

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE ANIL K. NARENDRA

MONDAY, THE 22ND DAY OF SEPTEMBER 2015/31ST BHADRA, 1937

WP(C).No. 26173 of 2014 (V)

PETITIONER:

NISHA THOMAS, W/O. GIRISH,
PARAYIL HOUSE, EDAMARUKU P.O.
PALA.

BY ADV. SRI. I. DINESH MENON

RESPONDENT:

THE SECRETARY,
REGIONAL TRANSPORT AUTHORITY, KOTTAYAM-686002.

BY SR. GOVERNMENT PLEADER SRI T. J. MICHAEL

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 22-09-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WP(C).No. 26173 of 2014 (V)

APPENDIX

PETITIONER(S)' EXHIBITS

- P1: COPY OF THE NOTIFICATION ISSUED BY THE GOVERNMENT DATED 30.8.2013.
P2: COPY OF THE APPLICATION FOR REPLACEMENT DATED 4.10.2014 WITH COVERING LETTER AND CHALAN.
P3: COPY OF THE INTERIM ORDER IN WPC.NO.8695/2014 DATED 26.3.2014.

RESPONDENT(S)' EXHIBITS: NIL

TRUE COPY

P.S.TO JUDGE

dsn

ANIL K.NARENDRA, J

W.P.(C)No.26173 Of 2014

DATED THIS THE 22nd DAY OF SEPTEMBER, 2015

JUDGMENT

The petitioner, who is the holder of a regular permit to operate service on the route Kumali – Ernakulam which is valid up to 16.10.2018, has filed Ext.P2 application dated 4.10.2014 for replacement of the existing vehicle bearing registration No.KL-39/B-3236 with another vehicle bearing registration No.KL-35/F 3677. The said application was not considered by the the respondent and it was in such circumstances, the petitioner has approached this Court in this Writ Petition seeking a writ of mandamus commanding the respondent to allow replacement of the vehicle bearing registration No.KL-39/B-3236 (53 seats in all) with KL-35/F 3677 (48 seats in all) so as to operate on the route Kumali - Ernakulam.

2. By order dated 9.10.2014, this Court directed the respondent to allow replacement of the existing vehicle with registration No.KL-39/B-3236 with 53 seats in all with KL-35/F 3677 with 48 seats in all, provisionally and subject to the result of the Writ Petition.

3. Today, when the case was taken up for final hearing, the learned counsel for the petitioner and also the learned Government Pleader appearing for the respondent submitted that, the issue raised in this writ petition is covered by the judgment of this Court dated 13.03.2015 in W.P.(C). No.5728/2015 and connected cases. Paragraphs 8, 9 and 10 of the judgment reads thus:

"8. There shall be a meaningful interpretation of the Note in the context of the concern expressed by the Government in its Explanatory Note. The concern sought to be addressed by the Government was the loss to the exchequer and public interest caused by successive reduction of seating capacity. As Rule 174 of the KMV Rules exists, before the expansion, a vehicle with a certain seating capacity could be replaced with another vehicle with a lesser seating capacity, the material difference being within the 25% limit. Then when a second replacement is sought, the material difference could be related to the seating capacity of the second vehicle and not the original vehicle endorsed in the permit. It is to curb such practises that the Government intended to bring a clarification to Rule 174.

9. However, this Court is afraid, neither the proviso introduced nor the expansion of the Note bring in such clarification. In fact, the restriction should be that,

there should be no replacement allowed if the "material difference" is more than 25% of the original vehicle endorsed in the permit. Such restriction should also be maintained only, in the context of a reduction of seating capacity, since an enhancement of seating capacity would serve both the cause of the exchequer as also the public. In such circumstance, this Court is of the opinion 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 same not bringing in the result the Explanatory note intends. The amendment is totally incongruous with the intendment. I do so. 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.

The writ petitions would stand allowed. The consideration of the applications, in which provisional registration has been granted by way of interim orders of this Court and the writ petitions in which fresh applications have been given, shall be made by the Transport Authority concerned, in accordance with the observations made hereinabove. The "material difference" shall always be related to the original vehicle, since even the rule as it exists now, could be so interpreted. The same shall be done within a period of three weeks from the date of receipt of a certified copy of this judgment. Parties are left to suffer their respective costs."

In view of the judgment of this Court dated 13.03.2015 in

W.P.(C).No.5728/2015 and connected cases, this writ petition is disposed of directing the respondent to consider Ext.P2 application dated 4.10.2014 submitted by the petitioner for replacement, in accordance with the observations contained in the judgment of this Court dated 13.03.2015 in W.P.(C). No.5728/2015 and connected cases. The material difference shall always be related to the original vehicle, since even the Rule as it exists now, could be so interpreted. The same shall be done within a period of three weeks from the date of receipt of a certified copy of this judgment. No order as to costs.

Sd/-
ANIL K.NARENDRA,
JUDGE

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