

Aruna P., vs State of Kerala,

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Court : Kerala

Decided On : Feb-21-2022

Judge : Honourable Mr.Justice N.Nagaresh

Appeal No. : WP(C)/2355/2022

Appellant : Aruna P.,

Respondent : State of Kerala,

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR.JUSTICE N.NAGARESH MONDAY,
THE 21ST DAY OF FEBRUARY 2022/2ND PHALGUNA, 1943 WP(C)
NO. 2355 OF 2022 PETITIONER: ARUNA P., AGED 35 YEARS, W/O.
RATHEESH A., ARUNAVILASAM, KALAYAPURAM, KOLLAYIL P.O.,
THIRUVANANTHAPURAM DISTRICT. BY ADVS. MANOJ
RAMASWAMY JOLIMA GEORGE JISHA SASI C.B.SABEELA APARNA
G. CHINNU ROSE MARY THOMAS RESPONDENTS: 1 STATE OF
KERALA REPRESENTED BY THE PRINCIPAL SECRETARY TO
GOVERNMENT, DEPARTMENT OF INDUSTRIES AND COMMERCE,
GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM-695 001. 2
THE DISTRICT COLLECTOR, COLLECTORATE, CIVIL STATION,

KOLLAM DISTRICT-691 013. 3 THE LAND REVENUE COMMISSIONER, O/O COMMISSIONER OF LAND REVENUE, PUBLIC OFFICE BUILDING, THIRUVANANTHAPURAM-695 033. 4 HINDUSTAN PETROLEUM CORPORATION LTD., REPRESENTED BY ITS CHIEF REGIONAL MANAGER, COCHIN RETAIL REGIONAL OFFICE, PB NO.1601, ERNAKULAM NORTH P.O., ERNAKULAM-682 018. 5 THE GEOLOGIST, DISTRICT OFFICE, DEPARTMENT OF MINING & GEOLOGY, KOLLAM DISTRICT - 691 008. 6 THE MEMBER SECRETARY, STATE ENVIRONMENTAL IMPACT ASSESSMENT AUTHORITY, 4TH FLOOR, KSRTC BUS TERMINAL, THAMPANOOR, THIRUVANANTHAPURAM-695 001.

BY ADVS. R1-R3 & R5 SRI.APPU P.S., G.P. R4 - SRI.M.GOPIKRISHNAN NAMBIAR R4 - SRI.K.JOHN MATHAI R4 - SRI.JOSON MANAVALAN R4 - SRI.KURRYAN THOMAS R4 - SRI.PAULOSE C. ABRAHAM R4 - SRI.RAJA KANNAN R6 - SRI.M.P.SREEKRISHNAN, SC THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 21.02.2022, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

JUDGMENT

Dated this the 21st day of February, 2022 The petitioner has approached this Court seeking to direct the 2nd respondent to issue necessary NOC to establish a Petroleum Retail Outlet pursuant to Ext.P2 application of the 4th respondent - HPCL within a time frame and to set aside Ext.P16.

2. The application for NOC submitted by the HPCL

was considered and the Additional District Magistrate passed Ext.P11 order rejecting the application for NOC submitted by the HPCL. Aggrieved by the said Ext.P11 order, Ext.P12 appeal was preferred before the Land Revenue Commissioner. This Court in WP(C) No.25346 of 2021 directed the Land Revenue Commissioner to consider the appeal and pass appropriate orders. Subsequently, the Land Revenue Commissioner issued Ext.P15 order setting aside Ext.P11

order and directing the District Authority to consider the application afresh.

3. The petitioner states that even after Ext.P15, the

District Collector as per Ext.P16 sought for a report from the 6th respondent - Member Secretary, SEIAA. In Ext.P16, it has been stated that since there is no Building Permit or Development Permit, the case should go to SEIAA for Environmental Clearance. It is aggrieved by the direction of the District Authority contained in Ext.P16 that the petitioner is before this Court.

4. The learned counsel for the petitioner submitted

that the Additional District Magistrate has issued Ext.P16 only to cause further delay in issuing NOC. In Ext.P16, it is stated that if there is no Building Permit and Development Permit, NOC can only be granted as and when application is submitted along with Environmental Clearance given by the 6th respondent.

5. The petitioner has obtained Consent to Establish

from the Kerala State Pollution Control Board and Ext.P6 Development Permit from the Panchayat. Since the petitioner is holding a Development Permit, the reasons stated in Ext.P16 cannot stand the scrutiny of law.

6. The learned Government Pleader entered

appearance and contested the writ petition. The learned Government Pleader controverted all the material allegations made by the petitioner in the writ petition. The Government Pleader submitted that as the petitioner is holding Ext.P6 Development Permit, the petitioner can approach the Geologist and obtain transit passes for removing the earth for the purpose of establishment of fuel station.

7. I have heard the learned counsel for the petitioner, the learned Government Pleader for respondents 1 to 3 and 5. I have also heard the learned Standing Counsel for respondents 4 and 6.

8. This Court considered a similar issue in WP(C)

No.23431/2021 in similar circumstances and this Court held

as follows:

The allegation that the petroleum outlet is likely to cause environmental issues is not supported by any data. The competent authority to decide whether any environmental pollution will result in from the establishment of Retail Petroleum Outlet is the Pollution Control Board. The petitioner has already obtained Ext.P5 Consent to Establish from the Kerala State Pollution Control Board. When the competent authority has found and considered the matter and granted approval for site, the 3rd respondent cannot be seen to take a different view in the matter, without any supporting material.

In this case also, it is found that the petitioner has already obtained Consent to Establish from the Pollution Control Board and Land Development Permit from Panchayat as evidenced by Ext.P6.

9. In view of the Land Development Permit obtained

by the petitioner, this Court is of the considered view that no Environmental Impact Assessment is required for grant of NOC to the 4th respondent. Therefore, the petitioner is entitled to relief. In view of the facts and circumstances as stated above, Ext.P16 order of the 2nd respondent is set aside. The 2nd respondent is directed to reconsider the application submitted by the 4th respondent for NOC to establish Petroleum Retail Outlet and pass appropriate orders thereon within a period of one month taking note of Ext.P6. Sd/- N. NAGARESH JUDGE
ncd/21.02.2022 APPENDIX OF WP(C) 2355/2022 PETITIONER'S EXHIBITS
Exhibit P1 TRUE COPY OF THE LETTER NO. CRRO/RFT/ADVT/2018-19
DATED 04/10/2019. Exhibit P2 TRUE COPY OF THE APPLICATION NO.
CRO/AT/E&P DATED 02/12/2019. Exhibit P3 TRUE COPY OF THE CONSENT
VIDE O. PCB/KO/ICE/378/2019. Exhibit P4 TRUE COPY OF THE RELEVANT
PORTION OF THE FILE NOTES OBTAINED UNDER RIGHT TO INFORMATION
ACT. Exhibit P5 TRUE COPY OF THE REPORT DATED Exhibit P6 TRUE COPY

OF THE DEVELOPMENT PERMIT VIDE NO. A5-BA(29379) 2021 DATED 05/02/2021.

Exhibit P7 TRUE COPY OF THE CLARIFICATION DATED Exhibit

TO EXHIBIT P9. Exhibit P11 TRUE COPY OF THE ORDER VIDE NO. DCKLM/11546/2019/M7 DATED 01/10/2021. Exhibit P12 TRUE COPY OF THE APPEAL DATED Exhibit P13 TRUE COPY OF THE RECEIPT OF THE APPEAL ISSUED FROM THE OFFICE OF THE 3RD RESPONDENT DATED 25/10/2021. Exhibit P14 TRUE COPY OF THE JUDGMENT DATED BY THIS HON'BLE COURT. Exhibit P15 TRUE COPY OF THE ORDER VIDE NO. LR/6072/2021/LR(A2) DATED 21/12/2021 ISSUED BY THE 3RD RESPONDENT. Exhibit P16 TRUE COPY OF THE ORDER VIDE NO. DCKLM/11546/2016-MZ DATED 05/01/2022 ISSUED BY THE 2ND RESPONDENT. Exhibit P17 TRUE COPY OF THE LETTER VIDE NO. 0019/EC2/2022/SEIAA DATED 12/01/2022 ISSUED BY THE 6TH RESPONDENT. Exhibit P18 TRUE COPY OF THE JUDGMENT DATED

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