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**BEFORE THE HONOURABLE HIGH COURT OF
KERALA AT
ERNAKULAM**

OP. No: 9552/2002

N.Krishnaprasad
Petitioner

Vs.

State of Kerala & another
Respondents

**COUNTER AFFIDAVIT ON BEHALF OF THE
RESPONDENTS**

I, Rajan P.Abraham, aged 52 years, S/o Late Shri.Itty Abraham, residing at Thiruvananthapuram do hereby solemnly affirm and state as follows:

1. I am the Additional Secretary, General Administration Department, Secretariat, Thiruvananthapuram and I am conversant with the fact of the case as disclosed from the relevant files. I am swearing to this Affidavit on behalf of the respondents 1 & 2. All the averments contained in the OP are denied save those specifically admitted herein.



2. The main prayer in the OP is to declare that the orders Ext.P1 and P2 are unconstitutional and have no force of law having been approved and issued by a cabinet, which has not taken the Oath in the terms of the 3rd Schedule of the Constitution of India. In other words, the petitioner is challenging two Government orders collaterally in the light of the pleading that the members of the Cabinet have not taken the Oath as contemplated by the Constitution of India and hence the two Government orders are constitutionally invalid.

3. As a matter of fact, before delving deep into the factual intricacies alleged by the petitioner, some basic facts are necessary for the adjudication by this honourable court. The Constitution of India has envisaged a solemn affirmation in the form of an Oath to be administered, before a Minister assumes the office. The oath aforesaid reads thus:

"I, _____ do swear in the name of God
 Solemnly
 affirm that I will bear true faith and allegiance to the constitution of India as by law established, that I will uphold the sovereignty and integrity of India, that I will faithfully and conscientiously discharge my duties as a Minister for the State

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of Kerala and that I will do right to all manner of people in accordance with the Constitution and the law without fear or favour affection ^{or} ill will".

The Malayalam translation of the oath of office, in force from 1967 onwards reads thus;

സത്യപ്രതിജ്ഞ

----- എന്ന ഞാൻ നിയമപ്രകാരം
ഘേർപ്പെടുത്തപ്പെട്ട ഇന്ത്യൻ ഭരണഘടനയോട് യഥാർത്ഥമായ
വിശ്വാസവും, കൂറും കാണിക്കുമെന്നും, ഇന്ത്യയുടെ
പരമാധികാരവും അവസ്ഥയും നിലനിർത്തുമെന്നും, കേരള
സംസ്ഥാനത്തെ മന്ത്രി എന്ന നിലയിൽ എന്റെ കർത്തവ്യങ്ങൾ
വിശ്വസ്തതയോടും, മനസ്സാക്ഷിയോടും കൂടി നിർവ്വഹിക്കുമെന്നും,
ഭരണഘടനയും നിയമവും അനുസരിച്ച് ഭീതിയോ, പ്രീതിയോ,
സ്നേഹമോ, വിദ്വേഷമോ കൂടാതെ എല്ലാവിധത്തിലുള്ള
ആളുകളോടും നീതി കാണിക്കുമെന്നും ദൃഢപ്രതിജ്ഞ ചെയ്യുന്നു.

4. As per the Malayalam translation, the meaning attributed is 'ഭീതി' for "fear" 'പ്രീതി' for "favour", 'സ്നേഹം' for "affection" and 'വിദ്വേഷം' for "ill will". But the petitioner contends that for the word favour, it should be 'പക്ഷഭരണം' and for the word affection, the Malayalam word should be

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'പ്രീതി' The meaning given for the word "favour" as per the NBS English Malayalam Dictionary of C.Madhavan Pillai is 'ആഭിമുഖ്യം, ദാക്ഷിണ്യം, പ്രീതി, അനുഗ്രഹം, ദയാപരമായ കൃത്യം, അനുകൂല്യം, സഹായം, അടുത്തത് (Eg:- awaiting your favour), 'പക്ഷഭേദം' etc. and 'affection' ദയ, സ്നേഹം, സ്നേഹം, പ്രീതിവാൽസല്യം, പ്രേമം, യാചന, ഗുണം, വാസന, വികാരം, ഭാവം, വിക്രിയ etc. While translating the Oath for the first time in Malayalam in the Year 1967, Government have used the word 'പ്രീതി' for 'favour' and "സ്നേഹം" for affection. This translation is correct and valid and in accordance with the Constitution of India. At any rate, the solemn affirmation of the Oath of Office which is consistently being followed from 1967 onwards is constitutionally, legally and factually correct. The attempt of the petitioner is to challenge two government orders collaterally on the ground that the Council of Ministers have not taken the Constitutionally prescribed Oath of office. There is absolutely no merit in the contentions raised in the OP.

5. Regarding the averments in para 1 of the OP, it is respectfully submitted that Ext.P1 order has been issued by the State of Kerala imposing some additional economy measures

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to overcome the financial crisis of the State. 28 items of additional economy measures are imposed by the said order, which include restrictions of certain benefits enjoyed by the Government servants. Ext.P2 order has been issued by the State describing the measures for dealing with the strike called for by the government employees. It is respectfully submitted that the two government orders aforesaid are legally valid and issued in public interest and in the exigencies of public administration.

6. Regarding the statements in para 2 of the OP, it is submitted that, the Government are not aware of the name or the existence of an organization called Secretariat Iykavedi. The Ministry which has sworn on 17-05-2001 under the leadership of Shri.A.K. Antony, had taken the Oath of office strictly in accordance with the Oath prescribed in the 3rd schedule of the constitution of India. The same is submitted from the Governor's Secretariat and the Oath was taken by the Ministers in Malayalam which is a true translation of the Oath described and prescribed in the 3rd Schedule of the Constitution of India.

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Earlier in the past, the oath was taken in English. It was during the year 1967, a Malayalam translation was necessitated. Later, the Malayalam translation is more used than the English version. The allegation that there is no word corresponding to favour in Malayalam version of the Oath is absolutely incorrect. The different words used for favour as per the dictionary are പ്രീതി, പ്രശംസ etc. The Government have used the word പ്രീതി in the Oath, for the word favour, to have a rhythm in the language used in the Oath. The reckless allegation of the petitioner that the Oath prescribed denotes an affirmation without love is wholly baseless and malafide. On a close reading of the Oath taken in Malayalam, it will be revealed that there is nothing wrong so far as the letter and spirit of the one prescribed in the constitution is concerned.

7. The averments in para 3 of the OP are without any basis. It is submitted that no deviation has been made by the Government with regard to the preparation of Oath in Malayalam. The Malayalam translation is the correct and true translation of the original, prescribed in the constitution of India. As submitted



earlier, the allegation of the petitioner that the Oath taken by the Ministers said that they will act without love is only an imagination of the petitioner for dubious reasons.

8. Regarding the averments paras 4 to 6, it is submitted that the discussions the Government had with Asian Development Bank, the Central Planning Commission etc. are made in the best interest of the State in order to tide over the prevailing financial crisis

9. Regarding the averments paras 7 & 8, it is humbly submitted that allegation that the India Service Officers of the State are ignorant and indifferent in the drafting of the Oath is totally incorrect. The Oath in Malayalam had been prepared years ago, on the application of mind by the experts in the field.

10. There is absolute no merit in the grounds A & B in the original petition. Exts P1 and P2 are constitutionally and legally valid and has been issued in the prevailing circumstances

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11. On an overall appreciation of the matter, it is crystal clear that the OP is devoid of merits and is an abuse of the process of the court, which entails dismissal with exemplary costs.

All the facts stated above are true to the best of my knowledge, information and belief.

Dated this the 28th day of June, 2002.



Deponent

Solemnly affirmed and signed before me by the deponent whom I know on this the 28th day of June, 2002 at Government Secretariat, Thiruvananthapuram.



P. S. Sreekumar
Under Secretary
GrAD (Political)
Govt. Secretariat

True Copy

Sr. Govt. Pleader