

IN THE HIGH COURT OF KERALA AT ERNAKULAM

present:

THE HONOURABLE MRS. JUSTICE ANU SIVARAMAN

Monday, the 24th day of August 2020/2nd Bhadra, 1942

WP(C) No.17439/2020(D)

PETITIONER

JACKSON MATHEW,
VANNIAMPARAMBIL HOUSE, CARBORUNDUM ROAD,
KD PLOT PO, SOUTH KALAMASSERY, COCHIN-683 104

RESPONDENTS

1. UNION OF INDIA
REPRESENTED BY THE SECRETARY, MINISTRY OF CIVIL AVIATION,
RAJIV GANDHI BHAWAN, BLOCK B, SAFDARJUNG AIRPORT AREA,
NEW DELHI-110 003
2. AIRPORT AUTHORITY OF INDIA,
REPRESENTED BY THE SECRETARY, RAJIV GANDHI BHAWAN,
BLOCK B, SAFDARJUNG AIRPORT AREA, NEW DELHI-110 003
3. AIR INDIA LIMITED,
AIR INDIA BUILDING, MUSEUM ROAD, VELLAYAMBALAM,
THIRUVANANTHAPURAM, KERALA-695 033
4. MINISTRY OF HEALTH AND FAMILY WELFARE
GOVERNMENT OF INDIA, REPRESENTED BY THE SECRETARY,
NIRMAN BHAWAN, NEW DELHI-110 011
5. MINISTRY OF ELECTRONICS AND INFORMATION TECHNOLOGY,
GOVERNMENT OF INDIA, REPRESENTED BY THE SECRETARY,
ELECTRONICS NIKETAN, 6, CGO COMPLEX,
LODHI ROAD, NEW DELHI-110 003
6. MINISTRY OF HOME AFFAIRS,
NORTH BLOCK, CENTRAL SECRETARIAT,
NEW DELHI-110 001
7. STATE OF KERALA,
REPRESENTED BY CHIEF SECRETARY,
GOVERNMENT OF KERALA, SECRETARIAT,
THIRUVANANTHAPURAM-695 001

Writ Petition (civil) praying inter alia that in the circumstances stated in the affidavit filed along with the WP(C) the High Court be pleased to:

- 1) Injunct the 1st Respondent from enforcing Para 2(a)(iii) and (iv) of Annexure II of Exhibit P1 Order No.AV.29017/5/2020-DT dated 21.05.2020 issued by the 1st Respondent, insofar as it makes it mandatory for all passengers to download and install the Aarogaya Setu app prior to domestic air travel;

p.t.o

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- 2) Injunct the 2nd Respondent from enforcing Clause A(5) of the "Standard Operating Procedure (SOP) for Recommencement of Domestic Flights" dated 20/21.05.2020(Exhibit P2) issued by the 2nd respondent, insofar as it requires all departing passengers above the age of 14 years to be compulsorily registered with Aarogya Setu app on their mobile phones;
- 3) Restrain the 4,5,6 and 7 Respondents from sharing any personal data or anonymised user data with third parties for any purpose whatsoever;
- 4) Direct the Respondents to give wide publicity, through electronic/print/social media as well as on the Aarogya Setu app itself, that the installation of the app is not mandatory; and
- 5) Appoint a High Powered Committee with independent members to examine the privacy practices, security architecture, and the data sharing policies of the Aarogya Setu app, particularly with private third parties.

This petition coming on for admission upon perusing the petition and the affidavit filed in support of WP(C) and upon hearing the arguments of M/S.SANTHOSH MATHEW, SHRI.ABI BENNY AREECKAL, DIVYA SARA GEORGE, JAISY ELZA JOE, KARTHIKA MARIA, LEAH RACHEL NINAN, VEENA RAVEENDRAN, ANIL SEBASTIAN PULICKEL, ARUN THOMAS, JENNIS STEPHEN, VIJAY V. PAUL, Advocates for the petitioner SRI.P.VIJAYAKUMAR, ASSISTANT SOLICITOR GENERAL OF INDIA for the respondent 1 and of SRI.V.SANTHARAM, STANDING COUNSEL for the respondent 2, the court passed the following:

p.t.o.

pb/25.08.20.

ANU SIVARAMAN, J.

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Dated this the 24th day of August 2020

ORDER

This writ petition is filed challenging the provisions in the orders issued by the respondents as well as the provisions of the standard operating procedure for recommencement of domestic flights to the extent such directions or instructions make downloading of the Aarogya Setu App mandatory for air travel. From a perusal of the pleadings, I find that the writ petition is in the nature of a Public Interest Litigation.

2. It is submitted by Sri.V.Santharam, the learned standing counsel appearing for the 2nd respondent that it is clear from Ext.P1 Government Order itself that the provisions for downloading of the Aarogya Setu App for air passengers is not mandatory and that a self declaration can also be provided by the passengers in lieu of downloading of the App. It is also submitted by the learned standing counsel that Ext.P2 has been superseded by revised State wise guidelines. Referring to the revised guidelines, the learned counsel would submit that the provisions with regard to passenger obligation in the revised guidelines applicable to the Airports in Kerala read as follows :- *"passengers are expected to certify the*

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status of their health through the Aarogya Setu App or a self declaration form. All passengers shall be required to register their details. It is further submitted that the passengers are required to register their details on the Jagratha Portal and to obtain e-pass. It is therefore contended that it is clear that the downloading of the Aarogya Setu App is not mandatory and is only an optional requirement.

These submissions are recorded. Post the writ petition after holidays along with the connected cases.

/true copy/

Sd/-
ANU SIVARAMAN, JUDGE


ASSISTANT REGISTRAR

Handwritten notes in the bottom left corner, including the word "Jagathar" and other illegible scribbles.

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- EXHIBIT P1 - TRUE COPY OF THE ORDER NO.AV.29017/5/2020-DT DATED
21.05.2020 ISSUED BY RESPONDENT NO.1
- EXHIBIT P2 - TRUE COPY OF THE STANDARD OPERATING PROCEDURE DATED
20.05.2020 ISSUED BY RESPONDENT NO.2
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