

No Fundamental Right To Ply Auto Rickshaws In Cochin International Airport Premises Without Specific Permissions: High Court

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**IN THE HIGH COURT OF KERALA AT ERNAKULAM
ANU SIVARAMAN, J.**

W.P.(C).No.10020 of 2022; 24 November, 2022

RATHEESH P.K. versus COCHIN INTERNATIONAL AIRPORT LIMITED

Petitioners by Advs. P.K. Ibrahim Sreeji K.B., Fathima Fidha

Respondents by Advs. Benny P. Thomas, SC, Cochin International Airport Limited, Vinod Vallikappan, P. Benny Thomas, D. Prem Kamath, Tom Thomas (Kakkuzhiyil), Abel Tom Benny, Kurian Oommen Therakath, Jaikrishnan M. Pisharodi, T.K. Shajahan-Sr.GP

J U D G M E N T

1. This writ petition is filed seeking the following reliefs: -

“1. Declare that the 1st respondent has no power or authority to obstruct Auto Rickshaws plying at Nedumbassery from picking up passengers from the place of arrival / departure station at Nedumbassery airport;

2. Issue a writ of mandamus commanding the 2nd respondent to afford adequate police protection to the petitioners or other auto rickshaw drivers plying at Nedumbassery in the event of any obstruction in picking up passengers from the place of arrival / departure station at Nedumbassery airport by the 1st respondent or any one acting on their behest.”

2. Heard the learned counsel for the petitioners and the learned Standing Counsel appearing for the respondents.

3. It is submitted by the learned counsel for the petitioners that the petitioners are auto rickshaw drivers who have been issued with due permits for conducting contract carriage operations on all fit roads in Ernakulam District with parking place at Nedumbassery Village. It is submitted that there are about 80 auto rickshaws operating in Nedumbassery Village and that though taxi cars are being permitted to operate within the premises of the 1st respondent, auto rickshaws are not being permitted to pick up passengers from the said premises. It is submitted that written requests made before the 1st respondent had not evoked any response. It is further contended that passengers are suffering undue hardship because of the refusal of the respondents to permit auto rickshaws to pick up passengers from the arrival terminal of the airport. It is contended that the petitioners have a fundamental right to ply their auto rickshaws and that the respondents cannot interfere in the said rights or the right of the passenger to travel by any means that they think fit.

4. The learned counsel for the petitioner would then contend that the power under Article 226 of the Constitution of India is wide and pervasive and can be exercised even against authorities not answering the definition of State, if there is a public law element involved in the prayers sought. Reliance is placed on the judgment of this Court in **Binny Ltd and Another v. Sadasivan and others** [AIR 2005 SC 3502], to contend that that scope of mandamus is determined by the nature of duty to be enforced, rather than the identity of the authority against whom it is sought. If a private body is discharging public function and denial of any right in connection with the public duty imposed on such body, the public law remedy can be enforced.

5. The learned counsel appearing for the respondents would contend that the writ petition itself is not maintainable, since the 1st respondent does not answer the definition of State under Article 12 of the Constitution of India and the direction as sought for cannot be

issued. It is further contended that the premises of the 1st respondent is a restricted area and that the right of the petitioners to ply their auto rickshaws on the basis of contract carriage permits granted by the Motor Vehicle Authorities would not extend to entry into restricted areas without specific permission granted by the 1st respondent. It is contended that the subject matter of the writ petition stands covered by Ext.R1(b) judgment wherein, it was held that auto rickshaws carrying passengers to the Airport shall be permitted to drop passengers at the terminals. However, it was held that the auto rickshaws cannot park or remain in waiting within the Airport premises or to pick up any passengers from the Airport. It is further submitted that Ext.R1(a) judgment is authority on the point that the 1st respondent is not State under Article 12 of the Constitution of India and that a writ will not lie against it. Exts.R1(d) and R1(e) judgments with regard to the Calicut Airport are also relied on to contend that airports being restricted areas, the petitioners cannot claim any fundamental right to operate their contract carriages within such areas without express permission being granted for such exercise.

6. Having considered the contentions advanced, I notice that the contention of the petitioners is with regard to their right to ply auto rickshaws within the restricted premises of the 1st respondent. Any right of the petitioners to ply their vehicles or to exercise their right of occupation is obviously not an absolute right to enter into any premises regardless of any restrictions whatsoever. All such rights, can, obviously be exercised only subject to such reasonable restrictions. Moreover, the right of the 1st respondent to impose restrictions on entry into their premises for reasons of public interest and security also cannot be disputed. All premises of airports are obviously restricted areas covered by the provisions of the Airports Authority of India Act, 1994, the Airports Authority of India (Management of Airports) Regulations and the instructions issued by the Ministry of Civil Aviation where entry is regulated by special permission is clear from the pleadings of the petitioners themselves. The contention of the petitioners that they have a fundamental right to ply their auto rickshaws within the premises of the 1st respondent even without specific permissions cannot be accepted. The judgments relied on by the respondents would also make it amply clear that this Court has considered the restriction placed on the entry of vehicles into the premises of airports, be they operated by the Airports Authority of India or otherwise and had approved of such restrictions, since they are apparently in place with proper power and authorisation.

In the above view of the matter, the prayers, as sought for, in the writ petition cannot be granted. The writ petition fails and the same is accordingly dismissed.

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