

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

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

MONDAY, THE 9TH DAY OF FEBRUARY 2015/20TH MAGHA, 1936

WA.No. 169 of 2015 IN WP(C).2575/2014

**AGAINST THE JUDGMENT IN WP(C) 2575/2014 of HIGH COURT OF KERALA
DATED 15-10-2014**

APPELLANTS/RESPONDENTS IN THE WRIT PETITION:

- 1. TRANSPORT COMMISSIONER
THIRUVANANTHAPURAM, KERALA-695001.**
- 2. THE REGIONAL TRANSPORT AUTHORITY
REP. BY THE SECRETARY REGIONAL TRANSPORT OFFICE
THRISSUR-680001.**
- 3. THE SECRETARY
REGIONAL TRANSPORT AUTHORITY, THRISSUR-680001.**

BY SENIOR GOVERNMENT PLEADER SRI. C.R. SYAMKUMAR

RESPONDENT/PETITIONER IN THE WRIT PETITION:

**MARSON CHERIYAN
S/O CHERIYAN, PROPRIETOR, TUBE LINKS
MASJID ROAD, KOKALAI, THRISSUR-680001.**

BY SRI.V.C.MADHAVANKUTTY

**THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON 09-02-2015, THE
COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

JJJ

ASHOK BHUSHAN, Ag. C.J.
&
A.M. SHAFFIQUE, J

W.A. No. 169 of 2015

Dated this the 9th day of February, 2015

J U D G M E N T

A.M. Shaffique, J.

Heard the learned Government Pleader appearing on behalf of the the appellants as well as the learned counsel appearing for the respondent.

2. This appeal is filed by the respondents in the Writ Petition challenging the judgment dated 15.10.2014 in W.P. (C) No.2575/2014. The respondent herein is the Writ Petitioner, who is hereinafter referred to as 'the petitioner'.

3. The Writ Petition is filed seeking to quash Ext.P13 and for a direction to the 2nd respondent to reconsider re-issuance of National Permit to the vehicles claimed by the petitioner. In Ext.P13 Order, the Secretary RTA observed that the vehicles do not comply with the provisions of Rule

90(4) of the Central Motor Vehicles Rules, 1989 (hereafter referred to as 'CMV Rules' for short). Hence, the request for re-issuing authorization in respect of vehicles bearing nos. KL-08 AZ 47, KL-08 AZ 92 and KL-08 AZ 1508 has been rejected. The permit holder of the said vehicles was called upon to show cause as to why the permit and registration certificate of the vehicles should not be cancelled for violation of Rule 90(4) of CMV Rules.

4. It was *inter alia* contended by the petitioner that the vehicles complied with the statutory requirements. It is stated that the vehicles were having national permit and were already plying under the same permit complying all the legal formalities.

5. The learned Single Judge, after considering the scope of Rule 90(4) of the CMV Rules, formed an opinion that the report of the authorised officer and the photographs indicate that the petitioner has complied with the statutory

provisions and therefore while setting aside Ext.P13, the Authority was directed to consider the grant of authorisation, subject to the petitioner's vehicles satisfying all other formalities. It is impugning the aforesaid direction of the learned Single Judge, directing the Authority to consider the application without reference to Rule 90(4) of CMV Rules, that this appeal has been filed.

6. The learned Government Pleader submits that Rule 90(4) of the CMV Rules cannot be diluted to such an extent permitting the petitioner to deviate from the said provision. The Rule clearly indicates that a seat behind the driver's seat has to be provided in full width for a spare driver to stretch himself and sleep.

7. It is argued that, as far as the vehicles in question are concerned, the width of the rear seat ranges from 7" on one side to 22" on the other side. The learned counsel for the petitioner also produced photographs, which apparently

indicate that, at the immediate rear portion of the driver's seat the width is very less, whereas sufficient space is available on the other side. According to the petitioner, this will satisfy the requirement.

8. Apparently, it is for the Authority to consider whether the requirement is satisfied or not. Though in Ext.P13 order it is stated that there is non compliance of Rule 90(4) of CMV Rules, the dimensions of the rear seat for the spare driver has not been mentioned. Therefore, it is for the Authority to consider whether the rear seat, now provided in the vehicle, is sufficient enough to comply with the provisions of Rule 90(4) of the CMV Rules. We are of the view that the matter requires to be considered by the Secretary, RTA and therefore the learned Single Judge was not justified in relying upon the report and photographs alone to arrive at a finding.

In the result, this appeal is allowed. The Secretary RTA /Authorised Officer is directed to re-consider the application of the petitioner for re-issuance of the authorisation, in accordance with law and in the light of the observations made above. It shall be done as early as possible and after obtaining necessary inspection report.

Sd/-
ASHOK BHUSHAN,
ACTING CHIEF JUSTICE.

Sd/-
A.M. SHAFFIQUE,
JUDGE.

//TRUE COPY//

P.A. TO JUDGE