

**BEFORE THE HON'BLE NATIONAL GREEN TRIBUNAL (SZ)  
SOUTHERN ZONE BENCH AT CHENNAI**

**APPEAL NO. 53 OF 2021**

**IN THE MATTER OF:**

Kerala State Pollution Control Board,  
Rep. by its Chairman,  
Pattom P.O  
Thiruvananthapuram

**...Appellants**

Vs.

Appellate Authority,  
Devi Kripa Building,  
T C 13/29 (8), 2<sup>nd</sup> Floor,  
Kannammoola Pettah,  
Thiruvananthapuram  
& 2 Others

**...Respondents**

**WRITTEN SUBMISSIONS ON BEHALF OF THE APPELLANT BASED ON  
THE HEARING HELD ON 29.9.21**

1. The Appellate Authority being a statutory authority can act only in accordance with the law laid down in the Air and Water Acts and the Rules framed under it. Annexure H is only a clarificatory letter and not a consent refusal order and so not appealable.

It is submitted that Annexure H is only a letter issued to the 3<sup>rd</sup> respondent informing that the consent to establish application was not complying with the distance criteria and that the same would be considered after clarification of the defects. The term "order" in section 28(1) of the Water (Prevention and Control of Pollution) Act cannot be equated to the Annexure H letter which is a communication requiring the respondents to clarify the defects. By admitting the case under appeal the first respondent has violated Rule 7 of the Kerala Water (Prevention and Control of Pollution) Appellate Authority Rules, 1977.

It is submitted that if the Board finds an application to be defective, clarification is called for. If the clarifications submitted are not *satisfactory*, the Board issues a 'Consent Refusal Intention Notice' directing the applicant to show cause why consent shall not be refused giving sufficient time for reply. If the reply to the above Consent Refusal Intention Notice is not satisfactory, 'Consent Refusal Order' is issued which is challengeable before the Water/ Air Appellate Authority. Therefore the appeal filed by the respondents before the Water Appellate Authority is premature without exhausting all remedies available to him.

2. *The Appellate Authority has no powers to decide on the vires of a circular issued by the Appellant Board.*

The 1<sup>st</sup> respondent Appellate Authority has held that the Annexure G circular of the appellant Board not sustainable. From a plain reading of section 28 of the Water Act, it is clear that the 1<sup>st</sup> respondent is quasi-judicial Authority and has been established to look specifically into any disputes arising from the action of the Pollution Control Boards while giving, denying or varying consents under sections 25, 26 and 27 of the Water Act. The Hon'ble NGT in Appeal 11&12 of 2019, Kerala State Pollution Control Board v Water & Air Appellate Authority, Kerala, vide judgement dated 22.1.2020 has held categorically that Appellate Authority has no powers whatsoever to hold a circular bad or illegal.

3. Siting criteria as specified by the Board is in accordance with the order of the NGT, PB in Order dated 22-7-2019 in O.A. No. 31/2019 and O.A. No. 86/2019 and well within the powers of the State Pollution Control Board.

It is submitted that vide Annexure G the Board had stipulated that the siting criteria for new retail Outlets of Petrol Pumps from the nearest "residential building" may be considered instead of residential areas. As per the CPCB guidelines, distance from proposed Outlets are to be measured from Schools, Hospitals and "residential areas designated as per local laws". It is a common fact that the demarcation of zones in the State of Kerala is done in a very small portion of the State by the Local Self Government Department. The very purpose of the introduction of new distance criteria would be defeated if the term "residential areas designated as per local laws" is adopted, rather than the term "residential buildings". This aspect is evident from the Order of the Hon'ble NGT (PB) itself. The Hon'ble NGT (PB) has highlighted the importance of "the health and safety of the inhabitants" while specifying distance norms by the CPCB. The term "residential building" was imported with the foremost object of safeguarding each inhabitant, irrespective of whether a residential building comes within a "residential area designated by local laws". In this regard it is submitted that Rule 3 of the Environment (Protection) Rules, 1986 empowers the State Board to specify more stringent standards to protect the environment. Hence the clarification given by the Board in connection with the distance to be maintained from "residential

building” rather than “residential area designated by local laws” is perfectly legal and justifiable.

Further, the respondents contend that proposed outlet is not located in a residential area under the local laws as provided under Annexure F since zonal classification is already made by the town planning authorities and the proposed outlet is not categorized as residential area as contemplated under Annexure F, the Environmental Engineer ought not have rejected the application. It is submitted that the distances from the tanks, dispensing units and vent pipe of the proposed establishment of the respondent to nearest residences are 26.76m, 38.05m and 34.8m respectively which is less than the required distance of 50m and 30m with additional safety measures as prescribed by PESO. Therefore, even if the area specified by the Respondent is a commercial area or a mixed zone the siting criteria as set out by the CPCB will hit them squarely and hence even according to the CPCB guideline siting criteria as required under law will not be satisfied. It was for the purpose of clarifying such matters that Annexure H letter was issued to the Respondent 3&4.

4. It is submitted that in Kerala, zoning is done by the Local Self Government Department and at present zoning has been done only in a very small portion of the State. Implementing the circular uniformly across the State would be impossible in the above circumstances. Considering the health and safety of the inhabitants as highlighted by Hon'ble NGT, the Annexure 'G' circular of the Board may please be upheld to ensure uniformity and safety for the people living close to such petrol bunk outlets.

Dated at Chennai this the 4<sup>th</sup> Day of October, 2021



**Counsel for the Appellant**

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**Ms.Rema Smrithi VK  
Standing Counsel for KSPCB  
9445782946**