

(1998) 04 KL CK 0003

In the High Court Of Kerala

Case No : O.P. No's. 18437 and 18438 of 1996 and 4446 of 1997

B. Mohandas and

APPELLANT

Vs

Registering Authority, Regional Transport Office, Trichur etc.
etc.

RESPONDENT

Date of Decision : 06-04-1998

Acts Referred:

Motor Vehicles Act, 1988 — Section 52

Citation : AIR 1998 Ker 300 : (1999) 1 RCR(Civil) 271

Hon'ble Judges : S. Sankara Subban, J;K.S. Radhakrishnan, J;K.K. Usha, J

Bench : Full Bench

Advocate : V. Santharam and N.P. Samuel, for the Appellant; V.V. Asokan, Spl. Govt. Pleader (Taxes), for the Respondent

Final Decision : Dismissed

Judgement

Usha, J.—The question that is referred for consideration of the Full Bench in these cases relates to the jurisdiction of the registering authority u/s 52 of the Motor Vehicles Act in the matter of granting permission for alteration of a motor vehicle. In the order of reference passed by a learned single Judge in O.P. Nos. 18437 and 18438 of 1996, it was observed that there is apparent conflict between the Bench decisions of this Court on this issue. Learned single Judge further felt that whether loss of revenue can be a reason for denying permission for alteration" of the vehicle u/s 52 is also an important question. When the matter came up before a Bench, the petitions were referred for consideration of a Larger Bench on the ground that there are conflicting decisions on the issue. O.P. 4446/97 was also referred for consideration of the Larger Bench since the very same issue is raised in that petition also.

2. In O.P. Nos. 18437 and 18438 of 1996, petitioners are owners of contract carriages of Mahindra and Mahindra bearing registration Nos. KL-8/A.505 and KL-9/A.6559 respectively. KL-8/A. 505 was manufactured in the year 1990 having a seating capacity of 16 in all (including driver). The unladen weight of

the vehicle is 2030 Kg. and wheel base is 265 cms. Maker's classification is Mahindra FJ 470 DS4 2WD omni bus. As far as KL-9/A. 6559 is concerned, except that it was a vehicle manufactured in 1992, all other particulars are the same. Petitioners wanted to reduce the seating capacity from 16 to 12. Ext. P1 notice dt. 28-7-1995 and 28-8-1995 respectively were given by the petitioners as contemplated u/s 52 of the Motor Vehicles Act seeking permission to alter the vehicles. After some correspondence and inspection of the vehicle, registering authority issued Ext. P2 order dt. 4-9-1995 to the petitioner in O.P. 18437/97 rejecting the application for reduction of the seating capacity from 16 to 12. The reasons given are that the application for reduction of seating capacity was against law and if permission is granted, it would result in loss of revenue to the Government. Petitioner in O.P. 18438/96 was also given a reply which is produced as Ext. P2 dt. 21-9-1995. The application was rejected for the reasons that the purpose for which reduction in seating capacity is not specified in the application and that if permission is granted for reduction of seating capacity, Government will lose revenue considerably. Reference is made to a judgment of this Court in O.P. 3902/92 dt. 31-3-1992 to the effect that the owner has no right to reduce the seats of his vehicle in any manner he likes.

3. O.P. 4445/97 is filed by 15 petitioners. They are also owners of the vehicles having contract carriage permits. Except in the case of petitioners 3, 4, 5- and 15, vehicles owned by all the other petitioners had a seating capacity of 15 passengers. In the case of the above-mentioned petitioners, their vehicles had seating capacity of 16 passengers. Petitioners submitted applications for permission to alter the vehicles by reducing seating capacity to 12 passengers u/s 52 of the M.V. Act. Exts. P18 to P32 are the orders passed by the registering authority declining the request for modification. The reason given in all these orders was identical. Referring to a Bench decision of this Court in W.A. 694/94, (Joint Regional Transport Officer, Alwaye Vs. K.K. Joshi, the authority held that even if the number of seats are reduced, seating capacity of the vehicle will continue the same. Thus, in the, vehicles belonging to the petitioners, it would remain 16 and 15 as the case may be. But the authority was not inclined to accept the prayer for permission to reduce the number of seats for the reason that it would result in reduction of revenue. The vehicle having a seating capacity of 16 in all which is used as a contract carriage shall be taxed as per Entry 4 of schedule of K.M.V.T. Act, 1976. Thus, vehicle permitted to ply solely as contract carriage and to carry more than six passengers, but not more than 12 passengers, the tax shall be levied at the rate of Rs. 200/- per passenger for every quarter whereas vehicle permitted to carry more than 13 passengers, but not more than 20 passengers shall be levied at the rate of Rs. 350/- per passenger for every quarter. If the number of seats are permitted to be reduced from 15 or 16 to 12, there will be lose of revenue to the Government of Kerala. For this reason, the Regional Transport Officer took the view that petitioners are not to be granted permission to reduce the number of seats.

4. It is contended by the petitioners that in the light of the judgment of this

Court W.A. 832/96 copy of which is produced as Ext. P16 in O.P. 4446/97 (the above judgment is reported as. T.K. Radhamani Vs. Joint Regional Transport Officer, Mattancherry, the registering authority had made an endorsement in the registration book of many vehicles to the effect that the seating capacity of the vehicle is altered as 12. Ext. P33 is copy of such an endorsement made in the case of a contract carriage vehicle KL-8/B. 4797. A reference to Ext. P33 would show that the endorsement is made on the basis of an order in O.P. 12510/95 dt. 23-9 1995. Denial of similar treatment to the petitioners, it is contended, is arbitrary. According to the petitioners, it is open to the owners of contract carriage to reduce the number of seats and the Department cannot compel the owner of a contract carriage to carry a particular number of passengers. The State has no authority to deny permission to reduce the seating capacity for the reason that revenue of the State would be adversely affected. Rejection of the permission sought by the petitioners to reduce the number of seats would be violative of petitioners fundamental rights under Articles 14 and 19 (1)(g) of the Constitution.

5. A counter-affidavit has been filed by the State in O.P. 4446/97. It is contended therein that vehicles belonging to the petitioners are built with stereotype bodies with seating capacity of 16 in all as has been so designed by the manufacturers. Their applications were rejected by the Department since it was found that the motive behind those applications was lacking in bona fides. The attempt was to get an amendment in Entry No. 13 of the registration certificate with the ultimate object to seek reduction in the rate of tax with reference to the number of seats. It is also contended that the mere increase or decrease in the number of seats would not amount to alteration within the meaning of Section 52 of the M.V. Act, as was held by this Court in the judgment in Joint Regional Transport Officer, Alwaye Vs. K.K. Joshi, Seating capacity is different from actual number of seats. Seating capacity can be altered only by a suitable structural alteration. Such structural alteration requires prior permission from concerned regional transport authority. None of the petitioners had a case that they were making structural alteration which would come within the meaning of Section 52 of the M.V. Act as was clarified by this Court in the judgment in T.K. Radhamani Vs. Joint Regional Transport Officer, Mattancherry, . It is clear from the averments contained in the counter-affidavit that the stand taken by the respondent State is that in order to reduce the number of seats in a contract carriage vehicle of the nature owned by the petitioners, there is no necessity to seek permission u/s 52 of the M. V. Act, since reduction of number of seats would not amount to reduction in seating capacity as was originally entered in the registration certificate. At the same time, State has a further contention that by such reduction, the owners cannot be allowed to defeat the revenue.

6. As mentioned earlier, reference of all these cases to Larger Bench was necessitated in view of alleged conflict between Bench decisions of this Court. Before we go into those decisions, we will first refer to the relevant provisions of law. The relevant provisions of Section 52 of the Motor Vehicles Act, 1988 reads

as follows: "52. Alteration in motor vehicle:

(1) No owner of a motor vehicle shall so alter the vehicle that the particulars contained in the certificate of registration are no longer accurate, unless-

(a) he has given notice to the registering authority within whose jurisdiction he has the residence or the place of business where the vehicle is normally kept, as the case may be, of the alteration he proposes to make; and

(b) he has obtained the approval of that registering authority to make such alteration:

Provided that it shall not be necessary to obtain such approval for making any change in the unladen weight of the motor vehicle consequent on the addition or removal of fittings or accessories, if such change does not exceed two per cent of the weight entered in the certificate of registration.

(2) Where a registering authority receives a notice under Sub-section (1), it shall, within seven days of the receipt thereof, communicate, by post, to the owner of the vehicle its approval to the proposed alteration or otherwise:

Provided that where the owner of the motor vehicle has not received any such communication within the said period of seven days, the approval of such authority to the proposed alteration shall be deemed to have been given."

Rule 47 of the Central Motor Vehicles Rules, 1989 provides that application for registration of motor vehicles is to be made in Form 20 to the registering authority. There are several particulars to be given by the applicant under form No. 20 of which item 19 refers to seating capacity (including driver). Registration certificate that has to be issued as per the provisions of Rule 48 is to be in form No. 23. Item No. 13 among the particulars to be shown in the registration certificate is seating capacity (including driver).

7. Section 3 of the Kerala Motor Vehicles Taxation Act, 1976, which is the charging Section, provides that tax shall be levied on every motor vehicle used or kept for use in the State at the rate specified for such vehicle in the schedule. As mentioned earlier, petitioners' vehicles are all contract carriages. Entry 7 in the schedule to the Motor Vehicles Taxation Act, takes in motor vehicles plying for hire and used for transport of passengers and in respect of which permits have been issued under the M. V. Act, 1988. Category (i) takes in vehicles permitted to ply solely as contract carriages. The rate of tax differs on the basis of the number of passengers permitted to carry in the vehicle. The relevant portion of the entry reads as follows:

Sl. No.	Class of Vehicle	Rate of Quarterly Tax (in Rupees)
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1	2	3
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7.	Motor Vehicles plying for hire and used for transport of passengers and in respect of which permits have been issued under the Motor Vehicles Act, 1988,	
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(i) Vehicles permitted to ply solely as contract carriages and to carry,--

(a) Not more than two passengers Petrol driven 60.00

Diesel driven 60.00

(b) Three Passengers Petrol driven 120.00

Diesel driven 130.00

(c) More than 3 passengers but not more than 6 passengers except for
tourist motor cabs Petrol driven 240.00

Diesel driven 260.00

(d) More than 6 passengers but not more than 12 passengers for every
passenger. Petrol driven 260.00

Diesel driven 280.00

(e) Vehicles permitted to operate within the State. More than 12 passen-
gers but not more than 20 passengers, for every passenger 480.00

More than 20 passengers, for every passenger

680.00

(f) Vehicle operating Inter-State,-

More than 12 passengers, for every passenger

1400.00

(g) Tourist Motor Cabs Petrol driven 320.00

Diesel driven 40.00

XX XX XX

8. The above provisions would show that the rate of tax is related to the number of passengers permitted to be carried in the vehicle and not related to the seating capacity. Rule 143 of the Kerala Rules provides that the application for a permit shall be in the prescribed form. The form prescribed for application for permit in respect of a contract carriage to be regularly so used, shows that applicant has to give the particulars of the registration mark, type of the vehicle and seating capacity (excluding driver). Permits are to be issued as per the forms prescribed under Rule 144. In the permit in respect of a contract carriage to be issued under Rule 144(b) what has to be shown is the maximum passenger capacity.

9. Now, we will refer to the different decisions placed before us by both sides in support of their respective contentions. The first decision on this point in,

Muraleedharan Pillai v. R.T.O., Kollam (1992) 1 K LT 726. The vehicle involved in the above case was a stage carriage registered with a seating capacity of 58 initially. Its owner made an application for permission to reduce the seats to 39. Permission having been declined, he challenged the order before this Court. The reason given by the authority to reject his application was two-fold. Firstly, it was pointed out that number of seats provided in the vehicle is within the permissible limits specified in the Kerala Motor Vehicles Rules, 1989 and secondly, any further reduction in seating capacity will affect Government revenue. This Court considered the provisions contained under Rule 269 of Kerala Motor Vehicles Rules which provides for a minimum seating capacity of a stage carriage which is linked with the wheel base of the vehicle. Going by the above ratio, the minimum seating capacity of the vehicle in question should be 50. Learned Judge found that a reading of the Rules relating to the seating capacity of a stage carriage vehicle would indicate that it is not the right of any owner of a vehicle to reduce seating capacity in any manner he likes. It was open to the registering authority to consider whether there are good reasons for permitting owner of a particular vehicle to reduce seating capacity without crossing the limit of minimum seats. On merits, this Court found that petitioner had not given any reason that would justify reduction of the number of the seats. It was also held in this decision that there is nothing wrong if the registering authority took into account the possibility of loss of revenue of the State as a consequence of reducing the seating capacity.

10. In, Gopalakrishnan v. R.T.O. Alleppey (1997) 1 K LT 386, a Division Bench had occasion to consider the very same question, namely, an application filed by an owner of a stage carriage vehicle u/s 52 of the Act. When the stage carriage vehicle was originally registered on 15-5-1989 as per the then existing rules, there should be a minimum of 45 seats in the vehicle. The registered owner, with permission of the authority, had got it increased to 50 and was operating the vehicle. Later, he made an application u/s 52 to reduce the seats to 43. His application was rejected on the ground that there will be loss of revenue, if the seats are reduced and also that the reduction of seats would inconvenience the travelling public. The Division Bench, after referring to the decision in (1992) 1 KLT 726. (supra), took the view that reduction of revenue is a valid ground to reject the application for alteration of the vehicle. It also took the view that Section 52 of the Act does not give any right as such to registered owner to reduce the number of seats. On the facts of the above case, the Court found that the petitioner had been operating his vehicle with 50 seats all these years and no reason is given why he wanted to reduce the seating capacity from 50 to 43, For these reasons, the original petition was dismissed.

11. Except on the question whether an application for reducing seating capacity can be rejected on the ground that it will adversely affect the revenue, the above two decisions have no direct application to the cases before us. There are specific rules regarding the minimum number of seats to be made available in the stage carriage vehicle. But, no such provision is brought to our notice by either side in

the case of contract carriages like those owned by the petitioners before us. A later decision; *Laila Beegam v. Regional Transport Officer* (1998) 1 Ker 470 : 1998 AIHC 1919, also considered the question of alteration of seating capacity of a stage carriage vehicle and not a contract carriage vehicle like those owned by the petitioners herein.

12. Now, we will consider two Bench decisions of this Court where the meaning of the terms seating capacity was considered with reference to the provisions for registration of the motor vehicles as well as Section 52 of the M.V. Act. In, *Joint Regional Transport Officer, Alwaye Vs. K.K. Joshi*, petitioners who are owners of light motor vehicles Hindustan Diesel Truckers - applied for registration of their vehicles before the registering authority under the M.V. Act, 1988. The application was rejected for the reason that the applicants had shown seating capacity of their vehicles in their application as 7 which, according to the registering authority, was incorrect. It was not disputed that the vehicles concerned were designed by the Company as 9 seater vehicles. But, provision was made only for 7 seats in the vehicle and remaining space was left vacant. After referring to the provisions contained under Sections 41, 44 and 45 of the M.V. Act. 1988 and Rules 47 and 48 of the Central Motor Vehicles Rules, 1989 read with form No. 20 prescribed for application for registration, the Bench came to the conclusion that "seating capacity" of a vehicle is different from actual seats provided in that vehicle. The "seating capacity" would depend upon the design, horse power and unladen weight and other allied factors. Therefore, according to the learned Judge of the Bench, there will not be any change in the seating capacity even if the owner has provided only one seat in a vehicle having a seating capacity of 20. In the application for registration, what is required to be stated is not the actual seats provided in the vehicle, but the seating capacity. Under these circumstances, even though there was a mistake in the application submitted by the petitioners who had shown the number of seats provided in the vehicle, this Court directed the registering authority to issue registration certificate in respect of those vehicles showing the correct seating capacity of each vehicle.

13. In, *T.K. Radhamani Vs. Joint Regional Transport Officer, Mattancherry*, the question came up for consideration was whether reduction of certain number of seats in the case of motor vehicles which are classified as omni buses, mini buses, truckers or LMV light motor vehicles having seating capacity varying 9 to 10 including driver, would amount to alteration in motor vehicle coming u/s 52 of the M.V. Act, 1988. The vehicles with respect to which the Bench was concerned, were having bodies built by manufacturer with fixed seating capacity. The Bench took the view, after referring to the provisions of the Act and Rules, including Rule 103 of Kerala Motor Vehicles Rules, 1989 that the entry in Item No. 13 of the registration certificate relates only to seating capacity and not to the actual number of seats provided in the vehicle. Their Lordships took the view that sub-Clause (a) of Clause (2) of Rule 103 deals with structural alteration requiring change of particulars noted in registration certificate. Sub-clause (b) which deals

with re-arrangement of seats, can apply only to vehicles seating capacity of which has not been fixed by the manufacturer. The certificate has no relevance as far as vehicles manufactured with proto type having fixed seating capacity. Therefore, their Lordships came to the conclusion that alteration of the vehicle contemplated under the Rules, does not take in addition or reduction of seats in a vehicle having seating capacity fixed by the manufacturers. It was also held that if, by addition of seats, there is any change in the unladen weight of the motor vehicle exceeding it by 2% of the weight entered in the certificate of registration, permission u/s 52 would be required.

14. Yet another decision referred before us is, Smt. Saramma Philipose Vs. Regional Transport Officer, Ernakulam and Another, . We find that the above decision has no relevance to the issue raised before us, since what was considered therein was permission for alteration by converting TATA mobile 207 Passenger Version as well as pick-up van as motor car. Eventhough, there is a reference to the decision of this Court in, Muraleedharan Pillai v. R.T.O., Kollam (1992) 1 KLT 726, we do not find that this decision is an authority for the question raised in these cases.

15. In the reference order by the Division Bench in O.P. 4446/97, it was observed that Their Lordships were unable to agree with the view taken by another Division Bench in T.K. Radhamani Vs. Joint Regional Transport Officer, Mattancherry, In the detailed reference order by the learned single Judge in O.P. Nos. 18437 and 18438/96, it is observed that in the judgment in W.A. 1/96, a Bench of this Court had followed decisions in, Smt. Saramma Philipose Vs. Regional Transport Officer, Ernakulam and Another, . But, these decisions are not referred by the later Bench decision in T.K. Radhamani Vs. Joint Regional Transport Officer, Mattancherry, It was under these circumstances, learned single Judge took the view that there is conflict between Bench decisions which has to be solved by a Larger Bench. W.A. 1/96 and W.A. 31/96 were disposed of under the common judgment reported in T.K. Radhamani Vs. Joint Regional Transport Officer, Mattancherry,

16. On a close examination of the decisions referred above, we do not find any real conflict between the Bench decisions. The decisions in 19921 K LT 726, (1997) 1 K LT 386 and (1998) 1 KLT 470 : 1998 AIHC 1919 supra, considered cases where permission for alteration was sought for reducing the number of seats in respect of stage carriage vehicles. These stage carriage vehicles are not vehicles with readymade body built by manufacturers themselves. The minimum and maximum number of seats to be provided in stage carriages are regulated by the provisions contained under the Kerala Motor Vehicles Rules. In Smt. Saramma Philipose Vs. Regional Transport Officer, Ernakulam and Another, the question considered was entirely different. It related to alteration into a different type of vehicle. We do not find any conflict between the above Bench decisions and the decisions in Joint Regional Transport Officer, Alwaye Vs. K.K. Joshi, Both these decisions considered cases where owners of light motor vehicles with

manufactured bodies and fixed seating capacity designed by the manufacturer sought permission to reduce the number of seats. Their Lordships took the view that even if the number of seats are reduced in such cases, it will not change the built-in seating capacity of the vehicles and therefore the question of alteration of the particulars contained in the certificate of registration does not arise at all.

17. We are in full agreement with the above view. What has to be shown against item 19 in the application for registration of motor vehicle and what has to be mentioned as item 13 in the certificate of registration in form 23 is the "seating capacity" (including driver) and not the number of seats. It may be that in cases where the owner of the vehicle applies for permission to increase the number of seats in the type of vehicles with which we are concerned to more than seating capacity designed by the manufacturer, permission may be required, since, such increase in number of seats may require alteration in the structure of vehicle and the unladen weight of the motor vehicle may be increased exceeding 2% of the weight entered in the certificate of registration. In such cases, a change in the entry against item 14, namely, unladen weight in the certificate of registration, would be required. But, in cases before us, both sides have no contention that the petitioners had made a request for permission to increase the number of seats by making any structural alteration in the vehicle.

18. As mentioned earlier, in the reference order in O.P. 4446/97, the learned Judges of the Division Bench have observed that their Lordships were unable to agree with the view taken in T.K. Radhamani Vs. Joint Regional Transport Officer, Mattancherry, , but no reason is given in support of the above view. No decision of this Court is brought to our notice which has taken a different view from 1996 (1) K LT 196 ; Joint Regional Transport Officer, Alwaye Vs. K.K. Joshi, in the case of contract carriage vehicles. We I therefore affirm the view taken in the above decisions that as far as contract carriage vehicles with bodies manufactured by the manufacturers themselves and having a definite seating capacity as designed by the manufacturer, no permission is necessary u/s 52 of the M.V. Act, 1988 for reducing the number of seats as by such reduction, no alteration has to be made in the entry regarding seating capacity in the certificate of registration: Seating capacity in such cases would continue to be the same irrespective of the reduction in the number of actual seats.

19. The next question referred for our consideration is whether an application for altering the seating capacity u/s 52 of the M.V. Act, 1988 can be refused for the reason that it would adversely affect the interest of revenue. We are afraid that this question does not arise for consideration in the facts of this case. If no permission is necessary to reduce the number of seats in these type of vehicles as it would not amount to change in the seating capacity, the question of refusing a petition u/s 52 does not arise. As mentioned earlier, the tax liability for contract carriage vehicles Under Kerala Motor Vehicles Taxation Act is related to the number of passengers permitted to carry in the respective vehicles. The number of passengers permitted to carry will depend on the permit issued to the

particular vehicle. No argument was placed before us by either of the sides as to the number of passengers now permitted to carry in each of the vehicles, whether the permit holders have made applications for making modifications in the permit, what are the conditions to be satisfied for such change or modification in the permit and whether the authorities can refuse permission to modify the permit once granted only for the reason of consequential reduction in revenue. Since, no arguments had been addressed before us on this issue, as it does not arise in the facts of these cases, we decline to express any view on the above issue.

20. In O.P. Nos. 18437 and 18438/96, petitioners seek identical prayers. They seek to quash orders by which their application for permission to reduce number of seats from 16 to 12 was rejected. They also seek a direction to the respondent to endorse in the registration certificate of all the respective vehicles changed seating capacity from 16 to 12. There is also a prayer for a declaration that they are entitled to alter their seating capacity from 16 to 12 including the driver.

21. We find that there is no necessity to grant the first prayer to quash the order rejecting their application u/s 52 since, we have taken the view that reduction in number of seats will not amount to alteration which would require permission u/s 52 of the Motor Vehicles Act, 1988. Petitioners are not entitled to the second prayer, since, there is no alteration of the seating capacity by reducing the number of seats from 16 to 12 no endorsement can be made in the certificate of registration as required by the petitioners. Petitioners are not entitled to the third prayer also, since reduction in the number of seats from 16 to 12 will not amount to reduction of seating capacity.

22. In O.P. 4446/97, petitioners seek to quash orders by which their applications for change of seating capacity were rejected. There is also a prayer for a direction to the 1st respondent to make an endorsement in the registration of the vehicles of the petitioners to the effect that seating capacity of the vehicles was reduced to 12. Petitioners further seek a declaration that they are liable to pay tax for their contract carriages at the rate realisable for carrying 12 passengers in all. We hold that the petitioners are not entitled to the prayers 1 and 2 in the light of our finding that a mere reduction in number of seats would not amount to alteration requiring permission u/s 52 of the M.V. Act 1988 in the nature of the vehicles concerned. Petitioners are also not entitled to the declaration sought regarding tax liability. As mentioned earlier, tax liability is on the basis of number of passengers permitted to carry in the vehicle. No materials are available in these cases as to whether the petitioners had got their permits modified by reducing the number of passengers as 12. No arguments were also put forward before us on that basis. In the result, the original petitions are dismissed subject to the observations contained in the judgment that mere reduction in number of seats in these type of vehicles would not amount to alteration it does not change seating capacity requiring permission u/s 52 of the Motor Vehicles Act, 1988.