

BEFORE THE HONOURABLE OMBUDSMAN FOR LOCAL SELF
GOVERNMENT INSTITUTION.

THIRUVANATHAPURAM

O.P.No.397 OF 2004

3rd November, 2004.

Dr. A.K.Sabhapathy vs Corporation of Cochin

ORDER

The question as to how the "BIO MEDICAL" waste generated in the Hospitals can effectively be disposed of and thus prevent the ill effects therefrom to public ?, even today remains a problematic question.

The answer however, depends upon the construction of the relevant rules in The BIO-MEDICAL WASTE (MANAGEMENT AND HANDLING RULES) 1998 for short, The Rules.

The clauses in The Rules, relevant in the context, are:

Sub Rule 5 Rule 3 defines the Bio-Medical Waste this, "BIO-MEDICAL WASTE" means any waste, which is generated during the diagnosis, treatment or Immunisation of human beings or animals in research activities pertaining thereto or in the production of testing of biologicals and including categories mentioned in Schedule I.

Category 1 and Category 8 in The 1st schedule govern the issue Category 1 prescribes incineration or deep burial for treatment and disposal of human anatomical waste, human tissues, organs, body parts, Category No.8; the liquid waste generated from Laboratory and washing, cleaning, house keeping and disinfecting activities by chemical treatment and thereafter the liquid shall be discharged into drains.

Experiments carried on in Hospitals by the Pollution Control Board establish beyond doubt that both the methods suggested by The Rules namely, 'incineration or deep burial' are not practicable. Deep burial in the City of Kochi is

not allowed. The following excerpts from the letter, the Member Secretary of The Kerala State Pollution Control Board, dated 13-03-2004 addressed to the Managing Director, Westside Hospital, is relevant in the context. For easy reference the letter is reproduced:

"It is observed that the Bio-Medical Waste is not collected in colour coded container with emblem as per rules. The treatment and disposal options for category I type wastes are incineration or deep burial. Deep burial is not allowed in Cochin city area as per rule and the board is not encouraging installation of incinerators in individual health care institutions.

Regarding the installation PAB reactor this is to inform that the reactor is not a treatment option approved as per Bio-Medical Waste Rule".

The problems pointed out by the Member Secretary are the problems that hospitals in India, particularly in Kerala, a coastal area, generally are confronted with. It shall in this connection be remembered that incineration in fact is a pollutant. A reference to 'Stockholm Declaration' to which The Nation is committed is relevant in the context. Developed countries therefore are shunning incineration as a treatment and disposal system. Deep burial, unless carried out scientifically, will turn out to be another polluting agency. This system cannot uniformly be introduced because "There is 6000 Kms long coast line in India" observation of The Supreme Court. Vide 1996 (5) SCC 281 at 284. That means as in Kerala, "Deep Burial" along the 6000 Kms is not possible.

The Rules thus are impossible of implementation even according to Authorities constituted to administer. The Rules. If that be so it must be held that The Rules do not compel. The Hospital Management, in any event in Kerala to comply with The Rules and dispose of the Bio-Medical Waste generated in The Hospitals. A reference in this connection to the well established principle of interpretation of Statutes and Rules framed thereunder, is relevant. The principle is stated thus. "The law does not compel a man to do that which he cannot possible perform. "Lex Non Cogit Ad impossibilia". This maxim is also known as impotentia excuses legem. It means that "impotentia excuses when there is a necessary or invincible disability to perform the mandatory part of the law or to forbear the prohibitory". Vide Brooms Legal Maxims, Tenth edition Page 162.

The position is highlighted by Lord Dundin in Whitney IRC *1926) AC 37 at 52 thus:

"A statute is designed to be workable and the interpretation thereof by a Court should be to secure that object, unless crucial omission or clear direction makes that end unattainable".

This principle is noted with approval by the Supreme Court in C.I.T. Vs. Tej Singh AIR 1999 SC 352 at 356. Though repetition, the finding of the Pollution Control Board revealed by the letter of the Secretary reproduced supra, makes it clear that in any event, so far as the Hospitals in Kerala, particularly in Kochi, there is the invincible disability to perform the mandatory duty cast on them by The Rules. In other words the authority concerned cannot insist upon the disposal of Bio-Medical Waste adopting the methods prescribed by The Rules.

However, some other methods shall be evolved to prevent the ill effects to the public created by the Bio-Medical Waste generated in the Hospitals. The Association of private Nursing Homes and Hospitals "QPMPA" per force had to search for a competent authority to suggest ways and means to effectively dispose of the Bio-Medical Waste generated in the Hospitals. The Association could locate an expert body. "The School of Environmental Studies, Cochin Univerisity of Science and Technology, to develop Eco-friendly, appropriate and economic altermate method to dispose of the Bio-Medical waste within the Health Care Institution itself.

The CUSAT developed a methodology after conducting research and with reference to The Rules. They are, "The Placents Anaerobic Bio-Reactor" (PAB) and "Body Parts Anaerobic Bio Reactor" (BPAB). The research report forms part of this order. Particular reference to the following statements in the report is advantageous.

"For those hospitals which are installing, PAB/BPAB Reactors, human anatomical waste, organs and body parts (wastes of category 1 & 2 in Schedule I) on generation, are not wastes as these are not discarded as such, but further processed in Reactors. Thus, they need not go in for the disposal options of deep burial/incineration. But for those hospitals which do not install, PAB/BPAB Reactors, the disposal option for the anatomical wastes are only deep Burial/.incineration".

The discussion above clearly indicates that the installation of PAB/BPAB Reactors is within the Rules, governing hospitals, nursing centers and health care units all over the Country.

The inferences irresistible in the circumstances are:

- (1) The method of treating the Bio-Medical Waste prescribed by The Rules even according to the Controlling Board, is not suitable.
- (2) The methodology suggested by the CUSAT, the Expert Body on Environmental Matters, necessarily shall be adopted in the absence of any other methodology suggested by any expert body to manage the Bio-Medical Waste in Hospitals. It shall in this connection be remembered that the report authored by the Research Centre at the

CUSAT, a University recognized internationally as a University on a par with any other Research University in the world, makes it clear that the installation of PAB/BPAB Reactors is within The Rules and less expensive. The methodology suggested by the CUSAT, the Pollution Control Board is not prepared to accept because The Report (submitted by CUSAT) "is not a treatment option approved as per Bio-Medical Waste Rules". That however means the methodology though, cannot be accepted as it does not form part of The Rules.

As already stated, The Rules as such are impossible of implementation,. But that does not mean that the Hospitals can adopt their own methods of disposing of Bio-Medical Waste. There must be uniformity. This can be accomplished if the report of the Expert body of CUSAT is introduced in all the Hospitals.

- 1) I ACCORDINGLY ORDER ALL THE Local Authorities shall issue directions to all the Hospitals and Health Care institutes to install in their respective areas, PAB and BPAB within a period of six months from the date of receipt of the direction.
- 2) Copies of this Order, The Director of Urban Affairs shall forward to all the Corporation and Municipalities to enable them to implement the order and The Director of Panchayat shall forward copies of This Order to all the Panchayats to enable them to implement the Order.

The petition is allowed in the manner stated above.

Sd/-
Justice K.P.Radhakrishna Menon
Ombudsman.

The Secretary, Ombudsman, shall forward copies of This Order and the Report of the Expert Committee of CUSAT to.

- 1) The Hon'ble Minister for Health, Kerala.
- 2) The Hon'ble Minister for Local Government Department of Kerala.
- 3) The Director of Urban Affairs.
- 4) The Additional Director, Ministry of Environment & Forest, Government of India, Paryavaran Bhavan, C.G.O.Complex, Lodhi Road, New Delhi-110 003.
- 5) Dr.Bhiswal, Chairman, Central Pollution Control Board, Parivesh Bhavan CBD cum Office Complex, East Arjun Nagar, New Delhi-110 032.
- 6) Dr.Sen Gupta, Member Secretary, Central Pollution Control Board, Parivesh Bhavan, CBD cum Office Complex, East Arjun Nagar, New Delhi-110032.

- 7) The Ministry of Environment, New Delhi.
- 8) The Secretary, Local Self Government Department of Kerala.
- 9) The Secretary, health Department of Kerala.