

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.10855 OF 2021(S)

PETITIONER:

DR. PRADEEP K.P., ADVOCATE, AGED 47 YEARS
SON OF LATE K.KRISHNAN NAIR, KALLETUMKADAVU P.O,
RAMANTHALI, KANNUR-670 308

BY DR. PRADEEP K.P. (PARTY IN PERSON)

RESPONDENTS:

- 1 STATE OF KERALA REPRESENTED BY ITS CHIEF SECRETARY, GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM-695 001
- 2 ADDITIONAL CHIEF SECRETARY TO GOVERNMENT, DEPARTMENT OF HOME, GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM-695 001
- 3 STATE POLICE CHIEF, KERALA POLICE, STATE POLICE HEADQUARTERS, VAZHUTHACAUD, THIRUVANANTHAPURAM-695 010
- 4 UNION OF INDIA, REPRESENTED BY THE SECRETARY, MINISTRY OF HOME AFFAIRS, NORTH BLOCK, NEW DELHI 110 01
- 5 COMMUNIST PARTY OF INDIA (MARXIST), STATE COMMITTEE, AKG CENTRE, PALAYAM AIRPORT ROAD, NEAR KERALA UNIVERSITY OFFICE ROAD, THIRUVANANTHAPURAM-695 034, REPRESENTED BY ITS SECRETARY AKGCENTRE@CPIMKERALA.ORG
- 6 INDIAN NATIONAL CONGRESS, KERALA PRADESH CONGRESS COMMITTEE, INDIRA BHAVAN, VELLAYAMBALAM, THIRUVANANTHAPURAM-695 0101, REP.BY ITS STATE PRESIDENT PCCKERALA@GMAIL.COM

- 7 BHARATHIYA JANATHA PARTY, STATE COMMITTEE
OFFICE, MARARJI BHAVAN, THYCAUD,
THIRUVANANTHAPURAM-695 014, REPRESENTED BY
ITS STATE PRESIDENT BJPKERALAOFFICE@GMAIL.COM
- 8 LEFT DEMOCRATIC FRONT-LDF, AKG CENTRE, PALAYAM
AIRPORT ROAD, NEAR KERALA UNIVERSITY OFFICE ROAD,
THIRUVANANTHAPURAM-695 034, REPRESENTED BY ITS
CONVENOR
- 9 UNITED DEMOCRATIC FRONT-UDF, KPCC OFFICE,
INDIRABHAVAN, VELLAYAMBALAM,
THIRUVANANTHAPURAM-695 010, REPRESENTED BY
ITS CONVENOR
- 10 NATIONAL DEMOCRATIC ALLIANCE, MARARJI BHAVAN,
THYCAUD, THIRUVANANTHAPURAM-695 014, REPRESENTED
BY ITS CONVENOR
- 11 ADDL.R11-THE ELECTION COMMISSION OF INDIA
NIRVACHAN SADAN,ASHOKA ROAD,NEW DELHI.

IS SUO MOTU IMPLEADED VIDE ORDER DATED 30/04/2021
IN WP(C) 10855/2021

R4 BY ADV. P.VIJAYAKUMAR, SCGC
R11 BY ADV. SHRI.DEEPULAL MOHAN
BY SRI. K.V.SOHAN - STATE ATTORNEY

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON
07.05.2021, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

JUDGMENT

Dated this the 7th day of May 2021

Devan Ramachandran, J.

In a manner of speaking, the wheel has now come a full circle!

2. The public health situation today is no less grave – if not worse – than it was last year this time, thanks to the resurgent wave of COVID-19 pandemic.

3. The seemingly unbridled and unrestrained euphoria of an inevitable and vital democratic exercise – the local body and State Legislature elections – was in full display in the last few months and one can only rue in hindsight that, perhaps, if we had been collectively a little more careful, the present crisis could have been better contained.

4. The prophylactic 'SMS' against COVID-19 – Sanitiser, Mask and Social Distancing – was unfortunately lost in the din of the electoral campaigns. There is a general sentiment that we let our guard down, but we cannot let it happen again.

5. It is in this scenario that the importance of this writ petition becomes glaring.

6. Normally, when election results are announced, after the counting, celebratory and congratulatory congregations and processions would have been the norm. Anticipating this, the petitioner approached this Court and we passed an order on 30.04.2021 as below:

“The petitioner, in public interest, inter alia seeks that this Court declare all kinds of public and social gatherings, processions or parades in the 'name of election oriented or organisational activities' by the political parties, to be unconstitutional and illegal during the period when the COVID-19 protocols are in force; and as an interim measure, prays that such activities be banned, particularly between 01.05.2021 and 04.05.2021.

2. The learned State Attorney, in response, submitted that the official respondents are fully alive to the rapidly evolving COVID-19 pandemic scenario and that consequently, no gatherings or meetings or processions or parades in violation of the pandemic protocols will be allowed by any one, including political parties.

3. *Quad hoc* the counting day preparedness, he added that the General Directives of the Election Commission of India dated 21.08.2020, supplemented by Exhibit P3 order dated 27.04.2021 and the directions in Exhibit P4 Government Order dated 26.04.2021, will be scrupulously implemented.

4. *Prima facie*, we cannot view this writ petition to be adversarial, since the averments, in its inherent nature and tenor, present a compelling public cause.

5. The upward curve of the pandemic statistics is climbing by the day, reminding all of us to act responsibly and with extreme care.

6. The 'social distancing' protocols are acme and need to be enforced effectively and unreservedly, no matter the excuse some may make against it.

7. Hence strict prevention, rather than initiation of punitive action after infractions, is – as the aphorism goes - the need of the hour.

8. We are certain that the directives of the Election Commission of India and that of the Government cannot merely rest on paper, as it seemingly were when the election campaigns had been completed. This Court cannot, therefore, afford to allow anything to chance, when our State is in the brink of a precipice.

9. The petitioner is, consequently, directed to take out notice before admission to respondents 5 to 10 by E-mail/Fax, while recording that the learned State Attorney has taken notice on behalf of respondents 1 to 3 and that the learned Assistant Solicitor General seeks time to obtain instructions from the fourth respondent.

10. Considering the nature of the prayers made, we also deem it appropriate to *suo motu* implead the Election Commission of India, Nirvachan Sadan, Ashoka Road, New Delhi. It is so ordered. The petitioner is directed to serve a copy of this writ petition on Sri.Deepu Lal Mohan, learned Standing Counsel for the said respondent, today itself.

11. We record the afore submissions made by the learned State Attorney and resultantly direct respondents 1 to 3, particularly the State Police Chief, as also the District Collectors – who are the District Electoral Officers and the Commissioners/District Superintendents of Police to take effective and requisite steps to ensure that no social or political assemblages, meetings, gatherings, processions or parades of any kind – be that celebratorial, cheering or otherwise – in violation of the COVID-19 protocols, as also the directives of the Election Commission of India (both general and those contained in its order dated 27.04.2021) and the mandate of the Government Order dated 26.04.2021, are held anywhere in the State of Kerala – including at the counting stations or Offices/establishments of political parties - between 01.05.2021 and 04.05.2021; and to take swift and unreserved action to avert, avoid and prevent any violation of these orders under the applicable laws, including the Epidemic Diseases Act and the Disaster Management Act.”

7. Today, the learned Standing Counsel for the Election Commission of India, Sri.Deepu Lal Mohan and the learned State Attorney, Sri.K.V.Sohan, informed that the directions of this Court have been complied with in its letter and spirit and that no processions,

parades, congregations or crowding of any kind was allowed between 01.05.2021 and 04.05.2021.

8. Sri. Deepu Lal Mohan also told us that simultaneous with the afore directions of this Court, the Election Commission of India came out with directives to the State Government to ensure that no celebratory or congratulatory processions or parades are allowed anywhere in the State of Kerala. He submitted that these have also been complied with by the law enforcement officials of the State.

9. As we have said above, had there been some discretion exercised at the time when the election campaigns were conducted, we are sure that there would have been great difference to the crisis which we are facing today and to a pointed question about this, the learned State Attorney also affirmed it.

10. That said, we cannot turn back the clock and what has happened has happened.

We, therefore, close this writ petition commending the petitioner for having brought this grave issue to the notice of this Court and recording appreciation of the effort taken by the Election Commission of India and the Police force of this State in ensuring that there was no violation of the COVID-19 protocols by any political

party subsequent to the afore extracted interim order of this Court.

Sd/-
Devan Ramachandran, Judge

Sd/-
Dr.Kauser Edappagath, Judge

tkv

APPENDIX

PETITIONER'S EXHIBITS:

- EXHIBIT P1 TRUE COPY OF THE DO LETTER NO.40-3/2020
-DM-I (A) DATED 23.03.2021 ISSUED BY THE
GOVERNMENT OF INDIA
- EXHIBIT P2 TRUE COPY OF THE ORDER NO.40-3/2020-DM-I
(A) DATED 23.03.2021 WITH ANNEXURE ISSUED
BY THE GOVERNMENT OF INDIA
- EXHIBIT P3 TRUE COPY OF THE ORDER NO.464/INST/2021/EP
DATED 27.04.2021 ISSUED BY THE ELECTION
COMMISSION OF INDIA
- EXHIBIT P4 TRUE COPY OF THE ORDER NO.GO(RT)
383/2021/DMD DATED 26.04.2021