

IN THE HIGH COURT OF KARNATAKA AT BENGALURU
(Original Jurisdiction)

Writ Petition No 3949 / 2021

BETWEEN

B. Subbaya Rai,
S/o Late I. Rama Rai,
Advocate,
Aged 56, Years,
Ichalampady House,
Kumbla,
Kasargod District,
Kerala State

And also
11, Tej Towers,
Jyothi Circle
Mangaluru
D.K District 575001

Petitioners

AND

1. Union of India
Rept. By its Secretary,
Dept. of Home Affairs,
National Stadium,
India Gate
New Delhi - 110 001
2. The State of Karnataka
Rept., by its Secretary
Department of Health and Family Welfare
Vidhana Soudha,
Bengaluru - 560 001.
3. The Deputy Commissioner/
President District Disaster Management Authority
Dakshina Kannada
Mangaluru,
D.K. District. 575001

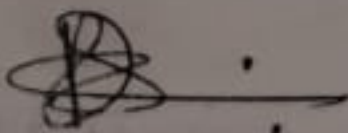
Respondents

MEMORANDUM OF WRIT PETITION
UNDER ARTICLES 226 & 227 OF CONSTITUTION OF INDIA

The petitioner submits as follows -

1. The petitioner is a practicing advocate having 33 years of practice at Mangaluru courts who is a resident of Kasaragod District of Kerala State.

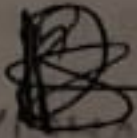
The petitioner is also a public spirited person and former chairman of Kerala



Tulu Academy. This writ petition is filed by way of public interest litigation on behalf of the society at large who are the residents of Karnataka Kerala boarder areas in and around of the border areas and as well as Dakshina Kannada district of Karnataka State and Kasaragod District of Kerala State. The copy of the Aadhar card of the petitioner and as well as the copy of the enrolment card issued by the Karnataka State Bar Council are produced herewith & marked as ANNEXURE 'A & B'.

2. The Dakshina Kannada and Kasaragod Districts of Karnataka & Kerala state respectively known as Gadinaada Karnataka. It is submitted that both the districts and the residents thereof are interdependent upon employment, trade, commerce, education and major hospitals which is situated at Mangaluru city of D.K District. It is submitted that more than 80,000 people i.e., 35% to 40% of the border area travel on day today basis for the aforesaid purposes. The petitioner who is practicing at Mangaluru court is travelling frequently to Kerala state as his native. Some of the details of the Kerala and Karnataka borders are mentioned as hereunder.

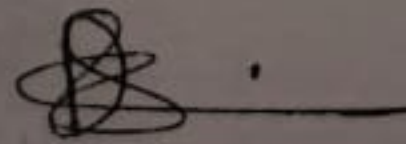
<u>Borders closed (Check Posts)</u>	<u>Check posts open with negative report</u>
Anekallu	Talapady
Pathoor	Saradka
Talekki	Nettanige Mudnoor
Nandarapadavu	Menala
Narya	Jalsoor
Bayar Muligade	
Kurudapadavu	
Adyanadka	
Thoudugoli	
Kedumbady	
Nethilapadavu	
Adoor	


K. RAVISHANKAR
Enroll No. 1173/2002

It is submitted that all these borders are connecting the land route to the Karnataka and Kerala state including Dakshina Kannada district and more particularly Mangaluru city. It is submitted that the border areas are the remote places where no immediate ambulance facilities are provided for medical purpose. It is submitted that the inhabitants border area are mainly depended upon the Karnataka taluk places and districts such as Sullia, Puttur, coorg, Mangaluru etc for all purposes.

3. It is submitted that due to Covid-19 the central and state government have taken suitable measures in order to prevent the spreading of the above said disease by lock down procedure including the closure of the border areas of each state including Kerala and Karnataka borders. It is submitted that the 1st respondent Union of India has issued the Unlock-4 standard operating procedure (SOP) under the powers conferred under Disaster Management Act 2005 and issued various guidelines and also orders. The copy of the order/guideline dated 27/01/2021 (Unlock - 4) issued by the 1st respondent is produced herewith & marked as ANNEXURE 'C'

4. It is submitted that pursuant to the above said order the state government Karnataka has also issued circular dated 16/02/2021 prescribing certain special surveillance measures for arrivals from Kerala to Karnataka with immediate effect. The copy of the above said circular is produced herewith & marked as ANNEXURE 'D'. The 3rd respondent who is the head of the district and also an authority under the National Disasters Act 2005 now has issued an order dated 18/02/2021 by relying upon the circular dated 16/02/2021 has passed the impugned order restricting the



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movements of the public from Kasaragod district to enter into Dakshina Kannada district by exercising power under Sec.34 of the said Act. The impugned order passed by the 3rd respondent is contrary to the guidelines issued by the 1st respondent and also the circular issued by the state government. The power exercised by the 3rd respondent is contrary to the Act and its procedure and also the above said order, guideline and circular. The copy of the above said order bearing No. CAL.CR 45/2021/128059/B2/2 dated 18/02/2021 is produced herewith & marked as ANNEXURE 'E'.

5. It is submitted that, by the impugned order the public at large who are residing in the border areas who are depending upon the road transport as a means of their livelihood, education trade and commerce and health are jeopardized and their free movements to travel and other activities which is the part of their fundamental rights are curtailed by impugned order. If the impugned order is allowed to continue the fundamental rights guaranteed under the Constitution of India will be infringed.

6. Therefore the petitioner is filing this Writ Petition in the absence of there being any effective and efficacious alternative remedy. The petitioner has not filed any other writ petition on the same cause of action. There is ~~no other legal proceeding pending before any other court or authority in this regard.~~ Hence this petition is filed on the following among other grounds.

GROUND

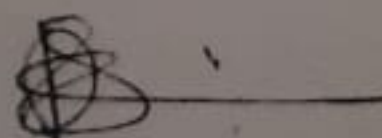
7. The impugned order passed by the 3rd respondent is contrary to Sec.30 to 34 of the Disaster Management Act 2005. The Sec. 30 of the Act deals with the powers conferred for the District authority to take all measures for the purpose of disaster management in district in accordance with the

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guidelines laid down by the national authority and the state authority. The said Sec. also prescribes certain procedures to be followed before any measures are taken in that regard. Sec.31 deals with the plan for disaster management of every district of the state and such plan shall be made after consultation with the local authorities. The Sec 34 is a power vested with the 3rd respondent to control and restrict vehicle traffic and also control and restrict entry of any person into, his movements within and departure from a vulnerable or affected area. From the reading of the above said provisions it is clear that Sec.34 is not an independent power but the same has to be exercised after following the procedures contemplated under Sec.30 to 33 and in accordance with the guidelines issued by the national authority and the state authority in this regard. The guidelines issued by the central government and the circular issued by the state government does not restrict the movement of the public by closer of borders but the same lays down certain procedures such as production of RT-PCR negative reports. It is submitted that except these restrictions there is no guideline or circular to restrict the movement of the public and society at large by closing all the borders and check posts by leaving open only 5 check posts as mentioned in the order. Hence the impugned order is liable to be set aside.

8. It is submitted that the impugned order passed by the 3rd respondent is contrary to and in derogation with Article 19(d) of Constitution of India. The Constitution provides a fundamental right to every citizen to move freely throughout the territory of India. Therefore the 3rd respondent without any valid reason and contrary to the circulars more so when there is no lock down SOP in existence cannot abridge the fundamental right of the citizens. The above said order also indirectly abridges right to trade, profession and

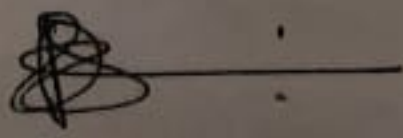


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other activities between the two interstate districts. The impugned order is also in the nature of destructive in the nature of revenue between the two districts. Hence the impugned order is liable to be quashed.

9. It is submitted that most of the inhabitants of the border area of Kerala state which are in remote places are mainly dependent upon Mangaluru, sullia, puttur, coorg cities Dakshina Kannada & coorg for the purpose of emergency medical service, hospitals, courts, colleges, business and other essential services. The 3rd respondent without taking into consideration all these aspects has passed the impugned order restricting the movements of the citizens. The impugned order does not reasoned or there is no rational behind the said decision. The action of the 3rd respondent has not been supported by any of the guidelines issued by the national authority or the state authority to pass an order under Sec.34 of Disaster management Act 2005. Hence the impugned order is liable to be quashed.

10. It is submitted that the order passed by the 3rd respondent is not supported with any expert's advice or supported by a scientific reason. The guidelines prescribed by the state government regarding Covid tests and other thermal screening are remained intact and therefore there is no justification to close all the borders except five check posts as mentioned in the impugned order. The respondents without providing the safety and medical measurement to the citizens as provided under the Directive principles of State policy are indirectly putting a ban for the free movement by closing the borders between two interstate districts. Hence the impugned order is liable to be quashed.



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movements o...
disposal of the

Pass s...
circumstances:

Bengaluru
Date:

ADDRESS FOR
SHRI K. RAVIS
ADVOCATE,
'ARPITHA' NO.
2ND MAIN, MA
KOTHNOOR, J
BANGALORE -
MOBILE NO 94
E MAIL: RAVIK

GROUND FOR INTRIM RELIEF

11. During the pendency of above writ petition it is just and necessary to grant the interim relief staying the operation of the impugned order passed by the 3rd respondent. If the interim order is allowed to continue the fundamental rights of the society at large will be infringed and there by affecting the socio economic rights of the citizens. If the interim order is not granted the petitioner and the general public would be put to great hardship & injury on the other hand no prejudice will be caused to the respondents.

PRAYER

Wherefore, it is prayed that this Hon'ble Court may be pleased to -

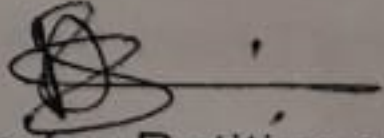
- i) Issue a Writ of Certiorari and quash the impugned order dated 18/02/2021 bearing No. CAL.CR 45/2021/128059/B2/2 passed by the 3rd respondent produced vide Annexure-E to the writ petition and;
- ii) Issue such other writ, order or direction as deemed fit in the circumstances of the case.

INTERIM PRAYER

During the pendency of above writ petition it is just and necessary to stay the operation of impugned order dated 18/02/2021 bearing No. CAL.CR 45/2021/128059/B2/2 passed by the 3rd respondent produced vide Annexure-E to the writ petition in so far as it relates to restriction of the movements of the public by closing the borders excepts 5 check posts till the disposal of the writ petition; and

Pass such other interim order or direction as deem fit under the circumstances of the case.

Bengaluru
Date:


Advocate for Petitioner

K. RAVISHANKAR

Roll No. 123456789

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