

BEFORE THE HONOURABLE NATIONAL GREEN TRIBUNAL
PRINCIPAL BENCH NEW DELHI

Original Application No.143 of 2020 (SZ)
With
Original Application no. 182 of 2021(SZ)

Applicant : K K Muhammed Iqbal

Versus

Respondent : The Kerala State Pollution Control Board
& Others

with

Applicant : Mahesh Kumar, Ernakulam

Versus

Respondent : The Kerala State Pollution Control Board
& Others

REPORT FILED BY THE CHIEF ENVIRONMENTAL ENGINEER FOR AND ON
BEHALF OF THE KERALA STATE POLLUTION CONTROL BOARD, THE 1st
RESPONDENT

Standing counsel for the 1st respondent

Rema Smrithi. V. K., Advocate
Additional Standing Counsel,
National Green Tribunal, (SZ), CHENNAI

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Dated this the 21st day of July, 2022.

**Rema Smrithi. V. K., Advocate
Standing Counsel for the 1st Respondent**

**BEFORE THE HONOURABLE NATIONAL GREEN TRIBUNAL
PRINCIPAL BENCH NEW DELHI**

Original Application No.143 of 2020 (SZ)

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Vs

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Board & others

with

Applicant: Mahesh Kumar, Ernakulam

Respondent: The Kerala State Pollution Control Board & Others

**REPORT FILED BY THE CHIEF ENVIRONMENTAL ENGINEER FOR AND ON
BEHALF OF THE KERALA STATE POLLUTION CONTROL BOARD, THE 1st
RESPONDENT**

I, Baburajan P K, aged 52 years, working as Chief Environmental Engineer, Regional Office, Kerala State Pollution Control Board, Ernakulam. I am competent to and duly authorized to represent the 1st Respondent in the above O.A. I know the facts and circumstances of the case. The factual submissions made here under are true and correct to the best of my knowledge, information and belief. In these circumstances, it is just and necessary that this Hon'ble Tribunal may be pleased to accept the accompanying information on file and it is so humbly prayed in the interests of justice in this case.

1. I may humbly submit that this report is in continuation to the report filed dated 10.04.2022 in the above-mentioned case and the facts and circumstances of the case are known to me. It is respectfully submitted the second meeting and joint inspection of the Committee in the was done on 24.06.2022. Intimation was given to the 9th and 10th respondent companies also about the meeting of the committee, as committee members were directed to allow the participation of alleged polluting




BABURAJAN P.K.
Chief Environmental Engineer

companies during the meeting and inspections as directed by the Hon'ble Tribunal in its order dated 13.04.2021. But the company representatives informed their inconvenience for attending the meeting. The Chief Environmental Engineer therefore requested the company to submit their representation in writing, if any, to the committee. They had submitted their representation through email is as follows:

At the outset, we regret to inform that we are not in a position to attend the meeting scheduled on 24 June 2022 on a short notice, since authorised persons of the company are out of station and it requires detailed input from legal as well as technical portfolios of the company in the matter, especially a matter which is sub judice. We are ready to execute on-site remediation by removal of jarosite kept in 3 old ponds in our premises by safely disposing it in Pond No.4 constructed as per CPCB guidelines with leakproof HDPE liner and other safe measures. Our willingness for the same has been already expressed before the Honourable High Court in our additional counter affidavit dated 13.12.2021 in WP© No.22772/2018 and also to State PCB by separate communication in this regard.

In fact, the DPR for Edayar sites under NCEF project has been prepared on an assumption that the off sites in Edayar, namely Edayattuchal and Chakkarachal paddy fields are contaminated only by Zinc ingots. The DPR did not deal with the source of contamination or its pathways. The tender floated by CPCB from consultancy firms for preparing DPR for the contaminated sites itself was on a presumption that source of contamination for off sites in Edayar is our Zinc smelter and the jarosite generated therefrom.

It is to be noted that as per the Environment Impact Assessment Report, 2005, prepared by Local Area Environment Committee for Eloor Edayar Area appointed by Supreme Court Monitoring Committee on Hazardous Waste, 4 other industrial units working in Edayar Industrial Area, apart from our company were mentioned as the source of heavy-metal contamination in groundwater and soil of Edayar, based on their analysis report.

The Chief Environmental Engineer of State Pollution Control Board in 2008 by communication dated 22/03/2008 reported to the District Collector, Ernakulam in reply to a complaint regarding contamination of Edayattuchal area that this large tract of paddy fields remains as a dump site, vulnerable for littering any kinds of waste by anyone, which is easily accessible by road. These paddy fields have



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become not suitable for cultivation by receiving pollutants from about 200 industrial units in the area. It also reported that Hazardous Waste (Management and Handling) Rules originally came into force in India in 1989 and after enforcement of the Rules, the company has constructed a pond to store jarosite as per the CPCB guidelines and same is leakproof. The old 3 ponds were constructed before the enactment of the Rules were not in compliance of the present guidelines for storage ponds prescribed by CPCB under HW Rules, hence they were capped and not in use. PCB also admits that the contamination of land in Edayar was due to the historical operation of industries before the commencement of pollution control laws and that board is trying to secure assistance of national and international agencies for remediation of the soil and water in Edayar.

Our unit closed its operation since November 2014 due to financial crunches. The DPR has been prepared by the consultancy by conducting preliminary and remedial investigation in Edayar sites during the period from 2015 to 2017, while our company was not in operation. The DPR has been prepared on a hypothetical assumption that the offsites in Edayar was contaminated due to the operation of our unit. The DPR did not consider the available studies regarding the site such as EIA study report made by Local Area Environment Committee. Unfortunately, during the remedial investigation or in the finalisation of DPR, we couldn't get an opportunity to place our concerns with respect to the subject matter since the unit was not in operation and possession of the premises was taken over by the secured creditor bank. The agencies conveniently put all blame for contaminated sites on our company since we were closed. It is easy to put the blame for all the sins upon a dead horse. The DPR has marked such a huge amount for remediation and put the entire liability on our shoulders, in negation of natural justice to us. None should be condemned unless heard, the adage was forgotten while finalising the DPR and liability for remediation cost upon us. Moreover, the remedial plan and methodology was prepared on the sample analysis taken much earlier in the year 2015 and 2017. Now more than 5 years have been elapsed since the date of available data. The Edayar area was prone to the massive flood witnessed by the state in the year 2018 the heavy downpour in the year 2019. Two massive flood and heavy monsoon in the following 5 years, might have impacted many ramifications on the intensity of contamination and on morphology of soil and groundwater in the area.




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We think that it is essential in the interest of environment to have a detailed remedial investigation in the site enabling formulation of a sound and realistic remedial methodology considering the actual status existing on the ground and by taking note of the data gap occurred after the finalisation of DPR.

We are not available with the information whether joint committee was constituted as per the order dated 13/04/2021 of honourable National Green Tribunal Southern zone at Chennai in O.A No. 143/2020 for inspecting the area in question and submit report regarding the source of contamination in the area and the extent of our contribution to the pollution load and the composition of the committee, since Board has not submitted anything about the constitution of the committee.

It is also pertinent to note that at the time of inviting expression of interest for preparing DPR for Edayar sites based on the EIA study report prepared by Local Area Environment Committee, the Edayattuchal and Chakkarachalpaddy fields were reported to be not suitable for cultivation. Now after the efflux of time, these paddy fields were found suitable for cultivation and have been cultivated with paddy for the last few years with the assistance of local bodies and agricultural department.

Please consider the contents and averments made in the detailed counter affidavit filed by us in O.A No.143/2020 and preliminary objection in O.A.No.182/2020 pending on the files of Honourable NGT, Chennai, as part of this response.

We would be happy to place our detailed response after the culmination of the inspection by the honourable committee constituted as per the order of honourable Tribunal in O.A. No.143/2022 with reference to the data revealed in the investigative study of the committee which reveals the ground reality.

The company is under securitisation proceedings and Punjab National Bank has taken possession of the assets of the company. We shall endeavour to honour our commitment towards the remediation cost proportionate to our contribution to the pollution load as per the available revenue after discharging the liability due to the secured creditors, in accordance with law.



BABURAJAN P.K.
BABURAJAN P.K.
Chief Environmental Engineer

Expressing regret for our absence in the meeting proposed to be held on 24th June, on a short notice, since the authorised persons are out of station and not in a position to be present there on the proposed date.

2. It is respectfully submitted that the representative of M/s.ERM (India) Private Limited conducted a detailed presentation of the DPR prepared for the remediation of Edayattuchal–Chakarachal before the Committee on 24.06.2022. The presentation covered the overview of the project, introduction to the study area and subject sites, reconnaissance and preliminary assessment, preliminary investigation of the contaminated site and development of conceptual plans and sampling protocols, detailed site characterization, detailed site investigation and Tier 1 Risk Assessment, Tier 2 risk assessment, Human health Risk assessment, remedial action plan etc. After detailed discussions and deliberations, the Committee members visited the Edayattuchal, Chakarachal, Binani School ground and the premises of M/s. Binani Zinc Lted (presently Edayar Zinc Ltd), including the capped and uncapped jarosite pond areas. Samples of soil, drain water and well water from the accessible locations were also collected, as detailed below and handed over to the Central laboratory of the Board for analysis.

- | | | |
|----|----------------------------------|-----------------|
| 1. | Binani School Ground (Middle) | : Soil |
| 2. | Binani School Ground(South side) | :Soil |
| 3. | Binani School Ground | :Water |
| 4. | Open well near school ground | : surface water |
| 5. | Kuthu thodu Starting point | :Water |
| 6. | Thodu near Glastec industries | :Water |

During the visit, it was observed that most of the Edayattuchal and Chakarachal area was water logged and in submerged condition, making it impossible to access the areas, which were earlier demarcated as having higher levels of contamination. As observed during the presentation, higher levels of heavy metal Zinc was mostly observed during the DPR preparation studies, in these locations, both in surface soil and ground water.

3. It was decided that the results of the samples taken during the visit and other historical data available with the present owners of the unit shall be considered for further preparation of the report. Copy of the minutes of the second meeting of the Committee is produced herewith and marked as **Annexure 1.**




BABURAJAN P.K.
 Chief Environmental Engineer

4. It is also proposed to do further sampling and analysis after the recession of the monsoon as the area reported by the CPCB as contaminated is now waterlogged and not easily accessible.
5. It is also important to note that CPCB had forwarded the DPR for the remediation of Edayattuchal-Chakkarachal for its timely implementation. The total project cost as per the DPR is Rs.47.88 crore and the industry in question is not functional and the dismantling of the unit is almost completed. Board had initiated steps to recover the amount by the revenue recovery procedures. The Chief Environmental Engineer, Regional Office, Ernakulam is appointed as state level nodal officer for the Revenue Recovery procedure and it is informed from the office of the Land Revenue Commissioner that the Board is to be notified under Section 71 of the Kerala Revenue Recovery Act,1968 so as to include the Board in the online RR web portal. Board already communicated the above matter to the Environment Department. Follow up action is being taken by the Board in the above matter.

In these circumstances, it is humbly requested that the Hon'ble a Tribunal may kindly grant some more time to complete another set of sampling and analysis and to file a report.

All that is stated above are true to the best of my knowledge information and belief.

Dated this the 21st of July 2022




DEPONENT

(Chief Environmental Engineer)
BABURAJAN P.K.
Chief Environmental Engineer

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Dated this the 21st day of July, 2022.

**Rema Smrithi. V. K., Advocate
Standing Counsel for the 1st Respondent**

**Minutes of the second meeting of the Committee constituted
as per the order dated 13.04.2021 of the Hon'ble NGT in O.A
no.143/2020 held on 24.06.2022**

Meeting of the Committee started at 10.30AM.

The following members and officials were present during the meeting.

1. Sri. Baburajan P K, Chief Environmental Engineer, KSPCB, Regional Office, Ernakulam
2. Sri. Vivek K, SEE/Scientist D, CPCB, RD-Bengaluru
3. Dr. A.K. Sreelatha, Associate Professor & Head, Rice Research Station, Vyttila
4. Dr. Garggi G, Soil Survey Officer, Office of the Assistant Director, Department of Soil Survey & Soil Conservation, Ernakulam
5. Smt. Vinaya K S, Senior Environmental Engineer, KSPCB, Environmental Surveillance Centre, Eloor
6. Smt. Shahana M.A, Assistant Environmental Engineer, KSPCB, Regional Office, Ernakulam
7. Sri. Sajeesh Joy, Assistant Environmental Engineer, KSPCB, Environmental Surveillance Centre, Eloor
8. Kumari. Anagha S, Assistant Engineer, KSPCB, Regional Office, Ernakulam

The Chief Environmental Engineer, nodal officer of the Committee gave a brief introduction of the O.A.No.143 of 2020 filed before the Hon'ble NGT in his welcome speech. He pointed out that KSPCB already shared the brief note on the consent compliance, action taken against the violations noticed, etc. with the committee members. He also informed that intimation was given to the 9th and 10th respondent companies about the meeting of the committee, as committee members were directed to allow the participation of alleged polluting companies during the meeting and

inspections as directed by the Hon'ble Tribunal in its order dated 13.04.2021. But the company representatives informed their inconvenience for attending the meeting. The Chief Environmental Engineer therefore requested the company to submit their representation in writing, if any, to the committee. After that, he invited the representative of M/s.ERM (India) Private Limited for a detailed presentation of the DPR. Sri. Padmanabhan Girnathan Nair, representative of M/s.ERM (India) Ltd, presented the DPR prepared for the remediation of Edayattuchal-Chakarachal. The presentation covered the overview of the project, introduction to the study area and subject sites, reconnaissance and preliminary assessment, preliminary investigation of the contaminated site and development of conceptual plans and sampling protocols, detailed site characterization, detailed site investigation and Tier 1 Risk Assessment, Tier 2 risk assessment, Human health Risk assessment, remedial action plan etc. After detailed discussions and deliberations, the Committee members visited the Edayattuchal, Chakarachal, Binani School ground and the premises of M/s. Binani Zinc (presently Edayar Zinc Ltd.), including the capped and uncapped jarosite pond areas. Samples of soil, drain water and well water from the accessible locations were also collected, as detailed below and handed over to the Central laboratory for analysis.

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During the visit, it was observed that most of the Edayattuchal and Chakarachal area was water logged and in submerged condition, making it impossible to access the areas, which were earlier demarcated as having higher levels of contamination. As observed during the presentation, higher levels of heavy metal Zinc was mostly observed during the DPR preparation studies, in these locations, both in surface soil and ground water.

It was decided that the results of the samples taken during the visit and other historical data available with the present owners of the unit shall be considered for further preparation of the report and if required, adequate time shall be sought from the Tribunal, considering the present status of the area. All the Committee members were also requested to report their views/comments, if any, to the nodal officer at the earliest as the committee is required to file the preliminary report before the Hon'ble Tribunal before 25.07.2022, the next hearing date of this application.

Meeting and inspection of the Joint Committee ended at 5.00PM.



**Vivek K, SEE/Scientist D,
CPCB, RD-Bengaluru**



**Baburajan PK
CEE,RO,Ernakulam**



**Dr.Sreelatha.A.K
Associate Professor & Head
Rice Research Station, Vyttila
Ernakulam**



**Dr.Garggi G
Soil Survey officer
Office of the Assistant
Director**