

S. MANIKUMAR, CJ & SHAJI P. CHALY, J

W.P.(C). Nos. 14141 & 14196 of 2020

Dated this the 14th day of July, 2020.

ORDER

S. Manikumar, CJ

The Kerala Epidemic Diseases Ordinance, 2020, has empowered the Government to issue a notification in the official gazette, to notify any disease as epidemic disease, for the purpose of the Ordinance, either throughout the State or in such part or parts thereof, as may be specified in the notification, and that, in exercise of the powers conferred, the Health and Family Welfare (F) Department, Government of Kerala, have issued notification dated 02.07.2020 prescribing certain regulations. Regulation (3), deals with general precautionary measures to be observed by all persons for control of COVID-19 and regulation 3(e) speaks about 'social gathering'. Regulations 3(a) to (e) read thus:

“3. General precautionary measures to be observed by all persons for control of COVID-19.-To control and prevent spreading of COVID-19 in the State following measures shall be followed by all the persons:-

(a) **Wearing of Mask/Face Cover.**- All persons shall cover their mouth and nose with the mask/face cover in all public places, work places, any place where public have access, all kinds of vehicles and during transport.

(b) **Social Distancing.**-All persons shall maintain a social distance

of six feet between person to person in all public places and functions.

(c) **Marriage Function.**- In all marriage ceremonies and any functions thereafter the maximum number of participants at a time shall not exceed fifty persons. All persons in such ceremonies/ functions shall use sanitizer, wear face cover/mask and shall keep a social distance of six feet between them. Organizers of the marriage or functions shall provide sanitizer for the use of the participants.

(d) **Funeral Functions.**-In funeral functions the maximum participants at a time shall not exceed twenty persons and all of them shall wear face cover/mask, use sanitizer and also keep a social distance of six feet between them. In the case of COVID suspected death the standing instructions issued by Government of India and State Government shall be complied.

(e) **Social Gathering.**--No manner of social gathering including get together, processions, dharna, congregation, demonstration etc., shall be conducted without the written permission of the concerned authority. The maximum participants in such social gathering shall not exceed ten persons. The persons participating in such gathering shall wear face cover/mask, use sanitizer and observe a social distance of six feet between them.”

2. Government of India, Ministry of Home Affairs, New Delhi, have issued order dated 29.06.2020 to re-open more activities in a calibrated

manner, in areas outside the Containment Zones and to extend the lockdown in the Containment Zones upto 31.07.2020; but certain activities are permitted during Unlock 2 period outside the Containment Zones, except the following:

“(i) Schools, colleges, educational and coaching institutions will remain closed till 31 July, 2020. Online/distance learning shall continue to be permitted and shall be encouraged.

Training institutions of the Central and State Governments will be allowed to function from 15 July, 2020, for which standard Operating Procedure (SOP) will be issued by the Department of Personnel & Training (DoPT).

(ii) International air travel of passengers, except as permitted by MHA.

(iii) Metro Rail.

(iv) Cinema halls, gymnasiums, swimming pools, entertainment parks, theatres, bars, auditoriums, assembly halls and similar places.

(v) Social/ political/ sports/ entertainment/ academic/ cultural/religious functions and other large congregations.

3. It is also stated therein that national directives for COVID-19 Management, as specified in Annexure-I, shall continue to be followed throughout the country. Guideline No. I deals with activities permitted during Unlock 2 period outside the Containment Zones and Annexure-I thereto deals with National Directives for COVID-19 Management, which include 'social distancing' and 'gatherings'. The said directives read thus:

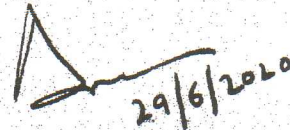
Annexure I

National Directives for COVID-19 Management

1. **Face coverings:** Wearing of face cover is compulsory in public places; in workplaces; and during transport.
2. **Social distancing:** Individuals must maintain a minimum distance of 6 feet (2 gaz ki doori) in public places.
Shops will ensure physical distancing among customers.
3. **Gatherings:** Large public gatherings/ congregations continue to remain prohibited.
Marriage related gatherings : Number of guests not to exceed 50.
Funeral/ last rites related gatherings : Number of persons not to exceed 20.
4. **Spitting in public places** will be punishable with fine, as may be prescribed by the State/ UT local authority in accordance with its laws, rules or regulations.
5. **Consumption of liquor, paan, gutka, tobacco etc.** in public places is prohibited.

Additional directives for Work Places

6. **Work from home (WfH):** As far as possible the practice of WfH should be followed.
7. **Staggering of work/ business hours** will be followed in offices, work places, shops, markets and industrial & commercial establishments.
8. **Screening & hygiene:** Provision for thermal scanning, hand wash and sanitizer will be made at all entry and exit points and common areas.
9. **Frequent sanitization** of entire workplace, common facilities and all points which come into human contact e.g. door handles etc., will be ensured, including between shifts.
10. **Social distancing:** All persons in charge of work places will ensure adequate distance between workers, adequate gaps between shifts, staggering the lunch breaks of staff, etc.


29/6/2020

4. Sections 51 to 60 of the Disaster Management Act, 2005 deal with the offences and penalties for violation of lockdown measures, which read thus:

"51. **Punishment for obstruction, etc.**,-Whoever, without reasonable cause-
(a) obstructs any officer or employee of the Central Government or the State Government, or a person authorised by the National Authority or State Authority or District Authority in the discharge of his functions under this Act; or
(b) refuses to comply with any direction given by or on behalf of the Central Government or the State Government or the National Executive Committee or the State Executive Committee or the District Authority under this Act,

shall on conviction be punishable with imprisonment for a term which may extend to one year or with fine, or with both, and if such obstruction or refusal to comply with directions results in loss of lives or imminent danger thereof, shall on conviction be punishable with imprisonment for a term which may extend to two years.

52. **Punishment for false claim.**—Whoever knowingly makes a claim which he knows or has reason to believe to be false for obtaining any relief, assistance, repair, reconstruction or other benefits consequent to disaster from any officer of the Central Government, the State Government, the National Authority, the State Authority or the District Authority, shall, on conviction be punishable with imprisonment for a term which may extend to two years, and also with fine.

53. **Punishment for misappropriation of money or materials, etc.**—Whoever, being entrusted with any money or materials, or otherwise being, in custody of, or dominion over, any money or goods, meant for providing relief in any threatening disaster situation or disaster, misappropriates or appropriates for his own use or disposes of such money or materials or any part thereof or wilfully compels any other person so to do, shall on conviction be punishable with imprisonment for a term which may extend to two years, and also with fine.

54. Punishment for false warning.—Whoever makes or circulates a false alarm or warning as to disaster or its severity or magnitude, leading to panic, shall on conviction, be punishable with imprisonment which may extend to one year or with fine.

55. Offences by Departments of the Government.—(1) 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 and punished accordingly unless he proves that the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of such offence. (2) Notwithstanding anything contained in sub-section (1), where an offence under this Act has been committed by a Department of the Government and it is proved that the offence has been committed with the consent or connivance of, or is attributable to any neglect on the part of, any officer, other than the head of the Department, such officer shall be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

56. Failure of officer in duty or his connivance at the contravention of the provisions of this Act.—Any officer, on whom any duty has been imposed by or under this Act and who ceases or refuses to perform or withdraws himself from the duties of his office shall, unless he has obtained the express written permission of his official superior or has other lawful excuse for so doing, be punishable with imprisonment for a term which may extend to one year or with fine.

57. Penalty for contravention of any order regarding requisitioning.—If any person contravenes any order made under section 65, he shall be punishable with imprisonment for a term which may extend to one year or with fine or with both.

58. Offence by companies.—(1) Where an offence under this Act has been committed by a company or body corporate, every person who at the time the offence was committed, was in charge of, and was responsible to, the company, for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the contravention and shall be liable to be proceeded against and punished accordingly:

Provided that nothing in this sub-section shall render any such person liable to any punishment provided in this Act, if he proves that the offence was committed without his knowledge or that he exercised due diligence to prevent the commission of such offence.

(2) Notwithstanding anything contained in sub-section (1), where an offence under this Act has been committed by a company, and it is proved that the offence was committed with the consent or connivance of or is attributable to any neglect on the part of any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also, be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Explanation.—For the purpose of this section—

(a) “company” means any body corporate and includes a firm or other association of individuals; and

(b) “director”, in relation to a firm, means a partner in the firm.

59. Previous sanction for prosecution.—No prosecution for offences punishable under sections 55 and 56 shall be instituted except with the previous sanction of the Central Government or the State Government, as the case may be, or of any officer authorised in this behalf, by general or special order, by such Government.

60. Cognizance of offences.—No court shall take cognizance of an offence under this Act except on a complaint made by— (a) the National Authority, the State Authority, the Central Government, the State Government, the District Authority or any other authority or officer authorised in this behalf by that Authority or Government, as the case may be; or (b) any person who has given notice of not less than thirty days in the manner prescribed, of the alleged offence and his intention to make a complaint to the National Authority, the State Authority, the Central Government, the State Government, the District Authority or any other authority or officer authorised as aforesaid.”

5. Contending, inter alia, that even though there is a direction to keep a minimum distance of six feet between persons, in a public place,

and the fact that the public gathering/ congregation is prohibited, all the guidelines issued by the Central as well as the State Governments under the Disaster Management Act, 2005 and the Kerala Epidemic Diseases Ordinance, 2020, as the case may be, have been violated by the political parties -- respondents 5 to 10, by conducting dharna, processions, demonstrations, and due to the same, there is a likelihood of increase in the number of COVID-19 cases, the petitioners have filed the above writ petitions as Public Interest Litigations. W.P.(C) No.14141 of 2020 is filed seeking the following reliefs:

- “i. To declare that the large scale public gathering in the name of protest or activities by the political parties in the State, is unconstitutional and illegal, during the phase of Covid 19 regulations and direct the 4th respondent to de-recognise such political parties, who are involving in the practices of larger political gatherings, violating the norms issued by the Government, from time to time, during the period of pandemic Covid 19.
- ii. To issue a writ of mandamus, or any other writs, order or direction to respondents 1 and 3 to take strict actions against the organizers or participants; or both, of large political gatherings, who are acting in violation of existing Covid 19 regulations.
- lii. To direct respondents 5 to 10 and the coalition parties of respondents 8 and 10; their associate organisations, to desist themselves from organising any kind of political or social activities with large public gatherings, during the period of Covid 19 regulations or violating the Covid 19 regulations issued by the appropriate authorities, from time to time.

iv. Direct the respondents to pay cost of this proceedings.”

6. W.P.(C) No.14196 of 2020 is filed for the following reliefs:

i. Declare that the unauthorised performance of public assemblies, strikes, dharnas, processions in public places without maintaining sufficient social distance and without wearing proper face masks during lockdown period is unconstitutional and violative of Article 21 of the Constitution of India guaranteed to the citizens in the State of Kerala;

ii. Issue a writ in the nature of Mandamus or any other appropriate, writ, order or direction, commanding the respondents not to permit any unauthorised performance of public assemblies, strikes, dharnas, processions in public places without maintaining sufficient social distance and without wearing proper face masks during lockdown period.”

7. We have heard Dr. K.P. Pradeep, learned counsel for the petitioner in W.P.(C) No.14141/2020, and Sri. Ranjith Thampan, learned Addl. Advocate General.

8. To a query as to whether under which statutory provision, the petitioners are seeking for a direction against the Election Commission of India, New Delhi, respondent No. 4 in W.P.(C) No. 14141 of 2020, to de-recognise such political parties, who are involved in the practice of larger political gatherings, violating the norms issued by the Governments from time-to-time during the period of COVID-19, Sri. K.P. Pradeep submitted that Section 29A of the Representation of the People Act, 1951 speaks about registration of parties and he fairly submitted

that no legislation has been enacted or guidelines issued by the Election Commission of India or the Central Government, to de-recognise political parties, who violate the guidelines issued by the Central as well as the State Governments, in exercise of the powers conferred under the Disaster Management Act, 2005 or the Ordinance, as the case may be. However, it is submitted that the political parties cannot conduct dharna or processions or demonstrations violating the rights guaranteed to a citizen under Article 19 of the Constitution of India. Reference has been made to the decisions of this Court in ***Communist Party of India (M) v. Bharat Kumar and other*** [(1998) 1 SCC 201].

9. Mr. Ranjith Thampan, learned Addl. Advocate General, further submitted that, in exercise of the powers conferred under the aforesaid enactment/ordinance, all persons, including the political parties, have to adhere to the directives issued by the Governments, and maintain social distancing. He has further submitted that even a political party or an association conducts a dharna or procession or demonstration, persons gather in large numbers are likely to be infected with the disease.

10. Learned Addl. Advocate General has also relied on a recent decision of the Hon'ble Apex Court in *Suo Motu* Writ Petition (Civil) No. 5 of 2020, reported in 2020 SCC Online 355, issuing guidelines for the

courts functioning through video conferencing, wherein the Hon'ble Apex Court, after considering the issue of social distancing, in exercise of the powers conferred under Article 142 of the Constitution, ordered as follows:

“6. Therefore, in exercise of the powers conferred on the Supreme Court of India by Article 142 of the Constitution of India to make such orders as are necessary for doing complete justice, we direct that,-

- i. All measures that have been and shall be taken by this Court and by the High Courts, to reduce the need for the physical presence of all stakeholders within court premises and to secure the functioning of courts in consonance with social distancing guidelines and best public health practices shall be deemed to be lawful;
- ii. The Supreme Court of India and all High Courts are authorized to adopt measures required to ensure the robust functioning of the judicial system through the use of video conferencing technologies; and
- iii. Consistent with the peculiarities of the judicial system in every state and the dynamically developing public health situation, every High Court is authorised to determine the modalities which are suitable to the temporary transition to the use of video conferencing technologies;

- iv. The concerned courts shall maintain a helpline to ensure that any complaint in regard to the quality or audibility of feed shall be communicated during the proceeding or immediately after its conclusion failing which no grievance in regard to it shall be entertained thereafter.
- v. The District Courts in each State shall adopt the mode of Video Conferencing prescribed by the concerned High Court.
- vi. The Court shall duly notify and make available the facilities for video conferencing for such litigants who do not have the means or access to video conferencing facilities. If necessary, in appropriate cases courts may appoint an amicus curiae and make video conferencing facilities available to such an advocate.
- vii. Until appropriate rules are framed by the High Courts, video conferencing shall be mainly employed for hearing arguments whether at the trial stage or at the appellate stage. In no case shall evidence be recorded without the mutual consent of both the parties by video conferencing. If it is necessary to record evidence in a Court room the presiding officer shall ensure that appropriate distance is maintained between any two individuals in the Court.
- viii. The presiding officer shall have the power to restrict entry of persons into the court room or the points from which the arguments are addressed by the advocates. No presiding officer shall prevent the entry of a party to the case unless such

party is suffering from any infectious illness. However, where the number of litigants are many the presiding officer shall have the power to restrict the numbers. The presiding officer shall in his discretion adjourn the proceedings where it is not possible to restrict the number.”

11. He also invited our attention to the decision of the Hon'ble Supreme Court in ***Kodungallur Film Society and another v. Union of India and others*** [(2018) 10 SCC 713], wherein the Hon'ble Apex Court after considering the reports of Justice K.T. Thomas Committee and Mr. F.S. Nariman, ordered thus:

“5. The Report submitted by Justice K. T. Thomas Committee has made the following recommendations:

(i) The PDPP Act must be so amended as to incorporate a rebuttable presumption (after the prosecution established the two facets) that the accused is guilty of the offence.

(ii) The PDPP Act to contain provision to make the leaders of the organisation, which calls the direct action, guilty of abetment of the offence.

(iii) The PDPP Act to contain a provision for rebuttable presumption.

(iv) Enable the police officers to arrange videography of the activities damaging public property.

6. The recommendations of the Justice Thomas Committee have been made on the basis of the following conclusions after taking into consideration the materials.

In respect of (i)

7. *"According to this Committee the prosecution should be required to prove, first that public property has been damaged in a direct action called by an organization and that the accused also participated in such direct action. From that stage the burden can be shifted to the accused to prove his innocence. Hence we are of the view that in situations where prosecution succeeds in proving that public property has been damaged in direct actions in which accused also participated, the court should be given the power to draw a presumption that the accused is guilty of destroying public property and that it is open to the accused to rebut such presumption. The PDPP Act may be amended to contain provisions to that effect."*

In respect of (ii)

8. "Next we considered how far the leaders of the organizations can also be caught and brought to trial, when public property is damaged in the direct actions called at the behest of such organizations. Destruction of public property has become so rampant during such direct actions called by organizations. In almost all such cases the top leaders of such organisations who really instigate such

direct actions will keep themselves in the background and only the ordinary or common members or grass root level followers of the organisation would directly participate in such direct actions and they alone would be vulnerable to prosecution proceedings. In many such cases, the leaders would really be the main offenders being the abettors of the crime. If they are not caught in the dragnet and allowed to be immune from prosecution proceedings, such direct actions would continue unabated, if not further escalated, and will remain a constant or recurring affair.

Of course, it is normally difficult to prove abetment of the offence with the help of direct evidence. This flaw can be remedied to a great extent by making an additional provision in PDPP Act to the effect that specified categories of leaders of the organization which make the call for direct actions resulting in damage to public property, shall be deemed to be guilty of abetment of the offence. At the same time, no innocent person, in spite of his being a leader of the organization shall be made to suffer for the actions done by others. This requires the inclusion of a safeguard to protect such innocent leaders.”

11. The recommendations of the Justice Thomas Committee according to us are wholesome and need to be accepted.

12. To effectuate the modalities for preventive action and adding teeth to enquiry/investigation following guidelines are to be observed:

As soon as there is a demonstration organized:

(I) The organizer shall meet the police to review and revise the route to be taken and to lay down conditions for a peaceful march or protest;

(II) All weapons, including knives, lathis and the like shall be prohibited;

(III) An undertaking is to be provided by the organizers to ensure a peaceful march with marshals at each relevant junction;

(IV) The police and State Government shall ensure videograph of such protests to the maximum extent possible;

(V) The person in charge to supervise the demonstration shall be the SP (if the situation is confined to the district) and the highest police officer in the State, where the situation stretches beyond one district;

(VI) In the event that demonstrations turn violent, the officer - in - charge shall ensure that the events are videographed through private operators and also request such further information from the media and others on the incidents in question.

(VII) The police shall immediately inform the State Government with reports on the events, including damage, if any, caused.

(VIII) The State Government shall prepare a report on the police reports and other information that may be available to it and shall file a petition including its report in the High Court or Supreme Court as the case may be for the Court in question to take suo motu action.

.....

Where persons, whether jointly or otherwise, are part of a protest which turns violent, results in damage to private or public property, the persons who have caused the damage, or were part of the protest or who have organized will be deemed to be strictly liable for the damage so caused, which may be assessed by the ordinary courts or by any special procedure created to enforce the right.

.....

15. In the absence of legislation the following guidelines are to be adopted to assess damages:

(I) Wherever a mass destruction to property takes place due to protests or thereof, the High Court may issue suo motu action and set up a machinery to investigate the damage caused and to award compensation related thereto.

(II) Where there is more than one state involved, such action may be taken by the Supreme Court.

(III) In each case, the High Court or Supreme Court, as the case may be, appoint a sitting or retired High Court Judge or a sitting or retired District Judge as a Claims Commissioner to estimate the damages and investigate liability.

(IV) An Assessor may be appointed to assist the Claims Commissioner.

(V) The Claims Commissioner and the Assessor may seek instructions from the High Court or Supreme Court as the case may be, to summon the existing video or other recordings from private and public sources to pinpoint the damage and establish nexus with the perpetrators of the damage.

(VI) The principles of absolute liability shall apply once the nexus with the event that precipitated the damage is established.

(VII) The liability will be borne by the actual perpetrators of the crime as well as organisers of the event giving rise to the liability - to be shared, as finally determined by the High Court or Supreme Court as the case may be.

(VIII) Exemplary damages may be awarded to an extent not greater than twice the amount of the damages liable to be paid.

(IX) Damages shall be assessed for:

(a) damages to public property;

- (b) damages to private property;*
- (c) damages causing injury or death to a person or persons;*
- (d) Cost of the actions by the authorities and police to take preventive and other actions.*

(X) The Claims Commissioner will make a report to the High Court or Supreme Court which will determine the liability after hearing the parties.

16. The recommendations of Justice K. T. Thomas Committee and Mr. F. S. Nariman Committee above which have the approval of this Court shall immediately become operative. They shall be operative as guidelines."

12. Learned Addl. Advocate General further submitted that no person can exercise his right under Article 19(1) of the Constitution of India, depriving the rights enjoyed by any other citizens.

13. Thus, reading of the directives issued by the Central as well as the State Governments make it clear that the guidelines are intended to be strictly adhered to by all the citizens, political parties and associations, the violation of which is punishable. In the absence of any law on the subject, the Hon'ble Supreme Court has also issued guidelines under Article 142 of the Constitution of India. The decisions reported in 2020 SCC Online SC 355 and in (2018) 10 SCC 713 are binding on all, including political parties and associations.

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14. In view of the directives issued by the Central as well as the State Governments, and the decisions referred to above, we deem it fit to direct all the political parties and associations, including respondents 5 to 10, to strictly abide by the same. Government is also directed to take preventive measure to ensure that no political party or association shall violate the directives issued by the Governments and the judgments of the Hon'ble Apex Court, as stated above.

15. Learned Addl. Advocate General shall get instructions, as to the action taken against those persons, who have violated the provisions of the Disaster Management Act, 2005, and the Kerala Epidemic Diseases Ordinance, 2020, as the case may be.

Post the matter tomorrow (15.07.2020).

Sd/-
S. MANIKUMAR,
CHIEF JUSTICE

Sd/-
SHAJI P. CHALY,
JUDGE

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P.A. TO C.J.