

IN THE HIGH COURT OF KERALA AT ERNAKULAM
PRESENT
THE HONOURABLE MR. JUSTICE SHAJI P.CHALY
&
THE HONOURABLE MR. JUSTICE A. BADHARUDEEN

Tuesday, the 17th day of August 2021 / 26th Sravana, 1943
WP(C) NO. 17071 OF 2021(S)

PETITIONER:

A.K.M.ASHRAF, AGED 43 YEARS, MANJESWARAM MLA, SON OF ABBOBACKER, CEEYEM MINNATH,
NEAR KADAMBAR SCHOOL, KADAMBAR, KERALA-671 323.

RESPONDENTS:

1. UNION OF INDIA, REPRESENTED BY ITS SECRETARY, MINISTRY OF HOME AFFAIRS, NORTH BLOCK, NEW DELHI, DELHI-110 001.
2. STATE OF KARNATAKA, REPRESENTED BY ITS CHIEF SECRETARY, ROOM NO.321, VIDHANA SOUDHA, BENGALURU, KARNATAKA-560 002.
3. STATE OF KERALA, REPRESENTED BY ITS CHIEF SECRETARY, GOVERNMENT SECRETARIAT, GOVERNMENT OF KERALA, THIRUVANANTHAPURAM, KERALA, PIN-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 direct the Respondent No.1 to ensure free Inter-State travel between Kerala and Karnataka, especially for daily commuters to and fro Manjeshwaram and Dakshin Kannada Districts in light of the latest MHA Order dated 20/04/2021,

This petition coming on for orders upon perusing the petition and the affidavit filed in support of WP(C) and upon hearing the arguments of HARRIS BEERAN, O.A.NURIYA, AZHAR ASSEES Advocates for the petitioners and of P.VIJAYAKUMAR, ASSISTANT SOLICITOR GENERAL OF INDIA, PRABHULING K.NAVADGI, ADVOCATE GENERAL OF KARNATAKA, SRI.RAJENDRAN AND SRI.K.P.HARISH, SENIOR GOVERNMENT PLEADER, Advocates for the respondents, the court passed the following:

SHAJI P.CHALY & A. BADHARUDEEN, JJ.

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Dated this the 17th day of August, 2021

ORDER

SHAJI P. CHALY, J.

These writ petitions are public interest litigations filed by the residents of Kasargod district, basically complaining that the State of Karnataka have created blockade in the borders of Kasargod and Mangalore, within the State of Karnataka, which causes a situation that the people from the State of Kerala is unable to enter into the State of Karnataka for any emergent situations.

2. Petitioner in W.P.(C).No.17071 of 2021 is a member of Kerala Legislative Assembly from Manjeshwaram Constituency, Kasaragod district. According to the petitioner, the action of creating blockade in the border district of Karnataka State, preventing people from Kerala to enter into the State of Karnataka, is totally illegal and violative of fundamental rights guaranteed to the citizens under the Constitution of India. It is also submitted that, various restrictions are imposed virtually preventing the people of Kerala from entering the State of Karnataka through the entry point from the district of Kasaragod. It is also submitted that the people of Manjeshwaram are dependant on Dakshin Kannada district/Mangalore city for their basic needs and they also rely entirely

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upon the medical facilities of Mangalore district in the State of Karnataka and its adjacent areas, since it is the nearest medical hub available. Various other circumstances are pointed out in respect to the blockade causing disruption in trade, supply of food and other essential items and the consequential impasse created, thus interfering with the rights of the citizens to move freely throughout the territory of India. It is also submitted that, consequent to the acts of the State of Karnataka in blocking the highways and other roads, free movement of the people of Kerala to Karnataka and movement of transportation from Karnataka to Kerala is totally disrupted, which is causing serious prejudice to the people of Kerala and thus interfering with the rights guaranteed under Article 19(1)(d) of the Constitution of India, which protects the freedom of movement of the citizens.

3. In fact, when W.P.(C).No.16833 of 2021 came up for admission before the Hon'ble Chief Justice's Court on 13.08.2021, directions were issued to serve notice on the Central Government, State of Karnataka and others. Therefore, the Additional Advocate General of Karnataka also entered appearance along with Assistant Solicitor General representing the

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Union of India, so also the learned Senior Government Pleader for the State.

4. Learned Additional Advocate General appearing for the State of Karnataka submitted that, they have received notice only recently and they have serious objection to the relief sought for by the petitioners to allow the passengers who are having Covid vaccination certificate to enter the State of Karnataka through the entry point and reopen all the borders of the State of Karnataka connecting the State of Kerala, thus enabling the persons from Kerala to enter the State of Karnataka for treatment, and also for the free movement of vehicles from Kerala to Karnataka. Learned Additional Advocate General of Karnataka has pointed out that, in view of the present Covid pandemic situation in the State of Kerala and the high percentage of Covid-19 patients in the Dakshin Kannada district of Karnataka, the State of Karnataka has issued a revised circular in order to regulate the entry of the people from Kerala. However, in the circular dated 31.07.2021, the government has adequately addressed the issue of emergent case to enter the State of Karnataka through the entry point at Kasaragod district.

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Therefore, according to the learned Advocate General, there would be no manner of serious prejudice as is apprehended in the writ petitions.

5. It was also submitted that, as per the circular, public visiting Karnataka daily and the students are protected by incorporating suitable conditions in the circular enabling them to cross the border and enter into the State of Karnataka. Learned Additional Advocate General also submitted that, if the writ petitions are posted to 25.08.2021, the State Government would be in a position to file a detailed statement or counter affidavit explaining the situations under which the blockade is created at the entry point in question. That apart, it was submitted that, the Honourable High Court of Karnataka has passed an order today, i.e., 17.08.2021, in W.P.(C).No.14925 of 2021, directing the State Government to strictly implement the revised circular dated 31.07.2021, and therefore, if at this stage of the proceedings, if any directions are issued, it would be in conflict with the directions issued by the Honourable High Court of Karnataka. That apart, learned Advocate General submitted that, since the blockade created by the State of Karnataka is challenged, there would not be territorial jurisdiction for this Court to entertain the writ petition.

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6. We have heard learned Counsel for the petitioners Sri. Anoop P.V. And Sri. Haris Beeran, learned Advocate General of Karnataka Sri. Prabhuling K.Navadgi, learned Assistant Solicitor General Sri. P.Vijayakumar, learned Senior Government Pleader Sri. K.P.Harish Kumar and Sri. Rajendran who assisted the learned Advocate General of Karnataka, and perused the pleadings and the materials on record.

7. Learned Advocate General in fact submitted that the issues involved due to the blockade created in the border in question requires serious consideration in view of the precarious situations prevailing in the State of Kerala consequent to the Covid-19 pandemic and the situation prevailing in Dakshin Kannada district, wherein there is a high percentage of Covid-19 patients. However, it was submitted that, by virtue of the revised circular dated 31.07.2021, issued by the Government of Karnataka, dire emergent situations like death in the family, medical treatment etc, appropriate directions are issued so as to facilitate the entry of people requiring to meet up with emergent situations and therefore, the apprehensions voiced by the petitioners in that regard may not have much basis.

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8. In fact, learned Counsel for the petitioners submitted that, for the time being, they would be satisfied if directions are issued to the State of Karnataka to permit the people to enter the State of Karnataka to meet up with any emergent situations, irrespective of the vehicle used by them to transport patients or family members, in the case of death. In that view of the matter and in view of the circular, we think it is only appropriate that necessary directions are issued to the State of Karnataka to ensure that the situation taken care of in the revised circular dated 31.07.2021 is strictly implemented so as to avoid any inconvenience to the people of Kerala and thus avoiding complex situations as pointed out by the petitioners. In that process, it is only appropriate that the revised circular dated 31.07.2021 is extracted hereunder, which read thus:

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28/07/21
WP 17071/21
WP 16833/21

GOVERNMENT OF KARNATAKA

No: HFW 220 ACS 2021

Karnataka Government Secretariat
Vikasa Soudha
Bengaluru, Dated:31.7.2021

REVISED CIRCULAR

Subject: Special surveillance measures for arrivals from Kerala
& Maharashtra - Regarding.

Reference : (1) Proceedings of 112th meeting of State COVID 19 TAC .
Dated: 20.6.2021.
(2) Order No: RD 158 TNR 2020, Dated: 28.6.2021 & 01.07.2021
(3) Proceedings of 116th meeting of State COVID 19 TAC ,
Dated: 24.7.2021.

In view of the current COVID 19 situation, the following revised special surveillance measures are notified herewith to be complied strictly for arrivals from Kerala & Maharashtra .

- (i) Persons arriving from Kerala & Maharashtra , **should produce a negative RT – PCR certificate , that is not older than 72 hours irrespective of vaccination status.**
- (ii) The above condition is mandatory for all the passengers coming to Karnataka by flight, bus, train and personal transport. This is applicable for all the flights originating from Kerala & Maharashtra .
- (iii) Airlines shall issue boarding passes only to the passengers carrying RT-PCR negative certificate not older than 72 hours.
- (iv) Railway Authorities shall be responsible for ensuring that all passengers travelling by trains carry negative RT-PCR certificates.
- (v) For all the passengers travelling by bus, the bus conductor shall ensure that they possess RT-PCR negative certificates.
- (vi) Deputy Commissioners of the Districts bordering Kerala i.e., Dakshina Kannada, Kodagu & Mysore and Maharashtra i.e., Belagavi , Vijayapura, Kalburgi and Bidar shall establish check posts & make arrangements to deploy necessary staff to ensure that all the vehicles (driver, passengers, helper / cleaner) entering Karnataka are checked for the compliance of the above requirement.

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- (vii) Its mandatory for students & public visiting Karnataka daily for education, business & other reasons, to undergo RT – PCR test once in 15 days & possess the negative test report.

Permitted exemptions for negative RT-PCR certificate are as follows :

- (i) Constitutional functionaries and health care professionals.
- (ii) Children below 2 years.
- (iii) In dire emergency situation (death in the family, medical treatment etc.,) the passenger's swab shall be collected on arrival in Karnataka with necessary details like phone number, address etc., duly verifying from his ID card. On receipt of the RT-PCR test report, further action will be taken as per the State protocol.



(Jawaid Akhtar)

Additional Chief Secretary to Govt.,
Department of Health and Family Welfare

To:

1. Chief Executives of all Airlines.
2. The Managing Director, BIAL, to coordinate the activity
3. The APHO, Bengaluru International Airport & Mangalore Airport.
4. The Manager, Airport Authority of India, Hubballi, Bealagavi, Kalaburagi & Mysore.
5. The Special Commissioner – Health, BBMP, Bengaluru
6. The Deputy Commissioners of all districts
7. CEO, ZP of all districts
8. The District Health and Family Welfare officers of all districts
9. The District Surveillance Officers of all districts

Copy for kind information to:

1. Chief Secretary, GoK
2. Additional Chief Secretary to Hon'ble Chief Minister
3. Additional Chief Secretary, Home Department
4. The Chief Commissioner – BBMP, Bengaluru
5. The Commissioner, Health & F W Services, Bengaluru
6. Mission Director-National Health Mission
7. Smt. Shikha, IAS, Managing Director, BMTC, Bengaluru, Coordinator, Domestic & International Returnees, BIAL, Bengaluru.
8. The Director, Health & Family Welfare Services
9. PS to Hon'ble Minister for HFW and Medical Education.

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9. Paragraph VII of the circular makes it clear that, certain category of people are exempted which includes students and public visiting Karnataka daily for education, business and other reasons, on certain conditions. That apart, certain categories are exempted from negative RT-PCR certificate and they includes constitutional functionaries and health care professionals, children below two years and the emergent situations like death in the family, medical treatment, etc, after undergoing the protocol prescribed thereunder. The only apprehension voiced by learned Counsel for the petitioners is that the police and other authorities of State of Karnataka are preventing patients transported to the State of Karnataka in private vehicles. In that view of the matter, there will be a direction to the State of Karnataka and the officials to ensure that the directions contained in the revised circular dated 31.07.2021 extracted above is strictly implemented and further to ensure that the people in dire emergent situations like death in the family, medical treatment etc, are permitted to enter the State of Karnataka on production of necessary documents to establish the respective case, irrespective of the nature of the vehicles used for the purpose.

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Post the writ petitions on 25.08.2021, for statements/affidavits of the respondents.

Sd/-

**SHAJI P. CHALY
JUDGE**

Sd/-

**A. BADHARUDEEN
JUDGE**

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17.08.2021

