

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE THE CHIEF JUSTICE MR.S.MANIKUMAR

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THE HONOURABLE MR. JUSTICE SHAJI P.CHALY

TUESDAY, THE 27<sup>TH</sup> DAY OF JULY 2021 / 5TH SRAVANA, 1943

WP(C) NO. 14867 OF 2021

PETITIONER/S:

A.HAMEED HAJEE,  
AGED 67 YEARS,  
SON OF BAWA MAESTHRI,  
MANAGING PARTNER, KOOLIKKAD AGENCIES,  
RESIDING AT MYTHRI MAHAL, AJANUR KADAPPURAM,  
AJANUR, KOLAVAYAL P. O.,  
KASARAGOD - 673 531.

BY ADVS.  
SABU P.JOSEPH  
C.N.SREEKUMAR  
MANJU PAUL  
ANIL PRASAD  
SURESHKUMAR C

RESPONDENT/S:

STATE OF KERALA,  
REPRESENTED BY THE CHIEF SECRETARY,  
GOVERNMENT OF KERALA, GOVERNMENT SECRETARIAT,  
THIRUVANANTHAPURAM - 695 001.

OTHER PRESENT:

SRI. K.GOPALAKRISHNA KURUP, ADVOCATE GENERAL FOR  
RESPONDENT

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON  
27.07.2021, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

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

**S. Manikumar, C.J.**

Instant writ petition has been filed for the following reliefs:-

“i. Issue a writ of mandamus or any other appropriate writ order or direction to the respondent to withdraw the lock down imposed on Saturdays and Sundays and restriction imposed on all shops, establishments, banks, other institutions, in the state enabling them to function on all days without any time restrictions;

ii. Issue a writ of mandamus or any other appropriate writ order or direction to the respondents to allow the shops, establishments, banks, other institutions to function more time including Sundays to reduce overcrowding of people by maintaining social distancing at all time;

iii. Issue a writ of mandamus or any other appropriate writ order or direction to the respondent to pass an order to functions Offices and other essentials services of Government Banks and Financial Institutions and other institutions on Sundays by following rotations of employees by granting leave on weekday to ensure services to all needy by avoiding overcrowding;

iv. Issue a writ of mandamus or any other appropriate writ, order to the respondent implement effective and efficient plan to strict adherence of Covidi Protocol and Social Distancing each and every corner of the state.”

2. Short facts leading to filing of the writ petition are as hereunder:-

According to the petitioner, the lock down and restrictions imposed by the State Government to control the spread of Covid-19 has proved to be as unsuccessful, evidencing from the current status of continuing constant rate of TPR in the State.

Due to the indefinite extension of complete lock down on Saturday and Sundays, and other restrictions on the functioning of shops, establishments, Banks and other Institutions in the State, on a restricted time period and days, cause overcrowding in all these places, during the period of its functioning, cases have not come down.

Petitioner has contended that the number of people or customers are not reduced, by imposing the lock down, but the Government have restrained, to a shorter period, to avail and meet the demands of public

and others, the needs and requirements, which cause the overcrowding in shops and other establishments, violating the Covid Protocol and social distancing, the most effective and efficient method accepted across the world, for controlling spread of Covid-19.

Petitioner has further contended that there are more than 30 lakh shops and establishments functioning in the State of Kerala and more than 90 lakh workers employed in these shops and establishments. Due to lock down and restrictions on the functioning of shops and establishments, merchants, businessmen, their employees and their families are facing huge financial stringency. The family of these people are purely depending on these sectors for their livelihood and other needs. Due to restrictions to open and functioning of the shops and establishments, huge stock purchased by the merchants are lying idle, holding their huge investment. Apart from that, dues in rent for shops and buildings, electricity and water charges, EMI for loan, wages and salary of its works and employees, etc., piled up the financial burden and liability of merchants in the State.

Petitioner has also contended that in the urge of effective and efficient method to control the Covid - 19 in the State and safeguard

the interest of the merchants and businessmen in the State, according to the petitioner, the Government is still continuing with the proven failed method of implementing lock down and restriction on shops and establishment to control spread of pandemic Covid-19, which is highly necessary to be withdrawn in the current scenario and that the Government should come out with effective implementation of Covid Protocol, social distancing and sanitation and cleanliness, a world wide accepted method of controlling spread of Covid-19.

3. Heard the learned counsel for the parties and perused the material on record.

4. On 23.07.2021, an Hon'ble Full Bench of this Court in W. P. (C) No. 11316 of 2021 (suo motu), have passed the following order:-

“Taking note of the order in G.O(Rt).No.500/2021/DMD dated 6.7.2021, we extended the interim order dated 19.05.2021 and directed the Registry to post the writ petition on 23.07.2021.

2. On this day, when the matter came up for hearing, inviting attention of this Court to G.O(Rt). No.524/2021/DMD, Mr. K. Gopalakrishna Kurup, learned Advocate General, submitted that vide order dated 13.07.2021, additional guidelines for implementation by the enforcement authorities from 15.07.2021, were issued.

3. Subsequently, having regard to the Bakrid (Eid-ul-Azha), celebrated in the State on 21.07.2021, orders were issued on 17.07.2021 exempting certain restrictions imposed in the State, to contain COVID-19 pandemic. Both orders stated supra are extracted hereunder:

“GOVERNMENT OF KERALA

Abstract

Disaster Management Department - COVID19 - Additional guidelines for implementation by the enforcement authorities from 15th July 2021- orders issued

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DISASTER MANAGEMENT (A) DEPARTMENT

G.O.(Rt).No.524/2021/DMD Dated, Thiruvananthapuram,  
13/07/2021

- Read:- 1. GO(Rt)No.500/2021/DMD dated 06.07.2021.  
2. GO(Rt)No.459/2021/DMD dated 07.06.2021  
3. GO(Rt)No.461/2021/DMD dated 10.06.2021.

**ORDER**

After assessing the current situation of the spread of COVID-19 pandemic in the State, the undersigned, in his capacity as Chairman of the State Executive Committee of State Disaster Management Authority, in exercise of the powers under Sec.20(3) of the Disaster Management Act-2005, hereby orders following additional guidelines for implementation by the enforcement authorities from 00:00 hours of 15<sup>th</sup> July-2021 onwards:

- a. The present categorization of LSGIs based on seven day average TPR vide GO (Rt) No.500/2021/DMD dated 06.07.2021 shall continue. Exemptions and restrictions already applicable to the respective category areas will continue.
- b. Banks can allow public on all five days of operation. 17<sup>th</sup> July, 2021 will be holiday for banks and other

financial institutions under Negotiable Instruments Act, 1881.

- c. Shops in category 'A', 'B' and 'C' LSGIs will be allowed to open till 8 pm on the days in which they are allowed already.
- d. Collectors are authorized to declare micro-containment zones and implement special intensified stringent restrictions in specific areas in A, B and C LSGIs after analyzing the existing TPR, number of active cases and other factors in the area.
- e. There will be complete lockdown on 17<sup>th</sup> and 18<sup>th</sup> July, 2021 (Saturday & Sunday) with the same guidelines as issued for 12<sup>th</sup> and 13<sup>th</sup> June, 2021 vide Government Orders GO(Rt) No.459/2021/DMD dated 07.06.2021 and GO(Rt) No.461/2021/DMD dated 10.6.2021.

(By order of the Governor)  
Dr.V.P. Joy  
Chief Secretary”

5. G.O.(Rt) No.532/2021/DMD dated 17.07.2021, is  
extracted below:

“GOVERNMENT OF KERALA

Abstract

Disaster Management Department - Exemption in  
restrictions imposed in the state to contain Covid 19  
pandemic- orders issued

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DISASTER MANAGEMENT (A) DEPARTMENT

G.O.(Rt)No.532/2021/DMD

Dated, Thiruvananthapuram, 17/07/2021  
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- Read 1. GO(Rt)No.467/2021/DMD dated 15.06.2021
2. GO(Rt)No.479/2021/DMD dated 22.06.2021
3. GO(Rt)No.487/2021/DMD dated 29.06.2021
4. GO(Rt) No.500/2021/DMD dated 06.07.2021
5. GO(Rt) No.524/2021/DMD dated 10.06.2021

**ORDER**

As part of COVID- 19 containment activities, the LSGIs in the state were categorized based on the Test Positivity Rate(TPR) and certain relaxations on lock-down were extended to the areas where the TPR is less and special intensified stringent restrictions are being implemented in areas where TPR is high.

After assessing the current situation of the spread of COVID-19 pandemic in the State, the undersigned, in his capacity as Chairman of the State Executive Committee of State Disaster Management Authority, in exercise of the powers conferred under Sec 20(3) of the Disaster Management Act-2005, hereby issues following additional guidelines for strict implementation by the enforcing authorities.

- i. Bakrid (Eid-ul-Azha) is being celebrated in the State on 21<sup>st</sup> July-2021. Therefore, textiles, footwear shops, jewellery, fancy stores, shops selling home appliances and shops selling electronic items, all types of repairing shops and shops selling essential items (already allowed in all category of LSGIs) shall be allowed to open on 18<sup>th</sup>, 19<sup>th</sup> and 20<sup>th</sup> -2021 (Sunday, Monday and Tuesday) from 7 AM to 8 PM in 'A', 'B' and 'C' category LSGIs. In "D" category, these shops can function on 19th July (Monday) only.
- ii. Beauty parlor and barber shops can function for hair styling only on the days on which other shops are permitted in 'A' and '13' category areas.
- iii. Along with the other permitted activities, electronic shops and electronic repair shops can also be opened on all days from 7 am to 8 pm in category 'A' and '13' LSGIs and during permitted days in other categories.
- iv. Places of worship can be allowed with maximum 40 persons on special occasions of celebration.



- v. Shooting of Cinema shall be allowed as per the guidelines for serial shooting stipulated in the order read as (2) above by strictly adhering to COVID protocols.
- vi. Public are cautioned that as far as possible, the persons visiting shops and other establishments may belong to those with at least one dose of vaccine/COVID recovered category and follow strict COVID protocols.

(By order of the Governor)

Dr. V P Joy  
Chief Secretary”

5. Learned Advocate General further submitted that having regard to the '*Kanwar Yatra*' in Uttar Pradesh, Hon'ble Supreme Court registered *Suo motu* Writ Petition (C). No.5 of 2021 and, on 14.7.2021, issued certain directions and further directed to list the matter on 16.07.2021. Subsequently, on 18.07.2021, an interlocutory application, viz., I.A. No.82837 of 2021, in *Suo motu* Writ Petition (C).No.5 of 2021 is filed on behalf of one Mr. P.K.D. Nambiar, pointing out certain news articles, which portray an alarming situation taking place in Kerala as a result of Bakrid celebrations.

6. Having heard learned counsel for the parties therein, in I.A. No.82837 of 2021, the Hon'ble Supreme Court, on 20.7.2021, passed the following orders:

“What is extremely alarming is the fact that in Category D, where infections are the highest i.e. 15%, a full day of relaxation has been granted, which was yesterday. It is then stated that, as far as possible, the persons visiting shops and other establishments may belong to those with at least one dose of vaccine/COVID recovered category and follow strict COVID protocols, echoing paragraph (vi) of the 17<sup>th</sup> July, 2021 Notification, along with the Chief Minister’s appeal.

The aforesaid facts disclose an alarming state of affairs. To give in to pressure groups so that the citizenry of India is laid bare to a nationwide pandemic discloses a sorry state of affairs. Even otherwise, homilies such as “as far as possible” and assurances from traders without anything more, do not inspire any confidence in the people of India or this Court. We may only indicate that this affidavit discloses a sorry state of affairs as has been stated hereinabove, and does not in any real manner safeguard the Right to Life and Health guaranteed to all the citizens of India under Article 21 of the Constitution of India. It may also be pointed out that the relaxation for one day to a Category D area was wholly uncalled for.

In these circumstances, we direct the State of Kerala to give heed to Article 21 read with Article 144 of the Constitution of India, and follow the law laid down in our orders in the Uttar Pradesh case i.e., 14.7.2021, 16.7.2021 and 19.7.2021. Also, pressure groups of all kinds, religious or otherwise, cannot in any manner, interfere with this most precious Fundamental Right of all the citizens of India. We may also indicate that if as a result of the Notification dated 17.07.2021, any untoward spread in the Covid-19 disease takes place, any member of the public may bring this to the notice of this Court, after which this Court will take necessary action against those who are responsible.

In view of the above, I.A. No.82837 of 2021 and the suo motu writ petition are disposed of.”

7. Mr. K. Gopalakrishna Kurup, learned Advocate General, further submitted that there will be a review of the COVID-19 pandemic situation in Kerala and depending upon the decision, the restrictions either relaxed in certain cases or made stringent, as the case may be. According to him, only after a comprehensive decision is taken, appropriate orders will be issued by the Government.

8. Placing on record the above submission, having regard to the orders of the Hon'ble Apex dated 20.7.2021, extracted supra, and taking note of the submission that a review will be conducted on COVID-19 pandemic situation, we are of the view that the interim order granted on 19.05.2021, periodically extended, requires further extension.

Interim order is extended upto 9.8.2021. Registry is directed to post this *suo motu* writ petition on 06.08.2021.”

6. Judicial notice can also be taken that subsequent to the interim order passed by the Hon'ble Supreme Court in I. A. No. 82837 of 2021 dated 20.07.2021, Government of Kerala have issued G. O. (Rt) No. 545/2021/DMD dated 24.07.2021, wherein guidelines on the restrictions imposed in the State, as part of Covid – 19 containment

activities, from 26.07.2021, have been issued. Said Government Order is extracted hereunder:-



**GOVERNMENT OF KERALA**

**Abstract**

Disaster Management Department - Guidelines on the restrictions imposed in the State as part of COVID-19 containment activities from 26<sup>th</sup> July 2021 - Orders issued

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**DISASTER MANAGEMENT (A) DEPARTMENT**

G.O.(Rt)No.545/2021/DMD Dated,Thiruvananthapuram, 24/07/2021

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- Read:-
1. GO(Rt)No.404/2021/DMD dated 06.05.2021
  2. GO(Rt)No.467/2021/DMD dated 15.06.2021
  3. GO(Rt)No.479/2021/DMD dated 22.06.2021
  4. GO(Rt)No.487/2021/DMD dated 29.06.2021
  5. GO(Rt) No.500/2021/DMD dated 06.07.2021
  6. GO(Rt) No.524/2021/DMD dated 10.07.2021
  7. GO (Rt) No.532/2021/DMD dated 17.07.2021
  8. GO (Rt) No.534/2021/DMD dated 20.07.2021

**ORDER**

As part of COVID- 19 containment activities, the Local Self Government Institutions(LSGIs) in the state were categorized based on the Test Positivity Rate(TPR) and certain relaxations on lock-down were extended to the areas where the TPR is less and special intensified stringent restrictions are being implemented in areas where TPR is high.

2) After assessing the current situation of the spread of COVID-19 pandemic in the State, the undersigned, in his capacity as Chairman of the State Executive Committee of State Disaster Management Authority, in exercise of the powers conferred under Sec 20(3) of the Disaster Management Act-2005, hereby issues the following additional guidelines for strict implementation by the enforcing authorities from 00:00 Hrs of 26<sup>th</sup> July 2021.

- i. Existing categorisation of LSGIs and restrictions/relaxations in respective categories will continue.
- ii. All Government offices, including PSUs, companies, autonomous

organizations, commissions etc. will function with 50% attendance in A and B category LSGIs and with 25% attendance in C categories except essential services which will function fully in all areas including D category LSGIs. However, employees connected with the ongoing Kerala Legislative Assembly questions and related activities shall attend office every day. Others shall be on 'work from home duty'. The heads of departments shall strictly monitor the work from home duty attended by employees before furnishing their attendance details.

- iii. There shall be no change in the functioning schedules of banks and other financial institutions.
- iv. District Collectors are authorized to ensure the services of government servants and employees of other Government agencies including PSUs, autonomous organizations, companies, commissions etc. for COVID-19 prevention and containment activities.
- v. District Collectors shall post sectoral magistrates wherever necessary and strictly enforce the activities for declaring micro-containment zones, contact tracing and quarantine.

(By order of the Governor)

Dr V P Joy  
Chief Secretary

7. Thus, when the Hon'ble Supreme Court had already taken note of the Covid situation in Kerala and observed that relaxation of the restrictions, even for a day to some category of area, was wholly uncalled for, and that when the Hon'ble Supreme Court has also observed that it was the sorry state of affairs that State of Kerala, does not in any real manner, safeguard the rightful life and health guaranteed to all the citizens under Article 21 of the Constitution, the prayers sought for, would be contrary to the directions issued by the Hon'ble Supreme Court.

8. That apart, judicial notice can also be taken that in the State of Kerala, the Test Positivity Rate is increasing, despite the measures taken by the Government, to contain the spread of Covid – 19. Trade or business is not more important than health, which is integral to right to life. Reasonable restrictions can be imposed on trade or business. Article 19 (6) and 21 of the Constitution of India, encourages, right to trade and business. If only there is health and life, one can engage himself in trade or business.

Having regard to the above, we are not inclined to issue any mandamus as prayed for by the writ petitioner.

Writ petition is dismissed.

**Sd/-**

**S. MANIKUMAR  
CHIEF JUSTICE**

**Sd/-**

**SHAJI P. CHALY  
JUDGE**

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///TRUE COPY///

P. A. TO JUDGE

APPENDIX OF WP(C) 14867/2021

**PETITIONER EXHIBITS**

<b>EXHIBIT P1</b>	<b>TRUE COPY OF THE GOVERNMENT ORDER, G.O. (RT) NO. 364/2021/DMD DATED 13.04.2021.</b>
<b>EXHIBIT P2</b>	<b>TRUE COPY OF THE GOVERNMENT ORDER, G.O. (RT) NO. 378/2021/DMD DATED 21.04.2021.</b>
<b>EXHIBIT P3</b>	<b>TRUE COPY OF THE GOVERNMENT ORDER, G.O. (RT) NO. 391/2021/DMD DATED 30.04.2021.</b>
<b>EXHIBIT P4</b>	<b>TRUE COPY OF THE GOVERNMENT ORDER, G.O. (RT) NO. 404/2021/DMD DATED 06.05.2021.</b>
<b>EXHIBIT P5</b>	<b>TRUE COPY OF THE GOVERNMENT ORDER, G.O. (RT) NO. 467/2021/DMD DATED 15.06.2021.</b>