

(1995) 08 KL CK 0054

High Court Of Kerala

Case No: O.P. No. 6990 of 1992

Saramma Philipose and Others

APPELLANT

Vs

R.T.O. Ernakulam

RESPONDENT

Date of Decision: Aug. 29, 1995

Acts Referred:

- Constitution of India, 1950 - Article 226
- Motor Vehicles Act, 1988 - Section 2(21), 2(26), 2(29), 41, 52

Citation: AIR 1996 Ker 44 : (1995) 3 ILR (Ker) 693

Hon'ble Judges: M.M. Pareed Pillay, C.J; P. Shanmugam, J

Bench: Division Bench

Advocate: P. Ravindran, K. Radhakrishnan, K.G. Anil Babu, G. Hariharan and P.M. Paulose, for the Appellant; Kurian Joseph), for the Respondent

Final Decision: Dismissed

Judgement

P. Shanmugam, J.

O.P. No. 6990/1992: The above Original Petition is filed praying for the issue of a writ of mandamus directing the 1st respondent to register the petitioner's vehicle Tata Mobile 207 as a Light Motor Vehicle/Passenger Vehicle. The facts stated in brief are that the petitioner purchased a Tata Mobile 207 pick-up van on 11.5.1992 and approached the 1st respondent to register the vehicle as a Light Motor Vehicle/Passenger vehicle. It is stated that the respondent informed the petitioner that the vehicle could be registered only as a goods vehicle for her own use. Contending that the petitioner is entitled to get the vehicle registered as a Passenger Vehicle, she filed the above O.P. Pending the O.P. the petitioner obtained an interim direction in C.M.P. No. 11643/92 dated 2.6.1992 to issue temporary registration to the petitioner's vehicle as Light Passenger Motor Vehicle, if it is produced before the R.T.O. after its body is built according to the required specifications. O.P. No. 14322/1994: The petitioner in O.P. No. 6990/92 has filed the above O.P. praying for the issue of a writ of certiorari to quash the condition

imposed in Ext. P3 order of the 1st respondent, which stated that the alteration of the vehicle as "Sedan" type has to be made without altering the seating capacity.

2. O.P. No. 6121/1995: The petitioner in O.P. No. 6990/92 has filed the above O.P. for a direction to direct the 1st respondent to receive tax for the vehicle at the rate of five seater vehicle. The above O.P. was directed to be posted before the Division Bench as similar matters were pending before the Division Bench.

3. W.A. No. 372/1995: The above appeal is filed by the Additional Registering Authority and the R.T.O., Ernakulam against the interim order passed in C.M.P. No. 25150/94 in O.P. No. 14322/94. By the interim order the learned Judge has directed the 1st respondent to allow reduction of seating capacity to the petitioner's vehicle KL-7/C 7791 pending disposal of the above O.P.

4. W.A. No. 627/1995: Petitioner is the appellant. The Original Petition was filed praying for the issue of a writ of mandamus directing the 1st respondent to effect alteration in the registration certificate of the petitioner's vehicle as "Tourer" type. The learned single Judge by Judgment dated 27.3.1995 directed the petitioner, to produce the vehicle with the altered body before the registering authority, who should inspect the vehicle and taking into consideration the nature of the body and the number of seats he should register the vehicle in the appropriate category in strict accordance with the definitions in the M.V. Act and the Rules. The appeal is directed against this judgment.

5. W.A. No. 681/1995: Petitioner is the appellant. The Original Petition was filed for a direction to register the petitioner's vehicle as a Light Passenger Motor Vehicle. The learned single Judge directed the registering authority to inspect the vehicle and then classify it as per the definitions given in the Motor Vehicles Act and the Rules and the circulars issued by the Government of India from time to time. The appeal is filed against this judgment.

6. From the facts set out above we find that the first three petitions are filed by the same petitioner and the subject-matter involved in all these matters relates to alteration of motor vehicles and interpretation of Section 52 of the Motor Vehicles Act (hereinafter referred to as the Act). The owners of the vehicles have purchased Tata Mobile 206 & 207. The Tata Mobile 207 range of vehicles are manufactured by M/s. Tata Engineering and Locomotive Co. Ltd. for two specific purposes such as goods carriages intended for carrying goods and passenger version for carrying passengers. The passenger version of "Tata Mobile 207" is designed and constructed with a cabin in the front portion for the driver and two passengers and with a passenger compartment in the rear which is suitable for passengers.

7. The technical specifications of 207 Tatamobile Passenger Version as set out in Annexure-I (c) states under the heading "Weights" the seating capacity as 11 including driver with bench seat and 10 including driver with bucket seat. Tatamobile - 207 with Cab & Body is classified as LCV chassis with cab & load body.

In the technical specifications as found in Annexure - I(b) under the heading "weights" it is stated as follows: "Max. Payload 1000".

8. The owners of the vehicles that we are concerned with who have purchased either Tatamobile - with Cab & Body or Tatamobile Passenger Version - 207 wanted to convert the 207 Tatamobile (Pick-up van) into that of Light Motor Car and the owners of 207 - Tatamobile Passenger Version wanted to reduce the seating capacity. As per the technical specifications it is clear, that 207-Tatamobile Passenger Version is intended to have seating capacity of 11 including driver or 10 including driver. Similarly Tatamobile - 207 (Pick-up van) is designed and constructed with a cabin for the driver and a separate load carrying open type body in the rear. The goods carriage version is marketing with the brand name as "Tatamobile 207 with cab and body" capable of carrying a maximum payload of 1000 kgs.

9. The owners of the vehicles have sought for alteration by invoking Section 52 of the Act. The said provision stipulates that the particulars contained in the certificate of registration shall not be altered without notice and prior approval of the registering authority. The particulars that are to be contained in the certificate of registration are found in Section 41 of the Act read with Rule 47 of the Central Motor Vehicles Rules. The relevant prescribed forms under the Rules viz. Form 20 and Form 23 call for particulars regarding the class of vehicle, type of body, maker's classification; seating capacity etc. The particulars that are thus contained in the certificate of registration, made as per Section 41 cannot be altered unless the registering authority approves for making such an alteration. Any order of approval of alteration, therefore, should take into account as to why the earlier specifications and approval as to the class of vehicle, type of body, maker's classification, seating capacity etc. are to be altered.

10. The contention of the owners of the vehicles is that Tatamobile 207 Passenger Version as well as Pick-up Van could be converted as Motor Car. Such a contention is untenable for more than one ground. "Motor car" has been defined u/s 2(26) of the Act, which is as follows:

"motor car" means any motor vehicle other than a transport vehicle, omnibus, road-roller, tractor, motor cycle or invalid carriage.

The category of vehicles which have been excluded like omnibus is defined u/s 2(29), which is as follows;

"omnibus" means any motor vehicle constructed or adapted to carry more than six persons excluding the driver.

As per this clause any motor vehicle constructed or adapted to carry more than six persons excluding the driver irrespective of the use will be an omnibus. In that view the vehicle in question cannot be a motor car since the vehicle had been

constructed or adapted to carry more than six persons. It is also pertinent to note that M/s. Telco Ltd. who are the manufacturers of Tatamobile 207 vehicles have not manufactured them as motor cars. Therefore, the conversion of these vehicles will basically alter the content and specification for which the vehicles were manufactured, certified and marketed, which will be against the provisions of the Act.

11. Further in M/s. Central Coal Fields Ltd. and Others Vs. State of Orissa and others, the Supreme Court considered the question of adaptability of the vehicles as follows:

The word "adapted" in the provision was read as "suitable" in Bolani Ores Ltd., by interpretation on the strength of the language in Entry 57, List II of the Constitution.

Assuming that alterations could be allowed, from the above decision it is clear that the vehicles in question which are suitable and are intended to be used as omnibus cannot be permitted to be converted into a motor car.

12. The contention of the owners of the vehicles to the effect that their vehicles which are registered as Light Motor Vehicles/Passenger Vehicles cannot mean that the vehicles could be registered as motor car as defined under the Act. "Light Motor Vehicle" as defined u/s 2(21) means a transport vehicle or omnibus. "Motor Car" as defined u/s 2(26) to mean any motor vehicle other than a transport vehicle, omnibus etc. Even, though the vehicles in question are classified as Light Motor Vehicles, they are used as transport vehicles or omnibus as in the case of similar categories of vehicles like Matador Van, Standard Van, Gipsy Van etc., The vehicle viz. Tatamobile 207 Passenger Version must have a seating capacity of minimum 10 or 11 and the vehicle has to be classified as an omnibus and it cannot be converted as a motor car with seating capacity of six. Similarly Tatamobile 207 with Cab & Body can be used only as a transport vehicle and it cannot be converted into a Sadan.

13. The Karnataka High Court in the decision in Bhakhavatsalam v. Asstt. Regional Transport Officer, Bangalore (AIR 1990 Kar 297) has taken the view that when a vehicle fits in with more than one description as provided under the statute, it is open to the authorities to choose any one of them which is most apt in the circumstances. The nature of the vehicle has to be considered when the party is seeking for reduction of the seating capacity by an application. When the authorities with reference to manufacturer's description of the vehicles find that they fit in with the relevant provisions of the statute classifying them as maxicabs with the seating capacity of more than six persons, the mere registration of the vehicle as omnibus in the Registration Certificate would not classify it as such and it would be considered as a maxicab only.

14. Therefore, it is for the authorities to take into account all the relevant factors set out above before classifying the vehicle as omnibus or transport vehicle. It is not open to the owners of the vehicles to convert the vehicles to suit their own

convenience.

15. The tax levied for a motor car per year is based on its unladen weight whereas the tax levied for an omnibus is based on the number of passengers that it can carry. The owners of the vehicles who have purchased their vehicle, as hight Motor Vehicle viz, omnibus or transport vehicle cannot be permitted to evade tax by converting their vehicle viz. omnibus or transport vehicle, cannot be permitted to evade tax by converting their vehicle into a motor car by reducing the seating capacity. The excise duty leviable on Tata LCV vehicles is as follows:

Tata Estate:	40.125%
Tata Sierra:	40.125%
207 Pick-up:	10.125%
207 Passenger:	10.125%
Seater	

The basic duty on Tatamobile Pick-up as well as passenger vehicles is the same that is applicable for commercial vehicles. In the case of motor cars the rate of basic excise duty is 40% of the net price of the vehicle. The difference in excise duty leviable on commercial as well as motor car vehicles will be about Rs. 95,000/- and above. Thus it could be seen that by converting their commercial vehicles into that of motor cars the owners are seeking to evade motor vehicle tax as well as excise duty.

16. This Court in *Muraleedharan Pillai v. R.T.O., Kollam* (1992(1) KLT 726) held that it is not the right of any owner of a vehicle to reduce seating capacity in any manner he likes and there is nothing wrong if the registering authority took into account the possibility of loss of revenue for the State as a consequence of slicing down the seating capacity.

17. The vehicles manufactured and suited to carry more passengers cannot be converted in such away to defeat its purpose. The precious oil resources for which India has to spend valuable foreign exchange cannot be permitted to be wasted. National resources spent on making larger vehicles will be under utilized if this conversion is permitted. In these days of need for small cars and fuel economy vehicles, the process cannot be permitted to be reversed by permitting bigger vehicles intended to carry more passengers, to carry less passengers. The contention on behalf of the state that the intention of these owners of vehicle are not bonafide and genuine has much force in this background.

18. Coming to the individual cases we find that Smt. Saramma Philipose has filed three original Petitions viz. O.P. Nos. 6990/92, 14322/94 & 6121/95. She had availed loan from the Kanayanur Co-operative Agricultural & Rural Development Bank Ltd.

for the purchase of the vehicle under the scheme "Loans for small Road Transport Operators Scheme" vide loan No. M/V/2/92. It is interesting to note that Smt. Saramma Philipose who purchased Tatamobile 207 pick-up van as goods carriage vehicle on 11-5-1992 for the purpose for which the loan was availed, filed the O.P. on the next day that, 12-5-1992 (corrected to 30th May 1992) with the prayer to register the vehicle as Light Motor Vehicle/Passenger Vehicle. She also obtained an interim direction in C.M.P. No. 11643/92 dated 2-6-1992 to register the vehicles as Light Passenger Motor Vehicle. Without disclosing any of these facts the petitioner filed O.P. No. 14322/94. In para 2 of the petition she had stated that "the vehicle was registered as a light passenger motor vehicle for the private use of the petitioner's family. The body of the vehicle was originally built as a "Tourer type" with canvas roofing on the rear side. Since the seating arrangements were uncomfortable the petitioner had decided to alter the vehicle into a sedan type vehicle with 2 bracket seats to be fixed in the front side and 3 seats in the rear side. The Statement proceeded as though the petitioner purchased the vehicle as a passenger motor vehicle and now she wants to convert it into a sedan type vehicle. The material and relevant particulars of taking of the loan for buying goods carriage vehicle and immediately filling of O.P. No. 6990 of 1992 to convert the vehicle into a passenger vehicle and the interim direction obtained in C.M.P. No. 11643/92 were conspicuously and deliberately suppressed in the petition viz. O.P. No. 14322/94 so as to mislead this court. This court was misled by these suppressions leading to the passing of the interim order of reduction of seating capacity. The successive application made by the petitioner would clearly go to show the mala fide intention of the petitioner. She had obtained a conversion of a transport goods vehicle into a passenger vehicle and later on obtained a conversion to reduce the seating capacity. Thus the petitioner has wilfully and deliberately suppressed the material facts in order to mislead this court. The petitioner also filed O.P. No. 6121 of 1995 for receiving the tax as if it is a 5 seater vehicle.

19. The Supreme Court has laid down that the petitioners who have approached the High Court by invoking Article 226 of the Constitution by suppressing the material may be awarded costs taking into the circumstances of the case. Besides the conduct of the petitioner is not only suppressing the material facts but also misleading this court to obtain interim orders. This has to be deprecated in the strongest terms possible. The Supreme Court in [Dr. Vijay Kumar Kathuria Vs. State of Haryana and Others](#), held that by the conduct of the petitioners they are disentitled from getting any relief or assistance from the Supreme Court. Similarly in [Maganlal Chaganlal \(P\) Ltd. Vs. Municipal Corporation of Greater Bombay and Others](#), the Supreme Court held that by being guilty of suppression of material fact the petition was not bonafide leading to award of cost. The Madras High Court in the decision reported in 1956(10 M.L.J. 324 has laid down the principle that the petitioner who approaches the court with misleading and suppressing materials is not entitled to any relief whatsoever.

20. The petitioner, Smt. Saramma Philipose in this case by obtaining interim orders has in effect obtained the main relief itself. Such granting of reliefs which will nullify the disposal of the O.P. has been strongly deprecated by the Supreme Court in the decision in [State of Uttar Pradesh and others Vs. Km. Ramona Perhar](#), in the following words:

Passing of interim order - more particularly of a mandatory nature - is neither a matter of course nor a matter of charity. The power to grant interim orders is coupled with the duty to consider all the relevant facts and legal principles relevant in that behalf.

Such a mandatory interim order ought not to have been granted to the petitioner. In these circumstances all the interim orders granted in favour of the petitioner Smt. Saramma Philipose have to be vacated and the Original Petitions have to be dismissed with cost of Rs. 5,000/-. We do so.

21. W.A. No. 372/95 filed by the Additional Registering Authority and the R.T.O., Ernakulam against the interim order in C.M.P. No. 25150/94 in O.P. No. 14322/94 is, therefore, allowed with cost. In W.A. Nos. 627 & 681 of 1995 the learned single Judge has only directed the Registering Authority to inspect the vehicle and taking into consideration the nature of the body and the number of seats, to register the vehicle in the appropriate category in strict accordance with the definitions in the M.V. Act and the Rules. In the light of the findings rendered by us, the judgment of the learned Judge is perfectly valid and the relief sought by the appellants cannot be granted. In the above circumstances the appeals are dismissed. However, no order as to cost.