

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

**APPEAL NOS. 6 – 9 OF 2022 (SZ)**

**BETWEEN**

Abraham Kuruvila

... Appellant

**And**

Kerala State Pollution Control Board and Others.

... Respondents

**COMMON REPLY STATEMENT FILED BY THE 4<sup>th</sup> RESPONDENT**

Dated at Chennai on this the 28<sup>th</sup> day of April, 2022.



**M/s. ABDUL SALEEM**

**S.SARAVANAN**

**COUNSEL FOR THE 4<sup>th</sup> RESPONDENT**

No.74 & 76, II & III Floors,  
Sukh Sagar Buildings, Marshalls road,  
Egmore, chennai – 600 008, Tamil Nadu

Mobile:- +91-9500069660

E-mail: [saleemattorney@gmail.com](mailto:saleemattorney@gmail.com)

**BEFORE THE NATIONAL GREEN TRIBUNAL  
SOUTHERN ZONAL BENCH AT CHENNAI**

**APPEAL NOS. 6,7,8 & 9 of 2022**

**BETWEEN**

Abraham Kuruvila,  
aged 58 years,  
Son of A.K.Abraham,  
Amprayil Anchil House, Neerattupuram P.O.,  
Thalavady Village, Alapuzha – 689 571.  
Email: [mathewabraham@outlook.com](mailto:mathewabraham@outlook.com)  
Mob: 95677 57968.

**...APPELLANT**

**VERSUS**

1. The Kerala State Pollution Control Board,  
Represented by its Member Secretary,  
Pattom, Plamood Junction,  
Thiruvananthapuram – 695 004.  
Ph: 0471 2318153. E-mail: [ms.kspcb@gov.in](mailto:ms.kspcb@gov.in)
  
2. The Central Pollution Control Board,  
Represented by its Chairman,  
Parivesh Bhawan, East Arjun Nagar,  
Delhi – 110 032.  
E.mail: [ccb.cpcp@nic.in](mailto:ccb.cpcp@nic.in). Ph: 011 43102201.
  
3. Juby Jacob,  
Proprietor Kopparaparambil Fuels,  
Kopparapparampil House,  
Neerattupuram.P.O.Thalavady,  
Alapuzha-689 571.  
Email: [juby.jake@gmail.com](mailto:juby.jake@gmail.com) Mob:94462 03030.
  
4. The Territory Manager (Retail),  
Bharat Petroleum Corporation Limited,  
Irimpanam Installation,  
Irimpanam,  
Kochi-682 309,  
E-Mail: [chandrasekarkk@bharatpetroleum.in](mailto:chandrasekarkk@bharatpetroleum.in).  
Ph: 0484-22292324.

**...RESPONDENTS**



  
**VIKRAM G**  
Territory Manager (Retail),  
Bharat Petroleum Corporation Ltd  
Emakulam Retail Territory  
Seaport Airport Road, Irimpanam  
Irimpanam PO, Emakulam -682 309

**COMMON REPLY STATEMENT FILED BY THE 4<sup>th</sup> RESPONDENT**

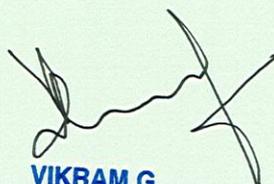
I, G. Vikram, S/o Govinda Rao, aged 47 years, residing at 12 F, SFS Casaflora, Pappaly Road, Thrikkakkara, Ernakulam District, do hereby solemnly do hereby solemnly affirm and sincerely state as follows:

1. I state that I am the Territory Manager, Retail, Bharat Petroleum corporation Ltd., Ernakulam Retail Territory, representing the 4th Respondent herein and as such I am well acquainted with the facts of the case from the available records and I am authorized to file this Reply Statement on behalf of the 4<sup>th</sup> Respondent.
2. I humbly submit that Appeal Nos. 6 and 7 of 2022 has been filed under Section 16 and 18(1) read of the National Green Tribunal, Act, 2020, for the following relief:

“

- i. *To set aside the 'Consent to establish issued under Sec.25 of the Water (Prevention and Control of Pollution) Act, 1974, File No. PCB/ALP/UC-E-1928/2020, dated 06-02-2020,' and 'under Sec.18 of the Air (Prevention and Control of Pollution) Act, 1981, File No. PCB/ALP/UC-E-1928/2020, dated 06-02-2020', varied by order dated 24-07-2020 and the common*



  
**VIKRAM G**  
Territory Manager (Retail),  
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Ernakulam Retail Territory  
Seaport Airport Road, Irimpanam  
Irimpanam PO, Ernakulam -682 309

*judgement passed by the Appellate Authority in Appeal No.3 and 4 of 2021, dated 07-01-2022.*

- ii. To pass an order directing the 3<sup>rd</sup> and 4<sup>th</sup> respondents from functioning the petroleum retain outlet in the land in Re-Survey No.557/12 Block 36, Thalavady Village, Kuttanad Taluk, Alapuzha District;*
- iii. Pass such other orders or direction which this Hon'ble Tribunal may deem fit, proper and necessary in the circumstances of the case."*

**3.** I humbly submit that Appeal Nos. 8 and 9 of 2022, has been filed under Section 16 and 18(1) read of the National Green Tribunal, Act, 2020, for the following relief:

"

- i. To set aside the Consent to operate issued under Sec.25 of the Water (Prevention and Control of Pollution) Act, 1974, File No. PCB/ALP/UC-0-7943/2021, dated 15-01-2021 and under Section 21 of the Air (Prevention and Control of Pollution) Act, 1981 and the judgement passed by the Appellate Authority in Appeal No.5 and 6 of 2021, dated 07-01-2022.*
- ii. To pass an order directing the 3<sup>rd</sup> and 4<sup>th</sup> respondents from functioning the petroleum retain outlet in the land in Re-Survey No.557/12 Block 36, Thalavady Village, Kuttanad Taluk, Alapuzha District;*
- iii. Pass such other orders or direction which this Hon'ble Tribunal may deem fit, proper and necessary in the circumstances of the case including orders to recover*



  
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*the damages suffered to the ecology on account of its functioning."*

4. 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 appeals save and except what has specifically been admitted by the answering Respondent herein.
5. 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.
6. 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 Appellant in the instant Appeals. The answering Respondent reserves liberty to file a further detailed Statement/Affidavit and additional documents if the situation so necessitates at a later stage.
7. I humbly submit that this Respondent had proposed to appoint a retail outlet dealer in Kerala State including the location of Ambalapuzha Thiruvalla Highway SH 012, Alapuzha and had issued a notification in the year 2018, calling for application for appointment of Retail Outlet Dealership for the said subject area by "Draw of lots" method.
8. I humbly submit that one Ms. Juby Jacob was selected as a dealer for the site at Re-Survey No. 557/12, Block No. 36, Thalavady Village, Kuttanad Taluk, Alapuzha District. I state that on



  
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appointment of a dealer, this Respondent had obtained approvals/licenses/permissions from the following authorities :

- 1) No Objection Certificate obtained from the Additional District Magistrate, Alappuzha, dated 20.12.2019.
- 2) Certificate from the Regional Fire Officer, Kottayam dated 25.07.2019.
- 3) Consent for establishment issued by the Kerala Pollution Control Board vide Proceeding No. PCB/ALP/ICE-1614/2020 dated 06.02.2020.
- 4) Site approval and Building Permit in Proceeding No. (4-833/2020/17) dated 23/3/2020 issued by the Thalavady Grama Panchayat.
- 4) Initial PESO License dated 01.06.2020.

9. I humbly submit that the Appellant herein filed a Writ Petition in W.P. (c) No. 10129 of 2020 before the Hon'ble High Court of Kerala, seeking an order against the 1<sup>st</sup> Respondent to not issue Consent to operate to the subject retail outlet and the Hon'ble High Court on 22.05.2020, disposed of the matter with a direction to the 1<sup>st</sup> respondent to consider the grant of consent after giving an opportunity of objections being heard from the Appellant herein. It is submitted that thereafter, the 1<sup>st</sup> Respondent after considering the objections, issued a consent variation order for the subject retail outlet on 24.07.2020, directing the following to be adhered to by this Respondent :

"1. The unit shall install additional safety measures as prescribed by Petroleum and Explosives Safety Organization



  
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*(PESO) including Vapour Recovery System for reducing the vapour emission load during the establishment.*

2. *The CPCB guidelines for setting up new Petrol pumps (excepting siting criteria) shall be complied."*

**10.** I humbly submit that the Appellant herein thereafter filed an application in OA No. 101 of 2020 before this Hon'ble Tribunal, on identical and on the same set of facts and circumstances and praying for identical relief, as was before the Hon'ble High Court and presently before this Hon'ble Tribunal and vide order dated 08.07.2020, the Hon'ble Tribunal was pleased to dispose of the matter at the admission stage with the direction to the 1<sup>st</sup> Respondent to consider the representation made by the Appellant and then pass orders for issuance of consent to operate. It is also pertinent to note that the Hon'ble Tribunal in its order was also pleased to observe as follows :-

*"15. Since the Hon'ble High Court had considered the grievance of the Appellant and disposed of the case with such directions, the Appellant is not entitled to come before this Tribunal with a different prayer in order to achieve the same purpose."*

**11.** I humbly submit that the allegation that the subject retail outlet had been established in violation of the Guidelines issued by CPCB with respect to Siting Criteria, dated 07.01.2020 does not stand any merit for the following reasons :



  
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a. That the 1st Respondent issued a circular dated 24.02.2020 adopting and implementing the guidelines issued by CPCB dated 07.01.2020, in the State of Kerala and wherein it had been clarified by the 1<sup>st</sup> Respondent that the circular shall be applicable to only applications received after the date of issuance of the said circular i.e., 24.02.2020. It is submitted that the this Respondent had submitted application for Consent to Establish on 04.02.2020, which is prior to the date of issuance of the said circular and as such this Respondent would not come under the purview of the said guidelines.

b. i. That even assuming without admitting, that the Guidelines issued by CPCB dated 07.01.2020 would apply to subject retail outlet, the criteria with respect to the distance of the Retail outlet being 30m away from areas designated as Residential as per local laws, cannot find to be applied for the subject retail outlet since there is no mechanism or system in place in the State of Kerala, that classifies the land to various use zones and as such, when there is no area classified as residential, the subject retail outlet cannot be barred from establishing the unit at the site.

ii. That in this regard, the 1<sup>st</sup> Respondent on vide circular dated 18.08.2020, further clarified this discrepancy in the word "Residential area" and stated that the word "Residential building" may be considered instead of "Residential areas".



  
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iii. Furthermore, with respect to the siting criteria, the 1<sup>st</sup> Respondent clarified in the same circular dated 18.08.2020, that if any requisite license other than PCB consent is obtained by the Appellant for establishing the petrol pump prior to the date of the circular dated 24.02.2020, then the siting criteria mentioned in the circular dated 09.08.2004 shall be applicable.

- 12.** Pursuant to the above, it is humbly submitted that the subject retail outlet does not come under the purview of the Siting Criteria mentioned in Guidelines issued by CPCB dated 07.01.2020 and since this Respondent had obtained a Certificate from the Regional Fire Officer, Kottayam on 25.07.2019 and a No Objection Certificate from the Additional District Magistrate, Alappuzha on 20.12.2019, the siting criteria specified in the circular issued by the 1<sup>st</sup> Respondent dated 09.08.2004 only would apply to the subject retail outlet.
- 13.** It is submitted that as per the Circular dated 09.08.2004, Green Category small scale industries were specified to maintain a minimum distance of 3m from nearby residence. It is submitted that the subject retail outlet comes under the category of the Green (Small Scale) Industry and as such, the subject retail outlet has been established strictly in compliance with the stipulated norms as per the Circular dated 09.08.2004 and no distance norm has been violated.
- 14.** It is further submitted that thereafter this Respondent completed the construction of the subject retail outlet and had obtained final PESO License on 27.11.2020.



  
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- 15.** It is submitted that thereafter this Respondent filed an application for consent to operate on 16.12.2020 and the same was duly considered by the 1<sup>st</sup> Respondent and Consent to operate was issued on 15.01.2021 on satisfaction that the subject retail outlet had complied with all the norms and regulations.
- 16.** It is humbly submitted that this Respondent has established the subject retail outlet only after obtaining all the necessary clearances, permissions and licenses required as per the applicable law. It is further submitted that the 2<sup>nd</sup> Respondent on 30.04.2020 had issued an office order for categorization of industries as Red/Orange/Green/White for the purpose of obtaining consent and it is stated that as per the said order, Automobile Fuel outlets was regarded as a Green Category industry and was exempted from the purview of Consent Management. However, it is submitted that the State of Kerala, with a view to curb pollution and control emissions had insisted on Retail outlets obtaining consent from the Board and as such, this Respondent duly complied with the same and obtained necessary consents from the 1<sup>st</sup> Respondent before the establishing and commencing operations.
- 17.** It is humbly submitted that this present Appellant has filed these present appeals 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 evident from the following :



  
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Bharat Petroleum Corporation Ltd  
Emakulam Retail Territory  
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i. That this Appellant has filed these present appeals at the behest of another rival petroleum retail outlet situated nearby about 250mtrs away and that since an application or appeal filed by a rival trader will not have any locus standi, they have instigated this present appellant to agitate against this respondent and as such the same is not maintainable.

ii. That this Appellant has previously preferred a Writ Petition as against this Respondent in W.P (c) No. 10129 of 2020 before the Hon'ble High Court of Kerala and an Application in OA No. 101 of 2020 before this Hon'ble Tribunal, seeking the same relief.

iii. That this Appellant has previously filed a Writ Petition in W.P (c) No. 19486 of 2020 on 18.09.2020 challenging the building permit of this Respondent and the same is pending disposal before the Hon'ble High Court of Kerala.

**18.** It is humbly submitted that pursuant to the above, the impugned orders passed by the Learned Appellate Authority do not suffer from any infirmity and was right in dismissing the Appeals filed by the Appellant with costs, as against the Consent to Establish and Consent to Operate issued to this Respondent.

For the reasons stated above, it is therefore humbly prayed that this Hon'ble Tribunal may be pleased to dismiss the above Appeals with heavy cost and pass such further or other orders as this Hon'ble

  
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Tribunal may deem fit and proper in the circumstances of the case and thus render justice.

Dated at Chennai on this the 28<sup>th</sup> day of April, 2022.

  
4<sup>th</sup> RESPONDENT  
**VIKRAM G**  
Territory Manager (Retail),  
Bharat Petroleum Corporation Ltd  
Ernakulam Retail Territory  
Seaport Airport Road, Irimpanam  
Irimpanam PO, Ernakulam -682 309  
VERIFICATION



G. Vikram, S/o Govinda Rao, aged 47 years, residing at 12 F, SFS Casaflorea, Pappaly Road, Thrikkakkara, Ernakulam District working as Territory Manager, Retail, Bharat Petroleum corporation Ltd., Ernakulam Retail Territory do hereby verify that the contents of Paragraph Nos. 1 to 17 are true to the best of my knowledge and Paragraph Nos. 1 to 17 are believed to be true on legal advice and that I have not suppressed any material fact.

Verified at Chennai on this the 28<sup>th</sup> day of April, 2022.

4<sup>th</sup> RESPONDENT  
  
**VIKRAM G**  
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Ernakulam Retail Territory  
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Irimpanam PO, Ernakulam -682 309

