

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE ANIL K. NARENDHAN

&

THE HONOURABLE MR.JUSTICE P.G. AJITHKUMAR

MONDAY, THE 7TH DAY OF AUGUST 2023 / 16TH SRAVANA, 1945

W.P. (C) NO.18621 OF 2023

PETITIONERS:

- 1 G.VYASAN, AGED 68 YEARS
S/O GOVINDAN, CHITHIRA, CHIRAYINKEEZHU
P.O, THIRUVANANTHAPURAM., PIN - 695304
- 2 K.V.VIJAYAKUMAR, AGED 60 YEARS
S/O S.VIJAYADAS, VAYALIL VEEDU, CHIRAYINKEEZHU
P.O, THIRUVANANTHAPURAM., PIN - 695304
BY ADVS.S.NIKHIL SANKAR
K.RAJENDRAN CHETTIAR (K/632/2009)

RESPONDENTS:

- 1 STATE OF KERALA
REPRESENTED BY THE PRINCIPAL SECRETARY TO THE
GOVERNMENT REVENUE (DEVASWOM) DEPARTMENT,
GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM., PIN
- 695001
- 2 TRAVANCORE DEVASWOM BOARD
NANTHANCODE, KAWDIAR P.O THIRUVANANTHAPURAM,
REPRESENTED BY SECRETARY, PIN - 695003
- 3 DEVASWOM COMMISSIONER
DEVASWOM COMMISSIONERATE TRAVANCORE DEVASWOM
BOARD, PRASANTHI NAGAR, PAZAHAVANGADI P.O
THIRUVANANTHAPURAM., PIN - 695023
- 4 THE ADMINISTRATIVE OFFICER
SARKARA DEVI TEMPLE PANDAKASALA SARKARA ROAD,
CHIRAYINKEEZHU P.O THIRUVANANTHAPURAM.,
PIN - 695304
- 5 STATION HOUSE OFFICER
CHIRAYINKEEZHU POLICE STATION, CHIRAYINKEEZHU-
ATTINGAL ROAD, CHIRAYINKEEZHU P.O
THIRUVANANTHAPURAM., PIN - 695304
- 6 VIMAL
S/O VIJAYAN, ASHANVILAKOM ARADIPATHA,
CHIRAYINKEEZHU P.O, THIRUVANANTHAPURAM., PIN -

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7 695304
 BABU S
 S/O SURENDRAN, VARAMBIL VEEDU, ANCHAKADAVU,
 CHIRAYINKEEZHU P.O, THIRUVANANTHAPURAM., PIN -
 695304
 BY ADVS.
 Biju
 S. BIJU
 G.SREEKUMAR (CHELUR)
 SRI G.BIJU - STANDING COUNSEL- TRAVANCORE
 DEVASWOM BOARD ; SRI S.RAJMOHAN- SR GOVERNMENT
 PLEADER

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON
07.08.2023, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

JUDGMENT**Anil K. Narendran, J.**

The petitioners, who are the devotees and nearby residents of Sree Sarkara Devi Temple, Chirayinkeezhu, which is a temple under the management of the 2nd respondent Travancore Devaswom Board, have filed this writ petition under Article 226 of the Constitution of India, seeking a writ of mandamus commanding respondents 2 to 5 to ensure a 'peaceful and calm atmosphere' in Sree Sarkara Devi Temple, upholding the divinity of 'Sanctum Sanctorum', thereby protecting the 'right to worship' of the petitioners, enshrined under Article 21 of the Constitution of India. The petitioners have also sought for a writ of mandamus commanding the 4th respondent Administrative Officer of Sree Sarkara Devi Temple to consider Ext.P2 representation dated 24.04.2023, within a time frame to be fixed by this Court and to redress the grievance ventilated by the petitioners forthwith; a writ of mandamus commanding the 3rd respondent Devaswom Commissioner to consider Ext.P3 representation dated 15.05.2023, within a time frame to be fixed by this Court and to redress the grievance ventilated by the petitioner forthwith; a writ of mandamus commanding respondents 2 to 4 to take prompt

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steps to issue orders to prevent illegal use and unauthorised occupancy of Sree Sarkara Devi Temple and its premises by respondents 6 and 7, for conducting 'mass drill' and 'weaponry training', in strict compliance with Ext.P1 circular dated 30.03.2021 issued by the 3rd respondent Devaswom Commissioner and Ext.P4 circular dated 18.05.2023 issued by the 2nd respondent Travancore Devaswom Board and based on the directions by this Court on similar matters; and a writ of mandamus commanding the 5th respondent Station House Officer, Chirayinkeezhu Police Station to afford adequate protection and ensure strict enforcement of law and order in strong and effective implementation of Exts.P1 and P4 circulars.

2. Going by the averments in the writ petition, the petitioners are aggrieved by the illegal encroachment and occupying of temple premises at the behest of respondents 6 and 7 styling themselves to be the members of Rashthriya Swayam Sevak Sangh (RSS) for conducting mass drills and weaponry training during 05.00 p.m. to 12.00 a.m. on all days. Respondents 3 and 4 have already issued Exts.P1 and P4 circulars to prevent unauthorised use of temple and its premises, but the same was

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not seen strictly implemented in its vigour and spirit.

3. By the order dated 13.06.2023 in I.A.No.1 of 2023, the writ petition was amended and accordingly, the petitioners filed the amended writ petition.

4. On 20.06.2023, when this writ petition came up for admission, this Court admitted the matter on file. The learned Senior Government Pleader took notice on admission for respondents 1 and 5. The learned Standing Counsel for Travancore Devaswom Board took notice on admission for respondents 2 to 4. Urgent notice on admission by special messenger was ordered to respondents 6 and 7, returnable by 26.06.2023. The learned Senior Government Pleader and the learned Standing Counsel for Travancore Devaswom Board were directed to get instructions.

5. On 26.06.2023, when this writ petition came up for consideration, the learned Senior Government Pleader, on instructions from the 5th respondent Station House Officer, Chirayinkeezhu Police Station submitted that based on the complaint made by the 4th respondent Administrative Officer, the Station House Officer has conducted an enquiry and found that at present, there is no law and order issues.

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6. The 2nd respondent has filed a counter affidavit dated 11.07.2023. Paragraphs 4 to 6 of that counter affidavit read thus;

"4. It is submitted that respondents 2 and 3 issued Exts.P1 and P4 circulars prohibiting the conduct of mass drill and other weaponry practices in the temples and its premises under the management of the Board. The Board instructed all its officers administering the temples to strictly implement the above circulars and further, strict action will be initiated against the officers who are found not implementing the directions contained in the circulars.

5. It is submitted that the Administrative Officer of Sarkara Devaswom noticed that occasionally mass drills are conducted inside the temple compound on the western side of the temple. Immediately, he lodged a complaint in this regard before the 5th respondent on 14.04.2023, pursuant to which the police warned the organisers of the mass drill inside the temple compound. After the filing of this writ petition, now no mass drill or weapon practice is conducted by anybody inside the temple compound.

6. It is submitted that the temple compound is surrounded by compound walls on all sides. The Administrative Officer of the temple forwarded a request to install gate for access to the temple to prevent the unauthorised entry into the temple compound and the same is under process in the Maramath Department."

7. The 5th respondent Station House Officer of Chirayinkeezhu Police Station has filed a counter affidavit dated 30.06.2023. Paragraphs 3 to 5 of that counter affidavit read thus;

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"3. On perusal of the facts, it is learned that Mass drill is being conducted at the temple ground of Sree Sarkara Devi. A complaint was also received from the Administrative Officer, Sree Sarkara Devi Temple alleging that a mass drill and classes are being conducted at the Temple maidan without the consent of the Devaswom Board.

4. In the letter, the Administrative Officer of Sree Sarkara Devi Temple requested to take action to stop the above mass drill and allied activities. The police conducted enquiry in the matter and it is revealed that the allegations raised by the Administrative Officer and the petitioner is true. Hence, the police authorities issued a notice to Vimal, S/o.Vijayan, Ashanvilakom, Aradippatha, Chirayinkeezh and Babu S., S/o. Surendran, Varambil Hosue, Anchakkadavu, Chirayinkeezhu, who are 6th and 7th respondents of this case, directing to stop the unauthorised and illegal mass drill being conducted at Sarkkara Devi Temple ground and warned them regarding the legal consequences if they do otherwise. A true copy of the letter issued to the 6th respondent dated 20.06.2023 is produced herewith and marked as Ext.R5(a). A true copy of the letter issued to the 7th respondent dated 20.06.2023 is produced herewith and marked as Ext.R5(b).

5. It is submitted that on receipt of Exts.P5(a) and R5(b) respondents 6 and 7 stopped the drill activities undertaken by them at the temple premises and at present they are not conducting any activity at the temple premises. Further, there is no law and order issues exist in and around the temple."

8. The 6th respondent has filed a counter affidavit dated 11.07.2023 followed by another counter affidavit dated 01.08.2023 of the 7th respondent. In the counter affidavit filed by the 6th respondent, it is stated that the RSS Shaka is not conducting mass drills and weaponry training in the premises of the Sree Sarkara Devi Temple during 5.00 p.m. to 12.30 a.m. on all days, as alleged in the writ petition. The allegations that the presence of the party respondents in the temple premises is causing inconvenience to the devotees and that, they are using tobacco products within the temple premises, affecting the divinity of Sanctum Sanctorum of Sree Sarkara Devi Temple, are absolutely baseless. On the other hand, the services offered by the party respondents during temple festival, as part of seva programme, were welcomed by the devotees of the temple. The allegations levelled against the party respondents are politically motivated and made with an intention to defame them and to prevent them from offering worship in Sree Sarkara Devi Temple. To their knowledge, no mass drill or RSS Shaka is being conducted in the temple premises. In the counter affidavit filed by the 7th respondent, it is stated that the 1st petitioner is the Secretary of

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the Sarkara Local Committee of Communist Party of India (Marxist) and the 2nd petitioner is a member of that committee. The 7th respondent is the Go-Seva Pramukh of Chirayinkeezhu Khandu of Rashtriya Swayam Sevak Sangh in Thiruvananthapuram district. The RSS Shaka in Chirayinkeezhu is being conducted in the plot owned by one Sujith, Akottu Veedu in Chirayinkeezhu and not in the premises of Sree Sarkara Devi Temple. In the counter affidavit, the 7th respondent has also denied the allegations levelled against him in the writ petition.

9. Heard the learned counsel for the petitioners, the learned Senior Government Pleader for respondents 1 and 5, the learned Standing Counsel for Travancore Devaswom Board for respondents 2 to 4 and also the learned counsel for respondents 6 and 7.

10. Travancore-Cochin Hindu Religious Institutions Act, 1950 enacted by the State Legislature makes provision for the administration, supervision and control of incorporated and unincorporated Devaswoms and of other Hindu Religious Endowments and Funds. As per sub-section (3) of Section 1 of the Act, substituted by the Kerala Adaptation of Laws Order, 1956,

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Part I of the Act shall extend to Travancore, Part II of the Act shall extend to Cochin and Part III of the Act shall extend to the whole of the State of Kerala, excluding the Malabar District. Chapter II of the Act deals with the Travancore Devaswom.

11. Section 3 of the Act deals with vesting of administration in Board. As per Section 3, the administration of incorporated and unincorporated Devaswoms and of Hindu Religious Endowments and all their properties and funds as well as the fund constituted under the Devaswom Proclamation, 1097 M.E. and the surplus fund constituted under the Devaswom (Amendment) Proclamation, 1122 M.E. which were under the management of the Ruler of Travancore prior to the first day of July, 1949, except the Sree Padmanabhaswamy Temple, Sree Pandaravaka properties and all other properties and funds of the said temple, and the management of all institutions which were under the Devaswom Department shall vest in the Travancore Devaswom Board.

12. Section 15 of the Act deals with vesting of jurisdiction in the Board. As per sub-section (1) of Section 15, subject to the provisions of Chapter III of Part I, all rights, authority and jurisdiction belonging to or exercised by the Ruler of Travancore

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prior to the first day of July, 1949, in respect of Devaswoms and Hindu Religious Endowments shall vest in and be exercised by the Board in accordance with the provisions of this Act. As per sub-section (2) of Section 15, the Board shall exercise all powers of direction, control and supervision over the incorporated and unincorporated Devaswoms and Hindu Religious Endowments under their jurisdiction.

13. Section 15A of the Act, inserted by Act 5 of 2007, with effect from 12.04.2007, deals with duties of the Board. As per Section 15A, it shall be the duty of the Board to perform the following functions, namely, (i) to see that the regular traditional rites and ceremonies according to the practice prevalent in the religious institutions are performed promptly; (ii) to monitor whether the administrative officials and employees and also the employees connected with religious rites are functioning properly; (iii) to ensure proper maintenance and upliftment of the Hindu religious institutions; (iv) to establish and maintain proper facilities in the temples for the devotees.

14. Section 31A of the Act deals with the formation of the Temple Advisory Committees. As per sub-section (1) of Section

31A of the Act, a Committee for each temple in the name 'Temple Advisory Committee' (name of the temple) may be constituted in order to ensure participation of Hindu devotees. As per sub-section (2) of Section 31A, the Temple Advisory Committee constituted under sub-section (1) may be approved by the Board. As per sub-section (3) of Section 31A, the composition of an Advisory Committee under sub-section (1) shall be in such manner as may be prescribed by the rules made by the Board, not inconsistent with any practice prevailing, if any. In terms of sub-section (3) of Section 31A of the Act, the Travancore Devaswom Board framed the Rules for the formation of Temple Advisory Committees in the temples under the management of the Board.

15. Clause (2) of the Rules deals with objectives of the Temple Advisory Committees. As per Clause (2) of the Rules one of the objectives of the Temple Advisory Committee is to formulate schemes for the betterment and development of the Temple, submit the same before the Board and execute it with the approval of the Board. The Advisory Committee shall collect donations from the devotees for the smooth functioning of the temple activities

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and festivals only with the permission of the Department.

16. Clause (3) of the Rules deals with membership. Clause (3) makes it explicitly clear that the membership in 'registered mandalam' is mainly for the devotees who are residing within a distance of 5kms from the temple, who are regular worshippers and had contributed considerably for the betterment of the temple and the devotees. Sub-clauses (i) to (iv) of Clause (3) deal with class of persons who are entitled to get membership.

17. In **Santharam Roy T.S. v. Travancore Devaswom Board and others [2022 (2) KHC 595]** this Court held that the provisions under Clause (3) of the Rules framed by Travancore Devaswom Board for the formation of Temple Advisory Committees in the temples under the management of the Board makes it explicitly clear that the membership in 'registered mandalam' is mainly for the devotees who are residing within a distance of 5 kms from the temple, who are regular worshippers and had contributed considerably for the betterment of the temple and the devotees. Sub-clauses (i) to (iv) of Clause (3) of the Rules deal with class of persons who are entitled to get membership. For constituting the Temple Advisory Committee, the devotees will

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have to be enrolled as members of 'registered mandalam'. The election of members to the Temple Advisory Committee is made from among the members of 'registered mandalam' present in the meeting convened by the Assistant Commissioner of the Group, as provided under Clause (5) of the Rules.

18. Clause (11) of the Rules, which deals with term of office of the Temple Advisory Committee. As per Clause (11) of the Rules, the term of the Temple Advisory Committee shall be two years from the date of approval of the Committee by the Department. The Devaswom Commissioner is empowered to extend the term of the Temple Advisory Committee for a further period of one year on the ground of any development works or unavoidable rituals. On the aforesaid grounds the Board can extend the term for a further period of one year. Clause (11) makes it explicitly clear that the term of the Temple Advisory Committee shall not be extended beyond two years.

19. In **Chandu K. v. Travancore Devaswom Board [2021 (3) KHC 379]** a Division Bench of this Court held that, with the insertion of Section 31A to the Act the formation of Temple Advisory Committees in temples has become statutory. In

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the said decision, the Division Bench noticed that the Travancore Devaswom Board, in exercise of the rule making power under clause (a) of sub-section (2) of Section 35 of the Act, has framed rules for the formation of Temple Advisory Committees in temples under the Travancore Devaswom Board and this Court has approved the draft bye-laws by the order dated 03.11.2011 in DBA No. 153 of 2009. Clause (11) of the Rules deals with the term of office of the Temple Advisory Committee. As per Clause (11), the term of office of the Temple Advisory Committee shall be two years from the date of approval of the election by the Devaswom Commissioner. The Devaswom Commissioner has the authority to extend the term of the committee by one year in case of development works or unavoidable rituals in the temple. The Board will have the power to extend the term by a further period of one year. The term shall not to be extended beyond the period of two years. Thus, the term of the committees is statutorily fixed. The term can be extended by one year or up to two years under certain unavoidable circumstances and no longer. The object of providing duration of office of Temple Advisory Committees in the approved bye-laws is to see that timely elections are held and the

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constitution of the Committees is not delayed.

20. Clause (12) of the Rules deals with powers and rights of the Devaswom Board. As per Clause (12), the Devaswom Commissioner shall have the power to determine the qualification of the members of the Advisory Committee, the term of the Advisory Committee and also to remove the members of the Committee on the basis of specific reasons. In the event of the activities of the Advisory Committee being contrary to the interest of the Temple, Hindu faith or the Devaswom Board, or in the event of specific financial irregularities, the Commissioner shall have the absolute power to remove the Advisory Committee.

21. In **Sunil Kumar C. and others v. Travancore Devaswom Board and others [2022 (4) KHC 663]** this Court held that a reading of the provisions under Clause (9) of the Rules framed by the Travancore Devaswom Board for the formation of Temple Advisory Committees makes it explicitly clear that the construction or repair or renovation work that has to be undertaken in a temple is not outside the purview of the Temple Advisory Committees constituted under Section 31A of the Act. It would certainly be open to the Travancore Devaswom Board to

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undertake such construction, repair or renovation work in a temple, directly by its Maramath Department. However, when the Board has chosen to undertake such construction or repair or renovation work in a temple through a committee, under the supervision of the officials in the Maramath Department, it has to be undertaken through the Temple Advisory Committee constituted under Section 31A of the Act, under constant supervision and scrutiny by the concerned officers of the Board, in order to ensure that the activities of the committee are in compliance with the directions issued by the Board. When the provisions under Section 31A of the Act contemplate the constitution of a Temple Advisory Committee in the temples under the management of the Board, which is assigned with various duties as per the said Rules, which includes undertaking various developmental activities in the temple, the normal rule is that any developmental activity in a temple, which is not undertaken directly by the Board through its officials in the Maramath Department, has to be undertaken through the Temple Advisory Committee. In **Sunil Kumar C.** this Court found that, in view of the provisions contained in Clause (2), Clause (9) and Clause (11) of the Rules, and also the law laid down

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in **Chandu K. [2021 (3) KHC 379]**, the construction, repair or renovation work that has to be undertaken in a Temple is not outside the purview of the Temple Advisory Committees constituted under Section 31A of the Act.

22. Clause (18) of the Rules framed by the Travancore Devaswom Board for the formation of Temple Advisory Committees prohibits the Temple Advisory Committee from collecting funds in connection with any ceremonies in the temple by placing kanikkavanchi or hundials. When coupons are printed for development activities in the temple, with the approval of the Department, only coupons for the specified amount shall be printed. No receipts without the seal of the Assistant Commissioner shall be used for collecting funds. As per Clause (18), a person who is an office bearer or member of the Temple Advisory Committee shall not be eligible to continue as such continuously exceeding the term of two committees. In **Sunil Kumar C. [2022 (4) KHC 663]**, this Court held that the provisions under Clause (18) of the said Rules provide sufficient safeguards to prevent the illegal collection of funds by the Temple Advisory Committee for development activities in a temple.

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23. According to *Oxford Dictionary*, 'worshipper' is a person who shows reverence and adoration for a deity. Right to worship is a civil right, of course in an accustomed manner and subject to the practice and tradition in each temple.

24. In **Major Vellayani Devi Temple Advisory Committee v. State of Kerala and others [2023 (2) KHC 290]** a Division Bench of this Court in which both of us were parties held that a worshipper or a devotee has no legal right to insist that saffron/orange coloured decorative materials alone are used for festivals in a temple under the management of the Travancore Devaswom Board. Similarly, the District Administration or the Police cannot insist that only 'politically neutral' coloured decorative materials are used for temple festivals. Politics has no role to play in the conduct of daily worship and ceremonies and festivals in temples. The role of a Temple Advisory Committee in a temple under the management of the Travancore Devaswom Board is to render necessary assistance to the Board and its officials for the smooth functioning of the temple activities and the conduct of festivals according to the usage of that temple.

25. In **Hindu Seva Kendram v. State of Kerala and**

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others [2023 (3) KHC 258] a Division Bench of this Court in which both of us were parties reiterated that politics has no role to play in the conduct of daily worship and ceremonies and festivals in temples. In the said decision, it was held that cultural or social activities unconnected with temple worship have no role to play in temple festivals.

26. In view of the law laid down in the decisions referred to supra, the Travancore Devaswom Board has to manage the properties and affairs of Sree Sarkara Devi Temple and arrange for the conduct of the daily worship and ceremonies and of the festivals in the said temple according to the usage. The Temple Advisory Committee of Sree Sarkara Devi Temple, which consists of devotees who fall under the eligibility criteria prescribed in Clause (3) of the Rules framed under sub-section (3) of Section 31A of the Act, shall render necessary assistance to the Board and its officials for the smooth functioning of the temple activities and festivals according to the usage. The temple premises of Sree Sarkara Devi Temple cannot be used for conducting mass drill or weaponry training by the devotees or a group of persons.

In the above circumstances, this writ petition is disposed of

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by directing 3rd respondent Devaswom Commissioner and the 4th respondent Administrative Officer to ensure strict compliance of the prohibition contained in Exts.P1 and P4 circulars in the premises of Sree Sarkara Devi Temple, Chirayinkeezhu. No mass drill or weaponry practices shall be permitted in the premises of the said temple, which is under the management of the Travancore Devaswom Board. The 5th respondent Station House Officer, Chirayinkeezhu Police Station shall render necessary assistance to the 4th respondent Administrative Officer to ensure strict compliance of the prohibition contained in Exts.P1 and P4 circulars.

Sd/-

ANIL K. NARENDRAN, JUDGE

Sd/-

P.G. AJITHKUMAR, JUDGE

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APPENDIX OF WP(C) 18621/2023

PETITIONER EXHIBITS

Exhibit P1	TRUE COPY OF THE CIRCULAR BEARING R.O.C.NO: 489/2021/VIG ISSUED BY THE 3RD RESPONDENT DATED 30/03/2021
Exhibit P2	TRUE COPY OF THE COMPLAINT PREFERRED BY THE PETITIONERS BEFORE THE 4TH RESPONDENT DATED 24/04/2023
Exhibit P3	TRUE COPY OF THE REPRESENTATION PREFERRED BY THE PETITIONERS BEFORE THE 3RD RESPONDENT DATED 15/05/2023
Exhibit P4	TRUE COPY OF THE CIRCULAR BEARING NO.ROC.NO.17/223/VIG ISSUED BY THE 2ND RESPONDENT DATED 18.05.2023

RESPONDENT EXHIBITS

EXHIBIT R5(a)	TRUE COPY OF THE LETTER ISSUED TO THE 6TH RESPONDENT DATED 20/06/2023 BY THE 5TH RESPONDENT
EXHIBIT R5(b)	TRUE COPY OF THE LETTER ISSUED TO THE 7TH RESPONDENT DATED 20/06/2023 BY THE 5TH RESPONDENT