

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE P.V.KUNHIKRISHNAN

THURSDAY, THE 21ST DAY OF OCTOBER 2021 / 29TH ASWINA, 1943

WP(C) NO. 14291 OF 2021

PETITIONER:

DR.PRATHIBHA K
AGED 34 YEARS
D/O. BHASKARAN, KOTHAYAMATTIL HOUSE, MADATHIL
ROAD, TANUR P.O, MALAPPURAM DISTRICT, PIN -
676302, WORKING AS ASSISTANT SURGEON, TANALUR
FAMILY HEALTH CENTRE, MALAPPURAM.

BY ADV R.GOPAN

RESPONDENTS:

- 1 STATE OF KERALA
REPRESENTED BY THE CHIEF SECRETARY TO GOVERNMENT,
SECRETARIAT, THIRUVANANTHAPURAM - 695001.
- 2 ADDITIONAL CHIEF SECRETARY
HOME DEPARTMENT, GOVERNMENT SECRETARIAT,
THIRUVANANTHAPURAM - 695001.
- 3 PRINCIPAL SECRETARY
HEALTH DEPARTMENT, GOVERNMENT SECRETARIAT,
THIRUVANANTHAPURAM - 695001.
- 4 THE DIRECTOR OF HEALTH,
HEALTH DIRECTORATE, THIRUVANANTHAPURAM - 695035.

BY ADVS.SMT.K.M.RASHMI, SR.GOV'T. PLEADER
SHRI.N.MANOJ KUMAR, STATE ATTORNEY

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR
ADMISSION ON 21.10.2021, THE COURT ON THE SAME DAY
DELIVERED THE FOLLOWING:

P.V.KUNHIKRISHNAN, J.

W.P.(C).No.14291 of 2021

Dated this the 21st day of October, 2021

JUDGMENT

This writ petition is filed with following prayers:

- i. Issue a writ of mandamus or any other appropriate order or direction directing the 4th respondent to issue direction that Ext.P4 is not a bar in conducting necessary medical test to the accused person as the examining Doctor deemed fit and proper.
- ii. Issue a writ of mandamus or any other appropriate writ order or direction directing the 1st respondent to dispose of Ext.P6.
- iii. Such other writ, direction or order this Honourable Court may deem fit and proper for the circumstances in this case.

2. The petitioner is a Government Doctor working in the Government Hospital, Tanalur Family Health Centre. In connection with the custody death of Mr.Rajkumar, the Government appointed Justice Narayana Kurup as Judicial Commission to conduct an enquiry. On 05.01.2021, Justice Narayana Kurup filed report before the Government and in

the report, there are certain recommendations to be followed by the Police, Doctors and Jail Authorities, which is mentioned in page Nos.135 to 138 of the Commission Report. The relevant portion of the report is produced as Ext.P1 in this writ petition. The Judicial Commission has reported that, the failure in reporting the internal injuries of the accused is the reason for the custodial torture and custodial death and therefore recommended to implement the recommendations in the report. The Government accepted the recommendations and directed to issue circular, as directed by the Commission. On 04.06.2021, the 4th respondent issued Ext.P2 circular. It is the case of the petitioner that the circular is issued without understanding the recommendations of the Judicial Commission. According to the petitioner, the recommendation was to the effect that, on medical examination if the doctor found or suspect internal injury, he/she can conduct or recommend certain tests to the accused. Pursuant to Ext.P2 circular, the Jail Superintendent, Kannur issued a circular stating that before admitting the accused in Jail it has to verify renal profile, Creative Phosphokise (CPK), urine myoglobin and c-reactive protein (CRP), ultrasound scanning of the

abdomen test of the accused, etc. It is the further case of the petitioner that on 14.06.2021, the 4th respondent issued Ext.P4 circular stating that Ext.P2 circular is kept in abeyance until further directions. After Ext.P4 circular, according to the petitioner, the Medical Practitioners are in dilemma. It is stated in the writ petition that even if in the medical examination they suspect serious internal injury, they may not conduct various tests to find out the same or refer the patient to the Medical Board for detailed examination, due to the absence of specific direction or circular from the Health Department. It is also stated by the petitioner that the Police will insist for noting the external injuries only otherwise they will harass the Medical Practitioners, and due to that reason, on 08.07.2021, the petitioner filed representation before respondents 2 to 4 requesting to issue circular clarifying that Ext.P4 circular is not a bar in conducting the various tests if the doctor found it necessary in the preliminary examination of the accused person. When there is no response, this writ petition is filed.

3. Heard the counsel for the petitioner and the Government Pleader.

4. The counsel for the petitioner reiterated his contentions in the writ petition. The Government Pleader submitted that a statement is filed by the 2nd respondent in which it is stated that the Government is considering the point raised by the petitioner, including the contentions in Ext.P6 representation, and a final decision will be taken immediately.

5. When this writ petition came up for consideration on 19.07.2021, this Court passed the following order:

"Government Pleader seeks time for instructions.

List this matter after six weeks.

In the meanwhile, it is made clear that Ext.P4 order will not preclude the doctors conducting medical examination of persons accused in criminal cases from ordering appropriate investigations as they deem fit, if there are indications or complaints of custodial torture."

6. I perused the counter affidavit filed by the 2nd respondent. It will be better to extract the relevant portion of the counter affidavit:

"7. Taking into consideration the reports of the State Police Chief, Director General, Prisons and Correctional Services, Principal Secretary, Health and Family Welfare Department and also by considering the Exhibit P5 representation submitted by the petitioner, a meeting has been convened by

Additional Chief Secretary, Home Department to discuss on the matter of Medical Examination and Investigation of persons under trial on 14.07.2021 at 4.30 PM via video conferencing. State Police Chief, Principal Secretary, Health and Family Welfare Department, ADGP (Law & Order), IGP, South Zone, DIG of Prisons and Correctional Services (HQ), Director of Medical Education, Director of Health Services attended the said meeting.

8. On the basis of suggestions put forth by the participants, it was decided to modify the relevant portion of the Government order dated 17.02.2021, preferably by insisting that higher investigations and tests can be carried out based on the recommendations of the medical officers, evaluating a custodial person so that two to three stages of investigations can be specified. It is also decided to obtain detailed and specific comments of the Health and Family Welfare Department to proceed further in amending the Government order.

9. Accordingly, the file (No.Home-SSA2/113/2021-Home) has been forwarded to Health and Family Welfare Department for obtaining specific comments of that Department for amending the Government order. Amendment of the Government order will be issued after considering all the suggestions came up in the meeting and looking into the prayer of this writ petition and the Exhibit P5 representation submitted by the petitioner before this respondent. Government will also rely upon the guidelines for

Medico legal examination of arrested person as prescribed by the Hon'ble NHRC issued based on the Judgment of this Hon'ble Court in WP(C) No. 41207/2018 filed by the petitioner and subsequent G.O issued by the Government vide G.O.(P) No.55/2020/Home dated 31.10.2020. A true copy of the Judgment in WP(C) No.41207/2018 dated 28.05.2019 and G.O.(P) No. 55/2020/Home dated 31.10.2020 are produced herewith and marked as **Exhibit R2(a)** and **Exhibit R2(b)** respectively.”

7. From the above it is clear that the Government is considering the issue in detail and the Government is also taking consideration of the contention raised by the petitioner in Exts.P5 and P6 representations. The counsel for the petitioner submitted that, since a meeting with different departments of the Government is necessary, the 1st respondent may be directed to complete the proceedings. In such circumstances, there can be a direction to the 1st respondent to conclude the proceedings and pass a final order within a time frame and in the meanwhile, the interim order already passed can be continued.

Therefore, this writ petition is disposed in the following manner:

1. The 1st respondent is directed to conclude the

proceedings already initiated as evident from the averments in the counter affidavit filed by the 2nd respondent, as expeditiously as possible, at any rate, within two months from the date of receipt of a copy of this judgment.

2. Till a decision is taken by the 1st respondent, the interim order dated 19.07.2021 passed in this writ petition will continue.

Sd/-
P.V.KUNHIKRISHNAN
JUDGE

APPENDIX OF WP(C) 14291/2021

PETITIONER EXHIBITS

- Exhibit P1 PHOTOCOPY OF PAGE NOS.135 TO 138 OF THE JUDICIAL COMMISSION'S REPORT TO CONDUCT THE ENQUIRY FOR THE DEATH OF SAID RAJKUMAR.
- Exhibit P2 PHOTOCOPY OF THE CIRCULAR NO. EC1-20983/2021/HDS DATED 4.5.2021 ISSUED BY THE 4TH RESPONDENT.
- Exhibit P3 PHOTOCOPY OF THE CIRCULAR NO. J.O.B 191/21 DATED 12.06.20921 ISSUED BY THE SUPERINTENDENT, CENTRAL PRISON & COMMISSIONAL HOME, KANNUR.
- Exhibit P4 PHOTOCOPY OF THE CIRCULAR NO. EC1-20983/2021/DHS DATED 14.06.2021 ISSUED BY THE 4TH RESPONDENT.
- Exhibit P5 PHOTOCOPY OF THE REPRESENTATION SUBMITTED BY THE PETITIONER BEFORE THE 2ND RESPONDENT DATED 10.07.2021.
- Exhibit P5 (A) PHOTOCOPY OF THE REPRESENTATION SUBMITTED BY THE PETITIONER BEFORE THE 3RD RESPONDENT DATED 09.07.2021.
- Exhibit P5 (B) PHOTOCOPY OF THE REPRESENTATION SUBMITTED BY THE PETITIONER BEFORE THE 4TH RESPONDENT DATED 08.07.2021.
- Exhibit P6 PHOTOCOPY OF THE REPRESENTATION SUBMITTED BY THE PETITIONER BEFORE THE 1ST RESPONDENT DATED 12.07.2021 WITH RECEIPT.

RESPONDENTS' EXHIBITS:

- EXT.R2 (A) TRUE PHOTOCOPY OF THE JUDGMENT IN WPC NO.41207/2018 DATED 28.05.2019
- EXT.R2 (B) TRUE PHOTOCOPY OF G.O.(RT) NO.55/2020/HOME DATED 31.10.2020