

**BEFORE THE NATIONAL GREEN TRIBUNAL  
EASTERN ZONE BENCH, KOLKATA  
(THROUGH PHYSICAL HEARING WITH HYBRID MODE)**

Original Application No.154/2022/EZ  
(I.A. No.236/2022/EZ)

**In the matter of:**

**YODH BDR. THAPA,**

.....Applicant(s)

**Versus**

**1. BHARAT PETROLEUM CORPORATION LTD.,**

Through Chairman and Managing Director,  
Bharat Bhavan, 4 and 6 Currimbhoy Road,  
Ballard Estate, Mumbai-400001

**2. SIKKIM STATE POLLUTION CONTROL BOARD,**

Through Chairman,  
Ground Floor, Forest Secretariat Annex I,  
Deorali Rd., Gangtok, Sikkim-737102

**3. CENTRAL POLLUTION CONTROL BOARD,**

Through its Chairman,  
Parivesh Bhavan, CBD-cum-Complex,  
East Arjun Nagar, Delhi-110032

**4. DISTRICT COLLECTOR, PAKYONG DISTRICT,**

Office of the District Collectorate,  
Pkyong, Sikkim,

**5. PETROLEUM AND EXPLOSIVES SAFETY ORGANIZATION,  
UNDER MINISTRY OF COMMERCE AND INDUSTRY,  
DEPARTMENT FOR PROMOTION OF INDUSTRY  
AND INTERNAL TRADE,**

Through Chief Controller of Explosives,  
A Block CGO Complex Fifth Floor, Seminary Hills,  
Nagpur, Maharashtra-440006

**6. MINISTRY OF ENVIRONMENT, FORESTS AND CLIMATE CHANGE,**

Through Secretary,  
Indira Paryavaran Bhawan, Jor Bagh Road,  
New Delhi-110003

.....Respondent(s)

Date of hearing: 17.04.2023

**CORAM: HON'BLE MR. JUSTICE B. AMIT STHALEKAR, JUDICIAL MEMBER  
HON'BLE DR. AFROZ AHMAD, EXPERT MEMBER**

For Applicant(s) : Mr. Akshar Bhatt, Advocate a/w  
Mr. Sajal Sharma, Advocate (in Virtual Mode)

For Respondent(s): Mr. Vikram Wadehra, Advocate (in Virtual Mode) a/w  
Mr. Mayukh Roy, Advocate for R-1,  
Ms. Vani V. Chhetri, Advocate for R-2&4 (in Virtual Mode),  
Mr. Surendra Kumar, Advocate for R-3,  
Mr. Apurba Ghosh, Advocate for R-6 (in Virtual Mode)

### **ORDER**

1. This Original Application has been filed by the Applicant with alleging that the Respondent No.1, Bharat Petroleum Corporation Limited (BPCL), is setting-up a Petrol Depot on Plot No. 2242 which is adjacent to the plot of the Applicant being Plot No. 2254 and Plot No. 2242 is under the proprietorship of one Mr. Arjun Chhetri, proprietor of M/s Pankaj Fuel, which is stated to have been leased out to the Respondent No.1.
2. The allegation of the Applicant is that the said Petrol Depot is being set-up in violation of the Siting Criteria laid down by the Central Pollution Control Board in its Circular dated 07.01.2020, copy of which has been filed as Annexure A-16 to the Original Application.
3. The documents filed as Annexure-3 (colly) along with the Original Application further show that on the complaint of the Applicant, an inspection was carried out by the Sub-Divisional Magistrate, Rangpo, East Sikkim, of the plot in question, which mentions that construction of huge petroleum containers is going on in the Plot No. 2242 and this construction is approximately 15 feet away from the boundary wall of Shri Y. B. Thapa (the Applicant herein) and is about 24 feet away from the office and 64 feet away from the dispensing unit.
4. Learned Counsel for the Applicant further states that as per the Siting Criteria laid down by the Central Pollution Control Board in its Notification dated 07.01.2020, petrol pumps/new retail outlets

shall not be located within a radial distance of 50 meters from the fill point/dispensing units/vent pipe whichever is nearest) from schools, hospitals and residential areas. Paragraph 'H' of the Siting Criteria of the said Notification reads as under: -

***“H. Siting Criteria for Retail Outlets:***

*In case of siting criteria for petrol pumps new Retail outlets shall not be located within a radial distance of 50 meters (from fill point/dispensing units/vent pipe whichever is nearest) from schools, hospitals (10 beds and above) and residential areas designated as per local laws. In case of constraints in providing 50 meters distance, the retail outlet shall implement additional safety measures as prescribed by PESO. In no case the distance between new retail outlet from schools, hospitals (10 beds and above) and residential area designated as per local laws shall be less than 30 meters. No high tension line shall pass over the retail outlet.”*

5. Learned Counsel for the Applicant further submits that the Unit in question being established by the Respondent No.1, BPCL, does not have due Consents from the State Pollution Control Board, Sikkim. He has further referred to the letter of the Pollution Control Board, Sikkim, dated 07.01.2022 (Annexure A-7 to the Original Application) which clearly states that Consent has not been issued to the said Unit by the State Pollution Control Board, Sikkim, though a Consent to Establish has been applied for by the Unit of Respondent No.1, BPCL, which has not been considered due to non-submission of the details required by the Board.
6. At the time of admission, the Tribunal restrained the Respondent No.1, Bharat Petroleum Corporation (BPCL) from carrying out any construction activity on Plot No.2242, Rangpo, East Sikkim.

7. Affidavit dated 10.01.2023 has been filed by the Respondent No.2, Sikkim State Pollution Control Board, stating therein that immediately upon receiving information with regard to allegations regarding construction of the Petrol Depot, a site inspection was carried out on 24.11.2022 and it was found that the construction work had already been started by the Respondent No.1 without obtaining a Consent to Establish (CTE). Therefore, a Show Cause Notice dated 30.11.2022 was issued to the Respondent No.1 and another Show Cause Notice was issued on 09.12.2022 directing the Respondent No.1 to ensure strict adherence to the order dated 05.12.2022 passed by the Tribunal and to immediately stop further construction activities on Plot No.2242 at Majhitar, Pakyong District. It is stated that the Respondent No.1 had applied online on 27.09.2021 for grant of Consent to Establish (CTE) but the application was returned by the Board with a request to the Respondent No.1 to furnish relevant documents and information. It is categorically stated that since the Consent to Establish was under process for approval the Respondent No.1 was not entitled to undertake any construction. Details of the application submitted by the Respondent No.1 and action taken by the Board have been outlined in a chart given in paragraph-9 of the affidavit which reads as under: -

<b>Sl. No.</b>	<b>Date of Submission by the Respondent No.1</b>	<b>Activity</b>	<b>Reason for Return by the Answering Respondent</b>
1.	27.09.2021	Returned by the Answering Respondent	Certified copy of all the relevant documents to be uploaded in PDF format.

2.	21.10.2021	Returned by the Answering Respondent	Certified copy of the Detailed Project Report (“DPR”) to be uploaded in PDF format.
3.	17.11.2021	Returned by the Answering Respondent	All documents to be properly certified and scanned. Further, DPR lacks relevant information about the project i.e. investment details, technical specifications and processes, pollution issue and control measures, statutory permissions (EC, Fire NOC from the Petroleum and Explosives Safety Organization (“PESO”), crisis management plan etc.).
4.	09.05.2022	Returned by the Answering Respondent	<ol style="list-style-type: none"> <li>1. Capital investments to be provided for all civil work, plant and machinery, land and pollution control measures.</li> <li>2. Authorization letter or Power of Attorney in respect of the authorized signatory to be provided.</li> </ol>
5.	23.09.2022	Returned by the Answering Respondent	Legible registered Land Agreement in stamp paper to be uploaded.
6.	31.10.2022	Returned by the Answering Respondent	1. Attested copy of the Land Parcha to be uploaded in addition to the uploaded

			<p>documents.</p> <p>2. The DPR containing design details in compliance with the Central Pollution Control Board (“CPCB”) Guidelines on Petrol Pumps vide Office Memorandum dated 07.01.2020 and the addendum to the Guidelines vide Office Memorandum dated 16.08.2021 to be uploaded.</p> <p>It is pertinent to point out for the purposes of this application that the DPR was specifically called for, so as to ensure that the location of the Respondent No.1’s proposed project was more than 50 meters from a residential area as required by the Siting Criteria provided under the Respondent No.3’s Office Memorandum with Reference No. B-13011/1/2019-20/AQM dated 07.01.2020 (“OM dated 07.01.2020”) &amp; the Office Memorandum with Reference No. B-13011/1/2019-</p>
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			<i>20/AQM dated 16.08.2021 (“OM dated 16.08.2021”)</i>
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8. With regard to violation of the Manufacture, Storage and Import of Hazardous Chemical Rules, 1989 (hereinafter referred to as ‘Rules, 1989’), it is stated that the Board has considered the Rules and returned the application of the Respondent No.1 seeking grant of Consent to Establish with a direction to the Respondent No.1 to furnish the Onsite Emergency Plan, Safety Reports and Safety Audit Reports but the Respondent No.1 has failed to provide the same and has continued with illegal constructions without intimation to the Board. It is stated that a Show Cause Notice was issued to the Respondent No.1, copy of which has been filed along with the affidavit.
9. The Respondent No.6, Ministry of Environment, Forests and Climate Change has filed affidavit dated 11.01.2023 bringing on record the Manufacture, Storage and Import of Hazardous Chemical Rules, 1989, Notification dated 27.11.1989. Part-I Schedule 1 to the Rules, 1989 deals with Flammable Chemicals.
- Hazardous Chemicals in Rule (2) (e) of the Rules, 1989 is defined as-
- (i) any chemical which satisfies any of the criteria laid down in Part I of Schedule 1 or listed in Column 2 of Part II of Schedule;
  - (ii) any chemical listed in Column 2 of Schedule 2; and
  - (iii) any chemical listed in Column 2 of Schedule 3.
10. The Central Pollution Control Board has filed affidavit dated 14.02.2023 bringing on record the CPCB, O.M. dated 07.01.2020 which provides the sitting criteria for retail outlets.

11. The Resident Commissioner, Sikkim, has filed affidavit dated 18.02.2023 and it is stated that on receiving a complainant from the Applicant dated 06.09.2022 the SDM, Rangpo immediately deployed a surveyor to the Depot site who along with boundary holders, conducted a Spot Verification of the same on 07.09.2022 and prepared a Spot Verification Report dated 07.09.2022. It was found that on the land bearing Plot No.2242, recorded in the name of one Mr. Arjun Chettri, huge constructions of petroleum containers were being undertaken by the Respondent No.1. Petroleum tanks were being constructed approximately 15ft. away from the boundary wall of the Applicant, 24 ft. away from its office and 64 ft. away from its dispensing Unit. The Spot Verification Report has already been filed as Annexure-3, page no.62 to the Original Application. It is also stated that the SDM, Rangpo issued notice to the Depot In-charge, Respondent No.1, directing them to attend a hearing in the office of the SDM, Rangpo on 26.09.2022 with all the relevant documents regarding installation of the huge petroleum containers close to the boundary wall of the Applicant. It is also stated that on 26.09.2022, all the parties i.e. the Applicant and the representatives of the Respondent No.1 presented themselves in the office of the SDM and thereafter, the SDM vide another notice on 29.11.2022 again directing the Respondent No.1 and Applicant to attend the second hearing in the office of the SDM, Rangpo on 03.12.2022 with relevant supporting documents. It is further stated that on 03.12.2022, the Respondent No.1 did not produce the relevant permissions for establishment of the Depot and therefore, the parties were directed to approach a Court of competent jurisdiction for resolution of their dispute.



12. The Applicant in his rejoinder affidavits has stated that MoEF&CC has notified the Rules, 1989, already referred to hereinabove, as well as the Chemical Accidents (Emergency, Planning, Preparedness and Response) Rules, 1996 and it is stated that the State Chief Inspector of Factories and Petroleum and Explosives Safety Organization grant approvals to isolated storages and are expected to ensure preparation of the Onsite Emergency Plans and Safety Report by the Unit, 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. His case is that there is no specific guideline which can govern the issue of appropriate siting criteria for establishment of isolated storage petrol depot as distinguished from petrol pumps/retail outlets. The case of the Applicant is that the Respondent No.1 is establishing a Petrol Depot of 1000 KL capacity with a massive underground setup. 1000 KL is equivalent to 10 lakhs liters of petrol.
13. By way of illustration the Applicant has also stated that in the State of Gujarat, the Gujarat State Pollution Control Board has prepared a Standard Operating Procedure (SOP) for isolated storage facilities providing therein that within urban area no isolated storage facility can be permitted in a residential area. This SOP further 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 college. Copy of the Standard Operating Procedure (SOP) has been filed as Anneuxre-A-15 to the Original Application. The Siting Criteria in the Gujarat SOP reads as under: -

***“II. Storage facility should comply following siting criteria.***

- a) Unit should be minimum 500 meters away from the residential area, school and college.*
- b) Unit should be minimum 500 meters away from the Historic buildings, Religious places, forest boundary and coastline.*
- c) Unit should be in accordance with control line of National highway, Express highway, State highway, District major roads as per Notification of concerned authority.*
- d) Unit should be in accordance with control line of Railway track following the norms of Indian Railways.*
- e) Unit should be at least 500 meters away from the water source like river, nallah, canal, lake, pond etc.*
- f) Such industry according to use of non-agricultural land and all around industry should be maximum green belt area 5 meter in premises.”*

14. The submission is that no Standard Operating Procedure has been prepared by the Sikkim State Pollution Control Board or even by the State Administration regarding Siting Criteria for installation of Petrol Depots other than petrol pumps/retail outlets to ensure safety of residential/commercial areas in the State of Sikkim.
15. The Respondent No.5, Petroleum and Explosives Safety Organization (hereinafter referred to as ‘PESO’) has filed its affidavit dated 14.04.2023 stating that licence to import & store petroleum at an installation was granted to Respondent No.1, Bharat Petroleum Corporation Limited, by PESO on the strength of NOC dated 28.06.2000 issued by the District Collector, East Sikkim. Licence for Service Station/Petroleum Retail Outlet was granted to

the Respondent No.1 on 31.07.2014 on the strength of the NOC issued by the District Magistrate, East Sikkim.

16. The Respondent No.1 has obtained prior approval with respect to enhancement of petroleum storage capacity up to 1065 KL from the Chief Controller of Explosives, Nagpur vide letter dated 04.09.2021. It is stated that hazardous zone concerning petroleum installation defined in Rule 105 of Petroleum Rules, 2002 read with Schedule IV (B) lays down the minimum distance required to be maintained for granted of licence under the Petroleum Rules, 2002. It is also stated that the Siting Criteria laid down in the CPCB O.M. dated 07.01.2020 is applicable only for Petroleum Retail Outlet whose construction has commenced on or after 07.01.2020.
17. There is no dispute between the parties that what is being setup by the Respondent No.1 is not a petrol retail outlet but a petrol depot having a capacity of 1065 KL equivalent to 10,65,000 liters of petrol. It cannot be gainsaid that petrol is a hazardous substance within the meaning of the term as defined in Part I of Schedule 1 of the Rules, 1989. Here we are not concerned with a case of setting up of a petrol pump/retail outlet and therefore, the CPCB guidelines of 07.01.2020 have no application in the present case.
18. Be that as it may, the Spot Verification Report of the SDM, Rangpo clearly states that the Petrol Depot site in question is situate 15 ft. from the boundary wall of the Applicant, 24 ft. away from its office and 64 ft. away from its dispensing Unit. In this view of the matter, even if assuming that the CPCB guidelines of 07.01.2020 were applicable, the siting of the retail depot in question is in violation of the siting criteria given therein.

19. Having said that, we find there is no Standard Operating Procedure (SOP) with regard to establishment of Petrol Depots as distinguished from petrol pumps/retail outlets. It appears that the District Administration while issuing the NOC has not taken into consideration the fact that the Depot is situated in a mountainous urban area where the residential establishments are situated not only to the right, left and in front of the Depot but also above the Depot on the hill side as would be evident from the photographs which are on record. It appears that the District Administration has not applied its mind to the horrendous scene that would unfold, if an accident were to occur at this Petrol Depot. There would be untold loss of human lives other than a precipitous environmental disaster. On the own showing of the Resident Commissioner, Sikkim, the Respondent No.1 did not produce relevant documents during the second hearing on 03.12.2022. This does not show the bona fide of the Respondent No.1 to act in accordance with law.
20. The PESO in its affidavit has also not stated whether the adequate steps and mechanism for Disaster Management have been put in place before setting up the Petrol Depot in question.
21. However, since there is no Standard Operating Procedure (SOP) for Petrol Depots as in the case of the Gujarat State Pollution Control Board, we are of the view that the matter needs to be re-examined by the State Respondents in the light of the observations made above.
22. We accordingly direct the Central Pollution Control Board to examine this issue and prepare Standard Operating Procedure (SOP) for Petrol Depots within three months. Till such Standard Operating Procedure (SOP) is evolved and put in place the

Respondent No.1 is restrained from carrying out any construction activity on Plot No.2242, Rangpo, East Sikkim. The interim order shall be enforced by the Sikkim State Pollution Control Board as well as by the Resident Commissioner, Sikkim.

23. With the aforesaid directions, the Original Application No.154/2022/EZ is disposed of.
24. Interlocutory Applications, if any stand disposed of accordingly.
25. There shall be no order as to costs.

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**B. Amit Sthalekar, JM**

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**Dr. Afroz Ahmad, EM**

April 17, 2023  
Original Application No.154/2022/EZ  
(I.A. No.236/2022/EZ)  
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