

(2016) 06 KL CK 0094
In the High Court Of Kerala
Case No : WP(C). No. 35755 of 2015 (T)

Hindustan Petroleum Corporation Ltd.	APPELLANT
Vs	
State of Kerala	RESPONDENT

Date of Decision : 29-06-2016

Acts Referred:

Central Motor Vehicles Rules, 1989 — Rule 134
Kerala Motor Vehicles Rules, 1989 — Rule 191

Citation : (2016) AIR(Kerala) 187 : (2016) 3 ILRKerala 583 : (2016) 3 KerLJ 216 : (2016) 3 KHC 693 : (2016) 3 KLT 183

Hon'ble Judges : Mr. Shaji P. Chaly, J.

Bench : Single Bench

Advocate : Sri. E.K. Nandakumar (Sr.), Sri. P. Gopinath, Sri. P. Benny Thomas, Sri. K. John Mathai, Sri. Joson Manavalan, Sri. Kuryan Thomas and Sri. M. Gopikrishnan Nambiar, Advocates, for the Appellant; Smt. K.A. Sanjeetha, Senior Government Pleader, for the Respo

Final Decision : Allowed

Judgement

Mr. Shaji P. Chaly, J.—;This writ petition is filed by the petitioner seeking to declare that petitioner's trade mark on Tank Trucks under contract with the petitioners, evident from Ext.P1 series of photographs does not amount to advertisement or exhibition of the advertisement as envisaged under Rule 191 of the Kerala Motor Vehicles Rules, 1989 [hereinafter called the "KMV Rules"] and also to quash Ext.P12 by which it was held that petitioner is liable to pay advertising charges as provided under Rule 191 of the KMV Rules, and for other related reliefs.

2. Shorn of unnecessary details, material facts for the disposal of the writ petition are thus:

3. Petitioner is a Public Sector Oil Marketing Company involved in refining and retail sale of petroleum products such as petrol, diesel, auto LPG, cooking LPG etc., which are commodities under the Essential Commodities Act, 1955.

Petitioner has set up a Terminal for storage and supply of petroleum products to retail outlets, at Irumpanam in Ernakulam District, which has commenced its operation in the year 2004. Petitioner has also a storage depot at Elathur, Calicut. From the Irumpanam Terminal and Elathur Depot, petroleum products including Aviation Turbine Fuel are transported to various retail outlets and other consumers through contracted Tank Trucks. Across India, these Tank Trucks are taken on exclusive contract through public tender and as per the terms of such tender, the Tank Trucks are supposed to have the HPCL trademark clearly advertised on the tank and cabin for distinguishing the petitioner's Tank Trucks from that of other Trucks on contract with other Oil Marketing Companies. That apart, it is contended that, such a system has been prevalent for several decades and more than 400 Tank Trucks are under contract with petitioner for transport and supply of petroleum products in the State of Kerala.

4. Therefore, it is the contention of the petitioner that, permanent advertising of the petitioner's trademark on Trucks exclusively transporting petroleum products is necessary to differentiate the Tankers with that of the other similarly operated companies. That apart, it is also contended that, such easily recognisable and visual differentiation is necessary for several reasons such as checking unfair practices like adulteration, pilferage etc. by the contractors apart from alerting the company in the event of any accident. Other contentions are raised to justify the writings made in the Tank Trucks to contend and canvass the proposition that, they are not advertisement but are requirements under law. That apart, it is also contended that, no manner of advertisement is done by incorporating such materials on the Tank Trucks. That, there is no element of advertising, since no writings are provided to attract consumers for the products of the company.

5. The issue started pursuant to Ext.P2 check report of Assistant Motor Vehicle Inspector, to which petitioner has submitted Ext.P3 dated 01.07.2014 and Ext.P4 dated 16.09.2014 to the State Minister concerned and the Transport Commissioner respectively. Anyhow, according to the petitioner, thereafter no action was further pursued based on Ext.P2. However, by Exts.P5 to P10 issued by Assistant Motor Vehicles Inspector, Regional Transport Office, Ernakulam and Sub R.T. Office, Tripunithura respectively, petitioner was directed to remit advertising charges as provided under Rule 191. It is in that background, petitioner has submitted a representation before the Transport Commissioner. The Transport Commissioner, after considering the representation submitted by the petitioner, issued Ext.P12 declining permission for displaying of unauthorised advertisement of any form in the vehicles for various purposes operated by the petitioner otherwise than as provided under Rule 191 of KMV Rules. It is thus aggrieved by Ext.P12, petitioner has filed this writ petition.

6. Heard learned Senior Counsel, Sri. E.K. Nandakumar appearing for the petitioner and Smt. K.A. Sanjeetha, learned Senior Government Pleader appearing for the respondents.

7. Since the subject involved in this writ petition is a pure question of law,

learned Senior Government Pleader has offered to argue the matter without filing a counter affidavit.

8. Learned Senior Counsel for the petitioner reiterated the contentions raised in the writ petition. The predominant contention raised by learned Senior Counsel is that, Rule 191 of the KMV Rules will not apply since there is no advertising done by the petitioner in the Tank Trucks, but the inscriptions are made on the Tank Trucks to meet with emergent and other situations in order to alert any officer of the company by the public. It is also contended that, by merely writing the name of the petitioner company on the Tank, there is no advertisement, especially due to the fact that the quality of product is not advertised in order to attract the public and inure benefit out of the same.

9. Learned Senior Counsel has also invited my attention to Rule 130(4) of Central Motor Vehicles Rules, 1989 [hereinafter called "the CMV Rules"], which read thus:

"130(4). Every goods carriage carrying any dangerous or hazardous goods shall display the class label both in the front and in the rear in a conspicuous manner".

There can be no dispute that the products carried by the petitioner are petroleum products, hazardous and highly inflammable in nature. True, the word "hazardous" is not described under the statute or under the Rules. But however, the general dictionary meaning of "hazardous goods", are goods which can create danger. Manner of advertising of class labels is provided under sub-rule (1) of Rule 130, which prescribes minimum size and angle so as to have projections and size for the writings. Rules 131 to 133 prescribe the responsibility of the consignor, transporter or owner of goods carriage and the driver respectively. That apart, Rule 134 of CMV Rules speaks of emergency information panel, which read thus:

"134. Emergency information panel.--(1) Every goods carriage used for transporting any dangerous or hazardous goods shall be legibly and conspicuously marked with an emergency information panel in each of the three places indicated in the Table below so that the emergency information panel faces to each side of the carriage and to its rear and such panel shall contain the following inform, namely:-

(i) the correct technical name of the dangerous hazardous goods in letters not less than 50 millimetres high;

(ii) the United Nations class number for the dangerous or hazardous goods as given in column 1, Table 1 appended with Rule 137, in numerals not less than 100 millimetres high;

(iii) the class label of the dangerous or hazardous goods of the size of not less than 250 millimetres square;

(iv) the name and telephone number of the emergency services to be contacted in the event of fire or any other accident in letters and numerals that are not less

than 50 millimetres high and the name and telephone number of the consignor of the dangerous or hazardous goods or of some other person from whom expert information and advice can be obtained concerning the measures that should be taken in the event of an emergency involving such goods.

(2) The information contained in sub-rule (1) shall also be displayed on the vehicle by means of a sticker relating to the particular dangerous or hazardous goods carried in that particular trip;

(3) Every class label and emergency information panel shall be marked on the goods carriage and shall be kept free and clean from obstructions at all times".

10. Therefore, taking cue from the said mandatory statutory stipulations, learned Senior Counsel contended that the writings contained on the Tank Trucks are statutory requirements which are bound to be followed by the petitioner and therefore the same cannot be treated as advertisement. Learned Senior Counsel has also invited my attention to the judgments of the Apex Court in "Municipal Corporation of Greater Bombay v. Bharat Petroleum Corporation Ltd." [(2002) 4 SCC 219] and "ICICI Bank and another v. Municipal Corporation of Greater Bombay and others" [(2005) 6 SCC 404] and canvassed the proposition that every inscription that contained or every material that is used may not be an "advertisement" so as to impose a fee on the same. In the above two decisions, the Apex Court was considering the question with respect to the tax imposed by Bombay Municipal Corporation for advertising materials.

11. Per contra, learned Senior Government Pleader has invited my attention specifically to Rule 191 of KMV Rules, which reads thus:

"191. Prohibition of advertisement or writing on vehicles:- No advertising device, figure or writing shall be exhibited on any transport vehicle save as may be specified by the State or Regional Transport Authority by general or specific order and on payment of a fee or Rs.10 per 100 centimetres square for a period of one year or part thereof for each vehicle: Provided that in respect of vehicles of the State Transport Undertaking the Government may allow such advertisements subject to the conditions that they may lay down from time to time in this regard". [As per S.R.O No. 803/2015, there is an amendment to Rule 191, which is not material for consideration of the question involved in this writ petition].

12. It is the specific contention of the learned Senior Government Pleader that under Rule 191, not only an advertising device but any figure or writing if exhibited on any transport vehicle, save as may be specified by the State or Regional Transport Authority by general or specific order, are liable to pay fee at the rate and area specified, for the period mentioned thereunder for each vehicle. Therefore, it is the specific contention of the learned Senior Government Pleader that, apart from the statutory requirements under the Central Motor Vehicles Rules, the name of the petitioner company is written in large bold letters inuring benefit to the petitioner company and thereby it renders the company to boost up its petroleum products. Therefore, whatever writings contained on the

Tank, is writing coming under Rule 191 of the KMV Rules, and accordingly the action initiated by the statutory authorities is in accordance with law. That apart, it is also contended that, Ext.P12 impugned order is not suffering from any vice of arbitrariness or illegality warranting interference of this Court in writ jurisdiction.

13. Having considered the rival submissions made across the Bar and perusal of the pleadings and documents on record, the predominant question to be considered in this case is whether the writings made in the Tank Trucks on contract to the petitioner, are liable to be imposed with fee as provided under Rule 191 of the KMV Rules. True, not only advertising device or figure, but writing exhibited shall also be liable for fee at the rate provided under Rule 191 of KMV Rules. In order to advert to the nature of advertising, I thought it proper to refer to the meaning provided to the word "advertisement" in Black's Law Dictionary, 9th Edition, which recognises various forms of advertising. They are as follows:

"advertising. 1. The action of drawing the public's attention to something to promote its sale.

2. The business of producing and circulating advertisements.

comparative advertising. Advertising that specifically compares the advertised brand with another brand of the same product.

competitive advertising. Advertising that contains little information about the advertised product, and that is used only to help a producer maintain a share of the market for that product.

informative advertising. Advertising that gives information about the suitability and quality of a product."

14. In my considered opinion, the writings contained on the Tank Trucks, evident from Ext.P1 series of photographs, will come under competitive advertising, which is containing only little information about the product and which is used only to help a producer to maintain a share of the market for that product. Therefore, by virtue of Rule 191 of KMV Rules, the writings contained in the Tank Trucks are liable to be imposed with fee as provided under the said Rules. It is more so, when the said rule provides incorporation of fee not only for advertisements, but for figures or writings also.

15. However, in my view, Rule 191 of the KMV Rules cannot be read independently and detached from Rule 134 of CMV Rules, which is extracted above. On a reading of Rule 134, it is categoric and clear that there are certain parameters and stipulations provided which are to be strictly and scrupulously followed, while transporting any dangerous or hazardous goods. On a thoughtful consideration of the provisions of Rule 134 of CMV Rules, it is clear that, a minimum standard is prescribed for the letters and class of labels, however no maximum standard is prescribed. According to the learned Senior Counsel for the

petitioner, the name of the company is written in large bold letters on the Tank Trucks in order to have the benefit of receiving information from the public in the event of any accident, danger, or other illegal transactions the driver or other staff of the vehicle indulges, like decanting fuel and causing adulteration etc. etc. On a reading of the entire provisions of the said rule, and specifically the requirements under clause (iii) of sub-rule (1) of the said rule, such informations are provided to tackle emergent situations.

16. Now the question is how to equilibrate the two provisions, Rule 191 of the KMV Rules and Rule 134 of the CMV Rules. Rule 191 of the KMV Rules is not intended to create a complete prohibition of advertising or writing on transport vehicles, but to impose fee for such advertising or writing and generate revenue from the same. Whereas, Rule 134 of the CMV Rules is incorporated for the purpose of securing safety standards for transport vehicles carrying dangerous or hazardous goods. While weighing the purport of the respective Rules, it can be seen that, one is a commercial venture intended to generate revenue for the State, while the other one is to ensure safety on public roads and thereby to protect the life and liberty of the public at large and the environment. Considering the said two statutory provisions, I am of the considered opinion that, the public safety and liberty should be given prominent and predominant consideration rather than generation of revenue by the State by imposing fee on writings made on such transport vehicles. That apart, when a transport vehicle carrying volatile, dangerous or hazardous goods, capable of causing explosion meets with any accident, there is every likelihood of highly risky and uncertain events taking place, which can ruin the life of human beings, and damages to the environment in unimaginable manner and irreparable dimensions. So also, when such accident occurs, people may not go near a hazardous vehicle and ascertain the details written on the Tank Trucks. Therefore, at least from a safe distance the name of the company written in large and bold letters, could be ascertained and inform the consignor, apart from informing other authorities like Fire Force, Police etc. etc.

17. That apart, Section 110(1)(I) of the Motor Vehicles Act enables only the Central Government to make Rules with respect to transportation of goods of dangerous or hazardous nature to human life. Therefore, Rule 191 of KMV Rules and Rule 134 of the CMV Rules when read juxtaposition and harmoniously, operate in different fields. But in the particular fact situation enumerated above, State rule has to concede to Rule 134 of CMV Rules. Similar is the situation under Rule 291 of the KMV Rules, whereby the educational institutions are stipulated to write name of the institutions conspicuously at the front, rear and left side body of the vehicle. There also, the intention is quick action by providing necessary information. Above are indicative factors to show that those transport vehicles are treated, a class apart, from other transport vehicles. Therefore, there is no repugnancy at all, also between Rules 191 of KMV Rules and 134 of the CMV Rules.

18. Taking into account the aforesaid fact situations and reckoning the legal circumstances, I am of the considered opinion that the writings contained in Tank Trucks operated by the petitioner by exhibiting its name in large and bold letters, even though has the characteristics of imposing with fee as prescribed under Rule 191, in view of the stipulations and prescriptions contained under Rule 134 of CMV Rules, are not liable to be imposed with fee for such writings made on the Tank Trucks.

19. Resultantly, petitioner is entitled to succeed, writ petition is accordingly allowed, holding that respondents are not empowered to impose fee on mere writing of name of the petitioner company on vehicles transporting hazardous goods. Therefore, I quash Ext.P12 order passed by the Transport Commissioner dated 08.10.2015 and consequentially the check reports as per Exts.P2 and P5 to P10. However, I make it clear that, if any inscriptions or writings are made on such transport vehicles inviting public attention for the products of the petitioner company, Rule 191 of KMV Rules will come into play.

20. The writ petition is allowed accordingly.