

(2003) 07 KL CK 0054
In the High Court Of Kerala
Case No : O.P. No. 10474 of 2003

Sunny Joseph

APPELLANT

Vs

State of Kerala

RESPONDENT

Date of Decision : 17-07-2003

Acts Referred:

Kerala Panchayat Raj (Landing places, Halting places, Cart Stands and other Vehicle Stands) Rules, 1995 — Rule 3, 4, 5

Citation : (2003) 3 KLT 247

Hon'ble Judges : M. Ramachandran, J

Bench : Single Bench

Advocate : Madathil S. Anil Kumar and D. Jameela Devi, for the Appellant; Thomaskutty, Government Pleader, T.R. Ramchandran Nair and James Kurian, for the Respondent

Judgement

M. Ramachandran, J.—By Ext.P6, the Secretary, Kuravilangad Grama Panchayat had informed the petitioner, who is the Secretary of Drivers' Union, that effective from 28.3.2003 parking of vehicles should be shifted to the Taxi Stand approved by the Regional Transport Authority. The indication is clear that the parking as at present carried out was not authorised. In most cordial manner, their co-operation had been requested for. The petitioner had however thought it fit to challenge the same in this Original Petition. By interim order dated 27.3.2003, in C.M.P. No. 18051 of 2003, the direction was stayed. The Panchayat has entered appearance. Additional respondent has got himself impleaded. According to the petitioner, the decision evidenced by Ext.P6 is irregular and illegal and not to be enforced.

2. After hearing the parties, I am at once struck by the efforts made, which obviously is against public interest, and attempt for a retrograde. Apparently the Panchayat had faltered in one of its initial steps, and this is capitalised by a group, who have false notions about their rights and priorities. They conveniently forget that Rules have been framed for public benefit, and are not to be recognised as rigid and are liable to be interpreted as pliable and tuned to public

interest and welfare. The Original Petition is filed only to see that half a dozen taxis are permitted to remain on a central location of the Panchayat, though such occupation may be inconvenient to every other resident of the locality. The Original Petition is per se misconceived. The relevant facts could be briefly stated to notice the background of the case.

3. The Kuravilangad Grama Panchayat had notified a vehicle stand in the town, in 1994. It could hold only a maximum of seven cars, and finding the inadequacy, a new place was found nearby; a stand had been built, and it could accommodate about twenty vehicles. It was at a distance of about three hundred meters from the existing stand.

4. It appears that the Panchayat had thought it necessary only to get the permission of the Regional Transport Authority in the matter. An application had been filed before the Regional Transport Authority. In the meanwhile, taxi operators were required to move over to the new stand. But they refused. The Panchayat filed a Writ Petition for police protection for bringing about the shifting. The President of the petitioner - Union was the 6th respondent there.

5. The taxi drivers had raised an objection that the mandatory requirement of publication of notice and approval spoken to by Rules 3, 4 and 5 of the Kerala Panchayat Raj (Land Places, Halting Places, Cart Stands and Other Vehicle Stands) Rules, 1995 (hereinafter referred to as Rules) was not there. Rules had not been followed or consent obtained before the shifting order, and the proposal was therefore void. By Ext.P1 judgment, three directions came to be passed. Court had directed the Panchayat to look into the representation of the drivers Union; the District Panchayat Officer (DPO) was asked to examine the objections filed by them before him, and the Regional Transport Authority (RTA) had been directed to grant permission in accordance with law.

6. According to the petitioner, the District Panchayat Officer had passed Ext.P2 order thereafter on 21.8.1999. Though the officer had noticed about the sanction in the mean while on 29.4.1999, granted by the RTA (Ext.R2(d)), a rider was put on the order that the omission of publication was an irregularity. By Ext.P2, the DPO directed that the Rules should be strictly followed. Thus, the efforts of the Panchayat for shifting was successfully stalled.

7. The Panchayat appears to have caused publication of the proposal on 18.2.2000 and after a formal hearing on the objections, had passed Ext.R2(c) order on 25.4.2000 reiterating the decision for shifting.

8. But this decision was not implemented, perhaps for the reason that the Panchayat did not possess courage to over reach the wrath of the Drivers Union. It appears that a citizen had filed O.P. No. 3593/2003, requesting that the shifting is to be expedited, as decided. This Court had on 31.1.2003 directed further steps in a time bound manner (Ext.P3). The comment of the petitioner on this development, as could be seen from paragraph 6 of the Original Petition is:

"In the meantime, under the instigation of the 2nd respondent - Panchayat - another O.P. is filed before this Court as O.P. No. 3593/2003."

9. The petitioner evidently was unhappy about the development, as according to them, their objections were subsisting, and not disposed of. But the Panchayat had thereafter again given a notice of hearing. The petitioner had not appeared for hearing, in spite of receipt of notice. Again Ext.P4 notice was given, and after noticing the version of the petitioner, Ext.P6 had been passed requiring the shifting of the vehicles to the new stand, which is the subject matter of challenge.

10. The Panchayat, in their counter affidavit, (a copy of which was handed over to me at the time of hearing), referred to the further circumstance that they had approached the RTA once again after Ext.P3 judgment and the Authority had on 9.6.2003 observed as following:

"Attention is invited to the reference cited. Since RTA Kottayam at its meeting held on 29.4.1999 have considered the request for approval of the new Taxi Stand at Kuravilangad and granted the same, it is not necessary for a further sanction for functioning of the taxi stand at the same place."

11. But the petitioner continues to harp on the argument that the proposal is unenforceable. Counsel had not formulated the arguments with particular reference to any provision of law, but the argument appears to be that the decision of the RTA was on 29.4.1999, well before the publication of Ext.R2(a) and Ext.R2(b) notices, and therefore the procedure stands violated, and the resolution of the Panchayat directing a shifting is ab initio void. What is stressed in the Original Petition is that (i) this sort of planning without proper care and caution will only create financial chaos, (ii) the hasty attempt to shift without foresight will repeat the same contingency in future, (iii) the new stand is inconvenient and (iv) there is sufficient space at the backyard of the present stand for expansion of the stand.

12. What can be generally felt is only the allergy to cope up with the change proposed. As regard the convenience of the new stand and inconvenience of old stand, Ext.P2 containing definite finding as against the petitioner's claims, and it binds them. The due formalities of publication, and approval by the RTA has also been made, and as the counsel for the Panchayat points out, the DPO had also clarified that there may not be any objectionable circumstance for shifting as at present. At this point, again the steps have been got stalled.

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 Rule 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 Rule 4 is required to consider the objections only in the

cases where the approval of the RTA is not required. Under Rule 5, the Panchayat is bound to obtain previous sanction of the RTA before opening any public stand of halting place to motor vehicles.

14. Thus, 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 Rule 3. Perhaps in the case of decision of the RTA, as there is sufficient notice given by public hearing, a separate hearing at Panchayat level is not contemplated. It is not clear as to at what stage the objection referred to in Rule 3 is to be reckoned, in view of the specific rule viz., Rule 5 when we read it along with the proviso to Section 227 of the Act. In the case of motor vehicles, a public notice therefore does not appear to be required. However, since in this case all formalities scrupulously have been carried out, Ext.P6 cannot be termed as irregular. The petitioner is adopting only delaying tactics and the Original Petition, therefore, is dismissed.

15. Before concluding, as the Panchayat's notices are likely to be misleading, advertence to Rule 15 is also deemed necessary. It reads as follows:

"15. Public halting places, landing places and cart stands to be kept open to all:- Public halting places, landing places and cart stands shall be kept open to all persons irrespective of their caste, creed or sex."

Rule 19 also might be equally relevant. Thus, the new place is not to be considered as a taxi stand, but the user of the place is to be let open to all persons. The Rules have been framed with reference to Section 227 of the Act, and what is contemplated is public landing places, halting places and cart stands, including stand for vehicles of any description. The taxi operators are not to be treated as a distinct group or having right for exclusive occupation of the place nor do they can enjoy any monopoly. Any member of general public is to be permitted to use the place on payment of prescribed fee. The Panchayat has the right to levy fee themselves or may farm out such right on yearly basis. I have been constrained to observe as above, since the petitioner appears to be under a misapprehension that the place has been specifically earmarked to them, especially as seen from their letters, Exts. P5, P7 and P8. The Panchayat appears to have overlooked the mandate of the Rules, when the place is described as a taxi stand. Such a reservation is not warranted by the Act or Rules. It can also be seen that the Act and Rules referred to publication and permission of the R.T.A., since the definition of vehicles include stage carriage also. In the matter of cart stands and other vehicles, the relevance of a clearance by the R.T.A. is difficult to be appreciated. The local authority is the best judge in the matter. The Government will do well to look into the statutory provisions, whereunder unnecessary formalities and restraints are prescribed.

A copy of the judgment is to be forwarded to the Government to facilitate them to look into the matter and bring about necessary changes as they deem fit.