

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MRS. JUSTICE ANU SIVARAMAN

TUESDAY, THE 3RD DAY OF NOVEMBER 2015/12TH KARTHIKA, 1937

WP(C).No. 33983 of 2010 (W)

PETITIONER(S):

**1. SAJAY JOSEPH, EDAMATTOM, KAMVANCHAL
KANNUR-670571.**

**2. JOSE JAMES, PUTHENPARA, VAYATTU
PARAMBA, KANNUR-670 582.**

**BY ADVS.SRI.V.C.JAMES
SRI.M.A.FIROZ
SRI.RAJU K.MATHEWS**

RESPONDENT(S):

**1. THE GOVERNMENT OF INDIA REPRESENTED
BY ITS SECRETARY, MINISTRY OF SHIPPING
ROAD TRANSPORT OF HIGHWAYS, DEPARTMENT OF ROAD
TRANSPORT & HIGHWAYS, NEW DELHI - 110750**

**2. THE CHAIRMAN, NATIONAL HIGHWAYS
AUTHORITY OF INDIA, (MINISTRY OF SHIPPING, ROAD
TRANSPORT AND HIGHWAYS), G-5&6, SECTOR-10
DWARAKA, NEW DELHI-110750.**

**3. THE CHIEF GENERAL MANAGER (T),
NATIONAL HIGHWAY AUTHORITY OF INDIA, MINISTRY OF
ROAD TRANSPORT AND HIGHWAYS, KARNATAKA AND KERALA
REGION, NO.1573, 'B' BLOCK
BEHIND ELECTRIC SUB STATION, SAHAKARANA NAGAR
BANGALORE-560092.**

**4. THE TERRITORY MANAGER (RETAIL),
M/S.BHARAT PETROLEUM CORPORATION LIMITED, 3RD FLOOR
CEEKAY TOWERS, VANDIPETTA, KANNUR ROAD
NADAKKAVU WEST, CALICUT-673011.**

R1 BY ADV. SRI.T.P.M.IBRAHIM KHAN,ASST.S.G OF INDI

R4 BY ADV. SRI.E.K.NANDAKUMAR

R4 BY ADV. SRI.A.K.JAYASANKAR NAMBIAR

R4 BY ADV. SRI.K.JOHN MATHAI

R4 BY ADV. SRI.P.BENNY THOMAS

R4 BY ADV. SRI.P.GOPINATH

R3 BY ADV. SRI.THOMAS ANTONY

R1 BY ADV. SRI.P.PARAMESWARAN NAIR,ASG OF INDIA

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

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 03-11-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

APPENDIX

PETITIONERS' EXHIBITS:

- P1: COPY OF LETTER OF INTENT DATED 08.12.2009 OF M/S.BPCL
- P2: COPY OF COVERING LETTER DATED 19.02.2006 OF THE BPCL SUBMITTED TO THE EXECUTIVE ENGINEER
- P3: COPY OF COMMUNICATION DATED 09.05.2008 FROM THE 1ST RESPONDENT TO THE 2ND RESPONDENT
- P4: COPY OF REMINDER TO THE 2ND RESPONDENT BY THE GOVERNMENT OF INDIA ON 28.05.2008
- P5: COPY OF COMMUNICATION DATED 04.06.2008 SENT BY THE 2ND RESPONDENT TO THE PROJECT DIRECTOR, PIU
- P6: COPY OF COMMUNICATION NO.NHA/DP/PALAKKAD/NH17/KL/PO/KM 139.500 (RHS)/2008/2151 DATED 19.12.2009
- P7: COPY OF REQUEST DATED 27.10.2009 SENT BY THE 4TH RESPONDENT TO THE PROJECT DIRECTOR
- P8: COPY OF COMMUNICATION DATED 28.10.2009 SENT BY THE PROJECT DIRECTOR
- P9: COPY OF INTERIM ORDER DATED 17.12.2009 IN WPC NO.36530/2009
- P10: COPY OF COMMUNICATION DATED 23.12.2009 ADDRESSED TO THE DIRECTOR GENERAL, MINISTRY OF ROAD TRANSPORT & HIGHWAYS BY THE NATIONAL HIGHWAYS AUTHORITY OF INDIA
- P11: COPY OF NORMS OF THE ACCESS FOR FUEL STATIONS, ISSUED BY THE MINISTRY ON 25.09.2003
- P12: COPY OF ORDER DATED 15.01.2010 IN IA NO.524/2010 IN WPC NO.36530/2009
- P13: COPY OF THE STATEMENT FILED ON 25.02.2010 IN WPC NO.36530/20010
- P14: COPY OF ORDER DATED 09.03.2010 IN WPC NO.36530/2009 (I)
- P15: COPY OF JUDGMENT DATED 14.06.2010 IN WPC NO.36530/2009
- P16: COPY OF COMMUNICATION ADDRESSED TO THE REGIONAL OFFICER DATED 17.08.2010
- P17: COPY OF THE NOTIFICATION NO.SO 2060E DATED 14.08.2014 PUBLISHED IN THE GAZETTE OF INDIA EXTRAORDINARY NO.1615 PART II SECTION 3 SUBSECTION (II) DATED 14.08.2014

RESPONDENTS' EXHIBITS:

- R1(A): COPY OF THE LETTER DATED 06.03.2010

//TRUE COPY//

P.A. TO JUDGE

ANU SIVARAMAN, J.

W.P.(C) No.33983 of 2010

Dated this the 3rd day of November, 2015

JUDGMENT

The challenge in this writ petition was directed against Ext.P16 communication issued by the 3rd respondent rejecting the proposal for access to the proposed retail outlet of the petitioner from National Highway-17. The approval was rejected by Ext.P16 since the National Highway Authority of India had stated that the location of the proposed retail outlet is lying within 1000m from the proposed toll plaza and is not in compliance with the Ministry's guidelines.

2. The petitioner has now produced Ext.P17 notification dated 14.08.2014 by which the entry regarding the widening of the proposed highway has been denotified. In the above circumstances, it is submitted by the learned counsel for the petitioner that the very basis on which Ext.P16 rejection was rendered has been taken away and therefore, Ext.P16 cannot survive.

3. Heard the learned counsel for the petitioner, the learned

Central Government Standing Counsel appearing for the 1st respondent and also the learned counsel appearing for respondents 3 and 4.

Since by Ext.P17, the proposed widening project of the National Highway has been denotified, Ext.P16 cannot survive. Ext.P16 is therefore set aside. Further steps in the matter shall be taken by the respondents in accordance with law.

The Writ Petition is disposed of as above.

SD/-
ANU SIVARAMAN,
JUDGE

JV