

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

FRIDAY, THE 13TH DAY OF MARCH 2015/22ND PHALGUNA, 1936

WP(C).No. 5728 of 2015 (M)

PETITIONER(S):

**RAPHEAL MATHEW,
PORATHOOKARAN HOUSE,
MANNANMPETTA, VARAKKARA,
THRISSUR.**

BY ADV. SRI.K.V.GOPINATHAN NAIR

RESPONDENT(S):

**THE SECRETARY,
REGIONAL TRANSPORT AUTHORITY,
THRISSUR, PIN - 680 001.**

BY GOVERNMENT PLEADER SRI.R.RANJITH

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
13-03-2015, ALONG WITH WPC. 1264/2014 AND CONNECTED CASES,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

msv/

WP(C).No. 5728 of 2015 (M)

APPENDIX

PETITIONER(S)' EXHIBITS

**EXHIBIT-P1: TRUE COPY OF THE REGULAR PERMIT ISSUED TO THE PETITIONER ON
THE ROUTE CHIMMINI DAM-AYYANTHOLE VALID UP TO 24.5.2019.**

**EXHIBIT-P2: TRUE COPY OF THE REGISTRATION PARTICULARS IN RESPECT OF
STAGE CARRIAGE KL-05/S 7311.**

**EXHIBIT-P3: TRUE COPY OF THE REGISTRATION PARTICULARS IN RESPECT OF
STAGE CARRIAGE KL-45/L 6552.**

**EXHIBIT-P4: TRUE COPY OF THE REPLACEMENT APPLICATION SUBMITTED BY THE
PETITIONER BEFORE THE RESPONDENT DATED 6.2.2015.**

**EXHIBIT-P5: TRUE COPY OF THE COMMUNICATION ISSUED BY THE RESPONDENT
DATED 10.2.2015.**

EXHIBIT-P6: TRUE COPY OF THE G.O.(P) NO.93/2014/TRANS. DATED 29.12.2014.

RESPONDENT(S)' EXHIBITS:

NIL

//TRUE COPY//

P.S.TO JUDGE

Msv/

K. Vinod Chandran, J.

W.P(C) Nos.5728 of 2015-M, 1264 of 2014-G, 27982 of 2013-W,
1333 of 2014-N, 2332 of 2014-N, 5364 of 2014-U, 6166 of 2014-U,
12184 of 2014-W, 12190 of 2014-W, 15139 of 2014-L,
15614 of 2014-B, 7242 of 2015-E, 7533 of 2015-N & 7572 of 2015-V

Dated this the 13th day of March, 2015

JUDGMENT

The issue in the present writ petitions relates to replacement of vehicles in the regular permits, which is permitted as per Section 83 of the Motor Vehicles Act, 1988 [for brevity “MV Act of 1988”]. The provision only insists on the vehicles sought to be replaced, being one of a “similar nature” as the vehicle which is endorsed in the regular permit. In fact, the earlier Act, being MV Act of 1939, by sub-section (2) of Section 59, insisted on the vehicle being of the “same nature” and “capacity”; while the MV Act of 1988 required, only, the vehicle to be of the “same nature”. Hence, replacement of a stage carriage shall be only by one another stage carriage as indicated in Section 83 of the MV Act of 1988.

2. Invoking the powers under Section 96 of the MV Act of 1988, Rule 174 has been framed by the State in the Kerala Motor Vehicles Rules of 1989 [for brevity “KMV Rules”]. Rule 174(2) of the KMV Rules speaks of a discretion conferred on the Transport

Authority to reject an application, in instances noticed under clauses (a) to (d). We are concerned only with clause (b), which deals with the new vehicle offered for replacement, differing in material respects from the old. Sub-rule (3) assumes significance, insofar as any material difference in the newly offered vehicle for replacement entitling the Transport Authority to treat such application for replacement as an application for a fresh permit. The Note appended to Sub-rule (3) also defines the “material difference” as being one which is more than 25% of the gross vehicle weight or seating capacity. Hence by the Note, any difference in seating capacity less than 25% would not be treated as a material difference.

3. Government amended the Rules, by Exhibit P5 produced in W.P.(C).No.1264 of 2014, by G.O.(P) No.85/2013/Tran. Dated 30.08.2013; wherein the following proviso was introduced between sub-rule (3) and the Note:

“Provided that this is applicable for the first replacement only”.

The Explanatory Note also speaks of the concern of the Government insofar as the seating capacity being consistently reduced with successive replacement applications and, thus, causing loss to the

exchequer by way of reduction of tax payable as also the inconvenience caused to the travelling public.

4. This Court cannot but notice that the proviso introduced, as such does not take care of the concern expressed by the Government in the Explanatory Note. In any event, this Court would not go into this aspect, since the Government itself has deleted the afore-said proviso by a subsequent notification, G.O.(P) No.93/2014/Trans. dated 29.12.2014, produced as Exhibit P6 in W.P. (C).No.5728 of 2015. By the said G.O., the Note to Sub-rule (3) of Rule 174 has been expanded, by adding the following sentence:

“No replacement shall be allowed to a vehicle with material difference for a second time even if the material difference is less than 25 percent and such an application shall be treated as if it is for a fresh permit”.

5. Based on the said expansion of the Note, the application of the petitioner in W.P.(C).No.5728 of 2015 stood rejected by Exhibit P5. In fact, in the said case the petitioner had produced a vehicle of a seating capacity of 38, to replace a vehicle which was originally endorsed in the Registration Certificate and regular permit with 48 seats. Hence, the material difference in seating capacity was not more than 25%. There could have been no rejection on that count.

It is also clear that the application of the petitioner was not the second application and was the first one. Exhibit P5, in the said writ petition would stand set aside.

6. The facts in W.P.(C).No.7572 of 2015 indicate that the replacement sought therein was for the 4th time. However, the original vehicle and the three vehicles replaced, had the very same seating capacity of 39. The present vehicle, which was sought to be replaced for the 4th time, has a seating capacity of 31. The Authority felt that there could be no replacement sought even if the difference is less than 25%, since the expansion of the Note indicate that it shall not be allowed at the second or any successive instance.

7. Replacement by a vehicle of a higher seating capacity, would only further the cause of the exchequer as also public interest, as is averred in W.P.(C) No.7242 of 2015. Therein, the vehicle which was endorsed in the original permit had a seating capacity of 38 and the newly offered vehicle has a seating capacity of 48. That was not considered; again for the reason of the expansion of the Note by G.O. (P).No.93/2014/Tran.

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.

Sd/-
K. Vinod Chandran,
Judge

vku/

[true copy]