

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.V.RAMAKRISHNA PILLAI

FRIDAY, THE 12TH DAY OF JUNE 2015/22ND JYASHTA, 1937

WP(C).No. 14855 of 2015 (F)

PETITIONER(S) :

**SULFICKER,
S/O.SULAIMAN, MATTAPPILLY HOUSE, EDATHALA P.O.,
ERNAKULAM DISTRICT.**

BY ADV. SRI.P.DEEPAK

RESPONDENT(S) :

**THE SECRETARY,
REGIONAL TRANSPORT AUTHORITY,
ERNAKULAM- 682 030.**

BY GOVERNMENT PLEADER SRI.T.R.RAJESH

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 12-06-2015, THE COURT ON THE SAME DAY DELIVERED
THE FOLLOWING:**

Msd.

WP(C).No. 14855 of 2015 (F)

APPENDIX

PETITIONER(S)' EXHIBITS :

**EXHIBIT P1: A TRUE COPY OF THE REGULAR PERMIT ISSUED TO KL-05/Q 2046
ON THE ROUTE KONTHURUTHY-ALUVA DATED 14-05-2015.**

**EXHIBIT P2: A TRUE COPY OF THE JUDGMENT DATED 18-10-2013 IN
W.P.(C).NO.24552/2013.**

**EXHIBIT P3: TRUE COPY OF THE TEMPORARY PERMIT ISSUED TO
KL-06/C 1755 VALID TILL 19-05-2015.**

**EXHIBIT P4: TRUE COPY OF THE PROCEEDINGS OF THE RESPONDENT
DATED 20-02-2015.**

RESPONDENT(S)' EXHIBITS :

NIL

//TRUE COPY//

P.A.TO JUDGE.

Msd.

A.V.RAMAKRISHNA PILLAI, J.

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W.P(C) No.14855 of 2015

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Dated this the 12th day of June, 2015

JUDGMENT

Aggrieved by the rejection of the petitioner's application for replacement relying on an amendment made to Rule 174 of the Kerala Motor Vehicles Rules, 1989 vide G.O(P) No.93/2014 dated 29.12.2004, the petitioner has come up before this Court.

2. The petitioner is a stage carriage operator operating on the route Konthuruthy-Aluva on the basis of Ext.P1 permit which is valid till 5.11.2017. Pursuant to the directions of this Court in Ext.P2, a clearance certificate was issued to his vehicle bearing no.KL-05/Q 2046 keeping the permit in suspended animation. The petitioner alleges that on 20.2.15, in response to a notice issued by the second respondent requiring him to offer a vehicle for replacement, an application for replacement was filed wherein stage carriage bearing registration no.KL-06/C 1755 was offered in substitution of the petitioner's vehicle. The petitioner further alleges that pending reconsideration of the application, he was allowed to resume service with the proposed incoming vehicle on

the strength of successive temporary permits issued to the said vehicle.

3. According to the petitioner, since the incoming and outgoing vehicles do not differ materially, going by the 'Note' attached to Rule 174 of the Motor Vehicles Act, the application for replacement has to be allowed. Now, the petitioner was served with Ext.P4 order rejecting the application for replacement relying on an amendment made to Rule 174 of the KMV Rules vide G.O(P) dated 29.12.2014. The petitioner points out that by virtue of the said amendment, a proviso was sought to be incorporated to Rule 17 limiting the applicability of the 'Note' to the first replacement effected and not subsequent applications for the same purpose. It is with this background, the petitioner has come up before this Court.

4. Heard the learned counsel for the petitioner and the learned Government Pleader in the matter.

5. The learned counsel for the petitioner invited my attention to the judgment dated 13.3.2015 in W.P(C) No.5728 of 2015 wherein this Court held 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 connected cases, same not bringing in the result the

Explanatory note intends. It was further held that the amendment is totally incongruous with the intendment. It was further held that 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. A copy of the said judgment is made available for my perusal by the learned counsel for the petitioner during the course of the argument. Therefore, according to the learned counsel, Ext.P4 is unsustainable.

6. Considering the nature of the submission made by the learned counsel for the petitioner, this Court is of the view that the petitioner is entitled to the relief prayed for.

In the result, the writ petition is allowed. Ext.P4 is quashed. The respondent is directed to endorse replacement of the vehicle bearing No.KL-05/Q 2046 with KL-06/C 1755 in Ext.P1 regular permit held by the petitioner.

Sd/-

A.V.RAMAKRISHNA PILLAI
JUDGE

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