

WP(C):11315/2021

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IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE THE CHIEF JUSTICE MR.S.MANIKUMAR

&

THE HONOURABLE MR. JUSTICE SHAJI P.CHALY

WEDNESDAY, THE 19TH DAY OF MAY 2021 / 29TH VAISAKHA, 1943

WP(C) NO. 11315 OF 2021

PETITIONER/S:

CHIKITHSANEETHI, REG. NO.TCR/TC/183/2016,
REPRESENTED BY ITS GENERAL SECRETARY DR. K. J. PRINCE,
SON OF JAYAPRAKASH, AGED 45 YEARS, KARATTUPARAMBIL HOUSE,
EAST PERINGOTTUKARA, THRISSUR-680565.

BY ADVS. SRI. ARUL MURALIDHARAN
SMT. VINEETHA VIJAYAN

RESPONDENTS:

1. STATE OF KERALA.
REPRESENTED BY THE CHIEF SECRETARY,
SECRETARIAT, TRIVANDRUM-695 001.
2. KERALA DISASTER MANAGEMENT AUTHORITY,
REPRESENTED BY ITS CONVENOR, VIKAS BHAVAN P.O.,
OBSERVATORY HILLS, OPPOSITE KANAKAKKUNNU PALACE,
NANTHANCODE, TRIVANDRUM-695 033.
3. DIRECTOR GENERAL OF POLICE, KERALA
STATE POLICE HEAD QUARTERS, VELLAYAMBALAM, TRIVANDRUM-695 010.

BY STATE ATTORNEY SHRI K.V. SOHAN

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 19.05.2021, THE COURT
ON THE SAME DAY DELIVERED THE FOLLOWING:

JUDGMENT

S. Manikumar, CJ

Instant writ petition is filed by the petitioner seeking interference of this Court in the matter of Swearing-in ceremony or Oath taking ceremony, decided to be conducted physically, by which, Government have invited participants numbering 500. The ceremony is to be conducted at Chandrasekaran Nair Stadium, Thiruvananthapuram.

2. Petitioner has submitted that the Disaster Management Authority has declared Triple Lockdown in four districts, in the State of Kerala, including Thiruvananthapuram, due to spread of COVID-19 Pandemic. COVID-19 Pandemic is uncontrolled and the condition in Kerala is worsening. Several thousands of people are infected and many lost their lives. According to the petitioner, one of the reasons for the spread of Corona-virus is the uncontrollable gathering during Assembly Election. Though the Election Commission of India has issued guidelines for conducting meetings of not more than 100 persons, following Covid protocols such as social distancing and wearing masks, meetings are conducted without adhering to the protocols.

3. Though, at one stage, Government have issued lockdown and Triple lockdown imposing stringent conditions, on various places, and when the social workers are restlessly attending all COVID-19 issues, and

taking note of the worsening situation in Kerala, Disaster Management Authority had issued Government order dated 14.05.2021 and declared lockdown in Kerala and further order dated 17.05.2021, Government of Kerala have decided to conduct Swearing-in Ceremony at Chandrasekaran Nair Stadium, Thiruvananthapuram, by inviting 500 persons.

4. Petitioner has further contended that Government order dated 17.05.2021 inviting as many as 500 persons for the abovesaid ceremony is in violation of Exhibit-P1 guidelines issued by the State Government dated 06.05.2021 and Exhibit-P2 order issued by the Government on 14.05.2021.

5. Learned counsel for the petitioner submitted that though the number in the aforesaid Government is stated as 500, passes have been issued to more people and one person has been donated Rs.2 lakhs to the Hon'ble Chief Minister's Distress Relief Fund also has been issued with Pass No.546. It is the further submission of the learned counsel for the petitioner that in the States of West Bengal and Tamil Nadu, where the Member of Legislatures are more than 200, the invitees of Swearing-in Ceremonies were less than 100 in the case of West Bengal and 200 in the case of Tamil Nadu. Learned counsel also added that in the case of Pondicherry, only 50 people attended the Swearing-in Ceremony.

6. According to the learned counsel for the petitioner, one of the person who was engaged in electrical works for the Swearing-in Ceremony is tested positive. According to her, there is no need or necessity for the presence of so many people just for the purpose of witnessing the Swearing-in Ceremony which can always be done from their residence itself.

7. Mr. K.V. Sohan, learned State Attorney, submitted that Chandrasekaran Nair Stadium, Thiruvananthapuram consists of 36 acres of land. He also submitted that though the stadium is having a seating capacity of 1000, by observing the Covid protocol, the number of participants in the stadium is restricted to 500. He further submitted that out of 500 invitees, 40 are Hon'ble Judges and two Hon'ble Judges from the Lok Ayukta are not attending the ceremony. There are 41 MLAs belonging to the opposition party. Those 41 MLAs along with their respective spouses are not attending the ceremony. So also, 30 M.Ps belonging to opposition are also not attending the ceremony.

8. Learned State Attorney further submitted that total number of MLAs of the Kerala State Legislature is 140, out of which 41 are not attending. From the remaining 99 MLAs of the political parties which form the Government, 21 will take Oath of office as Ministers. Therefore, at least 144 persons will not attending the program. (40 Hon'ble Judges, 20

Lok Ayukta Judges, 41 MLAs with their respective spouses, and 30 M.Ps)

9. Learned State Attorney further submitted that adequate safeguards are taken by the Chairperson, State Executive Committee, State Disaster Management Authority and after consultation with the experts, found that about 500 participants are indispensable for attending the Swearing-in Ceremony. He also submitted that in the abovesaid ceremony, the Secretaries of various Departments, Government of Kerala upto the level of Principal Secretary are invited, police officers upto the level of Director General of Police are invited, Senior Law Officers are invited, MLAs are also invited.

10. Learned State Attorney further submitted that instant writ petition is a politically motivated writ petition, since the Chairperson, State Executive Committee, State Disaster Management Authority has taken note of situation in the State. He also submitted that Government of Kerala have taken all steps to prevent the spread of COVID-19 Pandemic and it is being one of the exclusive States. When the Chairperson, State Executive Committee, State Disaster Management Authority has taken note of all the ground realities and issued the impugned Government order dated 17.05.2021, there is no reason to interfere the same. For the foregoing reasons, he prayed for dismissal of the writ petition.

11. Heard learned counsel for the parties and perused the pleadings and material available on record.

12. Disaster Management Act, 2005 is an Act to provide for the effective management of disasters and for matters connected therewith or incidental thereto. This Act extends to the whole of India. The Act has come into force on such date as the Central Government may, by notification in the Official Gazette appoint; and different dates may be appointed for different provisions of the Act and for different States, and any reference to commencement in any provisions of this Act in relation to any State shall be construed as a reference to the commencement of that provision in that State.

13. Section 14 of the Disaster Management Act, 2005 reads thus:

“14. Establishment of State Disaster Management Authority.- (1) Every State Government shall, as soon as may be after the issue of the notification under sub-section (1) of section 3, by notification in the Official Gazette, establish a State Disaster Management Authority for the State with such name as may be specified in the notification of the State Government.

(2) A State Authority shall consist of the Chairperson and such number of other members, not exceeding nine, as may be prescribed by the State Government and, unless the rules otherwise provide, the State Authority shall consist of the following members, namely:—

(a) the Chief Minister of the State, who shall be Chairperson, ex officio;

(b) other members, not exceeding eight, to be nominated by the Chairperson of the State Authority;

(c) the Chairperson of the State Executive Committee, ex officio.

(3) The Chairperson of the State Authority may designate one of the members nominated under clause (b) of sub-section (2) to be the Vice-Chairperson of the State Authority.

(4) The Chairperson of the State Executive Committee shall be the Chief Executive Officer of the State Authority, ex officio:

Provided that in the case of a Union territory having Legislative Assembly, except the Union territory of Delhi, the Chief Minister shall be the Chairperson of the Authority established under this section and in case of other Union territories, the Lieutenant Governor or the Administrator shall be the Chairperson of that Authority:

Provided further that the Lieutenant Governor of the Union territory of Delhi shall be the Chairperson and the Chief Minister thereof shall be the Vice-Chairperson of the State Authority.

(5) The term of office and conditions of service of members of the State Authority shall be such as may be prescribed.”

14. Section 18 of the Disaster Management Act, 2005 reads thus:

“18. Powers and functions of State Authority.- (1) Subject to the provisions of this Act, a State Authority shall have the responsibility for laying down policies and plans for disaster management in the State.

(2) Without prejudice to the generality of provisions contained in sub-section (1), the State Authority may—

(a) lay down the State disaster management policy;

(b) approve the State Plan in accordance with the guidelines laid down by the National Authority;

(c) approve the disaster management plans prepared by the departments of the Government of the State;

(d) lay down guidelines to be followed by the departments of the Government of the State for the purposes of integration of measures for prevention of disasters and mitigation in their development plans and projects and provide necessary technical assistance therefor;

- (e) coordinate the implementation of the State Plan;
- (f) recommend provision of funds for mitigation and preparedness measures;
- (g) review the development plans of the different departments of the State and ensure that prevention and mitigation measures are integrated therein;
- (h) review the measures being taken for mitigation, capacity building and preparedness by the departments of the Government of the State and issue such guidelines as may be necessary.

(3) The Chairperson of the State Authority shall, in the case of emergency, have power to exercise all or any of the powers of the State Authority but the exercise of such powers shall be subject to ex post facto ratification of the State Authority.”

15. Section 20 of the Disaster Management Act, 2005 reads thus:

“20. Constitution of State Executive Committee.- (1) The State Government shall, immediately after issue of notification under sub-section (1) of section 14, constitute a State Executive Committee to assist the State Authority in the performance of its functions and to coordinate action in accordance with the guidelines laid down by the State Authority and ensure the compliance of directions issued by the State Government under this Act.

(2) The State Executive Committee shall consist of the following members, namely:—

(a) the Chief Secretary to the State Government, who shall be Chairperson, ex officio;

(b) four Secretaries to the Government of the State of such departments as the State Government may think fit, ex officio.

(3) The Chairperson of the State Executive Committee shall exercise such powers and perform such functions as may be prescribed by the State Government and such other powers and functions as may be delegated to him by the State Authority.

(4) The procedure to be followed by the State Executive Committee in exercise of its powers and discharge of its

functions shall be such as may be prescribed by the State Government.”

16. Section 23 of the Disaster Management Act, 2005 reads thus:

“23. State Plan.- (1) There shall be a plan for disaster management for every State to be called the State Disaster Management Plan.

(2) The State Plan shall be prepared by the State Executive Committee having regard to the guidelines laid down by the National Authority and after such consultation with local authorities, district authorities and the people's representatives as the State Executive Committee may deem fit.

(3) The State Plan prepared by the State Executive Committee under sub-section (2) shall be approved by the State Authority.

(4) The State Plan shall include,—

(a) the vulnerability of different parts of the State to different forms of disasters;

(b) the measures to be adopted for prevention and mitigation of disasters;

(c) the manner in which the mitigation measures shall be integrated with the development plans and projects;

(d) the capacity-building and preparedness measures to be taken;

(e) the roles and responsibilities of each Department of the Government of the State in relation to the measures specified in clauses (b), (c) and (d) above;

(f) the roles and responsibilities of different Departments of the Government of the State in responding to any threatening disaster situation or disaster.

(5) The State Plan shall be reviewed and updated annually.

(6) Appropriate provisions shall be made by the State Government for financing for the measures to be carried out under the State Plan.

(7) Copies of the State Plan referred to in sub-sections (2) and (5) shall be made available to the Departments of the

Government of the State and such Departments shall draw up their own plans in accordance with the State Plan.”

17. COVID-19 entered the world in March, 2020. It has infected several crores of people across the world, taken away lakhs of lives, appeared to have sub merged in India, surged back with all vigour, intensity and velocity from April, 2021, by mutations, infected people rapidly and the Test Positivity Rate is alarming.

18. In support of the above, judicial notice can be taken from the official website of Kerala Government COVID-19, as regards number of persons infected, discharged, died, and active cases, at the time when the State Government have issued Government orders dated 06.05.2021, 07.05.2021, 08.05.2021, 10.05.2021, 11.05.2021, 12.05.2021, 13.05.2021, 14.05.2021 and 17.05.2021, the last of which issued exclusively for the swearing-in ceremony of the Hon'ble the Chief Minister and other Cabinet Ministers, numbering 21.

19. A consolidated chart of infected, recovered, active and death, cases are reproduced hereunder:

GoK Dashboard / Official Kerala COVID-19 Statistics

May 2021

Date	Confirmed	Recovered	Active	Death
1	35636	15493	323828	48

2	31959	16296	339441	49
3	26011	19519	345887	45
4	37190	26148	356872	57
5	41953	23106	375658	58
6	42464	27152	390906	63
7	38460	26662	402650	54
8	41971	27456	417101	64
9	35801	29318	423514	68
10	27487	31209	419726	65
11	37290	32978	423957	79
12	43529	34600	432789	95
13	39955	33733	438913	97
14	34694	31319	442194	93
15	32680	29442	445334	96
16	29704	34296	440652	89
17	21402	99651	362315	87
18	31337	45926	347626	97

20. Particulars seen from the official website of Kerala Government COVID-19 statistics between 06.05.2021 and 17.05.2021 as regards the number of cases district-wise are as under:

DATE: 06-05-2021

DISTRICT	CONFIRMED	RECOVERED	DEATH	ACTIVE
ERNAKULAM	6506	2999	2	53489
TVPM	3969	2389	14	37893

DATE: 14-05-2021

DISTRICT	CONFIRMED	RECOVERED	DEATH	ACTIVE
ERNAKULAM	3855	3341	19	37893
TVPM	4567	2802	5	53489

DATE: 17-05-2021

DISTRICT	CONFIRMED	RECOVERED	DEATH	ACTIVE
ERNAKULAM	2315	14900	10	37893
TVPM	2364	16100	22	50172

21. Pleadings and submissions disclose that taking note of the uncontrollable surge of COVID-19 cases, Government have issued G.O. (Rt) No.404/2021/DMD dated 06.05.2021 with the following conditions in the form of Annexure.

GOVERNMENT OF KERALA

Abstract

Disaster Management Department - Covid-19 – containment activities-lock down in the State from 8th May 2021-orders issued.

DISASTER MANAGEMENT (A) DEPARTMENT

G.O.(Rt)No.404/2021/DMD Dated, Thiruvananthapuram, 06/05/2021

Read:- GO(Ms)No.12/2020/DMD dated 26.03.2020.

ORDER

As per the Government Order read above, the entire State of Kerala was declared as COVID-19 affected. Various measures are being taken in the State to contain the spread of COVID-19 which interalia include certain restrictions in the normal activities of general public to ensure proper physical distancing. Now it is felt that more regulations are necessary to ensure proper physical distancing, the best possible way to contain the spread of Novel Corona Virus.

2) Hence in exercise of the powers conferred under section 20(3) of the Disaster Management Act 2005, the undersigned in his capacity as Chairperson, State Executive Committee, State Disaster Management Authority hereby notifies lockdown in the entire state of Kerala with effect from 0600 Hrs of 8th May-2021 till 2359 Hrs of 16.05.2021 prescribing the annexed regulations and measures during the said period to all Departments, District Collectors, Superintendents of Police and Heads of Departments for strict implementation in the State of Kerala.

3) Any persons violating these measures will be liable to be proceeded against as per the relevant provisions of Disaster Management Act, 2005, Kerala Epidemic Diseases Ordinance 2020 and other relevant laws in force.

(By order of the Governor)

DR. V P JOY

CHIEF SECRETARY”

Annexure to G O (Rt)404./2021/DMD dated 06/05/2021. Guidelines on the measures to be taken by Officers of Government of India/Departments of Government of Kerala.

1. Officers of Government of India, its autonomous and subordinate offices and public corporations shall remain closed.

Exceptions:

Defence, Central Armed Police Forces, Treasury, Public Utilities (including petroleum, CNG, LPG, PNG), Disaster Management, Power Generation and transmission units, Postal department and post offices, National Informatics Centre, Early warning Agencies, Food Corporation of India, Indian Metrological Department, Doordarshan, All India Radio, Central Water Commissioner, National Cyclone Risk Mitigation Project (MPCS and EWDS works), Airport Authority of India, Airport, Seaport, Railways.

2. Offices of the Government of Kerala, its autonomous and subordinate offices and public corporations shall remain closed.

Exceptions:

i. Health, Ayush, Revenue, LSGD, Food and Civil Supplies, Industries, Labour, Zoo, Kerala IT mission, Irrigation, Veterinary Services, Social Justice Institutions, Printing, Insurance Medical Services.

ii. Police, Excise, Home Guards, Civil Defence, Fire & emergency Services, Disaster Management, Forest and prisons.

iii. District Collectorate and Treasury.

iv. Electricity, Water Resources, Sanitation.

All the above departments except those involved in Covid management shall minimise the staff requirements.

3. Hospitals and all related medical establishments, including their manufacturing and distribution units, both in public and private sector such as dispensaries, chemists and medical equipment shops, laboratories, clinics, nursing homes, ambulance etc. will continue to remain functional. The transportation for all medical personnel, nurses, para medical staff, other hospital services be permitted.

4. Agricultural, horticultural, fisheries, plantation and animal husbandry activities shall be permitted with minimum movement of persons. Procurement and marketing of perishable agricultural commodities shall be permitted.

5. Commercial and private establishments shall be closed down.

Exceptions:

- i. Shops including ration shops (under PDS) dealing with good, groceries, fruits and vegetables, dairy products, meat and fish, animal fodder, poultry and cattle feed, bakeries. However, district authorities may encourage and facilitate home delivery to minimise the movement of individuals outside their homes. All shops shall be closed by 7:30 PM (except those relating to clause 3 above)
- ii. Banks, insurance and financial services from 10 AM to 1 PM only for public with minimal staff upto 2 PM.
- iii. Print and electronic media.
- iv. Cable service and DTH
- v. Telecommunications, internet services, broadcasting and cable services, IT and IT enabled services.
- vi. Delivery of all essential goods including food, pharmaceutical, medical equipment through e commerce and home delivery.
- vii. Petrol pumps, LPG, petroleum and gas retail and storage outlets.

- viii. Power generation, transmission and distribution units and services.
- ix. Capital and debt market services as notified by the Securities and Exchange Board of India
- x. Cold storage and warehousing services
- xi. Private Security Services.
- xii. Supply of hygiene materials.
- xiii. Private establishments involved in the production and supply of equipment required to contain COVID-19 including masks, sanitizers, drugs, personal protective equipments (PPE) etc.
- xiv. Co-operative credit societies.
- xv. E-commerce, courier including the vehicles for this purpose.
- xvi. Repair services of essential equipments including vehicles.
- xvii. Toll booths, Marine fishing, Inland fisheries and aquaculture.
- xviii. Palliative care services.

5. Industrial establishments will remain closed.

Exceptions:

- i. Manufacturing units of essential commodities
- ii. Production units which require continuous process 24*7
- iii. Units manufacturing medical supplies including medical Oxygen cylinders or cylinders or industrial gas cylinders, Units converting industrial gas cylinders into medical oxygen cylinders.
- iv. Manufacturing units involved in exports to other countries.

6. All roadways and water ways transport services will remain suspended. Air and rail services (Except Metro) will remain operational.

Exceptions:

- i. Goods transport will continue.
- ii. Fire, Law and order and emergency services.
- iii. Use of taxis and auto rickshaws including Uber, Ola etc will be permitted only for procurement of essential commodities, medicines and for

attending to medical emergencies as well as transport from/to airports and railway stations (with proof of ticket).

- iv. Plying of private vehicles shall be allowed only to the extent of procuring essential commodities, medicines and for other activities permitted under this order.
- v. Private vehicles for persons travelling for vaccination against COVID-19 (showing their vaccination registration), movement of persons from other states / countries to destination from railway station and airport (with proof of ticket)
- vi. Interstate road transport is allowed for goods and emergency services. For interstate road transport of individuals on emergency purposes, registration on Covid 19 Jagratha portal is mandatory.

7. Hospitality services to remain suspended.

Exceptions:

- i. Hotels, Home stays lodges and motels which are accommodating tourists and person stranded due to lock down, medical and emergency staff, air and sea crew
- ii. Establishments earmarked for quarantine facilities.

8. All educational, training, research, coaching institutions etc. shall remain closed.

9. All places of worship shall be closed for public.

10. All social /political /sports/entertainment/academic/cultural/religious gatherings shall be barred.

11. In case of funeral congregation of not more than 20 persons will be permitted. Details may be registered in the covid19 jagratha portal.

12. In case of pre fixed marriages not more than 20 persons can be permitted with strict social distancing protocol. Advance intimation to the nearest Police

station shall be given and details shall be entered in the covid19 jagratha portal.

13. Movement of volunteers connected with the COVID-19 activities shall be permitted.

14. Technicians (On call electrical and plumbing services) shall be permitted.

15. Pre-monsoon preparedness works, including cleaning works, shall be permitted.

16. Movement of House helps and caregivers for elderly and bedridden persons shall be permitted.

17. Construction and maintenance works shall be permitted. MGNREGA and Ayyankali Employment Guarantee Scheme works with groups upto 5 persons maintaining Covid protocols shall be permitted. Transportation of workers to the site adhering to Covid protocols will also be permitted. However, such transportation may be minimised.

18. Wherever exceptions to the above containment measures have been allowed, the organisation/employers must ensure necessary precautions against COVID-19 virus, as well as physical distancing measures as advised by the Health department from time to time.

19. In order to implement these measures, the District Collectors will deploy Sectorial Magistrates and Incident Commanders in the respective local jurisdictions. The Incident Commander will be responsible for the overall implementation of these measures in their respective jurisdiction. All other line department officials in the specified area will work under the directions of such Incident Commander.

20. All enforcing authorities to note that these strict restrictions fundamentally relate to movement of people but not to that of essential goods.

21. The Incident Commanders will in particular ensure that all the efforts for mobilisation of resources, workers and materials for augmentation and expansion of hospital infrastructure shall continue without any hindrance.

22. Thus, initially, Government have held that a lockdown from 8th May, 2021 to 16th May, 2021 was necessary with the above conditions.

Giving due consideration to the rise in infection, death and the measures

taken for providing vaccination, shortage of vaccine, and such factors, Government have decided to impose stringent conditions and thus, resorted to Triple Lockdown in four districts viz., Thiruvananthapuram, Ernakulam, Thrissur and Malappuram and lockdown for other districts with the following conditions in G.O.(Rt) No.416/2021/DMD dated 14.05.2021:

"GOVERNMENT OF KERALA

Abstract

GAD- Covid-19 – containment activities- second phase lock down in the State from 16th May-2021 to 23 rd May-2021-orders issued.

DISASTER MANAGEMENT (A) DEPARTMENT

G.O.(Rt)No.416/2021/DMD Dated,Thiruvananthapuram, 14/05/2021

READ 1 GO(Rt) No.404/2021/DMD dated 06.05.2021

2 GO(Rt) No.405/2021/DMD dated 07.05.2021

3 GO(Rt) No. 406/2021/DMD dated 08.05.2021

4 GO(Rt) No. 408/2021/DMD dated 10.05.2021

5 GO(Rt) No. 413/2021/DMD dated 12.05.2021

ORDER

As per Government Orders referred above, certain restrictions in the form of Lockdown are being implemented in the State from 8th to 16th May-2021 to contain the spread of COVID-19 pandemic. Now it is observed that the Test Positivity Rate (TPR) of the disease has not shown any significant decrease so far.

Hence, in exercise of the powers conferred under section 20 (3) of the Disaster Management Act 2005, the undersigned in his capacity as Chairperson,

State Executive Committee, State Disaster Management Authority hereby orders extension of the State-wide lockdown from 00:00 Hrs of 17th May-2021 to 23:59 Hrs of 23rd May-2021.

Apart from the guidelines of lockdown detailed in the government orders read above, following additional guidelines are issued for implementing the restrictions during the extended period:

- i. Special intensified stringent restrictions shall be enforced in the districts of Thiruvananthapuram, Ernakulam, Thrissur and Malappuram where infections show upward trend. All District Disaster Management Authorities shall analyse the situation within the districts and implement stringent containment measures wherever required.
- ii. Sale and transportation of Natural rubber will be allowed on Monday (17.5.2021) and Friday (21.5.2021).
- iii. Shops selling construction materials, including plumbing and electrical materials, will be allowed to function from 11 am to 6 pm observing strict COVID-19 protocols.
- iv. Delivery of books through e-commerce/home delivery is allowed.
- v. Staff in Law Department and Legislature Secretariat engaged in the preparation of Governor's Address and the session of Legislative Assembly respectively shall be included in the essential category for attending office.

Any persons violating the regulations will be liable to be proceeded against as per the relevant provisions of Disaster Management Act-2005, Kerala Epidemic Diseases Ordinance-2021 and other relevant laws in force.

(By order of the Governor)
DR. V P JOY
CHIEF SECRETARY"

23. The above conditions would apply to all, with the exclusions specified therein. At this juncture, it could be noticed that even in the case

of a marriage and death function, the number of persons permitted to attend is very very less. Even though the dear and near relatives of the person would be desirous of participating in a marriage, the number is restricted to 20. In the case of death, it is restricted to a bare minimum of 20. The former is a function, and the latter is the final rites. It would be pertinent to reproduce clauses 10, 11 and 12 in the annexure to Government order dated 06.05.2021:

“10. All social /political /sports/ entertainment/ academic/cultural/religious gatherings shall be barred.

11. In case of funeral congregation of not more than 20 persons will be permitted. Details may be registered in the covid19 jagratha portal.

12. In case of pre fixed marriages not more than 20 persons can be permitted with strict social distancing protocol. Advance intimation to the nearest Police station shall be given and details shall be entered in the covid19 jagratha portal.”

23.A. Government order dated 17.05.2021 reads thus:

File No.DMA3/230/2021-DMD

GOVERNMENT OF KERALA

Abstract

GAD- Covid-19 – containment activities- Swearing in ceremony of the new Council of Ministers, Kerala- exemption from lockdown restrictions-orders issued.

DISASTER MANAGEMENT (A) DEPARTMENT

G.O.(Rt)No.427/2021/DMD Dated,Thiruvananthapuram, 17/05/2021

Read 1 GO (Rt) No. 416/2021/DMD dated 14.05.2021

2 Proceedings no. DDMA/COVID/01/2020-H2 dated 16.05.2021 of District Collector and Chairperson, DDMA, Thiruvananthapuram

ORDER

Government proposes to conduct the swearing-in ceremony of the new Council of Ministers at 3.30 pm in Central Stadium, Thiruvananthapuram on 20th May-2021 following COVID-19 protocols. Therefore, in exercise of the powers conferred under section 20 (3) of the Disaster Management Act 2005, the undersigned in his capacity as Chairperson, State Executive Committee, State Disaster Management Authority hereby prescribe the following restrictions for the swearing in ceremony on 20th May-2021 and the activities connected with the ceremony at Central Stadium, Thiruvananthapuram, in partial relaxation of the orders read above :

- i. The Central Stadium has a seating capacity of 1000 observing the Covid protocols. However. the number of participants shall be limited to 500.
- ii. Entry to the function site shall strictly be regulated through entry pass. iii. Entry and exit of invitees shall be regulated as per existing physical distancing norms.
- iv. Entire seating arrangements,including on stage, shall be made as per existing COVID-19 protocol.
- v. Entry to the Central Stadium shall be limited only to persons having RTPCR/TRUNAT/RT LAMP negative results obtained within 48 hours or on production of final certificate of COVID vaccination.
- vi. Testing facility for CODID 19 shall also be arranged near the venue.
- Vii. All participants shall wear double masks and shall not remove the same during the entire duration of the event.
- Viii. No refreshment/drinking water will be served inside the venue. Drinking water shall be made available at select points.
- ix. The invitees are permitted to travel to attend the function with the authorisation of the invitation card and car pass issued from GAD.

(By order or Governor)
Dr. V.P.Joy
CHIEF SECRETARY”

24. The contention made by Mr. K.V.Sohan, learned State Attorney, is that a swearing-in ceremony is a constitutional function and, therefore, it

is required to be performed in a dignified manner, by inviting constitutional authorities, Government officials and others.

25. Referring to the conditions/restrictions imposed by the State Disaster Management Authority viz., the Chief Secretary to Government of Kerala, Mr. K.V.Sohan, learned State Attorney submitted that sufficient safeguards are taken, in order to avoid any spread of the disease According to them, though the programme is scheduled in a stadium which can accommodate more number of people. Nevertheless, only 500 persons are invited. Persons participating the function have to take RT-PCR test before 48 hours.

26. Learned State Attorney further submitted that Government order dated 14.05.2021 is superseded by the latter Government order dated 17.05.2021.

27. Though Mr. K.V.Sohan, learned State Attorney described the function as a constitutional function and, therefore, to be conducted in a dignified manner, we observe that except His Excellency, the officials attached to his office, Hon'ble Ministers, who are to be administered the Oath of office, and the required Government officials to assist the performance of the programme, His Excellency the Governor, no other persons have to be allowed to participate in the swearing-in ceremony.

28. We observe that dignity will not be lost when the swearing-in ceremony is witnessed from home. and not a political function of a party/parties, such function can be conducted, in a dignified manner, even in the absence of many, who are not part and parcel of the performance of the ceremony but only to witness the ceremony.

29. Contention of the learned State Attorney that G.O.(Rt.) No.427/2021/DMD dated 17.05.2021 has superseded the Government order dated 14.05.2021 does not lay any support, for the reason that perusal of the latter Government order shows that only a reference has been made to the former Government order.

30. Contention of the learned State Attorney that adequate measures are taken to prevent the spread of COVID-19 for conducting the function, in an open stadium, by maintaining social distancing, as well as checking the invitees by conducting the required RT-PCR tests. If such a contention is accepted, then even marriages can be performed with the participation of 500 people with RT-PCR test conducted 48 hours before solemnisation of the marriage in any big Marriage Hall or open place, which can accommodate people more than 500. So also, the final rites and obsequies ceremonies, in the case of death. We do not see any difference as to whether it is a Government function or family function or ceremony, in relation to death and the contentions of the learned State

Attorney as regards the nature of the function or ceremony, as the case may be, cannot be countenanced in entirety. Even going by the restrictions imposed in the Government Order dated 06.05.2021 and 14.05.2021 respectively, though it is described as a constitutional function as per the version of learned State Attorney, such large gathering cannot be permitted.

31. Surge of Covid-19 pandemic is reflected in the statistics of the Government of Kerala. Purpose of lock down/triple lock down known to the Government. That is why, such stringent conditions are imposed on the public, applicable to all citizens. The restrictions should not be diluted, or in other words, altered, by the Government, solely for the swearing-in-ceremony.

32. We may also add that Government function cannot be converted into a public or political function.

33. In normal circumstances, it is expected that Swearing-in Ceremony would take place with more number of participants, but, taking note of the statistics of cases, as detailed above, pleadings and submissions, we have to consider the following aspects. Whether all those persons invited are required to be present for the performance of the ceremony or those categories of persons invited are only to witness the Swearing-in Ceremony.

34. It may be the desire of an elected MLA of a political party/parties which forms the Government to be present in the ceremony of their Government and in such circumstances, it is for the party or parties to decide as to whether, presence of all the MLA is required along with their spouses, for witnessing the ceremony. We are unable to understand as to why the spouses or relatives of each of the MLAs are required to be present in the ceremony and when they are not, indispensable, either for the performance of the ceremony or for witnessing. Considering the present COVID-19 Pandemic situation, velocity and vigour of the virus, Test Positivity Rate in various Districts, uncontrolled rise in the death, etc., we are of the view that such persons ought not to have been included in the list of participants.

35. At this juncture, we categorically observe that there is no necessity for the spouses of the MLAs to be present in the Swearing-in Ceremony. At the same time, it may be a proud moment, for the spouses or the relative of the designated Ministers to be present in the ceremony.

36. Though the learned State Attorney submitted that instant writ petition is politically motivated, we are not inclined to accept the said contention for the reason that there is certainly a public interest involved in the lis.

37. Though the learned State Attorney submitted that all the invitees would be subjected to RT-PCR test, we are not inclined to accept the said submission also, for the reason that there is no substantial change in the number of infected in active cases from 06.05.2021 to 17.05.2021. Needless to say, the increase in the number of death, warranting the Chairperson, State Executive Committee, State Disaster Management Authority, to come to the conclusion that Swearing-in Ceremony can be performed with the restrictions stated in the impugned Government order dated 17.05.2021.

38. Though the learned State Attorney submitted that the Chairperson, State Executive Committee, State Disaster Management Authority has issued the abovesaid Government order dated 17.05.2021, after consulting with the experts, perusal of the said Government order does not indicate even a reference to the opinion of any expert, particularly medical experts. Besides, when COVID-19 Pandemic situation is worsening in all the parts of the country, including Kerala, though claimed to be one of the defenders, at some point of time, the present Pandemic situation would not permit any authority to conduct a Government function much less, even a Swearing-in Ceremony of the new Council of Ministers, with such a large gathering of 500 persons.

39. Though this Court has repeatedly posed a question to the learned State Attorney as to the category of persons invited, which according to the learned counsel for the petitioner that all the State Committee members of the political parties have been invited, there is no clear answer from the learned State Attorney, except to state that such details are not readily available. It is the submission of the learned State Attorney that the maximum number of persons would be slightly more than 350, however, the restrictions imposed in the Government Order would be strictly implemented.

In the light of the above discussion, we are not inclined to quash the Government order dated 17.05.2021, in its entirety, but dispose of the writ petition, with the following directions.

- (i) All the Covid protocols/guidelines/circulars/notifications issued on 06.05.2021 and 14.05.2021 have to be adhered to or strictly followed by the State Government while conducting the Swearing-in Ceremony.
- (ii) Political parties shall take a decision as to whether all the MLAs are required to be present in the Swearing-in Ceremony.
- (iii) The spouses and relatives of all the MLAs, except the designated Ministers are not required to participate in the Swearing-in Ceremony. The ceremony can be viewed from the residence of the respective MLAs.

- (iv) Government officials required for the performance/ participation in the ceremony alone shall be permitted.
- (v) As the Government have not come out with the details of special invitees, other than the Hon'ble Judges, Secretaries to the Government up to the level of Principal Secretaries, Police officials up to the level of Additional Director General of Police, Senior Law Officers, stated supra, Chief Secretary, Government of Kerala shall consider whether the presence of all the special invitees, including the member of the State Committee of the political parties are required to be present, in view of the utmost adverse situations prevailing due to the pandemic. The above direction applies to all the special invitees including persons who have contributed to the Hon'ble Chief Minister's Disaster Relief Fund.

Though States like West Bengal and Tamil Nadu, with more number of Legislators in the Assembly have performed the Swearing-in Ceremony with lesser number, Government of Kerala, a forerunner in Covid-19 management, should restrict the number to the maximum to avoid the widespread COVID-19.

Sd/-
S. MANIKUMAR
CHIEF JUSTICE

Sd/-
SHAJI P. CHALY,
JUDGE

APPENDIX

PETITIONER'S EXHIBITS:-

P1:- TRUE COPY OF THE GUIDELINES ISSUED BY THE GOVERNMENT DATED 6.5.2021.

P2:- TRUE COPY OF THE ORDER ISSUED BY THE GOVERNMENT DATED 14.05.2021.

P3:- TRUE COPY OF THE REPRESENTATION SUBMITTED BY THE PETITIONER BEFORE THE CHIEF SECRETARY DATED 15.05.2021.

P4:- ENGLISH TRANSLATION OF EXHIBIT-P3.

P5:- TRUE COPY OF THE REPRESENTATION DATED 15.5.2021

P6:- ENGLISH TRANSLATION OF EXHIBIT-P5.

P7:- REGISTRATION CERTIFICATE OF THE PETITIONER ORGANISATION.

RESPONDENTS' EXHIBITS:- NIL

//TRUE COPY//

P.A. TO CJ