

Dejo Kappen and Another Vs. State of Kerala

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Court : Kerala

Decided On : Mar-22-2012

Reported in : 2012(2)KLT143

Judge : C.N. Ramachandran Nair & P.S. Gopinathan

Appeal No. : W.P.(C) Nos.32428 & 32429 of 2011

Appellant : Dejo Kappen and Another

Respondent : State of Kerala

Judgement :

Ramachandran Nair, J.

The short question arising in these writ petitions filed in public interest is whether the judgment of this court confirmed by the Honourable Supreme Court prohibiting holding of meetings on public roads and road margins as violative of fundamental rights of the citizens guaranteed under Article 19(1)(d) of the Constitution of India can be got over through State legislation and when the State has made such a legislative invasion on the fundamental rights of the citizens of the country, shouldn't this court declare such law as unconstitutional and stillborn under Article 13(2) of the Constitution of India. The background of the impugned legislation and the developments that led to this second round of litigation to protect fundamental rights of the citizens of the State are stated below in brief.2. Public meetings were held frequently by erecting panthal and by spreading chairs on tarred road in the

junction in front of the Aluva Railway Station which is just opposite to the State Road Transport Bus Station causing road block for long time and preventing public access even to the Railway Station. A local resident filed a public interest litigation which was allowed by this court by declaring that holding of public meeting on public road and road margin as illegal and violative of the fundamental rights of the citizens and the said judgment rendered in KHALID MUNDAPPILLY Vs. EXECUTIVE ENGINEER and OTHERS is reported in 2010 (3) KLT 86. In fact the instruction from the Inspector of Police stating that the holding of public meeting on public road at Aluva is undesirable as it leads to long time traffic block and even prevents people's entry to the Railway Station and the Police cannot manage the situation was not brought to the notice of this court. Strangely, inspite of this stand of the Police and the declaration of the illegality in permitting meetings on public road and road margins in violation of the fundamental rights of the traveling public, the State filed a Review Petition wherein several public interest litigants also got impleaded as additional respondents and opposed the Review Petition filed by the State and prayed for sustaining the law declared by this court in the judgment in the abovesaid Writ Petition. This court vide judgment in CHIEF SECRETARY TO GOVERNMENT and OTHERS Vs. KHALID MUNDAPPILLY and OTHERS reported in 2010 (3) KLT 757 dismissed the Review Petition upholding the law declared in the judgment, simultaneously prohibiting the Police, P.W.D. and State authorities from granting any permission to hold public meetings on public roads and road margins. These two judgments of this court were taken up by the State in S.L.P.(C) No.35169/2010, which was dismissed by the Honourable Supreme Court by order dated 6.1.2011. Even though the Honourable Supreme Court dismissed the S.L.P. by a single sentence order, Media reported that the matter was seriously contested by the State by engaging distinguished lawyers who even tried to convince the Supreme Court that the notoriously narrow Kerala roads admit space for holding public meetings. However, the Bench consisting of Honourable Mr. Justice H.L.Dattu who was Chief Justice of Kerala for over one and a half years being very familiar with the road conditions and the traffic blocks in Kerala, could not be convinced is the report of the Media. In any case fact remains that the State could not even get admission for their Special Leave Petition filed against the judgment, which was summarily rejected by the Supreme

Court. The position that emerges after the dismissal of the S.L.P. by the Supreme Court is that the declaration made by this court in the judgment holding that all public meetings on public roads and road margins as illegal and violative of the fundamental rights of the traveling public conferred under Article 19(1)(d) stands endorsed by the order of the Honourable Supreme Court. In fact, ever since the first judgment which was rendered on 23.6.2010, there has been general compliance in the State in as much as public meetings on public roads and road margins were not permitted until the State authorised it through a subsequent legislation namely, the Kerala Public Ways (Restriction of Assemblies and Procession) Act, 2011 (hereinafter called "the Act") which came into force in the State from 18.2.2011. Contempt Case(Civil) No.1041/2011 was filed in this court by the petitioner in the W.P.(C) which led to the above referred two judgments of this court producing Newspaper cuttings and photographs showing holding of public meetings by a political party on public road in violation of the judgment. When the Contempt Case came up before this Bench on 2.11.2011, we were informed of the permissions being granted for holding public meetings on road side under the Act, but in flagrant violation of the judgment confirmed by the Honourable Supreme Court. At that time the very same Bench (presided over by C.N.R.(J), as Acting Chief Justice) had the jurisdiction to hear public interest matters and the Bench in exercise of it's jurisdiction in public interest matters, initiated suo moto proceedings and issued notice to consider constitutional validity of the provisions of the Act which was enacted basically to get over the law declared by this court and confirmed by the Supreme Court. In fact, simultaneous with the initiation of proceedings to consider constitutional validity, this court suo moto granted stay against operation of the provisions of the Act authorising grant of permission to hold public meeting on public road and road margins in violation of judgments above referred. Thereafter interim applications were filed by the petitioners in these two Writ Petitions who were additional respondents in the first round litigations defending the judgments and opposing the provisions of the Act. Since these interim applications filed in the Contempt Case were in the nature of challenge against the constitutional validity of the Act passed in violation of the law declared by this court and confirmed by the Supreme Court, we permitted the impleading petitions filed in the Contempt Case to be numbered as writ petitions in

public interest and allowed the petitioners to produce paper books with the Contempt petitioner, who was the petitioner in the first round litigation that led to the two judgments of this court, as an additional petitioner and the State as a respondent. The stay order issued by this court against operation of the provisions of the Act for granting permission to hold public meeting on public roads and road margins was again extended and is continuing even now. In spite of wide publicity for the interim orders restoring the status quo ante i.e the position declared by this court and confirmed by the Supreme Court against granting of any more permission for holding public meetings on public roads and road margins, only the All India Lawyers Union represented by its High Court Unit filed an impleading application supporting the State to sustain the provisions of the Act enacted essentially to get over the judgments of this court.

3. We have heard Adv. Sri.Johnson Manayani, counsel appearing for the first petitioner in W.P.(C) No.32429/2011, who was a respondent in the first round of litigation, Adv. Sri.Baisil Attipetti, the first petitioner in person in W.P.(C) No.32428/2011, Adv. Sri.T.R.Rajan appearing for the second petitioner in the W.P.(C)s. who was the petitioner in the first round of public interest litigation which led to the above referred judgments of this court, Adv. Sri.Peeyus A. Kottam appearing for additional respondent who is a social worker impleaded in W.P.(C) No.32429/2011 supporting the petitioners in the challenge against the Act and also Advocate General Sri.K.P.Dandapani appearing for the State and Adv. Sri.P.V.Surendranath appearing for the All India Lawyers Union, the second respondent. We have also perused the argument notes and documents filed by the petitioners, the State and the additional respondent.4. We have to first consider maintainability of the two writ petitions raised by the second respondent impleaded namely, the All India Lawyers Union and the objections raised by the petitioners about the right of the All India Lawyers Union to support the legislation which is enacted to neutralise the law declared by this court protecting fundamental rights of citizens which is upheld by the Supreme Court. It is very unusual or rather unprecedented for this court to suo moto initiate proceedings to consider constitutional validity of a State legislation in a Contempt Case. However, Sri.T.R.Rajan, counsel for the petitioner in the Contempt application who was later allowed to be impleaded as second petitioner in one of the W.P.(C)s. defended the

action of this court by stating that this court while considering the Contempt Case has not only the authority but the duty to prevent repetition of violation of the judgment which was possible in this case by staying the operation of the provisions of the Act because only under the provisions of the Act, the Police authorities were granting permissions to hold public meeting on public roads in violation of the judgment. We are in complete agreement with this contention because in an application for contempt the court has to first consider whether there is prima facie contempt and whether there is likelihood of it's repetition. Before proceeding to take action for contempt, the first step a prudent court should take is to prevent further violation of the judgment which is exactly what we have done by staying the operation of the provisions of the Act which authorised Police authorities to give permission to hold meetings on public roads which is done by erecting panthals and by spreading chairs on tar road either blocking traffic or partially obstructing traffic. Further, as already stated, the Bench before which the Contempt Case came on 2.11.2011 had the jurisdiction to consider public interest matters and in that jurisdiction only we permitted the impleading applications filed in the Contempt Case, which are basically challenging the provisions of the Act, to be numbered as public interest litigations wherein the All India Lawyers Union was impleaded as the only party supporting the State legislation other than the State. The petitioners also rightly pointed out that the suo moto proceedings initiated by this court had become redundant because the impleading applications filed by the petitioners in the Contempt Case were permitted to be numbered as public interest litigations challenging the provisions of the Act. The additional second respondent impleaded cannot question the right of the petitioners who were parties in the original judgments of this court, to challenge provisions of the Act which is exactly the issue now before us. We, therefore, do not find any merit in the objection raised by the second respondent about the jurisdiction of this court to consider public interest litigations on merit. The three petitioners in the two writ petitions have raised serious objection against the right of the second respondent which is the High Court Unit of the All India Lawyers Union to challenge the law declared by this court and confirmed by the Supreme Court in the two judgments and to support the Act which is made to get over the judgments. In this regard they have relied on the Constitution Bench decision of the Supreme Court in HARISH

UPPAL Vs. UNION OF INDIA reported in 2003 (1) KLT 192 (SC) and another decision of the Supreme Court in O.P.SHARMA and OTHERS Vs. HIGH COURT OF PUNJAB AND HARYANA reported in (2011) 6 SCC 86 and contended that the Advocates have a duty to uphold the law declared by Higher courts and they should not promote or support violation of judgments and support legislation made to achieve the said object. We have to consider this contention with reference to the ground realities at least in Kerala where every political party has a Lawyers Unit as well. Therefore, if political parties shy away from being parties for fear of public resentment or loss of popularity, probably lawyers' wings come to their rescue and they take up the cause of the politicians. The second respondent namely, the All India Lawyers Union does not claim that they have ever held any meeting on public road or they ever propose to hold any such meeting, but still they are the only party which has come to rescue a State legislation made to neutralise the judgments of this court upheld by the Supreme Court upholding the fundamental rights of citizens conferred under Article 19(1)(d) of the Constitution. Even though we do not find any grievance for the second respondent even if this court declares any provision of the Act as unconstitutional, still we permitted the second respondent to implead along with the State as a party in both W.P.(C)s. and proceed to consider the W.P.(C)s. on merit. In order to consider the constitutional validity of the provisions challenged in the W.P.(C)s. we have to necessarily refer to the relevant provisions of the Act, which are extracted hereunder. "

S.3. 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.S.4. Prohibition of obstruction on public ways:-

(1) 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.(2) No meeting or assembly shall be conducted so as to obstruct any portion of the carriage, way or footpath.(3) No demonstration or procession shall be conducted in such a manner that the entire carriage way or free flow of traffic is fully obstructed.S.5. Regulation of conduct of festivals, assemblies, meetings etc:-

(1) Notwithstanding anything contained in Sections 3 and 4, the District Police Chief may impose reasonable restrictions on the right of unobstructed movement of the public along public ways for a period not exceeding twenty four hours in any particular area, in all or any of the following instances, namely:- (a) for the conduct of religious or national festivals, which are customary and have been established by tradition and for the conduct of such festivals of social, cultural or public importance which are declared to be so by the District magistrate; (b) for security of the State or individuals which in the opinion of the District Police Chief necessitate such restrictions; (c) for the conduct of public assemblies or meetings; and (d) for the conduct of public demonstrations and processions.....
.....(4) (a) On receipt of an application under sub- section

(3) the District Police Chief shall, after due consideration of the same, publish a notice regarding the nature, duration and other details of the restrictions imposed on the right of the public for unobstructed movement at any location or locality; (b) All notices under clause (a) shall specify alternative routes or facilities available to the public for the duration of the obstruction and it shall be the duty of the District Police Chief to deploy such police strength in the area, free of cost or partly or fully at the cost of the licensees as may be decided by the District Police Chief having regard to the public importance of the event and subject to such guidelines as may be issued by Government from time to time for maintaining public order, catering to emergencies and mitigating the difficulties to the public;.....(7) Nothing in this section shall be deemed to compel the District Police Chief to permit any demonstration or procession or assembly or meeting or festival, where he is satisfied that for considerations of public safety, convenience or security, such activity cannot be allowed." On going through Section 3 of the Act we notice that the Legislature has recognised and declared the fundamental right of unobstructed movement of people through vehicles or other carriage or on foot along public ways and footpaths. Section 4(1) and

(2) prohibits any obstruction by the conduct of any business or holding of any meeting or assembly on any public way or part thereof. So far as sub-section

(3) of Section 4 is concerned, procession on public roads are permitted so long as the same does not cover the entire carriage way and permits free flow of traffic. While Section 4(1) and

(2) upholds the law declared by the Division Bench upheld by the Supreme Court above stated, sub-section

(3) recognises the Full Bench decision of this court in PEOPLES COUNCIL FOR SOCIAL JUSTICE Vs. STATE OF KERALA reported in 1997(2) KLT 301 (F.B.) confirmed by the Supreme Court wherein it is declared that procession should be permitted on one side of the road so that free flow of traffic is maintained through the remaining portion of the road. However, it is seen that Section 5 is a complete negation of Section 4 which authorises the District Police Chief to permit conduct of religious or national festivals and also holding of public assemblies and meetings on public ways and road margins. No religious institution conducts any meeting on public road and national festivals are also not celebrated on public roads. At the maximum all these may involve processions on roads for short distances in the local area where it is held. The purpose of legislation is, therefore, to permit public meetings on roads which are organised by political parties and trade unions and, therefore, the most objectionable clause according to the petitioners, is Section 5(1)(c) of the Act. We have to consider the challenge against statutory provisions separately, one with regard to the religious or national festivals referred to in sub-clause (a) and the other with regard to conduct of public assemblies or meetings referred to in clause (c) of Section 5(1). In the counter affidavit, the State has referred to two major religious festivals, one the Thrissur Pooram held in Thrissur Town and the other the Attukal Pongala held at Trivandrum, both of which are temple festivals held once in an year. However, before considering scope of Section 5(1)(a) authorising permissions for religious or national festivals on public ways, we have to consider the first and foremost objection raised by the petitioners which is against Section 5(1)(c) authorising public assemblies and meetings on public ways and road margins which are regularly organised by political parties, trade unions and occasionally by social organisations.⁵ In the first place, we have to briefly state what is the law declared by this court in the two judgments above referred, the second of which is an

elaborate one rendered in the Review Petition, confirmed by the Honourable Supreme Court. The petitioners pointed out, and on going through the judgments we find that this court while deciding the matter considered the conditions of the roads in Kerala, which are narrow and always congested, the terrible tragedy that happened in Bharananganam a few years back killing 13 persons and injuring 50 persons when a vehicle ran into a religious procession passing through the road and the tragedy at Pothanikkad killing several people when a vehicle ploughed into a political rally taken out on road and the frequent and regular meetings organised by political parties in busy bus stops, in front of railway stations, bus stands etc., causing long time obstruction to traveling public, risking the life of critical patients and pregnant women transported to hospitals, detention of tender school children returning home in school vehicles and above all, the risk from passing vehicles to the life of the participants in the meetings held on road side. Taking all these into account, this court unequivocally held that the public meetings on the road side covering road and road margin fully or partially is a flagrant violation of the right of movement of citizens conferred under Article 19(1)(d) and the right to life conferred under Article 21 of the Constitution of India. In the said judgment in the Review Petition this court specifically took note of the contention raised by the State at that time that meetings and public speeches will have to be permitted in places and spots where people usually gather and are likely to assemble which are invariably roads and road margins where common man, villagers and the peasants assemble and walk through. This argument was met by this court holding that innocent public disinterested in political or trade union meeting should not be compelled to be participants by permitting panthals to be erected in busy junctions and allowing public meetings making them audience. It was also taken note by this court in the judgments that it is not the lack of meeting halls or community halls that encourage politicians and trade unions to hold public meetings on public road, but they go to the road in search of audience which is rather admitted by the State in the counter affidavit filed in the last round of litigation. Advocate General raised the contention that the Act is not made to get over judgments of this court confirmed by the Supreme Court but is made in exercise of legislative powers conferred on the State under Entries 1, 2, 13 and 64 of List II of the VIIth Schedule to the Constitution. However, the issue is not one of

want of legislative power but limitations and restrictions imposed by the Constitution on the Legislature to make legislation derogatory of fundamental right of the traveling public declared by this court and upheld by the Supreme Court. The fundamental question, therefore, to be considered is whether the Act is in violation of Article 13(2) of the Constitution which interdicts the State as follows:"Art. 13(2) The State shall not make any law which takes away or abridges the rights conferred by this Part and any law made in contravention of this clause shall, to the extent of the contravention, be void."We will now examine whether Section 5(1) particularly, clause) of it, authorising public meetings on public ways and road margins is a violation of fundamental right conferred under Article 19(1)(d) and Article 21 of the Constitution and if so, the said provisions have to be declared as null and void or in other words, still-born by virtue of operation of Article 13(2) of the Constitution above stated.⁶ A controversy raised by both sides in the course of hearing is whether the dismissal of SLP by the Supreme Court amounts to merger so that the judgments of this court confirmed by the Supreme Court could be held to be the law declared by the Honourable Supreme Court under Article 141 of the Constitution. The petitioners relied on two Judge judgment of the Honourable Supreme Court in GANGADHARA PALO Vs. REVENUE DIVISIONAL OFFICER AND ANOTHER reported in (2011

(2) KLT SN 3 (c.No.3) SC = (2011) 4 SCC 602 = 2011

(2) KHC SN 14(SC) wherein the Supreme Court held that when Supreme Court dismisses a Special Leave Petition by giving some reasons, however meagre it be, (it can even be just one sentence), there will be a merger of the judgment of the High Court with the order of the Supreme Court dismissing the Special Leave Petition. Counsel for the respondents on the other hand relied on judgment of the Supreme Court in KUNHAYAMMED Vs. STATE OF KERALA reported in (2000

(3) KLT 354 (SC) = (2000) 6 SCC

359) wherein the Supreme Court held that mere dismissal of SLP by the Supreme Court does not amount to merger and consequently Article 141 has no application. The petitioners' counsel submitted that inspite of best efforts by eminent counsel who argued the S.L.Ps. challenging the two judgments of this court, the

Honourable Supreme Court could not be convinced neither on the legal position canvassed against our judgment nor about the availability of space in Kerala Roads to permit public meeting without traffic obstruction and, therefore, dismissal of S.L.P. at the threshold should be taken as Supreme Court's endorsement of the law stated by the High Court. Counsel for the second respondent not only canvassed the position that there is no merger but has also sought for reconsideration of the position laid down by this court in the two judgments above referred. In our view, there is no scope to reconsider the law declared by this court because the matter was repeatedly considered by us in the Review Petition wherein we have elaborately discussed all aspects now raised before us and held that holding of public meeting on road not only violates fundamental rights of the citizens but is declared illegal and impermissible by specific legislation on the subject namely, The National Highways Act and State Legislations namely, The Kerala Highway Protection Act, The Panchayat Raj Act and the Kerala Municipalities Act. In fact, in the judgments we have even held that the obstruction caused on the road amounts to criminal offences punishable under Section 339 read with Section 341 and Section 431 of the Indian Penal Code.

7. The next contention raised by the State as well as the additional second respondent is about the fundamental right of freedom of speech and assembly conferred under Article 19(1)(a) and (b) of the Constitution. We have considered this claim in detail with reference to large number of judgments of the Supreme Court on the subject in the judgment in the Review Petition referred above. It may be noticed that in the decision in *K.K.ROAD MERCHANTS E.A.R.W.A.TN V. DISTRICT COLLECTOR, T.N.* reported in (2004) 13 SCC 61 the Supreme Court dropped the proposal to issue prohibitory orders against State authorities from granting permission to hold meeting, erect stage, etc. in the K.K.Road, Villupuram, because the Tamil Nadu Government communicated the decision of the Council of Ministers to the Supreme Court that no meeting will be permitted in the K.K.Road. In *MUNICIPAL BOARD, MANGALORE Vs. MAHADEOJI MAHARAJ* reported in AIR 1965 SC 1147 the Supreme Court held that even erection of statue of Mahatma Gandhi on road side is not permissible. In the decision in *RAILWAY BOARD Vs. NIRANJAN SINGH* reported in AIR 1969 SC 966, the Supreme Court held that there is no fundamental right for anyone to hold meetings in Government

premises, even though the same may be the convenient place to do so. The court specifically held in the said decision that the freedom to assemble peacefully and freedom to form unions does not mean that they can exercise those freedoms in whatever place they please. In another decision in VOLGA TELLIS and OTHERS Vs. DELHI MUNICIPAL CORPORATION reported in AIR 1986 SC 180 the Supreme Court held that foot paths or pavements are public properties which are intended to serve the convenience of 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. In view of the law declared by the Supreme Court in specific terms as above, we do not think there is any need to consider whether the above two judgments of this court specifically prohibiting grant of permission for public meeting on the public ways in Kerala have merged in the order issued by the Supreme Court dismissing the SLP because the law is settled in large number of other decisions of the Supreme Court. So much so, in our view, the law on the issue is very well settled in as much as right of movement, whether by foot or by carriage, on public roads and foot paths is the fundamental right of the citizens of the country conferred under Article 19(1)(d) of the Constitution. Kerala is one State which has probably the narrowest Highways and Public roads in India. As against the normal width of National Highway of 60 metres, the State has bargained for reduction to 45 metres and the road-side encroachers and vested interests are opposing even the 45 metre width for Highways in Kerala. Kerala tops on road accidents and over 4000 people died in road accidents during the year 2011. Many dying in accidents are pedestrians including even the unfortunate people who venture on morning walk on public roads. A small State like Kerala has above 55 lakhs of vehicles registered and invariably every road is clogged with vehicles except probably during late hours in the night. Besides this, being a consumer State, thousands of heavy vehicles reach Kerala with goods from other States and there is an exodus of tourists round the year reaching the State through road. Any one who travels on any road in Kerala will not be spared of the bitter experience of road block at somewhere or other. There is no provision in the Act to identify any road margin in any road side in the State having space for permitting any meeting. When we asked a specific question to the Advocate General as to whether the State can identify road

margins in the State permitting space for public meeting without causing obstruction to the vehicles and traveling public, the Advocate General submitted that under Section 5(7) if the District Police Chief is not satisfied about the availability of space, he is free to reject an application submitted for permission under Section 5(3). However, it is reported that recklessly permissions were granted by the District Police Chiefs who cannot be realistically expected to show the courage to reject a single application from any political party or trade union. Admittedly no survey is conducted to identify whether any road margin is suitable or sufficient to hold public meetings and if so, the number of people who can be permitted to participate. On the other hand, any one traveling on road will notice that wherever there is some space in some corner of a road, the same is occupied for residence by the landless or for conducting business by those who have the muscle power and influence. The road margins in Kerala are encroached by public and even electricity connections and water connections are given to such road side encroachers permitting and encouraging it. We, therefore, do not find any justification to uphold the provisions of Section 5(1)(c) which gives authority to the District Police Chiefs to grant permission to any one to hold public meetings and assemblies on public ways and road margins. Counsel for the additional respondent filed argument note raising several contentions in support of the validity of the Act. The main contention supported by several decisions of the Supreme Court is about the presumption of constitutional validity of the Act. We do not think there can be any controversy on the legal position which is settled by several decisions of the Supreme Court. So far as the legal position canvassed i.e. the fundamental rights of freedom of speech and freedom of assembly conferred on the citizens, by the second respondent to justify assembly and meetings on public roads and road margins is concerned, referring to several decisions of the Supreme Court we have in the first round of litigation covered by the above referred judgments confirmed by the Supreme Court held that nobody has a right to assemble and hold meeting on public road in violation of fundamental rights conferred under Article 19(1)(d) and Article 21 of the Constitution. We are not shown any later decision of the Supreme Court after the two decisions of this court referred above confirmed by the Supreme court by dismissing S.L.P. permitting meeting on public roads and road margins in violation of fundamental rights. Even

though counsel for the second respondent has relied on decision of the Supreme Court in HIMAT LAL Vs. POLICE COMMR., AHMEDABAD reported in AIR 1973 SC 87 to contend that granting of permission for public meeting on road side is not altogether unknown in India, what we notice is that the basic law stated by the Supreme Court even in that decision is that the right to assemble under Article 19(1)(b) does not mean that the right can be exercised at any and every place. Further, the Bombay Police Act in the context of which the decision is rendered by the Supreme Court, we are afraid, has no contemporary relevance, particularly in view of the decision of the Constitution Bench of the Supreme Court in ZEE TELEFILMS LTD. Vs. UNION OF INDIA reported in (2005)4 SCC 649 wherein the Supreme court has held as follows:"There can be no two views about the fact that the Constitution of this country is a living organism and it is the duty of courts to interpret the same to fulfil the needs and aspirations of the people depending on the needs of the time."Nobody can controvert the fact that automobile industry in India probably has the highest rate of growth. As against a few thousand vehicles made a few decades back, the production in this country is counted only in millions both for two wheelers and four wheelers. A situation has come when nobody can venture on the road without risking his life. If we follow the Supreme Court decision to decide the matter keeping in mind the needs of the time, then we will be constrained to prohibit not only public meetings but even any kind of assembly or procession on public roads to save the people. We, therefore, do not wish to repeat the very same findings in the earlier judgments which will hold good here also. Fundamental rights conferred under Article 19(1)(a) and (b) have to be synchronised with the right under Article 19(1)(d) which is possible only by prohibiting assembly and meetings on public roads and such restriction is justified under Article 19(2) of the Constitution. We, therefore, reject the argument of counsel for the second respondent that the public have a fundamental right to assemble and hold meeting on public road and road margins which necessarily involves traffic obstruction and risk to public life.

8. For the reasons stated above, we declare Section 5(1)(c) of the Act as violative of fundamental rights of the citizens conferred under Article 19(1)(d) and Article 21 of the Constitution and hence declare the said provision as unconstitutional and invalid by virtue of operation of Article 13(2) of the Constitution of India.9. The next

question to be considered is the permission contemplated for religious and national festivals under Section 5(1)(a) of the Act. The Advocate General has specifically referred to the counter affidavit dealing with the two religious festivals both conducted by Hindu temples once in an year, one the Thrissur Pooram at the Thrissur Town and the other the Attukal Pongala, a festival in a Devi Temple at Trivandrum participated by women devotees massively. Reference is also made about religious processions and festivals of the religious communities namely, the Christians and Muslims. So far as the religious ceremonies and festivals of Christian and Muslim communities are concerned, the State has not pointed out any instance of such festival held on public road. Of course processions are carried out through the road, but by virtue of the Full Bench judgment of this court above referred which is confirmed by the Supreme Court, the Police authorities should ensure that such processions occupy only one side of the road without affecting vehicular traffic. Sri.Johnson Manayani, counsel appearing for one of the petitioners contended that the Church authorities have in their mind the terrible tragedy that happened in Bharananganam, killing 13 persons and injuring 50 when a vehicle ran into a religious procession and taking lessons from it, the Church will have to avoid or atleast minimise the use of public roads for religious processions. What is to be noticed is that the religious processions are moving crowd who do not occupy road for any duration of time and by virtue of the Full Bench decision, procession should not block road preventing flow of traffic. In any case so long as they do not hold any public meeting or conduct any religious ceremonies on public ways or foot path or road margins, the State cannot take refuge under religious institutions for permitting public meeting to others. So far as the Thrissur Pooram is concerned, though organised by three major Hindu Temples in and around the Town, it has become a unique festival of the Town supported and participated by people from all communities and the impressive decorated elephant-parade and the spectacular fire works attract lakhs of people including foreign tourists. The celebrations are mainly held in the famous Thekkinkadu Mydan and the processions are on the wide roads within the City. Since there are large number of parallel roads connecting Highways and main roads outside the ring road of the town, the Thrissur Pooram does not affect road- connectivity. In fact considering the number of people participating in the festival, the intrinsic risk of elephants

running amok, the danger from fire-works and consequent stampede, the concern of the organisers, Police, Health and other authorities should be to provide space to services in the event of necessity.

10. So far as the Attukal Pongala is concerned, it is the festival of a Goddess Temple located in the suburbs of Trivandrum City. Large number of women devotees participate in the ritual by lining up on road side and cook "Nivedya" using fire-wood in separate brick ovens set up by each one on road-side. There is steady increase in the number of participants on an year to year basis and the festival virtually paralyses the city life during a day time. This court has on several occasions issued specific direction to the Police and Revenue authorities to ensure that the festival does not lead to road block for lakhs of residents living in the City. We understand that on the festival day roads nearby the Temple and even private properties are all filled up with women devotees, each one maintaining a fire place for cooking and on account of lack of space around temple, women line up on all road sides stretching several kilometres away from the Temple. Most of the women devotees participating in the festival do not even get a Darsan of the Deity in the Temple on that day. If Vote-Bank politics of the political bosses do not compel them to interfere, we are sure, the City Police will ensure that devotees occupy only one side of public road and the festival is conducted without road block. In our view, devotees should be permitted only one side of the main roads without blocking the road fully so that at least emergency services like Police, Ambulance and Fire Service can be maintained. So far as Pongala cannot be contained in the temple compound or atleast around it, there is nothing wrong in the Pongala line of women devotees stretching to Kanyakumari in the South or goes straight in the opposite direction on the National Highway to Attingal or beyond. So long as the Police and State authorities cannot declare holidays for the fundamental rights of the people of the region, full road block should not be permitted. The concept of secularism visualised in the Constitution is unfortunately taken by the political leaders as patronage to every religion and religious groups even to the detriment of public interest at large. However, we feel the authority conferred on statutory authorities under Section 5(1)(a) to permit religious festivals and processions on road side should be granted without permitting obstruction of the full road and by permitting traffic on one side of the

road as held by the Full Bench. Even though Section 5(1)(a) talks about national festivals, the State has not pointed out any such festival being held on public road. In any case we feel since religious and national festivals are held once in an year and the same maximum involves short distance processions or rituals on road side as stated above, the same can be permitted on one side of the road without completely obstructing the traffic. We, therefore, uphold Section 5(1) (a) under which the District Police Chiefs can grant permission for holding religious or national festivals without obstructing public roads completely but by permitting use on one side leaving the other side for traffic.

11. So far as Section 5(1)(d) is concerned, we have already stated that right to take out procession on public roads is covered by Full Bench decision of this court confirmed by the Honourable Supreme Court wherein the finding is that procession should be permitted on one side of the road by allowing free flow of traffic on the other side. However, we wish wisdom should prevail upon the enlightened political and religious leaders and they should not risk the life of the public by leading them in procession on the road along with dangerous traffic. We wish atleast this time the State will notice the "Lakshman Rekha" contained in Article 13(2) so that they don't repeat another legislative misadventure in this direction.12. To sum up, we allow the Writ Petitions in part as stated below.i) The constitutional validity of Sections 5(1)(a) and (d) of the Kerala Public Ways (Restriction of Assemblies and Processions) Act, 2011, is upheld subject to limitations and restrictions on permissions to be granted as stated above.ii) Section 5(1)(c) of the Act is declared unconstitutional and violative of fundamental rights conferred under Article 19(1)(d) and Article 21 of the Constitution and hence declared invalid by virtue of operation of Article 13(2) of the Constitution of India. In view of the declaration above, we prohibit granting of any permission under Section 5(1)(c) for holding any public meeting on public roads or road margins by the District Police Chiefs or any authority. The Chief Secretary to Government will forward the judgment to the State Police Chief for issuing appropriate instructions to the District Police Chiefs and in turn to the subordinate Police Officers for compliance of the judgment.