

BEFORE THE NATIONAL GREEN TRIBUNAL

SOUTHERN ZONAL BENCH

CHENNAI

Application No. 247 of 2014

Vilappilsala Samyuktha Samara Samithi
Vilappil Panchayat, Peyad P.O.,
Thiruvananthapuram- 695573
Represented by its Convenor
C.S. Vijayakumar alias C. S. Anil
S/o. R. Chellappan, Kizhakkekara Puthan Veedu
Bhajanamadom Road, Peyad
Thiruvananthapuram

.....Applicant

Vs.

1. State of Kerala
Represented by its Chief Secretary
Kerala Government Secretariat
Thiruvananthapuram
2. Secretary to Government
Department of Environment
Kerala Government Secretariat
Thiruvananthapuram
3. Secretary
Ministry of Environment, Forest & Climate Change
Paryavaran Bhavan
New Delhi- 110001
4. Secretary to Government
Department of Local Administration
Kerala Government Secretariat
Thiruvananthapuram
5. Corporation of Thiruvananthapuram
Represented by its Secretary
Corporation Buildings
Vikas Bhavan, Palayam
Thiruvananthapuram

6. Kerala State Pollution Control Board
Represented by its Secretary
District Office, Thiruvananthapuram

7. District Medical Officer
Office of the District Medical Officer
Thiruvananthapuram

8. Vilappil Grama Panchayat
Represented by its Secretary
Peyad P.O., Thiruvananthapuram

9. Trivandrum Development Authority
Represented by its Chairman
TDA Building, Vellayambalam
Thiruvananthapuram

.....Respondents

Counsel for Applicant

M/s. R. Krishna Raj

M/s. Ayyappan Sankar

Counsel for Respondents

Mrs.Suvitha A.S - Counsel for Respondent No. 1, 2, 4, 7 & 9

Mrs. C.Sangamithrai - Counsel for Respondent No. 3

Mrs.Kamatchi.D and

Mr.Sithannan - Counsel for Respondent No. 5

Mrs.Rema Smrithi - Counsel for Respondent No.6

Mrs. Vidyalakshmi Vipin - Counsel for Respondent No.8

Application 248 of 2014

S. Bhanudeen

S/o Shahul Hameed

Nazeema Manzil

Oottukuzhi, Vilappilsala P.O.,

Thiruvananthapuram 695573

...Applicant

Vs.

1. The State of Kerala
Represented by the Secretary to Government
Local Administration Department, Secretariat
Thiruvananthapuram- 695001
2. The Corporation of Thiruvananthapuram
Represented by its Secretary
Corporation Buildings
VikasBhavan Post, Palayam
M.G.Road, Thiruvananthapuram- 695033
3. The Kerala State Pollution Control Board
Represented by the Environmental Engineer
District Office, Pattom P.O.,
Thiruvananthapuram-695004

.....Respondents

Counsel for the Applicant

M/s. G. Purushothaman

M/s. K. Thangapandi

Counsel for the Respondents

Mrs.Suvitha - Counsel for Respondent No. 1

M/S Kamatchi. D &

Sithannan - Counsel for Respondent No. 2

Mrs. Rema Smrithi - Counsel for Respondent No. 3

Application No. 429 of 2013

(W. P. (Civil) No. 1306/2012, High Court, Kerala)

1. Karmachandran
Mulayara, Cherukodu
Vilappil, Thiruvananthapuram
2. William Raj
Sherly Bhavan
Kanilanumpara, Neduluzhi
Viappilsala P.O.,
Thiruvananthapuram

3. Radakrishnan
Punartham, Puliyaakonam
Mylady, Vilappil
Thiruvananthapuram

..... Applicants

Vs.

1. The State of Kerala
Represented by the Secretary to Government
Thiruvananthapuram

2. The Corporation of Trivandrum
Represented by its Secretary
Corporation Building
Vikas Bhavan Post, Palayam
M.G. Road, Thiruvananthapuram- 695033

3. The Vilappil Grama Panchayat
Represented by its Secretary
Thiruvananthapuram- 695573

4. The Kerala State Pollution Control Board
Represented by its Secretary
Thiruvananthapuram

5. District Medical Officer
Thiruvananthapuram
695001

6. M/s. Bayern Mercantile Pvt. Ltd
Chacko Towers, First Floor
Jaws Street, Padma Pullepadi Road
Cochin, Represented by its Director P. V. Philip
101, Pearl Havens, Hamsakunju Lane
S.R.M.Road, Kochi- 18

....Respondents

Counsel for the Applicant

M/s. Ayyappan Sankar

Counsel for the Respondents

- | | |
|------------------------------------|------------------------------------|
| 1. M/s. Suvitha A. S | - Counsel for Respondent No. 1 & 5 |
| 2. M/s. Rema Smrithi | - Counsel for Respondent No. 4 |
| 3. M/s. D. Kamatchi &
Sithannan | - Counsel for Respondent No. 2 |
| 4. M/s. Vidyalakshmi Vipin | - Counsel for Respondent No. 3 |

QUORUM:

Hon'ble Justice Dr. P. Jyothimani (Judicial Member)

Hon'ble Prof. Dr. R. Nagendran (Expert Member)

ORDER

Delivered by Hon'ble Justice Dr. P. Jyothimani (Judicial Member) dated 30th September 2015

- 1) Whether the judgement is allowed to be published on the internet ----- yes / no
- 2) Whether the judgement is to be published in the All India NGT Report ----- yes / no

1. As all the three applications raise a common question relating to the removal of the Solid Waste Treatment Plant (MSW Plant) established by the Thiruvananthapuram Corporation (the Corporation) in the area belonging to Vilappil Panchayat and solid waste accumulation in the said area, all of them have been heard together. Application No.247/2014 is filed by the action group formed by the residents of Vilappilsala Panchayat, complaining against the Corporation in attempting to establish a Solid Waste Treatment Plant without obtaining necessary approval and sanction from the State Government, Pollution Control Board (SPCB) and other agencies and praying for a direction against the said Corporation, the 5th respondent to remove the said Plant and the solid waste accumulated and buried causing damage to the environment in the entire Vilappil Panchayat, to direct respondent Nos. 1, 2, 4 and 5 to implement the decision of the cabinet dated 21-12- 2011 to close down the Plant established by the Corporation in Ward No. III of Vilappil Panchayat and to restrain the Corporation from further operating the Plant and to shift the same to some other area within the territory of the Corporation.
2. Likewise, the applicant in Application No. 248/2014, who is a resident of Vilappilsala has prayed to forbear the Corporation, the second respondent therein from proceeding with the activities of handling, dumping, storing, treating and disposing of garbage, filth and solid waste of Corporation in its Plant situated at Vilappil village, which is in violation of Environmental Protection laws and causing various diseases to the people. Similarly, Writ Petition No.1306/2012, was filed in the High Court of Kerala, Ernakulam, by the petitioners who are the social workers in Vilappil Panchayat praying for a direction against the Corporation not to put up any construction in the lands owned by it in the Vilappil Panchayat and also to direct stoppage of the MSW Plant. The said Writ

Petition was subsequently transferred to this Tribunal and numbered as Application No. 429/2013.

3. It is the case of the applicants that Vilappilsala Panchayat is situated adjacent to the Corporation limit of Thiruvananthapuram. The Corporation, without obtaining prior approval from Government and in violation of Kerala Municipality Act, 1994 has purchased 12.5 acres of land in Chavallloor ward No. III of Vilappilsala Panchayat in the year 2000 by a private sale. Thereafter, it entered into an arrangement with a private company and established the MSW Plant. This was opposed by the people in the area. It is their further case that corporation has made further purchase of lands in Chavallloor ward totally to an extent of 46.5 acres. There are 2 major paddy fields in 1250 acres with more than 400 cattle farmers. People in the other wards of Vilappilsala Panchayat and adjacent areas mainly depend on paddy cultivation and cattle farming. The area is situated in the valley of a mountain Kanikanumpara with many ponds, wells, rivulets, natural streams with large extent of wetlands. One of the main rivulets namely Meenampally originates from the mountain and passes through the Vilappil Panchayat and reaches Karamana river which is the main source of drinking water to the people of Vilappil Panchayat and the Corporation. It is stated that after acquiring 46 acres, the Corporation has started dumping waste in the entire land during night times which has become very huge in quantity in the year 2010. The use of 46.5 acres of land as a dumping yard of solid waste of Thiruvananthapuram for utilising in the Plant in 12.5 acres was opposed by the people of the Panchayat and the Corporation approached the High Court of Kerala by filing W.P. (C) No. 9/2012 for police protection on the ground that agitating people of the locality are attempting to thwart the Corporation's attempt to establish the Plant for scientific treatment of solid waste as directed by the Hon'ble Supreme Court and under the provisions of the Municipal Solid Waste (Management and Handling) Rules, 2000 (MSW Rules). Some of the residents have filed W. P. No. 1306/2012 praying for a restraint against the Corporation from establishing the Plant without permission from Vilappilsala Panchayat. The High Court directed police protection to enable the Corporation to install machinery. However, due to stiff resistance of residents the installation was not done.

4. The High Court by looking into the complaints of residents has appointed an Advocate Commissioner and the SPCB which was subsequently impleaded as a party to conduct an inspection. Both of them conducted inspection and filed separate reports. The Commissioner has found that the Plant is causing pollution to the entire locality. Accordingly, the Writ Petition pending in the High Court was deferred for hearing and W.P. No. 1306/2012 was transferred to the Tribunal and in the meantime, the PCB also took a stand that operation of the Plant will cause serious pollution. According to the applicants, as per the Environment (Protection) Act, 1986 (EP Act) any act which causes environment pollution has to be approved by the Authority before establishment. As per the MSW Rules, in areas falling under the jurisdiction of the "Development Authority", it shall be its responsibility to identify the landfill sites and hand over the same to the Municipal Authorities for development, operation and maintenance. The sites shall be away from human habitations, forest areas, water bodies, monuments, national parks, wetlands and places of cultural, historical or religious importance. The Trivandrum Development Authority has not identified the site as per the legal criteria. Moreover, as per Rule 4 of the MSW Rules, every Municipal Authority shall be responsible for implementing the provisions of the Rules within the territorial area of the Municipality and it has to approach the SPCB before establishing such facilities.
5. It is the case of the applicants that in the event of the Municipal Corporation implementing provisions of the Rules outside the territorial area of the Municipality, permission of Development Authority and State Urban Development Department must be obtained apart from permission from the Panchayat, where the Plant is sought to be erected. After purchasing further extent of land, the Corporation has started dumping waste collected from the city of Thiruvananthapuram which has resulted in leachates seeping into the land flowing out from the Plant to the entire adjacent area including paddy field, wells, ponds and natural streams especially Meenampally rivulet causing environmental pollution. Due to this, the entire soil in the area has changed not only in colour but also in odour of water in the wetland, paddy fields etc., affecting the day to day life of residents of the entire Panchayat. This has caused not only damage to the cultivation and cattle farming but also serious health problems including skin diseases and respiratory problems to the people. As there was a State- wide agitation against this

conduct of the Corporation, the officers of the Government as well as the SPCB including the District Medical Officer conducted inspection and found that the functioning of the Plant has created serious environmental problem. In addition to that, the report of the Advocate Commissioner appointed by the Division Bench of Hon'ble High Court of Kerala has also confirmed this. It was after finding the seriousness of the issue the Vilappilsala Panchayat has resolved to direct the Corporation to stop the functioning of the Plant. When this was referred to the Government by the Corporation, the decision of the Panchayat was stayed by the Government and the matter was referred to the Ombudsman. It is stated that subsequently, the Kerala Government Cabinet on 21-12-2011 has decided to close down the Plant.

6. Therefore, the present applications are filed on legal grounds that the Government and Municipal Authority are to manage the waste generated within the Municipal Area and that as per the provisions of the MSW Rules, 2000, the Municipal Authority has the responsibility of establishing infrastructure development for collection, storage, segregation, transportation, processing and disposal of municipal solid waste within its territorial area. In cases where the area falls under the jurisdiction of the Development Authority which consist of more than one Municipal Authority, it is the duty of the Development Authority to identify the site. However, in this case it is by purchase of land in the Vilappil Panchayat privately, the Corporation has illegally set up the MSW Plant. Further, before setting up of such Plant a comprehensive environment study should have been made and necessary approval should have been obtained from Urban Development Department along with the Municipal Authority. Such a landfill site should be away from habitation clusters, forest areas, water bodies, monuments, national parks, wetland and other places of cultural, historical and religious importance. The Corporation has no authority to do anything about its municipal activities outside its territorial area without prior concurrence of the Development Authority and the State Government. In as much as the Corporation has no interest in the problems of Vilappilsala Panchayat and its people, it would not have studied the environment and health impact of such a project on the people living within the territorial jurisdiction of the Panchayat.

7. Under the MSW Rules, the storage facilities shall not create any unhygienic or insanitary condition. The Corporation has not made any study with any expertise in this regard. The

SPCB has not been associated in choosing the site and setting up of the Plant. The applicant has also raised the issues under the Travancore Cochin Public Health Act, 1955 which prevents emission of any kind of health hazard prejudicial to health. In the light of the categorical stand taken by the Vilappil Panachayat not accepting to have the Plant in its territorial jurisdiction, there is no right on the part of the Corporation. The power of the State Government to interfere with such resolution is also restricted, as the resolution cannot be said to be illegal. With the above averments the applicants have chosen to file the applications challenging the establishment of Municipal Solid Waste Treatment Plant by the Corporation within the territorial jurisdiction of Vilappilsala Panchayat by purchasing the lands privately.

8. The 3rd respondent in Application No.248/2014 namely the SPCB in the reply filed through its Environmental Engineer has stated that the SPCB has granted a conditional consent to Poabs Enviro Tech Pvt. Ltd. Mulayara, Vilappilsala to establish a project for treatment of municipal garbage and for production of organic manure at 60 tonnes per day in the Vilappil village. The Plant was initially started in 12.5 acres and after the purchase of additional land it is now in 46 acres of land. According to the 3rd respondent, the Windrow Composting Technology is used for processing the Municipal Solid Waste in the area with roof for rain protection and concrete flooring. According to the 3rd respondent there are 3 unscientific landfills in the site out of which the oldest landfill situated on the west of the Processing Plant is capped with HDPE liner and soil in the capped landfill area of about 3150 m². The second landfill of the Processing Plant is yet to be capped. The third landfill of 3000 m² is used for disposing non biodegradable waste and rejects from the Processing Plant. It is stated that leachate is generated from land fill and the Corporation has not provided permanent leachate treatment facility as part of existing Solid Waste Processing Plant. Leachate was collected in temporary ponds and disposed after addition of alum, lime and bleaching powder and these temporary measures are inadequate in handling leachate generated and they are frequently flowing into a nearby stream and reach Karamana river through Meenampally Thodu causing river water pollution. As the project has been now stopped, the leachate generation has reduced.

9. It is further stated by the 3rd respondent that the Board has directed the Thiruvananthapuram Municipal Corporation to adopt measures to prevent pollution caused by leachate. The Corporation has intimated to the Board that the leachate treatment Plant could not be progressed due to public agitation. It is stated that at present no municipal solid waste is transported to the Processing Plant and the Corporation is concentrating on Decentralised Waste Management by constructing large size community level Biogas Plants in various markets apart from source level treatment of biodegradable waste at households. It is also reiterated that due to non transportation of solid waste to the Plant from the City of Thiruvananthapuram the environmental issues in the Vilappilsala Solid Waste Processing Plant has been reduced.

10. The Corporation which is the 5th respondent in Application No. 247/ 2014, while denying the various allegations raised by the applicant has referred to a direction issued by the Hon'ble Supreme Court to all State Governments to ensure that all cities in India with a population of more than one lakh had facilities for scientific treatment of solid waste. Subsequently, the Government of India based on various orders of Hon'ble Supreme Court has passed the Municipal Solid Waste (Management and Handling) Rules, 2000, made applicable to every Municipal Authority imposing the responsibility of collection, segregation, storage, transportation, processing and disposal of municipal solid waste. It is stated that it is with that idea of implementing the rules the corporation has purchased 12.076 acres of land in Vilappilsala Panchayat which is 8 km away from the City of Thiruvananthapuram and floated tenders with the full knowledge and support of State Government for the establishment of this Solid Waste Treatment Plant at Vilappil Panchayat. After the transparent tender process, the project was commissioned in July 2000 and became operational immediately. The Plant is being operated by the Centre for Environment and Development (CED) which is an accredited agency of the Government of Kerala from 2008 and the functioning of the Plant was in full swing for 11 years and Rs. 35 crores have been spent. The purchase of land in Vilappilsala Panchayat by the Corporation was sanctioned by the Government as it was felt that Vilappilsala is comparatively a suitable area. The Government has also issued sanction for establishing the Plant. However, protest started from the public only in the year 2011. It is the case of the Corporation that the Plant was established in Vilappilsala in accordance with the

direction of Hon'ble Supreme Court of India and in fact the Hon'ble High Court of Kerala has granted police protection after being satisfied by the report of the Commission that instead of processing 150 tonnes of waste, 90 tonnes shall be processed. It is also stated that the Plant is away from the habitation, forest area national park etc., The installation of such plants outside the corporation area is being done in many places including Chennai and in this case the Hon'ble Ombudsman has visited the factory site at intervals and found that the implementation of the work was satisfactory. It is also stated that all safety measures have been taken by the Corporation while collecting the waste and the Leachate Treatment Plant is in progress and all the activities have been done with the approval of the Kerala State Pollution Control Board. It is also stated that the Corporation has purchased vehicles for transportation of waste without odour or spillage of leachate. It is stated that Vilappil Panchayat President on 21-12-2011 has taken law into her hands and entered into the premises and caused damage by abusing her position. Subsequently, a resolution of Panchayat was communicated to the Corporation. The Corporation has also explained about the manner of collection of waste effected by employing Kudumbashree workers etc., It is due to the adamant conduct of the Panchayat President that the matter could not be settled as the Thiruvananthapuram is a thickly populated City and hence a rural area had to be selected for setting up of the Plant. With the above averments the Corporation has prayed for the dismissal of all applications.

11. The Thiruvananthapuram Development Authority, the 9th respondent in Application No. 247/2014 in the reply has stated that the said authority was constituted as an autonomous body by the Government of Kerala on 15-05-1980 fixing the boundaries and Vilappil Panchayat is within the boundaries of the Thiruvananthapuram Development Authority (TRIDA). It is stated that regarding the Municipal Solid Waste Management Schemes, the Municipal Corporation is responsible and the functions of Development Authority are limited. The authority does not have the know how and expertise for setting up of such a Plant. It is also stated that the TRIDA was not involved in selecting Vilappilsala area for solid waste management purpose of the Corporation of Thiruvananthapuram. According to the said respondent it is the responsibility of Corporation and not Development Authority.

12. The Government of Kerala in the reply filed through its Additional Secretary, Local Self Government has stated that as per the provisions of the Kerala Municipality Act, 1994, the responsibility of collection, transportation, treatment and disposal of municipal solid waste lies with the Urban Local Bodies. The State Government provides guidance, technical support and financial help. It is stated that the Treatment Plant at Vilappilsala was started as the initiative of Government of Kerala and Corporation of Thiruvananthapuram and the Plant was functioning for 11 years. The Government has stated about various activities done by the Corporation in the development of the Plant as stated by the Corporation itself. It would add that if the public allow, the project can be completed soon and the conciliatory efforts taken by the Government could not fructify. In the meantime, the Vilappilsala Panchayat has passed a resolution on 21-12-2011 withdrawing the permission to run the Plant and locking the Plant. The Government has stayed the resolution of the Panchayat on the ground that the Panchayat has not given opportunity to the Corporation and the matter was referred to Ombudsman and therefore the Panchayat resolution is not in operation. The mediation efforts taken by the High Court has also failed. It is also stated by the Government that steps have been taken for the purpose of disposing the waste generated in the area by various methods including sanction granted to the Corporation to establish a Plastic Shredding unit at Pappanamcode industrial estate. Thus the waste management has been decentralised and the loads of waste that are coming to the general pool are reduced considerably. It is also stated that the modern MSW Plant at Chalai can treat about 100 tonnes of waste per day which can reduce the load considerably. It is stated that the Corporation is one of cleanest cities in the Country and the strong protest of people of Vilappilsala still remains.

13. The Corporation of Thiruvananthapuram in the affidavit dated 5th August 2013 filed before Hon'ble High Court of Kerala at Ernakulam has stated that the Waste Management Plant at Vilappilsala is situated about 14 km from city limit and at the time when steps were taken to establish the Plant, there was no objection either from the Panchayat or from the people of the area. It is stated that experts in field of solid waste management have identified the land at Vilappilsala as the most suitable place for Waste Treatment Plant. It is also stated that nearly 900 sanitary workers and 750 Kudumbashree workers are engaged for collection and segregation of sanitary waste to keep the Thiruvananthapuram city clean. There is an average accumulation of solid waste in the City of Thiruvananthapuram to the extent of **200** tonnes per day.

14. Mr. R. Krishna Raj, learned Counsel appearing for the applicant in Application No. 247/2014 has submitted that establishment of the Solid Waste Management Plant by the Corporation in the Vilappil Grama Panchayat territory itself is illegal and amount to interference with the administration by the Local Authority as enshrined under the Constitution of India. He has also submitted that the Corporation has no right or authority to dump the municipal waste generated in its territorial limit to the land belonging to the Panchayat. He has also stated that even in cases where more than one Panchayat are to be associated for Solid Waste Management Scheme, the same has to be done with the consent of all Panchayats and on a site which is either mutually agreed by all Panchayats or as identified by the Development Authority. It is also his submission that before even starting such projects a cumulative study should have been made and authorisation should have been obtained from the SPCB. He has also submitted that the Corporation has not followed any of the provisions of the MSW Rules, 2000. Therefore, even if the people of the Panchayat have not objected at the inception of the project, as it has come against the statutory rules, it cannot be permitted and it is the duty of Corporation to remove and clean the entire area. This is also the submission made by Mr. G. Purushothaman, learned Counsel appearing for the Vilappilsala Samyuktha Samara Samithi, which is the applicant in Application No. 248/2014 and Mr. Ayyappan Sankar appearing for the Applicant in Application No.429/2013. They have also stated that by the illegal conduct of the Corporation, leachate has polluted water bodies to the maximum extent resulting in continuing health hazard to the people living in the territory of the Panchayat.
15. *Per contra*, it is the contention on behalf of the respondents that when the project was started in the year 2000 itself the Panchayat as well as the people of Panchayat have not objected. After many years if at this stage the Corporation is directed to close the unit and remove the waste material it would be a loss to the exchequer creating enormous practical problems. However, Vidyalakshmi Vipin, learned Counsel for the Panchayat would submit that the Panchayat has never given such permission to the Corporation.
16. Ms.Kamatchi. D. learned Counsel appearing for the Corporation, relying upon the dates and events submitted by her, stated that in fact SPCB has given a consent to establish the Solid Waste Plant at Vilappil Panchayat on 29 -03-2000 and the conduct of the Vilappil

Panchayat President in forcefully closing the land is illegal and unauthorised and the Plant should be allowed to function for the benefit of the people. According to her, the Hon'ble of High Court of Kerala having found the genuineness in the conduct of Corporation has granted Police protection to the officials of Corporation to enter in the place and such order is in operation even as on today. She also vehemently denied that the corporation has purchased the lands privately in Vilappil Panchayat jurisdiction in a clandestine manner. She has also produced certain original records with an earnest request to refer to the same.

17. We have heard all the learned Counsel appearing for the parties, referred to the pleadings and documents including the original records submitted by the learned counsel for the Corporation and given our anxious thought to the issue involved in this case.

18. While discussing the practice of disposing Municipal Solid Waste generally prevailing in our country, an eminent Environmentalist and a renowned academician Prof. S. J Arceivala once remarked that “we are all affected by NIMBY- Not In My Backyard Syndrome.” The case of the Corporation in dumping waste generated within its territory into another Panchayat appears to be a classical example of this approach.

19. On perusal of the entire materials, a decision is required to be given on the following issues:

1. Whether the Corporation of Thiruvananthapuram is entitled to set up a Municipal Solid Waste Treatment Plant outside its territorial jurisdiction and in the extent of land purchased by it in Vilappilsala Panchayat to treat the solid waste generated within its corporation limit?
2. Whether the Corporation of Thiruvananthapuram has followed the provisions of the MSW Rules, 2000 in setting up of the Plant. If not, what are the remedial measures the Corporation of Thiruvananthapuram is to take?

As both the issues are interconnected, we propose to take up both the issues together in analysing the entire case.

20. The Parliament of India has effected amendment to the Constitution of India by the 73rd Amendment Act, 1992 with effect from 24-04-1993 dividing part IX into 3 parts namely:

1. Part IX with caption The Panchayat

2. Part IX A with caption The Municipalities
3. Part IX B with The Co-operative societies.

Out of these, the third part was inserted by the Constitution (97th Amendment) Act, 2011 with effect from 15-02-2011. The distinction shown between Panchayats and Municipalities by having elected representatives in each level shows that the intention was to have free administration at lower level in order to see that the benefits reach the people directly based on their actual need. The underlying purpose as held by the Hon'ble Supreme Court in **Union of India v. Rakesh Kumar**, (2010) 4 SCC 50 in making part IX as Panchayat is to create democratic decentralisation for ensuring that traditionally marginalised groups should progressively gain foothold in the local self - government. The object of Part IX A in creating Municipalities is to create democratic decentralisation, greater accountability between Citizens and State apparatus and empowerment of weaker sections as held by the Hon'ble Supreme Court in **K. Krishna Murthy v. Union of India**, (2010) 7 SCC 202. Therefore, the basic object is to strengthen the Panchayat system to become vibrant units of administration in the rural area by establishing strong, effective and democratic local administration so that there can be rapid implementation of rural developmental programmes.

21. The objects and reasons appended to the constitution (73rd Amendment) Act, 1992 reads as follows:

“ Though the Panchayati Raj Institutions have been in existence for a long time, it has been observed that these institutions have not been able to acquire the status and dignity of viable and responsive people's bodies due to a number of reasons including absence of regular elections, prolonged supersession, insufficient representation of weaker sections like Scheduled Castes, Scheduled Tribes and women, inadequate devolution of powers and lack of financial resources.

2. Article 40 of the Constitution which enshrines one of the Directive Principles of State Policy lays down that the State shall take steps to organise village panchayats and endow them with such powers and authority as may be

necessary to enable them to function as units of self-government. In the light of the experience in the last forty years and in view of the short-comings which have been observed, it is considered that there is an imperative need to enshrine in the Constitution certain basic and essential features of Panchayati Raj Institutions to impart certainty, continuity and strength to them.

3. Accordingly, it is proposed to add a new Part relating to Panchayats in the Constitution to provide for among other things, Gram Sabha in a village or group of villages; constitution of Panchayats at village and other level or levels; direct elections to all seats in Panchayats at the village and intermediate level, if any, and to the offices of Chairpersons of Panchayats at such levels; reservation of seats for the Scheduled Castes and Scheduled Tribes in proportion to their population for membership of Panchayats and office of Chairpersons in Panchayats at each level; reservation of not less than one-third of the seats for women; fixing tenure of 5 years for Panchayats and holding elections within a period of 6 months in the event of supersession of any Panchayat; disqualifications for membership of Panchayats; devolution by the State Legislature of powers and responsibilities upon the Panchayats with respect to the preparation of plans for economic developments and social justice and for the implementation of development schemes; sound finance of the Panchayats by securing authorisation from State Legislatures for grants-in-aid to the Panchayats from the Consolidated Fund of the State, as also assignment to, or appropriation by the Panchayats of the revenues of designated taxes, duties, tolls and fees; setting up of a Finance Commission within one year of the proposed amendment and thereafter every 5 years to review the financial position of Panchayats; auditing of accounts of the Panchayats; powers of State Legislatures to make provisions with respect to elections to Panchayats under the superintendence, direction and control of the Chief Electoral Officer of the State; application of the provisions of the said Part to Union territories; excluding certain States and areas from the application of the provisions of the said part; continuance of existing laws and Panchayats until one year from the

commencement of the proposed amendment and barring interference by courts in electoral matters relating to Panchayats.

4. The Bill seeks to achieve the aforesaid objectives.”

22. The said Part IX which speaks about the constitution of Panchayat, states that there shall be constituted in every State, Panchayats at village, intermediate and district levels. While speaking about the composition of Panchayat, the term “Panchayat area” is defined to mean a territorial area of a Panchayat, as defined under Article. 243 of the Constitution of India.

23. Article 243-G of the Constitution which explains about the powers, authority and responsibilities of Panchayat, empowers the State Legislature by law to confer power and authority to enable institutions of Self Government subject to the conditions which may relate to the preparation of plans for economic development and social justice apart from implementation of schemes for economic development and social justice as may be entrusted to them including the matters which are listed in 11th schedule.

24. Likewise part IX A of the Constitution which speaks about the Municipalities, contemplates the Constitution of

- a. Nagar Panchayat for area in transition from rural to urban area
- b. A municipal Council for a smaller urban area and
- c. A municipal Corporation for a large urban area

The powers, authority and responsibilities of Municipalities are enumerated under Article 243 W of the Constitution of India enabling the State Legislature to pass law with respect to the preparation of plans for economic development and social justice and performance of functions and implementations of schemes entrusted to them including those matters relating to the list in the 12th schedule.

25. Therefore, it is a clear Constitutional mandate that there are distinct powers and jurisdiction among the Panchayats and Municipalities. In accordance with the Constitutional mandate, the State of Kerala has enacted The Kerala Panchayati Raj Act, 1994 which *inter alia* provides for powers and duties of Village Panchayat under Section 166 (1) which reads as follows:

“166. Powers, duties and functions of village panchayat. - (1) It shall be the duty of the village panchayat to meet the requirements of the village panchayat area in respect of the matters enumerated in the Third Schedule:

Provided that it shall be the duty of the village panchayat to render services to the inhabitants of the village panchayat area in respect of the matters enumerated as mandatory functions in the Third Schedule.”

The 3rd schedule mentioned in the Act enumerates the following items which are either mandatory or general, as follows:

THIRD SCHEDULE

[See Sub-section (1) of section 166]

Functions of Village Panchayats

A. Mandatory Functions.

1. Regulating building construction.
2. Protection of public lands against encroachment
3. Maintenance of traditional drinking water sources.
4. Preservation of ponds and other water tanks
5. Maintenance of waterways and canals under the control of Village Panchayats.
6. Collection and disposal of solid waste and regulation of liquid waste disposal.
7. Storm water drainage.
8. Maintenance of environmental hygiene.
9. Management of public markets.
10. Vector Control
11. Regulation of slaughtering of animals and sale of meat, fish and other easily perishable food stuffs etc.
12. Control of eating places.
13. Prevention of food adulteration.
14. Protection of roads and other public properties.
15. Street lighting and its maintenance.
16. Adopt immunisation programmes.
17. Effective implementation of National and State level strategies and programmes for prevention and control of diseases.

18. Establishment and maintenance of burial and burning grounds.
19. Issue of licenses to dangerous and offensive trades.
20. Registration of births and deaths.
21. Providing bathing and washing ghats.
22. Provision for ferries.
23. Provision for parking spaces for vehicles.
24. Construction of waiting sheds for travellers.
25. Provision for toilet facilities and bathing ghats at public places.
26. Regulate the conduct of fairs and festivals.
27. Issue licence to domestic dogs and to destroy stray dogs.

B. General Functions

1. Collection and updating of essential statistics.
2. Organise voluntary workers and make them participate in collective activities.
3. Organise campaigns for thrift.
4. Awareness building against social evils like drinking, consumption of narcotics, dowry, abuse of women and children
5. Ensuing maximum peoples participation at all stages of development.
6. Organise relief activities during natural calamities.
7. Inculcating environmental awareness and motivating local action for environmental upgradation.
8. Promotion of co-operative sector.
9. Enhancing communal harmony.
10. Mobilisation of local resources in cash or in kind including free surrender of land for developmental purposes.
11. Campaign on legal awareness among weaker sections.
12. Campaign against economic offences.
13. Organising neighbourhood groups and self-help groups focusing on the poor.
14. Awareness building on civic duties.

C. Sector-wise functions.

I. Agriculture

1. Cultivate wastelands and marginal lands.

2. Ensure optimum utilisation of land.
3. Soil protection
4. Production of organic manure.
5. Establishment of nurseries.
6. Encourage the system co-operative ground farming.
7. Organise self help groups among farmers
8. Encourage horticulture and vegetable cultivation.
9. Fodder development.
10. Plant production.
11. Seed protection.
12. Farm mechanisation.
13. Management of Krishi Bhavans.
14. Awareness building on civic duties.

II. Animal Husbandry and Diary farming

1. Cattle Development Programmes
2. Diary farming
3. Poultry farming, bee keeping, piggery development, goat rearing, rabbit rearing, etc.
4. Running of veterinary hospitals
5. Running of ICDP sub-centres.
6. Preventive Health Programmes for animals.
7. Prevention of cruelty to animals.
8. Implementation of fertility improvement programmes.
9. Control of diseases of animal origin.

III. Minor Irrigation

1. Maintenance and implementation of all minor irrigation projects within the area of a village panchayat.
2. Implementation and maintenance of all micro irrigation projects.
3. Put into practice water conservation.

IV. Fishing

1. Development of fisheries in ponds, pisci-culture in fresh water and brackish water and mariculture.
2. Improvement of fish seed production and distribution of offsprings.
3. Distribution of fishing implements.
4. Provide assistance for fish marketing.
5. Provide minimum basic facilities for fishermen families. 6. Implementation of fishermen Welfare Schemes.

V. Social Forestry

1. Growing trees for cattle feed, fire wood and growing of fruit trees.
2. Organise campaigns for planting of trees and to build environmental awareness.
3. Afforestation of waste land

VI. Small scale Industries

1. Promotion of cottage-village industries.
2. Promotion of handicrafts.
3. Promotion of traditional and mini industries.

VII. Housing

1. Identification of the homeless people and the poramboke dwellers and provide them with lands for house construction and with houses.
2. Implementation of rural housing programmes.
3. Implementation of shelter upgradation programmes.

VIII. Water Supply

1. Management of water supply schemes within a village panchayat.
2. Setting up of water supply schemes within a village panchayat.

IX. Electricity and Energy

1. Installation and maintenance of streetlights.
2. Encourage the consumption of bio-gas.

X. Education

1. Management of Government Pre-primary Schools and Primary Schools.
2. Implementation of literacy programmes.
3. Management and promotion of reading rooms and libraries.

XI. Public Works

1. Construction and maintenance of village roads within a village panchayat.
2. Construction of buildings for institutions including those transferred from the government.

XII. Public Health and Sanitation

1. Running of dispensaries, Primary Health Centres and Sub-centres (with all systems of medicines.)
2. Management of maternity and Child Welfare Centres.
3. Carry out immunisation and other preventive measures.
4. Implementation of family welfare programme.
5. Implementation of sanitation programmes.

XIII. Social Welfare

1. Running of Anganwadis
2. Sanctioning and distribution of pension to destitutes, widows, handicapped and agricultural labourers.
3. Sanctioning and distribution of unemployment wages.
4. Sanctioning of financial assistance for the marriage of the daughters of widows.
5. Implementation of Group Insurance Scheme for the poor.

XIV. Poverty Alleviation

1. Identifying the poor.
2. Implementation of self employment and Group Employment Schemes for the poor especially for women.
3. Providing community assets of continuing benefits to the poor.

XV. Scheduled Caste-Scheduled Tribe Development

1. Implementation of beneficiary oriented schemes under S.C.P., T.S.P.
2. Running of nursery schools for Scheduled Caste-Scheduled Tribes.
3. Arrange basic facilities in Scheduled Caste-Scheduled Tribe Colonies.
4. Provide assistance to Scheduled Caste-Scheduled Tribe Students.
5. Provide discretionary assistance to scheduled Caste-Scheduled Tribe when necessary.

XVI. Sports and Cultural Affairs

1. Construction of playgrounds.

2. Establishment of Cultural Centres.

XVII. Public Distribution System

1. Examining the complaints against the Public Distribution System and find out and implement remedial measures.

2. Organise campaigns against offences relating to weights and measures.

3. General supervision and guidance of Ration Shops, Maveli Stores, Neethi Stores and other public distribution systems and start new public distribution centres, if necessary.

XVIII. Natural calamities Relief

1. Protection of Relief Centres.

2. Conduct works relating to natural calamity. The work to compensate damages caused to the assets should be done by the respective panchayats.

XIX. Co-operation

1. Organise Co-operative societies within the boundaries of village panchayat.

2. 2. Strengthen [the existing co-operative institutions]

26. The functions relating to the Solid waste Management including preservation of water are all the mandatory functions of the Village Panchayat. In such circumstances such powers cannot be given up by the village Panchayat to benefit certain Municipalities unless there is consensus between the Municipality and the Panchayat. The consensus itself can be arrived at by village Panchayat in the meeting of duly elected members. While so, on the factual matrix of the case when the Vilapplilsala Panchayat has taken objection to the conduct of Thiruvananthapuram Municipal Corporation in setting up a MSW Plant in Vilappilsala territory, certainly such plant cannot be installed there at all as per the spirit of the constitutional mandate.

27. The MSW Rules, 2000 was framed by the Central Government in exercise of the powers conferred under Sections 3, 6 and 25 of the Environment (Protection) Act, 1986. The term 'Municipal Authority' means Municipal Corporation, Municipality, Nagar Palika, Nagar Nigam, Nagar Panchayat, Municipal Council etc. Rule 4 (1) of the said statutory rules makes it abundantly clear that every Municipal Authority which includes Panchayat as well as Municipal Corporation is responsible to implement the provisions of the Rules within their territorial area. The rule is as follows:

“Every municipal authority shall, within the territorial area of the municipality, be responsible for the implementation of the provisions of these rules, and for any infrastructure development for collection, storage, segregation, transportation, processing and disposal of municipal solid wastes.”

28. The Rules, impose responsibility on every Municipal Authority a duty for collection, segregation, storage, transportation, processing and disposal of Municipal solid waste. The term ‘Municipal Solid Waste’ includes commercial and residential waste generated in a Municipal or notified area in either solid or semi solid form excluding industrial hazardous waste but including the treated biomedical waste as defined under Rule 3 (xv) of MSW Rules. The MSW Plant at Vilappilsala came to be inaugurated simultaneously at the time when MSW Rules have come into operation. It was in 2008 the Corporation entrusted the operational work to CED. Therefore, one cannot conclude that the Plant has come into operation before the statutory rules have been made operational. Under the Rules it is clear that Thiruvananthapuram Municipal Corporation can implement the provisions of MSW Rules only within its territorial area. Even otherwise under the Constitutional provisions enumerated above, there are distinct territorial jurisdictions of the Corporation and village Panchayat.

29. Under the MSW Rules, Rule 6 imposes a responsibility on the State as well as Central Pollution Control Board (CPCB) to monitor compliance of the standards regarding ground water, ambient air, leachate quality, compost quality including the incineration standards. After receipt of application for setting up of MSW Plant, the SPCB before granting authorisation for setting up of such facility including landfills has to examine the proposal taking into consideration the views of other agencies like State Urban Development Department, the Town and Country Planning Department, Air Port or Air Base Authority, the Ground Water Board etc. The Board shall issue authorisation in the prescribed form to the municipal authority within 45 days stipulating compliance criteria. Schedule 3 of the MSW Rules contemplate the specifications for landfill sites and site selection. It makes clear that if the site falls within the jurisdiction of Development Authority, the Authority has to identify the land fill site and hand over the same to the concerned Municipal Authority. It also makes clear that even while selecting land fill sites, the same shall be based on the examination of environmental issue and the same

must be away from habitation clusters, forest area, water bodies, monuments, national parks, wet lands, and places of important cultural, historical or religious interest. The schedule 3 relating to site selection is as follows:

Site Selection

1. In areas falling under the jurisdiction of 'Development Authorities' it shall be the responsibility of such Development Authorities to identify the landfill sites and hand over the sites to the concerned Municipal Authority for development, operation and maintenance. Elsewhere, this responsibility shall lie with the concerned municipal authority.
2. Selection of landfill sites shall be based on examination of environmental issues. The Department of Urban Development of the State or the Union territory shall co-ordinate with the concerned organisations for obtaining the necessary approvals and clearances.
3. The landfill site shall be planned and designed with proper documentation of a phased construction plan as well as a closure plan.
4. The landfill sites shall be selected to make use of nearby wastes processing facility. Otherwise, wastes processing facility shall be planned as an integral part of the landfill site.
5. The existing landfill sites which continue to be used for more than five years, shall be improved in accordance of the specifications given in this Schedule.
6. Biomedical wastes shall be disposed of in accordance with the Bio-medical Wastes (Management and Handling) Rules, 1998 and hazardous wastes shall be managed in accordance with the Hazardous Wastes (Management and Handling) Rules, 1989, as amended from time to time.
7. The landfill site shall be large enough to last for 20-25 years.
8. The landfill site shall be away from habitation clusters, forest areas, water bodies, monuments, National Parks, wetlands and places of important cultural, historical or religious interest.
9. A buffer zone of no-development shall be maintained around landfill site and shall be incorporated in the Town Planning Department's land-use plans.

10. Landfill site shall be away from airport including airbase. Necessary approval of airport or airbase authorities prior to the setting up of the landfill site shall be obtained in cases where the site is to be located within 20 km of an airport or airbase.

30. On the factual matrix of the case, either under the Constitution of India or MSW Rules, the Thiruvananthapuram Municipality has no manner of right to put up its MSW Plant in Vilappilsala Pnachayt. That apart, not even one of the conditions contemplated under MSW Rules is proved to have been complied with including the site selection, transportation, processing, and disposal. The SPCB as stated above, in its reply has mentioned that leachate generation is a consequence of the operation of the Plant. There are also evidence to show that this leachate has polluted Karamana river through Meenampally Thodu. There is nothing on record to show that the territory is covered by Development Authority. In fact, the TRIDA has stated in the reply that it was not involved in the site selection. Therefore it cannot be said that the site selection was done in accordance with law. There is no documentation regarding landfill and there is nothing on record to show that environmental studies have been undertaken before the entire process was commenced. Therefore, there is a substantial and procedural violation in respect of all the acts done by the Corporation in establishing the said MSW Plant at Vilappilsala. There is also nothing on record to show that the SPCB has given any previous consent either under Section 25 of Water (Prevention and Control of Pollution) Act, 1974 or Section 21 of Air (Prevention and Control of Pollution) Act, 1981. The consent given by the State Board to Establish dated 29-03-2000 is for a project for treatment of municipal garbage and for production of organic manure at the rate of 60 t/ day. It is not known as to whether Rule 6 of the MSW Rules was followed. In any event, there is an order of authorisation dated 24-07-2006. But it is seen that even before authorisation, the Corporation had almost completed the work. No "Precautionary Principle" was applied by the Corporation before establishing the MSW Plant at Vilappilsala. This is in our view not only a transgression by the Corporation into the territory of the Panchayat but also violative of Article 48A of the Constitution of India which is read under Article 21 of the Constitution regarding right to life. The conduct of the Corporation certainly affected the people of Vilappilsala Panchayat and their right to

live in pollution free environment. It is also relevant to point out at this stage that the Cabinet of the Kerala Ministry appears to have taken a decision to defer the project and shift it to some other place.

31. We make it clear that we are not examining anything about the correctness or otherwise of the purchase or acquisition of any land by the Thiruvananthapuram Municipality within the territory of the Vilappisala Panchayat which is not within our jurisdiction. Therefore, we are not concerned with the question as to whether the Municipal Corporation can purchase any land in a Panchayat. We are concerned in this case only about the environmental issues involved and as to whether the statutory rules in that regard have been followed. We are compelled to refer the constitutional provisions only in furtherance of the above objective.

32. The additional typed set of papers filed by the learned counsel for the Municipal Corporation has not revealed anything to show that the Vilappilsala Panchayat has ever been a party in allowing the MSW Plant in 2000 within its territorial limit. Even the Environment Impact Assessment of Municipal Solid Waste Management Project of Thiruvananthapuram Municipal Corporation prepared by Dr. Ajayakumar Varma and others of National Centre for Earth Science Studies, Thiruvananthapuram, is of the year 2014, much after the damage has occurred. Unfortunately, even that study has not focused on any of the measures to be taken to rectify the damages caused. That apart, the other documents are all relating to purchase or acquisition of lands in Vilappisala about which we are not concerned, as stated above.

33. In this regard it is relevant to extract one paragraph of the report filed by the Kerala SPCB through its Environmental Engineer dated 16th January 2012 wherein it is stated as follows:

“It is observed that leachate is flowing from the landfills. This is now collected in temporary ponds and is disposed after addition of alum, lime and bleaching powder. These temporary measures are inadequate to handle leachate that will raise on a rainy day. This leachate frequently flows into the nearby stream and reaches Karamana river through Meenampally Thodu and is causing river water pollution”

Therefore, looking into any angle we are unable to accept any of contentions raised on behalf the Thiruvananthapuram Municipal Corporation. The damages caused by this most unlawful and anti-environmental and improper Plant to the people of Vilappilsala as well as the people living in downstream of Karamana river are enormous. It is the duty of Thiruvananthapuram Municipal Corporation to remove the entire Plant put up in the territory of Vilappilsala Panchayat and restore the land to its original position by rectifying all defects. While doing so, the Corporation shall take steps to make thorough scientific study for the purpose of removal of the Plant without causing anymore environmental damage and the entire activity shall be done at the cost of Thiruvananthapuram Municipal Corporation.

34. We are aware that the process of shifting the municipal solid waste already dumped in the Plant at Vilappilsala Municipal Solid Waste Plant site and its relocation to an alternate site within the area covered by the Corporation is logistically daunting and from the view point of environment a challenging task. However, considering the environmental impacts, health effects and also the time frame involved in the above process, we direct the Corporation of Thiruvananthapuram to carry out the task as below:

1. Accordingly all the applications stand allowed and it is declared that setting up of MSW Plant by the Corporation at Vilappilsala Panchayat is illegal and the same is to be removed by the Corporation;
2. Within a period of 4 weeks from the date of receiving this order, the Corporation shall form a Task Force with an exclusive mandate to complete the said process. The task force shall include Senior Level Municipal Engineers and Scientists from the Corporation, an officer from the Central Pollution Control Board, an officer from Kerala State Pollution Control Board and two outside experts in this field drawn from Universities/ Organisations working on waste management- one from the State of Kerala and one from any other State of India.
3. The Task Force shall identify a suitable location to establish the MSW Plant within the Corporation area following the norms and guidelines as per the MSW Rules, 2000.

4. After identifying the site for locating the Plant, the Corporation shall make application and obtain prior Environment Clearance (EC) from SEIAA or MoEF& CC as applicable, following the due process of law.
5. As a parallel activity and prior to the commencement of shifting the existing municipal solid waste dumped at Vilappilsala site, a detailed study shall be undertaken following the advice of the Task Force to characterise and quantify the existing dumped waste in order to assess the potential health and environmental impacts that may be caused by the “aged” dump during the excavation.
6. The Corporation is directed to take all precautionary measures during the transportation of the waste from its present location to the designated project site. While loading and unloading of the municipal solid waste from the MSW Plant at Vilappilsala to the new project site, the environment and health aspects of the workers shall be taken care of and all the protective gears be made available to ensure the safety of workers. The advice of the Task Force in this regard shall be scrupulously followed.
7. On complete removal of the dumped waste from the Vilappilsala site, the Corporation of Thiruvananthapuram shall carry out a detailed study and document the impacts/damages already caused by the dumping of the waste on relevant parameters of soil, ground water and other ecological features in the zone of influence. The zone of influence for this shall be clearly marked as a part of the study.
8. While carrying out the above study, special focus shall be given to the effects of the conveyance of leachate from the existing site through Meenampally Thodu to Karamana river and its environs.
9. The Corporation is directed to initiate action on all the above with “topmost priority” and complete the relocation and commencement of the new facility within a period of 8 months from the date of receiving this order and prepare the rehabilitation plan for area allotted in Vilappilsala within a period of 3 months there from. The execution of Rehabilitation Plan shall be completed in

a time bound manner. In any event this task shall be completed within one year after the clearing of the dump.

10. Under no circumstances shall the Corporation commence shifting of the waste till all the facilities in the new project are ready for commissioning. That the time line indicated supra in this connection is reiterated once again and the corporation is directed to strictly follow the same.

11. We direct the SPCB to monitor the progress of the above activities periodically and facilitate the successful management of the municipal solid waste generated in the City of Thiruvananthapuram.

12. The entire expense in this regard shall be met by Thiruvananthapuram Municipal Corporation.

There shall be no order as to cost.

Dated 30th September 2015

Chennai

Justice Dr. P. Jyothimani

Judicial Member

Prof. Dr. R. Nagendran

Expert member

NGT