

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE THE CHIEF JUSTICE MR.S.MANIKUMAR

&

THE HONOURABLE MR. JUSTICE SHAJI P.CHALY

TUESDAY, THE 11TH DAY OF OCTOBER 2022 / 19TH ASWINA, 1944

WA NO. 1387 OF 2022

AGAINST THE JUDGMENTWP(C) 17966/2022 OF HIGH COURT OF
KERALA

APPELLANT/S:

RINU SREEJAYA ASWAN @ RINU S ASWAN
AGED 32 YEARS
S/O. S. ASWAKUMAR, RESIDING AT TC 27/1240 (3),
'KOWSTHUBHAM', VANCHIYOOR P.O, TRIVANDRUM
DISTRICT, PIN- 695035.

(PARTY-IN-PERSON)

BY ADVS.
G.SREEKUMAR (CHELUR)
S.SUDHEESH
RENJINI.R

RESPONDENT/S:

- 1 UNION OF INDIA
REPRESENTED BY SECRETARY TO THE GOVERNMENT,
MINISTRY FOR ROAD, TRANSPORT AND HIGHWAYS,
TRANSPORT BHAVAN, 1, PARLIAMENT STREET, NEW
DELHI, PIN-110001.
- 2 STATE OF KERALA
REPRESENTED BY SECRETARY TO THE GOVERNMENT,
GOVERNMENT SECRETARIAT, TRIVANDRUM DISTRICT, PIN-
695001.
- 3 DIRECTOR GENERAL OF POLICE,
POLICE HEADQUARTERS, VAZHUTHACAUD P.O, TRIVANDRUM
DISTRICT, PIN- 695010.
- 4 THE TRANSPORT COMMISSIONER,
TRANSPORT COMMISSIONERATE, 2ND FLOOR, TRANS

TOWERS, THYCAUD P.O, TRIVANDRUM, PIN- 695014.

- 5 THE ROAD SAFETY COMMISSIONER,
OFFICE OF THE ROAD SAFETY AUTHORITY, 4TH FLOOR,
TRANS TOWERS, DPI, VAZHUTHACAUD, THYCAUD P.O,
TRIVANDRUM DISTRICT, PIN- 695014.
- 6 THE SECRETARY,
KERALA PUBLIC WORKS DEPARTMENT, GOVERNMENT
SECRETARIAT, TRIVANDRUM DISTRICT, PIN- 695001.
- 7 THE CHIEF ENGINEER,
NATIONAL HIGHWAYS WING OF THE STATE PWD, PMG,
TRIVANDRUM DISTRICT, PIN- 695 033.
- 8 THE PROJECT MANAGER,
KERALA STATE TRANSPORT PROJECT (KSTP), T.C NO.
11/339, SREEBALA BUILDING, KESTON ROAD,
NANTHANCODE, KOWDIAR P.O, TRIVANDRUM DISTRICT,
PIN- 695003.
- 9 THE INSPECTOR OF POLICE,
HI-TECH TRAFFIC ENFORCEMENT CONTROL ROOM, PTC,
THYCAUD P.O, TRIVANDRUM DISTRICT, PIN- 695014.

BY ADV MANU S., DSG OF INDIA

V. TEKCHAND, SR. GP.

THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON
11.10.2022, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

J U D G M E N T

C. R.

Shaji P. Chaly, J.

The above appeal is preferred by the petitioner in W. P. (C) No. 17966 of 2022 challenging the judgment dated 03.06.2022 passed by the learned Single Judge whereby the following reliefs sought for in the writ petition were declined:-

“A. To issue a writ of mandamus or any other appropriate writ, order or direction commanding the respondents to erect appropriate sign boards specifying the speed limits applicable in stretch of roads owned and managed by the respondents 1 to 8;

B. To issue appropriate directions and guidelines to the 1st respondent to make it mandatory to install speed limiting mechanisms or such other alerting devices in the vehicles plying in the public road for the proper implementation of directives enshrined in S.112 of the Motor Vehicle Act as provided under Exhibit P5;

C. To call for the records leading to Ext P2 to P3 and such other further communications may be pleased to issue a writ of certiorari to quash the same.”

2. Brief material facts for the disposal of the appeal are as follows:-

3. Appellant is the registered owner of a motor car. He is served

with Exts. P2 and P3 charge memos by the Inspector of Police, High-Tech Traffic Enforcement Control Room, Thiruvananthapuram, the 9th respondent, for speeding and imposing a fine of Rs. 1,500/-. The case of the appellant is that the 9th respondent does not have any jurisdiction or authority to issue the charge memos without erecting sign marks on each and every road stretch, cautioning general public regarding speed limits applicable on the roads managed and maintained by the Union of India, State Government and other statutory authorities. It is also submitted that the 9th respondent has no jurisdiction to issue the impugned charge memos since the charge memos can be issued only by the jurisdictional Police or the competent authority under the Motor Vehicles Act, 1988 and the rules thereto.

4. That apart it is contended that Exts. P2 and P3 charge memos are not accompanied with any electronic record regarding the speed at the point of time when the charge has occurred, and without availability of the said electronic record, no action can be taken against the appellant.

5. The learned Single Judge after taking into account the contentions advanced by the petitioner has dismissed the writ petition

holding that imposition of fine for over speeding of vehicles is a summary proceeding, which cannot be challenged in a writ petition, as it involves disputed questions of fact.

6. Basically it is contended that the dismissal of the writ petition by the learned Single Judge is without assigning any reasons and therefore interference is required to the said judgment. It is also submitted that the issues raised by the appellant have severe ramifications since the action of the 9th respondent by issuing Exts. P2 and P3 has caused serious prejudice to the rights of the appellant.

7. That apart it is contended that the learned Single Judge misdirected himself and dismissed the writ petition since the challenge made in the writ petition was to the jurisdiction of the impugned authority to take cognizance and adjudicate on the overspeeding of the vehicle in question owned by the appellant for the alleged offense.

8. It is also pointed out that when issues were raised in the writ petition attributing interference with rights and liberties of the appellant, the learned Single Judge ought to have considered the issue taking into account the fundamental rights guaranteed to the appellant under the Constitution of India.

9. We have heard Sri. Rinu Sreejaya Aswan, the appellant appearing in-person, Sri. S. Manu, learned Deputy Solicitor General of India and Sri. V. Tekchand, learned Senior Government Pleader and perused the pleadings and material on record.

10. First of all, we are dealing with the primary issue raised by the appellant with respect to the jurisdiction exercised by the Inspector of Police, High-Tech Traffic Enforcement Control Room, Thiruvananthapuram. We are of the considered opinion that the power is conferred on the said authority by the State Government / the statutory authority in order to discharge the functions in contemplation of the provisions of the Motor Vehicles Act, 1988. When such a power is conferred on the said authority to discharge the functions taking advantage of the development of Information Technology, the action so taken cannot be said to be bad or illegal. This is for the basic reason that, in order to protect the larger public interest and public safety, such methods are adopted by the State Government / the statutory authority under the Act 1988.

11. Moreover, merely because the 9th respondent has issued charge memos in question-based on the duty and power conferred on

him, it has not caused any manner of prejudice to the appellant. Therefore the jurisdictional issue raised by the appellant has no force or basis to secure any relief on account of the said contention. Now the sole question to be considered is whether the appellant has driven the vehicle in excess speed in violation of the provisions of the Motor Vehicles Act, 1988.

12. In order to resolve the said issue, it would be better to discuss the statutory provisions first. Section 112 of the Act 1988 deals with limits of speed, which reads thus:-

“112. Limits of speed.- (1) No person shall drive a motor vehicle or cause or allow a motor vehicle to be driven in any public place at a speed exceeding the maximum speed or below the minimum speed fixed for the vehicle under this Act or by or under any other law for the time being in force:

Provided that such maximum speed shall in no case exceed the maximum fixed for any motor vehicle or class or description of motor vehicles by the Central Government by notification in the Official Gazette.

(2) The State Government or any authority authorised in this behalf by the State Government may, if satisfied that it is necessary to restrict the speed of motor vehicles in the interest of public safety or convenience or because of the nature of any road or bridge, by notification in the Official Gazette, and by causing appropriate traffic signs to be placed or erected under Section 116

at suitable places, fix such maximum speed limits or minimum speed limits as it thinks fit for motor vehicles or any specified class or description of motor vehicles or for motor vehicles to which a trailer is attached, either generally or in a particular area or on a particular road or roads:

Provided that no such notification is necessary if any restriction under this section is to remain in force for not more than one month.

(3) Nothing in this section shall apply to any vehicle registered under Section 60 while it is being used in the execution of military manoeuvres within the area and during the period specified in the notification under sub-section (1) of section 2 of the Manoeuvres, Field Firing and Artillery Practice Act, 1938 (5 of 1938).”

13. Therefore, it can be seen that when speed limits are fixed by the Central Government, every driver of the vehicle is duty bound to follow the limit prescribed therein. It may be true that the State Government by virtue of the powers conferred under Section 116 of Act 1988 read with Sub-section (2) of Section 112 is duty bound to fix traffic signs showing the speed limits, but once the maximum speed limit is fixed by the Central Government by notification in the official gazette, the said speed limit is legally presumed to be known to every driver driving vehicles on the road, depending on the nature of the road and the speed limits earmarked for such routes. This in our view, is a

mandatory requirement under section 112(1) and the proviso to it, of the Act 1988.

14. By virtue of the powers conferred under Section 112 of Act 1988, the Central Government was successively issuing notification with respect to the speed limit on various roads, and as of now, the issue is guided by a notification bearing No. 1522(E) dated 06.04.2018 and the maximum speed limit per hour in kilometers on roads in India are as follows:-

MINISTRY OF ROAD TRANSPORT AND HIGHWAYS

NOTIFICATION

New Delhi, the 6th April, 2018

S.O. 1522(E).—In exercise of the powers conferred by the proviso to sub-section (1) of section 112 of the Motor Vehicles Act, 1988 (59 of 1988) and in suppression of the notification of the Government of India in the Ministry of Road Transport and Highways published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-Section (ii) vide number S.O.1997(E) dated the 5th August, 2014, excepts as respect things done or omitted to be done before such supersession, Central Government hereby fixes the maximum speed in respect of the class of motor vehicles as specified in the table below-

TABLE

Maximum speed per hour in kilometres on roads in India					
S. No.	Class of Motor Vehicles	Expressway with Access Control	4 lane and above divided carriageway (roads with Median strips/Dividers)	Road within Municipal Limits	Other Roads
(1)	(2)	(3)	(4)	(5)	(6)
1.	Motor vehicles used for carriage of passengers comprising not more than eight seats in addition to the driver's seat (M1 category vehicles)	120	100	70	70
2.	Motor vehicles used for carriage of passengers comprising nine or more seats in addition to the driver's seat (M2 and M3 category Vehicles)	100	90	60	60
3.	More vehicles used for carriage of goods (All N category Vehicles)	80	80	60	60
4.	Motor Cycles	80*	80	60	60
5.	Quadricycle	-	60	50	50
6.	Three wheeled vehicles	-	50	50	50

* If permitted to ply on Expressway.

2. No cognizance of the violation of the speed limits shall be taken under section 183 of the Motor Vehicles Act, 1988, if the speed detected is within 5 per cent of the maximum speed specified in this notification.

[F. No. RT-11028/07/2017-MVL]

ABHAY DAMLE, Jt. Secy.

15. Anyhow, by virtue of the powers conferred under sub-section (2) of Section 112, the Government of Kerala has issued a notification dated 28.02.2014 bearing No. G. O. (P) No. 20/2014/Tran. whereby the speed limits are further restricted as follows:-

GOVERNMENT OF KERALA
Transport (B) Department
NOTIFICATION

G.O.(P) No.20/2014/Tran. Dated, Thiruvananthapuram, 28th February, 2014.
16th Kumbham, 1189.

S.R.O.No.-----/2014.- WHEREAS, the Government of Kerala are satisfied that it is necessary to restrict the speed of certain motor vehicles in the interest of public safety and convenience;

Now THEREFORE, in exercise of the powers conferred by sub-section (2) of section 112 of the Motor Vehicles Act, 1988 (Central Act 59 of 1988), and in accordance with the Government of India Notification S.O.No.425 (E) dated the 9th June, 1989 published in the Gazette of India Extraordinary Part-II, section 3(ii) dated the 9th June 1989, and in supersession of G.O.(P) No.38/96/PW & T dated 3rd February, 1996, published as S.R.O. No. 196/96 dated 3rd February, 1996 in Kerala Gazette Extraordinary No.234 dated 15th February, 1996, the Government of Kerala hereby refix the speed specified in column (3) of the Table below as the maximum speed, in the area and roads specified therein, in respect of the Motor Vehicles specified in the corresponding entry in column (2) thereof :

(1) Sl. No.	(2) Class of vehicle	(3) Maximum speed per hour in Kilometer						
		Near Educational Institutions	Ghat Roads	In the cities of Thiruvananthapuram, Kochi and Kozhikode, Municipal Towns and built up areas	National Highway	State Highway	Four Lane Road	All other places
1 If all the wheels of the vehicle are fitted with pneumatic tyres and the vehicle is not drawing a trailer.								
		N. E. I.	G. R.	C. U. A.	N. H.	S. H.	F. L.	O. L. H.
(a)	Motor Car	30	45	50	85	80	90	70
(b)	Motor Cycle	30	45	50	60	50	70	50
(c)	Autorickshaw	30	35	30	50	50	50	40
(d)	Light motor vehicle other than a transport vehicle	30	45	50	85	80	90	60
(e)	Light motor vehicle and a transport vehicle	30	45	50	65	65	70	60
(f)	Medium or Heavy passenger Motor vehicle	30	40	40	65	65	70	60
(g)	Medium or heavy goods vehicle	30	40	40	65	65	65	60
2 If the vehicle is an articulated vehicle, all the wheels are fitted with pneumatic tyres:								
(a)	Heavy goods vehicle	30	30	40	60	60	65	40
(b)	Heavy Passenger Vehicle	30	30	40	60	60	65	40

3	If the vehicle is drawing not more than one trailer, or in the case of artillery equipment, not more than two trailers and all the wheels of that vehicle and the trailer are fitted with pneumatic tyres:							
(a)	Light motor Vehicle drawing two-wheeled trailer having a gross vehicle weight not exceeding 800 kilograms	25	30	40	60	60	60	60
(b)	Light motor vehicle drawing trailer having more than two wheels and having gross vehicle weight exceeding 800 Kilograms	25	30	40	50	50	50	60
(c)	Medium goods Vehicle	25	30	40	65	65	65	50
(d)	Medium Passenger Vehicle	25	30	40	65	65	65	50
(e)	Heavy goods Vehicle	25	30	40	50	65	65	50
(f)	Heavy passenger Vehicle	25	30	40	65	65	65	50
(g)	Heavy goods vehicle used by fire brigade	25	30	40	65	65	65	50
(h)	Heavy passenger vehicle used by the fire brigade	25	30	40	65	65	65	50
4	Any other class of vehicle not covered by entries 1,2 or 3	25	30	30	30	30	30	30

By Order of the Governor,

Dr. V.M.GOPALA MENON,

16. Therefore, once a notification is issued by the State Government further limiting the speed, it may have to erect the traffic sign boards as contemplated under Section 112 (2) read with Section 116 of Act 1988. Whatever that be, every driver on the road is expected to know the maximum speed that has to be maintained in the streets based on the notification issued by the Central Government, irrespective of the reduced maximum speed limit fixed by the State as per its notification on certain routes as extracted above. This means if the petitioner has exceeded the speed limit notified by the Central Government on any roads, the 9th respondent was vested with the power to issue a charge memo under Section 183 of the Act 1988. It is accordingly that Exts. P2 and P3 charge memos are issued by the 9th respondent.

17. If the appellant has a case that traffic signs are not put up so as to identify the reduced maximum speed limits on various stretches of the roads, in accordance with the notification issued by the State Government, it is a factual circumstance to be identified by a fact finding body. It is not for this Court to enter into any finding as to whether, in the area in question where the appellant crossed the speed limit, the State Government has put up any traffic sign board

concerning the speed, exercising the powers conferred under article 226 of the Constitution of India. That is to say, as rightly noted by the learned Single Judge; it is an aspect surrounded by facts.

18. That said, if the appellant has a case that he was not driving the vehicle at an excessive speed in violation of the speed limit prescribed by the Central Government, then it is for the appellant to defend the case before the competent Magistrate court, especially when it is a factual aspect, which could be found out only on a fair trial conducted by the competent Magistrate.

Considering the above aspects, we are of the view that the appellant has not made out any case to interfere with the judgment of the learned Single Judge, though for our reasons.

Needless to say, the writ appeal fails. Accordingly, it is dismissed.

Sd/-
S. MANIKUMAR
CHIEF JUSTICE

Sd/-
SHAJI P. CHALY
JUDGE

Eb

///TRUE COPY/// P. A. TO JUDGE