
(2006) 05 KL CK 0044

In the High Court Of Kerala

Case No : Writ Petition (C) No's. 22971 of 2005

P.T. Abdurahiman

APPELLANT

Vs

The Tribunal for Local Self Govt. Institutions and Others

RESPONDENT

Date of Decision : 23-05-2006

Acts Referred:

Constitution of India, 1950 — Article 226
Motor Vehicles Act, 1988 — Section 117, 75, 76

Citation : (2006) 2 KLJ 269

Hon'ble Judges : K.M. Joseph, J

Bench : Single Bench

Advocate : M.K. Damodaran, P.K. Vijayamohanan, I.V. Pramod, S. Sreekumar, P. Jayabal Menon, P.K. Soyuz and Manu Roy, for the Appellant; V. Giri, Babu S. Nair, K. Gopalakrishna Kurup, K.S. Babu, N. Sudha, S. Sreekumar and M. Lalitha Nair (GP), for the Respondent

Final Decision : Dismissed

Judgement

K.M. Joseph

1. These writ petitions raise common questions and hence they are disposed of by a common judgment. Petitioner in W.P.(C) 22971 of 2005 is a resident of the respondent Panchayat. He challenges Ext. P5, the common order passed by the Tribunal for Local Self Government Institutions in Appeal Nos. 100 and 117 of 2005. The petitioner challenges Ext. P2 decision of the Panchayat also and seeks a direction to the Panchayat to invite fresh offers by proper notification for the construction of the bus stand. The petitioners in W.P.(C) 23098 of 2005 challenges the same orders as are challenged in W.P.(C) 22971 of 2005 and further seek a direction to appoint an expert committee to conduct a comparative study of the proposals submitted pursuant to Ext. P4 resolution. They also seek a mandamus to the second respondent Panchayat to accept Ext. P6 proposal offered by the petitioners. Briefly the case of the petitioner in W.P.(C) 22971 of 2005 is that the respondent Panchayat took Ext. P7 decision on 23-11-2004 to

call for applications from persons who were prepared to make available land suitable for the construction of a bus stand and thereafter the Panchayat decided by Ext. P2 to accept the proposal of respondents 3 and 4 yielding to pressure. The decision is that of the majority. It is pointed out that respondents 3 and 4 had large extent of landed properties and the offer was with the ulterior motive of creating accretion to the value of the surrounding properties. Petitioner preferred Ext. P3 appeal. The appeal was rejected by Ext. P5 order issued by the Tribunal. It is contended by the learned counsel for the petitioner that the impugned orders cannot be sustained on the following grounds:-

The decision of the Panchayat was to call for proposals for the offer of land. But the proposal which is found acceptable as per Ext. P2 resolution was the proposal involving land with built up area. It is pointed out that the decision dated 22-12-2004 of the Panchayat Committee directing the offers to submit fresh offers with the detailed project report was a private communication and the acceptance of the proposal of a built up area is opposed to the terms of Ext. P7 and Ext. P1, resolution and advertisement respectively. It is further contended that the Tribunal has not considered the appeal of the petitioner against Ext. P2 resolution as was expected of the appellate body. It is further pointed out that the decision cannot be sustained in the light of Section 117 of the Motor Vehicles Act and Section 227 of the Kerala Panchayat Raj Act, 1994 besides rule 344 of the Kerala Motor Vehicles Rules. It is pointed out that Ext. P2 was not an unanimous decision and there was genuine opposition to the proposal of respondents 3 and 4. Sri. S. Sreekumar, counsel appearing for the petitioners in W.P.(C) 23098 of 2005 would contend that the impugned decisions are insupportable. The petitioners in the said writ petition had also submitted a proposal involving the making available of built up bus stand. But their proposal was not accepted and as already mentioned it is the proposal of respondents 3 and 4 that has been accepted. The said decision stands confirmed by the common order of the Tribunal. Learned counsel would contend that there was absolutely no basis to reject the proposal of the petitioners and to accept the claim of respondents 3 and 4. He would contend that the approach of the Panchayat and the decision of the Tribunal are unsustainable. It is further submitted that the Panchayat has not considered the various aspects. Reference is made to the proposal of the Petitioners and it is compared with the proposal of respondents 3 and 4 to point out that it is the proposal of the petitioners which should have been accepted. A Sub Committee of six Panchayat members had been appointed to report on the feasibility and viability of the proposal. The Assistant Engineer submitted Ext. P15 report. Learned counsel for the petitioners relies on Ext. P15 report which is dated 4-3-2005 to contend that if the said report had been taken into consideration, the decision of the Panchayat would have been otherwise. He points out with reference to Ext. P15 that in respect of various relevant aspects it is the proposal of the petitioners which was more suitable and which should have been accepted by the Panchayat. It is further pointed, out that this report was not even considered by the so called members

of the Sub Committee. It is further pointed out that the proposal of the petitioners, contrary to the finding, was not actually a conditional proposal and he invited reference to the proposal to substantiate the same. He would submit that the reference to the words in the covering letter along with the proposal, which is produced as Ext. P6, was misplaced having regard to the contents of Ext. P6. Ground No. 6 contains the material facts which according to the writ petitioners, the Tribunal has not considered.

2. Per contra, learned counsel appearing on behalf of the respondents contended that there is no merit in the writ petitions. They would in one voice submit that this court should not overlook the limits of its jurisdiction under Article 226. It is further submitted that the Tribunal has considered all aspects and the writ petitions should not be treated as if they were appeals against the well considered Order by the Tribunal confirming the decision of the Panchayat. In this connection, attention was drawn by Sri. V. Giri, learned counsel appearing for one of the party respondents, to the decision of the Apex Court in *G.B. Mahajan v. Jalgaon Municipal Council* ((1991) 3 SCC 91), *Tata Cellular v. Union of India* ((1994) 6 SCC 651) and *Raunag International Ltd. v. I.V.R. Construction Ltd.* ((1999) 1 SCC 492).

3. Sri. Gopalakrishna Kurup, learned counsel appearing for another party respondent would also submit that reliance placed on Section 117 of the Motor Vehicle Act on behalf of the petitioner is without any basis. He relied on the decision of the Apex Court in *Municipal Board v. S.T.A. Rajasthan* (AIR 1965 SC 458), *Municipal Council, Bhopal v. S.S.M.T. Co-operative Society* (AIR 1973 SC 2420), 1979 KLT Case No. 101 at page 48 and *Sunny Joseph v. State of Kerala* (2003(3) KLT 247).

4. The contention of Sri. M.K. Damodaran, learned senior counsel appearing on behalf of the petitioner in W.P.(C) 22971 of 2005 that the resolution is vitiated on account of the fact that what was decided originally by the Panchayat by Ext. P7 and published vide Ext. P1 was an invitation of offers from persons desirous of making available land and therefore the acceptance of the proposal by respondents 3 and 4, which is not of land alone, but land with built up area does not appear to me to be a tenable ground. No doubt, there is a general proposition that public authorities should stick by the terms of the declaration made in a notification. This is on the basis that a fairness would not be attained otherwise and arbitrariness would result. The terms should be clear and conveyed to the general public and all persons satisfying the criteria are enabled to be treated alike. But the question is whether the said principle should be applied to the facts of this case?

5. Here, nobody has a case that there was some persons who were prepared to make available their land alone and the said proposal has been rejected. The conditions in Exts. P1 and P7 stand satisfied in the sense that making available of land is satisfied, no doubt, with the availability of the built up area. It is the contention of the respondents that there can be no case of any unfairness as in

fact the entire built up area is being provided free of cost to the Panchayat and the facts of the case should not be lost sight of. It may be true that what the party respondents had in mind when they had made the offers was that, there may accrue to them gain consequent upon the rise in price on the basis of the construction of the bus stand in the locality. But I feel that to veto the proposal which enables a local authority to make available a bus stand particularly When it is struggling for funds may not be in public interest at all.

6. In the decision of this court reported in 1979 KLT case No. 101 at page 48 this court held after referring to the decision of the Apex Court in *Municipal Council, Bhopal v. S.S.M.T. Co-operative Society* (AIR 1973 SC 2420) that the Regional Transport Authority is empowered by Section 68(2)(r) and (s) of the Motor Vehicles Act, 1939 read with Rule 383 of the Kerala Motor Vehicles Rules, 1961 to approve the proposal placed before it by the Collector u/s 6 of the Kerala Panchayats (Land Place, Halting Places and Cart Stands) Rules, 1964. This Court also held that either of the authorities may initiate steps for determining the places for establishment of the bus stand. It was further held as follows :

If one or the other of the authorities initiates steps, the provisions require that the authority who initiates steps, shall consult the other authority.

That was a case where the Nilambur Panchayat decided to shift a bus stand from its location about a kilo meter away from the former location. It was done in exercise of powers u/s 91 of the Kerala Panchayat Act, 1960. The Panchayat followed the provisions of Rules, namely, the Kerala Panchayat (Land Places, Halting places and Cart Stands) Rules, 1964. Under the said Rules the Collector before giving sanction was to consult the Regional Transport Authority and have due regard to its recommendation. The Transport Authority approved the proposal. It was the said order which was challenged by the petitioner. One of the contentions was that the proposal for shifting the bus stand having not come from any of the authorities under the Motor Vehicles Act, the impugned decisions were incompetent. It was also contended that Rule 383 of the Motor Vehicles Act, 1961 only contemplates determination of the location of bus stand and not shifting of the bus stand.

7. In *Sunny Joseph v. State of Kerala* (2003(3) KLT 247) a learned Single Judge of this Court was concerned with the question relating to shifting of parking of vehicles to the taxi stand approved by the Regional Transport Authority under the Panchayat Raj (Land Places, Halting Places, Cart Stands and Other Vehicle Stands) Rules 1995. The Court held as follows :

13. The relevant rules may be examined at this juncture. What is required to be obtained by the Village, Panchayat is previous sanction of the RTA before opening of any public stand. This has been obtained. See Exts. R2(d) and R2(f). As such, the objections of the petitioner can have no force. I may also refer to the apparent oversight on the part of the rule making authority in this context. Under R.3, Publication of notice on the Notice Board and news papers are required to be

made. This is for affording general public opportunity to submit objections. The Panchayat. under R. 4 is required to consider the objections only in the cases where the approval of the RTA is not required. Under R. 5, the Panchayat is bound to obtain previous sanction of the RTA before opening any public stand of halting place to motor vehicles.

Only in a case of providing parking places for vehicles which are not motor vehicles, the Panchayat is obliged to hear the objections which may be filed before them consequent to publication of notice, referred to in R. 3. In the case of motor vehicles, a public notice therefore does not appear to be required.

8. In *Municipal Board v. S.T.A. Rajasthan* (AIR 1965 SC 458) the Apex Court held as follows:

We have deliberately made these extensive quotations from the previous judgment of this Court because they clearly show, as nothing else can, that the Court has to consider in that case the question whether S. 68(2)(r) did confer upon the Transport Authority the power to direct fixing or alteration of a bus stand and answered the question in the affirmatives. Ibrahim's case is thus a clear and direct authority for the proposition that under S. 68(2) (r) of the Motor Vehicles Act the State Government has power to frame rules empowering the Regional Transport Authority to fix or alter bus stands. The notification of June 28, 1960 mentions R. 134 of the Rajasthan Motor Vehicles Rules, 1955 as the source was fixed, the old bus stand was discontinued and it was ordered that no other place except the new bus stand should be used as a bus stand at Pushkar. The material portion of Rule 134 reads thus:-

A Regional Transport Authority by notification in the Rajasthan Gazette, or by the erection of traffic signs which are permitted for the purpose under sub-s.(1) of S. 75 of the Act, or both, may, in respect of the taking up or setting down of passengers or both, by public service vehicles or by any specified class of public service vehicles... require that within the limits of any municipality, or within such other limits as may be specified in the notification, certain specified stands or halting places only shall be so used.

This rule clearly empowers the fixation or alteration of bus stands.

We may make it clear that even if this binding authority in Ibrahim's case had not been present we would have had no hesitation in holding that the fixation or alternation of a bus stand is made under a rule made u/s 68 of the Motor Vehicles Act and cannot be made under S.76. In our opinion, Chapter VI which deals with the question of "Control of traffic" in general has nothing to do with the fixation or alteration of bus stands. Section 76 has not doubt used the words "places at which motor vehicles may stand" and the learned Attorney General tried to persuade us that this includes the fixation of what is known as bus stand. While the word "bus stand" has not been defined in the Act, we have no hesitation in accepting the contention of the respondents that a bus stand means a place where bus services commence or terminate. It is the place where the

buses stand for commencing its transport service or where they stand after terminating their service, that is popularly known as a bus-stand. We do not think the words "places at which the motor vehicles may stand either indefinitely or for a specified period of time" can be reasonably interpreted to include a bus stand in the above sense. When it is remembered that Chapter VI in which S. 76 occurs, is intended to deal with the control of traffic it becomes clear that the determination of places at which the Motor Vehicles may stand either indefinitely or for a specified period of time means the "determination of places" while the determination of places at which public vehicles may stop for a longer time than is necessary for the taking up and setting down of passengers means "halting stations for public service vehicles". It is well worth noticing that while the determination of such places for stoppage in the latter portion of the section can be in respect of public service vehicles only the determination of places of standing in the first part of the section is in respect of motor vehicles in general.

All things considered, it appears to us clear that S.76 has nothing to do with the provision for bus stands.

Section 91(2)(e) which empowers the State Government to make rules for "the maintenance and management of parking places and stands" does not refer, in our opinion, to bus stands but to "stands" for motor vehicles which are in the nature of parking places determined under S. 76.

9. In *Bhopal Municipality v. S.S.M.T. Co-operative Society* (AIR 1973 SC 2420) the Apex Court dealt with the case where a Municipality passed a bye-law declaring certain places as Municipal bus stand. The bye-law provided that no person in charge of a motor bus plying for hire shall for the purpose of taking up or setting down of passengers, park or stop his bus any where within the limits of the Municipality except at the Municipal bus stand. A fee was demanded for the use of bus stand. The court held as follows:

The M.P. Municipalities Act (37 of 1961) does not empower a Municipality to pass a bye-law declaring certain place as a Municipal bus stand and cannot compel the persons plying motor-buses for hire to park buses anywhere within the municipal limits except at the Municipal Bus Stand for the purpose of taking up or setting down of passengers. Neither Section 349(H) nor S. 358(7) are relevant for the purpose. Specific provision in this regard is made in Section 68(2)(r) and (s) of the Motor Vehicles Act. However, if a Municipality provides for a Bus Stand without compelling everybody to use it, a fee can be charged on bus operators using it voluntarily.

10. The power of judicial review, particularly in matters of this nature cannot be, but narrow as can be seen from the following passage from the decision of the Apex Court in *G.B. Mahajan v. Jalgaon Municipal Council* ((1991) 3 SCC 91).

A project, otherwise legal, does not become any the less permissible by reason alone that the local authority, instead of executing the project itself, had entered into an agreement with a developer for its financing and execution. The criticism

of the project being "unconventional" does not add to or advance the legal contention any further. The question is not whether it is unconventional by the standard of the extant practices, but whether there was something in the law rendering it impermissible. Though there is a degree of public accountability in all governmental enterprises, but the present question is one of the extent and scope of judicial review over such matters. With the expansion of the State's presence in the field of trade and commerce and of the range of economic and commercial enterprises of government and its instrumentalities there is an increasing dimension to governmental concern for stimulating efficiency keeping costs down, improved management methods, prevention of time and cost overruns in projects, balancing of costs against time scales, quality control, cost-benefit ratios etc. In search of these values it might become necessary to adopt appropriate techniques of management of projects with concomitant economic expediences. These are essentially matters of economic policy which lack adjudicative disposition, unless they violate constitutional or legal limits on power or have demonstrable pejorative environmental implications or amount to clear abuse of power."This again is the judicial recognition of administrator's right to trial and error, as long as both trial and error are bona fide and within the limits of authority. In the ever increasing tempo of urban life and the emerging stresses and strains of planning, wide range of policy options not inconsistent with the objectives of the statute should be held permissible. Therefore, in the context of expanding exigencies of urban planning it will be difficult for the court to say that a particular policy option was better than another. The contention that the project is ultra vires the powers of the Municipal Council is not acceptable.

11. The Tribunal has taken note of the contention that the distance from the site offered by the petitioners in W.P.(C) 23098 of 2005 from the existing bus stand and National Highway is more or less the same as the distance of the site from the said places offered by respondents 3 and 4. No doubt, the site offered by respondents 3 and 4 is 200 metres more from the existing bus stand. Regarding the contention of the petitioners based on the height of the site from the National Highway that it is 27.6 metres high from the National Highway, it is pointed out that the report of the Assistant Engineer shows that the height of the site offered by the petitioners in W.P.(C) 23098 of 2005 is between 8 and 14 metres. It is also noted that sanction has been obtained from the authorities for excavating sand. It is, no doubt, noted that the distance from the junction is 826 metres. But it is found that it is a developing town and in most of the towns and cities, the bus stand is located a little away from the junction. It is found that the fact that it is at a distance of 200 metres than the site proposed by the petitioners in W.P.(C) 23098 of 2005 is not a sound ground.

12. Regarding the contention based on the approval of the Chief Town Planner, Regional Transport Authority, it is found that the authorities will definitely make a technical and feasibility study. Likewise it is found that the argument based on Section 337 of the Panchayat Raj Act was untenable. It is found that it was unnecessary to comply with Section 227 of the said Act for accepting the offer of

respondents 3 and 4. It is found that acceptance of the proposal of respondents 3 and 4 was only a preliminary step. The Tribunal also found that huge sum is required for the establishment of a bus stand and it may not be open to a Panchayat to establish a bus stand having so much of convenience by investing from its own funds. Because of the offer of respondents 3 and 4 the Panchayat could set apart the amount for the establishment of the bus stand for other beneficial and developmental purposes.

13. Rule 344 of the Kerala Motor Vehicles Rules reads as follows:

"344. Bus stand and parking places:- (1) Authority to determine location of Their Regional Transport Authority shall, in consultation with the concerned authorities of any Corporation, Municipality or Panchayat, the Executive Engineer and the Superintendent of Police of the District, determine the location of-

(a) bus stands, where from stage carriages start or terminate service; and

(b) parking places wherein motor vehicles in general or of specified description may stand either indefinitely or for a specified period of time.

Provided that in the case of vehicles of the Kerala State Road Transport Corporation, the District Transport Officer or the Assistant Transport Officer may, in consultation with the local authority concerned, fix up stands at the starting points and at the termini of the bus routes and also bus stands and stopping places in the course of the route subject to the following conditions:-

(i) The District Transport Officer or the Assistant Transport Officer, as the case may be shall consult the local authority concerned before determining the starting points, termini and the bus stops and bus stands within the limits of the local authority,

(ii) In case of any difference of opinion between the local authority and the concerned officer of the Corporation the matter shall be referred to the District Collector concerned;

(iii) The District Collector, after giving an opportunity of being heard to the officers of the Corporation and the local authority concerned, shall determine the issue and the decision of the District Collector shall be final.

(2) Construction of:- Government or subject to the previous approval of Government, any Corporation, Municipality or Panchayat may construct.....

Reference is also made to Kerala Panchayat Raj (Landing Places, Halting places, Cart stands and other Vehicle Stands) Rules, 1995. Rule 3 of the said Rules provides that the Panchayat shall publish a notice in the notice board in any prominent place calling for objections to the establishment of any public landing places, halting places, cart stands or other vehicle stands. Rule 4 provides for consideration of the objection where approval of the Regional Transport Authority is not required. Rule 5 provides for obtaining previous sanction of the Regional Transport Authority before opening any public stand or halting place to motor

vehicles. Vehicle stand can be treated as a bus stand as bus is a vehicle. But the contention of the respondents is that the decision taken by the Panchayat is only a preliminary step.

14. The main question to be considered is the effect of Rule 344 of the Kerala Motor Vehicles Rules and Section 227 of the Kerala Panchayat Raj (Landing Places, Halting Places, Cart stands and other vehicle stands) Rules 1996 besides Section 117 of the Motor Vehicles Act. The contention of the respondents is that the finding of the Tribunal that the decision of the Panchayat must be taken to be only a preliminary decision and the authorities under the enactments certainly have to consider the issue, is only to be supported..

15. In the Counter Affidavit filed by the Panchayat in W.P.(C) No.22971/05 it is, inter alia, stated as follows:

It is also submitted that previous sanction of the Regional Transport Authority is not a mandatory requirement for constructing a bus stand or halting place for motor vehicles. However, the second respondent is prepared to abide by the directions of this Honourable Court, if any, is issued.

Section 227 of the Panchayat Raj Act 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 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.

It deals with public landing places, halting places and stands. A Division Bench of this Court in *State of Kerala v. The Elappara Panchayat and Others* (ILR 1978 (1) KER 431) has taken the view that the words "landing place" seems to have relation to water transport. A bus stand was understood as meaning the place where the services commence or terminate. No doubt, what we are concerned in this case, is a bus stand. As per the Kerala Panchayat Raj (Landing Places, Halting Places, Cart Stands and other Vehicle Stands) Rules, 1996, as held by this Court in the decision in *Sunny Joseph v. State of Kerala* (2003 (3) KLT 247), the Panchayat is not obliged to hear any objection in regard to a Stand for a motor vehicle. What is required is the previous sanction of the Regional Transport Authority before the opening of the Stand or Halting Place for the motor vehicle. A perusal of rule 3 of the Rules would also show that the Panchayat intending to provide a land place, halting place or stand is to publish a notice and the notice

is to contain the details of the land in which it is intended to provide the landing place, halting place, cart stand or other vehicle stand. Under rule 5, the Panchayat is to obtain the previous sanction before opening a public stand or halting place to the motor vehicles. It cannot be in doubt that the opening of the bus stand is impermissible except after the previous sanction of the RTA is obtained. No doubt, the contention taken on behalf of the Panchayat and respondents 3 and 4 is that it is even open to carry out construction of the Stand and all that is required, is the previous sanction before the Stand is actually opened. The contention is that for initiating the proposal wherein the stand is to be located, no sanction is required, appears to be correct; This flows from the scheme of the Rules which I have referred to. But, at the same time, I am of the view that I cannot accept the contention of the respondents that it is open to them to even proceed with the construction of the bus stand without obtaining sanction of the Regional Transport Authority and the sanction needs to be obtained only before it is opened. Normally, the Panchayat puts up a Stand after expending money from its own funds. If the contention of the respondents is accepted, then it would lead to a situation where after huge amount is spent by the Panchayat for construction of the bus stand, but sanction is not forthcoming from the Regional Transport Authority, the entire amount expended from the public fund would be wasted. Therefore, the principle would appear to be that it is not open to the Panchayat to proceed with the construction and present a *fait accompli*, as it were, before the RTA robbing him of the much needed discretionary authority to either sanction the opening of the bus stand or to refuse to sanction the opening of the bus stand. I feel that it will be in the interest of the Panchayat as also in public interest that the sanction of the authority is sought on the proposal mooted by the Panchayat before the construction is started in any way. If Ext.P2 is understood in the sense that it evidences the decision of the Panchayat, no doubt, by a majority of its Members, to accept the proposal of respondents 3 and 4 for the construction of the bus stand, then I do not think it will fall foul of the mandate of Section 227 of the Kerala Panchayat Raj Act, subject to the condition, no doubt, that the Panchayat obtains sanction of the RTA before construction of the bus stand begins.

16. As far as Section 117 of the Motor Vehicles Act is concerned, as already noticed, the decisions of the Apex Court and of the Division Bench of this Court have interpreted the true scope of the words "bus stand" to mean the place from where the services commence or terminate. In the decision of the Apex Court in *Municipal Board. Pushkar v. State Transport Authority. Rajasthan and Others* (AIR 1965 SC 458), already referred to supra, the Apex Court has taken the view that Section 76 of the earlier Act corresponding to Section 117 of the present Act, does not deal with the provision for bus stand.

17. Rule 344 of the Kerala Motor Vehicles Rules provides that the Regional Transport Authority is to determine the location of bus stands and parking places in consultation with the concerned authorities of the local bodies, the Executive Engineer and the Superintendent of Police of the District. A learned Single Judge

of this Court has held as follows in the decision in *Abdurahiman v. Vengara Grama Panchavat* (2001 (2) KLT Case No. 107, Page 85):

S. 227 of the Kerala Panchayat Raj Act points out that previous sanction of the Regional Transport Authority is to be obtained before any stand or halting place for motor vehicles is opened. Almost identical provisions are there in R. 344 of the Kerala Motor Vehicles Rules. However, it will be appropriate that the legal formalities are complied with and a permanent arrangement is brought about. Consultation with R.T.A. appears to be mandatory.

18. It would appear to me, having regard to the provisions of Section 227 read with the Rules made under the Kerala Panchayat Raj Act, and the provisions of rule 344 of the Kerala Motor Vehicles, Rules, 1989, of which the legislature of the State and the rule making authority must be taken to have aware of when it framed the Panchayat Raj Act and the Rules, the result must be as follows:

A local authority is endowed with the power to start a bus stand subject to it following the conditions of Section 227 read with the Rules. Essentially, it can do so only on the basis of the previous sanction of the Regional Transport Authority. While it is open to the local authority to initiate proposal and towards the same it is open to even resolve that a particular site be accepted as a place where the bus stand is to be located, a final decision is contemplated only with sanction from the RTA, as contemplated u/s 227 and rule 5 of the Rules. On the other hand, it is open to the RTA to initiate the proposal to determine the location at which a bus stand or a parking place is to be located. In such an event, the RTA is duty bound to consult among others, the concerned local authority. In other words, acting u/s 227, it is open to the Panchayat to initiate the proposal in which case the sanction of the RTA has to be obtained. On the other hand, if the RTA initiates the proposal under rule 344 of the Kerala Motor Vehicles Rules 1989, the local body is to be consulted. I feel that this is the true scheme of the provisions of the Kerala Panchayat Raj Act on the one hand read with the Rules thereunder and the Motor Vehicles Act read with the Rules framed by the State on the other hand. If this be the position, I am of the view that the decision of the tribunal upholding the decision of the Panchayat cannot be faulted on the ground that it is in violation of rule 344 of the Motor Vehicles Rules. It is to be noted that in fact, the contention based on rule 344 of the Kerala Motor Vehicles Rules, is not seen taken before the tribunal. But, I have proceeded to deal with it in view of the fact that it is a pure question of law.

19. I having regard to the above circumstances, I do not think that the petitioners have made out a case for striking down the decision of the Panchayat or the decision of the Tribunal. It is to be noted that the local bodies are not exactly flush with funds, to put it mildly. Embarking upon a venture by which it is in a position to make available a bus stand subject to, no doubt, the formalities of law being complied with, ought not to be vetoed by this Court in the exercise of the power under Article 226 of the Constitution of India. The ultimate beneficiary of this venture must be taken to be the people. For obviating a huge

public expenditure, if a social good is conferred upon them, I feel whatever may be the niceties of the legal issues that may arise, this Court should be loathe at spiking down a proposal which may not be conventional, but which it is also not, at the same time, demonstrated to be patently illegal or against public interest. I am also not impressed by the contentions taken by the petitioners in W.P.(C) No.23098/05. This is an area where I must be even more conscious of the limitations flowing from exercise of judicial review. The proposal of the petitioners has not found favour with the Panchayat or with the Tribunal. It may not be open for me to carry out a comparative assessment and pronounce the proposal of the petitioners as deserving of being accepted, necessarily rejecting the proposal of respondents 3 and 4. No case has been made out, in my view, for rendering such an exercise. In the circumstances, this writ petition fails. At the same time, I am inclined to modify the decision of the Panchayat, Ext.P2 in W.P.(C) No.22971/05, in so far as a decision is taken to enter into a contract with respondents 3 and 4 even before getting sanction from the Regional Transport Authority. In other words, the decision of the Panchayat accepting the proposal of respondents 3 and 4, understood as a preliminary step, shall stand. But, it is made clear that the Panchayat shall not enter into any contract with respondents 3 and 4 till the matter engages the attention of the Regional Transport Authority and its sanction is obtained. Needless to say, no construction of any sort can be done on the basis of the decision of the Panchayat, nor any other activity carried out under Ext.P2 except after sanction is obtained from the Regional Transport Authority.

Subject to the above modification, the writ petitions shall stand dismissed.