

(2025) 08 KL CK 0839

In the High Court Of Kerala

Case No : Writ Petition (C) No.12226 of 2025

Bindhu Kuniparambath

APPELLANT

Vs

The Joint Chief Controller Of Explosives

RESPONDENT

Date of Decision : 18-08-2025

Acts Referred:

Petroleum Rules, 2002 — Rule 144

Citation : (2025) 08 KL CK 0839

Hon'ble Judges : S.Manu, J.

Bench : Single Bench

Advocate : R.Sunil Kumar, A.Salini Lal, Jinu P. Binu, O.M.Shalina, Santharam.P., Noel Jacob, Raajesh S.Subrahmanian, M.S.Amal Dharsan, Dr.Thushara James

Final Decision : Disposed Of

Judgement

S.Manu, J.

1. The 3rd respondent company invited applications for starting retail outlets of petroleum products at various places including Mananthavady Town. Petitioner applied, offering 30 cents of property in Re.Sy.No.683/2 of Mananthavady Village and the application was approved by the 3rd respondent.

2. Third respondent approached the 1st respondent for initial approval and on 28.3.2024 approval was granted. On 19.4.2024, No Objection Certificate under Rule 144 of the Petroleum Rules,2002, was issued by the District Collector. An application was filed before the 2nd respondent on 27.1.2025 for approval. It was rejected by the 2nd respondent on 24.2.2025 by Ext.P5. Aggrieved by the same, the petitioner approached this Court. A statement was filed by the learned Deputy Solicitor General on behalf of the respondents 1 and 2. The Central Pollution Control Board also filed a statement.

3. Heard the learned counsel for the petitioner,the learned Deputy Solicitor General for respondents 1 and 2, the learned Standing Counsel for the Indian Oil Corporation and the learned Government Pleader for respondents 6 and 7.

4. Learned counsel for the petitioner assailed Ext.P5 decision of the Controller of Explosives contending that the reasons stated in Ext.P5 for rejecting the requests are not sustainable. She pointed out that the Chief Controller stated in Ext.P5 that the distance between the boundary of Newman college and the retail outlet is less than 30 meters. Further the Controller stated that the proposed site is falling under mixed zone. The Controller also stated that it was not specified in the certificate that the proposed site is not a designated residential area. Controller added that the site is not compliant of CPCB guidelines dated 7.1.2020. She pointed out that the CPCB guidelines dated 7.1.2020 insists only that 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 m. She submitted that colleges are not included in the siting criteria. She further submitted that when the Secretary of the local authority certified that the proposed site is in a mixed zone, reasoning of the Controller that there is no confirmation that the proposed site is not within a designated residential area is illogical. She also stated that the Controller has not pointed out any reasons for his conclusion that the proposed site is not compliant of the CPCB guidelines.

5. Learned Deputy Solicitor General submitted that the petitioner obtained Ext.P2 approval dated 28.3.2024 without showing the boundary wall of the college in the drawing submitted with the application for approval. Hence, the approval was obtained by misrepresentation. It was also submitted that application dated 28.1.2025 was rejected by letter dated 29.1.2025. The said letter has been produced as Annexure-R1(b). Thereafter, an application was submitted on 22.2.2025. As per the siting criteria, minimum distance of 30 m. should be there from educational institutions. However, a college is located within the said distance from the proposed site. She further submitted that the Secretary of the Municipality affirmed only that the proposed site is falling within a mixed zone. It was not confirmed that the area is not a designated residential area. Later, by Ext.P7, the Secretary of the Municipality confirmed that the proposed site is not a designated residential area as per local laws. She contended that the two certificates issued by the Secretary are contradictory. She hence submitted that the decision taken by the Controller is justified and Ext.P5 is not liable to be interfered with by this Court.

6. In the statement filed by the Central Pollution Control Board the norms are explained.

7. Paragraph 'H' of the guidelines for setting up of new petrol pumps issued by the Central Pollution Control Board is extracted hereunder:-

"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 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."

8. The above extracted paragraph insists that fill point/dispensing unit/vent pipe of retail outlets, whichever is nearest, shall not be located within a radial distance of 50 m. from schools, hospitals (10 beds and above) and residential areas designated as per local laws. Additional safety measures are to be implemented if there are constraints in providing 50

m. distance. In no case distance between new retail outlets and schools, hospitals (10 beds and above) and residential area designated as per local laws shall be less than 30 m. It should be noted that only two distinct types of institutions, schools and hospitals (10 beds and above) have been specifically mentioned in the distance criteria apart from designated residential areas. There is no generic/general terms employed in the paragraph to bring any broad categories of institutions within its purview. The contention of the learned Deputy Solicitor General is that when schools are mentioned in the criteria, intent is clear and other educational institutions shall also fall within the scope of the same. If the intention was as canvassed, nothing stopped the CPCB from bringing other types of educational institutions also within the ambit of paragraph 'H' by expressly mentioning the same or by employing the generic expression 'educational institutions' rather than specifically using the word 'schools'. The only inference that can be drawn is that the guidelines dated 7.1.2020 issued by the CPCB for setting up of new petrol pumps do not require any minimum distance between educational institutions aside from schools and retail outlets that sell petroleum products.

9. It is also pertinent to note that the CPCB in its statement filed in this case has stated as under:-

"4. It is further submitted that the Hon'ble NGT (PB) in O.A. no.408/2023 vide order dated 20.12.2023 sought reply/response of CPCB on the matter for clarification as to inclusion of word 'colleges' in the word 'schools' as mentioned in guidelines dated 07.01.2020 issued by CPCB. In compliance to the order. CPCB vide its reply dated 02.02.2024 submitted that the issue of prescribing siting criteria w.r.t. certain locations/buildings has already been deliberated by the expert committee and colleges have not been included considering schools and hospitals (10 beds and above), as sensitive locations. It is humbly submitted that the matter is sub-judice at present."

[Emphasis added]

10. Therefore the CPCB has submitted before the National Green Tribunal(PB) that colleges have not been included in the siting criteria among the sensitive locations. Since the author of the guidelines, CPCB, has clarified before the NGT

(PB) that it did not intend to include colleges within the siting criteria treating them as sensitive locations , it is not for any other authority to give an expansive interpretation to the criteria and include colleges within its scope. Hence, the reasoning of the 2nd respondent in Ext.P5 that a college is situated within the vicinity of the proposed site, distance between the boundary of the college and the retail outlet is less than 30 m. and hence the outlet cannot be permitted is untenable. I hold that the Controller of Explosives cannot refuse approval for starting a new outlet for sale of petroleum products for the reason that a college is situated within the distance limits stipulated in the guidelines issued by Central Pollution Control Board. The distance rule under Paragraph 'H' of the guidelines dated 7.1.2020 would apply only in the cases of schools, hospitals with more than 10 beds and designated residential areas.

11. Likewise, the next reason given by the 2nd respondent is also fallacious. In the certificate issued on 7.2.2025, Secretary of the Municipality stated that the proposed site 'falls under the mixed zone, (not under the residential zone)'. Further it was stated that it is situated more than 50 m. away from the nearby residential zone as per the master plan of Mananthavady Municipality. In the certificate issued later on 25.2.2025, the Secretary stated that the 'proposed site/ key plan is not a designated residential area as per the local laws'. I find it difficult to comprehend how the 2nd respondent found a contradiction in the terms of these certificates. In the first certificate, apart from stating that the proposed site falls under a mixed zone, Secretary further stated that it is not under the residential zone. In the second certificate it was specifically stated that the proposed site is not a designated residential area as per the local laws. On both occasions the Secretary has certified that the site is not within a residential area. In the second certificate it was specified that the site is not a designated residential area as per the local laws, manifestly to satisfy the requirement under the siting criteria stipulated by the CPCB. There is no contradiction involved and in the light of the certificate issued on 25.2.2025 the 2nd respondent ought to have concluded that the site is not within the designated residential area.

12. The third reason stated in Ext.P5 is that the proposed site is not compliant of the CPCB guidelines dated 7.1.2020. No further explanation is given. Two other reasons stated are obviously on the basis of CPCB guidelines. Therefore, the third reason given can be considered only as a reiteration of the reasons already stated.

13. In view of the above discussion, I hold that Ext.P5 is legally not sustainable. I therefore set aside the same. The 2nd respondent is directed to consider the application of the petitioner dated 22.2.2025 anew and to take a fresh decision. The petitioner shall be free to submit a proper drawing as also other required documents. In case the 2nd respondent requires any further clarification, he shall provide an opportunity to the petitioner as well as the authorised representative of the 3rd respondent to appear before him and to explain their case. The 2nd respondent shall take a fresh decision in the matter as directed above, keeping in

mind the findings and observations in this judgment within a period of one month from the date of receipt of a copy of this judgment.

The writ petition is disposed of as above.