

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE N. NAGARESH

TUESDAY, THE 6TH DAY OF JULY 2021 / 15TH ASHADHA, 1943

WP(C) NO. 10982 OF 2021

PETITIONER:

JUBY JACOB,
 AGED 35 YEARS
 W/O. BIJOY ALEX, RESIDING AT KOPPARA PARAMBIL
 HOUSE, NEERETTUPURAM KARA, NEERETTUPURAM P.O.,
 THALAVADY VILLAGE, KUTTANADU TALUK,
 ALAPPUZHA DISTRICT.

BY ADVS.
 P. HARIDAS
 SRI. BIJU HARIHARAN
 SRI. P. C. SHIJIN
 SRI. RISHIKESH HARIDAS

RESPONDENTS:

- 1 STATE OF KERALA
 REPRESENTED BY ITS SECRETARY, DEPARTMENT OF
 INDUSTRIES, NORTH BLOCK, GOVERNMENT SECRETARIAT,
 THIRUVANANTHAPURAM, PIN-695001.
- 2 THE APPELLATE AUTHORITY UNDER THE WATER
 (PREVENTION AND CONTROL OF POLLUTION) ACT, 1974,
 AND THE AIR (PREVENTION AND CONTROL OF POLLUTION)
 ACT, 1981, REPRESENTED BY ITS SECRETARY, OFFICE
 OF THE AIR AND WATER APPELLATE AUTHORITY, 4TH
 FLOOR, KSRTC BUS TERMINAL, THAMPANOR,
 THIRUVANANTHAPURAM, PIN-695014.
- 3 KERALA STATE POLLUTION CONTROL BOARD,
 REPRESENTED BY ITS SECRETARY, OFFICE OF THE
 KERALA STATE POLLUTION CONTROL BOARD, PLAMOODU-
 THEKKAMOODU ROAD, PATTOM, THIRUVANANTHAPURAM,
 PIN-695004.
- 4 BHARAT PETROLEUM CORPORATION LTD. (BPCL),
 REPRESENTED BY ITS TERRITORY MANAGER (RETAIL),
 BPCL IRUMPANAM INSTALLATION, IRUMPANAM, KOCHI,
 PIN-682309.

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: 2 :

- 5 ABRAHAM KURUVILA
AGED 56 YEARS
S/O. ABRAHAM, RESIDING AT AMPRAYIL ANCHIL SAJO
BHAVAN, NEERETTUPURAM KARA, NEERETTUPURAM P.O.,
THALAVADY VILLAGE, KUTTANADU TALUK, ALAPPUZHA
DISTRICT.
- 6 ADDL.R6.PRASAD KUTTY M.A.C
AGED 60 YEARS
S/O.M.C. ABRAHAM, RESIDING AT MULACKEL HONEY
COMB, NEERATTUPURAM PO, KERALA-689571
(IS IMPLEADED AS ADDITIONAL 6TH RESPONDENT AS
PER ORDER IN IA.3/2021 DT. 06.07.2021)

BY ADVS.
P.B.SAHASRANAMAN
S.PRASANTH
T.S.HARIKUMAR
K.ARJUN VENUGOPAL
ASWIN KUMAR M J
M. GOPIKRISHNAN NAMBIAR
T. NAVEEN
GOVT. PLEADER SRI. MANU RAJ

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR
ADMISSION ON 06.07.2021, THE COURT ON THE SAME DAY
DELIVERED THE FOLLOWING:

J U D G M E N T

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Dated this the 6th day of July, 2021

The petitioner seeks to call for the records leading to Appeal Nos.3, 4, 5 and 6 of 2021 before the 2nd respondent and to quash the same.

2. The petitioner filed this writ petition contending that she, with an intention to start a Petroleum Retail Outlet in her ancestral property, demolished a residential house situated thereon and gave the land on lease to the 4th respondent-BPCL for a period of 19 years and 11 months. The 4th respondent agreed to appoint the petitioner as a Dealer of the Outlet.

3. Ext.P1 Letter of Intent was issued by the 4th respondent. The Department of Fire and Safety issued Ext.P3 NOC. The Additional District Magistrate issued Ext.P4 NOC. The Kerala State Pollution Control Board issued Ext.P5

Consent to Establish. The petitioner would contend that the 5th respondent, who is a henchman of a nearby petroleum outlet owner, filed OA No.101/2020 before the National Green Tribunal challenging the establishment of the outlet. The National Green Tribunal dismissed the OA as per Ext.P9 order. The 3rd respondent issued Ext.P12 Consent to Operate thereafter. As regards construction of the outlet, the petitioner has deemed permit, contends the petitioner.

4. Finally, after long legal fights resultant of the motivated complaints made by the 5th respondent, the petitioner commissioned Fuel Tank and unloaded fuel on 29.01.2021. The Legal Metrology Department calibrated the equipment and the outlet was ready to function. In the meantime, the 5th respondent filed a suit, but his application for interim injunction was dismissed by the Court. Suppressing all these facts, the 5th respondent filed Exts.P15 to P15(b) appeals before the Air (Prevention and Control of Pollution) Appellate Authority. The said Authority passed Ext.P16 interim order interdicting the petitioner from filling of

fuel tanks and operating the Outlet. The petitioner filed objections in all the appeals but the Appellate Authority is neither vacating the interim order nor hearing the matter finally. Hence, this writ petition.

5. The learned counsel for the petitioner urged that Ext.P16 is illegal as the Appellate Authority has no power or jurisdiction to pass interim orders in the nature of Ext.P16 either under Rule 11 of the Air (Prevention and Control of Pollution) Appellate Authority Rules, 1999 or under Rule 11 of the Water (Prevention and Control of Pollution) Appellate Authority Rules, 1977. As regards distance restrictions, Ext.P2 Circular alone is applicable and her Petroleum Outlet need to maintain only three metres distance from the dispensing unit or tank, to the nearest residential house. Ext.P6 would not apply as the distance prescribed therein has to be maintained only if the Outlet is in a residential zone designated as per local laws. The counsel further urged that the appeals are time barred. The respondents have not challenged the Consent to Establish issued by the Pollution

Control Board.

6. The 5th respondent contested the writ petition filing counter affidavit. The 5th respondent denied all material allegations levelled by the petitioner in the writ petition. There are a large number of residential houses within 100 metres of the proposed Outlet. The counsel for the 5th respondent contended that the 5th respondent has a legal right to file appeal against the Consent to Establish. The Appellate Authority has jurisdiction to interfere in appeal and the Authority is bound to protect the interest of the parties to the appeal. The action of the Pollution Control Board authorities in issuing Consent to Establish the Petroleum Outlet is highly illegal and unsustainable, contended the counsel for the 5th respondent.

7. Heard the learned counsel for the petitioner, the learned Government Pleader representing the 1st respondent-State, the learned Standing Counsel representing respondents 3 and 4 and the learned counsel for the 5th respondent and additional 6th respondent.

8. When the writ petition was taken up today, the learned counsel for the petitioner submitted that the petitioner will be satisfied if a direction is given to the Appellate Authority to finalise the appeals expeditiously and till such time, the interim order passed by this court on 07.05.2021 may continue to be in force.

In the circumstances, the writ petition is disposed of directing the 2nd respondent-Appellate Authority to pass orders on Appeal Nos.3, 4, 5 and 6 of 2021 as expeditiously as possible. Till the Appellate Authority passes final orders in the appeals, the interim order passed by this Court on 07.05.2021 will continue to remain in force.

Sd/-
N. NAGARESH, JUDGE

APPENDIX OF WP(C) 10982/2021

PETITIONER'S EXHIBITS :

- EXHIBIT P7 TRUE COPY OF THE JUDGMENT IN WP(C) NO.10129/2020 OF THE HON'BLE HIGH COURT OF KERALA DATED 22.5.2020.
- EXHIBIT P8 TRUE COPY OF THE CONSENT VARIATION ORDER ISSUED BY THE 3RD RESPONDENT DATED 24.7.2020.
- EXHIBIT P9 TRUE COPY OF THE ORDER OF NATIONAL GREEN TRIBUNAL SOUTHERN ZONE DATED 8.7.2020.
- EXHIBIT P10 TRUE COPY OF THE CIRCULAR OF 3RD RESPONDENT DATED 24.2.2020.
- EXHIBIT P11 TRUE COPY OF THE CIRCULAR OF 3RD RESPONDENT DATED 18.8.2020.
- EXHIBIT P12 TRUE COPY OF THE CONSENT TO OPERATE ISSUED BY THE 3RD RESPONDENT DATED 15.1.2021.
- EXHIBIT P13 TRUE COPY OF THE PHOTOGRAPH OF PETITIONER'S PETROLEUM RETAIL OUTLET DATED NIL.
- EXHIBIT P14 TRUE COPY OF THE FUEL INVOICE DATED 29.1.2021 ISSUED BY THE 4TH RESPONDENT.
- EXHIBIT P15 TRUE COPY OF THE APPEAL NO.4/2021 FILED BY 5TH RESPONDENT BEFORE 2ND RESPONDENT DATED 15.12.2020.
- EXHIBIT P15(A) TRUE COPY OF THE PETITION TO CONDONE DELAY FILED AS I.A.NO.5/2021 IN APPEAL NO.4/2021 FILED BY 5TH RESPONDENT BEFORE 2ND RESPONDENT DATED 4.1.2021.
- EXHIBIT P15(B) TRUE COPY OF THE STAY PETITION TO FILED AS I.A.NO.6/2021 IN APPEAL NO.4/2021 FILED BY 5TH RESPONDENT BEFORE 2ND RESPONDENT DATED 4.1.2021.
- EXHIBIT P1 TRUE COPY OF THE LETTER OF INTENT ISSUED TO THE PETITIONER BY 4TH RESPONDENT DATED 26.3.2019.
- EXHIBIT P2 TRUE COPY OF THE CIRCULAR NO.PCB/TAC/18/2004 ISSUED BY THE 3RD RESPONDENT DATED 9.8.2004.

EXHIBIT P3 NO OBJECTION CERTIFICATE BY DEPARTMENT OF FIRE AND SAFETY DATED 25.7.2019.

EXHIBIT P4 TRUE COPY OF THE NO OBJECTION CERTIFICATE OF THE ADDL. DISTRICT MAGISTRATE ALAPPUZHA DATED 20.12.2019.

EXHIBIT P5 TRUE COPY OF THE CONSENT TO ESTABLISH ISSUED TO THE PETITIONER BY THE 3RD RESPONDENT DATED 6.2.2020.

EXHIBIT P6 TRUE COPY OF THE CIRCULAR ISSUED BY THE CENTRAL POLLUTION CONTROL BOARD DATED 7.1.2020.

EXHIBIT P18 TRUE COPY OF THE REPROT OF THE TAHSILDAR, KUTTANADU DATED 19.11.2019

EXHIBIT P19 TRUE COPY OF THE REPORT OF RDO, ALAPPUZHA DATED 23.11.2019

EXHIBIT P16 TRUE COPY OF THE ORDER OF INJUNCTION PASSED BY THE 2ND RESPONDENT DATED 5.3.2021.

EXHIBIT P17 TRUE COPY OF THE OBJECTIONS FILED BY PETITIONER AGAINST EXHIBIT P15 DATED 22.3.2021.

EXHIBIT P17(A) TRUE COPY OF THE OBJECTIONS FILED BY PETITIONER AGAINST P15(A) DATED 22.3.2021.

EXHIBIT P17(B) TRUE COPY OF THE OBJECTIONS FILED BY PETITIONER AGAINST EXHIBIT P15(B) DATED 22.3.2021.

EXHIBIT P18 TRUE COPY OF THE REPORT OF THE TAHSILDAR, KUTTANADU DT 19.11.2019

EXHIBIT P19 TRUE COPY OF THE REPORT OF RDO, ALAPUZZHA DT 23.11.2019