

(2018) 03 KL CK 0052

In the High Court Of Kerala

Case No : Writ Appeal No. 394 Of 2018

P.L.Johnson @APPELLANT@Hash The Government Of Kerala And Ors

Date of Decision : 01-03-2018

Acts Referred:

Kerala Motor Vehicles Rules, 1989 — Rule 264, 290, 295, 304

Citation : (2018) 03 KL CK 0052

Hon'ble Judges : Antony Dominic, J;Dama Seshadri Naidu, J

Bench : Division Bench

Advocate : P.Deepak, I.Dinesh Menon, Santhosh Kumar.P

Final Decision : Dismissed

Judgement

1. Petitioner in W.P.(C)No.4098/18 is the appellant. In this appeal, he challenges the order dated 6th February 2018 passed by the learned Single Judge, whereby his prayer to direct the fourth respondent to renew the certificate of fitness of his contract carriage vehicle untrammelled by Ext.P5 decision of the State Transport Authority to introduce a 'uniform colour code' was declined by the learned Single Judge.

2. We heard the counsel for the appellant, learned Government Pleader and also the learned counsel appearing for the additional respondent.

3. Learned counsel for the appellant attacked the order of the learned Single Judge, mainly contending that the said order was passed without taking note of the fact that none of the provisions of the Kerala Motor Vehicles Act, 1988 or the Rules framed thereunder empower the State Transport Authority to introduce a 'uniform colour code' as ordered in Ext.P5. In support of this plea, counsel referred us to the various provisions of the Act and the Rules and also several judicial precedents. These submissions made by the learned counsel were contradicted by both the learned Government Pleader and the counsel appearing for the party respondents and according to them, it was well within the power of the State Transport Authority to introduce such a 'uniform color code' having regard to the provisions contained in Rule 264 of the Kerala Motor Vehicles Rules,

1989. They also placed reliance on the judgment of this court in *Kasaragod District Bus Owners Association v. Regional Transport Authority, Kasaragod and others* [2015 (1) KHC 156].

4. We have considered the submissions made. At the outset, we may clarify that what is impugned before us is only an interim order and the learned Single Judge is yet to consider the rival submissions which are made by the parties and render a judgment on the merits of the matter. Therefore, at this stage, if we examine the contentions now raised by both sides that will be an adjudication on the merits of an issue which is pending consideration of the learned Single Judge. Therefore, all that we endeavor to is only prima facie examination of the matter.

5. As we have already stated, the issue is whether the State Transport Authority was within its power in having issued Ext.P5 and thereby to introduce a 'uniform color code' for contract carriages. Insofar as this aspect of the matter is concerned, despite Rules 290, 295 and 304 of the Kerala Motor Vehicles Rules shown by the learned counsel for the appellant to contend that while restrictions have been placed on the colour of buses owned by educational institutions, goods carriages and motor cabs there is no such prescription insofar as contract carriages are concerned, we find that Rule 264, prima facie, indicate that the paint work of every transport vehicles shall be maintained in accordance with the specifications, if any, laid down by the State or the Regional Transport Authority. This has already been taken note of in *Kasaragod District Bus Owners Association's case* (supra) where the 'uniform colour code' introduced by the Regional Transport Authority was under challenge. The Apex Court in the judgment in *Subhash Chandra and others v. State of U.P. and others* (1980) 2 SCC 324 also took the view that even in the absence of any rules, it is within the domain of the authorities to issue such prescriptions.

6. In that view of the matter, prima facie, we are of the view that the learned Single Judge cannot be faulted for declining the order sought for by the appellant. Appeal fails and it is dismissed accordingly.