

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

FRIDAY, THE 30TH DAY OF JANUARY 2015/10TH MAGHA, 1936

WP(C).No. 2978 of 2015 (V)

PETITIONER(S):

**THOMAS K.E, AGED 67 YEARS
S/O. EPHREM, KADALIKKATTIL, KIZHATHADIYOOR P.O.
PALA, KOTTAYAM.**

**BY ADVS.SRI.BIMAL K.NATH
SRI.SREEVALSAN.V
SMT.M.K.SHIMI
SRI.D.SREENATH**

RESPONDENT(S):

- 1. THE REGISTERING AUTHORITY
MOTOR VEHICLES DEPARTMENT, PALA
KOTTAYAM DISTRICT - 686 575.**
- 2. THE TRANSPORT COMMISSIONER FOR STATE OF KERALA
THIRUVANANTHAPURAM - 695 001.**

R BY GOVERNMENT PLEADER SRI. R. RANJITH

**THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION
ON 30-01-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

APPENDIX

PETITIONER(S)' EXHIBITS

- EXT. P1 - COPY OF THE SALE CERTIFICATE DT. 18.2.14.**
- EXT. P2 - TRUE COPY OF THE TEMPORARY CERTIFICATE OF REGISTRATION
ISSUED BY THE MOTOR VEHICLE DEPARTMENT, DT. 18.12.14.**
- EXT. P3 - TRUE COPY OF THE COVERING LETTER AND APPLICATION FOR
REGISTRATION SUBMITTED ALONG WITH THE DOCUMENTS
BEFORE THE FIRST RESPONDENT DT. 16.1.15.**
- EXT.P4 - TRUE COPY OF THE BROCHURE OF THE VEHICLE SHOWING THE
DESCRIPTION OF THE VEHICLE.**

RESPONDENT(S)' EXHIBITS: NIL

// TRUE COPY //

PA TO JUDGE.

SB

K. VINOD CHANDRAN, J.

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W.P.(C) No.2978 of 2015 - V

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Dated this the 30th day of January, 2015

J U D G M E N T

The petitioner, owner of a “**Isuzu D max Space Cab**”, presented his vehicle for registration as a non-transport private vehicle. The 1st respondent refused to register the same on the ground that it is a transport vehicle. The petitioner contends that the issue is no longer res integra in view of the authoritative pronouncement of this Court in **Cheriyen v. Transport Commissioner [2009 (2) KLT 583]**.

2. In **Cheriyen's case** (supra) this Court had declared that with respect to vehicles which are constructed and adapted for carriage of goods and carriage of passengers, the primary aspect to be considered is the use to which it is put. It was also declared that, if the vehicle in question is a Light Motor Vehicle, then the

registration ought to be granted in that category and not as a goods carriage, if it is not intended to be used as a goods carriage. It was also clarified that if at all the vehicle was used other than for the purpose for which it was registered, then it was open to the authorities to re-classify the vehicle as a Transport Vehicle.

3. In the present case, the petitioner declares that she intends to use the vehicle for her personal needs. The definition of 'goods carriage' and 'transport vehicle' in sub-sections (14) and (47) of Section 2 of the Motor Vehicles Act, 1988 assumes significance.

(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.

(47) “Transport vehicle” means a public service vehicle, a goods carriage, an education institution bus or a private service vehicle”.

4. There is nothing on record to show that the petitioner sought for registration as a non-transport vehicle

and the same was declined by the registering authority. Ext.P2 Temporary Certificate of Registration shows that the class of vehicle as item No.“5” which; as per the Schedule to the Kerala Motor Vehicles Taxation Act, 1976, is a 'private service vehicle', which belongs to the category of transport vehicle as distinguished from item No.“6” “Private Service Vehicle for personal use (Non-Transport)”. The vehicle itself has a seating capacity of only 'two' and has an open carriage to carry goods. Ext.P1 sale certificate also indicates that the class of vehicle as described by the dealer and manufacturer is “LMV Goods Carrier Truck”. The specific contention in the writ petition is that the petitioner requires the vehicle for private use. That, however, will not take it away from the classification as a 'goods carriage'. Definitely the purpose for which the vehicle is intended to be put to use is carriage of goods. It is very clear that after seeking temporary registration of the vehicle as a goods vehicle, the petitioner on coming to know of the orders

passed by this Court, has approached this Court with the claim of registration as a non-transport vehicle. On the facts disclosed from the averments in the writ petition **Cherian's case** (supra) is not applicable in the instant case and in any event the said decision has been overruled in W.A.No.1757 of 2013 & connected cases, by judgment dated 09.01.2015.

The writ petition, hence, is dismissed.

Sd/-

**K. VINOD CHANDRAN,
JUDGE**

SB

// true copy //

P.A to Judge.