

"CR"

**K.SURENDRA MOHAN, J.**

=====  
WP(C).No.11644 & 12000 of 2012.  
=====

Dated this the 7<sup>th</sup> June, 2012.

**J U D G M E N T**

The questions raised in these writ petitions are identical and therefore, these writ petitions are heard and disposed of together.

2. The first petitioner in WP(C).No.11644/2012 is the Kerala Autorickshaw Drivers' Welfare Association, Pathanamthitta and the second petitioner an autorickshaw driver. The petitioners in WP(C).No.12000/2012 are the owner and driver of an autorickshaw. They have filed these writ petitions challenging the action of the Pathanamthitta Municipality in directing that for the grant of permit by the said authority, the front portion of the autorickshaws would have to be painted in cream yellow colour and the rest of the body in black. Only those autorickshaws so painted

**"CR"**

**K.SURENDRA MOHAN, J.**

=====  
WP(C).No.11644 & 12000 of 2012.  
=====

Dated this the 7<sup>th</sup> June, 2012.

**J U D G M E N T**

The questions raised in these writ petitions are identical and therefore, these writ petitions are heard and disposed of together.

2. The first petitioner in WP(C).No.11644/2012 is the Kerala Autorickshaw Drivers' Welfare Association, Pathanamthitta and the second petitioner an autorickshaw driver. The petitioners in WP(C).No.12000/2012 are the owner and driver of an autorickshaw. They have filed these writ petitions challenging the action of the Pathanamthitta Municipality in directing that for the grant of permit by the said authority, the front portion of the autorickshaws would have to be painted in cream yellow colour and the rest of the body in black. Only those autorickshaws so painted

would be granted permits to ply within the limits of the town. According to the counsel appearing for the petitioners in these writ petitions, the stipulation of the Municipality is in violation of Rule 295 of the Kerala Motor Vehicles Rules, 1989 ('the Kerala Rules' for short). It is contended that, as per Rule 295 of the Kerala Rules, only the hood of autorickshaws are to be painted in cream yellow colour and the rest of the body is to be painted in black. It is the contention of the counsel for the petitioners that the rule requires only painting of the front upper portion of the autorickshaws in cream yellow while the rest of the portion is to be painted in black. The Regional Transport Officer, Pathanamthitta has filed separate counter-affidavits in each of these writ petitions. Similar contentions are raised in both the cases. According to the counter-affidavit, the District Road Safety Council, Pathanamthitta at its meeting held on 22.6.2011 had decided to rearrange and relocate the Autorickshaw stands and decided to fix the maximum

number of autorickshaws to be accommodated in each stand. The Council had also decided that every autorickshaw to which the town permit is granted should compulsorily paint the whole front portion of the vehicle in cream yellow colour. According to the counter-affidavit, the said condition was insisted upon in view of the alarming number of illegal activities indulged in by unauthorised autorickshaws. It is for the purpose of identifying such unauthorised autorickshaws that the fresh requirements are insisted upon. Complaints regarding exorbitant charges extracted by the autorickshaw drivers are also referred to as a reason for the fresh restrictions imposed. Painting the autorickshaws in cream yellow is insisted upon for the further reason that the colour would be visible from long distances even during the night time. It is further contended that in Rule 295 (a) of the Kerala Rules it is insisted that the colour of the hood of all autorickshaws shall be painted in cream yellow and the rest of the body in

black. In addition to that, Section 74(2) (ix) and (xiii) of the Motor Vehicles Act, 1988 authorises the Regional Transport Authority to attach any condition to the permit issued to contract carriages. Therefore, it is contended that insistence on the condition of having the front portion of autorickshaws painted in cream yellow is within the powers of the authorities.

3. According to the counsel for the petitioners, as per Rule 295 of the Kerala Rules, only the 'hood' is required to be painted in cream yellow. Therefore, the insistence on having the entire front portion of an autorickshaw painted in the said colour is in excess of the power conferred on the authority. Reliance is also placed on the dictionary meaning of 'hood' to contend that the word refers only to the top portion of a vehicle, similar to the hood of an animal, like the hood of a snake or to the head dress of a human being. It is also contended that it is in the said sense that the word has been understood by all, as is evident from the practice

followed by the authorities throughout the State. It is for the said reason that autorickshaws all over the State are granted permits upon their painting the metal portion around their front windshield glass alone, in cream yellow. Since the practice followed all over the State has been on the basis of the common understanding of the law referred to above, it is contended that any understanding of the meaning of the word in deviation to the common understanding and practice is not only uncalled for but would also be unjustified. For the above reasons, it is contended that the present requirement insisted upon as per Ext.P3 in WP(C).No.11644/2012 is liable to be set aside. Ext.P3 is Ext.P9 in WP(C).No.12000/2012.

4. I have heard Adv.R.V.Sreejith, who appears for the petitioners in WP(C).No.11644/2012, Adv.C.V. Manuvilsan, who appears for the petitioners in WP(C). No.12000/2012, as well the learned Govt.Pleader at length. I have been taken through the records of the cases as well

as the dictionary meanings of the word 'hood' in different dictionaries. I have also considered the rival contentions anxiously.

5. The District Road Safety Council, Pathanamthitta has taken the following decision on 26.4.2012:-

"(D) The entire front portion of all Auto rickshaws shall be painted in cream yellow to ensure visibility from long distance, during night."

The question to be decided is, whether the above decision is violative of Rule 295 of the Kerala Rules? The relevant portion of Rule 295 necessary for the purpose of deciding the issue is extracted hereunder:

"295. Painting and marking of:- No motor cab shall be permitted to ply if it does not conform to the provisions of this rule -

(a) colour of the hood of all autorickshaws shall be painted in cream yellow and rest of the body in black."

6. The above rule provides that the colour of the hood of all autorickshaws shall be painted in cream yellow and rest of the body in black. It is contended that the

colour combination insisted upon by the above rule cannot be changed by the District Road Safety Council, who have no authority to amend the rules. According to the petitioners, the word 'hood' refers to the front top portion of an autorickshaw.

7. The word 'hood' is not defined either in the Motor Vehicles Act, 1988 or in the Rules. Therefore, it is the common literary meaning that has to be adopted in order to understand the meaning of the word. In the New Webster's Dictionary of the English Language-Deluxe Encyclopedic Edition, 1971, the meaning of hood is given as follows:

**"hood**, A soft covering of fabric for the head and neck; a cowl; anything that resembles a hood in form or in use, as the sepal or petal of some flowers or the crest distinguishing certain birds; an ornamental fold at the back of an academic gown or ecclesiastical robe; a **covering for mechanical parts, as the hood over an automobile's engine;** condition, state, or quality: used in combination; as motherhood, falsehood, hardihood; falconry, the cover for the hawk's head."

(emphasis supplied)



In the Concise Oxford Dictionary of Current English, Ninth Edition, the meaning of hood is as under:

**"hood**, a covering for the head and neck, whether part of a cloak etc, or separate. A separate hoodlike garment worn over a university gown or a surplice to indicate the wearer's degree. **a folding waterproof top of a motor car, pram, etc. the bonnet of a motor vehicle.** a canopy to protect users of machinery or to remove fumes etc. a hoodlike structure or marking on the head or neck of a cobra, seal, etc. a leather covering for a hawk's head. cover with a hood."

(emphasis supplied)

According to the Webster's Learners Dictionary, the meaning is as given below:-

**"hood**, a part of a coat or jacket that covers your head and neck a waterproof jacket with a hood. **US (UK bonnet) the metal part that covers a car engine."**

(emphasis supplied)

The meaning of the word 'hood' is given in identical terms in various other dictionaries also, that are referred to by the counsel.

8. The above meanings show that the word hood

assumes different shades of meaning depending on the context in which the word is used. Thus, it would refer to a soft covering of fabric for the head and neck, in relation to a human being. It would also refer to an ornamental fold at the back of an academic gown or an ecclesiastical robe. There cannot be any doubt that the meanings referred to above have no relation to the context in which the word is used in Rule 295. The word also refers to a covering for the mechanical parts, as the hood over an automobile engine. It is the above meaning that should apply to the context in which the word has been used in Rule 295 in relation to an autorickshaw. A similar meaning is found in each of the dictionaries referred to by the counsel. Therefore, it is clear that the commonly accepted meaning of the word, 'hood' in relation to a motor vehicle is, the covering of the engine of a car. The word 'hood' also refers to the soft, folding cover of the roof of a car. The said meaning can have no application to the present situation for the reason

that an autorickshaw does not have a folding roof though, some autorickshaws have soft, canvas roofing. As far as an autorickshaw is concerned, the engine of an autorickshaw is inside the body of the vehicle. The covering of its engine is the metallic front portion of the autorickshaw, vertically flat, with a portion thereof taken up by the glass windshield. It is only the metallic front portion extending around and below the windshield of an autorickshaw that is comparable to the hood of a motor car. Therefore, the decision taken by the District Road Safety Council, Pathanamthitta that the front portion of an autorickshaw should be painted in cream yellow is certainly within its authority. It cannot be said that insistence on the said condition is in violation of Rule 295 of the Rules. The condition insisted upon by the District Road Safety Council is therefore held to be in accordance with the stipulation contained in Rule 295.

9. It is contended by Adv.R.V.Sreejith, the counsel for the petitioners in WP(C).No.11644/2012 that nowhere in

the State of Kerala is it insisted that an autorickshaw should have the entire front portion painted in cream yellow. The reason for not insisting on the above stipulation in accordance with Rule 295 is not disclosed before me. The fact that Rule 295 was not being complied with is no reason to contend that the rule should be given a restricted interpretation. The Kerala Motor Vehicles Rules was enacted in the year 1989. The above stipulation was made applicable to autorickshaws in the year 1994 by an amendment to the Rules. If the requirement that the entire front portion of an autorickshaw be painted in cream yellow colour is not being insisted upon by the authorities, that is no reason to hold that the rule does not stipulate such a requirement. It has also been contended by the counsel that the word 'hood' refers to the bonnet of a car or a motor vehicle only in American English and therefore the said meaning cannot be accepted while interpreting Rule 295. It is to be noted that in the King's English, the word 'hood' is

not used at all and instead, it is the word 'bonnet' that is used. Since the rule maker has used the word 'hood' in Rule 295 which is the American English equivalent of the word 'bonnet' in relation to an automobile, the same can only be understood as meaning a bonnet.

10. Apart from the above, I am not satisfied that the petitioners are prejudiced in any manner by the insistence on the entire front portion of autorickshaws being painted in cream yellow colour. I do not find any grounds to grant the reliefs sought for by the petitioners in these writ petitions.

The Writ Petitions are therefore dismissed.

**K.SURENDRA MOHAN,**  
(Judge)

*Kvs/-*