

P. Gangadharan Pillai Vs State of Kerala and Others**O.P. No. 86 of 1992**

Court: High Court Of Kerala**Date of Decision:** July 31, 1995**Acts Referred:**

Constitution of India, 1950 – Article 14, 19(1)(g), 226#Criminal Procedure Code, 1973 (CrPC)
– Section 144

Citation: (1995) 2 ACC 523 : AIR 1996 Ker 71**Hon'ble Judges:** K.K. Usha, J**Bench:** Single Bench**Advocate:** P. Radhakrishnan, for the Appellant; A.K. John), for the Respondent

Judgement

K.K. Usha, J.

Petitioner is the proprietor of a vegetarian hotel by name "New Ananda Bhavan" at Kalvathy road, Fort Cochin. It is

alleged that he had been running the said hotel for about last more than 20 years. Petitioner claims that his hotel is reputed as a good vegetarian

hotel catering to the needs of people belonging to all walks of life, particularly to those in the middle class and employees working in Fort Cochin

area. On account of the goodwill that could be acquired by him during the last about 20 years, his business had been prospering. Petitioner

contends that he suffered substantial loss on account of the mob attack on his hotel and the looting which took place on 16-10-1990 which could

have been prevented if appropriate and timely action had been taken by the respondents. He therefore seeks a writ of mandamus directing the

respondents to compensate the petitioner to the extent of Rs. 86,000/- for the wanton destruction of property and loss of business of the petitioner

caused on account of failure of duty and negligence on the part of the respondents. He also seeks a direction to the respondents to afford him a

similar treatment as in the case of other persons who were affected by riots in Mattancherry and Palghat. The facts as alleged by the petitioner in

the original petition are as follows: On the murder of a priest of the mosque at Kattoor, there arose communal disturbance in certain parts of

Kerala which led even to riot in some places. The ripples of such disturbance were felt in Fort Cochin/Mattancherry area of the city of Cochin

also. Respondents 2 to 4 who were in-charge of law and order in the district were aware of the fact that trouble would erupt in Mattancherry/Fort

Cochin area on a large scale if necessary precautions were not taken in time. On 16th October, 1990, there was a "harthal" in Mattancherry/Fort

Cochin area to protest against the murder of the priest. A conference of top officers of Government and other were convened by the 4th

respondent at his office at Fort Cochin on the previous day of the "harthal" in order to chalk out preventive steps to be taken and also to decide

about the measures to be adopted to give sufficient protection to the life and property of the citizens in case of breach of peace. Even though

petitioner also came to know about the meeting and proposed programme chalked out by the officers by way of abundant caution, petitioner

decided not to open his hotel on that day. But, by about 11.30 in the morning of 16-10-1990, about 100 persons armed with deadly weapons and

instruments, attacked petitioner's business premises, broke open the hotel, caused severe damage to the doors and windows and entered the

hotel. Petitioner is staying at Thripunithura, about 18 kms. from the place where the hotel is situated. But, some of his workers were inside the hotel.

They were threatened by the mob and were forced to run away from the premises. Thereafter, the mob destroyed valuable items of properties

inside the hotel including a refrigerator, stabilizer, tables, chairs, cash counters, mirrors, telephone, doors windows, emergency lights, tiles, hotel

name-boards and other articles. They ransacked the store and took away rice, sugar etc. kept in bags and all other consumable goods like fruits,

vegetables, coconuts etc., They also removed costly brass utensils, steel utensils, furniture, currency notes to the extent of Rs. 15,000/- and coins

worth about Rs. 2,000/-. Bank pass books, cheque books, kerosene permits, bills, seals, account books etc., were also destroyed. Petitioner

estimates the total cost of the articles and goods thus destroyed and taken away at Rs. 74,000/-.

2. Since there was no transport facility on the day of "harthal", it was not possible for the petitioner to travel from his home to the place of

business. When the looting was going on, one of the employees of the petitioner reported to the Fort Cochin police station and requested them to

render immediate help to prevent the loss and destruction. But, unfortunately, police did not take any action on his request. When the petitioner

received telephonic message from one of his employees from Fort Cochin about the destruction that was being caused to his business premises, he

also immediately contacted Fort Cochin police station, Asst. Commissioner of Police, Police Control Room and the Inspector of Police and

requested them to render necessary help to save his business premises and the properties therein. But, unfortunately, the police did not react to his

desperate call for help. Though the respondents were aware of the possibility of such riots in Fort Cochin/Mattancherry area and though they had

taken a decision to render necessary steps to give protection to the life and property of the citizens at the meeting held on 15th October,

respondents miserably failed to discharge their duty and render protection to the petitioner's business premises. Petitioner submits that apart from

the loss which he suffered on that day due to destruction of his assets, he could not-re-open the hotel and conduct business for about two months.

He had thus lost a minimum of Rs. 5,000/- during this period on account of loss of business. Apart from the above, since all his account books

were destroyed, he could not collect from his regular customers, balance amount due from them. On this count, he had suffered a loss of Rs.

7,000/-. Thus, according to the petitioner, he had suffered a total amount of Rs. 86,000/- as a result of the failure on the part of the respondents to

discharge their duty to give protection to the property of the petitioner.

3. Immediately after the incident, petitioner made complaints before the respondents and requested for adequate compensation. Ext. P1 is a

petition dt. 19-10-1990 submitted before the 4th respondent. He sent a petition to the Finance Minister on 5-11-1990, copy of which is produced

as Ext. P2. This was followed by another representation, Ext. P3 dt. 10-1-1991 to the Chief Minister and ultimately he sent a lawyer's notice, Ext.

P4 dt. 12-4-1991 to the Chief Secretary and respondents 2 to 4. He did not receive any reply to any of the : representations or petitions. But, at

the same time, he came to know that persons who had suffered loss on account of the looting by anti-social elements on 16-10-1990 in

Mattancherry/Fort Cochin area had been rendered financial help and compensation. Petitioner refers to a report in Mathrubhoomi daily dt. 6th

March, 1991 in support of his above contention. Ext. P5 is the report which says that an amount of Rs. 17,625/- has been sanctioned to 13 bunk

owners who had suffered loss during the calamity in Mattancherry. This amount represents 15% of the loss claimed by the bunk owners. But, as

far as the petitioner is concerned, he was not favoured even with a reply. Petitioner submits that it is not possible for him to resort to a civil suit

since the loss was sustained at the hands of a mob and the principles of law of evidence which had to be followed in a civil suit will stand against

the petitioner getting any relief in such proceeding. It is under these circumstances, petitioner has approached this Court under Art. 226 of the

Constitution.

4. Petitioner has produced along with the original petition, certain affidavits and certificate sworn to and issued by responsible persons to support

his case regarding the loss sustained by him at the hands of the mob on 16-10-1990. Ext. P6 is a certificate issued by Sri. K.J. Sohan who was the

then Mayor of the Corporation of Cochin and who had occasion to visit petitioner's premises on 18-10-1990 and see for himself the destruction

caused to the business premises of the petitioner. In Ext. 16 certificate, it is stated that furniture, fittings, refrigerator, utensils etc., of the hotel were

found totally destroyed and they were strewn on the road and it is clear that the petitioner had suffered considerable loss on account of the riot

which happened on 16-10-1990. Ext. P7 is an affidavit sworn to by the Chief Reporter of Indian Express, Ernakulam Edition. He states that while

he was covering riot-stricken areas of Mattancherry-Fort Cochin, he visited the hotel premises of the petitioner on 18-10-1990. He found the

furniture and other items of properties inside the hotel lying shattered in a totally damaged condition. He estimated the loss sustained by the

petitioner between Rs. 75,000/- and 1 lakh. Sri. K.P. Varghese who was the Asst. Commandant, District Administration and personal officer for

District Commander at Headquarters Coast Guard Dist. No. 4. Cochin had also visited petitioner's premises and Ext. P8 is the affidavit sworn to

by him. He says that he could make out that there were pieces of wooden almirah, wooden tables, benches, doors, windows, electrical junction

boxes, fan, light shades, bulbs and tubes, hundreds of soda, and cool drink bottles, books, files, steel glasses, brass pots and even telephone

instruments were disconnected and thrown away. A big refrigerator, was found on the road in completely damaged state. Wooden cash counter

chairs, mirrors, gas cylinder and many such items were lying on the road shattered into pieces. He estimated the loss sustained by the petitioner to

Rs. 70,000/- Ext. P9 is an affidavit sworn to by Sri. R. Prakash, a business man and social worker of Mattancherry. He estimated the loss of the

petitioner between Rs. 75,000/- and Rs. 1 lakh. According to him, the officials who participated in the meeting held on 15th October had assured

that police would be deployed in all important places and sensitive areas where there was any likelihood of breach of peace. But the promise was

not carried out and the police machinery did not take any steps to prevent the riot which was expected by the authorities even on 15th October.

Sri. P.K. Mohammed Ali, a social worker and who is working as a Supervisor of transporting of cargo and residing near petitioner's hotel, has

sworn to the fact that at the meeting held on 18-10-90 in the residence of R.D.Q. to create peaceful atmosphere in the area affected by riots, there

was severe criticism on the police and there was a general conclusion that it was on account of the negligence and inaction of the police force, the

violence had taken place. Ext. P10 is copy of the affidavit. Sri. S. Krishnaswamy, owner of a dairy and who is supplying milk to various hotels of

Mattancherry and Fort Cochin, is an eye witness to the looting that had taken place in Petitioner's premises on 16-10-1990 by the unruly mob.

Ext. P11 is the affidavit sworn to by him. He states that he had sent one of the employees of the petitioner to the police station situated about 1

furlong away from the hotel, but police had expressed their inability to come to the place of destruction. According to him, if the police had

immediately reacted to the request and came to the hotel premises, looting and destruction of petitioner's property could have been averted. Ext.

P12 is a report which had come in Indian Express daily on 27th (October, 1991. According to the report, Government itself had estimated that 74

shops were partially gutted or looted during the five days of vandalism. Government had estimated the total loss around Rs. 75 lakhs while a

survey conducted by Indian Chamber of Commerce and Industry had put the loss above Rs. 1 crore. Most of the shop owners had no insurance

for their shops. Several ministers and political leaders came to Mattancherry to assuage the feelings of riot-hit people and promised to use their

good offices to secure compensation for the traders. Even late Rajiv Gandhi when he was the opposition leader, made a visit to mattancherry

during a tour to Kerala and promised to compensate the riot victims. But the promises remain without being implemented. This, in effect, is the

contents of the report.

5. Petitioner further submits that during second week of December, 1991, there were some riots in Palghat in which number of people suffered

loss on account of the looting and violence. It had been reported in Mathrubhoomi daily dt. 19th December, 1991 that the Government proposes

to appoint a member of the Board of Revenue to assess the loss suffered by the persons at Palghat for the purpose of awarding compensation.

6. It is contended by the petitioner that the executive wing of the State has a duty to protect the person and properties of the citizens. Conduct of

the, police in refusing to grant protection to him and his business premises in spite of its knowledge that an attack is likely to happen against the

hotel of the petitioner on 16-10-1990 would amount to infringement of petitioner's fundamental rights under Article 19(1)(g) of the Constitution.

State is liable to compensate the petitioner as it has failed in its public duty to protect the fundamental right of the petitioner. It is also contended

that petitioner has been discriminated in the matter of granting compensation as in the case of certain other traders such compensation was granted.

In support of the above contention, petitioner relies on the decisions of the Supreme Court in Rudul Sah Vs. State of Bihar and Another, , Bhim

Singh, MLA Vs. State of Jammu & Kashmir and Others, , Peoples' Union for Democratic Rights v. State of Bihar and others, AIR 1987 SC 355,

State of Maharashtra and Others Vs. Ravikant S. Patil, , Smt. Nilabati Behera alias Lalita Behera Vs. State of Orissa and others, , Smt. Kumari

Vs. State of Tamil Nadu and others, , Lucknow Development Authority Vs. M.K. Gupta, Jaram Singh Vs. State of H.P. and Others, and Antony

Cherian v. Union of India, 1992 (1) KLT 73.

7. A counter-affidavit has been filed on behalf of the 1st respondent wherein the incident which happened, as alleged by the petitioner, on 16-10-

1990 is admitted. It is also admitted that when "harthal" on 16-10-1990 was announced as a protest against the murder of a Muslim Madrassa

Teacher at Kattoor on 14-10-1990, law, and order problem was anticipated. It is further stated that in order to handle such a situation, the entire

police force within Mattancherry Sub Division was mobilised and mobile patrol and police pickets were arranged at sensitive areas with the

assistance of additional armed police. As a precautionary measure, a prohibitory order u/s. 144 Cr. P.C. was issued by the 2nd respondent

District Collector. It is admitted in the counter-affidavit that the "harthal" was followed by large scale violence and groups of people indulged in

arson looting and even murder. The entire Ernakulam district was a disturbed area on 16-10-1990. Mattancherry and Fort Cochin were the worst

affected places. It is further admitted that police were unable to bring the situation under control and the police had to resort to firing at New Road,

Mattancherry at 12.12. p.m. Bazar Road, at 2.15 p.m. and at Panayapilly at 8.45 p.m. on 16-10-1990. According to the deponent, in such

widespread act of violence and looting, it was practically impossible to render police protection to each and every shop in the area.

8. The allegation that there was inaction on the part of the police is denied. The fact that petitioner's hotel was looted and destroyed by a mob at

about 11 O clock in the F.N. of 16-10-1990 is admitted in the counter-affidavit. But the averment in the original petition that on getting information

from his employee about the attack on his hotel, petitioner had contacted immediately the Fort Cochin Police Station. Asst. Commissioner of

Police, Police Control Room and Inspector of police and requested their help to save his business premises, is denied. The allegation that the

police was insensitive to the wanton destruction and that loss was occurred due to the failure of the respondent to take action, is also denied.

Attack on petitioner;s shop was reported only after the incident was over. No complaint was received prior to the attack. The fact that there was a

conference called by the Revenue Divisional Officer, Fort Cochin, on 15-10-1990 is admitted; but according to the deponent, all the decisions

taken at the conference were implemented and utmost vigil was maintained. It is contended by the learned Govt. Pleader appearing on behalf of

the respondents that the petitioner is not entitled to claim any compensation as per law. The attempt of the petitioner is to saddle the responsibility

of loss with the Government and to claim compensation. Petitioner has no legal right to claim such compensation. Apart from the above, as per the

assessment made by the respondents, petitioner's loss is only to the extent of Rs. 33,000/- and not to the extent of Rs. 86,000/- as claimed by

him. It is further contended that so long as the petitioner has no legal right to claim compensation, he cannot have a complaint of violation of his

fundamental right under Art. 14 of the Constitution on the ground that while he was denied compensation, 13 petty shop owners who had

sustained loss during the very same riot were granted compensation. Such compensation was given to petty traders from Chief Minister's distress

relief fund. Their income came within the limit stipulated under Chief Minister's distress relief fund rules. Petitioner will not come within the rules as

his income would come under higher range. According to the respondent, the statements contained in the affidavits filed along with the original

petition are not reliable and no relief can be granted to the petitioner on the basis of such affidavits. Anti-social elements made use of the

opportunity available on the "harthal" day and looted shops and damaged many of them. Petitioner's hotel is one among those which sustained

damage 1st respondent would aver that it is practically impossible to give police protection to each and every shop when riot was going on within

the entire area of Mattancherry and Fort Cochin police station limits at the same time. Earnest attempts had been made by the police at the risk of

their lives. Therefore, according to the respondents petitioner is not entitled to the reliefs sought in this original petition.