

(2008) 10 KL CK 0007

In the High Court Of Kerala

Case No : O.P. No"s. 24281 of 1998 and 15782 of 2002

Alex Thomas

APPELLANT

Vs

State of Kerala and Others

RESPONDENT

Date of Decision : 24-10-2008

Acts Referred:

Kerala Motor Vehicles Rules, 1989 — Rule 304
Motor Vehicles Act, 1988 — Section 2(14)

Citation : (2008) 3 KLJ 690

Hon'ble Judges : K. Balakrishnan Nair, J

Bench : Single Bench

Advocate : H.B. Shenoy, B. Ashok Shenoy, Lakshmi B. Shenoy, Abu Mathew and M. Ajay, for the Appellant; Benjamin Paul, GP, for the Respondent

Judgement

K. Balakrishnan Nair, J.

O.P. No. 15782/2002

1. The petitioner is the owner of a motor vehicle bearing registration No. KL-08/U4329. It is a light good vehicle with a seating capacity of 5 including driver. The unladen weight of the vehicle is 1690 Kgs. It is a "Mahindra & Mahindra Utiliti" vehicle. Ext.P2 is the relevant page of the R.C. book of the vehicle and Ext.P3 is the photograph of that vehicle. Ext.P3 would show that in the front portion there are two seats for the driver and another. Behind that there are three seats with a separate door to them. Further behind, there is an open platform for carrying goods. The point that arises for decision in this writ petition is whether this is a goods vehicle and therefore it has to be painted as contemplated under Rule 304 of the Kerala Motor Vehicle Rules 1989. The relevant portion of Rule 304 reads as follows:

Painting: Every goods vehicle shall be painted in Highway yellow colour either fully or its front and rear portion in highway yellow colour.

2. The petitioner submits, his vehicle is not a goods vehicle in terms of Section

2(14) of the Motor Vehicles Act and therefore, the above Rule will not apply. Section 2(14) of the Act reads as follows:

Goods carriage means any motor vehicle constructed or adapted for use solely for the carriage of goods, or any other motor vehicle not so constructed or adapted when used for the carriage of goods.

(Emphasis supplied)

3. The petitioner submits, his vehicle is not constructed or adapted solely for using it as a goods carriage. He further submits that he is not using his vehicle as a goods-carriage, but only for carrying passengers. The petitioner points out that the respondents insisted that he should paint his vehicle according to Rule 304 for receiving the tax. Therefore, he has approached this Court, seeking appropriate reliefs. The petitioner submits, his vehicle need not be painted as per Rule 304, in view of the above facts stated by him.

4. I heard the learned Government Pleader for the respondents also. He submitted that the manufacturer of the vehicle is treating the vehicle as a light goods vehicle. Further, the vehicle cannot be treated as a motor car. So, it should come under the definition of "goods carriage" and therefore, the petitioner has to paint it according to Rule 304 of Kerala Motor Vehicle Rules.

5. It is not in dispute that the vehicle of the petitioner is not designed solely for carriage of goods. But, it may come under the second limb of the definition of "goods carriage", that is, a motor vehicle though not constructed or adapted solely for carriage of goods but used for carriage of goods. So, if the petitioner uses or intends to use the vehicle for carriage of goods, then he has to paint the same, as provided under Rule 304 of the Kerala Motor Vehicles Rules. The respondents can insist for such painting, if they find that the petitioner is using his vehicle as a goods carriage, though strictly it is not constructed or adapted solely for use as a goods carriage. But, if it is not used for carrying goods and it is used only for other purposes, there cannot be any insistence for painting the same in accordance with Rule 304.

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6. In view of the above position, the respondents can watch the user of the vehicle and if it is found that it is being used as a goods carriage, they can insist for painting the same as per the mandate of Rule 304.

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7. The point raised by the petitioner is covered by the judgment in O.P. No. 15782/2000. But, the petitioner points out that his vehicle has been registered provisionally, pursuant to the interim order of this Court. It is ordered that the said registration shall be treated as regular. But, whether it should be painted with highway yellow colour or not, will depend upon the user of the vehicle. The respondents can take appropriate action in this regard after watching the user of

the vehicle.

8. The original petitions are disposed of as above.