

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE SHAJI P.CHALY

&

THE HONOURABLE MRS.JUSTICE M.R.ANITHA

TUESDAY, THE 10th DAY OF MAY, 2020 /20th VAISAKHA, 1942

W.P.(C). NO.9840 OF 2020

PETITIONER:-

HARISH VASUDEVAN,
ADVOCATE,
S/O. V.N. VASUDEVANNAMBOOTHIRI,
AGED 34 YEARS,
RESIDING AT HARITHAM, NEELESHWAR P.O.,
KASARGOD DISTRICT.

**BY ADV. SRI GEORGE POONTHOTTAM (SR.)
SMT. NISHA GEORGE**

RESPONDENTS:-

1. STATE OF KERALA,
REPRESENTED BY THE CHIEF SECRETARY,
GOVERNMENT SECRETARIAT,
THIRUVANANTHAPURAM-695 001.
2. THE DISTRICT COLLECTOR,
COLLECTORATE, PALAKKAD-678 014.
3. THE DISTRICT COLLECTOR,
COLLECTORATE, AYYANTHOLE,
THRISSUR – 680 003.

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4. THE STATE POLICE CHIEF,
POLICE HEAD QUARTERS,
NANTHONCODE, THIRUVANANTHAPURAM- 695 033.

5. THE SUPERINTENDENT OF POLICE,
PALAKKAD - 678 001.

**BY SRI.RANJITH THAMPAN, ADDL. ADVOCATE GENERAL
BY SRI.P. NARAYANAN, SR. GOVERNMENT PLEADER
BY SRI. MANU V., SR. GOVERNMENT PLEADER**

**THIS WRIT PETITION HAVING COME UP FOR ADMISSION
ON 10/05/2020, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:-**

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O R D E R

Shaji P.Chaly, J.

This Public Interest Litigation is filed by a practicing lawyer before this Court seeking direction to the respondents to facilitate the journey of the persons who were stranded at Walayar Check-post on 9.5.2020 which is an entry point provided by the Government of Kerala to permit interstate entry to people outside the State due to the lockdown restrictions imposed by the Government of India as well as the State of Kerala. The case put forth by the petitioner is that even though the persons traveling have secured passes from the State of Karnataka and the State of Tamil Nadu, they could not secure passes from the State Government online since the platform offered by the State Government was not properly functional. It is also pointed out in the writ petition that the group of people include pregnant women, children, students, senior citizens and people with medical illnesses. It is submitted that even though the group of people tried their best to cross the border of the State of Kerala, the State officials did not permit them and they were even denied the basic amenities as is contemplated in the Government Order dated 2.5.2020 issued on the basis of the order of the Ministry of Home Affairs, Government of India dated 29.4.2020, whereby the Ministry of Home Affairs permitted inter-state movement of persons stranded in different parts of the country owing to general lockdown to contain the COVID-19 disease outbreak.

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2. A detailed statement is filed for and on behalf of the State Government refuting the allegations, claims and demands raised by the petitioner. It is submitted that the State Government has issued the order dated 2.5.2020 delineating the regulatory measures to be followed by the inter-state passengers crossing the border of the State of Kerala and the guidelines to be followed by the State officials as well as the people crossing the border. It is submitted that the basic facilities as stated in the government order are being followed by the State officials scrupulously without any failure. It is significantly pointed out that the people who came to Walayar on 9.5.2020 happened to be stranded there since they have not secured passes from the State of Kerala. It is further submitted that the online platform provided for the application of passes were functional throughout and the allegation made contrary to the same in the writ petition is not at all true or correct. It is also pointed out that the State Government is strictly adhering to the directives, orders and advisories issued by the Government of India and there is no manner of laches on the part of the Government in complying with the regulations and the guidelines issued for the purpose.

3. The above writ petition was posted along with W.P.(C). No.9401 of 2020 which is a *suo motu* writ petition registered by a Division Bench of this Court to tackle various situations during the lockdown period and orders were being passed whenever necessitated. The said writ petition was posted today along with the instant writ petition on the basis of the oral request made by counsel for the petitioner in the

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above writ petition. However, later the instant Public Interest Litigation was filed so as to bring forth the specific issues faced by the inter-state passengers. Therefore, other counsel who were attending the video conferencing also made submissions with respect to the lack of co-ordination by and between the State Governments in facilitating the crossing of State borders, and also that some students are stranded at Malahalla Check-post which is not an entry point permitted by the State of Kerala, bordering Wayanad District and close to Muthenga Entry point permitted by the State Government.

4. We have heard Sr. Adv. Sri George Poonthottam appearing for the writ petitioner, assisted by Adv.Nisha George; learned Additional Advocate General Sri Ranjith Thamban and Adv. Sri Muhammad Shah and; Adv. Sajal who have made submissions with respect to the alleged Government failure in facilitating the crossing of the border and requesting to provide entry to the students stranded at Malahalla Check post respectively.

5. The issue raised by the petitioner and others are guided by the order of the State Government dated 2.5.2020 and other subsequent orders for the purpose of facilitating the inter-state movement of people from other States and thereby permit entry to Kerala. Clause B onwards deals with the procedure for coming into Kerala which reads thus:

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“B. Procedure for coming into Kerala:

The inbound movement of people stranded in other parts of India is also permitted. However, this facility as of now will not be extend to the passenger train service in the country which is suspended till 17th May. For facilitating the same, State Government has designated six entry points for receiving the stranded persons from other States to enter Kerala, viz.

- i. Inchivila in Thiruvananthapuram ii.*
- Aryankavu in Kollam iii. Kumily in Idukki iv.*
- Walayar in Palakkad v. Muthanga in*
- Wayanad and vi. Manjeshwaram in*
- Kasaragod*

Detailed SoP for facilitating the inbound movement of persons to Kerala is appended.

C. Infrastructure requirements at entry points:

The District administration shall ensure the following facilities at the designated entry points immediately.

i. A duly lit up parking area on both sides of roads with levelled land to accommodate substantial number of vehicles. Checks for water logging may be kept in mind as rainy days are expected. Facilities for disinfecting vehicles need be ensured.

ii. An all-weather Pandal to accommodate not less than 500 persons at a time with ample waiting area with chairs, lights and fans. The Pandal should have following facilities too:

(a) Drinking water supply.

(b) Separate rest rooms for males and females.

(c) Functional space for office at one end of the pandal with Queue system to attend the inbound.

(d) There should a proper Queue system to reach the desks.

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- (e) Required IT infrastructure with proper support should be provided at the desks.*
- (f) Provision for health check-up cubicles. This could be arranged in open area also adhering to COVID-19 containment protocol.*
- (g) Office space/rooms with washroom facilities for the officials deployed.*
- (h) Ambulance with paramedics.*
- (i) Wheel Chair facility.*
- (j) Dedicated vehicles for taking symptomatic passengers to pre-quarantine designated centres for testing/ sample collections.*
- (k) PPEs as per requirement.*
- (l) Standby power for entire area.*
- (m) Display facilities for information for waiting passengers.*
- (n) Public address systems.*
- (o) The approach area towards the entry/parking area should be adequately lit up.*
- (p) Entire area to be sanitised at regular intervals.*
- (q) Food counters to be operated on payment basis.*

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(r) Proper waste management.

(s) Spot registration facilities for serving unregistered inbounds.

iii. The following will be given priority over others for entering Kerala:

a) Those from neighboring states seeking Medical aid in Kerala b) Pregnant ladies with family c) Families members including children separated due to lockdown d) Students e) Senior citizens with family members f) Persons who lost job

3. No deviation from the above SoP/guidelines shall be entertained under any circumstances without obtaining prior clearance from the State Nodal officer, Interstate transit.

(By Order of the Governor)

BISHWANATH SINHA

PRINCIPAL SECRETARY TO GOVERNMENT

& STATE CO-ORDINATOR FOR INTERSTATE TRANSIT"

6. Therefore, it is clear that definite and clear procedures are prescribed to facilitate the entry of people stranded outside the State. A guideline is also issued to be followed by people returning to Kerala which reads thus:

"Guidelines to be followed by people returning to Kerala

During the time of COVID 19 pandemic Kerala state has strengthened the surveillance and taken control measures against the spread of disease and providing timely health interventions to affected persons. Many Keralites who are stranded in different parts of

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the country and are desirous to come to their home state are welcomed by the state. The Government of Kerala has appealed to people returning to Kerala from other states to register in NORKA Roots website which has provision to update information on travel details preferred by people.

It is important for all of us to be responsible and sensitive enough to co-operate with work done by our State to contain the outbreak with the lowest fatality rate.

Please follow the steps to reach your home state

- 1. Please get permission from your destination District Collector by submitting information related to accompanying members in **Covid19 Jagratha** using the registration ID obtained while registering in Norka Roots website by following the link <https://covid19jagratha.kerala.nic.in/>. [covid-19 jagratha portal Public services Domestic return pass Register (with Mobile number) Add group, Vehicle No., Check post, time of arrival, etc. Submit] One has to select a check post entry date depending on queue and the maximum limit allowed on a particular day*
- 2. You can also apply in Covid19 Jagratha, even if you do not have NORKA registration ID*
- 3. After submitting the required information your details will be verified for the genuineness of the request and travel permit will be issued with a **QR Code** in your registered mobile number and email. They can use won vehicle or rented vehicle for travel to their home*
- 4. **Necessary permission, if any, required from the State where you are presently located need to be taken for ensuring a smooth journey till Kerala border.***
- 5. All people have to enter through **Check posts** notified by the State and will undergo medical screening for symptoms. To reduce crowding at the check posts, daily entry will be limited to a fixed number which will be decided by the District Administration. You can choose the check post and day of travel according to the availability of slots through*

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'Covid19Jagrata'.

- 6. If the journey is planned as a group or family in one vehicle, group may be formed using the individual register nos. If persons bound to more than one district is involved in a group, separate group may be formed district wise and same vehicle number may be entered in each group*
- 7. You are requested to start travel only after receiving the travel permit from Kerala Government and the local authority of your present location to avoid any problem during travel***
- 8. Please carry the permit for verification by the enforcement squads at check posts*
- 9. To maintain social distance only 4 will be permitted to travel in a car, 5 in an SUV, 10 in a van and 25 in a bus. Keep sanitizer, use masks and maintain physical distancing during travel*
- 10. Those who come in a rented vehicle up to Kerala check posts can use the vehicle from their domestic vehicle for their further onward journey. Those who taking such persons back home shall also undergo home quarantine. Only driver shall be allowed to come for pick up. Those who travel to the Border to pick the relatives can obtain a pass from their District Collector by applying for an "Emergency Travel Pass" in Covid-19 Jagaratha.*
- 11. An exit and entry pass/passess shall be issued by District Collectors to those persons who seek to go outside states to bring back their stranded child/ children, spouse and parent/s. It must be ensured that entry passes for such person must contain the detail/s of such family member/s whom he is intending to bring back. The journey outside state will be subject to approval by the counterpart state/s, entry inside on return will be subject to observance of procedure prescribe for medicalscreening,quarantine,etc.*
- 12. You will have to undergo medical screening for any symptoms of COVID-19. Those without symptoms will be allowed to enter and have to be in home quarantine and those with symptoms will be sent to either COVID Care Center or Hospital.*

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13. The District Collector concerned will issue the return pass for the rented vehicles carrying passengers from other States

14. All those who enter Kerala should mandatorily install Covid-19 Jagratha Mobile App.

15. If any unexpected issues crop up during travel you may please contact the Covid- 19 War Room set up at the State Secretariat (0471-2781100/2781101) or concerned border check posts”

7. It is an admitted fact that the people stranded at Walayar on 9.5.2020 did not have passes issued by the State of Kerala. The reasons stated in the writ petition for not securing passes from the State of Kerala are stoutly disputed by the learned Additional Advocate General. Anyhow we are not venturing to resolve the said factual circumstances. After assimilating the pros and cons and the facts and figures, we are of the opinion that every citizen of India has the fundamental right to travel throughout the territory of India and settle in any part of the territory of India by virtue of Article 19(1) (d) and (e) of the Constitution of India. However the State is at liberty to impose reasonable restrictions under clause (5) of Article 19. So much so every citizen has the freedom to travel which is a right protected under Article 21 of the Constitution of India, irrespective of the territory of India and the State boundaries.

8. But, the present meticulous and stringent restrictions imposed on crossing the borders of State have occurred due to the outbreak of pandemic COVID-19. It was thereupon that the Government of India and the State Government have started

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issuing advisories and orders. The Government of India has ordered the lockdown during the third week of March 2020. However taking into account the difficulties faced by the people stranded outside their home State advisories were issued relaxing the lockdown conditions. In our considered view the restrictions are imposed by the Central and the State Governments by virtue of the powers vested on them under the provisions of the Epidemics Act 1897, the Disaster Management Act 2005 and the Kerala Epidemics Diseases Ordinance 2020. Therefore, what we intend to convey is that the attempts of the Governments are to contain the pandemic from being spread in an unprecedented and uncontrollable level to protect the interest of the general public and the nation as such. Hence it cannot be said that the restrictive orders and advisories issued are in any manner unreasonable so as to interfere with the fundamental rights enjoyed by the citizens. Looking at that angle it cannot be said that the action of the State officials not permitting the inter-state movement of the people in question is illegal or bad. However, the learned Senior Counsel for the petitioner has a case that by virtue of clause C(ii)(s) of the Order specified above, spot registration facilities for serving unregistered inbounds is possible. But the learned Additional Advocate General submitted that such a facility is available only to pregnant women, senior citizens aged above 75 years etc. Anyhow we are conscious of the fact that there are clear parameters provided in clause 7 of the guidelines specified above that a person securing a pass from the host Government can start travel only after receiving the travel permit from the Kerala Government and the local authority of the person's location to avoid any problem

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during travel. Since that being the broader and general guideline for such movement, the clause contained under C(ii)(s) of the order can only be treated as one for the purpose of tackling any special circumstances. In that view of the matter, the contention advanced by the learned Additional Advocate General has sufficient force.

9. Therefore, the learned Additional Advocate General submitted that if the restrictions contained under the order dated 2.5.2020, the guidelines thereto and any periodical advisory issued by the Central Government are not adhered to strictly, the containment of the pandemic would be impossible. We find much force in the contention so advanced since they are issued in the best interest of the larger general public and the nation as such. Anyhow it is fairly submitted by the Additional Advocate General that directions will be issued to the officials as a special case to issue passes and permit the people stranded at Walayar on 9.5.2020, who are presently accommodated in the guesthouse of the Tamil Nadu Government in Coimbatore, to cross the border. The said submission is recorded.

10. Accordingly we direct the respondents, who are the State and its officials, to take urgent immediate steps to facilitate the persons stranded at Walayar on 9.5.2020 to cross the State border by issuing necessary passes. However, we make it clear that all those persons who are crossing the border in accordance with the passes so issued shall strictly adhere to the order and guidelines specified above and any other orders issued by the State Government to deal with the situations day by day. While

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doing so immediate attention and preference shall be given to the pregnant women, aged senior citizens and children. It is also made clear that others shall also be issued with the passes at the earliest avoiding unnecessary delay since they are stranded from 9.5.2020 onwards.

11. In view of the contentions advanced by the learned Senior Counsel and others, we direct the State Government to ensure that basic facilities are provided to the persons reaching the entry points as is stated in the guidelines specified above and any violations of the same would be viewed by this Court strictly. We also direct the respondents to co-ordinate with officials of other State Governments with respect to the passes issued for inter-state travel so as to have parity of dates and other requirements in order to avoid any inconvenience to the movement of the people in future. As we have pointed out earlier, even though Malahalla is not an entry point to receive the stranded persons, since it is submitted that 13 students are stranded there, which is also a forest area having presence of wild animals, the respondents shall adequately attend to the said matter so as to avoid any inconvenient situation. These directions are issued taking into account the special circumstances mentioned above and this order cannot be treated as a precedent for any future purposes. We further make it clear that the directions made above are not intended to water down the advisories, orders and guidelines issued by the appropriate Governments, since we are conscious of the fact that the Governments and their officials are better equipped to deal with the situations taking into account the

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factual circumstances occurring from time to time during the lockdown period .

Post the writ petition along with W.P.(C).No. 9401 of 2020 on 12.05.2020.

SHAJI P.CHALY

JUDGE

M.R. ANITHA,

JUDGE

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