

Presented on: 13/12/2021

**BEFORE THE HONOURABLE NATIONAL GREEN TRIBUNAL, SOUTH ZONE  
BENCH AT CHENNAI**

Application No.43 of 2017 (SZ)

**IN THE MATTER OF**

Suo moto

::

Applicant

**VERSUS**

State of Kerala & others

::

Respondents

**ADDITIONAL STATEMENT FILED BY THE 7<sup>TH</sup> RESPONDENT**

Mr. Babu Joseph Kuruvathazha  
E. No.K/379/92  
Counsel for the 7<sup>th</sup> Respondent

**BEFORE THE HONOURABLE NATIONAL GREEN TRIBUNAL, SOUTH ZONE**  
**BENCH AT CHENNAI**

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FILED BY



M/s. Babu Joseph Kuruvathazha  
E. No.K/379/92  
COUNSEL FOR THE 7<sup>TH</sup> RESPONDENT  
Mathai Manjooran Road,  
Ernakulam, Kochi - 18

10.12.2021  
Kochi

**BEFORE THE HONOURABLE NATIONAL GREEN TRIBUNAL, SOUTH ZONE  
BENCH AT CHENNAI**

Application No.43 of 2017 (SZ)

**IN THE MATTER OF**

Suo moto :: Applicant

**VERSUS**

State of Kerala & others :: Respondents

**ADDITIONAL STATEMENT FILED BY THE 7<sup>TH</sup> RESPONDENT**

1. In pursuance to the orders of this Hon'ble Tribunal dated 19.8.2020, 19.1.2021, 25.2.2021, 23.3.2021 and 24.6.2021, the Government of Kerala authorized the Kerala State Pollution Control Board to issue appropriate order regarding the bifurcation of districts for the management of Bio-medical waste generated in the State of Kerala, between the 6<sup>th</sup> and 7<sup>th</sup> respondents. Accordingly, the KSPCB issued the Order No.PCB/HO/EE2/BMW-03/GENERAL dated 13.8.2021, a true copy of which is produced herewith and marked as **Annexure-R7(a)**, authorizing the 7<sup>th</sup> respondent to collect the BMW, from 5 districts such as Ernakulam, Alappuzha, Pathanamthitta, Kottayam and Idukki.

2. Challenging Annexure-R7(a), 6<sup>th</sup> respondent along with another filed W.P.(C) No.17693/2021 before the Hon'ble High Court of Kerala, and on close perusal of facts and law, the Hon'ble High Court rejected the said W.P.(C), along with W.P.(C) No.18270/2021, as per the judgment dated 27.9.2021. A true copy of the said judgment in W.P.(C) No.17693/2021 is produced herewith and marked as

**Annexure-R7(b)**.



Dr. N. K. PILLAI  
Chief Executive Officer  
Kerala Enviro Infrastructure L  
Ambalamedu - 682 303

3. Challenging Annexure-R7(b) judgment, W.A.1303/2021 was filed. However, as per the judgment dated 22.11.2021, a true copy of which is produced herewith and marked as **Annexure-R7(c)**, the said Writ Appeal was dismissed, along with connected case W.A.No.1290/2021 filed by the Kerala Private Hospitals Association.

4. However, besides the dismissal of Writ Petitions and Writ Appeals by the Hon'ble High Court of Kerala, the direction contained in Annexure-R7(a) order, has not been complied/obeyed so far. After the issuance of Annexure-R7(a) order, the private hospital/health care establishments of 5 districts of Kerala, have absolutely no authorization of the KSPCB, to dispose the BMW through the 6<sup>th</sup> respondent, and the 6<sup>th</sup> respondent has no authorization to collect the BMW from the private health care establishments of those 5 districts. However, besides the dismissal of WPCs and WAs, the 6<sup>th</sup> respondent collects the BMW from those 5 districts too.

In the above circumstances, for the ends of justice, it is highly essential to restrain the 6<sup>th</sup> respondent from collecting the BMW from any health care establishment in the 5 districts mentioned in Annexure-R7(a) order of the KSPCB, for the ends of justice.

All the facts stated above are true and correct to the best of my information and belief.

Dated this the 10<sup>th</sup> day of December, 2021

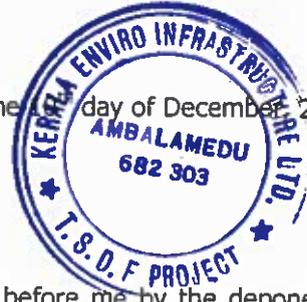
Dr. N. K. PILLAI  
Chief Executive Officer  
Kerala Enviro Infrastructure Ltd  
Ambalamedu - 682 303  
Deponent

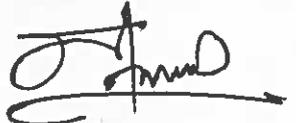


**Verification**

I, Dr. N.K. Pillai, S/o. late G.N. Unnithan, aged 74 years, 40 Santhi Nagar, South Kalamassery, Rajagiri P.O., Kochi-683 104, Kerala, working as Chief Executive Officer of Kerala Enviro Infrastructure Ltd., Ambalamedu, Kochi-682 303, Kerala, the above named deponent, do hereby verify that the contents of the above Additional Statement are true and correct to my knowledge based on official records, no part of it is false and nothing material has been concealed there from.

Verified at Ernakulam on this the \_\_\_\_\_ day of December, 2021



  
Dr. N. K. PILLAI  
Chief Executive Officer  
Kerala Enviro Infrastructure Ltd.  
Ambalamedu - 682 303

Deponent

Solemnly affirmed and signed before me by the deponent whom I know on this the 10<sup>th</sup> day of December, 2021 at Ernakulam.

  
Babu Joseph Kuruvathazha  
Advocate

PROCEEDINGS

(Present: Prudeepkumar A.B., Chairman)

Sub:- O A 43/2017-Allocation of bio medical waste to CBWTF of M/s Kerala Enviro Infrastructure Limited, Ambalamedu, Ernakulam and IMAGE, Palakkad- Sanctioned - Orders issued.

KERALA STATE POLLUTION CONTROL BOARD

Thiruvananthapuram

No. PCB/HO/EE2/BMW-03/GENERAL

Dated: 13/08/2021

- Read:
1. The Bio medical Waste Management Rules, 2016
  2. Revised guideline of CPCB for CBWTF dated 21.12.2016
  3. Hon'ble NGT order dated 24.06.2021 in O.A 43/2017
  4. Minutes of meeting dated 29.06.2021 held by ACS, Env't.
  5. Minutes of meeting dated 19.07.2021 held by Chairman, KSPCB
  6. Letter dated 17.07.2021 of KEIL
  7. Letter dated 09.08.2021 of IMAGE
  8. Consent to establish issued to KEIL dated 10.03.2014 and renewals dated 15.10.2017 & 02.11.2019
  9. Environmental Clearance no. 1036(A)/SEIAA/EC3/502/2016 dated 29.11.2017 issued by SEIAA
  10. Consent to operate/authorization issued to KEIL dated 11.05.2021

ORDER

The occupiers of health care units and operators of Common Bio Medical Waste Treatment Facilities (CBWTFs) are bound to comply with the relevant provisions under the Bio Medical Waste Management Rule 2016 (BMW Rule) and the guidelines issued by CPCB. The concept of biomedical waste treatment at common facility has been introduced in our country and widely accepted among health care units, medical associations and entrepreneurs. As per Rule 7, occupiers of health care units shall dispose BMW through CBWTFs, if the service of CBWTF is available at a distance of 75 km. Central Pollution Control Board (CPCB) published revised guidelines for common bio medical waste treatment and disposal facilities in December, 2016. It is mentioned therein that these guidelines are mandatory under the Bio-Medical Waste Management Rules, 2016. The guideline provides the criteria for development of CBWTFs for a locality or region.

The common facility, IMAGE in Palakkad was the only one common facility that catered the waste from Govt. and Private health care units across the State so far, in addition to the captive treatment facilities in a few institutions.

The second CBWTF in the State by Kerala Enviro Infrastructure Limited (KEIL), Ambalamedu has been set up and is presently functional at the premises of the already



established common hazardous waste treatment facility (CTSDF), after getting consent to establish of the Board and environmental clearance from SEIAA. Consent to operate/authorization was issued for 16 tonne/day capacity to KEIL on 11.05.2021 with validity up to 30.06.2024.

The Govt.(Health Department) issued directive vide M4/70/2021-Health dated 03.05.2021 allotting the waste from the Govt. hospitals in the three districts of Malappuram, Ernakulam and Pathanamthitta to KEIL. KEIL started treating wastes from Govt. health care units collected from these three districts with effect from 24.05.2021. They have also started collecting COVID BMW from these districts from 27.07.2021 onwards.

KEIL submitted before the Hon'ble NGT that they have been permitted to collect BMW from Govt. hospitals from the three districts of Ernakulam, Malappuram and Pathanamthitta. However as their installed capacity is much more than the permitted quantity they stated that the operation of the plant is not viable with the reduced quantity of waste, that they obtain from the government health care unit of 3 districts.

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 Government 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 biomedical waste generated in that area.

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 issues emerged during the pandemic situation, was discussed in the meeting and after deliberations on the bifurcation of area and allotment of Govt. and private health care units, the Additional Chief Secretary directed PCB to take a decision on the allotment of wastes from both Pvt. and Govt. sector health care units to KEIL. Accordingly the Board Chairman held a meeting on 19.07.2021 with IMAGE and KEIL authorities. KEIL vide letter dated 17.07.2021 submitted proposal and requested for granting permission for collection of BMW from both Govt. and Private health care units within 75 km radial distance from their facility as they are getting only a very few quantity as against their designed capacity of 16 v/day. IMAGE submitted a proposal regarding the system of charges to be levied from HCFs, in the State but did not submit any alternate proposal suggesting the allocation or transferring of waste from Govt. and private health care units to KEIL within 75 km radius.



As part of implementation of the guideline for the management of COVID waste, CPCB has developed a tracking app COVID 19 BMW for monitoring the waste being handled by the generators and CBWTFs and both the service providers are updating the daily quantity collected and disposed in the app. It is evident from the data that KEIL is getting only 3 to 4 t/day including both COVID and non COVID BMW from the already allotted hospitals by the Govt. whereas IMAGE is getting surplus quantity. This system of distribution of BMW is resulting in shortage of waste for processing in one unit and accumulation of waste in another unit. Hence, a balance need to be worked out for the effective management of BMW.

As per the CPCB guideline a CBWTF located within the respective State/UT shall be allowed to cater healthcare units situated at a radial distance of 75 km. However, in a coverage area where 10,000 beds are not available within a radial distance of 75 km, existing CBWTF in the locality (located within the respective State) may be allowed to cater the healthcare units situated upto 150 km radius with respect to its location provided the bio-medical waste generated is collected, treated and disposed of within 48 hours as stipulated under the BMW Rules.

It is also emphasized in the Rules that no healthcare facility shall establish on-site treatment and disposal facility for BMW, if a service of CBWTF is available within 75 km of travelling distance of the facility. All the healthcare facilities within a radius of 75km of CBWTF needs to dispose the BMW through such CBWTF only and are not allowed to establish its own treatment and disposal facility.

As the service charge for Govt. hospitals is at subsidized rate, the transportation cost could be utilized effectively only if the wastes from both Govt. and private hospitals in the same area are allotted. KEIL also informed that only 80 % of beds are considered for payment from the Govt. hospitals and as there is no affiliation charge, the plant can be run in a viable manner only if waste is obtained from both private and govt. health care units.

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 & IMAGE, the two service providers as follows:

1. As per the guideline, KEIL shall operate their plant at Ambalamedu, Kochi by collecting bio medical waste from both private and government health care units within a radial distance of 75 km 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, Alappuzha and Idukki along with Kottayam and Ernakulam to KEIL.



- 7 -

Annexure R7(a) / G

Therefore KEIL shall collect and process BMW from both Govt. and Private health care units from the districts of Alappuzha, Kottayam, Ernakulam, Pathanamthitta and Idukki.

2. The rest of the bio medical waste generated both from the government and private health care units of the districts of Thiruvananthapuram, Kollam, Thrissur, Malappuram, Palakkad, Wayanadu, Kozhikkodu, Kannur and Kasargodu shall be collected and processed by IMAGE in their facility at Palakkad.

The sketch showing the allotment is attached with this order.

This order shall come into effect from the first day of September 2021. All Government and private health care institutions in the State shall comply with this order.

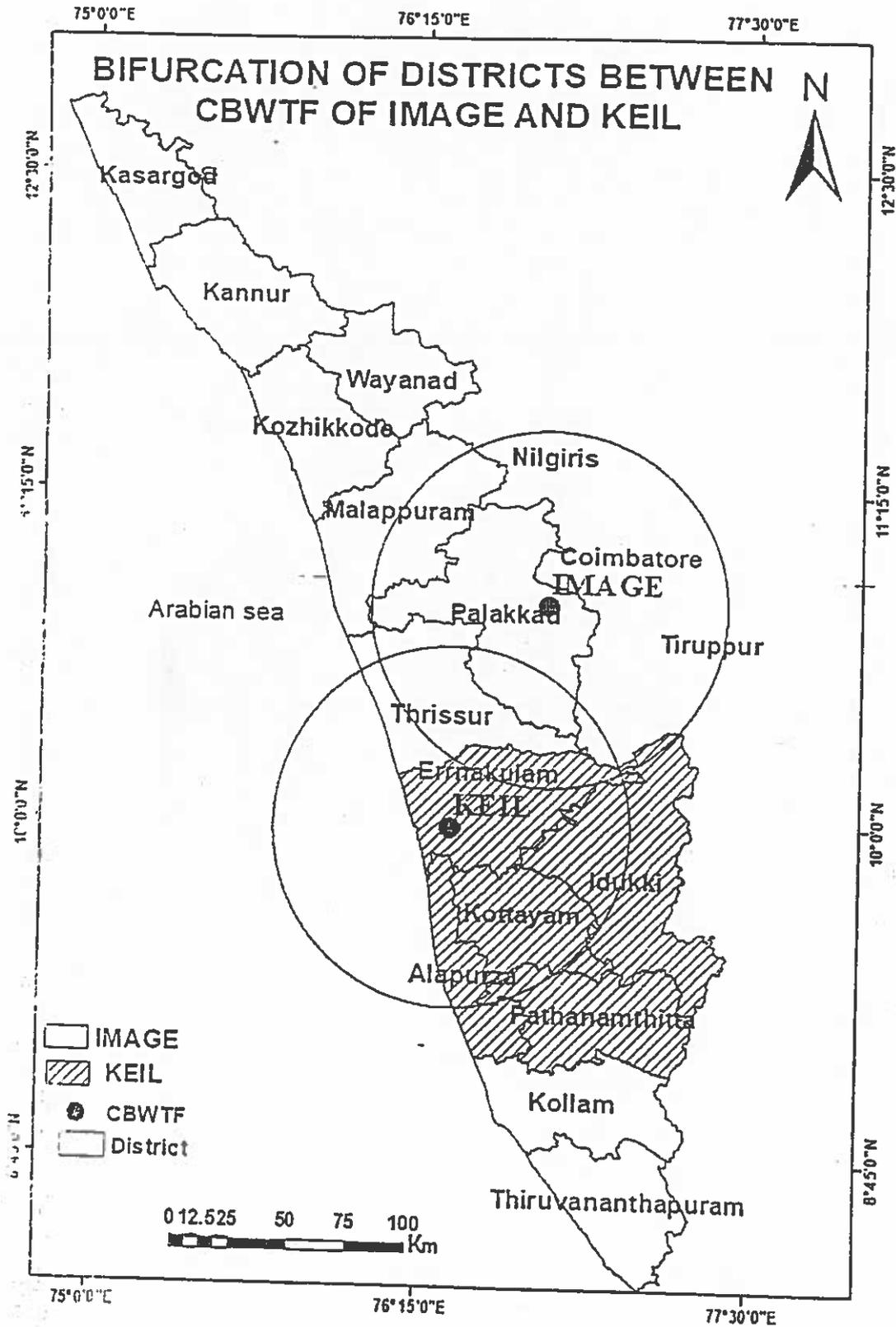


CHAIRMAN

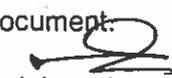
Copy to: The Additional Chief Secretary, Environment Department  
The Principal Secretary, Health and Family Welfare Department  
The Director, Directorate of Health Services, TVM  
The Director, Directorate of Medical Education, TVM  
The State President, IMA KSB, IMA State HQ, Thiruvananthapuram  
The Hon. Secretary to IMAGE, IMAGE, Palakkad  
The Chief Executive Officer, KEIL, Ernakulam  
The Chief Environmental Engineers, Regional Offices, KSPCB  
The Environmental Engineers, District Offices, KSPCB  
CA to Chairman  
CA to MS



- 8 -



This Annexure-R7(a) is the true copy of the original document.

  
Advocate

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MRS. JUSTICE ANU SIVARAMAN

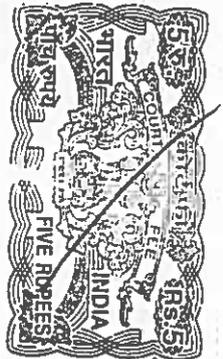
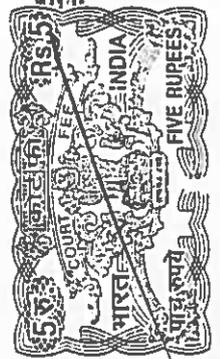
MONDAY, THE 27<sup>TH</sup> DAY OF SEPTEMBER 2021 / 5TH ASWINA, 1943

WP(C) NO. 17693 OF 2021

PETITIONERS :-

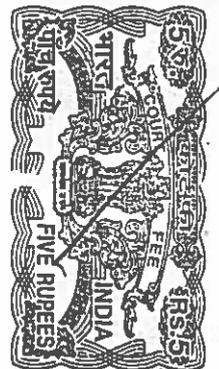
- 1 INDIAN MEDICAL ASSOCIATION GOES ECO-FRIENDLY (IMAGE) REPRESENTED BY ITS SECRETARY, IMA STATE HEAD QUARTERS, ANAYARA P. O., THIRUVANANTHAPURAM - 695 029.
- 2 INDIAN MEDICAL ASSOCIATION (IMA) REPRESENTED BY ITS SECRETARY, KERALA STATE BRANCH, ANAYARA P. O., THIRUVANANTHAPURAM - 695 029.

BY ADVS.  
 S.GOPAKUMARAN NAIR (SR.)  
 SOORAJ T.ELENJICKAL  
 ASWIN KUMAR M J  
 HELEN P.A.  
 ARUN ROY  
 SHAHIR SHOWKATH ALI



RESPONDENTS :-

- 1 STATE OF KERALA REPRESENTED BY ITS SECRETARY TO GOVERNMENT, DEPARTMENT OF ENVIRONMENT, DEVIKRIPA, PALLIMUKKU, PETTAH P. O., THIRUVANANTHAPURAM - 695 024.
- 2 KERALA STATE POLLUTION CONTROL BOARD REPRESENTED BY ITS CHAIRMAN, KERALA STATE POLLUTION CONTROL BOARD, PATTOM P. O., THIRUVANANTHAPURAM - 695 004.
- 3 STATE OF KERALA REPRESENTED BY THE PRINCIPAL SECRETARY, DEPARTMENT OF HEALTH AND FAMILY WELFARE TO GOVERNMENT, ROOM NO.603, 6TH FLOOR, ANNEX - II, SECRETARIAT, THIRUVANANTHAPURAM - 695 001.
- 4 STATE OF KERALA REPRESENTED BY CHIEF SECRETARY,



1

--: 2 :-

GOVERNMENT SECRETARIAT, GOVERNMENT OF KERALA,  
THIRUVANANTHAPURAM, PIN - 695 001.

5 KERALA ENVIRO INFRASTRUCTURE LTD.  
REPRESENTED BY ITS CHAIRMAN, SRI.ARUN CHANDRESAN  
ASHAR, TSDF PROJECT, DIVISION CAMPUS,  
AMBALAMEDU, COCHIN - 682 303.

6 STATE LEVEL ADVISORY COMMITTEE CONSTITUTED UNDER RULE  
11 OF THE BIOMEDICAL WASTE MANAGEMENT RULES,  
2016 (SLAC), REPRESENTED BY ITS MEMBER SECRETARY,  
PATTOM P. O., THIRUVANANTHAPURAM - 695 004.

ADDL 7 KERALA PRIVATE HOSPITALS ASSOCIATION HAVING ITS  
REGISTERED OFFICE AT KPHA HEAD QUARTERS,  
ASHIR BHAVAN ROAD, KACHERIPPADY, ERNAKULAM,  
KOCHI - 682 018 REPRESENTED BY ITS PRESIDENT,  
HUSSAIN KOYA THANGAL

ADDITIONAL 7TH RESPONDENT IS IMPLEADED AS PER ORDER  
DATED 8.9.2021 IN I.A.No.1/2021.

BY ADVS.  
SRI.N.MANOJ KUMAR, STATE ATTORNEY  
M.G.SREEJITH  
K.ANAND  
AMEER SALIM  
BABU JOSEPH KURUVATHAZHA  
K.S.ARCHANA  
SRI.T.NAVEEN, SC

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON  
8.9.2021, ALONG WITH WP(C).18270/2021, THE COURT ON 27.9.2021  
DELIVERED THE FOLLOWING:

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**JUDGMENT**

**IWP(C) Nos.17693/2021 and 18270/2021**

**Dated this the 27<sup>th</sup> day of September, 2021**

The substantial prayers in W.P.(C) No.17693/2021 are as follows :-

- "a. Issue a writ of certiorari or any other writ, direction or order quashing Exhibit P3 order as ultra vires and illegal.
- b. Issue a writ of mandamus or any other writ, direction or order directing respondents 1 to 3 and 5 not to disturb the existing pattern and arrangement of collection of Biomedical waste by the petitioner from the HCEs all through the State.
- c. Issue a declaration that bifurcation of the districts in the State into two segments and earmarking the separate segments to the petitioner and the 5<sup>th</sup> respondent for the purpose of collection and disposal of Bio-Medical Waste from the HCEs in the districts as is done in Exhibit P3 order is ultravires the Biomedical Waste Management Rules, 2016 and hence is illegal and unsustainable."

From the pleadings of the petitioners in the writ petitions itself, I notice that the orders impugned are those passed specifically referring to orders passed in a pending Original Application No.43/2017 (SZ) before the National Green Tribunal, Southern Zone, Chennai.



2. The learned counsel for the petitioners submits that the question whether the Kerala Pollution Control Board has jurisdiction to pass an order in the nature of Ext.P3 is raised by the petitioners in these writ petitions and therefore, the issue requires a consideration by this Court. Detailed arguments are raised by the learned Senior Counsel appearing for the petitioners on this aspect of the matter. The learned Senior Counsel for the petitioners would contend that the direction of the National Green Tribunal as is evident from Ext.P2 was specifically to the State Government to examine as to whether more areas and hospitals can be connected with the facilities of the 7<sup>th</sup> respondent (5<sup>th</sup> respondent herein) and the State Government was directed to file a detailed report regarding the policy by which demarcation is made. The direction to the Kerala Pollution Control Board was to file a further detailed action taken report and also the status report regarding implementation of the Solid Waste Management Rules, 2016 and Bio-Medical Waste Management Rules, 2016 in the Government Medical College, Kalamassery. The matter stood posted for further reports on 17.8.2021. It is submitted that it was

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for the State Government to have submitted a report with regard to the policy of demarcation before the National Green Tribunal and that the Pollution Control Board had absolutely no jurisdiction to pass an order in the nature of Ext.P3.

3. A detailed counter affidavit has been placed on record by the 5<sup>th</sup> respondent in W.P.(C) No.17693/2021 pointing out the factual aspects of the matter.

4. I have heard the learned for the petitioners in these writ petitions, the learned State Attorney appearing for the State Government, the learned Standing Counsel for the Kerala Pollution Control Board and the learned counsel appearing for the 5<sup>th</sup> respondent.

5. The learned State Attorney would submit that a reading of Ext.P3 would, by itself, show that pursuant to the order of the National Green Tribunal dated 24.6.2021, the Additional Chief Secretary, Environment Department of the State of Kerala convened a meeting on 29.6.2021 with the Principal Secretary, Health and the Chairman, Kerala State Pollution Control Board and discussed the issues emerging during the pandemic situation and



directed the Pollution Control Board to take a decision on the allotment of waste from both private and Government sector health care units to the 5<sup>th</sup> respondent. Thereafter, the Board held a meeting with the petitioners in W.P.(C) No.17693/2021 and the 5<sup>th</sup> respondent and the respective proposals were examined and thereafter, Ext.P3 decision was rendered. It is stated that since the 1<sup>st</sup> petitioner in W.P.(C) No.17693/2021 is a party to the Original Application, any objections even with regard to the issuance of Ext.P3 order are to be raised before the National Green Tribunal and not before this Court.

6. The learned Standing Counsel for the Pollution Control Board submits that the State Pollution Control Board is a prescribed authority under the Bio-Medical Waste Management Rules, 2016 and the guidelines issued in 2016 specifically empower the State Pollution Control Board to take decisions with regard to Common Bio-Medical Waste Treatment Facilities. It is further submitted that the power under Section 5 of the Environment Protection Act has been delegated to the Chairpersons of the State Pollution Control Boards and the Pollution Control Boards are

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therefore, fully empowered to take decisions in the nature of Ext.P3.

7. The petitioners in W.P.(C) No.18270/2021 are private health care facilities affiliated to the Indian Medical Association Goes Eco-Friendly (IMAGE) and contend that they have privity of contract with IMAGE and the decision of the Pollution Control Board with regard to the bifurcation of areas is, therefore, an infringement of their rights to choose the common bio-medical waste treatment plants and, resultantly, an infringement of their right guaranteed under Article 19(1)(g) of the Constitution of India.

8. As stated earlier, various arguments have been raised by the learned counsel appearing on all sides with regard to the power and the lack of it in the State Pollution Control Board to issue an order in the nature of the impugned one.

9. Having considered the contentions advanced, I notice that the very issue of bifurcation of area of operation of the Common Bio-Medical Waste Treatment Facilities is pending consideration before the National Green Tribunal, Chennai Bench, Southern Zone in O.A. No.43/2017. It is seen that the case stood



posted on 17.8.2021. I am told that there are further postings in the matter as well. The 1<sup>st</sup> petitioner in W.P.(C) No.17693/2021 is admittedly the 6<sup>th</sup> respondent in the above Original Application, which was registered *suo motu* by the said Bench of the Tribunal. The specific question as to bifurcation of the area of operation of the Common Bio-Medical Waste Treatment facilities is evidently being considered by the Tribunal on an emergent basis.

In the above view of the matter, *de hors* all the contentions raised by the parties, I am of the opinion that a multiplicity of litigation on the identical subject matter before different courts and tribunals invoking powers which may overlap is to be discouraged, in the interest of justice. The question with regard to setting up of Common Bio-Medical Waste Treatment Facilities admittedly is a matter which falls squarely within the jurisdiction of the National Green Tribunal under Section 14 of the National Green Tribunal Act, 2010. The Tribunal is considering a *suo motu* application in which the 1<sup>st</sup> petitioner in W.P.(C) No.17693/2021 as well as the 5<sup>th</sup> respondent, the Government and the Pollution Control Board are parties. In the above factual

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situation, I am of the opinion that the entertaining of a parallel litigation by this Court on the very same subject matter would be unjustifiable even if the petitioners can make out a case for interference in terms of the concerned enactments and the constitutional provisions. I am, therefore, of the opinion that this is a fit case where this Court should restrain from exercising its jurisdiction in view of the fact that the petitioners in these two writ petitions and the additionally impleaded respondent in W.P.(C) No.17693/2021 can plead absolutely no difficulty in approaching the Green Tribunal with their contentions.

In the above view of the matter, without expressing any opinion on the merits of the contentions raised by the parties to these writ petitions, these writ petitions are dismissed with liberty to the petitioners to raise appropriate contentions before the National Green Tribunal in the proceedings pending before it.

Sd/-  
ANU SIVARAMAN  
JUDGE



APPENDIX OF WP(C) 17693/2021

PETITIONER EXHIBITS

- Exhibit P1 THE TRUE COPY OF THE LIST OF HEALTH CARE ESTABLISHMENTS NOT AFFILIATED TO IMAGE.
- Exhibit P2 TRUE COPY OF THE ORDER DATED 24.06.2021 OF THE NGT, CHENNAI BENCH, CHENNAI IN O.A.43/2017.
- Exhibit P3 TRUE COPY OF THE ORDER DATED 13.08.2021 ISSUED BY THE CHAIRMAN OF THE 2ND RESPONDENT BOARD.
- Exhibit P4 TRUE COPY OF THE REPRESENTATION DATED 11.08.2021 MADE BY THE 1ST PETITIONER TO THE 2ND RESPONDENT BOARD.
- Exhibit P5 TRUE COPY OF THE REPRESENTATION DATED 09.08.2021 MADE BY THE 1ST PETITIONERS TO THE 2ND RESPONDENT BOARD.
- Exhibit P6 A TRUE COPY OF THE PETITION FILED JOINTLY BY THE FUNCTIONARIES OF BOTH THE PETITIONERS DATED 18.08.2021.
- Exhibit P7. TRUE COPY OF THE LETTER DATED 18.08.2021 SENT BY 5TH RESPONDENT.
- Exhibit P8 THE TRUE COPY OF THE FIRST CHART IN RESPECT OF THE 5 DISTRICTS THAT ARE NOW TRANSFERRED AND ALLOCATED TO THE 5TH RESPONDENT.
- Exhibit P9 THE TRUE COPY OF THE SECOND CHART IN RESPECT OF THE 9 DISTRICTS WHICH ARE RETAINED AND ALLOCATED TO THE 1ST PETITIONER.
- Exhibit P10 TRUE COPY OF THE MINUTES OF THE MEETING CHAIRED BY THE PRINCIPAL SECRETARY, ENVIRONMENT DEPARTMENT THROUGH VC HELD ON 11.12.2020 REGARDING THE AREA EARMARKING FOR THE COMMON BIOMEDICAL WASTE



TREATMENT FACILITY BY KEIL AT COCHIN.

- Exhibit P11 A TRUE COPY OF THE MINUTES OF THE MEETING DATED 07.01.2021.
- Exhibit P12 TRUE COPY OF THE MINUTES DATED 01.02.2021.
- Exhibit P13 TRUE COPY OF THE LETTER NO.M4/70/2021-HEALTH DATED 03.05.2021.
- Exhibit P14 TRUE COPY OF THE LETTER NO.PCB/HO/BMW/CBWF/2017/17/2017-VOL. II DATED 05.05.2021.
- Exhibit P15 A TRUE COPY OF THE MINUTES OF THE MEETING DATED 19.07.2021.
- Exhibit P16 TRUE COPY OF THE RELEVANT EXTRACT OF THE RULES CONTAINING RULE 7.
- Exhibit P17 TRUE COPY OF THE ORDER DATED 01.09.2017 BY THE HON'BLE HIGH COURT OF ANDHRA PRADESH IN W.P.(C) NO.19727 OF 2016.
- Exhibit P18 TRUE COPY OF THE ABSTRACT OF THE ORDER DATED 18.12.2018 IN B.P.NO.46.

RESPONDENTS' EXHIBITS :-

EXT.R5(a) :- TRUE COPY OF THE LIST OF SHAREHOLDERS OF THE 5TH RESPONDENT.

EXT.R5(b) : TRUE COPY OF THE LIST PERTAINING TO THE PRESENT DIRECTORS OF THE 5TH RESPONDENT.

EXT.R5(c) : TRUE COPY OF THE ORDER DATED 8.7.2005 ISSUED BY THE 1ST RESPONDENT.

EXT.R5(d) : TRUE COPY OF THE ORDER DATED 6.10.2006 ISSUED BY THE



1ST RESPONDENT.

EXT.R5(e) : TRUE COPY OF THE MINUTES OF THE MEETING HELD ON 17.11.2011 AT THE GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM.

EXT.R5(f) : TRUE COPY OF THE REQUEST FOR EXPRESSION OF INTEREST INVITED BY THE 2ND RESPONDENT FOR SETTING UP OF A COMMON BIO-MEDICAL WASTES TREATMENT AND DISPOSAL FACILITY.

EXT.R5(g) : TRUE COPY OF THE ADVERTISEMENT DATED 15.11.2012 PUBLISHED BY THE 2ND RESPONDENT, IN PURSUANCE TO EXT.R5(f), INVITING REQUEST FOR EXPRESSION OF INTEREST FOR SETTING UP OF BIO-MEDICAL WASTES TREATMENT AND DISPOSAL FACILITY.

EXT.R5(h) : TRUE COPY OF THE MINUTES OF THE MEETING HELD ON 25.3.2013 CONVENED BY THE CHAIRMAN OF THE 2ND RESPONDENT.

EXT.R5(i) : TRUE COPY OF THE LETTER DATED 16.5.2013 FORWARDED BY THE CHAIRMAN OF THE 2ND RESPONDENT TO THE 1ST RESPONDENT.

EXT.R5(j) : TRUE COPY OF THE LETTER DATED 4.4.2013 ISSUED BY THE KERALA STATE INDUSTRIAL DEVELOPMENT CORPORATION.

EXT.R5(k) : TRUE COPY OF THE ORDER DATED 16.5.2013 ISSUED BY THE CHAIRMAN OF THE 2ND RESPONDENT.

EXT.R5(l) : TRUE COPY OF THE INTEGRATED CONSENT TO ESTABLISH DATED 10.3.2014 ISSUED BY THE 2ND RESPONDENT.

EXT.R5(m) : TRUE COPY OF THE ENVIRONMENTAL CLEARANCE No.87/2017 DATED 29.11.2017 ISSUED BY THE STATE ENVIRONMENT IMPACT ASSESSMENT AUTHORITY, KERALA.

EXT.R5(n) : TRUE COPY OF THE INTEGRATED CONSENT TO OPERATE/ AUTHORIZATION/REGISTRATION DATED 11.5.2021 ISSUED BY THE 2ND RESPONDENT.

EXT.R5(o) : TRUE COPY OF THE LETTER DATED 3.3.2020 OF THE MINISTRY OF ENVIRONMENT, FOREST & CLIMATE CHANGE, NEW DELHI ADDRESSED TO THE 2ND RESPONDENT, REGARDING THE SANCTIONING OF Rs.90 LAKHS TO THE 5TH RESPONDENT.

EXT.R5(p) : TRUE COPY OF THE ORDER DATED 16.9.2020 OF THE 1ST RESPONDENT, PERTAINING TO THE SANCTIONING OF Rs.90 LAKHS, TO THE



FACILITY ESTABLISHED BY THE 5TH RESPONDENT.

EXT.R5(q) : TRUE COPY OF THE REPLY STATEMENT DATED 18.5.2017 FILED ONBEHALF OF THE 1ST PETITIONER, ON O.A.No.473/20174 ON THE FILE OF THE LEARNED NATIONAL GREEN TRIBUNAL.

EXT.R5(r) : TRUE COPY OF THE ORDER OF THE LEARNED NATIONAL GREEN TRIBUNAL, SOUTH ZONE, CHENNAI DATED 19.8.2020 IN O.A.No.43/2017.

EXT.R5(s) : TRUE COPY OF THE ORDER OF THE LEARNED NATIONAL GREEN TRIBUNAL, SOUTH ZONE, CHENNAI DATED 19.1.2021 IN O.A.No.43/2017.

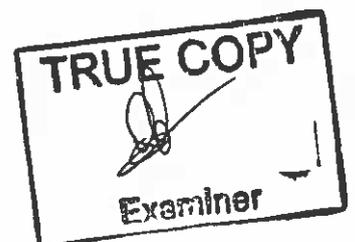
EXT.R5(t) : TRUE COPY OF THE ORDER OF THE LEARNED NATIONAL GREEN TRIBUNAL, SOUTH ZONE, CHENNAI DATED 25.2.2021 IN O.A.No.43/2017.

EXT.R5(u) : TRUE COPY OF THE ORDER OF THE LEARNED NATIONAL GREEN TRIBUNAL, SOUTH ZONE, CHENNAI DATED 23.3.2021 IN O.A.No.43/2017.

EXT.R5(v) : TRUE COPY OF THE REVISED GUIDELINES FOR COMMON BIO-MEDICAL WASTE TREATMENT AND DISPOSAL FACILITIES, PUBLISHED BY THE CENTRAL POLLUTION CONTROL BOARD, NEW DELHI.

EXT.R5(w) : TRUE COPY OF THE JUDGMENT OF THE LEARNED DIVISION BENCH OF THIS HON'BLE COURT IN SALIM M.K. V. STATE OF KERALA & OTHERS, REPORTED IN 2021 (4) KHC 597.

EXT.R5(x) : TRUE COPY OF THE JUDGMENT OF THE HON'BLE SUPREME COURT OF INDIA IN BHOPAL GAS PEEDITH MAHILA UDYOG SANGATHAN & OTHERS V. UNION OF INDIA & OTHERS [(2012) 8 SCC 326].



This Annexure-R7C6 is the true copy of the original document.

  
Advocate



IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE THE CHIEF JUSTICE MR.S.MANIKUMAR

&

THE HONOURABLE MR. JUSTICE SHAJI P.CHALY

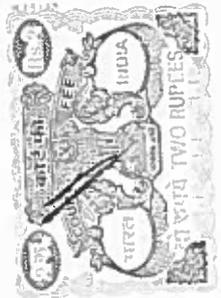
MONDAY, THE 22<sup>ND</sup> DAY OF NOVEMBER 2021 / 1ST AGRAHAYANA, 1943

WA NO. 1303 OF 2021

AGAINST THE JUDGMENT IN WP(C) 17693/2021 OF HIGH COURT OF KERALA,  
ERNAKULAM

APPELLANTS/PETITIONER IN WPC:

- 1 INDIAN MEDICAL ASSOCIATION GOES ECO-FRIENDLY (IMAGE),  
REPRESENTED BY ITS SECRETARY, IMA STATE HEAD QUARTERS,  
ANAYARA P.O, THIRUVANANTHAPURAM-695 029.
- 2 INDIAN MEDICAL ASSOCIATION (IMA),  
REPRESENTED BY ITS SECRETARY, KERALA STATE BRANCH,  
ANAYARA P.O, THIRUVANANTHAPURAM-695 029  
BY ADVS.  
S.GOPAKUMARAN NAIR (SR.)  
ASWIN KUMAR M J  
HELEN P.A.  
ARUN ROY  
SHAHIR SHOWKATH ALI  
SOORAJ T.ELENJICKAL



RESPONDENTS/RESPONDENTS AND ADDL.RESPONDENT NO.7 IN WPC:

- 1 STATE OF KERALA,  
REPRESENTED BY ITS SECRETARY TO GOVERNMENT, DEPARTMENT OF  
ENVIRONMENT, DEVIKRIPA, PALLIMUKKU, PETTAH P.O,  
THIRUVANANTHAPURAM-695 024
- 2 KERALA STATE POLLUTION CONTROL BOARD,  
REPRESENTED BY ITS CHAIRMAN, KERALA STATE POLLUTION  
CONTROL BOARD, PATTOM P.O, THIRUVANANTHAPURAM-695 004.

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- 3 STATE OF KERALA,  
REPRESENTED BY THE PRINCIPAL SECRETARY, DEPARTMENT OF  
HEALTH AND FAMILY WELFARE TO GOVERNMENT, ROOM NO. 603,  
6TH FLOOR, ANNEX II, SECRETARIAT, THIRUVANANTHAPURAM-695  
001
- 4 STATE OF KERALA,  
REPRESENTED BY CHIEF SECRETARY, GOVERNMENT SECRETARIAT,  
GOVERNMENT OF KERALA, THIRUVANANTHAPURAM, KERALA, PIN-695  
001
- 5 KERALA ENVIRO INFRASTRUCTURE LTD.,  
REPRESENTED BY ITS CHAIRMAN, SRI. ARUN CHANDRESAN ASHAR,  
TSDF PROJECT, DIVISION CAMPUS, AMBALAMEDU, COCHIN 682  
303.
- 6 STATE LEVEL ADVISORY COMMITTEE,  
CONSTITUTED UNDER RULE 11 OF THE BIOMEDICAL WASTE  
MANAGEMENT RULES, 2016 (SLAC), REPRESENTED BY ITS MEMBER  
SECRETARY, KERALA STATE POLLUTION CONTROL BOARD, PATTOM  
P.O, THIRUVANANTHAPURAM-695 004.
- 7 KERALA PRIVATE HOSPITALS ASSOCIATION,  
HAVING ITS REGISTERED OFFICE AT KPHA HEAD QUARTERS, ASHIR  
BHAVAN ROAD, KACHERIPPADY, ERNAKULAM, KOCHI 682 018,  
REPRESENTED BY ITS PRESIDENT HUSSAN KOYA THANGAL.

R1, R3 & R4 BY ADV SHRI.N.MANOJ KUMAR, STATE ATTORNEY  
R2& R6 BY SRI.T.NAVEEN FOR KERALA STATE POLLUTION CONTROL BOARD

R5 BY SRI.BABU JOSEPH KURUVATHAZHA

R7 BY SRI.G.SHRI KUMAR  
SRI.K.ANAND

THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON 22.11.2021,  
ALONG WITH WA.1290/2021, THE COURT ON THE SAME DAY DELIVERED THE  
FOLLOWING:

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IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE THE CHIEF JUSTICE MR.S.MANIKUMAR

&

THE HONOURABLE MR. JUSTICE SHAJI P.CHALY

MONDAY, THE 22<sup>ND</sup> DAY OF NOVEMBER 2021 / 1ST AGRAHAYANA, 1943

WA NO. 1290 OF 2021

AGAINST THE JUDGMENT IN WP(C) 17693/2021 OF HIGH COURT OF KERALA,  
ERNAKULAM

APPELLANT/7<sup>th</sup> RESPONDENT:

KERALA PRIVATE HOSPITALS ASSOCIATION,  
HAVING ITS REGISTERED OFFICE AT KPHA HEAD QUARTERS, ASHIR  
BHAVAN ROAD, KACHERIPPADY, ERNAKULAM, KOCHI 682 018,  
REPRESENTED BY ITS PRESIDENT, HUSSAIN KOYA THANGAL.

BY ADVS.

K.ANAND

T.M.MUHAMED HAFEEES

AMEER SALIM

ADITHYA KIRAN V.E

RESPONDENT/PETITIONERS AND RESPONDENTS 1 TO 6:

- 1 INDIAN MEDICAL ASSOCIATION GOES ECO-FRIENDLY (IMAGE),  
REPRESENTED BY ITS SECRETARY, IMA STATE HEAD QUARTERS,  
ANAYARA P.O, THIRUVANANTHAPURAM-695 029.
- 2 INDIAN MEDICAL ASSOCIATION (IMA),  
REPRESENTED BY ITS SECRETARY, KERALA STATE BRANCH,  
ANAYARA P.O, THIRUVANANTHAPURAM-695 029.
- 3 STATE OF KERALA,  
REPRESENTED BY ITS SECRETARY TO GOVERNMENT, DEPARTMENT OF  
ENVIRONMENT, DEVIKRIPA, PALLIMUKKU, PETTAH P.O,  
THIRUVANANTHAPURAM-695 024.
- 4 KERALA STATE POLLUTION CONTROL BOARD,  
REPRESENTED BY ITS CHAIRMAN, KERALA STATE POLLUTION  
CONTROL BOARD, PATTOM P.O, THIRUVANANTHAPURAM-695 004
- 5 STATE OF KERALA,  
REPRESENTED BY THE PRINCIPAL SECRETARY, DEPARTMENT OF  
HEALTH AND FAMILY WELFARE TO GOVERNMENT, ROOM NO. 603,  
6TH FLOOR, ANNEXURE II, SECRETARIAT, THIRUVANANTHAPURAM-  
695 001
- 6 STATE OF KERALA,  
REPRESENTED BY CHIEF SECRETARY, GOVERNMENT SECRETARIAT,

2/

7 GOVERNMENT OF KERALA, THIRUVANANTHAPURAM, KERALA 695 001.  
KERALA ENVIRO INFRASTRUCTURE LTD.,  
REPRESENTED BY ITS CHAIRMAN, SRI. ARUN CHANDRESAN ASHAR,  
TSDF PROJECT, DIVISION CAMPUS, AMBALAMEDU, KOCHI 682 030.  
8 STATE LEVEL ADVISORY COMMITTEE CONSTITUTED UNDER RULE 11  
OF THE BIO MEDICAL WASTE MANAGEMENT RULES,  
2016 (SLAC), REPRESENTED BY ITS MEMBER SECRETARY, KERALA  
STATE POLLUTION CONTROL BOARD, PATTOM P.O,  
THIRUVANANTHAPURAM-695 004  
BY ADV SHRI.N.MANOJ KUMAR, STATE ATTORNEY  
R1 BY ADV.SRI.S.GOPAKUMARAN NAIR(SENIOR), SRI.ASWIN KUMAR.M.J.  
SRI.T.NAVEEN FOR KERALA STATE POLLUTION CONTROL BOARD  
R7 BY SRI.BABU JOSEPH KURUVATHAZHA

THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON 22.11.2021,  
ALONG WITH WA.1303/2021, THE COURT ON THE SAME DAY DELIVERED THE  
FOLLOWING:

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**JUDGMENT****SHAJI P.CHALY,J.**

Captioned writ appeals are preferred by the 7<sup>th</sup> respondent and the petitioners in the writ petition, respectively, challenging the judgment of the learned Single Judge in W.P.(C) No.17693/2021 dated 27.9.2021, whereby the learned Single Judge has dismissed the writ petition, along with W.P.(C) No.18270/2021, basically holding that the question with regard to the setting up of Common Bio-Medical Waste Treatment Facilities is a matter, which falls squarely within the jurisdiction of the National Green Tribunal under Section 14 of the National Green Tribunal Act, 2010.

2. The learned Single Judge has also found that the Tribunal is considering a *suo motu* application, in which 1<sup>st</sup> and 2<sup>nd</sup> respondents in writ appeal No.1303/2021 viz., State Government and State Pollution Control Board, are parties. Therefore, the learned Single Judge held that entertaining a parallel litigation by the writ court on the very same subject matter would be unjustifiable, even if the appellants can make out the case for interference in terms of the Environment (Protection) Act, 1986 & the attendant rules, the National Green Tribunal Act,2010 and the constitutional provisions. Therefore, the writ petition was dismissed, leaving open

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the liberty of the appellants to raise appropriate contentions before the National Green Tribunal in the proceedings pending before it.

3. Appellant in writ appeal No.1290/2021 viz., Kerala Private Hospitals Association - 7<sup>th</sup> respondent, in fact was sailing with the appellants in W.A No.1303/2021 viz., Indian Medical Association Goes Eco-Friendly (IMAGE), represented by its Secretary, IMA State Headquarters, Thiruvananthapuram & Indian Medical Association (IMA), represented by its Secretary, Kerala State Branch, Thiruvananthapuram. Indian Medical Association Goes Eco-Friendly (IMAGE) is a Common Bio-Medical Waste Treatment Facility (CBWTE) started by the Indian Medical Association at Palakkad as a non-profit and non-loss charitable project in the year 2003 and according to the appellants, they were serving the State by treating and disposing the entire bio-medical waste generated in the State. It is also submitted that the 5<sup>th</sup> respondent in W.A.No.1303/2021 viz., Kerala Enviro Infrastructure Ltd.,(KEIL) a private company started a bio-medical waste treatment facility at Ambalamedu, Ernakulam District, and thereupon issues cropped up in regard to the bifurcation of the bio- medical waste for treatment by and between the appellants and KEIL .

4. The grievance highlighted by the appellants is that on the persuasion of the 5<sup>th</sup> respondent, the Kerala State Pollution Control Board has passed an order dated

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13.8.2021 bearing No.PCB/HO/EE2/BMW-03/Gen, produced as Exhibit P3 in the writ petition, bifurcating the entire Districts in the State to two segments and allotted the first segment consisting of five Central Districts to the 5<sup>th</sup> respondent, KEIL, and the 2<sup>nd</sup> segment consists of nine Districts lying on the northern and southern parts of the State to IMAGE i.e., the 1<sup>st</sup> appellant in writ appeal No.1303/2021 for collection, treatment and disposal of the bio-medical waste generated by the health care facilities in the respective districts.

5. The contention put forth by the writ Appellants was that M/s.IMAGE has been collecting the bio-medical waste throughout the State from both private as well as Government Health Care Facilities during these years by getting those institutions affiliated to the IMAGE. According to the IMAGE and IMA, the IMAGE has an installed capacity to dispose of 68 tonnes of bio-medical waste per day, whereas the 5<sup>th</sup> respondent has only a capacity of 16 tonnes per day. M/s.IMAGE had entered into an annual agreement with the State Government as well as separate private agreement with their clients i.e., Private Health Care Facilities, who are members of Kerala Private Hospitals Association, which is the appellant in W.A.No.1290/2021 to collect and dispose of bio-medical waste generated in the State and has been discharging the duty to the utmost satisfaction of its clients.

6. Various contentions were taken in the writ petition including the funds

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invested for purchase of land and erecting buildings and requisite machineries and equipment. Other facts and figures were also put forth by the learned counsel for petitioners/appellants in order to impress upon the learned Single Judge that the action of the Pollution Control Board unilaterally bifurcating the treatment of bio-medical waste as per Exhibit P3 order dated 13.8.2021, is illegal. According to the appellants, the State Pollution Control Board is not vested with any powers to issue the order dated 13.8.2021, apart from contending that Exhibit P3 order is passed violative of the principles of natural justice and without any jurisdiction.

7. Whatever that be, the 5<sup>th</sup> respondent filed a detailed counter affidavit along with requisite documents to substantiate the contentions raised therein. Apparently, the learned Single Judge primarily considered the question as to whether the writ petition was maintainable in view of the subject matter being an environmental issue, and in view of the Original Application No.43/2017 pending before the National Green Tribunal, Southern Zone, Chennai, a *suo motu* application registered by the National Green Tribunal in the matter of treatment of bio-medical waste; on the basis of the contentions raised by the Pollution Control Board that by virtue of the powers conferred under the National Green Tribunal Act, 2010, the Tribunal alone is vested with powers to consider the issue of the order impugned passed by the Pollution Control Board dated 13.8.2021. However, the appellants had a case

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that the subject issue raised by the appellants in the writ petition on the basis of the impugned order passed by the Kerala State Pollution Control Board dated 13.8.2021 is an administrative order passed by the Pollution Control Board, which would not come within the jurisdiction and realm of the National Green Tribunal and therefore, according to the appellants, the writ petition ought to have been considered by the learned Single Judge on its merit.

8. The point urged by the appellants is that the impugned order passed by the Pollution Control Board is vitiated by total lack of jurisdiction and therefore, it is *per se* illegal and nullity in law ; that the impugned order is in utter violation of the rules of natural justice as there was no notice nor any opportunity to the appellants to have a say in the matter; that the impugned order is infringing the fundamental rights of the appellants to carry on their trade and business; that the impugned order is vitiated by official mala fides and as the 2<sup>nd</sup> respondent has been extending all undue favours to the 5<sup>th</sup> respondent private company; that the 2<sup>nd</sup> respondent viz., Indian Medical Association being a member of the Advisory Committee constituted under rule 11 of the Bio-Medical Waste Management Rules, 2016, it was mandatory that prior to issuance of the impugned order, the same should have been placed before the Advisory Committee for its consideration and recommendation; and that the impugned order was passed by the State Pollution Control Board

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without adverting to any of the contentions/discussions/suggestions/decisions arrived at during the several meetings among the Government, appellants and the Kerala Enviro Infrastructure Ltd.

9. Similar and typical contentions are raised by the Kerala Private Hospitals Association in W.A.No.1290/2021. Learned counsel appearing for the State Pollution Control Board has addressed arguments basically contending that the Bio-Medical Waste Management Rules, 2016, (hereinafter called Rules 2016) is constituted as per Sections 6, 8 & 25 of the Environment (Protection ) Act, 1986 and in supercession of the Bio-Medical Waste (Management and Handling) Rules, 1998.

10. According to the learned counsel for the State Pollution Control Board, definition of authorisation provided in rule 3(c) of the Rules, 2016 makes it clear that permission granted by authorisation means, "permission granted by prescribed authority for the generation, collection, reception, storage, transportation, treatment, processing, disposal or any other form of handling the bio-medical waste in accordance with these Rules and the guidelines issued by the Central Government or Central Pollution Control Board, as the case may be.

11. Learned counsel has also invited my attention to rule 3(o) of the Rules, 2016, dealing with prescribed authorities and is defined to mean "State Pollution Control Board in respect of a State and Pollution Control Committees in respect of an

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Union Territory". Learned counsel has also invited our attention to rule 6 of Rules, 2016 dealing with duties of authorities which specify that the authorities specified in Column (2) of Schedule III shall perform the duties as specified in Column (3) thereof in accordance with the provisions of the Rules, 2016. Schedule III deals with a list of prescribed authorities and their corresponding duties. Entry No.6 of Schedule III is concerning the State Pollution Control Boards or Pollution Control Committees and their duties. According to the learned counsel for the State Pollution Control Board, as provided under duty No.VIII, it has got power to deal with any other function under the Rules, 2016 assigned by the Ministry of Environment, Forest and Climate Change or Central Pollution Control Board from time to time.

12. Accordingly, it was submitted that the Central Pollution Control Board had issued revised guidelines for Common Bio-Medical Waste Treatment and Disposal Facility dated 21<sup>st</sup> December, 2016. Learned counsel has taken us through the guidelines, from where it is clear that, Common Bio-Medical Waste Treatment and Disposal Facility is set up, where by medical waste generated from Member Health Care Facilities has to be imparted with necessary treatment to reduce adverse effects that this waste may pose on human health and environment.

13. It also specifies that the Bio-Medical Waste Management Rules, 2016

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restricts the occupier for establishment on On-sight or captive bio-medical waste treatment and disposal facility, if a service of Common Bio-Medical Waste Treatment and Disposal Facility is available within a distance of 75 Kms., as installation of individual treatment facility by Health Care Facility requires comparatively high capital investment and the concept of Common Bio-Medical Waste Treatment and Disposal facility not only addresses such problems but also prevents proliferation treatment technologies, in particular, town or city.

14. It is also specified in the guidelines produced as Exhibit R5(v) in the writ petition that as it reduces monitoring pressure on regulatory agencies and by running the treatment equipment at the Common Bio-Medical Waste Treatment Facility to its full capacity, the cost of treatment of per kilogram bio-medical waste gets significantly reduced. The guidelines has various dimensions and facets with respect to the duties of an operator of a Common Bio-Medical Waste Treatment and Disposal facility, applicability of the guidelines, Environmental Laws applicable for commissioning or operation of a CBWTF, consents under various statutes like Water (Prevention and Control of Pollution) Act, 1974, Air (Prevention and Control of Pollution) Act, 1981 as well as Authorisation under the Bio-Medical Waste Management Rules, 2016, Environmental Clearance under EIA Notification – 2006, apart from other significant aspects in respect of the treated waste storage room,

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display and sign board, Fire Safety etc.

15. Learned counsel for Pollution Control Board has also invited our attention to section 14 of the National Green Tribunal Act and the Schedule thereto in order to impress upon us that even the issues raised by the appellants in the writ petition are also matters to be considered and guided appropriately by the National Green Tribunal. It is also submitted that going by the Schedule to section 14 of the National Green Tribunal Act, it is clear that the issues that are arising under the Environment (Protection) Act, other statutes and the Rules framed under such laws are to be considered by the National Green Tribunal whatever be its ethos and significance.

16. Learned State Attorney has taken us through the recent judgment of the Apex Court in **Municipal Corporation of Greater Mumbai v. Ankita Sinha & Ors.** reported in [2021(6)KLT 133(SC)] and submitted that the issues now basically raised with respect to the power of the National Green Tribunal was considered in the said judgment and found that the powers conferred on the National Green Tribunal is akin to the powers exercised by this Court under Article 226 of the Constitution of India and the honourable Apex Court under Article 32 of the Constitution of India. Learned State Attorney also submitted that on an analysis of section 14 of the National Green Tribunal Act, it is clear and evident that all matters

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of civil nature whatever be its magnitude and significance has to be considered by the National Green Tribunal, and the National Green Tribunal being a specialised body with technical persons as its members would be able to identify the exact situations and issue appropriate directions so as to protect the environment in the best possible manner, and adjudicate any issues or orders passed by the statutory authorities under the environment laws specified in schedule 1 of the National Green Tribunals Act 2010 .

17. Learned counsel appearing for the Kerala Enviro Infrastructure Ltd., submitted that a close analysis of the orders passed by the National Green Tribunal in the *suo motu* proceedings would make it clear that the subject issue is also a matter to be considered by the National Green Tribunal since the bifurcation is done as per the orders passed by the Pollution Control Board for efficient management of the Bio-Medical waste so as to protect the larger interest of protecting the environment.

18. We have heard learned Senior Adv.Sri.S.Gopakumaran Nair, assisted by Sri.Aswin Kumar.M.J., learned Senior Adv.Sri.G.Shrikumar, assisted by Adv.K.Anand, for appellants, learned State Attorney Sri.N.Manoj Kumar, learned Standing Counsel Sri.T.Naveen for Kerala State Pollution Control Board, learned counsel Sri.*Babu Joseph Kuruvathazha* and perused the pleadings and materials on record.

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19. To understand the real situation, a reference to the *suo motu* action taken by the National Green Tribunal, Southern Zone, Chennai, would be beneficial. Original Application No.43/2017 was *suo motu* registered by the National Green Tribunal, Southern Zone, Chennai, on the implementation of the Bio-Medical Waste Management Rules, 2016. From then onwards the Tribunal was issuing orders and securing reports from the State Government in the matter of implementation of the Bio-Medical Waste Management Rules in an effective manner so as to curb the menaces occurring due to the generation of bio-medical waste.

20. It is evident from the order passed by the Tribunal dated 24.6.2021 that on 25.2.2021, the Tribunal has considered the report submitted by the Kerala State Pollution Control Board dated 19.2.2021, on which it was recorded that;

*"7). It may be mentioned here that though they have admitted that 2<sup>nd</sup> plant has been established at Ambalamedu at Ernakulam, built and operated by KEIL in the capacity of handling 15-16 tonnes of bio-medical waste per day, they have not bifurcated the area for the purpose of authorising the IMAGE, who has been authorised to collect, segregate and take it to the disposal facility so as to enable them to collect those bio-medical waste from that bifurcated area which was intended to be disposed of by the present bio-medical waste facility and it is mentioned that, that will be completed by March, 2021.*

8. It may be mentioned here that for the purpose of finalising the same, it is not known as to why so much time is required especially when the facility has completed its process of establishing after obtaining necessary

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clearance/permission etc. even during December, 2020.

9. Further, there is a risk of not disposing the medical waste in a scientific manner and it is not known as to why the Government is not serious about the same, especially when a facility has already been established. The Government must be proactive in taking decisions in respect of utilising the facility in an effective manner without delay."

21. Other orders were being passed by the National Green Tribunal periodically. Therefore, it can be seen that the subject issue with respect to the bifurcation of bio-medical waste was a subject matter of consideration before the Tribunal in the *suo motu* proceedings. Anyhow on 28.9.2021, the Tribunal has passed an order taking into account a report filed by the Pollution Control Board dated 16.8.2021 and the report recorded in the said order reads as follows:

**"REPORT FILED BY THE ENVIRONMENTAL ENGINEER ON BEHALF OF THE 5<sup>th</sup> RESPONDENT.**

1. *I, Mini Mary Sam, aged 54 years, W/o. Sri. Ranjan Jacob Environmental Engineer, Kerala State Pollution Control Board, Regional Office, Ernakulam do hereby submit that I am authorized to represent the 5<sup>th</sup> respondent and that I am conversant with the facts of the said case as available from the official records and I state as follows:*

2. *The Board Officers inspected Kalamassery Medical College on 02.07.2021 and it was reported that the augmentation work of STP had been completed. In the meeting held on 29.06.2021 by the Additional Chief Secretary, Environment Department it was decided to explore the possibility of helping the Hospital authorities in identifying any nearby STP for treating the effluent*

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till the augmentation of STP is completed and initiated for operation. Accordingly the Board's District Officer conducted a discussion on 14.07.2021 with GCDA to explore the feasibility of utilizing the STP of Jawahar Lal Nehru stadium for the treatment of sewage from the Medical College. The minutes of the meeting are attached as Annexure-1. The Joint Secretary, Health Department also conducted discussion with the hospital authorities and GCDA to evolve the terms and conditions to be agreed upon by the hospital and GCDA. The Board has assured the support in monitoring the trial run operation of STP to check the adequacy and confirming the compliance to discharge standards.

3. Regarding the common biomedical waste treatment facility at Ernakulam, KEIL started the trial run from 24.05.2021 with non COVID BMW from Govt. health care facilities of the three districts allotted to them by the Health Department. Now it is reported by KEIL that the collection of non COVID waste from these hospitals in three districts is stabilized and the average daily quantity is only 2.1 T/day as against the plant capacity of 16 T/day. Average daily quantity of COVID BMW from Kalamassery MC is 0.37 tonne (370 kg) and non COVID BMW is 0.073tonne (73 kg).

4. In the meeting convened by the Additional Chief Secretary, Environment Department on 29.06.2021 the matter of effective distribution of BMW among the two facilities, IMAGE, Palakkad & KEIL at Ernakulam, was discussed. The current situation of one facility struggling to operate with optimum capacity while the other operating with full capacity and still accumulating waste of around 8T/day was noted. The Pollution Control Board Chairman was asked to convene a meeting with KEIL & IMAGE authorities to solve this issue and work out a solution. The Chairman KSPCB held a meeting on 19.07.2021 with KEIL and IMAGE authorities. The minutes of the meeting are attached as Annexure 2. KEIL requested permission to collect BMW from Govt. and private

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*hospitals from the area within 75 km from the facility which covers 5 districts as the facility was proposed accordingly.*

*5. CPCB granted registration to KEIL in "COVID 19 BWM" app for the collection of COVID waste. The Board also issued instructions to DMOs and the Superintendents, Medical Colleges in the three districts to give COVID BMW also to KEIL vide letter dated 22.07.2021 with intimation to IMAGE and Board's Regional/District offices concerned. It is reported by KEIL that even if they start collecting COVID waste also from the Govt. hospitals in the three districts it would not be sufficient to run the plant viably. KEIL pointed out that as a service charge for Govt. health care facilities are at subsidised rate, the transportation cost could be utilized effectively only if the waste from both the Govt. hospitals and private hospitals in the same area are allotted. In the meeting the Chairman asked IMAGE to submit an alternate proposal, if any, in this regard allowing KEIL to collect waste from both Govt. and private health care institutions within 75 km. As per the CPCB guideline for CBWTF a minimum of 10,000 beds are to be made available and CBWTF shall be allowed to cater waste from healthcare units situated at a radial distance of 75 km. It is evident from the data updated in the COVID 19BWM app that they are getting about 4.5 t/day max (as on 09.08.2021) including both COVID and non COVID BMW. In consultation with ACS, Environment Department, an order bearing no. PCB/HO/EE2/BMW-03/GENERAL dtd 13.08.2021 in this regard is issued. Copy of the order is attached as Annexure 3*

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

*Dated this the 16th August 2021 "*

22. It is also stated in the said order that M/s.IMAGE has filed an affidavit dated

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21.9.2021 challenging the action of the Pollution Control Board in bifurcating the transportation and disposal of bio-medical waste generated and allotting certain areas to M/s.KEIL, which was established recently for this purpose, however the said finding recorded by the Tribunal is disputed by the appellants. Any how, it is relevant to note the report dated 27/9/2021 filed by the State Government and recorded in the said order of the Tribunal, which reads thus:

**"REPORT SUBMITTED ON THE ALLOTMENT OF COVID AND NON COVID**

**BIOMEDICAL WASTE BY THE PRINCIPAL SECRETARY,**

**HEALTH & FAMILY WELFARE (M) DEPARTMENT**

*It is submitted that in Kerala the Common Biomedical Treatment and Disposal Facility Image owned and operated by IMA, situated at Palakkad has been engaged for treatment and disposal of Biomedical waste including Covid- 19 waste generated from all Healthcare institutions in accordance with the stipulations and Guidelines of Bio-Waste Management Rules 2016. KEIL, yet another Common Biomedical Treatment and Disposal Facility has become operational on the directive of the Supreme Court Monitoring committee on hazardous waste for treatment and disposal of hazardous waste generated from Healthcare institutions with KSIDC as the nodal agency. As Image was carrying out the Common Biomedical Treatment and*

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*Disposal Facility all over the state it was decided to bifurcate some areas to the agency in order to lessen the burden on Image and also as a learning curve to the new agency.*

### **Action Taken By Government**

*It is submitted that in a meeting by the Joint Secretary, Health it was decided to allot the Biomedical waste generated from government healthcare in three districts of Ernakulam, Malappuram and Pathanamthitta to KEIL and accordingly communication has been issued to all concerned parties in three districts to handover BMW to KEIL at rates previously fixed for Image for the time being. The policy by which the demarcation is being done is that these three districts was in urgent need for more facilities and hence government instructed to KEIL to collect waste from these three 6 districts which as a new company will also benefit from the experience and at the same time not put Image at a disadvantage as at present the BMW collection and transportation of vehicles of Image are operated daily on a route based method and hence a district wise transportation allocation for them will be difficult. Also the contract with Image has been prepared in terms of unit/bed wise and not in terms of collection transportation services. The current criteria caters to the entire Bio-Medical waste generated in the state and as a more scientific division of the working area of Image and KEIL*

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*evolves it will cover the entire quantity of Biomedical waste generated in the state. This decision was agreed to by KEIL as well.*

*It is submitted that the Hon'ble Tribunal in its order dated 24.06.2021 has directed the Government to examine whether more area and hospitals can be connected with the facility of KEIL and has also enquired about the policy by which the current demarcation is made and also if the current allocation criteria caters to the entire Biomedical waste generated in the area. It is submitted that in compliance with the Hon'ble Tribunal order the Additional Chief Secretary, Environment Department has convened a meeting on 29/06/2021 in which the pollution control Board has been directed to take a stand on further course of action required like allotment of district to service providers, allotment of both Govt. and private sector hospitals, fixing of rates etc. Accordingly a meeting was held by Chairman KSPCB on 19.07.2021 with both Image and KEIL in this issue and has asked Image to submit their proposal to solve the matter in a mutually beneficial way. KEIL authorities have requested the government to grant permission to collect biomedical waste from all healthcare facilities both Government and private within 75 km radial distance from their facility as their average daily collection is only 3.5 MT/day as against a plant capacity of 16 MT/day. As Image has not submitted any proposals PCB has requested ACS*

*Environment Dept. to permit KEIL to collect BMW from both Government*

*9*



*and private healthcare facilities within a radial distance of 74 Km from their plant based on stipulated guidelines. It is submitted that Considering the above aspects and as per schedule 111 6 [viii] of Rule 6 and 9 [3] of Biomedical Waste Management rules, 2016 orders have been issued by PCB on 13.08.2021 as PCB/HO/EE2/BMW0/GENERAL in which it is mentioned that as per the CPCB guideline a CBWTF located within the respective State/UT shall be allowed to cater healthcare units situated at a radial distance of 75 km and hence the full districts of Pathanamthitta, Alappuzha and Idukki along with Kottayam and Ernakulam has been allocated to KEIL and KEIL shall collect and process the BMW from both Government and Private healthcare institutions in the concerned districts.*

*The rest of the Biomedical Waste generated both from the Government and private healthcare institutions of the remaining 9 districts will be collected and processed by Image. This arrangement will come into effect from the first day of September 2021.*

*Therefore it is most humbly prayed that this Hon'ble Tribunal may be pleased to take the said report submitted on the allotment of COVID and Non COVID biomedical waste by the Principal Secretary, Health & Family Welfare(M) Department on Record and thus render justice.*

*Dated at Chennai on the 27th day of September 2021".*

23. After considering the report submitted by the State Pollution Control Board

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as well as the State Government, the Tribunal has made the following observations in the order dated 28.9.2021 :

5. *Learned Senior Counsel appearing for 6th respondent submitted that Pollution Control Board has no authority to issue such directions and the same has been challenged before the Hon'ble High Court of Kerala by filing a writ petition. If those writ petitions are filed, it is for the Hon'ble High Court to consider those aspects and pass appropriate orders.*

6. *Mr. Babu Joseph Kuruvathazha, Learned Counsel appearing for 7th respondent submitted that the writ petition filed by 6th respondent as W.P. No. 17693/2021 was dismissed by the Hon'ble High Court directing them to approach this Tribunal for appropriate consideration.*

7. *Learned Senior Counsel for 6th respondent submitted that they intend to file Writ Appeal before the Hon'ble High Court itself against that order as according to the Learned Senior Counsel, the order passed by the Hon'ble Single Judge is unsustainable in law. However, it is for the parties to decide as to where they want to challenge the orders according to the remedy provided to them in accordance with law.*

8. *We are not passing any opinion in this regard as the 6th respondent wanted to file a Writ Appeal against the order passed by the Hon'ble Single Judge. However, we are not at present interfering with the directions, if any, issued by the Pollution Control Board regarding the allotment of the areas and*

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*if ultimately, the Hon'ble High Court of Kerala directs this Tribunal to consider the same at that time this Tribunal can consider those aspects and pass appropriate order. Before that we do not want to express our opinion regarding the allegations made by the 6th respondent in the latest affidavit filed by them as it may likely to affect their case before the Hon'ble High Court.*

*9. For consideration of report, post on 26.10.2021."*

24. As we have pointed out above, what is challenged by M/s. IMAGE before the writ court was the order passed by the Pollution Control Board dated 13.8.2021, wherein a reference is made to O.A. No.43/2017 pending before the National Green Tribunal. In order to understand the real issue and the implications of the contentions raised by the appellants, we feel it better to extract the said order, which reads thus:

" PROCEEDINGS

(Present Pradeepkumar A.B., Chairman)

*Sub:( O A 43/2017 - Allocation of bio medical waste to CBWTF of M/s Kerala Enviro Infrastructure Limited, Ambalamedu, Ernakulam and IMAGE, Palakkad - Sanctioned - Orders issued*

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KERALA STATE POLLUTION CONTROL BOARD  
Thiruvananthapuram  
No. PCB/HO/EE2/BMW-03/GENERAL

Dated: 13/08/2021

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- Read: 1. The Bio medical Waste Management Rules, 2016*  
*2. Revised guideline of CPCB for CBWTF dated 21.12.2016*  
*3. Hon'ble NGT order dated 24.06.2021 in O.A 43/2017*  
*4. Minutes of meeting dated 29.06.2021 hold by ACS,Envt.*  
*5. Minutes of meeting dated 19.07.2021 held by Chairman, KSPCB*  
*6. Letter dated 17.07.2021 of KEIL*  
*7. Letter dated 09.08.2021 of IMAGE*  
*8. Consent to establish issued to KEIL dated 10.03.2014 and renewals dated 15.10.2017 & 02.11.2019*  
*9. Environmental Clearance no. 1036(A)/SEIAA/EC3/502/2016 dated 29.11.2017 issued by SEIAA*  
*10. Consent to operate/authorization issued to KEIL dated 11.05.2021*

#### **ORDER**

*The occupiers of health care units and operators of Common Bio Medical Waste Treatment Facilities (CBWTFs) are bound to comply with the relevant provisions under the Bio Medical Waste Management Rule 2016 (BMW Rule) and the guidelines issued by CPCB. The concept of biomedical waste treatment at common facility has been introduced in our country and widely accepted among health care units, medical associations and entrepreneurs. As per Rule 7, occupiers of health care units shall dispose BMW through CBWTFs, if the service of CBWTF is available at a distance of 75 km. Central Pollution Control Board (CPCB) published revised guidelines for common bio medical waste treatment and disposal facilities in December, 2016. It is mentioned therein that these guidelines are mandatory under the Bio-Medical Waste Management Rules, 2016. The guideline provides the criteria for development of CBWTFs for a locality or region.*

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*[Signature]*

*The common facility, IMAGE in Palakkad was the only one common facility that catered the waste from Govt. and Private health care units across the State so far, in addition to the captive treatment facilities in a few institutions.*

*The second CBWTF in the State by Kerala Enviro Infrastructure Limited (KEIL), Ambalamedu has been set up and is presently functional at the premises of the already established common hazardous waste treatment facility (CTSDP), after getting consent to establish of the Board and environmental clearance from SEIAA. Consent to operate/authorization was issued for 16 tonne/day capacity to KEIL on 11.05.2021 with validity up to 30.06.2024*

*The Govt. (Health Department) issued directive vide M4/70/2021-Health Care 01.05.2021 allotting the waste from the Govt. hospitals in the three districts of Malappuram, Emakulam and Pathanamthitta to KEIL. KEIL started treating wastes from Govt. health care units collected from these three districts with effect from 24.05.2021. They have also started collecting COVID BMW from these districts from 27.07.2021 onwards.*

*KEIL submitted before the Hon'ble NGT that they have been permitted to collect BMW from Govt. hospitals from the three districts of Ernakulam, Malappuram and Pathanamthitta. However as their installed capacity is much more than the permitted quantity they stated that the operation of the plant is not viable with the reduced quantity of waste, that they obtain from the government health care unit of 3 districts.*

*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 Government 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 biomedical waste*

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generated in that area.

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 issues emerged during the pandemic situation, was discussed in the meeting and after deliberations on the bifurcation of area and allotment of Govt. and private health care units, the Additional Chief Secretary directed PCB to take a decision on the allotment of wastes from both Pvt. and Govt. sector health care units to KEIL. Accordingly the Board Chairman held a meeting on 19.07.2021 with IMAGE and KEIL authorities. KEIL vide letter dated 17.07.2021 submitted proposal and requested for granting permission for collection of BMW from both Govt. and Private health care units within 75 km radial distance from their facility as they are getting only a very few quantity as against their designed capacity of 16 t/day. IMAGE submitted a proposal regarding the system of charges to be levied from HCFs, in the State but did not submit any alternate proposal suggesting the allocation or transferring of waste from Govt. and private health care units to KEIL within 75 km radius.

As part of implementation of the guideline for the management of COVID waste, CPCB has developed a tracking app COVID 19 BWM for monitoring the waste being handled by the generators and CBWTFs and both the service providers are updating the daily quantity collected and disposed in the app. It is evident from the data that KEIL is getting only 3 to 4 t/day including both COVID and non COVID BMW from the already allotted hospitals by the Govt. whereas IMAGE is getting surplus quantity. This system of distribution of BMW is resulting in shortage of waste for processing in one unit and accumulation of waste in another unit. Hence, a balance need to be worked out for the effective management of BMW.

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*As per the CPCB guideline a CBWTF located within the respective State/UT shall be allowed to cater healthcare units situated at a radial distance of 75 km. However, in a coverage area where 10,000 beds are not available within a radial distance of 75 km, existing CBWTF in the locality (located within the respective State) may be allowed to cater the healthcare units situated upto 150 km radius with respect to its location provided the bio-medical waste generated is collected, treated and disposed of within 48 hours as stipulated under the BMW Rules.*

*It is also emphasized in the Rules that no healthcare facility shall establish on-site treatment and disposal facility for BMW, if a service of CBWTF is available within 75 km of travelling distance of the facility. All the healthcare facilities within a radius of 75km of CBWTF needs to dispose the BMW through such CBWTF only and are not allowed to establish its own treatment and disposal facility.*

*As the service charge for Govt. hospitals is at subsidized rate, the transportation cost could be utilized effectively only if the wastes from both Govt. and private hospitals in the same area are allotted. KEIL also informed that only 80 % of beds are considered for payment from the Govt. hospitals and as there is no affiliation charge, the plant can be run in a viable manner only if waste is obtained from both private and govt. health care units.*

*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& IMAGE, the two service providers as follows:*

- 1. As per the guideline, KEIL shall operate their plant at Ambalamedu,*

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*Kochi by collecting bio medical waste from both private and government health care units within a radial distance of 75 km 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, Alappuzha and Idukki along with Kottayam and Ernakulam to KEIL. Therefore KEIL shall collect and process BMW from both Govt. and Private health care units from the districts of Alappuzha, Kottayam, Ernakulam, Pathanamthitta and Idukki.*

2. *The rest of the bio medical waste generated both from the government and private health care units of the districts of Thiruvananthapuram, Kollam, Thrissur, Malappuram. Palakkad, Wayanadu, Kozhikkodu, Kannur and Kasargodu shall be collected and processed by IMAGE in their facility at Palakkad.*

*The sketch showing the allotment is attached with this order.*

*This order shall come into effect from the first day of September 2021. All Government and private health care institutions in the State shall comply with this order.*

Sd/-  
CHAIRMAN

25. On an analysis of the order passed by the State Pollution Control Board as extracted above, it is clear that there was certain understanding by and between the parties in the matter of bifurcation of the waste management in order to have an effective administration of the same. The order also reveals various other aspects,

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which is self explanatory. However, it speaks in volume about the nature of deliberations made by and between the parties, the State Government and the Pollution Control Board. Be that as it may, it is worthwhile to refer to certain of the aspects contained under the Environment (Protection) Act, 1986, in order to identify as to whether the Tribunal has the power to adjudicate the issues raised by the appellants, which is the predominant contention advanced by the appellants. The definition of 'environment' contained under section 2(a) of Act, 1986 takes in water, air and land and the inter-relationship which exists among and between water, air and land, and human beings, other living creatures, plants, micro-organism and property. The 'environmental pollutant' is defined under section 2(b) to mean any solid, liquid or gaseous substance present in such concentration as may be, or tend to be, injurious to the environment. Section 2(c) defines 'environmental pollution' to mean the presence in the environment of any environmental pollutant. Section 2(d) define 'handling' to mean, in relation to any substance, means the manufacture, processing, treatment, package, storage, transportation, use, collection, destruction, conversion, offering for sale, transfer or the like of such substance. Hazardous substance is defined under section 2(e) to mean any substance or preparation which, by reason of chemical or physico-chemical properties or handling, is liable to cause harm to human beings, other living creatures, plants, micro-organism,

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property or the environment.

26. Section 3 of Act, 1986 deals with the power of the Central Government to take measures to protect and improve the environment. Sub-section (2) specifies that the measures that are to be taken by the Central Government for the purpose of protecting and improving the quality of the environment and preventing, controlling, abating environmental pollution, includes (I) coordination of actions by the State Governments, officers and other authorities; (a) under the Act or the Rules made thereunder or (b) under any other law for the time being in force which is relatable to the object of this Act. Sub-section 2(ii) thereto deals with planning and execution of a nation-wide programme for the prevention, control and abatement of environmental pollution and clause (v) thereto empowers to make restriction of areas in which any industries, operations or processes or class of industries, operations or processes shall not be carried out or shall be carried out subject to certain safeguards. Clause (vii) thereto empowers laying down procedures and safeguards for the handling of hazardous substances. Clause (xiv) thereto clearly specifies that such other matters as the Central Government deems necessary or expedient for the purpose of securing the effective implementation of the provisions of the Act, 1986. Other enabling powers are conferred on the Central Government to constitute an authority and to give such directions to the authority under the Act,

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1986 in respect of the management and control of all aspects dealt with under the Act.

27. Reading together of the provisions of the Act, 1986 and the Bio-Medical Waste Management Rules, 2016, it is clear that the Pollution Control Board is vested with ample powers to deal with the management of bio-medical waste. As per the provisions of section 5A of the Act, 1986, the National Green Tribunal is vested with powers to entertain an appeal aggrieved by any directions issued under section 5 of Act, 1986 on and w.e.f. the constitution of the National Green Tribunal in the year 2010. Moreover, the Air (Prevention and Control of Pollution) Act, 1981 confers various powers on the Central Pollution Control Board as well as State Pollution Control Board wherein also powers are conferred on the State Pollution Control Board for controlling and regulating the air pollution. Provisions of the said Act also shows that the Central Government is vested with ample powers to issue any directions to the authority under the said Act, in order to effectively regulate and control the pollution so as to protect the environment. In the said Act also, the National Green Tribunal is the appellate authority. Rules are also prescribed under the said Act, 1981. Similarly, under the Water (Prevention and Control of Pollution) Act, 1974, various powers are conferred on the Central Pollution Control Board and the State Pollution Control Board, and the Central Government is vested with ample

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powers to issue necessary directions to the authorities. Under the said Act also, appellate power is conferred on National Green Tribunal from the orders of the first appellate authority prescribed thereunder.

28. Therefore it is quite explicit and clear that the National Green Tribunal is all powerful to take decisions in all matters relating to the mechanism provided for abating pollution, regulating and effectively controlling, and issuing directions for managing the waste and also the power to decide and adjudicate all the issues raised by the parties aggrieved by any orders passed by the statutory authorities under the relevant environmental laws . In fact, the power of the National Green Tribunal to take *suo moto* action and the consequential powers thereto was considered by the Hon'ble Apex Court in **Municipal Corporation of Greater Mumbai** (*supra*). Various aspects were considered by the Hon'ble Apex Court in the matter of effective management of pollution generated and the role of the National Green Tribunal in the process. It would be worthwhile to refer to the relevant portion of the said judgment, which read thus:

**" VIII. THE SUI GENERIS ROLE OF NGT**

24.1 *The NGT being one of its own kind of forum, commends us to consider the concept of a sui generis role, for the institution. The structure of Sui generis institutions was explained in Paramjit Kaur Vs. State of Punjab, wherein Justice S. Saghir Ahmad spoke thus for a Division Bench,*

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"14. The concept of sui generis is applied quite often with reference to resolution of disputes in the context of international law. When the conventions formulated by compacting nations do not cover any area territorially or any subject topically, then the body to which such power to arbitrate is entrusted acts sui generis, that is, on its own and not under any law."

*24.4 The above discussion would advise us to say that the NGT was conceived as a specialized forum not only as a like substitute for a civil court but more importantly to take over all the environment related cases from the High Courts and the Supreme Court. Many of those cases transferred to the NGT, emanated in the superior courts and it would be appropriate thus to assume that similar power to initiate suo motu proceedings should also be available with the NGT.*

*24.5 The NGT is a Tribunal with sui generis characteristic, with the special and all-encompassing jurisdiction to protect the environment. Besides its adjudicatory role as an appellate authority, it is also conferred with the responsibility to discharge the role of supervisory body and to decide substantial questions relating to the environment. The necessity of having a specialized body, with the expertise to handle multi-dimensional environmental issues allows for an all-encompassing framework for environmental justice. The technical expertise that may be required to address evolving environmental concerns would definitely require a flexible institutional mechanism for its effective exercise.*

#### **IX. AUTHORITY WITH SELF-ACTIVATING CAPABILITY**

*25.1 Given the multifarious role envisaged for the NGT and the purposive interpretation which ought to be given to the statutory provisions, it would be fitting to regard the NGT as having the mechanism to set in motion all*

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*necessary functions within its domain and this, as would follow from the discussion below, should necessarily clothe it with the authority to take suo motu cognizance of matters, for effective discharge of its mandate.*

*25.3 The Section 14(1) of the NGT Act deals with jurisdiction, and the jurisdictional provision conspicuously omits to specify that an application is necessary to trigger the NGT into action. In situations where the three prerequisites of Section 14(1) i.e., Civil cases; involvement of substantial question of environment; and implementation of the enactments in Schedule I are satisfied, the jurisdiction and power of the NGT gets activated. On these material aspects, the NGT is not required to be triggered into action by an aggrieved or interested party alone. It would therefore be logical to conclude that the exercise of power by the NGT is not circumscribed by receipt of application. When substantial questions relating to the environment arise and the issue is civil in nature and those relate to the enactments in Schedule I of the Act, the NGT in our opinion even in the absence of an application, can self-ignite action either towards amelioration or towards prevention of harm.*

*25.4 In the same spirit, we find merit in the arguments that Section 14(1) exists as a standalone feature, not constricted by the operational mechanism of the subsequent subsections. The sub Section (2) of Section 14 functions as a corollary and comes into play when a dispute arises from the questions referred to in Section 14(1). Likewise sub Section (3) thereafter, refers to the period of limitation concerning applications, when they are addressed to the NGT. Where adjudication is involved, the adjudicatory function under Section 14(2) comes into play. When it is a case warranting NGT's intervention, or may be a situation calling for decisions to meet certain exigencies, the functions under Section*

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14(1) can be undertaken and those may not involve any formal application or an adjudicatory process. However, the later provisions may not work in similar fashion. Therefore, care must be taken to ensure unrestricted discharge of the responsibilities under Section 14(1) and that wide arena of NGT's functioning.

27.1 The conceptual frameworks of environmental justice and equity should merit consideration vis-à-vis the NGT's domain and how its functioning and decisions can have wide implications in socio-economic dimensions of people at large. The concept of environmental justice is a triffecta of distributive justice, procedural justice and justice as recognition. Environmental equity as a developing concept has focused on the disproportionate implications of environmental harms on the economically or socially marginalized groups. The concerns of human rights and environmental degradation overlap under this umbrella term, to highlight the human element, apart from economic and environmental ramifications. Environmental equity thus stands to ensure a balanced distribution of environmental risks as well as protections, including application of sustainable development principles.

27.3 There is also a need to focus on the interconnection between principles of procedural justice and distributive justice. The concern is to create a system which is affirmative enough to balance the disproportionate wielding of power between polluters and affected people.

"Environmental justice starts with distributive justice, or more accurately, distributive injustice. The rich and powerful derive the most benefit while suffering the least harm from environmentally harmful activities; conversely, the poor and minorities derive the least benefit but suffer the most harm. Further, those who benefit

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*cause harm to the places where people "live, work, play, and go to school," whereas the people who reside there do little or nothing to harm their community."*

*27.4 The law must be interpreted in such a manner as to foster further development of existing legal concepts by incorporating this sense of equity. The issues which this Court has had the occasion to examine have highlighted the limitations of the mechanisms to reach to the heart of environmental concerns. This Court has previously moulded the jurisdictional jurisprudence in favour of larger societal interest, whether that be in the form of 'Public Interest Litigation' or widening the scope of locus standi.*

*"The identification of potential environmental justice issues is very important in determining how our enforcement efforts are working in minority and low-income communities, and whether they are comparable to the enforcement efforts in other communities."*

*30. The NGT Act, when read as a whole, gives much leeway to the NGT to go beyond a mere adjudicatory role. The Parliament's intention is clearly discernible to create a multifunctional body, with the capacity to provide redressal for environmental exigencies. Accordingly, the principles of environmental justice and environmental equity must be explicitly acknowledged as pivotal threads of the NGT's fabric. The NGT must be seen as a sui generis institution and not unus multorum, and its special and exclusive role to foster public interest in the area of environmental*

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*domain delineated in the enactment of 2010 must necessarily receive legal recognition of this Court.*

35. *The NGT, with the distinct role envisaged for it, can hardly afford to remain a mute spectator when no-one knocks on its door. The forum itself has correctly identified the need for collective stratagem for addressing environmental concerns. Such a society centric approach must be allowed to work within the established safety valves of the principles of natural justice and appeal to the Supreme Court. The hands-off mode for the NGT, when faced with exigencies requiring immediate and effective response, would debilitate the forum from discharging its responsibility and this must be ruled out in the interest of justice. "*

29. Therefore, in our considered opinion, National Green Tribunal is a special tribunal constituted with the purpose of making decisions and issuing orders, to safeguard and the management of a quality environment, control and management of waste generated, and to issue necessary directions, and adjudicate all relevant matters arising therefrom and the orders passed by the authority under the laws specified in the Schedule 1 of Act 2010. That apart, from section 14 of the National Green Tribunals Act, 2010, it is clear that the Tribunal has the jurisdiction over all civil cases, where a substantial question relating to the environment including enforcement of any legal right relating to environment, is involved and such question arises out of the implementation of the enactments specified in Schedule I, and section 15 empowers it to grant relief, compensation and restitution. It is an

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appellate authority under various enactments pointed out above, and also other enactments.

30. Section 19 deals with the procedure and powers of Tribunal and sub-section (1) thereto specifies that the Tribunal shall not be bound by the procedure laid down by the Code of Civil Procedure, 1908 but shall be guided by the principles of natural justice. Section 20 stipulates that the Tribunal, while passing any order or decision or award, apply the principle of sustainable development and the precautionary principle of Polluter Pays principle. It is also vested with powers to take decisions by majority of members. Schedule (1) thereto clearly specifies that it is vested with powers to deal with any matters under the Water (Prevention and Control of Pollution) Act, 1974; Water (Prevention and Control of Pollution) Cess Act, 1977; the Forest (Conservation) Act, 1980; Air (Prevention and Control of Pollution) Act, 1981, Environment (Protection) Act, 1986; the Public Liability Insurance Act, 1991 and the Biological Diversity Act, 2002. Schedules II and III also make it clear that it has got various powers in order to deal with matters relating to environmental damages etc.

31. Above all, the appellants namely IMAGE/IMA were participating in the meetings convened by the State PCB for amicably settling the issue in regard to the bifurcation of treatment facilities, and therefore conceded to the jurisdiction of the board, very well discernible from the impugned order extracted above; even IMAGE

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was of opinion that bifurcation is required for efficient management of the waste generated. That apart, the discussion made and the reports of PCB and the State extracted above would make it clear that the subject issue of bifurcation of the treatment facility is under consideration of the Tribunal. So also the Central guidelines enable the PCB to take any decision of its own if the facility available for treatment is exceeding 75 Kms. from the area of waste generation, and merely because the Chairman PCB convened meetings for amicably resolving the issue of bifurcation with the participation of appellants, that would not confer authority and power to them to participate in the discharge of a statutory function by the State PCB, as contended by the appellants to advance an argument that the impugned order is passed violative of the principles of natural justice. To put it otherwise mere convening of conciliatory meetings with the participation of appellants, that will not detain or preclude State PCB to pass orders on its own under the provisions of any enabling laws. Even Though a contention is advanced that a representative of IMA being a member of the advisory Committee constituted under Rule 11 of the Bio-Medical Waste Management Rules 2016, the State PCB could have passed the impugned order with the juncture of the representative of the IMA, we are are unable to agree with the same for the basic reason that the role of the advisory committee is only the review of of all matters related to the implementation of the

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rules, which in our considered view has nothing to do with the power exercised by PCB from a different source, as empowered under the Environment Protection Act 1986, and the rules and guidelines issued by the Central Government, for effectively implementing the aims and objects of various environmental laws.

32. Therefore, on a consideration of the facts, law and circumstances discussed above, we have no hesitation to hold that it has got the power to deal with the decision taken by the Pollution Control Board, which was impugned in the writ petitions viz., the order dated 13.8.2021. It is also equally important to note that being the Tribunal vested with ample powers to deal with the issues relating to the environment, necessarily the Tribunal would follow the basic principles for making decisions and adjudicating the issues before it.

33. This we have said for the reason that the Tribunal is also vested with powers to analyse and arrive at a conclusion as to whether the impugned order viz., the order of the State Pollution Control Board dated 13.8.2021 is passed observing the principles of natural justice and whether it is tainted with any arbitrariness, illegality and malafides. It may be true that under exceptional circumstances, a writ court may exercise its powers under Article 226 of the Constitution of India, however, that doesn't mean that in any order passed by the State Pollution Control Board or any other statutory authority under the provisions of the aforesaid laws, the

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High Court need to exercise its discretionary powers conferred under Article 226 of the Constitution of India.

34. Upshot of the above discussion is that, we do not find any jurisdictional error or other legal infirmities in the judgment of the learned Single Judge so as to interfere with the same in an intra court appeal filed under section 5 of the Kerala High Court Act, 1958. However we make it clear that the observations and findings are rendered by us to arrive at conclusions in terms of the arguments advanced by the appellants, but the Tribunal would be at liberty to consider any issues raised by the parties on its own merit, irrespective of such findings and observations .

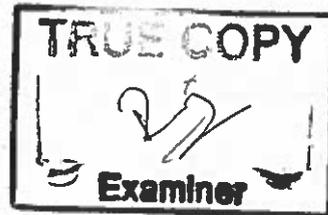
Needless to say, writ appeals fail, accordingly they are dismissed.

Sd/-

**S. MANIKUMAR,  
CHIEF JUSTICE.**

Sd/-

**SHAJI P. CHALY,  
JUDGE.**



This Annexure-R7(c) is the true copy of the original document.

Advocate