

W.P.(PIL).No.1 of 2025

-:1:-



2025:KER:24144

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE THE CHIEF JUSTICE MR. NITIN JAMDAR

&

THE HONOURABLE MR. JUSTICE S.MANU

FRIDAY, THE 21ST DAY OF MARCH 2025 / 30TH PHALGUNA, 1946

WP(PIL) NO. 1 OF 2025

PETITIONER:

GILBERT CHEERAN, AGED 51 YEARS,
S/O. C. M. GEORGE, CHEERAN HOUSE,
PAZHANJI KARA, PAZHANJI P.O.,
KUNNAMKULAM TALUK, THRISSUR, PIN - 680542.

BY ADV. SRI. YESHWANTH SHENOY

RESPONDENTS:

- 1 STATE OF KERALA,
REPRESENTED BY THE CHIEF SECRETARY,
SECRETARIAT, THIRUVANANTHAPURAM, PIN - 695001.
- 2 STATE OF KERALA,
REPRESENTED BY SECRETARY, HOME DEPARTMENT,
SECRETARIAT, THIRUVANANTHAPURAM, PIN - 695001.
- 3 UNION OF INDIA,
REPRESENTED BY THE SECRETARY,
MINISTRY OF EXTERNAL AFFAIRS,
ROOM NO. 74 B, GATE NO. 04,
SOUTH BLOCK, NEW DELHI, PIN - 110011.



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4 JOSEPH MAR GREGORIUS, AGED 65 YEARS,
 S/O. GEEVARGHESE,
 BISHOP'S HOUSE, KYOMTHA SEMINARY,
 THIRUVAMKULAM, TRIPUNITHURA,
 ERNAKULAM, PIN - 682301.

BY ADVOCATE GENERAL SRI. K. GOPALAKRISHNA KURUP,
BY SRI. ASOK M. CHERIAN, ADDL. ADVOCATE GENERAL
SRI. T.S.SHYAM PRASANTH, GOVERNMENT PLEADER
SRI.N.MANOJ KUMAR, STATE ATTORNEY
SRI. V. MANU, SPL.G.P. TO A.G.

THIS WRIT PETITION (PUBLIC INTEREST LITIGATION) HAVING
COME UP FOR ADMISSION ON 20.03.2025, THE COURT ON 21.03.2025
DELIVERED THE FOLLOWING:

**JUDGMENT**

Dated this the 21st day of March, 2025.

Nitin Jamdar, C.J.

The Petitioner, an advocate, and belonging to Malankara Orthodox Syrian Church, has filed this Public Interest Litigation being aggrieved by the decision of the State of Kerala to send a delegation to attend the consecration ceremony for Jacobite Syrian Christian Bishop Mor Gregorios Joseph, scheduled to be held on 25 March 2025 at Lebanon. The Petitioner seeks to quash Exhibit-P1 order dated 11 March 2025, issued by the Additional Secretary, General Administration (Protocol) Department, Government of Kerala, granting approval, on the ground that it is issued in breach of the orders of the Hon'ble Supreme Court. The Petitioner has also sought declarations regarding the lack of authority of the Patriarch in Lebanon to conduct the ceremony.

2. Respondent No. 1 is the State of Kerala, through the Chief Secretary. Respondent No. 2 is the Secretary, Home Department, who is in charge of law and order. Respondent No. 3 is the Union of India, through the Secretary, Ministry of External Affairs. Respondent No. 4 is the person, who is to be ordained in the consecration ceremony on 25 March 2025.

3. To provide a brief factual backdrop to the Malankara Orthodox and Jacobite legal dispute, the representative of Parish Churches in



Kerala adopted a constitution for the Malankara Church on 26 December 1934. A detailed decision on the subject came to be rendered by the Hon'ble Supreme Court in 2017, where the 1934 constitution was reiterated and confirmed. This decision was followed by the subsequent decisions of the Supreme Court. Contempt petitions and petitions for police protection were filed in this Court, and later orders passed in these proceedings were the subject matter of challenge before the Hon'ble Supreme Court. By order of 30 January 2025, the Supreme Court called upon this Court to examine the issues that have been framed in the judgment and the Division Bench is currently hearing this group of petitions.

4. We have heard Mr. Yeshwanth Shenoy, the learned counsel for the Petitioner, and Mr. K. Gopalakrishna Kurup, learned Advocate General for the Respondent – State.

5. The Petitioner contends that the Patriarch, who will conduct the consecration ceremony scheduled to be held on 25 March 2025 to ordain Respondent No. 4, does not have the power to appoint Vicars, Priest, etc., in violation of the 1934 constitution of the Malankara Church, as per the decision of the Supreme Court in the case of *K.S.Varghese and Others v. St. Peters and St. Pauls Syrian Orthodox Church and Others*¹ and all the decisions referred to in *K.S.Varghese*, as reiterated thereafter by the Supreme Court. He has relied upon the

¹ (2017) 15 SCC 333



decisions in the cases of *K.S.Varghese v. St. Peters and Pauls Syrian Orthodox Church and Others*², *Mathews Mar Koorilos v. M. Pappy*³, *Fr. Issac Mattammel Cor-Episcopa v. St. Marys Orthodox Syrian Church and Others*⁴, *St. Marys Orthodox Church and Others v. State Police Chief and Others*⁵, *K.P. John and Another v. John Puthiyakunnel and Others*⁶, *K.S. Varghese v. St. Peters and Pauls Syrian Orthodox Church and Others*⁷, *Fr. Thomas Paul Ramban v. S. Suhas, District Collector*⁸, and *V.P. Markose & Others v. Rev. Fr. Tijo Kuriakose*⁹.

6. The learned Advocate General submitted that the Writ Petition is without merit and should not be entertained as a Public Interest Litigation (PIL) as the Petitioner is directly an interested party, a member of the Malankara Church. It is submitted that the declaration sought by the Petitioner regarding the authority of Respondent No.4 is a matter of dispute on merits between the parties who are not even joined in the Petition, and such a declaration cannot be given in a PIL. He submitted that various facets and intricacies have to be decided by the civil court or by this Court in substantive proceedings between the rival parties. It is submitted that pursuant to the order of the Supreme

2 (2017) 15 SCC 333

3 (2018) 9 SCC 672

4 (2019) 10 SCC 606

5 (2020) 18 SCC 329

6 Order dated 19 April 2015 in C.A. No.3986-3989 of 2018.

7 Order dated 19 June 2020 in M.A. No.1095 – 1097 of 2020.

8 Contempt Case (Civil) No.2615/2019.

9 W.A. No.945/2023



Court in Civil Appeals arising out of Special Leave to Appeal (C) Nos. 26064 – 26069/2024 dated 30 January 2025 [*V. Venu & Ors. v. St. Marys Orthodox Church (Odakkali Palli) & Ors.*], the Division Bench of this Court is now considering the matters on merits and any observation on the reliefs sought for by the Petitioner would affect the contentions of the parties in those proceedings. The learned Advocate General submitted that following the decision in the case of *K.S.Varghese*, the subsequent orders passed by the Supreme Court, culminating in the final order dated 30 January 2025, have changed the complexion of the dispute.

7. As stated earlier, a constitution for the Malankara Church was adopted on 26 December 1934. The legality and validity of the 1934 constitution was challenged, and by judgment and order dated 12 September 1958, the Hon'ble Supreme Court held the constitution to be valid and binding. Thereafter, there were further rounds of litigation. A committee was also appointed. A detailed decision on the subject came to be rendered by the Supreme Court in the case of *K.S.Varghese*. The decision in the case of *K.S.Varghese* was thereafter reiterated in the cases of *Mathews Mar Koorilos*, *Fr. Issac Mattammel Cor-Episcopa*, and *St. Marys Orthodox Church*. Meanwhile, proceedings under the Contempt of Courts Act, 1971 were also initiated in this Court. In one contempt case, the learned Single Judge, making certain observations against the State Government, directed the Central Reserve Police Force



(CRPF) to take over the concerned church premises by order dated 8 December 2020. This order was the subject matter of an appeal. The appeal was admitted by order dated 7 January 2021 and all proceedings pursuant to the order passed by the learned Single Judge were stayed. The learned Single Judge of this Court also passed orders in a writ petition seeking police protection in respect of enforcement of the orders of the Court. The Division Bench while dismissing the appeal, made certain observations regarding the law and order situation and also that the rule of law has to be maintained and the orders of the Court have to be complied with.

8. The proceedings from the orders passed by the Division Bench of this Court in appeal, as well as the orders passed by the learned Single Judge in various contempt petitions, and the order passed in the proceedings for police protection were the subject matter of challenge before the Hon'ble Supreme Court in a group of appeals. In the group of appeals, on 25 November 2024, the Hon'ble Supreme Court passed an interim order, whereby the State Authorities were asked to submit a proposal along with the modalities giving effect to the directions issued by the Court. Thereafter, a detailed interim order was passed on 3 December 2024. Then, further orders were passed on 17 December 2024 and thereafter, the Hon'ble Supreme Court disposed of the appeals. The relevant observations are as follows:



"12. It seems to us that the High Court, while entertaining the contempt proceedings and before issuing the directions which can have far reaching consequences, ought to have determined some of the most relevant issues such as: (i) what is the true import of the principles laid down or issues determined by this Court in the cited decisions; (ii) who are the parties that shall be bound by the dictum of this Court in the cited decisions;(iii) whether the decree, which attained finality, has been satisfied/fulfilled; (iv) If not, which part of the decree remains unfulfilled and what remedial action in that regard are required to be taken; (v) what is the legal effect of the Kerala Right to Burial of Corpse in Christian (Malankara Orthodox-Jacobite) Cemeteries Act, 2020; (vi) what is the legal impact of 2020 Act on the contempt proceedings; and (vii) should a High Court in a dispute relating to religious affairs direct the Civil Administration to take over physical possession of the religious places, and if so, to what extent such like intervention would be necessitated in public interest?"

13. Since we find that all these questions would require a fresh consideration by the High Court, we deem it appropriate to set aside the impugned order(s) dated 17.10.2024 and remit the matters to the Division Bench of the Kerala High Court to decide the controversy afresh after hearing all the parties concerned."

Thereafter, the Division Bench of this Court is now considering the group of appeals on merits, on the above-mentioned points. As indicated by the Hon'ble Supreme Court, in view of these legal proceedings between the rival factions, we do not deem it appropriate to



consider the prayer for a declaration regarding the power of Respondent No.4 in this PIL as it is a matter of merits of the disputes between these rival factions. Under the guise of seeking to restrain a delegation, an attempt to initiate parallel proceedings to obtain some observations on merits cannot be permitted.

9. Therefore, the main issue that arises for consideration is the validity of the order passed by the State Government approving the delegation to be sent to Lebanon to attend the consecration ceremony of Respondent No.4.

10. According to the Petitioner, the delegation should not be permitted as it would be a contempt of the judgment of the Hon'ble Supreme Court in *K.S.Varghese* which is binding. The Petitioner has relied upon paragraphs 130, 145, and 146 of the judgment in *K.S.Varghese*, and the paragraph 184, where the findings on the main conclusions were summarized where the Supreme Court reiterated that the 1934 constitution is valid and that there should not be any attempt to establish a parallel administration. According to the Petitioner, there is a clear declaration that the Patriarch has no rights over the subject matter, and there should not be any illegal interference in the management and assumption of the properties, and therefore, there should not be any State delegation at the State's expense. Relying on the observations of the Supreme Court and the orders passed by this Court, the learned counsel for the Petitioner submits that actions of the State of



Kerala are always in defiance of the orders of the Supreme Court, and the State has a bounden duty to ensure that the rule of law is maintained and should not take actions while representing the State in foreign soil, which will be in violation of the orders of the Supreme Court. The Petitioner contends that the orders passed by the Single Judge and the Division Bench of this Court while granting police protection and in contempt petitions, have noted that the conduct of the State Government in siding with the Jacobite faction contrary to the orders of the Supreme Court and, in fact, directed that the Central agencies should intervene. According to the Petitioner, sending the delegation is nothing, but in furtherance of this defiance of the State Government. The Petitioner also contends that the actions of the State would give rise to law and order situation and, therefore, it is imperative that the delegation is restrained from attending the ceremony and calls upon this Court to quash Exhibit-P1 order dated 11 March 2025, that is, according sanction for an official visit to attend the ceremony.

11. The learned Advocate General has relied upon Clauses 12 and 16 of the guidelines in the case of *K.S. Varghese* to contend that there is no impediment in respect of the matters of faith and belief. According to the learned Advocate General, the issue in the case of *K.S. Varghese* was primarily relating to administration and had nothing to do with the matters of faith, and there is no restraint order, either directly or impliedly, to prohibit the delegation from attending a religious



ceremony. The learned Advocate General has submitted that in the year 2020, the State of Kerala has also enacted legislation, viz., the Kerala Right to Burial of Corpse in Christian (Malankara Orthodox-Jacobite) Cemeteries Act, 2020, wherein both the Malankara Orthodox and Jacobite denominations have been recognised. He submitted that, since both these denominations are recognized, there is nothing wrong if the delegation chooses to attend the ceremony. He submitted that the Petitioner has not demonstrated how attending a religious ceremony would contravene the orders and directions of the Hon'ble Supreme Court, which primarily pertained to property rights. He also submitted that there is nothing in the orders of the Supreme Court that prohibits a particular faction from professing a religious faith. It is also contended that the Petitioner has not shown anything that the religious ceremony to be held on 25 March 2025 is in any way setting up a parallel administration. It is also contended that the orders passed by the Single Judge and the Division Bench of this Court were considered by the Hon'ble Supreme Court in the judgment dated 30 January 2025 and that further orders passed by this Court would show that an attempt to reconcile the issue and introduce legislation is also being made. According to the learned Advocate General, the observations of the learned Single Judge of this Court purportedly against the State, have either been stayed or set aside, and there cannot be a general indictment of the State in such a casual manner. He also contended that the



decision to send a delegation cannot be a matter of judicial review.

12. One aspect to be noted is that permission from the Central Government to grant clearance to the delegation to visit Lebanon is pending. Despite service, none has appeared for the Respondent No. 3 – Union of India, to inform us about the current position.

13. The Petitioner has approached this Court under Article 226 of the Constitution of India, seeking to restrain the State of Kerala from sending a delegation to attend a religious ceremony. To send an official delegation is a general policy decision of the State. The issue before this Court in this Petition is not whether the religious head has the authority to conduct the ceremony but whether, in exercise of writ jurisdiction, this Court can interfere with a policy decision of the State Government. Courts do not interfere with policy decisions merely on the ground that it is erroneous or on the ground that a better, fairer or wiser alternative is available. The legality of the policy decision is the subject of judicial review, not the wisdom or soundness of the decision. The Courts exercise judicial restraint in matters of policy, unless the decisions fall within the well-settled exceptions.

14. In the present case, no pre-existing judicial order or statutory provision is shown to us directly restraining the State from sending a delegation for this event. There is a debate before us on the distinction between religious faith and property rights. Accordingly to the learned



Advocate General, this religious ceremony would not contravene the orders and directions of the Hon'ble Supreme Court, which primarily pertain to property rights. We refer to these arguments only because these matters will be decided in the proceedings on merits and in contempt petition if at all taken out. The Central Government has not yet granted clearance for the visit of the delegation. Clearance may or may not be granted. It is relevant to note that, though in different circumstances, there have been instances of State delegations attending religious events abroad.

15. However, though a case for issuance of mandatory order is not made out to restrain the delegation, we do take note of the concern expressed by the Petitioner regarding the possibility of a law and order situation. The record shows that there have been instances of violence between these two factions in the State. As the learned Advocate General has stated, attempts are going on to reconcile the issue, and the State may come out with legislation to bring about finality and peace. If that is the end sought to be achieved, maintaining an atmosphere conducive to finding a lasting solution would be desirable. Apart from the question of which faction is right, it cannot be denied that the issue is emotive for many in both factions. The State will have to carefully ensure that the impugned order Exhibit-P1, whether directly or indirectly, is not perceived or taken as a cause of violence and disharmony. Thus, we expect that the State Government and the



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Central Government (where clearance is pending) will take further action in sending the official delegation to Lebanon after considering all relevant factors – the legal, ethical, and moral, and the consequences that may ensue.

16. In light of the above, we decline to grant the reliefs sought for by the Petitioner. We make it clear that our non-interference is based on the parameters of judicial review and should not be construed as approval of the impugned action of the State in sending the official delegation, nor is it a reflection on the merits of the dispute in the pending proceeding between the rival factions therein.

17. The Writ Petition is accordingly disposed of.

Sd/-
NITIN JAMDAR,
CHIEF JUSTICE

Sd/-
S. MANU,
JUDGE

krj



APPENDIX OF WP (PIL) 1/2025

PETITIONER'S EXHIBITS:-

- EXT.P1 TRUE COPY OF GOVERNMENT ORDER G.O. (RT) NO. 1081/2025/GAD. DATED 11.03.2025.
- EXT.P2 TRUE COPY OF A LETTER ISSUED BY SYRIAN ORTHODOX PATRIARCHATE OF ANTIOCH & ALL THE EAST DATED 27 JANUARY 2025, ANNOUNCING THE ORDINATION OF JOSEPH MOR GREGORIOS.
- EXT.P3 A TRUE COPY OF THE LETTER SENT BY E-MAIL ON 16 MARCH 2025 TO THE RESPONDENT NO.1 AND TO THE DELEGATES.
- EXT.P4 A TRUE COPY OF THE REPRESENTATION DATED 16 MARCH 2025 SENT BY THE PETITIONER TO THE RESPONDENT NO.3.

RESPONDENTS' EXHIBITS:-

- EXT.R1 (A) A TRUE PHOTOCOPY OF THE G.O. (RT) NO.2418/2014/GAD DATED 22.03.2014.
- EXT.R1 (B) A TRUE PHOTOCOPY OF THE INDIA TODAY NEWS ITEM DATED 06.12.2024 PERTAINING TO THE VISIT OF THE CENTRAL TEAM TO WITNESS THE ORDINATION OF KERALA PRIEST (MONSIGNOR GEORGE JACOB KOOVAKAD) AT VATICAN.
- EXT.R1 (C) A TRUE PHOTOCOPY OF THE NEWS ITEM DATED 06.01.2024 IN HINDUSTAN TIMES PERTAINING TO APPROVAL BY THE HONOURABLE PRIME MINISTER OF INDIA FOR THE INDIAN DELEGATION TO VISIT VATICAN CITY FOR THE ORDINATION OF THE KERALA PRIEST (MONSIGNOR GEORGE JACOB KOOVAKAD) AS CARDINAL
- EXT.R1 (D) TRUE COPY OF THE KERALA RIGHT TO BURIAL OF CORPSE IN CHRISTIAN (MALANKARA ORTHODOX-JACOBITE) CEMETERIES ACT, 2020.



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- EXT.R1 (E) A TRUE PHOTOCOPY OF THE ORDER DATED 17.12.2024 OF THE HONOURABLE APEX COURT IN S.L.P(C) NOS. 26064-26069/2024.
- EXT.R1 (F) A TRUE PHOTOCOPY OF THE ORDER DATED 30.01.2025 OF THE HONOURABLE APEX COURT IN S.L.P(C) NOS. 26064-26069/2024.
- EXT.R1 (G) A TRUE PHOTOCOPY OF THE ORDER DATED 06.12.2021 OF THIS HONOURABLE COURT IN WRIT APPEAL NO.6/2021 AND CONNECTED CASES
- EXT.R1 (H) A TRUE PHOTOCOPY OF THE ORDER DATED 03.02.2022 OF THIS HONOURABLE COURT IN WRIT APPEAL NO.6/2021 AND CONNECTED CASES.
- EXT.R1 (I) A TRUE PHOTOCOPY OF THE ORDER DATED 28.02.2022 OF THIS HONOURABLE COURT IN WRIT APPEAL NO.6/2021.
- EXT.R1 (J) A TRUE PHOTOCOPY OF THE ORDER DATED 24.03.2022 OF THIS HONOURABLE COURT IN WRIT APPEAL NO.6/2021.
- EXT.R1 (K) A TRUE PHOTOCOPY OF THE ORDER DATED 15.01.2025 OF THIS HONOURABLE COURT IN WRIT APPEAL NO.6/2021 AND CONNECTED CASES.

KRJ

//TRUE COPY//

P.A. TO C.J.