

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE ANIL K.NARENDRAN

&

THE HONOURABLE MR.JUSTICE P.G. AJITHKUMAR

FRIDAY, THE 10TH DAY OF DECEMBER 2021/19TH AGRAHAYANA, 1943

D.B.P.NO. 30 OF 2021

IN THE MATTER OF TRAVANCORE DEVASWOM BOARD - TDB
PROCEEDINGS INITIATED - REG.

PETITIONER:

SUO MOTU

Bar & Bench (www.barandbench.com)

RESPONDENTS:

- 1 TRAVANCORE DEVASWOM BOARD
NANTHANCODE, KAWADIAR POST,
THIRUVANANTHAPURAM - 695003
REPRESENTED BY ITS SECRETARY.
- 2 CHIEF VIGILANCE SECURITY OFFICER
(SUPERINTENDENT OF POLICE VIGILANCE) ,
TRAVANCORE DEVASWOM HEAD QUARTERS, NANTHANCODE,
KOWDIAR POST, THIRUVANANTHAPURAM - 695003.
- 3 STATION HOUSE OFFICER
SANNIDHANAM POLICE STATION, SABARIMALA
SANNIDHANAM, PATHANAMTHITTA - 689713.
- 4 STATION HOUSE OFFICER
PAMPA POLICE STATION, THRIVENI - PAMPA,
PATHANAMTHITTA - 689662.

D.B.P.No.30 of 2021

5* DEPUTY SUPERINTENDENT OF POLICE,
RING ROAD, THAZHEVETIPRAM, PATHANAMTHITTA,
KERALA-689645.

*SUO MOTU IMPEADED ADDITIONAL R5.

BY ADVS.

SRI.G.BIJU, SC, TRAVANCORE DEVASWOM BOARD
SRI.K.MANOJKUMAR, STATE ATTORNEY

THIS DEVASWOM BOARD PETITION HAVING COME UP FOR
ADMISSION ON 10.12.2021, THE COURT ON THE SAME DAY
DELIVERED THE FOLLOWING:

Bar & Bench (www.barandbench.com)

ORDER

Anil K. Narendran, J.

This D.B.P. relates to transportation of goods through the trekking path from Pamba to Sannidhanam in a rash and negligent manner. Today, at 9.36 a.m., a devotee proceeding to Sannidhanam brought to the notice of this Court the rash and negligent driving of tractors used for transportation of goods to Sannidhanam, through the trekking path, causing threat to the safety of the pilgrims. Therefore, by proceedings dated 10.12.2021, Registry was directed to initiate a suo motu proceedings and list the D.B.P. before the Bench at 11.30 a.m. The learned State Attorney and the learned Standing Counsel for the Travancore Devaswom Board are furnished with a copy of the D.B.P.

2. The Deputy Superintendent of Police, Ring Road, Thazhevettipram, Pathanamthitta, Kerala-689 645, is suo motu impleaded as additional 5th respondent in this D.B.P. Registry to carry out necessary correction in the cause title.

D.B.P.No.30 of 2021

3. Heard the learned Standing Counsel for the Travancore Devaswom Board for respondents 1 and 2 and also the learned State Attorney for respondents 3, 4 and additional 5th respondent.

4. In the order dated 25.11.2021 in D.B.P.No.26 of 2011 it was made it clear that the order of this Court prohibiting the movement of devotees, Devaswom Officials, Police personnel, etc. in tractors used for transportation of goods through trekking path has to be implemented by all, in letter and spirit. Such tractors cannot be used for transportation of devotees or any other person. In case of any violation or obstruction from any corner, it should be reported to the Chief Vigilance Security Officer and also to the Special Commissioner, who shall bring it to the notice of this Court, if further orders are required. It was also made clear that since the entire trekking path from Pamba to Sannidhanam is having CCTV coverage, with control panel at Pamba, the officers in charge of the control panels should report any transportation of devotees or any other person in the tractors

used for transportation of goods to Sannidhanam, which should be forthwith intimated to the officers concerned for taking stringent actions against those persons.

5. The learned Standing Counsel for the Travancore Devaswom Board, on instructions, would submit that on 08.12.2021, the Virtual-Q booking was 45,000 and the number of devotees, who had Darshan on 08.12.2021 is 33,410. Yesterday (09.12.2021) as well, the number of devotees was on a higher side.

6. The learned State Attorney would submit that the additional 5th respondent Deputy Superintendent of Police has already issued necessary instructions to the concerned police officials to ensure that the movement of tractors through trekking path is without causing any threat to the safety of the pilgrims and that, stern action will be taken against the tractor drivers for rash and negligent driving.

7. As held by the Apex Court in **Ravi Kapur v. State of Rajasthan [(2012) 9 SCC 284]**, rash and negligent driving has to be examined in the light of the facts and

circumstances of a given case. It is a fact incapable of being construed or seen in isolation. It must be examined in light of the attendant circumstances. A person who drives a vehicle on the road is liable to be held responsible for the act as well as for the result. It may not be always possible to determine with reference to the speed of a vehicle whether a person was driving rashly and negligently. Both these acts presuppose an abnormal conduct. Even when one is driving a vehicle at a slow speed but recklessly and negligently, it would amount to 'rash and negligent driving' within the meaning of the language of Section 279 of the Indian Penal Code, 1860. That is why the legislature in its wisdom has used the words 'manner so rash or negligent as to endanger human life'. The preliminary conditions, thus, are that (a) it is the manner in which the vehicle is driven; (b) it be driven either rashly or negligently; and (c) such rash or negligent driving should be such as to endanger human life. Once these ingredients are satisfied, the penalty contemplated under Section 279 of the Indian Penal Code is attracted.

8. In **Ravi Kapur**, the Apex Court held that 'negligence' means omission to do something which a reasonable and prudent person guided by the considerations which ordinarily regulate human affairs would do or doing something which a prudent and reasonable person guided by similar considerations would not do. Negligence is not an absolute term but is a relative one; it is rather a comparative term. It is difficult to state with precision any mathematically exact formula by which negligence or lack of it can be infallibly measured in a given case. Whether there exists negligence per se or the course of conduct amounts to negligence will normally depend upon the attending and surrounding facts and circumstances which have to be taken into consideration by the Court. In a given case, even not doing what one was ought to do can constitute negligence. The court has to adopt another parameter, i.e., 'reasonable care' in determining the question of negligence or contributory negligence. The doctrine of reasonable care imposes an obligation or a duty upon a person (for example a driver) to

care for the pedestrian on the road and this duty attains a higher degree when the pedestrian happen to be children of tender years. It is axiomatic to say that while driving a vehicle on a public way, there is an implicit duty cast on the drivers to see that their driving does not endanger the life of the right users of the road, may be either vehicular users or pedestrians. They are expected to take sufficient care to avoid danger to others.

9. In **Balakrishnan Nair v. P.Vijayan [2020 (3) KHC 219]** this Court held that the doctrine of 'reasonable care' imposes an obligation or a duty upon driver to care for the pedestrian on the road and this duty attains a higher degree when the pedestrian happen to be children of tender years or a senior citizen.

10. It is for respondents 2 to 4 and also the additional 5th respondent to take necessary steps to ensure that the movement of tractors through the trekking path is without causing any threat to the safety of the pilgrims.

11. By the order dated 08.11.2017 in D.B.A.No.13 of

D.B.P.No.30 of 2021

2016, this Court permitted movement of tractors for transporting goods from Pamba to Sannidhanam by stakeholders other than Travancore Devaswom Board from 12.00 midnight to 3.00 a.m. In case of extreme emergency, the movements of goods by Travancore Devaswom Board was permitted during 12.00 noon to 3.00 p.m., i.e., during day time as well. In the order dated 22.11.2017 in D.B.A.No.13 of 2016, the Division Bench has made it clear that the benefit extended to Travancore Devaswom Board in paragraph 8 of the order dated 08.11.2017 to carry goods in tractors on such other timings, based on emergency, will be equally applicable to other stakeholders as well, subject to the satisfaction of the emergency situation before the Special Commissioner appointed by this Court or subject to such orders/arrangements to be made by the Special Commissioner in his absence. It is for the respondents to ensure strict compliance of the aforesaid orders in D.B.A.No.13 of 2016, in letter and spirit, in the transportation of goods in tractors through the trekking path from Pamba to Sannidhanam.

12. The learned State Attorney would undertake that the orders issued by this Court in D.B.A.No.13 of 2016 and that in D.B.P.No.26 of 2021 shall be enforced in letter and spirit by the concerned officials, in order to ensure that there is no threat to the safety of the pilgrims and that, the movement of tractors through the trekking path causes only least inconvenience to the devotees.

13. Having considered the submissions made by the learned Standing Counsel for the Travancore Devaswom Board and also the learned State Attorney, we deem it appropriate to direct the additional 5th respondent Deputy Superintendent of Police, the 2nd respondent Chief Vigilance Security Officer and also respondents 3 and 4 Station House Officers to take necessary steps to ensure that movement of tractors for transporting goods from Pamba to Sannidhanam by the Travancore Devaswom Board and also by the stakeholders other than the Board are regulated strictly in terms of the orders of this Court dated 08.11.2017 and 22.11.2017 in D.B.A.No.13 of 2016 and that, any transportation of goods

during day time, other than transportation of goods by the Travancore Devaswom Board during 12.00 noon to 3.00 p.m., is done only in case of extreme emergency, as per the permission granted by the Special Commissioner, Sabarimala. Respondents 2 to 5 shall take necessary steps to ensure that there is no threat to the safety of the pilgrims on account of transportation of goods in tractors through the trekking path and that, any movement of tractors through trekking path even in case of extreme emergency causes only least inconvenience to the devotees.

14. With the above directions, this DBP is closed.

The Special Commissioner, Sabarimala, shall file a report before this Court on 13.12.2021 on the implementation of this order.

Sd/-

ANIL K. NARENDRAN, JUDGE

Sd/-

P.G. AJITHKUMAR, JUDGE