

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE THE CHIEF JUSTICE MR.S.MANIKUMAR

&

THE HONOURABLE MR.JUSTICE A.M.SHAFFIQUE

TUESDAY, THE 19TH DAY OF NOVEMBER 2019 / 28TH KARTHIKA, 1941

WP(C).No.25181 OF 2010(S)

PETITIONER/S:

GEORGE JOHN, 230, MATHER NAGAR
KOCHI - 682033.

BY ADVS.
SRI.JOY THATTIL ITTOOP
SMT.RAKHI K.KUMAR

RESPONDENT/S:

- 1 THE CHIEF SECRETARY, GOVERNMENT OF KERALA
KERALA, SECRETARIAT, THIRUVANANTHAPURAM-695001
- 2 THE SECRETARY, TRANSPORT DEPARTMENT
GOVERNMENT OF KERALA, SECRETARIAT,,
THIRUVANANTHAPURAM.
- 3 UNION OF INDIA REPRESENTED BY ITS
SECRETARY, MINISTRY OF ROAD TRANSPORT, NEW DELHI.
110001

R1-2 BY SRI.P.SANTHOSH KUMAR,SPECIAL GOVERNMENT
PLEADER
R3 BY SRI.T.P.M.IBRAHIM KHAN, ASSISTANT SOLICITOR
GENERAL OF INDIA

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 19-11-2019, ALONG WITH WA.2261/2015, WP(C).27865/2015(G), THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE THE CHIEF JUSTICE MR.S.MANIKUMAR

&

THE HONOURABLE MR.JUSTICE A.M.SHAFFIQUE

TUESDAY, THE 19TH DAY OF NOVEMBER 2019 / 28TH KARTHIKA, 1941

WP(C).No.27865 OF 2015

PETITIONER/S:

RAVINDRAN .T.U
AGED 62 YEARS
S/O.UNNI, THARAYIL HOUSE, PALLURUTHY, KOCHI,
ERNAKULAM DISTRICT, KERALA, PIN 682006

BY ADVS.
SRI.JOSEPH RONY JOSE
SRI.P.K.SEBASTIAN

RESPONDENT/S:

- 1 STATE OF KERALA
REPRESENTED BY CHIEF SECRETARY TO GOVERNMENT,
GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM 695001
- 2 TRANSPORT B DEPARTMENT
REPRESENTED BY ITS SECRETARY TO GOVERNMENT,
GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM 695001
- 3 TRANSPORT COMMISSIONER
TRANSPORT BHAVAN, THIRUVANANTHAPURAM 695001
- 4 DIRECTOR GENERAL OF POLICE (POLICE CHIEF)
POLICE HEADQUARTERS, THIRUVANANTHAPURAM 695001

BY SRI.P.SANTHOSH KUMAR, SPECIAL GOVERNMENT PLEADER

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
19-11-2019, ALONG WITH WP(C).25181/2010(S), WA.2261/2015, THE
COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE THE CHIEF JUSTICE MR.S.MANIKUMAR

&

THE HONOURABLE MR.JUSTICE A.M.SHAFFIQUE

TUESDAY, THE 19TH DAY OF NOVEMBER 2019 / 28TH KARTHIKA, 1941

WA.No.2261 OF 2015

AGAINST THE ORDER/JUDGMENT IN WPC 27865/2015 DATED 16-09-2015 OF
HIGH COURT OF KERALA

APPELLANT/S:

- 1 STATE OF KERALA
REPRESENTED BY CHIEF SECRETARY TO GOVERNMENT,
GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM.695 001.
- 2 TRANSPORT (B) DEPARTMENT
REPRESENTED BY ITS SECRETARY TO GOVERNMENT,
GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM.695 001.
- 3 TRANSPORT COMMISSIONER
TRANSPORT BHAVAN, THIRUVANANTHAPURAM.695 001.
- 4 DIRECTOR GENERAL OF POLICE (POLICE CHIEF)
POLICE HEADQUARTERS, THIRUVANANTHAPURAM. PIN-695
001.

BY SRI.P.SANTHOSH KUMAR,SPECIAL GOVERNMENT PLEADER

RESPONDENT/S:

RAVINDRAN T.U
AGED 62 YEARS
SON OF UNNI, THARAYIL HOUSE, PALLURUTHY, KOCHI,
ERNAKULAM DISTRICT, PIN-682 006.

R1 BY ADV. SRI.JOSEPH RONY JOSE

R1 BY ADV. SRI.P.K.SEBASTIAN

THIS WRIT APPEAL HAVING BEEN FINALLY HEARD ON 19-11-2019,
ALONG WITH WP(C).25181/2010(S), WP(C).27865/2015(G), THE COURT
ON THE SAME DAY DELIVERED THE FOLLOWING:

"CR"

JUDGMENT**S.MANIKUMAR, C.J.**

WP(C) No.27865/2015 is filed with the following reliefs:

- (i) Issue a writ of certiorari, call for records leading to Exhibit P1 G.O and quash the same and insertion of Rule 347A may be struck off;
- (ii) direct the 3rd respondent to direct the concerned Officers under him to instruct all the pillion riders also in two wheeler to wear headgear (helmets) immediately, while they are riding and driving two wheelers on public roads;
- (iii) direct the 2nd respondent to ensure that the pillion riders are wearing headgear (helmets) while riding on motorcycle on public places and public roads;
- (iv) direct the 3rd respondent to file a detailed statement with regard to death of pillion riders of two wheelers in Kerala during the last 5 years;
- (v) direct the first respondent to produce the letter received from the Supreme Court Committee on road safety suggesting to issue orders to wear helmets by pillion rider also;
- (vi) grant such other reliefs as are deem just and necessary in the facts and circumstances of the case.

2. WP(C) No.25181/2010 is filed with the following reliefs:

1. To delcare that the amendment to the Kerala Motor Vehicles Rules,1989 granting exemption to the pillion riders from wearing of protective headgears under Rule 347A of the Kerala Motor Vehicles Rules, 1989 is illegal and unconstitutional.
2. To issue Writ of Mandamus to other appropriate Writ, Direction or Order directing the respondents to exercise their powers conferred

on them under the second proviso to Sec.129 of the Kerala Motor Vehicles Rules, 1989 in a judicial manner.

3. To grant said such relief as this Honourable court may deemed fit and proper in the interest of justice.

2. Government have issued G.O (P) No.46/2003/Tran. Dated 13th October, 2003, by amending the Kerala Motor Vehicles Rules, 1989. After rule 347, following rule was inserted:

“347 A Exemption from wearing of protective headgear. – Any person riding on a motor cycle other than the driver thereof, need not wear a protective headgear”.

Said Government Order has been stayed by a learned Single Judge of this Court, which resulted in filing of W.A No.2261/2015. Inasmuch as the issue involved in Writ Appeal and other Writ Petitions relate to wearing of protective headgear, on 14th November, 2019, we passed the following order:

“WP(C) No.25181/2010 has been filed challenging Rule 347A of the Kerala Motor Vehicles Rules, 1989 granting exemption to the pillion riders from wearing the headgear.

2. *Rule 347A of the Kerala Motor Vehicles Rules, 1989 reads thus:*

*“**347A.** Exemption from wearing of protective headgear. Any person riding on a motor cycle other than the driver thereof, need not wear a protective headgear.”*

Said rule is stated to have been framed in exercise of the powers conferred under the second proviso to Section 129 of the Motor

Vehicles Act, 1988.

3. For brevity, Section 129 of the Act is extracted under:-

“129. Wearing of protective headgear.—Every person driving or riding (otherwise than in a side car, on a motor cycle of any class or description) shall, while in a public place, wear [protective headgear conforming to the standards of Bureau of Indian Standards]:

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

Provided further that the State Government may, by such rules, provide for such exceptions as it may think fit.

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 motor cycle 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.”

4. On the aspect stay of the impugned Rule 347A, after hearing the learned counsel for the parties, writ court in WP(C) No.27865/15 passed the following order on 16th September, 2015:-

“ xxx

3. Rule 347 A of the Kerala Motor Vehicles Rules as amended is in direct conflict with Section 129 of the Motor Vehicles Act, 1988. The 'exceptions' made mention in the second proviso to Section 129 of the Act concerns the applicability to persons who are sick or belonging to a particular community like 'Sikhs'. The main body of Section 129 of the Act itself stipulates that every person

driving or 'riding' a motor cycle shall wear a protective headgear.

4. *The State Government as early as in the year 2003 undertook to enforce Section 129 of the Act with all vigour. This is discernible from the Full Bench decision in **Narayanan Nair v. State of Kerala** (2003 (3) KLT 676). But the State Government by Ext.P1 notification has acted in contravention by inserting Rule 347A in the Rules. Ext.P1 notification amending the Rules to the above effect is prima facie bad in law.*

5. *The operation of Ext.P1 notification by which Rule 347A was introduced in the Kerala Motor Vehicles Rules is hereby stayed until further orders."*

5. *Being aggrieved by the interim order made in WP(C) No.27865/15, State of Kerala and others have filed WA No.2261/15. Record of proceedings in WA No.2261/15 shows that a Hon'ble Division Bench of this Court (to which one of us is a party, (Hon'ble Mr.Justice A.M.Shaffique) passed an order dated 16th October 2015 directing joint hearing of WP(C) No.27865/15 and WA No.2261/15.*

6. *On this day, when the matter came up for further hearing, inviting the attention of this court to the Motor Vehicles (Amendment) Act, 2019, (No.32/2019), w.e.f. 9th August, 2019, Sri.P.Santhosh Kumar, Special Government Pleader submitted that the Motor Vehicles Act, 1988 has undergone amendment to several sections and with reference to Section 129 of the Principal Act, 1988, the following has been substituted:-*

"44. For section 129 of the principal Act, the following section shall be substituted, namely:—

'129. 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.”

7. Thus, in the light of the Amendment Act, 2019 (No.32/19), which has come into force from 9th August, 2019, State Government can no longer be said to have the power to make any exceptions, as provided earlier u/s 129 of 1988 Act. Consequent to the amendment made in the Motor Vehicles (Amendment) Act, 2019 and taking note of Article 254(2) of the Constitution of India, there is a clear repugnancy between said rules and the present Section 129 of the Motor Vehicles Act, 1988. For brevity, Article 254(2) of the Constitution of India is reproduced:

“Art.254(2) *Where a law made by the Legislature of a State with respect to one of the matters enumerated in the concurrent List contains any provision repugnant to the provisions of an earlier law made by Parliament or an existing law with respect to that matter, then, the law so made by the Legislature of such State shall, if it has been reserved for the consideration of the President and has received his assent, prevail in that State:*

Provided that nothing in this clause shall prevent Parliament from enacting at any time any law with respect to the same

matter including a law adding to, amending, varying or repealing the law so made by the Legislature of the State.”

8. *Though there is stay of Rule 347A of the Kerala Motor Vehicles Rules, judicial notice can be taken that pillion riders are not wearing headgears. State Government shall respond to the above by 19/11/2019, failing which, appropriate orders will have to be issued on the basis of the legal position.*

Post on 19/11/2019 in the admission list. Government Pleader shall communicate the order forthwith.”

3. Pursuant to the directions, Writ Petition Nos 25181/2010 and 27865/2015 have been posted today along with W.A No.2261/2015. On instructions, Sri.P.Santhosh Kumar, learned Special Government Pleader for motor vehicles submitted that W.A No.2261/2015, may be dismissed as withdrawn. Inviting the attention of this Court to proceedings issued by the Government of India, Ministry of Road Transports and Highways, New Delhi, dated 12th March, 2019 addressed to the Chief Secretary, Puduchery Administration, Sri.P.Santhosh Kumar, learned Special Government Pleader for motor vehicles submitted that instructions are issued to carry out enforcement drive that all persons driving or riding two wheeler vehicles to wear protective headgear (helmet) conforming to such standards as may be prescribed by the Central Government.

4. Heard Sri.Joy Thattil Ittoop, learned counsel appearing for the petitioner in WP(C) 25181/2010, Sri.P.K.Sebastian, learned

counsel appearing for the petitioner in WP(C) 27865/2015 and Sri.P.Santhosh Kumar, learned Special Government Pleader appearing for the State in W.A.No.2261/2015.

5. For the reasons contained in order dated 14th November, 2019 in W.A 2261/2015 and for other reasons contained in Writ Petition Nos 25181/2010 and 27865/2015 respectively, G.O(P) No.46/2003/Tran. dated 13.10.2003 amending the Kerala Motor Vehicles Rules, 1989, has to be set aside as inoperative by virtue of amendment to Sec.129 of the Kerala Motor Vehicles Act.

6. Sri.P.Santhosh Kumar, learned Special Government Pleader for motor vehicles submitted that, instructions would be issued in the form of a circular to all the Regional Transport Authorities, law and enforcement Agencies and others, for effective implementation of the Central enactment, ie., Sec.129 of the Kerala Motor Vehicles Act.

7. 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 rule 347A in the Kerala Motor Vehicles Rules,1989 granting exemption to pillion riders in wearing headgear (helmet) is inoperative and consequently invalid.

6. In the result, impugned G.O(P) No.46/2003/Tran. dated 13.10.2003 inserting rule 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.

Sd/-

S . MANIKUMAR

CHIEF JUSTICE

Sd/-

A . M . SHAFFIQUE

JUDGE

APPENDIX OF WP(C) 25181/2010**PETITIONER'S/S EXHIBITS:**

P1- True copy of the judgment dated 7.8.2003

P2-true copy of the judgment in the contempt case (c) 822/07 dated 20.6.07

P3- a copy of the Newspaper report came up on Malayala Manorama daily Newspaper dated 21.8.08

P3(a)- A free English translation of Ext P3.

P4- A true copy of the interim order dated 9.7.2009 in CCC No.777 of 2009

P5-A true copy of the interim direction dated 19.8.2009 in CCC No.777 of 2009

P6-A true copy of the report filed by the first respondent in CCC No.777 of 2009

P7-Kerala Gazette Notification No.G.O(P) No.46/2003/Trans dated 13.10.2003.

APPENDIX OF WP (C) 27865/2015**PETITIONER'S/S EXHIBITS:**

- EXHIBIT P1 P1:TRUE COPY OF THE GOVERNMENT ORDER GO(P)
NO.46/2003/TRAN DATED 13TH OCTOBER 2003
- EXHIBIT P2 P2:TRUE COPY OF JUDGMENT OF THIS HONOURABLE
COURT REPORTED IN 2000 KHC 823 REPORTED IN
DR. JOSEPH MANADAN AND ANOTHER V.TRANSPORT
COMMISSIONER, GOVERNMENT OF KERALA,
THIRUVANANTHAPURAM AND OTHERS
- EXHIBIT P3 P3:TRUE COPY OF THE JUDGMENT OF THE FULL
BENCH OF THIS HONOURABLE COURT DATED
07.08.2003 REPORTED IN 2003 KHC 1171
NARAYANAN NAIR V STATE OF KERALA
- EXHIBIT P4 P4:TRUE COPY OF PAPER REPORT APPEARED IN
THE MALAYALA MANORAMA DAILY DATED
23.06.2015
- EXHIBIT P5 P5:TRUE COPY OF PAPER REPORT APPEARED IN
THE MATHRUBHOOMI DAILY DATED 30.06.2015
- EXHIBIT P6 P6:TRUE COPY OF PAPER REPORT APPEARED IN
THE MALAYALA MANORAMA DAILY DATED
09.07.2015
- EXHIBIT P7 P7:TRUE COPY OF PAPER REPORT APPEARED IN
THE MATHRUBHOOMI DAILY DATED 03.07.2015
- EXHIBIT P8 P8:TRUE COPY OF PAPER REPORT APPEARED IN
THE MALAYALA MANORAMA DAILY DATED
22.07.2015
- EXHIBIT P9 P9:TRUE COPY OF PAPER REPORT APPEARED IN
THE MATHRUBHOOMI DAILY DATED 24.07.2015
- EXHIBIT P10 P10::TRUE COPY OF PAPER REPORT APPEARED IN
THE MATHRUBHOOMI DAILY DATED 08.08.2015
- EXHIBIT P11 P11:TRUE COPY OF PAPER REPORT APPEARED IN
DESABHIMANI DAILY DATED 10.08.2015
- EXHIBIT P12 P12:TRUE COPY OF THE PAPER REPORT APPEARED
IN THEJUS DAILY DATED 12.08.2015
- EXHIBIT P13 P13:TRUE COPY OF PAPER REPORT APPEARED IN
THE MATHRUBHOOMI DAILY DATED 17.08.2015
- EXHIBIT P14 P14:TRUE COPY OF PAPER REPORT APPEARED IN

THE MATHRUBHOOMI DAILY DATED 18.08.2015

EXHIBIT P15 P15:TRUE COPY OF PAPER REPORT APPEARED IN THE MATHRUBHOOMI DAILY DATED 19.08.2015

EXHIBIT P16 P16:TRUE COPY OF PAPER REPORT APPEARED IN THE MATHRUBHOOMI DAILY DATED 22.08.2015

EXHIBIT P17 P17:TRUE COPY OF PAPER REPORT APPEARED IN THE MALAYALA MANORAMA DAILY DATED 23.08.2015

EXHIBIT P18 P18:TRUE COPY OF PAPER REPORT APPEARED IN THE MATHRUBHOOMI DAILY DATED 27.08.2015

EXHIBIT P19 P19:TRUE COPY OF PAPER REPORT APPEARED IN THE MALAYALA MANORAMA DAILY DATED 03.09.2015

EXHIBIT P20 P20:TRUE COPY OF PAPER REPORT APPEARED IN THE MATHRUBHOOMI DAILY DATED 05.09.2015

EXHIBIT P21 P21:TRUE COPY OF PAPER REPORT APPEARED IN THE MALAYALA MANORAMA DAILY DATED 15.06.2015

EXHIBIT P22 P22:TRUE COPY OF PAPER REPORT APPEARED IN THE MATHRUBHOOMI DAILY DATED 11.09.2015

EXHIBIT P23 P23:TRUE COPY OF PAPER REPORT APPEARED IN THE DESABHIMANI DAILY DATED 07.07.2015

EXHIBIT P24 P24:TRUE COPY OF THE PAPER REPORT APPEARED IN TIME OF INDIA DAILY DATED 04.09.2015