

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE THE CHIEF JUSTICE MR.S.MANIKUMAR

&

THE HONOURABLE MR. JUSTICE SHAJI P.CHALY

FRIDAY, THE 28TH DAY OF MAY 2021 / 7TH JYAISHTA, 1943

WA NO. 215 OF 2021

**AGAINST THE JUDGEMENT IN WP(C) 29184/2020 OF HIGH COURT OF
KERALA**

APPELLANT/S:

SHAFEEQUE RAHMAN K.K.
AGED 34 YEARS
S/O P.I.MUTHUKOYA, KUNNAM KULAM HOUSE, KALPENI
ISLAND, UNION TERRITORY OF LAKSHADWEEP, PIN-682
557.

BY ADVS.
SHYAM PADMAN
C.M.ANDREWS
BOBY M.SEKHAR
LAYA MARY JOSEPH
HARISH ABRAHAM

RESPONDENT/S:

- 1 COLLECTOR AND CHAIRMAN
DISTRICT DISASTER MANAGEMENT AUTHORITY, UNION
TERRITORY OF LAKSHADWEEP, KAVARATTI, PIN-682 555.
- 2 THE ADMINISTRATOR,
UNION TERRITORY OF LAKSHADWEEP, KAVARATTI, PIN-
682 555.
- 3 UNION OF INDIA,
REPRESENTED BY THE SECRETARY, MINISTRY OF HEALTH
AND FAMILY WELFARE DEPARTMENT, NEW DELHI-100 001.

BY ADV SHRI.P.VIJAYAKUMAR, ASG OF INDIA
ADV. SHRI S. MANU, SC, UT OF LAKSHADWEEP

THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON
28.05.2021, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

J U D G M E N T

S. Manikumar, C.J.

Instant writ appeal is filed challenging the common judgment passed in W.P.(C) No. 29184 of 2020 & 589 of 2021 dated 18.01.2021, by which, after taking into account the statements, as well as additional statements filed by the respondents, and the minutes of the joint meeting of Lakshadweep District Disaster Management Authority & Heads of Departments held on 23.12.2020, in connection with the Swachh Lakshadweep Utsav-2020 and Covid management, in the wake of revised SOP issued on 22.12.2020, a learned Single Judge of this Court disposed of the writ petitions by observing thus:

“12. When petitioners apprehend immediate spread of Covid 19 on account of withdrawal of institutional quarantine for travelling to the islands and point out the inadequacy of facilities to contain the spread of Covid 19, contention of the respondents is that they have taken all measures to contain the same. It is seen that there has been a complete lock down in the islands for a period of 9 months from March to 28.12.2020. The developmental activities have come to a stand still affecting the economy. Several islanders have become jobless for the last 9 months; Covid-19

restrictions are relaxed world wide, stage by stage for reviving normalcy. It is seen that the Administration of UT of Lakshadweep also found it necessary to resume the activities in the larger public interest. Ext P9 as well as the minutes of the meeting of 23.12.2020 and the additional statement filed in W.P. (C) No.589/2021 would show the arrangements made by the respondents to contain the spread of Covid-19. Using a mask, sanitiser maintaining physical distancing, restrictions in social gathering, etc are some of such measures ordered to be observed by the islanders strictly. As the petitioners have stated that masks were not being used in the islands and there were no restrictions in social gatherings, it would be incumbent on the Panchayat as well as the public spirited citizens like petitioners along with other stakeholders to see that those guidelines are followed by one and all strictly and to render assistance for the revival of the islands to normalcy.

13. It is seen that Ext P9, the revised SOP has come into force on 28.12.2020. In view of the arrangements in place as stated by the respondents, I find that Ext P9 does not warrant interference of this court under Article 226, as it is issued in implementation of the policy decision taken by the Lakshadweep Administration, in order to protect the interest of all concerned, which is very well within its authority. However, though the respondents have stated that all the facilities are available to take care of any situation, there

shall be close monitoring for the same in tune with the decision taken on 23.12.2020 and also to ensure the availability of sufficient medical specialists as well as strict adherence to the guidelines issued by it.

Writ petition is disposed of accordingly.”

2. Appellant herein was the writ petitioner and the respondents herein were the respondents in the writ petition. He has filed the writ petition, aggrieved by the issuance of Exhibit-P9 revised Standard Operating Procedure dated 22.12.2020, which substituted the earlier mandatory institutional and home quarantine of all the persons travelling to the island, with just a negative test report of RT-PCR, obtained 48 hours before the travel. The reliefs sought for in the writ petition are as under:

(i) To call for the records leading to the revised Standard Operating Procedure (SOP) dated 22.10.2020 and also to quash the same by issuing a writ of certiorari or any other appropriate writ, order or direction.

(ii) To issue a writ of mandamus or any other appropriate writ, order or direction, commanding the respondents to strictly adhere to the institutional and home quarantine protocols currently in place, without in any manner, relaxing or diluting the same.

(iii) To issue a writ of mandamus or any other appropriate writ, order or direction, commanding the respondents to

conduct a scientific study through an expert medical body on the impact of any relaxations or dilutions of the restrictions, guidelines or protocols before taking any such decisions.

3. According to the appellant, even though density of population in Lakshadweep is one of the highest in the country, it was the only Covid-19 free territory in India, as on the date of issuance of the aforementioned SOP, on account of the strict Standard Operating Procedure, guidelines and precautionary measures, especially the mandatory institutional and home quarantine, of all persons travelling to the island. Appellant is very much concerned about the issuance of Ext. P9 SOP, especially in view of the limited medical facilities and specialized medical professionals such as Pulmonologists, Cardiologists etc., available in the island, limitations on travel on account of the oppression of geography, safety concerns in evacuating using a helicopter, which necessitates travel for around 3 hours in closed atmosphere etc.

4. After considering the pleadings and the rival submissions, by the impugned judgment dated 18.01.2021, writ court disposed of the writ petitions, as extracted above.

5. Being aggrieved, instant writ appeal is filed stating that on

improper appreciation of facts and law applicable, the writ court has dismissed the writ petitions, with inadequate and insufficient directions, which are of no consequence, as far as the grave and critical situation in Lakshadweep is concerned, as per judgment dated 18.01.2021, holding the view that Exhibit-P9 Standard Operating Procedure dated 22.10.2020, which substitutes the earlier requirement of mandatory institutional and home quarantine does not need interference. He has also stated that the namesake restriction mentioned in Exhibit- P9 is thoroughly inadequate, unscientific and absurd, especially when the respective authorities confirmed 14 Covid-19 positive cases on 18.01.2021 in the Union Territory of Lakshadweep, and ordered restrictions under Section 144 of the Code of Criminal Procedure, 1973.

6. Appellant has further stated that, in the wake of the new mutant virus recently identified, worldwide restrictions are being made strict, and also the increasing reported positive cases in the UT of Lakshadweep, the impugned judgment passed by the learned Single Judge, without considering the far reaching consequences and ramifications, is not proper, correct, legal or sustainable.

7. On the above pleadings, appellant has raised the following

grounds for consideration:

A. Learned Single Judge ought to have considered the fact that the territory will be infected completely with the new mutant virus, exposing the residents to fatalities, if the restrictions are diluted with regard to the entry of people into the island.

B. Quarantine is the safest and sure method, now available, to prevent the spread of the virus, through infected persons. While so, removing the said restriction, and substituting it with just a test, is baseless, unscientific and suicidal.

C. Exhibit-P9 SOP is incompetent, unauthorised and seen made without due compliance of the statutory mandates and procedure.

D. When the notification issued under Article 243(g) of the Constitution of India specifies medical and health services to come under the District Panchayat, Ext. P9 seen made, without due consultation with the District Panchayat, is not proper, correct or sustainable.

E. When the only recommendation available by an authorised person under the Exhibit-P1 epidemic disease, Covid-19 Regulations, 2020, was Exhibit-P14, which mandated a minimum 5 days mandatory institutional quarantine at Cochin, and a Covid-19 RT-PCR testing at the end of the 5th day of institutional quarantine, before allowing travel to Lakshadweep, no

reason or justification is offered for ignoring the same in Exhibit-P9 revised Standard Operating Procedure.

F. The catastrophic effect feared by the inhabitants of Lakshadweep, on account of the improper and unscientific relaxation of quarantine protocol, is not proven to be correct, with Covid - 19 positive cases being identified in the islands, which till now was completely free from the deadly virus.

8. Mr. S. Manu, learned Senior Central Government Standing Counsel for Lakshadweep Administration, has filed a detailed statement, in support of the proceedings impugned in the writ petition, controverting the allegations of the writ petitioner.

9. It is stated that the apprehension of the appellant expressed in the writ petition, are exaggerated and unrealistic. The petitioner has not made any efforts, to know the steps already taken by the Administration, and the facilities made available for Covid management. In the writ petition, appellant was trying to impose his personal perceptions upon the Administration, thus seeking intervention in a policy matter, which is well within the requirements of law. Hence, he prayed for dismissal of the writ petition.

10. Learned Senior Central Government Standing Counsel for Lakshadweep Administration, has also filed an additional statement,

stating that the Government of India has already announced a vaccination programme to resist Covid - 19 pandemic. According to him, from 16.01.2021, the vaccination will commence in all States and Union Territories. In Lakshadweep also, vaccination will be commencing, and enough quantities of vaccine will be provided by the Central Government. The Administration have already made all the preparations for the vaccination drive. A coordination mechanism at the UT level, with the Advisor to the Administrator as its Chairman and Island level Task Forces, with respective Deputy Collectors/Sub Divisional Officers as Chairmen, have been already constituted. The Medical Superintendents or Medical Officers of the respective islands are the Member Secretaries of the Task Forces. Therefore, the apprehension of the appellant as regards spread of pandemic in the islands is no longer relevant.

11. It is further contended that already, the movements of ships between mainland and the islands have become regular as usual. Nearly thousands of passengers have travelled to various islands from the mainland, after the revised SOP came into force on 28.12.2020. The Department of Port, Shipping & Aviation, has already published the ship schedule for the month of January, and the voyages of

different ships, according to the schedule, have commenced from 01.01.2021. Thus the normal movement of passengers and goods to the islands has been restored, strictly following the directions in the revised SOP, for preventing spread of the virus infection. Any intervention in the matter will adversely affect movement of passengers and ships, thus resulting in retardation of economic and other activities.

12. Heard learned counsel for the respective parties and perused the material available on record.

13. In fact, in a Public Interest Litigation, the very same issue was considered by this Court and has upheld the Standard Operating Procedure dated 22.12.2020 and other circulars issued by the Lakshadweep Administration.

14. The entire aspects relating to the powers conferred on the authority under the Disaster Management Act, 2005 and the power of the authority to modify the Standard Operating Procedures and issuance of fresh notifications were considered elaborately in the public interest litigation viz W.P.(C) No.1079 of 2021. In view of the findings rendered therein and since the subject matter of this writ appeal is similar to the contentions raised in W.P.(C) No.1079 of 2021,

we do not think that an elaborate discussion of the matter is required.

15. In that view of the matter, we uphold the judgment of the learned single Judge dated 18.01.2021 in W.P.(C) No.29184 of 2020, by which, the Standard Operating Procedure dated 22.12.2020 (Exhibit-P9) was found to be valid in law. The findings rendered by this Court in W.P.(C) No.1079 of 2021 will squarely apply to the facts of this appeal also.

In the result, the appeal will stand dismissed.

Sd/-
S. Manikumar,
Chief Justice

Sd/-
Shaji P. Chaly,
Judge

Eb

///TRUE COPY///

P. A. TO JUDGE

APPENDIX OF WA 215/2021

ANNEXURE/EXHIBITS

- ANNEXURE A1 TRUE COPY OF THE NOTIFICATION DATED
7.3.2012 ISSUED BY THE SECRETARY,
DEPARTMENT OF PANCHAYATS.
- ANNEXURE A2 TRUE COPY OF THE REPORT DATED 19.1.2021
OF INDIAN EXPRESS NEWSPAPER DAILY
REPORTING 14 NEW COVID CASES IN THE UT
OF LAKSHADWEEP
- ANNEXURE A3 TRUE COPY OF THE ORDER ISSUED BY THE
DIRECTOR OF EDUCATION DATED 19.1.2021