

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. 5188 of 2014 (W)

PETITIONER(S):

**VIJESH K.T AGED 33 YEARS
S/O.SHANMUGHAN.K.T
KOTHAMKUNNU PARAMBIL THOTTATHIL HOUSE
KARUVANCHERI PARAMBU, IRUMBUZHI.P.O., MUNDUPARAMBA
ANAKKAYAM VILLAGE, MALAPPURAM-676 509.**

BY ADV. SRI.B.N.SHIVSANKAR

RESPONDENT(S):

**1. REGIONAL TRANSPORT OFFICER
R.T.OFFICE, MALAPPURAM - 676 509.**

**2. STATE OF KERALA
REPRESENTED BY CHIEF SECRETARY,
THIRUVANANTHAPURAM p- 695 001.**

BY SRI T.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. 5188 of 2014 (W)

APPENDIX

PETITIONER(S)' EXHIBITS

- P1- COPY OF THE INVOICE NO.INV14A001093 DATED 23.01.2014.**
- P2- COPY OF THE VEHICLE DATA SHEET ISSUED BY I.T.L. MOTORS(P) LTD.,
THE DISTRIBUTOR OF MAHINDRA BEARING APPLICATION
NO.21K/79644/2014 DATED 23.1.2014.**
- P3- COPY OF THE FORM 21 (SALE CERTIFICATE) DATED 23.01.2014.**
- P4- COPY OF THE INITIAL CERTIFICATE OF COMPLIANCE OF THE
PETITIONER'S VEHICLE DATED NIL.**
- P5- COPY OF THE INSURANCE POLICY CERTIFICATE OF THE PETITIONER'S
VEHICLE BEARING COVER NOTE NO.45310 DATED 23.01.2014.**
- P6- COPY OF THE APPLICATION FOR REGISTRATION DATED 28.01.2014.**

RESPONDENT(S)' EXHIBITS: N I L

//TRUE COPY//

P.A. TO JUDGE

JV

ANIL K. NARENDRA, J.

W.P.(C) No.5188 of 2014

Dated this the 22nd day of September, 2015

JUDGMENT

The petitioner, who has purchased a Mahindra make Bolero Camper Gold 2wd BsIII vehicle has filed this writ petition seeking a writ of mandamus commanding the 1st respondent to register the vehicle in question bearing Engine No.GHD4K66336 and Chassis No.MA1RY2GHKD3K55723 as LMV Motor Car.

2. On 21.02.2014, this Court granted an interim order directing the Registering Authority to register the vehicle as a non-transport vehicle subject, however, to the result of the writ petition and on condition of the petitioner filing an undertaking, to use the vehicle only as a non-transport vehicle, before the Registering Authority.

3. The issue raised in this writ petition is squarely covered against the petitioner in the judgment in **Hassan Koya v. Transport Commissioner [2015 (1) KLT 916]** in which a Division Bench of this Court held that when a particular model vehicle is categorised as goods vehicle by the manufacturer, the

same entry has to come in the registration certificate as well and the said classification cannot be changed. Thus classification depends purely upon the certificate issued by the manufacturer and notification, if any, issued under sub section 4 of Section 41 of the Motor Vehicles Act, 1988. Paragraphs 31, 32 and 33 of the judgment reads thus:

"31. Now coming to the second part of the defining 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 S.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 R.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."

In such circumstances, this writ petition is dismissed holding that the petitioner is not legally entitled for registration of the vehicle in question as a non-transport vehicle, namely LMV motor car. The 1st respondent is directed to take necessary steps to register the vehicle in question in terms of the law laid down by this Court in **Hassan Koya's case** (supra), within a period of two months from the date of receipt of a certified copy of this judgment.

SD/-
ANIL K. NARENDRA,
JUDGE

JV