(2012) 02 KL CK 0194

In the High Court Of Kerala

Case No : Writ Petition (C) .No. 32721 of 2011

Jagan Thomas APPELLANT

Vs

State of Kerala and Others RESPONDENT

Date of Decision : 28-02-2012

Acts Referred:

Motor Vehicles Act, 1988 — Section 2(33), 2(47), 41

Citation : (2013) 1 ACC 186 : AIR 2012 Ker 154 : (2012) 2 KarLJ 363 : (2012) 2 KLJ 363

Hon'ble Judges : P.N. Ravindran, J

Bench : Single Bench

Advocate : C.S. Manu and S.K. Premraj, for the Appellant; P. Maya (GP), for the Respondent

Final Decision : Allowed

Judgement

P.N. Ravindran, J.—The petitioner, the proprietor of a bakery, purchased a tempo traveller with a seating capacity of 17 passengers excluding the driver, manufactured by Force Motors, from the dealer at Mylapra in Pathanamthitta District on 20-10-2011. In the sale certificate, a copy of which is produced as Ext.P1, the address of the buyer is given as "Jagan Thomas, S/o Thomas Eapen, Thomson Bakery, VII/357, Niranam P.O., Kadapara, Thiruvalla-689581" and the dealer had described the class of the vehicle as, light motor vehicle contract carrier. The petitioner applied for registration of the vehicle on 25-10-2011 and produced along with the application, the original of Ext.P1 sale certificate, Ext.P2 tax invoice evidencing payment of value added tax, Ext.P3 certificate of insurance and Ext.P4 letter wherein he had declared that he intends to use the vehicle for personal use and requested that the vehicle may be registered as a private service vehicle for personal use. The third respondent returned the original of Ext.P4 letter by making the following endorsement on the original of Ext.P4 letter. The endorsement reads as follows:

This vehicle is purchased in the name of Sri. Jagan Thomas, Thomson Bakery, Niranam, Thiruvalla. Hence, the application could not be entertained since the vehicle belongs to the proprietor of a business concern.

In this writ petition, the petitioner challenges the aforesaid endorsement on Ext.P4 letter and seeks a direction to the third respondent to receive back the application for registration and the accompanying documents on being represented and to register the vehicle mentioned in the application as a private service vehicle for personal use. The petitioner contends that the stand taken by the third respondent that as the vehicle belongs to the proprietor of a business concern, it cannot be registered as a private service vehicle for personal use, cannot be sustained in the light of the notification dated 5-11-2004 issued by the Central Government in exercise of the power conferred on it under sub-section (4) of section 41 of the Motor Vehicles Act, 1988. It is contended that the very same registering authority had registered similar vehicles manufactured by the very same manufacturer as private service vehicles for personal use or as omnibus for private use, but a different stand has been taken in the case of the petitioner. The petitioner relies on Exts.P5, P6 and P7 which contain the registration details of three identical motor vehicles in support of the said contention.

2. The third respondent has filed a counter affidavit dated 1-2-2012. In paragraph 4 thereof, it is stated that as the petitioner purchased the vehicle in the name of his firm "Jagan Thomas, Thomson Bakery, Building No. VII/357, Niranam P.O., Kadapara, Thiruvalla", it means that the owner of the vehicle maintains it for the purpose of carrying persons for or in connection with his trade or business otherwise than for his personal purpose and therefore, the petitioner''s vehicle can be registered only as a private service vehicle and classified as a transport vehicle with liability to pay motor vehicles tax at the rate applicable to transport vehicles. As regards, the petitioner''s contention that identical vehicles manufactured by the very same manufacturer have been registered either as an omnibus for private use or as a private service vehicle for personal use, it is contended with reference to the registration details of the said vehicles that the registered owners of those vehicles are individuals and not institutions or concerns and therefore, no reliance can be placed on Exts.P5 to P7 registration particulars.

3. The second respondent has filed a counter affidavit dated 22-2-2012, wherein, in paragraph 4, after referring to the notification dated 5-11-2004 issued by the Central Government, it is contended that as the vehicle in the instant case was purchased in the name of a company (business concern) with the intention to use the vehicle for business purposes, it can be registered only as a contract carriage or as a private service vehicle; and in both events, the vehicle should be treated as a transport vehicle for taxation purposes. In paragraph 9 it is contended that as the petitioner''s vehicle was purchased in the name of a business concern and it has a seating capacity of more than 6 passengers excluding the driver, it cannot be registered as a private service vehicle for

personal use.

4. I heard Sri. C.S. Manu, learned counsel appearing for the petitioner and Smt. S. Maya, learned Government Pleader appearing for the respondents. The main question that arises for consideration in the instant writ petition is whether the petitioner can rely on the notification dated 5-11-2004 issued by the Central Government under sub-section (4) of section 41 of the Motor Vehicles Act to contend for the position that he is entitled to have the vehicle registered as a private service vehicle for personal use. The respondents resist the petitioner''s claim on the ground that the vehicle belongs to the proprietor of a business concern and therefore it can be registered only as a private service vehicle and classified as a transport vehicle.

5. The term ''private service vehicle'' is defined in section 2(33) of the Motor Vehicles Act, 1988, as follows:

private service vehicle means a motor vehicle constructed or adapted to carry more than six persons excluding the driver and ordinarily used by or on behalf of the owner of such vehicle for the purpose of carrying persons for, or in connection with, his trade or business otherwise than for hire or reward but does not include a motor vehicle used for public purposes;

6. The term ''transport vehicle'' is defined in section 2(47) of the Motor Vehicles Act, 1988 as follows:

transport vehicle" means a public service vehicle, a goods carriage an educational institution bus or a private service vehicle;

Going by the aforesaid definitions, a private service vehicle is a vehicle constructed or adapted to carry more than six persons excluding the driver and ordinarily used by or on behalf of the owner of such vehicle for the purpose of carrying persons for, or in connection with his trade or business, otherwise than for hire or reward. Such a private service vehicle is also a transport vehicle as defined in the Act.

Sub-section (4) of section 41 of the Motor Vehicles Act, 1988 reads as follows:

(4) In addition to the particulars required to be included in the certificate of registration, it shall also specify the type of the motor vehicle, being a type as the Central Government may, having regard to the design construction and use of the motor vehicle, by notification in the Official Gazette, specify.

7. The Central Government have in exercise of the power conferred on it under sub-section (4) of section 41 of the Motor Vehicles Act, 1988 issued Ext.R2(a) notification dated 5-11-2004 which stipulates that a private service vehicle registered in the name of an individual, if declared to be used by him solely for personal use, can be specified as a non transport vehicle. Prior to the issuance of the notification dated 5-11-2004, the Central Government had issued a notification dated 19-6-1992 in which private service vehicles were specified as

transport vehicles. The notifications dated 19-6-1992 and 5-11-2004 are extracted below:

[S.O.451(E)], dated 19-6-1992:- In exercise of the powers conferred by sub section (4) of the Section 41 of the Motor Vehicles Act, 1988 (59 of 1988), and in supersession of the Notification dated the 12th June 1989, except or respects things done or omitted to be done before such supersession the Central Government hereby specified the types of Motor Vehicles mentioned in column 2 of the Table below as the type in respect of motor vehicles specified in corresponding entry in column 1 thereof for the purpose of sub section (4).

THE TABLE

Transport Vehicles

Non-Transport Vehicles

(1)

(2)

(i) Motor Cycle with side car for carrying goods

(i) Motor cycle with or without car for personal use

(ii) Motor Cycle with trailer to carry goods

(ii) Motor Cycle with trailer to carry personal effects

(iii) Motor Cycle used for hire to carry one passenger on pillon and trucks/ tankers/mail cycle rickshaw for goods/passengers on hire.

(iii) Mopeds and motorized cycles Engine capacity exceeding 35CC)

(iv) Motor Cab and Luxury cabs

(iv) Invalid carriage

(v) Goods carrier trucks/tankers/mail carriers

(v) Three wheeled vehicles tor personal use

(vi) Trailers

(vi) Motor Car

(vii) Maxi cab.

(vii) Fork lift

(viii) Stage carriers

(viii) Vehicles / trailers fitted with equipments like Rig, generator compressor.

(ix) Contract carriages and tourist vehicles

(ix) Crane mounted vehicle

(x) Three wheeled vehicles for transport of passenger/goods

(x) Tractor

(xi) Mobile clinic/X-Ray van/Library vans

(xi) Trailers to carry personal effects

(xii) Private Service Vehicle vehicles

(xii) Tower wagons and tree trimming

(xiii) Educational Institution buses

(xiii) Tow trucks Breakdown Van Recovery Vehicles

(xiv) Ambulances

(xv) Mobile Canteens

(xvi) Cash Vans

(xvii) Articulated Vehicles

(xviii) Camper Vans

(xix) Animal ambulances

(xx) Hearses

(xxi) Mobile workshops

(xxii) Fire tenders,snorked ladders, auxiliary trailers and fire fighting vehicles.

(xxiii) Omnibus

(xxiv) Dumper/Excavator)

a) Ambulance means vehicle specifically designed, constructed or modified and equipped and intended to be used for emergency transportation of person who are sick, injured, wounded or otherwise incapacitated.

b) Animal ambulance" means intended to be used for the emergency transportation of sick, injured wounded or otherwise incapacitated animal.

c) "Campers Van" means motor vehicles designed or constructed to provide living quarters for recreational camping or travel use with direct walk through access to the living quarters from the driver''s seat.

d) "Camping Trailer" means a trailer not used for transport of goods, constructed with partial side walls which folds for towing and unfolds to provide temporary living accommodation for recreational camping and tourist purposes.

[S.O.1248(E), dated 5th November 2004.-In exercise of the powers conferred by sub-section (4) of section 41 of the Motor vehicles Act, 1988 (59 of 1988) and in supersession of the notification of the Government of India in the erstwhile Ministry of Surface Transport No.S.O 451(E), dated the 19th June, 1992, the Central Government hereby specifies the types of motor vehicles as mentioned in columns 1 and 2 of the Table below for the purpose of said sub-section (4).

THE TABLE

Transport Vehicles

Non-Transport Vehicles

(i)

Motor Cycle with side car for for carrying goods

(i) Motor cycle with or without car personal use

(ii)

Motor Cycle with trailer to carry goods

(ii) Mopeds and motorized cycles (Engine capacity exceeding 25CC)

(iii)

Motor Cycle used for hire to carry one passenger on pillon and motorized cycle rickshaw for goods or passengers on hire.

(iii) Invalid carriage

(iv)

Luxury cabs

(iv) The wheeled vehicles for personal use

(v)

Three wheeled vehicles for transport of passengers/goods

(v) Motor Car

(vi)

Goods carrier trucks or tankers or mail carriers (N1-N3 category)

(vi) Fork lift

(vii)

Power tillers and Tractors using public roads

(vii) Vehicles or trailers fitted with equipments like rig, generator compressor.

(viii)

Mobile clinic or X-Ray van or library vans

(viii) Crane mounted vehicle

(ix)

Mobile work-shops

(ix) Agricultural tractor and power tiller

(x)

Mobile canteens

(x) Private service vehicle, registered in the name of an individual and if declared to be used by him solely for personal use

(xi)

Private Service Vehicle

(xi) Camper van or trailer for private use.

(xii)

Public Service Vehicle such as maxi-cab, motor cab, stage carriage and contract carriage including tourist vehicles

(xii) Tow trucks Breakdown Van and Recovery Vehicles

(xiii)

Educational Institution Buses

(xiii) Tower wagons and tree trimming vehicles owned by Central, State and local authorities.

(xiv)

Ambulances

(xiv) Construction Equipment Vehicles as defined in rule 2 (ca)*

(xv)

Animal ambulances

(xvi)

Camper Vans or trailers

(xvii) Cash Vans

(xviii) Fire tenders,snorked ladders, auxiliary trailers and fire fighting vehicles.

(xix) Articulated vehicles.

(xx) Hearses

(xxi) Omnibus+

a) "Ambulance means vehicle specifically designed, constructed or modified and equipped and intended to be used for emergency transportation of persons who are sick, injured, wounded or otherwise incapacitated.

b) "Animal ambulance" means a motor vehicle intended to be used for the emergency transportation of sick, injured wounded or otherwise incapacitated animals.

c) "Camper Van" means a special purpose MI category vehicle constructed to include living accommodation which contains at least the following equipment:

-Seats and table

-Sleeping accommodation which may be converted for the seats.

-Cooking facilities, and

-Storage facilities

This equipment shall be rigidly fixed to the living compartment; however, the table may be designed to be easily removable,

+(d) The "Omnibus" has been kept in the category of transport vehicle with a view to bringing it under the purview of fitness regime as it is exhaustively used on road. However, the taxes to be levied on such vehicle would fall within the jurisdiction of State Governments.

*(e) Under rule 2(ca), use of public road by Construction Equipment Vehicle is incidental to the main off-road function. However, when the public road is being used regularly for carrying on commercial activities, then Construction Equipment Vehicles such as dumpers and excavators being used for such activities, shall be deemed as transport vehicles.

8. It is evident from the notification dated 5-11-2004, that a private service vehicle as defined in section 2(33) of the Motor Vehicles Act registered in the name of an individual can be used for private purposes unconnected with the business or trade of the owner of such vehicle. Therefore, a business man who purchases a motor vehicle which answers the definition of the term "private service vehicle" can have the vehicle specified as a private service vehicle for personal use, if it is registered in his name and he gives a declaration to the effect that the vehicle is intended to be used by him solely for personal use. The petitioner had given such a declaration by filing Ext.P4 application along with the application for registration. However, the third respondent did not entertain the application on the short ground that the vehicle belongs to the proprietor of a business concern. In my opinion, the stand taken by the respondents cannot be sustained in the light of the notification dated 5-11-2004 issued by the Central Government. The mere fact in the sale certificate the business address of the petitioner is given by itself will not make the business concern the owner of the

vehicle. That apart, a proprietary concern is not a natural person or a juristic person and it cannot be the owner of a motor vehicle. The apprehension if any entertained by the respondents that the petitioner who is running a bakery is likely to use the vehicle either for his business purposes or as a contract carriage after registering it as a private service vehicle for personal use and paying tax at the rate applicable to non transport vehicles, cannot be in my opinion be a reason to deny registration of the vehicle as a private service vehicle for personal use. If later, after registration and classification as a private service vehicle for personal use, the petitioner is found to use the vehicle for the purpose of his trade or business and not for personal use or is found to use it as a contract carriage, certainly the respondents will be entitled to seize the vehicle and reclassify it as a private service vehicle with liability to pay tax at the rate applicable to transport vehicles with effect from the date of its original registration. I am therefore of the considered opinion that the petitioner is entitled to succeed.

I accordingly allow the writ petition and direct that in the event of the petitioner submitting an application for registration of the motor vehicle described in Ext.P1 sale certificate as a private service vehicle for personal use, and paying the compounding fee for belated registration of the motor vehicle, the third respondent shall register the same, if the documents are in order and classify the vehicle as a private service vehicle for personal use. It is made clear that such registration will not stand in the way of the respondents or any other competent authority from re-classifying the vehicle as a private service vehicle with liability to pay motor vehicle tax at the rate applicable to a transport vehicle, with effect from the date of its original registration, if later, the petitioner uses the vehicle for his trade or business or as a contract carriage.

