
(2014) 09 KL CK 0057

In the High Court Of Kerala

Case No : Writ Petition (Civil) No. 20218 of 2014 (B)

Pathanamthitta

APPELLANT

Vs

The Traffic Regulatory Committee

RESPONDENT

Date of Decision : 22-09-2014

Acts Referred:

Motor Vehicles Act, 1988 — Section 113, 115, 68

Citation : (2014) 4 KHC 21 : (2014) 4 KLT 123

Hon'ble Judges : K. Vinod Chandran, J

Bench : Single Bench

Advocate : P. Deepak, Advocate for the Appellant; T.J. Michael, Government Pleader, Advocate for the Respondent

Judgement

K. Vinod Chandran, J.—The petitioners are aggrieved, by the decision taken to impose "one-way traffic", inside the Ranni town, which decision was originally taken as a temporary measure, to get over the difficulties experienced by the pilgrims to Sabarimala during the "mandalam" season in the year 2013. However, the said decision has been continued from July, 2014 by the Traffic Regulatory Committee [for brevity "TRC"] under the Kerala Police Act, 2011 [for brevity "Police Act of 2011"], is the specific contention raised by the petitioner herein.

2. The petitioners would, relying on the provisions constituting the TRC under Section 72 of the Police Act of 2011, impugn the decision, insofar as the TRC having intruded into the powers conferred specifically to the Regional Transport Authority under the Motor Vehicles Act, 1988 [for brevity "MV Act"]. The decision would be inconsistent with Sections 68, 113 and 115 of the MV Act and Rule 339 of the Kerala Motor Vehicles Rules, 1989 [for brevity "KMV Rules"], is the specific contention raised by the learned counsel for the petitioners. The petitioners would rely on the decisions of this Court in Ramakrishnan & Others. v. Executive District Magistrate, Trichur and Another [1964 KHC 324], Abdul Khader v. State of Kerala [1990 KHC 328] and an unreported Division Bench judgment of this

Court in W.A. No. 1756 of 1998 dated 06.10.1998, to buttress their contentions. The petitioners would also point to Exhibit P5 judgment of a learned Single Judge of this Court.

3. In Abdul Khader (supra), this Court had, in fact, upheld the actions of the Government made under the then existing Section 18 of the Police Act, 1960 (Kerala) [for brevity "Police Act of 1960"] for reason of Section 18 of the then existing enactment and Section 74 of the Motor Vehicles Act, 1939 [for brevity "MV Act of 1939"], conferring power on the Government itself. Section 74 being a wider power, the Court did not find any conflicting decisions by the same authority, being the Government under the MV Act and the Police Act of 1960.

4. Ramakrishnan (supra)] again considered the question of sustainability of an order based on the ground of no consultation having been effected under Section 18 of the Police Act of 1960. The Court rejected the contention and sustained the order under Section 18, despite there being no consultation with the Municipal authorities specifically noticing that consultation does not mandate concurrence. It was further held that the power conferred under the Police Act is wider than that conferred under the MV Act. It was declared that the "preservation of order in public places" as indicated in Section 18 of the Police Act of 1960 was wider than the mere regulation of traffic indicated in the MV Act. The words used in Section 72 of the Police Act of 2011 also indicates such a wider power, since it takes in orders "for preventing danger, obstruction and inconvenience caused to the general public in respect of traffic" and the further enumerated aspects from clause (a) to (g) of sub-section (3), which is akin to "preservation of order in public places".

5. Hence, the said decisions if at all applied in the present case, would have to be applied against the contention of the petitioners. Section 18 of the Police Act of 1960, being in pari materia with the provisions of the Police Act of 2011, the decisions afore-cited does not consider the aspect of whether there is any conflict with the Motor Vehicles Act and finds Section 18, as it existed then, to confer a wider power.

6. In W.A. No. 1756 of 1998, the decision to implement one way traffic in a particular sector made by the RTA was upheld. However, that is not to say that the conflict with the powers exercised by the TRC under the Police Act and the powers exercised by the Regional Transport Authorities under the MV Act was considered or that issue answered in the aforesaid decision. Exhibit P5 also would not be applicable, since a mere reading of the said decision would show that the order issued therein was neither under the Police Act nor under the MV Act.

7. The issue, by virtue of the binding precedents in Abdul Khader and Ramakrishnan (supra), is no longer res integra. The perceivable difference in the extant enactments; is that the power conferred is on two separate authorities; the RTA under the MV Act and the TRC under the Police Act. The question in that context has not been dealt with in the afore-cited decisions.

8. It is to be noticed that Section 72 of the Police Act of 2011 specifically confers power on the TRC, by sub-clause (a) of sub-section (2), to regulate the manner and time of traffic of all kinds in public places. Section 68 refers to the constitution of the State and Regional Transport Authorities and the powers to be exercised by the said authorities; which are to be prescribed as per the Rules. The apparent conflict with the provisions of the Motor Vehicles Act is a contention which has to be specifically looked at in the context of Sections 113 and 115 of the MV Act and Rule 339 of the KMV Rules. Section 113 refers to the limitation with respect to use of vehicles; which limitations are prescribed on the aspect of weight and other conditions. Section 115 is a power to restrict the use of "a vehicle" on a specified route or a specified area. This is not a power which is synonymous with that of the TRC. The RTA could, in specified cases, impose restrictions of "one way traffic" in any sector invoking Section 115 read with Rule 339; but, that is not to say that the powers are exclusive on the authority under the Motor Vehicles Act. Again the power under the Police Act is wider than the power conferred under the MV Act.

9. In any event, it is to be noticed that the constitution of the TRC as indicated in sub-section (2) of Section 72 of the Police Act of 2011 ensures the representation of all departments concerned with the regulation of traffic, including the Regional Transport Officer; the Secretary of the RTA, who would be competent to air the opinion of the Regional Transport Authority, before the TRC. The order passed under Section 115 cannot, in any way, be said to be in violation of the provisions of the Motor Vehicles Act, especially since the RTA has not, in the same sector, passed any contrary orders. In such circumstances, the contention raised by the petitioner with respect to a decision taken by the TRC is found to be unsustainable.

10. However, the grievance of the petitioners seem to be, insofar as they being not able to adhere to the timings allotted/settled by the Secretary, RTA; for reason of the "one way traffic", since they are required to travel 3 (Three) kilometres more, when touching Ranni, which is an intermediary point between Thiruvalla and Vadasserikkara. That would be an aspect which has to be considered by the Secretary, RTA, if a proper application is made before that authority; after looking at the orders passed by the TRC implementing the "one way traffic", as also the sustainability of an objection on that count, on facts.

In the result, the writ petition stands dismissed; however, reserving liberty to the petitioners to approach the Secretary, RTA for consideration of the request for variation of timings. It is made clear that this Court has not found that the variation of timings is expedient or necessary, which issue would be exclusively within the domain of the Secretary, RTA.