

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

Original Application No. 514/2019

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: 24.01.2020

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

For Respondent(s): Mr. Nishe Rajen Shonker, Advocate for State of Kerala
Mr. Alim Arver, Advocate
Mr. Jogy Scaria, Advocate for KSPCB

ORDER

1. A report dated 23.02.2019 was received from Justice A.V. Ramakrishna Pillai, former Judge, Kerala High Court to the effect that unscientific dumping of waste in violation of Solid Waste Management Rules, 2016 (SWM Rules, 2016) causing huge pollution was taking place at Bharampuram Solid Waste Processing Plant on the outskirts of Kochi city and a major fire broke out there. On consideration of the said report, vide order dated 05.08.2019, this Tribunal sought response from the Kerala State PCB.
2. Response of the Kerala State PCB dated 03.10.2019 was to the effect that no proper segregation of waste was being done. There was huge

gap in waste collection and waste transfer for processing. With regard to the quantity of manure prepared from the waste, it was mentioned that no record was available. The Tribunal, vide order dated 20.11.2019, observed:

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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. In pursuance of above, even though no report has been filed, learned Counsel for the State of Kerala has put in appearance and has handed over a statement to the effect that sanction has been given for waste to energy plant to be constructed in 18 months. Approval has been given for bio-methanation plants on 13.12.2019 for which suitable land is to be identified.

4. Thus, there is hardly any tangible action which may show lack of concern for the environment and the health of the inhabitants and the rule of law. Since even land has not yet been identified, sanction is meaningless. Action could have started on the site of waste itself so that there could be simultaneous remediation of the legacy waste. Period of almost one year has already been gone without meaningful action. It may be noted that Chief Secretary, Kerala appeared in

person on 25.04.2019 in pursuance of order dated 16.01.2019. This Tribunal, inter-alia, directed that in view of prescribed timeline under Rule 22 of the SWM Rules, 2016, specified cities, towns and villages may be made models of compliance within six months and the remaining cities, towns and villages may be made fully compliant within one year. The compliance may be monitored by the Chief Secretary personally once every month and by the District Magistrate once every two weeks. Quarterly reports to be furnished to this Tribunal and the Chief Secretary was to appear again personally.

5. It may be noted that the matter has been transferred by the Hon'ble Supreme Court to this Tribunal on 02.09.2014 in *W.P. 888/1996* after noting constant failures of the authorities in the matter, inter-alia, in *(2000) 2 SCC 679* and *(2004) 13 SCC 538*. The Tribunal gave comprehensive directions vide order dated 22.12.2016.¹ Execution thereof is still continuing. Vide order dated 20.08.2018, all action plans were directed to be prepared by 31.12.2018 and executed latest by 31.12.2019. Further order was passed on 16.01.2019 and thereafter several orders, including orders dated 17.07.2019, 12.09.2019 and 07.01.2020 have been passed. It is in the light of the said orders that Secretary, Local Bodies, Govt. of Kerala was expected to furnish a meaningful report which has not been done. On 10.01.2020, progress was reviewed in the case of some of the States in the presence of their respective Chief Secretaries and directions were issued:

“36. We accordingly direct:

- a. In view of the fact that most of the statutory timelines have expired and directions of the Hon'ble Supreme Court and*

¹ O.A. No. 199/2014 (2016) SCC Online NGT 2981

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 28² even though 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,*

² 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 reason why the same should not happen earlier, in view of serious implications on the environment and public health.

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.*

The Chief Secretaries of UP, Punjab and UT Chandigarh may remain present in person for further review tentatively on 24.08.2020.

A copy of this order be sent to Chief Secretaries of UP, Punjab and UT Chandigarh, CPCB and Chairman of Committee constituted by this Tribunal in States of UP, Punjab and UT Chandigarh by e-mail. CPCB may put all Local Bodies and other concerned Departments of all the States in the country to notice for compliance."

- 6. In view of above, the State of Kerala and its authorities have to take meaningful action in above terms.
- 7. In view of unsatisfactory state of affairs noticed above, let the Secretary, Urban Development, Kerala remain present in person on the next date with tangible progress failing which this Tribunal may

be left with no other option except to take stringent measures for enforcement of law as per the provisions of the NGT Act, 2010.

List again on 28.02.2020.

A copy of this order be sent to the Secretary, Urban Development, Kerala by e-mail.



Adarsh Kumar Goel, CP

S.P Wangdi, JM

Dr. Nagin Nanda, EM

Siddhanta Das, EM

January 24, 2020
Original Application No.514/2019
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