

(2022) 05 PAT CK 0024

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 8900 Of 2020

National Highway Projects

APPELLANT

Vs

State Of Bihar

RESPONDENT

Date of Decision : 10-05-2022

Acts Referred:

Constitution Of India, 1950 — Article 21, 39(e), 39(f), 41, 42, 47, 51A(g)

Citation : (2022) 05 PAT CK 0024

Hon'ble Judges : Sanjay Karol, CJ;S. Kumar, J

Bench : Division Bench

Advocate : P. K. Shahi, Anjani Kumar, Alok Kumar Rahi, Kumar Priya Ranjan, Pallav, Dr. K.N.Singh, Dr. Maurya Vijay Chandra, Devansh, Sriram Krishna, Amarjeet, Gaurav Govinda, Gaurav Kumar, Anjali Kumari, Sarat Kumar Mishra, Ankit Katriar, Siddharth Prasad, Om Prakash Kumar, Rajeev Prakash

Final Decision : Disposed Of

Judgement

1. Following issues arise for consideration:-

1. Whether the failure of the authorities to finalize the setting up of Petrol Pumps leads to a violation of rights vested in travellers?

2. Within the expanding area of Right to Life, does an entitlement of the right to sanitation arise, more so on the Highway, be it setting up of Petrol Pumps and providing facilities therein or otherwise?

3. What is the nature of obligations imposed upon the State to ensure the availability and upkeep of sanitation facilities on the Highways?

2. Our discussion, herein later, in relation to several statutes/orders/guidelines/circulars unmistakably points to the obligation on the part of the State (all stakeholders) in establishing sufficient facilities for sanitation and personal care on the Highways, be it on the Petrol Pumps or otherwise. Even earlier, we had emphasized the need for setting up of such facilities both on the National and the State Highways.

3. How would a lactating mother travelling from Kishanganj (farthest District from the capital city of Bihar) to Patna (capital city) feed an infant or ease off herself without any such facilities available on the Highways? How would a patient travelling from Kaimur to Patna, the nearest State Level Hospital, undertake such journey without using such facilities on the Highways? How would, a woman, travelling even in a private transport to a tourist destination, such as Nalanda; Gaya; Madhubani; Bithiharwa; West Champaran; Vikramshila; Tomb of Sher Shah Suri at Sasaram and other places of interest, including different religious places of importance of Hinduism, Buddhism, Jainism, Sikhism, Islam, travel without any amenities in Bihar? Manersharif at Maner, Patna is an international attraction for people hailing from the Islamic faith; the famous University of Nalanda which occupies an important place in India's rich and diverse history is also a place often visited by tourist both from within and outside the country. None have thought of having facilities of public concern to such places. It is so unfortunate that in the land of Dr. Bindeshwar Pathak, who revolutionized the public health, hygiene and sanitation concept in India by establishing Sulabh Sauchayalas throughout the country that public toilets and proper sanitation facilities are nowhere to be seen.

4. Unlike women, men shamelessly stand on the Highways to ease off themselves, but a society cannot expect the same from the former and therefore it is an urgent duty upon the State/its instrumentalities to ensure that such needs, which are the very definition of basic needs, are met.

5. Many such questions concerning the lay person and their ease of travel have led us to pass numerous orders. In light of many such pertinent questions, we deem it fit to also issue certain directions.

6. It is brought to our notice that despite earlier orders passed by this Court, to make available public conveniences on the Highways, more so the National Highways, and to set up Petrol Pumps having such facilities remains to be achieved. Considerable time has passed since the last order; hence, we are constrained to pass a detailed order, highlighting the obligations upon the State, the need for such conveniences and the socio-economic benefits arising out of the availability of these facilities.

7. The relevant portion of our order dated 25 March 2021 is extracted below:-

"Repeatedly, in our several orders, we have emphasized the need of setting up of places of public conveniences on the National Highways. Also, the need for setting up of Petrol Pumps having such facilities. The Ministry of Petroleum of the National Highway Authority of India have a workable plan providing such facilities, which surely, when implemented in the State of Bihar would not only boost its economy, but also generate employment so as to check migration of the residents of Bihar, seeking employment outside the State. We cannot forget that all arterial roads to East/North-East of India passes through Bihar, which also has an International Border."

(Emphasis supplied)

8. In our subsequent order dated 13.04.2022, we had directed that:-

“It is unfortunate that in Bihar, the oil distribution companies have not exhibited any interest in setting up retail outlets, either on the National or the State Highways within the State of Bihar. And all this despite the Ministry of Petroleum and Natural Gas, the Ministry of Road Transport and Highways, Government of India as also the other stakeholders already set up certain norms and guidelines for establishments thereof.

It is rather unfortunate that even today, one finds petrol/diesel being sold in bottles, openly displayed, dangling from the wooden poles, more so, on all the National Highways, projecting a very poor and primitive picture of the State of Bihar.

It is also brought to our notice that at least 457 petrol pumps, which were sanctioned in the year 2018, have yet not become functional and operational. Perhaps, all such cases are embroiled in litigation at different levels.

Be that as it may, it is the duty of the petroleum companies to ensure that retail outlets are established with enhanced capacity, based on the census and density of human population and number of vehicles. As such, the petroleum companies must furnish information in a tabular form, indicating: (a) the number of petrol pumps/retail outlets sanctioned within the State of Bihar; (b) number of petrol pumps/retail outlets, which are actually functional and operational; (c) number of petrol pumps/retail outlets in relation to which Letters of Intent stands issued/ agreement executed, but are not operational/functional, be it for whatever reason; (d) number of petrol pumps/retail outlets in relation to which Letters of Intent have yet not been issued, if any, and the time frame it would take to do so; (e) as to whether any survey stands conducted for assessing the need of setting up of more number of petrol pumps/retail outlets within the State of Bihar, which exercise has to be on the basis of density of both human population and vehicular traffic (f) whether oil producing and marketing companies have filed the reports indicating the steps taken for implementing the marketing plan for the State of Bihar.

Let such information be furnished under the signature of the respective local heads of the petroleum companies.

List on 15.04.2022.”

(Emphasis supplied)

9. Subsequently on 15th April, 2022, Oil Distribution/Marketing Companies, including the Agency for distribution of Gas (used for motor vehicles) placed on record information indicating that the survey was lastly conducted in November, 2018 and at least out of 3000 proposed outlets, 1000 could not be established or made functional, be it for whatever reason. Since information was not on an

affidavit, Oil Marketing Companies (referred to as OMC) namely (1) Indian Oil Corporation Ltd.; (2) Bharat Petroleum; (3) M/S Hindustan Petroleum Corporation Limited, were directed to place such information on an affidavit.

10. The Oil Marketing Companies (OMCs) have filed their affidavits and undisputedly much is left to be desired.

11. Illustratively, from the affidavit filed by M/s Hindustan Petroleum Corporation Limited it is apparent that in Bihar, out of 650 proposed petrol pumps/retail outlets, though the advertisement was issued in the year 2018, but however, retail outlets could not be opened up inter alia for- (a) non-finalisation of the cases- 331 in number; (b) cancellation of location-26 in number; (c) initial security amount deposited but no further action taken by the allottee-34 in number; (d) finalization of draw of lots- 271 in number.

12. Consequently, considering the importance of the issue, on 25th April, 2022, we had directed the Development Commissioner, Government of Bihar to immediately convene a meeting of all the stakeholders for ascertaining as to how soon appropriate action would be taken by the authorities, be it with regard to issuance of No Objection Certificate or otherwise, for establishment of all the petrol pumps in relation to which an advertisement was issued in the year 2018.

13. An affidavit stands filed on behalf of the Road Construction Department, Government of Bihar placing on record the minutes of the meeting dated 04.05.2022 convened by the Development Commissioner. With profit, we reproduce the minutes as under:-

"Minutes of the meeting held by the Development Commissioner, Bihar, in compliance with the order passed on 25/04/2022 by the Hon'ble High Court, Patna, in CWJC No. 8900/2020

Attendance recorded separately.

1. The meeting began with a briefing by the Development Commissioner about the pendency of NOCs for establishment of retail petrol/diesel outlets and the concern of the Hon'ble High Court in this regard. At the very outset, he made it clear that there was no justification for such a huge pendency at any level.

2. A Power Point presentation was made by the Secretary, Transport Department, on the pendency of NOCs of different departments at the district level and also on the issues concerning the delay in grant of the NOCs. In this context, it was apprised that a software application for tracking and monitoring of the same has been developed in collaboration with IOCL.

3. Engineer-in-Chief, RCD, mentioned that IRC guidelines needed to be followed for the grant of the NOCs. Submission of defective drawings and lack of other details documents are the common causes for the delay in granting NOC. It was requested that the oil companies should submit clear-cut drawings indicating all

necessary details for quick approval of NOC. The Secretary, RWD, concurred with the Engineer-in-Chief, RCD, on this count.

4. The Additional Chief Secretary, Environment, Forest and Climate Change Department, mentioned that after the previous review by the Chief Secretary, the time-limit for grant of the NOCs for Retail Petrol Pump Outlets has been further squeezed. Further, since there is a separate portal for application for diversion of forest land as mandated by the Central Government, it was suggested that the application for the same should be delinked from the District and submitted directly to the Department.

5. NHAI representative mentioned that applications for NOCs in respect of proposed pumps located on NH are directly made to the NHAI, and NOCs are accordingly granted.

6. Revenue and Land Reform Department representative informed that non-mentioning of allottees'/land-owners' name on the NOC application results in delay in getting the lands converted as per the provisions of the relevant Act. It was pointed out that the land conversion was mandatory for the commercial use of the plot.

7. It was informed that NOCs from Bihar State Pollution Control Board and Fire Directorate were also essential, apart from the above clearances.

8. After due deliberations, the following main causative factors impeding the smooth flow of grant of the NOCs were identified:

- a. Lack of department-wise formats for NOC application
- b. Lack of department-wise clear-cut process flow for grant of NOC
- c. Lack of clarity with regard to documents requirement for every clearance
- d. Non-existence of any check slip for acceptance of applications
- e. Opaque, offline procedure for getting separate clearances
- f. Insufficient role clarity of the different stake-holders

9. Keeping in mind the aforementioned deficiencies, in view of the Hon'ble High Court's direction, the following measures (a) for immediate resolution of the stalemate-like situation; and (b) for initiating institutional improvements in the NOC ecosystem were suggested:

A. Immediate measures:

- i) All DMs will soon convene a meeting with representatives of oil companies and representatives of clearance-giving agencies to a) sort out the mismatch in 'pending NOC' figures so that all the stake-holders are on the same page; b) expedite clearances related to land conversion, electricity, police verification and fire, pending with the local authorities; and c) take all necessary steps to

liquidate the pendency within a month's time.

ii) It was brought to the notice that 188 rectification directions, given by the Road Construction Department alone to the oil companies, have not been complied with. Similar rectifications may also have been warranted by the Forest and other departments, which need to be responded to urgently. The oil companies may comply with the rectification directions within a fortnight so that the clearances concerned don't get delayed.

B. Institutional measures

i) The entire process, from the application for NOC to the issue of trading licence, should be done online on an integrated portal to be put in place by ED, IOCL, Bihar, the coordinating authority on behalf of oil companies located in Bihar.

ii) The formats for application, the process flow and the requisite check-slips must be vetted by the concerned department before the portal is rolled out.

iii) The applications, after getting screened by a common check-slip, will be pushed online simultaneously to all the agencies concerned, and can be tracked on a real-time basis by all the stakeholders.

iv) In cases where clearances are already being done online through an independent process on a different portal, e.g., forest clearance, the authorities concerned at the district/state level will enter the online clearance status as reflected in the niche portal.

v) In cases where there are no arrangements presently for online application/disposal, like in the cases of Land Conversion and Fire clearance, the departments concerned will endeavour to have online processes in place by the 30th of June, 2022 so that the procedure is made transparent and fair.

vi) All departments and oil companies are expected to identify Nodal Officers for enabling better coordination among the stakeholders.

It was decided to place the suggestions listed above for the kind consideration of the Hon'ble High Court. The meeting concluded with thanking the participants for their valuable insights and inputs.

Sd/-

(Vivek Kumar Singh)

Development Commissioner

Bihar."

(Emphasis supplied)

14. The enormity of the problem and the express need and requirement for dealing with the same expeditiously rightly stands considered by the Development Commissioner. It would be totally appropriate to mention that

procedural wrangles within the Road Construction Department are the causes for the delay. Inter alia, he has factored the following reasons for impeding the smooth flow of the issuance of No objection certificate.

- a. Lack of department-wise formats for NOC application
- b. Lack of department-wise clear-cut process flow for grant of NOC
- c. Lack of clarity with regard to documents requirement for every clearance
- d. Non-existence of any check slip for acceptance of applications
- e. Opaque, offline procedure for getting separate clearances
- f. Insufficient role clarity of the different stake-holders

15. What is really appreciative of the decision taken by the Development Commissioner is, having the entire process commissioned on integrated portal to be placed by the appropriate authority and the constant monitoring thereof. Even with regard to the clearances, including land clearance, necessary directions stand issued for completion of the process prior to 30th June, 2022. We are assured that all obstacles in the expeditious establishment of the Petrol Pumps shall be appropriately dealt with.

16. The Development Commissioner, Government of Bihar is now seized of the matter. He has identified the "causative factors" impeding the grant of NOC. He has further decided to take immediate action for resolution of the "stalemate-like situation" and "initiating institutional improvements". As such, at this stage we deem it appropriate to put the matter to rest reserving liberty to any public spirited person to agitate the issue, should the need so arise.

17. However, before we do that, we examine, in depth the legal issue arising for consideration.

18. The Statutory obligation on the part of the Central and, in some instances, delegated to the State is clear from the provisions, rules and orders which we refer to hereinafter.

I. Laws Relating To The Establishment Of Petrol Pumps

19. The Petroleum And Natural Gas Regulatory Board Act, 2006 "is an Act of Parliament to provide for the establishment of Petroleum and Natural Gas Regulatory Board to regulate the refining, processing, storage, transportation, distribution, marketing and sale of petroleum, petroleum products and natural gas excluding production of crude oil and natural gas..."

20. It, inter alia, provides for the Board to carry out certain functions under Section 11 of the Act. The provision reads as follows:

"11. Functions of the Board :-The Board shall-...

(f) in respect of notified petroleum, petroleum prod-ucts and natural gas-

(i) ensure adequate availability;...

...(iv) secure equitable distribution for petroleum and petroleum products;

(v) provide, by regulations, and enforce, retail service obligations for retail outlets and marketing service obligations for entities;

(vi) monitor transportation rates and take corrective action to prevent restrictive trade practice by the entities;..."

21. The Essential Commodities Act, 1955 (referred to as the E C Act) deals with the essential commodities. Motor Spirit and High-Speed Diesel being Petroleum and Petroleum products, are also essential commodities listed in Schedule 2A. As such they are controlled by the Central Government under various Control Orders viz. GSR 729 (E) dated 19 November 2005, GSR 830 (E) dated 8 November 2019, and GSR 903 dated 10 December 2019.

22. The issuance of the Control Orders ipso facto attracts the provisions of Section 3 of the E C Act, which states that a Control Order is liable to be issued in respect of an Essential Commodity "if the Central Government is of opinion that it is necessary or expedient so to do for maintaining or increasing supplies of any essential commodity or for securing their equitable distribution and availability at fair prices, or for securing any essential commodity for the defence of India or the efficient conduct of military operations..."

23. While the Control Orders do not mention which one of the three conditions apply to Petroleum Products, one may safely assume that given the importance of Motor Spirits and HSD, in the logistics and the farming sector and the obligation on OMCs to establish retail outlets in Remote Areas as well as Rural areas, equitable distribution of the commodity would be an essential part of the justification of the Control order hence, also an obligation of the Central and the State Governments in respect of establishing Fuel Retail Outlets.

24. The Prevailing Control Order GSR 729 (E) dated 19 December 2005, titled Motor Spirit and High-Speed Diesel (Regulation of Supply, Distribution and Prevention of Malpractices) Order, 2005, stipulates in clause 4 that only persons authorized by the Central Government "shall market and sell motor spirit or high speed diesel".

25. Clause 5 of the said order stipulates for application by a desirous person to apply for authorization to the Central Government in the form given in Schedule II. Column 7 thereof requires such a person to inter alia mention the Details of the marketing scheme, including the number of retail outlets proposed to be established. Such information is to be furnished with the application for Authorization to the Joint Secretary, Ministry of Petroleum and Natural Gas, Government of India, Shastri Bhawan, New Delhi-110001.

26. The Ministry of Petroleum and Natural Gas (hereinafter referred to as MoPNG) Resolution dated 8 November 2019, bearing No. P-12029(11)/2/2018-

OMG-PNG further liberalized the Fuel Retail Sector. The Central Government issued Control Order No.GSR 830 (E) dated 8 November 2019, stipulating the form for application for issue of authorization to market motor spirit and high-speed diesel. Column 8 of the said form stipulates that the applicant must disclose the "(d) number and locations of retail outlets proposed to be established...; (e) year-wise plan for setting up remote area and non-remote area retail outlets separately".

27. However, the OMCs, have framed directory volume norms for setting up of Retail Outlets as per Ministry of Petroleum and Natural Gas (MoPNG) letter dated 06.02.2014. It prescribes that as of 2014, the volume norm for setting up new Retail Outlets on National Highways is 150 KLPM. The said letter reads as under:-

"No. P-19011/5/2010-IOC

Government of India

Ministry of Petroleum & Natural Gas

To

1. Director [Marketing], IOCL
2. Director [Marketing] HPCL
3. Director, [Marketing], BPCL.

Subject: Norms for setting up of Retail Outlets.

Sir/Madam

I am directed to refer to BPCL's letter dated 6th January, 2014 (issued on behalf of OMCs) on the subject mentioned above and to say that the volume norms decided by OMCs for setting up new ROs have been noted by the Ministry as below-

A&B Cities- 150 KLPM

National Highways- 150 KLPM

C Class Town/State Highways-100 KLPM

It is also noted that the norms for new ROs in rural areas will remain unchanged at 25 KLPM. It is further noted that these volume norms are expected to be achieved within two years of commissioning of the RO.

2. In case of deviation from volume norms in specific cases, reasons for deviation may be recorded by the OMCs and approval of functional Director obtained in each case. Further, since the volume norms themselves may require change from time to time, OMCs may vary the volume norms required to meet target IRRs with proper justification, after obtaining approval of Board of Directors. The volume norms may also be placed on the web site of OMCs for public information.

3. This issues with the approval of Minister (P&NG) [Akhilesh Kumar]

Under Secretary to the Govt. of India”

28. In so far as Bihar is concerned, the MoPNG published the last advertisement for opening of retail outlets as far back as 2018. But the same is still under process. One thousand five hundred fifty-four locations were advertised for Bihar, only one of the three OMC's, indicated on the website of Indian Oil Corporation.

29. Here only we may observe that within this period there has been exponential growth of vehicular population, both local and intra State.

30. From a note supplied to this Court by Dr. Maurya Vijay Chandra, learned counsel for the NHAI, it appears that Letters of Intent stand issued in some, and candidate selection is in progress in others. But the fact of the matter being none stands established and made functional.

31. Petroleum products being an essential commodity, its equitable access is imperative. Long distances between two fuel retail outlets leads to unnecessary travel by vehicles owners who have localized travel requirements to travel just for refueling, which may be counterproductive to efficient fuel economy and sustainability in the long term.

32. The equitable distribution of essential commodities, such as petroleum, is a positive obligation on the State, and must continually take steps to ensure that this obligation is met. In this regard, periodical survey for updating is absolutely necessary. Numerous benefits accrue when the same is fulfilled. Well planned interspersing of petrol pumps achieves- (a) reduction of unnecessary travel for refueling purposes; (b) reduction in pollution and the wastage of petroleum; (c) reduced demand due to more efficient uses leads to a reduction in imports over a period of time; (d) generation of employment in the locality of the unit; (e) ease of availability contributes to checking the issue of black-marketing of motor spirit; (f) preventing open sale of product in bottles dangling from a pole.

33. Establishing these units to ensure sustainability both resource-wise and economically, is imperative. Benefits arising out of such activity have a social angle as well. As stated above, easy access to petrol will go a long way in curbing black-marketing practices an evil of society.

34. The economic impetus in undertaking the opening of many units is also considering providing much-needed employment to the people of Bihar.

35. A critical aspect of social benefit is the access to rest areas (public washrooms), which is the nature of the 24-hour obligation upon the owners of the Petrol Pumps.

2.1 RIGHT TO SANITATION

36. Sanitation is personal and private, inextricably linked to human dignity. At the same time, sanitation has an essential public health dimension. In this

regard, sanitation is not only about an individual's right to access a toilet or latrine. Inadequate sanitation leads to contamination of the environment, public spaces, and water bodies through faeces and wastewater. Therefore, contamination negatively impacts public health and the life and well-being of everyone in the community, affecting their human rights to health, life, food, and a healthy environment. [Inga. T. Winkler, The Human Right to Sanitation <https://scholarship.law.upenn.edu/cgi/viewcontent.cgi?article=1927&context=jil>]

2.2. CONSTITUTIONAL MANDATE:- SANITATION

37. The Constitution envisages the establishment of a welfare State at the federal level and at the state level. In a welfare State, the primary duty of the Government is to secure the welfare of the people. [Paschim Banga Khet Mazdoor Samity and others versus State of W.B.& another (1996) 4 SCC 37]

38. The right to live with human dignity enshrined in Article 21 derives its life breath from the Directive Principles of State Policy and particularly clauses (e) and (f) of Article 39 and Articles 41 and 42, and at the least, therefore, it must include protection of the health and strength of the workers, men and women, and of the tender age of children against abuse, opportunities and facilities for children to develop in a healthy manner and in conditions of freedom and dignity, educational facilities, just and humane conditions of work and maternity relief. These are the minimum requirements that must exist to enable a person to live with human dignity, and no State, neither the Central Government nor any State Government has the right to take any action that will deprive a person of the enjoyment of these basic essentials. [Bandhua Mukti Morcha vs. Union of India & others, (1984) 3 SCC 161 and Francis Coralie Mullin v. Administrative, Union Territory of Delhi, (1981) 1SCC 608]

39. Article 47 further imposes the duty on the State to improve public health as its primary duty.

40. Article 51-A (g) imposes "a fundamental duty" on every citizen of India to protect and improve the natural "environment" including forests, lakes, rivers and wildlife and to have "compassion for living creatures." The word 'environment' is of the broad spectrum which brings within its ambit "hygienic atmosphere and ecological balance." It is, therefore, not only the duty of the State but also the duty of every citizen to maintain a hygienic environment. The State, in particular, has a duty on that behalf to shed its extravagant unbridled sovereign power and to forge in its policy to maintain ecological balance and a hygienic environment. Article 21 protects the right to life as a fundamental right. Enjoyment of life and its attainment, including their right to life with human dignity, encompasses within its ambit the protection and preservation of the environment, ecological balance free from air and water pollution, and sanitation without which non can enjoy life. Any contra acts or actions would cause environmental pollution.

41. Environmental ecological, air, water, pollution, etc., should be regarded as

amounting to a violation of Article 21. Therefore, a hygienic environment is an integral facet of the right to a healthy life, and it would be impossible to live with human dignity without a humane and healthy environment. Therefore, environmental protection has become a matter of grave concern for human existence; promoting environmental protection implies maintaining the environment as a whole, comprising the man-made and the natural environment. Therefore, there is a constitutional imperative on the State Government and the municipalities to ensure and safe-guard proper environment and imperative duty to take adequate measures to promote, protect, and improve both the man-made and the natural environment. [Virendra Gaur and Ors. V. State of Haryana and Ors., (1995) 2 SCC,577 at 580]

42. The right also includes the right to live with human dignity and all that goes along with it, namely, the bare necessities of life. [State of Maharashtra v. Chandrabhan Tale (1983) 3 SCC 387]

2.3 Swachh Bharat Mission

43. The Swachh Bharat Mission (SBM) was launched in 2014 to fulfil the vision of a cleaner India by 2 October 2019, as a tribute to Mahatma Gandhi on his 150th birth anniversary.

44. The campaign is one of the biggest-ever drives to accelerate efforts towards achieving universal sanitation coverage, improving cleanliness and eliminating open defecation in India. The Mission comprises components such as constructing individual household toilets, community and public toilets, solid and liquid waste management, etc. [<https://www.niti.gov.in/content/sub-group-chief-ministers-swachh-bharat-mission>]

2.4 Objectives of Swachh Bharat Mission

45. Open defecation free behaviours are sustained, and no one is left behind. Solid and liquid waste management facilities are accessible and reinforce open defecation free (ODF) behaviours and focus on providing interventions for safe management of solid and liquid waste in villages To encourage cost-effective and appropriate technologies for ecologically safe and sustainable sanitation. To develop, wherever required, community managed sanitation systems focusing on scientific Solid & Liquid Waste Management systems for overall cleanliness in the rural areas. To create a significant positive impact on gender and promote social inclusion by improving sanitation, especially in marginalized communities. [<https://swachhbharatmission.gov.in/SBMCMS/about-us.html>]

2.5 INTERNATIONAL LAW ON SANITATION

46. Access to safe drinking water and adequate sanitation is now firmly recognized as a human right. Target 6.2 under Sustainable Development Goal No.6 reads as under:-

“By 2030, achieve access to adequate and equitable sanitation and hygiene for

all and end open defecation, paying special attention to the needs of women and girls and those in vulnerable situations” [<https://sdgs.un.org/goals/goal6>]

47. In July of 2010, the United Nations General Assembly “explicitly recognized the human right to water and sanitation and acknowledged that clean drinking water and sanitation are essential to the realization of all human rights”. [<https://blogs.worldbank.org/water/why-human-rights-based-approach-water-and-sanitation-essential-poor>]

48. The Government of India has not only signed the International Covenant on Economic, Social and Cultural Rights (ICESCR) in the 1970s [https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtdsg_no=IV-3&chapter=4] Which implicitly included the right to sanitation, but in 2010 has further confirmed its commitment by voting in favour of a specific UN resolution that explicitly recognized the right to sanitation. At the regional level, India has supported the articulation of the right to sanitation, for example, through the South Asian Conference on Sanitation (SACOSAN) declarations. [Sujith Koonan, Right To Sanitation In India: Nature And Scope (K.J. Joy and Sarita Bhagat (eds), Right to Sanitation in India: Nature, Scope and Voices from the Margins (Pune: Forum for Policy Dialogue on Water Conflicts in India, 2016), p. 1-14]

49. The UN Committee on ESCR, issued a statement on the Right to Sanitation, 2010, the relevant part thereof stands extracted as under:-

“7. The Committee reaffirms that since sanitation is fundamental for human survival and for leading a life in dignity, the right to sanitation is an essential component of the right to an adequate standard of living, enshrined in Article 11 of the International Covenant on Economic, Social and Cultural Rights. The right to sanitation is also integrally related, among other Covenant rights, to the right to health, as laid down in Article 12 paragraphs 1 and 2 (a), (b) and (c), the right to housing, in Article 11, as well as the right to water, which the Committee recognized in its General Comment No. 15. Although much of the world relies on waterborne sanitation, sanitation solutions that do not use water are being promoted and encouraged. However, it is significant that sanitation has distinct features, which warrant its separate treatment from water in some respects.

8. In line with the definition of sanitation, as proposed by the Independent Expert on Water and Sanitation as 'a system for the collection, transport, treatment and disposal or re-use of human excreta and associated hygiene', State must ensure that all and without discrimination have physical and affordable access to sanitation, 'in all spheres of life, which is safe, hygienic, secure, socially and culturally acceptable, provides privacy and ensures dignity'. The Committee is of the view that the right to sanitation requires full recognition by State parties in compliance with the human rights principles related to non-discrimination, gender equality, participation and accountability.”

50. A report on the situation regarding sanitation across the world was issued in 2020 titled as State of the World’s Sanitation: An urgent call to transform

sanitation for better health, environments, economies and societies issued by United Nations Children's Fund (UNICEF) and the World Health Organization.

51. With regard to India, the report states as follows:

"...study estimated that India becoming open defecation free would result in a significant reduction in economic costs nationwide. In the fiscal year 2018/2019, the economic cost of poor sanitation was estimated to be 3.87 per cent of gross value added (GVA), compared to 9.77 per cent of GVA if sanitation coverage had remained at 2013/2014 levels – a reduction in economic costs of 5.90 per cent of GVA over the five year period. With the increased need for private sector involvement in parts of the sanitation chain, there is an opportunity to grow the 'sanitation economy', which is a market place of products and services, renewable resource flows, data and information. The sanitation economy includes construction of individual and shared toilets, maintenance, repair and cleaning, as well as the products derived from sanitation, such as water, fuel, proteins and organic fertilizers. The sanitation economy is estimated to represent a US\$62 billion market opportunity in India alone by 2021. Growth of the private sector and the circular economy will require building skills in these areas, as well as for improved environmental management and climate change considerations, and the business opportunities that sanitation presents. The sanitation economy can only thrive with development of a supportive regulatory environment that encourages initiative."

(Emphasis supplied)

52. Human Rights Council resolution A/HRC/ 15/L.14:- provides the legal basis for the rights to water and sanitation and recognizes that it is inextricably related to the right to the highest attainable standard of physical and mental health and the right to life and human dignity.

53. UN General Assembly (GA) passed Resolution 64/292, which affirmed that sanitation was a human right "inextricably linked to the highest standard of physical and mental health, as well as the right to life and human dignity."

3.1 National Highways Act, 1956

54. The Central Government fully finances the development and maintenance of National Highways as this function comes within Entry 23 of the Union List of the Seventh Schedule of the Constitution. Further, Section 5 of the National Highways Act, 1956 reads as under:-

"5. Responsibility for development and maintenance of national highways.— It shall be the responsibility of the Central Government to develop and maintain in proper repair all national highways; but the Central Government may, by notification in the Official Gazette, direct that any function in relation to the development or maintenance of any national highway shall, subject to such conditions, if any, as may be specified in the notification, also be exercisable by the Government of the State within which the national highway is situated or by

any officer or authority subordinate to the Central Government or to the State Government.

"8A. Power of Central Government to enter into agreements for development and maintenance of national highways.—(1) Notwithstanding anything contained in this Act, the Central Government may enter into an agreement with any person in relation to the development and maintenance of the whole or any part of a national highway.

(2) Notwithstanding anything contained in section 7, the person referred to in sub-section (1) is entitled to collect and retain fees at such rate, for services or benefits rendered by him as the Central Government may, by notification in the Official Gazette, specify having regard to the expenditure involved in building, maintenance, management and operation of the whole or part of such national highway, interest on the capital invested, reasonable return, the volume of traffic and the period of such agreement.

(3) A person referred to in sub-section (1) shall have powers to regulate and control the traffic in accordance with the provisions contained in Chapter VIII of the Motor Vehicles Act, 1988 (59 of 1988) on the national highway forming subject-matter of such agreement, for proper management thereof."

(Emphasis supplied)

3.2 The National Highways Authority of India Act, 1988

55. Section 16 of the National Highways Authority of India Act, 1988 relates to providing public conveniences on the National Highways. The Relevant portion of said section reads as:

"16. Functions of the Authority.

(1) Subject to the rules made by the Central Government in this behalf, it shall be the function of the Authority to develop, maintain and manage the national highways and any other highways vested in, or entrusted to, it by the Government.

(2) Without prejudice to the generality of the provisions contained in sub-section (1), the Authority may, for the discharge of its functions—

...

(b) construct offices or workshops and establish and maintain hotels, motels, restaurants and rest-rooms at or near the highways vested in, or entrusted to, it;

...

(f) provide such facilities and amenities for the users of the highways vested in, or entrusted to, it as are, in the opinion of the Authority, necessary for the smooth flow of traffic on such highways; ..."

(Emphasis supplied)

3.3 The Control of National Highways (Land and Traffic) Act, 2002

56. Under section 28 and 29 of The Control of National Highways (Land and Traffic) Act, 2002, the right to access a high-way is controlled by the Highway Administration. Any retail outlet requires a special permission from the Highway administration to have access the Highway.

57. On 26 June, 2020, the Ministry of Road Transport and Highways has issued guidelines/norms for grant of permissions for construction of access to Fuel Stations, Wayside amenities, connecting roads, other properties, rest area complexes and such other facilities under the provisions of The Control of National Highways (Land and Traffic) Act, 2002. The relevant paragraphs of Appendix -1 titled "Norms for Location, Layout and Access to Fuel Stations Along National Highways" of the abovementioned Guidelines reads as under:

"3.0 General Conditions of Sitting

i. Rest areas should have various amenities for users e.g. fuel stations, places for parking, toilets, restaurants, restroom, kiosks for selling sundry items, bathing facilities, repair facilities, crèche etc. These aspects should be incorporated while planning for improvement and up-gradation of highways and/or planning for new fuel stations along the highways..."

11.0 Responsibilities of Oil Companies/Owners

" ...

ii. After obtaining provisional permission for access, Oil Companies/ Owners shall be responsible for the construction and maintenance of deceleration/ acceleration lanes, service roads, channelizers, drainage arrangement, drinking water and toilet facilities, signs and markings in accordance with the approved layout and specifications conforming to these norms, at his own cost. The drinking water and toilet facilities shall be accessible to the public round the clock. In order to inform the public about these, a display board showing availability of such facilities shall be installed before the entry to the fuel station ..."

(Emphasis supplied)

58. That the Draft Lease Deed appended to these guidelines also reflects the above guidelines, making it mandatory for the Fuel Retail Outlet Owners to provide access to drinking water and toilets round the clock to the public. It may not be out of place to mention that NHAI gives all the Licenses as per the said draft.

59. On 11 February 2021, the Ministry has further issued a fresh set of guidelines for the development of wayside amenities along National Highways and Expressways to be followed for projects in the future, i.e. those for the future tendering process is not already underway.

CONCLUSIONS

60. Given the ever-expanding definition of right to life, citizen of the country are certainly entitled to civic amenities and medical aid, during the course of his/her travel, which he/she undertakes, by whatsoever mode of transport, on the State/ National Highways. It clearly emerges from some of the judgments, as referred hereinabove, that right to sanitation has been virtually accepted as fundamental rights like right to water, right to health, right to healthy environment, right to education, and right to dignity directly related to right of sanitation. Bare necessities of life include proper sanitation facilities as the practice of open defecation or a life with polluted drinking water source and environment cannot be considered as a life of dignity as understood in the context of Right to life under the constitution.

61. In the background above, this Court is of the definite view that State is under obligation to provide basic amenities to the citizens on the Highways, while ensuring that their right of sanitation/ basic amenities is not defeated. Lack of sanitation on the Highways impacts our environment and it consigns people to the undignified and unsafe practice of open defecation/urination and inefficient waste management, which causes serious health and hygiene issues. Definitely, citizens travelling on the State/National Highways need to be protected from open defecation, untreated waste disposal into streams, and contamination of water supplies, which could be caused by the heavy influx of tourists and lack of proper amenities State. After all Bihar is a highly populace State nearly one tenth of Indian live here.

62. With the nature of obligation on part of the State and the law being enunciated in the terms above, all the three issues raised in the opening paragraph are answered as below:-

63. Roadways and Highways form an essential part of the national economy as also connectors to different parts of the country. When made available within a State, Amenities serve the State and the country as a whole. Easy travel with all necessities being served is a right vesting in anyone who chooses to travel by such means. Therefore, long stretches of road sans such amenities can be said to be in contravention of such basic rights. The Central Government has issued detailed guidelines, enumerating the various units that would combine to form a fully functioning rest area. Setting up of such areas facilitates a right of easy and comfortable travel among all citizens.

64. Both economic and social benefits come out of setting up petrol pumps at regular intervals. Economically, the reprehensible practice of black-marketing, although not a product of only difficult access, can be significantly checked by the ease of access. The construction, service and upkeep are sources of long term gainful employment for local youth and socially access to amenities further the goals of Central Government Policies, as discussed above. The lapse of time from the initiation of the process to the setting up of these units, till today, has

not been adequately explained by the State. Such unexplained delays take away from the ideals of a welfare State where the prime objective of those in administration is to serve the people in a way that all their needs are met also giving them opportunities to grow. The Authorities must take expedient steps to establish the units that stand approved, furthering the cause of holistic development.

65. The right to sanitation comes within the expansive and further expanding scope of Article 21 as discussed above. The nature of obligation imposed upon the State is not only that of those upon it by virtue of being a welfare state but also the realization of fundamental rights for every citizen, even more so the rights enshrined within Article 21, which forms the nerve centre of our constitutional consciousness. Equally, the State has also upon its obligations imposed by International law- various Human Rights Instruments and Resolutions to ensure that the basic right of sanitation is available to all, irrespective of any differences in social or economic status.

66. In particular reference to women, such an obligation becomes even more pressing and delay in its true realization impedes achieving Sustainable Development Goal No.5, i.e. gender equality, also pulling back all other goals associated therewith.

67. As quoted above, SDGs, in particular Goal no.6, explicitly recognize sanitation rights. Therefore, the achievement of such access to all persons has in this context multiple advantages in meeting the stipulated targets. The Hon'ble Supreme Court in *Citizens for Green Doon & Ors. v. Union of India & Ors.* 2021 SCC OnLine SC 1243 Para 31 recognized as under the important position which the sustainable development framework holds in environmental jurisprudence-

"The principle of sustainable development is deep-rooted in the jurisprudence of Indian environmental law. It has emerged as a multi-faceted principle, which does not prohibit development, but structures it around what is sustainable. Sustainable development incorporates two related ideas – development which not only ensures equity between the present and the future generations but also development which ensures equity between different sections of society at present."

68. However, before we part with these proceedings, it is essential to note caution in setting up petrol pumps. Regard must be given to the fact that petrol is a product of a conventional source of energy, i.e. crude oil. Therefore, the distribution of said commodity is done so that the paramount consideration of environmental suitability and resource conservation is given due consideration. While sanctioning such projects, the Authorities should keep in mind the entire gamut of effects that such a decision will have and not just those of economic and social benefit.

69. In furtherance of the above discussions, we find it necessary to issue the following directions:-

- i) The Chief Secretary, Government of Bihar, to convene a meeting of all stakeholders to examine the best and most efficient way to realize the multifarious benefits arising from the establishment of petrol pumps with equal importance being placed upon economic, social and environmental aspects. Also ensure that a sample survey for ascertaining the requirement of additional fresh Petrol Pumps/Gas Retail Outlets is carried out at the earliest.
- ii) The Development Commissioner, Government of Bihar, who is already seized of the matter shall take expedient steps in furtherance of the action(s) taken thus far.
- iii) The State, National Highways Authority of India and the Oil Marketing Companies consider constituting Public toilets and public conveniences at places easily identifiable and accessible by the public at large, and in this regard, signboards of "Public Toilets" or "Private Toilets" be displayed at the retail outlets. Such facilities should be easily accessible by the ladies walking or driving on the roads.
- iv) The amenities constructed should be done so, keeping in mind accessibility for persons with disabilities. The State has a responsibility to provide them equitable access to basic amenities while undertaking road travel, in light of the Constitution of India and the various international Human Rights obligations.
- v) All toilets be adequately staffed for taking care and maintaining the same with a proper system for the disposal of sanitary napkins.
- vi) Authorities may also consider making it necessary/mandatory for all the Dhabas/ Restaurants on the highways to make available public toilets and drinking water facilities for the use of the general public. While granting permission to such establishments, authorities should consider incorporating specific conditions regarding the provision of toilets and restrooms. Also, maintain the same hygiene, failing which their registration/permit is cancelled.
- vii) The State Authorities and corresponding Central Authorities will take expedient steps to check the practice of the black-marketing or open unauthorized sale of petrol/diesel and initiate action after the proper investigation against units aiding the perpetuation of such practice.
- viii) The Oil Marketing Companies to take steps to verify the continued interest or otherwise of the allottees/proposed allottees. The entire pending process of allotment shall be finalized within the time stipulated in the minutes of the Development Commissioner, Bihar.
- ix) The authorities may consider the development of a mechanism to:-
 - (a) institute a randomized checking system to ensure facilities and resources' quality and proper availability.
 - (b) in consultation with OMCs and furtherance of the Statutory obligation take constructive steps to ensure sustainable use of resources and all other related

issues.

(c) Prepare a digital platform furnishing complete information of such places of convenience to the general public with a provision of lodging online remarks.

70. We place on record our appreciation for all the assistance rendered by learned counsel appearing in this matter and in particular Mr. P. K. Shahi, Senior Advocate, amicus curiae along with Dr. K. N. Singh, learned Additional Solicitor General; Mr. Anjani Kumar, Senior Advocate, learned Additional Advocate General IV, Dr. Maurya Vijay Chandra, learned Advocate.

71. The writ petition stands disposed with the above directions/observations.

72. Interlocutory Application, if any, shall stand disposed of.