

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

APPLICATION NO. 214 OF 2021 (SZ)

BETWEEN

Senthil Lakshmanan

... Applicant

And

District Collector and Ors.

... Respondents

REPLY STATEMENT FILED ON BEHALF OF THE 8th RESPONDENT

Dated at Chennai on this the 7th day of October, 2021.

E-Filing No. :

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

**(Under Section 18 (1) read with Section 14 (1) of the National
Green Tribunal Act 2010)**

ORIGINAL APPLICATION No. 214 of 2021 (SZ)

Senthil Lakshmanan

S/o. Lakshmanan

No.54, Gurusamy Naicker Street, Dasappagoundanpudur,
Erode District – 638 503.

... Applicant

Vs

1. The District Collector
Erode District,
Collectorate Complex,
State Highway 96, Opp. District Court, Palayapalayam,
Erode – 638 001
2. The District Revenue Officer,
Erode District,
Collectorate Complex, State Highway 96,
Opp. District Court, Palayapalayam,
Erode – 638 001.
3. The Joint Chief Controller of Explosives,
A and D Wing, Block 1 – 8,
Shashtri Bhavan,
No.26, Haddows Road, Nungambakkam,
Chennai – 600 006.
4. The Divisional Engineer,
Highways Department (C&M),
Sathy Sub – Division,
New No. 182, Old No. 233,
Highways TB Compound,
Sathy Main Road,
Gobichettypalayam – 638 452.
5. The Commissioner,
Sathyamangalam Municipality,
Mysore Trunk Road,
Rangasamuthuram,
Sathyamangalam – 638 032.

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कोयंबटूर मण्डल कार्यालय
इंडियन ऑयल कॉर्पोरेशन लिमिटेड
विपणन प्रभाग
इंडियन ऑयल भवन
8/1079, अविनाशी रोड
कोयंबटूर - 641018
(तमिल नाडु)

Lekha Raj Meena
Divisional Retail Head
Coimbatore Divisional Office
Indian Oil Corporation Limited
Marketing Division
Indian Oil Bhavan
8/1079, Avinashi Road
Coimbatore - 641 018
Tamil Nadu

6. The Chairman,
Tamilnadu Pollution Control Board,
No.76, Mount Salai, Guindy,
Chennai – 600 032.
7. The Regional Director,
Regional Directorate (South)
Central Pollution Control Board (CPCB)
2nd Floor, No. 77-A, South Avenue Road,
Ambattur Industrial Estate, Chennai – 600 058.
8. The Divisional Retail Head,
Indian Oil Corporation Limited,
Coimbatore Divisional Office,
Indian Oil Bhavan,
8/1079, Avinashi Road,
Coimbatore – 641 018.

... Respondents

REPLY STATEMENT FILED ON BEHALF OF THE 8th RESPONDENT

I, Lekha Raj Meena, son of Mr. C L Meena, aged 42, residing at 8/1079, P N Palayam, Coimbatore, do hereby solemnly affirm and sincerely state as follows :-

1. I submit that I am officiating as the Divisional Retail Head, and am authorized to swear this reply statement on behalf of the 8th Respondent and am well acquainted with the facts and circumstances of this case.
2. I humbly submit that the present application has been filed under Section 18 (1) read with Section 14 (1) of the National Green Tribunal Act 2010, for the following reliefs :-

"A. *permanently injunct the 8th Respondent from commissioning and operating the proposed New Road-side Petroleum Retail Outlet on MDR 679, Sathy periyakoduveri to Kadambur Road in Survey No. 83 / 3A - 3B, Malayadipudur*

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(Komarapalayam) Village, Sathyamangalam Taluk, Erode District, in gross violation to (i) the Siting Criteria notified by the Central Pollution Control Board (CPCB) in Clause "H" of the Office Memorandum No. B-13011/1/2019- 20/AQM/10802-10847 dated 07.01.2020 and the addendum dated 16.08.2021 prescribing a minimum distance of 50 M of the proposed site from Residential areas and Water bodies, (li) the mandatory provisions of G.O.(Ms) No. 79 of 2017 dated 04.05.2017 and (ili) the mandatory norms prescribed under Circular No 12-2009 issued by the Indian Road Congress and;

B. 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."

3. I humbly submit that nothing contained in this Reply Statement shall be construed as an admission of any statement or averment made in the present Application save and except what has specifically been admitted by the answering Respondent herein.
4. It is submitted that the answering Respondent denies each and every averment, which is contrary to and/or inconsistent with what is stated in this reply statement, as if the same were specifically traversed.
5. It is submitted that the instant Reply Statement is being filed in order to bring out the true and correct factual position and to specifically deal with the averments and allegations made by the Applicant in the instant Application. The answering Respondent reserves liberty to file an additional Statement/Affidavit and additional documents if the situation so necessitates at a later stage.
6. I humbly submit, at the outset, the present application is premature, devoid of any merit or a legal cause of action and as such is liable to be dismissed.

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7. I humbly submit that this Respondent has proposed to establish a retail outlet at SF No. 83/3A3B, Malayadipur (Komarapalayam) Village, Sathyamangalam Taluk, Erode District.

8. I humbly submit that the above application is not maintainable at all and is completely devoid of merits on both factual and legal aspects. I state that the Applicant has filed this present application prematurely, with absolutely no cause of action nor locus standi and the same has been filed only with vested and malafide interests and as such it is an abuse of the process of law.

9. I further state that the applicant has approached this Hon'ble Tribunal with tainted and unclean hands and knowingly suppressed material facts and made misrepresentation and the same is abuse of process of law. Hence, the applicant is not entitled to any relief from this Hon'ble Tribunal.

10. It is submitted that the details of the proposed subject Retail Outlet is as described below:-

- **Extent of land :** 624.95sq.m
- **Taluk :** Sathyamangalam
- **Town/Village :** Malayadipur
(Komarapalayam)
- **District :** ERODE
- **Site :** S No. 83/3A3B

11. It is humbly submitted that the subject retail outlet, is only proposed to be established and as such this respondent is only in its nascent preliminary stage of obtaining the requisite statutory permissions, licenses and clearances, as is required for its establishment and operation.

12. It is submitted that this Respondent had filed an application to the 1st Respondent herein for grant of a No Objection Certificate on 28.07.2021 and as on date, the same is still pending. It is further submitted that this Respondent has obtained initial PESO approval

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from the Petroleum and Explosives Safety Organisation vide Prior Approval No. A/P/SC/TN/14/11165 dated 20.09.2021.

13. It is submitted that this respondent has only applied for the statutory licenses and approvals and the construction towards establishment of the outlet would be started by this respondent only after the requisite licenses have been granted and duly approved. It is further submitted that as on date no construction has been carried on in the site.

14. With respect to the violation of IRC Norms, it is submitted that this Respondent has wantonly suppressed the fact that the issue with respect to the applicability of IRC norms in Tamil Nadu is already a settled proposition. It is submitted that on a bare perusal of the IRC Norms would show that the same only applies to National and State Highways specifically and as such the allegation that the IRC Norms are applicable to the subject retail outlet and its alleged violation are all false and denied. It is submitted that the IRC norms are only recommendatory in nature and not mandatory, as is seen from the numerous judgements passed by the Hon'ble High Courts in this regard.

15. It is submitted that the allegation of violation to IRC Norms is not maintainable for the reason that the IRC norms are not applicable for the proposed site in light of the judgment of the Division Bench of the Madurai Bench of Madras High Court in W.P.(MD) Nos.19218, 2661, 3678 & 705 of 2019 dated 17.10.2019 wherein it has been held that the Indian Road Congress Guidelines are not mandatory as it will get statutory force only when appropriate rules are framed by the State Government.

16. It is further submitted that the same has been reiterated recently by the Hon'ble Madras High Court vide its order dated 11.03.2021 in W.P 35885 of 2019, the relevant portion is as follows:-

"22. ...

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As seen from the above, the Indian Road Congress Guidelines have no statutory force as far as State of Tamil Nadu is concerned. The instructions given by the Assistant Divisional Engineer, Highways Department dated 08.11.2019 as well as instructions given by the Principal Secretary to Government of Tamil Nadu to all the District Collectors/Commissioner of Police dated 08.02.2020 relied upon by the learned Senior Counsel for the petitioner has no statutory force. In order for executive instructions to have force of Statutory Rules, it must be shown that they have been issued either under the authority conferred on the State Government by some statute or under some provision of the Constitution providing therefor. In the communication dated 08.11.2019 of the Assistant Divisional Engineer, Highways as well as the communication dated 08.02.2020 issued by the Principal Secretary to Government of Tamil Nadu there is no reference to any statute and therefore, the said communications are only in the nature of instructions and is not mandatory in nature.

23. Insofar as the order dated 12.12.2019 passed in W.P.No.18753 of 2019 by the Division Bench of this Court is concerned, it is only an interim order and the said writ petition is still pending on the file of this Court. An interim order cannot be used as a precedent when another Division Bench of this Court has earlier authoritatively decided the question in issue by holding that the Indian Road Congress Guidelines are not mandatory. Furthermore, in the Division Bench judgment of the Madurai Bench of Madras High Court in a batch of writ petitions referred to supra has given due consideration to the decision of the Hon'ble Supreme Court in Arti Devi Dangi case referred to supra and only thereafter has come to the conclusion that the Indian Road Congress Guidelines are not mandatory. The other writ petitions referred to in the order dated 12.12.2019 passed in W.P.No.18753 of 2019 are all Public Interest Litigations which are still pending on the file of this Court and the fifth respondent is

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also not a party in those litigations. Therefore, this Court is of the considered view that insofar as the first issue for consideration namely whether Indian Road Congress Guidelines is mandatory or not will have to be answered in favour of the fifth respondent by holding Indian Road Congress Guidelines are not mandatory.

..

25. Admittedly, petroleum outlets are set up with public interest in mind. None of the official respondents before this Court have raised any objection with regard to setting up of a petrol bunk by the fifth respondent. There is no material on record placed before this Court to establish that setting up of the petroleum retail outlet by the fifth respondent in the subject location is dangerous and is against public interest. The Indian Road Congress Guidelines as observed earlier are not mandatory. The State of Tamil Nadu has not framed Statutory Rules incorporating the Indian Road Congress Guidelines till date and therefore, the Indian Road Congress does not have any binding statutory force."

It is further submitted that the Hon'ble First Division Bench of the Hon'ble High Court of Madras, vide its order dated 01.08.2021 in W.P Nos. 34652 of 2019 and batch, has held as follows :-

" ...

As to the failure on the part of the relevant oil company to adhere to the IRC norms, it is submitted that several Division Bench judgments of this Court have held that such norms are not binding.

9. Indeed, several Division Bench judgments have been cited on either side and though there is an odd decision that the IRC:12-2009 guidelines ought to be adhered to, there are more Division Bench judgments that refer to the guidelines not being mandatory or a part of any prescribed statutory rules that would operate whenever a new petrol or diesel retail outlet is about to reopen. The Supreme Court judgment cited would also not apply since the tender terms in that

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case required any person wanting to open a retail store in terms of the advertisement to adhere to the applicable norms and the tender terms

specifically provided for adherence to the rules and sub-rules of the local PWD. In view of the several Division Bench judgments of this court, including the one rendered on October 17, 2019 reported at 2019 SCC OnLine Mad 8587 (Durairaj Venkatachalam vs. Additional Chief Secretary, Revenue and Disaster Management Department) and another rendered on W.P. (MD) No.2895 of 2020 (M.G.Saravanan vs. The Commissioner of Police) dated October 20, 2020, which clearly say that the IRC guidelines have no statutory force and may not be applied, the fact that the proposed site may be at an intersection and may cause traffic snarls and inconvenience to the general public, may not be a relevant factor.

...

14. To the extent that the no-objection certificate required the IRC:12-2009 guidelines to be followed, it can be said that in view of the recent consistent stand taken by this court that the IRC guidelines do not have any statutory force and are not mandatory, the breach of the IRC guidelines may not be fatal. It must also be recognised that notwithstanding the injunction subsisting now, substantial construction had been carried out previously. Even if it is accepted that no equity can be claimed by the private oil company as a consequence of commencing the construction and even if the petitioner's version is accepted that the construction has not been completed, it does not appear that at the time that the proposal for setting up the retail outlet was submitted or at the time that the no-objection certificate was issued on November 11, 2019, it was necessary for the strict conditions which are now in place to be followed or imposed in connection with the setting up of a new fuel outlet.

14. In such circumstances, the project cannot be interfered with and the private oil company may go ahead and take the requisite measures to open the retail outlet. But, in view of the outlet being in a

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residential area and at an intersection, some amount of additional care and caution need to be taken to operate the gas station. Considering the risks that a petrol station may bring to the local residents, the Collector will specify additional fire fighting equipment to be installed, so that in the unlikely event of a fire, it is possible to take immediate measures to arrest the spread thereof to the neighbouring buildings. In addition, sufficient open space must be left at the intersection to allow the smooth flow of traffic. In particular, the Collector should advise the private oil company to not construct a boundary wall along the narrower road opening onto M.G. Road, but the wall on such side should stop at at least 15 metre shy of M.G.Road to allow the smooth flow of traffic, especially vehicles entering or exiting the fuel station."

In the light of the above, it is clear that the applicant's allegation of violation of the IRC Guidelines is unfounded and baseless.

17. It is submitted that the present application is premature in nature and hence the same is liable to be dismissed. It is submitted that this respondent has not yet started any construction activity at the site as alleged by the applicant and the subject site is only at the preliminary stage of obtaining prior statutory permissions, licenses and clearances. Furthermore, the applications submitted for statutory clearances/approvals are being considered by the relevant statutory authorities. While so, this applicant has filed this present application seeking an injunction alleging violation of rules which are not applicable or relevant to the proposed site and it is evident that the same has been filed with vested and ulterior motives.

18. It is submitted that the relevant statutory authorities would be carrying out enquiries and processes to ensure that the proposed outlet is meeting all the norms/rules that are applicable as per the applicable laws and as such, a cause of action, if any, would only arise only if there are discrepancies or short comings in the enquiry/process. Hence, it is submitted that this applicant should not be allowed to misuse the jurisdiction of this Hon'ble Tribunal to fulfil his ulterior motives and vested interests and this applicant is liable to be imposed

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heavy costs for approaching this Hon'ble Tribunal with the complete knowledge that this present application does not arise from any cause of action whatsoever and is prima facie premature.

19. It is submitted that the applicant has filed a vexatious and frivolous application without any cause of action, by doing so, he has wasted the time of this Hon'ble Tribunal and as such huge cost may be imposed.

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

Dated at Chennai on this the 7th day of October, 2021

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8th RESPONDENT

VERIFICATION

I, Lekha Raj Meena, Son of Mr. C L Meena, aged 42 years, having address at 8/1079, P N Palayam, Coimbatore, working as Divisional Retail Head, do hereby verify that the contents of Paragraph Nos. 1 to 20 are true to the best of my knowledge and Paragraph Nos. 1 to 20 are believed to be true on legal advice and that I have not suppressed any material fact.

Verified at Chennai on this 7th day of October, 2021

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