

(1963) 07 KL CK 0013
In the High Court Of Kerala
Case No : O. P. No. 2412 of 1962

Ramakrishnan and Others

APPELLANT

Vs

Executive District Magistrate, Trichur and Another

RESPONDENT

Date of Decision : 31-07-1963

Acts Referred:

Kerala Police Act, 1960 — Section 18
Motor Vehicles Act, 1988 — Section 74

Citation : (1964) KLJ 292

Hon'ble Judges : P. Govindan Nair, J

Bench : Single Bench

Advocate : V.R. Krishna Iyer, V. Sivaraman Nair and K.C. Sankaran, for the Appellant;

Final Decision : Dismissed

Judgement

Govindan Nair, J.—The short question arising for decision in this writ application relates to the validity of a notification, Ext. P. 1, issued by the first respondent to this writ application purporting to be u/s 18 of the Kerala Police Act (V of 1961). That section reads:

18. Powers to make rules for regulation of traffic and for preservation of order in public places, etc. (1) In any local area in which he thinks fit, the District Magistrate, with the previous sanction of the Government and in consultation with the Municipal or other local authority may, from time to time, make rules not inconsistent with this Act, for-

(a)...

(b) regulating traffic of all kinds in streets and public places and the use of streets and public places by persons riding, driving, cycling, walking or leading or accompanying cattle so as to prevent danger, obstruction or inconvenience to the public.

By the notification, Ext. P. 1, restrictions have been imposed regarding the

movement of the vehicles in the town and the three petitioners are" bus operators who hold permits under the Motor Vehicles Act. The complaint is that the restrictions imposed by Ext. P. 1 have seriously affected them. They have to run very much longer distances and it has caused great inconvenience. It is urged that section 18 of the Kerala Police Act has also been violated. Section 18 is violated because, it is said, that, there was no consultation with the Municipal authority, which is insisted by the section. This is not accepted by the respondents. They have stated in paragraph 9 of the counter-affidavit as follows:

The averments and allegations contained in ground (b) of the petitioners' affidavit are not correct. There has not been any contravention of the provisions contained in section 18 of the Kerala Police Act. Before issuing Ext. P. 1 notification the Municipal Authorities were consulted in the matter and their concurrence obtained. It may also be submitted that the Municipal Chairman and the Municipal Commissioner of Trichur are members of the Traffic Co-ordination Committee constituted as per G. O. M. S. No. 433 Home dated 26-5-1959 on whose recommendations the notification was issued.

This assertion, one would have thought, would be sufficient to dispose of this petition. But it is contended that there is nothing to indicate that the Municipal Council had been consulted; and that by virtue of section 28 of the Kerala Municipalities Act, 1960, it is clear that the Municipal administration is vested in the Council; that the fact that the Municipal Commissioner and the Municipal Chairman are members of the Committee referred to in the counter-affidavit and assuming that they have been consulted, is not sufficient compliance with section 18 of the Kerala Police Act.

I do not think that I am called upon to decide in this case the question whether there should be a consultation with the Council or whether a consultation with the Chairman or the Commissioner of the Municipality would be enough, in view of the pronouncements of the Supreme Court in *State of U.P. Vs. Manbodhan Lal Srivastava*, and *Major U.R. Bhatt Vs. Union of India (UOI)*, . A passage from the latter decision reads:

The question whether the order dated December 3, 1947 discharging the appellant from service was void because of failure to consult the Public Service Commission is not now open to be canvassed in view of the decisions of this court, and has, therefore, rightly not been raised by the counsel for the appellant. In *The State of U.P. Vs. Manbodhan Lal Srivastava*, this court held that Art. 320(3)(c) of the Constitution of India (which is substantially the same as S. 266 of the Government of India Act) is not mandatory and that it does not confer any rights on the public servant, and the absence of consultation or any irregularity in consultation does not afford him a cause of action in a court of law.

2. Assuming, therefore, that there is no consultation, I do not think, that by itself, would affect the validity of the notification Ext. P. 1. The next point argued by counsel for the petitioners is that the statute itself, the Kerala Police Act, is

bad in so far as the provisions u/s 18 are identical with the provisions u/s 74 of the Motor Vehicles Act and that the State enactment cannot be pressed into service because the State Act has not received the assent of the President. By section 74 of the Motor Vehicles Act, it is the Government that have been authorised to regulate motor vehicles in the manner provided by that section and section 18 of the Kerala Police Act also authorises the Government to Act under that section though based on the recommendation of the District Magistrate. I cannot conceive the Government acting one way u/s 74 of the Motor Vehicles Act and in a different manner u/s 18 of the Kerala Police Act. One relates to the Motor Vehicles and the other relates to traffic. In this sense, section 18 of the Kerala Police Act is wider than section 74 of the Motor Vehicles Act. In another sense, section 74 of the Motor Vehicles Act is wider than section 18 of the Kerala Police Act, because section 74 of the Motor Vehicles Act covers the wider field of the entire State. There may be overlapping areas. But in view of the fact that the same authority, the State Government, would have to make the final decision in regard to the powers either u/s 74 of the Motor Vehicles Act or section 18 of the Kerala Police Act, I do not see any conflict in this case. I therefore dismiss this writ application, but in the circumstances of the case, make no order as to costs.