

**BEFORE THE NATIONAL GREEN TRIBUNAL
PRINCIPAL BENCH, NEW DELHI**

(By Video Conferencing)

Original Application No. 514/2019

(With Report dated 16.06.2020)

In Re: Report received from State Level Monitoring Committee, Kerala, constituted by this Tribunal vide order dated 16.01.2019 in O.A. No. 606/2018, headed by Justice A.V.R. Pillai, former Judge of Kerala High Court, to oversee compliance of directions on the subject of Solid Waste Management.

Date of hearing: 03.07.2020

**CORAM: HON'BLE MR. JUSTICE ADARSH KUMAR GOEL, CHAIRPERSON
HON'BLE MR. JUSTICE S. P. WANGDI, JUDICIAL MEMBER
HON'BLE DR. SATYAWAN SINGH GARBYAL, EXPERT MEMBER**

ORDER

1. The Issue for consideration is non-compliance of Solid Waste Management Rules, 2016 (SWM Rules, 2016) causing huge pollution at Bharampuram Solid Waste Processing Plant on the outskirts of Kochi city in Kerala affecting environment and public health.

2. The matter was earlier considered in the light of report dated 23.02.2019, received from Justice A.V. Ramakrishna Pillai, former Judge, Kerala High Court about unscientific dumping of waste and response of the Kerala State Pollution Control Board (KSPCB) dated 03.10.2019. Vide order dated 20.11.2019, it was observed:

“3. *The above report shows a sorry state of affairs. Not only there is violation on environmental norms, there is potential for hazard to public health for which immediate steps are required to be taken.*

- 4 *Let the Secretary, Local Bodies (Urban Development), Government of Kerala ensure that remedial action is taken in accordance with Solid Waste Management Rules, 2016 and directions of this Tribunal in order dated 20.08.2018 and 16.01.2019 in O.A. No. 606/2018, Compliance of Municipal Solid Waste Management Rules, 2016 and order dated 17.07.2019 in Original Application No. 519/2019, News item published in "The Times of India" Authored by Jasjeev Gandhiok & Paras Singh Titled "Below mountains of trash lie poison lakes" and report filed within one month from today by email at judicial-ngt@gov.in."*

3. The matter was thereafter considered on 28.02.2020 in the personal presence of Secretary, Urban Development, Kerala and in the light of further report dated 22.02.2020 furnished by Justice A.V Ramakrishna Pillai, former Judge, Kerala High Court pointing out continuing violation of law. The Tribunal referred to earlier order dated 10.01.2020 in a connected matter directing as follows:

- "a. In view of the fact that most of the statutory timelines have expired and directions of the Hon'ble Supreme Court and this Tribunal to comply with Solid Waste Management Rules, 2016 remain unexecuted, compensation scale is hereby laid down for continued failure after 31.03.2020. The compliance of the Rules requires taking of several steps mentioned in Rule 22 from Serial No. 1 to 10 (mentioned in para 12 above). Any such continued failure will result in liability of every Local Body to pay compensation at the rate of Rs. 10 lakh per month per Local Body for population of above 10 lakhs, Rs. 5 lakh per month per Local Body for population between 5 lakhs and 10 lakhs and Rs. 1 lakh per month per other Local Body from 01.04.2020 till compliance. If the Local Bodies are unable to bear financial burden, the liability will be of the State Governments with liberty to take remedial action against the erring Local Bodies. Apart from compensation, adverse entries must be made in the ACRs of the CEO of the said Local Bodies and other senior functionaries in Department of Urban Development etc. who are responsible for compliance of order of this Tribunal.*
- b. Legacy waste remediation was to 'commence' from 01.11.2019 in terms of order of this Tribunal dated 17.07.2019 in O.A. No. 519/2019 para 28¹ even though*

¹ The Chief Secretaries may ensure allocation of funds for processing of legacy waste and its disposal and in their respective next reports, give the progress relating to management of all the legacy waste dumpsites. Remediation work on all other dumpsites may commence from 01.11.2019 and completed preferably within six months and in no case beyond one year. Substantial progress be made within six months. We are conscious that the SWM Rules provide for a maximum period of upto five years for the purpose, however there is no

statutory timeline for ‘completing’ the said step is till 07.04.2021 (as per serial no. 11 in Rule 22), which direction remains unexecuted at most of the places. Continued failure of every Local Body on the subject of commencing the work of legacy waste sites remediation from 01.04.2020 till compliance will result in liability to pay compensation at the rate of Rs. 10 lakh per month per Local Body for population of above 10 lakhs, Rs. 5 lakh per month per Local Body for population between 5 lakhs and 10 lakhs and Rs. 1 lakh per month per other Local Body. If the Local Bodies are unable to bear financial burden, the liability will be of the State Governments with liberty to take remedial action against the erring Local Bodies. Apart from compensation, adverse entries must be made in the ACRs of the CEO of the said Local Bodies and other senior functionaries in Department of Urban Development etc. who are responsible for compliance of order of this Tribunal.

- c. Further, with regard to thematic areas listed above in para 20, steps be ensured by the Chief Secretaries in terms of directions of this Tribunal especially w.r.t. plastic waste, bio-medical waste, construction and demolition waste which are linked with solid waste treatment and disposal. Action may also be ensured by the Chief Secretaries of the States/UTs with respect to remaining thematic areas viz. hazardous waste, e-waste, polluted industrial clusters, reuse of treated water, performance of CETPs/ETPs, groundwater extraction, groundwater recharge, restoration of water bodies, noise pollution and illegal sand mining.*
- d. The compensation regime already laid down for failure of the Local Bodies and/or Department of Irrigation and Public Health/In-charge Department to take action for treatment of sewage in terms of observations in para 31 above will result in liability to pay compensation as already noted above.*
- e. Compensation in above terms may be deposited with the CPCB for being spent on restoration of environment which may be ensured by the Chief Secretaries’ of the States/UTs.*
- f. An ‘Environment Monitoring Cell’ may be set up in the office of Chief Secretaries of all the States/UTs within one month from today, if not already done for coordination and compliance of above directions which will be the responsibility of the Chief Secretaries of the States/UTs.*
- g. Compliance reports in respect of significant environmental issues may be furnished in terms of order dated 07.01.2020 quarterly with a copy to CPCB.”*

reason why the same should not happen earlier, in view of serious implications on the environment and public health.

4. Finally the Tribunal observed:

“8. We may observe that non-compliance of rules relating to waste disposal results in damage to the environment and public health. Any failure needs to be visited with assessment and recovery of compensation for such damage from the persons responsible for such failure. A study was recently got conducted by CPCB, under orders of this Tribunal requiring such a study by a joint Committee comprising CPCB, NEERI and IIT, Delhi about the monetary cost of damage caused to the environment on account of existence of legacy waste dump site at Gurgaon (Bandhewadi) vide order dated 05.03.2019 in O.A. No. 514/2018. The report of the CPCB filed on 13.02.2020 is that damage on account of the said legacy waste dump site was Rs. 148.46 crore, on account of damage to the air quality, soil and water quality, climate change and disamenity (aesthetic). The damage has been assessed in terms of impact on health due to release of pollutants in air atmosphere, release of leachate into ground / surface water and soil, due to pollution from the landfill site, damage cost associated with climate change due to carbon di-oxide and methane, damage caused due to aesthetics loss, price depreciation due to disamenity cost etc.

The matter is to be considered further in relation to State of Kerala on 20.03.2020 when the Chief Secretary, Kerala is scheduled to appear in person. The State of Kerala needs to consider action on the pattern of successful models of other states where meaningful steps to deal with the issue have been initiated in consultation with CPCB.

List again on 20.03.2020.”

5. In pursuance of the above, we have considered the matter further.

The Chief Secretary, Kerala could not appear on 20.03.2020 on account of lock-down and the said date has been rescheduled. The report filed by the KSPCB dated 16.06.2020 clearly states that tender issued by the Corporation was cancelled. E-tender was floated for legacy waste and since only one bidder was eligible, it was decided to re-tender the bio-mining work. After visit to the site by the Environmental Engineer of the KSPCB following suggestions are given:

“a) As per the details submitted by the Corporation, 89.8% of household and 59.8% of establishments are having door to door collection for dry and wet wastes. It is to be ensured by the Kochi Corporation that dry and wet waste is to be segregated at sources, and only segregated wet waste reach manure plant. This is to be also ensured by nearby

Municipalities and Panchayaths, who also dispose waste in Brahmapuram Plant.

- b) *Currently, entire quantity of non biodegradable waste is collected and transported from Kochi Corporation and disposed in the two sheds and nearby open yard of in Brahmapuram plant and only 1% of plastic waste is segregated from the above and given to recyclers. In order to minimize the load of non biodegradable waste reaching Brahmapuram, **action may be taken to segregate non biodegradable waste through existing Material Collection Facilities (MCF) and Resource Recovery Facilities (RRF) in Kochi Corporation through the involvement of Haritha Karma Sena, Scrap Merchant Association. Recycling Plastic Association arrangement may be provided to recycle the recyclable plastic in registered recycling units and the remaining non recyclable plastic through co incineration in cement plant.** This may be ensured by nearby Municipalities and Panchayaths who disposed waste in Brahmapuram Plant.*
- c) ***As the construction of new leachate collection tank of 1 lakh litre collection capacity is nearing completion, leachate is to be diverted and collected in the new tank and in the same is to be treated in septage treatment plant till the proposed leachate treatment plant is in operation.***
- d) *The retendering of waste to energy plant has been done by Government and its operation the management of solid waste in Brahmapuram can be sorted out.*
- e) *Regarding legacy waste retendering processing has been done by Government and further procedures need to be expedited for the clearing of legacy waste.”*

6. Considering the critical situation, we do not understand where is the absolute bar to a single tender if otherwise in order or even inhouse work. Moreover, in the light of report of the NITI Ayog mentioned in the order dated 02.07.2020 in *Original Application No. 606/2018, Compliance of Municipal Solid Waste Management Rules, 2016 and other environmental issues*, other available options may be considered.

7. Even in the case of waste to energy plant, it is stated that the re-tender has been called for similar reason which will be a cause for

further delay in the process of environment remediation which may be appropriately reconsidered.

8. We find that the steps taken to be inadequate having regard to the serious adverse consequences of acknowledged unscientific handling of waste management. Suggestion 'c' above shows that 1 lakh litre collection capacity for the leachate is nearing completion and the leachate is to be diverted to septage treatment plant. It is doubtful whether leachate can be treated in an ordinary septage treatment plant as it contains heavy metals. The progress appears to be very slow and in disregard to the statutory and constitutional obligation of providing clean environment. It is the responsibility of the KSPCB to initiate prosecution and recover compensation for such failures failing which, the Chairman and the Member Secretary of the KSPCB may be liable for their failure.

9. Let effective steps in the matter be taken on day to day basis and further report filed before the next date by e-mail at judicial-ngt@gov.in preferably in the form of searchable PDF/ OCR Support PDF and not in the form of Image PDF.

A copy of this order be sent to the Chairman and the Member Secretary of the KSPCB by email for compliance.

List for further consideration on 04.08.2020.

Adarsh Kumar Goel, CP

S. P. Wangdi, JM

July 3, 2020
Original Application No. 514/2019
AK

Dr. Satyawan Singh Garbyal, EM