

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

Original Application No. 46 of 2024(SZ)

IN THE MATTER OF:

Tharish Rahman : Applicant

Vs

Kerala State Pollution Control Board and others : Respondents

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Place: Bengaluru

Date: 10-04-2024




DEPONENT

J. Chandra Babu
REGIONAL DIRECTOR
CENTRAL POLLUTION CONTROL BOARD
REGIONAL DIRECTORATE - BENGALURU
(MIN.OF ENV,FOREST & CC, GOVT OF INDIA)
BENGALURU - 560 079. MOB: 9868278903

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

Original Application No. 46 of 2024(SZ)

IN THE MATTER OF:

Tharish Rahman : Applicant

Vs

Kerala State Pollution Control Board and others : Respondents

**REPLY STATEMENT FILED ON BEHALF OF RESPONDENT NO.
2, THE CENTRAL POLLUTION CONTROL BOARD, (CPCB)**

I, Jathikartha Chandra Babu, Son of Late Sh. J Balaramaiah, aged 55 years, having office at the Regional Directorate (Bengaluru), Central Pollution Control Board (CPCB), 1st & 2nd Floors, Nisarga Bhavan A- Block, Thimmaiah Main Road, 7th D Cross, Shivanagar, Bengaluru – 560 079, Karnataka, do hereby solemnly affirmed and sincerely state as follows:

1. That I, in capacity of Scientist 'E' & holding charge of Regional Director (Bengaluru), Central Pollution Control Board (hereinafter referred as "CPCB") have made myself acquainted with the facts and circumstances of the instant available records, I am well versed with the facts and circumstances of the matter and as such competent & authorized to submit this reply on behalf of Respondent No.2.
2. That, I have read and understood the averments made by Applicant in synopsis, list of dates, grounds and annexes enclosed with the Original Application



J. Chandra Babu
10/4/2024

J. Chandra Babu
REGIONAL DIRECTOR
CENTRAL POLLUTION CONTROL BOARD
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(hereinafter referred as O.A) and at the outset it is respectfully submitted that the Answering Respondent deny all contents as well as averments, questions of law raised and grounds taken in the Application unless specifically admitted and reply all together in the following paragraphs.

3. That the 2nd Respondent has perused the application filed by the applicant. The applicant has filed the application to permanently forbear the 3rd Respondent from establishing a fuel station in violation of the existing guidelines. It is submitted that the applicant is aggrieved by the setting up of a fuel station at Re-Survey No. 15, Block No.176, Velloor Village, Kottayam District, Kottayam Taluk, Kottayam Municipality in Kerala State.
4. That the applicant has alleged that the 3rd respondent has installed Petroleum dispenser for the purpose of starting a Petrol Pump at Survey No.15, Block No.176, Velloor Village, Kottayam District, Kottayam Taluk, Kottayam Municipality in Kerala State. It is claimed by the applicant that the said land has been categorized as residential area in the approved Town Plan by the Kottayam Municipality. The applicant has attached a true copy of the said master plan of the Kottayam Municipality as **Annexure A-1**. It is also claimed by the applicant that several residential buildings exist in the adjoining properties and that several persons have already purchased lands for the establishment of residential buildings in the area. It is contended that entire area is residential area and thereby substantial question arises whether a petrol pump can be established inside a residential area.
5. That with regard to the averment related to this answering respondent, it is humbly submitted that this answering respondent No. 2 vide CPCB office memorandum No. B-13011/1/2019-20/AQM/0814, dated January 07, 2020, has issued guidelines for setting up of new petrol pumps in compliance with the Honourable National Green Tribunal (NGT) order dated January 18, 2019 in the matter of OA No. 86/2019. The guidelines issued are based on the specific directions to prepare appropriate guidelines for setting up new petrol pumps in the country and the




10/4/2024

J. Chandra Babu
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guidelines are to be got implemented by the State Government/ State Pollution Control Board (hereinafter referred as SPCBs)/ Pollution Control Committee (hereinafter referred as PCCs). **However, the applicant throughout the application wrongly referred the CPCB office memorandum as “Directions” instead of “Guidelines”.** Applicant’s statement that the *Annexure A-4* guidelines is a direction issued under Sec.5 of the Environment (Protection) Act, 1986 is thus denied.

6. That, it is further submitted that as per the CPCB guidelines, new petrol pumps/ Retail Outlets (hereinafter referred as ROs) shall not be located within a radial distance of 50 m (from fill point/ dispensing unit/ vent pipe whichever is nearest) from schools, hospitals (10 beds and above) and residential areas designated as per the local laws. It is also mandated that in case of constraints in complying with 50 m distance criteria, the petrol pump/ RO shall implement additional safety measures as prescribed by the Petroleum Explosive Safety Organization (hereinafter referred as PESO). The guideline further insists on a minimum 30 m distance criteria between the new petrol pump/ RO and schools/ hospitals/ residential areas designated by local laws. The guidelines were issued vide CPCB office memorandum No. B-13011/1/2019-20/AQM/0814 dated 07-01-2020 (*Annexure A-4*).
7. That it is humbly submitted that, in view of the several references/ cases received regarding the applicability of CPCB siting criteria dated 07-01-2020 with respect to new petrol pumps/ ROs where letter of intent (hereinafter referred as LoI) have been issued or applications have been made for obtaining NOC or prior/ initial approval has been obtained from Petroleum Explosive Safety Organization (PESO); CPCB issued clarification vide office memorandum No. B-13011/1/2020-21/AQM dated 29-01-2021 (*Annexure R2-1*), that the above guideline is applicable for petrol pumps/ ROs where construction commenced by Oil Marketing Companies (hereinafter referred as OMC) on or after 07-01-2020. It was made clear that the siting criteria specified in the above guideline are not applicable to petrol pumps/ ROs where prior clearance/ initial approval has been



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obtained from PESO and subsequently construction has been started by OMC before 07-01-2020.

8. That, it is humbly submitted that concerned State Pollution Control Board in the States/ Pollution Control Committee in the Union Territories has to ensure strict adherence to CPCB guidelines, as per Hon'ble Supreme Court order dated 14.03.2023 passed in Civil Appeal No. 421 of 2022 (in the matter of Indian Oil Corporation Limited V/s V.B.R Menon & Ors [2023 SCC OnLine SC 257]). The Hon'ble Court had also directed that the concerned State Pollution Control Board shall proceed against the erring outlet in accordance with law at the earliest, in case of breach of any of the guidelines issued by the CPCB vide Office Memorandum dated 07.01.2020. In compliance to the order of the Hon'ble Supreme Court, CPCB has also issued an Office Memorandum dated 16.06.2023 (**Annexure R2-2**) vide which it has been directed that all the SPCBs in the States and PCCs in the Union Territories are required to ensure that CPCB guidelines are strictly adhered to.
9. That, it is respectfully submitted that a common judgment in the matters related to new petrol pumps in Kerala was passed by the Hon'ble High Court of Kerala in WP(C) No. 11517/2020 and other connected matters on 26-07-2023. It is clarified in the Hon'ble High Court judgment that the requirement to measure the distance from individual residential buildings, as specified in the Kerala State Pollution Control Board (hereinafter referred as KSPCB) Circular dated 18-08-2020, cannot be insisted upon. Hon'ble High Court of Kerala also directed that none of the circulars issued by the KSPCB regarding the siting requirements can be insisted upon, and the authorities are required to consider the applications in light of the judgment of the Hon'ble Supreme Court.
10. That with regard to the grounds raised by the applicant, it is humbly submitted that the allegations and apprehensions must be verified by a proper site inspection of the location of the proposed fuel station. It is submitted that, the proposed fuel station should be in accordance with the Hon'ble Supreme Court order dated



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14.03.2023 in Civil Appeal No. 421 of 2022 (Indian Oil Corporation Limited V/s V.B.R Menon & Ors [2023 SCC OnLine SC 257]) and common judgment passed by the Hon'ble High Court of Kerala in WP(C) No. 11517/2020 and other connected matters on 26-07-2023. In compliance to the order of the Hon'ble Supreme Court, CPCB has also issued an Office Memorandum dated 16.06.2023 (**Annexure R2-2**) vide which it has been directed that all the SPCBs in the States and PCCs in the Union Territories are required to ensure that CPCB guidelines are strictly adhered to.

11. That in light of the above submissions, it is respectfully submitted that this Answering Respondent i.e. CPCB, shall abide by any order(s) or direction(s) passed by this Hon'ble Tribunal in the instant OA.

Dated at Bengaluru on this the 10th Day of April, 2024.

Counsel for 2nd Respondent

DEPONENT

J. Chandra Babu
REGIONAL DIRECTOR
CENTRAL POLLUTION CONTROL BOARD
REGIONAL DIRECTORATE - BENGALURU
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Kerala State Pollution Control Board and others	:	Respondents

AFFIDAVIT

I, Jathikartha Chandra Babu, currently working as Scientist 'E' in Central Pollution Control Board, Regional Directorate - Bengaluru, 1st & 2nd Floors, Nisarga Bhavan A-Block, Thimmaiah Main Road, 7th D Cross, Shivanagar, Bengaluru – 560 079, Karnataka, do hereby solemnly affirm, declare on oath and state as under: -

1. That the accompanying reply may be read part and parcel of the present affidavit as I am competent to swear this affidavit.

2. That the contents of reply are true and correct on the basis of the record maintained during ordinary course of business of CPCB and available records and documents and the contents of the same are read over to me and are not repeated herein for the sake of brevity.




DEPONENT

J. Chandra Babu
REGIONAL DIRECTOR
CENTRAL POLLUTION CONTROL BOARD
REGIONAL DIRECTORATE - BENGALURU
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VERIFICATION

Verified at Bengaluru on this day of 10th April, 2024 that the contents of the above reply are correct and true on the basis of the available record. Nothing has been concealed therefrom or mis-stated.

Verified at Bengaluru on this the 10th Day of April, 2024.



DEPONENT

J. Chandra Babu
REGIONAL DIRECTOR
CENTRAL POLLUTION CONTROL BOARD
REGIONAL DIRECTORATE - BENGALURU
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ANNEXURE R2-1

CENTRAL POLLUTION CONTROL BOARD

DELHI 110032

B-13011/1/2020-21/AQM

January 29, 2021

OFFICE MEMORANDUM

Sub: Clarification with regard to cut-off date for applicability of siting criteria referred in Guidelines for Setting Up of New Petrol Pumps dated 07.01.2020

This is in reference to guidelines issued by CPCB on 07.01.2020 for setting up of new petrol pumps indicating the siting criteria to be got implemented for new Retail Outlets.

References/cases have been received with regard to applicability of CPCB siting criteria dated 07.01.2020, in case of Retail Outlets where Letter of Intents (LoIs) have been issued or applications have been made for obtaining NOC or prior clearance/ initial approval has been obtained from PESO.

In this regard, it is clarified that the siting criteria for new Retail Outlets is to be complied with in cases where construction of Retail Outlets by Oil Marketing Companies commenced on or after 07.01.2020. In other words, the siting criteria will not apply to those cases where PESO prior clearance/ initial approval has been obtained and subsequently construction has been started by the OMC before 07.01.2020.

This is issued with the approval of Competent Authority.

(P. K. Gupta)

Additional Director and Head
AQM division

To:

1. All SPCBs/PCCs - *With a request to circulate to Commissioner of civil supplies or other similar authorities who look after issues related to fuel Retail Outlets at State level and District Collectors.*
(As per list enclosed)
2. Ministry of Petroleum And Natural Gas
Joint Secretary (Marketing)
Ministry of Petroleum and Natural Gas, Govt. of India
Shastri Bhavan,
New Delhi – 110001

3. Petroleum And Explosives Safety Organisation
Chief Controller of Explosives
Petroleum and Explosive Safety Organization (PESO)
A Block CGO Complex Fifth Floor Seminary Hills
Nagpur-(Maharashtra) -440006
4. The Chairman,
M/s. Bharat Petroleum Corporation Limited
Bharat Bhavan, 4 and 6 Currimbhoy Road
Ballard Estate, Mumbai 400 001
5. The Chairman,
M/s. Hindustan Petroleum Corporation Limited
Petroleum House, 17, Jamshedji Tata Road, Mumbai
Maharashtra 400020
6. The Chairman,
M/s. Indian Oil Corporation Limited
Indian Oil Bhawan, G9, Ali Yavar Jung Marg
Bandra East, Mumbai, Maharashtra 400 051
7. General Manager (International Trade),
Mangalore Refinery and Petrochemicals Limited,
Core - 8, 7th Floor,
Scope Complex, Lodhi Road,
New Delhi – 110003
8. The Chairman and Managing Director,
M/s. Shell India Pvt. Ltd.
Plot No. 7, Bangalore Hardware Park,
Devanahalli Industrial Park
Mahadeva Kodigehalli
Bangalore- 562 149, Karnataka.
9. The Chairman and Managing Director,
M/s Reliance Industries Limited,
Maker Chambers - IV
Nariman Point
Mumbai 400 021
10. Chairman
M/s. Nayara Energy Limited (Formerly Essar Oil Limited)
5th Floor, Jet Airways Godrej BKC,
Plot No. C-68, G Block
Bandra Kurla Complex, Bandra East
Mumbai- 450 051

Copy to:

1. Regional Director
Regional Directorate, Bhopal
Third Floor Sahkar Bhawan
North T T Nagar
Bhopal 462003
2. Regional Director
Regional Directorate Bengaluru
A-Block, Nisarga Bhavan,
1st and 2nd Floors, 7th D Cross,
Thimmaiah Road, Shivanagar,
Bengaluru-560079
3. Regional Director
Regional Directorate, Chennai
No. 76, Mount Salai,
Guindy, Chennai-600032
4. Regional Director
Regional Directorate Kolkata
South end Conclave Block-502, 5th and 6th Floor,
1582, Razidanga, Main Road,
Kolkata-700107
5. Regional Director
Regional Directorate, Lucknow
PICUP Bhawan
Vibhuti Khand, Gomti Nagar
Lucknow - 226 010
6. Regional Director
Regional Directorate, Shillong
TUM-SIR. Lower Motinagar,
Near Fire Brigade H.Q., Shillong-793014
7. Regional Director
Regional Directorate, Vadodara
Parivesh Bhawan, Opp. Ward No. 10
VMC Office Subhanpura, Vadodara - 390 023
8. Regional Director
Regional Directorate, Pune
Row House No.1, Nisarg Vihar,
Balewadi, Pune -411045

List of SPCBs/ PCCs

1.	The Member Secretary Andhra Pradesh State Pollution Control Board D. No.33-26-14 D/2, Near Sunrise Hospital, Pushpa Hotel Centre, Chalmvari Street, Kasturibaipet, Vijayavada-520010	2.	The Member Secretary Arunachal Pradesh State Pollution Control Board 'Paryavaran Bhavan', Yupla Road, Pappu Nallah, Naharlagun - 791110 Arunachal Pradesh
3.	The Member Secretary Assam State Pollution Control Board Bamunimaidan, Guwahati - 781021 Assam	4.	The Member Secretary Bihar State Pollution Control Board Parivesh Bhawan, Plot No.N-B/2, Patliputra Industrial Area Patna-800023
5.	The Member Secretary Chhattisgarh Environment Conservation Board Paryavaran Bhawan, North Block Sector-19 Naya Raipur - 492 099 Chhattisgarh	6.	The Member Secretary Goa State Pollution Control Board Nr. Pilerne Industrial Estate, Opp. Saligao Seminary, Saligao - Bardez Goa - 403511
7.	The Member Secretary Gujarat State Pollution Control Board Sector 10-A, Gandhi Nagar - 382043 Gujarat	8.	The Member Secretary Haryana State Pollution Control Board C-11, Sector 6, Panchkula, Haryana 134109 Haryana
9.	The Member Secretary Himachal Pradesh State Pollution Control Board Paryavaran Bhavan, Phase III, New Shimla - 171009 Himachal Pradesh	10.	The Member Secretary J&K State Pollution Control Board, Parivesh Bhawan, Forest Complex, Gladni, Narwal, transport Nagar, Jammu (J&K)
11.	The Member Secretary Jharkhand State Pollution Control Board T.A Building, HEC Campus, P.O. Dhurwa Ranchi - 834004 Jharkhand	12.	The Member Secretary Karnataka State Pollution Control Board Parisara Bhavan, 4 th & 5 th floors Church Street, Bangalore - 560 001 Karnataka
13.	The Member Secretary Kerala State Pollution Control Board Plamoodu Junction, Pattam Palace P.O. Thiruvananthapuram - 695004 Kerala	14.	The Member Secretary Maharashtra State Pollution Control Board Kalpataru Point, 3 rd & 4 th floors Sion Matunga Scheme Road No. 6 Opp. Cine Planet, Sion Circle, Sion (E), Mumbai 400 022, Maharashtra
15.	The Member Secretary Madhya Pradesh State Pollution Control Board Paryavaran Parisar, E-5 Arera Colony Bhopal - 462016 Madhya Pradesh	16.	The Member Secretary Manipur State Pollution Control Board Lamphelpat, Imphal West D.C. Office Complex - 795004 Manipur
17.	The Member Secretary Meghalaya State Pollution Control Board Arden, Lumpyngngad, Shillong - 793014 Meghalaya	18.	The Member Secretary Mizoram State Pollution Control Board New Secretariat Complex, Khatla, Thlanmual Peng, Aizawl Mizoram 796001
19.	The Member Secretary Nagaland State Pollution Control Board Signal Point, Dimapur, Nagaland - 797112 Nagaland	20.	The Member Secretary Odisha State Pollution Control Board Paribesh Bhawan A-118, Nilakanta Nagar, Unit -VIII, Bhubaneshwar - 751012 Odisha
21.	The Member Secretary Punjab State Pollution Control Board Nabha Road, ITI Rd, Adarsh Nagar, Prem Nagar, Patiala - 147001 Punjab	22.	The Member Secretary Rajasthan State Pollution Control Board A-4 Institutional Area, Jhalane Dungri Jaipur - 302004 Rajasthan

23.	The Member Secretary Sikkim State Pollution Control Board State land Use & Environment Cell Govt. of Sikkim, Deorali, Gangtok., Sikkim	24.	The Member Secretary Tamil Nadu State Pollution Control Board No. 76, Mount Salai, Guindy, Chennai – 600032, Tamil Nadu
25.	The Member Secretary Telangana State Pollution Control Board Paryavaran Bhavan A-3, Industrial Estate, Sanath Nagar, Hyderabad – 500 018 Telangana	26.	The Member Secretary Tripura State Pollution Control Board Parivesh Bhawan Pt. Nehru Complex, Gorkhabasti P.O., Kunjaban, Agartala, West Tripura - 799 006 Tripura
27.	The Member Secretary Uttarakhand Environment Protection & Pollution Control Board 29/20, Nemi Road, Dehradun – 248001 Uttarakhand	28.	The Member Secretary Uttar Pradesh State Pollution Control Board 3 rd floor, PICUP Bhavan, Vibhuti Khand, Gomti Nagar, Lucknow – 226010 Uttar Pradesh
29.	The Member Secretary West Bengal State Pollution Control Board Paribesh Bhavan Building, No.10-A, Block –LA, Sector 3, Salt Lake City, Kolkata – 700 091, West Bengal	30.	The Member Secretary Delhi Pollution Control Committee, Government of N.C.T. Delhi 4th Floor, ISBT Building, Kashmere Gate, Delhi-110006
31.	The Member Secretary Andaman & Nicobar Islands Pollution Control Committee, Department of Science & Technology, Dollygunj Van Sadan, Haddo P.O., Port Blair – 744102	32.	The Member Secretary Chandigarh Pollution Control Committee, Paryavaran Bhawan, Ground Floor, Sector 19 B Madhya Marg, Chandigarh
33.	Member Secretary Daman, Diu & Dadra Nagar Haveli Pollution Control Committee, Office of the Deputy Conservator of Forests, Moti Daman, Daman – 396220	34.	Member Secretary Lakshadweep Pollution Control Committee, Department of Science, Technology & Environment, Kavarati-682555
35.	Member Secretary Pondicherry Pollution Control Committee, Housing Board Complex, Anna Nagar, Pondicherry-600 005		

ANNEXURE R2-2

EQ-11099/25/2021-AQM-HO-CPCB-HO

1830-1879

June 16, 2023

OFFICE MEMORANDUM

Sub: Guidelines for setting up of new petrol pumps issued by CPCB- reg.

The Hon'ble Supreme Court of India vide order dated 14.03.2023 in Civil appeal no. 421 of 2022: M/s Indian Oil Corporation Limited v/s V.B.R. Menon & Others, with Civil appeal no. 494 of 2022, Civil appeal no. 1695 of 2022, Civil appeal no. 2039 of 2022, Civil appeal no. 1758 of 2022 and Civil appeal no. 1912 of 2022 directed CPCB to instruct all the State Pollution Control Boards to ensure that the guidelines issued by it vide the Office Memorandum dated 07.01.2020 are strictly adhered to. If there is breach of any of the guidelines issued by the CPCB vide Office Memorandum dated 07.01.2020, then the concerned State Pollution Control Board shall proceed against the erring outlet in accordance with law at the earliest. Copy of the order of the Hon'ble Supreme Court is enclosed herewith.

Accordingly, all SPCBs and PCCs are directed to ensure that CPCB guidelines for setting up of new petrol pumps issued vide Office Memorandum dated 07.01.2020 and addendum dated 16.08.2021 are strictly adhered to. In case of violation of these guidelines, concerned SPCB/PCC shall take action against the erring outlet as per law.

o/c
(45)


(P.K. Gupta)

Scientist 'F' and Head
Air Quality Management Division

Encl: As above

To:

All SPCBs and PCCs (as per list enclosed)

केन्द्रीय प्रदूषण नियंत्रण बोर्ड
निर्गत
दिनांक 21/6/2023

1. The Member Secretary Andhra Pradesh Pollution Control Board D. No. 33-26-14 D/2, Near Sunrise Hospital, Pushpa Hotel Centre, Chalamalavari Street, Kasturibaipet, Vijayawada - 520010	2. The Member Secretary Arunachal Pradesh State Pollution Control Board Govt. of Arunachal Pradesh, Department of Environment & Forest, Paryavaran Bhawan, Yupia Road, Papunalah, Naharlagun - 791110
3. The Member Secretary Pollution Control Board- Assam, Bamunimaidam, Guwahati - 781021 (Assam)	4. The Member Secretary Bihar State Pollution Control Board Parivesh Bhawan, Plot No. NS-B/2, Paliputra Industrial Area, Patliputra, Patna - 800023 (Bihar)
5. The Member Secretary Chhattisgarh State Environment Conservation Board, Paryavas Bhawan, North Block Sector-19, Naya Raipur - 492002 (Chhattisgarh)	6. The Member Secretary Goa State Pollution Control Board Nr. Pilerne Industrial Estate, Opposite Saligao Seminary, Saligao Bardez- 403511 (Goa)
7. The Member Secretary Gujarat Pollution Control Board Paryavaran Bhawan, Sector 10-A, Gandhi Nagar 382010 (Gujarat)	8. The Member Secretary Haryana State Pollution Control Board C-11, Sector-6, Panchkula- 134109 (Haryana)
9. The Member Secretary Himachal Pradesh State Pollution Control Board Him Parivesh, Phase-III, New Shimla - 171009	10. The Member Secretary J&K Pollution Control Committee, Parivesh Bhawan, Shiekh-ul-Campus, behind Govt. Silk Factory, Raj Bagh, Srinagar - 190008 (J&K)
11. The Member Secretary Jharkhand State Pollution Control Board T.A. Bldg., HEC, P. O. Dhurwa, Ranchi-834004 (Jharkhand)	12. The Member Secretary Karnataka State Pollution Control Board "Parisara Bhawan", #49,4th & 5th Floor, Church Street, Bangalore 560 001
13. The Member Secretary Kerala State Pollution Control Board Head Office, Pattom. P. O Thiruvananthapuram- 695 004 (Kerala)	14. The Member Secretary Madhya Pradesh Pollution Control Board Paryavaran Parisar, E-5, Arera Colony, Bhopal - 462016 (Madhya Pradesh)
15. The Member Secretary Maharashtra Pollution Control Board, Kalpataru Points, 3rd & 4th Floor, Sion Matunga Scheme Road No.6 Opp. Cine Planet, Sion Circle, Sion (E), Mumbai-400022	16. The Member Secretary Manipur Pollution Control Board Lamphalpat, Imphal - 795004 (Manipur)
17. The Member Secretary Meghalaya State Pollution Control Board, "ARDEN", Lumpyngngad, Shillong- 793014 (Meghalaya)	18. The Member Secretary Mizoram Pollution Control Board New Secretariat Complex, Khatla, Aizawl - 796001 (Mizoram)
19. The Member Secretary Nagaland Pollution Control Board Signal Point, Dimapur - 797112 (Nagaland)	20. The Member Secretary Odisha State Pollution Control Board Paribesh Bhawan, A-118, Nilakantha Nagar, Unit VIII Bhubaneswar-751012 (Odisha)
21. The Member Secretary Punjab Pollution Control Board Vatavaran Bhawan, Nabha Road Patiala 147 001 (Punjab)	22. The Member Secretary Rajasthan Pollution Control Board, A-4, Institutional Area, Jalana Dungi, Jaipur 302 004 (Rajasthan)

<p>23. The Member Secretary Sikkim State Pollution Control Board State Land Use & Environment Cell Govt. of Sikkim, Deorali Gangtok – 737102 (Sikkim)</p>	<p>24. The Member Secretary Tamil Nadu Pollution Control Board 76, Anna Salai, Guindy Industrial Estate, Race View Colony, Guindy, Chennai-600032 (Tamil Nadu)</p>
<p>25. The Member Secretary Telangana State Pollution Control Board Paryavarana Bhavan, A-III, Industrial Estate, Sanathnagar, Hyderabad-500018 (Telangana)</p>	<p>26. The Member Secretary Tripura State Pollution Control Board Parivesh Bhawan, Pandit Nehru Complex P.O. Kunjaban, Gorkhabasti, Agartala – 799 006 (Tripura)</p>
<p>27. The Member Secretary Uttar Pradesh Pollution Control Board IIIrd Floor PICUP Bhavan Vibhuthi Khand, Gomti Nagar, Lucknow – 226 020, (Uttar Pradesh)</p>	<p>28. The Member Secretary Uttarakhand Environment Protection & Pollution Control Board 29/20, Nemi Road, Dalanwala, Dehradun – 248 001 (Uttarakhand)</p>
<p>29. The Member Secretary West Bengal Pollution Control Board Paribesh Bhavan, 10-A, Block LA, Sector III, Salt Lake City, Kolkata-700 091 (West Bengal)</p>	<p>30. The Member Secretary Andaman & Nicobar Islands Pollution Control Committee, Department of Science & Technology, Dollyganj Van Sadan, Haddo P.O. Port Blair-744102 (Andaman & Nicobar)</p>
<p>31. The Member Secretary Chandigarh Pollution Control Committee Paryavarana Bhawan, Ground Floor, Sector-19 B, Madhya Marg, Chandigarh – 160 019</p>	<p>32. The Member Secretary Pollution Control Committee, UTs of Daman, Diu and Dadra & Nagar Haveli Fort Area, Court Compound, Moti Daman - 396 220</p>
<p>33. The Member Secretary Delhi Pollution Control Committee, Government of N.C.T. Delhi 4th Floor, ISBT Building, Kashmere Gate, Delhi-110 006</p>	<p>34. The Member Secretary Lakshadweep Pollution Control Committee Department of Science, Technology & Environment, Kavarati-682555</p>
<p>35. The Member Secretary Puducherry Pollution Control Committee 'B' Block, Ground Floor, Chief Secretariat, Puducherry-605 001</p>	<p>36. The Member Secretary Ladakh Pollution Control Committee Wildlife Office Building, Near Council Secretariat, Opposite Police Station Housing Colony, Leh-194101 (Ladakh)</p>

Copy to:

1. PPS to Additional Secretary (CP)
Ministry of Environment, Forest and Climate Change
Indira Paryavaran Bhawan, Jorbagh Road, New Delhi – 110 003
2. PS to Chairman, CPCB
CPCB, Delhi
3. Joint Secretary (Marketing and Oil refinery)
Ministry of Petroleum & Natural Gas,
Shastri Bhavan, New Delhi – 110001
4. Chief Controller of Explosives
Petroleum and Explosive Safety Organisation (PESO)
A Block, CGO Complex, Fifth floor
Seminary Hills, Nagpur
5. Director- Legal Metrology
Deptt. of Consumer Affairs,
Room No.461-A, Krishi Bhawan,
New Delhi - 110 001
6. Regional Director
Central Pollution Control Board
Regional Directorate
1st & 2nd Floors, Nisarga Bhavan
A-Block, Thimmaiah Main Road
7th D Cross, Shivanagar,
Opp. Pushpanjali Theatre, Bangalore –560 010
7. Regional Director
Central Pollution Control Board
Regional Directorate
Parivesh Bhawan, Paryavaran Parisar,
E-5, Arera Colony,
Bhopal-462016, Madhya Pradesh
8. Regional Director
Central Pollution Control Board
Regional Directorate
'South end Conclave' Block-502
5th & 6th Floor, 1582, Razidanga,
Main Road, Kolkata-700107
9. Regional Director
Central Pollution Control Board
Regional Directorate
Ground & First Floor, PICUP Bhawan
Vibhuti Khand, Gomti Nagar
Lucknow – 226 020

10. Regional Director
Central Pollution Control Board
Regional Directorate
"TUM-SIR" Lower Motinagar
Near Fire Brigade H.Q.,
Shillong - 793 014
11. Regional Director
Central Pollution Control Board
Regional Directorate
Parivesh Bhawan
Opp VMC Ward office no 10
Subhanpura, Vadodara - 390 023
12. Regional Director
Central Pollution Control Board,
Regional Directorate,
Survey No. 110, Dhankude Multi-Purpose Hall,
Baner Road, Baner, Pune - 411045
13. Regional Director
Central Pollution Control Board, Regional Directorate,
2nd Floor, 77-A, South Avenue Road,
Ambattur Industrial Estate,
Ambattur Taluk, Thiruvallur Dist.
Chennai-600 058
14. Regional Director
Central Pollution Control Board
Regional Directorate
BSNL Exchange, 2nd Floor
Sector 49-C, Chandigarh
Pin-160047

REPORTABLE**IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
CIVIL APPEAL NO. 421 OF 2022****M/s Indian Oil Corporation Limited ...Appellant(s)****Versus****V.B.R. Menon & Others ...Respondent(s)****WITH****CIVIL APPEAL NO. 494 OF 2022****CIVIL APPEAL NO. 1695 OF 2022****CIVIL APPEAL NO. 2039 OF 2022****CIVIL APPEAL NO. 1758 OF 2022****CIVIL APPEAL NO. 1912 OF 2022****J U D G M E N T****J.B. PARDIWALA, J. :**

Since the issues raised in all the captioned appeals are the same and the challenge is also to the self same order passed by the National Green Tribunal, Southern Zone, Chennai, (for short, “NGT, Chennai”), those were

taken up for hearing analogously and are being disposed of by this common judgment and order.

2. For the sake of convenience, the Civil Appeal No. 2039 of 2022 is treated as the lead matter.

3. This appeal is filed by an oil marketing company viz. the Reliance BP Mobility Limited incorporated under the Companies Act, 2013 and is directed against the judgment and order dated 23.12.2021 passed by the NGT, Chennai in the Original Application No. 138 of 2020 (SZ) insofar as the impugned order directs the Central Pollution Control Board (CPCB) as well as the State Pollution Control Boards to issue directions to make it mandatory to obtain Consent to Establish (“CTE”) and the Consent to Operate (“CTO”) for new retail petroleum outlets as well as the existing retail petroleum outlets.

FACTUAL MATRIX:

4. It appears from the materials on record that the respondent No. 2 herein Mr. V.B.R. Menon, a resident of Chennai, filed the Original Application No. 138 of 2020 (SZ) before the NGT, Chennai raising the issue in regard to the

non-installation of Vapour Recovery Systems (VRS) in the petroleum outlets by the oil marketing companies (OMCs). In the Original Application No. 138 of 2020, the applicant (respondent No. 2 herein) prayed for the following reliefs:-

“Reliefs:

A. Injunct the respondents 5 to 9 from commissioning and operating any new petroleum retail outlets in Tamil Nadu without installing Vapour Recovery Systems, Stage 1 and 2 in good working condition, pending disposal of this application and

B. Pass such further order or orders as may fit proper and necessary in the facts and circumstances of the case

Prayer

A. Direct the respondent oil marketing companies R-5 to R-9 to install and operate Vapour Recovery Systems, Stage 1 and 2, in good working condition before opening and commissioning of any new petroleum retail outlets in Tamil Nadu.

B. Direct the respondent oil marketing companies R-5 to R-9 to install and operate Vapour Recovery Systems Stage 1 and 2, in all the existing petroleum outlets in Tamil Nadu within a time schedule to be prescribed by this Hon’ble Tribunal for each city, town and rural area situated in Tamil Nadu.

C. Pass such further order or orders as may be fit proper and necessary in the facts and circumstances of the case and thus render justice.”

5. The basis for filing of the original application as aforesaid before the NGT, Chennai was the order passed by the Principal Bench of the NGT in the Original Application No. 147 of 2016 wherein the Principal Bench of the NGT issued directions to install Stage-I and Stage-II vapour recovery devices (VRD) at all fuel stations, distribution centers, terminals, railway loading/unloading facilities and airports in the National Capital Territory of Delhi. Vide order dated 28.09.2018 passed in the O.A. No. 147 of 2016 by the Principal Bench of the National Green Tribunal, the time line of installation of VRD was extended.

6. The NGT, Chennai adjudicated the O.A. No. 138 of 2020 (SZ) and disposed of the same vide order dated 23.12.2021 by issuing the following directions:-

“69. In the result, this application is disposed of as follows:-

i. We made it clear that all the Retail Petroleum Outlets which are located in cities having more than 10 Lakh population should have installed the VRS mechanism which are having turnover of more than 300 KL/Month and above, as insisted by the

Central Pollution Control Board in consultation with the Ministry of Petroleum and Natural Gas as per circular dated 12.12.2016. If any of the Retail Petroleum Outlets had not installed the same within the time frame fixed by the CPCB or extended by the Hon'ble Apex Court in this regard, then CPCB is directed to take appropriate action against those petroleum outlets/storage depot which have not complied with the same by imposing environmental compensation as directed by the Principal Bench of National Green Tribunal, New Delhi in O.A. No.147 of 2016 (Aditya N. Prasad & Ors. Vs. Union of India & Ors.).

ii. As regards the new petroleum outlets of Stage 1 and Stage 2 (having 100 KL/Month to 300 KL/Month) and for Stage 1A (Storage depots) are concerned, the same will have to be installed within the extended time fixed by the CPCB both by public sector undertaking and private sector undertaking and if there is any violation found, then they are directed to take appropriate action for such violation as directed by the Principal Bench of National Green Tribunal, New Delhi in O.A. No.147 of 2016 (Aditya N. Prasad & Ors. Vs. Union of India & Ors.).

iii. The Central Pollution Control Board (CPCB) as well as the State Pollution Control Boards are directed to issue direction under Section 5 of the Environment (Protection) Act, 1986 and Section 18 of the Water (Prevention and Control of Pollution) Act, 1974 and Air (Prevention and Control of Pollution) Act, 1981 to make it mandatory to obtain Consent to Establish and Consent to Operate for new petroleum outlets to be established in future

and even to those which are under the preparation of establishment, but not started construction as has been done by the State Pollution Control Board, Kerala and such a direction should be issued within a period of 3 (Three) months and till then, all the new Retail Petroleum Outlets are directed to apply for Consent to Establish and Consent to Operate before its establishment.

iv. We also direct all the existing Retail Petroleum Outlets irrespective of its turnover to obtain Consent to Operate for the existing outlets within a period of 6 (Six) Months. If it is not obtained, then the concerned State Pollution Control Board is directed to take appropriate action against such petrol pumps in accordance with law.

v. Considering the circumstances, parties are directed to bear their respective cost in the application.

vi. The Registry is directed to communicate this order to the Ministry of Environment, Forests & Climate Change (MoEF&CC), Central Pollution Control Board, New Delhi, Integrated Regional Office of the Central Pollution Control Board, Bangalore and Chennai, State Pollution Control Boards of Tamil Nadu, Kerala, Andhra Pradesh, Telangana, Karnataka and also to the Pollution Control Committee of Union Territory of Puducherry for their information and compliance of the direction.”

7. Being dissatisfied with the aforesaid directions issued by the NGT, Chennai, the appellant is here before this Court.

8. The other oil marketing companies (OMCs) before this Court seeking to challenge the very self same order passed by the NGT are : (1) M/s Indian Oil Corporation Limited, (2) M/s Hindustan Petroleum Corporation Limited; (3) M/s Bharat Petroleum Corporation Limited, (4) M/s Nayara Energy Limited, and (5) M/s Shell India Markets Private Ltd.

Submissions on behalf of the appellant:

9. At the outset, the learned counsel appearing on behalf of the appellant herein submitted that it does not seek to challenge the directions contained in para 69(i) and 69(ii) respaly of the impugned order i.e. regarding the installation of the VRS/VRD. The learned counsel would like to confine his challenge only to the direction issued in para 69(iii) and para 69(iv) respaly referred to above i.e. in regard to the Consent to Establish (CTE) and Consent to Operate (CTO).

10. The learned counsel submitted that the present appeal gives rise to three substantial questions of law which read thus:-

A. Whether the NGT can issue directions which are in the nature of legislative functions?

B. Whether the public sector and private sector OMCs and/or ROs (Retail Outlets) are required to obtain Consent to Establish and/or Consent to Operate for operation, establishment and carrying on the business of ROs?

C. Whether the NGT can impose requirement of obtaining an additional approval merely to provide for a regulating mechanism to supervise compliance of the existing guidelines issued by the CPCB?

11. The learned counsel submitted that the directions issued in para 69(iii) and 69(iv) respily of the impugned order are legislative in nature and therefore beyond the jurisdiction of the NGT. He would submit that the directions issued by the NGT, Chennai to the CPCB making it mandatory to obtain CTE and CTO for ROs would amount to enacting a law under the guise of judicial order. It was further submitted that there is no rational basis to

issue the directions making it mandatory for the ROs to obtain CTE and/or CTO. According to the learned counsel, the only basis for the NGT to issue such directions is to ensure proper regulatory mechanism and/or to secure compliance of the guidelines issued by the CPCB regarding installation of VRS, etc. It was also submitted that the impugned directions are directly in conflict with the object with which the reclassification of industries has been done by the CPCB. It was pointed out that the petroleum retail outlets fall within the green zone and for any industry falling within the green zone, it is not mandatory to obtain CTO and/or CTE. It was further submitted that the process of setting up of a RO requires obtaining of numerous approvals and the same takes a considerable period of time. For instance, even prior to the construction of ROs, the OMCs are required to obtain approvals from *inter alia* (1) Petroleum & Explosives Safety Organisation (PESO), (2) Town and Country Planning Officers, (3) National Highway Authority of India, (4) District/Divisional Forest

Officer/Regional Forest Officer, (5) approvals from the State Cabinet, etc. Furthermore, the OMCs are also required to obtain No-Objection Certificate from the concerned District Magistrate. Such NOC from the District Magistrate comprises of approvals from various authorities, such as – the fire department, Police Department, PWD, Health and Safety, concerned Municipality and/or any other authority that the District Magistrate may consider necessary. Thereafter, upon construction of the ROs, the OMCs are required to obtain final approvals from inter alia PESO, National Highway Authority of India, Legal Metrology Department Labour Department and the concerned Municipality. The timelines for some of the aforesaid approvals range over 120 to 240 days. In such circumstances, according to the learned counsel, by making it mandatory to obtain the CTO and CTE for setting up/operating a RO would cause lot of hardship and also delay the setting of ROs.

12. The learned counsel laid much stress on the fact that the CPCB its vide Office Memorandum dated 07.01.2020 had issued guidelines for setting up of new petroleum pumps in compliance of the order passed by the NGT dated 18.01.2019 in O.A. No. 86 of 2019 titled **Gyanprakash @ Pappu Singh v. GoI & Ors.** The guidelines are very exhaustive and they take care of the apprehension expressed by the NGT in its impugned order. Once these guidelines are scrupulously observed and followed, there is no need thereafter to obtain CTO and/or CTE.

13. In such circumstances referred to above, the learned counsel appearing for the appellant prayed that there being merit in his appeal, the same may be allowed and the directions issued in para 69(iii) and para 69(iv) of the impugned order passed by the NGT, Chennai be set aside.

Submissions on behalf of the respondent No. 2 – the original applicant before the NGT:

14. The learned counsel appearing for the respondent No. 2 (the original applicant) vehemently submitted that no error, not to speak of any error of law, could be said to have

been committed by the NGT in issuing the impugned directions. It was submitted that no interference is warranted at the hands of this Court in an appeal filed under Section 22 of the National Green Tribunal Act, 2010 (for short, 'the NGT Act'). According to the learned counsel, an appeal under Section 22 of the NGT Act is restricted to substantial questions of law. There is no substantial question of law involved in the present appeal. In such circumstances referred to above, the learned counsel prays that there being no merit in the present appeal, the same may be dismissed.

Submissions on behalf of the respondent No. 1- CPCB:

15. Mr. Tushar Mehta, the learned Solicitor General submitted that there was no need for the NGT to issue the impugned directions as contained in para 69(iii) and para 69(iv) reply, more particularly in view of the detailed guidelines issued by the CPCB vide the Office Memorandum dated 07.01.2020. According to Mr. Mehta, what is sought to be achieved by asking the ROs to obtain

CTE and/or CTO can very well be taken care of by ensuring that all the existing ROs and the ROs that may come up in future scrupulously abide by the guidelines issued by the CPCB. The CPCB has ensured that all the State Pollution Control Boards keep a very strong vigil on the ROs across the country so as to ensure that the guidelines issued by it are scrupulously followed. Even, according to Mr. Mehta, to ask all the existing ROs to obtain CTO is something very unreasonable. According to Mr. Mehta, the same requires a lot of paper work and is very time consuming.

16. Mr. Mehta would submit that it is highly debatable that the NGT could have directed the CPCB that it should in exercise of powers under Section 5 of the Environment (Protection) Act, 1986 (for short, 'the Act 1986') make it mandatory to obtain CTE and/or CTO.

17. Mr. Mehta in the last submitted that so far as directions contained in para 69(i) & 69(ii) resply are concerned, the same shall be complied with in its true perspective and the State Pollution Control Boards shall

ensure due compliance of the same. He would submit that the CPCB shall also ensure that the guidelines issued by it referred to above are strictly adhered to by the all State Pollution Control Boards and, if there is any lapse at the end of any retail outlet, then necessary action shall be taken in accordance with law.

18. In such circumstances referred to above, Mr. Mehta prays that the directions contained in para 69(iii) and 69(iv) may be set aside or modified appropriately.

Analysis:

19. Having heard the learned counsel appearing for the parties and having gone through the materials on record, the only question that falls for our consideration is : (i) whether the NGT has the jurisdiction to direct the CPCB that it should in exercise of its powers under Section 5 of the Act 1986 make obtaining of the CTE and CTO resply mandatory for all the petroleum retail outlets across the country?

20. This Court, while issuing notice vide order dated 07.02.2022 in one of the connected appeals i.e. Civil Appeal 494 of 2022, observed thus:-

“Issue notice, returnable in six weeks.

Meanwhile, the directions issued vide impugned order of the National Green Tribunal dated 23.12.2021 shall remain stayed provided the petitioner complies with the directions issued by the Central Pollution Control Board (CPCB) dated 04.06.2021 prescribing fresh timeline for completion of installation of Vapor Recovery Devices (VRD).

Mr. Sanjay Kapur, learned counsel appearing for the appellant has stated that in terms of the said directions of CPCB dated 04.06.2021, Vapor Recovery Devices have already been installed in 50% retail outlets by December, 2021 in the specified category and the remaining timeline shall also be complied with.”

21. As the principal argument of all the learned counsel appearing for the respective oil marketing companies in the present litigation is in regard to the jurisdiction of the NGT to issue the impugned directions, it is necessary to first understand the entire scheme of the NGT Act.

Scheme of the NGT Act, 2010:

22. The preamble to the NGT Act reads as follows:-

“An Act to provide for the establishment of a National Green Tribunal for the effective and expeditious disposal of cases relating to environmental protection and conservation of forests and other natural resources including enforcement of any legal right relating to environment and giving relief and compensation for damages to persons and property and for matters connected therewith or incidental thereto.

AND WHEREAS India is a party to the decisions taken at the United Nations Conference on the Human Environment held at Stockholm in June, 1992, in which India participated, calling upon the States to provide effective access to judicial and administrative proceedings, including redress and remedy and to develop national laws regarding liability and compensation for the victims of population and other environmental damage;

AND WHEREAS in the judicial pronouncement in India, the right to healthy environment has been construed as a part of the right to life under article 21 of the Constitution.

AND WHEREAS it is considered expedient to implement the decisions taken at the aforesaid conference and to have a National Green Tribunal in view of the involvement of multi-disciplinary issues relating to the environment.”

23. The jurisdiction and powers of the NGT are to be found in Sections 14 to 20 respily. A close look at these provisions would show that the NGT has both original as

well as appellate jurisdiction. The range of powers that the NGT has include:-

- (i) the power to adjudicate upon civil cases where a substantial question relating to environment is involved (Section 14(1));
- (ii) the power to grant relief and compensation to the victims of pollution (Section 15(1)(a); and
- (iii) the power to order restitution of either property damaged or of the environment (Section 15(1)(b).

24. A person in whose favour the NGT passes an award or order, is entitled to two types of remedies, if the award or order or the decision of the NGT is not complied with. The first is a right to seek execution of the award under Section 25 and the second is to seek the prosecution of the offenders before a criminal court under Section 26.

25. Apart from the bar of jurisdiction of civil courts under Section 29, the NGT Act is also conferred the

overriding effect upon any other law under Section 33, which reads as follows:

“Section 33. Act to have overriding effect:—The provisions of this Act, shall have effect notwithstanding anything inconsistent contained in any other law for the time being in force or in any instrument having effect by virtue of any law other than this Act.”

26. Sub-section (1) of Section 38 of the NGT Act repeals the following enactments:-

(i) The National Environment Tribunal Act, 1995

(ii) The National Environment Appellate Authority Act, 1997

27. Apart from repealing the above two enactments expressly under sub-section (1) of Section 38, the NGT Act also contains a provision in sub-Section (8) of Section 38 which deals with implied repeal. Sub-Section (8) of Section 38 reads as follows:-

“(8) The mention of the particular matters referred to in sub-sections (2) to (7) shall not be held to prejudice or affect the general application of section 6 of the General Clauses Act, 1897 (10 of 1897) with regard to the effect of repeal.”

28. In so far as the execution of the orders of NGT are concerned, Section 25 confers two types of powers as noted below:-

- (a) The power to execute the award by itself, as if the award is a decree of a civil court and
- (b) The power to transmit the award to a civil court for its execution.

29. As stated earlier, the failure of any person to comply with the award of the NGT is also made punishable under Section 26, with imprisonment for a term that may extend to three years or with fine which may extend to ten crore rupees or with both. Section 27 makes every company and every person directly in charge of the affairs of the company liable to prosecution. Section 28 makes even the Government Departments liable to be prosecuted and punished. Such powers are not available for the Loss of Ecology Authority.

30. Though Sub-Section (2) of Section 26 makes offences under the AGT Act known cognizable, Section 30(1)(b) entitles any person who has given notice of not less than sixty days in the prescribed manner, of the alleged offences and of his intention to prosecute, to file a complaint before the competent court. Interestingly, Section 30(1)(b) does not even use the expression “aggrieved person”. It uses only an expression “any person”.

31. The 186th Report of the Law Commission, submitted in 2003, eventually paved the way for the enactment of the NGT Act. This can be seen from the relevant portion of the Statement of Objects and Reasons of the NGT Act which read as follows:-

“4. The National Environment Tribunal Act, 1995 was enacted to provide for strict liability for damages arising out of any accident occurring while handling any hazardous substance and for the establishment of a National Environment Tribunal for effective and expeditious disposal of cases arising from such accident, with a view to giving relief and compensation for damages to persons, property and the environment. However, the National Environment Tribunal, which had a very limited mandate, was not established. The

National Environment Appellate Authority Act, 1997 was enacted to establish the National Environment Appellate Authority to hear appeals with respect to restriction of areas in which any industries, operations or processes or class of industries, operations or processes shall not be carried out or shall be carried out subject to certain safeguards under the Environment (Protection) Act, 1986. The National Environment Appellate Authority has a limited workload because of the narrow scope of its jurisdiction.

5. Taking into account the large number of environmental cases pending in higher courts and the involvement of multidisciplinary issues in such cases, the Supreme Court requested the Law Commission of India to consider the need for constitution of specialised environmental courts. Pursuant to the same, the Law Commission has recommended the setting up of environmental courts having both original and appellate jurisdiction relating to environmental laws.

6. In view of the foregoing paragraphs, a need has been felt to establish a specialised tribunal to handle the multidisciplinary issues involved in environmental cases. Accordingly, it has been decided to enact a law to provide for the establishment of the National Green Tribunal for effective and expeditious disposal of civil cases relating to environmental protection and conservation of forests and other natural resources including enforcement of any legal right relating to environment.”

32. From the 186th Report of the Law Commission and the salient features of the Act, the following could be deduced:

(1) The creation of the National Green Tribunal, was in pursuance of the repeated directions issued by this Court in at least four cases namely, *M.C. Mehta v. Union of India* [(1986) 2 SCC 176], *Indian Council for Enviro Legal Action v. Union of India* [(1996) 3 SCC 212], *A.P. Pollution Control Board v. M.V. Nayudu* [(1999) 2 SCC 718], *A.P. Pollution Control Board v. M.V. Nayudu* [(2001) 2 SCC 62].

(2) The object of creation of the National Green Tribunal was to provide, what could be called a one-stop-shop solution, for all types of issues such as Environmental clearances, settlement of disputes relating to environment, relief and compensation for victims of pollution and environmental damage, restitution of property, restitution of environment etc.

(3) The Tribunal was to have both original and Appellate jurisdiction, with enormous powers not only to execute its orders as decrees of civil courts, but also to punish those who fail to comply with its orders.

(4) The Tribunal was to collect a court fee and entertain claims preferred within a period of limitation.

33. Under the NGT Act, the Act 1986 was also amended. By Section 36 of the NGT Act, Section 5A was inserted in the Act 1986. Under this Section, any direction issued by the Central Government under Section 5, either for the closure, prohibition or regulation of any industry, operation or process or the stoppage or regulation of the supply of electricity or water or any other service, was made appealable to the National Green Tribunal.

34. The legal effect of Section 5A of the Act 1986, if juxtaposed in to Section 5 read with Section 3(3) will be:—

(1) that Central Government is competent to issue certain directions under Section 5;

(2) that the power under Section 5 can also be exercised by the Authority constituted under Section 3(3); and

(3) that the directions issued under Section 5, either by the Central Government itself or by the Authority constituted under Section 3(3) are amenable to the appellate jurisdiction of the National Green Tribunal.

35. We now proceed to consider whether the NGT has the power & jurisdiction to issue directions to the CPCB/its delegates to take all such measures if in a given case the NGT finds that such directions are necessary in the interest of justice.

36. Section 3 of the Act 1986 expressly empowers the Central Government or its delegate, as the case may be, to "take all such measures as it deems necessary or expedient for the purpose of protecting and improving the quality of environment.....". Section 5 clothes the Central Government or its delegate with the power to issue directions for achieving the objects of the Act. Read with the wide definition of "environment" in Section 2(a), Sections 3 and 5 respaly clothe the Central Government with all such powers as are "necessary or expedient for the purpose of protecting and improving the quality of the environment". The Central Government is empowered to take all measures and issue all such directions as are called for the above purpose.

37. We take notice of the fact that the Central Government has framed the National Green Tribunal (Practices and Procedures) Rules, 2011 (for short, 'the NGT Rules'). For our purpose, Rule 24 is important which reads thus:-

“Rule 24. Order and directions in certain cases.—
The Tribunal may make such orders or give such directions as may be necessary or expedient to give effect to its order or to prevent abuse of its process or to secure the ends of justice.”

38. The aforesaid Rule 24 fell for the consideration of this Court in ***Municipal Corporation of Greater Mumbai v. Ankita Sinha***, 2021 SCC OnLine SC 897. We quote the few relevant observations made by this Court in ***Ankita Sinha*** (supra) as regards the powers of the National Green Tribunal:-

“16.3 The said Rules make it clear that the NGT has been given wide discretionary powers to secure the ends of justice. This power is coupled with the duty to be exercised for achieving the objectives. The intention understandably being to preserve and protect the environment and the matters connected thereto.

16.4 By choosing to employ a phrase of wide import, i.e. secure the ends of justice, the

legislature has nudged towards a liberal interpretation. Securing justice is a term of wide amplitude and does not simply mean adjudicating disputes between two rival entities. It also encompasses inter alia, advancing causes of environmental rights, granting compensation to victims of calamities, creating schemes for giving effect to the environmental principles and even hauling up authorities for inaction, when need be.

16.5 Moreover, unlike the civil courts which cannot travel beyond the relief sought by the parties, the NGT is conferred with power of moulding any relief. The provisions show that the NGT is vested with the widest power to appropriate relief as may be justified in the facts and circumstances of the case, even though such relief may not be specifically prayed for by the parties.

21.6 ... The above would show that from the very inception, the role of the NGT was not simply adjudicatory in the nature of a lis but to perform equally vital roles which are preventative, ameliorative or remedial in 17 (1999) 2 SCC 718 nature. The functional capacity of the NGT was intended to leverage wide powers to do full justice in its environmental mandate.

IX. AUTHORITY WITH SELF-ACTIVATING CAPABILITY

25.1 Given the multifarious role envisaged for the NGT and the purposive interpretation which ought to be given to the statutory provisions, it would be fitting to regard the NGT as having the mechanism to set in motion all necessary functions within its domain and this, as would follow from the discussion below, should necessarily clothe it with

the authority to take suo motu cognizance of matters, for effective discharge of its mandate.

25.7 The duty to safeguard Article 21 rights cannot stand on a narrow compass of interpretation. Procedural provisions must be allowed to fall in step with the substantive rights that are invoked in the environmental domain, in larger public interest. The specialized forum is bestowed with the responsibility to ensure protection of the environment. To be effective in its domain, we need to ascribe to the NGT a public responsibility to initiate action when required, to protect the substantive right of a clean environment and the procedural law should not be obstructive in its application.

26.3 As earlier seen, S.20 of the NGT Act which includes the term “decision”, in addition to “order” and “award”, also require the Tribunal to apply the ‘Precautionary Principle’ and the statutory mandate being relevant is extracted:-

“20. Tribunal to apply certain principles.

- The Tribunal shall, while passing any order or decisions or award, apply the principles of sustainable development, the precautionary principle and the polluter pays principle.”

26.4 The principle set out above must apply in the widest amplitude to ensure that it is not only resorted to for adjudicatory purposes but also for other ‘decisions’ or ‘orders’ to governmental authorities or polluters, when they fail to “to anticipate, prevent and attack the causes of environmental degradation”. Two aspects must

therefore be emphasized i.e. that the Tribunal is itself required to carry out preventive and protective measures, as well as hold governmental and private authorities accountable for failing to uphold environmental interests. Thus, a narrow interpretation for NGT's powers should be eschewed to adopt one which allows for full flow of the forum's power within the environmental domain."

CONSENT TO ESTABLISH & CONSENT TO OPERATE:

39. What is "Consent to Establish" (CTE) and what is "Consent to Operate" (CTO)? Consent to Establish (CTE) means the prior permission of the pollution control board to begin the work of construction of petrol retailing outlet at any place. At this stage, the ground water level in the proposed site, nature of the ground water, its corrosive properties, availability of residential premises, schools, probable danger to environment from the proposed outlet, etc. would be considered by the Pollution Control Board. In case consent to establish is given, the conditions to be complied with would be prescribed in order to safeguard the air ambience and ground water quality and also the

soil. The power in this regard is available under Section 25 of the Water (Prevention and Control of Pollution) Act, 1974.

40. Consent to Operate (CTO) means after the establishment of the retail petroleum outlets, a certificate is issued permitting to commence operation. At this stage, the actual compliance of the conditions imposed while issuing the “consent to establish” are ascertained. In case, any additional measures are required to be undertaken, further orders would be issued. After satisfying about the complete safeguard to environment such certificate is issued. In case of a new outlet, the company will first get the consent to establish and after establishment and before operationalizing the petrol bank, the consent to operate is to be obtained. In existing outlets, the safeguards available in their units will have to be shown, thereby indicating & assuring the pollution control board that the unit would not cause damage to the environment. After such satisfaction, the pollution control board would issue a certificate permitting them to operate continuously. The

object of the last direction is to ensure that the existing outlets are safe not only regarding air pollution but also against seepage to the ground water and soil. NGT has inherent power to issue this direction since it is only to ensure the safety of the existing units.

41. The fundamental documents required for seeking CTE and CTO are as under:-

Consent to Establish:

- Site plan of the production unit/project
- Brief project report which covers the details of raw material, proposed product, the capital cost of the establishment (land and plant machinery), water-balance, water source, and its proposed quantity
- Land documentation such as rent deed/ Registration deed/ Lease deed
- Details of air pollution control/ Water Pollution control equipment

- MOA /Partnership Deed

Consent to Operate:

- Copy of the last Consent granted by competent Authority
- Layout schematics manifesting the detail of manufacturing processes
- Latest analysis report of effluent, solid wastes, fuel gases, and hazardous wastes.
- Balance sheet copy attested by CA
- Detail relating to land in case trade effluent is discharged on land for percolation
- Occupation registration accorded by Town & Country Planning Department in case of area development projects/ Building & construction projects
- MOA /Partnership Deed

42. It will be in the fitness of things to incorporate in this judgment the guidelines issued by the CPCB vide its Office Memorandum dated 07.01.2020 for setting up new petroleum pumps. The guidelines are as follows:-

“GUIDELINES FOR SETTING UP OF NEW PETROL PUMPS

A. Containment and treatment of spillages from fuel filling operations at petrol pumps:

1. Petrol pumps located in areas with high groundwater table i.e. groundwater levels less than 04 meters shall have secondary containment by way of double walled tanks or concrete protection walls so as to minimize groundwater and soil contamination. It shall be the responsibility of OMC to properly get measured groundwater level at the site of proposed petrol pump and ensure implementation of these adequate protection measures for such sites. Details of measures taken by Oil Marketing Company shall be placed in public domain and in case of contradictory view, view of State/ Central Ground Water Board/ Authority wild prevail.
2. All new retail outlets shall have underground tanks/ above ground tank and its ancillary components such as pipes, flexible connectors, pumps fittings etc(protected from leaks due to corrosion by adopting materials (HDPE/ Mild Steel etc.) with required protective coating, as applicable, duly approved by PESO.
3. Any major leakage/ spillage of Petrol, Diesel, Lube Oil (more than barrel-165 litres) occurs at fueling station, concerned OMC shall report to State Pollution Control Board, PESO and District Administration under intimation to CPCB within

24 hours of occurrence.

Operation of concerned underground storage tank (UST) and its ancillary components shall be stopped immediately and not be resumed till corrective measures to contain and stop leakage/spillages are implemented to the satisfaction of PESO and concerned SPCB.

OMCs will be held liable for Environmental Compensation (imposed by SPCBs/PCCs) and assessment of environmental damage (depending on extent of contamination in soil and groundwater) and site remediation. Consultant/Expert agency appointed by OMCs for damage assessment and site remediation shall have minimum national/ international experience of 5 years in this field. Various approved methods shall be considered for cleaning underground contaminants.

4. All DUs shall have Auto Cut off Nozzles which shuts dispensation of fuel if its level in customer fuel tank reaches full capacity.
5. Breakaways to be installed for all the hoses of dispensing units to reduce spillage in the event of customer vehicles moves away with nozzle still in the fueling position.
6. Single/double plane swivel with breakaway coupling shall be installed for all the dispensing units for better positioning of nozzle while refueling does not fall off accidentally.
7. In pressurized dispensation, all dispensing units shall be installed with shear valves to cut the fuel flow from pipe line immediately upon accidental knocking of dispensing units from its position.
8. In pressurized system all Submersible Turbine Pumps (STPs) are to installed with line leak detectors and in the event of pipeline leaks STPs shall stop pumping fuel from underground tanks.

9. Emergency stop button switch shall be provided on the Multi-Product Dispenser (MPD) to stop the dispensation in case of emergency.
 10. Automation system shall be installed at all new retail outlets to alert in case of tank leak by way of auto gauging system approved by PESO.
 11. All Retail Outlets shall provide overfill alarm through automation.
 12. Measures for spill containment in fill point chambers and forecourt area shall be implemented as prescribed by PESO.
- B. Check on leakages (Leakage Detection System) from underground storage tanks so as to prevent groundwater and soil contamination:
1. All new retail outlets *will* have automation system installed which will provide reports on volume balance after every day operation and records shall be maintained.
 2. Manual gauging shall be done once in a month and compare the same with Automatic Tank Gauging for accuracy.
 3. Daily MS and HSD loss shall not exceed MoPNG prescribed limits. In case of leakage beyond such limits, matter shall be got analyzed by OMCs and further action shall be taken for ascertaining the reasons of losses. In case of leakage resulting in soil/groundwater contamination:
 - a. Concerned OMC shall report to State Pollution Control Board, PESO and District Administration under intimation to CPCB within 24 hours of occurrence. Operation of such underground storage tank (UST) and its ancillary components shall be stopped immediately.
 - b. Fuel shall be removed immediately from underground storage tank to prevent further release to environment. Measures to prevent

explosion due to vapors released due to leakage as recommended by PESO shall be implemented immediately.

- c. OMCs will be held liable for Environmental compensation (imposed by SPCBs/PCCS) and assessment of environmental damage (depending on extent of contamination in soil and groundwater) and site remediation.

Consultant/ Expert agency appointed by OMCs for damage assessment and site remediation shall have minimum national/ international experience of 05 years in this field. Various approved methods shall be considered for cleaning underground contaminants.

- d. Operation of Underground tank and its ancillary components shall not be resumed till corrective measures to contain and stop leakages are implemented to the satisfaction of PESO and concerned SPCB.

4. All underground tanks and pipelines shall be subjected to test for leaks every 7 years.

- C. Policy towards Treatment and disposal of sludge removed from underground tanks during cleaning:

D. Installation, Operation and maintenance of Vapour Recovery System:

1. All new retail outlets set up with sale potential of 300KL MS per month and setting up in cities with population more than 1 lakh will be provided with YRS. YRS should be functional by the time of sale of MS touch 300 KL. In case of failure of installation of VRS, Environment Compensation will be levied by SPCBs/ PCCs equivalent to the cost of VRS and this will further increase proportionate to the period of non-compliance.

2. Any new retail outlet set up in cities having

population more than 10 lakh and having sale potential of 100 KL MS per month will be provided with YRS. YRS should be installed within a period 03 months from the day of sale of MS touch 100 KL. In case of failure of installation of VRS, Environment Compensation will be levied by SPCBs/ PCCs equivalent to the cost of VRS and this will further increase proportionate to the period of non-compliance.

- 3.**In case of Stage II VRS, nozzle shall be provided with flexible cover flap or other alternative system for proper covering of filling tank and therefore proper recovery of vapors.
- 4.**OMCs are responsible for maintaining installed VRS. They have to maintain periodic inspections for AJL regulator as prescribed by Legal Metrology. Proper record shall be maintained,
- 5.**Working of dispenser shall be interlinked with VRS functioning. Online system shall be developed within 06 months to monitor status of operation of VRS. In case of non-operation of YRS, the same shall be automatically reported to concerned OMC. YRS shall be brought into operation immediately within 24 hrs and in any case within 72 hrs failing which sale of MS shall be stopped from the fueling station. Proper records of operation of YRS shall be maintained.
- 6.**Work zone monitoring for Total VOC and Benzene shall be conducted by OMCs for petrol pumps selling more than 300 KL/ month and more than 10 lakh population (in first phase) by E(P)Act, 1986 approved labs once in a year to check compliance with OSHA norms (Time-Weighted Average) and report shall be submitted to SPCB. In addition, pilot study shall be conducted by OMCs through expert institutions for online monitoring of VOCs.

E. Ground water and soil quality monitoring within

petrol pump selling more than 300 KL/ month and more than 10 lakh population shall be conducted by OMCs once in two years through E(P)Act, 1986 approved labs for the following parameters from the nearest source and report submitted to SPCB:

Permissible Limit

S.No.	Parameter	Permissible Limit
1.	Total petroleum hydrocarbons	600 pg/I
2.	BTEX	i. Benzene-950 pg/I ii. Toluene-300 pg/I iii. Zylenes- a. O-xylene-350 pg/I b. M&p-xylene-200 pg/I
3.	Ethanol	1400 Pg/I
4.	Methyl Tertiary Butyl Ether	13 Pg/I
5.	PAH	0.000 Pg/I

Enforcement agencies including SPCB can collect samples m and around petrol pump to check contamination

F. Measures for protection of Worker's Health

1. All workers engaged at retail outlets may be covered under ESI, OMC dealers shall implement the personal protective equipment (PPE) in par labor laws.
2. IEC (Information Education Communication) activities should be organized by OMC dealers for workers at regular intervals in order to sensitize them about harmful impacts of VOC emissions,

G. Audit of all protection measures and monitoring system implemented at petrol pumps:

PESO shall conduct audit of tanks and fuel equipment including pipes, overfill protection equipment and alarm system on annual basis and maintain records.

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.”

43. Section 21 of the Air (Prevention and Control of Pollution) Act, 1981 places restrictions, both on establishment and operation of any industrial plant located

in an air pollution control area without previous consent of the Board. The legislative intent behind this provision would lead to decipher two concepts - one, the consent for the purpose of establishing an industrial plant while the other for operation of that plant. The purpose of this Section is to ensure that when a unit or an industrial plant is given consent to operate, the unit ought to have satisfied all the conditions stated in the order of consent to establish and would have installed the requisite effluent treatment plants and other anti-pollution devices to ensure that it causes no pollution.

44. The upshot of our aforesaid discussion is that the NGT was well within its powers and jurisdiction to issue the directions which have been impugned before us. However, we would like to address on the question — whether the impugned directions are reasonable and whether the same may lead to unnecessary harassment and cause immense hardships to the retail outlets?

45. We take notice of the fact that all the appellants before us have installed VRS and VRD at their sites and retail outlets. We also take notice of the fact that the respondent No. 2 (original applicant) had not prayed before the NGT, Chennai to make CTE and CTO mandatory. The prayers in O.A. No. 138 of 2020 (SZ) were limited to the State of Tamil Nadu only. However, the NGT, Chennai by its impugned order has directed all the petroleum ROs in cities having more than 10 lakh population to install VRS mechanism which are having turnover of more than 300 KL/Month. We also take notice of the fact that the CPCB in consultation with the Ministry of Petroleum and Natural Gas has issued circulars/guidelines from time to time for installation of VRS (also known as Vapour Recovery Device circular). We are not inclined to disturb the impugned directions issued by the NGT, Chennai in regard to installation of the VRS. The CPCB shall ensure that these directions are scrupulously followed and complied with.

46. What is important for us to note is that in the directions/guidelines issued by the CPCB dated 30.04.2020 and 07.03.2016 resply the automobile fuel outlets have been classified as “green” which may be exempted from consent management. The learned Solicitor General submitted that it is only after due consideration and deliberations that the CPCB issued the said directions. The NGT itself in para 66 of its impugned order has noted that the oil industry is characterized as “green category” and the CTE and CTO was not required. It appears to us that the apprehension on the part of the NGT that the installation of VRS may not be strictly monitored by the State Pollution Control Boards, led the NGT to issue directions to the CPCB & State Pollution Control Boards to issue a circular making it mandatory for obtaining the CTE and CTO as a condition precedent for establishing new petroleum outlets. What has been argued before us and also on the basis of the materials on record, we are convinced that it is not necessary to make obtaining of CTE and CTO mandatory.

We would like to impress upon the CPCB to ensure that its guidelines referred to above are scrupulously followed and once the guidelines are scrupulously adhered to, no direction to obtain CTE and CTO for starting/operating a RO is warranted. We are at one with the learned counsel appearing for the respective appellants that asking the existing ROs to obtain CTO is something very unreasonable and may lead to various difficulties. Even directing the ROs that may come up in future to obtain the CTE and CTO would be cumbersome and time consuming and thus we do not find it reasonable.

47. In such circumstances, while holding that the National Green Tribunal has the power to direct the CPCB that it should exercise its powers under Section 5 of the Act 1986 for the purpose of protecting the environment, we are inclined to modify the impugned directions issued by the NGT, Chennai as contained in para 69(iii) and 69(iv) resply of the impugned order.

48. In view of the aforesaid, we dispose of the Civil Appeal No. 2039 of 2022 in the following terms:-

(a) The CPCB shall ensure that all the retail petroleum outlets located in different cities having population of more than 10 lakh and having turn over of more than 300 KL/Month shall install the VRS mechanism within the fresh timeline as prescribed in its Circular dated 04.06.2021. To put it in other words, the CPCB shall ensure that the directions issued by the NGT as contained in para 69(i) and (ii) of the impugned order is fully complied with. It shall be the legal obligation of all the State Pollution Control Boards to ensure that the directions issued by the NGT in regard to the installation of the VRS mechanism is complied with within the fresh timeline as prescribed by the CPCB.

(b) We set aside the directions issued by the NGT in the impugned order as contained in para 69(iii) and (iv). Instead, we direct the CPCB to instruct all the

State Pollution Control Boards to ensure that the guidelines issued by it vide the Office Memorandum dated 07.01.2020 are strictly adhered to. If there is breach of any of the guidelines issued by the CPCB vide Office Memorandum dated 07.01.2020, then the concerned State Pollution Control Board shall proceed against the erring outlet in accordance with law at the earliest.

49. The connected Appeals are also disposed of in the aforesaid terms.

50. There shall be no order as to costs.

51. Pending application, if any, stands disposed of.

.....**J.**
(SUDHANSHU DHULIA)

.....**J.**
(J.B. PARDIWALA)

NEW DELHI;
MARCH 14, 2023