

**BEFORE THE NATIONAL GREEN TRIBUNAL  
PRINCIPAL BENCH, NEW DELHI  
(Through Video Conferencing)**

Original Application No. 581/2018  
(Earlier O. A. No. 302/2013 (SZ) (THC))

The Edayar Resident's Association, Edayar

Applicant(s)

Versus

The Government of India & Ors.

Respondent(s)

Date of hearing: 25.01.2019

**CORAM:** HON'BLE MR. JUSTICE ADARSH KUMAR GOEL, CHAIRPERSON  
HON'BLE MR. JUSTICE S.P. WANGDI, JUDICIAL MEMBER  
HON'BLE MR. JUSTICE K. RAMAKRISHNAN, JUDICIAL MEMBER  
HON'BLE DR. NAGIN NANDA, EXPERT MEMBER

For Applicant(s):

For Respondent (s):

Mr. Gokul Krishnan, Mr. EK. Kumarsan and Mr.  
G. Prabhu, Advocates  
Ms. Rema Smirithi V.K., Advocate

**ORDER**

1. The issue for consideration in this application which was registered on transfer of a Writ Petition by the Kerala High Court is abatement of pollution of *Karamana* River in Thiruvananthapuram District, by preventing dumping of waste of the city into the river.
2. It is undisputed that the river stretch in question is one of the 351 river stretches identified by the Central Pollution Control Board (CPCB) on declared parameters, which issue is the subject matter of consideration before this Tribunal in Original Application No. 673 of 2018, in "News Item Published in *"the Hindu"* authored by Shri Jacob Koshy, titled *"More river stretches are now critically polluted: CPCB"*." The Tribunal has passed order dated 20.09.2018 in the said matter requiring preparation of action plans by River Rejuvenation Committee (RCC) as per suggested composition and further action as directed in the said order.

3. The case in the application is that the Karamana River takes its zig-zag path to reach the Arabian Sea. The river while it reaches Thiruvallom, just after the Thiruvallom Bridge, diverts into two tributaries. One tributary flows towards the south, encircles an island called Edayar and reaches Panathura and falls into Arabian Sea. Another tributary flows towards north and reaches Kovalam. Parvathy Puthanar is the National Water way connecting Karamana River and Veli lake. The Killi river falls into Karamana River at Pallothu Kadavu and another outlet from Vellayani lake reaches the Karamana river from the east. The entire drainage waste of Thiruvananthapuram city reaches sewage plant and even without purifying the same, the waste is deposited into Karamana river through Parvathy Puthanar. Three waste water channels are directed toward Karamana river. The Muttathara waste water channel, the Kareethorde waste water channel and the Pattanikkuzhi waste water channel all fall into the Karamana River. The waste materials of plastic bottles and other waste materials from the city are dumped into the Karamana River to make it more polluted. Even coconut leaves in bundles are immersed into the river which causes much health hazards to the populace of Edayar and the people residing in the nearby places. As a last blow to break the camel's back, the waste water including the human excreta are flowed into the river through jets provided to the houses illegally constructed by the trespassers of the rivers banks.
4. After the matter was transferred to the Tribunal, first order was passed by Tribunal on 02.05.2014. The matter has been thereafter considered in the last more than four years on several dates. Brief reference can be made to some of the proceedings.
5. On 02.08.2016, the Chief Secretary of Kerala was directed to hold a meeting of the concerned Authorities.



6. On 23.09.2016, it was noted that there was pollution in the river and also construction in the catchment areas. Direction was issued to demarcate *poromboke* (Government) lands.

7. Vide order dated 25.10.2016, it was noticed that there was inadequacy of sewerage lines and STPs.

8. On 31.03.2017, the KSPCB was directed to demarcate places where domestic sewage/industrial effluents are being discharged without treatment.

9. On 21.08.2017, the Municipal Corporation of Thiruvananthapuram made a statement that a Detailed Project Report (DPR) has been prepared by the Irrigation Department. However, the said DPR did not mention how the problem of untreated effluents will be addressed. The river was completely polluted. On 21.09.2017, it was noted that proper action had not been taken by the State Authorities.

10. Unsatisfactory response of the State Authorities to the challenge posed by the pollution was noted and the Chief Secretary was directed to hold a meeting of all stake holders.

11. The above proceedings show that the State of Kerala has been consistently failing to perform its duties of controlling pollution of the river.

12. Today, the stand taken by the State of Kerala and KSPCB is that draft action plan has been prepared for 21 polluted river stretches in Kerala by the RCC and the same have been submitted to the CPCB, in view of the order passed by this Tribunal on 20.09.2018 in Original Application No. 673/2018 (*supra*).

13. On being asked to explain the features of the action plans, particularly with regard to budget allocation, only provision which

has been pointed out is that the cost was assessed to be Rs. 513 crores but it is not provided how the cost will be met.

14. We, thus, find that mere making of paper plan can hardly be taken to be sufficient action by State of Kerala in discharge of its constitutional obligation under Article 21 of the Constitution. It is the responsibility of the State to provide clean environment which includes checking discharge of untreated effluents in water bodies. It is for the State to prepare a budget by augmenting resources from the suitable sources, including by collecting damages from the polluters on 'Polluter Pays' principle. During the pendency of the matter in the last more than five years, it is not clear whether the State of Kerala has been collecting any compensation from the polluters and if not, inference of collusion of the concerned Officers with the polluters, in violation of rights of the citizens of Kerala, is not ruled out.

15. Let further needful action be taken at the earliest and supplementary provisions made in the action plan and submitted to CPCB. There is no prohibition for the State to take remedial action even before action plan is approved by the CPCB. In fact, prompt action is expected, including closing polluting activities, recovering cost of damage caused, prosecution etc. Failure to do so may render the State itself accountable. The CPCB will be at liberty to take further action in the matter including assessing the amount of damages to be recovered from the State of Kerala for its failure and the amount of performance guarantee to be taken so that the State of Kerala does not continue to violate the constitutional obligations.

16. Further order can be passed on the issue in question in Original Application No. 673/2018, where the subject matter of the present application is also covered.

17. Vide order dated 16.01.2019, in Original Application No. 606 of 2018, in the matter of Compliance of Solid Waste Management Rules, 2016,



while considering to issue of solid waste management, which is also one of the issues in the present case, the Tribunal has directed constitution of a Committee of the concerned Officers to be overseen by the former Judge of the Kerala High Court – Justice A.V. Ramkrishnan Pillai. We direct that the said Committee may also oversee the issue of rejuvenation of the polluted rivers in Kerala. Any logistics required for the purpose will be provided by the State of Kerala and KSPCB. The Chief Secretary has been required to remain present before this Tribunal on 25.04.2019, after being ready on the issue of rejuvenation polluted rivers also. We, thus, leave the issue to be gone into further in the said proceedings as well as in Original Application no. 673 of 2018.

18. The issue of amount of compensation to be recovered from the State of Kerala and the amount for which performance guarantee is required to be furnished will also be determined in the said proceedings.

19. It may also be noted that the State of Kerala appears to be focusing only on hotspots of polluted stretch, ignoring settled principle of management of river i.e. “beginning of pipe solution” for any success for tackling pollution of the river. Mere treatment of hotspot, without treatment to the entire stretch will not achieve the desired results.

20. The present application is disposed of, subject to the issue being dealt with in the proceedings mentioned above.

Adarsh Kumar Goel, CP

S.P. Wangdi, JM

K. Ramakrishnan, JM

Dr. Nagin Nanda, EM

January 25, 2019  
Original Application No. 581/2018  
(Earlier O. A. No. 302/2013 (SZ) (THC)  
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