
(2000) 12 KL CK 0020
In the High Court Of Kerala
Case No : O.P. No. 22623 of 2000

Charly

APPELLANT

Vs

K.T.D.C.

RESPONDENT

Date of Decision : 16-12-2000

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2001) 1 RCR(Civil) 632 : (2001) 1 RCR(Rent) 228

Hon'ble Judges : M. Ramachandran, J

Bench : Single Bench

Advocate : K. Jaju Babu, for the Appellant; B. Gopakumar, for the Respondent

Final Decision : Dismissed

Judgement

M. Ramachandran, J.—Mr. Jaju Babu, advocate for the petitioners, has raised an issue of general importance in the above Original Petition. It concerns about the restrictions that had been brought about by a public sector Corporation in the matter of parking of vehicles of third parties in its premises. The restriction is brought about by introducing parking fee at notified rates. The submission is that such conduct is illegal and interferes with the rights of citizens.

2. The first respondent-Kerala Tourism Development Corporation (KTDC) -owns a shopping complex in the Marine Drive of Cochin. The principal occupant of the building is the State Bank of India and it is stated that there are 34 shops functioning in the ground floor of the building. The building and the surrounding area owned by the Corporation, measures about one acre and twenty cents. It is also one of the most busy areas in the city. On three sides of the building there is sufficient space for parking about 50 vehicles at a time.

3. The building was constructed some time in 1979 and the petitioners submit that till such time Ext. P3 had been issued there was no parking fee levied from any persons for using the area. The first petitioner is a citizen of Cochin and he holds an account in the branch of State Bank of India housed in the premises.

The second petitioner is an Association of Shop owners in the shopping complex and the third petitioner is one of the occupants of the shops that has been let out by the first respondent-Corporation. The petitioners have espoused their individual causes as also the cause of the general public, and contend that the proceedings of the first respondent whereunder there was proposal to levy parking fee was altogether illegal and without jurisdiction. The first petitioner submits that his rights for banking transactions is interfered with, as even for a short halt, he will have to pay a heavy fee. As far as the others, the contention appears to be that the customers will keep off the place because of the unfriendly attitude, and they will have to languish with lean patronage, which will affect their very existence.

4. The first respondent had filed a counter affidavit and they had produced Ext. R2(a), the tender notification inviting tenders for collecting parking fee. Ext. R2(b) is an agreement that has been executed by the successful tenderer, for a period of one year from 4.8.2000. The rate of fee prescribed is for a duration of three hours period and the fee payable was Rs. 2/- for two wheelers; Rs.3/- for three wheelers, Rs. 5/- for car, Rs. 10/- for light vehicles and Rs. 20/- for heavy vehicles. Double the amount has to be paid for parking the vehicles beyond three hours.

5. The petitioners have invited the attention of [his Court generally to the inconvenience faced by the public in the matter of parking of vehicles in the city. As a customer of the third respondent-Bank, the first petitioner feels that the introduction of parking fee was illogical. The second and third petitioners also submit that it is not in the larger interest of the Corporation itself.

6. In order to project the attack on the basis of legal contentions, counsel for the petitioners, also had invited my attention to the provisions of the Kerala Building Rules as also the Kerala Municipal Building Rules. He had also referred to certain decisions in support of his contention that the demand brought about, evidenced by Ext. P3 was unsustainable.

7. The argument of the petitioners is that it is a statutory duty of the respondent-corporation to provide for parking facility in the premises. This had been provided and this facility had been continuously used by the general public, including the shop owners. It is submitted that a change in the system had been brought about with ulterior intention and the 6th respondent had been inducted surreptitiously and as a matter of fact the shop owners and the customers were being harassed. He referred to R. 20 of the Kerala Building Rules which required that parking area as prescribed has to be mandatorily provided at the lime of construction. This should be there even after the building is commissioned. He had also referred to a decision reported in *Kalpaka Amma v. Muthurama Iyer* 1994 (2) KLT 424. It had also been pointed out that if the Corporation was insistent in its proposal, at least a portion of the space in the immediate vicinity of the shops may be left as a free zone. An examination of R. 20 of the Kerala Building Rules shows that even though there is specific provision for parking

space to be mandatorily made available at the time of construction, there is nothing more in the rule which prohibits a fee being charged in respect of the space that has been used.

8. Counsel for the respondents also took a stand that the Building Rules which came into force in 1984 cannot have application in the instant case, since the building in question was constructed in 1979 and there was no stipulation for parking area at that time. They, therefore submit that the contention on the basis of the said Rules was misconceived. As far as the decisions of this Court, it had been contended that they were rendered in a totally different context. An examination of R. 20 of the Kerala Building Rules shows that even though there is specific provision for parking space to be mandatory made available at the time of construction, there is nothing more in the rule which prohibits levying of fee in respect of the space that has been used. Referring to 1994 (2) KLT 424, the counsel for the respondents submit that it was an authority for the principle that in the case of lease of a building it takes in the sites unless it is excluded. It was a case where a leased out building which stood demolished, but the Court had held that there was no automatic termination of lease and destruction of the building did not put an end to the land owner - tenant relationship. Referring to the decision reported in 1991 (2) KLJ 579, the respondents submitted that it had no relevance to the claim of the petitioners that they were entitled to user of the properties of the Corporation as of right.

9. When the proposal was made for levying a fee, the petitioners had approached this Court by filing O.P. No. 18300/2000. At that time, this Court had directed that the matter should have a fresh look and the pending representation was directed to be disposed. Ext. P3 came to be passed in the above said circumstance. The petitioners highlight that the reasons pointed out in Ext. P3 cannot have any legal basis. The justification of the Corporation for introducing the parking fee as could be seen from Ext. P3, are as follows:

"You are aware that GCDA is also levying parking fee for the vehicles parked at their place nearby. Levying parking fee for all vehicles in the KTDC area is also necessary, considering the safety of the premises as well as to stop unhealthy practices like drinking alcohol, smoking etc., being carried out in the vehicles parked for hours together in the premises without any authority."

10. Shri. Jaju Babu points out that this was totally unrealistic, if not a lame excuse. Persons visited the shopping complex for business purpose and it requires only a few minutes of work and there are only very few persons who may intend to use it as a parking place. Collection of parking fee in respect of such individuals would create an allergy in those persons for coming to that area. But the issue is whether by all these, the decision of the respondent could be faulted or annulled.

11. The Corporation may be correct when they point out that there are several instances of persons coming and parking their vehicles for hours together which

may create difficulties for them. Even if the reasons in Ext. P3 are not adequate for sustaining the order, counsel for the Corporation Mr. B. Gopakumar, submits that the Corporation being a legal person, it was within their rights to utilise the properties that were under their control to the best possible use. When there are sufficient space available in its disposal the respondent submits that it may not be possible for the petitioners to claim that only for the reason that they are tenants of the building they have a say in the policy that may be decided by the Corporation. The Corporation also has not given them any assurance that by locating the shops, adequate custom will be ensured, or that needs of their customers will be taken care of. It is also submitted that neither the shop owners nor a member of the general public have any vested right to insist that the service of providing parking should be free. He has also pointed out that sufficient safeguards had been taken when the agreement had been executed with the tenderer that in respect of vehicles which are nominated there was stipulation that no fee is payable and this included vehicles of the shop keepers. The group of shop owners and officers and staff members of the Bank are exempted from liability for payment of parking fee for their vehicles. In respect of public, the respondent-Corporation submits that there was no legal right for them to insist that the facility of parking may be made available to them without any restriction whatsoever, whether they visit the shops or come to the area on their business. It was also submitted that the funds which were generated could be profitably be used to keep the premises clean and also for providing for essential needs connected therewith. Dealing with the request for keeping certain areas as free zone, the counsel for the Corporation submits that this would be impractical. An orderly system demands that when an area is cordoned off and permission is granted only on payment of a prescribed fee, to divide the area into separate blocks as payment zone and free zone would only lead to unnecessary disputes, difficult to be resolved by the persons in whose favour the rights had been framed out.

12. When the larger question is whether the levy of fee is within the powers of the Corporation or not, it was submitted that when the Court comes to a conclusion that the Corporation was within its rights to insist on payment of parking fee, nothing further remained for contending that any third party had any right to dictate terms as to the method and manner the premises should be utilised.

13. I see much force in the contentions of the first respondent. It may be that for about two decades there was no system of payment of parking fee. It may also be true that there is no sufficient parking areas available in the Cochin city, owners of the vehicles will have to go round searching for a slot to park their vehicles. The proliferation of the vehicles nevertheless is not a reason for the first respondent Corporation to leave its premises free for all time. For the only reason that it is a public sector enterprise, it could not be subjected to any special disability. They can utilise their properties for productive purposes, which are not against public policy. Security to parked vehicles is definitely a good

reason to be projected. A citizen or a tenant cannot insist that he should get free parking space, and at his discretion. No law stipulates for providing this privilege. Fee for parking cannot be termed as objectionable. When a local authority is permitted to levy such fee, it cannot be contended that a Corporation cannot adopt such a practice. I hold that it will be a competent for the first respondent to levy a fee. The revenue generated at present is stated to be Rs.15,000/- per month. Perhaps this may be a figure that will be in excess of the returns by venturing construction and letting out the premises. The change in time do authorise the Corporation to adapt itself to the new systems whereunder they have to work efficiently and as economically viable unit. Exercising powers under Art. 226 of the Constitution, this Court has no jurisdiction to give instructions to the Corporation as to the manner in which it is to regulate its business. Neither the shop owners nor the public can put a demand that they may be given a right to decide matters which are exclusively within the competence of the first respondent.

14. No submission was made by the counsel for the petitioners that it was incompetent for the Corporation to pass such orders or that there was no justification for them to impose such a levy. Therefore, I am constrained to hold that the relief prayed for in this Original Petition cannot be granted.

15. It was lastly submitted that the contract that had been awarded in favour of the 6th respondent was arbitrary. If strictly viewed, this will not come within the purview of the enquiry in the O.P. It was conceded that there was only one tender received in response to the notification and so he was awarded the right for levying the fee. It may appear rather strange, but I am not expressing any opinion on this point, since this was not under direct challenge.

16. As the interests of the occupiers had been looked after well and as there is powers reserved with the Corporation permitting vehicles to be parked at their discretion, it will be within the province of the Corporation to make further regulations as may be required to meet special contingencies.

The Original Petition is therefore dismissed. There will be no order as to costs.