

**BEFORE THE HON'BLE NATIONAL GREEN TRIBUNAL
SOUTHERN ZONE AT CHENNAI**

APPLICATION NO. 167 OF 2020 (SZ)

A. Vijayan
S/o. Ayyakutty,
Carol & Bharat Villai,
Vijayapuram,
Kirathoor Post,
Kanyakumari District

... Applicant

VERSUS

- 1.** The District Collector,
Kanyakumari District,
Nagercoil
- 2.** The District Revenue Officer,
Collectorate Office,
Nagercoil,
Kanyakumari District
- 3.** The Revenue Divisional Officer,
Vilavancode Taluk,
Thuckalay,
Kanyakumari District
- 4.** The Deputy General Manager,
Indian Oil Corporation Limited,
Southern Region,
Indian Oil Bhavan,
No.139, Mahatma Gandhi Road,
Nungambakkam High Road,
Chennai – 600 034
- 5.** The Divisional Manager,
Indian Oil Corporation,
Kappallur,
Madurai
- 6.** The Assistant Director of Pollution Control,
Water Tank Road,
Nagercoil,

Kanyakumari District,

- 7.** Antony Vijayan,
S/o. Singarajan,
Kalingarajapuram,
Vallavilai,
Kollemcode Post,
Kanyakumari District.

... Respondents

**WRITTEN SUBMISSIONS FILED ON BEHALF OF THE
RESPONDENT NOS. 4 & 5**

The 5th Respondent begs to submit as follows:

A. It is submitted that the Reply Statement, Typed Set of papers and compilation of judgments filed by this Respondent before this Hon'ble Tribunal, may be treated as a part and parcel of this present written submission.

B. It is submitted that the present application has been filed under Section 18(1) read with Section 14 (1) of the National Green tribunal, Act, 2020, by the Applicant for the following relief:

- "i) *Directing the respondents 1 to 6 from permitting to carry on petroleum retail outlet in violation of the guidelines of Pollution Control Board dated 16.01.2020 within 50 metres radius from the applicant's residential house situated at Re Survey No. 675/7 and 675/8A of Kollencode Village, Vilavancode Taluk of Kanyakumari District.*
- ii) *Grant permanent injunction restraining the 7th Respondent from carrying on petroleum outlet in Re*

survey No. 675/7 and 675/8A of Kollencode village, Vilavancode Taluk or Kanyakumari District.

iii) To pay the cost and thus render justice”.

C. It is submitted that the above Application is liable to be dismissed on the following grounds:-

I. CPCB Guidelines have no statutory force.

II. Non Application of CPCB Guidelines in the State of Tamil Nadu.

III. No violation of CPCB Guidelines.

IV. Devoid of Merits.

D. NOW DEALING WITH THE ABOVE GROUNDS:

I. CPCB GUIDELINES DO NOT HAVE STATUTORY FORCE

1. It is humbly submitted that the said guidelines issued by the Central Pollution Control Board (CPCB) dated 07.01.2020, relied on by the Applicant herein, does not attain or attach to itself, any statutory force and remains only to be recommendatory in nature.

2. It is submitted that Section 5 of the Environment (Protection) Act 1986 (EP Act) empowers the Central Government to give directions in exercise of its powers and performance of its functions

under the act. Such power was delegated to CPCB by the Central Government by way notification dated 27.02.1996. The power vested with CPCB is only to issue directions to regulate and compliance of the provisions of EP Act and its allied rules.

3. It is further submitted that though the said Guidelines of CPCB have been issued pursuant to the directions of the Principal Bench of this Hon'ble Tribunal vide its order dated 19.01.2019, in O.A. No. 86/2019: Gyanprakash @ Pappu Singh Vs Uol & Ors, however, the Guidelines have not been issued under any provisions of or made in reference to, any existing statute/s, for it attain a force of law. It is relevant to state that the Bio-Medical Waste (Handling and Management) Rules, 1998 was enacted by the Central Government subsequent to the direction of the Hon'ble Supreme Court in **Dr. B.L. Wadehra v. Union of India and others**, reported in **(1996) 2 SCC 594**. In the above context, the Hon'ble Chhattisgarh High Court in **E. Tech Projects Private Limited v. State of Chhattisgarh** reported in **2018 SCC OnLine Chh 369**, observed and held as follows:

"30. The ancillary question would be whether the guidelines issued by the CPCB are statutory in nature which can be enforced by the petitioner by way of writ petition.

31. This Court, as noticed herein-above, by order dated 17-5-2017 directed the respective parties to file their affidavit as to whether there is statutory prohibition under the law to establish more than one plant of CBWTF in the periphery of 75 Kms., the rules or regulations. Central Pollution Control Board has filed its

affidavit clearly stating that the guidelines published by CPCB in the year 2003 were to facilitate setting up of new CBWTFs in the country, though such guidelines are not mandated under Bio-medical Waste (Management & Handling) Rules, 1998 as amended. Further, CPCB has stated in the affidavit as under:—

"In this regard, it is humbly that the objective of CPCB's earlier guidelines is to protect operational area of an already existing CBMWTF so as to provide effective services to member hospitals. Further, as per earlier guidelines, another facility was allowed close to existing facility but has to operate beyond the coverage of existing facility. In this regard, it is also submitted that mushrooming of multiple facilities in same area would bring in un-healthy competition among the facility operators which would result into operation of facilities in economically un-viable manner, leading to improper management of biomedical waste."

32. *Central Pollution Control Board has also stated that Rule 7(3) of the Rules of 2016 contains a bar to establish on-site treatment and disposal facility, if a service of a CBWTF is available at a distance of 75 Kms.*

33. *State Pollution Control Board has also filed affidavit clearly stating that the guidelines of 2003 issued by CPCB are regulatory as well as recommendatory in nature, but it is not mandatory in nature. It has also stated that the guidelines of 2003 fixed the limit of operation of CBWTF, but it nowhere lays*

down that there cannot be any CBWTF within a distance of 150 Kms.

34. *After having noticed the stand of CPCB and State Pollution Control Board in which they have clearly stated that the guidelines of 2003 were not issued in terms of any statutory provisions under the Rules of 1998, it would be appropriate to notice a pertinent decision of the Supreme Court in the matter of Syndicate Bank v. Ramachandran Pillai in which Their Lordships of the Supreme Court have held that if administrative orders/decisions/executive instructions/orders/circulars - guidelines are not statutory in character, they are not law, they confer no legal right to seek a direction in a court of law for compliance with such guidelines even if there has been any violation or breach of such non-statutory guidelines and it has been held as under:—*

"6. If any executive instructions are to have the force of statutory rules, it must be shown that they were issued either under the authority conferred on the Central Government or a State Government or other authority by some statute or the Constitution. Guidelines or executive instructions which are not statutory in character, are not "laws", and compliance therewith cannot be enforced through courts. Even if there has been any violation or breach of such non-statutory guidelines, it will not confer any right on any member of the public, to seek a direction in a court of law, for compliance with such guidelines. An order validly made in accordance with a statute (as in this

case the Public Premises Act), cannot be interfered with, even if there has been any transgression of any guidelines, except where it is arbitrary or mala fide or in violation of any statutory provision. These are well-settled principles (see Union of India v. S.L. Abbas , South Central Railway v. G. Ratnam and State of U.P. v. Gobardhan Lal).

7. As the guidelines relied upon in this case were not issued in exercise of any statutory power under the Public Premises Act or any other statute, even if there was violation or non-compliance with the aforesaid guidelines by the appellant, relief to the appellant could not be denied by relying upon the guidelines. To do so would amount to reading the guidelines into the statute, which is impermissible. The only "remedy" of any person complaining of non-compliance with such guidelines, is to bring such violation to the notice of a higher authority. We therefore hold that the enforcement of any right or exercise of any power by the appellant, under the Public Premises Act cannot be set at naught by relying upon or referring to the guidelines issued by the Central Government."

35. *The judgment of the Supreme Court in the matter of Shivashakti Sugars Limited v. Shree Renuka Sugar Limited may be noticed herein profitably in which the challenge was to the permission granted to establish a new sugar factory within a radius of 15 kms. from the sugar factory of the appellant therein, in breach of clause 6 -A of the Sugar (Control) Order, 1966. In that case also by the time the challenge was made,*

the respondent therein had already made huge investment in establishing the factory. After taking into consideration various aspects of the case, the Supreme Court declined to interfere and held that there is no reason to not let the appellant factory function, merely because there might be technical violation(s) of law and placing reliance upon its earlier judgment in the matter of Har Shankar v. Excise and Taxation

Commr. , it has been held as under:—

"37. ... At the same time, it was observed that the licensees are not precluded from seeking to enforce the statutory provisions governing the contract. It must, however, be remembered that we are dealing with parties to a contract, which is a business transaction, no doubt governed by statutory provisions. (Reference may also be made to the decision of this Court in Excise Commr. v. Issac Peter .) While examining complaints of violation of statutory rules and conditions, it must be remembered that violation of each and every provision does not furnish a ground for the court to interfere. The provision may be a directory one or a mandatory one. In the case of directory provisions, substantial compliance would be enough. Unless it is established that violation of a directory provision has resulted in loss and/or prejudice to the party, no interference is warranted. Even in the case of violation of a mandatory provision, interference does not follow as a matter of course. A mandatory provision conceived in the interest of a party can be waived by that party, whereas a mandatory provision conceived in the interest of the public

cannot be waived by him. In other words, wherever a complaint of violation of a mandatory provision is made, the court should enquire—in whose interest is the provision conceived. If it is not conceived in the interest of the public, question of waiver and/or acquiescence may arise—subject, of course, to the pleadings of the parties. This aspect has been dealt with elaborately by this Court in State Bank of Patiala v. S.K. Sharma and in Krishan Lal v. State of J&K on the basis of a large number of decisions on the subject. Though the said decisions were rendered with reference to the statutory rules and statutory provisions (besides the principles of natural justice) governing the disciplinary enquiries involving government servants and employees of statutory corporations, the principles adumbrated therein are of general application. It is necessary to keep these considerations in mind while deciding whether any interference is called for by the court—whether under Article 226 or in a suit. The function of the court is not a mechanical one. It is always a considered course of action.”

36. *Their Lordships further in Shivashakti Sugars Limited (supra) held that economic impact of judicial decision is important in deciding cases, as India, a developing economy, is on road of economic growth and judiciary also has a role in this development. Their Lordships also held that if two views are possible, the view that sub-serves economic interest of nation should be adopted and economic interest of nation should take precedence over technical violation of law. It has been observed as under:—*

"41. When we keep in mind all the aforesaid factors cumulatively, we see that no purpose is going to be served in getting the unit of the appellant closed. On the contrary, public purpose demands that the appellant's factory remain in operation and continue to function.

43. It has been recognised for quite some time now that law is an interdisciplinary subject where interface between law and other sciences (social sciences as well as natural/physical sciences) come into play and the impact of other disciplines of Law is to be necessarily kept in mind while taking a decision (of course, within the parameters of legal provisions). Interface between Law and Economics is much more relevant in today's time when the country has ushered into the era of economic liberalisation, which is also termed as "globalisation" of economy. India is on the road of economic growth. It has been a developing economy for number of decades and all efforts are made, at all levels, to ensure that it becomes a fully developed economy. Various measures are taken in this behalf by the policy-makers. The judicial wing, while undertaking the task of performing its judicial function, is also required to perform its role in this direction. It calls for an economic analysis of law approach, most commonly referred to as "Law and Economics" . In fact, in certain branches of Law there is a direct impact of Economics and economic considerations play predominant role, which are even recognised as legal principles. Monopoly laws (popularly known as "Antitrust Laws" in USA) have been transformed

by Economics. The issues arising in competition laws (which has replaced monopoly laws) are decided primarily on economic analysis of various provisions of the Competition Commission Act. Similar approach is to be necessarily adopted while interpreting bankruptcy laws or even matters relating to corporate finance, etc. The impress of Economics is strong while examining various facets of the issues arising under the aforesaid laws. In fact, economic evidence plays a big role even while deciding environmental issues. There is a growing role of Economics in contract, labour, tax, corporate and other laws. Courts are increasingly receptive to economic arguments while deciding these issues. In such an environment it becomes the bounden duty of the Court to have the economic analysis and economic impact of its decisions.

44. We may hasten to add that it is by no means suggested that while taking into account these considerations, specific provisions of law are to be ignored. First duty of the Court is to decide the case by applying the statutory provisions. However, on the application of law and while interpreting a particular provision, economic impact/effect of a decision, wherever warranted, has to be kept in mind. Likewise, in a situation where two views are possible or wherever there is a discretion given to the Court by law, the Court needs to lean in favour of a particular view which subserves the economic interest of the nation. Conversely, the Court needs to avoid that particular outcome which has a potential to create an adverse effect on employment, growth of infrastructure or economy or the revenue of the

State. It is in this context that economic analysis of the impact of the decision becomes imperative .”

37. *The principle of law laid down in the above-stated judgment squarely applies to the facts of the present case. The petitioner has even failed to establish technical violation in granting consent to establish CBWTF at Raipur by the impugned order.*

40. *Reverting to the facts of the present case after having noticed the statutory provisions and the principles of law laid down by the Supreme Court in aforesaid cases and directions issued by the National Green Tribunal with regard to establishment of CBWTF, particularly taking into consideration that the petitioner's CBWTF plant was established only for Durg, Raipur and Bhilai cities, it is quite vivid that the Act of 1986 nor the Rules of 1998 restrict or prohibit the State Pollution Control Board from establishing more than one CBWTF in a particular locality and the Rules of 2016 are not applicable. Clause D of the guidelines issued by the Central Government in the year 2003 are not statutory in nature. Even otherwise, clause D of the said guidelines though not statutory in nature, yet did not prohibit or restrict the respondent Board from establishing more than one CBWTF in a particular locality. Further, the petitioner's CBWTF plant was not functional, the respondent Board received several complaints leading to issuance of directions under Section 5 of the Act of 1986 and submission of willingness of the petitioner to close down the unit necessitated establishment of further CBWTF at Raipur by respondents No. 2 and 3 which was imminently required to be established looking to the stand,*

status and function of the petitioner unit. Thus, it cannot be held that there is any legal bar for establishment of CBWTF in the locality where the petitioner is operating the unit of CBWTF at present.

Thus, issue No. 1 is answered accordingly."

4. It is also further submitted that the said Guidelines being issued by a Central body, it has not adhered to the provisions of Article 77 of the Constitution of India and hence, the said guidelines cannot be said to have attained the force of a statute and are only mere expression of opinion, which are recommendatory in nature.

5. It is submitted that in a similar circumstances, the Hon'ble Supreme Court in the matter of ***Gulf Goans Hotels Company Limited and Another vs Union of India and Others, reported in (2014) 10 SCC 673***), observed as follows :

"19. Article 77 of the Constitution provides the form in which the Executive must make and authenticate its orders and decisions. Clause (1) of Article 77 provides that all executive action of the Government must be expressed to be taken in the name of the President. The celebrated author H.M.Seervai in Constitutional Law of India, 4th Edition, Volume 2, 1999 describes the consequences of Government orders or instructions not being in accordance with Clauses (1) or (2) of Article 77 by opining that the same would deprive of the orders of the immunity conferred by the aforesaid clauses and they may be open to challenge on the ground that they have

not been made by or under the authority of the President in which case the burden would be on the Government to show that they were, in fact, so made. In the present case, the said burden has not been discharged in any manner whatsoever. The decision in Air India Cabin Crew Association vs. Yeshaswinee Merchant[10], taking a somewhat different view can, perhaps, be explained by the fact that in the said case the impugned directions contained in the Government letter (not expressed in the name of the President) was in exercise of the statutory power under Section 34 of the Air Corporations Act, 1953. In the present case, the impugned guidelines have not been issued under any existing statute.

20. *Clause (2) of Article 77 also provides for the authentication of orders and instruments in a manner as may be prescribed by the Rules. In this regard, vide S.O. 2297 dated 3rd November, 1958 published in the Gazette of India, the President has issued the Authentication (Orders and Other Instruments) Rules, 1958. The said Rules have been superseded subsequently in 2002. Admittedly, the provisions of the said Rules of 1958 had not been followed in the present case insofar as the promulgation of the guidelines is concerned.*

21. *In the absence of due authentication and promulgation of the guidelines, the contents thereof cannot be treated as an order of the Government and would really represent an expression of opinion. In law, the said guidelines and its binding effect would be no more than what was*

expressed by this Court in State of Uttaranchal vs. S.K. Vaish[11] in the following paragraph of the report : (SCC p.678, paras 23-24)

"23. It is settled law that all executive actions of the Government of India and the Government of a State are required to be taken in the name of the President or the Governor of the State concerned, as the case may be [Articles 77(1) and 166(1)]. Orders and other instruments made and executed in the name of the President or the Governor of a State, as the case may be, are required to be authenticated in the manner specified in the rules made by the President or the Governor, as the case may be [Articles 77(2) and 166(2)]. In other words, unless an order is expressed in the name of the President or the Governor and is authenticated in the manner prescribed by the rules, the same cannot be treated as an order on behalf of the Government."

24. A noting recorded in the file is merely a noting simpliciter and nothing more. It merely represents expression of opinion by the particular individual. By no stretch of imagination, such noting can be treated as a decision of the Government. Even if the competent authority records its opinion in the file on the merits of the matter under consideration, the same cannot be termed as a decision of the Government unless it is sanctified and acted upon by issuing an order in accordance with Articles 77(1) and (2) or Articles 166(1) and (2). The noting in the file or even a decision gets culminated into an order

affecting right of the parties only when it is expressed in the name of the President or the Governor, as the case may be, and authenticated in the manner provided in Article 77(2) or Article 166(2). A noting or even a decision recorded in the file can always be reviewed/reversed/overruled or overturned and the court cannot take cognizance of the earlier noting or decision for exercise of the power of judicial review."

6. It is further submitted that reiterating the above judgment of the Hon'ble Supreme Court, this Hon'ble Tribunal in OA No. 66 of 2016, in ***Santhiyagu vs Union of India and others***, vide its order dated 05.05.2017, held as follows :-

"45. The said guidelines framed by the Board are executive in nature and cannot be said to have the effect of law to be enforced or having authority of law as it has been pointed by the Hon'ble Supreme Court in GULF GOANS HOTELS CO. LTD VS. UNION OF INDIA (2014) 10 SCC 673. While dealing with the environmental guidelines issued for development of beaches, apart from the direction issued to the State Government by the then Prime Minister, the Notification issued by the Governor for setting up of the Ecological Development Council for Goa inter alia for scrutiny of beach constitution within 500 m of HTL and the order of the Under Secretary, Ministry of Tourism dated 11.6.1986 addressed to the Chief Secretary, Government of Goa, constituting an Inter-Ministerial Committee for considering tourist projects within 500 m. the Hon'ble Supreme Court has rejected the contention

that in respect of ecology and environment strict view of environmental degradation should be adopted in the light of Article 21 of the Constitution of India and held that if the guidelines are not statutorily enacted the same cannot be enforced. The guidelines were at the most held to be expression of opinion and observed as follows:

"19. Article 77 of the Constitution provides the form in which the Executive must make and authenticate its orders and decisions. Clause (1) of Article 77 provides that all executive action of the Government must be expressed to be taken in the name of the President. The celebrated author H.M. Seervai in Constitutional Law of India, 4th Edn. Vol. 2, 1999 describes the consequences of government orders or instructions not being in accordance with clauses (1) or (2) of Article 77 by opining that the same would deprive the orders of the immunity conferred by the aforesaid clauses and they may be open to challenge on the ground that they have not been made by or under the authority of the President in which case the burden would be on the Government to show that they were, in fact, so made. In the present case, the said burden has not been discharged in any manner whatsoever. The decision in Air India Cabin Crew Assn. V. Yeshaswinee Merchant (2003) 6 SCC 277, taking a somewhat different view can, perhaps, be explained by the fact that in the said case the impugned directions contained in the government letter (not expressed in the name of the President) was in exercise of the statutory power under Section 34 of the Air

Corporations Act, 1953. In the present case, the impugned guidelines have not been issued under any existing statute.

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21. In the absence of due authentication and promulgation of the guidelines, the contents thereof cannot be treated as an order of the Government and would really represent as expression of opinion In law, the said guidelines and then binding effect would be no more than what was expressed by this Court in State of Uttaranchal v. Sunil Kumar Vaish (2011) 8 SCC 670 in the following paragraph of the report : (CC P.678, paras 23, 24)

"23. It is settled law that all executive actions of the Government of India and the Government of a State are required to be taken in the name of the President or the Governor of the State concerned, as the case may be (Articles 77(1) and 166(1). Orders and other instruments made and executed in the name of the President or the

Governor of a State, as the case may be, are required to be authenticated in the manner specified in the rules made by the President or the Governor, as the case may be (Articles 77(2) and 166(2). In other words, unless an order is expressed in the name of the President or the Governor and is authenticated in the manner prescribed by the rules, the same cannot be treated as an order on behalf of the Government.

24. A noting recorded in the file is merely a noting simpliciter and nothing more. It merely represents expression of opinion by the particular individual. By no stretch of imagination, can such noting be treated as a decision of the Government. Even if the competent authority records its opinion in the file on the merits of the matter under consideration, the same cannot be termed as a decision of the Government unless it is sanctified and acted upon by issuing an order in accordance with Articles 77(1) and (2) or Articles 166 (1) and (2). The noting in the file alone is a decision gets culminated into an order affecting right of the parties only when it is expressed in the name of the President or the Governor, as the case may be, and authenticated in the manner provided in Article 77(2) or Article 166(2). A noting or even a decision recorded in the file can always be reviewed/reversed/overrules or overturned and the court cannot take cognizance of the earlier noting or decision for exercise of the power of judicial review.”

46. In any event, these guidelines issued by the Board cannot be considered to be rigid and have to be relaxed based on the technological advancement and scientific improvements in respect of various projects. As and when new scientific and technological process are introduced, the siting criteria even in the form of guidelines are to be changed to suit the scientific advancements."

7. It is also further submitted that since there already exists a notified statute in the State of Tamil Nadu, "Tamil Nadu Combined Development and Building Rules, 2019", wherein the construction and operation of Fuel filling stations i.e., petroleum retail outlet in both residential and commercial zone are permitted, the guidelines issued by the Central Pollution Control Board, not having attained any statutory force and being merely recommendatory in nature, cannot in any way override the provisions of a notified Statute.

8. It is submitted that the Hon'ble Allahabad High Court in **Vijay Singh and Others vs State of U.P and Ors, (2004 SCC Online ALL 1656)**, held as follows:

"4. It is settled legal proposition that executive instructions cannot override the statutory provisions. Vide B.N. Nargajan v. State of Mysore, Sant Ram Sharma v. State of Rajasthan, Union of India v. Majji Jangammyya, B.N. Nagarajan v. State of Karnataka, P.D. Agrawal v. State of U.P. Beopar Sahayak (P) Ltd. v. Vishwa Nath, State of Maharashtra v. Jagannath Achyut Karendikar, Paluru Ramkrishananiah v. Union of India Comptroller and Auditor General of India v. Mohan Lal

Mehrotra State of Madhya Pradesh v. G.S. Dall and Flour Mills, Naga People's Movement of Human Rights v. Union of India, C. Rangaswamaiah v. Karnataka Lokayukta.

5. *Executive instructions cannot amend or supersede the statutory Rules or add something therein, nor the orders be issued in contravention of the statutory rules for the reason that an administrative instruction is not a statutory rule nor does it have any force of law; while statutory rules have full force of law provided the same are not in conflict with the provisions of the Act. Vide State of U.P. v. Babu Ram Upadhyaya, and State of Tamil Nadu v. Hind Stone etc..*

6. *In Union of India v. Sri Somasundaram Vishwanath, the Hon'ble Apex Court observed that if there is a conflict between the executive instruction and the rules framed under the proviso to Article 309 of the Constitution, the rules will prevail. Similarly, if there is a conflict in the rules made under the proviso to Article 309 of the Constitution and the law, the law will prevail.*

7. *Similar view has been reiterated in Union of India v. Rakesh Kumar. Swapan Kumar Pal v. Samitabhar Chakraborty, Khet Singh v. Union of India, Laxmi Narayan R. Bhattad v. State of Maharashtra, and Delhi Development Authority v. Joginder S. Monga, observing that statutory rules create enforceable rights which cannot be taken away by issuing executive instructions.*

8. *In Ram Ganesh Tripathi v. State of U.P., the Hon'ble Supreme Court considered a similar controversy and held that any executive instruction/order which runs counter to or is inconsistent with the statutory rules cannot be enforced, rather deserves to be quashed as having no force of law. The Hon'ble Supreme Court observed as under:—*

"They (respondents) relied upon the order passed by the State. This order also deserves to be quashed as it is not consistent with the statutory rules. It appears to have been passed by the Government to oblige the respondents and similarly situated ad hoc appointees."

9. *Thus, in view of the above, it is evident that executive instructions cannot be issued in contravention of the rules framed under the proviso to Article 309 of the Constitution and statutory rules cannot be set at naught by the executive fiat."*

II. NON APPLICATION OF GUIDELINE IN THE STATE OF TAMIL NADU

9. It is further submitted that assuming without admitting that the CPCB guidelines have statutory force and have to be adhered to mandatorily, a bare perusal of the said guideline would go to show that the same would not apply to the subject retail outlet.

10. It is submitted that on a reading of the clarification dated 29.01.2021, issued by the Central Pollution Control Board with respect to the Guidelines issued on 07.01.2020, the same would

show that the said guideline will not apply to retail outlets that have obtained initial PESO Approval and have commenced construction, prior to 07.01.2020.

11. It is submitted that there is already a statute namely the Tamil Nadu Combined Development and Building Rules, 2019 has been enacted by the Government of Tamil Nadu by publishing the said Rules in a Tamil Nadu Government Gazette on 04.02.2019, with the assent of His Excellency the Governor of the State of Tamil Nadu. The said enactment is in force in the State of Tamil Nadu, wherein the establishment and operation of the petroleum retail outlets are permitted in a residential area without any restrictions, hence the CPB guidelines are contrary to the above statute and the same will not be applicable to the petroleum retail outlets in the State of Tamil Nadu.

III. NO VIOLATION OF CPCB GUIDELINES

a. SITING CRITERIA

20. It is submitted that the present application has been filed with various allegations against the subject retail outlet, however, those allegations are neither the issue of pollution nor the issue of environmental degradation, which warrant the indulgence of this Hon'ble Tribunal under the provisions of the National Green Tribunal Act, 2020, however, the only allegation which can be decided by this Hon'ble Tribunal is that the subject retail outlet is established in violation to siting criteria prescribed by the Central Pollution Control Board in Clause "H" of the Office Memorandum No.B-13011/1/2019-

20/AQM/10802-10847 dated 07.01.2020. In this regard, it is relevant to read the said Clause "H" and the same is as follows:-

"H. Siting criteria of retail Outlets:

*In case of siting criteria for petrol pumps new **Retail Outlets shall not be located within a radial distance of 50 meters (from fill point/dispensing units/vent pipe whichever is nearest) from schools, hospitals (10 beds and above) and residential areas designated as per local laws.** In case of constraints in providing 50 meters distance, the retail outlet shall implement additional safety measures as prescribed by PESO. In no case the distance between new retail outlet from schools, hospitals (10 beds and above) and residential area designated as per local laws shall be less than 30 meters. No high tension line shall pass over the retail outlet."*

It is apparent from the above clause that the new Retail Outlets shall not be located within a radial distance of not less than 30 meters from schools, hospitals and residential areas designated as per local laws. It is submitted that the said guidelines are in no way applicable to the subject retail outlet and it is also further submitted that assuming without admitting that the said guidelines are mandatory in nature, it cannot apply to the subject retail outlet for the reason that there are no hospitals or schools near the subject retail outlet besides there are various commercial establishments located around the site in question. None of the

authorities including local authority has said that the subject area is a residential zone.

b. ZONING REGULATIONS AND LAND CLASSIFICATION

21. It is humbly submitted that the Government of Tamil Nadu had issued G.O. Ms. No. 1730, Rural Development and Local Administration Department dated 24.07.1974, wherein urban areas are classified into 6 Zones and zoning regulations on use of land and building were prescribed. As per the Appendix on Use Zone Regulations, S.No.11 of Zone 1(b) i.e., Mixed Residential use zone, wherein operation of **Petrol filling and service stations** are permitted. For Commercial Use Zone, it has been stated that all uses permitted in the Use Zone 1(a) and 1(b) is permitted in addition to other uses permitted thereunder.

22. It is humbly submitted that apart from the above, the Government of Tamil Nadu enacted the Tamil Nadu Combined Development and Building Rules, 2019 wherein the construction and operation of Fuel filling stations i.e., petroleum retail outlet in both residential and commercial zone are permitted. The relevant provision is as follows:-

"33. Zoning Regulations.—

The Zoning Regulations shall comprise of Residential use zone, Commercial use zone, Industrial use zone, Special and Hazardous use zone, Institutional use zone, Open Space and

Recreational use zone, Urbanisable use zone and Agricultural use zone and the activities permissible in each use zone are provided in Annexure - XVIII.

Annexure – XVIII [See rule 33] Zoning Regulations

Residential use zone

(1) In this zone buildings or premises shall be permitted only for the following purposes and accessory uses. Permissible non-residential activity shall be limited to one in a sub-division.

xxi) Fuel filling stations, and automobile service stations with installation not exceeding 30 HP.

Commercial use zone

(1) In this zone, buildings or premises shall be permitted only for the following purposes and accessory uses:

iii) Fuel filling stations, automobile service stations and workshops with installation not exceeding 50 HP".

23. It is respectfully submitted that the subject retail outlet is located in the "Unclassified Zone/Area" and not in the **designated Residential Zone/area** as stipulated in the above Office Memorandum of the Central Pollution Control Board. Further there

are no schools or hospitals located within the prohibited distance from the subject retail outlets.

24. I humbly submit that the subject retail outlet is located in the unclassified Zone/Area which is neither a residential nor a commercial zone as designated by the local authority as stipulated in the above Office Memorandum of the Central Pollution Control Board. Further there are no schools or hospitals located within the 200 metres distance from the subject retail outlets, which is evident from the Proceedings of the Kollencode Local Authority in its Letter bearing Na Ka No. 52/2020/B1 dated 20.03.2020.

IV. DEVOID OF MERITS:

12. I humbly submit that prior to establishment of the subject retail outlet, all necessary prior permissions/licenses were obtained from the competent authorities and necessary safety measures were duly undertaken in order to avoid any harm to the public. The District Revenue Officer and PESO issued "No Objection Certificates" for the subject retail outlet. Further, the District Revenue Officer, Kanyakumari had sought clearance from the Tamil Nadu Pollution Control Board for the subject outlet, however, the Tamil Nadu Pollution Control Board has replied that "Automobile Fuel Outlets" are exempted from the purview of Consent Management. Hence, there is no flouting of any rules in setting up of Retail Outlet by this Respondent.

13. As far as the allegation in respect of vapour emission and harmful effects, I humbly submit that this Respondent is proposed to install PV valve (Pressure Vacuum Valve) in all MS Tanks to avoid

escape of vapours. Further, it is in practice that "Sealed Parcel Decantation System" with camlock coupling will be installed where vapour emission or oil leakage is very minimal. Thus, all the efforts to safeguard of environment are being taken up while installing a new retail outlet by this Respondent without any default.

14. I humbly submit that the emission of vapours will be harmful if only they exceed threshold limit. Such high vapour emissions are expected only in 100 KL and above MS selling Retail Outlets. We are coming up with Vapour Recovery System (VRS) at all such Retail Outlets as per the guidelines issued by the Ministry of Petroleum and Natural Gas (MoP & NG). Thus mere installation of a retail outlet will not create air pollution/water pollution.

15. I humbly submit that the District Revenue Officer, Kanyakumari has issued NOC for setting up of retail outlet after careful consideration of facts and also with personal visit to the site.

16. I humbly submit that the retail outlet is set up by following all the norms/rules as prescribed by the Central Pollution Board (CPCB) by way of an Office Memorandum in B-13011/1/2019-20/AQM/10802 – 10847 dated 07.01.2020.

GENERAL

G. It is humbly submitted that despite knowing of all the above, the applicant has approached this Hon'ble Tribunal for his vested interest and there is no public or environment interest is involved in the present issue, hence the present application is liable to be dismissed with huge cost.

H. I humbly submit that the applicant with an ill intention to stall the operation of the subject retail outlet, has filed the present application and the same is an abuse of process of law. Further, he is not entitled to any relief as claimed in the present application.

I. PRAYER:

For the reasons stated above, it is therefore humbly prayed that this Hon'ble Tribunal may be pleased to dismiss the above application with heavy cost and pass such further or other orders as this Hon'ble Tribunal may deem fit and proper in the circumstances of the case and thus render justice.

Dated at Chennai on this the 15th day of December, 2021



COUNSEL FOR THE RESPONDENT NOS. 4 & 5