

IN THE HIGH COURT OF KERALA AT ERNAKULAM
PRESENT
THE HONOURABLE THE ACTING CHIEF JUSTICE MR.S.V.N.BHATTI
&
THE HONOURABLE MR.JUSTICE BASANT BALAJI
Tuesday, the 23rd day of May 2023 / 2nd Jyaishta, 1945
WP(C) NO. 7844 OF 2023(S)

SUO MOTU WRIT PETITION INITIATED BY THE HIGH COURT.

RESPONDENTS:

1. STATE OF KERALA, REPRESENTED BY THE CHIEF SECRETARY,
GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM - 695 001.
2. KOCHI MUNICIPAL CORPORATION, REPRESENTED BY ITS SECRETARY,
PARK AVENUE ROAD, MARINE DRIVE, KOCHI - 682 011.
3. KERALA STATE POLLUTION CONTROL BOARD, REPRESENTED BY ITS
CHAIRMAN, HEAD OFFICE, PATTOM P.O., THIRUVANANTHAPURAM - 695
004.
4. THE DISTRICT COLLECTOR, DISTRICT COLLECTORATE, KAKKANAD,
ERNAKULAM- 682 030.
5. THE DIRECTOR GENERAL, KERALA FIRE AND RESCUE SERVICES,
HEADQUARTERS, FIRE FORCE JUNCTION, PULIMOODU P.O.,
THIRUVANANTHAPURAM - 695 001.
6. THE STATE POLICE CHIEF, KERALA POLICE HEADQUARTERS,
THIRUVANANTHAPURAM, KERALA, INDIA - 695 010.

ADDL. R7 IMPEADED

7. THE ADDITIONAL CHIEF SECRETARY,
LOCAL SELF GOVERNMENT DEPARTMENT, GOVERNMENT OF KERALA.

ADDL. R7 IS SUO MOTU IMPEADED AS PER ORDER
DATED 07/03/2023 IN WPC

ADDL. R8 IMPEADED

8. KERALA STATE ELECTRICITY BOARD,
REPRESENTED BY ITS CHAIRMAN & MANAGING DIRECTOR,
VYDUTHI BHAVAN, PATTOM-695 004.

ADDL. R8 IS SUO MOTU IMPEADED AS PER ORDER
DATED 10/03/2023 IN WPC.

P.T.O.

This Suo Motu writ petition again coming on for orders upon perusing the petition, this Court's order dated 11/04/2023 and upon hearing the arguments of SRI.K. GOPALAKRISHNA KURUP, ADVOCATE GENERAL, for R1, R4, R6 & R7, SRI.RANJITH THAMPAN, SENIOR ADVOCATE, SRI.K. JANARDHANA SHENOY, STANDING COUNSEL for R2, SRI.T. NAVEEN, STANDING COUNSEL for R3 and of SRI.C.E. UNNIKRISHNAN, SPECIAL GOVERNMENT PLEADER for R5, Advocates SRI.VINU T.V, SRI.VISHNU.S & SMT.POOJA MENON, AMICI CURIAE and of Adv. SRI.MOHAMMED SHAH and SRI.ANTO(PARTY IN PERSON), the court passed the following:

P.T.O.



S.V.N. BHATTI, Acting C.J. & BASANT BALAJI, J.

W.P.(C) No. 7844 of 2023

Dated: 23rd May 2023

ORDER

S.V.N. Bhatti, Acting C.J.

We have heard the learned Advocate General, Mr Gopalakrishna Kurup; Special Government Pleader, Mr C E Unnikrishnan; Senior Advocate, Mr Ranjith Thampan; Standing Counsel for Municipal Corporation, Mr K Janardhana Shenoy; Standing Counsel for the Pollution Control Board Mr T Naveen; Party-in-person Mr Anto; Mr Mohammed Shah representing Deputy Leader of Opposition Mr P K Kunjalikutty; Amici Curiae Mr T.V Vinu, Mr Vishnu S and Ms Pooja Menon.

2. We have perused the affidavits dated 19.05.2023, 20.05.2023 and 23.05.2023. We take note of the progress made on the topic-wise timelines given by the contesting respondents. We have particularly invited arguments from the learned counsel and *Amici Curiae* on the difficulties or

problems faced by the respondents and the Officers of the Local Self Governments. The first and foremost problem canvassed before us relates to the illegal and unauthorised dumping by bulk generators, individuals and a few four-wheeler and two-wheeler vehicles. To bring home the changing of the epicentre of the problem, namely, from the facilities where steps are being taken for putting in place a scientific and technologically feasible facility for handling and disposing of the solid waste collected by the Local Self Governments or the non-government organisations or societies authorised in this behalf to the vacant spaces in the Corporations, Towns, Villages and water bodies.

2.1 The efforts taken by the Cochin Municipal Corporation are the basis for issuing appropriate directions on this behalf. The Officer of the Cochin Municipal Corporation is taking forward the directives issued by the Court for implementing Rules 2016. The cooperation from the citizenry,

by and large, as stated by Mr Babu, Secretary of Cochin Municipal Corporation, is progressive, and in the shortest span, the Cochin Municipal Corporation may be able to accomplish good performance in source segregation, handling and handing over of both biodegradable and non-biodegradable waste to the Municipal Corporation or its authorised NGOs/Societies. A photograph is a substitute for a thousand-word narrative. We prefer to annex to our order of even date the photos showing illegal and unauthorised dumping by a few waste generators. The steps are seizure and handing over the offending vehicles to the jurisdictional Police Officers.

3. The question for consideration is the course of action adopted by the official respondents and the Officers of Local Self Governments. It is axiomatic that howsoever noble the end may be, the means should also be lawful and proportional to the procedure stipulated by law. The above

statement begs the question, and the answer is not farfetched, for, in the considered view of this Court, the violators of Rules 2016 need to first establish that the collection, handling and disposal at unspecified areas firstly are legal and, secondly, not leading to environmental degradation or becoming a breeding ground for diseases. The seizure of vehicles is again in line with the precautionary principle of preventing the degradation of the environment by these illegal activities.

4. The unauthorised volumes of municipal solid waste dumped are, as it is stated, mainly from commercial or bulk generators of municipal solid waste. We direct the 7th respondent, the Corporation and Local Self Governments, to identify the sources or genesis of such municipal solid waste movement and act according to law. The authorities are entitled to hand over the vehicles indulging in pernicious acts of dumping municipal waste in parks, water bodies, open spaces and footpaths. The vehicles can be handed over to the

Police for custody.

5. The object of the present Public Interest Litigation is to put facilities in place for the collection, transport, treatment and disposal of per law. The law prohibits unauthorised disposal or dumping of waste according to the whims and choice of anyone. When a significant problem is being attended to in this litigation, creating a few other unauthorised sites for monitoring either by Local Self Government officials or this Court is avoidable to get the desired result in the present Public Interest Litigation. Therefore, we note the steps being taken by the Officers of the Cochin Municipal Corporation and the Officers of the District Administration, including the Police.

5.1 We record that the violators have invited this problem upon themselves; the release of seized vehicles shall be upon due intimation to this Court by the respective District Collectors.

5.2 The 7th respondent is directed to issue a Government Order in line with the directives

issued in this Order, strengthening the hands of the administration in controlling the unauthorised dumping of solid waste by individuals, commercial establishments, and four and two-wheelers in the State. The entire endeavour of the administration and this Court is to prevent law violators from converting the State into a scattered dumping ground. We henceforth not only monitor the case and, in the process, issue continuous mandamus from time to time for effective implementation of Rules 2016.

6 The District Collector of Kasaragode has issued an Office Order, which is placed on record. We appreciate the efforts taken by the District Collector Kasaragode. At the same time, we are unhappy to note that the District Collector Kasaragode could not accomplish the desired results because of non-cooperation or interference by the individuals in her discharge of duty in obeying the directives of this Court.

6.1 We are not recording a finding, but we need to call upon the 7th respondent to exercise

the power of the Government under the Municipal Corporation Act and Panchayat Raj Act and issue directions strengthening the hands of the district administration in every possible way.

6.2 The 7th respondent calls upon the other District Collectors to do on the same lines as District Collector Kasaragode has done or put in place a better mechanism.

6.3 The 7th respondent informs the Court that the six Municipal Corporations are evaluating the feasible alternative and the most advanced technology options available for establishing municipal solid waste facilities within their jurisdictions. This is a decision both under Rules 2016 and the Municipal Corporations Act.

6.4 The Corporations are entitled to take a decision and are answerable to the decision taken on this behalf. Therefore, the 7th respondent is directed to call upon the Municipal Corporations in the State of Kerala to file affidavits, together with the decisions taken by the Corporations for establishing a facility to handle and dispose of municipal solid waste generated within their

jurisdiction. The affidavits would enable to fix the responsibility in the event of continued breach of Rules 2016 by the Corporations.

7. The *Amicus Curiae* are directed to get sufficient information from the Secretary, District Legal Services Authority on the progress and implementation of facilities established by the Local Self Government and volumes of unauthorised dumping of municipal solid waste within their jurisdiction.

8. The 7th respondent informs the Court that BPCL proposed establishing a state-of-the-art facility for handling municipal solid waste for Cochin Municipal Corporation, and a decision must be taken.

8.1 We call upon the Government to immediately expedite the decision-making process on this behalf since the Cochin Municipal Corporation has several issues to answer in establishing and operating a facility and also

taking care of the legacy waste generated and dumped at Bramhapuram which is threatening the safety and wellbeing of the citizen of cochin and Ernakulam every day. ‘

8.2 The 7th respondent places before the Court the final decision and the modalities/schedule to carry forward these proposals.

9. Adv Pooja has argued explicitly that Mangalapady Grama Panchayath is not only ignoring the obligation under the Rules 2016 but also not cooperating with the administration in implementing the directions issued by the Court.

9.1 We call upon the 7th respondent to get a status report from the jurisdictional District Collector and file it as a separate annexure for our consideration and, if necessary, to issue directions for taking over the powers of the Local Self Governments in discharging the primary duty of taking care of sanitation within their jurisdiction.

9.2 The Court considers it appropriate to call upon the Member Secretary of KeLSA to

communicate the Orders of the Court made from time to time.

9.3 In the possible way and manner, the District Legal Services Authority Secretaries may be called upon to place before the Court the action taken report by verification on the ground through Para Legal Volunteers.

10. The Registry communicates soft copies of orders and reports the respondents filed. While sending the report, the Member Secretary ensures that communications are sent district-wise with relevant material to provide clarity to the Officers who have to discharge this responsibility.

11. We have heard Mr Anto, who has volunteered to share his expertise in handling municipal solid waste.

11.1 We place on record his statement and call upon him to examine the reports already filed by the respondents and suggest to this Court through Adv Vishnu further positive inputs and course corrections needed in the plans mooted by the respondents.

12. Adv. Mohammed Shah seeks indulgence of the Court to represent to the Court the suggestions and information received from Sri P K Kunhalikutty MLA, Vengara Assembly Constituency and also the Deputy Leader of the Opposition to enhance the performance of the implementation of Rules 2016 in the State of Kerala. We appreciate the inputs shared by Adv. Mohammed Shah, and we also give him the liberty to place the views of Sri P K Kunhalikutty on record.

12.1 We call upon Adv. Mohammed Shah to inform Sri P K Kunhalikutty to call upon all the constituents, namely, Panchayats, Municipalities, and Commercial bulk generators of waste, in his constituency to take up all the steps directed by the District Collector as part of the schedule given by the 7th respondent, ensure the strict compliance and place before the Court the progress made within his constituency.

12.2 The Secretary, Cochin Municipal Corporation, is directed to take stringent action on the unauthorised dumping of waste by the bulk generators and vehicles and file a separate report on the omissions noted, action taken etc.,

Post on 08.06.2023.

Handover copy.

Sd/-

S.V.N. BHATTI

ACTING CHIEF JUSTICE



Sd/-

BASANT BALAJI
JUDGE

Jjj

