

VERDICTUM.IN

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE THE CHIEF JUSTICE MR.S.MANIKUMAR

&

THE HONOURABLE MR. JUSTICE SHAJI P.CHALY

TUESDAY, THE 25TH DAY OF JANUARY 2022 / 5TH MAGHA, 1943

WA NO. 116 OF 2022

AGAINST THE JUDGMENT IN WP(C).21560/2021 OF HIGH COURT OF
KERALA DATED 21.12.2021

APPELLANT/PETITIONER IN WPC:

PETER MYALIPARAMBIL
AGED 62 YEARS, S/o. LATE JOSEPH,
MYALIPARAMPIL HOUSE, POOZHIKOL P.O.
KADUTHURUTHY, KOTTAYAM 686604
KOTTAYAM, PIN - 686604

BY ADV AJIT JOY

RESPONDENTS/RESPONDENTS IN WPC:

- 1 UNION OF INDIA
REPRESENTED BY THE SECRETARY,
MINISTRY OF HEALTH AND FAMILY WELFARE,
NIRMAN BHAVAN, NEW DELHI, PIN - 110011
- 2 GOVERNMENT OF KERALA
REPRESENTED BY THE CHIEF SECRETARY,
GOVERNMENT SECRETARIAT,
THIRUVANANTHAPURAM, PIN - 695001

SRI.JAISHANKAR V NAIR, CGC FOR R1
SRI. K.P.HARISH, SR.GOVERNMENT PLEADER FOR R2

THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON
25.01.2022, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

J U D G M E N T

Dated this the 25th day of January, 2022

Shaji P. Chaly, J

Captioned writ appeal is filed, by the writ petitioner challenging the judgment of the learned Single Judge in W.P(C). No.21560 of 2021 dated 21.12.2021 whereby the following reliefs sought for by the appellant were declined.

“a) Declare that affixing of the photograph of the Hon'ble Prime Minister in the COVID-19 Vaccination Certificate of the petitioner, having objected to it, is a violation of his fundamental rights.

b) Issue an appropriate writ, order or direction to the 1st respondent to issue the petitioner a COVID -19 vaccination certificate without the photograph of the Hon'ble Prime Minister in it, along with access to the COWIN platform, to generate such a certificate when needed.”

2. Appellant claims to be a social activist interested in espousing public causes, and the kind of litigations undertaken by him in the larger public interest are all narrated in the writ petition. The question emerging for consideration is, whether the photographic printing of the Hon'ble Prime Minister in the Covid-19 Vaccination Certificate issued to

the vaccinated persons online through Co-WIN platform , violates the fundamental right guaranteed to the petitioner conferred under Part III of the Constitution of India, especially Article 19(1)(a) dealing with freedom of speech and expression.

3. In fact, the appellant raised the following questions for consideration before the learned Single Judge:

- 1) Whether any public interest is served by affixing the photograph of Hon'ble Prime Minister in Covid-19 Vaccination Certificate?
- 2) Whether the State can impose unwanted speech in the form of a photograph and a message on the appellant within the private space of a certificate, recording his medical information?
- 3) Whether the appellant is entitled to receive a certificate without the photograph of the Hon'ble Prime Minister, especially when he has purchased the vaccine
- 4) Whether the campaign of the Union of India against Covid-19 projecting the Hon'ble Prime Minister adversely affects the freedom of vote of the appellant?

4. The appellant in the writ petition has explained and narrated

the details with respect to the vaccination taken by him on payment of money. It is basically contended that the State has no right to access the private space in the certificate without the appellant consenting to it; and as a mandatory document, the Covid-19 Vaccination Certificate needs to be carried with the appellant, and therefore, the appellant is, in fact, a captive audience on whom unwanted speech in the form of the photograph and message is being imposed upon him. It is also contended that the appellant has the right to be left alone. That apart, it is submitted that messaging, and the general campaign associated with response to the Covid-19 pandemic, in which the Hon'ble prime Minister is permanently shown at public expense would lead to interference with appellant's rational thought and critical appraisal leading to a distortion of the appellant's right to vote including exercising free choice.

5. That apart, it is also contended that the public campaign so done violates the guidelines laid down by the Hon'ble Supreme Court in ***Common Cause v. Union of India [(2015) 7 SCC 1]***, that "Government advertising shall maintain political neutrality and avoid glorification of political personalities and projecting a positive impression of the party in power". Therefore, according to the appellant, the

learned Single Judge has not taken into consideration any of the pointed legal questions raised by the appellant and dismissed the writ petition imposing cost of Rupees One Lakh, which is incorrect, and without exercising the jurisdiction conferred under Article 226 of the Constitution of India appropriately, and therefore illegal, which is liable to be interfered with by this Court.

6. We have heard, Sri. Ajith Joy, learned counsel for the appellant and Sri. Jaishankar V. Nair, learned Central Government Counsel for the Union of India and perused the pleadings and material on record.

7. The question emerges for consideration is whether any manner of interference is warranted to the judgment of learned Single Judge. It is the prime contention of the appellant that the learned Single Judge did not consider at all the question whether the Hon'ble Prime Minister's picture on the Covid-19 Vaccination Certificate was based on any law, policy, circular or decision of the Union of India. It is also contended that the learned Single Judge has not ascertained as to whether the Hon'ble Prime Minister himself had ordered to have his photograph in Covid-19 Vaccination Certificate, as is laid down by the Hon'ble Supreme Court in the ***Common Cause*** case (supra).

8. It is also submitted that if there was nothing wrong with the affixture of the photograph of the Hon'ble prime Minister in the Vaccination Certificate, what led the Election Commission of India to direct to filter out such photographs in Vaccination Certificates, which were generated when the election model code of conduct was in force in poll bound States. It is also submitted that cost of Rupees One Lakh, imposed by learned Single Judge is, without taking into account the law laid down by the Apex Court in its various judgments and also ignoring the fact that the appellant has taken up a genuine cause rightfully thinking that affixing of photograph is affecting the fundamental rights guaranteed to the citizen under Part III of the Constitution of India.

9. We have evaluated the submissions made by the learned counsel for the appellant. The subject issue revolves around Exhibit P1 Vaccination Certificate downloaded by the petitioner, which is printed with a photograph of the Prime Minister of India, wherein it is also written that "Medicine and the Strict Control" in vernacular language ie., Malayalam and again another caption is provided "Together, India will defeat Covid-19". The primary question to be decided is, to what extent the inscriptions and the photograph of the Hon'ble Prime Minister would

interfere with the freedom of speech and expression conferred to a citizen under Article 19(1)(a) of the Constitution of India.

10. In our considered opinion, the printing of a photograph, or inscriptions contained in the certificate would not interfere with the fundamental rights of appellant since the photograph and the inscriptions are made apparently with the intention of gathering the attention of the citizens at large and to motivate the citizens to come forward for the administration of the vaccine. In our view, such an action was required from the side of the Government of India since Covid-19 vaccination was not made compulsory and therefore, in order to protect the larger interest of the community as such, motivation in order to instill confidence in the public, was largely required. Printing of the photograph of the Prime Minister and the inscriptions in the Certificate were not the only methods adopted by the Government of India in order to win confidence of the public so as to ensure that the citizens are undertaking the administration of vaccine; rather press releases were also given by the concerned ministry, apart from advertising and other awareness programmes so as to achieve the target of acquiring herd immunity in the larger interest of the citizens and the country.

11. Moreover, once an elected body comes to power in the Parliament, with the mandate of the voters, it is entitled as of right, to carry on with administration of the nation by making policies that are suitable, convenient and adaptable to the nation, bearing in mind the larger public interest. It is not the fundamental right of an individual that concerns the Government of India, but the fundamental rights enjoyed by the larger public, is the concern in a situation like the instant COVID-19 Pandemic. An individual right on the basis of the guaranteed fundamental right under Part III of the Constitution of India is subservient to the larger public interest when any volatile situation has engulfed the nation and the entire world. Moreover, the directive principles of the State Policy contained in part IV, and the fundamental duties contained in Part IV A of the Constitution of India entrusts a duty with the Union and State Governments to protect the health, welfare and safety of the public collectively, rather than being concerned, beyond necessity, with the individual fundamental rights as is claimed by the appellant.

12. Above all these things the Government of India is vested with powers under Article 73 of the Constitution of India to issue executive

orders in the matter of administration of the nation for the common good by adopting and envisaging appropriate policies to meet with the felt necessities of time, without infringing the fundamental and constitutional rights guaranteed and conferred under the Constitution of India, and also the rights conferred on the citizens under various statutes and other enactments. This we say because the appellant has raised the prime contention that the photograph and inscriptions contained in the Covid-19 Vaccination Certificate is without authority of law. In fact, Article 73 of the Constitution of India is incorporated in the Constitution with the specific purpose of conferring power on the Government of India to discharge its functions when the Government is not guided by a statutory provision to do a particular thing. That apart, an elected Government functioning in a democratic set up has got its own operational freedom to discharge its functions without seriously affecting and rupturing the fundamental rights guaranteed to the citizens of the country.

13. We are at a loss to understand how the fundamental right guaranteed under Article 19(1)(a) affects the appellant merely because a photograph is printed and inscriptions are made in the certificate, so as to achieve and attain a common target. In our considered view it would

never interfere with the freedom of speech and expression guaranteed to a citizen within the framework of the Constitution of India. The rights guaranteed there under cannot be treated so wafer thin and so peripheral and hence citizens cannot be intolerant to the extent that they cannot withstand printing of the photograph of the Prime Minister in a certificate. Which thus means, merely because there is a photograph and an inscription in the certificate, the right of the citizen to criticize the same in accordance with law, conferred under Article 19 (1) (a) of the Constitution is not interfered with, which could be the extent of right in the context.

14. However, a citizen is not entitled as of right to ask the Government of India to remove the inscriptions and photograph of the Prime Minister from the Certificate exercising rights under the said article, because according to us such a claim is never a fundamental right envisaged thereunder. This is for the basic reason that such a course is adopted by the Government of India with the intention of gathering attention of the citizens, and motivating and inspiring the people to cooperate with the Government, and thereby to ensure that maximum number of citizens take the vaccine in order to avoid fatality.

15. We are of the clear opinion that merely because the appellant has paid for the vaccine, that will not take away the right of the Government to make necessary inscriptions and affixes with the hopeful intention of securing public attention in order to achieve the target of complete vaccination for the entire citizens of the country. Therefore it could be seen only as an effort made by the Government of India to discharge its obligations, duties and functions by capturing the attention and cooperation of the citizens.

16. That apart, the Apex court in the judgment in ***Common Cause*** (supra) has clearly stated that there is nothing wrong in the Government publishing photographs of the President of India, Prime minister of India, Chief Justice of India in any publication, however only stated that the same shall be done only after securing the permission of the concerned dignitary; which apparently is modified in the order in a review petition, in ***State of Karnataka v. Common Cause and others*** reported in ***[(2016) 13 SCC 639]***, extending the benefit of the Judgment to Governors, Chief Ministers, Cabinet and other Ministers of the Union and the State Governments. When the photograph of the Prime minister is affixed in the certificate, it cannot be believed that it

was done without the permission of the Prime Minister of India. So much so, when an official act is done by the Government of India, incorporating the photograph of the Prime Minister of India and the inscriptions, this court has to legally presume that it is done in accordance with law, and therefore the onus to prove otherwise was definitely on the appellant, which burden he has failed to discharge. Above all, we do not think that the Prime Minister of India requires any more advertisement than occupying the office of the Prime Minister of India and thereby making his presence in several hundreds of platforms within the country and abroad. That said, it is a fallacious contention that the attempt is to attract the electorate, because the vaccination certificate is downloaded by the individual and kept with him for his personal purposes, and thinking so it would not fetch any larger publicity, than confining to the particular individual . This privacy is secured by virtue of the guidelines issued by the Ministry of health and family welfare for integration of Co-WIN with third-party applications, which would enable citizens to access their certificates anywhere any time only through the Co- WIN portal. Therefore there is no question of any recurring advertisement charges of whatsoever nature as contended by

the learned counsel for the petitioner, and the exhibition of the image of the Prime Minister is not a message “Conveyed and paid for” by the Government for placement in mass media (Co-WIN portal), and no public fund is involved other than the expenses for the maintenance of the portal .

17. We also do not find much force in the contention advanced by the appellant that the learned Single Judge has not verified as to whether the permission of the Prime Minister was secured before printing the photograph in the certificate in question for the reasons assigned above.

18. On going through the judgment of the learned Single Judge, we are of the considered opinion that the learned Single Judge has taken into account the contentions put forth by the appellant and assimilated the factual and legal circumstances by undertaking a deep seated survey in regard to the way in which a parliamentary democracy is to function and discharge its obligations and duties and thereby protect the interest of the public at large. Having analysed and understood the situation so, we have no hesitation to hold that the appellant has not made out any case to interfere with the judgment of the learned Single Judge.

19. In so far as the cost of Rupees one lakh imposed by the learned single judge is concerned, we are of the considered opinion that a litigant should also be watchful, and cautious enough to identify before filing the litigation, as to whether the litigation has got any factual and legal foundation. No citizen of the country is expected to approach a constitutional court with litigation, without understanding the true implications, the spirit, and the true and correct intent of the fundamental rights guaranteed under the Constitution of India.

20. It was bearing in mind all these factual and legal circumstances alone, the learned Single Judge has imposed a cost of Rupees One Lakh and therefore, it cannot be said that the cost imposed is in any manner bad, illegal or arbitrary. Anyhow, the learned counsel appearing for the appellant submitted that he was only attempting to put forth a *bona fide cause* and therefore, the cost imposed by the learned Single Judge may not be correct.

21. Whatever that be, taking into account the present pandemic situation and consequential economic and other crisis prevailing in the community, we are of the opinion that the cost can be reduced to an amount of Rs.25000/- (Rupees Twenty five thousand only). This we say

because even if a cost of Rupee One is imposed against a litigant, that is a clear indication given to the litigant that in future he should not venture in filing unwanted and frivolous litigations and waste the valuable time of the court.

Upshot of the above discussion is that the appellant has not made out any case for interference with the judgment of the learned Single Judge, there being no jurisdictional error or other legal infirmities justifying us to do so, accordingly it is dismissed, subject to the modification of the cost as above, and for the reasons assigned.

Sd/-
S. Manikumar,
Chief Justice

Sd/-
Shaji P. Chaly,
Judge