

VERDICTUM.IN

IN THE HIGH COURT OF KERALA AT ERNAKULAM
PRESENT
THE HONOURABLE MR.JUSTICE S.V.BHATTI
&
THE HONOURABLE MR.JUSTICE BASANT BALAJI

Wednesday, the 8th day of March 2023 / 17th 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 IMPLEADED

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

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

This Suo Motu writ petition again coming on for admission upon perusing the petition, and this Court's orders dated 07/03/2023 and upon hearing the arguments of SRI.K. GOPALAKRISHNA KURUP, ADVOCATE GENERAL for R1 & R4 to R6 and of SRI.UNNIKRISHNAN, SPECIAL GOVERNMENT PLEADER for Addl. R7, the court passed the following:

P.T.O.

S.V.BHATTI
&
BASANT BALAJI, JJ.

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Dated: 8th March 2023

ORDER

S.V.Bhatti, J.

Read order dated 7.3.2023.

2. Apropos to the orders of this Court, the Additional Chief Secretary, Local Self Government Department, the District Collector, Ernakulam, the Secretary, Cochin Municipal Corporation and the Chairman, Kerala State Pollution Control Board are present and have placed before the Court the plan of action formulated for immediate, shorter and long-term measures for due implementation of Solid Waste Management Rules, 2016.

3. The learned Advocate General referring to the instructions received from the respondents in the *suo motu* Writ Petition has brought to our notice that a High Level Conference by the Hon'ble Chief Minister on the issues considered by this *suo motu*

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writ petition is convened today at 5 p.m. The officers present in the Court in unison have stated that there is obligation on the part of the State Government, Local Bodies, District Administration and also the statutory corporation, i.e. Pollution Control Board, to take efficacious measures for addressing the problem which is taken up by this Court as *suo motu* Writ Petition. We appreciate the predicament of the officers to go on record with affirmative undertaking in a matter as the present even before the points proposed receiving approval from the high level conference. We are of the view that we need not inform the officers what is otherwise obvious and their inclination not only to take up the issue for permanent solution under 2016 Rules and also for continuous monitoring by the Local Self Governments, District Administrations and the Pollution Control Board. Without having a categorical statement from these officers by looking at the formative proposals taken forward, we do not want to incorporate the proposals in the latest order. As has been suggested by the learned Advocate General, we grant time till the day after tomorrow to the Additional

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Chief Secretary to place on record all the points which are finalised by the High Level Conference with definite time lines for performance by the Local Bodies.

4. We direct the Secretary through our present order to issue notices to all the establishments which come within the scope of Solid Waste Management Rules and have not taken authorisations or have put in place the equipment required for handling the bulk solid waste generated at these places. The Secretary gives the noticee the minimum time and places the copies of such notices before the court on the next date of hearing. We further direct the Secretary, Cochin Municipal Corporation to place before the Court orders on the implementation of immediate, shorter and long term measures at the Brahmapuram plant and also on improving the source collection, handling on collection, disposal of the solid waste management within the jurisdiction of Secretary, Cochin Municipal Corporation. After receiving the proposals from the Secretary, we would be incorporating those proposals in consultation with the Additional Chief Secretary, District Collector

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and the Pollution Control Board in our order dated 10.3.2023. The District Collector, we are given to understand, is under the order of transfer. Today we take note of her presence and also the efforts the officer has taken between Thursday and till date. The only omission we note if at all in her approach is that the efforts undertaken did not receive the required attention. After hearing the officer we notice that the responsibilities under the Disaster Management Act have been taken note of and action has been taken. The District Collector who assumes charge shall remain present on 10.03.2023.

5. Coming to the Pollution Control Board, the Chairman has invited our attention to the omissions and commissions with which the plant is being operated at Brahmapuram. The inspection reports, according to the Chairman, would disclose the haphazardous operations happening at the site. He also stated immediate measures to implement the Rules by the Cochin Municipal Corporation. This Court is conscious of the penal provisions under all the three enactments. The *suo motu* case is not

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taken up for the purpose of penalising omissions or commissions whether intended or unintended. But the *suo motu* case intends to improve the future and also ensure the complete implementation of 2016 Rules. An *ex post facto* decision which could be done under all the three enactments, this Court would look into satisfactory implementation of the Rules by the Secretary of Corporation to pass *ex post facto* orders. We direct the parties who are present to beforehand circulate the respective affidavits/replies to the other participants in the litigation to enable such of the parties to assist the Court with suggestion and remarks in this behalf.

6. The Secretary, Cochin Municipal Corporation informs the Court that, at present, the facility operated from the generators installed and operated at the site. One of the reasons stated for not containing the fire is staff at the site could not immediately use water hydrants and contain the fire. On further probing by us, the Secretary expressed the difficulty, the Corporation has in this behalf, i.e. the facility is being run without a dedicated power supply line to this plant. It is also brought to our notice that a request for

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sanction for electricity connection is made by the Cochin Municipal Corporation and pending.

7. The Deputy Chief Engineer, Kerala State Electricity Board, Ernakulam is directed by this Court to provide a temporary connection to the facility operated by the Cochin Municipal Corporation within four hours from 4 p.m. today itself. The Standing Counsel appearing for the Board is incidentally present in the Court. We have directed him to communicate our order to the Deputy Chief Engineer immediately.

Post on 10.03.2023 at 1.45 p.m along with the connected cases.

Handover copy.

S.V.BHATTI
JUDGE

BASANT BALAJI
JUDGE

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