

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE DEVAN RAMACHANDRAN

WEDNESDAY, THE 27TH DAY OF AUGUST 2025 / 5TH BHADRA, 1947

WP(C) NO. 24027 OF 2021

PETITIONER:

COCHIN PORT TRUST,
WILLINGDON ISLAND, COCHIN, ERNAKULAM-682 009, KERALA,
REPRESENTED BY ITS SECRETARY.

SRI.E.K.NANDAKUMAR (SR.)
SHRI.M.GOPIKRISHNAN NAMBIAR
SHRI.K.JOHN MATHAI
SRI.JOSON MANAVALAN
SRI.KURRYAN THOMAS
SHRI.PAULOSE C. ABRAHAM
SHRI.RAJA KANNAN

RESPONDENTS:

- 1 STATE OF KERALA,
REPRESENTED BY ITS CHIEF SECRETARY, GOVERNMENT
SECRETARIAT, THIRUVANANTHAPURAM-695 001, KERALA.
- 2 DISTRICT COLLECTOR, ERNAKULAM,
COLLECTORATE, KAKKANAD, ERNAKULAM-682 030, KERALA.
- 3 CHAIRPERSON,
STATE EXECUTIVE COMMITTEE, KERALA STATE DISASTER
MANAGEMENT AUTHORITY, OBSERVATORY HILLS, VIKAS BHAVAN
P.O., THIRUVANANTHAPURAM-695 033, KERALA.
- 4 ADDL R4. COCHIN SHIPYARD LTD
MAHATMA GANDHI ROAD, RAVIPURAM, PERUMANOOR, KOCHI ,
KERALA- 682015
- ADDL.5 THRISSUR DISTRICT LABOUR CONTRACT
CO- OPERATIVE SOCIETY LTD., REG NO 1389, GLOBAL TOWER,
FIRST FLOOR, VANCHIKULAM ROAD, OPPOSITE RAILWAY
STATION, POOTHOLE P.O, THRISSUR - 680004
(ADDITIONAL R4 & R5 SUO MOTU IMPEADED AS PER ORDER
DATED 20.10.2022).



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- ADDL.6 C.L EBENSER
AGED 56 YEARS, S/O LONANKUTTY, RESIDING AT
CHULLIKATTU HOUSE, CHERANELLUR, KOCHI-682034.
- ADDL.7 CYRIL SHIBU
AGED 58 YEARS, S/O K.S. JERRY, RESIDING AT
KOLLATTUTHARA HOUSE, KOONAMMAVU, CHEMMAYAM,
KOONAMMAVU.P.O., PIN:683518.
- ADDL.8 JACOB SANTHOSH,
AGED 56 YEARS, S/O LATE P.C MATHEW, RESIDING AT
POTHADI HOUSE, RIVER LANDING ROAD, JETTY
ROADVAZHI, VADUTHALA, KOCHI-682023
(ADDITIONAL R6 TO R8 ARE IMPEADED AS PER ORDER
DATED 22.01.2025 IN IA 1/2022 IN WP(C)24027/2021)
- SHRI.S.KANNAN, SENIOR G.P.
SMT.ALINA ANNA KOSE
SMT.P.I.RAHEENA
SMT.KARTHIKA GANESH
SMT.AKHILA S.
SHRI.VISHNU PRASAD N.K.
SMT.SANDHRA MARIA SEBASTIAN
SHRI.NAYAN LAL A.
SMT.JAYALAKSHMI G. NAIR
SHRI.SANGEETH KRISHNA G.S.
SHRI.SHERON WILLIAMS
SRI.GOVIND PADMANABHAN - AMICUS CURIAE
SRI.A.G.SUNILKUMAR
SRI.SUNIL JACOB JOSE

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION
ON 27.08.2025, ALONG WITH WP(C).17185/2022, THE COURT ON THE
SAME DAY DELIVERED THE FOLLOWING:



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IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE DEVAN RAMACHANDRAN

WEDNESDAY, THE 27TH DAY OF AUGUST 2025 / 5TH BHADRA, 1947

WP(C) NO. 17185 OF 2022

PETITIONER:

AFCONS INFRASTRUCTURE LTD
AFCONS HOUSE, 16, SHAH INDUSTRIAL ESTATE, VEERA
DESAI ROAD, AZAD NAGAR, ANDHERI WEST, MUMBAI,
MAHARASHTRA - 400 053 REPRESENTED BY POWER OF
ATTORNEY HOLDER JAIDEV VELAYUDHAN VADAKKEKKARA,
AGED 49 YEARS, S/O.V.K.VELAYUDHAN, RESIDING AT
JEWEL HOME WHITE FIELD BLOCK B G-6, 6TH FLOOR,
DOOR NO.43/2153 G-5, HAMZA KUNJU LANE, SRM ROAD,
ERNAKULAM NORTH, ERNAKULAM DISTRICT, KERALA - 682
018.

SRI.M.RAMESH CHANDER (SR.)
SRI.BALU TOM
SRI.BONNY BENNY
SHRI. GOVIND G. NAIR
SHRI. BEJOY JOSEPH P.J.

RESPONDENTS:

- 1 STATE OF KERALA
REPRESENTED BY CHIEF SECRETARY TO GOVERNMENT OF
KERALA, SECRETARIAT, THIRUVANANTHAPURAM - 695 001.
- 2 DISTRICT COLLECTOR
OFFICE OF THE DISTRICT COLLECTOR, COLLECTORATE,
KAKKANAD, ERNAKULAM - 682 030.
- 3 CHAIRPERSON
STATE EXECUTIVE COMMITTEE, KERALA STATE DISASTER



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MANAGEMENT AUTHORITY, OBSERVATORY HILLS, VIKAS
BHAVAN P.O., THIRUVANANTHAPURAM - 695 033.

- 4 COCHIN PORT TRUST
WILLINGTON ISLAND, COCHIN - 682 009 REPRESENTED BY
ITS SECRETARY.
- 5 RAIL VIKAS NIGAM LIMITED
39/1968, DEVI KRIPA, H.I.G., AVENUE ROAD, GANDHI
NAGAR, COCHIN - 682 020.
- 6 ADDL.R6. THE COCHIN SHIPYARD LTD.
MAHATMA GANDHI ROAD, RAVIPURAM, PERUMANOOR, KOCHI,
KERALA - 682 015
- 7 ADDL.R7. THRISSUR DISTRICT LABOUR CONTRACT CO-
OPERATIVE SOCIETY LTD., REG.NO.1389, GLOBAL TOWER,
FIRST FLOOR, VANCHIKULAM ROAD, OPPOSITE RAILWAY
STATION, POOTHOLE P.O., THRISSUR - 680004 [ARE
IMPLEADED AS PER ORDER DATED 20.10.2022 IN
WP(C)17185/2022.]
- 8 ADDL.R8. PROJECT DIRECTOR
NATIONAL HIGHWAYS AUTHORITY OF INDIA, ERNAKULAM
[ADDL.R8 IS SUO MOTU IMPLEADED AS PER ORDER DATED
20.02.2025 IN WP(C)17185/2022].

SRI.BIDAN CHANDRAN
SHRI.M.GOPIKRISHNAN NAMBIAR
SHRI.K.JOHN MATHAI
SRI.JOSON MANAVALAN
SRI.KURYAN THOMAS
SHRI.PAULOSE C. ABRAHAM
SHRI.RAJA KANNAN
SRI.GOVIND PADMANABHAN - AMICUS CURIAE
SRI.A.G.SUNILKUMAR
SRI.SUNIL JACOB JOSE

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR
ADMISSION ON 27.08.2025, ALONG WITH WP(C).24027/2021, THE
COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

**JUDGMENT****[WP(C) Nos.24027/2021, 17185/2022]**

These two writ petitions have been heard together and am disposing them jointly on account of the factum of both of them impugning the same order and the factual factors involved being analogous, if not similar.

2. The genesis of the controversy in these cases is in that the Kerala Engineering Research Institute (KERI) made an investigation regarding the “obstruction of flow of the Periyar River near the Vallarpadam bridge at Vaduthala”, to determine the quality and quantity of the legacy sediments. It is reported to have been found by them that the deposit is significant “*for a distance of 1 km upstream and 2.083 km downstream of the railway bridge*” (sic) and that it is comprised mainly of clay and silt.

3. The District Collector, Ernakulam, thereupon made a report before the Government on 26.10.2021, enclosing the afore study of the KERI; and the matter was then brought to the notice of this Court, while it was hearing W.P(C)No.23911/2018,



relating, *inter alia*, to a plea for rejuvenation of the Perandoor Canal in Kochi. This Court passed an order dated 22.10.2021 in the said Writ Petition, directing the competent Authority to take steps to remove the sedimentation, so as to ensure free flow of water into the backwaters, observing that, unless this is done, what awaits the city of Kochi may be nothing short of a catastrophe.

4. It transpires that the District Collector then reported to the Government that the debris relates to the construction of the International Container Transshipment Terminal, Vallarpadam (ICTT), by the Cochin Port Trust; and that it was the responsibility of two subcontractors - one of them being AFCONS Infrastructure Limited, to have removed it, to restore smooth flow of water. The Officer further reported that this should have been made sure by the Cochin Port Trust.

5. The matter thus was seized to its consideration by the Government; and its Chief Secretary - in his capacity as the Chairperson of the State Executive Committee of the Kerala State Disaster Management Authority, constituted under the provisions of the Disaster Management Act, 2005 ('Act', for



short) - issued the impugned order on 27.10.2021, directing the Chairperson, Cochin Port Trust, *"to take urgent and necessary steps to remove the sedimentation to ensure the free flow of water through the backwaters in Vaduthala within 3 weeks of receipt of this order."* (sic). The order went on to further say that *"this will enable the Hon'ble Court to assess the reparatory damages which may have to be fixed in the event responsibility is found on either the AFCONS Infrastructure Ltd., or other agencies or entities."* (sic)

6. The Cochin Port Trust challenges the aforesaid order through W.P(C)No.24027/2021; while, AFCONS Infrastructure Limited assails it through W.P(C)No.17185/2022.

7. Sri.Nandakumar, learned Senior Counsel, instructed by Sri.Jayamohan - appearing for the Cochin Port Trust, argued that the impugned order is flawed since it is underpinned on a wrong factual assumption that his client had constructed the 'ICTT'. He asserted that such construction was done by the Government of India, Ministry of Railways, in conjunction with the Rail Vikas Nigam Ltd., through AFCONS Infrastructure Ltd., which was one of the contractors. He predicated that the



impugned order is thus infirm, since no liability could have been cast on his client, particularly its Chairperson, solely because the area where the construction was done may come within their territorial ambit. He concluded, saying that the Chief Secretary, therefore, obtained no jurisdictional capacity to direct their client in the manner as has been done in the order impugned; and prayed that Ext.P3 in W.P(C)No.24027/2021 be quashed.

8. Sri.Ramesh Chander, learned Senior counsel, instructed by Sri.Govind G.Nair - appearing for the AFCONS Infrastructure Limited, the petitioner in W.P(C)No.17185/2022, vehemently argued that the "threat" in the impugned order, that reparatory responsibility will be fixed on his client is untenable because, they were not the beneficiary of any contract, or even the construction of 'ICTT', Vallarpadam, but were merely the contractor acting under the specific terms of the agreement entered into by them. He argued that the statements in the impugned order have been made without proper study or thought and in a rather mechanical fashion; but then conceded that, perhaps, this is because the chief secretary of the Government of Kerala was acting in response to a major event,



namely the heavy monsoons of the year 2021. He concludingly asserted that, nevertheless, no liability can ever be found against his client.

9. Sri.S.Kannan - learned Senior Government Pleader, submitted that the issue projected in these cases is in the public realm and that if the free flow of the backwaters is not restored immediately, it would be the citizens of Kochi and other parts of the State of Kerala, who would be put to grave detriment. He explained that the severity of the monsoons in some of the years immediately prior to and after the impugned order was issued, stand testimony to this; and impressed upon this court that it is, therefore, that the Chief Secretary, in his capacity as the Chairperson of the State Executive Committee of the Kerala State Disaster Management Authority, had issued the order assailed. Sri.S.Kannan thereafter pointed out that a detailed counter affidavit has been filed on record by the Government of Kerala, explaining how the petitioners in these cases are responsible for the sedimentation; and consequently prayed that the same be not interdicted by this Court.

10. I do not propose to speak in detail about the rival



contentions at this stage because, am of the view that the Government of Kerala must be ordered to take a comprehensive view of the matter, not as an adversarial issue but in public interest; and to thus find a solution that will be feasible and efficacious.

11. I say as afore because, pending these matters, this Court had issued an order constituting a High Level committee – comprised of all stakeholders, including nominees of the petitioners in these cases - which has gone into the issue in detail; and a report settled by it is available. However, admittedly, no action has been able to be taken on it as of now, presumably because the petitioners had raised severe objections to some of the findings and observations therein; leading to them not signing the report.

12. Be that as it may, the issue involved surely is something that needs to be dealt with urgently. Nature has been very unpredictable in the last few years, particularly after the year 2018; and the seasonal changes in climate have been rather fierce.

13. In the years 2018 and 2019, the city of Kochi



suffered large-scale inundation, but it has been slightly better thereafter only because of various interventions of this Court in the connected matter relating to the upkeep of canals and the drainage system of Kochi.

14. The scenario cannot be allowed to remain in a flux, particularly when the final responsibility of ensuring the safety and well-being of all citizens is that of the Government.

15. This Court had ventured to constitute a High Level Committee only to find the true factual scenario; and if the petitioners are aggrieved by any finding entered against them by it; or if they are aggrieved that their objections have not been considered by the said Committee before the report was finalized, then it is for the competent Authority of the Government to consider all such aspects and take a final but comprehensive decision.

16. It may be true that the Government has filed a counter affidavit before this Court, detailing the manner in which they think that the petitioners are responsible; but, before a final decision in such manner can be finalized, the latter should be heard and their versions properly analyzed and assessed.



17. As this Court has already said in the prefatory portion of this judgment, the issues and aspects involved can ill afford to be treated as being adversarial; and am certain that all the stakeholders, including the petitioners herein, must involve themselves with sincerity of purpose, advertent to the pressing and dire consequences for the city of Kochi, as also several other parts of the State, which would have to suffer if the debris/deposits are not cleared at the earliest.

18. That being said, Sri.Vishnu Prasad - learned counsel for respondents 7 and 8 in W.P(C)No.24027/2021, impelled a different course, saying that the deposits/debris can be, in fact, removed and monetised, since it can be put to profitable use. He pointed out that his clients have placed on record, through their pleadings, some of such “innovative” suggestions. This Court is aware that one suggestion is that it can be used by the National Highways Authority of India (NHAI) for filling or construction in the ongoing Highway Projects in Kerala; but Sri.T.C.Krishna, learned Central Government Counsel, representing the NHAI, submitted that this would not be possible because its quality was not apposite for such construction.



19. Sri.Vishnu Prasad had, thereupon, made certain other suggestions, including through the participation of a private entity; to which, Sri.S.Kannan – learned Senior Government Pleader, responded saying the same are still pending with the Government for final approval.

20. This is more reason why this Court is of the view that it is for the Government, or its competent Authority, to take a final decision, advertng to all available alternatives.

21. Coming to the impugned order, the same had been issued by the Chief Secretary of the Government, reacting to the imminent need of that time, especially the impending monsoon. But, the conclusions in it are arrived in a paced manner, perhaps because of the compelling cause at that time. The counter pleadings by the Government is based on *ex post facto* evaluation; but affirmative findings require deeper thought, scientific investigation and in-depth inquiry, advertng to the reports of the KERI, as also that of the High Level Committee, constituted by this Court, and the suggestions of respondents 7 and 8 in WP(C) No.24027/2021, or any other germane inputs. However, as regards the report of the High Level Committee,



since the petitioners urge objections against some of its findings, such should also be incisively examined and evaluated by the Government or its competent Authority – which is stated to be its Chief Secretary — without being fettered or confined by the averments contained in the counter affidavit filed by it in these matters.

22. To paraphrase, it is up to the Government to finally decide cogently, taking all the stakeholders into confidence. The stakeholders, on their part, must keep in mind that the cause projected is one of grave public concern; and consequently, that they must cooperate sincerely, being fully alive to their commitments and responsibilities as statutory or corporate entities. This Court hopes hortatively that each of such players will understand the true import of the directions in this judgment and the gravity of the problem being addressed.

23. In such perspective, I allow these writ petitions and set aside the impugned order; consequently directing the Government to reconsider the entire matter as observed above. Since the cause impelled is exceptionally urgent, especially when nature's ways and climate effects are becoming more



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unpredictable, I direct the Government to take a final decision without any avoidable delay; and record that Sri.S.Kannan, learned Senior Government Pleader has submitted that this will be done in about eight months from the date when the copy of this judgment is received.

Needless to say, it would also be open to the Government to decide whether the deposit and debris to be removed, can be used for a profitable purpose; since, if so possible, it would be a win-win situation for all.

Sd/- DEVAN RAMACHANDRAN

JUDGE

akv/stu



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APPENDIX OF WP(C) 17185/2022

PETITIONER EXHIBITS

- | | |
|-------------|--|
| Exhibit P1 | PHOTOSTAT COPY OF THE RVNL'S NOTIFICATION OF AWARD LETTER DATED 21/02/2007. |
| Exhibit P2 | PHOTOSTAT COPY OF THE LETTER DATED 31/07/2010 ISSUED BY THE 5TH RESPONDENT. |
| Exhibit P3 | PHOTOSTAT COPY OF THE LETTER NO.2944/JR/2182 DATED 28/08/2010 TO THE 5TH RESPONDENT. |
| Exhibit P4 | PHOTOSTAT COPY OF THE PERFORMANCE CERTIFICATE ISSUED BY RVNL DATED 18/04/2011. |
| Exhibit P5 | PHOTOSTAT COPY OF THE BANK GUARANTEE RELEASE LETTER. |
| Exhibit P6 | PHOTOSTAT COPY OF THE JUDGMENT IN WPC 24358/2009 DATED 22/03/2010. |
| Exhibit P7 | PHOTOSTAT COPY OF THE LETTERS OF APPRECIATION DATED 10/10/2009 ISSUED BY RVNL. |
| Exhibit P8 | PHOTOSTAT COPY OF THE COUNTER AFFIDAVIT FILED BY THE PETITIONER IN WPC 23911/2018 WITHOUT ENCLOSURES DATED 22/10/2021. |
| Exhibit P9 | PHOTOSTAT COPY OF THE INTERIM ORDER IN WPC 23911/2018 DATED 22/10/2021. |
| Exhibit P10 | PHOTOSTAT COPY OF THE ORDER BEARING G.O.(RT) NO.713/2021/DMD, DATED 27/10/2021 ISSUED BY THE 3RD RESPONDENT. |
| Exhibit P11 | PHOTOSTAT COPY OF THE WRIT PETITION IN WPC 24027/21 WITHOUT ENCLOSURES DATED 30/10/2021. |
| Exhibit P12 | PHOTOSTAT COPY OF THE INTERIM ORDER IN WPC 24027/21 DATED 10/11/2021. |



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APPENDIX OF WP(C) 24027/2021

PETITIONER EXHIBITS

Exhibit P1 TRUE COPY OF THE ORDER DATED 15.09.2021
IN WRIT PETITION (CIVIL) NO.23911 OF
2018.

Exhibit P1 A TRUE COPY OF THE JUDGMENT DATED
22.03.2010 OF THIS HON'BLE COURT IN WRIT
PETITION 24358 OF 2009.

Exhibit P2 TRUE COPY OF THE ORDER DATED 22.10.2021
OF THIS HON'BLE COURT IN WRIT PETITION
(CIVIL) NO.23911 OF 2018.

Exhibit P3 TRUE COPY OF THE ORDER DATED 27.10.2021
ISSUED BY THE CHIEF SECRETARY, GOVT. OF
KERALA.

Exhibit P4 A TRUE COPY OF THE COMMUNICATION DATED
5.11.2021 SENT BY THE 1ST RESPONDENT TO THE 3RD RESPONDENT CHAIR
PERSON STATE EXECUTIVE COMMITTEE, KERALA
DISASTER MANAGEMENT AUTHORITY

Exhibit P5 A TRUE COPY OF THE MINUTES OF THE MEETING
DATED 12.12.2005 CHAIRED BY THE PRINCIPAL
SECRETARY TO THE HON'BLE PRIME MINISTER

Exhibit P6 A TRUE COPY OF THE MINUTES OF THE MEETING
DATED 23.02.2006 HELD BY THE SECRETARY
(SHIPPING)

Exhibit P7 A TRUE COPY OF THE LETTER DATED
03.06.2020 SENT BY EXECUTIVE ENGINEER,
IRRIGATION DIVISION, ERNAKULAM, TO THE
DEPUTY CONSERVATOR, COCHIN PORT TRUST.

Exhibit P8 A TRUE COPY OF THE LETTER DATED
01.03.2021 SENT BY DISTRICT COLLECTOR,
ERNAKULAM, TO SECRETARY, COCHIN PORT
TRUST.

Exhibit P9 A TRUE COPY OF THE REPORT IN MALAYALA
MANORAMA NEWSPAPER DATED 28.10.2021.

RESPONDENT EXHIBITS

Exhibit R8(a) A true copy of the estimate report
14.02.2022

Exhibit R8(b) A true copy of the representation dated



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02.06.2022

Exhibit R8(c) A true copy of memorandum dated 19.06.2022

Exhibit R8(d) A true copy of the online news dated 22.01.2025 in The Hindu

Exhibit R8(e) A true copy of the news dated 28.01.2025 in Kerala Kaumudi epaper

Exhibit R8(f) A true copy of the news in The Hindu dated 31.01.2025

Exhibit R8(g) A true copy of the enquiry report of the investigation agency of Kerala Lok Ayukta

Exhibit R(8)h THE TRUE COPY OF THE GOVERNMENT ORDER NO. G.O.(MS) NO. 28/2025/WRD DATED 21/04/2025 OF THE WATER RESOURCES (IR) DEPARTMENT

Exhibit R(8)i A TRUE COPY OF THE EXPRESSION OF INTEREST (EOI) SUBMITTED TO THE DISTRICT COLLECTOR, ERNAKULAM BY THE MASTERMIND BUILDTECH SOLUTIONS AND DEVELOPERS PVT.

Exhibit R(8)j A TRUE COPY OF THE NEWS REPORT DATED 07/03/2025 CAME IN KERALA KAUMUDI E-NEWS ABOUT THE ACTIVITIES OF THE MASTERMIND BUILDTECH SOLUTIONS AND DEVELOPERS PVT. LTD.

Exhibit R2(a) A TRUE COPY OF THE NOTIFICATION DATED 21.06.2006 ISSUED BY THE MINISTRY OF SHIPPING, ROAD TRANSPORT AND HIGHWAYS.

Exhibit R2(b) A TRUE COPY OF THE COUNTER AFFIDAVIT FILED BY AFCONS IN WRIT PETITION(CIVIL) NO.24358/2009.

Exhibit R2(c) A TRUE COPY OF THE JUDGMENT DATED 22.03.2010 IN WRIT PETITION(CIVIL) NO.24358/2009.

Exhibit R2(d) A TRUE COPY OF THE COUNTER AFFIDAVIT FILED BY AFCONS IN WRIT PETITION(CIVIL) NO.23911/2018.

Exhibit R2(e) A TRUE COPY OF THE PHOTOGRAPH OF THE AREA SHOWING THE BOARD ERECTED BY THE PETITIONER.