



**BECHU KURIAN THOMAS, J.**

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**W.P.(C) Nos. 11578 of 2022**  
**&**  
**13522 of 2023**  
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Dated this the 4<sup>th</sup> day of January, 2024

**JUDGMENT**

These writ petitions, filed by different persons, challenge the permission granted to establish a petroleum retail outlet. Since the challenge is against the grant of permission to the same person, the writ petitions were heard together and are being disposed of by this common judgment.

2. The Bharat Petroleum Corporation Limited granted a letter of intent to Smt. Prasannakumari (hereafter referred to as 'the licensee') to open a petroleum retail outlet in an extent of 16.70 Ares in Re-Sy No.517/4 in Block No.VII of East Kallada Village, Kollam District. A consent to establish the outlet was obtained from the Pollution Control Board apart from a No Objection Certificate from the District Administration. Those two



permissions produced as Ext.P7 and Ext.P12, are challenged in W.P.(C) No.11578 of 2022. The licensee has also obtained approval of the site and a building permit for construction of a building, which are produced as Ext.P2 and Ext.P3 and are challenged in W.P.(C) No.13522 of 2023. Petitioners have also sought for a direction not to permit the licensee to proceed with the construction of the retail outlet or to open the same without all permissions or licences.

3. The Additional District Magistrate had issued Ext.P12 NOC for granting licence under the Petroleum Rules for the storage of petroleum products at the site. One of the conditions stipulated therein refers to a consent to be obtained from the Environmental Engineer of the Pollution Control Board. Ext.P7 in W.P.(C) No.11578 of 2022 is the consent to establish the petroleum retail outlet. The NOC and the consent issued are challenged on the ground that the distance limit from the nearby residences was not considered by the said authorities. Petitioners allege that there are at least nine residential houses situated within a distance of 30 metres, and therefore, the requirement of a minimum distance of 30 metres between the retail outlet and



nearby residences is not satisfied. The sanctioned plan, the site approval and the building permit are also questioned on the grounds that the proposed retail outlet of the licensee does not satisfy the distance criteria specified by the Central Pollution Control Board as well as the Kerala State Pollution Control Board.

4. In the counter affidavit filed by the seventh respondent, it was stated that, pursuant to the letter of intent issued by BPCL on 07.03.2019, the licensee obtained a permit for construction of the building after getting sanction for the layout from the Chief Town Planner on 21.11.2019 and NOC from the Additional District Magistrate on 19.01.2022, apart from the consent to establish on 07.02.2020. It was also stated that all requirements of setback under the Building Rules are satisfied and that the guidelines of the Central Pollution Control Board are misconstrued with ulterior motives. It is also pleaded in the counter affidavit that after filing the writ petitions when an interim order was not obtained, writ petitioners 1 and 3 filed O.S. No.483 of 2023 before the Munsiff Court, Kollam seeking injunction against the functioning of the petroleum retail outlet by the seventh respondent and also to cancel the NOC. By an



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order dated 05.06.2023, the Munsiff Court issued a temporary injunction restraining further construction on the property. However, consequent to the seventh respondent entering appearance in the suit, by order dated 24.08.2023, the injunction petition was dismissed after finding that the plaintiffs had not made out a prima facie case.

5. The eighth respondent also filed a counter affidavit in W.P.(C) No.13522 of 2023, pleading that the licensee has satisfied all the statutory requirements and that Sri.Kailesh Kumar, the writ petitioner is the staff of another retail outlet, who is a competitor to the seventh respondent.

6. I have heard Sri. Lakshmi Narayan, the learned counsel for the writ petitioners, Sri. C. Harikumar, the learned counsel for the 7<sup>th</sup> respondent, Smt.Ramola Nainpalli, the learned counsel for the 8<sup>th</sup> respondent, apart from Sri.T.Naveen, the learned Standing Counsel for the Pollution Control Board and Smt.K.Amminkutty, the learned Senior Government Pleader.

7. In a recent judgment in **Indian Oil Corporation Limited v. V. B.R.Menon and Others** (2023) 7 SCC 368, the Supreme Court had held that the petroleum retail outlets fall



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within the green category and therefore, the consent to establish and the consent to operate were not required. However, it was observed therein that the Central Pollution Control Board (for short 'the CPCB') shall instruct all the State Pollution Control Boards to ensure that the guidelines issued by the CPCB in its office memorandum dated 07.01.2020 are strictly adhered to. In view of the above directions of the Supreme Court, it is no longer in dispute that the petroleum retail outlets do not fall within the consent management regime. However, the guidelines issued by the CPCB on 07.01.2020 need to be complied with. In this context, the relevant provision in the said guideline is required to be borne in mind.

8. The contentions raised by the writ petitioners relate to the distance rule, which is provided in CPCB guidelines under the head 'Siting criteria of retail outlets'. For the purpose of easier comprehension, the said siting criteria is extracted as below:

“(h) Siting criteria of retail outlets - In case of siting criteria for petrol pumps, new retail outlets shall not be located within a radial distance of 50 metres (from fill point/dispensing units/bent pipes 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 metres 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 metres. No high-tension line shall pass over the retail outlet.”

9. A reading of the above provision will reveal that the only stipulation as per the siting criteria is that there must be a distance of 30 metres in the minimum from the nearby designated residential area as per local laws.

10. Admittedly, petitioners are not residing in any residential area designated as per the local laws. The contention raised by the learned counsel for the petitioners is that the term 'residential area designated as per local laws' ought to be interpreted as including 'a residential house'. According to the learned counsel, it does not serve any purpose or meaning if the retail outlet is permitted to be set up inside 30 metres of a residential house, but not within 30 metres of area designated as residential.

11. While considering the said contention, it has to be borne in mind that the Supreme Court had in **V. v. B.R Menon's case** (supra) specifically directed to ensure that the CPCB office



memorandum of 07.01.2020 should be strictly adhered to. The office memorandum has not referred to a residential house, but only a residential area designated as per local laws. The said words have significance especially with reference to the siting criteria. If a residential house is built on a property that by itself may not be a negative component in establishing a retail outlet unless the area where the residential house is situated falls within a designated residential area. In view of the above, the term 'residential area designated as per local laws' cannot be interpreted to mean 'a residential house'. Since admittedly the petitioners' houses are not situated within legally designated residential areas, the contention regarding violation of the siting criteria has no legal basis.

12. As regards the challenge against the NOC granted by the Additional District Magistrate under Rule 144 of the Petroleum Rules, 2002 is concerned, it is noticed that no tenable contentions have been raised in the writ petitions against the grant of the said NOC. The NOC having been issued in consonance with the rules, in the absence of any legally valid grounds raised in the writ petitions, the challenge against the



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NOC is only to be rejected.

In the light of the above discussion, I find no merit in these writ petitions and they are dismissed.

**Sd/-  
BECHU KURIAN THOMAS  
JUDGE**

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APPENDIX OF WP(C) 11578/2022

## PETITIONER'S/S' EXHIBITS:

- EXHIBIT P1 TRUE COPY OF THE PLAN SUBMITTED BEFORE THE 2ND RESPONDENT DISTRICT COLLECTOR, KOLLAM.
- EXHIBIT P2 TRUE COPY OF THE NOTIFICATION DATED 07.01.2020 ISSUED BY THE CENTRAL POLLUTION CONTROL BOARD (CPCB).
- EXHIBIT P3 TRUE COPY OF THE ORDER DATED 22.07.2019 IN OA NO.31/2019 WITH OA NO.86/2019 ISSUED BY THE HON'BLE NATIONAL GREEN TRIBUNAL.
- EXHIBIT P4 TRUE COPY OF THE NOTIFICATION DATED 24.02.2020 ISSUED BY THE STATION POLLUTION CONTROL BOARD.
- EXHIBIT P5 TRUE COPY OF THE CIRCULAR DATED 18.08.2020 ISSUED BY KERALA STATE POLLUTION CONTROL BOARD.
- EXHIBIT P6 TRUE COPY OF THE OFFICE MEMORANDUM FOR CLARIFICATION DATED 29.01.2021 ISSUED BY CPCB.
- EXHIBIT P7 TRUE COPY OF CONSENT TO ESTABLISH DATED 07.02.2020 ISSUED BY KSPCB.
- EXHIBIT P8 TRUE COPY OF THE COMPLAINT DATED WITHIN THE DISTANCE OF 30 OR 50 METERS SUBMITTED BEFORE KSPCB.
- EXHIBIT P9 TRUE COPY OF THE PROCEEDINGS DATED 12.10.2021 REJECTING APPLICATION FOR NOC ISSUED BY THE ADDITIONAL DISTRICT MAGISTRATE.
- EXHIBIT P10 TRUE COPY OF THE REVISED PLAN SUBMITTED BEFORE THE 2ND RESPONDENT DISTRICT COLLECTOR, KOLLAM.
- EXHIBIT P11 TUE COPY OF THE COMMUNICATION NO.D6



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1970/19 DATED 06.02.2021 ISSUED BY THE EXECUTIVE ENGINEER OF PWD NATIONAL HIGHWAY, KOLLAM.

EXHIBIT P11 (A) TRUE COPY OF THE COMMUNICATIONS NO.D 258/08/NOC DATED 05.09.2019 ISSUED BY THE EXECUTIVE ENGINEER OF PWD NATIONAL HIGHWAY, KOLLAM.

EXHIBIT P12 NO OBJECTION CERTIFICATE NO.DCKLM/3739/2019-M7 DATED 19.01.2022 ISSUED BY THE ADDITIONAL DISTRICT MAGISTRATE, KOLLAM.

EXHIBIT P13 TRUE COPY OF THE APPEAL APPLICATION DATED 20.11.2022 SUBMITTED BEFORE THE SECRETARY, WATER & AIR APPELLATE AUTHORITY

RESPONDENT 'S/S' EXHIBITS

EXHIBIT R10 (a) THE TRUE COPY OF THE LETTER ISSUED BY THE 9TH RESPONDENT TO THIS RESPONDENT DATED 01.09.2022

EXHIBIT R10 (b) THE TRUE COPY OF THE LETTER OF INTENT ISSUED BY THE 11TH RESPONDENT FOR THE FUNCTIONING OF A RETAIL OUTLET OF BHARATH PETROLEUM CORPORATION LIMITED DATED 07.03.2019

EXHIBIT R10 (c) THE TRUE COPY OF THE FINAL PERMISSION ORDER FOR CONSTRUCTION OF LAYOUT IN 1570 SQ.MTRS IN SURVEY NO 517/4 OF THE EAST KALLADA VILLAGE ISSUED BY THE CHIEF TOWN PLANNER DATED 20.08.2022

EXHIBIT R10 (d) THE TRUE COPY OF THE NO OBJECTION CERTIFICATE ISSUED BY THE 3RD RESPONDENT DATED 19.01.2022

APPENDIX OF WP(C) 13522/2023

## PETITIONER'S/S' EXHIBITS

- EXHIBIT.P1 TRUE COPY OF NO OBJECTION CERTIFICATE NO. DCKLM/3739/2019-M7 DATED 19.01.2022 ISSUED BY THE ADDITIONAL DISTRICT MAGISTRATE, KOLLAM,
- EXHIBIT.P2 TRUE COPY OF THE LAY OUT PLAN SANCTIONED BY 4TH THE RESPONDENT DISTRICT TOWN PLANNER
- EXHIBIT.P3 TRUE COPY OF THE BUILDING PERMIT DATED 03.12.2022 ISSUED BY PANCHAYATH SECRETARY
- EXHIBIT.P4 TRUE PHOTO SHOWING THE LOCATION OF LARGE PIT TAKEN TO DEPOSIT THE FUEL TANK
- EXHIBIT.P5 TRUE COPY OF THE PETITION FILED BEFORE THE DISTRICT COLLECTOR KOLLAM DATED 06.02.2023
- EXHIBIT.P6 TRUE COPY OF THE PETITION FILED BEFORE THE HON'BLE CHIEF MINISTER DATED 10.02.2023
- EXHIBIT.P7 TRUE COPY OF THE LETTER DATED 02.03.2023 ISSUED TO THE PETITIONER BY THE SECRETARY EAST KALLADA GRAMA PANCHAYATH
- EXHIBIT.P8 TRUE COPY OF THE NOTICE DATED 02.03.2023 ISSUED TO 7TH BY THE SECRETARY, EAST KALLADA PANCHAYATH
- EXHIBIT.P9 TRUE PHOTO SHOWING A LARGE UNEARTHED PIT READY FOR INSTALLING THE FUEL TANK
- EXHIBIT.P10 TRUE COPY OF THE PETITION FILED BY THE 1ST PETITIONER BEFORE THE SECRETARY, EAST KALLADA GRAMA PANCHAYATH DATED 20.03.2023
- EXHIBIT.P11 TRUE COPY OF THE PETITION FILED BY THE 3RD PETITIONER BEFORE THE SECRETARY,



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- EAST KALLADA GRAMA PANCHAYATH DATED  
20.03.2023
- EXHIBIT.P12 TRUE COPY OF THE HEARING NOTE SUBMITTED  
BY THE PETITIONER BEFORE THE AD M DATED  
30.03.2023
- EXHIBIT.P13 TRUE COPY OF THE THE PETITION FILED BY  
THE 1ST PETITIONER BEFORE THE SECRETARY,  
EAST KALLADA GRAMA PANCHAYATH DATED  
30.03.2023
- EXHIBIT.P14 TRUE COPY OF THE PETITION FILED BY THE  
3RD PETITIONER BEFORE THE SECRETARY,  
EAST KALLADA GRAMA PANCHAYATH DATED  
30.03.2023
- EXHIBIT.P15 TRUE PHOTOS SHOWING THE LOCATION OF THE  
FUEL TANK DEPOSITED IN LARGE TRENCH AND  
THE LOCATION OF DISPENSING UNITS FOR  
INSTALLING WITHIN THE PROHIBITED  
DISTANCE
- EXHIBIT.P16 TRUE COPY OF THE OFFICE MEMORANDUM DATED  
07.01.2020 ISSUED BY THE CENTRAL  
POLLUTION CONTROL
- EXHIBIT.P17 TRUE COPY OF THE CIRCULAR DATED  
18.08.2020 ISSUED BY KERALA STATE  
POLLUTION CONTROL BOARD.
- EXHIBIT.P18 TRUE COPY OF THE OFFICE MEMORANDUM FOR  
CLARIFICATION DATED 29.01.2021 ISSUED BY  
CPCB.
- EXHIBIT-P19 THE TRUE COPY OF THE PROCEEDINGS/ORDER  
DATED 12.10.2021 ISSUED BY THE THIRD  
RESPONDENT, REJECTING THE APPLICATION  
FOR NOC
- RESPONDENT'S/S' EXHIBITS
- EXHIBIT R7 (a) THE TRUE COPY OF THE LETTER OF INTENT  
ISSUED BY THE ADDITIONAL 8TH RESPONDENT  
IN FAVOR OF THE 7TH RESPONDENT DATED



07.03.2019

- EXHIBIT R7 (b) THE TRUE COPY OF THE ACKNOWLEDGEMENT LETTER ISSUED BY THE 7TH RESPONDENT TO THE ADDITIONAL 8TH RESPONDENT DATED 14.03.2019
- EXHIBIT R7 (c) THE TRUE COPY OF THE FINAL PERMISSION ORDER ISSUED BY THE CHIEF TOWN PLANNER DATED 21.11.2019
- EXHIBIT R7 (d) THE TRUE COPY OF THE NO OBJECTION CERTIFICATE ISSUED BY THE 3RD RESPONDENT DATED 19.01.2022
- EXHIBIT R7 (e) THE TRUE COPY OF THE CONSENT TO ESTABLISH THE OUTLET ISSUED BY THE ADDITIONAL 9TH RESPONDENT DATED 07.02.2020
- EXHIBIT R7 (f) THE TRUE COPY OF THE PHOTOGRAPH SHOWING THE ACTUAL POSITION OF THE PITS TAKEN AND OF THE COMPLETED CONSTRUCTION
- EXHIBIT R7 (g) THE TRUE COPY OF THE LETTER ISSUED BY THE TAHSILDAR, KOLLAM TO THE 2ND RESPONDENT DATED 25.06.2019
- EXHIBIT R7 (h) THE TRUE COPY OF THE REPLY TO THE SHOW CAUSE SUBMITTED BY THIS RESPONDENT TO THE 6TH RESPONDENT DATED 10.04.2023
- EXHIBIT R7 (i) THE TRUE COPY OF THE LETTER ISSUED BY THE 6TH RESPONDENT PANCHAYATH TO THE 7TH RESPONDENT DATED 27.06.2023
- EXHIBIT R7 (j) THE TRUE COPY OF THE CIRCULAR NO PCB/HO/HOW/RULES9/7/2019 ISSUED BY THE POLLUTION CONTROL BOARD DATED 21.04.2020
- EXHIBIT R7 (k) THE TRUE COPY OF THE PLAINT IN O.S. NO 483 OF 2023 ON THE FILE OF THE MUNSIF COURT, KOLLAM FILED BY THE PETITIONERS 1 AND 3 DATED 02.06.2023
- EXHIBIT R7 (l) THE TRUE COPY OF THE PETITION IN I.A.NO



- 3 OF 2023 IN O.S.NO 483 OF 2023 ON THE FILE OF THE MUNSIF COURT, KOLLAM FILED BY THE PETITIONERS 1 AND 3 DATED 02.06.2023
- EXHIBIT R7 (m) THE TRUE COPY OF THE WARRANT OF TEMPORARY INJUNCTION IN I.A.NO 3 OF 2023 IN O.S.NO 483 OF 2023 PASSED BY THE MUNSIF COURT, KOLLAM DATED 05.06.2023
- EXHIBIT R7 (n) THE TRUE COPY OF THE OBJECTION IN I.A. NO 3 OF 2023 IN O.S. NO 483 OF 2023 ON THE FILE OF THE MUNSIF COURT, KOLLAM FILED BY THE 7TH RESPONDENT
- EXHIBIT R7 (o) THE TRUE COPY OF THE ORDER IN W.P.(C.)NO 11578 OF 2022 PASSED BY THIS HON'BLE COURT DATED 16.11.2022
- EXHIBIT R7 (P) THE TRUE COPY OF THE ORDER IN I.A.NO 3 OF 2023 IN O.S.NO 483 OF 2023 PASSED BY THE HON'BLE PRINCIPAL MUNSIF COURT, KOLLAM DATED 24.08.2023
- EXHIBIT R8 (a) A TRUE COPY OF THE PRIOR APPROVAL DATED 27.05.2019 ISSUED BY THE PESO
- EXHIBIT R8 (b) A TRUE COPY OF THE LAYOUT APPROVAL GRANTED BY THE CHIEF TOWN PLANNER DATED 21.11.2019
- EXHIBIT R8 (c) A COPY OF THE JUDGMENT DATED 14.12.2021 IN WPC NO.24626 OF 2021
- EXHIBIT R8 (d) A TRUE COPY OF THE CONSENT TO ESTABLISH DATED 07.02.2020
- EXHIBIT R8 (e) A TRUE COPY OF THE CIRCULAR DATED 24.2.2020 ISSUED BY THE KERALA STATE POLLUTION CONTROL BOARD
- EXHIBIT R8 (f) A TRUE COPY OF THE CIRCULAR DATED 09.08.2004 OF THE KSPCB
- EXHIBIT R8 (g) A TRUE COPY OF THE CONSENT VARIATION ORDER DATED 14.03.2022



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- EXHIBIT R8 (h) A TRUE COPY OF THE RECTIFIED LAYOUT APPROVAL DATED 20.08.2022
- EXHIBIT R8 (i) A TRUE COPY OF THE RTI REPLY DATED 16.06.2023 ISSUED BY THE STATE PUBLIC INFORMATION OFFICER, EAST KALLADA GRAMA PANCHAYAT
- EXHIBIT R8 (j) A TRUE COPY OF THE CIRCULAR DATED 21.04.2021 ISSUED BY THE KSPCB