

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE N.NAGARESH

THURSDAY, THE 26TH DAY OF AUGUST 2021/4TH BHADRA, 1943

W.P.(C)NO.12021 OF 2021

PETITIONER:

DESEEYA SEVABHARATHI, KERALAM, ER-512/2007,
MADHAVA NIVAS, PERANDOR ROAD, ELAMAKKARA.P.O,
ERNAKULAM DISTRICT, KOCHI-26,
REPRESENTED BY ITS GENERAL SECRETARY,
VIJAYAN.D, S/O.DAMODARAN NAIR.E.K, AGED 65,
TC-42/140-1, KAILASAM, MALLASSERIL LANE,
SREEVARAHAM, MANAKKAD.P.O,
THIRUVANANTHAPURAM DISTRICT, PIN-695 009.

BY ADVS.

V.N.SANKARJEE

V.N.MADHUSUDANAN

R.UDAYA JYOTHI

M.M.VINOD

M.SUSEELA

KEERTHI B.CHANDRAN

VIJAYAN PILLAI P.K.

C.PURUSHOTHAMAN NAIR

SANAL C.S

NITHEESH.M

RESPONDENTS:

- 1 UNION OF INDIA,
REPRESENTED BY THE SECRETARY, DISASTER MANAGEMENT
DIVISION, MINISTRY OF HOME AFFAIRS, GOVERNMENT OF
INDIA, 3RD FLOOR, NDCC-II BUILDING, JAI SINGH
ROAD, NEW DELHI, PIN-110 001.
- 2 THE NATIONAL DISASTER MANAGEMENT AUTHORITY,
NDMA BHAVAN, A-1, SAFDARJUNG ENCLAVE, NEW DELHI,
PIN-110 029, REPRESENTED BY ITS CHAIRPERSON.
- 3 THE STATE OF KERALA,
REPRESENTED BY THE SECRETARY, DISASTER
MANAGEMENT (REVENUE-K) DEPARTMENT,
GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM
DISTRICT, PIN-695 001.

WP(C) No.12021/2021

: 2 :

- 4 KERALA STATE DISASTER MANAGEMENT AUTHORITY,
REPRESENTED BY ITS CHAIRPERSON, OFFICE OF THE
KERALA STATE DISASTER MANAGEMENT AUTHORITY,
OBSERVATORY HILLS, VIKAS BHAVAN.P.O,
THIRUVANANTHAPURAM DISTRICT, PIN-695 033.
- 5 THE DISTRICT DISASTER MANAGEMENT AUTHORITY,
KANNUR, REPRESENTED BY ITS CHAIRPERSON,
COLLECTORATE, KANNUR DISTRICT, PIN-670 002.
- 6 THE DISTRICT COLLECTOR,
KANNUR, CIVIL STATION, COLLECTORATE ROAD,
KANNUR DISTRICT, PIN-670 002.
- 7 THE PRESIDENT,
KANNUR DISTRICT PANCHAYAT, TALAP,
KANNUR DISTRICT, PIN-670 002.
- 8 SMT P.P.DIVYA,
(AGE AND FATHER'S NAME NOT KNOWN TO THE
PETITIONER), PRESIDENT, KANNUR DISTRICT
PANCHAYAT, TALAP, KANNUR DISTRICT, PIN-670 002.

BY ADVS.

SHRI.P.VIJAYAKUMAR, ASG OF INDIA
K.S.ARUN KUMAR FOR R7 & R8
JUSTINE JACOB FOR R7 & R8
SRI.V.MANU, SENIOR GOVT. PLEADER

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR
ADMISSION ON 26.08.2021, THE COURT ON THE SAME DAY
DELIVERED THE FOLLOWING:

WP(C) No.12021/2021

: 3 :

J U D G M E N T

~ ~ ~ ~ ~ ~ ~ ~ ~ ~

Dated this the 26th day of August, 2021

The petitioner, a voluntary social service organisation, has approached this Court seeking to quash Ext.P4 and to direct the respondents not to prevent or obstruct the petitioner or its District Unit from rendering voluntary service as relief agency in Kannur District.

2. The petitioner states that it is a voluntary social service organisation working all over India, providing charitable services at grassroot levels. The petitioner states that Seva Bharati is providing health care service through over 5000 Health Care Centres, 960 Mobile Clinics, 480 Urban Area Clinics, 200 Counselling Centres, 6500 Ambulances and 7 Leprosy Medication and Rehabilitation Centres, through thousands of volunteers. It has a chain of 450 Blood Banks and 300 Blood Donation Indexes. The petitioner is a

WP(C) No.12021/2021

: 4 :

Non-Governmental Organisation.

3. The Central Council for Research in Ayurvedic Sciences (CCRAS), Ministry of AYUSH developed Ayurvedic Medicine AYUSH-64 for treating asymptomatic Covid-19 patients. The Secretary, Government of India, directed the State Health Authorities to promote AYUSH-64, as per Ext.P1. The CCRAS directed their Institutes/Units/Centres to facilitate distribution of AYUSH-64 through Seva Bharati volunteers, as per Ext.P2. The petitioner is Kerala State Chapter of Seva Bharati. The petitioner has been authorised to distribute AYUSH-64 in four Districts in Kerala.

4. The petitioner would state that since the outbreak of Covid-19 pandemic, the petitioner has been providing services to thousands of persons affected by the pandemic. The petitioner is operating 1270 Help Centres, 72 Quarantine Centres, 12 Covid Care Centres, 156 Support to Government Covid Care Centres, 1431 Food Distribution Centres for Covid affected families, 616 Blood Donation Centres, 782 Immune Medicine Supply Centres, 42 Counselling Centres, 128

WP(C) No.12021/2021

: 5 :

Ambulances and 552 other Vehicles throughout Kerala. The petitioner is engaged in these activities purely on charity basis.

5. On 22.03.2020, Janata Curfew was declared nationwide. On the very next day, the Volunteers of the petitioner in Kannur District met the 6th respondent-District Collector and offered their readiness to provide free service to combat Corona Pandemic. Since then the volunteers of the petitioner have been rendering free services supplementing the work carried out by the respondents 5 and 6, at Covid Centres, Quarantine Centres, Food Supply Centres, Blood Donation Centres, etc. in Kannur District. The 6th respondent-District Collector, being the Chairman of the District Disaster Management Authority (DDMA) appointed the petitioner as Relief Agency as per Ext.P3 proceedings dated 22.05.2021.

6. To the surprise of the petitioner, the 6th respondent as per Ext.P4 cancelled the said appointment on 24.05.2021 itself alleging that volunteers of the petitioner have been working using the symbol and signs of political party being

WP(C) No.12021/2021

: 6 :

represented by the petitioner. The petitioner would state that it has no political inclination or affiliation and none of its volunteers have used any symbol or sign of any political party anywhere. The petitioner thereupon sent Ext.P5 representation stating the said fact and requested to review the decision contained in Ext.P4. The petitioner also expressed its willingness to work along with the District Administration whether in the capacity as Relief Agency or otherwise.

7. The counsel for the petitioner argued that cancellation of Ext.P3 is without notice to the petitioner and is in violation of the principles of natural justice. The allegation that the volunteers of the petitioner have used symbol and sign of a political party is incorrect. The petitioner is an apolitical NGO which is in service of humanity, for long years. While the petitioner is being ousted on unfounded allegations, another organisation having admitted and proven political affiliation, is permitted to remain as a Relief Agency.

WP(C) No.12021/2021

: 7 :

8. Respondents 5 and 6 contested the writ petition filing statement and additional statement. Respondents 5 and 6 pointed out that in Ext.P3 order it was stated that the Relief Agency has to work without any political or communal interest, failure of which entail cancellation of the order. Respondents 5 and 6 received complaints from a Grama Panchayat President, a Ward Councilor and two others alleging that the petitioner is engaged in relief activities with political symbols. The letters contained other allegations of a serious nature. The complaints were placed before the DDMA on 25.05.2021 and the DDMA unanimously decided to cancel Ext.P3 as a temporary measure. Accordingly, Ext.P4 was issued.

9. The DDMA, which has appointed the petitioner, has power to cancel the appointment. There is no arbitrariness in the matter. The petitioner has no statutory right to be recognised as a Relief Agency. Hence, the writ petition is without any merit, contended the learned Government Pleader.

WP(C) No.12021/2021

: 8 :

10. Heard the learned counsel for the petitioner, the learned ASGI representing respondents 1 and 2, the learned Government Pleader representing respondents 3 to 6 and the learned counsel for respondents 7 and 8.

11. The petitioner is a registered Non Governmental Organisation. It is evident from Ext.P10 Memorandum of Association that the petitioner-Association is formed to render services to the Society on a no-profit basis. The claim of the petitioner that it is running large numbers of Health Care Centres, Mobile Clinics, Urban Area Clinics, Counselling Centres, Ambulances, Leprosy Medication and Rehabilitation Centres, Blood Banks and Blood Donation Indexes through volunteers is not in dispute.

12. Ext.P2 Circular issued by the Government of India, Ministry of Ayush, Central Council for Research in Ayurvedic Sciences would show that to initiate local solutions during Covid-19 pandemic, the Seva Bharati volunteers have been roped in. Instructions are given to arrange for issuance of special passes to Seva Bharati volunteers from local

WP(C) No.12021/2021

: 9 :

Governments to enable the volunteers to effectively extend their services in the program of CCRAS to fight Covid-19 pandemic.

13. The statement in the writ petition that the petitioner-Kerala Chapter of the Seva Bharati has been operating a large number of Help Centres, Quarantine Centres, Covid Care Centres, Support to Government Covid Care Centres, Food Distribution Centres for Covid affected families, Blood Donation Centres, Immune Medicine Supply Centres, Counselling Centres, Ambulances and other Vehicles throughout Kerala, is not disputed.

14. Ext.P3 proceedings would show that the petitioner has been working in co-operation with the District Administration, Department of Health and Local Self Governments for fighting Covid-19, for the last more than one year. It was the said experience and the dire requirement to get sufficient number of volunteers to be deployed for Covid related work including care giving to those who reside in footpaths, to those who are in quarantine and in containment

zones, etc., that prompted the 5th respondent to recognise the petitioner as a Relief Agency. While deciding so, the 5th respondent-Authority admittedly had more than one year first hand experience on the work done by the volunteers of the petitioner, as is evident from Ext.P3.

15. But, the events that followed Ext.P3 are surprising. On 22.05.2021, Ext.P3 order was passed recognising the petitioner as Relief Agency. On 24.05.2021, four persons including a Grama Panchayat President and a Ward Councillor filed complaints against the volunteers of the petitioner. On 25.05.2021, the complaints are placed before the DDMA and the DDMA decided to cancel the recognition given to the petitioner 'temporarily' on the same day, on an allegation that the volunteers have used the symbols and signs of a political party.

16. No notice was given to the petitioner before cancellation of appointment. The petitioner is not informed as to who used, where it was used and which political party's symbols/signs were used during relief work. It has not been

stated even in the statements filed by the respondent before this Court. The DDMA has not cared to make any sort of preliminary enquiry in order to convince itself that the complaints are not politically motivated and there is at least *prima facie* substance in the complaint. The DDMA, it is evident from Ext.P4, has taken the decision contained in Ext.P4 solely based on the demand made by the Co-Chairperson of the DDMA who is District Panchayat President.

17. The context in which the petitioner was recognised as a Relief Agency as per Ext.P3 and the sequence of events immediately followed give rise to genuine suspicion on the veracity of the complaints made against the petitioner. Admittedly, no preliminary enquiry was made before acting upon the complaints against the petitioner. The fact that complaints are made by the Panchayat President or District Panchayat President, does not make such complaints acceptable as such without any enquiry. At least the petitioner should have been granted an opportunity of hearing before

passing Ext.P4, which indeed causes aspersions on an NGO claiming to be apolitical. Ext.P4 is therefore unsustainable and is liable to be set aside.

18. The learned Government Pleader argued that Ext.P4 is only a temporary measure and a final decision would be taken after making a detailed enquiry and after giving opportunity of hearing to the petitioner. It has to be kept in mind that after passing Ext.P4 on 25.05.2021, respondents 5 and 6 did not take any steps to cause an enquiry till 07.06.2021 when this writ petition was filed and not even thereafter.

19. The learned Government Pleader further argued that the petitioner has no statutory right to be appointed as a Relief Agency. The petitioner has no enforceable right and hence the writ petition is not maintainable, argued the Government Pleader. This Court cannot agree with the said argument for the reason that the petitioner has approached this Court aggrieved by the arbitrary exercise of power by a public authority. The petitioner is challenging an order which

WP(C) No.12021/2021

: 13 :

prima facie causes aspersions on it.

For all the above reasons, the petitioner has to succeed. Ext.P4 is therefore set aside. The writ petition is allowed as above.

Sd/-
N. NAGARESH, JUDGE

aks/24.08.2021

WP(C) No.12021/2021

: 14 :