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2023/KER/34588

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE P.V.KUNHIKRISHNAN

MONDAY, THE 19TH DAY OF JUNE 2023 / 29TH JYAISHTA, 1945

WP (C) NO. 18952 OF 2023

PETITIONERS:

- 1 MOHANAN V.V
AGED 65 YEARS
S/O. VELAYUDHAN, VAYALIL HOUSE, RAMANGALAM, MARADY,
MARADY VILLAGE, MUVATTUPUZHA TALUK, PERUMBALLOORE P.O.,
ERNAKULAM DISTRICT, PIN - 686673
- 2 SANTHA MOHANAN, W/O. MOHANAN V.V
AGED 63 YEARS
VAYALIL HOUSE, RAMANGALAM, MARADY, MARADY VILLAGE,
PERUMBALLOORE P.O., MUVATTUPUZHA TALUK, ERNAKULAM
DISTRICT, PIN - 686673

BY ADVS.
JOHN JOSEPH (ROY)
ANGEL GLORIA V.S.

RESPONDENTS:

- 1 STATE OF KERALA REPRESENTED BY THE SECRETARY TO
GOVERNMENT OF KERALA
TRANSPORT DEPARTMENT, SECRETARIAT,
THIRUVANANTHAPURAM, PIN - 695001
- 2 KERALA STATE POLICE CHIEF, POLICE HEAD QUARTERS
SASTHAMANGALAM, THIRUVANANTHAPURAM, PIN - 695010
- 3 TRANSPORT COMMISSIONER
OFFICE OF THE TRANSPORT COMMISSIONER, THYKAD,
THIRUVANANTHAPURAM, PIN - 695014
- 4 THE REGIONAL TRANSPORT OFFICER
VAZHAPPILLY, MUVATTUPUZHA, PIN - 686669

SRI.B.S.SYAMANTAK, GP

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON
19.06.2023, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

**CR****P.V.KUNHIKRISHNAN, J.****-----
W.P.(C)No. 18952 of 2023
-----****Dated this the 19th day of June, 2023****JUDGMENT**

1. There was a meaningful message from Hyderabad City Police on Twitter long back, which is even now available on 'google search' of internet, which reads like this:- **"DON'T WEAR HELMET BECAUSE OF POLICE. WEAR IT TO MEET YOUR FAMILY AGAIN"**. What a heart-breaking message!

2. The petitioners filed this writ petition with a strange prayer to get an exemption from wearing Helmets while riding two wheelers on medical grounds and their immediate provocation to file this writ petition is the installation of AI surveillance Cameras on the roads of Kerala. Petitioners are the permanent residents of Marady Grama Panchayath, close to Muvattupuzha Municipality. It is the submission of the petitioners that, they have to come to Muvattupuzha Town for their each and every need. There is no frequent public Transport service from the area of the petitioners to Muvattupuzha Town, is the submission. Hence the only source to



reach the town is to depend on Auto rickshaw or two wheelers. It is submitted that the petitioners are having Two wheelers bearing Nos. KL-17/ L-6745 and KL-17/ R-883. They used to ride on it with proper license and other documents. It is submitted that, due to high headache, the 1st petitioner is under continuous treatment of Giridhar Eye Institute Pvt. Ltd Ernakulam for the last several years. He has undergone Electroretinogram (ERG), Optical Coherence Tomography (OCT) etc. It is also submitted that the petitioners are not able to cover their heads and put any weight upon the head with helmet like articles. It is also submitted that the 2nd petitioner too is suffering from heavy headache and after treatment in various reputed hospitals in Kerala, she was referred to Indo American Hospital, Brain and Spine Center, Chemmanakkary, Vaikom and she is undergoing treatment. She is also under the same condition like the 1st petitioner and she is not able to bear any weight upon her head and hence not able to wear a helmet, is the submission. It is submitted that, before introducing the AI Camera surveillance system, petitioners submitted Exts.P-4 and P-5 representations before the 2nd and 3rd respondents for exempting them from wearing helmets. The same was not considered, is the grievance. Hence this writ petition is filed for issuing direction to the 2nd and



3rd respondents to pass orders exempting the petitioners from wearing helmets while travelling on two wheelers within the territorial jurisdiction of the 4th respondent to avoid fine being imposed due to the A.I Camera footage for not wearing the helmet.

The prayers in this writ petition are extracted hereunder:

"(i) issue a writ of mandamus or any other writ, order or direction, directing the Respondents 2 and 3 to issue orders exempting the petitioners from wearing helmets while travelling on Two wheelers within the territorial Jurisdiction of the 4th Respondents, to avoid the fine to be imposed due to the A.I camera footage for non wearing of helmets.

(ii) Issue a writ of mandamus or any other writ or order directing the Respondents 2 and 3 to consider and pass orders on Exhibit P-4 and Exhibit P-5 respectively, after affording the petitioners and opportunity of being heard.

(iii) Issue a writ of mandamus or any other appropriate writ, order of direction declaring that the petitioners are entitled for exemption from wearing helmets due to health problems to the nerves of the eyes of the Petitioners.

(iv) Dispense with the production of English Translation of Exhibits in Malayalam produced along with this Writ Petition in vernacular language.

(v) To grant such other reliefs as this Hon'ble Court may deem fit, just and proper in the facts of the case"[SIC]

3. Heard counsel appearing for the petitioners and the learned Government Pleader.



4. Section 129 of the Motor Vehicles Act, 1988 reads like this:

"129. Wearing of protective headgear.—Every person, above four years of age, driving or riding or being carried on a motorcycle of any class or description shall, while in a public place, wear protective headgear conforming to such standards as may be prescribed by the Central Government:

Provided that the provisions of this section shall not apply to a person who is a Sikh, if, while driving or riding on the motorcycle, in a public place, he is wearing a turban:

Provided further that the Central Government may by rules provide for measures for the safety of children below four years of age riding or being carried on a motorcycle.

Explanation.—"Protective headgear" means a helmet which,—
(a) by virtue of its shape, material and construction, could reasonably be expected to afford to the person driving or riding on a motorcycle a degree of protection from injury in the event of an accident; and

(b) is securely fastened to the head of the wearer by means of straps or other fastenings provided on the headgear."

5. Similarly, Rule 347 of the Kerala Motor Vehicles Rules, 1989 is also extracted hereunder :

*"347 **Protective head gear** - The head gear to be worn by any person driving or riding on, a motor cycle shall be of the ISI standards."*

6. In the light of the above provisions in the Motor Vehicles Act and Kerala Motor Vehicles Rules, it is mandatory to wear head



gear (helmet) for the rider and the pillion rider of a two wheeler. There cannot be any exemption to any citizen from wearing headgear (helmet) while riding a two wheeler. This Court in **Narayanan Nair v. State of Kerala** [2003 KHC 1171] considered a similar point. It will be better to extract the relevant portion of the judgment.

"5. The 1939 Act was replaced by the Motor Vehicles Act, 1988 to take care of the fast increasing number of vehicles; adoption of higher technology; the free flow of passenger and freight with the least impediments; the concern for road safety standards and other similar reasons. The Act of 1988 lays down stricter procedures relating to the grant of driving licences and the period of validity thereof. It lays down standards for the components and parts of motor vehicles and the issue of fitness certificates. The apparent legislative intent is to keep pace with the progress. The dominant purpose is to make driving and roads safe for the drivers and riders.

6. Chapter VIII of the Act provides for control of traffic, specification of parking places, driving regulations, duty to obey traffic signs, provision for signals and signaling devices, etc. All these measures are calculated to make driving easy and the roads safer. The purpose is to ensure safety to the person and property. The provisions promote public interest. These have to be followed by every driver. The default carries penalty. The provisions have to be followed by the people and enforced by the State.

7. S.129 of the Act is one of the safety measures provided by the Parliament. In fact, S.128 and 129 regulate the use of two wheelers. S.128 inter alia provides - no driver of a two wheeled motorcycle shall carry more than one person in addition to himself. The apparent



intention is to avoid the consequences of over loading. Under S.129, every person driving or riding a motorcycle has to wear a protective headgear. The mandate of the provision is clear and categorical. It is true that the second proviso permits the State to make rules and provide for certain exceptions. The indication in this behalf is also available in the first proviso. Factually, the State had a proposal to exempt the rider. However, it is not shown to have been finalized. So far as the present case is concerned, it is the admitted position that the State has framed a positive rule, which makes it mandatory for the driver as well as the pillion rider to wear protective headgear. This provision is contained in R.347 of the Motor Vehicles Rules. It reads as under:

347. Protective head gear : - The head gear to be worn by any person driving or riding on, a motor cycle shall be of the ISI standards.

8. A perusal of the above provision shows that the Act and the Rule requires the driver as well as the rider of a motor cycle to wear a protective headgear. It should conform to the ISI standards. The mandate is binding on everyone. The obligation is of the citizen. In case of default, the State has the power to impose the penalty.

9. There is a clear rationale for the requirement. Human bones are brittle. These can break easily. The skull is a sensitive part of the anatomy. It needs to be secured. A protective headgear is essential to protect the head. It is not merely a part of the space suit that the astronaut wears on the voyage in the outer space. The law makes it incumbent even for those who move on motorcycle or scooters etc. in public places.

10. Mr. Chacko submits that carrying a helmet is cumbersome. Sometimes, even the helmet itself can cause injury. Reference was made to a newspaper report.

11. The petitioner has placed material on record to show that the number of fatal accidents is raising. Each accident is a tragedy for the family. It has implications for the society as well. The amount of



compensation and the cost of treatment are clear economic factors. It is a matter of concern for all. It is true that carrying extra weight on the head or in hand cannot be convenient. Yet, mere inconvenience cannot be a good ground to ignore the advantage or the mandate of law. We need to realize that it is better to wear the helmet than to hurt the head.

12. In recent years, the society has seen the strides of science. Technology has brought about tremendous transformation. Speed has become the secret of success. But speed, if unchecked, can be suicidal. In any case, it carries a duty to take care. And we find no ground for the fear that even helmet can cause hurt. One swallow does not make a summer. A rare instance as reported in a paper cannot be a ground for rejection. Surely, helmets are being used all over the world. In all kinds of weather. Even by the cricketers and the cyclists. The need in the case of motorcyclists is even more. The petitioner has placed material on record to show that proper shape and standards have been laid down. The industry has to comply with the prescribed norms. And then, research is a continuing process. The design etc. can always be taken care of. Even weather conditions can be catered for. Other problems can also be resolved. For example: It should not be difficult to provide a hook to hang the helmet on the handle or anywhere else. There can also be a provision for a lock with it.” (Underline supplied)

7. Similarly, in **George John and others v. Chief Secretary, Government of Kerala and others** [2019 KHC 898], this Court considered all the relevant portions and observed that inserting Rule 347A in the Kerala Motor Vehicles Rules granting exemption to the pillion riders in wearing headgear is inoperative



and consequently invalid. It will be better to extract the relevant portion of the above judgment.

"8. For the reasons contained in order dated 14th November, 2019 and for other grounds in Writ Petition Nos. 25181/2010 and 27865/2015, G.O. (P) No.46/2003 / Tran. dated 13/10/2003 inserting R.347A in the Kerala Motor Vehicles Rules,1989 granting exemption to pillion riders in wearing headgear (helmet) is inoperative and consequently invalid.

9. In the result, impugned G.O(P) No.46/2003 / Tran. dated 13/10/2003 inserting R.347A of the Kerala Motor Vehicles Rules is set aside. Sri. P. Santhosh Kumar, learned Special Government Pleader seeks time to issue the circular, as stated supra, and also to make enforcement drive so as to enable the riders as well as the pillion riders to wear headgear (helmet). Respondents are directed to initiate and complete the above said exercise, as expeditiously as possible and wearing of helmet should be done compulsorily in respect of riders and pillion riders. Accordingly, Writ Appeal and Writ Petitions are disposed of as above."

8. The Madhya Pradesh High Court in **Rajneesh Kapoor v. Union of India and another** [2007 KHC 7451] considered the contention regarding the infringement of the fundamental rights of the citizens in such situation. It will be better to extract the relevant portion of the above judgment of Madhya Pradhesh High Court.

"29. The second ground of attack by the learned senior counsel for the petitioner is that the said provision restricts movement of a



citizen. It is well settled in law whenever a statute is challenged as violative of fundamental rights, the real effect on operation of the fundamental right is of primary importance, for it is the duty of the Court to act as the sentinel on the quivive. Art.19 (1)(d) stipulates that all citizen shall have the right to move freely throughout the territory of India. Clause (5) of Art.19 provides as under:

"19 (5). Nothing in sub-clauses (d) and (e) of the said clause shall affect the operation of any existing law in so far as it imposes, or prevent the State from making any law imposing, reasonable restrictions on an exercise of any of the rights conferred by the said sub-clauses either in the interests of the general public or for the protection of the interests of any Schedule Tribe."

If both these provisions or Art. 19(1)(d) and Art. 19(5) are read together, in our considered opinion, submission of Mr. Trivedi is absolutely sans substratum as there is no restriction as such to move freely throughout the territory of India and even if it is stretched then also there is no restriction of movement to move with a protective headgear. If the anatomy of the said provision is scanned in proper perspective there cannot be any shadow of doubt that there is no restriction per se on movement in the provision and conditions prescribed therein meet the requirement of reasonableness as envisaged under Art.19 of the Constitution. Ergo we repel the aforesaid submission of Mr. Trivedi.

30. xxx xxx

31. xxx xxx

32. xxx xxx

33. xxx xxx

34. xxx xxx

35. *From the aforesaid pronouncement of law which have dealt with S.129 it is quite vivid that the provision has been enacted to avoid the accidents and disasters on the road. It is noticeable that two wheelers are mostly involved in the accident and life - sparks*



of the person driving or riding the said vehicle gets extinguished because of impact of accident. The gruesome accidents sometime sends chill down the spine and their sight on the road creates a shudder. It is always to be kept in mind that Art.21 is the most Organic and progressive provision in our living Constitution, the fountain head of our laws. In this context, we may refer with profit to the decision rendered in the case of X v. Hospital Z., 1998 (8) SCC 296 : AIR 1999 SC 495 wherein the two Judge Bench of the Apex Court after placing reliance on the decisions rendered in the cases of Kharak Singh v. State of U.P., AIR 1963 SC 1295, Gobind v. State of M.P., 1975 (2) SCC 148 : AIR 1975 SC 1378, Munn v. Illinois, 94 US 113, Woll v. Colorado, 338 US 25, Malak Singh v. State of P and H, 1981 (1) SCC 420 : AIR 1981 SC 760, R. Rajagopal v. State of T.N., 1994 (6) SCC 632 : AIR 1995 SC 264 and Jane Roe v. Henry Wade, 410 US 113 expressed the opinion in paragraph 28 as under:

"28. Disclosure of even true private facts has the tendency to disturb a person's tranquility. It may generate many complexes in him and may even lead to psychological problems. He may, thereafter, have a disturbed life all through. In the face of these potentialities, and as already held by this Court in its various decisions referred to above, the right of privacy is an essential component of the right to life envisaged by Art.21. The right, however, is not absolute and may be lawfully restricted for the prevention of crime, disorder or protection of health or morals or protection of rights and freedom of others."

From the aforesaid pronouncements of law it is quite clear that under certain circumstances the aforesaid Article is not to be treated in absolute terms and can be lawfully restricted for the protection of the health. No citizen can claim the protection of Art.21 on the ground that he is discomforted or flummoxed by wearing a helmet while driving or riding a motorcycle. The individual discomfiture has to succumb to the paramount objective of saving life. As has been indicated earlier the impact of the



provision on the fundamental rights has to be seen. Hence, the petitioner on his personal discomfiture cannot say that the provision is unconstitutional when it has been engrafted with the object of protection of health and life of the individual as well as that of all motorcycle users which in a way forms the in - severable part of the health and safety of the collective. The data produced may be scientific or may not be. The articles that have been authored and which have been produced by the petitioner may have some relevance or may not. A stand has been taken in the counter - affidavit that the said articles are not scientific. We are not inclined to dwell in the said debate as we are disposed to think that the same is not within the domain of scrutiny of the Courts and the Legislature in its own expertise and data has engrafted the provision. The Legislature in its own wisdom may look at the same. As advised at present the said provision, as it appears to us, is wholesome and beneficial. We do not really find that it offends any of the fundamental rights as has been pyramided by Mr. A. M. Triversi, learned senior counsel for the petitioner. On the contrary, we are of the considered opinion that it does not infringe or create any concavity in the golden triangle, namely, Art.14, Art.19 and Art.21 of the Constitution of India, for such a provision saves life, the precious gift of nature and the prized benefaction of creative intelligence."

9. I respectfully agree with the above observations of the Madhya Pradesh High Court. Hence I am of the considered opinion that, there cannot be any exemption to a citizen from wearing helmet while driving or riding a two wheeler. If the petitioners are suffering from any illness which disable them from wearing



helmets, they have to abandon their two wheeler ride. They cannot avoid helmet in such situation while driving or riding. Wearing of helmet while riding a two wheeler is to protect the life of the citizen. Protection of the life of the citizen is the duty of the State. Therefore, there cannot be any exemption to the petitioners in wearing helmets, stating that they are suffering from some illness. There is no fundamental right to a citizen to use two wheelers without following the rules of the land. There is public transport facility and private transport facility available in the State. If the petitioners are suffering from illness, they can use the same. They cannot violate the law and ride two wheelers without helmets and escape from the AI cameras. An innovative system is introduced in the State to detect the violation of the provisions of the Motor Vehicles Act and Rules by installing AI surveillance Cameras on the roads. We have to appreciate the government and its Motor Vehicle department for introducing the same. There is no criticism from any part against the installation of AI Cameras, even from opposition parties in the state. They also wholeheartedly accept the new venture. There may be objections regarding the transparency in the decision making by which the cameras and other equipment are purchased. It appears that, even allegations of corruption are



raised. That is a different matter which is to be dealt separately. For that reason, an innovative venture initiated by the Motor Vehicle department may not be discouraged. Since it is introduced recently, there may be some technical defects and lapses. Of course, that is to be rectified. But in this new era of technology, installation of AI surveillance cameras is an innovative step to detect the violation of the road rule. The petitioners can't evade the AI Cameras by getting an exemption. Therefore, the prayers in this writ petition cannot be entertained.

Accordingly, this writ petition is dismissed.

Sd/-

**P.V.KUNHIKRISHNAN
JUDGE**

DM



APPENDIX OF WP(C) 18952/2023

PETITIONER EXHIBITS

- EXHIBIT P1 TRUE COPY OF THE UP TO DATE RECEIPT FOR PAYMENT OF TREATMENT DATED 13-03-2023 ISSUED FROM GIRIDHAR EYE INSTITUTE PVT. LTD
- EXHIBIT P2 TRUE COPY OF THE PRESCRIPTION OF THE DR. ANUBHAV GOYAL DATED 11-03-2023 OF GIRIDHAR EYE INSTITUTE PVT. LTD ERNAKULAM
- EXHIBIT P3 TRUE COPY OF THE CONSULTANCY CHART OF THE 2ND PETITIONER FOR VARIOUS DATES IN INDO AMERICAN HOSPITAL, VAIKOM.
- EXHIBIT P4 TRUE COPY OF THE REPRESENTATION DATED 09-05-2023 SUBMITTED BEFORE THE 2ND RESPONDENT
- EXHIBIT P5 TRUE COPY OF THE REPRESENTATION DATED 09-05-2023 SUBMITTED BEFORE THE 2ND RESPONDENT