

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE THE AG.CHIEF JUSTICE MR.ASHOK BHUSHAN
&
THE HONOURABLE MR.JUSTICE A.M.SHAFFIQUE

MONDAY, THE 9TH DAY OF FEBRUARY 2015/20TH MAGHA, 1936

WP(C).No. 26277 of 2014 (S)

PETITIONER(S) :

S.GOPALAKRISHNAN SHENOY AGED 48 YEARS
S/O. LATE V.SUBRAHMANYA SHENOY
RESIDING AT SYAM NIVAS, S.S.TEMPLE ROAD
PAYYANNOOR - 670 307, KANNUR DISTRICT.

BY ADVS.SRI.R.RAMADAS
SRI.T.SIVADASAN

RESPONDENT(S) :

1. STATE OF KERALA
REPRESENTED BY THE CHIEF SECRETARY TO GOVERNMENT
GOVERNMENT SECRETARIAT
THIRUVANANTHAPURAM - 695 001.

2. THE PRINCIPAL SECRETARY TO GOVERNMENT
HOME DEPARTMENT, SECRETARIAT
THIRUVANANTHAPURAM - 695 001.

3. THE PRINCIPAL SECRETARY TO GOVERNMENT
REVENUE DEPARTMENT, SECRETARIAT
THIRUVANANTHAPURAM - 695 001.

4. THE DIRECTOR GENERAL OF POLICE
POLICE HEADQUARTERS, THIRUVANANTHAPURAM - 695 001.

R1-R4 BY SR.GOVERNMENT PLEADER SRI.P.I.DAVIS

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON
09-02-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER(S) ' EXHIBITS

- P1 - TRUE COPY OF THE STATEMENT IN TABULAR FORM PREPARED.
- P2 - COPY OF THE PHOTOGRAPH TAKEN BY THE PETITIONER ON 30.9.14.
- P2(A) - COPY OF THE PHOTOGRAPH TAKEN BY THE PETITIONER ON 30.9.14.
- P2(B) - COPY OF THE PHOTOGRAPH TAKEN BY TH PETITIONER ON 30.9.14.
- P3: COPY OF NEWS PAPER REPORT APPEARED IN THE MALAYALAM DAILY MATHRUBHUMI DATED 17.12.2014 (KANNUR EDITION).
- P3(a): ENGLISH TRANSLATION OF EHBIT P3 NEWS PAPER REPORT IN MALAYALAM.
- P4: PHOTOGRAPH OF VEHICLES FOUND KEPT ON THE ROAD MARGIN NEAR PAZHAYANGADI JUNCTION, KANNUR DISTRICT TAKEN BY THE PETITIONER ON 17.12.2014.
- P4(a): PHOTOGRAPH OF THE VEHICLES KEPT OUTSIDE THE PREMISES OF THE PAYYANNUR POLICE STATION TAKEN BY THE PETITIONER ON 17.12.2014.

RESPONDENT(S) ' EXHIBITS

- ANNEXURE R4(a): COPY OF CIRCULAR NO.89584/G3/2008/HOME DATED 5.1.2009.
- ANNEXURE R4(b): COPY OF G.O. (Rt) .NO.3792/10/HOME DATED 20.12.2010.
- ANNEXURE R4(c): COPY OF G.O. (MS) NO.223/12/FIN. DATED 17.4.2012.
- ANNEXURE R4(d): COPY OF G.O. (Rt) NO.5740/13/FIN DATED 11.7.2013 REVISING THE GUIDELINES.
- ANNEXURE R4(e): COPY OF LETTER NO.C-5/58110/2011/SB DATED 9.5.2013 IN MALAYALAM OF THE ADDITIONAL DIRECTOR GENERAL OF POLICE (INTELLIGENCE).
- ANNEXURE R4(f): COPYO F ENGLISH TRANSLATION OF THE LETTER NO.C-5/58110/2011/SB DATED 9.5.2013 OF THE ADDITIONAL DIRECTOR GENERAL OF POLICE (INTELLIGENCE).
- ANNEXURE R4(g): COPY OF CIRCULAR NO.23/2013 DATED 3.8.2013 IN MALAYALAM ISSUED BY STATE POLICE CHIEF.
- ANNEXURE R4(h): COPY OF ENGLISH TRANSLATION OF THE CIRCULAR NO.23/2013 DATED 3.8.2013 ISSUED BY THE RESPONDENT.
- ANNEXURE R4(i): COPY OF LETTER NO.C5/58110/11/SB DATED 29.11.2013.
- ANNEXURE R4(k): COPY OF CASE WISE DETAILS OF SEIZED VEHICLES PENDING FOR DISPOSAL IN VARIOUS POLICE STATIONS IN ALL THE DISTRICTS.

/TRUE COPY/

PS TO JUDGE

ASHOK BHUSHAN, Ag.CJ & A.M.SHAFFIQUE, J

W.P(C).No. 26277 of 2014

Dated this the 9th February, 2015

JUDGMENT

Ashok Bhushan, Ag.CJ.

Heard learned counsel for the petitioner and the learned Senior Government Pleader.

2. This Writ Petition, a public interest litigation, is filed praying the following reliefs:

- “a) to issue a writ of mandamus or any other appropriate writ, order or direction directing the respondents to take necessary steps to ensure that the seized vehicles and articles are not kept for a long time at the time at the police stations.*
- b) to issue a writ of mandamus or any other appropriate writ, order or direction directing the respondents to ensure that no seized vehicles are parked on the road margins of public roads such as PWD roads and State and National Highways.*

- c) *to issue a writ of mandamus or any other appropriate writ, order or direction directing the respondents to file a report before this Hon'ble Court regarding the number of vehicles seized by 456 Police stations in the state for their involvement in various offences, particularly those offences under the sand Mining act and the regulation of Sand Act, within the last 3 years, and which are kept undisposed of, and also the details of the places where such vehicles are kept,*
- d) *to declare that parking of seized vehicles on the side of the public road and State and National Highways is illegal and improper."*

3. The petitioner highlights the problem of vehicles, which have been seized by the Police lying on the road margins and some times on the road itself, causing traffic hazards as well as the roads themselves being becoming dangerous for other vehicles to ply. It is stated that seized vehicles lie on the road margins for months together and no urgent steps are taken for removal of such vehicles

from the road margins or their disposal. It is stated that although the issue pertaining to vehicles seized and kept on the road margins, highways and Government offices/Police Stations came up for consideration before the Division Bench of this Court pertaining to Malappuram District in ***Moideeniutty v State of Kerala and others*** (2014(3) KHC 248 (DB), after considering the various suggestions and proposals, the Court had issued a direction in paragraph 9 of the judgment, which is to the following effect:

“9. Having regard to these facts, even if they have to keep the vehicles without disposal on account of pendency of litigation and other problems, they must be kept at places where they have an eye on these vehicles so that no illegal activity would be carried on by antisocial elements in the society. Having regard to 3rd and 4th paragraphs of the additional affidavit filed by 3rd respondent, District Collector, the relief sought in the writ petition is substantially attended to. We may further say that, it is not just Malappuram district but other districts in the State of Kerala also should not have a problem of this nature on account

of narrow roads and scarcity of space available for general public.”

4. Learned counsel for the petitioner submits that despite the directions issued by the Division Bench on 30.6.2014, there are no improvements in the situation and the seized vehicles are still lying on the road margins. The petitioner's case is that the petitioner has asked for information from 456 Police Stations of the State, out of which, only 70 Police Stations given reply giving details of the vehicles, which are seized, which is produced as Exhibit P1. In the Writ Petition certain photographs have also been produced showing the vehicles lying idle with seized goods on the road margins.

5. This Court had directed the respondents to file affidavits. Two affidavits have been filed on behalf of the fourth respondent being affidavit dated 15.11.2014 as well as affidavit dated 29.1.2015. In the affidavits filed on behalf of the respondents, reference has been made to the circular dated 5.1.2009 issued by the State as well as

circular dated 9.5.2013 issued by the Additional Director General of Police (Intelligence) giving directions on various aspects of seized vehicles. The submission is that in spite of clear circulars having issued by the Police Headquarters, appropriate measures for implementation of the circulars have not yet been taken. In the affidavit, which has been filed on 29.1.2015, the fourth respondent has compiled details regarding the vehicles, which have been auctioned under the interim order of this Court dated 21.11.2012. Reference has also been made to circular dated 1.12.2014, where it has been mentioned that as part of enforcement and raids by the Police, the vehicles on a regular basis had to be seized and confiscated. In the letter it has been recommended to the Government that there is a need for vehicle yard under each Police Station and steps have to be taken to find an available place for vehicle yard in every Police Circle Headquarters for parking the seized vehicles.

6. We have considered the submissions of the parties and perused the records.

7. There cannot be any dispute that seized vehicles cannot be allowed to stand on the road margins affecting the smooth flow of the vehicles on the road and exposing the public to several dangers. There has to be a suitable time-bound mechanism for disposal of the confiscated vehicles and a place has to be found out to keep the said vehicles during the period the proceedings remain pending regarding the confiscation and disposal. The State Police again sent a recommendation to the Government by letter dated 1.12.2014 filed as Annexure R4(b). It is useful to refer to the recommendations, which are in the following words:

“....The Police Department as part of enforcement is bound to mount searches and raids on various illegal activities like abkari mafia, sand mafia, forest mafia etc. As a result there would be regular seizure of vehicles and since the confiscation process followed by

disposal would necessarily take reasonable time and these vehicles are bound to be kept near Police stations as they are Court Property. Hence on a long term each Police station would require vehicle yard within its jurisdiction for parking seized vehicles so that the public roads as well as Police station campus would not be crowded with those vehicles. Therefore it is requested to kindly accept in principle the need for vehicle yard under each Police Station jurisdiction and as a first step necessary steps may kindly be taken for allotting a suitable place for vehicle yard in every Police Circle Headquarters for parking the seized vehicles."

8. A statement in Exhibit R4(c) has also been filed indicating the details with regard to different steps regarding number of vehicles removed from the road side, number of vehicles auctioned and number of vehicles released. In the statement, although some progress have been made in compliance with the directions, however, substantial number of vehicles are still on the road margins and have not yet been removed. The Police

Administration as well as the District Administration are duty bound to take appropriate measures regarding traffic and smooth flow of vehicles on the road and there is no obstruction on account of the vehicles parked on the road margins, which have been seized and some times which are loaded with goods like sand etc. The circular, which was issued by the Police Chief on 9.5.2013, Annexure R4 (f) itself contemplates several measures, which have been mentioned therein. The Police Chief having issued the said circular, it is the duty of the Police Department to ensure that the directions issued therein are complied with in letter and spirit. The Government having already recommended for providing vehicle yard in every Police Circle Headquarters, the Government has to consider the said recommendations and come up with appropriate decision for providing places for vehicle yard.

9. There is also a judgment of the Division Bench as noted above reported in ***Moideeniutty's case (supra)***, where directions having already been issued, we are of

the view that the circulars issued by the Police itself have to be implemented by the Police Department and the recommendations sent to the Government for providing a vehicle yard in each circle has to be looked into and appropriate measures in compliance thereof have to be taken at the earliest.

10. We are, however, of the view that the Police Administration itself shall take appropriate measures requesting the investigating authorities or any authorities under whom the vehicles have been seized to take early steps for taking a final decision in regard to those vehicles, which may be the forest, excise, revenue authorities or other authorities under whose orders the vehicles have been confiscated.

In view of the above matter, we dispose of the Writ Petition with the following directions:

i) The Police Administration has to take steps for disposal of cases where vehicles have been seized at an early date, so that within a short time a final decision can

be taken regarding the seized vehicles.

ii) The Police Department has to ensure compliance of the circular dated 9.5.2013 and the monitoring committee as contemplated may periodically review the situation with regard to each Police Station and appropriate directions be given to all concerned.

iii) The State Government shall take appropriate decision on the recommendations, which have been sent by the Police Chief by letter dated 1.12.2014, Annexure R4(b) for providing a vehicle yard in every Police Circle Headquarters for parking the seized vehicles.

iv) The State Government shall take all consequential steps for implementation of the above directions.

**ASHOK BHUSHAN
ACTING CHIEF JUSTICE**

**A.M.SHAFFIQUE
JUDGE**

vgs9/2/15