

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

APPLICATION NO. 07 OF 2021 (SZ)

BETWEEN

Anwar and ors.

... Applicant

And

Additional District Magistrate, Malappuram and Ors.

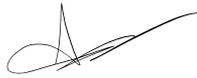
... Respondents

**REPLY STATEMENT FILED ON BEHALF OF THE 2nd
RESPONDENT**

Dated at Chennai on this the 25th day of August, 2021.

E-Filing No. :

Date : 25.08.2021



M/s. ABDUL SALEEM

S.SARAVANAN

COUNSEL FOR THE 2nd 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

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

ORIGINAL APPLICATION NO. 07 OF 2021 (SZ)

1. Anwar.K
S/o K.Hamsu
R/o Kuroor House,
Perunthalloor P.O., TirurTaluk,
Malappuram District
Kerala - 676102
2. Hamza K.,
S/o Moideen
House No. 12/108, Kuroor House,
Perunthallor P.O., Tirur,
Malappuram, Kerala - 676102
3. Abida K.,
W/o Anwar Kurur,
Kannath House,
Perunthalloor P.O., Tirur,
Malappuram District
Kerala - 676 102

..... Applicants

AND

1. Additional District Magistrate, Malappuram,
Office of the District Collector,
Civil Station, Up Hill,
Malappuram District, Kerala - 676505.
2. Chief Divisional Retail Sales Manager,
Indian Oil Corporation Limited,
2nd Floor, P.M.K. Towers, Civil Station P.O,
Wayanad Road, Kozhikode District,
Kerala - 673 020.
3. Biju K.P S/o Subramanian,
R/o Kattikaattuparambil House,
Ezhoor, TirurTaluk,
Malappuram District, kerala - 676 101.
4. MuhammedKutty, S/o Poker Alias Bava,
KambilaValappil House, Chamravattom P.O,
TirurTaluk, Malappuram District,
Kerala - 676102



Signed before me at my
office at Calicut / Koyiandy
on 04/8/2021

बी. अरुण कुमार / B. ARUN KUMAR
मंडल रीटेल प्रमुख / Divisional Retail Sales Head
इंडियन ऑयल कॉर्पोरेशन लिमिटेड (विपणन प्रभाग)
Indian Oil Corporation Limited (Marketing Division)
कोषिकोड मंडल कार्यालय / Kozhikode D O

Deponent / Executant is identified as per His / Her
AADHAAR Card, Unique Identification Authority of India
(Govt. of India) Vide No: 6434

5501 5525
ADVOCATE
B.M. MOHAMMED BASHEER
STATE NOTARY

5. Central Pollution Control Board,
Represented by its chairman,
'PariveshBhawan', East Arjun Nagar,
Shahdara, Delhi - 110 032.

6. Kerala State Pollution Control Board,
Represented by its Chairman,
Pattom P.O, Tiruvananthapuram District,
Kerala - 695 004.

7. Deputy Chief Controller of Explosives,
C-2, IIIrd Floor, CGO Complex,
Kakkanad, Ernakulam District
Kerala - 682 037.

8. District Collector - Malappuram,
Office of District Collector,
Civil station, Up Hill,
Malappuram District, Kerala - 676505.

9. The Panchayat Secretary,
Tripangode Grama Panchayat,
Alingai, Malappuram District,
Kerala - 676 505.

10. The Tahasildar, Tirur Taluk,
Taluk Office, Tirur,
Malappuram District,
Kerala - 676 101.

... Respondents

**REPLY STATEMENT FILED ON BEHALF OF THE SECOND
RESPONDENT**

I, B Arun Kumar, Son of Mr. S G Balasubramanian aged 36 years
having address at 8B, Si Camelot Point Apartments, Panniker Road,
Kozhikode - 673011, do hereby solemnly affirm and sincerely state
as follows:

1. I state that I am the Divisional Retail Sales Head, representing
the 2ND 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 second Respondent.

Signed before me at my
office at Calicut / Koyiandy
on..... 24/8/2021



B. Arun Kumar
बी. अरुण कुमार / B. ARUN KUMAR
मंडल रिटेल प्रमुख / Divisional Retail Sales Head
इंडियन ऑयल कॉर्पोरेशन लिमिटेड (विपणन प्रभाग)
Indian Oil Corporation Limited (Marketing Division)
कोषिकोड मंडल कार्यालय / Kozhikode D O

2. I humbly submit that the present application has been filed under Section 18(1) read with Section 14 of the National Green Tribunal, Act, 2010, for the following relief:

"1. Issue an order setting aside Annexure A3 Proceedings/ Order and Annexure A2 NOC issued by the 1st Respondent to the 2nd Respondent. .

2. Issue an order restraining the 2nd, 3rd, and 4th Respondent from proceeding to establish a new petrol pump in the site shown in the Annexure A1 site plan.

3. Issue an order directing the 1st Respondent and Respondents 5 to 10 to ensure that Annexure A4 guidelines and Annexure A5 Circular is Strictly implemented and to ensure that no new petrol pumps are established in the site shown in the Annexure A1 site plan.

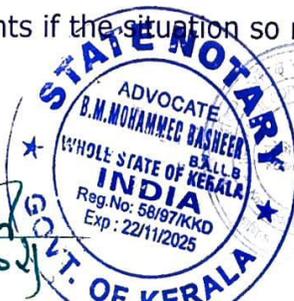
4. Issue any other order or direction that his Hon'ble Tribunal may deem appropriate in the facts and circumstances of the present case."

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 Statement/Affidavit and additional documents if the situation so necessitates at a later stage.

Signed before me at my
office at Calicut / Koyandy
on 14/8/2021



B. ARUN KUMAR
बी. अरुण कुमार / B. ARUN KUMAR
मंडल रिटेल प्रमुख / Divisional Retail Sales Head
इंडियन ऑयल कॉर्पोरेशन लिमिटेड (बिमान प्रभाग)
Indian Oil Corporation Limited (Marketing Division)
कोयिकोड मंडल कार्यालय / Kozhikode D O

6. I humbly submit that the Indian Oil Corporation Limited i.e answering Respondent is a Public Sector Enterprise of the Government of India under the administrative Control of the Ministry of Petroleum & Natural Gas, Government of India and is engaged in marketing petroleum products through retail network and has been enjoying the market leadership. The company deals with refining and marketing of Petroleum Products like MS, HSD, SKO, LDO, LPG and Lube Oil in the country through its wide spread dealers network.

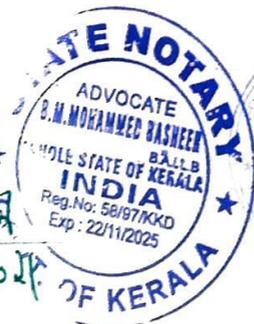
7. I humbly submit that the 2nd respondent proposed to set up a retail outlet in a land belonging to one Mr.Muhammedkutty. The Proposed project to be set in land admeasuring 0.1076 hectares falling under survey Nos. 253/9, 253/10 of Triprangode Village, Triprangode Panchayat in TirurTaluk, Malappuram District.

8. I humbly submit that the 2nd respondent submitted an application for No Objection Certificate (NOC) U/s 144 of the Petroleum Rules,2002 for establishing a new retail outlet at Tripangode Village, TirurTaluk vide letter no. KDO/R/TRIPANGODE on 07.05.2019 to the Additional District Magistrate,Malappuram.

9. I humbly submit that after considering the application for NOC, the District Magistrate sought a report from (1)Tahalsidar, Tirur, (2) Divisional officer, Fire & Rescue Palakkad, (3) District Medical Officer, Malappuram, (4) District supply Officer, Malappuram, (5) Executive Engineer, PWD Roads, Manjeri.

10. I humbly submit that the Tahsildar, Tirur, Divisional officer, Fire & Rescue Palakkad, District Medical Officer, Malappuram, District supply Officer, Malappuram, Executive Engineer, PWD Roads, Manjeri submitted their respective NOC to the proposed retail outlet.

Signed before me at my
office at Calicut / Kozhikode
on 14/8/2021



B. Arun Kumar
बी. अरुण कुमार / B. ARUN KUMAR
मंडल रिटेल प्रमुख / Divisional Retail Sales Head
इंडियन ऑयल कॉर्पोरेशन लिमिटेड (विपणन प्रभाग)
Indian Oil Corporation Limited (Marketing Division)
कोयिकोड मंडल कार्यालय / Kozhikode D O

11. I humbly submit that after considering all the factors and the no objections given by different statutory authorities, the Additional District Magistrate inspected the site and issued NOC to the proposed retail outlet on 15.07.2020 U/s 144 of the Petroleum Rules, 2002.

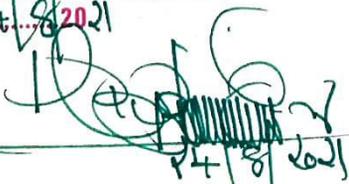
12. I humbly submit that the petitioner corporation submitted an application before the Petroleum & Explosives Safety Organisation (PESO) for initial License Vide Letter No. OIN381765 dated 04.10.2019. After considering the application, PESO granted initial Approval vide Prior Approval No: A/P/SC/KL/14/3818 (P458155) dated 29.10.2019.

13. I humbly submit that the Central Pollution Control Board (CPCB) vide Circular B-13011/1/2019-20/AQM dated 07.01.2020 issued guidelines for setting up of New Petrol Pumps. The siting criteria of retail Outlet is as follows:

"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 school, hospital (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 the new retail outlet from school, 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."

14. I humbly submit that pursuant to the circular dated 07.01.2020, the CPCB vide circular B-13011/1/2020-21/AQM dated 29.01.2021 issued clarification with regard to cut-off date for applicability of siting referred in Guidelines for setting up New Petrol Pumps dated 07.01.2020 is as follows:

Signed before me at my
office at Calicut / Koyilandy
on... 21/1/2021





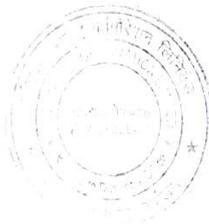

बी. अरुण कुमार / B. ARUN KUMAR
मंडल रिटेल प्रमुख / Divisional Retail Sales Head
इंडियन ऑयल कॉर्पोरेशन लिमिटेड (विपणन प्रभाग)
Indian Oil Corporation Limited (Market Division)
कोच्चिकोड मंडल कार्यालय / Kozhikode D O

"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."

15. I humbly submit that pursuant to the above guidelines of CPCB, the Kerala State Pollution Control Board issued a circular No. PCB/HO/HOW/RULES9/7/2019 dated 24/02/2020. It is stated that 50 meters shall be minimum distance for the retail outlet in the designated retail outlet area and in that no case, it shall be below 30 meters. The order clearly states that it is applicable to residential areas designated as per local laws and shall apply to all applications to residential areas designated as per local laws and shall apply to all applications received thereafter. Later Kerala State Pollution Control Board has partially modified the condition of designated residential area as residential building. It is clearly stated in the order dated 18/08/2020 that if any requisite license is obtained by the applicant for establishing the petrol pump prior to the date of the circular dated 24/02/2020, the siting criteria in circular dated 09/08/2004 shall be applicable.

16. I humbly submit that this Hon'ble Tribunal in the instant application vide order dated 08.01.2021 issued direction to appoint a Joint Committee, comprising of The District Collector, A Senior Officer from Central Pollution Control Board (CPCB), Regional Office Bangalore, A senior Officer from Kerala state pollution control board (KSPCB) to inspect the area in question and submit a factual, as well as action taken report, if there is any violation.

Signed before me at my
office at Calicut / Koyilandy
on 24/8/2021



B. Arun Kumar
बी. अरुण कुमार / B. ARUN KUMAR
मंडल रीटेल प्रमुख / Divisional Retail Sales Head
इंडियन ऑयल कॉर्पोरेशन लिमिटेड (विपणन प्रभाग)
Indian Oil Corporation Limited (Marketing Division)
कोयिकोड मंडल कार्यालय / Kozhikode D O

17. I humbly submit that the joint committee conducted an inspection in the subject proposed retail outlet submitted their report on 16.03.2021 concluding as follows:

"17) This Joint Committee respectfully submits before the Hon'ble Tribunal that, on the light of the detailed site inspection and verification of all the documents and concerned circulars & guidelines this joint committee has observed that the project proponent has not committed any violation regarding the siting criteria as alleged in the original application by the petitioner, however, the committee is of the opinion that all the pollution prevention/ control measures, leakage/spillage management as listed in the CPCB guideline dated 07.01.2020 shall applicable and M/s Indian Oil Corporation Ltd has to strictly comply with them and has to take all efforts to alleviate the apprehensions of residents neighbouring the site.

18) This joint committee also suggests that the oil marketing company may reconsider the site layout, so that maximum possible distance can be maintained between the petitioner's residence and the proposed petrol pump. It is also reiterated that additional safety measured if any prescribed by PESO shall be applicable in the case, apart from the other conditions in the CPCB guidelines dated 07.01.2020

18. I humbly submit that the proposed site does not come under the purview of the CPCB guidelines for setting up new petrol pump, issued vide CPCB Office Memorandum No. B-13011/1/2019-20/AQM/0814 dated 07.01.2020, as Respondent 6 (KSPCB) vide its Circular Ref. No. PCB/HO/HOW/RULES9/7/2019 dated 18.08.2020 has ruled that "Also if any requisite license other than the PCB consent is obtained by the applicant for establishing the petrol pump prior to the date of the circular No. PCB/HO/HOW/RULES9/7/2019

Signed before me at my
office at Calicut / Kozhikode
on... 24/8/21



B.A.K.
बी. अरुण कुमार / B. ARUN KUMAR
मंडल रीटेल प्रमुख / Divisional Retail Sales Head
इंडियन ऑयल कॉर्पोरेशन लिमिटेड (विपणन प्रभाग)
Indian Oil Corporation Limited (Marketing Division)
कोयिकोड मंडल कार्यालय / Kozhikode D O

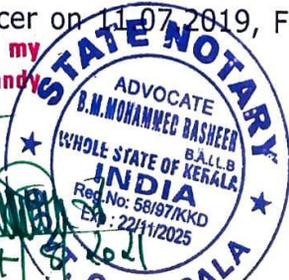
dated 24.02.2020, the siting criteria mentioned in circular dated 09/08/2004 shall be applicable”.

19. It is submitted that the PESO initial licence was obtained on 29.10.2019 and also the clearances have been obtained from District Medical Officer on 11.07.2019, Fire & Rescue Services Palakkad on 23.07.2019 and Executive Engineer, PWD on 01.07.2019. Hence, the distance criteria of 30 metres as mentioned in the CPCB circular will not be applicable and the siting criteria mentioned in circular dated 09/08/2004 shall only be applicable in this case.

20. I humbly submit that the joint committee consists of members of various authorities including CPCB. The report filed by the joint committee clearly states that there is no Violation committed by the 2nd respondent in the process of setting up the proposed retail outlet. CPCB being the member of the Joint committee also observed the fact that the CBCP guidelines dated 07.01.2020 will not be applicable to the subject proposed outlet.

21. I humbly submit that the question of whether the construction activity commenced before 07.01.2020 is not applicable in this case as the consent to establish application was submitted by the 2nd Respondent on 05.09.2020 and hence State Board Circulars dated 24.02.2020 and 18.08.2020 shall only be applicable in the subject case, which clearly states that “Also if any requisite license other than the PCB consent is obtained by the applicant for establishing the petrol pump prior to the date of the circular No. PCB/HO/HOW/RULES9/7/2019 dated 24.02.2020, the siting criteria mentioned in circular dated 09/08/2004 shall be applicable”. In the subject case, the clearances have been obtained from District Medical Officer on 11.07.2019, Fire & Rescue Services Palakkad on

Signed before me at my
office at Calicut / Koyilandy
on... 14/08/2021



वै. अरुण कुमार / B. ARUN KUMAR
मंडल रिटेल प्रमुख / Divisional Retail Sales Head
इंडियन ऑयल कॉर्पोरेशन लिमिटेड (विपणन प्रभाग)
Indian Oil Corporation Limited (Marketion Division)
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23.07.2019 and Executive Engineer, PWD on 01.07.2019. Thus the clearance needs to be issued by KSPCB for setting up of the Retail Outlet.

22. I humbly submit that the proposed retail outlet is eligible to claim exemption from applicability of the siting criteria of 30 Mts as per KSPCB (the authority for issuance of "Consent to Establish" in the subject case) circular ref. PCB/HO/HOW/RULES9/7/2019 dated 18.08.2020. I further submit that siting criteria mentioned in circular dated 09.08.2004 shall only be applicable in the subject case in line with the KSPCB circulars dated 18.08.2020 and circular dated 21.04.2021 read along with Erratum ref. PCB/HO/HOW/RULES9/7/2019 dated 28.05.2021.

23. I humbly submit that the proposed Retail Outlet meets all the required norms and is eligible for issuance of "Integrated Consent to Establish" from KSPCB. Further, as per the Committee Report and the reply by KSPCB submitted to this Hon'ble Tribunal, there has not been any violation of Rules & Guidelines by the 2nd Respondent.

24. I humbly submit that the 1st prayer sought by the applicant in the present application does not lie before this Hon'ble Tribunal, as the 1st Respondent granted NOC to the answering respondent under the Petroleum Rules, 2002. The Petroleum Rules are not covered under the Schedule I of the National Green Tribunal Act, 2010.

25. I humbly submit that after knowing of all the above, the applicants have approached this Hon'ble Tribunal for their vested interest and there is no public or environment interest is involved in the present issue, hence the present application is liable to be dismissed with huge cost.

Signed before me at my
office at Calicut / Kozhikode
on... 24/8/21



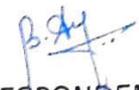
बी. अरुण कुमार / B. ARUN KUMAR
मंडल रीटेल प्रमुख / Divisional Retail Sales Head
इंडियन ऑयल कॉर्पोरेशन लिमिटेड (विपणन प्रभाग)
Indian Oil Corporation Limited (Marketing Division)
कोयिक्कोड मंडल कार्यालय / Kozhikode D O

26. I humbly submit that the applicants with an ulterior motive to stop the construction of the proposed project, has filed the present application and the same is an abuse of process of law. Further, he is not entitled to any relief as claimed in the present application.

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 Kozhikode on this the 24th day of August, 2021




2nd RESPONDENT
बी. अरुण कुमार / B. ARUN KUMAR
मंडल रिटेल प्रमुख / Divisional Retail Sales Head
इंडियन ऑयल कॉर्पोरेशन लिमिटेड (मार्केटिंग विभाग)
Indian Oil Corporation Limited (Marketing Division)
कोच्चिकोड मंडल कार्यालय / Kozhikode D O

VERIFICATION

I, B Arun Kumar, Son of Mr. S G Balasubramanian, aged 36 years, having address at 8B, Si Camelot Point Apartments, Panniker Road, Kozhikode - 673011, working as Divisional Retail Sales Head, do hereby verify that the contents of Paragraph Nos. 1 to 25 are true to the best of my knowledge and Paragraph Nos. 1 to 25 are believed to be true on legal advice and that I have not suppressed any material fact.

Verified at Kozhikode on this the 24th day of August, 2021

Signed before me at my
office at Calicut / Kozhikode
on 24/8/2021


24/8/2021


2nd RESPONDENT
बी. अरुण कुमार / B. ARUN KUMAR
मंडल रिटेल प्रमुख / Divisional Retail Sales Head
इंडियन ऑयल कॉर्पोरेशन लिमिटेड (मार्केटिंग विभाग)
Indian Oil Corporation Limited (Marketing Division)
कोच्चिकोड मंडल कार्यालय / Kozhikode D O



ADVOCATE
B.M. MOHAMMED BASHEER
B.A., LL.B.

STATE NOTARY
(Govt. of Kerala)
Roll No. K / 203/1976, Reg. No: 58/97/KKD
Office: K.M.O. Building, 2/2161C, Ground Floor
Opp. Civil Station, Calicut-20, Kerala. State