

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.MUHAMED MUSTAQUE

TUESDAY, THE 28TH DAY OF JULY 2015/6TH SRAVANA, 1937

WP(C).No. 21477 of 2012 (H)

PETITIONER :

**P.J.BABU, AGED 47 YEARS,
PONMANKAL HOUSE, THELLAKOM.P.O,
ETTUMANNOOR, KOTTAYAM.**

BY ADV. SRI.P.DEEPAK

RESPONDENTS :

- 1. THE REGIONAL TRANSPORT OFFICER,
KOTTAYAM - 686 001.**
- 2. THE DEPUTY TRANSPORT COMMISSIONER,
CZ-II, ERNAKULAM. 682 030.**
- 3. THE TRANSPORT COMMISSIONER,
THIRUVANANTHAPURAM. 695 001.**

R1 TO R3 BY GOVERNMENT PLEADER SRI. R. RANJITH

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 28-07-2015, THE COURT ON THE SAME DAY DELIVERED
THE FOLLOWING:**

bp

APPENDIX

PETITIONER(S) EXHIBITS

- P1: A TRUE COPY OF THE 'RESERVE PERMIT' ISSUED TO KL-05/Q 3360 VALID TILL 17.02.2009.**
- P2: A TRUE COPY OF SRO NO.880/75 DATED 29.09.1975.**
- P3: A TRUE COPY OF THE CERTIFICATE OF REGISTRATION (RELEVANT PAGES ONLY) ISSUED TO KL-05/Q 3360.**
- P4: A TRUE COPY OF 'MEMO' DATED 4.12.2011.**
- P5: A TRUE COPY OF THE OBJECTION DATED 14.12.2011.**
- P6: A TRUE COPY OF THE ORDER OF THE 1ST RESPONDENT DATED 09.02.2012.**
- P7: A TRUE COPY OF THE MEMORANDUM OF REVISION DATED 15.06.2012.**
- P8: A TRUE COPY OF THE ORDER OF THE 3RD RESPONDENT DATED 18.08.2012.**

RESPONDENTS' EXHIBITS : NIL.

//TRUE COPY//

P.A.TO JUDGE

bp

A.MUHAMED MUSTAQUE, J.

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**W.P.(C).No.21477/2012**  
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Dated this the 28th Day of July, 2015

J U D G M E N T

This writ petition is filed by a stage carriage operator having more than 7 buses, challenging assessment of escaped tax. The petitioner was given reserve temporary permit as per Ext.P1 for four months from 18/10/2008 onwards. The petitioner was served with a demand notice produced as Ext.P4 demanding an amount of Rs.2,24,100/- towards tax in respect of vehicle bearing registration No.KL-05-Q-3360 for various periods from 19/01/2007 to 31/03/2009 . This vehicle was, in fact, covered by Ext.P1 temporary permit. There is no dispute regarding the fact that the above vehicle is owned by the petitioner. To satisfy the requirement of Rule 182 of the Kerala Motor Vehicles Rules, 1989 (for short, the "Rules), other vehicles have been mentioned in Ext.P1. A few of the vehicles referred in Ext.P1 stand in the names of different persons, who claim to be from within the family of the petitioner. The petitioner challenged Ext.P4 before this Court in W.P.(C).No.33696/2011 and this Court directed the Regional Transport Officer to consider the petitioner's objection regarding escaped assessment. It is thereafter, Ext.P6 order was passed overlooking the

petitioner's objection. The reason stated for rejection in Ext.P6 is that there is no provision in the Rules to keep a reserve bus, for the vehicles which are owned by different persons even if the operators are from the same family or undertaking as family enterprise also. The petitioner challenged the above order before the Revisional Authority. The Revisional Authority affirmed the decision of the Regional Transport Officer as seen from Ext.P8. It is stated therein that the benefit of Rule 182 of the Rules can be given only to an operator having seven or more buses in operation. It indicates that only a single entity could claim the above benefit and not plural.

2. It is pertinent to refer to Rule 182 of the Rules. Rule 182 reads as follows:

“182. Reserve bus (Spare bus).- It shall be a condition of every stage carriage permit that an operator having seven or more route buses in operation (including stage carriages operating on temporary permits) shall maintain reserve buses calculated at the rate of one reserve bus for every complete unit of seven route buses.”

3. The petitioner's case is that Rule 182 of the Rules only expresses “an operator” and not the “owner”. Therefore, any person, who by virtue of an agreement or otherwise is entitled to operate the vehicles of others would also fall within the expression, “an operator”.

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4. It is to be noted that the reserve temporary permit was given to the petitioner as per Ext.P1, recognising the vehicles owned by different persons itself. A person who is issued with temporary permits, need not be a registered owner. It is not the case of the Authority that the petitioner has used the vehicle other than a reserve bus. It is to be noted that the respondents have no case that the petitioner has violated the conditions stipulated in Ext.P1. Having once accorded recognition to the vehicle bearing registration No.KL-05-Q-3360 as that of the reserve bus after taking note that other buses do not belong to the petitioner in ownership, the respondents cannot now complain that there is escape of assessment. As already noted, the petitioner has used the vehicle as reserve bus and the respondents did not have any complaint that the operator should be the owner of the buses. In that view of the matter, the impugned order is set aside. The writ petition is allowed.

Sd/-

A.MUHAMED MUSTAQUE, JUDGE

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