

VERDICTUM.IN

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE V.G.ARUN

TUESDAY, THE 13TH DAY OF DECEMBER 2022 / 22ND AGRAHAYANA, 1944

WP (C) NO. 13694 OF 2020

PETITIONERS:

- 1 RESSY MOL BABU, AGED 47 YEARS
D/O.CHACKO MATHEW, POIKAYIL HOUSE, MANDAPAM PO,
CHITTARIKKAL, KASARAGOD-671326.
- 2 CHACKO MATHEW,
S/O.MATHAI, POIKAYIL HOUSE, MANDAPAM PO, CHITTARIKKAL,
KASARAGOD-671326.

BY ADVS.
K.P.PRADEEP
SMT.T.THASMI

RESPONDENTS:

- 1 STATE OF KERALA
REPRESENTED BY THE CHIEF SECRETARY TO GOVERNMENT,
GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM-695001.
- 2 SECRETARY TO GOVERNMENT,
DEPARTMENT OF HEALTH AND FAMILY WELFARE, GOVERNMENT
SECRETARIAT, THIRUVANANTHAPURAM-695001.
- 3 DISTRICT COLLECTOR,
KASARGOD, CIVIL STATION, VIDYANAGAR, KASARAGOD -671123.
- 4 DEPUTY COLLECTOR, KASARAGOD,
CIVIL STATION, VIDYANAGAR, KASARAGOD -671123.
- 5 STATE BANK OF INDIA,
KADUMENI BRANCH, CHEEMENI, PALAVAYAL, ODAKOLLY ROAD,
KADUMENI, KASARAGOD -670511, REPRESENTED BY ITS CHIEF
MANAGER/AUTHORISED OFFICER.

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- 6 CANARA BANK, CHITTARIKKAL BRANCH,
CHITTARIKKAL, V M MATHAI MEMORIAL BUILDING,
CHITTARIKKAL P.O., KASARAGOD-671 326, REPRESENTED BY
ITS CHIEF MANAGER/AUTHORISED OFFICER.
- 7 THE PLANTATION CORPORATION OF KERALA LIMITED,
REPRESENTED BY ITS MANAGING DIRECTOR, REGISTERED OFFICE,
MUTTAMBALAM P.O., KOTTAYAM-686004.

BY ADVS.
GOVERNMENT PLEADER
SRI.GEORGE THOMAS (MEVADA) (SR.)
SRI.M.GOPIKRISHNAN NAMBIAR (SR.)
SRI.N.RAJESH (R7)
SRI.K.JOHN MATHAI
SRI.AMAL GEORGE
SRI.JOSON MANAVALAN
SRI.KURYAN THOMAS
SRI.PAULOSE C. ABRAHAM

OTHER PRESENT:

GP RIYAL DEVASSY

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON
11.10.2022, THE COURT ON 13.12.2022 DELIVERED THE FOLLOWING:

JUDGMENT

Dated this the 13th day of December, 2022

During the period between 1978 and 2001 the Plantation Corporation of Kerala sprayed Endosulfan, a highly hazardous organochlorine pesticide, over 4696 hectares of its cashew plantations spread across 11 villages in Kasaragod District. The consequence of aerial spraying done for controlling Tea Mosquito Bugs was complex health implications among the community in Kasaragod, such as congenital anomalies, physical deformities, neurological disorders, impaired mental health, disorders related to hormonal irregularities, defective reproductive health, developmental health disorders, different types of cancers and respiratory and immune systems disorders. One among the thousands of victims was Ann Mariya, born on 28.06.2005, with 80% mental retardation and multiple disabilities, which rendered her immobile. The 1st petitioner is the mother of the

ill-fated girl and the 2nd petitioner, her maternal grand father. From the moment Ann Mariya was born, the family struggled to lend medical, physical and emotional support to the child. Being a family belonging to lower strata of society, they had to borrow money to provide medical aid and treatment to the child. The 2nd petitioner availed a loan of Rs.3 Lakhs from the 6th respondent Bank and the 1st petitioner, a loan of Rs.69,000/- from the 5th respondent Bank. The loan amount received by the 1st petitioner was remitted to the loan account of the 2nd petitioner, thereby reducing the outstanding in that account to Rs.2,03,000/-. In spite of the petitioner's best efforts, Ann Mariya left this world on 24.04.2017.

2. As the petitioners failed to effect prompt repayment towards the loans, they were served with notices issued from the 5th and 6th respondent Banks. Thereupon, petitioners approached the 3rd respondent seeking a direction to write off the loans in terms of Ext.P5 Government Order. In Ext.P6 report submitted to the Hon'ble Chief Minister, the 3rd respondent informed about the decision to write off the

balance loan amount of Rs.2,03,000/- due from the 2nd petitioner to the 6th respondent Bank. To the petitioners' dismay they were later served with Ext.P7 communication stating that only loans availed on or before 30.06.2011 will be considered for waiver. Therefore, only the loan amount of Rs.88,400/- availed prior to 30.06.2011 from the 6th respondent Bank can be waived. This has resulted in the loan accounts of the petitioners remaining unsettled, while the loans taken by the families of other endosulfan victims are settled. The Banks having issued notices demanding repayment of the overdue amount, this writ petition is filed seeking the following reliefs;

- i. To issue a writ of Mandamus or any other appropriate writs or writ or direction or order to direct the respondents 1, 2, 3 and 4 to consider the debt covered by Exts. P9. P9(a) and 9(b), issued by the 5th and 6th respondents, respectively, taking into consideration of Ext. P4 Order, under the debt waiver scheme for endosulfan victims; at the earlier or within a time frame fixed by this Hon'ble Court, or alternatively.
- ii. Issue a writ of mandamus, or any other appropriate writs or writ or order or direction to the respondents 1 to 4 to

write off the loan availed by the petitioners covered by Ext.P9, P9(a) and P9(b), with the 5th and 6th respondents Banks, under the waiver scheme applicable for the endosulfan victims and their family.

iii. Direct the respondents to pay cost of this proceedings.

iv. Grant any other relief, in the interest of justice, which this Hon'ble Court deems fit in the facts and circumstances of the case.

3. Heard.

4. The health hazard posed to the local populace of Kasaragod due to the indiscriminate spraying of endosulfan pesticide was taken cognizance by the National Human Rights Commission in 2001. As directed by the NHRC, the National Institute of Occupational Health conducted a thorough environment epidemiological study and reported that the most probable cause for health problems in the study area could be the relatively high and continued exposure to endosulfan through various environmental media such as food, water, soil and air. In the meanwhile, a Munsiff's Court in Kasaragod injuncted the Plantation Corporation of Kerala from spraying

endosulfan over its plantations. This was followed by a suspension order from the State Government. Later, as per the judgment in **Democratic Youth Federation of India v. Union of India** [(2011) 15 SCC 530) the Supreme Court of India also banned the use of endosulfan, this time, all over the country.

5. As a remedial measure for the debilitating impact of endosulfan over the present and future generations in Kasaragod, the NHRC issued various recommendations to the Central and State Governments. One such recommendation was that the State Government should pay at least Rs.5 Lakhs to the next of kin of those who died and those who were fully bed ridden/unable to move without help or mentally retarded. Ann Mariya being a victim falling under the above category, the State Government paid Rs.5 Lakhs to her family. In addition, monthly pension of Rs.2,200/- was paid to Ann Mariya and Rs.700/- per month was paid to the 1st petitioner, she being the care taker. By the time the payments were effected, the family had incurred huge debts. Taking into

account the financial difficulties being faced by the families of the victims, despite financial help rendered by the Government, Ext.P5 Government Order was issued providing for writing off of loans up to Rs.3 Lakhs. As per the Government Order, only loans availed upto 30.06.2011 and loans existing as on 30.06.2011 and renewed thereafter, are eligible for waiver. Although petitioners requested for waiver of the two loans of Rs. 69,000/- and Rs.2,03,000/-, waiver of only Rs.88,400/- was allowed for the reason that the balance amounts were availed as loan after 30.06.2011.

6. Neither the State nor this Court can pretend to be oblivious of the plight of the endosulfan victims and their families in Kasaragod. It is pertinent to note that the NHRC recommended to pay Rs.5 Lakhs as compensation to victims like Ann Mariya. The Commission has also recommended to increase the quantum of relief and rehabilitation to victims and their families. Of course, the State came out with relief and rehabilitation packages. The daunting question is whether, in a case of this nature, the State and its officers can stick on

technicalities like cut off dates for refusing the benefits due to the family of a victim. In my opinion, these are cases in which the *parens patriae* doctrine should be applied. The concept of *parens patriae* is that the State has the inherent power and authority to provide protection to persons *non-sui-juris* such as minors, insane and incompetent persons as well as persons rendered helpless due to calamities. Duty and responsibility being concomitant to power and authority, the State is bound to provide solace to the family of Ann Mariya by going the extra mile. Pertinently, there is no challenge as to the genuineness of the petitioner's claim, the objection being that major portion of the loan was availed after 30.06.2011 and being the grand father of the victim, the loan availed by the 2nd petitioner do not qualify for waiver. Such objections are insignificant when compared to the suffering undergone by the victim and her family.

For the aforementioned reasons, the writ petition is allowed. Respondents 1 to 4 are directed to consider the debts granted by respondents 5 and 6, covered by Exts. P9,

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P9(a) and P9(b), as debts qualified for waiver under Ext.P5 Debt Waiver Scheme for endosulfan victims and write off the loans immediately.

Sd/-

V.G.ARUN
JUDGE

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APPENDIX OF WP (C) 13694/2020

PETITIONER EXHIBITS

- EXHIBIT P1 TRUE COPY OF THE PHOTOGRAPH OF THE FIRST PETITIONER'S DAUGHTER ANN MARIA.
- EXHIBIT P1 (A) TRUE COPY OF THE IDENTITY CARD FOR DISABLED ISSUED BY THE GOVERNMENT OF KERALA TO ANN MARIA.
- EXHIBIT P1 (B) TRUE COPY OF THE CERTIFICATE FOR THE PERSONS WITH DISABILITY ISSUED BY THE HEALTH SERVICE DEPARTMENT TO ANN MARIA.
- EXHIBIT P1 (C) TRUE COPY OF THE DEATH CERTIFICATE NO.601/2017 DATED 8.5.2017 ISSUED BY THE REGISTRAR OF BIRTHS AND DEATHS, KADANNAPPALLY PANAPUZHA GRAMA PANCHAYAT.
- EXHIBIT P2 TRUE COPY OF CERTIFICATE ISSUED BY THE DMO, NRHM DATED 26.9.2012 IN AROGYAKERALAM KASARGODE, DISTRICT PROGRAMME MONITORING & SUPPORT UNIT TO THE SUPERINTENDENT OF PARIYARAM MEDICAL COLLEGE.
- EXHIBIT P3 TRUE COPY OF THE ORDER PASSED BY THE HUMAN RIGHTS COMMISSION IN HRMP 4662/12/KSGD DATED 1.8.2013.
- EXHIBIT P4 TRUE COPY OF G.O.(MS)NO.16/14 ISSUED BY THE 2ND RESPONDENT DATED 10.1.2014 IN FAVOUR OF THE PETITIONERS.
- EXHIBIT P5 TRUE COPY OF THE G.O.(MS) NO.298/2014 ISSUED BY THE 2ND RESPONDENT.
- EXHIBIT P6 TRUE COPY OF THE REPORT GIVEN BY THE 3RD RESPONDENT TO THE CHIEF MINISTER DATED 8.1.2016 WITH HAND WRITTEN COPY.

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EXHIBIT P7 TRUE COPY OF COMMUNICATION GIVEN BY THE 4TH RESPONDENT TO THE PETITIONERS DATED 8.11.2017.

EXHIBIT P8 TRUE COPY OF COMPLAINT SUBMITTED BY THE FIRST PETITIONER TO THE CHIEF MINISTER DATED 8.12.2018.

EXHIBIT P9 TRUE COPY OF NOTICE ISSUED BY THE 5TH RESPONDENT BANK TO THE FIRST PETITIONER IN THE ACCOUNT NO.67382044423 DATED 28.11.2018.

EXHIBIT P9(A) TRUE COPY OF THE NOTICE ISSUED BY THE 5TH RESPONDENT BANK TO THE FIRST PETITIONER IN THE AMOUNT NO.67262561630 DATED 28.11.2018.

EXHIBIT P9(B) TRUE COPY OF THE COMMUNICATION NO.CTKL:012019:BM DATED 18.8.2018 ISSUED BY THE 6TH RESPONDENT.

EXHIBIT P10 TRUE COPY OF THE JUDGMENT IN WPC NO.23398 OF 2018 DATED 12.7.2019.

Exhibit P11 TRUE COPY OF THE RATION CARD NO. 248001452 ISSUED BY THE GOVERNMENT OF KERALA

Exhibit P12 TRUE COPY OF THE PASSPORT NO. F8589751 OF THE PETITIONER

Exhibit P13 TRUE COPY OF THE DISCHARGE CARD DATED 28/06/2005 ISSUED BY THE PARIYARAM MEDICAL COLLEGE, KANNUR

Exhibit P13(A) TRUE COPY OF THE CLINICAL BIO CHEMISTRY INVESTIGATIONS REQUEST - REPORT FORM DATED 04/03/2006 ISSUED BY THE PARIYARAM MEDICAL COLLEGE, KANNUR

Exhibit P13(B) TRUE COPY OF THE DISCHARGE CARD DATED 30/04/2006 ISSUED BY THE PARIYARAM MEDICAL COLLEGE, KANNUR

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Exhibit P13 (C)

TRUE COPY OF THE DISCHARGE SUMMARY DATED
17/06/2006 ISSUED BY THE DEPARTMENT OF
PEDIATRICS IMCH, MEDICAL COLLEGE, KOZHIKODE

Exhibit P14

TRUE COPY OF THE MEDICAL CERTIFICATE DATED
29/09/2012 ISSUED BY THE SUPERINTENDENT
DISTRICT HOSPITAL, KASARAGOD