IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE THE CHIEF JUSTICE MR.S.MANIKUMAR

&

THE HONOURABLE MR. JUSTICE SHAJI P.CHALY

FRIDAY, THE 19TH DAY OF JUNE 2020 / 29TH JYAISHTA, 1942

WP(C).No.11686 OF 2020(S)

PETITIONERS:

PRATHYASA MENTAL HEALTH COUNSELLING FORUM
THROUGH ITS PROGRAM ME COORDINATOR, GEORGE SEBASTIAN,
S/O P. V. GEORGE, KOTTAPPURATH HOUSE, R/O. 8 B, A - BLOCK,
SREEDHANYA PLANET - X, KALLAMPALLY, MEDICAL COLLEGE P. O.,
THIRUVANANTHAPURAM, PIN - 695 011, KERALA, INDIA.

BY ADVS.SRI.SAJU JAKOB
SRI.ANIL KUMAR SREEDHARAN

RESPONDENTS:

1 STATE OF KERALA
REPRESENTED BY CHIEF SECRETARY, SECRETARIAT,
THIRUVANANTHAPURAM, PIN - 695 001, KERALA.

2 SECRETARY, TRANSPORT (B) DEPARTMENT, GOVERNMENT OF KERALA,
SECRETARIAT, THIRUVANANTHAPURAM, PIN - 695 001, KERALA.

3 UNION OF INDIA. REPRESENTED BY HOME SECRETARY,
MINISTRY OF HOME AFFAIRS, NORTH BLOCK, CENTRAL SECRETARIAT,
NEW DELHI, PIN - 110001.

R1 & R2 BY SRI. RANJITH THAMPAN, ADDL.ADVOCATE GENERAL
SRI.P.NARAYANAN, SENIOR GOVT. PLEADER
R3 BY ADV. SHRI P.VIJAYAKUMAR, ASG OF INDIA

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 19.06.2020, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

"C.R."

JUDGMENT

Dated this the 19th day of June, 2020

S. Manikumar, CJ

Instant public interest writ petition is filed for the following reliefs:

(i) To direct respondents 1 & 2, State of Kerala represented by Chief Secretary and the Secretary, Transport (B) Department, Thiruvananthapuram - to forthwith ensure the strict/actual/practical compliance of social distancing norm in public places issued by respondent No.3, Ministry of Home Affairs, vide its Order No.40-3/2020-DM-1(A) dated 30th May, 2020, as mandated in national directives for COVID-19 management, in the clause 2);

(ii) To quash the impugned provision of Exhibit-P1 notification dated 2nd June, 2020, S.R.O. No.366/2020, allowing the buses to carry passengers in all the seats available in the stage carriers as it is in violation of Article 21 of the Constitution of India and above notification of Ministry of Home Affairs, and direct the respondents 1 and 2 to issue order directing passengers only to occupy 50% seats available, and to maintain a distance of six feet between passengers in public transport, till the vaccine for COVID-19 virus is invented or till the alternative solution is found or till the Central Government otherwise issues another order with respect to public transport/travel advisory;

(iii) To direct respondents 1 & 2, either to disinfect the vehicles and disinfect the seats when a passenger disembark;

(iv) To direct respondents 1 and 2, either to maintain six feet distance in the allocation of seats or to keep one passenger in one seat or in alternative seat or keep the middle seat vacant if it is a 3-seater chair to serve the purpose of social distancing in the buses with the stickers marking the seats to be left vacant.

2. Short facts leading to the filing of writ petition are as follows:-

Petitioner, a charitable non-registered organization, is constrained to file this public interest litigation against the impugned provision of Exhibit-P1 notification issued by the Transport Department, Government of Kerala vide No.GO(P) No 29/2020/Tran. S.R.O. No. 366/2020 dated 02.06.2020. The impugned provision is, *"AND WHEREAS the Government have decided to relax the lockdown restrictions and decided to permit to carry passengers in all the seats available in the stage carriages*". It is further stated that as per the impugned provision, State of Kerala has decided to relax the lockdown restrictions and as a result of which, permitted to carry passengers in all the seats available in the stage carriages. Petitioner has further stated that through the notification of Transport (B) Department, Government of Kerala vide SRO No. 333/2020 dated 19.05.2020, in order to effectuate the necessity of social distancing, Government have permitted to carry passengers not more than the 50% of seating capacity of the carriage. In the current situation, when it can be said that the spread of infection is almost on the verge of community transmission and where now more than 2 lakhs people have been infected in the country, State of Kerala has decided to relax the measures taken specifically for carrying out social distancing. The efforts of State of Kerala, in order to check the

spread of COVID-19 has won accolades from across the globe, but the number of infected persons have grown up to 80 on the first day of June itself. Petitioner has further contended that the State of Kerala has tried its best to evanescence the COVID-19 out of Kerala and yet could not achieve the desired result, and the relaxation of social distancing measures during the lockdown period would adversely affect the health and life of people and would create dangerous repercussions, which can lead to loss of numerous lives.

3. Being aggrieved, the petitioner filed the instant writ petition on the following grounds:

A. The impugned provision of Exhibit-P1 notification issued by the respondents is arbitrary and harmful to the life and health of the people of Kerala, hence ultra vires.

B. The impugned provision of the notification violates the mandatory guidelines issued by the Ministry of Home Affairs dated 30.05.2020, which mandates the norms of social distancing to be observed by maintaining a distance of 6 feet between individuals.

C. The Hon'ble Supreme Court in SLP(c) Diary No. 11629/2020 titled 'Union of India v. Deven Yogesh Kanani' has given paramount importance to health and safety of people rather than commercial transaction and the mandate of social distancing must be observed for rest of the life till an alternative solution is found or vaccine is invented.

D. The impugned provision of the notification violates the Right to life and healthy environment under Article 21 of not only the passengers of the public transport but also the people coming in contact with those passengers.

E. Kerala State Road Transport Corporation as per its memorandum TR l/000201/2020 dated 03.06.2020, has prohibited any person to seat in the seat along with the conductor's seat for the reason of contagious diseases of COVID -19. The said memorandum of KSRTC is subject to strict implementation, wherein it has clearly indicated and referred the reason in memorandum stating the spread of COVID-19 and instructed that no passengers are allowed to seat in conductor seat where generally two persons are allowed to seat.

F. There shall not be any artificial discrimination between the passenger and conductor, in observing the rule of social distancing norm, wherein adjoining seat of the conductor is kept vacant whereas passenger seat can be filled in its full capacity. The passenger is equally prone to being infected with COVID-19 as that of a conductor and that the impugned provision of the notification is discriminatory.

G. With the onset of monsoon season, a passenger is vulnerable to various flu diseases such as running nose, cold, fever, allergy resulting into constant sneezing and with the buses running with open windows, there are high chances of COVID-19 to spread to every passenger due to the flying wind in the running bus. Hence filling the bus to its full capacity and allowing the passenger to seat very close without keeping 6 feet distance, makes the spread of COVID-19 much likely as in buses every passenger who embarks in the bus who is not subject to constant sanitization process. lf social distancing norms are not observed strictly and really in its letter and spirit, the chain of spread of the virus would be carried forward even to their loved ones and finally leading to a domino effect.

H. The implementation of the impugned provision shall lead to the loss in the State of Kerala, which would become almost irremediable.

I. Ministry of Home Affairs have mandated the requirement of Social Distancing in Public Places and the buses strictly fall under the definition of Public Places and thus cannot be relaxed in regard to the mandate of social distancing. The continuation of the impugned provision shall have cascading effect on the social impact of the disease and shall defeat the purpose of implementing the countrywide lockdown.

J. There is no remedy other than social distancing to deal with COVID-19 pandemic. The reasonable restrictions imposed by the Central Government shall be strictly, fully and practically complied with. Any compromise on adhering to execution of such kind of guidelines will lead to loss of lives. Many States like State of Delhi have implemented the guidelines of Ministry of Home Affairs very strictly and accordingly, one person is allowed or passengers are allowed to sit in alternative seats. The State of Kerala cannot withstand the economic crisis being caused by COVID-19 due to the tact that the community spreading will be caused by such relaxation of sitting arrangement in the public places in the proximity to each other.

K. The Private Bus owner's Association being the major stakeholder has already accepted the terms and condition of the notification of State of Kerala dated 19.05.2020, which has clear cut instructions pertaining to social distancing and thereby granting of 50 % seats allowed to the passengers in the stage carriage.

L. There is no medical solution or vaccination invented so far for the invisible enemy, the entire Indian continent is subject to critical situation and the State of Kerala, being the part of India

cannot claim the immunity from the other States where the cases of COVIDD has been exponentially raised.

M. State of Kerala is on the verge of community spreading through various sources and with the implementation of the impugned provision of notification dated June 2, 2020, it will enhance the number of COVlD-19 victims.

N. The petitioner and its medical consellors deal with not only the patients and their relatives in Kerala, but also deal with all Keralites living abroad especially in U.K, U.S, Spain and Italy. The unwinding of lockdown, more and more people shall tend to travel which would lead to unending chaotic situation in the public transport and hence, stringent measures have to be taken in the current situation.

O. There is no thermal scanner to exactly check the passengers and the nearby person sitting beside a potentially infected person is at the high risk of getting infected.

4. Admittedly, instant writ petition, though styled as a Public Interest Litigation, is filed by an unregistered body - “Prathyasa Mental Health Counselling forum, through its Programme Co-ordinator”. Therefore, without going into the merits, we posed a question as to the maintainability of a public interest litigation by an unregistered body.

5. Answering the above, Mr. Saju Jakob, learned counsel for the petitioner, submitted that petitioner has been serving the cause of public and addressing the problems of malayalis across the world. Mr. George Sebastian, who has sworn to the affidavit filed in support of the writ

petition, is a genuine person, who has taken the cause of maintaining social distancing and being aggrieved by relaxing the standards in buses and in public places, which would result in cascading effect on the social impact of the disease and consequently, defeat the purpose of implementing lockdown in the country.

6. The impugned notification, Exhibit-P1, dated 2.6.2020, allowing buses to carry passengers in all the seats available therein, is in violation of Article 21 of the Constitution of India and, therefore, when a public cause is taken up, instant public interest writ petition should be entertained. In support of his contention that a public interest writ petition filed by an unregistered body is maintainable, learned counsel relied on a judgment of the Hon'ble Supreme Court in W.P.(C) No.857 of 2015 dated 11.05.2016 *(Swaraj Abhiyan - (I) v. Union of India & Ors.)*. Attention of this Court was invited to paragraph 5 of the said judgment, wherein the Hon'ble Supreme Court before taking up the writ petition filed under Article 32 of the Constitution of India, posed a question to the learned counsel appearing on behalf of Swaraj Abhiyan, the petitioner therein, as to whether the petitioner is a political party. Answer to the same was that,- 'Swaraj Abhiyan is an unregistered non-government organisation and not a political party'. Paragraph 5 of the judgment is extracted hereunder:-

> "We put this question to learned counsel for two reasons: firstly, we were of the prima facie opinion that the reliefs sought in the writ petition arising out of drought-like conditions and a declaration of drought in some parts of the country was not a political issue but a matter of grave humanitarian distress and invited concern for the affected persons and animals, particularly livestock. Secondly, we have some *prima* facie reservations whether a public interest litigation initiated by a political party should at all be entertained. Since we were given an assurance that Swaraj Abhiyan is not a political party and humanitarian concern was uppermost, we proceeded to hear the petition on merits." (Emphasis supplied)

7. Perusal of the abovesaid judgment discloses that the writ petition arose out of drought-like conditions. The Hon'ble Court wanted to ascertain as to whether the petitioner therein was a political party, and whether a political party can initiate a public interest litigation under Article 32 of the Constitution of India. Though strong reliance was placed by Mr. Saju Jakob, learned counsel for the petitioner, to contend that a public interest writ petition is maintainable even by a unregistered body, before adverting to the said contention, we deem to fit to consider a few decisions of the Courts as to what ***precedent*** means:

> "(i) ***Halsbury's Laws of England*** sets out only three exceptions to the rule of precedents and the following passage is found in paragraph 578 of Vol. 26, Fourth Edition.

> "...There are, however, three and only three, exceptions to this rule; thus (1) the Court of Appeal is entitled and bound to decide which of two conflicting decisions of its own it will follow; (2) it is bound to refuse to follow a decision of its own which although not expressly overruled, cannot, in its opinion stand with a decision of the House of Lords and (3) the Court of Appeal is not bound to follow a decision of its own if given per incuriam."

(ii) In **M. Subbarayudu v. State** reported in AIR 1955 Andhra 87, a Hon'ble Full Bench of the Andhra Pradesh High Court held that,- the binding nature of the precedents of one Court on another depends upon the fact whether such Courts are Courts of co-ordinate jurisdiction or not and co-ordinate Jurisdiction does not connote the same idea as concurrent jurisdiction or simultaneous jurisdiction. The connotation of the word 'co-ordination' is not the same as that of the words 'concurrence or simultaneity'. Simultaneity or coexistence is not a necessary ingredient of coordination. Co-ordination is more comprehensive and takes in successive acts of the same status or level.

(iii) In **Anand Municipality v. Union of India** reported in AIR 1960 Guj. 40, a Hon'ble Full Bench of the Gujarat High Court applied the principles of binding effect, declared in *M. Subbarayudu's case* (cited supra).

(iv) A Full Bench of the Gujarat High Court in **State of Gujarat v. Gordhandas Keshavji Gandhi** reported in AIR 1962 Guj. 128, has considered the question as to binding nature of judicial precedents. K. T. Desai, CJ., in his judgment, observed:

"Judicial precedents are divisible into two classes, those which are authoritative and those which are persuasive. An authoritative precedents is one which judges must follow whether they approve of it or not. It is binding upon them. A persuasive precedent is one which the Judges are under no obligation to follow, but which they will take into consideration and to which they will attach such weight as they consider proper. A persuasive precedent depends for its influence upon its own merits.... A decision of a High Court Judge of a State is regarded as binding on all the subordinate courts in that State. A decision of a Division Bench of a High Court is regarded as binding on Judges of the same High Court sitting singly in the High Court. A decision of a Full Bench, i. e. a Bench of at least 3 Judges of a High Court is considered binding on all Division Benches of the same High Court.... A decision of a High Court Judge sitting singly is not legally binding on another Judge of the same High Court sitting singly. So also a decision of a Division Bench of a High Court is not legally binding on another Division Bench of the same High Court. A decision of a Full Bench is not legally binding on another Full Bench of the same Court. One Judge of a High Court has however, no right to overrule the decision of another Judge of the same High Court nor has one Division Bench of a High Court the legal right to overrule another decision of a Division Bench of the same High Court.....The rule that a court should follow the decision of another Court of co-ordinate jurisdiction is subject however to several exceptions which have been dealt with in Salmond's jurisprudence, 11th Edn. at page 199 to 217.

> (1) A decision ceases to be binding if a statute or statutory rule inconsistent with it is subsequently enacted, or if it is reversed or overruled by a higher court.
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> (2) A precedent is not binding if it was rendered in ignorance of a statute or a rule having the force of statute.
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> (3) A precedent loses its binding force if court that decided it overlooked an inconsistent decision of higher court.
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> (4) xx xx xx xx xx
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> (5) Precedents sub silentio are not regarded as authoritative. A decision passed sub silentio when the particular point of law involved in the decision is not perceived by the Court or present to its mind."

(xiv) In **State of Orissa v. Sudhansu Sekar Misra,** reported in AIR 1968 SC 647, the Hon'ble Supreme Court explained as to when a decision can be taken as a precedent, and held as follows:-

> "A decision is only an authority for what it actually decides. What is of the essence of a decision is its ratio and not every observation found therein nor what logically follows from the various observations made in it. On this topic, this is what *Earl of Halsbury LC* said in *Quinn v. Leathem*, reported in 901 AC 495.
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> "Now before discussing the case of *Allen v. Flood*, reported in 1898 AC 1 and what was decided therein, there are two observations of a general character which I wish to make, and one is to repeat what I have very often said before, that every judgment must be read as applicable to the particular facts proved, or assumed to be proved, since the generality of the expressions which may be found there are not intended to be expositions of the whole law, but governed and qualified by the

> particular facts of the case in which such expressions are to be found. The other is that a case is only an authority for what it actually decides. I entirely deny that it can be quoted for a proposition that may seem to follow logically from it. Such a mode of reasoning assumes that the law is necessarily a logical code, whereas every lawyer must acknowledge that the law is not always logical at all.
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> It is not profitable task to extract a sentence here and there from a judgment and to build upon it....."

(v) In **Eknath Shankarrao Mukhawar v. State of Maharashtra** reported in AIR 1977 SC 1177, it was held that judicial discipline as well as decorum suggested only one course when a Bench wanted to differ from the decision of a co-ordinate court and that was to refer to a larger Bench.

(vi) In **Ayyaswami Gounder v. Munuswamy Gounder** reported in (1984) 4 SCC 376, it was held that a single Judge of a High Court not agreeing with earlier decision of single Judge of the same Court, should refer the matter to a Larger Bench and propriety and decorum do not warrant his taking a contrary view.

(vii) In **Sonal Sihimappa v. State of Karnataka and Ors.,** reported in AIR 1987 SC 2359, it was observed, In a precedent-bound judicial system, binding authorities have got to be respected and the procedure for developing the law has to be one of evolution.

(viii) The Hon'ble Chief Justice Pathak, speaking for the Constitution Bench, in **Union of India v. Raghubir Singh** reported in AIR 1989 SC 1933, said:

> "The doctrine of binding precedent has the merit of promoting a certainty and consistency in judicial decisions, and enables an organic development of the law, besides providing assurance to the individual as to the consequence of transactions forming part of his daily affairs. And, therefore, the need for a clear and consistent enunciation of legal principle in the decisions of a court."

(ix) In **Sundaradas Knyalal Bhathija v. The Collector, Thane** reported in AIR 1991 SC 1893, the law is stated thus:

> "17. It would be difficult for us to appreciate the judgment of the High Court. One must remember the pursuit of the law, however glamorous it is, has its own limitation on the Bench. In a multi-Judge Court, the Judges are bound by precedents and procedure. They could use their discretion only when there is no declared principle to be found, no rule and no authority. The judicial decorum and legal propriety demand that where a learned single Judge or a Division Bench does not agree with the decision of a Bench of co-ordinate jurisdiction, the matter shall be referred to a larger Bench. It is subversion of judicial process not to follow this procedure."

(x) In **Philip Jeyasingh v. The Jt. Regr. of Co-op. Societies** reported in 1992 (2) MLJ 309, a Hon'ble Full Bench of the Madras High Court, held as follows:

> "49. The ratio decidendi of a decision may be narrowed or widened by the judges before whom it is cited as a precedent. In the process the ratio decidendi which the judges who decided the case would themselves have chosen may be even different from the one which has been

approved by subsequent judges. This is because Judges, while deciding a case will give their own reasons but may not distinguish their remarks in a right way between what they thought to be the ratio decidendi and what were their obiter dicta, things said in passing having no binding force, though of some persuasive power. It is said that "a judicial decision is the abstraction of the principle from the facts and arguments of the case". A subsequent judge may extend it to a broader principle of wider application or narrow it down for a narrower application."

(xi) A Hon'ble Division Bench of Bombay High Court in **CIT v. Thana Electricity Supply Ltd.**, reported in (1994) 206 ITR 727 (Bombay), held as follows:

"(a) The law declared by the Supreme Court being binding on all courts in India, the decisions of the Supreme Court are binding on all courts, except, however, the Supreme Court itself which is free to review the same and depart from its earlier opinion if the situation so warrants. What is binding is, of course, the ratio of the decision and not every expression found therein.

(b) The decisions of the High Court are binding on the subordinate courts and authorities or Tribunals under its superintendence throughout the territories in relation to which it exercises jurisdiction. It does not extend beyond its territorial jurisdiction.

(c) The position in regard to the binding nature of the decisions of a High Court on different Benches of the same court may be summed up as follows:

(i) A single judge of a High Court is bound by the decision of another single judge or a Division Bench of the same High Court. It would be judicial impropriety to ignore that decision. Judicial comity demands that a binding decision to which his attention had been drawn should neither be ignored nor overlooked. If he does not find himself in agreement with the same, the proper procedure is to refer the binding decision and direct the papers to be placed before the Chief Justice to enable him to constitute a larger Bench to examine the question (see *Food Corporation of India v. Yadav Engineer and Contractor AIR 1982 SC 1302*).

(ii) A Division Bench of a High Court should follow the decision of another Division Bench of equal strength or a Full Bench of the same High Court. If one Division Bench differs from another Division Bench of the same High Court, it should refer the case to a larger Bench.

(iii) Where there are conflicting decisions of courts of co-ordinate jurisdiction, the later decision is to be preferred if reached after full consideration of the earlier decisions.

(d) The decision of one High Court is neither binding precedent for another High Court nor for courts or Tribunals outside its own territorial jurisdiction. It is well settled that the decision of a High Court will have the force of binding precedent only in the State or territories on which the court has jurisdiction. In other States or outside the territorial jurisdiction of that High Court it may, at best, have only persuasive effect."

(xv) In **Union of India v. Dhanwanti Devi,** reported in (1996) 6 SCC 44, the Hon'ble Supreme Court has explained, what constitutes a precedent, and held as follows:-

"Before adverting to and considering whether solatium and interest would be payable under the Act, at

the outset, we will dispose of the objection raised by Shri Vaidyanathan that Union of India v. Hari Krishan Khosla reported in (1993) Suppl. 2 SCC 149, is not a binding precedent nor does it operate as ratio decidendi to be followed as a precedent and is per se per incuriam. It is not everything said by a Judge while giving judgment that constitutes a precedent. T he only thing in a Judge's decision binding a party is the principle upon which the case is decided and for this reason it is important to analyse a decision and isolate from it the ratio decidendi According to the well-settled theory of precedents, every decision contains three basic postulates--(i) findings of material facts, direct and inferential. A inferential finding of facts is the inference which the Judge draws from the direct, or perceptible facts; (ii) statements of the principles of law applicable to the legal problems disclosed by the facts; and (iii) judgment based on the combined effect of the above. A decision is only an authority for what it actually decides. What is of the essence in a decision is its ratio and not every observation found therein nor what logically follows from the various observations made in the judgment. Every judgment must be read as applicable to the particular facts proved, or assumed to be proved, since the generality of the expressions which may be found there is not intended to be exposition of the whole law, but governed and qualified by the particular facts of the case in which such expressions are to be found. It would, therefore, be not profitable to extract a sentence here and there from the judgment and to build upon it because the essence of the decision is its ratio and not every observation found

therein. The enunciation of the reason or principle on which a question before a court has been decided is alone binding as a precedent. The concrete decision alone is binding between the parties to it, but it is the abstract ratio decidendi. ascertained on a consideration of the judgment in relation to the subject-matter of the decision, which alone has the force of law and which, when it is clear what it was, is binding. It is only the principle laid down in the judgment that is binding law under Article 141 of the Constitution. A deliberate judicial decision arrived at after hearing an argument on a question which arises in the case or is put in issue may constitute a precedent, no matter for what reason, and the precedent by long recognition may mature into rule of stare decisis. It is the rule deductible from the application of law to the facts and circumstances of the case which constitutes its ratio decidendi.

Therefore, in order to understand and appreciate the binding force of a decision it is always necessary to see what were the facts in the case in which the decision was given and what was the point which had to be decided. No judgment can be read as if it is a statute. A word or a clause or a sentence in the judgment cannot be regarded as a full exposition of law. Law cannot afford to be static and therefore, Judges are to employ an intelligent technique in the use of precedents."

(xii) In **Government of W.B v. Tarun Roy and others**, reported in (2004) 1 SCC 347, as regards binding precedent of a judgment, the Hon'ble Supreme Court at paragraph 26, observed as follows:-

> “26... If rule of law is to be followed, judicial discipline demands that the court follows its earlier binding precedent. The Calcutta High Court itself has rejected such a plea. The matter is pending in appeal. An order passed to the contrary by another learned Single Judge in ignorance of the earlier binding precedent by itself would not constitute a binding precedent and may be held to have been rendered per incuriam.

(xiii) In **Raman Gopi v. Kunju Raman Uthaman** [2011 (4) KLT 458], a Hon'ble Full Bench of the Kerala High Court held that,- when a Bench of higher number of judges of the concerned court decided a question on the subject, then that is binding on the Bench of co-equal judges or lesser number of judges of that court. Further, it is settled law that, if a decision has been rendered by the same High Court , then any decision rendered by any other High Court is not binding on the other High Court but it has got only persuasive value.

(xvi) In **State of Punjab v. Devans Modern Breweries Ltd.**, reported in (2004) 11 SCC 26, the Hon'ble Supreme Court explained the doctrine of precedents and when a judgment becomes *per incuriam*. Paragraphs 334 to 336, 339 and 343 of the judgment are relevant and they are as follows:-

> “334. The doctrine of precedent is a well-accepted principle. A ruling is generally considered to be binding on lower courts and courts having a smaller bench structure:
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> > "A precedent influences future decisions. Every decision is pronounced on a specific set of past facts and from the decision on those facts a rule has to be extracted and projected into the future. No one can foresee the precise situation that will arise, so the

> rule has to be capable of applying to a range of broadly similar situations against a background of changing conditions. It has therefore to be in general terms and 'malleable'... No word has one proper meaning, nor can anyone seek to fix the meaning of words for others, so the interpretation of the rule remains flexible and open-ended. (See Dias Jurisprudence, 5th Edn., p. 136.)"

335. However, although a decision has neither been reversed nor overruled, it may cease to be "law" owing to changed conditions and changed law. This is reflected by the principle "cessante ratione cessat ipsa lex".

> "... It is not easy to detect when such situations occur, for as long as the traditional theory prevails that judges never make law, but only declare it, two situations need to be carefully distinguished. One is where a case is rejected as being no longer law on the ground that it is now thought never to have represented the law; the other is where a case, which is acknowledged to have been the law at the time, has ceased to have that character owing to altered circumstances. (See Dias Jurisprudence, 5th Edn., pp. 146-47.)"

336. It is the latter situation which is often of relevance. With changes that are bound to occur in an evolving society, the judiciary must also keep abreast of these changes in order that the law is considered to be good law. This is extremely pertinent especially in the current era of globalisation when the entire philosophy of society, on the economic front, is undergoing vast changes.

339. Judicial discipline envisages that a coordinate Bench follow the decision of an earlier coordinate Bench. If

> a coordinate Bench does not agree with the principles of law enunciated by another Bench, the matter may be referred only to a larger Bench. (See *Pradip Chandra Parija v. Pramod Chandra Patnaik*, reported in (2003) 7 SCC 01, SCC at paras 6 and 7; followed in *Union of India v. Hansoli Devi*, reported in 2002 (7) SCC 01, SCC at para 2.) But no decision can be arrived at contrary to or inconsistent with the law laid down by the coordinate Bench. *Kalyani Stores v. State of Orissa and Others*, reported in AIR 1966 SC 1686 and *Krishan Kumar Narula v. State of J. and K.* reported in AIR 1967 SC 1368, both have been rendered by the Constitution Benches. The said decisions, therefore, cannot be thrown out for any purpose whatsoever; more so when both of them if applied collectively lead to a contrary decision proposed by the majority.
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> 343. It is also trite that the binding precedents which are authoritative in nature and are meant to be applied should not be ignored on application of the doctrine of sub silentio or *per incuriam* without assigning specific reasons therefor. I, for one, do not see as to how Kalyani Stores (cited supra) and K.K. Narula (cited supra) read together can be said to have been passed sub silentio or rendered *per incuriam*."

8. In the abovesaid judgment dated 11.05.2016, there is no declaration of law under Article 141 of the Constitution of India, that any unregistered body can file a writ petition. Attention of this Court was also invited to an interim order dated 30.09.2014 passed in W.P.(C)

No.1359 of 2009 (*Narmada Bachao Andolan v. The State of Madhya Pradesh)*. The issue framed by the writ court therein was, whether the petition presented by an unregistered association is a properly instituted petition and can be taken forward. An *Amicus Curiae* seems to have been appointed. The Madhya Pradesh High Court in its interim order dated 30.09.2014 observed thus:

> "Indubitably, any petition/proceedings can be instituted and prosecuted only by a living or a juristic person. Unregistered Association, not being a juristic person nor a living peron, therefore, cannot be permitted to do so. Nevertheless, if the issue raised in the petition is concerning public at large or to espouse the cause of section of persons by unregistered Association, the office bearers of such Association must be named as co-petitioners. The Court can permit those office bearers to espouse such a cause in representative capacity or in public interest, as the case may be. This position is no more res integra."

9. Reliance for passing such an order has been made to the decision of the Hon'ble Supreme Court in ***Akhil Bharatiya Soshit Karamchari Sangh (Railway) represented by its Assistant General Secretary on behalf of the Association v. Union of India*** reported in *(1981) 1 SCC 246,* wherein at paragraph 62, held thus:-

> "62. A technical point is taken in the counter affidavit that the 1st petitioner is an unrecognised association and that,

> therefore, the petitioner to that extent, is not sustainable. It has to be overruled. Whether the petitioners belong to a recognised union or not, the fact remains that a large body of persons with a common grievance exists and they have approached this Court under Article 32. Our current processual jurisprudence is not of individualistic Anglo-Indian mould. It is broad-based and people-oriented, and envisions access to justice through 'class actions', 'public interest litigation', and 'representative proceedings'. Indeed, little Indians in large numbers seeking remedies in courts through collective proceedings, instead of being driven to an expensive plurality of litigations, is an affirmation of participative justice in our democracy. We have no hesitation in holding that the narrow concept of 'cause of action' and 'person aggrieved' and individual litigation is becoming obsolescent in some jurisdictions. It must fairly be stated that the learned Attorney General has taken no objection to a non-recognised association maintaining the writ petitions."

10. Inviting our attention to the decision of the Hon'ble Supreme Court in ***Guruvayur Devaswom Managing Committee & Anr. v. C.K.Rajan & Others*** reported in **(2003) 7 SCC 546**, learned counsel for the petitioner submitted that writ petition under Articles 32 and 226 of the Constitution of India can be filed by any person interested in the welfare of people, who is in an disadvantaged position, and in the case on hand, public interest litigation is filed exposing the cause of public, who

will be forced to sit in stage carriages without maintaining the standards of social distancing. Learned counsel also relied on a portion of the decision in ***S.P.Gupta v. Union of India*** reported in ***(1981) Supp. SCC 87***. In ***Guruvayur Devaswom Managing Committee's case*** *(cited supra)*, the Hon'ble Apex Court has summarised the principles in filing a public interest litigation and they are reproduced:

> (i) The Court in exercise of powers under Article 32 and Article 226 of the Constitution of India can entertain a petition filed by any interested person in the welfare of the people who is in a disadvantaged position and, thus, not in a position to knock the doors of the Court.
>
> The Court is constitutionally bound to protect the fundamental rights of such disadvantaged people so as to direct the State to fulfil its constitutional promises. (See S.P. Gupta v. Union of India, People's Union for Democratic Rights v. Union of India (1982) 2 SCC 494, Bandhua Mukti Morcha v. Union of India and Others (1984) 3 SCC 161 and Janata Dal v. H.S.Chowdhary (1992) 4 SCC 305)
>
> (ii) Issues of public importance, enforcement of fundamental rights of a large number of the public vis-a-vis the constitutional duties and functions of the State, if raised, the Court treats a letter or a telegram as a public interest litigation upon relaxing procedural laws as also the law relating to pleadings. (See Charles Sobraj v. Supdt., Central Jail, Tihar, New Delhi (1978) 4 SCC 104 and Hussainara Khatoon and Others v. Home Secretary, State of Bihar (1980) 1 SCC 81)

(iii) Whenever injustice is meted out to a large number of people, the Court will not hesitate in stepping in. Articles 14 and 21 of the Constitution of India as well as the International Conventions on Human Rights provide for reasonable and fair trial. In Mrs. Maneka Sanjay Gandhi v. Rani Jethmalani (AIR 1979 SCC 468), it was held:"2. Assurance of a fair trial is the first imperative of the dispensation of justice and the central criterion for the court to consider when a motion for transfer is made is not the hypersensitivity or relative convenience of a party or easy availability of legal services or like mini-grievances. Something more substantial, more compelling, more imperilling, from the point of view of public justice and its attendant environment, is necessitous if the court is to exercise its power of transfer. This is the cardinal principle although the circumstances may be myriad and vary from case to case. We have to test the petitioner's grounds on this touchstone bearing in mind the rule that normally the complainant has the right to choose any court having jurisdiction and the accused cannot dictate where the case against him should be tried. Even so, the process of justice should not harass the parties and from that angle the court may weigh the circumstances." (See also Dwarka Prasad Agarwal (D) By Lrs. and Anr. v. B.D. Agarwal and Ors. (2003) 5 SCALE 138)

(iv) The common rule of locus standi is relaxed so as to enable the Court to look into the grievances complained on behalf of the poor, the depraved (sic), the illiterate and the disabled who cannot vindicate the legal wrong or legal injury caused to them for any violation of any constitutional or legal right. [See Fertilizer Corpn. Kamgar Union (Regd.) v. Union of India, AIR

1981 SC 344, S.P. Gupta (supra), People's Union for Democratic Rights (supra), Dr. D.C. Wadhwa (Dr) v. State of Bihar (1987) 1 SCC 378 and BALCO Employees' Union (Regd.) v. Union of India and Others [(2002) 2 SCC 333]

(v) When the Court is prima facie satisfied about variation of any constitutional right of a group of people belonging to the disadvantaged category, it may not allow the State or the Government from raising the question as to the maintainability of the petition.

(vi) Although procedural laws apply to PIL cases but the question as to whether the principles of res judicata or principles analogous thereto would apply depends on the nature of the petition as also facts and circumstances of the case. [See Rural Litigation and Entitlement Kendra v. State of U.P., 1989 Supp (1) SCC 504 and Forward Construction Co. v. Prabhat Mandal (Regd.), Andheri and others (1986) 1 SCC 100]

(vii) The dispute between two warring groups purely in the realm of private law would not be allowed to be agitated as a public interest litigation. (See Ramsharan Autyanuprasi v. Union of India and Others 1989 Supp (1) SCC 251)

(viii) However, in an appropriate case, although the petitioner might have moved a court in his private interest and for redressal of personal grievances, the Court in furtherance of the public interest may treat it necessary to enquire into the state of affairs of the subject of litigation in the interest of justice. (See Shivajirao Nilangekar Patil v. Dr. Mahesh Madhav Gosavi and Others (1987) 1 SCC 227)

(ix) The Court in special situations may appoint a Commission, or other bodies for the purpose of investigating into the allegations

> and finding out facts. It may also direct management of a public institution taken over by such Committee. (See Bandhua Mukti Morchai, Rakesh Chandra Narayan v. State of Bihar (1989) Suppl 1 SCC 644 and A.P. Pollution Control Board v. Prof. M.V. Nayudu (1999) 2 SCC 718). In Sachidanand Panday and Another v. State of West Bengal and others [(1987) 2 SCC 295], this Court held,- 61. It is only when courts are apprised of gross violation of fundamental rights by a group or a class action on when basic human rights are invaded or when there are complaints of such acts as shock the judicial conscience that the courts, especially this Court, should leave aside procedural shackles and hear such petitions and extent its jurisdiction under all available provisions for remedying the hardships and miseries of the need, the underdog and the neglected. I will be second to none in extending help when such is required. But this does mean that the doors of this Court are always open for anyone to walk in. It is necessary to have some self-imposed restraint on public interest litigants."

11. Insofar as *Narmada Bachao Andolan's* case (cited supra) is concerned, perusal of the order placed before us shows that it is only an interim order. It is well settled that interim order is not binding on the same court or on other High Courts. On this aspect, reference can be made to few decisions, which are extracted hereunder:

> (I) In **Empire Industries v. UOI** [AIR 1986 SC 662], the Hon'ble Supreme Court made it clear that interim orders passed by the Courts are not precedent within the meaning of Article 141 and it was held as follows:

"58. Good deal of arguments were canvassed before us for variation or vacation of the interim orders passed in these cases. Different Courts sometimes pass different interim orders as the Courts think fit. It is a matter of common knowledge that the interim orders passed by particular Courts on certain considerations are not precedents for other cases which may be on similar facts. An argument is being built up now-a-days that once an interim order has been passed by this Court on certain factors specially in fiscal matters, in subsequent matters on more or less similar facts, there should not be a different order passed nor should there be any variation with that kind of interim order passed. It is submitted at the Bar that such variance creates discrimination. This is an unfortunate approach. Every Bench hearing a matter on the facts and circumstances of each case should have the right to grant interim orders on such terms as it considers fit and proper and if it had granted interim order at one stage, it should have the right to vary or alter such interim orders. We venture to suggest, however, that a consensus should be developed in the matter of interim orders."

(ii) In **Vishnu Traders v. State of Haryana** reported in (1995) Suppl 1 SCC 461, the Hon'ble Supreme Court observed as under:-

"In the matters of interlocutory orders, principle of binding precedent cannot be said to apply. However, the need for consistency approach and uniformity in the exercise of judicial discretion respecting similar causes and the desirability to eliminate occasions for grievance of

discriminatory treatment requires that all similar matters should receive similar treatment except where factual differences require a different treatment so that there is an assurance of consistency, uniformity, predictability and certainty of judicial approach."

(iii) The Hon'ble Supreme Court in **State of Assam v. Barak Upatyaka D.U. Karmachari Sanstha**, [(2009) 5 SCC 694], held as follows:

> "Interim directions based on tentative reasons, restricted to peculiar facts of the case involving extraordinary situation have no value of precedent and the interim order which does not finally and conclusively decide an issue cannot be a precedent. Apart from above, it is also settled law that the interim order and direction issued in a case binds the parties to that case only and that too, till the final decision of the matter by final judgment. Not only this but what is binding in the interim order is the ultimate direction and order which has been passed by the Court and any finding recorded in the interim order on any issue is not binding on even the parties in the same suit or litigation, what to say it be binding upon stranger to the litigation. Any decision on any issue in interim order is also not binding upon the same Court which has passed it. Because of this reason only the Court can decide and is required to decide the issues finally in final judgment uninfluenced by any prima facie finding given in interim order. Therefore, not only that, the interim order is not precedent for stranger to the litigation in which such order has been passed but

> also is not a precedent for the party to litigation in whose litigation such order has been passed. To that extent, there may be force in the submissions of the learned counsel for the petitioners and the counsels for the students who have been given admission by the petitioners but in the present facts of the case, it is no end of the controversy."

12. We also deem it fit to consider a few decisions of this Court as well as other High Courts, on the aspect of ***maintainability of a writ petition, by an unregistered body***:

Writ by an Unregistered body

(I) In **The North Arcot District Pawn Brokers' Association and Ors. v. The Secretary to Government of India, Ministry of Finance (Department of Revenue and Insurance) and Ors.** reported in (1975)1 MLJ 290, the High Court of Madras opined as follows:

> "13..... It is well established that only a person whose rights are alleged to have been threatened or transgressed or on whom obligations are imposed by any statute can approach this Court invoking the jurisdiction of this Court under Article 226 of the Constitution of India. It is not the case of any these Associations that the Association as such is carrying on business of pawnbroker and therefore the said Association as such has been called upon to discharge any obligation or perform any duty imposed by the Gold Control Act. Therefore, the said Associations cannot invoke the jurisdiction of this Court under Article 226 of the Constitution of India. That is the view taken by Ramaprasada Rao, J., in his judgment dated 3rd April, 1973 in The Polur Town Panchayat

Taxpayers Association v. The Polur Town Panchayat and Ors. W.P. No. 2197 of 1972 dated 3rd April. 1973. in respect of a writ petition filed by the Polur Town Panchayat Tax Payers' Association challenging the levy of tax made by the Panchayat. The learned Judge pointed out;

The petitioner is admittedly a society registered under the Societies Registration Act. Under Section 6 every society no doubt can sue or be sued in its name and the provisions of the Act make the society a legal entity by itself. It has a separate existence in the eye of law and can act in its own name and in the manner prescribed by the Act. It therefore, follows that the petitioner association is an independent legal person.

If such an independent legal person approaches this Court exercising extraordinary jurisdiction and demands an issue of rule in the nature of certiorari, then it should be in a position to establish beyond doubt that its legal right is affected or by the enforcement of the challenged or impugned order, the petitioner would be aggrieved.

In holding that the association as such could not file a writ petition, the learned Judge followed an earlier decision of a Bench of this Court in Authoor Vivasaya Abhivirdhi Sangam and Ors. v. State of Madras by the Secretary to Government, Revenue Department, Fort St. George, Madras-9 W.A. Nos. 49 to 52 and 58 to 60 of 1963. The Bench also was dealing with writ petitions filed by certain registered and unregistered Associations and with reference to those associations, the Bench pointed out:

The appellants in W.A. Nos. 49, 52 and 60 of 1963 are associations which have been registered under the Societies Registration Act. Those in W.A. Nos-51 and 58 and 59 of 1963 are unregistered associations which cannot be regarded as having any independent legal existence. They cannot obviously file or maintain applications under Article 226 of the Constitution. Even

> as regards registered societies it cannot be said that they are persons aggrieved by the order of the Government. It has not been claimed that the associations or any one of them own lands in the ayacut and that the imposition of the additional assessment directly affected them or the particular association as a society. It may be that the members of the association feel aggrieved by the enhancement of the assessment, and in that sense the society might perhaps be interested in doing all things necessary for getting them reliefs. That cannot amount to legal grievance of the society.
>
> Having regard to this legal position established by the decisions of this Court, I hold that these writ petitions filed by the three associations are not maintainable and therefore they are dismissed."
>
> (Emphasis supplied)

(ii) In **Tamil Nadu Panchayat Development Officers Association, Madras v. Secretary to Govt. of Tamil Nadu, Rural Development and Local Administration Dept., Madras and Ors.** reported in AIR 1989 Mad 224, a Hon'ble Full Bench of Madras High Court observed as follows:

> "7. The question that has been referred to a Full Bench by a Division Bench to which one of us (Mohan, J. as he then was) is as follows : --
>
> > "Whether an unregistered association can maintain a writ petition under Article 226 of the Constitution of India."
>
> After going through the papers and on hearing the counsel, we are of the view that in view of Rule 2-B of the Rules framed by virtue of Article 225 of the Constitution, to regulate proceedings under Article 226 of the Constitution, this question pales into insignificance, as any body of persons who wish to jointly agitate a matter or espouse a common cause can

> invoke the benefit of the said rule. Accordingly, we hold that an unregistered Association cannot maintain the writ petition." (Emphasis supplied)

(iii) In **Porathissery Panchayat Tax Payees Association v. Executive Officer and Ors.** reported in 1989 (1) KLJ 664, this Court held as follows:

> "By expanding the principle of locus standi third parties were permitted to approach the court when there are physical restraint such as in habeas corpus cases or when socio economic factors are involved, and when volunteer representatives are allowed to approach the court on behalf of the poor and oppressed (See *Gobindram v. Union of India A.I.R. 1981 S.C. 928 (Bhagalpur blinded prisoners) and in Olga Tellis v. Bombay Municipal Corporation - A.I.R. 1986 S.C. 180 (Bombay Pavement Dwellers)*. There are also cases where no traditional individual rights existed to be vindicated but rights diffused among the public generally are to be vindicated when under the principle of citizen standing, the petition was entertained. These are cases relative to residuary power to Transfer of Judges in S.P. Gupta & others v. President of India & others - 1982 S.C. 149;"
>
> The law relating to locus standi, payment of court fee etc. cannot be ignored by the petitioner in challenging the individual assessment orders. The larger question whether an unincorporated association of persons can file a writ petition also arises. When a number of individuals are affected by an official act, they can ordinarily bring a legal proceeding to challenge that only if all such persons join in the proceedings by name, except where the law confers upon them, a legal personality as a collective body such as an association which is incorporated by statute or formed under a statute."

(iv) In **Jalore District Teachers' Association, Jalore v. State of Rajasthan and Ors.** (RLW 1997(2) Raj 1091), the High Court

of Rajasthan, while dealing with the Jalore District Teachers' Association case, observed as follows:

> "5.....in view of the latest Supreme Court judgment in case of Shri Mahendra Kumar Gupta vs. Union of India (1995 JT (1) SC 11) as well as full bench judgment of Jaipur Bench of this Court in case of R.S.E.B. Accountants Association, Rajasthan, Jaipur through its convenor Tej Singh Arora vs. R.S.E.B. and another (1995 (3) WLC 1). It is not in dispute that the petitioner association is not a registered association. The Apex Court as well as Full Bench of this Court have held that the unregistered association has no fundamental right to approach this Court under Article 226 of the Constitution of India. The Full Bench of this Court in the case of R.S.E.B. Accountants' Association (supra) has laid down certain conditions for entertaining such petitions, which are (a) That the members of the said association should have sufficient strength so as to come in the category of a large sect of public, (b) That the members should be identifiable, (c) That the members must be of the category of poor/illiterate/helpless or disabled, (d) That the individual member must not be capable of filing a writ petition, (e) That the entire body of the members must authorise the association to protect their legal rights, (f) That such an association must have its own Constitution, and (g) That there must be authority to file a writ petition on behalf of all the members.
>
> 8.In view of the above, there is no alternative for this Court but to dismiss this writ petition solely on the ground of maintainability of the writ petition as it was filed by the unregistered association, which is not maintainable. Accordingly, it is dismissed."
>
> (Emphasis supplied)

(v) In **Parents Teachers Association and Ors. v. Chairman, Kendriya Vidyalaya Sangathan and Ors.** (AIR 2001 Raj 35), the High Court of Rajasthan speaking for the Bench, Chief Justice Dr. AR.Lakshmanan, in paras 12 and 13 observed as under:

"(12). The appellant-petitioners have not placed before this Court any document to show that the Parents-Teachers Association is a registered and recognised association. The writ petition has been allegedly filed in public interest and the alleged large interest of the students. It is evident that the so-called Parents-Teachers Association is an unregistered and unrecognised association and, therefore, in our view, has no fundamental right to approach this Court under Article 226 of the Constitution. This point has been concluded by the decision of the Apex Court in the case of Mahendra Kumar Gupta v. Union of India and ors. (JT 1995 (1) SC 11); and by the decision of Full Bench of this Court in the case of R.S.E.B. Accountant's Association of Rajasthan v. The R.S.E.B. (1995(3) WLC 1, RLW 1995(2) Raj. 495) A reply to the preliminary objection raised by the respondents was also made by the appellants. It is stated that the Parents-Teachers Association has been recognised by the KVS and that the Principal is the Vice Chairman of the said Association and hence, the Association is competent to file the writ petition on behalf of the students. In our view, the above reason cannot be considered as a valid reason for maintaining the writ petition. It is not in dispute that the Association is not a registered body and recognised Association. Thus, after examining this point of law in detail and placing reliance on various judgments delivered by the Apex Court from time to time, the Full Bench of this Court in the case of RSEB Accountant's Association (supra) held as under:

> It may also be observed that an unregistered association has no fundamental right to approach this Court under Article 226 of the Constitution and this point is concluded by the decision in the case of Shri Maninder Kumar Gupta v. Union of India, Ministry of Petroleum and Natural Gas (1995)1SCC85 . A decision in the case of Akhil Bharatiya Soshit Karamchari Sangh v. Union of India and Ors. (1981)ILLJ209SC was relied where the non-registered Association was held to apply under Article 32 of the Constitution. We may

observe that there had been number of the instances of public interest litigation where large body of persons is having the grievance against inaction of the State. Even letters have been considered to be a writ petition but all these are the matters where large section of public is affected and the personal interest of any person or a smaller section as in the present case, is not involved. Even in the case of People's Union for Democratic Rights v. Union of India (1982)IILLJ454SC when the question of locus standi was considered, the Hon'ble Supreme Court had taken into consideration the poverty, illiteracy and the ignorance obstructing and impeding accessibility of the judicial process and on that ground it was considered that the writ petition can be filed. In D.S. Nakara and Ors. v. Union of India (1983)ILLJ104SC the old pensioners individually were unable to undertake journey through labyrinths of costly and protracted legal judicial process for allowing to espouse their cause. In case of S.P. Gupta and Ors. v. President of India [1982]2SCR365 poverty, helplessness and disability or social or economic disadvantaged, position was considered a sufficient ground for maintaining the writ petition. There had been other decisions of the Apex Court as well and principles which emerge from all of them are as under:

(a) That the members of the said association should have sufficient strength so as to come in the category of a large sect of public.

(b) That the members should be identifiable.

(c) That the members must be of the category of poor/illiterate/helpless or disabled.

(d) That the individual member must not be capable of filing a writ petition.

(e) That the entire body of the members must authorise the association to protect their legal rights.

(f) That such an association must have its own Constitution, and

(g) That there must be authority to file a writ petition on behalf of all the members.

(13) In the instant case, none of the grounds mentioned above in (a) to (g) have been satisfied by the present appellants to maintain the writ petition. Since the above conditions are not fulfilled such an unregistered association cannot file writ petition in respect of the legal rights of the said association for the alleged breach of fundamental right as the association itself has no fundamental right of its own."

(vi) In **Meghalaya Wine Dealers Association and Ors. v. State of Meghalaya and Ors**. reported in 2010 (2) GLT 673, the High Court of Gauhati held as follows:

"8.....Now, the question before us, whether such an unregistered association can be a legal person to bring an action under Article 226 of the Constitution. The fact that the petitioners' association still remains an unregistered association can be located/spotted from Annexure 1 to the counter affidavit filed by respondent Nos. 1 to 3. Annexure 1 is a communication of the Registrar of Societies, Meghalaya, Shillong dated 22.11.2009 addressed to the Commissioner of Excise, Meghalaya, Shillong wherein it has been stated/indicated that for want of certain documents as indicated therein at Sl. No. 1 to 3, "Shillong Wine Dealers Association" could not be registered as "Meghalaya Wine Dealers Association" as desired by the applicant. This communication goes to show that though an application was made for alteration of the name and for registration, the Registrar of Societies, Meghalaya, Shillong was unable to register the society for want of documents in the altered name, namely, "Meghalaya Wine Dealers Association", therefore, apparently, "Meghalaya Wine Dealers Association" remained unregistered till date and it cannot file a writ petition under Article 226 of the Constitution challenging the vires of the amended rules and the new rule of the amended Rules.

9.....Now the question, before us is whether the petitioner, "Meghalaya Wine Dealers Association" can assumed the character of either a juristic person or legal person without registration and can bring the writ petition challenging the vires of the amended and new rules. "Meghalaya Wine Dealers Association" is an association of the licensees who obtained such licences for running liquor business in the State of Meghalaya. Each individual licence holder if is aggrieved by any action of the Government or the respondent authorities can bring an action under Article 226 of the Constitution but individual licence holder cannot file writ petition for each and every licence holder unless they form an association and such association is registered. When the association is registered under the relevant Act such association assumes the character of a juristic person or a legal person which may sue or may be sued. This "Meghalaya Wine Dealers Association" admittedly being not a registered society under the Meghalaya Societies Registration Act, it cannot file writ petition against the respondents seeking relief as indicated in the writ petition and in that situation the writ petition so filed by such unregistered association would be not maintainable.

11. The issue whether unincorporated association even if recognized by the Government according to the Central Services (Recognition of Service Association) Rules, 1959 can bring an action or in other words file a writ petition under Article 226 of the Constitution is answered in the case between ***Director General Ordnance Factories Employees' Association v. Union of India and Director General Ordnance Factories AIR 1969 Cal. 149***. Learned Judge of the Calcutta High Court while rendering the judgment in the case (supra) in paragraph 6 to 9 answered the issue as under:

> "6. Before entering into the merits of the petition, it is necessary to dispose of the preliminary objection taken on behalf of the respondent 3, namely, that the Petitioner, being an unincorporated association, cannot maintain an application under Article 226 and that the

> grievance, if any, of its members should be agitated in appropriate proceedings brought by them in their individual capacity."

> 12. In the case of a body incorporated by law, the corporate body acquires a legal personality of itself and is as such entitled to maintain legal proceedings. But an unincorporated association has no legal personality and it is nothing but an aggregation of its members who can only bring legal proceedings in their individual capacity. Even when all of them are affected by an official act, they can challenge that only if all the members join in the proceedings by name, the association, in such a case, cannot maintain an application under Article 226 or other legal proceeding in its own name, as has been established by a number of decisions. (Indian Sugar Mills Assocn. v. Secy. to Government U.P. Labour Dept. AIR 1951 ALL 1 (FB); General Secy. Eastern Zone Insurance Employees' Assocn. v. Zonal Manager, Eastern Zone Life Insurance Corporation AIR 1962 Cal 45) and Registration Act cannot confer this right. (Bangalore District Hotel Owners' Association v. District Magistrate, Bangalore AIR 1951 Mys. 14)."

(vii) In **Joint Action Committee of PWD, Manipur v. State of Manipur and Ors**. 2008 (Supp.) GLT 131, at paragraphs 8 and 9, it was held as under:

> "8. This Court has given anxious consideration to the submissions of the learned Counsel of the rival parties as well as the records available and the Law Reports referred to by the learned Counsel. It is an admitted position that the present writ petitioner is not a registered Association as required to be a Juristic person to file a writ petition before the court of law. Tough in the writ petition, the petitioner Contended that it is the representative of 3 registered trade Unions/Associations but in support of its contention, no document is annexed to the writ petition and also there is no such averment in the petition to the effect that the disengaged M.R. Workers are the members of it, rather, it appears from the records that 7 persons, who were re-engaged by the

respondents, they themselves filed separate writ petitions Challenging their respective order of disengagement and this Court in those writ petitions passed order in favour of them. As the respondents initially did not comply with the order of this Court, those M.R. workers filed Contempt petitions before this Court and while the contempt petitions, being Contempt No. 127 of 1998, 234 of 1999 and 233 of 2002 were pending, the respondents re-engaged them which will be evident from Annexure-A/12 to the rejoinder affidavit filed by the petitioner. Unless the fundamental and/or legal and any other right of a citizen and/or juristic person has been affected by any action of the authority and/or any body and if the petitioner filed any writ petition challenging the wrong action of any authority in which it is in no way connected in such wrong action, this Court should not exercise its discretionary power under Article 226 of the Constitution of India, as the present case is one of such cases. The aforesaid observation is based on the decision of this Court as well as the Apex Court.

9. This Court in the case of All Manipur DIC Supervisors (supra) specifically held that when an Association is not a registered one under the Societies Registration Act, 1860 or under any other then the writ petition filed by such Association is not maintainable. Same view was expressed by this Court in its Judgment and order dated 22.6.2005 in WP(C) No. 902 of 2002 and the judgment and order dated 28.2.2005 passed in WP(C) No. 978 of 2004. Even in the case of Land Used Board (supra) this Court also held that an unregistered Association is not a Juristic person and that apart no legal or any other right of the said Association was violated and, hence, the said Association was violated and, hence, the said Association was not aggrieved person. This Court further held in the aforesaid decisions that since the grievance of the members of the said Association were never aggrieved, they ought not to have filed writ petition as any legal right, if any, were never infringed and the instant writ petition ought not to be maintained."

(Emphasis supplied)

(viii) In **Sand Carrier's Owner's Union and Ors. v. Board of Trustees for the Port of Calcutta and Ors**. (AIR 1990 Cal 176), the High Court of Calcutta observed as follows:

> "14. Unincorporated associations are not legal persons and as such, writ petitions are not maintainable. An association could be formed to protect the interest of consumers, tenants or other groups with the common interest but such group cannot move writ application. No aspect of the representative law has been changing more rapidly than the law governing standing and the standing barrier has been substantially lowered in recent years, but on the basis of the law relating to standing as in England or in America as also in India, it can be held without any difficulty that the writ petition at the instance of an association is not maintainable where the association itself is not affected by any order. The members of such association may be affected by common order and may have common grievance, but for the purpose of enforcing the rights of the members, writ petition at the instance of such association is not maintainable. The door of the writ court could be made open at the instance of persons or authorities under the aforesaid four categories and to hold that every Tom, Dick and Harry can move the writ application would render the standing requirement meaningless and would introduce a procedure which is not judicially recognised." (Emphasis supplied)

13. Said judgments have laid down the principles of law in public interest writ petitions. In the light of the decisions of the Courts in India, on the law of precedents, with due respect, ***Guruvayur Devaswom Managing Committee's case*** *(cited supra)* cannot be said to have laid down a law on the issue of maintainability of a Public Interest Litigation or even a writ petition by an unregistered body. Even in S***waraj Abhiyan's***

case (cited supra), there was no specific issue as to whether an unregistered body can maintain a writ petition or not. Reliance on S***waraj Abhiyan's case*** (cited supra) would not support the petitioner. 'Person' refers to human being. 'Jurstic person' refers to a body recognized by the law as being entitled to rights and duties in the same way as a natural or human person. In the case on hand, Prathyasa Mental Health Counselling forum, through its Programme Co-ordinator, an unregistered body does not fall within the definition of juristic person.

14. On an analysis of law relating to precedents, binding effect of interim orders and maintainability of filing a writ petition by an unregistered body, and the facts and circumstances of this case, we are of the view that instant writ petition filed as Public Interest Litigation by an unregistered body viz., Prathyasa Mental Health Counselling forum, through its Programme Co-ordinator, is not maintainable.

Writ petition fails and accordingly, dismissed. No costs.

Sd/-
S.MANIKUMAR
CHIEF JUSTICE

Sd/-
SHAJI P.CHALY
JUDGE

Krj

APPENDIX

PETITIONER'S EXHIBITS:

P1	PHOTOSTAT COPY OF THE IMPUGNED PROVISION OF THE NOTIFICATION PUBLISHED IN KERALA GAZETTE EXTRA - ORDINARY DATED 2.6.2020.
P2	PHOTOSTAT COPY OF REPORT OF INAUGURATION OF THE PETITIONER ORGANIZATION ALONG WITH TRUE ENGLISH TRANSLATION.
P3	PHOTOSTAT COPY OF THE PHOTOGRAPH OF THE U.S.A. PROGRAM OF PETITIONER ORGANIZATION ALONG WITH TRUE ENGLISH TRANSLATION.
P4	PHOTOSTAT COPY OF NEWS REPORT BY TIMESNOWNEWS.COM DATED 02.06.2020.
P5	PHOTOSTAT COPY OF NOTIFICATION DATED 19.05.2020 ISSUED VIDE S.R.O.NO.333/2020 DATED 19.05.2020 BY GOVERNMENT OF KERALA.
P6	PHOTOSTAT COPY OF ORDER OF TRANSPORT (B) DEPARTMENT, STATE OF KERALA DATED 18.05.2020 ALONG WITH TRUE ENGLISH TRANSLATION.
P7	PHOTOSTAT COPY OF NOTIFICATION BEARING NO.40-3/2020-DM-I(A) DATED 30.05.2020 ISSUED BY UNION OF INDIA KERALA.
P8	PHOTOSTAT COPY OF INTERVIEW OF PROF. K. VIJAY RAGHAVAN ALONG WITH TRUE ENGLISH TRANSLATION.
P9	PHOTOSTAT COPY OF MANORAMA ONLINE OF 7.6.2020 CONTAINING THE REPORT ABOUT THE CAUTION OF STATE HEALTH DEPARTMENT THAT THE NUMBER OF COVID CASES AND DEATHS WOULD BE INCREASED IN THE STATE IN THREE MONTHS AND ABOUT SOCIAL DISTANCING ALONG WITH THE USAGE OF MASKS AND SANITIZER ARE VERY CRUCIAL TO CONTROL THE EPIDEMIC ALONG WITH TRUE ENGLISH TRANSLATION.
P10	PHOTOSTAT COPY OF ORDER DATED 25.05.2020 IN SLP (CIVIL) DIARY NO.11629/2020 BY THE HON'BLE SUPREME COURT.
P11	PHOTOSTAT COPY OF KERALA STATE ROAD TRANSPORT CORPORATION VIDE MEMORANDUM TR 1/000201/2020 DATED 03.06.2020 ALONG WITH TRUE ENGLISH TRANSLATION.

RESPONDENTS' EXHIBITS:- 'NIL'

//TRUE COPY//

P.A. TO C.J.