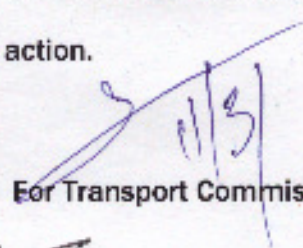
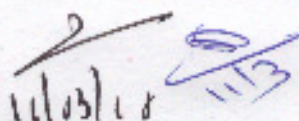


Endt No.C1/7989/TC/2014

Copy forwarded to all Deputy Transport Commissioners,
all Regional Transport Officers and all Joint Regional Transport
Officers for information necessary action.


For Transport Commissioner



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21/12/14 WB

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE THE AG.CHIEF JUSTICE MR.ASHOK BHUSHAN

&

THE HONOURABLE MR.JUSTICE A.M.SHAFFIQUE

WEDNESDAY, THE 17TH DAY OF DECEMBER 2014/26TH AGRAHAYANA, 1936

WA.No. 1856 of 2014 IN RP.821/2014

AGAINST THE ORDER IN RP 821/2014 of HIGH COURT OF KERALA DATED
11.11.2014 AND AGAINST THE JUDGMENT IN WP(C) 6893/2014 DATED
09.10.2014.

APPELLANTS/PETITIONERS :

-
1. KERALA BUS TRANSPORT ASSOCIATION,
REGN NO 710/2006, SALU COMPLEX
MISSION QUARTERS JUNCTION, T.B ROAD, THRISSUR-680 001
REPRESENTED BY ITS PRESIDENT JOHNSON PADAMADAN.
 2. T.P.ALI, AGED 43 YEARS
S/O.T.K.PAREEKUTTY, THEKKETHAMARACHALIL HOUSE
VADACODE P.O., KANGARAPPADY, ERNAKULAM DISTRICT
PIN-682 021.
 3. BALAKRISHNAN,
KUNNATH HOUSE, PAUL'S APARTMENT, ELAMAKKARA
PIN - 682 026.

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

RESPONDENTS/RESPONDENTS :

-
1. THE TRANSPORT COMMISSIONER,
TRANS TOWERS, TRANSPORT BHAVAN, VAZHUTHAKKAD
THIRUVANANTHAPURAM, PIN - 695 001.
 2. REGIONAL TRANSPORT OFFICER,
ERNAKULAM, PIN - 682 031.
 3. JOINT REGIONAL TRANSPORT OFFICER,
SUB REGIONAL TRANSPORT OFFICE
THRIPUNITHURA - 682 301.

BY SPL.GOVERNMENT PLEADER, SMT. GIRIJA GOPAL

THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON
17-12-2014, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

W.A.No.1856 of 2014

Dated this the 17th December, 2014

JUDGMENT

Shaffique, J.

Petitioners in the Writ Petition are the appellants herein. They filed the Writ Petition seeking for the following directions:

- "(i) Issue a writ of mandamus or any other appropriate writ or order restraining the respondents and their subordinates from insisting for use of Electronic Speed Governors only after effecting seal of the Motor vehicles Department citing the provisions of Rule 118 of the Central Motor Vehicle Rules.*
- (ii) Issue a writ of mandamus or any other appropriate writ or order restraining the respondents and their subordinates from harassing the Stage Carriage Operators invoking the conditions stipulated in Exhibit P10 circular issued by the 1st respondent against the provisions of Rule 118 of the Central Motor Vehicle Rules."*

2. The petitioners inter alia contended that by virtue of Sub-Rule (2) of Rule 118 of the Central Motor Vehicles Rules, transport vehicles, which are equipped with speed governors as specified in clause 3.4 of AIS:018/2001, which controls the speed of vehicles by an electronic control unit, does not require to be sealed. Despite such provision has been brought into force, the transport authorities are detaining vehicles and checking up the same for finding out whether there is any seal or not as per Exhibit P10 circular issued by the Transport Commissioner. As per Exhibit P10 circular, directions had been issued by the Transport Commissioner to all the transport authorities directing that they should ensure that speed governors used in the vehicles are sealed in terms of Rule 118(1) of the Central Motor Vehicles Rules, 1989. Exhibit P10 reads as under:

"Attention is invited to the above subject. All Regional Transport Officers and Joint Regional Transport Officers are directed to issue a Certificate of Sealing of speed governors at the

time of sealing by the department, as provided under Rule 118(1) of the Central Motor Vehicles Rules, 1989 in the format already specified by this office and the same shall be kept in the vehicle or shall be exhibited inside the vehicle in a conspicuous place.

It is found that such an exhibition is necessary for the effective and speedy verification of speed governor sealing by the department while checking. Otherwise there is possibility of delaying the passengers and service of the vehicle which have already sealed as the number of such vehicles will be large in number in due course. Keeping merely a register alone in the office will not be sufficient for this purpose. The certificate shall bear the seal and signature of the inspecting officers."

3. The learned Single Judge, having regard to the contentions raised by the petitioners, formed an opinion that requirement of sealing in respect of electric control speed governors as specified in clause 3.4 of AIS 018/2001 is dispensed with. However, the learned Single Judge observed that the said matter requires to be verified by the transport authorities. Merely for the reason that an

operator asserts that speed governor is fitted in the stage carriage, which has an electric control, that does not prevent the department officials from checking the same.

4. Reference was also made to the counter affidavit, in which it was stated that two instances were noticed during checking that the vehicles were not fitted with speed governor, which conforms to the standards as specified in Rule 118(2) of the Central Motor Vehicles Rules.

5. It is argued by learned counsel for the appellants that Rule 118(1) had underwent an amendment with effect from 1.4.2014, which was not taken into consideration by the learned Single Judge. Rule 118(1) and first proviso reads as under:

*"118. **Speed governor.**- (1) All types of transport vehicles notified by the Central Government under sub-section (4) of Section 41 of the Motor Vehicles Act, 1988 (59 of 1988) save as provided herein, and manufactured with effect from the 1st April, 2014 shall be equipped or fitted with a speed governor (speed limiting*

device or speed limiting function) with a maximum pre-set speed of 80 kilometer per hour by the vehicle manufacturer in the manufacturing stage or at the dealership stage, conforming to the Standard AIS:018/2001, as amended from time to time:

Provided that the transport vehicles registered prior to the date specified in sub-rule (1) and as may be notified by the State Governments in their Official Gazette, if not already fitted with a speed limiting device or speed limiting function, shall be equipped, or fitted by the operator of such transport vehicle with a speed governor or speed limiting function having maximum pre-set speed of 80 kilometer per hour, conforming to the Standard AIS:018/2001, as amended from time to time:"

6. There is no substantial difference between the earlier provision and the present amendment. The present amended proviso has been added inter alia indicating that the transport vehicles registered prior to the date specified in sub-rule (1) of Rule 118, i.e., 1st April, 2014 shall be, if not already fitted with a speed limiting device

or speed limiting function, having a maximum pre-set speed of 80 kilometer per hour, conforming to the Standard AIS:018/2001, as amended from time to time. In other words the proviso clearly indicates that the transport vehicles, which were not equipped with speed governor prior to 1.4.2014 shall also to be fitted with an electric device, which conforms to the Standard AIS:018/2001. The proviso to sub-rule (2) of Rule 118 indicates that the sealing is not required in respect of electronic speed governors as specified in clause 3.4 of AIS:018/2001. Whether the vehicle is fitted with a particular type of speed governor, is a matter to be verified. Sealing is not required only if the speed governors, conforms with the specification in clause 3.4 of AIS:018/2001. That particular specification alone does not require sealing. In respect of other speed governors, which is not included in clause 3.4 of AIS:018/2001, definitely sealing is a mandatory requirement. Under such circumstances, it is for the transport authority to verify

whether the speed governor as specified in clause 3.4 of AIS 018/2001 has been fitted to the vehicle as contended by the operators.

6. Under such circumstances, we do not find that the grievance projected by learned counsel for the appellants has any basis. However, if there is any independent case in which the authorities have exceeded their powers, it is always open for such operator to take up the matter before the superior officers or proceed in accordance with law.

We do not intend to interfere with the judgment of the learned Single Judge. The Writ Appeal is hence dismissed.

SAH
ASHOK BHUSHAN
ACTING CHIEF JUSTICE

SAH
A.M.SHAFFIQUE
JUDGE

vgs20/12/14

True copy

to be made