

BEFORE THE KERALA STATE HUMAN RIGHTS COMMISSION, THIRUVANANTHAPURAM

**Present: Mr.Justice N.Dhinakar,
Hon'ble Chairperson**

Dated this the 18th April, 2008.

H.R.M.P.No.678/07

Petitioner : Suo-motu based on a photograph published in the New Indian Express daily dated 27-2-2007 with regard to putting up of 'Arche' in public places.

ORDER

On seeing a photograph published in the New Indian Express with a foot note "an arch being erected on the Vellayambalam-Vazhuthacaud road on Monday in open violation of the District Collector's ban on putting up arches in the city" the Commission had taken suo-motu action and registered HRMP No.678 Of 2007. Reports were called for from the Secretary, Thiruvananthapuram Corporation and the District Collector, Thiruvananthapuram.

There after, the news reports attached with the photographs showing 'arches' put up at different places, especially on public roads, were published in the New Indian express on different dates. The City Express in the New Indian Express daily dated 17-01-2008 reported as follows:

" city roads witnessed 1512 accidents, 107 deaths and 1231 serious injuries during January-September, 2007. These NATPAC statistics may shock you. But if we fail to take on another looming threat on our roads – arches – the stats next year could be worse. The bevy of arches decking city roads are proof of the fact that neither the road

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safety week celebrations, nor the formation of a Road Safety Authority could make a difference to the plight of our roads that continue to be marred by the parabolic threats, even in busy junctions. The PWD Roads Division, which sanctions permission to erect arches on roads, has not been giving permission for arches on city roads. Invariably, this means that all the arches that one finds on the city roads are in blatant violation of the ban order”.

According to the newspaper report, the PWD also issued a special order about banning arches on BOT (Build-Operate Transfer) roads.

It was also reported in the newspaper that

“ it was more than a year ago the District Collector N.Ayyappan, in his capacity as the district magistrate, invoked CrPC 133 to ban erection of arches. According to section 133, the district magistrate can ‘remove such obstructions’ in public places that are likely to fall and cause injury to persons living or carrying on business in the neighbourhood or passing by”.

It was also reported that

“ most of the arches erected on public roads belong to Govt departments. If we go to remove these arches, against whom do we charge the case? Can we file a case against the Government itself? Asks the District Collector”.

According to the newspaper report, the Additional District Magistrate Sivarajan Nair stated that the district administration has issued an order banning arches and it is now the duty of the police to enforce them.

The New Indian Express daily dated 18-01-2008 reported as follows:

“the authorities responsible for enforcing the Collector’s ban order are shying away from their duty simply because of their reluctance to take action against the Government Departments”.

It was also reported that

“according to Mohanan Nair, the Traffic South Assistant Commissioner a collective action by the police, PWD and Corporation could rid the city of its arch menace. If arches cause traffic problems or traffic jams, then the traffic police can immediately take action. However, regarding the safety of the public the PWD or Corporation has to take the initiative and enforce the ban. The police can then give protection to their enforcement drives”.

According to the Deputy Police Commissioner M.Wahab, it was reported that, the departments who give sanction to arches never consult the police before permitting them.

In the New Indian Express daily dated 19-01-2008 it was reported that “ it is clear that TRDCL (Trivandrum Road Development Corporation Ltd) will not allow to put up any arch along any of the roads coming under the project. We will put notice along these roads in this regard, according to Anil Kumar Pandala, associate vice-president, TRDCL”.

According to the newspaper report, the fee for erecting an arch across busy city lanes is around Rs.4,500/-. The newspaper report indicated that the reporter contacted the arch makers also and according to them ‘actually the whole issue of putting up of arches is a very risky affair; that most of the time they are put up during night and that too hastily and that so workers neither have time nor patience to take care of the safety precautions’.

It was also reported that

“ a man had died at Chirayinkizhu after being electrocuted when he hit an arch beam”.

According to the arch maker, it was reported in the newspaper, that,

“ actually the PWD is not giving sanction for arches these days. But nobody bothers to go for permission, because any way there is no action from the authorities. They simply erect the arch”.

The New Indian Express daily dated 28-01-2008 reported news about the erection of arches and also published a photograph of arches erected across the road at spencer junction and statue junction.

In the above ground and on the factual situation it is needless to say that erection of arch/arches in public places, especially on busy roads, is a real threat to the vehicle, passengers and pedestrians. The arch/arches cause problems to the vehicular traffic not only during peak traffic times but during lean traffic time also. Most of the arch/arches is/are put up during night time in a hasty manner which indicate that they are put up without any licence from the authorities concerned.

The erection of arch/arches during night time itself is a clear indication that such arch/arches is/are put up by persons who do not want their identity to be known to others and further as the arch/arches is/are erected during night without sufficient light at the place the arch/arches is/are found to be unsafe as they are not only put up in the dark but also on account of the haste with which they are erected and such arch/arches put up will lead to tragedy. The authorities, if they are vigilant can prevent such unauthorized erection of arch/arches at places on the road causing hindrance to the free flow of traffic at all times.

The authorities instead of crying over the spilt milk if any accident occurs can and should take action against unauthorized erection of arch/arches and thereby prevent danger to the vehicles and the public. As the arch/arches are put up in an unscientific manner in places which are not suitable for their erection danger looms large as such unauthorized arch/arches will lead to tragedy. In such a situation the authorities cannot also fix the responsibility on any individual or organization for fixing the unauthorized

arch/arches and the very purpose of granting licence by a competent authority to erect arch/arches will get defeated since any competent authority to issue licence will issue the same only after taking into consideration the capacity of the person or organization to put up arch/arches, whether such an arch can be put up at a particular place as required by the individual/organization and also to verify and take action against those responsible if there is any defect in the erection of arch/arches. Several departments, organizations, political parties and religious institutions are erecting the arches now –a- days. The tragedy, if any, occurs on account of the arch/arches it will result in serious consequences which we cannot bear in heart. It will lead loss of life of the persons and some times the breadwinner of the family and viewed from any angle erection of an arch is a threat to the life of the driver of a vehicle or passenger or pedestrian and hence it should be banned.

In this context, I also wish to point out another menace staring the public. Now-a-days ‘flex boards’ are seen erected on the side of the road and even on traffic islands. The placing of these flex boards will obstruct the view of the drivers of the vehicles plying on the road to see whether other vehicles are coming from the opposite direction. This causes hindrance to the drivers and distract their attention which will lead to serious consequences and of late tying the flags with the rod in the traffic island has also assumed alarming proportions. As the drivers are not able to get a clear view at the curves and in other places on account of the placing of flex boards the road accidents will only increase in future. We should remember that life is precious and no activity, which will endanger the human life, should be permitted. It is seen from the newspaper reports

that the District Collector, Thiruvananthapuram and the P W D, Roads, Thiruvananthapuram have issued ban orders on arch/arches. But their duty do not end by simply issuing ban orders and it continues for them to see that such ban orders are implemented in letter and spirit.

The Secretary, Thiruvananthapuram Corporation has sent his report dated 17-10-2007 to the Commission. In the report it was stated that the Corporation did not give any consent to erect an 'arch' on the Vellayambalam-Vazhuthacaud road. The report further stated that on the basis of the news reported in the New Indian Express the place in question was inspected and the arch put up unauthorizedly was removed from the place.

Though several opportunities were given to the District Collector, Thiruvananthapuram to file his report by repeatedly sending reminders in the matter he has not filed his report. Taking into consideration the seriousness of the issue I have decided to pass the order. Hence I make the following recommendations to the State Government:

RECOMMENDATIONS:

- 1. The Public Works Department in the State shall be directed not to give any permission/consent to erect 'arches' or 'flex boards' in public roads.**
- 2. Taking into consideration the possibility of danger in putting up of 'arches' and 'flex boards' in public places the District Collectors in the State shall be directed to issue necessary orders banning the erection of arches in public places.**

- 3. The Public Works Department shall be directed to take all steps to enforce the order of the District Collectors in the State banning the erection of 'arches' and 'flex boards' in public places and stringent action should be initiated against the violators of the order without any fear or favour.**
- 4 The Director General of Police, Thiruvananthapuram shall be directed to take immediate action in the matter of erection of 'arches' or 'flex boards' in public places when assistance is sought from the police. The police department will also take immediate steps to remove all unauthorized arch/arches and flex board/boards erected in public places.**

**Justice N.Dhinakar
Chairperson.**