

IN THE HIGH COURT OF KERALA AT ERNAKULAM

Present:

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

&

THE HONOURABLE MR. JUSTICE SHAJI P.CHALY

TUESDAY, THE 1st DAY OF APRIL, 2020/12TH CHAITHRA, 1942

WRIT PETITION (TMP) NO. 2/2020

PETITIONER :

The Kerala High Court Advocates' Association, represented by its Secretary,
1st Floor, High Court of Kerala Building, Ernakulam -682 031

By Adv. Sri. P. Ravindran (Sr.) along with Sri. Manu Govind

RESPONDENTS :

1. The State of Kerala, represented by the Chief Secretary to Government of Kerala, Secretariat, Thiruvananthapuram 695 001
2. The Secretary to Government of Kerala, Department of Home, Secretariat, Thiruvananthapuram 695 001.
3. The Secretary to Government of Kerala, Department of Health, Secretariat, Thiruvananthapuram 695 001
4. The Director General of Police and State Police Chief, Police Head Quarters, Thiruvananthapuram 695001
5. The Union of India, represented by Secretary to Government of India, Department of States, Ministry of Home Affairs, New Delhi 110001.
6. The State of Karnataka, represented by the Chief Secretary, Secretariat, Vikasa Saudha, Bangalore 560001.
7. The State of Tamil Nadu, represented by the Chief Secretary, Secretariat, Chennai 600009.
8. The Union Territory of Puducherry, represented by its Lieutenant Governor, Puducherry 605013.
9. The National Disaster Management Authority, NDMA Bhawan, A-1, Safdarjung, Enclave, New Delhi - 110029 represented by its Member Secretary
10. The Kerala State Disaster Management Authority, represented by its convenor, Observatory Hills, Vikas Bhavan P.O, Thiruvananthapuram – 695033

Sri. Ranjith Thampan, Additional Advocate General for R1 to R4
Adv.Sri. Jaishankar V. Nair , CGC, for R5
Adv. Sri. S . Manu for R6

This Writ Petition having come up for orders on 01-04-2020, the Court on the same day passed the following :

A.K. JAYASANKARAN NAMBIAR, J.

&

SHAJI P. CHALY, J.

W.P.(C). (TMP) NO.2 OF 2020

Dated this the 1st day of April, 2020

ORDER

A.K. Jayasankaran Nambiar, J.

Pursuant to our last order, dated 30.03.2020, we heard the learned Advocate General of Karnataka through Video Conferencing on 31.03.2020, as well as today (01.04.2020). At the time of hearing on 31.03.2020, it was submitted by the Advocate General of Karnataka that some of the road routes from Karnataka to Kerala, bordering Kannur District, that had hitherto been blocked by the State of Karnataka, could be opened and maintained as such till the lifting of the lockdown arrangement, to facilitate transportation of essential commodities to the State of Kerala. He then sought for a day's time to ascertain whether it would be possible to remove the blockade over the roads bordering Kasaragod District, so as to facilitate the movement of vehicles carrying patients who required urgent medical attention.

2. At the video conferencing scheduled @ 1.45 pm today for the purpose, the learned Central Government Standing Counsel submitted that he had instructions from the Ministry of Home Affairs, that efforts were on to try and bring about an amicable resolution of the issue, and that a meeting with the Chief Secretaries of the two States was also being considered. Reacting to the said submission, the learned Advocate General of Karnataka submits that it would be desirable for this court to await the outcome of such

deliberations before passing any orders in this case.

3. The learned Senior Counsel appearing for the Petitioner, as also the learned Additional Advocate General of Kerala would, however, object to the said submission and point out that, when the right to life of a citizen is at stake, and the action of the State of Karnataka in erecting blockades that prevent the movement of persons seeking medical relief, go against the grain of the guidelines issued, both by the Central Government under the Disaster Management Act, as also the Government of Karnataka under the Epidemic Diseases Act, 1897 read with the enabling provisions under the Disaster Management Act, 2005, this Court ought not to wait any longer, and must pass urgent orders to protect the fundamental right of the citizens.

4. With a view to enable the Central Government and the two State Governments to confer and amicably resolve the issue, we adjourned the special sitting of this Court to 5.30 pm. When the court re-convened through video conference at 5.30 pm, we were informed by the learned Central Government Standing Counsel that a meeting convened by the Central Government, in the Ministry of Home Affairs, with the Chief Secretary's of the States of Kerala and Karnataka, at 5 pm today, was currently in progress, and that the outcome of the said deliberations would be known by 6 pm. We therefore adjourned the video conference to 6.30 pm.

5. When the video conference was re-convened at 6.30 pm, we were informed by the Central Government Standing Counsel that no decision was arrived at, at the meeting that was convened today by the Central Government. He points out, however, that although the Central Government has issued guidelines under the Disaster Management Act, the State Governments have been given the freedom to relax those conditions based on ground realities faced by them. He would also submit that the issue in question involves

policy considerations which this Court would not ordinarily interfere with, more so when discussions are still ongoing between the States and the Central Government, and the impact of any decision would be felt across the country. The learned Advocate General of Karnataka, on his part, made elaborate submissions as regards the maintainability of the writ petition and, in particular, took us through precedents that suggest that this Court will not have the territorial jurisdiction to entertain a writ petition in cases where the cause of action has arisen in Karnataka.

6. On a consideration of the rival submissions, we feel that we have no option now, but to pass this order with a view to safeguard the fundamental rights of citizens during this grim period in our country's history. This Court had readily agreed to the request of the learned Advocate General of Karnataka, for time to revert to this Court, with a practical solution to the problem faced by the residents in Kasargod District, in Kerala, who were prevented from travelling to Mangalore, in Karnataka, for urgent medical treatment. The said restrictions imposed by the State of Karnataka, through the blockades erected for the purpose, has resulted in the loss of many lives in the last two days. Despite the grant of time, the learned Advocate General of Karnataka has not been able to come up with any solution to the problem. The discussions between the Central Government and the two State Governments have also not produced any results. Under the circumstances, we feel that any further delay in resolving the stalemate could be catastrophic for the residents of Kasargod District in Kerala.

7. The right of a citizen to move freely throughout the territory of India, subject to reasonable restrictions that may be imposed in the interests of the sovereignty and integrity of India, the security of the State, public order etc. is recognised under Art.19 (1)(d) of our Constitution. A citizen also has a fundamental right to life and personal liberty guaranteed to him by the State under Art.21 of our Constitution. Both these rights

are simultaneously infringed in the case of a resident of the State of Kerala when he/she is denied entry into the State of Karnataka for availing medical treatment, or is deprived of essential articles of food that are being transported into the State through blockades erected by the State of Karnataka. We cannot forget that India is a signatory to the International Convention on Economic, Social and Cultural Rights, Art.12 of which obliges all State Parties to the Convention to recognise the right of everyone to the highest attainable standard of physical and mental health, and to take steps for the creation of conditions which would assure to all, medical service and medical attention in the event of sickness. Our Courts have since read in these obligations into the guarantee assured to our citizens under Art.21 of our Constitution. We are also of the view that the restrictions imposed on the transportation of essential articles of food would amount to a breach of the rights protected under Arts.301-304 of our Constitution.

8. The learned Advocate General of Karnataka vehemently reminds us that we would be exceeding our jurisdiction if we issue any direction to the State of Karnataka in this matter. We are well aware of our jurisdictional limitations and we, therefore, do not propose to issue any direction to the State of Karnataka in this matter. We might however observe that when a High Court of a State in the Union of India, finds and declares the actions of the executive Government of another State to be illegal and unconstitutional, the said State Government would be obliged, under our Constitution, to defer to the said declaration of law by a Constitutional Court of this Country, notwithstanding that the said Court is situated beyond the territorial limits of the said State. The fundamental rights guaranteed to each Citizen of India under our Constitution, are to be zealously protected by the State, which term refers jointly to the Centre, the States and the Union Territories that together constitute the Union of India. The said Federal principle is eloquently and succinctly expressed in Art.1 of our Constitution, which states "*India, that is Bharat, shall be a Union of States*". The State Government of Karnataka cannot therefore be heard to

contend that it is not obliged to respect the fundamental right of a citizen who resides outside its territorial limits. So long as it is an integral part of the Union of India, the State of Karnataka has necessarily to respect, and guarantee, the fundamental rights of a citizen of this country, irrespective of the place of his residence or domicile within the country. We sincerely hope that the State Government of Karnataka will take note of the said basic principles enshrined in our Constitution and take immediate steps to resolve the present stalemate.

9. As already mentioned above, we feel compelled to issue directions to the Central Government today because we are of the view that any further delay in issuing directions could entail loss of precious lives of our citizens. The National Highways come under the administrative jurisdiction of the Central Government and the provisions of the National Highways Act clearly provide for the maintenance of such highways by the Central Government, and even provide for penal measures to be taken against anyone blocking such a highway. The arterial roads that connect Mangalore in Karnataka, to Kasaragod in Kerala, are part of the National Highway network and it is therefore the duty of the Central Government to ensure that the said roads are kept free of blockades. No doubt, restrictions may be imposed in times of a national emergency such as the present, but when the guidelines issued by the Central Government under the Disaster Management Act itself permits travel for urgent medical treatment, then the said guidelines have necessarily to be enforced by the Central Government through the removal of the blockades that prevent such travel. We, therefore, direct the Central Government to forthwith intervene in the matter and ensure that the blockades erected by the State of Karnataka, on the National Highways connecting the said State to the State of Kerala, are removed forthwith, and without any further delay, so as to facilitate the free movement of vehicles carrying persons for urgent medical treatment, across the border between the two States. We may re-iterate that we expect the Central Government to act expeditiously in this matter, taking note of

the human lives that are at stake.

10. Before parting, we might also mention that there are other issues raised in this public interest litigation and we have not referred to, or expressed any opinion on, the said issues. We also direct the respondents to file their counter affidavits to the writ petition within three weeks from today.

Post the writ petition along with W.P.(C). (TMP) No.4/2020 for further orders after three weeks.

A.K.JAYASANKARAN NAMBIAR
JUDGE

SHAJI P. CHALY
JUDGE