
(1973) 11 KL CK 0008

In the High Court Of Kerala

Case No : O.P. No's. 5373, 5442 and 5489 of 1971

K.G. Sukumaran and Others

APPELLANT

Vs

The Executive Engineer, National Highway, Cochin Division

RESPONDENT

Date of Decision : 19-11-1973

Acts Referred:

Constitution of India, 1950 — Article 226

Kerala Municipal Corporation Act, 1961 — Section 210

Citation : AIR 1974 Ker 220

Hon'ble Judges : P. Subramonian Poti, J

Bench : Single Bench

Advocate : K.K. Usha and M.K. Ramadevi, for the Appellant; Govt. Pleader, for the Respondent

Final Decision : Allowed

Judgement

P. Subramonian Poti, J.—The petitioners in all these three cases are persons engaged in the business of displaying advertisements and publicity materials on boards and other suitable media. They are paying advertisement tax in respect of the advertisements displayed by them within the limits of the Cochin Corporation. The places in which such advertisements are exhibited are notified by the petitioners to the Corporation in advance and it is said that previous approval is also being obtained from the Corporation.

2. The petitioners aver that some of their advertisement boards are erected on the sides of important road junctions but away from the National Highway. According to the petitioners these boards will not in any way cause impediment or obstruction to the traffic nor would it be objectionable on any other account. This business the petitioners have been carrying on for some years now. The advertisement boards are erected either in places owned by private parties or on lands, which, according to the petitioners, are properties vested in the Cochin Corporation. In regard to the latter the Corporation had demanded Poramboke occupation fees. This was challenged by the petitioner in O. P. No. 911 of 1969.

In supporting its demand for fee for erection of boards on the Poramboke lands the Corporation relied on Section 77 of the Act 1.4 of 1961 and contended that the public streets in the Municipality and other places referred to in the section vested in the Municipality. The State had also been a party in that case and the State had filed a counter therein which inter alia stated :

"It appears that the petitioner has put up hoardings on the road margins within the Corporation limits for display of advertisements without obtaining the necessary sanction or the licence from the Corporation authorities. It is submitted that the petitioner has been required to pay the fee for unauthorised occupation of poramboke by the Corporation u/s 228 of the Act....."

Ultimately the original petition was allowed holding that the petitioner who exhibits advertisement boards outside the margin of the road limits is not liable to be proceeded against for levy of fee u/s 231 of the Act. The Court also observed that this did not preclude the Corporation from taking legal action to recover fees legally due from the petitioner.

3. The petitioners have come to court now because, all on a sudden, several of their advertisement boards were removed and that was, according to them, at the instance of the respondent herein who is the Executive Engineer, National Highway, Cochin Division. He is an officer of the State of Kerala. According to the petitioners these were removed without notice to them and this act on the part of the respondent was high-handed as he had no authority to remove any board that stood either in the premises of private parties or in the lands vested in the Corporation. Prior notice to the petitioners was also not given. The prayer in these petitions is to issue a mandamus directing the respondent to forbear from interfering with the advertisement boards or structures on which such boards are displayed by the petitioners on poramboke lands vested in the Cochin Corporation or on private lands adjacent to the roads and also to issue an order of prohibition more or less for the same purpose.

4. The only question calling for decision in these cases is whether the respondent has authority to interfere with the erection of advertisement boards by the petitioners in these cases. The respondent has no case that the petitioners' conduct in putting up advertisement boards in properties belonging to private parties could be restrained. Therefore to that extent there can be no grievance in directing the respondent from forbearing from doing so. The controversy concerns the propriety of the action taken concerning and to issue necessary directions to the respondent to forbear from interfering with, the advertisement boards displayed on the side of the national highways. The main controversy in regard to this is about the competency of the respondent to take any action.

5. Section 210 of the Kerala Municipal Corporations Act, 30 of 1961 vests the public streets and appurtenances in the Corporation. It is necessary to refer to this Section.

"210. Vesting of public streets and their appurtenances in corporation.-- (1) All

public streets in the city not reserved under the control of the Central or the State Government, with the pavements, stones and other materials thereof, and all works, materials, implements and other things provided for such streets, all sewers, drains, drainage works, tunnels and culverts, whether made at the cost of the municipal fund or otherwise, in, along-side or under any street, whether public or private, and all works, materials, implements and other things appertaining thereto and all trees not being private property growing on public streets or by the side thereof, shall vest in the Corporation.

(2) Any property vested in the Corporation under Sub-section (1) may be used by the council for any municipal purpose and as deemed fit by the council.

(3) The Government may, by notification, withdraw any such street, sewer, drain, drainage work, tunnel, culvert or tree from the control of the corporation."

A public street is defined in Section 29 of the Act as meaning,

"any street, road, square, court, alley, passage or riding-path over which the public have a right of way, whether a thoroughfare or not, and includes-

(a) the roadway over any public bridge or causeway;

(b) the foot-way attached to any such street, public bridge or causeway; and

(c) the drains attached to any such street, public bridge or causeway and the land, whether covered or not by any pavement, verandah or other structure, which lies on either side of the roadway up to the boundaries of the adjacent property, whether that property is private property or property belonging to the Government."

The National Highway passing through the Cochin Corporation is, no doubt, a public street. It is not contended that it is otherwise. Such public streets include the footway attached to the highway and it is in this that the petitioners are said to have erected advertisement boards. The core of the controversy in this petition is whether the National Highway passing through the Cochin Corporation vests in the State Govt. or whether it vests in the Corporation. It is evident from what has been said in the counter-affidavit filed by the State in O. P. No. 911 of 1969 that the stand then taken by the State Government was that it vests in the Corporation, and that is pointed out in the petition here. But in answer to that what is stated by the Executive Engineer is that :

"The decision of O. P. No. 911 of 1969 referred to by the petitioner has no relevancy to the facts of these cases. That was a matter arising under the Kerala Municipalities Act, 1960. The petitioner cannot take advantage of the statements in the counter-affidavit or the judgment in that case."

One fails to understand why the statement by the State Government in the counter-affidavit in that case could not be taken note of here. Whatever that be, the decision on this case need not rest upon the averment of the State in that case, and may be considered independently on the basis of the relevant

provisions of law, the question to be examined being whether there is vesting of the property in the State as contended by the respondent.

6. It is apparent from Section 210 of the Act that unless it is shown that any public street in the Cochin city is reserved under the control of the Central or State Government that part of the National Highway passing through the Cochin Corporation would vest in the Corporation and any property vested in the Corporation may be used by the Council for any municipal purpose. The Government has power, by notification to withdraw any public street from the control of the Corporation. Therefore, unless shown otherwise I should assume that public street within the limits of the Corporation vests in the Corporation and it is the Corporation which is competent to deal with it. This is quite consistent with what the State averred in the earlier case though the counter of the Executive Engineer in this case speaks differently. But in support of the current version of the Executive Engineer no material has been produced. The cases have been adjourned several times in order to give opportunity to counsel for the respondent to contact the Government and to bring to the notice of the Court orders, if any, reserving such public streets in the Government. Before me it was contended earlier that there was some such order of the Government. Necessarily orders, if any, should be in writing. Counsel promised to make such order available. But after having contacted the State Government Sri T. C. N. Menon submits that they are not able to find any order reserving these to the State. All the same he would refer to the practice of the Government expending money for the maintenance of the road and consequently he urges that the Government is in control of these roads. An additional affidavit has been filed along with a certificate from the Corporation Engineer marked as Ext. R-1. In this the Corporation Engineer certifies that the authority for the maintenance of the National Highway from Kilometre 342/0 to 363/200 north and south boundaries of Cochin Corporation is not vested in the Corporation. In the additional counter filed along with this certificate the Executive Engineer swears that no separate notification is usually issued declaring a road to be a Public Works Department Road in normal course. The Corporation Engineer has issued a certificate to the effect that the National Highway in the Cochin Corporation boundary is not maintained by the Corporation and the same is under the control of the Public Works Department.

7. I am not concerned with what is usually done in such matters. I am concerned with the relevant provision in Section 210 of the Act. If that section vests the control of any public streets in the Corporation irrespective of any practice those shall continue to be vested in the Corporation until in accordance with Section 210 (3) there is an order by the Government reserving those to itself. The citizen need only be concerned with the law regulating his conduct. If there is no order reserving the National Highway in the control of the State or the Central Government, necessarily, it must vest in the Corporation. If it so vests in the Corporation, irrespective of the question as to who maintains it the respondent would have no jurisdiction to interfere. Whether the Corporation would have such

power or not is a different matter.

8. The respondent does not admit that he alone is responsible for having removed the advertisement boards. He contends that the petition having been filed after the removal of the boards the petitions are infructuous. But the complaint of the petitioners is that such acts are likely to be repeated and therefore the court may issue directions to see that boards not yet removed are not removed. It is not therefore possible to say that the reliefs prayed for in the petitions do not arise for consideration. In other words the reliefs could still be granted to prevent prospective offending action.

9. The respondent avers that it was not he who removed the boards but, a squad of people pursuant to a direction issued by a Committee of persons who met together and took certain decisions. It is said that the District Collector, the Corporation Commissioner, the respondent and many other officers of various departments sat together to discuss ways and means of removing obstructions from public streets and also of removing materials stacked on the sides of the roads, with a view to make traffic more easy and safe. It goes without saying that the object the committee had before it is quite laudable. But whatever may be the purpose that cannot justify resort to action not warranted by law. If such acts are committed by people who have no authority in them, that could normally be characterised as "high-handed". The mere fact that such action is purported to be taken to further public good does not justify the taking of law by the authorities into their hands.

10. If the respondent was not competent to take any decision in regard to the removal of advertisement boards from lands vested in the Cochin Corporation then he can be prevented from doing so. I would not have issued this direction to him had he disowned his responsibility in the matter. But he seems to justify the stand and the petition has been hotly contested on his behalf. Therefore I think the apprehension of the petitioners is not unfounded. In the circumstances I feel it is necessary to issue a direction as prayed for. Sri T. C. N. Menon counsel for the State, very vehemently argued that I should not resort to issuing any such direction unless and until it is shown that the petitioner has a right to erect advertisement boards in the lands belonging to the Corporation. In other words, the contention is that even if the respondent is incompetent to remove the hoardings erected by the petitioners and even if he may act so again he should not be restrained so long as the petitioners cannot show that they have authority to erect boards. For various reasons I do not think this argument is sound. The petitioners aver that the hoardings are erected with the consent of the Corporation of Cochin. The petitioners in seeking the directions are only seeking protection for exercising their right to carry on their trade or business without alleged interference. Their right could no doubt be restrained, but such restraint must come in the proper manner and must be exercised also properly. If the respondent is not competent to interfere and the petitioners are shown to have prima facie right then no other question arises. Secondly whenever a public

authority acts in excess of the powers conferred on it the courts will have no hesitation to restrain such acts. That is evidently in the public interest. Moreover public authorities must be kept within the bounds of their authority. It is in the larger interest of the State that the authorities should not exercise powers which are not vested in them, and they should be told that they should not do so irrespective of the question whether the petitioner who moves the court for relief has established positively a vested right in him the infringement of which is complained of. This is indicated by the) Supreme Court in the decision in K.N. Guruswamy Vs. The State of Mysore and Others, .

11. The petitioners in these cases, as I have said, are persons who are carrying on business for some years. The only objection of the Corporation on the earlier occasion was to the conduct of one of these petitioners and that was that fees was not being paid to the Corporation. That came to this court and the petitioner succeeded. The petitioners aver in their petitions that advertisement tax has been paid. The corporation has so far not been seen to have objected to the activities of the petitioners. In these circumstances it is not for a third party like the respondent here to assume to himself the power to interfere with the petitioner's business. In the circumstances the petitions are allowed and the respondent is restrained from interfering with the display of advertisement boards and hoardings by the petitioners on the side of the public streets within the Cochin Corporation.

12. I want to make it clear that this is not intended to give a licence to the petitioners to act as they choose and to protect them from being proceeded against in accordance with law by those who are competent to proceed against them in case they have violated any law or rule. That of course does not call for adjudication here. My adjudication in this case is limited to the conduct of the respondent as against the petitioners.

13. The original petition is allowed as above. No costs. A carbon copy of this judgment will be issued to the counsel for State free of charges.