

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE SHAJI P. CHALY

FRIDAY, THE 9TH DAY OF OCTOBER 2015/17TH ASWINA, 1937

WP(C).No. 18611 of 2013 (B)

PETITIONER:

AKBAR TRAVELS OF INDIA PRIVATE LIMITED
KASHKAND CHAMBERS, C.D.BANK ROAD, KOZHIKODE
REPRESENTED BY ITS MANAGING DIRECTOR ABDUL NAZAR.K.V.

BY ADV. SRI.C.P.MOHAMMED NIAS

RESPONDENT(S):

1. DEPUTY TRANSPORT COMMISSIONER
NORTH ZONE, KOZHIKODE-673 004.

2. REGIONAL TRANSPORT OFFICER
KOZHIKODE-673 004.

BY SENIOR GOVERNMENT PLEADER SRI.THOMAS JOHN AMBOOKEN

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 09-10-2015,
ALONG WITH WPC. 18617/2013, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

APPENDIX

PETITIONER'S EXHIBITS:

EXHIBIT P1. COPY OF THE CERTIFICATE OF REGISTRATION DATED 02.02.2007, IN RESPECT OF THE VEHICLE BEARING REGISTRATION NO.KA.19.B.6931 ISSUED BY THE R.T.O MANGALORE.

EXHIBIT P2. COPY OF THE CERTIFICATE OF FITNESS DATED 02.02.2007 IN RESPECT OF THE VEHICLE BEARING REGISTRATION NO.KA.19B.6931 BY THE R.T.O MANGALORE.

EXHIBIT P3. COPY OF THE PHOTOGRAPHS OF THE VEHICLE BEARING REGISTRATION NO.KA.19B.6931.

EXHIBIT P4. COPY OF THE FORM 28 APPLICATION FOR GRANT OF NO OBJECTION CERTIFICATE, DATED 21.03.2011, SUBMITTED BY THE PETITIONER BEFORE THE REGISTERING AUTHORITY, MANAGALORE.

EXHIBIT P5. COPY OF THE FORM 33 INTIMATION OF CHANGE OF ADDRESS DATED 21.03.2011 SENT BY THE PETITIONER TO THE 2ND RESPONDENT.

EXHIBIT P6. COPY OF THE FORM 27 APPLICATION DATED 21.03.2011 FOR REASSIGNMENT OF NEW REGISTRATION MARK SUBMITTED TO THE 2ND RESPONDENT.

EXHIBIT P7.COPY OF THE NOTARIZED AFFIDAVIT (EXCLUDING THE DOCUMENTS APPENDED THEREWITH) SWORN BY THE PETITIONER AND SUBMITTED BEFORE THE REGISTERING AUTHORITY, KOZHIKODE.

EXHIBIT P8. COPY OF THE REPORT DATED 16.07.2011 PREPARED BY THE MOTOR VEHICLES INSPECTOR IN THE 2ND RESPONDENTS OFFICE.

EXHIBIT P9. COPY OF THE ORDER NO.R2/11144/2012 D DATED 22.09.2012 PASSED BY THE 2ND RESPONDENT.

EXHIBIT P10.COPY OF THE MEMORANDUM OF APPEAL AND THE STAY PETITION, BOTH DATED 05.04.2013 PRESENTED BEFORE THE 1ST RESPONDENT.

EXHIBIT P11.COPY OF THE JUDGMENT DATED 09.04.2013 OF THIS HONOURABLE COURT IN WPC NO. 9952/2013.

EXHIBIT P12.COPY OF THE ORDER BEARING NO.C/999/2013N.Z DATED 05.06.13 PASSED BY THE 1ST RESPONDENT.

WP(C).No. 18611 of 2013 (B)

EXHIBIT P13.COPY OF THE PHOTOGRAPHS OF THE VEHICLE BEARING
REGISTRATION NO.KL.54B.6223 OWNED BY THE PETITIONER.

EXHIBIT P14.COPY OF THE REGISTRATION CERTIFICATE OF THE VEHICLE BEARING
REGISTRATION NO.KL.54B.6223.

EXHIBIT P15.COPY OF THE PHOTOGRAPHS OF THE VEHICLE BEARING
REGISTRATION NO.KL.54B. 6210 OWNED BY THE PETITIONER.

EXHIBIT P16. COPY OF THE REGISTRATION CERTIFICATE OF THE VEHICLE
BEARING REGISTRATION NO.KL.54B.6210.

EXHIBIT P17. COPY OF THE PHOTOGRAPHS OF THE VEHICLE BEARING
REGISTRATION NO.KL.55K.5908 OWNED BY THE PETITIONER.

EXHIBIT 18. COPY OF THE REGISTRATION CERTIFICATE OF THE VEHICLE BEARING
REGISTRATION NO.KL.55K. 5908.

EXHIBIT P19. COPY OF THE COMMON JUDGMENT DATED 04.04.2012 OF THIS
HONOURABLE COURT IN WPC NO. 30643 OF 2011 AND WPC NO.30650 OF 2011.

RESPONDENT(S)' EXHIBITS : NIL

//TRUE COPY//

P.A. TO JUDGE

smv

SHAJI P. CHALY, J.

W.P(C) Nos.18611 & 18617 of 2013

Dated this the 9th day of October, 2015

JUDGMENT

These writ petitions present a common question with regard to the decision taken by the 2nd respondent, which was affirmed by the 1st respondent declining re-registration of two contract carriage vehicles owned by the very same petitioner in the writ petitions. Since both the writ petitions relate to a common issue, and the documents produced are typical and similar these writ petitions are disposed of by a common judgment. I am relying on the facts mentioned in Writ Petition No. 18617/2013 for disposal of both the cases.

2. Brief facts necessary for the disposal of the writ petitions are as follows:

3. Petitioner is the owner of two contract carriage vehicles bearing Nos. KA-19 B 6931 and KA – 19B 6936. Vehicles were registered with the Regional Transport Office, Mangalore, evident from Ext.P1 Certificate of Registration in both the cases.

4. Petitioner has decided to shift its office to Kerala during

the year 2011 and thereupon petitioner obtained Ext.P4 No Objection Certificate dated 21.3.2011 from RTO, Calicut. It is submitted that petitioner started its operation in Mangalore w.e.f. 7.4.2011. Thereafter, petitioner submitted Ext.P6 application dated 7.4.2011 before the 2nd respondent. Consequent to the same, Motor Vehicle Inspector attached to the office of the 2nd respondent inspected the vehicles on 6.7.2011 and submitted Ext.P8 report dated 16.07.2011 to the 2nd respondent denoting certain irregularities which are extracted in the writ petition. Thereupon, Ext.P6 request for registration was rejected by 2nd respondent by Ext.P9 order dated 22.9.2012.

5. Being aggrieved by Ext.P9 order, petitioner has preferred Ext.P10 appeal dated 05.04.2013 before the 1st respondent. By Ext.P12 order dated 05.06.2013 1st respondent dismissed Ext.P10 appeal. It is thus challenging Exts.P9 and P12 orders in both the cases these writ petitions are filed. First respondent has filed a counter affidavit refuting the statements and allegations contained in the writ petition and contends that Exts.P9 and P12 orders passed by the respective statutory authorities are in accordance with law. It is contended that

since there is a structural alteration in variation of the specification of the manufacturer, there is violation of Section 52 (1) of the Motor Vehicles Act, 1988 and Rule 126 of Central Motor Vehicle Rules, 1989 and therefore, re-registration of the vehicle could not have been provided to the petitioner. It was contended that the writ petition does not require any consideration on merit.

6. I heard Sri. S. Ajith, learned counsel appearing for the petitioner and learned Government Pleader Sri.Thomas John Ambooken appearing for the respondents.

7. The thrust of the contention advanced by learned counsel for the petitioner is that, the 2nd respondent as well as the 1st respondent have passed the respective impugned orders in absolute violation of the principles of natural justice. Learned counsel invited my attention to Section 47 of the Motor Vehicles Act and contended that parameters for assigning the new registration mark on removal to another State is prescribed thereunder and therefore, the respective statutory authority is bound to confine to the circumstances mentioned thereunder alone. It is also contended that 2nd respondent has passed Ext.P9

order holding that the RTO, Mangalore wherein the vehicle was originally registered failed to forward the registration details in order to identify whether the alteration was permitted while registering the vehicle originally before the said authority. Learned counsel has brought my attention to Ext.P12 order passed by the 1st respondent and contended that it is absolutely a non speaking order and without assigning any reason the appeal was dismissed.

8. On the other hand, learned Government Pleader invited my attention to Section 52(1) of the Motor Vehicles Act and Rule 126 of the Central Motor Vehicles Rules and canvassed the proposition that under law if an alteration is made to the vehicle, the parameters required under Section 52(1) and Rule 126 of the Central Motor Vehicles Rules will have to be complied with.

9. Having evaluated the facts, law and circumstances and the impugned orders passed by the respective statutory authorities, I am of the considered opinion that both the authorities have failed to consider Ext.P6 request for re-registration taking into account the factual circumstances and the law involved in the subject matter. It is true that while

transferring a vehicle a re-registration is required with the concerned Regional Transport Officer as provided under Section 47. But at the same time, parameters are fixed therein before granting re-registration of the vehicle. On a perusal of Section 47 of the Motor Vehicles Act, I do not find any stipulation contained thereunder which enabled the 2nd respondent to seek the details of the registration from the Original Registering Authority. Having the vehicle registered by a Regional Transport Officer of a different State, registration is granted under the Central Motor Vehicles Act and therefore, when such an official act was performed by the statutory authority, it is to be presumed that registration was granted taking into account the legal circumstances involved for registration of the vehicle. Bearing in mind such a legal fiction, I am of the considered opinion that findings of the 2nd respondent declining registration on transfer of the vehicles for want of details of registration from the Original Registering Authority is not a sustainable ground. The same leads to yet another conclusion that the decision arrived at by the 2nd respondent was not in accordance with any factual or legal situation available with him, even if it is assumed

that the original registration details are required.

10. Even though petitioner preferred Ext.P10 appeal before the 1st respondent explaining the legal and factual situations, 1st respondent without considering any of those aspects on merit has declined to interfere with the order passed by the 2nd respondent. In my view, orders of the 1st and 2nd respondent suffer from vice of arbitrariness, illegality and fairness. Therefore, it is only just and proper that Ext.P9 and P12 orders are set aside and remand the matter to the 2nd respondent for a de novo consideration of the entire aspects including the legal situation available under the Motor Vehicles Act while re-registering a motor vehicle on transfer from one State to another and the allied rules thereunder.

11. Learned counsel has invited my attention to the judgment reported of a Division Bench of this Court in **Jayachandran and others v. Regional Transport Officer, Trichur and others** [2012 (4) KHC 684] and contended that even if a minor alteration is made to the vehicle, the same is not a ground for refusal of the registration by the Motor Vehicles Authority. Learned counsel specifically invited my attention to

paragraphs 12, 15, 16, 17 and 19 and contended that the very same issue in this case was the consideration before the Division Bench of this Court supra and canvassed that, petitioner is entitled to get the benefit of law laid down by the Division Bench of this Court thereunder. Any how, since I am remanding the matter to the 2nd respondent for de novo consideration, the principles laid down in the judgment cited supra shall be considered by the 2nd respondent along with the legal provisions contained under the Motor Vehicles Act, 1988 and the Central Motor Vehicles Rules.

12. Therefore, this writ petition is allowed. Exts.P9 and P12 orders passed by the 2nd respondent and the 1st respondent respectively in the writ petitions are quashed and I direct the 2nd respondent to take a decision in the subject issue within a period of three months from the date of receipt of a copy of this judgment also taking into account the observations made above. When these writ petitions were admitted to the file of this Court, interim orders were passed by this Court in both the cases directing the 2nd respondent to provisionally assign new registration mark. The said interim order granted by this Court

will be in force till a final decision is taken by the 2nd respondent.

Writ petitions are allowed accordingly.

Sd/-

SHAJI P. CHALY
JUDGE

smv
09.10.2015