

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE THE CHIEF JUSTICE MR.ASHOK BHUSHAN
&
THE HONOURABLE MR.JUSTICE P.R.RAMACHANDRA MENON

THURSDAY, THE 25TH DAY OF JUNE 2015/4TH ASHADHA, 1937

WP(C) .No. 11024 of 2009 (S)

PETITIONER(S) :-

1. N.G. SIDHARTHAN @ SIDHARTHAN CHOONDAL, AGED 71 YEARS
S/O. N.S. GOVINDAN, RESIDING AT PADMASYLAM,
SASTHANAGAR, W. YAKKARA, PALAKKAD.
2. KERALA CONSUMER PROTECTION CENTRE,
REGN. NO. 193/93, INSTITUTIONAL MEMBER OF CERS
AHAMEDABAD, SASTHA NAGAR, W.YAKKARA
PALAKKAD -1, REPRESENTED BY ITS
PRESIDENT SIDHARTHAN CHOONDAL

BY ADV. SRI.N.UNNIKRISHNAN

RESPONDENT(S) :-

1. THE STATE OF KERALA, REP. BY SECRETARY
TO THE GOVERNMENT, TRANSPORT DEPARTMENT
GOVT. SECRETARIAT, THIRUVANANTHAPURAM.
2. THE TRANSPORT COMMISSIONER,
TRANSPORT COMMISSIONERATE, KERALAM
THIRUVANANTHAPURAM.
3. THE SECRETARY, STATE TRANSPORT
AUTHORITY, GOVT. OF KERALA, THIRUVANANTHAPURAM.
4. THE REGIONAL MANAGER, HINDUSTAN
PETROLEUM CORPORATION LTD., LPG BOTTLING PLANT
KANJICODE, PALAKKAD.
5. THE TERRITORY MANAGER, M/S BHARAT
PETROLEUM CORPORATION LTD., LPG BOTTLING PLANT
KOCHIN REFUBERY LTD., CAMPUS, AMBALAMUGAL, ERNAKULAM.

R4 & R5 BY ADV. SRI.E.K.NANDAKUMAR
SRI.K.JOHN MATHAI
SRI.P.BENNY THOMAS
SRI.ANIL D. NAIR
SRI.V.J.ANAND

R1 & R2 BY SR.GOVERNMENT PLEADER SRI.P.I.DAVIS

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
25-06-2015, ALONG WITH WPC. 14687/2010, THE COURT ON THE SAME
DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER'S EXHIBITS :-

EXT.P1 :- TRUE COPY OF LETTER No.117/08/MISC. DTD.3/10/2008 SENT BY 2ND PETITIONER TO THE HON'BLE MINISTER FOR TRANSPORT, GOVT. OF KERALA, THIRUVANANTHAPURAM.

EXT.P2 :- TRUE COPY OF LETTER No.12744/B2/08 TRAN. DTD.1/11/08 ISSUED BY THE ADDITIONAL CHIEF SECRETARY, GOVERNMENT OF KERALA ENGLISH TRANSLATION.

EXT.P2(a) :- TRUE COPY OF ENGLISH TRANSLATION OF EXT.P2.

EXT.P3 :- TRUE COPY OF LETTER No.D1/18661/STA/2007 DTD.9/12/2008 ISSUED BY 2ND RESPONDENT TO THE ADDITIONAL CHIEF SECRETARY, TRANSPORT (B) DEPARTMENT, GOVT.SECRETARIAT, THIRUVANANTHAPURAM.

EXT.P3(a) :- TRUE COPY OF ENGLISH TRANSLATION OF EXT.P3.

EXT.P4 :- TRUE COPY OF CERTIFICATE OF REGISTRATION KLI 8191-DIESEL ASHOK LAY-LAND OF 1986 MODEL.

EXT.P5 :- TRUE COPY OF COMMERCIAL INVOICE No.1530487 DTD.15/11/2008 ISSUED TO KERALA STATE CONSUMER FED.

EXT.P6 :- TRUE COPY OF JUDGMENT IN WP(C)No.7244/09 DTD.1/3/2009.

RESPONDENT'S EXHIBITS :- NIL.

//TRUE COPY//

P.A. TO JUDGE

**ASHOK BHUSHAN, C.J &
P.R.RAMACHANDRA MENON, J.**

**W.P.(C) Nos.11024 of 2009
and
14687 of 2010**

Dated this the 25th day of June 2015

J U D G M E N T

Ramachandra Menon, J.

The prayers raised by the petitioners in both these writ petitions are almost similar; mainly as to the necessity to prescribe the maximum age for motor vehicles; in particular to transport vehicles. W.P.(C) No.11024 of 2009 is taken as a specimen, where the petitioners have sought for the following reliefs :-

- “i) issue a Writ of Mandamus or appropriate writ or order or direction to the first respondent to take immediate action to cancel permits, Registration Certificates and Fitness Certificates to all vehicles which have out lived 15 years of age from the date of initial registration;
- ii) issue appropriate writ or order or direction to the respondents to incorporate necessary amendments in the Act and Rules so as to prevent accident from the vehicles of more than 15 years of age from the date of initial registration; and also carry hazardous materials and chemicals in the State;
- iii) issue appropriate writ or order or direction to issue guidelines to subordinates to implement the mandate of Section 59 and Rule-88 of Motor Vehicle Act; and other provisions like Rule 107 of the Kerala M.V. Rules in regard to the age of vehicle registration in the State as well as operation through out the State within a reasonable time.”

When it comes to the other writ petition, the grievance sought to be redressed is projected in Exts.P12, P13 and P14 representations before the 1st and 2nd respondents and the prayer is to have the same considered and disposed of.

2. Heard the learned counsel for the petitioners as well as the learned Government Pleader appears for the State.

3. The learned counsel for the petitioners points out that the power stands vested only with the Central Government, to fix age for the vehicles; as given under Sec.59 of the Motor Vehicles Act, 1988 (in short 'the Act'). The said provision reads as follows :-

“59. Power to fix the age limit of motor vehicle.- (1) The Central Government may, having regard to the public safety, convenience and objects of this Act, by notification in the official Gazette, specify the life of a motor vehicle reckoned from the date of its manufacture, after the expiry of which the motor vehicle shall not be deemed to comply with the requirements of this Act and the rules made thereunder :

Provided that the Central Government may specify different ages for different classes or different types of motor vehicles.

(2) Notwithstanding anything contained in sub-section (1), the Central Government may, having regard to the purpose of a motor vehicle, such as, display or use for the purposes of a demonstration in any exhibition, use for the purposes of technical research or taking part in a vintage car

rally, by notification in the Official Gazette, exempt, by a general or special order, subject to such conditions as may be specified in such notification, any class or type of a motor vehicle from the operation of sub-section (1) for the purpose to be stated in the notification.

(3) Notwithstanding anything contained in section 56, no prescribed authority or authorized testing station shall grant a certificate of fitness to a motor vehicle in contravention of the provisions of any notification issued under sub-section (1).

From the above, it is very much evident that the power to fix the age of course, stands vested with the Central Government, which has to be done by way of a notification published in the official Gazette. No mention is made anywhere in W.P.(C) No.11024 of 2009 that such a notification has been issued. But, the petitioner in the other case (W.P.(C) No.14687 of 2010) has sought to direct the Central Government to issue necessary notification in terms of Sec.59 of the Act.

4. Learned counsel for the petitioners in the former case submits that a decision has already been taken by the State Transport Authority, so as to have the situation remedied by incorporating such a provision in the permit. The fact remains that 'permit' as defined under Sec.2(31) of the Act is envisaged in

respect of 'transport vehicle', as stipulated under Sec.66 of the Act. The requirement of permit has been stipulated under the relevant rules and such rules do not contemplate any power with regard to fixation of age, which is to be fixed only by the Central Government as per the notification, as mentioned herein before. This being the position, in the absence of any notification in this regard, this Court finds it difficult to accede to grant the relief sought for by the petitioners in W.P.(C).No.11024 of 2009.

5. With regard to the grievance projected by the petitioner in W.P.(C) No.14687 of 2010, as to the non-consideration of the representations pending before the Union of India, it is brought to the notice of this Court that the issue is pending consideration before the Government with regard to the amendment of Statute as a whole, that is; Motor Vehicles Act, 1988 and that the draft is under process. In the above circumstances, this Court does not find it necessary to entertain the writ petitions preferred as 'public interest litigation' at this stage.

Both these writ petitions are disposed of without prejudice to the rights of the parties to move the Court, if at all any notification is issued by the Government as mentioned above

W.P.(C) Nos.11024 of 2009 and
14687 of 2010

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and the same is not given effect to by the Government or if any
sustainable cause of action arises in the due course.

Sd/-
ASHOK BHUSHAN
CHIEF JUSTICE

Sd/-
P.R.RAMACHANDRA MENON
JUDGE

Jvt