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

ORIGINAL APPLICATION NO. 188 of 2024 (SZ)

IN THE MATTER OF

Muhammed Risham,
House No 12/163, Nambyattil House,
Naduvannur Post, Kozhikode Kerala – 673614 … Applicant.

and

1. District Collector Office, Kozhikode Collectorate,
Civil Station P.O, Kozhikode – 637 020
and 5 others … Respondents

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Place : Chennai

Date : 03.02.2025

Filed by :

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

ORIGINAL APPLICATION NO. 188 of 2024 (SZ)

Between

Muhammed Risham,
House No. 12/163, Nambyattil House,
Naduvannur Post,
Kozhikode , Kerala – 673 614 ... Applicant.

---Vs---

1. District Collector Office, Kozhikode Collectorate,
   Civil Station P.O, Kozhikode – 673 020

2. The Chairman,
   Central Pollution Control Board,
   Parivesh Bhawan, East Arjun Nagar,
   Delhi - 110 032

3. The Member Secretary,
   Kerala State Pollution Control Board,
   Pattom P.O, Thiruvananthapuram – 695 004

4 Joint Chief Controller of Explosives,
   Petroleum & Explosives Safety Organisation (PESO)
   South Circle,
   A and D Wing, Block 1-8, Second Floor,
   Shastri Bhavan, 26, Haddows Road,
   Nungambakkam, Chennai – 600006

5. M/s. Reliance BP Mobility Limited.,
   Indian Oil Bhavan,
   8/1079, Avinashi Road, Coimbatore – 18

6. Shekeen Imbichi Moidy,
   Padikkal House, Naduvannur,
   Koyilandy Taluk, Kozhikode District–673305 ... Respondents.

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COMMON REJOINDER AFFIDAVIT FILED BY THE APPLICANT TO THE REPLY AFFIDAVITS/ STATEMENTS FILED BY THE RESPONDENT Nos. 1 to 3 and 5 & 6

The Applicant , Muhammed Risham, S/o. Moosakoya, aged about 32 years, residing at House No. 12/163, Nambyattil House, Naduvannur Post, Kozhikode, Kerala – 673 614 , do hereby solemnly affirms and sincerely states as under :-

1. That I am the Applicant in the above Original Application No. 188 of 2024 (SZ) and as such I am well acquainted with the facts and circumstances of the instant case and competent to swear this Rejoinder Affidavit to the Reply Statements / Affidavits filed by the Respondent Nos. 1 to 3 and 5 & 6.

2. I have read the above Reply Statements/ Affidavits filed by the above Respondents and I am filing this Rejoinder Affidavit by seeking liberty from this Hon'ble Tribunal to file further affidavit / affidavits if found necessary later.

3. I deny all the averments made by the above Respondents in their Reply Affidavits except those which are specifically admitted herein and the above Respondents are put to strict proof of the rest.

4. I state that I have filed the above Application seeking to :

Direct the Respondents 1 to 4 to take action against the Respondent No.5 and 6 for the ~~illegal~~ setting up of the Fuel station, at S. No. 198/4,

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Naduvannur Village, Koyilandy Taluk, Kozhikode District, which is the violation of the 2nd Respondent (CPCB) Office Memorandum , in proceedings number B-13011/1/2019-20AQM , dated 07.01.2020 , and restrain the setting up of the fuel station.

PRELIMINARY SUBMISSIONS;

5. I state **at the outset** that the 4th Respondent , *who is the Designated Authority to grant Final Explosive Licenses* by ensuring that all the statutory requirements have been complied with , has chosen to remain silent by not filing any Reply or Counter Affidavit to the alleged violations and has surprisingly left it to the alleged perpetrators of illegalities and their associates to justify their unlawful actions/ decisions to aid/ support the wrongful siting of the Petroleum Retail Outlet at the above site .

6. I further state that the Hon'ble First Bench of Madras High Court has specifically held in Para 20 of the Final Judgment dated 15.02.2024 in WP No.2095 of 2021 that the ultimate responsibility for allowing a Petroleum Retail Outlet to operate at a particular Site shall be with the 4th Respondent alone. Therefore, it may be appropriate that the views/ submissions of the 4th Respondent are ascertained/ considered before deciding the instant dispute, finally. Otherwise, all my submissions may have to be treated as the deemed admissions on the part of the 4th Respondent . T*rue copy of the Final Judgment dated 15.02.2024 in WP No.2095 of 2021 is annexed hereto as* ***Annexure No. 1.***

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7. I further state that the entire submissions of the Respondents in defence of their indefensible actions / decisions are resting on the sole fact that the residential premises surrounding the proposed Site are not situated in "*a residential area designated under local laws*" so as come under the ambit of the Siting Criteria prescribed under Clause " H" of the Memorandum dated 07.01.2020 by CPCB, pursuant to the directions issued by the Principal Bench of this Hon'ble Tribunal in Para No.11 of the Final Order dated 22.07.2019 passed in OA No. 31 of 2019. *True Copies of the Final Order dated 22.07.2019 and Memorandum dated 07.01.2020 are annexed hereto as* ***Annexure Nos. 2 & 3.***

8. I further state that my primary contention is that despite the District Authorities have not prepared and notified Area Development Plans for the above area , *in gross violation of the Constitutional mandate under Articles 243ZD and 243ZE of the Constitution of India*, the protection of *Right to life and Clean Environment* guaranteed to **"all the persons"** under Article 21 r/w Article 48-A of the Constitution are incapable of being denied to me . *True copy of the Extracts of Article 243 ZD and 243 ZE of the Constitution is annexed hereto as* ***Annexure No. 4***.

9. I further state that the Hon'ble Madras High Court , in Para Nos. 9 to 22 of the Judgment dated 24.09. 2021 in WP No. 43434 of 2016 has elaborately dealt with the scope of the enquiries to be conducted by the Statutory Authorities, while acting under the Petroleum Rules,2002, from the standpoint of the Right to Life and Clean environment guaranteed to every person under Article 21 of the Constitution of India . The Hon'ble Court has

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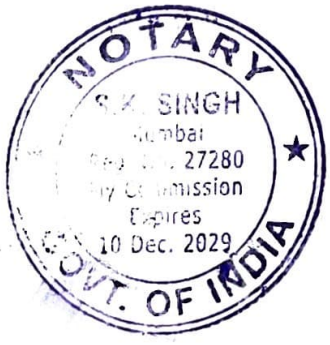
categorically held that the Statutory Authorities shall be bound to act in a manner so as to protect the Right to life of every person while granting Approvals/ Licences / permissions to the Petroleum Retail Outlets under the Petroleum Rules, 2002 and the other Rules/statutes. *True copy of the Final Judgment dated 24.09.2021 passed by the Hon'ble Madras High Court in WP No. 43434 of 2016 is annexed hereto as* ***Annexure No. 5.***

10. I further state that the memorandum dated 07.01.2020 issued by CPCB , as it exists today, is applicable only to those residential areas which come under the category of "designated under the local laws" and therefore does not provide protection under Article 21 and 48-A of the Constitution to the lawfully built residential buildings/ premises and the persons living in other areas where there are no prohibitions under any statute to construct residential buildings or to reside therein. Therefore, by *watering down the direction of the Hon'ble First Bench of this Tribunal in the Final Order dated 22.07.2019* to prescribe safety distance for " *all residential areas" , without any distinction* , CPCB has excluded more than 85 % of land areas across the States from the scope of the Siting Criteria for the only reason that there are no Development Plans prepared and notified for those areas by the States/ Districts. Therefore the present Siting Criteria has become Otiose for the bulk of residential areas where people have lawfully built their houses and live without violating any law of the land .

11. I further state that CPCB has revealed it's true colour as " *an extended arm*" of the powerful OMC lobby by abdicating it's primary duty to protect the environment and thereby give protection to the rights



guaranteed under Article 21 r/w Article 48-A of the Constitution to every person regardless of wherever they live in a lawful manner. However, being fully aware that no development plans have been prepared and notified in large majority of areas/towns/ cities by the State Governments including Kerala in spite of the constitutional mandate under Article 243-ZD and 243-ZE of the Constitution and that residential areas/ premises are lawfully permitted in those areas , exclusion of the lawfully built residential buildings/ premises/areas from the ambit of *the Siting Criteria shall be a clear infraction of Article 14 on the ground of unreasonable classification without any intelligible differentia.*

12. I further state that the refusal by CPCB to comply with the directions issued in Para Nos. 64 (e) & (f) of the Final Order passed by this Hon'ble Tribunal in OA No. 176 of 2020 (*which has attained finality as the Hon'ble Apex Court did not interfere it in Civil Appeal No. 5763 of 2022)* directing to prescribe safe distances from all types of residential areas situated in non-plan areas , mixed residential and commercial areas, where residential buildings are permissible under the local laws, and relegating the issue to the respective State governments shall tantamount to a contumacious and mischievous conduct on the part of CPCB . *True Copies of the Judgment dated 01.07.2022 in OA No. 176 of 2020 and the Office Memorandum dated 16.09.2024 issued by CPCB are annexed hereto as* ***Annexure Nos. 6 & 7.***

13. I further state that Hon'ble Apex Court has reiterated the authority of this Hon'ble Tribunal to issue directions to CPCB in all matters related to the environment in Para a no. 48 of the Judgment of the case IOCL

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Vs VBR Menon, reported in (2023) 7 SCC 368. Therefore, CPCB shall be mandated to comply with the directions issued by this Hon'ble Tribunal in OA No. 176 of 2020 in it's true letter and spirit instead of acting as the agent of the Petroleum Ministry and OMCs to the detriment of public health and safety . *True Copy of the Judgment dated 14.03.2023 in Civil Appeal No. 421 of 2022, reported in (2023) 7 SCC 368, is annexed hereto as* ***Annexure No. 8.***

14. I further state that as the Siting Criteria prescribed by CPCB has a very limited/ narrow scope to only those areas situated within Major Cities and Corporations , where Development Plans have already been prepared and notified, the Applicant has no other way to get protection from the potential leakages and emission of harmful Petroleum Vapor from the proposed Petroleum Outlet Site, situated adjacent to my residential premises, except seeking intervention of this Hon'ble Court to protect my right to life and environment as guaranteed under Article 21 and 48-A of the Constitution. It is relevant to mention that my house was constructed in 1991 after obtaining all the necessary approvals from the local body. Therefore, the view of a Hon'ble Division Bench , presided over by Hon'ble Justice D.V. ChandraChud , in para Nos. 10 & 11 of the Judgment in the case of St. Philomena Convent High School Vs.. Union of India and Ors., , reported in 2009-4-MLJ-255, shall be squarely applicable to my case . *True Copy of above judgment of Bombay High Court dated 31.03.2009 is annexed hereto* ***Annexure No. 9 .***

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SUBMISSIONS ABOUT THE BIASED ROLES / ACTIONS OF RESPONDENTS 1 & 2

15. I further state that Rule 144 of the Petroleum Rules,2002 has prescribed a format for issuing NOC by including the list of Authorities from whom the District Authorities shall obtain prior comments . However, the adverse remarks of the jurisdictional Inspector of Police vide his report no. C.No.25/j1/2021 dated 29.12.2021 had been totally ignored by the 1st Respondent while issuing the NOC , without assigning any reasons . *True copies of the above Report dated 29.12.2021 and amended Rule 144 of the Petroleum Rules 2002 are annexed hereto as* ***Annexure Nos. 10 & 11.***

16. I further state that a Flow chart showing the various Authorities required to be consulted/engaged while granting NOC s to set up new Petroleum Outlets with the scope of enquiry contemplated under Rule 144(5) of the Petroleum Rules,2002 *is annexed hereto as* ***Annexure No. 12 .***

17. I further state that the Report received from the Superintendent of Police Office vide Report Nos. D-2/44567/2021/DR dated 17.10.2021 through RTI contains several adverse remarks against issuing the NOC to the proposed Petroleum outlet. *True copy of the above Report dated 17.10.2021 , received through RTI with English translation, is annexed hereto as* ***Annexure No. 13.***

18. I further state that the 1st Respondent, the designated Authority to issue NOC under Rule 144 of the Petroleum Rules, 2002, is mandated to conduct a due enquiry at site under Rule 144(5) and the scope of such an

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enquiry is elaborately discussed in the Judgment in WP No. 43434 of 2016 ,annexed hereto as Exhibit No.5 . However, the 1st Respondent had chosen to ignore the numerous representations and mass petitions received by him from the Suraksha Residents Association , a registered housing society and several local residents of the area against the proposed Outlet. It shall certainly tantamount to dereliction of the duty vested on the 1st Respondent under the Statute .

19. I further state that several cases of leakages from the underground Petrol and Diesel tanks have been reported in the various News Papers and one of such cases is still going on and the panchayat has issued a stop memo to the outlet . *True copy of a News Paper report dated 07.07.2024 is annexed hereto as* ***Annexure No. 14.***

20. I further state that in Annexure No.3 @ Page No.20 of the reply filed by 5th Respondent in November, 2024 before this Hon'ble Tribunal , the comments of the Tahsildar have been wrongly translated to english. The reply clearly states that permission may be granted after solving the grievances of nearby house owners and that the Pump site is at one meter above the ground level and the house of the petitioner is within 10 meters.

21. I further state that the reply of Kerala PCB, uploaded on 04-07-2024 on NGT website, states that the water levels of domestic wells are at the same ground level. Hence water pollution is also imminent as the rain water might flow from one meter elevated petrol pump site to the

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Applicant's well. *True copy of the above reply dated 04.07.2024 is annexed hereto as* ***Annexure No. 15***

22. I further state that the RTI reply dated 24.09.2024, received from the Department of Planning, Government of Kerala , reveals that development plans have been notified so far for only 12 Nos. out of 941 Nos. of village Pachayats in Kerala ie.only around only 1 % of the total number. *True copy of the above RTI reply dated 24.09.2024 is annexed herewith as* ***Annexure No. 16.***

23. I further state that the Village officer's report dated 01.04.2022 also contains several adverse remarks which were also not considered and addressed while granting the NOC by the 1st Respondent. *True copy of the above report dated 01.04.2022 with English translation is annexed hereto as* ***Annexure No. 17.***

24. I further state that the Principal Bench of this Hon'ble Tribunal at New Delhi had gone into the issues related to Public health and safety arising out of setting up of large number of Petroleum Outlets across India and has elaborately discussed the same in detail in Para Nos. 2 to 4 of the Order dated 28.09.2018 in OA No,. 147 of 2016. VOCs are a precursor to ground level ozone, the main constituent of summertime smog. Exposure to ozone can damage crops and ecosystems and presents a direct risk to human health. Benzene, for example, is a genotoxic human carcinogen. Benzene is a potent carcinogen and is blamed for leukemia. The WHO estimates a 4 in 1 million risk of leukemia on exposure to benzene to a concentration of 1µg/m3.

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True copy of the above order dated 28.09.2018 in OA No. 147 of 2016 is annexed hereto as ***Annexure No. 18.***

25. I further state that the Principal Bench of Hon'ble Tribunal , New Delhi , had thereafter appointed an Expert Group to conduct a detailed study about the harmful effects of Petroleum Vapor on public health and associated health hazards in operating of a large number of Petroleum Retail Outlets in close proximity to critical locations such as Schools, Hospitals, Water bodies, Residential areas, etc. Based on the Report submitted by the Expert group and consultation with all the stakeholders including OMC s , the Hon'ble Principal Bench had approved the Siting Criteria for new Outlets vide the Final Order dated 22.07.2019 in OA No. 31 of 2019 and directed CPCB to publish/ notify the same for strict compliance. The Hon'ble Tribunal had also directed CPCB to fix and notify " *safety distance from Residential areas*" in the same Order. *True Copies of a few published Articles on pollution to the surroundings areas of Petrol Stations within 100 M radius are annexed hereto as* ***Annexure No. 19*** .

26. I further state that in 2020, as directed by the Principal Bench, CPCB had notified the Guidelines for Siting of New Petroleum Retail Outlets vide the Memorandum dated 07.01.2020, followed by an Addendum dated 16.08.2021, in respect of prohibited distance of 50 M from water bodies . In the instant case , there are several wells (Water bodies) used for drinking water purposes by the households ,situated within the prohibited distance from the proposed site, and the Respondents have ignored this factor

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while issuing the NOC and Licence to the OMC . *True copy of the Addendum dated 16.08.2021 is annexed hereto as* ***Annexure No. 20.***

27. I further state that in 2020, Applicant's Counsel had filed an Original Application No. 138 of 2020 (SZ) before this Hon'ble Tribunal raising the issue regarding non-installation of vapour recovery systems (VRS) in the petroleum outlets by the oil marketing companies (OMCs). The Final Order passed by this Hon'ble Tribunal in this matter was challenged by the OMCs in a batch of Civil Appeals before the Hon'ble Apex Court which was disposed vide the Final Order dated 14.03.2023 in Civil Appeal 421 of 2022 ,etc. by directing the State PCB s to strictly enforce the Siting Criteria prescribed by CPCB vide the Memorandum dated 07.01.2020 . In the event of any breach of the Guidelines issued by CPCB vide Office Memorandum dated 7-1-2020, the State Pollution Control Boards were directed to proceed against the erring outlet in accordance with law at the earliest.

28. I further state that CPCB , pursuant to the above directions issued in C.A.No.421 of 2022, had issued an Office Memorandum dated 16.06.2023 directing the State PCBs to strictly comply with the Siting Criteria notified vide the Memorandum dated 07.01.2020 . *True copy of the Office Memorandum dated 16.06.2023 is annexed hereto as* ***Annexure No. 21.***

29. I further state that in 2020, Applicant's Counsel had filed another Original Application No. 176 of 2020 (SZ) before this Hon'ble Tribunal challenging establishment of a new roadside petroleum retail outlet at Survey No. 2470, Ward-B, Block-38, Srirangam, Tiruchirappalli in

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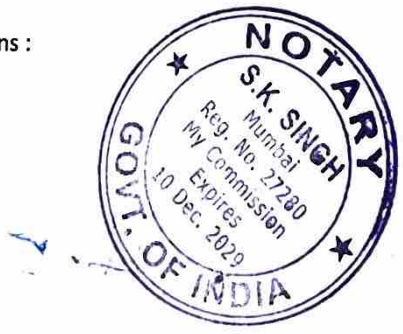
violation of the siting criteria provided in Clause H of the Office Memorandum dated 7-1-2020 and the norms prescribed under the circular issued by the Indian Road Congress. This Hon'ble Tribunal passed the Final Order in OA No. 176 of 2020 (SZ) and disposed of the same vide order 1-7-2022 and after noticing some lacuna and shortcomings in the Siting Criteria for effective implementation during the proceedings , this Hon'ble Tribunal had directed CPCB as under ;

(i) 2nd Respondent (CPCB) was directed to revisit the siting criteria prescribed for setting up of new petrol pumps vide the Office Memorandum dated 07.01.2020 and to come up with a proper notification/office memorandum and to publish the same to make it enforceable among the stakeholders and the statutory authorities.

(ii) CPCB was further directed to consider the difficulties encountered in implementing the above Siting Criteria vide the Office Memorandum dated 07.01.2020 in respect of residential areas which are either not classified/ notified as per the zoning regulations or come under non-planning areas. As there is no clarity in the above guidelines about what should be the distance criteria to be adopted for permitting establishment of new Petroleum Retail Outlets in such cases, the ambiguity is being exploited by the Oil Marketing Companies to their advantage by setting up new Petroleum Outlets adjacent to residential buildings and thereby defeating the very purpose for which the siting criteria had been prescribed i.e. to protect the residential areas from the harmful emission of Petroleum Vapor from the newly established Petroleum Retail Outlets.

(iii) The CPCB was directed to examine what should be the distance criteria to be adopted in respect of siting of petroleum outlets near to residential areas



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which have not been designated exclusively for residential purposes or come under non-planning areas as per the local laws.

(iv) The CPCB was also directed to examine even in areas classified as Commercial Zone/Mixed Zone, in which residential buildings are permissible under the local laws, whether any minimum distance criteria need to be provided considering the environmental impact of establishing new petroleum units near to the residential premises in such cases.

30. I further state that the above Final Order dated 1-7-2022 passed by this Hon'ble Tribunal in OA No. 176 of 2020 (SZ) was challenged by the Indian Oil Corporation Limited ("**IOCL**") in Civil Appeal No. 5763 of 2022 which was closed after the Appellant offered to close down and relocate the Petrol Pump. The Hon'ble Apex Court however did not interfere with any of the findings and directions rendered by this Hon'ble Tribunal in the above Final Order dated 1-7-2022 in OA No.176 of 2020 and therefore the same had become final and binding on all the Respondents including CPCB. *True copy of the order dated 13.10.2023 passed in Civil Appeal No. 5763 of 2022 is annexed hereto as* ***Annexure No.22.***

31. I further state that in the meanwhile, on 10-10-2022, an Expert Committee constituted by CPCB had held a meeting regarding siting criteria for new petrol pumps in case of non-planning areas, areas where residential areas had not been classified as per local law and commercial /mixed residential zones. While discussing the issue pertaining to distance criteria for cases where no residential areas have been classified under the local laws and where there are non-planning areas under local laws, the Expert

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Committee was of the view that the State Governments shall take necessary action in the matter. *True copy of the Minutes of the Expert Committee dated 10.10.2022 is annexed hereto as* ***Annexure No.23.***

32. I further state that on 21.05.2024, the Applicant's Counsel approached this Hon'ble Tribunal by means of original application No. 183/2024 seeking issuance of directions to CPCB to revisit and revise the Siting Criteria formulated by office memorandum dated 7-1-2020 after taking into account the ground realities and the main objective to ensure environmental protection from harmful petroleum papers and leakages of petroleum products to the surrounding residential premises . *True copies of the OA No. 183 /2024 dated 21.05.2024 and the Interim Order passed are annexed hereto as* ***Annexure Nos. 24 & 25 .***

33. I further state that on 25-7-2024, a Meeting was held under the Chairmanship of Secretary, DPIIT (SIIT) regarding additional safety measures for siting of new petrol pumps. The safety measures recommended by PESO for setting up new petroleum outlets near residential areas, hospitals and schools within a 30–50-meter radius were discussed. *True copy of the minutes of the meeting held on 25.07.2024 is annexed herewith as* ***Annexure No. 26.***

34. I further state that PESO recommended following measures:

i. Minimum 2 meters high RCC solid brick masonry boundary wall of 230 mm thick on the sides of proposed petroleum retail outlet facing the school, hospital and residential area designated as per local laws.

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ii. All underground tanks to be in the concrete pit in the proposed petroleum service station.

iii. Vapour recovery system was to be provided in the retail outlets.

iv. The tanker unloading platform was to be preferably located opposite the side of the petroleum service station facing the school/residential areas/hospitals.

v. No refueler loading or parking arrangement was omitted in the proposed petroleum service station.

vi. Item wise compliance of CPCB Guidelines duly signed by the Divisional/Regional Manager of the OMC to be submitted for construction approval. The application was to clearly mention in the undertaking that "no school, hospital and residential area designated as per local laws is situated within 30 meters from the fill points, dispensers and vent pipes of the retail outlet."

vii. The site plan drawings of the proposed petroleum retail outlet was to show 30 meters, 50 meters and 100 meters separation distance circles incorporating all the existing structures within the same. The site plan drawings were to clearly indicate minimum 30 meters radial separation distance available from the fill points, dispensing units, vent pipes from existing school, hospital and residential area designated as per local laws. The drawing was to be endorsed by the District Authorities while issuing NOC.

viii. The District Magistrate was to mention in the NOC that no school, hospital, residential area designated as per local laws was existing within 30 meters from the proposed retail outlet fill points, dispensers and vent pipes.

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35. I further state that in the Meeting held on 25-7-2024 under the Chairmanship of Secretary, DPIIT (SIIT)Safety Measures No.1, 2 and 4 were agreed upon by all stakeholders and adopted.

36. I further state it was however decided that additional measures No. 6,7 and 8 need not be provided as there were already provisions in Rule 131 and Rule 144 of the Petroleum Rules, 2002 regarding these measures. *It was a blatant lie by the OMCs but was accepted without any verification of actual facts.*

37. I further state that measure No. 3 pertaining to installation of VRS was dropped as the OMCs argued that VRS required backend infrastructure including preparation of tankers, supply points based on the statutory requirements governed by population norms which were anyway required to be followed if the retail outlet fell within the said criteria. *It was also another blatant lie by the OMCs as the existing norms are general in nature and based on population and turnover values and not based on proximity to the various critical objects like residences, hospitals, schools, etc.*

38. I further state that on 07.08.2024, the Explosives Section of Department for Promotion of Industry and Internal Trade approved minutes of meeting held on 25.07.2024 under the Chairmanship of Secretary, DPIIT (SIIT) regarding recommendation of additional safety measures for siting of new petrol pumps. *True copy of the Office Memorandum dated 07.08.2024 is annexed herewith as* ***Annexure No. 27.***

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39. I further state that on 09-09-2024, Chief Controller of Explosives, Petroleum & Explosives Safety Organisation (PESO) issued circular No. C.VIII(3)125/Circular Petroleum prescribing additional safety measures for setting up of new petroleum service stations. The additional recommended measures were in line with the approved Minutes of Meeting held on 25-7-2024 under the Chairmanship of Secretary, DPIIT (SIIT). *True copy of the above Circular dated 09.09.2024 is annexed hereto as* ***Annexure No. 28.***

40. I further state that the Circular prescribed following additional safety measures for setting up new petroleum service stations near residential areas, hospitals (10 beds and above) and schools within 30-50 m radius which has been approved by the Explosives Section of Department for Promotion of Industry and Internal Trade by Office Memorandum dated 7-8-2024 ;

a) Minimum 2 meters high RCC solid brick masonry boundary wall of 230 mm thick on the sides of proposed petroleum retail outlet facing the school, hospital and residential area designated as per local laws.

b) All underground tanks were to be in the concrete pit in the proposed petroleum service station.

c) The tanker unloading platform was to be preferably located opposite the side of the petroleum service station facing the school/residential areas/hospitals.

d) No refueler loading or parking arrangement was omitted in the proposed petroleum service station.

41. I further state that it is relevant to mention for the sake of completion that *the additional safety measures prescribed by the Chief*

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Controller of Explosives, Petroleum & Explosives Safety Organisation (PESO) , Nagpur vide Circular dated 9-9-2024 deals with and consider safety only from the standpoint and threshold of fire and safety angle. Moreover, the important Additional measures Nos. 6,7 and 8 of the Expert Committee appointed by PESO were dropped without verification and based on the unverified fraudulent submissions made by the OMCs.

42. I further state that the additional safety measures prescribed by the Chief Controller of Explosives, Petroleum & Explosives Safety Organisation (PESO) did not consider the environmental harmful effects and long-term effects and dangers to the health of citizens in reducing the distance for setting new petroleum service stations from 50 meters to 30 meters.

43. I further state that on 16-9-2024, pursuant to the Order dated 1-7-2022 in OA No. 176 of 2020 whereby CPCB was directed to revisit the siting criteria prescribed in the CPCB Guidelines dated 7-1-2020, the following recommendations were made:

i. SPCBs/PCCs were directed to take up the matter for classification of areas in their State, under the extant Rules/Regulations/Byelaws for implementation of the siting criteria, with State Governments.

ii. State Govt. were directed to permit setting up of new petrol pumps strictly as per the siting criteria prescribed in local bye-laws (in case of unclassified areas, non-planning areas, mixed zone, commercial zone) and taking into account CPCB guidelines dated 7-1-2020.

iii. SPCBs/PCCs were directed to ensure implementation of all environment protection and control measures including VRS installation,

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provision of double containment walls, leakages and spillage detection and control systems, groundwater and soil quality monitoring, etc., as prescribed in CPCB guidelines dated 07.01.2020 and addendum dated 16.08.2021.

iv. State Govt. were directed to ensure implementation of various safeguards for safety, fire hazard, traffic movement, etc. prescribed by PESO or any other agency designated by the State Government for giving approvals for establishment of petrol pumps, besides additional measures as prescribed by SPCB/PCC.

44. I further state that the CPCB has failed to prescribe Additional Environmental Safety Measures for granting concessionary distance norms of 30 meters from environmental angle in addition to the measures prescribed by PESO from fire/ explosive angle. *Endorsement by CPCB of the additional safety measures prescribed by PESO from an environmental angle also shall be appalling to any reasonable mind.*

45. I further state that the CPCB and the Expert Committee appointed by CPCB have failed to notice that the State Governments have not formulated and notified development plans for more than 85 % of the land areas and those lands are allowed to be used for residential as well as for non-residential purposes by the respective local bodies. In Tamil Nadu, residential buildings are permissible in mixed residential and commercial zones as well.

46. I further state that CPCB has failed to appreciate that classifying residential areas into 2 Groups namely "Designated and Non-Designated Residential Areas" shall be unreasonable and therefore violate Article 14 as it

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does not constitute an intelligible differentia. They have further failed to appreciate that classifying residential areas into 2 Groups Namely "Designated and Non-Designated Residential Areas" is unintelligible especially when the right to life and clean environment are guaranteed to all under Article 21 r/w 48-A of the Constitution..

47. I further state that the Office Memorandum dated 7-1-2020 directing PESO to prescribe additional safety measure for setting new petroleum service stations from 50 meters to 30 meters had failed to appreciate that PESO does not possess adequate domain knowledge or expertise on environmental issues to decide and prescribe Additional Safety measures for allowing the concessionary safety distance of 30 meters from critical areas such as schools, hospitals and residential areas.

48. I further state that CPCB has failed to appreciate that in the absence of any zoning plan by the District Planning Authorities, no residential/ dwelling unit would be covered under the category of designated residential area. It has further failed to appreciate that a zoning plan for the District/ Corporation has to be firstly developed for a residential house/locality to come within the status of a designated residential area.

49. I further state that CPCB has failed to appreciate that the very objective of prescribing the safety distances in the Siting Criteria has been to protect the residential premises of public from the release of harmful petroleum vapor and from the leakage of Petroleum products from the Petroleum Outlets. There shall be no doubt that the operation of the proposed

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Retail Petroleum Outlet shall cause severe air and water pollution problems to my residential premises which is situated adjacent to the proposed site.

50. I further state that the Memo dated 16-9-2024 has failed to appreciate that anticipated environmental harms and available environmental data warrant a strong and strict application, i.e., the potentially hazardous activity shall be banned until the proponent of the activity demonstrates that it poses no (or acceptable) risk.

51. I further state that the Memo dated 16-9-2024 has failed to appreciate that the precautionary principle enjoined the State to take affirmative action to prevent environmental harm, even when the nature and extent of such harm cannot not be anticipated with scientific precision and certainty. Therefore, the contention of the OMC that the fear of the Applicant is imaginary is to be rejected outright as preposterous.

52. I further state that the precautionary principle duly mandates that all agencies of the State must make their best endeavour to ensure that precaution is instilled in the process of development. Therefore, non-inclusion of residential premises/ areas other than designated residential areas under local laws in the Siting Criteria prescribed by CPCB was a thoughtless act due to CPCB'S overwhelming desire to favor/support the OMC s , even at the cost of public health and safety which they are duty bound to protect and preserve .

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53. I further state that the Hon'ble Apex Court has recognized the precautionary principle as a part of environmental law, stating that measures must be taken to prevent environmental harm, even in the absence of full scientific certainty.

54. I further state that the Hon'ble Apex Court has held in **Mantri Techzone Pvt. Ltd. vs. Forward Foundation** that the principles of sustainable development, precautionary principle and polluter pays, propounded by the Hon'ble Apex Court by way of multiple judicial pronouncements, have now been embedded as a bedrock of environmental jurisprudence under the NGT Act. It has also been held that directions of the Principal Bench of Hon'ble Tribunal, New Delhi and CPCB shall have an overriding effect on state laws. *True copy of the above Judgment dated 05.03.2019 is annexed hereto as* ***Annexure No.29.***

55. I further state that **in Pragnesh Shah v Dr. Arun Kumar Sharma (2022) 11 SCC 493** the Hon'ble Apex Court held that the precautionary principle requires the State to act in advance to prevent environmental harm from taking place, rather than by adopting measures once the harm has taken place. In deciding when to adopt such action, the State cannot hide behind the veil of scientific uncertainty in calculating the exact scientific harm.

56. I further state that in spite of the Constitutional mandate under Article 243-ZD & 243-ZE of the Constitution of India for preparation and notification of development plans for every district, the Kerala State

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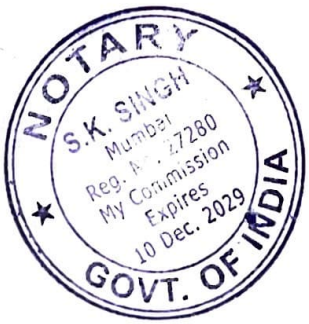
government is yet to implement it in more than 85 % of the land areas in the State.

57. I further state that in the absence of State legislatures, urban local and municipal bodies and rural bodies defining "designated residential areas" , the guidelines dated 7-1-2020 of Central Pollution Control Board have become otiose and are not capable of being effectively implemented.

58. I further state that in the absence of a uniform definition of designated residential areas , the guidelines of 7-1-2020 of Central Pollution Control Board are being given a complete go-by and thereby posing serious environmental hazards to the people residing in close proximity to the Petroleum Outlets.

59. I further state that apart from including all residential area/ premises under the ambit of CPCB Circular, specific additional environmental safety measures are to be prescribed by the CPCB for granting the concessionary distance norm of 30M in addition to the measure prescribed by PESO (which is only from the fire/ explosives aspect and not environmental safety aspect).

60. I further state that the Central Pollution Control Board shall only be concerned with environmental hazards involved and the remedies required to be taken, in order to mitigate the same. Enforcement of the compliance of Local planning laws is not the responsibility of CPCB.



61. I further state that the Central Pollution Control Board in its meeting held on 10.10.2022 has decided that in the case of unclassified residential areas or for non-planning areas the matter is to be looked after by the concerned State Government. It shall tantamount to abdication of CPCB's primary responsibility to prepare and notify appropriate guidelines for the protection of environment on Pan India basis.

62. I further state that Section 3 of the Environment (Protection) Act, 1986 empowers the Central Government or its delegate to take all such measures necessary or expedient for the purpose of protecting and improving the environment.

63. I further state that , it is imperative that the State Government defines areas permissible for residential purposes for the effective implementation of guidelines of the Central Pollution Control Board and thereby additionally comply with the Constitutional mandate under Articles 243- ZD & 243- ZE of the Constitution .

64. I further state that Siting Criteria is not a final word on the safety from the hazardous/ harmful operations of Petroleum Outlets to the surrounding areas. It's application , as it exists today , is limited to only the Residential areas designated under local laws. Therefore, for all other areas except the designated residential areas , CPCB may be directed to comply with the earlier direction issued by this Hon'ble Tribunal in OA No. 176 of 2020 and fix and notify appropriate safety distance by taking the instant case as a test case.

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65. I further state that as there are no disputed questions of facts regarding the distances between the residential premise of the Applicant and others , drinking water wells ,etc. from the proposed site and about the various approvals/ licenses obtained by either sides , the only question remains to be decided by this Hon'ble Tribunal is about the safety distance required to be provided between the proposed Petroleum Retail Outlet and Petitioner's residential premises . The Hon'ble Apex Court has already held in the case of Archeological Survey of India Vs.. Narender Anand, reported in (2012) 2 SCC 562 , that the distances shall be from the compound walls of the protected areas which in this case shall be the residential premises of the Petitioner and others. *True copy of the above Judgment dated 16.01.2012 is annexed hereto as* ***Annexure No. 30.***

66. I further state that CPCB has failed to appreciate that the State Governments have not formulated and notified development plans in more than 85 % of the land areas and such unclassified lands are allowed to be used for residential as well as non-residential purposes by the respective local bodies. CPCB siting Criteria excludes even those residential buildings/premises which possess approvals from the Local bodies and pay property taxes.

67. I further state that the self glorifying and factually incorrect statements of the 5th Respondent , in their usual style , about their commitments to safety aspects from environmental angle and compliance of statutory provisions in establishing and operating Petroleum Retail Outlets across the country deserve no response in view of the penalties being

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imposed by CPCB on them for various violations such as non-installation of VRS equipments, etc. *True copy of the recent imposition of penalty on them by CPCB is annexed hereto as* ***Annexure No. 31.***

68. I further state that the Applicant's Counsel has filed a Writ Petition under Article 32 in WP(C) No. 81 of 2025 challenging (i) the exclusion of non-designated areas from the ambit of Siting Criteria dated 07.01.2020 and (ii) the notification of additional safety measures by PESO . As the outcome of the above Writ Petition shall have a direct impact on the instant Application, it may be appropriate to wait for the decision/views of the Hon'ble Apex Court before passing the final order in the instant case . *A copy of the case status of WP(C) No. 81 of 2025 is annexed hereto as* ***Annexure No. 32 .***

69. I further state that the Memo dated 16-9-2024 is required to be read down and interpreted in a manner applying the 'precautionary principle' to protect and provide a clean environment. ***It is therefore necessary to extend the safety distances prescribed under Siting Criteria by CPCB to all the pre-existing residential premises which do not violate any of the laws of the land.***

70. The averments made in the Original Application No. 188 of 2024 may be read as a part and parcel of this Rejoinder Affidavit for better appreciation of the facts of the case.

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It is therefore prayed that this Hon'ble Tribunal may be pleased to reject the Reply statements / Affidavits filed by the above Respondents being devoid of any merit and allow the above Original Application as prayed for and thus render justice .

Counsel for Applicant

Applicant

VERIFICATION

The Applicant , Muhammed Risham, does hereby verify that the contents of paras 1 to 70 are true to my personal knowledge and that I have not suppressed any material fact .

Applicant

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...mly affirmed at Mumbai][

on this the 02 Feb ,2025][

and signed his name in my presence.][

BEFORE ME 02-02-25

S.K. SINGH
NOTARY
Government of India
Mumbai

F 2 FEB 2025

ADVOCATE

NOTED & REGISTERED
Sr. No. 802 Page No. 57
Book No. 02 Date.....

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F 2 FEB 2025

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.02.2024

CORAM :

THE HON'BLE MR.SANJAY V.GANGAPURWALA, CHIEF JUSTICE
AND
THE HON'BLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY

Writ Petition No.2095 of 2021

V.B.R.Menon .. Petitioner

Versus

1.The Secretary
Ministry of Petroleum & Natural Gas
A-Wing, Shastri Bhawan
Dr.Rajendra Prasad Road
New Delhi – 110 001.

2.The Chief Controller of Explosives
Petroleum and Explosive Safety Organisation (PESO)
A-Block, CGO Complex, 5th Floor
Seminary Hills, Nagpur – 440 006.

3.The Joint Chief Controller of Explosives
Petroleum and Explosive Safety Organisation (PESO)
A and D – Wing, Block 1 -8, 2nd Floor
Shastri Bhavan, 26, Haddows Road
Nungambakkam, Chennai – 600 006.

4.The Deputy Chief Controller of Explosives
Petroleum and Explosive Safety Organisation (PESO)
South Circle, Chennai
A & D Wing, Block 1 – 8, 2nd Floor

Shastri Bhavan, No.26, Haddows Road
Nungambakkam, Chennai – 600 006.

5.The Joint Director and Head of Zone
Central Bureau of Investigation-Chennai Zone
3rd Floor, E.V.K.Sampath Building
College Road, Nungambakkam
Chennai – 600 006.

6.The Head of Bureau
Central Bureau of Investigation – ACB, Chennai
3rd Floor, Shastri Bhavan
No.26, Haddows Road, Nungambakkam
Chennai – 600 006.

7.M/s Indian Oil Corporation Ltd.,
Rep.by the Executive Director (Retail), Indian Oil Bhawan
No.139, Nungambakkam High Road
Chennai – 600 034.

8.M/s Bharath Petroleum Corporation Ltd.,
Rep.by the State Head (Retail)
Southern Regional Office
No.1, Ranganathan Gardens, Off 11th Main Road
Anna Nagar, Chennai – 600 040.

9.M/s Hindustan Petroleum Corporation Ltd.,
Rep.by the General Manager (O), South Zone – Retail,
Thalamuthu Natarajan Building,
4th Floor, No.3045, Gandhi Irwin Road,
Chennai – 600 008.

(RR7 to 9 are impleaded vide order of this Court dated 10.03.2021 made in W.M.P.No.3754 of 2021 in W.P.No.2095 of 2021)

.. Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Mandamus, to direct the 5th and 6th respondents or any other independent investigation agency to investigate and take appropriate actions, in accordance with law, against wrongful and negligent issuing of provisional site approvals and final explosive licenses in Form XIV by the 3rd and 4th respondents to the Petroleum Retail Outlets in Tamil Nadu and Puducherry and further direct the 1st and 2nd respondents to formulate and notify, within a prescribed time limit, appropriate site inspection and verification procedures for adherence while issuing prior site approvals and final explosive licences in Form No.XIV to the Petroleum Retail Outlets.

For the Petitioner : Mr.V.B.R.Menon, Petitioner-in-Person

For the Respondents: Mr.A.R.L.Sundaresan
Additional Solicitor General of India
Assisted by
Mr.R.P.Pragadish, for RR1 to 4
Mr.V.Anantha Natarajan
for RR7 to 9

O R D E R

(Order made by the Hon'ble Mr.Justice D.Bharatha Chakravarthy)

This Writ Petition is filed by the petitioner, who is a practising Advocate before this Court in public interest. The petitioner has also filed

similar public interest Writ Petitions in respect of proper siting of petroleum outlets.

2.The cause that the petitioner brings to the notice of this Court by way of this public interest litigation is that any Petroleum Retail Outlet has to comply with several parameters relating to public safety and environment. The general public do not have sufficient knowledge and exposure about the relevant rules and procedure in force for granting site approvals for Petroleum Outlets as well as about the extent of harm that wrongful site approvals shall cause to their health and safety. The potential fire hazards and health problems associated with the continuous emission of Volatile Oil Compounds (VOC) such as Benzene, Toluene, etc., which are medically proven to cause major diseases of Cancer and damages to Brain and nervous systems, makes it necessary that these outlets are located as per law.

3.The safety and public health norms are prescribed under the Petroleum Rules, 2002 (hereinafter referred to as 'the Rules'). The Central Pollution Control Board (CPCB) had issued Siting and other mandatory

criteria for new Petroleum Outlets, vide Circular dated 07.01.2020. However, greedy applicants who seek prior site approvals from the Petroleum and Explosive Safety Organisation (PESO), as well as the No Objection Certificate (NOC) and Explosives Licence, play fraud with the system and succeed. False declarations are made and documents are produced as if every site is suitable and safe. Without any inspection whatsoever, the PESO authorities grant initial permission under Rule 133 of the Rules. Thereafter, on the strength of the same, the parties seem to manoeuvre the State authorities in getting the NOC with respect to the site and also Fire Safety and Explosive Licences. On the strength of the same the final licence is also granted by PESO. This resulted in innumerable retail outlets being illegally located posing potential danger to the society and therefore, repeated orders have been passed by this Court relating to the cancellation of NOC, license and ordering re-location of retail outlets. Hence, the petitioner is seeking constant vigil and prior site approvals based on independent and thorough verification of site, conforming to the standards and mandatory requirements. In many cases, wilfully and wantonly, the licenses are issued. In some cases, fake NOC's were also produced. Without even proper

verification of the same, the retail outlets are run. Under these circumstances, the above prayer is made.

4.The Writ Petition is resisted by filing of separate counter affidavits.

5.A counter affidavit is filed on behalf of PESO (Respondents 2 to 4) stating that the licenses under Form XIV of the Rules is issued by following the steps prescribed therein and the said steps are as follows:-

(a) Specification and plans drawn to scale in duplicate clearly indicating.-

(i)the manner in which the provisions prescribed in these rules will be complied with;

(ii) the premises proposed to be licensed, the area of which shall be distinctly coloured or otherwise marked.

(iii) The surroundings and all protected works lying within 100 meters of the edge of all facilities which are proposed to be licensed;

(iv) The position, capacity, materials of construction and ground and elevation view of all storage tanks, enclosures around tanks, all valves, filling and discharge points, vent pipes, dip pipes, storage and filling sheds, pumps, fire-fighting and all other building and facilities forming part of the premises proposed to be licensed;

(v) The areas reserved for different class of petroleum including petroleum exempted under section 11 of the Act;

6. On receipt of documents mentioned therein, at this stage, the authority goes by the declaration of the concerned applicant. The safety distances as applicable for license in Form XIV are prescribed in 4th Schedule C (Extent of hazardous area in service station). Construction approval for Retail Outlets are accorded only after the said prescribed distances are available / provided in the plan of the premises submitted. Thereafter, the second step is to obtain NOC under Rule 144, from the District Authority. While issuing NOC, the District Authorities are required to consider the following particulars:-

(a) Possession of the site by the applicant is lawful and authorization from land owner or lease holder for developing premises under these rules for storage of petroleum products,

(b) Interest of public, specially the facilities like schools, hospitals or proximity to places of public assembly and the mitigating measures, if any, is provided;

(c) traffic density and impact on traffic;

(d) conformity of proposal to the local or area development planning,

(e) accessibility of the site to fire tenders in case of emergency and preparedness of fire services for combating the emergencies;

(f) genuineness of purpose.

(g) any other matter pertinent to public safety.

7. Before grant of NOC, the District Authorities used to inspect the premises to assess the above points. After receipt of NOC, the concerned applicant is authorized to commence the construction. On completion of the construction, thereafter, the PESO conducts inspection with regard to safety of the premises and testing of underground tanks and also confirms as to whether

the premises has been constructed as per the approved drawing of PESO. Competent persons are also appointed under the Rules, who will on behalf of the PESO will generate Safety Certificate and Tank Testing Certificate in the prescribed format under Sections 130 & 126 of the Rules. Thereafter, the following documents are required from the licensees:-

(i)Four copies of specifications and plans approved under sub-rule (5) of rule 131,

(ii) "No Objection Certificate" from the District Authority,

(iii) Requisite amount of fees for the grant, amendment, or transfer of a licence paid in the manner specific in Rule 13.

(iv) A certificate of tank testing if required under Rule 126,

(v) A certificate of safety if required under Rule 130.

8. Further, the competent person, after inspection of the premises, also issues Safety Certificate under Rule 130 that the Site is safe for storage of petroleum. It is only thereafter, the PESO issues licence in Form XIV.

9. The 7th respondent viz., M/s Indian Oil Corporation Ltd., has filed a counter stating that the Writ Petition filed by the practicing Advocate need not be entertained and the same has been deprecated by the Hon'ble Supreme Court of India in the case of ***Dattaraj Nathuji Thaware Vs. State of Maharashtra,[1].*** It is their submission that the Writ Petition has been filed on vague allegations and no public interest is involved in the matter. Detailed rejoinder affidavits are also filed by the petitioner, refuting the allegations and reiterating the submissions made in the Writ Petition.

10. We have heard, *Mr.V.B.R.Menon*, Petitioner-in-Person, *Mr.A.R.L.Sundaresan,* learned Additional Solicitor General of India and *Mr.Edwin Prabhakar,* learned State Government Pleader.

11. *Mr.V.B.R.Menon,* Petitioner-in-Person would contend that the respondents 2 to 4 have admitted in paragraph Nos.10 and 15 of their counter affidavit that no site inspection or physical verification of the relevant particulars submitted by the Oil Marketing Companies are being done, prior to

1 (2005) 1 SCC 590

the issuance of prior site approval under Rule 131 or Final Explosive License in form XIV of the said Rules. This is resulting in issuance of prior Site Approvals and Final Explosive Licenses to the Oil Marketing Companies, on the basis of fraudulently submitted site drawings and false site particulars.

12. As matter of fact, non conduct of inspection leading to submission of false site particulars is not expressly denied and therefore, it should be deemed to be admitted by the respondents 2 to 4. It is the bounden duty of the said authorities to verify and satisfy themselves that the particulars submitted to them are true and correct. An enquiry is contemplated under Section 131 (2) of the Rules which pre supposes objective satisfaction of all the site particulars. For the same, physical site inspection will be essential. It is not enough for the respondents 2 to 4 to rely only upon the State Authorities issuing NOC. The role of District Authorities are distinct and separate. When the site approval is granted under Rule 131, it cannot be done without an enquiry. The petitioner has produced number of forged NOC's which resulted in directions by this Court . The directions issued in W.P.No.19983 of 2023 by itself would demonstrate the failure and lack of efficacy of the system which has been followed presently.

13. The contents of Schedule C, under Rule 105 of Chapter IV relate to the in house electric and other installations within the site and not the safety distances from 'protected works and areas' situated outside the site for which mandatory siting criteria have been prescribed by CPCB, Highways Department, Fire Department, WRO (PWD), DTCP, etc.. As a matter of fact, before issuance of Final Explosives License in form XIV, (i) completion certificates of site works as per the approved plan and (ii) colour photographs of the completed outlet will be mandatory, which is not even mentioned in the paragraph 14 of the counter affidavit. When the prior site approval and the final license are issued without even any inspection, the same is exploited by the Oil Marketing Companies or their nominees by submitting false siting particulars. Even the PESO authorities are not sure, whether the District Authorities are inspecting the site and it is mentioned in the counter affidavit that the District Authorities ‘used to’ visit the site. As far as the certificate of testing of tanks is concerned that does not involve physical verification of safety distances from protected areas which lie outside the site. Similarly, construction as per the approval, conformity of siting criteria of CPCB and

other authorities will not come within the purview of an inspection, with reference to the certificate of safety. In some of the cases, which were ordered to be closed down, even the Oil Marketing Companies being the Public Sector Units also suffer loss, on account of indiscriminate grant of licenses.

14. *Mr.V.B.R.Menon,* would submit that the authorities are attempting to shirk their primary responsibility to protect public safety and health and therefore, he would submit that even if not an independent agency, the PESO as well as the other authorities should be mandated by this Court to make a physical inspection as part of their enquiry under 131 as well as 144 or any other Rules.

15. Per contra, *Mr.A.R.L.Sundaresan,* learned Additional Solicitor General of India appearing on behalf of the respondents 2 to 4 would submit that as far as the safety of the tank and other installations are concerned 'competent person' is appointed under the Rules, who has the requisite technical qualifications to inspect and do the testing and submit the Safety Certificate in respect of the installations. As far as the locational and siting criteria is concerned, the same comes within the purview of the District

Authorities who only inspect the site and grant NOC. The PESO, while granting prior site approval as well as the final approval thoroughly scrutinizes the documents including Safety Certificate and NOC granted by the District Authorities and all the other relevant documents including site maps which are submitted by the Oil Marketing Companies and the licensees. Therefore, it cannot be said that the prior site approvals or the final license approvals are indiscriminately given. Even though Section 131 (2) contemplates an enquiry, the same does not mean physical inspection. The authorities can verify the facts from the documents submitted before them. PESO is provided with limited staffing and that is why Rules specify that competent person be appointed for the purpose of Safety Certificate and testing of tanks. Similarly, NOC is issued by the District Authorities, who conduct the on-site inspection. Therefore, it is not necessary that in all cases, the PESO should inspect or any independent agency should inspect the same.

16. *Mr.Edwin Prabhakar,* learned State Government Pleader would submit that as far as the District Authorities are concerned, their duty is to

check various parameters mentioned under Rule 144 and for that purpose, they are entitled to make an enquiry, which includes site inspection.

17. We have considered the rival submissions made on either side and perused the material records of the case.

18. This is not an adversarial litigation and all concerned are interested in the safety of the general public as well as the due compliance of the Petroleum Rules and the mandatory criteria in respect of the location of the retail outlets. It is true that even at the stage of prior site approval, an enquiry is contemplated under Section 131 (2), wherein, the PESO authorities are to satisfy themselves as to the necessary ingredients in respect of Rule 131 (1) of the Rules. Similarly, the District Authorities are to satisfy the various criteria mentioned in Rule 144. Both the Rules, within the ambit would include the siting criteria and or any other mandatory norms imposed by any other law or authorities including CPCB or Directorate of Town and Country Planning or Water Resources Department or the Highways Department or the Fire Department etc.. However, it is also submitted that number of Petroleum Retail

Outlets are opened across the country and PESO does not have the wherewithal or the staffing pattern to physically inspect each and every site. Site inspection would also involve the proper identification of the site. Only the concerned Surveyor / Revenue Official will be in a position to earmark the concerned site, in order to measure the location of other protected areas around the site, such as water bodies, schools or other public building, residences etc., and the distances between the same and the Retail Outlets. In that view of the matter, the District Authorities granting NOC are better suited for the said purpose to coordinate with the local authorities in identifying and verifying the survey numbers boundaries and making measurements.

19. Rule 144 of the Rules also specifically mention the possession of the site, interest of public, specially the facilities like schools, hospitals and their proximity and any other matter pertinent to public safety. Therefore, the verification of the mandatory criteria of CPCB, or any other lawful authority would also come within the purview of granting of NOC. It would also be the duty of the respondents 2 to 4 - PESO authorities, to ensure that every Retail

Outlets which are licensed by them are not violating any of the mandatory norms.

20. Under the said circumstances, we dispose of the present Writ Petition with the following directions:-

(i) While granting prior site approvals under Rule 131, the respondents 2 to 4 shall conduct due enquiry and satisfy themselves as to the fact that the site satisfies all the criteria mentioned under Rule 131 (1) and all other legal requirements;

(ii) For the said purpose, it is not necessary to carry out physical inspection in each and every case, but whenever any doubt arises or in any situation which they deem fit and proper, a physical inspection shall also be made by PESO;

(iii) Upon request of PESO, the concerned Revenue Tahsildar shall depute the jurisdictional Surveyor, who will demarcate the boundaries and assist in the location of the premises of the Retail Outlets and also assist in the measurements between the site and location of other buildings, water bodies etc.;

(iv) Whenever a prior site approval is granted and the matter proceeds to the District Authority for issuance of NOC, the respondents 2 to 4 shall also in every case can prepare and forward a check list for the District Authorities to check, apart from the parameters for the District Authorities, which should include mandatory CPCB guidelines and other locational requirements;

(v) Every State authority granting NOC shall grant the same only after objective satisfaction of all the criteria mentioned in the proforma and the criteria that may be contained in the checklist or any other criteria which it founds to be relevant and only upon satisfaction of the same shall issue a NOC;

(vi) Satisfaction of the same shall be made by making a site inspection;

(vii) Site inspection shall be carried on with the help of the jurisdictional Revenue Authorities upon request of the District Authority, concerned Tahsildar or the Authority as the case may be shall depute the jurisdictional Surveyor, who will identify the location and boundaries and shall

also assist the authority in making the measurements between the site and other relevant locations around the site so as to satisfy the mandatory requirements;

(viii) The notes of inspection shall also be prepared in writing indicating therein, the objective satisfaction of each of the criteria, where under, the actual measurement and the distances between the houses or hospitals or water bodies etc., should be specifically mentioned. Site inspection notes shall also be forwarded to the respondents 2 to 4 for their consideration at the time of grant of final license;

(ix) Even at the time of grant of final license, it would still be the duty of the respondents 2 to 4 to ensure that the Retail Outlets satisfy all the mandatory norms and if any doubt arises or in any appropriate cases, site inspection can also be made.

21. The Writ Petition is disposed of with the above directions. No costs.

(S.V.G., C.J.,) (D.B.C., J.,)
15.02.2024

Jer

Index : Yes
Speaking order
Neutral Citation : Yes
To
1.The Secretary
Ministry of Petroleum & Natural Gas
A-Wing, Shastri Bhawan
Dr.Rajendra Prasad Road
New Delhi – 110 001.
2.The Chief Controller of Explosives
Petroleum and Explosive Safety Organisation (PESO)
A-Block, CGO Complex, 5th Floor
Seminary Hills, Nagpur – 440 006.
3.The Joint Chief Controller of Explosives
Petroleum and Explosive Safety Organisation (PESO)
A and D – Wing, Block 1 -8, 2nd Floor
Shastri Bhavan, 26, Haddows Road
Nungambakkam, Chennai – 600 006.
4.The Deputy Chief Controller of Explosives
Petroleum and Explosive Safety Organisation (PESO)
South Circle, Chennai
A & D Wing, Block 1 – 8, 2nd Floor
Shastri Bhavan, No.26, Haddows Road
Nungambakkam, Chennai – 600 006.
5.The Joint Director and Head of Zone
Central Bureau of Investigation-Chennai Zone
3rd Floor, E.V.K.Sampath Building
College Road, Nungambakkam
Chennai – 600 006.
6.The Head of Bureau
Central Bureau of Investigation – ACB, Chennai
3rd Floor, Shastri Bhavan
No.26, Haddows Road, Nungambakkam
Chennai – 600 006.

/True copy/

VBR Menon

Item Nos. 04 & 05 Court No. 1

BEFORE THE NATIONAL GREEN TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

Original Application No. 31/2019
(I.A. No. 07/2019)
WITH
Original Application No. 86/2019
(M. A. No. 11/2019)

K. Sathyadevan Applicant(s)

Versus

Union of India & Ors. Respondent(s)

WITH

Gyanprakash @ Pappu Singh Applicant(s)

Versus

Union of India & Ors. Respondent(s)

Date of hearing: 22.07.2019

(Compliance Report in O.A. Nos. 31/2019 and 86/2019 with I.A. No. 07/2019 & M. A. No. 11/2019 for stay)

CORAM: HON'BLE MR. JUSTICE ADARSH KUMAR GOEL, CHAIRPERSON
HON'BLE MR. JUSTICE S.P. WANGDI, JUDICIAL MEMBER
HON'BLE MR. JUSTICE K. RAMAKRISHNAN, JUDICIAL MEMBER
HON'BLE DR. NAGIN NANDA, EXPERT MEMBER

For Applicant(s): NONE

For Respondent (s): Mr. Rajkumar, Advocate for CPCB

ORDER

1. The question for consideration is mandatory installation of Vapour Recovery Devices (VRDs) on all existing fuel stations, distribution

centres, terminals, railway loading/unloading facilities and airports and viability of number of outlets.

2. In the order dated 29.01.2019, this Tribunal noted that as per the Central Pollution Control Board (CPCB) guidelines, VRDs are required to be installed if capacity of the outlet is more than 300 KL per month and population of the city is 10 lakhs. The Tribunal, however, sought opinion of the CPCB whether such requirement should be laid down for cities of lesser population or outlets of lesser business and also feasibility of number of outlets.

3. As per report furnished by the CPCB on 20.03.2019, it was suggested that installation of Vapour Recovery System (VRS) should be applicable to petrol pumps selling 100 KL of oil per month in cities with population of 10 lakhs and 300 KL per month in cities with population of ten lakhs. Regarding feasibility of more outlets, it is stated that the same is considered while permitting every new outlet.

4. The Tribunal, vide order dated 01.04.2019, directed that the matter be finalized in consultation with the Ministry of Petroleum and Natural Gas (MoPNG). The siting guidelines, preventing measures and monitoring requirement may also be examined. Timelines be provided and feasibility report and other issues be finalized within three months.

5. Accordingly, further report dated 08.07.2019 has been submitted to the effect that following Committee was constituted to deal with the matter:

1. Member Secretary, CPCB	Chairman
2. Sh. K.M. Mahesh, Director, MoPNG	Member
3. Dr. Mukesh Sharma, Professor, IIT Kanpur	Member
4. Dr. Nitin Labhasetwar, Chief Scientist, NEERI	Member
5. Dr. Ajay Gupta, Indian Institute of Petroleum (IIP)	Member
6. Ms. Meena Sehgal, TERI	Member
7. Sh. V.K. Shukla, Sc. 'E', CPCB	Member

6. The Committee discussed the issues and finalized the guidelines on the following subjects:

"A. Containment and treatment of spillages from fuel filling operations at petrol pumps.

1. Petrol pumps located in areas with high groundwater table shall have secondary containment by way of double walled tanks or concrete protection walls so as to minimize groundwater and soil contamination. Ground water level of less than 4m shall be considered for such provision, to be verified from online data being reported by State/ Central Ground Water Board/ Authority. In such case, measures taken by Oil Marketing Company shall be placed in public domain and in case of contradictory view, view of State/ Central Ground Water Board/ Authority will prevail.

2. All new retail outlets shall have underground tanks and its ancillary components such as pipes, flexible connectors, pumps, fittings etc. protected from leaks due to corrosion by adopting materials conforming to IS standards with required protective coating as applicable.

3. Any major spillage of Petrol, Diesel, Lube Oil (more than 1 barrel-165 litres) occurs at fueling station, concerned OMC shall report to State Pollution Control Board, PESO and District Administration under intimation to CPCB within 24 hours of occurrence.

Operation of such Retail Outlet shall be stopped immediately.

OMCs will be held liable for Environmental Compensation (imposed by SPCBs/PCCs) and assessment of environmental damage (depending on extent of contamination in soil and groundwater) and site remediation. Consultant/ Expert agency appointed by OMCs for damage assessment and site remediation shall have minimum national/ international experience of 07 years in this field. Various approved methods shall be considered for cleaning underground contaminants.

Operation of retail outlet shall not be resumed till corrective measures to contain and stop spillages are implemented to the satisfaction of PESO and concerned SPCB.

4. All DUs shall have Auto Cut off Nozzles which shuts dispensation of fuel if its level in customer fuel tank reaches full capacity.

5. Breakaways to be installed for all the hoses of dispensing units to reduce spillage in the event of customer vehicles moves away with nozzle still in the fueling position.

6. Two pane swivels shall be installed for all the dispensing units for better positioning of nozzle while refueling so that it does not fall off accidently.

7. In pressurized dispensation, all dispensing units shall be installed with shear valves to cut the fuel flow from pipe line immediately upon accidental knocking of dispensing units from its position.

8. In pressurized system all Submersible Turbine Pumps (STPs) are to installed with mechanical leak detectors and in the event of pipeline leaks STPs shall stop pumping fuel from underground tanks.

9. Emergency stop button switch shall be provided on the Multi-Product Dispenser (MPD) to stop the dispensation in case of emergency.

10. Automation system shall be installed at all new retail outlets to alert in case of tank leak by way of auto gauging system.

11. All Retail Outlets shall provide overfill alarm through automation.

12. Measures for spill containment in fill point chambers and forecourt area shall be implemented as prescribed by PESO.

B. Check on leakages (Leakage Detection System) from underground storage tanks so as to prevent groundwater and soil contamination

1. All new retail outlets will have automation system installed which will provide reports on volume balance after every day operation and records shall be maintained.

2. Manual gauging shall be done once in a month and compare the same with Automatic Tank Gauging for accuracy.

3. Daily MS and HSD loss shall not exceed MoPNG prescribed limits. In case of leakage beyond such limits, matter shall be got analyzed by OMCs and further action shall be taken for ascertaining the reasons of losses. In case of leakage resulting in soil / groundwater contamination:

a. Concerned OMC shall report to State Pollution Control Board, PESO and District Administration under intimation to CPCB within 24 hours of occurrence. Operation of such Retail Outlet shall be stopped immediately.

b. Fuel shall be removed immediately from underground storage tank to prevent further release to environment. Measures to prevent explosion due to vapors released due to leakage as recommended by PESO shall be implemented immediately.

c. OMCs will be held liable for Environmental Compensation (imposed by SPCBs/PCCs) and assessment of environmental damage (depending on extent of contamination in soil and groundwater) and site remediation. Consultant/ Expert agency appointed by OMCs for damage assessment and site remediation shall have minimum national/ international experience of 07 years in this field. Various approved methods shall be considered for cleaning underground contaminants.

d. Operation of retail outlet shall not be resumed till corrective measures to contain and stop leakages are implemented to the satisfaction of PESO and concerned SPCB.

4. All underground tanks and pipelines shall be subjected to test for leaks every 5 years.

***C. Policy towards Treatment and disposal of sludge removed from underground tanks during cleaning**: Sludge shall be collected, stored and disposed as per Rule 8 of Hazardous Waste (Management and Transboundary) Rules, 2016 and amendments thereof and records shall be maintained.*

D. Installation, Operation and maintenance of Vapour Recovery System

1. All new retail outlets set up with sale potential of 300KL MS per month and setting up in cities with population more than 1

lakh will be provided with VRS. VRS should be functional by the time of sale of MS touch 300 KL per day. In case of failure of installation of VRS, Environment Compensation will be levied equivalent to the cost of VRS and this will further increase proportionate to the period of non-compliance.

2. Any new retail outlet set up in cities having population more than 10 lakh and having sale potential of 100 KL MS per month will be provided with VRS. VRS should be functional by the time of sale of MS touch 100 KL per day. In case of failure of installation of VRS, Environment Compensation will be levied equivalent to the cost of VRS and this will further increase proportionate to the period of non-compliance.

3. In case of Stage II YRS, dispensers shall be provided with flexible cover flap or other alternate system for proper covering of filling tank and therefore proper recovery of vapors.

4. OMCs are responsible for maintammg installed YRS systems. They have to maintain periodic inspections for AIL regulator as prescribed by Legal Metrology. Proper record shall be maintained.

5. Working of dispenser shall be interlinked with VRS functioning. Online system shall be developed within 06 months to monitor status of operation of VRS. In case of non-operation of VRS, the same shall be automatically reported to concerned OMC. YRS shall be brought into operation immediately within 24 hrs and in any case within 72 hrs failing which sale of MS shall be stopped from the fuelling station. Proper records of operation of YRS shall be maintained.

6. Work zone monitoring for Total VOC and Benzene shall be conducted by OMCs for petrol pumps selling more than 300 KL/ month and more than 10 lakh population (in first phase) by E(P)Act, 1986 approved labs once in a year to check compliance with OHSAS norms and report shall be submitted to SPCB. In addition, pilot study shall be conducted by OMCs through expert institutions for online monitoring of voes.

***E. Ground water and soil quality monitoring within petrol pump** selling more than 300 KL/ month and more than 10 lakh population shall be conducted by OM Cs once in two years through E(P)Act, 1986 approved labs for the following parameters from the nearest source and report submitted to SPCB:*

I. *Total petroleum hydrocarbons*
II. *BTEX*
Ill. *Ethanol*
IV. *Methyl Tertiary Butyl Ether*

V. PAH

Enforcement agencies including SPCB can collect samples in and around petrol pump to check contamination.

F. Measures for protection of Worker's Health

1. All workers engaged at retail outlets are being covered under ESL OMC dealers shall implement the personal protective equipment (PPE) as per labor laws.

2. IEC (Information Education Communication) activities should be organized by OMC dealers for workers at regular intervals in order to sensitize them about harmful impacts of VOC emissions.

***G. Audit of all protection measures and monitoring system implemented at petrol pumps**: PESO shall conduct audit of tanks and fuel equipments including pipes, overfill protection equipments and alarm system on annual basis and maintain records.*

***H. Siting criteria of Retail Outlets**: New retail Outlets shall not be located within a radial distance of 50 meters (from fill point/ dispensing units/ underground storage tanks/ vent pipe whichever is nearest) from schools and hospitals (10 beds and above). 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 new retail outlet and sensitive areas shall be less than 30 meters. No high tension line shall pass over the retail outlet.*

***2. Feasibility study of new petrol pumps**: MoPNG in the meeting convened by CPCB on February 08, 2019 in compliance of order dated 18.1.2019 OA No. 86/2019: Gyanprakhash @ Pappu Singh vs Uol informed that the any new outlet proposed to be set up by oil marketing company is after conducting feasibility study.*

As regard to preventive measures for minimizing pollution, all new petrol pumps shall have VRS as per CPCB plan, and, shall follow guidelines for setting up of petrol pumps."

7. The report states that the timeline for installation of VRS as per above plan was to be finalized in a separate meeting before today's hearing and the CPCB was to place the guidelines on its website.

8. Learned Counsel appearing for the CPCB states that the guidelines have now been placed on the website. He is not aware of further steps.

9. We may note that installation of VRS is important as in addition to reducing the release of VOC, VRS also help in reduction of particulate matter 2.5 concentration. The VOCs released are converted into semi volatiles and these subsequently results in formation of secondary organic aerosols which may contribute to 12-15% of particulate matter of 2.5 concentrations.[1] Installation of vapour recovery systems is necessary to reduce the risks of toxic chemicals such as benzene, toluene and ethyl benzene.[2] Cars and gasoline-burning engines are large sources of volatile organic compounds (VOCs).[3] VOCs are a precursor to ground level ozone, the main constituent of summer time smog. Exposure to ozone can damage crops and ecosystems, and presents a direct risk to human health. Benzene, for example, is a genotoxic human carcinogen. Benzene is a potent carcinogen and is blamed for leukemia. The WHO estimates a 4 in 1 million risk of leukemia on exposure to benzene to a concentration of 1µg/m3.[4] Thus, Vapour recovery systems need to be installed at service stations to reduce emissions of VOCs. The impact of VOCs on the

[1] Report of CPCB dated 23.03.2019 in the present matter
[2] Aditya N. Prasad & Ors. Vs. Union of India & Ors. O.A. No. 147/2016, dated 28.09.2018.
[3] https://www3.epa.gov/region1/airquality/oz_prob.html
[4] https://www.who.int/ipcs/features/benzene.pdf

environment and public health has been noted by this Tribunal even earlier.[5]

10. Mr. Rakesh Kumar, learned Counsel appearing for the oil marketing companies seeks to appear on behalf of oil marketing companies, only to seek adjournment for which we find no justification.

11. In view of the above, the Expert Committee having already gone into the matter, finalization of timelines as contemplated in the report, if not yet done, may be done within one month from today which will be the responsibility of the Secretary, MoPNG and the Chairman, CPCB. Further action in terms of the report may be ensured. We may also add that a safe distance from the residential areas must be maintained for any new outlet to be set up which may also be specified within one month, keeping in view the health and safety of the inhabitants.

The applications are disposed of.

Adarsh Kumar Goel, CP

S.P. Wangdi, JM

K. Ramakrishnan, JM

[5] Aditya N. Prasad & Ors. Vs. Union of India & Ors. O.A. No. 147/2016, Charudatt Koli Versus M/s Sea Lord Containers Ltd. –Execution Application No. 05/2018 (THC)IN Original Application No. 40/2014

Dr. Nagin Nanda, EM

July 22, 2019
Original Application No. 31/2019 and connected matter
DV

/True Copy /

VBR Menon

CENTRAL POLLUTION CONTROL BOARD

DELHI 110 032

B-13011/1/2019-20/AQM 10802-10847 January 07, 2020

OFFICE MEMORANDUM

Sub: Guidelines for Setting Up of New Petrol Pumps in Compliance of Hon'ble NGT order dated January 18, 2019 in OA No. 86/2019: Gyanprakhash@ Pappu Singh vs GoI & Ors -regarding.

Hon'ble National Green Tribunal, vide order dated January 18, 2019 in OA No. 86/2019: Gyanprakhash@ Pappu Singh vs GoI & Ors directed Central Pollution Control Board and MoPNG to look into the issue of setting up of large number of petrol pumps in the country and directed that appropriate guidelines be issued by the Central Pollution Control Board in exercise of statutory power.

An Expert Committee comprising of members from IIT Kanpur, NEERI, IIP, TERI, MoPNG and CPCB was constituted to frame Guidelines for setting up of new Petrol Pumps including siting criteria and pollution prevention and control measures

The guidelines were placed in public domain and comments/suggestions/objections were invited from public and concern stakeholder and these were reviewed and guideline have been finalised.

The final Guidelines prepared by Expert Committee are hereby circulated for implementation by concerned stakeholders. These guidelines are hereby issued with the approval of the Competent Authority.

(V.K. Shukla)
Additional Director, AQM Div.

Encl.: As Above

To.

1. As per List Enclosed

Copy to:

1. Joint Secretary
   CP Division
   Ministry of Environment, Forest and Climate Change
   Indira Paryavaran Bhavan,
   Jorbagh Road, New Delhi – 110 003
2. PS to CCB
3. PS to MS

GUIDELINES FOR SETTING UP OF NEW PETROL PUMPS

A. Containment and treatment of spillages from fuel filling operations at petrol pumps:

1. Petrol pumps located in areas with high groundwater table i.e. groundwater levels less than 04 meters shall have secondary containment by way of double walled tanks or concrete protection walls so as to minimize groundwater and soil contamination. It shall be the responsibility of OMC to properly get measured groundwater level at the site of proposed petrol pump and ensure implementation of these adequate protection measures for such sites. Details of measures taken by Oil Marketing Company shall be placed in public domain and in case of contradictory view, view of State/ Central Ground Water Board/ Authority will prevail.

2. All new retail outlets shall have underground tanks/ above ground tank and its ancillary components such as pipes, flexible connectors, pumps, fittings etc. protected from leaks due to corrosion by adopting materials (HDPE/ Mild Steel etc.) with required protective coating, as applicable, duly approved by PESO.

3. Any major leakage/ spillage of Petrol, Diesel, Lube Oil (more than 1 barrel-165 litres) occurs at fueling station, concerned OMC shall report to State Pollution Control Board, PESO and District Administration under intimation to CPCB within 24 hours of occurrence.

   Operation of concerned underground storage tank (UST) and its ancillary components shall be stopped immediately and not be resumed till corrective measures to contain and stop leakage/ spillages are implemented to the satisfaction of PESO and concerned SPCB.

   OMCs will be held liable for Environmental Compensation (imposed by SPCBs/PCCs) and assessment of environmental damage (depending on extent of contamination in soil and groundwater) and site remediation. Consultant/ Expert agency appointed by OMCs for damage assessment and site remediation shall have minimum national/ international experience of 5 years in this field. Various approved methods shall be considered for cleaning underground contaminants.

4. All DUs shall have Auto Cut off Nozzles which shuts dispensation of fuel if its level in customer fuel tank reaches full capacity.

5. Breakaways to be installed for all the hoses of dispensing units to reduce spillage in the event of customer vehicles moves away with nozzle still in the fueling position.

6. Single/ double plane swivel with breakaway coupling shall be installed for all the dispensing units for better positioning of nozzle while refueling so that it does not fall off accidently.

7. In pressurized dispensation, all dispensing units shall be installed with shear valves to cut the fuel flow from pipe line immediately upon accidental knocking of dispensing units from its position.

8. In pressurized system all Submersible Turbine Pumps (STPs) are to installed with line leak detectors and in the event of pipeline leaks STPs shall stop pumping fuel from underground tanks.

9. Emergency stop button switch shall be provided on the Multi-Product Dispenser (MPD) to stop the dispensation in case of emergency.

10. Automation system shall be installed at all new retail outlets to alert in case of tank leak by way of auto gauging system approved by PESO.

11. All Retail Outlets shall provide overfill alarm through automation.

12. Measures for spill containment in fill point chambers and forecourt area shall be implemented as prescribed by PESO.

B. **Check on leakages (Leakage Detection System) from underground storage tanks so as to prevent groundwater and soil contamination:**

1. All new retail outlets will have automation system installed which will provide reports on volume balance after every day operation and records shall be maintained.

2. Manual gauging shall be done once in a month and compare the same with Automatic Tank Gauging for accuracy.

3. Daily MS and HSD loss shall not exceed MoPNG prescribed limits. In case of leakage beyond such limits, matter shall be got analyzed by OMCs and further action shall be taken for ascertaining the reasons of losses. In case of leakage resulting in soil / groundwater contamination:

   a. Concerned OMC shall report to State Pollution Control Board, PESO and District Administration under intimation to CPCB within 24 hours of occurrence. Operation of such underground storage tank (UST) and its ancillary components shall be stopped immediately.
   b. Fuel shall be removed immediately from underground storage tank to prevent further release to environment. Measures to prevent explosion due to vapors released due to leakage as recommended by PESO shall be implemented immediately.

c. OMCs will be held liable for Environmental Compensation (imposed by SPCBs/PCCs) and assessment of environmental damage (depending on extent of contamination in soil and groundwater) and site remediation. Consultant/ Expert agency appointed by OMCs for damage assessment and site remediation shall have minimum national/ international experience of 05 years in this field. Various approved methods shall be considered for cleaning underground contaminants.

d. Operation of Underground tank and its ancillary components shall not be resumed till corrective measures to contain and stop leakages are implemented to the satisfaction of PESO and concerned SPCB.

4. All underground tanks and pipelines shall be subjected to test for leaks every 7 years.

C. **Policy towards Treatment and disposal of sludge removed from underground tanks during cleaning:**

Sludge shall be collected, stored and disposed as per Rule 8 of Hazardous Waste (Management and Transboundary) Rules, 2016 and amendments thereof and records shall be maintained.

D. **Installation, Operation and maintenance of Vapour Recovery System:**

1. All **new retail** outlets set up with sale potential of 300KL MS per month and setting up in cities with population more than 1 lakh will be provided with VRS. VRS should be functional by the time of sale of MS touch 300 KL. In case of failure of installation of VRS, Environment Compensation will be levied by SPCBs/ PCCs equivalent to the cost of VRS and this will further increase proportionate to the period of non-compliance.

2. Any **new retail** outlet set up in cities having population more than 10 lakh and having sale potential of 100 KL MS per month will be provided with VRS. VRS should be installed within a period 03 months from the day of sale of MS touch 100 KL. In case of failure of installation of VRS, Environment Compensation will be levied by SPCBs/ PCCs equivalent to the cost of VRS and this will further increase proportionate to the period of non-compliance.

3. In case of Stage II VRS, nozzle shall be provided with flexible cover flap or other alternative system for proper covering of filling tank and therefore proper recovery of vapors.

4. OMCs are responsible for maintaining installed VRS. They have to maintain periodic inspections for A/L regulator as prescribed by Legal Metrology. Proper record shall be maintained.

5. Working of dispenser shall be interlinked with VRS functioning. Online system shall be developed within 06 months to monitor status of operation of VRS. In case of non-operation of VRS, the same shall be automatically reported to concerned OMC. VRS shall be brought into operation immediately within 24 hrs and in any case within 72 hrs failing which sale of MS shall be stopped from the fueling station. Proper records of operation of VRS shall be maintained.

6. Work zone monitoring for Total VOC and Benzene shall be conducted by OMCs for petrol pumps selling more than 300 KL/ month and more than 10 lakh population (in first phase) by E(P)Act, 1986 approved labs once in a year to check compliance with OSHA norms (Time-Weighted Average) and report shall be submitted to SPCB. In addition, pilot study shall be conducted by OMCs through expert institutions for online monitoring of VOCs.

E. **Ground water and soil quality monitoring within petrol pump selling more than 300 KL/ month and more than 10 lakh population shall be conducted by OMCs once in two years through E(P)Act, 1986 approved labs for the following parameters from the nearest source and report submitted to SPCB:**

Permissible Limit

Sr.No.	Parameter	Permissible Limit
1.	Total petroleum hydrocarbons	**600µg/l**
2.	BTEX	i. Benzene- **950µg/l** ii. Toluene- **300µg/l** iii. Xylenes- a. o-xylene- **350µg/l** b. m & p- xylene- **200µg/l**
3.	Ethanol	**1400 µg/l**
4.	Methyl Tertiary Butyl Ether	**13µg/l**
5.	PAH	**0.0001µg/l**

Enforcement agencies including SPCB can collect samples in and around petrol pump to check contamination.

F. **Measures for protection of Worker's Health**

1. All workers engaged at retail outlets may be covered under ESI. OMC dealers shall implement the personal protective equipment (PPE) as per labor laws.

2. IEC (Information Education Communication) activities should be organized by OMC dealers for workers at regular intervals in order to sensitize them about harmful impacts of VOC emissions.

G. **Audit of all protection measures and monitoring system implemented at petrol pumps:**

PESO shall conduct audit of tanks and fuel equipment including pipes, overfill protection equipment and alarm system on annual basis and maintain records.

H. **Siting criteria of Retail Outlets:**

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 schools, hospitals (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 new retail outlet from schools, 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.

These guidelines are supplementary to all existing relevant Rules, Guidelines, Orders etc.

/True copy /

VBR Menon

EXTRACT OF ARTICLE NOS. 243 ZD and 243 ZE OF THE CONSTITUTION

(1) 243ZD. Committee for district planning.

- (1) There shall be constituted in every State at the district level a District Planning Committee to consolidate the plans prepared by the Panchayats and the Municipalities in the district and to prepare a draft development plan for the district as a whole.
- (2) The Legislature of a State may, by law, make provision with respect to-
    - (a) the composition of the District Planning Committees;
    - (b) the manner in which the seats in such Committees shall be filled:

Provided that not less than four-fifths of the total number of members of such Committee shall be elected by, and from amongst, the elected members of the Panchayat at the district level and of the Municipalities in the district in proportion to the ratio between the population of the rural areas and of the urban areas in the district;

- (c) the functions relating to district planning which may be assigned to such Committees;
- (d) the manner in which the Chairpersons of such Committees shall be chosen.

- (3) Every District Planning Committee shall, in preparing the draft development plan,-
    - (a) have regard to-
        - (i) matters of common interest between the Panchayats and the Municipalities including spatial planning, sharing of water and other physical and natural resources, the

integrated development of infrastructure and environmental conservation;

- (ii) the extent and type of available resources whether financial or otherwise;

- (b) consult such institutions and organisations as the Governor may, by order, specify.

- (4) The Chairperson of every District Planning Committee shall forward the development plan, as recommended by such Committee, to the Government of the State.

(II) 243ZE. Committee for Metropolitan planning.

- (1) There shall be constituted in every Metropolitan area a Metropolitan Planning Committee to prepare a draft development plan for the Metropolitan area as a whole.

- (2) The Legislature of a State may, by law, make provision with respect to-

  - (a) the composition of the Metropolitan Planning Committees;

  - (b) the manner in which the seats in such Committees shall be filled:

Provided that not less than two-thirds of the members of such Committee shall be elected by, and from amongst, the elected members of the Municipalities and Chairpersons of the Panchayats in the Metropolitan area in proportion to the ratio between the population of the Municipalities and of the Panchayats in that area;

  - (c) the representation in such Committees of the Government of India and the Government of the State and of such organisations and Institutions as may be deemed necessary for carrying out the functions assigned to such Committees;

  - (d) the functions relating to planning and coordination for the Metropolitan area which may be assigned to such Committees;

- (e) the manner in which the Chairpersons of such Committees shall be chosen.

- (3) Every Metropolitan Planning Committee shall, in preparing the draft development plan,-
  - (a) have regard to-
    - (i) the plans prepared by the Municipalities and the Panchayats in the Metropolitan area;
    - (ii) matters of common interest between the Municipalities and the Panchayats, including co-ordinated spatial planning of the area, sharing of water and other physical and natural resources, the integrated development of infrastructure and environmental conservation;
    - (iii) the overall objectives and priorities set by the Government of India and the Government of the State;
    - (iv) the extent and nature of investments likely to be made in the Metropolitan area by agencies of the Government of India and of the Government of the State and other available resources whether financial or otherwise;
  - (b) consult such institutions and organisations as the Governor may, by order, specify.

- (4) The Chairperson of every Metropolitan Planning Committee shall forward the development plan, as recommended by such Committee, to the Government of the State.

***/**

/True Copy/

VBR Menon

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24-09-2021

CORAM

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

WP No.43434 of 2016
And
WMP No.37295 of 2016

A.Packrisamy .. Petitioner

vs.

1.The Joint Chief Controller of Explosive
Petroleum and Explosives Organisation,
South Circle,
A and D Wing Block 1-8,
II Floor. Shastri Bhavan,
26, Haddows Road,
Nungambakkam,
Chennai – 600 006.

2.The District Collector,
District Collector Office,
Tiruvarur.

3.The District Revenue Officer,
District Revenue Office,
Tiruvarur.

4.The Revenue Divisional Officer,
Tiruvarur.

5.The Tahsildar,
Tiruvarur.

6.The Fire Service Department Officer,
Fire Service Department,
Tiruvarur.

7.Essar Oil Limited,
Chennai House, 5th Floor,
No.7, Esplanade,
Chennai – 600 108.

8.Chitra .. Respondents

Writ Petition is filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Mandamus, forbearing the first and third respondents from issuing 'Explosive License' and 'No Objection Certificate' respectively under Petroleum Rules 2002 in favour of the seventh and eighth respondents for setting Petroleum Service Station (PSS) at R.S.111/B1, Mangudi Village, Tiruvarur-Thiruthuraipoondi Main Road, Tiruvarur District, without considering the objection raised in representation dated 27.06.2016 of the petitioner.

For Petitioner : Mr.R.Ravi

For Respondent-1 : Mr.C.G.Kumar,
Central Government Standing
Counsel.

For Respondents-2to6 : Mr.C.Kathiravan,
Government Advocate.

For Respondent-7 : Mr.Abdul Saleem

For Respondent-8 : Ms.S.R.Shenbaga Babu

O R D E R

The writ on hand has been instituted to forbear the respondents 1 and 3 from issuing 'Explosive License' and 'No Objection Certificate' respectively under Petroleum Rules 2002 in favour of the seventh and eighth respondents for setting Petroleum Service Station (PSS) at R.S.111/B1, Mangudi Village, Tiruvarur-Thiruthuraipoondi Main Road, Tiruvarur District, without considering the objection raised by the petitioner in representation dated 27.06.2016.

2. The petitioner is a resident of Mangudi village and an agriculturist by avocation and also run a Provision Store. The petitioner is residing at Tiruvarur-Thiruthuraipoondi Main Road and the proposed retail outlet sought to be located in the land belonging to the eighth respondent's husband Mr.G.Gurunathan bearing R.S.No.111/B1 of Mangudi Village

shares common boundary on Northern side of the residence of the petitioner.

3. The petitioner states that in the Tiruvarur-Thiruthuraipoondi Main Road, very close to the proposed site of locating Petroleum Retain Outlet, a Nursery and a Primary School namely 'Thai Nursery' and 'Primary School' having the strength of not less than 300 children, are located. The said school was established ten years back from the date of filing of the writ petition and it is located very close to the proposed Retail Outlet. A Marriage Hall and a Welding Shop are also located close to the proposed site and setting up of Petroleum Retail Outlet close to such places of public assembly is clearly prohibited under the norms of fire safety requirements.

4. During February-March 2016, the petitioner came to know that the public belonging to Mangudi Village raised an objection for setting up of Petroleum Retail Outlet at the said location stating that it would create hazardous to the public and cause potential danger for the public assembly near the site. Thus, the petitioner took up the case and filed the present writ

petition.

5. The petitioner made several representations citing all these irregularities and made a request not to issue 'NOC' as well as the 'License' granted by the District Authority in favour of the seventh respondent. Since the efforts taken by the petitioner went in vain, he is constrained to move the present writ petition.

6. The third respondent-District Revenue Officer filed counter statement stating that the seventh respondent has applied for issuing 'NOC' for setting up Petroleum Retail Outlet in R.S.No.111/B1, Mangudi Village, Tiruvaru Taluk, Tiruvarur District vide his application dated 20.01.2016. The said application was processed, inspection was conducted and thereafter 'NOC' was issued by the third respondent vide Rc.692/C4/2016 dated 19.10.2016. Thus, the writ petition is to be rejected.

7. In view of the public importance raised by the learned counsel for the petitioner, this Court has gone into the role of the Pollution Control

Board and the District Authority for the purpose of granting 'NOC', conducting inspection and to initiate all further actions in the event of any violation of the guidelines.

8. The respondents have stated that they have acted in accordance with the provisions of the Petroleum Act, Rules and Regulations and therefore, the present writ petition is filed by the petitioner without any acceptable ground and thus to be rejected.

9. The Oil Companies, no doubt, are interested in protecting their business activities. But the Oil Corporations are 'State' within the meaning of Article 12 of the Constitution of India. Thus, the Oil Corporations are bound to ensure that the right to life enunciated under Part III of the Constitution, which is a fundamental right of every citizen, is protected. 'Freedom of Trade' is enunciated under the Constitution is subject to the right of other citizen of this Great Nation. While granting permission, mechanical approach is impermissible. Retail Petrol Bunks are creating lot of health issues and therefore, the mitigating factors, surrounding

atmosphere, the presence of schools, oldage homes and hospitals are also to be taken into consideration, while granting NOC by the District Authorities and also the license by the Explosive Department. However, the people residing in residences are complaining in many places that such Petrol Bunks are allowed to function very close to the residential premises and the same is causing lot of health issues to the children, oldage and the sick people.

10. Guidelines are issued and the Central Pollution Control Board also issued the norms. Certain measures are taken to avoid such hazardous substances affecting the health of the citizen residing close to the Retail Petrol Bunks. However, the irregularities are happening in many areas, more specifically, in urban locations. It cannot be denied that many such Retail Petrol Bunks are functioning very close to the residential areas, schools etc. Protection of health is an integral part of Article 21 of the Constitution of India. Thus, while granting NOC and License for running Retail Petrol Bunks, the Authorities must ensure 'subjective satisfaction'. The persons running the Retail Petrol Bunks may flout the instructions and

the regulations. However, the Authorities Competent, while granting NOC, license and after commencement of business, have to conduct inspections frequently and thereby ensure that the guidelines are followed and health issues to the persons residing nearby are being protected.

11. 'Subjective satisfaction' includes that before grant of NOC and License, the Authorities Competent must ensure that the schools, oldage homes, hospitals and the residential areas are not closely situated, wherein it is proposed to run Retail Petrol Bunks. In other words, if any schools, oldage homes and hospitals are very close to the proposed site, then such NOC and License should not be granted in the interest of the public at large and to protect the fundamental right of every citizen for healthy life.

12. It is needless to state that the rules, regulations and the guidelines are not meant for mechanical implementation. The mitigating factors affecting the children, senior citizen and the health of the people in general, are also to be taken into consideration. The Authorities should borne in mind that if such Retail Petrol Bunks are allowed to run very close

to their own residences, then what would be their mindset and the consequences. Thus, the Authorities are expected to put themselves in the place of the victim, who is making such complaints and decide the issues to their subjective satisfaction and by applying the relevant rules and regulations.

13. The National Green Tribunal is also dealing with these issues. Several orders are passed. The Central Pollution Control Board also issued directions, which are to be implemented by the State Pollution Control Board. But it is unfortunate that the State Pollution Control Board is not functioning upto the mark and to the expectation of the people for the purpose of controlling the pollution and to protect the health issues and complaints raised by the citizen.

14. As far as the children studying in schools, oldage homes and hospitals are concerned, their welfare can never be compromised by the Authorities. No doubt, development is essential. However, such developments should not affect the health of the children, sick and oldage

people.

15. 'Right to Life' is a fundamental right ensured under the Constitution of India. The health of the children is to be protected in all circumstances and any hazards on this aspect on account of installation of Retail Petrol Bunks nearby schools, residential areas, oldage homes and hospitals, are to be seriously viewed. The Competent Authorities cannot mechanically adopt the rules and regulations and grant NOC. Such an approach would result in non-application of mind with reference to the issue, which is bound to be considered in the interest of the general public.

16. The Authorities Competent are expected to borne in their mind that all such rules, regulations and guidelines are issued only in the interest of public at large and to protect the rights of the citizen, including the right to life. Thus, while implementing the regulations, mere measurement of an area is insufficient and the other mitigating factors and the surrounding areas are also to be assessed, in order to satisfy that the Authorities have applied their mind.

17. Thus, even in cases, where the Authorities formed an opinion that the guidelines issued for installation of Retail Petrol Bunks are satisfied with reference to the distance, area etc., the other factors affecting the health issues of the residents, who all are closely residing in the proposed site, are also to be taken into consideration in order to uphold the fundamental right of life to the citizen, who all are residing in the particular locality. Thus, the Oil Corporations are duty bound to ensure that they are not violating the constitutional mandates involving the fundamental right of citizen.

18. It is important to understand that all rules and regulations for grant of NOC and License to run Retail Petrol Bunks are subject to fundamental rights ensured to the citizen of this Great Nation under the Indian Constitution. Thus, the right to life became the first priority and will override all other guidelines, rules and regulations issued by the Authorities Competent.

19. This being the principles, while implementing the rules and regulations, the Authorities are duty bound to consider that the right to life of the citizen of the nearby locality, is also taken care and protected. In the event of any such violation, the residents, schools, oldage homes and hospitals are entitled to make complaints for removal of such Petrol Bunks from such objectionable locations.

20. Thus, application of mind on the part of the Authorities includes likelihood of causing any danger, health hazards, quality of air, ground water level and other factors affecting the normal life of the residents of that locality are to be taken into consideration, while granting NOC or License for setting up Retail Petrol Bunks in a particular location.

21. As far as the present writ petition is concerned, the petitioner has raised several objections. However, those objections were not considered while conducting inspection by the Authorities.

22. The respondents contended that they have followed the guidelines as discussed above. Adherence of guidelines is one aspect of the matter and other relevant factors are also to be considered in view of the fundamental right promised to every citizen under the Indian Constitution.

23. In view of the facts and circumstances, the respondents 1 and 3 are directed to conduct a revised inspection in respect of the subject Retail Petrol Bunk and consider the objections raised by the public as well as by the petitioner and by the people residing in that locality and make an assessment and accordingly, pass an order by following the procedures as contemplated under the Statutes and the Rules as applicable. The said exercise is directed to be done by the respondents 1 and 3, within a period of eight weeks from the date of receipt of a copy of this order. The petitioner is permitted to furnish copies of the objections and relevant documents to the respondents 1 and 3, enabling them to consider the issues in a right perspective.

24. With the above directions, the writ petition stands disposed of. However, there shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

24-09-2021

Index : Yes/No.
Internet : Yes/No.
Speaking Order/Non-Speaking Order.
Svn

To

1.The Joint Chief Controller of Explosive
Petroleum and Explosives Organisation,
South Circle,
A and D Wing Block 1-8,
II Floor. Shastri Bhavan,
26, Haddows Road,
Nungambakkam,
Chennai – 600 006.

2.The District Collector,
District Collector Office,
Tiruvarur.

3.The District Revenue Officer,
District Revenue Office,
Tiruvarur.

4.The Revenue Divisional Officer,
Tiruvarur.

5.The Tahsildar,
Tiruvarur.

6.The Fire Service Department Officer,
Fire Service Department,
Tiruvarur.

/True copy/

VBR Menon

Item No.7:- **Court No.1**

BEFORE THE NATIONAL GREEN TRIBUNAL
SOUTHERN ZONE, CHENNAI

(Through Video Conference)

Original Application No. 176 of 2020 (SZ)

IN THE MATTER OF:

V.B.R. Menon, B.E. (Mech), MBA (IIMA), LLB,
Advocate
Flat No.4B, Brook Dale Apartments,
No.12, P.T. Rajan Salai,
K.K. Nagar, Chennai – 600 078.

… Applicant(s)

Versus

The Commissioner of Police
Trichy City Police Office
Pudukkottai Main Road, Subramaniapuram
Tiruchirappalli – 620 020 and Ors.

…Respondent(s)

For Applicant(s): Mr. V.B.R. Menon (Party in Person)

For Respondent(s): Dr. D. Shanmuganathan for R1, R4 & R5.
Mr. S. Sai Sathya Jith for R2.
Mr. Abdul Saleem and Mr. S. Saravanan for R6.
Mr. T.N.C. Kaushik for R7.

Judgment Pronounced on: 01st July, 2022.

CORAM:

HON'BLE Mr. JUSTICE K. RAMAKRISHNAN, JUDICIAL MEMBER

HON'BLE Dr. SATYAGOPAL KORLAPATI, EXPERT MEMBER

ORDER

Judgment pronounced through Video Conference. The original application is disposed of with directions vide separate Judgment.

Pending interlocutory application, if any, shall stand disposed of.

Sd/-
Justice K. Ramakrishnan, JM

Sd/-
Dr. Satyagopal Korlapati, EM

O.A. No.176/2020 (SZ),
01st July 2022. Mn.

Item No.7:- **Court No.1**

BEFORE THE NATIONAL GREEN TRIBUNAL
SOUTHERN ZONE, CHENNAI

(Through Video Conference)

Original Application No. 176 of 2020 (SZ)

IN THE MATTER OF:

V.B.R. Menon, B.E. (Mech), MBA (IIMA), LLB,
Advocate
Flat No.4B, Brook Dale Apartments,
No.12, P.T. Rajan Salai,
K.K. Nagar, Chennai – 600 078.

… Applicant(s)

Versus

1) **The Commissioner of Police**
Trichy City Police Office
Pudukkottai Main Road, Subramaniapuram
Tiruchirappalli – 620 020.

2) **Joint Chief Environmental Engineer (a/c)**
Tamil Nadu Pollution Control Board
No.25, Developed Plots, Thuvakudy,
Trichy – 620 015.

3) **The Joint Chief Controller of Explosives**
A and D Wing, Block 1 – 8,
2nd Floor, Shastri Bhavan,
No.26, Haddows Road, Nungambakkam,
Chennai – 600 006.

4) **The Commissioner**
Trichy City Municipal Corporation
No.58, Bharathidasan Salai,
Opp. Campion School, Cantonment,
Tiruchirappalli – 620 001.

5) **The District Collector**
Trichy District
District Collector Office,
Raja Colony, Tiruchirappalli – 620 001.

6) **M/s. Indian Oil Corporation Limited**
Represented by the Divisional Manager
3rd Floor, No.B-35, Shastri Road
Thillai Nagar, Trichy – 620 018.

7) **The Regional Director**
Regional Directorate (South)
Central Pollution Control Board
2nd Floor, No.77-A, South Avenue Road,
Ambattur Industrial Estate,
Chennai – 600 058.

(R7 - Impleaded as per order in I.A. No.97/2021 dated 16.07.2021)

…Respondent(s)

For Applicant(s): Mr. V.B.R. Menon (Party in Person)

For Respondent(s): Dr. D. Shanmuganathan for R1, R4 & R5.
Mr. S. Sai Sathya Jith for R2.
Mr. Abdul Saleem and Mr. S. Saravanan for R6.
Mr. T.N.C. Kaushik for R7.

Earlier Judgment Reserved on: 09th December, 2021.

Case Reopened on: 10th February, 2022.

Judgment Reserved on: 28thMarch, 2022.

Judgment Pronounced on: 01st July, 2022.

CORAM:

HON'BLE Mr. JUSTICE K. RAMAKRISHNAN, JUDICIAL MEMBER

HON'BLE Dr. SATYAGOPAL KORLAPATI, EXPERT MEMBER

Whether the Judgment is allowed to be published on the Internet – Yes/No

Whether the Judgment is to be published in the All India NGT Reporter – Yes/No

J U D G M E N T

Delivered by Justice K. Ramakrishnan, Judicial Member

1. The grievance in this application is regarding the establishment of new road side Petroleum Retail Outlet at Sy. No.2470, Ward – B, Block – 38 of Thimmarayasamudhiram Village, Ammamandapam, Srirangam, Tiruchirappalli by the 6th Respondent against the siting criteria provided by the Central Pollution Control Board (CPCB) in Clause "H" of the Office Memorandum No. B-13011/1/2019-20/AQM/10802-10847 dated

07.01.2020 and clarification issued as per Circular dated 16.01.2020 and the norms prescribed under Circular No.12-2009 by Indian Road Congress (IRC).

2. The applicant reiterated the ill effects of establishment of Petroleum Retail Outlet on account of emission of harmful petroleum vapour as observed by the Principal Bench of National Green Tribunal in **Original Application No.147 of 2016 (PB)**. As per the final order dated 22.07.2019 passed by the Principal Bench in **Original Application Nos.31 of 2019 and 86 of 2019**, the Central Pollution Control Board had issued an Office Memorandum mentioned above prescribed certain norms including siting criteria for establishing new Petroleum Retail Outlet, but the same has not been complied with by the 6thRespondent. The jurisdictional Inspector of Police had submitted a report dated 24.01.2020 objecting to the proposal citing various problems in that area, if the same is allowed to operae. But discarding the same, the 1st Respondent had issued NOC to start the Petroleum Retail Outlet in the disputed area. Necessary enquiry as contemplated under Rule 144 (7) r/w Rule 144 (1) and 144 (5) of the Petroleum Rules, 2002 as observed by the Division Bench of the Hon'ble High Court of Madras at Madurai Bench in its Judgment dated 05.08.2019 in **W.P. (MD) No.5690 of 2019**has not been conducted by the 1stRespondent before issuing the NOC. This was also against the directions issued by the Principal Bench in **Original Application Nos. 31 of 2019 and 86 of 2019** dated 22.07.2019, on the basis of which, the guidelines were issued by the CPCB by Office Memorandum dated 07.01.2020.

3. It was also alleged in the application that it was against the directions issued by the Division Bench of the Hon'ble High Court of Madras in **W.P. No.691 of 2017**. Since the authorities have not complied with the statutory obligation, the applicant has no other remedy, except to approach this Tribunal seeking the following interim as well as final relief:-

> *"Interim Relief:*
> *(a) Injunct the 6th Respondent from commissioning and operating the proposed Petroleum Retail Outlet at Survey No. 2470, Ward-B, Block-38, Thimmarayasamudhiram village, Ammamandapam, Srirangam, Tiruchirppalli, pending disposal of this application and*

(b) Pass such further order or orders as may be fit proper and necessary in the facts and circumstances of the case.

Main Relief:

(a) Permanently forebear the 6th respondent to opening and operating a New Road-side Petroleum Retail Outlet at Survey No. 2470, Ward-B, Block-38, Thimmarayasamudhiram village, Ammamandapam, Srirangam, Tiruchirppalli, adjacent to several residential buildings and commercial building and in violation to the siting criteria prescribed by the Central Pollution Control Board (CPCB) in clause-H of the Office Memorandum No. B-13011/1/2019-20/AQM/10802-10847 dated 07.01.2020 and the norms prescribed under the Circular No. 12-2009 by the Indian Road Congress.

(b) Pass such further order or orders as may be fit proper and necessary in the facts and circumstances of the case and thus render justice."

4. Vide Order dated 17.09.2020, after considering the pleadings, this Tribunal had satisfied that there arose a substantial question of environment and admitted the matter and in order to ascertain the genuineness of the allegations made in the application, this Tribunal had appointed a Joint Committee comprising of **(i)** the District Collector, Tiruchirappalli District or a Senior Officer not below the rank of Assistant Collector or Sub Divisional Magistrate deputed by the District Collector and **(ii)** a Senior Officer from the Tamil Nadu Pollution Control Board as designated by its Chairman to inspect the area in question and submit a factual as well as action taken report, if there is any violation in respect of siting criteria as alleged by the applicant. The Joint Committee was also directed to give the descriptions of the area in question and also give the location map showing the distance of the residential buildings and other institutions from the proposed petroleum outlet to be operated by the 6th respondent. The Tamil Nadu Pollution Control Board was designated as the nodal agency for co-ordination and also for providing necessary logistics for this purpose.

5. The 1st Respondent filed counter affidavit denying the allegations made in the application regarding the issuance of NOC by the 1st Respondent ignoring the report submitted by the jurisdiction Inspector of Police dated 24.01.2020. The permission was granted after conducting detailed field inspection by the Inspector of Police, Trichy and the Assistant Commissioner of Police, Srirangam Range and based on the recommendations, NOC has been issued vide Proceedings Na.Ka. No.1653/E1/2020 dated 26.02.2020 by the District Fire Officer. Only after

considering the reports, the same has been granted. All necessary enquires were conducted before granting the same. The CPCB guidelines and other aspects have to be complied with by the 6th Respondent when the sale of the motor spirit touches 300 KL only by providing VRS. The NOC has been issued, considering the public interest in establishing the unit.

6. The 2nd Respondent filed a reply in form of report in tune with the report submitted by the Joint Committee.

7. The 4th Respondent filed counter contending that the application is not maintainable and there is no cause of action arose against the 4th Respondent to maintain the action. A compliant was given by a person name J. Sakthi to the Joint Commissioner of Srirangam Aranganathar Temple to take appropriate steps for making an application for establishment of petroleum retail outlet, since the land in Survey No. 2470, Ward B, Block 38, Thimmarayasamudhiram Village, Amma Mandapam, Srirangam, Trichy belongs to the said Temple. Pursuant to the same, vide Proceedings Na.ka.No. 3408/1426/C3/ dated 07.08.2020 a communication has been sent to the 4th Respondent office and they replied that as per the proceedings of the Principal Secretary/Commissioner of HR&CE in their proceedings Na.Ka.No.48373/2018/R3 dated 29.11.2019 permission was given to the 6th respondent on rental basis in Survey No. 2470, Ward B, Block 38, Thimmarayasamudhiram Village, Amma Mandapam, Srirangam, Trichy, belongs to Srirangam Aranganathar Temple. Further, no such proceedings was issued by the Assistant Commissioner, Srirangam Zone, Trichy Corporation dated 06.05.2020, as if referred in Serial No. 2 in the proceedings in Na. Ka.No. 3408/1426/C3/ dated 07.08.2020. The copy of the said proceedings dated 07.08.2020 was communicated to the Branch Manager/6th Respondent by the Joint Commissioner of Srirangam Aranganathar Temple, HR&CE and also directed the Manager of the 6th Respondent to get appropriate planning permission and building permission from the Trichy Corporation and to proceed further with the construction by 6th Respondent. The 6th Respondent did not adhere to the Order of the Joint Commissioner of Srirangam Aranganathar Temple,

HR&CE dated 07.08.2020, and also did not adhere to the provisions of Tamil Nadu Town and Country Planning Act, 1971 for obtaining planning permission and building permission under the provisions of Coimbatore City Municipal Corporation Act 1981, which is applicable to Trichy City Municipal Corporation Act 1994, as per Section 8 of the said Act. The Trichy City Municipal Corporation vide their Proceedings in Na.Ka.No.F1/3596/2020 (Sri) dated 18.08.2020, directed the 6th Respondent to obtain appropriate building permission as per law. In spite of communication dated 18.08.2020, the 6th Respondent did not obtain any building permission and planning permission as per law for proceeding with the construction works of petroleum outlet in Survey No. 2470, Ward B, Block 38, Thimmarayasamudhiram Village, Amma Mandapam, Srirangam, Trichy and in such circumstances, action was taken under Section 296(1) and (2) of Coimbatore City Municipal Corporation Act, 1981 by order dated 20.08.2020 Vide Proceedings No. F1/3705/20 and communicated the same to the Joint Commissioner of Srirangam Aranganathar Temple, HR&CE, Trichy and Bank Manager - Indian Oil Corporation, owner of the land in dispute. In spite of the Proceedings dated 20.08.2020, the 6th Respondent proceeded with the construction unauthorizedly in the said land and hence, stop work notice was issued by the Trichy Corporation vide their Proceedings No. Na.Ka.No.F1/3705/2020 dated 27.08.2020 to the Joint Commissioner of Srirangam Aranganathar Temple, HR&CE, Trichy and Manager - Indian Oil Corporation, owner of the land in dispute and the rental agreement holder respectively. Mr. Senthil Arugumugam claimed as a public activist (Sata Panchayat Iyakam) had given a representation to Trichy Corporation dated 28.08.2020 received by them on 31.08.2020, and the same was forwarded to Srirangam Zone Corporation Office on 01.09.2020 requesting the corporation to forbid the construction of the Petrol Bunk in the disputed area and also requested the Trichy Corporation to stop the construction of the petrol outlet immediately. The 6th Respondent had made an application for building permission and planning permission on 03.09.2020 with Trichy Corporation without paying necessary fees for building permission and planning permission and also did not submit the necessary document along with the building and planning application to

proceed further by the Trichy Corporation, and in such circumstances, the Trichy Corporation vide their Proceedings Na.Ka.No.3911/2020/F1(Sri) dated 09.09.2020 rejected the application for the building permission and planning permission and communicated the same to the 6th Respondent on 23.09.2020. Further, as per law, the building permission and planning permission must be submitted by the owner of the land (i.e.) the Joint Commissioner of Srirangam Aranganathar Temple, HR&CE Trichy in respect of the said survey number and as such, the rental agreement holder is not entitled to submit the building permission and planning permission as per law. In continuation of the earlier proceedings in Na.Ka.No.F1/3705/2020 dated 27.08.2020 and final order by proceedings in Na.Ka.No.F1/3705/2020 dated 14.09.2020, directing the Joint Commissioner of Srirangam Aranganathar Temple, HR&CE, Trichy and Bank Manager - Indian Oil Corporation, owner of the land in dispute and the rental agreement holder respectively to remove the unauthorized construction within 7 days, failing which, appropriate criminal prosecution would be initiated under the provisions the Coimbatore City Municipal Corporation Act 1981, which is applicable to Trichy City Municipal Corporation Act 1994, as per Section 8 of the said Act. In the meantime, the applicant filed the present application before this Tribunal. Further, in continuation of the final Order mentioned above dated 14.09.2020, necessary charge sheet was filed before the competent Judicial Magistrate, Srirangam, Trichy on 25.09.2020 under Section 447 of the Coimbatore City Municipal Corporation Act, 1981 which is applicable to Trichy City Municipal Corporation Act, 1994 and that is pending before the Judicial Magistrate, Srirangam, Trichy. So, they prayed for accepting their contentions and passing appropriate orders.

8. The 5th Respondent filed counter more or less in tune with the report submitted by the Joint Committee and they prayed for passing appropriate orders.

9. The 6th Respondent filed counter contending that the application is not maintainable and the applicant has no bonafides in filing the application. They denied most of the allegations made in the application. The applicant herein had already filed two writ petitions as W.P. (MD)

Nos.3678 of 2019 and 19218 of 2019 before the Hon'ble High Court of Madras at Madurai Bench challenging the notification issued by the Oil Marketing Companies for selection of Retail Outlet dealers on various ground and both the writ petitions were dismissed by the Hon'ble High Court by Judgment dated 17.10.2019 and aggrieved by the same, the applicant herein filed an appeal before the Hon'ble Supreme Court and the same was also dismissed. The subject retail outlet is established in conformity with siting criteria prescribed by the Central Pollution Control Board in Clause "H" of the Office Memorandum No.B-13011/1/2019-20/AQM/10802-10847 dated 07.01.2020 which reads as follows:-

> *"H. Siting criteria of retail Outlets:*
>
> *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 schools, hospitals (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 new retail outlet from schools, 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."*

10. It is clear from the above clause that new Retail Outlets shall not be located within a radial distance of 50 meters from schools, hospitals and residential areas designated as per local laws. So, there was no violation whatsoever in establishing the subject Retail Outlet by this Respondent. The Government of Tamil Nadu had issued G.O. Ms. No. 1730, Rural Development and Local Administration Department dated 24.07.1974, wherein urban areas are classified into six zones and zoning regulations on use of land and building were prescribed. As per the Appendix on Use Zone Regulations, S.No.11 of Zone 1(b) i.e., Mixed Residential use zone, wherein operation of Petrol filling and Service Stations are permitted. Apart from the above, the Government of Tamil Nadu enacted the Tamil Nadu Combined Development and Building Rules, 2019, wherein the construction and operation of fuel filling stations i.e., petroleum retail outlet in both residential and commercial zones are permitted and the relevant provision is reads as follows:

"33. Zoning Regulations:

The Zoning Regulations shall comprise of Residential use zone, Commercial use zone, Industrial use zone, Special and Hazardous use zone, Institutional use zone, Open Space and Recreational use zone, Urbanisable use zone and Agricultural use zone and the activities permissible in each use zone are provided in Annexure - XVIII.

Annexure - XVIII [See rule 33] Zoning Regulations

Residential use zone

(1) In this zone buildings or premises shall be permitted only for the following purposes and accessory uses. Permissible non residential activity shall be limited to one in a sub-division.

xxi) Fuel filling stations, and automobile service stations with installation not exceeding 30 HP.

Commercial use zone

(1) In this zone, buildings or premises shall be permitted only for the following purposes and accessory uses:

iii) Fuel filling stations, automobile service stations and workshops with installation not exceeding 50 HP".

11. It is further contended in the counter that the subject retail outlet is located in the Commercial Zone/Area and not in the designated residential zone/area as stipulated in the above Office Memorandum of the CPCB. There were various commercial establishments situated on both sides of the road. So, the subject area is exclusively a Commercial Zone/Area and the above siting criteria will not apply to the subject retail outlet. Prior to establishment of the subject retail outlet, all necessary prior permissions/licenses were obtained from the competent authorities and necessary safety measures were duly undertaken in order to avoid any harm to the public. The PESO had issued license after considering all the safety aspects including transformers. They also obtained license from the 3rd Respondent which was issued only after inspection of the site in question and also following the conditions prescribed under the Petroleum Rules, 2002. They denied the allegation that no enquiry was conducted by the 1st Respondent before issuing the No Objection Certificate for the subject retail outlet. They obtained all the necessary clearances from the statutory authorities before the establishment and operation respectively of the present project as mandated under law. There was no environmental laws violation committed by them and they are making all necessary steps to protect environment and avoid any damage being caused to the environment as apprehended by the applicant. The applicant had approached the Tribunal with vested

interest and there was no public or environment interest involved in the present case. So, they prayed for dismissal of the application.

12. The 7th Respondent filed counter contending that the siting criteria specified in CPCB guidelines dated 07.01.2020 applies to residential area designated as per local laws. In a similar matter was referred to CPCB by Kerala State Pollution Control Board (KSPCB), they suggested that KSPCB in consultation with the State Government may decide about the classification of residential area for implementation of siting criteria. With regard to setting up of new Petrol Pumps, a minimum distance of 30 meters from Hospital or School or residential area, designated as per local laws has been prescribed in CPCB guidelines dated 07.01.2020 and that distance needs to be considered from fill point/ dispensing units/ vent pipe of the petrol pumps whichever is nearest to the Hospitals, School and Residential area. The siting criteria for new Retail Outlet is to be complied in cases where construction of Retail Outlets by OMCs 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 OMCs before 07.01.2020. As per the directions of the National Green Tribunal, they prepared guidelines and circulated the same to all the SPCBs/ PCCs for implementation by the concerned stakeholders and the matter of implementation of siting criteria is to be dealt with by the concerned State Government and they will abide by any directions issued by this Tribunal in this regard. So, they prayed for accepting their contentions and passing appropriate orders.

13. The applicant filed common rejoinder to the reply filed by Respondents No.1 & 6 reiterating the contentions raised in the application and also relying on the various documents and decisions of the Hon'ble High Court of Madras, cancelling the NOC granted to some of the Petrol Pumps and also various orders passed by the Hon'ble High Court of Madras in this regard.

14. The Joint Committee has filed the report signed by the members on 24.10.2020 which reads as follows:-

> *"JOINT COMMITTEE INSPECTION REPORT*
>
> *For Hon'ble National Green Tribunal, South Zone, Chennai in O.A No. 176/2020 Order Dated 17.9.2020 - Case filed by Thiru. V.B.R. Menon*
>
> *As per the order of the District Collector. Trichirappalli Rc.D2/21910/2020 Dated 23.10.20. Nishant Krishna, I.A.S. Assistant Collector, Sri Rangam was appointed as the member of the Joint committee and R. Lakshmi, District Environmental Engineer . Tami Nadu pollution control Board, Trichy was nominated as member and nodal oflicer of Joint Committee by the Chairman, in Bd's Proc.no.TV/TNPCB/Law/LAITINGT/018161/2020 dated 07/10/2020.*
>
> *Nishant Krishna, I.A.S. Assistant Collector, Sri Rangam, Trichy and R. Lakshmi, District Environmental Engineer, Tami Nadu pollution control Board, Trichy have inspected the establishment of the new Petroleum Retail outlet at TS No.2470, Ward B, Block 38 of Thimmarayasamuthiram Village, Srirangam Taluk, Trichirappalli by Indian Oil corporation Itd on 24.10.2020 regarding siting criteria. The above Petroleum Retail outlet is located in east side of the Ammamandapam to Srirangam Temple road. The above Petroleum retail outlet is located in both Residential and commercial area. It has been commenced from 1.09.2020. There are several Residential and commercial buildings adjacent to this Retail outlet.*
>
> *The Four boundaries are as follows:*
>
> *North : TS No.2469 Sastha Sagar Apartments*
>
> *East : TS No. 2453 Street*
>
> *South : TS No.2471 Premier Subhashek Apartment*
>
> *West : TS No.2466 . Ward A, Block 43 TS No.1450/1 Ammamandapam Road*
>
> *The northern side Sastha Sagar Apartments is located in the distance of 2 Meters (6.50 Ft) from the boundary of Retail outlet. (Distance of Filling station is 10M)*
>
> *The south side Premier Subhashek Apartment is located in the distance of 2 Meters (6.50 Ft) from the boundary of Retail outlet. (Distance of Filling station is TOM)*
>
> *The East side at a distance of 24.50M (80.25F1) from filling station, there are so many individual houses are located.*
>
> *The western side at a distance 22.20M (72.75Ft) there are so many individual houses are located and the distance of filling station is 30.20M (100 Ft)*
>
> *There is Transformer located at a distance of 16M (52.50 Ft) from filling station in western south side of Retail out.*
>
> *As per the Siting Criteria prescribed by the Central Pollution Control Board in clause H of the office memorandum No.B-13011/1/2019-2020/AQM/10802-10847 Dated 7.01.2020 is as follows:*
>
> *In case of siting criteria for petrol pumps new Retail outlets shall not be located within a radial distance of 50meters (from fill point dispensing units/vent pipe whichever is nearest) from schools, hospitals (10 beds and above) and residential areas designated as per local laws in case of constraints in providing 50meters distance, the retail outlet shall implement additional safety measures as prescribed by PESO. In no case the distance between new retail outlet from schools, 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.*
>
> *In this connection, based on the above details. It is submitted that there is violation of guidelines issued by CPCB in setting up the New Petroleum Retail outlet at TS No.2470. Ward B. Block 38 of Thimmarayasamuthiram Village, Srirangam Taluk, Trichirappalli District."*

15. The matter was reopened for further hearing and sought for certain clarifications as per order dated 10.02.2022. After reopening the matter, as per order dated 10.02.2022, the 6th Respondent has filed additional

reply affidavit contending that the question raised in the order reopening the matter are not related to any environmental issues and this Tribunal has no jurisdiction to interfere with the same. In compliance with the order dated 08.03.2022 and also in compliance with the order dated 10.02.2022, the 6th Respondent is filing the additional reply. They had established the Petroleum Retail Outlet in Sy. No.247 D, Ward – B, Block – 38 of Thimmarayasamudhiram Village, Ammamandapam, Srirangam, Tiruchirappalli after obtaining necessary permission from the competent authority. The IRC Guidelines were not notified at the time of establishment of the subject retail outlet and the same is not applicable. The said retail outlet is neither situated on a State Highway nor on a National Highway. The subject retail outlet meets all safety norms as per PESO as well as CPCB for establishment of retail outlet. They would take care all safety norms, distance in establishing and operating the retail outlet. All due precautions and efforts will be made in dealing with the petroleum vapour as being done at thousands of retail outlets across the country. With respect to the building approval, presently only temporary structures have been put up at the subject site and for putting up permanent structure, they had applied for building approval and the same was returned for clarification. In due course, the application was rejected by the Corporation and a penal action has been initiated against the respondents and a charge sheet was also filed before the Judicial Magistrate, Srirangam. Again, they approached the corporation for approval, however due to the pendency of the present matter before the Hon'ble Tribunal, the authorities refused to receive the application for building approval and it was informed that the same will be considered only after disposal of the matter and no permanent structures will be put up at the subject retail outlet until the building approval is obtained from the Corporation. They have obtained all other necessary permissions from the various authorities including No Objection Certificate for the purpose of establishing the unit. So, they prayed for accepting their contentions and dismissal of the application.

16. Heard the applicant who appeared in person as well as the learned counsel appearing for respondents.

17. The applicant filed a detailed written submission and argued in tune with the contentions raised in the written submission. The applicant also argued that the Petroleum Retail Outlet is situated within the prohibited distance from aschool and he had relied on the decision of the Hon'ble High Court of Madras in **W.P. No.19255 of 2020** dated 02.03.2021 and **W.P. No.4321 of 2020** dated 22.09.2021, wherein the Hon'ble High Court of Madras observed that Rule 11 (j) of G.O. No.256 of 2015 shall be applicable, in addition to the CPCB siting criteria, in respect of all types of schools where students within the age group of 2.5 to 5.5 years (Play school classes) are studying. He had also relied on the order of the Hon'ble High Court of Madras in **W.P. No.23546 of 2017** dated 05.09.2017, relying on the decisions of the Bombay High Court reported in **(2009) 4 MhLJ 255** regarding the applicability of the above said rules to other types of schools also by taking note of the health hazards associated with operation of petroleum outlets on young children. Further, the necessary enquiry as contemplated under the Petroleum Rules, 2002was not conducted by the 3rdRespondent. Though there was an exemption granted to establish the petroleum retail outlet within 30 meters from the above said institutions, there is a safeguard provided that additional safety measures will have to be provided, but what is the nature of additional safety measures provided by the PESO has not been mentioned therein. There was a violation of G.O. Ms. 79 dated 04.05.2017 regarding change of land use and the construction was made without obtaining necessary permission from the Municipal Corporation and steps have been taken in this regard by them. The allegation of personal rivalry and business rivalry and sponsorship by another person alleged against the applicant are without any merit and the same were denied. The IRC Rules have been violated as well.

18. Further, the applicant has relied on the decisions of the Hon'ble High Court of Madras in **W.P. No.11906 of 2020** and all the permissions were obtained after the guidelines were issued by the CPCB on the basis of the directions given by the Principal Bench of National Green Tribunal in **Original Application No.31 of 2019 and 86 of 2019** dated 22.07.2019. Some of the decisions relied on by the 6th Respondent are pending in

appeal before the Hon'ble High Court of Madras. So, the 6th Respondent is not entitled to contend that the guidelines are not applicable and the dictum laid down in **W.P. No.34652 of 2019** and connected order passed by the Hon'ble Apex Court in **SLP (C) No.12699 of 2021** are in respect of outlet situated in Union Territory of Puducherry where the Government has not yet adopted the IRC Norms whereas, as regards the State of Tamil Nadu is concerned, a direction was issued by the Principal Secretary to Government to comply with the IRC Norms and as such, those decisions are not applicable. As regards **W.P. No.18753 of 2019** is concerned, a writ appeal was filed as **Writ Appeal No.1187 of 2021** and that is pending and it has not become final.

19. The learned counsel appearing for the State Pollution Control Board and the Central Pollution Control Board reiterated their contentions raised by them in the written statements and the Joint Committee report and they also argued that the petroleum retail outlets are not coming with the consent mechanism and as such, the Pollution Control Board has limited role in monitoring the same.

20. The learned counsel appearing for the State Departments argued that necessary permissions were granted after complying with all procedures and after getting necessary documents and conducting proper enquiry in this regard. If the applicant is aggrieved by the same, their remedy is to challenge the same before the appropriate forum and not before this Tribunal.

21. The learned counsel appearing for the 6th Respondent argued that none of the contentions raised by the applicant are applicable to the facts of this case. The G.O. Ms. 79 dated 04.05.2017 is not applicable to the facts of this case and if any conversion was granted against the provisions, this Tribunal will not be having jurisdiction to entertain the same. Further, the applicant has filed this application without any bonafides. The 6th respondent had obtained necessary permission from the various authorities and there is no school and hospital (having 10 beds and above) and it was not a residential area designated under the local laws. The school situated is not a primary school and it is a higher secondary

school and as such, the guideline relied on by the applicant in respect of primary schools are not applicable. Further, the Petroleum Retail Outlet is situated about 36 meters from the said school and it is beyond the 30 meter minimum distance provided in the CPCB Guideline. The IRC Guidelines are not applicable. The Division Bench of Hon'ble High Court of Madras in **W.P. No.19218, 2661,3678 & 705 of 2019** observed that until the State Government adopted the IRC Norms and issued statutory rules, the same is not applicable to the State of Tamil Nadu and the same has been reiterated by the First Bench of the Hon'ble High Court of Madras in **W.P. No.34652 of 2019** and batch of connected case in its order dated 01.08.2021 and this was challenged before the Hon'ble Supreme Court by filing **SLA (C) No.12699 of 2021** and the same was dismissed by the Hon'ble Apex Court by Order dated 03.09.2021 and it has become final.

22. The learned counsel appearing for the 6th Respondent also relied on the decisions of the various Hon'ble High Courts and the Hon'ble Apex Court in respect of the contention that the CPCB Guidelines if it is not issued under Section 5 of the Environment (Protection) Act, 1986, has no statutory force and it will have only recommendatory in nature and he had relied on the decisions reported in**Dr.B.L. Wadehra Vs. Union of India & Ors. (1996) 2 SCC 594, E. Tech Projects Private Limited Vs. State of Chhattisgarh 2018 SCC Online Chh 369, Gulf Goans Hotels Company Limited & Anr. Vs. Union of India & Ors. (2014) 10 SCC 673, Santhiyagu Vs. Union of India & Ors.** reported in **Original Application No.66 of 2016** dated 05.05.2017 of the National Green Tribunal, Principal Bench, New Delhi and **Vijay Singh & Ors. Vs. State of U.P. & Ors. 2004 SCC Online ALL 1656** in support of their case.

23. We have considered the pleadings, reports and written submissions made by the learned counsel for the parties and also perused the documents available on record.

24. The points that arose for consideration are:-

i. Whether the disputed Petroleum Retail Outlet has been established in violation of the siting criteria issued by the Central Pollution Control Board?

ii. Whether the applicant is entitled to any of the reliefs claimed in the application?

iii. Whether even assuming that the disputed Petroleum Retail Outlet is to continue with the existing siting criteria, what are all the further directions (if any) to be issued by this Tribunal applying the *"Precautionary Principle"*?

iv. Relief and costs.

POINTS:-

25. The grievance in this application was that the disputed Petroleum Retail Outlet was established against the siting criteria issued by the CPCB dated 07.01.2020 and subsequent clarification issued dated 16.01.2020 and directions issued by the National Green Tribunal in **Original Application No.61 of 2019 (CZ)** and the authorities have not properly considered the objections and it was also against the IRC Circular No.12-2009.

26. The case of the contesting respondents was that it was issued in accordance with the provisions of the Rules and Guidelines and the application was filed only after commencement of the Petroleum Retail Outlet. Further, the IRC Guidelines were found to be not mandatory and the guidelines issued were not in accordance with the provisions of the Environment (Protection) Act, 1986. It will have only recommendatory in nature and it will not have any statutory force.

27. Before going into the facts of the case and discuss about the facts and findings to be issued, we feel it appropriate to consider the circular issued and the precedents and the statutes relied on by the parties.

28. In the decision reported in **St. Philomena Convent High School, Nashik through its Principal Sister Fatima Vs. Union of India through the Secretary, Ministry of Petroleum & Ors.** reported in **(2009) 111 Bom LR 1593 = (2009) 4 MhLJ 255**, it has been held that when a particular distance has been provided under the Rules for establishment of Petrol Pump, then that must be strictly adhered to and no relaxation can be made in this regard. That was a case where there was a provision in the DCR that the minimum distance from the petrol pump to school must be 91.5 meters from the nearest gate of the school and in that case, it was observed that *"the welfare of the students cannot be sacrificed on the altar of the developmental interest of the adjoining owner. An adjoining owner is free to develop his land in accordance with law. But when he chooses to house a hazardous establishment like a petrol filling station, the law steps in and tells him what distances must be maintained, if the safety of young children in schools is not to be compromised. Such a restriction is reasonable."* and the relaxation granted by the Commissioner in that case was not proper and that was set aside and remitted to the Municipal Commissioner to reconsider the decision.

29. The applicant relied on the notification issued by the Government of Tamil Nadu in respect of Code of Regulations for Play Schools, 2015 dated 22.12.2015 for the proposition that under Rule 11 (j) of the said Regulations, it was mentioned that the play schools are not to be located near petrol bunk which is less than 100 meters. It was relied on for the purpose that no petrol pump can be situated within 100 meters of the school.

30. As regards the conversion of the agricultural land for commercial purpose relying on the notification issued by the Housing and Urban Development [UD4(3) Department] G.O. (Ms.) 79 dated 04.05.2017, the authorities have not properly considered the rules before granting permission for conversion. But we don't think that there is any necessity for this Tribunal to go into the question, as if the applicant was aggrieved regarding the permission for conversion granted, his remedy is to approach the appropriate forum and the National Green Tribunal cannot grant such relief in this regard, as that will not come under any of the

statutes provided under Schedule – I of the National Green Tribunal Act, 2010.

31. In the decision reported in **W.P. No.23546 of 2017 (B. Moorthi Vs. The District Revenue Officer, Coimbatore District & Ors.)** while granting an interim order, the Division Bench of the Hon'ble High Court of Madras relying on the decision of *St. Philomena Convent High School, Nasik* cited supra observed that when a petrol pump is proposed to be located within 25 meters from the gate of the school as against the provisions of Code of Regulations for Play Schools, 2015, it was observed that though that regulation was applicable to the play schools, but there is no reason as to why there should not be similar regulations in relation to recognized schools (other than play schools) which have long been in existence and granted Status Quo order to be maintained and it is not known as to whether the case has been finally disposed or not.

32. In the decision reported in **Aditya N Prasad & Ors. Vs. Union of India & Ors.** in **Original Application No. 147 of 2016 (PB),** the Principal Bench of National Green Tribunal, New Delhi by order dated 28.09.2018 observed that there is possibility of pollution being caused on account of emission of fumes coming from the petroleum products which may contain Benzene, Toluene, Ethyl benzene and Xylene which are toxic in nature and if it is mixed with the ambient air, it may have impact on human health and there is a necessity to provide Vapour Recovery System (VRS) to control the emission rate or to minimize the emission rate and directed the Oil Marketing Companies to install VRS with certain guidelines issued by the CPCB and this was confirmed by the Hon'ble Apex Court in the appeal filed by the Oil Marketing Companies except granting time for implementing the directions.

33. In the decision reported in **V.B.R. Menon, B.E. (Mech.) Vs. The Secretary to Union of India, Ministry of Petroleum and Natural Gas, Shastri Bhawan, New Delhi & Ors. (W.P. No.691 of 2017)**, the Division Bench of the Hon'ble High Court of Madras by Judgment dated 18.01.2019, disposed of the matter on the basis of the clarification given by the State of Tamil Nadu that a clarification memo was issued for issuance of NOC

for road side petroleum retail outlets by Oil Marketing Companies or any other agency in respect of Government Highway roads i.e. State Highways, State Highways Urban, Major District Roads, Other District Roads and Other District Roads (Sugarcane Roads), the guideline issued by IRC Circular No.12-2009 shall be strictly followed for passing orders. In the earlier notification, it was only mentioned that the guidelines will apply only for Government Highways not including other district roads etc. and relying on the clarification issued, the Writ Petition was disposed of. This was relied on by the learned counsel appearing for the applicant for the proposition that IRC Circular No.12-2009 is applicable to the State of Tamil Nadu and that was accepted by the State of Tamil Nadu before the Hon'ble High Court of Madras.

34. In the decision reported in **K.N. Shanmugam Vs. The Commissioner of Police, Trichy City Police Office, Tiruchirappalli & Ors. [W.P. (MD) No.5690 of 2019]** dated 05.08.2019, the Hon'ble High Court of Madras at Madurai Bench observed that before issuing NOC for establishment of Petroleum Retail Outlets under Rule 144 of the Petroleum Rules, 2002, the authorities must conduct an enquiry to ascertain various aspects, including whether the possession of the site is lawful, whether the interest of the public and the facilities like schools, hospitals, etc. are affected, the impact on traffic, conformity to local or area development planning, accessibility to site to fire tenders, other matter pertinent to public safety etc. and it must be reflected in the NOC issued and if there is no discussion and reasons given, then it cannot be said to be a valid order passed under Rule 144 (5) of the Petroleum Rules, 2002 and the NOC granted by the authority was set aside and the matter was remitted to the authorities for fresh consideration and for passing appropriate reasoned order.Based on that, further enquiry was conducted and the NOC granted earlier was cancelled by the issuing authority viz., Commissioner of Police, Tiruchirappalli by proceedings dated 10.02.2020.

35. The same view has been reiterated by the Hon'ble High Court of Madras at Madurai Bench in **W.P. (MD) Nos.19244 and 19830 of 2019 (Karthik Santhanam Vs. The Commissioner of Police, Trichy City Police, Tiruchirappalli & Ors.)** dated 30.09.2019 and set aside the NOC granted

and it was remitted to the authorities and on the basis of the remission order, the Commissioner of Police – Tiruchirappalli cancelled the NOC earlier granted for establishment of new Petroleum Retail Outlet.

36. Rule 144 of the Petroleum Rules, 2002 deals with the issuance of NOC wherein procedures have been provided and under Rule 144 (5) of the said Rules, the authority has to complete the enquiry of issuing NOC under Sub Rule 1 and complete the action for issue or refusal of NOC as the case may be as expeditious as possible but not later than 3 months from the date of the application.

37. Based on the said Rules, the Hon'ble High Court of Madras at Madurai Bench observed that enquiry is not an empty formality and it must contain reasons for granting the same, but a different view was taken by the First Bench of the Hon'ble High Court of Madras in **W.P. No.4321 of 2020**and **2951 of 2022(St. Mary's Matriculation Higher Secondary School, Sriperumbudur Vs. Secretary, Ministry of Petroleum, New Delhi & Ors.)**dated 21.06.2022, wherein it was held that if it is reflected in the NOC granted regarding the reports obtained from various authorities to satisfy the things to be considered and it was answered as per the format given in Rule 144 (7) of the said Rules as amended from 10.08.2018, then it will be sufficient. Further, in that decision, it was held that the Code of Regulators for Play Schools, 2015 will be applicable for establishment of Play Schools and not in respect of establishment of Petroleum Retail Outlet, as it was governed by another special statute.

38. In the decision reported in **W.P. (MD) Nos.19218, 2661, 3678 and 705 of 2019**, the Hon'ble High Court of Madras at Madurai Bench held that the IRC Guidelines unless accepted by the State Government and Rules framed in accordance with law, will not have any statutory force and even the orders issued by the Principal Secretary to Government is not having any statutory force and further observed that it is only recommendatory in nature and not mandatory in nature, relying on the earlier decision of the Division Bench of the Hon'ble High Court Madras dated 11.03.2021 in **W.P. No.35885 of 2019** and it was also referred to the interim orders relied on by the writ petitioner in that case and observed

that no final decisions have been taken in those cases and as such, that will not give any binding effect and there was no stay granted in the Writ Appeal said to have been pending.

39. The applicant submitted that the order passed by the Hon'ble High Court of Madras in W.P. No.35885 of 2019 is contrary to the order passed by the Division Bench in **W.P. No.18753 of 2019** and against that order, a Writ Appeal **[W.A. No.1187 of 2020]**has been filed and that is pending. Since that position has not become final, the decision of the Division Bench holding that it is not mandatory in nature with regard to the State of Tamil Nadu will prevail and there was no stay granted in the Writ Appeal said to have been pending.

40. The same view has been reiterated by the Hon'ble High Court of Madras in **W.P. No.34652 of 2019** and it was challenged before the Hon'ble Apex Court by filing **SLP (C) No.12699 of 2021**, the same was confirmed. But the applicant wanted to distinguish the same on the ground that it was related to the Union Territory of Puducherry where the State Government has not adopted the IRC Norms. But it may be mentioned here that the subsequent decision of the Division Bench has observed that it is not mandatory till it was adopted by the State Government and the learned counsel for the Oil Market Company had produced the subsequent notification issued by the State of Tamil Nadu adopting the IRC Circular No.12-2009 only in 2022 as per G.O. (Ms.) No.25 dated 24.02.2022 issued by the Highways & Minor Ports (HN2) Department and that will be applicable thereafter. Since the notification was issued by the State of Tamil Nadu adopting the IRC Guidelines in respect of consideration of application for NOC only in 2022, that will not have retrospective operation and till the final decision as taken by the Hon'ble High Court in the Writ Appeal cited supra, it can only be said that the IRC Guidelines are only directory and not mandatory, as far as State of Tamil Nadu is concerned, as on the date of consideration of the application for NOC which is under challenge in this case.

41. In the decision reported in **Tej Bahadhur Vs. Shri Narendra Modi** reported in **2020 SCC Online SC 951,** while considering the question of locus standi, the Hon'ble Apex Court observed that a person having no or insufficient interest lacks locus standi to file application. That was a case where the election of Shri Narendra Modi was challenged on certain grounds and the Hon'ble Apex Court had observed that the person who challenged the election petition has no locus standi to file the same, as the petitioner did not disclose that the applicant has cause of action which invested him with right to sue. That was an appeal filed against the order passed by the Hon'ble High Court in an election matter.

42. In the decision reported in **Seethalakshmi Ammal Vs. State of Tamil Nadu & Anr. in W.P. (C) No.2064 of 1983 and connected matters** reported in**(1992) 1 MLJ 606,** it was observed that only those who are having some cause of action or interest in the litigation alone has power to challenge the same, as he cannot be said to be an aggrieved person. The same was reiterated by the Hon'ble High Court of Delhi in **Hindustan Photo Films Manufacturing Company Limited & Union of India Vs. CEGAT** reported in **1990 SCC Online Del 493** and the same view has been reiterated by the National Green Tribunal, Western Zone Bench, Pune in **Amit Maru Vs. Secretary of MoEF&CC & Ors.** reported in **2014 SCC Online NGT 6972**. But as regards the environmental issues are concerned, it cannot be said that only a personally aggrieved person can file an application but if there is any substantial question of environment is raised on account of certain violations of environmental laws and non-implementation of the environmental laws, then he will be getting a right to file an application under Section 14 & 15 of the National Green Tribunal Act, 2010.

43. In the decision reported in **E. Tech Projects Private Limited Vs. State of Chhattisgarh 2018 SCC Online Chh 369,** the Hon'ble High Court of Chhattisgarh observed that whether any direction issued against the statutory provision by way of an official memorandum will have any statutory background and certain guidelines issued by the CPCB in the year 2003 was not statutory in nature and as such, it will not give any effect too.

44. In the decision reported in **Gulf Goans Hotels Company Limited & Anr. Vs. Union of India & Ors. (2014) 10 SCC 673,** the Hon'ble Apex Court observed that the guidelines cannot be enforced unless shown to have acquired the force of law. To acquire such force of law, the guidelines concerned must satisfy minimum elements of law i.e. they must inter alia possess a certain form, possessed by other laws in force encapsulate a clear mandate and disclose a specific purpose. Further, such guidelines claim to be a law need some authentication and must be notified or made public in order to bind citizens. Certain guidelines were issued by the Central Government on the executive side in 1983 – 1986 in respect of siting criteria was held to be contrary to the CRZ Notification and it cannot have any statutory force. The same view has been reiterated by this Bench in **Original Application No.66 of 2016 (SZ) [Santhiyagu Vs. Union of India & Ors.]** dated 05.05.2017 and the NOC granted was not enforceable if it is against the law prevails and the guidelines issued by the Board cannot be said to be a rigid and have to be relaxed on the basis of the technological advancement and scientific improvements in respect of various aspects. That was a case where the establishment of STP was challenged on the ground of siting criteria and considering the circumstances, the Tribunal also observed that the same cannot be said to be inflexible rule if the evidence shows that on account of the technological advancement, there is no possibility of any pollution being caused and relaxation of siting criteria cannot be said to be invalid.

45. Regarding the validity of the executive orders, the learned counsel for the respondents also relied on the decision reported in **Vijay Singh & Ors. Vs. State of U.P. & Ors. 2004 SCC Online ALL 1656** and **Dr.B.L. Wadehra Vs. Union of India & Ors. (1996) 2 SCC 594.**

46. The CPCB Guidelines were issued on the basis of the directions given by the Principal Bench of National Green Tribunal, New Delhi in **Original Application No.31 of 2019(PB) (K. Sathyadevan Vs. Union of India & Ors.) and Original Application No.86 of 2019 (PB) (Gyanprakhash @ Pappu Singh Vs. Union of India & Ors.).**In those two cases, the question regarding installation of VRS and also setting up of new Petroleum Retail

Outlet was considered and the Tribunal by Order dated 01.04.2019, directed the matter to be finalized in consultation with the Ministry of Petroleum and Natural Gas, the siting guidelines, prevention measures and monitoring requirement and the timelines and feasibility report has to be finalized within three months. It is on that basis, a further report was filed dated 08.07.2019, on the basis of the Expert Committee appointed with the members of the CPCB, Ministry of Petroleum and Natural Gas, IIT Kanpur, NEERI, Indian Institute of Petroleum and others and finalized the guidelines on the following subjects which was extracted in Para (6) of the order which reads as follows:-

"A. Containment and treatment of spillages from fuelfilling operations at petrol pumps.

1. Petrol pumps located in areas with high groundwater table shall have secondary containment by way of double walled tanks or concrete protection walls so as to minimize groundwater and soil contamination. Ground water level of less than 4m shall be considered for such provision, to be verified from online data being reported by State/ Central Ground Water Board/ Authority. In such case, measures taken by Oil Marketing Company shall be placed in public domain and in case of contradictory view, view of State/ Central Ground Water Board/ Authority will prevail.

2. All new retail outlets shall have underground tanks and its ancillary components such as pipes, flexible connectors, pumps, fittings etc. protected from leaks due to corrosion by adopting materials conforming to IS standards with required protective coating as applicable.

3. Any major spillage of Petrol, Diesel, Lube Oil (more than 1 barrel-165 litres) occurs at fueling station, concerned OMC shall report to State Pollution Control Board, PESO and District Administration under intimation to CPCB within 24 hours of occurrence.

OMCs will be held liable for Environmental Compensation (imposed by SPCBs/PCCs) and assessment of environmental damage (depending on extent of contamination in soil and groundwater) and site remediation. Consultant/ Expert agency appointed by OMCs for damage assessment and site remediation shall have minimum national/ international experience of 07 years in this field. Various approved methods shall be considered for cleaning underground contaminants.

Operation of retail outlet shall not be resumed till corrective measures to contain and stop spillages are implemented to the satisfaction of PESO and concerned SPCB.

4. All DUs shall have Auto Cut off Nozzles which shuts dispensation of fuel if its level in customer fuel tank reaches full capacity.

5. Breakaways to be installed for all the hoses of dispensing units to reduce spillage in the event of customer vehicles moves away with nozzle still in the fueling position.

6. Two pane swivels shall be installed for all the dispensing units for better positioning of nozzle while refueling so that it does not fall off accidently.

7. In pressurized dispensation, all dispensing units shall be installed with shear valves to cut the fuel flow from pipe line immediately upon accidental knocking of dispensing units from its position.

8. In pressurized system all Submersible Turbine Pumps (STPs) are to installed with mechanical leak detectors and in the event of pipeline leaks STPs shall stop pumping fuel from underground tanks.

9. Emergency stop button switch shall be provided on the Multi-Product Dispenser (MPD) to stop the dispensation in case of emergency.

10. Automation system shall be installed at all new retail outlets to alert in case of tank leak by way of auto gauging system.

11. All Retail Outlets shall provide overfill alarm through automation.

12. Measures for spill containment in fill point chambers and forecourt area shall be implemented as prescribed by PESO.

B. Check on leakages (Leakage Detection System) from underground storage tanks so as to prevent groundwater and soil contamination

1. All new retail outlets will have automation system installed which will provide reports on volume balance after every day operation and records shall be maintained.

2. Manual gauging shall be done once in a month and compare the same with Automatic Tank Gauging for accuracy.

3. Daily MS and HSD loss shall not exceed MoPNG prescribed limits. In case of leakage beyond such limits, matter shall be got analyzed by OMCs and further action shall be taken for ascertaining the reasons of losses. In case of leakage resulting in soil / groundwater contamination:

a. Concerned OMC shall report to State Pollution Control Board, PESO and District Administration under intimation to CPCB within 24 hours of occurrence. Operation of such Retail Outlet shall be stopped immediately.

b. Fuel shall be removed immediately from underground storage tank to prevent further release to environment. Measures to prevent explosion due to vapors released due to leakage as recommended by PESO shall be implemented immediately.

c. OMCs will be held liable for Environmental Compensation (imposed by SPCBs/PCCs) and assessment of environmental damage (depending on extent of contamination in soil and groundwater) and site remediation. Consultant/ Expert agency appointed by OMCs for damage assessment and site remediation shall have minimum national/ international experience of 07 years in this field. Various approved methods shall be considered for cleaning underground contaminants.

d. Operation of retail outlet shall not be resumed till corrective measures to contain and stop leakages are implemented to the satisfaction of PESO and concerned SPCB.

4. All underground tanks and pipelines shall be subjected to test for leaks every 5 years.

***C. Policy towards Treatment and disposal of sludge removed from underground tanks during cleaning**: Sludge shall be collected, stored and disposed as per Rule 8 of Hazardous Waste (Management and Transboundary) Rules, 2016 and amendments thereof and records shall be maintained.*

D. Installation, Operation and maintenance of Vapour Recovery System

1. All new retail outlets set up with sale potential of 300KL MS per month and setting up in cities with population more than 1

lakh will be provided with VRS. VRS should be functional by the time of sale of MS touch 300 KL per day. In case of failure of installation of VRS, Environment Compensation will be levied equivalent to the cost of VRS and this will further increase proportionate to the period of non-compliance.

2. Any new retail outlet set up in cities having population more than 10 lakh and having sale potential of 100 KL MS per month will be provided with VRS. VRS should be functional by the time of sale of MS touch 100 KL per day. In case of failure of installation of VRS, Environment Compensation will be levied equivalent to the cost of VRS and this will further increase proportionate to the period of non-compliance.

3. In case of Stage II YRS, dispensers shall be provided with flexible cover flap or other alternate system for proper covering of filling tank and therefore proper recovery of vapors.

4. OMCs are responsible for maintammg installed YRS systems. They have to maintain periodic inspections for AIL regulator as prescribed by Legal Metrology. Proper record shall be maintained.

5. Working of dispenser shall be interlinked with VRS functioning. Online system shall be developed within 06 months to monitor status of operation of VRS. In case of non-operation of VRS, the same shall be automatically reported to concerned OMC. YRS shall be brought into operation immediately within 24 hrs and in any case within 72 hrs failing which sale of MS shall be stopped from the fuelling station. Proper records of operation of YRS shall be maintained.

6. Work zone monitoring for Total VOC and Benzene shall be conducted by OMCs for petrol pumps selling more than 300 KL/ month and more than 10 lakh population (in first phase) by E(P)Act, 1986 approved labs once in a year to check compliance with OHSAS norms and report shall be submitted to SPCB. In addition, pilot study shall be conducted by OMCs through expert institutions for online monitoring of voes.

***E. Ground water and soil quality monitoring within petrol pump** selling more than 300 KL/ month and more than 10 lakh population shall be conducted by OM Cs once in two years through E(P)Act, 1986 approved labs for the following parameters from the nearest source and report submitted to SPCB:*

I. Total petroleum hydrocarbons
II. BTEX
Ill. Ethanol
IV. Methyl Tertiary Butyl Ether

IV. PAH

Enforcement agencies including SPCB can collect samples in and around petrol pump to check contamination.

F. Measures for protection of Worker's Health

1. All workers engaged at retail outlets are being covered under ESL OMC dealers shall implement the personal protectiveequipment (PPE) as per labor laws.

2. IEC (Information Education Communication) activities should be organized by OMC dealers for workers at regular intervals in order to sensitize them about harmful impacts of VOC emissions.

***G. Audit of all protection measures and monitoring system implemented at petrol pumps**: PESO shall conduct audit of tanks and fuel equipments including pipes, overfill protection equipments and alarm system on annual basis and maintain records.*

***H. Siting criteria of Retail Outlets**: New retail Outlets shall not be located within a radial distance of 50 meters (from fill point/ dispensing units/ underground storage tanks/ vent pipe whichever is nearest) from schools and hospitals (10 beds and above). 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 new retail outlet and sensitive areas shall be less than 30 meters. No high tension line shall pass over the retail outlet.*

***2. Feasibility study of new petrol pumps**: MoPNG in the meeting convened by CPCB on February 08, 2019 in compliance of order* follow guidelines for setting up of petrol pumps."

47. After considering those aspects, the applications were disposed of with the following directions:-

"11. In view of the above, the Expert Committee having already gone into the matter, finalization of timelines as contemplated in the report, if not yet done, may be done within one month from today which will be the responsibility of the Secretary, MoPNG and the Chairman, CPCB. Further action in terms of the report may be ensured. We may also add that a safe distance from the residential areas must be maintained for any new outlet to be set up which may also be specified within one month, keeping in view the health and safety of the inhabitants."

48. It is on that basis, the CPCB had issued the guideline dated 07.01.2020 with respect to the siting criteria. It is also seen from the report that a draft guideline was issued and objections were called for from the different stakeholders and only after consideration of the objections, the same has been finalized. It was also published in the website of the CPCB and it was directed to be implemented by all the State Pollution Control Boards/Pollution Control Committees and it can be treated as a direction under Section 18 (1) of the Water (Prevention and Control of Pollution), 1974 and Air (Prevention and Control of Pollution) Act, 1981issued by the CPCB and also under Section 3 & 5 of the Environment (Protection) Act, 1986 applying the '*Precautionary Principle*'.

49. In the decision reported in **A. Packrisamy Vs. The Joint Chief Controller of Explosive, Chennai & Ors. (W.P. No.43434 of 2016)** dated 24.09.2021, the Single Bench of the Hon'ble High Court of Madras considered the facts to be considered for the purpose of considering the question of issuance of NOC, in which, it was relied on the guidelines issued by the CPCB in respect of locations and it was observed in that decision that while granting the NOC and license for running the Petroleum Retail Outlet, the authorities must ensure that subject to the satisfaction, the person running Retail Outlet may flout the instructions and regulations. However, the competent authority while granting the NOC/license and after commencement of business have to conduct inspections frequently and thereby ensure that the guidelines are followed and health issues of the persons residing nearby are protected. It was also observed that the National Green Tribunal which was dealing with these issues passed several orders and the CPCB had also issued directions which are to be implemented by the State PCBs/Pollution Control Committees. Further, it was also observed that such a development should not affect the health of the children, sick and old age people. In the decision, it was reiterated regarding the Right to Life as fundamental right and health of the children has to be protected in all circumstances and anything hazardous in these aspects on account of installation of Petroleum Retail Outlets nearby schools, residential areas, old age homes and hospitals are to be seriously viewed. The Competent Authority cannot mechanically adopt

the rules and regulations and grant NOC. Such an approach would result in non-application of mind with reference to the issue which is bound to be considered in the interest of general public. In that case, it was also directed that further inspection will have to be conducted, the objections regarding the public and persons residing nearby have to be considered and then appropriate orders will have to be passed. So, that also gives an implication that the guidelines issued by the CPCB in respect of siting criteria and precautionary methods to be adopted are to be considered by the authorities before granting the NOC.

50. In view of the above discussions, the following findings have been arrived at by this Tribunal to be considered while considering the case in hand.

a. As regards the CPCB Circular dated 07.01.2020 is concerned, since it was issued on the basis of the Expert Committee appointed as directed by the National Green Tribunal applying the *'Precautionary Principle'*, it will have statutory force, as it was published in the website of the CPCB and it was circulated among the State PCBs/Pollution Control Committees and it was made known to the public and the directions issued by the Principal Bench of National Green Tribunal, New Delhi in **Original Application Nos.31 and 86 of 2019** on the basis of the report submitted by the Joint Committee was not challenged and it has become final and that will have to be adhered to by the Oil Marketing Companies and also the statutory authorities while considering the question of NOC being granted.

b. The authorities who are vested with the power to grant NOC are expected to consider the objections of the public and also give reason as to why they are granting permission after answering the objections and it should not be mechanically issued and there must be application of mind by the authorities while granting the NOC.

c. As regards the distance criteria for other schools (other than play schools) and regarding the applicability of Code of Regulations for Play Schools, 2015 issued by the State of Tamil Nadu is concerned,

that will subject to the directions to be issued by the Hon'ble High Court of Madras in the pending matters, as that question has not become final and only interim orders have been passed by the Hon'ble High Court in some cases. But in the subsequent decision of the Hon'ble High Court of Madras in **St. Mary's Matriculation Higher Secondary School, Sriperumbudur Vs. Secretary, Ministry of Petroleum, New Delhi & Ors. in W.P. No.4321 of 2020 and 2951 of 2022,** it was observed that it will apply only for establishment of play school near Petroleum Retail Outlet and not for establishment of Petroleum Retail Outlets.

d. As regards the applicability of IRC Circular No.12-2009 are concerned, in view of the latest notification issued by the State of Tamil Nadu i.e. G.O. (Ms.) No.25 dated 24.02.2022 that will have applicability only from that date of notification and it cannot be applied retrospectively and the applicability of IRC Rules will be subject to the final decision to be taken in the Writ Appeal**[W.A. No.1187 of 2020]**pending before the Hon'ble High Court of Madras.

51. Clause H of the Office Memorandum No.B-13011/1/2019-20/AQM/10802-10847 dated 07.01.2020 reads as follows:-

> ***"H. Siting Criteria of Retail Outlets:***
>
> *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 schools, hospitals (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 new retail outlet from schools, 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."*

52. There was a contention raised by the Oil Marketing Companies that the distance criteria is available only if it was declared as a residential area. It may be mentioned here if the local law does not provide for any residential area, then the purpose of the guidelines issued applying the *'Precautionary Principle'* will become redundant.

53. In some cases, residential area has not been classified by the zoning regulations and certain areas are kept as non-planning area. There is no clarity in the guidelines given in such cases and what should be the distance criteria to be adopted for the purpose of establishing new Petroleum Retail Outlet and this is being likely used in their favour by the Oil Marketing Companies and that will affect the very purpose of the providing siting criteria for establishment of such Petroleum Retail Outlet. So, under such circumstances, we feel that it is necessary to direct the CPCB to revisit that issue and come with some clarifications in the form of notification in addition to the circular already issued dated 07.01.2020 and subsequent circular issued in this regard based on the various directions issued by the National Green Tribunal (both Principal Bench and Central Zone Bench) as to what should be the distance criteria should be adopted where no residential areas have been classified in the local laws or in case where there is non-planning areas under the local laws, then what should be the distance criteria to be adopted for establishment of new Petroleum Retail Outlet

54. Further, even in areas which are classified as Commercial Zone/Mixed Zone, whether any minimum distance criteria will have to be provided taking into account the environmental impact of establishment such petroleum units. So, we direct the CPCB to revisit the siting criteria on the basis of the observations made and come with a proper notification/office memorandum and publish the same in accordance with law so as to make it enforceable to the stakeholders and the statutory authorities.

55. Further, we are not in agreement with the submissions made by the learned counsel appearing for the Oil Marketing Companies that when there is no restriction in the Building Rules or other rules or under the Town and Country Planning Act and the rules framed there under, no further restrictions can be issued by the other authorities or Tribunal. But this has not been accepted by the Hon'ble Apex Court in the decision reported in **Mantri Tech Zone Private Limited Vs. Forward Foundation & Ors. (2019) 18 SCC 494** where it has been observed that the National

Green Tribunal has got power to impose additional restrictions applying the *'Precautionary Principle'* to protect environment and also in view of the observations made by the Hon'ble Apex Court dealing with the power of National Green Tribunal to entertain the Suo Motu case on the basis of the newspaper report and letter petition in **Municipal Corporation of Greater Mumbai Vs. Ankita Sinha & Ors.** reported in **AIR 2021 SC 5147**.

56. It may also be mentioned here that the relaxation of 30 meters provided in the guidelines issued by the CPCB is an exceptional to the general rule of 50 meters and the exemption can be applied only sparingly and it cannot be applied as a general rule which will override the purpose of the siting criteria itself. Even when they are adopting the lesser distance rule of 30 meters, they must give reason as to why it is being adopted instead of fixing the distance of 50 meters.

57. Even if as per the Building Rules, 2019 relied on by the learned counsel appearing for the Oil Marketing Companies that if there is a road of 15 meters abutting the place where the petrol pump will have to be established will be treated as a commercial area, if it is not otherwise notified under any of the rules, even then that will make only this as a permissible activity but it will not absolve the application of siting criteria in locating the units, as the siting criteria has been provided for the purpose of protecting the interest of the public against the probable danger being caused on account of establishment of such institutions. Even the zonal regulations and the permissibility granted also only will give indication that certain type of activities are permitted in different zones classified under the zonal regulations issued and that also will not restrict the applicability of the distance rule, if it was directed to be implemented as per the directions of the National Green Tribunal, as the direction of the National Green Tribunal were issued applying the *'Precautionary Principle'*and it will have overriding effect over any other existing local laws as it is being used to protect environment.

58. In this case, the Joint Committee has filed a report giving the distance of several apartments which reads as follows:-

"The northern side Sastha Sagar Apartments is located in the distance of 2 Meters (6.50 Ft) from the boundary of Retail outlet. (Distance of Filling station is 10M)

The south side Premier Subhashek Apartment is located in the distance of 2 Meters (6.50 Ft) from the boundary of Retail outlet. (Distance of Filling station is TOM)

The East side at a distance of 24.50M (80.25F1) from filling station, there are so many individual houses are located.

The western side at a distance 22.20M (72.75Ft) there are so many individual houses are located and the distance of filling station is 30.20M (100 Ft)

There is Transformer located at a distance of 16M (52.50 Ft) from filling station in western south side of Retail out.

xxx xxx xxx

In this connection, based on the above details. It is submitted that there is violation of guidelines issued by CPCB in setting up the New Petroleum Retail outlet at TS No.2470. Ward B. Block 38 of Thimmarayasamuthiram Village, Srirangam Taluk, Trichirappalli District."

59. It was observed that there is violation of guidelines issued by the CPCB in establishment of new petroleum retail outlet in T.S. No.2470, Ward B, Block 38 of Thimmarayasamuthiram Village, Srirangam, Tiruchirappalli District. Further, it is seen from the counter filed by the Tiruchirappalli City Municipal Corporation that the construction was made in the property without obtaining necessary planning permission under the Coimbatore City Municipal Corporation Act, 1981 which is applicable to the Tiruchirappalli City Municipal Corporation Act, 1994 as per Section 8 of the said Act and proceedings have been issued vide Na.Ka. No.F1/3596/2020 (Sri) dated 18.08.2020 directing the 6th Respondent to obtain necessary planning permission and building permission as per law. Since they did not obtain further permission, they also issued further proceedings dated 27.08.2020 and thereafter, when the 6th Respondent filed application for building permission on 03.09.2020, as it did not contain necessary documents, the same was rejected by the Tiruchirappalli City Municipal Corporation vide their Proceeding Na.Ka. No.3911/2020/F1 (Sri) dated 09.09.2020 and communicated the same to them on 23.09.2020 and asked them to stop further construction.

60. They were also directed to remove the constructions made vide their Final Order Na.Ka. No.F1/3705/2020 dated 14.09.2020 and they also filed a charge sheet against the 6th Respondent and the temple authorities and the agreement holder before the competent Judicial Magistrate, Srirangam under Section 447 of the Coimbatore City Municipal

Corporation Act, 1981 which was made applicable to the Tiruchirappalli City Municipal Corporation Act, 1994 as per Section 8 and that was pending. The authorities are also expected to implement the order of removal if it was constructed against the provisions of the local laws without obtaining permission.

61. We cannot agree with the contention that there is no power to demolish the building which was constructed against the provisions of the local laws. Once the authority has got power to issue order of removal and if it is not complied with, they will be having a power to remove the same and initiating prosecution is only a criminal action and removal of unauthorized construction is a consequential to the order of removal issued. So, it is for the Tiruchirappalli City Municipal Corporation to take action against the 6th Respondent and other persons who had made the construction without necessary permissions under the Municipal Laws.

62. Since the construction was made in violation of the guidelines issued by the CPCB with respect to the siting criteria, we feel that it is appropriate to issue an order of injunction restraining the 6th respondent from operating the Petroleum Retail Outlet in Sy. No.247 D, Ward – B, Block – 38 of Thimmarayasamudhiram Village, Ammamandapam, Srirangam, Tiruchirappalli and also we direct the Thiruchirpallai City Municipal Corporation to take steps to remove the unauthorized construction in accordance with law and realize the cost of removal, if it is not removed by the 6thRespondent themselves in accordance with law.

63. Since it was established in violation of environmental laws, the Respondent No.6 (M/s. Indian Oil Corporation Limited) or the Franchisee is directed to pay environmental compensation of **Rs.10,00,000/- (Rupees Ten Lakhs only)** to the State Pollution Control Board within a period of **3 (Three) Months** and if it is not paid, then the State Pollution Control Board is at liberty to recover the amount from the Respondent No.6. If any further application has been filed later for establishment of new Petroleum Retail Outlet, then the authorities who are expected to grant NOC and licenseshave to strictly adhere to the

principles laid down in this case, siting criteria etc. strictly in its letter and spirit.

64. So, we feel that the application can be disposed with the following directions:-

a. As regards the CPCB Circular dated 07.01.2020 is concerned, since it was issued on the basis of the Expert Committee appointed as directed by the National Green Tribunal applying the *'Precautionary Principle'*, it will have statutory force, as it was published in the website of the CPCB and it was circulated among the State PCBs/Pollution Control Committees and it was made known to the public and the directions issued by the Principal Bench of National Green Tribunal, New Delhi in **Original Application Nos.31 and 86 of 2019** on the basis of the report submitted by the Joint Committee was not challenged and it has become final and that will have to be adhered to by the Oil Marketing Companies and also the statutory authorities while considering the question of NOC being granted.

b. The authorities who are vested with the power to grant NOC are expected to consider the objections of the public and also give reason as to why they are granting permission after answering the objections and it should not be mechanically issued and there must be application of mind by the authorities while granting the NOC.

c. As regards the distance criteria for other schools (other than play schools) and regarding the applicability of Code of Regulations for Play Schools, 2015 issued by the State of Tamil Nadu is concerned, that will subject to the directions to be issued by the Hon'ble High Court of Madras in the pending matters, as that question has not become final and only interim orders have been passed by the Hon'ble High Court in some cases and also the order passed by the Hon'ble High Court of Madras in **W.P. No.4321 of 2020 and 2951 of 2022** dated 21.06.2022 mentioned above.

d. As regards the applicability of IRC Circular No.12-2009 are concerned, in view of the latest notification issued by the State of Tamil Nadu i.e. G.O. (Ms.) No.25 dated 24.02.2022 that will have applicability only from that date of notification and it cannot be applied retrospectively and the applicability of IRC Rules will be subject to the final decision to be taken in the Writ Appeal **[W.A. No.1187 of 2020]** pending before the Hon'ble High Court of Madras.

e. In some cases, residential area has not been classified by the zoning regulations and certain areas are kept as non-planning area. There is no clarity in the guidelines given in such cases and what should be the distance criteria to be adopted for the purpose of establishing new Petroleum Retail Outlet and this is being likely used in their favour by the Oil Marketing Companies and that will affect the very purpose of the providing siting criteria for establishment of such Petroleum Retail Outlet. So, under such circumstances, we feel that it is necessary to direct the CPCB to revisit that issue and come with some clarifications in the form of notification in addition to the circular already issued dated 07.01.2020 and subsequent circular issued in this regard based on the various directions issued by the National Green Tribunal (both Principal Bench and Central Zone Bench) as to what should be the distance criteria should be adopted where no residential areas have been classified in the local laws or in case where there is non-planning areas under the local laws, then what should be the distance criteria to be adopted for establishment of new Petroleum Retail Outlet.

f. Further, even in areas which are classified as Commercial Zone/Mixed Zone, whether any minimum distance criteria will have to be provided taking into account the environmental impact of establishment such petroleum units. So, we direct the CPCB to revisit the siting criteria on the basis of the observations made and come with a proper notification/office memorandum and publish the same in accordance with law so as to make it enforceable to the stakeholders and the statutory authorities.

g. Respondent No.6 and their franchisee in whose favour the permission was granted are restrained from operating the Petroleum Retail Outlet in Sy. No.247 D, Ward – B, Block – 38 of Thimmarayasamudhiram Village, Ammamandapam, Srirangam, Tiruchirappalli, as it was constructed in violation of the guidelines issued by the CPCB vide their Office Memorandum dated 07.01.2020.

h. The owner of the Petroleum Retail Outlet or the Oil Marketing Company is permitted to remove the products which are kept in the premises, but this permission should not be taken as a ground for retail sale of the products.

i. The Tiruchirappalli City Municipal Corporation is directed to take appropriate action against the 6th Respondent or their Franchisee for making construction of building in the disputed area against the provisions of the Coimbatore City Municipal Corporation Act, 1981 which is applicable to the Tiruchirappalli City Municipal Corporation Act, 1994 as per Section 8 of the said Act, in accordance with law.

j. The 6th Respondent (M/s. Indian Oil Corporation Limited) or their franchisee is directed to pay environmental compensation of **Rs.10,00,000/- (Rupees Ten Lakhs only)** to the State Pollution Control Board within a period of **3 (Three) Months** and if it is not paid, then the State Pollution Control Board is at liberty to recover the amount from the Respondent No.6 or their franchisee in accordance with law.

k. If the 6th Respondent files fresh application for issuance of license/NOC for establishment of new Petroleum Retail Outlet, then the authorities who are expected to grant NOC and licenses are directed to conduct proper enquires as directed by this Tribunal in earlier paragraphs on the basis of the directions issued by the Hon'ble High Court of Madras in several decisions referred to above and also considering the subsequent notification issued by the State of Tamil Nadu, accepting the IRC Circular No.12-2009 and pass appropriate reasoned orders in accordance with law at any rate within a period of three months from the date of filing of fresh application by them and

the parties, if aggrieved by any order(s) would be entitled to challenge the same before the appropriate forum in accordance with law.

65. The points are answered accordingly.

66. In the result, the Original Application is allowed in part and disposed of with the following directions:-

i. As regards the CPCB Circular dated 07.01.2020 is concerned, since it was issued on the basis of the Expert Committee appointed as directed by the National Green Tribunal applying the *'Precautionary Principle'*, it will have statutory force, as it was published in the website of the CPCB and it was circulated among the State PCBs/Pollution Control Committees and it was made known to the public and the directions issued by the Principal Bench of National Green Tribunal, New Delhi in **Original Application Nos.31 and 86 of 2019** on the basis of the report submitted by the Joint Committee was not challenged and it has become final and that will have to be adhered to by the Oil Marketing Companies and also the statutory authorities while considering the question of NOC being granted.

ii. The authorities who are vested with the power to grant NOC are expected to consider the objections of the public and also give reason as to why they are granting permission after answering the objections and it should not be mechanically issued and there must be application of mind by the authorities while granting the NOC.

iii. As regards the distance criteria for other schools (other than play schools) and regarding the applicability of Code of Regulations for Play Schools, 2015 issued by the State of Tamil Nadu is concerned, that will subject to the directions to be issued by the Hon'ble High Court of Madras in the pending matters, as that question has not become final and only interim orders have been passed by the Hon'ble High

Court in some cases and also the order passed by the Hon'ble High Court of Madras in **W.P. No.4321 of 2020 and 2951 of 2022** dated 21.06.2022 mentioned above.

iv. As regards the applicability of IRC Circular No.12-2009 are concerned, in view of the latest notification issued by the State of Tamil Nadu i.e. G.O. (Ms.) No.25 dated 24.02.2022 that will have applicability only from that date of notification and it cannot be applied retrospectively and the applicability of IRC Rules will be subject to the final decision to be taken in the Writ Appeal **[W.A. No.1187 of 2020]** pending before the Hon'ble High Court of Madras.

v. In some cases, residential area has not been classified by the zoning regulations and certain areas are kept as non-planning area. There is no clarity in the guidelines given in such cases and what should be the distance criteria to be adopted for the purpose of establishing new Petroleum Retail Outlet and this is being likely used in their favour by the Oil Marketing Companies and that will affect the very purpose of the providing siting criteria for establishment of such Petroleum Retail Outlet. So, under such circumstances, we feel that it is necessary to direct the CPCB to revisit that issue and come with some clarifications in the form of notification in addition to the circular already issued dated 07.01.2020 and subsequent circular issued in this regard based on the various directions issued by the National Green Tribunal (both Principal Bench and Central Zone Bench) as to what should be the distance criteria should be adopted where no residential areas have been classified in the local laws or in case where there is non-planning areas under the local laws, then what should be the distance criteria to be adopted for establishment of new Petroleum Retail Outlet.

vi. Further, even in areas which are classified as Commercial Zone/Mixed Zone, whether any minimum distance criteria will have to be provided taking into account the

environmental impact of establishment such petroleum units. So, we direct the CPCB to revisit the siting criteria on the basis of the observations made and come with a proper notification/office memorandum and publish the same in accordance with law so as to make it enforceable to the stakeholders and the statutory authorities.

vii. Respondent No.6 and their franchisee in whose favour the permission was granted are restrained from operating the Petroleum Retail Outlet in Sy. No.247 D, Ward – B, Block – 38 of Thimmarayasamudhiram Village, Ammamandapam, Srirangam, Tiruchirappalli, as it was constructed in violation of the guidelines issued by the CPCB vide their Office Memorandum dated 07.01.2020.

viii. The owner of the Petroleum Retail Outlet or the Oil Marketing Company is permitted to remove the products which are kept in the premises, but this permission should not be taken as a ground for retail sale of the products.

ix. The Tiruchirappalli City Municipal Corporation is directed to take appropriate action against the 6th Respondent or their Franchisee for making construction of building in the disputed area against the provisions of the Coimbatore City Municipal Corporation Act, 1981 which is applicable to the Tiruchirappalli City Municipal Corporation Act, 1994 as per Section 8 of the said Act, in accordance with law.

x. The 6th Respondent (M/s. Indian Oil Corporation Limited) or their franchisee is directed to pay environmental compensation of **Rs.10,00,000/- (Rupees Ten Lakhs only)** to the State Pollution Control Board within a period of **3 (Three) Months** and if it is not paid, then the State Pollution Control Board is at liberty to recover the amount from the Respondent No.6 or their franchisee in accordance with law.

xi. If the 6th Respondent files fresh application for issuance of license/NOC for establishment of new Petroleum Retail Outlet, then the authorities who are expected to grant NOC and licenses are directed to conduct proper enquires as

directed by this Tribunal in earlier paragraphs on the basis of the directions issued by the Hon'ble High Court of Madras in several decisions referred to above and also considering the subsequent notification issued by the State of Tamil Nadu, accepting the IRC Circular No.12-2009 and pass appropriate reasoned orders in accordance with law at any rate within a period of three months from the date of filing of fresh application by them and the parties, if aggrieved by any order(s) would be entitled to challenge the same before the appropriate forum in accordance with law.

xii. Considering the circumstances, we don't find any reason to disallow the cost to the applicant payable by the 6th Respondent or the Franchisee and that amount is fixed as **Rs.10,000/- (Rupees Ten Thousand only)** which the 6th Respondent is liable to pay within **3 (Three) months** and if it is not paid, the applicant is entitled to recover from the 6th Respondent in accordance with law.

xiii. The Registry is directed to communicate this order to the official respondents, Commissioner – Tiruchirappalli City Municipal Corporation, District Collector – Tiruchirappalli District, Commissioner of Police -Tiruchirappalli, Chairman – State Pollution Control Board, Central Pollution Control Board (both New Delhi and Regional Office at Chennai) and PESO for their information and compliance of directions.

67. With the above observations and directions, this Original Application is disposed of.

/True Copy/

Sd/-
Justice K. Ramakrishnan, JM

Sd/-
Dr. Satyagopal Korlapati, EM

VBR Menon

O.A. No.176/2020 (SZ),
01st July 2022. Mn.

Annexure - 7

EQ-11099/25/2021-AQM-HO-CPCB-HO **September 16, 2024**

OFFICE MEMORANDUM

Sub: Siting criteria for setting up of new petrol pumps- reg.

The Hon'ble NGT vide order dated 01.07.2022 in OA no. 176 of 2020 (SZ): V.B.R. Menon v/s The Commissioner of Police, Tiruchirappalli and Ors. directed CPCB to revisit the siting criteria prescribed in CPCB guidelines dated 07.01.2020 for setting up of new petrol pumps, with respect to cases where no residential areas have been classified in the local laws or where there are non-planning areas under the local laws, and for Commercial Zone/Mixed Zone. The matter was also referred to the Expert Committee, constituted for framing guidelines for setting up of new petrol pumps.

02. Further, the Hon'ble Supreme Court has incorporated the said guidelines in its judgment dated 14.03.2023 in Civil Appeal no. 421 of 2022 and SPCBs/PCCs are required to ensure strict adherence to CPCB guidelines. Thereafter, CPCB had issued an OM directing all SPCBs/PCCs to ensure strict adherence to CPCB guidelines.

03. Considering the views of the Expert Committee, the following is recommended:

i. SPCBs/PCCs to take up the matter for classification of areas in their State, under the extant Rules/Regulations/Byelaws for implementation of the siting criteria, with State Governments

ii. State Govt. to permit setting up of new petrol pumps strictly as per the siting criteria prescribed in local bye-laws (in case of unclassified areas, non-planning areas, mixed zone, commercial zone) and taking into account CPCB guidelines dated 07.01.2020

iii. SPCBs/PCCs to ensure implementation of all environment protection and control measures including VRS installation, provision of double containment walls, leakages and spillage detection and control systems, groundwater and soil quality monitoring, etc., as prescribed in CPCB guidelines dated 07.01.2020 and addendum dated 16.08.2021

iv. State Govt. to ensure implementation of various safeguards for safety, fire hazard, traffic movement, etc. prescribed by PESO or any other agency designated by the State Government for giving approvals for establishment of petrol pumps, besides additional measures as prescribed by SPCB/PCC.

This issues with the approval of Competent Authority.

/True copy/

VBR Menon

(P. Agarwal)
Scientist 'F' and Head
Air Quality Management Division

/Annexure - 8/

(2023) 7 Supreme Court Cases 368

2J

(BEFORE SUDHANSHU DHULIA AND J.B. PARDIWALA, JJ.)

INDIAN OIL CORPORATION LIMITED . . Appellant;

Versus

V.B.R. MENON AND OTHERS . . Respondents.

Civil Appeals No. 421 of 2022† with Nos. 494, 1695, 1758, 1912 and 2039 of 2022†, decided on March 14, 2023

A. **Environment Law — National Green Tribunal Act, 2010 — Ss. 14 to 20 and 25 to 30 — Scheme of the Act — Jurisdiction/powers of NGT — Scope — Explained in detail**

— Held, NGT has both original and appellate jurisdiction which include: (i) Power to adjudicate upon civil cases where substantial question relating to environment involved; (ii) Power to grant relief and compensation to victims of pollution; and (iii) Power to order restitution of either property damaged or of environment

— Further held, person in whose favour award/order is passed by NGT is entitled to two types of remedies for non-compliance therewith viz. (i) Seek execution of award under S. 25; and (ii) Seek prosecution of offenders under S. 26 which carry imprisonment for term that may extend to three years or fine extending to ten crore rupees or both — S. 27 makes every person and every company in charge of affairs of Company liable to prosecution while under S. 28 even government departments are liable to be prosecuted and punished

— Insofar as execution of orders of NGT is concerned, S. 25 confers two types of powers viz. (i) Power to execute award itself as if it was decree of civil court; and (ii) Power to transmit award to civil court for execution

— Furthermore, apart from bar of jurisdiction of civil courts under S. 29 of the NGT Act also confers overriding effect upon any other law under S. 33 — Moreover, apart from repealing the National Environment Tribunal Act, 1995 and the National Environment Appellate Authority Act, 1997 expressly under S. 38(1), it also contains provision in S. 38(8) dealing with implied repeal

— Further, though S. 26(2) makes offences under the Act non-cognizable, S. 30(1)(b) entitles any person who has given notice of not less than sixty days in prescribed manner, of alleged offences and of his intention to prosecute, to file complaint before competent court — Interestingly, S. 30(1)(b) does not even use expression "aggrieved person" but uses expression "any person" — National Green Tribunal (Practices and Procedure) Rules, 2011, R. 24 (Paras 26 to 35)

† Arising from the Judgment and Order in *V.B.R. Menon* v. *State of T.N.*, 2021 SCC OnLine NGT 3583 (National Green Tribunal, Original Application No. 138 of 2020, dt. 23-12-2021) **[Modified]**

B. **Environment Law — National Green Tribunal Act, 2010 — Object of — To provide one-stop-shop solution for all types of issues such as environmental clearances, settlement of disputes relating to environment, relief and compensation for victims of pollution and environmental damage, restitution of property/environment, etc. — Tribunals possess both original and appellate jurisdiction, with enormous powers not only to execute its orders as decrees of civil courts, but also to punish those who fail to comply with its orders — Tribunal also empowered to collect court fee and entertain claims preferred within period of limitation (Para 36)**

C. **Environment Law — National Green Tribunal Act, 2010 — Ss. 14 to 20 — Jurisdiction and powers of NGT — Direction by NGT to Central Pollution Control Board (CPCB) as well as State Pollution Control Board to make obtaining of consent to establish (CTE) and consent to operate ("CTO") mandatory for new as well as existing petroleum retail outlets and to install vapour recovery systems (VRS), in exercise of power under S. 5 of the EP Act, 1986 — Legality of, affirmed**

— NGT was well within its powers and jurisdiction to issue impugned direction for protecting environment — However, further held that, it was not necessary to make obtaining of CTE and CTO mandatory and directed CPCB to ensure that its guidelines were scrupulously followed — Impugned direction regarding installation of VRS not interfered with and State Pollution Control Board directed to ensure compliance therewith within fresh timeline prescribed by CPCB

— Oil, Petroleum and Natural Gas — Environmental Issues/Laying of Pipelines — Environment (Protection) Act, 1986, S. 5 (Paras 48 to 53)

Municipal Corpn., Greater Mumbai v. *Ankita Sinha*, (2022) 13 SCC 401 : 2021 SCC OnLine SC 897, *relied on*

V.B.R. Menon v. *State of T.N.*, 2021 SCC OnLine NGT 3583, *modified*

Hindustan Petroleum Corpn. Ltd. v. *V.B.R. Menon*, 2022 SCC OnLine SC 1890, *considered*

Gyanprakash v. *Union of India*, 2019 SCC OnLine NGT 619; *M.C. Mehta* v. *Union of India*, (1986) 2 SCC 176 : 1986 SCC (Cri) 122; *Indian Council For Enviro-Legal Action* v. *Union of India*, (1996) 3 SCC 212; *A.P. Pollution Control Board* v. *M.V. Nayudu*, (1999) 2 SCC 718; *A.P. Pollution Control Board (2)* v. *M.V. Nayudu*, (2001) 2 SCC 62, *referred to*

Vellore Citizens' Welfare Forum v. *Union of India*, (1996) 5 SCC 647, *S. Jagannath* v. *Union of India*, (1997) 2 SCC 87; *Karnataka Industrial Areas Development Board* v. *C. Kenchappa*, (2006) 6 SCC 371; *Aditya N. Prasad* v. *Union of India*, 2018 SCC OnLine NGT 333, *cited*

D. **Environment Law — Environment (Protection) Act, 1986 — Ss. 5, 5-A and 3(3) — Jurisdiction and powers of Central Government — Scope — Held, Central Government as well as Authority constituted under S. 3(3) are competent to issue directions under S. 5 as are "necessary or expedient for purpose of protecting and improving quality of environment", which are amenable to appellate jurisdiction of NGT**

— National Green Tribunal Act, 2010 — Ss. 14 to 20 — Directions passed under S. 5 of the EP Act, 1986 — Held, amenable to jurisdiction of NGT (Para 38)

E. **Oil, Petroleum and Natural Gas — Environmental Issues/Laying of Pipelines — Consent to establish ("CTE") and consent to operate ("CTO") — Connotation — Explained**

— Held, consent to establish means prior permission of Pollution Control Board to begin work of construction of petrol retailing outlet at any place, while consent to operate means after establishment of retail petroleum outlet, certificate is issued permitting commencement of operation which is subject to actual compliance of conditions imposed while issuing "consent to establish" — Water (Prevention and Control of Pollution) Act, 1974 — S. 25 — Air Pollution — Air (Prevention and Control of Pollution) Act, 1981, S. 21 (Paras 43 to 47)

The instant appeals are filed by various oil marketing companies challenging judgment and order dated 23-12-2021 passed by NGT, Chennai directing the Central Pollution Control Board ("CPCB") as well as State Pollution Control Boards to issue directions to make it mandatory to obtain consent to establish ("CTE") and consent to operate ("CTO") for new as well as existing petroleum outlets.

The issue for determination was whether NGT has jurisdiction to direct CPCB to exercise its powers under Section 5 of the EP Act, 1986 mandating obtaining of CTE and CTO by all petroleum retail outlets across the country.

Answering in the affirmative, the Supreme Court held as above.

P-D/69824/C

Advocates who appeared in this case :

Tushar Mehta, Solicitor General, Amit Anand Tiwari, Additional Advocate General, Jay Savla, Pinaki Mishra and A. Sirajudeen, Senior Advocates [Prabhat Chaurasia, Jasdeep Singh Dhillon, Rahul Gupta (Advocate-on-Record), K.R. Sasiprabhu (Advocate-on-Record), Vishnu Sharma A.S., Tushar Bhardwaj, Prakhar Agarwal, T. Sundar Ramanathan (Advocate-on-Record), Vivek Pandey, Ms Sukanya Viswanathan, Ms Aastha Sardana, Sanjay Kapur (Advocate-on-Record), Balaji Srinivasan (Advocate-on-Record), Shiva Krishnamurti, Ms Gauri Pasricha, Devamshu Behl, Rohan Dewan, Ms Lakshmi Rao, V.B.R. Menon, Ms Manjeet Chawla (Advocate-on-Record), Keethik Vasan, Ms Usha Pant Kukreti, Dr Joseph Aristotle S. (Advocate-on-Record), Shobhit Dwivedi, Ms Devyani Gupta, Ms Tanvi Anand, Saurabh Mishra (Advocate-on-Record), Ms Bhumi Agrawal, Rakesh Chander, Ms Priya Kaushik, Amrish Kumar (Advocate-on-Record), Ms Megha Karnwal, Surya Prakash and Arjun Bhatia, Advocates], for the appearing parties.

Chronological list of cases cited ***on page(s)***

1. (2022) 13 SCC 401 : 2021 SCC OnLine SC 897, *Municipal Corpn., Greater Mumbai* v. *Ankita Sinha* 380*f-g*
2. 2022 SCC OnLine SC 1890, *Hindustan Petroleum Corpn. Ltd.* v. *V.B.R. Menon* 376*e*, 376*e-f*
3. 2021 SCC OnLine NGT 3583, *V.B.R. Menon* v. *State of T.N.* 371*b-c*, 371*d-e*, 372*d-e*, 373*h*, 374*c*, 375*c*, 375*f*, 376*c*, 376*f*, 387*g-h*, 388*b-c*, 388*f*, 388*g-h*, 389*a*
4. 2019 SCC OnLine NGT 619, *Gyanprakash* v. *Union of India* 375*b*

5. 2018 SCC OnLine NGT 333, *Aditya N. Prasad* v. *Union of India* 372*d*, 372*g*, 373*a*
6. (2006) 6 SCC 371, *Karnataka Industrial Areas Development Board* v. *C. Kenchappa* 382*b*
7. (2001) 2 SCC 62, *A.P. Pollution Control Board (2)* v. *M.V. Nayudu* 379*e*
8. (1999) 2 SCC 718, *A.P. Pollution Control Board* v. *M.V. Nayudu* 379*e*
9. (1997) 2 SCC 87, *S. Jagannath* v. *Union of India* 382*b*
10. (1996) 5 SCC 647, *Vellore Citizens' Welfare Forum* v. *Union of India* 382*b*
11. (1996) 3 SCC 212, *Indian Council For Enviro-Legal Action* v. *Union of India* 379*e*
12. (1986) 2 SCC 176 : 1986 SCC (Cri) 122, *M.C. Mehta* v. *Union of India* 379*d-e*

The Judgment of the Court was delivered by

J.B. PARDIWALA, J.— Since the issues raised in all the captioned appeals are the same and the challenge is also to the selfsame order[1] passed by the National Green Tribunal, Southern Zone, Chennai (for short "NGT, Chennai"), those were taken up for hearing analogously and are being disposed of by this common judgment and order.

2. For the sake of convenience, Civil Appeal No. 2039 of 2022 is treated as the lead matter.

3. This appeal is filed by an oil marketing company viz. Reliance BP Mobility Ltd. incorporated under the Companies Act, 2013 and is directed against the judgment and order dated 23-12-2021[1] passed by NGT, Chennai in Original Application No. 138 of 2020 (SZ) insofar as the impugned order directs the Central Pollution Control Board (CPCB) as well as the State Pollution Control Boards to issue directions to make it mandatory to obtain consent to establish ("CTE") and the consent to operate ("CTO") for new retail petroleum outlets as well as the existing retail petroleum outlets.

Factual matrix

4. It appears from the materials on record that Respondent 2 herein Mr V.B.R. Menon, a resident of Chennai, filed Original Application No. 138 of 2020 (SZ) before NGT, Chennai raising the issue in regard to the non-installation of vapour recovery systems (VRS) in the petroleum outlets by the oil marketing companies (OMCs).

5. In Original Application No. 138 of 2020, the applicant (Respondent 2 herein) prayed for the following reliefs:

> "*Reliefs*
>
> A. Injunct Respondents 5 to 9 from commissioning and operating any new petroleum retail outlets in Tamil Nadu without installing vapour recovery systems, Stage 1 and 2 in good working condition, pending disposal of this application; and
>
> B. Pass such further order or orders as may fit proper and necessary in the facts and circumstances of the case.

1 *V.B.R. Menon* v. *State of T.N.*, 2021 SCC OnLine NGT 3583

Prayer

A. Direct the respondent oil marketing companies R-5 to R-9 to install and operate vapour recovery systems, Stage 1 and 2, in good working condition before opening and commissioning of any new petroleum retail outlets in Tamil Nadu.

B. Direct the respondent oil marketing companies R-5 to R-9 to install and operate vapour recovery systems, Stage 1 and 2, in all the existing petroleum outlets in Tamil Nadu within a time schedule to be prescribed by this Hon'ble Tribunal for each city, town and rural area situated in Tamil Nadu.

C. Pass such further order or orders as may be fit, proper and necessary in the facts and circumstances of the case and thus render justice."

6. The basis for filing of the original application as aforesaid before NGT, Chennai was the order passed by the Principal Bench of NGT in Original Application No. 147 of 2016 wherein the Principal Bench of NGT issued directions to install Stage I and Stage II vapour recovery devices (VRD) at all fuel stations, distribution centres, terminals, railway loading/unloading facilities and airports in the National Capital Territory of Delhi. Vide order dated 28-9-2018[2] passed in OA No. 147 of 2016 by the Principal Bench of the National Green Tribunal, the timeline of installation of VRD was extended.

7. NGT, Chennai adjudicated OA No. 138 of 2020 (SZ) and disposed of the same vide order dated 23-12-2021[1] by issuing the following directions: (*V.B.R. Menon case*[1], SCC OnLine NGT para 69)

"*69. In the result, this application is disposed of as follows*:

(*i*) We made it clear that all the Retail Petroleum Outlets which are located in cities having more than 10 lakh population should have installed the VRS mechanism which are having turnover of more than 300 KL/month and above, as insisted by the Central Pollution Control Board in consultation with the Ministry of Petroleum and Natural Gas as per Circular dated 12-12-2016. If any of the Retail Petroleum Outlets had not installed the same within the time-frame fixed by CPCB or extended by the Hon'ble Apex Court in this regard, then CPCB is directed to take appropriate action against those petroleum outlets/storage depot which have not complied with the same by imposing environmental compensation as directed by the Principal Bench of National Green Tribunal, New Delhi in OA No. 147 of 2016 (*Aditya N. Prasad* v. *Union of India*[2]).

(*ii*) As regards the new petroleum outlets of Stage 1 and Stage 2 (having 100 KL/month to 300 KL/month) and for Stage 1-A (Storage depots) are concerned, the same will have to be installed within the extended time fixed by CPCB both by public sector undertaking and private sector undertaking and if there is any violation found, then they are directed to take appropriate

2 *Aditya N. Prasad* v. *Union of India*, 2018 SCC OnLine NGT 333
1 *V.B.R. Menon* v. *State of T.N.*, 2021 SCC OnLine NGT 3583

action for such violation as directed by the Principal Bench of National Green Tribunal, New Delhi in OA No. 147 of 2016 (*Aditya N. Prasad* v. *Union of India*[2]).

(*iii*) The Central Pollution Control Board (CPCB) as well as the State Pollution Control Boards are directed to issue direction under Section 5 of the Environment (Protection) Act, 1986 and Section 18 of the Water (Prevention and Control of Pollution) Act, 1974 and the Air (Prevention and Control of Pollution) Act, 1981 to make it mandatory to obtain consent to establish and consent to operate for new petroleum outlets to be established in future and even to those which are under the preparation of establishment, but not started construction as has been done by the State Pollution Control Board, Kerala and such a direction should be issued within a period of 3 (three) months and till then, all the new Retail Petroleum Outlets are directed to apply for consent to establish and consent to operate before its establishment.

(*iv*) We also direct all the existing Retail Petroleum Outlets irrespective of its turnover to obtain consent to operate for the existing outlets within a period of 6 (six) months. If it is not obtained, then the State Pollution Control Board concerned is directed to take appropriate action against such petrol pumps in accordance with law.

(*v*) Considering the circumstances, parties are directed to bear their respective costs in the application.

(*vi*) The Registry is directed to communicate this order to the Ministry of Environment, Forests & Climate Change (MoEF&CC), Central Pollution Control Board, New Delhi, Integrated Regional Office of the Central Pollution Control Board, Bangalore and Chennai, State Pollution Control Boards of Tamil Nadu, Kerala, Andhra Pradesh, Telangana, Karnataka and also to the Pollution Control Committee of Union Territory of Puducherry for their information and compliance of the direction." (emphasis in original)

8. Being dissatisfied with the aforesaid directions issued by NGT, Chennai, the appellant is here before this Court.

9. The other oil marketing companies (OMCs) before this Court seeking to challenge the very selfsame order passed by NGT are: (1) M/s Indian Oil Corporation Ltd., (2) M/s Hindustan Petroleum Corporation Ltd., (3) M/s Bharat Petroleum Corporation Ltd., (4) M/s Nayara Energy Ltd., and (5) M/s Shell India Markets Pvt. Ltd.

Submissions on behalf of the appellant

10. At the outset, the learned counsel appearing on behalf of the appellant herein submitted that it does not seek to challenge the directions contained in paras 69(*i*) and 69(*ii*), respectively, of the impugned order[1] i.e. regarding

1 *V.B.R. Menon* v. *State of T.N.*, 2021 SCC OnLine NGT 3583

the installation of the VRS/VRD. The learned counsel would like to confine his challenge only to the direction issued in para 69(*iii*) and para 69(*iv*), respectively, referred to above i.e. in regard to the consent to establish (CTE) and consent to operate (CTO).

11. The learned counsel submitted that the present appeal gives rise to three substantial questions of law which read thus:

11.1. (*A*) Whether NGT can issue directions which are in the nature of legislative functions?

11.2. (*B*) Whether the public sector and private sector OMCs and/or ROs (retail outlets) are required to obtain consent to establish and/or consent to operate for operation, establishment and carrying on the business of ROs?

11.3. (*C*) Whether NGT can impose requirement of obtaining an additional approval merely to provide for a regulating mechanism to supervise compliance of the existing guidelines issued by CPCB?

12. The learned counsel submitted that the directions issued in paras 69(*iii*) and 69(*iv*), respectively, of the impugned order[1] are legislative in nature and therefore beyond the jurisdiction of NGT. He would submit that the directions issued by NGT, Chennai to CPCB making it mandatory to obtain CTE and CTO for ROs would amount to enacting a law under the guise of judicial order. It was further submitted that there is no rational basis to issue the directions making it mandatory for the ROs to obtain CTE and/or CTO. According to the learned counsel, the only basis for NGT to issue such directions is to ensure proper regulatory mechanism and/or to secure compliance of the guidelines issued by CPCB regarding installation of VRS, etc.

13. It was also submitted that the impugned directions are directly in conflict with the object with which the reclassification of industries has been done by CPCB. It was pointed out that the petroleum retail outlets fall within the green zone and for any industry falling within the green zone, it is not mandatory to obtain CTO and/or CTE.

14. It was further submitted that the process of setting up of an RO requires obtaining of numerous approvals and the same takes a considerable period of time. For instance, even prior to the construction of ROs, the OMCs are required to obtain approvals from inter alia: (1) Petroleum and Explosives Safety Organisation (PESO), (2) Town and Country Planning Officers, (3) National Highway Authority of India, (4) District/Divisional Forest Officer/ Regional Forest Officer, (5) approvals from the State Cabinet, etc. Furthermore, the OMCs are also required to obtain no-objection certificate from the District Magistrate concerned. Such NOC from the District Magistrate comprises of approvals from various authorities, such as — the Fire Department, Police Department, PWD, Health and Safety, Municipality concerned and/ or any other authority that the District Magistrate may consider necessary. Thereafter, upon construction of the ROs, the OMCs are required to obtain final approvals from inter alia PESO, National Highway Authority of India, Legal

1 *V.B.R. Menon* v. *State of T.N.*, 2021 SCC OnLine NGT 3583

Metrology Department, Labour Department and the Municipality concerned. The timelines for some of the aforesaid approvals range over 120 to 240 days. In such circumstances, according to the learned counsel, by making it mandatory to obtain the CTO and CTE for setting up/operating an RO would cause lot of hardship and also delay the setting of ROs.

15. The learned counsel laid much stress on the fact that CPCB vide its Office Memorandum dated 7-1-2020 had issued guidelines for setting up of new petroleum pumps in compliance of the order passed by NGT dated 18-1-2019 in *Gyanprakash* v. *Union of India*[3]. The guidelines are very exhaustive and they take care of the apprehension expressed by NGT in its impugned order. Once these guidelines are scrupulously observed and followed, there is no need thereafter to obtain CTO and/or CTE.

16. In such circumstances referred to above, the learned counsel appearing for the appellant prayed that there being merit in his appeal, the same may be allowed and the directions issued in para 69(*iii*) and para 69(*iv*) of the impugned order[1] passed by NGT, Chennai be set aside.

Submissions on behalf of Respondent 2 — The original applicant before NGT

17. The learned counsel appearing for Respondent 2 (the original applicant) vehemently submitted that no error, not to speak of any error of law, could be said to have been committed by NGT in issuing the impugned directions. It was submitted that no interference is warranted at the hands of this Court in an appeal filed under Section 22 of the National Green Tribunal Act, 2010 (for short "the NGT Act"). According to the learned counsel, an appeal under Section 22 of NGT Act is restricted to substantial questions of law. There is no substantial question of law involved in the present appeal. In such circumstances referred to above, the learned counsel prays that there being no merit in the present appeal, the same may be dismissed.

Submissions on behalf of Respondent 1 CPCB

18. Mr Tushar Mehta, the learned Solicitor General submitted that there was no need for NGT to issue the impugned directions as contained in para 69(*iii*) and para 69(*iv*), respectively, of the impugned order[1] more particularly in view of the detailed guidelines issued by CPCB vide the Office Memorandum dated 7-1-2020.

19. According to Mr Mehta, what is sought to be achieved by asking the ROs to obtain CTE and/or CTO can very well be taken care of by ensuring that all the existing ROs and the ROs that may come up in future scrupulously abide by the guidelines issued by CPCB. CPCB has ensured that all the State Pollution Control Boards keep a very strong vigil on the ROs across the country so as to ensure that the guidelines issued by it are scrupulously followed. Even, according to Mr Mehta, to ask all the existing ROs to obtain CTO is

3 2019 SCC OnLine NGT 619
1 *V.B.R. Menon* v. *State of T.N.*, 2021 SCC OnLine NGT 3583

something very unreasonable. According to Mr Mehta, the same requires a lot of paperwork and is very time-consuming.

20. Mr Mehta would submit that it is highly debatable that NGT could have directed CPCB that it should in exercise of powers under Section 5 of the Environment (Protection) Act, 1986 (for short "the 1986 Act") make it mandatory to obtain CTE and/or CTO.

21. Mr Mehta in the last submitted that so far as directions contained in paras 69(*i*) and 69(*ii*), respectively, are concerned, the same shall be complied with in its true perspective and the State Pollution Control Boards shall ensure due compliance of the same. He would submit that CPCB shall also ensure that the guidelines issued by it referred to above are strictly adhered to by all the State Pollution Control Boards and, if there is any lapse at the end of any retail outlet, then necessary action shall be taken in accordance with law.

22. In such circumstances referred to above, Mr Mehta prays that the directions contained in paras 69(*iii*) and 69(*iv*) of the impugned order[1] may be set aside or modified appropriately.

Analysis

23. Having heard the learned counsel appearing for the parties and having gone through the materials on record, the only question that falls for our consideration is:

> Whether NGT has the jurisdiction to direct CPCB that it should in exercise of its powers under Section 5 of the 1986 Act make obtaining of the CTE and CTO, respectively, mandatory for all the petroleum retail outlets across the country?

24. This Court, while issuing notice vide order dated 7-2-2022[4] in one of the connected appeals i.e. Civil Appeal No. 494 of 2022, observed thus: (*Hindustan Petroleum case*[4], SCC OnLine SC paras 1-3)

> "*1*. Issue notice, returnable in six weeks.
>
> *2*. Meanwhile, the directions issued vide impugned order of the National Green Tribunal dated 23-12-2021[1] shall remain stayed provided the petitioner complies with the directions issued by the Central Pollution Control Board (CPCB) dated 4-6-2021 prescribing fresh timeline for completion of installation of vapour recovery devices (VRD).
>
> *3*. Mr Sanjay Kapur, learned counsel appearing for the appellant has stated that in terms of the said directions of CPCB dated 4-6-2021, vapour recovery devices have already been installed in 50% retail outlets by December, 2021 in the specified category and the remaining timeline shall also be complied with."

1 *V.B.R. Menon* v. *State of T.N.*, 2021 SCC OnLine NGT 3583
4 *Hindustan Petroleum Corpn. Ltd.* v. *V.B.R. Menon*, 2022 SCC OnLine SC 1890

25. As the principal argument of all the learned counsel appearing for the respective oil marketing companies in the present litigation is in regard to the jurisdiction of NGT to issue the impugned directions, it is necessary to first understand the entire scheme of NGT Act.

Scheme of the NGT Act, 2010

26. The Preamble to the NGT Act reads as follows:

> An Act to provide for the establishment of a National Green Tribunal for the effective and expeditious disposal of cases relating to environmental protection and conservation of forests and other natural resources including enforcement of any legal right relating to environment and giving relief and compensation for damages to persons and property and for matters connected therewith or incidental thereto.
>
> AND WHEREAS India is a party to the decisions taken at the United Nations Conference on the Human Environment held at Stockholm in June, 1992, in which India participated, calling upon the States to provide effective access to judicial and administrative proceedings, including redress and remedy and to develop national laws regarding liability and compensation for the victims of population and other environmental damage;
>
> AND WHEREAS in the judicial pronouncement in India, the right to healthy environment has been construed as a part of the right to life under Article 21 of the Constitution.
>
> AND WHEREAS it is considered expedient to implement the decisions taken at the aforesaid conference and to have a National Green Tribunal in view of the involvement of multi-disciplinary issues relating to the environment.

27. The jurisdiction and powers of NGT are to be found in Sections 14 to 20, respectively. A close look at these provisions would show that NGT has both original as well as appellate jurisdiction. The range of powers that NGT has include:

27.1. The power to adjudicate upon civil cases where a substantial question relating to environment is involved [Section 14(1)];

27.2. The power to grant relief and compensation to the victims of pollution [Section 15(1)(*a*)]; and

27.3. The power to order restitution of either property damaged or of the environment [Section 15(1)(*b*)].

28. A person in whose favour NGT passes an award or order, is entitled to two types of remedies, if the award or order or the decision of NGT is not complied with. The first is a right to seek execution of the award under Section 25 and the second is to seek the prosecution of the offenders before a criminal court under Section 26.

29. Apart from the bar of jurisdiction of civil courts under Section 29, NGT Act is also conferred the overriding effect upon any other law under Section 33, which reads as follows:

> "**33.** ***Act to have overriding effect***.—The provisions of this Act, shall have effect notwithstanding anything inconsistent contained in any other law for the

time being in force or in any instrument having effect by virtue of any law other than this Act."

30. Sub-section (1) of Section 38 of NGT Act repeals the following enactments:

(*i*) The National Environment Tribunal Act, 1995

(*ii*) The National Environment Appellate Authority Act, 1997

31. Apart from repealing the above two enactments expressly under sub-section (1) of Section 38, NGT Act also contains a provision in sub-section (8) of Section 38 which deals with implied repeal. Sub-section (8) of Section 38 reads as follows:

"**38. (8)** The mention of the particular matters referred to in sub-sections (2) to (7) shall not be held to prejudice or affect the general application of Section 6 of the General Clauses Act, 1897 (10 of 1897) with regard to the effect of repeal."

32. Insofar as the execution of the orders of NGT is concerned, Section 25 confers two types of powers as noted below:

32.1. The power to execute the award by itself, as if the award is a decree of a civil court; and

32.2. The power to transmit the award to a civil court for its execution.

33. As stated earlier, the failure of any person to comply with the award of NGT is also made punishable under Section 26, with imprisonment for a term that may extend to three years or with fine which may extend to ten crore rupees or with both. Section 27 makes every company and every person directly in charge of the affairs of the company liable to prosecution. Section 28 makes even the government departments liable to be prosecuted and punished. Such powers are not available for the Loss of Ecology Authority.

34. Though sub-section (2) of Section 26 makes offences under NGT Act non-cognizable, Section 30(1)(*b*) entitles any person who has given notice of not less than sixty days in the prescribed manner, of the alleged offences and of his intention to prosecute, to file a complaint before the competent court. Interestingly, Section 30(1)(*b*) does not even use the expression "aggrieved person". It uses only an expression "any person".

35. The 186th Report of the Law Commission, submitted in 2003, eventually paved the way for the enactment of NGT Act. This can be seen from the relevant portion of the Statement of Objects and Reasons of NGT Act which reads as follows:

"**4.** The National Environment Tribunal Act, 1995 was enacted to provide for strict liability for damages arising out of any accident occurring while handling any hazardous substance and for the establishment of a National Environment Tribunal for effective and expeditious disposal of cases arising from such accident, with a view to giving relief and compensation for damages to persons, property and the environment. However, the National Environment Tribunal, which had a very limited mandate, was not established. The National

Environment Appellate Authority Act, 1997 was enacted to establish the National Environment Appellate Authority to hear appeals with respect to restriction of areas in which any industries, operations or processes or class of industries, operations or processes shall not be carried out or shall be carried out subject to certain safeguards under the Environment (Protection) Act, 1986. The National Environment Appellate Authority has a limited workload because of the narrow scope of its jurisdiction.

5. Taking into account the large number of environmental cases pending in higher courts and the involvement of multidisciplinary issues in such cases, the Supreme Court requested the Law Commission of India to consider the need for constitution of specialised environmental courts. Pursuant to the same, the Law Commission has recommended the setting up of environmental courts having both original and appellate jurisdiction relating to environmental laws.

6. In view of the foregoing paragraphs, a need has been felt to establish a specialised tribunal to handle the multidisciplinary issues involved in environmental cases. Accordingly, it has been decided to enact a law to provide for the establishment of the National Green Tribunal for effective and expeditious disposal of civil cases relating to environmental protection and conservation of forests and other natural resources including enforcement of any legal right relating to environment."

36. From the 186th Report of the Law Commission and the salient features of the Act, the following could be deduced:

36.1. The creation of the National Green Tribunal was in pursuance of the repeated directions issued by this Court in at least four cases, namely, *M.C. Mehta* v. *Union of India*[5], *Indian Council For Enviro-Legal Action* v. *Union of India*[6], *A.P. Pollution Control Board* v. *M.V. Nayudu*[7], *A.P. Pollution Control Board (2)* v. *M.V. Nayudu*[8].

36.2. The object of creation of the National Green Tribunal was to provide, what could be called a one-stop-shop solution, for all types of issues such as environmental clearances, settlement of disputes relating to environment, relief and compensation for victims of pollution and environmental damage, restitution of property, restitution of environment, etc.

36.3. The Tribunal was to have both original and appellate jurisdiction, with enormous powers not only to execute its orders as decrees of civil courts, but also to punish those who fail to comply with its orders.

36.4. The Tribunal was to collect a court fee and entertain claims preferred within a period of limitation.

37. Under NGT Act, the 1986 Act was also amended. By Section 36 of NGT Act, Section 5-A was inserted in the 1986 Act. Under this Section, any direction issued by the Central Government under Section 5, either for the closure, prohibition or regulation of any industry, operation or process or the

5 (1986) 2 SCC 176 : 1986 SCC (Cri) 122
6 (1996) 3 SCC 212
7 (1999) 2 SCC 718
8 (2001) 2 SCC 62

stoppage or regulation of the supply of electricity or water or any other service, was made appealable to the National Green Tribunal.

38. The legal effect of Section 5-A of the 1986 Act, if juxtaposed in to Section 5 read with Section 3(3) will be:

38.1. That the Central Government is competent to issue certain directions under Section 5;

38.2. That the power under Section 5 can also be exercised by the Authority constituted under Section 3(3); and

38.3. That the directions issued under Section 5, either by the Central Government itself or by the Authority constituted under Section 3(3) are amenable to the appellate jurisdiction of the National Green Tribunal.

39. We now proceed to consider whether NGT has the power and jurisdiction to issue directions to CPCB/its delegates to take all such measures if in a given case NGT finds that such directions are necessary in the interest of justice.

40. *Section 3* of the 1986 Act expressly empowers the Central Government or its delegate, as the case may be, to "take all such measures as it deems necessary or expedient for the purpose of protecting and improving the quality of environment …". *Section 5* clothes the Central Government or its delegate with the power to issue directions for achieving the objects of the Act. Read with the wide definition of "environment" in *Section 2(a)*, *Sections 3* and *5*, respectively, clothe the Central Government with all such powers as are "necessary or expedient for the purpose of protecting and improving the quality of the environment". The Central Government is empowered to take all measures and issue all such directions as are called for the above purpose.

41. We take notice of the fact that the Central Government has framed the National Green Tribunal (Practices and Procedure) Rules, 2011 (for short "the NGT Rules"). For our purpose, Rule 24 is important which reads thus:

> "**24.** ***Order and directions in certain cases***.—The Tribunal may make such orders or give such directions as may be necessary or expedient to give effect to its order or to prevent abuse of its process or to secure the ends of justice."

42. The aforesaid Rule 24 fell for the consideration of this Court in *Municipal Corpn., Greater Mumbai* v. *Ankita Sinha*[9]. We quote the few relevant observations made by this Court in *Ankita Sinha*[9] as regards the powers of the National Green Tribunal: (SCC paras 38-40, 53, 62, 68 & 72-73)

> "*38.* … The said Rules make it clear that NGT has been given wide discretionary powers to *secure the ends of justice*. This power is coupled with the duty to be exercised for achieving the objectives. The intention understandably being to preserve and protect the environment and the matters connected thereto.
>
> *39.* By choosing to employ a phrase of wide import i.e. *secure the ends of justice*, the legislature has nudged towards a liberal interpretation.

9 (2022) 13 SCC 401 : 2021 SCC OnLine SC 897

Securing justice is a term of wide amplitude and does not simply mean adjudicating disputes between two rival entities. It also encompasses inter alia, advancing causes of environmental rights, granting compensation to victims of calamities, creating schemes for giving effect to the environmental principles and even hauling up authorities for inaction, when need be.

40. Moreover, unlike the civil courts which cannot travel beyond the relief sought by the parties, NGT is conferred with power of moulding any relief. The provisions show that NGT is vested with the widest power to appropriate relief as may be justified in the facts and circumstances of the case, even though such relief may not be specifically prayed for by the parties.

* * *

53. … The above would show that from the very inception, the role of NGT was not simply adjudicatory in the nature of a lis but to perform equally vital roles which are preventative, ameliorative or remedial in nature. The functional capacity of NGT was intended to leverage wide powers to do full justice in its environmental mandate.

* * *

IX. *Authority with self-activating capability*

62. Given the multifarious role envisaged for NGT and the purposive interpretation which ought to be given to the statutory provisions, it would be fitting to regard NGT as having the mechanism to set in motion all necessary functions within its domain and this, as would follow from the discussion below, should necessarily clothe it with the authority to take suo motu cognizance of matters, for effective discharge of its mandate.

* * *

68. The duty to safeguard Article 21 rights cannot stand on a narrow compass of interpretation. Procedural provisions must be allowed to fall in step with the substantive rights that are invoked in the environmental domain, in larger public interest. The specialised forum is bestowed with the responsibility to ensure protection of the environment. To be effective in its domain, we need to ascribe to NGT a public responsibility to initiate action when required, to protect the substantive right of a clean environment and the procedural law should not be obstructive in its application …

* * *

72. As earlier seen, Section 20 of the NGT Act which includes the term "*decision*", in addition to "*order*" and "*award*", also require the Tribunal to apply the "*precautionary principle*" and the statutory mandate being relevant is extracted:

'**20.** ***Tribunal to apply certain principles***.—The Tribunal shall, while passing any order or decision or award, apply the principles of sustainable development, the precautionary principle and the polluter pays principle.'

73. The principle set out above must apply in the widest amplitude to ensure that it is not only resorted to for adjudicatory purposes but also for other "*decisions*" or "*orders*" to governmental authorities or polluters, when they fail to "*to anticipate, prevent and attack the causes of environmental degradation*"[10]. Two aspects must therefore be emphasised i.e. that the Tribunal is itself required to carry out preventive and protective measures, as well as hold governmental and private authorities accountable for failing to uphold environmental interests. Thus, a narrow interpretation for NGT's powers should be eschewed to adopt one which allows for full flow of the forum's power within the environmental domain." (emphasis in original)

Consent to establish and consent to operate

43. What is "consent to establish" (CTE) and what is "consent to operate" (CTO)? Consent to establish (CTE) means the prior permission of the Pollution Control Board to begin the work of construction of petrol retailing outlet at any place. At this stage, the groundwater level in the proposed site, nature of the groundwater, its corrosive properties, availability of residential premises, schools, probable danger to environment from the proposed outlet, etc. would be considered by the Pollution Control Board. In case consent to establish it is given, the conditions to be complied with would be prescribed in order to safeguard the air ambience and groundwater quality and also the soil. The power in this regard is available under Section 25 of the Water (Prevention and Control of Pollution) Act, 1974.

44. Consent to operate (CTO) means after the establishment of the retail petroleum outlets, a certificate is issued permitting to commence operation. At this stage, the actual compliance of the conditions imposed while issuing the "consent to establish" are ascertained. In case, any additional measures are required to be undertaken, further orders would be issued. After satisfying about the complete safeguard to environment such certificate is issued. In case of a new outlet, the company will first get the consent to establish and after establishment and before operationalising the petrol bank, the consent to operate is to be obtained. In existing outlets, the safeguards available in their units will have to be shown, thereby indicating and assuring the Pollution Control Board that the unit would not cause damage to the environment. After such satisfaction, the Pollution Control Board would issue a certificate permitting them to operate continuously. The object of the last direction is to ensure that the existing outlets are safe not only regarding air pollution but also

10 *Vellore Citizens' Welfare Forum* v. *Union of India*, (1996) 5 SCC 647; *S. Jagannath* v. *Union of India*, (1997) 2 SCC 87 and *Karnataka Industrial Areas Development Board* v. *C. Kenchappa*, (2006) 6 SCC 371

against seepage to the groundwater and soil. NGT has inherent power to issue this direction since it is only to ensure the safety of the existing units.

45. The fundamental documents required for seeking CTE and CTO are as under:

45.1. Consent to establish:

(*i*) Site plan of the production unit/project

(*ii*) Brief project report which covers the details of raw material, proposed product, the capital cost of the establishment (land and plant machinery), water balance, water source, and its proposed quantity

(*iii*) Land documentation such as rent deed/registration deed/lease deed

(*iv*) Details of air pollution control/water pollution control equipment

(*v*) MoA/Partnership deed

45.2. Consent to operate:

(*i*) Copy of the last consent granted by competent authority

(*ii*) Layout schematics manifesting the detail of manufacturing processes

(*iii*) Latest analysis report of effluent, solid wastes, fuel gases, and hazardous wastes.

(*iv*) Balance sheet copy attested by CA

(*v*) Detail relating to land in case trade effluent is discharged on land for percolation

(*vi*) Occupation registration accorded by Town & Country Planning Department in case of area development projects/Building & construction projects

(*vii*) MoA/Partnership deed

46. It will be in the fitness of things to incorporate in this judgment the guidelines issued by CPCB vide its Office Memorandum dated 7-1-2020 for setting up new petroleum pumps. The guidelines are as follows:

"***Guidelines for setting up of new petrol pumps***

A. Containment and treatment of spillages from fuel filling operations at petrol pumps:

1. Petrol pumps located in areas with high groundwater table i.e. groundwater levels less than 04 metres shall have secondary containment by way of double-walled tanks or concrete protection walls so as to minimise groundwater and soil contamination. It shall be the responsibility of OMC to properly get measured groundwater level at the site of proposed petrol pump and ensure implementation of these adequate protection measures for such sites. Details of measures taken by oil marketing company shall be placed in public domain and in case of contradictory view, view of State/Central Ground Water Board/Authority will prevail.

2. All new retail outlets shall have underground tanks/above ground tank and its ancillary components such as pipes, flexible connectors, pumps fittings, etc. protected from leaks due to corrosion by adopting materials (HDPE/Mild Steel, etc.) with required protective coating, as applicable, duly approved by PESO.

3. Any major leakage/spillage of petrol, diesel, lube oil (more than barrel-165 litres) occurs at fuelling station, OMC concerned shall report to State Pollution Control Board, PESO and District Administration under intimation to CPCB within 24 hours of occurrence.

Operation of underground storage tank (UST) concerned and its ancillary components shall be stopped immediately and not be resumed till corrective measures to contain and stop leakage/spillages are implemented to the satisfaction of PESO and SPCB concerned.

OMCs will be held liable for environmental compensation (imposed by SPCBs/PCCs) and assessment of environmental damage (depending on extent of contamination in soil and groundwater) and site remediation. Consultant/Expert agency appointed by OMCs for damage assessment and site remediation shall have minimum national/international experience of 5 years in this field. Various approved methods shall be considered for cleaning underground contaminants.

4. All DUs shall have auto cut-off nozzles which shuts dispensation of fuel if its level in customer fuel tank reaches full capacity.

5. Breakaways to be installed for all the hoses of dispensing units to reduce spillage in the event of customer vehicles moves away with nozzle still in the fuelling position.

6. Single/Double plane swivel with breakaway coupling shall be installed for all the dispensing units for better positioning of nozzle while refuelling does not fall off accidently.

7. In pressurised dispensation, all dispensing units shall be installed with shear valves to cut the fuel flow from pipeline immediately upon accidental knocking of dispensing units from its position.

8. In pressurised system all Submersible Turbine Pumps (STPs) are to be installed with line leak detectors and in the event of pipeline leaks STPs shall stop pumping fuel from underground tanks.

9. Emergency stop button switch shall be provided on the Multi-Product Dispenser (MPD) to stop the dispensation in case of emergency.

10. Automation system shall be installed at all new retail outlets to alert in case of tank leak by way of auto gauging system approved by PESO.

11. All retail outlets shall provide overfill alarm through automation.

12. Measures for spill containment in fill point chambers and forecourt area shall be implemented as prescribed by PESO.

B. Check on leakages (leakage detection system) from underground storage tanks so as to prevent groundwater and soil contamination:

1. All new retail outlets *will* have automation system installed which will provide reports on volume balance after everyday operation and records shall be maintained.

2. Manual gauging shall be done once in a month and compare the same with Automatic Tank Gauging for accuracy.

3. Daily MS and HSD loss shall not exceed MoPNG prescribed limits. In case of leakage beyond such limits, matter shall be got analysed by OMCs and further action shall be taken for ascertaining the reasons of losses. In case of leakage resulting in soil/groundwater contamination:

(*a*) OMC concerned shall report to State Pollution Control Board, PESO and District Administration under intimation to CPCB within 24 hours of occurrence. Operation of such underground storage tank (UST) and its ancillary components shall be stopped immediately.

(*b*) Fuel shall be removed immediately from underground storage tank to prevent further release to environment. Measures to prevent explosion due to vapours released due to leakage as recommended by PESO shall be implemented immediately.

(*c*) OMCs will be held liable for environmental compensation (imposed by SPCBs/PCCS) and assessment of environmental damage (depending on extent of contamination in soil and groundwater) and site remediation.

(*d*) Consultant/Expert agency appointed by OMCs for damage assessment and site remediation shall have minimum national/ international experience of 05 years in this field. Various approved methods shall be considered for cleaning underground contaminants.

(*e*) Operation of underground tank and its ancillary components shall not be resumed till corrective measures to contain and stop leakages are implemented to the satisfaction of PESO and SPCB concerned.

4. All underground tanks and pipelines shall be subjected to test for leaks every 7 years.

C. Policy towards treatment and disposal of sludge removed from underground tanks during cleaning:

D. Installation, operation and maintenance of vapour recovery system:

1. All new retail outlets set up with sale potential of 300 KL MS per month and setting up in cities with population more than 1 lakh will be provided with YRS. YRS should be functional by the time of sale of MS touch 300 KL. In case of failure of installation of VRS, environment compensation will be levied by SPCBs/PCCs equivalent to the cost of VRS and this will further increase proportionate to the period of non-compliance.

2. Any new retail outlet set up in cities having population more than 10 lakhs and having sale potential of 100 KL MS per month will be provided with YRS. YRS should be installed within a period 03 months from the day of sale of MS touch 100 KL. In case of failure of installation of VRS,

environment compensation will be levied by SPCBs/PCCs equivalent to the cost of VRS and this will further increase proportionate to the period of non-compliance.

3. In case of Stage II VRS, nozzle shall be provided with flexible cover flap or other alternative system for proper covering of filling tank and therefore proper recovery of vapours.

4. OMCs are responsible for maintaining installed VRS. They have to maintain periodic inspections for AJL regulator as prescribed by Legal Metrology. Proper record shall be maintained,

5. Working of dispenser shall be interlinked with VRS functioning. Online system shall be developed within 06 months to monitor status of operation of VRS. In case of non-operation of YRS, the same shall be automatically reported to OMC concerned. YRS shall be brought into operation immediately within 24 hrs and in any case within 72 hrs failing which sale of MS shall be stopped from the fuelling station. Proper records of operation of YRS shall be maintained.

6. Work zone monitoring for total VOC and Benzene shall be conducted by OMCs for petrol pumps selling more than 300 KL/month and more than 10 lakh population (in first phase) by the EP Act, 1986 approved labs once in a year to check compliance with OSHA norms (Time-Weighted Average) and report shall be submitted to SPCB. In addition, pilot study shall be conducted by OMCs through expert institutions for online monitoring of VOCs.

E. Groundwater and soil quality monitoring within petrol pump selling more than 300 KL/month and more than 10 lakh population shall be conducted by OMCs once in two years through the EP Act, 1986 approved labs for the following parameters from the nearest source and report submitted to SPCB:

Permissible limit

Sl. No.	*Parameter*	*Permissible limit*
1.	Total petroleum hydrocarbons	600 pg/I
2.	BTEX	(*i*) Benzene-950 pg/I (*ii*) Toluene-300 pg/I (*iii*) Zylenes— (*a*) O-xylene-350 pg/I (*b*) M&p-xylene-200 pg/I
3.	Ethanol	1400 Pg/I
4.	Methyl Tertiary Butyl Ether	13 Pg/I
5.	PAH	0.000 Pg/I

Enforcement agencies including SPCB can collect samples in and around petrol pump to check contamination.

F. Measures for protection of workers' health

1. All workers engaged at retail outlets may be covered under ESI, OMC dealers shall implement the personal protective equipment (PPE) on a par with Labour laws.

2. IEC (Information Education Communication) activities should be organised by OMC dealers for workers at regular intervals in order to sensitise them about harmful impacts of VOC emissions,

G. Audit of all protection measures and monitoring system implemented at petrol pumps:

PESO shall conduct audit of tanks and fuel equipment including pipes, overfill protection equipment and alarm system on annual basis and maintain records.

H. Siting criteria of retail outlets:

In case of siting criteria for petrol pumps new retail outlets shall not be located within a radial distance of 50 metres (from fill point/dispensing units/vent pipe whichever is nearest) from schools, hospitals (10 beds and above) and residential areas designated as per local laws. In case of constraints in providing 50 metres distance, the retail outlet shall implement additional safety measures as prescribed by PESO. In no case the distance between new retail outlet from schools, hospitals (10 beds and above) and residential area designated as per local laws shall be less than 30 metres. No high tension line shall pass over the retail outlet."

47. *Section 21* of the Air (Prevention and Control of Pollution) Act, 1981 places restrictions, both on establishment and operation of any industrial plant located in an air pollution control area without previous consent of the Board. The legislative intent behind this provision would lead to decipher two concepts — one, the consent for the purpose of establishing an industrial plant while the other for operation of that plant. The purpose of this Section is to ensure that when a unit or an industrial plant is given consent to operate, the unit ought to have satisfied all the conditions stated in the order of consent to establish and would have installed the requisite effluent treatment plants and other anti-pollution devices to ensure that it causes no pollution.

48. The upshot of our aforesaid discussion is that NGT was well within its powers and jurisdiction to issue the directions which have been impugned before us. However, we would like to address on the question — Whether the impugned directions are reasonable and whether the same may lead to unnecessary harassment and cause immense hardships to the retail outlets?

49. We take notice of the fact that all the appellants before us have installed VRS and VRD at their sites and retail outlets. We also take notice of the fact that Respondent 2 (original applicant) had not prayed for before NGT, Chennai to make CTE and CTO mandatory. The prayers in OA No. 138 of 2020 (SZ) were limited to the State of Tamil Nadu only. However, NGT, Chennai by its impugned order[1] has directed all the petroleum ROs in cities having more than 10 lakh population to install VRS mechanism which are having turnover of more than 300 KL/month. We also take notice of the fact that CPCB

1 *V.B.R. Menon* v. *State of T.N.*, 2021 SCC OnLine NGT 3583

in consultation with the Ministry of Petroleum and Natural Gas has issued circulars/guidelines from time to time for installation of VRS (also known as Vapour Recovery Device circular). We are not inclined to disturb the impugned directions issued by NGT, Chennai in regard to installation of the VRS. CPCB shall ensure that these directions are scrupulously followed and complied with.

50. What is important for us to note is that in the directions/guidelines issued by CPCB dated 30-4-2020 and 7-3-2016, respectively, the automobile fuel outlets have been classified as "green" which may be exempted from consent management. The learned Solicitor General submitted that it is only after due consideration and deliberations that CPCB issued the said directions. NGT itself in para 66 of its impugned order[1] has noted that the oil industry is characterised as "green category" and the CTE and CTO was not required. It appears to us that the apprehension on the part of NGT that the installation of VRS may not be strictly monitored by the State Pollution Control Boards, led NGT to issue directions to CPCB and State Pollution Control Boards to issue a circular making it mandatory for obtaining the CTE and CTO as a condition precedent for establishing new petroleum outlets. What has been argued before us and also on the basis of the materials on record, we are convinced that it is not necessary to make obtaining of CTE and CTO mandatory.

51. We would like to impress upon CPCB to ensure that its guidelines referred to above are scrupulously followed and once the guidelines are scrupulously adhered to, no direction to obtain CTE and CTO for starting/operating an RO is warranted. We are at one with the learned counsel appearing for the respective appellants that asking the existing ROs to obtain CTO is something very unreasonable and may lead to various difficulties. Even directing the ROs that may come up in future to obtain the CTE and CTO would be cumbersome and time-consuming and thus we do not find it reasonable.

52. In such circumstances, while holding that the National Green Tribunal has the power to direct CPCB that it should exercise its powers under Section 5 of the 1986 Act for the purpose of protecting the environment, we are inclined to modify the impugned directions issued by NGT, Chennai as contained in paras 69(*iii*) and 69(*iv*), respectively, of the impugned order[1].

53. In view of the aforesaid, we dispose of Civil Appeal No. 2039 of 2022 in the following terms:

53.1. CPCB shall ensure that all the retail petroleum outlets located in different cities having population of more than 10 lakhs and having turnover of more than 300 KL/month shall install the VRS mechanism within the fresh timeline as prescribed in its Circular dated 4-6-2021. To put it in other words, CPCB shall ensure that the directions issued by NGT as contained in paras 69(*i*) and (*ii*) of the impugned order[1] are fully complied with. It shall be the legal obligation of all the State Pollution Control Boards to ensure that the directions

1 *V.B.R. Menon* v. *State of T.N.*, 2021 SCC OnLine NGT 3583

issued by NGT in regard to the installation of the VRS mechanism are complied with within the fresh timeline as prescribed by CPCB.

53.2. We set aside the directions issued by NGT in the impugned order[1] as contained in paras 69(*iii*) and (*iv*). Instead, we direct CPCB to instruct all the State Pollution Control Boards to ensure that the guidelines issued by it vide the Office Memorandum dated 7-1-2020 are strictly adhered to. If there is breach of any of the guidelines issued by CPCB vide Office Memorandum dated 7-1-2020, then the State Pollution Control Board concerned shall proceed against the erring outlet in accordance with law at the earliest.

54. The connected appeals are also disposed of in the aforesaid terms.

55. There shall be no order as to costs.

56. Pending application, if any, stands disposed of.

———

/True copy/

VBR Menon

St. Philomena Convent High School through its Principal Sister Fatima vs. Union of India **(UOI), through the** Secretary, Ministry of Petroleumand Ors. **(31.03.2009 - BOMHC)**
MANU/MH/0221/2009

Eq Cit: 2009 111 BomLR 1593, 2009 4 MhLJ 255

IN THE HIGH COURT OF BOMBAY

Writ Petition No. 4734 of 2004

Decided On: 31.0M009

Appellants: St. Philomena Convent High School through its Principal Sister Fatima
Vs.
Respondent: Union of India (UOI), through the Secretary, Ministry of Petroleumand Ors.
[Alongwith Public Interest Litigation No. 28 of 2004]

Hon'ble Judges:
Swatanter Kumar, C J. and D.Y. Chandrachud, J.

Counsels:
For Appellant/Petitioner/Plaintiff: Y.R. Mishra,Adv., i/b., S.S. Sarkarand N.R. Prajapati, Advs.

For Respondents/Defendant: S.R. Nargolkar,Assistant Government Pleader,V.A. Gangaland A.T. Gade,Advs. for Respondent No. 4 and N.S. Rodrigues,Adv., i/b., Desai & Diwanji for Respondent No. 6

Subject: Civil

Acts/Rules/Orders:
Maharashtra Regional Town Planning Act, 1966 - Section 22; Development Control Rules - Rule 2.6, Development Control Rules - Rule 6.6.2; Petroleum Rules, 1976 - Rules 141, Petroleum Rules, 1976 - Rules 144

Case Note:
Civil — Powers of **Municip** Cdmmissioner — Development Control Rules — Petition filed by appellant for revoking permission granted for allotment and construction of retail petroleum outlet by Nashik Municipal Corporation in violation of Rules — Division Bench appointed Commissioner to inspect site and submit

report to court — Report of Commissioner opined aerial distance from centre of main gate of appellant to storage tank of petrol pump being 45 meters within safety limits prescribed under Rules — Submission of appellant that permission granted by Municipal Commissioner ultra vires Rule 2.6(d) of Rules and liable to be set aside — Whether valid exercise on part of Municipal Commissioner of power of relaxation conferred by Rule 6.6.2 of Rules — Held, only possible manner to measure distance is to take point to point distance measured by straight line between two establishments ñe. nearest gate of appellant and petrol station — Discretionary powers of Municipal Commissioner be exercised in conformity with intent and spirit of Rules — Power to relax minimum distance being exceptional power be used sparingly and with great deal of caution — Grant of relaxation by Municipal Commissioner and **exercise** of discretion under Rule 6.6.2 of Rules not been based on adequate and proper application of mind — Discretion under Rules vested with Municipal Commissioner — Appropriate to direct Municipal Commissioner to reconsider whole issue afresh having regard to interpretation placed by Court on statutory provisions — Permission granted by Municipal Corporation set aside — Appeal allowed

Ratio Decidendi:

"if grant of relaxation for operation of a petrol filling station by Municipal Commissioner and exercise of discretion under Rate 6.6.2 of Rules is not based on adequate and proper application of mind then it has to be set aside."

JUDGMENT

D.Y. Chandrachud, J.

1. St. Philomena Convent High School has been in existence for well over sixty years. The campus of the school at Nashik houses four additional institutions where students are admitted from Kindergarten to the Tenth Standard. Nearly 6,000 students study in these institutions. Across the road from the campus is a plot of land bearing Survey No. 130A/3 belonging to the Eighth Respondent. The school is situated on the Nashik Road. The bone of contention in these proceedings is the commencement of the business of a retail petroleum outlet by Indian Oil Corporation - the Sixth Respondent - on the land in question.

2. The relief that has been sought in these proceedings is an appropriate declaration and a consequential writ revoking the permission granted for the allotment and construction of the retail petroleum outlet. The basis and foundation of the Petition is that the permissions that were granted by the Nashik Municipal Corporation were in violation of Development

Control Rules. Rule 2.6(d) provides as follows:

Petrol filling station with or without service boys - (a) The plot on which a petrol filling station with or without service buoys is proposed shall be an independent plot on which no other structures shall be constructed.

(b) **Petrol st tionwllall** not be permitted within a distance of 91.5 m. from any junction on roads.

(c) **Petrot station** shall not be sited on the convergence of a road curve. In case the curve is not very sharp and cars moving out of the station are completely visible to the traffic from a distance of at least 91.5 m. and vice versa ,a petrol station may be permitted on such a convex curve.

(d) Petrol station shall not be sited within a distance of 91.5 m. from the nearest gate of a School, hospital, theatre, place of assembly **or stadium or** such other **place** of public **utility.**

3. The contention of the Petitioner is that the permission granted by the **Municipal** Corporation is in breaGh of the provisions of Clause (d) of Development **Control Rule 2.6** which stipulates that a petrol station shall not be located within a distance of 91.5 mtrs. from the nearest gate of a school.

4. In view of the controversy that has been raised in the Petition, a Division Bench of this Court by an order dated 30th June, 2004 appointed a Commissioner to inspect the site and to submit a report to this Court upon measuring the distance with reference to the specifications contained in Development Control Rule 2.6.(d). The Commissioner submitted his report on 16th July, 2004. The Commissioner has opined that the aerial distance from the center of the main gate of the compound wall of the school upto the storage tank of the petrol pump is 45 mtrs. The Commissioner has prepared a sketch plan on which this distance as measured is shown in a green - dotted line. The Commissioner also measured the walking distance from the center of the main gate to the petrol pump and observed that the distance was 175.30 mtrs. The contention of the Petitioner is that the report of the Commissioner would show that the straight line, point to point distance between the main gate of the school and the retail petroleum outlet in question is 45 mtrs. and that consequently the permission granted by the Municipal Corporation is in breach

of a mandatory provision of the Development Control Rules. Learned Counsel submitted that Development Control Rule 2.6(d) is a valid piece of subordinate legislation and the avowed object is to promote and protect public welfare by providing for a minimum distance of separation between petrol stations and schools, hospitals, stadia, places of assembly, theatres or other places of public utility. The object, it is submiDed, is to ensure the safety of the members of the public who would assemble at such places. In the present case, it has been urged that the welfare and safety of nearly 6,000 students of the school is in question. The permission that has been granted by the Municipal Commissioner is, in the submission, ultravires Rule 2.6 (d) and is liable to be set aside.

5. An affidavit in reply has been filed in these proceedings by the Assistant Director of Town Planning of the Nashik Municipal Corporation. The reply contains a categoric admission that the petrol pump which has been sanctioned is situated on the other side of the road from the school. In the middle of the road in question is a divider which is approximately two and a half feet in height. The Assistant Director of Town Planning has relied on the provisions of Rule 6.6.2 of the Development Control Rules under which the Commissioner is vested with a discretionary power to relax the provisions of the Rules. The affidavit states that "before relaxing the DC Rules, the Commissioner satisfied himself that the necessary no objection certificates or permissions (were) granted for the said outlet" viz. by (i) the Joint Commissioner of Explosives; and (ii) the Commissioner of Police. The operator of the petrol pump, it is stated, agreed to keep the petrol pump closed for thirty mimites at the time of the opening and closing of the school and to display road signs exhorting vehicular traffic to be careful in view of the school in the vicinity. The permission that was granted by the Municipal Commissioner, it is stated, is on the basis of the affidavit of the owner agreeing to close the petrol pump for thirty minutes at a time during closing and opening timings of the school and has been issued on the strength of the No Objection Certificate granted by the Explosives Department on 30th September, 2003. The affidavit states that the nearest petrol pump in the area is more than 2 kms. away. Finally, it has been sought to be contended that the "walking distance by a regular road" from the gate of the school to the petrol pump will not be less than 91.5 mtrs.

6. Affidavits in reply have also been filed in these proceedings by the contesting Respondents including the private Respondent. The private Respondent - the Eighth Respondent - has averred that the land was purchased since Indian Oil Corporation had issued an advertisement inviting applications for the grant of a lease of a plot of land. Necessary permissions were granted by the Department of Explosives of the Government of India, by the Nashik Municipal Corporation; and by the Assistant Commissioner of Police under Rule 144 of the Petroleum Rules, 1976. An affidavit has also been filed on behalf of the Indian Oil Corporation in which reliance has been placed on the permissions

granted by the diverse statutory authorities. The contention of the Corporation is that the distance of 91.5 mtrs. has to be computed as the distance which a vehicle would be required to cover in order to proceed from the petrol pump to the gate of the school. Moreover, it has been submitted that the Municipal Commissioner is vested with the discretionary power to grant a relaxation under Development Control Rule 6.2(a)(5). It has been submitted that there are other instances within the jurisdiction of the Nashik Municipal Corporation where petrol pumps have been permitted to be constructed in proximity to temples. or educational institutions. In the circumstances, it has been contended that there is no illegality in the grant of permission. An affidavit has been filed by the Deputy Chief Controller of Explosives clarifying that he has a limited role to play in respect of the subs matter of the Petition and that a No Objection Certificate was granted in terms of **Rule 144** of the Petroleum Rules, 1976.

7. Development Control Rules, it is well settled, constitute subordinate legislation. The legislative authority for their promulgation is contained in Section 22(m) of the Maharashtra Regional Town Planning Act, 1966. Appendix M to the **Development** Control Rules deals with ”Land Use Classification and Permissible Use”. **Clause** M.2.3 defines the uses to which land may be put permissibly in a residential **zone** (R2). **Among** them in Sub-clause (ii) is a petrol filling and service station not employing more than nine persons. The special written permission of the Commissioner is **necessary. Development** Control Rule 2.6 lays down special provisions for petrol filling **stations. Among them is** the **requirement in Clause (a) that** the land must be comprised **in an independent plot; in** Clause (b) that the petrol filling station would not be permitted **within a distance of 91.5** mtrs from any junction on a **road;** in Clause (c) that a petrol station **shall not be sited on** the convergence of a road **curve** and finally, in Clause (d) that a **minimum** distance of 91.5 mtrs has to be preserved **between** the petrol station and the **nearest gate of a school,** hospital, theatre, place of assembly, stadium or such other place of public utility. The underlying object of DCR 2.6 is to ensure that the operation of a petrol filling **station** does not pose a danger to public safety. The public interest is sought to be protected by stipulating a minimum distance between the nearest gate of a specified establishment and the petrol station. The distance has to be measured from the nearest gate.

8. The affidavits which have been fi1ed on behalf of the Respondents seek to put forth the submission that the distance of 91.5 mtrs must be computed not in terms of the nearest point to point distance measured by a straight line but by some other methodology. The affidavit filed by the Assistant Director of Town Planning for instance states that the distance of 91.5 mtrs should be taken as the walking distance by a regular road. On the other hand, the affidavit filed by the Indian Oil Corporation seeks to contend that the distance of 91.5 mtrs is to be computed as the distance which a vehicle would be required to cover in order to proceed from the petrol pump to the gate of the school. Both these

affidavits clearly miss the point. When DCR 2.6(d) indicates that a minimum stipulated distance has to be observed, that distance must be measured with reference to the straight line between the ”nearest gate" of the school and the petrol filling station. The underlying object of DCR 2.6(d) is to protect and enhance public safety. Keeping that object in view, the only possible manner in which that distance is to be measured is to take the point to point distance measured by a straight line between the two establishments viz. the nearest gate of the school and the petrol station. Otherwise, even if a petrol station is in the immediate vicinity of a school, the provisions of DCR 2.6(d) would be liable to liable to be defeated. For example where the road in question is a one way traffic road or, for that matter, a 'U' turn is required to be made at a considerable distance while driving from the school to the petrol pump the actual driving distance may be enhanced. In the event of a mishap or accident, the inhabitants in the immediate **vicinity** are liable to be affected Hence, the preservation of public safety would merit an interpretation which would subserve the objeGt that is sought to be achieved by the Rule. So construed, the Rule would be entirely defeated by seeking recourse to an interpretation that has been suggested by the Respondents. In fact, the affidavit that has been filed by the Assistant Director of Town Planning suffers from a clear inconsistency. If as is sought to be postulated, the ”walking distance by a regular road" was not less than 91.5 mtrs., there was no reason for the Commissioner to exercise his **discretionary power under** Rule 6.6.2 to **relax** die operative **provisions** of DCR 2.6(d). But the **Assistant Director of Town** Planning states before the Court that as a matter of fact, the **Commissioner** had exercised the **power** of **relaxation. The** exercise of the power of **relaxation** under DCR **6.6.2** postulates that the distance between the school and the retail outlet was beyond 91.5 mtrs. It is evident from the report of the **Commissioner** that the straight line **or point to point** distance between the nearest gate of the school and the retail outlet is 45 mtrs and within the safe margin of 91.5 mtrs prescribed by DCR 2.6(d).

9. That leads to the question as to whether there has been a valid exercise on the part of the Municipal Commissioner of the power **of relaxation** conferred by Rule 6.6.2. DCR confers certain discretionary powers upon the Municipal Commissioner. Clause (a) thereof is as follows:

”- 6.6.2 Discretionary Powers (a) In conformity with the intent and spirit of these rules, the Commissioner may:

(i) Decide on matters where it is alleged that there is an error in any order, requirement, decision determination or interpretation made by him in the application of these rules;

(ii) Determine and establish the location of zonal boundaries in exceptional cases, or in cases of doubt or controversy;

(iii) Interpret the provisions of these rules where the **street** layout actually on the ground varies from the street **layout** shown on the development plan;

(iv) Modify the limit of a zone where the boundary line of the zone divides a plot; and

(v) Authorise the operational construction of public service building or use of undertaking for public utility purposes only, where he finds such an authorisation to be reasonably necessary for the public convenience and welfare even if it is not permitted in any land use classification." It is sub clause
(v) of Clause (a) that has been pressed into service on behalfof the MuniGipal Corporation.

10. The discretionary powers of the Municipal Commissioner have to be exercised in conformity with the intent and spirit of the Rules. Clauses (i), (ii) and (iü) are **indicative** of the nature of the power. Clause (i) envisages a situation of an error in an order, requirement or decision. Clause (ii) deals with exceptional cases, or cases of **"doubt or** controversy". Clause (iii), applies where the layout on the ground varies with the layout in the Development Plan. Sub clause (v) empowers the Commissioner to authorise the operational construction of a public service building or the use of an undertaking only for public utility purposes where he finds thèse to be reasonably necessary for public convenience and welfare, even if it is not permitted in any land use classification. The existence of a reasonable necessity, founded in public convenience and welfare is the touchstone. The regulations are made in the interests of planned development and are based on public interest. The power of relaxation is conditioned by public convenience and welfare. Relaxations cannot be allowed indiscriminately. Else a relaxation will swallow the rule. Such relaxations are not intended to subserve the interests of developers but to answer a genuine and pressing public need. Unfortunately this is lost sight of and relaxations are granted to obviate compliance with the intent and spirit of development rules. That is a perversion of planning. No law can permit it. Judicial interpretation cannot countenance it.

11. The affidavit filed by the Assistant Director of Town Planning states before the Court that before relaxing the Development Control Rules, the Commissioner had satisfied

himself about the grant of permission by the Joint Commissioner of Explosives and by the Commissioner of Police. In addition, the owner had agreed to keep the petrol pump closed for thirty minutes at the time of the opening and the Glosing of the school and to display traffic signs. The affidavit states that nearest petrol pump is more than 2 kms away. In our view, the test which the Commissioner was required **to apply was** whether such authorization was reasonably necessary for the public convenience and welfare". When the Commissioner assesses the question of public convenience and welfare, paramount importance must be given to the welfare of the users of those facilities from which Rule 2.6(d) requires the maintenance of a stipulated distance. In the case of a school it is the interest of the students, most of whom would be young children that is of paramount concern. The Commissioner relied upon the permission granted by the Joint Commissioner of Explosives. The Deputy Chief Controller of Explosives is on an affidavit before this Court to state that he has a very limited role to play in respect of the subject matter of the Petition. Rule 141 of the Petroleum Rules, 1976 provides for the grant of a licence while Rule 144 deals with the grant of a No Objection **Certificate.** Compliance with the provisions of the Petroleum Rules is necessary in every such ease. But that cannot justify a relaxation in every case merely relying on the No Objection **Certificate of the Controller of** Explosives. **A No Objection Certificate was granted by** the Assistant Commissioner of Police on 14th July, 2003 upon which the **Chief Controller of Explosives** informed the sixth Respondent **that** a licence would be **granted for the subject** premises in due course. The Municipal Commissioner cannot abdicate the **discretion** which is vested in him under Rule 6.6.2 by merely relying upon the permissions which are granted by other authorities. Absent permissions from the other statutory authorities such as the Chief Controller of Explosives under the Petroleum Rules 1976, an **operator would** not possess a valid licence to operate the facility. But the grant of permissions by other authorities is not dispositive of the matter insofar as the Municipal Corporation is concerned. DCR 2.6(d) still stipulates a minimum distance. The power to relax the minimum distance is an exceptional power which has to be used sparingly and with a great deal of caution. Otherwise the grant of a relaxation is liable to become the norm and a salutary provision which is made in the public interest is liable to be rendered nugatory. The condition which has been imposed in the present case that the outlet should be closed for thirty minutes during the opening and closing timings of the school is perfunctory and does not show any serious application of mind to the concerns of the welfare of the students. There ought to have been a close and considered application of mind on the part of the Municipal Commissioner to the question as to whether the provisions contained in DCR 2.6(d) should be relaxed or otherwise. That has not been done. The welfare of the students cannot Se sacrificed on the altar of the developmental interest of the adjoining owner. An adjoining owner is free to develop his land in accordance with law. But when the chooses to house a hazardous establishment like a petrol filling station, the law steps in and tells him what distances must be maintained, if the safety of young children in schools is not to be compromised. Such a restriction is reasonable. The Commissioner, unfortunately, misconceived the nature of the provision and wrongfully exercised the power conferred upon him.

12. In these circumstances, we are of the view that the grant of relaxation by the Municipal Commissioner and the exercise of discretion under Rule 6.6.2 has not been based on an adequate and proper application of mind. At the same time, we are conscious of the fact that the discretion under the Development Control Rules is vested with the Municipal Commissioners In the present case, it would be appropriate to direct that the Municipal Commissioner should reconsider the whole issue afresh having regard to the interpretation that has been placed by this Court on the provisions which have been adverted to herein above. The Municipal Commissioner shall furnish an **opportunity of** being heard to all the concerned parties affected thereby including the Petitioner and the Sixth and Eighth Respondents to these proceedings. Upon remand the **Commissioner** shall pass a reasoned order. In order to facilitate a fresh exercise being carried out in terms of the aforesaid directions, the permission granted by the Municipal **Corporation is** quashed and set aside. The Municipal Commissioner will be at liberty to take a fresh decision in accordance with law. Rule is accordingly made absolute in the **aforesaid** terms. In the circumstances of the case, there shall be no order as to costs.

/True copy/

VBR Menon

C No: 25 /J1/2021

From

Inspector SHO,
Balussery Police Station.

To

The District Police Chief,
Kozhikode Rural.
(Through proper Channel)

Sir,

Sub: Petroleum Act and Rules- Application for granting NOC for setting up Petroleum retail outlet- report sub of reg.

Ref: 1) No D2- 44567/21 DR dtd. 03.09.2021

2) No . DC KKD /6908/2021– D4

With reference to the above I am herewith submitting the pro-forma report on the application of Reliance BP Mobility Limited for favour of necessary action.

Yours faithfully,

BALUSSERY POLICE STATION Date:. 1/10/2021 Pin 673612 KOZHIKODE RURAL

Inspector SHO 1/10/2021
Balussery Police Station

TRUE COPY
29/12/2021

PRO-FORMA

1	Name and address, license number and social status of the applicant with his age	Reliance BP Mobility Limited.
2	Need of the explosive with details	Petroleum Retail Out let on land bearing RS No. 198/4 in Naduvannur Village, Koyilandy Taluk.
3	Antecedents and character of the applicant according to Police records	They are not involved in any crime cases with in Balussery Police limit.
4	Ability of the applicant to handle the weapon	N.A
5	Ability of the applicant to protect the weapon from misuse or theft	N.A .
6	Political warring of the applicant to see, if he is associated with such groups and organizations who would support the violence	NA .
7	If the request is for sports, whether the applicant is bonafide sportsman, whose status warrants such as license and whether will be abide by the lays in force for protection of wild animals and birds.	NA
8	It is weapon of SBML /DBML/DBBL etc. details of weapon to be mentioned	NA
9	Type of explosive to be retained by the custodian	NIL
10	What is the type and quantity of explosive sought to be store	Petrol and Diesel
11	Is there any dwelling house or institution like school/ places of	

29/12/2021

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RTI 44/51/2021

	worship near the same	
12	Are there facilities of the place sufficient for avoiding accident relating to explosives?	No
13	What is the distance to the nearest licensed premises having explosive license.	2 Km
14	Is the license involved as accused in any criminal cases previously or any active workers of any communal organizations	No

Remarks of SHO :

State Business Development Manager- Kerala for Reliance BP Mobility Ltd. has applied for NOC for setting up of Petroleum retail outlet on land bearing RS No. 198/4 in Naduvannur Village, Koyilandy Taluk with in Balussery Police Station limit. There is dwelling houses near the Bunk and the public in the area are against the proposed Bunk. Hence there is objection to grant license on public safety point of view.

Submitted,

11/01/2021

INSPECTOR SHO
BALUSSERY POLICE STATION
KOZHIKODE RURAL

BALUSSERY POLICE STATION Date: Pin 673612 KOZHIKODE RURAL

29/12/2021

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No. RTI/44/21/2021.

29/12

/True copy/

VBR Menon

EXTRACT OF RULE. 144 OF THE PETROLEUM RULES, 2002

144. No-objection certificate. –

(1) Where the licensing authority is the Chief Controller or the Controller, as the case may be, an applicant for a new licence other than a licence in Forms III, XI, XVII, XVIII, or XIX shall apply to the District Authority with two copies of the site-plan showing the location of the premises proposed to be licensed for a certificate to the effect that there is no objection, to the applicant receiving a licence for the site proposed and the District Authority shall, if he sees no objection, grant such certificate [in the proforma specified in sub-rule (7)] to the applicant who shall forward it to the licensing authority with his application Form IX.

[Note: 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]

(2) Every certificate issued by the District Authority under sub-rule (1) shall be accompanied by a copy of the plan of the proposed site duly endorsed by him under his official seal.

(3) The Chief Controller or the Controller as the case may be, may refer an application not accompanied by certificate granted under sub-rule (1) to the District Authority for his observations.

(4) If the District Authority, either on a reference being made to him or otherwise, intimates to the Chief Controller or the Controller as the case may be, that any licence which has been applied for should not, in his opinion, be granted, such licence shall not be issued without the sanction of the Central Government.

(5) The District Authority shall complete his inquiry for issuing NO OBJECTION CERTIFICATE(NOC) under sub-rule(1) and shall complete the action for issue or refusal of the NOC, as the case may be, as expeditiously as possible but not later than three months form the date of receipt of application by him.

(6) Where the location of storage of petroleum is within the notified area of a Port or Airport under the control of the state or establishment of Indian Space Research Organisation or Department of Atomic Energy, NO OBJECTION CERTIFICATE from The District Authority referred to in sub-rules (1) to (5) shall not be required :

Provided that consent for establishment of petroleum storage from the competent authority of concerned notified area or head of the establishment, as the case may be, is obtained.

(6a) There shall be no requirement of No Objection Certrificate from District Authority under sub-rule (1) for a licence in FORM XIV forming a part of the CNG station licensed in FORM “G” under the Gas Cylinder Rules, 2016 or Auto LPG dispensing station licensed in FORM “LS-1B” or LNG dispensing station licensed in FORM “LS-IC” under the Static and Mobile Pressure Vessels (Unfired) Rules 2016.

(6b) in sub-rule(7), for the Proforma relating to No Objection Certificate , the following Proforma shall be substituted, namely:-

(7) The district authority shall issue a no objection certificate in the following proforma, namely:-

" Proforma
No Objection Certificate
[See rule 144]

No…….

Date……...

Subject : No Objection Certificate

With reference to the application No……. dated…….. submitted by……and in pursuance of rule 144 of the Petroleum Rules, 2002 , there is no objection for granting licence under the Petroleum Rules, 2002 to Shri/Smt/M/s…….address…..…… for storage of petroleum products in their premises at Survey No……/Gata No……/Khasra No..,……Plot No……Village……Taluka/Tahsil……. Village……Taluka / Tahsil……District……..State……as shown in the site plan duly endorsed and enclosed herewith.

(1) The following particulars have been considered while issuing this no-objection certificate , that :-

(a) Comments from the Revenue Department on the issue, regarding the possession of the site by the applicant is lawful and there is an authorisation from the land owner or leaseholder for developing premises under these rules for storage of petroleum products:

(b) Comments from the Police department regarding traffic density and impact on traffic.

(c) Comments from the concerned Municipal Corporation or Gram Panchayat or local area development authority as applicable, regarding the conformity of proposal to the local area development planning including schools, hospitals and mitigating measure , if any, is provided.

(d) comments from the National Highway Authority of India or Public Works Department or any other authority concerned regarding road safety, road alignment and road access conformity.

(e) Comments from the Fire Department regarding accessibility of the site to the fire tenders in case of emergency and preparedness of fire services for combating the emergencies.

Signature of the district authority issuing no objection certificate with his office seal (in towns having a Commissioner of Police, the Commissioner or a Deputy Commissioner of Police and for any other place, the District Magistrate)

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

/True copy/

VBR Menon

Annexure - 12

FLOW CHART FOR ESTABLISHING NEW PETROLEUM RETAIL OUTLETS

OIL MARKETING COMPANIES

Application for Prior Approval of Site Drawings by PESO under Rule 131 of Petroleum Rules, 2002 .	Application for NOC to District Revenue Officer or Commissioner of Police under Rule 144 of Petroleum Rules, 2002	Application for Access to National Highways to NHAI as per MoRTH Circular,2013	Application for change of land use to DTCP through Local Body.	Application for permission to do Site Development and construction activities to respective Local body under Sec.48 , 56 and 57 of DTCP Act, 1971..
Verification of particulars provided by the Applicant and subsequent enquiry as contemplated under Rule 131 (2) of Petroleum Rules,2002	Verification of particulars furnished by the Applicant and subsequent Inquiry under Rule 144 (5) of Petroleum Rules,2002 and calling for NOC s from Revenue, Fire, Police, Highways, PWD, Health, Pollution Control, etc to ascertain the factors listed in the proforma NOC prescribed under Rule 144(7) and CPCB Siting Criteria	Verification of particulars furnished by the Applicant to satisfy the rules of MoRTH Circular No. RW/NH-33023/19/99-DO-III dated 24.07.2013 . Separate provision exists for giving approval in the cases of minor violations as per the procedure prescribed and publication for the views of the public.	Scrutiny as per the prcocedure prescribed under G.O.(Ms) No. 79 of 2017 issued under Sec.47-A of DTCP aCT, 1971.	Scrutiny and necessary field verification to confirm compliance of the proposal with master plan/ LPA Classifications
Obtain prior site approval for carrying out site works as per approved site plan and the conditions prescribed	Obtain NOC for the site u/s 144 of Petroleum Rules, 2002 and submit to PESO.	Obtain priliminary approval as per approved drawing and conditions stipulated to provide access to National Highways	Obtain permission for change of land classification before carrying out any site works	Obtain permission from Local Body before carrying out site development and construction activities

Complete Site development, construction and erection activities as per approved plans and conditions prescribed therein including , testing, caliberation, etc., No changes from approved plans are permissible without getting prior approval as per Rule 146 of Petroleum Rules,2002.

Apply for Final Licence to PESO by certifying that all the site works have been completed as per approved plans along with colour site photographs and final NOC from NHAI/ Highways Dpt. for road access

Obtain Final Explosive Licence in Form XIV

Commence Operations of the Outlet subject to the conditions prescribed in the Final Licence in Form XIV. Any violations noticed later on or cancellation of NOC by th District Authority or right of lawful possession of the premises by the Applicant shall result in Suspension/cancellation of the Final Licence forthwith as per Rule 152 of the Petroleum Rules, 2002.

/True copy/

VBR Menon

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POLICE **DEPARTMENT**

KERALA

No. D2-44567/2021/DR
District Police Office,
Kozhikode Rural
spkkdrl.pol@kerala.gov.in
04962523031
Dated. 17-10-2021

Issued under RTI Act.

From

ജില്ലാ പോലീസ് മേധാവി
കോഴിക്കോട് റൂറൽ

To

ജില്ലാ കലക്ടർ
കോഴിക്കോട്

12.1.2023
District Police Chief
Kozhikode Rural
Vatakara-5

സർ,

Sub : കൊയിലാണ്ടി താലൂക്കിലെ നടുവണ്ണൂർ വില്ലേജിലെ സർവെ നമ്പർ 198/4 ൽ ഉൾപ്പെടുന്ന സ്ഥലത്ത് Petroleum Retail Outlet സ്ഥാപിക്കുന്നതിന് നിരാക്ഷേപ പത്രം ലഭിക്കുന്നതിനുള്ള അപേക്ഷയിൻമേൽ അന്വേഷണ റിപ്പോർട്ട് സമർപ്പണം സംബന്ധിച്ച് :

Ref : 26.08.2021 തിയ്യതിയിലെ DCKKD/6908/2021-D4 എന്ന നമ്പറിലുള്ള അങ്ങയുടെ കത്ത്

മേൽ വിഷയത്തിലേക്കും സൂചനയിലേക്കും അങ്ങയുടെ മഹനീയ ശ്രദ്ധ ക്ഷണിക്കുന്നു.

കൊയിലാണ്ടി താലൂക്കിലെ നടുവണ്ണൂർ വില്ലേജിൽ കരുമ്പാപൊയിൽ എന്ന സ്ഥലത്ത് പെട്രോളിയം റീട്ടെയിൽ ഔട്ട് ലെറ്റ് സ്ഥാപിക്കുന്നതിന് നിരാക്ഷേപ പത്രം ലഭിക്കുന്നതിനു വേണ്ടി Reliance BP Mobility Limited കമ്പനി, ബഹു.കോഴിക്കോട് അഡീഷണൽ ജില്ലാ മജിസ്ട്രേറ്റ് മുമ്പാകെ സമർപ്പിച്ച അപേക്ഷയിൽ അന്വേഷണം നടത്തി റിപ്പോർട്ട് സമർപ്പിക്കുന്നതിന് അയച്ചു കിട്ടിയ പ്രകാരം ആവശ്യമായ അന്വേഷണം നടത്തിയിട്ടുള്ളതാണ്.

അന്വേഷണത്തിൽ നിന്നും ബാലുശ്ശേരി പോലീസ് സ്റ്റേഷൻ പരിധിയിൽ കൊയിലാണ്ടി താലൂക്കിൽ നടുവണ്ണൂർ വില്ലേജിൽ റി.സർവ്വേ നമ്പർ 198/4 ഉൾപ്പെടുന്ന കരുമ്പാപൊയിൽ എന്ന സ്ഥലത്താണ് പെട്രോളിയം ഔട്ട് ലെറ്റ് ആരംഭിക്കുന്നതെന്നും, Reliance BP Mobility Limited കമ്പനി വക പെട്രോളിയം ഔട്ട് ലെറ്റ് സ്ഥാപിക്കാൻ ഉദ്ദേശിക്കുന്ന 35 സെൻറ് സ്ഥലം ഇമ്പിച്ചി മൊയ്തി, ഉത്രാടത്ത് പടിക്കൽ, വാകയാട്, നടുവണ്ണൂർ എന്നയാളുടെ ഉടമസ്ഥതയിലുള്ളതാണെന്നും, ടി സ്ഥലത്ത് ഇമ്പിച്ചി മൊയ്തിയുടെ മകൻ ഷെക്കിൻ, വയസ്സ് 26/21, ഉത്രാടത്ത് പടിക്കൽ, വാകയാട്, നടുവണ്ണൂർ എന്നയാളാണ് പെട്രോളിയം റീട്ടെയിൽ ഔട്ട് ലെറ്റ് ആരംഭിക്കുന്നതെന്നും അന്വേഷണത്തിൽ അറിവായിട്ടുള്ളതാണ്. ബാലുശ്ശേരി പോലീസ് സ്റ്റേഷൻ പരിധിയിൽ കൊയിലാണ്ടി താലൂക്കിൽ നടുവണ്ണൂർ വില്ലേജിൽ ഉള്ള്യേരി- പേരാമ്പ്ര സ്റ്റേറ്റ് ഹൈവേയിൽ റി. സർവ്വേ നമ്പർ 198/4 ൽ ഉൾപ്പെടുന്ന കരുമ്പാപൊയിൽ എന്ന സ്ഥലത്താണ് നിർദ്ദിഷ്ട പെട്രോളിയം റീട്ടെയിൽ ഔട്ട് ലെറ്റ് ആരംഭിക്കുന്ന സ്ഥലം സ്ഥിതി ചെയ്യുന്നത്. ടി സ്ഥലം നടുവണ്ണൂർ മെട്രോ ആശുപത്രി ബസ് സ്റ്റോപ്പിൽ നിന്നും സുമാർ 150 മീറ്റർ തെക്ക്-പടിഞ്ഞാറ് മാറിയാണ് സ്ഥിതി ചെയ്യുന്നത്. ടി സ്ഥലത്ത് നിന്നും സുമാർ 10 മീറ്റർ തെക്ക് മാറി ഷാഹിന, D/o അമ്മോട്ടി ഹാജി, നമ്പ്യാട്ടിൽ വീട്, കരുമ്പാപൊയിൽ എന്നയാളും, കുടുംബവും താമസിക്കുന്ന വീടും, സുമാർ 50 മീറ്റർ വടക്ക്-കിഴക്ക് മാറി കൃഷ്ണൻ, വയസ്സ് 60/21, S/o കണാരക്കുട്ടി, ശ്രീശൈലം, നമ്പ്യാട്ടിൽ വീട്, കരുമ്പാപൊയിൽ എന്നയാളുടെ വീടും, സുമാർ 25 മീറ്റർ കിഴക്ക് മാറി കുഞ്ഞായൻ കുട്ടി, വയസ്സ് 67/21, S/o അസ്സൻ കുട്ടി, നെട്ടോളി വീട്, കരുമ്പാപൊയിൽ എന്നയാളും കുടുംബവും താമസിക്കുന്ന വീടും കാണുന്നു. പരിസരവാസികളോട് അന്വേഷണം നടത്തിയതിൽ പെട്രോളിയം റീട്ടെയിൽ ഔട്ട് ലെറ്റ് വന്നാൽ ചളുപ്പ് നിലമായതിനാൽ കടിവെള്ളം മലിനമാകും എന്നതിനാൽ തങ്ങൾക്ക് എതിർപ്പ് ഉണ്ടെന്നും, പെട്രോളിയം റീട്ടെയിൽ ഔട്ട് ലെറ്റിനെതിരെ വിവിധ ഓഫീസുകളിൽ പരാതി കൊടുത്തതായും, കൂടാതെ നടവണ്ണൂർ ഗ്രാമപഞ്ചായത്തിലെ 12)o വാർഡ് കരുമ്പാപൊയിൽ ടൗൺ പ്രദേശവാസികളായ കൃഷ്ണൻ നമ്പ്യാട്ടിൽ, ഷിജിത്ത് നമ്പ്യാട്ടിൽ ഉൾപ്പെടെയുള്ള 45 ഓളം പേർ ഒപ്പു വച്ച ഹർജി നടുവണ്ണൂർ ഗ്രാമ പഞ്ചായത്ത് സെക്രട്ടറിക്ക് സമർപ്പിച്ചതായും അന്വേഷണത്തിൽ

റിവായിട്ടുള്ളതാണ്. പെട്രോളിയം ഔട്ട് ലെറ്റ് ആരംഭിക്കുന്ന ഷെകിൻ, വയസ്സ് 26/21, ഉത്രാടത്ത് പടിക്കൽ, വാകയാട്, നടുവണ്ണൂർ, എന്നയാളെക്കുറിച്ച് ബാലുശ്ശേരി പോലീസ് സ്റ്റേഷൻ റിക്കാർഡുകൾ പരിശോധിച്ചതിൽ ടിയാൻ നല്ല നടപ്പുകാരനാണെന്നും, നിലവിൽ കേസ്സുകൾ ഒന്നും തന്നെ ഇല്ലെന്നും അറിവായിട്ടുള്ളതാണ്.

നടുവണ്ണൂർ വില്ലേജിൽ റി.സർവ്വേ നമ്പർ 198/4 ഉൾപ്പെടുന്ന കരുമ്പാപൊയിൽ Reliance BP Mobility Limited കമ്പനി വക പെട്രോളിയം ഔട്ട് ലെറ്റ് ആരംഭിക്കുന്ന സ്ഥലത്തെ പ്രദേശവാസികളിൽ നിന്നും കടുത്ത എതിർപ്പ് നേരിടുന്നതിനാലും, ടി പെട്രോളിയം ഔട്ട് ലെറ്റ് ആരംഭിക്കുന്ന സ്ഥലത്ത് നിന്നും സുമാർ 1 KM വടക്ക് മാറി നടുവണ്ണൂരിലും, 2 KM തെക്ക് മാറി ഉള്ള്യേരി ടൗണിലും നിലവിൽ പെട്രോളിയം ഔട്ട് ലെറ്റ് പ്രവർത്തിച്ചു വരുന്ന സാഹചര്യത്തിലും, നടുവണ്ണൂർ വില്ലേജിൽ റി.സർവ്വേ നമ്പർ 198/4 ഉൾപ്പെടുന്ന കരുമ്പാപൊയിൽ എന്ന സ്ഥലത്ത് മറ്റൊരു പെട്രോളിയം ഔട്ട് ലെറ്റ് ആരംഭിക്കുന്നത് പൊതുജന താല്പര്യാർത്ഥം അനിവാര്യമല്ല എന്നുള്ളതിനാലും, ടി സ്ഥലത്തിന്റെ സുമാർ 150-200 മീറ്റർ പരിധിക്കുള്ളിൽ ജുമാ മസ്ജിദ്, ആശുപത്രി, ഇടങ്ങിയ വലിയ തോതിൽ ആളുകൾ എത്തിച്ചേരുന്ന സ്ഥാപനങ്ങൾ സ്ഥിതി ചെയ്യുന്നതും, വർഷത്തിൽ 7 ദിവസങ്ങളിലായി ഉത്സവവും, ഉത്സവത്തിന്റെ ഭാഗമായി കരിമരുന്ന് പ്രയോഗവും, കാർണിവലും മറ്റും നടക്കുന്ന ക്ഷേത്രവും മറ്റും സ്ഥിതിചെയ്യുന്നതിനാലുള്ള പൊതുജനസുരക്ഷ മുൻനിർത്തിയും, പെട്രോളിയം ഔട്ട് ലെറ്റിന് നിരാക്ഷേപപത്രം അനുവദിക്കുന്നത് സുരക്ഷാ കാരണങ്ങളാൽ ഒട്ടും ഉചിതമായിരിക്കില്ല എന്നുള്ള കാര്യം ബോധിപ്പിച്ചു കൊള്ളുന്നു.

Yours faithfully

Srinivas.A.

Dr.Srinivas A IPS
District Police Chief (ic)

Issued under RTI Act

12.1.2023
District Police Chief
Kozhikode Rural
Vatakara-6

AL MUMARASA LANGUAGE CENTRE AND TRANSLATION SERVICES, ERNAKULAM

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Date of translation: 29/12/2023

Al Mumarasa Language Centre & Translation Services Kochi 682017 NO.MOR14/15263/19 Certified Translation

POLICE DEPARTMENT

KERALA

Al Mumarasa Language Centre & Translation Services
62, Judges Avenue, Kaloor 682017
NO.MOR14/15263/19

No.D2-44567/2021/DR

District Police Office,

Kozhikode Rural

Spkkdrl.pol@kerala.gov.in

04962523031

Dated.17-10-2021

From,

District Police Chief ,

Kozhikode Rural

To,

District Collector

Kozhikode

Sir,

Subject: Regarding the submission of inquiry report on the application for obtaining Non-objection letter for the construction of Petroleum Retail Outlet at the land included in Survey No. 198/4 of Naduvannur village, Koyilandi taluk:

Ref: Your letter No. DCKKD/6908/2021-D4 dated 26.08.2021

Your Excellency's attention invited to the above subject and implication.Reliance BP Mobility Limited has applied before the Hon'ble Additional District Magistrate, Kozhikode for obtaining a no-objection letter to construct a petroleum retail outlet at Naduavannur village, Karimbhapoyil, Koyilandi taluk.

Translation is true to the best of my knowledge and belief:

AL MUMARASA LANGUAGE CENTRE AND TRANSLATION SERVICES, ERNAKULAM

Al Mumarasa Language Centre & Translation Services
62, Judges Avenue, Kaloor 682017
NO.MOR14/15263/19

INSTRUCTOR: ADIL.M.H
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Date of translation: 29/12/2023

Based on that application conducted an investigation for submitting a report in the matter as received.

Based on the investigation, it was found that the petroleum outlet begins at a location called Karimbhapoyil, situated in Re. Survey No. 198/4 in Naduvannur village, Koyilandi taluk, within the jurisdiction of the Balusseri police station.

The investigation revealed that 35 cents of land proposed for the establishment of a petroleum outlet by Reliance BP Mobility Limited is owned by Imbichi Moidi of Uthradath Padikkal, Vakayad, Naduvannur. In the same site, Imbichi Moidi's son Shekeen, aged 26/21, of Uthradath Padikkal, Vakayad, Naduvannur, is initiating a petroleum retail outlet. The starting point of the proposed petroleum retail outlet is located at a place called Karimbhapoyil, belonging to Re. Survey No. 198/4 on Ulliyeri-Perambra State Highway in Naduvannur Village, Koyilandi taluk, within the jurisdiction of Balusseri Police Station. The same place is located approximately 150 meters southwest from Naduvannur Metro Hospital bus stop. About 10 meters south of this location, Shahina, Daughter of Ammoti Haji, of Nambyattil House, Karimbhapoyil along with her family, resides. Approximately 50 meters northeast of this place, the house of Mr. Krishnan, aged 60/21, Son of Kanarakutti, of Srisailam, Nambyatttil House, Karimbhapoyil, is situated and his family reside there. About 25 meters to the east of this location, the house of Kunhayin Kutty, aged 67/21, Son of Assan Kutty, of Netoli House, Karimbhapoyil is situated. He along with his family resides there.

Upon inquiry with the local residents, it was found that they have objections to the petroleum retail outlet as it is situated in a marshland, and they are concerned about water pollution. They have filed complaints with various offices against the petroleum retail outlet, and a petition has signed by about 45 people, including Krishnan Nambyattil and Shijith Nambyattil, residents of the 12th ward of Karimbhapoyil town in Naduvannur Gram Panchayath submitted to the Panchayat Secretary. This information has gathered from the investigation.

Shekeen, aged 26/21, of Uthradath Padikkal, Vakayad, Naduvannur, who is starting a petroleum outlet, has a clean record according to Balusseri Police Station records. It has found that he is a good citizen with no pending cases.

Translation is true to the best of my knowledge and belief:

AL MUMARASA LANGUAGE CENTRE AND TRANSLATION SERVICES, ERNAKULAM

Al Mumarasa Language Centre & Translation Services
62, Judges Avenue, Kaloor 682017
NO.MOR14/15263/19

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Date of translation: 29/12/2023

Due to strong opposition from local residents of the locality where Reliance BP Mobility Limited is planning to start a petroleum outlet in Karimbhapoyil which is in Re-survey No. 198/4 in Naduvannur village. Also, another petroleum outlet is operational in Naduvannur, approximately 1 KM north of the proposed site of the future Petroleum Outlet, and another petroleum outlet situated 2 KM south from Ulliyeri town. Due to these reasons, it is deemed unnecessary in the public interest to establish another petroleum outlet at Karimbhapoyil in Naduvannur village which is in Re-survey No. 198/4. Due to the presence of a large number of highly frequented institutions within a radius of about 150-200 meters from the said site, such as Juma Masjid and the Hospital, raises concerns and by considering public safety during the 7-day festival in a year and the fireworks display as part of the festival and the carnival where the temple is located, it is suggested that granting a No-Objection Letter to the petroleum outlet would not be appropriate for security reasons.

Yours faithfully,

Dr.Srinivas A IPS

District Police Chief (ic)

True copy

VBR Menon

Translation is true to the best of my knowledge and belief:

mathrubhumi.com
മാതൃഭൂമി

Diesel found in wells located near Indian Oil petrol pump in Naduvannur, Kozhikode

07 July 2024, 12:01 PM IST

Naduvannur: The wells of houses near the Indian Oil Petrol Pump in Naduvannur, Kozhikode, have been contaminated with diesel. Three wells have been affected, with one containing a significant amount of diesel.

The residents of the area convened and established an action task force to address the issue. Complaints were lodged with the Naduvannur Grama Panchayat secretary, Naduvannur village officer, Koyilandy tehsildar, district collector, Naduvannur Public Health Centre, Pollution Control Board and the Indian Oil Corporation.

The action task force demanded that the petrol pump halt fuel-filling operations and the pump owner provide clean water to the affected households.

The meeting was presided over by Balakrishnan Vishnoth, with contributions from N. Ali, Shiju Vishnoth Poil, Ravindran Vishnoth Poil, and Vasantha Puliyathinkal. Naduvannur Gram Panchayat 12th Ward chairman, vice-president, conveyor and office bearers were also present.

True copy

VBR Menon

മലയാള മനോരമ

Annexure - 14A

170

നടുവണ്ണൂരിൽ പെട്രോൾ പമ്പിലെ ചോർച്ച

ആശങ്ക മാറാതെ നാട്ടുകാർ

▸▸ കിണറുകളും ജലസ്രോതസ്സുകളും മലിനം

നടുവണ്ണൂർ● സംസ്ഥാന പാതയിൽ നടുവണ്ണൂർ ജവാൻ ഷൈജു സ്മാരക ബസ് സ്റ്റോപ്പിനടുത്ത് പ്രവർത്തിക്കുന്ന ഇന്ത്യൻ ഓയിൽ കോർപറേഷന്റെ പെട്രോൾ പമ്പിൽ ഇന്ധന ചോർച്ചയുണ്ടായി 8 മാസം കഴിഞ്ഞിട്ടും പരിഹാരം കാണാത്തതിൽ നാട്ടുകാർ ആശങ്കയിൽ. പമ്പിന് സമീപമുള്ള കിണറുകളിലും ജലസ്രോതസ്സുകളിലും ഇന്ധനത്തിന്റെ ഗന്ധവും അസാധാരണ നിറവും രുചിവ്യത്യാസവും ഇപ്പോഴും നിലനിൽക്കുകയാണ്. പമ്പിന്റെ പരിസരത്തുള്ള വീടുകളിൽ ശുദ്ധജലം മുടങ്ങിയിട്ട് 8 മാസമായി.

ജല മലിനീകരണം മൂലം ആരോഗ്യ പ്രശ്നങ്ങൾ നേരിടേണ്ടി വന്നതും നാട്ടുകാരെ ഭീതിയിലാക്കിയിട്ടുണ്ട്. കിണറുകൾ മലിനീകരിക്കപ്പെട്ടത് മാത്രമല്ല ഇതിന്റെ ദീർഘകാല ഫലങ്ങൾ പരിശോധിക്കേണ്ടത് അത്യാവശ്യമാണെന്നാണ് നാട്ടുകാരുടെ ആവശ്യം.

നാട്ടുകാർ പെട്രോൾ പമ്പ് അധികൃതരോടും പ്രാദേശിക ഭരണകൂടത്തിനും അനുബന്ധ വകുപ്പിലും ഒട്ടേറെ തവണ പരാതി നൽകിയിട്ടും ഇതുവരെ ഫലപ്രദമായ നടപടികൾ സ്വീകരിച്ചിട്ടില്ല.

നടുവണ്ണൂർ പെട്രോൾ പമ്പിനു സമീപത്തെ കിണറ്റിൽ നിന്നെടുത്ത ഡീസൽ കലർന്ന വെള്ളം

ജനകീയ കൂട്ടായ്മയും നന്മ റസിഡന്റ്സ് അസോസിയേഷനും ചേർന്ന് മലിനീകരണത്തിനെതിരെ കർമ സമിതി രൂപീകരിച്ചിട്ടുണ്ട്. പമ്പ് ഉടമയുടെ നിരുത്തരവാദപരമായ നടപടിക്ക് എതിരെ കർമ സമിതി കലക്ടർക്കും ബന്ധപ്പെട്ട വകുപ്പിലും നൽകിയ പരാതി പ്രകാരം സംസ്ഥാന മലിനീകരണ നിയന്ത്രണ ബോർഡ് കഴിഞ്ഞ ജൂലൈയിൽ സ്ഥലം സന്ദർശിച്ചിരുന്നു. നിർമാണത്തിൽ അപാകത ഉള്ളതായി കണ്ടെത്തിയിരുന്നു. ഓഗസ്റ്റിൽ നിർദേശങ്ങൾ പാലിച്ചു പ്രവൃത്തി നടത്തണമെന്ന് പമ്പ് ഉടമയെ അറിയിച്ചതാണ്. എന്നാൽ ഇതെല്ലാം അവഗണിച്ചാണ് പിന്നീട് പമ്പ് പ്രവർത്തിച്ചത്.

സംസ്ഥാന മലിനീകരണ ബോർഡിന്റെ നിർദേശങ്ങൾ പാലിക്കാതെ പ്രവർത്തിച്ചത് മൂലം ഇന്ധന ചോർച്ച കൂടുതൽ പ്രദേശങ്ങളിലേക്ക് വ്യാപിച്ചിട്ടുണ്ടെന്ന് നാട്ടുകാർ ആശങ്കപ്പെടുന്നു. ഈ മാസം 8ന് നടുവണ്ണൂർ പഞ്ചായത്ത് സെക്രട്ടറി പെട്രോൾ പമ്പിനു സ്റ്റോപ്പ് മെമ്മോ നൽകിയതിനെ തുടർന്ന് പമ്പ് അടച്ചിരിക്കുകയാണ്. പഞ്ചായത്ത് നടപടിക്രമങ്ങൾ ധിക്കരിച്ചു പമ്പ് തുറന്നു പ്രവർത്തിപ്പിക്കാനുള്ള ഉടമകളുടെ ശ്രമം പഞ്ചായത്ത് സെക്രട്ടറിയുടെയും ബാലുശ്ശേരി പൊലീസിന്റെയും ഇടപെടലിൽ നിർത്തിവച്ചിരിക്കുകയാണ്.

മലിനമായ ജലസ്രോതസ്സുകൾ ശുദ്ധീകരിക്കുന്നതിനും ഉത്തരവാദികൾക്കെതിരെ നിയമാനുസൃത നടപടി സ്വീകരിക്കുന്നതിനും അധികൃതർ തയാറാകണമെന്ന് കർമ സമിതി ഭാരവാഹികളായ സമീർ മേക്കോത്ത്, രാമചന്ദ്രൻ തിരുവോണം, യൂസഫ് മേക്കോത്ത് എന്നിവർ ആവശ്യപ്പെട്ടു.

/Translated copy/

MALAYALA MANORAMA

Naduvannur Petrol Pump Leak: Residents Remain Anxious

Wells and Water Sources Contaminated

Naduvannur : Residents are anxious as no solution has been found even after eight months since a fuel leak occurred at the Indian Oil Corporation petrol pump operating near the Jawan Shaiju Smaraka bus stop in Naduvannur on the state highway.

The smell of fuel, abnormal color, and altered taste continue to persist in the wells and water sources near the pump. Households in the vicinity of the pump have been without clean water for eight months. Due to water contamination, people are facing health problems, and this has instilled fear among the residents. It is the demand of the locals that not only the wells be cleaned but also the long-term effects of this (contamination) be investigated.

Despite complaining numerous times to the petrol pump authorities, the local government, and related departments, no effective action has been taken so far. The Janakeeya Kootayma (People's Collective) and Nanma Residents' Association have jointly formed an action committee against the pollution. Based on the complaint filed by the action committee with the Collector and the concerned departments against the pump owner's irresponsible actions, the State Pollution Control Board visited the site last July and found irregularities in the construction. In August, the pump owner was informed to conduct operations in compliance with the instructions. However, the pump continued to operate, disregarding all of this.

Residents fear that the fuel leak has spread to more areas as the pump operated without following the directives of the State Pollution Control Board. The pump has been closed following a stop memo issued by the Naduvannur Panchayat Secretary on the 8th of this month. An attempt by the owners to open and operate the pump, defying the Panchayat's procedures, has been stopped by the intervention of the Panchayat Secretary and the Balusseri police.

Sameer Mekkoth, Ramachandran Thiruvonam, and Yusuf Mekkoth, the action committee leaders, demanded that authorities be willing to purify the contaminated water sources and take legal action against those responsible.

/True copy/

VBR Menon

Annexure- 15

172

BEFORE THE HON'BLE NATIONAL GREEN TRIBUNAL

(SOUTHERN ZONE, CHENNAI)

IN

OA. NO.188 OF 2024

REPORT FILED BY THE ENVIRONMENTAL ENGINEER, DISTRICT OFFICE KOZHIKODE, ON BEHALF OF KERALA STATE POLLUTION CONTROL BOARD (RESPONDENT NO.3)

I, Sauma Hameed, Environmental Engineer; Kerala State Pollution Control Board District Office Kozhikode do hereby solemnly affirm and state as follows.

1. I am the Environmental Engineer, Kerala State Pollution Control Board, District Office Kozhikode (hereinafter referred to as Board) and duly authorized to represent the 3 rd respondent in the above case. I am aware of the facts affirmed by me in this report. I am swearing this report based on the best of my knowledge, information and belief and the facts revealed from the records.

2. This Original Application was filed by Sri. Muhammed Risham, House No. 12/163, Nambyattil House, Naduvannur Post, Kozhikode, Kerala - 673614 against the establishing of a new petroleum outlet at his neighborhood property at survey no. 198/4 of Naduvannur Village, Koyilandy Taluk, Kozhikode alleging violation of the guidelines stipulated by the Central Pollution Control Board (CPCB) vide Office memorandum dated 07.01.2020 and seeks order to restrain them from setting up the fuel station. The Hon'ble Tribunal vide its order dated 31.05.2024 had directed to file report by all the respondents. Accordingly report was submitted on 28.06.2024.

3. In continuation of the report, it is submitted as follows. This respondent, the Board issued a letter dated 27.06.2024 to the District Town Planner , Kozhikode to clarify whether the land area in Naduvannur Village where the petrol pump is proposed to be located is a designated residential

Kerala State Pollution Control Board
District Office Kozhikode

SAUMA HAMEED
Environmental Engineer

area as per local laws. As per the reply dated 09.07.2024 from the District Town Planner, there is currently no approved master plan or detailed town planning scheme for the area encompassed by Survey No. 198/4 of Naduvannur Village Koyilandy Taluk, where the proposed petrol pump is located. A copy of the letter is produced herewith and marked as **Annexure R3 (a)** along with its translation.

4. It is humbly submitted that this respondent issued letter dated 27.06.2024 to the occupier of the proposed petrol pump to submit evidence from the Town Planning Department confirming that the site of the proposed petrol pump is not a designated residential area as per local laws. Reply dated 10.07.2024 received from the occupier included letter dated 22.06.2023 from the District Town Planner, confirming that there are no approved master plans or detailed town planning schemes applicable to the area within Naduvannur Grama Panchayat, as per the Kerala Municipality and Town Planning Act, 2016. A copy of the reply is produced herewith and marked as **Annexure R3 (b)** along with its translation.

5. It is humbly submitted that Central Pollution Control Board (CPCB) had issued Guidelines for Setting up of New Petrol Pumps dated 07.01.2020. A copy of the Guidelines is produced herewith and marked as **Annexure R3 (c)**. As per this Guidelines "siting criteria for new Petroleum Retail Outlets is that they should not be located within a radial distance of 50 meters (from fill point/ dispensing unit /vent pipe whichever is nearest) from schools, hospitals (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 new retail outlet from schools, hospitals (10 beds and above) and residential areas designated as per local laws shall be less than 30 meters." Board had issued Circular no. KSPCB/14/2021-SEE3 dated 18.02.2024 in which it was stated that "*wherever residential areas are not designated as per local laws, the siting criteria related to 'designated residential areas as per local laws' shall not be applicable*". A copy of the Board's circular is produced herewith and marked as **Annexure R3 (d)**. As there are no approved master plans or detailed town planning schemes applicable to the area in question as reported by the town planner, the area is not a designated residential area as per local laws, hence, the minimum distance criteria from residential area as per CPCB Guidelines will

Kerala State Pollution Control Board
District Office
Kozhikode

SAUMA HAMEED
Environmental Engineer

not be applicable to the residences located near the proposed site.

6. Addendum to Guidelines for Setting up of New Petrol Pumps was issued by CPCB vide Office Memorandum no.B-13011/1/2019-20/AQM dated 16.08.2021. A copy of the Addendum to Guidelines dated 16. 08.2021 is produced herewith and marked as **Annexure R3 (e)**. The minimum distance of 50 meters to water bodies as described in the CPCB Addendum to Guidelines for setting up of New Petrol Pumps dated 16.08.2021 is to be considered by the proponent, while setting up the fuel station. As per the inspection report dated 24.06.2024 there are no water bodies, as listed in the Addendum to Guidelines, within 50 meters of the boundary of the site of the proposed petrol pump.

All the facts stated above are true to the best of my knowledge, information and belief.

Dated this, the 8th day of January 2025.

For and on behalf of the 3rd Respondent,

Environmental Engineer

District Office, Kozhikode

Kerala State Pollution Control Board
District Office
Kozhikode

SAUMA HAMEED
Environmental Engineer

True copy

VBR Menon

Annexure - 16

PRINCIPAL DIRECTORATE
Local Self Government Department, Swaraj Bhavan,
Nanthancode,Kowdiar PO,Thiruvananthapuram - 695003
Contact: 0471-2727255, 2314526
e-mail: plg.pdlsgd@kerala.gov.in
Website: principaldirectorate.lsgkerala.gov.in

No: LSGD/PD/31579/2024-TCPB4

Date: 24-09-2024

State Public Information Officer &
Junior Superintendent.

Sri. Muhammed Risham
Nambyattil House, Karimbhapoyil,
Naduvannur Post, Calicut - 673 614.

Sir,

Sub: LSGD –Principal Directorate-Right to Information Act 2005-reply furnishing of - reg.

Ref : Your application dated. 02/09/2024 recieved in this office on 03/09/2024.

Attention is invited to the reference cited. Kindly find the following information available in this office with respect to your RTI application.

a) Currently, there are 941 Grama Panchayaths in Kerala.

b) In the Master Plans prepared by this Department under the provisions of Town and Country Act in force, planning area (areas under the jurisdiction of local bodies concerned) is classified into different land uses. Residential zone is one among such land use classification. There are 10 Grama Panchayats with sanctioned Master Plans and 2 Grama Panchayats with published Master Plans.

If you have any objection regarding the above, you can file an appeal before the below mentioned appellate authority within 30 days.

Appellate Authority
Additional Chief Town Planner,
Principal Directorate, Local Self Government Department (Planning),
Second Floor, Swaraj Bhavan, Nanthancode,
Kowdiar P.O, Thiruvananthapuram - 695003.

Yours faithfully,

Signed by
V Biju
Date: 24-09-2024 13:51:19 V. Biju.
State Public Information Officer &
Junior Superintendent.

/True copy/

VBR Menon

നം. 27/2022

വില്ലേജ് ഓഫീസ് നടുവണ്ണൂർ
തിയ്യതി 01.04.2022

പ്രേഷകൻ

വില്ലേജ് ഓഫീസർ
നടുവണ്ണൂർ

സ്വീകർത്താവ്

തഹസിൽദാർ
കൊയിലാണ്ടി

സർ,

വിഷയം - പെടോളിയം ഔട്ട് ലെറ്റ്- അന്വേഷണ റിപ്പോർട്ട് സമർപ്പിക്കുന്നത് - സംബന്ധിച്ച്

സൂചന – 1) അങ്ങയുടെ TLKKDY/6053/2021-D1 നമ്പർ കത്ത്.
2) ജില്ലാ കലക്ടറുടെ 13/10/2021 ലെ DCKKD/8747/2021/D4 നം. കത്ത്

സൂചനയിലേക്ക് അങ്ങയുടെ മഹനീയ ശ്രദ്ധ ക്ഷണിക്കുന്നു. നടുവണ്ണൂർ വില്ലേജ് നടുവണ്ണൂർ ദേശത്ത് റി.സ 198/4 ൽ ഉൾപ്പെട്ട സ്ഥലത്ത് പെടോളിയം ഔട്ട് ലെറ്റ് സ്ഥാപിക്കുന്നതിലേക്കായി അപേക്ഷ സമർപ്പിച്ചിട്ടുള്ളതായ സ്ഥലം നേരിൽ പരിശോധിച്ചു. നിരാക്ഷേപ പത്രം ലഭ്യമാക്കുന്നതിലേക്കായി ആവശ്യമായ രേഖകൾ ബന്ധപ്പെട്ട അപേക്ഷകർ ഹാജരാക്കിയിട്ടില്ല.

നിർദ്ദിഷ്ട സ്ഥലം കോഴിക്കോട് - കുറ്റ്യാടി സംസ്ഥാന പാതയോട് ചേർന്ന് കിടക്കുന്നതും തൊട്ടടുത്ത് തെക്കുഭാഗത്ത് ഉദ്ദേശം 15 മീറ്ററിനുള്ളിൽ വീട് സ്ഥിതിചെയ്യുന്നതുമാണ്. പ്രസ്തുത വീട്ടുകാർക്ക് പെടോളിയം ഔട്ട് ലെറ്റ് സ്ഥാപിക്കുന്നതിനോട് കടുത്ത എതിർപ്പ് നിലനിൽക്കുന്നുണ്ട്. പെടോളിയം ഔട്ട് ലെറ്റ് സ്ഥാപിക്കാൻ ഉദ്ദേശിക്കുന്ന സ്ഥലത്തിന്റെ തൊട്ടടുത്തുള്ള പ്രസ്തുത വീടിന്റെ കിണർ, അടുക്കള എന്നിവ 15 മീറ്റർ പരിധിയിൽ വരുന്നതാണ്. പെടോളിയം ഔട്ട് ലെറ്റ്- ന്റെ പ്ളാൻ ഈ ഓഫീസിൽ ലഭ്യമല്ലാത്തതിനാൽ ദൂരപരിധി സംബന്ധിച്ച് പുനർ നിർണ്ണയം ആവശ്യമാണ്.

നിർദ്ദിഷ്ട പെടോളിയം ഔട്ട് ലെറ്റ്- നേറ തൊട്ടടുത്ത താമസക്കാരനും മിലിട്ടറിയിൽ സേവനമനുഷ്ഠിച്ചുവരുന്ന ആളുമായ ശ്രീ മുഹമ്മദ് റിഷാം സമർപ്പിച്ച പരാതി സൂചന 2 പ്രകാരം ജില്ല കലക്ടർ ഈ ഓഫീസിലേക്ക് അയച്ചു തന്നിട്ടുള്ളതാണ്. പരാതി നിലനിൽക്കുന്നതിനാലും നിയമാനുസൃതം ആവശ്യമായ സമ്മതപത്രം പരാതിക്കാരിൽ നിന്നും ലഭ്യമാക്കാൻ അപേക്ഷകർക്ക് സാധിക്കാത്തിനാലും അപേക്ഷയിൽ തുടർ നടപടി എടുക്കാൻ സാധിച്ചിട്ടില്ല എന്നുള്ള വിവരം ബോധിപ്പിച്ചു. ഫയൽ ഇതൊന്നിച്ച് തിരികെ സമർപ്പിച്ചു.

വിശ്വസ്തതയോടെ

01/04/2022

VILLAGE OFFICER
NADUVANNUR

AL MUMARASA LANGUAGE CENTRE AND TRANSLATION SERVICES, ERNAKULAM

INSTRUCTOR: ADIL.M.H
LISSIE JUNCTION , ERNAKULAM, PIN:682017
NO.MOR14/15263/19
EMAIL: almumarasa@gmail.com , Ph: 7034885245,9778737456
website : documenttranslationkochi.com

Date of translation: 29/12/2023

Al Mumarasa Language Centre & Translation Services Kochi 682017 NO.MOR14/15263/19 Certified Translation

No.27/2022

Village Office, Naduvannur

Date: 01.04.2022

From,

Village Officer,

Naduvannur

Al Mumarasa Language Centre & Translation Services
62, Judges Avenue, Kaloor 682017
NO.MOR14/15263/19

To,

Tahasildar,

Koyilandi

Sir,

Subject: Petroleum Outlet: Regarding submitting Investigation Report.

Hint: 1) Your letter numbered TLKKDY/6053/2021-D1

2) Letter of District Collector numbered DCKKD/8747/2021/D4 dated 13/10/2021

Your Excellency's attention has drawn to the fact that the applicants has not submitted the required documents to avail the no objection letter by inspecting the place where the proposed petroleum outlet is constructing in Naduvannur area, Naduvannur village, included in Re.Survey. 198/4.

The proposed site is adjacent to the Kozhikode-Kutiyadi State Highway, and the house is located within 15 meters of the proposed site on the adjacent south side. There is strong opposition to the installation of a petroleum outlet from the households in the vicinity. The well and the kitchen of the said house, located next to the proposed petroleum outlet site, are within 15 meters. As the

Translation is true to the best of my knowledge and belief:

AL MUMARASA LANGUAGE CENTRE AND TRANSLATION SERVICES, ERNAKULAM

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website : documenttranslationkochi.com

Date of translation: 29/12/2023

plan is not available in this office, a re-determination of distance limits is required.

The complaint submitted by Mr. Muhammed Risham, a resident of the proposed petroleum outlet and a military service member, his complaint has forwarded to this office by the District Collector, as per reference 2. Due to the pending nature of the complaint and the applicants' inability to obtain the legally required consent form from the complainants, no further action could taken on the application. The file returned herewith.

Al Mumarasa Language Centre & Translation Services
62, Judges Avenue, Kaloor 682017
NO.MOR14/15263/19

Yours sincerely

VILLAGE OFFICER

NADUVANNUR

/True copy/

VBR Menon

Translation is true to the best of my knowledge and belief:

BEFORE THE NATIONAL GREEN TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

Original Application No. 147/2016

IN THE MATTER OF:

Aditya N. Prasad & Ors. Vs. Union of India & Ors.

CORAM : HON'BLE MR. JUSTICE ADARSH KUMAR GOEL, CHAIRPERSON
HON'BLE MR. JUSTICE S.P. WANGDI, JUDICIAL MEMBER
HON'BLE DR. NAGIN NANDA, EXPERT MEMBER

Present:	**Applicant**	**Mr. Aditya N. Prasad, Adv., Applicant in person**
	CPCB:	**Mr. Raj Kumar, Adv.**
	DPCC:	**Mr. Sandeep Mishra & Mr. Dinesh Jindal, LO**
	Respondent No. 4:	**Mr. Kshitij Mudgal, Adv.**
	Respondent nos. 5,6, & 7:	**Mr. Ashish Rana and Mr. Suresh Baxy, Advs.**

	Date and Remarks	**Orders of the Tribunal**
	Item No. 10 **September 28, 2018** **dv**	1. This applications seeks direction to install Stage I and Stage II vapor recovery devices at all fuel stations, distribution centers, terminals, railway loading/unloading facilities and airports in the National Capital Territory of Delhi. Prayer is also for other incidental directions. 2. According to the applicants, during transfer of petroleum products, Volatile Organic Compounds (VOC) are released which causes large numbers of molecules to evaporate or sublimate from the liquid or solid form of the compound and enter the surrounding atmosphere. Petroleum products contain traces of Benzene, Toluene and Xylene (BTX) which are highly toxic in nature. 3. Exposure to high level of BTX causes neuro-toxic symptoms. Persistent exposure to high levels of BTX may cause injury to human bone marrow, DNA damage in mammalian cells and damage to the immune system. Mild exposure causes irregular heartbeat, headache, dizziness, nausea and even unconsciousness, if exposure is continued for a long time. Early manifestation of toxicity is

	Item No. 10 **September 28, 2018** **dv**	in the form of anaemia, leucocytopenia and thrombocytopenia. Benzene is a known human carcinogen. The World Health Organization (WHO) estimates four in one million risk of leukemia on exposure to a concentration of 1 microgram per cubic meter. Together with other pollutants, BTX also participate in photochemical process, which results in formation of oxidants and smog. The applicant has referred to various studies on the subject. 4. The Ministry of Petroleum and Natural Gas has not disputed the hazardous impact of the release of VOC. In fact, it is stated that the Government of India itself has directed public sector oil marketing companies to install Vapour Recovery System (VRS) during fueling of vehicles at all the retail outlets (ROs) in Delhi and all high selling ROs, i.e. selling more than 300 KL per month in the country. 5. The Indian Oil Corporation (IOC) in its affidavit has stated that it has initiated process of installing VRS systems in 2006 and the process will be completed within four months. BPCL has also taken a similar stand. HPCL claims to have installed VRS systems at 53 retail outlets in New Delhi. 6. The Central Pollution Control Board (CPCB), in its affidavit filed on 18.07.2016, has stated that it has issued directions under Section 5 of the Environment (Protection) Act, 1986 to the following Petroleum Companies for installation of Stage-I and Stage-II vapour recovery systems in petrol re-filling stations located in the cities with the population have more than a million: (i) M/s Bharat Petroleum corporation Ltd.; (ii) M/s Hindustan Petroleum corporation Ltd.

	Item No. 10 **September 28, 2018** **dv**	(iii) M/s Indian Oil Corporation Ltd. (iv) M/s Mangalore Refinery and Petro Chemicals Ltd. (v) M/s Essar Oil Ltd. (vi) M/s Reliance industries Ltd. (vii) M/s Oil and Natural Gas Corporation Ltd. 7. The Ministry of Environment, Forests and Climate Change (MoEF&CC), in its affidavit, has stated that in view of the adverse effect on human health and the environment, Benzene, Toluene, Ethylbenzene and Xylene (BTEX) monitoring is being conducted by CPCB from time to time at selected Stations/areas in Delhi/NCR i.e. Pitampura, ITO and East Arjun Nagar during normal and festive seasons such as during pre, post and Diwali days. Active VOCs monitoring are being done in industries on need basis by CPCB. It is further stated that the CPCB has issued directions under Section 18(1) (b) of the Air (Prevention and Control of Pollution) Act, 1974, the State Pollution Control Board (SPCB) and the Delhi Pollution Control Committee (DPCC) for initiating time bound action for improvement of air quality. The SPCB of Uttar Pradesh has issued direction to install vapour recovery system in fuelling stations within the stipulated time. 8. It is clear from the above that there is no dispute about the need for installing Stage-I and Stage-II vapor recovery devices at all fuel stations, distribution centers, terminals, railway loading/unloading facilities and airports in the National Capital Territory of Delhi. 9. Only issue is the implementation. The matter is pending for the last more than two years. The timelines prescribed by the CPCB have expired. There is no justification for the long delay which has already taken place in the matter in taking requisite steps necessary for

	Item No. 10 **September 28, 2018** **dv**	protection of environment and public health. 10. Accordingly, we direct that all the oil companies present before this Tribunal must complete the process by 31.10.2018. The CPCB and the Ministry Petroleum and Natural Gas are directed to issue directions and ensure that necessary steps are taken by all the concerned. In respect of petrol pumps selling more than 300 KL per month, the directions must be required to comply with preferably on or before 31.10.2018 and with regard to remaining on or before 31.12.2018. The Tribunal may have to consider directing prosecution of the Chairman of the oil complies for violation. 11. A Compliance Report be filed by the CPCB after taking compliance reports from all the oil companies. The Report may be filed on or before 15.01.2019 by email at filing.ngt@gmail.com. 12. Needless to say that order of National Green Tribunal is binding as a decree of Court and non-compliance is actionable by way of punitive action including prosecution, in terms of the National Green Tribunal Act, 2010. 13. The application is disposed of. 14. To consider the report which may be received in pursuance of the above directions, the matter may be listed on 28th January, 2019. ……., CP (Adarsh Kumar Goel) /True copy/ ……,JM (S.P. Wangdi) VBR Menon ……,EM (Dr. Nagin Nanda) 28.09.2018

Petrol stations pollute their immediate surroundings

February 4, 2011

In Spain it is relatively common to come across petrol stations surrounded by houses, particularly in urban areas. Researchers from the University of Murcia have studied the effects of contamination at petrol stations that is potentially

In Spain it is relatively common to come across petrol stations surrounded by houses, particularly in urban areas. Researchers from the University of Murcia (UM) have studied the effects of contamination at petrol stations that is potentially harmful to health, which can be noted in buildings less than 100 metres from the service stations.

"Some airborne organic compounds – such as benzene, which increases the risk of cancer – have been recorded at petrol stations at levels above the average levels for urban areas where traffic is the primary source of emission", Marta Doval, co-author of the study and a researcher at the UM, tells SINC.

The study, which has been published in the *Journal of Environmental Management*, shows that the air at petrol stations and in their immediate surroundings is above all affected by emissions stemming from evaporated vehicle fuels (unburnt fuels from fuel loading and unloading operations, refuelling and liquid spillages).

The research team measured the levels of "typical traffic" pollutants in different parts of the urban area of Murcia, and calculated the quotients for the levels of an aromatic compound (benzene) and a hydrocarbon (n-hexane) at three Murcia petrol stations (near the petrol pumps and surrounding areas) to find the distance at which the service stations stop having an impact.

"In the three cases studied we obtained maximum distances of influence of close to 100 metres, although the average distance over which this contamination has an effect is around 50 metres", Enrique González, the UM researcher who led the research team, tells SINC.

However, the distances depend on the number of petrol pumps, the amount of fuel drawn from them, traffic intensity, the structure of the surroundings, and weather conditions.

According to the researcher, "the more contaminated the zone surrounding the petrol station as a result of other causes (traffic), the lower the impact of the two pollutants at the service station". If traffic in the area surrounding the petrol station is very intense, and exceeds the emissions from the station itself, pollution at the service station is "overlapped and goes unnoticed" over short distances.

Advice for new constructions

The research study shows that a "minimum" distance of 50 metres should be maintained between petrol stations and housing, and 100 metres for "especially vulnerable" facilities such as hospitals, health centres, schools and old people's

homes. "Ideally, the 100 metre distance should be respected in plans for building new houses", says Doval.

The researchers propose carrying out this study at new construction areas in which it is planned to build these kinds of facilities. However, petrol stations are not the only source of emission of these pollutants.

"There is not much use in protecting people from petrol stations if the other sources of emission (above all traffic and industries near population hubs) are not controlled or reduced", stresses González.

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Mail Online

Living near a petrol station is 'bad for your health' as fuel pollutants found to travel 100m

By Daily Mail Reporter
UPDATED: 01:38 BST, 8 February 2011

Living near a petrol station can be a health hazard, researchers warn.

They say the air in the immediate vicinity of garages is often polluted with airborne particles from evaporated fuel and therefore harmful to local residents.

Scientists from the University of Murcia in Spain studied the effects of contamination at petrol stations.

Dangerous airborne organic compounds can travel as far as 100m from petrol stations.

They found dangerous airborne pollutants from garages could contaminate buildings as far as 100m away.

The scientists said a 'minimum' distance of 50 metres should therefore be maintained between petrol stations and housing, and 100 metres for 'especially vulnerable' facilities such as hospitals, health centres, schools and old people's homes.

Study co author Marta Doval, said: 'Some airborne organic compounds - such as benzene, which increases the risk of cancer - have been recorded at petrol stations at levels above the average levels for urban areas where traffic is the primary source of emission.'

The study, published in the Journal of Environmental Management, shows the air at petrol stations and in their immediate surroundings is especially affected by emissions stemming from evaporated vehicle fuels. This includes unburnt fuel from fuel loading and unloading operations, refuelling and liquid spillages.

The research team measured the levels of 'typical traffic' pollutants in different parts of the urban area of Murcia. They then calculated the quotients for the levels of an aromatic compound (benzene) and a hydrocarbon (n-hexane) at three Murcia petrol stations - near the petrol pumps and surrounding areas - to find the distance at which the service stations stop having an impact.

In the three cases studied a maximum distances of influence of close to 100 metres was found although the average distance of contamination was around 50 metres.

But the distances depend on the number of petrol pumps, the amount of fuel drawn from them, traffic intensity, the structure of the surroundings, and weather conditions.

****

Living with 100 yards of petrol stations 'damages your health', study claims

Living within 100 yards of petrol stations can damage your health, according to a new study.

Experts say that a 'minimum' distance of 50 yards should be maintained between petrol stations and housing Photo: GETTY

6:26AM GMT 07 Feb 2011

Researchers found that air in the immediate vicinity of garages is often polluted and can harm local residents.

Scientists from the University of Murcia studied the effects of contamination at petrol stations that is potentially harmful to health

Experts say it shows that a "minimum" distance of 50 yards should be maintained between petrol stations and housing.

A 100 yards minimum distance should apply to "especially vulnerable" facilities such as hospitals, health centres, schools and old people's homes.

Marta Doval, co-author of the study and a researcher at the Spanish university, said: "Some airborne organic compounds such as benzene, which increases the risk of cancer have been recorded at petrol stations at levels above the average levels for urban areas where traffic is the primary source of emission."

The study, which has been published in the *Journal of Environmental Management*, shows that the air at petrol stations and in their immediate surroundings is above all affected by emissions stemming from evaporated vehicle fuels which are unburnt fuels from fuel loading and unloading operations, refuelling and liquid spillages.

The research team measured the levels of "typical traffic" pollutants in different parts of the urban area of Murcia, and calculated the quotients for the levels of an

aromatic compound (benzene) and a hydrocarbon (n-hexane) at three Murcia petrol stations – near the petrol pumps and surrounding areas – to find the distance at which the service stations stop having an impact.

In the three cases studied a maximum distances of influence of close to 100 metres was found although the average distance of contamination was around 50 metres.

But the distances depend on the number of petrol pumps, the amount of fuel drawn from them, traffic intensity, the structure of the surroundings, and weather conditions.

/True copy/

VBR Menon

Annexure - 20

केन्द्रीय प्रदूषण नियंत्रण बोर्ड
CENTRAL POLLUTION CONTROL BOARD
पर्यावरण, वन एवं जलवायु परिवर्तन मंत्रालय भारत सरकार
MINISTRY OF ENVIRONMENT, FOREST & CLIMATE CHANGE GOVT. OF INDIA

B-13011/1/2019-20/AQM

August 16, 2021

OFFICE MEMORANDUM

Sub: Addendum to the Guidelines for Setting Up of New Petrol Pumps issued on January 07, 2020 -regarding.

CPCB in compliance of the Hon'ble National Green Tribunal order dated January 18, 2019 in O.A. No. 86/2019: Gyanprakhash @ Pappu Singh Vs UoI & Ors. issued guidelines for Setting Up of New Petrol Pumps vide O.M. No. B-13011/1/2019-20/AQM/10809 dated January 07, 2020.

Hon'ble NGT vide further orders dated 23.07.2020 and 09.10.2020, in the matter of Suresh Mandaloi Vs. State of M.P & Ors. (O.A. No. 61 of 2019 (CZ)), directed MoEF&CC and CPCB to submit a report with regard to the minimum distance from water bodies to the petrol pump.

The matter was referred to the Expert Committee and the draft guidelines for implementation in case of petrol pumps near water bodies were prepared. The guidelines also specify the groundwater and soil sampling protocol, frequency of sample collection and the prescribed parameters and screening values to be adopted. The same monitoring protocol and parameters/ values (except for monitoring frequency) need to be adopted for petrol pumps covered under the guidelines dated January 07, 2020.

These draft guidelines were placed in public domain for seeking comments/suggestions from public and concerned stakeholders. These were reviewed by the Expert Committee and the guidelines have been finalised and are hereby issued as addendum to the earlier CPCB Guidelines dated January 07, 2020 for implementation by concerned stakeholders.

This issues with the approval of the Competent Authority.

(P.K. Gupta)
Additional Director& Divisional Head
AQM Div.

Encl.: As Above

To

1. All SPCBs/ PCCs
   (As per list enclosed)

with a request to circulate to Commissioner of civil supplies or other similar authorities who look after issues related to petrol pumps at State/ UT level and District Collectors/ Commissioners /Deputy Commissioners.

2. Joint Secretary (Marketing)
   Ministry of Petroleum and Natural Gas, Govt. of India
   ShastriBhavan,
   New Delhi – 110001

3. Chief Controller of Explosives
   Petroleum and Explosive Safety Organization (PESO)
   A Block CGO Complex Fifth Floor Seminary Hills
   Nagpur-(Maharashtra) -440006

4. Director
   Legal Metrology
   Ministry of Consumer Affairs, Food and Public Distribution Deptt. of Consumer Affairs,
   Room No.461-A, Krishi Bhawan,
   New Delhi - 110 001

5. The Chairman,
   M/s. Bharat Petroleum Corporation Limited
   Bharat Bhavan, 4 and 6 Currimbhoy Road
   Ballard Estate, Mumbai 400 001

6. The Chairman,
   M/s. Hindustan Petroleum Corporation Limited
   Petroleum House, 17, Jamshedji Tata Road, Mumbai
   Maharashtra 400020

7. The Chairman,
   M/s. Indian Oil Corporation Limited
   Indian Oil Bhawan, G9, Ali Yavar Jung Marg
   Bandra East, Mumbai, Maharashtra 400 051

8. The Chairman,
   M/s. Shell India Markets Pvt. Ltd.
   Plot No. 7, Bangolore Hardware Park,
   Devanahalli Industrial Park
   MahadevaKodigehalli
   Bangalore- 562 149, Karnataka.

9. The Chairman,
   M/s Reliance Industries Limited,
   Maker Chambers - IV
   Nariman Point
   Mumbai 400 021, India

10. The Chairman,
    M/s. Nayara Energy Limited (Formerly Essar Oil Limited)
    5th Floor, Jet Airways Godrej BKC,
    Plot No. C-68, G Block
    BandraKurla Complex, Bandra East
    Mumbai- 450 051

ADDENDUM TO GUIDELINES FOR SETTING UP OF NEW PETROL PUMPS

The Hon'ble NGT vide orders dated 23.07.2020 and 09.10.2020, in the matter of Suresh Mandaloi Vs. State of M. P. & Ors. (O.A. No. 61 of 2019 (CZ)), directed MoEF&CC and CPCB to submit a report with regard to the minimum distance from water bodies to the petrol pump.

The matter was subsequently referred to the Expert Committee constituted by CPCB earlier in the matter of guidelines for setting up of new petrol pumps and the following addendum guidelines (to guidelines dated 07.01.2020) have been finalised for implementation in case of petrol pumps near water bodies:

a) All the surface water bodies irrespective of utility shall be protected from any possible contamination. These include lakes, ponds, streams, rivers, wetlands, canals and creeks, as per revenue records. Retail Outlets shall not be located within a distance of 50 meters from the nearest point of water bodies. In case of streams and rivers, the distance shall be considered from floodway. In case floodway is not defined, the distance shall be considered from firm banks/ edge of river. The siting criterion is to be implemented for all new petrol pumps where construction by OMCs starts post the issuance of these guidelines.

b) Retail outlets coming within 50 meter to 100 meter from the nearest point of surface water body shall have secondary containment by way of double walled tanks or concrete protection walls around Underground Storage Tank (UST).

c) Groundwater and soil quality monitoring near the premises of fuel retail outlets shall be conducted by OMCs once a year through E (P) Act, 1986 approved labs or labs with national/international accreditation. The monitoring shall be done for those Fuel Retail Outlets which are located within 100 meter from the nearest point of surface water bodies. These shall be applicable to all petrol pumps, regardless of the date of establishment. In case of any clarification and/or difficulty in obtaining samples for groundwater and soil quality monitoring, OMCs may seek

assistance of local administration/SPCB/PCC/CGWB. Protocol for soil and groundwater monitoring is annexed as Annexure-I.

d) Groundwater and soil quality monitoring shall also be conducted by OMCs before installation of the new fuel retail outlet, for those retail outlets coming up within 100 meter from the nearest point of surface water bodies.

NOTE: These guidelines are supplementary to all existing relevant Rules, Guidelines, Orders, Notifications such as Wetlands (Conservation and Management) Rules, 2017, Coastal Regulation Zone (CRZ) Notification, 2011 etc. The other measures, prescribed in CPCB guidelines for setting up of new petrol pumps dated 07.01.2020, for containment and treatment of spillages, check on leakages from USTs, treatment and disposal of sludge removed from underground tanks during cleaning, measures for protection of workers' health, audit of all protection measures and monitoring system implemented at petrol pumps, shall also apply to the fuel retail outlets falling in the criteria specified above.

Monitoring protocol specifying the prescribed parameters and screening values annexed with these guidelines (other than the monitoring frequency), shall also be adopted for those retail outlets where CPCB guidelines dated 07.01.2020 are applicable.

These guidelines shall be reviewed from time to time.

Annexure-I

Protocol for monitoring quality of soil and groundwater near the premises of fuel retail outlets

Samples of groundwater being used for drinking purposes shall be collected from at least three different directions with reference to the retail outlet. The sampling point should be preferably within 50m distance from the underground storage tank location at the retail outlet. The samples shall be analysed for the following parameters:

Table 1.

Sr. No.	Parameter	Screening Values
1.	Total petroleum hydrocarbons (C_{10} -C_{40})	**0.6mg/L**
2.	BTEX	i. Benzene- **0.01mg/L** ii. Toluene- **0.7mg/L** iii. Xylene-**0.5mg/L**
3.	Methyl Tertiary Butyl Ether	**13µg/l**
4.	Total PAH	**0.0001mg/l**

Further, soil sample shall be collected from a borehole within the premises of the fuel retail outlet adjacent to the Underground Storage Tank (UST) pit. The depth of bore hole should be up to 1m below the bottom of the storage tank level. Soil samples shall be analysed for the following parameters:

Table 2.

Sr. No.	Parameter	Screening Values(mg/kg)
1.	Total petroleum hydrocarbons (TPH)	**5000**
2.	Benzene	**5**
3.	Toluene	**30**
4.	Xylene	**50**
5.	Methyl Tertiary Butyl Ether	**100**
6.	Total PAH	**40**

Ground water and soil quality monitoring shall be conducted by OMCs once a year through E (P) Act, 1986 approved labs or labs with national/international accreditation and the reports are to be submitted to SPCB. The soil monitoring shall be done in first six months while groundwater monitoring shall be done in the next six months.

In case of exceedance of screening by any parameter, or in case of leakage resulting in soil/groundwater contamination, the measures/steps as prescribed in the guidelines for setting up of petrol pumps dated 07.01.2020 shall be taken up. Assessment and remediation shall be carried out as per the guidelines issued by MoEF&CC and CPCB.

/True copy/

VBR Menon

Speed. Post

Annexure - 21

EQ-11099/25/2021-AQM-HO-CPCB-HO / 1830-1879 June 16, 2023

OFFICE MEMORANDUM

Sub: Guidelines for setting up of new petrol pumps issued by CPCB- reg.

The Hon'ble Supreme Court of India vide order dated 14.03.2023 in Civil appeal no. 421 of 2022: M/s Indian Oil Corporation Limited v/s V.B.R. Menon & Others, with Civil appeal no. 494 of 2022, Civil appeal no. 1695 of 2022, Civil appeal no. 2039 of 2022, Civil appeal no. 1758 of 2022 and Civil appeal no. 1912 of 2022 *directed CPCB to instruct all the State Pollution Control Boards to ensure that the guidelines issued by it vide the Office Memorandum dated 07.01.2020 are strictly adhered to. If there is breach of any of the guidelines issued by the CPCB vide Office Memorandum dated 07.01.2020, then the concerned State Pollution Control Board shall proceed against the erring outlet in accordance with law at the earliest*. Copy of the order of the Hon'ble Supreme Court is enclosed herewith.

Accordingly, all SPCBs and PCCs are directed to ensure that CPCB guidelines for setting up of new petrol pumps issued vide Office Memorandum dated 07.01.2020 and addendum dated 16.08.2021 are strictly adhered to. In case of violation of these guidelines, concerned SPCB/PCC shall take action against the erring outlet as per law.

O/C
(GS)

(P.K. Gupta)
Scientist 'F' and Head
Air Quality Management Division

Encl: As above

To:

All SPCBs and PCCs (as per list enclosed)

/True copy/

केन्द्रीय प्रदूषण नियंत्रण बोर्ड
निर्गत No/108/22
दिनांक 21/6/2023

VBR Menon

Annexure - 22

CA 5763/2022

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

Civil Appeal No 5763 of 2022

M/s Indian Oil Corporation Limited **Appellant**

Versus

V B R Menon and Others **Respondents**

O R D E R

1 We have heard Mr Tushar Mehta, Solicitor General, appearing on behalf of the appellant.

2 Ms Manjeet Chawla, counsel had entered appearance on behalf of the respondent. She has sought a discharge on the ground that Mr V B R Menon, the respondent wishes to appear in-person. Consequently, Mr V B R Menon has also appeared in-person on the video conferencing mode.

3 During the course of the hearing, the Solicitor General states that the appellant, Indian Oil Corporation Limited, has decided to shift the entire establishment of the retail outlet from the land in question, but it needs some reasonable time to do so.

4 Mr V B R Menon, the respondent in-person states that there is no objection to the grant of reasonable time to the appellant to shift and vacate.

5 We accordingly grant time to the appellant in terms as noted above until 31 March 2024.

6 The direction for the payment of costs shall stand set aside.

7 The appeal is accordingly disposed of.

8 Pending applications, if any, stand disposed of.

.....CJI.
[Dr Dhananjaya Y Chandrachud]

.....J.
[J B Pardiwala]

.....J.
[Manoj Misra]

New Delhi;
October 13, 2023
CKB

/True copy/

VBR Menon

केन्द्रीय प्रदूषण नियंत्रण बोर्ड
CENTRAL POLLUTION CONTROL BO
पर्यावरण, वन एवं जलवायु परिवर्तन मंत्रालय भारत सरकार
MINISTRY OF ENVIRONMENT, FOREST & CLIMATE CHANGE GOVT. OF INDIA

SPEED POST/Email

B-13011/1/2021-22/AQM-PP/Guidelines

November 30, 2022

To,

As per list

Sub: Minutes of the Expert committee meeting held on 10.10.2022 regarding siting criteria for new petrol pumps in case of non-planning areas, areas where residential areas have not been classified as per local laws and commercial / mixed zones- Reg.

Sir,

Please find enclosed herewith the minutes of Expert committee meeting held on 10.10.2022 through video conferencing at CPCB on the subject matter for kind information please.

Encl: As above

Yours faithfully,

(**P. K. Gupta**)
Director & DH,
AQM Division

List:

1. Sh. Kushagra Mittal, Deputy Secretary (LPG & Mkt)
   Ministry of Petroleum & Natural Gas,
   Shastri Bhawan, Dr. Rajendra Prasad Road,
   New Delhi – 110001
   Email: dir.m-png@gov.in, maildistribution@yahoo.com

2. Dr. Mukesh Sharma, Professor,
   Department of Civil Engineering,
   Indian Institute of Technology Kanpur
   Kanpur-208016, Uttar Pradesh
   Email: mukesh@iitk.ac.in

3. Dr. Nitin Labhsetwar, Chief Scientist & Head,
   Energy and Resource Management Division,
   CSIR-NEERI, Nehru Marg, Vasant Nagar,
   Nagpur, Maharashtra 440020
   Email: nk_labhsetwar@neeri.res.in

4. Dr. Ajay Gupta,
   Principal Technical Officer,
   Indian Institute of Petroleum (IIP), Mohkampur,
   Dehradun, Uttrakhand
   Email: ajay@iip.res.in

Minutes of the meeting of the Expert Committee held on 10.10.2022

A meeting of the expert committee was convened on October 10, 2022 under the chairpersonship of Prof. Mukesh Sharma, IIT Kanpur. List of participants is annexed.

02. Sh. PK Gupta, CPCB welcomed the participants to the meeting and informed that the Hon'ble NGT(SZ) in their judgment dated 01.07.2022, in four cases (OA No. 167 of 2020, OA No. 22 of 2021, OA no. 118 of 2021 and OA No. 176 of 2020) has directed CPCB to revisit the siting criteria prescribed by it vide guidelines dated 07.01.2020 and clarify on the distance criteria that should be adopted in following cases:

1. Where no residential areas have been classified in the local laws or in case where there is non-planning areas under the local laws and
2. Areas are classified as Commercial Zone/Mixed Zone.

Accordingly, this meeting has been called to seek inputs of the expert committee on the matter. The Expert Committee was also requested to provide its inputs on applicability of siting criteria prescribed in CPCB guidelines dated in cases wherein Letter of Intent (LOI) has been issued by OMC prior to issue of guidelines but construction could not start before issuance of guidelines.

03. Sh. Sanjeev Agrawal, BPCL suggested that preventive and mitigation measures for containment of spillages and environment protection have already been prescribed in CPCB guidelines issued on 07.01.2020. He expressed that the definition of residential areas is not even clear to OMCs and suggested that siting norms may be relaxed if additional measures such as VRS and double containment walls are installed, especially in those sites earmarked by town planning authorities for establishment of petrol pumps. CPCB expressed that said siting guidelines have been prepared in compliance of directions of Hon'ble NGT and are to be implemented.

04. With regard to matter of suggesting distance criteria for cases where no residential areas have been classified in the local laws or in case where there is non-planning area under the local laws, Expert Committee expressed that state government to take necessary action in this matter.

05. Regarding the matter of siting norms in commercial or mixed zones, Committee expressed that siting criteria in CPCB guidelines issued on 07.01.2022 was specified with

respect to sensitive receptors such as residential areas, schools and hospitals. The committee concluded that in case of non-residential area such as commercial zones or mixed zones or non-planning areas, siting criteria may not be required however all precautionary and proper measures including VRS and double containment walls, need to be implemented for minimizing exposure, as indicated in the guidelines. Further, any existing guidelines/regulations including siting norms prescribed by the state government or other central agencies/organisations need to be strictly adhered to.

06. Regarding applicability of CPCB siting guidelines dated 07.01.2020 wherein Letter of Intent (LOI) has been received by OMC prior to issue of guidelines but construction could not start before 07.01.2020, Committee deliberated whether some specific time period may be provided to the applicant for completing the commissioning of the petrol pump after the issuance of LoI, and if the applicant fails to complete construction within the said period, then the guidelines shall be applicable to the petrol pumps. Committee noted that same may not be feasible at this stage and accordingly present criteria to be implemented.

Meeting ended with thanks to chair.

***

List of Participants:

1. Prof. Mukesh Sharma, IIT Kanpur
2. Sh. P K Gupta, Director, CPCB
3. Dr. Nitin Labhsetwar, Chief Scientist & Head, CSIR-NEERI
4. Dr. Ajay Kumar Gupta, Principal Technical Officer, CSIR-IIP
5. Sh. Deepak Srivastava, Director, Ministry of Petroleum & Natural Gas
6. Sh. Sanjeev Agrawal, ED Engineering and Automation, BPCL
7. Sh. Ankush Tewani, Sc. 'D', CPCB
8. Sh. Gautam Kumar Sharma, Sc. 'B', CPCB

/True copy/

VBR Menon

FORM - I
[See rule 8 (1)]

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

MEMORANDUM OF APPLICATION
(Under Section 18(1) read with Section 14 (i) of National Green Tribunal Act, 2010)

ORIGINAL APPLICATION NO. 183 of 2024 (SZ)

Between ;

V.B.R. Menon, B.E (Mech), MBA (IIMA), LLB,
Advocate,
Flat No: 4 A&B, Brook Dale Apartments,
No:12, P.T. Rajan Salai,
K.K. Nagar, Chennai – 600 078
E-mail. vbrmenon@gmail.com
Phone : 9384762930 … Applicant

and

1. The Member Secretary,
   Central Pollution Control Board,
   Parivesh Bhawan, East Arjun Nagar,
   New Delhi – 110 032
   E-mail : mscb.cpcb@nic.in
   Phone :011 – 43102208 / 43102209

2. The Secretary,
   Ministry of Petroleum and Natural Gas,
   A-Wing, Shastri Bhavan,
   Dr. Rajendra Prasad Road,
   New Delhi – 110 001
   E-mail : sec.png@nic.in
   Phone : 011 – 23383562/23383501

3. The Chief Controller of Explosives,
   Petroleum & Explosives Safety Organisation (PESO),
   A-Block, CGO Complex, 5th Floor,
   Seminary Hills, Nagpur – 440 006
   E-mail : explosives@explosives.in
   Phone : 0712 – 2510103 … Respondents

TO,

THE HON'BLE NATIONAL GREEN TRIBUNAL, SOUTHERN ZONE

APPLICATION HUMBLY SUBMITTED BY THE APPLICANT ABOVE NAMED.

1. The Applicant , V.B.R. Menon, S/o. (Late) KMB Menon, aged 71 years, is residing at Flat No.4 A&B, Brook Dale Apartments, No.12, P.T. Rajan Salai, K.K. Nagar, Chennai - 600 078 . The Applicant is a practicing Advocate (Roll No. MS. 23/2012), holding a Degree in Mechanical Engineering and a Postgraduate degree in Business Administration from the Indian Institute of Management, Ahmedabad. The Applicant has instituted several Public Interest Litigations on issues of large public interest related to incorporation of technology and modern management systems into Land administration, preservation of water bodies and wetlands, sand mining, regularization of unauthorized layouts and buildings, regulation and fixation of reasonable fees for medical courses in Deemed Universities , proper siting of petrol pumps to avoid hazards to public health and safety, etc. and has obtained favorable orders / judgements for the benefits of the public at large. The Applicant had earlier worked as a Dy. Manager-Engineering in the Marketing Division of M/s Bharat Petroleum Corporation Limited during 982-84 and therefore possesses adequate knowledge of the subject matter and the Public health and safety issues associated with the operation of Petroleum Retail Outlets .

2. It is submitted that the present Application has been filed seeking a direction to the Respondents to revisit and revise the Siting Criteria , formulated and notified vide Office Memorandum No. B-13011/12019-20/AQM/ 10802-10847 dated 07.01.2020 , for setting up of New Petroleum Retail Outlets after taking into account the ground realities and the main objective to ensure environmental protection from harmful petroleum vapors and leakages of petroleum products to the surrounding areas , in large public interest.

I. The address of the Applicant is as given above for the service of the notices of this Application and that of the representatives.

II. The addresses of the Respondents are as given above for the service of notices of the Application.

III. The Applicant above-named begs to present the Memorandum of Application against the Respondents on the grounds set-out hereunder .

FACTS IN BRIEF :

1. The Applicant had earlier filed an OA No. 138 of 2021 (SZ) seeking installation of Vapour recovery systems (VRS) in the Petroleum Outlets operating in Tamilnadu which was allowed by this Hon'ble Tribunal vide the Final Order dated 23.12.2021 . However, the Respondent Oil Marketing companies had challenged the above Final Order in a batch of Civil Appeal Nos. 421 of 2022, etc. before the Hon'ble Apex Court which was disposed off on 14.03.2023 wherein the power of this Hon'ble Tribunal to issue directions to CPCB in environmental matters and the Siting Criteria for new retail outlets , notified by CPCB pursuant to the direction of the Principal Bench of this Hon'ble Tribunal , were upheld. (**Ref: Annexure Nos. 1 ,2 & 6)**

2. In the meanwhile, This Hon'ble Tribunal had noticed some deficiencies and the need to incorporate certain changes and modifications in the Siting Criteria dated 07.01.2020 to achieve the stated objectives therein. Accordingly, this Hon'ble Tribunal had directed in paragraph nos. 53 , 54 and 64 (v) & (vi) of the Final Order dated 01.07.2022 in OA No. 176 of 2020 (SZ) and the same has become final as the Hon'ble Apex Court did not interfere with the same while disposing off the Civil Appeal No. 5763 of 2022 vide the Final Order dated 13.10.2023. (**Ref: Annexure Nos. 4 and 7)**

3. During the proceedings in Civil Appeal No. 5763 of 2022, CPCB had filed a Counter Affidavit on 01.03.2023 and the relevant paragraph is extracted hereunder ; (**Ref: Annexure No. 5)**

> "*4 (j) : That averments made in Para 4.32 of the present Civil Appeal states the order dated 01.07.2022 passed by the Hon'ble NGT in OA No. 176/2020 . In reply to the averments, it is humbly submitted that a meeting of the Expert Committee involved in formulation of the guidelines for setting up of new petrol pumps was convened on October 10, 2022, to discuss implementation of directions of the Hon'ble NGT in OA 176/2020 . The minutes were prepared but further action including issuing of minutes was not taken in view of the stay order issued by the hon'ble Supreme Court".*

4. As the above case and the restraint perceived by CPCB in proceeding with the directions issued by this Hon'ble Tribunal do not exist now , the Applicant had sent a representation to the Respondents on 05.03.2024 for which no responses have been received till date. In the case of Tamil Nadu, more than 80 % of land areas are yet to be brought under Planning areas and remain to be non-planning areas. The situation is not much different in the case of the whole country except the metropolitan and large corporation / municipal areas. (**Ref: Annexure Nos. 3 & 8)**

5. The Zoning Regulations under Tamil Nadu Combined development and building Rules, 2019 permit construction of residential buildings and Automobile Service Stations in all the categories of zones. The policy regarding how the Siting Criteria shall be enforced in such cases is also required to be clarified to ensure proper compliance (**Ref: Annexure No. 9).**

6. The concessionary minimum distance of 30 M , provided in the Siting Criteria dated 07.01.2020 , also requires clarification and revision as PESO ,

who is vested with the power to allow the concessionary distance, is neither competent to decide on the Additional Safety measures required to be installed to reduce environmental harm due to Petroleum Vapors nor to decide on the exigencies to justify such concessions. CPCB or State PCBs alone shall be competent to grant such relaxations of safety distances after ascertaining and assessing all the relevant factors involved.

7. Due to the absence of clarity regarding the applicability of the safety distance norms prescribed under the CPCB Siting Criteria dated 07.01.2020 to non-plan areas , the permissible exigencies and details of additional safety measures required to be installed to avail the concessionary distance norms , large number petroleum Retail Outlets continue to come up everywhere without complying with the CPCB Siting Criteria.

G R O U N D S

i. This Hon'ble Tribunal had noticed some deficiencies and the need to incorporate certain changes and modifications in the Siting Criteria dated 07.01.2020 to achieve the stated objectives therein. Accordingly, this Hon'ble Tribunal had directed in paragraph nos. 53 , 54 and 64 (v) & (vi) of the Final Order dated 01.07.2022 in OA No. 176 of 2020 (SZ) and the same has become final as the Hon'ble Apex Court did not interfere with the same while disposing off the Civil Appeal No. 5763 of 2022 vide the Final Order dated 13.10.2023.

ii. The State Planning Authorities have not formulated development plans and notified residential zones/areas for most parts of Tamil Nadu except a few large Corporation areas and it may be true in respect of most other states too. *Therefore, the existing Siting Criteria needs to be modified to include all the areas which are used as residential premises and not explicitly prohibited under local laws*

iii. The Zoning Regulations under Tamil Nadu Combined development and building Rules, 2019 permit construction of residential buildings and Automobile Service Stations in all the categories of zones. The policy regarding how the Siting Criteria shall be enforced in such cases is also required to be clarified to ensure proper compliance.

iv. Petroleum Explosives & Safety Organisation (PESO) does not possess adequate domain knowledge or expertise to decide and prescribe Additional Safety measures for allowing the concessionary safety distance of 30 M from Residential areas as it is primarily the role of Authorities dealing with environmental issues such as CPCB , State PCB s , etc. *Therefore, it shall be desirable to decide and prescribe the list of Additional Safety Measures required to be installed by the Applicants while allowing the concessionary Safety Distance of 30 M in case of exceptional circumstances.*

v. It shall also be necessary to lay down clear grounds for allowing the concessionary distance of 30 M in the Siting Criteria as the failure to do so shall result in lowering of prescribed Safety distance of 50 M in all the cases and make it effectively redundant.

vi. The Hon'ble Supreme Court of India has already held in the case of IOCL Vs. VBR Menon, reported in (2023) 7 SCC 368 that the guidelines prescribed in the above CPCB Circular dated 07.01.2020 shall be binding and mandatory for compliance by all the Authorities and The State Pollution Control Board , had been specifically directed to ensure strict compliance of the same.

vii. CPCB had earlier submitted before the Hon'ble Apex Court in Civil Appeal No. 5763 of 2022 , as under ;

"*4 (j) : That averments made in Para 4.32 of the present Civil Appeal states the order dated 01.07.2022 passed by the Hon'ble NGT in OA No. 176/2020 . In reply to the averments, it is humbly submitted that a meeting of the Expert Committee involved in formulation of the guidelines for setting up of new petrol pumps was convened on October 10, 2022, to discuss implementation of directions of the Hon'ble NGT in OA 176/2020 . The minutes were prepared but further action including issuing of minutes was not taken in view of the stay order issued by the hon'ble Supreme Court".*

viii. The above restraint ,perceived by CPCB, in proceeding with the directions issued by this Hon'ble Tribunal does not exist now and therefore CPCB must expeditiously comply with the directions already issued by this Hon'ble Tribunal in OA No. 176 of 2020(SZ).

ix. Wrongful and indiscriminate siting of Petroleum Retail Outlets shall directly impinge on the Right to life guaranteed under Article 21 of the Constitution and therefore formulation and implementation of correct and reasonable Siting Criteria shall be of utmost importance in protecting and safeguarding of Public interest and protection of their life and property.

LIMITATION : As the issue raised in the instant Application is of a continuous nature, no limitation period shall apply in the instant case.

INTERIM RELIEF

Pending disposal of the Application, the Applicant prays that this Hon'ble Tribunal may be pleased to :

A. direct the 1st Respondent to issue a clarification that no new Petroleum Retail Outlet shall be permissible within a distance of 50 M from existing premises used for residential purposes , Hospitals and Schools .

B. pass such further order or orders as may be fit proper and necessary in the facts and circumstances of the case.

PRAYER

For the reasons stated in the above, it is humbly prayed that this Hon'ble Tribunal may be pleased to :

A. Direct the Respondents to revisit and revise the Siting Criteria , formulated and notified vide Office Memorandum No. B-13011/12019-20/AQM/ 10802-10847 dated 07.01.2020 for setting up of New Petroleum Retail Outlets after taking into account the ground realities and the main objective to ensure environmental protection from harmful petroleum vapors and leakages of petroleum products to the surrounding areas , in large public interest.

and

B. pass such further order or orders as may be fit proper and necessary in the facts and circumstances of the case and thus render justice.

Applicant

VERIFICATION

I, V.B.R. Menon, Son of (Late) K.M.B. Menon , aged 71 years, residing at Flat No. 4 A& B, Brook Dale Apartments, No:12, P.T. Rajan Salai, K.K. Nagar, Chennai - 600 078 , do hereby verify that the contents of paras 1 to 7 and grounds i to ix are true to my personal knowledge and that I have not suppressed any material fact .

Date : 21.05.2024
Place : Chennai

Applicant.

/True copy//

VBR Menon

Item No.08:

BEFORE THE NATIONAL GREEN TRIBUNAL
SOUTHERN ZONE, CHENNAI

(Through Video Conference)

Original Application No.188 of 2024(SZ)

IN THE MATTER OF:

Muhammed Risham,
Kerala.

...Applicant(s)

Versus

District Collector Office,
Kozhikode Collectorate,
Kozhikode and Ors.

...Respondent(s)

Date of hearing: 02.07.2024.

CORAM:

HON'BLE Smt. JUSTICE PUSHPA SATHYANARAYANA, JUDICIAL MEMBER

HON'BLE Dr. SATYAGOPAL KORLAPATI, EXPERT MEMBER

For Applicant(s): Ms. Aarti R. Mundhra.

For Respondent(s): Mr. G. Vignesh represented
Mr. E.K. Kumaresan for R1.
Mr. R. Thirunavukarasu for R2.
Mrs. Rema Smrithi for R3.

ORDER

1. The report of the Kerala State Pollution Control Board (KSPCB) states that there is a house located 10 Metres to the west and another house located 2.50 Meters to the south from the boundary of the proposed plot. State Highway - 38 (SH 38) is passing along the eastern side of the site. On the northern side, there is a water service station named 'Team Proxima LLP' which was nearing completion of construction works. The distance from the complainant's well to the boundary of the petrol pump is measured as 9 Meters.

2. It is stated that the project proponent had applied for 'Consent to Establish' and the same was returned by the KSPCB for non-submission of necessary documents viz., the site plan, building plan, PESO certificate, possession certificate, cross-sectional drawing of fuel tank, septic tank, soak pit, revised complete affidavit with wetland condition & water bodies condition, clarification regarding mismatch in survey number in land tax receipt with application/lease agreement and also for remitting balance fee.

3. It is also mentioned that there is a complaint which is pending against the proposed unit. The project proponent has also not resubmitted the application till today.

4. Even though, the Hon'ble Supreme Court has stated that the 'Consent to Establish' from the KSPCB is not required. From the return made by the KSPCB, it is evident that the applicant does not seem to have all the necessary documents and approvals in place.

5. In such circumstances, if it is permitted to proceed, it would be detrimental to the interest of the neighbourhood. **Hence, the 6th Respondent is restrained from proceeding with any kind of construction with respect to the petroleum pump in question till the date of next hearing.**

6. In the meanwhile, the District Collector – Kozhikode District is also directed to file an affidavit specifically clarifying how the NOC was issued without adverting to the Central Pollution Control Board guidelines and also no zonation was done regarding the residential areas.

7. It is to be noted that the private notice sent by the applicant on the 5th & 6th Respondent is served and received by them, as evidenced by the affidavit of service, though the notice sent through the Tribunal is returned. The learned counsel for the applicant is directed to furnish the necessary requisites for a fresh notice to the 5th & 6th Respondent.

8. The Central Pollution Control Board (CPCB) also has filed its report.

9. Post the matter on **07.08.2024.**

Sd/-
Smt. Justice Pushpa Sathyanarayana, JM

Sd/-
Dr. Satyagopal Korlapati, EM

O.A. No.188/2024(SZ)
02nd July, 2024. AD.

/True copy/

VBR Menon

Minutes of the meeting held on 25.07.2024 at 3:30 PM under the Chairmanship of Secretary, DPIIT (SIIT) regarding Additional Safety Measures for siting of new petrol pump-reg.

Agenda: Discussion on safety measures (**Annexure I**) recommended by PESO for setting up new petroleum retail outlets near residential areas, hospitals (10 beds and above), and schools within a 30-50 meter radius.

Dr. Bhuvnesh Pratap Singh welcomed all the participants. The meeting aimed to review and discuss these safety measures proposed for aforesaid new retail outlets. The list of participants is provided in **Annexure - II**.

Safety Measures and views of the participants thereto : -

- **Safety Measure 1**: A boundary wall of 230 mm thickness is proposed for outlets facing schools and hospitals. Shri Anil Ahir from BPCL suggested a reduced thickness of 170 mm. After detailed deliberations, OMCs agreed to adhere to the 230 mm requirement.
- **Safety Measure 2**: The measure recommends placing all underground tanks in concrete pits. OMCs proposed removing this requirement, citing existing CPCB norms for concrete protection only when the water table is less than 4 meters or near surface water bodies.
- **Safety Measure 3**: A Vapour Recovery System (VRS) is recommended. OMCs requested an exemption, arguing that VRS is mandated by CPCB for air pollution control, not safety. CPCB confirmed that it is a pollution related issue. However, Dr. Sanjana Sharma, Joint CCE, PESO, emphasized VRS's importance for safety to prevent vapour-related accidents at the premises where the residential areas, school and hospitals are located at 30 meter or within 30 to 50 meter. OMCs further argued that all PESO distance norms will be followed but VRS has got a backend infrastructure including preparation of Tankers, supply points based on the statutory requirements governed by population norms, which anyway will be followed if the subject RO falls under the same but should not be made mandatory. Secretarty, DPIIT mentioned that this will be considered to be relaxed while all other requirements are put in place.
- **Safety Measures 4 and 5**: Recommendations include placing the tanker unloading platform away from sensitive areas and prohibiting refueler loading or parking in these ROs. OMCs argued that these measures may be unnecessary due to existing safety distances defined in the Petroleum Rules.
- **Safety Measures 6, 7, and 8**: Additional Measures No. 6, 7 and 8 are related to documentation, site plan drawing, etc.

Representatives of OMCs demanded to drop these measures as OMCs are submitting documents and layout Drawings duly signed by Authorized officer of OMCs, as per Petroleum Rules and Licensing requirements.

After detailed deliberation following actions were unanimously accepted by all the stakeholders: -

Safety Measures No. 1, 2, 4 and 5 were agreed upon by all stakeholders and shall be followed by OMCs and additional measures No. 6, 7 and 8 may be dropped as there are already provisions in Rule 131 and Rule 144 of Petroleum Rules, 2002 regarding these measures. Measure No. 3 (VRS) will be followed in line with CPCB's guidelines wherever applicable.

It was also decided: -

I. To setup a committee comprising of officers of PESO, CPCB and one representative each from major PSU Oil companies to furnish a report on what are the best global practices regarding setting up of retail outlets in populated areas.
II. Based on the recommendation of the committee if required, an appeal for revision of CPCB guidelines will be made before Hon'ble Supreme Court.

The meeting concluded with a vote of thanks.

***

In view of the above, a committee has been constituted by the Chief Controller of Explosives to suggest a way forward to implement said guidelines while granting prior approval for construction and licenses to new petroleum retail outlets. The matter is also discussed with the industry members as well as with all heads of Circle & Sub-Circle offices of PESO. The committee report is enclosed herewith.

On the basis of recommendations of committee and deliberations with the industry members as well as PESO officers, PESO prescribes the following additional measures for siting of new petrol pump in case minimum distance of 30 meters is available with respect to above said criteria with following conditions.

(1) The proposed petroleum retail outlet shall be provided with minimum 2 meters high RCC / solid brick masonry boundary wall of 230 mm thick on the sides of proposed petroleum retail outlet facing the school, hospital (10 beds & above) and residential area designated as per Local Law.

(2) All underground tanks shall be concrete pit in the proposed petroleum retail outlet.

(3) Vapor recovery system shall be provided in these retail outlets.

(4) The tanker unloading platform shall preferably be located opposite to the side of the petroleum retail outlet.

(5) No Refueller loading or parking arrangement shall be allowed in the proposed petroleum retail outlet.

(6) The item-wise compliance of CPCB guidelines duly signed by the Divisional / Regional Manger of OMC shall be submitted along with application for construction approval and it should be clearly mentioned in their undertaking that "No school, hospital (10 beds and above) and residential area designated as per local laws is situated within 30 metres from the fill points, dispensers and vent pipes of the retail outlet".

(7) The site plan drawings of proposed petroleum retail outlet shall show 30 metres , 50 metres and 100 metres separation distance circles incorporating all the existing structures within the same. The site plan drawings shall clearly indicate minimum 30 metres radial separation distance is available from the fill points , dispensing units, vent pipes, from existing school, hospitals (10 beds and above) and residential area designated as per Local Laws and the same drawing shall be endorsed by District Authorities while issuing of NOC.

(8) The District Magistrate shall mention in the NOC that no school, hospital (10 beds and above) , residential area designated as per Local Laws is existing within 30 metres from the proposed retail outlet fill points , dispensers and vent pipes.

*****

Annexure – II

List of Participants

1. Shri Rajesh Kumar Singh, Secretary, DPIIT
2. Ms Sujata Sharma, JS, MoPNG
3. Dr. Bhuvnesh Pratap Singh, DS, DPIIT
4. Shri Pritam Kumar, Under secretary, DPIIT
5. Shri P. Kumar, Chief Controller of Explosives, PESO
6. Dr. Sanjana Sharma, Jt Chief Controller of Explosives
7. Shri Sanjay Singh, Dy Chief Controller of Explosives
8. Shri R. N Meena, Jt Chief Controller of Explosives
9. Dr. M.I.Z Ansari, Jt Chief Controller of Explosives
10. Shri V.K Mishra, Jt Chief Controller of Explosives
11. Shri Ankush Tewani, Scientist F, CPCB
12. Shri Anil Ahir
13. Shri Pradeep
14. Shri ND Mathur, IOCL
15. Shri Anil Garg
16. Shri DHV Anand, HPCL

*****

/True copy/

VBR Menon

Annexure -27

P-13033/100/2024-EXPLOSIVE
भारत सरकार/Government of India
वाणिज्य और उद्योग मंत्रालय/Ministry of Commerce and Industry
उद्योग संवर्धन और आंतरिक व्यापार विभाग/Deptt. for Promotion of Industry & Internal Trade
विस्फोटक अनुभाग/Explosives Section

Udyog Bhawan, New Delhi-110011
Dated: 7th August, 2024

OFFICE MEMORANDUM

Subject: Approved Minutes of the meeting held on 25.07.2024 under the Chairmanship of Secretary, DPIIT regarding recommendation of additional safety measures for siting of new petrol pump-reg.

The undersigned is directed to refer to the subject mentioned above and to forward herewith a copy of the approved minutes of the meeting held on 25.07.2024 under the Chairmanship of Secretary, DPIIT regarding recommendation of additional safety measures for siting of new petrol pump.

2. This issues with the approval of competent authority.

Encl: As above

(Pritam Kumar)
Under Secretary to the Govt. of India
Tel: 011-23063148
Email ID: pritam.k@gov.in

To,

1.The Secretary, Ministry of Petroleum and Natural Gas
2. Shri P. Kumar, CCE, PESO
3. The Chairman, Central Pollution Control Board

Copy to,

1.OSD to Secretary, DPIIT.
2. PS to JS (SB), DPIIT
3. Shri Bhuvnesh Pratap Singh, DS, DPIIT

केन्द्रीय प्रदूषण नियंत्रण बोर्ड
भवन, पूर्वी अर्जुन नगर, दिल्ली-110 032
9 AUG 2024
Central Pollution Control Board
Nagar, Delhi-110032

/True copy/

VBR Menon

तार- "विस्फोटक", नागपूर
Telegram: 'EXPLOSIVES', Nagpur
Website : http://peso.gov.in
Email: explosives@explosives.gov.in
दूरभाष/ Telephone : 0712-2510248
फ़ैक्स/ FAX : 2510577

कार्यालयीन उद्देश्य के सभी पत्रादि "मुख्य विस्फोटक नियंत्रक" के पदनाम से भेजे जाए उनके व्यक्तिगत नाम से नही.
All communications intended for this Office should be addressed to the 'Chief Controller of Explosives' and NOT to him by name.

भारत सरकार
GOVERNMENT OF INDIA
पेट्रोलियम तथा विस्फोटक सुरक्षा संगठन
Petroleum and Explosives Safety Organisation
(पूर्व नाम – विस्फोटक विभाग)
(Formerly- Department of Explosives)
"ए-ब्लाक ५, पाँचवा तल, केन्द्रीय कार्यालय परिसर,
"A" Block, 5th Floor, CGO Complex,
सेमिनरी हिल्स, नागपूर - 440 006 (महा)
Seminary Hills, Nagpur- 440006

संख्या /No. C.VIII(3)125/Circular/Petroleum
दिनांक/ dated 09/09/2024

CIRCULAR

Sub: Additional safety measures for setting up of new petroleum service station – reg.

As per CPCB guidelines dated 07.01.2020 for setting up of new petrol pumps, new retail outlets shall not be located within the radial distance of 50 meters (from fill point/ dispensing units/ vent pipe whichever is nearest) from schools, hospitals (10 beds and above) and residential area 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 new retail outlet from school, hospitals (10 beds and above) and residential area designated as per local laws shall be less than 30 meters.

In view of the Directions of CPCB, the following additional safety measures shall be complied for setting up new petroleum service stations near residential areas, hospitals (10 beds and above) and schools within 30-50 meter radius.

1. The proposed petroleum service station shall be provided with minimum 2 meters high RCC/solid brick masonry boundary wall of 230 mm thick on the sides of proposed petroleum retail outlet facing the school, hospital (10 beds & above) and residential area designated as per Local Laws.
2. All underground tanks shall be in concrete pit in the proposed petroleum service station.
3. The tanker unloading platform shall preferably be located opposite to the side of the petroleum service station facing the school/residential area/hospitals (10 beds and above).
4. No Refuller loading or parking arrangement shall be allowed in the proposed petroleum service station.

These additional safety measures are approved by DPIIT vide Explosives Section OM No. P-13033/100/2024-EXPLOSIVE dated 7th August 2024 (copy enclosed).

Encl : As above

Yours faithfully,

(P.Kumar)
Chief Controller of Explosives

To

All Stake holders for Petroleum Service Stations.

Copy to:

1. Explosives Section DPIIT: w.r.t. Explosives Section OM No. P-13033/100/2024-EXPLOSIVE dated 7th August 2024.
2. All PESO Circle /Sub-Circle offices.

/True copy/

VBR Menon

Annexure - 29

3-Judge Bench
2019
March 5

(2019) 18 Supreme Court Cases 494

(BEFORE DR A.K. SIKRI, S. ABDUL NAZEER AND M.R. SHAH, JJ.)

MANTRI TECHZONE PRIVATE LIMITED . . Appellant;

Versus

FORWARD FOUNDATION AND OTHERS . . Respondents.

Civil Appeals No. 5016 of 2016† with Nos. 8002-8003, 9227, 10992-95, 12152, 12156-60, 12326 of 2016, 1343, 4923-24 and 14966 of 2017 and 2246 of 2018, decided on March 5, 2019

A. **Environment Law — Polluter Pays Principle and Remedial/Compensatory/Punitive Measures — Nature and Scope — Power of NGT to direct Remedial/Compensatory/Punitive Measures**

— NGT's power to grant and give directions for relief, compensation and restitution under NGT Act, 2010 — Scope of — Overriding effect of NGT Act, 2010 over State legislation in cases of conflict — Extent of

— Held, NGT while directing restoration of environment can specify buffer zones around specific lakes and water bodies in contradiction to zoning regulations under the State Municipal Corporation Act or Master Plan framed under town planning laws, as NGT Act has overriding effect — NGT Act being a Central Act enacted under Sch. VII List I Entry 13 of the Constitution shall have overriding effect over State legislation — Therefore, specific directions of NGT relating to penalty (on basis of pollution pays principle) and environmental restoration (liability being on project proponents, who had caused damage to water bodies), affirmed even if NGT's direction relating to buffer zones (no construction zones of various lengths specified for water body types concerned) was different from zoning regulations of State Government

— But general direction of NGT relating to all buffer zones not relating to project proponents and differing from State zoning regulations, set aside — Thus Direction/Condition (1) in order dt. 4-5-2016 in *Forward Foundation*, 2016 SCC OnLine NGT 1409, set aside except directions issued against R-9 & R-10

— Constitution of India — Sch. VII List I Entry 13 — Water/River/Coastal Pollution — Water Conservation/Preservation, Development Projects and Interlinking of Rivers — Primacy of environmental laws over town planning laws — Wetlands (Conservation and Management) Rules, 2010 — Local Government, Municipalities and Panchayats — Town Planning — Ecology/Environmental clearance — Layout/Master/Zonal Plan — Primacy of environmental laws over — National Green Tribunal Act, 2010, Ss. 33, 14, 15, 20 and 22 (Paras 39 to 47 and 60 to 63)

[**Ed.**: Project proponents are Respondents 9 and 10 in Original Application No. 222 of 2014 and appellants in in Civil Appeals Nos. 5016 and 8002-03 of 2016.]

† Arising from the Judgment and Order in *Forward Foundation* v. *State of Karnataka*, 2015 SCC OnLine NGT 5 (National Green Tribunal, Principal Bench at New Delhi, Original Application No. 222 of 2014, dt. 7-5-2015) and *Forward Foundation* v. *State of Karnataka*, 2016 SCC OnLine NGT 1409 (National Green Tribunal, Principal Bench at New Delhi, Original Application No. 222 of 2014, dt. 4-5-2016)

B. **Environment Law — National Green Tribunal Act, 2010 — S. 22 — Appeal to Supreme Court under — Scope**

— Held, appeal under S. 22 has to be read subject to conditions provided therein — Thus appeal restricted to substantial question of law arising from judgment of NGT — Merely because remedy of appeal is provided, it does not ipso facto permit appellants to agitate their appeal to seek re-appreciation of factual matrix of entire matter — Civil Procedure Code, 1908, S. 100 (Paras 35 to 38 and 55)

C. **Environment Law — National Green Tribunal Act, 2010 — S. 22 — Appeal to Supreme Court under — Whether raises substantial question(s) of law — Test**

— It has to be tested whether the question (i) is of general public importance, (ii) directly and substantially affects rights of parties and (iii) is an open question or is not free from difficulty or calls for discussion of alternative views — If question is settled by highest court or plea raised is palpably absurd, it would not be substantial question — Civil Procedure Code, 1908, S. 100 (Paras 35 to 38)

D. **Environment Law — National Green Tribunal Act, 2010 — S. 15 r/w Ss. 20, 33, 14 and 22 — Limitation of 6 months under S. 14 or 5 yrs under S. 15 — As matter related to environmental degradation and its restoration, limitation of 5 yrs under S. 15, held, would apply — A broad construction should apply to such beneficial legislation — Application before Tribunal not barred by limitation**

— Considering specific prayer of applicants before NGT, evidence supported by data, findings arrived at by NGT, and jurisdiction of NGT it is not an application under S. 14 simpliciter — It was a petition under S. 15 — Non-mention of or erroneous mention of provision of law, not a bar to pass appropriate orders, if NGT had jurisdiction in respect of same — Directions issued by NGT against both project proponents in present case did not suffer from any perversity — General Principles of Environmental Law — Polluter Pays Principle and Remedial/Compensatory/Punitive Measures — Nature and Scope — Limitation period for approaching NGT — Reckoning of (Paras 48 to 55)

E. **Environment Law — National Green Tribunal Act, 2010 — S. 15 r/w Ss. 20 and 33 — Application before Tribunal, when not barred by res judicata due to earlier writ petition**

— Parties, not common — Issues not directly and substantially same, writ petition related to land acquisition, present application related to environment, ecology and their restoration — No commonality of cause of action of likelihood of conflict between judgments — Prayer and genesis entirely different in their scope and relief — Practice and Procedure — Res Judicata (Paras 56 to 59)

The present appeals were filed under Section 22 of the National Green Tribunal Act, 2010 (the NGT Act, 2010) against the judgment of restoration and penalty of the Tribunal.

Disposing of the appeals, the Supreme Court

Held :

Appeal to Supreme Court

The proper test for determining whether a question of law raised in the case is substantial would be whether it is of general public importance or whether it directly and substantially affects the rights of the parties and if so whether it is either an open question in the sense that it is not finally settled by the Court or by the Privy Council or by the Federal Court or is not free from difficulty or calls for discussion of alternative views. If the question is settled by the highest court or the general principles to be applied in determining the question are well settled and there is a mere question of applying those principles or that the plea raised is palpably absurd the question would not be a substantial question of law. (Para 37)

Chunilal V. Mehta & Sons Ltd. v. *Century Spg. & Mfg. Co. Ltd.*, 1962 Supp (3) SCR 549 : AIR 1962 SC 1314, *relied on*

Further, merely because the remedy of appeal is provided against the decision of the Tribunal on a substantial question of law alone, that does not ipso facto permit the appellants to agitate their appeal to seek reappreciation of the factual matrix of the entire matter. The appellants cannot seek to re-argue their entire case to seek wholesale reappreciation of evidence and the factual matrix that has been considered by the Tribunal is ex facie impermissible under Section 22 of the NGT Act, 2010. There cannot be fresh appreciation or reappreciation of facts and evidence in a statutory appeal under this provision. (Paras 36 to 38)

Jurisdiction of Tribunal

The first question is in relation to the maintainability of the application before the Tribunal. (Para 39)

The Tribunal has been established under a constitutional mandate provided in Schedule VII List I Entry 13 of the Constitution, to implement the decision taken at the United Nations Conference on Environment and Development. The Tribunal is a specialised judicial body for effective and expeditious disposal of cases relating to environmental protection and conservation of forests and other natural resources including enforcement of any legal right relating to environment. The right to healthy environment has been construed as a part of the right to life under Article 21 by way of judicial pronouncements. Therefore, the Tribunal has special jurisdiction for enforcement of environmental rights. (Para 40)

The jurisdiction of the Tribunal is provided under Sections 14, 15 and 16 of the NGT Act, 2010. (Para 41)

The principles of sustainable development, precautionary principle and polluter pays, propounded by this Court by way of multiple judicial pronouncements, have now been embedded as a bedrock of environmental jurisprudence under the NGT Act. Therefore, wherever the environment and ecology are being compromised and jeopardised, the Tribunal can apply Section 20 of the NGT Act, 2010 for taking restorative measures in the interest of the environment. (Para 43)

The NGT Act being a beneficial legislation, the power bestowed upon the Tribunal would not be read narrowly. An interpretation which furthers the interests of environment must be given a broader reading. The existence of the Tribunal

without its broad restorative powers under Section 15(1)(*c*) read with Section 20 of the NGT Act, 2010, would render it ineffective and toothless, and shall betray the legislative intent in setting up a specialised Tribunal specifically to address environmental concerns. The Tribunal, specially constituted with Judicial Members as well as with experts in the field of environment, has a legal obligation to provide for preventive and restorative measures in the interest of the environment. (Para 44)

Kishore Lal v. *ESI Corpn.*, (2007) 4 SCC 579 : (2007) 2 SCC (L&S) 1, *relied on*

Section 15 of the NGT Act, 2010 provides power and jurisdiction, independent of Section 14 thereof. Further, Section 14(3) juxtaposed with Section 15(3) of the NGT Act, 2010, are separate provisions for filing distinct applications before the Tribunal with distinct periods of limitation, thereby amply demonstrating that jurisdiction of the Tribunal flows from these sections (i.e. Sections 14 and 15 of the NGT Act, 2010) independently. The limitation provided in Section 14 is a period of 6 months from the date on which the cause of action first arose and whereas in Section 15 it is 5 years. Therefore, the legislative intent is clear to keep Section 14 and 15 as self-contained jurisdictions. (Para 45)

Further, Section 18 of the NGT Act, 2010 recognises the right to file applications each under Section 14 as well as Section 15. Therefore, it cannot be argued that Section 14 provides jurisdiction to the Tribunal while Section 15 merely supplements the same with powers. The only tenable interpretation to these provisions would be to read the provisions broadly in favour of cloaking the Tribunal with effective authority. An interpretation that is in favour of conferring jurisdiction should be preferred rather than one taking away jurisdiction. (Para 46)

Section 33 of the NGT Act, 2010 provides an overriding effect to the provisions of the Act over anything inconsistent contained in any other law or in any instrument having effect by virtue of law other than this Act. This gives the Tribunal overriding powers over anything inconsistent contained in the KIAD Act, the Planning Act, the Karnataka Municipal Corporations Act, 1976; and the Revised Master Plan of Bengaluru, 2015 (RMP). A Central legislation enacted under Entry 13 of Schedule VII List I of the Constitution will have the overriding effect over State legislations. The corollary is that the Tribunal while providing for restoration of environment in an area, can specify buffer zones around specific lakes and waterbodies in contradiction with zoning regulations under these statutes or RMP. (Para 47)

The State of Karnataka is aggrieved by the Direction/Condition (1) of the order dated 4-5-2016 of the Tribunal in *Forward Foundation*, 2016 SCC OnLine NGT 1409. The applicants have no objection to set aside the aforesaid impugned portion of the order insofar as the appellants in all the appeals except the appeals filed by Respondents 9 and 10 are concerned. The aforesaid portion of the order contains not only general directions but also certain directions against Respondents 9 and 10. Therefore, only that portion of the order which does not pertain to Respondents 9 and 10 needs to be quashed. Civil Appeals Nos. 5016 and 8002-03 of 2016 filed by appellant-Respondents 9 and 10 are dismissed. The impugned judgment and order insofar as appellant-Respondents 9 and 10 are concerned is sustained. All the other appeals are allowed and Direction/Condition (1) in the order dated 4-5-2016 is set aside except the direction issued against Respondents 9 and 10. (Paras 60 to 62)

Forward Foundation v. *State of Karnataka*, 2016 SCC OnLine NGT 1409, *partly reversed*

Core Mind Software & Services (P) Ltd. v. *Forward Foundation*, 2015 SCC OnLine SC 1778, *referred to*

Limitation

OA No. 222 of 2014 was not an application simpliciter under Section 14 of the NGT Act, 2010. It was an application where a specific prayer has been made with reference to Lake Development Authority's (LDA) Report dated 12-6-2013 and the Ministry of Environment, Forests and Climate Change (MoEF) Monitoring Committee Report dated 14-8-2013 for restoration of ecologically sensitive land and for maintaining the sensitive in its natural condition so that the ecological balance of the area is not disturbed. It is clear from the documentary evidence supported by data, that the project proponents have committed breaches and the implementation of the project is bound to have serious adverse impact on the ecology, hydrology and the environment in the catchment area of Bellandur Lake. The environmental degradation as established from the documents would give rise to an independent cause of action. Therefore, this was a petition under Section 15 of the NGT Act, 2010 and thus it could be filed within 5 years from the date on which the cause for such compensation or relief first arose. (Para 49)

In fact, in the original application before the Tribunal there was no mention of the provision under which it was being filed. Non-mention of or erroneous mention of the provision of law would not be of any relevance, if the court had the requisite jurisdiction to pass an order. It would be a mere irregularity and would not vitiate the application or the judicial order of the Tribunal. (Para 50)

The Tribunal has pointed out on the basis of the Committee Report of August 2015, that the appellant had encroached 3 ac 10 guntas of Bellandur Lake and a boundary wall has been raised around the said land. The Tribunal has also found that the project proponents have violated the Master Plan. They have not obtained the mandatory clearance from the Sensitive Zone Committee constituted by the Government of Karnataka. It is also clear from the materials on record that there are several other violations by the project proponents. The Tribunal has discussed all these issues from para 52 onwards. It is also clear from the materials on record that there is a definite possibility of environment, ecology, lakes and wetland being adversely affected by these projects. (Paras 52 and 51)

Forward Foundation v. *State of Karnataka*, 2015 SCC OnLine NGT 5, *affirmed*

The findings arrived at by the Tribunal are not only based on the documents that were available on record but also on the pleadings that were made by the parties buttressed by the Committee report and the inspection note of the expert members. The directions passed and the penalty imposed by the Tribunal on both project proponents are valid and sustainable and do not suffer from any perversity. (Para 54)

Forward Foundation v. *State of Karnataka*, 2015 SCC OnLine NGT 5, *affirmed*

It is impermissible for the appellants to seek a factual review through the methodology of reappreciation of factual matrix by the Supreme Court under Section 22 of the NGT Act, 2010. (Para 55)

Forward Foundation v. *State of Karnataka*, 2016 SCC OnLine NGT 637, *referred to*

SS-D/62061/S

Advocates who appeared in this case :

Udaya Holla, Advocate General, Shashi Kiran Shetty, Maninder Singh, Dhruv Mehta, Mukul Rohatgi, Neeraj Kishan Kaul, R. Venkataramani, Sajan Poovayya, Ms Kiran Suri and Basavaprabhu S. Patil, Senior Advocates [Mahesh Thakur, Ms Anuparna Bordoloi, Savyasachi Sahai, Ms Vipasha Singh, Gaurav Goel, V.N. Raghupathy, M/s Devasa & Co., Devashish Bharuka, Justine George, Prabhas Bajaj, Ms Kanika

S., Ravi Bharuka, Ms Sarushree, Satish Kumar, Gaurav Agrawal, George Thomas, Anurag Gharote, A.S. Bhasme, Abid Ali Beeran P., Nishanth Patil, Rohit Prasad, Ananth Suresh, S.K. Kulkarni, M. Gireesh Kumar, Ankur S. Kulkarni, Shekhar G. Devasa, Bhuvanendra K.V., S. Mahesh, Manish Tiwari, Luv Kumar, Praveen Vignesh, Priyadarshi Banerjee, Pratibhanu Singh Kharola, Saransh Jain, Meka V. Ramakrishna, Madhavam Sharma, Ms Sriparna Dutta Choudhury, Udayaditya Banerjee, Mahesh Agrawal, Ankur Saigal, Ms Tanvi Manchanda, Nithin P., Ms Priyanka M.P., E.C. Agrawala, S.J. Amith, Ms Rithika Gambir, A. Shwarya Kumar, Dr (Ms) Vipin Gupta, Parikshit P. Angadi, Chinmay Deshpande, Geet Ahuja, Parikshit Angadi, Anup Kumar, O.P. Bhadani, Rajesh Mahale, Anand Sanjay M. Nuli, Dharm Singh, Sandeep Grover, Ms Pankhuri Bhardwaj and Pai Amit, Advocates] for the appearing parties.

Chronological list of cases cited ***on page(s)***

1. 2016 SCC OnLine NGT 1409, *Forward Foundation* v. *State of Karnataka* **(partly reversed)** 499*e*, 499*g*, 509*a*, 514*e*, 522*e-f*, 523*e-f*
2. 2016 SCC OnLine NGT 637, *Forward Foundation* v. *State of Karnataka* 508*e*
3. 2015 SCC OnLine SC 1778, *Core Mind Software & Services (P) Ltd.* v. *Forward Foundation* 507*f-g*
4. 2015 SCC OnLine NGT 5, *Forward Foundation* v. *State of Karnataka* 499*e*, 505*e-f*, 508*c*, 520*a-b*, 521*a*, 522*a*
5. (2007) 4 SCC 579 : (2007) 2 SCC (L&S) 1, *Kishore Lal* v. *ESI Corpn.* 518*a*
6. 1962 Supp (3) SCR 549 : AIR 1962 SC 1314, *Chunilal V. Mehta & Sons Ltd.* v. *Century Spg. & Mfg. Co. Ltd.* 516*e-f*

The Judgment of the Court was delivered by

S. ABDUL NAZEER, J.— These appeals have been preferred under Section 22 of the National Green Tribunal Act, 2010 (for brevity "the NGT Act") challenging the judgment and order dated 7-5-2015[1] and 4-5-2016[2] respectively passed by the Principal Bench of the National Green Tribunal, New Delhi (for short "the Tribunal").

2. The appellants in Civil Appeals Nos. 5016 of 2016 and 8002-03 of 2016 are Respondents 9 and 10 in Original Application No. 222 of 2014 (hereinafter referred to as "Respondents 9 and 10"). The said application was filed by Respondents 1 to 3 herein (hereinafter referred to as "the applicants"). Respondents 4 to 7 in these appeals are the State of Karnataka and other authorities. They were arrayed as Respondents 1 to 4 in the application. Respondents 12 and 13 herein were subsequently impleaded in the application (for short "the impleaded respondents").

3. The State of Karnataka has filed Civil Appeals Nos. 4923-24 of 2017, challenging the general condition and Direction (1) contained in the order of the Tribunal dated 4-5-2016[2]. The other appeals have been filed by different entities, who were not parties before the Tribunal challenging the order of the Tribunal dated 4-5-2016[2] insofar as it directs a buffer/green zone of 75 m in respect of lakes, 50 m in respect of primary Rajakaluves, 35 m in

1 *Forward Foundation* v. *State of Karnataka*, 2015 SCC OnLine NGT 5
2 *Forward Foundation* v. *State of Karnataka*, 2016 SCC OnLine NGT 1409

case of secondary Rajakaluves and 25 m in case of tertiary Rajakaluves with retrospective effect. According to them, they are adversely affected by the aforesaid condition in the impugned order.

4. The applicants filed OA No. 222 of 2014 by contending that ecologically sensitive land was allotted by the Karnataka Industrial Area Development Board (for short "KIADB") to Respondents 9 and 10 vide Notifications dated 23-4-2004 and 7-5-2004 respectively for setting up of software technology park, commercial and residential complex, hotel and multi-level car parks. The Master Plan formulated by the Bangalore Development Authority (for short "BDA"), identifies the allotted land as "residential sensitive", though the same land was identified in the Draft Master Plan as "protected zone". It was further contended that the revenue map in respect of properties as referred in the land lease agreements has multiple Rajakaluves (storm water drains). The development projects in question sit right on the catchment and wetland area which feeds the Rajakaluves, which in turn drains rainwater into Bellandur Lake. The project will thus encroach two Rajakaluves of 1.38 ac and 1.23 ac each.

5. The satellite digital images of the area from the year 2000 to 2012 show encroachment upon these Rajakaluves, as well as the manner in which they are covered by the construction. The State Level Expert Appraisal Committee (for short "SEAC"), which was to assist the State Level Environment Impact Assessment Authority (for short "SEIAA"), held its meetings on various dates to examine the project. It had required Appellant 9 to submit a revised NOC from the Bangalore Water Supply and Sewerage Board (for short "BWSSB") for the project in question. It was also observed that the project lies between Bellandur Lake and Agara Lake. Respondent 9 was also directed to take protective measures to spare the buffer zone around Rajakaluves and also to commit that no construction would be carried out in the buffer zone. In the meeting of 11-11-2011, it was recorded that the project proposes car parking facility for 14,438 cars in that environmentally sensitive area.

6. It was alleged that NOC was issued covering an area of 17,404 sq m whereas the built-up area, as noted by SEAC, is 13,50,454.98 sq m. Respondent 9 obtained NOC from BWSSB by concealing material facts and by misrepresenting that NOC is required only for residential units which form a very minuscule part of the total project. Respondent 9 had approached the Karnataka State Pollution Control Board (for short "KSPCB") for obtaining clearance, which was granted on 4-9-2012 subject to the fulfilment of the conditions stated in the consent order which included leaving the buffer zone all along the valley and towards the lake. It is further contended that the grant of consent by KSPCB to Respondent 9 also contained a condition with regard to obtaining environmental clearance from the competent authority and no construction was to commence until such clearance was granted.

7. The applicants further contended that Respondent 9 violated the conditions and commenced construction of the project. There was also violation of the stipulations stated in the approval of SEAC in relation to buffer zone and construction over Rajakaluves. The construction had been commenced over

the ecologically sensitive area of the lake catchment area and valley, with utter disregard to the statutory compliances. Referring to these blatant irregularities, the applicant submitted that the conversion of land from "protected zone" to "residential sensitive area" is violative of the law. The project is right in the midst of a fragile wetland area which ought not to have been disturbed by the development activity. The fragile environment of the catchment area has been exposed to grave and irreparable damage. It has severely disturbed and damaged the Rajakaluves. Respondents 9 and 10 started to level the land by filling it with debris, thus causing damage to the drains. The conditions with regard to no disturbance to the storm water drains, natural valleys and buffer area in and around the Rajakaluves have been violated. It has in turn, affected the groundwater table and borewells which are the only source of water for thousands of households. Fishing and agriculture which depends on Bellandur Lake are also severely affected. The construction over the wetland between the two lakes is in violation of the Wetlands (Conservation of Management) Rules, 2010 (for short "the 2010 Rules").

8. It was submitted that SEIAA in its meeting dated 29-9-2012, decided to close the file pertaining to Respondent 10 due to non-submission of requisite information and the application thereof was rejected in November 2012. Despite the rejection, Respondent 10 commenced construction on the project in full swing.

9. The applicants also relied upon the findings of the Joint Legislative Committee, constituted under the Chairmanship of Shri A.T. Ramaswamy in the month of July 2005, which stated that there were 262 waterbodies in Bangalore City in 1961 which drastically came down because of trespass and encroachments. It was also affirmed that about 840 km of Rajakaluves have been encroached upon in several places and have become sewage channels. The applicants also relied on the report of the Committee under the Chairmanship of Hon'ble Justice N.K. Patil suggesting immediate remedial action in order to remove encroachments on the lake area and the Rajakaluves and preservation of the lakes in and around Bangalore City. It was further contended that other Expert Committees, including Lakshman Rau Expert Committee had also submitted proposals for preservation, restoration or otherwise of the existing tanks in Bangalore metropolitan area which recommended to maintain good water surface in Bellandur tank and to ensure that the water in the tank is not polluted. The Central Government in August 2013 had issued an advisory on conservation and restoration of waterbodies in the urban areas. The applicants claim to have obtained monitoring report of the project by Respondent 5, Ministry of Environment and Forests, through RTI on 21-8-2013. The report dated 14-8-2013 revealed that the project proponents are in clear breach of their undertaking to carry out all precautionary measures to ensure that Bellandur Lake is not affected by the construction and operational phase of the project. This approach is particularly with regard to the major alteration in natural sloping pattern of the project site and natural hydrology of the area.

10. The Lake Development Authority (for short "LDA"), after inspection in the catchment area of Bellandur Lake submitted its report dated 12-6-2013 which confirms that the project will have disastrous impact, including deleterious effect on Bellandur Lake. This report was brought to the notice of KIADB. LDA has also opined that the land should be classified and maintained as sensitive area. KIADB called upon Respondent 9 to comply with the rules of Ecology and Environment Department and to obtain necessary approval from KSPCB and LDA. Despite all this, Respondents 9 and 10 have continued with their illegal constructions and have caused damage to the ecology and the environment by irreparably jeopardising the ecological balance in this sensitive area. The applicants rely upon the Revised Master Plan, 2013 issued by BDA which specifically provides that 30 m buffer zone is to be created around the lakes and 50 m buffer zone to be created on either side of the Rajakaluves. It was also pleaded that Respondent 9 had obtained the NOC from BWSSB only with regard to residential units and not for the entire project and that the environmental clearance obtained by Respondent 9 is based upon the partial NOC issued by BWSSB which itself is a misrepresentation. It was contended that the projects are bound to create water scarcity as the requirement of the project of Respondent 9 alone is approximately 4.5 million litres per day i.e. 135 million litres per month, which is more than what BWSSB supplies to the entire Agaram Ward. The construction of respective projects by Respondents 9 and 10 respectively, besides having commenced without permission from the authorities and being in violation of the conditions imposed for grant of permission/consent, is bound to damage the environment, resulting in change in the topography of the area, posing potential threat of extinction of Bellandur Lake, causing traffic congestion, shortening and wiping out the wetlands, extinction of Rajakaluves and causing serious and potential threat of flooding and massive scarcity of water in the city of Bangalore, particularly the areas located near the waterbodies.

11. Respondent 9 in its objections contended that it was incorporated with the objective of establishing an information technology park and R&D Centre with facilities such as residential complexes, parks, education centres and other allied infrastructure within a single compound. It had submitted the proposal to establish such information technology park and other facilities to the State Government and requested for allotment of land for the project. Its proposal was considered in 78th High-Level Committee meeting held on 21-6-2000 and after examining the proposal, it was approved by the Government on 6-7-2000. Before the State High-Level Committee, it had informed that its requirement was 110 ac of land, 25 MW of power from the Karnataka Power Transmission Corpn. Ltd. (for short "KPTCL"), and four lakh litres of water per day from BWSSB. The lands for the project were initially notified vide Notification dated 10-2-2004. Subsequently, the lands were allotted vide letter dated 28-6-2007 for which lease-cum-sale agreement was signed on 30-6-2007. Considering the overall development of the State of Bangalore, this respondent proposed a Mixed Use Development Project consisting of an information

technology park, residential apartments, retail, hotel and office buildings with a total built-up area of 13,50,454.98 sq m. The Project was conceived as a zero waste discharge project. The Project is located one-and-a-half kilometres away from the southern side of Bellandur Lake. Towards the north, adjacent to the Project, lies vast stretches of lands belonging to the Defence and towards the east, lies the project of Respondent 10 and another developer is also developing a project on the western side. It has obtained sanction plan on 4-7-2007 which was renewed from time to time.

12. Respondent 9 claims that it has obtained NOC from Airport Authority of India on 9-4-2010. Bharat Sanchar Nigam Ltd., vide its communication dated 16-4-2010, granted clearance for the project construction. BWSSB, vide its communication dated 26-4-2011 issued NOC for portion of the proposed construction to be built. Bangalore Electricity Supply Co. Ltd. also granted NOC for arranging power supply to the proposed residential and commercial building in its favour. Environmental clearance was granted by SEIAA vide communication dated 17-4-2012. The Director General of Police has issued NOC and KSPCB vide order dated 4-9-2012 accorded its consent for construction of the said Project subject to the conditions stated therein. It was further stated that after grant of the environmental clearance on 17-9-2012, the same was published in the leading newspapers *Kannada Prabha* and *The Indian Express* on 12-3-2012 and 14-3-2014 respectively.

13. It submitted a modified building plan which was approved by KIADB vide its letter dated 30-8-2012, which was valid up to 10-8-2014. It started the construction of the Project in November 2012, taking all precautions as per terms and conditions of the orders issued by the competent authorities. It was also submitted that it has raised the constructions in accordance with the plans and conditions of the environmental clearance and consent orders and that it has not violated any of the conditions and has not caused any adverse impact on the ecology and environment of the area. It has denied the contention that its construction activity has blocked the Rajakaluves and has adversely affected the lake. It has already spent a sum of Rs 306.73 crores on the Project towards procurement of men and materials, machinery, infrastructure, medical and sanitary facilities, etc. and that it has availed financial assistance from various banks and financial institutions towards the construction and execution of the project and that various contracts have been signed with the third parties. It is specifically pleaded that the petition is barred by time and suffers from defects and laches.

14. Respondent 10 pleaded that the applicants raised multifarious proceedings against it which is an abuse of the process of law and mala fides. It had submitted a revised proposal in respect of its project in question and to obtain fresh clearance on 31-8-2007 with an investment of Rs 179.22 crores. The State High-Level Committee had cleared the project which was communicated to it on 25-1-2008. Its properties are located in between Bellandur Lake and Agara Lake but there are no primary storm water drains

and secondary storm water drains that exist in its properties. It has clearances from various authorities, including Environmental Clearance and consent for establishment.

15. KIADB stated that after possession of the land was handed over to Respondents 9 and 10, one year time was granted for the implementation of the Project which was extended from time to time. The building drawings were approved on 4-7-2007, and the modified building drawings were approved on 26-4-2011 and 30-8-2012 with specific conditions. In its meeting held on 16-7-2013, it was resolved to inform Respondents 9 to fully comply with the Ecology and Environment Rules and to obtain approvals from LDA and KSPCB. LDA vide its letter dated 24-9-2013, had informed KIADB that the construction activity in the catchment area in Bellandur Lake could drastically impact the lake with deleterious effects and asked it to stop construction activity of Respondents 9 and 10. However, the validity of the building drawings was again extended up to 10-8-2014. The Lokayukta on 17-12-2013 had written a letter in respect of complaint filed by the South-East Forum for Sustainable Development where it had been averred that the decision had been taken by the Board on 21-12-2013 to keep in abeyance the approval accorded and even the re-validations of plans. This was also informed to Respondent 9. The Board took a decision which was communicated to Respondent 9 on 2-1-2014, wherein it asked Respondent 9 to stop all construction activities on the allotted lands. The said communication was challenged by Respondent 9 and on the stop-work notice, stay was granted by the High Court of Karnataka. The stop-work notice dated 23-12-2013 issued by Bruhat Bengaluru Mahanagara Palike (for short "BBMP") was also stayed vide order dated 21-1-2014. The proposal submitted by Respondents 9 and 10 had been approved by the State Government. The land allotted to Respondents 9 and 10 does not consist of any Rajakaluves.

16. LDA took a stand that it was not at all aware of the project initiated by KIADB. It came to know about the entire project only when certain newspaper reports surfaced during the month of June 2013 and till that time it was in the dark. After the complaints, it inspected Bellandur Lake and Agara Lake on 12-6-2013 and prepared an inspection report. In the report, it was noticed that large-scale construction activities were going on in the catchment area of Bellandur Lake and that there was a change in the land use, which in turn has directly affected the catchment of Bellandur Lake. The wetland area of Agara Lake had also shrunk, which originally formed the irrigation area for the adjoining agricultural lands. Therefore, it had questioned the decision of KIADB vide letter dated 6-7-2013 and even requested it to stop the construction activity and to re-classify the land as non-SEZ area. It was thereafter on 31-8-2013, that Respondent 9 wrote a letter for according approval for the proposed development projects. However, vide its letter dated 23-9-2013, LDA informed KIADB that it had no authority to grant or deny construction projects, but it also communicated its objections to KIADB mentioning that construction activity

would be in contravention of the directions of the Supreme Court. Despite these warnings, KIADB granted approval to the extension of the building drawings of the project in favour of the project proponents with certain conditions, like ensuring that all natural valleys, valley zone, irrigation tanks and existing roads leading to villages in the said land should not be disturbed. Further, the natural sloping pattern of the project site was not to be altered and the lakes and other waterbodies within and/or at the vicinity of the project area should be protected and conserved. Despite the objections, the plans were approved and approvals were extended from time to time. It has taken a categorical stand that the projects as approved by KIADB would have adverse impact on Bellandur and Agara Lakes.

17. On the basis of the pleadings of the parties, the Tribunal framed the following questions for consideration and determination:

17.1. Whether the application filed by the applicants and supported by Respondents 11 and 12, is barred by time and thus, not maintainable?

17.2. Whether the petition as framed and reliefs claimed therein, disclose a cause of action over which this Tribunal has jurisdiction to entertain and decide the application under the provisions of the NGT Act, 2010?

17.3. Whether the present application is barred by the principle of res judicata and/or constructive res judicata?

17.4. Whether the application filed by the applicants should not be entertained or it is not maintainable before the Tribunal, in view of the pendency of Writ Petitions Nos. 36567-74 of 2013, before the Hon'ble High Court of Karnataka? and

17.5. What relief, if any, are the applicants entitled to? Should or not the Tribunal, in the interest of environment and ecology issue any directions and if so, to what effect?

18. The Tribunal by its order dated 7-5-2015[1] at Annexure A-2, disposed of the applications with the following directions: (*Forward Foundation case*[1], SCC Online NGT para 85)

> "*85.* ... (1) We decline to pass any direction or order to stop further progress and/or demolition of the project or any part thereof at this stage. However, we constitute the following Committee to inspect the projects in question and submit a report to the Tribunal inter alia but specifically on the issues stated hereinafter:
>
> (*a*) Advisor in the Ministry of Environment and Forest dealing with the subject of wetlands.
>
> (*b*) CEO of the Lake Development Authority, Karnataka State.
>
> (*c*) Chief Town Planner of BBMP, Bangalore.
>
> (*d*) Chairman of SEAC which recommended the grant of environmental clearance to the projects in question.

1 *Forward Foundation* v. *State of Karnataka*, 2015 SCC OnLine NGT 5

(*e*) Sr. Scientist (Ecology) from the Indian Institute of Sciences, Bangalore.

(*f*) Dr Siddharth Kaul, former Advisor to MoEF.

(*g*) A senior officer from the National Institute of Hydrology, Roorkee.

(2) Member-Secretary of the Karnataka State Pollution Control Board shall act as the Convener of the Committee and would submit the final report to the Tribunal.

(3) The Committee shall inspect not only the sites where the projects in question are located but even other areas of Bangalore which the Committee in its wisdom may consider appropriate, in order to examine the interconnectivity of lakes and impact of such activities upon the waterbodies, with particular reference to lakes.

(4) The Committee shall submit whether the projects in question have encroached upon or are constructed on the wetlands and Rajakaluves. If so, are there any adverse environmental and ecological impact of these projects on the lake particularly, Bellandur Lake and Agara Lake, as well the Rajakaluves. The report should specify if any Rajakaluves have been covered by the construction activities of Respondents 9 and 10 or by any of the projects in the area in question.

(5) Committee should submit in its report if these projects have any adverse impacts upon the surrounding ecology and environment, with particular reference to lakes and wetlands. If yes, then whether any part of the project is required to be demolished. If so, details thereof along with reasons.

(6) The Committee shall substantially notice if any of the conditions of the environmental clearance order in each case of Respondents 9 and 10 have been violated. If so, to what extent and suggest remedial measures in that behalf to restore the ecology of the area.

(7) The Committee would also recommend what should be the buffer zone around the lake(s) and interconnecting passages and wetlands. The Committee shall also report whether activities of multipurpose projects which have serious repercussions on traffic, air pollution, environment and allied subjects should be permitted any further or not, particularly, in wetlands and catchment areas of waterbodies.

(8) Recommendations should be made with regard to the steps and measures that should be taken for restoration of lakes, particularly, in the city of Bangalore.

(9) The Committee shall also find out that whether the construction of the projects is in accordance with the sanctioned drawings and bye-laws in accordance with the letters dated 4-7-2007 and 22-4-2008 respectively. Further, the Committee would also report whether both Respondents 9 and 10 have installed ETP/STP and have taken full measures for recycling of used water for washing and flushing, etc., in terms of letters

dated 11-10-2013 and 3-1-2013, issued by the Karnataka Industrial Area Development Board to Respondents 9 and 10 respectively.

(10) In the event, the Committee is of the opinion that the adverse impacts noticed are redeemable, then what directions need to be issued in that behalf and the cost involved for achieving the said conservation and restoration of lakes and waterbodies.

(11) Till the submission of the report by the Committee and directions passed by the Tribunal in that regard, both Respondents 9 and 10 are hereby restrained from creating any third party interests or part with the possession of the property in question or any part thereof, in favour of any person.

(12) The Committee shall submit its report to MoEF and to this Tribunal as expeditiously as possible and in any case not later than three months from today. During that period we restrain MoEF, SEIAA and/or any public authority from sanctioning any construction project on the wetlands and catchment areas of the waterbodies in the city of Bangalore.

(13) The Committee shall report if the project proponents are proposing to discharge their trade or domestic effluents into the lake or any of the waterbodies in and around of the area in question.

(14) For the reasons stated in the judgment Respondent 9 is liable and shall pay a sum of Rs 117.35 crores, while Respondent 10 shall pay a sum of Rs 22.5 crores respectively being 5% of the project value, within two weeks from today. The said amount would be paid to KSPCB, which shall maintain a separate account for the same and would spend this amount for environmental and ecological restoration, restitution and other measures to be taken to rectify the damage resulting from default and non-compliance to law by the project proponent in that area, after taking approval of the Tribunal.

(15) We make it clear that the said respondents would not be entitled to pass on the amount in terms of Direction 14, onto the purchasers because this liability accrues as a result of their own intentional defaults, disobedience of law in force and carrying on project activities and construction illegally and unauthorisedly."

19. Feeling aggrieved by the said order, Respondents 9 and 10 filed Civil Appeals Nos. 4829 and 4832 of 2015 before this Court. This Court by its order dated 20-5-2015[3] passed the following order: [*Core Mind Software & Services (P) Ltd. case*[3], SCC OnLine SC paras 2-5]

"2. One of the main contentions raised by the appellants in these appeals is that though the Tribunal had heard the matter only on preliminary issues and no arguments on merit were advanced, final judgment decides the merits of the disputes as well and above all a penalty of Rs 117.35 crores against the original Respondent 9 (the appellant in CA No. 4832 of

3 *Core Mind Software & Services (P) Ltd.* v. *Forward Foundation*, 2015 SCC OnLine SC 1778

2015) and Rs 22.5 crores against original Respondent 10 (the appellant in CA No. 4829/2015) is imposed.

3. On the aforesaid averment, we feel that it would be more appropriate for the appellant to file an application before the Tribunal with the prayer to recall the order on merits and decide the matter afresh after hearing the counsel for the parties, as the Tribunal knows better as to what transpired at the time of hearing.

4. With the aforesaid liberty granted to the petitioners, the appeals are disposed of. Certain preliminary issues are decided against the appellants which are also the subject-matter of challenge. However, it is not necessary to deal with the same at this stage. We make it clear that in case the said application is decided against the appellants or if ultimately on merits, it would be open to the appellants to challenge those orders by filing the appeal and in that appeal all the issues which are decided in the impugned judgment[1] can also be raised.

5. The counsel for the appellants state that they would file the requisite application within one week. Till the said application is decided by the Tribunal, there shall be stay of the direction pertaining the payment of aforesaid penalty. Mr Raj Panjwani points out that the Tribunal has allowed the appellants to proceed with the construction only on the payment of the aforesaid fine/penalty. We leave it to the Tribunal to pass whatever orders it deems fit in this behalf, after hearing the parties."

20. In relation to Issue 5, an opportunity of hearing was granted to the respondents. The Tribunal passed order dated 6-4-2016[4] on these applications as under: (*Forward Foundation case*[4], SCC OnLine NGT)

"***MA No. 603 of 2015 and MA No. 596 of 2015***

These applications have been filed on behalf of Respondents 9 and 10 respectively. It is not necessary for us to refer to any details in view of the directions that we propose to issue in this case.

Without prejudice to the rights and contentions of the parties and subject to just exception we would hear the parties in terms of the order of the Hon'ble Supreme Court of India primarily on the question of imposition of environmental compensation and merits attached in relation thereto. Parties are given liberty to address their submissions on that behalf.

With the above directions MA No. 603 of 2015 and MA No. 596 of 2015 stand disposed of without any order as to cost."

21. It is evident from the above orders that the Tribunal had granted opportunity to the parties to address it "limited question", as aforementioned.

1 *Forward Foundation* v. *State of Karnataka*, 2015 SCC OnLine NGT 5
4 *Forward Foundation* v. *State of Karnataka*, 2016 SCC OnLine NGT 637

The Tribunal after hearing the parties passed an order dated 4-5-2016[2] as under: (*Forward Foundation case*[2], SCC OnLine NGT)

a

"***General conditions or directions***

1. In view of our discussion in the main judgment, we are of the considered view that the fixation of distance from waterbodies (lakes and Rajkalewas) suffers from the inbuilt contradiction, legal infirmity and is without any scientific justification. The RMP 2015 provides 50 m from middle of the Rajkalewas as buffer zone in the case of primary Rajkalewas,
b 25 m in the case of secondary Rajkulewas and 15 m in the tertiary Rajkulewas in contradiction to 30 m in the case of lake which is certainly much bigger waterbody and its utility as a waterbody/wetland is well known certainly part of wet land. Thus, we direct that the distance in the case of Respondents 9 and 10 from Rajkulewas, waterbodies and wetlands shall be maintained as below—

c

(*i*) In the case of *lakes*, 75 m from the periphery of waterbody to be maintained as green belt and buffer zone for all the existing waterbodies i.e. lakes/wetlands.

(*ii*) 50 m from the edge of the primary Rajkulewas.

(*iii*) 35 m from the edges in the case of secondary Rajkulewas.

d (*iv*) 25 m from the edges in the case of tertiary Rajkulewas.

This buffer/green zone would be treated as no construction zone for all intent and purposes. This is absolutely essential for the purposes of sustainable development particularly keeping in mind the ecology and environment of the areas in question.

e All the offending constructions raised by Respondents 9 and 10 of any kind including boundary wall shall be demolished which falls within such areas. Wherever necessary dredging operations are required, the same should be carried out to restore the original capacity of the water spread area and/or wetlands. Not only the existing construction would be removed but also none of these respondents — project proponent would be permitted to raise any construction in this zone.

f All authorities particularly Lake Development Authority shall carry out this operation in respect of all the waterbodies/lakes of Bangalore.

2. The capacity of the existing STPs to treat sewage is 729 MLD, whereas another 500 MLD sewage is proposed to be treated in 10 upcoming STPs. In this context, all the STPs operating in the area whether Government or privately owned, should meet the revised standards notified
g by CPCB/MoEF.

3. Bangalore City receives treated potable water of 1360 MLD from River Cauvery whereas the requirement is for another 750 MLD and the entire area falls in critical zone in terms of groundwater exploitation. Information reveals that only one million litre per month of STP treated water is used by builders for construction purposes. For this reason, the

h

2 *Forward Foundation* v. *State of Karnataka*, 2016 SCC OnLine NGT 1409

BWSSB issues partial NOC to various residential and commercial projects in respect of supply of potable water. In this context, following directions need to be issued:

(*i*) At the time of grant of EC, the water requirement for the construction phase and operation phase should be considered separately. Due consideration should also be given for identification of source of supply of water and this should be a prerequisite for grant of EC.

(*ii*) All the project proponents should necessarily use only treated sewage water for construction purpose and this should be reflected in EC as a condition for construction phase.

(*iii*) Wherever the quality of treated sewage water does not conform to the quality needed for construction, necessary upgradation in STP should be undertaken immediately.

Specific conditions/directions for Respondent 9

In addition to the above directions which should be equally part of EC condition in respect of Respondents 9 and 10, following specific conditions shall apply to Respondent 9:

(*i*) Reclaimed area of the lake to the extent of 3 ac 10 guntas in Survey No. 43 should be restored to its original condition at the cost of project proponent. The possession of this area should be restored by Respondent 9 to the authorities concerned immediately. In addition, a buffer zone of 75 m should be provided between the lake and the project area and this should be maintained as green area.

(*ii*) In the remaining area, where primary Rajkalewa is abutting the project area, 50 m buffer zone on the side of the project area from the edge of the Rajkalewa should be maintained as green belt.

(*iii*) Several irrigation canals or tertiary Rajkalewas taking off from the Agara tank were passing through the area of Respondent 9, and serve the dual purpose of irrigating paddy fields and disposal of surface run off (storm water drains) during rainy season. However on account of the activities of the project, these drains have been totally obliterated. For the purpose of proper disposal of storm runoff from the entire area falling between Agara Lake and Belandur Lake, Respondent 9 must provide required number of storm water drains based on proper hydrological study. These storm drains should have a buffer zone of 15 m on either bank maintained as green belt.

(*iv*) The cumulative quantity of earth excavated for the construction of project is around 4 lakhs cubic metres in the depth range of 0 to 9 m. This has created huge hillock like structure obstructing the natural flow pattern of surface runoff from Agara Lake side to Balendur Lake side or primary Rajkalewas. For this purpose, during construction phase garland drain should be constructed around the existing dumping site for safe disposal of runoff to the Rajkalewas. For the disposal of excavated material, a proper muck disposal plan duly approved by

SEIAA shall be prepared. In any case the plan should ensure that no muck/sediment flows into Rajkalewas and/or Belandur Lake.

(*v*) The kharab land identified by Revenue Department admeasuring 1 ac 2 guntas should be demarcated and maintained separately as green belt.

(*vi*) The entire green belt created under the directions of this Tribunal should not to be considered as part of green belt of the project as part of EC condition and will be over and above the green belt as indicated in the EC.

(*vii*) In view of the heavy traffic load in the adjoining Sarjapur Road, a proper study on the basis of traffic density, foot falls expected, etc., a proper plan needs to be prepared and the concept of service road exclusively for the project needs to be worked out and additional parking space created within the project area and incorporated as a part of the overall project layout, within a period of 3 months.

* * *

10. Though, at the time of hearing prior to passing of the judgment, we had heard the parties on all aspects but still we have provided rehearing to the parties on all issues with emphasis on imposition of environmental compensation including the quantum. Upon hearing, we are of the considered view that environmental compensation imposed upon Respondent 9 calls for no variation and Respondent 9 should be called upon to pay the said amount of Rs 117.35 crores determined under the judgment prior to commencement of any project activity at the site. Respondent 10 has not commenced any actual construction activity but has carried out various preparatory steps including excavation and deposition of huge earth by creating a hillock at the premises in question and a site office.

Thus, considering cumulative effect on environment and ecology due to various breaches in that behalf by Respondent 10 and the fact that the remedial measures can more effectively be taken by Respondent 10, we reduce environmental compensation payable by Respondent 10 to Rs 13.5 crores (3% of the stated project cost instead of 5% as imposed in the original judgment).

General directions

1. We direct SEIAA, Karnataka to issue amended order granting environmental clearance within four weeks from today incorporating all the conditions stated in this judgment and such other conditions as it may deem appropriate in light of this judgment and inspection note of the expert members. The project proponents would be permitted to commence activity only after issuance of amended environmental clearance order.

2. SEIAA Karnataka and MoEF shall ensure regular supervision and monitoring of the project and during the construction and even upon completion to ensure that activity is carried out strictly in accordance with the conditions of the order granting environmental clearance, this judgment, notification of 2006 and other laws in force.

3. The distances in respect of buffer zone specified in this judgment shall be made applicable to all the projects and all the authorities concerned are directed to incorporate such conditions in the projects to whom environmental clearance and other permissions are now granted not only around Belandur Lake, Rajkulewas, Agara Lake, but also all other lakes/wetlands in the city of Bengaluru.

4. We hereby direct the State of Karnataka to submit a proposal to MoEF for demarcating wetlands in terms of the Wetland Rules, 2010 as revised from time to time. Such proposal shall be submitted by the State within four weeks from today and MoEF shall consider the same in accordance with law and grant its approval or otherwise within four weeks thereafter. After such approval is granted by MoEF, the State would issue notification notifying such areas immediately thereafter in accordance with Rules and law.

5. Both Respondents 9 and 10 shall ensure that debris or any construction material that has been dumped into the Rajkulewas, or on their banks and on the buffer zone of wetlands should be removed within four weeks from today. In the event they fail to do so, the same shall be removed by the Lake Development Authority along with the State Administration and recover charges thereof from the said respondents.

6. There is a serious discrepancy even in regard to the measurement of land as far as Respondent 9 is concerned. Admittedly the respondent has been allotted and is in possession of land admeasuring 63.94 ac, though environmental clearance has been granted for 2,92,636.03 sq m which is equivalent to 72.22 ac. For this reason alone, environmental clearance cannot be given effect to. While issuing the amended environmental clearance, SEIAA Karnataka shall take into consideration all these aspects and, if necessary, would require Respondent 9 to submit a fresh layout plant and the entire project may be revised in accordance with law.

7. Both the respondents (project proponents) shall submit an appropriate plan in view of the conditions imposed in this judgment and the amended environmental clearance that would be issued.

8. The amount of environmental compensation will be deposited prior to issuance of amended environmental clearance.

With the above directions, Original Application No. 222 of 2014 and Miscellaneous Applications Nos. 596 of 2016 and 603 of 2016 are finally disposed of while leaving the parties to bear their own costs." (emphasis in original)

22. Appearing for the appellants in CA No. 5016 of 2016, Shri Mukul Rohatgi, learned Senior Counsel, has submitted that the State Government in exercise of the power conferred under the Karnataka Industrial Areas Development Act (for short "the KIAD Act") declared the land in question as an industrial area. Thereafter, the land in question has been acquired by the State Government in the year 2004. Following the acquisition, on 28-6-2007, the land was allotted to the appellant by KIADB. SEIAA granted environmental clearance which was followed by public notice concerning clearance on 14-3-2012.

Neither the allotment of land nor the environmental clearance was challenged before the Tribunal. Thus, none of the statutory decisions or processes, are the cause of action for the purpose of the application. The averments made in the original application does not satisfy or meet the requirements of Sections 14(1) and (3) of the NGT Act and the original application does not spell out the cause of action relevant for the purpose of the said provision. Since the statutory processes and clearances could not have been challenged for being hit by Section 14(3), the construction activities which were the alleged cause of action could not have been challenged. Therefore, the Tribunal ought to have held that the application was not maintainable.

23. Further, the application is barred by limitation. Though environmental clearance was granted on 17-2-2012 and it was published in two leading newspapers on 12-3-2012 and 14-3-2012, modified plan was approved by KIADB on 30-8-2012, the application ought to have been filed within six months from the date on which cause of action for the dispute first arose in terms of Section 14 of the NGT Act. The present application has been filed in March 2014 which was much beyond the prescribed period of limitation. No application seeking condonation of delay has been filed accompanying the application. Hence, the Tribunal ought to have dismissed the application on the ground that as it is barred by time.

24. It was also argued that buffer zone laid down by NGT is substantially higher as compared to buffer zone which is required to be maintained as per the Revised Master Plan, 2015 issued on 22-6-2007. This is contrary to the Karnataka Town and Country Planning Act, 1961 (for short "the Planning Act").

25. Shri Neeraj Kishan Kaul and Shri R. Venkataramani, learned Senior Counsel appearing for the appellants, in this case have also made similar submissions. It was argued that the direction imposing penalty/compensation is illegal on the ground that the applicants did not allege that the construction work of the project has caused environmental wrong. No wrong or injury either to Bellandur Lake waterbody or to Bellandur Lake area, has been alleged and established. As such, there is no question of any enquiry relating to imposition of penalty or any compensation.

26. Shri Maninder Singh, learned Senior Counsel appearing for the appellants, in CAs Nos. 5016 and 10995 of 2016, while supporting the submissions made by Shri Rohatgi, has submitted that the appellant has obtained sanction and approvals for the project from the competent authorities. It could not start construction despite grant of all the permissions, including environmental clearance as early as possible i.e. 30-9-2013. Hence, imposing penalty/compensation is entirely unsustainable.

27. The learned Advocate General, Shri Udaya Holla, appearing for the appellant State of Karnataka in CAs Nos. 4923-24 of 2017, has submitted that the State of Karnataka is also aggrieved by the order of NGT to the extent of setting aside the buffer zone in respect of waterbodies and drains specified in

the Revised Master Plan, 2015, and enlargement of the buffer zone in respect of lakes and Rajakaluves. It is also aggrieved by the order of NGT directing the authorities to demolish all the offending constructions raised/built in the buffer zone, which will result in demolition of 95% of the buildings in Bengaluru. It is submitted that the Revised Master Plan is statutory in nature and NGT has no power, competence or jurisdiction to consider the validity or vires of any statutory provision/regulation. Therefore, the order of NGT to that extent is liable to be set aside.

28. The learned Senior Counsel appearing for the appellants in other cases, have also supported the arguments of the learned Advocate General. It was contended that the Revised Master Plan provides for a 30 m buffer zone around the lakes and a buffer zone of 50 m, 25 m and 15 m from the primary, secondary and tertiary drains, respectively to be measured from the centre of the drain. Vide the impugned judgment, NGT has revised these buffer zones and has directed that the buffer zone be maintained for 75 m around the lake and 50, 35 and 25 m respectively from the primary, secondary and tertiary drain, respectively. Variation of buffer zone, as directed by NGT is without any legal and scientific basis and has the effect of amending the Revised Master Plan, 2015, without there being any challenge to the same or any relief sought with respect to the said Revised Master Plan.

29. On the other hand, Shri Sajan Poovayya, learned Senior Counsel, appearing for the applicants, has fairly submitted that the applications were filed only against the appellants in CAs Nos. 5016 and 8002-03 of 2016 (Respondents 9 and 10). He has no objection to set aside the order insofar as the appellants in other appeals including the State of Karnataka are concerned. He has also no objection to set aside the general conditions and directions of NGT in para 1 of the order dated 4-5-2016[2] except the directions issued against Respondents 9 and 10. In view of the above, it is not necessary to examine the contentions of the learned Advocate General in Civil Appeals Nos. 4923-24 of 2017. It is also not necessary to consider the contentions urged in the other civil appeals except the appeals filed by Respondents 9 and 10.

30. Shri Poovayya has strongly opposed the submissions made by the learned Senior Counsel appearing for the appellants in CA No. 5016 of 2016 and CAs Nos. 8002-03 of 2016. It is submitted that the Tribunal is a specialised body for effective and expeditious disposal of cases relating to environmental protection and conservation of forests and other natural resources including enforcement of any legal right relating to environment. The jurisdiction of the Tribunal is provided under Sections 14, 15 and 16 of the NGT Act. Section 14 provides for the jurisdiction over all civil cases where a substantial question relating to environment is involved. However, such question should arise out of implementation of the enactments specified in Schedule I. The Tribunal has the jurisdiction under Section 15(1)(*a*) of the NGT Act to provide relief

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and compensation to the victims of pollution and other environmental damage arising under the enactments specified in Schedule I. Under Sections 15(1)(*b*) and 15(1)(*c*), the Tribunal can provide for restitution of property damaged and for restitution of the environment for such area or areas, as the Tribunal may think fit. Sections 15(1)(*b*) and 15(1)(*c*) have not been made relatable to enactment specified in Schedule I of the Act. Section 15(1)(*c*) is an entire island of power and jurisdiction read with Section 21 of the Act. He submits that whenever ecology is being compromised and jeopardised, the Tribunal can apply Section 20 for taking restorative measures in the interest of environment. The limitation provided in Section 14 is period of six months from the date on which cause of action first arose whereas in Section 15 it is five years. Therefore, the petition is not barred by time.

31. He has further submitted that the provisions of Section 33 shall have the effect notwithstanding anything inconsistent contained in any other law for the time being in force. This gives the Tribunal overriding powers over anything inconsistently contained in the KIAD Act, Planning Act, Revised Master Plan of Bangalore, 2015 and Karnataka Municipal Corporation Act, 1976 (for short "the KMC Act"). Therefore, the Tribunal while providing for restoration of environment in an area can specify buffer zone around specific lakes and waterbodies in contravention with zoning regulation.

32. Regarding limitation, he has submitted that the application filed by Respondents 1 to 3 was not an application simpliciter under Section 14 of the Act. It was an application where a specific prayer has been made with reference to Lake Development Authority's report dated 12-6-2013 and the Ministry of Environment, Forests and Climate Change Monitoring Committee Report dated 14-8-2013 for restoration of ecologically sensitive land and for maintaining sensitive area in its natural condition so that ecological balance of the area is not disturbed. Therefore, the petition was under Section 15 of the Act and it can be filed within five years from the date on which the cause for such compensation or relief first arose.

33. It was further submitted that right to appeal under Section 22 is not a vested right unless provided by statute. Exercise of appellate jurisdiction without the fulfilment of statutory mandate would be without jurisdiction. Section 22 of the Act provides for an appeal on the ground specified in Section 100 of the Code of Civil Procedure, 1908 (for short "CPC"). Under Section 100 CPC, an appeal can be filed only on the ground that the case involves a substantial question of law as may be framed by the appellate court. In the instant case, the appeal does not involve any substantial question of law hence it has to be dismissed in limine. He has taken us through various materials placed on record in order to substantiate that the direction passed and penalty imposed by the Tribunal upon to project proponents are sustainable. He prays for dismissal of the appeals.

34. We have carefully considered the submissions of the learned counsel of the parties and perused the materials placed on record.

35. Before considering the other contentions of the learned counsel for the parties, let us first consider the scope of enquiry in appeals filed under Section 22, which is as under:

> "**22.** ***Appeal to Supreme Court.***—Any person aggrieved by any award, decision or order of the tribunal, may, file an appeal to the Supreme Court, within ninety days from the date of communication of the award, decision or order of the Tribunal, to him, on any one or more of the grounds specified in Section 100 of the Code of Civil Procedure, 1908 (5 of 1908):
>
> Provided that the Supreme Court may entertain any appeal after the expiry of ninety days, if it is satisfied that the appellant was prevented by sufficient cause from preferring the appeal."

36. It is settled that there is no vested right of appeal unless the statute so provides. Further, if a statute provides for a condition subject to which the appropriate appellate court can exercise jurisdiction, the court is under an obligation to satisfy itself whether the condition prescribed is fulfilled. Exercise of appellate jurisdiction without the fulfilment of statutory mandate would be without jurisdiction. Therefore, the right of appeal provided under Section 22 is to be read subject to the conditions provided therein.

37. Section 22 provides for an appeal to the Supreme Court on the grounds specified in Section 100 CPC. Under Section 100 CPC, an appeal can be filed only on the ground that the case involves a substantial question of law as may be framed by the appellate court. The scope of appeal under Section 22, therefore, is restricted to substantial question of law arising from the judgment of the Tribunal. The test to determine whether the question is substantial question of law or not was laid down by a Constitution Bench of this Court in *Chunilal V. Mehta & Sons Ltd.* v. *Century Spg. & Mfg. Co. Ltd.*[5] This Court has laid down the test as under: (AIR p. 1318, para 6)

> "*6.* … The proper test for determining whether a question of law raised in the case is substantial would, in our opinion, be whether it is of general public importance or whether it directly and substantially affects the rights of the parties and if so whether it is either an open question in the sense that it is not finally settled by this Court or by the Privy Council or by the Federal Court or is not free from difficulty or calls for discussion of alternative views. If the question is settled by the highest court or the general principles to be applied in determining the question are well settled and there is a mere question of applying those principles or that the plea raised is palpably absurd the question would not be a substantial question of law."

38. It is equally settled that merely because the remedy of appeal is provided against the decision of the Tribunal on a substantial question of law alone, that does not ipso facto permit the appellants to agitate their appeal to

5 1962 Supp (3) SCR 549 : AIR 1962 SC 1314

seek reappreciation of the factual matrix of the entire matter. The appellants cannot seek to re-argue their entire case to seek wholesale reappreciation of evidence and the factual matrix that has been considered by the Tribunal is ex facie impermissible under Section 22. There cannot be fresh appreciation or reappreciation of facts and evidence in a statutory appeal under this provision.

39. The first question raised by the learned counsel is in relation to the maintainability of the application before the Tribunal.

40. The Tribunal has been established under a constitutional mandate provided in Schedule VII List I Entry 13 of the Constitution of India, to implement the decision taken at the United Nations Conference on Environment and Development. The Tribunal is a specialised judicial body for effective and expeditious disposal of cases relating to environmental protection and conservation of forests and other natural resources including enforcement of any legal right relating to environment. The right to healthy environment has been construed as a part of the right to life under Article 21 by way of judicial pronouncements. Therefore, the Tribunal has special jurisdiction for enforcement of environmental rights.

41. The jurisdiction of the Tribunal is provided under Sections 14, 15 and 16 of the Act. Section 14 provides the jurisdiction over all civil cases where a substantial question relating to environment (including enforcement of any legal right relating to environment) is involved. However, such question should arise out of implementation of the enactments specified in Schedule I.

42. The Tribunal has also jurisdiction under Section 15(1)(*a*) of the Act to provide relief and compensation to the victims of pollution and other environmental damage arising under the enactments specified in Schedule I. Further, under Sections 15(1)(*b*) and 15(1)(*c*), the Tribunal can provide for restitution of property damaged and for restitution of the environment for such area or areas as the Tribunal may think fit. It is noteworthy that Sections 15(1)(*b*) and (*c*) have not been made relatable to Schedule I enactments of the Act. Rightly so, this grants a glimpse into the wide range of powers that the Tribunal has been cloaked with respect to restoration of the environment.

43. Section 15(1)(*c*) of the Act is an entire island of power and jurisdiction read with Section 20 of the Act. The principles of sustainable development, precautionary principle and polluter pays, propounded by this Court by way of multiple judicial pronouncements, have now been embedded as a bedrock of environmental jurisprudence under the NGT Act. Therefore, wherever the environment and ecology are being compromised and jeopardised, the Tribunal can apply Section 20 for taking restorative measures in the interest of the environment.

44. The NGT Act being a beneficial legislation, the power bestowed upon the Tribunal would not be read narrowly. An interpretation which furthers the interests of environment must be given a broader reading. (See *Kishore*

Lal v. *ESI Corpn.*[6], para 17.) The existence of the Tribunal without its broad restorative powers under Section 15(1)(*c*) read with Section 20 of the Act, would render it ineffective and toothless, and shall betray the legislative intent in setting up a specialised Tribunal specifically to address environmental concerns. The Tribunal, specially constituted with Judicial Members as well as with experts in the field of environment, has a legal obligation to provide for preventive and restorative measures in the interest of the environment.

45. Section 15 of the Act provides power and jurisdiction, independent of Section 14 thereof. Further, Section 14(3) juxtaposed with Section 15(3) of the Act, are separate provisions for filing distinct applications before the Tribunal with distinct periods of limitation, thereby amply demonstrating that jurisdiction of the Tribunal flows from these sections (i.e. Sections 14 and 15 of the Act) independently. The limitation provided in Section 14 is a period of 6 months from the date on which the cause of action first arose and whereas in Section 15 it is 5 years. Therefore, the legislative intent is clear to keep Sections 14 and 15 as self-contained jurisdictions.

46. Further, Section 18 of the Act recognises the right to file applications each under Section 14 as well as Section 15. Therefore, it cannot be argued that Section 14 provides jurisdiction to the Tribunal while Section 15 merely supplements the same with powers. As stated supra the typical nature of the Tribunal, its breadth of powers as provided under the statutory provisions of the Act as well as the scheduled enactments, cumulatively, leave no manner of doubt that the only tenable interpretation to these provisions would be to read the provisions broadly in favour of cloaking the Tribunal with effective authority. An interpretation that is in favour of conferring jurisdiction should be preferred rather than one taking away jurisdiction.

47. Section 33 of the Act provides an overriding effect to the provisions of the Act over anything inconsistent contained in any other law or in any instrument having effect by virtue of law other than this Act. This gives the Tribunal overriding powers over anything inconsistent contained in the KIAD Act, the Planning Act, the Karnataka Municipal Corporations Act, 1976 (the KMC Act); and the Revised Master Plan of Bengaluru, 2015 (RMP). A Central legislation enacted under Entry 13 of Schedule VII List I of the Constitution of India will have the overriding effect over State legislations. The corollary is that the Tribunal while providing for restoration of environment in an area, can specify buffer zones around specific lakes and waterbodies in contradiction with zoning regulations under these statutes or RMP.

48. The second question raised by the appellants is that the petition is barred by time. According to the appellants, environmental clearance was granted to Respondent 9 on 17-2-2012 for which notice was published in the leading newspaper on 12-3-2012 and 14-3-2012. Modified building plan was approved on 30-8-2012, which was followed up to 10-8-2014. Similar events had taken place in regard to the project of Respondent 10 who had been

6 (2007) 4 SCC 579 : (2007) 2 SCC (L&S) 1

granted environmental clearance on 30-9-2013. The application had to be filed within a period of six months from the date on which cause of action for such dispute has first arisen in terms of Section 14 of the NGT Act. Admittedly, the present application has been filed in March 2014 and according to them, it is much beyond the prescribed period of limitation. Also, there is no application for condonation of delay accompanying the main application. Therefore, the Tribunal will not have jurisdiction to condone the delay.

49. OA No. 222 of 2014 was not an application simpliciter under Section 14 of the Act. It was an application where a specific prayer has been made with reference to Lake Development Authority's (LDA) Report dated 12-6-2013 and the Ministry of Environment, Forests and Climate Change (MoEF) Monitoring Committee Report dated 14-8-2013 for restoration of ecologically sensitive land and for maintaining the sensitive in its natural condition so that the ecological balance of the area is not disturbed. It is clear from the documentary evidence supported by data, that the project proponents have committed breaches and the implementation of the project is bound to have serious adverse impact on the ecology, hydrology and the environment in the catchment area of Bellandur Lake. The environmental degradation as established from the documents would give rise to an independent cause of action. Therefore, this was a petition under Section 15 of the Act and thus it could be filed within 5 years from the date on which the cause for such compensation or relief first arose.

50. In fact, in the original application before the Tribunal there was no mention of the provision under which it was being filed. It is well-settled principle of law that non-mention of or erroneous mention of the provision of law would not be of any relevance, if the court had the requisite jurisdiction to pass an order. It would be a mere irregularity and would not vitiate the application or the judicial order of the Tribunal.

51. Shri R. Venkataramani, learned Senior Counsel, appearing for the appellant in CA No. 5016 of 2016 has submitted that the constructions had not commenced before the grant of environment clearance. The inspection report dated 11-1-2012 of the Chairman of KSPCB observes that "no construction" had commenced on the date of inspection. This report cannot be overlooked on the basis of some dumping of debris which could not be attributed to the appellant. He has pointed out the report of the Committee appointed by the Tribunal in the month of August 2015, wherein it was stated that "it started construction after obtaining clearance". In this regard he has also taken us through various documents placed on record and submits that there is absolutely no justification in imposing monitoring penalty/compensation without assessment of impact.

52. The Tribunal has pointed out on the basis of the Committee report of August 2015, that the appellant had encroached 3 ac 10 guntas of Bellandur Lake and a boundary wall has been raised around the said land. The Tribunal has also found that the project proponents have violated the Master Plan. They have not obtained the mandatory clearance from the Sensitive Zone Committee

constituted by the Government of Karnataka. It is also clear from the materials on record that there are several other violations by the project proponents. The Tribunal has discussed all these issues from para 52 onwards. It is also clear from the materials on record that there is a definite possibility of environment, ecology, lakes and wetland being adversely affected by these projects. That is why, the Tribunal has observed[1] as under: (*Forward Foundation case*[1], SCC OnLine NGT para 72)

> "*72.* In light of the above scope of the project and records before the Tribunal and the defaults on the part of the project proponents, the cumulative adverse effects of the activities undertaken by the respondents before us can be summed up as under:
>
> (1) The construction of both the projects had started prior to the grant to environmental clearance.
>
> (2) The EIA Notification of 2006 requires that without grant of environmental clearance, no project can commence its activity. This restriction applies not only to operationalisation of the project but even for the purposes of establishment.
>
> (3) Revenue map images shows multiple Rajakaluves flowing through the project(s) in question. The images further show encroachment on Rajakaluves.
>
> (4) Digital images of the land available on Google satellite images showing encroachment on two major Rajakaluves.
>
> (5) Google satellite images retrieved from Google archives clearly reflect two distinct features. Firstly, change in the wetland area between the period of 13-11-2000 and 23-11-2010. Secondly, it reveals the excavation work carried out by Respondents 9 and 10 commenced prior to obtaining environmental clearance.
>
> (6) Restriction in regard to extraction of groundwater was not strictly complied with as permission of Central Ground Water Authority was not obtained before construction.
>
> (7) The conditions with regard to the natural slopping pattern of the project site to remain unaltered and natural hydrology of the area to be maintained as it is, to ensure natural flow of storm water as well as in relation to lakes and other waterbodies within and/or at the vicinity of the project area to be protected and conserved. The inspection report by MoEF clearly notes that Conditions (xxxix) and (xl) in the environmental clearance of Respondent 9 cannot be complied with as it will necessarily result in some alteration of the natural slopping pattern of the project site and the natural hydrology of the area. It noted that the project area is located in the catchment area of the Bellandur Lake and the project authorities have informed that they will take all precautionary measures to ensure that the lake will not be affected by project activities either during construction or operation phase."

1 *Forward Foundation* v. *State of Karnataka*, 2015 SCC OnLine NGT 5

53. In para 81, the Tribunal has observed as under: (*Forward Foundation case*[1], SCC OnLine NGT para 81)

> "*81.* ... Another very important aspect which cannot be overlooked by the Tribunal is with regard to Respondents 9 and 10 carrying on their project activity fully knowing that they were incapable of or it was not possible for them to comply with Conditions (xxxix) and (xl) (or alike conditions) in the order granting the environmental clearance. This has even been noticed by MoEF in its monitoring report dated 14-8-2013. These respondents never applied for variation or amendment of these conditions and continued with their construction activities. This renders these respondents entirely liable for environmental and ecological damage and the restoration and restitution thereof."

54. In our view, the findings arrived at by the Tribunal are not only based on the documents that were available on record but also on the pleadings that were made by the parties buttressed by the Committee's report and the inspection note of the expert members. Therefore, the directions passed and the penalty imposed by the Tribunal on both project proponents are valid and sustainable and do not suffer from any perversity.

55. We are also of the view that it is impermissible for the appellants to seek a factual review through the methodology of reappreciation of factual matrix by this Court under Section 22 of the NGT Act.

56. Shri R. Venkataramani, learned Senior Counsel has also raised a subsidiary issue relating to res judicata. According to him, Respondents 12 and 13 filed Writ Petitions Nos. 3656-57 of 2013 seeking similar reliefs in a representative capacity. The issues raised therein are same as those canvassed in the application before the Tribunal. The reliefs sought for are essentially the same. Hence, the applications are barred by the principle of res judicata.

57. The Tribunal has answered this issue in paras 47 to 51 of the order. There was no dispute insofar as filing of the writ petitions is concerned. However, the parties are not common nor the issues in application and the writ petitions are directly and substantially the same. After examination of the pleadings, the Tribunal has recorded a finding of fact that there is no commonality of a cause of action or likelihood of a conflict between the judgments. The prayers and the genesis of the respective proceedings are entirely distinct and different in their scope and relief. The issues before the Tribunal would essentially relate to environment ecology and its restoration while the proceedings before the High Court relate to entirely different issues with acquisition of land, its allotment and transfer to the third party. These issues in both the proceedings are neither substantial nor materially identical.

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58. After elaborately considering this question, the Tribunal has concluded as under: (*Forward Foundation case*[1], SCC OnLine NGT para 51)

> "*51.* ... For these reasons, we find no merit in this contention of Respondents 9 and 10. The purpose of the doctrine of res judicata is to provide finality and conclusiveness to the judicial decisions as well as to avoid multiplicity of litigation. In the present case, the question of reagitating the issues or agitating similar issues in two different proceedings does not arise. The ambit and scope of jurisdiction is clearly decipherable. The jurisdictions of the Hon'ble High Court of Karnataka and this Tribunal are operating in distinct fields and have no commonality insofar as the issues which are raised directly and substantially in these petitions, as well as the reliefs that have been prayed for before the Hon'ble High Court and the Tribunal are concerned. There is no commonality in parties before the Tribunal and the High Court. The "cause of action" in both proceedings is different and distinct. The matters substantially and materially in issue in one proceedings are not the same in the other proceeding. There is hardly any likelihood of conflicting judgments being pronounced by the Tribunal on the one hand and the High Court on the other. Therefore, we are of the considered view that the present applications are neither hit by the principles of *res judicata* nor *constructive res judicata*. We also hold that culmination of proceedings before the Tribunal into a final judgment would not offend the principle of "judicial propriety", because of the writ petitions pending before the Hon'ble High Court of Karnataka."

59. We do not find any error in the aforesaid conclusion of the Tribunal. We are of the view that the Tribunal was justified in holding that the objections taken by Respondents 9 and 10 do not satisfy the basic ingredients to attract the application of res judicata or constructive res judicata.

60. The State of Karnataka is aggrieved by the following offending portion of the order dated 4-5-2016[2]: (*Forward Foundation case*[2], SCC OnLine NGT)

> "*1.* In view of our discussion in the main judgment, we are of the considered view that the fixation of distance from waterbodies (lakes and Rajkalewas) suffers from the inbuilt contradiction, legal infirmity and is without any scientific justification. The RMP 2015 provides 50 m from middle of the Rajkalewas as buffer zone in the case of primary Rajkalewas, 25 m in the case of secondary Rajkulewas and 15 m in the tertiary Rajkulewas in contradiction to the 30 m in the case of lake which is certainly much bigger waterbody and its utility as a waterbody/wetland is well known certainly part of wet land. Thus, we direct that the distance in the case of Respondents 9 and 10 from Rajkulewas, waterbodies and wetlands shall be maintained as below—
>
> > (*i*) In the case of *lakes*, 75 m from the periphery of waterbody to be maintained as green belt and buffer zone for all the existing waterbodies i.e. lakes/wetlands.

1 *Forward Foundation* v. *State of Karnataka*, 2015 SCC OnLine NGT 5
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(*ii*) 50 m from the edge of the primary Rajkulewas.

(*iii*) 35 m from the edges in the case of secondary Rajkulewas.

(*iv*) 25 m from the edges in the case of tertiary Rajkulewas.

This buffer/green zone would be treated as no construction zone for all intent and purposes. This is absolutely essential for the purposes of sustainable development particularly keeping in mind the ecology and environment of the areas in question.

All the offending constructions raised by Respondents 9 and 10 of any kind including boundary wall shall be demolished which falls within such areas. Wherever necessary dredging operations are required, the same should be carried out to restore the original capacity of the water spread area and/or wetlands. Not only the existing construction would be removed but also none of these respondents — project proponent would be permitted to raise any construction in this zone.

All authorities particularly Lake Development Authority shall carry out this operation in respect of all the waterbodies/lakes of Bangalore." (emphasis in original)

61. We have already noticed that Shri Poovayya has no objection to set aside the aforesaid impugned portion of the order insofar as the appellants in all the appeals except the appeals filed by Respondents 9 and 10 are concerned. The aforesaid portion of the order contains not only general directions but also certain directions against Respondents 9 and 10. Therefore, only that portion of the order which does not pertain to Respondents 9 and 10 needs to be quashed.

62. In the light of the above discussion, we pass the following order:

62.1. Civil Appeal No. 5016 of 2016 and Civil Appeals Nos. 8002-03 of 2016 filed by the appellant-Respondents 9 and 10 are hereby dismissed. The impugned judgment and order insofar as the appellant-Respondents 9 and 10 are concerned is sustained.

62.2. All the other appeals are hereby allowed and Direction/Condition (1) in the order dated 4-5-2016[2] is hereby set aside except the direction issued against Respondents 9 and 10.

63. There will be no order as to costs.

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/True copy/

VBR Menon

2 *Forward Foundation* v. *State of Karnataka*, 2016 SCC OnLine NGT 1409

(2012) 2 Supreme Court Cases 562

(BEFORE G.S. SINGHVI AND A.K. GANGULY, JJ.)

Civil Appeal No. 2430 of 2006†

ARCHAEOLOGICAL SURVEY OF INDIA .. Appellant;

Versus

NARENDER ANAND AND OTHERS .. Respondents.

With

Civil Appeal No. 2431 of 2006

NARENDER ANAND AND ANOTHER .. Appellant;

Versus

ARCHAEOLOGICAL SURVEY OF INDIA AND OTHERS .. Respondents.

Civil Appeals No. 2430 of 2006 with No. 2431 of 2006, decided on January 16, 2012

A. **Ancient Monuments and Archaeological Sites and Remains Act, 1958 — Ss. 39(2), 2(a), 3, 4, 38(1), (2)(a) & (b) and Ss. 20-A, 20-B, 20-C, 20-F [as inserted by Act 10 of 2010] — Jantar Mantar, New Delhi, held, is a protected monument of national importance to be preserved and protected — Noti. dt. 4-10-1956 declaring Jantar Mantar, New Delhi to be protected monument published in Official Gazette — However, Noti. dt. 3-5-1957 issued in supersession thereof purportedly for correcting an error therein not published in gazette — Contention that Jantar Mantar could not be treated as "protected monument" since Noti. dt. 3-5-1957 was not published in gazette and hence, prohibition contained in Noti. dt. 16-6-1992 for purposes of construction within the stipulated area was inapplicable to respondents' construction activity — Tenability — Held, even though Noti. dt. 3-5-1957 did not become effective because it was not published in Official Gazette, earlier Notification issued on 4-10-1956 remained effective and same was saved by S. 39(2) — General Clauses Act, 1897 — S. 23 — Non-publication of notification requiring publication — Effect**

B. **Ancient Monuments and Archaeological Sites and Remains Act, 1958 — Ss. 20-A, 20-B, 20-C, 20-F [as inserted by Act 10 of 2010] and Ss. 2(a), 3, 4, 38(1), (2)(a) & (b), 39(2) — Powers of Central Government to permit public work or any project in prohibited/protected area — Expression "such other work or project" occurring in S. 20-A(3)(b) — Implication of — "Renovation" — Scope of — Held, said former expression implies larger public interest in contrast to private interest and in no case should construction be allowed if the same adversely affects ancient and historical monuments or archaeological sites — Moreover, term "renovation" appearing in S. 20-C take its colour from the word "repair" appearing therein — This would mean that in the garb of renovation, owner of a**

† From the Judgment and Order dated 23-7-2004 of the High Court of Delhi at New Delhi in FAO (OS) No. 414 of 2002 and WP (C) No. 2635 of 2002

building cannot demolish the existing structure and raise a new one and competent authority cannot grant permission for such reconstruction — Ancient Monuments and Archaeological Sites and Remains Rules, 1959, Rr. 31, 32 and 33

C. **Constitution of India — Art. 226 — Mandamus — Issuance — Propriety — Direction to review Noti. dt. 16-6-1992 prohibiting construction/mining operations within stipulated area of prohibited monuments — Held, said notification was issued for preserving and protecting ancient and historical monuments and archaeological sites and remains of national importance — In the name of development and accommodating need for multi-storeyed structures, High Court could not have issued mandamus to Central Government to review notification — Notification confirmed and mandamus revoked — Constitution of India, Art. 49**

D. **Ancient Monuments and Archaeological Sites and Remains Act, 1958 — Ss. 2(a), 3, 4, 38(1), (2)(a) & (b) and Ss. 20-A, 20-B, 20-C, 20-F [as inserted by Act 10 of 2010] — Noti. dt. 16-6-1992 inter alia declaring area up to 100 m from protected limits and further beyond it up to 200 m from protected monuments to be prohibited and regulated areas, respectively for construction/mining purposes — Interpretation of — Held, as rightly interpreted by High Court, 100 m is to be counted from outer boundary wall of monument concerned i.e. Jantar Mantar which has protected area of 5.39 acres and not physical structures of Jantar Mantar observatory — Constitution of India, Art. 49**

E. **Ancient Monuments and Archaeological Sites and Remains Act, 1958 — S. 20-A [as inserted by Act 10 of 2010] — Scope of — Explained — Ancient Monuments and Archaeological Sites and Remains Rules, 1959, Rr. 31, 32 and 33**

F. **Ancient and Protected Monuments, Art and Antiquities — State protection — Archaeological and historical pursuits beginning from 18th Century, traced (Paras 3 to 5)**

The Central Government issued Notification dated 4-10-1956 declaring Jantar Mantar, New Delhi to be protected monument, which was published in the gazette on 13-10-1956. Since an error had crept therein stating that the Maharaja of Jaipur was the owner thereof, another notification in supersession of earlier notification was issued on 3-5-1957 and the Government of Rajasthan was shown as the owner. However, the said notification was not published in the Official Gazette. Thereafter on 16-6-1992 another notification was issued which was duly published in the Official Gazette declaring an area up to 100 m from the protected limits and further beyond it up to 200 m adjoining the protected monument to be prohibited and regulated areas, respectively for purposes of mining operations and constructions.

A building plan of Respondents 1 and 2 who owned a plot in Janpath Lane was sanctioned sometime in September 2000. Thereafter the respondents demolished the existing structure and started digging a foundation for the new building. On 5-5-2001, the Conservation Assistant of Archaeological Survey of India lodged a complaint about excavations and constructions undertaken by

respondents which was in violation of the prohibition contained in Notification dated 16-6-1992. The Archaeological Survey also informed NDMC that the sanction accorded by it was contrary to the notification. Thereupon, NDMC issued notice dated 23-5-2001 to the respondents directing them to stop construction and to obtain necessary permission from Archaeological Survey of India.

Respondents 1 and 2 challenged the letter of NDMC and prayed that the restriction imposed on the construction of building be declared as nullity.

The Single Judge found that in the absence of publication of Notification dated 3-5-1957, the said notification was ineffective and the subsequent Notification dated 8-1-1958 in which reference was made to the earlier Notification dated 3-5-1957 was also ineffective and the prohibition contained in the Notification dated 16-6-1992 cannot be made applicable to the plot of Respondents 1 and 2.

During the pendency of the appeal filed against the order of the Single Judge, Heritage and Culture Forum, Delhi filed writ petition by way of public interest litigation and prayed for issuance of a mandamus for stopping the construction of multi-storeyed building on the plot owned by Respondents 1 and 2. The respondents besides challenging the locus standi of Heritage and Culture Forum to challenge the permission granted to them for the construction of a building, pleaded that Jantar Mantar, New Delhi, cannot be treated as a protected monument because the Notification dated 3-5-1957 was not published in the Official Gazette, and as such, the prohibition contained in Notification dated 16-6-1992 was inapplicable to them. The Division Bench of the High Court before whom the writ petition came up, opined that Jantar Mantar was already declared a protected monument by Notification dated 4-10-1956 and that in view of the prohibition contained in Notification dated 16-6-1992 the respondents were not entitled to raise construction on Janpath Lane because the same was within 100 m of the protected monument. It also directed the Central Government to review the Notification dated 16-6-1992. Hence, the instant appeal.

During the pendency of the instant appeals, the Ancient Monuments and Archaeological Sites and Remains Act, 1958 was amended by the Ancient Monuments and Archaeological Sites and Remains (Amendment and Validation) Act, 2010 and Sections 20-A and 20-B were inserted with effect from 16-6-1992 and Sections 20-C to 20-Q were inserted with effect from 29-3-2010.

Allowing the appeals, the Supreme Court

Held :

With the insertion of Section 20-A since 2010 it has been made clear that every area, beginning at the limit of the protected area or the protected monument, as the case may be, and extending to a distance of one hundred metres in all directions shall be the prohibited area in respect of such protected area or protected monument. Not only this, by virtue of the proviso to Section 20-A(1) the Central Government has been clothed with the power to extend the prohibition beyond 100 m by issuing a notification in the Official Gazette keeping in view the classification of any protected monument or protected area, as the case may be. (Paras 45 and 46)

In terms of Section 20-A(2), no person other than an Archaeological Officer can carry out any construction in any prohibited area. Section 20-C is an exception to Section 20-A(2) which lays down that any person who owns any building or structure, which existed in a prohibited area before 16-6-1992 or had

been subsequently constructed with the approval of the Director General may carry out any repair or renovation of such building or structure by making an application to the competent authority. The term "renovation" appearing in Section 20-C take its colour from the word "repair" appearing in that section. This would mean that in the garb of renovation, the owner of a building cannot demolish the existing structure and raise a new one and the competent authority cannot grant permission for such reconstruction. (Para 47)

The use of the expression "such other work or project" in Section 20-A(3)(*b*), if interpreted in isolation, may give an impression that the Central Government or the Director General is empowered to allow any other work or project by any person in the prohibited area but, the said expression has to be interpreted keeping in view the mandate of Article 49 of the Constitution and the objects sought to be achieved by enacting the 1958 Act i.e. preservation of ancient and historical monuments, archaeological sites and remains of national importance. This would necessarily imply that "such other work or project" must be in the larger public interest in contrast to private interest. Any other interpretation of this provision would destroy the very object of the 1958 Act and the prohibition contained in the Notification dated 16-6-1992 and Section 20-A(1) would become redundant. It also needs to be emphasised that public interest must be the core factor to be considered by the Central Government or the Director General before allowing any construction and in no case the construction should be allowed if the same adversely affects the ancient and historical monuments or archaeological sites. (Paras 48 and 49)

The High Court's anxiety to maintain a balance between the dire necessity of protecting historical monuments of national and international importance and development of infrastructure is understandable, but it is not possible to approve the fiat issued to the Central Government to review the prohibition contained in the Notification dated 16-6-1992. That notification was issued by the Central Government for implementing the policy enshrined in Article 49 of the Constitution and the 1958 Act i.e. to preserve and protect ancient and historical monuments and archaeological sites and remains of national importance. Therefore, in the name of development and accommodating the need for multi-storeyed structures, the High Court could not have issued a mandamus to the Central Government to review/reconsider the Notification dated 16-6-1992 and that too by ignoring that after Independence a large number of protected monuments have been facing the threat of extinction and if effective steps are not taken to check the same, these monuments may become part of history. (Paras 50 and 51)

One of such protected monuments facing extinction is Jantar Mantar, New Delhi. Some of its instruments have become unworkable/non-functional which is largely due to construction of multi-storeyed structures around Jantar Mantar. Therefore, the High Court was not justified in directing the Central Government to review or reconsider the Notification dated 16-6-1992 and, to that extent, the impugned judgment is liable to be set aside. (Para 52)

The appeal of Respondents 1 and 2 is wholly meritless. The High Court has rightly held that even though the Notification dated 3-5-1957 did not become effective because the same was not published in the Official Gazette, the earlier Notification issued on 4-10-1956 remained effective and the same was saved by Section 39(2) of the 1958 Act. The High Court's interpretation of the prohibition contained in the Notification dated 16-6-1992 is correct and the distance of

100 m has to be counted from the outer boundary wall of Jantar Mantar which has protected area of 5.39 acres and not from the physical structures of the observatory. (Para 53)

Heritage and Culture Forum v. *Union of India*, WP (C) No. 2635 of 2002, order dated 26-4-2002 (Del); *Heritage and Culture Forum* v. *Union of India*, WP (C) No. 2635 of 2002, order dated 6-8-2003 (Del); *Archaeological Survey of India* v. *Narender Anand*, Civil Appeal No. 2430 of 2006, order dated 29-9-2010 (SC), *referred to*

P-D/49340/C

Advocates who appeared in this case :

Mohan Parasaran and H.P. Raval, Additional Solicitors General, A. Mariarputham, J.S. Attri, Senior Advocates [Ashok Bhan, Ms Shweta Verma, Ms Asha G. Nair, Pradeep Kr. Bakshi, Rajat N., Ms Bohra Anand, Ms Anjani Aiyagiri, Pawan Bindra, Ms Kavita Wadia, Vishnu B. Saharya (for M/s Saharya & Co.) and Ravindra Kumar, Advocates] for the appearing parties.

Chronological list of cases cited ***on page(s)***

1. Civil Appeal No. 2430 of 2006, order dated 29-9-2010 (SC), *Archaeological Survey of India* v. *Narender Anand* 578*c*
2. WP (C) No. 2635 of 2002, order dated 6-8-2003 (Del), *Heritage and Culture Forum* v. *Union of India* 576*d-e*
3. WP (C) No. 2635 of 2002, order dated 26-4-2002 (Del), *Heritage and Culture Forum* v. *Union of India* 576*b-c*

The Judgment of the Court was delivered by

G.S. SINGHVI, J.— These appeals are directed against the judgment of the Division Bench of the Delhi High Court whereby the appeal filed by the Archaeological Survey of India (the appellant in CA No. 2430 of 2006 and Respondent 1 in CA No. 2431 of 2006) was allowed and the order of injunction passed by the learned Single Judge in IA No. 2912 of 2002 in Suit No. 645 of 2002 allowing Shri Narender Anand and M/s Raval Apartments Pvt. Ltd. (Respondents 1 and 2 in CA No. 2430 of 2006 and the appellants in CA No. 2431 of 2006) to raise construction up to the height of 55 ft on Plot No. 14, Janpath Lane, New Delhi was set aside and Writ Petition No. 2635 of 2002 filed by Heritage and Cultural Forum was disposed of with a direction to the Central Government to review Notification dated 16-6-1992 issued under Rule 32 of the Ancient Monuments and Archaeological Sites and Remains Rules, 1959 (for short "the Rules").

2. While the Archaeological Survey of India has questioned the direction given by the Division Bench of the High Court for review of Notification dated 16-6-1992, Respondents 1 and 2 have challenged that portion of the impugned judgment by which the Division Bench vacated the order of injunction passed by the learned Single Judge.

3. Archaeological and historical pursuits in India started with the efforts of Sir William Jones, who put together a group of antiquarians to form the Asiatic Society on 15-1-1784 in Calcutta. He was supported by many persons who carried out survey of monuments in various parts of India. The identification of Chandragupta Maurya with Sandrokottos of Greek historians by Jones helped in fixing a chronological horizon of Indian history. This was followed by the identification of Pataliputra (Palibothra of classical writings)

at the confluence of Ganga and Sone. The decipherment of Gupta and Kutila scripts by Charles Wilkinson was a landmark in this regard. Thereafter, many individuals made contribution in surveying different monuments in India.

4. In 1861, Alexander Cunningham was appointed as the first Archaeological Surveyor. He surveyed areas stretching from Gaya in the east to Indus in the north-west, and from Kalsi in the north to Narmada in the south, between 1861 and 1865. For this, he largely followed the footsteps of the Chinese pilgrim Hiuen Tsang. However, with the abolition of the Archaeological Survey in 1866, this work came to a grinding halt.

5. In the meanwhile, an Act was passed in 1863 empowering the Government to prevent injury to, and preserve the buildings remarkable for their antiquity and historical or architectural value. In 1878, the Treasure Trove Act was enacted which enabled the Government to confiscate treasures and antiques found during chance digging. After 26 years, the Ancient Monuments Preservation Act, 1904 (for short "the 1904 Act") was enacted for the preservation of ancient monuments and objects of archaeological, historical or artistic interest.

6. Section 2(1) of the 1904 Act, which contains the definition of "ancient monument" and Section 3 under which the Central Government was empowered to declare an ancient monument to be a protected monument were as under:

> "**2.** ***Definitions***.—In this Act, unless there is anything repugnant in the subject or context—
>
> (1) '**ancient monument**' means any structure, erection or monument or any tumulus or place of interment, or any cave, rock sculpture, inscription or monolith, which is of historical, archaeological or artistic interest, or any remains thereof, and includes—
>
> (*a*) the site of an ancient monument;
>
> (*b*) such portion of land adjoining the site of an ancient monument as may be required for fencing or covering in or otherwise preserving such monument; and
>
> (*c*) the means of access to and convenient inspection of an ancient monument;
>
> * * *
>
> **3.** ***Protected monuments***.—(1) The Central Government may, by notification in the Official Gazette, declare an ancient monument to be a protected monument within the meaning of this Act.
>
> (2) A copy of every notification published under sub-section (1) shall be fixed up in a conspicuous place on or near the monument, together with an intimation that any objections to the issue of the notification received by the Central Government within one month from the date when it is so fixed up will be taken into consideration.
>
> (3) On the expiry of the said period of one month, the Central Government, after considering the objections, if any, shall confirm or withdraw the notification.

(4) A notification published under this section shall, unless and until it is withdrawn, be conclusive evidence of the fact that the monument to which it relates is an ancient monument within the meaning of this Act."

7. The Framers of the Constitution were very much conscious of the need of protecting the monuments and places/objects of artistic and historic importance. This is why Article 49 was incorporated in the directive principles of State policy (Part IV of the Constitution) whereby an obligation has been imposed on the State to protect every monument or place or object of artistic or historic interest declared by or under law made by Parliament. For the sake of reference Article 49 is reproduced below:

"**49.** ***Protection of monuments and places and objects of national importance***.—It shall be the obligation of the State to protect every monument or place or object of artistic or historic interest, declared by or under law made by Parliament to be of national importance, from spoliation, disfigurement, destruction, removal, disposal or export, as the case may be."

8. In 1951, Parliament enacted the Ancient and Historical Monuments and Archaeological Sites and Remains (Declaration of National Importance) Act, 1951, whereby certain monuments, etc. were declared to be of national importance. After 7 years, Parliament enacted the Ancient Monuments and Archaeological Sites and Remains Act, 1958 (for short "the 1958 Act") to provide for the preservation of ancient and historical monuments and archaeological sites and remains of national importance, for the regulation of archaeological excavations and for the protection of sculptures, carvings and other like objects. Similar legislations have been enacted by various State Legislatures with reference to Schedule VII List II Entry 12 of the Constitution.

9. The definition of "ancient monument" contained in Section 2(*a*) and Sections 3, 4, 38(1), (2)(*a*) and (*b*) and 39 of the 1958 Act, which are relevant for deciding the issues raised in these appeals are reproduced below:

"**2.** ***Definitions***.—In this Act, unless the context otherwise requires—

(*a*) '**ancient monument**' means any structure, erection or monument, or any tumulus or place of interment, or any cave, rock sculpture, inscription or monolith, which is of historical, archaeological or artistic interest and which has been in existence for not less than one hundred years, and includes—

(*i*) the remains of an ancient monument,

(*ii*) the site of an ancient monument,

(*iii*) such portion of land adjoining the site of an ancient monument as may be required for fencing or covering in or otherwise preserving such monument, and

(*iv*) the means of access to, and convenient inspection of an ancient monument;

* * *

3. ***Certain ancient monuments, etc. deemed to be of national importance***.—All ancient and historical monuments and all archaeological sites and remains which have been declared by the Ancient and Historical Monuments and Archaeological Sites and Remains (Declaration of National

Importance) Act, 1951 (71 of 1951), or by Section 126 of the States Reorganisation Act, 1956 (37 of 1956), to be of national importance shall be deemed to be ancient and historical monuments or archaeological sites and remains declared to be of national importance for the purposes of this Act.

4. ***Power of Central Government to declare ancient monument, etc. to be of national importance***.—(1) Where the Central Government is of opinion that any ancient monument or archaeological site and remains not included in Section 3 is of national importance, it may, by notification in the Official Gazette, give two months' notice of its intention to declare such ancient monument or archaeological site and remains to be of national importance; and a copy of every such notification shall be affixed in a conspicuous place near the monument or site and remains, as the case may be.

(2) Any person interested in any such ancient monument or archaeological site and remains may, within two months after the issue of the notification, object to the declaration of the monument, or the archaeological site and remains, to be of national importance.

(3) On the expiry of the said period of two months, the Central Government may, after considering the objections, if any, received by it, declare by notification in the Official Gazette, the ancient monument or the archaeological site and remains; as the case may be, to be of national importance.

(4) A notification published under sub-section (3) shall, unless and until it is withdrawn, be conclusive evidence of the fact that the ancient monument or the archaeological site and remains to which it relates is of national importance for the purposes of this Act.

* * *

38. ***Power to make rules***.—(1) The Central Government may, by notification in the Official Gazette and subject to the condition of previous publication, make rules for carrying out the purposes of this Act.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely—

(*a*) the prohibition or regulation by licensing or otherwise of mining, quarrying, excavating, blasting or any operation of a like nature near a protected monument or the construction of buildings on land adjoining such monument and the removal of unauthorised buildings;

(*b*) the grant of licences and permissions to make excavations for archaeological purposes in protected areas, the authorities by whom and the restrictions and conditions subject to which, such licences may be granted, the taking of securities from licensees and the fees that may be charged for such licences;

* * *

39. ***Repeals and saving***.—(1) The Ancient and Historical Monuments and Archaeological Sites and Remains (Declaration of National Importance) Act, 1951 (71 of 1951), and Section 126 of the States Reorganisation Act, 1956 (37 of 1956), are hereby repealed.

(2) The Ancient Monuments Preservation Act, 1904 (7 of 1904), shall cease to have effect in relation to ancient and historical monuments and archaeological sites and remains declared by or under this Act to be of national importance, except as respects things done or omitted to be done before the commencement of this Act."

10. In exercise of the power vested in it under Section 38 of the 1958 Act, the Central Government enacted the Ancient Monuments and Archaeological Sites and Remains Rules, 1959 the relevant provisions whereof are extracted below:

"**31.** ***Notice or intention to declare a prohibited or regulated area.***— (1) Before declaring an area near or adjoining a protected monument to be a prohibited area or a regulated area for purposes of mining operation or construction or both, the Central Government shall, by notification in the Official Gazette, give one month's notice of its intention to do so, and a copy of such notification shall be affixed in a conspicuous place near the area.

(2) Every such notification shall specify the limits of the area which is to be so declared and shall also call for objection, if any, from interested persons.

32. ***Declaration of prohibited or regulated area.***—After the expiry of one month from the date of the notification under Rule 31 and after considering the objections, if any, received within the said period, the Central Government may declare, by notification in the Official Gazette, the area specified in the notification under Rule 31, or any part of such area, to be a prohibited area, or, as the case may be, a regulated area for purposes of mining operation or construction or both.

33. ***Effect of declaration of prohibited or regulated area.***—No person other than an Archaeological Officer shall undertake any mining operation or any construction—

(*a*) in a prohibited, area, or

(*b*) in a regulated area except under and in accordance with the terms and conditions of a licence granted by the Director General."

11. Jantar Mantar, New Delhi is one of the five unique observatories built between 1699 and 1743 by Maharaja Jai Singh (II) of Jaipur, who was a great Mathematician and Astronomer. The other observatories are at Jaipur, Ujjain, Varanasi and Mathura. Jantar Mantar, New Delhi, like other observatories has several instruments that can graph the path of the astronomical universe. There is a colossal Samrat Yantra at the periphery of Jantar Mantar. To the south of Samrat Yantra, there is an amazing instrument called Jai Prakash, which has two concave hemispherical structures used for determining the position of the sun and celestial bodies. The other important yantras are Misra Yantra, Daksinovarti Bhitti Yantra, Karka Rasivalaya, Niyat Chakra, Rama Yantra, Brihat Samrat and Sasthamsa Yantra. Unfortunately, some of these yantras have been rendered unworkable or have become non-functional. One of the main reasons for this is the construction of multi-storeyed structures which have come up in the vicinity of Jantar Mantar in the last 25 to 30 years.

12. In exercise of the powers conferred by Section 3(1) of the 1904 Act, the Central Government issued Notification dated 4-10-1956, which was published in the Gazette of India dated 13-10-1956, declaring Jantar Mantar, New Delhi to be a protected monument.

13. That notification reads as under:

"MINISTRY OF EDUCATION

ARCHAEOLOGY

New Delhi, 4-10-1956

SRO 2306.—In exercise of the powers conferred by sub-section (1) of Section 3 of the Ancient Monuments Preservation Act, 1904 (7 of 1904), the Central Government hereby declares the ancient monument described in the Schedule annexed hereto to be a protected monument within the meaning of the said Act.

SCHEDULE

Sl. No.	*District*	*Locality*	*Name of monument*	*Area*	*Boundary: East, South, North, West*	*Whether in religious use*	*Ownership*	*Remarks*
	Delhi	New Delhi	Jantar Mantar	Protected area 5.39	South: South India Club, 9, Jantar Mantar Road East: Low land with a modern temple and well West: Jantar Mantar Road North-East: Partap Singh Building North-West: Parliament Street	No	Maha-raja of Jaipur	

(No. F-3-76/50-C-1)

D. Chakravarti

Under-Secretary"

14. With a view to correct an obvious mistake committed by showing Maharaja of Jaipur as the owner of Jantar Mantar in the Schedule to the aforesaid notification, the Central Government issued Notification dated 3-5-1957 under Section 3(1) of the 1904 Act, which reads as under:

"TO BE PUBLISHED IN THE GAZETTE OF INDIA

PART II SECTION III

No. F.3-76/50-0.1

Government of India

Ministry of Education

New Delhi, dated 3-5-1957

NOTIFICATION

(ARCHAEOLOGY)

In exercise of powers conferred by sub-section (1) of Section 3 of the Ancient Monuments Preservation Act, 1904 (7 of 1904) and in supersession

of notification of the Government of India, Ministry of Education No. F.3-76/50/0.1 dated 4-10-1956, the Central Government hereby declares the ancient monument described in the Schedule annexed hereto to be a protected monument within the meaning of the said Act.

sd/-
(Rameshwar Dass)
Under-Secretary

The Publisher,
Gazette of India,
New Delhi."

15. The Schedule annexed with that notification is reproduced below:

"City	*Locality*	*Name of monument*	*Area*	*Boundary: East, South, North, West*	*Ownership*
1	2	3	4	5	6
Delhi	New Delhi	Jantar Mantar	Protected area 5.39	South: South India Club, 9, Jantar Mantar Road East: Low land with a modern temple and well West: Jantar Mantar Road North-East: Partap Singh Building North-West: Parliament Street	Government of Rajasthan"

16. Although Notification dated 3-5-1957 was not published in the Official Gazette, as was done in the case of Notification dated 4-10-1956, the only difference in the two notifications was that in the Schedule appended to the first notification, the ownership of Jantar Mantar was shown to be that of "Maharaja of Jaipur" and in the second notification, the owner of Jantar Mantar was shown as the Government of Rajasthan. What needs to be emphasised is that after merger of the erstwhile State of Jaipur and formation of the State of Rajasthan, the Maharaja of Jaipur did not retain his earlier status and he no longer remained the owner of Jantar Mantar because it was not his private property.

17. In exercise of the power vested in it under Rule 31 of the Rules, the Central Government issued Notification dated 15-5-1991, which was published in the Gazette of India dated 25-5-1991, and gave notice of its intention to declare an area of 100 m from the protected limits and further beyond it up to 200 m near or adjoining protected monuments to be prohibited and regulated areas respectively for the purposes of mining operations and constructions.

18. After considering the objections/suggestions received from the public, the Central Government issued Notification dated 16-6-1992, which was duly published in the Official Gazette.

19. The final notification reads thus:

"DEPARTMENT OF CULTURE

(Archaeological Survey of India)

New Delhi, 16-6-1992

(ARCHAEOLOGY)

S.O. 1764.—Whereas by the notification of the Government of India in the Department of Culture, Archaeological Survey of India No. S.O. 1447 dated 15-5-1991 published in the Gazette of India, Part II Section 3 sub-section (*ii*) dated 25-5-1991, the Central Government gave one month's notice of its intention to declare area up to 100 m from the protected limits, and further beyond it up to 200 m near or adjoining protected monuments to be prohibited and regulated areas respectively for purposes of both mining operation and construction.

And whereas the said Gazette was made available to the public on 5-6-1991.

And whereas objections to the making of such declaration received from the person interested in the said areas have been considered by the Central Government.

Now, therefore, in exercise of the powers conferred by Rule 32 of the Ancient Monuments and Archaeological Sites and Remains Rules, 1959, the Central Government hereby declares the said areas to be prohibited and regulated areas. This shall be in addition to and not in any way prejudice the similar declarations already made in respect of monuments at Fatehpur Sikri; Mahabalipuram; Golcunda Fort, Hyderabad (Andhra Pradesh); Thousands Pillared Temple, Hanamkonda, Distt. Warangal (Andhra Pradesh); Shershah Tomb, Sasaram (Bihar); Rock Edict of Ashoka, Kopbal, Distt. Raichur (Karnataka); Gomateshwara Statue at Sravanbelgola, District Hassan (Karnataka); Elephanta Caves, Gharapur, District Kolba (Maharashtra).

(No. F.8/2/90-M-M.C.)

M.C. Joshi

Director General"

20. Respondents 1 and 2, who own Plot No. 14, Janpath Lane submitted an application to the New Delhi Municipal Corporation (for short "the Corporation") sometime in August 1986 for sanction of the building plan for the construction of multi-storeyed commercial building. The same was rejected vide letter dated 15-9-1986 on the ground that the area was under comprehensive development and the details of redevelopment controls/ drawings, if any, finalised by the Delhi Development Authority (for short "DDA") were not available with the Corporation.

21. After about 7 years, Respondents 1 and 2 again submitted application dated 24-6-1993 for sanction of the building plan. The DDA vide its letter dated 1-10-1993 suggested to the Corporation that Plot No. 14, Janpath Lane formed part of redevelopment scheme and the building plan should be approved as per the Development Control Norms. The building plan was finally sanctioned by the Corporation sometime in September 2000 and was released on 5-3-2001. Thereafter, Respondents 1 and 2 demolished the existing structure and started digging foundation for the new building.

22. On 5-5-2001, the Conservation Assistant of Archaeological Survey of India lodged a complaint about the excavation and construction being undertaken by Respondents 1 and 2 in violation of the prohibition contained in Notification dated 16-6-1992. The Superintending Archaeologist, Archaeological Survey of India, vide his letter dated 10-5-2001 informed the Corporation that the sanction given by it was contrary to Notification dated 16-6-1992. Thereupon, the Corporation issued notice dated 23-5-2001 to Respondents 1 and 2 and directed them to stop the construction and obtain the requisite permission from the Archaeological Survey of India.

23. Respondents 1 and 2 challenged the letter of the Corporation in Suit No. 645 of 2002 and prayed that the restriction imposed on the construction of building be declared as nullity. They also filed IA No. 2912 of 2002 under Order 39 Rules 1 and 2 CPC for temporary injunction. On 22-3-2002, the learned Single Judge directed registration of the suit and passed an ex parte injunction order whereby the Corporation was restrained from giving effect to letter dated 23-5-2001 subject to the condition that Respondents 1 and 2 shall furnish an undertaking that they will raise construction up to the height of 55 ft only.

24. On notice, the Archaeological Survey of India filed IA No. 4479 of 2002 for modification of order dated 22-3-2002. The same was disposed of by the learned Single Judge with a direction to Respondents 1 and 2 not to raise the construction beyond the DPC level. The injunction application was finally allowed by the learned Single Judge vide order dated 30-10-2002 and the order dated 22-3-2002 was made absolute.

25. The learned Single Judge noted that despite several opportunities, the counsel representing the Archaeological Survey of India failed to produce a copy of the Official Gazette in which the Notification dated 3-5-1957 was published and held that in the absence of such publication, the notification cannot be treated as effective. The learned Single Judge further held that the subsequent Notification dated 8-1-1958 in which reference was made to the earlier Notification dated 3-5-1957 was also ineffective and in the absence of a legally binding notification not having been issued under Section 3(1) of the 1904 Act, the prohibition contained in the Notification dated 16-6-1992 cannot be made applicable to the plot of Respondents 1 and 2.

26. IA No. 10985 of 2002 filed by the Archaeological Survey of India for review of the injunction order was disposed of by the learned Single Judge on 27-11-2002 by taking cognizance of the concession made by the counsel appearing on its behalf that the Notification dated 3-5-1957 had not been published in the Official Gazette. The Archaeological Survey of India challenged the order of injunction in FAO (OS) No. 414 of 2002 mainly on the ground that while deciding the application for injunction, the learned Single Judge had misinterpreted the notifications issued under Section 3(1) of the 1904 Act and Section 39 of the 1958 Act.

27. During the pendency of the appeal filed against the order of the learned Single Judge, Heritage and Culture Forum, Delhi filed Writ Petition

No. 2635 of 2002 by way of public interest litigation and prayed for issuance of a mandamus for stopping the construction of multi-storeyed building on the plot owned by Respondents 1 and 2 by asserting that the same was contrary to the provisions of the 1958 Act and the Rules framed thereunder and the prohibition imposed on the construction of buildings within 100 m of the protected monument.

28. In their counter-affidavit, Respondents 1 and 2 not only questioned the locus standi of Heritage and Culture Forum to challenge the permission granted to them for the construction of building, but also pleaded that the prohibition contained in the Notification dated 16-6-1992 was not applicable to their plot. On behalf of the Archaeological Survey of India, the Superintending Archaeologist filed counter-affidavit and pleaded that the building plan sanctioned by the Corporation which enabled Respondents 1 and 2 to construct the building was violative of the prohibition contained in the Notification dated 16-6-1992.

29. At the hearing of the appeal, the learned counsel for Respondents 1 and 2 reiterated the plea taken before the learned Single Judge that Jantar Mantar, New Delhi cannot be treated as a protected monument because the Notification dated 3-5-1957 had not been published in the Official Gazette and as such the prohibition contained in the Notification dated 16-6-1992 was not applicable to his clients. He then argued that there was no justification to enforce the prohibition qua Plot No. 14, Janpath Lane because a number of other buildings including Phase II of the Corporation's building had already been constructed around Jantar Mantar in violation of the restriction of 100 m.

30. The Division Bench of the High Court took cognizance of the fact that the Corporation had constructed Phase II building in violation of the prohibition contained in the Notification dated 16-6-1992 and directed the Archaeological Survey of India to explain why such construction of that building was not stopped. Thereupon, the Superintending Archaeologist filed affidavit dated 26-5-2003. In Paras III(1) and (2) of his affidavit, the deponent spelt out the details of the objections raised by the Archaeological Survey of India against the construction of Phase II building of the Corporation and claimed that the officers of the Corporation continued with the construction despite objections.

31. In Para IV of his affidavit, the deponent made the following statement:

> "IV. That it is evident from the abovestated chronology of events that insofar as ASI is concerned, it pursued the matter with NDMC and the Government of NCT of Delhi vigorously with the hope that NDMC would stop the construction. However, despite best efforts of ASI, nothing was being done to ensure that the construction activity at the site takes place in accordance with the provisions of law. It is only on 26-8-2003 that an application in the prescribed form has been submitted by NDMC, seeking the permission of the Archaeological Survey of India

to sanction the construction in the regulated area. It is respectfully submitted that the Archaeological Survey of India does not have any machinery, either to demolish the construction or to stop the construction and therefore it could do only as much in the present case, since it involved a local authority, and for the purposes of execution of its orders ASI has to depend upon the assurance of the local government only. It is significant to note that in the present case the construction was carried out by none other than the municipal authority, and, as such, there was nothing that the Archaeological Survey of India could do except to persuade the authority concerned to dissuade from persisting with the same. Towards the said directions, best efforts were made by ASI, but to no avail."

32. In compliance with the order dated 26-4-2002[1] passed by the Division Bench of the High Court, the Corporation submitted a status report containing the details of the applications made by Respondents 1 and 2 and sanction of the building plan. The status report also made a mention of letter dated 25-9-2001 written by DDA to the Corporation that the objections/ suggestions made by the Archaeological Survey of India regarding setbacks and heights were considered while finalising the Redevelopment Scheme in 1989, which was approved by DDA on 24-5-1994 and by the Ministry of Urban Development in October 1994.

33. In compliance with another order passed by the Division Bench on 6-8-2003[2], the Corporation explained its position regarding Phase II building by stating that approval for NDMC, New Delhi City Centre was granted vide Resolution dated 12-2-1969 and the building was to be constructed in two phases. That plan for Phase II was approved by the Delhi Urban Arts Commission on 13-3-1992 and the building was constructed without violating the 100 m restriction.

34. Respondents 1 and 2 also filed an affidavit and claimed that the proposed building is 218 ft away from the outer boundary of Jantar Mantar and 101.46 m from the protected monument. According to Respondents 1 and 2, in terms of the sanction plan they are entitled to construct a building up to the height of 75 ft but the learned Single Judge has allowed construction only up to 55 ft.

35. The Division Bench of the High Court first considered the implication of the concession made before the learned Single Judge by the counsel appearing for the Archaeological Survey of India that the Notification dated 3-5-1957 had not been published in the Official Gazette as per the requirement of Section 3(2)* of the 1904 Act and observed that the so-called concession was inconsequential because a copy of the Official Gazette had, in fact, not been produced before the Court. The Division Bench

1 *Heritage and Culture Forum* v. *Union of India*, WP (C) No. 2635 of 2002, order dated 26-4-2002 (Del)

2 *Heritage and Culture Forum* v. *Union of India*, WP (C) No. 2635 of 2002, order dated 6-8-2003 (Del)

* **Ed.**: *See also* Section 3(1) of the 1904 Act at p. 567*f-g*, above.

then considered the question whether Jantar Mantar is a protected monument, referred to the Notifications dated 4-10-1956 and 3-5-1957 and observed that the second notification had been issued only with a view to correct the mistake which had been committed in mentioning the name of Maharaja of Jaipur in the column of "ownership" of the first notification.

36. The Division Bench opined that Jantar Mantar had already been declared as a protected monument by the Notification dated 4-10-1956, which was specifically saved by Section 39(2) of the 1958 Act. The Division Bench then referred to the Notification dated 16-6-1992 and held that in view of the prohibition contained therein, Respondents 1 and 2 were not entitled to raise construction on Plot No. 14, Janpath Lane because the same was within 100 m of the protected monument.

37. The observations made by the Division Bench in this respect are extracted below:

> "The Notification dated 4-10-1956 clearly refers to the protected area as comprising 5.39 acres. It is not in dispute that the entire area within the boundary wall comprises of these from 5.39 acres. Thus, reading the 1956 Notification itself makes it clear that what is protected is not just the buildings/structures comprised within, which collectively go by the name Jantar Mantar, but the entire area of 5.39 acres. Now, reading the Notification dated 16-6-1992, it is apparent that what has been prohibited is mining and construction activity within 100 m 'from the protected limits' of the protected monuments. Therefore, the measurement that has to be obtained is not from the structures but from the boundary wall or in other words from 'the limits of the protected area'. If that is so, then there is no dispute that the proposed building at Plot No. 14, Janpath Lane falls within 100 m thereof."

38. The Division Bench rejected the argument of Respondents 1 and 2 that in view of the provisions contained in the Delhi Development Act, 1957 (for short "the DDA Act"), which is a special law enacted for planned development of Delhi, the prohibition contained in the Notification dated 16-6-1992 issued under Rule 32 of the Rules framed under Section 38 of the 1958 Act will not be applicable to their case. In the opinion of the Division Bench, there is no conflict between the provisions of the DDA Act and the 1958 Act because the two statutes operate in different fields and even if there was some conflict, the 1958 Act being a special law enacted for the preservation and protection of ancient monuments would prevail over the DDA Act.

39. The Division Bench then noted that several buildings including the Phase II building of the Corporation had come up in violation of the prohibition contained in the Notification dated 16-6-1992 but did not delve deep into the issue because an undertaking was given on behalf of the Corporation that the basement of the building constructed in violation of the prohibition shall not be used.

40. Finally, the Division Bench vacated the order of injunction passed by the learned Single Judge but proceeded to direct the Central Government to review the Notification dated 16-6-1992 by observing that a provision could be made for relaxation of the prohibition on case to case basis because the degree and type of protection depends upon variables such as the nature of protected monument, its location, the weather conditions, the topography, the soil, etc. and there has to be application of mind on these and other issues linked with preservation of monuments and the Archaeological Survey of India cannot take shelter of the notification prohibiting construction within 100 m from the boundary of the protected monument in each and every case for refusing permission or licence for construction.

41. Before proceeding further, we deem it proper to mention that in compliance with the direction given by this Court on 29-9-2010[3], an additional affidavit was filed on behalf of the Corporation detailing the events leading to the construction of its Phase II building. In the end, it has been stated that the Director General, Archaeological Survey of India has accorded ex post facto approval to the construction of that building. In support of this assertion, copies of letter dated 11-2-2005 issued by the Director General, Archaeological Survey of India to the Chairperson of the Corporation conveying ex post facto approval and licence dated 21-2-2005 issued by the Superintending Archaeologist, Delhi Circle, have been placed on record.

42. Respondents 1 and 2 also filed additional affidavit stating therein that while they are not being allowed to construct a building, the Corporation has constructed multi-storeyed building within 70 m of the protected monument and this is in clear violation of the prohibition contained in the Notification dated 16-6-1992.

43. At this stage, it is apposite to mention that during the pendency of these appeals the 1958 Act was amended by the Ancient Monuments and Archaeological Sites and Remains (Amendment and Validation) Act, 2010 and Sections 20-A and 20-B were inserted with effect from 16-6-1992 and Sections 20-C to 20-Q were inserted with effect from 29-3-2010.

44. Since the validity of the Amendment Act has not been questioned before us, we do not propose to examine the same. However, we would like to notice the provisions of Sections 20-A, 20-B, 20-C and 20-F(1) and (2), the interpretation of which will have far-reaching impact on the future of protected monuments of national and international importance including Jantar Mantar, New Delhi. These sections read as under:

> "**20-A.** ***Declaration of prohibited area and carrying out public work or other works in prohibited area***.—Every area, beginning at the limit of the protected area or the protected monument, as the case may be, and extending to a distance of one hundred metres in all directions shall be the prohibited area in respect of such protected area or protected monument:
>
> Provided that the Central Government may, on the recommendation of the Authority, by notification in the Official Gazette, specify an area more

3 *Archaeological Survey of India* v. *Narender Anand*, Civil Appeal No. 2430 of 2006, order dated 29-9-2010 (SC)

than one hundred metres to be the prohibited area having regard to the classification of any protected monument or protected area, as the case may be, under Section 4-A.

(2) Save as otherwise provided in Section 20-C, no person, other than an archaeological officer, shall carry out any construction in any prohibited area.

(3) In a case where the Central Government or the Director General, as the case may be, is satisfied that—

(*a*) it is necessary or expedient for carrying out such public work or any project essential to the public; or

(*b*) such other work or project, in its opinion, shall not have any substantial adverse impact on the preservation, safety, security of, or, access to, the monument or its immediate surrounding.

It or he may, notwithstanding anything contained in sub-section (2), in exceptional cases and having regard to the public interest, by order and for reasons to be recorded in writing, permit, such public work or project essential to the public or other constructions, to be carried out in a prohibited area:

Provided that any area near any protected monument or its adjoining area declared, during the period beginning on or after the 16th day of June, 1992 but ending before the date on which the Ancient Monuments and Archaeological Sites and Remains (Amendment and Validation) Bill, 2010, receives the assent of the President, as a prohibited area in respect of such protected monument, shall be deemed to be the prohibited area declared in respect of that protected monument in accordance with the provisions of this Act and any permission or licence granted by the Central Government or the Director General, as the case may be, for the construction within the prohibited area on the basis of the recommendation of the Expert Advisory Committee, shall be deemed to have been validly granted in accordance with the provisions of this Act, as if this section had been in force at all material times:

Provided further that nothing contained in the first proviso shall apply to any permission granted, subsequent to the completion of construction or reconstruction of any building or structure in any prohibited area in pursuance of the notification of the Government of India in the Department of Culture (Archaeological Survey of India) No. S.O. 1764, dated 16-6-1992 issued under Rule 34 of the Ancient Monuments and Archaeological Sites and Remains Rules, 1959, or, without having obtained the recommendations of the Committee constituted in pursuance of the order of the Government of India No. 24/22/2006-M, dated 20-7-2006 (subsequently referred to as the Expert Advisory Committee in orders dated 27-8-2008 and 5-5-2009).

(4) No permission, referred to in sub-section (3), including carrying out any public work or project essential to the public or other constructions, shall be granted in any prohibited area on and after the date on which the Ancient Monuments and Archaeological Sites and Remains (Amendment and Validation) Bill, 2010 receives the assent of the President.

20-B. ***Declaration of regulated area in respect of every protected monument***.—(1) Every area, beginning at the limit of prohibited area in respect of every ancient monument and archaeological site and remains,

declared as of national importance under Sections 3 and 4 and extending to a distance of two hundred metres in all directions shall be the regulated area in respect of every ancient monument and archaeological site and remains:

Provided that the Central Government may, by notification in the Official Gazette, specify an area more than two hundred metres to be the regulated area having regard to the classification of any protected monument or protected area, as the case may be, under Section 4-A:

Provided further that any area near any protected monument or its adjoining area declared, during the period beginning on or after the 16th day of June, 1992 but ending before the date on which the Ancient Monuments and Archaeological Sites and Remains (Amendment and Validation) Bill, 2010, receives the assent of the President, as a regulated area in respect of such protected monument, shall be deemed to be the regulated area declared in respect of that protected monument in accordance with the provisions of this Act and any permission or licence granted for construction in such regulated area shall, be deemed to have been validly granted in accordance with the provisions of this Act, as if this section had been in force at all material times.

20-C. ***Application for repair or renovation in prohibited area, or construction or reconstruction or repair or renovation in regulated area.***— (1) Any person, who owns any building or structure, which existed in a prohibited area before the 16th day of June, 1992, or, which had been subsequently constructed with the approval of the Director General and desires to carry out any repair or renovation of such building or structure, may make an application to the competent authority for carrying out such repair or renovation, as the case may be.

(2) Any person, who owns or possesses any building or structure or land in any regulated area, and desires to carry out any construction or reconstruction or repair or renovation of such building or structure on such land, as the case may be, may make an application to the competent authority for carrying out construction or reconstruction or repair or renovation, as the case may be.

* * *

20-F. ***Constitution of National Monuments Authority.***—(1) The Central Government shall, by notification in the Official Gazette, constitute an Authority to be called as the National Monuments Authority.

(2) The Authority shall consist of—

(*a*) a Chairperson, on whole-time basis, to be appointed by the President, having proven experience and expertise in the fields of archaeology, country and town planning, architecture, heritage and conservation-architecture or law;

(*b*) such number of members not exceeding five whole-time members and five part-time members to be appointed, on the recommendation of the Selection Committee referred to in Section 20-G, by the Central Government, having proven experience and expertise in the fields of archaeology, country and town planning, architecture, heritage, conservation-architecture or law;

(*c*) the Director General as member, ex officio."

45. What has been done by enacting Sections 20-A and 20-B is to give legislative mandate to the concept of prohibited and regulated areas respectively for the purposes of mining operation and construction. Before the 2010 Amendment, the Central Government could issue notification under Rule 31 read with Rule 32 and declare an area near or adjoining a protected monument to be a prohibited area or a regulated area for the purposes of mining operation or construction or both. With the insertion of Section 20-A it has been made clear that every area, beginning at the limit of the protected area or the protected monument, as the case may be, and extending to a distance of one hundred metres in all directions shall be the prohibited area in respect of such protected area or protected monument.

46. Not only this, by virtue of the proviso to Section 20-A(1) the Central Government has been clothed with the power to extend the prohibition beyond 100 m by issuing a notification in the Official Gazette keeping in view the classification of any protected monument or protected area, as the case may be, under Section 4-A. Of course, this power can be exercised only on the recommendations of the Authority as defined in Section 2(*da*) and constituted under Section 20-F. Somewhat similar provision has been made in Section 20-B for the regulated area in respect of every ancient monument and archaeological site and remains. The proviso to that section empowers the Central Government to issue notification in the Official Gazette and specify an area more than two hundred metres to be the regulated area having regard to the classification of any protected monument or protected area, as the case may be, under Section 4-A.

47. In terms of Section 20-A(2), it has been made clear that no person other than an Archaeological Officer shall carry out any construction in any prohibited area. This is subject to Section 20-C, which can be treated as an exception to Section 20-A(2). That section lays down that any person who owns any building or structure, which existed in a prohibited area before 16-6-1992 or had been subsequently constructed with the approval of the Director General may carry out any repair or renovation of such building or structure by making an application to the competent authority. The term "renovation" appearing in Section 20-C will take its colour from the word "repair" appearing in that section. This would mean that in the garb of renovation, the owner of a building cannot demolish the existing structure and raise a new one and the competent authority cannot grant permission for such reconstruction.

48. Section 20-A(3) lays down that the Central Government or the Director General can, in exceptional cases and having regard to the public interest, pass a reasoned order and permit a public work or any project essential to the public or other construction in a prohibited area provided that such construction does not have substantial adverse impact on the preservation, safety, security of, or access to the protected monuments or its immediate surrounding. The use of the expression "such other work or project" in clause (*b*) of Section 20-A(3), if interpreted in isolation, may give an impression that the Central Government or the Director General is

empowered to allow any other work or project by any person in the prohibited area but, in our view, the said expression has to be interpreted keeping in view the mandate of Article 49 of the Constitution and the objects sought to be achieved by enacting the 1958 Act i.e. preservation of ancient and historical monuments, archaeological sites and remains of national importance. This would necessarily imply that "such other work or project" must be in the larger public interest in contrast to private interest.

49. In other words, in exercise of power under Section 20-A(3), the Central Government or the Director General cannot pass an order by employing the stock of words and phrases used in that section and permit any construction by a private person dehors public interest. Any other interpretation of this provision would destroy the very object of the 1958 Act and the prohibition contained in the Notification dated 16-6-1992 and sub-section (1) of Section 20-A would become redundant and we do not think that this would be the correct interpretation of the amended provision. It also needs to be emphasised that public interest must be the core factor to be considered by the Central Government or the Director General before allowing any construction and in no case the construction should be allowed if the same adversely affects the ancient and historical monuments or archaeological sites.

50. We may now revert to the impugned judgment in these appeals. In our view, the Archaeological Survey of India is fully justified in making a grievance that the Division Bench of the High Court was not justified in directing the Central Government to review the prohibition contained in the Notification dated 16-6-1992. The High Court's anxiety to maintain a balance between the dire necessity of protecting historical monuments of national and international importance and development of infrastructures is understandable, but it is not possible to approve the fiat issued to the Central Government to review the prohibition contained in the Notification dated 16-6-1992. That notification was issued by the Central Government for implementing the policy enshrined in Article 49 of the Constitution and the 1958 Act i.e. to preserve and protect ancient and historical monuments and archaeological sites and remains of national importance.

51. Section 19 of the 1958 Act contains a restriction against construction of any building within the protected area or carrying out of any mining, quarrying, excavating, blasting or any other operation of similar nature in such area. Rules 31 and 32 of the Rules empower the Central Government to declare an area near or adjoining a protected monument to be a prohibited area or a regulated area for the purposes of mining operation or construction. The Central Government must have issued the Notification dated 16-6-1992 after consulting experts in the field and keeping in view the object of the 1958 Act. Therefore, in the name of development and accommodating the need for multi-storeyed structures, the High Court could not have issued a mandamus to the Central Government to review/reconsider the Notification dated 16-6-1992 and that too by ignoring that after Independence a large number of protected monuments have been facing the threat of extinction and

if effective steps are not taken to check the same, these monuments may become part of history.

52. One of such monuments is Jantar Mantar, New Delhi. Some of its instruments have become unworkable/non-functional. This is largely due to construction of multi-storeyed structures around Jantar Mantar. Therefore, we have no hesitation to hold that the High Court was not justified in directing the Central Government to review or reconsider the Notification dated 16-6-1992 and, to that extent, the impugned judgment is liable to be set aside. We may add that with the insertion of Sections 20-A and 20-B, the direction given by the High Court for review of the Notification dated 16-6-1992 has become infructuous and the Government is no longer required to act upon the same.

53. The appeal of Respondents 1 and 2 is wholly meritless. The High Court, in our view, has rightly held that even though the Notification dated 3-5-1957 did not become effective because the same was not published in the Official Gazette, the earlier Notification issued on 4-10-1956 remained effective and the same was saved by Section 39(2) of the 1958 Act. We may add that even though the Notification dated 3-5-1957 was issued in supersession of the Notification dated 4-10-1956, the same remained alive because of non-compliance with Section 3(2) of the 1904 Act. The High Court's interpretation of the prohibition contained in the Notification dated 16-6-1992 is correct and the distance of 100 m has to be counted from the outer boundary wall of Jantar Mantar which has protected area of 5.39 acres and not the physical structures of the observatory. The High Court has given detailed reasons for rejecting the plea of Respondents 1 and 2 that the provisions of the DDA Act would prevail over those contained in the 1958 Act and we entirely agree with it.

54. We may have dealt with the additional affidavits of the parties in greater detail and examined whether the Archaeological Survey of India was justified in not taking action against construction of a large number of buildings in violation of the prohibition contained in the Notification dated 16-6-1992, but do not consider it proper to do so because the owners of these buildings are not parties to these appeals.

55. In the result, Civil Appeal No. 2430 of 2006 is allowed and the direction given by the Division Bench of the High Court for review of the Notification dated 16-6-1992 is set aside. However, it is made clear that in the future the Central Government or the Director General shall not take action or pass any order under Sections 20-A(3) and 20-C except in accordance with the observations made in this judgment. Civil Appeal No. 2431 of 2006 is dismissed. The parties are left to bear their own costs.

/True copy/

VBR Menon

Speed Post

EQ-11099/20/2021-AQM-HO-CPCB-HO 5360 **October/4, 2023**

To,

The Chairman,
M/s Reliance BP Mobility Limited, (erstwhile M/s Reliance Industries Limited)
3rd Floor, Maker Chambers IV 222,
Nariman Point, Mumbai – 400021

Sub: Direction under Section 5 of Environment (Protection) Act, 1986 for non-installation of Vapour Recovery Systems in petrol refueling stations and storage terminals-reg.

WHEREAS, clean air is a matter of right and it is necessary to take steps towards improvement of Air Quality and for protecting public health National Ambient Air Quality Standards have been prescribed for 12 pollutants viz. $PM_{2.5}$, PM_{10}, SO_2, NO_2, CO, Ozone, NH_3, Benzene, Benzo(a)pyrene, Pb, Ni, and As;

WHEREAS, many towns and cities, where ambient air is monitored under National Ambient Monitoring Programme, are not complying with the National Ambient Air Quality Standards, particularly with respect to particulate matter pollution, and NO2, benzene and Ozone are becoming a matter of concern;

WHEREAS, petrol refueling stations are a major source of emissions of benzene, which is a carcinogenic compound, and the people in the vicinity of these stations including the workers engaged in the dispensing activities may potentially be at risk of benzene exposure;

WHEREAS, petroleum refueling stations are also a source of other volatile organic compounds (VOC), which are emitted from loading/unloading operations, and refueling of individual vehicles and are precursor to tropospheric ozone; therefore, requiring control of VOC emissions from such installations is an important step for improving air quality, particularly in regard to benzene and ozone.

WHEREAS, the Ministry of Environment & Forests, Government of India, vide Notification No. GSR 913 (E) dated 24.10.1989, has delegated the powers vested under Section 5 of the Environment (Protection) Act, 1986 to the Chairman, Central Pollution Control Board, to issue directions to any industry or any local body or any other authority for violations of the standards and the rules notified under the Environmental (Protection) Rules, 1986 and amendment thereof,

WHEREAS, CPCB on 22.02.20216 issued directions to M/s. Reliance BP Mobility Limited (erstwhile Reliance Industries Limited) to install VRS in existing petrol pumps selling more than 300 KLPM and located in 46 million plus cities and new petrol pumps coming up with capacity more than 300 KLPM;

WHEREAS, Hon'ble National Green Tribunal, Principal Bench vide order dated 28.09.2018 in Original Application No.147/2016: Aditya N. Prasad & Ors. v/s Union of India & Ors., directed oil companies to ensure installation of VRS in petrol pumps located in Delhi selling more than 300 KLPM on or before 31.10.2018 and with regard to remaining on or before 31.12.2018;

WHEREAS, Hon'ble National Green Tribunal vide said order also directed CPCB to issue directions to Oil Marketing Companies (OMCs) and ensure that necessary steps are taken by all the concerned;

WHEREAS, CPCB on 25.10.2018 issued directions to M/s. Reliance BP Mobility Limited (erstwhile Reliance Industries Limited) for installation of VRS in petrol pumps in Delhi and VRS installation within the prescribed timeline was reported to CPCB;

WHEREAS, Hon'ble National Green Tribunal in Original Application No.147/2016: Aditya N. Prasad & Ors. v/s Union of India & Ors., vide further orders dated 01.11.2018 and 22.11.2018 directed OMCs including M/s Reliance BP Mobility Limited for installation of VRS at petrol pumps and storage terminals in NCR by 30.04.2019;

WHEREAS, the Hon'ble National Green Tribunal, Southern Zone, Chennai, vide order dated 23.12.2021 in Original Application No. 138 of 2020: V.B.R. Menon v/s The Chief Secretary to Government of Tamil Nadu and Ors., directed CPCB to take appropriate action against those petroleum outlets/storage depot which are located in cities having more than 10 Lakh population and are having turnover of more than 300 KL/Month and above, for non-installation of VRS within the time frame fixed by the CPCB in direction dated 12.02.2016 or extended by the Hon'ble Apex Court, by imposing environmental compensation as directed by the Principal Bench of National Green Tribunal, New Delhi in O.A. No.147 of 2016 (Aditya N. Prasad & Ors. Vs. Union of India & Ors.);

WHEREAS, M/s Reliance BP Mobility Limited filed a Civil Appeal No. 2039 of 2022 in the Hon'ble Supreme Court against the said order and the order of Hon'ble NGT was stayed by the Hon'ble Supreme Court vide order dated 28.01.2022;

WHEREAS, the Hon'ble Supreme Court vide order dated 14.03.2023 directed CPCB to ensure that the directions issued by the NGT as contained in paras above are fully complied with;

WHEREAS, the status submitted by M/s Reliance BP Mobility Limited vide email dated 03.05.2020 shows delay in VRS installation at 01 storage terminal located at Rewari and 01 RO, i.e. Bahadurgarh, Jhajjar, located in NCR, in violation of the timelines prescribed by the Hon'ble National Green Tribunal;

NOW THEREFORE, in view of above and in exercise of power vested under Section 5 of Environment (Protection) Act, 1986, M/s. Reliance BP Mobility Limited is hereby directed to pay Environmental Compensation of Rs. One crore for not installing VRS within the timeline prescribed the Hon'ble National Green Tribunal.

The Environmental Compensation amount shall be deposited with CPCB within 15 days of receipt of this direction, failing which necessary action will be taken as per law.

(Tanmay Kumar)
Chairman

Copy to:

1. **Joint Secretary,** :for information please
   Ministry of Petroleum and Natural Gas,
   Shastri Bhawan, New Delhi- 110001

2. **Joint Secretary,** :for information please
   CP division
   Ministry of Environment, Forests and Climate Change,
   Indira Paryavaran Bhawan, Jorbagh road,
   New Delhi- 110003

3. **Divisional Head,** : with request to upload on CPCB website
   IT division, CPCB

(Bharat Kumar Sharma)
Member Secretary

/True copy/

VBR Menon

DIARY NO. - 2417/2025

V.B.R. MENON VS. CENTRAL POLLUTION CONTROL BOARD

Case Details	
Diary Number	**2417/2025** Filed on 14-01-2025 05:49 PM [**SECTION: PIL-W**] **PENDING**
Case Number	W.P.(C) No. 000081 / 2025 Registered on 29-01-2025 (Verified On 31-01-2025)
CNR Number	SCIN010024172025
Present/Last Listed On	**03-02-2025 [HON'BLE MR. JUSTICE M.M. SUNDRESHand HON'BLE MR. JUSTICE RAJESH BINDAL] [CL.NO. : 60]**
Status/Stage	PENDING (Motion Hearing [FRESH (FOR ADMISSION) - CIVIL CASES])
Tentatively case may be listed on (likely to be listed on)	03-02-2025 (Computer generated)
Category	0812-Letter Petition & Pil Matters : Others
Petitioner(s)	1 V.B.R. MENON
Respondent(s)	1 CENTRAL POLLUTION CONTROL BOARD 2 MINISTRY OF PETROLEUM AND NATURAL GAS 3 THE CHIEF CONTROLLER OF EXPLOSIVES
Petitioner Advocate(s)	DHIRAJ ABRAHAM PHILIP

/True copy/

VBR Menon

Before the Hon'ble National
Green Tribunal,
Southern Zone Sitting at Chennai

OA No. 188 of 2024 (SZ)

Between:
Muhammed Risham,
House No. 12/163,
Nambyattil House,
Naduvannur Post,
Kozhikode ,
Kerala – 673 614 … Applicant.

---Vs---

District Collector Office,
Kozhikode Collectorate,
Civil Station P.O,
Kozhikode – 673 020
and others … Respondents

COMMON REJOINDER AFFIDAVIT

V.B.R Menon [Ms- 23/2012)
Counsel for Applicant
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