

**BEFORE THE NATIONAL GREEN TRIBUNAL,
PRINCIPAL BENCH, DELHI
Original Application 134/2022 and 267/2022**

In the Matter of :

Tejasvi Chandra ---

Applicant

Vs.

Madhu Kamboj ---

Respondent

UTTARAKHAND

DATED: 28 October, 2022

REPLY TO THE REPORT SUBMITTED BY THE DM DEHRADUN BY THE APPLICANT IN PERSON

1. As mentioned in the report submitted by the DM Dehradun w.r.t O.A No. 134 of 2022 dated 17.10.22, no communication was made to me whatsoever, neither telephonically nor in a written manner. I was never informed that I was called by the District Authorities to present my case in front of them.
The question arises as to why neither me nor the UKPCB appeared in front of the District Magistrate but only I.O.C.L and Smt. Madhu Kambhoj appeared for the same. This indicates that both the UKPCB and I were kept in the dark to favour one particular person concerned.
2. This report clearly indicates that Smt. Madhu Kambhoj is being favoured by the district authorities as they have sought relief to the respondent on the basis vague references of cases such as Abraham Kuruvila v/s State of Kerala.
In the above case mentioned in the report, there are many hidden factors that were intentionally ignored to throw dust in the eyes of the court of law. Such as –

2.1 The NOC of the site in the said case was issued by the DM Alappuzha on 20.12.19 and NOC by the Fire and Safety Department was issued on 25.7.19 which is prior to the latest guidelines of the CPCB. (ANNEXURE-1) The new guidelines of the CPCB were nowhere applicable to him and it was an utterly vague reference.
3. Another fact being highlighted in the Report was that the draw of allotment of the said pump at Khasra No. 1081, Mothronwala Road was made in 2018 and because of which no guidelines of the NGT dated 07.01.20 holds valid on the same. However, as per the Standing Committee Report presented in the Lok Sabha on 06.08.21, the total number of applicants for the draw of allotment were 4,03,087 and number of locations advertised were 78,389. Out of which only 10,307 were commissioned as on 01.06.21.
Going by the Report submitted by the DM DDN, the remaining 68,082 applicants are also eligible and applicable to sought relief from the guidelines of 2020 laid down by the CPCB whenever they deem to open a new retail outlet in their due course of life. (ANNEXURE-2)
4. The Joint Committee Report submitted to the NGT on 05.04.22 mentions about the non-compliance of the guidelines by the said petrol pump retail outlet and how it does not fulfil

any such guidelines. However, the DM DDN has contradicted and failed to stick to their own words. In the recent report of 17.10.22, they have taken a completely different direction superseding their own words.

5. As far as the reply submitted by Smt. Madhu Kambhoj (dated 05.10.22) is concerned, all the NOCs, LOI, applications made by her are dated after 07.01.20, making her come under the bigger umbrella of the guidelines dated 07.01.20. (ANNEXURE-3)
6. In a similar fashion, Rakesh Verma V/S State of Uttarakhand (O.A No.140/2022), the suspected site was also not fulfilling the guidelines of the CPCB. In regards to which, the UKPCB on 18.04.22 informed the DM DDN to cancel its NOC. Subsequently it was cancelled by the DM DDN and the site map was also cancelled. (ANNEXURE – 4)

This reflects the fact that the person concerned is being preferred by every other authority and are giving vague- non-sensical references to hide the reality.

Kindly acknowledge this.

Annexure-1

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BEFORE THE NATIONAL GREEN TRIBUNAL
SOUTHERN ZONE, CHENNAI

Appeal No.06 of 2022 (SZ)

With

Appeal No.07 of 2022 (SZ)

With

Appeal No.08 of 2022 (SZ)

With

Appeal No.09 of 2022 (SZ)

(Through Video Conference)

IN THE MATTER OF:

Abraham Kuruvila,

Aged 58 years, Son of A.K. Abraham,
Amprayil Anchil House, Neerattapuram,
P.O. Thalavady Village,
Alapuzha- 689 571

...Appellant(s)
(In all the cases)

Versus

1. The Kerala State Pollution Control Board,

Rep. by its Member Secretary,
Pattom, Plamood Junction,
Thiruvananthapuram- 695 004

2. The Central Pollution Control Board,

Rep. by its Chairman,
Parivesh Bhawan, East Arjun Nagar,
Delhi- 110032

3. Juby Jacob,

Proprietor Kopparaparambil Fuels,
Kopparapparamil House,
Neerattapuram, P.O. Thalavady,
Alapuzha- 689 571

4. The Territory Manager (Retail),

Bharat Petroleum Corporation Limited,
Irimpanam Installation, Irimpanam,
Kochi- 682 309

...Respondent(s)
(In all the cases)

For Appellant(s):

Mr. P.B. Sahasranaman (In all cases)

For Respondent(s):
(In all cases)

Mrs. V.K. Rema Smrithi for R1.
Mr. R. Thirunavukarasu for R2.
Mr. P. Haridas for R3.
Mr. Karthikeyan for M/s. AVV Partners for R4.

Judgment Reserved on: 5th May, 2022

Judgment Pronounced on: 11th May, 2022

CORAM:

HON'BLE SMT. JUSTICE PUSHPA SATHYANARAYANA, JUDICIAL MEMBER

HON'BLE DR. SATYAGOPAL KORLAPATI, EXPERT MEMBER

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JUDGMENT

Delivered by Justice Smt. Pushpa Sathyanarayana, Judicial Member

1. All these four appeals are instituted against the common judgment dated 07.01.2022 passed by the Air and Water Appellate Authority, Thiruvananthapuram, in Appeal Nos.03/2021, 04/2021, 05/2021 and 06/2021.
2. By virtue of the impugned common judgment, the Air and Water Appellate Authority, Thiruvananthapuram, ("the Appellate Authority", for the sake of brevity), rejected the appeals preferred by the appellant under Section 28 of the Water (Prevention and Control of Pollution) Act, 1974 and under Section 31 of the Air (Prevention and Control of Pollution) Act, 1981.
3. The case of the appellant is that the third respondent proposed to set up a Petroleum Retail Outlet in Re-Survey No.557/12, Block 36, Thalavady Village, Kuttanad Taluk, Aalapuzha District. Since the distance between the said land and his residential building is only 7.5 meters, he lodged a petition dated 03.03.2020 questioning the issuance of consent to establish a petroleum retail outlet in favour of the third respondent herein. According to him, the consent issued by the first respondent - Kerala State Pollution Control Board (KSPCB) is in violation of the guidelines issued by the second respondent - Central Pollution Control Board (CPCB) in Office Memorandum No.B.13011/1/2019-2020 AQM dated 07.01.2020. However, without considering his petition, the first respondent issued a variation order dated 24.07.2020 followed by Consent to Operate/Authorisation/Registration order dated 15.01.2021. The said orders, having been passed without taking note of the fact that the subject petroleum outlet is located within 50 meters from the residential area, the appellant filed appeals before the Appellate Authority culminating into the impugned order.
4. The first respondent filed a report dated 28.02.2022 through its Environmental Engineer (HG). In the report, it was claimed by the first respondent that the Revenue Divisional Officer, Alappuzha, addressed a letter dated 28.10.2019 to its Alappuzha District Office about the proposed establishment of the subject outlet, based on which, site inspection was conducted on 05.11.2019. Upon receipt of online

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application of the third respondent on 04.02.2020, Consent to establish was issued. According to the first respondent, since the process was completed before the implementation of the CPCB guidelines dated 07.01.2020 and the circulars, which were in vogue as on the date of issuance of consent, there is no merit in the appeals.

5. The reply affidavit dated 25.02.2022 filed by the second respondent would go to show that the CPCB issued the guidelines dated 07.01.2020 pursuant to the orders passed by the Hon'ble Principal Bench of this Tribunal in O.A.No.86 of 2019 and the same is applicable throughout the country and the State PCBs cannot exempt or relax the applicability date. The second respondent submitted that any petrol pump set up after 07.01.2020 shall meet the said siting criteria.
6. The third respondent filed a detailed counter-affidavit dated 22.04.2022 along with typed-set of documents. It is stated that the appellant has been taking up the cause of one Smt. Geetha Kumari, a rival petroleum outlet owner, whose petroleum outlet is located only few meters away from the third respondent's outlet and he has no public interest. It is also stated that vide order dated 08.07.2020 in O.A.No.101 of 2020, this Tribunal negated the *locus standi* of the appellant to question the consent issued favouring the third respondent, which order was conveniently suppressed by the appellant and thus, these appeals are barred by *res judicata*. It is further stated that the High Court of Kerala vide order dated 06.07.2021 in WP (C)No.10982 of 2021 permitted the third respondent to proceed with the running and operation of the petroleum outlet and directed the Appellate Authority to dispose of the appeals expeditiously, which resulted in passing the impugned judgment. The third respondent stated that the Siting criteria of 50 meters to be maintained from the residential zone to the outlet as per the local laws contained in the guidelines of the CPCB dated 07.01.2020 is not applicable to the third respondent, as there is no such law in force in Thalavady Village as has been informed by the Town Planning Office, Alappuzha and also on the premise that prior to Consent orders, the third respondent obtained No Objection Certificates (NOCs) from the Department of Fire and Safety on 25.07.2019 and Additional District Magistrate, Alappuzha, on 20.12.2019 and in terms of judgment of the High Court of Kerala in WP(C)No.1060 of 2021, the Circular dated 09.04.2004 is applicable to the case of the third respondent, as per which the green

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category outlets need to maintain only a distance of 3 meters to the nearest residence and the third respondent's outlet falls under the Green category. It is also stated by the third respondent that her outlet is having tank capacity of 60 KL and as such, installation of Vapor Recovery System (VRS), which has to be done for outlets with 300 KL capacity, is also not applicable to their case. The third respondent claimed that the appellant never questioned the consent to establish and as such, he has no right to challenge the consent to operate or consent variation order.

7. The fourth respondent filed a common reply statement dated 28.04.2022, which, *inter alia*, would go to show that the fourth respondent has issued a notification in the year 2018 itself calling for application for appointment of Retail Outlet Dealership for the subject area, in which, the third respondent was selected, who, in turn, obtained NOCs from the Department of Fire and Safety on 25.07.2019 and Additional District Magistrate, Alappuzha, on 20.12.2019, which led to the issuance of Consent for Establishment on 06.02.2020. It is the claim of the fourth respondent that the official respondents followed all the mandates in the issuance of consent orders to the third respondent and there is no illegality in the process and the resultant orders. According to the fourth respondent, the orders of the High Court of Kerala and this Tribunal, including the order of the Hon'ble Principal Bench of this Tribunal, have been scrupulously followed in the process by the respondents.

8. Heard the learned counsel appearing on behalf of the appellant and the respondents and perused the materials placed on record.

9. The learned counsel for the appellant contended that the Consent to Establish was issued in favour of the third respondent on 06.02.2020, while the application itself was submitted on 04.02.2020, only to circumvent the compliance of the CPCB guidelines dated 07.01.2020, which was issued pursuant to the order passed by the Hon'ble Principal Bench of this Tribunal. It is the submission of the learned counsel for the appellant that the first respondent ignored their responsibility qua protection of environment, which necessitated the appellant to knock at the doors of this Tribunal, so also the High Court of Kerala. It is contended that the Appellate Authority also failed to appreciate the material facts and thus, the impugned order needs interference.

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10. Learned counsel for the first, second and fourth respondents, relying upon their respective reports/counter statements, submitted that the official respondents discharged their duties in accordance with the Statute and guidelines in force and considering all those aspects, the Appellate Authority rejected the appeals. According to them, the impugned judgment needs no interference at this stage.

11. This Tribunal considered rival submissions and the materials placed on record.

12. Having regard to the facts and circumstances of these appeals, the points arise for consideration in the instant appeals are :

- i. whether the CPCB circular dated 07.01.2020 or the earlier Circular of the KSPCB is applicable to the case of the third respondent ?
- ii. whether the first respondent is right in issuing the Consent to Establish, Consent Variation Order and the Consent to Operate/ Authorisation/registration ? and
- iii. whether the common order of the Appellate Authority needs to be set aside or not ?

13. Since all these points are intrinsically intertwined, they are taken up for consideration together.

13.1 Before going into the factual issue, it is necessary to know the backdrop for issuance of the circular dated 07.01.2020 by the CPCB. The Hon'ble Principal Bench of this Tribunal considered the issue of location of petrol pumps near residential areas and its resultant possibility of causing pollution to air and water to the nearby areas, in O.A.No.31 of 2019 and vide order dated 18.01.2019 appointed a Joint Committee to look into the issues and suggest remedial measures and based on the report of the Joint Committee, *inter alia*, issued a direction, vide order dated 22.07.2019, that a safe distance has to be fixed from residential area to the new outlet and the same shall be maintained and also directed to include the guidelines in the Integrated Consent to Establish (ICE) of new outlets of petrol pumps. In compliance with the said direction, the CPCB issued guidelines dated 07.01.2020 in OM No.B-13011/1/2019-20/AQM/10802-2084, as per which, 50 meters distance has to be

maintained by a new outlet from schools, hospitals and residential areas designated as per local laws and in no case, the distance shall be less than 30 meters. Acting on this Circular, the KSPCB issued Circular dated 24.02.2020 in No.PCB/HO/HOW/RULES9/7/2019, followed by modification Circular dated 18.08.2020 and the relevant portion of the latter is as follows :

"Also if any requisite licence other than the PCB consent is obtained by the applicant for establishing the petrol pump prior to the date of the circular cited (2) above, the siting criteria mentioned in circular dated 09/08/2004 shall be applicable."

It is to be stated that the Circular dated 09.04.2004 defines three categories as Red, Orange and Green and the third respondent's outlet falls under the Green category, for which, maintaining only a distance of 3 meters to the nearest residence would suffice.

13.2 Now coming to the factual aspects, it is to be stated that the third respondent, in response to the notification of the fourth respondent, sought for appointment of Retail Outlet Dealership in the year 2018 itself and obtained NOCs from the Department of Fire and Safety on 25.07.2019 and Additional District Magistrate, Alappuzha, on 20.12.2019. This is followed by submission of joint application on 04.02.2020 by the third respondent and the resultant issuance of Consent to Establish on 06.02.2020. Against this, the appellant preferred the complaint dated 03.03.2020. The appellant also filed WP (C)No.10129 of 2020 before the High Court of Kerala seeking to restrain the first respondent from issuing the Consent to operate and the said writ petition was disposed of on 22.05.2020 directing the first respondent to give an opportunity of hearing to the stakeholders. Thus, the first respondent, in compliance of the directions, issued Consent Variation Order on 24.07.2020. The appellant filed O.A.No.101 of 2020 before this Tribunal seeking a similar relief, which was disposed of at the admission stage itself by this Tribunal on 08.07.2020 observing that "the appellant is not entitled to come before this Tribunal with a different prayer in order to achieve the same purpose." Subsequently, the third respondent commissioned Fuel Tank and unloaded fuel on 29.01.2021 and the Legal Metrology Department calibrated fuel on the same day and thus, the outlet was ready to function. However, according to the third respondent, the appellant filed appeals before the Appellate Authority suppressing so many material facts leading to the passing of the interim order interdicting the filling of fuel tanks. Thus, she

filed WP (C)No.10982 of 2021, in which, interim relief was granted favouring her and also the Appellate Authority was directed to pass orders on the appeals as expeditiously as possible. In such backdrop, the impugned judgment was passed by the Appellate Authority.

13.3 The Appellate Authority considered the alleged feeble attempts made by the appellant to achieve scores for the rivalry of the third respondent. It is apt to reproduce the penultimate paragraph of the impugned judgment of the Appellate Authority, which reads thus:

"9. Upon hearing both sides and on perusal of the materials on records, I have no hesitation to hold that the appellant preferred these experimental appeals to defeat the lawful right of the first respondent. So in order to render complete justice to the licensee/the 1st respondent who had obtained the license for the establishment of petroleum retail outlet in legal means, we reject the prayer in the appeal memorandum."

13.4 The narration of facts and dates and events, as above, would go to show that the CPCB circular dated 07.01.2020 has no application to the instant case and there is no infirmity in the orders issuing the Consent to Establish, Consent Variation Order and the Consent to Operate/ Authorisation/registration on the part of the first respondent, since the ball was set in motion in the year 2018. Having regard to the aforesaid discussion, there is no illegality in the order of the Appellate Authority.

13.5 The points are answered accordingly.

14. In the facts and circumstances of these appeals, the parties are directed to bear their own costs.

15. In the result, these appeals are liable to be dismissed as devoid of merit and accordingly, Appeal Nos.06 to 09 of 2022 stand dismissed.

.....J.M.
(Smt. Justice Pushpa Sathyanarayana)

.....E.M.
(Dr. Satyagopal Korlapati)

Internet – Yes/No
All India NGT Reporter – Yes/No

Appeal No.06/2022 (SZ) to
Appeal No.09/2022 (SZ)
11th May, 2022. (AM)

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(10)

Before the National Green
Tribunal
Southern Zone (Chennai)

Appeal No.06 of 2022 (SZ)
With
Appeal No.07 of 2022 (SZ)
With
Appeal No.08 of 2022 (SZ)
With
Appeal No.09 of 2022 (SZ)

Abraham Kuruvila,
Vs.
The Kerala State Pollution
Control Board and Ors.



Appeal No.06/2022 (SZ) to
Appeal No.09/2022 (SZ)
11th May, 2022. (AM)

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**STANDING COMMITTEE ON
PETROLEUM & NATURAL GAS
(2020-21)**

SEVENTEENTH LOK SABHA

MINISTRY OF PETROLEUM & NATURAL GAS

**ALLOTMENT OF RETAIL OUTLETS AND LPG
DISTRIBUTORSHIPS**

EIGHTH REPORT



**LOK SABHA SECRETARIAT
NEW DELHI**

August, 2021 / Shravana, 1943 (Saka)

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CP&NG NO.

EIGHTH REPORT

**STANDING COMMITTEE ON
PETROLEUM & NATURAL GAS
(2020-21)**

(SEVENTEENTH LOK SABHA)

MINISTRY OF PETROLEUM & NATURAL GAS

ALLOTMENT OF RETAIL OUTLETS AND LPG DISTRIBUTORSHIPS

Presented to Lok Sabha on 6.08.2021

Laid in Rajya Sabha on 06.08.2021



**LOK SABHA SECRETARIAT
NEW DELHI**

August, 2021 / Shravana, 1943 (Saka)

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1.2 On being enquired about the reasons behind dissolution of the Dealer Selection Board and entrusting the responsibility of selection of dealerships to OMCs, the Ministry in its written reply submitted as under:

"After the dismantling of the Administered Pricing Mechanism in the petroleum sector on 1.4.2002, all the Dealer Selection Boards (DSBs) in the country were dissolved with effect from 9.5.2002. On the basis of broad guidelines issued by the Ministry, OMCs have framed their own detailed guidelines for selection of candidates. The step was taken inline with the spirit of liberalization and empowering OMCs with commercial freedom".

1.3 On being enquired about the reason for frequent changes in the guidelines for allotment of LPG distributorships at regular intervals, the Ministry in its written reply submitted as under:

"Changes in Selection guidelines are made from the learning/ experiences/ feedbacks to improve the process by incorporating changes/amendments to maintain clarity & transparency in the Guidelines".

1.4 When asked to furnish a note on the proposed road map for setting up of new retail outlets by OMCs in the country, the Ministry in its written reply submitted the following information:

"Expansion of retail outlet network is a continuous process undertaken by Public Sector Oil Marketing Companies (OMCs) in tandem with the growth in demand of Petrol and Diesel. Accordingly, the locations for retail outlets identified by Public Sector OMCs are included in the State Retail Marketing Plan and are advertised for setting up of new Retail Outlet Dealerships.

Public Sector OMCs have advertised in Nov/Dec 2018 for setting of retail outlets across the country and have issued 29501 LOIs as on 01.06.2021 out of which 10307 nos. of ROs have been commissioned. As on 01.06.2021 Public Sector OMC have the network of 69521 number of retail outlets.

LOI issued and NRO commissioning (2018 Advertisement) as on 01.06.2021:

OMC	LOI issued from 2018 Advertisement	NROs Commissioned from 2018 Advertisement
BPCL	9216	3550
HPCL	8364	2981
IOCL	11921	3776
TOTAL	29501	10307

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Network strength as on 01.06.2021:

OMC	No of ROs as on 01.06.2021
BPCL	18652
HPCL	18692
IOCL	32177
TOTAL	69521

With regard to LPG Distributorships

Total 1079 no. of LPG Distributorships have been allotted by Oil Marketing Companies (OMCs) since 01.12.2018 till 01.05.2020. Details are as under:

OMC	IOC	BPC	HPC	Total
No. of LOIs Issued	612	231	236	1079

1.5 On being enquired about the national coverage of LPG by the public sector oil companies along with company wise data of the number of petrol pumps and LPG distributorships that are expected to be commissioned, the Ministry in its written reply submitted the following information:

"With regard to RO

OMCs expect to commission 2850 no of ROs during the year 2020-21

Retail outlet Planned for commissioning by Public Sector OMC in 2020-21 is as below:-

OMC	NRO Planned (numbers)
IOC	1000
BPC	1000
HPC	850
Total	2850

With regard to LPG

National LPG coverage as on 01.07.2020 is 98.1%. OMCs expect to commission 400 LPG distributorships in the year 2020-21.

OMC	Distributorship Target (numbers)
IOC	200
BPC	100
HPC	100
Total	400

1.6 On being enquired about the reasons for clustering of ROs in certain areas, the Ministry in its written reply submitted the following information:

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d) Reserved category certificate, if applicable.

The dealer selection guidelines of Public Sector OMCs do not provide for conducting such field inspection by any third party.

With regard to LPG

Field verification of credentials (FVC) is carried out for the candidate, selected in the Draw as per laid down procedure after the online computerized draw. FVC is carried out by a committee of one officer nominated by the State LPG / Regional / Zonal Head of IOC/BPC/HPC. FVC of selected candidate is undertaken only after receipt of requisite fee and all the requisite documents with the concerned office of OMC. The candidate is required to be present while the FVC is conducted. During the field investigation, the information/statement made in the application form is verified with the documents submitted and the corresponding original documents. This verification (inspection) is done by concerned OMC officer only, it is not done by third party. The existing system is transparent and is working satisfactorily."

1.18 When asked about the average number of applicants who applied for Retail Outlets and LPG distributorships in the four categories during the last three years, the Ministry in its written reply submitted as under:

"OMCs have released an advertisement in Nov/Dec 2018 for Retail Outlets and number of applicants is as under (in last three years Retail has released only one advertisement was in 2018):

Retail -OMCs	Number of locations advertised (A)	Number of applicants (B)	Average number of applicants (C = B/A)
BPC	21010	117501	5.6
IOC	37050	181791	4.9
HPC	20329	103795	5.11
IND. TOTAL	78389	403087	5.1

Further, during the last three years (Apr'18 to Mar'21), OMC have received following number of average applicants per LPG distributorships:

Type of Distributorships	Total Applications	Total Locations	Avg. Application per location
Sheheri Vitrak & Rurban Vitrak	2987	55	54
Gramin Vitrak & Durgam Kshetriya Vitrak	8464	817	10

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कार्यालय जिलाधिकारी देहरादून।

संख्या- 260/पत्रि-2020-21

दिनांक 31 दिसम्बर 2020

विषय- भूमि खसरा नं 1081 KA ग्राम मोथरावाला तहसील देहरादून जनपद देहरादून में प्रस्तावित न्यू पेट्रोलियम क्लास ए0/बी0 रिटेल आउटलेट स्थापित किये जाने हेतु अनापत्ति प्रमाण पत्र के सम्बन्ध में।

सेवा में

- 1-वरिष्ठ पुलिस अधीक्षक, देहरादून।
- 2-मुख्य अग्नि शमन अधिकारी देहरादून।
- 3-सचिव, मसूरी देहरादून विकास प्रधिकरण देहरादून।
- 4- उप जिलाधिकारी देहरादून।
- 5-अधिसाक्षी अभियन्ता लोडिंग/डि देहरादून।
- 6-जिला पूर्ति अधिकारी देहरादून।

महोदय,

उपरोक्त विषयक इंडियन ऑयल कॉरपोरेशन लिमिटेड पंजीकृत कार्यालय जी-9, अली बाबर जंग मार्ग, वाडा (पूर्व), मुम्बई- 400051 के पत्र संख्या- DDN DO/NRO/245 दिनांक 30-12-2020 का सन्दर्भ ग्रहण करने का कष्ट करें जिसमें भूमि खसरा नं 1081 KA ग्राम मोथरावाला तहसील देहरादून जनपद देहरादून में प्रस्तावित न्यू पेट्रोलियम क्लास ए0/बी0 रिटेल आउटलेट स्थापित किये जाने हेतु अनापत्ति प्रमाण पत्र निर्गत किये जाने का अनुरोध किय गया है। उक्त के क्रम में पत्र के साथ मानचित्र की प्रति संलग्न कर इस आशय के प्रेषित की जा रही है कि प्रस्तुत स्थल का स्थलीय निरीक्षण कर जीव आख्या/अनापत्ति इस कार्यालय को प्रेषित करने का कष्ट करें।

संलग्नक-उपरोक्तानुसार।

BH
ना. त. छ. ड. ड.

कृ. जी. च. कर
आख्या 5

S.D.M (3)

31/12/20

उप जिलाधिकारी देहरादून

कार्यालय जिलाधिकारी देहरादून।

(अरविन्द कुमार पाण्डेय)
अपर जिलाधिकारी (प्रो)
देहरादून।

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Annexure-4

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कार्यालय मसूरी देहरादून विकास प्राधिकरण, देहरादून।

कार्यालय आदेश

पत्रांक :- 343 /

दिनांक 28 / 07 / 2022

मा0 उच्च न्यायालय, नैनीताल उत्तराखण्ड में योजित रिट पिटीशन संख्या- 45 (एम.एस.)/2022, एवं स्पेशल अपील संख्या-112/2022 श्रीमती मुक्ता जैन एवं अन्य बनाम श्री भानूप्रताप चौधरी एवं अन्य में पारित आदेश दिनांक 27.06.2022 के क्रम में श्री भानूप्रताप चौधरी द्वारा प्रस्तुत प्रत्यावेदन दिनांक 02.07.2022 के क्रम में दिनांक 08.07.2022 को श्री भानूप्रताप चौधरी एवं श्रीमती मुक्ता जैन को अपना पक्ष एवं सुनवाई हेतु प्राधिकरण कार्यालय में उपस्थित होने के लिये सूचित किया गया।

प्राधिकरण कार्यालय में दिनांक 08.7.2022 को श्री भानूप्रताप चौधरी स्वयं तथा श्रीमती मुक्ता जैन के प्रतिनिधि के रूप में श्री अमित जैन उपस्थित हुये। दोनों पक्षों द्वारा निम्न बिन्दुओं से प्राधिकरण को अवगत कराया गया :-

1. श्री भानूप्रताप द्वारा सुनवाई में अवगत कराया गया कि आवेदक श्रीमती अरुणा जैन एवं श्रीमती मुक्ता जैन (पत्रावली संख्या-सी-0200/21-22) का पेट्रोल फिलिंग स्टेशन का मानचित्र भवन निर्माण एवं विकास उपविधि के अनुसार मानक निम्नानुसार पूर्ण नहीं करता है :-
 - (क) शासनादेश संख्या- 1647, दिनांक 25-10-21 के अनुसार दो पेट्रोल पम्प के बीच की दूरी, यदि मार्ग की दूसरी तरफ भी हो 300 मीटर होना अनिवार्य है। जबकि प्रश्नगत पेट्रोल पम्प लगभग 100 मीटर की दूरी पर स्थित है।
 - (ख) यह कि मा0 राष्ट्रीय हरित अधिकरण द्वारा दिये गये मानकों को पूर्ण नहीं करता है।
 - (ग) मा0 राष्ट्रीय हरित अधिकरण द्वारा मूल वाद संख्या 140/2022-श्री राकेश वर्मा बनाम उत्तराखण्ड राज्य एवं अन्य में पारित आदेश दिनांक 21.04.2022 में राज्य प्रदूषण नियंत्रण बोर्ड द्वारा मा0 अधिकरण के समक्ष प्रस्तुत आख्या में स्पष्ट रूप से उल्लेख किया गया है कि उपरोक्त पेट्रोल पम्प का निर्माण नियमों के विरुद्ध है तथा जिलाधिकारी को उनके द्वारा उक्त पेट्रोल पम्प को दी गई अनुमति को निरस्त करने हेतु सूचित किया गया।
2. श्रीमती मुक्ता जैन के प्रतिनिधि श्री अमित जैन द्वारा प्राधिकरण को निम्न बिन्दुओं से अवगत कराया गया :-
 - (क) मानचित्र संख्या-सी-0200/21-22 जो कि खसरा संख्या-268 मि0 माता मन्दिर रोड पर स्थित है, प्राधिकरण में दिनांक 01.09.2021 को आवेदित किया गया था।
 - (ख) पेट्रोल पम्प फिलिंग स्टेशन का संशोधित शासनादेश संख्या-1647, दिनांक 05.10.2021 इसके बाद जारी हुआ है। अतः पेट्रोल पम्प की स्वीकृति सही है क्योंकि यह प्रकरण संशोधित शासनादेश से पूर्व का है।
 - (ग) पेट्रोल पम्प लगाने का कार्य भी स्थल पर काफी पूर्ण हो गया है।
3. सुनवाई के पश्चात् दोनों पक्षों को अपना लिखित पक्ष प्रस्तुत करने हेतु निर्देशित किया गया।
4. श्री भानूप्रताप चौधरी ने अपने लिखित पक्ष में निम्नानुसार उल्लेख किया है कि-

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- (क) पेट्रोल फिलिंग स्टेशन के मानचित्र संख्या-0200/21-22 की स्वीकृति मानको के अनुसार नहीं है, क्योंकि शासनादेश संख्या-1647, दिनांक 25.10.21 के अनुसार दो पेट्रोल पम्प के बीच की दूरी यदि मार्ग के दूसरी तरफ भी हो तो 300 मीटर होना अनिवार्य है, जबकि प्रश्नगत पेट्रोल पम्प दूसरे पेट्रोल पम्प से लगभग 100 मीटर की दूरी पर स्थित है।
- (ख) मा0 राष्ट्रीय हरित अधिकरण द्वारा मूल वाद संख्या 140/2022-श्री राकेश वर्मा बनाम उत्तराखण्ड राज्य एवं अन्य में पारित आदेश दिनांक 21.04.2022 में राज्य प्रदूषण नियंत्रण बोर्ड द्वारा मा0 अधिकरण के समक्ष प्रस्तुत आख्या में स्पष्ट रूप से उल्लेख किया गया है कि उपरोक्त पेट्रोल पम्प का निर्माण नियमों के विरुद्ध है तथा जिलाधिकारी को उनके द्वारा उक्त पेट्रोल पम्प को दी गई अनुमति को निरस्त करने हेतु सूचित किया गया।
- (ग) राज्य प्रदूषण नियंत्रण बोर्ड द्वारा अपने पत्रांक यू.के.पी.सी.बी./एच.ओ./सा0-183-553/2022/163 दिनांक 18.04.2022 के माध्यम से उक्त पेट्रोल पम्प एन.जी.टी. के मानकों के अनुरूप न होने के कारण जिलाधिकारी देहरादून को पेट्रोल पम्प की अनुमति नियमानुसार निरस्त करने हेतु अनुरोध किया गया है।
5. श्रीमती मुक्ता जैन के प्रतिनिधि श्री अमित जैन द्वारा अपने लिखित पक्ष में निम्नानुसार उल्लेख किया है कि-

- (क) श्री भानूप्रताप द्वारा माननीय उच्च न्यायालय, नैनीताल में याचिका दायर की गई थी, जिसमें मा0 उच्च न्यायालय द्वारा प्राधिकरण के समक्ष नवीन प्रत्यावेदन प्रस्तुत करने हेतु आदेशित किया गया था तथा प्राधिकरण को उक्त प्रत्यावेदन एक सप्ताह के भीतर निस्तारित करने हेतु निर्देशित किया गया था। मा0 उच्च न्यायालय के आदेश की अवहेलना के पश्चात् प्रार्थिनी द्वारा उक्त आदेश के विरुद्ध मा0 उच्च न्यायालय की खण्डपीठ के समक्ष स्पेशल अपील संख्या 112/2022 योजित की गई, जिसमें मा0 न्यायालय द्वारा आदेश दिनांक 27.08.2022 के द्वारा श्री भानूप्रताप के नवीन प्रत्यावेदन को पुनः एक सप्ताह में निस्तारित करने हेतु आदेशित किया गया है।
- (ख) शासनादेश संख्या-1647 दिनांक 5.10.2021, जो कि पेट्रोल फिलिंग के बाईलॉज से सम्बन्धित है, से पूर्व ही प्रार्थी का मानचित्र स्वीकृत है क्योंकि उक्त शासनादेश दिनांक 09.05.22 को बोर्ड में अंगीकृत किया गया है।
- (ग) प्रार्थिनी के स्वीकृत मानचित्र को निरस्त किये जाने से पहले कारण बताओ नोटिस जारी किया जाना चाहिये तथा मानचित्र निरस्त किये जाने का आधार भी होना चाहिये।

उपरोक्त दोनों पक्षों द्वारा दिये गये अपने साक्ष्यों के आधार पर एवं स्वीकृत मानचित्र की जाँचोपरान्त यह संज्ञान में आया है कि-

1. मानचित्र संख्या-सी-0200/21-22, जो कि श्रीमती अरुणा जैन एवं श्रीमती मुक्ता जैन के नाम से स्वीकृत है, में आर्किटेक्ट द्वारा साईट-प्लान तथा की-प्लान में दूसरा पेट्रोल पम्प दूरी के साथ अंकित नहीं किया गया है। अतः पूर्ण तथ्य मानचित्र में प्रस्तुत नहीं किये गये हैं।



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2. मानचित्र संख्या-सी-0200/21-22 शासनादेश संख्या- 1647 दिनांक 25.10.2021 के अनुसार दी गई 02 पेट्रोल पम्प की दूरी का मानक पूर्ण नहीं करता है। (छायाप्रति संलग्न)
3. राज्य प्रदूषण नियंत्रण बोर्ड के पत्रांक यू.के.पी.सी.बी/एच.ओ./सा0-183-553/2022/163 दिनांक 18.04.2022 के अनुसार भी एन.जी.टी. के निर्देशानुसार जिलाधिकारी देहरादून एवं राज्य प्रदूषण नियंत्रण बोर्ड द्वारा संयुक्त निरीक्षण के अनुसार निर्माणाधीन पेट्रोल पम्प केन्द्रीय प्रदूषण नियंत्रण बोर्ड द्वारा निर्गत गाईडलाईंस सेटिंग आफ न्यू पेट्रोल पम्प साईटिंग criteria रिटेल आउटलेट का पालन नहीं करता है (छायाप्रति संलग्न)। इस पत्र में राज्य प्रदूषण नियंत्रण बोर्ड द्वारा जिलाधिकारी देहरादून को पेट्रोल पम्प की अनुमति निरस्त करने हेतु अनुरोध किया गया है। उक्त पत्र के सम्बन्ध में श्रीमती मुक्ता जैन द्वारा अपना कोई पक्ष प्रस्तुत नहीं किया गया।

उपरोक्त के क्रम में मानचित्र संख्या-सी-0200/21-22, खसरा नं 268 मौजा अजबपुरकलाँ, देहरादून पर स्थित पेट्रोल पम्प एन.जी.टी. के मानकों के विपरीत पाया गया है तथा प्राधिकरण से स्वीकृत मानचित्र में भी साईट प्लान में आर्किटेक्ट द्वारा दूसरे पेट्रोल पम्प की दूरी अंकित नहीं करते हुये तात्त्विक दुर्यपदेशन (material mis-representation) के माध्यम से स्वीकृत कराना प्रदर्शित होता है तथा उपरोक्त मानचित्र को निरस्त करने हेतु पृथक से कार्यवाही उत्तराखण्ड नगर एवं ग्राम नियोजन तथा विकास अधिनियम, 1973 की धारा 15(9) के अन्तर्गत की जायेगी।

अतः श्री भानूप्रताप चौधरी द्वारा प्रस्तुत प्रत्यावेदन को उपरोक्तानुसार निस्तारित किया जाता है।

सचिव
मसूरी देहरादून विकास प्राधिकरण,
देहरादून।

प्रतिलिपि:-

1. ✓ श्री भानूप्रताप चौधरी, 1/1 अजबपुरकलाँ समीप माता मन्दिर, देहरादून को सूचनार्थ प्रेषित।
2. श्रीमती मुक्ता जैन एवं श्रीमती अरुणा जैन, खसरा नं 268, माता मन्दिर रोड़, अजबपुरकलाँ, देहरादून।

सचिव
मसूरी देहरादून विकास प्राधिकरण,
देहरादून।

Tejasvi
28/10/22