

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

FRIDAY, THE 27TH DAY OF FEBRUARY 2015/8TH PHALGUNA, 1936

WP(C).No.31043 of 2013 (E)

PETITIONER:

**G.VENKITESHWARA PRABHU,AGED 33 YEARS,
S/O.GOPALAKRISHNA PRABHU,HOUSE NO.8/1013,
KARTHIK NIVAS,R.G.PAI ROAD,COCHIN - 682 002,
ERNAKULAM DISTRICT.**

BY ADV. SRI.ASHIK K.MOHAMMED ALI

RESPONDENTS:

- 1. STATE OF KERALA,REPRESENTED BY THE SECRETARY,
DEPARTMENT OF TRANSPORT,
SECRETARIAT,THIRUVANANTHAPURAM-695 001.**
- 2. THE TRANSPORT COMMISSIONER,
TRANSPORT COMMISSIONERATE,2ND FLOOR,
TRANS TOWERS,VAZHUTHACAUD,THYCAUD P.O.
THIRUVANANTHAPURAM - 695 014.**
- 3. THE DEPUTY TRANSPORT COMMISSIONER,
MOTOR VEHICLES DEPARTMENT,KUNNUMPURAM,
KAKKANAD,ERNAKULAM -682 021.**
- 4. REGIONAL TRANSPORT OFFICER,
OFFICE OF THE REGIONAL TRANSPORT OFFICE,
2ND FLOOR,CIVIL STATION,KAKKANAD,ERNAKULAM - 682 030.**
- 5. THE JOINT REGIONAL TRANSPORT OFFICER,
OFFICE OF THE SUB REGIONAL TRANSPORT OFFICE,
NEAR KUMAR'S PETROL BUNK,CHULLIKKAL,
ERNAKULAM- 682 005.**
- 6. PLATINO CLASSIC MOTORS (INDIA) PRIVATE LIMITED,
NH 47,BY PASS ROAD,MARADU P.O.,COCHIN - 682 304
REPRESENTED BY ITS MANAGING DIRECTOR,
P.ASHIQUE,RESIDING AT 28/729,PONNAM PARAMBATH HOUSE,
CHEVAYUR POST,KOZHIKODE - 673 017.**

**R1-R5 BY SENIOR GOVT. PLEADER SRI.BIJU MEENATTOOR
R6 BY ADV.SRI.C.P.MOHAMMED NIAS**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 27-02-2015, ALONG WITH WPC.31964/2013 AND CONNECTED CASES,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

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APPENDIX

PETITIONER'S EXHIBITS:

EXHIBIT-P1-TRUE COPY OF THE PETITION DATED 15/02/2013 GIVEN TO THE 1ST RESPONDENT WITHOUT ENCLOSURE.

EXHIBIT-P2-TRUE COPY OF THE PETITION DATED 23/02/2013 GIVEN TO THE 2ND RESPONDENT WITHOUT ENCLOSURE.

EXHIBIT-P3-TRUE COPY OF THE ORDER NO.C1/3652/TC-2013 DATED 07/03/2013 ISSUED BY THE 1ST RESPONDENT.

EXHIBIT-P4-TRUE COPY OF THE ORDER NO.G/249/13/C.Z 11 DATED 12/03/2013 ISSUED BY THE 2ND RESPONDENT.

EXHIBIT-P5-TRUE COPY OF THE INTERIM REPORT ALONG WITH THE FINAL REPORT ORDER NO.G/249/13/C.Z 11 DATED 12/03/2013 ISSUED BY THE 2ND RESPONDENT.

EXHIBIT-P6-TRUE COPY OF THE STATEMENT DATED 15/04/2013 FILED BY THE PETITIONER BEFORE THE 3RD RESPONDENT.

EXHIBIT-P7-TRUE COPY OF THE REQUEST LETTER DATED 27/04/2013 GIVEN BY THE PETITIONER TO THE 3RD RESPONDENT.

EXHIBIT-P8-TRUE COPY OF THE ORDER IN W.P(C) 12126/2013.

EXHIBIT-P9-TRUE COPY OF THE REPORT DATED 21/05/2013 OF THE SUB INSPECTOR OF POLICE, MARADU POLICE STATION.

EXHIBIT-P10-TRUE COPY OF THE ORDER IN W.P(C) 5321/2013.

EXHIBIT-P11-TRUE COPY OF THE ORDER DATED 30/08/2013 OF THE 2ND RESPONDENT.

EXHIBIT-P12-TRUE COPY OF THE PETITION DATED 11/11/2013 FILED BY THE 6TH RESPONDENT SHOWING THE ORDER OF THE HONOURABLE MINISTER FOR TRANSPORT.

EXHIBIT-P13-TRUE COPY OF THE ORDER DATED 25/11/2013 OF THE 2ND RESPONDENT.

RESPONDENT'S EXHIBITS:

EXT.R3(a):A TRUE COPY OF THE ENQUIRY REPORT SUBMITTED BY THE DEPUTY TRANSPORT COMMISSIONER,CENTRAL ZONE II ALONG WITH THE LIST OF BMW VEHICLES FURNISHED BY THE RTO,ERNAKULAM.

EXT.R6(a):A TRUE COPY OF THE CEASE AND DESIST ORDER SERVED ON THE HOST OF WWW.BMWVIN.COM BY BMW INDIA PVT.LTD., DATED 21.3.2013.

WP(C).No.31043 of 2013 (E)

**EXT.R6(b):TRUE COPY OF THE LETTER DATED 31.1.2013 ADDRESSED BY THE
6TH RESPONDENT TO THE 5TH RESPONDENT.**

WP(C).No.31043 of 2013 (E)

**EXT.R6(c):TRUE COPY OF THE AFFIDAVIT DATED 19.2.2013 OF THE PETITIONER
SUBMITTED TO THE 4TH RESPONDENT.**

**EXT.R6(d):TRUE COPY OF THE REPLY DATED 27.3.2013 ADDRESSED TO THE 4TH
RESPONDENT BY THE PETITIONER.**

**EXT.R6(e):TRUE COPY OF THE LETTER DATED 21.8.2013 SUBMITTED BY THE
6TH RESPONDENT BEFORE THE 2ND RESPONDENT.**

**EXT.R6(f):TRUE COPY OF THE JUDGMENT OF THE HONOURABLE HIGH COURT
OF KERALA IN W.P(C) NO.5321/2013.**

**EXT.R6(g):TRUE COPY OF THE JUDGMENT DATED 22.5.2013 OF THIS
HONOURABLE COURT IN W.P(C) NO.12126/2013.**

**EXT.R6(h):TRUE COPY OF THE REPORT PUBLISHED IN THE NEW INDIAN
EXPRESS ON 16.10.2013.**

**EXT.R6(i):TRUE COPY OF THE NEWS REPORT PUBLISHED IN THE TIMES OF
INDIA NEWSPAPER ON 17.12.2013.**

//TRUE COPY//

P.S. TO JUDGE

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K. VINOD CHANDRAN, J

**W.P(C) Nos.31043 of 2013, 31964 of 2013,
5833 of 2014, 12439 of 2014 &
4765 of 2015**

Dated this the 27th day of February, 2015

J U D G M E N T

In these writ petitions, this Court is called upon to decide on the rival contentions of a dealer of high-end cars and the purchaser of one such vehicle. Allegations galore are raised by both parties, but the fact remains that the entire issue arises from the purchase of a BMW car by one Venkiteshwara Prabhu from M/s.Platino Classic Motors (India) Pvt. Ltd. The parties are referred to as the purchaser and the dealer, for convenience. Some of the above writ petitions are filed by the dealer and the others by the purchaser.

2. The allegations and counter allegations are to be examined, essentially on an overview of the

background facts. The purchaser, bought a BMW Motor car from the dealer in June 2012. The purchaser is also said to have used the car till December, when due to frequent problems and breakdowns, the purchaser returned the car to the dealer. On such return of the car, according to the purchaser, it was disclosed that there was a manipulation of the records and that the vehicle which was purchased as one manufactured in the year 2012, was actually manufactured in the year 2011. This is where the controversies arise.

3. The purchaser contends that the entire documents of the vehicle handed over to him revealed the year of manufacture as 2012, while the dealer asserts that except the vehicle data sheet, all the other documents showed the year of manufacture as 2011. While the purchaser alleges a

deliberate manipulative exercise to defraud the customer, the dealer concedes only a clerical mistake; claimed to be quite inadvertent. The learned counsel for the purchaser and the dealer have taken me through the various documents produced in the connected writ petitions to substantiate their respective case. In the context of the documents produced by each of the parties, revealing the year of manufacture, as 2011 and 2012, it may not be possible for this Court to arrive at a clear finding as to which are the actual documents relating to the vehicle; especially under Article 226. In any event, there are various proceedings pending before various forums wherein the grievance of the purchaser along with the allegation of fraud; are agitated. Hence, each of the writ petitions have to be noticed separately, since

the reliefs sought are vastly different. The documents noticed are those produced in the respective writ petitions.

4. The first writ petition in period of time is W.P(C) No.31043 of 2013. Therein the petitioner, the purchaser, challenged the endorsement made by the Minister for Electricity and Transport, in Ext.P12. The background facts of the purchase and return of vehicle, are as stated above. On the allegation of the dealer having passed-off the vehicle manufactured in the year 2011, as one manufactured in the year 2012, the petitioner approached the Transport Commissioner and the Deputy Transport Commissioner. There was a preliminary enquiry conducted and, interim reports by the Motor Vehicles Authorities are also produced. Eventually, the Transport Commissioner, by Ext.P11

order dated 30.08.2013 considered the rival contentions of both the parties and directed that a detailed enquiry, through the internal vigilance team, be conducted.

5. Against this, the dealer approached the Minister by Ext.P12, in which the Minister had noticed that the disputes on which the enquiry is proceeded with, are pending before various judicial forums and hence directed that the enquiry be kept in abeyance. Such endorsement was made on 11.11.2013 and the Transport Commissioner, on the basis of such endorsement made by the Minister, passed Ext.P13 order dated 25.11.2013, which was impugned in W.P(C) No.31043/2013. This Court, on 16.12.2013, stayed Ext.P13 order of the Transport Commissioner. It is the agreed position that enquiry has proceeded thereafter, the culmination of which,

will be noticed later on. In any event, the Minister's order was on the premise that there were proceedings pending before various judicial forums. That cannot be sustained since, an enquiry by the Transport authority is independent of such proceedings and would only look into whether there was any fraud played on the Department or the customers, with respect to the allegations raised by the petitioner and allegedly by certain other purchasers too. In view of the fact that the enquiry had proceeded thereafter, by virtue of the interim order, the above writ petition is only to be allowed, setting aside Ext.P13 and holding that the endorsement made in Ext.P12 is of no consequence.

W.P(C) No.31043/2013 would stand allowed.

6. W.P(C) No.31964/2013 is filed by the dealer, in which the prayer sought is similar to that

sought before the Minister, in Ext.P12, produced along with W.P(C) No.31043/2013. The contentions raised by the dealer in W.P(C)31964/2013 was that the interim reports produced as Exts.P9 and P10 would not commend an enquiry as ordered under Ext.P14 and that no such enquiry could be initiated or proceeded on the initiative of the purchaser. The authorities under the Motor Vehicles Act, 1988 could definitely invoke the provisions under the statute to conduct an enquiry into any violation of the Act and Rules, wherein fraud is detected, on the registration carried on, of vehicles sold. This could even be on a complaint by a purchaser. In any event, as is noticed herein above, the enquiry ordered by Ext.P14, which is produced as Ext.P11 in W.P(C) No.31043/2013 has proceeded with and culminated in certain actions. Hence **W.P(C)**

No.31964/2013 is dismissed as infructuous.

7. W.P(C) No.5833/2014 was again a writ petition filed by the purchaser seeking to quash certain adverse remarks against the purchaser in a report dated 30.01.2014 (produced as Ext.P9 therein). The purchaser also sought initiation of a vigilance enquiry in the matter. One other prayer was with respect to the initiation of action on the basis of Ext.P14, for cancellation of trade Certificate.

8. With respect to the prayer for vigilance enquiry, the Transport Commissioner already initiated an internal vigilance enquiry. As for the cancellation of trade certificate, it is to be noticed that the purchaser had filed an earlier writ petition, W.P(C) No.12126/2013, in which the first prayer sought was for suspending or cancelling the trade

certificate issued to the dealer. The petitioner had withdrawn the aforesaid writ petition, and no liberty was sought for or reserved. The learned counsel for the purchaser would contend that the said withdrawal was only in view of the 2nd prayer; which was for issuance of the copy of the report of the enquiry, having become infructuous, by reason of the report having subsequently been supplied to the purchaser. In that event, on withdrawal of the writ petition, the same should have been brought to the notice of the Court and liberty should have been sought to proceed with the other prayer. The dealer is also not made a party in the said earlier writ petition. In such circumstance, at the instance of the purchaser no cancellation of trade certificate can be effected, nor would the purchaser be an appropriate party in any proceedings initiated for

cancellation of trade certificate. That would be the exclusive premise of the department as provided under the Central Motor Vehicles Rules, 1989. The purchaser cannot also be permitted to again move for a similar prayer in a subsequent writ petition, when the identical prayer earlier sought was not pressed, and the writ petition specifically withdrawn.

9. What remains in the said writ petition is only the relief of expunging remarks in Ext.P9 report. The purchaser is aggrieved with the fact that, in the report, the purchaser is said to have colluded with the dealer in effecting registration of a vehicle of 2011 as one manufactured in the year 2012. The Purchaser also relies on the "Quick Verification Report" produced along with the impleading petition, filed in W.P(C)No.4765/2015 as

Ext.R4(d) to contend that the said report concludes that no case is made out against the purchaser.

10. In any event, it is admitted by both parties that an FIR has been registered with the dealer as the first accused and the purchaser as the second accused. The parties would be entitled to take appropriate proceedings, if so advised, against the registration of the FIR and also would be entitled to contest the same in the appropriate forum. In any event, this Court cannot, under Article 226, endeavor to expunge remarks in either of the said reports, which would result in validating the other report. This Court would not pre-empt the proceedings initiated under the Criminal Procedure Code, with an observation in a petition filed under Article 226. **W.P(C) No.5833/2014 is dismissed as unnecessary, leaving open the contentions**

of either parties to be agitated before the appropriate forum.

11. W.P(C) No.12439/2014, challenges suspension of the trade certificate, between 01.06.2014 to 30.06.2014. The dealer had filed the above writ petition initially against the order of the Transport Commissioner, produced at Ext.P9, wherein there was a direction to the Regional Transport Officer to suspend the trade certificate issued to the dealer. However, indicating that the period of suspension could be prescribed by the authority. This is the result of the internal vigilance enquiry conducted by the Department; initiated by the Transport Commissioner, on the complaint of the purchaser.

12. The cancellation of trade certificate, as per Rule 44 of the CMV Rules, is an authority

conferred on the Regional Transport Officer; who has the authority to issue the trade certificate. A denial of issuance or cancellation effected, is appealable before the Transport Commissioner, under Rule 45. The Transport Commissioner at best, could have placed the enquiry report before the RTO and directed him to consider the same. The clear dictate by the Head of the department, that too the appellate authority, vitiates the suspension made under Rule 44. The dealer was granted a stay of Ext.P9, issued by the Transport Commissioner on 16.05.2014. The Regional Transport Officer is said to have issued Ext.P11 order dated 05.05.2014, allegedly in contempt of the interim order of this Court. A Contempt of Court case is also said to have been filed. This Court would not speak on that at all. Suffice it to notice

that the suspension as per Ext.P11 is already over. There is absolutely no reason to keep the aforesaid writ petition pending. Ext.P9, which directed the RTO to cancel the trade certificate is found to be bad. Ext.P9 is hence set aside and the consequential order of the RTO under Rule 44 also would stand set aside. **W.P(C) 12439/2014 is allowed.**

13. The challenge in W.P(C) No.4765/2015 is to the order now passed by the RTO, produced at Ext.P5. The said writ petition has been filed by the dealer and the purchaser has sought for impleadment, which is opposed by the dealer. In the circumstance of the above writ petition being heard along with the other petitions, and disposed of by a common judgment, the purchaser shall also be impleaded as additional respondent in the above writ petition. The Registry shall carry out the

impleadment.

14. Ext.P5 is an order, refusing to renew the trade certificate. The order of the registering authority, specifically speaks of a direction from the Transport Commissioner to suspend the trade certificate issued to the dealer and the cancellation effected between 01.06.2014 to 30.06.2014, which has now been set aside in W.P(C)12439/14. The registering authority by Ext.P5 order finds that the Transport Commissioner's order was on the ground that the dealer is not a "bonafide dealer". The registering authority is said to have conducted a detailed enquiry through the Joint Regional Transport Authority, Thripunithura. The enquiry officer is said to have pointed out certain cases pending against the dealer and the specific allegation of fraud and mal-practice in selling the

BMW vehicle, of an earlier year; as manufactured in a subsequent year. The case filed by the Motor Vehicles Department is also noticed.

15. The authorised representative of the dealer also appeared and admitted the pending proceedings before the various judicial forums. However, it is to be immediately noticed that, pending proceedings cannot be a ground for renewal of trade certificate since, the CMV rules does not speak of a disability to seek renewal, on the ground of pending criminal proceedings against the dealer. The registering authority specifically refers to Rule 35 and affirms that the above facts would show that the dealer is not a “bonafide dealer” . The refusal is solely on the ground that the dealer is not a “bonafide dealer”, under Rule 35.

16. The learned counsel for the purchaser

would, in fact, assert that even now, there is no certificate from the manufacturer that the dealer is a “bonafide dealer” and that the certificate only refers to an “authorised dealership”. Such a contention is only to be noticed, to be rejected. By the employment of words “bonafide dealer” in Rule 35, what is intended is an authorised or approved dealership of the manufacturer. The words employed in the Rule need not be necessarily extracted by the manufacturer when issuing a certificate of authorisation. The language employed in a statute or statutory rule, cannot be treated as barren words incapable of any other expression. The result intended to be achieved, has to be examined in the background of the context. The concept intended, if possible of expression, by other words which have the same meaning; no insistence can be

made for use of identical words as employed in the statute.

17. The power conferred under Rule 44, is specifically to cancel the trade certificate, in the event of non-compliance of Rule 39 to 43. Rule 44 speaks of suspension or cancellation of the trade certificate and we are concerned with renewal. It would not be proper to find that violation of Rule 39 to 43 would, all the same, give a right to a dealer to seek for renewal; when suspension or cancellation can be effected on such violation. Hence, a renewal also has to be looked at, in the context of Rule 39 to 43 and that has not been done by the authority. The registering authority merely proceeded on the premise that the dealer is not a "bonafide dealer" under Rule 35. That finding cannot be sustained. Ext.P5 hence would stand set aside.

18. The registering authority would definitely be entitled to look into whether there is any violation of Rule 39 to 43. In this context, the learned counsel for the dealer specifically refers to Ext.R4(g) wherein the Motor Vehicles Inspector, the Enquiry Officer had submitted a report that the relevant provision of Rules 35, 40, 41, 42 & 43 of the CMV Rules are complied with by the dealer. The same is said to have been noticed in the "Quick Verification Report" produced as Ext.R4(b) also. In any event, that would be a matter to be considered by the appropriate authority. Ext.P5 would stand set aside. The renewal application shall be taken up and considered afresh within a period of one week from today. The registering authority shall consider the same independent of any directions by the Transport Commissioner. The earlier order

directing suspension also shall not be taken into account. **W.PC) 4765/2015 is allowed, with the above directions.**

W.P(C) Nos.31043/2013, 12439/2014 and 4765/2015 stands allowed, W.P(C)31964/2013 stand dismissed as infructuous. W.P(C)5833/2014 would stand dismissed reserving the contentions of either parties The parties shall bear their respective costs.

Sd/-
(K. VINOD CHANDRAN, JUDGE)

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P.A to Judge