

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

THURSDAY, THE 12TH DAY OF MARCH 2015/21ST PHALGUNA, 1936

WP(C).No. 3638 of 2015 (D)

PETITIONER(S):

**PASTOR KURIAN THAMPI,
S/O.GEORGE THAMPI, AGED 48 YEARS,
DIVINE WORSHIP CENTER, GLORIA TOWER,
MOONAMKUTTY, PALLICKAL, MAVELIKKARA.**

BY ADV. SMT.BINDU GEORGE.

RESPONDENT(S):

**THE JOINT REGIONAL TRANSPORT OFFICER,
OFFICE OF THE REGIONAL TRANSPORT OFFICE,
MAVELIKARA, ALAPPUZHA DISTRICT-688 501.**

BY GOVT.PLEADER SRI.R. RANJITH.

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 12-03-2015, THE COURT ON THE SAME DAY DELIVERED
THE FOLLOWING:**

rs.

WP(C).No. 3638 of 2015 (D)

APPENDIX

PETITIONER'S EXHIBITS:-

P1- TRUE COPY OF THE REGISTRATION CERTIFICATE.

P2- TRUE COPY OF THE SKETCH.

P3- TRUE COPY OF THE REJECTION ORDER DATED 16.12.2014.

RESPONDENT'S EXHIBITS:- NIL.

//TRUE COPY//

P.A. TO JUDGE

rs.

K. VINOD CHANDRAN, J.
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W.P.(C) No.3638 of 2015 - D
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Dated this the 12th day of March, 2015

J U D G M E N T

The petitioner seeks conversion of a Tempo Traveller to a Hearse with a closed body, built of glass. The registration certificate shows that, the vehicle is one with a seating capacity of 10. The petitioner applied for an alteration with the proposed alteration specified by way of diagram before the authority. The authority declined the same as per Ext.P3, on the basis on Circular No. 5 of 2014 and also on the ground of Section 52 of the Motor Vehicles Act, 1988.

2. The learned Counsel for the petitioner reads Section 52(3) of the M.V Act to contend that, the said provision speaks of an approval of the registering authority for an alteration and hence, there would be no difficulty in an approval being granted in the application made by the petitioner. As to Circular No.5 of 2104, alteration in seats

is permitted and it is indicated that, the alteration of a motor vehicle permissible under Section 52 of the M.V Act can be endorsed in a registration certificate only after inspection by the competent authority and certified that, the alteration is effected satisfactorily and the vehicle is fit to be used in public places. There is also specific direction to permit alteration in vehicle, which does not result in the basic feature of the approved prototype, being altered, is the contention.

3. Section 52(3) of the M.V Act is not an enabling provision which permits an application to be made prior to the alteration. Section 52(3) of the M.V Act only indicates that, on any alteration made in a motor vehicle without the approval of the registering authority; an instance of which is revealed in Section 52(3) of the M.V Act, the same shall be reported to the registering authority and the registration certificate forwarded to that authority with the prescribed fees so as to enter the said alteration in the particulars of registration.

4. The Circular has been issued in consonance with the aforesaid provision. The Circular also states that, on an alteration made, there should be an inspection as to the feasibility of the vehicle being used safely on public roads. Specific prohibition as per Section 52 of the M.V. Act, as reiterated, in the Circular is the alteration affecting the basic feature of approved prototype. Alteration of body is specifically permitted by the Circular also, which is a clarification issued by the Head of the Department.

5. No prior approval is contemplated under the M.V Act and unless there is an enabling provision in the Act, there could be no application made for prior approval. Ext.P3 is also stated to be appealable. However, de hors what has been stated in Ext.P3, if the petitioner alters the vehicle and produces the same before the registering authority, the registering authority would have to comply with the directions in the Circular and after ascertaining the feasibility, would have to enter the modification in the registration certificate so as to allow plying of the altered

vehicle in public roads. However, that can be only after the alteration is made. The petitioner is left open to take such proceeding, if so advised.

6. The learned Counsel for the petitioner would urge that substantial financial implication is involved in making the alteration and a subsequent rejection would seriously prejudice the petitioner. That cannot be a reason to direct consideration of an application when there is no provision for the same in the Act or Rules. The petitioner would have to take the risk and present the altered vehicle for inspection before the authority. In any event, merely on the basis of a proposal, alteration cannot be allowed, since the safety and feasibility of using the altered vehicle in public places will have to be tested on inspection and actual operation on roads. The writ petition is devoid of merit.

7. The further apprehension of the department, as expressed by the learned Government Pleader, is the loss of revenue on account of the seating capacity of 10 being reduced, when the vehicle is converted to a Hearse. That

however is covered by a decision of this Court in **Musthaffa v. Assistant Motor Vehicle Inspector [2014 (1) KLT 575]**. The tax will have to be satisfied on the basis of the actual seating capacity as originally classified by the manufacturer and reduction will not affect the tax liability.

In such circumstance, the writ petition is dismissed, leaving liberty to the petitioner as indicated above.

Sd/-
K. VINOD CHANDRAN,
JUDGE

SB

// true copy //

P.A to Judge