
(2002) 10 KL CK 0067

In the High Court Of Kerala

Case No : O.P. No's. 2705, 18413 etc. of 2001 and 9412, 17273 etc. of 2002

Job Koottumkal

APPELLANT

Vs

State of Kerala

RESPONDENT

Date of Decision : 31-10-2002

Acts Referred:

Motor Vehicles Act, 1988 — Section 41(4)

Citation : (2003) 2 ACC 611 : (2003) 1 ILR (Ker) 298 : (2003) 1 KLT 731

Hon'ble Judges : C.N. Ramachandran Nair, J

Bench : Single Bench

Advocate : Jose J. Mathaikal, Litto Varghese Palathinkal, P. Deepak, Thampan Thomas and C.A. Jojo, for the Appellant; Raju Joseph, Government Pleader, for the Respondent

Judgement

C.N. Ramachandran Nair, J.—The petitioners in these Original Petitions are either priests or nuns and they are registered owners of Bajaj Tempo or Mahindra Jeep having seating capacity of 10 including driver. While the petitioners were paying tax at the rate applicable to "omni bus for private use" under item 6 of Schedule to the Kerala Motor Vehicles Taxation Act, 1976 (hereinafter called the Taxation Act), the R.T.O. changed the endorsement in the R.C. Book describing the vehicle as "private service vehicle". The endorsement is as follows :

"Balance tax from 5/2000 to 6/2002 as per Circular No. 7/2000 of T.C. TVM is due and tax from 1 st July 2002 at P.S.V. rate is due at Rs. 1260 per quarter."

2. The tax is being demanded from 5/2000 to 6/2002 based on the Circular dated 15th July, 2002 issued by the Transport Commissioner. The said endorsement is produced as Ext.P-1 and the Circular Ext. P-2 in O.P. No. 23403/2002. Similar endorsements are made by the respective R.T.Os. in the case of other petitioners. Letters demanding motor vehicle tax at the rate applicable to "private service vehicles" are also issued. The petitioner's case is that the petitioner's vehicle are omni bus for private use coming under item 6 of the Schedule to the Taxation Act and therefore, the original endorsement and

payment of tax being made at the rate of Rs. 70 per seat are correct.

3. Special Government Pleader, Mr. Raju Joseph contended that the vehicles are owned by congregation of priests or nuns and registered in the name of the congregation. Use by such institutions cannot be treated as for private use, and so much so, he justified the demand of tax at the rate applicable to private service vehicle.

4. The consequence of the impugned proceedings resulting in reclassification will involve the requirement of a permit for the vehicles owned by the petitioners, which is now demanded by the department. This is because a private service vehicle comes within the description of transport vehicle under the Motor Vehicles Act which needs a permit to operate. Further, there are other restrictions such as drivers with badge only are authorised to drive transport vehicles, whereas in the case of the vehicles owned by the petitioners they themselves drive the vehicles.

5. Issues arise for consideration both under the Motor Vehicles Act as well as under the Motor Vehicle Taxation Act. There is no dispute that the vehicle in the case of the petitioners are omni bus. u/s 2(29) of the Motor Vehicles Act, "omni bus" means any motor vehicle constructed or adapted to carry more than six persons excluding the driver. So far as the requirement of Motor Vehicles Act is concerned, permit is required only if the vehicle is a transport vehicle. "Transport Vehicle" as defined u/s 2(47) of the M.V. Act, includes a private service vehicle. The case of the respondents is that the petitioners are using the vehicle as "private service vehicle" and therefore, they need permit. "Private Service Vehicle" is also defined in Section 2(33) of the Act which reads 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".

It is clear from the definition of private service vehicle that the vehicles used by the institutions or persons for trade or business only come within the category of private service vehicle. Trade or business are not defined under the Act and therefore, the meaning of the words "trade" and "business" available in the common parlance has to be adopted. Trade and business are explained in the Blacks Law Dictionary as follows:

"Trade means the act or the business of buying and selling for money, traffic barter. Business means employment, occupation, profession or commercial activity engaged in for gain or livelihood."

6. The department has no case that any of the congregation of priests or nuns are engaged in any trade or business. The activities of the congregation are only religious, and so much so, they cannot be said to be involved in any trade or business. However, nothing bars the church from carrying any trade or business.

If the petitioners are found engaged in trade or business, of course the vehicles used in such trade or business will answer the description of private service vehicle. In the absence of such allegations, the reclassification of the vehicles used by the petitioners for their own use as "private service vehicle" is not tenable.

7. So far as the Taxation Act is concerned, the relevant two categories of vehicles are provided under items 5 and 6 of the Schedule to the Act. The relevant vehicles are explained as follows:

5. Private service vehicles for every seated passenger (other than driver) Petrol driven Diesel driven 130.00 140.00

Omni bus for private use

(a) Not more than ten seats, for every seated passenger (other than driver)

70.00

(b) More than 10 seats, for every passenger (other than driver)

130.00

8. The impugned proceedings are issued demanding tax treating "omni bus" as "private Service vehicle". In the case of a congregation, use of vehicle by the members of congregation cannot be taken to be anything other than private use. The chief of the congregation is holding the registration in his capacity as the head of the institution and therefore, the institution is the registered owner. Therefore, I feel the original classification as omni bus for private use is right and tenable.

9. The next question is whether Ext. P-2 circular relied on by the Government Pleader is sustainable or not. The respondents justified reclassification of the vehicles based on the circular but the circular provides for classification of vehicles owned by the companies. Obviously the department has no case that the congregations are companies, and so much so, circular has no application at all. The petitioners also brought to my notice that by notification issued by the Central Government u/s 41(4) of the Motor Vehicles Act private service vehicle categorised as transport vehicle and omni bus for private use as non-transport vehicle. The petitioner's case is that the original classification is to be sustained in the light of the notification issued by the Central Government. Therefore I feel the impugned endorsements in the R.C. Books and the demand of tax based on reclassification are illegal and contrary to the provisions of the Motor Vehicles Act and the Taxation Act. So much so, the impugned proceedings in all these cases are quashed and the respondents are directed to make fresh endorsement treating vehicles owned by the petitioners as "omni bus for private use" and all consequences shall follow.

The Original Petitions are disposed of as above.