

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE THE CHIEF JUSTICE MR.S.MANIKUMAR

&

THE HONOURABLE MR.JUSTICE MURALI PURUSHOTHAMAN

THURSDAY, THE 16TH DAY OF MARCH 2023 / 25TH PHALGUNA, 1944

WP(C) NO. 41627 OF 2022

PETITIONER/S:

- 1 ADV.RICHARD RAJESH KUMAR,
AGED 25 YEARS
PADAMATTUMMAL HOUSE, CHERAI PO., ERNAKULAM683514.
- 2 ARJUN.P.BHASKAR,
ANGEL'S GARDEN, COMAPANYPADI ROAD, NEAR
POICKATTUSERY LP SCHOOL, CHENGAMANAD PO.,
NEDUMBASSERY, KOCHI-683 578.
BY ADVS SUNIL JACOB JOSE
AJIT M.S.

RESPONDENT/S:

- 1 STATE OF KERALA,
REPRESENTED BY ITS CHIEF SECRETARY, SECRETARIAT,
THIRUVANANTHAPURAM-695001.
- 2 UNION OF INDIA,
REPRESENTED BY ITS SECRETARY, MINISTRY OF HOUSING
AND URBAN AFFAIRS, GOVERNMENT OF INDIA, ROOM
NO.308, C WING, NIRMAN BHAVAN, MOULANA AZAD ROAD,
NEW DELHI-110011.
- 3 THE ADDITIONAL CHIEF SECRETARY TO THE GOVERNMENT,
LOCAL SELF GOVERNMENT DEPARTMENT, 5TH FLOOR,
SECRETARIAT ANNEX-I, THIRUVANANTHAPURAM-695001.
- 4 THE PRINCIPAL DIRECTOR,
PRINCIPAL DIRECTORATE, LOCAL SELF GOVERNMENT
DEPARTMENT, SWARAJ BHAVAN, 5TH FLOOR,
NANTHANKODE, KAWADIAR PO., THIRUVANANTHAPURAM -
695 003.
SMT. K. R. DEEPA, SPL. GP.

**THIS WRIT PETITION (CIVIL) HAVING COME UP FOR
ADMISSION ON 16.03.2023, THE COURT ON THE SAME DAY
DELIVERED THE FOLLOWING:**

J U D G M E N T

S. Manikumar, C. J.

When the matter came up for admission, on 21.12.2022, we passed the following order:-

“Instant writ petition has been filed by the petitioners, seeking the following reliefs:-

“i. Call for the records leading to submission of Ext.P1;

ii. Issue a writ of mandamus any other appropriate writ or order compelling the 1st respondent to immediately constitute the Metropolitan Planning Committee for the Metropolitan area of Kochi, as mandated in Article 243 ZE, through the 74th constitutional amendment of the Constitution of India;

iii. Issue a writ of mandamus or any other appropriate writ directing the 1st respondent to take immediate steps for the formation of Kochi Metropolitan Development Authority, for the purpose of implementing, coordinating and supervising the orderly development of the Kochi Metropolitan area;

iv. Direct the 1st respondent to consider Ext. P1 representation and pass appropriate orders thereon, within a time frame to be fixed by this Hon'ble Court, in the interest of justice.”

2. Short facts leading to the filing of the writ petition are

as under:-

2.1. Petitioners have submitted that the 74th Constitutional amendment introduced Article 243 ZE to the Constitution of India, which mandated the States to constitute a Metropolitan Planning Committee (MPC), for preparing a draft development plan for metropolitan areas as a whole in every metropolitan area in India, with a population of 10 lakhs or more. The Kochi metropolitan area qualifies the stipulation for the purpose of constitution of MPC.

2.2. Petitioners have further submitted that the State of Kerala, represented by its Chief Secretary, Thiruvananthapuram, the 1st respondent, has failed to undertake the constitutional mandate, in spite of the lapse of 30 years of the amendment. Petitioners, natives of the city of Kochi, and being public spirited, submitted Ext. P1 representation dated 03.09.2022 before the 1st respondent, with a request to establish a MPC for undertaking the urban planning for the orderly development of the Kochi metropolitan area, with an additional prayer to establish a statutory body called Kochi Metropolitan Development Authority (KMDA), for implementing, coordinating, and supervising the orderly development of Kochi region within the Kochi Metropolitan area.

2.3. Petitioners have also submitted that the 1st respondent has failed to fulfill the constitutional mandate on its own, nor acted on being prompted through Ext. P1 representation dated 03.09.2022.

3. Ms. K. R. Deepa, learned Special Government Pleader, takes notice on behalf of the State of Kerala, represented by the Chief Secretary, Thiruvananthapuram, the Additional Chief Secretary to the Government, Local Self Government Department, Thiruvananthapuram, and the Principal Director, Local Self Government Department, Thiruvananthapuram, respondents 1, 3 and 4 respectively.

4. Mr. Jaishankar V. Nair, learned Central Government Counsel, takes notice for the Union of India, represented by its Secretary, Ministry of Housing and Urban Affairs, New Delhi, the 2nd respondent.

Ms. K. R. Deepa, learned Special Government Pleader submitted that as on today, Committee as envisaged under Article 243ZE has not been constituted. She seeks time to get instructions.

2. On 13.02.2023, when the matter came up for further hearing, we passed the following order:-

“Earlier, in our order dated 21.12.2022, we have pointed out the constitutional mandate under Article 243ZE of the Constitution of India, to constitute Metropolitan Planning Committee in every Metropolitan area. Needless to state, the opening sentence of Article 243ZE dealing with the Constitution of Committee for Metropolitan Planning reads as follows: “There shall be constituted in every Metropolitan area a Metropolitan Planning Committee to prepare a draft development plan for the

Metropolitan area as a whole”.

2. On this day, when the matter came up for hearing, Ms.K.R. Deepa, learned Senior Government Pleader submitted that, in this regard, policy decision has to be taken.

3. *Per contra*, referring to the Constitutional amendment, which came into existence on 1993, Mr. Sunil Jacob Jose, learned counsel for the petitioners submitted that, though nearly two decades is over, Government does not come with a positive direction to constitute a committee, as stated supra.

4. It is expected that the Constitutional mandate has to be implemented in letter and spirit and in this regard, we direct the respondents to come out with appropriate instructions.”

3. A detailed counter affidavit dated 01.03.2023 has been filed by the Additional Chief Secretary to the Government, Local Self Government Department, Thiruvananthapuram, the 3rd respondent, which is reproduced:-

2. The Writ Petition is filed seeking a direction to the 1st respondent seeking the constitution of the Metropolitan Planning Committee of Kochi for the metropolitan area of Kochi as mandated

in **Article 243ZE** and the setting up of a **Special Purpose Vehicle (SPV)** in the form of a **Kochi Metropolitan Development Authority (KMDA)** to undertake developmental activities in the metropolitan area.

3. At the outset I apologise for the delay in filing the Counter Affidavit, as I have not been able to attend to office work for more than last 6 weeks on account of injuries pursuant to a road accident on 09.01.2023 and it is prayed that the delay in filing the counter affidavit may be excused. The following facts are brought for the kind consideration of this Hon'ble Court.

4. It is respectfully submitted that **Article 243ZE** of the Indian constitution does mandate setting up of a metropolitan planning committees for metropolitan areas of over 10 lakh population that are notified as such by the State Government. So the Ernakulam metropolitan area was indicated by the Government vide **GO (Ms)No.256/95/LAD dated 14.11.1995** which is notified in the Gazette as **SRO 1435/95 on 04.12.1995**.

5. It is also submitted that besides the above mentioned metropolitan area, other configurations for various developmental and planning purposes have also been effected – for the Greater Cochin Development Authority (**GCDA**), the Goshree Island Development Authority (**GIDA**), the Jawaharlal Nehru Nation Urban Renewal Mission (**JNNURM**) and Basic Services to the Urban Poor (**BSUP**) projects for infrastructure and basic services, the Kochi urban agglomeration under the 15th Central Finance Commission Award for

50 million plus cities that were an agglomeration of various local self government areas based on census data.

6. It is submitted that the listing of the metropolitan area was a convenient clustering of proximate Local government areas and not necessarily based on the nature of outward urbanisation, which is borne by the fact that the urban agglomeration identified by the 15th Central Finance Commission (CFC) based on the 2011 census of urban towns and their out growths (adjoining areas) identifies another set of urbanising spaces around Kochi with partial overlap.

The table below shows the comparison and jurisdiction overlap/exclusion in respect of the various entities including the Ernakulam metropolitan area:

	Name of LSG	MPA	GCDA	GIDA	UA
1	Kochi Corporation	*	*		*
2	Thrippunithura municipality	*	*		*
3	Perumbavoor municipality	*	*		*
4	Kalamassery municipality	*	*		*
5	Paravur municipality	*	*		*
6	Aluva municipality	*	*		*
7	Angamaly municipality	*	*		*
8	Eloor panchayat	*	*		*
9	Pallipuram	*		*	*
10	Kuzhupilly	*		*	
11	Edavanakad	*		*	*
12	Nayarambalam	*		*	
13	Mulavukad	*		*	*
14	Cheranallur	*	*		*
15	Kadamakudy	*		*	*

16	Varapuzha	*	*		*
17	Kottuvally	*	*		*
18	Ezhikkara	*	*		*
19	Kadungallur	†	†		*
20	Alangad	*	*		*
21	Choornikara	*	*		*
22	Edathala	*			
23	Keezhmadu	*	*		
24	Sreemoolanagaram	*	*		*
25	Chengamanadu	*	*		*
26	Nedumbassery	*	*		*
27	Kanjoor	*	*		*
28	Vazhakkulam	*	*		*
29	Chellanam	*	*		*
30	Thrikkakara	†	†		*
31	Vadavukodu Puthenkurishu	*	*		*
32	Thiruvankulam	*			
33	Chottanikkara	*	*		*
34	Mulanthuruthy	*	*		*
35	Maradu	*	*		*
36	Udaympoor	*	*		*
37	Kumbalam	*	*		*
38	Kumbalangy	*	*		*
39	Elamkunnappuzha	*		*	*
40	Chittattukara				*
41	Koovapady				*
42	Okkal				*
43	Vengola				*
44	Rayamangalam				*
45	Kunnathunadu				*
46	Thiruvaniyur				*

47	Kalady				*
48	Malayattoor				*
49	Edathala		*		*
50	Puthenvelikara				*
51	Kunnukara				*
52	Chendamangalam				*
53	Vadakkekkara				*
54	Karamaloor				*
55	Njarakkal			*	*
56	Amballoor				*
57	Vypin			*	*

The metropolitan areas are in **black** font excepting areas which are missed out in the Urban Agglomeration (UA) that are shown in **blue**. Areas in the UA which do not figure in the Metropolitan area are shown in **red**.

7. It is also submitted that while 39 Local governments fall within the purview of the Ernakulam metropolitan area, only 34 of them are within the urban agglomeration. The urban agglomeration has an additional 18 panchayats that are missing in the metropolitan area. The GCDA and GIDA have 31 and 9 LSGs respectively within their jurisdiction.

The Government is seized of the rapid urbanising nature in and around Kochi as well as other areas, and also of the fact that urban growth necessitates a new approach to the development on account of multiple peculiarities of urbanising populations – the issues arising out of enhanced population density, the pressure on utilities, the load on public infrastructure, the need

for climate resilience and adaptability, the need to accommodate transitory population and intensive migration etc., based on which it has been decided to come out with a detailed urban policy. It is also a fact that the system of urban administration needs to gear up to the increased demand for services. The financial and technical resources available to the local governments to take on the responsibilities that are attendant to rapid urbanisation also would need to be substantially augmented and urban reform to enable generation of resources including optimal leverage of land resources and ability to avail institutional finance is being contemplated. Incorporating the newest understanding of urban design into the template of urban governance, including spatial and agile planning and smart technologies is also essential to equip local governments to deliver effectively on these fronts. **Constitution of expert committee for providing insight and inputs for the formulation of the urban policy of the State is underway.** The committee's mandate would include looking into growth clusters including metropolitan areas and providing specific suggestions for effective operationalisation.

8. **It is submitted that at present the responsibility of preparation of development plan is vested with another constitutional entity, the District Planning Committee. The State of Kerala was among the first to constitute the District Planning Committee (DPC) in the spirit of the provision of the Indian Constitution Article 243ZD. The State Government also augmented**

the responsibility of the DPC from preparation of the draft district plan amalgamating the urban and rural plans as envisaged in the Constitution to the approval of all annual local Government plans, coordination of inter LSG interventions, monitoring of plan implementation and progress, and leadership in respect of large development and welfare interventions. All district officers involved in developmental activities are ex officio joint secretaries to the DPC. The DPC is headed by the District Panchayat President, and has representation of both urban and rural local Governments. MLAs are permanent invitees to the DPC. The District collector is ex officio member secretary of the DPC. The DPC Secretariat is headed by the District Planning Officer. The roles and functions of the DPC have been developed and finetuned over 26 years of decentralised governance in Kerala. The DPCs have also prepared District Plans as per Government directions through a detailed process of consultation and feedback. **The Ernakulam District Plan was finalised and published in 2018 and is available on the website of the State Planning Board.** 24 subject committees had been constituted for various subjects including Urban development and Migration, and Infrastructure. The district plan was finalised after a series of interactions and seminars at the District and State level.

9. It is further submitted that the Committee on Decentralisation of Powers, the Sen committee, which was the first State Finance commission of the State in the wake of the constitutional amendment enabling local governance had deliberated the matter of the Metropolitan Planning Committee (MPC). The

10. It is submitted that **the Kerala Municipality Act 1994, Section 54 mentions the metropolitan committee and the Kerala Metropolitan Planning Committee Rules 1995 stipulate the structure and function of the Metropolitan Planning Committee.** However in view of the Sen Committee observations these were not further acted upon.

11. It is further submitted that the responsibility already being undertaken by the District Planning Committee for the entire district including the metropolitan area is what is expected of the Metropolitan Planning Committee (MPC) as per the Indian Constitution. **As per the Constitution, every Metropolitan Planning Committee shall, in preparing the draft development plan, —**

(a) have regard to —

- i. the plans prepared by the Municipalities and the Panchayats in the Metropolitan area;**
- ii. matters of common interest between the Municipalities and the Panchayats, including co-ordinated spatial planning of the area, sharing of water and other physical and natural resources, the integrated development of infrastructure and environmental conservation;**
- iii. the overall objectives and priorities set by the Government of India and the Government of the State;**
- iv. the extent and nature of investments likely to be made in the Metropolitan area by agencies of the Government of India and of the Government of the State and other available resources whether financial or otherwise;**

Committee report, which was approved by the Government, states as follows:

“The Committee on Decentralisation of Powers feels that unless a metropolitan area spans across the jurisdiction of more than one District, there is no need of a Metropolitan Planning Committee. Such a Committee for a single District would only create confusion vis-à-vis the functions of the District Planning Committee. Therefore for the moment there is no need to create Metropolitan Committees in Kerala.”

The context of this observation was also the intensive exercise that was taken by the State Government for devolution of funds, functions and functionaries to local governments, the highest undertaken by any State in India in compliance with the constitutional mandate of empowering the three tier panchayats and Municipal bodies. The challenge was to ensure the autonomous decision making by Local Self Governments while at the same time ensuring that National and State priorities, policies, and due process were ensured. Guidelines for plan formulation, decision making and integration across departments and sectors and across local self governments were issued and improved upon an annual basis based on the experience from the ground which has become the framework for the functioning of the DPC (which has been mandated by the State to ensure the same).

12. It is submitted that **the method by which the MPC can undertake such responsibilities without adversely affecting another, an already functional constitutional entity, has to be worked out.** The complementarity of the metropolitan plan with the district plan, the overlap of functions between the DPC and MPC, the channelising of funds, ensuring that the operational template is equitable and does not swallow the smaller local self governments, synchronising of priorities that are now enunciated through the DPC (for example taking up disaster management plans, planning for elimination of extreme poverty, local economic development initiatives, inter LSG coordination of liquid waste management projects etc) – all these have to be articulated in such a manner as to strengthen both entities rather than replace one with the other.

13. It is further submitted that the Niti-Aayog has highlighted the non-availability of the following in the context of urban governance:

- An inter-agency coordination mechanism, including special purpose vehicles (SPVs), for effective delivery.
- A solid spatial plan that serves as an overall framework for smart city planning and implementation.
- Intelligent mechanisms for amplifying the voices of the urban poor, slum dwellers, migrants, and other marginalized citizens.
- A digital master plan, also known as a digital strategy and road map.

- Decision-making based on data for service delivery and resource sustainability.
- Access to skilled human resources to handle a variety of functional domains.
- Financing smart cities and ULB financial sustainability

14. It is also submitted that to properly grapple with disaster management, mobility, housing, climate change, and other issues that transcend municipal boundaries, regional-level, solutions are necessitated.

In the meanwhile the 15th Central Finance Commission Award stipulated a special dispensation for Urban Agglomerations that were identified based on the 2011 Census. These urban agglomerations were provided funds and had to undertake interventions for drinking water and waste management in an integrated fashion looking to the growing needs of urbanising cities and adjoining areas. In order to effect the same, while at the same time retaining the resilience of the DPC, a Joint Planning committee has been constituted by the State Government for the Kochi Urban Agglomeration. This committee is responsible for developing integrated plans for improving the quality of service in the sectors of drinking water, sanitation, and solid waste management for which Central Finance Commissioner (CFC) funds are provided to the urban agglomeration. The Kochi Corporation Mayor is the Chairperson and the Kochi Corporation Secretary is the Convenor of the Joint Planning Committee (JPC). The Municipal

chairpersons and Panchayat Presidents of all the LSGs in the UA and the corresponding Block Panchayat and District Panchayat Development Standing Committee chairpersons are members. The DPC members from the areas falling within the UA are also members of the JPC. Other members include:

- Government nominee of the DPC
- District Development Commissioner
- District Planning Officer
- District Town Planner
- Working group chairpersons, vice chairpersons and convenors of the working groups for water conservation, drinking water supply, sanitation and waste management (as constituted by the JPC)

15. It is further submitted that the committee formed for the Urban Agglomeration (UA) is very similar in nature and function to the MPC as envisaged in the Constitution. It has however come to existence based on a requirement of the Central Finance Commission (CFC) award. The experience of functioning of the committee has thrown up many concerns. These include:

- Risk of marginalisation of the smaller and more peripheral local self governments in the UA

- Coordination issues between the various implementing agencies identified by different local self governments in respect of the schemes taken up under the UA funds for implementation
- Challenge in developing holistic view overriding local propensities and preferences
- Risk of impinging on the autonomy and jurisdiction of local self governments who are mandated to take up social and economic developmental activities for their respective areas.
- Risk of reduction of citizen interface through the gram sabha and ward sabha which is the corner stone of local democracy.

16. It was in the wake of the evident urbanisation around corporation areas and the development of growth clusters, as well as the creation of urban agglomerations, the attendant possibilities and challenges that the decision was taken to formulate a clear urban policy for the State Government. An Urban observatory is being set up by the State under the Rebuild Kerala Initiative (RKI) for action research and insight on many of the challenges and possibilities of urban development. The State has also reached out to the World Resources Institute (WRI) India and Centre for Environment Planning and Technology (CEPT) Ahmedabad for inputs on navigating the inherent contradictions and arriving at a workable model for development of the metropolitan area. This would include enunciating very clearly the space of the MPC vis-a-vis the DPC, how the draft metropolitan plan and the district plan are to be synchronised or made complementary to each other, the resources that need to go into the functioning of the MPC. The area jurisdiction of the Metropolitan area would also have to be revisited since the urban

sprawl and development has not been along the lines and the local self governments that were envisaged in the 1995 Gazette notification.

17. It is respectfully pointed out that **while the Government is seized of its constitutional obligation regarding Metropolitan Planning Committees (MPCs), it would like to do it right, in such a way** as to ensure that the strengthening of local self governments and DPCs that has been effected over two decades of experience in decentralised governance is not subverted, even while ensuring that the development challenges of urban growth clusters and metropolitan areas are brought into focus and strategized through the MPC. **For this it is requested that Government may please be permitted to incorporate the same into the comprehensive urban policy that the State Government has decided to formulate in response to the times.**

18. It is also pointed out that the petitioner suggests that the GCDA and GIDA be converted into the SPV for implementation of the metropolitan area schemes. **Proponents of decentralised governance are not in favour of parastatals like developmental authorities that are mandated to be done by local governments. This would also be a dilution of the Local government's constitutional mandate.** Instead it is advocated to strengthen the Administrative machinery and delivery systems. This would require augmentation of own resources and restructuring the administrative machinery, another area proposed to be discussed under the urban policy of the State. **As it is, the area jurisdiction of the GCDA and GIDA do not correspond to the metropolitan area identified either for Ernakulam metropolitan area or the Kochi urban**

agglomeration. How these entities can be brought within the local governance framework is also to be studied. It is therefore earnestly prayed that an extension of time is highly necessary in the matter of setting up the MPC of the Kochi agglomeration.

Therefore, it is submitted that the Writ Petition is devoid of any merit and is liable to be dismissed.

What is stated above in paragraphs 2 to 18 is true to my knowledge and what is stated in paragraphs 2 to 18 is on information and belief derived from the relevant office records and I believe the same to be true.

4. Having given due consideration to the material on record, in particular, the averments that steps have been taken to constitute a Metropolitan Planning Committee for the Metropolitan area of Kochi, as mandated under Article 243ZE, taking note of the length of time, i.e. nearly 2 decades, we direct the Chief Secretary, Secretariat, Thiruvananthapuram, the Additional Chief Secretary to the Government, Local Self Government Department, Thiruvananthapuram, and the Principal Director, Local Self Government Department, respondents 1, 3 and 4 respectively, to finalize the preparation of the process already undertaken and as explained in the foregoing paragraphs of the counter affidavit filed by the 3rd respondent, and constitute the Metropolitan Planning

Committee for Kochi, as mandated under Article 243ZE, and also to take immediate steps for the formation of Kochi Metropolitan Development Authority, for the purpose of implementing, coordinating and supervising the orderly development of Kochi Metropolitan area, within four months from the date of receipt of a copy of this judgment.

5. Having regard to the inordinate delay, directions issued should be implemented in letter and spirit, without there being any application for extension of time.

With the above directions, writ petition is disposed of.

Post on 18.07.2023 for compliance report.

**Sd/-
S. MANIKUMAR
CHIEF JUSTICE**

**Sd/-
MURALI PURUSHOTHAMAN
JUDGE**

Eb

///TRUE COPY///
P. A. TO JUDGE

APPENDIX OF WP(C) 41627/2022

PETITIONER EXHIBITS

EXHIBIT P1

**PHOTO COPY OF THE REPRESENTATION DATED
3/9/2022 OF THE PETITIONERS SUBMITTED
BEFORE THE HONBLE CHIEF MINISTER, STATE
OF KERALA.**