

**BEFORE THE HON'BLE HIGH COURT OF KERALAAT ERNAKULAM
(Under Special Original Jurisdiction)**

Writ Petition (Civil) No 14141 Of 2020

JAYAKUMAR T.V. AND ANOTHER	WRIT PETITIONERS
And	
STATE OF KERALA AND OTHERS	RESPONDENTS

SYNOPSIS

Whether the State Government can issue modified guidelines, by diluting the Covid-19 Regulations issued by the Government of India, which are issued invoking the powers under the Disaster Management Act, 2005, is the mooted legal question in this Writ Petition.

As per the Government of India guidelines; issued under Section 6 and 10 of the Disaster Management Act, 2005, Ext P4 on 29-06-2020, which was adopted by the State Government, as per Ext P7 dated 30-06-2020, no social, religious or other gatherings are permitted in the country, during the regulation period, as regulatory measures to contain Covid 19. However, the State Government is taking an unreasonable stand that as per the Government of Kerala order dated 5-6-2020 and 24-06-2020, a congregation up to 100 persons can be permitted in religious institution.

Novel coronavirus COVID-19, a human killing virus is spreading everywhere in the world. The World Health Organization, viewed that it is now asymptomatic and airborne and the infected patient cannot be identified, without having his swab test, which will take time to give final result. No vaccination has been identified to curb the infection. The Government of India has declared a complete lockdown of the country for more than 40 days and on reopening, limited regulations are being invoked to curb the super spread and community spreading of the virus. One of the important regulatory measures, as per the Government guideline, is complete prohibition on social/ political/ sports/entertainment/academic/cultural/religious function and other large congregations, until further directives, as in Ext P4.

However, at present, in Kerala, social and religious gatherings are being permitted without following regulatory guidelines of the Government of India, in the name of religious practices, large human crowd are being permitted throughout the State, within the religious institutions. The health experts viewed that this is a serious lapse and if such incidents are continued, the community spreading cannot be contained and the outcome of such negligence will be grave and irreparable.

Under Article 25 and 26 of the Constitution, religious freedom and right to manage religious affairs are identified as fundamental rights, but the same are subjected to

reasonable restrictions, that is restrictions on the ground of public order, morality and health. Ext P4 is a valid piece of legislation mandating reasonable restrictions and all religious or social groups are bound to follow it. However, exceeding the jurisdiction and in total violation to Section 72 of the Disaster Management Act, 2005 as well as in contrary to the constitutional guidelines under Article 254, the Government of Kerala is enforcing a different stipulation, in the matter of religious congregation, which is highly illegal and unconstitutional.

Points to be Urged and argued

Whether the Government of Kerala can introduce; a different yardstick in the matters of prohibiting of public gathering for social or religious purpose, in contrary to the guidelines issued under Section 6 and 10 of the Disaster Management Act, 2005 by the Government of India. Whether such modified guidelines issued by the State Government are repugnant to central regulation and invalid under Article 254 or unenforceable under Section 72 of the Disaster Management Act, 2005.

Chronological Order of Events

24-03-2020: Government of India announced the complete lockdown of the country in phase one.

26-03-2020: Governor of Kerala promulgated Kerala Epidemic Diseases Ordinance, 2020.

29-03-2020: Government of Kerala notified Covid 19 regulations

30-05-2020: Guidelines for Phased reopening- Unlock-1

04-06-2020: Government of India SOP for reopening of religious institutions

05-06-2020: Government of Kerala Covid 19 Guidelines for religious institution.

24-06-2020: Clarification in SOP applicable for religious institution

29-06-2020: Government of India announced reopening guidelines- Unlock 2.

30-06-2020: Government of Kerala issued order adopting Unlock 2 guidelines

02-07-2020: Government of Kerala notified Covid 19 additional regulations

Acts and Rules Applicable

Disaster Management Act, 2005

Epidemic Diseases Act, 1897

Kerala Epidemic Diseases Ordinance, 2020

Constitution of India

Dated this on 24th day of July, 2020

Dr. K.P. Pradeep, K/1240/1999, Counsel for the Petitioners

**BEFORE THE HON'BLE HIGH COURT OF KERALA
AT ERNAKULAM
(Under Special Original Jurisdiction)**

Writ Petition (Civil) No 14141 of 2020

Between

1. JAYAKUMAR T.V. ADVOCATE, AGED 46 YEARS S/O ESWARAN MASTER KUNNARU, RAMANTHALI P.O., KANNUR- 670308	WRIT PETITIONERS
2. MANSOOR B.H. ADVOCATE, AGED 40 YEARS S/O LATE P.O. HASSAN KOYA, FLAT D2 GALAXY ESTATE, PEEDIYEKAL ROAD ERNAKULAM NORTH- KOCHI 682018	

And

1. STATE OF KERALA REPRESENTED BY ITS CHIEF SECRETARY GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM- 695001	RESPONDENTS
2. ADDITIONAL CHIEF SECRETARY TO GOVERNMENT, DEPARTMENT OF HOME, GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM -695001	
3. KERALA STATE DISASTER MANAGEMENT AUTHORITY- KSDMA OBSERVATORY HILLS, VIKAS BHAVAN P.O, THIRUVANANTHAPURAM – 695033 REPRESENTED BY ITS MEMBER SECRETARY	
4. STATE POLICE CHIEF, KERALA POLICE POLICE HEAD QUARTERS VAZHUTHAKKAD, THIRUVANANTHAPURAM 695010	
5. UNION OF INDIA, REPRESENTED BY ITS SECRETARY MINISTRY OF HOME AFFAIRS, NORTH BLOCK, NEW DELHI- 111001	

**MEMORANDUM OF WRIT PETITION
FILED UNDER ARTICLE 226 OF THE CONSTITUTION OF INDIA**

- I. The Address of service of all notices and process on the petitioners are that of their counsel Dr.Pradeep K.P; Poduval Legal, Advocates, High Court, Kochi-31.*
- II. The Address for services of all notices and process on the official respondents are the address as shown above.*

III. STATEMENT OF FACTS

The petitioner begs to submit as follows.

1. The petitioners are Lawyers practicing at the High Court of Kerala and are actively involving in the forefront of Covid -19 mitigation activities, by providing necessary assistance and guidance to the needy people. They have serious concern on the present day's situation, wherein large numbers covid positive cases are being reported on daily basis, in the country, more particularly within the State of Kerala.
2. Considering the spread of Novel Corona (Covid-19) virus as a threat to human life, the public at large are required to follow the health advisories of the Government of India and the respective State governments, issued from time to time. The Government mechanisms are more vigilant about the present situations and regulatory guidelines are being issued appropriately and timely, but its effective implementation is an area which requires frequent analysis and concern, and critical evaluations.
3. This Hon'ble Court, considering the larger importance of the issue, the increasing cases of positive Covid 19 and its contact spreading, has intervened appropriately and apprised the situations, on various occasions. During the declaration of nationwide lockdown, from March, 24, 2020; this Hon'ble Court has intervened, when complaints were reported while enforcing strict implementations of the Government Advisories and regulations. Violations of legal

rights as well as law and order issues were exposed to numerous litigations before this Hon'ble Court and considering the larger public importance; even a suo-motu proceeding was initiated as per the reports on right infringement, from various corners. Writ Petition © No 9401 of 2020 has been registered as a suo-motu proceeding and this Hon'ble Court was pleased to issue general directions from time to time, as and when such concerns are brought before this Hon'ble Court and the same is pending before this Hon'ble Court.

4. On another occasion, this Hon'ble Court has intervened and directed the State Government to take stringent actions to prevent the conduct of public protests, which are being conducted in violation of the Covid Regulations. WP © No 14141 of 2020 and connected cases are filed in Public Interest by various petitioners, which are pending consideration of this Hon'ble Court. As per the orders issued on 14-07-2020 and 15-07-2020, in the said Writ Petitions, this Hon'ble Court was pleased to direct the 1st and 4th respondents to strictly abide by the Government of India directives in this regard.
5. Presently in Kerala, a State wherein a total population of 3.48 crores is reported, as per the government information, and having a density of 859/SqKM, the total reported cases of Covid 19 has reached to 16995 out of which 9371 cases are active cases, as on 25-07-2020 and 7562 cases are cured cases. 54 casualties were reported due to the infection of Covid 19, as on 25th July, 2020 and this was 27 on 10th July, 2020. It can be seen that 42.9 lakhs people in the State are in a risky group of above 60 years of age. This is 12.6% of the total population in the State and high as compared to

other States in India. There are 850 palliative care centres located in the State, which requires complete medical attention, as the palliative patients are the high risk group. Due to high proportion of elderly and high prevalence of people with cardiovascular disease in Kerala if Covid 19 spreads in Kerala, the deaths will be very high in Kerala, as compared to other Indian States.

6. It is the alarming situation that 1, 56, 766 persons are under compulsory quarantine and medical surveillance and average daily reporting of Covid positive cases are more than 1000, at present and on 23-07-2020 it reached to 1078 positive cases. The World Health Organization certifies that COVID death rate is 3 to 8 times higher among the people with cardiovascular disease, 6 times higher for people with diabetics, and 5 times higher for people with high blood pressure. Medical study reveals that one in 3 adults is with hypertension and one in 5 adults are having diabetics, in Kerala, which requires an advanced level health concern, during Covid 19 spread.
7. Even at the beginning of the Covid 19 spreading, considering the gravity of the situation, the Governor of Kerala has promulgated Kerala Epidemic Diseases Ordinance 2020 to unify and consolidate the laws relating to the regulation and prevention of epidemic diseases and for matters connected therewith or incidental thereto. True copy of the Notification No 6640/Leg.H1/2020/Law dated 27-3-2020 is produced herewith and may be marked as **Ext P1**.
8. The State Government has issued GO (P) NO 16/2020/H & FWD dated 29-03-2020 vide SRO No 250/2020 initiating measures that may be necessary for regulation and prevention of epidemic

diseases as decided by the Government, namely Kerala Epidemic Disease Coronavirus Disease (Covid-19) Regulations 2020.

9. It is most respectfully submitted that as per SRO No 453/2020 dated 2-7-2020, the Government of Kerala has issued Kerala Epidemic Disease Coronavirus Disease (Covid-19) Additional Regulations 2020, further prescribing the guidelines and regulation for prevention of epidemic diseases. True copy of the SRO No 453/2020 dated 2-7-2020 is produced herewith and may be marked as **Ext P2**.

10. It is to be noted that though public health is a subject enumerated in Entry 6 of List II, State List in Seventh Schedule of the Constitution of India, once an epidemic or pandemic is notified as disaster under the Disaster Management Act, 2005, which is Central Legislation, State Government cannot formulate separate guidelines in contrary to the regulations framed under Disaster Management Act, 2005. Hence Ext P1 and P2, even if it is valid piece of legislations, are subject to the law and regulations enacted or framed by the Government of India under Disaster Management Act, 2005 or such other law relating to epidemic or pandemic. Entry 29 of the List II, Concurrent list which states "*Prevention of the extension from one State to another of infectious or contagious diseases or pests affecting men, animals or plants*" is also relevant, in the matter of interpretation, in this regard. Entry 97 of the Union List which gives the legislative power to the Union, in the subject matters, which are not enumerated in List II and III, is also very much relevant here.

11. It is most respectfully submitted that on 30-05-2020, the Government of India; invoking the powers under Section 6(2) read with Section 10(2) of the Disaster Management Act, 2005 has issued

Order issuing guidelines on prohibited activities and restricted activities in re-opened area as well as containment zone, after the complete lock down. True copy of the Order No 40-2/2020-DM-1(A) dated 30-05-2020 issued by the Government of India is produced herewith and may be marked as **Ext P3.**

12. On modification of Ext P3 order, the Government of India has issued another order on 29-06-2020, under the Disaster Management Act, 2005. True copy of the Notification No 40-3/2020-DM-1(A) dated 29-06-2020 is produced herewith and may be marked as **Ext P4.**

13. However, claiming that in terms of the Standard Operating Procedure, issued by the Government of India, the State Government has issued Government Order dated 05-06-2020, granting relaxation in public places like hotels/ restaurants, shopping malls, including the religious and other places of worship, with effect from 08-06-2020. True copy of the GO (Rt.) No 1762/2020/GAD dated 05-06-2020 issued by the Government of Kerala is produced herewith and may be marked as **Ext P5.**

14. After issuing Ext P5, the Government of Kerala has issued a clarification order on 24-06-2020 clarifying Ext P5 order. True copy of the GO (Rt.) No 2066/2020/GAD dated 24-06-2020 is produced herewith and may be marked as **Ext P5 (a).**

15. It is stated that Ext P5 and P5 (a) are issued in terms of the Standard Operating Procedure issued by the Ministry of health and Family Welfare Department, on 04-06-2020. True copy of the Standard Operating Procedure dated 04-06-2020 issued by the Government of India with respect to religious places is produced herewith and may be marked as **Ext P6.**

16. It is clear and without any ambiguity it can be said that there was no permission granted by the Government of India with respect to any kind of public assembly, but only the religious worship is permitted in the religious and worship places. But in contradiction with Ext P3 and P6, which are issued by the Government of India, Ext P5 has been issued in which it is stated in Annexure that *"Number of person's at a time may be decided on the basis of the area of religious/worship place. 15 persons per 100 sq ft. can be taken as a parameter. In any case, number of persons shall not exceed 100 at a time."*

17. However, in Ext P4 order, in Annexure, the Government of India has made clear that public assembly of 20 persons and 50 persons are allowed in the case of funeral function and marriage function only. So, Ext P4 has been superseded all other directives, either issued by the Government of India, in earlier occasions or by the State Government of India, prior to Ext P4. In fact Ext P5 and P5(a) are not in terms of Ext P6 SOP of the Government of India and the Government of Kerala has exceeded its jurisdiction, while issuing Ext P5 order, in which public assembly up to 100 persons has been allowed in the religious and other worship places.

18. Meanwhile, on 30-06-2020, the Government of Kerala has issued an order implementing the General Guidelines of the Government of India, for phase 2 and extension of lock down in containment zones that is the Government of India order in Ext P4. True copy of the GO (MS) No 127/2020/GDA dated 30-06-2020 is produced herewith and may be marked as **Ext P7**. The Government of India has also issued as many directives and ordered urgent actions to ensure that the Covid 19 preventive mechanisms are co-ordinated throughout

the country, effectively, which includes a complete national lockdown for 40 days.

19. Thus, in the peculiar circumstances, there are enough statutory and other guidelines and other advisories to regulate the public actions, during the pandemic days. The Health Professionals and workers along with the Police and other government functionaries are working hard to contain the pandemic situation, but due to the indiscipline act of the public and irresponsible attitude from certain corners of the community, the situations are more aggravated.

20. The activities of social or political or religious functions and other large congregations are not permitted in the country, as per Ext P4. The District Magistrates of the respective area are authorised to take strict actions.

21. However, now in Ext P5, in contrary to the directions in Ext P4, which is adopted in Ext P7, by the Government of Kerala, now it is learnt that the religious activities, propagations, rites and rituals are being permitted with a maximum congregation of 100 persons, which is nothing but in violation of the Covid 19 regulations, which in force.

22. Right to assembly is a fundamental right under Article 19(1), as it forms part of freedom of speech and expression as well as right to form association. However, Article 19(2) authorises the State to impose reasonable restrictions on the ground of public order etc. So the larger public interest is one of the justifiable grounds to regulate all kinds of rights and freedoms, either that are constitutional right or mere statutory rights.

23. Rights under Article 19(1) reads as follows.

19. Protection of certain rights regarding freedom of speech etc.-
(1) All citizens shall have the right

(a) to freedom of speech and expression;

(b) to assemble peaceably and without arms;

(c) to form associations or unions;

(d) to move freely throughout the territory of India;

(e) to reside and settle in any part of the territory of India;

and

(f) omitted

(g) to practise any profession, or to carry on any occupation, trade or business

24. The reasonable restrictions in Article 19 with respect to the rights contained in 19(1) (a) to (c), reads as follows in Article 19(2)

(2) Nothing in sub clause (a) of clause (1) shall affect the operation of any existing law, or prevent the State from making any law, in so far as such law imposes reasonable restrictions on the exercise of the right conferred by the said sub clause in the interests of the sovereignty and integrity of India, the security of the State, friendly relations with foreign States, public order, decency or morality or in relation to contempt of court, defamation or incitement to an offence

(3) Nothing in sub clause (b) of the said clause shall affect the operation of any existing law in so far as it imposes, or prevent the State from making any law imposing, in the interests of the sovereignty and integrity of India or public order, reasonable restrictions on the exercise of the right conferred by the said sub clause

(4) Nothing in sub clause (c) of the said clause shall affect the operation of any existing law in so far as it imposes, or prevent the State from making any law imposing, in the interests of the

sovereignty and integrity of India or public order or morality, reasonable restrictions on the exercise of the right conferred by the said sub clause

25. Same way religious freedom is also permitted under Article 25 of the Constitution of India, that too with reasonable restrictions which can be imposed by the State, invoking its powers under the law and procedure established by law. Article 25 reads as follows

25. Freedom of conscience and free profession, practice and propagation of religion

(1) Subject to public order, morality and health and to the other provisions of this Part, all persons are equally entitled to freedom of conscience and the right freely to profess, practise and propagate religion

(2) Nothing in this article shall affect the operation of any existing law or prevent the State from making any law

(a) regulating or restricting any economic, financial, political or other secular activity which may be associated with religious practice;

(b) providing for social welfare and reform or the throwing open of Hindu religious institutions of a public character to all classes and sections of Hindus Explanation I The wearing and carrying of kirpans shall be deemed to be included in the profession of the Sikh religion Explanation II In sub clause (b) of clause reference to Hindus shall be construed as including a reference to persons professing the Sikh, Jaina or Buddhist religion, and the reference to Hindu religious institutions shall be construed accordingly

26. In Article 26, also, which permits to manage the religious affairs, as part of the religious freedom, it is stated that the same is subject to reasonable restrictions under public order, morality and health. Article 26 is reads as follows.

26. Freedom to manage religious affairs: Subject to public order, morality and health, every religious denomination or any section thereof shall have the right

(a) to establish and maintain institutions for religious and charitable purposes;

(b) to manage its own affairs in matters of religion;

(c) to own and acquire movable and immovable property; and

(d) to administer such property in accordance with law

27. In view of Ext P5, now the State Government is going to permit, larger public worship and gatherings in religious places and worship places, more particularly, with respect to the Muslim Community, stating that that is an essential practice of that religion. However, during the Ramzan month, the religious head in the State has agreed to comply with the lock down guidelines and they have cancelled all the mass prayers and public assemblies, sharing the health concern, during the spreading of Covid. True copy of the news reported in On-Manorama dated 22-04-2020 is produced herewith and may be marked as **Ext P8**.

28. The followers of Muslim religion in the world celebrate; Bakrid on 31st July and August 1, this year; and usually in every year large scale public gatherings are being conducted for mass prayers, on that day. This year, the Government of Kerala, in terms of Ext P5 and P5(a) orders issued by them, has conveyed the permission to the religious leaders that mass prayers up to 100 persons will be permitted in Mosque and the participation in excess of 100 persons will be illegal. Similarly, it is also stated that mass gatherings in public places other than the Mosques are not be allowed. The

intention of the Government is clear, that regulatory measures are suggested for implementation in certain extent, but as per Ext P4, no such gathering can be permitted even up to 100 persons and allowing such gathering is highly unreasonable and arbitrary.

29. The lazy and irresponsible attitude of the Government of Kerala, to prevent large gathering in the State to contain the spreading Covid 19, is highly objectionable and illegal. The Government of Kerala cannot decide separate norms, deviating from the guidelines in Ext P4 and such other directives issued by the Government of India, by invoking the provisions of Disaster Management Act, 2005.

30. Now World Health Organization has identified Corona Virus as asymptomatic and also airborne. So permitting large scale gatherings in the name of religious worship and social gathering is a serious concern to be addressed, in the larger public interest, and also on the health grounds. A Scientific Brief has been published by the World Health Organization on 09-07-2020 certifying the fact that the Covid 19 virus is asymptomatic and airborne.

31. How the risk level in Kerala is dangerously high can be analysed with the help of international study on impact of COVID 19 to cardiovascular patients. Expert says that coronavirus disease 2019 may disproportionately affect people with cardiovascular disease. The high percentage of patients with cardiovascular diseases in Kerala is also need to be taken as a serious concern, by the Government.

32. India has granted religious freedom as the fundamental right of the Citizen under Article 25 and 26. It can be seen that the propagating religious faith and practice the rites and rituals are not absolute or unfettered rights of any citizen or religious group in the country

and the State or its instrumentalities are empowered to restrict such activities in public interest. Hence Ext P4 directives, governs the field as a valid law.

33. Section 2(d) of the Disaster Management Act defines disaster, as follows

“disaster” means a catastrophe, mishap, calamity or grave occurrence in any area, arising from natural or manmade causes, or by accident or negligence which results in substantial loss of life or human suffering or damage to, and destruction of, property, or damage to, or degradation of, environment, and is of such a nature or magnitude as to be beyond the coping capacity of the community of the affected area;

34. Covid- 19 spreading in the nation is a declared disaster under the Disaster Management Act, 2005. Disaster Management is defined under Section 2(e), which is an exhaustive definition, covering all types of mitigation actions to prevent a disaster. Different levels of authorities are constituted at National, State and District levels to co-ordinate the mitigation and management activities. The Central Government as well as the State Government enjoys wider powers to initiate and manage mitigation and prevention activities, invoking the powers under Chapter V of the Act, 2005.

35. Government of India has the power to issue necessary directions to different bodies, officers and statutory bodies, to comply their directions, from time to time, while enforcing the disaster mitigations directives. Section 62 reads as follows

62. Power to issue direction by Central Government.—
Notwithstanding anything contained in any other law for the time being in force, it shall be lawful for the Central Government to issue direction in writing to the Ministries or Departments of the Government of India, or the National Executive Committee or the State Government, State Authority, State Executive Committee, statutory bodies or any of its officers or employees, as the case may be, to facilitate or assist in the disaster management and such Ministry or Department or Government or Authority, Executive

Committee, statutory body, officer or employee shall be bound to comply with such direction.

36. Disaster management Act, 2005 has overriding effect over all other statutory schemes in India, in view of Section 72 of the Act, which reads as follows.

72. Act to have overriding effect.—*The provisions of this Act, shall have effect, notwithstanding anything inconsistent therewith contained in any other law for the time being in force or in any instrument having effect by virtue of any law other than this Act.*

37. Thus the statutory scheme is clear, unambiguous and undisputable that during the days of disaster like, pandemic or epidemic, the Government of India has larger powers, subject to the constitutional limitations, and can issue necessary directions to the persons, collective groups of such persons, which includes political parties and other associated organizations of political parties. However, the State Government has diluted such a mandatory guidelines in Ext P5 and P5(a), and has failed to contain the larger religious and social gatherings, in the name of worship and occurrence of rites and rituals, whatever be the reasons and genuineness of such gatherings

38. Ext P5 and P5 (a) cannot be sustained since it suffers constitutional limitation under Article 254 of Constitution of India also. Article 254 provides that

254. Inconsistency between laws made by Parliament and laws made by the Legislatures of States: *(1) If any provision of a law made by the Legislature of a State is repugnant to any provision of a law made by Parliament which Parliament is competent to enact, or to any provision of an existing law with respect to one of the matters enumerated in the Concurrent List, then, subject to the provisions of clause (2), the law made by Parliament, whether passed before or after the law made by the Legislature of such State, or, as the case may be, the existing law,*

shall prevail and the law made by the Legislature of the State shall, to the extent of the repugnancy, be void

(2) Where a law made by the Legislature of a State with respect to one of the matters enumerated in the concurrent List contains any provision repugnant to the provisions of an earlier law made by Parliament or an existing law with respect to that matter, then, the law so made by the Legislature of such State shall, if it has been reserved for the consideration of the President and has received his assent, prevail in that State:

Provided that nothing in this clause shall prevent Parliament from enacting at any time any law with respect to the same matter including a law adding to, amending, varying or repealing the law so made by the Legislature of the State.

39. So, the State Government is not competent to permit any religious congregation, by fixing 100 as maximum limit, since there is an absolute bar on religious assembly, in view of Ext P4 order issued by the Government of India. It is learnt that the Government of Kerala, citing Ext P5 and P5(a) orders issued by them, has agreed to permit the “Eidgah”, a mass assembly of the worshipers, in the Mosque, in connection with the religious festival of Bakrid, which is scheduled to be held in the next week. True copy press release of the Hon’ble Chief Minister published on 23-07-2020 in Mathrubhumi English Online is produced herewith and may be marked as **Ext P9**.

40. Steadily, the situation of covid spreading is reaching to an alarming condition and various health experts have warned the State Government to take urgent measures to contain the situation, before reaching it to a surge or super spread or community spreading. But due to the irresponsible attitude of certain group of citizens and laziness of the State Government to enforce the Government of India guidelines, the public order in the State has

reached into a disturbing situation, which needs urgent concern and response.

41. Official respondents are not taking any actions to curb the situation.

The respondents are acting in highly arbitrary and unreasonable manner, even in the toughest time, where more than 5.5 lakhs people in the world lost their life, due to the infection of Covid 19. Ext P4 order of the Government of India, is to be complied with in its strict and mandatory form and Ext P5 and P5(a) cannot be enforced, when Ext P4 and P6 orders are in force.

42. As a matter of conflicts of rights, the right to health and right to live in a healthy environment of a person is being subjected to gross infringement, due to the irresponsible actions in the name of religious freedom. Individuals, including the petitioner herein have the right to have a healthy environment to live, though the religious institutions have their organized right of religious practices and propagation. The citizen in the country, religious groups, their associations and leaders of religious institutions are need to act more responsibly, during these pandemic time, but the reality is otherwise, as seen from the current days scenario. No rights can be claimed as essential rights of the religious or other social groups, when the world is facing the worst time, during the pandemic days, where more than one crore people have been infected so far.

43. It is the settled principles of law that religious freedom of a citizen or any religious group is not unfettered and absolute. Practicing mass worship is not an essential religious practice, as protected under the Constitution, either under Article 25 or 26. The judicial precedents are consistent in this matter that it held in unambiguous language that the Constitution recognizes the importance of religion

in people's life, and that it holds religious liberty as a fundamental value of the Indian political community but not at the cost of certain substantive principles which are necessary in the society for all to lead a life worthy of human dignity.

44. The Constitution of India guarantees freedom of conscience and the right to manifest one's religious beliefs in overt ways. But this freedom is to be ensured in a balanced manner so as not to endanger the security and wellbeing of the society, the maintenance of which is the prerogative of the State for the proper growth and progress of the people. Hence, Constitutions provide also the power to regulate and even to restrict this freedom. The manner and various reasons under which religious freedom comes under State restriction in India will be discussed in the proceeding sections. Ext P4 and P7 can be identified as law fixing such reasonable restrictions and cannot be side-lined or ignored by the State of Kerala, by diluting its directives.

45. Actions of the respondents are against the parameters of Articles 14, 19 and 21 of the Constitution of India that they cannot act against the mandate of the Constitution of India, unreasonably and irresponsibly.

Under the above circumstances, without having any other effective and sensible alternative remedy, the petitioner is before this Hon'ble Court, by invoking its extraordinary remedy available under Article 226 of the Constitution of India, on following among other

IV. GROUNDS

A. Right to live in a healthy environment is a right guaranteed under Article 21 of the Constitution of India. Understanding health as a human right creates a legal obligation on states to ensure access to

timely, acceptable, and affordable health care of appropriate quality as well as to providing for the underlying determinants of health, such as safe and potable water, sanitation, food, housing, health-related information etc., not confined these, but also to maintain a healthy environment to live, in the society. So State must have exercised its autonomy in regulating the gatherings, whatever be, its nature, religious or political or social, during the times of pandemic. Here the State Government has failed to contain the religious and social gathering in large scale; obviously they are reluctant due their own reasons but giving less concern to the public health and public order. Ext P4 and the directions in continuation of Ext P4 need to be enforced by the 1st respondent, in its letter and spirit and Ext P5 and P5(a) are liable to be vacated and liable to be held as unconstitutional.

- B. Human rights are universal and inalienable. They apply equally, to all people, everywhere, without distinction. Human Rights standards are also interrelated. The improvement of one right facilitates advancement of the others or the deprivation of one right adversely affects the others. However improvement of one right, obviously the group rights, as in the present case, cannot be permitted to infringe others individual right to health and right to life.
- C. Even though there are advisories and regulations to regulate the religious and social gatherings, during the containment period, the State has failed to take stringent actions against the religious assemblies and in contrary to Ext P4, the Government of Kerala has diluted the guidelines by prescribing 100 as maximum, in Ext P5 and P5(a), which in fact promotes the public gatherings, which are

prohibited or regulated, as per the law and supported by the procedure established by that law.

- D. The powers under the Disaster Management Act, 2005 and Epidemic Diseases Act are not properly exercised by the State Government to regulate or prohibit the larger public gatherings conducted in the name of religious worship and practices. The intervention of Constitutional Court is warranted in such a peculiar circumstance and thus this Writ Petition under Article 226 of the Constitution of India, seeking to invoke the extra ordinary powers of this constitutional court.
- E. The State Government is failed to actions against the leaders of religious and social groups who are canvassing for the violation of Covid 19 regulations and conducting larger public gathering, in the name of their right to practice and profess religion and to manage the religious affairs.
- F. Article 254 of the Constitution of India and Section 72 of the Disaster Management Act, 2005 are more clear and specific that the law made by the Government of India, in exercise of its legislative and executive powers are bound to all state units and it is the fundamental principles of federalism. The 1st respondent cannot dilute or ignore the Government of India directives in Ext P4, while implementing the guidelines in Ext P5 and P5(a).
- G. Though public health is a subject enumerated in Entry 6 of List II, State List in Seventh Schedule of the Constitution of India, once an epidemic or pandemic is notified as disaster under the Disaster Management Act, 2005, which is Central Legislation, State Government cannot formulate separate guidelines in contrary to the regulations framed under Disaster Management Act, 2005. Hence

Ext P1 and P2, even if it is valid piece of legislations, are subject to the law and regulations enacted or framed by the Government of India under Disaster Management Act, 2005 or such other law relating to epidemic or pandemic. Thus Ext P1 and P2, and also Ext P5 and P5(a) have no independent existence or enforceable, when there are provisions contrary to that in the regulation made by the Government of India, under a valid piece of legislation. Ext P1 and P2, subject to such repugnancy are liable to be held as unconstitutional and unenforceable.

V. PRAYERS

Under the above circumstances and for the reasons stated above, it is most respectfully prayed that this Hon'ble Court may be pleased to

- i. To declare that the public gathering/ assemblies or mass prayers by any social or religious institution or group or congregation, violating the norms issued by the Government of India, from time to time, during the period of pandemic Covid 19, is illegal and unconstitutional.
- ii. To issue a certiorari or any other appropriate writ or writs or order or directions to quash Ext P5 and P5(a) orders issued by the 1st respondent, to the extent of it permits social or religious gathering with a participation of maximum 100 persons, which is in violation of Ext P4 and P7 orders.
- iii. To issue a Writ of mandamus, or any other writs or order or direction to the 1st and 4th respondents to take strict actions against the organizers or participants; or both, of large social or religious gatherings, who are acting in violation of existing Covid 19 regulations, in Ext P4 or such other directives issued by the

Government of India, under Disaster Management Act, 2005, from time to time.

- iv. To declare that Ext P1 Kerala Epidemic Diseases Ordinance, 2020 or any regulation made thereunder or any Standard Operation Procedure or notifications or orders issued there under, to the extent of its repugnancy or contravention to the order or notification or rules issued or framed under the Disaster Management Act, 2005 is unconstitutional and unenforceable.
- v. Direct the respondents to pay cost of this proceedings
- vi. Grant any other relief, in the interest of justice, which this Hon'ble Court deems fit in the facts and circumstances of the case.

VI. INTERIM RELIEF PRAYED FOR

For the reasons stated above and in the accompanying affidavit, it is most respectfully prayed that this Hon'ble Court may be pleased to direct the 1st and 4th respondents to ensure that no social or religious gathering is conducted, allowing any mass prayers or congregations or assemblies, in public places or in religious worship places or other religious institutions, in violation of guidelines in Ext P4 and P7 orders, in the State of Kerala, during the period of Covid 19 regulations or violating the Covid 19 regulations issued by the Government of India, under Disaster Management Act, 2005, during the pendency of this Writ Petition.

Dated this 24th day of July, 2020

Petitioners

Dr. K.P. Pradeep, K/1240/1999

Counsel for the Petitioners