

**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: 21.01.2021

**CORAM: HON'BLE MR. JUSTICE ADARSH KUMAR GOEL, CHAIRPERSON
HON'BLE MR. JUSTICE SHEO KUMAR SINGH, JUDICIAL MEMBER
HON'BLE DR. NAGIN NANDA, EXPERT MEMBER**

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

ORDER

1. The Issue for consideration is non-compliance of Solid Waste Management Rules, 2016 (SWM Rules, 2016) causing huge pollution at Bharampuzha Solid Waste Processing Plant on the outskirts of Kochi city in Kerala affecting environment and public health.

2. The matter has been considered on several occasions in the last two years and was last considered on 16.09.2020. Relevant parts of the last order is as follows:-

"1...xxx.....xxx.....xxx

2. The matter was earlier considered in the light of report dated 23.02.2019, received from Justice A.V. Ramakrishna Pillai, former Judge, Kerala High Court about unscientific dumping of waste and response of the Kerala State Pollution Control Board (KSPCB) dated 03.10.2019. Vide order dated 20.11.2019, it was observed:

"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. The matter was thereafter considered on 28.02.2020 in the personal presence of Secretary, Urban Development, Kerala and in the light of further report dated 22.02.2020 furnished by Justice A.V Ramakrishna Pillai, former Judge, Kerala High Court pointing out continuing violation of law. The Tribunal referred to earlier order dated 10.01.2020 in a connected matter directing as follows:

"a. In view of the fact that most of the statutory timelines have expired and directions of the Hon'ble Supreme Court and 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 28¹ even though statutory timeline for 'completing' the said step is till 07.04.2021 (as per serial no. 11 in Rule 22), which direction

¹ 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.

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, 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."*
4. *Finally, the Tribunal observed:*
- "8. *We may observe that **non-compliance of rules relating to waste disposal results in damage to the environment***

and public health. Any failure needs to be visited with assessment and recovery of compensation for such damage from the persons responsible for such failure. A study was recently got conducted by CPCB, under orders of this Tribunal requiring such a study by a joint Committee comprising CPCB, NEERI and IIT, Delhi about the monetary cost of damage caused to the environment on account of existence of legacy waste dump site at Gurgaon (Bandhewadi) vide order dated 05.03.2019 in O.A. No. 514/2018. The report of the CPCB filed on 13.02.2020 is that damage on account of the said legacy waste dump site was Rs. 148.46 crore, on account of damage to the air quality, soil and water quality, climate change and disamenity (aesthetic). **The damage has been assessed in terms of impact on health due to release of pollutants in air atmosphere, release of leachate into ground /surface water and soil, due to pollution from the landfill site, damage cost associated with climate change due to carbon di-oxide and methane, damage caused due to aesthetics loss, price depreciation due to disamenity cost etc.**

The matter is to be considered further in relation to State of Kerala on 20.03.2020 when the Chief Secretary, Kerala is scheduled to appear in person. **The State of Kerala needs to consider action on the pattern of successful models of other states where meaningful steps to deal with the issue have been initiated in consultation with CPCB.**

List again on 20.03.2020.”

5. Thereafter, the matter was considered on 03.07.2020 in the light of earlier proceedings and report of the State PCB dated 16.06.2020 and it was observed:

“5. In pursuance of the above, we have considered the matter further. The Chief Secretary, Kerala could not appear on 20.03.2020 on account of lock-down and the said date has been rescheduled. The report filed by the KSPCB dated 16.06.2020 clearly states that tender issued by the Corporation was cancelled. E-tender was floated for legacy waste and since only one bidder was eligible, it was decided to re-tender the bio-mining work. After visit to the site by the Environmental Engineer of the KSPCB following suggestions are given:

- “a) As per the details submitted by the Corporation, 89.8% of household and 59.8% of establishments are having door to door collection for dry and wet wastes. It is to be ensured by the Kochi Corporation that dry and wet waste is to be segregated at sources, and only segregated wet waste reach manure plant. This is to be also ensured by nearby Municipalities and Panchayaths, who also dispose waste in Brahmapuram Plant.
- b) Currently, entire quantity of non biodegradable waste is collected and transported from Kochi Corporation and

disposed in the two sheds and nearby open yard of in Brahmapuram plant and only 1% of plastic waste is segregated from the above and given to recyclers. In order to minimize the load of non biodegradable waste reaching Brahmapuram, **action may be taken to segregate non bio degradable waste through existing Material Collection Facilities (MCF) and Resource Recovery Facilities (RRF) in Kochi Corporation through the involvement of Haritha Karma Sena, Scrap Merchant Association. Recycling Plastic Association arrangement may be provided to recycle the recyclable plastic in registered recycling units and the remaining non recyclable plastic through co incineration in cement plant.** This may be ensured by nearby Municipalities and Panchayaths who disposed waste in Brahmapuram Plant.

- c) **As the construction of new leachate collection tank of 1 lakh litre collection capacity is nearing completion, leachate is to be diverted and collected in the new tank and in the same is to be treated in septage treatment plant till the proposed leachate treatment plant is in operation.**
- d) *The retendering of waste to energy plant has been done by Government and its operation the management of solid waste in Brahmapuram can be sorted out.*
- e) *Regarding legacy waste retendering processing has been done by Government and further procedures need to be expedited for the clearing of legacy waste.”*

6. **Considering the critical situation, we do not understand where is the absolute bar to a single tender if otherwise in order or even inhouse work. Moreover, in the light of report of the NITI Ayog mentioned in the order dated 02.07.2020 in Original Application No. 606/2018, Compliance of Municipal Solid Waste Management Rules, 2016 and other environmental issues, other available options may be considered.**

7. **Even in the case of waste to energy plant, it is stated that the re-tender has been called for similar reason which will be a cause for further delay in the process of environment remediation which may be appropriately reconsidered.**

8. **We find that the steps taken to be inadequate having regard to the serious adverse consequences of acknowledged unscientific handling of waste management. Suggestion ‘c’ above shows that 1 lakh liter collection capacity for the leachate is nearing completion and the leachate is to be diverted to septage treatment plant. It is doubtful whether leachate can be treated in an ordinary septage treatment plant as it contains heavy metals. The progress appears to be very slow and in disregard to the statutory and constitutional obligation of providing clean environment. It is the**

responsibility of the KSPCB to initiate prosecution and recover compensation for such failures failing which, the Chairman and the Member Secretary of the KSPCB may be liable for their failure.

9. Let effective steps in the matter be taken on day to day basis and further report filed before the next date 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.”

6. In view of above, the State PCB has filed updated status report dated 01.08.2020 inter-alia stating as follows:

“9. It is respectfully submitted that the leachate collection and transfer mentioned after inspection conducted by the Environmental Engineer has been a temporary facility only to manage the leachate generated from permeating into the "Kadambrayar" a water body surrounding the Brahmapuram Dumping yard till the permanent Effluent Treatment Plant is made functional. **It is true that the legacy waste sample collected after a serious fire hazard occurred and the manure, "the City Compost" they produced from bio mining showed heavy metal presence which will be sufficiently addressed during environment damage assessment.**

10. I may humbly submit that in compliance with the order dated 03.07.2020 with specific addressing to **initiate prosecution against responsible officials of the Corporation, this respondent is authorized vide the proceedings dated 31.07.2020 of the Chairman**, a copy of which is produced herewith and marked as Annexure R2-(F).

11. It is respectfully submitted that these practises were carried out diligently by the Board though some restrictions are imposed due to lockdown in view of the outbreak of COVID-19 in the country. Though certain relaxations were allowed in lockdown recently, the pandemic situation is worsened day by day from the middle of May 2020 onwards as the COVID-19 cases are showing increasing trend and the Board is compelled to restrict office works especially the Head Quarters where the Chairman, Member Secretary and concerned legal cells are available. Also, **the delay if any occurred to initiate actions are due to time constrains faced in allocating field staffs for conducting detailed verification of the facilities provided by each and every local bodies in the State.** It is also pertinent to note that the Chief Secretary has convened a meeting of all the concerned and already formed "Environment Management Cell" to coordinate the activities as per the relevant provisions of the solid waste management rules 2016 as well as other environment related Rules in the State and the committee will function under the supervision of SLMC.”

7. From the above, it is clear that there is no meaningful action taken, as required under the law. **There is serious dereliction of duties of the State authorities under the 'Public Trust Doctrine' to provide pollution free environment. No**

meaningful coercive measures have been adopted as expected from the State PCB as a regulator. The local bodies as well as the Urban Development Department have failed to take effective steps in the matter. We record our disapproval for the lack of sincerity and sensitivity of the authorities to the health of the citizens on flimsy grounds. There is non compliance of orders of this Tribunal dated 28.2.2020, quoted earlier. Not even compensation has been recovered, as directed nor action taken against erring officers by way of entry in their ACRs. Under the NGT Act, 2010, violation of orders of this Tribunal is criminal offence, apart from an executable decree which can be enforced even by directing detention of violators in prison till compliance. This course of action may have to be considered even against highest erring officers, if the default continues. It is unfortunate that the State and its senior officers should not obey the law of the land. The Tribunal expects the State to enforce the law.

8. In view of above, we direct the Chief Secretary, Kerala to take the matter seriously and take remedial action by constituting a three-member team of Secretary, Urban Development Department, Chairman, State PCB and concerned Municipal Commissioner. It should not be difficult, if there is willingness, to tackle the problem. Failure of the State Authorities in this regard is at the cost of public health of the citizens which a welfare State can ill afford. The Chief Secretary, Kerala may personally monitor the compliance of these directions atleast on monthly basis and record the proceedings. The Chief Secretary may further direct that if the targeted actions are not taken, the erring officers will not be entitled to draw their salaries from a specified date till compliance. The Chief Secretary, Kerala may file his personal affidavit giving information about commencement of work relating to remediation of legacy waste site(s) and waste processing plant to handle day-to-day waste generation to avoid creation of legacy waste dump site before the next date 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.

List again on 21.01.2021.”

3. Accordingly, the State PCB has filed its action taken report on 19.01.2021 as follows:-

“1&2..xxx.....xxx.....xxx

3. It is dutifully submitted that in compliance with the order of the Hon'ble Tribunal, the Chief Secretary had convened a meeting on 22.09.2020 to discuss about the compliance status and action plans to be prepared to ensure that the Corporation is satisfactorily managing the solid wastes at Brahmapuram. It was also decided that the violations if any shall be addressed. The Chairman of the Board also convened a meeting on the same day to discuss about the actions already taken by the Board and Kochi

Corporation and future course of actions to be planned. Copy of the minutes of meeting convened by the Chairman held on 22.09.2020 is produced herewith and marked as **Annexure R2(A)**.

4. It is respectfully submitted that **a decision was taken during the meeting convened by the Chairman on 22.09.2020 for issuing of notice to Kochi Corporation regarding violations committed till date and to show cause why prosecution shall not be initiated against Corporation. Action is being taken for incorporating legal evidences in the notice for prosecution.**

5. It is respectfully submitted that the **dumping yard was inspected on 22.09.2020 by the Surveillance team of the office of this respondent and samples of leachate were collected from the dilapidated windrow composting yard and damaged drains. The results revealed that different parameters were exceeding the limit specified. It is significant to note that the temporary ETP installed for leachate treatment was seen not functional.** It is respectfully submitted that this respondent had already started survey of solid waste management facilities provided by the Kochi Corporation and other Local Bodies who are utilizing this dump yard for the disposal of solid waste.

6. It is respectfully submitted that the Corporation vide letter dated 17.03.2020 reported that the quantity of legacy waste is 100000 Tonnes which need close scrutiny as **the Corporation was continuing its unauthorised operation of the dumping yard since 2010. 5 other Municipalities and 3 Grama Pachayaths are allowed to dispose biodegradable solid waste to windrow compost plant at Brahmapuram.** Regarding bio mining, the State Government identified agency for bio mining through tendering and work is to be started soon by the Corporation and the agency.

7. It is respectfully submitted that **a notice was already issued on 15.10.2020 asking the Secretary to explain why an amount of Rs 13.95 Crores shall not be imposed towards Environmental Compensation. Assessment of Environmental Compensation for the violations of SWM rule 2016 by the Corporation from 09.04.2018, was done and notice was issued. Copy of the notice is produced herewith and marked as Annexure R2 (B). In the reply dated 02.11.2020 the Corporation requested to keep in abeyance any action against them with respect to imposition of EC and other penal procedures. They have also furnished certain details through the said letter that they have provided proper treatment at Brahmapuram for 206 MT/day of biodegradable fraction of collected solid wastes. But during several inspections it was found that there were no such facilities as the same is disposed at Brahmapuram dumping yard where no satisfactory windrow composting were seen provided. This was identified by the Chairman, SLMC also during inspections**

conducted along with this respondent where the fresh wastes were being dumped over the deposited legacy waste in the so-called windrow composting sheds. As reported earlier these sheds were found to be in a partially collapsed stage due to uneven settlement of the foundation. It may be pertinent to note that the Corporation also vide the reply dated 02.11.2020 admitted that the windrow composting plant is in a dilapidated condition. Copy of the reply dated 02.11.2020 submitted by the Corporation is produced herewith and marked as Annexure R2(C). However, the revised assessment is done as on 31.12.2020 and the amount comes to Rs. 14.92 Crores. Based on the reassessment and in compliance with the precise direction of the Hon'ble Tribunal direction has been issued to the Corporation imposing Rs. 14.92 Crore towards EC. Copy of the direction is produced herewith and marked as Annexure R2 (D).”

4. An Affidavit has also been filed by the Chief Secretary, Kerala as follows:-

“1to14..xxx.....xxx.....xxx

15. It is submitted that construction of leachate collection tank of 1,00,000 litres has been completed at Brahamapuram plant. 5 truck loads (5x5000litres) of leachate are taken to the septage treatment plant situated within the premises and treated there. Though the work for preparation of DPR for leachate treatment plant was awarded after tendering process to the lowest bidder on 29/07/2019, GIZ a German collaboration agency who supports Corporation under the Sustainable Urban Development - Smart Cities project was also engaged to suggest suitable technology for the leachate treatment plant. As the technology proposed by GIZ that of Sequencing Batch Reactor was different from that proposed by Suchitwa Mission of Electrocoagulation, the council that met on 03/03/2020 referred the matter to the Health Standing Committee and the committee wanted to take a suggestion from Suchitwa Mission. The technical committee on liquid waste management constituted by Suchitwa Mission that met on 25/09/2020 in which Chief Environmental Engineer of Regional Office Pollution Control Board Thiruvananthapuram is also a member suggested to opt for treating the leachate in the septage treatment plant. The Technical Committee also assessed that presence of heavy metal will not tamper the treatment efficiency. Kochi Corporation has earmarked an amount of Rs.1,00,00,000 /- from the plan fund for the year 2020-2021 for the reconstruction of the compost plant shed at Brahmapuram.

16. It is also submitted that tenders are floated to purchase of bailing machines and dusters to be installed in the Material recovery facility (MRFs) constructed at various locations in Kochi Corporation. Rs. 20 Lakh has been allocated under plan fund of Corporation for the year 2020-21, by operating the MRFs the non bio degradable waste can be taken for recovery/ recycling directly from the MRFs. It is expected that 20% reduction in the non

biodegradable waste taken to Brahamapuram plant can be achieved by this. Kochi Municipal Corporation had identified land for constructing landfill in the 110 acres of land. **The Chief Environmental Engineer, Kerala State Pollution Control Board, Regional Office, Ernakulam had informed after inspection that the land identified by Corporation at Brahamapuram for construction of scientific landfill is not suitable as per the guidelines of CPCB as 2m clearance to the ground water table from the bottom liner of the landfill cannot be ensured and to find some other place in the 110 acre land at Brahamapuram. As per G.O (Rt)No.1198/2020/LSGD dated 18/06/2020, Government have accorded sanction to Kerala Enviro Infrastructure Limited and Clean Kerala Company Limited for constructing regional sanitary landfill in the land purchased by KINFRA from FACT near Brahamapuram by utilizing 25 acres of land.**

17. It is submitted that **Government have made honest interventions for the scientific disposal of legacy waste at Brahamapuram. As per the direction of State Level Monitoring committee of NGT in its meeting held on 06.04.2019, Kochi Municipal Oirporation floated tender for bio mining the legacy waste at Brahamapuram. As nobody participated in the tender, the Corporation has re-tendered the work on 26.10.2019 and received only one bid which was approved technically. In the circumstance that the Council of Kochi Municipal Corporation has not taken decision on the matter in a time bound manner and considering the urgent steps to be taken to manage the legacy waste scientifically, as per G.O(Ms)No.08/2020/DMD dated 05/03/2020 (copy of the G.O is enclosed herewith as annexure 4) Government have entrusted Kerala State Industrial Development Corporation (KSIDC) to initiate tender procedure for identifying a suitable agency for carrying out the rehabilitation of Municipal Solid Waste (MSW) dumpsite at Brahamapuram in Ernakulam district after cancelling the tender floated by Kochi Municipal Corporation. Accordingly KSIDC had floated e-tender on 20th March 2020 for identifying a suitable agency for the rehabilitation of MSW dumpsite at Brahamapuram in Ernakulam district. 22nd April 2020 was the last date for the submission of bids and KSIDC received two bids in response to the tender. As per G.O(Rt) No.985/2020/LSGD dated 26/05/2020 (copy of the G.O is enclosed herewith as annexure 5) Government have constituted a Technical Evaluation Committee chaired by Principal Secretary LSG (Urban) Department to evaluate the technical bids received for the project. The Committee evaluated the Technical Bids submitted by the two agencies and found that both the bids received are not meeting the minimum eligibility criteria for technical and financial qualifications. Subsequently the Committee resolved to cancel the tender process and directed KSIDC to re-tender the project.**

18. In accordance with the decision taken at the Technical Evaluation Committee meeting, KSIDC re-tendered the project on

24th June 2020 in Government e-tender portal. The pre bid meeting as part of the tender process was held on 16th July 2020. 30.07.2020 was the last date for the submission of bids. Considering the request by the prospective bidders the time for the submission of bids extended up to 27.08. 2020. The Technical Bids in e—tender portal were opened on 03.09.2020 and the following are three consortiums that had submitted bids for the project:

1. Consortium of M/s G J Naturecare and Energy Pvt Ltd, Kochi and M/s Equipo, Polland. (M/s G J Nature Care & Energy Pvt Ltd is the lead member and and M/s Equipo is the operator).
2. Consortium of M/s Tholani Clean Energy Pvt Ltd Kochi and M/s Geetanjali Envirotech Mumbai (M/s Tholani Clean Energy Pvt Ltd is the lead member and M/s Geetanjali Envirotech is the operator).
3. Consortium led by M/s Zonta Infratech Pvt Ltd, Bangalore and M/s Bauer GmbH , Germany (M/s Zonta Infratech Pvt Ltd is the lead member and operator of the Consortium and M/s Bauer GmbH is the supporting member).

19. It is submitted that the second meeting of Technical Evaluation Committee chaired by Principal Secretary Local Self Government (Urban) Department held on 23/09/2020 evaluated the bids based its responsiveness and minimum eligibility criteria for technical and financial qualification. The Committee after detailed evaluation noted that the two bids submitted by the consortiums led by M/s G J Ecopower Pvt. Ltd and M/s Tholani Clean Energy Pvt. Ltd are non responsive and does not meet the prescribed minimum eligibility criteria. After detailed discussion, the Committee resolved to declare the two bids submitted by the above consortiums as technically NOT qualified on multiple grounds of shortfalls and insufficiencies. The Committee further observed that the bid submitted by the Consortium led by M/s Zonta Infratech Pvt. Ltd. is responsive in terms of submission of all required formats and supporting documents. The Committee further observed that as per the documentary evidences attached along with the bid such as client certificate and annual reports the Consortium is meeting the technical and financial qualification as stipulated in the tender document. The Committee then awarded scores to M/s Zonta Infratech Pvt Ltd based on the technical scoring criteria detailed in the tender. Document. Based on the supporting documents attached along with the bid document the Consortium secured 90 marks as technical score. As per the RFP document 70 marks was the qualifying marks for Financial Bid Evaluation. Accordingly the Committee resolved that the Bid submitted by the Consortium led by M/s Zonta Infratech Pvt Ltd. has secured more than the minimum prescribed score and is technically qualified to open the Financial bid submitted.

20. The Financial Bid submitted by the Consortium led by M/s Zonta Infratech Pvt Ltd opened at 11.30 am on 12.10.2020 in e- tender portal. As per the Financial Bid the total cost submitted by the Consortium is Rs. 54,90,36,036/- (Rupees

Fifty Four Crores Ninety Lakhs Thirty Six Thousand Thirty Six only) excluding GST. After completing the tender process, KSIDC has submitted the report to Government for taking further steps through Kochi Municipal Corporation and State Pollution Control Board (KSPCB) to examine the quantity of legacy waste assessed by the bidder and the rate quoted by the bidder to undertake the rehabilitation, before proceeding further with the project.

21. It is submitted that the Government have directed Kochi Corporation to take urgent necessary action to assess the quantity of legacy waste and justification of the rate quoted by M/s Zonta, the bidder selected for the work, in consultation with Pollution Control Board. To examine the quantity of legacy waste, survey of the area to be biomined is to be conducted and for that Kochi Corporation has requested to NIT Calicut to submit their terms and conditions to conduct the said survey. Kochi Corporation Council is considering the award of the work to NIT Calicut in their Council Meeting on 21.01.2021. The Survey will take 15 days and remediation works by M/s Zonta can start from 10.02.2021.

22. It is submitted that as per G.O.(Ms) 01/2016/LSGD dated 04.01.2016 (copy of the G.O is enclosed herewith as annexure 6) Government had approved the project of M/s G.J. Nature Care Consortium submitted by KITCO for the implementation of a Waste-to-Energy project at Brahmapuram, Kochi and allied areas at a total cost of Rs. 295 Crore. Accordingly, Kochi Municipal Corporation (Authority) and M/s G.J. Eco Power Pvt. Ltd. (Concessionaire) executed a Concession Agreement for the implementation of the project on Design, Build, Finance, Operate and Transfer (DBFOT) basis, on 17th February, 2016. The Government had taken all possible support and measures for the implementation of the project and granted time to the Concessionaire from 17.02.2016 to 30.04.2020, to achieve the financial closure of the project. The concessionaire miserably failed to implement the project even after 1400 days elapsed after the signing of the agreement. As per G.O.(Rt.)No.805/2020/LSGD Dated 30.04.2020 (copy of the G.O is enclosed herewith as annexure 7) Government have cancelled the approval granted to the project of M/s G.J. Nature Care Consortium for the implementation of a Waste to Energy project at Brahmapuram, Kochi and the Secretary, Kochi Municipal Corporation has been directed to take immediate steps to terminate the Concession Agreement executed with M/s G.J. Eco Power Pvt. Ltd for the implementation of the project following the procedure laid down in Article 16 of the Agreement executed between Kochi Municipal Corporation and M/s. G.J. Eco Power Pvt. Ltd.

23. As per G.O.(Rt.)No.1064/2020/LSGD Dated 05.06.2020 (copy of the G.O is enclosed herewith as annexure 8), Government have rejected the request of the Chairman and Managing Director, M/s. G.J. Eco Power Pvt. Ltd., for reconsidering the decision taken in G.O.(Rt.)No.805/2020/LSGD Dated 30.04.2020 and the Managing Director, KSIDC was also

directed to take immediate steps to float RFP for the selection of a suitable concessionaire for setting up of a Centralized Waste Treatment Plant at Brahmapuram Kochi, with the broad terms and conditions ordered in G.O. (Ms.)No.82/2018/LSGD dated 11/06/2018 and G.O.(Ms.)No. 174/2018/LSGD dated 22/11/2018.

24. KSIDC floated e-tender for the project on 24th June 2020. The pre bid meeting as part of the tender process held on 16th July 2020 and representatives from more than 10 firms attended the meeting. 31st July was the last date for the submission of bids. Considering the request 'by prospective bidders attended the pre bid meeting the time for submission of bids extended up to 30th August 2020 and further up to 14th September 2020. The technical bids received in e- tender portal opened on 16th September 2020 and the following two agencies submitted bids for the project.

Consortium led by M/s Tholani Clean Energy Pvt. Ltd., Kochi
Consortium led by M/s Zonta Infratech Pvt. Ltd, Bangalore

The technical bids submitted by the two agencies were evaluated by the Bid Evaluation Committee on 07.01.2021. It was found that only one bidder was qualified. The Committee recommended for retendering the work in accordance with Government orders. In case of single bid found qualified for a work, a mandatory second bidding is to be done. Accordingly, the bids have been invited again, however, keeping the least 15 working days as the time framework. It is expected that the work for WtE plant would be awarded by 5th February 2021.

25. It is submitted that the following are the challenges faced by the authorities for identifying competent agency for establishing waste to energy projects in the State.

1. Availability of limited players in the sector : Based on the feedback received from the prospective bidders at various discussions the element of risk associated with WtE sector is much high compared to infrastructure development projects in other sectors. Hence only limited players are available in the sector. ,
2. Collection & Segregation of waste: As per the tender the Participating Local Bodies are responsible, for the primary collection of solid waste that is from the households and other establishments within the project cluster. The waste from the primary sources will be deposited in the bins being provided by the Concessionaire at the secondary collection points. The Concessionaire is responsible for the secondary collection from secondary collection points, transportation to the processing facility and the scientific processing of solid waste as per rules. Majority of the players in the sector are not in a position to take the responsibility of collection and transportation of waste. In addition being a DBFOT model project the scope of collection and transportation also impacts on the total project cost.

3. *The characteristics of waste — The bidders informed that success of waste to energy projects depends on the characteristics of municipal solid waste in the state. The generation of power mainly depends' on the calorific value of the waste. The bidders are under the impression that the calorific value of MSW in Kerala is quite less compared to other states in the country.*

4. *Quantity of Waste — Modern technologies in waste to energy sector requires uninterrupted feed of municipal solid waste. Though tender provides a commitment from Government side for the supply of minimum quantity of waste the bidders feels that required quantity', is not available for the viable operation of the plant.*

26. *It is submitted that monitoring and time bound interventions will be ensured to implement waste management projects for the compliance, of NGT directions in various OAs and Solid Waste Management Rules in the State and it is expected that waste management issues of the state can be addressed to a great extent on the commissioning of proposed Integrated Waste Management Projects with Waste to Energy facility.”*

5. Long stories of all round failure of the administration are poor substitute for good governance required to enforce environmental rule of law for protection of public health and the environment. The fact remains that the administration is patently a failure in protecting citizens' right to clean environment which is in no way less important than the right to live in crime free environment. There is no meaningful action for complying with the Solid Waste Management Rules, 2016 (SWM Rules) and handling of solid waste inspite of repeated directions in the last two years. As shown from the report by the State PCB, the samples clearly show that the parameters of environment are not being met. The Municipal Corporation is still continuing unauthorised operations. Work is yet to start for bio-mining. Compensation has been assessed but not recovered. Windrow composting plant is in dilapidated condition. The affidavit of the Chief Secretary does not show that any effective action has been taken on the ground. Thus, the situation is far from satisfactory. One wonders whether the officers dealing with the matter lack in competence or will their Constitutional obligation to provide clean

environment to the citizens. Failure to uphold environmental rule of law is no different from maintaining law and order and protecting the citizens against crimes. Continuing violation of environmental norms is not only violation of rights of citizens but also has potential for damage to the public health. It is unfortunate that in spite of several orders of this Tribunal for the last two years the concerned officers have only paid lip service to the issue. There is thus clear governance deficit which needs to be urgently remedied at appropriate highest level in the State. There is failure to enforce environmental laws. We do hope that atleast now prompt action will be taken in the matter failing which the Tribunal may have to adopt coercive measures as per law, including prosecution of concerned officers. Least expected is placing of order for execution of legacy waste bio-mining, landscaping of the area and plantation, development of bio-diversity park, rectification of the compost plant, continuous monitoring by the Secretary, Urban Development and quarterly review by the Chief Secretary.

Let a further action taken report be filed before the next date.

We consider it appropriate to transfer the proceedings for further consideration of the Southern Bench. The registry may transfer the record accordingly to the said Bench.

List for further consideration before the Southern Bench on 05.04.2021.

Adarsh Kumar Goel, CP

S.K. Singh, JM

Dr. Nagin Nanda, EM

January 21, 2021
O.A. No. 514/2019
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