

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

(HYBRID MODE)

Original Application No. 147/2022
(I.A. No. 113/2023)

Krishna Das K V

Applicant

Versus

State of Kerala

Respondent

Date of hearing: 22.03.2023

**CORAM: HON'BLE MR. JUSTICE ADARSH KUMAR GOEL, CHAIRPERSON
HON'BLE MR. JUSTICE SUDHIR AGARWAL, JUDICIAL MEMBER
HON'BLE DR. A. SENTHIL VEL, EXPERT MEMBER**

Respondent: Dr. Venu V., ACS (Environment) with Mr. Nishe Rajen Shonker
& Mr. Alim Anvar, Advocates for the State of Kerala
Mr. Jogy Scaria, Advocate for KSPCB

ORDER

1. Grievance in this application is against failure of statutory and administrative authorities in the State of Kerala to take remedial action for protecting Ashtamudi Wetland and Vambanad-kol wetland, which are Ramsar sites in Kollam district of Kerala. The said Wetlands have become polluted drains of the city due to dumping of pharmaceutical waste, plastic waste, domestic waste, slaughter-house waste and innumerable other sources. Kollam canal leads to National Water Highway. Ashtamudi wetland and Vembanad wetlands are protected under Ramsar Convention. These wetlands provide habitat for a considerable number of flora and fauna and migratory birds. The Authorities have been neglecting the situation for decades. Canal passes right through the centre of the city

which is less than a kilometer from District Collectorate and other government offices.

2. The matter was considered on 28.02.2022 and considering the seriousness of the situation and violation of Wetland Rules, 2017 and other norms and directions of the Hon'ble Supreme Court *inter-alia* in *Paryavaran Suraksha case*¹ and *M.K. Balakrishnan & Ors. v. Union of India & Ors*², the Tribunal directed the Chief Secretary, Kerala to hold a meeting with the concerned Departments and file an action taken report.

3. The matter was then considered on 23.08.2022 in the light of report dated 17.08.2022 filed by the State PCB acknowledging pollution of Ashtamudi Wetland lake by discharge of untreated sewage and other waste. Such pollution was established from analysis report of samples. The report also mentions that pollution was also added by boat breaking and burning of waste. In respect of Vambanad-kol wetland also pollution was acknowledged. Sources of pollution included discharge from house boats for which remedial action had to be taken by the DTPC. Other sources were waste from houses, shops, commercial establishments and industries in 10 Panchayats and 2 Municipalities which are sharing boundary with other 62 Panchayats and 4 Municipalities. The Tribunal directed that as follows:-

“1to7...xxx.....xxx.....xxx

8. *From the above, it stands established that serious violation of Water (Prevention and Control of Pollution) Act, 1974 as well as Wetland (Conservation and Management) Rules, 2017 and judgments of the Hon'ble Supreme Court inter-alia in Paryavaran Suraksha case³ and M.K. Balakrishnan & Ors. v. Union of India & Ors⁴ is taking place and remedial action taken is inadequate. Further action needs to be taken in a mission mode with the involvement of authorities at higher*

¹ (2017) 5 SCC 326

² (2017) 7 SCC 805

³ (2017) 5 SCC 326

⁴ (2017) 7 SCC 805

level. There is need to set up a Monitoring Committee headed by Additional Chief Secretary, Environment with other members being the Director Tourism, Director Local Bodies, Director Industries, Director, Panchayat, Kerala Coastal Zone Management Authority, State PCB, CPCB, and State Wetland Authority. The State PCB will be the nodal agency for coordination and compliance. The Committee may hold its first meeting within one month and prepare its Monitoring Plan which may include coordination with concerned Departments, raising of necessary funds by recovering Environmental Compensation from the violators and preventing the violations. A restoration plan may be prepared which may take care of cost of restoration and measures to be adopted and also the manner of execution. The monitoring may be conducted at least on fortnightly basis and minutes of the meeting may be placed on the website of the State PCB. The Committee will be at liberty to co-opt any other person and take assistance from any other Expert/Institution. It may undertake visit to the sites and interact with the stake holders.

9. The Additional Chief Secretary, Environment may remain present in person on the next date with the action taken report.”

4. The matter was last considered on 06.01.2023 in the light of further report dated 04.01.2023 filed by the ACS, Environment. The Tribunal found that virtually no step had been taken and no monitoring has been done. The Tribunal accordingly directed filing of an action taken report. Relevant extracts from the said order are reproduced below:-

“1to11.xxx.....xxx.....xxx

12. Perusal of the report shows that there is virtually no effective steps taken at the ground and only some paper work has taken place by the authorities. Nothing has been said as to whether Monitoring and Restoration Plans have been prepared as directed by Tribunal specifically by order dated 23.08.2022 and it also does not appear that minutes of the meeting of the Monitoring Committee which was directed to be conducted at least on fortnightly basis, have been placed on the website of State PCB.

13. The present report submitted by the Additional Chief Secretary is not at all a compliance of Tribunal’s order dated 23.08.2022.

14. We also place on record our disapproval to the conduct shown by the Additional Chief Secretary who is not present in the Tribunal today, though it was clearly directed by this Tribunal by order dated 23.08.2022. No appropriate reason has been placed before Tribunal, and as we have already said, the report is short of effective compliance of Tribunal’s order. There is nothing to show that any Integrated Coastal Zone Management Plan in compliance with Critical Vulnerable Coastal Area has been prepared, though the sites in question are unserved sites in the Coastal area of the State of Kerala. Every day pollution is continuing and being added to the sites in

question which is a criminal offence and therefore, everyday offence is being committed without there being effective and meaningful steps for regulations shown by the authorities concerned.

15. We strongly disapprove this approach and conduct on the part of Additional Chief Secretary, Environment Department, Kerala and the manner in which the order of this Tribunal has been violated and disobeyed cannot be accepted. We were inclined to issue Bailable Warrant in the circumstances above but Learned Counsel appearing for State of Kerala assured that an effective detailed report within a reasonable time shall be submitted and order of Tribunal shall be complied with in words and spirit.

16. Considering, this assurance given by learned Advocate, we give a last opportunity to Additional Chief Secretary, Environment, State of Kerala to submit a meaningful and effective action taken report showing compliance of Tribunal's order dated 23.08.2022 effectively and steps taken by it on the ground level also for curbing continued damage to Ramsar sites in question and also for restoration of the damage already caused.

17. Let such action taken report be submitted within two months 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 and on the next date Additional Chief Secretary, Environment shall also appear in person.”

5. In pursuance of above, an action taken report has been filed on 21.03.2023 by the ACS, Environment, Kerala which is reproduced below:-

“2. It is submitted that taking stock of the importance of the situation and to evolve a restoration plan , earnest efforts were taken / being taken at Chief Secretary and Additional Chief Secretary (Environment) level for the abatement of pollution of Ashtamudi and Vembanadu Wetlands. Vemaband lake and Ashtamudi lake are situated in the urbanized area of the Kerala State. One Corporation, seven Municipalities and 35 panchayaths are situated near the Vembanad lake and One Corporation and 1 panchayaths are situated near to the Ashtamudi lake.

3. The monitoring Committee was constituted vide G.O (Rt)No.95/2022/Env. dated 13.12.2022 as per order of this Hon'ble NGT dated 23.08.2022. The Committee meetings were conducted on 21.12.2022, 4.1.2023, 23.01.2023 and 25.2.2023. A meeting was held by Chief Secretary with the stake holder departments and authorities on 3.2.2023 in this regard (Minutes in Annexure-1). Field visit by this committee was conducted in Vembanad lake and the surrounding area to assess the progress on 23.02.2023. A copy of the field visit report is attached as Annexure-2-);

4. It is submitted that since the issue requires multi departmental level intervention, meetings with the stakeholders namely Kerala State Pollution Control Board(KSPCB), Kerala Water Authority(KWA)

Sewerage circle, Irrigation Department, Regional Joint Director Of Urban Affairs, Ernakulam, Harithakeralam Mission, Suchitwa Mission, Greater Cochin Development Authority (GCDA), Kochi Municipal Corporation, Kochi Metro Rail Limited (KMRL), Kalamassery Municipality were conducted on 11.01.2023 and 21.01.2023(Annexure-3). Public awareness programme was also conducted on 21.01.2023 for creating awareness among the Kerala Hotel & Restaurant Association (KHRA), Residents Associations Apex Council and representatives of the Establishments/Residential apartments on the need to protect water bodies. Copy of the minutes is submitted as Annexure- 4.

5. It is submitted that a format for action plan for restoration of two Ramsar sites was prepared by the Member Secretary, Kerala State Pollution Control Board , and circulated among Kochi and, Kollam Corporation, Municipalities, and Gramapanchayats vide letter dated 18,1.2023(Annexure- 5).Separate restoration plan was prepared for each urban local bodies and for Gramapanchayaths. Copy of the restoration plan is attached as Annexure-6. Meetings via video conferencing conducted by KSPCB for all municipalities and Grama panchayats and the urgent need to provide proper waste management facilities was brought to their attention on 10.02.2023 & 16. 02.2023. Minutes of the meeting is attached as Annexures- 7.

6. It is submitted that in order to stop the discharge of untreated waste water from establishments, inspections were conducted by the local bodies and the KSPCB to identify the apartments/establishments located along the banks of the canals and along the banks of the drains leading to the canal. Notices were issued by the local bodies and the KSPCB to flats, commercial establishments, hotels, resorts, house boats, industrial units etc., which have not provided sewage treatment facilities to ensure that liquid waste is treated to the prescribed standards. Board has taken actions in this regard and 1176 notices under the provisions of Water Act has been issued to apartments/ hotels/ houseboats/ industrial units for not having valid consent from the Board/ no sewage treatment plant / non-functional sewage treatment plant so far. In Alappuzha district' a total of 790 notices were issued including Closure Intention Notice and Consent Withdrawal Intention Notice were issued to 624 houseboats, 112 Closure Intention Notices and 54 Show Cause Notices were issued to other units including peeling shed/ resorts/ hotels for illegal discharge (unauthorized units) coming into the water bodies reaching Vembanad lake. A total of 167 apartments/ restaurants are served notice in Ernakulam district. The list of the units in Ernakulam district is submitted as Annexure-8. In Kottayam notices were issued to 215 units including 106 house boats and 109 apartments/ hotels/ restaurants/ auditorium/ lodge/ service station/ nursing homes. In Kollam district, 2 Closure Intention NOtice and 2 show cause notices were issued to units functioning without Consent & not having proper STP. Direction was also issued to Secretary, Neendakara Grama Panchayath as wastewater discharge was noticed from fish peeling sheds in Neendakara.

7. It is submitted that 209 notices were issued by LSGIs based on the inspections conducted both day and night for not providing STP and not functioning STPs. 1939 illegal outlets were closed by LSGIs. A total amount of Rs.1,74,82,635/-was imposed as fine against illegal dumping of wastes ,single use plastic and illegal outlets . The details are given as Annexure-9.

8. The Board issued Notice under Section 33A of the Water (Prevention and Control of Pollution) Act, 1974 to Kochi Corporation, Kollam Corporation and to seven Municipalities namely Vailcom, Thrippunithura, Marad, Cherthala, Alappuzha, Aluva ' and Kalamassery to show reasons for not levying Environmental Compensation for the failure to prevent the pollutants being discharged in water bodies and failure to implement waste management act/ rules, as per order of Hon'ble NGT in OA No. 593/2017(Annexure-10).

9. Setting up of waste treatment plants.

It is submitted that in the meeting held by Chief Secretary on 3.2.2023 decision was taken for the speedy implementation of STP /13TP / FSTP projects so as to treat the rubbish solid and liquid wastes at root level. The implementation of these projects (noted below), its progress etc. are reviewed 'on a monthly basis by Chief Secretary in the meeting of River Rejuvenation Committee and Stake holder Departments/ Authorities as per projects taken up in the matter of another NGT Order in OA No. 673 of 2018,

(a) 12 STP Plant at Kurrepuzha.

It is submitted that steps have been initiated to remove the legacy waste at Kurrepuzha, one of the major causes of pollution of Ashtamudi and it is in the final stage.76 % of the work has been completed.

(b) STP at Elamkulam

It is submitted that in Kochi, besides the two septage treatment plants at Brahmapuram and Wellington island, there are two common STPs (5 MLD STP at Elamkulam of Kerala Water Authority and 750 KLD STP of GCDA at Kaloor) and at present only 3 MLD capacity is utilized in Elamiculam plant and 30 KLD in Kaloor plant. For the full utilization of common STPs at Elamilculam and Kaloor, actions taken by Kerala Water Authority and GCDA are progressing and expected to complete by 31.05.2023. Registration of private tankers for carrying sewage from establishments which have no treatment facility to the above common STPs has been started. Direction issued by the Government to complete the registration along with GPS tracking system by 13.04.2023. This will lead to reduction of untreated effluent reaching the lake thereby improving water quality. The matter is being closely monitored. Desilting of Edappalli canal is also progressing.

Railway station at Ernakulam Junction is identified as one of the major contributor of pollution in Perandoor canal. Though Integrated Consent to Operate was .issued to Railway station at Ernakulam Junction valid upto 31/03/2023 with a condition to set the Sewage Treatment Plant, STP is not yet provided and also the area behind the loco shed situated in the South Railway station is contaminated

with oil. Several instructions/ notices had been issued to the railway authorities from the Board. No action has been initiated for the remediation of oil contaminated area till date. The matter has been brought to the notice of the Central Pollution Control Board. (Annexure-11).

(c) House Boats

It is submitted that to find out unauthorized house boats, the Port office Alappuzha was instructed by the Board on 22.12.2022 for providing list of house boats and as per reply 821 houseboats are registered under Alappuzha and Kottayam district. Instruction was then given on 16/02/2023 to District Tourism Promotion Council Kollam, Alappuzha, Kottayam and Kerala Maritime Board to ensure treatment of wastewater generated in house boats and to take action against unregistered houseboats (Annexure-12). Meetings: were also conducted for stake holders namely, Tourism Department, KSPCB and all – Houseboat Owners Association and decided that the food and plastic wastes from house boats are to be collected by an authorized agency, appointed by DTPC.

d) ETP in Railway stations

It is submitted that DPRs prepared by Kochi Metro Rail Limited duly vetted by CUB13.-IIT Chennai for STPs and sewer line at Mutter, Perandoor, Vennala, Elamkulam for an amount of Rs,324.28 Crore, Rs.232.68 Crore, Rs. 499,26 Crore Rs.367.63 Crore respectively were (forwarded to the Secretary, Ministry of Jal Sakti for the consideration of getting fund under NRCD. These STPs will lead to great improvement of water quality or the canals and water bodies connected to Vembanad lakes. Copy of the letter is attached as Annexure-13).

10. As per the order of Hon'ble NGT (SZ) in OA 2712021 dated 02.02.2023, it is directed that temporary measure like Phytorid Wastewater Treatment Technology which is developed by the NEERI" can be considered till the completion of permanent works. Accordingly NEERI was addressed for reporting whether the study can be taken up by NEERI and they expressed willingness to provide scientific and technical support. Further NEERI officials made an online presentation on'13.03.2023 to the officials of local bodies, Suchitwa mission and KSPCB. The Director, NEERI has been addressed for providing support by sending concerned Scientist to the state to study the suitability of such projects in Kerala condition. Copy of minutes and letter is submitted as Annexure-14. Further action is being taken in this regard.

11. Coastal Zone Management Plan-2019

It is submitted that steps are being taken to finalize coastal zone management plan of 10 coastal Districts in the state. The task has been assigned to NCESS (National Centre for Earth Science Studies). It is expected that NCESS shall submit the draft plan .by the end of June 2023 (Annexure-15).

*12. Materials removed from Ashtamudi and Vembanadu Lakes
It is submitted that the Clean Kerala Company Limited: (CKCL) has collected legacy materials, recyclable materials from the local*

bodies surrounding Ashtamudi and Vembanadu Wetlands. The CKCL from 2020-21 to 2022-23 has collected a total of 977678 Kg from Ashtamudi and 2885475 Kg waste from Vembanadu lakes (Annexure-16).

13. *Projects by local body institutions.*

The local self-governments have initiated effective projects for abating pollution of Ashtamudi and Vembanadu lakes through various projects (Annexure -17).

14. *Regarding monitoring of the plan, it is humbly submitted that efforts were being taken to ensure the water quality of the lakes within limit on monthly basis by KSPCB as given below:-*

<i>Lake</i>	<i>Stations</i>	<i>Parameters</i>	<i>Frequency</i>
<i>Vembanad lake</i>	<i>11</i>	<i>pH, Ec, DO, BOD, TC, FC</i>	<i>Monthly</i>
<i>Ashtamudi</i>	<i>5</i>	<i>pH, Ec, DO, BOD, TC, FC</i>	<i>Monthly</i>

15. *The analysis report for Vembanad Lake for the year 2022 is attached as Annexure-IS. As per the Primary Water Quality Criteria for Bathing Water, Fecal Coliform count of 500MPN/100ml is desirable, with a value of 2500MPN/100ml being maximum permissible limit. Thus with respect of annual average Fecal Coliform Count for the year 2022, all the locations can be classified as '13', i.e. for organized outdoor bathing. The latest analysis report of Ashtamudi lake for the month of February 2023 is attached as Annexure-19."*

6. We have interacted with ACS, Environment present by VC and considered the report.

7. It is self-evident that pollution of lakes is still continuing. Water quality data of Ashtamudi lake during February, 2023 indicates that BoD level at Thoppilkadavu and KSRTC are in the range of 13.0 mg/l. Since these two locations appears to be critical, reasons for the same may be identified and remedial measures taken. Notices have been issued to the Local Bodies, owners of flats, establishments, hotels, resorts, house boats and industrial units -1176 in number. 790 notices have been in issued in Alappuzha, 167 in Ernakulam, 215 in Kottayam and 4 notices in Kollam. 209 notices were issued to LSGIs based on inspection for not providing functional STPs. 1939 illegal outlets were closed by LSGIs. Compensation of 1,74,82,635/- was levied against illegal dumping of waste etc. Notices

under Section 33A of the Water Act have been issued to 2 Corporations and 7 Municipalities for compensation for failing to prevent discharge of pollutants as per order of this Tribunal in O.A. No. 593/2017. Decision has been taken for installation of pollution control devices. Estimates for remedial measures have been sent to Ministry of Jal Shakti for control discharge by the Metro Rail.

8. The above report depicts disappointing state of affairs in doing mandatory duty of protecting wetlands which are Ramsar sites inspite of binding orders of the Hon'ble Supreme Court in *Paryavaran Suraksha case*⁵ and *M.K. Balakrishnan & Ors. v. Union of India & Ors*⁶. Action taken at the State level is also inadequate to remedy the situation. State cannot plead helplessness in implementing guaranteed rights of the citizens and also in taking stringent measures for protection of environment and public health. For gross failure of the State in overseeing remedial measures by its Departments/Authorities, we require the State to pay compensation of Rs. 10 Crores on Polluter Pays principle to be deposited in ring-fenced account to be operated under the Authority of Chief Secretary, Kerala. Such deposit may be made within one month. The above amount of Rs. 10 Crores be utilized for conservation/restoration measures by preparing an action plan to be preferably executed within six months It will be open to the Chief Secretary to collect the amount from erring officers/departments/ industries/individuals in accordance with law by an appropriate mechanism and hold erring officers appropriately accountable departmentally or by way of prosecution and also to proceed against other entities, railways, local bodies and industries. This may be ensured

⁵ (2017) 5 SCC 326

⁶ (2017) 7 SCC 805

preferably within three months. The Action plan may cover integrated approach and delineated with time bound mitigation plan.

9. The State PCB and State Wetland Authority may exercise their statutory powers in sync with the action of other Authorities, in pursuance of above order. The ACS, Environment may monitor progress of the action plan atleast once in a month and place the minutes of meeting at the website of the State. The Chief Secretary may hold a review meeting atleast once in a quarter.

10. Action taken report of progress on expiry of six months be filed with the Registrar General of this Tribunal by email at judicial-ngt@gov.in preferably in the form of searchable PDF/ OCR Support PDF and not in the form of Image PDF on or before 31.10.2023. If found necessary, the matter be placed before the Bench for further directions.

Subject to above, the application is disposed of. I.A. No. 113/2023 also stands disposed of.

A copy of this order be forwarded to the Chief Secretary, Kerala, State Wetland Authority and State PCB by email for compliance.

Adarsh Kumar Goel, CP

Sudhir Agarwal, JM

Dr. A. Senthil Vel, EM

March 22, 2023
Original Application No. 147/2022
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