

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE THE CHIEF JUSTICE MR.S.MANIKUMAR

&

THE HONOURABLE MR. JUSTICE SHAJI P.CHALY

TUESDAY, THE 14TH DAY OF JANUARY 2020 / 24TH POUSHA, 1941

WP(C).No.797 OF 2020(Y)

PETITIONER/S:

QUALIFIED PRIVATE MEDICAL PRACTITIONERS ASSOCIATION,
REG.NO.KTM/TC/702/2013, HAVING ITS REGISTERED OFFICE
16/400, KIZHAKKE MOOZHICKATIL BUILDING, OPPOSITE PEROOR
VILLAGE OFFICE, PEROOR P.O., KOTTAYAM 686 637, REPRESENTED
BY ITS PRESIDENT, DR.O.BABY, S/O. LATE M.KOCHUNNY, AGED 75
YEARS, RESIDING AT CHEMPAKASSERIL, 9A, SKYLINE HILL VIEW
MUTTAMBALAM P.O., KOTTAYAM-686 004.

BY ADVS.

SRI.M.R.HARIRAJ

SRI.K.RAJAGOPAL

SHRI.VISWAJITH C.K

SHRI. JAYRAJ M.B.

SMT.GANGA A.SANKAR

RESPONDENTS:

- 1 UNION OF INDIA,
REPRESENTED BY GOVERNMENT OF INDIA, MINISTRY OF HEALTH
AND FAMILY WELFARE, NEW DELHI-110 001.
- 2 STATE OF KERALA
REPRESENTED BY ITS CHIEF SECRETARY, SECRETARIAT,
THIRUVANANTHAPURAM-695 001.
- 3 STATE OF KERALA
REPRESENTED BY ITS SECRETARY,DEPARTMENT OF HEALTH AND
FAMILY WELFARE, SECRETARIAT THIRUVANANTHAPURAM-695 001.
- 4 FOOD SAFETY AND STANDARDS AUTHORITY OF INDIA
FDA BHAVAN, KOTLA ROAD, NEW DELHI-110 002.
- 5 COMMISSIONER OF FOOD SAFETY
COMMISSIONERIAT OF FOOD SAFETY IN KERALA, THYCAUD P.O.,
THIRUVANANTHAPURAM-695 014.

- 6 KERALA CATHOLIC BISHOPS COUNCIL
REPRESENTED BY ITS PRESIDENT, PASTORAL ORIENTATION CENTRE,
P.B.NO.2251, PALARIVATTOM, KOCHI-682 025.
- 7 CATHOLICOSE OF THE EAST AND MALANKARA METROPOLITAN
CATHOLICATE ARAMANA, DEVALOKOM, KOTTAYAM-686 002.
- 8 CATHOLICOSE OF THE SYRIAN ORTHODOX CHURCH
PATRIARCHAL CENTRE, PUTHENCROUZ, ERNAKULAM-682 308.
- 9 METROPOLITAN OF MALANKARA MAR THOMA CHURCH
REPRESENTED BY ITS METROPOLITAN, POOLATHEEN, THIRUVALLA,
-689 101.
- 10 C.S.I. CHURCHES
REPRESENTED BY ITS MODERATOR, C.S.I. CENTRE, 5, WHITES ROAD,
INDIRA GARDEN, ROYALPETTA, CHENNAI-600 014.

R1 & R2 BY SR.GOVERNMENT PLEADER SRI.TEK CHAND

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON
14.01.2020, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

ALL ABOUT LAW

JUDGMENT

Shaji P. Chaly, J

This writ petition is filed by a registered Organisation of modern medical doctors and dentists in India seeking the following reliefs:

1. To issue a writ of mandamus or other appropriate writ, order or direction commanding respondents 1 to 5 to ensure that hygienic practices are followed in all religious institutions including churches under respondents 6-10 where food is distributed and to ensure such distribution is only of safe food within the meaning of Food Safety and Standards Act, 2006.
2. The contention put forth by the petitioner is that there is an unhealthy practice of administering holy sacrament commemorating the last supper of Jesus Christ by distributing bread and wine in Christian churches, which poses serious health hazards to the general public, especially the communicants. According to the petitioner, the practice followed in majority of the Christian churches in India in respect of holy sacrament is that the priests serve wine from a single chalice using the same spoon into the mouth of every communicants. Pieces of bread are also

served into the mouth of the communicant by the priests with their own hand. There is no cleaning of the spoon or the hand while serving each communicant, which gives rise to a very high possibility of saliva contamination and one of the major causes of spreading of many diseases, and some of them can even spread through saliva droplets in the air. The possibility of such infections spreading through direct saliva contamination of large mass of people is very high and it ought to be avoided by resorting to hygienic practices. That apart, it is submitted that many members of the petitioner Association had taken the matter individually with different churches and some of the churches have made certain restrictions, while others have declined to make any changes in administering the holy communion. It is also submitted that various representations were submitted before the State Government and its Officers, including the authorities under the Food Safety and Standards Act, 2006. No action was initiated which necessitated the petitioner to approach this Court by filing this writ petition.

3. The paramount contention advanced by the petitioner is that the activity described as above is violative of the provisions of the Food Safety and Standards Act, 2006 and the authorities are duty bound to take action against the churches. It is also pointed out that the inaction on the part of the respondents in not taking action in accordance with the representations submitted by the petitioner is violative of Articles 14 and 21 of the Constitution of India.

4. We have heard the learned counsel for the petitioner, Sri. M.R. Hariraj and perused the pleadings and the documents on record.

5. The prime contention advanced by the learned counsel for the petitioner is relying upon Section 3(1)(f) of the Act, 2006, which defines the word 'consumer' and it states that "consumer" means persons and families purchasing and receiving food in order to meet their personal needs". So also, it is submitted that the word 'food' is defined under the Act to mean "any substance, whether processed, partially processed or unprocessed,

which is intended for human consumption and includes primary food, to the extent defined in clause (ZK) genetically modified or engineered food or food containing such ingredients, infant food, packaged drinking water, alcoholic drink, chewing gum, and any substance, including water used into the food during its manufacture, preparation or treatment but does not include any animal feed, live animals unless they are prepared or processed for placing on the market for human consumption, plants prior to harvesting, drugs and medicinal products, cosmetics, narcotic or psychotropic substances.” The word 'food business' is defined to mean “any undertaking, whether for profit or not and whether public or private, carrying out any of the activities related to any stage of manufacture, processing, packaging, storage, transportation, distribution of food, import and includes food services, catering services, sale of food or food ingredients”.

6. The word 'manufacturer' is defined to mean “a person engaged in the business of manufacturing any article of food for sale and includes any person who obtains

such article from another person and packs and labels it for sale or only labels it for such purposes". 'Food Safety' is defined to mean "assurance that food is acceptable for human consumption according to its intended use".

7. 'Premises' is defined as "premises include any shop, stall, hotel, restaurant, airline services and food canteens, place or vehicle or vessel where any article of food is sold or manufactured or stored for sale". 'Risk' is defined as "risk in relation to any article of food, means the probability of an adverse effect on the health of consumers of such food and the severity of that effect, consequential to a food hazard".

8. Relying upon the aforesaid provisions, the learned counsel for the petitioner submitted that the authorities under the Act, 2006 are duty bound to take action against the respondent Churches. In our considered opinion, the contention put forth by the petitioner that the holy sacrament as a food may be in accordance with the provisions of the Act, 2006. But, so far as the purpose of the Food Safety and Standards Act, 2006 is concerned, it is

promulgated to consolidate the laws relating to food and to establish the Food Safety and Standards Authority of India for laying down science based standards for articles of food and to regulate their manufacture, storage, distribution, sale and import, to ensure availability of safe and wholesome food for human consumption and for matters connected therewith or incidental thereto. Therefore, on a reading of the preamble of the provision, it is clear that the intention is to regulate the manufacture, storage, distribution, sale and import to ensure the availability of safe and wholesome food for human consumption. So also, Section 16 of the Act, 2006 deals with the duties and functions of Food Authority. Sub-Rule (1) thereto stipulates that “it shall be the duty of the Food Authority to regulate and monitor the manufacture, processing, distribution, sale and import of food so as to ensure safe and wholesome food”.

9. Section 18 of the Act, 2006 deals with the general principles to be followed in the administration of Act, which stipulates that “the Central Government, the State

Governments, the Food Authority and other agencies, as the case may be, while implementing the provisions of this Act shall be guided by the principles laid down thereunder". Sub-Section (1)(a) stipulates that "endeavour to achieve an appropriate level of protection of human life and health and the protection of consumers' interests, including fair practices in all kinds of food trade with reference to food safety standards and practices".

10. Therefore, on a reading of the basic provisions of law contained under the Food Safety and Standards Act, 2006, what we could gather is that the endeavour is to carry out functions by the authority with respect to the manufacturing, processing, distribution, sale and importing of food so as to ensure safe and wholesome food.

11. Taking into account the provisions of the Act, 2006, we are of the considered opinion that the Food Safety Authority is not vested with any powers to interfere with the distribution or administering of holy sacrament in the churches. The practice of administering the holy sacrament, which is relatively called the Eucharist,

commemorates the last supper of Lord Jesus Christ. The story is thus, the Lord Jesus, on the night he was betrayed, took bread and when he had given thanks, he broke it and said, 'this is my body, which is for you; do this in remembrance of me'. In the same way, after supper, he took the cup saying that 'this cup is the new covenant in my blood; do this, whenever you drink it, in remembrance of me (1 Corinthians 11: 23-25). Most Christians receive holy Eucharist commonly called holy bread and holy wine occasionally, some do it regularly, some more often and some less often. It is a faith followed by the Christians, who are the disciples of Jesus Christ; but not compulsory. The Catholic community calls it Eucharist or the mass. Some of the Christian denominations call it 'holy communion' and it commonly denoted ' holy sacrament'. Some of them give more importance to it; but all Christians believe that when the holy bread and the wine is received, they are following the principles and the covenants instructed by the Jesus Christ. Such a ceremony is instituted to be observed sincerely and faithfully and with

dedication till Jesus Christ returns. It is pursuant to this faith and belief, Christians receive the holy communion. In fact, various Christian denominations have different approaches with regard to the administration and receipt of holy sacrament. However, it is never compulsorily insisted upon and it is received by the believers due to their absolute faith as followers of Christianity. That apart, the holy communion is most sacred and considered to be holy by the Christian community and therefore, the same is administered or given by the priests with utmost care and after ensuring hygiene. So much so, the holy sacrament is received by a believer out of faith and it is not a food consumed by the believer to satisfy the hunger, and it has got its own religious and spiritual significance and importance.

12. The petitioner has no case that consequent to the receipt of holy communion, any persons were inflicted with communicable disease and therefore, it is not for the court of law to interfere with the centuries old practice, faith, custom and belief followed by the Christian communities

and to issue any direction as is sought for by the petitioner. In this regard, I have come across the judgment of this Court in ***Sreeni Pattathanam v. State of Kerala [2011(3) KLT 257]*** in the matter of 'Makarajyothi' at Ponnambalamedu in Sabarimala and one of the questions raised thereunder is whether courts should exclude any adjudication as regards matters affecting faith and worship, unless such matters transgress constitutional limits and makes it absolutely necessary to probe into further.

Paragraph 8 is relevant to the context, which reads thus:

“8. The court would exclude any adjudication as regards matters affecting faith and worship unless such matters transgress the constitutional limits and makes it absolutely necessary to probe into further, as to whether it is in conformity with and does not offend public order, morality and health. Subject to those restrictions, every religious denomination has the right to freedom of conscience recognised and expressed in [Article 26](#) of the Constitution and all persons are equally entitled to freedom of conscience and the right to freely profess, practice and propagate religion as enshrined under [Article 25](#) of the Constitution.”

13. As we have pointed out earlier, the petitioner has not made out any specific instances, where due to the administration of holy sacrament by the priests in the churches, any communicable diseases or health hazards have been caused to any of the recipients of the holy

sacrament.

14. So also, a Division Bench of this Court had occasion to consider the question of faith and belief in the matter of confession undertaken by the Christians in ***Chacko v. Union of India*** [2019 (2) KLT 291]. Paragraphs 9, 10 and 11 are relevant to the context, which read thus:

“9. Our Constitution, through its preamble, proclaims liberty of thought, action, belief, faith and worship as cherished concepts, that are guaranteed to all persons through Articles 25 and 26 thereof. It is through the exercise of these very liberties, that the petitioner chose to be a member of the 6th respondent Church, or to continue to be one. His actions were also in accordance with the exercise of his fundamental right to choose the religion that he wanted to adopt. Having done so, he cannot be heard to say that his continuance as a member of the Church is on account of any compulsion that is imposed on him. Just as he had a choice to embrace the religion or any facet of it, he has a choice to leave it for another. His dilemma is one that stems from his uncertainty as to the path he must pursue for spiritual salvation. That is a dilemma that cannot be resolved through legal proceedings, much less through these proceedings under Art.226 of the Constitution of India.

10. Ours is a secular country which permits all citizens to have their freedom of expression and belief, faith and worship and the laws of the country does not compel anyone to choose any particular religion, in preference to another. We can also take notice of the fact that even among those professing Christian religion, the practice of confession is not universal but the episcopal churches have the practice of confession directly to the priest. In fact, it is pointed out to us that the Malankara Mar Thoma Syrian Church, who are arrayed here as the 7th respondent, do not have the practice of confession to the

priest and in fact, sins can be absolved through intercessional prayer.

11. That apart we cannot overlook the fact that the respondent churches also have the constitutionally guaranteed rights under Article 26, to manage their religious affairs and it would, therefore, be highly improper for the Court to intervene and declare that confession cannot be made a condition precedent, for enjoyment of any of the spiritual and temporal rights of the member of a Christian church and denial of any such right would thus amount to denial of fundamental right. Therefore, such intervention is found to be constitutionally impermissible.”

15. It is equally important to note that the freedom of conscience and free profession, practice and propagation of religion, and freedom to manage religious affairs granted under Articles 25 and 26 of the Constitution of India respectively are absolute, but for the restrictions contained thereunder i.e., public order, morality and health. It, thus, means the purport of Article 26 is to protect the rights conferred on a religious denomination or any section thereof. Accordingly, on a deeper analysis of Articles 25 and 26 of the Constitution, it is clear that the members of the Christian community are entitled to enjoy the fundamental rights guaranteed under Articles 19(1)(a) and 21 of the Constitution, subject to the restrictions contained under Articles 25 and 26. Moreover, the term

'expression' denoted in Article 19(1)(a) of the Constitution is to be construed in a wider angle so as to be comprehensive of the citizen's freedom to follow the culture, practice, faith and conventions followed by a religious denomination.

16. Thinking in that manner, receiving holy sacrament by a believer is nothing but an expression of his/her faith in the said practice followed for centuries. So also, the belief of a citizen in a particular practice followed by a religious denomination is also an expression of freedom to think and accept the faith he/she believes to be true and is entitled as of right to conserve the said faith. Therefore, we have no doubt that no authority is empowered to interfere with the practice propagated and followed by the Christian denomination in respect of holy sacrament, subject to the restrictions specified under Articles 25 and 26 of the Constitution, otherwise than in accordance with law.

17. Therefore, every religious denominations or any section thereto shall have the right to establish and maintain institutions for religious and charitable purposes,

to maintain its own affairs in the matters of religion, to own and acquire immovable and movable property and to administer such property in accordance with law. That said, the freedom guaranteed under Articles 25 and 26 is to be construed in a broader outlook and not in a narrow and pedantic manner, as is contended by the petitioner.

18. So much so, the practice of receiving the holy sacrament by members of the religious denomination in a manner followed in the community is the personal liberty of the members and well protected under Article 21 of the Constitution. Such a religious practice is an essential and integral part of it.

19. Therefore, in our considered opinion, the receipt of the holy sacrament by the Christians is a matter of absolute faith and belief of the Christians, and unless and until it is established that the act of administration of holy sacrament has interfered with the public order, morality and health, interference under Article 226 is next to impossibility. However, if at all any changes are to be made in the practice, beliefs and faith, it is to be done by

the Church authorities themselves and it is not possible for the writ court under Article 226 of the Constitution of India to issue any directions to the State and its authorities to take action in the matter of administration of holy sacrament by the priests in the churches. Moreover, the petitioner has not brought to our notice any law that is being violated by the churches in this regard and therefore, we are unable to find any arbitrariness, illegality or other legal infirmities, justifying interference of this Court under Article 226 of the Constitution of India.

Needless to say, writ petition fails and accordingly, it is dismissed.

sd/-

**S. MANIKUMAR,
CHIEF JUSTICE.**

sd/-

**SHAJI P. CHALY,
JUDGE.**

Rv

APPENDIX

PETITIONER'S EXHIBITS:

EXHIBIT P1	A TRUE COPY OF THE RESOLUTION NO.13 OF SYNOD HELD ON 11 AND 12 JANUARY, 2005.
EXHIBIT P2	A TRUE COPY OF THE LETTER DATED 15.7.2011 OF RESPONDENT NO.9.
EXHIBIT P3	A TRUE COPY OF THE LETTER DATED 16.1.2017 BEFORE THE RESPONDENTS NO. 6-10.
EXHIBIT P4	A TRUE COPY OF THE REPRESENTATION DATED 10.7.2018.
EXHIBIT P5	A TRUE COPY OF THE REPRESENTATION DATED 10.7.2018.
EXHIBIT P6	A TRUE COPY OF THE SUGGESTED BILL TITLED KERALA REGULATION OF PROCEDURES FOR PREVENTING PERSON TO PERSON TRANSMISSION OF INFECTIOUS ORGANISMS ACT, 2018.
EXHIBIT P7	A TRUE COPY OF THE LETTER NO.F2/270/2019/H&FWD DATED 26.7.2019.
EXHIBIT P8	A TRUE COPY OF THE REPRESENTATION NO.16/QPMPA/NP/2019-20 DATED 12.11.2019.
EXHIBIT P9	A TRUE COPY OF THE REPRESENTATION NO.16/QPMPA/NP/2019-20 DATED 12.11.2019.

RESPONDENTS' EXHIBITS: NIL

/True Copy/

PS to Judge.

