
(2001) 12 KL CK 0024
In the High Court Of Kerala
Case No : O.P. No. 515 of 1994

Jacob

APPELLANT

Vs

Regional Transport Officer

RESPONDENT

Date of Decision : 19-12-2001

Acts Referred:

Kerala Motor Vehicles Rules, 1989 — Rule 117
Motor Vehicles Act, 1988 — Section 66, 66(1), 66(3), 66(4)

Citation : (2002) 2 ILR (Ker) 310

Hon'ble Judges : K.K. Denesan, J

Bench : Single Bench

Advocate : K. Surendra Mohan and Issac Ninan, for the Appellant; Teresa Rani George, Government Pleader, for the Respondent

Judgement

K.K. Denesan, J.—Petitioner is the President and Chief Functionary of a Charitable Society registered under the Travancore-Cochin Literary Scientific and Charitable Societies Act, 1955. The Society was formed with the intention of helping the mentally and physically handicapped children. The Society engages itself in various activities aimed at improving the conditions of the handicapped. Since 1992, the Society is running a school for the handicapped at Panangad in Ernakulam District where specifically trained teachers and the staff members provided training and care to the mentally retarded with the intention of making them self supporting citizens. The Society picks up the students from their homes in the morning and takes them back to their homes after their classes. The service of the Society is provided to the children either free of cost or at very nominal charges. For the purpose of picking up the mentally retarded students from their homes and taking them back, the Society has a tempo traveller van, a 14 seater bearing registration No. KL-7/D 5902. The school van is used only for the purpose of conveying the mentally retarded children and staff of education centre from their respective homes to the school and back.

2. No counter affidavit has been filed by the respondents and the above

averments made in the Original Petition stand uncontroverted. I, therefore, find no reason not to accept the said facts as correct.

3. Petitioner submits that the school van was purchased in the year 1993. When the vehicle was taken to the 1st respondent's office for registering the same, he was informed by the authorities that it should be registered as "a private service vehicle". As instructed by them, he submitted the necessary application forms and the vehicle was registered as a "private service vehicle". Petitioner says that the registration as a private service vehicle was insisted upon by the authorities inspite of the petitioner informing them that the vehicle would be used only as a school van and that the society was a charitable organisation engaged in helping the handicapped. It is further said that School vans like that of the petitioner are registered under the category "Omnibus". But the petitioner was compelled to register the school van as a private service vehicle and the entire tax due on the vehicle upto 31.12.1994 was paid as directed by the 1st respondent's office.

4. According to the petitioner, vehicles, used by handicapped persons are exempt from payment of vehicle tax. When the petitioner approached the Joint R.T.O., Ernakulam, he was informed that he should take a permit for the vehicle and pay tax at the rate of Rs. 100/- per seat with effect from 1.4.1993. Petitioner immediately made a request to the 1st respondent by letter dated 1.12.1993 to change the category of registration of the school van from "private service vehicle" to an "Omnibus". His request, ie., Ext. P4 was supported by certificate dated 9.4.1992 of the Village Officer (Ext. P5), registration certificate evidencing its status as a charitable organisation and copy of the memorandum of association. When Ext. P4 was sought to be served personally on the 1st respondent, it was not received by the said authority. He told the petitioner that the application would be entertained only if the entire arrears of tax upto 31.12.1993 along with fine was paid by the petitioner.

5. It was under the above circumstances that the petitioner has approached this Court. One of the reliefs prayed for in the Original Petition is to strike down R. 117 of the Kerala Motor Vehicle Rules, 1989 as ultra vires the Motor Vehicles Act, 1988. The ground of attack is that R. 117 is ultra vires Section 66 of the Motor Vehicles Act. Petitioner prays for a direction to the 1st respondent to change the category of registration of the vehicle to "Omnibus" and to refund the tax already collected from the petitioner by wrongly classifying it as a private service vehicle.

6. I have heard Sri. K. Surendra Mohan, learned counsel for the petitioner and the learned Government Pleader for the respondents.

7. Rule 117 of the Kerala Motor Vehicles Rules, 1989 stipulates that every motor vehicles which is adapted to carry more than nine persons excluding the driver is liable to take out a permit unless specifically exempted by a notification issued by the Government. The said Rule is extracted below for easy reference:

"117. Necessity for permit:-

(1) A permit under sub-s. (1) of Section 66 of the Act shall be necessary in the case of any motor vehicle other than an omni-bus for private use adapted to carry more than nine persons excluding the driver referred to in Sub-section (4) of Section 66 of the Act unless specifically exempted by a notification issued by the Government.

(2) Exemption.- A permit under Sub-section (1) of Section 66 of the Act shall not be necessary to any transport vehicle used for the following public purposes:-

(a) for elections conducted by the Central or State Government or by any local authority commanded under the law for the time being in force;

(b) for partaking in any procession of national importance sponsored by the Government such as in connection with the Independence Day, the Republic Day, etc.;

(c) for the transport of personnel, luggage, camp equipments, provisions etc., of organisations such as National Volunteer Force, National Cadet Corps, Auxiliary Cardet Corps, Boy Scouts and Girl Guides under authorisation in writing issued by the Collector of the District or the Secretary of the concerned Regional Transport Authority or the Secretary, State Transport Authority;

(d) for propaganda work for the removal of untouchability by the Harijan Sevak Sangh;

(e) for motor vehicles on defence purposes on interstate routes, provided that the driver or any other person in charge of the vehicle, carries with him a certificate signed by a District Magistrate or Area Commanding Officer to the effect that the vehicle is used for defence purpose."

8. As per Section 66(1) of the Motor Vehicles Act, 1988 every owner of a transport vehicle has to take out a permit from the Regional or State Transport Authority or any other prescribed authority. However, Sub-section (3) thereof says that the provisions of Sub-section (1) shall not apply to certain classes of motor vehicles mentioned in (a) to (p) thereof. Section 66(3)(h) is relevant in the context of this case and is extracted below:

"(h) to any transport vehicle owned by, and used solely for the purpose of, any educational institution which is recognised by the Central or State Government or whose managing committee is society registered under the Societies Registration Act, 1860(21 of 1860) or under any law corresponding to that Act, in force in any part of India;"

Sub-section (4) of Section 66 says that subject to the provisions of Sub-section (3) Sub-section (1) shall, if the State Government by rule made u/s 96 so prescribes, apply to any motor vehicle adapted to carry more than nine persons excluding the driver. It shows that any rule made Sub-section (4) of Section 66 shall not go against Sub-section (3) of Section 66.

9. When Sub-section (1) of Section 66 mandates that every owner of a motor

vehicle shall use or permit the use of the vehicle as a transport vehicle in any public place only in accordance with the conditions of a permit granted by the competent authority prescribed by law, Sub-section (3) exempts certain categories of vehicles from the purview of Section 66(1). On such exempted category is a vehicle owned by and used solely for the purpose of, any educational institution which is recognised by the Central or State Government or whose managing committee is a society registered under the Societies Registration Act, 1860 or under any law corresponding to that Act in force in any part of India. Petitioner who is the owner of the school van satisfies the description shown in the above provision of law and going by the averments made in the Original Petition the said vehicle is solely used for the purposes of the educational institution whose managing committee is a society registered under the Travancore-Cochin Literary Scientific and Charitable Societies Act, 1955,. Though the petitioner's vehicle thus stands exempted by a provision in the Act from the requirement of a permit for using it as a transport vehicle, Rule 117 of the Kerala Motor Vehicles Rules exclude the said category of vehicle from the necessity to have a permit under the said rule. It is therefore, evident that there is a conflict between Sub-section (3) of Section 66 of the Act and Rule 117 of the Rules. Both these provisions insist on the necessity of permit. Law is trite that in cases where there is a conflict between a provision in the Act and a provision in the Rules, the former shall prevail over the latter. Since the petitioner is entitled to the exemption provided under Sub-section (3) of Section 66 of the Act, the said benefit cannot be taken away by the authorities by relying on a provision to the contrary contained in Rule 117 of the Motor Vehicles Rules. I therefore hold that the school van bearing registration No. KL-7/D 5902 owned by the petitioner shall stand exempted from the provisions of Section 66(1) of the Act by the operation of the exemption clause u/s 66(3)(h) of the Motor Vehicles Act. Since the petitioner is thus entitled to get the benefit of Section 66(3), that benefit cannot be denied by having recourse to R. 117 of the Motor Vehicles Rules which to the extent it operates against the provisions in the Act is ultra vires.

10. In the result, I direct the 1st respondent to grant the petitioner's vehicle the benefit available u/s 66(3)(h) of the Act as long as that vehicle satisfies the requirements mentioned in Section 66(3)(h) of the Act. It is declared that the petitioner shall be entitled to all consequential reliefs.