

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE N.NAGARESH

THURSDAY, THE 11TH DAY OF AUGUST 2022/20TH SRAVANA, 1944

WP(C) NO. 17676 OF 2022

PETITIONER:

M/s.VODAFONE IDEA LTD.,
(FORMERLY KNOWN AS IDEA CELLULAR LTD.)
VJ TOWER, SERVICE ROAD,
VYTILLA P.O.,
ERNAKULAM - 682019,
REP. BY ITS HEAD LEGAL (NODAL OFFICER),
RAJESH M.V.,
AGED 48 YEARS,
S/O. M.V.RAGHAVAN,
RESIDING AT VILLA NO.42,
ASSET KASAVU, TOG ROAD,
SOUTH KALAMASSERY, COCHIN.

BY ADVS.
P.SATHISAN
DONA AUGUSTINE

RESPONDENTS:

- 1 KERALA STATE POLLUTION CONTROL BOARD,
HEAD OFFICE, PATTAM P.O.,
THIRUVANANTHAPURAM-695004,
REPRESENTED BY ITS CHAIRMAN.
- 2 THE CHIEF ENVIRONMENTAL ENGINEER,
KERALA STATE POLLUTION CONTROL BOARD,
REGIONAL OFFICE ERNAKULAM,
GANDHI NAGAR, ERNAKULAM-682020.
- 3 THE CHIEF ENVIRONMENTAL ENGINEER,
KERALA STATE POLLUTION CONTROL BOARD,
REGIONAL OFFICE KOZHIKODE,
3RD FLOOR, ZAMORINS SQUARE,
LINK ROAD,
KOZHIKODE-673002.

4 THE CHIEF ENVIRONMENTAL ENGINEER,
KERALA STATE POLLUTION CONTROL BOARD,
REGIONAL OFFICE TRIVANDRUM, PATTOM P.O.,
THIRUVANANTHAPURAM-695004.

ADDL.5 UNION OF INDIA,
MINISTRY OF ENVIRONMENT,
FOREST AND CLIMATE CHANGE,
REPRESENTED BY ITS SECRETARY,
MINISTRY OF ENVIRONMENT,
FOREST AND CLIMATE CHANGE,
INDIRA PARYAVARAN BHAVAN,
JORBAGH ROAD, NEW DELHI-110 003,
INDIA.

(IS IMPEADED AS PER ORDER DATED 13-06-2022 IN
IA No.1/2022)

BY ADVS.

R1-4 BY SRI. T.NAVEEN SC, KERALA STATE POLLUTION
CONTROL BOARD,
ADDL.R5 BY SRI.M. JAYAKRISHNAN VAZHOOR, CGC

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR
ADMISSION ON 11.08.2022, THE COURT ON THE SAME DAY
DELIVERED THE FOLLOWING:

CR

N. NAGARESH, J.

.....
W.P.(C) No. 17676 of 2022
.....

Dated this the 11th day of August, 2022

J U D G M E N T

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The petitioner, who is a licensed Telecom Service Provider, is before this Court seeking to direct the respondents not to implement any restrictive orders on the operation of DG (Diesel Generator) sets without specific direction in writing from Central Government in that regard and to pass restrictive orders with implementable concentration mandates alone with respect to air pollutant emissions.

2. The petitioner is a licensed Telecom Service Provider and a Telecom Authority as per Section 19B of the Indian Telegraph Act. Their Telecom Service is rendered

through Telecom Towers using technically hybrid Switching Centres across the State. Energy to switching Centres is provided by the Kerala State Electricity Board (KSEB). The Centers are provided with Battery backups with substantial storage capacity.

3. To avoid any service break in case of failure of KSEB power supply and exhausting of battery backup, the petitioner has deployed hybrid and high quality DG sets. The DG sets used by the petitioner are below par emission levels. The quality specifications and standards of these DG sets are certified by manufacturers themselves.

4. The petitioner states that the State Pollution Control Board can function and exercise its powers based on the directions issued by the Central Government alone. The restrictions on the use of certain industrial plants are specified in Section 21 of the Air (Prevention and Control of Pollution) Act, 1981. As per Section 2(k) of the Act, industrial plant means any plant used for any industrial or trade purposes and emitting any air pollutant into the atmosphere. Air pollutant is

any solid, liquid or gaseous substance (including noise) present in the atmosphere in such concentration as may be or tend to be injurious to human beings or other living creatures or plants or property or environment. Restrictions on the use of industrial plants and air pollutants essentially necessitate the measurement of the concentration of air pollutants.

5. The petitioner states that the Telecom Tower and the switching centres of the petitioner cannot be treated as “plant”. Even if those are treated as plants, the essential requirement with respect to the restriction on the use of industrial plants is with respect to the concentration of emission of air pollutants. Therefore, the rudimentary requirement is the fixation of concentration of emission, contends the petitioner.

6. The 1st respondent-Kerala State Pollution Control Board issued Ext.P5 order dated 09.12.2020 mandating deduction of emission by 30% of DG sets above 500 KVA. The order does not specify any specific unit with respect to the concentration and the level to which emission concentration

needs to be contained. Ext.P5 order is issued without application of mind.

7. The petitioner states that Ext.P5 order has been issued as per Section 17(1) and Section 31(A) of the Air (Prevention and Control of Pollution) Act, 1981 read with Section 5 of the Environment (Protection) Act, 1986. A reading of the said provisions would show that direction from the Central Government is an essential prerequisite for issuance of any directions like those contained in Ext.P5. Ext.P5 does not refer to any direction from the Central Government or Central Pollution Control Board.

8. The petitioner was issued with Consent to Operate after finding that the emission standards of the DG sets are impeccably within the prescribed limits. The petitioner has made huge investments in purchase and installation of these DG sets. The DG sets of the petitioner are of high-quality with least emission. Prescribing a uniform level for emission without any reference to the capacity, vintage and manufacturing qualities of the DG sets create imbroglios and implementation

of the order has become impossibility.

9. The learned counsel for the petitioner argued that Ext.P5 order has been made applicable only to DG sets above 500 KVA. There is no intelligible nexus in confining the applicability of pollution norms only to DG sets of 500 KVA. The emission standards of DG sets are not made a consideration. No emission standard has been prescribed for the 500 KVA DG sets operated by the petitioner.

10. Ext.P5 order at one place speaks of reduction of pollutants to the national level target of 30% and at another place speaks of capturing efficiency at least of 70%. Conflicting signals in Ext.P5 makes the order unreliable and unsupportable. Ext.P5 Order is therefore liable to be interfered with by appropriate writs of this Court, urged the counsel for the petitioner.

11. Respondents 1 to 4, the Kerala State Pollution Control Board and its officials, filed a counter affidavit and justified Ext.P5 order. Respondents 1 to 4 stated that emissions from the DG sets are considered to be a major

contributor of particulate matter in the atmosphere. The Ministry of Environment, Forest and Climate Change (MoEF& CC) has introduced "National Clean Air Programme" (NCAP) for reducing the levels of air pollution at both the Regional and Urban scales. The target of the programme is to reduce 20-30 percent of PM 2.5 and PM 10 concentration by the year 2024.

12. The NCAP has published a report on 31.12.2018 prescribing various action points to be implemented on a time bound basis. Paragraph 7.5.3 deals mainly with the restrictions to be imposed on the usage of DG sets. The action points under paragraph 7.5.3 read as follows:

“For DG Sets already operational, ensure usage of either of the two options: (a) use of retrofitted emission control equipment having a minimum specified PN capturing efficiency of at least 70%, type approved by one of the 5 CPCB recognised labs; or (b) shifting to gas-based generators by employing new gas-based generators or retrofitting the existing DG sets for partial gas usage.”

13. The National Green Tribunal (NGT) by order dated 06.08.2019 has observed that the time line to reduce the air pollution by 30% need to be reduced and the target of

reduction needs to be increased. It is in the above background that the Board, by invoking the powers vested under Section 17(1)(j) read with Section 31(A) of the Air (Prevention and Control of Pollution) Act, 1981 and Section 5 of the Environment (Protection) Act, 1986, has issued Ext. P5 order.

14. The Board is a statutory body created under Section 4 of the Air (Prevention and Control of Pollution) Act, 1974. As per Section 5 of the Air Act, the State Board constituted under the Water Act shall be deemed as the State Board constituted under the Air Act. Section 17 of the Air Act and Water Act prescribes the functions of a State Board. As per that, a State Board is vested with comprehensive powers to prevent, control and abate air and water pollution. Section 18 gives powers to give directions, to the Central Government, State Government as well as Central Board, which shall be followed by the State Board. Section 18 does not contemplate that the State Board can function only if there is a direction issued by the Central Government or State Government or Central Board. State Board is a fully independent statutory body vested with

functions and powers to discharge its statutory goals. Hence, the argument of the petitioner that the State Board can function only upon receiving direction from the Central Government, is unsustainable.

15. The 5th respondent-Ministry of Environment, Forest and Climate Change filed an affidavit. The 5th respondent stated that the directions issued by the Central Pollution Control Board and the Type Approval Certificate issued, are basic minimum. The State Pollution Control Boards / Pollution Control Committees are empowered to impose any stringent condition over and above the basic norms prescribed by the CPCB or the Government.

16. The petitioner desires formulation of emission standards for in-use DG sets having capacity <800 KWs. Such standards are not formulated as DG sets having capacity <800 KWs are governed by separate sets of emission standards, which are to be complied with at the manufacturing stage. Further, DG sets having capacity >800 KWs are having separate set of emission standards which are to be complied

with during operation, urged the 5th respondent.

17. As per Section 18 of the Air (Prevention and Control of Pollution) Act, 1981, in the performance of its functions under this Act, the CPCB shall be bound by such direction in writing as the Central Government may give to it and every State Board shall be bound by such directions in writing as the CPCB or State Government may give to it. However, SPCBs are empowered to impose stringent standards as per their function given under the Air Act, 1981, states the 5th respondent.

18. I have heard the learned counsel for the petitioner, the learned Standing Counsel representing respondents 1 to 4 and the learned Central Government Counsel appearing for the 5th respondent.

19. The Government of India, Ministry of Environment, Forest and Climate Change launched **National Clean Air Program (NCAP)** for the prevention, control and abatement of air pollution level in the country at an urban and regional level. The NCAP recognised major sources of air pollution such as

vehicles, DG sets, construction dust, etc. As per the NCAP, DG sets are a major source of air pollution in Indian Cities and States.

20. The National Green Tribunal also in their order titled **"NCAP with multiple timelines to clean air in 102 Cities to be released around August 15"** (O.A. No.681 of 2018) gave certain directions to prepare an action plan for ambient air quality in the Non Attainment cities.

21. The NCAP Plan is for national level target of 30% reduction of PM 2.5 and PM 10 concentration in the ambient air. The National Green Tribunal observed that the timeline to reduce the air pollution by 30% needs to be reduced and the target of reduction need to be increased, having regard to the adverse effect on public health. In the NCAP Report, one of the Action Point is to retrofit all operational DG sets with an Emission Control Device/Equipment having a minimum Specified Particulate Matter capturing efficiency of at least 70% or shift to gas based DG sets by employing new gas based generators or retrofitting.

22. The Kerala State Pollution Control Board therefore gave certain directions to all industries and establishments operating DG sets of capacity 500 KVA and above in Kerala, invoking Board's powers under Section 17(1)(j) read with Section 31(A) of the Air (Prevention and Control of Pollution) Act, 1981 and Section 5 of the Environment (Protection) Act, 1986. The directions were to the following effect:

"I) Retrofit all operational DG sets of capacity 500 KVA and above with an Emission Control Device / Equipment having a minimum specified Particulate Matter capturing efficiency of at least of 70% in 5 mode D2 cycle. The Emission Control Device / Equipment must be tested over an ISO-8178 5 mode D2 cycle for equivalent KVA rating by any one of the five Central Pollution Control Board, Government of India, recognized/approved laboratories as given below:

a) Automotive Research Association of India, Pune (Maharashtra).

b) International Centre for Automotive Technology, Manesar (Haryana).

c) Indian Oil Corporation, Research and Development Centre, Faridabad (Haryana).

d) Indian Institute of Petroleum, Dehradun (Uttarakhand); or

e) Vehicle Research Development Establishment, Ahmednagar (Maharashtra)

(or)

(II) Shifting to gas based generators by employing new gas based generators or retrofitting the existing DG sets for partial gas usage.

This is to be complied with within a period of 120 days from the date of issuance of this order by all stake holders."

It is these directions which are impugned in the writ petition.

23. A retrofit emission control device is installed to reduce the harmful emission and pollutants exhausts from DG sets. In India, Diesel Generators are widely used for continuous power backup. When diesel burns, it emits unburned hydrocarbons, carbon monoxide, nitrogen oxides or Particulate Matters (PM) into the air. According to the World Health Organisation, the safety limits of these Particulate Matter is 23 micrograms per cubic metre. DG sets cause the density to increase up to 300 micrograms per cubic metre. It is in such circumstances that the Kerala State Pollution Control Board gave Ext.P5 directions.

24. The learned counsel for the petitioner would argue that there is no intelligible nexus with the purpose, in picking up DG sets of 500 KVA and above, for imposing retrofitting of emission control devices. The absence of emission standards in Ext.P5 would render Ext.P5 unsustainable, according to the counsel for the petitioner.

25. This Court finds that Section 17(1)(j) of the Air (Prevention and Control of Pollution) Act, 1981 empowers the State Pollution Control Boards to do such acts for proper discharge of their functions. While discharging its functions, if the Board chooses to regulate functioning of pollutant machinery of a particular description or power, it cannot be said that non-regulation of functioning of all such machinery irrespective of description and power, is bad or that it has no nexus with the object. The Boards will be amply justified in regulating more polluting units/machinery first.

26. The fact that emission standards are not laid down in Ext.P5 order is also of no consequence. As stated by the 5th respondent, the directions issued by the Board and Type Approval Certificate issued are basic minimum. The State Boards are empowered to impose more stringent conditions over and above the basic norms by the Government of India or the Central Pollution Control Board. It has to be kept in mind that emission of Particulate Matter, however little it may be, is harmful to Public Health. The order of the State Board is to

retrofit emission control devices with Particulate Matter capturing efficiency of at least 70%.

27. This Court further finds that there is no ambiguity in the percentage of emission sought to be controlled as per Ext.P5. The figure 30% indicated in Ext.P5 is the targeted national level timeline reduction of air pollution. To achieve this National target, the industries and establishments like the petitioner are required to retrofit DG sets with Emission Control Devices/Equipments having a minimum specified Particulate Matter capturing efficiency of at least 70%. There is no ambiguity or uncertainty in Ext.P5 order in that regard.

28. It has to be further noted that the industries and establishments using DG sets are given options to reduce polluting emissions. Retrofitting is only one of the options.

29. Air Pollution is a silent killer. The air pollution levels in India are considered as high. Exposure to Particulate Matter 2.5 can cause deadly illnesses like lung cancer, stroke and heart diseases. The health impacts of pollution have a cost on the Nation's economy also. Sectors such as Agriculture,

Industry, Power, households and Transport, all contribute to Particulate Matter emission.

30. The air pollution challenge in India is multi-sectoral and multi-jurisdictional. The Union and States and the Central and State Pollution Control Boards are taking on the challenge in all possible ways. Improvement of Public Health is a Directive to the State under Article 47 of the Constitution. Ext.P5 Order therefore is intended to achieve a laudable objective. It does not violate any of the fundamental or statutory rights of the petitioner.

The writ petition is therefore without any merit and the same is dismissed.

Sd/-

N. NAGARESH, JUDGE

aks/10.08.2022

APPENDIX OF WP (C) 17676/2022

PETITIONER'S EXHIBITS:

Exhibit P1	TRUE COPY OF THE RELEVANT EXTRACT OF LICENSE OF THE PETITIONER COMPANY.
Exhibit P2	TRUE COPY OF THE RELEVANT EXTRACT OF CERTIFICATE OF INCORPORATION OF THE PETITIONER COMPANY.
Exhibit P3	TRUE COPY OF THE CERTIFICATE/CONSENT VARIATION ORDER DATED 27.01.2021 ISSUED BY 1ST RESPONDENT.
Exhibit P3(a)	TRUE COPY OF THE CERTIFICATE OF REGISTRATION DATED 17.04.2020 BEARING NO.PCB/KKD/DO/WHITE-1068/REG13148455/2020.
Exhibit P4	TRUE COPY OF THE ENGINE TEST CERTIFICATE DATED 26.04.2018.
Exhibit P4(a)	TRUE COPY OF THE DG TEST CERTIFICATE DATED 22.02.2017 ALONG WITH KOEL GREEN GENSET TEST CERTIFICATE.
Exhibit P5	TRUE COPY OF THE ORDER OF 1ST RESPONDENT DATED 09.12.2020.

RESPONDENT'S EXHIBITS:

Exhibit R1 A	TRUE COPY OF THE RELEVANT PAGES OF THE REPORT DATED 31.12.2018 PUBLISHED BY THE NCAP.
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