

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE DEVAN RAMACHANDRAN

&

THE HONOURABLE DR. JUSTICE KAUSER EDAPPAGATH

FRIDAY, THE 07TH DAY OF MAY 2021 / 17TH VAISAKHA, 1943

WP(C).No.11056 OF 2021(S)

PETITIONER:

MELWIN BYJU

S/O. BYJU T.J., THATTIL HOUSE, NELLIKUNNU, EAST FORT
P.O., THRISSUR DISTRICT-680005, KERALA.

BY ADV. SRI.G.SREEKUMAR (CHELUR)

RESPONDENTS:

- 1 STATE OF KERALA
REPRESENTED BY CHIEF SECRETARY, SECRETARIAT,
THIRUVANANTHAPURAM-695001.
- 2 DISASTER MANAGEMENT DEPARTMENT,
REPRESENTED BY ITS SECRETARY, STATE OF KERALA,
SECRETARIAT, THIRUVANANTHAPURAM-695001.
- 3 THE STATE POLICE CHIEF,
KERALA STATE POLICE HEADQUARTERS, VAZHUTHACAUD,
THIRUVANANTHAPURAM, KERALA-695010.

SRI.SUMAN CHAKRAVARTHY

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON
07.05.2021, ALONG WITH WP(C).11060/2021(F), THE COURT ON THE SAME
DAY DELIVERED THE FOLLOWING:

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE DEVAN RAMACHANDRAN

&

THE HONOURABLE DR. JUSTICE KAUSER EDAPPAGATH

FRIDAY, THE 07TH DAY OF MAY 2021 / 17TH VAISAKHA, 1943

WP(C).No.11060 OF 2021(F)

PETITIONERS :

- 1 ALL INDIA ASSOCIATION OF JURISTS,
A REGISTERED SOCIETY WITH REG. NO.278/2014, HAVING
ITS REGISTERED OFFICE AT ROOM NO.1, ANDHRA
INSURANCE BUILDING, THAMBU CHETTY STREET, CHENNAI-
600001, TAMIL NADU, HAVING ITS HEAD OFFICE AT #41
OLD LAWYERS' CHAMBER, SUPREME COURT OF INDIA, TILAK
MARG, NEW DELHI-110001, REPRESENTED BY ITS GENERAL
SECRETARY, M.S. VISHNU SANKER.

- 2 VARGHESE SABU
AGED 26 YEARS
ADVOCATE, S/O. SABU JACOB, CHAMBAKKOTTUKUDIYIL
HOUSE, WEST VENGOLA P.O., PERUMBAVOOR, ERNAKULAM-
683556.

BY ADVS.
SRI.V.JOHN MANI
SHRI.S.JAYANT
SRI.JACKSON JOHNY
SHRI.SETHULAKSHMI K.K.
SRI. SONY P.G.
SMT.GAYATHRI MENON
SHRI.XAVIER THOMAS V.T.

RESPONDENTS :

- 1 STATE OF KERALA,
REPRESENTED BY ITS CHIEF SECRETARY TO THE
GOVERNMENT, GOVERNMENT SECRETARIAT,
THIRUVANANTHAPURAM-695001.

- 2 UNION OF INDIA,
REPRESENTED BY ITS SECRETARY, MINISTRY OF HOME
AFFAIRS, NORTH BLOCK, NEW DELHI-110001.
- 3 BAR COUNCIL OF INDIA,
REPRESENTED BY ITS CHAIRMAN, 21, ROUSE AVENUE
INSTITUTIONAL AREA, NEAR BAL BHAVAN, NEW DELHI-
110002.
- 4 BAR COUNCIL OF KERALA,
REPRESENTED BY ITS CHAIRMAN, BAR COUNCIL OF KERALA,
BAR COUNCIL BHAVAN, HIGH COURT CAMPUS, ERNAKULAM-
682031.
- 5 PRINCIPAL SECRETARY,
KERALA STATE DISASTER MANAGEMENT DEPARTMENT,
OBSERVATORY HILLS, VIKAS BHAVAN P.O.,
THIRUVANANTHAPURAM-695033.
- 6 DIRECTOR GENERAL OF POLICE,
POLICE HEAD QUARTERS, ALTHARA JUNCTION,
SASTHAMANGALAM P.O., VAZHUTHACAD,
THIRUVANANTHAPURAM.
- 7 KERALA HIGH COURT ADVOCATES ASSOCIATION
HIGH COURT OF KERALA,
KERALA, ERNAKULAM-682031, REPRESENTED BY ITS
PRESIDENT ADV.THOMAS ABRAHAM, AGED 65 YEARS, SON OF
LATE P.T.ABRAHAM, SRA FI, SOUMYA NAGAR,
ALINCHUVADU, EDAPPALLY P.O. - 682 021.

(Impleaded as per order dated 07.05.2021 in
I.A.No.1/2021)

SRI. SUMAN CHAKRAVARTHY
SRI.P. VIJAYAKUMAR ASGI,
SRI. RAJITH - SC

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
07.05.2021, ALONG WITH WP(C).11056/2021(S), THE COURT ON THE
SAME DAY DELIVERED THE FOLLOWING:

JUDGMENT

[WP(C) .11056/2021, WP(C) .11060/2021]

Dated this the 7th day of May 2021

One good thing about the Covid – 19 pandemic is that it has shown how ordinary men and women have risen above themselves.

2. Difficult times throw up new challenges each day and the worldwide extent of the disease confronts us with the tenuously fragile nature of human life.

3. We have all still endured!

4. There can be no two ways about it that the judicial system faced arduous challenges in the last more than a year and taught us that “the price of liberty is eternal vigilance” - the famous words of Thomas Jefferson, which has gained a renewed significance in our life time.

5. The Courts have uninterruptedly functioned – evolving in the process and adopting technology like never before; and this was possible to a very large extent owing to the inexorable commitment shown to the justice delivery system by the

Advocates and the Advocate Clerks. They virtually put their lives at stake to ensure that those who most need its protection – the vulnerable and the marginalised – are not left without legal recourse. The constant but inevitable “lock downs” and “quarantines” have caused damaging repercussions on court activities; but in the midst of it all, the system has moved on, as it must in the future; and certainly there is not gainsaying that Advocates and Advocate Clerks are an unexpendible component of it.

6. The “second wave” of the pandemic now once again forces citizens to confine themselves to their homes and the Government has issued orders imposing restrictions and even “lock downs”. We are told reliably that such restrictions and “lock downs” may have to continue, if required, in future.

7. In such scenario, the petitioners in these cases – which have been heard together on account of the common issues impelled – who are practicing counsel, justifiably apprehends that members of the Bar and their Clerks may be interdicted by the Police Authorities from travelling, to reach their offices/chambers/courts and other legal forums.

8. We had earlier considered W.P.(C) No.11056/2021 on 05.05.2021 and had passed the following order:

“The petitioner voices an apprehension that, on account of Exhibit P1 Government Order, advocates and their clerks may be interdicted by the police force from attending their offices, chambers, courts and other legal forums.

The learned Senior Government Pleader submitted that the apprehension of the petitioner is completely baseless since the police are only maintaining constant vigil and will not disturb the professional functioning of any lawyer or their office staff. It is also submitted that if any advocate or clerk is stopped by the police, it will be sufficient that they show their identity cards and explain where they are going and if they are proceeding to their offices, chambers, courts and other legal forums, they will not be stopped in any manner.”

9. Today, Sri.Suman Chakravarthy, learned senior Government Pleader, submitted that the afore undertaking has been implicitly complied with by the Police and Sri.G.Sreekumar (Chelur) and Sri.John Mani, the learned counsel for the petitioners affirm it.

10. That said, we must record that, pending these matters, the Government has issued a further order imposing a complete “lock down” in the State of Kerala between 08.05.2021 and 16.05.2021. This certainly therefore presents a further challenge.

11. Sri.Suman Chakravarthy submits that the undertaking afore recorded by this Court would certainly continue as long as the restrictions are in force; but that in the case of a

complete “lock down”, more stringent measures will require to be placed, in the movement of Advocates and their Clerks, as other citizens. He added that this has been done by the Government for common good.

12. Sri.John Mani, learned counsel appearing for the petitioner in W.P.(C) No.11060/2021, placed reliance on several precedents to contend that advocates and their clerks must be regarded as “essential services” and prayed that their movement be directed to be not interdicted by the Government even during “lock down”. He asserted that without Advocates and their Clerks, the liberties of ordinary citizens cannot be protected, particularly when the entire system is closed down on account of the Covid – 19 restrictions.

13. We find some force in the submissions made on behalf of the petitioners, but it is also equally important that the restrictions placed by the Government are honoured and obeyed. As long as “total lock down” are not ordered, the afore undertaking made on behalf of the State Police Chief will be maintained; but in the case of total “lock downs”, the situation certainly will require a further thought.

14. Sri.Thomas Abraham, the President of the Kerala High Court Advocates Association, appearing in person, also

endorsed the view that Advocates and their Clerks must be allowed at least minimum access to their offices and courts, so that they will be in a position to file and move litigations, if it becomes absolutely necessary.

15. Sri.Rejith, the learned standing counsel for the Bar Council of India, also argued on the afore lines; but supplemented it by saying that though the lives of Advocates and their Clerks are important, their professional freedom cannot make be lost sight of. He, therefore, wanted that, except for reasonable restrictions, the access of Advocates to their offices and Courts be not completely prevented.

16. When we consider the afore submissions, it is without doubt that the situation which comes out of complete “lock down” is different from one when there are only restrictions.

17. If there is no total “lock down” but only restrictions, as has been ordered by the Government through Ext.P1 in W.P. (C) No.11056/2021, certainly the arrangement that we have directed in the interim order dated 04.05.2021 in the said writ petition will have to be maintained. However when it comes to complete “lock down”, the situation is slightly different.

18. We are, therefore, without doubt that these writ petitions deserve to be ordered in a limited manner and that

the afore recorded undertaking given on behalf of the State Police Chief would operate in future also, except in the case of an absolute or total “lock down” or such other similar measure. It is so ordered.

19. As far are as total “lock downs” and such similar measures are concerned, the Advocates and the Clerks will be permitted to travel to Courts if physical sittings are notified, provided they carry an undertaking in the prescribed format, as also their identity cards. The State Police Chief is directed to instruct all the Police Officers to ensure that in such event, lawyers are given essential access to the Courts because, otherwise, it will be the common man who will be the sufferer, particularly in criminal matters. Of course, in exceptional circumstances on such days, if an Advocate or Clerk requires access to office also, it will be up to the Police Officer to verify credentials and take a decision, if such access be allowed.

20. As regards the request of Sri.John Mani, the learned counsel for the petitioners in W.P.(C) No.11060/2021, that Advocates and their Clerks be declared as “essential service”, we do not deem it appropriate that we speak on it in any manner, since it is a matter to be decided by the Government at the appropriate level - it being in the realm of policy decision

making. We, therefore, leave it open to the petitioners in the said writ petition to move the Government, including through Ext.P8, appositely.

These writ petitions are thus ordered.

Sd/- DEVAN RAMACHANDRAN

JUDGE

Sd/- DR. KAUSER EDAPPAGATH

JUDGE

Stu

APPENDIX OF WP(C) 11056/2021

PETITIONER'S EXHIBITS:

EXHIBIT P1 A TRUE COPY OF THE GOVERNMENT ORDER BEARING GO(RT) NO.391/2021/DMD DATED 30.4.2021 ISSUED BY THE GOVERNMENT OF KERALA, DISASTER MANAGEMENT (A) DEPARTMENT.

APPENDIX OF WP (C) 11060/2021

PETITIONER'S EXHIBITS:

- EXHIBIT P1 A TRUE COPY OF THE CERTIFICATE OF REGISTRATION NO.278/2014 ISSUED IN RESPECT OF THE 1ST PETITIONER DATED 21/08/2014.
- EXHIBIT P2 A TRUE COPY OF THE ORDER DATED 23/03/2020 ISSUED BY THE 1ST RESPONDENT.
- EXHIBIT P3 A TRUE COPY OF THE ORDER ISSUED NO.40-3/2020 DM-1(A) DATED 24/03/2020 ISSUED BY THE 2ND RESPONDENT.
- EXHIBIT P4 A TRUE COPY OF THE ORDER DATED 25/03/2020 ISSUED BY THE 2ND RESPONDENT.
- EXHIBIT P5 A TRUE COPY OF THE ORDER DATED 25/03/2020 ISSUED BY THE 2ND RESPONDENT.
- EXHIBIT P6 A TRUE COPY OF THE ORDER GO(P) NO.16/2020/HOME SRO NO.247/2020 DATED 25/03/2020 ISSUED BY THE 1ST RESPONDENT.
- EXHIBIT P7 A TRUE COPY OF THE ORDER NO.GO(MS) NO.78/2020/GAD DATED 17/04/2020 ISSUED BY THE 1ST RESPONDENT.
- EXHIBIT P8 A TRUE COPY OF THE GUIDELINES NO. DMU/2020/CR-92/DIS-M-1 DATED 05/04/2021.
- EXHIBIT P9 A COPY OF REPRESENTATION SUBMITTED BEFORE THE 1ST RESPONDENT DATED 27/04/2021 BY THE 2ND PETITIONER.
- EXHIBIT P9(A) A TRUE COPY OF THE REPRESENTATION SUBMITTED BEFORE THE 1ST RESPONDENT DATED 27/04/2021 BY THE 2ND PETITIONER.
- EXHIBIT P10 A TRUE COPY OF THE ORDER GO(RT) NO.397/2021/DMD DATED 30/04/2021 ISSUED BY THE 1ST RESPONDENT.
- EXHIBIT P11 A TRUE COPY OF ORDER GO(RT) NO. 391/2021/DMD DATED 30/04/2021.