

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.MUHAMED MUSTAQUE

THURSDAY, THE 3RD DAY OF DECEMBER 2015/12TH AGRAHAYANA, 1937

WP(C).No. 34937 of 2015 (N)

PETITIONER :

**PREETH KUMAR N.V., AGED 36 YEARS,
S/O. VIJAYAN, MANNAMPARAMBIL, PUNNAPRA P.O.
ALAPPUZHA.**

**BY ADVS.SRI.S.SANAL KUMAR
SRI.M.T.SURESHKUMAR
SMT.T.J.SEEMA
SMT.BHAVANA VELAYUDHAN
SMT.SMITHA PHILIPOSE**

RESPONDENTS :

- 1. STATE OF KERALA
REPRESENTED BY THE SECRETARY TO HEALTH DEPARTMENT
SECRETARIAT, THIRUVANANTHAPURAM-695 001.**
- 2. THE DIRECTOR OF MEDICAL EDUCATION,
DIRECTORATE OF MEDICAL EDUCATION,
THIRUVANANTHAPURAM-695 001.**
- 3. THE SUPERINTENDENT
TIRUMALA DEVASWOM MEDICAL COLLEGE HOSPITAL,
VANDANAM, ALAPPUZHA-688 011.**
- 4. THE DISTRICT COLLECTOR,
ALAPPUZHA, ALAPPUZHA-688 001.**
- 5. THE EXECUTIVE ENGINEER
BUILDINGS DIVISION, PUBLIC WORKS DEPARTMENT
ALAPPUZHA-688 001.**
- 6. THE PRINCIPAL
TIRUMALA DEVASWOM MEDICAL COLLEGE HOSPITAL,
VANDANAM, ALAPPUZHA-688 011.**

R1 TO R6 BY ADV. STATE ATTORNEY SRI.P. VJAYARAGHAVAN

**THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION
ON 03-12-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

bp

APPENDIX

PETITIONER(S)' EXHIBITS

- P1 : COPY OF THE LICENCE NO.A6-3166/07/ADC/EKM DTD.7.5.2007 ISSUED BY THE DRUGS CONTROLLER, KAKKANAD.
- P2 : COPY OF THE REPRESENTATION DTD.2.9.2009 SUBMITTED BY THE PETITIONER AND OTHER SHOP OWNERS TO THE THEN MINISTER FOR FINANCE DR.THOMAS ISSAC.
- P3 : COPY OF THE REPRESENTATION SUBMITTED BY THE PETITIONER AND OTHER SHOP OWNERS BEFORE THE SUPERINTENDENT OF MEDICAL COLLEGE HOSPITAL, ALAPPUZHA.
- P4 : COPY OF THE COUNTER AFFIDAVIT FILED BY THE 1ST RESPONDENT IN WPC NO.4455 OF 2011 BEFORE THIS HON'BLE COURT, DTD.8.4.2011.
- P5 : COPY OF THE JUDGMENT OF THIS HON'BLE COURT IN WPC NO.4455 OF 2011 DTD.9.12.2011.
- P6 : COPY OF THE REPRESENTATION SUBMITTED BEFORE THE DISTRICT COLLECTOR, ALAPPUZHA THROUGH HIS ADVOCATE MR.M.MANOCHARAN PILLAI.
- P7 : COPY OF THE COMMUNICATION OF THE DIRECTORATE OF MEDICAL EDUCATION, DTD.19.3.2012.
- P8 : COPY OF THE JUDGMENT OF THIS HON'BLE COURT IN WPC NO.14682/2012, DTD.21.1.2014.
- P9 : COPY OF THE GOVERNMENT ORDER GO(RT)NO.3770/2014/H&FWD DTD.24.11.2014.
- P10: COPY OF THE GOVERNMENT ORDER NO.GO(RT)NO.22/2015/H&FWD DTD.5.1.2015.
- P11: COPY OF THE GOVERNMENT ORDER NO.GO(RT)NO.3251/2015/H&FWD DTD.5.10.2015.

RESPONDENT(S)' ANNEXURES :

- ANNEXURE R3(a): COPY OF THE JUDGMENT DT 9/12/2011 IN WPC NO. 4455/2011.
- ANNEXURE R3(b): COPY OF THE MINUTES DT 12/2/2015.
- ANNEXURE R3(c): COPY OF THE REMARKS OF SUPERINTENDENT DT 23/11/2015.
- ANNEXURE R3(d): COPY OF THE REPRESENTATIVES FROM KGMCTAPG ASSOCIATION DT 17/10/2015 AGAINST CONSTRUCTION F WICKET GATE.

WP(C).NO. 34937 OF 2015

**ANNEXURE R3(e): COPY OF THE REPRESENTATION OF HOUSE SURGEONS
ASSOCIATION DT 17/10/2015.**

ANNEXURE R3(f): COPY OF THE STOP MEMO DT 3/12/2014.

ANNEXURE R3(g): COPY OF THE GOVERNMENT LETTER DT 5/6/2012.

ANNEXURE R3(h): COPY OF THE REPRESENTATION DT 17/11/2015.

//TRUE COPY//

P.A. TO JUDGE

bp

A.MUHAMED MUSTAQUE, J.

W.P.(C).No.34937 of 2015

Dated this the 3rd day of December, 2015

J U D G M E N T

The issue in this writ petition is regarding the implementation of the Government Order produced as Ext.P10 dated 5.1.2015. Ext.P10 was preceded by Ext.P9 and also followed by Ext.P11.

2. The Government, acting upon the request of the petitioner has accorded sanction to provide wicket gate on the boundary wall on the western side, opposite to casualty of the T.D. Medical College Hospital, Alappuzha subject to certain conditions referred to in Ext.P10. Opposite to causality as referred to in Ext.P10 has been clarified as adjacent to the casualty in Ext.P9.

3. The petitioner has approached this Court to implement the above Government orders.

4. A statement has been filed by the 3rd respondent highlighting the practical difficulties in implementing the

Government Orders.

5. The learned State Attorney appearing for the respondents also would submit that at the instance of hospital authorities, the Government is also reconsidering the matter.

6. It is highlighted in the statement, apart from pointing out the practical difficulties, Panchayat has also not accorded sanction to construct the wicket gate. Communication in this regard is produced as Annexure R3(f).

7. As matters stand now, the Government's decision has not been reconsidered or reviewed so far. Therefore, the 3rd respondent is bound to implement the same.

8. With regard to the objection raised by the Panchayat, this Court is of the view, that objection raised by the Panchayat is untenable in as much as that Panchayat is apprehending reconstruction of compound wall and ordered that it cannot be done without obtaining necessary permit from them.

9. It is to be noted that nobody is proposed to undertake the reconstruction of the boundary wall. It is not known, on what basis such a communication has been issued by the

Panchayat Secretary.

10. The learned Counsel for the petitioner apparently points out the interest of certain officer bearers of the Panchayat in issuing such a communication. Though the Panchayat is not a party on records this court restrains making further observation in this regard on account of their absence in the party array. Certainly, Annexure R(f) produced along with the statement cannot be a reason at all for non-implementation of the Government Orders. The petitioner's case is that for the construction of wicket gate permission from the Panchayat is not required. No doubt, if the Panchayat is of the view that any action on the part of the hospital authority is in violation of the provisions of the Kerala Panchayat Building Act, it is open for them to take appropriate action. Even if permission is required, the 3rd respondent is bound to apply for such permit in the light of the Government Order. The 3rd respondent cannot rely on Annexure R3(f) to shirk his responsibility to implement the order. If the 3rd respondent is of the view that permission is required, he ought to have applied for such permission before the

Panchayat. Therefore, this Court is of the view that Ext.P11 shall be implemented by the 3rd and 5th respondents within a period of one month from the date of receipt of a copy of this judgment.

The writ petition is disposed of accordingly.

Sd/.

**A.MUHAMED MUSTAQUE,
JUDGE**

jm/

True Copy //P.A to Judge//