

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE P.V.KUNHIKRISHNAN

Thursday, the 24<sup>th</sup> day of March 2022 / 3rd Chaithra, 1944

WP(C) NO. 6709 OF 2022(K)

PETITIONER:

M.K.UTHAMAN, AGED 53 YEARS, S/O.M.K. KUMARAN, RESIDING AT  
MANAPPURATHU HOUSE, WARD 8, THAIKATUSSERRY GRAMA PANCHAYAT,  
MANAPPURAM P.O., CHERTHALA, 688 526.

RESPONDENT:

STATE OF KERALA, REP. BY THE SECRETARY OF DEPARTMENT OF FISHERIES  
AND PORTS, SECRETARIAT, THIRUVANANTHAPURAM 695 001.

Writ petition (civil) praying inter alia that in the circumstances stated in the affidavit filed along with the WP(C) the High Court be pleased to stay the operation of Kerala maritime Board (Amendment) Ordinance, 2022, and / or restrain the Respondent and its officers from exercising powers or committing any act pursuant to the Kerala Maritime Board(Amendment)Ordinance, 2022, specifically Sections 3,4,5,7,10 and 11 of the Kerala Maritime Board(Amendment)Ordinance,(amendments made in 3,8,9,14,90,91 Kerala Maritime Board Act 2017) till the disposal of this Writ Petition, in the interest of justice.

This petition coming on for orders upon perusing the petition and the affidavit filed in support of WP(C) and upon hearing the arguments of M/S. V.M.KRISHNAKUMAR & P.R.REENA Advocates for the petitioner and of GOVERNMENT PLEADER for the respondent, the court passed the following:

P.T.O.

**P.V.KUNHIKRISHNAN, J**

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W.P.(C) No.6709 of 2022  
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Dated this the 24<sup>th</sup> day of March, 2022

**O R D E R**

The writ petition is filed challenging the constitutional validity of Kerala Maritime Board (Amendment) Ordinance, 2022. The writ petition is already admitted. The senior counsel Sri.Ranjit Thampan, instructed by his retaining counsel, insisted for an interim order. The prayer in the interim relief is to stay the operation of Kerala Maritime Board (Amendment) Ordinance, 2022 or restrain respondents and its officers from exercising the powers or committing any Act pursuant to the Kerala Maritime Board (Amendment) Ordinance, 2022, specifically sections 3, 4, 5, 7, 10 and 11 of the Kerala Maritime Board (Amendment) Ordinance.

2. Since the prayer in the interim relief is to stay the operation of the ordinance or to restrain respondents from exercising powers based on certain sections in the amended

Act, this Court raised a doubt about the jurisdiction of this Court to pass such orders by way of interim order. Therefore, the case was adjourned for hearing the prayer for interim orders.

3. Heard senior counsel Sri.Ranjit Thampan and also the Advocate General for the State.

4. The senior counsel relied the judgment of the apex court in **Dr.Jaishri Laxmanrao Patil v. The Chief Minister & another (Civil Appeal No.3123 of 2020)** and submitted that in appropriate case the court is not disabled from passing interim orders. On the other hand, the Advocate General relied the judgment of the Apex Court in **Health For Millions v Union of India and others [(2014)14 SCC 496]** and submitted that it is a well settled position of law that in matters involving challenge to the constitutionality of any legislation enacted by the Legislature and the rules framed thereunder, Courts should be extremely careful in passing an interim order.

5. I will decide first the maintainability issue regarding the

issuance of interim orders in a case in which constitutional validity of an amendment Act is challenged. It is a settled position that there is always a presumption in favour of the constitutional validity of a legislation. Normally interim orders will not be passed to stultify statutory provisions. But as observed by the apex court in the above cited judgments, if the court is fully convinced that a particular enactments or rules are ex facie unconstitutional and the factors like balance of convenience, irreparable injury and public interests are in favour of passing an interim order, the court can pass interim orders.

6. Therefore, the question to be decided for passing interim order is whether the enactment is ex facie unconstitutional and also the factors like the balance of convenience, irreparable injury and public interests are in favour of passing an interim order. The senior counsel Ranjit Thampan mainly prayed for a stay of Section 10 in the Kerala Maritime Board (Amendment) Ordinance, 2022, by which there

is drastic changes made in Section 90 of the Original Act. In clause (a) of Section 90(1) of the Original Act instead of the words "on account of grave emergency," the words "for reasons stated in the order" is substituted by way of an amendment. Similarly in clause (b) of Section 90(1) instead of "supersede the Board for such period not exceeding six months at a time, as may be specified in the notification," the words "appoint an Administrator for discharging the functions of the Board for a period as may be specified in the notification" is substituted. The proviso to Section 90(b) is also deleted. As per the proviso, the Government shall give reasonable opportunity to the Board to show cause why it should not be superseded. The senior counsel prayed for staying these part of the amendment. Since the proviso to Section 90(b) is completely omitted by which an opportunity of hearing is denied to the aggrieved person, this Court requested the Advocate General to address this point also. The Advocate General submitted that the opportunity of hearing is given to

the Board as per the unamended Act. There are certain reasons for deleting the same which is narrated in the statement and Advocate General submitted that a detailed counter affidavit also will be filed. The Advocate General submitted that the petitioner is only one of the Board member. The Advocate General submitted that the Board is not in existence now after the amendment, of course the same is disputed by the senior counsel who is appearing for the petitioner. According to the Advocate General, there is no Board in existence.

7. It is true that several other legal contentions are raised by the counsel for the petitioner relying on the decisions of the apex court. Since only a member of the Board challenge the Amendment and Board is not challenging the same, I think there is no immediate necessity to pass any interim order.

8. This writ petition can be heard immediately after vacation. In the meanwhile, nothing will happen because there is no Board in existence according to the State. Constitutional

validity of the Amendment can be considered at the time of final hearing.

With the above observation, the prayer for interim order is rejected.

Sd/-

**P.V.KUNHIKRISHNAN, JUDGE**

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