

**BEFORE THE HON'BLE NATIONAL GREEN TRIBUNAL
SOUTHERN ZONE AT CHENNAI
OA No. 127 of 2024 (SZ)**

Mrs. Neena. S and Ors.

...Applicants

Vs

Joint Chief Controller of Explosives and Ors.

...Respondents

WRITTEN ARGUMENTS SUBMITTED BY THE 4th RESPONDENT

The 4th Respondent begs to submit as follows :

1. That the present Original Application has been filed seeking for the following relief :

"Prohibit the 5th and 6th Respondents from erecting, commissioning and operating a new Petroleum Retail Outlet at Survey No. 308/2, Thichur Village, Erumapetty Post, Talappilly Taluk, Thrissur District - 680 584, Kerala State in gross violation to the Siting Criteria prescribed by the Central Pollution Control Board (CPCB) in Clause of the Office Memorandum No. B - 13011/1/2019-20/AQM/ 10802-10847 dated 07.01.2020 and the Addendum dated 16.08.2021."

RELEVANT DATES OF APPROVALS :

2. That on 31.07.2018, the subject site situated at Survey No. 644, Mangaluru Thota Village, Mangaluru Taluka, Dakshin Kannada District, Karnataka State, was identified for setting up the retail outlet.

3. That thereafter, the following approvals/permissions was obtained for the establishment of the retail outlet which shall be relevant to the present case :

S No.	Date	Description
1.	17.12.2018	Application submitted for issuance of Initial PESO License.
2.	17.09.2019	Initial application for PESO license for filling cum storage of CNG at the retail outlet.
3.	30.10.2019	Initial PESO License granted for Filling Cum Storage of CNG at the retail outlet.
4.	10.12.2019	Civil Work carried out at the site Vide Call up No. 19000652-OF-11757
5.	22.07.2020	Conversion order granted from residential to commercial.
6.	06.10.2020	Initial PESO Approval for MS/HSD granted for the same layout submitted vide application dated 17-12-2018.
7.	02.09.2021	NOC granted by the Commissioner of Police.
8.	08.04.2022	Sale Deed executed with the Land owner with respect to the subject site.
9.	04.05.2022	NOC application for Tree cutting was submitted
10.	26.12.2022	Single Site approval obtained from Mangaluru Urban Development Authority.
11.	22.02.2023	No Objection Certificate granted by Forest Department.

12.	10.03.2023	Site clearance and construction started
13.	19.01.2024	Revised Single Site approval granted by MUDA.
14.	28.03.2024	Final PESO License granted for commissioning of outlet.

GROUND FOR DISMISSAL OF APPLICATION :

LIMITATION :

1. It is submitted that the present application is barred by limitation. As per Section 14(3) of the NGT Act, 2010, no application for adjudication of dispute under this section shall be entertained by the Tribunal unless it is made within a period of six months from the date on which the cause of action for such dispute first arose
2. The proviso to Section 14 (3) states that the Tribunal may, if it is satisfied that the applicant was prevented by sufficient cause from filing the application within the said period, allow it to be filed within a further period **not exceeding 60 days.**
3. However, it is submitted that the cause of action in the present case arose when :
 - a) **30.10.2019** - Initial peso approval was granted for CNG
 - b) **10.12.2019** - Civil work carried out in the retail outlet
 - c) **06.10.2020** - Initial PESO approval for MS/HSD
 - d) **02.09.2021** - NOC granted to the subject site.
 - e) **30.03.2023** - it is submitted that the President of the Apartment Owner Association had requested information with respect to the clearances being obtained for the retail outlet vide RTI addressed to HPCL.

- f) **25.04.2023** - That vide letter, HPCL replied to the queries raised in the RTI submitted by the President of the Apartment Association in which Applicants were members.
 - g) **28.04.2023** - That the applicant has also sent representation for cancelling the NOC granted to the site.
 - h) **30.11.2023** - That assuming the cause of action arose on 30.03.2023 on date of RTI request, the period of limitation as under Section 14 of the NGT act, 6 months + inclusive of the condonable delay period of 60 days, expires on 30.11.2023.
4. **13.04.2024** - Present Application is filed before this Hon'ble Tribunal. The applicant has not filed this application within 6 months from the date on which the cause of action of dispute arose and no sufficient cause has been shown. Hence application deserves to be dismissed on this ground alone.
5. It is submitted that the language of Section 14(3) of the NGT Act, i.e. "unless it is made within a period of six months from the date, on which the cause of action for such dispute first arose", negates the principle of continuing cause of action.
6. The applicant, while filing the application, has tried to justify the limitation period by challenging the final licence granted but their own documents establishes that it is filed beyond limitation. However, concept of limitation by continued cause of action is not available under NGT Act under Sec. 14.
7. That the following case laws bears relevance :

- i. **OA No. 350 of 2016 – Ved Prakash and Ors. Vs Union of India** – Principal Bench, Hon'ble NGT, New Delhi dated – 03.01.2017 - **(2017 SCC OnLine NGT 629)** –

*"We have heard the Learned Counsel appearing for the parties at some length. In our considered view the present application is not maintainable inter-alia but primarily on the ground that it lacks facts, particulars and the law which will bring this application within the ambit of Section 14 of the NGT Act, 2010. Ex-facie it appears to be barred by time. **In fact under the limitation it has not been stated as to when the cause of action first arose. The concept of continuous cause of action does not apply to the case, before the Tribunal. In view of the Section 14 and 16 of the NGT Act, 2010 continuing cause of action is an expression which is contradictory in terms to the expression the "cause of action first arose" , as it can only be recurring cause of action which can be given effect to extend the period of limitation. As every action which is recurring cause of action itself would trigger limitation afresh."***

- ii. **OA No. 54 of 2019 – Yashovardhan Shandilya Sharma vs UOI and Ors** – NGT, Central Zone, Bhopal – dated 30.05.2022 - **(2022 SCC OnLine NGT 1936)** –

"34. Sufficient cause or reasonable cause was dealt in the matter of M.A. No. 247/2012 in Appeal No. 76/2012, Nikunj Developers v. State of Maharashtra decided on 14.03.2013, it was held as follows:

...

"28. *The NGT Act is a special enactment and hence, there is statutory prescription of the special period of limitation under Section 14(3) and 15(3) of the Act which will certainly exclude the general law of limitation. The assumption that the project proponent has illegally commenced the construction on 04.11.2012 was factually incorrect and misleading. The plain and simple language of Section 14(3) i.e. unless it is made within the period of six months from the date on which the cause of action/dispute first arose negates the principles of continuing cause of action. If the plea of continuing cause of action is accepted within the limitation, the statute would be eschewed of the important and vital words namely "first arose". On the facts of the present case, Section 22 of the Limitation Act will have no effect. Though, the same being apart of the general law of limitation since it would stand excluded by the special provision of limitation. In the special law, under Section 14(3) and 15(3) of the Act. The NGT Act is a special law enacted for the effective and expeditious disposal of cases related of Environment (Protection) Act and conservation of forest and other natural resource. Hence, the law provides the period of limitation which would be have overriding effect over the Limitation Act which is general law. If the plea of the applicants of principles of continuing cause of action for the purpose of bringing a dispute under Section 14(1) within the limitation or reliefs under Section 15(1) within the limitations of 15(3) is to be accepted, then it would lead to the serious, anomalous and undesirable consequences"*

8. It is submitted that the plea of limitation can be raised at any point of time since it is a question of law. In this regard, reliance is placed on the observations in "**Aradhana Bhargav & Ors. V. MoEF & Ors**" [Application No.11 of 2013] (2013 SCC OnLine NGT 84), decided on 12.8.2013 and the observations in relevant paragraphs of the said Judgment are as below:

"23. From the very reading, it would be quite clear that the Tribunal has jurisdiction over all civil cases only where a substantial question relating to the environment including enforcement of any legal right related to environment is involved and also the said substantial question should also arise out of the implementation and is included in one of the seven enactments specified under the Schedule - I. Even, if the applicant is able to satisfy the above requisites, the Tribunal can adjudicate the disputes only if it is made within a period of six months from the date on which the cause of action in such dispute first arose and the Tribunal for sufficient cause can condone the delay for a period not exceeding 60 days in making the application."

9. It is submitted that as observed vide order dated 18.08.2023 in **Goa Foundation vs the State of Goa and Others in OA 54/2023 (NGT-WZ)**, is as follows :

"23. We find that the above ruling is fully applicable here because by lapse of time, a right has accrued in favour of the Respondent No.3 which should not be taken away by liberally granting the condoning delay in the present matter."

24. *The learned counsel for the Applicant vehemently argued that she had approached the Hon'ble High Court because she did not press for CRZ violation rather she was pressing before the Hon'ble High Court the issue of Public Trust Doctrine, because the act of Respondent No.3 having raised the construction/wall was prohibiting general public free access to the beach but later on it was realized by the Hon'ble High Court that even matter covered by the Public Trust Doctrine could be taken up before the NGT, because of which the Hon'ble High Court has directed applicant to approach the Tribunal. We are not inclined to accept this argument made by the learned counsel for the Applicant because the Public Trust Doctrine can always be pressed before this Tribunal, that is settled position of law from beginning. Learned counsel for the Applicant, being such senior counsel cannot be taken to be not knowing this. We may also highlight here that the relief which was prayed before Hon'ble High Court was similar which is being prayed before us. We have already given our opinion above that in the matter in hand it was Appeal which was required to be filed before the Tribunal against the order passed by GCZMA dated 14.10.2021.*

25. *As regards bonafides of the Applicant, we would like to mention that the Applicant was fully aware of the alleged illegal construction having been held to be legal by GCZMA by order dated 14.10.2021 and that the Appeal was maintainable against that order before this Tribunal but even then the Appellant chose the forum of Hon'ble High Court and continued to contest there for a long time, which is now being prayed to be excluded from being counted while calculating the limitation. The same does not appear to be bonafide approach of the Applicant. The*

Applicant could have straight-away filed an appeal before us soon after the order was passed by the GCZMA dated 14.10.2021. Therefore, we are not convinced about the bonafides of the Applicant in this matter.

26. We reject I.A. No.106/2023 and consequently Original Application No.54/2023 is dismissed as time-barred."

ESTOPPED FROM FILING APPLICATION :

10. It is further submitted that the 2nd to 5th applicants are estopped from making this application by virtue of their letter dated 28.04.2023 whereby they have given their consent to construction of the outlet subject to HPCL shifting the compound wall. Acting upon the same, our Corporation demolished the already built compound wall and shifted the same as per the request of the residents.

COMMERCIAL LAND USE AND NON – RESIDENTIAL AREA

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11. It is submitted that the Building permit of the Apartment in which the Applicant No. 1 is living is a mixed use permit. As per license dated 24.05.2010 submitted by the applicants, the same is granted for both Commercial and Residential Use. In fact, the owner of the restaurant (Navmi Veg Resto) running on the ground floor is paying tax for the property as commercial.

12. It is submitted that the land in which the subject retail outlet is situated is classified for commercial use. Similarly, the lands and building on either side of the subject retail outlet, are also designated for commercial use and commercial property taxes are being paid by the respective buildings, which house a restaurant and a convention hall respectively.
13. Therefore, it is submitted that the subject retail outlet is not situated in violation of the guidelines, more specifically, within 30 metres from any residential area designated as per local laws.
14. Moreover, the Karnataka Town and Country Planning Act, 1961 and the Karnataka Municipal Corporation Act, 1976, permit the operation of a retail outlet in a commercial area and therefore, the allegation and apprehension raised by the applicant is unfounded, motivated and baseless.
15. Further reliance is placed in the order of Hon'ble Kerala High Court in ***Kaleshkumar K K v. State of Kerala, WP(C) 11578/2022*** dated 04.01.2024 wherein it was held as follows:

"11. ... The office memorandum has not referred to a residential house, but only a residential area designated as per local laws. The said words have significance especially with reference to the siting criteria. If a residential house is built on a property that by itself may not be a negative component in establishing a retail outlet unless the area where the residential house is situated falls within a designated residential area. In view of the above, the term 'residential area designated as per local laws'

cannot be interpreted to mean 'a residential house'. Since admittedly the petitioners' houses are not situated within legally designated residential areas, the contention regarding violation of the siting criteria has no legal basis."

OTHER GROUNDS :

16. It is submitted that the subject outlet commissioning is not in violation of the CPCB guidelines dated 07.01.2020. The process of Purchase of land had started in 2018 wherein HPCL rolled out a newspaper advertisement dated 05.01.2018 calling for transfer of land by lease/ sale to set up Retail Outlets at 104 locations including "41. Mangalore City Corporation Limits". Dr. Errol Pinto applied for Sale of Land in Sy. No. 644/P1 and P2 for an amount of Rs. 16 cr. The negotiations were finalised and final offer was made by Shri. Errol Pinto on 31.07.2018 for Rs. 11.75 Cr.
17. It is further submitted that, meanwhile, before finalising the purchase, HPCL made an application dated 17.12.2018 for initial PESO approval since if the approval is not granted, then HPCL may not proceed with purchase.
18. Accordingly, initial PESO Approval for CNG was issued vide license dated 30.10.2019. Civil works of construction were started and carried out from December, 2019. By the time initial PESO Approval dated 06.10.2020 could be obtained for MS/HSD. Since all approvals were received while HPCL intended to proceed for the purchase of land and commence, COVID 19 pandemic caused the delay in the entire process.

19. It is also submitted that PESO approved the original layout submitted by HPCL for MS/HSD on 06.10.2020 thereby approving the construction of Retail Outlet.
20. It is submitted that NOC was also issued by the Commissioner of Police, Mangaluru on 02.09.2021. As per Rule 144 of the Petroleum Rules, 2002 as amended vide G.S.R. 762(E) dated 10.08.2018 w.ef. (10.08.2018) and the same was valid for a period of 3 years and the licensing authority shall accept the no objection certificate within a period of **three** years from the date of its issue for considering grant of license.
21. Basis the above, the Respondent finally purchased the site on 08.04.2022 for a sale consideration of Rs. 11.75 Cr. and made further substantial investments of public money for construction of the Retail Outlet and no objections were received at any point of time by the residents.
22. That the Outlet has been commissioned in compliance with the guidelines issued by CPCB, and the same is held by the KSPCB in their report to this Tribunal dated 23.12.2025. The commissioning of the said outlet will serve not only the general motoring public of the locality, but will also serve the tourists and devotees visiting the Mangaladevi Temple at Mangaluru.
23. Further, there is no violation of Article 21 of the Constitution of India by storing Petroleum Products at the Retail Outlet. The petroleum products are stored underground in previously approved storage tanks and are placed after

obtaining all NOCs, including Fire NOC, which in this case has been issued by the Fire Dept. on 03.07.2021.

24. It is further to state that the Applicant has relied on Hon'ble Supreme Court's order in Mantri Techzone Pvt. Ltd. v. Forward Foundation 2019 (18) SCC 494 - to state that CPCB has been held to having an overriding effect over State Planning Laws by the Supreme Court. However, the same is not applicable since it is regarding buffer zones around lakes and it deals with protected zones.
25. It is submitted that vide order dated 11.01.2024 in ***State of Himachal Pradesh vs Yogendra Mohan Sengupta, Civil Appeal Nos. 5348-5349 of 2019***, the Hon'ble Supreme Court has held that the Hon'ble Tribunal's jurisdiction is strictly confirmed to substantial questions relating to environment arising specific acts in Schedule 1 of NGT Act, 2010. Issues regarding land use, zoning, construction permission falls under municipal and planning authorities. NGT cannot invoke precautionary principle to displace existing statutory approvals or to already approved legally complied plans.
26. That the applicant had raised an allegation that NOC dated 02.09.2021 was valid only for 2 years whereas the PESO licence was issued on 22.03.2024. We wish to state the following clarification. In NOC issued on 02.09.2021 under Note, it is stated as following:

"Note: The licensing authority shall accept that no objection certificate within a period of Two year from the date of issue for considering for grant of licence."

27. It is submitted that PESO was issued on 22.03.2024 based on NOC issued on 02.09.2021 under Rule 144. The Rule 144 underwent amendment vide G.S.R. 762(E) dated 10.08.2018 w.ef. (10.08.2018) wherein the following amendment was carried out.

"The licensing authority shall accept the no objection certificate within a period of three years from the date of its issue for considering grant of licence."

28. The said amendment was also carried out in the proforma wherein it states three years instead of two years. Hence, though the NOC was issued on 02.09.2021 , the NOC issuing authority has failed to take note of the amendment since from 10.08.2018 that Act use the word "shall" and mandated that licensing authority shall accept NOC within a period of three years instead of two years. PESO final licence was issued on 22.03.2024, which is well within the three year period which the amended provision has mandated. Even Annexure 16 provided by applicant along with their petition of Rule 144 of Petroleum rules shows three years.. Hence, the allegation that NOC was not valid at the time of issuance of final peso is false and invalid.

29. It is submitted that the Tribunal adjudicates substantial questions relating to the environment under the NGT Act, 2010. It lacks jurisdiction over licensing disputes such as NOC, PRESO approvals unless it is connected to environmental impact.
30. That the Respondent Corporation is ready and willing to install any additional safety measures as may be directed by this Hon'ble Tribunal or the State Pollution Control Board including the installation of a Vapour Recovery System which is otherwise mandatory to be installed only in Retail Outlets selling more than 300 KL per month.
31. That, there will be no serious danger to the health and safety of the students and public residing in the surrounding area, since, this Respondent has taken necessary precautions and safety measures for the establishment of the subject retail outlet.
32. That the retail outlet is dispensing petroleum product i.e. MS and HSD & CNG, which are essential commodity to the motoring public. Besides, huge amount of money is invested by the company for the construction and commissioning of the retail outlet, established in accordance with law.
33. That after knowing of all the above, the applicant has approached this Hon'ble Tribunal for vested interest at the instance of Rival retail outlet dealer 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.

Under the above circumstances, it is humbly prayed that this Hon'ble Tribunal may be pleased to take on record the present Written Arguments and to dismiss the present application and pass such orders and thus render justice.

DATED AT CHENNAI ON THIS THE 8th APRIL, 2026

A handwritten signature in black ink, consisting of a circular initial followed by several horizontal strokes.

COUNSEL FOR 5th RESPONDENT