



2023/KER/56107

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE A.MUHAMED MUSTAQUE

&

THE HONOURABLE MRS. JUSTICE SHOBA ANNAMMA EAPEN

WEDNESDAY, THE 13<sup>TH</sup> DAY OF SEPTEMBER 2023/22ND BHADRA, 1945

WA NO. 1461 OF 2022

AGAINST THE JUDGMENT DATED 15.09.2022 IN WP(C) 1688/2022 OF  
HIGH COURT OF KERALA

APPELLANT/ADDL. 5TH RESPONDENT:

JAYARAJAN B.C.,  
AGED 47 YEARS,  
S/O. B. CHANDU,  
VANIYAN VEEDU,  
DARGAZ P.O.,  
PARAPPA,  
PIN - 671533

BY ADVS.  
K.P.SUDHEER  
P.K.SURESH KUMAR (SR.)

RESPONDENTS/PETITIONER & RESPONDENTS 1 TO 4:

- 1 LAKSHMI MALLYA,  
AGED 30 YEARS,  
W/O. NITHIN NAGARAJ NAYAK,  
RADHA NIVAS,  
ALLAMIPALLY, KANHANGAD,  
KASARAGOD, PIN - 671533
- 2 THE DISTRICT COLLECTOR,  
KASARGOD DIST.,  
COLLECTORATE,  
KASARGOD, PIN - 671121
- 3 THE ADDITIONAL DISTRICT MAGISTRATE,  
COLLECTORATE,  
KASARGOD,  
PIN - 671121



- 4 INDIAN OIL CORPORATION LIMITED,  
REP. BY ITS CHIEF REGIONAL MANAGER,  
TRIVANDRUM DIVISIONAL OFFICE,  
GROUND FLOOR,  
PREMIER PARK INCHAKKAL BYE PASS ROAD,  
VALLAKKADAV P.O.,  
THIRUVANANTHAPURAM,  
PIN - 695008
- 5 THE VILLAGE OFFICER,  
VILLAGE OFFICE,  
MALOTH,  
VALLIKKADAVU,  
PIN - 671533

R1 BY ADV.SMT.A.SALINILAL  
R1 BY ADV. SRI. R.SUNIL KUMAR  
R2, R3 & R5 BY SRI.V.TEKCHAND, SENIOR GOVERNMENT  
PLEADER  
R4 BY SRI.M.GOPIKRISHNAN NAMBIAR, SC  
SMT.RAMOLA NAYANPALLY  
SRI.K.JOHN MATHAI  
SRI.JOSON MANAVALAN  
SRI.KURYAN THOMAS  
SRI.PAULOSE C. ABRAHAM  
SRI.RAJA KANNAN

THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON  
13.09.2023, THE COURT ON THE SAME DAY DELIVERED THE  
FOLLOWING:



## **JUDGMENT**

### **A.Muhamed Mustaque, J.**

This intra-court appeal is filed at the instance of additional fifth respondent, who got himself impleaded in the writ petition filed before this Court. The writ petition was filed challenging an order rejecting No Objection Certificate (NOC) by the Additional District Magistrate, Kasargode for establishment of a petroleum outlet. The Additional District Magistrate rejected the NOC applied by the Indian Oil Corporation noting that the proposed site for establishing the outlet is a different location than one notified in the notification by the Indian Oil Corporation. The learned Single Judge noted that it is not in the domain of the Additional District Magistrate to interpret a notification and reject the NOC. The appellant herein, who got himself impleaded, in fact had raised objection before the Additional District Magistrate contending that the proposed site by the applicant is a different area than notified in the notification by the Indian Oil Corporation. Accepting this objection, the NOC was rejected.

2. The learned Single Judge after adverting to Rule



144 of the Petroleum Rules, 2002 took a view that the District Authority cannot interpret a notification and reject the NOC. Though argument and objection raised by the appellant before us is attractive, in as much that it raises a doubt as to the location. After advertng to the scope of Rule 144 of the Petroleum Rules, 2002, we are of the view that the District Authority could not have rejected a No objection Certificate by interpreting a notification issued by the Indian Oil Corporation. The power of District Authority is to ensure public safety, keeping in mind the proposed location for establishing a petroleum outlet.

3. It is proper to refer Rule 144 of Chapter VII of the Petroleum Rules, 2002 which reads thus:-

*"144. No-objection certificate.-*

*(1) Where the licensing authority is the Chief Controller or the Controller, as the case may be, an applicant for a new licence other than a licence in Forms III, XI, XVII, XVIII, or XIX shall apply to the District Authority with two copies of the site- plan showing the location of the premises proposed to be licensed for a certificate to the effect that there is no objection, to the applicant receiving a licence for the site proposed and the District Authority shall, if he sees no objection, grant such certificate to the applicant who shall forward it to the licensing authority with his application Form IX.*

*(2) Every certificate issued by the District Authority under sub-rule (1) shall be accompanied by*



*a copy of the plan of the proposed site duly endorsed by him under his official seal.*

*(3) The chief controller or the controller as the case may be, may refer an application not accompanied by certificate granted under sub-rule (1) to the District Authority for his observations. (4) If the District Authority, either on a reference being made to him or otherwise, intimates to the Chief Controller or the Controller as the case may be, that any licence which has been applied for should not, in his opinion, be granted, such licence shall not be issued without the sanction of the Central Government.*

*(5) The District Authority shall complete his inquiry for issuing NO OBJECTION CERTIFICATE (NOC) under sub-rule (1) and shall complete the action for issue or refusal of the NOC, as the case may be, as expeditiously as possible but not later than three months from the date of receipt of application by him.”*

4. The proforma referred under Rule 144 of the Petroleum Rules, 2002 reads thus:-

“Proforma  
No Objection Certificate  
[See Rule 144]  
NO.....  
Date.....  
Subject: No objection certificate  
*with reference to the application No.....dated  
.....submitted by.....and in pursuance of Rule  
144 of the Petroleum Rules, 2002, there is no  
objection for granting licence under the Petroleum  
Rules, 2002 to Shri/ Smt./*



*M/s.....address.....for storage of petroleum products in their premises at Survey No...../Gat No...../Khasra No.....Plot No.....Village.....Taluka/Tehsil-..... District.....State.....as shown in the site plan duly endorsed and enclosed herewith.*

*(1) The following particulars have been considered while issuing this no objection certificate, that-*

*(a) possession of the site by the applicant is lawful and authorisation from land owner or lease holder for developing premises under these rules for storage of petroleum products;*

*(b) interest of public, specially the facilities like schools, hospitals or proximity to places of public assembly and the mitigating measures, if any, is provided;*

*(c) traffic density and impact on traffic;*

*(d) conformity of proposal to the local or area development planning;*

*(e) accessibility of the site to fire tenders in case of emergency and preparedness of fire services for combating the emergencies;*

*(f) genuineness of purpose.*

*(g) any other matter pertinent to public safety; signature of the district authority issuing no objection certificate with his office seal (in towns having a Commissioner of Police, the Commissioner or a Deputy Commissioner of Police and for any other place the District Magistrate)*

*Note.- The licensing authority shall accept the no objection certificate within a period of three years from the date of its issue for considering grant of licence."*



5. The nature of power under the Petroleum Act and Rules, 2002 as illustrated in Rule 144 and Proforma clearly indicates that the insistence of NOC from the District Authority is to protect the public interest and public safety. If the Indian Oil Corporation acted arbitrarily in allocating a petroleum outlet that is not a matter coming under the scope of power conferred on the District Authority. That can be subject to a separate challenge in appropriate manner under law. The District Authority must confine its scope of enquiry with the parameters referred under the proforma in the light of Rule 144 of the Petroleum Rules 2002. Any enquiry beyond its power would amounts to abdication of duty vested under the statutory provisions and that can be interfered by this Court under Article 226 of the Constitution of India. The scope of enquiry must be confined to protect the interest of public in the location proposed for the establishment of the petroleum outlet by the applicant. The question as to whether location is covered by notification or not is not a matter to be decided by the District Authority. Therefore, rightly the learned Single Judge interfered with the order of the District authority.

6. However, we make it clear that we have not



approved or validated the proposed location by the dealer. If the proposed location is in variance or deviation of the notification, the appellant is at liberty to challenge the same in proper manner. We give liberty to the appellant to raise any challenge, if such a petroleum outlet is established in deviation of notification.

with liberty as above, the appeal stands dismissed.

Sd/-

**A.MUHAMED MUSTAQUE, JUDGE**

Sd/-

**SHOBA ANNAMMA EAPEN, JUDGE**

DCS





APPENDIX

PETITIONER ANNEXURES

- ANNEXURE A1                    A TRUE COPY OF THE REPLY DATED 17.8.2021  
ISSUED BY THE INDIAN OIL CORPORATION TO  
AN APPLICATION UNDER THE RIGHT TO  
INFORMATION ACT
- ANNEXURE A2                    TRUE COPY OF LICENSE ISSUED ON 28.6.2023  
BY THE JOINT CONTROLLER OF EXPLOSIVES.
- ANNEXURE A3                    TRUE COPIES OF TWO OF THE PHOTOGRAPHS OF  
THE SITE.
- ANNEXURE A4                    TRUE COPIES OF TWO PHOTOGRAPHS OF THE  
SITE FROM GOOGLE EARTH ON 18.8.2023.

RESPONDENT ANNEXURES

- ANNEXURE R1 (A)                COPY OF THE PESO INITIAL APPROVAL DATED  
8/7/2021
- ANNEXURE R1 (B)                COPY OF THE INVOICE DATED 30/6/2023
- ANNEXURE R5 (A)                COPY OF THE JUDGMENT IN W.A. NO. 171/2016