

ANIL K. NARENDRAN & ZIYAD RAHMAN A.A., JJ.

W.P.(C) No.11886 of 2021

Dated this the 8th day of June, 2021

ORDER

Anil K.Narendran, J.

Heard the learned counsel for the petitioner and also the learned Government Pleader for the respondents.

2. This writ petition is one filed by Trivandrum Chamber of Commerce and Industry along with its President seeking a writ of mandamus commanding the respondents as well as law enforcement agencies including Police to formulate and issue guidelines for earmarking certain public areas in State of Kerala for the purpose of holding mass assemblies, including protests, campaigns, demonstrations, etc. The petitioners have also sought for a writ of mandamus commanding the respondents as well as the law enforcement agencies including Police to remove assemblies staged around Government Secretariat and Raj Bhavan, including the adjoining footpaths; and a declaration that staging or holding of assemblies including protests, campaigns, demonstrations, etc., around Government Secretariat, Raj Bhavan and the adjoining footpaths is illegal and unconstitutional.

3. In the writ petition, it is alleged that various organisations and political parties are staging protests, demonstrations, etc., in public places, including footpaths/pavements, causing serious inconvenience to general public and also commercial and other establishments set up at such places. For the last several years, footpaths in front of Government Secretariat and Raj Bhavan and also the nearby areas are the targets for such protests, demonstrations, etc. Exts.P1, P1(A) to P1(c) are printouts of news items regarding such protests, demonstrations, etc., appeared in online news portals. Ext.P2 is a copy of reply dated 09.01.2021 of the Public Information Officer, Cantonment Police Station, Thiruvananthapuram and Ext.P3 is a copy of reply dated 20.01.2021 of the State Public Information Officer, Museum Police Station, Thiruvananthapuram, obtained under the provisions of the Right to Information Act, 2005, wherein it is stated that various organisations have conducted strikes and protests in front of Government Secretariat and Raj Bhavan causing traffic congestion and difficulties to pedestrians. There have been instances wherein campaigns or protests on footpaths, which initially started on temporary basis, attained the nature of

permanence. In connection with such campaigns or protests, sheds and other structures have come up on footpaths, which provide shelter to the campaigners/ protesters. Such structures, which gradually become permanent constructions, cause hindrance to the general public using footpath for the purpose for which it was constructed.

4. In **C.S.S. Motor Service v. Madras State [AIR 1953 Madras 279]** a Division Bench of the Madras High Court held that all public streets and roads vest in the State, but that the State holds them as trustee on behalf of the public. The members of the public are entitled as beneficiaries to use them as a matter of right and this right is limited only by the similar rights possessed by every other citizen to use the pathways. The State as trustees on behalf of the public is entitled to impose all such limitations on the character and extent of the user as may be requisite for protecting the rights of the public generally. In **Saghir Ahmad v. State of U.P. and others [AIR 1954 SC 728]** a Constitution Bench of the Apex Court agreed with the statement of law made by the Division Bench of the Madras High Court in Para. 24 of the decision in **C.S.S. Motor Service**.

5. In **Sodan Singh v. New Delhi Municipal Committee [1989 (4) SCC 155]** a Constitution Bench of the Apex Court held that the primary object of building roads is undoubtedly to facilitate people to travel from one point to another. P. Duraiswami Aiyangar in his book dealing with the Law of Municipal Corporations in British India (1914 Edn.) has observed that the primary and paramount use of the street is public travel for man, beast and carriage for goods. Public have a right of passing and re-passing through a street, but have no right 'to be on it', which Sri Aiyangar has mentioned at page 542 of his book. Halsbury's Laws of England (Vol. 21 Para. 107) it has been stated that the right of the public is a right to pass along a highway for the purpose of legitimate travel, not to be on it, except so far as the public's presence is attributable to a reasonable and proper user of the highway as such. What is required of him is that he should not create an unreasonable obstruction which may inconvenience other persons having similar right to pass; he should not make excessive use of the road to the prejudice of the others. Liberty of an individual comes to an end where the liberty of another commences. Subject to this, a member of the public is entitled to legitimate

user of the road other than actually passing or re-passing through it. As to what will constitute public nuisance and what can be included in the legitimate user can be ascertained only by taking into account all the relevant circumstances including the size of the road, the amount of traffic and the nature of the additional use one wants to make of the public streets. This has to be judged objectively and here comes the role of public authorities.

6. The Indian Roads Congress has formulated Guidelines for Pedestrian Facilities, vide IRC:103-2012. In Chapter 1 of IRC:103-2012 'footpath' is defined as a portion of right of way of road used for the movement of pedestrian. Chapter 2 of IRC:103-2012 deals with introduction. As per Para.2.3, all pedestrian facilities ensure social equity. Chapter 3 of IRC:103-2012 deals with its scope. As per Para.3.2, the guidelines cover engineering design and planning aspects of pedestrian facilities on roadside and at road crossing in urban and semi-urban areas. As per Para.3.3, the guidelines are intended for use by the local authorities responsible for creating and maintaining semi-urban and urban road transport facilities. As per Para. 4.2, efforts should be made to create such conditions that pedestrians are

not forced to walk in unsafe circumstances and that motorists respect the position of pedestrians. As per Para.4.5, the mobility and safety of all pedestrians including those with disabilities and reduced mobility should be ensured to promote inclusive mobility and universal accessibility. As per para 4.7, while planning and designing pedestrian facilities, overall objectivity could be continuity and overall safety.

7. In **Shali v. State of Kerala [(2019) 5 KHC 118]** this Court held that, as per Para.4.2 of the Guidelines for Pedestrian Facilities [IRC:103-2012], an effort should be made to create such conditions that pedestrians are not forced to walk in unsafe circumstances, and that the motorists respect the position of pedestrian. The Guidelines for Pedestrian Facilities have the approval of the Ministry of Road Transport and Highways (MoRTH). Every local authority in the State is bound to provide pedestrian facilities on public roads in conformity with these guidelines.

8. In **Kottamom (Kottiyar Mangalam) Sri. Darmasastha Temple Advisory Committee v. State of Kerala [2019 (5) KHC SN 27]** this Court held that, in view of the Guidelines for Pedestrian Facilities formulated by the Indian

Roads Congress, vide IRC:103-2012, no parking of vehicles is legally permissible on the 'footpath', which is the portion of right of way of road used for the movement of pedestrians. Any such parking of vehicles on the footpath of public streets will force pedestrians to walk in unsafe circumstances, which will adversely affect the mobility and safety of all pedestrians including those with disabilities and reduced mobility.

9. In exercise of the powers under Section 118 of the Motor Vehicles Act, 1988 and in supersession of the Rules of Road Regulations, 1989, the Central Government made the Motor Vehicles (Driving) Regulations, 2017, vide G.S.R.634(E) dated 23.06.2017. Regulation 5 of the Motor Vehicles (Driving) Regulations, 2017 deals with duties of drivers and riders. As per clause (4) of Regulation 5, the driver and the riders shall take special care and precautions to ensure the safety of the most vulnerable road users such as pedestrians, cyclists, children, elderly and the differently-abled persons. Regulation 22 deals with stopping and parking. As per sub-clause (c) of clause (2) of Regulation 22, a vehicle shall not be parked on footpath, cycle path and pedestrian crossing. Regulation 39 deals with pedestrian crossing, footpath and cycle track. As per sub-clause

(3) of Regulation 39, when a road is provided with a footpath or cycle track, no vehicle shall drive on such footpath or track, except on the directions of a Police Officer in uniform or where traffic signs permitting some movements have been displayed.

10. In **Sivaprasad v. State of Kerala and others [2020 (6) KHC 373]** this Court held that, in view of the law laid down in **Kottamom (Kottiyar Mangalam) Sri. Darmasastha Temple Advisory Committee [2019 (5) KHC SN 27]**, once the National Highways/State Highways are constructed as per the standards and guidelines prescribed by the Indian Roads Congress, it has to be maintained as such without any encroachment on the right of way or on the pedestrian facilities provided as per such standards and guidelines.

11. In **Sivaprasad** this Court held that, the primary object of building roads is to facilitate people to travel from one point to another and carriage of goods. Footpaths or pavements are public properties which are intended to serve the convenience of the general public. They are not laid for private use and indeed, their use for a private purpose frustrates the very object for which they are carved out from portions of public

streets. The main reason for laying out pavements is to ensure that the pedestrians are able to go about their daily affairs with reasonable measure of safety and security. That facility, which has matured into a right of the pedestrians, cannot be set at naught by allowing encroachments to be made on the pavements.

12. In **Sivaprasad** this Court held further that, removal of encroachments on the footpaths or pavements over which the public has the right of passage or access cannot be regarded as unreasonable, unfair or unjust. The State, being the principal protector of the rights of its citizens, keeping in view the doctrine of public trust, should not permit any encroachments on the footpaths or pavements. Nobody has got a right to erect any structures on roads. The State is not an exception. The National Highways and State Highways constructed by acquiring private property and by using public funds, can be used only for the travelling needs of public. It cannot be converted for other collateral purposes like erection of statues and memorials.

13. In **Dr.Mary Anita v. Corporation of Kochi and others [2020 (6) KHC 298]**, a Division Bench of this Court was dealing with a public interest litigation in which the

petitioner pointed out the hardships, inconvenience, dangers and threats to the life frequently faced and confronted by differently abled children, men and women, due to lack of safe and proper footpaths and allied facilities within the area of Kochi Municipal Corporation. The Division Bench held that Kochi Municipal Corporation as well as the Public Works Department are duty bound under law to make necessary arrangements in the footpaths and roads so as to enable the differently abled persons to access the roads and footpaths to their convenience. The Division Bench disposed of that writ petition directing Kochi Municipal Corporation, its Nodal Agencies and also the Public Works Department to maintain and repair and make arrangements for the roads and footpaths under their respective control so as to enable the differently abled persons to access them appropriately.

14. Clause (a) of sub-section (1) of Section 2 of the Kerala Public Ways (Restriction of Assemblies and Processions) Act, 2011 defines 'footpath' to mean any area comprised in a public way earmarked for movement of pedestrian having a width of not less than one meter but not exceeding three meters on either side of the public way, after leaving sufficient space for

the movement of vehicles. As per clause (d) of sub-section (1) of Section 2, 'public way' includes any highway, bridge, causeway, road, lane, footpath, square, courtyard, garden-path, channel or passage, accessible to the public, which is not owned by a private person.

15. As per Section 3 of the said Act, which deals with rights of the public for movement on public ways, on all public ways the public shall have, subject to the laws governing the control of traffic and safety of public, the right to unobstructed movement by vehicles along carriage ways and on foot along footpaths. Section 4 of the Act deals with prohibition of obstruction on public ways. As per sub-section (1) of Section 4, no person shall cause any obstruction by conducting any business or meeting or assembly or procession or demonstration on any public way or part thereof. As per sub-section (2) of Section 4, no meeting or assembly shall be conducted so as to obstruct any portion of the carriage way or footpath. As per sub-section (3) of Section 4, no demonstration or procession shall be conducted in such a manner that the entire carriage way or free flow of traffic is fully obstructed.

16. Section 5 of the Kerala Public Ways (Restriction of Assemblies and Processions) Act, 2011 deals with regulation of conduct of festivals, assemblies, meetings, etc. In **Basil Attipetti v. State of Kerala and others [2012 (2) KHC 85]** a Division Bench of this Court declared clause (c) of sub-section (1) of Section 5 of the Kerala Public Ways (Restriction of Assemblies and Processions) Act, 2011 as violative of the fundamental rights of the citizens conferred under Article 19(1) (d) and Article 21 of the Constitution of India, by virtue of the operation of Article 13(2) of the Constitution. The Division Bench upheld the constitutional validity of clauses (a) and (d) of sub-section (1) of Section 5 of the Act, subject to limitations and restrictions on permissions to be granted, as stated in Paras.9 to 11 of the judgment.

17. It is pertinent to note that, by the order dated 18.01.2013 in SLP(Civil)No.8519 of 2006 [**Union of India v. State of Gujarat and others**], the Apex Court issued a general direction to the effect that, from the date of that order the Government of Kerala shall not grant any permission for installation of any statue or construction of any structure in public roads, pavements, sideways and other public utility

places. The Apex Court made it clear that the said order shall not apply to installation of high-mast lights, street lights or construction relating to electrification, traffic, toll or for development and beautification of streets, highways, roads, etc., and relating to public utility and facilities. The above order was made applicable to all other States and Union Territories and the concerned Chief Secretary/Administrator is directed to ensure compliance of that order. Paragraphs 2 to 5 of the order dated 18.01.2013 in I.A.No.10 of 2012 in SLP(Civil)No.8519 of 2006 read thus;

"2. Mr. M.T. George, learned counsel for the State of Kerala placed before us a copy of the order dated September 7, 2011 passed by the Government of Kerala granting permission for installation of statue of late Shri N. Sundaran Nadar, Ex-Deputy Speaker of Kerala Legislative Assembly near to Neyyattinkara – Poovar Road in the curve turning to the KSRTC Bus Stand Neyyattinkara in the Kanyakumari National Highway near bus stand.

3. We have our doubt whether such permission could have been granted by the State Government for installation of statue on the national highway.

4. Until further orders, we direct that the status quo, as obtaining today, shall be maintained in all respects by all concerned with regard to the Triangle Island where statue of late Shri N. Sundaran Nadar has been permitted to be sanctioned. We further direct that henceforth, State

Government shall not grant any permission for installation of any statue or construction of any structure in public roads, pavements, sideways and other public utility places. Obviously, this order shall not apply to installation of high mast lights, street lights or construction relating to electrification, traffic, toll or for development and beautification of the streets, highways, roads, etc. and relating to public utility and facilities.

5. The above order shall also apply to all other states and union territories. The concerned Chief Secretary/ Administrator shall ensure compliance of the above order."

(underline supplied)

18. The order of the Apex Court dated 18.01.2013 in I.A.No.10 of 2012 in SLP(Civil)No.8519 of 2006 was in relation to the permission granted by the State of Kerala, by an order dated 07.09.2011, for installation of statue of late Shri.N.Sundaran Nadar, Ex-Deputy Speaker of Kerala Legislative Assembly near to Neyyantinkkara-Poovar Road in the curve turning to KSRTC bus stand, Neyyatinkkara in Kannyakumari National Highway.

19. By the order dated 05.07.2013 in SLP(Civil) No.8519 of 2006, the Apex Court directed the States and Union Territories to state on affidavit the position with regard to unauthorised structures including unauthorised religious structures on public roads, pavements, sideways and other

public utility places as existing on 30.06.2013 in their respective States and the steps taken up to 30.06.2013 for removal of such unauthorised structures. In the said order, the Apex Court noticed the submission of the learned counsel for the States of Madhya Pradesh, Kerala, Punjab and Rajasthan that they have already filed their affidavits. By the order dated 05.07.2013, the Apex Court directed the States of Madhya Pradesh, Kerala, Punjab and Rajasthan to file fresh affidavits indicating the position as on 30.06.2013.

20. By the order dated 31.01.2018 in SLP(Civil) No.8519 of 2006 and connected cases, the Apex Court ordered that the implementation of its orders should be supervised by the concerned High Courts. Consequently, the Apex Court remitted the matters to the respective High Courts for ensuring implementation of orders in an effective manner. While ordering transmission of concerned records to the respective High Courts, the Apex Court ordered that, the interim orders wherever passed shall continue, until the matters are considered by the High Courts. In case any clarification is required, it would be open to the parties to approach the Apex Court. The High Court will have the jurisdiction to proceed in the contempt of any of

the orders passed by the Apex Court.

21. Despite the enactment of the Kerala Public Ways (Restriction of Assemblies and Processions) Act, 2011 by the State Legislature and the law laid down by the Apex Court and this Court in the decisions referred to supra, the 1st respondent State and the law enforcement machinery have not taken necessary steps to to ensure strict enforcement of the relevant statutory provisions and also the Guidelines for Pedestrian Facilities formulated by Indian Roads congress [IRC:103-2012], in order to prevent encroachment of any nature, in any form, either temporary or permanent, on the right of way or on the pedestrian facilities on public roads, since any such encroachment will adversely affect the mobility and safety of all pedestrians including those with disabilities and reduced mobility.

22. Once roads are constructed as per the standards and guidelines prescribed by the Indian Roads Congress, it has to be maintained as such without any encroachment on the right of way or on the pedestrian facilities provided as per such standards and guidelines. Footpaths are not intended for stocking articles for trade or for display of goods by traders, in

front of their shops or establishments. Similarly, footpaths are not intended for the purpose of holding campaigns, demonstrations, etc., by political parties and other organisations, by causing any obstruction whatsoever to free movement of pedestrians. No political party or organisation can be permitted to encroach footpath or right of way of public roads, in connection with any such protest, demonstrations, etc., by erecting any temporary structures on the right of way or on the pedestrian facilities, forcing pedestrians including those with disabilities and reduced mobility to walk in unsafe circumstances.

23. Showing scant regard to the law laid down in the decisions referred to supra, political parties and various organisations are permitted to put up structures on footpaths and even on the right of way of public roads, all over the State. The protesters/agitators having political backing are even permitted to lay carpet and place chairs on the footpath. On account of such encroachments, pedestrians including those with disabilities and reduced mobility are forced to walk through the right of way of public roads, in unsafe circumstances.

24. Considering the nature of issues involved in this writ petition, this Court deem it appropriate to suo motu implead the Additional Chief Secretary, Home Department, Government Secretariat, Thiruvananthapuram-695 001; the Additional Chief Secretary, Local Self Government Department, Government Secretariat, Thiruvananthapuram-695 001; and also the Transport Commissioner, Kerala, 2nd Floor, Trans Towers, Vazhuthacaud, Thycaud, Thiruvananthapuram-695014 as additional respondents 5 to 7. Registry to carry out necessary corrections in the cause title.

25. Admit.

26. The learned Senior Government Pleader takes notice for the respondents 1 to 4 and also for additional respondents 5 to 7. The learned counsel for the petitioner to provide additional copies of the writ petition to the learned Senior Government Pleader, within two days.

27. The learned Senior Government Pleader shall ensure that the counter affidavit of the 1st respondent is placed on record within a period of four weeks. In the counter affidavit the 1st respondent shall explain the steps already taken to ensure strict enforcement of the orders of the Apex Court and the

judgments of this Court referred to supra, the relevant statutory provisions and also the Guidelines for Pedestrian Facilities formulated by Indian Roads congress [IRC:103-2012], in order to prevent encroachment of any nature, in any form, either temporary or permanent, on the right of way or pedestrian facilities on public roads.

List on 09.07.2021.

Sd/-
ANIL K. NARENDRAN
JUDGE

Sd/-
ZIYAD RAHMAN A.A.
JUDGE

bpr