

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

**THE HONOURABLE THE AG.CHIEF JUSTICE MR.ASHOK BHUSHAN
&
THE HONOURABLE MR.JUSTICE A.M.SHAFIQUE**

FRIDAY, THE 9TH DAY OF JANUARY 2015/19TH POUSHA, 1936

WA.No. 1757 of 2013 ()

AGAINST THE JUDGMENT IN WP(C).NO.24252/2013 DATED 24-10-2013.

APPELLANT/PETITIONER:

**HASSAN KOYA, AGED 45 YEARS,
S/O.MOOSA, VALIYAPEEDIKAKKAL HOUSE,
MAMPAD P.O., MALAPPURAM.**

**BY ADVS.SRI.JAGAN GEORGE,
SRI.P.JAYABAL MENON.**

RESPONDENTS/RESPONDENTS:

- 1. THE TRANSPORT COMMISSIONER,
THIRUVANANTHAPURAM, KERALA-695 001.**
- 2. THE REGIONAL TRANSPORT OFFICER,
MALAPPURAM-676 505.**

BY SPL. GOVT. PLEADER SMT.GIRIJA GOPAL.

**THIS WRIT APPEAL HAVING BEEN FINALLY HEARD ON 15/12/2014,
ALONG WITH W.A. NO. 1797 OF 2013 AND CONNECTED CASES,
THE COURT ON 09/01/2015 DELIVERED THE FOLLOWING:**

rs.

APPENDIX

PETITIONER'S ANNEXURES:- **NIL.**

RESPONDENT'S ANNEXURES:-

- | | |
|---------------------|---|
| ANNEXURE I | COPY OF THE COMMUNICATION NO.RT-11011/1/88-TAG
DATED 31/07/1990. |
| ANNEXURE II | COPY OF THE AUTOMOTIVE VEHICLES-TYPES-TERMINOLOGY-
AUTOMOTIVE INDUSTRIES STANDARD-053-2005. |
| ANNEXURE III | COPY OF THE APPROVAL CERTIFICATE DATED 28/02/2014
ISSUED BY THE AUTOMOTIVE RESEARCH ASSOCIATION
OF INDIA (ARAI). |
| ANNEXURE IV | COPY OF THE APPROVAL CERTIFICATE DATED 06/07/2011
ISSUED BY THE VEHICLES RESEARCH AND DEVELOPMENT
ESTT. |
| ANNEXURE V | COPY OF THE APPROVAL CERTIFICATE DATED 09/01/2008
ISSUED BY THE AUTOMOTIVE RESEARCH ASSOCIATION
OF INDIA (ARAI). |
| ANNEXURE VI | COPY OF THE APPROVAL CERTIFICATE DATED 01/08/2013
ISSUED BY THE AUTOMOTIVE RESEARCH ASSOCIATION
OF INDIA (ARAI). |

//TRUE COPY//

P.S. TO JUDGE

rs.

**ASHOK BHUSHAN, Ag.CJ
& A.M.SHAFFIQUE, J.**

W.A.Nos.1757, 1797 of 2013 &
24, 51, 76, 171, 349, 353, 389, 500,
1414, 1716, 1789, 1860 of 2014
and W.P.C.No.12504 of 2014

Dated this the 9th day of January 2015

J U D G M E N T

Shaffique,J

These appeals and writ petition concerns a common issue relating to registration of motor vehicles, either as transport vehicle or a non transport vehicle, and hence considered and decided together.

2. W.A.No.51/2014 arises from judgment dated 13/03/2009 in W.P.C.No.24546/2008 reported in **Cheriyann v. Transport Commissioner** [2009 (2) KLT 583]. The appeal is filed by the respondents in the writ petition. The respondent herein is the writ petitioner who sought for a direction to declare that he is entitled to register the vehicle Mahindra 'Bolero Camper 4WD' as a Light Motor Vehicle-Motor Car and for other consequential reliefs. Writ petitioner

claimed that he intended to purchase such a vehicle. But, he was unable to purchase the same since respondents 2 and 3 namely the Regional Transport Officer and the Regional Transport Authority, Kozhikode have taken a stand that the said vehicle cannot be registered as a Light Motor Vehicle-Motor Car. Reference is made to the certificate issued by the Automotive Research Association of India (for short 'ARAI') indicating the type of vehicle as "Goods & passenger vehicle, Normal Control". As evident from Annexure II which forms part of Ext.P1, the seating capacity is either 6, 5 or 4 depending upon the option and it has a luggage carrying area on the rear portion. The specifications of that vehicle also forms part of Ext.P1. Ext.P2 is the registration certificate of a similar vehicle registered in the name of a company 'Essential Constrowell (P) Ltd'. The class of vehicle is shown as Light Motor Vehicle-Motor Car. Petitioner has sought for information from the Public Information Officer by way of Ext.P3 dated

01/02/2008 requesting as to whether the said brand of vehicle and its variants can be registered as a private vehicle in Kerala. He got an information by way of Ext.P4 dated 24/03/2008 stating that it is not clear whether the vehicle can be registered as a non-transport vehicle or transport vehicle. Since the type of vehicle is shown as goods and passenger vehicle-normal control, a clarification is sought from the Transport Commissioner which would be sent as soon as it is received.

3. Counter affidavit is filed by the 1st respondent inter alia stating that the particular type of vehicle namely Mahindra Bolero Camper Van-Normal Control LCV (Goods and Passenger) cannot be a non-transport vehicle since it is a light commercial vehicle. Copy of ARAI certificate was communicated to all Sub Offices and if any registering authority has registered such a model as non-transport vehicle, action will be taken to correct it. It is further stated that when a clarification was sought by RTO, Kozhikode in

this regard, necessary clarification was given on 13/06/2008 directing the vehicle to be registered as transport vehicle or non-transport vehicle on the basis of the nature of use of the vehicle. It was further stated that the vehicle cannot be registered as a motor car since the vehicle is constructed to carry goods also as defined under Section 2(14) of the Motor Vehicles Act, 1988 (hereinafter referred as the Act) and therefore when it is constructed or adapted for carriage of goods, it becomes a goods carriage which is a transport vehicle in terms of Section 2(47) of the Act. The learned Single Judge allowed the writ petition holding that in respect of a vehicle which is constructed and adapted not for carriage of goods alone, the user of the vehicle is the prime aspect which need be considered for deciding the question as to whether it is to be treated as a transport vehicle or as a non-transport vehicle. It is therefore held that the transport authorities cannot take a uniform stand to register such type of vehicle as transport vehicle in all cases. In so

far as the vehicle in question is a light motor vehicle, it has to be given registration as light motor vehicle provided it is not used as a goods carriage. If it is not used as a goods carriage, it cannot be treated as a transport vehicle but only as a non-transport vehicle. Hence, it was held that the vehicle which the petitioner is intending to purchase namely Mahindra Bolero Campher 4WD need be registered as a non-transport light motor vehicle. However, it was observed that depending on the use of the vehicle, respondents are always at liberty to reclassify the vehicle as a transport vehicle if it is found that the vehicle is being used for carriage of goods.

4. W.A.No.1414/2014 is filed by the writ petitioner challenging the judgment dated 30/09/2014 in W.P.C.No.25484/2014. The petitioner being the owner of Mahindra Bolero Camper claimed that his vehicle has to be registered as Light Motor Vehicle Motor Car whereas the registering authority insisted that the vehicle has to be registered as passenger-cum-goods vehicle. According to

the petitioner, he did not intend to use the vehicle as a goods carriage. He had relied upon the judgment in **Cheriyani's** case (supra). The learned Single Judge, having taken note of the fact that the petitioner is an agriculturist and business man, formed an opinion that since the dominant use to which the petitioner intends to put the vehicle is for his agriculture and business activities, judgment in **Cheriyani's** case (supra) is not applicable and hence dismissed the writ petition. That was also a case in which the petitioner intended to purchase the said vehicle. The respondent authorities have taken contentions similar to those raised in W.A.No.51/2014.

5. W.P.C.No.12504/2014 is filed seeking to challenge Ext.P1 proceedings of the registering authority by which the request of the petitioner for alteration of the class of vehicle as a non-transport vehicle was refused. In that case, petitioner had purchased Mahindra Bolero Camper. It was registered on 29/09/2003 as a Light Goods Vehicle. He

wanted to alter the class of vehicle as Non-Transport Private vehicle. In this case also the respondent authorities have raised contentions similar to that in W.A.No.51/2014.

6. W.A.No.1789/2014 is filed against the judgment dated 12/11/2014 in W.P.C.No.30033/2014. The petitioner claimed that vehicle Mahindra and Mahindra Pick Up Van has to be registered as a Non-Transport Private vehicle, which was refused by the registering authority. He relied upon **Cheriyen's** case (supra). The learned Single Judge found that since the requirement of the petitioner is to carry on transportation of agricultural implements, manure, pesticide etc. in connection with his agricultural operations, it would fall under the category of 'goods carriage' which is a Transport Vehicle and therefore it cannot be registered as a Non-Transport Vehicle.

7. W.A.No.1716/2014 is filed by the petitioner challenging the judgment dated 11/11/2014 in W.P.C.No.29770/2014. Petitioner in the said case purchased

two “Mahindra Genio DC VX” vehicles and claimed registration as Non-Transport Private vehicle which was refused by the registering authority. He also relied upon **Cheriyen**'s case and the learned Single Judge having found that the requirement is for using the vehicles for commercial activities, it amounts to goods carriage and cannot be registered as a Non-Transport vehicle.

8. In W.A.No.1860/2014, the petitioner challenges judgment dated 27/10/2014 of the learned Single Judge in W.P.C.No.21427/2014. The vehicle involved in this case is Mahindra Bolero Camper. Here also, the petitioner claimed that he never intended to use the vehicle as a goods carriage and relied upon **Cheriyen**'s case (supra). The learned Single Judge found that the vehicle has already been registered as Light Motor Vehicle-Goods Carriage and the petitioner wants to change the category as Light Motor Vehicle - Non-transport vehicle. It was held that the registering authority by Ext.P2 refused to change the

classification of the vehicle which was upheld by the learned Single Judge on the ground that the vehicle was endorsed as Light Motor Vehicle - Goods Carriage as per the Proto type approval.

9. W.A.No.24/2014 is filed by the petitioner challenging judgment dated 20/11/2013 in W.P.C.No.22040/2013. This appeal concerns a vehicle Mahindra Bolero Pick Up. He applied for registering his vehicle as Light Motor Vehicle - Non-transport on the ground that he intended to use it only for his personal use. He was running a dairy farm and the learned Single Judge found that since the personal use projected was for the use in the dairy farm it amounts to goods carriage and can be registered only as a transport vehicle.

10. W.A.No.76/2014 is filed by the petitioner in W.P.C.No.26160/2013 challenging the judgment dated 31/10/2013. In this case, the vehicle involved is Mahindra Bolero DCH. His claim for registration of the vehicle as Light

Motor Vehicle - Motor Car was rejected by the learned Single Judge on a finding that the vehicle involved is a goods carriage especially since the petitioner admittedly owns farm land and the vehicle was purchased for his farming and business activities.

11. W.A.No.171/2014 is filed by the writ petitioner challenging the judgment dated 20/12/2013 in W.P.C.No.31910/2013. Petitioner has originally registered his vehicle as Light Motor Vehicle - Goods Carriage and his requirement was to change the use and hence requires it to be registered as a Non-Transport Vehicle. The vehicle involved was Mahindra Bolero. The learned Single Judge dismissed the writ petition on a finding that the petitioner owns a construction company and therefore it could not be said that he will not use the vehicle for carriage of goods.

12. W.A.No.349/2014 is filed by the writ petitioner challenging the judgment dated 21/01/2014 in W.P.C.No.1964 of 2014. Petitioner purchased Mahindra

Genio DC VX, a vehicle which is adapted for carriage of goods as well. But, on the basis that he purchased the vehicle for his private use, he wanted to register the vehicle as a Non-Transport vehicle. He relied upon the judgment in **Cheriyen's** case (supra). The learned Single Judge observed that since the petitioner is an agriculturist and the dominant use of the vehicle is for farming activities, **Cheriyen's** case cannot be made applicable and hence the writ petition was dismissed.

13. In W.A.No.353/2014, petitioner is aggrieved by the judgment dated 07/02/2014 in W.P.C.No.29957/2013. Petitioner owns a Mahindra Bolero Camper which was originally registered as a Goods Carriage vehicle. He requested for change of classification which was not considered by the registering authority and therefore he had approached this Court for a direction to register his vehicle as Non-Transport Private vehicle. His claim was rejected by the learned Single Judge on the ground that since the

vehicle is being put for farming activities, **Cheriyen's** case(supra) has no application.

14. W.A.No.1757/2013 is filed against the judgment dated 24/10/2013 in W.P.C.No.24252/2013. In this case also, the petitioner, who is the owner of the vehicle Tata Xenon, has registered his vehicle as a Light Motor Vehicle-Goods Carriage. He requested for change of classification as a Non-Transport vehicle which was rejected by Ext.P4 order. He relied upon the judgment in **Cheriyen** (supra) to contend that he is not using the vehicle as a goods carriage. The learned Single Judge rejected his contention as it was clear that the vehicle is being used for farming activities.

15. W.A.No.1797/2013 is filed by the writ petitioner challenging judgment dated 13/11/2013 in W.P.C.No.27801/2013. In this case, petitioner who is the owner of a vehicle Mahindra Genio, had obtained temporary registration. He claimed that he does not intend to use the vehicle as a goods carriage as the same was purchased for

his personal use. He was engaged in catering business. It was found that his use of vehicle is as a transport vehicle and therefore **Cheriyam's** case (supra) has no application. Further, it was observed that the manufacturer itself has classified the vehicle as Light Motor Vehicle- Goods Carriage Transport as evident from Ext.P1.

16. W.A.No.389/2014 is filed by the petitioner challenging judgment dated 08/01/2014 in W.P.C.No.31405/2013. In this case also, the vehicle was originally registered as a Light Motor Vehicle - Goods Carriage. Petitioner sought for change of classification as Non-Transport vehicle which was rejected as per Ext.P3 order. Petitioner relied upon the judgment in **Cheriyam's** case (supra) and submitted that it was used only for private use and not for carriage of goods. Claim was rejected by the learned Single Judge on the ground that the dominant use of the petitioner was for his business activities and **Cheriyam's** case (supra) has no application.

17. W.A.No.500 of 2014 was filed by the writ petitioner challenging the judgment dated 24/02/2014 in W.P.C.No.5370/2014. In this case, the petitioner owns a vehicle Tata Xenon which according to him, is to be registered as a Non-Transport vehicle. While granting temporary registration, registering authority has described the vehicle as goods vehicle. He sought for a direction to reclassify the vehicle as Non-Transport vehicle by relying on **Cheriyam** (supra). It is held that, as the vehicle is purchased in the name of Hotel Jaya Lodging & Auditorium, it is evident that the intention is to use the same as goods carriage and therefore it cannot be registered as a Non-Transport vehicle.

18. Smt. Girija Gopal, the learned Special Government Pleader, first of all argued W.A.No.51/2014 which is filed against **Cheriyam's** case (supra) and contended that the said judgment does not lay down the correct principle of law. It is argued that classification of a vehicle mainly depends

upon the classification issued by the manufacturer and approved by the competent authority. It is based on such classification that the registering authority classifies a particular vehicle. Perusal of the statutory provisions as contained in the Act, as well as the Central Motor Vehicle Rules, 1989 (hereinafter referred as CMV Rules), it is evident that the class of vehicle for which petitioners in these cases claim registration as a “non-transport vehicle” is, in fact, transport vehicle as defined under Section 2(47) of the Act. The Learned Government Pleader referred to Section 10 of the Act which provides for the form and contents of a licence to drive motor vehicles, which are classified under several classes namely motor cycle without gear, motor cycle with gear, invalid carriage, light motor vehicle, transport vehicle, road roller, motor vehicle of specific description etc.

19. On the other hand, learned counsel for the writ petitioners supported the judgment in **Cheriyen's** case (supra) and contended that though the vehicles in question

have a goods carriage portion, classification depends upon whether the owners of such vehicles are actually using it as a goods carriage or not. If a person who owns a vehicle is purely utilising the same for carriage of persons, merely for the reason that it has an open goods carriage portion, it cannot be treated as a transport vehicle. According to them, the question that may arise would be whether the owners are actually using the vehicle as a goods carriage or not, which could be ascertained only after verification by the RTA concerned.

20. The Learned Government Pleader, relied upon the following judgments to substantiate her contentions.

i) **Sunny Scaria v. Joint RTO, Palai** (1993(1) KLT 148). In this case, owners of Tourer Jeeps with registration as Omni Bus sought for operating the vehicle as goods carriage. The learned Single Judge, after referring to Rule 126 of the CMV Rules, held that the aforesaid provision requires the manufacturer of the motor vehicle to submit the

prototype of the vehicle to be manufactured for test by the Vehicle Research and Development Establishment of the Ministry of Defence of Government of India or Automotive Research Association of India or the Central Machinery Testing and Training Institute or other agencies specified by the Central Government for certification. When such certification has been obtained after undergoing prototype test, it is intended to be used only for the purpose for which the prototype has been tested and therefore they cannot change the classification of the vehicle from Omni Bus to Goods Carriage.

ii) In **Saramma v. R.T.O, Ernakulam** 1995(2) KLT 450, a Division Bench of this Court had occasion to consider whether a Tatamobile Pick Up van can be converted as a motor car. It was held by this Court that a vehicle constructed or adapted to carry more than six persons excluding the driver, irrespective of those will be an omni bus. In that view of the matter, the vehicle in question

cannot be a motor car as the same has been constructed and adapted to carry more than six persons. Further, it is held that vehicles manufactured and suited to carry more passengers cannot be converted in such a way to defeat its purpose. It is also held that when the authorities with reference to manufacturer's description of the vehicle comes to a finding that the vehicle fits in with the relevant statutory provisions classified them as Maxi Cab with seating capacity of more than six persons, the mere registration of the vehicle as Omni Bus in the registration certificate would not classify as such and it would be considered as Maxi Cab only. It is only for the authorities to take into account all the relevant factors before classifying the vehicle as Omni Bus or transport vehicle.

iii) In **Father Jose Panakezham v. Regional Transport Officer** [1998 (2) KLT 905] a learned Single Judge of this Court held that after complying with the prototype test, the registering authority cannot give

sanction to change the goods carriage vehicle into a passenger transport vehicle. Reference is made to paragraph 7 which reads as under:

"7. The vehicle purchased by the petitioner was certified by the manufacturer as well as by the registering authority as a goods carriage. Goods carriage is defined under S. 2(14) of the Motor Vehicles Act as any motor vehicle constructed or adapted for use solely for the carriage of goods, or any motor vehicle not so constructed or adapted when used for the carriage of goods. Petitioner wants to change the registration of the vehicle to that of a passenger transfer vehicle. Before issuing form No. 22 every manufacturer has to comply with Rr. 47G, 115(6), 124,126A and 127. Manufacturer has also to issue a certificate in form No. 22 A stating that he has complied with pollution standard, safety standards, road worthiness, etc. It is after complying with all these formalities that the manufacturer has described the vehicle as goods carriage. As already mentioned, after complying with the prototype test, the registering authority under S. 52 of the Act cannot change or alter the basic and fundamental factors. That is not within the power of the registering authority."

iv) In W.A.No.2171/1998 the writ petitioner had sought for alteration of his vehicle from that of a goods carriage to passenger transport. Relying upon the judgment

in **Sunny Scaria** (supra) the learned Single Judge dismissed the writ petition. The same was approved by the Division Bench.

v) In **Jayaprakash v. Regional Transport Officer [1999(1) KLT 393]**, the petitioner had sought for alteration of omni bus/ private vehicle into goods carriage. The learned Single Judge, after referring to the statutory provisions, held that the particulars furnished by the manufacturer has to be entered into the certificate of registration. The manufacturer has to give such information after complying with the various statutory formalities and Rules 47(g), 115(6), 124, 126A, 127 etc. That apart, every manufacturer has to submit the prototype of the vehicle to be manufactured by him for test. The learned Single Judge referred to communication No.RT-11011/1/88-TAG dated 31/7/1990 issued by the Ministry of Surface Transport to all the State Transport Authorities and Regional Transport Authorities indicating that unless the prototype testing also

covers the use of vehicle as a passenger car, the same vehicle cannot be altered and got registered as a passenger vehicle. Paragraphs 16 to 19 are relied upon which reads as under:

“16. R. 302 of the Kerala Motor Vehicles Rules, 1989 says that every goods vehicle including a trailer shall be equipped with strong platform or body so constructed as to be capable of carrying the load for which it is used without danger to other road users and be such that the load can be securely packed within or fastened to the body or platform. A vehicle manufactured or constructed or adapted for use as a passenger vehicle may be different from a vehicle constructed or adapted for carrying goods. It cannot be said that on the application of owner of a vehicle, registering authority can freely give approval for alteration of a passenger vehicle to that of a goods vehicle due to the mere fact that those vehicles have been manufactured prior to the coming into force of the Central Motor Vehicles (Amendment) Rules, 1993. So also the mere fact that on failure of the Registering Authority to give approval within seven days as provided under S. 52 of the Motor Vehicles Act not necessarily mean that the owner can make any alteration which he wishes.

17. S. 52 of the Act says that no owner of a motor vehicle shall so alter the vehicle that the particulars contained in the certificate of registration are no longer accurate unless he has given notice to the registering authority within

whose jurisdiction he has the residence or the place of business where the vehicle is normally kept as the case may be, of the alteration he proposes to make and he has obtained the approval of that registering authority to make such alteration. However, it shall not be necessary to obtain such approval for making any change in the unladen weight of the motor vehicle consequent on the addition or removal of fittings or accessories, if such change does not exceed two per cent of the weight entered in the certificate of registration.

18. S. 41 (1) stipulates that an application by or on behalf of the owner of a motor vehicle for registration shall be in such form and shall be accompanied by such documents, particulars and information and shall be made within such period as may be prescribed by the Central Government. S. 52 deals with only particulars and not documents or information. The information as well as the documents furnished by the manufacturer after complying with the various statutory formalities and entered in the certificate of registration, cannot be altered in exercise of powers under S. 52 of the Act. In other words, certain basic and fundamental factors and informations furnished cannot be altered by owner of the vehicle or by the registering authority, unless and until necessary permission is obtained from the Central Government or the competent authority.

19. On an examination of the various provisions of the Act and Rules, I am of the view that even apart from the communication dated 31.7.1990

when a vehicle is constructed or adapted for a particular use under the Motor Vehicles Act and Rules, owner or registering authority has no power to alter the vehicle in such a way that some of the basic and fundamental factors made are made inaccurate. Registering authority has also no power to grant approval for the same. Neither the Act nor the Rules give any such freedom to the owner of a vehicle or the registering authority lest it may affect safety standards. In a case where a vehicle is constructed or adapted solely for the purpose of carriage of goods, the same cannot be altered for carrying passengers without satisfying the statutory requirements. There is nothing in the Act to show that owner of a vehicle or the registering authority can alter the vehicle to fit in some other definition.”

vi) In **Oriental Insurance Company Ltd. v.**

Devireddy Konda Reddy and Others [(2003) 2 SCC 339]

while considering the question regarding the liability of the insurance company in a motor accident, the Supreme Court held that the difference in the language of “goods vehicle” as appearing in the Motor Vehicles Act, 1939 and “goods carriage” in the Motor Vehicles Act, 1988 is of significance. The legislative intent was to prohibit a goods vehicle from carrying any passenger.

vii) In **New India Assurance Co. v. Vedwati and Others** [(2007) 9 SCC 486] while considering the motor accident claims case, Supreme Court referred to the early judgment in **Devireddy Konda Reddy** (supra) and held that when a tractor could only be used for agricultural purpose and the same was used for carrying passenger, the insurer was not responsible to indemnify any award and to pay any amount to the claimants.

viii) Another judgment relied upon is **Natwar Parikh & Co.Ltd. v. State of Karnataka and Others** [(2005) 7 SCC 364]. In that case, the Supreme Court held that even though a trailer is drawn by a motor vehicle, it by itself being a motor vehicle, the tractor trailer would constitute a goods carriage under Section 2(14) and consequently a transport vehicle under Section 2(47). The test to be applied in such a case is whether the vehicle is proposed to be used for transporting goods from one place to another. When a

vehicle is so altered or prepared that it becomes apt for use for transporting goods, it can be said to be adapted for the carriage of goods. Applying the said test, Supreme Court held that the tractor trailer in the case falls under Section 2(14) as a goods carriage and consequently it falls under the definition of transport vehicle.

21. On the other hand, Adv.Mohammed Nias, learned counsel for the respondent in W.A.No.51/2014 relied upon two judgments of this Court. In **Vijay Kumar v. State of Kerala** [2006(3) KLT 546], a learned Single Judge of this Court held that when the construction or adaptation of the motor vehicle is not for the sole purpose of carriage of goods, the said vehicle cannot be treated as goods carriage. That was a case in which a doctor purchased Mahindra Camper. The transport authority called upon him to paint his vehicle in highway yellow colour in terms of Rule 304 of the Kerala Motor Vehicles Rules, 1989. The same came to be challenged. It was held that the use of the word 'goods

carriage' exclude any other meaning being attached to the term goods carriage. Use of the word 'solely' in the said definition shows that the construction or adaptation of a motor vehicle is not for the sole purpose of carriage of goods. Therefore the said vehicle cannot be treated as a goods carriage. It is further held that if it is predominantly clear that the vehicle is not solely used for the carriage of goods, the same cannot be required to be painted in highway yellow colour. The learned Single Judge directed the matter to be placed before the competent authority in the Government to ascertain whether the vehicle of the petitioner is to be treated as goods vehicle or not. Another judgment relied upon is **Alex Thomas v. State of Kerala** [2008(4) KLT 604] wherein a learned Single Judge had occasion to consider a somewhat similar issue. It is held that if the vehicle is not designed solely for carriage of goods, the question is one of use or intention to use the vehicle for carriage of goods. If so, he has to paint the same

in yellow as provided under Rule 304. It is further held that the respondents can insist for such painting if they find that the petitioner is using the vehicle as a goods carriage.

22. The issue involved in the aforesaid Writ Appeals and writ petition is in regard to the registration of a motor vehicle, which is dealt with under Chapter IV of the Act. Registration has to be made by every owner of a motor vehicle by a Registering Authority in whose jurisdiction he has the residence or place of residence where the vehicle is normally kept (Section 40). Section 41 of the Act indicates the particulars regarding the procedure to be followed for registration of a motor vehicle. An application has to be submitted in the prescribed form and it has to accompany such documents, particulars and information as prescribed by the Central Government. Section 41(4) gives power to the Central Government to issue notification to include in the registration certificate the type of vehicle having regard to its design, construction and use. Section 58(2) of the Act

also provides that a Registering Authority when registering a transport vehicle other than a motor cab shall enter in the record of registration and certificate of registration of the vehicle the particulars regarding the unladen weight of the vehicle, the number, nature, size of tyre attached to the wheels, the gross vehicle weight, the registered axle weight etc. Section 58(2)(d) provides that if the vehicle is used or adapted to be used for carriage of passengers solely or in addition to goods, the number of passengers for whom accommodation is provided and the owner of the vehicle shall have the said particulars exhibited in the prescribed manner on the vehicle.

23. Chapter III of CMV Rules, prescribes the particulars to be submitted for registration of a vehicle. As per Rule 47 of CMV Rules, an application for registration of a motor vehicle has to be submitted in Form No.20. In Form No.20, among the particulars that are required to be furnished, Sl.No.12 refers to “class of vehicle”, Sl.No.14

refers to type of body, Sl.No.15 refers to type of vehicle. Sl.No.24 refers to seating capacity (including driver). In respect of transport vehicles other than motor cab, certain other particulars are also to be specified which inter alia includes the number, description, size and ply rating of tyres, as declared by the manufacturer, gross vehicle weight as certified by the manufacturer, maximum axle weight, the dimensions etc. The application has to be accompanied by sales certificate in Form No.21 to be issued by the manufacturer/dealer. In the said form Sl.No.1 refers to class of vehicle, Sl.No.9 refers to seating capacity which includes driver and Sl.No.14 refers to type of body. Rule 48 indicates that after verification of the documents furnished in terms of Rule 47, the Registering Authority shall issue a certificate of registration in Form No.23 or 23A. Form No.23 is the certificate of registration, which shall contain various particulars and Sl.No.1 refers to class of vehicle, Sl.No.3 type of body, Sl.No.11 maker's classification, Sl.No.13 seating

capacity. Certain additional particulars are to be included in all transport vehicles other than motor cabs relating to gross vehicle weight, particulars regarding rating of tyres as declared by manufacturer, axle weight etc. Therefore it is evident that the class of vehicle is one of the specific particulars to be mentioned in the application for registration, the manufacturer's certificate as well as registration certificate.

24. In all these cases, the request of the petitioners is to classify the vehicle as a non-transport vehicle on the allegation that they do not intend to use the vehicle as a goods carriage which is a transport vehicle. The vehicles admittedly have a goods carriage portion also, in addition to seating capacity of upto 5 seats. The contentions are twofold. One is that the vehicle is not solely constructed or adapted for carriage of goods and secondly they have not purchased it for carriage of goods.

25. The issue to be decided is whether the

Registering Authority can register a vehicle, which is certified by the manufacturer as a goods vehicle, as a non-transport vehicle based on the use to which the owner of the vehicle intends to use it.

26. Let us now advert to the definition of a transport vehicle and the different classes of vehicles coming within the said meaning.

Section 2(47) : “transport vehicle” means a public service vehicle, a goods carriage, an educational institution bus or a private service vehicle;

Section 2(35) : “public service vehicle” means any motor vehicle used or adapted to be used for the carriage of passengers for hire or reward, and includes a maxi cab, a motor cab, contract carriage and a stage carriage;

Section 2(14) : “goods carriage” means any motor vehicle constructed or adapted for use solely for the carriage of goods, or any motor vehicle not so constructed or adapted when used for the carriage of goods;

Section 2(11) : “educational institution bus”

means an omni bus which is owned by a college, school or other educational institution and used solely for the purpose of transporting students or staff of the educational institution in connection with any of its activities;

Section 2(33) : “private service vehicle” means a motor vehicle constructed or adapted to carry more than six persons excluding the driver and ordinarily used by or on behalf of the owner of such vehicle for the purpose of carrying persons for, or in connection with, his trade or business otherwise than for hire or reward but does not include a motor vehicle used for public purposes;

27. Chapter V of the CMV Rules prescribes the parameters and standards which the vehicles have to maintain which inter alia includes over all dimension of the vehicles' emission levels, size of tyres, break, gear, windscreen wipers, lights, safety devices etc. The manufacturers are under obligation to comply with the standards prescribed under the Rules. Rule 126 inter alia provides that every manufacturer of motor vehicle shall

submit the prototype of vehicle for test by the Vehicle Research and Development Establishment, Ministry of Defence or Automotive Research Association of India, Pune or such other agencies as recognised by the Government to ensure that they comply with the standards prescribed under the Rules which applies to imported vehicles as well.

28. The Learned Government Pleader made available to us the Kerala Motor Vehicles Manual which are the instructions given to the Registering Authority. Specific reference is made to Chapter IV which relates to registration of a motor vehicle. The manual gives a general idea about how the officers have to take note of the particulars regarding registration as provided under the statutory provisions. She referred to the class of vehicle which had to be classified as light motor vehicle, medium motor vehicle, heavy motor vehicle etc. The Manual contains provisions which are available under the statutory provisions and we do not think that a reference to the manual is required for a

proper adjudication of the case.

29. Having regard to the aforesaid statutory provisions, what is required to be considered is whether a vehicle can be classified based on the actual use by the owner of the vehicle. In **Cheriyān's** case (supra), the learned Single Judge observed that if the owner of a vehicle is using the vehicle only for the purpose of carrying persons, it can be classified as a non-transport vehicle, whereas it is open for the registering authority to subsequently verify whether the vehicle is being used as a goods carriage, in which event, appropriate steps can be taken in the matter. Transport vehicle apparently is a vehicle used for transportation of passengers or goods. We are concerned with a particular type of vehicle which can be utilised for carrying persons as well as goods. Goods have been defined under Section 2(13) of the Act as *“goods” includes live-stock, and anything (other than equipment ordinarily used with the vehicle) carried by a vehicle except living persons,*

but does not include luggage or personal effects carried in a motor car or in a trailer attached to a motor car or the personal luggage of passengers travelling in the vehicle;”.

Therefore, if a motor vehicle is used to carry anything other than living persons or personal luggage/effects as defined under section 2(13), it amounts to carriage of goods within the meaning of Section 2(14). Transport vehicle apparently includes 'goods carriage' and therefore the meaning of 'goods carriage' would clarify the point in issue. To be a goods carriage, it should primarily be a “*motor vehicle constructed or adapted for use solely for the carriage of goods*” The first question therefore would be whether the motor vehicle which is sought to be registered is constructed or adapted solely for carriage of goods. It is in this background that a reference has to be made to the certification issued by the manufacturer. If a manufacturer classifies the motor vehicle as a goods carriage or goods vehicle, there cannot be any doubt that it is solely

constructed or adapted for the carriage of goods. In such an event, the vehicle can only be classified as a goods carriage and therefore a transport vehicle and the Registering Authority has no discretion in the matter. However it is open for the Central Government to specify by notification in the official gazette, to include in the certificate of registration the type of vehicle having regard to the design, construction and use of motor vehicle, as specified under section 41(4) of the Act. No such notification has been brought to our notice in this regard. As already indicated, every manufacturer has to comply with the prototype test in terms of Rule 126 of CMV Rules and the utility of the vehicle depends upon the approved test by the competent agency. This position has been well stated in **Sunny Scaria** and **Father Jose Panakezham** (supra). If such agencies have certified the vehicle to be of a class which comes under 'goods carriage', it can only be treated as a transport vehicle.

30. Several manufacturers come up with different

type of vehicles as evident from Ext.P1 in W.A.No.51/2014 which is a passenger cum goods vehicle. But that is not the certification for the vehicle involved in the said case whereas it was a certification issued with reference to some other vehicle. Therefore, primarily, classification of the vehicle has to depend upon the manufacturer's certification. Only in case, there is any ambiguity regarding such classification that the Transport Commissioner or any other competent authority is required to issue any clarification. The fact that the CMV Rules clearly specifies about an entry to be made in the registration certificate based on the class of vehicle as certified by the manufacturer strengthens our aforesaid view.

31. Now coming to the second part of the definition of 'goods carriage', that is *“any motor vehicle not so constructed or adapted when used for the carriage of goods”*, relates to a different situation. There might be instances of vehicles, though not constructed or adapted

solely for carriage of goods are used for that purpose. In such an event, the Registering Authority can treat the same as a goods carriage. But, as far as registration is concerned, which is the primary aspect to be complied for plying the vehicles on road, classification depends purely upon the certificate issued by the manufacturer and the notification if any issued under section 41(4) of the Act.

32. The learned Government Pleader also brought to our notice the various categories of vehicles by way of Annexures in the Writ Appeal. Annexure II is a publication of ARAI published in December 2005 which categorizes vehicles into different categories. Specific reference has been given to Category N which means a motor vehicle with at least four wheels used for carrying goods. It further specifies that these vehicles can carry persons in addition to the goods subject to the conditions in clause 3.2. Clause 3.2 indicates that a vehicle which is designed to carry persons in addition to goods shall be

categorized as N category vehicle, if certain conditions are met. One of the conditions is that seating position excluding the driver shall not be more than six. There are other conditions as well regarding weight, goods carriage etc. Therefore, according to the Learned Government Pleader, these vehicles come under N category. She refers to Annexure III certificate of ARAI which refers to Mahindra Bolero Camper VX-2WD. The type of vehicle is shown as goods vehicle-normal control-N1. Seating capacity is 5 persons, load carrying capacity is 370 Kgs. Annexure IV is a certificate issued by Vehicles Research and Development Establishment, another recognised agency in respect of Mahindra Bolero - DX 2WD - 8 seater which is categorized as M1 and is a passenger vehicle. Annexure V is with reference to Tata Xenon which is described as goods carriage coming under N1. The very same vehicle has other variants of passenger vehicle coming under M1. Certain models are categorized as M1 and certain as N1. Annexure VI refers to

Tata Xenon which is categorized as goods carriage. Therefore it is evident that even if the seating capacity is 5 seats, still it could be a goods carriage.

33. It is therefore clear from the aforesaid documents that when a particular model vehicle is certified by an approved agency under Rule 126, the classification has to be made on that basis. If the model of vehicle is categorized as goods vehicle under N1 category by the manufacturer, the same entry has to come in the registration certificate as well and the said classification cannot be changed.

34. In **Cheriyen**'s case (supra) as well as in **Vijay Kumar** and **Alex Thomas** (supra) directions have been issued to verify the use of vehicle in order to ascertain the classification. Such a view, according to us, is not the correct approach to be made in the matter. The second part of the definition of 'goods carriage' to the extent it indicates that a motor vehicle which is not constructed or adapted

solely for carriage of goods can be treated as a goods carriage when it is used as a goods carriage, only means that vehicles which are not classified as goods carriage in the certification of the manufacturer, can be treated as goods carriage, if it is used by the owner as a goods carriage. It is not the other way. A vehicle classified as goods carriage or goods vehicle by the manufacturer remains as a goods carriage for the purpose of registration.

34. Learned counsel for the writ petitioners however would contend that if the goods carriage is to be treated as transport vehicle it has to comply with certain other norms, namely, that it has to be driven by a qualified licence holder having badge, certification of fitness has to be obtained periodically and the vehicle has to be painted with a particular colour. Apparently, those are statutory provisions which have to be complied with if the vehicle belongs to a particular classification.

35. A reference to the definition of light motor

vehicle would be useful as in most of the cases the request is to register the vehicle as Light Motor Vehicle (non transport). Section 2(21) : *“light motor vehicle” means a transport vehicle or omni bus the gross vehicle weight of either of which or a motor cab or road roller the unladen weight of any of which, does not exceed 7500 Kilo Grams;* Such a classification depends upon the weight of the vehicle and cannot be a reason to classify the same as 'non transport', if it actually is a goods carriage. Therefore, we do not think that **Cheriyān**'s case (supra) has laid down the correct law and we set aside the said judgment.

36. As far as other appeals are concerned, the learned single judge was justified in not relying upon **Cheriyān**'s case to the particular facts of each case. Having regard to our aforesaid findings, we are of the view that the appeals are to be dismissed. For the reasons aforesaid W.P.C.No.12504 of 2014 is also liable to be dismissed.

In the result:

(i) W.A.No.51 of 2014 is allowed setting aside the judgment of the learned Single Judge.

(ii) W.A Nos.1757, 1797 of 2013 & 24, 76, 171, 349, 353, 389, 500, 1414, 1716, 1789, 1860 of 2014 and W.P.C.No.12504 of 2014 are dismissed.

(sd/-)

**(ASHOK BHUSHAN,
ACTING CHIEF JUSTICE)**

(sd/-)

(A.M.SHAFFIQUE, JUDGE)

jsr

