

BEFORE THE NATIONAL GREEN TRIBUNAL PRINCIPAL BENCH

NEW DELHI

I.A.No. OF 2022

IN

O.A.No. 404 OF 2021

IN THE MATTER OF:

KOSHY SAMUEL

...

Petitioner

Versus

THE STATE OF KERALA

...

Respondents

WITH

AFFIDAVIT FILED BY THE RESPONDENT

STATE OF KERALA

PAPER BOOK

(FOR KINDLY SEE INSIDE)

ADVOCATE FOR THE RESPONDENT / STATE OF KERALA

Mr. NISHE RAJEN SHONKER

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BEFORE THE NATIONAL GREEN TRIBUNAL
PRINCIPAL BENCH

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IA No. OF 2022
IN
ORIGINAL APPLICATION No. 404 OF 2021

IN THE MATTER OF:

KOSHY SAMUEL PETITIONER
VERSUS
STATE OF KERALA RESPONDENTS

**AFFIDAVIT FILED BY THE RESPONDENT STATE OF
KERALA**

I, Sreenivas C.D, S/o. P. K. Damodaran, Aged 51 years, Joint Secretary & Law officer, Government of Kerala, Office of the Resident Commissioner, Travancore Palace, Kasturba Gandhi Marg, New Delhi, do hereby solemnly affirm and state as under:

1. That I am Joint Secretary & Law Officer to the Government of Kerala and I am as such well conversant with the facts of the case as derived from the records of the case as available in my office and therefore I am competent to swear this affidavit.
2. The above matter pertains to the illegal encroachment and waste dumping in Konuthupuzha River, Kerala which is



having a length of Approximate 17 ½ K.M flowing through Kanayanoor Taluk, Kanakkunnam Village, Konuthupuzha, Thripunithura Municipality, Ambaloor, Udhayaperoor, Mulanthuruthi, Udayamperur and Chottanikkara grama panchayath. That by order dated 24.01.2022 this Hon'ble Tribunal was pleased to direct the CPCB, State PCB, Regional Office (MoEF&CC) Bengaluru, Superintendent Engineer, Irrigation Department, Tripunithura, Municipal Commissioner, Tripunithura and District Magistrate Tripunithura to ascertain the factual position. The State Pollution Control Board was appointed as the nodal agency for coordination and compliance. It was also directed that the joint Committee may meet within one month and look into the grievance and to furnish an action taken report within three months. A copy of the Order dated 24.01.2022 passed by this Hon'ble Tribunal is produced and marked as **ANNEXURE A/1 (Page no.6 to 7).**

3. However it respectfully submitted that an identical Application OA 237/2017 was already filed by Manakkunnam Village Padasekhara Samithy highlighting the identical issue before the Hon'ble Green Tribunal Southern Zone Bench and it is still pending. By an interim order dated 26.05.2020 in OA no. 237/2017 of the National



Green Tribunal Chennai Bench was pleased to pass the following;

“So, under these circumstances, we feel it appropriate to appoint a joint committee comprising of (1) District Collector, Ernakulam (2) State Pollution Control Board (3) Public Works Department (Irrigation, Bridge and Roads) (4) Secretary, District Panchayat, Ernakulam (5) Commissioners of the respective Municipalities and Executive Officers of the respective Grama Panchayat, Secretary of the Municipalities and Grama Panchayats through which the river passes and is being polluted to look into the matter and come with a proper action plan with specific time line to abate the pollution in the Konothupuzha river. If this will have to be extended to some other river stretch also, then they will have to connect those things as well for the purpose of preparing a holistic action plan. Chief Secretary of the State Government as well as the Principal Secretary of Urban Development Department and P.W.D. as well as Social Welfare Department and Environment Secretary and Water Resources are directed to coordinate with the respective authorities to prepare the action plan and submit the same before this Tribunal within a period of three months. The Chief Secretary of Kerala State Government



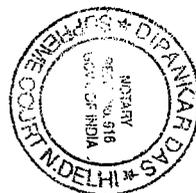
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shall over see the same and if necessary guidelines will have to be framed to implement the direction of this Tribunal, the same be provided by the Chief Secretary of the State Government of Kerala. District Collector, Ernakulam will be nodal agency for this purpose, including logistic support.”

A true copy of the order dated 26.05.2020 of the Hon'ble National Green Tribunal, Southern Bench is produced and marked as ANNEXURE A/2 (Page no. 8 to 11). The above order has already been complied with and a committee in terms of the direction of this Hon'ble Tribunal had been constituted.

4. Pursuant to the Annexure A/2 order the Government of Kerala issued G.O (Rt) No. 817/2020/LSGD dated 03.05.2020 a joint committee has been constituted comprising;

- 1) District Collector, Ernakulam- Chairman
- 2) Member Secretary, State Pollution Control Board
- 3) Superintending Engineer, Public Works Department (Roads & Bridges)
- 4) Superintending Engineer, Irrigation Department
- 5) Secretary, District Panchayath, Ernakulam
- 6) Secretary, Tripunithura Municipality



- 7) Secretary, Amballur Grama Panchayath
- 8) Secretary, Mulanthuruthy Grama Panchayath
- 9) Secretary, Chottanikara Grama Panchayath
- 10) Secretary, Udayamperur Grama Panchayath .

- 5. Therefore for the very same/identical issue there are two orders of Principal Bench and Southern Bench directing the constitution of two different committees for the same purpose. The direction of the National Green Tribunal, Southern Bench order Annexure A/2 was executed and a committee has already been constituted in O.A No. 237/2017 and it is still functioning.
- 6. The above facts are brought to the notice of kind attention of this Hon'ble Tribunal.
- 7. That all facts stated above are true and correct.

Sreenivas C.D.
 DEPONENT

SREENIVAS C.D
 Joint Secretary & Law Officer
 Govt. of Kerala (Pen 152274)
 Law Wing, O/o the Resident Commissioner,
 Travancore Palace, K.G. Marg,
 New Delhi-110 001

VERIFICATION:

I, the above named respondent do hereby verify that the facts stated in the above counter affidavit at paras 1 to 6 are true and correct to the best of my knowledge and belief.

Verified at on this 9th day of March, 2022 at New Delhi.

ATTESTED

DIPANKAR DAS
 NOTARY PUBLIC
 R.K. GARD BLOCK
 SUPREME COURT



Sreenivas C.D.
 who has signed this affidavit in my presence

Sreenivas C.D.
 DEPONENT

SREENIVAS C.D
 Joint Secretary & Law Officer
 Govt. of Kerala (Pen 152274)
 Law Wing, O/o the Resident Commissioner,
 Travancore Palace, K.G. Marg,
 New Delhi-110 001

Item No.15

ANNEXURE-A/1
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(Court No. 2)

**BEFORE THE NATIONAL GREEN TRIBUNAL
PRINCIPAL BENCH**

(By Video Conferencing)

Original Application No. 404/2021

Koshy Samuel

Applicant

Versus

State of Kerala

Respondent

Date of hearing: 24.01.2022

**CORAM: HON'BLE MR. JUSTICE BRIJESH SETHI, JUDICIAL MEMBER
HON'BLE PROF. A. SENTHIL VEL, EXPERT MEMBER**

Application is registered based on a complaint received by E-mail

ORDER

1. Grievance in this application is regarding Konuthupuzha River which is in Tripunithura District and requires immediate attention to resolve the issues of flooding of the adjacent area by the river due to chocking and also to solve the issue of pollution.

2. In view of the above serious nature of allegations, we direct the CPCB, State PCB, Regional Office (MoEF &CC) Bengaluru, Superintendent Engineer, Irrigation Department, Tripunithura, Municipal Commissioner, Tripunithura and District Magistrate Tripunithura to ascertain the factual position. The State PCB will be the nodal agency for coordination and compliance. The joint Committee may meet within one month and look into the grievance. Factual and action taken report may be furnished within three months by e-mail at judicial-

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ngt@gov.in preferably in the form of searchable PDF/ OCR Support PDF
and not in the form of Image PDF.

List for further consideration on 29.04.2022.

A copy of this order along with the copy of the complaint be
forwarded to the CPCB, State PCB, Regional Office (MoEF &CC)
Bengaluru, Superintendent Engineer, Irrigation Department,
Tripunithura, Municipal Commissioner, Tripunithura and District
Magistrate Tripunithura by email for compliance.

BrijeshSethi, JM

Prof. A. SenthilVel, EM

January 24, 2022
Original Application No. 404/2021
AP

D
A True copy

Item No.4:

ANNEXURE - A/2
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**BEFORE THE NATIONAL GREEN TRIBUNAL
SOUTHERN ZONE, CHENNAI**

Original Application No. 237/2017 (SZ)

IN THE MATTER OF

Manakunnam Village,

Padashekara Samrakshana Samithy

...Applicant(s)

With

Thiripunithura Municipality,

Kerala and others.

...Respondent(s)

Date of hearing: 26.05.2020.

CORM:

HON'BLE MR. JUSTICE K. RAMAKRISHNAN, JUDICIAL MEMBER

HON'BLE MR. SAIBAL DASGUPTA, EXPERT MEMBER

For Applicant(s) : Mr. Stanly Hebzon Singh

For Respondent(s): Mr. Hariharan represented M/s. S. Sree Kumar Associates represented by Jawahar Basha here for R. 2, 3, 4, and 6.

Sri. M.K. Kumaresan, G. Prabhu & T. Johnson Alexander represented R 7, 14 & 16,

Srimathi Rema Smrithi V.K. and Niveditha S. Menon represented R11,

C.G. Bindhu represented Respondent No.5

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ORDER

1. As per order dated 24.01.2020 after considering the pleadings in this case, we have passed the following order:

It is seen from the statements filed by some of the respondents that it is admitted that construction of the bridges at least in some areas are not as per the standard for maintaining the flow of river. It is also seen from the statements submitted by the local bodies that though they admit their responsibility to maintain the waterbody and maintain free flow of water in the river and make it pollution free, they are expressing their inability to maintain the same due to want of funds and want of coordinating of all stakeholders. It may be mentioned here that as per the direction of the Apex Court in several decisions and also as per the provisions of the Panchayat Raj Act and Municipalities Act, maintenance of water bodies are with local bodies viz., Grama Panchyat, Municipality and Corporation and it is for them to make necessary steps to protect the same. There is a responsibility on the local bodies to prevent discharge of untreated effluents into the river and pollute the water, affect flow of water by dumping garbage either solid waste or construction waste or other waste. If the local bodies have implemented the provisions of Solid Waste Management Rules, 2016, Bio Medical Waste (Management) Rules, 2016, E-waste Management Rules, 2016 and Construction and Demolition Management Rules, 2016 in its true spirit, then most of the problems that are alleged can be curtailed or remedied. But most of the local bodies are shirking their responsibility in implementing the Rules, as expected from them. They are expressing their inability to implement the same either on the ground of non availability of infrastructure or want of staff or necessary funds for implementing the same. This being a welfare measure to protect environment, they should not shirk their responsibility. This has been repeatedly expressed by the Apex Court that paucity of funds or infrastructure or man power is not a ground in not discharging their responsibility, as expected by the statute. It is for the State Government as well as local bodies to find out their own method by which these things can be solved by preparing proper action plan to meet the situation. They forget the fact that protection of environment is the primary responsibility of the State and its machineries under Article 48A of the Constitution of India. Further, importance of river is well known. Rivers carry water and nutrients. They play a very important part in the water cycle, acting as drainage channels for surface water. Rivers drain nearly 75% of earth's land surface. They provide excellent habitat and food for many of the earth's organisms. So it is the duty of the State machinery to protect the same, as part of right to life and it is the responsibility of the State as enshrined under

Article 21 of the Constitution of India. It is true that there is a duty cast on the people also to protect environment as contemplated under Article 51A(g), as fundamental duty, under the Constitution of India. But if authority wants to penalise the general public for not following the Rules, the authorities must discharge their responsibility in the manner in which they have to function under the Rules.

It is in a way admitted by all respondents that there is an imminent necessity to rejuvenate Konothupuzha and make it pollution free with free flow of water and a joint effort will have to be taken by all stakeholders which the localbodies alone cannot undertake and the State Machineries will have to be involved for proper preparation of action plan and effective coordination of various departments, whose expertise is required for generating common fund and expertise to effectively execute the same.

So, under these circumstances, we feel it appropriate to appoint a joint committee comprising of (1) District Collector, Ernakulam (2) State Pollution Control Board (3) Public Works Department (Irrigation, Bridge and Roads) (4) Secretary, District Panchayat, Ernakulam (5) Commissioners of the respective Municipalities and Executive Officers of the respective Grama Panchayat, Secretary of the Municipalities and Grama Panchayats through which the river passes and is being polluted to look into the matter and come with a proper action plan with specific time line to abate the pollution in the Konothupuzha river. If this will have to be extended to some other river stretch also, then they will have to connect those things as well for the purpose of preparing a holistic action plan. Chief Secretary of the State Government as well as the Principal Secretary of Urban Development Department and P.W.D. as well as Social Welfare Department and Environment Secretary and Water Resources are directed to coordinate with the respective authorities to prepare the action plan and submit the same before this Tribunal within a period of three months. The Chief Secretary of Kerala State Government shall over see the same and if necessary guidelines will have to be framed to implement the direction of this Tribunal, the same be provided by the Chief Secretary of the State Government of Kerala. District Collector, Ernakulam will be nodal agency for this purpose, including logistic support.

The Registry is directed to communicate this order to the concerned authorities immediately by e-mail so as to enable them to comply with the direction and submit the report to this Tribunal within the time mentioned through e-mail @ ngtszfiling@gmail.com

2. The case was posted to 13.05.2020 for consideration of report. On

13.05.2020 it was adjourned by notification to today.
Standing counsel for Kerala State Pollution Control Board has filed a memo dated 04.05.2020 through e-mail requesting two months time to file the report.

3. When the matter came up for hearing through Video Conference. Sri. Stanley Hebzon Singh entered appearance for the applicant. Sri. Hariharan represented M/s. S. Sree Kumar Associates who was represented by S.A. Jawahar Basha here for Respondent No. 2, 3,4, and 6, Sri. M.K. Kumaresan, G. Prabhu and T. Johnson Alexander represented Respondents No. 7, 14 and 16, Srimathi Rema Smrithi V.K. and Niveditha Menon represented R11, Srimathi C.G. Bindhu represented Respondent No.5. All of the Respondents wanted time to submit a report as inspections could not be completed due to present pandemic situation in the State due to impact of Corona Virus and lock down declared.
4. Considering the circumstances, we also feel it appropriate to grant two more months time to the committee to file the report.
5. The committee is directed to file the report on or before 10.08.2020 through e-mail or e-filing to this Tribunal at ngtszfiling@gmail.com.
6. The Registry is directed to communicate this order to the members of the committee as well as Chairman, Kerala State Level Monitoring Committee through e-mail immediately, so as to enable them to comply with the direction of this Tribunal.
7. For consideration of report post on 10.08.2020.

.....J.M.
(Justice K. Ramakrishnan)

O.A. No.72/2017(SZ)26th May 2020.
Sr.

.....E.M.
(Shri. SaibalDasgupta)

u/jne copy