

**IN THE SUPREME COURT OF INDIA
CIVIL ORIGINAL JURISDICTION**

Writ Petition (Civil) No 446 of 2018

M K George & Ors

.... Appellant(s)

Versus

State of Kerala & Ors

....Respondent(s)

WITH

Writ Petition (Civil) No 796 of 2018

ORDER

In these proceedings under Article 32 of the Constitution, the following reliefs have been sought:

- “a. to issue a writ of mandamus to the respondent State of Kerala to enforce the fundamental rights of the petitioners guaranteed under Article 25 & 26 of the Constitution of India; and/or
- b. to issue a writ of mandamus to the respondent State of Kerala to allow the worshippers of those Parish Churches where the majority of the members who believe in the religious/theological faith and doctrines based on the ecclesiastical supremacy of the Patriarch of Antioch; and/or
- c. to issue a writ of mandamus to the respondent State of Kerala to afford protection to the Bishops and other clergymen who are ordained under the ecclesiastical Authority of the Patriarch of Antioch in performing religious ceremonies approved by the Synod of the Syrian Orthodox Church of all the East in the Parish Churches where the majority of the Parishioners/worshippers believe in the spiritual and apostolic succession of St. Peter through the Patriarch of Antioch; and/or
- d. to declare that the petitioners have a fundamental right of religious freedom and worship guaranteed under Articles 25 and 26 of the Constitution of India and thereby to administer the spiritual needs of the petitioners and similarly placed persons as per their faith in the Patriarch of Antioch; and/or
- e. to declare that the petitioners and similarly placed persons have the fundamental right of privacy and thereby a right to life and liberty guaranteed by Article 21 of the Constitution of India and the right to

practice their religion in the Churches in which they are the parishioners as per their faith in the supremacy of the Patriarch of Antioch; and/ or

f. to declare that the petitioners have the right to follow their religious beliefs and custom based on the spiritual supremacy of the Patriarch of Antioch in the Churches in which the petitioners and similarly placed persons are the parishioners; and/or

g. allow the Writ Petition by affirming the rights of the petitioners under Article 25 & 26 of the Constitution of India to follow all the religious customs like Holy Mass, baptism, confession, marriage, funeral services etc in the Churches as per their religious beliefs and faith;"

During the course of the hearing on 7 May 2019, this Court recorded the submission of Mr Jaideep Gupta, learned senior counsel appearing on behalf of the State of Kerala to the effect that a Cabinet Sub-Committee has been constituted to explore the possibility of a mediated settlement.

In view of the above statement, the hearing was adjourned to 2 August 2019.

On 2 August 2019, an objection was raised to the maintainability of the Writ Petitions by Mr C U Singh and Mr Krishnan Venugopal, learned senior counsel by relying upon the orders passed by this Court on 15 February 2019 in Writ Petition (Civil) No 132 of 2019 and on 2 July 2019 in Special Leave Petition (Civil) No 12461 of 2019.

On 15 February 2019, a Bench presided over by the then learned Chief Justice declined to entertain a Writ Petition under Article 32 of the Constitution [Writ Petition (Civil) 132 of 2019] on the ground that the issues which were raised had already been decided by this Court in two decisions, which are noted in the extract of the order, which is quoted below:

"The issues raised in this petition have been considered and decided by this Court in K.S. Varghese and Others vs. Saint Peter's and Saint Paul's Syrian Orthodox Church and Others (2017) 15 SCC 333 and Mathews Mar Koorilos (Dead) and Another vs. M. Pappy (Dead) and Another

(2018) 9 SCC 672. We are, therefore, not inclined to entertain this petition under Article 32 of the Constitution. The writ petition is, accordingly, dismissed."

On 2 July 2019, this Court in a special leave petition [SLP (C) 12461 of 2019] arising out of a judgment of a Division Bench of the Kerala High Court dated 13 March 2019¹ observed thus:

"In view of the Judgment passed by this Court in K.S. Varghese & Ors. Vs. St. Peter's & Paul's Syrian Orth. & Ors., reported in (2017) 15 SCC 333, there is absolutely no scope to construe the order passed by the High Court in a different manner than the order passed by this Court on 03.07.2017.

There cannot be any violation of the order by any one concerned. Even the State Government cannot act contrary to the Judgment and the observations made by this Court and has the duty to ensure that the Judgment of this Court is implemented forthwith.

Any observation made by the High Court contrary to the Judgment passed by this Court stands diluted.

The State and all parties shall abide by the Judgment passed by this Court in totality and cannot solve the matter in any manner different than the Judgment passed by this Court. No parallel system can be created.

In view of the above, the Special Leave Petitions are disposed of. Pending interlocutory application(s), if any, is/are disposed of. "

In the above backdrop, when an objection was raised to the maintainability of the Writ Petitions in the present case, this Court was apprised of the fact that another writ petition² under Article 32 was pending before another Bench of this Court. Consequently, the hearing was adjourned to 6 August 2019 to enable this Court to be apprised of the order that may be passed in the said writ petition.

Today, during the course of the hearing, it is common ground between the learned counsel that the said writ petition was withdrawn on 2 August 2019 with liberty to move the Kerala High Court.

1 Writ Petition (C) No 16248 of 2018

2 Writ Petition (C) No 977 of 2019

Mr V Giri, learned senior counsel appearing on behalf of the petitioners, fairly states that prayers (a) to (f) of the present writ petitions, which have been extracted above, would squarely stand covered by the earlier decisions rendered by this Court, as noted above. However, insofar as prayer (g) is concerned, Mr Giri urges that the issue in regard to funeral services is still open to be agitated and does not stand covered.

Opposing this submission, both Mr C U Singh and Mr Krishnan Venugopal, learned senior counsel, submitted that in the judgment of the Kerala High Court dated 13 March 2019, the High Court had made specific observations in regard to funeral services. The observations in paragraph 12 of the order of the High Court read as follows:

“12. In the course of arguments in these writ petitions, another vital aspect relating to the parishioners, that was brought to our notice is that there have been instances where parishioners of a particular church, who owe allegiance to the Patriarch faction, have been denied their right to bury their family members, in the space allotted for burial of their family members in the cemetery attached to the church concerned. This, in our view, would not be in accordance with the declaration of the Supreme Court in the cases referred above. As observed by the Supreme Court in paragraph 228.17 in K.S. Varghese's case [supra], the Church and the cemetery cannot be confiscated by anybody. It has to remain with the Parishioners as per the customary rights and nobody can be deprived of the right to enjoy the same as a Parishioner in the Church or to be buried honourably in the cemetery, in case he continues to have faith in the Malankara Church. The property of the Malankara Church in which is also vested the property of the Parish Churches, would remain in trust as it has for time immemorial for the sake of the beneficiaries and no one can claim to be owners thereof even by majority and usurp the Church and the properties. Accordingly, so long as the person claiming a right to burial continues to be a parishioner of the church, and his/her name is not removed from the register of parishioners of the church pursuant to a due process of law, the mere fact of allegiance of the Parishioner to the Patriarch, who is admittedly the spiritual head of the Malankara Church even as per the 1934 Constitution, or his/her inclination to the ideology of the Patriarch faction, cannot deprive the parishioner of his/her right to burial in the church of which he/she is the parishioner. This right cannot be taken away even if, in particular circumstances, the parishioner chooses to forego funeral services in the church or its cemetery or opts for a funeral service at any other premises by a priest of his/her choice. The right to a burial in the cemetery must be seen as flowing from his status as a Parishioner of the Church.”

It is against the above order of the Kerala High Court that Special Leave Petition (Civil) No 12461 of 2019 was filed. The Special Leave Petition came up before this Court on 2 July 2019 when the order, extracted earlier, was passed. It is evident that even as regards the issue of burial rights, which was the subject matter of the judgment of the High Court dated 13 March 2019, this Court, while disposing of the Special Leave Petition, has expressly observed that:

- (i) the judgment which has been rendered in ***K S Varghese (supra)*** must now govern the field;
- (ii) all parties including the State of Kerala must abide by the judgment in its entirety;
- (iii) any dispute cannot be resolved in a manner other than what is established by the judgment of this Court; and
- (iv) no parallel system to resolve disputes can be created.

Mr Giri submitted that he may be permitted to withdraw the Writ Petitions, but liberty may be reserved to the petitioners to adopt appropriate proceedings to agitate their grievance in regard to burial services to the extent that this is open after the order of this Court dated 2 July 2019.

In the considered view of this Court, it is appropriate and proper to grant liberty to the petitioners to do so in view of a similar order dated 6 August 2019 in WP (C) No 977 of 2019. This is, however, with the express reiteration by this Court of the order which was passed by the coordinate Bench on 2 July 2019, as extracted above. Moreover, in the event that fresh proceedings are adopted, this would be without prejudice

to such objections as the respondents may have in regard to the maintainability of the writ petition. We also clarify that the order of this Court dated 2 July 2019 operates as the interpretation of this Court on any other issue which is governed by the decisions in ***K.S. Varghese (supra)*** and ***Saint Peter's and Saint Paul's Syrian Orthodox Church (supra)***.

The Writ Petitions are accordingly dismissed as withdrawn with liberty aforesaid.

On the request of Mr V K Biju, learned counsel appearing for the applicant, the application for impleadment [IA No 111918 of 2019] is disposed of in terms of the liberty given in the above order.

The application for impleadment [IA No 115996 of 2019] is also disposed of.

.....J.
[Dr Dhananjaya Y Chandrachud]

.....J.
[Ajay Rastogi]

New Delhi;
November 19, 2019

ITEM NO.2

COURT NO.8

SECTION X

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Writ Petition(s)(Civil) No(s).446/2018

M.K. GEORGE & ORS.

Petitioner(s)

VERSUS

THE STATE OF KERALA & ORS.

Respondent(s)

(WITH IA No. 111921/2019 - EXEMPTION FROM FILING O.T., IA No. 67228/2018 - GRANT OF INTERIM RELIEF, IA No. 111918/2019 - INTERVENTION/IMPLEADMENT, IA No. 115996/2019 - INTERVENTION/IMPLEADMENT, IA No. 123608/2019 - PERMISSION TO PLACE ADDITIONAL FACTS AND GROUNDS)

WITH

W.P.(C) No. 796/2018 (X)

(WITH IA No. 80510/2018 - APPLICATION FOR INTERIM RELIEF, IA No. 123625/2019 - PERMISSION TO PLACE ADDITIONAL FACTS AND GROUNDS)

Date : 19-11-2019 These petitions were called on for hearing today.

CORAM :

HON'BLE DR. JUSTICE D.Y. CHANDRACHUD
HON'BLE MR. JUSTICE AJAY RASTOGI

For Petitioner(s) Mr. V. Giri, Sr. Adv.
Mr. Adolf Mathew, Adv.
Mr. Peter K. Alias, Adv.
Mr. Roy Issaic, Adv.
Mr. Sanjay Jain, AOR

Mr. P. V. Yogeswaran, AOR

Mr. A. Raghunath, AOR

For Respondent(s) Mr. Jaideep Gupta, Sr. Adv.
Mr. G. Prakash, Adv.
Mr. Jishnu M.L., Adv.
Ms. Priyanka Prakash, adv.
Ms. Beena Prakash, Adv.

Mr. C.U. Singh, Sr. Adv.
Mr. Krishnan Venugopal, Sr. Adv.
Mr. EMS Anam, Adv.

Mr. Manoj V. George, Adv.
Mr. Kamlendra Mishra, AOR
Ms. Shilpa Liza George, Adv.

Mr. Rajeev Kumar Dubey, Adv.
Mr. Renjith V. Philip, Adv.
Ms. Bhavika, Adv.

Mr. V. K. Biju, AOR
Mr. Abhay Pratap Singh, Adv.

Mr. Amit Kumar, Adv.

UPON hearing the counsel the Court made the following
O R D E R

The Writ Petitions are dismissed as withdrawn in
terms of the signed order.

Pending applications are accordingly disposed of.

(SANJAY KUMAR-I)
AR-CUM-PS

(SAROJ KUMARI GAUR)
COURT MASTER

(Signed order is placed on the file)