

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE ANIL K.NARENDRA

MONDAY, THE 5TH DAY OF OCTOBER 2015/13TH ASWINA, 1937

WP(C).No. 12269 of 2014 (G)

PETITIONER(S):

**JAMES ABRAHAM AGED 47 YEARS
S/O. ABRAHAM, NJALLIMACKEL, ADUKKAM
CHENGALAI, KANNUR-670 631.**

BY ADV. SRI.A.C.DEVY

RESPONDENT(S):

- 1. THE TRANSPORT COMMISSIONER
THIRUVANANTHAPURAM-695 001.**
- 2. THE REGIONAL TRANSPORT OFFICER
KANNUR-670 562.**

*** ADDL. R3 IMPEADED**

**R3. SUB REGIONAL TRANSPORT OFFICER,
THALIPARAMBA - 670 141**

[ADDL. R3 IS IMPEADED AS PER ORDER DATED 20.06.2014 IN I.A. 7908/2014]

BY SRI RAFEEQ, GOVERNMENT PLEADER

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 05-10-2015, THE
COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

WP(C).No. 12269 of 2014 (G)

APPENDIX

PETITIONER(S)' EXHIBITS

- P1 : COPY OF REGISTRATION CERTIFICATE OF THE PETITIONER'S VEHICLE
ALONG WITH VEHICLE DATA SHEET.**
- P2 : COPY OF THE SALE CERTIFICATE DTD.25.3.2014 ISSUED BY THE 2ND
RESPONDENT TO THE PETITIONER.**
- P3 : COPY OF THE JUDGMENT OF THIS HON'BLE COURT REPORTED IN 2009(2)
KLT 583.**
- P4 : COPY OF THE ORDER DTD.1.8.2012 IN WPC NO.18070/2012.**
- P5 : COPY OF THE JUDGMENT DTD.12.8.2013 IN WPC NO.19778/2013 OF THIS
HON'BLE COURT.**

RESPONDENT(S)' EXHIBITS: N I L

//TRUE COPY//

P.A. TO JUDGE

JV

ANIL K. NARENDRA, J.

W.P.(C) No.12269 of 2014

Dated this the 05th day of October, 2015

JUDGMENT

The petitioner, who has purchased a Mahindra make Bolero Camper Gold 2WD BSIII vehicle which was assigned with temporary registration mark as KL-13-S-TEMP-1585, has filed this writ petition seeking a declaration that he is entitled to get his vehicle registered as a Light Motor Vehicle / Private Motor Car and he has also sought for a writ of mandamus commanding the 2nd respondent to grant permanent registration for the vehicle in question as a Light Motor Vehicle / Private Motor Car.

2. On 13.05.2014, this Court passed an order which reads as follows:

"There shall be an interim direction to the second respondent to register the vehicle covered by Ext.P1 as a non-transport vehicle (private vehicle for personal use), provisionally and subject to the result of this writ petition, on condition that the petitioner furnishes an undertaking before the first respondent that he will not transfer the vehicle to any other person until disposal of this writ petition and that he will pay the difference in tax if it is ultimately found that the vehicle is not entitled to be registered as a private vehicle. There shall be a further

condition that the provisional registration as directed above is granted subject to the rider that he shall not use the vehicle for carriage of goods or passengers on hire. If any violation of the above conditions is detected, the authorities are free to initiate the appropriate action in accordance with law."

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 2nd 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