

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE A.V.RAMAKRISHNA PILLAI

FRIDAY, THE 19TH DAY OF JUNE 2015/29TH JYAISHTA, 1937

WP(C).No.17158 of 2014 (T)

PETITIONER'S:

1. **RAVEENDRAN NAIR,S/O.NARAYANAN NAIR,
AGED 61 YEARS,VARAVUKALAYIL VEEDU,
THEKKETHU KAVALA,KANJIRAPALLY,KOTTAYAM DISTRICT.**
2. **RADHAKRISHNAN NAIR,S/O.SANKARAN NAIR,
AGED 47 YEARS,ELAMPURAYIDATHIL (VADAKKAYIL) HOUSE,
THEKKETHU KAVALA P.O.,CHIRAKKADAVU,KANJIRAPALLY,
KOTTAYAM DISTRICT.**

BY ADV.SRI.GEORGE SEBASTIAN

RESPONDENT'S:

1. **THE STATE OF KERALA,
REPRESENTED BY THE SECRETARY,
DEPARTMENT OF LOCAL SELF GOVERNMENT,
SECRETARIAT,THIRUVANANTHAPURAM - 695 001.**
2. **CHIRAKADAVU GRAMA PANCHAYATH,
REPRESENTED BY ITS SECRETARY,
CHIRAKADAVU,PONKUNNAM P.O,
KOTTAYAM DISTRICT - 686 506.**
3. **ANEESH KUMAR T.J.,THEKKADAYIL HOUSE,
CHERUVALLY P.O.,MANIMALA,
KOTTAYAM DISTRICT - 686 543.**

***ADDITIONAL 4TH RESPONDENT IMPLEADED**

**ADDL.R4:THE TRAFFIC REGULATORY COMMITTEE,
CHIRAKADAVU GRAMA PANCHAYAT,REPRESENTED
BY ITS SECRETARY,CHIRAKADAVU,PONKUNNAM P.O.,
KOTTAYAM DISTRICT.**

*** ADDL.4TH RESPONDENT IMPLEADED AS PER JUDGMENT
DATED 19.6.2015 IN W.P(C) NO.17158 of 2014.**

**R1 BY GOVT. PLEADER SRI.G.GOPAKUMAR.
R3 BY ADV.SRI.LIJI.J.VADAKEDOM**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 19-06-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

pk

WP(C).No.17158 of 2014 (T)

APPENDIX

PETITIONER'S EXHIBITS:

EXHIBIT-P1-A TRUE COPY OF THE DRIVING LICENCE OF THE 1ST PETITIONER.

EXHIBIT-P2-A TRUE COPY OF THE DRIVING LICENCE OF THE 2ND PETITIONER.

**EXHIBIT-P3-A TRUE COPY OF THE RESOLUTION BEARING NO.VIII
DATED 15/02/2013 PASSED BY THE 2ND RESPONDENT.**

**EXHIBIT-P4-A TRUE COPY OF THE PETITION (PLP NO.122/2013) FILED BEFORE
THE TALUK LEGAL SERVICES COMMITTEE.**

**EXHIBIT-P5-A TRUE COPY OF THE STATEMENT FILED BY ADDITIONAL SUB
INSPECTOR OF POLICE, PONKUNNAM IN PLP NO.122/2013.**

**EXHIBIT-P6-A TRUE COPY OF THE PETITION FILED BY THE PETITIONERS UNDER
SECTION 191 OF THE KERALA PANCHAYATH RAJ ACT
DATED 19/09/2013 BEFORE THE 1ST RESPONDENT.**

**EXHIBIT-P7-A TRUE COPY OF THE JUDGMENT DATED 12/11/2013 IN
W.P(C) 27657/2013.**

**EXHIBIT-P8-A TRUE COPY OF THE ORDER PASSED BY THE 1ST RESPONDENT
DATED 23/06/2014.**

RESPONDENT'S EXHIBITS:

NIL

//TRUE COPY//

P.S. TO JUDGE

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A.V.RAMAKRISHNA PILLAI, J.

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W.P(C) No.17158 of 2014

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Dated this the 19th day of June, 2015

JUDGMENT

Alleging that the first respondent had passed Ext.P8 order on a petition filed by the petitioner under Section 191 of the Kerala Panchayat Raj Act, assailing Ext.P3 decision of the panchayat, the petitioners have come up before this Court.

2. The petitioners, who are drivers of three wheeler taxis, are parking and operating their vehicles from Thekkethu Kavala Junction within the local limits of respondent panchayat. Recently, the vehicles by name Tata Magic Iris (Auto Car) also started to park and operate from the autorickshaw stand where the petitioners' vehicles are operated. While so, Ext.P3 resolution was passed by which those Iris vehicles started to park and operate at a different place which is situated about 50 metres from the place where the petitioners are parking their vehicles which is on the northern side of the road.

3. The petitioners allege that by virtue of Ext.P3, the 2nd respondent had established a new halting place. According to the petitioners, the said resolution was passed in violation of the provisions of Kerala Panchayat Raj (Landing Places, Halting Places, Cart Stands and Other Vehicles Stands) Rules, 1995. The petitioners point out that as per Rule 3 of the aforementioned Rules, before establishing a vehicle stand, public notice should be given through notice board and by publication in at least two dailies, as per Rule 4, the panchayat is bound to consider the objections, if any, received from the general public and as per Rule 5, previous sanction of the Regional Transport Authority is required for establishing halting place for vehicles.

4. The grievance of the petitioners is that the establishment of the new stand for Iris Vehicles in a road margin without sufficient space is creating lot of traffic congestions leading to chances of accident. Since Ext.P3 resolution was neither appealable nor

revisable, the petitioners preferred Ext.P6 petition on 27.9.2013 under Section 191 of the Kerala Panchayat Raj Act which gives ample powers to the Government for canceling resolutions which are passed illegally.

5. Since there was delay in disposing Ext.P6, the petitioners approached this Court and this Court by Ext.P7 judgment directed the 1st respondent to dispose of Ext.P6 petition. The 1st respondent by Ext.P8 order disposed of Ext.P6 petition directing to maintain status quo with respect to the parking of the vehicles. In Ext.P8 it was observed that the traffic regulatory committee at the grama panchayat level has to take a decision in the matter. According to the petitioners, Ext.P8 order is *per se* illegal, arbitrary and unjustifiable. Therefore, they approached the Government under Section 191 of the Kerala Panchayat Raj Act which empowers the Government to cancel the illegal decisions/resolutions passed by the panchayat.

6. The petitioners allege that none of the specific contentions raised by them were considered by the 1st respondent. The 1st respondent went wrong in relegating the matter to the traffic regulatory committee, which according to the petitioner, has no power or right to consider the legality of the decision taken by the panchayat; it is alleged. It is with this background, the petitioners have come up with this writ petition.

7. The 3rd respondent has filed a detailed counter affidavit contending that the petitioners have not revealed all the facts related to the case. In fact, when the 3rd respondent started plying of the vehicles (motor cab), they went to park their vehicles at the spot where the petitioners are parking their autorickshaws. However, the petitioners opposed this respondent from parking the vehicles. Hence, they approached the respondent panchayat.

8. The panchayat by Ext.P1 resolution after discussing the issue with all the concerned persons permitted this respondent to park

their vehicles at the old jeep stand. Once they started parking of the vehicles and got 'calls' from hirers, the petitioners started to object the same. It is contended that Ext.P1 would show that it is not a resolution fixing a stand in terms of the Kerala Panchayat (Landing Places) Rules, 1995 and it is only a permission to use the old jeep stand for parking vehicles. Therefore, according to the respondent, neither Ext.P1 nor Ext.P8 is liable to be set aside as sought for in the writ petition.

9. It is further stated that a perusal of Ext.P8 would show that said decision is taken after considering the possibility of law and order problems and also after considering whether the parking of the vehicles cause any traffic obstructions. Ext.P8 would also show that as per the said order, the matter is only referred to the traffic regulatory authority and at present, decision is only a temporary measure subject to the decision to be taken by the transport regulatory authority.

10. It is further stated that the place where the petitioners are parking their autorickshaw is not a taxi stand fixed either under the Panchayat Act and Rules or Motor vehicles Act and they are parking autorickshaws on the wrong side of Punalur-Muvattupuzha Highway. Therefore, they prayed for a dismissal of the writ petition.

11. Arguments have been heard.

12. While the learned counsel for the petitioners would submit that Ext.P8 decision taken by the respondent panchayat is illegal as it was not in accordance the Rules, the learned counsel for the 3rd respondent, per contra, would submit that it was not a resolution fixing a stand in terms of the Kerala Panchayat (Landing Places) Rules, 1995. However, the same was only a permission to use the old jeep stand for parking the vehicles.

12. The matter has to be decided by the traffic regulatory committee as it is pending consideration by a reference under Ext.P8 order. As the traffic regulatory committee is not a party to this writ

petition, they were *suo moto* impleaded as additional 4th respondent in this writ petition. Therefore this Court is of the view that it is only just and proper to direct the 4th respondent committee to consider the issue independently after affording the petitioners and affected parties an opportunity of being heard. This shall be done within a period of one month from the date of receipt of a copy of this judgment. Till that exercise is completed, the existing state of affairs shall continue.

Anyone of the parties can produce a copy of the judgment as well as copy of the writ petition before the 4th respondent committee which shall act in accordance with the directions in the judgment.

Sd/-

A.V.RAMAKRISHNA PILLAI
JUDGE

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