

IN THE HIGH COURT OF KERALA AT ERNAKULAM
PRESENT
THE HONOURABLE THE CHIEF JUSTICE MR.S.MANIKUMAR
&
THE HONOURABLE MR. JUSTICE SHAJI P.CHALY

Wednesday, the 1st day of September 2021 / 10th Bhadra, 1943
WP(C) NO. 17091 OF 2021(S)

PETITIONER:

P.A. JANISH, 38 YEARS, S/O.ABDUL KHADER,
POTHIYIL HOUSE, VILANGU P.O., ERNAKULAM - 683 561.

RESPONDENTS:

1. STATE OF KERALA,
REPRESENTED BY SECRETARY TO GOVERNMENT,
TRANSPORT DEPARTMENT, GOVERNMENT SECRETARIAT,
THIRUVANANTHAPURAM - 695 001.
2. THE STATE POLICE CHIEF, POLICE HEADQUARTERS,
THIRUVANANTHAPURAM - 695 010.
3. THE TRANSPORT COMMISSIONER, TRANSPORT COMMISSIONERATE,
THIRUVANANTHAPURAM - 695 014.

Writ petition (civil) praying inter alia that in the circumstances stated in the affidavit filed along with the WP(C) the High Court be pleased to issue an interim direction interdicting the officers of the Motor Vehicles Department (MVD) under the 3rd respondent from wearing 'blue beret caps' and badges embossed with the Ashoka Emblem or any other uniform deceptively similar to the uniform prescribed for Senior Police Officers under Section 43 of the Kerala Police Act, 2011, pending disposal of the writ petition.

This petition again coming on for admission upon perusing the petition and the affidavit filed in support of WP(C) and this Court's order dated 24/08/2021 and upon hearing the arguments of SRI.P.DEEPAK, Advocate for the petitioner and of SRI.TEK CHAND, SENIOR GOVERNMENT PLEADER, the court passed the following:

P.T.O.

S.MANIKUMAR, C.J. & SHAJI P. CHALY, J.

W.P.(C)No.17091 of 2021

Dated this the 1st day of September, 2021

ORDER

S.MANIKUMAR, C.J.

This public interest litigation is filed for a direction of this court for interdicting the officers of the Motor Vehicles Department under the 3rd respondent from wearing 'blue beret caps' and badges embossed with the Ashoka Emblem or any other uniform deceptively similar to the uniform prescribed for Senior Police Officers under Section 43 of the Kerala Police Act, 2011 and in violation of the directive issued by State Police Chief.

2. Pursuant to the direction of this court dated 24th August 2021, Mr.Tek Chand, learned Senior Government Pleader has received instructions. He invited the attention of this court to the instructions dated 27.8.2021 furnished by the Transport Commissioner, Thiruvananthapuram to the office of the Advocate General, Kerala, Ernakulam wherein, it is stated that as per Sub Section (3) of Section 213 of the Motor Vehicles Act, 1988, "the State Government may make rules to regulate the discharge by officers of the Motor Vehicles Department of their functions and in particular and without prejudice to the generality of the foregoing power to prescribe the uniform to be worn by them, the authorities to which they shall be subordinate, the duties to be performed by them, the powers (including the powers exercisable by Police Officers under this Act) to be exercised by them, and the conditions governing the exercise of such powers".

3. It is also stated therein that in exercise of the said powers, Government of Kerala had framed Rule 406 under the Kerala Motor Vehicles Rules, 1989 prescribing uniform for Regional Transport Officers, Joint Regional Transport Officers, Motor Vehicles Inspectors and Assistant Motor Vehicles Inspectors of the Motor Vehicles Department, as per notification issued under G.O.(P)No.99/95/PW&T dated 18th July, 1995 and published as S.R.O.No.940/95 in the Kerala Gazette Extraordinary No.730 dated 22nd July, 1995. It is further stated that as per letter No.C5/79/2021/TC dated 19.7.2021, all the Regional Transport Officers and Joint Regional Transport Officers have been instructed to strictly wear the uniform prescribed under Rule 406 of the Kerala Motor Vehicle Rule 1989. As per sub rule (1) of rule 405 of KMV Rules all officers of the Motor Vehicles Department shall carry out the instructions and orders issued by the Transport Commissioner from time to time.

4. It is also stated therein that considering the present issue regarding wearing of uniform, it was decided to furnish a proposal to Government in Transport, for amending Rule 406 of the Kerala Motor Vehicles Rules 1989, by incorporating Asoka Emblem instead of Kerala Emblem.

5. Inviting attention of this court to a letter dated 31.8.2021 from the Secretary to the Government, Transport (B) Department, Government of Kerala addressed to the learned Advocate General, Kerala, Ernakulam, Mr. Tek Chand, learned Senior Government Pleader submitted that Rule 406 of the Kerala Motor Vehicles Rules, 1989 prescribes the uniform for Regional Transport Officers, Joint Regional Transport Officers, Motor Vehicles Inspectors and Assistant Motor Vehicles

Inspectors and in terms of the directions contained in letter dated 19.7.2021 issued by the Transport Commissioner, Government of Kerala to all the Deputy Transport Commissioners, the above mentioned officers should wear uniforms strictly in conformity with Rule 406 of the Kerala Motor Vehicles Rules, 1989.

6. As per Section 2(a) of the *Emblems and Names (Prevention of Improper Use) Act, 1950*, hereinafter referred to as 'the Act, 1950', "emblem" means any emblem, seal, flag, insignia, coat-of-arms or pictorial representation specified in the Schedule. Section (3) of the Act, 1950 speaks about 'prohibition of improper use of certain emblems and names', which reads as follows:

"3. Prohibition of improper use of certain emblems and names.— Notwithstanding anything contained in any law for the time being in force, no person shall, except in such cases and under such conditions as may be prescribed by the Central Government, use, or continue to use, for the purpose of any trade, business, calling or profession, or in the title of any patent, or in any trade mark or design, any name or emblem specified in the Schedule or any colourable imitation thereof without the previous permission of the Central Government or such officer of Government as may be authorised in this behalf by the Central Government."

7. Section 5 of the Act, 1950 speaks about "penalty", which reads as follows:

"5. Penalty—Any person who contravenes the provisions of section 3 shall be punishable with fine which may extend to five hundred rupees."

8. Section 6 of the Act, 1950 speaks about “Previous sanction for prosecution”, which reads as follows:

“6. Previous sanction for prosecution.—No prosecution for any offence punishable under this Act shall be instituted, except with the previous sanction of the Central Government or of any officer authorised in this behalf by general or special order of the Central Government.”

9. Schedule to Sections 2(a) and (3) of the Act, 1950 enumerates the name, emblem or official seal of institutions/Government.

10. The State Emblem of India (Prohibition of Improper Use) Act, 2005 is an Act to prohibit the improper use of State Emblem of India for professional and commercial purpose and for matters connected therewith or incidental thereto.

11. As per Section 2(b) of State Emblem of India (Prohibition of Improper Use) Act, 2005, 'emblem' means the State Emblem of India as described and specified in the Schedule to be used as an official seal of the Government.

12. Section 3 of the State Emblem of India (Prohibition of Improper Use) Act, 2005, deals with prohibition of improper use of emblem, which reads as under:

“3. Prohibition of improper use of emblem.—Notwithstanding anything contained in any other law for the time being in force, no person shall use the emblem or any colourable imitation thereof in any manner which tends to create an impression that it relates to the Government or that it is an official document of the Central Government, or as the case may be, the State Government, without the previous permission of the

Central Government or of such officer of that Government as may be authorised by it in this behalf.

Explanation.—For the purposes of this section, “person” includes a former functionary of the Central Government or the State Governments.”

13. Section 4 of the State Emblem of India (Prohibition of Improper Use) Act, 2005 deals with 'prohibition of use of emblem for wrongful gain'; Section 7 deals with 'penalty' and Section 8 deals with 'Previous sanction for prosecution'. Sections 4, 7 and 8 of the State Emblem of India (Prohibition of Improper Use) Act, 2005 read as under:

“4. *Prohibition of use of emblem for wrongful gain.*—No person shall use the emblem for the purpose of any trade, business, calling or profession or in the title of any patent, or in any trade mark or design, except in such cases and under such conditions as may be prescribed.

7. *Penalty.*—(1) Any person who contravenes the provisions of section 3 shall be punishable with imprisonment for a term which may extend to two years, or with fine which may extend to five thousand rupees, or with both, or if having been previously convicted of an offence under this section, is again convicted of any such offence, he shall be punishable for the second and for every subsequent offence with imprisonment for a term which shall not be less than six months, which may extend to two years and with fine which may extend to five thousand rupees.

(2) Any person who contravenes the provisions of section 4 for any wrongful gain shall be punishable for such offence with imprisonment

for a term which shall not be less than six months, which may extend to two years and with fine which may extend to five thousand rupees.”

“8. *Previous sanction for prosecution.*—No prosecution for any offence punishable under this Act shall be instituted, except with the previous sanction of the Central Government or of any officer authorised in this behalf by general or special order of the Central Government.”

14. In exercise of the powers conferred by Section 11 of the State Emblem of India (Prohibition of Improper Use) Act, 2005 (50 of 2005), the Central Government have framed the State Emblem of India (Prohibition of Improper Use) Rules, 2007. Schedule I of which deals with 'constitutional or statutory authorities, ministries or departments of the Central Government, State Governments or Union Territory Administrations and other Government Functionaries which may use the emblem'.

15. Part I of Schedule II deals with 'Constitutional authorities and other Dignitaries which may display the emblem on their cars'.

16. Part II of Schedule II speaks about 'Authorities which may display the Ashoka Chakra (which is part of the Emblem) on Triangular Metal Plaques on their cars'.

17. Schedule III deals with 'other purposes for which emblem has been used'.

18. Clause (xiv) of Schedule III speaks about the badges, collars, buttons, etc, with such modifications as are considered necessary, on the uniforms of –

(a) commissioned or gazetted officers of the armed forces of the Union;

(b) gazetted officers of uniformed services (other than armed forces) of the Union and such of the State Governments and Union territory Administrations that have adopted the emblem, or have incorporated the emblem in the Emblem of that State or Union territory;

19. Upon a cursory perusal of the statutory provisions, extracted supra, at this juncture, it is only observed that gazetted officers of Transport Department may not fall within the description of gazetted officers of uniformed services (other than armed forces) of the Union or State Government, although they are officers of Transport Department, Government of Kerala. In the absence of any counter affidavit or statement of facts, we are not inclined to delve further.

20. However, having regard to the specific instructions contained in letter No.C5/79/2021/TC dated 19.7.2021, there shall be direction that the officers mentioned in the order dated 19.7.2021 should strictly obey the same. All the Regional Transport Officers and Joint Regional Transport Officers and other officers should strictly wear the uniform prescribed under Rule 406 of the Kerala Motor Vehicle Rule 1989.

21. For brevity, Rule 406 of the Kerala Motor Vehicles Rule, 1989 is reproduced:

406.Uniform for Regional Transport Officers, Joint Regional Transport Officers, Motor Vehicles Inspectors and Assistant Motor Vehicles Inspectors. (The] Regional Transport Officers, Joint Regional Transport Officers, Motor Vehicles Inspectors and Assistant Motor Vehicles Inspectors of the Motor Vehicles Department shall wear the following uniform while on duty, namely:

1. Regional Transport Officers

- (i) Peak cap Khaki Gabardine, Cap, Badge with letters 'KTS' and Kerala Emblem and embossed buttons with the letters 'KTS' in yellow metal or gilt.
- (ii) Jacket and trousers Khaki Gabardine or terrycotton with embossed buttons in yellow metal on pockets and front of the jacket. The jacket to be tucked inside the trousers;
- (iii) Sam Browne belt;
- (iv) Whistle of police pattern attached to yellow cord and carried in the left breast pocket;
- (v) Brown shoes;
- (vi) Khaki, nylon or cotton socks;
- (vii) [Badge] of rank-One star and Kerala Emblem made of brass on the centre of each shoulder strap, evenly placed length-wise with metal badge bearing the letters 'KTS' at the base.

2. Joint Regional Transport Officers-

- (i) Peak cap Khaki Gabardine, Cap, Badge with the letters 'KTS' and Kerala Emblem and embossed buttons with the letters 'KTS' in yellow metal or gilt;
- (ii) Jacket and trousers - Khaki Gabardine or terrycotton with embossed buttons in yellow metal on pockets and front of the jacket. The jacket to be tucked inside the trousers;
- (iii) Sam browne belt;
- (iv) Whistle of police pattern attached to yellow cord and carried in the left breast pocket;
- (v) Brown shoes;
- (vi) Khaki nylon or cotton socks;
- (vii) Badges of rank - Three stars made of brass on the centre of each shoulder strap evenly placed length wise with metal badge bearing the letters 'KTS' at the base:

Provided that lady Regional Transport Officers and Joint Regional Transport Officers shall wear Khaki saree with Khaki blouse with appropriate badges of rank.

3. Motor Vehicles Inspectors

- (i) Peak cap Khaki Gabardine, Cap, Badge with the letters "KMV and Kerala Emblem and embossed buttons with the letters "KMV" in yellow or gilt;
- (ii) Jacket and trousers Khaki Gabardine or terrycotton with embossed buttons in yellow metal on pockets and front of the jacket. The jacket to be tucked inside the trousers
- (iii) Sam Browne belt;
- (iv) Whistle of police pattern attached to yellow cord and carried in the left breast pocket;
- (v) Brown shoes;
- (vi) Khaki, nylon or '[cotton socks];
- (vii) Badges of rank Three five pointed stars made of brass on the centre of each shoulder strap, evenly placed length wise with the metal badge bearing the letters 'KMV at the base and ribbon yellow and red horizontally divided on each shoulder strap worn between metal badge and stars.

4. Assistant Motor Vehicles Inspectors

- i) Peak cap' [Khaki Gabardine], Cap, Badge with the letters 'KMV' and Kerala Emblem and embossed buttons with the letters 'KMV' in yellow or gilt;
- (ii) Jacket and trousers Khaki, Gabardine or terricotton with embossed buttons in yellow metal on pockets and front of the jacket. The jacket to be tucked inside the trousers;
- (iii) Sam Browne belt;
- (iv) Whistle of Police pattern attached to yellow cord and carried in the left breast pocket;
- (v) Brown shoes;
- (vi) Khaki nylon or cotton socks;
- (vii) Badges of rank Two five pointed stars made of brass on the centre of each shoulder strap evenly placed lengthwise with the metal badge bearing the letters "KMV' at the base and ribbon yellow and red horizontally divided on each shoulder strap worn between metal badge and stars.]

22. It is further ordered that the first respondent/Secretary to the Government, Transport Department, Government of Kerala and the third

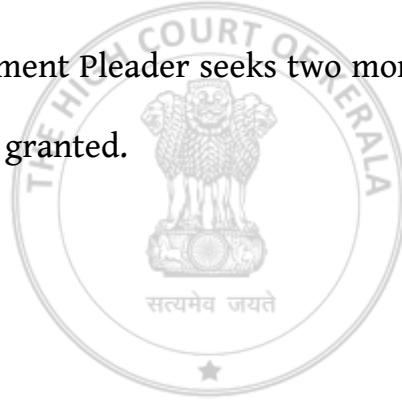
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respondent/Transport Commissioner, Transport Commissionerate, Thiruvananthapuram, shall ensure strict implementation of Rule 406 of the Kerala Motor Vehicles Rule, 1989 and the directions contained in letter No.C5/79/2021/TC dated 19.7.2021. If there is any violation of Rule 406 of the Kerala Motor Vehicles Rules and instructions dated 19.7.2021, Secretary to the Government, Transport Department, Government of Kerala/respondent No.1 and Transport Commissioner/respondent No.3 are directed to take appropriate action, under the Rules.

23. Learned Government Pleader seeks two months time for filing statement of facts. Time sought for is granted.

Post on 2.11.2021.



sd/-
S.MANIKUMAR
CHIEF JUSTICE

sd/-
SHAJI P. CHALY
JUDGE

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