

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE THE CHIEF JUSTICE MR.S.MANIKUMAR

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THE HONOURABLE MR. JUSTICE SHAJI P.CHALY

FRIDAY, THE 21ST DAY OF AUGUST 2020 / 30TH SRAVANA, 1942

WP(C).No.17028 OF 2020(S)

PETITIONER:

RAMESH CHENNITHALA
AGED 60 YEARS
S/O. LATE V. RAMAKRISHNAN NAIR, MEMBER KERALA LEGISLATIVE
ASSEMBLY, RESIDING AT CONTONMENT HOUSE,
THIRUVANANTHAPURAM, PIN - 695 033.

BY ADVS.
SRI.T.ASAFALI
SRI.RASHEED C.NOORANAD
SRI.V.S.CHANDRASEKHARAN
SMT.LALIZA.T.Y.

RESPONDENTS:

- 1 STATE OF KERALA
REPRESENTED BY CHIEF SECRETARY, SECRETARIAT,
THIRUVANANTHAPURAM - 695 001.
- 2 THE STATE POLICE CHIEF
POLICE HEAD QUARTERS, THIRUVANANTHAPURAM - 695 001.

R1 BY SRI.P.NARAYANAN, SENIOR GOVT. PLEADER
R1 BY SRI.V.MANU, SENIOR GOVT. PLEADER
R1-2 BY GOVERNMENT PLEADER
R1-2 BY SRI.SUMAN CHAKRAVARTHY, SENIOR GOVT.PLEADER
R1-2 BY SRI.K.K.RAVINDRANATH, ADDL.ADVOCATE GENERAL

SRI.K.K.RAVINDRANATH, ADDL. AG,
SRI.P.NARAYANAN, SR. GP,
SRI. MANU V, SR GP
SRI. SUMAN CHAKRAVARTHY, SR. GP

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON
21.08.2020, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

JUDGMENT

S. Manikumar, CJ.

The petitioner, MLA representing Harippad Assembly Constituency and the Leader of Opposition in the Kerala Legislative Assembly, has filed this writ petition as a Public Interest Litigation, challenging Ext.P1 circular, whereby the second respondent has issued directions to the Additional Director General Police (Inte.) and Police Head Quarters to take up the matter with BSNL, VODAFONE and ensure collection of CDRs of COVID-19 positive patients.

2. Learned counsel for the petitioner contended that the collection of CDRs of COVID-19 positive patients would be breach of privacy amounted to surveillance and it is not at all necessary for tracing the location of COVID-19 positive patients as contended by the police in a press release issued as rejoinder to the wide spread public protest emanated against Ext.P1 circular. It is also contended that as per Ext.P1, CDR collection had been started by the police and the nature of the use of tens of thousands of COVID-19 positive patients CDR are kept in dark. According to the petitioner, the second respondent has no right to collect CDRs of COVID-19 positive patients in such an arbitrary manner which would

amount to an intrusion to their privacy and it is illegal and void ab initio. It is also submitted that at present COVID-19 positive patients whose CDRs have been ordered to be collected by police on the strength of Ext.P1 circular, are not in a position to have resort to any legal remedies of their own for the injuries suffered by them on account of the illegal acts of the first respondent. Hence, the petitioner has filed this writ petition with the following prayers:

- 1) To call for the records relating to the issuance of Ext.P1 Circular No. T5/40634/2020/PHQ dated 11th August, 2020 issued by the second respondent and a writ of certiorari or any other appropriate writ or order may be issued quashing Ext.P1 as ultra vires, unconstitutional, null and void and unenforceable in law;
- 2) Writ of mandamus or other appropriate writ, order or direction commanding the second respondent and their subordinates restraining them from collecting CDRs of COVID-19 positive patients undergoing quarantine and under treatment from any service providers in pursuance of Ext. P1 and
- 3) To grant such other order or direction as this Hon'ble Court may deem fit and proper to meet the ends of justice.

Though invasion to right of privacy has been raised as one of the grounds assailing the correctness of Ext.P1 circular dated

11.08.2020, Mr. Asaf Ali, learned counsel for the petitioner, submitted that it is sufficient if CDR details are collected for locating the mobile towers, so as to track COVID-19 patients. He further submitted that there is every possibility of misusing the circular.

3. Mr. K.K. Ravindranath, learned Additional Advocate General, submitted that CDR details contains the mobile tower location and the contacts of the COVID-19 patients. Segregating tower location alone is not possible. CDR details are collected only for a limited purpose of locating COVID-19 patients and their contacts. They are kept only by the police and destroyed after 14 days.

4. From the submission of the learned counsel for the petitioner, it could be deduced that there is no objection for collection of CDR details to obtain the mobile tower location of COVID-19 patients. In the above circumstances, we directed a statement be filed by the respondents.

5. Pursuant to the direction of this Court on 19.08.2020, learned Senior Government Pleader, on behalf of the second respondent, has filed a detailed statement.

6. Though, quite contrary to the earlier submission, Sri. T. Asaf Ali, learned counsel for the petitioner, submitted that collection of CDRs of COVID-19 positive patients by police on the basis of

Ext.P1 is in violation of the right of privacy guaranteed under Article 21 of the Constitution of India and sought for time to implead the service providers to ascertain as to whether, service providers could segregate the tower locations alone from the data furnished to the police department, we are not inclined to accept the same, for the reason that in paragraphs 7 to 9 of the statement, the respondents have categorically stated that it is necessary to trace out the places, where COVID patients have visited, and the persons with whom, they have established contacts, and for that purpose, CDR details are taken for identifying the tower location. As regards segregation by the service providers, it is also stated that it is not possible. Paragraphs 7 to 9 of the statement read thus:

7. Since there is no other method for tracing the places where the COVID positive patient visited or the persons with whom the patient has established contact, the CDR is taken for the limited purpose for identifying the tower location. The guidelines issued by the Central Government in this regard are strictly followed. However, the details provided by the cellular service providers are not in a segregated form. On a specific enquiry made to the Cellular Phone operators as to whether the details of tower location alone can be provided, it was replied that the CDR details are downloaded by them from the server in encrypted CSV (Comma Separated Value) format and they are not authorised to do any alterations to the same. If any segregation is to be done that has to be done by the agency

which seeks the details, since the service providers are not authorised to alter the fields. The only other method of obtaining tower location is through LBS (location-based service) (real time), by which the actual tower location of a person on the given time can be obtained. This cannot be used for getting tower location of previous days. Upon receipt of CDR details from the service provider, which contains 13 columns, the 7th column which contains the First Cell Global Id alone is decoded by the Police with the data provided by the Cellular Service provider, to obtain the Latitude and longitude. Since CDR is the only method of obtaining previous fourteen days tower location of Covid Positive patients, the mentioning of CDR in Ext P-1 cannot be found fault with.

8. The apprehension of the petitioner that there will be an unauthorized access by third party is without any basis. The CDR is maintained strictly confidential, for the limited purpose of identifying the tower location and once the places where the COVID positive patients have been identified, the CDR is immediately destroyed. The CDRs obtained are stored by the Police and not by any third party or 'unknown agency' as stated in the Writ Petition. All possible measures are taken by the police to ensure that the CDR is not accessed by any third party. It is also incorrect to say that there is indiscriminate collection of CDRs of COVID-19 positive patients. The CDR is collected just 14 days prior to the date of which the patients become positive and not after that. There is no breach of confidentiality in the matter of collection of CDRs. No instance of any breach of confidentiality has been pointed out by the petitioner. No

complaint has been filed by any COVID patient to the effect that his/ her privacy has been violated on account of leakage of his/ her CDR to a third party other than the Police. The writ is based on a mere apprehension of the petitioner that there will be leakage, whereas no such incident has actually happened. The apprehension is also not based on reliable inputs or prior incidents and is solely based on the surmises and conjectures of the petitioner.

9. The State has been using the tower location details of COVID positive patients for contact tracing, which is highly essential in arresting the spread of the pandemic and quarantining the persons who had first hand/ primary contact with the COVID affected person. It is submitted that the Pandemic was successfully contained in the State during the first and second phases and even in the third phase, the instances of COVID cases are far less in the State when compared to the national scenario. This has been possible only due to the successful contact tracing and consequential quarantining of such contacts.

7. Contention of the respondents is that the details provided by the cellular service providers are not in a segregated form. It is also submitted that the CDR is maintained strictly confidentially for the limited purpose of identifying the tower location and once the places where the COVID positive patients have been identified, the CDR will immediately be destroyed. The CDR details obtained are stored by the police and all measures are taken by the police to

ensure that the CDR is not accessed by any third party. It is further submitted that the CDR is collected just 14 days prior to the date on which the patients become positive and according to State, there is no breach of confidentiality in the matter of collection of CDRs. State has been using the tower location details of COVID positive patients for contact tracing, which according to them, is highly essential for arresting the spread of the pandemic and quarantining the persons who had first primary contact.

8. Though the learned counsel for the petitioner seeks time to implead the service providers to adjudicate as to whether the details provided by the service providers can be segregated only to the extent of tower location, we are not inclined to grant any permission in that regard. Respondents are directed to ensure strict confidentiality of the CDR details collected and also to ensure that no third party has access, as affirmed before this Court. It is also directed that CDR details collected should not be used for any other purpose.

9. In the light of the above discussions and directions, we are not inclined to proceed further. Accordingly, this writ petition is closed.

After the disposal of the writ petition, learned counsel for the petitioner submitted that respondents may be directed to re-issue

Ext.P1 circular or to issue a corrigandum, to the effect that CDR details of COVID-19 positive patients are collected only for the purpose of finding the tower location. It is open to the respondents to consider the same.

sd/-
S. MANIKUMAR,
CHIEF JUSTICE.

sd/-
SHAJI P. CHALY,
JUDGE.

Rv

APPENDIX

PETITIONER'S/S EXHIBITS:

EXHIBIT P1	TRUE COPY OF THE CIRCULAR DATED 11TH AUGUST 2020 ISSUED BY 2ND RESPONDENT.
EXHIBIT P2	TRUE COPY OF THE POLICE PRESS RELEASE DATED 14.08.2020.
EXHIBIT P2 (a)	TRUE COPY OF THE ENGLISH VERSION OF POLICE PRESS RELEASE DATED 14.08.2020.

RESPONDENTS' EXHIBITS: NIL

/True Copy/

PS to Judge.