

# VERDICTUM.IN

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE S.V.BHATTI

&

THE HONOURABLE MR.JUSTICE BASANT BALAJI

Friday, the 10<sup>th</sup> day of March 2023 / 19th Phalgun, 1944

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.

## VERDICTUM.IN

This Suo Motu writ petition again coming on for admission upon perusing the petition, and this Court's orders dated 08/03/2023 and upon hearing the arguments of SRI.K. GOPALAKRISHNA KURUP, ADVOCATE GENERAL for R1, R4, R6 & R7, SRI.K. JANARDHANA SHENOY, STANDING COUNSEL for R2, SRI.T. NAVEEN, STANDING COUNSEL for R3 and of SRI.UNNIKRISHNAN, SPECIAL GOVERNMENT PLEADER for R5, the court passed the following:

P.T.O.



**S.V.BHATTI  
&  
BASANT BALAJI, JJ.**

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W.P(C) No.7844/2023  
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Dated: 10<sup>th</sup> March 2023

**ORDER**

S.V.Bhatti, J.

The presence of Additional Chief Secretary, Chairman, Kerala State Pollution Control Board, The District Collector and the Secretary, Cochin Municipal Corporation in today's hearing is noted.

2. The officers are represented by the learned Advocate General, Mr.Shenoy, Mr.Naveen and Mr.Unnikrishnan, learned Special Government Pleader for the Fire Department.

3. In the previous order, we have directed the Kerala State Electricity Board to supply power to the Brahmapuram plant, for short 'the site'. We have been informed by Mr.Babu Abdul Khader, the Secretary of Cochin Municipal Corporation that the

power has been connected and uninterrupted power supply is provided to the site. We have perused the affidavits filed by the Additional Chief Secretary for and on behalf of the State Government, the affidavit of the Chairman, Kerala State Pollution Control Board and the District Collector, competent authority under the Disaster Management Act. The consensus in the hearing is that the respondents are on board and as a first effort to make Cochin a clean city and replicate the same in other Local Self Governments. We prefer not to refer to their efforts and the statements in the order of even date. The necessity of Kerala State Electricity Board was noticed earlier without impleading the Board as one of the parties. We have issued directives and they have duly complied with. To avoid uncertainty or misunderstanding in the orders, we may issue in future on the erring facilities or defaulters of the directives issued by the Secretary, Cochin Municipal Corporation on one hand and on another hand, the State Government and the Pollution Control Board for effective implementation of solid waste management Rules, 2016, the presence of Kerala

State Electricity Board is proper and necessary. Therefore, *suo motu*, we implead Kerala State Electricity Board, represented by its Chairman & Managing Director, Kerala State Electricity Board, Vyduthi Bhavan, Pattom. We direct the Registry to take out notice by special messenger to the newly added respondent. Place on record the proof of service by the next date of hearing.

4. It has been considered at great length that the scheduled quelling of flames at the site is overshooting the anticipation of the district administration and also the Cochin Municipal Corporation. The Cochin Municipal Corporation, since is under the statutory obligation to dispose of the solid waste at the designated and specified place on account of the continuing fire at the site, but not collecting the solid waste for the past one week. In other words, the collection of solid waste has been stopped in the Cochin and Ernakulum cities. It is not in dispute that the continued containment of this waste at respective places is likely to result in yet another collateral, unanticipated problem in the cities. Therefore, firstly, we direct the Secretary, Cochin Municipal Corporation to resume

the collection and operation of waste from these two cities from tomorrow onwards. The Additional Chief Secretary, Local Administration is further directed to issue orders, directions or clarifications, as the case may be, in exercise of the powers conferred on the State Government by Section 5 of the Environmental Protection Act, 1986 to other Local bodies and the Treatment facilities nearby to Cochin Municipal Corporation as one-time reception and disposal of solid waste generated within the territorial limits of the Cochin and Ernakulam. We hope and trust that the Additional Chief Secretary with the inputs the officer has at her disposal would identify the proximate sites and the discharge point specified as a one-time measure. The subject site has been in the subject matter of consideration by the National Green Tribunal. The functional efficacy of the site has already been noticed and recorded resulting in imposition of fine by the National Green Tribunal. The Cochin Municipal Corporation is challenging the said order of the National Green Tribunal in W.P.(C) No.36204/2018. The Cochin Municipal Corporation, through

the interim order dated 09.11.2018 obtained the stay of the order of the National Green Tribunal. Between the date of passing of the order, till date, it cannot be stated with confidence that any of the measures expected from the Cochin Municipal Corporation by the National Green Tribunal have been carried out. We are looking at the site, when the site exposed itself to a fire incident. The first and foremost requirement in a situation as the present is to conduct audit of the environmental/ infrastructure facilities provided for by the Cochin Municipal Corporation at the site to appreciate the primary and indirect damage to the environment, particularly, the neighbourhood. Secondly, the site conforms to the Solid Waste Management Rules, 2018. Thirdly, the infrastructure details at the site, their efficacy and efficiency for the purpose for which the equipments were established. For the said purpose and also for the record, in appreciating what is the functionality of the site which was established and operated to cater to the needs of the Cochin and Ernakulam cities, we would like to depute a committee consisting of high-ranking officers

assisted by their choice of technical staffs together with, for the present, the Secretary, District Legal Services Authority and file a report before this Court on the next date of hearing together with the photographs that the committee thinks are necessary for appreciating the wherewithal treatment options at the site. The said committee consists of (1) The Chief Engineer, Local Self Government Department, (2) Director, Solid Waste Management Swachhatha Mission (3) The District Collector, Ernakulam (4) Joint Chief Environmental Engineer, Regional Office, Kerala State Pollution Control Board, Ernakulam (5) Mr. Babu Abdul Khader, Secretary, Cochin Municipal Corporation (6) Secretary, District Legal Services Authority, Member-Convenor.

5. The officers now nominated to the Committee are given the liberty to take the assistance of the technical experts in Solid Waste Management Rules, fire control, and amelioration steps. With their input can submit a report to this Court.

6. We call upon the Committee to schedule a visit to the site at the earliest, not later than 24 hours from now. The Additional Chief Secretary and the Secretary are called upon to explore viable, alternative long-lasting solutions for the handle, handover, transport, and safe disposal of solid waste generated from the twin cities of Cochin and Ernakulam. To this extent, it is unreasonable to expect a solution by the next date of the hearing. However, we trust and hope that alternative solutions are also suggested to us not later than ten days from today.

7. The case stands posted to 13.03.2023 at 1.45 p.m. The purpose of the said adjournment is to find out not only the stage of simmering fire at the site but also whether it has been fully brought under control or not. In the interregnum, any other mechanism that is available to prevent the dispersion of smoke in unexpected directions are explored and the impact from smoke to the extent possible by the use of technology is resorted to and controlled.

8. On 13.03.2023, Mr Babu Abdul Khader, the Secretary of Cochin Municipal Corporation is directed to appear in the Court at 1.45 pm and the other officers are advised to participate in the next date of hearing virtually. The matter will be called on 14.03.2023 to enable the State Government to file its affidavit on the other aspects which have come on record today.

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**Sd/- S.V.BHATTI  
JUDGE**

**Sd/- BASANT BALAJI  
JUDGE**

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