

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

ORIGINAL APPLICATION NO. 29 of 2022 (SZ)

Between

C. Danielraj

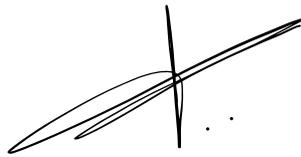
... Applicant

AND

Tamil Nadu Pollution Control Board,
And Ors.

... Respondents

REPLY STATEMENT FILED BY THE 6th RESPONDENT



**M/s. ABDUL SALEEM
S SARAVANAN
E. KARTHIKEYAN
COUNSEL FOR 6th RESPONDENT**

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

ORIGINAL APPLICATION NO. 29 of 2022 (SZ)

Between

C.Danielraj,
3/6, Saveriyar Nagar,
Parvathipuram, Vadalur,
Kurinjipadi Circle,
Cuddalore District – 607 303.

...Applicant

AND

1. Tamil Nadu Pollution Control Board,
Rep. by it's District Environmental Engineer,
Plot No.A-3, SIPCOT Industrial,
Complex, Kudikadu,
Cuddalore – 607 005.
2. Tamil Nadu Pollution Control Board,
Rep. by its Chairman,
76, Mount Salai, Guindy,
Chennai – 600 032.
3. The Central Pollution Control Board,
Rep. by its Chairman,
Parivesh Bhawan, East Arjun Nagar,
Delhi – 110 032.
4. The District Collector Cuddalore,
First Floor, New Collectorate Building,
Collectorate, Manjakuppam,
Cuddalore – 607 001.
5. Mr.Anwar, S/o Kudus,
S.No.108/6A, Boothangudi Village,
Chidambaram Taluk, Cuddalore District.
6. M/s. Nayara Energy Limited,
Formerly Essar Oil Limited,
Rep. by its Managing Director,
(Opp, Karnataka Bank),
5B, New Avadi Road, Thandavaraya,
Kilpauk, Chennai – 600 010.
7. The Joint Chief Controller of Explosives,
A&D wings, Block – 1-8, IInd Floor, Sasthri Bhavan,
No.26, Haddows Roads, Nungambakkam,
Chennai – 600 004.



...Respondents.

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REPLY STATEMENT FILED BY THE 6th RESPONDENT

I, P.Radhika, daughter of Mr. S. Pasupathy, aged 42 years, having Zonal office address at SREEROSH MADHAV BUILDING, 2nd Floor, Old No 73/2, New No 58/2, New Avadi Road, Kilpauk, (Opp. To Karnataka Bank), Chennai 600010, do hereby solemnly affirm and sincerely state as follows:

1. I state that I am the Senior Manager at Nayara Energy Limited, the 6th Respondent herein and as such I am well acquainted with the facts of the case from the records and I am authorized to file this Reply Statement on behalf of the 6th Respondent.

2. I humbly submit that the present application has been filed seeking for the following relief:-

"to pass an order to permanently forbear the 5th Respondent from establishing a Fuel Station at S.No. 108/6A, Boothangudi Village, Chidambram Taluk, Cuddalore District, which is in violation of the existing laws and pass such further or other orders in the interest of 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. I humbly submit that the answering Respondent denies each and every averment, which is contrary to and/or inconsistent with what is stated in this statement, as if the same were specifically traversed.

5. I humbly submit 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 detailed Statement/Affidavit and additional documents if the situation so necessitates at a later stage.



6. I humbly submit that the above application is not maintainable at all and devoid of merits on both factual and legal aspects. I state that the Applicant has no locus standi to file the above Application as he has approached this Hon'ble Tribunal completely with a vested interest, on the instigation of his own brother, intending to only cause unwanted agitation as against this Respondent and the same is evident from the fact that

- i.** the Applicant is a rival retail outlet dealer who is operating in the name and style of Antony Fuels at Kullanchavady to Marungur No.74/1 (Chathiram) Madhanagopalpuram Village;
- ii.** the Applicant's brother Mr.C.Charles is also a rival retail outlet dealer who is operating in the name and style of Queen Agency at Keerapalayam Road, Boothankudi Village, Cuddalore District;

It is pertinent to note that the subject retail outlet is proposed to be located nearer to the above retail outlet, which obviously affect the sale hence with a malafide intention to stall the establishment of the subject retail outlet the present application has been filed on the guise of environmental law violation and the same is violation of the law laid down by the Hon'ble Madras High Court.

7. I humbly submit that above calculative trivial claims made by the Applicant is liable to dealt with by an iron hand, through the imposition of exemplary costs on the applicant for attempting to misuse the powers of this Hon'ble Tribunal. 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.

8. Before going into the allegation made in the Application, I humbly submit that one Mr. K.Anwar, the 5th Respondent herein had approached this Respondent for a franchisee to operate a retail outlet at Survey No. 108/6A, Boothangudi Village, Chidambaram Taluk, Cuddalore District



and a Letter of Appointment dated 28.05.2021 was issued by this Respondent with various terms and conditions.

9. I humbly submit that in compliance of the Petroleum Rules, the following approvals were obtained for the proposed establishment of the above said petroleum retail outlets from the competent authorities, which details are as follows:-

Sl. No.	Date	Description of Approval / License	Issuing Authority
1	02.07.2021	Initial PESO Approval	Petroleum and Safety Organisation (PESO)
2	22.07.2021	No Objection Certificate	Tamil Nadu Fire Service & Rescue Department
3	02.12.2021	No Objection Certificate	District Collector, Cuddalore

10. I humbly submit that based on the application for NOC to the District Authorities under Rule 144 of the Petroleum Rules, the District Collector sought for the reports from the concerned departments including Tamil Nadu Pollution Control Board regarding the distance criteria. Subsequent to the reports of the below mentioned reports, the District Collector had issued the No Objection Certificate after the location of the subject retail outlet was duly verified and approved:

SL.NO.	DATE	DEPARTMENT
1	02.09.2021	Public Works Department, Water Resources Department
2	07.09.2021	Police Department – Superintendent of Police
3	13.10.2021	District Environmental Engineer, Tamil Nadu Pollution Control Board
4	18.10.2021	State Highways Department



11. I humbly submit that the District Environmental Engineer, Tamil Nadu Pollution Control Board, Cuddalore issued a letter dated 13.10.2021 to the District Revenue Officer, wherein it was categorically stated that there are no schools, hospitals or residences for a radial distance of 50 m on all sides from the subject retail outlet.

12. I humbly submit that after the receipt of all the necessary approvals and permission from the competent authorities, the construction was commenced in the subject site on 07.01.2022. Hence, there is neither any violation of environmental laws nor any pollution caused by this respondent.

13. I humbly submit that in the meantime, the Central Pollution Control Board issued the Office Memorandum No.B-13011/1/2019-20/AQM/10802-10847 dated 07.01.2020 regarding siting criteria for the establishment of retail outlets wherein siting criteria prescribed in Clause "H" of the said circular which reads as follows:-

"H. Siting criteria of retail Outlets:

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

It is apparent from the above clause that the new Retail Outlets shall not be located under no case, within a radial distance of 30 meters from schools, hospitals and residential areas designated as per local laws.



14. I humbly submit that since there is no prohibition of establishment of petroleum retail outlets near the water, however as per the direction of the Hon'ble Principal Bench of this Tribunal in the matter of Suresh Mandaloi Vs. State of M.P., & Ors. in O.A. No. 61 of 2019 (CZ), the Central Pollution Control Board issued an addendum dated 16.08.2021 to the guidelines dated 07.01.2020, wherein prescribed distance criteria which reads as follows:-

- "a) *All the surface water bodies irrespective of utility shall be protected from any possible contamination. These include lakes, ponds, streams, Rivers, wetlands, canals and creeks, as per revenue records. Retail Outlets shall not be located within a distance of 50 meters from the nearest point of water bodies. In case of streams and rivers, the distance shall be considered from floodway. In case floodway is not defines, the distance shall be considered from firm banks / edge of river. The siting criterion is to be implemented for all new petrol pumps where construction of OMCs starts post the issuance of these guidelines.*
- b) *Retail outlets coming within 50 meter to 100 meter from the nearest point of surface water body shall have secondary containment by way of double walled tanks or concrete protection walls around Underground Storage Tank (UST).*

....."

15. I humbly submit that in the present application, the applicant has raised only one allegation that the subject retail outlet is proposed to be set up within 50 meters from a water body and the same is in violation of the Guidelines dated 07.01.2020 and Addendum to the guidelines dated 16.08.2021 issued by the Central Pollution Control Board, except which, no other specific allegation has been raised.

16. I humbly submit that the said guidelines issued by the Central Pollution Control Board dated 07.01.2020 and its Addendum dated 16.08.2021, relied on by the Applicant herein, does not attain or attach to itself, any statutory force and remains only to be recommendatory in nature.



17. I respectfully submit that Section 5 of the Environment (Protection) Act 1986 empowers the Central Government to give directions in exercise of its powers and performance of its functions under the act. Such power was delegated to CPCB by the Central Government by way of a notification dated 27.02.1996. The power vested with CPCB is only to issue directions to regulate and compliance of the provisions of EP Act and its allied rules.

18. I respectfully submit that though the said Guidelines and Addendum of CPCB have been issued pursuant to the directions of the Principal Bench of this Hon'ble Tribunal in the matter of Gyanprakash @ Pappu Singh Vs Uoi & Ors. O.A. No. 86/2019 and in the matter of Suresh Mandaloi Vs. State of M.P., & Ors., in O.A. No. 61 of 2019 (CZ), however, the Guidelines have not been issued under any provisions of or made in reference to, any existing statute/s, for it attain a force of law.

19. I humbly submit that the above said Guidelines and Addendum being issued by a Central body, it has not adhered to the provisions of Article 77 of the Constitution of India and hence, the said guidelines and addendum cannot be said to have attained the force of a statute and are only mere expression of opinion, which are recommendatory in nature.

20. I humbly submit that assuming without admitting that the CPCB guidelines and addendum have statutory force and have to be adhered to mandatorily, a bare perusal of the said guidelines and addendum would go to show that the same would not apply to the subject retail outlet since the same was issued subsequent to the initial PESO approval and NOC from Tamil Nadu Fire and Safety Department which were obtained on 02.07.2021 and 22.07.2021 respectively.

21. I humbly submit that with respect to the above allegation of distance criteria near a water body, the Joint Committee which was appointed by this Hon'ble Tribunal in the present case has clearly stated in its report based on the site inspection that there is no violation of any



distance criteria prescribed by the CPCB and the relation portion of the report reads as follows:-

"For the contentions mentioned by the Applicant, the Committee submits the following:

The siting criteria for new Retail Outlets issued by the CPCB, was communicated to the District Collector by the Member Secretary, TNPC Board, Chennai vide Letter dated 12.03.2021. Based on the guidelines, the District Environmental Engineer, Cuddalore has given the report that there are no schools, hospitals or residences for a radial distance of 50 m on all sides vide ltr: 13.10.2021.

This was verified at the site, by the Committee during the Joint Inspection on 08.04.2022. The Addendum to the guidelines for setting up for New Petrol pumps states that the Retail outlets shall not be located within a distance of 50 meters from the nearest point of water bodies. The Addendum was communicated to all District Collectors and District Environmental Engineers on 03.01.2022, at a later date after the issue of NOC to this retail outlet, on 02.12.2021.

The Committee has measured the distance between the proposed place for storing the petroleum products in the above proposed site, and the bank of Veeranam lake, in the presence of Thiru.K.Anwar, the franchisee of M/s. Nayara Energy Ltd., and found to be 50 m."

It is apparent from the above findings of the committee that there is no violation of guidelines and addendum issued by the Central Pollution Control Board either by this Respondent or the franchisee.

22. I humbly submit that it proposed to install air vent at the subject retail outlet as per the norms and specification of the PESO. In addition, it is also proposed to construct concrete protection wall around Underground Storage Tank as recommended by the Central Pollution Control Board in its addendum to the guidelines dated 16.08.2021 and there will not be any threat of environmental pollution or leakage from Underground Storage Tank and contamination of groundwater or soil. It



is pertinent to note that the said Veeranam lake is protected through stone pitching and concrete embankment with a raised level of 10-15 feet.

23. I humbly submit that this respondent, after obtaining all the necessary approvals/clearances as is required under law, commenced the construction for the said retail outlet.

24. I humbly submit that the subject retail outlet had obtained all the necessary permissions and clearances prior to its commencement and the said permissions were granted by the respective authorities only after duly verifying and inspecting the retail outlet, taking into consideration all the applicable conditions and regulations as would be required to be in compliance by the subject retail outlet.

25. I humbly submit that this present applicant has filed this present application with vested and malafide interests, only with an intention to unnecessarily agitate and make false and baseless allegations as against this respondent and the same is liable to be condemned heavily by this Hon'ble Tribunal and it is requested that this Hon'ble Tribunal may impose exemplary costs on the applicant, for filing this bogus and highly malafide application, so as to prevent this applicant from filing such baseless applications and misusing the powers of this Hon'ble Tribunal.

For the reasons stated above, I respectfully pray 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 JULY, 2022



6th RESPONDENT

A handwritten signature consisting of several overlapping, sweeping lines.

COUNSEL FOR THE 6th RESPONDENT

VERIFICATION

I, P. Radhika, daughter of Mr. S Pasupathy, aged 42 years, having Zonal office address at SREEROSH MADHAV BUILDING, 2nd Floor, Old No. 73/2, New No. 58/2, New Avadi Road, Kilpauk, Chennai 600010, do hereby verify and affirm that the Paragraphs 1 - 25 are true to the best of my knowledge and Paragraphs 1 - 25 are believed to be true on legal advise and that I have not suppressed any material fact.

Verified at Chennai on this the 7th day of JULY, 2022.



6th RESPONDENT