

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

ORIGINAL APPLICATION No. 138 OF 2021

IN THE MATTER OF:

M. SAINUDHEEN KUNJU

.... APPLICANT

VERSUS

UNION OF INDIA & ORS.

.... RESPONDENTS

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Place: New Delhi
Date: 06.07.2021

BEFORE THE HON'BLE HIGH COURT OF KERALA AT ERNAKULAM**W.P.(C) No. 10182 Of 2021****Petitioner**

: M. Sainudheen, aged 60 years,
S/o Moideen Kunju,
Nadakkavinte Kizhakkathil,
Pallimuri, Poruvazhy,
Sooranadu P O,
Kollam.

Respondents

- : 1. State of Kerala
Rep. by Secretary to Government
Local Self Government Department,
Secretariat,
Thiruvananthapuram -01
2. District Collector
Collectorate,
Kollam – 681013.
3. Central Pollution Control Board
Rep, by its Director,
Office of the Central Pollution Control Board,
Parivesh Bhawan, CBD-cum-office complex East
Arjun Nagar
New Delhi – 110032.
4. District Town Planner Kollam,
Office of District Town Planner,
Municipal Building,
Chinnakkada,
Kollam.
5. Environmental engineer
Kerala State Pollution control Board,
District Office,
Kollam.
6. Naraya Energy Ltd,
6B, 6th Floor, Noel Focus,
Seaport Airport Road,
Chittethukara, CSEZ P O – 682037.
7. Poruvazhy Grama Panchayath,
Rep. by its Secretary,
Office of Poruvazhy Grama Panchayath,
Poruvazhy P O,
Kollam -680520.
8. Poruvazhy Grama Panchayath Committee,
Rep. by its President,
Office of Poruvazhy Grama Panchayath,
Poruvazhy P O,
Kollam -680520.
9. Sainudeen

Parankimavilayil House,
Poruvazhy,
Kollam.

10. Sajitha
Parankimavilayil House,
Poruvazhy,
Kollam

Address for service of notice to the petitioner is that of his counsel, Nijoy P K, Advocate, Chamber No. 531, KHCAA, Golden Jubilee Chamber Complex, Near High Court of Kerala, Ernakulam.

Address for service of notice to the respondents are as shown above

**WRIT PETITION FILED UNDER ARTICLE 226 OF THE CONSTITUTION OF
INDIA
STATEMENT OF FACTS**

1. Petitioner filed compliant before the Panchayath as well as other authorities against granting permission to the respondents 9 & 10 to establish a petroleum retail outlet in the property situated in survey No. 48/2-5 of Poruvazhy Village. The respondents 9 & 10 approached the 4th respondent to obtain permission to establish a petroleum retail outlet in the above property. There were several complaints by different persons against the establishment of petroleum outlet. The 4th respondent as per order dated 16/2/2021 granted permission to building layout and usage of land subject to certain conditions. Petitioner herewith produce copy of the order issued by the 4th respondent dated 16/2/2021 and marked the same as **Exhibit P1**. As per exhibit P1 order issued in favour of the 9th & 10th respondents, specific conditions were imposed while granting permit by the Panchayath. It is stipulated that, the lake (Chakkuvalli Chira) near to the above property shall be protected and any guidelines in this regard shall be taken into consideration while issuing permit to construct the petroleum outlet and the Panchayath shall ensure that, it shall not affect the life of the nearby residence.

2. As far as the petitioner is concerned, he is residing hardly 30 meters away from the proposed petroleum outlet and there are five residential buildings in an around the proposed petroleum outlet. As per the guidelines issued by the pollution control board for no petroleum outlet will not be permitted within 50 meters of the residential building. Petitioner here with produce copy of the office memorandum along with the guidelines issued by the Central Pollution Control Board dated 7/1/2021 and marked the same as **Exhibit P2**. As per exhibit P2 no permission shall be granted by the authorities to construct and establish petroleum outlet in violation of the guidelines issued by the Pollution Control Board. Here in this case the District town planner was issued the order permitting the usage of the land

only on 16/2/2021 and that too with specific conditions stipulated in exhibit P1. Hence before issuing permit to construct and establish petroleum outlet the respondent Panchayath shall ensure that, the 50 meters restriction to establish the petroleum outlet from residential property shall be complied with.

3. As far as the enforcement of the guidelines issued by the pollution control board dated 7/1/2020 is concerned, in those cases the construction of petroleum retail outlet is not started on or before 7/1/2021 by the oil marketing companies the present stipulation of 50 meters is applicable and in other words in those cases the construction was started before 7/1/2021, the present condition is not applicable. Petitioner herewith produce copy of the office Memorandum issued by the Central Pollution Control Board dated 29/1/2021 and marked the same as **Exhibit P3.** Here in this case exhibit P1 order was issued only on 16/2/2021 and the Panchayath so far not issued any permit to start the constructions. Hence the respondent Panchayath shall not issue permit to construct and establish petroleum outlet by the 9th & 10th respondents.

4. As far as the establishment of petroleum outlet in the property as mentioned in exhibit P1 order, no permit shall be issued to establish the petroleum outlet by the 8, 9 respondents on the very reason that, this property is situated very close chakkuvalli chira, a lake which is spread over two Panchayaths and thousands of people depend this lake for different purposes. This lake is presently maintaining and protecting by the Kollam District Panchayath providing funds. As per the knowledge of this petitioner there are directions by this Hon'ble court to implement schemes to protect Chakkuvalli Chira by providing buffer Zone. The petitioner already submitted a compliant before the 7th respondent Panchayath pointing out this situation. Petitioner herewith produce copy of the complaint filed before the 7th respondent and marked the same as **Exhibit P4.**

5. The guidelines issued by the Pollution Control Board specifically state that, the new guidelines are applicable from 7/1/2021. In the above circumstance it is pertinent note that, the Town Planner issued the order only on 16/2/2021 with strict conditions. It is to be noted that, the Central Pollution Control Board issued further guidelines with respect to establishment of petroleum outlet and distance rule has provided from the water bodies and this guidelines are supplementary to the existing rules and guidelines. Petitioner herewith produce copy of the draft guidelines issued by the central pollution control board on the basis of the order of National Green Tribunal and marked the same as **Exhibit P5.** Hence the Panchayath is duty bound to ensure and comply the guidelines issued by the concerned authorities. The respondent Panchayath shall not permit the 9th & 10th respondents to establish the petroleum outlet in violation of the guidelines issued

by the pollution control board. Hence petitioner submitted a detail representation before the Panchayath and also before the Panchayath committee. Petitioner herewith produce copy of the representation submitted before the 7th respondent Panchayath and 8th respondent Panchayath committee and marked the same as **Exhibit P6 & P7**.

6. In the above circumstance it is pertinent note that, in another complaint filed against this Petroleum Outlet before the Town Planner, he has issued a specific direction to the 7th respondent Panchayath to ensure that, the conditions stipulated in order dated 16/2/2021 shall be strictly complied with while considering the application for permit submitted by the 9th & 10th respondents. Petitioner herewith produce copy of the notice issued by the 4th respondent Town Planner dated 20/2/2021 and marked same as **Exhibit P8**. As stated above the location plan submitted by the 9th & 10th respondents shows that, the residential properties are situated very near to the proposed site of the petroleum outlet and Chakkuvalli Chira is situated very near to the above site. As per the knowledge of the petitioner the 9th & 10th respondents one or another manner doing some work in the proposed site without obtaining permit from the respondent Panchayath. The Kerala State Pollution Control Board also issued a circular on the basis of the guidelines issued by the Central Pollution Control Board. Petitioner herewith produce copy of the circular issued by the Kerala state Pollution Control Board dated 24/2/2020 and marked the same as **Exhibit P9**.

7. The respondent Panchayath shall not permit the establishment of petroleum outlet in violation of the guidelines issued by the Pollution Control Board and also protecting the interest of people in the locality. Hence the Panchayath shall consider the representation submitted by the petitioner as early as possible before taking any decision to grant permission to establish petroleum retail out by the 9th & 10th respondents. Under the above circumstance petitioner filed this petition invoking the jurisdiction of this Hon'ble court under article 226 of the constitution of India on the following among other:

GROUND

1. As per the guidelines issued by the Pollution Control Board dated 7/1/2020 no Petroleum Outlet shall be established within a radius of 50 meters from the residential property.
2. As per the guidelines issued by the Pollution Control Board Petroleum Outlet shall not be established within 50 meters from the water bodies and that may cause contamination of water.

3. As far as the establishment of Petroleum Outlet complying with the guidelines issued by the pollution control board is concerned, said guidelines are applicable to Petroleum Outlets, where construction works started on or after 7/1/2021, in other words those cases were work for the Petroleum Outlet started before 7/1/2021, the new guidelines not applicable. Here in this case permission as per exhibit P1 order was passed only on 16.2.2021 and the Panchayath so far not issued any permit.

4. The two conditions regarding distance of Petroleum Outlet are strictly applicable in this case. Hence the Panchayath is duty bound to consider the objection filed by the petitioner before issuing permit to start construction of Petroleum Outlet by the 9th & 10th respondents.

For these and other grounds to be urged at the time of hearing, it is humbly prayed that this Hon'ble Court may be pleased to:

- i) Call for the records, relating to **Ext.P1 to P8** and issue a writ or appropriate direction to 7th & 8th respondents to consider exhibit P6 & 7 before issuing any permit to establish Petroleum retail Outlet by the 9th & 10th respondents in the property mentioned exhibit P1 order.
- ii) Issue a writ or appropriate direction to 4th respondents to ensure that the condition imposed in exhibit P1 order shall be complied with on the basis of the guidelines issued by the Pollution Control Board, while considering the application for permit by the 7th respondent Panchayath.
- iii) Pass any other order or direction as this Hon'ble Court may deem fit and proper in the nature and circumstances of the case.

Dated this the 16th day of April, 2021.

Petitioner

Counsel for the Petitioner

INTERIM RELIEF

For the reasons stated in the Writ Petition and accompanying affidavit, it is humbly prayed that this Hon'ble Court may be pleased to direct the 7th respondent Panchayath to ensure that without obtaining permit from the Panchayath no construction shall be carried out to establish the petroleum outlet by the 9th & 10th respondents in the property covered by exhibit P1 order, pending disposal of the writ petition.

Dated this the 16th day of April, 2021.

Petitioner

Counsel for the Petitioner


- TRUE COPY -

Presented on: 22/04/2021

Subject: Establishment of Petroleum outlet, in violation of conditions stipulated in the guidelines issued by Pollution Control Board.

**BEFORE THE HON'BLE HIGH COURT OF KERALA AT
ERNAKULAM**

W.P.(C) No. 10367 of 2021

M. Sainundeen : Petitioner

State of Kerala and others : Respondents

**WRIT PETITION (CIVIL) FILED UNDER ARTICLE 226 OF
THE CONSTITUTION OF INDIA**

Nijoy P K

Counsel for the Petitioner

BEFORE THE HON'BLE HIGH COURT OF KERALA AT ERNAKULAM**W.P.(C) No. 10367 Of 2021****Petitioner**

: M. Sainudheen, aged 60 years,
S/o Moideen Kunju,
Nadakkavinte Kizhakkathil,
Pallimuri, Poruvazhy,
Sooranadu P O,
Kollam.

Respondents

- : 1. State of Kerala
Rep. by Secretary to Government
Local Self Government Department,
Secretariat,
Thiruvananthapuram -01
2. District Collector
Collectorate,
Kollam - 681013.
3. Central Pollution Control Board
Rep, by its Director,
Office of the Central Pollution Control Board,
Parivesh Bhawan, CBD-cum-office complex East
Arjun Nagar
New Delhi - 110032.
4. District Town Planner Kollam,
Office of District Town Planner,
Municipal Building,
Chinnakkada,
Kollam.
5. Kerala State Pollution Control Board
Rep, by its Chief Environmental engineer,
Pattom P O,
Thiruvananthapuram.
6. Environmental engineer
Kerala State Pollution control Board,
District Office,
Kollam.
7. Nayara Energy Ltd,
6B, 6th Floor, Noel Focus,
Seaport Airport Road,
Chittethukara, CSEZ P O - 682037.
8. Poruvazhy Grama Panchayath,
Rep. by its Secretary,
Office of Poruvazhy Grama Panchayath,
Poruvazhy P O,
Kollam -680520.

9. Sainudeen S, aged 56 years,
S/o Sulaiman Rawther,
S S Nivas,
Padinjatttom Kizhakku,
Sooranadu P O, Sooranadu North Village,
Kunnathur Taluk, Kollam.
Presently residing at Parankimavilayil Veedu,
Thekke Muri, Sooranadu P O,
Kollam - 690522.

10. Sajitha
W/o Sainudeen S,
S S Nivas,
Padinjatttom Kizhakku,
Sooranadu P O, Sooranadu North Village,
Kunnathur Taluk, Kollam.
Presently residing at Parankimavilayil Veedu,
Thekke Muri, Sooranadu P O,
Kollam - 690522.

Address for service of notice to the petitioner is that of his counsel, Nijoy P K, Advocate, Chamber No. 531, KHCAA, Golden Jubilee Chamber Complex, Near High Court of Kerala, Ernakulam.

Address for service of notice to the respondents are as shown above

WRIT PETITION FILED UNDER ARTICLE 226 OF THE CONSTITUTION OF INDIA
STATEMENT OF FACTS

1. The petitioner filed compliant before the Panchayath as well as other authorities against granting permission to the respondents 9 & 10 to establish a petroleum retail outlet in the property situated in survey No. 48/2-5 of Poruvazhy Village. The respondents 9 & 10 approached the 4th respondent to obtain permission to establish a petroleum retail outlet in the above property. There were several complaints by different persons against the establishment of petroleum outlet. The 4th respondent as per order dated 16/2/2021 granted permission to building layout and usage of land subject to certain conditions. Petitioner herewith produce copy of the order issued by the 4th respondent dated 16/2/2021 and marked the same as **Exhibit P1**. As per exhibit P1 order issued in favour of the 9th & 10th respondents, specific conditions were imposed while granting permit by the Panchayath. It is stipulated that, the lake (Chakkuvalli Chira) near to the above property shall be protected and any guidelines in this regard shall be taken into consideration while issuing permit to construct the petroleum outlet and the Panchayath shall ensure that, it shall not affect the life of the nearby residence.

2. As far as the petitioner is concerned, he is residing hardly 40 meters away from the proposed petroleum outlet and there are more than five residence in an

around within 50 meters radius from the proposed petroleum outlet. As per the guidelines issued by the pollution control board no petroleum outlet shall be permitted within 50 meters of the residential building. Petitioner here with produce copy of the office memorandum along with the guidelines issued by the Central Pollution Control Board dated 7/1/2020 and marked the same as **Exhibit P2**. As per exhibit P2 no permission shall be granted by the authorities to construct and establish petroleum outlet in violation of the guidelines issued by the Central Pollution Control Board. Here in this case the District town planner was issued the order permitting the usage of the land only on 16/2/2021 and that too with specific conditions stipulated in exhibit P1. Hence before issuing permit to construct and establish petroleum outlet, the respondent Panchayath shall ensure that, the 50 meters restriction to establish the petroleum outlet from residential property shall be complied with.

3. As far as the enforcement of the guidelines issued by the pollution control board dated 7/1/2020 is concerned, in those cases the construction of petroleum retail outlet is not started on or before 7/1/2020 by the oil marketing companies the present stipulation of 50 meters are applicable and in other words in those cases the construction was started before 7/1/2020, the present condition is not applicable. Petitioner herewith produce copy of the office Memorandum issued by the Central Pollution Control Board dated 29/1/2021 and marked the same as **Exhibit P3**. Here in this case exhibit P1 order was issued only on 16/2/2021 and the Panchayath so far not issued any permit to start the constructions. Hence the respondent Panchayath shall not issue permit to construct and establish petroleum outlet by the 9th & 10th respondents.

4. The 9th & 10th respondents now applied for permit from the Panchayath on the basis of a consent issued by the 6th respondent. As far as the consent issued by the Pollution Control Board is concerned, the said consent was issued as per the application dated 26/10/2018 and the consent was issued on 27/11/2018. Petitioner herewith produce copy of the consent to establish petroleum outlet issued to the 7th respondent and marked the same as **Exhibit P4**. Now 9th & 10th respondents filed application for permit on the basis of exhibit P4 consent and the Panchayath so far not issued the permit. But at the same time the Panchayath under the pressure from 9th & 10th respondents may issue permit without considering the validity of exhibit P4 consent, which is not permissible to be enforced after exhibit P2 & P3. Hence the respondents 5 & 6 are duty bound to recall the consent issued in the year 2018 and issue fresh consent imposing the 50 meters distance applicable in the case of petroleum retail outlet starting construction after 7/1/2020. The Kerala State Pollution Control Board issued a

circular dated 24/2/2020 to the District Environmental engineers stipulating the parameters laid down by the Central Pollution Control Board on the basis of the order issued by the National Green Tribunal. Petitioner herewith produce copy of the circular issued by the Kerala state Pollution Control Board dated 24/2/2020 and marked the same as **Exhibit P5**. Even though exhibit P5 circular was issued to the 6th respondent by the 5th respondent, so far the consent granted to the 7th respondent in the year 2018 were not recalled and issued fresh consent. The 6th respondent is duty bound to ensure that, the old consent was not used after 7/1/2020, since the permit to construct the petroleum outlet is so far not issued to the 9th & 10th respondents and the construction is not started. The new stipulation of 50 meters distance is squarely applicable in this case. Hence the 6th respondent is shall immediately verify the consent issued and if any kind of development activities going on in the proposed site of petroleum retail outlet, the same shall be stopped forthwith.

5. As stated above the 6th respondent is duty bound to ensure that, no petroleum outlet shall be constructed and establish after 7/1/2020 in violation of the guidelines issued by the Central Pollution Control Board, it is to be noted that, the 6th respondent may under the influence of the 9th & 10th respondents may permit them to construct and establish the petrol pump on the basis of the old consent which is not permissible for construction of a petroleum outlet after 7/1/2020. Hence necessary direction may be issued to the 5th & 6th respondents to recall exhibit P4 consent and issue fresh consent on the basis of exhibit P2 & P5.

6. It is to be noted once Central Pollution Control Board has issued a guidelines to the State Pollution Control Board, the State Pollution Control Board is duty bound to enforce the same in accordance with the cut of date provided by the Central Pollution Control Board. Here in this case after exhibit P3 no petroleum outlet shall be obtained permit to construct a petroleum retail outlet after 7/1/2020 from the local authorities on the strength of old consent issued. In the above circumstance it is the duty of the State Pollution Control Board to issue further guidelines regarding the implementation of old consent issued prior to 7/1/2020. Hence necessary direction may be issued to the 5th respondent in this regard.

7. As far as the establishment of petroleum outlet in the property as mentioned in exhibit P1 order, no permit shall be issued to establish the petroleum outlet by the 8, 9 respondents on the very reason that, this property is situated very close chakkuvalli chira, a lake which is spread over two Panchayaths and thousands of people depend this lake for different purposes. This lake is presently maintaining

and protecting by the Kollam District Panchayath providing funds. As per the knowledge of this petitioner there are directions by this Hon'ble court to implement schemes to protect Chakkuvalli Chira by providing Bio-conservation Zone. The guidelines issued by the Pollution Control Board specifically state that, the new guidelines are applicable from 7/1/2020. In the above circumstance it is pertinent note that, the Town Planner issued the order only on 16/2/2021 with strict conditions. It is to be noted that, the Central Pollution Control Board issued further guidelines with respect to establishment of petroleum outlet and distance rule has provided from the water bodies and this guidelines are supplementary to the existing rules and guidelines. Petitioner herewith produce copy of the draft guidelines issued by the central pollution control board on the basis of the order of National Green Tribunal and marked the same as **Exhibit P6**. Hence the Panchayath is duty bound to ensure and comply the guidelines issued by the concerned authorities. The respondent Panchayath shall not permit the 9th & 10th respondents to establish the petroleum outlet in violation of the guidelines issued by the pollution control board.

8. As stated above the location plan submitted by the 9th & 10th respondents shows that, the residential houses are situated very near to the proposed site of the petroleum outlet and Chakkuvalli Chira also is situated very near to the above site. As per the knowledge of the petitioner the 9th & 10th respondents one or another manner doing some work in the proposed site without obtaining permit from the respondent Panchayath. Hence the consent already granted by the Pollution Control Board is liable to be recalled and only after incorporating the fresh guidelines regarding distance from residential houses and water bodies new consent can be issued to the 7th respondent. In the similar circumstance Pollution Control Board issued notice to the owner of a retail petroleum outlet finding that, there is violation of 50 meters distance from residential houses and directed the owner of the petrol pump to comply with the condition. Petitioner herewith produce copy of the notice issued by the Environmental Engineer, Pollution Control Board Alappuzha District dated 3/4/2020 and marked the same as **Exhibit P7**. Hence it is duty of the 6th respondent to ensure that, the old consent issued to the 7th respondent is not misused and any silence on the part of the 6th respondent may invite dangerous situations by the establishment of petroleum outlet, a hazardous industry. Hence necessary direction may be issued to the 5th & 6th respondent to visit the proposed site of petroleum outlet and take appropriate measures. It is the duty of the Central Pollution Control Board to ensure that, their guidelines were not violated by the concerned State authorities. The petitioner already filed a writ petition in WPC No. 10182/2021 seeking direction to the Panchayath to ensure that the new guidelines issued by the Pollution Control

board is complied with while considering application for permit and the said case is pending. Under the above circumstance petitioner filed this petition invoking the jurisdiction of this Hon'ble court under article 226 of the constitution of India on the following among other:

GROUNDS

1. As per the guidelines issued by the Pollution Control Board dated 7/1/2020 no Petroleum Outlet shall be constructed after 7/1/2020 within a distance of 50 meters from the residential houses and any petroleum outlet obtained consent earlier but not started construction on or before 7/1/2020 is equally liable to comply with the guidelines issued by the Pollution Control Board.
2. In this case Pollution Control Board had issued consent to establish petroleum outlet to the 7th respondent in the year 2018 and since the permit was not obtained to construct petroleum outlet from the local authorities so far, the construction is not started, hence earlier consent shall not be misused to obtain the permit violating the conditions issued by the Pollution Control Board with respect to distance from the residential properties.
3. It is the duty of the 6th respondent to inspect the site of the proposed petroleum outlet and ensure that, no permit is obtained on the basis of consent issued before exhibit P2 notification.
4. The Central Pollution Control Board already issued a cut of date with respect to the petroleum outlet to comply to with the guidelines issued as per exhibit P3. Hence the respondents 5&6 are duty bound to recall exhibit P4 consent and imposed new conditions on the basis of exhibit P2 guidelines and exhibit P5 circular.
5. The 9th & 10th respondents are not expected to carry out any kind of development / construction in the property on the strength of exhibit P4 consent.

For these and other grounds to be urged at the time of hearing, it is humbly prayed that this Hon'ble Court may be pleased to:

- i) Call for the records, relating to **Ext.P1 to P6** and issue a writ or appropriate direction to 5th & 6th respondents to recall exhibit P5 consent granted to the 7th respondent to establish a petroleum outlet and impose the condition of 50 meters distance as contemplated in exhibit P2&P5 and to ensure that, no construction of petroleum outlet is started on the basis of exhibit P4 consent.
- ii) Issue a writ or appropriate direction to 5th respondent to issue a circular in accordance with exhibit P3 office

memorandum dated 29/1/2021 and also on the basis of exhibit P6 guidelines issued by the Central Pollution Control Board and ensure that, exhibit P4 consent dated 27/11/2018 is not used to obtain permit to construct petroleum outlet by the 7th respondent.

- iii) Issue a writ or appropriate direction to 8th respondent Poruvazhy Grama Panchayath not issue permit on the basis of exhibit P4 consent issued by the Pollution Control Board till the Pollution Control Board issued fresh consent on the basis of new guidelines issued as per exhibit P2.
- iv) Pass any other order or direction as this Hon'ble Court may deem fit and proper in the nature and circumstances of the case.

Dated this the 22nd day of April, 2021.

Petitioner

Counsel for the Petitioner

INTERIM RELIEF

For the reasons stated in the Writ Petition and accompanying affidavit, it is humbly prayed that this Hon'ble Court may be pleased to direct the 5th & 6th respondents to ensure that, the respondents 7, 8 & 9 no way use exhibit P5 consent dated 27/11/2018 to obtain permit from the Panchayath to start construction of petroleum retail outlet, pending disposal of the writ petition.

Dated this the 22nd day of April, 2021.

Petitioner

Counsel for the Petitioner


- TRUE COPY -

IN THE HIGH COURT OF KERALA AT ERNAKULAM

Present:

ANNEXURE A/14

THE HONOURABLE MR. JUSTICE P.V.KUNHIKRISHNAN

Friday, the 23rd day of April 2021/3rd Vaisakha, 1943

WP(C) No.10367/2021

PETITIONER:

M.SAINUDHEEN,
SON OF MOIDEEN KUNJU, AGED 60 YEARS,
NADAKKAVINTE KIZHAKKATHIL, PALLIMURI,
PORUVAZHY, SOORANADU P.O, KOLLAM.

RESPONDENTS:

1. STATE OF KERALA
REPRESENTED BY SECRETARY TO GOVERNMENT,
LOCAL SELF GOVERNMENT DEPARTMENT,
SECRETARIAT, THIRUVANANTHAPURAM-01.
2. THE DISTRICT COLLECTOR,
COLLECTORATE, KOLLAM-681 013.
3. CENTRAL POLLUTION CONTROL BOARD,
OFFICE OF CENTRAL POLLUTION CONTROL BOARD,
NEW DELHI 110 032, REPRESENTED BY ITS DIRECTOR.
4. THE DISTRICT TOWN PLANNER,
OFFICE OF DISTRICT TOWN PLANNER,
MUNICIPAL BUILDING, CHINNAKKADA, KOLLAM-691 013
5. THE KERALA STATE POLLUTION CONTROL BOARD,
PATTOM P.O, THIRUVANANTHAPURAM, 695 004,
REPRESENTED BY ITS CHIEF ENVIRONMENTAL ENGINEER.
6. THE ENVIRONMENTAL ENGINEER,
KERALA STATE POLLUTION CONTROL BOARD,
DISTRICT OFFICE, KOLLAM-691 013
7. NARAYA ENERGY LTD.,
6B, 6TH FLOOR, NOEL FOCUS,

SEAPORT AIRPORT ROAD,
CHITTETHUKARA, CSEZ P.O-682 037,
REPRESENTED BY ITS MANAGING DIRECTOR.

8. PORUVAZHY GRAMA PANCHAYATH,
OFFICE OF PORUVAZHY GRAMA PANCHAYATH,
PORUVAZHY P.O, KOLLAM-680 520,
REPRESENTED BY ITS SECRETARY.
9. SAINUDEEN S,
SON OF SULAIMAN RAWTHER, AGED 56 YEARS,
S.S. NIVAS, PADINJATTOM KIZHAKKU,
SOORANADU P.O, SOORANADU NORTH VILLAGE,
KUNNATHUR TALUK, KOLLAM,
PRESENTLY RESIDING AT PARANKIMAVILAYIL VEEDU,
THEKKE MURI, SOORANADU P.O, KOLLAM-690 522
10. SAJITHA,
WIFE OF SAINUDEEN S, S.S. NIVAS,
PADINJATTOM KIZHAKKU, SOORANADU NORTH VILLAGE,
KUNNATHOOR TALUK, KOLLAM,
PRESENTLY RESIDING AT PARANKIMAVILAYIL VEEDU,
THEKKE MURI, SOORANADU P.O, KOLLAM-690 522

Writ Petition (civil) praying inter alia that in the circumstances stated in the affidavit filed along with the WP(C) the High Court be pleased to pass an interim order directing the 5th and 6th respondents to ensure that, the respondents 7,9 and 10 no way use exhibit P4 consent dated 27.11.2018 to obtain permit from the Panchayath to start construction of petroleum retail outlet, pending disposal of the writ petition.

This petition coming on for admission upon perusing the petition and the affidavit filed in support of WP(C) and upon hearing the arguments of M/S.P.K.NIJOY, C.PRABITHA, K.R.REMYA & REJOICE B.CHEMBAKASSERIL, Advocates for the petitioner, GOVERNMENT PLEADER for R1 & R2 and of respective STANDING COUNSEL for R3, R4, R5& R8, the court passed the following:

ORDER

Admit.

Learned Government Pleader takes notice for respondents 1 and 2. Respective Standing

Counsel takes notice for respondents 3 to 5. Standing Counsel takes notice for the 8th respondent. Issue urgent notice to the other respondents in the writ petition.

The construction of the petroleum retail outlet will be subject to the result of the writ petition.

23-04-2021

Sd/-

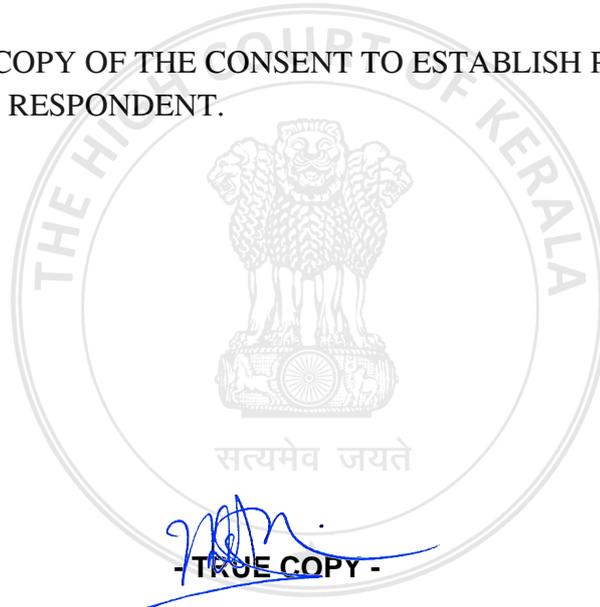
P.V.KUNHIKRISHNAN, JUDGE

/true copy/

Sd/-

ASSISTANT REGISTRAR

EXHIBIT P4 - TRUE COPY OF THE CONSENT TO ESTABLISH PETROLEUM OUTLET ISSUED TO THE 7TH RESPONDENT.



IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE T.R.RAVI

FRIDAY, THE 18TH DAY OF JUNE 2021 / 28TH JYAISHTA, 1943

WP (C) NO. 10182 OF 2021

PETITIONER:

ANEXURE A/15

M. SAINUDEEN
AGED 60 YEARS
SON OF MOIDEEN KUNJU,
NADAKKAVINTE KIZHAKKATHIL,
PALLIMURI, PORUVAZHY,
SOORANADU P.O, KOLLAM.

BY ADVS.
P.K.NIJOY
SMT.C.PRABITHA
SMT.K.R.REMYA (KARUKAYIL)
SRI.REJOICE B.CHEMBAKASSERIL

RESPONDENTS :

- 1 STATE OF KERALA,
REPRESENTED BY SECRETARY TO GOVERNMENT,
LOCAL SELF GOVERNMENT DEPARTMENT,
SECRETARIAT, THIRUVANANTHAPURAM-01.
- 2 THE DISTRICT COLLECTOR
COLLECTORATE,
KOLLAM-681 013.
- 3 CENTRAL POLLUTION CONTROL BOARD
OFFICE OF CENTRAL POLLUTION CONTROL BOARD,
NEW DELHI-110 032.
- 4 THE DISTRICT TOWN PLANNER
OFFICE OF THE DISTRICT TOWN PLANNER,
MUNICIPAL BUILDING,
CHINNAKKADA, KOLLAM-691 013.
- 5 THE ENVIRONMENTAL ENGINEER
KERALA STATE POLLUTION CONTROL BOARD,
DISTRICT OFFICE, KOLLAM-691 013.
- 6 NARAYA ENERGY LTD
REPRESENTED MANAGING DIRECTOR, 6B,
6TH FLOOR, NOEL FOCUS, SEAPRT AIRPORT ROAD,
CHITTETHUKARA, CSEZ P.O, -682 037.

- 7 PORUVAZHY GRAMA PANCHAYATH
 OFFICE OF PORUVAZHY GRAMA PANCHAYATH,
 PORUVAZHY P.O, KOLLAM-680 520.
 REPRESENTED BY ITS SECRETARY.

- 8 PORUVAZHY GRAMA PANCHAYATH COMMITTEE
 OFFICE OF PORUVAZHY GRAMA PANCHAYATH,
 PORUVAZHY P.O, KOLLAM-680 520.
 REPRESENTED BY ITS SECRETARY.

- 9 SAINUDEEN
 PARANKIMAVILAYIL HOUSE,
 PORUVAZHY,
 KOLLAM-680 520.

- 10 SAJITHA
 PARANKIMAVILAYIL HOUSE,
 PORUVAZHY,
 KOLLAM-680520.

BY SHRI.RAVIKRISHNAN, GP
BY SHRI S.BIJU (KIZHAKKANELA)
BY SHRI.VINOY VARGHESE KALLUMOOTIL, SC,
PORUVAZHY GRAMA PANCHAYAT

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON
18.06.2021, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

JUDGMENT

Dated this the 18th day of June 2021

The learned counsel for the petitioner submits that his representation has already been considered by the Panchayath and nothing survives in this writ petition.

The writ petition is closed as infructuous.

Sd/-

T.R.RAVI

JUDGE

sn


- TRUE COPY -

APPENDIX OF WP(C) 10182/2021

PETITIONER EXHIBITS

- EXHIBIT P1 TRUE COPY OF THE ORDER DATED 18/02/2021
ISSUED BY THE 4TH RESPONDENT.
- EXHIBIT P2 TRUE COPY OF THE OFFICE MEMORANDUM DATED
7/1/2021 ALONG WITH THE GUIDELINES ISSUED
BY THE CENTRAL POLLUTION CONTROL BOARD.
- EXHIBIT P3 TRUE COPY OF THE OFFICE MEMORANDUM DATED
29/01/2021 ISSUED BY THE CENTRAL POLLUTION
CONTROL BOARD.
- EXHIBIT P4 TRUE COPY OF THE COMPLAINT FILED BEFORE THE
7TH RESPONDENT.
- EXHIBIT P5 TRUE COPY OF THE GUIDELINES ISSUED BY THE
CENTRAL POLLUTION CONTROL BOARD ON THE
BASIS OF THE ORDER OF NATIONAL GREEN
TRIBUNAL.
- EXHIBIT P6 TRUE COPY OF THE REPRESENTATION SUBMITTED
BEFORE THE 7TH RESPONDENT PANCHAYATH.
- EXHIBIT P7 TRUE COPY OF THE REPRESENTATION SUBMITTED
BEFORE THE 8TH RESPONDENT PANCHAYATH
COMMITTEE.
- EXHIBIT P8 TRUE COPY OF THE NOTICE DATED 20.02.2021
ISSUED BY THE 4TH RESPONDENT TOWN PLANNER.
- EXHIBIT P9 TRUE COPY OF THE CIRCULAR DATED 24.02.2020
ISSUED BY THE KERALA STATE POLLUTION
CONTROL BOARD.

RESPONDENT'S EXHIBITS : NIL

//TRUE COPY//

PA TO JUDGE


- TRUE COPY -

IN THE HIGH COURT OF KERALA AT ERNAKULAM
PRESENT

22

THE HONOURABLE MR. JUSTICE SATHISH NINAN

TUESDAY, THE 29TH DAY OF JUNE 2021 / 8TH ASHADHA, 1943
WP(C) NO. 12880 OF 2021(H)

PETITIONER:

SAINUDEEN S, AGED 56 YEARS, S/O.SULAIMAN RAWTHER, SS NIVAS,
PADIJATTOM KIZHAKU, SOORANAD P.O., SOORANAD NORTH VILLAGE,
KUNNATHUR TALUK, KOLLAM DISTRICT, KERALA. PRESENTLY RESIDING AT
PARANKIMAMVILAYIL VEEDU, THEKKE MURI, SOORANAD P.O., KOLLAM
DISTRICT-690 522.

RESPONDENTS:

- 1.THE STATE OF KERALA, REPRESENTED BY THE SECRETARY, DEPARTMENT OF REVENUE, SECRETARIAT, THIRUVANANTHAPURAM, PIN-695 001.
- 2.THE DISTRICT COLLECTOR, KOLLAM DISTRICT COLLECTORATE, KOLLAM-691 013.
- 3.PORUVAZHI GRAMA PANCHAYATH, REPRESENTED BY ITS SECRETARY, AMBALATHUM BHAGOM P.O., PORUVAZHI, KOLLAM-690 520.
- 4.SECRETARY, PORUVAZHI GRAMA PANCHAYATH, AMBALATHUM BHAGOM P.O., PORUVAZHI, KOLLAM-690 520.
- 5.THE NAYARA ENERGY LTD (FORMERLY ESSAR OIL LTD) REPRESENTED BY ITS JOINT GM, DIVISIONAL MANAGER, RETAIL BD, No.602, 6TH FLOOR, INFRA FUTURA BUILDING, OPP.BHARAT MATHA COLLEGE, THRIKKAKARA, SEAPORT AIRPORT ROAD, KAKKANAD ERNAKULAM DISTRICT, PIN-682 021.
- 6.SAINUDEEN.M., NADAKKAVINTE KIZHAKKATHIL, PALLIMURI, PORUVAZHI, SOORANADU P.O., KOLLAM, KOLLAM DISTRICT-690 522.

WRIT PETITION (CIVIL) praying inter alia that in the circumstances stated in the affidavit filed along with the WP(C) the High Court be pleased to stay all further proceedings pursuant to Exhibit P7 and P8 order issued by the 2nd and 4th respondent respectively. This petition coming on for admission upon perusing the petition and the affidavit filed in support of WP(C) and upon hearing the arguments of M/s.S.BIJU (KIZHAKKANELA), JOHNSON GOMEZ Advocates for the petitioner, GOVERNMENT PLEADER for R1 & R2(B/o) and of SRI.VINOY VARGHESE, STANDING COUNSEL for R3 & R4(B/o), the court

passed the following:

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EXHIBIT P7: A TRUE COPY OF THE ORDER
NO.M7-91546/2018 DATED 16-06-2021 ISSUED BY THE
2ND RESPONDENT.

EXHIBIT P8:A TRUE COPY OF THE ORDER
NO.A3-4062/2021 DATED 17-06-2021 ISSUED BY THE
4TH RESPONDENT.

EXHIBIT P9:A TRUE COPY OF THE INTERIM ORDER
DATED 23-04-2021 IN WP(C) NO.10367/2021



Sathish Ninan, J.

=====
W.P.(C).No.12880 of 2021
=====

Dated this the 29th day of June, 2021

ORDER

Admit. Govt.Pleader takes notice for R1 and R2.
Adv.Vinoy Varghese, Standing Counsel takes notice for
R3 and R4. Notice by speed post to R5 and R6.

2. As per Ext.P9, this Court directed thus:

***“The construction of the petroleum retail outlet will
be subject to the result of the writ petition.”***

It appears that respondents 2 and 3 have interpreted this above quoted order to be an order of interdiction against construction till the disposal of the writ petition. The order has been misconstrued by the authorities. All that has meant is that the construction will be at the risk of the petitioner and it will be subject to the result of the wit petition. It is clarified that if there are no interdictory orders from any statutory authorities, the petitioner

25

W.P.(C).No.12880 of 2021

-: 2 :-

will be entitled to proceed with the construction at his risk and subject to the result of the writ petition.

Post along with W.P.(C).No.10367/2021.

Sd/-
Sathish Ninan, Judge

rsr

- TRUE COPY -



A handwritten signature in blue ink, appearing to be 'Sathish Ninan', is written below the seal.