

## Kerala High Court Issues Notice In Plea Vs Kerala Lalithakala Akademi Awarding Cartoon Portraying India As 'Cow' At Covid-19 Global Medical Summit



Gargi Chatterjee

03:42 PM, 23 Nov 2021



Read Time: 03 minutes

Justice N Nagaresh of the Kerala High Court has issued notice in a plea against the Kerala Lalithakala Akademi for awarding a cartoon that portrayed 'India as a 'cow' at the Covid-19 Global Medical Summit, where England, China and the USA are represented as humans.'

The cartoon is drawn by Anoop Radhakrishnan, secretary of Kerala Cartoon Academy. It is titled 'COVID-19 Global Medical Summit', depicting a cow shrouded in a saffron shawl representing India flanked by doctors in England, China, and the United States in the global medical summit.

The petition was moved by Haindaveeyam Foundation, arraigning the Union Government, Kerala Government, the state Lalithakala Akademi, cartoonist Anoop Radhakrishnan and unnamed jurist of the Honourable Mention Award for the cartoon, as respondents.

The Foundation has claimed that the cartoon disparages India and distorts reality.

According to them, it was authored with a deliberate intention to create public disorder. It has submitted that they approached the respondents to review the award, however, nothing transpired therefrom.

Thus, the present petition has prayed that the award be withdrawn. The plea also accused the criteria adopted by the Respondents in declaring the award to the said cartoon, to be illegal, unreasonable, and without any rationale.

Earlier the Kerala unit of BJP and its feeder organisations lashed out against the Akademi for selecting a cartoon that 'humiliates' the country, for its Honourable Mention Award.

BJP State President K Surendran tweeted out that those holding responsible positions are trying to insult and humiliate their own country.

**Cause Title:** Haindaveeyam Foundation v Union of India & Ors.

**Photo:** Twitter

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## Kerala High Court Issues Notice On Plea Challenging Kerala Lalitakala Akademi Recognition To Cartoon

**Hannah M Varghese**

(/hannah)

23 Nov 2021 9:47 AM

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A plea has reached the Kerala High Court condemning the Kerala Lalithakala Akademi for selecting a cartoon for its Honourable Mention Award. Justice N Nagaresh on Monday issued notice in the matter. Kerala Lalithakala Akademi was

CASE DETAILS			
Case Type	WP(C)	Case Status	PENDING
Filing Number	WP(C) 9046179/2021	Filing Date	18-11-2021
Registration Number	WP(C) 26052/2021 (F)	Registration Date	19-11-2021
CNR Number	KLHC010653112021	E-File NO	Offline

CASE STATUS			
First Hearing Date	Monday, the 22nd day of November 2021		
Case Status	PENDING		
Coram	4403-HONOURABLE MR.JUSTICE N.NAGARESH		
Bench	Single		
Last listed Details	Date : 22-11-2021	Bench: 4403 - HONOURABLE MR.JUSTICE N.NAGARESH	List : Part Two Item : 24

PETITIONER AND ADVOCATE	
1	<b>Petitioner : HAINDAVEEYAM FOUNDATION,</b> Petitioner Advocate : T.D.SUSMITH KUMAR,C.SIVADAS,T.O.DEEPA

RESPONDENT AND ADVOCATE	
1	<b>Respondent : UNION OF INDIA,</b> Respondent Advocate : MANU S., DSG OF INDIA
2	STATE OF KERALA,
3	SECRETARY, KERALA LALITHAKALA AKADEMI, Advocate : SHOBY K.FRANCIS (22086) Extra Advocate : SEBY JOSEPH (23180)
4	JURISTS OF HONORABLE MENTION AWARD FOR CARTOON,
5	ANOOP RADHAKRISHNAN,

SERVED ON	
SRI.MANU S., ASG OF INDIA-SERVED ON	
GOVERNMENT PLEADER-SERVED ON	

ACTS	
Under Act(s)	Under Section(s)
CONSTITUTION OF INDIA	226

IA DETAILS						
#	IA Number	Date of Filing	Status	Classification	Party	Date of Disposal

HISTORY OF CASE HEARING						
#	Cause List Type	Hon: Judge Name	BusinessDate	NextDate (Tentative Date)	Purpose of Hearing	Order
1	Part Two	4403-HONOURABLE MR.JUSTICE N.NAGARESH	22-11-2021		ADMISSION	GP TAKES....R2. ASGI...R. NOTICE BY S/P TO R3 TO R5.

INTERIM ORDERS			
Business Date	Hon: Judge Name	Application	

CATEGORY DETAILS	
Category : 152.00 Misc.-Other than subjects mentioned elsewhere (359)	

OBJECTION	
#	Objection
1	All Objections are Complied

BEFORE THE HON'BLE HIGH COURT OF KERALA, ERNAKULAM

W.P.(C) No.                      of 2021

PETITIONER

Haindaveeyam Foundation,  
Flat No. 304, Suresh Harivillu,  
Apartments, 10-2-278/1, P-253, Nehru Nagar Colony,  
West Marredpally, Secunderabad, Telangana- 500 026,  
Represented by Joint Chairperson,  
Deepthi K Vasudevan,  
W/o. R. Gopakumar, aged 44 years,  
Flat No. 304, Suresh Harivillu,  
Apartments, 10-2-278/1, P-253, Nehru Nagar Colony,  
West Marredpally, Secunderabad, Telangana- 500 026.

Vs.

RESPONDENTS

1. Union of India,  
Represented by Principal Secretary,  
Ministry of Home Affairs,  
North Block, Central Secretariate, New Delhi-110 001.
2. State of Kerala,  
Represented by its Secretary,  
Cultural Affairs (A) Department,  
Government Secretariat, Thiruvananthapuram - 695 001.
3. Secretary,

Kerala Lalithakala Akademi,  
Regional Theater Road, Chembukkavu, Thrissur-680 020.

4. Jurists of Honorable Mention Award for cartoon,  
Name Unknown,  
Father's name not known, age not known,  
Kerala Lalithakala Akademi,  
Regional Theater Road, Chembukkavu, Thrissur-680 020.
5. Anoop Radhakrishnan  
Father's name not known, age not known  
Kerala Cartoon Academy Secretary,  
2<sup>nd</sup> Floor, Amarakerala Building,  
Kalabhavan Road, Near Ernakulam Town Hall,  
Kochi, Ernakulam-682 018.

WRIT PETITION (CIVIL) FILED UNDER ART. 226 OF THE CONSTITUTION OF  
INDIA.

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- A. Address for service of Summons and Notices on the Petitioner is  
that of his Counsel Susmith Kumar T.D., Sivadas C, and  
Deepa T.O, Law Office of Nair and Nair, Door No. 58/1449,  
Infant Jesus Building, High Court Road, Kochi, Kerala- 682 031.
- B. All Processes and Notices on the Respondents may be served on  
their respective addresses shown on the cause title.
- C. Petitioner most humbly begs to submit as under:

### STATEMENT OF FACTS

1. Petitioner is a registered Trust having Registration No. 31/IV/2020; incorporated under the Telangana Charitable and Hindu Religious Institutions and Endowments, 1987. And, Represented by its Joint Chairperson. Incorporated with objectives inter-alia to promote and propagate Patriotism/Indian Nationalism, Culture, Customs, Rituals. The nature and scope of the Petitioner extended to cultural, charitable, and educational trust for the benefit of all persons belonging to a marginalized community across India.
2. Kerala Lalithakala Akademi was established in 1962 to conserve and promote visual arts: painting, sculpture, architecture, and graphics. It is an autonomous cultural organization of the 2<sup>nd</sup> Respondent. It is a society re-registered on 24-12-1985 under the Travancore-Cochin Literary, Scientific and Charitable Societies Registration Act, 1955, having Registration No. 28/85/C.D.
3. The 3<sup>rd</sup> Respondent declared Lalithakala Akademi Awards for the year 2019-2020. Accentuated that all the award-winning cartoons portray India in poor light and carry a distorted version of reality. Amongst the same, Honourable Mention Award for cartoon bagged by the 5<sup>th</sup> Respondent. Its prima facie demeans and disparages India.

Cartoon titles “COVID-19 GLOBAL MEDICAL SUMMIT”. Depicts as a cow with an orange shawl draping it, representing India



accompanied doctors in England, China, and the United States in the global medical summit. The author of the said cartoon is the Secretary of Kerala Cartoon Academy, Kochi; affiliated to Kerala University of Fisheries and Ocean Studies, Kochi. A true copy of the Cartoon title "*COVID-19 GLOBAL MEDICAL SUMMIT*" downloaded from the website is annexed herewith and marked as Exhibit P-1.

Insofar as Exhibit P-1 cartoon is concerned, it is explicit that it is authored to demean and disparage India. Very especially in the international arena, as it is clear-cut from its anti-national artistic elements. It is noteworthy; since the entire world is coping with a very extraordinary situation amid this pandemic. Many factions of the nation irrespective of political tint started agitation and protest against the 2nd to 5th Respondents. By breaching public order. Apposite to note this amid the backdrop of the loss of a multitude of human life. That apart, the pandemic affected even psychologically and put the people in socio-economic crisis.

4. A cartoon is a deliberate exaggeration intended to produce a satirical effect. It is intrinsically a weapon of ridicule. Evident that Exhibit P-1 was authored with a deliberate intention to create public disorder. Petitioner's Representative, Joint Chairperson personally perceived the agitation of the general public, other trustees, and even foreign nationals against the 2nd to 5th Respondents for selecting Exhibit P-1 for Honourable Mention Award for cartoon.

The Hon'ble Supreme Court in *Devidas Ramachandra Tuljapurkar Vs. State of Maharashtra and others*[MANU/SC/0612/2015=(2015)6SCC 1] referred to a German Cartoon portraying a well-known politician as a pig copulating with another pig dressed in judicial robes. Wherein German Court did not accept the publisher's argument relating to artistic freedom as protected by Article 5(3) of the Basic Law. *Where there was a conflict with human dignity, artistic freedom (Kunstfreiheit) must always be subordinate to personality rights.*

5. In such a scenario, award announced by the 2nd to 4th Respondent should be liable to withdraw, as it is demeaning and disparaging India amid the international arena. The 2<sup>nd</sup> to 5<sup>th</sup> Respondent cannot avail the protection under the Fundamental right guaranteed by Article 19(1)(a) of the Constitution of India.

The Fundamental right guaranteed by Article 19(1)(a) of the freedom of speech and expression is not absolute. It is subject to such reasonable restrictions as would come within the purview of clause (2), which comprises (a) security of the State, (b) friendly relations with foreign States, (c) public order, (d) decency or morality, etc.

Even applying the American principles of 'clear and present danger' test (*Schenck v. United States* [249 U.S. 47 (1919)]) or 'imminent lawless action' test (*Brandenburg v. Ohio* [395 US 444 1969], as well as the doctrine of proportionality pursuant to Justice *K.S. Puttaswamy and others Vs.*

*Union of India and Others* [MANU/SC/1054/2018=(2019) 1 SCC 1] and *Anuradha Bhasin and Others* [MANU/SC/0022/2020=( 2020 ) 3 SCC 637] as reiterated in various cases cannot rescue Exhibit P-1 under the wings of Article 19(1)(a) and 21 of the Constitution of India.

That apart, it will not cause a chilling effect on the freedom of speech and expression pursuant to the US doctrine of chilling effect and applying by this Hon'ble Supreme Court of India in various judgments including *K.S. Puttaswamy Case*, *Anuradha Bhasin Case(Supra)* and *Amish Devgan vs. Union of India and Others*. [MANU/SC/0921/2020=(2021)1 SCC 1]. So far as the gravity of the anti-national artistic elements in Exhibit P-1 is concerned.

6. Being agitated, as a preacher of Indian nationalism, the Petitioner has preferred a representation dated 15-11-2021 to 2nd and 3rd respondents; to review the award conferred to the 5th Respondent for Exhibit P-1. A true copy of representation dated 15-11-2021 addressed to the 2nd Respondent is annexed herewith and marked as Exhibit P-2. A true copy of the representation dated 15-11-2021 addressed to the 3rd Respondent is annexed herewith and marked as Exhibit P-3. Howbeit, it became a futile attempt.
7. Upon perusing Exhibit P-1, some strata even expressed to Petitioner their suspicion against India. As if latches on the part in tackling the said pandemic; after the declaration of Exhibit P-1. Especially regarding the lack of preparatory groundwork before the national lockdown. Whether it was with scientific recourse or not.

8. In such a factual scenario, it is crystal clear that the 2nd to 4th Respondents have selected Exhibit P-1 with an ulterior motive to demean and disparage India. It is arbitrary, illegal, illogical, and devoid of rationale and hence the vivid violation of Articles 19(1) (a) and 21 of the Constitution of India. And the award is liable to be withdrawn.
9. Being highly aggrieved by this the Petitioner prefers this Writ Petition on the following amongst other Grounds:

#### GROUNDS

- A. Kerala Lalithakala Akademi was incorporated to conserve and promote visual arts: painting, sculpture, architecture, and graphics. Howbeit, it is explicit from Exhibit P-1 that it fostered and awarded artworks that demean and disparage India. Contrary to its objectives. Though it contains such an anti-national artistic expression, the 2nd to 4th Respondents has been awarded the Honourable Mention Award for Exhibit P-1 cartoon with hidden agenda, with malaise. With a sole motto, to spread hatred and contempt against the nation.
- B. The criteria adopted by the 2nd to 4th Respondent by declaring award to the Secretary of Kerala Cartoon Academy, the 5th Respondent is illegal, unreasonable and without any rationale. It, prima facie reveals the unholy nexus amid the 2nd to 4th Respondents; such factum is to be analyzed in the backdrop of the political scenario.

D. In an analogous scenario, the 2nd Respondent has issued direction to the 3rd Respondent to review its decision to select a cartoon depicting Bishop Franco Mulakkal, the prime accused in the sensational nun's rape case, like a rooster. When the 3rd Respondent conferred the annual award 2018-2019 to cartoon titled "*Viswasam Rakshathi*". Apposite to note that the 2nd Respondent suo moto issued direction to review on the very same day of selection.

Howbeit, the 2<sup>nd</sup> and 3<sup>rd</sup> Respondents kept a deaf ear to Exhibit P2 and Exhibit P-3 representations; even by shrugging of the foregoing public protest and agitation.

E. Petitioner perceived that the 3rd Respondent contended through media that Exhibit P-1 got selected by eminent juries comprised of well-known cartoonists. Kerala Lalithakala Akademi has nothing to do with the selection of a cartoon. If so, it is a vivid case of non-formulation of selection criteria. It is arbitrary and irrational. It manifests the sheer mismanagement of a public institution. Owing to the mismanagement and misappropriation of the public fund, the Governing Body of the Kerala Lalithakala Akademi is liable to be dismissed. More so, 2nd Respondent got fastened with vicarious liability for the said mismanagement.

F. Exhibit P-1 is to be analyzed in the backdrop that as of October 2021, India has administered more than a billion Covid-19 jabs since it started the vaccination drive in January of this year. Just within

278 days, as a 2nd country to achieve the mark. And with aims to fully vaccinate about a billion by the end of 2021.

More so, India is manufacturing two vaccines. And it is approved by World Health Organization. Furthermore, India has provided free vaccines to 94 countries.

In such a factual scenario; the announcement of the award even after achieving such a laudable goal is nothing but to demean and disparage India amid the global arena. More so, India had taken adequate and timely measures to curb the said pandemic, to a great extent; relatively. With the scientific backstop.

- G. The 2nd to 5th Respondent cannot avail the doctrine of chilling effect, contending chilling effect on the freedom of speech and expression, since it is prima facie demeans India and incorporated with anti-national artistic elements. Concerning Exhibit P-1, it casts a clear and imminent danger since it is breaching public order. People who belong to different strata started agitation against it. Such factum is to be analyzed in the backdrop of the extraordinary situation facing each and every nation.

The 2<sup>nd</sup> to 5<sup>th</sup> Respondent ought to have at least considered the magnitude of the health care professional who lost their precious lives while in furtherance of curbing pandemic.

- H. Even applying the American principles of '*clear and present danger*' test, '*imminent lawless action*' test or the doctrine of proportionality will not rescue Exhibit P-1 under the wings of

Article 19(1)(a) and 21 of the Constitution of India. Since; it is explicit that the 2nd to 5th Respondents with premeditation implemented hidden agenda by conferring the award to Exhibit P-1. Owing to the anti-national contents, it already caused to breach the public order. It cannot be term as mere criticism of the Government. The expression 'public order' connotes the sense of public peace, safety, and tranquillity.

- I. India has been manufacturing two vaccines. The global impact of the COVID-19 pandemic has resulted in an unprecedented level of public interest in vaccines. It includes a focus on the development of vaccines and their regulatory review and safety monitoring. Much of this coverage has taken place through mass and social media. Any adverse news about India will reduce the global market of Indian-made vaccines. Publication of any elements which demeans or disparage India in the global arena will hamper the marketability of the Indian vaccine.
- J. Upon integral of the afore factual circumstances, the imminent damages ought to have caused as an offshoot of Exhibit P-1 will be having much gravity. It cannot be fathomed. In such an eventuality the 2nd and 5th Respondents are jointly and severally liable for it. The 4th Respondents, the eminent jurist have fastened with liability for conferring award for such cartoon having anti-national artistic elements. More so, the 2nd Respondent is vicariously liable for it.

- K. As the day advances, Exhibit P-1 is disseminating by gathering utmost momentum. So, the immediate intervention of this Hon'ble Court is inevitable. Or else it will cause far-reaching adverse impact by and large. In, multitude spheres.

RELIEF

For the foregoing grounds and such other grounds to be urged during the time of the hearing, it is most humbly prayed that this Hon'ble Court may be pleased:

- i. to call for the entire records pertaining to the case of Petitioner and all action taken by the 2<sup>nd</sup> and 3<sup>rd</sup> Respondent on Exhibit P-2 and Exhibit P-3, the Representation submitted by the Petitioner;
- ii. to issue a Writ of Mandamus or any other appropriate Writ, Order or Direction declaring that Exhibit P-1 contain elements to demean or disparage India;
- iii. to issue a Writ of Mandamus or any other appropriate Writ, Order or Direction directing the 3<sup>rd</sup> Respondent to withdraw Honorable Mention Award for cartoon conferred on 5<sup>th</sup> Respondent forthwith;
- iv. to issue a Writ of Mandamus or any other appropriate Writ, Order or Direction directing the 3<sup>rd</sup> Respondent to consider and dispose Exhibit P-2 and Exhibit P-3 representations to review the awards to the limited extent of Exhibit P-1 forthwith;
- v. to issue a Writ of Mandamus or any other appropriate Writ, Order or Direction directing Kerala Lalithakala Akademi to dismiss the



present governing body for mismanagement and misappropriation of public funds to foster anti-national artistic elements;

- vi. to pass any other order or orders which are deemed fit and proper in the factual circumstances of the case.

Dated this the 18<sup>th</sup> day of November 2021.

Susmith Kumar T.D

Counsel for the Petitioner

Deepthi K Vasudevan

Joint Chairperson,  
Haindaveeyam Foundation.