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Head Office,
Motor Vehicles Department,
Thiruvananthapuram,
Dated: 13.5.2002.

Circular No. 9/2-2

In pursuance of complaints by some Stage Carriage Operators the Hon'ble High Court of Kerala, in its common judgement dated 1.7.99 in O.P.No.17736/96 and connected O.Ps. emphasized the need to curb clandestine operation of Contract Carriages as Stage Carriages and has decried the tendency on the part of unauthorised officials to compound such offences.

The Court has directed that in case of detection of clandestine operation of vehicles the authorities have no power to compound and so the seizing authorities have to produce before the RTA/Magistrate who has the power to compound.

Any such clandestine operation would apart from causing embarrassment to the Stage Carriage Operators, involve violation of the provisions of the M.V.Act and Rules and loss of revenue to the Government. All officers of the Motor Vehicles Department are hereby directed to be vigilant so that such cases of violation may be detected and the violators of law brought to book promptly.

In this connection, the officers may also duly advert to the following legal aspects touching the matter.

Section 207 of the M.V.Act which relates to seizure of the vehicle does not empower the seizing authority to compound the offence in such cases. There is no other provision in the Act/Rules giving the seizing authority to compound the offence. Rule 351(2) of the KMV Rules prescribe the procedure to be adopted on seizure of a vehicle. As per this provision the seizing authority has to arrange for the custody of the vehicle and send a report to the authority authorised to release the vehicle. There is nothing in rule 351 also authorising the seizing authority to compound in such cases. Therefore, the seizing authorities have to produce the vehicle before the RTA/Magistrate concerned as observed by the Hon'ble High Court in the above said judgement.

Driving or allowing the use of a vehicle in contravention of the conditions of a permit relating to the purpose for which a vehicle may be used in an offence under section 192A. This offence is not compoundable since this section is not included in section 200 which specifies compoundable offences.

However, under Section 86 (5) suspension or cancellation of permit can be avoided if the holder of the permit pays a sum of money. But as is clear from Section 86(5) this power can be exercised only by the Transport Authority ie. STA/RTA and not by a Magistrate. Rule 186 of the KMV Rules prescribes the factors to be taken into account in determining the sum of money and other procedural matters

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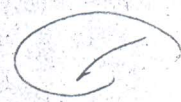
relating to the recovery of the sum. In case such suspension or cancellation of permit is to be avoided resort can be had to the said section 86 (5) read with rule 186 of the KMV Rules in appropriate cases.

In taking steps as indicated herein the officers of the Motor Vehicles Department shall strictly adhere to the above legal provisions.

Kes Ryan
TRANSPORT COMMISSIONER.

To

1. All DTCs, All RTOs, All Joint RTOs of Sub R.T. Offices for information and necessary action.
2. CA to TC, Secy. STA, Sr. DTC (Tax), All Section heads, SP and Spare.



S.A. 29.5.2002

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