

IN THE HIGH COURT OF JUDICATURE, KERALA
[SPECIAL ORIGINAL JURISDICTION]

Writ Petition.(Civil).No.....of 2005

Qualified Medical Practitioners and Hospitals Association.....Petitioner

Vs.

Union of India and others.....Respondents

S Y N O P S I S

Through out the world, for the treatment of bio-medical wastes incinerators have been found to be unsafe as it causes pollution. It is not recommended by the CPCB or the Ministry of Environment and Forests. But the Bio-Medical Waste (Management and Handling) Rules, 1998 insists for the treatment of incinerators for the human anatomical waste. CUSAT has developed a Placenta Anaerobic Bio-Reactor. (PAB) and Body Parts Anaerobic Bio-Reactor (BPAB) for the treatment of Bio-Medical Wastes. The same is installed in many of the hospitals of the petitioner organization . CPCB inspected the same and rejected the proposal because of some deficiency , which was later on cured. A request for re-consideration of the request is pending consideration.

The incineration technology will create air pollution due to emission of toxic gases. Therefore it is contrary to Art. 21 of the Constitution of India.

CHRONOLOGY OF EVENTS

20-07-1998 - Bio-Medical Waste (Management and Handling) Rules, 1998.

02-06-2000 – Amendment made to the said Rules for the Common Treatment Facilities and duty on Municipal Corporation.

13-03-2002 –Representation by the petitioner to the 1st respondent.

08-05-2002 – Representation by the petitioner to the 1st respondent.

17-05-2002 – Judgment of the High Court of Kerala directing the 1st respondent to consider the representation.

31-12-2002 – Deadline for the implementation of Bio-Medical Wastes.

31-01-2003 – Order by the 1st respondent rejecting the request for common medical treatment facilities to be set up by Municipal Corporation. (Ext.P.4).

30-04-2003 – Report of the CUSAT on PAB and BPAB reactors. (Ext.P.5).

09-03-2004 – Meeting of the Chairman and Member of Secretaries of PCB at New Delhi taking a decision to ban installation of new incinerators and consider the closure of existing incinerators. (Ext.P.6).

12-04-2004 – Inspection of the team from the 1st respondent on various sites where the PAB and BPAB reactors have been installed.

03-11-2004 – Order by the Ombudsman for Local Self Government for the installation of PAB and BPAB reactors in Hospital and Health Care Centres. (Ext.P.7).

05-02-2005 – Petitioner submitting proposal for sanction to use reactors (Ext.P.8)

10-03-2005 – Letter from the petitioner to the 2nd respondent about the PAB and BPAB technologies. (Ext.P.9).

29-04-2005 – Letter from the petitioner to the 2nd respondent for providing techno-financial help to rectify any defects as pointed out at the time of inspection.

18-05-2005 – Invitation from the 2nd respondent for a presentation of the said reactors at New Delhi.

24-05-2005 – Petitioner seeking time for modifying the reactors so as to clear the defects pointed out. (Ext.P.12)

31-05-2005 – Date on which the Expert Committee scheduled to meet this petitioner.

08-07-2005 – Petitioner submitting a new proposal to the 2nd Respondent along with the modifications made and the report of the Microbiology Department of the CUSAT. (Ext.P.13).

01-08-2005 – Letter from the 2nd Respondent to the petitioner stating that PAB and BPAB has been found to have been not suitable to the bio-medical waste treatment because of certain reasons. (Ext.P.14).

12-08-2005 – Letter by the Petitioner to the 2nd respondent sent clarifying the steps taken after inspection of the site and further details. (Ext.P.15).

02-09-2005 – Letter by the Petitioner to the 2nd respondent forwarding the effluent analysis report (Ext.P.16.)

01-10-2005 – Letter from the CUSAT to the 3rd respondent about the efficacy of the reactor to destroy/inactivate pathogens. (Ext.P.17)

JUDGMENTS REFERRED TO

B.L.Wadhera vs Union of India . 1996 (2) SCC 594_–Hospitals which are having bed above 50 beds or more to provide incinerators or other alternate treatment systems for safe disposal of hospital wastes.

IN THE HIGH COURT OF JUDICATURE, KERALA
[SPECIAL ORIGINAL JURISDICTION]

WRIT PETITION (CIVIL).No.....of 2005

BETWEEN

PETITIONER:

Qualified Medical Practitioners and Hospitals Association, Kerala (QMPMA), represented by its Co-ordinator Dr.A.K.Sabhapathy, Bio-Medical Waste Management Committee , 5th Floor, Vallamattom Estate, Ravipuram, Kochi-682015.

AND

RESPONDENTS:

1. Union of India, represented by its Principal Secretary, Ministry of Environment and Forests, Paryavaran Bhavan, New Delhi.
2. Central Pollution Control Board, represented by its Chairperson, “Parivesh Bhavan”, East Arjun Nagar, Delhi-110 032.
3. Kerala State Pollution Control Board, represented by its Secretary, Plamoodu Junction, Pattom Palace, Thiruvananthapuram-695 004.

All process to the petitioner be served on his counsel Shri.P.B.SAHASRANAMAN, K.JAGADEESH & T.S.HARIKUMAR, Advocates, Chittoor Road, Ernakulam, Kochi-682011.

All process to the respondents be sent on their above addresses or on their advocates, if any engaged.

**WRIT PETITION FILED UNDER ARTICLE. 226 OF THE
CONSTITUTION OF INDIA.**

Statement of Facts.

The petitioner above named states as follows:

1. The petitioner is an organization of qualified medical practitioners and hospitals in Kerala. The organization is keeping a list of its members and the same will be submitted as and when required or ordered by this Hon’ble Court. The organization is registered under the Travancore-Cochin Literary Scientific Societies Registration Act. This writ petitions is filed by the Bio-Medical Waste Management Committee regarding the insistence for incinerator for the bio-medial wastes.

2. Government of India , in exercise of its powers under Secs. 6, 8 and 25 of the Environment (Protection) Act, 1996, has framed the Bio-Medical Waste (Management and Handling) Rules, 1998 (hereinafter referred to as “the said rules”). The said rules provide for the treatment and disposal of such Bio-medical Waste which has been generated by the hospitals. The said rules also contemplate the disposal of waste as per Schedule-1. The said schedule reads as follows:-

SCHEDULE I
(See Rule 5)
CATEGORIES OF BIO-MEDICAL WASTE
SCHEDULE I
(See Rule 5)
CATEGORIES OF BIO-MEDICAL WASTE

Waste Category No.	Waste Category Type	Treatment and Disposal Option +
Category No.1	<u>Human Anatomical Waste</u> (human tissues, organs, body parts)	<u>incineration@/deep burial</u>
Category No.2	<u>Animal Waste</u> (animal tissues, organs, body parts carcasses, bleeding parts, fluid, blood and experimental animals used in research, waste generated by verterinary hospitals colleges, discharge from hospitals, animal houses)	<u>incineration@/deep burial</u>
Category No.3	<u>Microbiology & Biotechnology Waste</u> (wastes from laboratory cultures, stocks or specimens of micro-organisms live or attenuated vaccines, human and animal cell culture used in research and infectious agents from research and industrial laboratories, wastes from production of biologicals, toxins, dishes and devices used for transfer of cultures)	Local autoclaving/micro-waving/incineration@
Category No.4	<u>Waste sharps</u> (needles, syringes, scalpel, blades, glass, etc. that may cause puncture and cuts. This includes both used and unused sharps)	Disinfection (chemical treatment@@/auto claving/micro-waving and mutilation/shredding
Category No.5	<u>Discarded Medicines and Cytotoxic drugs</u> (wastes comprising of outdated, contaminated and discarded medicines)	<u>Incineration@/destruction</u> and drugs disposal in secured landfills

Category No.6	<u>Soiled Waste</u> - (Items contaminated with blood, and body fluids including cotton, dressings, soiled plaster casts, lines, beddings, other material contaminated with blood)	<u>Incineration@</u> autoclaving/microwaving
Category No.7	<u>Solid Waste</u> - (Wastes generated from disposable items other than the waste sharps such as tubings, catheters, intravenous sets etc.)	Disinfection by chemical treatment@@ autoclaving/microwaving and mutilation/shredding##
Category No.8	<u>Liquid Waste</u> (waste generated from laboratory and washing, cleaning, house-keeping and disinfecting activities)	Disinfection by chemical treatment@@ and discharge into drains
Category No.9	<u>Incineration Ash</u> (ash from incineration of any bio-medical waste)	Disposal in municipal landfill
Category No.10	<u>Chemical Waste</u> (chemicals used in production of biologicals, chemicals used in disinfection, as insecticides, etc.)	chemical treatment@@ and discharge into drains for liquids and secured landfill for solids

@@ Chemicals treatment using at least 1% hypochlorite solution or any other equivalent chemical reagent. It must be ensured that chemical treatment ensures disinfection.

Multilation/shredding must be such so as to prevent unauthorised reuse.

@ There will be no chemical pretreatment before incineration. Chlorinated plastics shall not be incinerated.

* Deep burial shall be an option available only in towns with population less than five lakhs and in rural areas.

+ Options given above are based on available technologies. Occupier/operator wishing to use other State of the art technologies shall approach the Central Pollution Control Board to get the standards laid down to enable the prescribed authority to consider grant of authorization.

3. The options given above are based on the technologies available. The occupier/operator wishing to use other technology shall approach the Central Pollution Control Board to get the standards laid down to enable the prescribed authority to consider the granting of authorization. The said Rules were amended in 2nd June, 2000 incorporating provisions for the installation of common treatment facilities and casting duty on the Municipal authorities in picking up and transporting the same for disposal.

4. The methods of disposing of the Bio-Medical Waste under Category –I and II is burning process known as incineration. Incineration is a chemical process in which waste is broken into constituents and where the constituents can form new chemicals . To ensure that these pollutants do not escape during the incineration process pollution control devices like scrubbers (wet and dry) are added. Incineration is a burning process and incinerators have two chambers, primary and secondary. The first chamber is intended to burning of the waste fed into it and the second chamber is supposed to destroy toxic gases which get formed during the burning process in the primary chamber. For the secondary process the chamber temperature should be above 1000 Degree Celsius. But in practice it is not done and is not possible in countries like India. No incinerator has achieved the said temperature in secondary chamber. The result is that toxic gases are emitted creating air pollution. Several countries in U.S and Europe has already phased out the usage of incinerators for the medical waste. Countries like Jamaica has obtained the assistance of research organizations in U.S and has developed the systems of autoclave or using steam sterilization. A true Photostat copies of the said reports published in various journals in this regard is produced herewith and marked as **Exhibit.P.1.**

5. Environmental journals like Toxic Link, clearly states that most of the countries have banned the use of incinerators. The October, 2001 issue of “*Toxic Link*”, with heading “*Putting out the Flames*” speaks about the adverse effects of incineration. A true Photostat copy of the, October, 2001 issue of “*Toxic Link*”, with heading “*Putting out the Flames*” speaks about the adverse effects of incineration is produced herewith and marked as **Exhibit.P.2. .**

6. The waste put in the incinerator is supposed to burn. They are to be categorized before burning. The constituents either react among themselves to form new chemicals or remain in their original form. These chemicals escape as smoke which are carried through air to different areas. These chemicals is also being consumed by different species. The ash remaining in the first chamber is dumped in open spaces. The said ash contains heavy metals such as mercury, lead, etc. Animals during foraging on vegetating ingest this contaminated ash. Humans then consume animal products like milk, meat, etc. This is called bio-magnification which has been identified

by the U.S. National Research Council's "Waste Incineration and Public Health", 2000.

7. It is now established fact that the incineration of Bio-medical waste, create a lot of air pollution in particular produces Dioxin, which is one of the green house gases and depletes the Ozone layer and adversely affects the health of the people. There is a world wide resistance in using incinerators even in Kyoto Protocol which has come into force with effect from 15-02-2005 . Dr.B.Sengupta ,Member Secretary of the CPCB has presented a paper on the implementation of the said rules wherein he himself has dissatisfied about the performance of the incinerators. A true photostat copy of the said paper presented by Dr.B.Sengupta ,Member Secretary of the CPCB, titled “ *Implementation of Bio-Medical Waste (Management and Handling)Rules in Delhi*”, dated NIL is produced herewith and marked as **Exhibit.P.3.**

8. The CPCB after assessing various technologies available for processing of the Municipal Solid Wastes in consultation with the National Environmental Engineering Research Institute (NEERI) has prepared a report on September, 2000. After carefully evaluating the various methods of treatment of Bio-medical wastes has found that composting and anaerobic digestion of Municipal Solid Waste are the two methods of success. The technologies namely, incineration, pyrolysis and refuse derived fuel are not presently suitable in Indian conditions.

9. Autoclaving and Micro waving are also methods which is not suitable for countries like India for the reason that one has to spend crores of rupees for its installation. The process is also very complicated which are not suitable for States like Kerala where there are a lot of small hospitals, and clinics. Moreover it is the duty of the Municipal authorities for the establishment of the common treatment plant. Taking into consideration the special features of Kerala and the pollution which is likely to be created by the usage of the above outmoded system of incineration this petitioner has submitted a representation before the 1st respondent on 13-03-2002 and on 08-05-2002. When the same was not considered this petitioner has filed O.P.No.13079 of 2002. As per the judgment dated 17th May, 2002 the said representation was directed to be dispose of by the 1st respondent.

- 10.** The first respondent by Order No. 23-2/96-HSMD, dated 31-01-2003 rejected the representations stating that only the existing technologies have to be adopted and extension of time could not be allowed. A true Photostat copy of the said order No. 23-2/96-HSMD, dated 31st January, 2003 is produced herewith and marked as **Exhibit.P.4.**
- 11.** The Municipal authorities in Kerala are not prepared to provide land or take steps for the management of bio-medicals as contemplated by the amended rules. Therefore it has felt that an alternate method was required so as to manage the bio-medical waste. This petitioner has approached the School of Environmental Studies, Cochin University of Science and Technology , Cochin (CUSAT) for an alternate aerobic process for the management of liquid waste and incineration for the Bio-medical Wastes . They have developed an alternate method of effective disposal of medical waste , Placenta Anerobic Bio-Reactor. (PAB) for all anatomical material organs and body parts without bones and Body Parts Anaerobic Bio-Reactor (BPAB) for the management of processing of anatomical materials with bones generated in hospitals. BPAB is a multipurpose one as it can handle small quantities of anatomical materials of both body parts without bones, placenta, etc and body parts with bones. Along with the letter dated 30-04-2003 the CUSAT has submitted the report on the development and performance of PAB Reactor . A true Photostat copy of the said report of the CUSAT on the PAB Reactor, dated 30th April 2003 is produced herewith and marked as **Exhibit.P. 5.**
- 12.** While so the 1st respondent has called for a meeting of Chairmen and Member Secretaries of all the State for a discussion on the usage of incinerators for the treatment of bio-medical wastes. In the meeting held on 8th and 9th March, 2004 it has been found that the usage of bio-medical waste causes air pollution in a large extent. They have also taken a decision to ban the installation of new incinerators and consider closure of existing incinerators in the operating area of common Bio-medical Waste Treatment Facilities (CBWTF). A true Photostat copy of the Minutes of the 50th Conference of Chairmen and Member Secretaries of Pollution Control Boards/Committees at India Habitat Centre, New Delhi , March, 8th September ,2004 is produced herewith and marked as **Exhibit.P. 6.**

13. For evaluating the performance of the PAB and BPAB reactors were installed in four hospitals in Ernakulam Districts, namely Cochin Hospital, Lakshmi Hospital, M.A.J Hospital, Lourdes Hospital, Lissie Hospital, and .PS.M. Hospital. The study by the CUSAT continued. In the meantime this petitioner has also approached the Ombudsman for Local Self Government. The said authority after considering all the aspects passed an order directing all the Local Self Government authorities to issue directions to all the hospitals and health care institutions to install and maintain in their respective areas, PAB and BPAB reactors within a period of six months. A true Photostat copy of the said order of the Ombudsman for Local Self Government, in O.P.No.397/2004, dated 3rd November, 2004 is produced herewith and marked as **Exhibit.P.7.**
14. This petitioner has submitted a proposal for getting sanction from the respondents for the usage of the said reactors developed by CUSAT on 5th February, 2005. The petitioner also sought the time for the submission of annual returns. A true Photostat copy of the said letter issued by the petitioner to the 3rd respondent, dated 05th February, 2005 is produced herewith and marked as **Exhibit.P. 8.**
15. The 3rd respondent also invited this petitioner for a meeting on 22-02-2005 and this petitioner has explained everything in detail all the doubts raised by the said officials. The 2nd respondent also invited this petitioner for highlighting about all the aspects of the said reactors. This petitioner has sent a letter on 10th March 2005 highlighting all the details of the said reactors and requested for a consent to establish the said technology. A true Photostat copy of the said letter dated 10th March 2005 issued by this petitioner to the 2nd respondent is produced herewith and marked as **Exhibit.P.9.**
16. A team of experts from the 2nd respondent inspected the said reactors and the members of the association clarified all the points raised. They officials of the 2nd respondent have pointed out certain curable defects in the processing, which this petitioner has agreed to rectify. They also stated that techno-financial help in this matter is available from various sources. This petitioner has sent a letter on 29th April, 2005 requesting for such techno-financial help for the rectification of any defects, and making the technology environmental friendly. A true photostat copy of the said order of the letter sent by this petitioner to the 2nd respondent dated 29th April 2005 is produced herewith and marked as **Exhibit.P. 10.**

17. The 2nd respondent has invited this petitioner for a presentation of the said reactors at New Delhi on 31st May, 2004 at their office. A true Photostat copy of the said letter issued by the 2nd respondent to this petitioner, dated 18th May, 2004 is produced herewith and marked as **Exhibit.P. 11.**
18. At the time of inspection of the said reactors the officials of the 2nd respondent has suggested certain deficiencies. The same was conveyed to the Microbiology Department of the CUSAT. But the final report of the said analysis has not come out, therefore this petitioner has requested to adjourn the meeting proposed on 31-05-2005 to another date. A true Photostat copy of the said communication sent by the petitioner to the 2nd respondent dated 24th May ,2005 is produced herewith and marked as **Exhibit.P.12.**
19. When the final report of the CUSAT, Microbiology Department came this petitioner has forwarded the same to the 2nd respondent on 8th July, 2005. This petitioner also sought an appointment for the presentation of the said reactors in the light of the new report. A true Photostat copy of the said report of the CUSAT along with the covering letter of this petitioner to the 2nd respondent, dated 8th July ,2005 is produced herewith and marked as **Exhibit.P. 13.**
20. When nothing was heard this petitioner sent a reminder to the 2nd respondent on 21st July, 2005 seeking a hearing to present the facts stated in the earlier representations.
21. While so this petitioner has received a communication, dated 01-08-2005 from the 2nd Respondent stating that the PAB and BPAB reactors have not been found suitable for treating bio-medical wastes. According to the 2nd Respondent the validation tests for the autoclaving/microwaving cannot be employed for the said records because of limitation in exposing the spores in the reactor. They also complained that the test results conducted by the CUSAT do not account for data related to presence of micro-organisms in waste at both stages, pre and post digestion stage. Another objection is that the process of the CUSAT does not provide any information on the type and role of inoculum in treating the waste which is essential to support the claimed disinfection. They also stated that when the PAB reactor was

opened they found flies , insects and mosquitoes. Therefore they cannot approve the same and rejected the proposal made by this petitioner for the installation of PAB and BPAB reactor. A true Photostat copy of the said communication, No. B-34017/3/2001/HWMD, dated 01st August, 2005 issued by the 2nd Respondent is produced herewith and marked as **Exhibit.P.14.**

22.It is respectfully submitted that Exhibit.P.14 decision has been taken arbitrarily, without considering the additional materials supplied by this petitioner. This petitioner, after consulting with the CUSAT, this petitioner has sent a detailed reply on 12th August, 2005 pointing out that the defects pointed out in Exhibit.P.13. Petitioner also requested for a review of the decision taken by Exhibit.P.13 in the light of the subsequent developments. A true photostat copy of the said reply letter sent by this petitioner to the 2nd respondent, dated 12th August, 2005 is produced herewith and marked as **Exhibit.P.15 .**

23.In addition this petitioner also forwarded, on 2nd September, 2005 the effluent analysis report and the report of the bacterial and viral study conducted in the effluent prepared by the CUSAT. A true photostat copy of the said letter sent by this petitioner to the 2nd respondent, dated 2nd September, 2005 is produced herewith and marked as **Exhibit.P.16 .**

24.The CUSAT also send a letter to the 3rd respondent clarifying more aspects required in regard to the efficacy of the reactor to destroy/inactivate pathogens. A true Photostat copy of the said letter send by I.S. Bright Sing, Reader in Microbiology, CUSAT, dated 1st October, 2005 is produced herewith and marked as **Exhibit.P.17 .**

25.This Petitioner was under the impression that the 2nd respondent will reconsider the decision taken as per Exhibit.P.13 in view of the subsequent developments. But it is understood that the 3rd respondent was instructed to take action against the hospitals which are using the PAB and BPAB reactors and issue a notice in this regard on news papers. It is respectfully submitted that if the said reactors cannot be used, the entire investment made by the members of the petitioner will go waste. As well as these hospitals and clinics will not be able install incinerators in a short time and

they will be constrained to close down their institutions which are providing service to a lot of people.

26. In a small state like Kerala where there are several small hospitals establish such number of incinerators and does not possess land fill . A plume of smoke from hospital waste incinerator stack stands as a frequent reminder of environment impact on the surrounding community . Incinerators emit toxic green house gases and contribute to global warming. Such burning technology is not conducive to health.

27. Therefore in these circumstances this petitioner has no other remedy than to invoke this Court's extraordinary jurisdiction under Article.226 of the Constitution of India on the following among other grounds:

GROUND S

A. The treatment of bio-medical waste by incineration causes adverse effect on the environment and health of the public. The usage of incineration is clear infringement of the Art.21 of the Constitution of India.

B. Even though the CPCB experts have inspected the reactors and made recommendations for certain modifications they have perused the records submitted by these Petitioner subsequently. The CPCB ought to have made a subsequent site inspection after the improving of the facility. The close minded approach of the CPCB is arbitrary and illegal.

C. The municipal authorities have a duty, after the amendment of the said Rules in 2002 for the installation of common treatment facilities (CTF). The Ombudsman for Local Self Government institution has already issued an order in this regard. But no steps have been taken by them so far for the implementation of the order of the Ombudsman.

D. Challenging the installation of incinerators , a public interest litigation was filed before the Supreme Court of India, and the Writ Petition (Civil) No. 160 of 2005 is pending consideration. The said writ petition also seeks a direction for the recognition of new upcoming technologies for the disposal of Bio-Medical Waste. The said writ petition is still pending. Therefore the 2nd respondent ought to have awaited till such decision comes before taking a final decision on the subject.

For the reasons set out above and in the affidavit filed herewith the petitioner prays that the following :

RELIEFS

- i. To issue a writ, direction or order in the nature of mandamus or such other appropriate writ, direction or order declaring that the usage of burning technology like incinerators for the disposal of Bio-Medical Waste (Management and Handling)Rules, 1998, is violative of Art. 21 and Art. 48A of the Constitution of India ;
- ii. To issue a writ, direction or order in the nature of mandamus or such other appropriate writ, direction or order in the nature of mandamus directing the respondents to issue appropriate orders for the closure of all the existing incinerators in the Kerala State;
- iii. To issue a writ, direction or order in the nature of mandamus or such other appropriate writ, direction or order in the nature of mandamus directing the respondents to examine the Placenta Anerobic Bio-Reactor. (PAB) and Body Parts Anaerobic Bio-Reactor (BPAB) and suggest recommendations for its use after modification, if any, and issue authorization as contemplated by the Bio-Medical Waste Rules;
- iv. To issue a writ, direction or order in the nature of mandamus or such other appropriate writ, direction or order directing the 2nd respondent to reconsider the decision taken as per Exhibit.P.13 in the light of subsequent developments;
- v. To issue a writ, direction or order in the nature of mandamus or such other appropriate writ, direction or order directing the 3RD respondent to take immediate steps for the establishment of common treatment facilities in all the Districts in Kerala for the treatment of Bio-medical wastes as contemplated under Rule 6 (6) of the said Rules with a reasonable time ;
- vi. To issue a writ of certiorari calling for the records leading to Exhibit.P.14 and quash the same;

- vii. Such other relief's which this Hon'ble Court deems fit and necessary in the circumstances of the case and the costs of this case.

Court Fees paid under the Kerala Court Fees and Suits Valuation Act. Schedule-II, Art-(I)11 (I)(2)(iii)..Rs.100/-

Dated this the 19th October, 2005.

Counsel for the Petitioner

Petitioner.

INTERIM RELIEF

For the reasons stated in the writ petition and the accompanying affidavit it is humbly prayed that this Hon'ble Court be pleased to pass the following interim orders as follows:-

- i. To permit the members of the petitioner organization usage of Placenta Anerobic Bio-Reactor. (PAB) for all anatomical material organs and body parts without bones and Body Parts Anaerobic Bio-Reactor (BPAB) for treatment of medical waste and the 3rd respondent be directed to issue authorization for its use till the disposal of the writ petition;
- ii. To appoint an independent expert committee for the examining the suitability of the Placenta Anerobic Bio-Reactor. (PAB) and Body Parts Anaerobic Bio-Reactor (BPAB) developed by the Cochin School of Environmental Studies (CUSAT) for the disposal of Bio-Medical Wastes.

Dated this the 19th October, 2005

COUNSEL FOR THE PETITIONER.

IN THE HIGH COURT OF JUDICATURE, KERALA
[SPECIAL ORIGINAL JURISDICTION]

W.P.(C).No..... of 2005

Qualified Medical Practitioners and Hospitals Association.....Petitioner

Vs.

Union of India and others.....Respondents

AFFIDAVIT

I, , Dr.A.K.Sabhapathy, aged years, Son of A.S.Krishna Iyer, Convenor, Bio-Medical Waste Management Committee , Qualified Medical Practitioners and Hospitals Association, 5th Floor, Vallamattom Estate, Ravipuram, Kochi-682015. solemnly affirm and state as follows:-

1. I am the Convenor of the petitioner organization in so far as Bio-Medical Waste Management Committee. I know the facts of this case. I am duly authorized to swear this affidavit on behalf of the petitioner organization.
2. The accompanying writ petition is prepared by my counsel on my instructions. I have gone through the petition and state that the facts stated therein are true and correct to the best of my knowledge and belief. I also declare that I have not filed any petition seeking similar relief's in respect of this cause of action.
3. The Exhibits produced along with the writ petition are true copies which has been provided by me to my counsel. If the interim prayer as prayed for it not granted petitioner will be put to irreparable loss and injury.

What is stated above are true and correct to the best of my knowledge, information and belief.

Dated this the 9 January 2023

Deponent:

Solemnly affirmed and signed before me by the deponent who is personally known to me at Ernakulam on this the 9 January 2023

P.B.SAHASRANAMAN
ADVOCATE

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 deep burial. Deep burial is not allowed in Cochin city area as per rule and the board is not encouraging installation of incinerator 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".

Exhibit.P.7 (2)

The problems pointed out by the Member Secretary are the problems the 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 possibly perform. "Lex Non Cogit Ad impossibilia". This maxim is also known as impotentia excus 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 Broome's Legal Maxims, Tenth edition Page 162.

The position is highlighted by Lord Diplock 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 "QNMPA" 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 University of Science and Technology, to develop Eco-friendly, appropriate and economic alternate 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 Placenta 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

Exhibit.P.7 (2)

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) (1) The method of treating the Bio-Medical Waste prescribed by The Rules even according to the Controlling Board, is not suitable.
- (2) (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) 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) 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.

This is the true copy of the order of the referred to and marked as Exhibit.P.7. in the writ petition

Advocate

IN THE HIGH COURT OF JUDICATURE, KERALA
[SPECIAL ORIGINAL JURISDICTION]

Writ Petition.(Civil).No.....of 2005

Qualified Medical Practitioners Hospitals Association.....Petitioner

Vs.

Union of India and others.....Respondents

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Dated this the 9 January 2023

Counsel for the petitioner

Presented on:- 20-10- 2005

Bio-Medical Wastes – Incineration causing pollution – Alternate method suggested not properly considered – Bio-Medical Wastes (Management and Handling) Rules, 1998. -Miscellaneous

IN THE HONOURABLE HIGH COURT OF KERALA

At Ernakulam.

WRIT PETITION (CIVIL) .No.....of 2005

Qualified Medical Practitioners Hospitals Association.....**Petitioner**

vs

Union of India and others.....**Respondents**

WRIT PETITION FILED UNDER ART. 226 OF THE
CONSTITUTION OF INDIA

COURT FEES PAID RS.100/-

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