

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE S.V.BHATTI

&

THE HONOURABLE MR.JUSTICE MURALI PURUSHOTHAMAN

THURSDAY, THE 17TH DAY OF JUNE 2021 / 27TH JYAISHTA, 1943

WP(C) NO. 11519 OF 2021

PETITIONER/S:

K P NOUSHAD ALI
AGED 43 YEARS
S/O.(LATE) K.P.ALI, RESIDING AT K.P. HOUSE,
CHEMMARAKKATTOOR P.O., AREEKODE, MALAPPURAM DISTRICT

BY ADV ANOOP.V.NAIR

RESPONDENT/S:

- 1 UNION TERRITORY OF LAKSHADWEEP
REP. BY ITS ADMINISTRATOR, OFFICE OF THE ADMINISTRATOR,
KAVARATHI ISLAND, LAKSHADWEEP 682 555
- 2 THE ADMINISTRATOR
UNION TERRITORY OF LAKSHADWEEP, OFFICE OF THE
ADMINISTRATOR, KAVARATHI ISLAND, LAKSHADWEEP 682 555
- 3 THE JOINT SECRETARY
LAKSHADWEEP ADMINISTRATION, LAKSHADWEEP BUILDING
DEVELOPMENT BODY, KAVARATHI ISLAND, LAKSHADWEEP 682 555
- 4 THE SECRETARY (PANCHAYAT)
UT OF LAKSHADWEEP ADMINISTRATION, DIRECTORATE OF
PANCHAYATS, KAVARATHI ISLAND, LAKSHADWEEP 682 555
- 5 THE ASSISTANT DIRECTOR (DISASTER MANAGEMENT)
LAKSHADWEEP ADMINISTRATION, DISASTER MANAGEMENT
AUTHORITY, KAVARATHI ISLAND, LAKSHADWEEP 682 555

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- 6 THE SENIOR SUPERINTENDENT OF POLICE
U.T.OF LAKSHADWEEP, POLICE DEPARTMENT, OFFICE OF THE SENIOR
SUPERINTENDENT OF POLICE, KAVARATHI ISLAND, LAKSHADWEEP 682
555
- 7 THE MANAGING DIRECTOR
SOCIETY FOR PROMOTION OF NATURE TOURISM AND SPORTS
(LAKSHADWEEP TOURISM), TOURISM BHAVAN, KAVARATHI ISLAND,
LAKSHADWEEP 682 555
- 8 THE SECRETARY (ANIMAL HUSBANDRY)
DEPARTMENT OF ANIMAL HUSBANDRY, KAVARATHI ISLAND,
LAKSHADWEEP 682 555
- 9 THE STATE PROJECT DIRECTOR AND DIRECTOR OF EDUCATION
DEPARTMENT OF EDUCATION, KAVARATHI ISLAND, LAKSHADWEEP
682 555
- 10 THE UNION OF INDIA
REP.BY THE SECRETARY TO MINISTRY OF LAW AND JUSTICE
(LEGISLATIVE DEPARTMENT), NEW DELHI 110 001

MR. K M NATARAJ, ADDITIONAL SOLICITOR GENERAL, ASSISTED BY
ADV SHRI.MANU.S, SCGC, ADMINISTRATION OF THE UNION
TERRITORY OF LAKSHADWEEP

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 17.06.2021, THE
COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

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J U D G M E N T

S.V.Bhatti, J

Heard learned Advocate Mr. Anoop V Nair for petitioner and the learned Additional Solicitor General Mr.K M Nataraj, assisted by Advocate Mr. S Manu for respondents.

2. One K P Noushad Ali, a resident of K P House, Chemmarakkattoor P O, Areekode, Malappuram District, is the petitioner. The instant Public Interest Litigation is filed by the petitioner challenging a few regulatory measures initiated by respondent Nos. 1 and 2 concerning Lakshadweep Islands. The writ prayer reads thus:

“i. Issue a writ of mandamus order or direction to the respondents 3 to 9 to initiate action in the matter by calling back Exhibits P3 to P7 regulations/orders/Rules passed by them and direct them to keep in abeyance all further actions pursuant to Exhibits P3 to P7.

ii. To issue a writ of mandamus order or direction to the respondents 1 to 3 and 10 not to implement Exhibits P1, P2 and P8 until further objections are called for from the residents of

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the Lakshadweep Islands, after fixing a time, after the Covid Pandemic restrictions are over and stay further proceedings pursuant to Exhibits P1, P2 and P8 until then.

iii. to declare that Exhibits P3 to P7 regulations or orders passed by Respondents 3 to 9 are illegal and unconstitutional and violative of Articles 15, 16, 19 and 21.

iv. To call for the entire records leading to Exhibits P3 to P7 and quash the same by the issuance of a writ of certiorari.”

3. The case of petitioner is that the petitioner is a responsible citizen and a social worker, has concern on the issues faced by the public at large, and claims to hold the post of Secretary in Kerala Pradesh Congress Committee, Thiruvananthapuram, as representative of Malappuram District. The instant Public Interest Litigation, it is claimed by petitioner to have been filed to protect the interests/rights of the people of Lakshadweep, a Union Territory under the administration of Central Government, from the ulterior motive of destroying the traditional life, culture, etc of the inhabitants of the island by the impugned action of respondents 1 to

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3. The petitioner alleges that the steps being initiated by respondent Nos. 1 to 3 through Exts.P1 to P8 are illegal and violative of Articles 15, 16, 19 and 21 of the Constitution of India (for short 'CoI'). It needs to be noted at the present stage of our consideration that the impugned notifications are at either preliminary stage or drafts are kept in public domain inviting suggestion, views etc., from Islanders.

4. The respondents have filed counter affidavit objecting to the maintainability of the writ petition and have also set their stand on the other objections raised by the petitioner concerning the exhibits under challenge. This Court would examine the stand of respondents to the extent required while disposing of the Public Interest Litigation and is of the view that case of both the parties is examined on preliminary objections. Further we would examine the merits of the instant Public Interest Litigation on the material relied on and prayers made in the Public Interest Litigation.

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5. The petitioner is a permanent resident of Malappuram, State of Kerala. A reading of the writ petition discloses that the petitioner never ever had any direct participation or concern with the people, affairs, or administration of Lakshadweep island. However, by making general or sweeping allegations that the petitioner is interested about the issues faced by the public at large and is a social worker, the Public Interest Litigation is sought to be maintained in this Court. The writ petition refers to circumstances touching upon the impugned steps taken by the respondents and raises objections available in law against the steps now initiated by respondent Nos.1 to 3. For the view we are proposing to take, we deem it completely unnecessary to burden our judgment with a long narrative of the case as stated by the petitioner as well as the respondents. It is sufficient to examine whether the writ petition is championing an effective cause or the prayers are premature. The writ prayer refers to Exts.P3 to P7. Ext.P3 is a Circular issued by the Assistant Director (Disaster Management)/5th respondent

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stipulating the modalities to be followed by persons or travellers interested in visiting Lakshadweep island. The apprehension expressed by the petitioner on Ext.P3 pales into insignificance, in the light of the judgment in W.P.(C) No.1079/2021, wherein challenge to circular was rejected. Hence renewed challenge to Ext.P3 Circular is mis-conceived and unavailable. For the said reason the prayer concerning Ext.P3 is liable to be rejected and accordingly rejected.

6. Let us examine Ext.P4. Ext.P4 is a notification issued eliciting public opinion on the draft regulation appended to the said Notification. The very case of petitioner is adverted to, particularly to bring home the conclusion that the petitioner as well understands Ext.P4 etc as a notification calling for objection on Draft Regulation, still has filed the present Public Interest Litigation apprehending steps being in terms of Draft Regulations. The petitioner, in paragraph 3 of the writ petition, stated thus:

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“The petitioner is approaching this Hon’ble Court challenging the actions of the respondents 1 and 2 mainly because if Draft Rules are implemented, nobody can challenge it later, as it gives immense power to the respondents 1 and 2 and the Administrator is working under the Central Government.”

On the lines of Ext.P4, the draft processed by the Department is filed as Ext.P8. This Court is of the view that examination of legality of draft regulation which is in the active consideration of respondent, is completely premature. Exts.P5 and P6 relate to discontinuation of temporary staff engaged by the administration in a few facilities. It is well settled that championing cause concerning service matters by way of Public Interest Litigation is impermissible and also unavailable on the ground that the petitioner lacks the locus to question the legality of Exts.P5 and P6. The prayer made against these exhibits is also liable to be rejected. Ext.P7 stipulates the procedure to be followed for auctioning livestock in Lakshadweep islands. The petitioner in the name of Public Interest Litigation cannot expand the consideration with inchoate

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knowledge about the inhabitants of the island and the island. The petitioner prays for a direction to respondents not to implement Exts.P1, P2 and P8. Even if a public notice inviting suggestions from members of the public, Ext.P2 is to the same effect and Ext.P8, it is stated by the learned Additional Solicitor General that, is a xerox copy of the regulation kept by the respondents while processing the files for administrative sanction, etc. In other words, it is stated that Ext.P8 is also a draft and it cannot be treated as regulation that has come into force upon receiving the assent of the President of India. In short, each prayer is unavailable or premature and entertaining the prayers by way of Public Interest Litigation is not warranted. The impugned exhibits, are at the stage of confabulation. The prayer though is one for mandamus/certiorari still the prayer has the effect of acting as writ of prohibition against respondents from discharging the function or the duty conferred on them by the Constitution of India. Draft stipulation therefore cannot be accepted for challenge in the Public Interest Litigation.

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We are not persuaded to entertain our jurisdiction in the matter.

7. The writ petition, at the instance of petitioner, is premature, the prayers as made are unavailable and the petitioner has not satisfied as to his standing *vis-à-vis* the affairs of Lakshadweep island to entertain the Public Interest Litigation.

For the above reasons, the petition fails and accordingly dismissed. No order as to costs.

Sd/-
S.V. BHATTI
JUDGE

Sd/-
MURALI PURUSHOTHAMAN
JUDGE

jjj 15/06/2021

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APPENDIX OF WP(C) 11519/2021

PETITIONER ANNEXURE

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| Exhibit P1 | TRUE COPY OF THE RELEVANT PAGES OF THE PAGES OF THE DRAFT LEGISLATION PASSED BY THE 1ST RESPONDENT, DATED 28.4.2021 BEARING NO.FNO.16/1/2021-LBDB WITH RESPECT TO THE DRAFT LAKSHADWEEP DEVELOPMENT AUTHORITY REGULATION 2021 |
| Exhibit P2 | TRUE COPY OF THE RELEVANT PAGES OF NOTIFICATION DATED 25.2.2021 BEARING NO.FNO.3/1/2021-DOP/3, PASSED BY THE 4TH RESPONDENT WITH RESPECT TO THE DRAFT LAKSHADWEEP PANCHAYAT REGULATION 2021 |
| Exhibit P3 | TRUE COPY OF THE REVISED STANDARD OPERATING PROCEDURE DATED 26.12.2020 BEARING NO.E/21/7/2020-COL, PASSED BY THE 5TH RESPONDENT, WITH RESPECT TO THE STANDARD COVID PROTOCOL |
| Exhibit P4 | TRUE COPY OF THE RELEVANT PAGES OF THE NOTIFICATION DATED 28.1.2021 BEARING NO.1/23/2020-POL/230, ISSUED BY THE 6TH RESPONDENT WITH RESPECT TO THE LAKSHADWEEP PREVENTION OF ANTI-SOCIAL ACTIVITIES REGULATION, 2021. |
| Exhibit P5 | TRUE COPY OF THE ORDER DATED 2.2.2021 BEARING NO.105/19/2014-SPORTS/650, WITH RESPECT TO THE DISENGAGEMENT OF 193 CASUAL LABOURS ENGAGED IN DIFFERENT UNITS OF SPORTS, PASSED BY 7TH RESPONDENT. |
| Exhibit P6 | TRUE COPY OF THE ORDER DATED 28.2.2021 BEARING NO.7/2020-EDN(SMSA), ISSUED BY THE 9TH RESPONDENT WITH RESPECT TO THE DISENGAGEMENT OF PART TIME TEACHERS. |

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- Exhibit P7 TRUE COPY OF THE ORDER DATED 21.5.2021 BEARING NO.22/9/2021-AH, ISSUED BY THE 8TH RESPONDENT TO CLOSE ALL THE DAIRY FARMS RUN BY THE DEPARTMENT OF ANIMAL HUSBANDRY INCLUDING BULLS, CALFS ETC.
- Exhibit P8 TRUE COPY OF THE RELEVANT PAGES OF THE LAKSHADWEEP ANIMAL PRESERVATION REGULATION, 2020 ISSUED BY THE 10TH RESPONDENT.
- Exhibit P9 TRUE COPY OF THE LETTER ISSUED TO PRESIDENT RAM NATH KOVIND BY ELAMARAM KAREEM, DATED 23.5.2021

RESPONDENT ANNEXURE

- ANNEXURE 1 TRUE COPY OF THE JUDGMENT IN WP(c) 11591 OF 2021 DATED 31.05.2021 OF THE DIVISION BENCH OF THIS HON'BLE COURT
- ANNEXURE II TRUE COPY OF THE JUDGMENT IN WRIT PETITION (CIVIL) NO. 1079/2021 OF THE DIVISION BENCH OF THIS HON'BLE COURT DATED 28.05.2021