

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE DEVAN RAMACHANDRAN

TUESDAY, THE 12TH DAY OF DECEMBER 2023 / 21ST AGRAHAYANA, 1945

WP(C) NO. 6642 OF 2023

PETITIONER:

RAJEEV K, PROPRIETOR,
M/S.PARIMANAM PETROLEUM,
NEENDAKARA, KOLLAM - 691582.

BY ADVS.
M.U.VIJAYALAKSHMI
K.JAJU BABU (SR.)
BRIJESH MOHAN

RESPONDENTS:

- 1 THE DISTRICT COLLECTOR,
KOLLAM - 691 013.
- 2 HINDUSTAN PETROLEUM CORPORATION LTD,
ERNAKULAM NORTH.P.O, ERNAKULAM - 682018,
REPRESENTED BY - ITS CHIEF REGIONAL MANAGER (RETAIL).
- 3 THE PROJECT DIRECTOR,
NATIONAL HIGHWAY AUTHORITY OF INDIA,
REGIONAL OFFICE, PETTA PO
THIRUVANANTHAPURAM - 695024.
- 4 NATIONAL HIGHWAY AUTHORITY OF INDIA,
REGIONAL OFFICE, PETTA PO
THIRUVANANTHAPURAM - 695024
REPRESENTED BY ITS REGIONAL OFFICER.

BY ADVS.SMT.FARHA MATHER K.B.
E.C.KURIAKOSE
LEJO JOSEPH GEORGE (K/357-C/2017)
SRI.SUNIL KUMAR KURIAKOSE, GP

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON
12.12.2023, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

JUDGMENT

The petitioner is a dealer of petroleum products under the 2nd respondent - Hindustan Petroleum Corporation Ltd. (HPCL); and he concedes that a portion of the property, which was used for the afore purpose, has now been acquired for construction of a National Highway.

2. The petitioner says that 'HPCL', therefore, preferred an application, on his behalf, for a No Objection Certificate (NOC) before the 1st respondent - District Collector, for shifting the outlet to the portion unacquired and to the extreme back side of the property now available, particularly because the Fuel Tank is also in that area; but that this has not been considered by the said Authority.

3. The petitioner, therefore, prays that 1st respondent be directed to take up Exts.P1, P2 and P8 applications and issue an 'NOC' as

required; with a further direction to respondents 3 and 4 to consider Ext.P9 application, adverting to Ext.P10, leading to grant of permission for expansion of the retail outlet, consequent to the acquisition proceedings.

4. Sri.Brijesh Mohan - learned counsel for the petitioner, explained that his client is now put to a piquant situation because, though the outlet has been operating for the last several years, it has now been impeded on account of the construction activities being carried out by the National Highway Authority of India (NHAI), especially because a portion of the area, where the Unit was in existence, has been acquired. He submitted that, therefore, the only available option for his client is to shift the Dispensing Unit to the other portion of the property, which is not under acquisition; and that this would

benefit everyone, because the Fuel Tank is already in that area, which causes no danger to either the continuing work, or to any of the stakeholders of the 'NHAI'. He thus reiteratingly prayed that the reliefs sought for in this writ petition be granted.

5. Smt.Farha Mather K.B. - learned counsel appearing for the 2nd respondent, affirmed that her client has made an application on behalf of the petitioner and that they stand by the same. She then submitted that, it is her client's firm position that the requests made by them and the petitioner, through the aforementioned representations, before the competent Authorities, are deserving of being granted because, it will cause no danger to anyone; and, in fact, would subserve public interest since the Dispensing Unit would be much away from the National Highway and its allied facilities.

6. Sri.E.C.Kuriakose - learned Standing Counsel for the NHAI, submitted that his client does not stand in the way of the reliefs, sought for by the petitioner, being granted; but that they are apprehensive that, if the Fuel Dispensing Unit is allowed to continue, it would cause danger in future, on account of the expansion of the National Highway. He, however, conceded that the area identified by the 'HPCL' and the petitioner, for translocating the Dispensing Unit, is not part of the acquired property and is at a safe distance.

7. When I evaluate and consider the afore rival submissions, it is indubitable that an ongoing concern cannot be stopped or terminated merely because of the expansion of National Highway. However, the safety requirements of both the National Highway and the Fuel Dispensing Unit will have to be ensured and

balanced by the competent Authority.

8. *Prima facie*, it appears that petitioner is still in possession of areas beyond the acquired extent, for shifting the Dispensing Unit; and he says that fuel tank is already installed in that area. If this be so, certainly, the 1st respondent, as also respondents 3 and 4, must look into this and take a final decision, as requested by the petitioner.

In the afore circumstances, I order this writ petition with the following directions:

(a) The 1st respondent is directed to take up Exts.P1, P2 and P8 applications and grant the requisite 'NOC' to the petitioner, after hearing him, as also respondents 2 and 3 if there are no other legal impediments. This shall be done, as expeditiously as is possible, but not later than one month from the date of receipt of a copy of

this judgment.

(b) On the afore being done and if the petitioner is able to obtain 'NOC', then the competent among respondents 3 and 4 will take up his Ext.P9 application and grant necessary permissions thereunder, adverting to Ext.P10 and subject to the remittance of necessary fee by him; thus culminating in an appropriate order and necessary action thereon, as expeditiously as is possible, but not later than one month thereafter.

(c) Needless to say and merely for the purpose of reiterated clarity, this Court has not affirmed the veracity of the assertions of the petitioner and that it will be up to the District Collector to verify all the germane facts - including through proper inspections, as may be warranted - while directions in (a) above are complied with.

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(d) It also goes without saying that, until such time as the afore exercise is completed and the resultant order communicated to the petitioner, the interim order granted by this Court on 23.11.2023 will continue to be in effect.

Sd/-

DEVAN RAMACHANDRAN

JUDGE

akv

APPENDIX OF WP (C) 6642/2023

PETITIONER EXHIBITS

EXHIBIT P1	TRUE COPY OF THE APPLICATION SUBMITTED BY THE PETITIONER BEFORE THE DISTRICT COLLECTOR ON 08.09.2020.
EXHIBIT P2	TRUE COPY OF THE REQUEST NO.CRO/AT/E&PI DATED 4-10-2020 SUBMITTED BY THE 2ND RESPONDENT BEFORE THE 1ST RESPONDENT.
EXHIBIT P3	TRUE COPY OF THE COMMUNICATION DATED 12.10.2020 FORWARDED BY THE 1ST RESPONDENT TO DIFFERENT AUTHORITIES.
EXHIBIT P4	TRUE COPY OF THE LETTER NO.B-3930/2021 DATED 16-1-2021 FORWARDED BY THE REGIONAL FIRE OFFICER, FIRE AND RESCUE SERVICES, THIRUVANANTHAPURAM TO THE 1ST RESPONDENT.
EXHIBIT P5	TRUE COPY OF THE CONSENT TO OPERATE DATED 7-3-2021 ISSUED BY THE ASSISTANT ENVIRONMENT ENGINEER, KERALA STATE POLLUTION CONTROL BOARD.
EXHIBIT P6	TRUE COPY OF THE COMMUNICATION DATED 29.11.2021 REGARDING THE RENEWAL OF EXPLOSIVE LICENSE UPTO 31.12.2024 ISSUED BY THE PETROLEUM AND EXPLOSIVES SAFETY ORGANISATION.
EXHIBIT P7	TRUE COPY OF THE LICENSE NO.29/2022-2023/SC-3/761/22 DATED 11-5-2022 ISSUED BY THE NEENDAKARA GRAMA PANCHAYAT TO THE PETITIONER.
EXHIBIT P8	TRUE COPY OF THE REQUEST DATED 13.04.2021 SUBMITTED BY THE PETITIONER BEFORE THE 1ST RESPONDENT.

EXHIBIT P9	TRUE COPY OF THE DETAILS OF THE APPLICATION VIDE NO.20211210/2/2/8819/20709 SUBMITTED BY THE PETITIONER BEFORE THE 3RD RESPONDENT ON 14.12.2021
EXHIBIT P10	TRUE COPY OF THE RECEIPT SHOWING THE REMITTANCE OF AN AMOUNT OF RS.10,000/- DATED 14-12-2021 ISSUED BY THE 3RD RESPONDENT.
EXHIBIT P11	TRUE COPY OF THE REPRESENTATION DATED 19-10-2023 SUBMITTED BY THE 2ND RESPONDENT BEFORE THE 3RD RESPONDENT.
EXHIBIT P12	TRUE COPY OF THE PHOTOGRAPHS SHOWING THE BLOCKADES CREATED BY RESPONDENTS 3 AND 4.
EXHIBIT P13	TRUE COPY OF AWARD NO.NDKA 0359 DATED 14-3-2022 ISSUED BY THE SPECIAL DEPUTY COLLECTOR (LAND ACQUISITION), NATIONAL HIGHWAY AND COMPETENT AUTHORITY, KOLLAM.

RESPONDENT ANNEXURES

ANNEXURE R3 (A)	TRUE COPY OF THE AWARD U/S 3G(1) DATED 25.03.2022
ANNEXURE R3 (B)	TRUE COPY OF THE NOTICE U/S 3E DATED 30.10.2021