

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

ORIGINAL APPLICATION NO.442 of 2013(SZ)

**Jith Kumar, Muthedathu
Versus
The State of Kerala & Others**

And

ORIGINAL APPLICATION NO.20 of 2017(SZ)

**Abdul Basheer
Versus
Kochi Municipal Corporation & Others**

And

ORIGINAL APPLICATION NO.276 of 2017(SZ)

**Lawyers Environmental Awareness Forum
Versus
SEIAA, Thiruvananthapuram**

VOLUME 2

Index

Sl.No	Description	Pages
1	Annexure A – Copy of the notice issued to the Secretary, Kochi Corporation	1-6

Dated this the 4th November 2020

Rama Smrithi, Advocate
Additional Standing Counsel for the Respondent

☎: General: 0471- 2312910, 2318153, 2318154, 2318155 Chairman: 2318150 Member Secretary: 2318151
E-mail: ms.kspcb@gov.in FAX: 0471 - 2318134, 2318152 web: www.keralapcb.nic.in



KERALA STATE POLLUTION CONTROL BOARD

കരളസംസ്ഥാന മലിനീകരണ നിയന്ത്രണ ബോർഡ്

Pattom P.O., Thiruvananthapuram – 695 004
പട്ടം പി.ഒ., തിരുവനന്തപുരം - 695 004

PCB/HO/SEE2/KOCHI CORPN/2019

Date:15/10/2020

Regd. with A/D

NOTICE UNDER SECTION 5 OF THE ENVIRONMENTAL PROTECTION ACT, 1986

Sub: Non-compliance of Solid Waste Management Rules, 2016.

- Ref: 1. Order dated 23/10/2018 of the Hon'ble NGT in O.A. 533-535/2018
2. Order dated 9/11/2018 of the Hon'ble High Court in WP(c) No. 36204/2018(A)
3. Order dated 16/01/2019 in OA no. 606/2018
4. This office notice No. PCB/HO/RULES/SWM-ERNAKULAM/2018 dated 12/10/ 2019
5. Letter no. PCB/RO-EKM/GEN-221/19 dated 18/10/2019 from the Chief Environmental Engineer, Regional Office, Ernakulam
6. This office notice No. PCB/HO/SEE2/KOCHI CORPN/2019 dated 11/12/2019
7. Letter No. MOE2/10948/2017 dated 01/ 01/ 2020 and 06/01/2020 of Secretary, Kochi Corporation
8. Order dated 30/01/2020 in OA no. 442/2013 by the Hon'ble NGT.
9. Letter no. PCB/RO/EKM/GEN-258/19 dated 20/02/2020.
10. Minutes of the meeting on 16-3-2020 with the Secretary, Kochi Corporation
11. Minutes of the meeting on 17-3-2020
12. Order dated 03/07/2020 in OA no.514/2019
13. Letter No PCB/RO-EKM/GEN-258/19 D dated 23.07.2020 from the Chief Environmental Engineer, Regional office, Ernakulam
14. Minutes of the video conference held on 17/08/2020 with Secretary , Kochi Corporation and allied municipalities
15. Letter No. MOE2/10948/2017 dated 11/09/2020 of Secretary, Kochi Corporation.
16. Order dated 22/11/2018 in O.A. No. 353/2016
17. Order dated 20/11/2018 in O.A No. 117/2014, 499/2014 and 102/2014
18. Letter No PCB/RO-EKM/GEN-258/19 D dated 11/08/2020 from the Chief Environmental Engineer, Regional office, Ernakulam
19. Order dated 16/09/2020 in OA no.514/2019.

WHEREAS the Central Government notified the Environmental (Protection) Act, 1986 for the protection and improvement of environment and for matters connected therewith;

WHEREAS as per Section 3, 6, and 25 of the Environment (Protection) Act, 1986, the Central Government re-notified the Solid Wastes Management Rules, 2016 (hereinafter referred as SWM Rules) vide notification S.O. 1357(E) dated 8/4/2016;

WHEREAS as per Rule 22 (1) of the SWM Rules, suitable sites for setting up solid waste processing facilities are to be identified;

WHEREAS as per Rule 22(3) of the SWM Rules, suitable sites for setting up solid waste processing facility and sanitary landfill facilities are to be procured;

WHEREAS as per Rule 22 (5) of the SWM Rules, door to door collection of segregated waste and its transportation in covered vehicles to processing or disposing facility shall be ensured by 8-4-2019;

WHEREAS as per Rule 22 (7) of the SWM Rules, solid waste processing facilities for the complete quantity of waste generated from the local body at 0.4 to 0.5 kg/person/day, shall be set up by 8-4-2019;

WHEREAS facilities with the technologies specified in CPHEEO manual and SWM Rules are to be in place for the effective treatment and disposal of the solid waste generated in the local body;

WHEREAS as per Rule 22 (6) of the SWM Rules, separate storage, collection and transportation of construction and demolition waste shall be provided;

WHEREAS as per Rule 22(11) of the SWM Rules, bio-remediation or capping of old and abandoned dump site shall be ensured;

WHEREAS the Hon'ble NGT vide order dated 23/10/2018 read first above, ordered to complete the new integrated solid waste treatment processing plant in six months to commence the treatment of legacy waste, impose a penalty of Rs. 1 crore on Kochi Corporation and to deposit a performance guarantee of Rs. 3 crore with Kerala State Pollution Control Board and the Hon'ble High Court vide the order read 2nd above, ordered to place bank guarantee of Rs. 50 lakh each to Central Pollution Control Board and Kerala State Pollution Control Board and to exempt from depositing Rs. 3 crore towards bank guarantee and accordingly bank guarantee was placed by the Kochi Corporation;

WHEREAS during the second meeting on 15/3/2019 of the State Level Monitoring Committee constituted by the Hon'ble NGT vide the order under ref.3, resolutions were made to conduct bio mining of legacy waste part by part; keep ESCROW amount for handling emergency situation; provide adequate cover, leachate collection tank and log book for waste transporting vehicles and allow waste transportation only by those vehicles by Health Supervisor; engage Ex-service armed security at the segregation in the dump yard; to make the roads, NH Bypass, Sahodaran Ayyappan Road and Banerjee Road as Zero Waste road; to insist door to door collection and prohibit the deposition of waste on roads and other public places and insist for segregation of waste before disposal; ban the plastic carry bags below the prescribed limit and to proceed against violators under the law of penalization; to give adequate protective equipment namely gumboots, gloves, masks etc., proceed against the violators disposing sewage, septage and chicken waste in the water resources; apartments, hospitals, hospitals which are not operating their sewage treatment plants and to evolve methods for the effective disposal of plastics and not to dispose plastic by burning;

WHEREAS Chairman SLMC during their 4th meeting on 08/05/19 directed to submit specific detailed time bound action plan to the Kerala State Pollution Control Board, to adopt mechanized system for the disposal of legacy waste, to implement heavy fining, provide surveillance cameras/ strict squad to prevent waste dumping on roads, to insist on segregation of wastes at source, to transport vehicles with adequate cover, to provide proper leachate collection tank and logbook, to provide adequate personal protective equipments to workers and to compel

them to wear the same, to prohibit deposit of wastes on roads and other public places, to deploy haritha karma sena for door to door collection, to report on the action taken and to submit to the SLMC;

WHEREAS the fifth meeting of the State Level Monitoring Committee held on 14/06/2019, noticed with distress that a good number of directions issued are yet to be complied with and therefore expressed displeasure over the same and it was again directed to issue directions by the Corporation to the bulk generators to take steps to channelize their own wastes as the same is homogenous and clean, channelization can be done easily; to submit the details of wards, in which segregation is complete; segregated plastic waste for shredding is to be stored in areas attached to the zonal office of the Corporation; and to submit action plan in each ward for solid waste management, projects to be implemented and to improve the existing waste management facility, existing material collection facility and resource recovery facility; to publish the information on waste management in the website; to take legal action against open burning of non-biodegradable waste and dumping of waste in water bodies; to take steps to establish MCFs in all wards and RRF at least in six wards; issue identity card to all workers engaged in waste management and to prepare action plan for developing a business model for effective treatment of waste;

WHEREAS it is noted that you have not identified the land for managing Construction and Demolition waste and sanitary landfill;

WHEREAS noticed dated 12/10/2019 was issued vide reference 4th above for not taking steps to provide biomethanation plant for the food wastes generated within Kochi Corporation;

WHEREAS the Chief Environmental Engineer, Regional Office, Ernakulam vide the letter dated 18/10/2019 cited 5th above, reported about the improper functioning of solid waste plant including no action taken to install proper leachate treatment plant at the site;

WHEREAS the Board issued notice dated 11/12/2019 read 6th above to the Secretary, Kochi Corporation to show cause why the Environmental compensation of Rs. 1.122 Crore shall not be levied for not providing leachate treatment plant and the replies of the Kochi Corporation under ref. 7th above were ;

WHEREAS the Hon'ble National Green Tribunal vide the order read 8th above on 30-1-2020 directed that, on receipt of the explanation from the Corporation to the notice issued by Board, the Pollution Control Board is to pass appropriate orders and complete the proceedings initiated on the basis of their inspection and dispose of the same in accordance with law and come with compliance report before the Tribunal;

WHEREAS the Chief Environmental Engineer, Regional Office, Ernakulam in the report (ref. 9) dated 20/02/2020 to the Chairman, State Level Monitoring Committee, reported that the Corporation is not taking earnest steps to solve the issue which is a long pending case from the Corporation side and to assess environmental compensation as done on 18/10/2019;

WHEREAS the Chief Environmental Engineer, Regional Office, Ernakulam vide letter No. PCB/RO-EKM/GEN-258/2019 dated 28-2-2020 reported that the Corporation is allowing five municipalities and two grama panchayaths to bring their biodegradable waste in addition to Corporation's biodegradable waste and non biodegradable waste and the total actual quantity of waste estimated as 365.19TPD;

WHEREAS on receiving the reply from the Secretary, Kochi Corporation, hearing was conducted with the Secretary, Kochi Corporation on 16/3/2020 vide ref., 10 and 11 and reported

status to the NGT;

WHEREAS the Hon'ble NGT on 3/7/2020 in OA514/2019 (ref. 12) observed the delay in setting up of waste to energy plant and was doubtful whether leachate can be treated in an ordinary septage treatment plant as it contains heavy metals and the tribunal also observed that the progress appears to be very slow and in disregard to the statutory and constitutional obligation of providing clean environment;

WHEREAS it was reported by the Chief Environmental Engineer, Regional office Ernakulam vide letter No. PCB/RO-EKM/GEN-221/19 dated 23/07/2020 (ref. 13) reported that during the inspection conducted by the Board on various occasions, it was noticed that

- a) The facilities provided for the treatment and disposal of solid waste provided at Brahmapuram are not maintained properly;
- b) The windrow composting shed is in dilapidated condition and the mixed solid waste including plastic waste is dumped in the yard in open condition;
- c) The manure produced seems to be marginal compared to the daily waste collected at the plant;
- d) Manure produced did not meet the fertilizer standard as per the SWM Rule, 2016 and contain heavy metals;
- e) Due to the unscientific treatment of biodegradable solid waste, huge quantity of rejects have dumped at various places and which in turn got converted to legacy waste;
- f) Fire accident were occurred in the legacy waste dump yard at Brahmapuram 3 or 4 times during the period of 2019 and 2020 which lead to air pollution in and around the dump site
- g) Leachate from the windrow composting shed and the biodegradable solid waste dumping area is not collected and treated properly due to improper drains and there are chances of leachate reaches the Kadambrayar river, one of the polluted river stretch identified by CPCB;
- h) The leachate treatment plant provided prior to the visit of Regional Monitoring Committee (RMC) appointed by the Hon'ble NGT is not operational now;
- i) During the inspection conducted on 16.07.2020 it was noticed that no progress in the installation of leachate treatment plant except the construction of a new collection tank having capacity of 100 m³ on which the Hon'ble Court made adverse remarks ;
- j) No effective steps were taken for construction activities for the installation of waste to energy plant and for the removal of legacy waste. The Corporation authorities are still not able to assess the quantum of legacy waste settled there;

WHEREAS hearing was conducted by the Chairman on 17/8/2020 with the Kochi Corporation (ref. 14) and accordingly details were submitted by you vide the letter under ref. 15;

WHEREAS from the above observations, it is noted that you have not fully complied with the directions of Hon'ble SLMC, provisions of Solid Waste Management Rules, 2016 and also not obtained authorization under SWM Rules, 2016;

WHEREAS the Hon'ble National Green Tribunal, Principal Bench, New Delhi in the order dated 22/11/2018 in O.A. No. 353/2016 (ref. 16) clarified that apart from prosecution, the statutory authorities under the Environment (Protection) Act, 1986, the Air (Prevention and Control of Pollution) Act, 1981 and the Water (Prevention and Control of Pollution) Act, 1974, must, in exercise of their incidental powers, prescribed scale of compensation to be collected from the

polluters on the “Polluter Pay’s Principle”. Such scale which may be laid down at various levels, having regard to the local condition or as per direction in the hierarchy of the authorities;

WHEREAS in various other application also, the Hon’ble NGT passed similar orders, for instance, in the Order dated 20/11/2018 in O.A No. 117/2014, 499/2014 and 102/2014 (ref. 17) the Hon’ble NGT noted as; “Needless to say that statutory authorities under the Environment (Protection) Act, 1986, Air (Prevention and Control of Pollution) Act, 1981 and the Water (Prevention and Control of Pollution) Act, 1974 are entitled to assess and recover damages as “Polluter Pay’s Principle” in exercise of incidental powers to protect environment”.

WHEREAS as per Hon’ble NGT order dated 23/09/2019 in O.A 585/2018, if the rules are violated, the Pollution Control Board can independently proceed against local bodies who are not complying with the rules including initiation of prosecution of those persons who are not complying with the same and assessment of damage caused to the Environment;

WHEREAS the Hon’ble NGT vide order dated 16/9/2020 in OA 514/2018 (ref. 19), observed the failure in taking effective steps on the matter;

AND WHEREAS the Chief Environmental Engineer, Regional Office, Ernakulummade recommendation for levying Environmental Compensation against Kochi Corporation and forwarded the following assessment details vide the letter dated 11/8/2020 cited 18th above;

City	Kochi Corporation
Population(2011)	6,77,381
Class	Class I
Waste generation (kg per person per day)	-
Waste generation (TPD)	315.96
Waste disposed as per Rules (TPD)	31.60
Waste Management Capacity Gap(TPD)	284.36
Calculated EC(capital cost component) in lakhs, Rs.	682.47
Minimum and Maximum values of EC (Capital cost component) recommended by the Committee (lakhs, Rs.)	Min. 100 Max. 1000
Final EC (capital cost component) in lakhs, Rs.	682.47
Calculated EC (O&M component) in lakhs, Rs./day	5.69
Minimum and maximum values of EC (O&M cost component) recommended by the Committee	Min. 0.1 Max. 1.0
Final EC(O&M component) in lakhs, Rs./day	1.00
Calculated Environmental Externality (lakhs Rs./day)	0.01
Minimum and maximum values of Environmental Externality recommended by the committee(lakhs, Rs./day)	Min. 0.05 Max.0.1

Final Environmental Externality (Rs. Per day)	0.05
EC to be collected (Rs. in lakhs from 22/11/2018 to 30/9/2020 i.e.679 days)	1395.42

NOW THEREFORE, in exercise of the powers vested under Section 5 of the Environment Protection Act 1986, read with Government of India Notification S.O. 327(E) dated 10/04/2001, you are directed to show cause within 15 days of receipt of this notice, why the Board shall not recover Environmental Compensation of Rs. 1395.42 lakhs (Rupees One thousand three hundred and ninety five lakhs and forty two thousand only) from 22/11/2018 to 30/09/2020 towards the noncompliance of Solid Waste Management Rules, 2016.


CHAIRMAN

To

The Secretary,
Kochi Corporation

Copy to:

1. The Chairman
State Level Monitoring Committee with C/L
2. The Additional Chief Secretary
Local Self Government Department with C/L
3. The Principal Secretary
Environment Department with C/L
4. The District Collector, Ernakulam
5. The Director, Urban Directorate
6. The Chief Environmental Engineer, Regional Office, Ernakulam
7. The Environmental Engineer, District Office 1 and 2, Ernakulam