

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE ANIL K. NARENDRAN

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THE HONOURABLE MR.JUSTICE P.G. AJITHKUMAR

FRIDAY, THE 23RD DAY OF DECEMBER 2022 / 2ND POU SHA, 1944

O.P. (FC)NO.702 OF 2022

ORDER DATED 21.11.2022 IN I.A.NO.4 OF 2022 IN O.P. (GW)NO.353 OF
2022 ON THE FILE OF THE FAMILY COURT, THIRUVALLA

PETITIONER:

AMBILI S. PILLA, D/O LALITHAMBIKA,
AGED 44 YEARS,
KRISHNA MANDIRAM HOUSE, MALAMPARA ,
KUNNAMTHANAM P.O., KUNNAMTHANAM VILLAGE, MALLAPPAY
TALUK, PATHANAMTHITTA, PIN - 689581

BY ADVS.
B.DIPU SACH DEEV
ARUN BABU
RAHUL S.R.
ANEESHRAJ R.

RESPONDENTS:

- 1 VINOD KUMAR PILLA,
AGED 46 YEARS,
ATTUPURATHU HOUSE, THELLIYOOR.P.O,THELLIYOOR
VILLAGE,MALLAPPALLY TALUK,PATHANAMTHITTA, PIN -
689544
- 2 RAJAMMA,
AGED 68 YEARS, W/O GOPALA PILLA,
ATTUPURATHU HOUSE,THELLIYOOR.P.O,THELLIYOOR
VILLAGE,MALLAPPALLY TALUK,PATHANAMTHITTA, PIN -
689544

OTHER PRESENT:

SRI K.R. SUNIL - FOR RESPONDENT

THIS OP (FAMILY COURT) HAVING COME UP FOR ADMISSION ON
23.12.2022, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

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

The petitioner filed O.P.(GW)No.353 of 2022, on the file of the Family Court, Thiruvalla, which is one filed seeking permanent custody of minor children namely, Navneeth Vinod Pillai, Vaibhav Vinod Pillai and Theertha Vinod Pillai and for other consequential reliefs. In that original petition, the respondents filed I.A.No.4 of 2022, seeking an order directing production of the minor child Theertha Vinod Pillai before Nicholson Syrian Girls Higher Secondary School, Thiruvalla. In that interlocutory application, Family Court passed Ext.P4 order dated 21.11.2022, which reads thus;

“Both represented. Counselling submitted to be not settled. Objection already produced. Heard. On considering the nature of the plea advanced and the documents produced, the custody of the child with the mother even though admitted, the manner in which such a custody was obtained stands not explained. Hence the respondent/mother is directed to produce the child before court at 10.30 a.m. before CMO of this Court and thereupon to 2nd petitioner is permitted to have the interim custody of the child until further order.”

Feeling aggrieved by Ext.P4 order, the petitioner is before this Court in this writ petition, invoking the supervisory jurisdiction under Article 227 of the Constitution of India seeking an order to

O.P.(FC)No.702 of 2022

set aside Ext.P4 order passed in I.A.No.4 of 2022 in O.P.(G&W)No.353 of 2022 dated 21.11.2022 by the Family Court, Thiruvalla and quash the same. The petitioner has also sought for temporary custody of the minor children and visitation right without any hindrance till the final disposal of the O.P.(G&W)No.353 of 2022.

2. On 21.12.2022, when this original petition came up for admission, this Court issued urgent notice on admission by special messenger to respondents, returnable by this date.

3. Heard the learned counsel for the petitioner and also the learned counsel for the 2nd respondent. Service of notice is not complete on the 1st respondent. Considering the nature of relief proposed to be granted, completion of service of notice on the 1st respondent is dispensed with.

4. The issue that arises for consideration in this original petition is as to whether any interferences is warranted on Ext.P4 order dated 21.11.2022 of the Family Court, Thiruvalla in I.A.No.4 of 2022 in O.P.(G&W)No.353 of 2022.

5. By the aforesaid order, the Family Court directed production of minor child by name, Theertha Vinod Pillai, before the Chief Ministerial Officer on 10.30 a.m. and thereupon the 2nd

respondent paternal grandmother is granted interim custody of the child, until further orders.

6. In **Breen v. Amalgamated Engineering Union [1971 (1) All. E.R. 1148]** Lord Denning, M.R. Observed that, the giving of reasons is one of the fundamentals of good administration. In **Alexander Machinery (Dudley) Ltd. v. Crabtree [1974 ICR 120]** it was observed that, failure to give reasons amounts to denial of justice. Reasons are live links between the mind of the decision-taker to the controversy in question and the decision or conclusion arrived at.

7. In **Commissioner of Police, Bombay v. Gordhandas Bhanji [AIR 1952 SC 16]** the Apex Court has held that, public orders publicly made, in exercise of a statutory authority cannot be construed in the light of explanations subsequently given by the officer making the order of what he meant, or of what was in his mind, or what he intended to do. Public orders made by public authorities are meant to have public effect and are intended to affect the actings and conduct of those to whom they are addressed and must be construed objectively with reference to the language used in the order itself. Following the principle laid down in **Gordhandas Bhanji's case (supra)**,

the Apex Court has reiterated in **Mohinder Singh Gill v. Chief Election Commissioner [(1978) 1 SCC 405]** that, when a statutory functionary makes an order based on certain grounds, its validity must be judged by the reasons so mentioned and cannot be supplemented by fresh reasons in the shape of affidavit or otherwise. Otherwise, an order bad in the beginning may, by the time it comes to Court on account of a challenge, gets validated by additional grounds later brought out.

8. Following the principle laid down in the decisions referred to above, the Apex Court in **Chairman and Managing Director, United Commercial Bank v. P.C. Kakkar [(2003) 4 SCC 364]** held that, reasons substitute subjectivity by objectivity. The emphasis on recording reasons is that if the decision reveals the 'inscrutable face of the sphinx', it can, by its silence, render it virtually impossible for the courts to perform their appellate function or exercise the power of judicial review in adjudging the validity of the decision. Right to reason is an indispensable part of a sound judicial system. Another rationale is that the affected party can know why the decision has gone against him. One of the salutary requirements of natural justice is spelling out reasons for the order made, in other words, a

speaking out. The 'inscrutable face of a sphinx' is ordinarily incongruous with a judicial or quasi - judicial performance.

9. The object underlying the rules of natural justice is to prevent miscarriage of justice and secure fair play in action. The recording of reasons by an administrative or quasi-judicial authority serves a salutary purpose, namely, it excludes chances of arbitrariness and ensures a degree of fairness in the process of decisions making. It would apply equally to all decisions made by such authority and its application cannot be confined to decisions which are subject to appeal, revision or judicial review. At the same time, it is not the requirement that, the reasons should be as elaborate as in the decision of a Court of law. What is necessary is that, the reasons are clear and explicit so as to indicate that the authority has given due consideration to the points in controversy. Hence, it is an essential requirement of the rule of law that, some reasons, at least in brief, must be disclosed in the order passed by an administrative or quasi-judicial authority.

10. Viewed in the light of the law laid down in the decisions referred to supra, conclusion is irresistible that the directions contained in Ext.P4 to the extent of granting interim

custody of minor child, namely, Theertha Vinod Pillai to the 2nd respondent herein-paternal grandmother cannot be sustained in law, in the absence of reasons. In the result, Ext.P4 order to that extent is set aside. The petitioner and the 2nd respondent are directed to appear before the Family Court, Thiruvalla on 26.12.2022 along with the minor child, namely, Theertha Vinod Pillai. The Family Court, shall interact with the minor child and thereafter take an appropriate decision as to interim custody, taking note of the law laid down by Apex Court in **Yashita Sanu v. State of Rajasthan [(2020) 3 SCC 67]**.

With the above directions, this original petition is disposed of.

Sd/-

ANIL K. NARENDRAN, JUDGE

Sd/-

P.G. AJITHKUMAR, JUDGE

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APPENDIX OF OP (FC) 702/2022

PETITIONER EXHIBITS

- Exhibit P1 THE COPY OF PETITION IN O.P. (G&W) .
NO.353 OF 2022 DATED 04.07.2022 PENDING
ON THE FILES OF THE FAMILY COURT,
THIRUVALLA
- ExhibitP2 THE COPY OF THE PETITION IN I.A.NO.4 OF
2022 DATED 03.11.2022 ON THE FILES OF
THE FAMILY COURT
- Exhibit P3 THE COPY OF THE OBJECTION STATEMENT IN
I.A.NO.4 OF 2022 DATED 07.11.2022
- ExhibitP4 THE COPY OF THE ORDER IN I.A.NO.4 OF
2022 IN O.P. (G&W) NO.353 OF 2022DATED
21.11.2022 OF FAMILY COURT, THIRUVALLA