

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MRS. JUSTICE ANU SIVARAMAN

&

THE HONOURABLE MRS. JUSTICE M.R.ANITHA

WEDNESDAY, THE 20TH DAY OF MAY 2020 / 30TH VAISAKHA, 1942

WP(C).No.9804 OF 2020(S)

PETITIONER :-

C.R.NEELAKANDAN, AGED 63 YEARS
S/O.RAMAN NAMBOOTHIRI, RESIDING AT THANAL,
THRIKKAKKARA P.O., ERNAKULAM.

BY ADV. SRI.RAJAN VISHNURAJ

RESPONDENTS :-

- 1 UNION OF INDIA
REPRESENTED BY THE SECRETARY,
MINISTRY OF HOME AFFAIRS, NORTH BLOCK,
NEW DELHI - 110 001.
- 2 THE SECRETARY
MINISTRY OF EXTERNAL AFFAIRS, NEW DELHI-110 001.
- 3 THE SECRETARY
MINISTRY OF CIVIL STATION, RAJIV GANDHI BHAWAN,
BLOCK B, SAFDARJUNG AIRPORT AREA, NEW DELHI-110003.
- 4 THE SECRETARY
MINISTRY OF DEFENCE, SOUTH BLOCK,
NEW DELHI - 110 001.
- 5 THE SECRETARY
MINISTRY OF HEALTH AND FAMILY WELFARE,
MOULANA AZAD ROAD, NEW DELHI - 110 011.
- 6 NATIONAL DISASTER MANAGEMENT AUTHORITY
REPRESENTED BY ITS MEMBER SECRETARY, NDMA BHAWAN,
A-1, SAFDARJUNG ENCLAVE, NEW DELHI - 110 029.
- 7 STATE OF KERALA
REPRESENTED BY THE CHIEF SECRETARY, SECRETARIAT,
THIRUVANANTHAPURAM, KERALA - 695 001.

BY SRI.P.VIJAYAKUMAR, ASG OF INDIA.
BY SRI.RENJITH THAMPAN, ADDL.AG

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 15-05-2020, THE COURT ON 20-05-2020 DELIVERED THE FOLLOWING:

JUDGMENT

Dated this the 20th day of May 2020

Anu Sivaraman, J.

- 1.This writ petition has been filed seeking directions to the 1st respondent to take effective steps to conduct mandatory RTPCR tests on passengers not more than 4 days before embarkation process to India at the cost of the first respondent. There is a further prayer to respondents 1 & 7 to take all precautionary measures to ensure proper quarantine of NRIs who arrive in Kerala to prevent the spread of Covid 19.
- 2.Heard the learned counsel for the petitioner, the learned Additional Advocate General appearing for the seventh respondent as well as the learned Central Government Counsel appearing for respondents 1 to 6.
3. It is contended by the learned counsel for the petitioner that the Standard Operating Protocols for movement of Indian nationals in the Vandhe Bharat Mission does not require proper screening through RTPCR tests of those who are permitted to travel under the said scheme. It is contended that several countries are

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resorting to testing of inbound passengers to ensure that carriers of the virus are not permitted to enter the country. It is further contended that the lack of testing before boarding is a serious danger, since if there are **asymptomatic** passengers who are permitted to board after the inconclusive temperature test alone, there is every chance of the virus being transmitted to other passengers during travel and that this is a further issue which has to be addressed by the Central Government by making necessary amendments in Exhibit P1 Standard Operating Protocol. It is submitted by the learned counsel for the petitioner that the State of Kerala has already addressed the issue by Ext.P8 letter dated 5.5.2020 sent by the Chief Minister to the Prime Minister and it has been requested that the Standard Operating Protocols may be properly modified by including provisions for testing all those who board the flights from the source countries so as to prevent further spread of the contagion in India.

4. The learned Additional Advocate General submits that the State has already raised the issue with the Central Government and that it is for the Central Government to consider the matter.

5.A statement has been placed on record by the Central Government Counsel on behalf of the second respondent. It is stated that all necessary steps are taken to ensure the safety of Indian nationals abroad as well as within the country. It is stated that Standard Operating Protocols are framed under the Disaster Management Act and non commercial flights and naval ships are arranged for the purpose.

6.It is further stated in paragraphs 5 and 6 of the statement as follows:-

“5. It is most respectfully submitted that only asymptomatic passengers are permitted to travel. The health protocols issued by the Ministry of Civil Aviation and the Department of Military Affairs will be strictly followed. It is most respectfully submitted that the passengers from UAE will undergo prior rapid antibody testing before their departure and passengers tested covid negative only permitted to travel. UAE authorities have conveyed that they would do Rapid anti body tests for all passengers before boarding. Most countries do not advocate mandatory RT PCR tests before departure. All passengers are expected to undergo thermal screening before boarding. Moreover,only asymptomatic passengers will be allowed to travel.

6. It is submitted that the pre embarkation health check up are conducted by the Officials in the Foreign Airports/Ports, from which the Flight or Ship is departing. The Officials in the Foreign Airports

are screening the passengers in accordance with the health protocol in vogue in the said Airport/Port.”

7.It is stated that only persons who are tested and found to be Covid negative are included in the crew of the aircrafts/ships and necessary steps for quarantine of persons reaching the country have also been made in consultation with the State Governments.

8. It is further submitted that the Union of India had filed SLP against an order of the Orissa High Court directing that all migrants who are in queue to come to Orissa should be tested negative for Covid 19. It is submitted that the Apex Court had by order dated 8.5.2020 in SLP(Civil) Diary No.11156/2020 stayed the interim order of the Orissa High Court and held that protections are provided by the orders issued by the Central Government. The Standard Operating Protocol provided by the Central Government was considered and approved by the Apex Court. It is stated that Exhibit P1 order provides ample protection as is practical and feasible on the basis of expert medical advice and that the subjective opinion of the petitioner, who is not an expert in the field cannot be a reason to interfere with the protocol set in place. It is further submitted that all

necessary steps shall be taken for preventing the spread of the disease as is warranted by the situation after considering the concerns of the respective State Governments as well.

9. Having considered the contentions advanced on all sides at considerable length, we find that the Standard Operating Protocol has apparently been framed after proper application of mind and due consultation with medical experts. The concerns expressed by individual States are matters to be addressed by the Central Government in the joint endeavour to fight the present pandemic. We have no doubt that proper procedure will be put in place and revised in a time bound manner by the Central Government after considering the situation prevalent and taking note of the requests made by individual States as also expert medical advice and the available relevant data. In the above view of the matter, We are of the opinion that an interference through a writ of mandamus is not warranted at this stage. Suffice it to say that concerns expressed by the State Government will also be considered by the Central Government while formulating and revising Standard Operating Protocols in respect of the required testing as well. In the absence of any

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further material, it may not be proper for this Court to issue the directions as are sought for by the petitioner. The writ petition is accordingly closed with the observation that the concerns addressed in Exhibit P8 letter by the State Government will also be duly considered by the Central Government.

**Sd/-
Anu Sivaraman, Judge**

**Sd/-
M.R.Anitha, Judge**

sj

APPENDIX

PETITIONER'S EXHIBITS:

- EXHIBIT P1 A TRUE PHOTOCOPY OF THE ORDER DATED 5.5.2020
ISSUED BY THE 1ST RESPONDENT.
- EXHIBIT P2 A TRUE PHOTOCOPY OF THE NEWS ARTICLE PUBLISHED IN
[HTTPS://WWW.BUSINESSDAY.IN/CURRENT/ECONOMY-
POLITICS/CORONAVIRUS-CRISIS-2-LAKH-NON-RESIDENT-
KERALITES-IN-160 COUNTRIES-REGISTER-TO-RETURN-
HOME/STORY/402189.HTML](https://www.businessday.in/current/economy-politics/coronavirus-crisis-2-lakh-non-resident-keralites-in-160-countries-register-to-return-home/story/402189.html)
- EXHIBIT P3 A TRUE PHOTOCOPY OF THE JOINT STATEMENT ISSUED BY
THE ICAO AND WHO ON COVID-19 PANDEMIC.
- EXHIBIT P4 A TRUE PHOTOCOPY OF THE REGULATIONS AND
GUIDELINES ISSUED BY THE ICAO AND WHO DURING
REPATRIATION AND QUARANTINE OF TRAVELERS DURING
COVID-19 OUTBREAK.
- EXHIBIT P5 A TRUE PHOTOCOPY OF THE NEW ARTICLE DATED
3.5.2020 PUBLISHED IN
[HTT;S://INREUTERS.COM/ARTICLE/HEALTH-CORONAVIRUS-
AUSTRIA-AIRPORT/VIENNA-AIRPORT-TO-OFFER-
CORONAVIRUS-TESTS-TO-AVOID-QUARANTINE-
IDINKBN22FOIM.](https://inreuters.com/article/health-coronavirus-austria-airport/vienna-airport-to-offer-coronavirus-tests-to-avoid-quarantine-idinkbn22foim)
- EXHIBIT P6 A TRUE PHOTOCOPY OF THE NEW ARTICLE DATED
16.4.2020 PUBLISHED IN
[HTTPS://EDITION.CNN.COM/TRAVEL/ARTICLE/EMIRATES-
PASSENGERS-BLOOD-TEST-COVID-19/INDEX.HTML.](https://edition.cnn.com/travel/article/emirates-passengers-blood-test-covid-19/index.html)
- EXHIBIT P7 A TRUE PHOTOCOPY OF THE NEWS ARTICLE DATED
13.3.2020 PUBLISHED IN
[HTTPS://WWW.HINDUSTANTIMES.COM/INDIA-NEWS/INDIAN-
MEDICAL-TEAM-REACHING-ITALY-TO-TEST-STRANDED-
STUDENTS-FOR-COIVD-19-CORONAVIRUS/STORY-
WWIRELOCZL513J30QNHWK.HTML.](https://www.hindustantimes.com/india-news/indian-medical-team-reaching-italy-to-test-stranded-students-for-coivd-19-coronavirus/story-wwireloczl513j30qnHWK.html)
- EXHIBIT P8 A TRUE PHOTOCOPY OF THE LETTER DATED 5.5.2020
SENT BY THE CHIEF MINISTER OF KERALA TO THE PRIME
MINISTER OF INDIA.
- EXHIBIT P9 A TRUE PHOTOCOPY OF THE PRESS RELEASE DATED
5.5.2020 ISSUED BY THE EMBASSY OF INDI, ABU
DHABI.