

Presented on: 24.04.2022

**BEFORE THE NATIONAL GREEN TRIBUNAL
SITTING AT CHENNAI**

Appeal No. 08 of 2022

(Against the judgment in Appeal No.05/2021 of the Air
&Water Appellate Authority, Thiruvananthapuram, dated
7th January, 2022)

Abraham Kuruvilla : Appellant

Vs.

Juby Jacob & another : Respondents

**COUNTER AFFIDAVIT FILED BY THE 3RD RESPONDENT
AGAINST APPEAL NO. 8/2022**

P.HARIDAS,
BIJU HARIHARAN
SHIJIMOL M. MATHEW
SHIJIN P.C. &
RISHIKESH HARIDAS

**M/s. CHERIAN & HARIDAS
ADVOCATES**

K.K. Padmanabhan Road,
Kochi – 682 018
Counsel for the 3rd respondent

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Kerala State Pollution Control Board
& Others : Respondents

INDEX

Sl No.	Particulars	Page No
1.	Counter affidavit filed by the 3 rd respondent against Appeal no. 8/2022	4-12
2.	<u>Annexure R3(a)</u> : True copy of the order of this hon'ble tribunal in O.A. No. 101/20201 dated 08.07.2020	
3.	<u>Annexure R3(b)</u> : True copy of the judgment of hon'ble High Court of Kerala in WP(C) 10982/2021 dated 06.07.2021	
4.	<u>Annexure R3(c)</u> : True copy of the office memorandum OF Central Pollution Control Board dated 07.01.2020	
5.	<u>Annexure R3(d)</u> : True copy of the letter of District Town Planner dated 05.08.2020 along with its true English Translation	
6.	<u>Annexure R3(e)</u> : True copy of the circular of the 1 st respondent dated 24.2.2020	
7.	<u>Annexure R3(f)</u> : True copy of the circular of the 1 st respondent dated 18.8.2020	
8.	<u>Annexure R3(g)</u> : True copy of the No Objection Certificate by Department of Fire and Safety dated 25.7.2019	
9.	<u>Annexure R3(h)</u> : True copy of the No Objection Certificate of the Addl. District Magistrate, Alappuzha dated 20.12.2019	

10.	<u>Annexure R3(i)</u> : True copy of the Circular No. PCB/TAC/18/2004 of the 1 st respondent dated 09.08.2004	
11.	<u>Annexure R3(j)</u> : True copy of the Report of RDO, Alappuzha dated 23.11.2019	
12.	<u>Annexure R3(k)</u> : True copy of the Government Order pertaining to the residential zone in Kochi City GO(Ms) 63/2016/LSGD dated 21.05.2016	

Dated this the 22nd day of April, 2022


Counsel for the 3rd respondent

**BEFORE THE NATIONAL GREEN TRIBUNAL SITTING
AT CHENNAI**

Appeal No. 08 of 2022

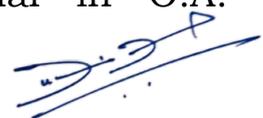
(Against the judgment in Appeal No.05/2021 of the Air and Water Appellate Authority, Thiruvananthapuram 7th January, 2022)

Abraham Kuruvila : Appellant
Vs.
Kerala State Pollution Control Board
& Others : Respondents

**COUNTER AFFIDAVIT FILED BY THE 3RD
RESPONDENT AGAINST APPEAL NO. 8/2021**

I, Juby Jacob, aged 38 years, W/o. Bijoy Alex, residing at Koppara Parambil House, Neerettupuram Kara, Neerettupuram P.O., Thalavady Village, Kuttanadu Taluk, Alappuzha district, Pin – 689571, do hereby solemnly affirm and state as follows:

1. I am the 3rd respondent in the above appeal and I am well conversant with the facts and circumstances of the case.
2. All the averments in the appeal and affidavit filed in support of the same saving those expressly admitted hereunder are false and hence denied.
3. It is submitted that the appellant is the henchman of Smt. Geetha Kumari, a rival petroleum outlet owner, whose HPCL petroleum outlet is situated only few meters away from the petitioner's outlet.
4. The issue of appellant's locus standi to challenge the Consent to Establish has already been answered negatively by this hon'ble tribunal in O.A. No. 101/2020 vide order dated 08.07.2020. True copy of the order of this hon'ble tribunal in O.A. No.



101/2020 dated 08.07.2020 is produced herewith and marked as **Annexure R3(a)**. The said order is also maliciously suppressed by the appellant. This appeal is hit by *res judicata*. Therefore, the locus standi of the appellant to prefer this appeal or an appeal before Air/Water Appellate authority has to be determined as a preliminary issue. This objection is filed without prejudice to the said preliminary issue.

5. The appellant has not challenged the Consent to Establish. It is well settled that there is no requirement to obtain Consent to Operate after obtaining Consent to Establish. Since, there is no challenge against consent to establish, the challenge against consent to operate or consent variation order will not sustain.
6. It is submitted filed this appeal is filed suppressing material facts and the orders suffered by the appellant from hon'ble High Court of Kerala and hon'ble NGT during his futile attempt to prevent the opening of a new petroleum outlet near the outlet of appellant's sponsor. It was in the light of the afore circumstances, the hon'ble High Court of Kerala vide judgment dated 06.07.2021 in WP(C) 10982/2021 permitted the 3rd respondent to proceed with the running and operation of petroleum outlet and by directing the Air/Water Appellate authority to expeditiously dispose of the appeal filed by the appellant herein. True copy of the judgment of hon'ble High Court of Kerala in WP(C)



10982/2021 dated 06.07.2021 is produced herewith and marked as **Annexure R3(b)**

7. The contentions in paragraph 1 of the appeal are incorrect and misleading. 3rd respondent's petroleum outlet is already in operation after obtaining all the requisite permissions and licences.
8. The contentions in paragraph no. 2 and 3 are stated with ulterior motives. The office memorandum issued by CPCB pursuant to directions of this tribunal is not applicable on the 3rd respondent. Vapor Recovery System (VRS) has to be installed in petroleum outlets having sale potential of 300 KL. My petroleum outlet is having a tank capacity of 60 KL only. True copy of the office memorandum of Central Pollution Control Board dated 07.01.2020 is produced herewith and marked as **Annexure R3(c)**. Furthermore, the new siting criteria of 50 meters is to be maintained from residential zone designated as per local laws. No such law is in force in petitioner's locality. True copy of the letter of District Town Planner dated 05.08.2020 along with its true English Translation is produced herewith and marked as **Annexure R3(d)**. Annexure R3(c) by CPCB was made applicable in Kerala w.e.f. 24.2.2020 by circular dated 24.2.2020. True copy of the circular of the 1st respondent dated 24.2.2020 is produced herewith and marked as **Exhibit R3(e)**. Thereafter a clarification was issued on 18.8.2020 by the 1st respondent regarding the applicability of Annexure R3(c). True copy of the circular of the 1st respondent dated



18.8.2020 is produced herewith and marked as **Exhibit R3(f)**. As per the same if any licence other than PCB consent is obtained by the applicant prior to the circular, dated 24.2.2020, siting criteria as per circular dated 9.8.2004 shall be applicable. In the instant case, I have even obtained consent to establish on 6.2.2020, i.e., prior to Annexure R3(e). True copy of the No Objection Certificate by Department of Fire and Safety dated 25.7.2019 is produced herewith and marked as **Exhibit R3(g)**. True copy of the No Objection Certificate of the Addl. District Magistrate, Alappuzha dated 20.12.2019 is produced herewith and marked as **Annexure R3(h)**.

Furthermore, hon'ble High Court of Kerala in Jerin J. Royees v. Secretary, Thycattussery Grama Panchayath & Anr filed as WP(C) 1060/2021 held that:

“Any consent which is having statutory flavour, without which a petroleum outlet cannot be established should be taken as a licence for the purpose of Circular dated 18.08.2020 of the PCB”

Therefore it is clear that the criteria applicable to the outlet of 3rd respondent is as per circular dated 9.8.2004. True copy of the Circular No. PCB/TAC/18/2004 of the 1st respondent dated 09.08.2004 is produced herewith and marked as **Annexure R3(i)**.

9. The contentions in paragraph nos. 4 are misleading and stated with ulterior motives. Consent to establish was granted to the 3rd respondent in accordance with law. It is submitted that appellant along with his



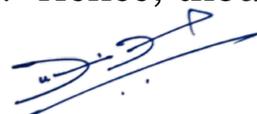
henchmen filed O.A. No. 101/2020 before this hon'ble tribunal challenging the establishment of the outlet. Though the impugned consent was produced as Annexure 1 therein, the same was not at all challenged and the NGT found that appellant is not entitled to challenge the same because the challenge was belated. Therefore appellant has approached this hon'ble tribunal with unclean hands. For that reason alone, these appeals are liable to be dismissed. Since, there is no challenge against consent to establish, the challenge against consent to operate or consent variation order will not sustain. Notwithstanding that as per the siting criteria applicable to 3rd respondent vide circular dated 09.08.2004, my establishment, classified as green category needs to maintain only a distance of 3 meters to the nearest residence.

10. Nevertheless, since there is no challenge against consent to establish, the challenge against consent to operate or consent variation order will not sustain.
11. The contentions in paragraph no. 5 is not at all relevant and stated with ulterior motives. Annexure A3 variation order is not at all applicable to 3rd respondent. The consent was varied on untenable grounds because as per Annexure R3(a), Vapour Recovery system (VRS) need not be installed for a petroleum outlet selling less than 300 KL motor spirit/petrol in a month. The tank capacity 3rd respondent's outlet is 60KL and the expected sale of motor spirit is less than 60 KL per month. All these



contentions were considered by the authority below. As per 2004 siting criteria, there is no prescription with regard to keeping the underground tank in a brick lined pit. However, respondent has constructed a double walled enclosure for underground tank installation. The inner wall of the enclosure is 10 cm wide thick Reinforced Cement Concrete (RCC) and outer wall is brick and cement mortar plastered inside having 15 cm thickness.

12. The contentions in paragraph no. 6 are misleading and stated with ulterior motives. It is submitted that upon various vexatious complaints filed by appellant and his henchmen before the District Collector, Alappuzha, a report was called for from the RDO, Alappuzha. RDO in turn called for report from Environmental Engineer. Environmental Engineer submitted a report on 4.11.2019. The RDO has heard the appellant and other complainants and submitted a report to District Collector that the apprehension of appellant and others are baseless. The said report recommending the grant of NOC is purposefully suppressed by the appellant and a letter of Tahsildar is produced in order to mislead this hon'ble tribunal. True copy of the Report of RDO, Alappuzha dated 23.11.2019 is produced herewith and marked as **Annexure R3(j)**. Thereupon the District Collector has issued the NOC. Only on the receipt of NOC and report from the District Collector, Pollution Control Board has issued consent to establish. Hence, though



no hearing is contemplated, an elaborate enquiry and hearing was conducted at various levels preceding the issuance of consent.

13. The contentions in paragraph no. 7 are misleading. All the objections of appellant and similarly situated persons were ordered to be heard and considered in accordance with law by hon'ble this tribunal vide Annexure R3(a) and by the hon'ble High Court of Kerala vide order dated 22.05.2020 in WP(C) 10129/2020. It is submitted that the consent to establish and consent to operate were issued pursuant to the same and thus perfectly legal, regular and in consonance with facts and evidence. All contrary contentions are incorrect and hence denied.
14. The contention in paragraph no. 8 are misleading and stated with ulterior motives. The appeals preferred by the appellant herein before the authority below were hopelessly time barred. As per Section 28 of Water (Prevention and Control of Pollution) Act and Section 31 of Air (Prevention and Control of Pollution) Act, an appeal has to be file within 30 days but appellant has not did so. On the other hand appellant along with his henchmen filed WP(C)No. 10129/2020 before the Hon'ble High Court of Kerala canvassing identical relief exhibiting the consent to establish as Exhibit P1 therein. Appellant also filed OA No. 101/2020 before the National Green Tribunal Southern Zone challenging the establishment of the outlet but without challenging the impugned consent

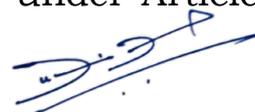


produced as Annexure 1 therein. This hon'ble tribunal vide Annexure R3(a) found that appellant is not entitled to challenge the same because the challenge was belated. It was under such circumstances the appeals were dismissed by the authority below. The same has been willfully suppressed herein. Thereby the appellant approached this appellate authority with unclean hands and this appeals are liable to be dismissed with costs.

15. The contentions in paragraph no. 9 and Annexure A6 produced therein has no application to the instant case. Appellant has produced the government notification pertaining to fair value enhancement to substantiate his case that property of 3rd respondent is a residential area designated as per local laws. It is to mislead this hon'ble court. Annexure R3(b) letter of district town planner clearly shows that no place in Thalavady Village has been declared as a 'Residential Zone'. True copy of the Government Order pertaining to the residential zone in Kochi City GO(Ms) 63/2016/LSGD dated 21.05.2016 is produced herewith and marked as **Annexure R3(k)**.

16. The contentions in paragraph no.10 are incorrect and hence denied. The judgment of authority below is perfectly legal and in consonance with the laws in vogue.

17. It is further submitted that though Rule 121 of the Petroleum Rules does not mandates any distance to be maintained. The licence issued under Article 5 of



schedule 1 of Petroleum Rules prescribe that only the underground storage shall be installed with a minimum distance of 1.5 meter from the boundary. No distance from the nearby dwelling house has been prescribed. Hence, appellant cannot insist for any maintenance of distance.

18. The grounds urged in this appeal are not sustainable. The reliefs prayed for are not allowable.

Under such circumstances, it is most humbly prayed that this hon'ble tribunal may be pleased to dismiss this appeal.

All the facts stated above are true and correct

Dated this the 22nd day of April, 2022



DEPONENT

Solemnly affirmed and signed before me by the deponent, who is personally known to me on this 22nd day of April, 2022 in my office at Ernakulam.



P. Haridas

Advocate