

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE THE CHIEF JUSTICE MR.S.MANIKUMAR

&

THE HONOURABLE MR. JUSTICE SHAJI P.CHALY

MONDAY, THE 20TH DAY OF JUNE 2022 / 30TH JYAISHTA, 1944

WP(C) NO. 18191 OF 2022

PETITIONER/S:

CHESHIRE TARZAN
AGED 52 YEARS
KADAVIL HOUSE, MUTTATHIL LANE, KADAVANTHRA.P.O.,
ERNAKULAM-682 020
BY ADVS.
RAJESH VIJAYAN
SIKHA S.NAIR

RESPONDENT/S:

- 1 STATE OF KERALA
REPRESENTED BY THE ADDITIONAL CHIEF SECRETARY, DEPARTMENT
OF HOME, GOVT. SECRETARIAT, STATUE.P.O.,
THIRUVANANTHAPURAM-695 001.
- 2 STATE POLICE CHIEF,
POLICE HEAD QUARTERS, VELLAYAMBALAM.P.O.,
THIRUVANANTHAPURAM-695 010.
- 3 DISTRICT POLICE CHIEF,
KOCHI CITY, REVENUE TOWER,
COLLEGE.P.O., ERNAKULAM-682 018.
- 4 INSPECTOR STATION HOUSE OFFICER,
FORT KOCHI POLICE STATION,
FORT KOCHI.P.O., ERNAKULAM-682 001.
- 5 **ADDL. R5 IMPLEADED:**

SECRETARY TO GOVERNMENT, MINISTRY OF CONSUMER AFFAIRS,
FOOD & PUBLIC DISTRIBUTION, DEPARTMENT OF CONSUMER
AFFAIRS, GOVERNMENT OF INDIA.
(ADDL.R5 IS IMPLEADED AS PER THE JUDGMENT DATED 20.06.2022
IN W.P.(C) NO. 18191 OF 2022)

R1-R4 BY SRI. TEK CHAND, SR. GOVERNMENT PLEADER

ADDL. R5 BY SRI. JAISHANKAR V. NAIR, CGC

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 20.06.2022,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

S. MANIKUMAR, CJ & SHAJI P. CHALY, J.

W.P.(C) No. 18191 of 2022

Dated this the 20TH day of June, 2022.

JUDGMENT

S. MANIKUMAR, CJ.

The petitioner has filed the instant writ petition as a Public Interest Litigation, being aggrieved by the deliberate dereliction of duty by the Inspector Station House Officer, Fort Kochi Police Station, respondent No. 4, in obeying the mandates of the Emblems and Names (Prevention of Improper Use) Act, 1950 ('Act, 1950' for short) allegedly for extraneous consideration which facilitates certain offending commercial establishments to continue the commission of offences for decades.

2. Facts leading to the writ petition are as hereunder:

As per circular No. 7627/K3/2006/H.R Edn. Higher Education (K) Department, Thiruvananthapuram dated 12.05.2006 the Government of Kerala has directed the State Police Chief, Vellayambalalm P.O., Thiruvananthapuram – 695 010, 2nd respondent, to take stringent action against those who violate the provisions of the Act, 1950. The second respondent, in turn, vide letter No.C3-42593/2006, has

directed the subordinate officers to take necessary action in the matter.

3. The then Circle Inspector of Fort Kochi Police Station noticed rampant violation of the Act, 1950 within his jurisdiction by 16 commercial establishments and issued notices to those commercial establishments on 29.06.2010 to discontinue the above violations. Challenge against the legality of the above notices were turned down by this Court vide Exts.P1 and P2 judgments dated 15.09.2010 and 20.12.2014 respectively.

4. Pursuant to the same, Inspector Station House Officer, Fort Kochi Police Station, the 4th respondent, as per Ext. P3 communication, sought prosecution sanction on 15.01.2015. For granting sanction in the above matter, the designated officer has sought the details of the offending commercial establishments from the State Government, following which, the State of Kerala, represented by the Additional Chief Secretary, Department of Home, 1st respondent, vide letter G3/247/2019/Home dated 19.04.2021 has directed to expedite and provide copies of the registration certificates and other details of the above establishments.

5. The notices issued by the 4th respondent under Section 91 of Cr.P.C., seeking the above information were complied with, only by 7

such establishments. The District Police Chief, Kochi City, the third respondent, as per Ext. P4 letter dated 19.11.2021, has forwarded the list of establishments, but neglected to furnish the full required information to the State Police Chief, Police Head Quarters, Thiruvananthapuram, 2nd respondent. According to the petitioner, the 2nd respondent, vide Ext. P5 letter dated 25.11.2021, without even applying his mind in the above letter, submitted the same to the State of Kerala, represented by the Additional Chief Secretary, 1st respondent, claiming it to be the details of all the 16 establishments. Finding the report of the 2nd respondent incomplete and contradictory, the first respondent, vide letter dated 10.12.2021, stated to have directed the 2nd respondent to clarify and produce the required details of all the offending establishments forthwith.

6. According to the petitioner, District Police Chief, Kochi City and Inspector Station House Officer, Fort Kochi Police Station, respondent Nos. 3 and 4, being duty bound police officers, are keeping the matter in abeyance due to some undue influence for unduly favouring the offenders. Hence the writ petition seeking for the following reliefs:

1. Issue a writ of mandamus to respondents 2 to 4 to complete the collection and furnishing of the information to the 1st respondent

for prosecution sanction in Ext. P3 in a time bound manner to be fixed by this Hon'ble Court.

2. Issue a writ of mandamus to the first respondent to prosecute the 4th respondent under Section 114(a) of the Act, 2011, since he has neglected to obey the above mentioned legal provisions in Section 4 of the Act, 2011.

7. The learned counsel for the petitioner argued that respondents 2 to 4 are duty bound to function under Section 4 of the Kerala Police Act, 2011 ('Act, 2011' for short) and that Sections 4(a) (g), (h), (r) and (s) of the Act, 2011 are found applicable in the situation. He further submitted that as per Section 27 of the Act, 2011, it is the duty of every Police Officer to undertake all reasonable and lawful activities for the efficient and effective discharge of police duties specified under the Act in respect of the duties entrusted with him. It is further contended that the above deliberate dereliction of duty by the respondents 2 to 4 itself is an offence under Section 114(a) of the Act, 2011. Further, as per Section 7 of the Act, 2011 the petitioner has a right to ask for the police services mentioned in Section 4 of the Act, 2011.

8. In pursuance to the direction of this Court dated 06.06.2022, a statement is filed by the learned Senior Government Pleader for and on behalf of the first respondent stating that upon receipt of the

proposal, the Ministry of Consumer Affairs, Food and Public Distribution, Department of Consumer Affairs, Government of India, requested the Government to forward certain details/documents and steps are being taken to furnish the details sought for by the Central Government for prosecution sanction. Relevant portion of the statement reads thus:

“3. It is submitted that the 2nd respondent requested the Government to accord sanction to prosecute 16 institutions mentioned in Exhibit P3 by the 4th respondent. It **seems** the Act of 1950, the matter taken up with the Ministry of Consumer Affairs as per Government letter No. G3/247/2019/HOME dated 18.06.2020. Later, on being informed that the matter in question comes under the jurisdiction of the Ministry of Consumer Affairs, the proposal was forwarded afresh to the Food and Public Distribution, Department of Consumer Affairs, Government of India as per Government Letter No. G3/247/2019/HOME dated 04.01.2021 for sanction, to prosecute the firms for violating the Act of 1950.

4. It is submitted that, upon receipt of the proposal, the Ministry of Consumer Affairs, Food & Public Distribution, Department of Consumer Affairs, Government of India has requested Government to forward the following details/documents respective of Institutions/firms against which prosecution sanction was sought for.

1. Registration Certificate
2. Act under which the firm is registered
3. Registered Address
4. Place where registered
5. Whether the matters were referred to the Department of Consumer Affairs before the Registration of Organizations.

5 Though Exhibit P5 report was furnished by the the 2nd respondent, the details were found insufficient to take up the the matter with Ministry of Consumer Affairs, Food & Public Distribution, Government of India to seek prosecution sanction under the Act, 1950. Therefore, the Government, as per letter No. G3/247/2019/HOME dated 8.10.2021 and 10.12.2021 has directed the 2nd respondent to collect and furnish complete details as desired by the Ministry of Consumer Affairs, Food & Public Distribution, Government of India for consideration of the question of prosecution Sanction. The detailed report is being awaited from the State Police Chief and on receipt of the same, immediate steps would be taken to forward the report to the Food & Public Distribution, Department of Consumer Affairs, Government of India without further delay. Under the circumstances, it is Clear that necessary steps are being taken to furnish the details sought for by the Central Government for prosecution sanction and there is no willful laches or negligence

on the part of the respondent in taking appropriate steps for initiation of prosecution sanction.”

9. As the matter is stated to be pending before the Ministry of Consumer Affairs, Food & Public Distribution, Department of Consumer Affairs, Government of India, having regard to the nature of the orders passed by this Court in the judgments dated 15.09.2010 and 20.12.2014 in W.P.(C) No. 20784 of 2010 and W.A. No. 1777 of 2010 respectively, we are of the view that the issue should reach a logical conclusion and should not be delayed further.

10. In that view of the matter, exercising powers conferred under Article 226 of the Constitution of India, we *suo motu* implead the Secretary to Government, Ministry of Consumer Affairs, Food & Public Distribution, Department of Consumer Affairs, Government of India, as additional respondent No.5.

11. Mr. Jaishankar V. Nair, learned Central Government Counsel, takes notice for the impleaded respondent.

12. Mr. Rajesh Vijayan, learned counsel for the petitioner, is directed to furnish the entire set of papers to Mr. Mr. Jaishankar V. Nair, learned Central Government Counsel, for onward transmission of the same to the Ministry so as to enable the impleaded respondent to pass

appropriate orders.

Additional respondent No.5, on receipt of the details/documents as called for, is directed to pass orders within one month thereafter.

With the above observations and directions, this writ petition is disposed of.

sd/-
S. MANIKUMAR,
CHIEF JUSTICE.

sd/-
SHAJI P. CHALY,
JUDGE.

Rv

APPENDIX OF WP(C) 18191/2022

PETITIONER'S EXHIBITS:

- Exhibit P1 TRUE COPY OF THE JUDGMENT DATED 15.09.2010 IN WP (C) NO. 20784/2010 PASSED BY THIS HONOURABLE COURT.
- Exhibit P2 TRUE COPY OF THE JUDGMENT DATED 20.12.2014 IN W.A NO. 1777 OF 2010 PASSED BY THIS HONOURABLE COURT.
- Exhibit P3 TRUE COPY OF THE APPLICATION FOR PROSECUTION DATED SANCTION 15.01.2015 THROUGH THE 2ND RESPONDENT.
- Exhibit P4 TRUE COPY OF THE LETTER NO. D2(C)- 31200/2021/EC DATED 19.11.2021.
- Exhibit P5 TRUE COPY OF THE LETTER NO. D240604/2021/PHQ DATED 25-112021.

RESPONDENTS' EXHIBITS: NIL

/True Copy/

PS To Judge.