

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE THE CHIEF JUSTICE MR.S.MANIKUMAR

&

THE HONOURABLE MR. JUSTICE SHAJI P.CHALY

TUESDAY, THE 8TH DAY OF MARCH 2022 / 17TH PHALGUNA, 1943

WP(C) NO. 7193 OF 2019

PETITIONER/S:

B.S.SYAMKUMAR
AGED 38 YEARS
S/O BALAKRISHNA PILLAI,KSRA-
233,MUDIPPURAMLANE,AVANAVAN CHERRY VILLAGE,
CHITTATTINKARA DESOM,ATTINGAL,
THIRUVANANTHAPURAM DISTRICT,PIN-695101.
BY ADV M.KANNAN

RESPONDENT/S:

- 1 STATE OF KERALA
REPRESENTED BY THE CHIEF SECRETARY,
GOVERNMENT SECRETARIAT,THIRUVANANTHAPURAM,
PIN-695001.
- 2 THE PRINCIPAL SECRETARY,
LOCAL SELF GOVERNMENT DEPARTMENT,
GOVERNMENT SECRETARIAT,
THIRUVANANTHAPURAM,PIN-695001.
- 3 ELECTION COMMISSION OF INDIA,
REPRESENTED BY THE CHIEF ELECTION COMMISSIONER
KERALA,
THIRUVANANTHAPURAM.
- 4 THE PRINCIPAL SECRETARY,
ENVIRONMENT DEPARTMENT,GOVERNMENT
SECRETARIAT,THIRUVANANTHAPURAM,
PIN-695001.
- 5 THE MEMBER SECRETARY,
KERALA STATE POLLUTION CONTROL BOARD,PATTO.M.P.O,
THIRUVANANTHAPURAM-695003.
- 6 ADDL.R6 M/S.SIGN PRINTING INDUSTRIES ASSOCIATION
41/2795, C2 FIRST FLOOR, NORTH AVENUE, PARAMARA
ROAD, ERNAKULAM, PIN-682018, REPRESENTED BY ITS
PRESIDENT OUSEPHACHAN P.P. (ADDL.R6 IS IMPEADED
AS PER ORDER DATED 05/04/2018 IN IA.NO.01/2019)

- 7 ADDL.R7 T.A.WAHID
PROPRIETOR, SURYA SIGNS, R.R.BUILDING, IRON
BRIDGE POST - 688 011, ALAPPUZHA DISTRICT.
- 8 ADDL.R8 MUHAMMED MUNEER V
PARTNER, FINEX PRINTING SOLUTIONS, 2ND FLOOR,
MALABAR PLAZA BUILDINGS, MATTANNUR POST-670702,
KANNUR DISTRICT. (ADDL.R7 AND R8 ARE IMPEADED AS
PER ORDER DATED 24/06/2019 IN IA.NO.02/2019)
BY ADVS.
SRI.V. TEKCHAND, SENIOR GP
SRI.DEEPULAL MOHAN
SRI. T.NAVEEN SC, KERALA STATE POLLUTION CONTROL
BOARD,
PHILIP J.VETTICKATTU
SRI.V.A.SATHEESH
SMT.ANEY PAUL
SRI.V.T.MADHAVANUNNI

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR
ADMISSION ON 08.03.2022, THE COURT ON THE SAME DAY
DELIVERED THE FOLLOWING:

J U D G M E N T

S. Manikumar, C.J.

Petitioner has sought for the following reliefs:-

“i) issue a writ of mandamus or any other appropriate writ, order, or direction compelling and commanding the respondents for the implementation of ban on the manufacture, storage, transportation, import, use and sale of PVC Flex in the State.

ii) issue a writ of mandamus or any other appropriate writ, order, or direction directing the respondents to ensure that only eco-friendly materials are used for the purpose of advertisement and during the election campaigning in the State.”

2. Brief facts leading to filing of the writ petition are as hereunder:-

a) According to the petitioner, he is an environmentalist, social worker and a public spirited citizen. Petitioner is aggrieved by the omission, rather inaction on the part of the respondents, in taking effective measures to prohibit the manufacture, storage, sale and usage of PVC Flex.

b) Petitioner has submitted that Poly Vinyl Chloride, commonly known as the PVC Flex, is the most environmentally hazardous consumer material ever produced. In the process of its manufacture, toxic gases are produced. It is a non biodegradable material, cannot be recycled, and therefore, of no resale value.

c) Petitioner has further submitted that the two sources for putting an end to the used PVC Flex are either to burn or to bury underneath the soil. If it is burnt, it will release highly toxic chlorine, dioxins and furan, which are carcinogenic, means any substance, radionuclide, of radiation that is an agent directly in causing cancer. On the other hand, if it is buried to the soil, the toxins will enter into the water by leaching.

d) In the above circumstances, petitioner submitted a detailed representation to the Chief Secretary, Government Secretariat, Thiruvananthapuram, the 1st respondent. Since there is no positive response from the 1st respondent, the petitioner has approached this Court invoking the original jurisdiction under Article 226 of the Constitution of India.

3. By inviting the attention of this Court to the record of

proceedings in Civil Appeal No. 9677 of 2019 in W. Edwin Willson v. Union of India and Others dated 12.08.2021, Mr. Deepu Lal Mohan, learned Standing Counsel for the Election Commission of India, submitted that on a similar issue, an SLP is pending on the file of the Hon'ble Supreme Court.

4. Earlier, when W. P. (C) No. 5218 of 2012 and connected writ petitions were heard on the issue of use of plastics / flex boards in the State of Kerala, after considering the statutory provisions, pleadings and submissions, this Court by judgment dated 14.01.2021, issued the following directions:-

“A) All the unauthorised arches, display boards, hoardings, placards, and banners with poles or frames, etc., fixed to and/or dug into the ground, which abuts the highways, public streets, and pedestrian pavements, shall forthwith be removed. No poles or frames or structures for arches, boards, placards, hoardings, display boards or banners shall be erected on any highway, public road, public passage or pedestrian pathway or pavement. Holes caused on pavements and roads, by reason of erection of frames, poles, structures, placards, hoardings, displaying boards, banners, etc., shall forthwith be repaired.

B) The Secretaries to the Government, LSGD, PWD, State Highways and Heads of Departments, under the respective Acts, extracted above, shall issue appropriate instructions for effective

implementation of the above said directions.

C) The District Collectors and the Secretaries of the aforementioned departments shall oversee the implementation of the directions issued by this Court, issue suitable orders, and take appropriate action against the erring officers.

D) The Principal Secretaries to the Government, Public Works Department, Local Self Government Institutions, Government of Kerala, are directed to issue appropriate instructions to the field officers, to remove the nailing, in other words, de-nailing, make trees nail free and thereby, remove all the unauthorised signboards, advertisements, pamphlets etc. The District Collectors shall act in accordance with the orders issued in that regard.

E) The Executive Engineer (Roads) or Executive Engineer (National Highways) of the Public Works Department, who are designated as Highway Authorities as per the provisions of the Kerala Highway Protection Act, 1999, are directed to identify those structures, hoardings, advertisement boards and displays etc., endangering road safety, and take immediate steps for removal thereof, under Section 22 of the said Act.

F) The Project Directors / National Highways Authority of India are directed to take appropriate action, to effectively implement the directions.

G) The Secretaries of Municipal Corporations and Municipalities in the State, under Section 275 of the Kerala Municipalities Act, 1994, are directed to take steps, to identify and remove

unauthorised hoardings, banners, flex boards, temporary arches, posters etc.

H) Likewise, the Secretaries of the Panchayats are directed to take steps to identify and remove unauthorised hoardings, banners, flex boards, temporary arches, posters, and other similar structures.

I) The concerned Secretaries are directed to supervise dismantling of outdoor billboards, unauthorised hoardings etc., which causes inconvenience to the commuters.

J) The Secretaries of the concerned Panchayat under Section 209C of the Kerala Panchayat Raj Act, 1994, shall provide necessary assistance to the NHAI for removal of illegal hoardings, banners, flexes, temporary arches, posters etc.

K) In the event, the Municipal Authorities/officials, who come across the cases of breaches, not attracting any of the Municipal Laws, shall forthwith report the same to the District Collectors. On such information, being received by the District Collectors, necessary action for removal of such nuisance shall be taken in a time bound manner.

L) Since, in the State of Kerala, certain notified portions of the National Highways are maintained by the National Highways Authority of India the outdoor advertising boards which cause distraction to traffic on such stretches of the Highways shall be identified by the concerned Project Director of NHAI and appropriate remedial action be taken, in accordance with law.

M) The Kerala State Road Safety Authority, constituted under the

provisions of Kerala Road Safety Authority Act, 2007, to coordinate action on areas related to road safety among various departments, advice the Government on road safety policy, prescribe and enforce road safety standards and procedures, formulate and implement schemes / projects and programmes relating to road safety and is directed to conduct a detailed study, with the help of various District Road Safety Councils in the State, as regards the harmful effects caused on account of the outdoor hoardings / billboards, installed at various National/ State Highways and elsewhere, and submit a report to the Chief Secretary, to facilitate the State Government to regulate the hazardous outdoor hoardings / billboards.

N) The Road Safety Commissioner/Transport Commissioner, who is the ex officio under Section 9 of the Kerala Road Safety Authority Act, 2007, is directed to look into the damaging effect of roadside advertisements in the light of 'Policy on Roadside Advertisements' published by the Indian Road Congress, 1992.

O) Cluster of wires on trees and electrical poles, be regulated by the statutory authorities and the District Collectors are directed to take appropriate action for removal as per the existing rules.

P) The Commissioner of Police or the Superintendent of Police, as the case may be, shall issue directions to the concerned police personnel, who are entrusted with the job of night patrolling, including the beat marshals, to keep a constant vigil, for preventing the activity of erection/display of illegal hoardings, banners, flexes, temporary arches, posters etc., during night time.

Q) The Commissioner of Police/District Police Chief, shall

provide necessary assistance to the Highways Authority under Sections 44 and 15(2) of the Act, 1999 for removal of the unauthorised structures, hoardings, advertisement boards and displays, endangering road safety.

R) Whenever an action is proposed to be taken by the authorities, as stated above, the concerned Assistant Commissioner / Deputy Superintendent of Police shall extend adequate police protection and police help to the local authorities, in the process.

S) Report regarding removal of the above-mentioned unauthorised structures, outdoor hoardings / billboards, be submitted by the competent authorities under the respective enactments, to the District Collectors, every month.”

5. Said directions are squarely applicable to the case on hand.

Thus, the instant writ petition is disposed of in terms of the abovesaid judgment.

Sd/-

**S. MANIKUMAR
CHIEF JUSTICE**

Sd/-

**SHAJI P. CHALY
JUDGE**

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

APPENDIX OF WP(C) 7193/2019

PETITIONER EXHIBITS

- EXHIBIT P1** TRUE COPY OF ARTICLE PUBLISHED IN THE INTERNATIONAL JOURNAL OF SCIENTIFIC RESEARCH.
- EXHIBIT P2** TRUE COPY OF THE NOTIFICATION NO.FEE 17 EPC 2012 DATED 11.03.2016,ISSUED UNDER ENVIRONMENTAL (PROTECTION) ACT,1986 BY GOVERNMENT SECRETARIAT.
- EXHIBIT P3** TRUE COPY OF THE NOTIFICATION NO.F 05-88/2014/32 DATED 27.9.2017 ISSUED BY GOVERNMENT OF CHHATTISGARH.
- EXHIBIT P4** TRUE COPY OF THE CIRCULAR NO.COMM./PR/774/2016-17 DATED 04.05.2016 ISSUED BY BANGALORE METROPOLITAN CITY.
- EXHIBIT P5** TRUE COPY OF THE COMMUNICATION NO/.PPCB/HO/PLA/GEN/2010 DATED 02.05.2013 ISSUED BY KERALA STATE POLLUTION CONTROL BOARD.
- EXHIBIT P6** TRUE COPY OF THE COMMUNICATION NO.PCB/HO/PLA/GEN/2010 DATED 14.07.2015 OF KERALA STATE POLLUTION CONTROL BOARD.
- EXHIBIT P7** TRUE COPY OF THE REPORT PUBLISHED BY THE "SUCHITWA MISSION"LOCAL SELF GOVERNMENT DEPARTMENT.
- EXHIBIT P8** TRUE COPY OF THE REPRESENTATION FILED BY THE PETITIONER BEFORE THE FIRST RESPONDENT.