

(2021) 05 KL CK 0084

In the High Court Of Kerala

Case No : Writ Petition (C) No. 11056, 11060 Of 2021

Melwin Byju And Ors

APPELLANT

Vs

State Of Kerala And Ors

RESPONDENT

Date of Decision : 07-05-2021

Acts Referred:

Citation : (2021) 05 KL CK 0084

Hon'ble Judges : Devan Ramachandran, J;Kauser Edappagath, J

Bench : Division Bench

Advocate : G. Sreekumar, Suman Chakravarthy, V. John Mani, S. Jayant, Jackson Johny, Sethulakshmi K.K, Sony P.G, Gayathri Menon, Xavier Thomas V.T, Rajith

Final Decision : Allowed

Judgement

1. One good thing about the Covidâ?19 pandemic is that it has shown how ordinary men and women have risen above themselves.
2. Difficult times throw up new challenges each day and the worldwide extent of the disease confronts us with the tenuously fragile nature of human life.
3. We have all still endured!
4. There can be no two ways about it that the judicial system faced arduous challenges in the last more than a year and taught us that â??the price of liberty is eternal vigilanceâ?? - the famous words of Thomas Jefferson, which has gained a renewed significance in our life time.
5. The Courts have uninterruptedly functioned â?" evolving in the process and adopting technology like never before; and this was possible to a very large extent owing to the inexorable commitment shown to the justice delivery system by the Advocates and the Advocate Clerks. They virtually put

their lives at stake to ensure that those who most need its protection the vulnerable and the marginalised " are not left without legal recourse. The constant but inevitable "lock downs" and "quarantines" have caused damaging repercussions on court activities; but in the midst of it all, the system has moved on, as it must in the future; and certainly there is not gainsaying that Advocates and Advocate Clerks are an unexpendable component of it.

6. The "second wave" of the pandemic now once again forces citizens to confine themselves to their homes and the Government has issued orders imposing restrictions and even "lock downs". We are told reliably that such restrictions and "lock downs" may have to continue, if required, in future.

7. In such scenario, the petitioners in these cases " which have been heard together on account of the common issues impelled " who are practicing counsel, justifiably apprehends that members of the Bar and their Clerks may be interdicted by the Police Authorities from travelling, to reach their offices/chambers/courts and other legal forums.

8. We had earlier considered W.P.(C) No.11056/2021 on 05.05.2021 and had passed the following order:

"The petitioner voices an apprehension that, on account of Exhibit P1 Government Order, advocates and their clerks may be interdicted by the police force from attending their offices, chambers, courts and other legal forums. The learned Senior Government Pleader submitted that the apprehension of the petitioner is completely baseless since the police are only maintaining constant vigil and will not disturb the professional functioning of any lawyer or their office staff. It is also submitted that if any advocate or clerk is stopped by the police, it will be sufficient that they show their identity cards and explain where they are going and if they are proceeding to their offices, chambers, courts and other legal forums, they will not be stopped in any manner."

9. Today, Sri.Suman Chakravarthy, learned senior Government Pleader, submitted that the afore undertaking has been implicitly complied with by the Police and Sri.G.Sreekumar (Chelur) and Sri.John Mani, the learned counsel for the petitioners affirm it.

10. That said, we must record that, pending these matters, the Government has

issued a further order imposing a complete "lock down" in the State of Kerala between 08.05.2021 and 16.05.2021. This certainly therefore presents a further challenge.

11. Sri.Suman Chakravarthy submits that the undertaking afore recorded by this Court would certainly continue as long as the restrictions are in force;

but that in the case of a complete "lock down", more stringent measures will require to be placed, in the movement of Advocates and their Clerks,

as other citizens. He added that this has been done by the Government for common good.

12. Sri.John Mani, learned counsel appearing for the petitioner in W.P.(C) No.11060/2021, placed reliance on several precedents to contend that

advocates and their clerks must be regarded as "essential services" and prayed that their movement be directed to be not interdicted by the

Government even during "lock down". He asserted that without Advocates and their Clerks, the liberties of ordinary citizens cannot be protected,

particularly when the entire system is closed down on account of the Covid "19 restrictions.

13. We find some force in the submissions made on behalf of the petitioners, but it is also equally important that the restrictions placed by the

Government are honoured and obeyed. As long as "total lock down" are not ordered, the afore undertaking made on behalf of the State Police

Chief will be maintained; but in the case of total "lock downs", the situation certainly will require a further thought.

14. Sri.Thomas Abraham, the President of the Kerala High Court Advocates Association, appearing in person, also endorsed the view that Advocates

and their Clerks must be allowed at least minimum access to their offices and courts, so that they will be in a position to file and move litigations, if it

becomes absolutely necessary.

15. Sri.Rejith, the learned standing counsel for the Bar Council of India, also argued on the afore lines; but supplemented it by saying that though the

lives of Advocates and their Clerks are important, their professional freedom cannot make be lost sight of. He, therefore, wanted that, except for

reasonable restrictions, the access of Advocates to their offices and Courts be not completely prevented.

16. When we consider the afore submissions, it is without doubt that the

situation which comes out of complete 'lock down' is different from one when there are only restrictions.

17. If there is no total 'lock down' but only restrictions, as has been ordered by the Government through Ext.P1 in W.P. (C) No.11056/2021,

certainly the arrangement that we have directed in the interim order dated 04.05.2021 in the said writ petition will have to be maintained. However

when it comes to complete 'lock down', the situation is slightly different.

18. We are, therefore, without doubt that these writ petitions deserve to be ordered in a limited manner and that the afore recorded undertaking given

on behalf of the State Police Chief would operate in future also, except in the case of an absolute or total 'lock down' or such other similar

measure. It is so ordered.

19. As far as total 'lock downs' and such similar measures are concerned, the Advocates and the Clerks will be permitted to travel to Courts

if physical sittings are notified, provided they carry an undertaking in the prescribed format, as also their identity cards. The State Police Chief is

directed to instruct all the Police Officers to ensure that in such event, lawyers are given essential access to the Courts because, otherwise, it will be

the common man who will be the sufferer, particularly in criminal matters. Of course, in exceptional circumstances on such days, if an Advocate or

Clerk requires access to office also, it will be up to the Police Officer to verify credentials and take a decision, if such access be allowed.

20. As regards the request of Sri.John Mani, the learned counsel for the petitioners in W.P.(C) No.11060/2021, that Advocates and their Clerks be

declared as 'essential service', we do not deem it appropriate that we speak on it in any manner, since it is a matter to be decided by the

Government at the appropriate level - it being in the realm of policy decision making. We, therefore, leave it open to the petitioners in the said writ

petition to move the Government, including through Ext.P8, appositely.

These writ petitions are thus ordered.