

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

FRIDAY, THE 20TH DAY OF MARCH 2020/30TH PHALGUNA, 1941

W.P(C).No.9115 OF 2020

PETITIONER:

JYOTHISH.G.
AGED 40 YEARS
S/O.GOPINATHAN, KULAPPARAMBIL HOUSE,
DESOM P.O., ALUVA-683 102.

BY ADVS.SRI.MANU GOVIND
SMT.MEGHA MUKUNDASWAR

RESPONDENTS:

- 1 THE STATE OF KERALA
REPRESENTED BY ITS CHIEF SECRETARY,
KERALA GOVERNMENT SECRETARIAT,
THIRUVANANTHAPURAM-695 001.
- 2 THE ADDITIONAL CHIEF SECRETARY,
FINANCE DEPARTMENT, KERALA GOVERNMENT SECRETARIAT,
THIRUVANANTHAPURAM-695 001.
- 3 THE COMMISSIONER OF EXCISE,
EXCISE COMMISSIONERATE, VIKAS BHAVAN P.O.,
NANDAVANAM, THIRUVANANTHAPURAM-695 033.
- 4 THE KERALA STATE BEVERAGES (M&M) CORPORATION LTD.,
BEVCO TOWER, VIKAS BAHVAN P.O., PALAYAM,
THIRUVANANTHAPURAM-695 003.

BY SRI.K.P.HARISH, SR. GOVT. PLEADER

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR
ADMISSION ON 20.03.2020, THE COURT ON THE SAME DAY
DELIVERED THE FOLLOWING:

J U D G M E N T

It is with a deep sense of exasperation and a tinge of disgust that I write this judgment in a writ petition filed by a citizen of this country, who has approached this Court seeking a seemingly innocuous direction to the 4th respondent Kerala State Beverages Corporation, to consider and pass orders on Ext.P4 representation preferred by him before the said Corporation, within a time limit to be fixed by this Court.

2. The petitioner is stated to be a consumer of potable alcohol, and the representation that he has preferred before the Beverages Corporation requires the Corporation to take a decision to make available potable liquor for delivery to consumers in the State through online platforms. The petitioner states that while the usual mode of sale of potable liquor is through the various retail outlets of the Corporation, and the said outlets are inevitably crowded during business hours, the outbreak of COVID 19 virus has rendered it unsafe for him to visit an outlet for procuring

alcohol for his consumption. His representation to the Corporation, suggesting alternate modes of delivery of alcoholic liquor to consumers, is stated to have been preferred under the said circumstances.

3. Under normal circumstances, this Court would have simply found that the petitioner had no right to insist on a delivery of potable alcohol for his consumption through a platform of his choice, more so when the commodity in question is one in respect of which, no person has a fundamental right to trade. That apart, the subject matter being one within the exclusive privilege of the State Government to vend, the mode of distribution of alcoholic liquor for human consumption, is at any rate, a policy decision that has to be taken by the State Government, with which this Court would seldom interfere. The writ petition would have therefore been dismissed by finding that the reliefs sought for therein cannot be granted, and that the petition itself was one filed by a person looking for cheap popularity through its institution before this Court.

4. What has irked this Court in the present writ petition, however, is not so much the prayer sought for therein, but the

circumstances under which it was filed before this Court. Consequent to the outbreak of the COVID-19 virus, our State has been under severe pressure to develop and adopt adequate measures to help contain the spread of the virus. The pressing concern that the State faces today is with regard to the transmission of the virus from an infected person to others, especially the elders in Society, through healthy individuals who may act as carriers of the deadly virus. With a view to contain the spread of the virus, the World Health Organisation, as also the Health authorities in the State, had suggested the adoption of adequate measures to prevent crowding of persons in public places, especially in public institutions like hospitals, Airports, Railway stations, places of religious worship, recreational spaces and Judicial institutions. The advisory issued by the Health Department advocates the practice of social distancing among persons, so as to contain the transmission of the virus in Society. Taking cue from the advisories issued by the Health authorities, this Court too had issued directions in the week beginning 16.3.2020, for restricting the number of cases to be filed in Court to the bare minimum, and in respect of only very urgent matters, so that the administrative machinery in this Institution would not have to spend long hours in crowded conditions. The restrictions

were contemplated only for a short period from 16.03.2020 till 31.3.2020, to coincide with the end of the transmission period of the virus, as projected by the Health authorities. This Court had also published clear instructions to the litigating public and lawyers to exercise their discretion in identifying and filing only such cases during the aforesaid period, as were very urgent and could not brook even a fortnight's delay, for recourse to justice.

5. It is indeed distressing to note that, notwithstanding the clear instructions given with a view to attaining the objectives of the Health Department, writ petitions have been indiscriminately filed before this Court, even when there would be no prejudice caused to the interests of the litigant had they waited till 31.3.2020, for filing their case. The citizenry ought to realize that the restrictions imposed by this Court on the filing of cases is with a view to ensuring that their fundamental rights as citizens, for access to justice, is guaranteed to the extent possible, even at the cost of exposing the Judges, lawyers, clerks and staff of this Court, to the risk of viral infection. When measures such as these are adopted by this Institution in public interest, the very least that is expected from the litigating public is a sensitivity to the interests of their fellow citizens in Society, who like them have a

fundamental right to a safe place of work and a healthy environment.

6. The instant case is yet another one, in a series of such petitions that have been filed in this Court, that manifests the total insensitivity of a litigant to the interests and well being of his fellow citizens, whose presence within the portals of this Institution, is necessitated in connection with a consideration of the case instituted by him. One cannot help but lament at the selfishness of the petitioner in the instant case, and others like him in Society, whose obsession with perceived "rights" blinds them to the obligatory 'duty' that they owe to their fellow citizens.

The petitioner's conduct in filing this frivolous petition at a time like this, while making a mockery of the salutary concept of access to justice, which this institution strives to guarantee, also ridicules the functioning of this noble institution. For the said reckless, insensitive and insolent action, the petitioner cannot be let away lightly. Although the learned counsel for the petitioner prays for permission to withdraw the writ petition, I am of the view that, merely because he has chosen to withdraw the writ petition, after having filed the same and submitted the writ

petition to the processing that is required before it reaches the Bench, the petitioner cannot be exempted from the costs that must inevitably be imposed on him for his conduct. Accordingly, while dismissing the writ petition with the contempt that it deserves, I also deem it appropriate to impose exemplary costs of Rs.50,000/- [Rupees Fifty thousand only] on the petitioner, which amount he shall pay to the Chief Minister's Distress Relief Fund, within two week from today, and produce a receipt of such payment before the Registrar General of this Court, failing which, the said amount, together with interest thereon, shall be recovered from him through revenue recovery proceedings.

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Sd/-
A.K.JAYASANKARAN NAMBIAR
JUDGE

APPENDIX

PETITIONER'S EXHIBITS:

- EXHIBIT P1 TRUE COPY OF THE OFFICE MEMORANDUM NO.Z-21020/14/2020-PH ISSUED BY THE MINISTRY OF HEALTH & FAMILY WELFARE, GOVERNMENT OF INDIA DATED 05.03.2020.
- EXHIBIT P2 THE TRUE COPY OF THE ADVISORY ON SOCIAL DISTANCING MEASURE IN VIEW OF SPREAD OF COVID-19 DISEASE ISSUED BY THE MINISTRY OF HEALTH & FAMILY WELFARE, GOVERNMENT OF INDIA.
- EXHIBIT P3 TRUE COPY OF THE ORDER NO.560/2020/A.K.V. OF THE MINISTRY OF HEALTH AND FAMILY WELFARE, GOVERNMENT OF KERALA, DATED 11.03.2020.
- EXHIBIT P4 TRUE COPY OF REPRESENTATION OF THE PETITIONER TO THE 4TH RESPONDENT DATED 16.03.2020.

RESPONDENTS EXHIBITS: NIL.

//TRUE COPY//

P.S. TO JUDGE