

(2025) 11 KL CK 1876

In the High Court Of Kerala

Case No : Writ Petition (C) Nos.27507, 38776 Of 2025

Prasad. K

APPELLANT

Vs

Land Revenue Commissioner

RESPONDENT

Date of Decision : 17-11-2025

Acts Referred:

Constitution of India, 1950 — Article 19(1)(g), 21, 226
Control of National Highways (Land and Traffic) Act, 2002 — Section 28, 28(2), 29
Petroleum Rules, 2002 — Rule 144, 154

Citation : (2025) 11 KL CK 1876

Hon'ble Judges : M.A.Abdul Hakhim, J

Bench : Single Bench

Advocate : K.Mohanakannan, Abdul Salim M., Krishna S., M.R.Sasith Panicker, Jomy K. Jose, Nithin George, M.V.Haridas Menon, Rithu Jose, K.M.Reshmi

Final Decision : Disposed Of

Judgement

M.A.Abdul Hakhim, J

1. The parties are the same in both these Writ Petitions. W.P.(C) No.38776 of 2025 is treated as the leading case, referring to the documents as per the markings therein.

2. The Petitioner Nos.1 and 2 are objecting to the establishment of a Petroleum Retail Outlet by the Respondent No.11 in their neighbouring property, having an extent of 22.80 Ares in Re-Sy. No.367/7-13 of Perayam Village in Kollam District, situated on the immediate western side of Kollam-Theni NH-183, belonging to one Mr. R.Bahulayen, as a dealer of the Respondent No.13 Petroleum Marketing Company.

3. W.P.(C) No.27507 of 2025 is filed challenging Ext.P1 N.O.C. issued by the Respondent No.3 to the Respondent No.13 under Rule 144 of the Petroleum Rules, 2002, and Ext.P2 Provisional Permission for access to the Highway issued by the Respondent No.6 to the Respondent No.13 under Section 28 of the

Control of National Highways (Land and Traffic) Act, 2002, and seeking direction to the Respondent No.1 to dispose of Ext.P19 Appeal filed against Ext.P1 N.O.C.

4. During the pendency of W.P.(C) No.27507 of 2025, the Respondent No.6 passed Ext.P23 Order granting Final Permission for access to the Highway to the Respondent No.13, and hence the Petitioner filed W.P.(C) No.38776 of 2025 challenging Ext.P23 Order.

5. The Respondent No.11 individually and the Respondent Nos.12 and 13 jointly filed Counter Affidavits in W.P.(C) No.38776 of 2025 opposing the prayers.

6. I heard learned Counsel for the Petitioners, Sri. K. Mohanakannan, learned Government Pleader, Sri. Tony Augustine for the Respondent Nos.1 to 4, learned Counsel for the Respondent Nos.5 to 8, Sri. Aditya Shenoy, learned Central Government Counsel for the Respondent No.9, learned Counsel for the Respondent No.10, Sri. Sajith Panicker, learned Senior Counsel for the Respondent No.11, Sri. P. Deepak, instructed by Adv. Sri. Jomy K. Jose, and the learned Counsel for the Respondent Nos.12 &13, Sri. Nithin George.

7. All the Respondents supported the establishment of the Petroleum Retail Outlet by the Respondent No.11 as the dealer of Respondent No.13.

8. Learned Counsel for the Petitioners contended that Ext.P23 Order was passed without considering Ext.P14 Report of the very same authority, which says that the Petroleum Retail Outlet does not conform to the Guidelines issued by the Ministry of Road Transport and Highways (MoRTH) for the grant of permission for construction of access to fuel stations (hereinafter referred to as the 'MoRTH Guidelines'). The Ext.P14 is based on Ext.P9 Report of the Respondent No.5. Ext.P9 Report was submitted when the Respondent No.6 sought for a Report from the Respondent No.5 when the Petitioners submitted their Petition and the Respondent No.13 submitted an Application for extension of one year Time in Ext.P2 Provisional Permission. Ext.P23 was passed without hearing the Petitioners on whose Petition the Ext.P14 Report was prepared, finding substance in the contentions raised in the Petition. Learned Counsel invited my attention to Note (b) under Clauses 2.3 and 3.0 (ii) of Appendix I to the MoRTH Guidelines. Note (b) under Clause 2.3 provides that in the case of distance from intersection with any category of road, the road means paved carriageway of 3.0 M width and having a length of minimum 300 M and above irrespective of the category of the road. Clause 3.0 (ii) provides that it should be ensured that the location of the proposed fuel station does not interfere with future improvements of the highway and the nearby intersections/junctions. In Ext.P9, it is reported the existence of an intersection of two roads of the specified width and length within the prohibited distance of 100 Meters - one abutting the Site and another within a distance of 50 M and that there is a detailed Project Report for road widening. The Petroleum Retail Outlet of the Respondent No.11 is in violation of the said two Clauses, and hence, Ext.P23 is liable to be set aside.

9. Per contra, learned Senior Counsel for the Respondent No.11 contended that

Ext.P14 Report is addressed to the Respondent No.13. It was withdrawn by the Respondent No.6 as per Ext.R11(q) dated 05.05.2025, and hence Ext.P14 was not available as on the date of passing Ext.P23 Order on 26.08.2025. Learned Senior Counsel invited my attention to Clause 2.3 of the MoRTH Guidelines to demonstrate the processing of the Application for access to the Highway. The person requiring access has to submit a self-certified proposal to the concerned authority, and such person shall be responsible for the preparation of such drawings/layouts in conformity with the norms prescribed under the Guidelines. As per Clause 2.5.1, the Authority has to check the proposal thoroughly. As per Clause 2.5.2, the Officer concerned of the Authority shall examine the documents, either inspect the site by himself or cause the same to be inspected by any of his subordinate officers, assess the suitability of the proposal and prepare his recommendations and forward the same to the Highway Administration and the Highway Administration shall issue Provisional Permission or reject the Application within 15 days after receipt of comments of the field officers. Clause 2.6 provides for Final Permission for access. It is granted on confirmation of the satisfactory completion of the construction of the outlet as per the approved drawings. The contention of the learned Senior Counsel is that once the suitability of the proposal is confirmed with reference to the drawings, before granting Provisional Permission, it could not be reopened again when Final Permission is sought on completion of the construction of the outlet and access. If the Petitioners had a grievance that MoRTH Guidelines are not followed, the Petitioners should have raised the same before the grant of Provisional Permission, or they should have challenged Ext.P2 Provisional Permission. It is clear from Ext.P2(a) Order of the Munsiff's Court that the Petitioners have been attempting to prevent the establishment of the outlet since the year 2019. It would reveal that they were well aware of the proceedings to establish the outlet. They cannot challenge the establishment of the outlet alleging violation of the MoRTH Guidelines after the establishment of the outlet and access in accordance with the Provisional Permission. Exts.P8 and P9 would reveal that the site was satisfying the MoRTH Guidelines during the processing of the Application for Provisional Permission. Since the grievance of the Petitioners is with respect to the violation of MoRTH Guidelines, which should have been agitated before the issuance of Provisional Permission, they are not necessary parties to be heard before passing Ext.P23 Order.

10. Learned Counsel for the other respondents advanced arguments supporting the contentions of the learned Senior Counsel for the Respondent No.11. The learned Government Pleader pointed out that as per Rule 154 of the Petroleum Rules, 2002, an appeal shall lie against any order refusing to grant N.O.C. by the District Collector, and hence, Ext.P19 Appeal against the grant of N.O.C. by the District Collector is not maintainable.

11. I have considered the rival contentions.

12. The Respondent No.13 issued Ext.R11(c) Letter of Intent on 19.08.2020 to

the Respondent No.11 for establishing and running a Petroleum Retail Outlet. The District Authority under Rule 144 of the Petroleum Rules, 2002, issued Ext.P1 N.O.C. on 25.01.2024. The Highway Administration issued Ext.P2 Provisional Permission under Section 28 of the Control of National Highways (Land and Traffic) Act, 2002, on 24.08.2021. Petitioners submitted Ext.P5 Petition on 20.02.2024. Ext.P9 Report dated 24.06.2024 and Ext.P14 dated 21.04.2025 were prepared taking into consideration the Petition of the Petitioners and the Application of the Respondent No.13 for Extension of Time in Ext.P2 Provisional Permission. In Ext.P14, the Respondent No.6 has found a violation of the MoRTH Guidelines. Ext.P14 Report was not taken into account when Ext.P23 Final Permission dated 26.08.2025 was issued, since Ext.P23 was withdrawn by the Respondent No.6 as per Ext.R11(q) dated 05.05.2025. The Petitioners were not heard before passing Exts.R11(q), withdrawing Ext.P14 Report in favour of the Petitioners, which was prepared taking into account the Petition of the Petitioners also. Ext.R11(q) was passed on a mere issuance communication by DSGI attached to this Court when the Respondent No.11 alleged non-compliance with the Ext.P12 Interim Order. No other reason is stated therein. In Ext.P12 Interim Order, the Respondent No.11 obtained a direction from this Court to the Respondent No.6 to dispose of the Application for Extension of Time submitted by the Respondent No.13 after hearing the Respondent No.11 and the Representative of the Respondent No.13, who is supporting the Respondent No.11. It is obvious that the opportunity of hearing to the Petitioners was avoided purposefully, when the Respondent No.1 had specific knowledge of the pendency of the Petition submitted by them and the Reports in favour of them. The Petitioners should have been heard by the Respondent No.6 before passing Ext.R11(q) and Ext.P23. Hence, in the normal case, this Court would have set aside Ext.R11(q) and Ext.P23 and directed the Respondent No.6 to pass fresh orders after hearing the Petitioners also. But there are circumstances in these cases that are dissuading me from doing that. It is seen that the Respondent No.11 constructed the outlet and access from the National Highway on the strength of Exts.P1 N.O.C. and Ext.P2 Provisional Permission for access. After obtaining Ext.P23 Final Permission, Respondent No.11 started operation of the outlet also. But he had to stop the operation of the outlet when the Petitioner No.1 filed Contempt Case (C) No.2113/2025, alleging violation of Ext.P11 Interim Order passed by this Court. Even though the Contempt proceedings were dropped by Ext.R11(t) judgment of this Court accepting the unconditional apology from the Respondent No.11, the outlet has been remaining closed. In such circumstances, I would prefer to consider the prima facie sustainability of the contentions of the Petitioners against the establishment of the outlet before deciding to set aside Ext.R11(q) and Ext.P23.

13. Permission for access to the National Highway is issued under Sections 28 and 29 of the Control of National Highways (Land and Traffic) Act, 2002. The said provisions contemplate general permission and specific permission. Respondent No.13 applied for a specific permission for access to the outlet. The definition of

'means of access' under Section 2(i) would make it clear that it means permanent means of access. Neither the provisions under the said Act nor the provisions under the Highways Administration Rules, 2004, made thereunder do provide for Provisional Permission and Final Permission. Rule 15 of the said Rules provides for the terms and conditions for specific permission to access to a Highway. Section 28(2) of the said Act provides that the access to a Highway shall be subject to the guidelines and instructions issued by the Central Government from time to time. The aforesaid MoRTH Guidelines dated 26.06.2020 are issued by the Central Government in this regard. Clause 2.5.2 of MoRTH Guidelines provides for the issuance of Provisional Permission, and Clause 2.6 provides for the issuance of Final Permission. The guidelines for processing the Application for Provisional Permission are contained in Clauses 2.3 to 2.5.2. Clause 2.5.1 provides that on receipt of the Application, the Proposing Authority is to examine/check the application/proposal thoroughly, and if at first hand, any further documents/clarification is required, same shall be sought from the Applicant. The Proposing Authority is the Respondent No.5 in these Writ Petitions. Clause 2.5.2 provides that the Officer concerned of the Proposing Authority shall examine the documents, either inspect the site by himself or cause the same to be inspected by any of his subordinate officers, assess the suitability of the proposal and prepare his recommendations and forward the same to the Highway Administration and the Highway Administration shall issue Provisional Permission or reject the Application within 15 days after receipt of comments of the field officers. These provisions would indicate that the suitability of the site in which the outlet is to be established and the suitability of the access are matters to be considered before the grant of Provisional Permission by the authorities. Such suitability includes compliance with the norms under the MoRTH Guidelines. Thus, the compliance with the norms under the MoRTH Guidelines is a matter to be ensured by the authorities before the issuance of the Provisional Permission. After issuance of Provisional Permission, the Dealer and the Petroleum Marketing Company have to establish the outlet and access in accordance with the conditions in the Provisional Permission. It is not legally permissible for the Highway authorities to check the suitability of the site and access after issuance of the Provisional Permission again at the time of processing the Application for Final Permission. It is highly unjust for an Authority to deny operational permission to an industry/establishment on the ground of unsuitability of the site when such Authority itself has granted permission for installation, finding that the site is suitable, and when the Applicant has invested a huge amount of money to establish the industry/establishment. Such denial would amount to violation of Article 19(1)(g) and Article 21 of the Constitution of India. Of course, the Authority would be perfectly justified in denying the operational permission if any of the conditions in the installation permission are not satisfied. Clause 2.6 provides that the Oil Company or the Owner may construct or develop the fuel station along with its access as per approved drawings at their own cost within 12 months from the date of issue of Provisional Permission. It is after the construction of the outlet as

per the approved drawings, the Applicant has to apply for the issue of Final Permission. The said provision makes it abundantly clear that the only thing to be verified after issuance of Provisional Permission and before the grant of Final Permission is whether the Applicant has constructed the outlet and the access as per the approved drawing. The Highway authorities have no right or authority to consider whether the site satisfies the norms under the MoRTH Guidelines again at that time. Thus, such an enquiry after the issuance of Ext.P2 Provisional Permission is quite unwarranted in the present case. If the Petitioners had any grievance with respect to the suitability of the site for Petroleum Retail Outlet on the ground that it does not conform to the norms of MoRTH Guidelines, they should have raised it before the Respondent Nos.5 and 6 before issuing Ext.P2 Provisional Permission dated 24.08.2021. They did not even challenge Ext.P2 within time. They thought of raising the unsuitability of the site for the Petroleum Retail Outlet on the ground that it does not conform to the norms of MoRTH Guidelines only when they submitted Ext.P5 Representation to the Respondent No.6 on 20.02.2024. Ext.P5 Representation was submitted after submission of the Application for Extension of Time on 08.02.2024 by the Respondent No.13 to extend the time by one year in Ext.P2. The contention of the learned Counsel for the Petitioners is that the Petitioners had no knowledge about Ext.P1 Provisional Order. I am unable to accept the said contention. It is seen from Ext.P2(a) Order of the Munsiff's Court, Kollam, that the Petitioners were aware of the attempts of the Respondent Nos.11 to 13 to establish a Petroleum Retail Outlet in their neighbouring property in the year 2019. In such case, there is every probability that the Petitioners had knowledge of the proceedings instituted by the Respondent Nos.11 and 13 for procuring N.O.C. from the District Collector and Permission for access from the National Highway Authorities. It is clear from Ext.P2(a) Order of the Munsiff's Court that the Respondent No.12 had stated in his Objection that only after getting clearance from the National Highway Authorities, the retail outlet would start functioning. The Petitioners are the immediate neighbours of the site in which the Petroleum Retail Outlet is proposed. They could not plead ignorance of the constructions undertaken therein by the Respondents Nos.11 and 13. Thus, even if the Petitioners did not have knowledge about Ext.P2, they could have obtained knowledge of the same if they had exercised due diligence. The contentions advanced by the Petitioners regarding the unsuitability of the site for a Petroleum Retail Outlet on the ground that it does not conform to the norms of MoRTH Guidelines could not be considered by the Respondent No.6 while considering the Application for issuance of Final Permission for access. There would not have been any change in Ext.P23 Order even if the Petitioners were heard before passing Ext.P23. I am of the view that the Petitioners are not in any way prejudiced for not hearing them before passing the Ext.P23 Order. Of course, they could have contended that the construction is not in accordance with the approved drawing, but they have no such case. In view of these facts, I find that it is not a fit case to exercise my discretionary jurisdiction under Article 226 of the Constitution of India in favour of the Petitioners to interfere with Ext.23 Order, especially when Respondent

No.11 has spent substantial amounts to establish the Petroleum Retail Outlet, and the same is ready for operation. I hold that W.P.(C) No.38776/2025 is liable to be dismissed.

14. As rightly pointed out by the learned Government Pleader, Ext.P19 Appeal against Ext.P1 N.O.C. before the Respondent No.1 under Rule 154 of the Petroleum Rules, 2002, is not maintainable as the said Rule does not provide appeal against the Order of the District Authority granting N.O.C. Ext.P17 Representation of the Petitioners was rejected by the Respondent No.3 on the sole reason that Appeal is provided to the Respondent No.1. Since the said reason is unsustainable, Ext.P18 is liable to be set aside and the Respondent No.3 is liable to be directed to consider Ext.P17 Representation of the Petitioners.

15. In view of the aforesaid discussions and findings, I dismiss W.P.(C) No.38776/2025 and dispose of W.P.(C) No.27507/2025, setting aside Ext.P18 Order and directing the Respondent No.3 to dispose of Ext.P17 Representation of the Petitioners after hearing the Petitioners and Respondent Nos.11 & 13 within a period of three months from the date of receipt of a copy of this judgment.