

BEFORE THE HONOURABLE GREEN TRIBUNAL, SOUTH ZONE
BENCH, CHENNAI

Original Application No. 442 of 2013

Jith Kumar : **Applicant(s)**

Vs

The State of Kerala & Ors : **Respondent(s)**

AFFIDAVIT FILED BY THE 5TH APPLICANT PURSUANT TO THE
DIRECTION OF THIS HON'BLE TRIBUNAL DATED 13/03/2023,
IN OA NO. 442/2013

VARGHESE K. PAUL (K/1559/2000)

COUNSEL FOR THE APPLICANTS

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TABLE OF CONTENTS

| SL. NO | DESCRIPTION | PAGE NO. |
|--------|---|----------|
| 1. | Affidavit | 1-12 |
| 2. | Annexure A1: Order of the Hon'ble High Court of Keala dated 07/03/2023, in WP(C) No. 7844/2023 | 13-19 |
| 3. | Annexure A2: Order of the Hon'ble High Court of Keala dated 07/03/2023, in WP(C) No. 7844/2023 | 20-24 |
| 4. | Annexure A3: Order of the Hon'ble High Court of Keala dated 08/03/2023, in WP(C) No. 7844/2023 | 25-31 |
| 5. | Annexure A4: Order of the Hon'ble High Court of Keala dated 08/03/2023, in WP(C) No. 7844/2023 | 32-36 |
| 6. | Annexure A5: Order of the Hon'ble High Court of Keala dated 10/03/2023, in WP(C) No. 7844/2023 | 37-46 |
| 7. | Annexure A6: Order of the Hon'ble High Court of Keala dated 13/03/2023, in WP(C) No. 7844/2023 | 47-52 |
| 8. | Annexure A7: Order of the Hon'ble High Court of Keala dated 13/03/2023, in WP(C) No. 24380/2016 and 36204/2018 | 53-58 |
| 8. | Annexure A8: Order of the Hon'ble High Court of Keala dated 14/03/2023, in WP(C) No. 7844/2023 | 59-63 |

Dated this the 16th day of March, 2023


Varghese K. Paul
Counsel for the applicants

BEFORE THE HONOURABLE GREEN TRIBUNAL, SOUTH ZONE
BENCH, CHENNAI

Original Application No. 442 of 2013

Jith Kumar : **Applicant(s)**

Vs

The State of Kerala & Ors : **Respondent(s)**

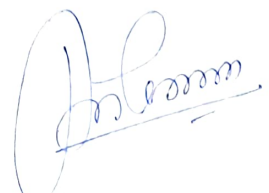
AFFIDAVIT

I, P. M. Kareem, aged 60 years, S/o Musthafa, residing at Mathrakkattu Padathikkara House, Brahmapuram P.O., Ernakulam district, Pin: 682303, do hereby solemnly affirm and state as follows:

1. This Hon'ble Tribunal as per the Order dated 13/03/2023, in OA Nos. 442/2013, 20/2017, 276/2017, and 77/2021, directed the applicants therein, to file an affidavit stating the sequence of events from the date of the fire at Brahmapuram site. I am the 5th applicant in OA No. 442/2013. I know the facts of the above case and I am competent to swear this affidavit for myself and on behalf of other applicants, as duly authorized.
2. OA No. 442/2013 was registered as a consequence of the transfer of WP(C) No. 9700/2012 filed before the Hon'ble High Court of Kerala, after the establishment of the South Zone Bench of the National Green Tribunal at Chennai seeking the following reliefs:
 - i. To close down the Waste Disposal Facility at Brahmapuram forthwith,
 - ii. to take appropriate remedial measures to restore the area of Brahmapuram Waste Disposal Facility to its original state as far as possible;
 - iii. Award the costs of the petition

and OA No. 20/2017 is filed by the residents of Brahmapuram, seeking the following reliefs:

- i. To close down the Municipal Solid Waste Treatment Plant established by the 1st respondent Corporation at Brahmapuram and the landfill situated therein, by holding that the Plant in question is bad for the want of Prior Environmental Clearance, Environment Impact Assessment,

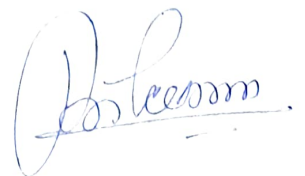


Statutory permits to be issued under Section 25 of the Water (Prevention and Control of Pollution) Act, 1974 and Section 21 of the Air (Prevention and Control of Pollution) Act, 1981 and also restrain the respondent Corporation from further operating the Plant and landfill and to shift the same to some other area within the territory of the Corporation.

- ii. To forbear the 1st respondent Corporation from proceeding with the activities of handling, dumping, storing, treating, and disposing of garbage, filth, and solid waste of Corporation in its Waste Disposal Plant at Brahmapuram Village and shut down the same in view of the fact that, The Municipal Solid Waste Treatment Plant at Brahmapuram is bad for the want of Prior Environmental Clearance as contemplated under The Environment Impact Assessment Notification, 2006.
- iii. To direct the 1st respondent Corporation to restore the degraded environment of the Brahmapuram Yard and its surrounding water bodies within a reasonable period from the date of disposal of this application.
- iv. Such other orders which this Hon'ble Tribunal may deem fit in the interests of justice.

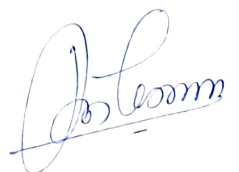
Apart from the above, the Lawyers Environmental Awareness Forum (LEAF) Organisation filed OA No. 276/2017 and the Hon'ble Principle Bench of the National Green Tribunal has initiated Suo Motu OA No. 77/2021, in the wake of continuous violations of the Environmental laws and non-compliance of the periodical directions issued by this Hon'ble Tribunal to the Cochin Corporation. The common grievance expressed in the batch of applications is the indiscriminate disposal and dumping of garbage in Village, Brahmapuram.

3. The above-mentioned cases were together considered by this Hon'ble Tribunal as well as the National Green Tribunal Principal Bench, New Delhi, and passed common orders. The applicant in O A No. 442/2013 filed MA No. 78 and 79/2016, praying for restraining the Corporation of Kochi from dumping waste at Brahmapuram against law. Having considered the rival contentions, this Hon'ble Tribunal *interalia* directed the Kerala State Pollution Control Board to



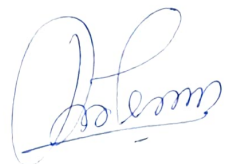
prosecute the officers concerned for consistent violation of the terms which are imposed by the Board and report to this Hon'ble Tribunal about the action taken on the next date of hearing. Thereafter, as per the Order dated 22/10/2018, the Hon'ble Principal bench of the Tribunal *interalia* directed as follows:

- i. The entire process of establishment of the new integrated solid waste treatment processing plant, stated to have been undertaken, be completed within a period of six months from hence. This timeline shall be strictly adhered to.
 - ii. The Kochi Municipal Corporation shall also undertake treatment of the legacy waste at the present site i.e., Brahamapuram Yard, which shall commence forthwith and shall be carried out in accordance with the procedure laid down under the Solid Waste Management Rules, 2016.
 - iii. For the inordinate delay caused in taking up the work, we impose a penalty of Rs. 1 Crore upon the Kochi Municipal Corporation, 50% of which shall be deposited with the Kerala SPCB and 50% with Central Pollution Control Board (CPCB).
 - iv. The Kochi Municipal Corporation shall deposit a Performance Guarantee of Rs. 3 Crores with the SPCB within a period of 15 days from hence. Failure to maintain this timeline prescribed shall entail forfeiture of the Performance Guarantee and additional penalty of Rs.2 lakhs per day until completion of the project.
4. Pursuant to the above-mentioned Orders dated 31/05/2016 and 22/10/2018, of this Hon'ble Tribunal, the respondent Cochin Corporation filed Writ petition Nos. 24380/2016 and 36204/2018, respectively, before the Hon'ble High Court of Kerala and obtained an interim stay of the said orders. In spite of repeated directions from this Hon'ble Tribunal as well as the National Green Tribunal, Principal Bench, and other statutory authorities, respondent Cochin Corporation failed to act according to the terms of the recommendations of the Monitoring Committee appointed by the Hon'ble High Court of Kerala and the Chairman, State Level Monitoring Committee. The solid waste disposal facility at Brahamapuram was found to be operating in blatant violation of the Solid Waste Management Rules, 2016, and other Environmental



Laws. The Respondent Cochin Corporation continues to be a willful perpetual defaulter, which resulted in an uncontrollable fire occurred at Brahmapuram on several occasions.

5. It is desperately sad to state that on 02/03/2023, an unfortunate and enormous fire incident occurred at the Brahmapuram Waste Dumping Yard operated and controlled by the respondent Cochin Corporation. The fire soon became uncontrollable and poisonous and noxious smoke emanating from the site engulfed the entire city of Kochi and nearby areas. It chopped the dwellers' lives and strangled the aged, kids, and patients resulting the Hon'ble High Court of Kerala initiating Suo Motu WP(C) No. 7844/2023 and monitoring the situation ever since.
6. A Council of Scientific and Industrial Research (CSIR) study report under the caption "Brahmapuram, a Dioxin Bomb" was lying dormant for more than 4 years when the fire broke out at Brahmapuram on 02/03/2023. It found the presence of an average of 10.3 picograms (one-millionth of a gram) of TEQ (toxic equivalent) dioxin per cubic meter of atmospheric air. According to data by the World Health Organisation (WHO), a person with a body weight of 65 kg can only tolerate 1.66 micrograms of dioxin per year. If the quantity exceeds, then it could result in health issues. However, in 2019, around 72 milligrams of dioxin were released from Brahmapuram.
7. Dioxins are Persistent Organic Pollutants (POPs) that take a long time to break down once they are in the environment. These are highly toxic and can cause cancer reproductive and developmental problems, damage the immune system, and can interfere with hormones. The amount of 'Dioxins' the poisonous chemical gas released while plastic is burnt which 80,00,000 people could tolerate was inhaled by the people in Kochi within a period of 10 days. Dioxins will turn hazardous through air and water and once it is mixed with the atmosphere, they cannot be controlled. The chances of causing cancer and other respiratory diseases to those who are exposed to the toxic air is very high. It is a fact that the people in the neighbourhood of Brahmapuram, as well as Kochi city, are living in the middle of a toxic gas chamber.



8. In the wake of the fire that broke out in Brahmapuram on 02/03/2023, this Hon'ble Tribunal vide order dated 13/03/2023 in OA Nos.442/2013, 20/2017, 276/2017, 77/2021, directed the applicants to file an affidavit as to the sequence of events from the date of the fire at Brahmapuram site.

The chronology of events is shown below in tabular form for easy reference.

| Date | News Portal | Report | Link |
|------------|-------------------|---|---|
| 02/03/2023 | The Hindu: | A major fire broke out at the dumping yard of the Kochi Corporation at Brahmapuram on Thursday. Smoke that billowed out of the dumping yard spread over Brahmapuram and Karimugal areas. Fire and Rescue Services personnel were deployed at the site to contain the fire that broke out around 4.30 p.m. Nearly 10 fire tenders from Thrikkakara, Eloor, Thripunithura, Gandhi Nagar, and Aluva were engaged in efforts to douse the flames. | https://www.thehindu.com/news/cities/Kochi/major-fire-at-brahmapuram-dumping-yard/article66572329.ece |
| 03/03/2023 | Manorama | Kochi: The fire that engulfed the waste dumping yard at Brahmapuram here is yet to be doused. At least six units of Fire and Rescue Services personnel have been attempting to douse the fire which broke out in the plant on Thursday. The firefighters will continue their work till 10 pm and resume in the morning. It is learnt that it will take at least one more day to kill the flames. | https://www.manorama.com/news/kerala/2023/03/03/fire-brahmapuram-waste-plant-smoke-kochi.html |
| 04/03/2023 | The Hindu | Fire at Kochi's Brahmapuram waste dumping yard has become an annual phenomenon. Untamed fire at Brahmapuram waste plant poses a health risk | https://www.thehindu.com/news/cities/Kochi/kochi-brahmapuram- |

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| | | | waste-treatment-plant-fire-breakouts-an-annual-phenomenon/article66579717.ece |
| 05/03/2023 | Manorama | Brahmapuram fire: 20 firefighters under treatment after inhaling toxic fumes. Twenty personnel of the Kerala Fire and Rescue Services are under treatment here after inhaling fumes while trying to put out the fire at the Brahmapuram waste dumping yard, said Ernakulam District Fire Officer M K Satheeshan. | https://www.manorama.com/news/kerala/2023/03/05/brahmapuram-fire-rescue-officials-under-treatment.html |
| 06/03/2023 | The Hindu | <p>The fire at Brahmapuram waste dumping yard, the toxic fumes from which has been dangerously engulfing Kochi since the last four days, was one which was deliberately set off on the eve of the renewal of the contract of the waste management firm, to avoid an inspection of the site, Leader of the Opposition V.D. Satheesan said in the Assembly on Monday. Despite repeated episodes, the authorities have not been able to take concrete action to check such mishaps, according to a report filed by the State-Level Monitoring Committee on Solid Waste Management following fire incidents in 2022.</p> <p>High levels of Particulate Matter (PM 2.5 and PM10) were recorded by the Kerala State Pollution Control Board in Kochi following the blaze.</p> <p>The Air Quality Index (AQI) in Kochi plummeted in the days following the fire outbreak. The smoke has led to symptoms</p> | https://www.thehindu.com/news/national/kerala/brahmapuram-fire-a-deliberate-act-to-cover-up-mismanagement-of-waste-says-satheesan/article66587991.ece |



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| | | <p>like respiratory issues, headache, cough and cold, fatigue, and irritation in the eyes.</p> <p>Particulate Matter 2.5, or <u>PM2.5</u> as it is commonly called, refers to tiny particles or droplets in the air that are 2.5 microns or less in width, which are able to travel deeply into the respiratory tract and reach the lungs. The presence of PM2.5 is 6-7 times higher than normal now, and can even cause heart attacks in high-risk patients, Dr Mujeeb warned.</p> | |
| 07/03/2023 | The Hindu | <p>A writ petition was filed on Monday before the Kerala High Court seeking a directive to the State government to conduct an inquiry into the fire that broke out at Brahmapuram waste treatment plant and also seeking another directive to the State Pollution Control Board (PCB) to file a report on the present condition at the site. Meanwhile, Justice Devan Ramachandran wrote a letter to the Chief Justice seeking to initiate a suo moto case in connection with the incident.</p> <p>In the wake of the fire broke out at Brahmapuram on 02/03/2023, the Hon'ble High Court of Kerala initiated Suo Motu WP(C) No. 7844/2023. The Orders dated 07/03/2023, in the above Writ Petition, is produced herewith and marked as <u>Annexure A1 & Annexure A2</u></p> | https://www.thehindu.com/news/cities/Kochi/hc-moved-for-probe-into-frequent-fires-at-brahmpuram/article66587860.ece |
| 08/03/2023 | The Hindu | <p>Repeated warnings by the National Green Tribunal (NGT) on the impending disaster at Brahmapuram fell on deaf ears as the authorities failed to clear the heaps of legacy (old) waste in violation of the Solid</p> | https://www.thehindu.com/news/cities/Kochi/ngts-warnings-on-brahmapuram- |

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| | | <p>Waste Management Rules and other environmental norms. The Principal Bench of the tribunal had taken note of the lapses in waste management at the yard back in 2019 following a major fire on February 22. It had issued several directives asking the government and the relevant departments to clear the legacy waste.</p> <p>The Orders dated 08/03/2023, in WP(C) No. 7844/2023 is produced herewith and marked as <u>Annexure A3 & Annexure A4</u></p> | <p>fiasco-went-unheeded/article 66595267.ece</p> |
| 09/03/2023 | Manorama | <p>Kochi city and its neighbouring areas were engulfed in toxic fumes for the eighth consecutive day on Thursday. Dense smog was observed in Kadavantara, Vyttila, Maradu and Panampally Nagar areas of the Ernakulam district. The work to completely extinguish the fire and smoke at the Brahmapuram plant is progressing. The authorities are using earth-movers to pick up the waste and pump water underneath. Parents worried as children raise health issues as smoke from Brahmapuram plant continues.</p> <p>Toxic fumes engulf Kochi on the eighth day, and health issues among residents rise. Dioxins are toxins produced when organic waste combines with halogenated plastics such as PVC and undergo partial combustion. Smoke containing deadly chemical compounds including dioxin has covered Kochi for more than 7 days. The Ernakulam District Collector has declared a two-day holiday for educational institutions.</p> | <p>https://www.onmanorama.com/news/kerala/2023/03/09/brahmapuram-fire-toxic-fumes-kochi.html</p> |

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| 10/03/2023 | Manor ama | <p>The Kerala High Court on Friday appointed a committee to monitor the ongoing firefighting mission at the Brahmapuram waste treatment plant here. The committee will have the district collector, members of the Legal Service Authority and officials of the Pollution Control Board as members. A division bench took the decision while hearing a case initiated Suo Motu over the fire incident. As per reports, over 300 people, who suffer from respiratory issues, sought medical help in hospitals in the vicinity of Brahmapuram within a week. General OP, pulmonology and Paediatric departments currently witness surging inflow of patients.</p> <p>The major symptoms found in the patients are breathing difficulties, asthma, vomiting, diarrhea, headache, throat pain and itching.</p> <p>Meanwhile, the Indian Medical Association warned that the Brahmapuram smoke could cause health issue.</p> <p>"Toxic gases and chemicals including carbon in the smoke will affect the environment. They may reach water bodies and agriculture fields and are likely to reach human through food and drinking water. Such a situation should be avoided effectively". IMA scientific advisor Dr Rajeev Jayadevan said.</p> <p>The Order dated 10/03/2023 in WP(C) No. 7844/2023 is produced herewith and marked as <u>Annexure A5</u></p> | https://www.onmanorama.com/news/kerala/2023/03/10/brahmapuram-fire-hc-appoints-monitoring-committee.html |
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| 11/03/2023 | The Hindu | Exposed to toxic smoke from Brahmapuram, techies to hit protest path. Progressive Techies, a collective of IT employees, has embarked on an online signature campaign against the distress caused by the fire and has demanded an immediate solution to it. Use of the Brahmapuram plant is unscientific, poorly managed, flouts several rules, reveals CPCB report | https://www.thehindu.com/news/cities/Kochi/after-being-exposed-to-toxic-smoke-from-brahmapuram-techies-to-hit-protest-path/article66607445.ece |
| 12/03/2023 | Business Today | Brahmapuram fire incident: Kochi locals 'choke' on toxic air after massive fire; all you need to know. More than a week since the massive fire at the Brahmapuram dump site started, but the problems of the residents of Kochi are far from over. Locals in the region are calling the situation a nightmare. | https://www.businessinsider.in/lastest/story/brahmapuram-fire-incident-kochi-locals-choke-on-toxic-air-after-massive-fire-all-you-need-to-know-373077-2023-03-12?onetap=true?utm_source=btweb_story_share |
| 13/03/2023 | The Hindu | 70-year-old with respiratory illness dies in Kochi, kin blame death on Brahmapuram smoke. Relatives of a 70-year-old person with respiratory illness blamed the toxic fumes from the Brahmapuri sewage plant for his death. They said his condition deteriorated after the fire broke out. Officials haven't commented on the cause of the death. Fire threatens Kochi's status as tourism & business destination. Brahmapuram smoke containment in final phase: district administration | https://www.thehindu.com/news/cities/Kochi/brahmapuram-smoke-containment-in-final-phase-district-administration/article66614827.ece |



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| | | <p>Nearly a fortnight after the fire breakout in the Kochi Corporation's solid waste treatment plant at Brahmapuram, authorities on Monday claimed that the efforts towards containing the smoke were approaching completion. The presence of smoke in the atmosphere had dropped. Final laps in fighting smoke were progressing in five of the seven sectors.</p> <p>The Order dated 13/03/2023, in WP(C) No. 7844/2023 is produced herewith and marked as <u>Annexure A6.</u></p> <p>The Order dated 13/03/2023, in WP(C) Nos. 24380/2016 and 36204/2018 is produced herewith and marked as <u>Annexure A7.</u></p> | |
| 14/03/2023 | Manorama | <p>The first spells of summer shower this year in and around Kochi would be laden with unsafe chemical materials as a result of the recent blaze at the Brahmapuram waste treatment plant on the periphery of this city. Such a phenomenon, widely known as acid rain, or acid deposition is inevitable in the aftermath of the unprecedented catastrophe brought about by inefficient waste management practices.</p> <p>The Order dated 14/03/2023, in WP(C) No. 7844/2023 is produced herewith and marked as <u>Annexure A8.</u></p> | <p>www.onmanorama.com/news/kerala/2023/03/14/brahmapuram-impact-acid-rain-likely-with-early-spells-of-summer-shower.html</p> |
| 15/03/2023 | | <p>Offering respite from the scorching summer and the pollution, rains lashed Ernakulam and parts of central Kerala Wednesday evening. The average</p> | <p>https://www.onmanorama.com/news/kerala/2023/03/15/sum</p> |

| | | |
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| | <p>temperature recorded a decrease of 15 degrees within hours, giving a respite from the severe heat. Fears of acid content in the rainwater from the first summer shower were soon raised by locals who pointed to foaming in puddles on roadsides in Ernakulam city. Rajagopal Kamath, who claims to be a researcher, has said acid rain fell on Kochi. He posted a picture of a few litmus papers on Facebook, to state his case.</p> | <p>mer-shower- kochi-presence- acid-rain- claimed- researcher- rajagopal- kamath.html</p> |
|--|--|---|

In compliance of the direction of this Hon'ble Tribunal dated 13/03/2023, in the above OA Nos. 442/2013, 20/2017, 276/2017, and 77/2021, I am submitting this affidavit with annexures A1 to A8, which may kindly be accepted.

All facts stated above are true to the best of my knowledge, information and belief.

Dated this the 16th day of March, 2023



Deponent

Solemnly affirmed and signed before me by the deponent who is personally known to me on this the 16th day of March, 2023 at my office at Ernakulam.



Varghese K. Paul
Advocate

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE S.V.BHATTI

&

THE HONOURABLE MR.JUSTICE BASANT BALAJI

Tuesday, the 7th day of March 2023 / 16th Phalguna, 1944

WP(C) NO. 7844 OF 2023(S)

SUO MOTU WRIT PETITION INITIATED BY THE HIGH COURT.

RESPONDENTS:

1. STATE OF KERALA, REPRESENTED BY THE CHIEF SECRETARY, GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM - 695 001.
2. KOCHI MUNICIPAL CORPORATION, REPRESENTED BY ITS SECRETARY, PARK AVENUE ROAD, MARINE DRIVE, KOCHI - 682 011.
3. KERALA STATE POLLUTION CONTROL BOARD, REPRESENTED BY ITS CHAIRMAN, HEAD OFFICE, PATTOM P.O., THIRUVANANTHAPURAM - 695 004.
4. THE DISTRICT COLLECTOR, DISTRICT COLLECTORATE, KAKKANAD, ERNAKULAM- 682 030.
5. THE DIRECTOR GENERAL, KERALA FIRE AND RESCUE SERVICES, HEADQUARTERS, FIRE FORCE JUNCTION, PULIMOODU P.O., THIRUVANANTHAPURAM - 695 001.
6. THE STATE POLICE CHIEF, KERALA POLICE HEADQUARTERS, THIRUVANANTHAPURAM, KERALA, INDIA - 695 010.

ADDL. R7 IMPEADED

7. THE ADDITIONAL CHIEF SECRETARY,
LOCAL SELF GOVERNMENT DEPARTMENT, GOVERNMENT OF KERALA.

ADDL. R7 IS SUO MOTU IMPEADED AS PER ORDER

DATED 07/03/2023 IN WPC

This Suo Motu writ petition again coming on for admission upon perusing the petition, and upon hearing the arguments of SRI.K. GOPALAKRISHNA KURUP, ADVOCATE GENERAL for R1 & R4 to R6 and of SRI.UNNIKRISHNAN, SPECIAL GOVERNMENT PLEADER for Addl. R7, the court passed the following:

P.T.O.

**S.V.BHATTI
& BASANT BALAJI, JJ.**

W.P.(C) No.7844 of 2023

ORDER

(Dated this the 7th day of March 2023)

S V Bhatti J.,

Read order of even date passed at 11 am.

2. We take note of the appearance of the Secretary, Municipal Corporation of Cochin and also the Chairman of Kerala State Pollution Control Board. The officers, who are present assisting the court have not in any manner shied away from the stark reality, the residents of Kochi and neighbourhood are experiencing from the smoke/fumes emanating from the Brahmapuram Solid Waste Management Plant. The Chairman of Pollution Control Board and the Secretary of Corporation have informed the court the

amelioration, steps taken at the time the incident has happened till the time both of them are representing in the court. The Secretary, referring to the inputs received from the field staff at the site makes a statement that fire is completely brought under control and would be put out by 100%. He desires to place before the court a status report and being the Secretary of the Municipal Corporation, is willing to participate in the ongoing proceedings for proper implementation of Solid Waste Management and Handling Rules 2016. We place on record his effort and statement.

3. The Chairman of the Pollution Control Board, we are given to understand, is an expert in this domain, which is a perpetual nuisance for the comfortable existence of human beings. The directives issued by the Pollution Control Board are brought to our notice including the delegation of power now accorded to one of the officers of

the Pollution Control Board to initiate prosecution against the persons violating the law. We take note of it. Adverting to the prosecution for present, we make it clear that we do not want parties to get into a parallel litigation without actually addressing the proper issue which is the very essence of the suo motu case. If any person has committed a breach of law, that can be taken care of at the appropriate stage of these proceedings. However, this observation will not stop the Pollution Control Board from completing the formalities viz., issue of notice, required to be undertaken before initiating the prosecution.

4. After looking at the stage and manner of implementation of Solid Waste Management and Handling Rules, we have posed a question to the learned Advocate General on the necessity to have a holistic implementation of these Rules in the State of Kerala. The State of Kerala

claims to be a Number :1 in literacy in the Centre. This Bench would like to know whether the State of Kerala would like to be Number 1 in protecting the environment and implementing Solid Waste Management Handling Rules. This cannot be accomplished by a parcel of accomplishment either in a Corporation or a Municipality or a Grama Panchayath. There are enough number of water bodies in the State of Kerala and no one is listening to their plight. All water bodies are getting converted as dump sites. This possibility can be prevented when all the local authorities concerned with protecting the water bodies are issued proper directions.

5. We have seen the array of parties in the suo motu case. For convenience and comprehensive implementation of our directions, we are of the view that the Additional Chief Secretary, Local Self Government Department,

Government of Kerala is a necessary and proper party and impleaded as an additional 7th respondent. The idea in impleading the Local Self Government Department is to consider issuing directions to the said authority, so that the said authority in the exercise of its power can not only issue directions to the local bodies, but also ensure due and proper implementation in establishing the facilities required under the Rules. The personnel who are looking after the implementation of these Rules by our subsequent orders will be enabled, to on a case to case basis, impose penalty on erring establishments, individuals and also common facilities.

6. We would like to continue to have the assistance of the Chairman of the Kerala State Pollution Control Board, the Secretary and the District Collector, Ernakulam, hence we desire their presence. The case will be called at 1.45 pm

tomorrow.

7. The Secretary is given liberty, to file a status report and inform the court the immediate steps the Corporation will take for implementation of these Rules, like wise medium and long term measures proposed and implemented by the Corporation. These measures are supervised by the Court and Pollution Control Board.

The Special Government Pleader Mr. Unnikrishan is instructed to inform the newly added respondent to be present online tomorrow.

Hand over copy to all the parties.

Sd/-

S.V.BHATTI, JUDGE

Sd/-

BASANT BALAJI, JUDGE

dl/wpc7844/scbj

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE S.V.BHATTI

&

THE HONOURABLE MR.JUSTICE BASANT BALAJI

Tuesday, the 7th day of March 2023 / 16th Phalgun, 1944

WP(C) NO. 7844 OF 2023(S)

SUO MOTU WRIT PETITION INITIATED BY THE HIGH COURT.

RESPONDENTS:

1. STATE OF KERALA, REPRESENTED BY THE CHIEF SECRETARY, GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM - 695 001.
2. KOCHI MUNICIPAL CORPORATION, REPRESENTED BY ITS SECRETARY, PARK AVENUE ROAD, MARINE DRIVE, KOCHI - 682 011.
3. KERALA STATE POLLUTION CONTROL BOARD, REPRESENTED BY ITS CHAIRMAN, HEAD OFFICE, PATTOM P.O., THIRUVANANTHAPURAM - 695 004.
4. THE DISTRICT COLLECTOR, DISTRICT COLLECTORATE, KAKKANAD, ERNAKULAM- 682 030.
5. THE DIRECTOR GENERAL, KERALA FIRE AND RESCUE SERVICES, HEADQUARTERS, FIRE FORCE JUNCTION, PULIMOODU P.O., THIRUVANANTHAPURAM - 695 001.
6. THE STATE POLICE CHIEF, KERALA POLICE HEADQUARTERS, THIRUVANANTHAPURAM, KERALA, INDIA - 695 010.

This Suo Motu writ petition coming on for admission upon perusing the petition, and upon hearing the arguments of SRI.K. GOPALAKRISHNA KURUP, ADVOCATE GENERAL for R1 & R4 to R6, the court passed the following:

P.T.O.

**S.V.BHATTI
& BASANT BALAJI, JJ.**

W.P.(C) No.7844 of 2023

ORDER

(Dated this the 7th day of March 2023)

S V Bhatti J.,

The suo motu case is taken up as per the direction of the honourable the Chief Justice on the news clippings dated 3.3.2023 on the smoke clouds being formed from the emissions of Brahmapuram Solid Waste Management plant. The photos annexed to the taken up case speak in volumes of the intensity of the fire mishaps.

2. When the case is taken up, the learned Advocate General appearing for the State has informed the court that the Government is alive to the incident at the Municipal Solid Waste Management and handling those plant – Brahmapuram and steps are being taken to address the

emission problems. A few of the counsel appearing for the respondents in connected WPs have brought to our notice that in two Writ petitions connected to this issue at the instance of Cochin Municipal Corporation, stay orders on the directives issued by the bench of National Green Tribunal are obtained. From the above narrative, it is clear that there is a just reason for the Corporation to continue to implement what the Corporation was implementing prior to the directives issued by the National Green Tribunal. Whatever we observe for the present, may not be treated as our conclusions without hearing the parties in this matter.

3. The learned Advocate General requested time till tomorrow and to assist the court. This court, after noticing that the smell perception from the fire emission from the treatment plant is still pervasive in the atmosphere, we are hesitant to accept the request for the adjournment. The court

would like to hear the persons who are primarily responsible for ensuring the implementation of the law on the subject. Therefore, we direct the presence of the Secretary, Kochi Municipal Corporation to be present in the court at 1.45 pm today. We would like to hear the Chairman of Pollution Control Board on his views on the commissions and omissions on the part of the Board in discharging its primary duties and functions. We are given to understand the Chairman is stationed at Thiruvananthapuram and cannot be physically present at 1.45 pm. We appreciate the difficulty, but that is no reason to excuse his presence for the hearing at 1.45 pm. Therefore, we call upon him to remain present virtually, for which the Officer can take the online link from the Court officer of court 6D and remain present at 1.45 pm today. The learned counsel appearing for the parties are directed to communicate the order of this court to the

respective clients.

The Registrar (General) is directed to tag WP(C) Nos.24380 of 2016 and 7805 of 2023 along with this case and Call at 1.45pm today.

Sd/-

S.V.BHATTI, JUDGE

Sd/-

BASANT BALAJI, JUDGE

dl/wpc7844/vbj

IN THE HIGH COURT OF KERALA AT ERNAKULAM
PRESENT

THE HONOURABLE MR.JUSTICE S.V.BHATTI

&

THE HONOURABLE MR.JUSTICE BASANT BALAJI

Wednesday, the 8th day of March 2023 / 17th Phalguna, 1944

WP(C) NO. 7844 OF 2023(S)

SUO MOTU WRIT PETITION INITIATED BY THE HIGH COURT.

RESPONDENTS:

1. STATE OF KERALA, REPRESENTED BY THE CHIEF SECRETARY, GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM - 695 001.
2. KOCHI MUNICIPAL CORPORATION, REPRESENTED BY ITS SECRETARY, PARK AVENUE ROAD, MARINE DRIVE, KOCHI - 682 011.
3. KERALA STATE POLLUTION CONTROL BOARD, REPRESENTED BY ITS CHAIRMAN, HEAD OFFICE, PATTOM P.O., THIRUVANANTHAPURAM - 695 004.
4. THE DISTRICT COLLECTOR, DISTRICT COLLECTORATE, KAKKANAD, ERNAKULAM- 682 030.
5. THE DIRECTOR GENERAL, KERALA FIRE AND RESCUE SERVICES, HEADQUARTERS, FIRE FORCE JUNCTION, PULIMOODU P.O., THIRUVANANTHAPURAM - 695 001.
6. THE STATE POLICE CHIEF, KERALA POLICE HEADQUARTERS, THIRUVANANTHAPURAM, KERALA, INDIA - 695 010.

ADDL. R7 IMPEADED

7. THE ADDITIONAL CHIEF SECRETARY,
LOCAL SELF GOVERNMENT DEPARTMENT, GOVERNMENT OF KERALA.

ADDL. R7 IS SUO MOTU IMPEADED AS PER ORDER

DATED 07/03/2023 IN WPC

This Suo Motu writ petition again coming on for admission upon perusing the petition, and this Court's orders dated 07/03/2023 and upon hearing the arguments of SRI.K. GOPALAKRISHNA KURUP, ADVOCATE GENERAL for R1 & R4 to R6 and of SRI.UNNIKRISHNAN, SPECIAL GOVERNMENT PLEADER for Addl. R7, the court passed the following:

P.T.O.

**S.V.BHATTI
&
BASANT BALAJI, JJ.**

=====

W.P(C) No.7844/2023

=====

Dated: 8th March 2023

ORDER

S.V.Bhatti, J.

Read order dated 7.3.2023.

2. Apropos to the orders of this Court, the Additional Chief Secretary, Local Self Government Department, the District Collector, Ernakulam, the Secretary, Cochin Municipal Corporation and the Chairman, Kerala State Pollution Control Board are present and have placed before the Court the plan of action formulated for immediate, shorter and long-term measures for due implementation of Solid Waste Management Rules, 2016.

3. The learned Advocate General referring to the instructions received from the respondents in the *suo motu* Writ Petition has brought to our notice that a High Level Conference by the Hon'ble Chief Minister on the issues considered by this *suo motu*

WP(C) No.7844/2023

writ petition is convened today at 5 p.m. The officers present in the Court in unison have stated that there is obligation on the part of the State Government, Local Bodies, District Administration and also the statutory corporation, i.e. Pollution Control Board, to take efficacious measures for addressing the problem which is taken up by this Court as *suo motu* Writ Petition. We appreciate the predicament of the officers to go on record with affirmative undertaking in a matter as the present even before the points proposed receiving approval from the high level conference. We are of the view that we need not inform the officers what is otherwise obvious and their inclination not only to take up the issue for permanent solution under 2016 Rules and also for continuous monitoring by the Local Self Governments, District Administrations and the Pollution Control Board. Without having a categorical statement from these officers by looking at the formative proposals taken forward, we do not want to incorporate the proposals in the latest order. As has been suggested by the learned Advocate General, we grant time till the day after tomorrow to the Additional

WP(C) No.7844/2023

Chief Secretary to place on record all the points which are finalised by the High Level Conference with definite time lines for performance by the Local Bodies.

4. We direct the Secretary through our present order to issue notices to all the establishments which come within the scope of Solid Waste Management Rules and have not taken authorisations or have put in place the equipment required for handling the bulk solid waste generated at these places. The Secretary gives the noticee the minimum time and places the copies of such notices before the court on the next date of hearing. We further direct the Secretary, Cochin Municipal Corporation to place before the Court orders on the implementation of immediate, shorter and long term measures at the Brahmapuram plant and also on improving the source collection, handling on collection, disposal of the solid waste management within the jurisdiction of Secretary, Cochin Municipal Corporation. After receiving the proposals from the Secretary, we would be incorporating those proposals in consultation with the Additional Chief Secretary, District Collector

WP(C) No.7844/2023

and the Pollution Control Board in our order dated 10.3.2023. The District Collector, we are given to understand, is under the order of transfer. Today we take note of her presence and also the efforts the officer has taken between Thursday and till date. The only omission we note if at all in her approach is that the efforts undertaken did not receive the required attention. After hearing the officer we notice that the responsibilities under the Disaster Management Act have been taken note of and action has been taken. The District Collector who assumes charge shall remain present on 10.03.2023.

5. Coming to the Pollution Control Board, the Chairman has invited our attention to the omissions and commissions with which the plant is being operated at Brahmapuram. The inspection reports, according to the Chairman, would disclose the haphazardous operations happening at the site. He also stated immediate measures to implement the Rules by the Cochin Municipal Corporation. This Court is conscious of the penal provisions under all the three enactments. The *suo motu* case is not

WP(C) No.7844/2023

taken up for the purpose of penalising omissions or commissions whether intended or unintended. But the *suo motu* case intends to improve the future and also ensure the complete implementation of 2016 Rules. An *ex post facto* decision which could be done under all the three enactments, this Court would look into satisfactory implementation of the Rules by the Secretary of Corporation to pass *ex post facto* orders. We direct the parties who are present to beforehand circulate the respective affidavits/replies to the other participants in the litigation to enable such of the parties to assist the Court with suggestion and remarks in this behalf.

6. The Secretary, Cochin Municipal Corporation informs the Court that, at present, the facility operated from the generators installed and operated at the site. One of the reasons stated for not containing the fire is staff at the site could not immediately use water hydrants and contain the fire. On further probing by us, the Secretary expressed the difficulty, the Corporation has in this behalf, i.e. the facility is being run without a dedicated power supply line to this plant. It is also brought to our notice that a request for

WP(C) No.7844/2023

sanction for electricity connection is made by the Cochin Municipal Corporation and pending.

7. The Deputy Chief Engineer, Kerala State Electricity Board, Ernakulam is directed by this Court to provide a temporary connection to the facility operated by the Cochin Municipal Corporation within four hours from 4 p.m. today itself. The Standing Counsel appearing for the Board is incidentally present in the Court. We have directed him to communicate our order to the Deputy Chief Engineer immediately.

Post on 10.03.2023 at 1.45 p.m along with the connected cases.

Handover copy.

S.V.BHATTI
JUDGE

BASANT BALAJI
JUDGE

CSS

08-03-2023

/True Copy/

Assistant Registrar

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE S.V.BHATTI

&

THE HONOURABLE MR.JUSTICE BASANT BALAJI

Wednesday, the 8th day of March 2023 / 17th Phalgun, 1944

WP(C) NO. 7844 OF 2023(S)

SUO MOTU WRIT PETITION INITIATED BY THE HIGH COURT.

RESPONDENTS:

1. STATE OF KERALA, REPRESENTED BY THE CHIEF SECRETARY, GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM - 695 001.
2. KOCHI MUNICIPAL CORPORATION, REPRESENTED BY ITS SECRETARY, PARK AVENUE ROAD, MARINE DRIVE, KOCHI - 682 011.
3. KERALA STATE POLLUTION CONTROL BOARD, REPRESENTED BY ITS CHAIRMAN, HEAD OFFICE, PATTOM P.O., THIRUVANANTHAPURAM - 695 004.
4. THE DISTRICT COLLECTOR, DISTRICT COLLECTORATE, KAKKANAD, ERNAKULAM- 682 030.
5. THE DIRECTOR GENERAL, KERALA FIRE AND RESCUE SERVICES, HEADQUARTERS, FIRE FORCE JUNCTION, PULIMOODU P.O., THIRUVANANTHAPURAM - 695 001.
6. THE STATE POLICE CHIEF, KERALA POLICE HEADQUARTERS, THIRUVANANTHAPURAM, KERALA, INDIA - 695 010.

ADDL. R7 IMPEADED

7. THE ADDITIONAL CHIEF SECRETARY,

LOCAL SELF GOVERNMENT DEPARTMENT, GOVERNMENT OF KERALA.

ADDL. R7 IS SUO MOTU IMPEADED AS PER ORDER

DATED 07/03/2023 IN WPC

This Suo Motu writ petition again coming on for admission upon perusing the petition, and this Court's order dated 07/03/2023 and upon hearing the arguments of SRI.K. GOPALAKRISHNA KURUP, ADVOCATE GENERAL for R1 & R4 to R6 and of SRI.UNNIKRISHNAN, SPECIAL GOVERNMENT PLEADER for Addl. R7, the court passed the following:

P.T.O.

**S.V.BHATTI
&
BASANT BALAJI, JJ.**

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W.P(C) No.7844/2023

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Dated: 8th March 2023

ORDER

S.V.Bhatti, J.

The instant suo motu writ petition is taken up by the High Court on the orders and the directives of Hon'ble Chief Justice.

2. In the present suo motu writ petition, the public interest is the only priority of this Court. In the process, this Court would be considering issuing directions to be carried out by the officers of the State and also by the persons entrusted with the functions and duties by the environmental laws, Environmental Protection Act read with rules and Solid Waste Management Rules, 2016. The

34

present suo motu initiative of the Court is not treated as publicity interest litigation or prosecution interest litigation initiated by the High Court. Being a constitutional Court, this Court is the custodian and the guardian of the rights of the citizens under the Constitution and also protects the rights assured to the citizens under the Environmental Protection Act read with rules and Solid Waste Management Rules, 2016. The right to clean air, water and pollution-free environment are the basic human rights. The incidents happening in the immediate past, this Court has noticed these rights of the citizens, particularly of the City of Ernakulam are at stake. Therefore, this suo motu Writ Petition addresses these problems.

3. We call up on all the non-stakeholders not to take forward the effort of this Court in the suo motu Writ Petition for any ancillary or incidental purpose. The Court would like to stay focused on the issues which are imminently urgent and, for the

present, does not entertain any impleading petition. We have noted from the media reports that the personal presence desired by this Court the officers of the state or the Chairman of the Pollution Control Board is not informed to the public in the sense in which this Court has desired the presence of these officers. The problem, as we notice from the narrative of none other than the Chairman of the Pollution Control Board is having serious ramifications. Therefore this Court felt desirable that their presence is ensured in the ongoing hearing so that there is no gap between the objectives to be achieved in the present suo motu litigation and the directives the officers carry out in the letter and spirit. We see that 'charity begins at home'. We change and say that change begins from us. During and in the course of further hearing of this writ petition, this Court will consider issuing directives not only to the other Departments but also to the judiciary. This Court, for the present, is of the view that it can

enlist the voluntary participation of the legal fraternity in solving the mammoth problem in the State of Kerala. The above we want to place on record as part of proceedings.

S.V.BHATTI, JUDGE

BASANT BALAJI, JUDGE

css/

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE S.V.BHATTI

&

THE HONOURABLE MR.JUSTICE BASANT BALAJI

Friday, the 10th day of March 2023 / 19th Phalguna, 1944

WP(C) NO. 7844 OF 2023(S)

SUO MOTU WRIT PETITION INITIATED BY THE HIGH COURT.

RESPONDENTS:

1. STATE OF KERALA, REPRESENTED BY THE CHIEF SECRETARY,
GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM - 695 001.
2. KOCHI MUNICIPAL CORPORATION, REPRESENTED BY ITS SECRETARY,
PARK AVENUE ROAD, MARINE DRIVE, KOCHI - 682 011.
3. KERALA STATE POLLUTION CONTROL BOARD, REPRESENTED BY ITS
CHAIRMAN, HEAD OFFICE, PATTOM P.O., THIRUVANANTHAPURAM - 695
004.
4. THE DISTRICT COLLECTOR, DISTRICT COLLECTORATE, KAKKANAD,
ERNAKULAM- 682 030.
5. THE DIRECTOR GENERAL, KERALA FIRE AND RESCUE SERVICES,
HEADQUARTERS, FIRE FORCE JUNCTION, PULIMOODU P.O.,
THIRUVANANTHAPURAM - 695 001.
6. THE STATE POLICE CHIEF, KERALA POLICE HEADQUARTERS,
THIRUVANANTHAPURAM, KERALA, INDIA - 695 010.

ADDL. R7 IMPEADED

7. THE ADDITIONAL CHIEF SECRETARY,
LOCAL SELF GOVERNMENT DEPARTMENT, GOVERNMENT OF KERALA.

ADDL. R7 IS SUO MOTU IMPEADED AS PER ORDER

DATED 07/03/2023 IN WPC

ADDL. R8 IMPEADED

8. KERALA STATE ELECTRICITY BOARD,
REPRESENTED BY ITS CHAIRMAN & MANAGING DIRECTOR,
VYDUTHI BHAVAN, PATTOM-695 004.

ADDL. R8 IS SUO MOTU IMPEADED AS PER ORDER

DATED 10/03/2023 IN WPC.

P.T.O.

This Suo Motu writ petition again coming on for admission upon perusing the petition, and this Court's orders dated 08/03/2023 and upon hearing the arguments of SRI.K. GOPALAKRISHNA KURUP, ADVOCATE GENERAL for R1, R4, R6 & R7, SRI.K. JANARDHANA SHENOY, STANDING COUNSEL for R2, SRI.T. NAVEEN, STANDING COUNSEL for R3 and of SRI.UNNIKRISHNAN, SPECIAL GOVERNMENT PLEADER for R5, the court passed the following:

P.T.O.

**S.V.BHATTI
&
BASANT BALAJI, JJ.**

=====

W.P(C) No.7844/2023

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Dated: 10th March 2023

ORDER

S.V.Bhatti, J.

The presence of Additional Chief Secretary, Chairman, Kerala State Pollution Control Board, The District Collector and the Secretary, Cochin Municipal Corporation in today's hearing is noted.

2. The officers are represented by the learned Advocate General, Mr.Shenoy, Mr.Naveen and Mr.Unnikrishnan, learned Special Government Pleader for the Fire Department.

3. In the previous order, we have directed the Kerala State Electricity Board to supply power to the Brahmapuram plant, for short 'the site'. We have been informed by Mr.Babu Abdul Khader, the Secretary of Cochin Municipal Corporation that the

power has been connected and uninterrupted power supply is provided to the site. We have perused the affidavits filed by the Additional Chief Secretary for and on behalf of the State Government, the affidavit of the Chairman, Kerala State Pollution Control Board and the District Collector, competent authority under the Disaster Management Act. The consensus in the hearing is that the respondents are on board and as a first effort to make Cochin a clean city and replicate the same in other Local Self Governments. We prefer not to refer to their efforts and the statements in the order of even date. The necessity of Kerala State Electricity Board was noticed earlier without impleading the Board as one of the parties. We have issued directives and they have duly complied with. To avoid uncertainty or misunderstanding in the orders, we may issue in future on the erring facilities or defaulters of the directives issued by the Secretary, Cochin Municipal Corporation on one hand and on another hand, the State Government and the Pollution Control Board for effective implementation of solid waste management Rules, 2016, the presence of Kerala

State Electricity Board is proper and necessary. Therefore, *suo motu*, we implead Kerala State Electricity Board, represented by its Chairman & Managing Director, Kerala State Electricity Board, Vyduthi Bhavan, Pattom. We direct the Registry to take out notice by special messenger to the newly added respondent. Place on record the proof of service by the next date of hearing.

4. It has been considered at great length that the scheduled quelling of flames at the site is overshooting the anticipation of the district administration and also the Cochin Municipal Corporation. The Cochin Municipal Corporation, since is under the statutory obligation to dispose of the solid waste at the designated and specified place on account of the continuing fire at the site, but not collecting the solid waste for the past one week. In other words, the collection of solid waste has been stopped in the Cochin and Ernakulum cities. It is not in dispute that the continued containment of this waste at respective places is likely to result in yet another collateral, unanticipated problem in the cities. Therefore, firstly, we direct the Secretary, Cochin Municipal Corporation to resume

the collection and operation of waste from these two cities from tomorrow onwards. The Additional Chief Secretary, Local Administration is further directed to issue orders, directions or clarifications, as the case may be, in exercise of the powers conferred on the State Government by Section 5 of the Environmental Protection Act, 1986 to other Local bodies and the Treatment facilities nearby to Cochin Municipal Corporation as one-time reception and disposal of solid waste generated within the territorial limits of the Cochin and Ernakulam. We hope and trust that the Additional Chief Secretary with the inputs the officer has at her disposal would identify the proximate sites and the discharge point specified as a one-time measure. The subject site has been in the subject matter of consideration by the National Green Tribunal. The functional efficacy of the site has already been noticed and recorded resulting in imposition of fine by the National Green Tribunal. The Cochin Municipal Corporation is challenging the said order of the National Green Tribunal in W.P.(C) No.36204/2018. The Cochin Municipal Corporation, through

the interim order dated 09.11.2018 obtained the stay of the order of the National Green Tribunal. Between the date of passing of the order, till date, it cannot be stated with confidence that any of the measures expected from the Cochin Municipal Corporation by the National Green Tribunal have been carried out. We are looking at the site, when the site exposed itself to a fire incident. The first and foremost requirement in a situation as the present is to conduct audit of the environmental/ infrastructure facilities provided for by the Cochin Municipal Corporation at the site to appreciate the primary and indirect damage to the environment, particularly, the neighbourhood. Secondly, the site conforms to the Solid Waste Management Rules, 2018. Thirdly, the infrastructure details at the site, their efficacy and efficiency for the purpose for which the equipments were established. For the said purpose and also for the record, in appreciating what is the functionality of the site which was established and operated to cater to the needs of the Cochin and Ernakulam cities, we would like to depute a committee consisting of high-ranking officers

assisted by their choice of technical staffs together with, for the present, the Secretary, District Legal Services Authority and file a report before this Court on the next date of hearing together with the photographs that the committee thinks are necessary for appreciating the wherewithal treatment options at the site. The said committee consists of (1) The Chief Engineer, Local Self Government Department, (2) Director, Solid Waste Management Swachhatha Mission (3) The District Collector, Ernakulam (4) Joint Chief Environmental Engineer, Regional Office, Kerala State Pollution Control Board, Ernakulam (5) Mr. Babu Abdul Khader, Secretary, Cochin Municipal Corporation (6) Secretary, District Legal Services Authority, Member-Convenor.

5. The officers now nominated to the Committee are given the liberty to take the assistance of the technical experts in Solid Waste Management Rules, fire control, and amelioration steps. With their input can submit a report to this Court.

6. We call upon the Committee to schedule a visit to the site at the earliest, not later than 24 hours from now. The Additional Chief Secretary and the Secretary are called upon to explore viable, alternative long-lasting solutions for the handle, handover, transport, and safe disposal of solid waste generated from the twin cities of Cochin and Ernakulam. To this extent, it is unreasonable to expect a solution by the next date of the hearing. However, we trust and hope that alternative solutions are also suggested to us not later than ten days from today.

7. The case stands posted to 13.03.2023 at 1.45 p.m. The purpose of the said adjournment is to find out not only the stage of simmering fire at the site but also whether it has been fully brought under control or not. In the interregnum, any other mechanism that is available to prevent the dispersion of smoke in unexpected directions are explored and the impact from smoke to the extent possible by the use of technology is resorted to and controlled.

8. On 13.03.2023, Mr Babu Abdul Khader, the Secretary of Cochin Municipal Corporation is directed to appear in the Court at 1.45 pm and the other officers are advised to participate in the next date of hearing virtually. The matter will be called on 14.03.2023 to enable the State Government to file its affidavit on the other aspects which have come on record today.

Handover copy.



Sd/- S.V.BHATTI
JUDGE

Sd/- BASANT BALAJI
JUDGE

Css/

IN THE HIGH COURT OF KERALA AT ERNAKULAM
PRESENT

THE HONOURABLE MR.JUSTICE S.V.BHATTI

&

THE HONOURABLE MR.JUSTICE BASANT BALAJI

Monday, the 13th day of March 2023 / 22nd Phalguna, 1944

WP(C) NO. 7844 OF 2023(S)

SUO MOTU WRIT PETITION INITIATED BY THE HIGH COURT.

RESPONDENTS:

1. STATE OF KERALA, REPRESENTED BY THE CHIEF SECRETARY,
GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM - 695 001.
2. KOCHI MUNICIPAL CORPORATION, REPRESENTED BY ITS SECRETARY,
PARK AVENUE ROAD, MARINE DRIVE, KOCHI - 682 011.
3. KERALA STATE POLLUTION CONTROL BOARD, REPRESENTED BY ITS
CHAIRMAN, HEAD OFFICE, PATTOM P.O., THIRUVANANTHAPURAM - 695
004.
4. THE DISTRICT COLLECTOR, DISTRICT COLLECTORATE, KAKKANAD,
ERNAKULAM- 682 030.
5. THE DIRECTOR GENERAL, KERALA FIRE AND RESCUE SERVICES,
HEADQUARTERS, FIRE FORCE JUNCTION, PULIMOODU P.O.,
THIRUVANANTHAPURAM - 695 001.
6. THE STATE POLICE CHIEF, KERALA POLICE HEADQUARTERS,
THIRUVANANTHAPURAM, KERALA, INDIA - 695 010.

ADDL. R7 IMPEADED

7. THE ADDITIONAL CHIEF SECRETARY,
LOCAL SELF GOVERNMENT DEPARTMENT, GOVERNMENT OF KERALA.

ADDL. R7 IS SUO MOTU IMPEADED AS PER ORDER

DATED 07/03/2023 IN WPC

ADDL. R8 IMPEADED

8. KERALA STATE ELECTRICITY BOARD,
REPRESENTED BY ITS CHAIRMAN & MANAGING DIRECTOR,
VYDUTHI BHAVAN, PATTOM-695 004.

ADDL. R8 IS SUO MOTU IMPEADED AS PER ORDER

DATED 10/03/2023 IN WPC.

P.T.O.

This Suo Motu writ petition again coming on for admission upon perusing the petition, this Court's orders dated 10/03/2023 and upon hearing the arguments of SRI.K. GOPALAKRISHNA KURUP, ADVOCATE GENERAL for R1, R4, R6 & R7, SRI.K. JANARDHANA SHENOY, STANDING COUNSEL for R2, SRI.T. NAVEEN, STANDING COUNSEL for R3 and of SRI.UNNIKRISHNAN, SPECIAL GOVERNMENT PLEADER for R5, the court passed the following:

P.T.O.



**S.V.BHATTI
& BASANT BALAJI, JJ.**

W.P.(C) No.7844 of 2023

ORDER

(Dated this the 13th day of March 2023)

S V Bhatti J.,

The District Collector has placed on record, the report dated 13.3.2023 of the Committee constituted by this court on 10.3.2023. The report, with brief expression, describes the lamentable situation, in which the site is termed as a facility and claiming to discharge the statutory standards set by Solid Waste Management and Handling Rules 2016 is in existence. After a detailed discussion on the report with the Additional Chief Secretary and the District Collector, we direct as follows:

- (i) The request of the Chief Environmental Engineer to place on record the course of action he would take in a situation as the present, we grant him

a day's time to place the options, the Board would be pursuing for the violations noticed in the report of even date and on all previous occasions by Cochin Municipal Corporation and the operators of the site.

(ii). The Secretary, Cochin Municipal Corporation is directed to place before the Court the chronology of the consideration of passing over the responsibility of managing this facility by a 3rd party agency, the mode and manner in which the decisions are taken shall also be incorporated in the said chronology. The Secretary shall place before us the contract under which the free handover of responsibility is given to a 3rd party. These details are necessitated without concluding on this aspect, the prosecution if warranted the starting point of prosecution and also the persons who are responsible for the present state of affairs.

(iii) The Secretary is directed to place before the court the payments made by the Cochin Municipal Corporation under the head of collection, transportation, handing over, treatment etc. for the

past seven years to the contractors or the staff under any head.

2. The Additional Chief Secretary and the District Collector, Ernakulam have been called upon by us to suggest by tomorrow the terms of consideration in the suo motu Writ Petition. The discussion proceeded that the terms of reference would include one part for Cochin Municipal Corporation and another part for all the local bodies in the State of Kerala.

3. The District Collector, referring to the latest information makes a statement to the court that 90 to 95% of the fire at different places has been put out. However, on account of continuous simmering and raising temperatures in the materials the sporadic occasioning of fires, is taken care and within outer limit of 2 hours doused. We place on

record the statement. The District Collector has informed that there is improvement in air quality near the site, neighbourhood and in the city. We call upon the Collector to place the said reports in tomorrow's hearing.

The Chairman of the Kerala State Pollution Control Board either himself or an officer authorised by him is allowed to file a report by tomorrow.

Post tomorrow. (14.3.2023).

Hand over copies to all the parties.

Sd/-

S.V.BHATTI, JUDGE

Sd/-

BASANT BALAJI, JUDGE

dl/wpc7844 13th march'

53

IN THE HIGH COURT OF KERALA AT ERNAKULAM
PRESENT

THE HONOURABLE MR.JUSTICE S.V.BHATTI

&

THE HONOURABLE MR.JUSTICE BASANT BALAJI

Monday, the 13th day of March 2023 / 22nd Phalgun, 1944

WP(C) NO. 24380 OF 2016

NAME AND ADDRESS OF THE PETITIONER:

CORPORATION OF COCHIN REPRESENTED BY ITS SECRETARY, OFFICE OF THE
COCHIN CORPORATION, ERNAKULAM.

NAME AND ADDRESS OF THE RESPONDENTS:

1. JITH KUMAR, AGED 39 YEARS, S/O.STEPHEN, MUTHEDATHU PARAMBIL,
P.O.BRAHMAPURAM, ERNAKULAM - 682 308.
2. PAUL.P.ABRAHAM, AGED 53 YEARS, S/O.REV.FR.P.V.ABRAHAM CORE EPISCOPA,
PALATHULLIL, P.O.BRAHMAPURAM, ERNAKULAM - 682 308.
3. T.V.PAULOSE, AGED 57 YEARS, S/O.VARGHESE, THURUTHIYIL HOUSE,
P.O.BRAHMAPURAM, ERNAKULAM - 682 308.
4. DR.BIJU.C.CHACKO, AGED 39 YEARS, S/O.T.C.CHACKO,NEDUMPURAM,
P.O.BRAHMAPURAM, ERNAKULAM - 682 308.
5. P.M.KAREEM, AGED 49 YEARS, S/O.MUSTHAFA, MATHRAKKATTU
HOUSE,P.O.BRAHMAPURAM, ERNAKULAM - 682 308.
6. M.A.RAHIM, AGED 40 YEARS, S/O.ALI, MATHRAKKATTU HOUSE,
P.O.BRAHMAPURAM, ERNAKULAM - 682 308.
7. BIJU.V.CHACKO, AGED 44 YEARS, S/O.K.M.CHACKO, VALLAPPIILLIL,
MATHRAKKATTU HOUSE, P.O.BRAHMAPURAM, ERNAKULAM - 682 308.
8. STATE OF KERALA, REPRESENTED BY ITS CHIEF SECRETARY, GOVERNMENT
SECRETARIAT, THIRUVANANTHAPURAM - 695 001.
9. UNION OF INDIA MINISTRY OF ENVIRONMENT AND FORESTS, CENTRAL
SECRETARIAT, NEW DELHI - 110 001.
10. KERALA STATE POLLUTION CONTROL BOARD, OFFICE OF THE KERALA STATE
POLLUTION CONTROL BOARD, PATTOM, THIRUVANANTHAPURAM - 695 001.
11. THE VADAVUCODE PUTHENCROUZ GRAMA PANCHAYATH, REPRESENTED BY ITS
SECRETARY, OFFICE OF THE VADAVUCODE PUTHENCROUZ GRAMA PANCHAYATH,
PUTHENCROUZ, ERNAKULAM - 682 308.

Writ petition (civil) praying inter alia that in the circumstances stated in the affidavit filed along with the WP(C) the High Court be pleased to stay the operation of Exhibit P-2 order dated 31.05.2016 in M.A. No. 78/2016 and in M.A.79/2016 in Application No.442/2013 of the Hon'ble Green Tribunal, Southern Zone Bench, pending final disposal of this writ petition.

This petition again coming on for orders upon perusing the petition and the affidavit filed in support of WP(C) and this Court's order dated 11.08.2016 and upon hearing the arguments of M/S BABU KARUKAPADATH and MITHUN BABY JOHN, Advocates for the petitioner and of GOVERNMENT PLEADER for the Respondent 8,sc for R10, the Court passed the following:

P.T.O .

S.V. BHATTI & BASANT BALAJI, JJ.

W.P.(C) No. 24380 of 2016 and
W.P.(C) No.36204 of 2018

Dated: 13th March 2023

ORDER

S.V.Bhatti, J

The Cochin Municipal Corporation is the petitioner. The writ petitions are filed challenging the directives issued by the National Green Tribunal *vide* common order dated 22.10.2018 in O.A. Nos.533/208, 534/2018 and 535/2018. Considering the prayer made at the time of initiation of the writ petitions, it can be, in retrospect, appreciated that the Municipal Corporation was optimistic about taking forward the proposal of establishing a power generation plant at the site. The very Annexures on which the reliance is made disclose that the

W.P.(C) Nos.24380/2016 & 36204/2018

-2-

proposal of establishing a power project was mired in teething problems. Confidence is always subjective. The Municipal Corporation thought it could tide over and accomplish the targets. It is sad to note that on 02.03.2023, an unfortunate and uncontrollable fire incident occurred at the subject site. The smoke emanating from the site engulfed the city of Cochin. It choked the dwellers' lives, resulting in this Court initiating *suo motu* Writ Petition No.7844/2023 and monitoring the situation ever since.

2. By Order dated 10.03.2023, a High-Level Committee consisting of the District Collector; the Chief Engineer, LSGD; the Director, Solid Waste Management; the Joint Chief Environmental Engineer, KSPCB; the Secretary, Cochin Municipal Corporation; and the Secretary DLSA, was constituted to make Field Inspection and report on the present state-of-affairs at the site. The efficacy and efficiency, at least,

there is consensus that the site cannot be measured as a facility from any perspective under the Solid Waste Management Rules 2016 (for short, Rules 2016). The basic requirements for handling solid waste upon site delivery are unavailable.

3. This Court, after considering the report dated 13.03.2023, notices that in the *suo motu* Writ Petition, this Court is considering the deficiencies and shortfalls in the implementation of Rules 2016 in two compartments: firstly, in the City of Cochin, secondly, the other Local Self Governments in the State of Kerala. The interim order, we are of the view, shall not be taken as an advantage for an omission to discharge any of the obligations of the Corporation under Rules 2016.

3.1 After appreciating the reality of the report and also to prevent orders from working at cross-purposes and gain momentum on the directions issued by the National Green

W.P.(C) Nos.24380/2016 & 36204/2018

-4-

Tribunal, we are of the view that the petitioner is not entitled to have the benefit of the stay granted by this Court on 09.11.2018 in W.P.(C) No.36204/2018 and 11.08.2016 in W.P.(C) No.24380/2016. Accordingly, both interim orders are vacated. The writ petitions since are tagged with W.P.(C) No.7844/2023; we would like to continue to monitor and issue directions as warranted on each occasion henceforth.

Handover copies to all Counsel.

Sd/-
S.V. BHATTI
JUDGE

Sd/-
BASANT BALAJI
JUDGE

jjj

13/03/2023

IN THE HIGH COURT OF KERALA AT ERNAKULAM
PRESENT

THE HONOURABLE MR.JUSTICE S.V.BHATTI

&

THE HONOURABLE MR.JUSTICE BASANT BALAJI

Tuesday, the 14th day of March 2023 / 23rd Phalgun, 1944

WP(C) NO. 7844 OF 2023(S)

SUO MOTU WRIT PETITION INITIATED BY THE HIGH COURT.

RESPONDENTS:

1. STATE OF KERALA, REPRESENTED BY THE CHIEF SECRETARY,
GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM - 695 001.
2. KOCHI MUNICIPAL CORPORATION, REPRESENTED BY ITS SECRETARY,
PARK AVENUE ROAD, MARINE DRIVE, KOCHI - 682 011.
3. KERALA STATE POLLUTION CONTROL BOARD, REPRESENTED BY ITS
CHAIRMAN, HEAD OFFICE, PATTOM P.O., THIRUVANANTHAPURAM -
695 004.
4. THE DISTRICT COLLECTOR, DISTRICT COLLECTORATE, KAKKANAD,
ERNAKULAM- 682 030.
5. THE DIRECTOR GENERAL, KERALA FIRE AND RESCUE SERVICES,
HEADQUARTERS, FIRE FORCE JUNCTION, PULIMOODU P.O.,
THIRUVANANTHAPURAM - 695 001.
6. THE STATE POLICE CHIEF, KERALA POLICE HEADQUARTERS,
THIRUVANANTHAPURAM, KERALA, INDIA - 695 010.

ADDL. R7 IMPEADED

7. THE ADDITIONAL CHIEF SECRETARY,
LOCAL SELF GOVERNMENT DEPARTMENT, GOVERNMENT OF KERALA.

ADDL. R7 IS SUO MOTU IMPEADED AS PER ORDER
DATED 07/03/2023 IN WPC

ADDL. R8 IMPEADED

8. KERALA STATE ELECTRICITY BOARD,
REPRESENTED BY ITS CHAIRMAN & MANAGING DIRECTOR,
VYDUTHI BHAVAN, PATTOM-695 004.

ADDL. R8 IS SUO MOTU IMPEADED AS PER ORDER
DATED 10/03/2023 IN WPC.

P.T.O.

This Suo Motu writ petition again coming on for admission upon perusing the petition, this Court's orders dated 13/03/2023 and upon hearing the arguments of SRI.K. GOPALAKRISHNA KURUP, ADVOCATE GENERAL for R1, R4, R6 & R7, SRI.K. JANARDHANA SHENOY, STANDING COUNSEL for R2, SRI.T. NAVEEN, STANDING COUNSEL for R3 and of SRI.UNNIKRISHNAN, SPECIAL GOVERNMENT PLEADER for R5, the court passed the following:

P.T.O.



S.V. BHATTI & BASANT BALAJI, JJ.

W.P.(C) No.7844 of 2023

Dated: 14th March 2023

ORDER

S.V.Bhatti, J

The District Collector and the Secretary, Cochin Municipal Corporation, both from the inputs they have received and what they have seen in the physical inspection undertaken on 13.03.2023, place a statement before the Court that the fire is completely contained and put out by 100%. The smouldering is not visible to the naked eye. By placing the statement on record, we notice that the first of the problems taken up by the *suo motu* writ petition is answered as stated by the Officers.

2. To reach this stage, this Court is of the view that this Court and the citizens of Cochin place on record their appreciation for discharging a herculean task of putting out the fire at the site at this time of the year by the Personnel of the Fire Department. We are conscious that either the failure to control the fire or allowing the fire to spread to the neighbourhood would have led to unimaginable consequences. We record our recognition, satisfaction, and appreciation to the Personnel of the Fire Department for all their efforts. We also record the same appreciation for the contribution of the Civil Defence Volunteers in putting out the fire.

2.1 We call upon the Director General, Kerala Fire and Rescue Services/5th respondent, to convey our appreciation now placed on record to each one of the Personnel who has worked without differentiating the day and the night. At the

W.P.(C) No.7844/2023

-3-

appropriate stage of the proceedings, this Court would also observe suitable rewards and recognition by the State Government to the frontline firefighters.

Handover copy.

Sd/-
S.V. BHATTI
JUDGE

Sd/-
BASANT BALAJI
JUDGE

jjj

14/03/2023