

VERDICTUM.IN

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE ANIL K.NARENDRAN

&

THE HONOURABLE MR.JUSTICE P.G. AJITHKUMAR

TUESDAY, THE 14TH DAY OF FEBRUARY 2023 / 25TH MAGHA, 1944

WP(C) NO.4729 OF 2023

PETITIONERS:

- 1 MAJOR VELLAYANI DEVI TEMPLE ADVISORY COMMITTEE
9ROC NO.15728/15/NS/1)
AGED 27 YEARS
REPRESENTED BY ITS SECRETARY, M.S.VIGNESH,
S/O.MOHANAN NAIR, VELLAYANI, NEMOM PO,
THIRUVANANTHAPURAM.
- 2 M RADHAKRISHNAN
AGED 58 YEARS
S/O.MAHADEVAN NAIR, PRESIDENT, PRESIDENT,
TEMPLE ADVISORY COMMITTEE, MAJOR SRI VELLAYANI
DEVI BHADRAKALI TEMPLE, VELLAYANI, NEMOM PO,
THIRUVANANTHAPURAM.

BY ADVS.
J.S.AJITHKUMAR
S.ASWAKUMAR

RESPONDENTS:

- 1 STATE OF KERALA
REPRESENTED BY THE SECRETARY, HOME
DEPARTMENT, SECRETARIAT, THIRUVANATHAPURAM,
PIN - 695001
- 2 TRAVANCORE DEVASWOM BOARD
REPRESENTED BY ITS SECRETARY NANTHANCODE,
THIRUVANANTHAPURAM , PIN - 695001
- 3 THE COMMISSIONER
TRAVANCORE DEVASWOM BOARD, NANTHANCODE

VERDICTUM.IN

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W.P.(C) Nos.4729 of 2023 and 5079 of 2023

THIRUVANANTHAPURAM, PIN - 695001

4 DEPUTY DEVASWOM COMMISSIONER
NEYYATTINKARA GROUP, NEYYATTINKARA PO ,
THIRUVANANTHAPURAM DISTRICT., PIN - 695121

5 DIRECTOR GENERAL OF POLICE
POLICE HEAD QUARTERS, THIRUVANANTHAPURAM,
PIN - 695001

6 CITY POLICE COMMISSIONER
THIRUVANANTHAPURAM, PIN - 695001

7 CI OF POLICE
NEMOM POLICE STATION, NEMOM PO
THIRUVANANTHAPURAM, PIN - 695020

SRI S.RAJMOHAN- SR GOVERNMENT PLEADER ;
SRI G. SANTHOSH KUMAR - STANDING COUNSEL-
TRAVANCORE DEVASWOM BOARD

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR
ADMISSION ON 14.02.2023, ALONG WITH WP(C).5079/2023, THE
COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

VERDICTUM.IN

3

W.P.(C) Nos.4729 of 2023 and 5079 of 2023

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE ANIL K.NARENDRAN

&

THE HONOURABLE MR.JUSTICE P.G. AJITHKUMAR

TUESDAY, THE 14TH DAY OF FEBRUARY 2023 / 25TH MAGHA, 1944

WP(C) NO. 5079 OF 2023

PETITIONER:

SREERAJ KRISHNAN POTTI M.S
S/O.MOHANAN POTTI, MANGALASSERI MANA,
T.C.50/4020, EDAGRAMAM, KARIMON,
THIRUVANATHAPURAM

BY ADVS.
RESMI A.
R.KRISHNA RAJ
KUMARI SANGEETHA S.NAIR
E.S.SONI
R.PRATHEESH (ARANMULA)

RESPONDENTS:

- 1 TRAVANCORE DEVASWOM BOARD
DEVASWOM HEAD QUARTERS, NANDANCODE,
KAWDIAR P.O., THIRUVANANTHAPURAM-695 003,
REPRESENTED BY ITS SECRETARY
- 2 STATE OF KERALA
REPRESENTED BY ITS SECRETARY DEPARTMENT OF HOME
AFFAIRS, GOVERNMENT SECRETARIAT
THIRUVANANTHAPURAM,, PIN - 695001
- 3 THE DISTRICT MAGISTRATE
CIVIL STATION, KUDAPPANANAKUNNU,
THIRUVANATHAPURAM, PIN - 695043
- 4 INSPECTOR OF POLICE
NEMOM POLICE STATION,

VERDICTUM.IN

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W.P.(C) Nos.4729 of 2023 and 5079 of 2023

THIRUVANANTHAPURAM -695 020

5 DEPUTY DEVASWOM COMMISSIONER
TRAVANCORE DEVASWOM BOARD NANTHANCODE,
KAWDIAR P.O., THIRUVANANTHAPURAM,
PIN - 695003

SRI S.RAJMOHAN- SR GOVERNMENT PLEADER ; SRI
G.SANTHOSH KUMAR - STANDING COUNSEL- TRAVANCORE
DEVASWOM BOARD

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR
ADMISSION ON 14.02.2023, ALONG WITH WP(C).4729/2023, THE
COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

C.R.

JUDGMENT

Anil K. Narendran, J.

The common issue raised in these Writ Petitions relates to the conduct of Kaliyoottu festival at Major Vellayani Bhadrakali Devi Temple, which is a temple under the management of the Travancore Devaswom Board.

2. W.P.(C) No.4729 of 2023 is one filed by the Temple Advisory Committee of Major Vellayani Bhadrakali Devi Temple and another seeking a writ of mandamus commanding respondents 2 to 6 to consider Ext.P1 representation dated 08.02.2023 and take necessary steps to ensure the use of saffron/orange coloured decorative materials at the temple premises and festival ground, during Kaliyoottu festival at Major Vellayani Bhadrakali Devi Temple. The petitioner has also sought for a writ of mandamus commanding the respondents to maintain law and order and ensure adequate and effective protection to the petitioners as well as devotees of Major Vellayani Bhadrakali Devi Temple, during Kaliyoottu festival of 2023, which is scheduled to be held from 14.02.2023 to 24.04.2023; and to restrain the 7th respondent Inspector of Police, Nemom Police Station, from interfering with the affairs of the Temple Advisory Committee and the devotees during

Kaliyoottu festival. In the Writ Petition, it is alleged that, on 07.02.2023, at about 10.30 a.m., when the decoration work in the temple premises commenced, the 7th respondent Inspector of Police orally directed the petitioners to stop the decoration work and laying of arches, festoons and tinsels with saffron colours, without any provocation, and demanded to provide multi-coloured decorations in the temple premises. On 08.02.2023, the petitioners submitted Ext.P1 representation before the 5th respondent Director General of Police to prevent the 7th respondent Inspector of Police and the police force from demanding the use of multi-coloured materials in the temple premises and the festival ground during Kaliyoottu festival, without causing obstruction and hindrance to the public. The document marked as Ext.P2 is a copy of the notice of Kaliyoottu festival.

2.1 On 10.02.2023, when this Writ Petition came up for admission, the learned Senior Government Pleader and also the learned Standing Counsel for the Travancore Devaswom Board sought time to get instructions.

2.2 On 13.02.2023, when this Writ Petition came up for consideration, it was ordered that the law laid down in **Satheesh v. Travancore Devaswom Board [2022 (1) KLT**

940] shall be followed by all concerned, in letter and spirit, during the temple festival in Major Vellayani Bhadrakali Devi Temple, which is under the management of the Travancore Devaswom Board.

2.3 The 7th respondent Inspector of Police, Nedom Police Station has filed a counter affidavit dated 14.02.2023. According to the 7th respondent, during previous years there were disputes between rival groups of devotees supported by political parties regarding putting up of arches, flags, decorations, festoons, etc. When that dispute was about to affect the law and order situation and also the smooth conduct of the temple festival, the District Magistrate issued Ext.R7(a) proceedings dated 03.03.2017, under Section 81 of the Kerala Police Act, 2011, directing the District Police Chief to remove all flags, banners, flex boards, festoons and other decorative works put up in public property and also on public roads. Ext.R7(a). Since there arose a dispute between the local people regarding the colour used in the decorative works and there are complaints from different corners, a joint meeting was convened to resolve the dispute. The District Magistrate, Thiruvananthapuram has issued an order dated 10.02.2023, under Section 81 of the Kerala Police Act, 2011, directing the

use of only 'politically neutral' colours in the decorations made in connection with the festival in Major Vellayani Bhadrakali Devi Temple, so as to avoid provocation from other groups. In the counter affidavit, it is stated that the Police are not interested in the colour code or the way in which decorations are to be made in temple premises, however, putting up of arches hoardings, banners, festoons and other decorative works can only be done in public places, road pavements and across roads only in accordance with law and the directions issued by the High Court and the Supreme Court. The police have not made any restrictions in using saffron in the rituals such as Nilathilporu, Paranettu, etc. The police have insisted only to use saffron with other colours in the decorations in public places. In the counter affidavit, it is pointed out that arches and nadapanthals are erected crossing the public road in front of the temple and all decorations in those areas are done against the law laid down by this Court in **Satheesh [2022 (1) KLT 940]**. Such activities of the Temple Advisory Committee cannot be permitted since they will affect the safety of the general public using that road.

3. W.P.(C) No.5079 of 2023 is one filed by a devotee of Major Vellayani Bhadrakali Devi Temple seeking a writ of

certiorari to quash Ext.P1 order dated 10.02.2023 issued by the 3rd respondent District Magistrate, Thiruvananthapuram, under Section 81 of the Kerala Police Act, 2011, directing the use of only 'politically neutral' colours in the decorations made in connection with the festival in Major Vellayani Bhadrakali Devi Temple and to avoid any activity affecting the law and order in the locality. Based on Ext.P1 order of the 3rd respondent District Magistrate, the 4th respondent Inspector of Police, Nemom Police Station has issued Ext.P2 notice dated 10.02.2023 to the Secretary of the Temple Advisory Committee to comply with the directions contained in the said order. In the writ petition, it is alleged that the 3rd respondent District Magistrate and the 4th respondent Circle Inspector are creating trouble in the conduct of the temple festival, misusing their powers, under the influence of the local Communist Party of India (Marxist) workers. The petitioner would rely on Ext.P3 decision of a Division Bench of this Court dated 31.01.2020 in W.P.(C)No.2351 of 2020.

4. Heard the learned counsel for the petitioners in the respective writ petitions, the learned Senior Government Pleader for the official respondents and also the learned Standing Counsel for the Travancore Devaswom Board.

5. Travancore-Cochin Hindu Religious Institutions Act, 1950 enacted by the State Legislature makes provision for the administration, supervision and control of incorporated and unincorporated Devaswoms and of other Hindu Religious Endowments and Funds. As per the provisions under Section 3 of the Act, the administration of incorporated and unincorporated Devaswoms shall vest in the Travancore Devaswom Board. As per Section 15A of the Act, it shall be the duty of the Board to perform the following functions, namely, (i) to see that the regular traditional rites and ceremonies according to the practice prevalent in the religious institutions are performed promptly; (ii) to monitor whether the administrative officials and employees and also the employees connected with religious rites are functioning properly; (iii) to ensure proper maintenance and upliftment of the Hindu religious institutions; (iv) to establish and maintain proper facilities in the temples for the devotees. As per Section 31 of the Act, subject to the provisions of Part I and the rules made thereunder, the Board shall manage the properties and affairs of the Devaswoms, both incorporated, and unincorporated as heretofore, and arrange for the conduct of the daily worship and ceremonies and of the festivals in every temple according

to its usage.

6. Section 31A of the Act deals with the formation of the Temple Advisory Committees. As per subsection (1) of Section 31A of the Act, a Committee for each temple in the name 'Temple Advisory Committee' (name of the temple) may be constituted in order to ensure participation of Hindu devotees. As per sub-section (2) of Section 31A, the Temple Advisory Committee constituted under sub-section (1) may be approved by the Board. As per sub-section (3) of Section 31A, the composition of an Advisory Committee under sub-section (1) shall be in such manner as may be prescribed by the rules made by the Board, not inconsistent with any practice prevailing, if any. In terms of sub-section (3) of Section 31A of the Act, the Travancore Devaswom Board framed the Rules for the formation of Temple Advisory Committees in the temples under the management of the Board, which has been approved by this Court vide order dated 03.11.2011 in DBA No.153 of 2009.

7. Clause (2) of the Rules deals with objectives of the Temple Advisory Committees. As per Clause (2) of the Rules, one of the objectives of the Temple Advisory Committee is to formulate schemes for the betterment and development of the

Temple, submit the same before the Board and execute it with the approval of the Board. The Advisory Committee shall collect donations from the devotees for the smooth functioning of the temple activities and festivals only with the permission of the Department.

8. Clause (3) of the Rules deals with membership. Clause (3) of the Rules makes it explicitly clear that the membership in 'registered mandalam' is mainly for the devotees who are residing within a distance of 5kms from the temple, who are regular worshipers and had contributed considerably for the betterment of the temple and the devotees. Sub-clauses (i) to (iv) of Clause (3) of the Rules deal with class of persons who are entitled to get membership.

9. In view of the provisions of the Travancore-Cochin Hindu Religious Institutions Act, the Travancore Devaswom Board is duty bound to see that the regular traditional rites and ceremonies according to the practice prevalent in Vellayani Bhadrakali Devi Temple are performed promptly; and to establish and maintain proper facilities in Vellayani Bhadrakali Devi Temple for the devotees. Subject to the provisions of Part I of the Act and the Rules made thereunder, the Board shall manage the properties and affairs of Sabarimala Devaswom

and arrange for the conduct of the daily worship and ceremonies and of the festivals in Vellayani Bhadrakali Devi Temple according to the usage. The Temple Advisory Committee of a temple under the management of the Travancore Devaswom Board, which consists of devotees who fall under the eligibility criteria prescribed in Clause (3) of the Rules framed under sub-section (3) of Section 31A of the Act, is duty bound to render necessary assistance to the Board and its officials for the smooth functioning of the temple activities and festivals according to the usage.

10. In **Anil Kumar A.G. v. Travancore Devaswom Board and others [2020/KER/6173]**, a decision relied on by the learned counsel for the petitioner in W.P.(C)No.5079 of 2023, a Division Bench of this Court held that festivals in temples are to be conducted in accordance with the custom, ritual and practices of the temple concerned. Interference with the conduct of such festivals by police authorities, in whatever manner, is unfortunate and uncalled for. The police authorities are empowered to take appropriate measures to keep the law and order situation in the area where the festival is to take place. To keep law and order certainly, appropriate measures may be required to be taken depending upon the circumstances

prevailing in a particular area. But, at the same time, in a bid to take measures to maintain law and order situation, interference with the conduct of the festival is impermissible.

Any temple may have its own custom, ritual and practice to be followed in the matter of conduct of the festival. The Devaswom Board concerned and/or any committee constituted for the purpose of conducting the festival may have to decide the manner in which it is to be conducted taking note of the above mentioned aspects. In that view of the matter, the Division Bench held that the instructions in the decision taken in the meeting held on 15.01.2019, in so far as it relates to the manner in which the festival in the temple in question is to be conducted, cannot be thrust upon the Devaswom Board or the committee, if any, constituted for the purpose of conducting the festival in the temple. The Division Bench noticed that the instructions in the said decision (quoted in para.4 of Ext.P3 judgment) includes matters beyond the scope of power of the 3rd respondent Deputy Superintendent of Police and thereby, giving the impression that he meddles with the power of the temple authorities. In truth, some of them, indeed belong to that category. In the circumstances, the Division Bench made it clear that the festival in Chirakkadavu Mahadeva Temple in

Ponkunnam, conduct of which, is a matter to be decided by the Officials of the Travancore Devaswom Board and the committee, if any, constituted for the purpose of conducting festival therein, in the manner it is to be conducted in accordance with the ritual, practice and custom. However, in case the officials of the Travancore Devaswom Board apprehends any untoward incident in the premises or in the near vicinity of the temple, that may hamper the law and order situation, which would affect the smooth conduct of the festival, it will be open to the said authorities to take up the matter appropriately before the police authorities and in such eventuality, appropriate steps shall be taken by the police authorities, including respondent Nos.3 and 4, taking note of the situation. The Division Bench made it clear that the judgment will not stand in the way of the 3rd respondent Deputy Superintendent of Police in taking appropriate lawful measures to avert any law and order situation in the area in question and also to deploy sufficient number of policemen in the area to ensure law and order situation.

11. According to *Oxford Dictionary*, 'worshipper' is a person who shows reverence and adoration for a deity. Right to worship is a civil right, of course in an accustomed manner and

subject to the practice and tradition in each temple. A worshipper or a devotee has no legal right to insist that saffron/orange coloured decorative materials alone are used for festivals in a temple under the management of the Travancore Devaswom Board. Similarly, the District Administration or the Police cannot insist that only 'politically neutral' coloured decorative materials are used for temple festivals. Politics has no role to play in the conduct of daily worship and ceremonies and festivals in temples. The role of a Temple Advisory Committee in a temple under the management of the Travancore Devaswom Board is to render necessary assistance to the Board and its officials for the smooth functioning of the temple activities and the conduct of festivals according to the usage of that temple.

12. Kaliyoottu festival at Major Vellayani Bhadrakali Devi Temple, which is a temple under the management of Travancore Devaswom Board has to be conducted in accordance with the custom, rituals and practices of that temple. Politics has no role to play in the conduct of daily worship and ceremonies and festivals in temples. A worshipper or a devotee has no legal right to insist that saffron/orange coloured decorative materials alone are used for festivals in a

temple under the management of the Travancore Devaswom Board. Similarly, the District Administration or the Police cannot insist that only 'politically neutral' coloured decorative materials are used for temple festivals. The District Administration or the police cannot meddle with the power of the Travancore Devaswom Board in conducting Kaliyoottu festival in accordance with the custom, rituals and practices of that temple. However, in case there is an apprehension of any untoward incident in the temple premises or in the near vicinity of the temple, that may hamper the law and order situation, which would affect the smooth conduct of the festival, it will be open to the Travancore Devaswom Board to take up the matter appropriately before the police authorities (respondents 6 and 7 in W.P.(C)No.4729 of 2023/4th respondent in W.P.(C)No.5079 of 2023) and in such eventuality, appropriate steps shall be taken by the police authorities and also by the 3rd respondent District Magistrate in W.P.(C)No.5079 of 2023. We make it clear that, on the strength of any decision taken in the meeting convened on 09.02.2023 or the direction contained in Ext.P1 order dated 10.02.2023 in W.P.(C)No.5079 of 2023, issued under Section 81 of the Kerala Police Act, 2011 the District Administration or the police cannot meddle with the power of

the Travancore Devaswom Board in conducting Kaliyoottu festival, in accordance with the custom, rituals and practices of Major Vellayani Bhadrakali Devi Temple. However, in case there is an apprehension of any untoward incident in the temple premises or in the near vicinity of the temple, that may hamper the law and order situation, which would affect the smooth conduct of the festival, the District Administration and the police shall take appropriate steps to ensure that law and order in the temple premises and in the near vicinity of the temple is maintained properly.

13. In the counter affidavit filed by the 7th respondent Inspector of Police, it is pointed out that arches and nadapanthals are erected crossing the public road in front of the temple and all decorations in those areas are done against the law laid down by this Court in **Satheesh [2022 (1) KLT 940]** and such activities of the Temple Advisory Committee will affect the safety of the general public using that road.

14. In **C.S.S. Motor Service v. Madras State [AIR 1953 Mad 279]** a Division Bench of the Madras High Court held that all public streets and roads vest in the State, but that the State holds them as trustee on behalf of the public. The members of the public are entitled as beneficiaries to use them

as a matter of right and this right is limited only by the similar rights possessed by every other citizen to use the pathways. The State as trustees on behalf of the public is entitled to impose all such limitations on the character and extent of the user as may be requisite for protecting the rights of the public generally.

15. In **Saghir Ahmad v. State of U.P. [AIR 1954 SC 728]** a Constitution Bench of the Apex Court agreed with the statement of law made by the Division Bench of the Madras High Court in Para. 24 of the decision in C.S.S. Motor Service.

16. The Indian Roads Congress has issued Guidelines for Pedestrian Facilities vide IRC:103-2012. Paragraph 3 of the said guidelines deals with the scope of those guidelines. These guidelines cover engineering design and planning aspects of pedestrian facilities on road sides and road crossings in urban and semi-urban areas (para 3.2). The guidelines are intended for use by the local authorities responsible for creating and maintaining semi urban road transport facilities and the guidelines are framed to serve the objectives of universal accessibility and social equity for sustainable transportation (para 3.3). Paragraph 4 of the guidelines deals with general principles.

17. In **Shali v. State of Kerala [2019 (5) KHC 118]** this Court held that, as per Para.4.2 of the Guidelines for Pedestrian Facilities [IRC:103-2012], an effort should be made to create such conditions that pedestrians are not forced to walk in unsafe circumstances, and that motorists respect the position of pedestrian. The Guidelines for Pedestrian Facilities have the approval of the Ministry of Road Transport and Highways (MoRTH). Every Local Authority in the State is bound to provide pedestrian facilities on public roads in conformity with these guidelines.

18. In **Kottamom (Kottiyar Mangalam) Sri. Darmasastha Temple Advisory Committee v. State of Kerala [2019 (5) KHC SN 27]** this Court held that, in view of the Guidelines for Pedestrian Facilities formulated by the Indian Roads Congress, vide IRC:103-2012, no parking of vehicles is legally permissible on the 'footpath', which is the portion of right of way of road used for the movement of pedestrians. Any such parking of vehicles on the footpath of public streets will force pedestrians to walk in unsafe circumstances, which will adversely affect the mobility and safety of all pedestrians including those with disabilities and reduced mobility.

19. In exercise of the powers under Section 118 of the Motor Vehicles Act, 1988 and in supersession of the Rules of Road Regulations, 1989, the Central Government made the Motor Vehicles (Driving) Regulations, 2017, vide G.S.R.634(E) dated 23.06.2017. Regulation 5 of the Motor Vehicles (Driving) Regulations, 2017 deals with duties of drivers and riders. As per clause (4) of Regulation 5, the driver and the riders shall take special care and precautions to ensure the safety of the most vulnerable road users such as pedestrians, cyclists, children, elderly and the differently-abled persons. Regulation 22 deals with stopping and parking. As per sub-clause (c) of clause (2) of Regulation 22, a vehicle shall not be parked on footpath, cycle path and pedestrian crossing. Regulation 39 deals with pedestrian crossing, footpath and cycle track. As per sub-clause (3) of Regulation 39, when a road is provided with a footpath or cycle track, no vehicle shall drive on such footpath or track, except on the directions of a Police Officer in uniform or where traffic signs permitting some movements have been displayed.

20. It is pertinent to note that, by the order dated 18.01.2013 in SLP(Civil) No. 8519 of 2006 [**Union of India v. State of Gujarat**], the Apex Court issued a general

direction to the effect that, from the date of that order the Government of Kerala shall not grant any permission for installation of any statue or construction of any structure in public roads, pavements, sideways and other public utility places. The Apex Court made it clear that the said order shall not apply to installation of high-mast lights, street lights or construction relating to electrification, traffic, toll or for development and beautification of streets, highways, roads, etc., and relating to public utility and facilities. The above order was made applicable to all other States and Union Territories and the concerned Chief Secretary/Administrator is directed to ensure compliance of that order. Paragraphs 2 to 5 of the order dated 18.01.2013 in I.A. No. 10 of 2012 in SLP(Civil) No. 8519 of 2006 read thus;

“2. Mr. M.T. George, learned counsel for the State of Kerala placed before us a copy of the order dated September 7, 2011 passed by the Government of Kerala granting permission for installation of statue of late Shri N. Sundaran Nadar, Ex-Deputy Speaker of Kerala Legislative Assembly near to Neyyattinkara - Poovar Road in the curve turning to the KSRTC Bus Stand Neyyattinkara in the Kanyakumari National Highway near bus stand.

3. We have our doubt whether such permission could have been granted by the State Government for installation of statue on the national highway.

4. Until further orders, we direct that the status quo, as obtaining today, shall be maintained in all respects by all concerned with regard to the Triangle Island where statue of late Shri N. Sundaran Nadar has been permitted to be sanctioned. We further direct that henceforth, State Government shall not grant any permission for installation of any statue or construction of any structure in public roads, pavements, sideways and other public utility places. Obviously, this order shall not apply to installation of high mast lights, street lights or construction relating to electrification, traffic, toll or for development and beautification of the streets, highways, roads, etc. and relating to public utility and facilities.

5. The above order shall also apply to all other states and union territories. The concerned Chief Secretary/ Administrator shall ensure compliance of the above order. (underline supplied)

21. The order of the Apex Court dated 18.01.2013 in I.A. No. 10 of 2012 in SLP(Civil) No. 8519 of 2006 was in relation to the permission granted by the State of Kerala, by an order dated 07.09.2011, for installation of statue of late Shri. N. Sundaran Nadar, Ex-Deputy Speaker of Kerala Legislative Assembly near to Neyyantinkkara-Poovar Road in the curve turning to KSRTC bus stand, Neyyatinkkara in Kanyakumari National Highway.

22. By the order dated 05.07.2013 in SLP(Civil) No. 8519 of 2006, the Apex Court directed the States and Union

Territories to state on affidavit the position with regard to unauthorised structures including unauthorised religious structures on public roads, pavements, sideways and other public utility places as existing on 30.06.2013 in their respective States and the steps taken up to 30.06.2013 for removal of such unauthorised structures. In the said order, the Apex Court noticed the submission of the learned counsel for the States of Madhya Pradesh, Kerala, Punjab and Rajasthan that they have already filed their affidavits. By the order dated 05.07.2013, the Apex Court directed the States of Madhya Pradesh, Kerala, Punjab and Rajasthan to file fresh affidavits indicating the position as on 30.06.2013.

23. By the order dated 31.01.2018 in SLP(Civil) No. 8519 of 2006 and connected cases, the Apex Court ordered that the implementation of its orders should be supervised by the concerned High Courts. Consequently, the Apex Court remitted the matters to the respective High Courts for ensuring implementation of orders in an effective manner. While ordering transmission of concerned records to the respective High Courts, the Apex Court ordered that, the interim orders wherever passed shall continue, until the matters are considered by the High Courts. In case any clarification is

required, it would be open to the parties to approach the Apex Court. The High Court will have the jurisdiction to proceed in the contempt of any of the orders passed by the Apex Court.

24. Despite the enactment of the Kerala Public Ways (Restriction of Assemblies and Processions) Act, 2011 by the State Legislature and the law laid down by the Apex Court and this Court in the decisions referred to supra, the State, Local Authorities and also the law enforcement machinery have not taken necessary steps to to ensure strict enforcement of the relevant statutory provisions and also the Guidelines for Pedestrian Facilities formulated by Indian Roads congress [IRC: 103-2012], in order to prevent encroachment of any nature, in any form, either temporary or permanent, on the right of way or on the pedestrian facilities on public roads, since any such encroachment will adversely affect the mobility and safety of all pedestrians including those with disabilities and reduced mobility.

25. In **Satheesh [2022 (1) KLT 940]** this Court held that, once roads are constructed as per the standards and guidelines prescribed by the Indian Roads Congress, it has to be maintained as such without any encroachment on the right of way or on the pedestrian facilities provided as per such

standards and guidelines. Footpaths are not intended for stocking articles for trade or for display of goods by traders, in front of their shops or establishments. Similarly, footpaths are not intended for holding campaigns, demonstrations, etc., by political parties and other organisations, by causing obstructions to free movement of pedestrians. No political party or organisation can be permitted to encroach footpath or right of way of public roads, in connection with any such protest, demonstrations, etc., by erecting any temporary structures on the right of way or on the pedestrian facilities, forcing pedestrians including those with disabilities and reduced mobility to walk in unsafe circumstances.

26. In **Satheesh [2022 (1) KLT 940]** this Court noticed that, showing scant regard to the law laid down in the decisions referred to supra, political parties and various organisations are permitted to put up structures on footpaths and even on the right of way on public roads, all over the State. The protesters/agitators having political backing are even permitted to lay carpet and place chairs on the footpath. On account of such encroachments, pedestrians including those with disabilities and reduced mobility are forced to walk through the right of way of public roads, in unsafe circumstances. The

prohibition imposed by the Apex Court in the decision in **Union of India v. State of Gujarat** [SLP(Civil) No. 8519 of 2006], whereby the Government of Kerala is restrained, with effect from 18.01.2013, from granting any permission for installation of any statue or construction of any structure in public roads, pavements, sideways and other public utility places, is being flouted by permitting unauthorised hoardings, structures like resting places for headload workers, bus shelters constructed by political and other organisations, etc., on public roads, pavements, footpaths, etc. Such encroachments are even permitted in front of the Office of the Local Self Government Institutions. The law laid down by this Court in **Shali [2019 (5) KHC 118]**, **Kottamom (Kottiyar Mangalam) Sri. Darmasastha Temple Advisory Committee [2019 (5) KHC SN 27]** and **Sivaprasad [2020 (6) KHC 373]** that every Local Authority in the State is bound to provide pedestrian facilities on public roads in conformity with the Guidelines for Pedestrian Facilities [IRC:103-2012] and that, once the National Highways/State Highways are constructed as per the standards and guidelines prescribed by the Indian Roads Congress, it has to be maintained as such without any encroachment on the right of way or on the pedestrian facilities

provided as per such standards and guidelines is also being flouted by permitting encroachments on the right of way and on the pedestrian facilities.

27. Section 198A of the Motor Vehicles Act, 1988, inserted by Section 84 of the Motor Vehicles (Amendment) Act, 2019, which came into force with effect from 01.09.2019, vide S.O. 3147(E) dated 30.08.2019, deals with failure to comply with standards for road design, construction and maintenance. As per sub-section (1) of section 198A, any designated authority, contractor, consultant or concessionaire responsible for the design or construction or maintenance of the safety standards of the road shall follow such design, construction and maintenance standards, as may be prescribed by the Central Government from time to time. As per sub-section (2), where failure on the part of the designated authority, contractor, consultant or concessionaire responsible under subsection (1) to comply with standards for road design, construction and maintenance, results in death or disability, such authority or contractor or concessionaire shall be punishable with a fine which may extend to Rs. 1,00,000/- and the same shall be paid to the Fund constituted under Section 164B.

28. As per sub-section (3) of Section 198A, for the purposes of sub-section (2), the court shall in particular have regard to the matters enumerated in clauses (a) to (g), namely, (a) the characteristics of the road, and the nature and type of traffic which was reasonably expected to use it as per the design of road; (b) the standard of maintenance norms applicable for a road of that character and use by such traffic; (c) the state of repair in which road users would have expected to find the road; (d) whether the designated authority responsible for the maintenance of the road knew, or could reasonably have been expected to know, that the condition of the part of the road to which the action relates was likely to cause danger to the road users; (e) whether the designated authority responsible for the maintenance of the road could not reasonably have been expected to repair that part of the road before the cause of action arose; (f) whether adequate warning notices through road signs, of its condition had been displayed; and (g) such other matters as may be prescribed by the Central Government. As per Explanation, for the purposes of Section 198A, the term 'contractor' shall include subcontractors and all such persons who are responsible for any stage in the design, construction and maintenance of a stretch of road.

29. As held by this Court in **Satheesh [2022 (1) KLT 940]** roads constructed as per the specifications and standards prescribed by the Indian Roads Congress are for vehicular traffic, which cannot be converted as a parking space for commercial or other establishments, religious institutions, etc., or even for putting up temporary structures in connection with festivals in temples, churches, mosques, etc., or for putting up temporary structures as resting place for headload workers, etc., or for putting up bus shelters by political parties or by any other organisations. The State holds public roads as a trustee on behalf of the public. By permitting encroachments on public roads by way of temporary structures on the right of way or on the pavements or on the pedestrian facilities provided on such roads, on political considerations or otherwise, the State Government or the concerned Local Self Government Institution is committing breach of trust. Any failure on the part of the designated authorities, contractor, consultant or concessionaire in maintaining the safety standards of public roads will attract the penal consequences provided under Section 198A of the Motor Vehicles Act. Therefore, in terms of the interim order dated 13.02.2023 in W.P.(C)No.4729 of 2023, the law laid down by this Court in **Satheesh v. Travancore**

Devaswom Board [2022 (1) KLT 940] shall be followed by all concerned, in letter and spirit, during the temple festival in Major Vellayani Bhadrakali Devi Temple, which is a temple under the management of the Travancore Devaswom Board.

In the result, both the writ petitions are disposed of in terms of the directions contained hereinbefore at paragraphs **12** and **29**.

Sd/-

ANIL K. NARENDRAN, JUDGE

Sd/-

P.G. AJITHKUMAR, JUDGE

dkr

APPENDIX OF WP (C) 4729/2023

PETITIONER EXHIBITS

Exhibit P1 **TRUE COPY OF THE REPRESENTATION OF THE
PETITIONERS DATED 08/02/2023 TO THE 5TH
RESPONDENT**

Exhibit P2 **TRUE COPY OF THE FESTIVAL NOTICE OF
MAJOR VELLAYANI DEVI TEMPLE**

APPENDIX OF WP(C) 5079/2023

PETITIONER EXHIBITS

**Exhibit P-1 TRUE COPY OF THE PROCEEDINGS OF THE 3RD
RESPONDENT DATED 10.02.2023**

**Exhibit P-2 TRUE COPY OF THE NOTICE OF THE 4TH
RESPONDENT DATED 10.02.2023**

**Exhibit P-3 TRUE COPY OF THE JUDGMENT IN
WPC.NO.2351/2020 DATED 31.01.2020**