

IN THE HIGH COURT OF KERALA AT ERNAKULAM
PRESENT
THE HONOURABLE THE CHIEF JUSTICE MR. NITIN JAMDAR
&
THE HONOURABLE MR.JUSTICE BASANT BALAJI

Thursday, the 12th day of June 2025 / 22nd Jyaishta, 1947
WP(PIL) NO. 50 OF 2025(S)

PETITIONER:

MR. T.N. PRATHAPAN, AGED 65 YEARS, FORMER MEMBER OF PARLIAMENT,
CHAIRMAN, KERALA FISHERMEN COORDINATION COMMITTEE,
RESIDING AT THOTTUNGAL HOUSE, PO. TALIKULAM, THRISSUR,
KERALA, PIN - 680 569.

RESPONDENTS:

1. UNION OF INDIA, REPRESENTED BY THE SECRETARY, MINISTRY OF SHIPPING, NEW DELHI, PIN - 110 001.
2. MINISTRY OF DEFENCE, REPRESENTED BY ITS SECRETARY, ROOM NO.305, B WING, SENA BHAWAN, NEW DELHI, PIN - 110 001.
3. THE DIRECTOR GENERAL OF SHIPPING, JAHAZ BHAVAN, BALLARD ESTATE, MUMBAI, PIN - 400 001.
4. INDIAN COAST GUARD, REPRESENTED BY THE DIRECTOR GENERAL, HEADQUARTERS, NATIONAL STADIUM COMPLEX, PURANA QUILA ROAD, NEW DELHI, PIN - 110 001.
5. DIRECTOR, DIRECTORATE OF FISHERIES AND ENVIRONMENT, COAST GUARD HEADQUARTERS, NEW DELHI, PIN - 110 001.
6. STATE OF KERALA, REPRESENTED BY THE CHIEF SECRETARY, SECRETARIAT, THIRUVANANTHAPURAM, PIN - 695 001.
7. KERALA STATE POLLUTION CONTROL BOARD, REPRESENTED BY ITS MEMBER SECRETARY, PATTOM P.O, THIRUVANANTHAPURAM, PIN - 695 004.
8. STATE DISASTER MANAGEMENT AUTHORITY, REPRESENTED BY ITS MEMBER SECRETARY, VIKAS BHAVAN, P.O, OBSERVATORY HILLS, OPPOSITE KANAKAKUNNU PALACE, NANTHANCODU, THIRUVANANTHAPURAM, PIN - 695 033.
9. DIRECTOR, DEPARTMENT OF FISHERIES, DIRECTORATE OF FISHERIES, THIRUVANANTHAPURAM, PIN - 695 033.
10. INSPECTOR GENERAL OF POLICE, KERALA COASTAL POLICE, KERALA COASTAL POLICE HEADQUARTERS, SHANMUGHAM ROAD, MARINE DRIVE, ERNAKULAM, PIN - 682 031.
11. VIZHINJAM INTERNATIONAL SEAPORT LTD., REPRESENTED BY ITS MANAGING DIRECTOR, LEVEL 5, 3RD FLOOR TRANS TOWERS, VAZHUTHACAUD, THIRUVANANTHAPURAM, PIN - 695 014.
12. MEDITERRANEAN SHIPPING COMPANY, THROUGH ITS AUTHORIZED NODAL OFFICER - MR. JACOB GEORGE, MSC HOUSE, ANDHERI - KURLA ROAD, ANDHERI EAST, MUMBAI, MAHARASHTRA, INDIA.
EMAIL:comm@mscindia.com, PIN - 400 059.

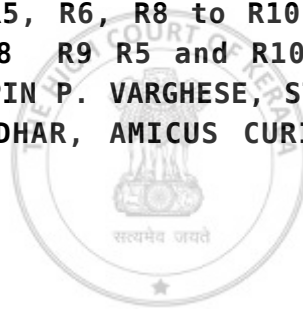
Writ petition (Public Interest Litigation) praying inter alia that in the circumstances stated in the affidavit filed along with the WP(PIL) the High Court be pleased to

A) direct the Respondents No.1, 3 and 6 to release interim financial assistance to the fishermen victims

B) direct the Respondents No. 4, 6 and 7 to take steps to remove all the wastes, chemicals and parts of the ship and clean up the environment without any further delay.

In accordance with law after affording an opportunity of being heard, in the interest of justice, equity and good conscience.

This petition coming again on for admission upon perusing the petition and the affidavit filed in support of WP(PIL), this Court's order dated 05/06/2025 and upon hearing the arguments of M/S. V.HARISH, C.R.REKHESH SHARMA & RAJAN VISHNURAJ, Advocates for the petitioner, SMT.O.M. SHALINA, DEPUTY SOLICITOR GENERAL OF INDIA & SRI.T.V.VINU, Advocate for R1 to R4, SRI.K.GOPALAKRISHNA KURUP, ADVOCATE GENERAL for R5, R6, R8 to R10, SRI.N.MANOJ KUMAR, STATE ATTORNEY for R5, R6,R8 R9 R5 and R10 , SRI.T.NAVEEN, STANDING COUNSEL for R7, SRI.VIPIN P. VARGHESE, STANDING COUNSEL for R11 and of ADV.SRI.ARJUN SREEDHAR, AMICUS CURIAE, the court passed the following:



P.T.O.

NITIN JAMDAR, C.J. & BASANT BALAJI, J.

W.P.(PIL). No. 50 of 2025

Dated this the 12th day of June, 2025.

ORDER

Nitin Jamdar, C.J.

This petition is listed for 9 June 2025; however, it was listed to today in view of another mishap involving a ship 'WAN HAI 503' which caught fire off the Kannur coast, with a likelihood of substantial risk to the marine environment.

2. Heard Mr. V. Harish, learned counsel for the Petitioner, Mr. K. Gopalakrishna Kurup, learned Advocate General appearing for Respondent Nos.6, 8, and 9, Mr. T. Naveen, learned Standing Counsel for the Respondent No.7, Mr. T.V. Vinu, learned counsel representing Ms. O.M. Shalina, learned DSGI, and Mr. Vipin. P. Varghese learned as Standing Counsel for Respondent No.11.

3. The learned counsel for the Petitioner seeks leave to amend the writ petition to place on record the facts pertaining to the incident involving 'WAN HAI 503' and to implead the necessary parties in that regard. Leave is granted.

4. The learned Advocate General informs us that the explosion on 'WAN HAI 503' occurred at 22:00 hours on 9 June 2025. The Indian

Coast Guard, the Indian Navy, the Directorate General of Shipping, and the salvage partners have mobilised firefighting and search operations. It is stated that the fire has been partially contained, however, the vessel remains unmanned and adrift, drifting in a south-southeasterly direction at approximately 1 knot and as per the latest update, the vessel is located approximately 65 nautical miles off the Indian coastline. It is stated that the vessel remains afloat but continues to emit heavy smoke. It is further informed that, according to the owners, MV 'WAN HAI 503' was carrying a total of 1,754 containers on board, several of which contained flammable liquids, flammable solids, and corrosive substances. The learned Advocate General has placed before us certain details regarding the containers on board 'WAN HAI 503'. Most of the containers are stated to have chemicals, including pesticides, and various other environmentally hazardous substances. Some of the chemicals are, METHOXY-2-PROPANOL; DIACETONE ALCOHOL; METHYL METHACRYLATE MONOMER; METHYL METHACRYLATE MONOMER STABILIZED; CHLOROANILINES LIQUID; RESIN SOLUTION; TRICHLOROBENZENE; TETRAETHYLENEPENTAMINE; HYDROBROMIC ACID; ISOPROPYL ALCOHOL; DICYCLOPENTADIENE; 1-METHOXY-2-PROPANOL; DICYCLOPENTADIENE; TETRAETHYLENEPENTAMINE; PIPERAZINE; AMMONIUM METAVANADATE; ETHYL CHLOROFORMATE; PHOSPHORIC

ACID SOLUTION; BIPYRIDILIUM PESTICIDE; NAPHTHALENE; MALEIC ANHYDRIDE; PARAFORMALDEHYDE; PARAFORMALDEHYDE; MALEIC ANHYDRIDE. The containers also contain printing ink, thinning or reducing compound, and also environmentally hazardous substance / solids. These items can cause serious damage to the marine ecology. This situation could place substantial strain once again on both the Central and State machinery.

5. As regards the vessel MSC ELSA-3, the learned Advocate General submitted that the Cargo Manifest has been published on the official website of the Kerala State Disaster Management Authority (KSDMA). It is also informed that an Expert Committee has been constituted to assess the ecological impact. An FIR is lodged by the Fort Kochi Police Station on 11 June 2025 against the owner of the vessel MSC ELSA-3 and other crew members under Sections 282, 285, 286, 287, 288, and 3(5) of the Bharatiya Nyaya Sanhita, 2023 based on a complaint received from one Mr. Shamji, Thekkum Muri, Neerkunnam, Malsya Gramam. It is also stated that the interim relief in terms of money and rice is extended to each fisherman.

6. For undertaking the remedial measures for environmental damages and providing assistance to the affected citizens, substantial amount from the public exchequer will have to be, and is being spent. However, there are various statutory provisions and International Conventions which will enable the Government to proceed against the offending vessel and

its owners through both, criminal and civil action, and recover damages. Among the statutory provisions which are relevant to note are as follows.

7. Under Section 3 of the Admiralty (Jurisdiction and Settlement of Maritime Claims) Act, 2017 (Act of 2017), the Kerala High Court has jurisdiction in respect of the maritime claim. Section 4 confers jurisdiction on the Kerala High Court to determine any question of maritime claim against any vessel, and under Section 4(1)(u), the claim can be a damage or threat of damage caused by the vessel to the environment, coastline or related interests. The relevant portions of Section 4 are as follows:

“4. Maritime claim. – (1) *The High Court may exercise jurisdiction to hear and determine any question on a maritime claim, against any vessel, arising out of any -*

(u) damage or threat of damage caused by the vessel to the environment, coastline or related interests; measures taken to prevent, minimise, or remove such damage; compensation for such damage; costs of reasonable measures for the restoration of the environment actually undertaken or to be undertaken; loss incurred or likely to be incurred by third parties in connection with such damage; or any other damage, costs, or loss of a similar nature to those identified in this clause;

(v) costs or expenses relating to raising, removal, recovery, destruction or the rendering harmless of a vessel which is sunk, wrecked, stranded or abandoned, including anything that is or has been on board such

vessel, and costs or expenses relating to the preservation of an abandoned vessel and maintenance of its crew; and

Explanation. – xxx

(2) While exercising jurisdiction under sub-section (1), the High Court may settle any account outstanding and unsettled between the parties in relation to a vessel, and direct that the vessel, or any share thereof, shall be sold, or make such other order as it may think fit.

(3) Where the High Court orders any vessel to be sold, it may hear and determine any question arising as to the title to the proceeds of the sale.

(4) Any vessel ordered to be arrested or any proceeds of a vessel on sale under this Act shall be held as security against any claim pending final outcome of the admiralty proceeding.

(emphasis supplied)

Therefore, a suit under Section 4 can always be filed, and even a sister vessel can be arrested.

8. Under the Territorial Waters, Continental Shelf, Exclusive Economic Zone and other Maritime Zones Act, 1976 (Act of 1976), the continental shelf and exclusive economic zone have been defined under Sections 6 and 7. As stated under section 6, the Continental shelf of India comprises the seabed and subsoil of the submarine areas that extend beyond the limit of its territorial waters throughout the natural prolongation of its land territory to the outer edge of the continental margin or to a distance of two hundred nautical miles from the baseline

referred to in sub-section (2) of Section 3 where the outer edge of the continental margin does not extend up to that distance. India has, and always has, full and exclusive sovereign rights in respect of its continental shelf. In the Continental shelf, the Union has the exclusive jurisdiction to preserve and protect the marine environment and to prevent and control marine pollution. The Exclusive Economic Zone defined under Section 7 is an area beyond and adjacent to the territorial waters, and the limit of such zone is two hundred nautical miles from the baseline referred to in sub-section (2) of Section 3. In the Exclusive Economic Zone, the Union has sovereign rights for exploration, exploitation, conservation and management of the natural resources, both living and non-living. It also has the exclusive jurisdiction to preserve and protect the marine environment and to prevent and control marine pollution. The loss of commercially harvested fish due to the marine pollution by these vessels in the exclusive economic zone can also be considered an economic loss.

9. Under the Merchant Shipping Act, 1958 (Act of 1958), various provisions which empower the Government to take steps. Part XI-A deals with the prevention and containment of pollution of the sea by oil. Section 358 of the Act of 1958 contemplates inquiries into ship casualties. Under Section 358(1)(a), a shipping casualty occurs when a ship is lost, abandoned, stranded or materially damaged. Under Section 359, a report of the shipping casualty has to be made to the Central Government.

10. Part X-B of the Act of 1958 provides for civil liability for oil pollution damage. Section 352-G(d) deals with a foreign ship as well. Part X-C deals with the international oil pollution compensation fund, and Section 352T deals with contributions to the fund. Section 352-T of the Act of 1958 states that the contributions to the Fund, in respect of contributing oil carried by sea to ports or terminal installations in India, shall be payable in accordance with Articles 10 and 12 of the Fund Convention. The person liable to pay contributions to the Fund shall be in case of contributing oil which is being imported into India, the importer: or in any other case, the person by whom the oil is received in India.

11. Under the Act of 1958, several rules have been framed which deal with the contingency. These are as follows:

A. Merchant Shipping (Prevention of Pollution by Harmful Substances Carried by Sea in Packed Form) Rules, 2010.

B. Merchant Shipping (International Fund for Compensation for Oil Pollution Damage) Rules, 2008.

C. Merchant Shipping (Civil Liability for Oil Pollution Damage) Rules, 2008.

12. There are International Conventions on the issue of marine pollution. The relevant International Conventions are as under:

A. International Convention on Civil Liability for Oil Pollution Damage, 1992.

B. The Nairobi International Convention on the Removal of Wrecks, 2007.

C. International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1992.

Following these Conventions, there have been several cases in other countries where the coastal States have sued for damages against offending vessels in respect of marine pollution, and substantial damages have been awarded.

13. The point we wish to emphasize is that there exist various legal instruments under which the State and Central Government can proceed to take action. For example, the District Collector can institute an Admiralty Suit under Section 4(1)(u) of the Admiralty (Jurisdiction and Settlement of Maritime Claims) Act, 2017 and even seek necessary directions in respect of arrest of sister vessels, subject, of course, to the rights and contentions of the parties. Normally, such actions under Admiralty laws are taken on urgent basis. Also under the Act of 1958, there is a substantial role to be played by the Director General of Shipping, which includes inquiries and necessary action.

14. As mentioned above, an FIR has been lodged on a complaint by the Fort Kochi Police Station under Sections 282, 285, 286, 287, 288, and 3(5) of the Bharatiya Nyaya Sanhita, 2023. The learned counsel for

the Petitioner submitted that FIR will also to be filed under the Environment (Protection) Act, 1986 (Act of 1986) as well. The learned Advocate General submitted that under Section 19 of the Act of 1986, no Court shall take cognizance of any offence under this Act except on a complaint made by the Central Government, and therefore, the State officers will not be able to file an FIR under Section 19. The learned counsel for the Petitioner, however, submitted that the Central Government has issued a notification under Section 19 of the Act of 1986 authorizing the State authorities to register an FIR for the offence under the Environment (Protection) Act within the jurisdiction. The State will examine this position and proceed; if not, the Central Government will examine this position in respect of the offences under the Act of 1986.

15. When various courses of action have been provided under the aforementioned statutes and international conventions, both the Central and the State Governments are expected to exercise those powers, any delay or failure to act may give rise to an argument by an offender in future that a precedent is being set. The learned Advocate General and the learned Central Government Counsel have submitted that action has already been initiated under various provisions. The response of the State and the Central Government on the aforesaid action taken / to be taken in respect of the various statutory provisions will be placed on record on the next date of hearing.

16. The Petitioner is also permitted to correct the description of Respondent No. 11, which, according to both the Petitioner and Respondent No. 11, has been incorrectly stated.

17. Amendments to be carried out before the next date of hearing. Post on 19 June 2025. Issue notice to the unrepresented Respondents, returnable on next date.

18. We request Adv. Mr. Arjun Sreedhar to assist the court as an *amicus curiae*. Registry to supply papers to the learned Amicus.



Sd/-
Nitin Jamdar,
Chief Justice

Sd/-
Basant Balaji,
Judge

krj/-

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P.A. TO C.J.