

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MRS. JUSTICE ANU SIVARAMAN

TUESDAY, THE 22ND DAY OF MAY 2018 / 1ST JYAISHTA, 1940

WP(C).No. 212 of 2018

PETITIONER

SEBY SEBASTIAN,
S/O. SEBASTIAN, KONGAMALAYIL,
NJANDUPARA P.O., POOVARANI,
MEENACHIL TALUK,
KOTTAYAM DISTRICT.

BY ADVS. SRI.G.HARIHARAN
SRI.PRAVEEN.H.
SMT.K.S.SMITHA
SMT.JINU ANTONY
SRI.V.R.SANJEEV KUMAR

RESPONDENT(S) :

1. THE JOINT REGIONAL TRANSPORT OFFICER,
PALA - 686 575.
2. THE REGIONAL TRANSPORT OFFICER,
KOTTAYAM-686001.
3. THE TRANSPORT COMMISSIONER,
TRANS TOWERS, VAZHUTHACAUD,
THIRUVANANTHAPURAM-695014.

BY GOVERNMENT PLEADER SMT THUSHARA JAMES

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 23-03-2018,
THE COURT ON 22.05.2018 DELIVERED THE FOLLOWING:

K.V.

Enclth No: C3/e- 71813/TC/18 dated 10.09.18

*Copy furnished to H.D.T.C., RTO's and Jt.RTO's
for information and necessary action.*

Sr. Deputy Transport Commissioner.

*10/9
11/9/18*

ANU SIVARAMAN, J.

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W.P.(C).No.212 of 2018

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Dated this the 22nd day of May, 2018

JUDGMENT

1. Prayers in this writ petition are as follows:-

"i)Issue a writ of Certiorari or any other appropriate writ or order quashing Exhibit P6 order passed by the 1st respondent without hearing the petitioner and without affording him with an opportunity of being heard.

ii)Issue a writ of Mandamus or any other appropriate writ or order commanding the 1st respondent to the effect of the permanent registration of the vehicle mentioned in Exhibit P2 taking note of the payment of lump-sum tax payable for private vehicle for own use provided under the provisions of Kerala Motor Vehicles Taxation Act."

2. Heard Sri.G.Hariharan, the learned counsel for the petitioner and Dr.Thushara James, the learned Government Pleader appearing for the respondents.

3.The contention of the petitioner in the writ petition is as follows:

The petitioner herein has purchased a brand new (2017 model) Force Traveller vehicle bearing Engine No.D68001161 and chassis No.MC1E4FKA1JP007899 from M/s.Poomkudi Motors, Kottayam on 04.11.2017 to be used as a Private Service Vehicle for personal use. It was temporarily registered at the

Regional Transport Office Kottayam on 14.11.2017 as a light Motor Vehicle for personal use with temporary registration KL-5AN-TEMP-4868. The petitioner has paid a sum of Rs.1,32,827/- as lifetime tax for the period commencing from 14.11.17 to the 1st respondent by making online payment at the time of effecting temporary registration. However, when the petitioner produced the vehicle for permanent registration before the respondent on 14.11.2017, the 1st respondent refused to accept the request that the vehicle is to be registered as a private service vehicle or contract carriage. Hence this Writ Petition is filed. The learned counsel for the petitioner relied on the Bench decision of this Court in **Vishwanatha Menon v. Additional Registering Authority** [1998 KHC 330] and **Joint RTO, Alwaye v. Joshi** [1996 KHC 41] to contend that rate of tax is to be decided on the seating capacity of a vehicle and the reduction in number of seats will make no difference.

4. A detailed counter affidavit has been filed on behalf of the respondents. It is contended therein that Section 41 of the

Motor Vehicles Act prescribes the manner in which the motor vehicles are to be registered. It is stated that the Central Government has issued a notification dated 05.11.2004, whereby motor vehicles have been classified into transport vehicles and non-transport vehicles wherein omni bus is unambiguously classified as a transport vehicle. Section 2(29) of the Motor Vehicles Act defines an omni bus as "any motor vehicle constructed or adapted to carry more than six passengers excluding the driver". Transport vehicles including omni bus have to compulsorily obtain a permit for their operation as stipulated in Section 66 of the Motor Vehicles Act. Rule 117(1) of the Kerala Motor Vehicle Rules provides that a permit under Section 66(1) is necessary in case of any motor vehicle other than an omni bus for private use adapted to carry more than nine persons excluding the driver. It is stated that in the instant case the petitioner has purchased a 27 seated traveller vehicle. It is also stated that the vehicle can only be classified as a transport vehicle, since it is an omni bus. Even in case the petitioner contends that he does not intend to use the vehicle as a transport vehicle or for any public purpose or

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for carriage of persons for hire or reward, the petitioner is duty bound to convince the registering authority about the intended use of the vehicle. It is stated that though the petitioner has paid an amount of Rs.1,32,827/-, the same has not been credited into the account of the Motor Vehicles Department, since the tax paid is erroneous. It is stated that the petitioner is duty bound to pay the tax in respect of a public service vehicle, since he has not convinced the registering authority about his intended use of the vehicle.

5. I have considered the contentions advanced. Sec.2(29) of the Motor Vehicles Act, 1988 defines an omni bus. Sec.2(33) provides that "Private service vehicle means a motor vehicle constructed or adapted to carry more than six persons, excluding the driver and ordinarily used by or on behalf of the owner of such vehicle for the purpose of carrying persons for, or in connection with, his trade or business otherwise than for hire or reward but does not include a motor vehicle used for public purposes." Section 2(35) provides that "public service vehicle as means any motor vehicle used or adapted to be used for the

carriage of passengers for hire or reward, and includes a maxi cab, a motor cab, contract carriage and a stage carriage".

6. The schedule to The Kerala Motor Vehicles Taxation Act, 1976 provides for the tax to be paid on motor vehicles, including public service vehicles. Ext.P6 is the order passed by the Additional Registering Authority declining the request of the petitioner for registering the vehicle of the petitioner as a private service vehicle for personal use. The order specifically considers the contention of the petitioner that the vehicle was purchased solely for personal use of his family members. It is further stated that as per Rule 117, a permit under Section 66(1) is necessary in case of any motor vehicle other than an omni bus for private use adapted to carry more than 9 persons excluding the driver, unless specifically exempted by notification issued by the government. It is stated that the petitioner had not been able to convince the registering authority that the vehicle is intended only for the private use of his family members.

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7. On a consideration of the contentions raised by the learned counsel for the petitioner as well as the arguments advanced and the materials produced, I am of the opinion that the claim raised by the petitioner that the vehicle was intended only for his personal use and that of his family members has been specifically considered by the registering authority, but was found against. In the above factual situation, I am of the opinion that the decision rendered by the registering authority on an examination of the factual aspects of the matter cannot be found fault with. There is no patent illegality or perversity vitiating the order of the registering authority. It is only in case it is found that the vehicle is intended only for the private use of the registered owner that the vehicle can be directed to be registered as a private service vehicle. In the absence of such finding, I am of the opinion that the decision of the registering authority was proper and valid.

The writ petition fails and is accordingly dismissed.

Sd/-

Anu Sivaraman, Judge