

BEFORE THE NATIONAL GREEN TRIBUNAL
EASTERN ZONE BENCH AT KOLKATA
ORIGINAL APPLICATION NO. 154 OF 2022

IN THE MATTER OF:

YODH BDR. THAPA

...APPLICANT

VERSUS

BHARAT PETROLEUM

CORPORATION LIMITED AND ORS.

...RESPONDENTS

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DATE: 04.03.2023

PLACE: KOLKATA

FILED BY:



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**REJOINDER TO COUNTER AFFIDAVIT BY RESPONDENT NO.6,
MINISTRY OF ENVIRONMENT, FOREST AND CLIMATE CHANGE**

MOST RESPECTFULLY SHOWETH:

1. The present Rejoinder is filed on behalf of the Applicant to the Counter Affidavit filed by Respondent No. 6, Ministry of Environment, Forest and Climate Change (hereinafter referred to as “**MoEF&CC**”).
2. The present Original Application is filed raising a substantial question of environment arising out of the illegal construction of an Oil Depot by Respondent No. 1 is a densely populated residential area without obtaining Consent to Establish, the lack of siting criteria applicable for setting up such isolated storage depots by Sikkim Pollution Control Board, Ambient Air Quality Standards in respect of Noise far in excess than those prescribed, construction material that has not been covered and lack of a Fire NOC from the PESO.
3. The Answering Respondent prays that the averments made in the Original Application may be read as part and parcel of the present Rejoinder and the

Answering Respondent craves leave of this Hon'ble Tribunal to rely on the same for the sake of brevity and prolixity.

4. It is submitted that the contents of the Counter Affidavit filed by Respondent No. 6, MoEF &CC, unless specifically admitted, are denied to the extent that they are inconsistent with the submissions made in the Original Application. The present Rejoinder is comprehensive and intends to deal with all the contentions placed by MoEF&CC in its Counter Affidavit. However, the present Rejoinder is not a para-wise response to Counter Affidavit, therefore, the Applicant craves leave of this Hon'ble Court to file a detailed submission at a later stage, if the need so arises.
5. The points raised by MoEF & CC in its Counter Affidavit have been succinctly elucidated herein below –
 - a. MoEF &CC has notified The Manufacture, Storage and Import of Hazardous Chemicals Rules, 1989 (hereinafter referred to as **“Hazardous Chemical Rules, 1989”**) and The Chemical Accidents (Emergency, Planning, Preparedness and Response) Rules, 1996 (hereinafter referred to as **“Chemical Accidents Rules, 1996”**)
 - b. Under Hazardous Chemical Rules, 1989, the concerned Central/ State Authorities have been delegated the responsibilities as per Schedule 5 of the Rules. The Petroleum and Explosive Safety Organisation (PESO), has been made the nodal authority to approve and notify site plans of industrial activity and isolated storage, as well as pipelines carrying hazardous chemicals including inter-state pipelines. The State Chief Inspector of Factories and PESO grant approvals to isolated

storages and are expected to ensure preparation of the on-site emergency plans and safety reports by units, reviewing the details of mock drills conducted and implementation of Standard Operating Procedures (SOPs) of industrial operation by the unit from industrial safety point of view.

- c. The Chemical Accident Rules, 1996, provide the statutory framework for Crisis Management setup and organisational support and envisages a “Four-tier Crisis Management System”. The Rules also assign key responsibilities to various State Governments. Central Government Departments with an objective to keep a check on chemical accidents.
 - d. The MoEF &CC has prepared an Integrated Guidance Framework for ensuring safety in industrial establishments and isolated storage covered under the Hazardous Chemical Rules, 1989 (hereinafter referred to as “**Integrated Guidance Framework**”). The Integrated Guidance Framework was circulated to all the States and Union Territories in January 2022 for implementation and they were reminded for compliance in October 2022.
6. It is submitted that the Counter Affidavit filed by MoEF & CC is silent on the following issues raised by the Applicant in the Original Application –
- a. There is no specific guideline which can govern the issue of appropriate siting criteria for the establishment of isolated storage of petrol depot.
 - b. The issue with regard to the removal of isolated storage facilities from the purview of the Environment Impact Assessment Notification, 2006

by way of EIA Amendment Notification dated 13.06.2019 has not been addressed.

- c. The Applicant has raised the issue that the absence of specific essential minimum criteria is to be followed by concerned authorities while considering the proposals for the establishment of isolated storage facilities. The absence of such criteria leads to the arbitrary and non-uniform implementation of the Integrated Guidance Framework by the concerned authorities under the Hazardous Chemical Rules.
7. The Applicant now seeks to address the contents of the Counter Affidavit on merits.
 8. It is an admitted position that only the Hazardous Chemical Rules, 1989 and the Chemical Accident Rules, 1996 regulate the compliances necessary for establishing isolated storage facilities. However, both the rules are silent on the issue of siting of such isolated storage facilities.
 9. Under the Hazardous Chemical Rules, 1989, different authorities are required to ensure the compliance of necessary safety parameters for different types of Isolated Storage facilities. With regard to petrol, the PESO is the concerned authority tasked with ensuring compliance of the conditions under the Hazardous Chemical Rules, 1989.
 10. As per the Integrated Guidance Framework, the concerned authorities are required to ensure that Hazardous Chemical storage should be located away from densely populated areas, drinking water sources, water bodies or from areas liable for flooding. It further prescribes that the isolated storage shall not

be allowed to operate in a non-industrial zone. (please see page 111 of OA No. 154 of 2022) However, the Integrated Guidance Framework is silent on the minimum safety criteria with respect to the siting of a new isolated storage facility. (please see page 117 of OA No. 154 of 2022)

11.In absence of such a minimum siting criteria to be followed by all states, there may be a situation wherein the State Pollution Control Boards may grant Consent to Operate to all isolated storage facilities on a case-to-case basis which would lead to arbitrariness and lack of uniformity and transparency for determining the siting criteria.

12.The Applicant seeks to highlight the issue of non-uniformity by way of an example-

- a. The Gujarat Pollution Control Board (GPCB) in its Standard Operating Procedure (SOP) for isolated storage facilities has prescribed that within urban area no isolated storage facility can be permitted in residential area. (please see page 127 of OA 154 of 2022). Further it provides that for storage facilities to be established in areas other than urban area, a minimum distance of 500 meters is to be ensured from residential area, school and colleges.
- b. If Respondent No. 1 were to establish a petrol depot of 1000 KL capacity within the State of Gujarat, it would be required to comply with the siting criteria as per the SOP and will establish the isolated storage facility by maintaining a minimum distance of 500 meters from residential areas to obtain a Consent to Establish from GPCB.

- c. However, because of the absence of a uniform SOP Respondent No. 1 can establish a petrol depot of 1000 KL capacity within a residential area as in the present case and the Sikkim State Pollution Control Board has no governing guideline for determining a minimum safe distance which can be maintained. In such a situation the Sikkim Pollution Control Board will have to determine the minimum safe distance for each petrol depot on a case-to-case basis. This leads to arbitrariness and risks the safety of the residents of the surrounding area.
- d. This is further highlighted by the fact that the Sikkim Pollution Control Board is following the siting criteria of minimum 50 meters which is prescribed for petrol pumps for the project in question which has a storage capacity of 1000KL petrol.
- e. In view of the fact that isolated storage facilities are removed from the rigours of the Environment Impact Assessment Notification, 2006, which ensured a certain level of minimum safety standards, the MoEF&CC is required to issue a Standard Operating Procedure for siting criteria for isolated storage facilities which provide the minimum safety distance which is to be followed throughout the country.
- f. It is submitted the mere issuance of a Guidance Framework wherein all the necessary parameters are left to be determined by different central/state authorities leads to more confusion and arbitrariness and does not solve the issue.

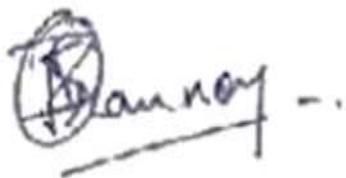
13.In view of the foregoing paragraphs and the issues raised in the Original Application, it is prayed that Respondent No. 3, Ministry of Environment,

Forest and Climate Change and Respondent No. 6, Central Pollution Control Board may be directed to take steps for forming a uniform Standard Operating Procedure which prescribes the minimums safety parameters to be followed while establishing new Isolated Storage Facilities.

DATE: 04.03.2023

PLACE: KOLKATA

FILED BY:

A handwritten signature in blue ink, appearing to read "Prannoy", with a horizontal line underneath it.

PRANNOY JOE SEBASTIAN, AKSHAR BHATT AND SAJAL SHARMA
ADVOCATES FOR THE APPLICANT
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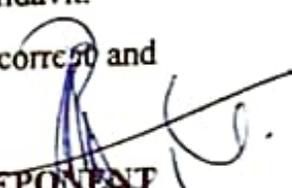
BHARAT PETROLEUM CORPORATION
LTD. & ORS

...RESPONDENTS

AFFIDAVIT

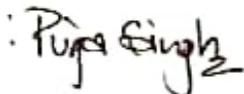
I, Yodh Bdr. Thapa, S/o K.B. Thapa with residence at Majhitar, Pakyong District, Sikkim, Pin Code 737106, currently aged about 65 years hereby solemnly affirm and declare as under:

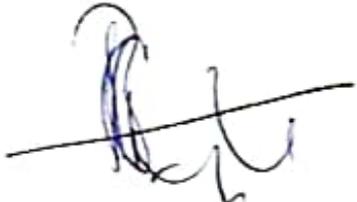
1. That I am the Applicant in the instant case and, hence, conversant with the facts and circumstances of the case and competent to swear this affidavit.
2. That the contents of the accompanying Rejoinder are true and correct and nothing material has been concealed therefrom.


DEPONENT

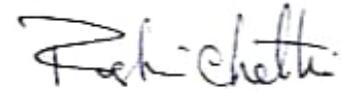
VERIFICATION

Verified at Gangtok, Sikkim on this the 15th day of February, 2023 that the contents of the above affidavit are true to my knowledge and no part of it is false and nothing material has been concealed therefrom.

Identified by :  Purna Singh


DEPONENT

Solemnly affirmed before me on this
15th day of February 2023 by
Shri/Smt/Miss Yodh Bdr. Thapa
Majhitar who is known and
identified by Shri/Smt/Miss Purna
Singh of Gangtok.


Miss Roshni Chettri
Oath Commissioner
High Court of Sikkim
Vide Notification No. 17/HCS/21/10/2022

Advance copy of Rejoinder to Reply Filed by R2 and R6

Akshar Bhatt <akshar@outlook.com>

Sat 3/4/2023 10:47 PM

To: vikram.wadehra@vidhiipartners.com <vikram.wadehra@vidhiipartners.com>; apu7law@gmail.com <apu7law@gmail.com>; contactadvsa@gmail.com <contactadvsa@gmail.com>; explosives@explosives.gov.in <explosives@explosives.gov.in>

Cc: prannoy sebastian <prannoyjoe.sebastian@gmail.com>

📎 2 attachments (3 MB)

Rejoinder r-2.pdf; Rejoinder MoEF and CC.pdf;

Dear Sir,

1. Mr Vikram Wadhera
Advocate for BPCL, R-1
2. Mr Sameer Abhyankar
Advocate for SPCB and DC, Pakyong,
R-2 and R-6
3. Mr. Surendra Kumar
Advocate for CPCB, R-4
4. PESO - R6

Kindly find attached the rejoinder to replies filed by R-2 and R-6 in the matter titled as Yodh BDR Thapa Vs BPCL&Ors, with OA No 154/2022 of NGT (EZ)

This service in advance through email shall constitute as effective service.

Regards,
Akshar Bhatt
Advocate for the Applicant