

BEFORE THE NATIONAL GREEN TRIBUNAL
SOUTH ZONE, CHENNAI

In

ORIGINAL APPLICATION No. 43 of 2017

IN THE MATTER OF:

SUO MOTO PROCEEDINGS

..... APPLICANT

VERSUS

THE STATE OF KERALA AND OTHERS

.....RESPONDENTS

AFFIDAVIT FILED BY 6TH RESPONDENT

MOST RESPECTFULLY SHOWETH

I, Dr.Sharafudheen.K.P., S/o Shamsudheen.K.P, aged 49 years, residing at Villa-D1, Misty Hills, Homstead Villas Panambi, Perunthalmanna, Malappuram- 679 322, do hereby solemnly affirm and state as follows:

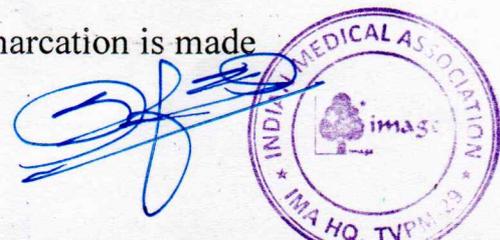
1. I am the Secretary of the 6th Respondent, Indian Medical Association Goes Eco-friendly, in the above O.A. I am conversant with the facts of the case and I am swearing this affidavit on behalf of the said respondent.
2. It is humbly submitted that when there was an allegation against the 6th respondent in the above O.A, the 6th respondent entered appearance and contested the matter by filing a detailed counter affidavit. The allegation was that the 6th respondent, while carrying the biomedical waste from the health care facilities in High Ranges, was disposing the same in the forest areas on the side of the highway that created environmental pollution leading to water in the forest streams and rivers getting polluted. After hearing the petitioner and on considering

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- the pleadings in their counter affidavit this Hon'ble Tribunal was pleased to exonerate the present this respondent from the allegations.
3. After the above adjudication in the year 2017, there was no notice to the 6th respondent for further hearing or about the future postings. While matter stood as above, petitioner has come to understand that the O.A was posted on several dates from 24/02/2020 onwards. There was no further notice of the postings to the 6th respondent as the respondent was not involved in and concerned with the subject matter under consideration. But, it is seen from the subsequent proceedings that the availability of biomedical waste disposal and treatment facility in the State came up for consideration and was deliberated upon by this Hon'ble Tribunal on the last posting dates. The 6th respondent was not aware about the said developments and hence could not participate in the hearings.
 4. It could be seen from the proceedings of this Hon'ble Tribunal that on 24/06/2021 the 7th respondent in the case, KEIL, a newly set up Common Biomedical waste Treatment Facility in Ernakulum District, submitted that "they have been permitted to collect the Biomedical Waste generated from the Government hospitals in Malappuram, Ernakulam and Pathanamthitta districts alone, whereas, their capacity is much more than the permitted quantity that is being to be collected and treated by them". Consequent to this submission this Hon'ble Tribunal directed that "the State Government must examine as to whether more areas and hospitals can be connected with these facilities permitted by the Government depending upon the capacity of the facilities, for which, permission was granted to establish, so that the entire bio medical waste generated in those areas can be scientifically disposed of". The State was further directed "to file a detailed report regarding the policy by which the demarcation is made

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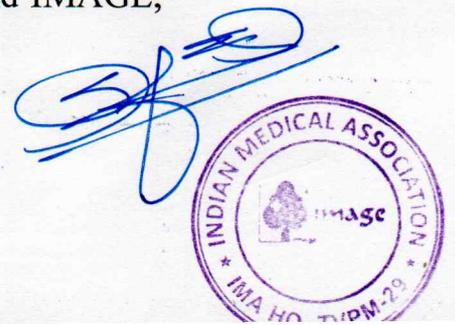


and whether the current allocation criteria caters to the entire Biomedical waste generated in that area". Accordingly the learned counsel for the state government submitted that they will come with a detailed report regarding this aspect.

5. In the above order dated 24/06/2021, the Kerala State Pollution Control Board is also directed to "file a further detailed action taken report and also the status report regarding the implementation of the solid waste management rules, 2016 and Biomedical Waste Management Rules, 2016 in the Government Medical College; Kalamassery". The 7th respondent private company is also directed to file a detailed report regarding the nature of permission granted by the Government for collecting the Biomedical Waste for the unit and the quantity of Biomedical Waste that is being collected and disposed of by them, so that this Tribunal can assess the gap of permitted capacity and the quantity which is available for disposal. The parties were directed to submit their respective reports to this Tribunal on or before 17/08/2021 by e-filing. The case was thereafter posted on 17/08/2021 for consideration of the above reports.
6. While things stood as above, despite the above specific direction by this Hon'ble Tribunal to file their action taken report in respect of Govt. Medical College, Kalamassery, the State Pollution Control Board Issued an order dated 13- 8- 21 the operative portion of which is extracted hereunder:

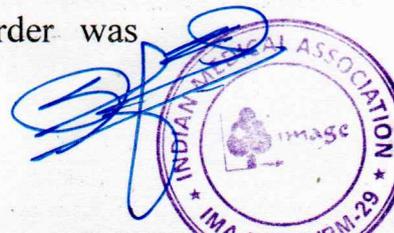
" Considering the above facts and as per schedule III 6 (viii) of Rule 6 and 9(3) of the Bio Medical Waste Management Rules 2016 it is now decided to allot the waste to KEIL and IMAGE, the two service providers as follows:

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1. As per the guideline KEIL shall operate their plant at Ambalamedu, Kochi by collecting bio medical waste from both private and government healthcare unit within a radial distance of 75KM from their facility. As implementation of this procedure based on radial distance would be difficult, it would be appropriate to allocate the full districts of Pathanamthitta, Alapuzha and Idukki along with Kottayam and Ernakulam to KEIL. Therefore KEIL shall collect and process BMW from both government and private healthcare units from the districts of Alapuzha, Kottayam, Ernakulam, Pathanamthitta and Idukki.
2. The rest of the bio medical waste generated from the government and private healthcare units of the districts of Thiruvananthapuram, Kollam, Thrissur, Mallappuram, Palakkad, Wayanad, Kozhikode, Kannur and Kasargode shall be collected and processed by IMAGE in their facility at Palakkad. “
7. Since the above order of the State Pollution Control Board dated 13/08/2021 was not in pursuance of any direction issued by this Hon'ble Court in its aforesaid order dated 24/06/2021, which is referred to in the order dated 13/08/2021; since the order is vitiated by total lack of jurisdiction as the State Pollution Control Board has no authority or power to issue an order bifurcating the entire districts in the State to two segments and allotting them separately to the two Common Bio Medical Waste Treatment Facilities; since the said order was passed in utter violation of the rules of natural justice in so far as the petitioner herein was not afforded any notice or an opportunity for hearing regarding the proposed order and since the order was

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arbitrary, unreasonable and unfair and in violation of the fundamental rights guaranteed under articles 14 and 19(1)(g) of the Constitution, the 6th respondent preferred writ petition no. 17693 of 2021 before the Hon'ble High Court of Kerala, challenging the above said order and seeking to quash the, not to disturb the existing pattern and arrangement of collection of bio medical waste by the petitioner from the HCFs all through the State and for a declaration that the impugned order bifurcating the districts in the State in to two segments and earmarking the separate segments to this respondent and the 5th respondent in the writ petition , Kerala Enviro Infrastructure Ltd (KEIL), a newly commissioned CBWTF is ultravires the Bio Medical Waste Management Rules 2016 and hence is illegal and unsustainable.

8. The above writ petition was finally heard by the Hon'ble High Court of Kerala on 08/09/2021 and the same is reserved for orders, which is pending. In the meantime seven individual private hospitals functioning in the Ernakulam District, affiliated to the petitioner hitherto for removal and treatment of their bio medical waste and presently allotted to the KEIL for the same, have also filed writ petition no. 18270 of 2021 praying for a writ of direction quashing the above impugned order of the State Pollution Control Board and also not to disturb the existing pattern and arrangement and for a consequential declaration as their fundamental right to carry on their trade and occupation has been infringed by the State Pollution Control Board without even a notice or an opportunity of hearing to those private hospitals. This writ petition was also heard along with the petitioner's writ petition and has been taken for orders.
9. It is significant to note here that the 6th respondent has got an installed treatment capacity of 68 tonnes per day but is allotted only 9 districts.

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whereas 7th respondent in the O.A, KEIL, which has got only a treatment capacity of 16 tonnes per day was allotted 5 nearest/central districts including the Ernakulam District, the health hub of the State. It may also be noted that there are a large number of private health care facilities in the State, including major hospitals and medical colleges, which are not yet affiliated to the 6th respondent or any other CBWTFs herein for removal of their bio medical waste, and, hence the 7th respondent in the OA has a large open constituency in the State to canvas their clients from a competitive market, which will certainly improve the quality of service rendered to the HCFs in the State. It is further submitted that the 6th respondent is also not averse to the State Government allotting the Government HCFs to the 7th respondent as their clients so that there will not be any dearth of work to the said newly established CBWTF.

In the above facts and circumstances since the Kerala State Pollution Control Board has referred the order of this Hon'ble Tribunal dated 24/06/2021 in O.A 43 of 2017 in their order under challenge in the above writ petition, it has become highly necessary and essential and expedient in the interest of justice that the 6th respondent may also be heard in the ensuing postings of the O.A no. 43 of 2017 by this Hon'ble Tribunal in the matter of distribution of work to CBWTFs in the state in respect of bio medical waste management and treatment, and the present affidavit may kindly be taken on record for consideration of this Hon'ble Tribunal.

Dated this the 21st day of September, 2021.

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DEPONENT:



VERIFICATION :

Verified at Ernakulam, Kerala on the 21st September 2021 that the contents of the above affidavit are true and correct, no part of it is false and nothing has been concealed there from.



DEPONENT

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