

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE ANIL K.NARENDRA

TUESDAY, THE 22ND DAY OF SEPTEMBER 2015/31ST BHADRA, 1937

WP(C).No. 1212 of 2014 (B)

PETITIONER(S):

**BABU M. KURIAN,
MUPPARATHARA HOUSE, THIRUVARPPU SOUTH
THIRUVARPPU P.O., KOTTAYAM.**

BY ADV. SRI.K.V.GOPINATHAN NAIR

RESPONDENT(S):

**THE SECRETARY,
REGIONAL TRANSPORT AUTHORITY, KOTTAYAM PIN: 686 002.**

BY SRI J.J. MICHAEL, SENIOR GOVERNMENT PLEADER

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 22-09-2015, THE
COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

WP(C).No. 1212 of 2014 (B)

APPENDIX

PETITIONER(S)' EXHIBITS

- EXT.P1: COPY OF THE REGULAR PERMIT ISSUED TO THE PETITIONER TO THE ROUTE MUNDAKAYAM-KOTTAYAM VALID UP TO 18/12/2015.**
- EXT.P2: COPY OF THE REGISTRATION PARTICULARS IN RESPECT OF STAGE CARRIAGE KL-05/AD 6905.**
- EXT.P3: COPY OF THE REGISTRATION PARTICULARS IN RESPECT OF INCOMING VEHICLE KL-05/AH 5760.**
- EXT.P4: COPY OF THE PROCEEDINGS OF THE RESPONDENT DATED 4/1/2013.**
- EXT.P5: COPY OF THE NOTIFICATION ISSUED BY THE GOVERNMENT DATED 30/8/2013.**
- EXT.P6: COPY OF THE AFFIDAVIT WITH PETITION FOR INTERIM DIRECTION FILED BEFORE THE STAGE TRANSPORT APPELLATE TRIBUNAL DATED 10/1/2014**

RESPONDENT(S)' EXHIBITS: N I L

//TRUE COPY//

P.A. TO JUDGE

JV

ANIL K. NARENDRA, J.

W.P.(C) No.1212 of 2014

Dated this the 22nd day of September, 2015

JUDGMENT

The petitioner, who is the holder of a regular permit to operate service on the route Mundakayam - Kottayam which is valid up to 18.12.2015, has filed an application for replacement of the existing vehicle bearing registration No.KL-05/AD-6905 with another vehicle bearing registration No.KL-05/AH 5760. The permit was originally issued to vehicle KRO 8629 (43 seats in all) and subsequently replaced to Stage Carriages KL-05/A-4041(48 seats in all), KL-05/N-3860 (48 seats in all), KL-05/W-3351 (38 seats in all) and KL-05/AD-6905 (38 seats in all). The said application was rejected by Ext.P4 order dated 04.01.2013 mainly for the reason that the existing vehicle bearing registration No.KL-05/AD-6905 is having 38 seats in all while the proposed incoming vehicle bearing registration No.KL-05/AH 5760 is having 48 seats in all and both outgoing vehicle and incoming vehicle are materially differed more than 25% as far as the number of seats are concerned and as such, the application

cannot be considered as per Rule 174 of the Kerala Motor Vehicles Rules. It is aggrieved by the aforesaid order, the petitioner is before this Court in this writ petition.

2. By order dated 20.01.2014, this Court passed the following order:

"Petitioner seeks replacement of a vehicle which has more seating capacity than the one which was being run with a valid permit. Same was not granted on the ground that Rule 174(3) of the Kerala Motor Vehicles Rules, 1989, prohibits such replacement of vehicle. However, it is pertinent that by a proviso, sub-rule 3 has been made applicable only to the first replacement. In the case of the petitioner, this is not a first replacement, is the contention. In any event, a notification by which the proviso was added, states the object was to prevent the revenue loss, when the replacing vehicle has lesser seating capacity. In the instant case, it is just the opposite. In such circumstances, there shall be a direction to the respondent to replace the vehicle offered by the petitioner which shall, of course, be provisional depending upon the disposal of the writ petition."

3. Today, when the case was taken up for final hearing, the learned counsel for the petitioner and also the learned Government Pleader appearing for the respondent submitted that, the issue raised in this writ petition is covered by the

judgment of this Court dated 13.03.2015 in W.P.(C). No.5728/2015 and connected cases. Paragraphs 8, 9 and 10 of the judgment reads thus:

"8. There shall be a meaningful interpretation of the Note in the context of the concern expressed by the Government in its Explanatory Note. The concern sought to be addressed by the Government was the loss to the exchequer and public interest caused by successive reduction of seating capacity. As Rule 174 of the KMV Rules exists, before the expansion, a vehicle with a certain seating capacity could be replaced with another vehicle with a lesser seating capacity, the material difference being within the 25% limit. Then when a second replacement is sought, the material difference could be related to the seating capacity of the second vehicle and not the original vehicle endorsed in the permit. It is to curb such practises that the Government intended to bring a clarification to Rule 174.

9. However, this Court is afraid, neither the proviso introduced nor the expansion of the Note bring in such clarification. In fact, the restriction should be that, there should be no replacement allowed if the "material difference" is more than 25% of the original vehicle endorsed in the permit. Such restriction should also be maintained only, in the context of a reduction of seating capacity, since an enhancement of seating capacity would serve both the cause of the exchequer as also the public. In such circumstance, this Court is of the opinion that the

expansion of the Note as per G.O.(P) No.93/2014/Tran. dated 29.12.2014 has to be set at naught for the same not bringing in the result the Explanatory note intends. The amendment is totally incongruous with the intendment. I do so. The Government would be entitled to bring in sufficient clarification de hors the fact that the expansion in the Note now brought in by the notification has been set aside by this Court.

The writ petitions would stand allowed. The consideration of the applications, in which provisional registration has been granted by way of interim orders of this Court and the writ petitions in which fresh applications have been given, shall be made by the Transport Authority concerned, in accordance with the observations made hereinabove. The "material difference" shall always be related to the original vehicle, since even the rule as it exists now, could be so interpreted. The same shall be done within a period of three weeks from the date of receipt of a certified copy of this judgment. Parties are left to suffer their respective costs."

In view of the judgment of this Court dated 13.03.2015 in W.P.(C). No.5728/2015 and connected cases, this writ petition is disposed of setting aside Ext.P4 order dated 04.01.2013. It is also ordered that the reconsideration of the application dated 03.04.2014 submitted by the petitioner, in which provisional replacement has been granted by way of an interim order passed

by this Court dated 20.01.2014, shall made by the respondent, in accordance with the observations contained in the judgment of this Court dated 13.03.2015 in W.P.(C). No.5728/2015 and connected cases. The material difference shall always be related to the original vehicle, as the Rule as it exists now, could be so interpreted. The same shall be done within a period of three weeks from the date of receipt of a certified copy of this judgment. No order as to costs.

JV

sd/-
ANIL NARENDRAN,
JUDGE