

IN THE SUPREME COURT OF INDIA  
CIVIL APPELLATE JURISDICTION  
SPECIAL LEAVE PETITION (CIVIL) NO. OF 2020

IN THE MATTER OF: -

State of Karnataka

...Petitioner

Versus

State of Kerala & Ors.

...Respondents

URGENCY APPLICATION

1. The Petitioner is filing the present SLP against the impugned order dated 01.04.2020 passed by the Hon'ble High Court of Kerala in WP(TMP) No. 2/2020 whereby the Hon'ble High Court has directed the Central Govt. to remove blockades from the road between the State of Karnataka and Kerala.
2. There is grave urgency in the matter as the roads and state borders had been sealed by the State of Karnataka in order to combat the spread of the Pandemic Covid-19 disease by preventing movement of people from the bordering Districts of the State of Kerala to Karnataka. The State of Kerala is the worst affected by the Pandemic Covid-19 disease with nearly 194 cases which is increasing at a rapid rate. It is pertinent to state that the adjoining border district of Kasaragod is the worst affected district in the country with over 100 cases, from which movement would commence if the blockade is removed.
3. The entire country is going through a lockdown and it is of grave importance that the affected districts of COVID be sealed and the pandemic be stopped from spreading to newer areas. It is submitted that the Impugned Order would lead to grave consequences for the people of the adjoining districts in the State of Karnataka. The same would also lead to law and order issues as the local population is opposing the opening of the blockades. It is pertinent to state that there are some Writ Petitions have been filed by residents of state of Kerala raising similar issues being WP(c) (D)No. 10803 of 2020 which is listed before the Hon'ble Court on 3.4.2020.
4. The SLP has been filed along with the requisite Applications, documents and Vakalatnama with an undertaking that the same shall be filed as soon as the Supreme Court functioning resumes properly.
5. The matter may be taken up through video conferencing mode as soon as the Bench of the Hon'ble Supreme Court is available.

Regards,

S.P

Shubhranshu Padhi

Advocate on Record, Supreme Court of India

CC: 2271

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Ph: 9971512668

**IN THE SUPREME COURT OF INDIA  
CIVIL APPELLATE JURISDICTION  
SPECIAL LEAVE PETITION (CIVIL) NO. OF 2020**

(Against the order dated 01.04.2020 passed by the Hon'ble High Court of Kerala in Writ Petition (TMP) No. 2/2020)

**[WITH PRAYER FOR INTERIM RELIEF]**

**IN THE MATTER OF: -**

State of Karnataka ...Petitioner

**Versus**

State of Kerala & Ors. ...Respondents

**WITH**

**IA NO. \_\_\_\_ OF 2020**

**APPLICATION FOR EXEMPTION FROM FILING CERTIFIED  
COPY OF THE IMPUGNED ORDER**

**PAPER BOOK**

(FOR INDEX PLEASE SEE INSIDE)

**ADVOCATE FOR THE PETITIONER:**

**SHUBHRANSHU PADHI**

**PROFORMA FOR FIRST LISTING**

**SECTION:**

**This case pertains to** (Please tick/ check the correct box):

- Central Act: (Title) Constitution of India
- Section : Article 226
- Central Rule : (Title) N.A
- Rule No(s) N.A
- State Act: (Title) N.A
- Section : N.A
- State Rule : (Title) N.A
- Rule No(s): N.A
- Impugned Interim Order : N.A  
(Date)
- Impugned Order /Decree : 01.04.2020  
(Date)
- High Court : (Name) High Court of Kerala
- Names of Judges: Hon'ble Mr. Justice A.K. Jayasankaran,  
Hon'ble Mr. Justice Shaji. P. Chaly
- Tribunal N.A.  
/Authority: (Name)
1. Nature of the  **Civil**  Criminal  
matter
2. a)Petitioner/Appellant State of Karnataka  
No.1.:
- b) Email I.D. N.A
- c) Mobile phone N.A  
number:
3. a) Respondent No.1 State of Kerala
- b) Email I.D. N/A
- c) Mobile phone N/A  
number:
4. a)Main category 18 civil matter  
classification
- b) Sub 1807 other  
classification :
5. Not to be listed N/A  
before:
6. a) Similar disposed of No similar matter is disposed of.  
matter with citation,  
if any & case details.

d/Pending matter:

b) Similar pending matter with case details.

WP(D) NO. 10803 OF 2020

RAJMOHAN UNNITHAN V. STATE OF KARNATAKA & ORS.

7. **Criminal Matters:**

N.A

a) Whether accused /convict has surrendered:  Yes  No

b) FIR No.....

Date :

c) Police Station:

d) Sentenced awarded

e) Sentence .....

Undergone:

8. **Land Acquisition Matters:** .....N/A

a) Date of Section 4 notification : .....N.A

b) Date of Section 6 notification : .....N.A

c) Date of Section 17 notification .....N.A

9. **Tax Matters :** State the Tax effect: .....N.A

10. **Special Category:** (first petitioner/ appellant only): N.A

Senior citizen>65 years  SC/ ST  Woman /child

Disabled  legal  Aid case  in custody

11. Vehicle Number (in case of Motor Accident Claim matters) : .....

SHUBHRANSHU PADHI

AOR CODE 2271

Email. [Shubhranshu.padhi@gmail.com](mailto:Shubhranshu.padhi@gmail.com)

Ph: 9971512668

Dated: 02.04.20



INDEX

Sl no.	Particulars of documents	Page No of part to which it belongs		Remarks
		Part-I (Contents of paper book)	Part -II (Contents of file alone)	
(i)	(ii)	(iii)	(iv)	(v)
A.	Court Fees.			
1.	O/R on Limitation	A	A	
2.	Listing Proforma	A1-A2	A1-A2	
3.	Cover Page on Paper Book		A-3	
4.	Index of Record of Proceedings		A-4	
5.	Limitation Report prepared by Registry		A-5	
6.	Defect Sheet		A-6	
7.	Note Sheet		NS1 to	
8.	List of Dates	B - U		
9.	Impugned order dated 01.04.2020 passed by the Hon'ble High Court of Kerala in Writ Petition (TMP) No. 2/2020.	1-7		

10.	SLP with affidavit	8-33		
11.	<b>Annexure P1.</b> Copy of the letter dated 28.03.2020 by the Additional Chief Secretary, State of Karnataka to the Additional Chief Secretary, State of Kerala.	34-35		
12.	<b>Annexure P2.</b> Copy of the Writ Petition being Writ Petition (TMP) No. 2/2020 filed before the Hon'ble High Court of Kerala.	36-48		
13.	<b>Annexure P3</b> Copy of the order dated 30.03.2020 passed by the Hon'ble High Court of Kerala in Writ Petition (TMP) No. 2/2020.	49-52		
14.	<b>Annexure P4</b> Copy of the order dated 31.03.2020 passed by the State of Karnataka under the Epidemic Diseases Act .	53		
15.	<b>Annexure P5</b> Copy of the order dated 31.03.2020 passed by the Hon'ble High Court of Kerala in Writ Petition (TMP) No. 2/2020.	54-56		
16.	<b>IA No. 1 of 2020</b> Application for exemption from filing certified copy of	57-59		

	Impugned Order.			
17.	F/M	60		
18.	V/A	61		

**IN THE SUPREME COURT OF INDIA**

**CIVIL APPELLATE JURISDICTION**

**SPECIAL LEAVE PETITION (CIVIL) NO.                      OF 2020**

(Against the order dated 01.04.2020 passed by the Hon'ble High Court of Kerala in Writ Petition (TMP) No. 2/2020)

**IN THE MATTER OF: -**

State of Karnataka

...Petitioner

**Versus**

State of Kerala &Ors.

...Respondents

**OFFICE REPORT ON LIMITATION**

1. The Petition is within time.
2. The Petition is barred by time and there is delay of ..... days in filing the same against order dated \_\_\_\_\_ and petition for condonation of ..... days delay has been filed.
3. There is delay of ..... days in re-filing the petition and petition for condonation of ..... days delay in re-filing has been filed.

New Delhi  
Dated: 02.04.2020

BRANCH OFFICER



**SYNOPSIS**

The Petitioner is filing the present Special Leave Petition against the order dated 01.04.2020 passed by the Hon'ble High Court of Kerala in Writ Petition (TMP) No. 2/2020 whereby the Hon'ble High Court has passed the following directions, inter alia-

*"We, therefore, direct the Central Government to forthwith intervene in the matter and ensure that the blockades erected by the State of Karnataka, on the National Highways connecting the said State to the State of Kerala, are removed forthwith, and without any further delay, so as to facilitate the free movement of vehicles carrying persons for urgent medical treatment, across the border between the two States. We may re-iterate that we expect the Central Government to act expeditiously in this matter, taking note of the human lives that are at stake."*

The issue involved in the present SLP is with regard to the closure of a road between the State of Karnataka and State of Kerala in order to combat the spread of the Pandemic Covid-19 disease from the bordering Districts of the States. The Hon'ble High Court vide the Impugned Order has directed the Central Government to intervene in the matter and ensure that the

alleged blockades erected by the State of Karnataka, on the National Highways connecting the State to the State of Kerala, are removed forthwith despite the fact that the roads in question were closed to preserve public health and to prevent the spread of the pandemic. The said direction has been passed despite the earlier observations in the same Impugned Order that the Hon'ble High Court had no territorial jurisdiction to issue any direction to the State of Karnataka to remove any impediments which are located in the State of Karnataka. On the face of it, the Impugned Order has been passed wholly without any jurisdiction and is thus liable to be set aside on this ground alone.

It is humbly submitted that the State of Karnataka has locked down its borders in order to prevent the spread of the Covid-19 disease except the movement of essential commodities. The State of Karnataka had specifically closed the Makutta Check post on the Mysore-Virajapat-Kannur highway. However, the Hon'ble High Court vide the Impugned Order has directed Central Government to intervene and remove the closure on the said road.

It is submitted that the order passed by the State of Karnataka is based on adequate material it had made available to itself that the existing facilities in the Mangalore district would not support patients from outside the State and there was every possibility of a serious outbreak of the COVID-19 in the border districts of Karnataka if free ingress and outgress of patients is allowed. In this context the State of Karnataka had passed an order under the Epidemics Act on 31.3.2020. A perusal of the order would show that the extreme urgency of the matter under which the State of Karnataka had passed the order banning all movement of people and goods, including patients in order to prevent any further transmission of the disease. It is extremely pertinent to state that the said order was not called into question before the Hon'ble High Court and yet the Hon'ble High court has passed the Impugned Order.

The basic premise of the Hon'ble High court is an assumption that the Union of India has an overriding powers over all National Highways, which is completely fallacious. An examination of the scheme of the National Highways Act would show that the Union of India only has limited powers with respect to manage and administer the National Highways. The



same in no way takes away the power of the State to regulate the movement within its territorial boundaries. In a federal structure of our country, the relations between the Union of India and the State Governments is that of a delicate balance and any High Court would be loathe to interfere with the same under Article 226 of the Constitution of India.

In any event, the orders passed by the State Govt. are justified in the facts and circumstances and the pandemic raging through the entire country. In no manner can the orders of the State Govt be held to be arbitrary or unreasonable. Even if the orders are examined on the touchstone of Article 19 and 21, no exception could have been taken by the Hon'ble High Court.

It is submitted that any opening of the road will lead to disastrous consequences and is not warranted in the following facts and circumstances-

- A. It is submitted that the State of Kerala is the worst affected by the Pandemic Covid-19 disease with nearly 194 cases as on 28.3.2020 and is increasing at a rapid

rate. Most of the cases are in the adjoining border districts wherein 7000 persons have been quarantined. One of the districts in the State of Kerala, Kasargod District, is the most affected District in the entire country with the number of Covid- 19 infected patients beyond 100 in the said District itself.

- B. The local residents are strongly opposing any movement of traffic and opening of the check post would lead to huge law and order consequences in this sensitive time of lockdown,
- C. There are no essential commodities being moved from Kogadu district and there is no hamper to essential commodities as there are two alternative routes for transport of goods from Mysore to Kunnur which is only 21 Kms longer and is being kept open,

Despite the same, the Kerala High Court has taken up a Public Interest Litigation and directed the opening of the check posts which fall within the territories of State of Karnataka. It is submitted that *Ex facie* the said Public Interest Litigation seeking an issuance of a writ of mandamus directing the State of Karnataka to open up its State Borders which have been sealed in larger public interest was itself not maintainable and the

directions issued by the Hon'ble High Court are beyond the powers conferred under Article 226 and 227 of the Constitution of India.

Although in the Impugned Order no specific directions have been issued against the State of Karnataka but by issuing such directions to the Central Government to intervene in the matter and remove the blockades erected by the State of Karnataka, the Hon'ble High Court has indirectly exceeded the jurisdiction and powers conferred under Article 226 and 227 of the Constitution of India. It is a well settled proposition of law what cannot be done directly, cannot be done indirectly. While exercising a constitutional power a court is bound to act within the four corners thereof. The Impugned Order is contrary to the basic structure of the constitution and the territorial limits for exercise of jurisdictions by High Courts under Articles 226 and 227.

The provision laid down under Article 226 of Constitution of India is reproduced below for brevity: -

"226. Power of High Courts to issue certain writs



(31) *Notwithstanding anything in Article 32 every High Court shall have powers, throughout the territories in relation to which it exercise jurisdiction, to issue to any person or authority, including in appropriate cases, any Government, within those territories directions, orders or writs, including writs in the nature of habeas corpus, mandamus, prohibitions, quo warranto and certiorari, or any of them, for the enforcement of any of the rights conferred by Part III and for any other purpose;*

*(2) The power conferred by clause ( 1 ) to issue directions, orders or writs to any Government, authority or person may also be exercised by any High Court exercising jurisdiction in relation to the territories within which the cause of action, wholly or in part, arises for the exercise of such power, notwithstanding that the seat of such Government or authority or the residence of such person is not within those territories;*

.....”

The plain reading of the provisions laid down under Article 226 of the Constitution of India to the extent of powers to be exercised by the Hon<sup>ble</sup> High Court was subject to a two-fold limitation, namely;

- i. That the power is to be exercised “throughout the territories in relation to which it exercises jurisdiction” and,
- ii. That the person or authority to whom the High Court is empowered to issue the writs must be “within those territories.”

Therefore, on the face of it such directions could not have been issued by the Hon'ble High Court in the Impugned Order. The same is not in consonance with the constitutional mandate under Art. 226 of the Constitution of India.

In any event, the dispute in question amounts to a dispute between two States within the meaning of Article 131 of the constitution of India and proceedings could have been instituted by the State of Kerala before this Hon'ble Court alone. The present proceedings amount to an abuse of process of the court and ought not to be countenanced.

The Hon'ble High Court failed to consider that the hospitals in Mangaluru, District are already overburdened and the people residing in Mangaluru are in panic due the increasing number of cases in the Districts of Kerala specially in Kasargod District. It is humbly submitted that the resources of the State of Karnataka are hard-pressed and it is very difficult to cater the needs of new patients from the State of Kerala. It is also humbly submitted that it is very difficult on ground level to differentiate a COVID-19 patient and other medical cases. In

any event, the alleged deaths on the side of State of Kerala are completely unsubstantiated and the Present Writ Petition is based on complete *Ipsi Dixit* of the Petitioners and unverified newspaper reports.

It is submitted that the State of Karnataka has been taking all precautionary measures to protect the citizens from this Pandemic Covid-19 disease, and to ensure their safety and to avoid spreading of the Covid -19 disease. The sealing of the state borders with the neighbouring states is in the interest of public health especially when there is a grave concern of spreading of the disease from the Bordering- Districts of the State of Kerala where the situation is really dire. The entire country is going through a lockdown and it is of grave importance that the affected districts of COVID be sealed and the pandemic be stopped from spreading to newer areas. It is submitted that the Impugned Order would lead to grave consequences for the people of the adjoining districts in the State of Karnataka.

Hence, the present Special Leave Petition.



**LIST OF DATES**

<b>Date</b>	<b>Particulars</b>
	<p>It is pertinent to state that the present Special Leave Petition arises out of the sealing of the State Borders in order to prevent the spread of Covid -19 disease and the powers of the High court of one State to direct the removal of alleged impediments in another State which is not within its territorial jurisdiction.</p> <p>It is submitted that the Kerala has identified a huge number of Covid-19 patients and majority of them belong to the bordering districts of Karnataka namely Waynad, Kannur and Kasargod Districts of Kerala.</p> <p>It is submitted that the Kasargod District of Kerala is the most affected district in the entire country with close to 100 cases in the said District itself.</p>
22.03.2020	The State Borders between the State of Kerala

	<p>and the State of Karnataka was totally locked down by the State of Karnataka in order to prevent the spread of Covid 19 disease across the States.</p> <p>It is pertinent to state that all the strict measures including the shutting down of the State Borders with the neighbouring States has been done by the State of Karnataka to combat the spread of the Covid-19 disease.</p> <p>As a necessary measure, closing down of the roads connecting the State Borders is essential to combat the disease, as the number of Covid-19 patients were rising in Kerala.</p>
24.03.2020	<p>The entire country has declared a total lockdown of 21 days commencing from the midnight of 24.03.2020 to 14.04.2020 in order to break the Covid-19 infection cycle and to prevent the spread of the Covid-19 disease.</p>
28.03.2020	<p>That the Additional Chief Secretary, State of Karnataka wrote a letter to the Additional</p>

Chief Secretary, State of Kerala concerning the reasons for not permitting any type of movement across the Highways as follows: -

i. Kerala has identified 176 cases of Covid-19 as on 28.03.2020, of which majority are from these bordering districts. Further, 7000 persons are reported to be quarantined in these districts. Any opening of this route will lead to possibilities of this virulent infection reaching "Kodagu" district.

ii. The local residents are strongly opposing any movement of traffic on this road and have put up blockades throughout the length of the road. Any move to open this road will lead to protests and deterioration of law and order situation.

iii. Kodagu District does not supply any essential commodities to Kerala. The



essential commodities are sourced from Mysuru. The route that has been closed passes through Kodagu and is 179 kms long from Kannur via Iritty- Makutta- Virajpet to Mysuru.

iv. There are two alternative routes available for transportation of goods from Mysuru to Kannur i.e.-

a. Kannur-Iritty-Mananthavady-Sarguru-Beguru-Nanjanagudu-Mysuru (Total 200 kms).

b. Kannuru-Sulthan batteri-Gundlupete-Mysuru (Total 246 kms).

Copy of the letter dated 28.03.2020 by the Additional Chief Secretary, State of Karnataka to the Additional Chief Secretary, State of Kerala is reproduced herewith and marked as **Annexure P1 (Pg. Nos. 34 to 35).**

30.03.2020	<p>The Kerala High Court Advocates Association had filed a Writ Petition being Writ Petition (TMP) No. 2/ 2020 before the Hon'ble High Court of Kerala.</p> <p>The following has been prayed before the Hon'ble High Court of Karnataka as follows: -</p> <p>“ ...</p> <ol style="list-style-type: none"><li data-bbox="582 806 1355 1265">i. <i>To issue a writ of mandamus directing the respondent no. 1 to formulate and implement proper guideline or regulations under the Kerala Epidemic Diseases Ordinance, 2020, to ensure that no illegal or unconstitutional measures are adopted by the officers in the field including Police Officers and that all Governmental Actions are kept within the purview of law.</i></li><li data-bbox="582 1321 1355 1691">ii. <i>To issue a writ in the nature of mandamus laying down the guidelines for the guidance of the officers in the field including Police Officers implementing the lockdown now promulgated by the Governments pending finalisation of the guidelines by the first respondent Government;</i></li><li data-bbox="582 1780 1355 2011">iii. <i>To issue a writ in the nature of mandamus directing the first respondent Government to take necessary steps to ensure the availability of essentials like food,</i></li></ol>
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	<p><i>medicine etc. to people at reasonable and fair price during the lockdown;</i></p> <p><i>iv. To issue a writ in the nature of mandamus directing the 5<sup>th</sup> respondent to ensure that the State Borders of Kerala to Karnataka, Mahe and Tamil Nadu are open for the purpose of transportation of essential commodities in to the State and for transportation of people in need of Medical Assistance; and</i></p> <p><i>v. pass any other direction, order or reliefs, as this Hon'ble Court may deem fit to be necessary in the interest of justice, equity and good conscience."</i></p> <p>Copy of the Writ Petition being Writ Petition (TMP) No. 2/2020 filed before the Hon'ble High Court of Kerala is reproduced herewith and marked as <b>Annexure P2 (Pg. Nos.36 to 70)</b>.</p>
30.03.2020	<p>The aforesaid Writ Petition came up for hearing before the Hon'ble High Court of Kerala whereby the Advocate General for State of Karnataka has requested for a one day to respond to the averments in the Writ Petition.</p>



The relevant portion of the order is reproduced below for brevity: -

“....

7. *On a consideration of the facts and circumstances of the case as well as the submissions made across the bar, we feel that while the request of the Advocate General of Karnataka, for a day's time to respond to the averments in the writ petition can be granted, the Central Government as well as the State Governments concerned must address the issues arising from the blockades, projected in this writ petition, without any further delay. This is more so because human lives are at stake, as evident from the cases of deaths reported before us by Sri. Ranjith Thampan, and at a time like this, when efforts are on worldwide to save humanity from the harmful effects of the COVID 19 Virus, one cannot be found resorting to measures that run counter to the said objective.”*

Copy of the order dated 30.03.2020 passed by the Hon'ble High Court of Kerala in Writ Petition (TMP) No. 2/2020 is reproduced herewith and marked as **Annexure P3 (Pg. Nos.71 to 74)**.

31.03.2020	<p>The State of Karnataka had passed an order under the Epidemics Act on 31.3.2020. A perusal of the order would show that the extreme urgency of the matter under which the State of Karnataka had passed the order banning all movement of people and goods, including patients in order to prevent any further transmission of the disease.</p> <p><b>Note-</b>It is extremely pertinent to state that the said order was not called into question before the Hon'ble High Court and yet the Hon'ble High court has passed the Impugned Order.</p> <p>Copy of the order dated 31.03.2020 passed by the State of Karnataka under the Epidemics Diseases Act herewith and marked as <b>Annexure P4 (Pg. No.75).</b></p>
31.03.2020	<p>The Hon'ble High Court of Kerala has passed an order dated 31.03.2020 whereby the Hon'ble High Court has directed the District</p>

Collector, Kannur to immediately send a communication to the Secretary, Home Department, Government of Karnataka.

The operative part of the order is reproduced below for brevity: -

".....

2. *The learned Advocate General of Karnataka would submit that as regards the opening up of road routes for transportation of essential commodities, the route from Kannur - Iritty - Mananthavady - Sargur - Begur - Nanjangud - Mysore and Kannur - SulthanBathery - Gundlupetes - Mysore have already been opened up for the said transportation, and will continue to be maintained as such through the lockdown period. As regards the third route between Kannur - Iritty - Koottupuzha - Mangoor - Virajpet, it was suggested by Sri.RanjithThampan that the State of Karnataka could consider the possibility of opening up of the said route also for transportation of essential commodities. The learned Advocate*



*General of Karnataka would respond by stating that if an appropriate letter is sent by the authorities in Kerala to the Secretary, Home Department of the Government of Karnataka, then the matter can be considered by the said authority. We therefore direct the District Collector, Kannur to immediately send a communication to the Secretary, Home Department, Government of Karnataka, on the lines indicated above, so that the matter can be considered by the latter immediately, and a decision be informed before us when the matter is taken up for consideration at 1.45 p.m. tomorrow. In response to the query with regard to the blockades in place preventing the transportation of patients for medical treatment, both the Advocate General of Karnataka as also the Additional Advocate General of Kerala would submit that they can revert before us by 1.45 p.m. tomorrow with specific instructions as to the arrangement that can be made for catering to the medical needs for patients in*

	<p><i>Kasaragod district based on the proximity of the hospital concerned to the residents in the said district.”</i></p> <p>Copy of the order dated 31.03.2020 passed by the Hon’ble High Court of Kerala in Writ Petition (TMP) No. 2/2020 is reproduced herewith and marked as <b>Annexure P5 (Pg. Nos.76 to 78)</b>.</p>
01.04.2020	<p>The Hon’ble High Court of Kerala has passed the the following directions, inter alia-</p> <p><i>“We, therefore, direct the Central Government to forthwith intervene in the matter and ensure that the blockades erected by the State of Karnataka, on the National Highways connecting the said State to the State of Kerala, are removed forthwith, and without any further delay, so as to facilitate the free movement of vehicles carrying persons for urgent medical treatment, across the border between the two States. We may re-iterate that we expect the Central Government to act expeditiously in this</i></p>

IN THE HIGH COURT OF KERALA AT ERNAKULAM

Present:

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

&

THE HONOURABLE MR. JUSTICE SHAJI P.CHALY

TUESDAY, THE 1<sup>ST</sup> DAY OF APRIL, 2020/12TH CHAITHRA, 1942

WRIT PETITION (TMP) NO. 2/2020

PETITIONER :

The Kerala High Court Advocates' Association, represented by its Secretary,  
1st Floor, High Court of Kerala Building, Ernakulam -682 031

By Advs. Sri. P. Ravindran (Sr.) along with Sri. Manu Govind

RESPONDENTS :

1. The State of Kerala, represented by the Chief Secretary to Government of Kerala, Secretariat, Thiruvananthapuram 695 001
2. The Secretary to Government of Kerala, Department of Home, Secretariat, Thiruvananthapuram 695 001.
3. The Secretary to Government of Kerala, Department of Health, Secretariat, Thiruvananthapuram 695 001
4. The Director General of Police and State Police Chief, Police Head Quarters, Thiruvananthapuram 695001
5. The Union of India, represented by Secretary to Government of India, Department of States, Ministry of Home Affairs, New Delhi 110001.
6. The State of Karnataka, represented by the Chief Secretary, Secretariat, Vikasa Saudha, Bangalore 560001.
7. The State of Tamil Nadu, represented by the Chief Secretary, Secretariat, Chennai 600009.
8. The Union Territory of Puducherry, represented by its Lieutenant Governor, Puducherry 605013.
9. The National Disaster Management Authority, NDMA Bhawan, A-1, Safdarjung, Enclave, New Delhi - 110029 represented by its Member Secretary
10. The Kerala State Disaster Management Authority, represented by its convenor, Observatory Hills, Vikas Bhavan P.O, Thiruvananthapuram – 695033

Sri. Ranjith Thampan, Additional Advocate General for R1 to R4  
Adv.Sri. Jaishankar V. Nair , CGC, for R5  
Adv. Sri. S . Manu for R6

This Writ Petition having come up for orders on 01-04-2020, the Court on the same day passed the following :



**A.K. JAYASANKARAN NAMBIAR, J.**  
&  
**SHAJI P. CHALY, J.**

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**W.P.(C). (TMP) NO.2 OF 2020**  
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**Dated this the 1<sup>st</sup> day of April, 2020**

**ORDER**

**A.K. Jayasankaran Nambiar, J.**

Pursuant to our last order, dated 30.03.2020, we heard the learned Advocate General of Karnataka through Video Conferencing on 31.03.2020, as well as today (01.04.2020). At the time of hearing on 31.03.2020, it was submitted by the Advocate General of Karnataka that some of the road routes from Karnataka to Kerala, bordering Kannur District, that had hitherto been blocked by the State of Karnataka, could be opened and maintained as such till the lifting of the lockdown arrangement, to facilitate transportation of essential commodities to the State of Kerala. He then sought for a day's time to ascertain whether it would be possible to remove the blockade over the roads bordering Kasaragod District, so as to facilitate the movement of vehicles carrying patients who required urgent medical attention.

2. At the video conferencing scheduled @ 1.45 pm today for the purpose, the learned Central Government Standing Counsel submitted that he had instructions from the Ministry of Home Affairs, that efforts were on to try and bring about an amicable resolution of the issue, and that a meeting with the Chief Secretaries of the two States was also being considered. Reacting to the said submission, the learned Advocate General of Karnataka submits that it would be desirable for this court to await the outcome of such

deliberations before passing any orders in this case.

3. The learned Senior Counsel appearing for the Petitioner, as also the learned Additional Advocate General of Kerala would, however, object to the said submission and point out that, when the right to life of a citizen is at stake, and the action of the State of Karnataka in erecting blockades that prevent the movement of persons seeking medical relief, go against the grain of the guidelines issued, both by the Central Government under the Disaster Management Act, as also the Government of Karnataka under the Epidemic Diseases Act, 1897 read with the enabling provisions under the Disaster Management Act, 2005, this Court ought not to wait any longer, and must pass urgent orders to protect the fundamental right of the citizens,

4. With a view to enable the Central Government and the two State Governments to confer and amicably resolve the issue, we adjourned the special sitting of this Court to 5.30 pm. When the court re-convened through video conference at 5.30 pm, we were informed by the learned Central Government Standing Counsel that a meeting convened by the Central Government, in the Ministry of Home Affairs, with the Chief Secretary's of the States of Kerala and Karnataka, at 5 pm today, was currently in progress, and that the outcome of the said deliberations would be known by 6 pm. We therefore adjourned the video conference to 6.30 pm.

5. When the video conference was re-convened at 6.30 pm, we were informed by the Central Government Standing Counsel that no decision was arrived at, at the meeting that was convened today by the Central Government. He points out, however, that although the Central Government has issued guidelines under the Disaster Management Act, the State Governments have been given the freedom to relax those conditions based on ground realities faced by them. He would also submit that the issue in question involves

policy considerations which this Court would not ordinarily interfere with, more so when discussions are still ongoing between the States and the Central Government, and the impact of any decision would be felt across the country. The learned Advocate General of Karnataka, on his part, made elaborate submissions as regards the maintainability of the writ petition and, in particular, took us through precedents that suggest that this Court will not have the territorial jurisdiction to entertain a writ petition in cases where the cause of action has arisen in Karnataka.

6. On a consideration of the rival submissions, we feel that we have no option now, but to pass this order with a view to safeguard the fundamental rights of citizens during this grim period in our country's history. This Court had readily agreed to the request of the learned Advocate General of Karnataka, for time to revert to this Court, with a practical solution to the problem faced by the residents in Kasargod District, in Kerala, who were prevented from travelling to Mangalore, in Karnataka, for urgent medical treatment. The said restrictions imposed by the State of Karnataka, through the blockades erected for the purpose, has resulted in the loss of many lives in the last two days. Despite the grant of time, the learned Advocate General of Karnataka has not been able to come up with any solution to the problem. The discussions between the Central Government and the two State Governments have also not produced any results. Under the circumstances, we feel that any further delay in resolving the stalemate could be catastrophic for the residents of Kasargod District in Kerala.

7. The right of a citizen to move freely throughout the territory of India, subject to reasonable restrictions that may be imposed in the interests of the sovereignty and integrity of India, the security of the State, public order etc. is recognised under Art.19 (1)(d) of our Constitution. A citizen also has a fundamental right to life and personal liberty guaranteed to him by the State under Art.21 of our Constitution. Both these rights



are simultaneously infringed in the case of a resident of the State of Kerala when he/she is denied entry into the State of Karnataka for availing medical treatment, or is deprived of essential articles of food that are being transported into the State through blockades erected by the State of Karnataka. We cannot forget that India is a signatory to the International Convention on Economic, Social and Cultural Rights, Art.12 of which obliges all State Parties to the Convention to recognise the right of everyone to the highest attainable standard of physical and mental health, and to take steps for the creation of conditions which would assure to all, medical service and medical attention in the event of sickness. Our Courts have since read in these obligations into the guarantee assured to our citizens under Art.21 of our Constitution. We are also of the view that the restrictions imposed on the transportation of essential articles of food would amount to a breach of the rights protected under Arts.301-304 of our Constitution.

8. The learned Advocate General of Karnataka vehemently reminds us that we would be exceeding our jurisdiction if we issue any direction to the State of Karnataka in this matter. We are well aware of our jurisdictional limitations and we, therefore, do not propose to issue any direction to the State of Karnataka in this matter. We might however observe that when a High Court of a State in the Union of India, finds and declares the actions of the executive Government of another State to be illegal and unconstitutional, the said State Government would be obliged, under our Constitution, to defer to the said declaration of law by a Constitutional Court of this Country, notwithstanding that the said Court is situated beyond the territorial limits of the said State. The fundamental rights guaranteed to each Citizen of India under our Constitution, are to be zealously protected by the State, which term refers jointly to the Centre, the States and the Union Territories that together constitute the Union of India. The said Federal principle is eloquently and succinctly expressed in Art.1 of our Constitution, which states "*India, that is Bharat, shall be a Union of States*". The State Government of Karnataka cannot therefore be heard to

contend that it is not obliged to respect the fundamental right of a citizen who resides outside its territorial limits. So long as it is an integral part of the Union of India, the State of Karnataka has necessarily to respect, and guarantee, the fundamental rights of a citizen of this country, irrespective of the place of his residence or domicile within the country. We sincerely hope that the State Government of Karnataka will take note of the said basic principles enshrined in our Constitution and take immediate steps to resolve the present stalemate.

9. As already mentioned above, we feel compelled to issue directions to the Central Government today because we are of the view that any further delay in issuing directions could entail loss of precious lives of our citizens. The National Highways come under the administrative jurisdiction of the Central Government and the provisions of the National Highways Act clearly provide for the maintenance of such highways by the Central Government, and even provide for penal measures to be taken against anyone blocking such a highway. The arterial roads that connect Mangalore in Karnataka, to Kasaragod in Kerala, are part of the National Highway network and it is therefore the duty of the Central Government to ensure that the said roads are kept free of blockades. No doubt, restrictions may be imposed in times of a national emergency such as the present, but when the guidelines issued by the Central Government under the Disaster Management Act itself permits travel for urgent medical treatment, then the said guidelines have necessarily to be enforced by the Central Government through the removal of the blockades that prevent such travel. We, therefore, direct the Central Government to forthwith intervene in the matter and ensure that the blockades erected by the State of Karnataka, on the National Highways connecting the said State to the State of Kerala, are removed forthwith, and without any further delay, so as to facilitate the free movement of vehicles carrying persons for urgent medical treatment, across the border between the two States. We may re-iterate that we expect the Central Government to act expeditiously in this matter, taking note of

the human lives that are at stake.

10. Before parting, we might also mention that there are other issues raised in this public interest litigation and we have not referred to, or expressed any opinion on, the said issues. We also direct the respondents to file their counter-affidavits to the writ petition within three weeks from today.

Post the writ petition along with W.P.(C). (TMP) No.4/2020 for further orders after three weeks.

Validity unknown

Digitally signed by JUSTICE A  
K JAYASANKARAN  
NAMBIAR  
Date: 2020.04.01 20:02:22 IST

**A.K.JAYASANKARAN NAMBIAR**  
**JUDGE**

Validity unknown

Digitally signed by  
JUSTICE SHAJI P CHALY  
Date: 2020.04.01 20:03:24  
IST

**SHAJI P. CHALY**  
**JUDGE**



**BEFORE THE HON'BLE SUPREME COURT OF INDIA  
CIVIL APPELLATE JURISDICTION  
SPECIAL LEAVE PETITION  
(Under Article 136 of the Constitution of India)  
SPECIAL LEAVE PETITION (CIVIL) NO. OF 2020**

**IN THE MATTER OF:**

POSITION OF PARTIES

Before the In this Court  
High Court

The State of Karnataka  
Represented through its Chief  
Secretary, Secretariat, Vikasa  
Saudha, Bangalore 560001

Respondent Petitioner  
No. 6

**AND**

1. The State of Kerala,  
represented by the Chief Secretary  
to Government of Kerala,  
Secretariat, Thiruvananthapuram  
695 001

Respondent Respondent  
No. 1 No. 1

2.The Secretary to Government of  
Kerala, Department of Home,  
Secretariat, Thiruvananthapuram  
695 001

Respondent Respondent  
No. 2 No. 2



- |   |                  |                  |
|---|------------------|------------------|
| 3. The Secretary to Government of Kerala, Department of Health, Secretariat, Thiruvananthapuram 695 001                                     | Respondent No. 3 | Respondent No. 3 |
| 4. The Director General of Police and State Police Chief, Police Head Quarters, Thiruvananthapuram 695001                                   | Respondent No. 4 | Respondent No. 4 |
| 5. The Union of India, represented by Secretary to Government of India, Department of States, Ministry of Home Affairs, New Delhi 110001    | Respondent No. 5 | Respondent No. 5 |
| 6. The State of Tamil Nadu, represented by the Chief Secretary, Secretariat, Chennai 600009   | Respondent No. 7 | Respondent No. 6 |
| 7. The Union Territory of Puducherry, represented by its Lieutenant Governor, Puducherry 605013   | Respondent No. 8 | Respondent No. 7 |
| 8. The National Disaster Management Authority, NDMA Bhawan, A-1, Safdarjung Enclave, New Delhi - 110029 represented by its Member Secretary | Respondent No. 9 | Respondent No. 8 |

9. The Kerala State Disaster Management Authority, represented by its convenor, Observatory Hills, Vikas Bhavan P.O, Thiruvananthapuram - 695033 Respondent No. 10 Respondent No. 9

10. The Kerala High Court Advocates' Association, represented by its Secretary, Ist Floor, High Court of Kerala Building, Ernakulam -682 031 Petitioner Respondent No. 10

**To,**

**THE HON'BLE CHIEF JUSTICE OF INDIA  
AND HIS COMPANION JUDGES OF THE  
SUPREME COURT OF INDIA**

**THE HUMBLE PRAYER OF THE  
PETITIONER ABOVEMENTIONED**

**MOST RESPECTFULLY SHOWETH:**

1. That the present Special Leave Petition is being filed against the Impugned Order dated 01.04.2020 passed by the Hon'ble High Court of Kerala in W.P. (c) (TMP) No. 2/2020 where the Hon'ble High Court has directed the Central Government to intervene in the matter and to remove the blockades erected by the State of Karnataka in the roads travelling to the State of Kerala.

1A. That no letters patent appeal and/ or writ appeal lies against

the impugned Order.

**2. QUESTIONS OF LAW: -**

The following questions of law arise for consideration by this Hon'ble Court –

**I.** Whether the Hon'ble High Court of Kerala could have issued directions to the Central Government to remove impediments in the matter of State of Karnataka when the Hon'ble Court had no territorial jurisdiction either on the road in question or the State of Karnataka under Article 226 of the Constitution of India?

**II.** Whether the Writ Petition filed before the Hon'ble High Court of Kerala seeking directions against the sealing of check posts in the State of Karnataka is maintainable under Article 226 of the Constitution of India?



**III.** Whether the Hon'ble High Court of Kerala could have passed the Impugned Order when this Hon'ble Court had laid down in the case *Lt. Khajoor Singh vs. Union of India & Anr.* [(1961) 2 SCR 828] wherein it was held that:

.....

*"the language of Art. 226 of the Constitution was "reasonably plain" and that the exercise of the power conferred by that Article was subject to a two-fold limitation, namely, (1) that the power is to be exercised "throughout the territories in relation to which it exercises jurisdiction" and (2) that the person or authority to whom the High Court is empowered to issue the writs must be "within those territories". In other words, the writ of the Court could not run beyond the territories subject to its jurisdiction and that the person or authority affected by the writ must be amenable to the Court's jurisdiction, either by residence or location within those territories."*

**IV.** Whether the Hon'ble High Court of Kerala could have passed the Impugned Order when this Hon'ble Court had laid down in the case *Rashmi Rekha Thatoi & Anr vs State Of Orissa & Ors* [(2012) 5 SCC 690] wherein it was held that:



.....

*“In this regard it is to be borne in mind that a court of law has to act within the statutory command and not deviate from it. It is a well settled proposition of law what cannot be done directly, cannot be done indirectly. While exercising a statutory power a court is bound to act within the four corners thereof. The statutory exercise of power stands on a different footing than exercise of power of judicial review.”*

**V.** Whether the Hon'ble High Court of Kerala failed to consider that the blockade on National Highway between the State of Kerala and the State of Karnataka was of utmost necessity and was imposed only after the outbreak of COVID-19 cases in the bordering District Kasargod, Kerala?

**VI.** Whether the State Govt. being the executive is not empowered to take necessary steps to protect the Public Health of the citizens residing in the State of Karnataka including the sealing of State Borders?

**VII.** Whether the Court below ought to have considered that the blocking of the National Highway was need of the

hour since the Kasargod District, Kerala had turned into a Coronavirus Hotspot having maximum cases of the infection?

**VIII.** Whether the dispute with regard to road closure does not amount to a dispute between two states within the meaning of Article 131 of the Constitution of India and thereby the Hon'ble High Court was denuded of any jurisdiction to issue any direction in the said matter?

**3. DECLARATION IN TERMS OF RULE 3(2):**

That the Petitioner states that no other or similar Petition seeking Special Leave to Appeal has been filed by it against Impugned Order dated 01.04.2020 passed by the Hon'ble High Court of Kerala in W.P. (c) (TMP) No. 2/2020.

**4. DECLARATION IN TERMS OF RULE 5:**

That the Annexures P 1 to P5 produced along with the present Special Leave Petition are true copies of their respective originals and they form part of the pleadings and the records of the case in the Court/Tribunal below against whose Order leave to appeal is sought for in the present Special Leave Petition.

## 5. GROUNDS

The Petitioner is seeking Special Leave to Appeal against the Impugned Order dated 01.04.2020 passed by the Hon'ble High Court of Kerala in W.P. (c) (TMP) No. 2/2020, *inter alia*, the following Grounds, which are taken without prejudice to one another—

- A. **BECAUSE** the Impugned Order is contrary to the mandate of the Constitution of India and facts and circumstances of the present case.
  
- B. **BECAUSE** the Hon'ble High Court vide the Impugned Order has directed the Central Government to intervene in the matter and ensure that the alleged blockades erected by the State of Karnataka, on the National Highways connecting the State to the State of Kerala, are removed forthwith despite the fact that the roads in question were closed to preserve public health and to prevent the spread of the pandemic. The said direction has been passed despite the earlier observations in the same Impugned



Order that the Hon'ble High Court had no territorial jurisdiction to issue any direction to the State of Karnataka to remove any impediments which are located in the State of Karnataka. On the face of it, the Impugned Order has been passed wholly without any jurisdiction and is thus liable to be set aside on this ground alone.

- C.** BECAUSE the Hon'ble High Court failed to appreciate that the order passed by the State of Karnataka is based on adequate material it had made available to itself that the existing facilities in the Mangalore district would not support patients from outside the State and there was every possibility of a serious outbreak of the COVID-19 in the border districts of Karnataka if free ingress and outgress of patients is allowed. In this context the State of Karnataka had passed an order under the Epidemics Act on 31.3.2020. A perusal of the order would show that the extreme urgency of the matter under which the State of Karnataka had passed the order banning all movement of people and goods, including patients in order to prevent any further transmission of the disease. It is extremely pertinent to state that the said order was not called into

question before the Hon'ble High Court and yet the Hon'ble High court has passed the Impugned Order.

**D.** BECAUSE the basic premise of the Hon'ble High court is an assumption that the Union of India has an overriding powers over all National Highways, which is completely fallacious. An examination of the scheme of the National Highways Act would show that the Union of India only has limited powers with respect to manage and administer the National Highways. The same in no way takes away the power of the State to regulate the movement within its territorial boundaries. In a federal structure of our country, the relations between the Union of India and the State Govt.s is that of a delicate balance and any High Court would be loathe to interfere with the same under Article 226 of the Constitution of India.

**E.** BECAUSE the Hon'ble High Court failed to appreciate that the orders passed by the State Govt. are justified in the facts and circumstances and the pandemic raging through the entire country. In no manner can the orders of the State Govt be held to be arbitrary or unreasonable. Even if the orders are examined on the touchstone of

Article 19 and 21, no exception could have been taken by the Hon'ble High Court.

**F.BECAUSE** the Writ Petition filed before the Hon'ble High Court of Kerala seeking directions against the opening of check posts in the State of Karnataka is not maintainable under Article 226 of the Constitution of India. It is submitted that the Writ of the Court could not run beyond the territories subject to its jurisdiction and that the person or authority affected by the writ must be amenable to the Court's jurisdiction, either by residence or location within those territories.

**G. BECAUSE** the Hon'ble High Court failed to appreciate that any opening of the road will lead to disastrous consequences and is not warranted in the following facts and circumstances-

- (i) It is submitted that the State of Kerala is the worst affected by the Pandemic Covid-19 disease with nearly 194 cases as on 28.3.2020 and is increasing at a rapid rate. Most of the cases are in the adjoining border districts wherein 7000



persons have been quarantined. One of the districts in the State of Kerala, Kasargod District, is the most affected District in the entire country with the number of Covid- 19 infected patients beyond 100 in the said District itself.

- (ii) The local residents are strongly opposing any movement of traffic and opening of the check post would lead to huge law and order consequences in this sensitive time of lockdown.
- (iii) There are no essential commodities being moved from Kogadu district and there is no hamper to essential commodities as there are two alternative routes for transport of goods from Mysore to Kunnur which is only 21 Kms longer and is being kept open.

Despite the same, the Kerala High Court has taken up a Public Interest Litigation and directed the opening of the check posts which fall within the territories of State of Karnataka. It is submitted that *Ex facie* the said Public Interest Litigation seeking an issuance of a writ of mandamus directing the State of Karnataka to open up its State Borders which have been sealed in larger public

interest was itself not maintainable and the directions issued by the Hon'ble High Court are beyond the powers conferred under Article 226 and 227 of the Constitution of India.

**H. BECAUSE** the Hon'ble High Court of Kerala erred by passing directions to the Central Government to intervene in the matter of State of Karnataka while entertaining a Writ of mandamus under Article 226 of the Constitution of India. Although in the Impugned Order no specific directions have been issued against the State of Karnataka but by issuing such directions to the Central Government to intervene in the matter and remove the blockades erected by the State of Karnataka, the Hon'ble High Court has indirectly exceeded the jurisdiction and powers conferred under Article 226 and 227 of the Constitution of India. It is a well settled proposition of law what cannot be done directly, cannot be done indirectly. While exercising a constitutional power a court is bound to act within the four corners thereof. The Impugned Order is contrary to the basic structure of the constitution and the territorial limits for

exercise of jurisdictions by High Courts under Articles 226 and 227.

**I. BECAUSE** Hon'ble High Court of Kerala could not have passed the Impugned Order when this Hon'ble Court had laid down in the case *Lt. Khajoor Singh vs. Union of India & Anr.* [(1961) 2 SCR 828] wherein it was held that:

.....

*"the language of Art. 226 of the Constitution was "reasonably plain" and that the exercise of the power conferred by that Article was subject to a two-fold limitation, namely, (1) that the power is to be exercised "throughout the territories in relation to which it exercises jurisdiction" and (2) that the person or authority to whom the High Court is empowered to issue the writs must be "within those territories". In other words, the writ of the Court could not run beyond the territories subject to its jurisdiction and that the person or authority affected by the writ must be amenable to the Court's jurisdiction, either by residence or location within those territories."*

**J. BECAUSE** the Hon'ble High Court of Kerala could not have passed the Impugned Order when this Hon'ble



Court had laid down in the case *Rashmi Rekha Thatoi & Anr vs State Of Orissa & Ors.* [(2012) 5 SCC 690] wherein it was held that:

.....

*"In this regard it is to be borne in mind that a court of law has to act within the statutory command and not deviate from it. It is a well settled proposition of law what cannot be done directly, cannot be done indirectly. While exercising a statutory power a court is bound to act within the four corners thereof. The statutory exercise of power stands on a different footing than exercise of power of judicial review."*

**K. BECAUSE** the Impugned Order is contrary to the mandate of Article 226 of the Constitution of India. The plain reading of the provisions laid down under Article 226 of the Constitution of India to the extent of powers to be exercised by the Hon'ble High Court was subject to a two-fold limitation, namely;

- i. That the power is to be exercised "throughout the territories in relation to which it exercises jurisdiction" and,

- ii. That the person or authority to whom the High Court is empowered to issue the writs must be "within those territories."

Therefore, on the face of it such directions could not have been issued by the Hon'ble High Court in the Impugned Order. The same is not in consonance with the constitutional mandate under Art. 226 of the Constitution of India.

**L. BECAUSE** the dispute in question amounts to a dispute between two States within the meaning of Article 131 of the constitution of India and proceedings could have been instituted by the State of Kerala before this Hon'ble Court alone. The present proceedings amount to an abuse of process of the court and ought not to be countenanced.

**M. BECAUSE** the Hon'ble High Court failed to consider that the hospitals in Mangaluru, District are already overburdened and the people residing in Mangaluru are in panic due the increasing number of cases in the Districts of

Kerala specially in Kasargod District. It is humbly submitted that the resources of the State of Karnataka are hard-pressed and it is very difficult to cater the needs of new patients from the State of Kerala. It is also humbly submitted that it is very difficult on ground level to differentiate a COVID-19 patient and other medical cases. In any event, the alleged deaths on the side of State of Kerala are completely unsubstantiated and the Present Writ Petition is based on complete *Ipsi Dixit* of the Petitioners and unverified newspaper reports.

**N.** BECAUSE the Hon'ble High Court failed to consider that the State of Karnataka has been taking all precautionary measures to protect the citizens from this Pandemic Covid-19 disease, and to ensure their safety and to avoid spreading of the Covid -19 disease. The sealing of the state borders with the neighbouring states is in the interest of public health especially when there is a grave concern of spreading of the disease from the Bordering-Districts of the State of Kerala where the situation is really dire. The entire country is going through a lockdown and it is of grave importance that the affected districts of COVID



be sealed and the pandemic be stopped from spreading to newer areas. It is submitted that the Impugned Order would lead to grave consequences for the people of the adjoining districts in the State of Karnataka.

**O. BECAUSE** the Hon'ble High Court failed consider that the State of Kerala has identified 176 cases of COVID-19 as on 28.03.2020, of which majority are from the bordering districts. Further around 7000 persons were quarantined in these districts. Any opening of this route will lead to possibilities of this virulent infection reaching Kodagu District. It is also submitted that the local residents are strongly opposing any movement of traffic on this road and have put up blockades throughout the length of the road. Any opening of this route will lead to protests and deterioration of law and order situation.

**P.BECAUSE** the Hon'ble High Court failed consider that as regards the opening up of road routes for transportation of essential commodities, the route from Kannur - Iritty - Mananthavady - Sargur - Begur - Nanjangud - Mysore and Kannur - SulthanBathery - Gundlupetes - Mysore have already been opened up for the said transportation,

and will continue to be maintained as such through the lockdown period.

**6. GROUND FOR INTERIM RELIEF:**

**A.** It is humbly submitted that the State of Karnataka has locked down its borders in order to prevent the spread of the Covid-19 disease except the movement of essential commodities. The State of Karnataka had specifically closed the Makutta Check post on the Mysore-Virajepat-Kannur highway. However, the Hon'ble High Court vide the Impugned Order has directed Central Government to intervene and remove the closure on the said road.

**B.** It is submitted that the blocking of the National Highway is between Kerala and Karnataka is need of the hour since the Kasargod District, Kerala had turned into a Coronavirus Hotspot having maximum cases of the infection. It is submitted that the very purpose of the nationwide lockdown is to prevent the spread of the pandemic. The State of Karnataka by blocking the National Highway took the precautionary measures to prevent the spread of COVID-19 in the bordering districts.

**D.** It is humbly prayed that if the Impugned Order is not stayed, the petitioner shall suffer an irreparable loss and injury. The entire country is going through a lockdown and it is of grave importance that the affected districts of COVID be sealed and the pandemic be stopped from spreading to newer areas.

**E.** It is submitted that any opening of the road will lead to disastrous consequences and is not warranted in the following facts and circumstances-

(A) It is submitted that the State of Kerala is the worst affected by the Pandemic Covid-19 disease with nearly 194 cases as on 28.3.2020 and is increasing at a rapid rate. Most of the cases are in the adjoining border districts wherein 7000 persons have been quarantined. One of the districts in the State of Kerala, Kasargod District, is the most affected District in the entire country with the number of Covid- 19 infected patients beyond 100 in the said District itself.



(B)The local residents are strongly opposing any movement of traffic and opening of the check post would lead to huge law and order consequences in this sensitive time of lockdown.

(C)There are no essential commodities being moved from Kogadu district and there is no hamper to essential commodities as there are two alternative routes for transport of goods from Mysore to Kunnur which is only 21 Kms longer and is being kept open.

Despite the same, the Kerala High Court has taken up a Public Interest Litigation and directed the opening of the check posts which fall within the territories of State of Karnataka. It is submitted that *Ex facie* the said Public Interest Litigation seeking an issuance of a writ of mandamus directing the State of Karnataka to open up its State Borders which have been sealed in larger public interest was itself not maintainable and the directions issued by the Hon'ble High Court are beyond the powers conferred under Article 226 and 227 of the Constitution of India.

F. It is submitted that the Petitioner has a good prima facie case in his favour and there is all likelihood to succeed in the matter. If the Impugned order is not stayed, the petitioner shall suffer an irreparable loss and injury. On the other hand no prejudice would be caused upon the respondent if ex-parte interim stay is granted in favour of the petitioner.

7. **MAIN PRAYER:**

It is, therefore, respectfully prayed that Your Lordships may be pleased to:

- a) Grant Special Leave to appeal against the Impugned Order dated 01.04.2020 passed by the Hon'ble High Court of Kerala in W.P. (c) (TMP) No. 2/2020;
- b) Pass such other and further orders as may be deemed fit and proper in the facts and circumstances of the present case.

8. **PRAYER FOR INTERIM RELIEF:**

It is respectfully prayed that this Hon'ble Court may be pleased to: -

- a. Stay the operation against the Impugned Order dated 01.04.2020 passed by the Hon'ble High Court of Kerala in W.P. (c) (TMP) No. 2/2020,
- b. Pass ex-parte ad-interim orders in terms of prayer above till the hearing and final disposal of the present Special Leave Petition.
- c. Pass such other and further orders as it may deem fit and proper in the facts and circumstances of the present case.

AND FOR THIS ACT OR KINDNESS THE PETITIONER  
SHALL AS IN DUTY BOUND SHALL EVER PRAY

FILED BY:

S.P

**(SHUBHRANSHU PADHI)**  
Advocate for the Petitioner

New Delhi  
Filed on: 02.04.2020



IN THE SUPREME COURT OF INDIA  
CIVIL APPELLATE JURISDICTION  
SPECIAL LEAVE PETITION (CIVIL) NO. OF 2020

IN THE MATTER OF: -

State of Karnataka

...Petitioner

**Versus**

State of Kerala & Ors.

...Respondents

C E R T I F I C A T E

Certified that the Special Leave Petition is confined only to the pleadings before the High Court whose orders are challenged and the other documents relied upon in those proceedings. No additional facts, documents or grounds have been taken therein or relied upon in the Special Leave Petition. It is further certified that the copies of the documents/annexure attached to the Special Leave Petition are necessary to answer the question of law raised in the petition or to make out grounds urged in the Special Leave Petition for consideration of this Hon'ble Court. This certificate is given on the basis of instructions given by the Petitioner whose affidavit is filed in support of the S.L.P.

NEW DELHI  
DRAWN ON:  
FILED ON:

FILED BY  
S.P  
(SHUBHRANSHU PADHI)  
ADVOCATE FOR PETITIONER

**IN THE SUPREME COURT OF INDIA**  
**CIVIL APPELLATE JURISDICTION**  
**SPECIAL LEAVE PETITION (CIVIL) NO. \_\_\_\_\_ OF 2020**

**BETWEEN**

State of Karnataka

...PETITIONER

VERSUS

Kerala High Court Advocates' Association  
rep. by its Secretary, Ernakulam & Ors.

...RESPONDENTS

**A F F I D A V I T**

I **DR. RAJNEESH GOEL** S/o Dr. S.L. Goel, aged about 56 years, working as Additional Chief Secretary to Government of Karnataka, Home Department, Vidhana Soudha, Bengaluru, do hereby solemnly affirm and state as under: -

1. That I am the Additional Chief Secretary to Government of Karnataka, Home Department and am conversant with the facts and circumstances of the case, based on records. As such I am competent to swear this affidavit.
2. That I have read and understood the contents of para Nos 1 to 8 at page Nos.8 to 33 of the Special Leave Petition and state that the facts stated in the petition are true and to my knowledge and belief. Parties to the present Petition are the same as they were before the Court below.
3. That I have read the accompanying list of dates and events from page B to U and prayers for Interim Reliefs and say that what is stated therein is true to my knowledge and belief.



4. That I have read the accompanying Applications and understood the contents thereof. I say that what is stated therein is true to my knowledge and belief.

5. The annexures filed along with the SLP are true copies of their respective originals and formed part of the record of the case.

6. That the Petitioner has not filed any other Petition before this Hon'ble Court against the impugned orders of the High Court.

7. No facts which were not pleaded before the Courts below have been pleaded in the SLP.

  
**DEPONENT**

**VERIFICATION:**

I, the deponent abovenamed, do hereby verify that the contents of paras 1 to 7 of my above affidavit is true to my knowledge and belief, no part of it is false and nothing material has been concealed therefrom.

Verified at Bengaluru on this day the 2<sup>nd</sup> of April, 2020.

  
**DEPONENT**



GOVERNMENT OF KARNATAKA

No. CHS 272 2020 (HD)

Karnataka Government Secretariat,  
Vidhana Soudha,  
Bengaluru, Dated: 28-03-2020.

From,

The Additional Chief Secretary,  
Home Department,  
Government of Karnataka,  
Bengaluru – 560 001.

To,

The Additional Chief Secretary,  
Home Department,  
Government of Kerala,  
Thiruvananthapuram.

Dear Sir,

District Magistrate, Kodagu District, Karnataka has reported that in keeping with the orders of Union Home Secretary, lockdown has been enforced through out Kodagu district to prevent and arrest spreading of Corona Virus.

Accordingly, all inter-state and inter-district roads have been closed for traffic, with the exception of movement of essential goods. You are aware that Kodagu district borders Waynad, Kannur and Kasargod districts of Kerala. Hence, the roads connecting these districts have been closed at present.

District Magistrate has reported that there is a persistent demand from residents of these bordering districts to open Makutta check post on the Mysore-Virajpet-Kannur highway. However, owing to the following reasons, District Magistrate has not permitted any movement on this route and has instead suggested alternative routes.

1. Kerala has identified 176 cases of COVID-19 as on 28-03-2020, of which majority are from these bordering districts. Further 7000 persons are reported to be quarantined in these districts. Any opening of this route will lead to possibilities of this virulent infection reaching Kodagu district.

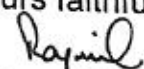
2. The local residents are strongly opposing any movement of traffic on this road and have put up blockades throughout the length of the road. Any move to open this road will lead to protests and deterioration of law and order situation.
3. Kodagu district does not supply any essential commodities to Kerala. The essential commodities are sourced from Mysuru. The route that has been closed passes through Kodagu and is 179 kms long from Kannur via Iritty-Makutta-Virajpet to Mysuru.
4. There are two alternative routes available for transportation of goods from Mysuru to Kannur (copy of Google Map routes attached).
  - i. Kannur-Iritty-Mananthavady-Sarguru-Beguru-Nanjanagudu-Mysuru (Total 200 kms).
  - ii. Kannuru-Sulthan batteri-Gundlupete-Mysuru (Total 246 kms).

The shorter alternate route is only 21 kms longer. During 2018 and 2019, Kodagu district faced heavy rainfall resulting in landslides and complete closure of Makutta road for six months. At that point of time, the above mentioned alternative routes were used for transportation of all essential goods. I would like to assure you that these two routes will always be kept open for movement of essential commodities to Kerala.

You will appreciate that the action of District Magistrate in keeping the Makutta check post closed in view of above mentioned reasons is wholly justified and prudent. The first and foremost priority for the district administration is maintenance of law and order and prevention of spread of COVID-19 epidemic. Further, in view of availability of alternative routes, the border districts of Kerala will not face inconvenience in obtaining essential commodities.

I request you to apprise these facts to all concerned and ensure healthy cooperation and coordination between the two States in these challenging times.

Thanking you,

Yours faithfully,  
  
(Dr. Rajaneesh Goel, IAS)  
Additional Chief Secretary,  
Home Department.

Presented on: 30.03.2020

Subject: PUBLIC INTEREST LITIGATION: GUIDELINES FOR FIELD OFFICERS  
DURING LOCKDOWN AND OPENING OF STATE BORDERS FOR TRANSPORT OF  
ESSENTIALS AND PATIENTS

## **IN THE HIGH COURT OF KERALA**

W.P. (C) No. \_\_\_\_\_ of 2020

The Kerala High Court Advocates' Association :: Petitioner

**Versus**

The State of Kerala and ors :: Respondents

### **MEMORANDUM OF WRIT PETITION (CIVIL) FILED UNDER ARTICLE 226 OF THE CONSTITUTION OF INDIA**

Court Fee to be paid Rs.100/-

Manu Govind (M-769)

Counsel for the Petitioner

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**M/s. Jayasankar & Manu**  
Advocates & Associates



# IN THE HIGH COURT OF KERALA

W.P. (C) No. \_\_\_\_\_ of 2020

The Kerala High Court Advocates' Association :: Petitioner

**Versus**

The State of Kerala and ors :: Respondents

## INDEX

SI No	Particulars	Page Nos
1	Synopsis	A
2	Memorandum of Writ Petition (Civil)	1-5
3	Affidavit	6
4	<b>EXHIBIT P1:-</b> The true copy of the news report appeared in Kerala Kaumudy web portal on 28.03.2020	7
5	<b>EXHIBIT P1A-</b> The true copy of the news reports appeared in thenewsminute on 27.03.2020	
6	<b>EXHIBIT P1B-</b> The true copy of the news report appeared in The News minute on 28.03.2020	
7	<b>EXHIBIT P2:-</b> The true copy of the ordinance (No18/2020) dated Kerala Epidemic Diseases Ordinance, 2020	
8	<b>Exhibit P2A -</b> True copy of Kerala Epidemic Diseases COVID 19 Regulations, 2020	
9	<b>EXHIBIT P3:-</b> True copy of press reports relating to closure of State Border appeared in Deccan Herald (web edition) on 27.3.2020	
10	<b>EXHIBIT P4:-</b> The true copy of the press report appeared in Time of India daily on 29.03.2020	
11	<b>EXHIBIT P5:-</b> The true copy of the paper report appeared in THE HINDU New Paper on 29.03.2020	
12	<b>EXHIBIT P6:-</b> The true copy of the paper report appeared in Deccan Herald daily on 28.03.2020	

Dated this the 29th day of March, 2020

Counsel for the Petitioner

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# IN THE HIGH COURT OF KERALA

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W.P. (C) No. of 2020

The Kerala High Court Advocates' Association :: Petitioner

**Versus**

The State of Kerala and ors :: Respondents

## SYNOPSIS

The writ petition is moved based on the widespread reports that while commendable efforts are being taken by the State Government to ensure that the lockdown announced to face the spread of COVID-19 is effectively carried out, some officials, especially police officers, are overstepping their powers in the absence of proper guidelines having force of law. This results in illegal and unconstitutional actions against people including physical assault in violation of fundamental rights of people of the State.

There are reports of impending scarcity of essentials which may result in unavailability of essentials or artificial hike in prices of essentials. This will result in gross violation of fundamental rights of the people of the State.

The Borders of the State to Karnataka are closed resulting in denial of medical facilities to the people in northern districts of Kerala, resulting in two deaths. Report shows that the efforts by the State Government of Kerala is not finding favour with the State Government of Karnataka. Interference of the Union Government is called for in such circumstances.

These matters demand emergent consideration of this Honourable Court under its extraordinary jurisdiction under the Constitution to ensure protection of Fundamental Rights of the people of the State of Kerala.

## CHRONOLOGY OF EVENTS

Sl No	Date	Event
1.	22.3.2020	The State Border of Kerala and Karnataka are totally locked down by the Officials of the State of Karnataka. This is done as a bid to prevent the spread of COVID 19.
2.	23.3.2020	Lockdown of Seven districts in Kerala Announced to prevent COVID 19 spread.
3.	24.3.2020	The entire country is placed under lockdown to prevent COVID 19 spread.

4.		<p>The closure of the State Border is resulting in prevention of transport of essential goods and also prevention of movement of people for getting medical care.</p> <p>The lockdown being implemented without proper guidelines is resulting in some police officials exercising power in illegal manner resulting in violation of rights of people.</p>
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Dated this the 29th day of March, 2020

Counsel for the Petitioner



## IN THE HIGH COURT OF KERALA

W.P.(c).No.

of 2020

### PETITIONER

The Kerala High Court Advocates' Association,  
represented by its Secretary,  
1st Floor, High Court of Kerala Building,  
Ernakulam -682 031

### *Versus*

### RESPONDENTS:

1. The State of Kerala, represented by the Chief Secretary to Government of Kerala, Secretariat, Thiruvananthapuram 695 001
2. The Secretary to Government of Kerala, Department of Home, Secretariat, Thiruvananthapuram 695 001.
3. The Secretary to Government of Kerala, Department of Health, Secretariat, Thiruvananthapuram 695 001
4. The Director General of Police and State Police Chief, Police Head Quarters, Thiruvananthapuram 695001
5. The Union of India, represented by Secretary to Government of India, Department of States, Ministry of Home Affairs, New Delhi 110001.
6. The State of Karnataka, represented by the Chief Secretary, Secretariat, Vikasa Saudha, Bangalore 560001.
7. The State of Tamil Nadu, represented by the Chief Secretary, Secretariat, Chennai 600009.
8. The Union Territory of Puducherry, represented by its Lieutenant Governor, Puducherry 605013.
9. The National Disaster Management Authority, NDMA Bhawan, A-1, Safdarjung Enclave, New Delhi - 110029 represented by its Member Secretary
10. The Kerala State Disaster Management Authority, represented by its convenor, Observatory Hills, Vikas Bhavan P.O, Thiruvananthapuram – 695033

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

- I. All the notices and processes to the Petitioner may be served on its counsel, Manu Govind of M/s. Jayasankar & Manu, First Floor, Prince Towers, Kombara Jn., Kochi-18 or at [manugovind@keralalawfirm.com](mailto:manugovind@keralalawfirm.com)
- II. All the notices and processes on the respondents may be served on the above address or on its counsel in the cause.

### III. STATEMENT OF FACTS

1. Petitioner is the Association of Advocates practising in the High Court of Kerala. This writ petition is being filed in Public Interest to redress the grievance of people in Kerala arising from certain aspects of the lockdown announced in view of spread of COVID 19.
2. He is approaching this Hon'ble Court seeking to compel the 4th Respondent to consider the representation made to the 4th Respondent in the wake of the Coronavirus Disease (COVID-19), pandemic for facilitating delivery of its products through online platforms.
3. Due to the spread of COVID 19, the 1st respondent State Government announced lock down of seven districts including Kasargod on 23.3.2020. The very next day, the 5th respondent directed total lock down of the country. It is submitted that the petitioner does not contest the validity or legality of the above steps by the respective Governments.
4. The 1st respondent through its officials did a commendable job ensuring effective lock down despite lack of cooperation from certain uninformed individuals. At the same time, the reports show that certain officials of the Police overstepped their brief and took to harassing and punishing citizens whom they felt are violating the lockdown instructions without justification. In some instances, it appears, the Police officials on the field physically attacked the individuals who were outside their home during lockdown. Taking into consideration the instances and media reports up to 27.03.2020, and perturbed by the safety of the citizen, a learned judge of this Honourable Court wrote to the Director General of Police on 27.03.2020 thus:  
*"... there are clips being circulated in social media of police officers beating up persons who deliberately violate the lockdown. Don't know if any of them are from Kerala. But, I must request you to direct all officers not to do so at any cost, unless it is absolutely essential to use force and even then, only to the extent necessary"*
5. However, on 28.03.2020, a Superintendent of Police Kannur is seen to have resorted to imposing penalty on citizens found outside their home by Public Shaming and forced squatting; thereby displaying arrogance of power. A true copy

of the news reports in this regard is produced herewith and is marked as **EXHIBIT P1, EXHIBIT P1A EXHIBIT P1B** A one minute video of the imposition of penalty on citizens by Public Shaming by forced squatting by Police is available [online](#)<sup>1</sup>. It is understood that the Police Officer seen in the video is Yathish Chandra G H is an IPS officer of 2011 batch, Kerala Cadre. He currently serves as the Commissioner of Police at Kannur. In another instance a patient who went to get treatment was beaten up by the police.

6. It is submitted that the 1st respondent has promulgated Kerala Epidemic Diseases 2020 for facing the situation like the one at hand. As per the Act Temporary Regulations or orders can be issued by the State Government when it is satisfied that there is or there is a threat of outbreak of an epidemic disease. Violation of the Regulation or Order is an offence punishable with imprisonment for two years or fine. It is treated as a Cognizable, Bailable Offence. A true copy of the ordinance is produced herewith and is marked as **EXHIBIT P2**.
7. It is submitted that prior to promulgation of the Exhibit P2 ordinance, the State Government had under its powers under Epidemic Diseases Act, 1897 (Central Act) promulgated Kerala Epidemic Diseases COVID 19 Regulations, 2020, a true copy of which is produced herewith and marked as **EXHIBIT P2A**.
8. In Exhibit P2A, no specific regulations are made as to how power of field officers are to be regulated. It appears that the officials on the field are, in the absence of specific guidelines/regulations, trying to implement the lockdown in their own way. While most of the officials are resorting to strictly legal methods, some of them have taken this as an opportunity to exercise unbridled power over the life and liberty of ordinary citizens.
9. It is necessary that the Government urgently interfere, laying down specific guidelines/regulation setting out procedural safeguards and legal perimeters for the officials to act. Otherwise, the very conferment of power would be unconstitutional and in violation of the fundamental rights of the people. It is submitted that till such

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<sup>1</sup>[Public Shaming Of Lockdown Violators : Kerala DGP Seeks Explanation From Police Commissioner \(LiveLaw.com\)](#)



guidelines are formulated by the Government general guidelines are to be issued by this Honourable court to protect citizens from vagaries of excess of power.

10. Kerala is a consumer state and most of the essential commodities come to the markets of the State from other places in India. The lockdown has seriously affected the inflow of essential commodities to the State. It is apprehended that this would result in scarcity of essential commodities including food and medicine. As a necessary corollary, one should guard against hoarding and artificial hiking of the price of essential commodities. It is submitted that necessary directions in this regard are warranted to protect equality, life, and liberty of the people of the State.
11. The above circumstances are further precipitated by the fact that the border of the State with Karnataka is closed at at least 20 places by the 6th respondent. True copy of press reports relating to closure of State Border is produced herewith and is marked as **EXHIBIT P3**
12. It can be seen that the closing of the borders not only affect the movement of essential commodities but also fetter movement of people for emergency medical treatment. The Kasargod district, especially the northern areas of the same, depend heavily on medical facilities in Karnataka State. This is because the Hospitals in Karnataka are more proximate Geographically. It is also due to the fact that the Hospitals towards the South of Kasargod are already crossed their capacity especially due to the rampant COVID 19 spread in that District. Thus closing of the State Border gives rise to a humane issue which unfortunately the 6th respondent and its officials fail to appreciate. The negotiation between the State Governments of Kerala and Karnataka has not borne any fruit. It appears that the 1st respondent has already addressed the 5th respondent on this issue. A true copy of the press report is produced herewith and is marked as **EXHIBIT P4**.
13. It is also reported that two individuals lost their lives, while in the Ambulance, because they could not obtain emergent medical attention they required, due to closure of the State border with Karnataka. A copy of the paper report is produced herewith and is marked as **EXHIBIT P5**. It is also reported that a lady in labour was

turned away at the border and she delivered a baby in the ambulance while on the way to another Hospital. A copy of the paper report is produced herewith and is marked as **EXHIBIT P6**.

14. The petitioner, as a responsible organisation of advocates practising before this Hon'ble Court seeks to place the above material before this Honourable Court and seek interference in order to protect the fundamental rights of the people of the State at large, on the following among other

#### GROUND

- A. Total lack of guidelines to the Field Officials in exercising power in an unprecedented situation arising from a total lockdown has resulted in some officials exercising power in excess of what is contemplated by law. This has resulted in serious violation of rights of the citizens. The cases as disclosed from the reports show that the Police themselves have become the investigators, prosecutors, judges and executioners. This is most abhorrent in a Constitutional Democracy. There cannot be nude powers conferred on any official whatever be the circumstances. It is submitted that the reports of police high-handedness show total violation of principles of natural justice, and violation of fundamental rights of life and liberty of people, resulting in violation of Art. 21 of the Constitution of India.
- B. Public Shaming by forced squatting is an act which violated the right to life and personal liberty, under Article 21, of the citizen. Right to life under Article 21 also includes the right to be treated with dignity.
- C. Imposing penalty on citizens by Public Shaming, by forced squatting, or beating, is an act undertaken by the Police even without a semblance of power to do so. In India, the Police do not have power to impose any sort of punishment on the citizen. In such circumstances, the act of the Police Commissioner and the like are instances of Torture<sup>2</sup> and abuse of Power.

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<sup>2</sup> "Torture" has not been defined in Constitution or in other penal laws. 'Torture' of a human being by another human being is essentially an instrument to impose the will of the 'strong' over the 'weak' by suffering. DK Basu v. State of West Bengal 1997 (1) SCC 416 (<https://indiankanoon.org/doc/501198/> )

- D. "Article 21 provides "no person shall be deprived of his life or personal liberty except according to procedure established by law". Personal liberty, thus, is a sacred and cherished right under the Constitution. The expression "life or personal liberty" has been held to include the right to live with human dignity and thus it would also include within itself a guarantee against torture and assault by the State or its functionaries.<sup>3</sup>. Police has no power to punish people. They can, if situation warrant, arrest a person. For this also, the law laid down by the Supreme Court in D K Basu Case has to be followed scrupulously. As reflected from the reports, it is seen that some of the police officials are violating the same with some assumed impunity.
- E. The apex court in Jaisinghani V. Union Of India And Ors<sup>4</sup> has already held that :*"...the absence of arbitrary power is the first essential of the rule of law upon which our whole constitutional system is based. In a system governed by rule of law, discretion, when conferred upon executive authorities, must be confined within clearly defined limits. The rule of law from this point of view means that decisions should be made by the application of known principles and rules and, in general, such decisions should be predictable and the citizen should know where he is. If a decision is taken without any principle or without any rule it is unpredictable and such a decision is the antithesis of a decision taken in accordance with the rule of law"*.  
The situation, as of now is one which confers power on the officers to implement lockdown by hook or by crook. The present discretion conferred is granting arbitrary power on the executive in the absence of any guidance as to how the discretion/power should be exercised.
- F. It is submitted that the Government is duty bound to take all efforts to ensure that essential commodities like food, medicine etc. are ensured to be in hinderless supply. Effective measures to avoid hoarding and excess pricing is to be taken. Given the fact that Kerala is a consumer Economy dependent on the other states for most of its essential commodities, it is necessary to ensure that the traffic of goods, especially essential commodities is ensured without hindrance.
- G. It is submitted that the respondent no. 6 has now closed the borders it shares with Kerala State. This is most illegal, and against the fundamental right to freedom to travel anywhere in India for all citizens of India. True, it may be necessary to restrict travel given the circumstances of spread of an epidemic disease. But that does not empower the Karnataka Government to totally prevent entry of people from one

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<sup>3</sup> DK Basu V. State of West Bengal 1997 (1) SCC 416

<sup>4</sup> 1967 AIR 1427



State to another. This cuts at the root of the Constitutional setup under which India is Governed. One State government cannot take such a hostile attitude towards inhabitants of another State. It is submitted that this unjustified closure of the borders has resulted in loss of life of two persons in Kerala already. A total closure of the State border is totally illegal and against the Constitutional mandates under Art. 14, 21, and 19 of the Constitution of India.

- H. The closure of State Borders also result in hindrance of transport of essential commodities to the State of Kerala. This also results in serious violation of fundamental rights of the citizens of India living all over Kerala. The right of a citizen to have medical treatment at the nearest hospital with facilities to cater to his need is to be read as a fundamental right under Art.21 of the Constitution. It is a necessary facet of the right to health. It is submitted that merely because the nearest hospital is beyond the State Border should not hinder the availability of efficient medical treatment for people. It is apprehended that such actions of closing the borders may be followed by the other states also and this will cause further violation of the rights of the people in the State of Kerala. It is necessary to give directions not to do such acts.
- I. It is submitted that the actions of respondent no. 6 and the apprehended actions of the respondents 7 and 8 affect the fundamental rights of the people residing within the territorial limits of the jurisdiction of this Honourable Court. Hence the cause of action arises within the territories where this Honourable Court exercises jurisdiction and hence the writ petition is maintainable.

#### PRAYERS

Having regards to the above mentioned grounds and also such other grounds that may be urged at the time of hearing, it is most humbly requested and prayed that this Hon'ble Court may be pleased to

- i. to issue a writ of mandamus directing the respondent no. 1 to formulate and implement proper guideline or regulations under the Kerala Epidemic Diseases Ordinance, 2020, to ensure that no illegal or unconstitutional measures are adopted by the officers in the field including Police Officers and that all Governmental Actions are kept within the purview of law.
- ii. to issue a writ in the nature of mandamus laying down the guidelines for the guidance of the officers in the field including Police Officers implementing the lockdown now promulgated by the Governments pending finalisation of the guidelines by the first respondent Government;

- iii. to issue a writ in the nature of mandamus directing the first respondent Government to take necessary steps to ensure the availability of essentials like food, medicine etc. to people at reasonable and fair price during the lockdown;
- iv. to issue a writ in the nature of mandamus directing the 5th respondent to ensure that the State Borders of Kerala to Karnataka, Mahe and Tamil Nadu are open for the purpose of transportation of essential commodities in to the State and for transportation of people in need of Medical Assistance; and
- v. pass any other direction, order or reliefs, as this Hon'ble Court may deem fit to be necessary in the interest of justice, equity and good conscience.

#### INTERIM RELIEF

For the reasons stated in the above Writ Petition and affidavit it is respectfully prayed that this Honourable Court may be pleased to

1. lay down guidelines for the exercise of power by officers on the field including Police Officials during the lockdown; and
2. direct the respondents 5 to 8 to immediately ensure that the State borders of Kerala are kept open for transport of essential commodities and people who are in need of medical care during the currency of Lockdown, presently in vogue

Dated this the 29th day of March, 2020

Petitioner

Counsel for the Petitioner

## IN THE HIGH COURT OF KERALA

W.P. (C) No. \_\_\_\_\_ of 2020

The Kerala High Court Advocates' Association :: Petitioner

**Versus**

The State of Kerala and ors :: Respondents

### A F F I D A V I T

I, Ajithkumar T.K., S/o T K Velayudhan, aged 51 years, residing at Aarya, Divine Village, Kakkanad, representing the Kerala High Court Advocates Association, as its Secretary, do hereby solemnly affirm and state as follows:-

1. I am the Secretary of the petitioner Association, in the above Writ Petition. I am conversant with the facts of the case and I am competent to swear to this Affidavit.
2. The above writ petition has been prepared on my instructions and I have not suppressed any material facts from this Honorable Court.
3. I have no personal gain other than the one described in relation to the subject matter involved in this Writ Petition. The matter involved in the above case is one involving substantial and larger public interest as this affects the fundamental rights of people across Kerala. There is no authoritative pronouncement on the subject matter by this Honourable Court or the Honourable Supreme Court of India.
4. The copy of the Exhibits marked in the writ petition is the true copy of the original.
5. I have not filed any other writ petition for the same relief or for similar reliefs.

All the facts stated above are true to the best of my knowledge, information and belief.  
Dated this the 29th day of March, 2020

Deponent

Solemnly affirmed and signed before me by the deponent, who is personally known to me, at my office at Ernakulam on this the 29th day of March, 2020

Manu Govind  
Advocate



**IN THE HIGH COURT OF KERALA AT ERNAKULAM**

**MONDAY, THE 30TH DAY OF MARCH, 2020/10TH CHAITHRA, 1942**

**Present:**

**THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR**

**THE HONOURABLE MR. JUSTICE SHAJI P.CHALY**

**WRIT PETITION (TMP) NO. 2/2020**

**PETITIONER :**

The Kerala High Court Advocates' Association, represented by its Secretary,  
1st Floor, High Court of Kerala Building, Ernakulam -682 031

BY ADVOCATE SRI. P. RAVINDRAN (SENIOR) ALONG WITH ADVOCATE SRI MANU GOVIND

**RESPONDENTS :**

1. The State of Kerala, represented by the Chief Secretary to Government of Kerala, Secretariat, Thiruvananthapuram 695 001
2. The Secretary to Government of Kerala, Department of Home, Secretariat, Thiruvananthapuram 695 001.
3. The Secretary to Government of Kerala, Department of Health, Secretariat, Thiruvananthapuram 695 001
4. The Director General of Police and State Police Chief, Police Head Quarters, Thiruvananthapuram 695001
5. The Union of India, represented by Secretary to Government of India, Department of States, Ministry of Home Affairs, New Delhi 110001.
6. The State of Karnataka, represented by the Chief Secretary, Secretariat, Vikasa Saudha, Bangalore 560001.
7. The State of Tamil Nadu, represented by the Chief Secretary, Secretariat, Chennai 600009.
8. The Union Territory of Puducherry, represented by its Lieutenant Governor, Puducherry 605013.
9. The National Disaster Management Authority, NDMA Bhawan, A-1, Safdarjung, Enclave, New Delhi - 110029 represented by its Member Secretary
10. The Kerala State Disaster Management Authority, represented by its convenor, Observatory Hills, Vikas Bhavan P.O, Thiruvananthapuram – 695033

Sri. Ranjith Thampan, Additional Advocate General for R1 to R4  
Adv.Sri. Jaishankar V. Nair , CGC, for R5  
Adv. Sri. S . Manu for R6

This Writ Petition having come up for admission on 30-03-2020, the Court on the same day passed the following :

**A.K. JAYASANKARAN NAMBIAR, J.**  
&  
**SHAJI P. CHALY, J.**

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**W.P.(C). (TMP) NO.2 OF 2020**  
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**Dated this the 30<sup>th</sup> day of March, 2020**

**ORDER**

**A.K. Jayasankaran Nambiar, J.**

Notice before admission to the respondents. Sri. Ranjith Thampan, the learned Additional Advocate General takes notice for respondents 1 to 4, Sri. Jaishankar V. Nair, the learned Central Government Counsel takes notice for the 5<sup>th</sup> respondent, Sri, S. Manu, the learned counsel takes notice for the 6<sup>th</sup> respondent on instructions received from the Advocate General for the State of Karnataka.

2. This writ petition is in the nature of a public interest litigation, and seeks directions to the Central Government, as well as to the State Governments of Karnataka and Kerala, to take measures to ensure the safety of citizens during the period of lockdown announced by the Central and State Governments in connection with the COVID Pandemic.

3. The learned Senior Counsel, Sri. P. Ravindran, duly instructed by Sri. Manu Govind, the learned counsel appearing for the petitioner, would point out that while there are various directions sought for in the writ petition, the pressing need is for a direction to the Central Government to forthwith take measures to ensure that the blockades put up by the State of Karnataka, on the roads, especially the National Highways, cutting through the border between the States of Kerala and Karnataka, are immediately removed. It is submitted that the blockades put up

by the State of Karnataka have prevented the free movement of vehicles carrying essential commodities to the State of Kerala as also the movement of ambulances and other vehicles carrying patients from Kerala, who require emergent medical attention in neighbouring hospitals in the State of Karnataka. We are also told that the present stalemate has also resulted in the loss of lives, with patients not being able to receive prompt medical attention.

4. Sri. Ranjith Thampan, the learned Additional Advocate General, would submit that the issue of blockades has engaged the attention of the State Government and frantic efforts are being made to remove the blockades. It is submitted that the Chief Minister of the State has already requested his counter part in the State of Karnataka to take suitable action, and a similar request has also been sent to the Prime Minister, seeking his intervention to end the stalemate.

5. Sri. Jaishankar V. Nair, the learned Central Government Counsel appearing on behalf of the Central Government would submit that guidelines have already been issued by the Central Government in the Ministry of Home Affairs, with regard to the lockdown measures to be adopted by the Central Government, State Governments and Union Territories, and that such guidelines clearly make provision for the uninterrupted movement of vehicles transporting essential supplies of food and medicine across State borders as also for the movement of vehicles carrying persons in need of medical attention. He refers in particular to the communication dated 29.03.2020 of the Home Secretary, Government of India.

6. Sri. Manu S, the learned counsel, who appears on the instructions of the Advocate General of Karnataka, seeks a day's time to respond to the averments in the writ petition.



7. On a consideration of the facts and circumstances of the case as well as the submissions made across the bar, we feel that while the request of the Advocate General of Karnataka, for a day's time to respond to the averments in the writ petition can be granted, the Central Government as well as the State Governments concerned must address the issues arising from the blockades, projected in this writ petition, without any further delay. This is more so because human lives are at stake, as evident from the cases of deaths reported before us by Sri. Ranjith Thampan, and at a time like this, when efforts are on worldwide to save humanity from the harmful effects of the COVID 19 Virus, one cannot be found resorting to measures that run counter to the said objective.

8. While we post this writ petition for further consideration tomorrow, we hope that the State Governments of Kerala and Karnataka would find an immediate solution to the present stalemate, by adverting to the guidelines issued by the Central Government.

Validity unknown

Digitally signed by JUSTICE A  
K JAYASANKARAN  
NAMBIAR  
Date: 2020.09.30 17:56:17 IST

**A.K.JAYASANKARAN NAMBIAR**  
**JUDGE**

Validity unknown

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JUSTICE SHAJI P CHALY  
Date: 2020.09.30 17:59:20  
IST

**SHAJI P. CHALY**  
**JUDGE**

HD 2488 HCP-2.2020

**IN THE SUPREME COURT OF INDIA  
APPELLATE JURISDICTION**

Special Leave Petition before the Hon'ble Supreme Court of India, New  
Delhi against the order dated 01.04.2020 of the Hon'ble High Court of  
Kerala in Writ Petition (TMP) No.2/2020

**IN THE MATTER OF:** State of Karnataka **Petitioner**

-V/s-

Kerala High Court Advocates' Association represented by its Secretary, Ernakulam **Respondent**

**VAKALATNAMA**

I, Parveen A. Bankapur, 1<sup>st</sup> Additional Solicitor & Ex. Officio Deputy Secretary to Government, Home Department, on behalf of Chief Secretary to Government, Government of Karnataka (Respondent No.6), do hereby appoint and retain Sri Shubhranshu Padhi, Advocate on record of the Supreme Court of India to act and appear for me/us in the above Appeal/Petition and on my/our behalf to conduct and prosecute (or defend) the same and all proceedings that may be taken in respect of any application connected with the same or any decree of order passed therein, including proceedings in taxation and applications for Review, and to represent me/us and take all necessary steps on my/our behalf in the matter. I/We agree to ratify all acts done by the aforesaid Advocate in pursuance of this authority.

Dated this the 2<sup>nd</sup> Day of April, 2020.

  
(PARVEEN A.BANKAPUR)

I Additional Solicitor & Ex. Officio  
Deputy Secretary to Government,  
HOME DEPARTMENT

  
Accepted & Identified & Certified

(KAR 71/05)

APPELLANT(S)/PETITIONER(S)/RESPONDENT(S)

Advocate, Supreme Court

**MEMO OF APPEARANCE**

To,  
The Registrar,  
Supreme Court of India  
New Delhi.

Sir,

Please enter my appearance on behalf of the Petitioner(s)/Appellant(s)/Respondent(s) Opposite Parties/Intervener No.....in the matter above.

Yours faithfully,

S.P

(SHUBHRANSHU PADHI)

(2271)

NEW DELHI:  
FILED ON:



## Government of Karnataka

No. HFW 54 CGM 2020

Karnataka Government Secretariat  
Vidhana Soudha  
Bengaluru, dated 31.03.2020.

## ADDENDUM ORDER

**Read:** Order Covid-19 dated: 13.03.2020, revised order dated: 20.03.2020 read with addendum order dated: 21.03.2020 and Order dated 23.3.2020 bearing the same number.

\*\*\*\*\*

In continuation of the previous order dated 23.03.2020, and in view of the severe shortage of Health Facilities in the State of Karnataka, the Government of Karnataka considers it necessary to impose certain restrictions on the movement and treatment of patients from other States to contain the spread of Covid-19 which is playing havoc across the world including India. Karnataka has witnessed more than 101 Covid-19 positive cases and 3 deaths.

2. Whereas, it is considered necessary in the public interest that in exercise of the powers conferred under Sec.2,3 & 4 of the Epidemic Diseases Act, 1897 (Central Act 3 of 1897 & Mysuru Act II of 1897) under Sec.16 of the Hyderabad Infectious Disease Act, 1950 (Hyderabad Act XII of 1950) has framed The Karnataka Epidemic Diseases (Covid-19) Regulations 2020.

3. Therefore, now in exercise of its powers under Section 2 of the Epidemic Diseases Act, 1897 read with the enabling provisions of the Disaster Management Act 2005, the Government of Karnataka hereby issue this order imposing the restrictions on the movement of patients from across the border, from other States into the State of Karnataka for treatment or diagnosis in view of severe shortage of health facilities in the State of Karnataka. The Government of Karnataka hereby notifies that the restrictions mentioned in the order dated 23.03.2020, read with above addendums shall be imposed in the territorial jurisdiction of the entire State of Karnataka from 00.00 hrs of 01.04.2020 to 00.00 hrs of 15.04.2020.

4. All other remaining conditions mentioned in the previous order dated 23.3.2020 remain unaltered and continued to be in force.  
(Approved by the Chief Secretary)

  
(Jawaid Akhtar)Addl Chief Secretary to Government  
Health and Family Welfare Dept.



**IN THE HIGH COURT OF KERALA AT ERNAKULAM**

**Present:**

**THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR  
&**

**THE HONOURABLE MR. JUSTICE SHAJI P.CHALY**

**TUESDAY, THE 31<sup>ST</sup> DAY OF MARCH, 2020/11TH CHAITHRA, 1942**

**WRIT PETITION (TMP) NO. 2/2020**

**PETITIONER :**

The Kerala High Court Advocates' Association, represented by its Secretary,  
1st Floor, High Court of Kerala Building, Ernakulam -682 031

By Advs. Sri. P. Ravindran (Sr.) along with Sri. Manu Govind

**RESPONDENTS :**

1. The State of Kerala, represented by the Chief Secretary to Government of Kerala, Secretariat, Thiruvananthapuram 695 001
2. The Secretary to Government of Kerala, Department of Home, Secretariat, Thiruvananthapuram 695 001.
3. The Secretary to Government of Kerala, Department of Health, Secretariat, Thiruvananthapuram 695 001
4. The Director General of Police and State Police Chief, Police Head Quarters, Thiruvananthapuram 695001
5. The Union of India, represented by Secretary to Government of India, Department of States, Ministry of Home Affairs, New Delhi 110001.
6. The State of Karnataka, represented by the Chief Secretary, Secretariat, Vikasa Saudha, Bangalore 560001.
7. The State of Tamil Nadu, represented by the Chief Secretary, Secretariat, Chennai 600009.
8. The Union Territory of Puducherry, represented by its Lieutenant Governor, Puducherry 605013.
9. The National Disaster Management Authority, NDMA Bhawan, A-1, Safdarjung, Enclave, New Delhi - 110029 represented by its Member Secretary
10. The Kerala State Disaster Management Authority, represented by its convenor, Observatory Hills, Vikas Bhavan P.O, Thiruvananthapuram – 695033

Sri. Ranjith Thampan, Additional Advocate General for R1 to R4  
Adv.Sri. Jaishankar V. Nair , CGC, for R5  
Adv. Sri. S . Manu for R6

This Writ Petition having come up for orders on 31-03-2020, the Court on the same day passed the following :

**A.K. JAYASANKARAN NAMBIAR, J.**  
&  
**SHAJI P. CHALY, J.**

-----  
**W.P.(C). (TMP) NO.2 OF 2020**  
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**Dated this the 31<sup>st</sup> day of March, 2020**

**ORDER**

**A.K. Jayasankaran Nambiar, J.**

When this matter was taken up today, we heard Sri.P.K. Navadgi, the learned Advocate General of the State of Karnataka as also Sri.Ranjith Thampan, the learned Additional Advocate General of the State of Kerala apart from the learned senior counsel Sri.P. Ravindran instructed by Sri.Manu Govind, the learned counsel on behalf of the petitioner.

2. The learned Advocate General of Karnataka would submit that as regards the opening up of road routes for transportation of essential commodities, the route from Kannur – Iritty – Mananthavady – Sargur – Begur - Nanjangud – Mysore and Kannur – Sulthan Bathery – Gundlupetes – Mysore have already been opened up for the said transportation, and will continue to be maintained as such through the lockdown period. As regards the third route between Kannur – Iritty – Koottupuzha – Mangoor – Virajpet, it was suggested by Sri.Ranjith Thampan that the State of Karnataka could consider the possibility of opening up of the said route also for transportation of essential commodities. The learned Advocate General of Karnataka would respond by stating that if an appropriate letter is sent by the authorities in Kerala to the Secretary, Home Department of the Government of Karnataka, then the matter can be considered by the said authority. We therefore

direct the District Collector, Kannur to immediately send a communication to the Secretary, Home Department, Government of Karnataka, on the lines indicated above, so that the matter can be considered by the latter immediately, and a decision be informed before us when the matter is taken up for consideration at 1.45 p.m. tomorrow. In response to the query with regard to the blockades in place preventing the transportation of patients for medical treatment, both the Advocate General of Karnataka as also the Additional Advocate General of Kerala would submit that they can revert before us by 1.45 p.m. tomorrow with specific instructions as to the arrangement that can be made for catering to the medical needs for patients in Kasaragod district based on the proximity of the hospital concerned to the residents in the said district.

Post this matter along with W.P.(C). (TMP).No.4/2020 for hearing through video conferencing at 1.45 p.m. tomorrow [1.4.2020].

Signature Not Verified

Digitally signed by JUSTICE A  
K JAYASANKARAN  
NAMBIAR  
Date: 2020.03.31 03:35:10 IST

**A.K.JAYASANKARAN NAMBIAR**  
**JUDGE**

Signature Not Verified

Digitally signed by  
JUSTICE SHAJI P CHALY  
Date: 2020.03.31 03:36:47  
IST

**SHAJI P. CHALY**  
**JUDGE**



**IN THE SUPREME COURT OF INDIA  
CIVIL APPELLATE JURISDICTION**

**I.A. NO. I OF 2020**

**IN**

**SPECIAL LEAVE PETITION NO. OF 2020**

**IN THE MATTER OF: -**

State of Karnataka

...Petitioner

**Versus**

State of Kerala &Ors.

...Respondents

**APPLICATION FOR EXEMPTION FROM FILING CERTIFIED  
COPY OF THE IMPUGNED JUDGMENT**

To

Hon'ble the Chief Justice and his  
Hon'ble Companion Justices of the  
Hon'ble Supreme Court of India.

The humble Application of the  
Petitioner abovenamed-

**MOST RESPECTFULLY SHEWETH:**

1. That the present Special Leave Petition is being filed against the Impugned Order dated 01.04.2020 passed by the Hon'ble High Court of Kerala in W.P. (c) (TMP) No. 2/2020 where the

Hon'ble High Court has directed the Central Government to intervene in the matter and to remove the blockades erected by the State of Karnataka.

2. It is submitted that the Petitioner has filed an ordinary copy of the Impugned Judgement and order. The Petitioner has applied for a certified copy of the Impugned Judgement and undertake to file the Certified Copy as soon as the same is made available. It is in the interest of justice that the Petitioner be exempted from filing the Certified Copy of the Impugned Judgment.

#### P R A Y E R

It is, therefore, most respectfully prayed that this Hon'ble Court may be pleased to -

- a) exempt the Petitioner from filing the Certified Copy of the Impugned Order dated 01.04.2020 passed by the Hon'ble High Court of Kerala in W.P. (c) (TMP) No. 2/2020;

- b) pass such other and further order or orders as may be deemed just and proper by this Hon'ble Court on the facts and in the circumstances of the case.

AND FOR THIS ACT OF KINDNESS, THE PETITIONER AS IN DUTY BOUND SHALL EVER PRAY.

FILED BY

S.P

**(SHUBHRANSHU PADH)**  
ADVOCATE FOR PETITIONER

New Delhi

Dated :



SUPREME COURT OF INDIA

Civil/Cr/Appellant/Original/Jurisdiction

Special Leave Petition (Civil/Cr.) No. \_\_\_\_\_ of 20

Civil/Criminal/Appeal/Writ Petition No. \_\_\_\_\_ of 20

Review Civil/Criminal/Misc. Petition No. \_\_\_\_\_ of 20

IN THE MATTER OF:

STATE OF KARNATAKA Petitioner/Appellant(s)

VERSUS

STATE OF KERALA & ORS Respondent (s)

INDEX OF PAPERS

Sl. NO.	PARTICULARS	COPIES	COURT FEE
1	Listing Petition.		
2	List of Dates		
3	S.L.P		
4	ANNEXURES		
5			
6			
7			
8			
9			
10			

TOTAL \_\_\_\_\_

FILED ON: 2/4/2020

FILED BY

(SHUBHRADEVI PACHA)

ADVOCATE FOR THE Petitioner

239 GROUND FLOOR, SECTOR-15A

NOIDA, UP

ADR-2271

Santosh Singh

IC No. 5149

Ph. 9582429436



HD 2488 HCP-2.2020

**IN THE SUPREME COURT OF INDIA  
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Special Leave Petition before the Hon'ble Supreme Court of India, New  
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-V/s-

Kerala High Court Advocates' Association represented by its Secretary, Ernakulam **Respondent**

**VAKALATNAMA**

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Dated this the 2<sup>nd</sup> Day of April, 2020.

*Parveen A. Bankapur*  
(PARVEEN A.BANKAPUR)

I Additional Solicitor & Ex. Officio  
Deputy Secretary to Government,  
HOME DEPARTMENT

*val*  
Accepted & Identified & Certified

(KAR 71/05)

APPELLANT(S)/PETITIONER(S)/RESPONDENT(S)

Advocate, Supreme Court

**MEMO OF APPEARANCE**

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Sir,

Please enter my appearance on behalf of the Petitioner(s)/Appellant(s)/Respondent(s) Opposite Parties/Intervener No.....in the matter above.

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S.P

(SHUBHRANSHU PADHI)

(2271)

NEW DELHI:  
FILED ON: