

(2012) 11 KL CK 0085

In the High Court Of Kerala

Case No : Writ Petition (C) No. 28702 of 2007

Jayachandran

APPELLANT

Vs

Regional Transport Officer

RESPONDENT

Date of Decision : 19-11-2012

Acts Referred:

Motor Vehicles Act, 1988 — Section 44, 52

Citation : (2013) 1 KLJ 224 : (2012) 4 KLT 729

Hon'ble Judges : Thottathil B. Radhakrishnan, J;K. Vinod Chandran, J

Bench : Division Bench

Advocate : P. Gopalakrishna Menon, M. Jithesh Menon, R. Padmakumari and Saju J. Vallyara, for the Appellant; James Mathew Kadavan) and T.G. Rajendran, for the Respondent

Final Decision : Allowed

Judgement

K. Vinod Chandran, J.—The question raised is as to whether, while building the body on the chassis of a vehicle, with an approved "prototype", alteration is permissible at variance with the manufacturer's specification contained in the "prototype test certification". These Writ Petitions are posted before the Division Bench on an order of reference on an apparent conflict between decisions by learned single Judges in W.P. (C). No. 29946 of 2006 and W.P. (C). No. 8836 of 2007. While W.P. (C). No. 29946 of 2006 was decided holding that alteration is not totally prohibited and certification of the Registering Authority as to the road-worthiness is mandated by the statutory provisions, W.P. (C). No. 8836 of 2007 was rendered holding that the prototype approved by the Automotive Research Association of India (for short "ARAI") cannot be tampered with.

2. By a Circular dated 28.9.2006, the Transport Commissioner reminded the Registering Authorities of S. 52 of the Motor Vehicles Act, 1988, hereinafter, "M.V. Act", and required them to decline registration if it is in contravention of S. 52 of that Act. The Writ Petitions are filed challenging the action of the Registering Authorities concerned, refusing registration of vehicles which have

been fitted with bodies on the chassis manufactured by the respective manufacturers. Such refusal has been made under R. 126 of the Central Motor Vehicles Rules, 1989, for short, "the C.M.V. Rules".

3. The petitioner in W.P. (C). No. 28702 of 2007 purchased a Medium Commercial Bus chassis manufactured by M/s. Tata Motors Ltd., of model Tata LP 1109/42-4200 MM. On building the body over the chassis in accordance with the M.V. Act, the C.M.V. Rules and the Kerala Motor Vehicles Rules, 1989 (hereinafter referred to as "the K.M.V. Rules"); the vehicle was produced for registration. However, on the ground that "the platform of the bus is extended to a distance of 37 cms and the body is having extension of 39 cms from the extreme rear end of the chassis long members, by reason of fabrication work using C channels of 7 cms width against long members, having 20 cms width" and that the same would be in violation of R. 126 of the C.M.V. Rules, the application of the petitioner was rejected by Ext. P7. The petitioner has produced Ext. P3, issued by the Transport Commissioner, which would indicate the technical specifications of the model TATA LP 1109/42-4200 bus chassis with the specified length of 757.5 cm. The petitioner's vehicle after the body was built, had an extended length of 39 cms., i.e., a total length of 796.5 cm. Petitioner alleges discrimination and arbitrariness in so far as Exts. P11, P13, P15 and P17 Measurement Certificates show overall vehicle length of 800 cms., 810 cms., 800 cms. and 780 cms., all being more than the approved length for TATA LP 1109 vehicle as per Ext. P3; and these vehicles having been registered by Exts. P12, P14, P16 and P18.

4. W.P. (C). Nos. 1323 of 2010 and 1468 of 2010 are with respect to two separate Goods Vehicles, again manufactured by M/s. Tata Motors Ltd., of model TATA SE 1613 TC the registration of which were declined again for reason of the body built over the chassis having been extended by 15 cms beyond the chassis; by orders produced as Ext. P5 in both the Writ Petitions. The appeals filed against those orders were also dismissed by Ext. P6 orders produced in the said Writ Petitions.

5. W.P. (C). No. 274 of 2012 was filed against the refusal to grant registration of a vehicle, which was re-modelled as a "recovery vehicle". The said vehicle was of Class 8. EICHER 10.80, manufactured by M/s. VE Commercial Vehicles Ltd. The registration of the said vehicle was refused on the ground that the vehicle, when altered as a "recovery vehicle", was altered in an unauthorized manner by cutting the chassis of the vehicle by one foot at the rear end. The said order is produced as Ext. P7 in the said Writ Petition.

6. For convenience, W.P. (C). No. 28702 of 2007 is referred to. Petitioner therein contends that the reason for refusal of registration for the vehicle was the issuance of Ext. P4 Circular dated 28.09.2006 by the Transport Commissioner, drawing the attention of the Registering Authorities in the State to S. 52 of the M.V. Act, which provides that "no owner of a Motor Vehicle shall so alter the vehicle that the particulars contained in the certificate of registration are at variance with those originally specified by the manufacturer". As the particulars

originally furnished by the manufacturers are contained in the Prototype Test Certificate (Type Approval Certificate), the authorities were alerted that any unstable construction of the body, extending the chassis, would be likely to affect the safety of the passengers as well as other road users. The Circular declared the Government's anxiety to ensure that the body of the vehicles are built in strict compliance with the specifications given by the manufacturer.

7. It is submitted by the learned counsel for the petitioner that the competence of the Authority under the M.V. Act and the K.M.V. Rules, to look at the stability of the body to ensure the safety of the vehicle and the passengers carried in it; as also the other road users, has to be necessarily conceded, however that, the entire confusion seems to arise from equating such stability and safety standards with the Prototype Test certification, and the measurements of the prototype approved chassis of such vehicle being taken as the standard and benchmark measurements being applied to the body built on the chassis. He also relied on the decision of the learned single Judge in W.P. (C). No. 29946 of 2006.

8. The learned Government Pleader, however, would contend that the body builders are in the private sector and not approved agencies. The extension of the chassis, being in violation of the prototype approved by the ARAI as also the particulars and measurements furnished by the manufacturer, Ext. P4 Circular was issued bona fide, legitimately, with authority, and hence, applies. He relied on the decision in W.P. (C). No. 8836 of 2007.

9. W.P. (C). No. 8836 of 2007 was a case in which an exactly similar situation arose for consideration. The prototype approved by ARAI fixed the length of the chassis of the vehicle as 832.5 cms., while after building the body, it was found to be 885 cms., which resulted in the rejection of the application for registration. A learned single Judge found that the petitioner cannot be heard to say that he is entitled to tamper with the prototype approved by ARAI. The petitioner therein having increased the length of the chassis without any research or test, could not have made an alteration which went against the prototype approved by the statutory authority. On such reasoning, the petitioner was held to be disentitled to get his vehicle registered for reasons of the increase in the length of the chassis by welding additional pieces to it. R.93(2) was held to be not applicable, since the ARAI had prescribed the maximum length of the prototype of the particular vehicle.

10. W.P. (C). No. 29946 of 2006 dealt with an open body Light Goods Vehicle, which was registered and was being used for transporting the goods dealt with by the agency run by the petitioner therein. The registered owner constructed a cover on the top portion of the open body to protect the goods transported, from sun and rain. The registered owner then applied for permission for the said conversion, rather, the incorporation of the altered particulars in the Registration Certificate. The said application having been dismissed, the petitioner filed appeal, which also turned out to be futile. The appellate authority having found that the unladen weight of the vehicle before alteration was 2315 kgs. and the

same having increased on alteration to 2715 kgs.; as also noticing the changes in the measurement of the body, declined permission for such alteration. R.126 of the C.M.V. Rules was relied on by the appellate authority in the said case too. A learned single Judge on a consideration of S. 52 of the M.V. Act found that though read in isolation, it may appear, as no alteration was permissible under sub-s.(1) even with the permission of the Registering Authority; sub-s.(3) and sub-s.(4) respectively detail the procedure to be followed when a motor vehicle is altered without the approval of the Registering Authority and how entries in the register maintained by the Registering Authority are to be made on such alteration. Sub-s (5) also mandated the permission of the financier for approving such alteration. Hence, it was held that alteration is not totally prohibited. This inference was held to be further fortified by Rules 96 and 103 of the K.M.V. Rules. R.96 provides for inspection of vehicle prior to registration and R. 103 provides for alteration of the motor vehicle. On consideration of the above provisions, it was held that the said provisions mandated inspection by the Registering Authority and certification that the vehicle is road-worthy and can be used safely in a public place. The contention that the unladen weight entered in the Registration Certificate is a basic feature of the vehicle and that there can be no modification of such basic feature was negated. It was held that even a basic feature could be altered, provided the competent officer certifies the vehicle to be safe for use on public roads. That is the situation in which a certificate in "Form MC" is contemplated when the particulars of the vehicle are different from those cleared in the prototype test.

11. Rule 126 of the C.M.V. Rules mandates prototype of every motor vehicle being subjected to test and certification by the authorities prescribed therein. But, it does not, for a moment, lead to an inference that the body has to be constructed only within the contours of the measurements given in the Prototype Test Certification. If such a view is taken, it would render otiose R.93 of the C.M.V. Rules, which prescribes the overall dimensions of the motor vehicles. R.93 of C.M.V. Rules prescribes the permissible limits of length, breadth and overhang. Such dimensions are prescribed with reference to the axis of the motor vehicle from which the measurements are to be taken. S. 52 of the M.V. Act also provides for alteration with respect to motor vehicles, however, with due approval by the Registering Authority. R.96 of the K.M.V. Rules provides for inspection of vehicle prior to registration, R.103 provides for recording such alteration and R.261 provides for body construction on a chassis having approved prototype. R.96, by its proviso, provides that in the case of any vehicle, the body of which is not factory built or in a pattern previously approved by the Registering Authority; when presented for registration, the Inspecting Authority shall prepare and issue a measurement certificate in Form "MC". Such measurement certificate shall also be forwarded to the Registering Authority. This necessarily involves a consideration by the Registering Authority as to the road-worthiness and safety of the vehicle and it cannot be a mechanical exercise where it is only verified as to whether the measurements conform to the

Prototype Test Certificate.

12. Dispelling any fear of repetition and to pointedly focus on what would be stated hereinafter, we extract R.96, R. 103 and R. 261 of the K.M.V. Rules hereunder:

96. Inspection of vehicle prior to Registration:- (1) Inspecting Officer:- The Registering Authority, or such authority as the Government may by order appoint shall inspect the vehicle as required by S. 44 of the Act.

(2) Production of vehicle for inspection:- The vehicle shall be produced for inspection along with the required documents for registration, before the inspecting officer, for a comparative scrutiny of the particulars contained in the application with the physical features of the vehicle, and for ascertaining its fitness for use in public place.

(3) Report of Inspecting Officer:- The inspecting officer after making modifications deemed necessary in the particulars contained in the application, shall certify therein regarding the correctness of the entries and the fitness of the vehicle:

Provided that in the case of a transport vehicle, or for any other vehicle of which the body is not factory-built or a stereo-typed pattern previously approved by the registering Authority, he shall prepare and issue a measurement certificate in Form "MC" and a sketch showing therein the seating arrangements, dimensions and other relevant particulars under Chapter VII of these rules. The Inspecting Officer shall simultaneously forward a copy each of the measurement certificate and sketch to the concerned Registering Authority also.

103. Recording alteration to a motor vehicle:- (1) Ascertaining suitability of alteration -The Registering Authority may require inspection of the vehicle by himself or by any other Inspector of motor vehicles to satisfy that any alteration made is suitable. The owner of the vehicle shall, on demand, produce the vehicle for inspection.

(2) The Inspecting Officer shall prepare and issue a fresh measurement certificate in Form "MC" and a sketch showing therein the seating arrangement, dimensions, etc., as found on inspection in the following circumstance:

(a) When consequent to any structural alteration made in a motor vehicle the Particulars of registration noted in one or more of items 1, 3, 11, 13 & 19 of the certificate of registration are no longer accurate.

(b) When consequent to any re-arrangement of loading space or seats, their position or dimensions are altered though such arrangement does not affect the registration particulars referred to in clause (a) above.

261. Body construction:- The body of every transport vehicle shall be soundly constructed and securely fastened to the frame of the vehicle and in accordance with the specifications, if any, laid down by the State or Regional Transport

Authority.

13. Sub-rule (2) of R. 96 speaks of the inspection and mandates a comparative scrutiny of the particulars contained in the application, with the physical features of the vehicle, and for ascertaining its fitness for use in public place. The proviso specifically enumerates the procedure of inspection with respect to a transport vehicle of which the body is not factory-built or stereo-typed pattern previously approved by the Registering Authority. The proviso mandates the measurement certificate to be forwarded to the Registering Authority, which is also insisted upon by sub-r.(2) of R.103. R.103 also provides for ascertaining the suitability of alteration by the Registering Authority itself; if found necessary. The stipulation in R. 261 also is to make sound and secure construction of the vehicle, in accordance with the specifications, if any, laid down by the State or Regional Transport Authorities. We have not been shown any such specifications. Ext. P4 Circular is not one issued under R.261 and, in any case, it makes the prototype measurements; the benchmark, which is not contemplated by the Act or the Rules.

14. On an anxious consideration of the various provisions of the M.V. Act and the Rules enacted by both the Union and the State as also the facts and circumstances existing, we are inclined to approve the decision of the learned single Judge rendered in W.P. (C). No. 29946 of 2006. Evidently the M.V. Act and the Rules framed thereunder do not contemplate in all situations a body manufactured by the manufacturer who has got approval of the vehicle prototype. The statute and the Rules provide for purchasing chassis and building bodies over such chassis. The Rules, as noticed above, provide for the dimensions of the vehicle. As rightly contended by the counsel for the petitioners, if the measurements of the prototype are to be taken as the gospel, then there was absolutely no reason why R.93 of the C.M.V. Rules was enacted. R.93 definitely is not an enabling provision to make prototype certification. Form 22A, as provided under the C.M.V. Rules, is the form in which the initial Certificate of compliance with respect to Pollution, Safety standards of components and Road worthiness for vehicles, where body is fabricated separately, is issued. R-47(1)(g) of the C.M.V. Rules contemplates road-worthiness certificate in Form 22 from the manufacturers and in Form 22A from the body-builders for applying for registration of the motor vehicles.

15. The contention in the counter affidavit that body-builders are in the private sector and they are not approved agencies cannot at all be countenanced, since M.V. Act and the Rules do not contemplate such approval. Neither is an authority authorised as competent to grant the approval nor is a due procedure prescribed under the Act or the Rules. While Part-I of Form 22A is to be issued by the manufacturer, Part-II is to be issued by the body-builder. What is contemplated, in our view, is that the body can be built on a chassis in compliance with the provisions of the M.V. Act and the Rules framed thereunder and the safety of such vehicle and its road-worthiness, to be driven with such body built on the

chassis, has to be assessed in conformity with the provisions of the M.V. Act and the Rules by the Registering Authority. Any specification issued by the State or Regional Transport Authorities also has to be looked into. The Registering Authority cannot abdicate itself of such authority, which is coupled with a duty to the public at large; relying on the prototype test certification granted under R.126 of the C.M.V. Rules. R. 126 speaks of prototype certification and "prototype" as is ordinarily understood is "the first design of something from which other forms are copied or developed". A manufacturer intending to bring out a vehicle of a particular model has to obtain certification of the prototype under R. 126 of the C.M.V. Rules. The Act and Rules do not provide for any prescription, by the manufacturer or the authorities specified under R. 126, as to the dimensions or nature of the body that is to be built on the chassis.

16. Rule 126A also provides for the procedure by which testing agencies are empowered to conduct tests on vehicles drawn from the production line of the manufacturer to verify whether such vehicles conform to the provisions of the Rules. This indicates the essential standards for a vehicle being approved at the first instance. The M.V. Act and the Rules contemplate such approved prototype to be the core on which a body is to be built upon. Such building of bodies on the approved prototype chassis also has to conform to the provisions of the Act and the Rules to ensure the safety and road-worthiness of the vehicle, when used with the body built on it. The Registering Authority has to verify such safety and road-worthiness with reference to the specifications in the Act and the Rules as also specifications issued under R. 261 of the K.M.V. Rules. It cannot merely go by the prototype test certification and confine its task to mechanical measurement to ensure mere dimensional conformity with the measurements as disclosed in the prototype test certification. Such an exercise, as indicated above, would result in the authority abdicating itself of the powers conferred and duties enjoined under the Act.

17. The Circular also can only be a cautioning note calling for ensuring the safety and road-worthiness of a vehicle when examined by the concerned authority. It cannot be considered to be one which lays down the rule that Registering Authorities ought to register only the vehicles satisfying the dimensions in the Prototype Test Certificate. That would be usurping the powers conferred by the Act and the Rules framed thereunder, on the Registering Authorities. The Transport Commissioner, we are afraid, does not have such authority. The Circular has only the effect declared by us. The decision of the learned single Judge in W.P. (C). No. 29946 of 2006 dated 16.1.2007 is affirmed and approved by us. In the result, Ext. P7 in both W.P. (C). Nos. 28702 of 2007 and 274 of 2012 and Exts. P5 and P6 in both W.P. (C). Nos. 1323 of 2010 and 1468 of 2010 are quashed. The Registering Authorities, hence, are directed to consider registration of the vehicles on the principles enumerated herein above and allow the petitioners to ply their vehicles on the strength of the provisional registration till their claim for regular registration is considered. The Registering Authorities, when examining the claim in W.P. (C). No. 28702 of 2007 shall give due

weightage to registrations granted to similar vehicles by other Registering Authorities within the State. This exercise shall be completed as expeditiously as possible, at any rate, within three months from the date of production of a certified copy of this judgment.

The Writ Petitions, hence, are allowed, with the above directions. No costs.