

**BEFORE THE HONOURABLE NATIONAL GREEN TRIBUNAL
SOUTHERN BENCH AT CHENNAI
OA No. 25 of 2023**

P. Paari

... Applicant

Vs

TNPCB and Ors.

... Respondents

REPLY STATEMENT FILED BY THE 5th RESPONDENT

Dated : 18.07.2024



M/s. AAV PARNTERS

COUNSEL FOR 5th RESPONDENT

No.74-76, II Floor,

Marshall's Road, Egmore, Chennai – 08

Email : saleemperson@gmail.com Ph - 9500069660

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

O.A. No. 25 of 2023 (SZ)

P. Paari,
B-72, Tamilnadu Housing Board,
Thendral Nagar,
Thiruvavoor - 610001

... Applicant

VERSUS

1. The Central Pollution Control Board,
Rep. by its Chairman,
Parivesh Bhawan, East Arjun Nagar,
Delhi - 110 032
2. The District Collector,
District Collector Office,
Nagapattinam District,
Nagapattinam - 611 003
3. The District Revenue Officer,
District Collector Office,
Nagapattinam District,
Nagapattinam - 611 003
4. The District Environmental Engineer,
Tamilnadu Pollution Control Board,
Nagapattinam - 611 001
5. M/s. Bharat Petroleum Corporation Ltd., (Southern Region)
Rep. by its State Head / Co-ordinator (TN&P),
No. 1, Ranganathan Gardens,
11th Main Road,
Anna Nagar, Chennai - 600 040
6. The Joint Chief Controller of Explosives,
A and D - Wing Block 1-8, Second Floor,
Shastri Bhavan,
No. 26, Haddows Road,
Nungambakkam, Chennai - 600 006.

... Respondent


Territory Manager (Retail)
Bharat Petroleum Corp. Ltd.,
Trichy Retail Territory.

REPLY STATEMENT FILED ON BEHALF OF THE 5TH RESPONDENT

I, Arun Subramanian, son of A. Subramanian, aged 36 years, having office at Retail Territory Office, Bharat Petroleum Corporation Limited, 1st Floor, Raj Towers, Near Kalaignar Arivalayam, Karur Bye pass Road, Trichy - 620002, do hereby solemnly affirm and sincerely state as follows :

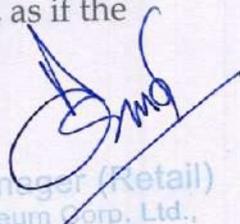
1. That I am officiating as the Territory Manager (Retail), Trichy, in M/s. Bharat Petroleum corporation Limited, the 5th Respondent herein and as such I am well aware of the facts and circumstances of the case and competent to swear this affidavit.

2. That the present Original Application has been filed under Section 14 of the National Green Tribunal Act, 2010, on the ground that the subject retail outlet is located within a prohibited distance from a waterbody which is in violation of the CPCB Guidelines, seeking for the following relief:

".....to pass an order to permanently forbear the 5th Respondent from establishing a fuel station at S.No. 31/2A, Kangalancheri Village, Nagapattinam District, which is in violation of the existing laws, and pass such further or other orders in the interest of justice."

3. That nothing contained in this Reply Statement shall be construed as an admission of any statement or averment made in the present Original Application save and except what has specifically been admitted by the answering Respondent herein.

4. That the answering Respondent denies each and every averment, which is contrary to and/or inconsistent with what is stated in this statement, as if the same were specifically traversed.


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5. That the instant Reply Statement is being filed in order to bring out the true and correct factual position and to specifically deal with the averments and allegations made by the Applicant in the instant Original Application. The answering Respondent reserves his rights and liberty to file a further detailed Statement/ Affidavit and additional documents if the situation so necessitates at a later stage.

6. That before traversing into the para wise reply of this Respondent with respect to the allegations raised in the application, it is necessary to set out the important dates with respect to the subject retail outlet, which details are as follows:-

i. On 25.11.2018, this Respondent had published newspaper advertisement inviting applications for setting up retail outlet dealerships at various locations in the State of Tamil Nadu.

ii. On 24.11.2021, a Letter of Intent (LOI) was issued to the dealer and thereafter, the following approvals/permissions was obtained for the establishment of the retail outlet :

S No.	Date	Description
1.	16.05.2022	NOC under Petroleum Rules
2.	31.01.2023	Final PESO approval
3.	19.01.2023	Building permit

iii. On 15.12.2022, the construction of the retail outlet was commenced at the subject site.

iv. On 30.01.2023, the construction was completed at the site.

v. On 10.03.2023, the sale was commenced in the subject retail outlet.


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vi. The retail outlet has been constructed by installing state-of-the-art equipment with underground tanks and connecting pipelines that can withstand extreme pressures without any leakage and all the safety measures have been implemented and installed at the subject retail outlet.

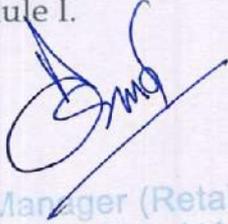
7. That the present application is liable to be dismissed on the following grounds:-

- I. Limitation
- II. Jurisdiction
- III. Locus Standi and the vested interest.
- IV. CPCB Guidelines have no statutory force.
- V. Devoid of Merits.

8. **NOW DEALING WITH THE ABOVE GROUNDS:**

I. **Jurisdiction**

1. That the present application is not maintainable before this Hon'ble Tribunal, since this Hon'ble Tribunal being the creation of the National Green Tribunal Act, is empowered to adjudicate cases which are within the jurisdiction of the statutes mentioned in Schedule-I of the Act.
2. That Section 14 of the NGT Act clearly states that NGT has jurisdiction over all civil cases where substantial question relating to environment including enforcement of legal right, is involved and such question arises out of the implementation of the enactments specified in Schedule I.


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3. That the allegation in the present Application is that the guidelines of the CPCB have been violated by this Respondent. It is submitted that in this regard, the Office Memorandum issued by CPCB are not issued under any of the enactments specified in Schedule-I and further it is only an office Memorandum and neither a Rule nor a regulation / amendment of any enactment as specified under Schedule I of the NGT Act and hence, the present application is not maintainable before this Hon'ble Tribunal.
4. This apart, against the subject retail outlet, a Writ Petition in W.P. No. 27369/2023, before the Hon'ble Madras High Court, was already filed seeking a direction against the Statutory Authorities to conduct a detailed enquiry and cancel/suspend the license granted to the dealer by this Respondent, for running the subject retail outlet, within a stipulated time frame. The Hon'ble Chief Bench of Madras High Court vide its order dated 12.06.2024 has directed the Respondent authorities to consider the representation of the petitioner therein, on merits and in accordance with law, and pass appropriate orders within a period of eight weeks; after affording an opportunity of hearing to the parties concerned and hence since the Hon'ble High Court was already deemed to be seized of the matter and directions issued, this present Application is not maintainable before this Hon'ble Tribunal.

II. Limitation:

1. That apart from the jurisdiction, the present Application is barred by limitation as the same is filed beyond the period as mentioned in Section 14 of the National Green Tribunal Act.


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2. That the Applicant in Para 6, has categorically admitted that the Respondent authority vide its communication dated 06.06.2022 has informed the applicant that the NOC has been issued to the subject retail outlet. Hence the Applicant, is very well aware of the issuance of NOC, but has intentionally chosen to file the present application only in March 2023, which shows the malafide conduct of the applicant. It is submitted that as per Section 14 (3) of the NGT Act, no application under this section shall be entertained unless it is filed within 6 months from the date when the cause of action **first arose which is condonable upto 60 days and not thereafter**. Therefore, the Hon'ble Tribunal, has the power to entertain the application only until 6 months + 60 days and not thereafter. Hence the present application is barred by Limitation and hence ought not to be entertained by this Hon'ble Tribunal.

III. LOCUS STANDI & VESTED INTEREST

1. It is submitted that the above application is not maintainable at all as the Applicant has no locus standi to file the above Application and as such the same has been filed with vested interest and is an abuse of process of law. The Applicant has approached this Hon'ble Tribunal completely with a vested interest, on the instigation of unknown persons, intending to only cause unwanted agitation as against this Respondent and the same is evident from the fact that the Applicant has cited erroneous provisions and statutes, which are under no circumstance, in violation by this answering respondent and the Applicant is also in full knowledge of the same.

IV. CPCB GUIDELINES DO NOT HAVE STATUTORY FORCE

1. It is humbly submitted that the said Office Memorandum issued by the Central Pollution Control Board (CPCB) dated 07.01.2020, relied on by the

Applicant herein, does not attain or attach to itself, any statutory force and remains only to be recommendatory in nature.

2. It is submitted that Section 5 of the Environment (Protection) Act 1986 (EP Act) empowers the Central Government to give directions in exercise of its powers and performance of its functions under the act. Such power was delegated to CPCB by the Central Government by way notification dated 27.02.1996. The power vested with CPCB is only to issue directions to regulate and compliance of the provisions of EP Act and its allied rules.

3. It is further submitted that though the said Guidelines of CPCB have been issued pursuant to the directions of the Principal Bench of this Hon'ble Tribunal vide its order dated 19.01.2019, in O.A. No. 86/2019: Gyanprakash @ Pappu Singh Vs Uol & Ors, however, the Guidelines have not been issued under any provisions of or made in reference to, any existing statute/s, for it attain a force of law.

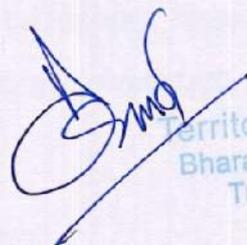
4. It is also further submitted that the said Guidelines being issued by a Central body, it has not adhered to the provisions of Article 77 of the Constitution of India and hence, the said guidelines cannot be said to have attained the force of a statute and are only mere expression of opinion, which are recommendatory in nature.

IV. DEVOID OF MERITS:

1. It is submitted that with respect to the Water canal alleged to be a waterbody situated adjacent to the retail outlet, it is submitted that the water canal mentioned here is only a rainwater drain constructed to drain off the excess rainwater of neighboring areas. The allegation of the petitioner that there is a canal near the retail outlet is baseless and denied.

and the petitioner has not provided any revenue documents in support of the claim. The drain remains dry when there is no rainfall and it is connected through a culvert on the opposite side of the road. The claim that this drain is a water body and caters to the water requirement of the nearby villages is entirely false. This is not a water source for the nearby villages and is not designated as a water body as per revenue records.

2. It is submitted that the report submitted by the Executive Engineer , Cauvery Watershed zone, Thanjavur dated 09.05.2022 has also stated that the water pathway on the north of the site is a drainage for excess rainwater.
3. It is submitted that this Respondent has received NOC on 16.05.2022 and the concerned authority has granted the NOC only after taking reports from all the departments including Fire, Police, Revenue, Highways etc. It is submitted that the letter sent by the District Collector to the respective departments, dated 26.11.2021 is attached as **Annexure-4**. That this Respondent has also received final explosive licence dated 31.01.2023 after the construction of the outlet and also obtained building permit dated 19.01.2023. It is submitted that the present retail outlet was established after obtaining all approvals from the concerned departments and also constructed the outlet without any violations. The allegations contained in Para 3 to 8 of the Application is false and baseless.
9. It is submitted that the underground tanks in the outlet are constructed with all the mandatory precautions and specifications as mentioned by the PESO and District authorities. There is no threat of leakages or improper

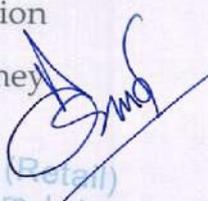


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disposal of oils. All precautions as prescribed by PESO and CPCB are complied at the outlet :

- The underground tanks in the outlet and its ancillary components including pipelines, pumps, connectors, fittings etc. are made of Mild steel and are protected from leaks due to corrosion with required protective coating duly approved by PESO.
- All the Dispensing Units (DU) (Multi Product Dispensers) installed in the outlet are equipped with Auto Cutoff nozzles, Breakaway couplings, Single plane swivel breakaway joints, Shear valves at the base of the DU.
- The outlet has 2 Underground tanks and both tanks have been installed with Leak detectors on the Submergible Pumps (STPs).
- All the DU's (Multi Product Dispensers) installed in the outlet are equipped with an Emergency Stop button in case of exigencies.
- All Automation systems have been provided, which consist of Auto tank Gauges, MPD slave modules and Forecourt controller which will provide alarms/ Alerts for overfills, tank leaks, Water Ingress etc.
- This Respondent will be regularly conducting inspections and stock checks at the outlet. Stock checks are mandatorily done once in 6 months at every outlet. Moreover, daily loss gain reports are monitored via the automation systems at the outlet. Any Loss in MS or HSD exceeding MOPNG prescribed limits will be immediately brought to the notice of the PESO, SPCB and District authorities under intimation of CPCB.

10. It is submitted that during the commissioning and subsequent operation of the Retail outlet, there will be no Sludge formation, in case there are any, they


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

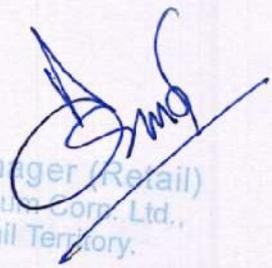
11. It is submitted that the subject retail outlet is operational with all the statutory approvals. That BPCL is a PSU and has invested more than Rs. 1 Crore of public money into the subject outlet. This has been done only after obtaining all the approvals from all the Government departments. Further it is reiterated that the water body is not source of irrigation or drinking water for the villagers and it is only a man-made rainwater drain and therefore, cannot be considered as a water body to attract the purview of the CPCB guidelines.

12. It is submitted that the present applicant has filed this application not on behalf of the villagers but on behalf of rival petroleum outlet dealer who is trying to get this establishment closed so that he can continue to enjoy the monopoly of operating in the market. This application has been filed purely because of business rivalry and with no public interest or violation as alleged by the applicant.

I. PRAYER:

For the reasons stated above, it is therefore humbly prayed that this Hon'ble Tribunal may be pleased to dismiss the above application with heavy cost and pass such further or other orders as this Hon'ble Tribunal may deem fit and proper in the circumstances of the case and thus render justice.

Dated at Trichy on this the 17th day of July, 2024

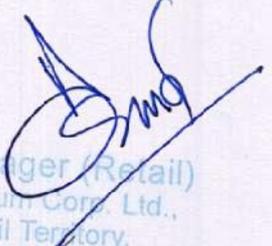

Territory Manager (Retail)
Bharat Petroleum Corp. Ltd.,
Trichy Retail Territory.

5th RESPONDENT

VERIFICATION

I, Arun Subramanian, son of A. Subramanian, aged 36 years, working as Territory Manager (Retail), Trichy, having office at Retail Territory Office, Bharat Petroleum Corporation Limited, 1st Floor, Raj Towers, Near Kalaingar Arivalayam, Karur Bye pass Road, Trichy - 620002, do hereby verify that the contents of paras 1 to 17 are true to the best of my knowledge and paras 1 to 17 are believed to be true on legal advice and that I have not suppressed any material fact.

Verified at Trichy on this the 17th day of July, 2024


Territory Manager (Retail)
Bharat Petroleum Corp. Ltd.,
Trichy Retail Territory.

5th RESPONDENT