

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

IN

Original Application No.43/2017 [SZ]

In the matter of: Suo Moto The Tribunal on its own motion on the implementation of the Biomedical Waste Management Rules 2016 in the State of Kerala

With: The State of Kerala, represented by it's Chief Secretary Secretariat, Thiruvananthapuram, Kerala & Others
[Respondents]

Additional Affidavit by the IMAGE [6th Respondent]

Remarks submitted by the 6th respondent, the IMAGE [Indian Medical Association Goes Eco-friendly] to the report submitted by the Chairman, State Level Monitoring Committee, Kerala; regarding the fire accident on 16.01.2022 in the CBWTF owned by the MAGE at Palakkad Kerala.

1. I am the Secretary of IMAGE who runs the CBMWTF at Palakkad. I have gone through the above report submitted before this Hon'ble Court, and I am authorized to make the following remarks/submissions in this regard.
2. It is respectfully submitted that the above report is not the outcome of any independent inquiry or investigation conducted by the authority concerned. The findings therein have been arrived at solely relying on the report of the Environment Engineer, KSPCB and also the order dated 13.08.2021 of the Chairman, KSPCB.
3. The Chairman of the State Level Monitoring Committee has not made any personal visit to or any inspection of the premises of the CBMWTF of IMAGE and, therefore, has no personal knowledge or information about the cause of the fire occurrence as evident from his report. His very finding in the 2nd para of the report that "though they could not prevent the spread of fire to other parts....." is contrary to truth and facts as evident from the report submitted by the Environmental Engineer, who says "they (the IMAGE) could only prevent the spread of fire outside that building to other parts of the plant."


Dr. SHARAFUDHEEN. K.P
Secretary, IMAGE, IMA KSB
IMA State Headquarters
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4. It is respectfully submitted that the infrastructural facilities of the CBMWTF of the IMAGE was set up in 2003 during the normal times, when there was not epidemics affecting the State. Hence IMAGE had a sanctioned capacity of 55.8 tons per day to cater to the state wide need of treating CBMW, though its installed capacity was higher.
5. What actually transpired was that during the Covid period the burden to treat the entire Covid waste from all over the State was imposed by the State Government on the CBMWTF of IMAGE. This has resulted in accumulation of some yellow BMW (i.e. normal waste) at IMAGE premises during the peak period of Covid pandemic, and that continued for a long period, as the pandemic could not be brought under control. Since preference had to be given to the Covid BMW, which had to be incinerated on the same day itself because of its highly infectious nature, some quantity of the regular BMW had accumulated in the premises. This, in fact, had been admitted by the Environmental Engineer in his report dated 16.02.2022 submitted to this Hon'ble Tribunal. He has also reported the stand of the IMAGE that the reason for the backlog is the excessive quantity of waste materials, which is endorsed by the Chairman, the State Monitoring Committee in his report.
6. It is significant to note here that the IMAGE received a show cause notice in this connection from the Environmental Engineer Palakkad to which we have already filed our detailed explanation dated 23.02.2022. A true copy of the said explanation is being produced herewith as Annexure-P1 which may kindly be read as part of this remarks/objection.
7. It is submitted that Annexure 11(a) order of the Chairman, KSPCB referred to in the report of the Chairman, Monitoring Committee is the order impugned in W.P.18270/2021 and W.A.1290/2021. Presently its validity is under challenge before the Hon'ble Supreme Court in SLPs filed by the IMAGE and the Kerala Private Hospitals Owners Association, which are pending disposal. The abrupt finding of the Chairman, State Level Monitoring Committee that "had the bifurcation as proposed in Annexure II(a) order has been effected, the same would have helped in clearing the backlog at IMAGE, thereby preventing untoward incidents like the one now reported" is without knowing or considering the history of IMAGE and its services rendered to the State Government and to the society at large. The same was arrived at without any application of mind to the reasons contributed to the fire occurrence and in blind and mechanical support to the order of the Chairman SPCB impugned in the court proceedings and pending in the present SLPs.


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Therefore it is humbly prayed that no reliance be placed on the above report and no legal weight may be attached to the same, as it is submitted on hearsay materials, and not upon any independent evaluation or assessment of the attendant circumstances that led to the fire occurrence.

Dated this the 30th day of April 2022.



**Dr.Sharafudheen K.P.,
Secretary, IMAGE IMA
Indian Medical Association Kerala**





INDIAN MEDICAL ASSOCIATION GOES ECOFRIENDLY

IMAGE ADMINISTRATIVE OFFICE

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ADM 0465 **IMAGE COMMON BIOMEDICAL WASTE TREATMENT FACILITY - CBWTF**
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No. IMAGE/Adm/PCB/20368/21-22

23-Feb-2022

BEFORE THE KERALA STATE POLLUTION CONTROL BOARD

From

The Secretary,
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To

The Environmental Engineer
Palakkad District Office
Kerala State Pollution Control Board
Near District Panchayat Office Palakkad- 678001
kspcbpalakkad@gmail.com

Sub: Explanation submitted by M/s. IMAGE to the Show Cause Notice No. PCB/PLKD/IC/CO-240/2008 dated 16.02.2022 issued by the Environment Engineer for and on behalf of the Kerala State Pollution Control Board.

- Ref: 1. KSPCB Show Cause Notice PCB/PLKD/IC/CO-240/2008 Dt. 16.02.2022
2. KSPCB email dated 07.12.2021
3. IMAGE Reply Letter No. IMAGE/Adm/OP/19439/21-22 Dt. 15.12.2021
4. KSPCB Letter No. PCB/PLKD/TG-60/2001 Dt. 22.05.2021
5. IMAGE Reply Letter No. IMAGE/ADM/SEC/16630/21-22 Dt. 27.05.2021

We are in receipt of the above referred show cause notice and are obliged to give the following explanation in due compliance thereof:

At the outset, it is respectfully submitted that the sum and substance of the allegations in the show cause notice condensed in its penultimate paragraph that

Stay Safe.....Stay Committed

“your inability to dispose the biomedical waste within 48 hours as per the Rules has resulted in a huge backlog which had led to the fire incident” is emphatically denied as the same is contrary to truth and facts. Before going into the details of the show cause notice it is our respectful submission that the above allegation is absolutely unfair, unjust and uncharitable mainly for the following reasons:

- i) The entire Covid biomedical waste from throughout the State, mostly from the Government Healthcare facilities, was imposed upon the IMAGE CBWTF during the Covid period, as IMAGE, being the only CBWTF in the State, was compelled to shoulder the burden; the recently commissioned new CBWTF, KEIL having commissioned in May 2021 only, who were initially not permitted to manage the Covid BMW. There was no moral, financial or infrastructural support extended by the Government to the IMAGE during this pandemic crisis period to tackle the additional & excess Covid BMW being forced upon the IMAGE or to deal with the same within 48 hours as stipulated in the Rules.
- ii) Even during the Covid crisis the Government did not come forward to sanction the installed/optimum capacity of the IMAGE plant till Dec 2020, and have not even permitted the IMAGE, at least on this disaster situation, to put into operation the newly installed additional standby incinerator, which IMAGE was pressing for. Further, although the Central Pollution Control Board had granted special sanction to the Government and the State Pollution Control Boards to make use of the Hazardous Waste incinerators at existing TSDFs or captive industrial incinerators in case of generation of large volume of yellow color coded (incinerable) COVID-19 waste beyond the capacity of existing CBWTFs and the captive BMW incinerators, no such initiative was taken by the Government or the State Pollution Control Board so as to come to the rescue of the IMAGE.
- iii) It is absolutely unfortunate that the cause for an accidental fire incident being sought and traced into the huge backlog in the Plant allegedly leading to the fire incident, without being substantiated or supported by any technical or scientific study or report in this regard from any of the public authorities.

This fire incident at the IMAGE plant at Palakkad is the one and only such occurrence during the entire 18 Years existence of the Plant. It is respectfully submitted that IMAGE cannot be found fault with if we suspect any mischief or sabotage behind this fire incident at this time by some vested interests since, of late, IMAGE has business rivals in the field, and there are lobbies which want to diminish the public reputation of the IMAGE as the most effective and useful Common Biomedical Waste Treatment Facility (CBWTF) in the State. Therefore, there are now people who may want to create damaging impression about the functioning of IMAGE, that IMAGE has piled up backlog of untreated waste in their premises and the fire has emanated from this piled up waste. There may also be efforts to give an impression that the machineries and equipment of the IMAGE have been damaged by the fire incident and hence IMAGE may not be able to handle and process the present quantity of biomedical waste which they are treating now, and therefore it may be shared with some other CBWTF in the State.

- iv) IMAGE has been helping the Government to keep the State free from the hazards of BMW for all these years right from 2004 onwards, collecting BMW from all Government owned healthcare facilities on subsidized rates and without any affiliation fee. Hence, instead of being grateful to the IMAGE for this immense help for discharging a basic Governmental obligation, it is unfortunate, if not to say ungrateful, that the public authority, the State Pollution Control Board, is trying to find fault with the IMAGE for an accidental fire incident, an act of God beyond the control and expectation of IMAGE, the one and only such occurrence during the entire 18 Years existence of the Plant. And to say that it was due to the huge backlog is to tie the bull behind the cart.

Now, please find below our explanation with details for the allegations in the referred Show Cause Notice.

Regarding the allegation in the 4th para that the **PCB officials had found backlog of BMW stored at the Plant beyond 48 hours during their inspection on 19.04.2021, 13.05.2021 and 25.11.2021**, it is submitted that above dates were at the height of the Covid crisis and there was some stock of partially processed

non-covid regular BMW at the Plant during those days, when the primary concern and priority was for treatment of the Covid BMW, which was highly contagious than the normal regular BMW. As your goodself knows India was under lockdown due to the pandemic since February 2020 to May 2021 in Covid 1st wave and followed by intermittent lock downs further. The impact of the second wave was unpronounceable wherein every walk of life was affected and was near to standstill. Impact of Covid-19 showed its bad face on Kerala since it reported huge number of affected patients. Government of Kerala had established huge number of Covid care centers all over Kerala; additional beds were added to the already existing hospitals and converted many offices, schools, colleges & hostels into makeshift covid care centers for accommodating more and more Covid patients. IMAGE CBWTF alone had to manage the enormous quantity of biomedical waste generated from all these covid care centres. When another CBWTF started operating by the end of May 2021, they were initially not permitted to manage the Covid BMW. Though the untreated waste bags were stored in the covered shed, team IMAGE was always sprinkling sodium hypochlorite and other disinfectants on this to prevent any spread of infection from this.

It is further submitted that during the Covid pandemic days the total number of Plant workers were minimized as reserve force i.e 50% workers were working for 15 days only in a month due to the concern that if a considerable number of workers are affected with the Covid, the plant operation could be in halt & this could adversely affect the entire state of the Kerala as there were no alternative option in the entire state for the biomedical waste management other than this IMAGE plant, till may 2021. This, coupled with the huge quantity of BMW arriving at the Plant daily, was naturally bound to create some backlog. As the nature and content of the Covid waste bags were different, including more plastic content, even food waste and general municipal waste found inside, were bound to damage and break down the incinerating equipment frequently. It is submitted that IMAGE has been disposing off the Covid BMW on priority in strict adherence to the various Covid protocols as well as the government instructions.

Regarding the allegation in the 5th para of the notice that the **PCB had issued letter dated 22.05.2021 instructing to prevent accumulation of BMW and not**

to store BMW in open without roof, it is submitted that this happened during the period from May 2020 to June 2021, when due to the sudden rise in Covid pandemic there was an additional surge of Covid BMW, which was beyond the sanctioned capacity of the IMAGE. Hence moderate accumulation of BMW in the plant was beyond the control of IMAGE and could not be prevented completely as IMAGE was the only CBWTF in the State then, and Government or PCB has not made any temporary arrangement to get over the sudden crisis. But the direction of the PCB not to store BMW uncovered had been strictly complied by keeping the partially processed waste in a covered shed and also by covering the daily received waste with tarpaulin sheets (Ref. No. 5). The problem of accumulation happened because despite the repeated request of IMAGE our plant capacity was increased only during the 2nd week of December 2020 to 55.8 tons per day. Till then it was only 37 tons per day against the daily biomedical waste including the Covid BMW reaching IMAGE CBWTF to the tune of an average 50 tons per day.

As far as the allegation in the 6th paragraph is concerned, it is submitted that IMAGE could not comply with the **instruction issued by the PCB in its letter dated 07.12.2021 to completely clear the backlog of BMW within a maximum period of 30 days**. It is submitted that IMAGE could not comply with this instruction completely due to the unfortunate breakdown of the incinerators owing to the refractory lining as well as the dry-scrubbing problems faced during the Covid pandemic period. During the incineration of the additional Covid BMW, with more plastic and even general municipal waste inside the Covid BMW collection bags, which was instrumental in accelerating the burning temperature of the incinerators beyond the standard and caused shutdown of incinerators on multiple occasions for the refractory lining repair & multiple breakdowns of incinerators including “candle-replacement”, which had to be procured from Delhi. Based on the above said direction dated 07.12.2021, IMAGE vide letter (Ref. No. 3) had replied to your good office stating that steps have been taken to reduce the backlog on a timely basis by incinerating more quantity from backlog in addition to the regular BMW, more workers were assigned on shift basis to work effectively, treatment equipment were operated for the maximum time to process more waste etc. Accordingly works were going on and suddenly got disturbed due to the unexpected fire outbreak.

The next allegation that **“it could be assessed that the shed which caught fire had contained approximately 2000 tons of BMW (type Yellow) based on the unit weight of biomedical waste and the size and volume of the shed** is factually incorrect and untrue. We would like to bring to your notice that the said quantity could have been estimated or assumed by just viewing the piled-up quantity. However, the yellow bags in storage did not have much weight in them and as to our knowledge and concern it can be assessed as not more than 700 Tons. Even though the fire caught on the stored waste; only 20 % of the waste was affected by the fire. On our analysis after the fire incident, we confirmed that only a thin layer of waste at the top caught fire and burned and this has formed a thick layer preventing the fire to spread down to the remaining waste.

Regarding the allegation that **considerable quantity of yellow category waste was found outside the shed also during earlier inspection**, it is submitted that the same is partly true as IMAGE was compelled to collect all the Covid BMW across the State including from the entire Government sector HCEs. During this pandemic IMAGE had to manage the Covid biomedical waste from 706 Govt. Covid Care Centres and 756 Private Covid Care centres, in addition to the regular biomedical waste generated in all its affiliated HCEs. Till 2019 IMAGE was running the facility with 80% of its installed disposal capacity. This scenario changed drastically during 2020-2021 during the Covid pandemic due to increase of bed-strength & biomedical waste generating facilities (occupiers) by new establishment of covid care centres, quarantine centres and conversion of many schools, colleges, hostels & hotels to covid care centres to accommodate the alarming number of covid patients and this caused increase in biomedical waste generation by more than 100% in addition. During this pandemic IMAGE was instructed by the Government to collect the entire covid biomedical waste generated in the state, as there was no other CBWTF in the state & no other alternative for the BMW management, till May 2021.

Also, it is to be noted that the normal biomedical waste generation pre-pandemic was around 150-250 gms/bed/day/capita. However, during covid pandemic the biomedical waste generation was increased to 750 gms to 2kg/bed/day/capita.

This did not end there because the piling up of personal protective equipment used by all frontline workers including Police, Govt. officials, Volunteers & Social Workers and the entire Flight crew & passengers resulted in generation of 20% of additional BMW apart from the waste generated by all HCEs. In this case, it is quite obvious that the waste backlog is quite possible.

During the pre-pandemic period, IMAGE had self-sufficient storage shed for the temporary storage of entire BMW received at the plant. The gross improper segregation of BMW especially from the Govt. HCEs and improper collection of plastic PPEs in the Yellow bags have tremendously increased the yellow bag quantity and caused severe maintenance works of the incinerators as well. We have faced a lot of operational issues due to this improper segregation practiced by the healthcare institutions and this has been reported several times to the Pollution Control Board Offices for taking appropriate action. Unfortunately, more improperly segregated bags had created a huge quantity and thus are forced to store some quantity of the waste outside the covered shed, but covered the same by tarpaulin sheets as advised and instructed by the PCB.

Regarding the allegation that **the fire has caused extremely huge quantities of uncontrolled emissions which escaped into the surrounding environment, forest & agricultural lands and it may have reached the human inhabitation areas even though far away from the unit & considerable quantities of ash which may contain hazardous contents might have got deposited in the surrounding environment including the forest & agricultural land**, it is submitted that the fire which broke out at the IMAGE Plant Storage Shed on 16-01-2022 that continued for few days had a toll on both the partially treated and untreated waste stock stored separately in this particular storage shed. The fire retardant equipment brought by the fire department were unable to cease the fire. When the incident occurred the staff and operator were helpless and though the firefighting equipment were in place, they were unable to control the fire. The northern circle fire service department who was deputed to bring the fire under control also was unable to control the fire immediately, instead they supported well to prevent the fire spreading to other parts of the plant, which would have otherwise affected the functioning of the CBWTF plant. This fire incident was a

force majeure which could not be curbed or brought to an end immediately by the team IMAGE or the Fire Service Department. Both their efforts were in vain, could be due to the chemicals and inflammable characteristics present in the biomedical waste. The smoke gushing out did not have any adverse effects on the nearby inhabitants nor did it damage any flora, fauna other than the nearest dry plants & bushes. Both the Forest Department & Fire Department took precautions to arrest the fire from spreading beyond the storage shed. The Fire Brigade team who supervised the fire outbreak suggested to control the fire rather than suddenly extinguishing the fire; hence the fire remained for few more days. No human casualties were reported during or after the fire incident. The plant functioning was not affected even for one hour. The workers were allowed to continue working inside the plant by the authorities as no health hazards or environmental hazards were predicted from this fire incident. Also no one was evacuated from their houses in the vicinity as part of this incident. There were no complaints raised from villagers residing nearby.

The final accusation in the show cause notice that **the inability of the IMAGE to dispose the bio-medical waste within 48 hours as per the rules has resulted in a huge backlog which had led to the fire incident**, is far from truth and is vehemently denied. It is submitted that IMAGE could have informed the Government that we cannot take the burden of treating the additional Covid-19 BMW. Instead, rising to the occasion and in upholding the social responsibility, IMAGE and IMA have taken this additional responsibility. But the Government or the Pollution Control Board has not given IMAGE any support or co-operation in performing this herculean task by deputing either additional employees or providing additional vehicles (in spite of repeated requests) to collect at least the Covid BMW from across the State.

While encountering the various problems during this pandemic period IMAGE has given several requests to the Government as well as to the Pollution Control Board for enhancing our sanctioned capacity, for permission to operate our additional standby incinerator, for making use of Hazardous Waste incinerators at existing TSDFs or captive industrial incinerators in the State as sanctioned by the CPCB etc. But we could not get any support or help or even any reply to our various

letters. It really is shocking to receive a show cause notice from your end rather than appreciating our tremendous job. During the most critical times of pandemic, we were working hand in hand with Kerala Pollution Control Board, Ministry of Home Affairs, Government of Kerala, Ministry of Health Department and all other statutory bodies of Kerala State. It is agonizing and surprising to see that the State Pollution Control Board is finding fault with the IMAGE for its good work and good intentions, faced with a fire accident happened as an act of God beyond the expectation or control of IMAGE, despite the fact that we have taken all reasonable precautions and necessary action so as to avert any such fire accident of any other untoward incident. The break out of fire was a force majeure event and we are innocent and we cannot be held responsible for the uncontrolled emissions which escaped into the surrounding environment.

Hence it is respectfully submitted that there is neither any legal nor moral nor logical justification for the State Pollution Control Board to issue the instant show cause notice to the IMAGE.

It is therefore humbly requested that this explanation may kindly be accepted, the show cause notice be withdrawn as unjustified and all further proceedings in this regard may kindly be dropped,

Yours Sincerely

23.02.2022
Palakkad



Dr. Sharafudheen. K.P
Hon. Secretary
IMAGE, IMA KSB