

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

SPECIAL LEAVE PETITION (CIVIL) D NO. 10823 OF 2020

IN THE MATTER OF

State of Karnataka:

Petitioner

Versus

State of Kerala and others

Respondents

COUNTER AFFIDAVIT ON BEHALF OF THE
RESPONDENTS 1 TO 4

I, N. Jeevan, S/o C.R.N. Pisharady, Aged 50 years, Joint Secretary to Government /Law Officer, Government of Kerala, Travancore Palace, Kasturba Gandhi Marg, New Delhi, do hereby solemnly affirm and swear this Affidavit as under:

1. That I am the Joint Secretary to Government /Law Officer, Government of Kerala and as such well conversant with the facts as derived from the records of the case and therefore, competent to swear this affidavit.
2. The SLP has been filed by the State Of Karnataka challenging an interim order dated 01.04.2020 passed by the High Court Of Kerala directing the Central Govt. to facilitate the free movement of vehicles carrying persons for urgent medical treatment across the border between Kerala and Karnataka (Talapadi). This Hon'ble Court considering the gravity of the situation passed an order on 03.04.2020 while issuing notice to the respondents.

The operative portion of the Order dated 03.04.2020 of this Hon'ble Court reads as under;

"We direct the Union of India and the States of Karnataka and Kerala to confer immediately and formulate the parameters for passage of patients for urgent medical treatment at the interstate border at Talapadi. List on 07.04.2020."

3. The Home Secretary to Govt. of Kerala after receiving the order dated 03.04.2020 of this Hon'ble Court forwarded a letter D.O No. 24/ACS/Home dated 04.04.2020 to Sri Ajay Kumar Balla IAS, Union Home Secretary requesting him to inform the time for video conference considering the urgency of the matter. The copy of the letter D.O No. 24/ACS/Home dated 04.04.2020 of the Additional Chief Secretary (Home), Kerala Govt. is **Annexure R1** to this counter. No response has been received from the Home Secretary, Union Government so far.
4. The above special leave petition is not maintainable either in law or on facts. All the averments in the special leave petition, save those that are expressly admitted or otherwise traversed herein, are denied.
5. The issues raised by the original petitioner before the Kerala High court in the WP which is pending are the following;
 - (i) the blockade by the State of Karnataka of various entry points from Kasaragod District in Kerala to Karnataka, including National Highway, thereby preventing people from the northern portion of the Kasaragod

District from having access to Mangalore and Sullya in Karnataka for medical treatment/ requirements and also preventing the movement of essential commodities through the said roads and

(ii) the blockade by the State of Karnataka of the road from Thalassery in Kannur District, Kerala to Iritty, in Kannur District, Kerala to Maakkutta to Virajpetta (in Kodagu/ Coorg District, Karnataka) to Mysore (Karnataka) Road (known as Thalassery –Coorg (Kodagu) Road) at the Inter State Border at Kuttupuzha, thereby preventing movement of essential commodities through the said road.

The factual aspects pertaining to the blockade by the State of Karnataka of various entry points from Kasaragod District in Kerala to Karnataka, including National Highway, thereby preventing people from the northern portion of the Kasaragod District from having access to Hospitals in Mangalore and Sullya in Karnataka for medical treatment/ requirements and also preventing the movement of essential commodities through the said roads.

6. Kasaragod District is the northernmost district of the State of Kerala and it borders Dakshin Kannada District of Karnataka. A substantial portion of Kasaragod district, north of Chandragiri River, formed part of South Canara District of the erstwhile Madras State. Many people in the Northern part of Kasaragod District of Kerala are depending on the Hospitals and the medical facilities available in Mangalore and Sullya in Dakshin Kannada District of

Karnataka for their Health Care needs, because for them Mangalore and Sullya are the nearest towns. From Talappady in Manjeshwar Taluk of Kasaragod District, there is only 15 kilometres to Mangalore. This has been the practice for decades. So free flow of ambulances and vehicles carrying patients across the border is to be enforced in order to save human lives. Further, Kerala is a consumer State and depends heavily on its neighbouring States for supply of essential goods. Therefore, essential goods are also transported from Karnataka to Kerala through the roads providing access to Karnataka from the Kasaragod District.

7. Out of the 17 Border entries between Kerala and Karnataka State in Kasaragod District of Kerala, five main entries (Thalappady NH 66 road, Adkasthala - Adynadka Road, Adhur - Kottiyadi - Sullya State Highway, Manimoola - Sullya Road and Panathur - Chemberi Road) are opened to the public and rest of the 12 entries have been closed as part of the lock down with temporary Barricades to regulate the traffic. These five roads entering the State of Karnataka have been kept open since they are roads leading to Mangalore and Sullya and since the people of Kasaragod, as stated above, are very much dependent on those towns for availing Hospital Services and for purchase of essential commodities. But the Roads leading to Mangalore in Vorkady, Pathur, Kedumpady, Nandarpadavu, Talike - Bakrabail, Kaniyala and Anekkal are seen blocked by dumping piles of soil fully

blocking the vehicular entry which resulted in the blocking of even ambulances plying to Mangalore for Medical Emergencies for patients in Kasaragod.

8. The details of the aforementioned five roads from Kasaragod to Mangalore, which have been kept open by the State of Kerala for transport of essential goods and for transport of individuals for medical treatment, and the particulars of the blockade of such roads by the State of Karnataka are as hereunder:

- a) National High Way 66 Passing through Manjeshwar Taluk - State Border at- Thalappady - Blocked by Karnataka - Using Temporary Baricades.
- b) Adkasthala - Adyanadka Road- Passing through Manjeshwar Taluk is a PWD Road - This road is Blocked by Karnataka at Adyanadka using Temporary Barricades
- c) Adhur - Kottiady- Sullya- Road - State Highway - maintained by PWD - State border at Panchikkal- This road. passes through Karnataka territory at Gwalimukha- Kottiadi and Mudur- Panchikkal. This Road passes through the Kasargod Taluk. This Road has been blocked by dumping heaps of soil at Gwalimukha, Kottiady, Mudur, and Panchikkal.
- d) Manimoola -Sullya Road This is classified as Major District Road and is maintained by PWD. This Road passes through Kasaragod Taluk. This road has been blocked by Karnataka at the State Border at Bandadka by dumping heaps of soil

e) Kanhangad- Panathur- Chemberi Road- Classified as State Highway and maintained by PWD. This road Passes through Vellarikund Taluk In Kasaragod District . Blocked by Karnataka at Karike near Chemberi boarder .

9. There are also blockades of roads at the instance of the State of Karnataka by entering into the geographical area of the State of Kerala:

The blockades made by State of Karnataka on many roads passing through the Kerala State Border are clear encroachments in to the geographical territory of the State of Kerala. At a junction called Panamangalore, Pathor Road, which is a Kerala State Highway, has been blocked by the State of Karnataka within 200 metres of Kerala Border. Another instance of ingress into the geographical area of Kerala is the blockade in Denampady Panchayat in Cherkkala - Panjikkal Road, which is a Kerala State Highway. In Vorkady also, similar act was done by the State of Karnataka. Vorkady is a Panchayath in the State of Kerala. The construction and maintenance of this road is done completely by the State of Kerala. The officers of the State of Karnataka have put blockades at many parts of this road at Gwalimukha- Kottiady, Mudoor, Panchikkal etc. by making heaps of soil on the road using JCB and putting Police Barricades therein with intention to completely shut down the road and thereby prevent the movement of men and vehicle through the road. The State of Karnataka and its Officers have no right to do such act on the roads belonging to the State of Kerala and within the territory of the state of Kerala.

10.A total of eight lives have been lost till date on account of these blockade of Border Roads by the State of Karnataka. One person died after this Special Leave Petition was filed by the State of Karnataka.

11.Smt. Beefathima, who was aged 70, was a native of Bandwal, Karnataka. She had come to her Grand Daughter's house at Udyawar, Manjeshwar, Kasaragod District 15 days ago. She became seriously ill. Even though her relatives tried to take her to Mangalore for treatment in an ambulance, the same was stopped by Karnataka Police at Karnataka Border boundary and she could not be taken to Mangalore. She later succumbed to her illness.

12.Shri. Abdul Hameed. aged 60, was a native of Kunjathur, Manjeshwaram Taluk. The ambulance which took him to a hospital in Mangalore was not allowed to enter Karnataka Border. This patient had Cardiac issues and his life could have been saved, but for want of proper medical attention in time died later on.

13.On Tuesday (31/03/2020), two persons, Shri. Shekhar, Gudakeri, Hosabettu, Manjeshwar and Smt. Baby, W/o Mahabala Shetty, Thuminadu, Kunjathur succumbed to their illnesses as they could not travel to Manglore for treatment on account of the border blockade by Karnataka. Shri. Shekhar was suffering from heart disease. He was not able to visit the Hospital where he was undergoing treatment and he succumbed to his illness. Smt. Baby was also undergoing treatment at a Hospital in Mangalore. She was suffering

from many illnesses. Due to denial of access to Hospital, she died due to High Blood Pressure.

14. Shri.Madhava was a diabetic patient. On the way to Hospital, he was blocked by Karnataka Police and was denied access to the Hospital. He was then brought back to his home. Shri.Yusuf, S/o Ali Kunhi, aged 50 years, Thuminad, Kunjathur, Kasaragod was a heart patient. The ambulance carrying him was blocked at Thalappady on 05/04/2020 and he succumbed to his illness.

15.Shri.Rudrappa, S/o Bhairappa, aged 52 years, residing at Pirara Moola, Govinda Nagar, Badaje Village, Manjeshwar, Kasaragod was suffering from heart ailment since two years and was being treated at a hospital at Mangalore. The vehicle in which he was carried to hospital was blocked by Karnataka Police on 05.04.2020 at the Kerala Border and his relatives had to bring him back. He was taken to a hospital at Uppala, wherein he succumbed to his illness.

16.A woman, native of Patna, had to be taken to Mangalore from Kasaragod for delivery. The ambulance in which she and her husband travelled was blocked at Thalappady by Karnataka Police and she gave birth to a baby in the ambulance while being taken back to a hospital in Kasaragod.

17. The contention and averment to the effect that the existing medical facilities in Mangalore in Karnataka were not sufficient to accommodate patients from Kasaragod in Kerala is not correct. The Hospitals in Mangalore are ready to cater to the patients from Kasaragod. A true photocopy of the Letter from Dr. Yusuf Kumble, Cardiologist and Managing Director, Indiana Hospital to the Deputy Commissioner, Dakshin Kannada, Mangaluru is produced herewith as **Annexure –R2**. This will also cut the root of the contention of the State of Karnataka to the effect that local sentiments are against removing the blockade. The contention that there would be break down of law and order if the blockades were removed is not based on any cogent materials.

18. The Government of Karnataka has issued Order dated 23/03/2020 regarding the steps to be taken during COVID -19. As per Clause (k) of paragraph 3 therein, it is mandated that State Borders with neighbouring States shall remain closed except for medical emergencies. A true photocopy of the Order dated 23/03/2020 issued by the Government of Karnataka is produced herewith as **Annexure –R3**. The Government of Karnataka came with an addendum restricting Inter State movements of even patients. The addendum, a copy of which has been produced with the special leave petition as Annexure –P4, is stated to be under the Karnataka Epidemic Act. The said Addendum, apart from being unsustainable in law for the reasons

stated hereunder, is vitiated by malafides also. The addendum is dated 31.03.2020. That is the same was issued after the matter was taken up for consideration by the High Court of Kerala and contentions were raised relying upon Annexure – R3 Order. At any rate, domicile considerations or residence in a State cannot, in any manner, be stated to be a criterion for providing treatment in hospitals situated in a particular State.

19. The Honourable Chief Minister of Kerala had repeatedly taken up the matter with the Government of Karnataka and the Government of the Union of India. The Hon'ble Governor of Kerala also took up the matter with the Union Government and the State of Karnataka. The Hon'ble Chief Minister had also taken up the matter with the Hon'ble Union Home Minister and the Hon'ble Union Minister Shri. Sadananda Gowda. This is apart from the numerous interventions at the Secretary level between the Chief Secretaries and Secretaries of Kerala and Karnataka.

20. Even after the impugned Order was passed by the High Court of Kerala, the District Medical Officer, Dakshin Kannada District reportedly issued an Order directing the hospitals of Mangalore not to admit patients from Kasaragod District. Reportedly, even after this Honourable Court was seized of the matter and Order dated 03.04.2020 was passed by this Honourable Court in this special leave petition, the Honourable Chief Minister of

Karnataka had openly declared that the blockade at Kerala Karnataka Border would not be removed.

Factual aspects pertaining to the blockade by the State of Karnataka of the road from Thalassery in Kannur District, Kerala to Iritty, in Kannur District, Kerala to Maakkutta to Virajpetta (in Kodagu/ Coorg District, Karnataka) to Mysore (Karnataka) Road (known as Thalassery –Coorg (Kodagu) Road) at the Inter State Border at Kuttupuzha, thereby preventing movement of essential commodities through the said road

21. The averments and contentions in the special leave petition to the effect that no essential commodities were being moved from Kodagu (Coorg) District and that there were no hamper to essential commodities as two alternate routes from Mysore to Kannur, which were only 21 kilometres longer, were kept open, are wrong and hence denied. It may be true that Kodagu (Coorg) District may not be producing any fruits or vegetables. But the transport of essential commodities from Mysore and nearby districts of Karnataka to Kannur District of Kerala is undertaken through the 190 kilometres long Thalassery (in Kannur District, Kerala) to Iritty (in Kannur District, Kerala) to Kuttupuzha to Maakkutta to Virajpetta (in Kodagu/ Coorg District,

Karnataka) to Mysore (Karnataka) Road (known as Thalassery –Coorg (Kodagu) Road). The said road has been closed by the State of Karnataka at Kuttupuzha Inter State Border. Before the COVID 19 outbreak, every day, nearly 140 goods transport vehicles used to ply through this road connecting Kannur District of Kerala and Mysore District of Karnataka.

22.The alternate routes suggested by the State of Karnataka are either circuitous or create difficulties in so far as Kannur District in Kerala is concerned and the blockade of traffic through Thalassery (Kannur) - Iritty -Kuttupuzha – Maakkutta-Virajpetta (Coorg) – Mysore Road (Thalassery – Coorg Road), providing easy access to Kannur District, will result in price rise of essential commodities in Kannur District. The first route suggested by Karnataka is Kannur- Manathavady – Kattikulam- Bavali- HD Kotte Road is having only an extra distance of 18 kilometres. But night traffic (6.00 pm to 6.00 am) is prohibited through this road and, therefore, the essential commodities, particularly vegetables and other food items, would not reach Kannur by day break or early in the day for the same to be distributed for sale all over Kannur during the day. This will create problems especially during this COVID season. Further, there will be a heavy rush through this road when the same is opened at 6.00 am.

23.The other route suggested by Karnataka is Kannur- Manathavady- Sulthan Bathery – Gundalpet- Mysore Road, which enters Kerala through the hilly District of Wayanad and enters Kannur District after covering the entire

Wayanad District. This road traverses additionally more than 80 kilometres to reach Kannur, and that too through a hilly terrain, when compared to Thalassery (Kannur) - Iritty -Kuttupuzha –Maakkutta-Virajpetta (Coorg) – Mysore Road (Thalassery – Coorg Road).

24.The Honourable Chief Minister of Kerala had repeatedly taken up the matter with the Government of Karnataka and the Government of the Union of India. A true photocopy of the Letter dated 27.03.2020 from the Hon'ble Chief Minister of Kerala to the Hon'ble Prime Minister with regard to removing the blockade of Thalassaerry – Coorg Road is produced herewith as **Annexure R4**. A true photocopy of the Letter dated 29.03.2020 from the Hon'ble Chief Minister of Kerala to the Hon'ble Prime Minister in this regard is produced herewith as **Annexure R5**. The Hon'ble Governor of Kerala also took up the matter with the Union Government and the State of Karnataka. The Hon'ble Chief Minister had also taken up the matter with the Hon'ble Union Home Minister and the Hon'ble Union Minister Shri.Sadananda Gowda. This is apart from the numerous interventions at the Secretary level between the Chief Secretaries and Secretaries of Kerala and Karnataka.

25.The High Court of Kerala, as per Order dated 31.03.2020 in Writ Petition (Civil) Temporary No. 2 of 2020, ordered that the District Collector, Kannur must forward a request to the Secretary, Home Department, Karnataka regarding opening of Kuttupuzha- Virajpetta Border at Maakkutta in the

Iritty (Kannur) -Kuttupuzha –Maakkutta-Virajpetta (Coorg) – Mysore Road. In compliance of the said Order dated 31/03/2020, the District Collector, Kannur, as per letter dated 31/03/2020, has addressed the Secretary, Home Department, Karnataka regarding opening of Kuttupuzha- Virapetta Border at Maakkutta in the Iritty (Kannur) -Kuttupuzha –Maakkutta-Virajpetta (Coorg) – Mysore Road. A true photocopy of the Order dated 31.03.2020 of the High Court of Kerala in Writ Petition (Civil) Temporary No. 2 of 2020 is produced herewith as **Annexure R6** . A true photocopy of the Letter dated 31/03/2020 from District Collector, Kannur to the Secretary, Home Department, Karnataka is produced herewith as **Annexure R7**.

26. In response to Annexure – R7 letter, the Additional Chief Secretary, Home Department, Government of Karnataka forwarded a letter dated 01.04.2020 to the District Collector, Kannur, Kerala stating that the Thalassery – Coorg (Kodagu) Road could not be opened and that the alternate routes suggested and opened would be kept opened. A true photocopy of the Letter dated 01.04.2020 from the Secretary, Home Department, Government of Karnataka to the District Collector, Kannur is produced herewith as **Annexure R8**.

27. In response to Annexure – R8 letter, the District Collector, Kannur, Kerala, forwarded a further letter dated 04.04.2020 to the Additional Chief Secretary, Home Department, Government of Karnataka, explaining the reasons why the alternate routes kept open were not feasible and as to why

Thalassery- Iritty- Virajpet- Coorg Road was to be opened. A true photocopy of the Letter dated 04.04.2020 from District Collector, Kannur to the Additional Chief Secretary, Home Department, Karnataka is produced herewith as **Annexure R9**. It is most humbly submitted that it was submitted before the High Court of Kerala on behalf of the State of Karnataka that two roads which were hitherto kept closed would be opened. However, no such road which was hitherto kept closed was opened.

28.As per Section 10 (2) of the Disaster Management Act, 2005 (hereinafter “the DM Act” for short), the National Disaster Management Authority is empowered to issue guidelines/ give directions, interalia, to the concerned Ministries or Departments of the Government of India, the State Governments and the State Authorities regarding measures to be taken by them in response to any threatening disaster situation or disaster. As per Section 38 of the DM Act, each State Government shall take all measures specified in the guidelines laid down by the National Authority. As per Section 39 of the DM Act, it shall be the responsibility of every department of the Government of a State to take measures necessary for prevention of disasters in accordance with the guidelines laid down by the National Authority. As per Section 62 of the DM Act, it shall be lawful for the Central Government to issue direction in writing to the Ministries or Departments of the Government of India, or the National Executive Committee or the State Government, State Authority, State Executive Committee, statutory bodies

or any of its officers or employees, as the case may be, to facilitate or assist in the disaster management and such Ministry or Department or Government or Authority, Executive Committee, statutory body, officer or employee shall be bound to comply with such direction. That there is a statutory compulsion to comply with the guidelines is also discernible from the fact that refusal to comply with any such direction is an offence in terms of Section 51 of the DM Act. Further, as per Section 55 of the Act, where an offence under this Act has been committed by any Department of the Government, the head of the Department shall be deemed to be guilty of the offence and shall be liable to be proceeded against. As per Section 72 of the DM Act, the provisions of the same shall have effect, notwithstanding anything inconsistent therewith contained in any other law for the time being in force or in any instrument having effect by virtue of any law other than the said Act.

29. The Union Home Secretary issued Order No. 40-3/2020-DM-I(A) dated 24.03.2020 in exercise of the powers conferred on him under Section 10 (2) (1) of the DM Act prescribing Guidelines on the measures to be taken by the Union and State Governments for the prevention of spreading of COVID - 19. A true photocopy of the Order No. 40-3/2020-DM-I(A) dated 24.03.2020 of the Secretary, Ministry of Home Affairs, Government of India, together

with Annexure and Appendix thereto is produced herewith as **Annexure R10**.

30.As per Guidelines produced as Annexure to Order No. 40-3/2020-DM-I(A) dated 24.03.2020(produced as Annexure – R10, delivery and transport of essential goods are permitted as per Clauses 4 and 15. Clause 15 specifically mandates that the restrictions therein relate to movement of people and not to that of essential goods.

31.As per Order No. 40-3/2020-DM-I(A) dated 25.03.2020 of the Secretary, Ministry of Home Affairs, Government of India, an addendum to the aforementioned guidelines were issued. A true photocopy of the Order No. 40-3/2020-DM-I(A) dated 25.03.2020 of the Secretary, Ministry of Home Affairs, Government of India is produced herewith as **Annexure R11**. As per Clause K of the addendum, cross land border movement of essential goods is permitted.

32.Standard Operating Procedure has been prescribed for maintaining supply of essential goods during the time of COVID -19. As per Letter No. 40-3/2020-DM-I(A) dated 26.03.2020, the Union Home Secretary has addressed the Chief Secretaries/ Administrators of States/ Union Territories to the effect that the Order No. 40-3/2020-DM-I(A) dated 24.03.2020 was issued under the DM Act; that the purpose of the same was to prevent the spread of COVID 19 by maintaining social distancing while at the same time ensuring

supply of essential goods; and that the restrictions fundamentally related to movement of people and not to movement of essential goods. A true photocopy of the Letter No. 40-3/2020-DM-I(A) dated 26.03.2020 of the Secretary, Ministry of Home Affairs, Government of India is produced herewith as **Annexure R12**. The Standard Operating Procedure which has been prescribed as per Annexure – R12 Letter is to ensure smooth availability of essential goods.

33. Annexure – R10 Order specifically mandates maintenance of health infrastructure during the lockdown period. Clause 3 of Annexure – R10 guidelines mandates that hospitals and medical services shall remain functional and that transport for the same must be permitted. Clause 7 therein provides exception to medical and emergency staff during the period of lock down. Clause K of Annexure – R11 guidelines permits transport of medical facilities.

34. The guidelines as per Annexure – R10, R11 and R12 have been issued in terms of Sections 10 and 62 of the DM Act. The same is equally binding on the States of Kerala and Karnataka in terms of Sections 38 and 39 of the DM Act. The mandatory nature of such guidelines is evident from the punishment for violation for the same provided for under Sections 51 and 55 of the DM Act. That the Union Government contemplated punishment for

such violation is clear from the fact that Sections 51 to 60 of the DM Act were appended to Annexure – R10 Order.

35. The act of the State of Karnataka in (i) blocking various entry points from Kasaragod District in Kerala to Karnataka, including National Highway, thereby preventing people from the northern portion of the Kasaragod District from having access to Mangalore and Sullya in Karnataka for medical treatment/ requirements and also preventing the movement of essential commodities through the said roads and (ii) blocking the road from Thalassery in Kannur District, Kerala to Iritty, in Kannur District, Kerala to Maakkutta to Virajpetta (in Kodagu/ Coorg District, Karnataka) to Mysore (Karnataka) Road (known as Thalassery –Coorg (Kodagu) Road) at the Inter State Border at Kuttupuzha, thereby preventing movement of essential commodities through the said road, are arbitrary, illegal, violative of Annexure – R10, 11 and 12 statutory guidelines and punishable as per the provisions of the DM Act. The Central Government is statutorily mandated as per Section 35 of the DM Act to do all that are necessary for the effective implementation of the guidelines issued by it or the National Disaster Management Authority.

36. Annexure – R10 to 12 guidelines, being statutory guidelines legally binding as per the provisions of the DM Act, is to be mandatorily followed by the State of Karnataka as it is obliged, as per Article 256 of the Constitution of

India, to exercise its executive power in compliance with the laws made by the Parliament. The Union Government, as mandated under Article 256 of the Constitution of India, is also obliged to issue necessary directions to the State of Karnataka for compliance with the provisions of the DM Act. Further, the State of Karnataka, as mandated by Article 257 of the Constitution, is obliged to exercise its executive power so as to not to impede upon the executive power of the Union and the Union Government is also conversely obliged to issue directions to the State of Karnataka to comply with the Guidelines issued by the Union Home Secretary under the DM Act. The State of Karnataka, is therefore, constitutionally mandated to remove the (i) blockade of various entry points from Kasaragod District in Kerala to Karnataka, including National Highway, and (ii) blockade at the Thalassery –Coorg (Kodagu) Road at the Inter State Border at Kuttupuzha and Union Government is also mandated under the Constitution to direct the State of Karnataka to remove the same.

37. Further, as per Section 4 of the National Highways Act, all National Highways shall vest in the Union of India. The development and maintenance of the National Highway is vested with the Central Government as per Section 5 of the said Act. As per Section 6, the Central Government is empowered to give directions to carry out the provisions of the Act in a State. The contention in the special leave petition to the effect that the Union

of India has only limited powers with respect to management and administration of National Highways and the same would not take away the State to regulate the movement within its territorial boundaries, is, for the aforesaid reasons, wrong. The contention that the State of Karnataka is having authority to regulate the movement within its territorial limits is against the very federal structure and contrary to the very spirit of the Indian Constitution, particularly Article 1 therein which mandates that the territory of India shall comprise the territories of the States. In so far as it is an admitted fact that the State of Karnataka has blocked the National Highway and its arterial roads in the Kerala- Karnataka Border at Kasaragod, which have resulted in blockade of transport of patients requiring medical attention and transport of essential goods, the Union Government, upon whom the National Highway vests, is duty bound to issue direction to the State of Karnataka to remove such blockade to the extent it prevents transport of patient requiring medical attention as well as to the extent it prevents transport of essential goods to Kerala.

38. Moreover, the act of the State of Karnataka in blocking the National Highways and other roads to Kerala, to extent of even preventing residents of Kerala from getting access to medical treatment and preventing movement of essential goods, is violative of the fundamental rights guaranteed to the citizens of India residing in Kerala under Articles 19(1)(d) and 21 of the

Constitution of India. The right of a citizen to move freely throughout the territory of India, subject to reasonable restrictions, is recognised under Art.19 (1)(d) of our Constitution. The right to food and right to take recourse to proper healthcare are necessary concomitants of the fundamental right to life guaranteed under Article 21 of the Constitution and the same is infringed on account of the blockade erected by the State of Karnataka. The unilateral blockade imposed by the State of Karnataka, to the extent it prevents access to needy from Kerala to Healthcare in Karnataka and also to the extent it prevents transport of essential goods to Kerala cannot, by any stretch of imagination, be stated to be a reasonable restriction, particularly when the same is violative of Annexure – R10 to 12 statutory guidelines.

39. It is most humbly submitted that the State of Kerala had submitted before the High Court to the effect that effective steps will be taken with the assistance of the Health Department and Fire and Rescue Force to sterilise all vehicles carrying patients to Karnataka from Kasaragod for treatment purposes. It is also submitted that the State of Kerala and its Health Department have been catering to COVID 19 treatment in an excellent manner. The State is concerned regarding the inhabitants of the northern part of Kasaragod District who have been taking recourse to the health care facilities in Mangalore and Sullya for cardiac and nephrological ailments and other diseases which require period checkups and review of treatment measures.

The case histories of many of such persons are kept in the hospitals at Mangalore and Sullya and only such institutions can cater to such patients. Likewise is the case of persons who are undergoing periodic dialysis at the various hospitals therein. They have taken recourse to such hospitals only because of proximity of Mangalore and Sullya to their places of residence. From Talappady, a border town in Kasaragod, Mangalore town is only at a distance of 15 kilometres.

40. The reliefs sought for in the writ petition are only against the Central Government. It is the Central Government which came up with the Guidelines in terms of the provisions of the DM Act. The said statutory guidelines permit interstate transport for medical purposes and of essential goods. The Central Government is having the mandate to direct the implementation of such guidelines. Further, the Central Government is constitutionally obliged to direct compliance of laws made by the Parliament and to ensure that the executive authority of a State is properly exercised. Moreover, the blockade has resulted in the violation of fundamental rights of the persons residing in Kerala, which the Central Government is statutorily and constitutionally empowered and obliged to redress. In the said circumstances, the writ petition is perfectly maintainable before the High Court of Kerala and the impugned Order of the High Court of Kerala is tenable in law.

41. Above all, the cause of action has arisen in Kerala in so far as the State of Karnataka has transgressed into Kerala to effect blockade, in so far all the deaths due to prevention of access to health care in Mangalore and Sullya happened in Kerala and in so far as the fundamental rights of persons residing within the territorial jurisdiction of the High Court of Kerala were impinged. The contentions and averments regarding the alleged lack of territorial jurisdiction is, therefore, not sustainable in law.

42. Annexure –P4 addendum in SLP is reportedly issued in terms of the Karnataka Epidemic Act. The same cannot override Annexure – R10 to R12 statutory guidelines. The said statutory guidelines have been issued under the provisions of the DM Act and Section 72 of the DM Act confers overriding effect on it over any other law in force.

43. Hence, in the interests of justice, it is most humbly prayed that this Honourable Court may be pleased to dismiss the special leave petition. The Union Government has so far not acted in terms of the impugned order. This Honourable Court may be pleased to direct the Government of India to comply with the Order dated 03.04.2020 of this Hon'ble court and order dated 02.04.2020 of the High Court of Kerala in Writ Petition (Civil) Temporary No. 2 of 2020 and to do all that is necessary to remove (i) the blockade of various entry points from Kasaragod District in Kerala to Karnataka, including National Highway and

(ii) the blockade of the road from Thalassery in Kannur District, Kerala to Iritty, in Kannur District, Kerala to Maakkutta to Virajpetta (in Kodagu/Coorg District, Karnataka) to Mysore (Karnataka) Road (known as Thalassery –Coorg (Kodagu) Road) at the Inter State Border at Kuttupuzha.

That the facts stated in the above affidavit are true and correct to the best of my knowledge and belief and no part of it is false and nothing material has been concealed therefrom.



DEPONENT

N. JEEVAN
Joint Secretary/Law Officer
Law Wing, O/o the Resident Commissioner,
Travancore Palace, K.G. Marg,
New Delhi-110 001

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VERIFICATION
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I the above named deponent do hereby verify that the facts stated in the affidavit are true and correct to the best of my knowledge and belief and no part of it is false and nothing material has been concealed therefrom.

Verified at New Delhi on this the 6th day of April, 2020.



DEPONENT

N. JEEVAN
Joint Secretary/Law Officer
Law Wing, O/o the Resident Commissioner,
Travancore Palace, K.G. Marg,
New Delhi-110 001