

(1996) 03 KL CK 0025
In the High Court Of Kerala
Case No : O.P. No. 4873 of 1996-E

M. Gopakumar

APPELLANT

Vs

State of Kerala and Others

RESPONDENT

Date of Decision : 26-03-1996

Acts Referred:

Constitution of India, 1950 — Article 29(1)
Kerala Motor Vehicles Rules, 1989 — Rule 174, 174(2)(C)
Motor Vehicles Act, 1988 — Section 81, 83

Citation : AIR 1996 Ker 291

Hon'ble Judges : P. Shanmugam, J

Bench : Single Bench

Advocate : M.K. Chandramohan Das, for the Appellant; Hemalatha, Govt. Pleader, for the Respondent

Final Decision : Dismissed

Judgement

P. Shanmugam, J.—The petitioner prays for a direction to declare Rule 174(2)(c) of the Kerala Motor Vehicles Rules as illegal, ultra vires and unconstitutional.

2. The facts leading to the filing of the O.P. are that the petitioner was granted with a regular permit on 29-12-1994 in reference to his vehicle KL-01/D 2669. The vehicle was re-possessed by the financier. Thereafter the petitioner intimated to the transport authorities that the vehicle is garaged for mechanical repairs and sought for replacement of the vehicle with another vehicle leased out to him. Before the order could be passed for the replacement the financier of the original vehicle filed objection stating that they have re-possessed the vehicle and therefore, permission for replacement was not granted. As against the refusal of the authorities to permit him to operate with the leased out vehicle, the petitioner filed O.P. No. 1335/1996 which was dismissed by me by judgment dated 5-2-1996. The appeal W.A. No. 320/96 filed by the petitioner was also dismissed by judgment dated 15-2-1996. The present O.P. is filed challenging the rule which enables the transport authority to refuse replacement of the vehicle.

3. Learned counsel for the petitioner raised the following grounds in challenge to the impugned Rule (1) The Rule is contrary to Section 83 of the Motor Vehicles Act. (2) Special provisions have been made to safeguard the interests of financiers in reference to transfer of the vehicle, issue of duplicate Registration Certificate for the vehicle and renewal of permit of the vehicle. But no provision had been made against the replacement. (3) The Rule violates the fundamental right of trade and business.

4. Section 83 of the Motor Vehicles Act, hereinafter referred to as "the Act" provides for the replacement of any vehicle covered by the permit with the permission of the authority. Thus the Section makes it very clear that the vehicle cannot be replaced without the permission of the authority. Rule 174 of the Kerala Motor Vehicles Rules sets out the conditions under which permission for replacement can be granted. One of the conditions as set out under Sub-rule (2) of the Rule 174 is that the transport authority in his discretion may reject the application if the holder of the permit has been deprived of the possession of the old vehicle under the provisions of any agreement of hire purchase, hypothecation or lease. The contention of the petitioner that Section 83 does not authorise the rejection cannot be accepted because the section imposes a condition precedent for replacement viz. permission of the authority. The Rule elaborates what are the conditions under which permission may be granted and may not be granted. Therefore, it cannot be said that Rule 174(2)(c) is contrary to Section 83. The argument that in all cases permission should be granted by the authority and that rejection of replacement will be contrary to 83, cannot be accepted as valid proposition.

5. As per the scheme of the Act admittedly special provision had been made for financing of the vehicles and safeguarding the interests of the financiers. Admittedly Section 51 provides for special provisions regarding the issue of duplicate certificate, transfer of vehicle and renewal of permit. Section 81 of the Act provides for renewal of permits. Section 51(6) provides for issue of no objection certificate for the purpose of renewal of permit u/s 81. Rule 159 of the Rules states that no permit shall be issued before entering the registration mark the vehicle to which it relates has been entered therein. Thus permit is granted normally to a particular vehicle as the application requires the particulars of the vehicle and permit is issued after entering the Registration mark of the vehicle in the permit. Therefore, it may not be possible for segregating the permit with the vehicle and whenever replacement of the vehicle is sought for a particular permit, it is incumbent upon the applicant to satisfy that he has not violated the requirements of the Act and the Rules. As per Section 81 while renewing the permit the financial conditions of the applicant is considered as one of the relevant factors for considering the application for renewal of the permit. Therefore, it cannot be said that since there is no mention in Section 51 as to the replacement of the vehicle, there is no bar for such a replacement even if the previous vehicle is re-possessioned by the financier. While transfer of the vehicle and renewal of the permit are not possible without no objection certificate from

the financier, the said provision cannot be got over by replacement of the vehicle. Therefore, the contention that enough safeguard has been provided for the financiers except for the replacement and therefore, even though the vehicle had been re-possessed the authorities should grant replacement, cannot be accepted.

6. The last submission is that the said provision is violative of the fundamental right of freedom of trade and business. The learned counsel did not elaborate his argument and substantiate the point. In my view Rule 174 is a salutary provision to safeguard the interests of the real owners of the vehicle. The registered owner, who is permitted to run the vehicle with the permit granted to him which actually belongs to the financiers, cannot be permitted to get over the payments due to the financier by substituting another vehicle. Such an enabling provision would only defeat the purpose of financial arrangements. While financial condition is a relevant factor in the grant of renewal of permits, I do not find any reason why the same consideration is pat by replacing the vehicle. The restriction imposed for replacement of the vehicle in my view is reasonable and in no way affects the freedom of trade or business of the petitioner.

For all these reasons I do not find any sustainable grounds in the O.P. to grant the reliefs prayed for and hence it is dismissed.