

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE THE CHIEF JUSTICE MR.ASHOK BHUSHAN  
&  
THE HONOURABLE MR.JUSTICE A.M.SHAFFIQUE

THURSDAY, THE 23RD DAY OF JULY 2015/1ST SRAVANA, 1937

WP(C).No. 5364 of 2015 (S)  
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PETITIONER(S) :  
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VINOD.M  
SECRETARY  
KYILI HOSPITAL MALINYA VIRUDHA JANAKEEYA SAMARASAMITHI  
KANNUR-670004  
RESIDING AT 'MUNDIYATH' NEAR TALAP HOUSING COLONY  
P.O.PALLIKUNNU, KANNUR-670004.

BY ADVS.SRI.P.B.SAHASRANAMAN  
SRI.T.S.HARIKUMAR  
SRI.K.JAGADEESH  
SRI.RAAJESH S.SUBRAHMANIAN

RESPONDENT(S) :  
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1. THE DISTRICT COLLECTOR  
COLLECTORATE, KANNUR-670001.

2. THE CHIEF ENVIRONMENTAL ENGINEER,  
KERALA STATE POLLUTION CONTROL BOARD  
DISTRICT OFFICE, KAKKAD ROAD, 1ST FLOOR  
GALAXY COMPLEX, KANNUR-670004.

3. THE PALLIKUNNU GRAMA PANCHYAT,  
REPRESENTED BY ITS SECRETARY, PALLIKKUNNU, KANNUR-670004.

4. KOYILI HOSPITAL  
REPRESENTED BY ITS SOLE PROPRIETOR MR.BHASKARAN  
N.H.17, KANNUR-670004.

R4 BY ADV. SRI.M.RAMESH CHANDER (SR.)  
R4 BY ADV. SMT.DENNIS VARGHESE  
R4 BY ADV. SRI.ANEESH JOSEPH  
KERALA STATE POLLUTION CONTROL BOARD  
R1 BY SPL.GOVERNMENT PLEADER SMT.GIRIJA GOPAL  
R3 BY SMT.M.MEENA JOHN  
R2 BY SRI. M.AJAY, SC, KERALA STATE POLLUTION CONTROL BOARD

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON  
23-07-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER(S) ' EXHIBITS

EXT.P1: TRUE PHOTOSTAT COPY OF THE COMMUNICATION SENT B THE 2ND RESPONDENT TO THE 4TH RESPONDEN, DATED 12-03-1997.

EXT.P2: TRUE PHOTOSTATE COPY OF THE JUDGMENT OF THE JUDICIAL FIRST CLASS MAGISTRATE, KANNUR, DATED 21-12-2013.

EXT.P3: TRUE PHOTOSTAT COPY OF THE ORDER OF THE SUB-DIVISIONAL MAGISTRATE, DATED 23-11-2001.

EXT.P4:- TRUE PHOTOSTATE COPY OF THE REPORT OF THE ANALYSIS OF WATER, DATED 13-01-2005 ISSUED BY THE ASSISTANT ENGINEER, QUALITY CONTROL, KERALA WATER AUTHORITY.

EXT.P5:- TRUE PHOTOSTAT COPY OF THE ORDER NO.A3-8322/14, DATED 15-12-2014.

EXT.P6: TRUE PHOTOSTATE COPY OF THE NOTICE NO.PCB/KNR/ICO/618/2008, DATED 17/12/2014 ISSUED BY THE 3RD RESPONDENT.

EXT.P7: TRUE PHOTOSTATE COPY OF THE REPORT OF THE DISTRICT MEDICAL OFFICER, KANNUR, DATED 19/12/2014.

EXT.P8: TRUE PHOTOSTATE COPY OF THE ORDER NO.A3-8322/14, DATED 23/12/2014 ISSUED BY THE 3RD RESPONDENT.

EXT.P9:TRUE PHOTOSTATE COPY OF THE ORDER PASSED BY THE 2ND RESPONDENT, DATED 26/12/2014.

EXT.P10: TRUE PHOTOSTATE COPY OF THE ORDER PSSSED BY THE DISTICT COLLECTOR, DATYED 24/12/2014.

EXT.P11: TRUE PHOTOSTATE COPY OF THE CONSENT REFUSAL ORDER ISSUED BY THE 2ND RESPONDENT, DATED 31/12/2014.

EXT.P12: TRUE PHOTOSTATE COPY OF THE INTERIM ORDER OF THIS HON'BLE COURT IN W.P.(C) NO.35403/2014, DATED 08/01/2015.

EXT.P13: TRUE PHOTOSTATE COPY OF THE PROCEEDINGS OF THE 1ST RESPONDENT, DATED 17/01/2015.

EXT.P14: TRUE PHOTOSTATE COPY OF THE JUDGMENT OF THIS HON'BLE COURT W.A.NO.155 OF 2015 AND W.A.NO.156 OF 2015 IN WP(C)NO.25403/2014, DATED 23/01/2015.

EXT.P15: TRUE PHOTOSTATE COPY OF THE REPRESENTATION MADE BY THE PETITIONER TO HE 1ST RESPONDENT, DATED 04/02/2015.

EXT.P16: TRUE PHOTOSTATE COPY OF THE REPORTED SUBMTTED BY THE TECHNICAL ASSISTANT (HEALTH), GR1, DMO OFFICE, KANNUR, DATED 07/02/2015.

EXT.P17: TRUE PHOTOSTATE COPY OF THE HOSPITAL RECORD, SHOWING ADMISSION TO ROOM NO.55, DATED 09/02/2015.

EXHIBIT P18: COPY OF NOTICE nO.H3-67068/2014, DATED 2.3.2015 ISSUED BY TH DISTRICT COLLECTOR, KANNUR ALONG WITH ENGLISH TRANSLATION.

EXHIBIT P18 (IA.5736/15): COPY OF MINUTES OF THE MEETING HELD ON 6.4.2015 OF THE KERALA STATE POLLUTION CONTROL BOARD ALONG WITH ENGLISH TRANSLATION.

EXHIBIT P19: COPY OF CONSENT TO OPERATE ISSUED BY THE KERALA STATE POLLUTION CONTROL BOARD, DATED 7.4.2015.

EXHIBIT P20: COPY OF SAID OBJECTION FILED BY THE PETITIONER TO THE KERALA STATE POLLUTION CONTROL BOARD DATED 17.4.2015.

WP(C) .No. 5364 of 2015 (S)

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RESPONDENT(S) ' EXHIBITS  
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EXHIBIT R2(a): COPY OF SENT TO OPERATE NO.PCB/HO/KNR/ICO/01/2015  
DATED 7.4.2015.  
EXHIBIT R2(b): COPY OF LETTER NO.PCB/KNR/ICO/282/2015 DATED 27.5.2015  
ISSUED TO THE 4TH RESPONDENT.  
EXHIBIT R2(c): COPY OF LETTER NO.PCB/KNR/ICO/282/2015 DATED 24.6.2015  
ISSUED TO THE 4TH RESPONDENT.  
EXHIBIT R4(a): COPY OF REPLY DATED 27.12.2014.  
EXHIBIT R4(b): COPY OF ORDER IN WPC.241/2015 DATED 8.1.2015.  
EXHIBIT R4(c): COPY OF THE REPORT.  
EXHIBIT R4(d): COPY OF ORDER OF THE DISTRICT COLLECTOR DATED  
17.1.2015.  
EXHIBIT R4(e): COPY OF LETTER DATED 25.1.2015.  
EXHIBIT R4(f): COPY OF ORDER IN WPC.241/15 DATED 3.2.2015.  
EXHIBIT R4(g): COPY OF REPORT BY MEMBER SECRETARY, KERALA STATE  
POLLUTION CONTROL BOARD ISSUED TO THE PETITIONER DATED 3.3.2015.  
EXHIBIT R4(h): COPY OF THE REPORT.  
EXHIBIT R4(i): COPY OF TEST REPORT.  
EXHIBIT R4(j): COPY OF ANALYSIS REPORT.  
EXHIBIT R4(k): COPY OF LETTER DATED 16.5.2013 ISSUED BY THE 2ND  
RESPONDENT.  
EXHIBIT R4(l): COPY OF RECEIPT OF PAYMENT OF RS.60,000/- ON  
11.8.2011.  
EXHIBIT R4(m): COPY OF RECEIPT EVIDENCING PAYMENT OF rs.67507/- TO  
THE KERALA STATE POLLUTION CONTROL BOARD FOR RENEWAL FOR CONSENT TO  
OPERATE THE SEWAGE TREATMENT PLANT.  
EXHIBIT R4(n): PHOTOSTAT COPY OF THE DRAFT GIVEN TO THE BOARD.  
EXHIBIT R4(na): COPY OF DRAFT GIVEN TO THE BOARD.  
EXHIBIT R4(o): COPY OF NOTICE ISSUED BY THE POLLUTION CONTROL BOARD  
DATED 26.12.2014.

/TRUE COPY/

PS TO JUDGE

**ASHOK BHUSHAN, CJ  
&  
A.M.SHAFFIQUE, J**

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**W.P.(C).No. 5364 of 2015**  
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**Dated this the 23<sup>rd</sup> July, 2015**

**JUDGMENT**

**Shaffique, J.**

This Writ Petition has been filed in the form of public interest litigation seeking the following relief:

*“To issue a writ, direction or order in the nature of mandamus or such other appropriate writ, direction or order commanding the respondents 1 to 3 to take immediate steps to implement the Exhibits P6, P7, P8, P9, P19 and P13 in its letter and spirit and to prosecute the 4<sup>th</sup> respondent and other officers responsible for causing the said activities and recover them the damages caused on account of its illegal working.”*

2. Exhibit P6 is a show cause notice issued by the Kerala State Pollution Control Board dated 17.12.2014 to the fourth respondent hospital, indicating that on investigation by the Board officials on 15.12.2014 and 17.12.2014 it was noted that the sewage treatment plant

was not functioning and the untreated sewage was found discharged into the nearby pond. Accordingly, the fourth respondent was called upon to show cause why they shall not be proceeded against under Section 33 of the Water (Prevention & Control of Pollution) Act, 1974. Exhibit P7 is a letter issued by the District Medical Officer (Health) to the District Collector on 19.12.2014 with reference to the very same sewage complaint on account of the functioning of the fourth respondent hospital and giving notice to comply with the suggestions stated thereunder. It was indicated that excess sewage was pumped to the pond called 'Arachikulam' in the ownership of the hospital and to the public drainage situated on the southern side of the hospital causing pollution to the wells in the locality.

3. Exhibit P8 is the notice issued by the Panchayat to the Administrator of the hospital indicating the very same issues. Exhibit P9 is another notice dated 26.12.2014

calling upon the fourth respondent to stop admission of new inpatients and discharge the admitted inpatients within 15 days.

4. Pursuant to similar complaints raised by the people of the locality, action was taken by the District Collector and after obtaining report from the Pollution Control Board, direction was issued to stop new admissions (inpatients) in the hospital until further orders. It was further stated that considering the emergent medical situation, the District Medical Officer was directed to implement the order by giving 15 days time to the hospital. In Exhibit P10 it was indicated that on a reference to the reports of District Medical Officer and Environmental Engineer and on inspection of the site, if the Hospital is functioning in the present condition, it will cause severe critical contamination problems and thereby it will cause to public health problems. Further it is observed that it will take atleast 4 months to solve the

problem by constructing a proper sewage plant. Hence, it is highly necessary to take imperative action with respect to this serious contamination subject. Exhibit P11 is the consent refusal order issued by the Pollution Control Board.

5. Exhibit P13 is another order issued by the District Collector by which it was directed that until the directions are complied with, patients to the inpatient department should not be admitted and new admissions shall be started only after clearance is obtained from the Pollution Control Board. It was also directed that the hospital authorities should undertake modern infrastructural developmental activities including sewage treatment plant for treating the existing capacity of 275-300 inpatients in the hospital and the same should be after the approval and under the supervision of the Pollution Control Board.

6. Counter affidavit has been filed by the fourth respondent inter alia stating that pursuant to the directions issued by the Pollution Control Board, the fourth

respondent had taken appropriate steps to comply with the conditions imposed by them. It was also stated that the Pollution Control Board had given consent to operate 120 beds as per order dated 7.4.2015 with validity upto 30.6.2015 on certain conditions.

7. By an interim order dated 1.6.2015 this Court had directed the Pollution Control Board to carry on an inspection of the hospital after due information to the local authorities and submit a report before this Court. Pursuant to the said direction, the Pollution Control Board had submitted a report dated 2.7.2015 before this Court. The said report reads as under:

*“The 4<sup>th</sup> respondent hospital was inspected on 24.6.2015 along with 3<sup>rd</sup> respondent. The Sewage Treatment Plant was functioning at the time of inspection. Board had issued Consent to Operate for 120 beds on 7.4.2015 with validity up to 30.6.2015; a copy of which is produced herewith and marked Exhibit R2(a). They had not installed micro filtration system as per condition no.3.2(a) of the consent on 24.6.2015. They are now reconstructing their*

*previous treated water collection tank without Board's approval. This respondent had directed the 4<sup>th</sup> respondent to stop the above work vide letter no.PCB/KNR/ICO/282/2015 dated 27.5.2015; a copy of which is produced herewith and marked as Exhibit R2(b). During the inspection conducted on 24.6.2015, the construction work was found progressing in spite of the direction by this respondent. The treated effluent sample collected at the time of inspection complies with the prescribed standards. Although the bed strength permitted is 120 more than 120 IP is functioning.*

*Based on the inspection conducted on 24.6.2015 direction was given to the hospital vide letter no.PCB/KNR/ICO/282/2015 dated 24.6.2015 to stop the modification work of the old treated water tank, a copy of which is produced herewith and marked as Exhibit R2(e). The hospital authorities vide their letter dated 29.6.2015 & 30.6.2015 reported that they have complied with the condition no.3.2(a) of the consent and hence inspection was again conducted on 2.7.2015 to verify the compliance.*

*It was found that they have installed micro filtration system and is under trial run. The compliance of condition no.3.2 is as follows:*

- a) Micro filtration system installed. Treated*

*effluent is stated to be reused for irrigation and balance into soak pits.*

- b) Laundry is not operating.*
- c) Sewage Treatment Plant sludge is stated to be disposed through bio gas plant.*
- d) Both FABS are working.”*

8. The main apprehension expressed by the petitioner in the Writ Petition is regarding the pollution that was being caused on account of the existence of the sewage treatment plant. Going by Exhibit P13 order of the District Collector, it is clear that the restriction had been imposed based on an opinion expressed by the Pollution Control Board. It is also stated in Exhibit P13 that the restrictions have been imposed subject to opinion to be expressed by the Pollution Control Board.

9. It is now stated in the aforesaid report that the fourth respondent had complied with the requirements in the consent to operate issued on 7.4.2015. The treated effluent sample collected at the time of inspection also complied with the prescribed standards. Under such

circumstances, it is evident that the fourth respondent had taken appropriate measures to ensure that the sewage treatment plant was functioning properly and in accordance with the directions issued by the Pollution Control Board.

10. It is not in dispute that as far as the consent to operate is concerned, the consent was valid only upto 30.6.2015.

11. The learned Senior Counsel appearing on behalf of the fourth respondent submits that the application for renewal of the consent to operate along with the required amount has already been submitted to the Pollution Control Board, which is pending consideration.

12. Having regard to the fact that appropriate steps had already been taken by the fourth respondent in the light of the directions issued by the Pollution Control Board, we do not think that as matters stand now, direction to implement Exhibits P6, P7, P8, P9, P10 or P13

is required as prayed for by the petitioner. However, it is made clear that if there is any allegation of pollution on account of the functioning of the fourth respondent hospital, it shall always be open for the petitioner or any other person to bring to the notice of the Pollution Control Board or the District Collector as the case may be. It is further made clear that the Pollution Control Board shall make periodical visits and ensure that there is compliance of the statutory requirements.

With the above observations, the Writ Petition is closed.

**ASHOK BHUSHAN  
CHIEF JUSTICE**

**A.M.SHAFFIQUE  
JUDGE**

vgs22/7/15