

(2021) 03 KL CK 0120

In the High Court Of Kerala

Case No : Writ Petition (C) No. 33405, 33935 Of 2019

Gopalan And Ors

APPELLANT

Vs

Vellangallur Gramapanchayath And Ors

RESPONDENT

Date of Decision : 10-03-2021

Acts Referred:

Kerala Police Act, 2011 — Section 72
Motor Vehicles Act, 1988 — Section 2(35), 117
Kerala Panchayat Raj Act, 1994 — Section 225, 227, 228

Citation : (2021) 03 KL CK 0120

Hon'ble Judges : N. Nagaresh, J

Bench : Single Bench

Advocate : V.M Krishnakumar, Maya M, T.B Hood, M Isha, Amal Kasha, K.M Rashmi

Final Decision : Disposed Of

Judgement

1. The petitioner in W.P.(C) No.33405/2009 is an auto-taxi owner/driver. In the writ petition, the petitioner seeks to command the respondents to ensure that Ext.P5 decision of the Traffic Regulatory Committee is implemented providing parking space to auto taxis in the place determined in Ext.P5 decision. The petitioners in W.P.(C) No.33935/2019 are autorickshaw drivers/owners. They seek to quash Ext.P5 and to declare that the Traffic Regulatory Committee as per Section 72 of the Kerala Police Act is not empowered to fix parking area such as auto stand, bus stand and other public/private parking places.

2. The dispute is between drivers/owners of 4-wheeler auto taxis and the drivers/owners of 3-wheeler autorickshaws, and relates to allocation of parking place for auto taxis.

3. Konathukunnu on Thrissur-Kodungallur State Highway is a main junction in the Vellangallur Panchayat. It is stated that about 140 autorickshaws and 13 auto taxis are operating from Konathukunnu junction. The Panchayat does not own any parking lots of its own. Autorickshaws have been parking on the western

side of the State Highway.

4. Disputes arose regarding parking of auto taxies. The Panchayat convened a meeting in November, 2017 and allowed parking of auto taxies on the northern side of Konathukunnu junction, opposite to Thrissur bus stop.

5. The Traffic Regulatory Committee would state that owners of auto taxies preferred a representation before the Chairman of the Committee seeking parking facility on the eastern side of the Kodungallur-Thrissur road in an area where tempo vans were earlier parked. Auto taxi owners filed W.P.(C) No.9551/2019 and this Court directed the Traffic Regulatory Committee to take appropriate decision on their representation.

6. Ext.P1 minutes of a subsequent meeting convened by the President of Vengallur Panchayat on 27.03.2018 would show that 3 auto taxies were permitted to be parked in front of the Church on Vengallur-Mathilakam route and in addition, 3 auto taxies were permitted to be parked in front of the house of one Aravindan. The said meeting was convened by the President and the participants in the meeting included members of Panchayat and drivers/owners of auto taxies and autorickshaws.

7. Pursuant to the directions contained in W.P.(C) No.9551/2019, the Traffic Regulatory Committee convened a meeting on 02.11.2019 in which some of the drivers/owners of the vehicles participated. The Inspector of Police and Assistant Motor Vehicle Inspector inspected the tempo parking space on the southern side of Konathukunnu junction. They reported that the number of tempo vans being parked in that parking space is minimal. Accordingly, the meeting of the Traffic Regulatory Committee held on 02.11.2019 decided to propose tempo van parking space at Konathukunnu junction as the parking area for auto taxies also. Ext.P5 would also show that it is a proposal made by the Traffic Regulatory Committee.

8. The petitioner in W.P.(C) No.33405/2019 would contend that Traffic Regulatory Committee is constituted under Section 72 of the Kerala Police Act to provide and regulate the traffic in public road within the areas of Local Self Government Institutions. Therefore, Ext.P5 decision taken by the Committee is liable to be implemented providing parking space to auto taxies in the place determined in Ext.P5 decision. Ext.P5 has not been implemented so far, contended the petitioner.

9. The petitioners in W.P.(C) No.33935/2019, on the other hand, would contend that the Traffic Regulatory Committee does not possess powers to make any recommendation as contained in Ext.P5. Ext.P5 is therefore ultra vires and therefore is liable to be quashed.

10. The issue arising in these writ petitions therefore is whether the Traffic Regulatory Committee constituted under Section 72 of the Kerala Police Act, 2011 has the power to decide the locations of three wheeler and four wheeler

taxi stands. The powers of Local Self Government Institutions under the Panchayath Raj Act and Road Traffic Authorities under the Motor Vehicles Act in this field also arise for consideration incidentally.

11. Chapter VIII of the Motor Vehicles Act, 1988 deals with Control of Traffic and Section 117 therein makes provision for parking places and halting stations. Section 117 of the Motor Vehicles Act, 1988 reads as follows:-

"117. Parking places and halting stations - The State Government or any authority authorised in this behalf by the State Government may, in consultation with the local authority having jurisdiction in the area concerned, determine places at which motor vehicles may stand either indefinitely or for a specified period of time, and may determine the places at which public service vehicles may stop for a longer time than is necessary for the taking up and setting down of passengers."

Section 117 thus authorises the State Government or any authority authorised by the State Government, to determine places at which:

- (i) Motor vehicles may stand indefinitely
- (ii) Motor vehicles may stand for a specified period and
- (iii) Public service vehicles may stop for a longer time than is necessary for taking up and setting down the passengers.

12. 'Public Service Vehicle' is defined under Section 2(35) of the Act, 1988, as any motor vehicle used or adapted to be used for the carriage of passengers for hire or reward. The autorickshaws and Auto taxis involved in these writ petitions are public service vehicles used for the carriage of passengers for hire. The auto stand/s which is/are under dispute in these writ petitions will fall under Serila No. (iii) referred to hereinabove. Therefore, the State Government or any authority authorised by the State Government in that behalf, has power under Section 117 of the Motor Vehicles Act to determine the place or places at which the autorickshaws/auto taxis may halt for a longer time than necessary for taking up passengers.

13. Chapter XX of the Kerala Panchayat Raj Act, 1994 deals with public safety, convenience and health. Section 227 of the Act contained in Chapter XX provides for public halting places. Section 227 reads as follows:-

"227. Public landing places and cart-stands etc. - Subject to such rules as may be prescribed, the Village Panchayat may -

- (a) provide public landing places, halting places and cart-stands (including stands for animals and vehicles of any description) and levy fees for their use; and
- (b) where any such place or stand has been provided, prohibit the use for the same purpose by any person, within such distance, thereof, any public place or the side of any public road as the panchayat may, subject to the control of the

Regional Transport Authority, specify:

Provided that the previous sanction of the Regional Transport Authority shall be obtained before any stand or halting place for motor vehicles is opened."

A close reading of Section 227 would show that the provision is intended to enable the Grama Panchayats to provide public landing places, halting places and cart-stands and levy fees for their use. An autorishaw stand or Taxi stand, where only public service vehicles and that too of a particular description, are permitted to park/halt, cannot be treated as public landing place or halting place, as contemplated by Section 227.

14. In exercise of the powers conferred by Section 227, 228 and 225 of the Act, 1994 the Government of Kerala as prescribed the Kerala Panchayat Raj (Landing places, Halting places, Cart stands and other vehicle stands) Rules, 1995. Though Sections 227 and 228 of the Act, 1994 only deals with public (i) landing places, (ii) halting places (iii) cart stands and (iv) private cart stands, the rules made under Sections 227 and 228 are seen to have been included 'other vehicle stands' also. Then the question will be whether the Autorikshaw/Auto Taxi stands permitted by the authorities at various road side areas in the State would fall under the term 'other vehicle stands' contemplated under the Rules, 1995.

15. The Rule 3 and 4 mandate that Village Panchayat shall, if it intends to provide any public landing place, halting place, cart stand or other vehicle stand, publish a notice requiring the public to raise objections and the Village Panchayat shall consider objections received. Rule 5 provides that Village Panchayat shall obtain previous sanction of the Regional Transport Authority before opening any public stand or halting place to motor vehicles.

16. Rule 6 provides that a road or land abutting the road shall not ordinarily be declared as public halting place or cart stand. Rule 7 provides that a Village Panchayat may, if it has provided public landing place, halting place or cart stand, prohibit within a distance fixed by it, using of any public space or side of a public road, by any person for the same purpose. Rule 9 enables the Village Panchayat to levy fees for the use of a public halting place or cart stand. The maximum fee for a period not exceeding 24 hours prescribed for autorickshaws is `2/- if no amenities are provided and `3/-, if amenities are provided. Rule 14 mandates that a Village Panchayat shall provide facilities including rest room for passengers, toilets and urinals, drinking water facility, canteen, clock room etc.

17. A reading of Sections 227 and 228 and the Kerala Panchayat Raj (Landing Places, Cart Stands and other vehicle stands) Rules, 1995 would show that the provisions are intended to provide for and regulate public parking places for motor vehicles which are to be open for all motor vehicles of particular categories (such as hand-cart, rickshaw, cycle, cycle rickshaw, autorikshaw, mini bus, tempo, trekker, mini lorry etc.) including private vehicles. The provisions under Rules 9 and 14 requiring the Village Panchayats to provide amenities to passengers and levy fee in the public halting places would make it clear that

Sections 227 and 228 of the Panchayat Raj Act and the Kerala Panchayat Raj (Landing Places, Halting Places, Cart Stands and other Vehicle Stands) Rules, 1995 are not intended to regulate autorickshaw stands and Taxi stands which are exclusively meant to demarcate picking points for public service vehicles.

18. The question then would be, who is the competent authority to regulate autorickshaw stand/Auto Taxi stand, which is the subject matter in these writ petitions. Section 117 indeed empower State Government or any authority delegated by the Government to determine the places at which public service vehicles may stop for a longer time than is necessary for the taking up and setting down passengers. However, the State Government or delegated authorities can do so only after consultation with the local authority having jurisdiction in the area concerned.

19. Section 72 of the Kerala Police Act, 2011 which is a subsequent legislation also provides that Traffic Regulatory Committees formed under the Act is empowered to issue orders "not inconsistent with the provisions of the Motor Vehicles Act, 1988, the Kerala Road Safety Act, 2007 and the rules made thereunder" for preventing inconvenience to the general public. As per Section 72, such orders regulating the manner and time of traffic of all kinds in public places, shall be complied with by the Government Department concerned, the officers and the general public. The powers given to the statutory Traffic Regulatory Committee to regulate traffic would include power to demarcate Autorickshaw/Auto Taxi Stands also.

20. It is notable in this regard that the Chairman of the Traffic Regulatory Committee shall be the head of the Local Government Institutions. Nominees of the District Magistrate, the District Police Chief, the Regional Transport Officer and the Executive Engineer, PWD would be members of the Committee. The Regional Transport Officer under the Motor Vehicles Department has been made a member of the Traffic Regulatory Committee, so as to exclude conflicting decisions in matter falling under Section 117 of the Motor Vehicles Act, 1988 and Section 72 of the Kerala Police Act, 2011.

21. On a harmonious reading of the provisions contained in the Motor Vehicles Act, 1988 and the Kerala Police Act, 2011 it has to held that the Traffic Regulatory Committees chaired by the heads of the Local Government Institutions constituted under Section 72 of the Kerala Police Act, 2011 will be competent to decide, locate and demarcate Autorickshaw/Auto Taxi stands in their respective territorial jurisdiction.

22. Ext.P1 decision [in WP(C) No. 33935 of 2019] has been taken on 27.03.2018 at a meeting convened by the Panchayat President in which representatives of trade unions and taxi vehicle owners and members of Panchayat participated. Any decision taken in such a meeting will not have statutory support. The decision contained in Ext.P5, however is seen taken on 02.11.2019 by the Traffic Regulatory Committee chaired by the Panchayat President and has statutory

support from Section 72 of the Kerala Police Act, 2011. 23. In the circumstances, respondents 1 to 3 in W.P. (C) No.33405/2019 are directed to implement Ext.P5 decision of the Traffic Regulatory Committee at the earliest. In view of the findings stated afore, no relief can be granted to the petitioners in WP(C) No.33935/2019. It is made clear that the Traffic Regulatory Committee will be at liberty to review their decision at any future date, if requirements of traffic regulations in the area so warrant.

The writ petitions are disposed of as above.