

IN THE HIGH COURT OF KERALA AT ERNAKULAM
PRESENT
THE HONOURABLE THE CHIEF JUSTICE MR.S.MANIKUMAR
&
THE HONOURABLE MR. JUSTICE A.MUHAMED MUSTAQUE
&
THE HONOURABLE MR. JUSTICE SHAJI P.CHALY

Tuesday, the 18th day of January 2022 / 28th Pousha, 1943
WP(C) NO. 11316 OF 2021(S)

PETITIONER:

SUO MOTU PROCEEDINGS INITIATED BY THE HIGH COURT
IN THE MATTER OF EXTENSION OF ORDERS OF STAY GRANTED BY
THE HIGH COURT IN WP(C)NO.9400/2020(S) AND CUSTODY ORDERS
IN RESPECT OF CHILDREN ISSUED BY THE FAMILY COURTS,
WHICH ARE DUE TO EXPIRE OR COMMENCE DURING THE PERIOD OF
LOCKDOWN/COVID RESTRICTIONS.

RESPONDENT/RESPONDENT IN WPC NO.9400/2020(S)

STATE OF KERALA, REPRESENTED BY ITS CHIEF SECRETARY,
GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM, PIN 695 001.

This Suo Motu writ petition again coming on for orders upon perusing the petition, this Court's judgment dated 06/08/2021 and upon hearing the arguments of SRI.K.GOPALAKRISHNA KURUP, ADVOCATE GENERAL, SRI.S.MANU, ASSISTANT SOLICITOR GENERAL OF INDIA, SRI.RAJESH VIJAYAN, PRESIDENT OF THE KERALA HIGH COURT ADVOCATES ASSOCIATION the court passed the following:

P.T.0

**S.Manikumar, C.J.
A.Muhamed Mustaque, J.
&
Shaji P.Chaly, J.**

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W.P.(C)No.11316 of 2021-S

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Dated this the 18th day of January, 2022

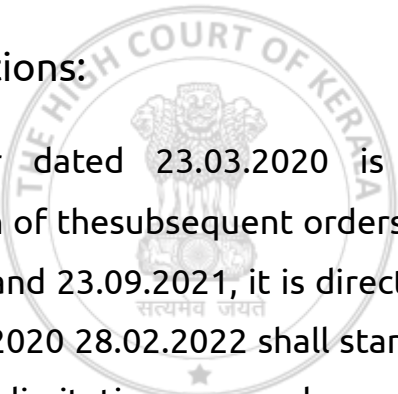
ORDER

S.Manikumar, C.J.

In view of the surge in Covid-19 cases and lockdown declared by the Government of India and State of Kerala and taking note of the inconvenience faced by the litigants in approaching the courts for ventilating the grievances, on 19.5.2021, a Full Bench of this Court in suo motu W.P. (C)No.11316 of 2021 passed a detailed order. We also passed orders directing the State/Central/public sector undertakings not to take steps for recovery.

2. Subsequently, order dated 19.05.2021 has been modified to certain extent. Taking note of the closure of the suo motu writ petition initiated by the Hon'ble Supreme Court, a Full Bench of this court closed the suo motu writ petition on 06.08.2021.

3. Now, in Miscellaneous Application Nos.21 of 2022 and 29 of 2022 in Miscellaneous Application No.665 of 2021 in Suo Motu Writ Petition (C) No.3 of 2020, the Hon'ble Supreme Court of India, taking note of the arguments advanced by the learned counsel, the impact of the surge of the virus on public health and adversities faced by the litigants in the prevailing conditions, while disposing of M.A.No.21 of 2022, has passed the following directions:

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- "I. The order dated 23.03.2020 is restored and in continuation of the subsequent orders dated 08.03.2021, 27.04.2021 and 23.09.2021, it is directed that the period from 15.03.2020 to 28.02.2022 shall stand excluded for the purposes of limitation as may be prescribed under any general or special laws in respect of all judicial or quasi judicial proceedings.
- II. Consequently, the balance period of limitation remaining as on 03.10.2021, if any, shall become available with effect from 01.03.2022.
- III. In cases where the limitation would have expired during the period between 15.03.2020 till 28.02.2022, notwithstanding the actual balance period of limitation remaining, all persons shall have a limitation period of 90 days from 01.03.2022. In the event the actual balance

period of limitation remaining, with effect from 01.03.2022 is greater than 90 days, that longer period shall apply.

IV. It is further clarified that the period from 15.03.2020 till 28.02.2022 shall also stand excluded in computing the periods prescribed under Sections 23 (4) and 29A of the Arbitration and Conciliation Act, 1996, Section 12A of the Commercial Courts Act, 2015 and provisos (b) and (c) of Section 138 of the Negotiable Instruments Act, 1881 and any other laws, which prescribe period(s) of limitation for instituting proceedings, outer limits (within which the court or tribunal can condone delay) and termination of proceedings.”

4. Test Positivity Rate in Kerala as on 17.01.2022 is 33.06%. Cases of Covid-19 are alarmingly increasing. Outbreak of the surge, has certainly put the litigants, lawyers and even the functioning of the court in difficult stage. Hence a Full Bench of this court resolved that all the proceedings in the High Court, as well as the courts in district judiciary would revert to virtual mode of hearing. On the administration side, appropriate directions have been issued as regards the

monitoring of the entry of stakeholders and staff besides to adhere to all the Government Orders issued from time to time.

5. Taking note of the orders of the Hon'ble Supreme Court in M.A.No.21 of 2022 dated 10.01.2022, the suo motu writ petition No.11316 of 2021 was directed to be listed and accordingly it is listed today.

6. We also took note of the recent Government Order issued by the Disaster Management (A) Department dated 14.01.2022, which reads thus:

"Government of Kerala
सत्यमेव जयते
Abstract

Disaster management-Restrictions imposed in the State in relation to containment of Covid-19- Revised Guidelines being issued.

Disaster Management (A) Department

G.O(Rt) No. 40/2022/DMD dated, Thiruvananthapuram, 14.01.2022

Read: 1. G.O.(Rt) No. 564/2021/DMD dated 04.08.2021
2. G.O.(Rt) No. 669/2021/DMD dated 02.10.2021
3. G.O.(Rt) No. 729/2021/DMD dated 05.11.2021
4. G.O.(Rt) No. 08/2022/DMD dated 04.01.2022
5. G.O.(Rt) No. 22/2022/DMD dated 10.01.2022

Order

The spread of Covid Virus is increasing in the State. In the said circumstances, in continuation of the above referred Orders, it is hereby ordered to issue the following guidelines in exercise of the powers conferred on the Chairman of the State Executive Committee of the Disaster Management Authority in accordance with provisions of Section 20 (3) of the Disaster Management Act.

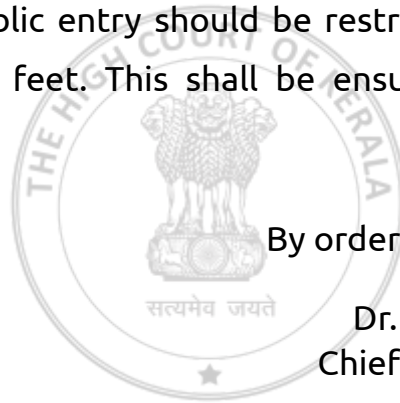
- 1) All data in relation to Covid must be made available by the Health Department to Police, Local Self Government and Revenue Departments indulged in Covid mitigation activities.
- 2) The District Collectors must identify Covid Clusters and impose necessary restrictions.
- 3) The Department Heads shall permit Work from Home facility to be availed by pregnant women working in Government Service.
- 4) All classes up to Ninth Standard must be conducted only by way of online mode for two weeks from 21st January. The decision regarding online classes after two weeks shall be taken later.
- 5) If clusters are formed in educational institutions, the Principals/ Head Masters are authorized to close the same for two weeks.

6) All functions and meetings in Government, quasi Government, Co-operative, Public Sector and Self Governed Institutions must be held online.

7) In Districts with average Test Positivity Rates above 20 for three days, participation in all social, political, cultural and religious public functions as well as rituals in relation to marriage, funeral etc must be restricted to 50 persons. If Test Positivity is above 30, no public functions shall be permitted.

8) Online booking and sales must be promoted in all shops.

9) In malls, public entry should be restricted to one person per 25 square feet. This shall be ensured by the District administration.



By order of the Governor

Dr. V.P. Joy
Chief Secretary”

7. Government of India have issued a circular restricting the staff strength by 50% in Government Departments. For brevity, the said circular is reproduced:

“F.No.11013/9/2014-Estt.A.III

Government of India
Ministry of Personnel, Public Grievances and Pensions
Department of Personnel & Training

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North Block, New Delhi
Dated the 3rd January, 2022

OFFICE MEMORANDUM

Subject: Preventive measures to contain the spread of Novel Corona virus (COVID-19)- Attendance of Central Government officials regarding

Reference: MHA Order No.40-3/2020-DM-I(A) dated the 27th December, 2021.

In view of the initial signs of surge in cases of COVID-19, the matter regulating attendance of Central Government employees has been reviewed and it has been decided as under, with immediate effect till 31st January. 2022.

- (i) Physical attendance of Government servants below the level of Under Secretary shall be restricted to 50% of the actual strength and the remaining 50% shall work from home. A roster may be prepared accordingly by all the Departments concerned.
- (ii) All officers of the level of Under Secretary & above are to attend office on regular basis.
- (iii) Persons with Disabilities and Pregnant women employees shall be exempted from attending office but are required to work from home.
- (iv) The officers/staff shall follow staggered timings to avoid over-crowding in offices, as indicted below
 - (a) 9.00 A.M. to 5.30 P.M
 - b) 10.00 A.M. to 6.30 P.M.
- (v) All officers/ staff residing in the containment zone shall be exempted from coming to offices till the containment zone is denotified.
- (vi) Those officers/ staff who are not attending office and working from home shall be available on

telephone and other electronic means of communication at all times.

- (vii) Meeting, as far as possible, shall be conducted on video-conferencing and personal meetings with visitors unless absolutely necessary in public interest, are to be avoided.
- (viii) All Officers/Staff have to ensure strict compliance with covid- appropriate behavior viz. frequent washing of hands/ sanitization, wearing a mask/ face cover, observing social distancing at all times.
- (ix) Proper cleaning and frequent sanitization of workplace, particularly of the frequently touched surfaces may be ensured. HoDs may also ensure non-crowding in corridors, canteens etc.

2. All Ministries/Departments / Offices as well as the Central Government employees are directed to ensure strict compliance of instructions on COVID appropriate behavior issued by MHA, MoH&FW and DoP&T from time to time.

(Umesh Kumar Bhatia)
Deputy Secretary to the Government of India
Tel 2309 4471"

8. In the light of the above, today, in open court, views of Mr.K.Gopalakrishna Kurup, learned Advocate General, Mr.S.Manu, learned Assistant Solicitor General of India and Mr.Rajesh Vijayan, learned counsel and President of the Kerala High Court Advocates' Association, were sought for.

9. Unanimously, the above learned counsel submitted that the detailed order passed by the Full Bench of this court on 19.05.2021, may be revived subject to certain modifications as ordered on subsequent dates.

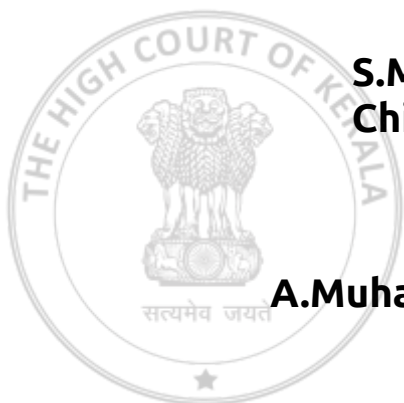
10. Placing on record the submission of the learned counsel, W.P.(C)No.11316 of 2021, disposed of on 06.08.2021, is restored. Interim Order passed on 19.05.2021 in W.P. (C)No.11316 of 2021 is revived, subject to the modifications made later, in the above said writ petition.

11. Request has also been made that the order passed today be reviewed after a month. Taking note of the surge in Covid 19 cases and the Test Positivity Rate, the said request is accepted.

12. Registry is directed to post the matter on 18.02.2022. Interim order passed by this court on 19.05.2021 and modified subsequently on various dates, is revived and extended up to 21.02.2022.

Registry is directed to show the name of the learned Advocate General, the learned Assistant Solicitor General of India, the learned Director General of Prosecution, the President of the Kerala High Court Advocates' Association and the President of the Kerala Federation of Women Lawyers in the cause list in the next date of hearing.

Sd/-



**S.Manikumar
Chief Justice**

Sd/-

**A.Muhammed Mustaque,
Judge**

Sd/-

**Shaji P.Chaly
Judge**

vpv