

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE THE CHIEF JUSTICE MR.S.MANIKUMAR

&

THE HONOURABLE MR. JUSTICE SHAJI P.CHALY

THURSDAY, THE 9TH DAY OF SEPTEMBER 2021 / 18TH BHADRA, 1943

WP(C) NO. 28496 OF 2018

PETITIONER:

JACKSON MATHEW, AGED 45 YEARS, VANNIYAMPARAMBIL HOUSE, CARBORUNDUM ROAD,
SOUTH KALAMASSERY, ERNAKULAM, COCHIN - 683109.

BY ADVS.SANTHOSH MATHEW, ARUN THOMAS, JENNIS STEPHEN
VIJAY V. PAUL, KARTHIKA MARIA, VEENA RAVEENDRAN, ANIL SEBASTIAN PULICKEL

RESPONDENTS:

- 1 STATE OF KERALA, REPRESENTED BY CHIEF SECRETARY, SECRETARIAT,
THIRUVANANTHAPURAM.
- 2 LOCAL SELF GOVERNMENT DEPARTMENT, REPRESENTED BY THE SECRETARY,
SECRETARIAT, THIRUVANANTHAPURAM - 695001.
- 3 SUCHITWA MISSION, REPRESENTED BY CHAIRMAN OF GOVERNING BODY, LOCAL SELF
GOVERNMENT DEPARTMENT, SWARAJ BHAVAN, BASE FLOOR (-1),
NANTHENCODE, KOWDIAR P.O., THIRUVANANTHAPURAM - 695003.
- 4 KERALA STATE POLLUTION CONTROL BOARD, HEAD OFFICE, PATTOM P.O.,
THIRUVANANTHAPURAM - 695004.
- 5 COCHIN MUNICIPAL CORPORATION, REPRESENTED BY ITS SECRETARY, CORPORATION
OFFICE, ERNAKULAM, KOCHI - 682011.
- 6 DISTRICT COLLECTOR, COLLECTORATE, CIVIL STATION, KAKKANAD, ERNAKULAM - 682030.

BY ADVS.SRI. T.NAVEEN SC, KERALA STATE POLLUTION CONTROL BOARD,
SRI.JOSEPH K.L., SC, KOCHI MUNICIPAL CORPORATION
SRI.RANJITH THAMPAN,ADDL.ADVOCATE GENERAL
S.SUDHISH KUMAR
SHRI.K.JANARDHANA SHENOY, SC, KOCHI MUNICIPAL CORPORATION

SRI.K.P.HARISH,SENIOR GOVERNMENT PLEADER, SRI.JACOB.P.ALEX (AMICUS CURAE)

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 09.09.2021, THE COURT ON
THE SAME DAY DELIVERED THE FOLLOWING:

JUDGMENT

Dated this the 9th day of September, 2021

S.MANIKUMAR, C.J.

The petitioner is stated to be a public spirited citizen residing in Cochin. In this public interest litigation, petitioner has sought for a direction to the respondents to take immediate effective steps for proper solid waste management, subsequent to flood in Kerala. The local self government bodies have the duty to ensure door-to-door collection and segregation of solid waste from households, including slums and informal settlements, commercial, institutional and other non-residential premises. According to the petitioner, there is inaction on the part of the Municipal authorities in providing adequate facilities for management of solid waste. Hence this writ petition with the following reliefs:

- i. To issue a writ of mandamus or any other appropriate writ or order directing the respondents to take immediate effective steps for infrastructure development for collection, storage, segregation, transportation, processing and disposal of municipal solid waste as laid down in SWMR, 2016, PWMR,

2016, Kerala Municipal Act and Kerala Panchayat Raj Act.

- ii. To issue a writ of mandamus or any other appropriate writ or order directing the respondents to take immediate steps to widely publicise Ext.P3 circular and effectively implement the directions in it, including through allocation of sufficient resources.

2. Petitioner has submitted that the public roads, parks, bus stations, railway stations, markets and other public premises are to be cleaned on daily basis, including holidays, by the local-self-government bodies. The public bodies have the duty to provide adequate sanitation facilities to the public and to minimize the spreading of communicable diseases. It is also submitted that the local-self-government bodies have a duty to promote setting up of decentralized compost plant or bio-methanation plant at suitable location in the markets or in vicinity of markets ensuring hygienic conditions. According to the petitioner, no such plants are established by Cochin Municipal Corporation or various local self government institutions in the State. Another contention raised by the petitioner is that the respondents have to take steps to ban the sale and consumption of non-biodegradable plastic products or

find alternate products for use. Steps taken to ban plastic bags are not being effectively enforced by the authorities concerned. The local-self government bodies have the duty to create public awareness about the waste generators and about how to segregate the waste. But no such steps are being taken by the 5th respondent or the local self government institutions. The untreated garbage disposed by municipal and other local authorities every day, in a unhygienic manner, causes spreading of communicable diseases, such as Malaria, Dengue fever, Chikungunya, Cholera, Typhoid, Diarrhoea etc. It is also to be noted that the increase in the number of stray dogs due to the lack of sufficient solid waste management is another dangerous menace faced by the inhabitants of the 5th respondent.

3. We have heard learned counsel for the parties and perused the materials available on record.

4. A detailed counter affidavit dated 18th September, 2018 has been filed on behalf of the 4th respondent/Kerala State Pollution Control Board, Thiruvananthapuram wherein, it is stated that there are more than 2.5 lakhs of wells submerged in the flooded area and cleaning and

disinfection activities of these wells are going on. The District Offices, Regional Offices and the State Level Cell constituted by the Board are closely monitoring the measures taken by the authorities for mitigating the Pollution/waste caused by the flood. Relevant portion of the counter affidavit reads as under:

“5. It is respectfully submitted that drastic flood hit in many districts of Kerala from 13th to 19th of August, 2018. Taking note of the alarming situation, the Kerala State Pollution Control Board (hereinafter referred to as Board) issued circular as early as on 17-8-2018 directing all Heads of District Offices of the Board to give necessary assistance to the respective District Collectors in the efforts to control pollution happened as a result of flood. Necessary directions are also issued to conduct quality test of drinking water and to inform the same to the Department concerned and the District Collectors. A true copy of the circular dated 17-8-2018 is produced herewith and marked as Exhibit R4(a). The English translation of Ext.R4(a) is produced herewith and marked as Exhibit R4(a)(1).

6. It is respectfully submitted that all kind of wastes accumulated in the banks of rivers, properties, public streets, houses etc. due to the unprecedented flood happened in these days. The Board found that various kind of solid and liquid wastes were generated in the Relief Camps, when thousands of people were displaced from their home land. In the above circumstances, the Board has issued Ext. P3 circular dated 21-8-2018 categorically giving directions to handle with and dispose of the waste that may generate at the Relief Camps, houses, public streets etc. Specific instructions were given to the District Offices of the Board to work along with the District Collectors and the activities carried out by the Local Self

Government Institutions. As per the above circular, the Chief Environmental Engineers in the respective regions of the Board were entrusted with the duties to co-ordinate the district level pollution control activities. Subsequently the Board has issued another circular dated 24-8-2018 constituting a State level Cell headed by the Senior Environmental Engineer, Head Office of the Board for the co-ordination at the State level with Haritha Kerala Mission, in connection with waste management associated with flood relief. A true copy of the circular dated 24-8-2018 is produced herewith and marked as Exhibit R4(b).

7. In order to formulate a comprehensive plan for disposal of waste cleaning process in the areas affected by flood, a meeting of the Officers of the Board was convened at Regional Office, Ernakulam on 26-8-2018. In the said meeting decisions touching all aspects of disposal of waste, cleaning of wells, performance appraisal of STPs in the flood affected areas etc. were taken. A true copy of the Minutes of the above Board meeting held on 26-8-2018 is produced herewith and marked as Exhibit R4(c). The English translation of Ext.R4(d) is produced herewith and marked as Exhibit R4(c)(1). A perusal of the above minutes would indicate that prime focus is given to the segregation and collection of plastic wastes, e-wastes, solid wastes etc. and to collect the same in separate places identified for that purpose. It is also evident that decisions are taken to ensure the participation of approved plastic recyclers and the Local Self Government Institutions for taking the plastic waste for recycling. Necessary decisions were taken to entrust the authorised agents/brand owners for taking back the e-wastes for recycling. Decisions were also taken to direct the authorised agents/brand owners to provide more employees to the authorised Service Centres for repairing of the electronic appliances to the possible extent. In the above meeting decision was taken to bury the bio-degradable wastes then and there in the available lands. Directions are given to the District Offices of the Board to give proposal for the proper

disposal of non-biodegradable wastes including beds, bags, footwear, umbrellas, utensils, cloths etc. on or before 29-8-2018. Further a meeting was held and it was decided to segregate and keep the above type of waste as such for giving to co-incineration process or any other suitable method of disposal. For the purpose of cleaning the wells contaminated as an after effect of the flood, decision was taken to introduce field kit and to give information about the water quality testing available in the Board.

8. It is respectfully submitted that the District Offices, Regional Offices and the State Level Cell constituted by the Board are closely monitoring the measures taken by the authorities for mitigating the Pollution/waste caused by the flood. It is submitted that the Board has given a detailed reply dated 29-8-2018 to the Government narrating the steps taken by the Board to control the pollution caused as a result of the recent flood. A true copy of the reply dated 29-8-2018 is produced herewith and marked as Exhibit R4(d). The English translation of Ext.R4(d) is produced herewith and marked as Exhibit R4(d)(1). A perusal of the above report would show that the Board is seeking assistance of the Pollution Control Boards in the neighbouring States to make available the facilities the Cement production Companies at neighbouring states for the disposal of plastics having calorific value and wastes other than plastics through co-incineration process. The Andhra Pradesh Pollution Control Board has replied that 3 cement plants in their State has agreed for taking the waste material in their cement kiln as per letter dated 30.08.2018. A true copy of the same is produced herewith and marked as Exhibit R4(E). It is also evident that the manufacturers and recyclers are required to intervene in the matter for the proper disposal of electronic wastes. The Board is taking steps to install Reverse Osmosis Plants with the approval of the State Government in area where no facilities are available for drinking water.

9. It is submitted that there are more than 2.5 lakhs of wells submerged in the flooded area and cleaning and disinfection activities of these wells are going on. There are a large number of demands to ascertain the water quality of cleaned wells and the Board initiated an action plan to monitor the wells in the fields with the help of Haritha Keralam Mission, Urban Local Body, Panchayath, Kerala Water Authority, Food Safety Department and National Service Scheme Volunteers. The programme was launched on 8th and 9th of September 2018 in One Municipality and One Grama Panchayath of flood affected Districts as first phase. A detailed schedule for collection and analysis of well water in Alappuzha, Pathanamthitta, Kottayam, Ernakulam, Thrissur and Wayanad Districts has been prepared as per the proceedings No. PCB/HO/EE4/FLOOD RELIEF/2018 dated 05.09.2018. The collection and analysis of well water samples were done as per the schedule. The programme was reviewed on 17-9-2018. It is noted that the physical and chemical parameters analysed are within the limit in most of the wells. The total coliform (TC) count in most of the wells are in the range 0 to 50. In few wells the TC is below 500 and in some other cases it is more than 500. In the case of TC less than 500, the well water can be used after further disinfection and if the TC is greater than 500, further inspection, cleaning of wells and disinfection are recommended. It was also decided to collect and analyse samples from 25% of the remaining wells at random in the second week of October, 2018.”

5. A detailed counter affidavit dated 6th February, 2019 has been filed on behalf of the 5th respondent/Secretary, Corporation of Kochi wherein, it is stated that strict directions have been given in the form of proceedings of Secretary assigning Health Inspectors and Junior Health

Inspectors to ensure that wastes are transported in covered vehicles. Responsibility of proper segregation of waste at source level has been assigned to Health Inspectors of respective health circles. Health Inspectors have to ensure that source level segregation is in place or shall enforce wherever necessary and from the waste transfer points plastic wastes are not loaded into the truck that carries food waste/Biodegradable waste. Relevant portion of the said counter affidavit reads as under:

“5. Steps have been taken to complete all the repair works related to the trommels, proper drainage system, establishment of semi-permanent Leachate Treatment System in the Brahmapuram plant to be completed in March 2019.

6. Regarding plastic wastes, plastic shredding unit is fully operational now. Baling unit has already been installed. Liaison works are progressing with the Clean Kerala Company to install two additional shredding units. Tenders are being invited for remediation of legacy wastes and reclamation of land and the same has been decided to be completed in March 2019. Corporation has made a proposal for capping a portion of the plastic waste with Suchitwa Mission. Suchitwa Mission advised to get the design vetted from an Engineering College. An engineering college have now responded and agreed to vet the design for Rs.1,47,000/-. An amount of Rs.1,06,00,000/- was also allocated under plan fund for the work.

7. It has been decided to complete the disposal of flood waste in March 2019. The disposal of the flood waste has been started from 18.01.2019 through Clean Kerala Company. About 117 truck-loads/1200 tones wastes have been taken to KEIL as on 02.02.2019. Due to dispute between the waste transporting contractor and Clean Kerala Company, regarding the dues to be paid, the work was temporarily stopped after 02.02.2019. After settling the issues the works have been resumed on 08.02.2019.

8. Notices have been issued to 5 Municipalities and 2 Grama Panchayaths whose wastes are brought to Brahmapuram plant for treatment, directing them to bring only segregated waste. Strict directions have been given in the form of proceedings of Secretary assigning Health Inspectors and Junior Health Inspectors to ensure that wastes are transported in covered vehicles. Responsibility of proper segregation of waste at source level has been assigned to Health Inspectors of respective health circles. Health Inspectors have to ensure that source level segregation is in place or shall enforce wherever necessary and from the waste transfer points plastic wastes are not loaded into the truck that carries food waste/Biodegradable waste.

9. In the meeting with the Kudumbasree and the workers of Corporation associated with waste collection held on 14/01/19 it was clearly informed that no mixed waste shall be collected or loaded into trucks. Also in the meeting with the Health Inspectors and Junior Health Inspectors of all Health circles on 14/01/2019 it was reiterated to ensure proper segregation of waste.

10. The matter of segregating the waste at source level itself is being rolled out through the Kudumbasree and health workers of Corporation. Kochi Corporation will stop collecting mixed waste after March 2019. Directions has been issued in the form of proceedings of Secretary that the Health

Inspectors and Junior Health Inspectors of respective health circles shall certify/issue pass to trucks transporting waste stating that the truck load contains only food waste/wet waste/bio-degradable waste. JHI of the plant shall acknowledge the passes and shall let to tip wastes certified as biodegradable waste by Health Inspectors and Junior Health Inspectors of respective health circles.”

6. Considering the entire facts and circumstances of the case and considering the averments contained in the abovesaid counter affidavits, it can be deduced that the respondents have already taken all possible effective steps for the disposal of solid waste caused due to flood, as laid down in statutory provisions.

In the light of the above, there is nothing further to adjudicate in the writ petition. Writ petition is accordingly disposed of.

SD/-
S.MANIKUMAR
CHIEF JUSTICE

SD/-
SHAJI P. CHALY
JUDGE

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APPENDIX

PETITIONER'S EXHIBITS

- EXHIBIT P1 A TRUE COPY OF NEWSPAPER REPORT DATED 29/08/2018 PUBLISHED IN THE NEW INDIAN EXPRESS DAILY.
- EXHIBIT P2 A COPY OF THE ORDER DATED 20/08/2018 IN WP(C) NO.28093/2018.
- EXHIBIT P3 A COPY OF THE CIRCULAR NO. PCB/HO/CIRCULAR- 01/03/2017 DATED 21/08/2018 ISSUED BY THE 4TH RESPONDENT.

RESPONDENT'S EXHIBITS

- EXHIBIT R4(a) TRUE COPY OF THE CIRCULAR DATED 17/08/2018 ISSUED BY THE PCB.
- EXHIBIT R4(a)(1) ENGLISH TRANSLATION OF EXT.R4(A)
- EXHIBIT R4(b) TRUE COPY OF THE CIRCULAR DATED 24/08/2018 ISSUED BY THE PCB.
- EXHIBIT R4(c) TRUE COPY OF THE MINUTES OF THE BOARD MEETING HELD ON 26/08/2018.
- EXHIBIT R4(c)(1) ENGLISH TRANSLATION OF EXT. R4(C).
- EXHIBIT R4(d) TRUE COPY OF THE REPLY DATED 29/08/2018 GIVEN BY THE BOARD TO THE GOVERNMENT.
- EXHIBIT R4(d)(1) ENGLISH TRANSLATION OF EXT. R4(d).
- EXHIBIT R4 TRUE COPY OF THE LETTER DATED 30/08/2018 ISSUED BY THE ANDHRA PRADESH POLLUTION CONTROL BOARD.

// TRUE COPY //

P.S. TO JUDGE