

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE THE CHIEF JUSTICE MR.S.MANIKUMAR

&

THE HONOURABLE MR. JUSTICE SHAJI P.CHALY

MONDAY, THE 21<sup>ST</sup> DAY OF JUNE 2021 / 31ST JYAISHTA, 1943

WP(C) NO. 12481 OF 2021

PETITIONER/S:

KERALA PRADESH GANDHI DARSHANVEDHI  
(REG. NO.TVM/TC/487/2018), REPRESENTED BY ITS CHAIRMAN,  
DR.M.C.DILEEPKUMAR, HAVING REGISTERED OFFICE AT  
SOWPARNIKA, TC 22/2609, KOCHAR ROAD, SASTHAMANGALAM,  
THIRUVANANTHAPURAM-695 010.

BY ADVS.  
ARUN.B.VARGHESE  
AISWARYA V.S.

RESPONDENT/S:

- 1 UNION OF INDIA  
REPRESENTED BY THE FINANCE SECRETARY, MINISTRY OF  
FINANCE, GOVERNMENT OF INDIA, NORTH BLOCK, NEW DELHI-  
110 001.
- 2 THE SECRETARY,  
MINISTRY OF PETROLEUM & NATURAL GAS, GOVERNMENT OF  
INDIA, SHASTRI BHAWAN, NEW DELHI-110 001.
- 3 THE GOODS AND SERVICES TAX COUNCIL,  
REPRESENTED BY ITS SPECIAL SECRETARY, OFFICE OF THE GST  
COUNCIL SECRETARIAT, 5TH FLOOR, TOWER II, JEEVAN BHARTI  
BUILDING, JANPATH ROAD, CONNAUGHT PLACE, NEW DELHI-110  
001.
- 4 STATE OF KERALA,  
REPRESENTED BY ITS CHIEF SECRETARY, GOVERNMENT OF  
KERALA, GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM-695  
001.
- 5 BHARAT PETROLUEM CORPORATION LIMITED,  
REPRESENTED BY ITS CHAIRMAN & MANAGING DIRECTOR, BHARAT  
BHAVAN, 4 AND 6 CURRIMBHOTY ROAD, BALLARD ESTATE,  
MUMBAI-400 001.

6 INDIAN OIL CORPORATION LIMITED (IOCL),  
REPRESENTED BY ITS CHAIRMAN, REFINERIES DIVISION,  
SCOPE COMPLEX, CORE 2, 7, INSTITUTIONAL AREA,  
LODHI ROAD, NEW DELHI-011.

7 HINDUSTAN PETROLEUM CORPORATION LIMITED,  
REPRESENTED BY ITS CHAIRMAN, PETROLEUM HOUSE, 17,  
JAMSHEDJI TATA ROAD, MUMBAI-400 020.

BY ADV SHRI.P.R.SREEJITH, SC, GSTN

OTHER PRESENT:

SRI. P.VIJAYAKUMAR ASG FOR R1 AND R32, SRI.  
P.R.SREEJITH SC FOR R3, SRI C.E. UNNIKRISHNAN,  
SPL GP FOR R4, SRI. GOPIKRISHNAN NAMBIAR, FOR R5  
TO R7

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON  
21.06.2021, THE COURT ON THE SAME DAY DELIVERED THE  
FOLLOWING:

**JUDGMENT**

Dated this the 21<sup>st</sup> day of June, 2021

**S.Manikumar, C.J.**

Kerala Pradesh Gandhi Darshanvedi has filed the instant Public Interest Litigation for the following reliefs:

- "1. To issue a writ of mandamus or any other writ or order directing the respondents 1 and 2 to include petrol and diesel under the GST regime.
2. To issue a writ of mandamus or any other writ or order directing the 3<sup>rd</sup> respondent to recommend the inclusion of petrol and diesel under the GST regime so as to achieve a harmonized national market as contemplated under Article 279 A (6) of the Constitution of India.
3. To declare that the non-inclusion of petrol and diesel under the GST regime are violative of Article 14 and 21 of the Constitution of India.
4. To issue a writ of mandamus or any other writ or order directing the 3<sup>rd</sup> respondent to consider and pass orders on Exhibit P2 representation.
5. To issue a writ of mandamus or any other writ or order directing the 4<sup>th</sup> respondent to consider and pass orders on Exhibit P3 representation."

2. Material on record discloses that the petitioner has submitted Exhibit P2 representation to the Special Secretary, Office of the GST Council Secretariat, New Delhi (respondent No.3) to recommend inclusion of petrol and diesel under the GST regime.

3. Material on record further discloses that the petitioner has also submitted Exhibit P3 representation to the Chief Secretary, Government of Kerala, Thiruvananthapuram (respondent No.4) to request the GST Council to include the petrol and diesel in the GST regime and till a decision is taken by the GST Council, Government of Kerala may refrain from levying the state tax on petrol and diesel.

4. Mr.Arun B.Varghese, learned counsel for the writ petitioner submitted that appellant would be satisfied, if a direction is issued to respondent Nos.3 and 4 to dispose of the above said representations within a time frame.

5. Mr.C.E.Unnikrshnan, learned Senior Government Pleader appearing for the Chief Secretary, Government of Kerala, Thiruvananthapuram (respondent No.4) submitted that he has no objection for issuing a direction to consider the representations stated supra.

6. Mr.P.Vijayakumar, learned Assistant Solicitor General, who takes notice for the Union of India and the Secretary, Ministry of Petroleum and Natural Gas (respondent Nos.1 and 2 respectively), submitted that inclusion or deletion of GST is a policy decision.

7. Mr.P.R.Sreejith, learned standing counsel for the GST Council (respondent No.3) submitted that a Hon'ble Division Bench of this court in W.A.No.2061 of 2017 has held that no mandamus can be issued to the GST Council to take any decision. He further submitted that Union of India (respondent No.1) is the competent authority to take a decision on the abovesaid issue.

8. Placing on record the abovesaid submissions and taking note of the decision of the Hon'ble Division Bench of this court in W.A.No.2061 of 2017, we only direct the Goods and Services Tax Council represented by the Special Secretary, Office of the GST Council Secretariat, New Delhi (respondent No.3) to forward Exhibit P2 representation dated 7.6.2021 to the Union of India, represented by the Finance Secretary, New Delhi, to take an appropriate decision within a period of six weeks from the date of receipt of a copy of Exhibit P2 representation. Similarly, Chief Secretary, Government of Kerala, Thiruvananthapuram (respondent

No.4), to dispose of Exhibit P3 representation.

Writ petition is disposed of accordingly.

Pending interlocutory applications, if any, shall stand closed.

Sd/-

**S.Manikumar  
Chief Justice**

Sd/-

**Shaji P.Chaly  
Judge**

**vpv**

APPENDIX OF WP(C) 12481/2021

PETITIONER ANNEXURES

- Exhibit P1            TRUE COPY OF THE STUDY REPORT DATED  
04.03.2021 CONDUCTED BY THE RESEARCH TEAM  
OF THE STATE BANK OF INDIA, AVAILABLE IN  
THE URL [HTTPS://SBI.CO.IN./WEB/SBI-IN-THE-  
NEWS/RESEARCH-DESK](https://sbi.co.in/web/sbi-in-the-news/research-desk).
- Exhibit P2            TRUE COPY OF THE REPRESENTATION DATED  
07.06.2021 SUBMITTED BY THE WRIT PETITIONER  
BEFORE THE 3RD RESPONDENT.
- Exhibit P3            TRUE COPY OF THE REPRESENTATION DATED  
07.06.2021 SUBMITTED BY THE WRIT PETITIONER  
BEFORE THE 4TH RESPONDENT.

/TRUE COPY/

P.A. TO JUDGE