IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE THE CHIEF JUSTICE MR.ASHOK BHUSHAN
&
THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

WEDNESDAY, THE 25TH DAY OF NOVEMBER 2015/4TH AGRAHAYANA, 1937

WP(C).No. 1625 of 2013 (S)

PETITIONER :

B.C. KUMARAN
S/O. LATE A.V.CHINDAN,
SRUTHILAYAM, BOVIKANAM
MULIYAR P.O., KASARGOD DIST.

BY ADV. SRI.KALEESWARAM RAJ

RESPONDENT(S) :
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1. STATE OF KERALA
REPRESENTED BY SECRETARY TO GOVERNMENT
DEPARTMENT OF HEALTH & FAMILY WELFARE, SECRETARIAT
THIRUVANANTHAPURAM-695001.

2. CHIEF SECRETARY
GOVERNMENT OF KERALA, SECRETARIAT
THIRUVANANTHAPURAM-695001.

3. DISTRICT COLLECTOR
KASARGOD-671121.

4. UNION OF INDIA
REPRESENTED BY THE MINISTRY OF HEALTH & FAMILY WELFARE
NEW DELH-110011.

5. PLANTATION CORPORATION OF INDIA
REPRESENTED BY THE MANAGING DIRECTOR
PLANTATION CORPORATION OF KERALA LTD., REGD. OFFICE
MUTTAMBALAM P.O., KOTTAYAM-686004.

R1 TO R3 BY SPL. GOVT. PLEADER SMT. GIRIJA GOPAL
R4 BY ADV. SRI. N. NAGARESH, ASGI

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 18-11-2015, ALONG WITH WP(C) NO. 28222/2010 & CONNECTED CASES, THE COURT ON 25/11/2015 DELIVERED THE FOLLOWING:

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...2/-

WP(C).No. 1625 of 2013 (S)

APPENDIX

PETITIONERS' EXHIBITS :

EXHIBIT P1- TRUE COPY OF THE RESOLUTION DATED 11-10-2006 PASSED BY THE DISTRICT PANCHAYAT, KASARGOD.

EXHIBIT P2- TRUE COPY OF G.O.(MS) NO. 1/07 DATED 2-2-2007.

EXHIBIT P3- TRUE COPY OF G.O.(MS) NO. 250/2011 DATED 8-7-2011.

EXHIBIT P4- TRUE COPY OF G.O.(RT)NO. 3619/2011 DATED 15-10-2011.

EXHIBIT P5- TRUE COPY OF THE LETTER DATED 31-10-2011 ISSUED BY THE 3RD RESPONDENT.

EXHIBIT P6- TRUE COPY OF THE REPRESENTATION DATED 5-3-2012 SUBMITTED BY SRI. SHAREED KODAVANCHI TO THE HON'BLE CHIEF MINISTER OF KERALA.

EXHIBIT P7- NIL

EXHIBIT P8- COPY OF G.O.(MS) NO. 7/2012/H & FWD DATED 12.1.2012.

EXHIBIT P9- COPY OF THE LIST OF PERSONS OF 185 WHO ARE IDENTIFIED, BUT NOT PAID COMPENSATION.

EXHIBIT P10- COPY OF THE STATEMENT/TABLE SHOWING THE DEFICIENCIES IN THE IMPLEMENTATION OF VARIOUS DECISION.

EXHIBIT P11- COPY OF G.O.(MS) NO. 298/2014 DATED 10.10.2014.

RESPONDENTS' EXHIBITS :

EXT. R1(a) COPY OF G.O.(MS) NO. 124/13/H & FWD DATED 4.4.2013. (PRODUCED ALONG WITH ADDITIONAL COUNTER AFFIDAVIT ON BEHALF OF RESPONDENTS 1 TO 3 DATED 8/4/2013)

EXT.R1(a) COPY OF THE MINUTES OF THE MEETING HELD ON 28.1.2014. (PRODUCED ALONG WITH AFFIDAVIT OF RESPONDENTS 1 TO 3 DATED 11/6/2014)

EXT. R1(b) TRUE ENGLISH TRANSLATION OF EXHIBIT R1(a).

EXT. R3(a) COPY OF THE G.O.(MS) NO. 113/2010/H & FWD DATED 26.3.2013 CANCELLING EXHIBIT P8 GOVERNMENT ORDER.

EXT. R3(b) COPY OF THE G.O. (MS) 147/12/H & FWD DATED 26.5.2012.

EXT. R3(b)(i) TRUE ENGLISH TRANSLATION OF EXHIBIT R3(b).

EXT. R3(c) COPY OF THE G.O.(RT) 1191/13/H & FWD DATED 2.4.2013 ALONG WITH ENGLISH TRANSLATION.

//TRUE COPY//

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P.A. TO JUDGE

C.R.

ASHOK BHUSHAN, C.J.
&
K. VINOD CHANDRAN, J.

W.P.(C)Nos.1625 of 2013-S, 28222 of 2010-S,
37509 of 2010-S, 10940 of 2011-N,
18571 of 2011-S, 32650 of 2011-S,
13040 of 2012-D, 28365 of 2012-U,
25197 of 2015-S & 32119 of 2015-S.

Dated this the 25th day of November, 2015

J U D G M E N T

K.Vinod Chandran, J.

The above batch of writ petitions project before this Court the ravages of a pesticide ironically named “End-o-sulfan” used in the plantations, the specific impact being in the northern districts, especially Kasaragod. The name though derived from its composition; the pesticide has been revealed to be an 'endocrine disruptor', causing reproductive and developmental damage in both animals and humans. The public interest litigations [for brevity 'PIL'] seek a public law

remedy, to arouse the Government to the gross ill-effects and to motivate it to provide for relief and rehabilitation to the victims, the majority of whom are from the marginalised sections of the society. The Government had been directed by the National Human Rights Commission [for brevity 'NHRC'] to provide for such relief/rehabilitation, which is also under challenge herein. As with any relief/rehabilitation scheme, it bristles with immense possibilities, for the wayward and the unscrupulous and the batch of cases also project such purported instances. Abuse of the provisions of the scheme, by which those actually inflicted were denied the benefit under the scheme and those afflicted with other diseases, the cause of which could not be traced to the Endosulfan menace, having illegally cornered such benefits, is one of the serious concerns urged.

2. It is to be noticed that the issue was first raised in the year 2010 and as in any PIL, of this magnitude; has led to mushrooming litigations on the same aspect or on different ramifications, all having been occasioned by the ill-effects of the alleged use of a harmful pesticide. Over the years many orders have been passed by different Division Benches of this Court. The initiation and implementation of the relief/rehabilitation scheme have been put on record by the State, with numerous affidavits and the claims of the State refuted on different counts by the petitioner in W.P.(C). No.1625 of 2013, which is taken as the leading case, since the other writ petitions of earlier years though projecting the same grievances, have not subsequently been buttressed with the numerous developments in and of, the implementation of the scheme for relief/rehabilitation. Considerable

progress has also been made in the last couple of years, which has been noticed and countered in W.P.(C) No.1625/2013.

3. The writ petitions also could be categorised in the following manner:

(i) W.P.(C).No.28222 of 2010 sought for the constitution of a Tribunal for identifying Endosulfan victims and for disbursal of adequate compensation as also ban the use of the offending pesticide. There is, as of now, a ban in place on the use of Endosulfan and the constitution of the Tribunal is no more relevant, since the Government had appointed a Judicial Commission and has rejected the proposal of the said Commission to constitute a Tribunal; but has constituted Multi-Level Committees for identification of victims and implementation of the relief/rehabilitation packages. W.P.(C).No.37509 of

2010 is by the Chairman of a Charitable Trust, for a direction to the State to provide adequate educational facilities, including food and clothing, to the children affected by the usage of pesticide and rehabilitation of such victims in Kasaragod District. W.P.(C).No.1625 of 2013 seeks the proper implementation of the relief/rehabilitation scheme, by the District Level Committee, constituted by the Government by order dated 15.10.2011 (produced as Exhibit P4). The petitioner asserts that the Committee has been stultified after its constitution and seeks direction for continued and effective functioning of the District Level Committee so as to provide adequate rehabilitation and relief to the Endosulfan victims in the Kasaragod District. W.P. (C) Nos.25197 of 2015 and 32119 of 2015 are also on the same lines; but project a different aspect of

the issue insofar as the free medical care guaranteed to the victims not being effected for reason of proper identity cards not being issued and the debt trap in which the families of the victims have been placed on account of the expenditure, for treatment of the victims. These writ petitions, in fact, project the difficulties of the victims and seek implementation of appropriate relief schemes by the State.

(ii) W.P.(C).No.10940 of 2011 filed by an Association of Pesticide manufacturers, challenge Exhibit P1 report of the NHRC. W.P.(C).Nos.18571 of 2011 and 13040 of 2012 are by an association of employees of the Plantation Corporation and a Union of plantation labourers, resisting the move of the Government to cause the Corporation into paying amounts for the relief scheme, on the ground that it would only result in the otherwise financially

tottering Corporation being closed down. W.P.(C) No.28365 of 2012 seeks investigation into the enlistment of persons for rehabilitation/relief who were not in fact afflicted by the pesticide. The said writ petitions together contend that many who have obtained the benefits of the rehabilitation/relief scheme are not, in fact, Endosulfan victims.

(iii) W.P.(C).No.32650 of 2011 stands apart, insofar as the *suo motu* proceeding initiated on the complaint of one Benny and 3 others, wherein a similar situation in another district, Kozhikode, is projected, again alleging various afflictions due to the use of the pesticide.

4. We have elaborately heard the learned Counsel appearing for all parties. The thrust of the writ petitions of 2010, was with respect to the use of Endosulfan and it was urged that the State

Government or the Union Government should be directed to ban the same. A quietus to the issue was brought in by the Interim Order of the Hon'ble Supreme court in W.P.(C) No. 213 of 2011 dated 13.5.2011, wherein a Joint Committee headed by the Director General of Indian Council of Medical Research (ICMR) and the Commissioner (Agriculture) was appointed to conduct a scientific study, on the question: whether the use of Endosulfan would cause any serious health hazard to human beings and cause environmental pollution. Pending submission of the report by the Committee, who was also empowered to co-opt experts in the field, the Hon'ble Supreme Court, under Article 21 of the Constitution of India, particularly keeping in mind the precautionary principle, passed an ad-interim order banning the production, use and sale of Endosulfan all over India. The said order was taken note of

by the Division Bench of this Court and the writ petitions were adjourned *sine die* with liberty to move it as and when required.

5. The next stage of litigations, of the year 2011, was initiated by the report of the NHRC, which is produced as Ext.P1 in W.P.(C) No.10940 of 2011, and challenged therein. W.P.(C) No.18571 of 2011 was filed by the Association of Workers of the Plantation Corporation seeking interdiction of the direction by the Government; to contribute huge amounts coming to Rs.53 crores for the rehabilitation scheme. The writ petition also sought to substantiate that it was not Endosulfan that occasioned the spate of diseases, in the particular district of Kasaragode. The Association relied on various reports and also the use in other regions, from where no such incidents were reported, to contend further that the Plantation

Corporation cannot be found liable for the disabilities caused and cannot be mulcted with the responsibility of rehabilitating the alleged victims. In 2012, again, there were writ petitions filed, both against and for the rehabilitation scheme.

6. The action taken by the Government not being satisfactory and whatever decisions taken by the Government, having not been implemented, gave rise to W.P.(C) No. 1625 of 2013; the documents in which are referred to herein. The State Government came forward with an 'Endosulfan Comprehensive Package', the implementation of which was entrusted to an 'Endosulfan Victims Relief & Remediation Cell' as constituted by Ext.P1. The constitution of the same, as revealed from Ext.P1, shows that, the District Panchayat President was the Chairman, the District Collector, the Convener, and the

Chairman of the Education-Health Standing Committee of the Panchayat, the Vice-Chairman. A Co-ordinator was appointed and the President of all the 11 Grama Panchayats, in which the ravages of Endosulfan were detected, was included as the Members. There were also other members, both official and from Non Governmental Organisations (NGOs). The project proposal forwarded by the President, District Panchayath, Kasaragod, was approved by the Government and administrative sanction was accorded for the same at a total cost of Rs.50 lakhs by Ext.P2 Government Order dated 2.2.2007. Since there were complaints regarding the implementation of the project, a District Cell was formed with the Member of Parliament; of the area, heading the same, and including the Members of the Legislative Assembly and other representatives of the peoples body (LSGI's),

officials of the various departments, the representatives of the political parties and so on and so forth, which is indicated at Ext.P4 dated 15.10.2011.

7. The petitioner, a public spirited person, contended that despite the formulation of these Committees, nothing fruitful has happened and the victims of the indiscriminate use of the pesticide, were still wallowing in their misery, without any mitigation offered by the Authorities. The specific contention was that the Committee and the District Cell were confined to paper.

8. The Government filed a detailed affidavit dated 18.2.2013 and on the directions issued by this Court on 7.3.2013, an additional counter affidavit dated 8.4.2013 was also filed. The said affidavits put on record, the various actions taken by the Government, a reference to which is

expedient here. The counter affidavit dated 18.2.2013 addressed the concerns raised in all the above writ petitions. The recommendations of the NHRC dated 31.12.2010 in the *suo motu* case 477/11/6/2010 was specifically referred to. The NHRC recommended payment of Rs. 5 lakhs to the next-of-kin of the deceased, as also those who were fully bed-ridden and unable to move, without aid and for the mentally retarded. Those who suffered other disabilities, were recommended payment of an amount of Rs.3 lakhs. The identification of victims of Endosulfan and the extent of the physical disability were directed to be made through a panel of doctors. A survey was directed and the State Government and the Union Government were directed to provide improved facilities for diagnosis, treatment and therapy at hospitals and health centres; that tend to the victims and to

facilitate such measures in all the Primary Health Centres in the 11 villages. The Government was directed by the NHRC to file a response within eight weeks.

9. It was estimated at that point of time that, to fully implement the recommendations of the NHRC, funds to the tune of Rs.250 crores were required and to effectuate relief and rehabilitation programs a further amount of nearly Rs.235.33 crores would be necessary. The Central Government was also requested to assist the State Government in implementing the recommendations of the NHRC. The NHRC, however, did not favour the State Government's request for Central assistance, especially since, according to the NHRC, the compensation recommended was meager and the cause of the misery visited on the victims, was occasioned by the actions of a fully owned State

Government Undertaking, being the Plantation Corporation.

10. The Government then brought out G.O. (MS) No.7/12/H&FW Department dated 12.1.2012 sanctioning financial assistance in addition to that given by the Kerala Social Security Mission. A lump sum amount of Rs.3 lakhs was to be disbursed in two instalments, as per the recommendations of the NHRC, from the Rs.5 lakh compensation ordered. The balance Rs.2 lakhs was to be considered as a deposit, with the beneficiaries given a monthly assistance of Rs.2,000/- per month for a period of five years; with the amounts in deposit to be disbursed after the expiry of five years. As to the compensation to be paid to the otherwise disabled victims, Rs. 2 lakhs was to be disbursed in two instalments and the balance to be kept in deposit, with a monthly payment of Rs.1,000/- and

disbursal after five years. The Plantation Corporation was also directed to deposit Rs. 53 crores towards satisfaction of the aforesaid compensation.

11. In addition to the above, the District Collector, Kasaragod conducted a socio-economic survey, primarily aimed at ascertaining the economic status, loss of livelihood due to ailments, loan indebtedness, patient's status, loss of education and the social stigma. A health survey was also conducted, which was accompanied by health camps in all the affected Panchayats. The health survey though is said to have given a general outlook of the afflictions in the affected areas, no specific ailments were identified. Hence, specialty medical camps were conducted with experts pooled from various agencies to identify endosulfan victims, to determine the modes of treatment as

also to enroll patients with Smart Cards issued, indicating the specialized care needed for each. Three camps are said to have been conducted in each Panchayat, wherein 15698 patients attended and 3434 patients were identified. Out of the 738 patients, who attended the Phase-II camp, another 256 victims were identified.

12. A three-tier system is said to have been established, wherein at the grass-root level, a patient, who approaches the Primary Health Centre or the CHC would be examined by the Medical Officer of the concerned Centre and the case-sheet would be sent to the Director, National Rural Health Mission [NRHM] with a provisional diagnosis. At level two, a Medical Board was constituted at the District Medical Office with 12 specialist doctors included. The Specialists assessed the severity of the

disease and urgency of the treatment, based on the provisional diagnosis case-sheet. The cases were prioritised on the basis of the severity and urgency for treatment and the same were examined by another Specialist team from the 4 Medical Colleges, who camped in the District for four days. Each case was examined by them to determine the list of patients with specific diseases, occasioned by reason only of the history of Endosulfan exposure. A fourth phase medical camp was also conducted in the very same manner. A re-categorisation workshop, again by a team of the Doctors of the Government Medical Colleges and field survey; using Staff Nurses, also had been conducted for identifying the endosulfan victims. The identification of patients hence was made by an elaborate procedure.

13. As to the relief provided to the victims and their families; in 2006, 133 persons were found to have died, due to the ill-effect of the pesticide as identified by the President, Kasaragode District Panchayat, who was directed by the Government to prepare a list of deceased victims. An amount of Rs.50,000/- was sanctioned to the relatives of such deceased persons from the Chief Minister's Distress Relief Fund [CMDRF]. Again in 2007-2008 a further list was prepared and Rs.50,000/- each was paid to 45 cases from the CMDRF. In 2011, another 134 persons were identified as having succumbed to the ill-effects of the pesticide and an amount of Rupees One lakh each was granted as financial assistance.

14. To strengthen facilities of medical care, Staff Nurses, field staff, Physiotherapists and an X-ray Technician were appointed through the

National Rural Health Mission. Modernisation steps were initiated with respect to Kasaragod General Hospital and District Hospital at Kanjangad. Infrastructure development of 1.17 Crores were carried out in the 6 Health Care Institutions in the affected Panchayats and an amount of Rupees three lakhs was provided to five Institutions for equipping the said Institutions to meet the specific needs of the victim. A physical medicine unit and a rehabilitation unit was established in the General Hospital, Kanjhangad for the endosulfan victims. Various other steps taken to improve the quality of medical treatment and health care offered has been detailed in paragraph 29 of the affidavit.

15. Parallel to this, the Counter Affidavit also speaks about, the various Committees appointed to look into the ill-effects of the pesticide and

also to conduct epidemiological study about the presence of endosulfan in the blood samples of victims and also its presence in water and soil. Schemes were introduced by the Health Department for identification and categorisation of victims and provision of free treatment through Smart Cards under a Scheme titled 'Snehasanthwanam Scheme'. The Scheme provided free transportation, home-based palliative care, mobile medical units, physiotherapy unit, dialysis units etc. The Civil Supplies Department provided free rations to the affected families in the District and the Social Welfare Department looked after the disbursement of monthly pensions, educational scholarships and distribution of special aid and equipments to the physically disabled persons. Special Schools called the “Bud Schools” were established to take in mentally retarded patients; the activities of

which were co-ordinated by the Local Self Government Department and the Education Department.

16. The direction dated 07.03.2013 of a Division Bench of this Court to place on record the frequency and content of meetings of the District Cell constituted as per Ext.P4, was responded with an additional Counter Affidavit dated 08.04.2013. The Endosulfan Victims' Relief and Remediation Cell constituted by Ext.P1 is stated to have conducted regular monthly meetings, ever since its inception. The Cell has five separate sub-committees for Health, Education, Social Welfare, Agriculture and Civil Supplies to look into the subject specific problems and appraise the Cell of the same and suggest measures in alleviation. In addition to the above, Panchayat level and Ward level Committees are also co-ordinated by the Relief and Remediation Cell. The Panchayat level Cells are headed by the

respective Panchayat Presidents and the Medical Officer attached to the respective Primary Health Centre, is the Convener. The de-centralised manner of functioning ensures that every finer detail, requiring attention of the District Cell, is brought to its notice and remedial measures taken.

17. The learned counsel for the petitioner submits that, it was after the above counter affidavits, that the two interim orders were passed on 10.3.2014 and 12.6.2014 regarding the implementation of Ext.P4. A reading of the said interim orders would indicate that on 10.3.2014 this Court directed the District Level Committee to file the details of the work they have done so far, which was to include the number of claims made before them and the amount of compensation paid and also the number of applications which are pending for consideration. In obedience with the said

direction the Government filed affidavit dated 10.6.2013 with more details and specifically pointing out that with respect to the compensation ordered by the NHRC the 1st instalment of Rs.1.5 lakhs was paid to 197 victims who were completely bed ridden and 902 victims who suffered from mental retardation. The first instalment of Rs.1 lakh with respect to otherwise disabled victims were made to 783 physically disabled and 164 cancer patients.

18. The steps for free medical rehabilitation were also listed out, which included cashless, specialty and super-specialty treatment, at 16 empaneled hospitals, two of which were situated in Kasaragod District and many others in the northern districts itself, as also one in Mangalore. The Sree Chithra Institute of Medical Science, Thiruvananthapuram and Regional Cancer Centre, Thiruvananthapuram, both premier institutions, were

also so empaneled. Three Mobile Medical Units were set up for providing free treatment to the victims in 11 Grama Panchayats in Kasaragod District and 34 staff nurses were posted at PHC/CHC to provide home based palliative care. The facilities in the General Hospital at Kasaragod and District Hospital at Kanhangad were equipped with physiotherapy units and 13 Physiotherapists were posted in the PHC/CHC of the respective Grama Panchayats. A vehicle each, specifically for the purpose of transporting patients for treatment to the hospitals and back home, was provided for all the 11 Grama Panchayats. Equipments like wheel chairs, crutches, water bed etc, for the physically challenged, were also provided.

19. The details of the staff posted at the PHC/CHC and the super specialty services offered with the dialysis unit in General Hospital,

Kasaragod and Pediatric Intensive Care Unit in District Hospital Kanhangad were also pointed out. Monthly pension of Rs.2,000/- was being paid to the 463 bed-ridden patients and 1846 persons who were not completely bed-ridden, but still required the aid of carers for carrying on their daily activities. 1630 other victims were also paid the monthly pension of Rs.1,000/-. The facilities for free ration, education scholarships and special schools called “Buds School” in six affected Panchayats were established. In addition to the monthly pension, a financial assistance of Rs.400/- per month was also granted to the carers of the bed-ridden and mentally retarded persons, which was also increased to Rs.700/-.

20. The petitioner, however, filed I.A. No.10184 of 2013 to refute the contentions placed on record by the Government and seeking rejection

of the affidavit dated 10.6.2013. The petitioner by the above interlocutory application, sought to refute the contentions of the Government regarding the implementation of the order produced as Ext.P8 in W.P.(C) No.1625 of 2013 to further contend that the Government has not complied with its obligations agreed upon under Ext.P8. A list of victims was also produced and it was contended that the persons eligible to get compensation would come to a total of 5500.

21. On 29.6.2013, the learned Government Pleader took time to verify the allegations made. The District Collector, in reply, filed an affidavit dated 09.09.2013, wherein the contentions of the petitioner were refuted. It was reiterated that the identification of persons, were done after the survey and medical camps as indicated earlier and it cannot be said that the list produced by the

petitioner would have precedence over the survey conducted by the District Administration and the identification made in multi-tire medical camps, in which the Doctors from the Primary Health Centres and the specialists Doctors from the Government Medical Colleges were participated.

22. The Government also in paragraph 9 specifically pointed out the instances were compensation could not be granted; for want of proper documents to prove legal heirship, dispute among the legal heirs, patients who died after attaining the age of 80 years and so on and so forth. It was also pointed out that there were many claims of compensation, after the death of the person alleging that the death was caused due to the pesticide, for which there was required a further clarification from the Government.

23. It is also submitted in the affidavit, that Ext.P8 was modified as Exts.R3(a) and R3(b), which are said to be the orders in force for payment of compensation, which took into account the concerns expressed by the various NGO's after Ext.P8 order was passed. A Committee of Doctors is said to have been constituted with the Heads of Medicines of the four Government Medical Colleges and an Assistant Nodal Officer to categorise the patients not included in the earlier four categories and for recommendations as to the financial assistance that could be extended to them.

24. The petitioner then filed an interlocutory application contending that certain decisions were taken at a meeting of various agencies, officials, Agriculture Minister, Social Welfare Minister and Health Minister held in the Chamber of the Chief Minister. On 29.5.2014, this Court noticed the

contentions of the learned counsel for the petitioner, that an agitation was carried on before the Secretariat on 28.1.2014 and there was a meeting called in which certain decisions were taken. Hence, the State was directed to place on record the details of the Minutes drawn on 28.1.2014. The minutes of the meeting is produced as Ext.R1(a), which according to this Court has dealt with the matter comprehensively and has addressed the concerns of all parties, with respect to the disbursement of compensation, provision for medical facilities and the need to ensure that benefit is not cornered by persons, who are not in fact entitled to the same.

25. Ext.R1(a) reveals that further identification of victims for compensation was left to be considered on the recommendations of Dr.K.P. Aravindan Committee; produced at Ext.R3(C). The

Government decided to reject the recommendations of the Judicial Commission. A decision was taken for the writing off, of the loans availed for treatment of Endosulfan victims, after getting a report from the District Collector. The medical facilities extended so far were decided to be continued.

26. The serious concerns raised regarding the stockpiling of Endosulfan by the Plantation Corporation was enquired into and soil and water samples were taken from eight different parts of Nenjamaparamba, where the stockpiling was alleged to have been made. The tests detected only Below Detectable Level (BDL) traces of Endosulfan. Hence, more or less, the allegations of stockpiling, which were, at the outset denied by the Plantation Corporation, was found to be not proved. In any event, the sampling was directed to be continued from other areas also and the said

work has been entrusted with the Centre for Water Resources Development and Management (CWRDM).

27. The additional affidavit filed on 21.07.2014 listed out the number of persons to whom the two instalments of compensation were paid. The monthly pension had also been increased by Rs.200/-. In addition to this, 932 children below the age of 18 years, who were found to have different ailments but however, not due to Endosulfan exposure, were also decided to be given free medical treatment under Arogya Kiran Scheme. 249 Cancer patients, whose affliction also could not be traced to the pesticide exposure were decided to be given free medical treatment. A rehabilitation village for Endosulfan victims with facilities for treatment, physical rehabilitation, vocational training, short stay etc; is intended to be constructed in Kasaragod. The Director of

Social Justice was also designated as the State level Nodal Officer for co-ordination of programs for rehabilitation of Endosulfan victims.

28. Having noticed the developments, now we have to deal with the individual writ petitions. The one numbered as W.P.(C) No.28222 of 2010 expresses concern over the prevalent use of Endosulfan, which, as noticed above, has now been banned by orders of the Hon'ble Supreme Court. The concerns expressed in the said writ petition, though from the angle of victims, is similar to the concerns expressed in W.P.(C) Nos.1857 of 2011, 13040 of 2012 and 28365 of 2012 from the side of those refuting the ill-effects of Endosulfan; which is essentially, the cornering of benefits by persons, who are not entitled to the same. We have also been taken through certain lists prepared by the Government, wherein, even persons with Cataract

and Cancer, not related to Endosulfan exposure, were granted relief. It is to be noticed that those are all lists prepared by the District Administration/Committee, at the time when the initial proposal of rehabilitation and relief was under the contemplation of the State and at the nascent stage of implementation.

29. Teething problems are inherent with any scheme, especially when it deals with disastrous consequences of such magnitude. As we have noticed, considerable development in implementation has been made in the last couple of years and the Government machinery has been put to use, effectively and efficiently, in identification of victims, their treatment and disbursement of compensation. It is also to be noticed, even the latest affidavit filed by the Government specifically points out that certain disabled children and other Cancer

patients, whose disablement and illness could not be attributed to Endosulfan exposure, were also given treatment under the Arogya Kiran Scheme. When welfare measures are underway to meet a disaster of like nature, it cannot be said that the welfare State should focus its entire energy on that one single disaster and should ignore all other members of the society, who also form a part of the under-privileged class and are afflicted by serious ailments, which, with their financial resources, they cannot deal with.

30. We are only happy to note that the State has looked into the other afflictions also, totally unrelated with the menace and not left them at the way-side to fend for themselves; only for the reason that they were not victims of pesticide exposure. It is also to be noticed that most of the petitioners in the above mentioned writ

petitions, have thought it fit not to take into account the various developments in implementation of the scheme or taken efforts to produce before this Court a deviation or gross aberration, in implementation of the scheme, where the benefits have been pocketed by unscrupulous persons. The provision for additional facilities sought for in W.P.(C) No.37509 of 2010 has already been provided and if the charitable trust wants to extend its hand, in aid of the victims, none could stand in their way and it is not for this Court to issue any direction on that count.

31. We are satisfied that such substantial progress has been made, in the implementation of the Relief/Rehabilitation Scheme, for the victims suffering from different ailments due to exposure to the pesticide; 'Endosulfan'. Sri. Kaleeswaram Raj, learned counsel appearing for the petitioner

in W.P.(C) No.1625 of 2013, who has kept the issue alive, before this Court, in the last couple of years, fairly submits that there has been substantial relief and rehabilitation granted to the victims of Endosulfan.

32. What remains, even according to the learned Counsel, is to draw a distinction between the social security measure of pension granted to the victims and the monetary compensation as ordered by the NHRC and the implementation of Ex.R1(b) within a clearly demarcated time frame, as also extension of benefit of write-off of loans, already directed by this Court in the interim order dated 29.10.2015.

33. The concerns expressed by the petitioner in W.P.(C) No.1625 of 2013 as to the proper implementation of Ext.R1(a), produced along with affidavit dated 11.06.2014, has to be addressed by

the Government itself and we do not think the Government should be put in a strait-jacket by prescribing a time frame. We should also be conscious of the myriad concerns of the Government as also the financial implications to the State. We also have to notice that the Plantation Corporation has shelled out considerable amounts for the scheme as directed by the Government and the concern expressed by the employees association is no more alive for consideration. We merely express our hope that the Government would go ahead in implementing the decisions taken at Ext.R1(a), as expeditiously as possible, keeping in mind the concerns of those victims, who are and still remain afflicted by the ill-effects of the pesticide exposure. We also find from the various Government Orders that the social security measure offered by the Government and the monetary compensation

ordered by the NHRC are clearly distinct and cannot be mixed up.

34. The next grievance is with respect to the writing off, of loans taken by the Endosulfan victims and their families. It is to be noticed that the Government has placed on record an affidavit, clearly stating that, there are about 1191 persons identified, as entitled to writing off, of loans only to the extent prescribed. The learned counsel for the petitioner contends that the list should be made public. We are not convinced that any useful purpose would be served in making such list public, but for casting a stigma, both on the social and financial aspect, on those persons, who have been put in a debt-trap for reason of the expenditure incurred in the treatment of Endosulfan victims. The publication of such list will not be necessary and we have already

indicated in our interim order dated 29.10.2015 as to the remedy available to any person so entitled for relief under the scheme of writing off, to a particular limit and also only in cases, where the loans have been availed for the purpose of treatment. We need to only notice paragraphs 4 and 5 of the interim order dated 29.10.2015, which would be a part of this judgment, which is extracted hereunder:

> "4. We are of the view that since there is a Committee headed by the Collector, who is monitoring the issue including the relief to the eligible persons, if any claim is submitted by any of the victims claiming that he/she is eligible under the Relief Scheme, the said claim has to be examined and till examination is complete, the Banks shall not take any coercive steps against them.
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> 5. The learned Standing Counsel appearing for the respondent Bank in W.P.(C) No.32119 of 2015 submits that the list of persons, part of Exts.P4 and P5, has been examined by the concerned Bank and found that some of the loans are housing loans and some the cases are untraceable. When a claim is made by a

> victim claiming the benefit of the Relief Scheme, it is for the Committee after due verification from the Bank to take appropriate decision regarding the eligibility of proving relief to satisfy at least a portion of the loan to the extent permissible. We only observe that other persons, apart from 1191 persons, who claim the benefit of Debt Relief Scheme, shall appear before the Committee with relevant details and the Committee may consider the same and also issue directions to the Bank not to take coercive steps till final adjudication regarding their claim is made. The affected persons can approach the office of the Collector; who shall place the matter before the Committee for examination, with due notice to the respective Banks."

35. W.P.(C) No.32119 of 2015 also raises the issue of writing off, which we have addressed herein above. W.P.(C) No.25175 of 2015 is regarding the insufficiency of the identification cards issued and the difficulties faced by many persons in getting free medical treatment. We are not inclined to entertain the allegations since the petitioner has not pointed out one single instance of such difficulty before the District

Administration or the Committee, nor before this Court. The petitioner has made broad allegations, which we are unable to countenance.

36. As a result, W.P.(C) Nos. 28222 of 2010 and 37509 of 2010, seeking ban of the pesticide Endosulfan and proper implementation of a relief/rehabilitation scheme, are closed for reason of both the prayers having been rendered infructuous by the subsequent events. We are also not convinced that we should look into the report of the Judicial Commission, which stands rejected by the Government, to examine whether a Tribunal has to be constituted. We cannot be oblivious to the implementation of the rehabilitation scheme carried on over the years, put on record by the State. A Tribunal, at this stage, would only be an additional burden on the exchequer.

37. W.P.(C) Nos. 18571 of 2011, 13040 of 2012 and 28365 of 2012, raising contentions against the alleged ill-effects of Endosulfan and the liability sought to be incurred on the Plantation Corporation, are dismissed finding that this Court is not equipped to enquire as to whether the pesticide has ill-effects. Further, there is already a Committee appointed by the Hon'ble Supreme Court to go into the said issue. The Stockholm Convention in April 2011 has called for a global ban on the manufacture and use of Endosulfan, which became operative in 2012. The prayer with respect to the liability incurred on the Plantation Corporation is not one which could be urged by the employees, especially since the Plantation Corporation has paid up the money as requested by the Government after a valid decision taken on that count by the Corporation.

38. W.P.(C) No.10940 of 2011 challenges the report of the NHRC on the ground of the Commission having no jurisdiction especially since the matter was *sub judice* before the Hon'ble Supreme Court. The recommendations of the NHRC having been accepted by the State Government and the comprehensive relief/rehabilitation scheme implemented over the past couple of years, we leave open the question of jurisdiction and close the writ petition. W.P.(C) No.32119 of 2015, projecting the travails of the victims and their families who are further involved in a debt-trap, is closed for the reason of the same being unnecessary in view of the directions passed in W.P.(C) No.1625 of 2013.

39. W.P.(C) No.32650 of 2011, *suo motu* proceedings initiated on complaints that the ill-effects of the pesticide have also affected

certain areas of Kozhikode, is disposed of directing any person, so affected, to approach the District Collector, who, in consultation with the Government and the Committee appointed for the Kasaragod District, shall decide upon the appropriate action to be taken, if such allegations are justified and are occasioned for reason of the use of Endosulfan.

40. W.P.(C) Nos.1625 of 2013 and 25197 of 2015 are disposed of recording the submission of the State Government that the implementation of the decisions at Ext.R1(a) would be complied with, in its letter and spirit. Any complaints, regarding any defect in implementation, shall be placed before the District Collector, who shall place it before the Committee, constituted under Ext.P4, who shall, in consultation with the Nodal Officer appointed by the State Government, decide on such

complaints. The interim order dated 29.10.2015, extracted above, shall also form part of the directions issued in the above writ petitions.

41. Before we part, we place on record our appreciation for the manner in which Smt.Girija Gopal, the learned Special Government Pleader, has adroitly kept the Government on its toes, by conveying the concerns of this Court appropriately and for ensuring that, even the finer details, regarding the implementation of the relief/rehabilitation scheme, are placed before this Court on affidavit.

Sd/-
ASHOK BHUSHAN,
CHIEF JUSTICE

Sd/-
K.VINOD CHANDRAN,
JUDGE

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