

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

FRIDAY, THE 13TH DAY OF MARCH 2015/22ND PHALGUNA, 1936

WP(C).No.28773 of 2011 (V)

PETITIONER:

ABDUSSALAM,S/O.ABOOBACKER HAJI,
KURUKKOLI HOUSE,THALAKKADATHOOR P.O.
MALAPPURAM DISTRICT,PIN-676 103.

BY ADVS.SRI.G.HARIHARAN
SRI.PRAVEEN.H.

RESPONDENTS:

1. REGISTERING AUTHORITY,
SUB REGIONAL TRANSPORT OFFICE,
TIRUR,MALAPPURAM DISTRICT,PIN 679 577.

*ADDITIONAL R2 AND R3 IMPLEADED

ADDL.R2.THE TRANSPORT COMMISSIONER,
THIRUVANANTHAPURAM-695001.

ADDL.R3.THE PRINCIPAL SECRETARY TO GOVERNMENT,
MINISTRY OF ROAD TRANSPORT AND HIGHWAYS,
PARLIAMENT STREET,NEW DELHI-110001.

ADDITIONAL R2 AND R3 ARE IMPLEADED AS PER ORDER
DATED 13.3.2015 IN I.A. NO.3886/2015 IN W.P(C) 28773/2011.

R1 & ADDL.R2 BY GOVT. PLEADER SRI.R.RANJITH.
ADDL.R3 BY SRI.N.NAGARESH,ASGI

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 13-03-2015, ALONG WITH WP(C) 14108/2012 & W.P(C) 30028/2014 THE
COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

pk

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1:TRUE COPY OF THE SALE CERTIFICATE ISSUED RELATING TO THE
VEHICLE BOLERO CAMPER SCXL FLAT BED BS3 2WD ISSUED BY
M/S.ITL MOTORS PVT.LTD.,KUTTANELLUR,THRISSUR ON 11.10.2011.

EXT.P2:TRUE COPY OF THE TEMPORARY REGISTRATION CERTIFICATE
BEARING REGISTRATION NO.KL-08P-TEMP-921 ISSUED BY THE
REGISTERING AUTHORITY,THRISSUR ON 11.10.2011.

EXT.P3:TRUE COPY OF THE CERTIFICATE IN FORM 22A UNDER RULE 47(G)
124,126-A & 127 OF THE CENTRAL MOTOR VEHICLE RULES.

EXT.P4:TRUE COPY OF THE APPLICATION DATED 21.10.2011 FILED FOR
REGISTRATION OF VEHICLE MENTIONED IN EXHIBIT.P1.

EXT.P5:TRUE COPY OF THE PHOTOGRAPHS OF THE MENTIONED IN EXHIBIT P1
AFTER MOUNTING OF THE CRANE ON THE VEHICLE BY M/S.MALAVIKA
ENGINEERING WORKS,KODIMATHA.

EXT.P6:TRUE COPY OF THE REGISTRATION CERTIFICATE OF A BREAK DOWN
RECOVERY VAN BEARING REGISTRATION NO.KL-53B-9992 REGISTERED
AT SUB REGIONAL TRANSPORT OFFICE,PERINTHALMANNA.

EXT.P7:TRUE COPY OF THE INTERIM ORDER MADE WP(C) NO.20400/2011
DATED 24.8.2011.

EXT.P8:TRUE COPY OF THE NOTIFICATION DATED 5.11.2014 ISSUED UNDER SUB
SECTION 4 OF SECTION 41 OF THE MOTOR VEHICLES ACT BY THE
GOVERNMENT OF INDIA.

RESPONDENT'S EXHIBITS:

NIL

//TRUE COPY//

P.S. TO JUDGE

pk

K.Vinod Chandran, J.

W.P.(C).Nos.28773 of 2011-V, 14108 of 2012-K & 30028 of 2014-C

Dated this the 13th day of March, 2015

JUDGMENT

The three writ petitions are with respect to the classification of a crane mounted vehicle as a non-transport vehicle. W.P.(C).No.28773 of 2011 deals with a Bolero Camper SCXL Flat Bed BS3 2WD vehicle and W.P.(C).No.30028 of 2014 concerns a Mahindra Bolero Maxi Truck; both of which are classified as “Light Motor Vehicle Goods Carriage Trucks” by the manufacturer according to the prototype classification. Similar is the case of Tata LPT 909 EX2 vehicle, which is the subject matter of W.P.(C).No.14107 of 2012. The Bolero vehicles have a seating capacity of two, with an open platform for carriage of goods. The Tata vehicle has a seating capacity of three, again with an open plat-form for carriage of goods. The petitioners have mounted a mechanism in the open platform intended for carriage of goods and contends that as per the notification issued under sub-section (4) of Section 41 of the Motor Vehicles Act, 1988 [for brevity “Act of 1988”], as S.O. No.1248(E) dated 05.11.2004, the vehicles are to be classified as a 'Non-Transport Vehicle'.

2. The claim based on the notification though is to register the same as a non-transport vehicle;' the alternative prayers are to consider it either as a "Crane mounted vehicle" [item No.(viii) of the notification] or "Tow Trucks, Breakdown Van and Recovery Vehicles" [item No.(xii)]. At the outset, it is to be noticed that the vehicles are not manufactured as a Crane mounted vehicle or a Tow Truck, etc. Alterations have been made by the owner to adapt it as a break down/recovery van. First, it has to be satisfied that the alteration is permissible, under Section 52 of the MV Act of 1988 for it to be endorsed on the Registration Certificate. The contention of the Department in that context, in their counter affidavit in W.P.(C). No.28773 of 2011, reads as under:

"5. It is further submitted that the vehicle in question is a Mahindra & Mahindra Light Goods Vehicle having an unladen weight of 2880 Kgs sold and registered as body type 'open'. The body of the vehicle is found extensively altered beyond the limit of dimensions stipulated in the prototype approval of the vehicle. The recovery mechanism which consists of a boom pipe assembly, towing hook extends beyond the rear most end point of the vehicle by 45 cm and permanently remain so even when the vehicle is in motion. In effect the overall length is increased by 45 cms, which is against the provisions of the statute.

Explanation to Rule 93 (3) of CMVR 1989 reads as:

For the purpose of this rule "The overall length means the length of a vehicle measured between parallel planes passing through the extreme projection of the vehicle exclusive of (i) starting handle (ii) any hood when down (iii) any fire escape fixed to a vehicle (iv) any post office, letterbox the length of which measured parallel to the axis of the vehicle, does not exceed 30 cms (v) any ladder used for loading or unloading from the roof of the vehicle or any tail or indicator lamp or number plate fixed to the vehicle (vi) any towing hook or other fitment which does not project beyond any fitment covered by clauses (iii) to (vi)".

Hence, in the case on hand, alteration made by the petitioner is without any authority and hence he is not entitled to get the reliefs as sought for.

6. It is to be noted that the boom pipe hook and other parts of the recovery mechanism is welded to an MS (Mild Steel) plate, which in turn is fitted to the load carrying platform of the vehicle by four M19 MS Bolts. The MS plate itself is only 16 SWG (Specific Wire Gauge) ie; 1.626 mm thickness, which is not at all sufficient to withstand the sheer loads acting at the region where holes have been drilled to accommodate the recovery mechanism. The recovery mechanism works as a cantilever wherein, the major portion of the load acts at the base of the recovery mechanism mounted on the MS plate. Since the towed vehicle is not supported anywhere on the platform and is kept hanging from the towing hook it may sway to the sides or wobble affecting the strength of towing mechanism as side shear forces also will act on the base of the recovery mechanism".

3. The other question raised is that though the prototype classification is “Goods Carriage Truck”, whether the registration has to be on the basis of the intention of the owner of the vehicle, since the vehicle is intended to be used as a crane mounted vehicle/breakdown/recovery van, as per the notification, which has to be registered as a Non-Transport Vehicle, is the contention raised. The said contention with respect to a vehicle having a seating capacity of 5 and an open platform was repelled by a Division Bench of this Court in the decision reported in ***Hassan Koya v. Transport Commissioner* [2015 (1) KLT 916]**. Following the said judgment, the distinction sought to be urged by certain persons was also answered by this Court in the judgment in ***Shamnad v. Regional Transport Officer* [2015 (1) KLT 931]**. Hence, none can contend that the intention of the user should be taken into account to decide the aspect of registration. Further, sub-section (4) of Section 41 of the MV Act of 1988 does not confer power on the Central Government to specify the type of vehicle only on the intended use. The provision requires such specification in accordance with the “design, construction and use”.

4. The aspect of registration has to be looked at in the background of the provisions of the Act of 1988. The Act of 1988 does not provide for a registration of a vehicle as "Non-Transport Vehicle". Any vehicle which is not a transport vehicle would be a non-transport vehicle, for e.g., Light Motor Vehicle, which is used for private use. This is how the Central Motor Vehicles Rules, 1989 specify the category of non-transport vehicles. The counter affidavit of the State also indicates that the notification relied on by the petitioner, is with respect to the original prototype as approved by the Automobile Association of India and manufactured as a Crane mounted vehicle, Tow Truck, Breakdown Van and Recovery Vehicle. Hence, an alteration made by the purchaser on a vehicle produced by the manufacturer as a 'Goods Carriage Truck' would be a Transport Vehicle as per the MV Act of 1988. On conversion or alteration, the vehicle does not cease to be a 'Goods Carriage Truck'.

5. In the present cases, all the vehicles are Goods Carriage Vehicles and there can be no registration effected as a Non-Transport Vehicle, since a Goods Carriage vehicle comes within

the definition of “Transport Vehicle”. The definition of “Goods Carriage” and “Transport Vehicle” are extracted hereunder:

“S.2(14) “Goods carriage” means any motor vehicle constructed or adapted for use solely for the carriage of goods, or any motor vehicle not so constructed or adapted when used for the carriage of goods”.

“S.2(47) “Transport vehicle” means a public service vehicle, a goods carriage, an educational institution bus or a private service vehicle”.

The vehicle being manufactured solely for the carriage of goods and the same being categorised as a “Goods Carriage” vehicle, it cannot be classified as a “Non-Transport Vehicle”. The alteration being not permissible under Section 52 also stands against the petitioners.

The writ petitions would stand dismissed. No costs.

Sd/-
K.Vinod Chandran,
Judge

vku.

[true copy]