

IN THE HIGH COURT OF KERALA AT ERNAKULAM
PRESENT
THE HONOURABLE THE CHIEF JUSTICE MR.S.MANIKUMAR
&
THE HONOURABLE MR. JUSTICE SHAJI P.CHALY
FRIDAY, THE 17TH DAY OF SEPTEMBER 2021 / 26TH BHADRA, 1943
WP(C) NO. 16614 OF 2021

PETITIONER:

HALVI. K.S., AGED 50 YEARS,
S/O. SUDHAKARAN, KOTTAPPALLY HOUSE,
THIRUMALABHAGOM P.O., CHERTHALA,
ALAPPUZHA-688540.

BY ADVS. SHRI P.JERIL BABU
SHRI PREMLAL KRISHNAN

RESPONDENTS:

- 1 THE UNION OF INDIA,
REPRESENTED BY SECRETARY,
MINISTRY OF HEALTH AND FAMILY WELFARE,
NEW DELHI-110001.
- 2 STATE OF KERALA
REPRESENTED BY SECRETARY,
HEALTH & FAMILY WELFARE DEPARTMENT,
SECRETARIAT, THIRUVANANTHAPURAM-695001.
- 3 INDIAN COUNCIL OF MEDICAL RESEARCH (ICMR)
REPRESENTED BY ITS DIRECTOR-GENERAL, ANSARI NAGAR,
NEW DELHI-110029.
- 4 NITI AAYOG,
REPRESENTED BY ITS CEO,
YOGANA BHAVAN, SANSAD MARG,
NEW DELHI-110001.

R1, R3 & R4 BY SRI. P. VIJAYAKUMAR, ASGI
R2 BY SRI.T.B.HOOD, SPL.GOVERNMENT PLEADER TO A.G.

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 09.09.2021, ALONG WITH WP(C). NO.17274/2021, THE COURT ON 17.09.2021 DELIVERED THE FOLLOWING:

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE THE CHIEF JUSTICE MR.S.MANIKUMAR

&

THE HONOURABLE MR. JUSTICE SHAJI P.CHALY

FRIDAY, THE 17TH DAY OF SEPTEMBER 2021 / 26TH BHADRA, 1943

WP(C) NO. 17274 OF 2021

PETITIONER:

N.V. HABEEBU RAHMAN, AGED 61,
S/O. KUTTY MUHAMMED (LATE),
TAJ HOME, AREACODE,
MALAPPURAM DISTRICT, PIN-673639.

BY ADVS. SHRI K. SHIBILI NAHA
SHRI A. LOWSY
SHRI SONA JAYARAMAN K.

RESPONDENTS:

- 1 STATE OF KERALA,
REP. BY THE CHIEF SECRETARY TO GOVT.,
GOVERNMENT SECRETARIAT,
THIRUVANANTHAPURAM, PIN-695001.
- 2 CHIEF SECRETARY
CHAIRPERSON, DISASTER MANAGEMENT (A) DEPARTMENT,
GOVERNMENT SECRETARIAT,
THIRUVANANTHAPURAM-695001.
- 3 THE DEPARTMENT OF HEALTH AND FAMILY WELFARE,
GOVERNMENT OF KERALA, REPRESENTED BY ITS SECRETARY,
GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM-695001.
- 4 THE LOCAL SELF GOVERNMENT DEPARTMENT,
GOVERNMENT OF KERALA,
REPRESENTED BY ITS PRINCIPAL SECRETARY (LSGD),
GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM-695001.

- 5 INDIAN COUNCIL FOR MEDICAL RESEARCH(ICMR),
V.RAMALINGASWAMY BHAVAN, PB NO.4911, ANSARI NAGAR EAST,
REP. BY MANAGER.

R1 TO R4 BY SPECIAL GOVERNMENT PLEADER TO A.G SRI.T.B.HOOD.

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON
09.09.2021, ALONG WITH WP(C). NO.16614/2021, THE COURT ON 17.09.2021
DELIVERED THE FOLLOWING:

JUDGMENT**S. Manikumar, CJ**

Alleging failure on the part of respondents in ensuring proper implementation of the guidelines/notification/directives/ advisories, notified/issued from time-to-time, for protection of the public at large from COVID-19 pandemic, W.P.(C) No.16614 of 2021 is filed for the following reliefs:

- “(i) Issue a writ of mandamus or any appropriate writ or direction or an order to the State of Kerala, Represented by Secretary, Health & Family Welfare Department, Secretariat, Thiruvananthapuram, (respondent No.2), and/or other appropriate authorities, to amend the guidelines issued by the 2nd respondent dated 4.8.2021 in G.O.(Rt.) No. 567/2021/DMD, *inter alia*, removing the following paragraphs:

(4) a person (workers/visitor) can enter shops, markets, banks, public and private offices, financial institutions, industries, factories, open tourist places, and all other institutions only if he/she is vaccinated with the first dose of Covid vaccine at least two weeks before or shall have an RTPCR negative certificate taken within 72 hours or he/she has been recovered from Covid 19 illness a month before.”

- (ii) To issue a writ of mandamus or any appropriate writ or direction or order to the respondents and/or other relevant authorities not to discriminate citizens between

vaccinated and not vaccinated as Government cannot compel a citizen to get vaccinated, in violation of the fundamental rights guaranteed under the Constitution.

- (iii) Issue a writ of mandamus or any appropriate writ or direction or order to the respondents and/or other appropriate authorities that right to breath air freely cannot be infringed by imposing any compulsory condition thus imposing fines against the citizens who found to be violating Covid-19 protocol merely based on not wearing mask etc., is arbitrary.
- (iv) Issue a writ of mandamus or any appropriate writ or direction or order to the respondents and/or other appropriate authorities to make the wearing of a mask is advisory and not compulsory unless in a crowded place.
- (v) Issue a writ of mandamus or any appropriate writ or direction or order to the respondents and/or other appropriate authorities to ensure availability of good quality and affordable mask and issue proper guidelines/protocol for usage and consequences of non-usage of the mask by the people who are suffering from heart/respiratory ailments and to the public at large.
- (vi) Issue a writ of mandamus or any appropriate writ or direction or an order to the respondents and/or other appropriate authorities for issuance of guidelines/ notification/advisory/protocol to provide PPE Kits at affordable rates and of good quality.

- (vii) Issue a writ of certiorari or such other appropriate writ, order or direction to set aside Exhibit-P1 guidelines/ order, as it violates Right to Life, Right to Livelihood and Freedom of Profession of the citizens.

2. W.P.(C) No.17274 of 2021 is filed challenging clause (iv) of G.O.(Rt.) No.575/2021/DMD dated 10.08.2021 (Exhibit-P2) issued by the Chief Secretary (Chairperson, Disaster Managements (A) Department, Government Secretariat, Thiruvananthapuram, under the Disaster Management Act, 2005. The reliefs sought for in the writ petition are as under:

- “(i) Issue a writ of certiorari, or any other appropriate writ calling for the records leading to Exhibit-P2 Government order and clause (iv) thereof, insofar as it is violative of Article 14, 19 and 21 of the Constitution of India.
- (ii) Issue any other appropriate writ, order or direction, commanding the 1st respondent to expedite vaccination drive in the State of Kerala, as expeditiously as possible, within a reasonable time frame.
- (iii) Declare that clause (iv) of Exhibit-P2 Government order dated 10.08.2021 takes away the fundamental rights of the citizens, including the right to life, personal liberty and livelihood, in as much as the rider to clause (iv) virtually means that a person cannot move out of his abode even for his livelihood, unless he/she satisfies any one of those requirements.

- (iv) Declare that the requirement in clause (iv) of Exhibit-P2 Government order dated 10.08.2021 to have an RT-PCR negative certificate every 72 hours is a restriction which causes hardship to the public and hence, arbitrary, coercive, harsh, and violative of Article 14 and, therefore, liable to be quashed.
- (v) Issue any appropriate writ, order or direction to the respondents 1 & 2 to the effect that the implementation of clause (iv) of Exhibit-P2 Government dated 10.08.2021 cannot stand in the eye of law, since the public who are otherwise following the Covid appropriate behaviour/ protocols hitherto viz., social distancing, masks and sanitizing (SMS protocol) cannot be deprived of their personal liberty and honourable existence in this fashion.
- (vi) Declare further that the welfare policy for vaccination can never affect a fundamental right, particularly when there exists no reasonable nexus between vaccination and prohibition of continuation of occupation/ profession/trade or even going out for essentials.

3. Facts relevant for consideration are that the petitioner in W.P.(C) No.16614 of 2021 is a practicing Advocate. He has filed the subject writ petition, *inter alia*, alleging failure on the part of respondents to ensure the lives of millions of health workers, the public at large, including COVID-19 patients,

persons, who are not affected with COVID-19, because of not adhering to the advisory issued for hospitals and medical institutions, advisory issued for managing health care workers in COVID-19 and non - COVID 19 areas of the hospital, guidelines issued for quarantine facilities and for not issuing any guidelines/protocol, with respect to the consequence of wearing of a mask, by the people suffering from old age and/ or other respiratory ailments, and for not issuing guidelines/protocol, with respect to the consequences of wearing PPE kits for a longer time and/ or providing standard or high-quality PPE kits.

4. Petitioner has stated that the treatment protocol was devised not as patient-friendly, but to prevent the spread of disease, as if the patients, who contacted COVID-19, do not have the right to live, putting severe pressure on the doctors and health workers. Petitioner has pointed out that India have lost more doctors and health workers in the process of controlling COVID-19, which itself is a proof that the system put heavy pressure and workload on the doctors and health workers, without taking adequate concern over their health,

work condition, resource availability, and skilled human resources support.

5. Petitioner has further stated that *prima facie*, there is failure of the sovereign to ensure, protection of fundamental rights of the general public and the rights guaranteed by the Constitution of India, *inter alia*, under Article 226 read with Articles 14, 19, 21 of the Constitution of India read with Sections 39, 52, 53, 55, 56, 57, 61, 65, 66 and 79 of the Disaster Management Act, 2005 read with COVID 19 Regulations, 2020 under the Epidemic Diseases Act, 1897.

6. Petitioner has further stated that the right to breathe freely cannot be restricted under any circumstances, as only a person would know whether breathing is difficult or not, thus imposing stringent punishment for removing a mask or not wearing a mask, when out on the road, could force even a vulnerable person to wear a mask endangering own life.

7. Petitioner has further stated that State of Kerala has now modified the COVID-19 guidelines and passed an order dated 4.8.2021 in G.O.(Rt.) No.564/2021/DMD, wherein paragraph (iv) states that "a person (workers/visitors) can

enter shops, markets, banks, public and private offices, financial institutions, industries, factories, open tourist places, and all other institutions only if he/she is vaccinated with the first dose of Covid Vaccine at least two weeks before, or shall have an RTPCR negative certificate, taken within 72 hours, or he/she has been recovered from COVID-19 illness, a month before”, which, according to him, is a clear violation of the fundamental rights of the citizens.

8. Petitioner has further contended that WHO has stated that lockdown and social distancing are the only effective way to combat COVID-19 pandemic. Petitioner, in fact, supports the lockdown and other steps taken by the respondents, but the same ought not to have been implemented, because it violates the fundamental rights of the citizens.

9. W.P.(C) No.17274 of 2021 is filed aggrieved by clause (iv) of G.O(Rt.) No.575/2021/DMD dated 10.08.2021, issued by the Chief Secretary, Thiruvananthapuram, the 2nd respondent, in his capacity as the Chairman of the State Executive Committee of the State Disaster Management Authority, invoking the powers conferred under Section 20(3)

of the Disaster Management Act, 2005. Clause (iv) of Exhibit-P2 order states that only persons, who have taken at least one dose of COVID-19 vaccine before two weeks, or who are in possession of RT-PCR negative certificate, taken 72 hours before, or who is in possession of COVID-19 positive results, more than a month old, will be allowed inside (workers/visitors) in shops, markets, banks, public and private offices, financial institutions, factories, industrial establishments, open tourist spaces and other establishments.

10. Likewise clause (v) of the Government order dated 10.08.2021 states that all persons [whether belonging to the categories mentioned in point (iv) or not] can move out of home for essential activities like vaccination, COVID-19 testing, medical emergency, purchase of medicine, death of relatives, marriage of close relatives, local travel to catch route bus/train/flight, ship, examinations etc.

11. Petitioner has further stated that going by clause (iv) of the order dated 10.08.2021, it is clear that the exemption for a citizen of this State to go out of the household for the above mentioned essential activities, is possible only if there

are no other persons in the household qualifying the stipulations prescribed therein. This, according to the petitioner, is highly deplorable, absurd, and has virtually placed the people in two categories, viz., vaccinated and not vaccinated, or those with RTPCR negative report or without such report, and those affected by the virus more than a month ago or those, who are not affected. This virtually creates an imbalance and in-equilibrium among the people, bracketing them into two classes viz., the haves and have nots.

12. Petitioner has further pointed out that 42.92% of the population got a single dose of COVID-19 vaccine and only 17.84% of the population have to be administered with a second dose. If that be so, it is for the State Government, to ensure adequate supply of vaccine before imposing restrictions of this nature.

13. According to the petitioner, going by the information dated 7.8.2021 provided by the Government of Kerala, a vast majority of the polity still remains to be vaccinated. Though the Government of Kerala is continuously taking steps to procure vaccines, the same is likely to take considerable time.

In such circumstances, according to the petitioner, it is quite in-apposite and inappropriate to have issued/incorporated the restrictions akin to clause/point No.(v) as per Government order dated 10.08.2021, in the garb of relaxing earlier restrictions formulated in the wake of the pandemic. Hence, clause (iv) in the Government order dated 10.08.2021 imposes fetters on the fundamental rights of equality, freedom of movement, and the right to carry out trade or profession. It also infringes the very right to life, guaranteed under Articles 14, 19 and 21 of the Constitution of India.

14. In support of the reliefs sought for, petitioner in W.P.

(C) No.16614 of 2021, has raised the following grounds:

A. The right to breathe air freely cannot be curtailed by imposing fine or punishment, at any cost. Such measures must be implemented as advisories as people must be expected to take care of their life themselves. The State of Kerala has modified the Covid guidelines in the State and passed an order dated 04/ 08/ 2021 to discriminate not only vaccinated and not vaccinated public, but also discriminate shops as no such guidelines seem to have been issued for beverages or other shops run by the Government. Imposing fine on the general

public for not adhering to advisory protocols is arbitrary and in violation of the fundamental rights of the citizens.

B. He further contends that when WHO guidelines stipulates that either mask-or social distance must be maintained to avoid infection, compelling people to observe protocol even when they are alone is not only illogical but also against the scientific findings on mask related risk. The insistence of wearing the mask at the hospitals or isolation centres must be made strictly on the advice of doctors and not in general. People must be educated about the risk or side effects of wearing masks continuously. Governments must focus on developing skilled manpower ready to take up tasks in various hospitals and isolation centers to help patients.

C. He further contends that the workload of the health workers and doctors must be reduced to avoid exposing them more to risk. A master guideline for treatment protocol of Covid patients must be issued, discarding all other guidelines to avoid confusion. Doctors must be entrusted to do their professional jobs without interference, and the choice of medicine must be left with the doctor treating the patient. Unless there is an allegation of mala fide, no doctor should be insisted upon giving treatment of choice to the media.

D. People of the nation are the most significant asset, and they are the backbone of the country contributing to the development of the economy of the nation at

large and therefore, the aforesaid persons are entitled to maximum incentives from the nation and this fact is acknowledged worldwide.

E. Patients feel happy to see their family or friends during their sufferings. Facilities like video call once in a day from hospital must be provided. CCTV access to friends and relatives of patients in ICU must be provided to avoid any misuse or abuse of the treatment protocol. All hospitals must be directed to keep CCTV footage for at least 3 months and footage must be easily provided to family members who ask for the same to find the reason for the death of their dear ones.

F. Advisory issued for hospitals, and medical education institutions is not taken care of *inter alia* the guideline that there should be a proper use of masks and/ or the hygiene facilities. Improper use of masks and its varied range and quality has led to more complex situations. On account of different masks available in the market, levels of intake of oxygen and exhale of CO₂ varies from person to person and depending upon the type of mask, the persons are getting more prone to the ongoing pandemic disease.

G. Lack of hygiene facilities in hospitals and quarantine centres led to a dangerous situation thereby increasing the number of cases every passing day. Basic facilities like food, water, clothes, separate rooms/bathrooms to the patients or health workers, have amounted to

violation of the guidelines issued in respect of quarantine facilities, thereby increasing the number of cases every passing day.

H. Article 21 of the Constitution of India gives every citizen the right to have access to all minimal requirements of living with dignity and consequently, obligates the State to provide these minimal facilities to them, when they are deprived of.

I. The provisions of the Disaster Management Act, 2005 are essential to be invoked as the legal right of the people of the nation is being infringed and affected by the act or omission of concerning authorities. Provisions of the Disaster Management Act, 2005 are also essential to be invoked to redress the public injury, enforcement of general duty, protecting the social right and vindicating public interest. Since injury has arisen from breach of public duty and there is an ex facie violation of the Constitution of India and, therefore, the present reliefs ought to be granted in the public interest.

J. Article 21 of the Constitution of India guarantees human dignity, which in turn guarantees further rights to the individuals / public at large. Due to shortage and/or lack of knowledge of the PPE Kits, there are unethical practices like price gouging and selling of substandard quality N95 masks and personal protective equipment. Article 21 of the Indian Constitution recognizes every individual's right to life and liberty,

which also includes the right to live in a clean and pure environment. Life with dignity and health is a guaranteed right as held by the Hon'ble Supreme Court in various cases. The Hon'ble Supreme Court has also held that maintenance and improvement of public health have to rank high amongst the State's obligations, as these are indispensable to the very existence of the community.

K. The 'Right to Health' is inseparable from 'Right to Life', and the 'Right to Medical Facilities' as a concomitant of 'Right to Health' is also part and parcel of the Right to Life. In a welfare State, the corresponding duty to the right to health and medical facilities lies with the State.

L. As per Article 38 of the Constitution of India, the State shall strive to promote the welfare of people by securing and protecting as effectively as it may. The state shall, in particular, strive to minimize the inequalities in income and endeavour to eliminate inequalities in status, facilities and opportunities, not only amongst individuals, but also amongst groups of people residing in different areas or engaged in different vocations. In other words, no person will be deprived of a healthy life because he cannot afford it. The State must provide facilities that an economically better-off person can afford out of his pocket. Article 47 makes it a paramount principle of governance that steps are

taken for the improvement of public health as amongst its primary duties", as held in **Municipal Council, Ratlam v. Vardhichand & Ors.** [1980 Cri LJ 1075]. In support of the contention that clause (iv) of the impugned order a violation of the fundamental rights, petitioner has placed reliance on the decision in **Guwahati High Court IN-RE Kohima, Nagaland v. The State of Nagaland and Ors.** [Case No. PIL (Suo Motu) 1/2021].

M. The impugned guidelines also prevent people, who cannot get vaccinated due to the existence of other diseases, from going to any shops for purchase of essential items, as they must otherwise produce RTPCR test report that cost around Rs. 600/-. It is not prudent for the respondents to insist on RTPCR, for a person, who visits a shop, to buy an item valued less than Rs. 50/ -, by spending Rs. 600/ - on tests.

15. In support of the reliefs sought for in W.P.(C) No.17274 of 2021, petitioner has contended that the Government order dated 10.08.2021 is issued, without any authority. Such a notification prohibiting a greater degree of rights having a direct effect on the fundamental rights of the citizens on a matter concerning both public health and personal liberty, cannot survive, since it infringes the

fundamental right to life and livelihood and the same is nothing short of a colourable exercise of power.

16. It is pertinent to state that vaccination for COVID-19 is a voluntary affair and not coercive. It can only be said that it is advisable to receive 2 doses of vaccine for protecting oneself and also to prevent the spread of the virus. Be that as it may, Exhibit-P3 data uploaded in the Government website providing details of COVID vaccination in the State as on 7.8.2021 shows that only 1,52,31,555 people in the State have been administered the first dose of vaccine and only 63,29,067 people have been administered two jabs i.e., the first and second doses vaccine. The data available further shows that only 42.92% of the population have got single dose of COVID-19 vaccine and only 17.84% of the population have been administered with 2 doses of COVID vaccine. Hence, it is for the State to ensure adequate supply of vaccine.

17. It is further contended that the next requirement to have an RTPCR negative certificate every 72 hours is a restriction which causes hardship to the public. Unless and until the vaccination drive is complete or at least 75-80

percent of the population coming under the age group 18-60 are administered at least with the first dose of vaccine, such a condition/ requirement cannot be enforced.

18. It is further contended that according to Exhibit-P4 survey conducted by the Indian Council for Medical Research (ICMR), 5th respondent, to estimate the sero-prevalence of SARS-COV-2 antibodies, Kerala has the lowest exposure to sars-cov-2. According to true infection estimates, based on serological studies new data by the Union Government showed only 44% of the population projected to have been infected till early July, as compared to 67% across the country as a whole. The said survey further states that among the total 130Cr. population of India, 90 Cr., have acquired immunity against Covid. According to the petitioner, if we assume that all the 39 Crores, who are vaccinated at least one dose, have acquired immunity, the balance 51 Cr., have acquired natural immunity, which thus means, 56.6% of people have acquired immunity without vaccines. This refutes the claim that vaccination is the only solution to immunity against Covid. This vital aspect also proves that the condition impugned is irrational and illogical.

19. Refuting the contentions raised by the petitioners in both the writ petitions, the Chief Secretary, Chairperson, Disaster Management (A) Department, Thiruvananthapuram, has filed a statement, wherein it was contended as under:

A. It is contended that to prevent the spread of second wave of COVID-19 pandemic, the State Government and State Disaster Management Authority have devised various measures, issued guidelines, and imposed restrictions. Curbs were imposed for opening shops, markets, banks, offices, factories, industrial establishments and open tourist places. They were permitted to open only on alternate days and were to be closed at the specified time. Complete lockdown was enforced on Sundays.

B. It is further contended that the restrictions are being imposed and relaxations are given after closely monitoring the evolving pandemic situation in the State and in consultation with the health experts, Government departments and enforcement agencies. The restrictions are reviewed at regular intervals and, depending on the changed circumstances, appropriate modifications are made or relaxations are given. As a part of containment activities, it was necessary to evolve a strategy focusing public health needs as well as livelihood concerns. To elicit the views of the health experts, enforcement agencies and the Secretaries to the Government,

meetings were convened on 31.07.2021, 01.08.2021 and 02.08.2021. The Chief Secretary attended the meetings. Team sent by the Ministry of Health & Family Welfare, Government of India met the Chief Secretary on 02.08.2021 and emphasized the need for containment at micro level.

C. It is further contended that the Chief Secretary considered the expert opinion in the matter and the concerns regarding the effect of prolonged closure of establishments on the livelihood of people. It was identified that a focused strategy based on micro-containment as well as access control to indoor spaces of public gathering was to be implemented in the State. Accordingly, Government order dated 04.08.2021 was issued with the guidelines annexed to it.

D. It is further contended that as per point (ii) in Annexure to the Government order dated 04.08.2021, shops, markets, banks, offices, factories, industrial establishments and open tourist places were allowed to function from Monday to Saturday. Point (iv) in Annexure to the Government order dated 4.8.2021 provides that only persons who have taken at least one dose of COVID – 19 vaccine before two weeks or who are in possession of RTPCR negative certificate taken 72 hours before or who is in possession of COVID - 19 positive results more than a month old would be allowed inside, (workers/visitors) in shops, markets,

banks, public and private offices, financial institutions, factories, industrial establishments, open tourist spaces and other establishments. However, as per point (v) in Annexure to the Government order dated 4.8.2021, all persons (whether belonging to the categories mentioned in point (iv) or not) can move out of home for essential activities like vaccination, COVID – 19 testing, medical emergency, purchase of medicine, death of relatives, marriage of close relatives, local travel to catch long route bus / train / flight / ship, examination etc.

E. It is further contended that all persons, who fall within the categories mentioned in point (iv) in Annexure to the Government order dated 4.8.2021 or not, are permitted to move out of home only for essential activities indicated in point (v). As per point (iv) in paragraph 3 of the Government order dated 10.08.2021, this was clarified and unvaccinated persons are allowed to move out of home for other essential activities, which were not mentioned in point (v) in Annexure to the Government order dated 4.8.2021. The petitioner seeks to quash clause (iv) in paragraph 3 of the Government order dated 10.08.2021. By the Government order dated 10.08.2021, purchase of food items, grocery, milk, meat, fish etc., were also brought within the purview of essential activities. In the event of allowing the prayers sought for in the writ petitions, the range of permitted essential activities will shrink.

F. It is further contended that vaccination helps to protect oneself from COVID - 19, limit the spread of infection and reduce hospital admission. As observed by the Hon'ble Supreme Court, vaccination appears to be one of the important strategies to combat further spread of pandemic and would also provide a measure of security and assure the people about their health and well-being.

G. It is further contended that the figures as on 04.09.2021 would show that more than 2.16 crore persons in the State were administered with first dose of vaccine and above 80 lakh persons took their second shot of vaccine. The target population (persons above 18 years age] in Kerala is 2.87 crores and 75.16% of the target population has been inoculated with one dose of vaccine. The restrictions in the Government orders dated 4.8.2021 and 10.08.2021 were imposed in the wake of a spike in COVID – 19.

H. It was found necessary that unvaccinated person's access to indoor spaces must be curtailed. By frequenting indoor spaces, the unvaccinated persons expose themselves to infection. Hence, in their best interest and in larger public interest, the restrictions in the Government orders 4.8.2021 and 10.08.2021 were imposed. In the light of continuing surge in infection and concerns of a possible third wave, the restrictions in the Government orders 4.8.2021 and 10.08.2021 are

absolutely essential to prevent the further spread of COVID – 19.

I. It is also contended that unvaccinated persons are more prone to getting COVID - 19 infected than inoculated persons. The severity of disease among the vaccinated persons is reported to be less. It is pertinent to point out that despite an increase in the number of COVID - 19 patients in the State, there was no corresponding demand for hospital admission.

J. It is further contended that the contention of the petitioners that the impugned provisions in the Government order dated 10.08.2021 violate the fundamental rights guaranteed under the Constitution of India is devoid of any merit or substance. It is settled law that no fundamental right is absolute. In the interest of the general public, reasonable restrictions can be imposed in exercise of rights conferred by Article 19 of the Constitution. As per the Government orders dated 4.8.2021 and 10.08.2021, reasonable restrictions were imposed as a measure to suppress the spread of COVID-19. The restrictions imposed have a rational nexus with the object sought to be achieved. In the current scenario, those restrictions would advance the social and general public interest. The rights of individuals are always subservient to the public interest. In the above circumstances, it is stated that the contentions raised in both the writ petitions are devoid of merit and, therefore, liable to be dismissed.

20. Heard learned counsel for the parties and perused the material available on record.

21. G.O.(Rt.) No.564/2021/DMD dated 4.8.2021 issued by the Chief Secretary, Disaster Management (A) Department, Government of Kerala, reads thus:

"GOVERNMENT OF KERALA

Abstract

Disaster Management Department – COVID-19
containment activities – relaxation and restrictions from
5th August – 2021 – Orders issued

DISASTER MANAGEMENT (A) DEPARTMENT

G.O.(Rt) No. 564/2021/DMD

Dated, Thiruvananthapuram, 04/08/2021

Read:-

1. GO (Rt) No.404/2021/DMD dated 06.05.2021
2. GO (Rt) No.467/2021/DMD dated 16.05.2021
3. GO (Rt) No.479/2021/DMD dated 22.06.2021
4. GO (Rt) No.487/2021/DMD dated 29.06.2021
5. GO (Rt) No.500/2021/DMD dated 06.07.2021
6. GO (Rt) No.524/2021/DMD dated 10.07.2021
7. GO (Rt) No.532/2021/DMD dated 17.07.2021
8. GO (Rt) No.534/2021/DMD dated 20.07.2021
9. GO (Rt) No.545/2021/DMD dated 24.07.2021
10. GO (Rt) No.550/2021/DMD dated 28.07.2021
11. GO (Rt) No.559/2021/DMD dated 30.07.2021

ORDER

Targeted COVID-19 containment activities were undertaken by the State in the last few months. On 30.07.2021, Hon. Chief Minister, in his regular COVID-19 core group meeting, directed to evolve a COVID-19

containment strategy focusing public health needs and livelihood concerns. Subsequent to this, the State Health Experts' Committee met on 01.8.2021 and the undersigned took meetings with Secretaries of Government, Enforcement agencies and Chairman, State Health Experts' Committee on 31.07.2021 and 02.08.2021 respectively to examine the COVID-19 containment strategy. The team sent by the Ministry of Health and Family Welfare, Government of India met with the undersigned on 02.08.2021 in which containment at micro-level was emphasized by the team.

The expert opinions in the matter and the concerns regarding the effect of prolonged closure of establishments on livelihood have been considered in entirety. Accordingly, it is identified that a focused strategy based on micro-containment as well as access control to indoor spaces of public gathering is required to be implemented in the State.

Accordingly, the undersigned in his capacity as Chairman of the State Executive Committee of State Disaster Management Authority, in exercise of the powers conferred under Section 20(3) of the Disaster Management Act, 2005, hereby issues the guidelines as given in the Annexure for strict implementation by the enforcing authorities with effect from 00:00 Hrs of 5th August-2021. These guidelines are in supersession of the previous guidelines issued by the Government read as (1) to (11) above.

(By order of the Governor)

Dr. V. P. Joy
Chief Secretary"

Annexure

i. Special intensified stringent lockdown restrictions will be enforced in the LSGIs with critical spread based on the Weekly Infection Population Ratio (WIPR). WIPR is the total number of COVID-19 infections reported in the week multiplied by 1000 divided by total population of the panchayath or urban ward. In panchayaths/urban wards with WIPR of more than 10, special intensified stringent lockdown restrictions shall be imposed. District Disaster Management Authorities shall publish this list by the evening of every Wednesday with data from Covid 19 Jagratha portal and disseminate information accordingly.

ii. Shops, markets, banks, offices, financial institutions, factories, industrial establishments, open tourist spaces and other establishments can function from Monday to Saturday. All shops, tourism centres and other establishments should display the status of vaccination of employees and the number of customers permitted at a time. It shall be the responsibility of the owner of such establishments to avoid crowding inside and outside the shop. Enforcement agencies will conduct checks and take action to ensure the above.

iii. All establishments in the public sector, including government offices, PSUs, companies, autonomous organizations, commissions etc., will function from Monday to Friday.

iv. Only persons who have taken at least one dose of COVID-19 vaccine before two weeks, or who are in possession of RT-PCR negative certificate taken 72 hours before or who is in possession of COVID-19 positive results more than a month old will be allowed inside (workers/visitors) in shops, markets, banks, public and private offices, financial institutions, factories, industrial establishments, open tourist spaces and other establishments.

v. All persons (whether belonging to the categories mentioned in point (iv) or not) can move out of home for essential activities like vaccination, COVID-19 testing, medical emergency, purchase of medicine, death of relatives, marriage of close relatives, local travel to catch long route bus/train/flight/ship, examinations etc.

vi. To avoid crowding, all shops and establishments can function from 7 am to 9 pm. People will be allowed inside the shop only on the basis of the shopping area (1 person per 25 sq ft.) Hotels and restaurants will be allowed online delivery till 9:30 PM.

vii. All transport vehicles (public and private) shall be permitted with strict adherence to COVID-19 protocols.

viii. All competitive, recruitment and University examinations/ sports trials shall be permitted.

ix. There will be complete lockdown on 8th August, 2021 (Sunday) with the permissible activities ordered in GO(Rt) No.459/2021/DMD dated 07/06/2021 and GO(Rt) No.461/2021/DMD dated 10/06/2021. However, there shall be no lockdown on 15th August, 2021 (Independence day).

x. Children who have not been vaccinated can accompany adults in point (iv).

xi. DDMA's shall declare containment zones and shall ensure that entry/exit is not allowed from these containment zones, except for emergencies.

xii. Schools, Colleges, Tuition Centres, Cinema theaters, in-house dining in Hotels and restaurants etc., will not be permitted. Malls can be permitted to open only for online delivery. Educational institutions can be opened for imparting online education only. Dining will be allowed in open areas, inside vehicles, parking lots etc., maintaining six ft. distance.

xiii. Accommodation facilities like hotels, resorts etc., will be allowed in a bio-bubble model in all areas on all days.

xiv. Public functions, social, cultural and political gatherings are not permitted. However, marriages and funerals will be allowed with participation of maximum 20 persons. Places of worship shall strictly limit the maximum number of persons to 40 with each person having a minimum of 25 sq.ft area. For lesser area, the maximum number of persons shall be reduced proportionately.

xv. All departments shall conduct online/social media campaigns to effectively implement the restrictions.

xvi. All departments concerned shall ensure that appropriate COVID protocol is followed in all areas. Specifically, Transport Department (Bus stops and bus depots), Fisheries Department (Fish markets, harbours and fish landing centres), LSGD (Markets and public places), Labour Department (Loading and unloading centres), Industries Department (Industrial areas and manufacturing units) etc., will take coordinated action for the purpose. District Collectors shall appoint Sectoral Magistrates for strict enforcement of regulations.

xvii. Police Department and Local Self Government Institutions concerned shall convene meetings with traders' associations of the area to ensure that crowding inside and outside the shops does not happen. Shops shall make necessary arrangements specifically for this purpose. Home delivery/ On-line delivery shall be encouraged.

xviii. Rapid Response Teams (RRT) shall be deployed at ward level for effective contact tracing and surveillance including monitoring of home quarantine and moving patients to Domiciliary Care Centres (DCC)."

22. G.O.(Rt.) No.575/2021/DMD dated 4.8.2021 issued by the Chief Secretary, Disaster Management (A) Department, Government of Kerala, reads thus:

"GOVERNMENT OF KEALA

Abstract

Disaster Management Department – Restrictions imposed in the State as part of COVID-19 containment activities – Further orders issued

DISASTER MANAGEMENT (A) DEPARTMENT

G.O.(Rt) No. 575/2021/DMD

Dated, Thiruvananthapuram, 10/08/2021

- Read:
1. MHA Letter No. 40-3/2020-DM-II (A) dated 29.06.2021.
 2. GO(Rt) No. 564/2021/DMD dated 04.08.2021
 3. GO(Rt) No.571 /2021/DMD dated 07.08.2021
 4. D.O. Letter No.04/Covid/Fest/AS(H)/2021 dated 04/08/2021 from the Secretary, Ministry of Health and Family Welfare, Government of India.

ORDER

The Ministry of Health and Family Welfare, Government of India vide letter read 4th above has alerted the State Governments about the potential of mass gathering events during the upcoming festivals like Muharam, Onam, Janmashtami, Ganesh Chaturthi and Durga Pooja turning into super spreader events, causing spike in COVID-19 cases. The State Governments have been advised to actively consider imposition of local restrictions in public observation of these festivals and curb mass gatherings, to ensure that no mass gathering occurs during the festivals.

2) Hence, in continuation of the guidelines issued as per Government Orders read 2nd and 3rd above detailing restrictions/ relaxations in connection With the COVID-19 containment activities in the State, the undersigned in his capacity as Chairman of the Kerala State Disaster Management Authority, in exercise of the powers conferred under Section 20(3) of the Disaster Management Act, 2005, reiterates that no public observation of festivals or mass gatherings will be permitted during the above mentioned festivals in the State.

3) Following additional guidelines/ clarifications are also issued for strict implementation by the enforcement authorities with effect from 00:00 Hours of 12th August, 2021:

- i. Special intensified stringent lockdown restrictions will be enforced in the Panchayats or Urban wards with critical spread, wherein Weekly Infection Population Ratio (WIPR) is above 8.
- ii. Micro-containment and testing shall be intensified in areas where new cases are on the rise.
- iii. For Sabarimala pilgrimage and darshan from 15th August 2021, a maximum of 15,000 devotees per day will be permitted and virtual queue registration will continue for crowd management.
- iv. As per point (v) of annexure to the Government Order read 2nd above, all persons (whether belonging to the categories mentioned in point (iv) or not) are allowed to undertake certain essential activities. It is clarified that those who are yet to receive COVID-19 vaccination or cannot take the vaccine due to drug allergy or other ailments, can move out of their homes for essential activities like purchase of food items,

including grocery, milk, meat, fish etc., if there are no other persons in the household belonging to point (iv) of G.O. read 2nd above. If they are required to visit shops they shall be given priority service by the traders. Traders and LSGIs concerned shall give special attention to these categories of persons and ensure home delivery of essential items.

(By order of the Governor)
Dr. V P Joy
Chief Secretary"

23. The Kerala Health COVID-19 daily vaccination bulletin dated 29.08.2021 issued by the COVID-19 outbreak Control and Prevention State Cell Health & Family Welfare Department, Government of Kerala is extracted hereunder:

Kerala HEALTH-COVID-19 DAILY VACCINATION BULLETIN

Date: 29/08/2021

COVID-19 mass vaccination are showing signs of preventing illness and steep decline in cases and hospital admissions in countries which have implemented them. Kerala started its vaccination for health care workers from January 16, 2021. The COVID-19 Vaccines Operational Guidelines issued by the Ministry of health and Family Welfare, Govt. of India, 28th December, 2020 and all subsequent Guidelines issued by the Ministry of health and Family Welfare, Govt. of India are followed at the sites and all vaccination lanes.

OUR HEALTH OUR RESPONSIBILITY-VACCINE ADVISORY

"ME FIRST" attitude does not strengthen our vaccination programme. We are requesting all to cooperate for ensuring vaccination to our needy Brothers and sisters and elderly people

- Vaccination sessions are planned as per the availability of vaccines. All are requested to cooperate.

- After receiving the first dose, second dose of covinshield vaccine is to be taken between 12-16 weeks and second dose of covaxin between 4 – 6 weeks.
- Covid vaccination is currently available to all above the age group of 45 yrs.
- Those who complete 18yrs by 1 January, 2022 and not completing 45yrs on 1 January, 2022 will be vaccinated from May 17, 2021 onwards in the 18-45 years category. As there is a limited supply of vaccine from the companies, Government has decided to import the vaccine and available dosage shall be prioritized for people with comorbidities and they will be provided vaccination on priority basis.
- Those in the age group of 18-45 years have to register in <https://www.cowin.gov.in> for getting vaccination as per the Govt. of India instructions. As there is no system of comorbidity document uploading in COWIN software as of now, State IT Mission has assisted and developed a portal to register and upload comorbidity related details and for getting priority based on comorbidities. All such people within the age group 18-45 years need to register in <https://covid19.kerala.gov.in/vaccine>. They should upload a comorbidity certificate from a registered medical practitioner. List of comorbidities and medical certificates are published in the following websites.

www.dhs.kerala.gov.in

www.arogyakeralam.gov.in

www.sha.kerala.gov.in

Those who are disabled can upload their disability certificate in <https://covid19.kerala.gov.in/vaccine> for getting priority.

- Only those who receive messages about the vaccination centre, date and time have to come.
- *NO NEED TO RUSH TO THE VACCINATION CENTRE WITHOUT GETTING SESSION, VENUE AND TIME. VACCINE WILL BE AVAILABLE TO EVERYONE.*

TABLE 1. Total Vaccination done in the State as on 29/08/21 midnight

State Summary till 30/08/2021 at 12 AM						
District	Target	First Dose	Percentage *	Second Dose	Percentage *	Total Dose Administered
Alappuzha	1915224	1310470	68%	500193	26%	1,810,663
Ernakulam	2938117	2508592	85%	834446	28%	3,34,038
Idukki	970389	740886	76%	256400	26%	997,286
Kannur	2168725	1539619	71%	557755	26%	2,097,374
Kasaragod	1067681	781248	73%	327934	31%	1,109,182
Kollam	2318825	1613565	70%	570274	25%	2,185,639
Kottayam	1776779	1286106	72%	476215	27%	1,762,321
Kozhikode	2626722	1797409	69%	654114	25%	2,451,523
Malappuram	3134075	1849899	59%	633138	20%	2,483,037
Palakkad	2386864	1439878	60%	476467	20%	1,916,345
Pathanamthitta	1104334	977212	88%	419486	38%	1,396,698
Thiruvananthapuram	2924113	2246582	77%	865559	30%	3,112,141
Thrissur	2744862	1925915	70%	693583	25%	2,619,498
Wayanad	706595	628501	89%	239248	34%	867,749
Grand Total	28773305	20645882	72%	7506612	26%	28,152,494
* Target population (> 18 years) as per MOHFW is 2.87 crores						

TABLE 2. Covid-19 Vaccination Centre Functional in the State as on 29/08/21 midnight

DISTRICTS	Public	Private	Total
Alappuzha	33	1	34
Ernakulam	4	23	27
Idukki	7	2	9
Kannur	46	6	52
Kasaragod	38	9	47
Kollam	15	13	28
Kottayam	14	5	19
Kozhikode	13	43	56
Malappuram	25	7	32
Palakkad	2	9	11
Pathanamthitta	10	1	11
Thiruvananthapuram	50	20	70
Thrissur	101	17	118
Wayanad	0	1	1
Grand Total	832	324	1156

TABLE 3. Health Care Workers Coverage as on 29/08/21 midnight

<i>District</i>	<i>1st DOSE</i>	<i>Percentage</i>	<i>2nd DOSE</i>	<i>Percentage Fully Vaccinated</i>
Alappuzha	28995	100%	25417	88%
Ernakulam	85525	100%	70173	82%
Idukki	13540	100%	12068	89%
Kannur	40369	100%	35307	87%
Kasaragod	11608	100%	10056	87%
Kollam	36019	100%	30710	85%
Kottayam	38679	100%	33594	87%
Kozhikode	52711	100%	43844	83%
Malappuram	44795	100%	37234	83%
Palakkad	34659	100%	29321	85%
Pathanamthitta	29321	100%	23191	79%
Thiruvananthapuram	73366	100%	60520	82%
Thrissur	51896	100%	45774	88%
Wayanad	13973	100%	12495	89%
Grand Total	555456	100%	469704	85%

TABLE 4. Frontline workers Coverage as on 29/08/21 midnight

<i>District</i>	<i>1st DOSE</i>	<i>Percentage</i>	<i>2nd DOSE</i>	<i>Percentage Fully Vaccinated</i>
Alappuzha	39084	100%	34343	88%
Ernakulam	54895	100%	46297	84%
Idukki	22964	100%	18760	82%
Kannur	41272	100%	37571	91%
Kasaragod	24605	100%	20991	85%
Kollam	42180	100%	34734	82%
Kottayam	32115	100%	28595	89%
Kozhikode	55234	100%	47855	87%
Malappuram	53880	100%	47237	88%
Palakkad	48069	100%	42169	88%
Pathanamthitta	25238	100%	20589	82%
Thiruvananthapuram	72891	100%	58970	81%
Thrissur	41883	100%	37856	90%
Wayanad	17016	100%	14810	87%
Grand Total	571326	100%	490777	86%

TABLE 5. Age-Appropriate Group (≥ 45 Years) Coverage as on 29/08/21 midnight

<i>Age appropriate group (≥ 45 years) Coverage as on 30/08/2021, 12 AM</i>					
<i>District</i>	<i>Target</i>	<i>1st Dose Coverage</i>	<i>Percentage</i>	<i>2nd dose</i>	<i>Percentage Fully Vaccinated</i>

Alappuzha	939381	785152	84%	407247	43%
Ernakulam	1391897	1337166	96%	641962	46%
Idukki	431545	407099	94%	206541	48%
Kannur	957707	860668	90%	431531	45%
Kasaragod	411782	404275	98%	256105	62%
Kollam	1068579	937494	88%	456753	43%
Kottayam	902961	757979	84%	373957	41%
Kozhikode	1119924	1052464	94%	497518	44%
Malappuram	1097443	973679	89%	456349	42%
Palakkad	996439	849050	85%	362563	36%
Pathanamthitta	584640	569059	97%	346409	59%
Thiruvananthapuram	1332129	1201427	90%	653150	49%
Thrissur	1284499	1130622	88%	551733	43%
Wayanad	27089	297089	100%	191651	65%
Grand Total	12816015	11563223	90%	583369	46%
* Among those who took 1st dose					

TABLE 6: Age-Appropriate Group (18-44 Years) Coverage as on 29/08/21 midnight

18-44 years Coverage as on 30/08/21 at 12 AM					
<i>District</i>	Target	1st Dose Coverage	Percentage	2nd dose	Percentage Fully Vaccinated
Alappuzha	975843	457239	47%	33186	3%
Ernakulam	1546220	1031006	67%	76014	5%
Idukki	538844	297283	55%	19031	4%
Kannur	1211018	597310	49%	53346	4%
Kasaragod	655899	340760	52%	40782	6%
Kollam	1250246	597872	48%	49877	4%
Kottayam	873818	457333	52%	40069	5%
Kozhikode	1496798	637000	43%	64897	4%
Malappuram	2036632	777545	38%	92318	5%
Palakkad	1390425	508100	37%	42414	3%
Pathanamthitta	519694	353594	68%	29397	6%
Thiruvananthapuram	1591984	898898	56%	92919	6%
Thrissur	1460363	701514	48%	5820	4%
Wayanad	409506	300423	73%	20292	5%
Grand Total	15957290	7955877	50%	712762	4%
* Among those who have taken first dose					

TABLE 7. Achievement for the day 29/08/21 midnight

DISTRICT	1st DOSE	2nd DOSE	Total
Alappuzha	22651	3898	26549
Ernakulam	1745	1948	3693
Idukki	2055	773	2828

Kannur	19568	4195	23763
Kasaragod	8834	6007	14841
Kollam	11303	5575	16878
Kottayam	1743	604	2347
Kozhikode	4405	2859	7264
Malappuram	38598	4608	43206
Palakkad	1605	208	1813
Pathanamthitta	4862	1385	6247
Thiruvananthapuram	15543	14352	29895
Thrissur	15045	6245	21290
Wayanad	3	88	91
Grand Total	147960	52745	200705

24. Discussion of the above facts would show that petitioners are alleged to have been affected by certain clauses of the Government orders dated 4.8.2021 and 10.08.2021, extracted supra, for appreciating the facts, law, and circumstances conveniently. It is clear from the said orders that they are issued invoking the powers conferred under the Disaster Management Act, 2005, with the intention to protect the general public from being affected with Corona-virus, and to curtail the spread of the disease.

25. Disaster Management Act, 2005 is an Act to provide for the effective management of disasters and for matters connected therewith or incidental thereto. The statement of objects and reasons clearly specify that the Government have decided to enact a law on disaster management, to provide for

requisite institutional mechanisms for drawing up and monitoring the implementation of disaster management plans, ensuring measures by various wings of the Government for prevention and mitigating effects of disasters and for undertaking a holistic, coordinated and prompt response to any disaster situation.

26. With the intention of having a dedicated system, the Government have set up the National Disaster Management Authority under the Chairmanship of the Prime Minister, State Disaster Management Authorities under the Chairmanship of Chief Ministers and District Disaster Management Authorities under the Chairmanship of District Magistrates. The enactment was brought out with the avowed object to facilitate effective measures for the mitigation of disasters, prepare for and coordinate effective response to disasters, as also matters connected therewith or incidental thereto.

27. Disaster Management Act, 2005 makes it clear that it has divided the powers among National Authority, State Authority, and District Authority. Apart from that, various other measures are also provided, in order to tide over any situation

of disaster. Public has to appropriately respond to the measures undertaken by the respective authority, in order to ensure that the disaster is not causing any serious threat to the lives and the normal life of the general public. The respective statutory authorities are provided with sufficient powers under the Act, to issue notifications/guidelines from time-to-time, taking into account the gravity of the situation. The Act also empowers the State Government under Section 38, to take all measures specified in the guidelines laid down by the National Authority and such other measures as it deems necessary or expedient for the purpose of disaster management, however, subject to the provisions of the Disaster Management Act, 2005.

28. Sub-section (2) of Section 38 makes it further clear that the State Government is obliged to co-ordinate actions of different departments of the Government of the State, the State Authority, District Authorities, local authority and other non-governmental organisations. *Inter alia*, among other obligations, the State Government is duty bound to allocate funds for prevention of disaster, mitigation, capacity-building

and preparedness by the departments of the State, in accordance with the provisions of the State and the district plans; ensure the preparation of disaster management plans by different departments of the State in accordance with the guidelines laid down by the National and State Authorities; establishment of adequate warning systems up to the level of vulnerable communities; ensure that different departments of the Government of the State and the District Authorities take appropriate preparedness measures; and such other matters as it deems necessary or expedient for the purpose of securing effective implementation of provisions of this Act.

29. It is an admitted fact that COVID-19 pandemic so far as concerning the 2nd wave, has affected the State of Kerala and a large number of Covid patients were identified, when compared to other States. In fact, taking into account the said alarming situation, the National Authority has given permission to the State Authority to take appropriate measures in the State-level, to curb the disease. Therefore, it is clear that by virtue of the powers conferred under Section 38 of the Disaster Management Act, 2005, the State Government has issued

orders along with the guidelines, so as to guide the public to be cooperative with the State Government in its endeavour to mitigate the circumstances due to the situation that is prevailing in the State, at present.

30. From the beginning of COVID-19 pandemic itself, notifications/guidelines/advisories were issued taking into account the increase and decrease in the Total Positivity Rate (TPR), and at times, complete lockdowns were imposed and the lockdown restrictions were relaxed, taking into account the mitigating situations. Apart from those, when the COVID-19 pandemic situation was found to be not manageable, at micro level, containment zones were also declared by the District Authority, as per the guidelines issued by the State Authority. These measures are introduced by the State Government for the larger interest of the public rather than providing too much significance to the individual rights conferred to the citizens under Part III of the Constitution of India.

31. Even though, contentions are raised by the petitioners, that their fundamental rights are affected, on an analysis of the pleadings put forth by them, we have no doubt

in our mind to say that the petitioners are self- centric and are concerned only with their fundamental rights guaranteed under Part III of the Constitution of India. The State Government, as a trustee of the public affairs, is duty bound to consider and view the issues due to the pandemic, in a broader and larger canvas, and should be concerned more with the interest of the public, rather than individual's interest. The Act, 2005 makes it further clear that it shall be the responsibility of every department of a State, to take necessary measures for prevention of disasters and mitigation, preparedness and capacity-building, in accordance with the guidelines laid down by the National, as well as the State Authority, and such departments also have the duty to integrate into its development plans and projects, the measures for prevention or mitigation.

32. Whatever that be, the Government of Kerala, taking into account the present COVID-19 pandemic situation, has promulgated the Kerala Epidemic Diseases Ordinance, 2020, on 26th March, 2020, to unify and consolidate the laws relating to the regulation and prevention of epidemic diseases and for matters connected therewith and incidental thereto.

33. Later, in order to include certain provisions in the Ordinance, 2020 (18 of 2020), the Kerala Epidemic Diseases (Amendment) Ordinance, 2020 was promulgated by the Governor of Kerala on the 3rd July, 2020, and whereas the bills to replace Ordinance Nos.18 of 2020 and 38 of 2020 dated 26.03.2020 and 3.7.2020 by the Act of State Legislature could not be introduced in and passed by the Legislative Assembly of the State of Kerala during its session, which commenced on the 24th August, 2020 and ended on the same day, and in order to keep alive the provisions of the said Ordinance, the Kerala Epidemic Diseases Ordinance, 2020 (57 of 2020) conjoining the provisions of the above two Ordinances, was promulgated by the Governor of Kerala on the 26th day of September, 2020. Again, a Bill to replace the said Ordinance by an Act of State Legislature could not be introduced in and passed by the Legislative Assembly of the State of Kerala during its session which commenced on 31st December, 2020 and ended on the same day, and during its session which commenced on the 8th day of January, 2021 and ended on the 22nd day of January, 2021. And whereas, under sub-clause (a)

of clause (2) of Article 213 of the Constitution of India, the Kerala Epidemic Diseases Ordinance, 2020 (57 of 2020) will cease to operate on 11.02.2021, Government of Kerala again promulgated the Ordinance 22 of 2021 dated 10th February, 2021 and later, the Ordinance was replaced by the Kerala Epidemic Diseases Act, 2021 (Act 4 of 2021).

34. As per Section 3 of Act 4 of 2021, the State is vested with the power to notify epidemic diseases and it reads thus:

"3. Power of Government to notify epidemic disease.- Government may, by notification in the official gazette, notify any disease as epidemic disease, for the purposes of this Act, either throughout the State or in such part or parts thereof as may be specified in the notification."

35. Section 4 of Act 4 of 2021 speaks about the powers of the Government to take special measures and specify regulations as to epidemic disease and it reads thus:

"4. Power to take special measures and specify Regulations as to epidemic disease.— (1) When at any time the Government is satisfied that the State or any part thereof is visited by or threatened with an outbreak of any epidemic disease, the Government may take such measures, as it deems necessary for the purpose, by notification in the official gazette specify such temporary regulations or orders to be observed by the public or by any person or class of persons so as to prevent the outbreak of such disease or the spread thereof and require or empower District Collectors to

exercise such powers and duties as may be specified in the said regulations or orders.

(2) In particular and without prejudice to the generality of the foregoing provisions, the Government may take measures and specify regulations,—

(a) to prohibit any usage or act which the Government considers sufficient to spread or transmit epidemic diseases from person to person in any gathering, celebration, worship or other such activities within the State;

(b) to inspect the persons arriving in the State by air, rail, road, sea or any other means or in quarantine or in isolation, as the case may be, in hospital, temporary accommodation, home or otherwise of persons suspected of being infected with any such disease by the officers authorized in the regulations, or orders;

(c) to seal State borders for such period as may be deemed necessary;

(d) to impose restrictions on the operation of public and private transport;

(e) to prescribe social distancing norms;

(f) to restrict or prohibit congregation of persons in public places and religious institutions;

(g) to regulate or restrict the functioning of Government and private offices and educational institutions in the State;

(h) to impose prohibition or restrictions on the functioning of shops and commercial establishments, factories, workshops and godowns;

(i) to restrict duration of services in essential or emergency services such as banks, media, healthcare, food supply, electricity, water, fuel etc.; and

(j) such other measures as may be necessary for the regulation and prevention of epidemic diseases, as decided by the Government.”

36. Apart from the above, there are various penal provisions also contained in Act 4 of 2021.

37. Therefore, it could be seen that the authority constituted under the district level and even micro level have a duty and obligation to see that required and adequate steps are taken to protect the welfare and interest of the public, by issuing appropriate orders/notifications/guidelines, which is a mandatory requirement under law, in order to tide over the present COVID-19 pandemic situation.

38. The grievance raised by the petitioners, who are seeking to quash certain clauses of the Government orders dated 4.8.2021 and 10.8.2021 is that the clauses violate their fundamental rights conferred under Articles 14, 19 and 21 of the Constitution of India and if the said provisions are implemented, the fundamental rights of the citizens along with the rights enjoyed by the petitioners, would be infringed.

39. In order to appreciate the abovesaid contention, we propose to refer to Article 19(1) of the Constitution of India, which deals with protection of certain rights regarding freedom of speech and expression; to assemble peaceably and without

arms; to form associations or unions or co-operative societies; to move freely throughout the territory of India; to reside and settle in any part of the territory of India; and to practise any profession, or to carry on any occupation, trade or business.

40. It is true that to move freely throughout the territory of India is a fundamental right conferred on every citizen, but at the same time, clause (2) of Article 19 makes it explicit that nothing contained in the sub-clauses shall affect the operation of any law, or prevent the State from making any law, in so far as such law imposes reasonable restrictions on the exercise of the right conferred by the said sub-clause in the interests of the sovereignty and integrity of India, the security of the State, friendly relations with Foreign States, public order, etc. Therefore, the rights enjoyed by a citizen under Article 19(1) of the Constitution is not an absolute right, in order to enjoy the same unmindful, ignorant, and negligent to the realities, taking place in the nation that are likely to affect the larger public, so as to create devastating effect in the public at large.

41. One of the contentions raised by the petitioners is that going by the provisions of the objectionable clause of the

orders dated 4.8.2021 and 10.08.2021, extracted above, the authority constituted under the District Management Act, 2005 is not entitled to compel the citizens, to take COVID-19 vaccination and wear mask, since the restrictions so imposed are violative of the fundamental rights guaranteed under Articles 19 and 21 of the Constitution of India. However, we are of the considered opinion that the restrictions are imposed by the State Government and the authority under the Disaster Management Act, 2005, after conducting in-depth study from time-to-time, with the aid and assistance of experts, in the field, and the orders/guidelines are issued, taking into account the specific requirements of the prevailing situation, so as to ensure safety and welfare of the public at large.

42. Going by the pleadings putforth by the petitioners, what we could gather is that, under Article 226 of the Constitution of India, the petitioners require this Court to replace/re-write the orders/guidelines issued by the Authority under the Disaster Management Act, 2005. We cannot pass any such orders/directions, as sought for by the petitioners, since no expertise in that regard is available to this Court or

this Court is not expected to discuss the subject issue with such experts and modify the Government orders impugned. If we do so, we would be transforming ourselves into a legislative body transgressing the Constitutional mandate of the separation of powers by and between the legislature, executive and the judiciary. To put it otherwise, the power exercised by this Court is circumscribed normally and ordinarily to the extent of judicial review in administrative matters alone.

43. Implementation of the provisions of Act, 2005, and Act 4 of 2021 is the duty and obligation of the State Government and the authority under the Disaster Management Act, 2005. When the State and other authorities are empowered by the provisions of Act, 2005 and Act 4 of 2021, to implement the same, we are of the view that the authorities concerned have a duty and obligation under the provisions of the Constitution, to ensure that the citizens are guided properly, so as to be alert them timely with respect to the emergent situation prevailing in the nation as a whole and the State specific, and to regulate and restrict their movements in the larger interest of the public, may be even diluting the

individual rights and interests with the fundamental object of public safety in the extraordinary circumstances prevailing in the community.

44. Penal provisions in the Kerala Epidemic Diseases Act, 2021 are incorporated with the avowed object of regulating and restricting people from violating the provisions of Act 4 of 2021 and they are deterrent in nature though appears to be punitive. In order to implement the provisions of the Act effectively, such measures are also required to be undertaken by the State Government and the authority under the Disaster Management Act, 2005 and Act, 2021.

45. When action is taken by the State Government, in the larger interest of the citizens, it can never be said that the fundamental rights of the citizens guaranteed under Articles 19 and 21 of the Constitution of India are violated. This we say because, there is a clear empowerment under clause (2) of Article 19, to make reasonable restrictions by introducing law in the larger interest of the public, and further, Article 21 of the Constitution makes it clear that no person shall be deprived of his life or personal liberty except according to the

procedure established by law, which also means, when the larger interest of the citizens is a concern for the State and authority under the Act, 2005, it is imperative on the part of the State Government to ensure that appropriate orders/guidelines are put in place, in order to protect the life and personal liberty of the citizens, rather than making individualistic approach, which if done, in our opinion, would be detrimental to the interest of the citizens at large.

46. Now, looking at the alleged objectionable clause of the Government order dated 10.08.2021, we are of the view that it is not an absolute bar or prohibition, interfering with the freedom of movement of the citizens, but it is a reasonable restriction imposed by the State Government, for protecting the interest of larger community from COVID-19 pandemic.

47. Going through the pleadings, the petitioners have raised a contention that even the scientists and experts in the field are making different opinions, at various times, as regards spread of COVID-19 pandemic. We are of the considered view that the experts and scientists are at the evaluation stage and they themselves are conscious about the

spread of Coronavirus. In order to prevent the spread of COVID-19 pandemic, the experts are making necessary and adequate advice, in the interest of the larger public, while attempting to attain perfection, to curb the menace caused by the disease. That fluctuating evaluation process can never be criticized as bad or irresponsible, but it can only be seen as a progressive method adopted, to arrive at a definite conclusion.

48. It may also be noted that there would be different theories and evaluations by the scientists and experts in respect of the disease. But, ultimately, all the evaluations drawn up by the scientists and specialised organisations would be utilised for the purpose of arriving at a definite and conclusive result, so as to protect the interest of the citizens at large. The Hon'ble Supreme Court had occasion to consider the responsibility cast upon the Government in the present situation, in the context of various vulnerable circumstances.

49. In ***IN RE Alarming Newspaper Report Regarding Kanwar Yatra in the State of UP***, [order dated 19.07.2021 in SMW (C) No. 5 of 2021], the Hon'ble Apex Court issued certain directions, reminding the authorities at all levels, to

have regard to Article 144 of the Constitution of India and ensure that any untoward incident which directly affect the lives of the people will be looked upon sternly and prompt action be taken immediately, reminding the authorities, by quoting a paragraph from the order dated 16.07.2021, which reads thus:

“We are of the view that this is a matter which concerns everyone of us as citizens of India, and goes to the very heart of Article 21 of the Constitution of India, which has a pride of place in the fundamental rights Chapter of our Constitution. The health of the citizenry of India and their right to “life” are paramount. All other sentiments, albeit religious, are subservient to this most basic fundamental right.”

50. In fact, the situation in Kerala during *Bakrid* celebration in July, 2021, on the basis of a notification issued by the State Government, has invited the attention of the Hon'ble Supreme Court, and taking into account the order issued by the State Government, relaxing the guidelines due to a celebration, an order has been passed in **Suo Motu Writ Petition No.5 of 2021 dated 20.07.2021**, the relevant portions of which, are reproduced hereunder:

“Even a cursory look at this Notification will show that all non-essential shops, which were allowed in only Category A, are now allowed to Category A to C. In Category D, however, all these shops were allowed on 19th July, 2021 i.e. Monday only, despite the most severe restrictions being placed in Category D, i.e. throughout the week, the restrictions placed on Saturdays/Sundays were to operate. Another thing that one gets from the aforesaid Notification is that the public are cautioned that as far as possible, the persons visiting shops and other establishments may belong to those with at least one dose of vaccine/COVID recovered category and follow strict COVID protocols.

Paragraphs 9 to 11 of the affidavit read with this Notification disclose that the State Government has given in to Associations of traders who represented before the Government that they have stocked up goods for the purpose of Bakrid very early. The State also blithely records that the opening of shops will strictly follow Covid protocols and they are ready to follow additional regulations ordered by the State, if any.

What is extremely alarming is the fact that in Category D, where infections are the highest i.e. 15%, a full day of relaxation has been granted, which was yesterday. It is then stated that, as far as possible, the persons visiting shops and other establishments may belong to those with at least one dose of

vaccine/COVID recovered category and follow strict COVID protocols, echoing paragraph (vi) of the 17th July, 2021 Notification, along with the Chief Minister's appeal.

The aforesaid facts disclose an alarming state of affairs. To give in to pressure groups so that the citizenry of India is laid bare to a nationwide pandemic discloses a sorry state of affairs. Even otherwise, homilies such as "as far as possible" and assurances from traders without anything more, do not inspire any confidence in the people of India or this Court. We may only indicate that this affidavit discloses a sorry state of affairs as has been stated hereinabove, and does not in any real manner safeguard the Right to Life and Health guaranteed to all the citizens of India under Article 21 of the Constitution of India. It may also be pointed out that the relaxation for one day to a Category D area was wholly uncalled for."

51. Accordingly, the State was directed to heed to Article 21 r/w. Article 144 of the Constitution of India and the law laid down in the orders passed in the matter of 'Kanwar Yatra', dated 14.07.2021, 16.07.2021 and 19.07.2021. It was also specifically observed in the order dated 20.07.2021 in Suo Motu Writ Petition No.5 of 2021 that pressure groups of all kinds, religious or otherwise, cannot in any manner, interfere

with this most precious fundamental right of all the citizens of India. Even the State Government was cautioned that if, as a result of the notification dated 17.07.2021, any untoward spread of Covid-19 disease take place, any member of the public may bring it to the notice of the Hon'ble Apex Court, after which, the Court would take necessary action against those, who are responsible.

52. After taking into account the observations and directives issued by the Hon'ble Supreme Court and bearing in mind the concern of the larger public, to be protected under Article 21 of the Constitution of India by all authorities, the State Government have issued notifications dated 04.08.2021 and 10.08.2021, which are under challenge in these writ petitions. Therefore, the alleged objectionable clauses contained under the impugned orders, issued under the provisions of the Disaster Management Act, 2005 can never be said to be issued by the State Government, without sufficient or adequate reasons and the restrictions, can only be viewed as reasonable.

53. On the aspect that the members of the Constitutional Courts are not public health experts, the Hon'ble Supreme Court in ***IN RE: Distribution of Essential Supplies and Services during Pandemic*** [order dated 31.05.2021 in Suo Motu Writ Petition (Civil) No.3 of 2021] held as under:

*“15. We had clarified in our order dated 30th April 2021, that in the context of the public health emergency with which the country is currently grappling, this Court appreciates the dynamic nature of the measures. Across the globe, the executive has been given a wider margin in enacting measures which ordinarily may have violated the liberty of individuals, but are now incumbent to curb the pandemic. Historically, the judiciary has also recognized that constitutional scrutiny is transformed during such public health emergencies, where the executive functions in rapid consultation with scientists and other experts. In 1905, the Supreme Court of the United States in **Jacobson v. Massachusetts** 197 U.S. 11 (1905), considered a constitutional liberty challenge to a compulsory vaccination law that was enacted to combat the smallpox epidemic. Justice Harlan had noted the complex role of the government in battling public health emergencies in the following terms:*

“..the State may invest local bodies called into existence for purposes of local administration

with authority in some appropriate way to safeguard the public health and the public safety... While this court should guard with firmness every right appertaining to life, liberty or property as secured to the individual by the Supreme Law of the Land, it is of the last importance that it should not invade the domain of local authority except when it is plainly necessary to do so in order to enforce that law. The safety and the health of the people of Massachusetts are, in the first instance, for that Commonwealth to guard and protect.....So far as they can be reached by any government, they depend, primarily, upon such action as the State in its wisdom may take, and we do not perceive that this legislation has invaded any right secured by the Federal Constitution.”

The Supreme Court of United States, speaking in the wake of the present COVID-19 pandemic in various instances, has overruled policies by observing, inter alia, that “Members of this Court are not public health experts, and we should respect the judgment of those with special expertise and responsibility in this area. But even in a pandemic, the Constitution cannot be put away and forgotten” [Roman Catholic Diocese of Brooklyn, New York v. Cuomo, 592 U.S., 141 S. Ct. 63] and “a public health emergency does not give Governors and other public officials carte blanche to disregard the Constitution for as long as the medical problem persists. As more medical and scientific evidence becomes available, and as States have time to craft policies in light of that evidence, courts should expect policies that more carefully account for constitutional rights [Calvary Chapel

Dayton Valley v. Steve Sisolak, Governor of Nevada, et al, 140 S.Ct. 2603 (Mem) (Justice Alito Dissenting Opinion)]

16. Similarly, courts across the globe have responded to constitutional challenges to executive policies that have directly or indirectly violated rights and liberties of citizens. Courts have often reiterated the expertise of the executive in managing a public health crisis, but have also warned against arbitrary and irrational policies being excused in the garb of the “wide latitude” to the executive that is necessitated to battle a pandemic. This Court in *Gujarat Mazdoor Sabha v. State of Gujarat* [AIR 2020 SC 4601], albeit while speaking in the context of labour rights, had noted that policies to counteract a pandemic must continue to be evaluated from a threshold of proportionality to determine if they, inter alia, have a rational connection with the object that is sought to be achieved and are necessary to achieve them.

17. In grappling with the second wave of the pandemic, this Court does not intend to second-guess the wisdom of the executive when it chooses between two competing and efficacious policy measures. However, it continues to exercise jurisdiction to determine if the chosen policy measure conforms to the standards of reasonableness, militates against manifest arbitrariness and protects the right to life of all persons. This Court is presently assuming a dialogic

jurisdiction where various stakeholders are provided a forum to raise constitutional grievances with respect to the management of the pandemic. Hence, this Court would, under the auspices of an open court judicial process, conduct deliberations with the executive where justifications for existing policies would be elicited and evaluated to assess whether they survive constitutional scrutiny.”

54. From the above, it is clear that what is paramount is the life of the citizens at large, rather than individual rights enjoyed by the citizens under Part III of the Constitution.

55. In this context, Mr. T. B. Hood, learned Special Government Pleader, has invited our attention to the decision of the Hon'ble Supreme Court in **Mr. 'X' v. Hospital 'Z'** reported in **(1998) 8 SCC 296**, wherein the issue relating to right to live – right to privacy conferred under Article 21 of the Constitution of India was considered and it was held as under:

“26. Right of Privacy may, apart from contract, also arise out of a particular specific relationship which may be commercial, matrimonial, or even political. As already discussed above, Doctor-patient relationship, though basically commercial, is, professionally, a matter of confidence and, therefore Doctors are morally and ethically bound to maintain

confidentiality. In such a situation, public disclosure of even true private facts may amount to an invasion of the Right of Privacy which may sometimes lead to the clash of person's "right to be let alone" with another person's right to be informed.

27. Disclosure of even true private facts has the tendency to disturb a person's tranquility. It may generate many complexes in him and may even lead to psychological problems. He may, thereafter, have a disturbed life all through. In the face of these potentialities, and as already held by this Court in its various decisions referred to above, the Right of Privacy is an essential component of right to life envisaged by Article 21. The right, however, is not absolute and may be lawfully restricted for the prevention of crime, disorder or protection of health or morals or protection of rights and freedom of others.

28. Having regard to the fact that the appellant was found to be HIV(+), its disclosure would not be violative of either the rule of confidentiality or the appellant's Right of Privacy as Ms. 'Y' with whom the appellant was likely to be married was saved in time by such disclosure, or else, she too would have been infected with the dreadful disease if marriage had taken place and consummated.

xx xxx xxxxxx

43. Ms. 'Y', with whom the marriage of the appellant was settled, was saved in time by the disclosure of the vital information that the appellant

was HIV(+). The disease which is communicable would have been positively communicated to her immediately on the consummation of marriage. As a human being, Ms. 'Y' must also enjoy, as she, obviously, is entitled to, all the Human Rights available to any other human being. This is apart from, and, in addition to, the Fundamental Rights available to her under Article 21, which, as we have seen, guarantees "Right to Life" to every citizen of this country. This right would positively include the right to be told that a person, with whom she was proposed to be married, was the victim of a deadly disease, which was sexually communicable. Since "Right to Life" includes right to lead a healthy life so as to enjoy all faculties of the human body in their prime condition, the respondents, by their disclosure that the appellant was HIV(+), cannot be said to have, in any way, either violated the rule of confidentiality or the right of privacy. Moreover, where there is a clash of two Fundamental Rights, as in the instant case, namely, the appellant's right to privacy as part of right to life and Ms. 'Y's right to lead a healthy life which is her Fundamental Right under Article 21, the RIGHT which would advance the public morality or public interest, would alone be enforced through the process of Court, for the reason that moral considerations cannot be kept at bay and the Judges are not expected to sit as mute structures of clay, in the Hall, known as Court Room, but have to be sensitive, "in the sense that they must keep their

fingers firmly upon the pulse of the accepted morality of the day." (See Legal Duties: Allen)"

56. In **Dr. Raghavan Menon v. Health Inspector, Koduvayur**, reported in **1972 KLT 834**, a learned single Judge of this Court had an occasion to consider the question of vaccination in rural areas and held that it is sufficient to say that a system of vaccination even if it infringes the conscientious objection of the petitioner, the State has authority to introduce legislation, in the interest of the people for the preservation of public health which is a part the scheme of social welfare.

57. In **Mazdoor Kisan Shakti Sangathan v. Union of India and Another** reported in **AIR 2018 SC 3476**, while considering the question as to how the conflict between two fundamental rights are to be resolved, the Hon'ble Supreme Court, at paragraphs 54 & 58, held as under:

"54. The right to protest is, thus, recognised as a fundamental right under the Constitution. This right is crucial in a democracy which rests on participation of an informed citizenry in governance. This right is also crucial since it strengthens representative democracy

by enabling direct participation in public affairs where individuals and groups are able to express dissent and grievances, expose the flaws in governance and demand accountability from State authorities as well as powerful entities. This right is crucial in a vibrant democracy like India but more so in the Indian context to aid in the assertion of the rights of the marginalised and poorly represented minorities.

xx xx xxxxxxxx

58. In the aforesaid context, it would be pertinent to point out that there may be situations where conflict may arise between two fundamental rights. Situations can conflict on inter fundamental rights, intra fundamental rights and, in certain peculiar circumstances, in respect of some person one fundamental right enjoyed by him may come in conflict with the other fundamental right guaranteed to him. In all such situations, the Court has to examine as to where lies the larger public interest while balancing the two conflicting rights. It is the paramount collective interest which would ultimately prevail.”

58. In **Ritesh Sinha v. State of Uttar Pradesh and Another**, reported in **(2019) 8 SCC 1**, while considering the issue as to whether a Magistrate can authorise investigating agency to record voice sample of the accused, the Hon'ble Supreme Court, at paragraph (24), held thus:

“24. Would a judicial order compelling a person to give a sample of his voice violate the fundamental right to privacy Under Article 20(3) of the Constitution, is the next question. The issue is interesting and debatable but not having been argued before us it will suffice to note that in view of the opinion rendered by this Court in **Modern Dental College and Research Centre and Ors. v. State of Madhya Pradesh and Ors.** [(2016) 7 SCC 353], **Gobind v. State of Madhya Pradesh and Anr.** [(1975) 2 SCC 148] and the Nine Judge's Bench of this Court in **K.S. Puttaswamy and Anr. v. Union of India and Ors.** [(2017) 10 SCC 1] the fundamental right to privacy cannot be construed as absolute and but must bow down to compelling public interest. We refrain from any further discussion and consider it appropriate not to record any further observation on an issue not specifically raised before us.”

59. The State Government is imposed with a duty under the Directive Principles of State Policy; Article 38 of the Constitution of India, which clearly specifies that the State shall strive to promote the welfare of the people by securing and protecting as effectively as it may a social order in which justice, social, economic, and political, shall inform all the institutions of the national life. Likewise, under Article 47, the State is endowed with the duty for raising the level of nutrition

and the standard of living of its people and the improvement of public health as among its primary duties. Similarly, Article 51A under Part IVA, inserted into the Constitution of India, as per Forty-second Amendment Act, 1976, which deals with the fundamental duties, makes it clear that it shall be the duty of every citizen of India to abide by the Constitution and respect its ideals and institutions, and also to strive towards excellence in all spheres of individual and collective activity, so that the nation constantly rises to higher levels of endeavour and achievement.

60. Even though the petitioners have also sought for a direction to the State Government, to enhance the vaccination activities, we do not think any such directions can be issued since the supply of vaccine is regulated and controlled by the Government of India, in order to have an equitable distribution among various States/UTs. Moreover, the Hon'ble Apex Court had occasion to consider the said issue in a Suo Motu Writ Petition (C) No.3 of 2021, [***In Re: Distribution of Essential Supplies and Services during Pandemic***] reported in AIR 2021 SC 2356, and held that the Central Government is free to

choose any available course of action that it deems fit to tackle the issue of requirements of adequate vaccine. Therefore, if we interfere with the policy adopted by the Central Government, it would imbalance the process and it is for the State Government to address its requirements to the Government of India for the supply of vaccine, taking into account the emergent situation. This is also because, even according to the petitioners, a systematic vaccination procedure is followed by the State and at the time of argument, the learned Special Government Pleader has handed over a copy of the COVID-19 Daily Vaccination Bulletin dated 29.08.2021, which is extracted above. Perusal of the said bulletin shows that vaccination is administered in all the districts as per the mandated procedure prescribed by the State Government and it is progressing in a systematic, dedicated and disciplined manner.

61. On an analysis of the discussions made above, it would be clear that interest of the State Government, in issuing the impugned Government orders, is only a collective interest, to protect the health, welfare, and interest of the citizens at large and, therefore, the action of the State in

including the alleged objectionable clauses contained in the impugned Government orders, can never be said to be arbitrary, illegal, irrational or unreasonable, and violative of the fundamental rights enjoyed by the petitioners or the citizens of the State under the Constitution of India.

62. Upshot of the above discussion is that the petitioners have not made out a case for interference with the action of the State Government in imposing the restrictive clauses contained in the Government orders dated 4.8.2021 and 10.08.2021.

In the result, instant writ petitions are dismissed.

Sd/-
S. MANIKUMAR
CHIEF JUSTICE

Sd/-
SHAJI P. CHALY
JUDGE

krj

APPENDIX OF WP(C) NO.16614/2021

PETITIONER EXHIBITS:

- P1 COPY OF THE G.O.(RT) NO.567/2021/DMD, DATED 04/08/2021.
- P2 ONLINE COPY OF NEWSPAPER REPORT ABOUT THE ANNOUNCEMENT OF DR. ANTHONY FAUCI DATED 12-06-2021.
- P3 ONLINE COPY OF THE NEWSPAPER ARTICLE APPEARED IN ALJEZERA ON 16TH JUNE 2021.
- P4 COPY OF THE BBC REPORT ON REINTRODUCTION MASK BY ISRAEL.

RESPONDENTS' EXHIBITS:- NIL

APPENDIX OF WP(C) NO.17274/2021

PETITIONER'S EXHIBITS:

- P1 COPY OF THE G.O.(RT.)NO.564/2021/DMB DATED 04.08.2021 BY THE 2ND RESPONDENT.
- P2 COPY OF THE G.O.(RT.)NO.575/2021/DMB DATED 10.08.2021 OF THE 2ND RESPONDENT.
- P3 COPY OF THE DATA UPLOADED IN THE GOVERNMENT WEBSITE PROVIDING DETAILS OF COVID VACCINATION IN THE STATE AS ON 07.08.2021.
- P4 COPY OF THE SURVEY REPORT CONDUCTED BY THE 5TH RESPONDENT ICMR ACROSS 7 DISTRICTS OF 21 STATES IN JUNE AND JULY 2020.
- P5 COPY OF AN ARTICLE PUBLISHED BY A RENOWNED MEDICAL PROFESSIONAL MR. BEDA M. STADLER, A BIOLOGIST AND PROFESSOR EMERITUS AND FORMER DIRECTOR OF THE INSTITUTE OF IMMUNOLOGY AT THE UNIVERSITY OF BEM, SWITZERLAND ON 10.07.2020 IN A SWISS MAGAZINE WELTWOCH (WORLD WEEK).
- P6 COPY OF AN ARTICLE WRITTEN BY DR.U.NANADAKUMAR IN MADHYAMAM DAILY DATED 11.08.2021 REGARDING DELTA VARIANT AND VACCINES.
- P7 COPY OF THE PRINT OUT OF AN ARTICLE ABOUT VACCINATION, HEALTH AND AUTONOMY PUBLISHED ON [HTTPS://THEVACCINEREACTION.ORG/2021/08](https://thevaccinereaction.org/2021/08).

RESPONDENTS' EXHIBITS:- NIL

//TRUE COPY//

P.A. TO C.J.