

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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**BEFORE THE NATIONAL GREEN TRIBUNAL  
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**VERSUS**

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**REJOINDER TO REPLY FILED BY R-2, SPCB, SIKKIM**

**MOST RESPECTFULLY SHOWETH:**

1. At the outset and without prejudice to the submissions made herein below, the Applicant denies each and every allegation, averment, and/or submission made by the Respondent No. 2 by way of its reply which is contrary to the submissions of the applicant. The denial may be treated as specific and in seriatim, save and except what has been specifically admitted.
2. That it is submitted that Respondent No.2 has raised certain contentions which can majorly be divided into four major points are listed hereinbelow:-
  - i. **INCORRECT PRESENTATION OF TIMELINE OF EVENTS**
  - ii. **NO SOP OR SITING CRITERIA PREPARED BY RESPONDENT NO.2 TO MEANINGFULLY IMPLEMENT THE INTEGRATED GUIDANCE FRAMEWORK FOR CHEMICALS SAFETY IN RESPECT OF THE ISOLATED STORAGES AND INDUSTRIES COVERED UNDER MANUFACTURE, STORAGE AND IMPORT OF HAZARDOUS CHEMICALS (MSIHC) RULES, 1989**

**iii. GRAVAMEN OF CHARGES AGAINST RESPONDENT NO.1  
HAS BEEN ACCEPTED BY RESPONDENT NO.2**

**iv. SITING CRITERIA FOR PETROL PUMPS IS INSUFFICIENT  
TO DEAL WITH PETROL DEPOTS**

**A. INCORRECT PRESENTATION OF TIMELINE OF EVENTS**

3. That in reply, the Respondent No.2 has not presented the correct timeline as to the sequence of events. It is pertinent to note that the Applicant chose to approach this Hon'ble Tribunal only after the humble request to stop the illegal construction of the petrol depot by Respondent No.1 fell on deaf ears.
4. It is submitted that the Applicant had written a letter to Respondent No.2 dated 31.10.2022, seeking information whether prior environmental permissions had been obtained by Respondent No.1 before commencing construction activity and also informing about the potential environmental dangers that it would befall on the community at large. (Kindly see Annexure A-6 on Page 69 of the Original Application)
5. In response, the Respondent No.2, on 07.11.2022 confirmed that a 1000kl petrol depot is being established and no consent to establish for the same has been obtained. (Kindly see Annexure A 7 on Pages 70-72 of the Original Application).
6. It is humbly submitted that even after informing the Applicant about the illegal construction of the petrol depot, Respondent No.2 failed to promptly act and stop illegal construction activities.
7. It is further submitted that constrained by circumstances, Applicant filed the present Original Application which was registered on 23.11.2022.
8. The Applicant, to address the gravity of the situation at hand, wrote another letter dated 27.11.2022 to Respondent No.2, informing about the continued and illegal construction activity of the petrol depot which poses a grave risk

to human health and habitation including the violation of several laws falling within the ambit of Respondent No.2 as nodal authority. It was requested that Respondent No.2 must take strict action under Section 31 A of the Air Act, 1981 and Section 33A of the Water Act, 1974 for prohibition of construction activities and impose strict fines under Noise Pollution Rules, 2000 and Construction and Waste Demolition Rules, 2016. Despite being made aware of the continued and illegal construction activity, no action was taken by Respondent No.2. It was also informed that these issues have been raised in an Original Application before this Hon'ble Tribunal.

Copy of the letter dated 27.11.2022 issued by the Applicant to Respondent No.2 is annexed and marked as Annexure A **1** on pages **10-11**.

- 9.** It is the contention of the Respondent No.2 that an inspection was purportedly carried out at the petrol depot of Respondent No.1 on 24.11.2022 and it was noted that construction work had already commenced by Respondent No.1 without obtaining a Consent to Establish. However, no inspection report has been annexed in support by Respondent No.2. It is humbly submitted that despite such detailed and advanced knowledge at hand, Respondent No.2 failed to stop construction activities of Respondent No.1. (Kindly see Para No. **5** on Pages **2** and **3** of the Reply filed by Respondent No.2).
- 10.** It is further submitted that belatedly, as an afterthought, almost a month after being made aware by the Applicant that illegal construction was ongoing did Respondent No.2 try seeking an explanation by sending a show cause notice dated 30.11.2022. (Kindly see Annexure R**3** on page **14** of the Reply filed by Respondent No.2).
- 11.** The Applicant had knocked the doors of all relevant authorities in Sikkim in order to make them aware of the dangers of establishing a petrol depot in such a densely inhabited area, but to no avail. Constrained by circumstances, and

lack of prompt action by the authorities, the Applicant moved this Hon'ble Tribunal which was pleased to grant a stay on construction vide order dated 05.12.2022 and subsequently extend it vide order dated 12.01.2022, till the next date of hearing i.e. 20.02.2022.

**12.**It is pertinent to note that Respondent No.2 only took substantive action against Respondent No.1 after the directions of this Hon'ble Tribunal dated 05.12.2022.

**B. NO SOP OR SITING CRITERIA PREPARED BY RESPONDENT NO.2 TO MEANINGFULLY IMPLEMENT THE INTEGRATED GUIDANCE FRAMEWORK FOR CHEMICALS SAFETY IN RESPECT OF THE ISOLATED STORAGES AND INDUSTRIES COVERED UNDER MANUFACTURE, STORAGE AND IMPORT OF HAZARDOUS CHEMICALS (MSIHC) RULES, 1989**

**13.** It is submitted that Isolated Storage and Handling of Hazardous Chemicals has been completely omitted from the EIA mechanism via notification dated 13.06.2019 issued by Respondent No.6. (Kindly see Annexure A9 from pages **89-93** in the Original Application)

**14.**It is submitted that in compliance of In re: News item published in The Hindu dated 23.02.2021 titled "Two dead, 5 missing in fire at UPL Plant" with Original Application No. 60/2021, on 11.06.2021, the Hon'ble Principal Bench of the NGT directed the Respondents No.3 and Respondents No.6 to bring out a comprehensive mechanism to deal with isolated storage of hazardous chemicals. In compliance of the same, Respondents No.3 and No.6 on 29.10.2021 brought out an Integrated Guidance Framework for Chemicals Safety in Respect of the Isolated Storages and Industries Covered Under Manufacture, Storage and Import of Hazardous Chemicals (MSIHC) Rules,

1989. (Kindly see Annexure **A-14** from pages **103-124** of the Original Application).

- 15.** That it is verily believed that only the state of Gujarat has brought out a standard operating procedure with a siting criteria clearly specifying distance requirements so as to properly implement the Integrated Guidance Framework for Chemicals Safety in Respect of the Isolated Storages and Industries Covered Under Manufacture, Storage and Import of Hazardous Chemicals (MSIHC) Rules, 1989. Gujarat's criteria has a minimum distance of 500 meters to be maintained from residential, religious areas, etc. (Kindly see Annexure **A-15** from Pages **125-133** of the Original Application)
- 16.** It is submitted that without a standard SOP in place with a clearly earmarked siting criteria, it is impossible to implement the Integrated Guidance Framework for Chemicals Safety in Respect of the Isolated Storages and Industries Covered Under Manufacture, Storage and Import of Hazardous Chemicals (MSIHC) Rules, 1989.
- 17.** It is submitted that Integrated Guidance Framework for Chemicals Safety in Respect of the Isolated Storages and Industries Covered Under Manufacture, Storage and Import of Hazardous Chemicals (MSIHC) Rules, 1989 has very broad contours within Part C relating to duty of state authorities inter alia, grant of CTE/CTO, risk assessment, no permission in non-industrial zone, safety audit, safe distance, etc. It is the contention of the Respondent No.2 that it has complied with these provisions. (Kindly see Para **14** and **15** on pages **9** and **10** of the Reply filed by Respondent No.2)
- 18.** That the state of Sikkim has not brought out any SOP with a specific siting criteria under the Integrated Guidance Framework for Chemicals Safety in Respect of the Isolated Storages and Industries Covered Under Manufacture, Storage and Import of Hazardous Chemicals (MSIHC) Rules, 1989 which

would enable scientific decision making and would ensure that no untoward environmental disaster occurs as safety protocols would be in place.

**19.** That even letter written by Secretary, MoEFCC dated 18.01.2022 to all Chief Secretaries of the country mentions that necessary instructions be issued to the concerned authorities for the effective implementation of Integrated Guidance Framework for Chemicals Safety in Respect of the Isolated Storages and Industries Covered Under Manufacture, Storage and Import of Hazardous Chemicals (MSIHC) Rules, 1989. The letter talks about ground status on half-yearly basis, including close monitoring, periodic assessments, safety audits, et al. (kindly see Annexure R/4, Page No.79 of Reply Filed by Respondent No.6)

**20.** It would also ensure that criteria before establishment is uniform, aiding and assisting in industries/isolated storages being set up safely and securely, with no threat to the environment, ecology and human habitation.

**C. GRAVAMEN OF CHARGES AGAINST RESPONDENT NO.1 HAS BEEN ACCEPTED BY RESPONDENT NO.2**

**21.** That the gravamen of the charges presented against Respondent No.1 by the Applicant have been accepted in toto by Respondent No.2. (Kindly see Para **12** on Page **8** of the Reply filed by Respondent No.2).

**22.** It is submitted that Respondent No.1 has not taken any prior environmental permissions from Respondent No.2 and has failed to follow the letter of law.

**23.** It is pertinent to note that illegal construction of the petrol depot was almost eighty per cent complete and on the verge of being fait accompli before construction activities were stopped by the directions of this Hon'ble Tribunal.

**D. SITING CRITERIA FOR PETROL PUMPS IS INSUFFICIENT TO DEAL WITH PETROL DEPOTS**

- 24.** It is submitted that Respondent No.3 has vide OM dated 07.01.2020 brought about certain guidelines related to the establishment of petrol pumps, inter alia, a siting criteria, keeping a specific distance requirement in mind, in order to ensure safety and security is maintained. (Kindly see Annexure A-16 from pages 134-139 of the Original Application)
- 25.** It is submitted that an addendum was issued by Respondent No.3 vide OM dated 16.08.2021 prescribing minimum distance requirement of petrol pumps from water bodies. (Kindly see Annexure A-17 from pages 140-148 of the Original Application)
- 26.** It is submitted that Respondent No.2 has, while returning, the application for CTE for Respondent No.1 on two occasions called for compliance to the abovementioned OM's.
- 27.** It is humbly submitted that the minimum distance criteria as mentioned in the OM's for petrol pumps is insufficient to deal with storage of petrol at a depot as it is almost fifty times quantity of petrol stored than in the case of a petrol pump.
- 28.** It is humbly submitted that failure on the part of Respondent No.2 to bring out a SOP with a clearly earmarked siting criteria to meaningfully implement Integrated Guidance Framework for Chemicals Safety in Respect of the Isolated Storages and Industries Covered Under Manufacture, Storage and Import of Hazardous Chemicals (MSIHC) Rules, 1989 has put the virgin ecology and environment of Sikkim at risk.
- 29.** Further, even the prayer of the Original Application requests this Hon'ble Tribunal to specifically direct Respondent No.2 to prepare Standard Operating Procedure for Integrated Guidance Framework for Chemicals Safety in Respect of the Isolated Storages and Industries Covered Under Manufacture, Storage and Import of Hazardous Chemicals (MSIHC) Rules,

1989. It further calls for Respondent No.2 to prepare a specific SOP mentioning siting criteria to ensure that safety protocols are in place. (Kindly see Prayer Clause No. 3 &4 at Page No.41 of the Original Application).

DATE: 04.03.2023  
PLACE: KOLKATA

A handwritten signature in blue ink, appearing to be 'Akshar', written over a light yellow rectangular background.

FILED BY:

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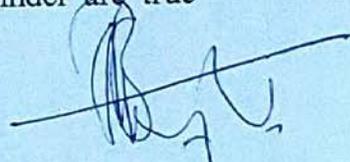
BHARAT PETROLEUM CORPORATION  
LTD. & ORS

...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:

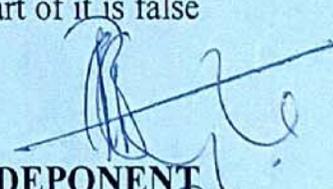
1. That I am the Applicant in the instant case and, hence, conversant with the facts and circumstances of the case and competent to swear this affidavit.
2. That the contents of the accompanying Rejoinder are true and correct and nothing material has been concealed therefrom.
3. That the annexures appended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

  
DEPONENT

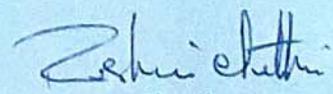
VERIFICATION

Verified at Gangtok, Sikkim on this the 15<sup>th</sup> 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 Piya Singh

  
DEPONENT

Solemnly affirmed before me on this  
15<sup>th</sup> day of February 2023 by  
Shri/Smt/Miss Yodh Bdr. Thapa  
Majhitar who is known  
to me by Shri/Smt/Miss Piya  
Singh of Gangtok.

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

## ANNEXURE A-1

27.11.2022

To,  
Member Secretary,  
Sikkim State Pollution Control Board,  
Forest & Environment Department  
Government of Sikkim,  
Deorali, Gangtok - 737102

**SUBJECT: Illegal construction of 1000KL petrol storage depot by BPCL in residential area without obtaining Consent to Establish in violation of the Air (Prevention and Control of Pollution) Act, 1981, Water (Prevention and Control of Pollution) Act, 1974, Noise Pollution Rules, 2000 and Construction and Demolition Waste Management (C&D) Rules, 2016**

**Sir,**

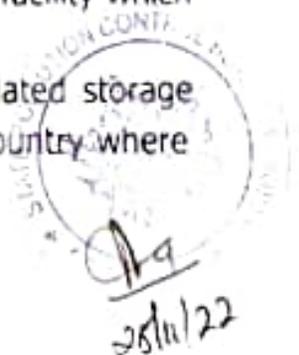
This is with reference to the Letter dated 31.10.2022 by the undersigned requesting information regarding the permissions taken by BPCL Rangpo for construction of a 1000KL petrol depot adjacent to the residence of the undersigned. The Undersigned informed about the ongoing construction activities wherein 6 large tanks are placed right adjacent to the boundary wall of the Undersigned while also informing about the safety issues arising therein. (A copy of letter dated 31.10.2022 has been appended as annexure 1)

In response, this Authority, issued letter dated 07.11.2022 wherein it was informed that BPCL Rangpo is establishing a 1000KL depot without obtaining Consent to Establish. It was further stated that BPCL Rangpo has merely applied for consent to establish on 27.09.2021 and has not received a CTE as statutorily mandated.

This present letter is to bring to your notice that BPCL Rangpo has been continuing its construction activities despite not obtaining a prior consent to establish under the Air Act, and Water Act. The Undersigned seeks to raise the following points which require an immediate action from this Authority -

1. The 1000KL depot falls under definition of Isolated Storage under the Red category of the categorisation of industries by the SPCB. Construction of isolated storage facilities requires a prior Consent to Establish (CTE), however the SPCB has not granted a CTE to BPCL Rangpo. BPCL Rangpo has started and has continued its construction activities in high population density area which poses tremendous risk to the life and property of the residents in the neighbouring areas.
2. The 1000KL tanks of BPCL Rangpo isolated storage facility are placed just 15 ft away from the boundary wall of the Undersigned and at a mere 50 ft radial distance from residential areas including a temple. Further, there is only one entry and exit facility which poses grave risk at the time of an accident.
3. The concerns of the undersigned with respect to the construction of isolated storage facility is not unfounded as there have been numerous instances across the country where

*[Handwritten Signature]*



such isolated storage of hazardous substances in depots have resulted in mishaps. A recent incident in the **Bhopal Fuel Mishap Tragedy in October, 2022** wherein a **BPCL Depot** in Bhopal caught fire resulting in deaths. The scale of construction being undertaken by BPCL Rangpo has a similarly high potential to attract an untoward incident, the likes of which has never been witnessed in Sikkim. Further, the fact that the construction is being undertaken without obtaining prior environmental permissions which addresses such risks further increases the chance of such an incident. This Authority, i.e. the Sikkim SPCB must take a strict view of this risk taking into account the precautionary principle and take action against such illegal activities which can have a deleterious effect on human habitat, environment and public at large.

4. The MoEF&CC has introduced the Integrated Guidance Framework for Chemicals Safety in Respect of the Isolated Storages and Industries Covered Under Manufacture, Storage and Import of Hazardous Chemicals (MSIHC) Rules, 1989 which provides that such facilities cannot be established in densely populated areas.

5. BPCL Rangpo has deployed heavy machineries for construction activities which has far exceeded the Ambient Standards for Noise for residential areas as prescribed under the Noise Rules, 2000. Further, the construction activities are being undertaken even at night time in total violation of the law.

6. BPCL Rangpo is undertaking construction activities without complying with the conditions under the Construction and Demolition Waste Management Rules, 2016. The construction material lies open without any cover or any mechanism for dust suppressions.

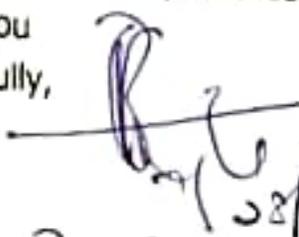
The undersigned has also filed an Original Application before the Hon'ble National Green Tribunal, Eastern Bench at Kolkata raising these and other additional issues.

In view of the aforementioned violations, it is essential that SPCB undertakes its statutory duty as prescribed under the Air Act and Water Act which grant powers to the SPCB to take action against violations of the two acts. The SPCB has been granted powers under Section 31A of the Air Act and under Section 33A of the Water Act to issue directions for closure, prohibition or regulation of any industry, operation or process. Further, the SPCB can also issue directions for stoppage or regulation of supply of electricity, water or any other service if it finds violations of the Air Act and Water Act. The SPCB must also stringently act against BPCL under the Noise Pollution Rules, 2000 and Construction and Waste Demolition Rules, 2016 for it has violated the same.

**We request the SPCB to take cognizance of the above-stated facts and fulfil its statutory obligation and issue directions under Section 31A and Section 33A of the Air Act and Water Act for prohibition of construction activities, and also impose strict fines under Noise Pollution Rules, 2000 and Construction and Waste Demolition Rules, 2016.**

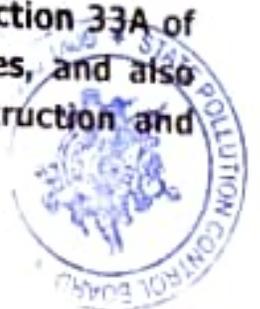
**This is for your kind, necessary and expeditious action.**

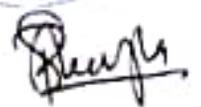
Thanking You  
Yours faithfully,

  
28/11/2022

(98320-57880)

YODH B. THAPA, MAJITAR, SIKKIM





**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