

**Radhakrishnan Vs. State of Kerala**

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**SooperKanoon Citation :** [sooperkanoon.com/730508](http://sooperkanoon.com/730508)

**Court :** Kerala

**Decided On :** Sep-24-2002

**Reported in :** 2003(1)KLT383

**Judge :** B.N. Srikrishna, C.J. and; R. Basant, J.

**Acts :** [Motor Vehicles Act, 1988](#) - Sections 48(3), 72(2) and 112

**Appeal No. :** O.P. No. 3466/2000

**Appellant :** Radhakrishnan

**Respondent :** State of Kerala

**Advocate for Def. :** C. Vatsalan, Government Pleader and; R. Krishna Raj, Adv.

**Advocate for Pet/Ap. :** K.S. Madhusoodanan and; C.P. Peethambaran, Adv.

**Judgement :**

B.N. Srikrishna, C.J.

1.The principal grievance made in this Writ Petition under Article 226 of the Constitution, moved in public interest, is that the nature of traffic in the State of Kerala has deteriorated over the years and has now reached alarming proportions on account of the frequent accidents which continue unabated. In the companion petition, O.P. No. 1265 of 2001, Ext. P2, gives the statistics of traffic accidents taken from the website of the City Traffic Police. The figures indicate that traffic

accidents, including accidents resulting in grievous injuries and deaths, are on the rise. One of the principal cause of the accidents, according to the petitioner, is that stage carriage buses are driven at reckless speed without observing any norms as to the speed limits. Due to the policy of liberalisation adopted in the matter of granting stage carriage permits, the situation has become critical and needs to be controlled immediately.

2. The Original Petition gives statistical data in paras. 1 to 3 with regard to the number of accidents occurring on the roads and the rise in the number of fatal accidents. The petitioner has also quoted the report of the Principal Research Officer of National Transportation, Planning and Research Centre (NATPAC) which supports the contention urged. Against the background of these facts, the petitioner urges that action ought to have been taken by the State Government in exercise of its powers under the Motor Vehicles Act to remedy the situation. Since the State has singularly failed to do so, it is necessary for this court to direct the State to take necessary and remedial measures by a writ of mandamus.

3. Under the Motor Vehicles Act, 1939, Section 48(3)(xxi) empowers the Regional Transport Authority after giving a notice of not less than one month to vary the conditions of an existing permit or attach further conditions to a permit while granting the permit. In exercise of this power the Regional Transport Authority had made it a condition of the permits granted to the owners of stage carriages running within the city limits of Kochi that they should instal electronic speed regulator devices in all the private stage carriages limiting the speed at 50 Kms. per hour. This condition was challenged before this court by a Writ Petition. By a Judgment in *Ernakulam Dist. Private Bus Operators' Association v. Regional Transport Authority* (1986 KLT 712) this Court interpreted Section 48(3)(xxi) as enabling the Regional Transport Authority to impose such a condition. It was held that under Rule 369(a) of the Motor Vehicles Rules the Regional Transport Authority was empowered to impose speed limits. The speed limit imposed should be real, effective and capable of proper supervision and control. In order to achieve the above purpose, if the Regional Transport Authority insists that electronic speed regulator devices should be installed in all private stage carriage vehicles, the court was of the view that there was nothing unreasonable or ultra vires in such a

decision. The court took notice of the fact that it was the Regional Transport Authority who came to the conclusion that mere physical checking by police and officials of the Road Transport Department could not ensure such effective speed control and that it would be essential to control the speed of the vehicle by means other than mere physical checking. The Regional Transport Authority after considering the various options had decided that installation of the electronic speed regulator device was the most feasible method of effectively checking the menace of overspeeding. In the circumstances the court was of the view that such a direction would promote public good and was conducive to public safety, especially in an overcrowded city like Kochi. Hence, the condition attached to the permit was upheld as valid.

4. The Judgment in Ernakulam District Private Bus Operator's Association's case (supra) was rendered in the year 1986 and considered the then existing state of the traffic. Sixteen years have elapsed since then and the traffic in the city of Kochi and other cities and towns in the State of Kerala has grown by leaps and bounds, become more disorderly and chaotic. The statistics quoted in the Writ Petition do not indicate that the density of traffic has reduced or that safety of the passengers and pedestrians has increased in any measure.

5. Though a counter affidavit has been filed by the second respondent, no reason is adduced as to why the wholesome practice of attaching a condition in the permit for installation of electronic speed regulator device was given up. One possible reason could be that after the coming into force of the 1988 Act, perhaps, the provision of Rule 118 might have led to this erroneous impression. Rule 118 of the Central Motor Vehicle Rules deals with 'Speed Governor'. Under Sub-rule (1) of this Rule the Central Government is empowered to issue a notification prescribing the type of governor that shall be fitted by the operators of different transport vehicles. In our view, Rule 118 has not made any change in the position in law which was noticed by this court in Ernakulam District Private Bus Operators' Association's case (supra). Today, under the new Act of 1989, we have Section 72 of Sub-section (2), Clause (xxii) which is identically worded with the earlier Section 48(3)(xxi). The power that was read into Section 48(3)(xxi) is, therefore, very much readable into present Section 72(2)(xxii) of the [Motor Vehicles Act, 1988](#).

Even under the Act of 1988 Section 112 empowers the State Government or any other authority to deal with the limits of speed of motor vehicles. Such speed limits have been notified by S.O. No, 425(E) dated June 9, 1989. Clause (1)(d) of the Table prescribes the maximum speed per hour in Kilometres in respect of medium or heavy passenger motor vehicles. The problem which was faced by the Regional Transport Authority in the year 1986, when this court decided in *Ernakulam District Private Bus Operators' Association's case (supra)*, persists even today. But, its dimensions have increased manifold. In the circumstances, we see no reason as to why the Regional Transport Authority cannot insist on such a condition even today as part of the stage carriage permit issued by it in exercise of its powers under Section 72(2)(xxii). The Regional Transport Authority can and should attach such a condition to all existing permits also by varying the conditions and attaching such a condition to all fresh permits to be issued by it. In our view, it is imperative that the Regional Transport Authority takes such action to ensure that the spurt in the number of fatal and other motor accidents is effectively curbed.

6. Hence, we allow the Original Petition and issue a writ of mandamus commanding the State of Kerala and the Regional Transport Authorities constituted under the Motor Vehicles Act in every district in the State to ensure that all stage carriage permits and heavy transport vehicle permits, already issued or to be issued henceforth, shall contain a stipulation as to installation of a suitable speed governor which would ensure that the vehicle is not driven at a speed in excess of what is notified in respect of such a vehicle under the notification S.O. No. 425(E), dated June 9, 1989 prescribed under Section 112 of the Act.

7. The Regional Transport Authority concerned shall take immediate steps to issue notices to the existing permit holders of stage carriage vehicles and heavy transport vehicles and follow the prescribed procedure to have the permits amended by incorporating such a condition within a period of three months from today.

Original Petition is accordingly disposed of.