



IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE DEVAN RAMACHANDRAN

WEDNESDAY, THE 28TH DAY OF FEBRUARY 2024 / 9TH PHALGUNA,

1945

WP(C) NO. 6343 OF 2024

PETITIONER:

NATAK [REGD. NO-TSR/TC/135/2018], AN ASSOCIATION REGISTERED UNDER TRAVANCORE-COCHIN LITERARY, SCIENTIFIC AND CHARITABLE SOCIETIES REGISTRATION ACT, 1955 REPRESENTED BY ITS GENERAL SECRETARY SHAILAJA.J, AGED 51 YEARS, D/O JANARDHANAN NAIR VAIKHARY, CHUNAKKARA, ALAPPUZHA, PIN - 690534

BY ADVS.

K.N.ABHILASH

SUNIL NAIR PALAKKAT

RISHI VARMA T.R.

RITHIK S.ANAND

K.M.TINTU

SREELAKSHMI MENON P.

ANU PAUL

RESPONDENTS:

- 1 STATE OF KERALA
REP. BY CHIEF SECRETARY, GOVERNMENT OF KERALA,
SECRETARIAT, THIRUVANANTHAPURAM, PIN - 695001
- 2 SUB DIVISIONAL MAGISTRATE, FIRST FLOOR,
KB JACOB RD, FORT KOCHI, COCHIN, PIN - 682001
- 3 STATION HOUSE OFFICER, FORT KOCHI POLICE STATION,
TOWER ROAD, FORT NAGAR, FORT KOCHI, KOCHI, PIN -
682001
- 4 V.SHIVAKUMAR KAMATH
MATTANCHERY MANDALAM COMMITTEE, BHARATHIYA
JANATHA PARTY, PALACE ROAD, MATTANCHERY
ERNAKULAM, PIN - 682002



SMT.VIDYA KURIAKOSE - GP

**THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION
ON 28.02.2024, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**



JUDGMENT

The petitioner is stated to be an Association registered under the provisions of the Travancore Cochin Literary, Scientific and Charitable Societies Registration Act, 1955 (for short 'the Act') and is stated to be an organisation of artists, writers and activists “working in areas associated with theatre” (sic).

2. The petitioner says that they proposed to host a drama by name “Governorum Thoppiyum”, as part of the “Cochin Carnival”, proposed in December, 2023; but that this was interdicted by the second respondent - Sub Divisional Magistrate, Fort Kochi, through Ext.P1. They assert that Ext.P1 is a product of colourable exercise of power and is manifestly in violation of law.

3. Sri.K.N.Abhilash – learned counsel for the petitioner, explained that the drama in question was an adaptation of the famous work of Friedrich Schiller, titled “William Tell” and that the title given by his client was only a reflection of the lead character in the play. He submitted that, however, the Sub Divisional Magistrate appears to have misunderstood this to be a reference to the Governor of Kerala and hence issued Ext.P1,



stipulating that the title of the drama ought to be altered since it denigrates persons holding constitutional posts. The learned counsel vehemently argued that, if one is to go through the script of the drama, or if the performance is to be viewed, it would become manifest that there is not even a whispering reference to the Governor of Kerala, but only to the character in the play. He thus prayed that Ext.P1 be set aside.

4. Smt.Vidya Kuriakose – learned Government Pleader, in response, submitted that this writ petition is no longer maintainable because, Ext.P1 was issued at a time when the petitioner proposed to perform the drama during the “Cochin Carnival”, which is now over. She added that the said proceedings were specific to the said Carnival and no more; and therefore, that it was not necessary for the petitioner to have approached this Court, since the event is long over.

5. Smt.Vidya Kuriakose, thereafter, submitted that the Sub Divisional Magistrate issued Ext.P1 in her capacity as the Chairperson of the “Carnival Committee”, which was required to verify each performance, to ensure that it would pose no threat to law and order and cause no other issues. She argued that, when the script was evaluated by the Committee, it was found



that it was objectionable, with references to constitutional functionaries, which would have created unrest and upheaval during the crowded Carnival; and therefore, that it was decided that the petitioner be directed to change the title, to avoid any such eventuality. She asserted that, therefore, Ext.P1 is irreproachable.

6. I must say upfront that in matters relating to creativity and artistic expression, intolerance is anathema, particularly when perceptions are different to each individual. The holdings in Ext.P1, that a play which is intended to denigrate constitutional functionaries cannot be allowed, perhaps is taking issues too far; and this will certainly depend on case to case. An omnibus declaration of such nature will not behoove a constitutional democracy, since the right to constructively criticize and be critical, is fundamental to the nature of such systems and which is inherent, but subject to reasonable restrictions.

7. That said, it is the specific contention of the petitioner, as I have already recorded above, that the play in question has no reference to or reflection on, any constitutional functionaries; and that its title has connection only to its lead character.



Coupled with this, is the assertion that the Drama is an adaptation of Friedrich Schiller's novel, titled "William Tell"; and obviously, therefore, creative discretion and liberties will have to be judged from the angle of impact, it may have on general public perceptions.

8. However, the specific contention of the learned Government Pleader is that, Ext.P1 is not intended to be a general injunction against the petitioner, but was only for the "Cochin Carnival", which was expected to attract a large number of people; and thus designed to ensure that there were no law and order issues, or chances of skirmishes or such violence, on account of the impact that the Drama may have on multifarious sections of people. I also note the submissions of the learned Government Pleader - Smt.Vidya Kuriakose that, the Sub Divisional Magistrate was acting as the Chairperson of the "Carnival Committee"; obviously, with the jurisdiction to decide what is best for the Festival, and that Ext.P1 does not operate beyond that perimeter.

9. I find favour with the afore submissions of the learned Government Pleader because, Ext.P1 only mandated that the petitioner must alter the title of the Drama; and that if it is not



so, then any consequences of its performance would have to be borne by the petitioner. The Sub-Divisional Magistrate was certainly referring to the consequences of a law and order breach and nothing else, to the best assessment of any person who reads Ext.P1 in its proper perspective.

I am, therefore, of the firm view that this writ petition does not require to be considered by this Court any further on its merits, especially when the learned Government Pleader says that Ext.P1 was intended only for the “Cochin Carnival” and for no other.

This writ petition is thus closed.

Sd/- DEVAN RAMACHANDRAN

JUDGE

stu/anm



APPENDIX OF WP (C) 6343/2024

PETITIONER EXHIBITS

**Exhibit P1 THE TRUE COPY OF ORDER NUMBERED
RDOCHN/6186/2023-C1 DATED 29.12.2023**

**Exhibit P2 THE TRUE COPY OF THE NOTICE DATED 828/2023/FK
DATED 29.12.2023 OF THE 3RD RESPONDENT**