

Item No. 06

**BEFORE THE NATIONAL GREEN TRIBUNAL
PRINCIPAL BENCH, NEW DELHI
(Through Video Conferencing)**

Original Application No. 585/2018
(Earlier O. A. No. 395/2013 (SZ) (THC))

Suo Motu proceedings initiated based on
the representation received from
Justice R. Bhaskaran, Former Judge

Applicant(s)

Versus

State of Kerala & Ors.

Respondent(s)

Date of hearing: 25.01.2019

CORAM: HON'BLE MR. JUSTICE ADARSH KUMAR GOEL, CHAIRPERSON
HON'BLE MR. JUSTICE S.P. WANGDI, JUDICIAL MEMBER
HON'BLE MR. JUSTICE K. RAMAKRISHNAN, JUDICIAL MEMBER
HON'BLE DR. NAGIN NANDA, EXPERT MEMBER

For Applicant(s):

Mr. Kamlesh Kannas, Advocate

For Respondent (s):

Ms. Rema Smrith V. K. Advocate for KSPCB

Mr. E. K. Kumaresan and Mr. G. Prabhu,
Advocates for State of Kerala for R- 1 to 4, 7 &
10

Mr. D. S. Ekambaray, Advocate

ORDER

1. The proceedings before this Tribunal are on account of transfer of a pending Writ Petition by the Kerala High Court to the Tribunal. The Writ Petition was based on a letter written by Justice R. Bhaskaran, former Judge of Kerala High Court regarding rampant dumping of hospitals and slaughter houses waste into the River Periyar. The matter has been considered by the Tribunal in the last more than four years.
2. On 07.09.2015, the Tribunal noted that there was pollution found in the analysis report of inspection conducted in June, 2015. Presence of metallic components exceeded the prescribed limits. Direction was issued to the National Environmental Engineering Research Institute (NEERI), Nagpur to take samples from the outlet of the Respondent

No.6- viz., Hindustan Insecticides Ltd., Udyogamandal, Eloor, Respondent No.7-viz., the Fertilizers and Chemicals Travancore Ltd., Udyogamandal, Respondent No.8- viz., Merchem Limited, Eloor East Udyogamandal and Respondent no.10 viz., Cochin Minerals and Routilis Ltd. Edayar, Aluva.

3. On 25.01.2016, after considering the material on record, this Tribunal directed the State Pollution Control Board and Central Pollution Control Board to visit the area and file a status report, including analysis report in respect of water.
4. Accordingly, Joint Inspection Report has filed by the CPCB and Kerala SPCB which was considered on 22.03.2016. The report noted that out of 19 health care facilities in and around the area in which 16 of them are members of Common Biomedical Waste Treatment Facility (CBMWTF), viz. (M/s. Image, Palakkad) and the two had their own facility. However, there was dumping of bio-medical waste and solid waste into the deep slopes mostly in un-inhabited forest area.
5. The findings of the Committee were found to be as follows:-
 - a) *The Team observed indiscriminate illegal dumping of MSW in several locations which falls under forest area along NH-49 and SH 44 road stretches, mostly are uninhabited area.*
 - b) *Illegal dumping of bio medical waste observed only in two locations along NH-49. One location was near to Valara waterfalls and the other one near Koompanpara, Adimaly*
 - c) *The team identified the hospitals (M/s.Rajakkad Medical Centre, Rajakkad) responsible for the bio medical waste recently dumped at Koompanpara, Adimaly. This hospital was inspected and found not having proper collection and treatment facility for disposal of bio medical waste and functioning without consent to operate. The illegal dumping by the hospital was verified and confirmed.*
 - d) *KSPCB has already written letter to all local bodies to provide license to healthcare facilities only after obtaining a valid consent to operate and also requested to provide the list of healthcare facilities in their jurisdiction. It was informed by KSPCB that around 50 % of the local bodies failed to provide the information.*

- e) *During random hospital/clinic visit for verification of biomedical waste management, the team observed M/s. St. Johns Medical Centre, Rajakkad which is a member M/s. IMAGE (CBMWTF), partially disposing bio medical waste along with MSW.*
- f) *It was also observed that M/s. IMAGE (CBMWTF) is collecting waste in 2-3 days and not on daily basis at Adimaly & Rajakkad.*
- g) *In SH-44, enormous quantity of MSW illegally dumped continuously in a 5 km stretch along with several types of solid wastes like slaughter waste(poultry), animal skeleton/bone, market waste, disposable catering items, construction waste, plastic wastes, glass waste, huge quantity of discarded fabrics (Polyester screen), refrigerator insulator waste,(PUF), paint container waste ceramics waste, electronic trash wastes etc.*
- h) *MSW disposed along the road stretches are meticulously packed and disposed. It was identified that the wastes are from hotels, resorts, market, other commercial ventures, etc.*
- i) *All along theNH49 road stretch sold waste like plastic bottles, napkins food waste from tourist activity was also observed and there were no waste collection bins provided by the local authorities in this stretch.*
- j) *Wastes such as plastic, PUF, electronic trash etc. which are either not recyclable nor fetches resale value were also found extensively in certain locations which may be dumped by recyclers/kabadiwala.*
- k) *In many locations presence of enormous quantity of solid wastes shows that the waste dumping is a routine activity and it was learnt from the locals that these solid wastes are being dumped during night hours even from plying vehicles.*
- l) *Even though forest check posts are there at both ends of SH-44, enormous quantity of solid wastes are regularly being dumped which shows inadequate surveillance.*
- m) *Local bodies have not provided proper scientific facility for the collection, segregation, treatment and disposal of MSW in any of the surrounding Panchayats.*
- n) *Since the local bodies failed miserably in handling and management of domestic solid waste which indirectly promoted the indiscriminate illegal dumping of biomedical waste in the high range area of Idukki district.”*

6. The Tribunal observed that there were no regulatory efforts taken by the Government of Kerala and KSPCB for implementing of Municipal Solid Waste Management Rules, 2010 as well as Bio Medical (Management and Handling) Rules, 1998.

7. The report also shows callous attitude of private hospitals, not taking permission of the Pollution Control Board as required under the rules and dumping the waste which is punishable under the law.
8. The Tribunal directed the Health Department and the Forest and Wildlife Departments of Kerala to file list of such hospitals and take action against such dumping.
9. On 18.05.2017, another Joint Inspection Report by CPCB and SPCB was considered which identified M/s. Rajakkad Medical Center, Rajakkad responsible for dumping of bio-medical waste and M/s. St. Johns Medical Centre, Rajakkad for partially disposing bio-medical waste along with the municipal solid waste which were required to be viewed with utmost seriousness. Show cause notices were issued to M/s. Rajakkad Medical Center, Rajakkad and M/s. St. Johns Medical Centre, Rajakkad requiring them to explain why Polluter Pays Principle be not applied.
10. The matter was thereafter considered on 11.09.2017 and it was found that the reply to the show cause notice filed by M/s. Rajakkad Medical Center, Rajakkad did not deal with the issue. No reply had been filed by M/s. St. Johns Medical Centre, Rajakkad.
11. On 16.10.2017, reply of M/s. St. Johns Medical Centre, Rajakkad was taken on record. Additional affidavit of M/s. Rajakkad Medical Center, Rajakkad was also taken on record.
12. It is thus, obvious that M/s. Rajakkad Medical Center, Rajakkad and M/s. St. Johns Medical Centre, Rajakkad were found to be dumping bio-medical waste illegally and no action was taken.
13. We have heard the learned Counsel for the State Pollution Control Board. It is patent that the State PCB is not performing its duties as expected under the law. Learned Counsel for SPCB states that

responsibility is of the local bodies who are giving permission to hospitals for their illegal action to take place.

14. The Kerala PCB in its reply dated 08.08.2017 submitted that the board has its field offices at district level only except in Ernakulam district and the number of industries and other units in the district range from 4000-8000. Since the work load and manpower available with board is inadequate, the help of the local bodies is required by the Board for effective implementation of the Statutes. Due to inadequacy of staff, the Board is unable to conduct frequent monitoring of hospitals and other units.

15. We may quote the relevant part of the affidavit which is as follows:-

“In connection with the illegal dumping of bio medical and other waste, a joint inspection had been conducted by the SPCB and CPCB on 16.02.2017 and 17.02.2017 as per the order of the Hon'ble Tribunal dated 25.01.2016 in this application. During the joint inspection, unauthorized dumping of municipal solid waste and bio-medical waste at two locations along the stretches of national highway in high range area could be noticed. The culprit behind the dumping of bio-medical waste was identified as one healthcare unit mainly Rajakkad medical Centre and the board took quick action by issuing closure order on 25.02.2016 to the unit. Later they provided satisfactory facilities for the management of biomedical rules 2016 and the closure order was lifted. They were also brought under the consent regime.

The following actions also were taken by the board towards the proper management of bio-medical waste in Idukki district,

- *Direction was given to 46 health care units which were operating without the consent of the board, to apply for the consent of the board. The list of the healthcare unit is produced herewith and marked as Annexure R8(d). the Time bound follow up action is being taken by the board in this regard*
- *The board gave direction to the Municipalities and local Gram Panchayats not to issue or renew license of units including healthcare facility until they produce consent from the board. Copy of directions along with English translation are produced herewith and marked as Annexure R8(e)& Annexure R8 (f).”*

16. Faced with the above, learned Counsel for State PCB states that now action will be taken in accordance with law for prosecuting the polluters and recovering deterrent damages for the pollution already caused.
17. Learned Counsel submits that the Board was unable to conduct frequent monitoring of hospitals and other units of the said area as the area is forest and hill terrain. Most of the hospitals and industries are in the said area.
18. The above submission itself shows failure of the State PCB and effort to justify such failure on untenable arguments. We hope the State PCB will manage its affairs remedying its unsatisfactory working. As noted in the *Aryavart Foundation Vs. M/s. Vapi Green Enviro Ltd. & Ors.*¹, there is dire need for revamping of Pollution Control Boards for their effective working and steps need to be taken in the matter.
19. A regulatory body entrusted with statutory duties cannot take a plea that it is not able to do its duty. If such plea is to be accepted, it means nobody has accountability. Whether more staff is required or how situation is to be managed is not to be explained by the victims of pollution but by the concerned statutory authority itself.
20. To consider the matter further, we constitute a Joint Committee of CPCB, Kerala SPCB and District Magistrate to forthwith prepare an action plan for compliance of law particularly the bio-medical waste and solid waste management Rules and furnish an action taken report within one month to the Tribunal by e-mail at ngt.filing@gmail.com.
21. The committee will also assess the damages caused to the environment and the persons from whom the same are to be recovered.

¹ O.A. No. 95/2018 order dated 11.01.2019

The application is disposed of.

Put up the report for consideration on 8th April, 2019.

Adarsh Kumar Goel, CP

S.P. Wangdi, JM

K. Ramakrishnan, JM

Dr. Nagin Nanda, EM

January 25, 2019
Original Application No. 585/2018
JG

