

IN THE HIGH COURT OF KERALA AT ERNAKULAM

Present:

THE HONOURABLE MR. JUSTICE P.B.SURESH KUMAR

Friday, the 4th day of October 2019/12th Aswina, 1941

WP(C) No.25912/2019 (L)

PETITIONER

RUBEL THEJU, HOUSE NO.14/1829, ARACKAL HOUSE(KURUPATH), CHULLICKAL,
THOPPUMPADUY, KOCHI, ERNAKULAM-682005.

RESPONDENTS

1. DIRECTOR GENERAL OF POLICE AND STATE POLICE CHIEF
KERALA, POLICE HEADQUARTERS, THIRUVANANTHAPURAM-695010.
2. THE CITY POLICE COMMISSIONER,
NEAR POLICE CLUB, KOCHI, ERNAKULAM, COCHIN, KERALA-682011.
3. THE STATION HOUSE OFFICER,
HARBOUR POLICE STATION, THOPPUMPADY, KOCHI, KERALA 682005.
4. SELF EMPLOYED DRIVERS 'UNION (SEDU)(AITUC)
K.B.HANEEF, CANON-SHED ROAD, ERNAKULAM-682011,
REPRESENTED BY ITS SECRETARY, KANAN DAS.
5. UBER INDIA SYSTEM PRIVATE LIMITED,
CENTRAL WAREHOUSING CORPORATION, REGIONAL OFFICE COMPLEX, MAVELI ROAD,
KADAVANTHARA, KOCHI-682021.

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 direct the Respondents 1 -3 to provide effective and adequate police protection to the petitioner and other Uber drivers to ensure that the protests called by the 4th Respondent does not disrupt its functioning or cause any harm to its employees, contractors and office premises, till the disposal of the Writ Petition.

This petition coming on for orders upon perusing the petition and the affidavit filed in support of WP(C) and upon hearing the arguments of SRI.GEORGE POONTHOTTAM, Senior Advocate along with M/S. JAISY ELZA JOE & NISHA GEORGE, Advocates for the petitioner and of GOVERNMENT PLEADER for R1 to R3, the court passed the following:

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P.B.SURESH KUMAR, J.

W.P.C Nos.25912 & 26397 of 2019

Dated 4th October, 2019

ORDER

The petitioners in these writ petitions seek virtually the same relief. The contesting respondent in the cases is also one and the same. Among the matters, W.P.(C) No.26397 of 2019 has come up for admission and W.P.(C) No.25912 of 2019 has come up after notice. By a separate order passed today, I have admitted W.P.(C) No.26397 of 2019 and issued notice to the contesting respondent in that case also. As notice to the contesting respondent in W.P.(C) No.25912 of 2019 was served, the learned counsel for the petitioners as also the learned Government Pleader were heard on the plea of the petitioners for interim relief.

2. The petitioner in W.P.(C) No.26397 of 2019 is the licensee of the mobile application 'Uber' which facilitates persons intending to avail transport services to interact with transport service providers through the application. The

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petitioner in W.P.(C) No.25912 of 2019 is a transport service provider/driver partner of Uber. The gist of the case of the petitioners in the writ petitions is that a group of persons at the behest of the fourth respondent trade union in the writ petitions, along with some of the former service providers of Uber who were restrained from using the Application due to safety or quality reasons, are instigating others to join with them in a protest against use of Uber Application; that the fourth respondent and their associates are posing threats to the commuters and the service providers to compel them to refrain from using the application; that they are resorting to acts of violence against those who do not accede to their demand; that several cases involving injuries to persons and destruction of vehicles have already been registered by the police against the associates of the fourth respondent union, and that despite repeated requests, the police who are bound to extend aid to commuters and service providers and prevent the fourth respondent and their associates from resorting to acts of violence, are neither extending the police aid expected from

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them or taking appropriate measures to prevent the fourth respondent and others from resorting to violence. The petitioners, therefore, seek effective and meaningful police protection for carrying out their business/avocation.

3. The learned Government Pleader, on instructions, submitted that a few instances of obstruction were reported and they were found to be not serious. It was, however, pointed out by the learned Government Pleader that it is not practically possible to render police aid to all Uber service providers who are stated to be approximately 4000 in number. It was also submitted by the learned Government Pleader that the police would certainly take action, if any untoward incident is reported to them.

4. Placing reliance on the threat posed on the commuters in the posters affixed by the fourth respondent at various places, the copies of which are part of the records, the learned counsel for the petitioners submitted that on account of the threat and incidents already reported, the commuters and the service providers are now scared to use the application.

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The learned counsel submitted that what is expected from the police in a case of this nature is to take appropriate measures to prevent occurrence of untoward incidents. The learned counsel for the petitioners also brought to the notice of the court the directions issued by the Division Bench in W.P.(C) Nos.222 and 244 of 2019 and the decision of the Apex Court in **Kodungallur Film Society and Another v. Union of India and Others** [2018(5) KHC 297], in support of the relief claimed in the writ petitions.

5. The posters claimed to have been affixed by the fourth respondent and their associates at various places, the copies of which are made available, would certainly involve a threat not only to the service providers, but also to the commuters availing service through the application. The copies of the first information reports produced in the writ petitions establish prima facie that the apprehension of untoward incidents entertained by the petitioners is not unfounded. It is seen that the service providers using the application have been attacked and their vehicles were damaged in all those cases.

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As rightly pointed out by the learned counsel for the petitioners, what is expected from the police in a case of this nature, is to take effective and sincere efforts to see that no person using the application is obstructed or injured or the property of such person is damaged. It is trite that acts of violence under the guise of protests, affecting the rights of citizens to move freely or to carry on their avocation and affecting their right to life are liable to be treated not only as mere criminal acts against the individuals, but also as serious offences against the society.

6. In the circumstances, having regard to the decision of the Apex Court in **Kodungallur Film Society** as also the interim order passed by the Division Bench in W.P.(C) Nos.222 and 244 of 2019, I deem it appropriate to pass an interim order directing respondents 2 and 3 to evolve appropriate and suitable measures to prevent the members and associates of the fourth respondent trade union from causing obstructions to the commuters and service providers of Uber Application, or causing any injury to them or damaging their vehicles and assets, including extending sufficient and

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meaningful police aid to them, so as to enable them to use the mobile application for availing and extending transport services. Ordered accordingly. It is also directed that respondents 2 and 3 shall invoke the provisions of the Kerala Prevention of Damage to Private Property and Payment of Compensation Ordinance, 2019, in cases involving damage to property in the guise of protest against the use of Uber application against the perpetrators and also against persons who have called for the protest.

Hand over.

Sd/- P.B.SURESH KUMAR, JUDGE

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ASSISTANT REGISTRAR

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