

IN THE SUPREME COURT OF INDIA

CIVIL ORIGINAL JURISDICTION

WRIT PETITION (CIVIL) No.____ OF 2020

UNDER ARTICLE 32 OF THE CONSTITUTION OF INDIA

IN THE MATTER OF:-

Rajmohan Unnithan

...Petitioner

Versus

State of Karnataka & Anr.

..Respondents

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I.A. No. _____ of 2020
(Application for Stay)

Advocate for the Petitioner: -

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SYNOPSIS AND LIST OF DATES

The Petitioner herein is constrained to prefer a writ petition under Article 32 of the Constitution to issue a writ of certiorari or any other appropriate writ to direct the State of Karnataka (Respondent No.1) to open its border with the State of Kerala (Respondent No.2) to allow the movement of ambulances and other emergency vehicles for the treatment of patients and for the transport of essential and non-essential items to the State of Kerala.

The present writ petition raises the important issue of the blockade imposed by the State of Karnataka with the State of Kerala. Imposition of such a blockade at a time when supply of commodities is itself hit hard and when a medical emergency has plagued the entire country is a clear violation of Articles 21 and 19(d) of the Constitution. This

blockade has also resulted in cutting off the essential lifeline of National Highways and State Highways and major District Roads leading to the State of Kerala which has resulted in the shortage of supply of essential and non-essential items to the State of Kerala leading to shortage supply of food and medical supplies. This ill planned and dangerous blockade has claimed the life of a 70 year old woman who was denied entry into Karnataka even for the purpose of urgent medical treatment which was only available in the medical hub of Mangalore. This is a clear case of violation of the right to life with dignity by the state as citizens are made to die on the roads because of the action of the state which is in total disregard to Article 21.

The Petitioner herein is a Member of Parliament (Lok Sabha) elected from the Kasaragod Constituency in the State of Kerala. The Kasaragod District is the northern most district of the State of Kerala, which shares most of its boundary with the State of Karnataka. The Panvel-Kochi- Kanyakumari National Highway (NH-66) is passing through the Kasaragod District and connecting the district with Mangalore which is situated in the State of Karnataka. There are other State Highways and District Roads connecting the Kasaragod District with the State of Karnataka.

Dependency on Medical Facilities in Mangalore

The people of Kasaragod in Kerala rely entirely upon the medical facilities of Mangalore District in the State of

Karnataka and its adjacent areas. As a result of this blockade two persons have already died as they were denied entry into Karnataka even for urgent medical treatment at a hospital in Mangalore.

Blockade causing disruption in supply of Food and other essential items

The state of Kerala is a consumer state and most of the grocery items and vegetables come from the State of Karnataka through roads and Highways connecting the Kasaragod and the Mangalore Districts of both States. Now all the roads including the National Highways leading to the Karnataka state side are closed by the officials of the Karnataka State in the wake of the nation-wide lockdown against the Covid 19 pandemic which has resulted in stoppage of supply of goods and other essential items from the State of Karnataka to the State of Kerala. The State of Karnataka has closed these roads by making mud mounds on the roads preventing even the pedestrian movement into the State of Karnataka from the State of Kerala. The above acts of the officials of the State of Karnataka are causing many difficulties for the people of Kerala especially of the people of Kasaragod.

Blockade against the Federal Structure

This act of the State of Karnataka of closing the roads including National Highways leading to Kerala is unconstitutional and against the federal structure of our country. The Kanyakumari-Kochi-Panvel National Highway

(NH-66) is the property of the National Highway Authority of India under the National Highways Act and no State Government has any authority to block the above Highways without the prior sanction of the National Highway Authority of India. The National Highway Authority of India has not given any sanction to block any of its Highways. There is no rational reason in the above acts of the State of Karnataka. As per Article 19(1)(d) of the Constitution, all citizens have the right to move freely throughout the Territory of India. Therefore, the acts of the State of Karnataka in blocking the Highways and other roads and thus preventing free movement of the people of Kerala to Karnataka and movement of transportation from Karnataka to Kerala is against the freedom of movement guaranteed under Article 19(1)(d) of the Constitution.

Blockade against the direction of the Union

As a result of the crisis felt in several part of the country, the Union of India has further, in a letter issued to all State Governments dated 29.3.2020, clarified to all states that the transportation of all goods without distinction of essential and non-essential are allowed during the lockdown period. Therefore, for the State of Karnataka to continue to maintain the blockade is against the guidelines of the Union and against the interest of the public at large.

Blockade leading to a humanitarian crisis in Kerala

Although the blockade has been done by the State of Karnataka for preventing the spread of Coronavirus, the move has resulted in a far graver consequence for the State of Kerala. The blockade has resulted in the disruption of supply of essential items for the State especially in such trying times.

This is a trying time for our country as a whole. It is a time when all State Governments and the Central Government must act in cooperation for the general good of people battling the coronavirus pandemic. However the State of Karnataka has acted in complete disregard for the people in the State of Kerala. This move has and will in the future cause great hardship to the people in Kerala in tackling with the present crisis of Coronavirus especially when essential items such as food and medical treatment have been denied to the people.

Right to Food a fundamental right

In the case titled ***People's Union for Civil Liberties v. Union of India & Others [Writ Petition (Civil) No. 196/2001]*** this Hon'ble Court explicitly established a constitutional human right to food and determined a basic nutritional floor for India's impoverished millions. The right to food can be seen as an implication of the fundamental "right to life", enshrined in Article 21 of the Indian Constitution. Indeed, the Supreme Court has explicitly stated (several times) that the right to life should be interpreted as a right to "live with human dignity", which

includes the right to food and other basic necessities. In *Maneka Gandhi v. Union of India* AIR 1978 SC 597, this Hon'ble Court stated: "Right to life enshrined in Article 21 means something more than animal instinct and includes the right to live with human dignity, it would include all these aspects which would make life meaningful, complete and living." Similarly, in *Shantistar Builders v. Narayan Khimalal Totame* (1990) 1 SCC 520, this Hon'ble Court opined that "The right to life is guaranteed in any civilized society. That would take within its sweep the right to food..."

This Hon'ble Court in several cases has established that "Article 21 of the Constitution of India guarantees a fundamental right to life and personal liberty. The expression 'Life' in this Article has been judicially interpreted to mean a life with human dignity and not mere survival or animal existence. In the light of this, the State is obliged to provide for all those minimum requirements which must be satisfied in order to enable a person to live with human dignity, such as education, health care, just and humane conditions of work, protection against exploitation, etc. In the view of the same, the Right to Food is inherent to a life with dignity, and Article 21 should be read with Articles 39(a) and 47 to understand the nature of the obligation of the State in order to ensure the effective realization of this right. Article 39(a) of the Constitution enunciated as one of the Directive Principles, fundamental in the governance of the country, requires the State to

direct its policy towards securing that the citizens, men and women equally, have the right to an adequate means of livelihood. Article 47 spells out the duty of the State to raise the level of nutrition and the standard of living of its people as a primary responsibility. The citizen's right to be free from hunger enshrined in Article 21 is to be ensured by the fulfillment of the obligation of the State set out in Articles 39(a) and 47. The reading of Article 21 together with Articles 39(a) and 47 places the issue of food security in the correct perspective, thus making the Right to Food a guaranteed Fundamental Right which is enforceable by virtue of the constitutional remedy provided under Article 32 of the Constitution."

This Hon'ble Court in the case of ***Vincent Panikurlangara vs. Union of India & Ors [(1987) 2 SCC 165]***, held that in a welfare State, it is the obligation of the State to ensure the creation and maintaining of conditions congenial to good health. In the case of ***CESC Ltd. vs. Subash Chandra Bose [(1992) 1 SCC 441]***, this Hon'ble Court relied on international instruments and concluded that right to health is a fundamental right. In the case of ***Consumer Education and Research Centre vs. Union of India[(2010) 15 SCC 699]***, this Hon'ble Court for the first time explicitly held that 'the right to health is an integral fact of a meaningful right to life.' In the case of ***Paschim Banga Khet Mazdoor Samity & Ors vs State of West Bengal & Anr [(1996) 4 SCC 37]***, it was held by this Hon'ble Court that Article 21 of the Constitution casts an obligation on the State to take

every measure to preserve life. The Court found that it is the primary duty of a welfare State to ensure that medical facilities are adequate and available to provide treatment.

8. Therefore the act of the State of Karnataka, in the garb of the nation-wide lockdown, of blocking the National Highway 66 and the other roads connecting Kerala and thereby hindering the supply of essential goods to Kerala and denying the right of the people of Kerala, especially the people of Kasaragod district, to access critical medical care in the hospitals in Karnataka is a grave violation of the constitutional rights of the people of Kerala to enjoy the right to live with human dignity, right to food and right to health and medical assistance.

It is imperative that the whole country comes together to fight the coronavirus as a whole. That unless there is complete cooperation among the states, it is the people who will suffer as can be seen from the result of the actions of the State of Karnataka.

Hence, the present writ petition

LIST OF DATES

DATE	PARTICULARS/EVENTS
21.3.2020	In light of the Covid 19 Pandemic the State of Karnataka decided to close its borders as a precautionary measure.
24.3.2020	<p>In light of the Coronavirus Pandemic, the Union of India (Respondent No.3) invoking powers under the Disaster Management Act 2005 declared a 21 day country wide lockdown and directed the citizens to remain in their homes in order to contain the spread of the coronavirus pandemic.</p> <p>In a notification issued by the Ministry of Home Affairs dated 24.3.2020, Essential Goods and services including ambulances and medical services were excluded from the lockdown.</p>
26.3.2020	In light of the guidelines issued by the Union of India dated 24.3.2020 for the tackling of covid-19 pandemic, the State of Kerala issued further guidelines in following the Union Guidelines and tackling the covid-19 epidemic in the

	State.
27.3.2020	Amid the COVID-19 pandemic, the Kerala Government promulgated the ' Epidemic Diseases Ordinance 2020 ' with the objective "to unify and consolidate the laws relating to the regulation and prevention of epidemic diseases".
28.3.2020	Due to the closure of Karnataka-Kerala State border an ambulance from Kerala was denied entry into Mangaluru which resulted in the death of an ailing 70 year old woman.
28.3.2020	The Petitioner herein wrote a representation to the Chief Minister of Karnataka urging him to lift the blockade as the same has caused severe hardship to the people of his constituency.
28.3.2020	The Petitioner herein wrote a representation to the Hon'ble Prime Minister urging him to take urgent action to ensure the inter-state transportation to avoid shortage of food in the State of

	Kerala.
28.3.2020	The Petitioner herein wrote a representation to the Member of Parliament, Dakshina Kannada Constituency urging him to to ensure uninterrupted inter-state transportation of food grains and vegetables from Karnataka to Kerala to avoid a grave scarcity of food in northern part of the State of Kerala.
29.3.2020	In a letter to all the States, the Union of India further clarified that the transportation of all goods without distinction of essential and non-essential are allowed during the lockdown period.
30.3.2020	Hence the present writ petition.

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WRIT PETITION (CIVIL) No.____ OF 2019

UNDER ARTICLE 32 OF THE CONSTITUTION OF INDIA

IN THE MATTER OF:

Rajmohan Unnithan
Aged 66 years,
Son of Kuttan Pillai,
Residing at Kampiyil,
MUDRA-2 Mudavanmugal,
Poojappura,
Thiruvananthapuram 695012,
Kerala,

...Petitioner

Versus

1. State of Karnataka
Represented by its Chief Secretary
Room No.321, Vidhana Soudha,
Bengaluru, Karnataka ...Respondent No.1

2. State of Kerala
Represented by its Chief Secretary
Government Secretariat
Government of Kerala
Thiruvananthapuram
Kerala, PIN - 695001

...Respondent No.2

**WRIT PETITION UNDER ARTICLE 32 OF THE
CONSTITUTION OF INDIA**

To
The Hon'ble Chief Justice of India
And His companion Justices of the
Supreme Court of India

The Humble petition of the
Petitioner above named

MOST RESPECTFULLY SHOWETH:

- 1.** The present writ petition is preferred in public interest since the Petitioner is aggrieved by the blockade done by the Respondent No.1 and the Petitioner is constrained to prefer a writ petition under Article 32 of the Constitution to issue a writ of certiorari or any other appropriate writ to direct the State of Karnataka (Respondent No.1) to open its border with the State of Kerala (Respondent No.2) to allow the movement of ambulances and other emergency vehicles for the treatment of patients and for the transport of essential and non-essential items to the State of Kerala.
- 2.** The present writ petition raises the important issue of the blockade imposed by the State of Karnataka with

the State of Kerala. This blockade has resulted in cutting off the essential lifeline of National Highways and State Highways and major District Roads leading to the State of Kerala which has resulted in the shortage of supply of essential and non-essential items to the State of Kerala leading to shortage supply of food and medical supplies. This ill planned and dangerous blockade has claimed the life of a 70 year old woman who was denied entry into Karnataka even for the prupose of urgent medical treatment which was only available in the medical hub of Mangalore.

3. Therefore, the present writ petitioner under Article 32 of the Constitution has been necessitated in accordance against the imposition of the blockade done by the State of Karnataka (Respondent No.1).

FACTS OF THE CASE

4. The State of Kerala shares a major portion of its border with the State of Kerala and is connected via National Highway 66 for the transport of much of its essential goods from the rest of India. Additionally the people of

the district of Kasargod depend entirely on the medical facilities in the city of Mangalore in Karnataka.

A True Copy of the map showcasing the border between the States of Karnataka and Kerala is annexed herewith and marked as **Annexure P-1.**

5. On 21.3.2020 and in light of the Covid 19 Pandemic the State of Karnataka decided to close its borders as a precautionary measure.

A True Copy of the newspaper report dated 21.3.2020 is annexed herewith and marked as **Annexure P-2.**

6. On 24.3.2020, In light of the Coronavirus Pandemic, the Union of India (Respondent No.3) invoking powers under the Disaster Management Act 2005 declared a 21 day country wide lockdown and directed the citizens to remain in their homes in order to contain the spread of the coronavirus pandemic.

In a notification issued by the Ministry of Home Affairs dated 24.3.2020, Essential Goods and services including ambulances and medical services were excluded from the lockdown.

A copy of the notification dated 24.3.2020 issued by the Union of India is produced and annexed herewith as

Annexure P-3

7. In light of the guidelines issued by the Union of India dated 24.3.2020 for the tackling of covid-19 pandemic, the State of Kerala issued further guidelines in following the Union Guidelines and tackling the covid-19 epidemic in the State.

A True Copy of the guidelines dated 26.3.2020 issued by the State of Kerala is annexed herewith and marked

as **Annexure P-4**

8. Amid the COVID-19 pandemic, the Kerala Government promulgated the '**Epidemic Diseases Ordinance 2020**' with the objective "to unify and consolidate the laws relating to the regulation and prevention of epidemic diseases".

A True Copy of the '**Epidemic Diseases Ordinance 2020**' promulgated by the State of Kerala dated 27.3.2020 is annexed herewith and marked as

Annexure P-5.

- 9.** Due to the closure of Karnataka-Kerala State border an ambulance from Kerala was denied entry into Mangaluru which resulted in the death of an ailing 70 year old woman.

A True Copy of the newspaper report of the incident dated 28.3.2020 is annexed herewith and marked as **Annexure P-6.**

- 10.** The Petitioner herein wrote a representation to the Chief Minister of Karnataka urging him to lift the blockade as the same has caused severe hardship to the people of his constituency.

A True Copy of the representation dated 28.3.2020 sent by the Petitioner to the Chief Minister of Karnataka is annexed herewith and marked as **Annexure P-7.**

- 11.** The Petitioner herein wrote a representation to the Hon'ble Prime Minister urging him to take urgent action to ensure the inter-state transportation to avoid shortage of food in the State of Kerala.

A True Copy of the representation dated 28.3.2020 sent by the Petitioner to the Hon'ble Prime Minister of India is annexed herewith and marked as **Annexure P-8.**

12. The Petitioner herein wrote a representation to the Member of Parliament, Dakshina Kannada Constituency urging him to ensure uninterrupted inter-state transportation of food grains and vegetables from Karnataka to Kerala to avoid a grave scarcity of food in northern part of the State of Kerala.

A True Copy of the representation dated 28.3.2020 sent by the Petitioner to the Member of Parliament, Northern Kannada Constituency is annexed herewith and marked as **Annexure P-9.**

13. In a letter to all the States, the Union of India further clarified that the transportation of all goods without distinction of essential and non-essential are allowed during the lockdown period.

A True copy of the letter dated 29.3.2020 issued by the Union of India is annexed herewith and marked as **Annexure P-10.**

14. Thus being aggrieved, the Petitioner with leave of this Hon'ble Court are filing the present writ petition under Article 32 of the Constitution of India on inter-alia the following grounds:-

GROUNDNS

A. Dependency on Medical Facilities in Mangalore

The people of Kasaragod in Kerala rely entirely upon the medical facilities of Mangalore District in the State of Karnataka and its adjacent areas. As a result of this blockade two persons have already died as they were denied entry into Karnataka even for urgent medical treatment at a hospital in Mangalore.

B. Blockade causing disruption in supply of Food and other essential items

The state of Kerala is a consumer state and most of the grocery items and vegetables come from the State of Karnataka through roads and Highways connecting the Kasaragod and the Mangalore Districts of both States. Now all the roads including the National Highways leading to the Karnataka state side are closed by the officials of the Karnataka State in the wake of the nationwide lockdown against the Covid 19 pandemic which has resulted in stoppage of supply of goods and other essential items from the State of Karnataka to the State of Kerala. The State of Karnataka has closed these roads by making mud mounds on the roads preventing even the pedestrian movement into the State of Karnataka from the State of Kerala. The above acts of the officials of the State of Karnataka are causing many difficulties for the people of Kerala especially of the people of Kasaragod.

C. Blockade against the Federal Structure

This act of the State of Karnataka of closing the roads including National Highways leading to Kerala is unconstitutional and against the federal structure of our country. The Kanyakumari-Kochi-Panvel National Highway (NH-66) is the property of the National Highway Authority of India under the National Highways Act and no State Government has any authority to block the above Highways without the prior sanction of the National Highway Authority of India. The National Highway Authority of India has not given any sanction to block any of its Highways. There is no rational reason in the above acts of the State of Karnataka. As per Article 19(1)(d) of the Constitution, all citizens have the right to move freely throughout the Territory of India. Therefore, the acts of the State of Karnataka in blocking the Highways and other roads and thus preventing free movement of the people of Kerala to Karnataka and movement of transportation from Karnataka to Kerala is against the freedom of movement guaranteed under Article 19(1)(d) of the Constitution.

D. Blockade against the direction of the Union

As a result of the crisis felt in several part of the country, the Union of India has further, in a letter issued to all State Governments dated 29.3.2020, clarified to all states that the transportation of all goods without

distinction of essential and non-essential are allowed during the lockdown period. Therefore, for the State of Karnataka to continue to maintain the blockade is against the guidelines of the Union and against the interest of the public at large.

E. Blockade leading to a humanitarian crisis in Kerala

Although the blockade has been done by the State of Karnataka for preventing the spread of Coronavirus, the move has resulted in a far graver consequence for the State of Kerala. The blockade has resulted in the disruption of supply of essential items for the State especially in such trying times.

This is a trying time for our country as a whole. It is a time when all State Governments and the Central Government must act in cooperation for the general good of people battling the coronavirus pandemic. However the State of Karnataka has acted in complete disregard for the people in the State of Kerala. This move has and will in the future cause great hardship to the people in Kerala in tackling with the present crisis of Coronavirus especially when essential items such as food and medical treatment have been denied to the people.

F. Right to Food a fundamental right

In the case titled ***People's Union for Civil Liberties v. Union of India & Others*** [Writ Petition (Civil) No.

196/2001] this Hon'ble Court explicitly established a constitutional human right to food and determined a basic nutritional floor for India's impoverished millions. The right to food can be seen as an implication of the fundamental "right to life", enshrined in Article 21 of the Indian Constitution. Indeed, the Supreme Court has explicitly stated (several times) that the right to life should be interpreted as a right to "live with human dignity", which includes the right to food and other basic necessities. In *Maneka Gandhi v. Union of India AIR 1978 SC 597*, this Hon'ble Court stated: "Right to life enshrined in Article 21 means something more than animal instinct and includes the right to live with human dignity, it would include all these aspects which would make life meaningful, complete and living." Similarly, in *Shantistar Builders v. Narayan Khimalal Totame (1990) 1 SCC 520*, this Hon'ble Court opined that "The right to life is guaranteed in any civilized society. That would take within its sweep the right to food..."

This Hon'ble Court in several cases has established that "Article 21 of the Constitution of India guarantees a fundamental right to life and personal liberty. The expression 'Life' in this Article has been judicially interpreted to mean a life with human dignity and not mere survival or animal existence. In the light of this, the State is obliged to provide for all those minimum requirements which must be satisfied in order to enable

a person to live with human dignity, such as education, health care, just and humane conditions of work, protection against exploitation, etc. In the view of the same, the Right to Food is inherent to a life with dignity, and Article 21 should be read with Articles 39(a) and 47 to understand the nature of the obligation of the State in order to ensure the effective realization of this right. Article 39(a) of the Constitution enunciated as one of the Directive Principles, fundamental in the governance of the country, requires the State to direct its policy towards securing that the citizens, men and women equally, have the right to an adequate means of livelihood. Article 47 spells out the duty of the State to raise the level of nutrition and the standard of living of its people as a primary responsibility. The citizen's right to be free from hunger enshrined in Article 21 is to be ensured by the fulfillment of the obligation of the State set out in Articles 39(a) and 47. The reading of Article 21 together with Articles 39(a) and 47 places the issue of food security in the correct perspective, thus making the Right to Food a guaranteed Fundamental Right which is enforceable by virtue of the constitutional remedy provided under Article 32 of the Constitution."

This Hon'ble Court in the case of ***Vincent Panikurlangara vs. Union of India & Ors [(1987) 2 Scc 165]***, held that in a welfare State, it is the obligation of the State to ensure the creation and maintaining of

conditions congenial to good health. In the case of ***CESC Ltd. vs. Subash Chandra Bose [(1992) 1 SCC 441]***, this Hon'ble Court relied on international instruments and concluded that right to health is a fundamental right. In the case of ***Consumer Education and Research Centre vs. Union of India[(2010) 15 SCC 699]***, this Hon'ble Court for the first time explicitly held that 'the right to health is an integral fact of a meaningful right to life.' In the case of ***Paschim Banga Khet Mazdoor Samity & Ors vs State of West Bengal & Anr [(1996) 4 SCC 37]***, it was held by this Hon'ble Court that Article 21 of the Constitution casts an obligation on the State to take every measure to preserve life. The Court found that it is the primary duty of a welfare State to ensure that medical facilities are adequate and available to provide treatment.

- G.** Therefore the act of the State of Karnataka, in the garb of the nation-wide lockdown, of blocking the National Highway 66 and the other roads connecting Kerala and thereby hindering the supply of essential goods to Kerala and denying the right of the people of Kerala, especially the people of Kasaragod district, to access critical medical care in the hospitals in Karnataka is a grave violation of the constitutional rights of the people of Kerala to enjoy the right to live with human dignity, right to food and right to health and medical assistance.

It is imperative that the whole country comes together to fight the coronavirus as a whole. Unless there is complete cooperation among the states, it is the people who will suffer as can be seen from the result of the actions of the State of Karnataka.

- H.** That in view of the above it is in the interest of justice and equity, the Petitioner seeks to pray following directions from this Hon'ble Court under Article 32 of the Constitution.

PRAYER

In the circumstances it is most respectfully prayed that this Hon'ble Court may be pleased to:

- (a) Issue a Writ of Certiorari directing State of Karnataka to open the borders with Kerala and in particular Kasargod-Mangalore border at Talappadi.
- (b) Issue a Writ of Certiorari directing the State of Karnataka to allow the movement of Ambulances and other emergency vehicles through the borders.
- (c) Issue a direction to the State of Karnataka to allow the movement of trucks and other vehicles carrying

essential and non-essential items to the state of Kerala.

- (d) Issue a direction to the State of Karnataka to register an FIR and constitute a Special Investigation Team under the supervision of this Hon'ble Court to enquire against the concerned authorities including the police officials whose action led to the death of two citizens.
- (e) Pass such other and further order/orders as are deemed fit and proper in the facts and circumstances of the case.

Drawn By

Haris Beeran

Advocate

New Delhi

Filed by

Pallavi Pratap

Advocate for the petitioner