

BEFORE THE NATIONAL GREEN TRIBUNAL, PRINCIPAL BENCH,
NEW DELHI

APPEAL 26 /2024

RELIANCE INDUSTRIES LIMITED

...APPLICANT

Vs

CENTRAL POLLUTION CONTROL BOARD


...RESPONDENT

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NDH 18.10.2024

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NEW DELHI
DATED: 14.10.2024

415

IN THE HON'BLE NATIONAL GREEN TRIBUNAL
PRINCIPAL BENCH AT NEW DELHI

Appeal No. 26 of 2024

IN THE MATTER OF:

RELIANCE INDUSTRIES LTD.

...Appellant

VERSUS

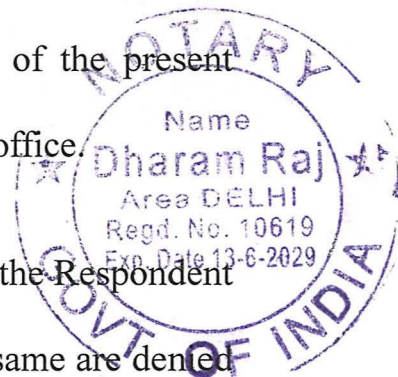
CENTRAL POLLUTION CONTROL BOARD

...Respondent

REJOINDER AFFIDAVIT ON BEHALF OF THE APPELLANT

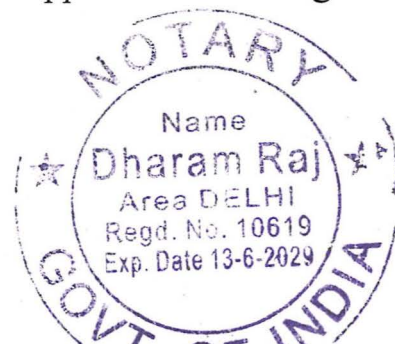
I, Sharad Nigam son of Late Shri. V.B. Nigam aged about 51 years, having my office at 1st floor Kanchenjunga Building, 18 Barakhamba Road, New Delhi-110001, do hereby solemnly affirm and state as under:-:

1. I am the authorized signatory of the Appellant and am competent to file the present Rejoinder Affidavit being familiar with the facts of the present dispute from the records maintained by the Appellant in its office.
2. I have perused the contents of the Reply Affidavit filed by the Respondent on 19.08.2024. At the outset I state that the contents of the same are denied and no part of the same may be treated as having been admitted for lack of specific denial. The captioned appeal filed by Appellant challenges and seeks to set aside the directions of 13.06.2024 issued by Respondent and the



imposition of penalty therein. This Hon'ble Tribunal was pleased to pass an interim order of stay vide order dated 19.07.2024, which has been continued vide subsequent orders.

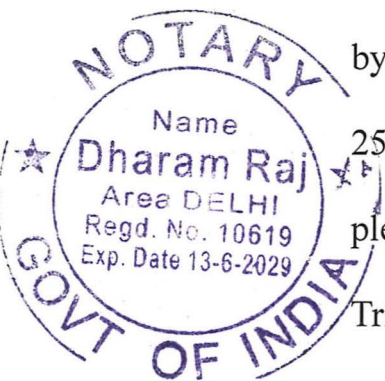
3. The Reply Affidavit filed by the Respondent mainly raises the contention that the Appellant cannot claim the benefit of the extension of the timelines for installation of vapour recovery devices since the Appellant was not a party to the proceedings before the Hon'ble Supreme Court wherein the timelines given by this Hon'ble Tribunal were extended, i.e. the orders dated 14.12.2019 and 08.04.2020 in C.A. No. 161-163/2019 etc and in M.A. No. 916/2019 in C.A. No. 256-258/2019. In fact, the very same ground was stated in the impugned direction dated 13.06.2024 [Pg 46-47 of the Appeal]. This contention of the Respondent is wholly erroneous in law and ought to be rejected outright.
4. At the outset, it is submitted that the Appellant had installed the Vapour Recovery System ("VRS") within the timelines as extended/ substituted by the Hon'ble Supreme Court, as elucidated in the following paragraphs. The contention of the Respondent that the extended timelines by the Hon'ble Supreme Court were applicable to only public sector oil marketing companies or that there has been any delay on Appellant in that regard has no rational basis and merits to be rejected.



5. Briefly stated the following facts *inter alia* may be noted-

- (i) Vide Judgment dated 28.09.2018 in O.A. No. 147/2016, this Hon'ble Tribunal had originally directed the Oil Marketing Companies to install Vapour Recovery Devices at all fuel stations/ distribution centres/ terminals etc. on or before 31.10.2018. It is pertinent to state that the said directions pertained to Delhi-NCT area;
- (ii) Vide order dated 1.11.2018, applications filed before this Hon'ble Tribunal seeking extension of time were rejected. However, this Hon'ble Tribunal was pleased to direct that the implementation of the directions would be extended to the entire National Capital Region ("NCR");
- (iii) Vide a subsequent order dated 22.11.2018 passed by this Hon'ble Tribunal the deadline for compliance was extended till 30.04.2019;
- (iv) The Oil Marketing PSUs challenged the aforesaid directions passed by this Hon'ble Tribunal by filing Civil Appeal No.s 161-163/2019, 256-258/2019 and 253-255/2019. The Hon'ble Supreme Court was pleased to "*substitute*" the timelines specified by this Hon'ble Tribunal vide order dated 14.02.2019. The relevant extract of the order is as below:

"Insofar as the NCR is concerned, this has been divided into two different groups : those are selling more than 300 Klspm and those selling less than 300 Klspm.



Insofar as the first category is concerned, the time schedule is extended, insofar as Stage 1-A is concerned till 31.03.2020. So far as the Stage 1-B and 2 are concerned, the time schedule is extended till 31.08.2019.

Insofar as retail outlets selling less than 300 Klspm in the NCR are concerned, so far as Stages 1-A and 1-B are concerned, time is extended till 31.03.2020. So far as Stage 2 is concerned, time is extended till 30.09.2020.

For this also, we have taken on record the requisite undertakings to adhere strictly to the aforesaid time-lines.

In this view of the matter, the NGT orders stand substituted.

The appeals are disposed of accordingly.”

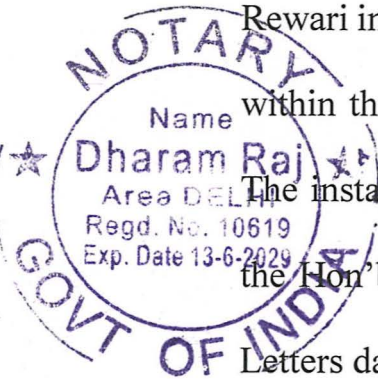
(Emphasis supplied)

(v) The Hon'ble Supreme Court was further pleased to extend the timeline for compliance by a period of six (6) months by virtue of Order dated 08.04.2020 passed in M.A. No. 916 of 2019 in C.A. No. 256-258 of 2019, titled as Hindustan Petroleum Corporation Ltd. v. Aditya N. Prasad & Ors;

(vi) That the Appellant herein installed Stage 1A VRS at its Storage Terminal at Rewari in November, 2019 and commissioned the same on 07.02.2020, well within the timelines as extended by the Hon'ble Supreme Court of India.

The installation and commission of VRS within the extensions granted by the Hon'ble Court was intimated to CPCB by the Petitioner herein by its Letters dated 22.04.2020, 03.05.2020 and 22.11.2020.

(vii) Despite this, after more than four years of the installation of the VRS, the CPCB/Respondent has addressed the Impugned Communication seeking to levy environmental compensation of one crore for allegedly not installing VRS within the timeline prescribed by this Hon'ble Tribunal.



6. It is submitted that the Appellant is similarly placed with the Appellants in Civil Appeal No. 161-163 of 2019 titled as *M/s. Indian Oil Corporation v. Aditya N. Prasad & Ors* before the Supreme Court of India and has in fact complied with the timelines directed by the Hon'ble Supreme Court in the said Appeal with regard to the installation of VRS in petrol refueling stations and storage terminals in NCR. The Impugned directions of the CPCB dated 13.6.2024 would lead to absurd consequences of the Appellant being penalized despite the Appellant having complied with the process more than 4 years back. The order imposing penalties by way of environmental compensation for alleged Violations is thus arbitrary, unreasonable and liable to be set aside.
7. It is submitted that the directions passed by the Hon'ble Supreme Court in the present matter was with respect to all storage terminals within Delhi NCR and were not confined to the Appellants therein. It is pertinent to state that this Hon'ble Tribunal had issued the directions in question to all the Oil Marketing Companies and the timelines therein were *substituted* by the Hon'ble Supreme Court. It is submitted the Hon'ble Supreme Court has not chosen to restrict relief only to parties before it as litigants. There is no rational basis for treating the Appellant separately from the other oil



companies and the Appellant is entitled to the benefit of the extended timeline on parity.

8. As highlighted in the Appeal, the Impugned Order itself came to be issued pursuant to the directions of the Ld. NGT, Southern Zone dated 23.12.2021 wherein the Ld. NGT had directed action to be taken against "Retail Petroleum Outlets had not installed the same within the time frame fixed by the 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". Thus, the Hon'ble NGT, Southern Zone itself understood the extension orders of the Hon'ble Supreme Court to have been extended to all parties.

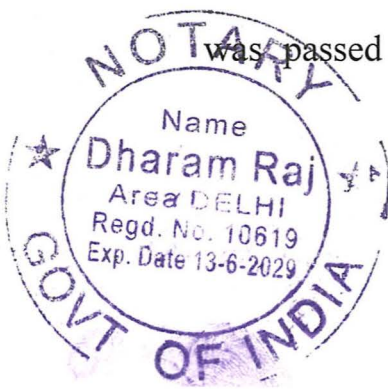
9. In that view of the matter, the sole submission raised by the Respondent merits to be rejected and the Appeal merits to be allowed.

10. It may be further be noted that there has been no substantial response on the other contentions raised by the Appellant in the appeal including:-

(a) The Impugned Order is violative of the principles of natural justice.

There was no show cause notice issued or replies called for and the order

was passed imposing the penalty of Rs. 1 crore as Environmental



compensation. The Impugned Order is thus vitiated and merit to be set aside on this ground alone.

(b) That the Impugned Order does not even consider the explanation offered by the Appellant in the proper perspective and has summarily reiterated the penalty. The non-consideration of the explanation also vitiates the Impugned Orders as being unreasoned and cryptic and thus violative of the principles of Natural Justice.

(c) That the Impugned Order imposes a huge penalty of Rs. 1 crores without any basis, discussion or calculation. There is no prior application of mind to the said imposition and the huge amount imposed in the name of 'Environmental Compensation' is illegal, arbitrary and liable to be set aside.

11. In fact, the Ld. Counsel for CPCB had also conceded that no show cause notice was issued to the Appellant before the Impugned Directions were issued, which has been recorded in the order dated 19.7.2024 passed by this Hon'ble Tribunal. In that light of the matter as well, the Impugned Directions merit to be set aside.

12. In view of the above, the contentions raised by the Respondent ought be rejected and the Appeal is liable to be allowed.



PARAWISE RESPONSE TO THE REPLY AFFIDAVIT

13. The contents of paragraphs 1 and 3 being factual require no response. Para 2 is however denied and the contents of the Appeal are reiterated.

14. The contents of paragraph 4 is denied as incorrect in law and fact. The Judgment of the Hon'ble NGT dated 28.09.2018 in O.A. No. 147/2016 originally set the timeline for installation of Vapour Recovery Devices at all fuel stations/ distribution centres/ terminals etc. as 31.10.2018. This original timeline was not extended by NGT upon applications Oil Marketing PSU which were rejected by the NGT vide order dated 01.11.2018 and also subsequently on 22.11.2018. The PSUs thereafter challenged the Hon'ble NGT's judgment vide Civil Appeal No. 161-163/2019, 256-258/2019 and 253-255/2019. The Hon'ble Supreme Court was pleased to substitute the timelines specified by the Hon'ble NGT vide order dated 14.02.2019. This was further extended by the Hon'ble Supreme Court order dated 08.04.2020 of the Hon'ble Supreme Court in M.A. No. 916/2016 in C.A. No. 256-258/2019. Therefore, the contention raised by the Respondent ought to be rejected and the contents of the preliminary submissions may be treated as part of the present para under reply.

15. The contents of para 5 and 6 of the Reply require no response.



16. The contents of para 7 of the Reply are incorrect and are denied. The contents of the preliminary submissions may be treated as part of the present para under reply.
17. The contents of para 8 of the Reply are incorrect and are denied except for facts which form part of the record. The contents of the preliminary submissions may be treated as part of the present para under reply. It is denied that there was any delay in installation of VRS as alleged. It is stated that the said para clearly states that there was no show cause notice issued before the Impugned directions were issued. The present appeal merits to be allowed.
18. The contents of para 9 of the Reply are incorrect and are denied. The contents of para 4 to 7 of the Rejoinder are reiterated. It is reiterated as in previous communications and in the Appeal, that the Appellant had completely met the timeline for installation of Vapour Recovery System at the Appellants storage terminal in Rewari by February 2020 whereas the Hon'ble Supreme Court had extended the timeline till 31.03.2020. Therefore, the Impugned Order/Directions are arbitrary, misconceived and bad in law. The contents of preliminary submissions may be treated as part of the present para under reply

19. The contents of para 10 require no response.

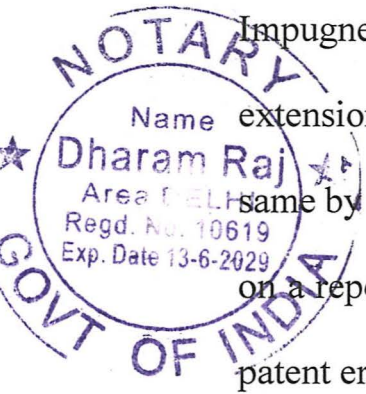


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20. The contents of para 11 to 13 of the Reply are erroneous in law and fact and denied except for facts which form part of the record. The Appellant reiterates the grounds raised in its Appeal. The contents of the Appeal and the preliminary submissions are reiterated. It is stated that the Respondent claims that there was no need for issuance of show cause notice which in itself states that there was a gross violation of the principles of natural justice. The contents of the Appeal are reiterated. It is submitted that the Impugned order suffers from complete non-application of mind, is arbitrary and erroneous and liable to be set aside. The preliminary submissions may be treated as part of the present para under reply and the Appellant was entitled to be treated at par with the other similarly placed Oil Marketing Companies.

21. The contents of para 14 of the Reply are incorrect and are denied to the except for admitted facts which form part of the record. The contents of the Appeal are reiterated. The preliminary submissions may be treated as part of the present para under reply. It is reiterated that the penalty imposed by the

Impugned Order is arbitrary and bad in law, as it fails to consider the extension orders of the Supreme Court and the acknowledgement of the same by the order of the Hon'ble NGT, Southern bench. The reliance placed on a report without any consideration and the facts of each case shows the patent error in the Impugned Order. It is submitted that the Impugned Order



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imposing one crore is without any consideration and on the basis of a report which has no application of the peculiar facts and circumstances of the Appellant.

22. The contents of para 15 to 18 of the Reply are incorrect and are denied and the contents of the grounds raised in its Appeal are reiterated. The contents of the preliminary submissions may be treated as part of the present para under reply. It is denied that there was any delay in installation of VRS as alleged.

23. The contents of para 19 of the Reply are incorrect and are denied. The Appellant reiterates the grounds raised in its Appeal. The contents of the preliminary submissions may be treated as part of the present para under reply. The facts concerning notices to M/s Narayana Energy Ltd is denied for want of knowledge and lack of proof to the extent the records have not been produced by the Respondent. In any event the facts concerning any other party cannot be the basis of justifying an impugned order that is bad in



24. The contents of para 20 to 21 of the Reply are incorrect and are denied. The Appellant reiterates the grounds raised in its Appeal.

25. The contents of para 22 of the Reply are incorrect and are denied. The Appellant reiterates the grounds raised in its Appeal. It is submitted that the

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Appellant had installed the VRS within the timelines as extended/ substituted by the Hon'ble Supreme Court. The contention of the Respondent that the extended timelines by the Hon'ble Supreme Court were applicable to only public sector oil marketing companies or that there has been any delay on Appellant in that regard has no rational basis and merits to be rejected.

26. The contents of para 23 to 26 of the Reply are incorrect and are denied. The Appellant reiterates the grounds raised in its Appeal. The contention that the closure was directed pursuant to 15 days opportunity is grossly incorrect. It is stated that post facto notice is impermissible in law. The Principles of Natural Justice mandates hearing and opportunity to the aggrieved party prior to the decision being taken. The contention of the Respondent is contrary to law.
27. The Appellant submits that the contentions of the Reply ought to be rejected and the Appeal ought to be allowed.



For Reliance Industries Limited
S. K. Singh
DEPONENT

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VERIFICATION

That the contents of the above paras are true and correct to the best of my knowledge and belief, no part of it is false and nothing material has been concealed there from.

Verified at New Delhi on this the 14th day of October 2024.

For Reliance Industries Limited
Sharad Abhinav
DEPONENT
Authorized Signatory



ATTESTED
Dharam Raj
Notary Public Delhi (India)
14 OCT 2024



R S Prabhu Office <office@rsprabhu.com>

Appeal No. 26/2024 Reliance Industries Ltd. vs CPCB

1 message

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R S Prabhu Office <office@rsprabhu.com>

Mon, Oct 14, 2024 at 4:19 AM

To: Raj Kumar <advraj कुमार@gmail.com>, ccb.cpcb@nic.in, mscb.cpcb@nic.in

Sir,

Please find attached, as advance service, a scanned copy of the Affidavit.

Regards

--

Yours sincerely,

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RS PRABHU

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