BEFORE THE NATIONAL GREEN TRIBUNAL
EASTERN ZONE BENCH AT KOLKATA
EXECUTION APPLICATION NO. 2 OF 2024
IN
ORIGINAL APPLICATION NO. 154 OF 2022
(Under Section 25 of the National Green Tribunal Act, 2010)

IN THE MATTER OF:

Yodh BDR. Thapa …Applicant

Versus

Bharat Petroleum Corporation Limited and Ors. …Respondents

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Through

(SAMEER ABHYANKAR)
ADVOCATE FOR RESPONDENT NO.2
D-247, LGF, DEFENCE COLONY
NEW DELHI-110024
CC-2516
Email: contactadvsa@gmail.com
M-9953328394

PLACE: NEW DELHI
Dated:30.07.2024

BEFORE THE NATIONAL GREEN TRIBUNAL
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COUNTER AFFIDAVIT ON BEHALF OF RESPONDENT NO. 2, SIKKIM STATE POLLUTION CONTROL BOARD TO THE EXECUTION APPLICATION FILED BY THE APPLICANT

MOST RESPECTFULLY SHOWETH

I, Gopal Pradhan, Member Secretary, Sikkim State Pollution Control Board, Ground Floor, Forest Secretariat, Annex I, Deorali Road, Gangtok, Sikkim 737102 do hereby solemnly affirm and most humbly and respectfully submit as under:

1. That I am the Member Secretary of Sikkim State Pollution Control Board ("**SPCB**"), Respondent No. 2 herein, and as such am competent to depose to the contents of this affidavit. I have gone through the contents of the Application and have understood its contents.

2. That I am authorised to swear the present affidavit based on the record maintained by the SPCB.

3. That the present affidavit is being filed by the Respondent No. 2, Sikkim State Pollution Control Board in response to the Execution Application filed by the Applicant, Mr. Yodh BDR. Thapa. The present matter arises out of the O.A. No. 154 of 2022 which was filed by the Applicant in order to stop the construction of a petrol depot by Respondent No. 1, Bharat Petroleum Corporation Ltd. alleging that the said construction was being

Dr. Gopal Pradhan
Member Secretary
State Pollution Control Board
Forest & Environment Deptt.
Govt of Sikkim

done without valid environmental permissions. The Applicant, in the said O.A. No. 154 of 2022 brough forth the issue of non-existence of any standard operating procedure in relation to deciding the site of a petrol depot.

4. That at the outset, it is submitted that the averments and submissions made by the Applicant in the captioned execution application are incorrect, false and misleading. Each and every allegation, averment and submission made by the Applicant is denied and nothing shall be deemed to be admitted unless specifically admitted in the present reply.

5. That vide Judgment and Order dated 17.04.2023, this Hon'ble Tribunal disposed off OA No. 154 of 2022 with the following directions:

> *"21. However, since there is no Standard Operating Procedure (SOP) for Petrol Depots as in the case of the Gujarat State Pollution Control Board, we are of the view that the matter needs to be re-examined by the State Respondents in the light of the observations made above.*
>
> *22. We accordingly direct the Central Pollution Control Board to examine this issue and prepare Standard Operating Procedure (SOP) for Petrol Depots within three months. Till such Standard Operating Procedure (SOP) is evolved and put in place the Respondent No.1 is restrained from carrying out any construction activity on Plot No.2242, Rangpo, East Sikkim. The interim order shall be enforced by the Sikkim State Pollution Control Board as well as by the Resident Commissioner, Sikkim."*

6. That a perusal of the said Judgment and Order dated 17.04.2023 indicates that the Hon'ble Tribunal has directed Respondent No. 2 and Respondent No. 3 to comply with the following directions:

   i. Respondent No. 3 was directed to examine the issue and prepare a Standard Operating Procedure for petrol depots within three months.

   ii. The Hon'ble Tribunal further restrained Respondent No. 1 from carrying out any construction activity on Plot No. 2242, Rangpo,

Dr Gopal Pradhan
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Govt of Sikkim

East Sikkim till the formation of SOP by Respondent No. 3. The enforcement of the order of restraint was directed to be done by Respondent No. 2 i.e., Sikkim State Pollution Control Board as well as by Resident Commissioner, Sikkim (who had filed an affidavit in the O.A. on behalf of Respondent No. 4 therein, the District Collector of Pakyong District).

7. It is further submitted that the Hon'ble Tribunal had directed Respondent No. 3, Central Pollution Control Board, formulate an SOP in relation to the petrol depots within 3 months and not to Respondent No. 2, as wrongly averred by the Applicant in its application. However, in due deference to the letter and spirit of the Judgment dated 17.04.2023, Respondent No. 2 has formulated a comprehensive SOP titled as "**Standard Operating Procedure for Sitting Criteria of Liquid Fuel Depots namely Petrol, Diesel, Kerosene etc. in the State of Sikkim**". The said SOP has already been sent to the Regional Director, North-East, Central Pollution Control Board vide a forwarding letter dated 18.05.2024 as well as by email dated 18.05.2024.
True copy of the SOP and forwarding letter dated 18.05.2024 is being annexed here as **Annexure R2/1**.

8. That the allegation by the Applicant in his application regarding apprehension of construction activities being carried out at Plot No. 2242, Rangpo is completely baseless and devoid of any truth. Respondent No. 2 is fully compliant with the Judgment dated 17.04.2023 of the Hon'ble Tribunal.

Copy of photographs of the said plot No. 2242 depicting that no construction has taken place is being annexed herewith as **Annexure R2/2**.

Dr Gopal Pradhan
Member Secretary
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9. In view of the above, it is clear that the Respondent No. 2 has fully complied with the directions given by the Hon'ble Tribunal in its Judgment dated 17.04.2024 rendered in O.A. No. 154 of 2022.

10. In view of the above, it is most respectfully prayed that this Hon'ble Court may be pleased to Dismiss the captioned application with cost.

DEPONENT
Dr Gopal Pradhan
Member Secretary
State Pollution Control Board
Forest & Environment Deptt.
Govt of Sikkim

VERIFICATION

Verified at Gangtok on this 29th day of ~~May~~ July 2024 that the contents of aforesaid counter affidavit are true and correct to the best of my knowledge as derived from records of the Respondent Authority. No part of it is false and nothing material has been concealed therefrom.

DEPONENT
Dr Gopal Pradhan
Member Secretary
State Pollution Control Board
Forest & Environment Deptt.
Govt of Sikkim

Identified by:

29/7/24.
Ms. Malati Sharma
Oath Commissioner
Pakyong District
High Court of Sikkim
Vide Notification No. 22/HCS/13/5/2024

Email:spcbsikkim@gmail.com
Phone no – 03592-281913

ANNEXURE R2/1

STATE POLLUTION CONTROL BOARD- SIKKIM
FOREST & ENVIRONMENT DEPARTMENT
GOVERNMENT OF SIKKIM
DEORALI, GANGTOK – 737102

F. No. 3018/SPCB/246 Dated: 18/5/2024

To,

The Regional Director,
Central Pollution Control Board,
Regional Directorate-North East,
CTO Building, Ground Floor-II,
Shillong-793001.

Sub: Execution Application No. 02/2024/EZ (in O.A. No. 154/2022/EZ) Yodh BDR Thapa Vs Bharat Petroleum Corporation Limited & Ors.-reg

Sir,

Kindly refer to your letter no. RDNE/335/NGT/2024-25/82-85 dated 25/04/2024 regarding the above-mentioned subject matter.

Reference above, the SPCB-Sikkim has prepared Standard Operating Protocol for Siting Criteria of Liquid Fuel Depots namely Petrol, Diesel, Kerosene, etc. in the state of Sikkim as directed in the above-mentioned letter.

The SOP has been attached herewith for kind information and further action please.

Thanking you,

Yours sincerely

(Dr. Gopal Pradhan)
Member Secretary
State Pollution Control Board -Sikkim

Dr. Gopal Pradhan
Member Secretary
State Pollution Control Board
Forest & Environment Deptt.
Govt of Sikkim

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STANDARD OPERATING PROCEDURE FOR SITING CRITERIA OF LIQUID FUEL DEPOTS NAMELY PETROL, DIESEL & KEROSENE, etc. IN THE STATE OF SIKKIM

1. BACKGROUND:

In the matter before the Hon'ble National green Tribunal (Eastern Zone Bench) Original Application No. 154/2022/EZ (I.A. No. 236/2022/EZ) Vide order dated 17/04/2023 directed the Central Pollution Control Board to prepare Standard Operating procedure (SOP) for Petrol Depots within three (3) Months. The Final SOP has been prepared by the CPCB and a copy of the same was circulated to all SPCBs/PCCs vide letter no. B-29016/IPC-I/510-545 dated 06/05/2024.

As per the SOP, "*The location & siting of petrol Depot shall strictly be in accordance with the extant law/guidelines issued by the Ministry of Petroleum and Natural Gas/PESP/any other statutory organization as applicable.*"

Subsequently, the CPCB- Regional Directorate-Shillong vide its letter no. RDNE/335/NGT/2024-25/82-85 dated 25/04/2024 directed the State Pollution Control Board-Sikkim to prepare SOP for establishment of fuel depots in Sikkim.

2. PURPOSE:

1. This SOP outlines the various checklist, conditions to be considered while granting of Consent by the SPCB;
2. The SOP has been prepared in compliance to the directions issued by the Hon'ble NGT(EZ) and CPCB-Shillong in the matter before the Tribunal O.A. 154/2022/EX;
3. The purpose of this SOP is to ensure that risk associated with the handling and storage of fuel oil are adequately managed in accordance to the relevant rules and in order to minimize the risk of accidents and prevention of damage to human life and environment.

3. SCOPE:

The scope of this SOP is limited to as a decision making tool in application received by the SPCB such as Consent to Establish and Consent to operate in case of Depots as stated in II(1) above and for uniformity in processing of such applications. This SOP is supplement to various guidelines issued/notified by CPCB.

This SOP shall be revised as and when, the Ministry of Petroleum and Natural Gas/Petroleum and Explosives Safety Organisation/ or any other Statutory Organisation issues/notifies National Guidelines for Siting Criteria for Fuel/Petrol Depots at any future date.

4. GENERAL COMPLIANCE:

Applicants shall adhere to the Standard Operating procedure for Petrol Depots prepared by CPCB along with SOP for siting criteria specified hereunder while submitting proposal/application for obtaining grant of Consent to Establish in the SPCB-Sikkim Online Consent Management & Monitoring System, *www.skocmms.nic.in*

5. SITING CRITERIA FOR PETROL/FUEL DEPOTS:

A. Storage facility located in Urban Areas:

i. If the storage facility is located in areas under Urban Local Bodies such as Municipal Corporation, Municipal Councils and Nagar Panchayats where development plan is prepared, the units shall adhere to the said plan;
ii. Fuel/Petrol depots shall not be permitted in residential areas;
iii. The project proponent must obtain permission from the Local Authority and District/Sub-Divisional Administration prior to application for CTE;
iv. The project proponent shall have to obtain Fire Safety Certificate from Fire and Emergency Services Department, GoS;
v. The project proponent shall have to obtain necessary clearances from Petroleum and Explosives Safety Organisation;
vi. The project proponent shall have to obtain insurance policy in accordance with the stipulations of the Public Liability Insurance Act,1991and amended thereof;
vii. The project proponent/company shall consult with local panchayats & general public prior to initiating the process for obtaining CTE and report endorsed by the local panchayat/authority shall be submitted to the SPCB-Sikkim;
viii. No projects shall be established in the MoEF&CC notified eco-sensitive areas of the state.

B. Storage facility located in other areas:

i. If the storage facility is located in other areas, the land should be converted into non-agricultural use and orders should be issued by the Local authority/District administration that the land parcel use is for storage of petrol/fuel;
ii. Compliance to criteria stated in 5. A (2 to 8) shall also be applicable.

C. General siting criteria:

i. The unit shall maintain a distance of atleast 100 m from residential area, educational institutions, healthcare facilities, historical structures, places of worship;
ii. The unit shall maintain a distance of atleast 100 m from drinking water sources, water bodies such as lakes and ponds, forest boundary and river banks. In case of streams and rivers, the distance shall be considered from the floodway. In case floodway is not defined, the distance shall be considered from banks/edges of the river;
iii. The unit shall be in accordance with control line of National highway, state highway, major district roads as notified by the Concerned Authority;
iv. The unit shall be in accordance with the control line of railway track following the norms of Indian railways;
v. The unit shall establish a green belt of minimum 5 m along its peripheral boundaries;
vi. The unit shall ensure that baseline monitoring of ambient air, soil and groundwater quality is conducted (of the locations situated between the boundary of the planned storage and 50m outwards) covering relevant pollutant parameters prior to submission of application for CTE to SPCB-Sikkim;

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vii. The report on Baseline environmental data focusing on soil and groundwater quality shall be prepared by the applicant duly engaging NABL accredited laboratories or MoEF&CC certified laboratories prior to initiation of an establishment work;

viii. In addition, to the above-mentioned general siting criteria, each new proposal shall be considered by the SPCB-Sikkim after detailed examination of pollution potential and ecological sensitivity of the pertinent region.

ix. In consonance with, the guidelines of the Central Pollution Control Board dated 07/01/2020, there shall be no retail outlets within a radial distance of 50 m of the fuel depot;

x. These guidelines shall come into force w.e.f. 01/07/2024;

xi. The adherence to the SOP by the project proponent/applicant does not preclude SPCB-Sikkim from rejecting the application considering larger public interest.

STATE POLLUTION CONTROL BOARD
SIKKIM

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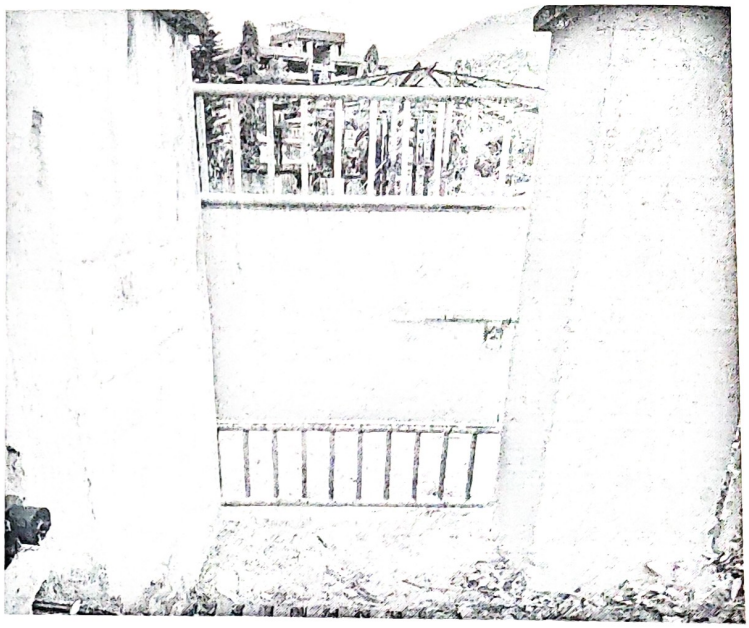
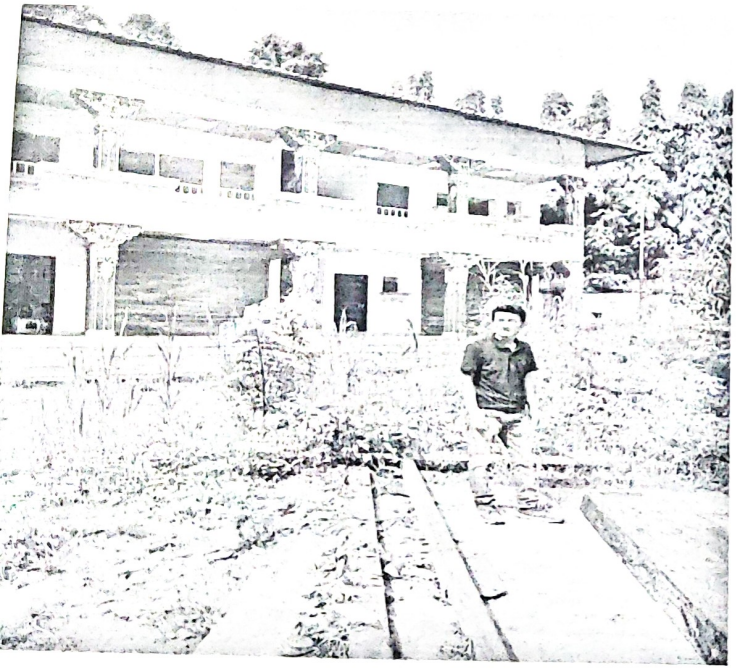
ANNEXURE R2/2

(A)



(B)



(C)

(D)

Fig(A,B,C,D): view of site without any activity

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BEOFRE THE NATIONAL GREEN TRIBUNAL
EASTERN ZONE BENCH, KOLKATA
Execution Application No.02/2024
IN
ORIGINAL APPLICATION No. 154 of 2022

IN THE MATTER OF:-

Yodh Bdr. Thapa .... Applicant

Versus

Bharat Petroleum Corp. Ltd. & Ors. ... Respondents

VAKALATNAMA

KNOW ALL to whom these present shall come that I, GOPAL PRADHAN , ,Member Secretary, State Pollution Control Board, Sikkim, in the above case do hereby appoint:

Sameer Abhyankar, Amish Tandon, Ayush Beotra, Nishi Sangtani, Rahul Kumar, Aakash Thakur, Anushree Kulkarni, Kushagra Aman, Vaishnavai Advocates

D-247, LGF, Defence Colony, New Delhi- 110024
Mobile: 9953328394
Email: contactadvsa@gmail.com

(herein after called the advocate/s) to be my/our Advocate in the above noted case authorized him:-

To act, appear and plead in the above-noted case in this Court or in any other Court in which the same may be tried or heard and also in the appellate Court including High Court subject to payment of fees separately for each Court by me.

To sign, file, verify and present pleadings, appeals, cross objections or petitions for execution review, revision, withdrawal, compromise or other petitions or affidavits or other documents as may be deemed necessary or proper for the prosecution of the said case in all its stages.

To file and take back documents and to admit and/or deny the documents of opposite party.

To take execution proceedings. To deposit, draw and receive money, cheques, cash and grant receipts thereof and to do all other acts and things which may be necessary to be done for the progress and in the course of the prosecution of the said case.

To appoint and instruct any other Legal Practitioner, authorizing him to exercise the power and authority hereby conferred upon the Advocate whenever he may think it to do so and to sign the Power of Attorney on our behalf.

And I the undersigned do hereby agree to ratify and confirm all acts done by the Advocate or his substitute in the matter as my/our own acts, as if done by me/us to all intents and purposes.

And I undertake that I or my duly authorized agent would appear in the Court on all hearings and will inform the Advocates for appearance when the case is called.

And I undersigned do hereby agree not to hold the advocate or his substitute responsible for the result of the said case. The adjournment costs whenever ordered by the Court shall be of the Advocate which he shall receive and retain himself.

And I the undersigned do hereby agree that in the event of the whole or part of the fee agreed by me/us to be paid to the Advocate remaining unpaid he shall be entitled to withdraw from the prosecution of the said case until the same is paid up. The fee settled is only for the above case and above Court. I hereby agree that once the fee is paid. I will not be entitled for the refund of the same in any case whatsoever. If the case lasts for more than three years, the advocate shall be entitled for additional fee equivalent to half of the agreed fee for every additional three years or part thereof.

IN WITNESS WHEREOF I do hereunto set my hand to these presents the contents of which have been understood by me on this **30** day of **July** , 2024.

Accepted subject to the terms of fees.

Advocate[s]

D/1957/2008
SAMEER ABHYANKAR

D/1668/2019

D/2439/19

D/1769/23

D-2947/2018

Client

Dr Gopal Pradhan
Member Secretary
State Pollution Control Board
Forest & Environment Dept.
Govt of Sikkim

11

Gmail

PROOF OF SERVICE

Office of Sameer Abhyankar <contactadvsa@gmail.com>

Advance Service Yodh Bdr. Thapa vs Bharat Petroleum Corp .Ltd & Ors EA/2/2024

1 message

Office of Sameer Abhyankar <contactadvsa@gmail.com> Tue, Jul 30, 2024 at 5:30 PM
To: akshar@outlook.com

Dear sir

Please find attached a scanned copy of the Counter Affidavit on Behalf of Respondent No. 2, Sikkim State Pollution Control Board to the Execution Application Filed By The Applicant.in the captioned Matter.

Thanks
Prince kumar
For
Mr.Sameer Abhyankar

--
Address for Correspondence:
D-247, LGF, Defence Colony,
New Delhi 110024
Ph. +91-11-49402169

Counter affidavit along with an affidavit.pdf
8773K