

(1989) 12 KL CK 0049
In the High Court Of Kerala
Case No : O.P. No. 2240 of 1988 N

Athammanakath Abdul Kadar and Others	APPELLANT
Vs	
State of Kerala and Others	RESPONDENT

Date of Decision : 21-12-1989

Acts Referred:

Kerala Police Act, 1960 — Section 18
Motor Vehicles Act, 1939 — Section 74
Motor Vehicles Act, 1988 — Section 115

Citation : (1989) 12 KL CK 0049

Hon'ble Judges : Chettur Sankaran Nair, J

Bench : Single Bench

Advocate : P.V. Jyothiprasad and P. Bhavadasan, for the Appellant; E. Thankappan, Government Pleader, for the Respondent

Judgement

Chettur Sankaran Nair, J.—Petitioners businessmen with commercial premises on the Main Road, Ponnani, seek a writ or appropriate direction, to restrain the Respondents from implementing "one way traffic" regulation on the road from Edappal to Puduponnani. According to Petitioners, if one way traffic is introduced, vehicles will have to travel an additional distance to reach their destination, as the portion covered by the restriction is long. Section 18 of the Kerala Police Act is violated, submits Petitioners.

2. In answer, Respondents submit that the road is very narrow, and cannot be widened, due to the presence of innumerable buildings and the lie of the land. The width of the road at a particular junction is only 3.70 meters, and the approximate width of a heavy vehicle is 1.80 meters. Thus, if vehicles are to cross or if one vehicle is parked, the entire traffic will come to standstill leading to chaos, on a busy road, submits Government Pleader. Besides, it is said that a large number of lorries and buses ply along this road and that traffic jams had become a regular feature.

3. u/s 18 of the Kerala Police Act, the District Magistrate has "powers to make

rules for regulation of traffic and for preservation of order in public places" (emphasis supplied). Section 115 of the Motor Vehicles Act, 1988, corresponding to Section 74 of the Motor Vehicles Act, 1939, also contains similar provisions. The power under the Police Act is much wider. Section 115 confers "power to restrict the use of vehicles". But, Section 18 comprehends not only regulation of traffic, but also "preservation of order in public places" (emphasis supplied). Preservation of order is a much larger concept, than mere regulation of traffic. Even the fundamental right to move freely under Article 19, is subject to reasonable restrictions. Such power should be available to administrative authorities to deal with problems that may arise from time to time. It may be that owing to a contingency such as a riot, a procession, an accident, a fire, or natural causes, free flow of traffic or preservation of order in public place may become difficult. In such a situation, a power more than the power to regulate traffic simplicitor will have to be exercised by the executive authorities who have first hand knowledge of the problem and whose responsibility it is to preserve order and regulate traffic. Such power is available u/s 18 of the Kerala Police Act. The section does not confer a right on the citizen, and he has no right to insist that regulation should be in a particular way or that there should be no regulation. True, convenience of the public also must be taken into account by the authority taking a decision. In *Ramakrishnan and Ors. v. Executive District Magistrate, Trichur and Anr.* AIR 1964 K.L.J. 292 noticing the decision of the Supreme Court in *State of U.P. Vs. Manbodhan Lal Srivastava, and Major U.R. Bhatt Vs. Union of India (UOI)*, this Court found that Section 18 does not confer a right on a citizen.

4. Power u/s 18 of the Kerala Police Act, must be exercised in consultation with municipal or local authorities. Consultation, as is well settled, means effective consultation. But, that is not to say that consultation implies concurrence. Even in the context of provisions of the Constitution, consultation is not understood to mean concurrence, as held by the Supreme Court in *S.P. Gupta Vs. President of India and Others, and Union of India (UOI) Vs. Sankalchand Himatlal Sheth and Another, .* The civic bodies are expected to be aware of the local problems and their views are entitled to be considered. But, the fact that the municipality did not concur with a proposal will not make an order u/s 18 invalid.

5. Apart from powers, a duty is cast on the authority u/s 18, to regulate traffic of all kinds, "to prevent danger, obstruction or inconvenience to public" (emphasis supplied). Thus there is an onerous responsibility on the authority to "prevent danger, obstruction or inconvenience to public". If the authority u/s 18, on reasonable material, comes to the conclusion that regulation is necessary, absence of concurrence by the municipal authorities will not vitiate the decision. The decision taken in the instant case by the Respondents cannot be challenged.

6. Nonetheless, the authorities should consider the question, in greater detail. Learned Counsel for Petitioners invited my attention to the recommendations (Ext. P-8) of the Sub Collector, which deserves consideration. According to him,

traffic moves into the town from Edappal end during mornings. He has suggested that oncoming traffic from Edappal towards the town in the morning may be allowed entry and that entry from that end could be prohibited in the evening, when there is an outflow of traffic towards Edappal. The Respondents will take into account the recommendations of the Sub Collector, as also views of the municipality, Petitioners or others, to the extent possible, while ensuring that flow of traffic is regulated so as to avoid danger to the public or to vehicles. Such decision will be taken within four months from today. Till then, the existing arrangement in force will continue. If on consideration of the matter, the Respondents feel that variation is called for, they are free to make such variations, as they consider necessary.

With these directions, writ petition is disposed of. No costs.

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