

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

**THE HONOURABLE MR.JUSTICE THOTTATHIL B.RADHAKRISHNAN
&
THE HONOURABLE MRS. JUSTICE ANU SIVARAMAN**

WEDNESDAY, THE 4TH DAY OF NOVEMBER 2015/13TH KARTHIKA, 1937

WA.No. 2378 of 2015 () IN WP(C).5625/2012

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AGAINST THE ORDER/JUDGMENT IN WP(C) 5625/2012 of HIGH COURT OF KERALA
DATED 20-10-2014**

APPELLANT(S):

- 1. THE QUILON DISTRICT PETROLEUM DEALERS ASSOCIATION,
AFFILIATED TO ALL KERALA PETROLEUM TRADERS, PETRO BHAVAN,
ROOM 19,
MUNICIPAL STADIUM COMPLEX, REPRESENTED BY ITS SECRETARY.**
- 2. S. MURALIDHARAN,
PROPRIETOR, MURALI FUELS, PUTHOOR PO, KOLLAM.**
- 3. MYTHANAM VIJAYAN,
PROPRIETOR, MYTHANATH FUELS, KALLELIBHAGOM P.O.,
KARUNAGAPPALLY, KOLLAM-695 546.**

BY ADV. SRI.ALIAS M.CHERIAN

RESPONDENT(S):

- 1. UNION ON INDIA,
REPRESENTED BY THE SECRETARY TO DEPARTMENT OF MINES & FUELS,
SECRETARIAT, NEW DELHI-100 001.**
- 2. KERALA STATE POLLUTION CONTROL BOARD,
REPRESENTED BY ITS SECRETARY, PATTOM,
THIRUVANANTHPURAM-695 004.**
- 3. ENVIRONMENTAL ENGINEER,
KERALA STATE POLLUTION CONTROL BOARD, DISTRICT OFFICE,
KOLLAM-691 001.**
- 4. INDIAN OIL CORPORATION LTD.,
DIVISIONAL OFFICE, PANAMPILLY AVENUE, PANAMPILLY NAGAR,
ERNAKULAM 682 036.
REPRESENTED BY ITS GENERAL MANAGER.**

R1 BY ADV. SRI.N.NAGARESH, ASSISTANT SOLICITOR GENERAL

R4 BY SRI.M.GOPIKRISHNAN NAMBIAR

R2, R3 BY SRI. M.AJAY, SC, KERALA STATE POLLUTION CONTROL BOARD

**THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON 04-11-2015, THE
COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

DG

**THOTTATHIL B.RADHAKRISHNAN &
ANU SIVARAMAN, JJ.**

W.A.No.2378 of 2015
&
C.M.Appl.No.1272 of 2015

Dated this the 4th day of November, 2015

J U D G M E N T

Thottathil B.Radhakrishnan, J.

1. We have heard the learned counsel for the appellants quite in extenso on the merits of the appeal as well, since this appeal stands with an application seeking condonation of delay of 387 days, that is to say, a couple of weeks more than one year.

2. On examining the grounds extended to condone the delay, what we see is that there were some disputes among the members of the first petitioner which is an association. Immediately, we would notice that petitioners 2 and 3 were individual proprietors of two petroleum outlets. They are so described in the cause title of the writ petition. The mere fact that there were certain disputes inside the first petitioner

association cannot be taken as a valid reason for condonation of delay by treating that as a sufficient cause under Section 5 of the Limitation Act.

3.The aforesaid position notwithstanding, we have also looked into the merits of the writ appeal.

4.By a decision under laws relating to environment, petroleum outlets are now categorized as orange category after elaborate discussions with the petroleum companies. It was decided by the competent authority that the outlets will have to take clearance in terms of the pollution laws as would apply to orange category establishments. The learned single Judge found that the dealers by themselves do not have any right to challenge such classification, since the petroleum companies do not have any such contention. Not only that, we are also of the firm view that classification of institutions or establishments into different categories on the basis of their activity for the purpose of enforcement of the laws relating to environment management is at large in the domain of persons who are eligible to decide on such classification since making

such classification itself calls for expertise which may have relevance to the wholesome management of environment, pollution etc.

5. The second limb of argument on behalf of the writ appellants is that even if clearance has to be obtained, treating the establishments as falling under orange category, the proprietors or dealers cannot be mulcted with responsibility, since they are only agents of the petroleum companies. The learned single Judge rightly held that such matter is an issue between the petroleum companies and the dealers. We are of the view that either way, the outlets require clearance by treating them as falling under orange category. Under such circumstances, it makes no difference as to whether it is for the dealer or the petroleum company to apply for the clearance. We do not see any issue of violation of constitutional provisions or statutory provisions in relation to the matter in hand in so far as the contractual relationship between the petroleum companies and the dealers is concerned; to necessitate judicial scrutiny in exercise of powers by this Court under Article 226 of the Constitution of

India in that regard. This way also, we are satisfied that the learned single Judge was justified in dismissing the writ petition, however, granting a time frame within which the writ petitioners could seek clearance.

6. For the aforesaid reasons, we see no ground to interfere with the impugned judgment of the learned single Judge. The writ appeal, therefore, fails.

Having held that there is no ground to condone the delay and having also noted that there is no merit in the writ appeal, the C.M.Application and the writ appeal are dismissed at the threshold.

Sd/-
(THOTTATHIL B.RADHAKRISHNAN, JUDGE)

Sd/-
(ANU SIVARAMAN, JUDGE)

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P.A TO JUDGE

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