

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE THE CHIEF JUSTICE MR.ASHOK BHUSHAN
&
THE HONOURABLE MR.JUSTICE A.M.SHAFFIQUE

WEDNESDAY, THE 7TH DAY OF OCTOBER 2015/15TH ASWINA, 1937

WP(C).NO. 3067 OF 2014 (S)

PETITIONER(S)/WRIT PETITIONER-IN- PERSON:

DR. VINCENT PANIKULANGARA
LAWYER, HIGH COURT OF KERALA, JYOTHIRGAMAYA
PO ATHANI 683585 ALUVA, ERNAKULAM DISTRICT.
KERALA STATE.

BY DR VINCENT PANIKULANGARA

RESPONDENT(S) :

1. STATE OF KERALA
REPRESENTED BY SECRETARY FOR CONSUMER AFFAIRS
TRIVANDRUM-695001.

2. CONTROLLER OF LEGAL METROLOGY
VIKAS BHAVAN, TRIVANDRUM-695001.

ADDL. RESPONDENTS IMPLEADED:

3. ABHILASH.K.S.
S/O.SIDHARTHAN.K.K., INSPECTOR, LEGAL METROLOGY
V.S.T.-1 (VERTICAL STORAGE TANK) KAKKANAD
RESIDING AT KALATHIL HOUSE, MANAKKAPADY
KARUMALLOOR.P.O., ERNAKULAM - 683511.

4. MUHAMAD ISMAIL.K.M.
S/O.LATE K.A.MUHAMMED, INSPECTOR OF LEGAL METROLOGY
KOTHAMANGALAM, ERNAKULAM, RESIDING AT KUTTIYANI HOUSE
MUDICKAL.P.O., PERUMBAVOOR, ERNAKULAM - 683 547.

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5. SHAJAHAN.A.
S/O.ABDUL VAHAB.A.
O/O THE LEGAL METROLOGY INSPECTOR V.S.T-II
LEGAL METROLOGY BHAVAN, KAKKANAD
RESIDING AT JAMI BHAVAN, KOLLAMKAVU, PAXHAKUTTY.P.O.
NEDUMANGAD.

ADDL. R3 TO R5 ARE IMPEADED AS PER
ORDER DATED 02/04/2014 IN IA 4983/2014.

R(ADDL.3-5) BY ADV. SRI.SAJITH KUMAR V.
R1,R2 BY SENIOR GOVERNMENT PLEADER SHRI C.R. SYAMKUMAR

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
28.09.2015, the court on 07.10.2015 delivered THE FOLLOWING:

WP(C) .NO. 3067 OF 2014 (S)

APPENDIX

PETITIONER(S) ' EXHIBITS:

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- EXHIBIT-P1: RULE 21 OF KERALA LEGAL METROLOGY ENFORCEMENT
 RULES 2012.
- EXHIBIT-P2: PHOTO COPY OF IDENTITY CARDS OF LEGAL METROLOGY
 OFFICERS.
- EXHIBIT-P3: CIRCULAR NO.10802/67 DT: 08/11/1967 ISSUED BY THE
 2ND RESPONDENT.
- EXHIBIT-P4& P4(A): CIRCULAR NO.A3-9709/79 DT.18/08/1979 ISSUED BY
 THE 2ND RESPONDENT TOGETHER WITH ITS TRUE
 ENGLISH TENDERING.
- EXHIBIT-P5& P5(A): CIRCULAR NO.A8-17013/79 DT.26/12/1979 ISSUED
 BY THE 2ND RESPONDENT TOGETHER WITH ITS TRUE
 ENGLISH TENDERING.
- EXHIBIT-P6& P6(A): CIRCULAR NO.A3: 17013/79 DT.09/01/1980 ISSUED
 BY THE 2ND RESPONDENT TOGETHER WITH ITS TRUE
 ENGLISH RENDERING.
- EXHIBITS: P7 & P7(A): GO(RT) NO.25/08/CAD DT.14/03/2008 ISSUED BY
 THE 1ST RESPONDENT TOGETHER WITH ITS TRUE ENGLISH
 RENDERING.

RESPONDENT(S) ' EXHIBITS:

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- EXHIBIT R3(A) A TRUE COPY OF THE JUDGMENT DATED 19.3.2014 IN
 S.T. NO.2901 OF 2009 BEFORE THE JUDICIAL FIRST
 CLASS MAGISTRATE, PONNANI.
- EXHIBIT R3(B) A TRUE COPY OF THE APPLICATION UNDER THE RTI ACT
 DATED 14.5.2014 SUBMITTED BY THE 3RD RESPONDENT
 BEFORE THE PUBLIC INFORMATION OFFICER, JFMC-1
 PONNANI.
- EXHIBIT R3(C) A TRUE COPY OF THE REPLY DATED 28.5.2014 ISSUED
 BY THE JUNIOR SUPERINTENDENT, JUDICIAL FIRST
 CLASS MAGISTRATE COURT-I, PONNANI.

“C.R.”

ASHOK BHUSHAN, C.J.

and

A.M. SHAFFIQUE, J.

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W.P(C) No.3067 of 2014

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Dated this the 07th day of October, 2015

J U D G M E N T

Ashok Bhushan, C.J.

This Writ Petition filed as a Public Interest Litigation seeks enforcement of statutory Rules framed by the State and Circulars issued prescribing wearing of uniform by the Officers of the Metrology Department of the State of Kerala. Petitioner, an Indian citizen and a practising Advocate complains about the non-wearing of uniform by the Officers in violation of the statutory provisions and Circulars and inaction on the part of the State and its Officers in taking appropriate action.

FACTS

2. Petitioner's case in the Writ Petition is that under the Acts enacted by the Parliament Rules have been framed by the State which provides for wearing of uniform by

Assistant Controller of Legal Metrology, Senior Inspector and Inspector of Metrology while on duty in the office or in field. Petitioner in the Writ Petition has referred to various Circulars issued by the State Government and the Controller of Weights and Measures emphasising on wearing of uniform by Inspectors and other Officers. Petitioner pleads that in spite of there being a large number of Assistant Controller and Senior Inspectors who are mandated by the Rules to wear uniform, none of the Officers wear uniform while on duty or in field. It is pleaded by the petitioner that although the State Government issued orders directing the Controller to take stringent action against Officers of the Legal Metrology Department who do not wear uniform, no action is being taken by the 2nd respondent. It is pleaded that Officers of Legal Metrology Department have wide powers who exercise such powers casually without even wearing their official uniform. Petitioner in the Writ Petition has prayed for the following reliefs:

“i) a direction to the respondents to furnish this honourable court the number and other details of Assistant Controllers, Senior Inspectors and Inspectors of Legal Metrology

who report for duty without wearing uniform prescribed by law; and

ii) a direction to the respondent to report to this honourable court the steps taken to ensure that Assistant Collectors, Senior Inspectors and Inspectors of Legal Metrology wear uniform and that actions initiated against Assistant Controllers, Senior Inspectors and Inspectors for not wearing uniform while on duty in office and/or in the field, including while attending the courts.”

3. In the Writ Petition respondents 3 to 5, Inspectors, who are impleaded as additional respondents filed counter affidavit opposing the Writ Petition. Respondents 3 to 5 in their counter affidavit pleads that the Writ Petition may not be entertained as a Public Interest Litigation. It is further pleaded that the petition has been filed without any bona fides. It is pleaded that Section 53(2) of the Legal Metrology Act, 2009 (hereinafter referred to as “the 2009 Act”) does not empower the State Government to frame Rules with regard to uniform. It is pleaded that Government of India does not visualize uniform to Enforcement Officers. Physical fitness was not a condition for recruitment to the cadre. It is pleaded that most of offences are detected mostly because the Inspectors approach the targets in civil dress. It is

pleaded that wearing of uniform by the Officers is not in public interest.

4. Counter affidavit has also been filed by the 2nd respondent, Controller of Legal Metrology. It is pleaded that statutory provisions required wearing of uniform which is prescribed by the Rules. It is pleaded that the 2nd respondent is strictly enforcing the Rules regarding wearing of uniform. It is stated that no specific instance has been pointed out in respect of any officer not wearing uniform while on duty.

5. Petitioner has appeared in person in support of the Writ Petition. Petitioner submitted that he is a practicing Advocate and he has personal knowledge of Officers not wearing uniform while conducting raid or even appearing in court. It is submitted by the petitioner that in spite of statutory provisions providing for wearing uniform by the Officers of Metrology Department, they defy the provisions with impunity and no action has been taken. Petitioner has referred to the Senior Assistant Controller deposing before a Court of law without wearing uniform and an Inspector with

10 years experience submitting that she does not have uniform till date. It is submitted that when Inspectors and Officers of Metrology Department are bound to wear Uniforms, the Officers cannot be allowed to defy rules with impunity and even after more than 48 years of enforcement of the Rules, Rules are not being enforced by respondents 1 and 2 and no action has ever been taken against the Officers who are not wearing uniform.

6. Learned Senior Government Pleader Shri C.R.Syamkumar submitted that both the State Government as well as the Controller of Legal Metrology had issued appropriate instructions to the Inspectors and other Officers to wear uniform and the State is enforcing Rules and Circulars. It is however submitted that no specific instance has been pointed out where officers are not wearing uniform. It has been further stated that petitioner as a counsel has earlier filed WP(C) No.37466 of 2008 contending that Officers of the Department are bound to wear uniform which Writ Petition was transferred to the Kerala Administrative Tribunal where it is pending.

7. Shri V.Sajith Kumar, learned counsel appearing for respondents 3 to 5 submitted that the Writ Petition be not entertained as a Public Interest Litigation. It is submitted that petitioner was a counsel in S.T. No.2901 of 2009 before the Judicial First Class Magistrate, Ponnani where the issue of non-wearing of uniform raised by the petitioner as defence was turned down by the Magistrate by judgment dated 19.03.2014. It is submitted that this Writ Petition was filed even before the decision in the aforesaid case, hence at the instance of the petitioner, this Writ Petition be not entertained as a Public Interest Litigation. It is further submitted that there is no instance of wearing uniform by the Inspectors of the Department. It is submitted that the State Government has no power to make any Rules prescribing wearing of uniform. It is submitted that the Rules framed by the State Government prescribing wearing of uniform have not been framed with the consultation of the Central Government. It is submitted that the 4th respondent is a physically handicapped person who cannot wear uniform and shoes. It is further submitted that most of

the offences are detected mostly because Inspectors approach the targets in civil dress and in case the officials are visually identified, the offenders will evade from getting booked.

STATUTORY PROVISIONS

8. It is necessary to look into the statutory provisions. In the year 1956 the Standards of Weights and Measures Act, 1956 was enacted with a view to replace numerous varieties of weights and measures in the country based on metric system. The 1956 Act was repealed by the Standards of Weights and Measures Act, 1976 to establish and enforce standards of weights and measures, regulate inter-state trade and commerce in weights, measures and other goods which are sold or distributed by weight, measure or number and for matters connected therewith and incidental thereto. The enforcement aspect of weights and measures which was earlier in the State List was transferred to the Concurrent List by the 42nd Amendment of the Constitution. Majority of the State had not taken action for enforcement of the legislation, the Parliament felt necessity of legislation for

enforcement of standards established by the 1976 Act. The Parliament consequently enacted the Standards of Weights and Measures (Enforcement) Act, 1985. The Parliament having felt that advancement of technology has necessitated the review of 1976 and 1985 Acts to make them simple, eliminate, obsolete regulations, ensure accountability and bring transparency enacted the 2009 Act to enforce and regulate standards of weights and measures, regulate trade and commerce in weights, measures and other goods which are sold or distributed by weight, measure or number and for matters connected therewith and incidental thereto. The 2009 Act provided for appointment of Controller of Legal Metrology and other Officers by the State Government, power of inspection, seizure verification, offence and penalties. The State Government in exercise of the power under the above mentioned Act framed Rules from time to time. It is sufficient to notice the relevant Rules concerning wearing of uniform which is the issue raised in the present Writ Petition. In exercise of the power conferred by Section 43 of the

Kerala Standards of Weights and Measures (Enforcement) Act, 1958, the Kerala Standards of Weights and Measures (Enforcement) Rules 1964 was framed by the State. Rule 23 (2) which was added by notification dated 12.07.1966 prescribes for District and Divisional Inspectors to wear uniforms while on duty either in office or in the field. After the insertion of Rule 23(2), the Controller of weights and measures, Thiruvananthapuram issued a Circular dated 18.06.2007 directing all the Districts and Divisional Inspectors to wear uniform as prescribed by the State Government in the Rules. The Controller again on 26.12.1979 issued a Circular providing that Inspectors who does not wear uniform shall not discharge any official duty. The State Government again issued an order dated 14.02.2008 to the same effect. After the enactment of the 2009 Act, in exercise of the powers under Section 53 of the 2009 Act, the State Government has framed Rules, viz., Kerala Legal Metrology (Enforcement) Rules, 2012.

9. We have considered the submissions of the petitioner, appearing in person and the learned counsel

appearing for the respondents. We have also perused the records.

ISSUES

10. From the submissions of learned counsel for the parties and the pleadings on record, the following are the issues which arise for consideration:

i) Whether the Writ Petition is liable to be dismissed on account of the fact that the petitioner has appeared as a counsel for the defence in S.T. No.2091 of 2009?

ii) Whether the Statutory Rules framed by the State Government and the Circulars issued by the State Government and the 2nd respondent provide for wearing of uniform by Inspectors and other Officers.

iii) Whether the State Government has no power to frame Rules under Section 53 of the 2009 Act prescribing wearing of uniform by the Inspectors and other Officials.

DISCUSSION

11. The first issue to be considered is whether this Writ Petition be not entertained as a public interest litigation as submitted by the learned counsel appearing for respondents 3 to 5. Petitioner in the 1st paragraph of the Writ Petition pleaded that he has successfully conducted several cases of public interest relating to environment, human rights and consumer affairs since 1980. Petitioner has referred to the judgment of the Apex Court reported in **Vincent Panikulangara v. Union of Indian and Others** ([1987] 2 SCC 165) as one of the examples where he raised the issues of public interest. The said Writ Petition was filed by the petitioner as an Advocate and Secretary of the Public Interest Law Service Society, Cochin under Article 32 of the Constitution of India for banning import, manufacture, sale and distribution of such drugs which have been recommended for banning by the Drugs Consultative Committee. It is useful to refer to the following observations made by the Apex Court:

“1. The petitioner, an advocate by profession is the General Secretary of Public Interest Law Service Society, Cochin. In his application as amended on 7th Feb., 1983, under Art.32 of the Constitution he has asked for directions, in public interest, banning import, manufacture, sale and distribution of such drugs which have been recommended for banning by the Drugs Consultative Committee and has also asked for cancellation of all licences authorising import, manufacture, sale and distribution in respect of such drugs. He has also asked for a direction to the Central Government to constitute a high powered Authority to go into the hazards suffered by people of the country on account of such drugs being in circulation and suggest remedial measures including award of compensation. He has further prayed that directions should be given for framing of strict regulations to ensure the quality and standard of approved drugs and to ensure weeding out of same, harmful as also injurious drugs from the market. The petitioner has alleged that the drug industry in India is dominated by multinational Corporations originally based in U.S.A., U.K., Federal Republic of Germany, Swedon, Japan, France and the like. According to the petitioner these Corporations have large resources and make huge profits. The control exercised by the Government in this country on such Corporations is minimal and inadequate. The disease prone sub continent of India has been used as pasture ground by these Corporations. The Hathi Committee appointed by the Central Government in its Report submitted in 1974, highlighted the havoc played by these Corporation in the Indian scene and pleaded. or nationalising the drug industry in the best interest of the Indian people. The recommendation has not been accepted by the Government. According to the petitioner several drugs banned in the advanced west after appropriate analytical research are routed into India and

on account of lack of control and sluggish enforcement of the law conveniently find their way into the market. What is poison to the human body in the west is equally poison to people in India but not knowing the repercussion thereof on the human system, such drugs freely circulate and are even prescribed for patients.”

The Apex Court entertained the Writ Petition under Article 32 and issued various directions. While closing the judgment, the following was observed by the Supreme Court:

“The petitioner has indeed done a commendable job in bringing the matter before the Court. We appreciate his move and are inclined to think that he should be suitably compensated with a view to reimbursing him for the expenses. We direct the Ministry of Health of the Central Government to deposit a sum of Rs. 5000/- (Rupees Five Thousand Only) in this Court within two months hence, which the petitioner will be at liberty to withdraw.”

12. Petitioner thus has been raising issues of public interest for more than a quarter century after gathering necessary facts and figures. Emphasis has been placed by the learned counsel for respondents 3 to 5 on the fact that petitioner has appeared as a counsel in a case before the Judicial First Class Magistrate, Ponnani being S.T. No.2091 of 2009 where one of the defences raised was regarding non-wearing of uniform while conducting raid by the Officers of the Weights and Measures. Petitioner in the present Writ

Petition in paragraph 3 stated the following:

“Petitioner has personal knowledge of a Senior Assistant Controller, presently Deputy Controller, deposing before a court of law recently without wearing uniform and an Inspector with 10 years experience submitting that she does not have uniform till date. Petitioner is ready and willing to furnish court records to prove this averment if and when needed. On enquiry the petitioner learned that as a matter of commonly accepted practice Assistant Collectors, Senior Inspector and Inspectors of Legal Metrology do not wear uniform while on duty, most of them do not have uniforms and practically no officer claim uniform allowance.”

Appearing in the above case before the Judicial First Class Magistrate and raising an issue by the petitioner cannot lead to the conclusion that the petitioner is precluded from raising the issue in a Public Interest Litigation. It cannot be said that the petitioner is raising the issue in this Public Interest Litigation on account of any of his personal interest. Appearance of the petitioner in the above case and raising the defence was only an occasion where the petitioner came to know about non-wearing of uniform by the Officers. Thus on this ground we are not inclined to throw out this Public Interest Litigation.

13. There is one more reason due to which we are not

persuaded to accept the submission raised by the learned counsel for respondents 3 to 5. Respondents 3 to 5 have filed a counter affidavit in the Writ Petition where they have emphatically pleaded that they are not required to wear uniform. Respondents 3 to 5 have even challenged the power of the State to frame Rules regarding wearing of uniform. When the Inspectors who are working in the Metrology Department have come up with such a stand it has become necessary to examine the legal issue and answer the same. Thus we proceed to decide the issues on merit. We however observe that the observations and directions made in this judgment shall have no bearing in the proceedings of the criminal case noted above.

14. Coming to the second issue we have already referred to the enactments and the Rules framed thereunder. The first Rule which was framed by the State of Kerala providing for uniform was the Kerala Weights and Measures (Enforcement) Act, 1964. Rule 23(2) which was added by Notification dated 12.07.1966 is relevant and quoted below:

“23.

(2) Uniform for Inspectors.- The District and Divisional Inspectors shall wear the following uniform while on duty either in office or in the field.

(a) District Inspectors of Weights and Measure.-(1)

'Khaki Forage Caps with a crest of the following design made of silver metal and having an overall height of 38 mm to be worn in the centre of the Cap:

(Design)

(2) Cavalry pattern bush coats with full sleeves of Khaki, cellular or twill having two breast-pockets and two side pockets, the side pockets being inside and with cloth belt.

(3) Trousers of Khaki drill.

(4) Brown shoes and Khaki coloured socks.

(5) Round white metal buttons with letters “KWM” inscribed on them in block letters.

(6) A silver departmental badge “KWM” not exceeding 35 mm in length and in 12.5 mm block letters on the base of each shoulder strap.

(7) Three stars made of white metal (silver plated) “Star of India Pattern” and 23 mm broad on each shoulder strap.

(b) **Divisional Inspectors of Weights and**

Measures:- (1). Khaki forage caps with black peak and crest of the type and design mentioned in Rule 23(2)(a)(1).

(2) Cavalry pattern bush coats with full sleeves of Khaki, cellular or twill having two breast-pockets and two side pockets, the side pockets being inside, with cloth belt.

(3) Trousers of Khaki drill.

(4) Brown shoes and Khaki coloured socks.

(5) Round white metal buttons with letters “KWM” inscribed on them in block letters.

(6) A silver departmental badge "KWM" not exceeding 35 mm in length and in 12.5 mm block letters on the base of each shoulder strap.

(7) Two stars made of white metal (silver plated) "Star of India Pattern" and 23 mm broad on each shoulder strap."

Immediately after framing of the Rules, Controller, Weights and Measures, Thiruvananthapuram issued a Circular dated 08.11.1967 which is to the following effect:

"CIRCULAR

Sub- Weights and Measures Department - Uniforms to Inspectors - Wearing of Uniforms to Inspectors - Wearing of Uniforms - Instructions issued.

Ref:- Government Notification No.59465/Ks/65/RD dated 5th July 1966 of Revenue (K) Department.

In the Government Notification cited it has been ordered, among other things, that the District and Divisional Inspectors shall wear the prescribed uniform while on duty, either in office or in the field. It has however come to the notice of the Authorities that Inspectors of this Department are not wearing uniforms, as per the Government Notification. This is highly irregular and cannot be allowed. All the District and Divisional Inspectors are therefore directed to adhere strictly to the instructions contained in the notification.

Any laxity on the part of Inspectors in this respect will be dealt with seriously.

The receipt of this Circular order should be acknowledged by return.

(Sd)
Controller (W and M).

The Controller again issued a Circular dated 26.12.1979

which is to the following effect:

“CIRCULAR

Subject:- Weights and Measures department - directions regarding Inspectors wearing uniform

Reference:-Circular No.A3 - 7705/76 dated 31.5.1976.

It has come to notice that in spite of repeated insistence even now some Inspectors are reluctant to wear uniform while on duty. Hereafter an Inspector who is not in uniform should not discharge any official duty. Especially while inspecting business establishments etc, Inspectors must be in uniform itself. All Inspectors are reminded in this context once again that inspections without wearing uniform will not have any legal validity.

Sd/-
Controller (Weights and Measures).”

It is also necessary to refer to the order of the State Government dated 14.03.2008:

“GOVERNMENT OF KERALA

Abstract

Consumer affairs Department - Legal Metrology - Order issued permitting to impart training to Enforcement Officers in Police Training Academy, Thrissur and making uniform compulsory for Enforcement Officers.

Consumer Affairs Department
GO(Rt) No.25/08/CAD Dated Thiruvananthapuram, 14.03.2008

Reference:- Circular No.C5-59996/07 dated 27.11.2007 of
Controller, Legal Metrology

ORDER

On the basis of the circumstances explained by the controller of Legal Metrology in the letter cited above, orders are issued granting permission to impart training to all the

Enforcement Officers of the department of Legal Metrology, who have not undergone the training of not less than six weeks prescribed in the Kerala standards of Weights and Measures (Enforcement) Rules, 1992 in the Police Training Academy, Thrissur. The amount needed for the training shall be met from the concerned head.

In the Terms of the Kerala Standards of Weights and Measures (Enforcement) Rules, 1992 Enforcement Officers such as Inspectors, Senior Inspectors and Assistant Controllers of Legal Metrology department should wear uniform. Government are convinced that vast majority of the Enforcement Officers do not wear uniform.

In the context explained above orders are issued making uniform prescribed in the rules compulsory for the Enforcement Officers. The Controller shall report to the Government ensuring that the concerned Enforcement Officers wear the uniform. The Controller shall take stringent action against the Enforcement Officers who show reluctant to wear the uniform.

As ordered by the Governor,

M.A.Mohan,
Additional Secretary."

15. The State Government has framed Kerala Legal Metrology (Enforcement) Rules, 2012 where Rule 21 provides for uniform for Assistant Controllers of Legal Metrology, Senior Inspectors of Legal Metrology and Inspectors of Legal Metrology. Rule 21 is quoted below:

"21. Uniform for Assistant Controllers of Legal

Metrology, Senior Inspectors of Legal Metrology and Inspectors of Legal Metrology:-

The Assistant Controller of Legal Metrology, Senior Inspector of Legal Metrology and Inspector of Legal Metrology shall wear the following uniform while on duty, either in office or in the field:-

(a) Assistant Controllers of Legal Metrology:-

(1) 'Khaki Forage Cap with a crest of the following design made of silver metal and having an overall height of 38 mm to be worn in the centre of the Cap:

emblem

(2) Cavalry pattern bush coats with full sleeves of Khaki, terry cotton or polyester having two breast-pockets and two side pockets, the side pockets being inside, with cloth belt.

(3) Trousers of Khaki, terry-cotton or polyester.

(4) Brown shoes and Khaki coloured socks.

(5) A silver departmental badge 'KLMS' not exceeding 35 mm in length and in 12.5 mm block letters on the base of each shoulder strap.

(6) Three stars made of white metal (silver plated) "Star of India Pattern" and 23 mm broad on each shoulder strap.

(7) Whistle of Police pattern to be worn attached to a dark blue lanyard and carried in left breast pocket.

(b) Senior Inspector of Legal Metrology - same as for Assistant Controllers of Legal Metrology except the badges of rank which shall be as follows:

Badge of Rank:- Three stars made of white metal (Silver plated) "Star of India pattern" and 23 mm broad on each shoulder strap. A Ribbon 12.7 mm in which, half red and half dark-blue, horizontally divided red colour being nearer to the stars to be worn on each shoulder strap 25.4 mm above its base.

(c) **Inspectors of Legal Metrology** - Same as for Assistant Controllers of Legal Metrology except the following:-

(1) The crest to be worn on the peak cap is of the following pattern:

(emblem)

(2) Departmental badge to be worn on the shoulder straps should be of the pattern 'KLM' 34 mm in length and 12.5 mm block letters.

(3) Badge of Rank-Two stars as specified in item (7) under the sub heading Assistant Controller of Legal Metrology against item (a) above."

Thus the above statutory provisions clearly provides for wearing of uniform and the State as well as the Controller have directed for enforcement of the said Rules strictly. The Circulars clearly contemplate taking of stringent action against non-wearing of uniforms.

16. The next issue is as to whether the State has power to frame Rules providing for wearing uniform. Referring to Rule 21 which is in force as on date, learned counsel for respondents 3 to 5 submitted that the State

Government has no jurisdiction to frame such Rules under Section 53 of the 2009 Act. For considering the aforesaid submission it is relevant to refer to Section 53 of the 2009 Act. Section 53 empowers the State Government to make Rules. Section 53 which is relevant is quoted below:

53. Power of State Government to make Rules.- (1)

The State Government may, by notification, and after consultation with the Central Government, make rules to carry out the provisions of this Act.

(2) In particular and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:-

(a) the time within which the weight or measure may be got verified under proviso to sub-section (1) of section 16;

(b) registers and records to be maintained by persons referred to under subsection (1) of section 17;

(c) the form, manner, conditions, period, area of jurisdiction and fees for issuance of licence under sub-section (2) of section 23;

(d) fee for verification and stamping of any weight or measure under sub-section (1) of section 24;

(e) manner of notifying Government approved Test Centre, terms and conditions and fee to be paid under sub-section (3) of section 24;

(f) fee for compounding of offences under sub-section (1) of section 48.

(3) In making any rule under this section, the State Government may provide that a breach thereof shall be punishable with fine which may extend to five thousand rupees.

(4) The power to make rules under this section shall be subject to the condition of the rules being made after previous publication in Official Gazette.

(5) Every rule made under this section shall, as soon as may be after it is made, be laid before each House of State Legislature, where there are two Houses and where there is one House of State Legislature, before that House.”

Submission of the learned counsel for respondents 3 to 5 is that none of the instances mentioned in Section 53 contemplate framing of Rules regarding wearing of uniform. Section 53(2) begins with the words “in particular and without prejudice to the generality of the foregoing” Section 53(1) empowers the State Government to make rules to carry out the provisions of this Act.

17. The State is empowered to frame Rules to carry out provisions of the 2009 Act. As noted above, the 2009 Act empowers power of inspection, seizure, forfeiture, verification of measures and various other provisions. Providing for wearing of uniform cannot be said to be beyond the provisions of the 2009 Act. The mere fact that particular instances mentioned in Section 53(2) does not specifically include the power to frame Rules regarding

dress code does not militate against the general power conferred on the State to frame Rules. The power to frame Rules given to the State under Section 53(1) is wide power and specific matters referred in sub-section (2) are only a few instances which are neither exclusive nor can control the power given under sub-section (1). Sub-section (2) begins with the words "in particular and without prejudice to the generality of the foregoing power..". The above words indicate that there is no restriction and limitation on rule making power of State in giving effect to the provisions of the Act. Section 53(5) provides that the rules made under this Section shall, as soon as may be, be laid before each House of State Legislature. Ample safeguard and control have been provided to check the above rule making power of the State.

18. There is one more reason due to which we are not inclined to accept the submission of the learned counsel for respondents 3 to 5. Section 14 of the 2009 Act provides for appointment of Controller, legal metrology officers and other employees by the State Government. State Government is

thus the appointing authority for Officers, Inspectors and other employees. Section 14(1) and 14(4) which are relevant are quoted below:

“14. Appointment of Controller, legal metrology officers and other employees:- (1) The State Government may, by notification, appoint a Controller of legal metrology, Additional Controller, Joint Controller, Deputy Controller, Assistant Controller, Inspector and other employees for the State for exercising the powers and discharging the duties conferred or imposed on them by or under this Act in relation to intra State trade and commerce.

(4) Every legal metrology officer-appointed under sub-section (1) shall exercise and discharge the duties under the general superintendence, direction and control of the Controller.”

Section 14(4) provides that every legal metrology officer appointed under sub-section (1) shall exercise and discharge the duties under the general superintendence, direction and control of the Controller. Thus both the State Government as being the appointing authority and the Controller under whose superintendence, direction and control the Inspectors and Officers have to work have ample power to issue any direction with regard to discipline and conduct. Wearing of uniform is part of the discipline and conduct of an Officer or an employee. Thus under Section 14 of the 2009 Act also

both the State and the Controller have ample jurisdiction to issue directions to the Officers to wear uniform. Hence contention of respondents 3 to 5 that the State Government has no authority to prescribe uniform for them is wholly untenable.

19. One submission raised by the respondents 3 to 5 is that if the Officers carry their work by wearing uniform the offenders will evade from getting booked. The above submission is too wide to be accepted. When the State and Controller provides for wearing of uniform respondents 3 to 5 cannot say that they will not wear uniform because they will not be able to catch the evaders. State best knows how a provision of the Act is to be enforced. In a case where any inspection or raid is to be carried out incognito there is no lack of authority in the Controller to grant permission in special cases. But it cannot be left to the Inspectors and Officers of their own not to wear uniform on their own interpretation of the Rules. We thus reject the submissions made by the learned counsel for respondents 3 to 5 and the pleadings raised by them in the counter affidavit that they

are not obliged to wear uniform. Respondents 3 to 5 have also pleaded about the physical handicap of the 4th respondent. Physical handicap of the 4th respondent or any other similar case is a matter which can be brought into the notice of the Controller and appropriate direction can be sought. But that cannot be a ground for not wearing uniform by any Inspector or other Officer.

20. In view of the foregoing discussion, we are of the view that petitioner has made out a case for appropriate directions to the respondents.

The Writ Petition is allowed with the following directions:

1. The State of Kerala and the 2nd respondent are directed to ensure that Assistant Collectors, Senior Inspectors, Inspectors and Officers of Legal Metrology Department wear uniform while on duty either in office or in the field as prescribed by Rule 21 of the Kerala Legal Metrology (Enforcement) Rules, 2012 and by the various Circulars issued by the 2nd respondent.

2. The 2nd respondent is obliged to enforce the Rules and if there is any

violation it is suitably dealt with by initiating disciplinary action or taking suitable measures as being deemed fit and proper.

3. The 2nd respondent is fully empowered to grant permission for incognito inspection/raid in specific cases as observed above. In case of any physical handicap, the 2nd respondent shall have ample power to grant necessary relaxation as being deemed fit and proper.

4. Officers of the Legal Metrology Department be directed to report instances of not wearing uniform to the 2nd respondent.

Parties shall bear their costs.

**ASHOK BHUSHAN,
CHIEF JUSTICE.**

**A.M. SHAFFIQUE,
JUDGE.**