
(2016) 06 KL CK 0029
In the High Court Of Kerala
Case No : WP(C).No. 30061 of 2015

Sadasivan

APPELLANT

Vs

State of Kerala

RESPONDENT

Date of Decision : 09-06-2016

Acts Referred:

Constitution of India, 1950 — Article 226, 39(6)
Kerala Panchayat Raj Act, 1994 — Section 166

Citation : (2016) AIR(Kerala) 163 : (2016) 3 KerLJ 304 : (2016) 3 KHC 632 :
(2016) 3 KLT 69

Hon'ble Judges : Mr. Shaji P. Chaly, J.

Bench : Single Bench

Advocate : Sri. G. Sreekumar (Chelur) & Sri. K.R. Arun Krishnan, Advocates, for the Appellant; Smt. N. Santha, Sri. K.A. Balan, Sri. V. Varghese, Sri. Peter Jose Christo, Sri. S.A. Anand Smt. L. Annapoorna, Advocates, Sri. Lindons, C. Davis, Smt. E.U. Dhanya, Advoca

Final Decision : Disposed Off

Judgement

Shaji P.Chaly, J.—This writ petition is filed by the petitioner seeking direction to the respondents not to interfere with the parking of petitioners' vehicles in the authorised taxi stand under the 4th respondent situated by the side of National Highway, known as Triprayar contract carriage stand" passing through Thriprayar and Nattika and for other related reliefs.

2. Brief facts for the disposal of this writ petition are thus; petitioners are taxi owners and they park their vehicles in the authorised stand of the 4th respondent. Now all of a sudden, 2nd respondent came to the premises where the vehicles are parked and some officials of the 4th respondent directed the petitioners each owner can park only one taxi in the stand at a time. It is the contention of the petitioners that most of them are owners of more than one taxi. The 2nd respondent intimated the petitioners that 4th respondent has passed a resolution and issued a circular to the effect that if any owners are parking more than one taxi in the stand, they are directed to remove excess

taxis other than one permitted at a time. It is the further contention of the petitioners that if at all any such resolutions or circulars are issued without hearing any of the aggrieved parties, the same is bad. Apart from that, according to the petitioners, Rule 344 of Kerala Motor Vehicles Rules prescribes the provision for parking and therefore the direction imposing the specified condition is not legal. In that view of the matter also, 4th respondent is not entitled to pass any resolutions or circulars completely violating the fundamental rights as well as the statutes. It is thus aggrieved by the alleged action of the 4th respondent Panchayat, petitioner has filed this writ petition.

3. The 4th respondent has filed a counter affidavit denying the allegations and statements and claims made in the writ petition. It is contended by the 4th respondent that petitioners are parking their vehicles by the side of the National Highway which includes tempo travellers and other kinds of vehicles. That apart it is contended that the area where the vehicles are parked by the petitioner is a busy area of NH-17 and therefore, the 4th respondent thought of regulating the parking so as to accommodate other taxi owners also. According to the 4th respondent, in accordance with the powers conferred under Section 72 of the Kerala Police Act, 2011, the Traffic Regulatory Committee has passed an order and directed the Panchayat to implement the same. Therefore, it is contended that, the action of the Panchayat is a consequent one to the order passed by the Traffic Regulatory Committee under Section 72 of the Police Act. That apart it is urged that consequent to the increase of taxi vehicles, parking of taxis have become a problem within the Panchayat area, since NH-17 is passing through the entire narrow stretch within the jurisdiction of the Panchayat. It is also contended that Panchayat is unable to provide space for parking vehicle since the land value has sky rocketed high and the Panchayat is not in possession of sufficient land so as to cater the needs of taxi operators. Therefore, it is the contention of the 4th respondent that the regulation made by the Traffic Regulatory Committee is executed by the Panchayat in order to see that traffic blocks and road accidents are avoided. Some of the vehicle owners, who have impleaded in this writ petition as additional respondents filed counter affidavit supporting the action of the Panchayat. The learned counsel for the additional 5th and 6th respondents have contended that there are 23 taxis in that area other than the vehicles owned by the petitioners. Therefore, it is contended that unless and until the regulation is implemented, other operators especially single taxi owners find it difficult to park their vehicles in the available space by the side of the National Highway.

4. Heard learned counsel for the petitioners, learned Government Pleader and respective counsel appearing for other respondents.

5. Learned counsel for the petitioners contended that the Panchayat has no manner of power to regulate the parking of vehicles by the side of the National Highway. That apart it is contended that the petitioners are not provided with an opportunity of hearing before a decision is taken by the 4th respondent to

regulate the parking of the vehicle. That apart it is contended that it is the bounden duty of the Panchayat to provide adequate space for parking of vehicles within the Panchayat area. It is also urged that the restrictions made by the Panchayat with respect to parking of number of vehicles by the side of the National Highway is without any authority or on the basis of any statutory function imposed on the Panchayat under the Panchayat Raj Act and Rules. On the other hand, learned counsel for the 4th respondent contended that NH-17 is passing through the Panchayat area and therefore, if parking of the vehicles are not regulated, this will cause innumerable difficulties to the vehicular traffic, public etc. etc. and therefore it is the duty of the Panchayat to ensure that the parking is regulated so as to accommodate the other taxi operators also in terms of directions issued under Section 72 of the Police Act. Learned counsel for additional respondents 5 and 6 supported the arguments advanced by learned counsel for the 4th respondent. That apart it is submitted that such a regulation is fair and reasonable since all are treated alike irrespective of number of vehicles owned.

6. Having considered the rival submissions put forth by the respective counsel, perusing the pleadings and documents, the question to be considered first is whether the petitioners have any legal right to insist that they are entitled to park vehicles by the side of NH-17. It is true that, the Panchayat may not be the authority having powers on the National Highway but however since the National Highway is passing through the Panchayat area, a duty is cast upon the Panchayat to ensure that traffic is moving smoothly and necessary parameters are also to be provided to ensure that accidents are avoided, apart from the power and duty to provide cart stands within the Panchayat area. In that view of the matter it can be seen that the Panchayat cannot be found fault with regulating the parking of taxis within the Panchayat area even though the same may be by the side of the National Highway. That apart petitioners could not point out any legal or statutory rights enabling them to insist that the vehicles belonging to them can be parked by the side of the National Highway. Learned counsel for the Panchayat has also submitted that there is no authorised taxi stand as contended by the petitioners in the area in question, but the vehicles are being parked there.

7. In my view due to the unprecedented parking of the vehicles and dearth of space persuaded the Traffic Regulatory Committee and the Panchayat to see that the commotion is avoided by bringing out sufficient regulation. Any how going by the contentions in the writ petition and the counter affidavit filed by the respective parties, it is clear that the Panchayat has not prohibited the parking of taxis in the area in question but the only restriction is that each operator is entitled to park one vehicle at one point of time in the aforesaid parking area. Therefore, such a regulation made by the Panchayat cannot be said to be illegal taking into account the larger public interest involved in the subject matter.

8. Learned counsel for the petitioner also contended that the Panchayat has no

manner of power to make such a restriction. However, Part IV of the Constitution Article 39(b) prescribes "that, the ownership and control of the material resources of the community are so distributed as best to subserve the common good". That apart clause (a) of the said Article states "that the citizens, men and women equally, have the right to an adequate means of livelihood". It is bearing in mind those aspects that the Panchayat has regulated the parking of the vehicles in the area in question. However, I find from entry 23 of Third Schedule enacted under Section 166 of the Kerala Panchayat Raj Act, a mandatory stipulation to make provision for parking spaces for vehicles. Even according to the Panchayat, it is not having sufficient space to cater the needs of taxi operators.

9. Even though I find that petitioners are not having a statutory right to insist that they are entitled to park more vehicles in the area in question against the regulatory measures, an imperative duty is cast upon the Panchayat to ensure that sufficient space is provided in terms of Panchayat Raj Act and Rules, and Kerala Motor Vehicle Rules for parking vehicles.

10. Taking into account the cumulative circumstances discussed above, I do not think that petitioners are entitled to succeed in the writ petition. However I remind the Panchayat to take necessary steps as early as possible to acquire space for cart stand so as to cater the needs of taxi operators. This will eliminate the traffic commotion and accidents to a large extent, especially when the Panchayat is situated in an area, NH-17 is crossing through. However by virtue of the mandate contained under Section 166(4) of the Kerala Panchayat Raj Act 1994, the Government, the District Panchayat and the Block Panchayat shall subject to availability of resources, provide necessary financial, technical and other assistance to Village Panchayats enabling them to discharge their functions. Therefore if there is a will and intention for good governance, Panchayat can find out resources to locate suitable space for the purpose, which is also an inevitable requirement of the day. There goes the old saying " if there is a will there is a way."

11. With the above observations, the writ petition is dismissed.