**HIGH COURT OF JAMMU &KASHMIR AND LADAKH AT SRINAGAR**

*Reserved on:* *05.11.2026*
*Pronounced on:* *20.11.2026*
*Uploaded on:* *21.11.2026*
*Whether the operative part or full judgment is pronounced:* ***Full***

**WP(C) No.2376/2025**

**ZAHIDA MUSHTAQ**

**...PETITIONER(S)**

*Through: -* *Mr. M. Y. Bhat, Sr. Advocate, with*
*Mr. Shabir Ahmad, Advocate,*
*Mr. Sajid Ahmad, Advocate.*

Vs.

**UT OF J&K AND ORS.** **...RESPONDENT(S)**

*Through: -* *None for R1 to R3.*
*Mr. Shuja-ul-Haq, Advocate-for R4 & R5*
*Mr. N. A. Beigh, Sr. Advocate, with*
*Mr. Sofi Manzoor, Advocate-for R12*

**CORAM: HON'BLE MR. JUSTICE SANJAY DHAR, JUDGE**

**JUDGMENT**

**1)** The petitioner, through the medium of present petition, has challenged communication dated 28.07.2025 issued by respondent No. 5, whereby Chief Manager, Retail Sales, of M/S Indian Oil Corporation Limited has been directed to deposit penalty amount of Rs.2,50,000/- in view of energizing of fuel station located at Ch.270+040 (LHS) without obtaining final NOC from the Highway Administration. A further direction for de-energization of the operations of the aforesaid retail outlet till grant of final NOC

has also been issued vide the said communication. Besides this, the petitioner has also sought a direction upon respondent Nos.4 and 5 to grant final NOC for access permission with a further direction to all the respondents for removal of unauthorized occupation/encroachment of National Highway land by implementation of Control of National Highways (Land and Traffic) Act, 2002.

**2)** As per case of the petitioner, she has established a fuel outlet of M/S Indian Oil Corporation under the name and style of 'M/S Fatima Filling Station' after obtaining necessary clearances from the competent authority as required under the Petroleum Act, 1934, and the Petroleum Rules, 2002. Thereafter, the petitioner obtained access permission from National Highway Authority through Indian Oil Corporation for establishing the fuel outlet on Khasra Nos. 7489, 7190, 7492 and 7493 of Village Letpora, Tehsil Pampore, after obtaining necessary permissions including explicit access rights from National Highway Authority of India vide reference permission letter No.NHAI/RO-Jammu/2013/ 11051/NOC/395 dated 25.02.2021. In terms of the said communication, the petitioner was granted right to use an approach road carved out of land owned and maintained by NHAI connecting the fuel outlet directly to the National Highway for seamless vehicular access.

**3)** It has been submitted that National Highway Authority has issued various notices to the District Administration for removal of encroachment on National Highway land by some shopkeepers and locals who have encroached upon the National Highway land adjacent to the petitioner's fuel outlet. It has been submitted that these persons, without having any legal claim or authority over the land of the National Highway Authority, are creating law and order problem for highway authorities who are trying to remove the encroachments. The petitioner has placed on record communications addressed by her as well as by the Indian Oil Corporation to National Highway Authority seeking removal of encroachment on the access road from National Highway land to the fuel outlet established by the petitioner.

**4)** It has been submitted that the Supreme Court in the case of **Gyan Prakash vs. Union of India** (WP(C) No.1272 of 2019) has issued general directions on 20.02.2024 for removal of encroachment of National Highways and in this regard, a communication has been issued to all the Chief Secretaries for compliance of the order passed by the Supreme Court. It has further been submitted that National Highway Authority has framed guidelines and norms for grant of permission for construction of access to fuel stations, wayside amenities, connecting roads from other

properties, rest area complexes and such other facilities through circular dated 26.06.2020 and as per para 2.11 of the said circular, penalty has been stipulated for operating a fuel station without obtaining the prior permission for grant of access and under this circular, the impugned communication has been issued by the National Highway Authority.

**5)** The petitioner has challenged the impugned action of the respondents on the grounds that the final access permission to her could not be granted because of the illegal encroachments on the National Highway land, which the respondents have been unable to remove, therefore, no penalty could have been imposed upon the petitioner, who has otherwise been subjected to harassment and loss. It has been submitted that the petitioner has invested her time, money and labour for operation of the petrol pump, but the respondents, without any justification, are delaying to consider her request for removal of encroachment and grant of final NOC for access permission, which is in clear violation of her constitutional rights.

**6)** During the pendency of the writ petition, an application was made by one Zaffar Ahmad Lone seeking his impleadment as a party to the writ petition. The said application was allowed by this Court and Zaffar Ahmad

Lone was impleaded as respondent No.12 to the present writ petition and he was permitted to file his reply to the writ petition.

**7)** In his reply to the writ petition, respondent No. 12 has raised a preliminary objection to the maintainability of the writ petition on the ground that the said respondent had filed a writ petition bearing WP(C) No.1919 of 2025, in which the petitioner was impleaded as a respondent, and vide the said writ petition, respondent No.12 had challenged the installation of petroleum retail outlet by the petitioner on various grounds, including the ground that the outlet has been installed in violation of the rules and guidelines. It has been submitted that the said writ petition came to be disposed of by this Court in terms of order dated 12.08.2025, whereby the official respondents, particularly the District Magistrate, Pulwama, was directed to examine all the requisite NOCs and in case it was found that the petitioner has got all the requisite NOCs, only then she should be allowed to operate the retail outlet, otherwise she should not be allowed to operate the same. It has been submitted that this material fact has been suppressed by the petitioner, hence the present writ petition deserves to be dismissed on this ground alone.

**8)** On merits, it has been submitted that till date the petitioner has not got all the requisite NOCs, including the final NOC from National Highway Authority, as such, she cannot operate the petrol pump. It has been submitted that pursuant to order dated 12.08.2025 passed in WP(C) No.1919/2025, the District Magistrate, Pulwama, has held a detailed enquiry, whereafter the said authority has observed that the petitioner is operating the petrol pump in violation of the rules and guidelines, but because of interim order passed by this Court on 26.09.2025, the District Magistrate has expressed his inability to proceed further in the matter. It has been further submitted that the petrol pump of the petitioner is situated in close proximity of residential house of respondent No. 12, which is less than 50 meters away from the petrol pump, therefore, the permission to operate the petrol pump cannot be granted in her favour. It has also been submitted that the license in respect of the petitioner's retail outlet has expired on 31.12.2025 and the same has not been renewed. According to respondent No.12, there are a number of residential houses and shops existing in close proximity of the petrol pump set up by the petitioner, and these residential and commercial structures cannot be demolished in order to

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permit the petitioner to operate the petroleum retail outlet, which is located in the vicinity of the water body.

**9)** Respondent National Highway Authority has also filed its reply to the writ petition, wherein it has been submitted that the penalty imposed upon Indian Oil Corporation Limited vide the impugned communication is strictly in accordance with the applicable policy framework, particularly para No. 2.11(v) of MoRTH circular No. RW-NH-33032/01/2017/S&R(R) dated 26.06.2020. It has been submitted that the said action was necessitated on account of the fuel station having been energized and commercial operations having been commenced without obtaining the final NOC from the Highway Administration. It has been submitted that the petitioner has, admittedly, deposited the penalty amount on 31.07.2025, hence she is debarred from challenging the impugned communication.

**10)** It has been submitted that on account of inaction of the authorities of District Administration in removing the encroachment on the National Highway land, which has been caused by third party interference, the final access permission to the petitioner could not be granted. It has been submitted that respondent Nos.4 and 5 have consistently taken up the matter with regard to removal of

encroachments on National Highway land with District Administration and the police authorities, but the said authorities have failed to take necessary action for removal of the encroachments. Respondent Nos.4 and 5 have referred to various communications addressed to District Magistrate and other authorities for removal of encroachment on the National Highway land.

**11)** In any case, the petitioner or Indian Oil Corporation could not have energized the petrol pump without obtaining final access permission from National Highway Authority. It has been submitted that the permission, which was granted in favour of Indian Oil Corporation, was provisional in nature and it was subject to compliances within the prescribed conditions and completion of approved access/service layer. It has been submitted that on the basis of provisional permission, the petrol pump could not have been energized.

**12)** I have heard learned counsel for the parties and considered the material on record.

**13)** As already stated, respondent No.12 has raised a preliminary objection with regard to maintainability of the writ petition on the ground that the petitioner has suppressed order dated 12.08.2025 passed by this Court in WP(C) No.1919/2025. To support this contention, learned

Senior Counsel appearing for respondent No.12 has placed heavy reliance upon the judgment of the Supreme Court in the case of **K. D. Sharma** vs. **Steel Authority of India Limited and others**, (2008) 12 SCC 481.

**14)** It is an admitted fact that respondent No.12 had filed a writ petition against the petitioner and official respondents before this Court, challenging the installation of petrol pump by the petitioner on the ground that she has been permitted to operate the petrol pump without obtaining all requisite no objection certificates from concerned departments and without adhering to the rules and guidelines on the subject. The said writ petition came to be disposed of by this Court on 12.08.2025 with the following directions:

> *04. Therefore, this writ petition is **disposed of** at its very inception stage with a direction to the District Magistrate, Pulwama to examine all the requisite NOCs of the respondent No. 11 and if found complete valid and effective for enabling him to commence and carry on with the business of Retail Petrol Pump then to allow the same by passing an order bearing reasons and if not then also to pass an order bearing reasons.*
>
> *05. Petitioner shall also be entitled to place his objections with respect to the NOCs as has come to be procured and presented by the respondent No. 11 to show that all the requisite NOCs are not at the disposal of respondent No. 11 with respect to the Petrol Pump.*
>
> *06. Needful to be done within a period of one month.*
>
> *07. One month period to commence from the date a copy of this order gets delivered by the respondent No. 11 to the District Magistrate, Pulwama.*

**15)** From a perusal of the aforesaid order, it is clear that District Magistrate, Pulwama, was mandated to examine all the requisite NOCs of the petitioner herein, and if the same were found to be complete and valid, she was to be allowed to operate the petrol pump, or else a reasoned order was to be passed in either case.

**16)** It is true that the aforesaid order has not been brought to the notice of this Court by the petitioner while filing the present writ petition. However, the question that arises for determination is as to whether it was necessary for the petitioner to bring the aforesaid order to the notice of this Court by making its mention in the writ petition. As already stated, the present writ petition has been filed to seek quashment of communication dated 28.07.2025 issued by National Highway Authority, whereby penalty of Rs.2.50 lakhs has been imposed upon Indian Oil Corporation, on whose behalf the petitioner is operating the retail outlet. The petitioner is also seeking removal of encroachment from the National Highway land so that she is able to construct access from the National Highway up to the petrol pump installed by her. Having regard to the nature of reliefs that are being sought by the petitioner in the present writ petition, it was not necessary for the petitioner to make any mention about the earlier writ petition filed by respondent No.12 against her

and other official respondents. Imposition of penalty upon the petitioner is an unrelated development. Therefore, non-disclosure of filing of earlier writ petition by respondent No.12 against the petitioner and other official respondents is not a material fact, the concealment of which would non-suit the petitioner.

**17)** However, it would have been prudent for the petitioner to bring to the notice of this Court order dated 12.08.2025 passed in WP(C) No.1919/2025 at least at the time of obtaining interim order dated 26.09.2025, whereby it was directed that the petitioner's running of petrol pump at the sanctioned place shall not be disturbed. By not bringing the earlier order to the notice of this Court, two apparently conflicting orders came into existence, which has put the District Magistrate, Pulwama, in quandary, inasmuch as, despite having noticed certain deficiencies in the compliances made by the petitioner, he was unable to stop the operation of the petrol pump in view of interim order dated 26.09.2025. This situation could have been avoided if the petitioner would have at least brought to the notice of the Court at the time of passing of order dated 26.09.2025 the order passed in the earlier writ petition, whereby the District Magistrate was obliged to first enquire into the compliances made by the petitioner and thereafter allow her

to operate the petrol pump. The later order dated 26.09.2025 passed in this writ petition is a blanket direction permitting the petitioner to operate the petrol pump at the sanctioned place. In any case, order dated 10.12.2025 passed by the Deputy Commissioner, Pulwama on the basis of interim order dated 26.09.2025 has been put on hold by this Court in terms of order dated 30.09.2026. Therefore, the situation stands remedied.

**18)** That takes us to the merits of the case. In this behalf the relevant guidelines are required to be noted. As per guidelines for grant of permission for construction of access to Fuel Stations, etc. issued by the Government of India, Ministry of Road Transport and Highways vide communication dated 26.06.2020, particularly para 2.3 thereof, the persons requiring and applying for access to National Highway have to submit a self-certified proposal for obtaining access permission to the concerned authority to whom such highway is entrusted. It further provides that in case the execution of access is not carried out as per the prescribed norms, the fuel station shall be de-energized and access of fuel station/property shall also be disconnected. Para 2.5.2 of the said guidelines provides that the Highway Administration shall issue provisional permission or reject the application within 15 days after receipt of comments

from field officers. It further provides that the fuel station shall not be energized during the intervening period of provisional permission and grant of regular access permission. Para 2.6 of the guidelines provides that Regional Officer of the Ministry may grant one year extension to the validity of provisional permission for access based on justifications for delay submitted by the applicant. As per para 2.11(v), penalty of Rs. 2,50,000/- has been provided for operating energized fuel station without obtaining prior permission for grant of access from the Highway Administration.

**19)** From the aforesaid guidelines, which are mandatory in nature, it is clear that on the basis of a provisional access permission, a fuel station cannot be energized and it is only after grant of regular access permission that a fuel station can be energized. It is also clear that in case a fuel station is energized without obtaining final permission for grant of access from Highway Administration, the defaulter has to pay a penalty of Rs.2,50,000/-.

**20)** In the present case, the petitioner has, admittedly, not obtained the final access permission and without obtaining the said permission, the Indian Oil Corporation has energized the petrol pump being operated by the petitioner.

Therefore, respondent National Highway Authority is legally justified in imposing penalty upon the Indian Oil Corporation by way of the impugned communication. It is true that the petitioner has not been able to construct access to her petrol pump because of reasons not attributable to her, but because of the fact that neither National Highway Authority nor the District Administration has been able to remove encroachment on the National Highway land. However, the petitioner cannot proceed to operate her petrol pump without waiting for removal of encroachment and without construction of access to the petrol pump. Doing so would be violative of the guidelines issued by the Ministry of Road Transport and Highways. The fact that the petitioner has been unable to construct access to her petrol pump for the reasons not attributable to her may offer a justification for her to seek extension of provisional access permission and to pray for further time to construct the access to the petrol pump until the encroachment is removed, but without constructing the access to the petrol pump, the same cannot be energized in any circumstances whatsoever.

**21)** So far as the grievance of respondent No.12 is concerned, the District Magistrate is already seized of the matter and after passing of interim direction by this Court on 30.09.2026, whereby earlier order dated 10.12.2025

passed by the Deputy Commissioner, Pulwama, has been kept in abeyance, it would be open to the said officer to hold an enquiry into the compliances made by the petitioner for installation of the petrol pump and if it is found that she has complied with the necessary requirements, she has to be allowed to operate the petrol pump and in case there is any deficiency, she has to be given an opportunity to make good those deficiencies. If she fails to do so, then the petrol pump installed by her has to be shut down.

**22)** This Court would not like to go into the merits of the rival contentions on the issue as to whether necessary compliances have been made by the petitioner for installation of the petrol pump, as the same is a subject matter which has to be gone into by the District Magistrate/Deputy Commissioner, Pulwama, while proceeding in the matter in terms of order dated 12.08.2025 passed in WP(C) No.1919 of 2025.

**23)** Yet another aspect that is required to be deliberated upon is with regard to the alleged encroachments on the National Highway land. There are a series of communications addressed by National Highway Authority and Indian Oil Corporation to the District Administration seeking removal of encroachment on the National Highway

land. Whether the said encroachment has been made by respondent No.12 or any other person, the same has to be removed in accordance with law by following the mandate prescribed in Control of National Highways (Land and Traffic) Act, 2002, particularly the provisions contained in Chapter IV of the said Act. Needless to mention here that the District Magistrate is the authority vested with powers under Sections 26, 27, 36 and 43 of the aforesaid Act to facilitate swift removal of the encroachments on National Highway land. Therefore, in terms of the directions passed by the Supreme Court in the case of **Gyan Prakash vs. Union of India** and the instructions issued to the States pursuant thereto, the District Magistrate, Pulwama, is duty bound to ensure that all the encroachments existing on the land of the National Highway which prevent construction of access to the petrol pump of the petitioner have to be removed.

**24)** For what has been discussed hereinabove, the writ petition is disposed of in the following terms:

(I) The imposition of penalty upon Indian Oil Corporation in terms of the impugned communication dated 28.07.2025 is upheld.

(II) The District Magistrate/Deputy Commissioner, Pulwama, is directed to hold an enquiry into the issue as to whether the petitioner has installed the petrol

pump at the sanctioned location in accordance with the relevant rules and guidelines after having obtained the requisite NOCs from the concerned departments.

(III) If, upon holding the enquiry, the District Magistrate/Deputy Commissioner, Pulwama, comes to the conclusion that the petitioner has complied with all the requirements, she shall be allowed to operate the petrol pump at the sanctioned location, and if there is any encroachment on the National Highway land, which prevents construction of access to the petrol pump of the petitioner, the same shall be removed by the District Magistrate/Deputy Commissioner after taking recourse to law.

(IV) Upon construction of access to the petrol pump, the respondent National Highway Authority shall grant necessary final access permission to the petitioner and permit her to energize the petrol pump.

(V) In case, after enquiry, it is found that the petitioner has not complied with all the requirements, she shall be given time to make up the deficiencies, and if she is unable to make up the deficiencies, the petrol pump installed by her shall be closed down/sealed.

**(Sanjay Dhar)**
**Judge**

**SRINAGAR**
20.11.2026
"Bhat Altaf-Secretary"

Whether the **judgment** is reportable: **YES/NO**