IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE RAJA VIJAYARAGHAVAN V

WEDNESDAY, THE 18TH DAY OF NOVEMBER 2020 / 27TH KARTHIKA, 1942

WP(C).No.8635 OF 2020(D)

PETITIONER:

PRAVEESH
AGED 37 YEARS
S/O. RAGHAVAN,
ELAYILLATHOTTATHIL,
NOCHAD,
KOZHIKODE 683 614.

BY ADV. SRI.O.D.SIVADAS

RESPONDENT:

THE REGISTERING AUTHORITY
(JOINT REGIONAL TRANSPORT OFFICER),
SUB REGIONAL TRANSPORT OFFICER,
PERAMBRA,
KOZHIKODE 673 525.

SRI KP HARISH, SENIOR GOVERNMENT PLEADER

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 18.11.2020, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

JUDGMENT

The petitioner states that he has purchased a Tata Xenon Yodha ECO-BS IV CBC vehicle for the purpose of using it as a recovery van. The vehicle was purchased in the form of a Chassis and after construction of the body by an approved builder, the vehicle was presented for registration before the respondent along with Exhibit P3 application. The petitioner is also stated to have produced the documents issued by the approved builder. However, the respondent did not entertain his request. The petitioner was directed to produce a Type Approval Certificate along with the application for registration. The petitioner contends that the body was constructed by an approved builder and since the vehicle is not a transport vehicle, the compliance of bus body code is not required. It is in the afore circumstances, the petitioner has approached this Court seeking the following reliefs:

> "i. issue a Writ of mandamus or any other appropriate Writ order or direction commanding the respondent to entertain the application for registration submitted by the petitioner and register the vehicle as recovery van without insisting for the compliance of parameters of AIS – 050 (bus code)"

2. In the counter affidavit filed by the respondent it is stated that in Form No.21 which is produced along with the application issued by the dealer, the vehicle sold is a LMV, Goods carriage having GVW 2950 kg. As per the Type Approval Certificate issued in respect of the vehicle by the VRDE, the vehicle presented by the petitioner is classified as TATA XENON YODHA pick up BSIV, Category/Type – N1 Goods Vehicle, Seating capacity of 2 (including driver), Gross vehicle weight 2950 kg. It is stated that as the vehicle is not manufactured as a Recovery vehicle, the same cannot be altered in a manner where particulars of registration are at variance with those originally specified by the manufacturer. Alternatively, it is stated that as the vehicle seeking registration was originally designed and manufactured for constructing a goods carriage body on it and therefore, to get the same registered as a non-transport recovery vehicle, the prototype should be approved by the testing agency. It is further stated that under Section 44 of the Motor Vehicles Act inspection of the vehicle prior to registration is mandatory to ensure the compliance of physical features with that of prototype approval originally specified by the manufacturer. The vehicle in the instant case has not been produced for inspection. It is in the said circumstances that the respondent had directed the petitioner to produce the prototype approved under Rule 126 of the Central Motor Vehicle Rules.

The direction issued by the respondent is legal and proper and is not liable to be interfered with is the contention.

3. I have heard the submissions of Sri. O.D. Sivadas, the learned counsel appearing for the petitioner and Sri. K.P.Harish, the learned Senior Government Pleader.

4. In **Vinu Vincent v Additional Registering Authority and others** [2020 (3) KLT 547] , the question was with regard to the registration of a goods carriage vehicle as a tow truck and its classification as a non-transport vehicle. The learned Single Judge following the judgment of a Division Bench of this Court in **Hassan Koya v. Transport Commissioner** [2015 (1) KLT 916] rejected the contention of the petitioner. The matter was carried up in appeal and the Division Bench of this Court taking note of the observations of the Apex Court in **Regional Transport Officer v K. Jayachandra** [2019 (3) SCC 722] had held thus:

> **14.** We agree with the learned Single Judge that the subject matter is squarely covered by the judgment in *Hassan Koya*. In *Hassan Koya* the question raised and decided was whether the Registering Authority can register a vehicle certified by the manufacturer as a 'goods vehicle', as a 'non-transport vehicle', based on the use to which the owner of the vehicle intends to put it to. A batch of appeals arose for consideration, in

which the type of vehicles classified by the manufacturer and shown as 'Goods & Passenger vehicle, Normal Control' were sought to be registered as a non-transport vehicle while the classification as per the MV Act specifically included vehicles adapted for carriage of goods as transport vehicles. After adverting to the various definitions as found in the MV Act, the learned Division Bench held that if a motor vehicle is adapted for carriage of goods, it falls within the meaning of a goods carriage vehicle and would, hence, be a transport vehicle as defined under the Act. The certification issued by the manufacturer in accordance with the prototype approval obtained from the competent authority cannot be differed from and the Registering Authority has no discretion in the matter.

15. The Division Bench in *Hassan Koya* specifically observed that the Central Government has the power under Section 41(4) of the Act to specify by notification in the Official Gazette; the type of vehicle to be indicated in the Registration Certificate, having regard to the design, construction and use of motor vehicle and it was held that there is no such notification brought out by the Central Government. It is in this context we have to look at the notification relied on by the appellant. Identical Exhibit P11 and P12, produced in the writ petitions, is a notification issued under Section 41(4). It categorizes 'Tow Trucks, Breakdown Van and Recovery Vehicles' as 'non transport vehicles'. But, that is not to say that any vehicle, the prototype for which has been approved as a goods carriage, can be converted into a tow truck and used as such, being registered as a non-transport vehicle. The notification cannot run counter to the specifications in the statute. The power under Section 41(4) only enables the Central Government to prescribe, by notification, the other particulars required to be included in the Certificate of Registration and also specify the type of the motor vehicle. It cannot run counter to the definitions of the various categories of vehicles as provided under Section 2; nor can the prototype approval be differed from and a vehicle categorized as one type, registered as another. The definition of 'transport vehicle' includes a goods carriage vehicle and the

prototype approval specifically requires the body to be built on the chassis in accordance with the specification so as to load goods on the body built over the chassis. The vehicle cannot be altered or modified at the will of the purchaser/owner to adapt it for other use. *Hassan Koya* held that the use or intention cannot decide the particulars to be entered in the Registration Certificate.

16. The decision in a batch of writ petitions as seen at Exhibit R1(g) produced in the writ petition from which W.A. No. 685 of 2018 arises, is squarely on the point. Exhibit R1(g) judgment dealt with two types of vehicles, one having a seating capacity of two and the other having a seating capacity of 3; both with open platform on the rear over the chassis for carriage of goods. The very same notification produced as Exhibits P11 and P12 were referred to therein. It was contended that though the prototype classification is 'goods carriage truck', the registration has to be on the basis of the intention of the owner of the vehicle. The intention was projected to be use as a crane mounted vehicle/breakdown van/recovery van. Reliance was placed on *Hassan Koya* to find that the intention of the user is not a relevant aspect for registration. It was also held that sub-section (4) of Section 41 does not confer power on the Central Government to specify the type of vehicle on the intended use. The power is one enabling specification in accordance with the 'designed construction and use'. The use cannot deviate from the design and construction at the will of the purchaser/owner.

17. In both the afore-cited decisions of this Court the issue was on the question of registration of transport vehicle, as a non-transport vehicle, which issue was projected only on the lesser tax effect for the latter. There is yet another legal impediment in registering the appellant's vehicle as a 'non-transport vehicle'. As we noticed, the manufacturer has classified the vehicle as 'N1' category as per the CMVR Certificate and the type indicated is 'goods carrier'. This comes squarely within the definition under Rule 2(p) of the Central Motor Vehicles Rules, 1989, which reads as

follows:

"(p) 'Category N1' means a motor vehicle used for carriage of goods and having a Gross Vehicle Weight not exceeding 3.5 tonnes".

18. A goods carriage vehicle is a transport vehicle as per Section 2(47) of the M.V. Act.

19. In this case, what is projected is not only the question of registration as a transport vehicle, but the very denial of registration as a tow truck/recovery van as has been ordered by the Registering Authority. It has been held that the alteration made does not conform to the prescriptions of the MV Act and the prototype approval granted by the Automobile Research Association of India, as obtained by the manufacturer. In this context, the decision of the Hon'ble Supreme Court in *K. Jayachandra* assumes significance. The aforesaid judgment arose from a Division Bench judgment of this Court, authored by one of us [K. Vinod Chandran, J.]. The issue was with respect to registration of a vehicle, the chassis of which was purchased from the manufacturer and a body built on it as permissible under the MV Act and Rules. The challenge before this Court was against the Circular issued by the Transport Commissioner requiring the Regional Transport Authorities to deny registration to those vehicles constructed in violation of the Prototype Test Certificate and which are built not in strict compliance with the specifications given by the manufacturer. The Division Bench of this Court held that Rule 126 of the Central Rules does not fetter the power of the Regional Transport Authorities to exercise their discretion in terms of the Kerala Rules, in particular Rules 96, 103 and 261.

20. The Hon'ble Supreme Court reversed the decision of this Court, finding that the Division Bench had failed to give effect to the provisions contained in Section 52(1) of the MV Act and has laid emphasis on the Rules. The amendment made to Section 52 in the year 1994 was specifically referred to and it was held so in paragraph 29:

"29. The object and the clear intent of amended Section 52 is

that the vehicle cannot be so altered that the particulars contained in the certificate of registration are at variance with those "originally specified by the manufacturer". The manufacturer issues sale certificate in Form 21 which has been framed under Rule 47(1)(a) of the Central Rules. Rule 47(1)(a) is extracted hereunder:

"47. *Application for registration of motor vehicles*.—(1) An application for registration of a motor vehicle shall be made in Form 20 to the registering authority within a period of seven days from the date of taking delivery of such vehicle, excluding the period of journey and shall be accompanied by—

(a) sale certificate in Form 21;"

21. After extracting Form 20 and 21, it was authoritatively held so in paragraph 33 as herein below:

"33. The vehicle has to comply with the provisions of the Rules contained in Chapter V of the Central Rules as provided in Rule 92(1). Rule 92(1) has to be read as subservient to the provisions contained in Section 52 of the Act and what is prohibited therein to allow the same is not the intendment of the Rules contained in the Chapter. Various provisions in Chapter V are additional safeguards to what is prohibited in Section 52(1), that is to say, what has been specified originally by the manufacturers and once that has been entered in the particulars in the certificate of registration, cannot be varied. No vehicle can be altered so as to change original specification made by the manufacturer. Such particulars cannot be altered which have been specified by the manufacturer for the purpose of entry in the certificate of registration. It is provided in Rule 126 of the Central Rules, prototype of every type of vehicle is subject to test. The provisions of Rule 126 intend for fitness of vehicle to be plied on the road by

> the agencies which are specified therein. Approval and certification of motor vehicles for compliance to these rules shall be in accordance with the AIS:017-2000. Rule 93 deals with overall dimensions of the motor vehicles such as width, length, height, overhang, etc. No doubt about it that the vehicle has to be in conformity with the Rules also but Rules cannot be so interpreted so as to permit the alteration as prohibited under Section 52(1) of the Act. The alteration under the Rules is permissible except as prohibited by Section 52. The specification of the Rules would hold good with respect to the matters as not specifically covered under Section 52(1) and not specified therein by the manufacturer. The emphasis of Section 52(1) is not to vary the "original specifications by the manufacturer". Remaining particulars in a certificate of registration can be modified and changed and can be noted in the certificate of registration as provided in Sections 52(2), (3) and (5) and the Rules. Under Section 52(5), in case a person is holding a vehicle on a hire-purchase agreement, he shall not make any alteration except with the written consent of the original owner.
>
> [underlining by us for emphasis]

22. Hence, there could be no alteration made in variance to the original specification by the manufacturer. As was noticed, the vehicle has been designed and manufactured in accordance with the prototype, which permits carriage of goods in a platform or a suitable body constructed on the chassis of the vehicle behind the driver's compartment, which allows seating to two persons including the driver. The crane mounted vehicle, which is intended to carry a broken down vehicle, was not the intention for which the vehicle has been designed and constructed. The various aspects pointed out by the authority as we have noticed hereinabove, are perfectly in order and there could be no such alteration made from that available in the Prototype Test Certificate. The specifications of the manufacturer as available in the CMVR Certificate produced as Exhibit P2

> has been deviated from in making an alteration quite contrary to the design approved by the competent authority. We conclude that the alteration made would not enable registration as a non-transport vehicle and in addition, would result in the registration itself being declined, as has been rightly done by the authorities. We find absolutely no reason to interfere with the decision of the authorities, as affirmed by the impugned judgment.

5. I am of the considered opinion that the principles laid down in **Vinu Vincent** (supra) will apply on all fours in the instant case as well. As held above, there could be no alteration made in variance to the original specification by the manufacturer. The vehicle which is the subject matter of dispute is a 'N1' category vehicle which means that the vehicle has been designed and manufactured in accordance with the prototype, which permits carriage of goods in a platform or a suitable body constructed on the chassis of the vehicle behind the driver's compartment and which allows seating of two persons including the driver. The vehicle has not been designed as a recovery van or a tow truck and if an alteration is made contrary to the design approved by the competent authority and against the specification of the manufacturer available in the CMVR certificate, the same would be prohibited by Section 52 of the Act.

6. In that view of the matter, I find no reason to interfere with Ext.P4. This writ petition is disposed of directing the petitioner to comply

with the directions. If the petitioner produces the prototype test certificate enabling him to use the vehicle as a recovery van, the respondent shall take note of the directions in **Vinu Vincent** (supra) and act accordingly.

Sd/-

RAJA VIJAYARAGHAVAN V

JUDGE

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APPENDIX

PETITIONER'S EXHIBITS:

EXHIBIT P1	TRUE COPY OF THE SALE CERTIFICATE DATED 10.2.2020 ISSUED BY THE DEALER NAMELY POPULAR MEGA MOTORS (INDIA),PVT LTD.,
EXHIBIT P2	TRUE COPY OF THE TEMPORARY REGISTRATION CERTIFICATE ISSUED TO THE PETITIONERS VEHICLE ON 13.2.2020 BY THE PERAMBRA SRTO.
EXHIBIT P3	TRUE COPY OF THE APPLICATION FOR REGIMENTATION DATED 13.2.2020 SUBMITTED BY THE PETITIONER BEFORE THE RESPONDENT.
EXHIBIT P4	TRUE COPY OF THE PROCEEDINGS DATED 6.3.2020 ISSUED BY THE RESPONDENT.

RESPONDENTS EXHIBITS:NIL

//TRUE COPY//

P.A TO JUDGE