

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE P.V.KUNHIKRISHNAN

FRIDAY, THE 9TH DAY OF MAY 2023 / 19TH JYAISHTA, 1945

WP(C) NO. 6912 OF 2023

PETITIONER:

YESHWANTH SHENOY
AGED 44 YEARS,
S/O.V.L.SHENOY
PRIYADARSHINI, VEEKSHNAM ROAD, ERNAKULAM, PIN - 682018
BY ADV YESHWANTH SHENOY(Party-In-Person)

RESPONDENTS:

- 1 THE CHIEF JUSTICE,
HIGH COURT OF KERALA, ERNAKULAM, PIN - 682031
- 2 UNION OF INDIA
THROUGH THE SECRETARY, MINISTRY OF LAW & JUSTICE, 4TH
FLOOR, A-WING, SHASTRI BHAWAN NEW DELHI, PIN - 110001
- 3 JUSTICE MARY JOSEPH,
AGED 61 YEARS,
JUDGE,
HIGH COURT OF KERALA, ERNAKULAM, PIN - 682031
- 4 THE REGISTRAR-GENERAL,
HIGH COURT OF KERALA, ERNAKULAM, PIN - 682031
BY ADVS.
S.SUJIN
N.N.SUGUNAPALAN (SR.)
SRI.S.MANU, DSGI

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON
31.05.2023, THE COURT ON 9.6.2023 DELIVERED THE FOLLOWING:

P.V.KUNHIKRISHNAN

W.P (C) No.6912 of 2023

Dated this the 9th day of June, 2023

JUDGMENT

Sir Thomas More, an English lawyer, Judge, Social Philosopher, Author, Statesman and noted Renaissance humanist framed a prayer for the lawyers, which is extracted hereunder:-

“Lord, grant that I may be able in argument,
Accurate in analysis, strict in study,
Candid with clients and honest with adversaries.
Sit with me at my desk and listen with me
to my client's complaints, read with me in my library,
And stand beside me in Court so that today I shall not, In order
to win a point, lose my soul.”

2. The petitioner, who claims to be a lawyer practising in this Court and different other courts in India, including the Apex Court, and also having 22 years of practice, filed this writ petition with “strange reliefs”. It will be better to extract the reliefs in this writ petition.

(i) To issue a writ of Mandamus to direct the Respondent No.4 to have a standard criterion for listing of matters before the various courts in the High Court of Kerala in accordance

with the directions of the Respondent No.1 who is the Master of the Roster.

(ii) To declare that a minimum of 50 matters be listed before every Court in the High Court in addition to a 'final disposal' list considering the pendency of matters before the High Court and the right of litigants to Speedy Justice which is a fundamental right recognised under Article 21 of the Constitution of India.

(iii) To declare that no Judge of the High Court has a right to direct the listing department to curtail the number of matters listed in accordance with the precedents of the Hon'ble Supreme Court.

(iv) To direct Respondent No.2 to devise a system by which they can track the number of matters being heard by a High Court Judge every day, the number of disposals and report these numbers to the Chief Justice so as to keep track of the performance of each Judge of the High Court.

(v) Pass such other further Order/Orders as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case. "

3. The 1st respondent in this writ petition is the Chief Justice of the High Court of Kerala. The 2nd respondent is the Union of India, represented through the Secretary, Ministry of Law & Justice. The 3rd respondent is a learned judge of this Court. The 4th

respondent is the Registrar General, High Court of Kerala. It will be beneficial to narrate the pleadings in this writ petition as such for proper consideration of the entire issue.

4. The Petitioner is an advocate enrolled in the Bar Council of Kerala, and it is stated that he has a 'counsel' practice in different High Courts and Tribunals. The petitioner explains the 'counsel' practice as a situation where the advocate does not file a vakalath but pleads before the Court on instructions of the advocate who has filed the Vakalath.

5. It is submitted that the petitioner had occasion to appear before the Court of the 3rd respondent Judge on 09.02.2023. It is submitted that in the petitioner's 22 years of practice as a lawyer, he has not come across a Judge so wantonly acting in breach of the governing principles of law or procedure. It is also stated in the writ petition that respondent No.3 dismissed a case in which the petitioner appeared, and till the filing of the writ petition, he has not given a certified copy of the order, which was applied for on the same day on which the order was dictated. The petitioner, in discharge of his duty as an advocate, was constrained to file an in-house complaint against the 3rd respondent with the 1st respondent

in accordance with the in-house procedure adopted by the Full Court of the Hon'ble Supreme Court on 15.12.1999 is the submission. It is also submitted that the petitioner was informed that the 3rd respondent was lethargic as regards the issuance of certified copies of the orders, and the 3rd respondent listed only 20 items per day in his Court. It is stated in the writ petition that the advocates and litigants have to wait endlessly for even a listing of their matter before the 3rd respondent. It is stated in the writ petition that the petitioner was shocked at hearing the fact that the 3rd respondent would list only 20 matters a day because no other Judge of any High Court anywhere in this country limits their list to just 20 matters a day. It is the submission of the petitioner that if every Judge of the High Court limits the number of matters before them to 20, the institution will die its natural death. The grievance of the petitioner is that after a backlog of cases has broken the back of the Judiciary, and if every Judge decides to hear only 20 matters a day, then the Institution itself will not survive. The petitioner also stated in the writ petition that there are hard-working Judges who hear over 100 matters every day. There are Judges who have sat through the night. There are Judges who work

18 hours shifts. But what negates all these stories of hard work is the lethargic attitude of a negligible few is the submission. It is also submitted that the 3rd respondent seems to have been listing about 30 matters until June 2022. The silence of the Bar probably led to a further direction to the Registry to list only 20 matters a day is the grievance of the petitioner. The petitioner produced Ext.P1, which is alleged to be the Facebook post dated 15.07.2022 made by Adv.Rajesh Vijayan, the then President of the Kerala High Court Advocate Association and a Council member of the Bar Council of Kerala. It is submitted that the manner in which the listing of matters in the Court of the 3rd respondent has gone unquestioned by the Bar Council of Kerala and the Kerala High Court Advocate Association. Therefore, it is submitted that the advocates are on their own, and the institutions/associations that are supposed to take care of the interests of the Bar will not stand up for the advocates or the Bar they represent. If lawyers have a fear of the judiciary or from elsewhere, that is not conducive to the effectiveness of the judiciary itself, and that would be self-destructive is the submission. Since there is no action from the Bar Council of Kerala and the Kerala High Court Advocate Association or

any other advocates, it is submitted that the petitioner was constrained to take up the issue with the 1st respondent, the Hon'ble Chief Justice of Kerala. The counsel also relied on the judgment of this Court in ***M.K.Surendrababu Vs Kodungallur Town Co-Op.Bank Ltd, (2022/KER/65066)*** in which this Court observed that the Registry of this Court should take necessary steps to place all old pending cases before the roster Judges after getting permission from the Hon'ble Chief Justice. The petitioner also relied on the dictum laid down by the Apex Court in ***State of Rajasthan vs. Prakash Chand & Others (1998 (1) SCC 1)***, which is reiterated by the Apex Court in ***Shanti Bhushan vs. Supreme Court of India (2018 (8) SCC 396)***.

6. It is also submitted by the petitioner that the High Court of Kerala has, at present, a strength of 37 Judges. Every Court, with the exception of the Court of the 3rd respondent, has at least a hundred matters listed before it in several types of lists is the submission. It is also stated that the petitioner has no reason to believe that the 1st respondent would violate the principles of Article 14 and allocate a lesser number of matters to the 3rd respondent. It is also stated that in any case, the 1st respondent, even as a Master

of the roster, will not have the power to violate Article 14 of the Constitution of India.

7. The petitioner also produced the cause list of the Court of the 3rd respondent as Ext.P3. According to the petitioner, it is most important to address the issue of listing and to understand as to on whose instruction did the Listing Department truncate the number of matters to be listed before the Court of the 3rd respondent to a mere 20. According to the petitioner, a hundred matters may be listed before any Judge, and it is the Judge's freedom as to how many matters are being heard on any given day. It is also stated that the petitioner, while interacting with the staff in the filing department, has realised that the morale of the staff is so low, and it is also stated that one of the staff told an advocate to the effect that "You only come and shout at us, please ask the same question to the Judge". The petitioner also stated that he by no means is saying that the Judge has to work for 15 hours every day. It is also stated that most of the Judges in India work for over 15 hours a day, and the petitioner has the greatest respect for the services they render. It is stated that the lawyers are also used to work over 15 hours a day, but the lawyers never complain about the same.

The petitioner also relied on the judgement of the Apex Court in ***R.Muthukrishnan vs High Court of Madras (2019 (16) SCC 407)***, in which the Apex Court observed that the lawyers are supposed to be fearless and independent in the protection of the rights of litigants and lawyers are supposed to protect the legal system and procedure of law of deciding the cases. With these pleadings, the above writ petition is filed with the reliefs, which are already extracted in the second paragraph above.

8. When this writ petition came up for consideration before another learned Judge on 03.03.2023, this Court, after going through the prayer and interim relief in this writ petition, observed like this :-

"3. Going through the pleadings and the nature of contentions advanced by the petitioner, I am of the considered opinion that the maintainability of the writ petition is doubtful and, therefore, without receiving a counter affidavit from the fourth respondent, i.e., the Registrar General of this Court, I think, it may not be appropriate on my part to proceed further either for the consideration of the main relief or the interim relief."

9. As directed by this Court, the Registrar General filed a counter affidavit on 21.03.2023. The Registrar General denied all the averments in the writ petition to the extent to which it is not

expressly admitted in the counter affidavit. The 4th respondent, the Registrar General submitted that the writ petition is not maintainable in the light of the dictum laid down in ***Mayavaran Financial Corporation Ltd vs. Registrar of Chits, Pondicherry reported in 1991 (2) LW 80***. The 4th respondent also relied on the judgment of the Apex Court in ***the Prakash Chand*** case (supra). It is also submitted that the Kerala High Court has already settled the "High Court of Kerala Rules, 1971" invoking the powers under Article 225 of the Constitution. It is submitted that Chapter III of the said Rules prescribe or regulate the posting and hearing of cases by the Judges/Benches of the High Court. Therefore, the relief sought by the petitioner to prescribe the criteria for listing is absolutely unnecessary since the Rules were already framed in the High Court as authorized by Article 225 of the Constitution of India, and Section 122 of the Civil Procedure Code is the submission. It is also submitted that the Registry of the High Court is listing the cases strictly in accordance with the Rules and as per the instructions issued by the Hon'ble Chief Justice. Regarding the facts of the writ petition, it is submitted that the Hon'ble Chief Justice fixes the roster of the Hon'ble Judges in such a manner that the

cumulative burden in each roster is more or less equal considering the total number of cases pending in the High Court and pendency of cases in each subject of the roster. It is submitted that in Court No.2D, in which the 3rd respondent judge is sitting, the total number of cases as per the roster subject is 7070 as against the total pendency of cases of 2.45 lakhs. It is also submitted that the cases allotted to Court No.2D by the Hon'ble Chief Justice as per the roster are trials of Election petitions and final hearing of Criminal Appeals from 2016 to 2019 and Motor Accidents Claims Appeals up to 2014. It is also submitted that the said Court being a hearing Court, as per the practice followed, the number of matters to be listed is decided by the Registry with the permission of the Court having regard to the average time required for disposal of listed matters. The said practice is adopted to avoid inconvenience to the lawyers and litigants. It is also submitted that the number of cases to be listed will vary from time to time, having regard to the nature of cases dealt with by the Court. The aforesaid practice does not create any inconvenience to the lawyers and litigants as the lawyers are free to make appropriate mentioning in Court if any urgent matter is required to be listed. Hence, it is submitted that

the writ petition is not maintainable, and the same may be dismissed.

10. The petitioner filed a reply affidavit to the counter affidavit filed by the 4th respondent. In the reply affidavit, it is stated that the 4th respondent is suppressing material facts before this Court. It is also submitted that the 4th respondent admits that the Hon'ble Chief Justice is the Master of the roster and the petitioner is not aware of the internal working (administrative side of the High Court) and therefore has sought reliefs based on the cases which is not specifically denied by the Registrar General in his affidavit. The petitioner also produced the cause list of respondent No.3 for the period from 01.03.2023 to 29.03.2023 as Ext.P1 in the reply affidavit. According to the petitioner, the averments in the counter affidavit of the 4th respondent to the effect that the Registry of the High Court is listing the cases strictly in accordance with the Rules and the instructions issued by the Hon'ble Chief Justice is a false statement. It is also submitted that assuming the Hon'ble Chief Justice is curtailing the list before one specific Court, then the same amounts to an arbitrary action that is prohibited by Article 14 of the Constitution of India. Therefore, it is submitted that the only

person who can point out the truth is the 1st respondent, and therefore, notice has to be issued to the 1st respondent. It is also submitted that this Court is duty-bound to bring out the truth. The counsel also relied on the judgment of the Apex Court in ***Maria Margarida Sequeria Fernandes vs Erasmo Jack de Sequeria (2015 (5) SCC 370)***, which underlined the importance of finding the Truth and the obligation of the Judge and the Court to go after the Truth.

11. It is also submitted that there is a clear admission of the violation/breach/non-compliance with the standard criteria of listing of matters as decided by the Hon'ble Chief Justice after extracting a portion of paragraph 9 of the counter affidavit. According to the petitioner, the same is a clear admission from the Registrar General that the Registry, along with respondent No.3, violated / breached / not comply with the standard criteria set by the Hon'ble Chief Justice as regards listing of the cases. It is also submitted that every Court is a hearing court and is nothing special about the Court presided over by the 3rd respondent.

12. The petitioner submitted that the averments of the Registrar General in para 9 to the effect that 'The said practice is

adopted to avoid inconvenience to the lawyers and litigants' is a false statement which the Registrar knows to be false. The petitioner also produced Ext.P2, the rosters published for the month of January, February and March 2023 and submitted that many other Judges are having hearing Courts and the number of cases posted before those Courts are not similar to that of the Court of the 3rd respondent. The petitioner also produced Ext.P3 judgment/orders delivered by the learned Judge(3rd respondent) during the period from 1st March 2023 to 28th March 2023. It is also submitted that a writ petition is filed before this Court by a lawyer against the Registry of this Court because a certified copy of an order along with the petition was not given by the 3rd respondent. It is submitted that the Registrar General has more access to facts than the petitioner, and yet, the Registrar General, for reasons best known to him, suppressed the material facts before this Court. According to the petitioner, the act in itself is contempt of this Court as well as punishable under the Indian Penal Code. It is also submitted that the judicial arrogance of the 3rd respondent is such that she has the least respect for the precedents of the Apex Court. The petitioner relied on certain judgments of the Apex Court in

paragraph 11 of the reply affidavit and submitted that the 3rd respondent reversed the decision of the Apex Court and also directed the Registry to circulate the order to all trial courts in the State of Kerala for compliance. According to the petitioner, what Apex Court held to be a wrong procedure was ordered to be followed, thereby delaying all criminal trials in the State of Kerala. Regarding the maintainability of the writ petition raised by the Registrar General, the petitioner answered the same in paragraph 12 (a) to (c) of the reply. According to the petitioner, the writ petition is maintainable and more so, after the admissions made by the Registrar in his counter affidavit. It is also submitted that a perusal of the counter affidavit clearly pointed out that the listing is curtailed only before the Court of the 3rd respondent. It is also stated that the 4th respondent conceded that the Hon'ble Chief Justice is the Master of Roster, and there is also a clear admission that the Registry, along with the 3rd respondent, decided the number of matters to be listed before the Court of the 3rd respondent which is clearly beyond the powers of respondents 3 and 4. According to the petitioner, since the Registrar clearly admitted that the 3rd respondent and the Registry curtailed the

listing, this Court is duty-bound to uphold the well-settled law and relied on the judgment of the Apex Court in ***Dwarikesh Sugar Industries Ltd. v. Prem Heavy Engineering Works (P) Ltd. And Another*** [1997 (6) SCC 450]. The petitioner also relied on the judgment in ***Bank of Travancore v. Mathew K.C.*** [2018 (3) SCC 85] and submitted that the Apex Court reiterated the position in ***Dwarikesh Sugar's case*** (supra).

13. The petitioner also submitted that if only 20 matters are listed in a Court, the number of cases that can be considered by a Judge will be very limited, considering the long pendency of cases. Therefore it is submitted that if this Court fails to uphold the rule of law and remind the Judges that they are amenable to the rule of law, the result could be every Judge choosing to list only 20 matters and the collapse of the judicial institution by the "woodpeckers inside than by the storm outside".

14. These are the pleadings in the writ petition, counter filed by the 4th respondent and in the reply affidavit filed by the petitioner.

15. Heard Sri.Yeshwanth Shenoy, who is the petitioner in this case, who appeared in person and argued the writ petition. The

Senior Counsel Sri.N.N.Sugunapalan, instructed by Sri.S.Sujin, appeared for the 4th respondent and argued the case.

16. The petitioner reiterated his contentions in the writ petition. The petitioner started his argument by taking me through the oath of office taken by the High Court Judges. According to the petitioner, this Court has to bear in mind the oath taken while deciding this case. The petitioner submitted that it is the duty of every Judge to bear in mind the oath of office while deciding cases. According to the petitioner, the 3rd respondent curtailed the daily cause list to 20 without any authority, and consequently, the litigants, lawyers, etc., are in difficulty. The petitioner also submitted that the 4th respondent, in the counter affidavit filed before this Court, admitted the facts and law pleaded by him in the writ petition. Therefore it is submitted that the facts stated in the writ petition and the law raised by the petitioner are proved and ratified in the light of the counter affidavit filed by the 4th respondent. Therefore the prayers in the writ petition may be allowed is the submission.

17. The Senior Counsel Sri.N.N.Sugunapalan takes me through the counter affidavit filed by the 4th respondent. The Senior

Counsel takes me through Article 225 of the Constitution of India and also the Rules of the High Court of Kerala, 1971 (for short, the Rules). The Senior Counsel also takes me through Rules 91 to 97 of Chapter VIII of the Rules. The Senior Counsel submitted that this is a frivolous writ petition which is not maintainable, and the same may be dismissed in limine with heavy cost.

18. This Court considered the contentions of the petitioner and the arguments raised by the 4th respondent. First, I will decide about the maintainability of this writ petition. The first prayer in this writ petition is to issue a writ of mandamus directing the 4th respondent to have a standard criterion for listing matters before the various courts in the High Court of Kerala in accordance with the directions of the 1st respondent, who is the Master of Roster. A reading of this prayer would show that the grievance of the petitioner is that the 4th respondent is not following the standard criterion for listing of matters as per the directions of the 1st respondent. The second prayer is for a declaration to the effect that a minimum of 50 matters be listed before every Court in the High Court in addition to the final disposal list considering the pendency of matters before the High Court and the right of litigants to speedy

justice which is a fundamental right recognised under Article 21 of the Constitution of India. The third prayer in this writ petition is to declare that no Judge of the High Court has a right to direct the listing department to curtail the number of matters listed in accordance with the precedents of the Hon'ble Supreme Court. The fourth prayer is to direct the 2nd respondent to devise a system by which they can track the number of matters being heard by a High Court Judge every day, the number of disposals and report these numbers to the Chief Justice so as to keep track of the performance of each Judge of the High Court.

19. A mere perusal of the reliefs would show that the prayers of the petitioner are mainly to issue directions regarding the manner in which the listing of cases in the High Court of Kerala is to be done. Prima facie, this prayer is not maintainable. It is a settled position that the Chief Justice of the High Court is the Master of Roster. He alone has the prerogative to constitute Benches of the Court and allocate cases to the Benches so constituted. A judicial order cannot be issued to the Chief Justice about the manner in which the cases are to be listed in the High Court of Kerala unless there are compelling reasons. In **Prakash Chand's case** (supra),

the Apex Court considered the powers of the Chief Justice of High Courts. It will be better to extract the relevant concluding portion of the above judgment:

“59. From the preceding discussion, the following broad CONCLUSIONS emerge. This, of course, is not to be treated as a summary of our judgment, and the conclusion should be read with the text of the judgment:

(1) That the administrative control of the High Court vests in the Chief Justice alone. On the judicial side, however, he is only the first amongst the equals.

(2) That the Chief Justice is the master of the roster. He alone has the prerogative to constitute benches of the Court and allocate cases to the benches so constituted.

(3) That the puisne Judges can only do that work as is allotted to them by the Chief Justice or under his directions.

(4) That till any determination made by the Chief Justice lasts, no Judge who is to sit singly can sit in a Division Bench, and no Division Bench can be split up by the Judges constituting the bench themselves and one or both the Judges constituting such bench sit singly and take up any other kind of judicial business not otherwise assigned to them by or under the directions of the Chief Justice.

(5) That the Chief Justice can take cognizance of an application laid before him under Rule 55 (supra) and refer a case to the

larger bench for its disposal, and he can exercise this jurisdiction even in relation to a part-heard case.

(6) That the puisne Judges cannot “pick and choose” any case pending in the High Court and assign the same to himself or themselves for disposal without appropriate orders of the Chief Justice.

(7) That no Judge or Judges can give directions to the Registry for listing any case before him or them which runs counter to the directions given by the Chief Justice.

(Emphasis supplied)

20. From the above dictum laid down by the Apex Court, it is clear that the administrative control of the High Court vest in the Chief Justice alone. The Chief Justice is the Master of Roster, and he alone has the prerogative to constitute benches of the High Court and allocate cases to the Benches so constituted. The Apex Court also laid down the principle that the puisne Judges can only do that work as is allotted to them by the Chief Justice or under his directions. It is also a settled position that the puisne Judges cannot pick and choose any case pending in the High Court and assign the same to themselves for disposal without appropriate orders of the Chief Justice. It is also observed by the Apex Court that no Judge or Judges can give directions to the Registry for listing any case before

him or them, which runs counter to the directions given by the Chief Justice. The above judgment is reiterated by the Apex Court in ***Shanthi Bhooshan's case*** (supra). Therefore I am of the prima facie opinion that the prayers in this writ petition cannot be entertained by this Court invoking the powers under Article 226 of the constitution of India. The Chief Justice alone has the prerogative to constitute benches of the Court and allocate cases to the benches so constituted. No circumstance or material is pointed out by the petitioner to interfere with the same on the judicial side regarding the allocation of the cases.

21. Moreover, the Rules of the High Court of Kerala, 1971 was framed invoking the powers under Article 225 of the Constitution of India, Section 122 of the Code of Civil Procedure, 1908 and all other powers enabling on this behalf. Therefore the Rules are framed in tune with the rule making power of the High Court stated in the Constitution of India and other statutes.

22. Chapter VIII of the Rules deals with the posting of cases. Rule 91 deals with notifying cases when ready. Rule 91 says that the cases which have become ready for hearing shall be so notified on the notice board of the Court and shall be sent to the Bench for

hearing only after the expiration of the period mentioned in the Rule. Rule 92 deals with the priority for certain cases in the daily cause list. Rule 92 is extracted hereunder:

“Priority for certain cases in the daily cause list.-

Part-heard cases, referred trials, cases in which the accused persons have been produced in Court, cases in which reports have been called for or findings have been submitted, cases which have been directed to be posted to a specific date or on the expiry of a specified period and cases in which the hearing has been directed to be expedited or advanced shall be included at the top of the daily cause lists, subject to any special or general directions given by the concerned Bench or Judge.”(Underline supplied)

23. A reading of the above Rule will show that part-heard cases, referred trials, cases in which the accused persons have been produced in Court, cases in which reports have been called for or findings have been submitted, cases which have been directed to be posted to a specific date or on the expiry of a specified period and cases in which the hearing has been directed to be expedited or advanced shall be included at the top of the daily cause lists, subject to any special or general directions given by the concerned Bench or Judge. A reading of the Rule shows that there is discretion to the concerned Bench or Judge regarding the posting of the cases

allotted to that Bench. Once the Roster is published by the Hon'ble Chief Justice and the subject is allotted to a Judge, the Judge concerned can issue directions regarding the posting of cases assigned to that Judge. Rule 93 says about the applications for early posting, and Rules 94 says the cases which are to be expedited. Rule 97 deals with the posting of urgent matters before a Bench. Rule 97 says that if a matter is urgent and the Bench before which it ought to be moved is not sitting, the party may apply to the Chief Justice for permission to move the same before another Bench, and the Chief Justice may issue the necessary orders on that behalf. Therefore the Rules framed by the High Court invoking the rule making power is a complete Code itself. The Chief Justice is the Master of the Roster, and the Chief Justice will allot cases to different Judges and Benches. As per Rule 92, the Bench or Judge has the discretion to issue special or general directions regarding the posting of cases assigned to him/her by the Chief Justice. There is no challenge to Rule 92 of the Rules. Therefore, even if the case of the petitioner is accepted that there is a limited number of cases posted before a particular Judge, that is the discretion of that Judge as per the Rules. The subjects allotted to

different Judges by the Hon'ble Chief Justice will be different. An admission court may have to handle more than 100 admissions and petitions. That does not mean that a Judge dealing final hearing cases should consider 100 or more than 100 cases every day. The first appeal in criminal and civil matters is a continuation of the trial. It will take some time, depending upon the facts of that case. The second appeal in civil matters and criminal revisions under the Code of Criminal Procedure against the conviction and sentence after the appeal is dismissed by the appellate Court may take some time to dispose of. A hearing matter cannot be disposed of like an admission matter. The admission court and the hearing court are entirely different. Sometimes, a hearing of an appeal will take a full day or days. That does not mean that the Judge is not doing his duty. The petitioner, while arguing the matter, repeatedly pointed out the display board in the Court of the third respondent and stated that in Court No.2D, the item is 2, and this Court almost completed the admission list. I am surprised to hear such an argument from a lawyer who claims that he has got 21 years of practice. Admittedly Court No.2D is a hearing court. It may take some time to complete the hearing of first appeals in old matters.

When a Judge is dealing with a case, he is dealing with the life of a citizen of this country. It may take some time. It should take some time. Moreover, some of the Judges may read the papers without jumping to any conclusions, before coming to the Court, so that the narration of the facts of the case by the lawyer can be skipped. But some other Judges believe that the facts should come from the mouth of the lawyer itself. These are different attitudes of judges, and there is nothing wrong with taking such a stand by the Judges. If lawyers started to file writ petitions like this, stating that one Judge is hearing only one case and the other Judge is taking up 10 cases, and yet another Judge is taking up 50 cases or 100 cases, the same would give a wrong signal to society. The lawyers are the officers of the Court. They know how this Court is hearing an admission matter, how this Court is hearing a petition matter and how this Court is dealing with a final hearing matter. There cannot be any straight jacket formula to dispose of a case. Each case has to be decided based on its merit. No court can issue a mandamus to a Judge or registry of the court to list such number of cases in the daily cause list. The petitioner reiterated while arguing the matter that every Judge should bear in mind the oath taken by him

while deciding every case. This need not be reminded by the petitioner because every Judge is dealing with cases by bearing in mind the oath of office taken by the Judge.

24. Moreover, if the prayers in this writ petition are entertained, that would amount to the issuance of direction to the rule making authority. The High Court is a rule making authority in the light of Article 225 of the Constitution of India. The rules are framed by the High Court invoking the powers conferred by Article 225 of the Constitution of India and Section 122 of the Code of Civil Procedure, 1908 and all other powers enabling in this behalf. The posting of the case is clearly dealt with in detail in Chapter VIII of the Rules. This Court cannot issue mandamus to the rule making authority regarding the posting of cases because it is already stated in Chapter VIII of the Rules. Moreover, the Apex Court in ***State of Jammu & Kashmir v. A.R. Zakki and others [1992 Supp (1) SCC 548]*** observed like this;

"10. In our opinion, there is considerable merit in this submission. A writ of mandamus cannot be issued to the legislature to enact a particular legislation. The same is true as regards the executive when it exercises the power to make rules, which are in the nature of subordinate legislation. Section 110 of the J. & K. Constitution, which is on the same lines as Article 234 of the

Constitution of India, vests in the Governor the power to make rules for appointments of persons other than the District Judges to the Judicial Service of the State of J & K and for framing of such rules, the Governor is required to consult the Commission and the High Court. This power to frame rules is legislative in nature. A writ of mandamus cannot, therefore, be issued directing the State Government to make the rules in accordance with the proposal made by the High Court.

11. In *State of Andhra Pradesh v. TGopalakrishna Murthi*, (1976) 1 SCR 1008, this Court was construing the provisions of Clause (2) of Article 229 of the Constitution of India which empowers the Chief Justice of the High Court or some other Judge or Officer of the Court authorised by the Chief Justice to make rules for the purpose of prescribing conditions of service of officers and servants of a High Court and further prescribes that the said rules shall so far as they relate to salaries, allowances, leaves or pensions require the approval of the Governor of the State. The question was whether a writ of mandamus could be issued to the Governor to give his approval to the rules made by the Chief Justice. This Court answered the said question in the negative. After holding that although on the facts and circumstances of the case and in the background of the conditions which are prevalent in the other States, the Government could have been well advised to accord approval to the suggestion of the Chief Justice as the suggestion was nothing more than to equate the pay scales of the High Court staff with those of the equivalent posts in the Secretariat, this Court observed that merely because the Government is not right in accepting the Chief Justices view, and in refusing to accord approval is not ground for holding that by a writ of mandamus the Government may be directed to accord the approval."

25. Similarly, in ***Prakash Chand's case*** (supra), the Apex

Court observed that no mandamus could be issued to direct a body or authority which is vested with a rule making power to make rules or to make them in a particular manner. Therefore, I am of the considered opinion that no mandamus can be issued to the respondents to change the listing/posting of cases because the rule making authority, mainly the High Court, already framed rules of the High Court of Kerala, 1971, and chapter VIII of the Rules deals about the posting of the cases. This Court cannot issue directions to the rule making authority to frame rules in a particular manner as prayed by the petitioner in this writ petition. Moreover the Rule is not challenged in this writ petition. Therefore, I am of the considered opinion that this writ petition is not maintainable at all.

26. Even though this writ petition is not maintainable, I am not stopping there by dismissing this writ petition. Society should not think that the High Court dismisses a meritorious case on the preliminary issue of maintainability. The petitioner makes wild allegations against a learned Judge of this Court in this writ petition without any basis and without any material. The petitioner submitted that notice should be issued to the 1st respondent and the 3rd respondent before deciding this matter. What is the

evidence produced by the petitioner to prove that the learned Judge acted in violation of the Rules of the High Court of Kerala, 1971? Absolutely no evidence is produced by the petitioner. He submits that on 09/02/2023, he had an occasion to appear before the Court of 3rd respondent, and the learned Judge dismissed a case argued by him. Thereafter, it is stated that on enquiry, the petitioner was informed that the 3rd respondent was lethargic as regards the issuance of certified copy, and the 3rd respondent issued directions to list only 20 matters a day. I fail to understand from where the petitioner obtained this information. Since the source is not mentioned in the writ petition, it can be treated only as hearsay evidence. It is stated that the petitioner was shocked at hearing that the 3rd respondent would list only 20 matters a day because no other Judge of any High Court anywhere in this country limits their list to just 20 matters a day. Without any specific evidence or documents, the petitioner submits that a learned Judge of this Court issued direction to post only 20 items per day. The petitioner relied on a Facebook post dated 15/07/2022 by the former President of Kerala High Court Association.

27. Nowadays, posting on Facebook contains sarcasm, jokes and some spontaneous reactions. The Facebook post of an individual cannot be accepted as evidence by this Court to conclude that a learned Judge of this Court directed to list only 20 cases per day, especially when the person who made the Facebook post is not a party in this writ petition. Unless that person vouches for the Facebook post, this Court cannot accept such Facebook post to conclude that a learned Judge directed the registry to post only 20 cases before that Court. I am sure that no Judge will do that. But in the final hearing Court, simply posting 100 hearing items will give no purpose. The Judge can decide the number of final hearing cases that can be taken up in a day so that the lawyers need not wait in the Court indefinitely. Such discretion is given to the Judge concerned as per Rule 92 of the Rules of the High Court of Kerala, 1971. This is beneficial to the lawyers also because, in final hearing Courts, the lawyers need not wait indefinitely to argue their matter because some final hearing matters may take some time to finish. The petitioner says that the learned Judge directs the Registry to post only 20 cases. Even if there is such a direction, since, admittedly, that Court is a hearing Court, it is the discretion of that

Court to adjust the work in the light of Rule 92 of the Rules of the High Court of Kerala, 1971.

28. Moreover, if the petitioner has a grievance against the listing of cases before a learned Judge, he ought not to have filed a petition like this on the judicial side. He is an officer of the Court. It is the duty of the petitioner to submit that grievance before the learned Judge in that Court itself. The petitioner relied on the judgment of the Apex Court in ***R.Muthukrishnan's case*** (supra), in which the Apex Court stated that the lawyers are supposed to be fearless and independent in the protection of rights of litigants. The petitioner can submit before the Court concerned about his client's plight. I am sure that no Judge will decline such prayer if there is a genuine reason pointed out for an early hearing, of course, depending upon the time available to that Court. Therefore, I am of the considered opinion that the attitude of the petitioner, who claims that he has got 21 years of practice, approaching this Court with a writ petition for issuing mandamus to the High Court Judge and the Registry regarding the listing of cases cannot be accepted.

29. If the petitioner is a lawyer in Kerala High Court, there is Kerala High Court Advocates Association to protect the interest of

the lawyers. Kerala High Court Advocate Association is a vibrant organisation to protect the interest of the lawyers. Stalwarts of the bar, like Senior Counsel T.P.Kelu Nambiar were the office bearers of the High Court Bar Association. That legacy is continuing. If the petitioner is a member of the High Court Advocates Association, the petitioner can approach the Association with appropriate request regarding his grievance about the listing of cases, so that the High Court Advocates Association can take up the matter with the Hon'ble Chief Justice. In addition to this, there is a Senior Advocates Association also in the Kerala High Court. The petitioner can take up this issue with the designated senior lawyers of this Court if there is any grievance regarding the listing of cases in Courts. I am sure that the Senior advocates will help the petitioner to see that his grievance is redressed. It is stated in the writ petition vaguely that, he approached the bar association, and the association is not taking up the issue. Not even a scrap of paper is produced to prove that he approached the bar association before filing this writ petition. Moreover, the High Court Bar association is not made as a party in this writ petition. If the petitioner is not interested in approaching the High Court Bar Association or the

Senior Lawyers Association, he can directly place the matter before the Chief Justice's Court to redress the grievance.

30. The petitioner claims that he is representing the entire Bar of the High Court of Kerala. I am afraid I have to disagree with the same. High Court Bar Association is not a party to this writ petition. There is no authorization seen given by the High Court Bar Association to the petitioner to agitate the grievance of the entire members of the Association before this Court by filing a writ petition like this. No other lawyers are party in this writ petition. The petitioner wants to change the entire listing system stating that he represents the Bar. I reject the prayer of the petitioner that he is representing the Bar because there is no such authorization produced by the petitioner to represent the Bar or lawyers or the Kerala High Court Advocates Association. Therefore, I am of the considered opinion that this is a frivolous writ petition from the side of the petitioner to get popularity and news value.

31. When the petitioner concluded the argument, he submitted that if this Court is not entertaining this writ petition, another writ petition is already typed and ready for filing, stating that the action of the Hon'ble Chief Justice in allotting cases to each

judge is discriminatory under Article 14 of the Constitution of India. The petitioner is free to file any number of cases if he intends to do so. But the petitioner has to face the consequences if he continues the same without any supporting documents.

32. The manner in which the petitioner filed the reply affidavit is also to be deprecated. The language of the petitioner in the writ petition and in the reply affidavit can not be accepted. In paragraph No.12 (b) of the reply affidavit, the petitioner submits that, instead of mentioning the name of the case, the Registrar General mentioned the Judges name in the citation of ***Prisoners Rights Forum v. High Court of Judicature at Madras*** [AIR 2014 Mad 246]. The petitioner says that 'it seems that the Registrar General has a misplaced sense of confidence as regards the outcome of the Writ Petition irrespective of his actions'. The petitioner also stated that the Registrar General is also represented by a Senior Counsel. To err is human. If a small mistake is committed while writing the citation, the petitioner ought to have neglected the same without making a wild allegation against the Registrar General and the lawyer representing the Registrar General. The petitioner is making this submission after filing a

frivolous writ petition without producing any supporting documents to support his case. This type of litigation is to be deprecated.

33. Lawyers are the officers of the Court; they are part of the judiciary. If these types of litigations are filed by the lawyers, what is the message that will go to the Society? A lawyer having 21 years of practice filing a writ petition before this Court arraying a Judge of this Court and the Hon'ble Chief Justice as party and making wild allegations without any basis. As I observed earlier, the petitioner should have redressed the grievance, if any, by submitting the same before the Hon'ble Judge concerned and, if not, before the High Court Advocates Association or the Senior Advocates Association of this Court. The petitioner can submit his grievance to the Hon'ble Chief Justice also. Without doing the same, to get popularity, he is filing a writ petition before this Court based on a Facebook post of the former president of the Kerala High Court Advocates Association. The former president of the Kerala High Court Advocates Association is not a party in this writ petition, and therefore, the same can not be accepted at all. Therefore, I am neglecting Ext.P1 Facebook post produced by the petitioner because it is not even stated in the writ petition that the

consent of the lawyer concerned was obtained before producing the same in a court of law. Moreover, the author of the Facebook post is not a party in this writ petition. The second document produced by the petitioner is a representation submitted by the petitioner to the Hon'ble Chief Justice of Kerala on 24.02.2023. The prayer in Ext.P2 representation submitted by the petitioner before the Hon'ble Chief Justice is to look into the aspects as a master of Roster and to give direction to the Registry to list matters before the 3rd respondent in the same way as they do for all other Judges. Ext.P2 is dated 24.02.2023, and this writ petition was filed on 27.02.2023. The petitioner is not ready to wait for the consequential action, if any, taken by the Hon'ble Chief Justice. It is not clear whether the petitioner submitted Ext.P2 before the Hon'ble Chief Justice directly or if it was dumped in the office of the Chief Justice. After filing a representation on 24.02.2023 and filing a writ petition with the same prayer on 27.02.2023 would show that the intention of the petitioner is not to redress any grievance, but to get popularity by filing a writ petition. Ext.P3 is the cause list dated 27.02.2023 of the Hon'ble Justice Mary Joseph. A perusal of that cause list itself shows that the cases listed before that Court

contain 2010, 2012, 2013 and 2014 first appeals filed against the award passed by the Motor Accidents Claims Tribunal. The criminal appeal of the year 2018 is also listed on that day. According to the petitioner, these first appeals of 2012, 2013 and 2014 etc. can be disposed of forthwith and sufficient number of cases are not listed before that Court. Who is the petitioner to decide this? There is a Chief Justice to this Court to decide the roster, and the Judges are working hard to dispose of the cases. If a judge disposes of a case quickly, there will be an allegation that there is no patient hearing from persons like the petitioner. If some time is taken to hear the matter, there will be an allegation that the cases are not disposed of early from these types persons. I am sure that a prudent lawyer would not make any such allegation because they knew the difficulty of the Judges also. Here is a case where the petitioner, who claims that he has 21 years of practice, is filing a writ petition before this Court stating that such and such number of cases should be listed before the Judges of this Court. I am of the considered opinion that these types of litigation should be curtailed from the beginning. I can understand that, if an ordinary citizen files this case, because he may not know the listing procedure of

cases in this court. But here is a case where a lawyer is coming up with these types of cases with wild allegations against a judge. Once again I am asking, what is the message that the petitioner wants to give to society? Judges and lawyers are part of the Judiciary. If there are any internal problems, there are facilities to redress such issues. Moreover, recently, the apex court in **District Bar Association Dehradun V. Ishwar Shandilya (2023(3) KLT 571(SC)** directed all the High Courts to constitute a Grievance redressal Committee in which the complaints regarding listing/filing of cases can be submitted. I make it clear that if there is any genuine grievance to any lawyer or the association of the lawyers regarding the filing/listing of cases, they can approach the authority concerned in accordance with law. But the petitioner is not interested in any of those options. His intention is only a 'Publicity Interested litigation' to malign judges and the judiciary. Here the lawyer's prayer framed by St.Thomas More is relevant, which I extracted at the beginning of this judgment which I am extracting once again.

"Lord, grant that I may be able in argument,

Accurate in analysis, strict in study,

Candid with clients and honest with adversaries.
Sit with me at my desk and listen with me
to my client's complaints, read with me in my library,
And stand beside me in Court, so that today I shall not,
In order to win a point, lose my soul."

34. Let the God almighty see that the lawyers like the petitioner may be able in argument, let the almighty help the lawyers like the petitioner to be accurate in analysis, let the Almighty help the lawyers like the petitioner to study their case properly, let the Almighty sit with the lawyers like the petitioner in their desk and listen them when they discuss the case with their client's complaint. Let the Almighty sit beside the lawyers, like the petitioner, while doing their professional duties.

The upshot of the above discussion is that this is a fit case in which this writ petition is to be dismissed with heavy costs. The petitioner is making wild allegations against a judge of this Court without any evidence. The petitioner filed this writ petition on 27.02.2023, after filing a representation on 24.02.2023 before the Honourable Chief Justice. That would show that the intention of the petitioner is not to redress the grievance, if any, but it is only to get popularity by filing a writ petition. Even though the petitioner

claims that he is representing the lawyers, he has not impleaded the High Court Bar Association or the Senior lawyers association in this writ petition. Hence this writ petition is frivolous and mischievous. This is a fit case which is to be dismissed with a heavy cost. Since this writ petition is not admitted, I do not want to impose costs in this case. Hence, this writ petition fails and accordingly dismissed.

**P.V.KUNHIKRISHNAN
JUDGE**

bng, jv, DM, das

APPENDIX OF WP(C) 6912/2023

PETITIONER EXHIBITS

- Exhibit P1 FACEBOOK POST DATED 15 JULY 2022 BY
ADV.RAJESH VIJAYAN
- Exhibit P2 LETTER WRITTEN BY THE PETITIONER TO THE
RESPONDENT NO.1 DATED 24 FEBRUARY 2023
- Exhibit P1 Copy of the Cause list of the Respondent No.3
for the period 01.03.2023 to 29.03.2023
- Exhibit P3 CAUSE LIST OF JUSTICE MARY JOSEPH DATED 27
FEBRUARY 2023
- Exhibit P2 Roster of Judges for the month of January,
February and March of 2023
- Exhibit P3 Judgments / orders passed by the Respondent
No.3 for the period 1 March 2023 to 28 March
2023
- Exhibit P4 A copy of the order of this Hon'ble Court in
W.P (C) 10334 of 2023 dated 27 March 2023