

**BEFORE THE HON'BLE NATIONAL GREEN TRIBUNAL  
SOUTHERN ZONE, CHENNAI  
IN**

**APPLICATION NO 43 of 2017 (SZ)  
[SUO MOTO]**

**Applicant** : **The Tribunal on its own motion on the  
Implementation of the Bio-Medical Waste  
Management Rules, 2016 in Kerala**

**Respondents** : **The State of Kerala & Others**

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Dated this the 23<sup>rd</sup> October 2021

**Rema Smrithi**, Advocate  
ADDITIONAL STANDING COUNSEL FOR THE 5<sup>th</sup> RESPONDENT

**BEFORE THE HON'BLE NATIONAL GREEN TRIBUNAL  
SOUTHERN ZONE, CHENNAI**

**ORIGINAL APPLICATION NO 43 of 2017 (SZ)**

**[SUO MOTU]**

**REPORT FILED BY THE ENVIRONMENTAL ENGINEER, KERALA  
STATE POLLUTION CONTROL BOARD, FOR AND ON BEHALF OF  
THE 5<sup>TH</sup> RESPONDENT**

Adv. Rema Smrithi.

ADDITIONAL STANDING COUNSEL FOR THE 5<sup>TH</sup> RESPONDENT

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**BEFORE THE HON'BLE NATIONAL GREEN TRIBUNAL  
SOUTHERN ZONE, CHENNAI**

APPLICATION NO 43 of 2017 (SZ)  
[SUO MOTO]

Applicant : The Tribunal on its own motion on the implementation of  
the Bio-Medical Waste Management Rules, 2016 in Kerala

Respondents : The State of Kerala & 7 Others

**REPORT FILED BY THE ASSISTANT ENVIRONMENTAL ENGINEER,  
REGIONAL OFFICE, ERNAKULAM FOR AND ON BEHALF OF THE KERALA  
STATE POLLUTION CONTROL BOARD**

I, Shahana M.A, W/O. Naseer K.E, now working as the Assistant Environmental Engineer, Regional Office, Kerala State Pollution Control Board, Ernakulum. I am competent to and duly authorized to represent the Board. I know the facts and circumstances of the case. The factual submissions 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 report on file and it is so humbly prayed in the interests of justice in this case.

1. It may kindly be note that the Hon'ble NGT in its order dated 24.06.2021 in O A 43/2017 directed the Govt. to examine whether more area and hospitals can be connected with the facility of KEIL and directed the State Govt. to file a detailed report regarding the policy by which the demarcation is being made and whether the current allocation criteria caters to the entire BMW generated in the State.
2. In compliance with the above order, the Additional Chief Secretary, Environment Department convened a meeting on 29.06.2021 with the Principal Secretary, Health and the Chairman KSPCB. The matter of effective distribution



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of biomedical waste among the two facilities, IMAGE, Palakkad and KEIL at Ernakulam, was discussed. The current situation of one facility struggling to operate the facility with optimum capacity while the other facility operating with full capacity and still accumulating waste of around 6-8 TPD was noticed. The Pollution Control Board Chairman was asked to convene a meeting with KEIL & IMAGE authorities to solve this issue and work out a solution. Copy of the minutes of meeting is produced herewith and marked as **Annexure 1**.

3. As per Annexure 1, Chairman KSPCB held a meeting on 19.07.2021 with KEIL and IMAGE authorities. KEIL requested for permission to collect biomedical waste from Govt. and private hospitals from the area within 75 km from the facility which covers 5 districts as the facility was proposed accordingly and stated that the operation of the plant is not viable with the reduced quantity of waste that they obtain from the govt. health care unit of 3 districts. It was reported by KEIL that even if they start collecting COVID waste also from the Govt. hospitals in the three districts, allotted by the Govt., it would not be sufficient to run the plant viably. KEIL pointed out that as service charge for Govt. health care facilities is at subsidised rate, the transportation cost could be utilized effectively only if the waste from both the Govt. hospital and private hospitals in the same area are allotted. In the meeting the Chairman asked IMAGE to submit alternate proposal, if any, in this regard allowing KEIL to collect waste from both Govt. and private health care institutions within 75 km of KEIL facility. Copy of the minutes of meeting is produced herewith and marked as **Annexure 2**.

4. Although IMAGE had submitted reply vide letter dated 09.08.2021, the alternate proposal regarding the sharing of waste to KEIL from hospitals within 75 km was not included, and hence reminder mail was sent in this regard as the matter was coming up on 18.08.2021 before the Hon'ble NGT. It is submitted that after the meeting of the Principal Secretary in 11.12.2020, eight months have elapsed, and till date IMAGE have not submitted any proposal of sharing a single HCF from the private sector other than govt. HCF;

5. Meanwhile the Additional Chief Secretary, Environment Department vide letter dated 03.08.2021 called for the draft framework for allotting districts to each agency and the same is produced herewith and marked as **Annexure 3**. The Additional Chief Secretary, Environment Department vide mail dated 13.08.2021 directed the Board to issue orders clearly demarcating the areas of operations for



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the two service providers, as statutorily provided. Copy of the email received is attached as **Annexure 4**.

6. As directed vide Annexure 4, the Board issued the impugned order. The impugned order has been issued considering the matter of minimum travel of waste and assurance of reaching the CBWTF within the prescribed time of 48 h. The disposal of BMW from throughout the state within the prescribed time of 48h through the only one facility at Palakkad with lifelong affiliation agreement as contended by the IMAGE is not acceptable.

7. As per Rule 6 of the Biomedical Waste Rules 2016, "Duties of Authorities – The Authority specified in column (2) of schedule III shall perform the duties as specified in column (3) thereof in accordance with the provisions of these rules". As per Rule 9 of the Biomedical Waste Rules 2016 "Prescribed Authority – The prescribed authority for implementation of the provisions of these rules shall be the State Pollution Control Boards in respect of States and Pollution Control Committees in respect of Union Territories". As per Schedule III (6)[viii] State Pollution Control Boards shall carry out "any other function under these rules assigned by Ministry of Environment, Forest and Climate change or Central Pollution Control Board from time to time". As per Rule 11 of BMW Rules 2016, the role of the Advisory Committee is to oversee the implementation of the Rules and to advise any improvements.

8. As per Clause 1 of the Revised guideline of the CPCB for CBWTF dated 21.12.2016 these guidelines are mandatory under Bio-medical waste Management Rule. As per Clause 2[C], "the State Board has to identify coverage area which require additional treatment facility and bring to the notice of the concerned Department". As per Clause 14 "The cost to be charged from the health care facilities plays an important role in financial viability and sustainable operation of CBWTF for providing the best treatment services to the health care units and for ensuring compliance to the BMW Rule. It is specified in the guideline that the cost shall be so worked out that neither it become a monopoly of the CBWTF operator nor the interest of the CBWTF operator is overlooked". It is submitted that the Board has not considered or fixed any rate at this juncture as the cost factor is to be decided after discussion in the Advisory Committee in which both the agencies are members.



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9. The opinion of IMAGE that the Advisory Committee was not consulted regarding bifurcation of area. It may be noted that in the Guideline 2(b) clause, it is stated that the treatment charges should be prescribed by the SPCB in consultation with State Advisory Committee. From the above it can be seen that there is no need for consultation with the State Advisory Committee for bifurcation of area and the Board is the prescribed authority for implementation of the Rules including demarcation of areas for CBWTF. The Board has passed the impugned order in exercise of the above provision and in accordance with the advice from the Govt.

10. Moreover, as per Section 5 of the Environment (Protection) Act, 1986, "5. POWER TO GIVE DIRECTIONS – Notwithstanding anything contained in any other law but subject to the provisions of this Act, the Central Government may, in the exercise of its powers and performance of its functions under this Act, issue directions in writing to any person, officer or any authority and such person, officer or authority shall be bound to comply with such directions". This power has been delegated to The Chairman, Kerala State Pollution Control Board vide notification number S.O 327(E) dated 10.04.2001 of the Ministry of Environment and Forests.

11. It is submitted that in continuation to the issuance of the impugned order, IMAGE authorities have circulated a notice to their affiliated hospitals mentioning that PCB is not having any authority to issue the impugned order.

12. IMAGE has submitted a letter dated 24.08.2021 to withdraw the order and stated that unless and until enough CBWTFs are established covering all parts of the State, it is not proper to implement the 75 km criterion and till then, both agencies are allowed open market competition. It may be noted that waste collection and processing is not an industry and unhealthy competition in this service sector may adversely affect the waste minimization. The CPCB has categorised CBWTFs as non-industrial sector.

13. The opinion that 75 km criterion can be adopted in the State only when the State has sufficient number of CBWTFs in each 75 km is not acceptable because in this case one facility is struggling to get waste whereas the other facility is struggling to handle excess quantity of waste. As per CPCB guideline in case one facility is not getting minimum 10,000 beds within 75 km radius they can collect waste upto 150 km. If the capacity of that facility is not adequate to handle more than 10,000 beds and then a new facility can be considered.



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14. The Board is collecting daily data from the two service providers through mail. COVID and non COVID BMW quantity from 01.09.2021 to 22.10.2021 is given below:

CBWTF	COVID BMW TPD(avg)	Non-COVID BMW TPD(avg)	Total disposed TPD(avg)	Consented capacity TPD
IMAGE	14	41	55	55.8
KEIL	2.4	3.1	5.5	16

15. Hence it is not advisable and feasible to set up and start functioning of CBWTFs within each 75 km and till then the only one facility who are collecting the waste from the entire area across the State alone can work in the field which symbolizes monopoly, in the sense, and it cannot be allowed as per the CPCB guideline. At present IMAGE is struggling to collect and dispose waste within 48 hours by plying across the entire State and the situation would be eased by demarcating area between the two service providers. The situation can be improved further if one facility in the southern region and one facility in the northern region can be established in the State. In fact, earlier IMAGE was not accepting affiliation stating that their maximum capacity has been reached.

16. It is submitted that the Biomedical Waste is to be disposed within 48 hours of its generation. As it is the responsibility of CBWTFs to dispose the biomedical waste within 48 hours after its collection at their hand, they can spend only minimum time in between the collection, transportation and transfer to the processing equipment at their facility. Hence the health care units have to readily make available the generated biomedical waste at the waste collection point, after source segregation, in a hurry and this results in improper segregation and improper handling of waste. Due to the hastiness of the CBWTF waste handlers, the health care staffs are not getting sufficient time for proper source segregated collection, pretreatment and its movement to the collection point. Several complaints were brought to the attention of the Board by IMAGE itself regarding improper segregation and the delay occurring at the collection points. There are instances noticed that there were occasional delays on the part of the IMAGE to collect biomedical waste. Considering the situation of Kerala traffic system,



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urbanization of the rural areas, the time taken for collection by the CBWTF and the cross-distance travel time, sticking on to the 48 hrs. time frame cannot be achieved easily. Hence by plying and catering all waste generated in the State by the facility of IMAGE alone in accordance with the Rules and guidelines cannot be effectively implemented by the prescribed authority. Hence it is imperative that for the smooth functioning of CBWTFs in consonance with the healthcare facilities and to reduce the time travel to reach the facility, there must be at least one facility each concentrating at the southern region and one at the Northern region and the Board is earnestly working on that.

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

Dated this 23<sup>rd</sup> day of October 2021



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