

K. Vinod Chandran & C.Jayachandran,JJ

-----  
WP(C) No.2351 of 2022  
-----

Dated, this the 21<sup>st</sup> January, 2022

ORDER

Vinod Chandran, J.

The petitioner is before us alleging that Ext.P1 order passed by the District Collector of Kasaragod has been withdrawn merely for the purpose of carrying out a political meeting in the said District. The prayer sought for in the writ petition is to ensure strict compliance of Ext.P1 order.

2. The learned State Attorney appears and submits that the order dated 17.01.2022 produced as Ext.P1 is no more in force, because the District Collector had issued another order dated 20.01.2022 with more stringent restrictions. Subsequently the Government has revisited the restrictions and the earlier Government Orders have been cancelled. The restrictions now in place are those brought out by Government Order dated 20.01.2022. It is stated that the Government is not looking at the Test Positivity Rate (TPR) and has classified the districts for containment and restrictions, based on the hospital admissions in each of the districts. The classification as per the order dated 20.01.2022 is A, B and C and in none of such categories, Kasaragod falls. The learned State Attorney, on instructions, submits that in

Kasaragod 250 beds are kept exclusively for COVID 19 patients, of which only 89 beds are now occupied, which is only 36%. As far as ICU beds, out of the 40 beds set apart, the present admission is only 7 which comes to 18%. Eleven ventilators have been kept ready for each districts of which, not one has been put to use for COVID 19 patients as of now. In such circumstances the Kasaragod District does not fall under any of the three categories. It is also submitted that the TPR in the different wards, of the District is only around 5. In such circumstances there is no reason to entertain the writ petition, is the submission. Due to paucity of time the learned State Attorney has produced the Government Orders referred to here, across the Bar. It is also submitted that on the basis of the present stipulation dated 20.01.2022 the Government Order dated 04.08.2021 would revive which permits the gathering of 150 persons.

3. Admittedly the infection is rising day by day and even as per the news reports it is scheduled to be highest by the 15<sup>th</sup> of February, 2022; the veracity of which we are not examining as of now. Suffice it to say that the Government cannot blow hot and cold by saying that they are not looking at the TPR are more concerned with the hospitalization; which is very minimal, as propounded by the State and again

fall back upon the TPR to convince us of the minimal severity. Having negated TPR, the Government cannot again fall back upon the the TPR statistics to say that there could be public meetings conducted without any restrictions.

4. Government Order G.O(Rt) No.8/2022/DMD dated 04.01.2022 speaks of public meetings including political ones, to be restricted with participation of a maximum number of 150 in open spaces and 75 in closed spaces. G.O(Rt) No.22/2022/DMD dated 10.01.2022 prescribed maximum 50 persons for marriages and bereavements. We see from Ext.P1 order that G.O(Rt)No.47/2022/DMD dated 15.01.2021 (the year noted is obviously a mistake since the number indicates the year correctly) was brought out, based on which Ext. P1 was issued. Admittedly there is another order issued, with more stringent restrictions, which the petitioner has not obtained. The Government has now done a complete volteface by revising the stipulations by which the earlier order of 04.01.2022 can be applied, is the contention. We extract Paragraph 6 and item numbers (i) in A, B and C categories which alone are relevant for our purposes:

6. നിലവിലെ ഒസ്റ്റോപ്പിറ്റിവിറ്റി നിരക്ക് അഭിസ്ഥാനപ്പെടുത്തിയുള്ള നിയന്ത്രണങ്ങൾക്ക് പകരം അതുപരികളിൽ അഡ്ജസ്റ്റ് അനുബന്ധതയ്ക്കു എണ്ണ കണക്കുകൾ ജില്ലാഭിസ്ഥാനത്തിൽ നിയന്ത്രണങ്ങൾ ഏർപ്പെടുത്തുന്നതാണ് ഇത്തരയി ബന്ധപ്പെട്ട വിവരങ്ങൾ അഭ്യർത്ഥിക്കപ്പെട്ട ജില്ലാ

ദുരന്തനിവാരണ അതോറിറ്റികൾക്ക് നൽകേണ്ടതാണ് ഇതിനെ അടിസ്ഥാനപ്പെടുത്തി ദുരന്തനിവാരണ അതോറിറ്റി ജില്ലകളെ **A, B, C** എന്നിങ്ങനെ തരം തിരിച്ച് തക്കപ്പയ്യുന്ന രീതിയിൽ നിയന്ത്രണങ്ങൾ ഏർപ്പെടുത്തേണ്ടതാണ്

**A വിഭാഗം**

1. എല്ലാ താഴ്ന്ന സമൂഹ സാംസ്കാരിക മതപരമായ സമുദായിക പൊതു പരിപാടികൾക്കും വിവാഹ, മരണാനന്തര ചടങ്ങുകൾക്കും പരമാവധി **50** പേർക്ക് പങ്കെടുക്കുന്നതാണ്

**B വിഭാഗം**

- i. താഴ്ന്ന സമൂഹ സാംസ്കാരിക മതപരമായ സമുദായിക പൊതു പരിപാടികൾ ഉൾപ്പെടെ യന്ത്രോപകരണങ്ങളോടുകൂടി മതപരമായ ആരാധനകൾക്കും ഉള്ളതായി മാത്രം നടത്തേണ്ടതാണ്

**C വിഭാഗം**

- i. താഴ്ന്ന സമൂഹ സാംസ്കാരിക മതപരമായ സമുദായിക പൊതു പരിപാടികൾ ഉൾപ്പെടെ യന്ത്രോപകരണങ്ങളോടുകൂടി മതപരമായ ആരാധനകൾക്കും ഉള്ളതായി മാത്രം നടത്തേണ്ടതാണ്

5. The spike in infection is what concerns the entire world and admittedly the hospitalizations continue unabated; though not to the extent of the first and second waves. The infection rate, however, is much more than the earlier times. We are on the cusp of the third wave is the general perception. The Government has decided that the restrictions need not be on the basis of TPR and that the admission rate into hospitals should be the criterion. The questions to be addressed are whether based on a different stipulation there should be relaxations and then, whether that is the purport

of the present order dated the 20<sup>th</sup>. The Government has now stipulated, in the order of 20<sup>th</sup>, as a continuation of the earlier orders and not in supersession that, there will be three categories specified as A, B and C. As far as A is concerned any meeting conducted shall only have 50 persons attending and so far as B and C are concerned there shall be no meeting conducted with the physical presence of persons, with all such meetings conducted online. There is no admission rate specified for the three categories and there is also no fourth category specified, where the earlier order applies, to permit 150 persons.

6. We cannot but notice that even in Kasaragod District, there is 36% admissions in the available ordinary COVID beds and 18% in ICU beds and fortunately no ventilator having been put to use for now. In this context we have to refer to the circular issued by the Government of Kerala, General Administration(Political) Department dated 19.01.2022 declaring the protocol for the Republic Day Celebrations 2022. As far as the districts are concerned the following paragraph is extracted.:

"District level:

A similar ceremony in the morning at or after  
9.00 am should be held at the district level,

which may inter alia, consist of unfurling of the National Flag by a Minister, playing of the National Anthem, Presentation of Guard of Honour with limited number of contingents, speech by the Minister and singing of patriotic songs. Total number of invitees shall be limited to 50."

Hence even for the Republic Day Celebrations to be conducted on 26<sup>th</sup>, the stipulation is that there should be only a gathering of 50 persons.

7. Going by the statistics put forth by the learned State Attorney and by reading the order dated 20.01.2022 and the classifications made therein, we cannot understand that there are relaxations made to the restrictions. Admittedly there are hospital admissions in the Kasaragod District and we are not apprised of the number of tests conducted which alone would enable a consideration of whether the TPR is a reliable index to project the rate of infections. The general purport of the order of 20<sup>th</sup> provides for stringent restrictions in category B and C and a relaxation with respect to conduct of meetings; with very limited participation of 50 persons. In fact the order of 20<sup>th</sup> specifically makes 23<sup>rd</sup> and 30<sup>th</sup>, the coming two Sundays as

restricted to essential services only. Though the learned State Attorney insists that Kasargod will not fall under any of the categories in the G.O of 20<sup>th</sup>, unfortunately or fortunately; which will depend upon the perspective from which it is viewed, the Government Order does not speak of any such other categories which is treated separately, for the purpose of lifting the restrictions in the earlier orders and reviving that of 04.01.2022. We reiterate that the G.O of 20<sup>th</sup>, is not in supercession of the earlier orders and is in continuance of the earlier orders. In such circumstances, we issue an interim order directing the District Collector, the 4<sup>th</sup> respondent who is also the Chairperson of the District Disaster Management Authority to ensure that no meetings are conducted within the district allowing participation of more than 50 persons. This interim order shall remain in force for a period of one week, with any more stringent conditions being at the discretion of the District Collector.

Post the matter on Monday 24<sup>th</sup> January, 2022 before the Bench having roster.

Sd/-

K. Vinod Chandran, Judge

Sd/-

C. Jayachandran, Judge