

(1977) 10 KL CK 0012

In the High Court Of Kerala

Case No : W.A. No"s. 466/74 and 43 of 1975

State of Kerala

APPELLANT

Vs

The Elappara Panchayat and Others

RESPONDENT

Date of Decision : 31-10-1977

Acts Referred:

Kerala Panchayat Act, 1960 — Section 131, 91
Motor Vehicles Act, 1988 — Section 68(2), 76

Citation : (1977) 10 KL CK 0012

Hon'ble Judges : Gopalan Nambiyar, C.J.;Balagangadharan Nair, J

Bench : Division Bench

Advocate : Government Pleader in W.A. 466/74, K. George Varghese, Thomas V. Jacob and P.C. Joseph, in W.A. 43/75 and, for the Appellant; K. George Varghese, Thomas V. Jacob and P.C. Joseph, for 1st Respondent in W.A. 466/74 and M.P. Menon and Ramachandran for 2nd Respondent in W.A. 466/74 and 1st Respondent in W.A. 43/75, for the Respondent

Final Decision : Dismissed

Judgement

Gopalan Nambiyar, C.J.—We think the learned Judge was right, and these appeals preferred by the State and by the Elappara Panchayat respectively against his judgment must fail.

2. Section 91 of the Kerala Panchayats Act, 1960 (Act 32 of 1960) provides:

91. Public landing places and cart stands, etc. -- Subject to such rules as may be prescribed, the Panchayat may-

(a) Provide public landing places, halting places and cartstands (which last expression includes stands for animals and vehicles of any description including motor vehicles) 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 road as the Panchayat may, subject to the control of the

Collector specify: Provided that the previous sanction of the Collector shall be obtained before any stand or halting places for motor vehicles is opened.

The writ Petitioner whose petition was allowed by the learned Judge, was a stage carriage operator plying his vehicle, Bus No. K.L.K. 8042 on the route Changanacherry -- Kattappana. The service starts from Changanacherry at 8 a.m. and returns to the place at 6.30 p.m. The distance between the two terminals is nearly 75 miles, and in addition to the municipal area of Changanacherry, it lies through a number of Panchayats such as, Madappilly, Karugachal, Ponkunnu, Mundakayam, Peruvanthanam, Elappara and Kattappana. The Elappara Panchayat had put up a "Bus stand" sometime towards the end of 1971 or early in 1972, and demanded of the writ Petitioner that his vehicle should stop at the said stand and pay fees at the rate of Re. 1 per day (vide Ext. P-1). The Petitioner did not comply, and that resulted in certain complaints by the Panchayat before the Additional I Class Magistrate's Court of Peermade u/s 91(b) and Section 131 of the Kerala Panchayats Act (vide Ext. P-2). The cases, are pending as S.T. 95 of 1972, 119 of 1972, 121 of 1972 and 135 of 1972. By Ext. P-3 notice, the Panchayat demanded charges "consequent on non-parking" of his bus at the bus stand for the period from 10th January 1972 to 30th April 1972. Ext. P-4 is a copy of the notice threatening prosecution.

3. It was against the said background that the writ petition which was allowed by the learned Judge was filed to quash Exts. P-3 and P-4 and for other reliefs.

4. The learned Judge allowed the writ petition and quashed Exts. P-3 and P-4.

5. Section 91(a) enables the Panchayat to provide landing places, halting places and cart stands. The last of these expressions includes a bus stand, popularly so called. The provisions of Clause (b) are consequential on Clause (a); and enables the Panchayat to prohibit the use of any place other than what has been provided for the same purpose, under certain conditions. That what was provided is not a landing place is clear enough, as that seems to have relation to water transport. For the writ Petitioner it was contended that the facility -- if such it can be called -- Provided by the Panchayat was neither a halting place nor a bus stand. It was contended that a halting place is a well-known form of bus shelter or a bus stop and not the sort of bus stand provided by the Panchayat in this case. It was also argued that it was not open to the Panchayat to provide a bus stand in a spot where it chooses, irrespective of the convenience of the vehicle that travels a specified route, and insist upon the vehicle halting at the provided bus stand. We think there is force in this contention and that it is supported by the principle of the decisions cited to us, to which we shall immediately call attention. We think too, that the provision made by the Panchayat cannot amount to a bus stand in the well understood sense of the term as expounded by judicial decision. In *Ebrahim Saheb v. R.T. Authority* AIR 1951 Mad 419 a Division Bench of the Madras High Court, speaking with reference to the provisions of Section 76 of the Motor Vehicles Act, observed:

The section, as the learned Advocate General also conceded, falls into two parts. The first part applies to all motor vehicles and not only to public service vehicles. The authority concerned can determine the places at which motor vehicles in general may be parked indefinitely or for a specified period of time. This part has obviously no application to the facts of this case. The second part certainly deals with public service vehicles. Such vehicles can ordinarily stop to take up or set down passengers at prescribed places. We are familiar with bus stops. But there may be places at which for the convenience of the public, the public service vehicles may have to halt for a longer time than is just necessary for the taking up and setting down of passengers. There may be places where though no passenger intends to alight and no passenger is actually present to be taken up, yet, the vehicle should stop for sometime on account of various reasons which we need not now consider. Such places may be correctly called halting stations, and the authority concerned can determine such places. But these places cannot mean the permanent bus stands, like for instance, the Petitioner's bus stand which is a sort of a radiating centre of all the bus traffic for the town. (Page 421).

The principle of the above decision was affirmed by the Supreme Court in *T.B. Ibrahim Vs. Regional Transport Authority, Tanjore, . In Municipal Board, Pushkar Vs. State Transport Authority, Rajasthan and Others*, speaking again with reference to the provisions of Section 68(2) of the Motor Vehicles Act, the Supreme Court expounded the meaning of the expression "Bus stand", thus:

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 bus 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 Section 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 parking 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.

* * * * 20. It is equally clear to us that the "control of transport vehicles" with which Chapter IV purports to deal should reasonably be expected to contain provisions for fixation of places where the transport vehicles may commence their journey or terminate their journey, that is, the fixation of bus stand. When

therefore we find in Section 68(2)(r) the specific clause about "prohibiting the picking up and setting down of passengers...at places other than duly notified stands it is reasonable to think that the word "stand" was used there to mean "bus stands" in the sense of places where services terminate or commence. The scheme of the sub-section clearly shows that bus stands have first to be notified and regulatory orders can, and have to be issued thereafter. In the nature of things, the power to issue the necessary notification is implied in the provision. (page 464).

6. Again, in *Bhopal Municipality v. S.S.M.T. Cooperative Society* AIR 1970 S.C. 2420 speaking with reference to the provisions of Section 349 of the Madhya Pradesh Municipalities Act, the Supreme Court observed:

It is well to keep clear in one's mind the distinction between halting places which would be the equivalents of garages of private persons and places where passengers may be set down and taken up which can properly be called bus stands. The power to compel persons in charge of motor buses to stop only at certain places for the purpose of taking up or setting down of passengers is a matter which relates to motor traffic and there is a specific provision in Section 68(2)(r) and (s) of the Motor Vehicles Act for this specific purpose. (Page 2422).

The Court referred to the previous decisions in *T.B. Ibrahim Vs. Regional Transport Authority, Tanjore*, and *Municipal Board, Pushkar Vs. State Transport Authority, Rajasthan and Others*, , and reiterated that in the latter of these decisions, the Court had pointed out that a bus stand meant a place where a bus service commenced or terminated. In the light of the above exposition of the concept of a bus stand and the facts noticed at the outset of this judgment, as of the terminals of the route on which the writ Petitioner's vehicle plied, we are of the opinion that the learned Judge was right in his conclusion that what the Elappara Panchayat provided cannot be regarded as a "bus stand" in the well understood sense of the term, and that the Panchayat was not justified in taking the action or issuing the notices impugned. We affirm the judgment of the learned Judge and dismiss these appeals, with no orders as to costs.