

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE THE CHIEF JUSTICE MR.S.MANIKUMAR

&

THE HONOURABLE MR. JUSTICE SHAJI P.CHALY

TUESDAY, THE 28TH DAY OF SEPTEMBER 2021 / 6TH ASWINA, 1943

WP(C) NO. 16833 OF 2021

PETITIONER:

JAYANANDA K.R., AGED 53 YEARS,
S/O. RAMAPPA, MITHA KANILA HOUSE, BANGRA, MANJESHWAR,
KASARGOD DISTRICT, PIN-671 323.

BY ADVS. SHRI P.V.ANOOP
SHRI PHIJO PRADEESH PHILIP
SHRI M. P. PRIYESHKUMAR
SHRI K. V. SREERAJ

RESPONDENTS:

- 1 UNION OF INDIA,
MINISTRY OF HOME AFFAIRS, NORTH BLOCK,
NEW DELHI, PIN-110 001, REP. BY ITS SECRETARY.
EMAIL-JSCPG-MHA@NIC.IN
- 2 MINISTRY OF HEALTH AND FAMILY WELFARE,
ROOM NO.348, 'A' WING, NIRMAN BHAVAN,
NEW DELHI-110 001, REP. BY SECRETARY.
EMAIL-HFM@GOV.IN
- 3 STATE OF KARNATAKA
VIDHANSOUDHA, BANGALORE, PIN 560 001,
REP.BY CHIEF SECRETARY.
EMAIL-CS@KARNATAKA.GOV.IN
- 4 DEPUTY COMMISSIONER AND DISTRICT MAGISTRATE
DAKSHINA KANNADA DISTRICT, DISTRICT COLLECTOR OFFICE,
BUNDER, MANGALORE, KARNATAKA 575 001.
EMAIL-DC.MNGLR@GMAIL.COM

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- 5 STATE OF KERALA,
SECRETARIAT, THIRUVANANTHAPURAM, PIN-695 001,
REP. BY CHIEF SECRETARY.
EMAIL-CHIEFSECY@KERALA.GOV.IN
- 6 DISTRICT COLLECTOR,
KASARGODE DISTRICT, CIVIL STATION,
VIDYANAGAR, KASARAGOD, PIN-671 123.
EMAIL-DCKAS@KERALA.NIC.IN
- 7 NATIONAL DISASTER MANAGEMENT AUTHORITY,
GOVERNMENT OF INDIA, NDMA BHAWAN, A-1, SAFDARJUNG,
ENCLAVE, NEW DELHI, PIN-110 02,
REP.BY ITS MEMBER SECRETARY.
EMAIL-CONTROLROOM@NDMA.GOV.IN
- 8 KERALA STATE DISASTER MANAGEMENT AUTHORITY
VIKAS BHAVAN, P.O. OBSERVATORY HILLS, OPPOSITE KANAKAKKUNNU
PALACE, NANTHANCODU, THIRUVANANTHAPURAM, PIN 695 033.
REP.BY ITS CHAIRMAN.
EMAIL-KERALASDMA@GMAIL.COM

R1, R2 & R7 BY ADVS. SRI. P. VIJAYAKUMAR, ASG OF INDIA
SRI. JAISHANKAR V. NAIR, CGC

R3 & R4 BY ADV. SRI. PRABHULING K. NAVADGI,
ADVOCATE GENERAL FOR KARNATAKA
DR. M. RAJENDRA KUMAR, CGC

R5, R6 & R8 BY SENIOR GOVERNMENT PLEADERS SRI. V. MANU
SRI. T.B. HOOD

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON
28.09.2021, ALONG WITH WP(C). NO.17071/2021, THE COURT ON THE SAME DAY
DELIVERED THE FOLLOWING:

W.P(C)s.16833 & 17071/2021 :3:

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE THE CHIEF JUSTICE MR.S.MANIKUMAR

&

THE HONOURABLE MR. JUSTICE SHAJI P.CHALY

TUESDAY, THE 28TH DAY OF SEPTEMBER 2021 / 6TH ASWINA, 1943

WP(C) NO. 17071 OF 2021

PETITIONER:

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

BY ADVS. SRI. HARIS BEERAN
SRI. O. A. NURIYA
SRI. AZHAR ASSEES

RESPONDENTS:

- 1 UNION OF INDIA,
REPRESENTED BY ITS SECRETARY, MINISTRY OF HOME AFFAIRS,
NORTH BLOCK, NEW DELHI, DELHI-110 001.
- 2 STATE OF KARNATAKA,
REPRESENTED BY ITS CHIEF SECRETARY, ROOM NO.321,
VIDHANA SOUDHA, BENGALURU, KARNATAKA-560 002.
- 3 STATE OF KERALA, REPRESENTED BY ITS CHIEF SECRETARY,
GOVERNMENT SECRETARIAT, GOVERNMENT OF KERALA,
THIRUVANANTHAPURAM, KERALA, PIN-695 001.

R1 BY ADVS. SRI. P. VIJAYAKUMAR, ASG
SRI. JAISHANKAR V. NAIR

R2 BY ADV. SRI. PRABHULING K. NAVADGI, ADVOCATE GENERAL, KARNATAKA
DR. M. RAJENDRA KUMAR, CGC

R3 BY SENIOR GOVERNMENT PLEADERS SRI. V. MANU & SRI. T.B. HOOD

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 28.09.2021,
ALONG WITH WP(C).16833/2021, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

“C.R”

JUDGMENT

S. Manikumar, CJ

Seeking for a direction to the respondents, to allow the passengers having Covid vaccination certificate for at least one dose, to enter the State of Karnataka, to remove the restrictions imposed by the 3rd respondent, viz., State of Karnataka, represented by its Chief Secretary, Bangalore, to permit entry from the State of Kerala and reopen all the borders of the State of Karnataka connecting the State of Kerala, W.P. (C) No.16833 of 2021 is filed with the following reliefs:

- “(i) Issue a writ in the nature of mandamus commanding respondents 1 to 4 to take immediate steps to allow the passengers, who are having Covid vaccination certificate for at least one dose, as imposed by the 3rd respondent to other States and reopen all the borders of the State of Karnataka connecting the State of Kerala enabling the persons in Kerala to enter the State of Karnataka for treatment and also for the free movement of vehicles from Kerala to Karnataka.
- (ii) Direct the respondent Nos. 3 and 4 to take necessary steps under the Disaster Management Act, 2005, to ensure that all the vehicles, including passenger vehicles, to the State of Karnataka, shall not be obstructed in the borders of

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State of Karnataka, in the light of Exhibit P1 order passed by the 4th respondent dated 31.07.2021 imposing a condition that the passenger must be in possession of an RT-PCR negative certificate even though the passenger is in possession of Covid vaccination certificate of at least one dose of vaccination.”

2. W.P.(C) No.17071 of 2021 is filed challenging the requirement of mandatory RT-PCR certificate insisted by the State of Karnataka, irrespective of having been vaccinated. The reliefs sought for in the writ petition are as under:

- (i) Issue a Writ of Mandamus or any other appropriate writ, order or direction, directing the 1st respondent, viz., Union of India, represented by its Secretary, Ministry of Home Affairs, Delhi, to ensure that possessing a negative RT-PCR Certificate taken within 72 hours is not mandatory for daily commuters from Manjeshwaram, Kasaragod district.
- (ii) Issue a writ of mandamus or any other appropriate writ, orders or direction, commanding the 1st respondent to open the borders with Kerala and in particular Kasaragod-Mangalore border at Thalappady.
- (iii) Issue a writ of mandamus or any other appropriate writ, orders or direction, directing the 1st respondent, to ensure free movement of daily commuters, who have taken at least 1st dose of Covid vaccine, through the

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borders, without possessing a negative RT-PCR Certificate taken within 72 hours.

3. Facts relevant for consideration are that the petitioner in W.P.(C) No.16833 of 2021 is the Secretary of Rastrakavi Manjeshwara Govinda Pai Smaraka Samithi, a trust operating in the District of Kasaragod. He is also a member of the Kasaragod Legal Aid Committee and a member of the District Tourism Promotion Council, Kasaragod.

4. Petitioner is challenging the arbitrary action of the State of Karnataka, Bangalore, Rep; by Chief Secretary, and Deputy Commissioner and District Magistrate, Dakshina Kannada District, District Collector Office, Mangalore, Karnataka-575001, respondents 3 and 4 respectively, in imposing illegal conditions violating the fundamental rights of the people residing at the border towns of Kasaragod, stating that all the passengers shall carry RT-PCR negative certificate, in addition to the Covid vaccination certificate issued by the Government, for entering into the State of Karnataka, and thereby all entries and passages from the State of Kerala to the State of Karnataka

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through Kasaragod District are blocked. This, according to the petitioner, curtailed the fundamental rights of the people in Kerala, predominantly the people residing in Kasaragod.

5. Petitioner has further stated that the people residing in Kasaragod are mainly depending upon Mangalore city, as it is only 15 kilometres away from the border town, and after the passing of Exhibit-P1 order dated 31.07.2021, the daily travelers, including labourers, employees and students, studying at various medical colleges, Mangalore, are being deprived of their right to travel on daily basis. In support of the said contention, he has relied on Articles 19(1)(g), 21, and 301 of the Constitution of India.

6. Petitioner has further stated that moreover, business activities done by the residents of the border towns of Kasaragod are now being stopped, due to the issuance of the impugned order. There was an earlier decision taken by the 3rd respondent that no RT-PCR report is needed for travelers, who are vaccinated, from Kerala to Karnataka and in the light of the same, people residing in Kerala were given liberty to enter into

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the State of Karnataka, who have taken at least one dose of COVID-19 vaccination till 31.07.2021, the date of Exhibit-P1 order. In order to substantiate the said contention, petitioner has invited our attention to Exhibit-P2, a news item published in the New Indian Express dated 2.7.2021.

7. Petitioner has further stated that now the 4th respondent has issued Exhibit-P1 order, without looking into the issues faced by the residents of Kerala-Karnataka border and the same has created hardships and curtailment of freedom of movement at least for their basic needs. It is further stated that at the first stage of pandemic, this Court vide order dated 11.06.2020 confirmed the interim order passed in W.P.(C) No.9399 of 2020 along with W.P.(C) No.9413 of 2020 (Exhibit-P4), directing the Central Government to intervene in the matter affecting the free movement of people, mainly the patients from the State of Kerala to the State of Karnataka. That apart, the Hon'ble Supreme Court has also made an oral direction to the 3rd respondent to amicably settle the matter between the State of Kerala and allow free movement of

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vehicles from State of Kerala to Karnataka, in strict adherence to Covid protocol.

8. Petitioner has further stated that even though people residing in the subject area are making several requests for entry, respondents 3 and 4 and their officials are not considering the requests and now the situation is the same, which was prior to the intervention of this Court. Hence, he has filed W.P.(C) No.16833 of 2021 for the reliefs stated supra.

9. W.P.(C) No.17071 of 2021 is filed aggrieved by the blockade created by the 2nd respondent, viz., State of Karnataka. As per the Karnataka Government's latest regulation, all the passengers from Kerala are required to possess a negative RT-PCR certificate taken within 72 hours. Even people who have taken two doses of COVID-19 vaccine are required to undergo the test.

10. Petitioner in W.P.(C) No.17071 of 2021 has further stated that vide order dated 1.7.2021 issued by the Government of Karnataka, a negative RT-PCR Certificate taken within 72 hours has to be carried by the people from the district

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of Kasaragod in Kerala, who regularly visit Dakshina Kannada in Karnataka, for educational, medical and business purposes. It is also stated that the people of Manjeshwar Constituency are dependent on Dakshina Kannada districts/ Mangalore city for their basic needs. They are aggrieved by the arbitrary decision of the Karnataka Government in the order dated 1.7.2021, since Dakshina Kannada districts are just within 10 to 20 kms. in distance. That apart, most people of Kasaragod, which is very near to the Karnataka border, predominantly depend on Mangalore for their education, trade, business, jobs and for urgent medical treatment, which is the nearest available medical hub to Kasaragod. Hence, the petitioner has contended that the action of the State in issuing the impugned order, is in total disregard to Articles 14, 19 and 21 of the Constitution.

11. Petitioner has further stated that invoking the powers under the provisions of Disaster Management Act, 2005, Union of India has issued an order bearing No.40-3/2020-DM-I(A) dated 29.08.2020 for phased Re-opening (Unlock 4), wherein it was clearly stated that "there shall be no restrictions on inter-

state and intra-State movement of persons and goods, including those for cross land border trade under treaties with neighbouring countries and that no separate permission/approval/e-permit is required for such movements. The said order has been updated timely to ensure smooth running of the economy even though strict measures have been issued to contain spread of COVID-19 by the 1st respondent.

12. Petitioner has further stated that in view of the spread of second wave of COVID-19, the 1st respondent - Union of India, has issued another order bearing No.40-3/2020-DM-I(A) dated 29.04.2021, for implementation of containment measures for COVID-19, wherein it was clearly stated that inter-State and intra-State movements shall not be restricted. In fact, on 18.02.2021, for the second time, the State of Karnataka has ordered that inter-State movement of traffic for public between Kerala and Karnataka will be restricted to only four points and entry through other points in Karnataka will remain prohibited.

13. Petitioner has further stated that order dated 18.02.2021 was challenged before the Karnataka High Court

and vide order dated 1.4.2021 in W.P.(C) No.3949 of 2021, the Court has directed the State of Karnataka that no restriction on the movement of people or goods will be imposed on the check posts between Kerala and Karnataka. Thereafter, Indian Council of Medical Research has issued an advisory dated 4.5.2021 for COVID-19 testing during the second wave of pandemic.

14. Petitioner has further stated that as per the guidelines issued by State of Kerala, RT-PCR negative certificate is not mandatory to enter into Kerala for passengers, who have taken both the vaccination and that, they have to carry proof of vaccination while travelling. However, people who have developed COVID symptoms shall undergo RT-PCR test and carry the negative result while travelling.

15. Petitioner has further stated that aggrieved by the above, he has written a letter to the Hon'ble the Chief Minister of Kerala, informing the relevant blockade of Karnataka State and urged to take necessary steps to remove the blockade. On 6.8.2021, petitioner wrote a letter dated 3.8.2021 to the Hon'ble Chief Minister of Karnataka urging to ensure

uninterrupted inter-State transportation of passengers, patients and commodities between Karnataka and Kerala.

16. Petitioner in W.P.(C) No.17071 of 2021 has further stated that the 2nd respondent - State of Kerala, has issued an order bearing G.O (Rt.) No. 530/2021/DMD dated 17.07.2021, wherein it was stated that Negative RT-PCR certificate is not to be mandatorily possessed by those persons, who have taken COVID-19 vaccine. Thereafter, vide order dated 31.07.2021 (Exhibit-P10), the Deputy Commissioner & District Magistrate, Dakshina Kannada, has stated that people travelling from neighbouring State/district to Dakshina Kannada district are more likely to spread the disease from person-to-person, and therefore, it is imperative to prevent the unrestricted travel and interference by the public as a part of ensuring the safety of the people in Dakshina Kannada district and laid down certain ill planned steps, which would affect the daily and normal life of the people of Karnataka, especially Manjeshwar.

17. Pursuant to Exhibit-P10 order, the State of Karnataka has issued a revised circular dated 31.07.2021 (Exhibit-P12),

stating that people travelling from Kerala and Maharashtra to Karnataka districts must produce a negative RT-PCR Certificate, which is not older than 72 hours, irrespective of the vaccination status. Petitioner has contended that Exhibit-P10 and Exhibit-P12 revised circular dated 31.07.2021 issued by the State of Karnataka, infringe the fundamental rights under Articles 19(1) (g) and 21 of the people of State of Kerala and that their right to free movement is restricted. According to the petitioner, Manjeshwar is at a distance of 30 kms from the city of Mangalore and majority of the people depend on Mangalore for medical facilities, education, business and other livelihoods.

18. Petitioner has further stated that the direction in the orders dated 29.08.2020 and 29.04.2021 issued by the Central Government under Section 10(2) of the Disaster Management Act, 2005 clearly mentions that there shall be no restrictions on inter-State transport. Once the Union of India, in exercise of the powers under the Provisions of Disaster Management Act, 2005 issues directions to the State Governments, it is mandatory for the State Governments to adhere to such

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directions. In the present case, Exhibit-P10 and P12 dated 31.07.2021 issued by the State of Karnataka are contrary to the directions issued by the Union of India and therefore, the said circulars may not be implemented as they infringe Articles 19(1) (g) and 21 of the Constitution of India.

19. In support of the contention that right to food is a fundamental right, petitioner has relied on various decisions of the Hon'ble Supreme Court. In **People's Union for Civil Liberties v. Union of India & Others** [W.P.(C) No.196/2001], the Hon'ble Apex Court has held that right to food is a human right and determined a basic nutritional floor for India's impoverished millions. That apart, petitioner has relied on the decisions in **Vincent Panikulangara v. Union of India & Ors.** [(1987) 2 SCC 165]; **CESC Ltd. v. Subhash Chandra Bose** [(1992) 1 SCC 441]; **Consumer Education and Research Centre v. Union of India** [(2010) 15 SCC 699]; and **Paschim Banga Khet Mazdoor Samity & Ors. v. State of West Bengal & Anr.** [(1996) 4 SCC 37], to establish his contentions.

20. Refuting the averments contained in the writ petition, the Chief Secretary, Government of Karnataka, has filed a detailed counter affidavit in W.P.(C) No.16833 of 2021, wherein it is stated as under:

- A. At the very outset, W.P.(C) No.16833 of 2021 is not maintainable in view of Article 226(2) of the Constitution of India, interpreted by the Hon'ble Apex Court, as no cause of action arises within the limits of territorial jurisdiction of this Court. In this case, the grievance of the petitioner relates to certain actions taken by respondents 3 and 4, insofar as it has been made mandatory for persons arriving from Kerala to Karnataka to produce negative RT-PCR Certificates that are not older than 72 hours, irrespective of vaccination status. In short, the petitioner in W.P.(C) No.16833 of 2021 contended that his legal and constitutional rights have been infringed by the action of respondents 3 and 4 by mandatorily requiring a negative RT-PCR test certificate to be produced before he is permitted entry into the State of Karnataka.
- B. Referring to Article 226 of the Constitution of India, it is contended that the power to issue writs to authorities beyond the territorial jurisdiction of the High Court is circumscribed by the requirement that

the cause of action must wholly or in part arise within the territorial limits of the Court's jurisdiction. In this context, he has relied on the decision of the Hon'ble Apex Court in **Nawal Kishore Sharma v. Union of India and Others** [(2014) 9 SCC 329].

- C. According to the State of Karnataka, it cannot be gainsaid that respondents 3 and 4 are functionaries, who fall within the territorial limits of Karnataka State, and therefore, fall outside the limit of this Court's territorial jurisdiction. Pertinently, the cause of action in respect of the legal rights that are alleged to have been infringed arise wholly within the State of Karnataka, as the requirement for production of a mandatory RT-PCR test, which forms the cause of action, is being enforced within the territorial limits of the State of Karnataka and not in Kerala. To put it otherwise, petitioner claims that his legal rights are infringed by the actions of the State of Karnataka, insofar as it restricts his entry into the State, without production of negative RT-PCR certificate. Therefore, an infringement of the petitioner's legal right, if any would occur wholly within the State of Karnataka and not in Kerala, as the respondents are not imposing the requirement for production of an RT-PCR certificate

for his movement within the State of Kerala, but only for his entry in the State of Karnataka.

- D. It was further contended that similar prayers were sought against the authorities of State of Karnataka in W.P.(C) (TMP) No.2 of 2020, wherein this Court in its order dated 1.4.2020 has observed that we are well aware of our jurisdictional limitations and we, therefore, do not propose to issue any direction to the State of Karnataka. Therefore, this Court previously in similar circumstances, has taken note of the Constitutional limitations on its jurisdiction under Article 226 and observed that it does not propose to issue any directions to the State of Karnataka. The prayers sought for in this writ petition against the State of Karnataka are, therefore, not maintainable as they are beyond the scope of this Court's jurisdiction and hence, liable to be rejected *in limine*.
- E. It was further contended that taking note of the vastly higher number of cases in Kerala and moreover, since the two States share an extensive border, the Karnataka State COVID-19 Technical Advisory Committee (TAC), comprising of prominent doctors and public health experts, in its 115th meeting held on 16.7.2021, observed that negative RT-PCR test reports must be insisted

upon, irrespective of the vaccination status of the person arriving in Karnataka. The TAC specifically observed in the meeting that, as vaccination does not prevent infection in the vaccinated persons (one of two doses), negative RT-PCR test reports must be insisted upon from all the persons arriving in Karnataka, irrespective of vaccination status.

- F. It is further contended that thereafter, at the 116th meeting of the TAC on 24.07.2021, the committee reiterated the need for insisting upon production of a negative RT-PCR test report from all the persons arriving from Kerala and Maharashtra, irrespective of vaccination status and even if they are asymptomatic. The TAC also noted that the above requirement is recommended in view of the magnitude of COVID-19 cases in the States of Kerala and Maharashtra, and that the requirement may be reviewed in due course after the situation improves in the two States. Thereafter, in the 117th meeting on 30.07.2021, the TAC, inter alia, has discussed in detail, the TPR prevailing in each of the State's districts, as well as that prevailing in the State of Kerala and Maharashtra.
- G. Accordingly, after taking into consideration the deliberations of the TAC, in its various meetings and after carefully applying its mind to the COVID-19

situation in the State, the State of Karnataka issued the revised circular dated 31.07.2021, which set out various special surveillance measures to be complied with strictly by the State functionaries with respect to arrival of persons from the States of Maharashtra and Kerala.

- H. Further, it is contended that the TAC, in its 120th meeting held on 15.08.2021 [Exhibit-R3(f)], discussed in detail the justification for compulsory RT-PCR testing of persons coming from Kerala, irrespective of vaccination status. A reading of the said proceedings revealed that the TAC has considered the TPRs in each of the districts in the State, the number of daily COVID-19 cases registered in Kerala and Karnataka, and the high incidence of COVID-19 cases in the districts bordering Kerala. It was upon careful consideration of all the data available that the TAC has reiterated its recommendation for mandatory production of RT-PCR test report, irrespective of vaccination status. Pertinently, the TAC has also reiterated that the requirement of production of negative RT-PCR reports will be reviewed after the number of Covid-19 cases in Kerala decline. Therefore, it is clear that the requirement for production of negative RT-PCR test reports is only a temporary measure, which will

be reviewed by the State of Karnataka after the Covid-19 situation in Kerala improves and the spread of the virus has been effectively contained. In this regard, it is contended that the temporary measures that have now been imposed by the State of Karnataka are absolutely essential in order to contain the spread of the pandemic.

- I. It is further contended that the TAC, in its Meeting on 15.08.2021, has also noted that during the beginning of the second wave, arrival of persons from Kerala triggered the spurt in the number of cases, and that these temporary measures that have currently been imposed are essential to ensure that this spurt is not repeated once again. Therefore, it is submitted that the requirements imposed vide the Circular dated 31.07.2021 are critical to ensure that the pandemic is contained.
- J. It is further contended that in fact, it is well accepted and recommended across the world, including by the Union of India, that effective testing and containment are two of the most important ways of fighting the pandemic. The measures that have currently been imposed by the State of Karnataka address both the requirements, as it ensures that persons are tested, and also that the virus is contained and not permitted to spread.

Importantly, these measures not only aid the State of Karnataka in fighting the pandemic but also the country as a whole, as allowing the virus to spread in one State would consequently result in a cascading effect where the virus spreads to other States. In fact, this is precisely how the deadly second wave spread across the country in the summer of 2021, and it is absolutely critical that the same is not allowed to be repeated again.

- K. It is, therefore, reiterated that the measures imposed vide circular dated 31.07.2021 are not violative of any fundamental, constitutional, or legal rights of the petitioners or any of the public residing in Kerala. To the contrary, the requirements set out in the circular protect the fundamental right to life and health of persons not only residing in Karnataka but across the country. Moreover, since the borders are open for free movement of persons and goods, there is absolutely no violation of Articles 19 or 301 of the Constitution of India.
- L. It was further contended that moreover, the contention of the petitioners that the requirement for the mandatory production of RT-PCR test reports for entry into the State of Karnataka is contrary to the directives of the National Disaster Management Authority ("NDMA") is wholly incorrect

and baseless. In this regard, it is contended that in exercise of the powers conferred under Section 6(2) (i) of the Disaster Management Act, 2005, the NDMA issued an order dated 29.04.2021, inter alia, setting out 'various measures for containing the spread of the Covid-19 pandemic. The petitioners rely upon the mandate in para 6(ix) of Annexure A to the order, which states that there shall be no restriction on interstate movement of persons and goods. The reliance placed in this regard is, however, entirely misplaced as the State of Karnataka has placed no restrictions whatsoever on the interstate movement of either persons or goods. It is reiterated that the measures set out in the Circular dated 31.07.2021 do not place any restrictions on the movement of persons or goods into the State of Karnataka. All the borders between the two States are free for movement of persons and goods, thereby complying with the requirements of the mandate of the NDMA. The prescription for production of a negative RT-PCR certificate can hardly be said to be a restriction that falls foul of the NDMA's mandate. As submitted earlier, the requirement only aids the process of detection and containment of the Covid-19 virus.

- M. It was further contended that the requirement for production of a negative RT-PCR certificate is mandatory for all the flights across the country and it can hardly be said that such a requirement is contrary to the directions of the NDMA. Therefore, this ground, too, is frivolous and is liable to be rejected.
- N. Furthermore, it is critical to submit that in WP No.14952/2021, the Court of Karnataka, after taking note of the precarious Covid—19 situation in the border districts, particularly Dakshina Kannada district, has, vide an order dated 17.08.2021, directed the State and the Dakshina Kannada Deputy Commissioner's office to strictly implement the Circular dated 31.07.2021 in its letter and spirit, without any concession. Therefore, the State of Karnataka is bound by judicial mandate to strictly implement the Circular dated 31.07.2021, failing which it would be in contempt of the order of the Hon'ble Karnataka High Court. It was contended that any orders passed by this Court, which may be contrary to the mandate of the Karnataka High Court, would result in upsetting the carefully delineated jurisdictions of the Constitutional courts of the country.

- O. It was finally contended that two orders from two different courts would result in a considerable amount of confusion and would put the people of the State of Karnataka, as well as the State of Kerala, in great hardship. Therefore, on this ground too, it is prayed that the instant writ petition be dismissed.

21. One of the main contentions advanced by Mr. Haris Beeran, learned counsel for the petitioner in W.P.(C) No. 17071 of 2021, is that Exhibit-P10 order dated 31.07.2021 issued by the Deputy Commissioner and District Magistrate, Dakshina Kannada district, Mangaluru, and Exhibit-P12 revised circular dated 31.07.2021, issued by the State of Karnataka, viz., the 2nd respondent, infringe the fundamental rights guaranteed to the people in the State of Kerala under Articles 19(1)(g) and 21 of the Constitution of India.

22. He has further submitted that the effect of the above circulars issued by the State of Karnataka is interfering with the fundamental rights of free movement guaranteed under Article 19(1)(d) of the Constitution of India and, therefore, the part of

cause of action has arisen within the State of Kerala, in as much as the said circulars have put fetters on the fundamental rights of the people of Kerala.

23. Learned counsel for the petitioner further submitted that Manjeshwar is only having a distance of 30 kilometres from the city of Mangaluru and a majority of the people residing in Kasaragod depend upon Mangaluru, to avail medical facilities, education, business etc. Therefore, Exhibits-P10 and P12 circulars dated 31.07.2021 issued by the 2nd respondent clearly violate the right of the people of Kerala, to secure medical care, right to education, right to occupation, and right to livelihood, accordingly, contended that this Court has got every power to entertain the writ petitions, under Article 226 of the Constitution of India.

24. Mr. P. V. Anoop, learned counsel for the petitioner in W.P.(C) No.16833 of 2021, submitted that the impugned circulars issued by the State of Karnataka are interfering with the orders passed by Government of India under the provisions

of the Disaster Management Act, 2005, which clearly specifies that there shall be no restrictions on inter-State transport.

25. Sum and substance of the contentions raised is that once the Union of India, in exercise of the powers conferred under the Disaster Management Act, 2005 issues any orders / guidelines, it is binding on all the State Governments and the State Governments shall strictly adhere to such directions. However, the circulars dated 31.07.2021 discussed above, are issued contrary to the directions of the Union of India, and therefore, bad in law and liable to be interfered with by this Court. It was therefore, contended that the orders passed by the Government of India, under Act, 2005 may be directed to be implemented, in order to protect the rights and interests of the people of Kerala, and further, direct the Government of Karnataka and its officials, to remove the blockades erected at Thalappady border, which prevents the inter-State travel and do away with the restrictions of RT-PCR test to enter the State, to undergo quarantine, etc.

26. Learned counsel for the petitioners have also relied on the order passed by this Court in W.P.(C) (TMP) No.2 of 2020 dated 1.4.2020, during the first lockdown, to which one of us is a party (Justice Shaji P. Chaly), and specifically referred to paragraph 7 of the order, to contend that the right of a citizen to move freely through the territory of India, subject to reasonable restrictions imposed in the interests of sovereignty and integrity of India, security of the State, public order, etc., which is very well recognised under Article 19 of the Constitution of India.

27. It is also contended that the State of Karnataka has no right to block a National Highway and interfere with the freedom guaranteed under Article 301 of the Constitution of India, to carry on with any trade, commerce and intercourse, throughout the territory of India, which shall be free in all respects. Yet another predominant contention advanced is that the action of State of Karnataka, by issuing the impugned circulars dated 31.7.2021, has severely interfered with the life and liberty guaranteed to the citizens under Article 21 of the Constitution of

India, which is not limited to the borders of any State, but to the contrary it grants liberty to any citizen to travel throughout the country without any unreasonable restrictions by any State Government, and therefore, it was submitted that the impugned circulars so far as interfering with the rights and liberties conferred on the citizens cannot be curtailed.

28. On the other hand, Mr. Prabhuling K. Navadgi, learned Advocate General for the State of Karnataka, submitted that there are three broad issues to be considered by this Court, viz., (i) having regard to the facts pleaded in the writ petitions, whether this Court has the territorial jurisdiction to entertain the writ petitions; (ii) what is the effect of the order passed by Karnataka High Court in W.P.(C) No.14952 of 2021 dated 17.08.2021; and (iii) whether the impugned order, though not specifically challenged by the petitioners, violates Article 19 of the Constitution of India.

29. In regard to the territorial jurisdiction, learned Advocate General of Karnataka submitted that a bare reading of Article 226(2) of the Constitution of India would make it clear

that petitioners were not right in contending that the part of cause of action has arisen within the State of Kerala. According to the learned Advocate General, orders are passed by the State of Karnataka to regulate and restrict the movements within the State of Karnataka and it is implemented only within the State of Karnataka. Learned Advocate General also submitted that the State of Karnataka and its officials have never entered the borders of State of Kerala and implemented any restrictions imposed under the circulars in question.

30. That apart, every order passed by every Government is likely to affect different parts of the country, but that would not necessarily provide jurisdiction to every court. He also submitted that the emergent situation of COVID-19 pandemic has, in fact, affected different States in a significantly different manner and during the first phase, some of the States were affected severely, some States moderately, and some States in a feeble manner. Therefore, the regulations and restrictions imposed by the States were different in various respects, and

they were issued with the hopeful intention to curb or control the disease within the respective States.

31. It was further contended that even within a State, there would be an umpteen number of situations to be tackled even at micro level, taking into account the severity and gravity of the situation, population and other factors. Therefore, according to the learned Advocate General, the attempt of the State of Karnataka is only to impose restrictions and contain the spread of COVID-19 disease for the welfare of the people of the nation as a whole and it has no vested or selfish interest to protect any particular set of people. Therefore, it was contended that the entire cause of action arises within the State of Karnataka, and if at all the petitioners are aggrieved by the circulars issued, necessarily, they have to challenge the same before the High Court of Karnataka.

32. That apart, the learned Advocate General of Karnataka has invited our attention to the decision of the Hon'ble Supreme Court in **Oil and Natural Gas Commission v. Utpal Kumar Vasu and Others** [(1994) 4 SCC 711].

33. Learned Advocate General also submitted that the State of Karnataka has done nothing in the State of Kerala, in order to entail the rights of the citizens in Kerala, and further submitted that if at all any right is violated, it is only when they enter the State of Karnataka, without RTPCR test. He also submitted that there is no rationale in the submission made by learned counsel for the petitioners, since if the people of Kerala stay within the territory of Kerala, there is no manner of consequence, on the basis of the circulars issued by the State of Karnataka. He also submitted that if the submission of learned counsel for the petitioners is accepted, that would result in a situation where multiple courts of the country will start exercising jurisdiction, in respect of different restrictions issued by different State Governments.

34. Learned Advocate General further submitted that in the present emergent situation of COVID-19 pandemic, every State Government has taken similar decisions to contain the spread of COVID-19 and protect the life and liberty of the citizens of this country, residing within the respective State

territories, and the said situation definitely would have some effect on the rights and privileges enjoyed by the citizens. But, the fact remains, every State Government would implement its order only within their territory and if at all, the action of the State Government is to be challenged, it can only be done in the Courts within the territorial limits of that State alone.

35. Learned Advocate General further submitted that during the initial lockdown restrictions during 2020, since the roads were blocked by the State of Karnataka, as there was no clear picture as to how the severity of the pandemic was to be regulated and controlled, a Hon'ble Division Bench of this Court has passed an interim order dated 1.4.2020 directing the Government of India to remove the blockade. However, no such situation is prevailing now, as the Government of India, apart from issuing orders under the Disaster Management Act, 2005, have given liberty to the State Governments to tackle the situations within the State, and basically the Government of India assists the State Governments in undertaking measures to fight the disease.

36. He also submitted that even going by the impugned circulars, emergent medical cases are permitted, without any RTPCR negative test result and other restrictions contained under the said circulars and further relaxations are granted, which is quite evident and clear from the circulars.

37. The basic contention advanced by learned Advocate General for the State of Karnataka is that the situation existed at the time of passing of the interim order dated 1.4.2020 by this Court, is no more existing, and therefore, the interim order passed by this Court may not have any bearing to the issues addressed by the petitioners in the writ petitions in question.

38. Learned Advocate General also highlighted that in view of the implementation of the circular dated 31.07.2021, in accordance with the directions issued by the High Court of Karnataka in W.P.(C) No.14952 of 2021 dated 17.08.2021, the circular is being strictly implemented and if any directions are issued by this Court, contrary to the said order, there would be conflict of orders creating very complex and complicated situations, which would also be sensitive in nature.

39. Learned Assistant Solicitor General of India also raised contentions, supporting the arguments advanced by the learned Advocate General of the State of Karnataka. According to the learned ASGI, the issue is highly sensitive and, therefore, requires a very careful and balanced judicial approach, so as to eliminate any possibility of conflict by and between two States. Learned ASGI also submitted that this Court may reconcile the circular dated 31.07.2021 issued by the State of Karnataka and the guidelines issued by the Government of India dated 25.08.2021, superseding the guidelines issued on 24.05.2020, for inter-State travel, in the context of COVID-19 pandemic.

40. Learned ASGI further submitted that since there is already an order passed by the High Court of Karnataka, it may not be proper for the petitioners to insist this Court to pass an order, which is likely to militate against the mandate of the order passed by the Karnataka High Court. He also submitted that what cannot be granted directly, cannot be granted indirectly. Arguments were advanced on the merits of the

circulars/guidelines issued by the State of Karnataka and Government of India also.

41. Heard Mr. Haris Beeran and Mr. P.V. Anoop, learned counsel for the petitioners, Mr. Prabhuling K. Navadgi, learned Advocate General, State of Karnataka, Mr. P. Vijayakumar, learned ASGI, and perused the material on record.

42. Order No.40-3/2020-DM-I(A) dated 29.08.2020 issued by the Government of India, Ministry of Home Affairs, New Delhi, is reproduced hereunder:

**"No. 40-3/2020-DM-I(A)
Government of India
Ministry of Home Affairs**

North Block, New Delhi-110001
Dated: 29th August, 2020

ORDER

Whereas, an Order of even number dated 29.07.2020 was issued for containment of COVID-19 in the country, for a period upto 31.08.2020;

Whereas, in exercise of the powers under section 6(2)(i) of the Disaster Management Act, 2005, National Disaster Management Authority (NDMA) has directed. the undersigned to issue an order to re-open more activities in areas outside the Containment Zones and to extend the lockdown in Containment Zones upto 30.09.2020;

W.P(C)s.16833 & 17071/2021

:37:

Now therefore, in exercise of the powers, conferred under Section 10(2)(1) of the Disaster Management Act 2005, the undersigned hereby directs that guidelines on Unlock 4, as annexed, will be in force upto 30.09.2020.

Guidelines for Phased Re-opening (Unlock 4)

[As per Ministry of Home Affairs (MHA) Order No.40-3/2020-DM-I(A) dated 29th August, 2020]

xx xxx xxxx

5. No restriction on Inter-State and intra-State movement

There shall be no restriction on inter-State and intra-State movement of persons and goods including those for cross land-border trade under Treaties with neighbouring countries. No separate permission/approval/e-permit will be required for such movements.

xx xxx xxxx xxxxxxxx"

43. Order No.40-3/2020-DM-I(A) dated 29.04.2021 issued by the Ministry of Home Affairs, Government of India, New Delhi, is reproduced hereunder:

**"No. 40-3/2020-DM-I(A)
Government of India
Ministry of Home Affairs**

North Block, New Delhi-110001
Dated 29th April, 2021

ORDER

Whereas, an Order of even number dated 23.03.2021 was issued for effective control of COVID-19 in the country, for a period upto 30.04.2021;

And whereas, considering the unprecedented surge in COVID-19 cases across the country, Ministry of Health & Family Welfare (MoHFW) vide DO No. Z.28015/85/2021-DM Cell dated 25th April 2021, has issued an advisory to all States and Union Territories (UTs), for implementing intensive, local and focused containment framework, in specific districts/ cities, areas, identified based on a prescribed criterion;

Whereas, in exercise of the powers under Section 6(2)(i) of the Disaster Management Act, 2005, National Disaster Management Authority (NDMA) has directed the undersigned to issue an order, for ensuring compliance on the focused containment measures, as mentioned in the aforesaid MoHFW letter dated 25.04.2021, for containment of COVID-19 in the country;

Now, therefore, in exercise of the powers, conferred under Section 10(2)(1) of the Disaster Management Act, 2005, the undersigned, hereby directs the State/Union Territory Governments and State/ Union Territory Authorities to consider the containment measures for COVID-19, as conveyed vide aforesaid MoHFW advisory dated 25.04.2021, as per Annexure-I, for immediate implementation in their State/ UT, based on the assessment of the situation, until 31.05.2021. States/UTs, will take the necessary containment measures, under the relevant provisions of the Disaster Management Act 2005. It is further directed that:

- (i) The National Directives for COVID-19 Management, as specified in Annexure-II, shall continue to be strictly followed throughout the country.
- (ii) All the District Magistrates shall strictly enforce the containment measures taken by States/UTs and the National Directives.
- (iii) Any person violating these measures will be liable to be proceeded against as per the provisions of Sections 51 to 60 of the Disaster Management Act, 2005, besides legal action under Section 188 of the IPC, and other legal provisions as applicable.

Union Home Secretary
and, Chairman, National Executive Committee (NEC)

**Containment framework, as mentioned in Ministry of
Health & Family Welfare (MoHFW), DO No. Z.28015/
85/2021-DM Cell dated 25th April, 2021**

Annexure – A

Implementation Framework for community
containment/large containment areas

XX XXX XXXXX

A. Containment

- i. Focus will be on containment as a major approach to flatten the current curve of the epidemic.
- ii. **Night curfew:** Movement of individuals shall be strictly prohibited during night hours, except for essential activities. Local administration shall decide the duration of the night curfew hours and issue orders, in the entire area of their jurisdiction, under appropriate provisions of law. such as under Section 144 of CrPC, and ensure strict compliance.
- iii. The spread or the infection has to be controlled through restricting the intermingling amongst people, the only known host for the COVID-19 virus.

- iv. Social / political / sports / entertainment / academic / cultural / religious / festival-related and other gathering and congregations shall be prohibited.
- v. Marriages (attended by up to 50 persons) and funerals! last rites (attended by up to 20 persons) may be allowed.
- vi. All shopping complexes, cinema halls, restaurants & bars, sports complexes, gym, spas, swimming pools and religious places should remain closed.
- vii. Essential services and activities such as health-care services, police, fire, banks, electricity, water and sanitation, regulated movement of public transport including all incidental services and activities needed for a smooth functioning of these activities shall continue. Such services shall continue in both the public and private sector.
- viii. Public transport (railways, metros, buses, cabs) to operate at a maximum capacity of 50%.
- ix. There shall be no restrictions on inter-state and intra-State movement including transportation of essential goods.
- x. All offices, both government and private, to function with a maximum staff strength of 50%.
- xi. All industrial and scientific establishments, both government and private may be allowed subject to the workforce following physical distancing norms. They shall also be tested through RAT (in case of individuals identified with flu-like symptoms) from time to time.
- xii. The SOPs already issued by MoHFW, including training manuals for surveillance teams and supervisors are available on the website & must be followed.
- xiii. However, these are indicative activities, and States! UTs should make a careful analysis of the local situation, areas to be covered, and probability of transmission and then take a decision.
- xiv. The restrictions as above shall continue for a period of 14 days.

- xv. Before declaring a containment area, make a public announcement, outlining the rationale for the same and the kind of restrictions that will be in place (a leaflet in local language may be distributed highlighting the gravity of the situation and restrictions to be followed)
- xvi. Community volunteers, civil society organizations, ex-servicemen, and members of the local NYK/NSS centres etc. should be involved for sustainable management of containment activities, translating the aforementioned leaflets and for encouraging people in the community for sustained behaviour change as well as vaccination.

xx xxx xxxxxxxx”

44. Advisory for COVID-19 testing during the second wave, issued by Indian Council of Medical Research(ICMR), Department of Health Research, Ministry of Health and Family Welfare, Government of India dated 4.5.2021 reads thus:

“Date: 04/05/2021

Advisory for COVID-19 testing during the second wave of the pandemic

Context

An unprecedented upsurge of COVID-19 cases and deaths is currently being witnessed across India. The overall nationwide test positivity rate is above 20%. Testing-tracking-tracing, isolation and home-based treatment of positive patients is the key measure to curb transmission of SARS-CoV-2, the causative agent of COVID-19. As on today, India has a total of 2506 molecular testing laboratories

including RTPCR, TrueNat, CBNAAT and other platforms. The total daily National testing capacity is close to 15 lakh tests considering a three-shift operationalization of the existing laboratory network. At present, the laboratories are facing challenges to meet the expected testing target due to extraordinary case load and staff getting infected with COVID-19. In view of this situation, it is imperative to optimize the RTPCR testing and simultaneously increase the access and availability of testing to all citizens of the country.

Recommended measures to optimize RTPCR testing

- i. RTPCR test must not be repeated in any individual who has tested positive once either by RAT or RTPCR.
- ii. No testing is required for COVID-19 recovered individuals at the time of hospital discharge in accordance with the discharge policy of MoH&FW
(<https://www.mohfw.gov.in/pdf/ReviseddischargePolicyforCOVID19.pdf>).
- iii. The need for RTPCR test in healthy individuals undertaking inter-state domestic travel may be completely removed to reduce the load on laboratories.
- iv. Non-essential travel and interstate travel of symptomatic individuals (COVID-19 or flu like symptoms) should be essentially avoided to reduce the risk of infection.
- v. All asymptomatic individuals undertaking essential travel must follow COVID appropriate behavior.
- vi. Mobile testing laboratories are now available on GeM portal. States are encouraged to augment RTPCR testing through mobile systems.

Measures to improve access and availability of testing:

Rapid antigen tests (RATs) were recommended in India for COVID-19 testing in June 2020. However, the use of these tests is currently limited to containment zones and health care settings. RAT has a short turn-around time of 15-30 minutes and thus offers a huge advantage of quick detection of cases and opportunity to isolate and treat them early for curbing transmission. So far, ICMR has approved 36 RATs of which 10 are on the GeM portal. To meet the overwhelming testing demand, it will be prudent to upscale testing using RATs.

xx xxxx xxxxxxxx”

45. Order No.40-3/2020-DM-I(A) dated 29.06.2021 issued by the Ministry of Home Affairs, Government of India, New Delhi, is reproduced hereunder:

“No. 40-3/2020-DM-I(A)
Government of India
Ministry of Home Affairs

North Block, New Delhi-110001
Dated: 29th June, 2021

ORDER

Whereas, an Order of even number dated 29th April 2021, was issued to ensure compliance to the containment measures for COVID-19, as conveyed vide Ministry of Health & Family Welfare (MOHFW) DO No. Z.28015/85/

2021-DM Cell dated 25th April 2021, which was further extended for a period upto 30.06.2021 vide an Order of even number dated 27.05.2021;

And whereas, considering the need for containment of COVID-19 cases across the country, MoHFW vide DO No. Z.28015/85/2021-DM Cell dated 28th June 2021, has issued an advisory to all States and Union Territories (UTs), for implementing targeted and prompt actions for bringing the pandemic under control;

Whereas, in exercise of the powers under section 6(2)(i) of the Disaster Management Act, 2005, National Disaster Management Authority (NDMA) has directed the undersigned to issue an order, for containment of COVID-19 in the country;

Now therefore, in exercise of the powers, conferred under Section 10(2)(1) of the Disaster Management Act 2005, the undersigned, hereby directs the State/Union Territory Governments and State/ Union Territory Authorities to consider implementation of targeted and prompt actions for COVID-19 management, as conveyed vide aforesaid MoHFW advisory dated 28.06.2021, as per Annexure-I, until 31.07.2021. States/ UTs, will take the necessary measures, under the relevant provisions of the Disaster Management Act 2005. It is further directed that:

- (i) The National Directives for COVID-19 Management, as specified in Annexure II, shall continue to be strictly followed throughout the country.

W.P(C)s.16833 & 17071/2021

:45:

- (ii) All the District Magistrates shall strictly enforce the above measures. For the enforcement of social distancing, State/UT Governments may, as far as possible, use the provisions of Section 144 of the Criminal Procedure Code (Cr.P.C) of 1973.
- (iii) Any person violating these measures will be liable to be proceeded against as per the provisions of Section 51 to 60 of the Disaster Management Act, 2005, besides legal action under Section 188 of the IPC, and other legal provisions as applicable.

Sd/-
Union Home Secretary
and, Chairman, National Executive Committee (NEC)“

ANNEXURE-I

D.O No. Z.28015/85/2021-DM Cell

28th June, 2021

This is in reference to my earlier DO letter of even number dated 25th April, 2021 wherein Ministry of Health and Family Welfare had shared with all States/UTs an implementation framework for intensive action and local containment in specific and well defined geographic units, to break and suppress the chain of transmission of SARS COV-2. This was also later reiterated by the Ministry of Home Affairs and orders regarding the same were issued under the DM Act, 2005 vide letter No. 40-3/2020-DM-I(A) dated 29th April, 2021.

2. With a rise in COVID 19 trajectory across the country in April and May 2021, many States and UTs have undertaken restrictions and containment measures as per the aforesaid

implementation framework. As a result, the trajectory of COVID 19 pandemic in the country is presently showing a steady decline.

3. In view of the declining number of cases being reported many States have initiated the implementation of relaxation measures, In this context, it is critical that the lifting of restrictions/providing relaxations be carefully calibrated with continued focus on containment efforts to curb the spread of infection.

4. In order to bring uniformity in implementing graded restriction/relaxation measures for COVID 19, the need for following the framework earlier shared with the States for either imposition of restrictions or allowing relaxations based on the burden of disease and strain on health care infrastructure still remain important. Prompt and targeted actions need to be implemented by the States as detailed below:

A. Guiding Principles

- * Monitoring of cases with districts as administrative units be done on a regular basis. Necessary action for containment and health infrastructure upgradation be done, by further micro analysis based on clusters of cases at the district level.
- * Case positivity calculated based on total positive cases vis-a-vis samples tested during the week is one of the prime indicators of the spread of infection in a district.

Higher case positivity would imply the need for stringent containment and restrictions so as to control the spread of infection.

- * Similarly, each district needs to analyze bed occupancy (oxygen and ICU beds) vis-a-vis the available health infrastructure to ensure that it doesn't get overwhelmed and seamless patient admission and follow up can be done. Higher bed occupancy is an indicator that the district needs to undertake specific measures to upgrade the available beds while focusing on containment activities equally vigorously. It is important to emphasize that a lead time is required to upgrade health infrastructure (a month or more) and hence districts need to plan such upgrades after having duly analyzed the case trajectory on a regular basis.
- * In view of the above, for prioritizing districts which need intensive follow up, States may continue to utilize the classification of risk profile of districts as already communicated by the Ministry of Health and Family Welfare on 25th April, 2021. Accordingly:
 - i) States/UTs may identify districts which require highest level of restrictions
 - ii) Remaining districts may be allowed higher degree of relaxations based on lower weekly case positivity or a relatively low Bed occupancy (Oxygen and ICU beds) rates.

- iii) Districts with high weekly case positivity or a high Bed occupancy (Oxygen and ICU beds) as detailed above, would need intensive monitoring and hence State may consider appointing a senior officer from State headquarter as the Nodal Officer for these districts.
- iv) District Nodal Officer will work in coordination with District Collector/Municipal Commissioner to identify cluster of new cases and ensure implementation of required containment activities including intensive action in areas reporting higher cases.
- v) Restrictions once imposed will remain in force for a minimum period of 14 days.
- vi) In remaining areas of the district not under containment action, clearly defined relaxations/restrictions may be provided.

xx xxx xxxxxxxx"

46. Order No. RD 158 TNR 2020 dated 1.7.2021 issued by the Government of Karnataka is reproduced.

"Government of Karnataka

No. RD 158 TNR 2020

Karnataka Government Secretariat
MS Building
Bengaluru, Dated: 01-07-2021

ORDER

Subject: Special surveillance measures for persons arriving from Kerala - reg.

Reference: Proceedings of 112th meeting of State COVID 19 TAC, dated 20-06-2021.

Whereas, the State of Kerala continues to be threatened with the spread of COVID 19 virus. Further, INSACOG (a consortium of laboratories for whole Genome sequencing in the context of COVID 19 pandemic) has intimated that Delta Plus variant of COVID 19 virus, which is currently a Variant of Concern (COV), has been reported in certain districts of Kerala.

Whereas, the State Government is satisfied that prevailing COVID 19 situation in the Kerala, the neighbouring State, entails taking special surveillance measures to prevent the spread in to the bordering districts of the State.

Now, therefore, in exercise of the powers conferred under the sub section (1) of Section 24 of the Disaster Management Act, 2005, the undersigned, in the capacity of the Chairman, State Executive Committee, directs taking special surveillance measures, as below, for persons arriving from Kerala, with immediate effect, for strict implementation by Chief Commissioner BBMP, Police Commissioners, Deputy Commissioners, Superintendents of Police, and other Heads of Departments and Authorities.

- (i) Negative RT-PCR certificate not older than 72 hours shall be compulsorily produced by the passengers coming to Karnataka by flight, bus, train, taxi, personal transport, etc. This will also be applicable for all the flights originating from Kerala to Karnataka.
- (ii) Airlines shall issue boarding passes only to the passengers carrying RT-PCR negative certificate not older than 72 hours.
- (iii) Railway Authorities shall be responsible for ensuring that all passengers travelling by trains carry negative RT-PCR certificates not older than 72 hours.
- (iv) For all the passengers travelling by bus, the bus conductor shall ensure that they

possess RT-PCR negative certificates not older than 72 hours.

- (v) Deputy Commissioners of the Districts bordering Kerala State, i.e., Dakshina Kannada, Kodagu, Mysuru and Chamarajanagara shall make arrangements to deploy necessary staff at Check-posts to ensure that all the vehicles (driver, passengers, helper/cleaner) entering Karnataka are checked for the compliance of the above requirement.
- (vi) It is mandatory for students and the public visiting Karnataka daily for education, business and other reasons to undergo RT-PCR test once in 15 days and possess the negative test report.

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

- a) Vaccination certificate of having received both the doses of COVID 19 vaccine.
- b) Constitutional functionaries and health care professionals.
- c) Children below 2 years.
- d) In dire emergency situations (death in the family, medical treatment etc.)- the passenger's swab shall be collected on arrival in Karnataka with necessary details like phone number, address etc., duly verifying from his ID card. On receipt of the RT-PCR test report, further action will be taken as per the State protocol.

Any person violating these measures will be liable to be proceeded against as per the relevant provisions of the Karnataka Epidemic Diseases Act 2020, Disaster Management Act, 2005, besides legal action under relevant section of IPC, and other legal provisions as applicable.

Sd/-
Chief Secretary and Chairman
State Executive Committee"

47. Proceedings of the 115th meeting of the Technical
Advisory Committee dated 16.07.2021 is extracted hereunder:

"COVID - 19 : TECHNICAL ADVISORY COMMITTEE,
KARNATAKA

Proceedings of the 115th meeting of State COVID-19 -
Technical Advisory Committee (TAC), Dept. of Health &
Family Welfare held on Friday, 16th July 2021 at 07:00 PM
by ECHO Zoom Video conference.

Members

1. Dr. M.K. Sudarshan — Chairperson, TAC
2. Dr. Md. Shariff -Member secretary, TAC
3. Dr. Ravi V., State Nodal officer—Genomic sequencing,
Rtd. Senior Professor & Head,
Department of Neurovirology, NIMHANS
4. Dr. Shivanada, Retired Director-IGICH, Pediatrician
5. Dr. Giridhar R. Babu, Professor of Epidemiology, IIPH-
PHFI
6. Dr. Shashi Bhushan B. L., Professor and Head,
Department
of Respiratory medicine
7. Dr. Anita Desai, Professor and Head, Department of
Neurovirology, NIMHANS
8. Dr. Girish N. Rao, Professor, Department of
Epidemiology,
NIMHANS
9. Dr. Rajath A., Consultant Neonatologist, Bengaluru.

Special invitees:

10. Dr. Nagaraja C., Director, RGICD
11. Dr. Nagaraj N.T., SMO, WHO-NPSP, Bengaluru
12. Dr. Nischith K. R., Medical Consultant - WHO

13. Dr. Karthik G. K., Consultant-NPPCD (OOD-TAC).

Dr. M. K. Sudarshan, Chairman TAC welcomed all the participants.

Agenda 1: Unlock 4.0 — TAC Guidelines

The TAC discussed in detail the current scenario of COVID-19 in the state, TPR of the districts, etc. **(Annexure-1)**, COVID-19 situation in the neighbouring states of Kerala and Maharashtra, compliance to CAB in public places by the general population and the draft guidelines of unlock 4.0 **(Annexure-2)**. Though the TPR of Bengaluru Urban (1.4 crore) is 0.8% still due to poor compliance to CAB it was strongly recommended that this district shall also be included in the districts having >2%.

Agenda 2: SoP for medical examination of under fives - TAC recommendation

The SOP provided by the Department of Women and Children was shared in advance and discussed in the meeting. The following additional points are recommended to be included.

- N-95 Masks shall be provided to ASHA, AWW, helper & others.
- Additionally face shield shall be provided to ASHA, AWW, helper & others.
- Only vaccinated (at least one dose) HCWs & others are to be engaged.
- Only asymptomatic (parent, child and HCWs) shall be allowed to work.
- At the end of the day, disinfection of premises using 1% sodium hypochlorite solution (one hour contact period minimum) shall be done.

Agenda 3: SoP for Bakrid festival due on Wednesday, 21st July

The SoP provided by the Department of Minorities was shared, discussed in the meeting and was found adequate. However, due care shall be taken to prevent crowding / congregation of people particularly in closed places.

Agenda 4: any other subjects

4.1: Insisting on negative RT-PCR test report irrespective of vaccination status of the person arriving in Karnataka

As vaccination does not prevent infection in the vaccinated person (one or two doses), after detailed deliberations, it was recommended to insist on a negative RT-PCR test report from all persons arriving in Karnataka irrespective of their vaccination status.

4.2: Providing COVID-19 treatment kits to infected persons under home isolation (adult and pediatric separately), and prophylactic kits to healthy family contacts (adult and pediatric separately).

The current guidelines of Govt. of India and others shall be reviewed and the contents of the kits will be given in the next meeting.

The Chairman-TAC thanked all the participants for their active participation.

Dr. Md. Shariff
Member Secretary,
TAC COVID-19
16th July, 2021

Dr. M.K. Sudarshan
Chairman, TAC, COVID-19
16th July, 2021

48. Order dated 17.07.2021 issued by the Chief Secretary, Government of Kerala, Disaster Management (A) Department is extracted hereunder:

“GOVERNMENT OF KERALA

Abstract

Disaster Management Department – COVID-19 –
Containment activities in the State Exemption in Mandatory
RT-PCR test negative result for interstate travels and for
attending exams- Orders issued

DISASTER MANAGEMENT (A) DEPARTMENT

G.O(Rt.) No.530/2021/DMD

Dated, Thiruvananthapuram, 17/07/2021

Read: 1. G.O(Rt.) No.404/2021/DMD dated 06-05-2021
2. G.O(Rt.) No.455/2021/DMD dated 03-06-2021
3. G.O(Rt.) No.500/2021/DMD dated 06-07-2021
4. G.O(Rt.) No.524/2021/DMD dated 13-07-2021

ORDER

In connection with the COVID-19 containment activities in the State, it was inter alia decided as per the order read (2) above, to make RT-PCR test negative result mandatory for many activities including interstate travels and for attending exams.

Now, since the COVID-19 vaccination is progressing well, the undersigned, in exercise of the powers conferred under Section 20(3) of the Disaster Management Act, 2005, in his capacity as chairman of the State Executive Committee of the State Disaster Management Authority hereby orders that the RT-PCR test negative certificate is not required, for purposes wherever it is specified, for those persons who have taken two doses of vaccination while attending the activities for which RT-PCR certificate is

made mandatory, including interstate travels. However, those who have developed symptoms of COVID shall undergo RT-PCR test and carry the negative result.

These orders shall come into force with immediate effect.

(By order of the Governor)

Dr. V P Joy
Chief Secretary"

49. Proceedings of the 116th meeting of the Technical Advisory Committee dated 24.07.2021 is extracted hereunder:

"COVID - 19 : TECHNICAL ADVISORY COMMITTEE,
KARNATAKA

Proceedings of the 116th meeting of State COVID-19 - Technical Advisory Committee (TAC), Dept. of Health & Family Welfare held on Saturday, 24th July 2021 at 07:00 PM by ECHO Zoom Video conference.

Members

1. Dr. M.K. Sudarshan — Chairperson, TAC
2. Dr. Md. Shariff -Member secretary, TAC
3. Dr. Giridhar R. Babu, Professor of Epidemiology, IIPH-PHFI
4. Dr. Shashi Bhushan B. L., Professor and Head, Department of Respiratory medicine
5. Dr. Ananta Desai, Project Director, National Ayush Mission
6. Dr. Savitha C., Professor & HoD of OBG, Vanivilasa Hospital, BMCRI.
7. Dr. Rajath A., Consultant Neonatologist, Bengaluru.
8. Dr. Anand Katti, Associate Professor, Govt. Ayurveda medical college, Bengaluru

Special invitees:

9. Dr. C. N. Manjunath, Director, SJIC
10. Dr. Nagaraja C., Director, RGICD
11. Dr. Karthik G. K., Consultant-NPPCD (OOD-TAC).

Dr. M. K. Sudarshan, Chairman TAC welcomed all the participants.

Agenda 1: Revised guidelines of surveillance for interstate air travellers [Ref: Letter from Ms.Usha Padhee, Joint Secretary, Ministry of Civil Aviation, GOI dt. 16th July, 2021].

The TAC discussed in detail the current scenario of COVID-19 in the state, neighbouring states of Kerala and Maharashtra and other states of India. TAC also considered - "one nation - one rule" for domestic air travellers with reference to testing and vaccination status. The members recommended that as the magnitude of COVID-19 is still high in the states of Maharashtra and Kerala there cannot be any change in the recommendations of surveillance of travellers from these two states. Hence, it would be difficult to have a uniform guideline for all the states and union territories and more so when the COVID-19- situation is quite dynamic in the country.

Generally air travel is safer due to short duration and better implementation of COVID-19 protocols. The members also opined that breakthrough infections are reported even in fully vaccinated persons. The TAC was of the opinion that the sensitivity of RAT (Coviself at home or RAT testing at airport) is poor in asymptomatics, and as such symptomatics are screened out at the airports by COVID-19 protocols. As a result there is no scope for RAT in screening of domestic passengers. Hence, RT-PCR shall continue to be the gold standard of COVID-19 testing for travellers.

The TAC also noted — the current guidelines of Govt. of Karnataka for interstate travellers, self-declaration of health

by travellers, contactless interface at airport, strict enforcement of CAB, etc. In this background the following recommendations are made:

- * Persons having a two doses vaccination (fully vaccinated) certificate, completed two weeks duration post 2nd dose and are asymptomatics are exempted from negative RT-PCR test certificate, except for those from Kerala and Maharashtra.
- * Persons arriving from Kerala and Maharashtra, having a two doses vaccination (fully vaccinated) certificate, completed two weeks post 2nd dose and are asymptomatics shall still produce a negative RT-PCR certificate that is not older than 72 hours. (this may be reviewed in the due course of time when the COVID-19 situation improves in these two states.)
- * During the travel all existing COVID-19 precautions and protocols like compulsory wearing of face mask, physical distancing and hand sanitization, etc., shall be duly followed by the passengers.

Agenda 2: Any other subjects - Nil

The Chairman-TAC thanked all the participants for their active participation.

Dr. Md. Shariff
Member Secretary,
TAC COVID-19
24th July, 2021

Dr. M.K. Sudarshan
Chairman, TAC, COVID-19
24th July, 2021

50. Proceedings of the 117th meeting of the Technical Advisory Committee dated 30.07.2021 is extracted hereunder:

“COVID - 19 : TECHNICAL ADVISORY COMMITTEE,
KARNATAKA

Proceedings of the 117th meeting of State COVID-19 -
Technical Advisory Committee (TAC), Dept. of Health &

Family Welfare held on Friday, 30th July 2021 at 07:00 PM by ECHO Zoom Video conference.

Members

1. Dr. M.K. Sudarshan — Chairperson, TAC
2. Dr. Md. Shariff -Member secretary, TAC
3. Dr. G Gururaj, former director, NIMHANS
4. Dr. Ravi V, State nodal officer-Genomic sequencing, Rtd. Senior Professor & Head, Department of Neurovirology, NIMHANS
5. Dr. Giridhar R. Babu, Professor of Epidemiology, IIPH-PHFI
6. Dr. Shashi Bhushan B L, Professor and Head, Department of Respiratory medicine
7. Dr. Anita Desai, Professor and Head, Department of Neurovirology, NIMHANS
8. Dr. Girish N Rao, Professor, Department of Epidemiology, NIMHANS
9. Dr. Ananta Desai, Projector Director, National AYUSH Mission
10. Dr. Rajath A, Consultant Neonatologist, Kaveri Hospital, Bengaluru.

Special invitees:

11. Dr. C. N. Manjunath, Director, SJIC
12. Dr. Nagaraja C., Director, RGICD
13. Dr. Nischith K.R., Medical Consultant - WHO.

Dr. M. K. Sudarshan, Chairman TAC welcomed all the participants.

Agenda 1: Unlock 5.0 — TAC Guidelines

The TAC discussed in detail the current scenario of COVID-19 in the state, TPR of the districts, etc. **(Annexure-1)**, COVID-19 situation in the country and neighbouring states of Kerala and Maharashtra, **(Annexure-2)**, compliance to CAB in public places by the general population and finalized the guidelines of unlock 5.0 **(Annexure-3)**. For Bengaluru Urban (1.4Cr) though the TPR is < 2% (0.73%) still it is

recommended to impose stricter restrictions as a measure of abundant public health precaution as there is regular travel of people between the city to/from Kerala & Maharashtra. Hence, even Bengaluru urban district shall follow the guidelines of unlock 5.0.

There shall be a continuous surveillance of districts for TPR, oxygen bed occupancy, R0 factor and the results shall be used judiciously to unlock the districts appropriately.

TAC recommends accelerating COVID-19 vaccination coverage in the districts where there is surge in cases.

The Chairman-TAC thanked all the participants for their active participation.

Dr. Md. Shariff
Member Secretary,
TAC COVID-19
30th July, 2021

Dr. M.K. Sudarshan
Chairman, TAC, COVID-19
30th July, 2021

Annexure-1

District wise distribution of Test Positivity Rate (TPR) and Variants of Concern (VoC) (30th July)

District	Test Positivity Rate (in last 7 days)	Alpha	Delta/B.1.6 17.2	Delta Plus / B.1.617.2.1 (AY.1)	Kappa	Beta
Dakshina Kannada	4.42	19	48			2
Chikkamangaluru	3.67	4				
Kodagu	3.44		9			
Udupi	3.39	27	9		4	1
Hassan	2.08		36			
Shivamoga	2.03	4				1
Chamarajanagar	1.92		12			
Mysuru	1.6		18	1		
Uttara Kannada	1.44		4			1
Tumkuru	1.27					
State	1.18	155	1089	3	159	7

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Bengaluru (Rural)	1.16					
Belagavi	1.11		8			
Kolar	0.96		27		1	
Mandya	0.82		8			
Devanagere	0.77	1	4			
Bangaluru (Urban)	0.73	99	791	2	143	
Chitradurga	0.73					
Kalburgi	0.49					
Chikkaballapura	0.44					
Koppal	0.34					
Ballari	0.33					2
Gadag	0.28					
Haveri	0.27		7			
Dharwad	0.26					
Ramanagara	0.22		7			
Vijayapura	0.22	1	94		7	
Bagalkot	0.17					
Bidar	0.13					
Yadgir	0.12					
Raichur	0.1					

Note: R₀ factor of the state is 0.88 as of 28th July, 2021.

Annexure-2 - COVID-19 scenario in the country

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Annexure-3

Proposed framework to unlock/roll back of existing restrictions in Karnataka

From Monday, 2nd August, to 16th August, 2021 (Unlock 5.0)*

Plan of unlock / roll back back of existing restrictions in districts TPR >2%	Remarks
- All officers (50%, roll back): Encourage work from home. - Factories & Industries (50%, roll back)	Delta variant (1089) - <u>Bengaluru Urban (791);</u> <u>Vijayapura (94);</u> DK (48); Hassan (36); Kolar (27); Haveri (14);

• Open markets (CAB) • Neighbourhood shops (CAB) • Restaurant - 50% (roll back) • Public transport 50% (roll back) • Parks and gardens (CAB) • Resorts/Picnic/tourists spots(to close) • Closed Markets (CAB) • Malls & shopping complexes (50% & CAB, roll back) • Shopping lanes (CAB) • Barber shops/saloons & spas (50%, roll back) • Marriage halls - 40 persons maximum, (rolled back from 100) strictly with individual passes • Pubs & Bars (to close - rollback) • Gyms and Yoga centres (to close- roll back)	others (79) Delta plus (3) - Belgaluru (2); Mysuru (1) Caution: 1. There is increase in cases in the neighbouring Kerala, Maharashtra, AP, TN. Recently, there is no decline in the .. cases in state; and in some districts - DK, Coorg & Udupi there is increase. Hence, <u>roll back of current restrictions</u> is strongly recommended to speed up reduction of cases in the state. Newly emerging Delta variants are of serious public health concern in low vaccination coverage areas, spread rapidly and affect lungs. 3. There is very poor compliance to CAB. 4. The unlock guidelines of Delhi was reviewed previously and continues to show drastic decline in daily cases- 51 (29th July, 2021). * Weekend curfew (Friday 7 pm to Monday 6 am with strong vigil, roll back)
• Places of worship (to close for public - roll back Funerals/Burials (10, roll back) • Cinema halls (to close-roll back) • Sports (indoor/outdoor) (for training purpose only) • Clubs & Club houses (to	* Very strict enforcement of Covid-19 appropriate beha... (CAB) like compulsory wearing of face mask, etc., * Interstate arrivals (MAH / KER) shall be restricted to dose vaccinated or persons with negative RT-PCR report older than

close - roll back)	3 days and it is valid for 14 days.
- Swimming pools (for training purpose only) (CAB) - Public washrooms & toilets (to close-roll back) - Rallies, fairs & festivals, public ceremonies, and functions, etc., shall not be permitted	* International arrivals as per GoK advisory * Opening of schools shall be decided separately. * The result of this unlock shall be closely monitored and daily reviewed on 13th August 2021.

* Weekly average test positivity rate (TPR) of the district: >2%;
Oxygen bed occupancy <60%

Note: (1) The districts that have TPR <2% shall continue with existing unlock guidelines. However, strict enforcement to prevent congregation of people in public areas like markets, fairs & festivals, places of worship, rallies etc., is recommended. (2) For Bengaluru Urban (1.4 Cr) though the TPR is <2% (0.73%) still it is recommended to impose stricter restrictions as a measure of abundant public health precaution as there is regular travel of people between the city to/from Kerala & Maharashtra. Hence, even Bengaluru urban district shall follow the above-mentioned guidelines of unlock 5.0."

51. English translation of the order dated 31.07.2021 issued by the Deputy commissioner & District Magistrate, Dakshina Kannada district, Mangalore dated 31.07.2021 is extracted hereunder:

"No.156/2021/133462425

Dated: 31-07-2021

Restrictions and precautions prescribed by the District Administration in connection with the prevention of the spread of Covid-19 in Dakshina Kannada District, in the event of a short rise in the number of Covid cases even after the necessary steps have been taken in a timely manner. In view of the escalating situation, as per the

Government order, promulgates special norms to be followed by the travelers entering Karnataka from Kerala and Maharashtra with regard to more precautionary control and vigilance.

Meanwhile, noticed a huge spike of Covid cases in Kasaragod district of Kerala, which shares a border with Dakshina Kannada district. As people travelling from neighbouring State/district to Dakshina Kannada district are more likely to spread the disease from person-to-person, it is imperative to prevent unrestricted travel and interference by the public as part of ensuring the safety of the people in Dakshina Kannada district. The Government is also advised to closely monitor border areas to prevent any major crises.

Due to the increasing prevalence of the disease in Dakshina Kannada district, at present, it is imperative that strict precautions be taken to prevent the spread of the third phase.

Therefore, in the light of the current developments in our district and the spread of Covid 19 disease in the border State of Kasaragod district in Kerala, I, Dr. Rajendra K.V., IAS, District Collector and District Magistrate and Chairman, District Level Disaster Management Committee, orders the imposition of the following restrictions under Section 34 of the Disaster Management Act and the power to apply Section 144(3) of the Penal Code, 1973.

1. Private buses, including KSRTC, from the border district of Kasaragod to Mangalore will be canceled from 01-08-2021 to 07-08-2021.
2. Daily commuters from the border State of Kerala to the Dakshina Kannada district can be admitted for 7 days on producing a negative certificate of RT-PCR test conducted within 72 hours, even if the college student has taken two doses of the vaccine.
3. Nursing and paramedical students from outside the State of Kerala / Maharashtra should remain in compulsory quarantine for one week after arrival in Mangalore with RT-

PCR negative certificate and after 7 days undergo for re-test to ensure no Covid positive.

4. Those who enter the district by rail, without carrying the RT-PCR test negative report can avail the facility of Covid test at the railway stations. If the test reports are delayed or the result is positive, they must be subjected to mandatory quarantine at the Covid Care Centre. The Tahsildar should take steps to open Covid Care Centres as and when required.

5. The Deputy Collector and Deputy Commissioner of Police should visit the respective areas and ensure that necessary facilities are in place in connection with the functioning of the systems for 24-hour surveillance at the check posts.

6. The above restrictions do not apply to emergency medical services, ambulances and interstate freight.

7. Political, social, cultural and religious celebrations and public events are strictly prohibited within the Dakshina Kannada district.

8. Weddings can be attended by a maximum of 50 people and only with the permission of the Local Self-Government. Grama Panchayat/Municipality officials and Revenue Department officials should ensure that Covid protocols are followed in the ceremonies.

9. Religious festivals and processions are strictly prohibited in religious instructions such as Temples, Mosques, Churches, Gurudwaras and other religious places.

10. The above Covid norms shall be strictly adhered to in all the areas, within the limits of Dakshina Kannada district.

The relevant authorities are tasked with enforcing the above Covid rules strictly. If the laws are violated by any person/persons, they will be prosecuted under Sections 50 to 60 of the Disaster Management Act, 2005, Section 188 of the IPC and Sections 4, 5 and 10 of the Karnataka Infectious Diseases Act, 2020.

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Signed
District Collector and District Magistrate
District Disaster Management Authority
Dakshina Kannada, Mangalore"

52. Revised circular dated 31.07.2021 issued by the Government of Karnataka imposing special surveillance measures, which is the focal point of the writ petitions, is extracted hereunder:

"GOVERNMENT OF KARNATAKA

No. HFW 220 ACS 2021

Karnataka Government Secretariat
Vikasa Soudha, Bengaluru, dated: 31.7.2021

REVISED CIRCULAR

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

Reference: (1) Proceedings of 112th meeting of State COVID 19 TAC dated 30.6.2021.
(2) Order No: RD 158 TNR 2020, Dated: 28.6.2021 & 01.07.2021.
(3) Proceedings of 116th meeting of State COVID 19 TAC Dated: 24.7.2021.

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

- (i) Persons arriving from Kerala & Maharashtra, should produce a negative RT – PCR certificate that is not older than 72 hours irrespective of vaccination status.

- (ii) The above condition is mandatory for all the passengers coming to Karnataka by flight, bus, train and personal transport. This is applicable for all the flights originating from Kerala & Maharashtra.
- (iii) Airlines shall issue boarding passes only to the passengers carrying RT-PCR negative certificate not older than 72 hours.
- (iv) Railway Authorities shall be responsible for ensuring that all passengers travelling by trains carry negative RT-PCR certificates.
- (v) For all the passengers travelling by bus, the bus conductor shall ensure that they possess RT-PCR negative certificates.
- (vi) Deputy Commissioners of the Districts bordering Kerala i.e., Dakshina Kannada, Kodagu, Mysore and Maharashtra i.e., Belagavi – Vijayapura, Kalburgi and Bidar shall establish check posts & make arrangements to deploy necessary staff to ensure that all the vehicles (driver, passengers, helper, cleaner) entering Karnataka are checked for the compliance of the above requirement.
- (vii) Its mandatory for students & public visiting Karnataka daily for education, business & other reasons, to undergo RT-PCR test once in 15 days & possess the negative test report.

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

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

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PCR test report, further action will be taken as per the State Protocol.

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

53. Order dated 6.8.2021 issued by the Principal Secretary to the Government, State of Karnataka, is extracted hereunder:

"GOVERNMENT OF KARNATAKA

No. RD 158 TNR 2020 Karnataka Government Secretariat,
MS Building
Bengaluru, Dated: 06-08-2021

ORDER

Containment measures to prevent spread of COVID 19

- Read. 1. Guidelines for surveillance, containment and caution issued vide order of even number dated 03-07-2021
2. Order of even number dated 16-07-2021 reg. reopening Medical colleges and allied institutions.
 3. Extension of guidelines and surveillance, containment and caution and additional activities issued vide order of even number dated 18-07-2021.
 4. Order of even number dated 24-07-2021 reg. functioning of places of worship.
 5. Order of even number dated 30-07-2021 reg. empowering Chief Commissioner - BBMP and DCs to impose additional containment measures upto 16-08-2021.
 6. Order of even number dated 31-07-2021 reg. extension of existing guidelines upto 16-08-2021.
 7. Ministry of health and Family Welfare, Govt. of India, letter No.04/COVID/fest/AS(H)/2021, dated 04-08-2021 reg. preventing crowding and gathering during the upcoming festival season.

Whereas, the Hon'ble Chief Minister on 06-08-2021 reviewed the COVID 19 situation in the State with the concerned Officers and Health Experts. It was suggested by the Health Experts that additional containment measures need to be imposed in light of up-coming festival season to prevent the spread of COVID-19.

Now, therefore, in exercise of the powers conferred under the sub-section (1) of Section 24 of the Disaster Management Act, 2005, the Chairman, State Executive Committee, directs Chief Commissioner BBMP, Police Commissioners, Deputy Commissioners. Superintendents of Police of the districts. and other Authorities to take following additional containment measures in view of the upcoming festival season which will come into effect from 07-08-2021 and will be in force until 16-08-2021.

- i. Night curfew will continue to be imposed from 9 pm to 5 am in the State as per the guidelines issued vide Order read at No.1.
- ii. There shall be weekend curfew in the districts bordering Maharashtra (Belagavi, Bidar, Vijayapura and Kalaburagi districts) and Kerala (Dakshina Kannada, Kodagu, Mysuru and Chamarajanagara districts) from Friday 9 pm to Monday 5 am as per the guidelines annexed as Annexure A.
- iii. As per Sub Clause (iv) of Clause 1 of guidelines read at Serial No.1. All social/political/sports/entertainment/academic/cultural/religious functions/ other gatherings and large congregations are prohibited. However, Marriages/Family functions are permitted to be conducted involving not more than 100 people strictly adhering to COVID 19 appropriate behaviour. Cremation / funerals allowed

with a maximum of 20 people. Functioning of academic institutions permitted as per orders Read at Serial No.2 and 3.

- iv. As read in the order referred to at serial No.4. Places of worship (Temples, Mosques, Churches, Gurudwaras, and other religious places) are allowed to open and related activities pertaining to the places of worship permitted strictly adhering to COVID appropriate behaviour. However, jathres, temple festivals, procession, and congregations are not allowed.
- v. As read in Order referred in Serial No. 6, the Chief Commissioner – BBMP. Deputy Commissioners of the districts may consider imposition of local restrictions in public observation of these festivals and curb mass gathering as deemed necessary.

The Chief Commissioner BBMP, Police Commissioners, Deputy Commissioners, and Superintendents of Police in their jurisdiction shall enforce the above guidelines strictly and take action against any person violating these measures under the relevant provisions of Section 51 to 60 of Disaster Management Act, 2005, besides legal action under Section 188 of the IPC, and other legal provisions as applicable.

Sd/-
Principal Secretary to Govt., Revenue
Department (DM) and Member Secretary,
State Executive Committee"

54. Proceedings of the 120th meeting of State COVID-19-Technical Advisory Committee, Department of Health & Family Welfare dated 15.08.2021 is extracted hereunder:

Proceedings of the 120th meeting of State COVID-19— Technical Advisory Committee (TAC), Dept. of Health & Family Welfare held on Sunday, 15th August 2021 at 6:00 PM by ECHO Zoom Video conference.

Members:

1. Dr. M.K Sudarshan — Chairperson, TAC.
2. Dr. Md. Shariff -Member secretary, TAC.
3. Dr. Gururaj G, Rtd. Director and Sr. Prof of Epidemiology, NIMHANS.
4. Dr. Ravi V, State nodal officer—Genomic sequencing, Rtd. Senior Professor & Head, Department of Neurovirology, NIMHANS.
5. Dr. Shivanada, Retired Director—IGICH, Pediatrician.
6. Dr. K. Ravi, Professor & HoD of Medicine, BMCRI, Member
7. Dr. Giridhar R.Babu, Professor of Epidemiology, IIPH-PHFI.
8. Dr. Shashi Bhushan B.L., Professor and Head, Department of Respiratory medicine.
9. Dr. Girish N. Rao, Professor, Department of Epidemiology, NIMHANS.
10. Dr. Anita Desai, Professor and Head, Department of Neurovirology, NIMHANS.
11. Dr. Asish Satapathy, Regional Team Leader-WHO.
12. Dr. Savitha C., Professor and HoD of OBG, Vanivilasa Hospital, BMCRI.
13. Dr. Rajath A., Consultant Neonatologist, Kauveri Hospitals, Bengaluru.
14. Dr. Ananta Desai, Project Director, National Ayush Mission.

Special invitees:

15. Dr. C. N. Manjunath, Director, SJIC
16. Dr. Nagaraj N.T, SMO, WHO - NPSP, Bengaluru
17. Dr. Karthik G. K, Consultant -NPPCD (OOD-TAC).

Dr. M.K. Sudarshan, Chairman TAC welcomed all the participants.

Agenda 1: Justification for compulsory RT-PCR testing of persons coming from Kerala irrespective of their vaccination status [Ref. ACS-HFW]

The currently available Covid -19 vaccines are known to protect the vaccinated individual against the disease — particularly of the severe form, and prevent death. But the Covid-19 vaccines are not known to protect the vaccinated individual from Covid-19 infection. Hence, the vaccinated individual may still contract Covid -19 viral infection that is referred to as "break through infection". Such infected individuals (harboring the Covid-19 virus) who are otherwise vaccinated are capable of infecting others and thus, drive the pandemic. Many times such vaccinated individuals out of false sense of security for being vaccinated, do not wear face mask that further aids transmission of infection. In Karnataka, about 13,768 cases of such breakthrough infections are reported.

Since, July 2021 the Covid -19 situation in Karnataka (6.8 crore population) is quite stable and in the last few weeks the average daily report of new cases is about - 1,600 to 1,800. In comparison for the same period in Kerala (3.4 crore population) about 18,000-22,000 new cases are reported every day. This high incidence of Covid-19 infection in Kerala is despite good vaccination coverage in the State. The test positivity rate (TPR) has been quite high of over 10% for a very long period in the State of Kerala.

A careful examination of the locality revealed that there was a regular, frequent travel and daily movement of over 25,000 persons from the adjacent districts of Kerala to these districts on a continual basis. In this context, the Karnataka Covid-19 Technical Advisory Committee (TAC) of State Health Department noted that the incident of Covid-19 cases was high in these border districts of Dakshina Kannada, Udupi, Chamarajanagara, Kodagu and Mysore (Table-1, vide below) and as compared to other districts of Karnataka (Annexure-1)

Table1: Covid-19 scenario in the districts of Karnataka adjoining Kerala for the period 1st June to 15th August, 2021

Border districts	New cases	Positivity rate	Deaths
Dakshina Kannada	29,494	5.36	554
Udupi	12413	4.8	103
Chamarajanagara	5388	4.82	92
Kodagu	8859	5.83	67
Mysuru	30,713	5.22	672

As a result of this Covid 19 scenario, the state is compelled to decide not to reopen schools & PU colleges in these districts (test positivity rate - TPR being more than 2%) despite planning to do it in the rest of the state from 23rd August, 2021.

Also, in the beginning of the second wave the initial cases reported were from the students who arrived from Kerala that later triggered clusters of cases in the hostels

and institutions they studied in and around Mangalore. This eventually spread to the rest of Karnataka, leading to a second wave and a massive 19.5 lakh cases were reported. Since June, 2021 a comparison of daily incidence of cases in Karnataka and Kerala reveals that there is a significant decline in Karnataka as compared to continued higher incidence in Kerala (Annexure-2). It was opined that there was a regular, continuous spillover of infection from Kerala (high infection/disease burden) to the border district of Karnataka (low infection/ disease burden) due to daily traffic of people from Kerala to Karnataka.

Consequently, the Technical Advisory Committee (TAC) recommended compulsory negative RT-PCR test report irrespective of their vaccination status of those arriving from Kerala to prevent entry of infection into the state. The validity of this certificate is for a duration of 7 days. This strategy has largely provided good results as it has prevented further surges in the specified border districts of Karnataka adjacent to Kerala. As health is a state subject, the state has considered this prudent action to protect the lives of its citizens from the Covid -19 infection and prevent its introduction into the state by those arriving from Kerala. Thus, by this action the entry of the virus is prevented and not of the person (having negative RT-PCR report) from Kerala. Lastly, this insistence on compulsory RT-PCR certificate will be reviewed when

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there is a significant decline of Covid-19 infection in the State of Kerala.

Agenda 2 : Testing strategy in children [Ref. ACS-HFW]

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Dr. Md. Shariff
Member Secretary,
TAC COVID-19
15th August, 2021

Dr. M.K. Sudarshan
Chairman, TAC, COVID-19
15th August, 2021

55. Order dated 27.08.2021 issued by the chief Secretary, Department of Health and Family Welfare, Government of India is extracted hereunder:

D.O. No. Z.28015/138/2021-DM Cell
27th August, 2021

The State of Kerala has witnessed a sustained and significant transmission of COVID-19 since July, 2021. The State reported an average of 13,500 cases per day in the month of July and almost 19,500 daily new cases in August so far. Kerala remains the one of the top contributors to daily new cases and is contributing more than half the active cases of COVID-19 in the country at present. Despite efforts by the State Government on increasing testing, the test conformation percentage still remains very high (more than 15%), signaling high and widespread transmission.

All 14 districts in Kerala have been identified as districts of concern due to high test positivity rates and high cases per million reported in the past 4 weeks. Further, Thrissur, Kozhikode and Ernakulam have reported more than 4,000 cases per million population in the week ending 25th August, 2021.

While the State has undertaken several measures to contain the transmission of COVID-19, the desired results are yet to materialize. Considering the recent sharp increase in the number of cases, deaths and the test positivity rate after the Onam festivities and the likelihood of this trend continuing for a few more days, this Ministry reiterates the following to assist the State:

A. Containment measures:

- * Containment zones need to be defined as per the GOI guidelines with a special focus on the high transmission clusters. Such zones need to be re-defined if the proportion of cases being reported outside of containment zones is showing an increase.
- * Buffer zone around the containment zone needs to be identified clearly and passive surveillance needs to be enhanced to detect any spillover of cases from the containment zone.
- * Contact tracing effort to be further scaled up to ensure that at-least 20-25 contacts per positive cases are identified and all contacts thus identified are put under quarantine.
- * The District Administration needs to ensure strict compliance to MoHFW's home isolation guidelines

and ensure that there is intensive follow up of all such cases under home isolation.

- * Enforcement of COVID-appropriate behavior needs to be further intensified.
- * Avoidance of mass gatherings need to be enforced by the District Administration.

B. Testing strategy:

- * The current positivity rate is high thus mandating a further increase in testing, as per ICMR guidelines
- * Targeted testing needs to be enhanced in containment zones and especially cover high-risk contacts.

C. Genomic surveillance:

- * State should ensure enhanced genomic surveillance in areas of high and sustained transmission.
- * Samples of all cases of vaccine breakthrough infections & re-infections need to be sent for genome sequencing positively. Clinico-epidemiological assessment of all such cases needs to be done promptly. Results of such assessments need to be shared with the National Centre for Disease Control.

D. Vaccination

- * While expanding the coverage of COVID-19 vaccination is required, it is reiterated that a State specific strategy to complete the 2nd dose vaccination of due beneficiaries may be devised.

E. Other measures

- * A graded response action plan at the district level may be prepared and deployed in accordance with MoHFW's containment implementation framework for community containment/large containment areas dated 25th April, 2021 and

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:77:

MoHFW's advisory on graded restrictions/relaxation measures for COVID-19 dated 28th June, 2021.

I would like to reiterate that any laxity in ensuring strict adherence to the five-fold strategy of 'Test-Track-Treat-Vaccinate and Ensuring COVID Appropriate Behaviour', may result in further surge in COVID-19 transmission in Kerala and its neighbouring States.

I am hopeful that with your proactive support and leadership we will be able to halt the surge of cases and prevent any further resurgences.

Yours sincerely,
Sd/-
(Rajesh Bhushan)

Dr. V. P. Joy,
Chief Secretary, Govt. of Kerala
Thiruvananthapuram"

56. Order dated 17.08.2021 in W.P. No.14952 of 2021 passed by a learned single Judge of the Karnataka High Court at Bengaluru reads thus:

“O R D E R

First petitioner is working as a Nurse and second petitioner is a student and both are residents of Mangaluru in Dakshina Kannada district.

2. Sri. Ashok Haranahalli, learned Senior Advocate for petitioners submitted that the State Government have issued a revised Circular dated 31.7.2021

(Annexure-A) with regard to protocols to be followed by the citizens who arrive from Kerala and Maharashtra. Mangaluru is a border district in Karnataka and shares its border with Kerala. The State Government, on the basis of the Technical Advisory Committee report, has issued a revised Circular containing six conditions. The Committee in its 120th meeting held on 15.8.2021 has reiterated its earlier stand. However, respondents are not strictly enforcing the Circular. He pointed out that the positivity rate is highest in Dakshina Kannada and Kodagu districts. If the conditions contained in Annexure-A are not strictly implemented, the petitioners and other citizens shall be exposed to the risk of infection. Accordingly, he sought for an appropriate direction against respondents to ensure that the Circular as per Annexure-A is strictly implemented.

3. Sri. Prabhuling K. Navadgi, learned Advocate General, submitted that the State have taken all measures to contain the pandemic. He further submitted that States are committed to ensure good public health and in furtherance thereof conducting meetings of the Technical Advisory Committee consisting of eminent doctors from time to time. Based on expert advice, Annexure-A has been issued. He further submitted that though the petitioners have expressed their concern, the State have already taken

all measures to enforce the Circular strictly and the petitioners' apprehension that the Circular is not enforced strictly is factually unfounded.

4. It is not in dispute that Mangaluru and Kodagu are border districts of the State. The State have taken action as per the advice given by the Technical Advisory Committee and accordingly issued the circular. It is submitted by the learned Advocate General that the Circular is being implemented strictly.

5. In view of the concern expressed by the petitioners, in the opinion of the Court to contain the pandemic, it is necessary for the district administration to enforce the revised Circular dated 31.7.20921 (Annexure-A in its letter and spirit without any concession. Ordered accordingly.

Writ petition is disposed off.”

57. Guidelines dated 25.08.2021, issued by the Ministry of Health and Family Welfare, Government of India, for domestic travel, in supersession of the guidelines issued on 24.05.2020 are extracted hereunder:

“Government of India
Ministry of Health and Family Welfare
Guidelines for domestic travel (flight/train/ship/bus
inter-state travel) in supersession of guidelines issued
on 24.05.2020

1. Background

The Union Government has not recommended any restrictions on inter-state travel in the context of COVID-19. Further, States are allowed to develop their own protocols with regards to quarantine and isolation as per their assessment. It has come to notice that certain States, however, have imposed negative RT-PCR testing reports as a criterion for point of entry in their states.

Presently, we are seeing a declining trajectory of cases across the country after a peak in reported cases during mid-May as part of the second wave. With a view to facilitate inter-State travel, while observing required precautions, the guidelines for domestic travel (flight/train/ship/bus inter-state travel) are revised so as to have a uniform protocol for domestic travel across the country.

2. Scope

These guidelines are applicable to all States/UTs so as to facilitate inter-state travel. Based on the evolving scenario of COVID-19, including evidence of mutant variants within India or outside, the guidelines may warrant suitable revision to institute appropriate public health measures also.

3. General Advisory to all passengers

People must follow required health protocols, as detailed below, whenever there is a need to travel:

- i. Passengers should self-monitor their health and travel only when they have no symptoms related to COVID-19.
- ii. All passengers shall follow COVID appropriate behavior at all times which includes use of mask/face cover, hand hygiene and physical distancing of six feet (*do gaj ki doori*) as far as feasible. Masks/face covers must be worn properly to cover nose and mouth.

Touching the front portion of mask/face covers to be avoided.

iii. Avoid spitting in public places during travel.

iv. All passengers shall be advised to download Arogya Setu app on their mobile devices.

v. If they develop fever during travel, they shall report to cabin crew/TTE/bus conductor as the case may be.

vi. If they develop symptoms after reaching their final destination, they shall inform the District Surveillance Officer or the State/National Call Center (1075).

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6. Advisory to States/UTs

i. There shall be no restrictions on inter-State travel by air, rail, water, or road.

ii. In case RT-PCR or RAT tests are required prior to entry in a State, as notified by the State govt., the same must be publicized widely to maximize traveller convenience.

iii. Asymptomatic persons who have been vaccinated with both doses of the COVID 19 vaccine and 15 days have lapsed since the administration of second dose of the vaccine and are in possession of the final vaccination certificate issued through the COWIN portal, such persons may be exempted from mandatory requirement of possessing a negative RTPCR report or RAT test on their entry into the State.

iv. Passengers who are found symptomatic on arrival shall be subjected to Rapid Antigen Test at the Terminal to aid early identification.

v. In the event of unusual surge in cases in any State/UT, the States/UTs may institute appropriate public health measures promptly.

vi. States may implement additional restrictions, based on local requirements.”

58. Our first endeavour is to find out as to whether, this Court has territorial jurisdiction to entertain writ petitions, in the light of the circulars dated 31.07.2021 issued by the State of Karnataka.

59. Going through the pleadings put forth and the reliefs sought for in the writ petitions, it is clear that petitioners have not challenged the circulars issued by the State of Karnataka/its officials, which according to us, is done to avoid the question of jurisdiction being raised by the State of Karnataka. But, fact remains is that, petitioners have sought for a writ of mandamus to direct Union of India, respondent No.1, to ensure that negative RTPCR certificate taken within 72 hours is not mandatory for daily commuters from Manjeshwar, Kasaragod district and a further writ of mandamus to the Union of India, to open the borders of the State of Karnataka with the State of Kerala and, in particular, Kasaragod-Mangaluru border at Thalappady. Petitioners have sought for a mandamus to ensure free movement for daily commuters who have taken at least one dose of COVID vaccine through the borders, without

possessing a negative RTPCR certificate taken within 72 hours. Significantly, such restrictions are imposed as per the circulars dated 31.07.2021, issued by the State of Karnataka.

60. In order to understand the implications of the circulars dated 31.07.2021, extracted above, an intrinsic reference to them is required. In fact, as per the circular dated 31.07.2021, the Deputy Commissioner and District Magistrate, Dakshina Kannada district, Mangaluru has imposed restrictions under Section 34 of the Disaster Management Act, 2005 and on the basis of power conferred under Section 144(3) of the Code of Criminal Procedure, 1973. It is clear that in the said order, the stage carriages, including KSRTC, were cancelled from the border district of Kasaragod to Mangaluru from 1.8.2021 to 7.8.2021; daily commuters from the border State of Kerala to the Dakshina Kannada district were permitted to enter for seven days on producing a negative certificate of RTPCR test conducted within 72 hours, even if the college students have taken two doses of vaccine. In fact, apart from the restrictions imposed to cross the border districts of Kerala, it has also

restricted the entry from the State of Maharashtra, by imposing similar requirements.

61. It is relevant to note that the restrictions imposed would not apply to emergency medical services, ambulances and inter-State freight. So also, political, social, cultural and religious celebrations and public events were strictly prohibited within the Dakshina Kannada district, apart from other severe restrictions imposed therein.

62. The revised circular dated 31.07.2021 issued by the Government of Karnataka also makes it clear that the requirement of quarantine to be undergone by the persons crossing the borders of Kerala and Maharashtra are imposed, apart from producing a negative RTPCR Certificate that is not older than 72 hours irrespective of vaccination status. Accordingly, the conditions were mandatory for all the passengers by flight, bus, train and personal transport, originating from Kerala and Maharashtra. However, the revised circular issued by the State of Karnataka dated 31.07.2021 clearly specifies permitted exemptions like constitutional

functionaries and health-care professionals; children below two years; and in dire emergency situations (death in the family, medical treatment, etc.), the passengers swab shall be collected on arrival in Karnataka with necessary details and appropriate steps would be taken as per the State Protocol.

63. It is true that Government of India have issued guidelines dated 25.08.2021, which specifies that Union Government have not recommended any restrictions on inter-State travel in the context of COVID-19. However, States were allowed to develop their own protocols with regard to quarantine and isolation as per their assessment.

64. Though it is specified in the guidelines dated 25.08.2021 that it has come to the notice that certain States have imposed negative RT-PCR testing reports, as a criterion for point of entry in the States, there is a situation of declining trajectory across the country, after a peak in reported cases during mid-May as part of the second wave. Accordingly, with a view to facilitate inter-State travel, while observing required precautions, the guidelines for domestic travel have been

revised so as to have a uniform protocol for domestic travel across the country. From the scope of the said guideline, it is clear that the guidelines are applicable to all States/UTs, so as to facilitate inter-State travel, based on the downward trajectory noticed thereunder, and of course, general advisory is given to all passengers.

65. Advisory is also given to airports, railway stations, ports, and bus stations, and advisories are given to the operators of airlines, railways, ship and bus operators.

66. Perusal of the guidelines dated 25.08.2021 shows that one may have a *prima facie* perception that it is absolutely binding on the States/UTs, without any restriction. The advisory also mandates that there shall be no restrictions on inter-State travel by air, rail, water or road. However, the advisory to States/UTs contained under paragraph 6 of the guidelines, further denotes that in case RTPCR or RAT tests are required prior to entry in a State, as notified by the State Government, the same must be publicized widely to maximize traveler convenience.

67. Perusal of the abovesaid guidelines further makes it clear that asymptomatic persons who have been vaccinated with both doses of COVID-19 vaccine and 15 days have elapsed, since the administration of second dose of the vaccine, and are in possession of the final vaccination certificate, through the COWIN portal, such persons may be exempted from the mandatory requirement of possessing a negative RTPCR report or RAT test on their entry into the State. However, it is significant to note that the advisory makes it imperative that in the event of an unusual surge in cases in any State/UT, the States/UTs may institute appropriate public health measures promptly and further, the States are given the liberty to implement additional restrictions based on local requirements.

68. On an analysis of the abovesaid guidelines, it is clear that the inter-State travel guidelines are issued in the background that there is a declining trajectory of cases across the country, and that is why, in the advisory to the States/UTs, they are given the liberty to institute appropriate public health measures promptly and to implement additional restrictions

based on local requirements. In fact, on a reading of the expert opinions and health advisories provided to the Government of Karnataka restrictions are imposed on the basis of the sustained and significant transmission of COVID-19 disease, since July, 2021, within the State of Kerala.

69. Taking into account the said aspect only, Government of India, Department of Health and Family Welfare, has issued a communication to the Chief Secretary, Government of Kerala, dated 27.08.2021, advising the measures to be undertaken, in order to regulate and control the spread of the disease, with appropriate containment measures, testing strategy, genomic surveillance, vaccination and other measures for graded response action plan at the district level, in accordance with the Ministry of Health and Family Welfare department containment implementation framework for community containment/large containment areas dated 25.04.2021 and the advisory of the same department on graded restrictions/relaxation measures for COVID-19 dated 28.06.2021. It was also re-iterated that any laxity in ensuring strict adherence to the five fold strategy

of "Test-Track-Treat-Vaccinate and ensuring COVID appropriate behaviour (CAB)", it is cautioned, it may result in further surge in COVID-19 transmission in Kerala and its neighbouring States.

70. The issue of the territorial jurisdiction raised by the learned Advocate General of Karnataka has to be viewed in the background discussed above.

71. It is an admitted fact that there is no blockade of the roads from Kerala to Karnataka. Reading of the impugned circulars would show that restrictions are imposed within the State of Karnataka, like a negative RTPCR certificate, etc., obviously taking into account the unprecedented surge of the COVID-19 pandemic prevalent in the State of Kerala. Therefore, going by the guidelines issued by the Central Government, it is clear that under any such circumstances, the States are given the power and responsibility to impose reasonable restrictions, so as to combat the disease. Therefore, State of Karnataka was well within its powers to issue circulars/orders/guidelines, under the provisions of the Act, 2005, in consonance with various guidelines issued by the Central Government.

72. Disaster Management Act, 2005, in fact, confers power both on the Central, as well as the State Governments, to take adequate, effective and appropriate steps, to regulate, control, and restrict in the event of any emergent situations arising interfering with the life and liberty of the citizens. True, if the Government of India have issued imperative directions under the provisions of Act, 2005, necessarily, the States may have to follow the same.

73. Here is a case where the guidelines issued by the Government of India dated 25.08.2021, though issued to facilitate inter-State travel by any means, without any restrictions, were done in view of the downward trend of the COVID-19 pandemic prevailing in the country generally. But at the same time it was cautious when it granted liberty to the States/UTs specifically to take measures so as to restrict and control the spread of the disease, State specific.

74. As we have pointed out earlier, the directions sought by the petitioners are against the Union of India, but in view of the power conferred on the State of Karnataka, by virtue of the

freedom and liberty granted as per the guidelines dated 25.08.2021, State of Karnataka has the necessary leverage to issue circulars, taking into account the situations prevailing in the neighbouring States of Kerala and Maharashtra.

75. Viewed from that angle, it can never be said that a part of cause of action for the writ petitions has arisen within the State of Kerala. This is more so, when there is no absolute prohibition for the citizens of Kerala to travel to Karnataka by any means, but we can only view it as restrictions imposed by the State of Karnataka. Whether the restrictions imposed within the State of Karnataka are reasonable or not, is a matter to be considered and decided by the jurisdictional High Court.

76. We are also of the firm view that since an order is passed by the Karnataka High Court, to implement the circular dated 31.07.2021 effectively, any interference with the directions issued would only complicate the situation. Moreover, a Division Bench of this Court has passed the interim order during the first lockdown, since absolute blockades were created by the State of Karnataka by prohibiting entry through

the National/State Highways and other roads. Such a situation is not prevailing now, justifying us to issue any such direction, since the circulars themselves make it clear that only restrictions are made within the State of Karnataka so as to manage the travelling public entering the State, which can only be viewed as a methodology adopted by the State to curb the spread of COVID-19 disease.

77. In this context, learned Advocate General of Karnataka has invited the attention of this Court to the decision in **State of Madras and Ors. v. V.G. Row** (AIR 1952 SC 196), wherein, at paragraph 15, the Hon'ble Apex Court held as under:

“15. This Court had occasion in *Dr. Khare's case* [(1950) S.C.R. 519] to define the scope of the judicial review under clause (5) of article 19 where the phrase "imposing reasonable restrictions on the exercise of the right" also occurs and four out of the five Judges participating in the decision expressed the view (the other Judge leaving the question open) that both the substantive and the procedural aspects of the impugned restrictive law should be examined from the point of view of reasonableness; that is to say, the Court should consider not only factors such as the duration and the extent of the restrictions, but also the circumstances under which and the manner in which their imposition has been authorised. It is important in this context to bear in mind that the test of reasonableness, where ever prescribed, should be applied to each individual statute impugned, and no

abstract standard, or general pattern of reasonableness can be laid down as applicable to all cases. The nature of the right alleged to have been infringed, the underlying purpose of the restrictions imposed, the extent and urgency of the evil sought to be remedied thereby, the disproportion of the imposition, the prevailing conditions at the time, should all enter into the judicial verdict. In evaluating such elusive factors and forming their own conception of what is reasonable, in all the circumstances of a given case, it is inevitable that the social philosophy and the scale of values of the judges participating in the decision should play an important part, and the limit to their interference with legislative judgment in such cases can only be dictated by their sense of responsibility and self-restraint and the sobering reflection that the Constitution is meant not only for people of their way of thinking but for all, and that the majority of the elected representatives of the people have, in authorising the imposition of the restrictions, considered them to be reasonable.”

78. Learned Advocate General has also invited our attention to the decision in **Oil and Natural Gas Commission vs. Utpal Kumar Basu and Ors.** [(1994) 4 SCC 711], which dealt with territorial jurisdiction, wherein the Hon'ble Apex Court, at paragraphs 5 & 6 held as under:

“5. Clause (1) of Article 226 begins with a non-obstante clause - notwithstanding anything in Article 32 - and provides that every High Court shall have power “throughout the territorial in relation to which it exercises jurisdiction”, to issue to any person or authority, including in appropriate cases, any Government, “within those territories” directions, orders or writs, for the enforcement of any of the rights conferred by Part III or for any other purpose. Under

clause (2) of Article 226 the High Court may exercise its power conferred by clause (1) if the cause of action, wholly or in part, had arisen within the territory over which it exercises jurisdiction, notwithstanding that the seat of such Government or authority or the residence of such person is not within those territories. On a plain reading of the aforesaid two clauses of Article 226 of the Constitution it becomes clear that a High Court can exercise the power to issue directions, orders or writs for the enforcement of any of the fundamental rights conferred by Part III of the Constitution or for any other purpose if the cause of action, wholly or in part, had arisen within the territories in relation to which it exercises jurisdiction, notwithstanding that the seat of the Government or authority or the residence of the person against whom the direction, order or writ is issued is not within the said territories. In order to confer jurisdiction on the High Court of Calcutta, NICCO must show that at least a part of the cause of action had arisen within the territorial jurisdiction of that Court. That is at best its case in the writ petition.

6. It is well settled that the expression “cause of action” means that bundle of facts which the petitioner must prove, if traversed, to entitle him to a judgment in his favour by the Court. In *Chand Kaur v. Pratab Singh* [ILR (1889) 16 Cal 98, 102], Lord Watson said:

“...the cause of action has no relation whatever to the defence which may be set up by the Defendant, nor does it depend upon the character of the relief prayed for by the Plaintiff. It refers entirely to the grounds set forth in the plaint as the cause of action or in other words to the media upon which the plaintiff asks the Court to arrive at a conclusion in his favour.”

Therefore, in determining the objection of lack of territorial jurisdiction the court must take all the facts pleaded in support of the cause of action into consideration albeit without embarking upon an enquiry as to the correctness or otherwise of the said facts. In

other words the question whether a High Court has territorial jurisdiction to entertain a Writ Petition must be answered on the basis of the averments made in the petition, the truth or otherwise whereof being immaterial. To put it differently, the question of territorial jurisdiction must be decided on the facts pleaded in the petition. Therefore, the question whether in the instant case the Calcutta High Court had jurisdiction to entertain and decide the Writ Petition in question even on the facts alleged must depend upon whether the averments made in paragraphs 5, 7, 18, 22, 26 and 43 are sufficient in law to establish that a part of the cause of action had arisen within the jurisdiction of the Calcutta High Court.”

79. On the other hand, Mr. Haris Beeran, learned counsel for the petitioner in W.P.(C) No17071 of 2021, invited our attention to the decision of the Hon'ble Apex Court in **Om Prakash Srivastava v. Union of India (UOI) and Ors.** [(2006) 6 SCC 207] and submitted that the High Court will have jurisdiction if cause of action wholly or in part arises within the territorial limits of its jurisdiction, even though the seat of the Government or authority or residence of a person against whom the direction, order or writ sought to be issued, is not within the said territory.

80. Mr. Haris Beeran, learned counsel for the petitioner, also invited our attention to the decision of the Hon'ble Apex

Court in **Nawal Kishore Sharma v. Union of India and Others** [(2014) 9 SCC 329] and submitted that since the personal liberty of the citizens in Kerala are affected, part cause of action has arisen within the jurisdiction of this Court.

81. He has also invited our attention to the decision of the Hon'ble Apex Court in **Rajendran Chingaravelu v. R.K.Mishra, Additional Commissioner of Income Tax and Others** [(2010) 1 SCC 457], in regard to the restrictions imposed as to the personal liberty and individual rights, *vis-a-vis*, public interest and also to the decision of the Hon'ble Apex Court in **Gurusimran Singh Narula v. Union of India (UOI) and Ors.** [(2021) 1 SCC 152], rendered under the provisions of the Disaster Management Act, 2005. In **Gurusimran Singh Narula** (cited *supra*), the Hon'ble Apex Court has considered the issue of spraying of all kinds of disinfectant on human beings, without the approval of relevant Ministry, and the inaction of the State, to prevent or regulate the same.

82. Wholesome appreciation of the facts and circumstances would make it clear that no part of cause of

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action as regards the circulars issued by the State of Karnataka/ its officials would not arise in the State of Kerala. Therefore, we have no hesitation to hold that the petitioners have failed to establish territorial jurisdiction of this Court in interfering with the circulars issued by the State of Karnataka dated 31.07.2021 and accordingly, we decline the reliefs sought for by the petitioners in the background of the circulars so issued.

In the result, the writ petitions are dismissed for want of territorial jurisdiction. No costs

Sd/-
S. MANIKUMAR
CHIEF JUSTICE

Sd/-
SHAJI P. CHALY
JUDGE

krj

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APPENDIX OF WP(C) NO.16833/2021

PETITIONER'S EXHIBITS:

- | | |
|----------------|--|
| Exhibit P1 | COPY OF THE ORDER DATED 31.07.2021 PASSED BY THE 4TH RESPONDENT. |
| Exhibit P1 (A) | COPY OF THE ENGLISH TRANSLATION OF EXHIBIT P1. |
| Exhibit P2 | COPY OF THE PRINT OUT OF THE NEWS PUBLISHED IN THE NEW INDIAN EXPRESS DATED 2.7.2021. |
| Exhibit P3 | COPY OF THE PRINT OUT OF THE NEWS PUBLISHED IN THE TIMES OF INDIA DATED 4.8.2021. |
| Exhibit P4 | COPY OF THE JUDGMENT PASSED BY THIS HON'BLE COURT DATED 11.6.2021 IN WP(C) NO.9399 OF 2020 ALONG WITH WP(C) NO.9413 OF 2020. |

RESPONDENTS' EXHIBITS:

- | | |
|--------|--|
| R3(A): | COPY OF THE DAILY MEDIA BULLETIN DATED 21.08.2021 RELEASED BY THE STATE OF KARNATAKA, CONTAINING DETAILS OF THE LATEST COVID-19 SITUATION IN THE STATE |
| R3(B): | COPY OF THE PROCEEDINGS OF THE 115TH MEETING OF THE TAC DATED 16.07.2021. |
| R3(C): | COPY OF THE PROCEEDINGS OF THE 116TH MEETING OF THE TAC DATED 24.07.2021. |
| R3(D): | COPY OF THE PROCEEDINGS OF THE 117TH MEETING OF THE TAX DATED 30.07.2021. |
| R3(E): | COPY OF THE REVISED CIRCULAR DATED 31.07.2021 ISSUED BY THE GOVERNMENT OF KARNATAKA. |

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R3(F): COPY OF THE PROCEEDINGS OF THE 120TH MEETING OF THE TAC DATED 15.08.2021.

R3(G): COPY OF THE ORDER OF THE HON'BLE KARNATAKA HIGH COURT DATED 17.08.2021 IN W.P. NO.14952 OF 2021.

APPENDIX OF WP(C) NO.17071/2021

PETITIONER'S EXHIBITS:

- EXHIBIT P1 COPY OF THE IMPUGNED ORDER ISSUED BY THE GOVERNMENT OF KARNATAKA BEARING NO.RD 158 TNR 2020 DATED 01.07.2021.
- EXHIBIT P2 COPY OF THE ORDER DATED 01.04.2020 IN WPC (TMP) NO.2 OF 2020.
- EXHIBIT P3 COPY OF THE ORDER BEARING NO.40-3/2020-DM-I(A) ISSUED BY THE GOVERNMENT OF INDIA MINISTRY OF HOME AFFAIRS DATED 29.08.2020.
- EXHIBIT P3 A COPY OF THE ORDER BEARING NO.40-3/2020-DM-I(A) DATED 29.04.2021.
- EXHIBIT P3 B COPY OF THE ORDER BEARING NO.40-3/2020-DM-I(A) DATED 29.06.2021.
- EXHIBIT P3 C COPY OF THE ORDER BEARING NO.40-3/2020-DM-I(A) DATED 28.07.2021.
- EXHIBIT P4 COPY OF THE ORDER DATED 01.04.2021 PASSED BY THE HIGH COURT OF KARNATAKA IN WP NO.3949 OF 2021.
- EXHIBIT P5 TRUE COPY OF THE ADVISORY DATED 04.05.2021 ISSUED BY THE ICMR.
- EXHIBIT P6 COPY OF THE ORDER ISSUED BY THE STATE OF KARNATAKA BEARING NO.RD 158TNR2020 DATED 06.08.2021.

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- EXHIBIT P7 COPY OF THE LETTER DATED 03.08.2021 SENT TO THE HON'BLE CHIEF MINISTER OF KERALA BY THE PETITIONER WITH ENGLISH TRANSLATION.
- EXHIBIT P7 A ENGLISH TRANSLATION OF EXHIBIT P7.
- EXHIBIT P8 COPY OF THE REPRESENTATION DATED 06.08.2021 ISSUED TO THE HON'BLE CHIEF MINISTER OF KARNATAKA BY THE PETITIONER.
- EXHIBIT P9 COPY OF THE GO(RT) NO.530/2021/DMD DATED 17.07.2021.
- EXHIBIT P10 COPY OF THE ORDER OF DEPUTY COMMISSIONER & DISTRICT MAGISTRATE'S OFFICE, DAKSHINA KANNADA DISTRICT - 2ND RESPONDENT DATED 31.07.2021.
- EXHIBIT P10(A) ENGLISH TRANSLATION OF EXHIBIT-P10(A).
- EXHIBIT P11 COPY OF THE RELEVANT PAGES OF THE DISASTER MANAGEMENT ACT, 2005.
- EXHIBIT P12 COPY OF THE REVISED CIRCULAR ISSUED BY THE 2ND RESPONDENT DATED 31.07.2021.

RESPONDENTS' EXHIBITS:-NIL

//TRUE COPY//

P.A. TO C.J.