

[Kerala HC Directs Chief Secretary To Consider BJP State President's Representation Against Govt Employees' Participation In CPI \(M\)'s Raj Bhavan March](#)

2022 LiveLaw (Ker) 602

IN THE HIGH COURT OF KERALA AT ERNAKULAM

**S. MANIKUMAR; C.J., SHAJI P. CHALY; J.**

WP(C) NO. 36503 OF 2022; 15 November 2022

**K. SURENDRAN versus STATE OF KERALA**

*Petitioner: Advs. K.S. Prenjith Kumar, Vishnu Pradeep, G. Sreekumar (Chelur)*

*Respondents: N. Manoj Kumar; State Attorney*

**J U D G M E N T**

**S. MANIKUMAR, CJ**

Petitioner has filed the instant public interest writ petition for the following reliefs:

- (i) Issue a writ of mandamus or any other appropriate writ order or direction commanding the 1<sup>st</sup> respondent to consider and act upon Exhibit P1 representation dated 14.11.2022 submitted by the petitioner to the 1<sup>st</sup> respondent;
- (ii) Declare that the participation of Government servants in the protest march and dharna, scheduled to be held on 15.11.2022 against the Hon'ble Governor, is illegal;
- (iii) Issue any other writ or order or any other writ or order as is deemed fit by this Hon'ble Court in the greater interest of justice.

**2.** Brief facts leading to the filing of the writ petition are that; petitioner is the President of State Unit of a National party viz., Bharatiya Janata Party. He is aggrieved by the attempt on the part of the ruling front in the State of Kerala i.e., Left Democratic Front (LDF), to conduct a protest march and demonstration in front of 'Raj Bhavan', which is the official residence of the Hon'ble Governor of Kerala, with the participation of Government employees and beneficiaries under the Mahatma Gandhi National Rural Employment Guarantee Act, 2005 (MGNREGA) on 15.11.2022.

**3.** Petitioner has further stated that the ruling party and allied parties are engaged in mass campaign to ensure maximum participation in the protest and towards the same, strict directions have been given to their affiliated service organization, to make sure that all the members of the organization are participating in the protest march and dharna mandatorily; and that, the Government Servants are assured with attendance, even if they abstain from official duties, to participate in the agitation.

**4.** Petitioner has further stated that this Court in **Balagopalan G. v. State of Kerala and others** (ILR 2021(1) Ker.673) and **Chandara Choodan Nair S. v. State of Kerala & others** (2022 KHC 3497), categorically held that there is no right conferred on the Government servants to participate in strike and there is clear prohibition under law to call for and participate in strike by the Government Servants. Further, it is the duty of the welfare Government to protect the interest of its citizens and should not attempt to slow down the Government work.

**5.** According to the petitioner, no Government Servant can be permitted or compelled to take part in a protest against the Hon'ble Governor, who is the highest Constitutional functionary and Constitutional Head of the State. Though, the petitioner has submitted Exhibit P1 letter dated 14.11.2022 before the State of Kerala, represented by its Chief Secretary, Government Secretariat, Thiruvananthapuram - respondent No.1, no positive

action is excepted from the state as the ruling front itself is agitating the protest. Hence, the instant writ petition.

6. Supporting the prayers sought for, petitioner at paragraph 5 to 7 of the Statement of Facts, has contended as under:

“5. It has come to the notice of the petitioner that the ruling parties like Communist Party of India (Marxist) and Communist Party of India (CPI) and allied parties are doing mass campaigning to ensure maximum participation in the protest and towards the same, strict directions have been given to the affiliated organizations of Government Servants to make sure that all its members are mandatorily participating in the protest march. Further, the Government servants are assured of attendance even if they abstain from official duties to participate in the protest march and dharna. Apart from Government servants, strict directions are issued to the beneficiaries of MGNREGA to take part in the protest mandatorily and they will be paid one day wages for the same without doing any labour.

6. This Court in **Balagopalan G Vs. State of Kerala and others** (ILR 2021(1) Ker.673) has held that there is no right conferred on the Government servants to go on strike, at the same time, there is a clear prohibition under law to call for and participate in strikes. This Court has interfered with the decision of the State Government to grant eligible casual leave to Government employees and teachers who had not attended duties during Nationwide general strike. Further, in **Chandra Chooden Nair. S Vs. State of Kerala & Others** (2022 KHC 3497), this Court has held that it is the duty of the welfare Government to continue with all the Government work as expected and it should not attempt any act which has the tendency to impede the reasonably efficient and speedy transaction of the Government work. This Court has given direction to the Government of Kerala to issue appropriate order to prevent the Government servants from engaging in strike and also to ensure that Rule 86 of the Government Servants Conduct Rules, 1960 is not violated.

7. It is reliably learned that efforts are going on to compel the Government servants to participate in the protest march and dharna scheduled to be held on 15.11.2022, in front of Raj Bhavan, and to guarantee them with attendance, even if they abstain from duties. The participation of Government servants in strike is prohibited by Rule 86 of the Kerala Government Servants Conduct Rules, 1960, Rule 14A of the Kerala Service Rules and the circulars issued there under. As per Rule 86 of Kerala Government Servants Conduct Rules, 1960, no Government servant shall engage himself in any strike or incitement thereto or in any similar activities and Government servants should not engage themselves in any concerted or organized slowing down or attempt at slowing down Government work or in any act which has been tendency to impede the reasonability efficient and speedy transaction of Government work.”

7. Going through the material on record, we do not find any material to support the contentions made at paragraphs 5 to 7 in the Statement of Facts. Besides, there is no proof of acknowledgement of Exhibit P1 letter dated 14.11.2022 stated to have been submitted to the 1<sup>st</sup> respondent.

8. In **Guruvayur Devaswom Managing Committee & Anr. v. C.K.Rajan & Others** [(2003) 7 SCC 546], the Hon'ble Supreme Court has summarised the principles with respect to filing of a Public Interest Litigation and they are reproduced:

“(i) The Court in exercise of powers under Article 32 and Article 226 of the Constitution of India can entertain a petition filed by any interested person in the welfare of the people who is in a disadvantaged position and, thus, not in a position to knock the doors of the Court. The Court is constitutionally bound to protect the fundamental rights of such disadvantaged people so as to direct the State to fulfill its constitutional promises. [See **S.P. Gupta v. Union of India, People's Union for Democratic Rights v. Union of India** (1982) 2 SCC 494, **Bandhua Mukti Morcha v. Union of India and Others** (1984) 3 SCC 161 and **Janata Dal v. H.S.Chowdhary** (1992) 4 SCC 305]

(ii) Issues of public importance, enforcement of fundamental rights of a large number of the public vis-a-vis the constitutional duties and functions of the State, if raised, the Court treats a letter or a telegram as a public interest litigation upon relaxing procedural laws as also the law relating to pleadings. [See **Charles Sobraj v. Supdt., Central Jail, Tihar, New Delhi** (1978) 4 SCC 104 and **Hussainara Khatoun and Others v. Home Secretary, State of Bihar** (1980) 1 SCC 81]]

(iii) Whenever injustice is meted out to a large number of people, the Court will not hesitate in stepping in. Articles 14 and 21 of the Constitution of India as well as the International Conventions on Human Rights provide for reasonable and fair trial. In **Mrs. Maneka Sanjay Gandhi v. Rani Jethmalani** (AIR 1979 SCC 468), it was held as under:

"2. Assurance of a fair trial is the first imperative of the dispensation of justice and the central criterion for the court to consider when a motion for transfer is made is not the hypersensitivity or relative convenience of a party or easy availability of legal services or like mini-grievances. Something more substantial, more compelling, more imperiling, from the point of view of public justice and its attendant environment, is necessitous if the court is to exercise its power of transfer. This is the cardinal principle although the circumstances may be myriad and vary from case to case. We have to test the petitioner's grounds on this touchstone bearing in mind the rule that normally the complainant has the right to choose any court having jurisdiction and the accused cannot dictate where the case against him should be tried. Even so, the process of justice should not harass the parties and from that angle the court may weigh the circumstances." (See also **Dwarka Prasad Agarwal (D) By Lrs. and Anr. v. B.D. Agarwal and Ors.** (2003) 5 SCALE 138)

(iv) The common rule of locus standi is relaxed so as to enable the Court to look into the grievances complained on behalf of the poor, the deprived (sic), the illiterate and the disabled who cannot vindicate the legal wrong or legal injury caused to them for any violation of any constitutional or legal right. [See **Fertilizer Corpn. Kamgar Union (Regd.) v. Union of India**, AIR 1981 SC 344, **S.P. Gupta** (supra), **People's Union for Democratic Rights** (supra), **Dr. D.C. Wadhwa (Dr) v. State of Bihar** (1987) 1 SCC 378 and **BALCO Employees' Union (Regd.) v. Union of India and Others** [(2002) 2 SCC 333]

(v) When the Court is prima facie satisfied about violation of any constitutional right of a group of people belonging to the disadvantaged category, it may not allow the State or the Government from raising the question as to the maintainability of the petition.

(vi) Although procedural laws apply to PIL cases but the question as to whether the principles of res judicata or principles analogous thereto would apply depends on the nature of the petition as also facts and circumstances of the case. [See **Rural Litigation and Entitlement Kendra v. State of U.P.**, 1989 Supp (1) SCC 504 and **Forward Construction Co. v. Prabhat Mandal (Regd.), Andheri and others** (1986) 1 SCC 100]

(vii) The dispute between two warring groups purely in the realm of private law would not be allowed to be agitated as a public interest litigation. (See **Ramsharan Autyanuprasi v. Union of India and Others** 1989 Supp (1) SCC 251)

(viii) However, in an appropriate case, although the petitioner might have moved a court in his private interest and for redressal of personal grievances, the Court in furtherance of the public interest may treat it necessary to enquire into the state of affairs of the subject of litigation in the interest of justice. (See **Shivajirao Nilangekar Patil v. Dr. Mahesh Madhav Gosavi and Others** (1987) 1 SCC 227).

(ix) The Court in special situations may appoint a Commission, or other bodies for the purpose of investigating into the allegations and finding out facts. It may also direct management of a public institution taken over by such Committee. (See **Bandhua Mukti Morchai, Rakesh Chandra Narayan v. State of Bihar** [(1989) Suppl. 1 SCC 644] and **A.P. Pollution Control Board v. Prof. M.V. Nayudu** [(1999) 2 SCC 718]). In **Sachidanand Panday and Another v. State of West Bengal and others** [(1987) 2 SCC 295], this Court held as under:

"61. It is only when courts are apprised of gross violation of fundamental rights by a group or a class action on when basic human rights are invaded or when there are complaints of such acts as shock the judicial conscience that the courts, especially this Court, should leave aside procedural shackles and hear such petitions and extent its jurisdiction under all available provisions for remedying the hardships and miseries of the need, the underdog and the neglected. I will be second to none in extending help when such is required.

But this does mean that the doors of this Court are always open for anyone to walk in. It is necessary to have some self-imposed restraint on public interest litigants."

**9.** In similar circumstances, this Court in the unreported judgment dated 30.06.2020 in **B. Radhakrishna Menon v. State of Kerala and Ors.** [W.P.(C) No.12109 of 2020], had an occasion to consider the principles to be followed in a PIL and, at paragraph 45, held as under:

"45. Placing reliance on the above decisions, the learned Senior Government Pleader submitted that a public interest writ petition which lacks bona fides, lack of particulars satisfying the requirements of a PIL, deserves to be dismissed with costs. Having regard to decisions considered in **Mythri Residents Association v. Secretary, Tripunithura Municipality and Others**, [2019 KHC 832], it has been summarised by the journal as under:

"(1) The Courts must encourage genuine and bona fide PIL and effectively discourage and curb the PIL filed for extraneous considerations.

(2) Instead of every individual Judge devising his own procedure for dealing with the public interest litigation, it would be appropriate for each High Court to properly formulate rules for encouraging the genuine PIL and discouraging the PIL filed with oblique motives. Consequently, we request that the High Courts who have not yet framed the rules, should frame the rules within three months. The Registrar General of each High Court is directed to ensure that a copy of the rules prepared by the High Court is sent to the Secretary General of this Court immediately thereafter.

(3) The Courts should prima facie verify the credentials of the petitioner before entertaining a PIL.

(4) The Courts should be prima facie satisfied regarding the correctness of the contents of the petition before entertaining a PIL.

(5) The Courts should be fully satisfied that substantial public interest is involved before entertaining the petition.

(6) The Courts should ensure that the petition which involves larger public interest, gravity and urgency must be given priority over other petitions.

(7) The Courts before entertaining the PIL should ensure that the PIL is aimed at redressal of genuine public harm or public injury. The Court should also ensure that there is no personal gain, private motive or oblique motive behind filing the public interest litigation.

(8) The Courts should also ensure that the petitions filed by busybodies for extraneous and ulterior motives must be discouraged by imposing exemplary costs or by adopting similar novel methods to curb frivolous petitions and the petitions filed for extraneous considerations.

(9) The misuse of public interest litigation is a serious matter of concern for the judicial process.

(10) Both this Court and the High Courts are flooded with litigations and are burdened by arrears.

(11) Frivolous or motivated petitions, ostensibly invoking the public interest detract from the time and attention which courts must devote to genuine causes.

(12) This Court has a long list of pending cases where the personal liberty of citizens is involved.

(13) Those who await trial or the resolution of appeals against orders of conviction have a legitimate expectation of early justice.

(14) It is a travesty of justice for the resources of the legal system to be consumed by an avalanche of misdirected petitions purportedly filed in the public interest which, upon due scrutiny, are found to promote a personal, business or political agenda.

(15) This has spawned an industry of vested interests in litigation.

(16) There is a grave danger that if this state of affairs is allowed to continue, it would seriously denude the efficacy of the judicial system by detracting from the ability of the court to devote its time and resources to cases which legitimately require attention.

(17) Worse still, such petitions pose a grave danger to the credibility of the judicial process.

(18) This has the propensity of endangering the credibility of other institutions and undermining public faith in democracy and the rule of law.

(19) This will happen when the agency of the court is utilised to settle extra-judicial scores. Business rivalries have to be resolved in a competitive market for goods and services.

(20) Political rivalries have to be resolved in the great hall of democracy when the electorate votes its representatives in and out of office.

(21) Courts resolve disputes about legal rights and entitlements.

(22) Courts protect the rule of law.

(23) There is a danger that the judicial process will be reduced to a charade, if disputes beyond the ken of legal parameters occupy the judicial space.

**10.** Giving due consideration to the material on record and the principles of law summarised above, we are of the view that the petitioner has not made out a case for issuance of any declaration as prayed for.

**11.** Learned counsel for petitioner submitted that Exhibit P1 letter dated 14.11.2022 has been sent through email.

**12.** Posed with a question, as to whether there is any objection for State of Kerala, represented by its Chief Secretary, Government Secretariat, Thiruvananthapuram - respondent No.1, to consider Exhibit P1 letter, stated to have been submitted by the writ petitioner, Mr. N. Manoj Kumar – learned State Attorney, submitted that the procession has already been started. Submission is placed on record.

**13.** In the light of the above discussion, respondent No.1 is directed to consider Exhibit P1 letter dated 14.11.2022, if acknowledged, and pending on his files, as expeditiously as possible, having regard to the fact that the march is scheduled on 15.11.2022.

With the above direction, the writ petition is disposed of.