

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE N.NAGARESH

THURSDAY, THE 23<sup>RD</sup> DAY OF DECEMBER 2021 / 2ND POU SHA, 1943

WP(C) NO. 24064 OF 2021

PETITIONERS:

- 1 RIYASUDHEEN K,  
AGED 41 YEARS,  
S/O.SALAHUDEEN, KARANKUNDIL HOUSE,  
PARAKKADAV, MOONNIYUR, MALAPPURAM-676 311
- 2 KRISHNANUNNI E.S.,  
AGED 31 YEARS,  
S/O.SIVAN, R.K.ERAYIL ROAD,  
KUNNUKARA, ERNAKULAM-683 578
- 3 SHARSHEED E.P.,  
AGED 36 YEARS,  
S/O.HAIRUNNISAK., SHARSHU MAHAL,  
MELEPADAM PARAMBA, PANNIYANKARA,  
KALLAI, KOZHIKODE 673 003

BY ADVS.  
SRI.P.MOHAMED SABAH  
SRI.SAIPOOJA

RESPONDENTS:

- 1 THE INSPECTOR GENERAL OF REGISTRATION,  
OFFICE OF THE INSPECTOR GENERAL OF REGISTRATION,  
EX-MAYOR R., BALAKRISHNAN NAIR ROAD,  
NEAR DISTRICT COURT, VANCHIYOOR,  
THIRUVANANTHAPURAM-695 035.
- 2 THE DISTRICT REGISTRAR (GENERAL),  
OFFICE OF THE REGISTRAR OF SOCIETIES,  
MANACHIRA, KOZHIKODE, KERALA 673 001

BY ADV SR. GOVERNMENT PLEADER SMT.VINITHA B

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR  
ADMISSION ON 23.12.2021, THE COURT ON THE SAME DAY  
DELIVERED THE FOLLOWING:

[CR]

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

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***Dated this the 23<sup>rd</sup> day of December, 2021***

The petitioners are the President, Vice President and General Secretary of an unregistered Association formed for the purpose of promoting Cricket among the Deaf youth in Kerala. The petitioners are aggrieved by the refusal of the respondents to register the Association in the name “Kerala Deaf Cricket Association”.

2. The petitioners state that their main objectives are to promote, encourage, organise and control the game Cricket in Kerala. Ext.P1 is the Memorandum of Association of the Kerala Deaf Cricket Association and Ext.P2, the Rules and Regulations. As the non-registration of the Association caused difficulties in sending Teams to Inter-State and National Level Competitions, the petitioners decided to

register the Association in the name “Kerala Deaf Cricket Association”. The petitioners submitted an application to register the Association under the Societies Registration Act, 1860.

3. The petitioners state that the 2<sup>nd</sup> respondent-District Registrar (General) is not accepting the application submitted by them. The 2<sup>nd</sup> respondent is under a mistaken belief that the terms “Kerala” or “India” cannot be used for registration of any Association. The petitioners found it very difficult to make its sponsored Team participate in the 5<sup>th</sup> T-20 National Cricket Championship for Deaf, organised by the Indian Deaf Cricket Association at Hyderabad, which was held from 12<sup>th</sup> to 18<sup>th</sup> December, 2021.

4. According to the petitioners, no law of the land precludes the petitioners from adding the term “Kerala” to the name of an Association. The petitioners have a fundamental right to form an Association under Article 19 of the Constitution of India. The respondents are therefore compellable to register the Association in its name “Kerala

Deaf Cricket Association”, contends the petitioners.

5. The 2<sup>nd</sup> respondent-District Registrar resisted the writ petition. The 2<sup>nd</sup> respondent submitted that as there is no provision to register a society bearing the word “Kerala” as per Section 2(a), 3 and as per Schedule No.4 of The Emblems and Names (Prevention of Improper Use) Act of 1950, the District Registrar (General) advised them to rename the society avoiding such prohibited names as it resembles the State Government. There is no provision to name a non-Governmental Organisation with a name of any State or Nation as the same may be misunderstood or interpreted as a Governmental Organisation.

6. The petitioners did not submit any application to the 2<sup>nd</sup> respondent as the petitioners argue in the writ petition. The petitioners have only prepared a bye-law of the society and brought it for verification at the office. The submission of application for the registration of any society under the Society Registration Act XXI of 1860 is through online by the software named “egroops”. There is no facility for manual submission

or registration and the petitioners' argument that they have submitted an application for registration of the said society under the said Act on 28.04.2021 is quite baseless. The Registrar has intimated them later that the said Association cannot be registered with the name "Kerala Deaf Cricket Association", as it is against the provisions of the Emblems and Names (Prevention of Improper Use) Act of 1950 and the petitioners were advised to rename the Association by omitting the word "Kerala".

7. The Emblems and Names (Prevention of Improper Use) Act of 1950 clearly states about the emblems and names which are not permitted to use by non-Governmental agencies or Organisations. Section 3 of the said Act says notwithstanding anything contained in any law for the time being in force, no person shall, except in such cases and under such conditions as may be prescribed by the Central Government, use or continue to use, for the purpose of any trade, business, calling or profession, or in the title of any patent, or in any trade mark or design, any name or emblem

specified in the Schedule or any colourable imitation thereof without the previous permission of the Central Government or such officer of Government as may be authorised in this behalf by the Central Government.

8. Schedule 4 of the Act states about the prohibition of registration of certain companies etc. too and the schedule of the Act at Serial No.4 states; “the Name, Emblem or Official seal or emblem of the Government of India or any State or other insignia or coat-of-arms used by any such Government or by a department of any such Government.”

9. The Government has given clarifications in this regard as per order No.6496/E2/2012 TD dated 26.09.2012 in connection with the registration of a firm named “Kerala Surgical Equipment Co.”, that the said firm cannot be registered as per Section 3 and Schedule 4 of the Emblems and Names (Prevention of Improper Use) Act of 1950.

10. I have heard the learned counsel for the petitioners and the learned Senior Government Pleader representing the respondents.

11. The petitioners' Association is named "Kerala Deaf Cricket Association". The petitioners want to register the Association with the said name. The petitioners have consulted the authorities to register the Association under that name. From the statement filed by the 2<sup>nd</sup> respondent, it is evident that the petitioners were discouraged by the respondents from adopting the said name for the reason that the word "Kerala" cannot be used by the Association in view of the provisions contained in the Emblems and Names (Prevention of Improper Use) Act, 1950.

12. Whether an Association of private individual citizens formed with the objective of promoting any sports/games among the deaf, can be denied registration under the Societies Registration Act, 1860 on the ground that their name included the word "Kerala", is the question arising for consideration in this writ petition.

13. **India**, that is **Bharat**, is a Union of States, proclaims Article 1 of the Constitution of India and **Kerala** is a State included in Schedule 1 to the Constitution, at Serial

No.5. *Hearing the word “**Bharatam**”, one should swell with pride and when you hear the word “**Keralam**”, blood should boil in your veins*, trumpeted Mahakavi Vallathol Narayana Menon. The deaf citizens in Kerala perhaps might not have heard these lines, but they indeed have read these poetic call. Unfortunately, an Association of deaf cricket enthusiasts in Kerala is being denied the right to name their Association after Kerala. The denial ostensibly is based on the provisions of the Emblems and Names (Prevention of Improper Use) Act, 1950.

14. Whether a Democratic State can prevent its citizens from using with pride the names of their Country or State and that too when the names were in existence and used without any restrictions even before the enactment of the Constitution itself ? Can the provisions of the Emblems and Names (Prevention of Improper Use) Act, 1950 ban or prevent the citizens from naming individuals or entities, after India, Bharat or Kerala ?

15. The Emblems and Names (Prevention of Improper Use) Act, 1950 is enacted, as its Preamble itself shows, to prevent the improper use of certain emblems and names for professional and commercial purposes. Sections 3 and 4 of the Act, 1950 read as follows:

**“3. Prohibition of improper use of certain emblems and names —** Notwithstanding anything contained in any law for the time being in force, no person shall, except in such cases and under such conditions as may be prescribed by the Central Government, use or continue to use, for the purpose of any trade, business, calling or profession, or in the title of any patent, or in any trade mark or design, any name or emblem specified in the Schedule or any colourable imitation thereof without the previous permission of the Central Government or such officer of Government as may be authorised in this behalf by the Central Government.

**4. Prohibition of registration of certain companies, etc —** (1) Notwithstanding anything contained in any law for the time being in force, no competent authority shall,—

(a) register any company, firm or other body of persons which bears any name, or

(b) register a trade mark or design which bears any emblem or name, or

(c) grant a patent in respect of any invention which bears a title containing any emblem or name, if the use of such name or emblem is in contravention of section 3.

(2) If any question arises before a competent authority whether any emblem is an emblem specified in the Schedule or a colourable imitation thereof, the competent authority may refer the question to the Central Government, and

the decision of the Central Government thereon shall be final.”

The prohibition of any name or emblem specified in the Schedule to the Act, 1950 is only on the use of such name or emblem for the purpose of any trade, business, calling or profession.

16. Naming a person, institution or entity is the prerogative of the citizen. It is a matter of the identity of the citizen or of an entity created by him. It is an inalienable right of the citizen. The State, therefore, will not be justified in regulating that right otherwise than through appropriate legislative measure. The Scheme of the Act, 1950 would manifest that the Act, 1950 is intended to curb the menace of exploitation of citizens by naming commercial entities in such a manner that the general public would be led to believe that a private commercial entity is one which has the official patronage of the Central or State Government. The Act, 1950 is rather intended to protect the common man than to assert the authority of the State.

17. Since the petitioners' Association is not an Association related to any trade, business, calling or profession, it is declared that the provisions of the Emblems and Names (Prevention of Improper Use) Act, 1950 cannot be applied to the petitioners. As and when the petitioners make an application to register it in the name "Kerala Deaf Cricket Association", the application shall be considered without regard to the provisions contained in the Act, 1950.

The writ petition is disposed of as above.

Sd/-  
**N. NAGARESH, JUDGE**

aks/07.01.2022

APPENDIX OF WP(C) 24064/2021

**PETITIONERS' EXHIBITS:**

**Exhibit P1** TRUE COPY OF THE MEMORANDUM OF ASSOCIATION OF KERALA DEAF CRICKET ASSOCIATION.

**Exhibit P2** TRUE COPY OF THE DOCUMENT CONTAINING THE RULES AND REGULATIONS OF KERALA DEAF CRICKET ASSOCIATION.

**RESPONDENTS' EXHIBITS:**

**EXHIBIT R2 (a)** TRUE COPY OF THE ORDER No.J2/72/19/TD DATED 07.05.2019.

**EXHIBIT R2 (b)** TRUE COPY OF THE ORDER No.IGR/7772/2019-L2 DATED 22.08.2019.