

(2019) 01 SC CK 0031

In the Supreme Court Of India

Case No : Civil Appeal No. 219, 222, 223 Of 2019

Regional Transport Officer & Ors. Etc

APPELLANT

Vs

K. Jayachandra & Anr. Etc

RESPONDENT

Date of Decision : 09-01-2019

Acts Referred:

Central Motor Vehicles Rules, 1989 — Rule 47, 47(1)(a), 47(1)(d), 47(1)(g), 47(a), 47(d), 48, 92, 92(1), 100, 104A, 106, 126
Kerala Motor Vehicle Rules, 1989 — Rule 93, 93(1), 93(2), 93(4), 93(6), 96, 103, 261
Motor Vehicles Act, 1988 — Section 27, 28, 52
Motor Vehicles Act, 1939 — Section 32
Motor Vehicles (Amendment) Act, 2000 — Section 52, 52(1), 52(1)(a), 52(1)(b), 52(2), 52(3), 52(4), 52(5), 52(6)

Citation : AIR 2019 SC 362 : (2019) 1 SCR 179 : (2019) 3 SCC 722 : (2019) 1 JT 206 : (2019) 1 Scale 317 : (2019) 2 BCR 126 : (2019) 1 JLJ 287 : (2019) 1 JLJR 281 : (2019) 1 KLT 435 : (2019) 1 PLJR 391 : (2019) 1 WLN 99 : (2019) 1 ACC 244 : (2019) 1 ACJ 484 : (2019)

Hon'ble Judges : Arun Mishra, J; Vineet Saran, J

Bench : Division Bench

Advocate : Nishe Rajen Shonker, Joggy Scaria

Final Decision : Allowed

Judgement

Arun Mishra, J

1. Leave granted.

2. The question involved is as to the permissible alteration in a Motor Vehicle in view of the provisions contained in section 52 of the Motor Vehicles Act, 1988 (hereinafter referred to as "the Act"), Rule 126 of the Central Motor Vehicles Rules, 1989 and the effect of Rules 96, 103 and 261 of the Kerala Motor Vehicle Rules, 1989. The Central Government has framed the rules called Central Motor Vehicle Rules, 1989 (for short "the Central Rules") in exercise of the power conferred under section 27 of the Act, and in exercise of powers conferred under Section 28 of the Act, the Kerala Government has framed the Kerala Motor

Vehicle Rules, 1989 (hereinafter referred to as "the Kerala Rules"). The validity of Circular No.7/2006 issued by the Transport Commissioner, Kerala to all the Registering Authorities stating that the body of the vehicle constructed in violation of the prototype test certificate and which was not built in strict compliance of the specifications given by the manufacturer are to be denied the registration. Pursuant thereto the Regional Transport Authorities did not grant permission to certain motor vehicles in view of the provisions contained in section 52 and the Circular. As such several writ petitions came to be filed in the High Court of Kerala at Ernakulam.

3. In Writ Petition (C) No.29946 of 2006 decided on 16.1.2007 by the learned Single Judge it was held that Rule 126 of the Central Rules does not fetter the powers of the Regional Transport Authorities to intelligently exercise their discretion in terms of the Kerala Rules, in particular Rules 96, 103 and 261; whereas a contrary view was taken by another Single Judge vide order dated 23.5.2007 in Writ Petition (C) No.8836 of 2007 and it was observed that the alteration in derogation of prototype test in terms of Rule 126 of the Central Rules cannot be approved.

4. Writ Petition (C) No.28702 of 2007 for quashing Circular No.7/2006 and the order passed on 3.7.2007 declining registration was filed.

5. Writ Petition (C) Nos.1323 of 2010 and 1468/2010 were filed with respect to the denial of registration by the Registering Authorities as the body built over the chassis extended by a length of 15 cms. beyond the chassis which was not adhering to the specifications given by the manufacturer of the vehicle.

6. Writ Petition (C) No.274 of 2012 was filed by the owner of the vehicle to question denial of registration in view of the aforesaid rule and the Circular. Yet another Writ Petition (C) No.274 of 2012 was filed against the refusal to grant registration of a vehicle which was re-modelled as a 'recovery vehicle' altered in an unauthorised manner by cutting the chassis of the vehicle by one feet at the rear end which was not in conformity with the prototype test in terms of Rule 126 of the Central Rules.

7. In view of the conflict in judgments in Writ Petition (C) No.29946 of 2006 and Writ Petition (C) No.8836 of 2007 regarding the issue of alteration whether alteration is permissible at variance with the manufacturer's specification contained in the prototype test certification, the matter was referred to a Division Bench of the High Court. The High Court by the common judgment passed in the writ petitions came to the conclusion that structural alteration is permissible as per the provisions of the Kerala Rules. The view taken by the learned Single Judge in Writ Petition (C) No.29946 of 2006 has been upheld hence the appeals have been preferred in this Court. This Court has stayed the operation of the impugned judgment and order on 16.4.2013. Considering the importance of the matter notice was issued to the Ministry of Road Transport and Highways through its Secretary, and Mr. K.V. Viswanathan, learned senior counsel was appointed as

amicus curiae to assist the Court.

8. It is apparent from the factual matrix of Writ Petition (C) No.28702 of 2007 that it was a case of medium commercial bus chassis. The registration was declined on the ground that the platform of the bus was extended to a distance of 37 cms. and the body was having an extension of 39 cms. from the extreme rear end of the chassis. The vehicle had an extended length of 39 cms. The technical specifications of model TATA bus chassis have specified length of 757.5 cm. After the body was built, it had a total length of 796.5 cm.

9. Similarly, in Writ Petition (C) No.1323 of 2010 and Writ Petition (C) No.1468 of 2010, the body was built over the chassis extended by 15 cm. beyond the chassis. In Writ Petition (C) No.274 of 2012 the vehicle was re-modeled as a recovery vehicle by cutting the chassis of the vehicle by one foot at the rear end. In Writ Petition (C) No.29946 of 2006, the unladen weight of the vehicle before alteration was 2315 kg. and the same had been increased on alteration to 2715 kgs. Besides, there were changes in the measurement of the body which resulted in declining the permission for registration. In Writ Petition

(C) No.8836 of 2007, the length of the chassis of the vehicle as per prototype was 832.5 cm. but after building the body it was found to have been extended to 885 cm.

10. Section 52 of the Act deals with alteration in the motor vehicle. Prior to that, provision with respect to alteration in motor vehicles was contained in section 32 of the Motor Vehicles Act, 1939. Section 32 of the Act of 1939 is extracted hereunder:

"SECTION 32: ALTERATION IN MOTOR VEHICLE

(1) No owner of a motor vehicle shall so alter the vehicle that the particulars contained in the certificate of registration are no longer accurate, unless-

(a) he has given notice to the registering authority within whose jurisdiction he resides of the alteration he proposes to make, and

(b) he has obtained the approval of the registering authority to make such alteration:

Provided that it shall not be necessary to obtain such approval for making any change in the unladen weight of the motor vehicle consequent on the addition or removal of fittings or accessories if Such change does not exceed two percent. of the weight entered in the certificate of registration.

(2) Where a registering authority has received notice under sub- section (1), it shall, within seven days of the receipt thereof, communicate, by post, to the owner of the vehicle its approval to the proposed alteration or otherwise:

Provided that where the owner of the motor vehicle has not received any such communication within the said period of seven days, the approval of such

authority to the proposed alteration shall be deemed to have been given.

(3) Notwithstanding anything contained in sub-section (1), a State Government may, by notification in the Official Gazette, authorise, subject to such conditions as may be specified in the notification, the owners of not less than ten transport vehicles to alter any vehicle owned by them so as to change its engine number by replacing the engine thereof without the approval of the registering authority.

(4) Where any alteration has been made in a motor vehicle either with the approval of the registering authority given or deemed to have been given under sub-section (2) or by reason of any change in its engine number without such approval under sub-section (3), the owner of the vehicle shall within fourteen days of the making of the alteration, report the alteration to the registering authority within whose jurisdiction he resides and shall forward the certificate of registration to that authority together with the prescribed fee in order that particulars of the alteration may be entered therein.

(5) A registering authority other than the original registering authority making any such entry shall communicate the details of the entry to the original registering authority."

(emphasis supplied)

11. The alteration in a motor vehicle under the parent Act is dealt with in section 52 of Motor Vehicles Act, 1988. Section 52 as originally enacted is extracted hereunder:

"52. Alteration in a motor vehicle .-

(1) No owner of a motor vehicle shall so alter the vehicle that the particulars contained in the certificate of registration are no longer accurate, unless.-

(a) he has given notice to the registering authority within whose jurisdiction he has the residence or the place of business where the vehicle is normally kept, as the case may be of the alteration he proposes to make; and

(b) he has obtained the approval of that registering authority to make such alteration:

Provided that it shall not be necessary to obtain such approval for making any change in the unladen weight of the motor vehicle consequent on the addition or removal of fittings or accessories if such change does not exceed two percent of the weight entered in the certificate of registration.

Provided further that modification of the engine, or any part thereof, of a vehicle for facilitating its operation by a different type of fuel or source of energy including battery, compressed natural gas, solar power or any other fuel or source of energy other than liquid petroleum gas shall be treated as an alteration but that shall be subject to such conditions as may be prescribed.

(2) Where a registering authority has received notice under sub-section (1), it

shall, within seven days of the receipt thereof, communicate, by post, to the owner of the vehicle its approval to the proposed alteration or otherwise:

Provided that where the owner of the motor vehicle has not received any such communication within the said period of seven days, the approval of such authority to the proposed alteration shall be deemed to have been given.

(3) Notwithstanding anything contained in sub-section (1), a State Government may, by notification in the Official Gazette, authorise, subject to such conditions as may be specified in the notification, the owners of not less than ten transport vehicles to alter any vehicle owned by them so as to change its engine number by replacing the engine thereof without the approval of the registering authority.

(4) Where any alteration has been made in a motor vehicle either with the approval of the registering authority given or deemed to have been given under sub-section (2) or by reason of any change in its engine number without such approval under sub-section (3), the owner of the vehicle shall within fourteen days of the making of the alteration, report the alteration to the registering authority within whose jurisdiction he resides and shall forward the certificate of registration to that authority together with the prescribed fee in order that particulars of the alteration may be entered therein.

(5) A registering authority other than the original registering authority making any such entry shall communicate the details of the entry to the original registering authority.

(6) No person holding a vehicle under a hire-purchase agreement shall make any alteration to the vehicle for which approval of the registering authority is required under sub- section (1) except with the written consent of the registered owner."

(emphasis supplied)

12. Section 52 has undergone change by way of Amendment Act 27/2000. The Statement of Objects and Reasons of Amendment Act 27/2000 is extracted hereunder:

"Amendment Act 27 of 2000 - Statement of Objects and Reasons. - The Motor Vehicles Act, 1988 consolidated and rationalized various laws regulating road transport. The said Act was amended in 1994.

2. Further amendments in the aforesaid Act have become necessary so as to reduce the vehicular pollution and to ensure the safety of the road users. It is, therefore, proposed to prohibit alteration of vehicles in any manner including change of tyres of higher capacity. However, the alteration of vehicles with a view to facilitating the use of eco-friendly fuel including Liquefied Petroleum Gas (LPG) is being permitted. Further, it is proposed to confer powers on the Central Government to allow the alteration of vehicles for certain specified purposes.

3. At present, the educational institutions are not required to obtain permits for the operation of buses owned by them. It is proposed to bring the buses run by

these institutions within the purview of the aforesaid Act by requiring them to obtain permits.

4. It is also proposed to allow renewal of permits, driving licences and registration certificates granted under the Motor Vehicles Act, 1939 to be renewed under the Motor Vehicles Act, 1988, by inserting new section 217 - A.

5. The proposed amendments are essential in the overall interest of securing road safety and maintaining a clean environment."

(emphasis supplied)

13. It is apparent that section 52 has been amended with the purpose to prohibit alteration of vehicles in any manner including change of tyres of higher capacity, keeping in view road safety and protection of environment. Section 52 has been amended by virtue of Amendment Act 27/2000 in the following manner:

"52. Alteration in a motor vehicle. -

(1) 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:

Provided that where the owner of a motor vehicle makes modification of the engine, or any part thereof of a vehicle for facilitating its operation by different type of fuel or source of energy including battery, compressed natural gas, solar power, liquid petroleum gas or any other fuel or source of energy, by fitment of a conversion kit, such modification shall be carried out subject to such conditions as may be prescribed:

Provided further that the Central Government may prescribe specifications conditions for approval, retrofitment and other related matters for such conversion kits;

Provided also that the Central Government may grant an exemption for alteration of vehicles in a manner other than specified above, for any specific purpose.

(2) Notwithstanding anything contained in sub-section (1), a State Government may, by notification in the Official Gazette, authorise, subject to such conditions as may be specified in the notifications, and permit any person owning not less than ten transport vehicles to alter any vehicle owned by him so as to replace the engine thereof with engine of the same make and type, without the approval of registering authority.

(3) Where any alteration has been made in a motor vehicle without the approval of registering authority or by reason of replacement of its engine without such approval under sub- section

(2), the owner of the vehicle shall, within fourteen days of the making of the alteration, report the alteration to the registering authority within whose jurisdiction he resides and shall forward the certificate of registration to that

authority together with the prescribed fee in order that particulars of registration may be entered therein.

(4) A registering authority other than the original registering authority making any such entry shall communicate the details of the entry to the original registering authority.

(5) Subject to the provisions made under sub-section (1), (2), (3) and (4), no person holding a vehicle under a hire-purchase agreement shall make any alteration to the vehicle except with the written consent of the registered owner.

Explanation. - For the purpose of this section, "alteration" means a change in the structure of a vehicle which results in change in its basic feature."

(emphasis supplied)

14. Rule 126 of the Central Rules deals with the prototype of every motor vehicle to be subject to test. Rule 126 is extracted hereunder:

"126. Prototype of every motor vehicle to be subject to test.-- On and from the date of commencement of Central Motor Vehicles (Amendment) Rules, 1993, every [manufacturer or importer] of motor vehicles [including trailers, semi trailers and modular hydraulic trailer] [including registered association (identified by the concerned State Transport Department) for E- rickshaw wherever applicable] shall submit the prototype of the vehicle [to be manufactured or imported by him] for test by the Vehicle Research and Development Establishment of the Ministry of Defence of the Government of India or Automotive Research Association of India, Pune, [or the Central Farm Machinery Testing and Training Institute, Budni (MP)], or the Indian Institute of Petroleum, Dehradun, [or the Central Institute of Road Transport", Pune, or the International Centre for Automotive Technology, Manesar,] [or the Northern Region Farm Machinery Training and Testing Institute, Hissar (for testing of combine harvester) and such other agencies as may be specified by the Central Government for granting a certificate by that agency as to the compliance of provisions of the Act and these rules:]

[Provided that the procedure for type approval and certification of motor vehicles for compliance to these rules shall be in accordance with the AIS:017-2000, as amended from time to time:]

[Provided further that in respect to the vehicles imported into India as completely built units (CBU), the importer shall submit a vehicle of that particular model and type to the testing agencies for granting a certificate by that agency as to the compliance to the provision of the Act and these rules.]

[126A. The testing agencies referred to in rule 126 shall in accordance with the procedures laid down by the Central Government also conduct tests on vehicles drawn from the production line of the manufacturer to verify whether these vehicles conform to the provisions of [rules made under section 110 of the Act]:]

[Provided that in case the number of vehicles sold in India for a given base model and its variants (manufactured in India or imported to India) are less than 250 in any consecutive period of six months in a year, then such base model and its variants need not be subjected to the above test, if at least one model or its variants manufactured or imported by that manufacturer or importer, as the case may be, is subjected to such tests at least once in a year:

Provided further that, in case the number of base models and its variants manufactured/imported is more than one and if the individual base model and its variants are less than 250 in any consecutive period of six months in a year, then the testing agencies can pick up one of the vehicles out of such models and their variants once in a year for carrying out such test.] "

15. Rule 93 deals with the overall dimension of motor vehicles. The Rule prescribes the overall width, overall length, and overall height etc. Rule 93(1) deals with overall width. Rule 93(2) with overall length. Rule 93(4) with overall height. Rule 93(6) with overhang etc.

16. The relevant Rules 96, 103 and 261 of the Kerala Motor Vehicles Rules, 1989, providing for inspection of vehicles, recording alteration and body construction are extracted 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 section 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 comparative scrutiny of the particulars contained in the application with the physical features of the vehicles, 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 stereotyped 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 circumstances:

(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."

(emphasis supplied)

17. The Division Bench of the High Court in the impugned judgment has opined that alteration is not totally prohibited. More so, in view of Rules 96 and

103 of the Kerala Rules, the Registering Authority is competent to consider roadworthiness and safety of the vehicle and it cannot be rendered a mechanical exercise. It is not only to verify as to whether the measurement conforms to the prototype test etc. The Rules provide for the dimensions of the vehicle. Rule 93 is not an enabling provision to make prototype certification. Rule 47(1)(g) of the Central Rules contemplates on road-worthiness certificate in Form 22 from the manufacturers and in Form 22A from the bodybuilders for applying for registration of the motor vehicles. The body can be built on a chassis in compliance with the provisions of the Motor Vehicles Act and the Rules framed thereunder. The manufacturer or the authorities specified under Rule 126 do not provide for any prescription as to the dimensions or nature of the body that is to be built on the chassis. The writ petitions have been allowed and orders passed by the Registering Authorities have been quashed.

18. It was urged by Mr. K.V. Viswanathan, learned senior counsel appearing as amicus curiae that the provisions contained in section 52 of the Act and Rule 126, as well as the Kerala Rules, have not been correctly interpreted by the High Court. It is not permissible to make alteration under the Rules in contravention of the provisions contained in section 52 of the Act. The provisions of the Act and the Rules have been enacted for the purpose of safety on the roads and environment and it is not permissible to alter the vehicle in derogation to the provisions of the Act. He has referred to a plethora of decisions and has also attracted the attention of this Court towards the pending Motor Vehicles Amendment) Bill, 2017 and the extracts of 243rd Report of the Parliamentary Standing Committee on Transport, Tourism and Culture on the Motor Vehicles

(Amendment) Bill, 2016.

19. Mr. Aman Lekhi, learned Additional Solicitor General appearing on behalf of the Ministry of Transport contended that the correct interpretation of the amended provisions in section 52 has not been made by the High Court. He has also attracted our attention to the Rules.

20. In *Avishek Goenka (1) v. Union of India & Anr.* (2012) 5 SCC 321, a question came up for consideration with respect to Rule 100 of the Central Rules prescribing a standard for safety. This Court held the same to be a valid piece of legislation. The object of the Act also came up for consideration and the Court observed that the legislative intent attaching due significance to the "public safety" is evident from the Objects and Reasons of the Act. The Court should give an interpretation of the Rules which would serve the legislative intent and the object of framing such Rules, in preference to the one which would defeat the very purpose of enacting the Rules as well as undermining the public safety and interest. This Court considered the provisions contained in section 52, Rules 92 and 100 of the Central Rules and observed thus:

"18. From the above provisions, it is clear that the Rules deal with every minute detail of construction and maintenance of a vehicle. In other words, the standards, sizes, and specifications which the manufacturer of a vehicle is required to adhere to while manufacturing the vehicle are exhaustively dealt with under the Rules. What is permitted has been specifically provided for and what has not been specifically stated would obviously be deemed to have been excluded from these Rules. It would neither be permissible nor possible for the Court to read into these statutory provisions, what is not specifically provided for. These are the specifications which are in consonance with the prescribed IS No. 2553-Part 2 of 1992 and nothing is ambiguous or uncertain.

19. Let us take a few examples. Rule 104 requires that every motor vehicle, other than three-wheelers and motorcycles shall be fitted with two red reflectors, one each on both sides at their rear. Every motorcycle shall be fitted with at least one red reflector at the rear. Rule 104A provides that two white reflex in the front of the vehicle on each side and visible to oncoming vehicles from the front at night.

20. Rule 106 deals with deflections of lights and requires that no lamp showing a light to the front shall be used on any motor vehicle including construction equipment vehicle unless such lamp is so constructed, fitted and maintained that the beam of light emitted therefrom is permanently deflected downwards to such an extent that it is not capable of dazzling any person whose eye position is at a distance of 8 meters from the front of lamp etc. Rules 119 and 120 specify the kind, size, and manner in which the horn and silencer are to be fixed in a vehicle.

21. These provisions demonstrate the extent of minuteness in the Rules and the efforts of the framers to ensure, not only the appropriate manner of construction and maintenance of the vehicle but also the safety of other users of the road.

28. The legislative intent attaching due significance to the 'public safety' is evident from the object and reasons of the Act, the provisions of the Act and more particularly, the Rules framed thereunder. Even if we assume, for the sake of argument, that Rule 100 is capable of any interpretation, then this Court should give it an interpretation which would serve the legislative intent and the object of framing such rules, in preference to one which would frustrate the very purpose of enacting the Rules as well as undermining the public safety and interest.

32. In the present case as well, even if some individual interests are likely to suffer, such individual or private interests must give in to the larger public interest. It is the duty of all citizens to comply with the law. The Rules are mandatory and nobody has the authority in law to mould these rules for the purposes of convenience or luxury and certainly not for crime."

21. It has been observed that the Rules deal in minute details with the construction and maintenance of the vehicle. Rules also deal with the safety of other users on the road. If some individual interest is likely to suffer, such individual interest must give way to the larger public interest.

22. Before dilating further upon the issue we take note of the decision in *R. Ramasamy v. The Secretary, Ministry of Transport, Chennai & Ors.* (2009) 1 Mad.LJ 1027 wherein the Madras High Court has considered the provisions of section 52(1)(a) as amended by Act 27/2000 and has opined thus:

"8.4 A comparison of the aforesaid provisions makes it clear that Section 32(1) (a) and (b) of the Old Act along with the proviso had been practically re-enacted as Section 52(1)(a) and (b) of the New Act. However, in the New Act, a second proviso was added which permitted modification of the engine for facilitating its operation by a different type of fuel. Section 32(2) of the Old Act along with the proviso was re-enacted as Section 52(2) of the New Act. As per Section 32(1) and 32(2) of the Old Act, corresponding to Section 52(1) and 52(2) of the new Act, before making any alteration, the owner was required to give notice to the registering authority and obtain permission. The registering authority was required to communicate its approval or disapproval within seven days and if no such communication was served within the period of seven days, approval of such authority to the proposed alteration was deemed to have been given. Section 32(3) of the Old Act corresponding to Section 52(3) of the New Act, contained an enabling provision whereunder the State Government could authorize the owners having ten or more transport vehicles to change its engine number by replacing such engine without the approval of the registering authority. Section 32(4) of the Old Act corresponding to Section 52(4) of the New Act, cast a duty on the owner of the vehicle to report the alteration made with actual or deemed approval as contemplated under Section 32(2) of the Old Act corresponding to Section 52(2) of the new Act or, and without approval as contemplated under Section 32(3) of the Old Act corresponding to Section 52(3) of the New Act "in order that particulars of the alteration may be entered in the

certificate of registration". Section 32(5) of the Old Act corresponding to Section 52(5) of the New Act envisaged that the registering authority making any such entry should communicate the details of the entry to the original registering authority. Section 52(6) of the New Act contained a new provision laying down that a person holding a vehicle under a hire purchase agreement cannot make the alterations contemplated in Section 52(1) of the New Act without the written consent of the registered owner.

8.5 After amendment of Section 52 of the New Act under Act 27 of 2000, Section 52(1) has been retained as Section 52(1) with significant modification. It is important to notice that the provisions contained in Section 32(1)(a) & (b) of the Old Act corresponding to Section 52(1)(a) & (b) of the New Act relating to giving of notice and obtaining of approval of the registering authority have been deleted in the Amended Act. The amended section does not contain any provision relating to giving of notice or obtaining of approval. The first proviso to Section 52(1) of the New Act has also been deleted and the second proviso to Section 52(1) of the New Act relating to the modification of engine has been re-enacted as the first proviso to Section 52(1) of the Amended Act. Moreover, two other provisos have been added to Section 52(1). Since the earlier provision in Section 52(1)(a) & (b) of the New Act relating to the issuance of notice and approval have been deleted. Section 52(2) of the New Act which related to deemed approval on expiry of seven days has also been deleted and Section 52(3) of the New Act has been renumbered as Section 52(2) of the Amended Act. Section 52(4) of the New Act has been re-enacted with certain changes as Section 52(3) of the Amended Act requiring the owner to report regarding the alteration to the registering authority. Under Section 52(4) of the New Act, the owner was required to report about the alteration, made either with the approval or deemed approval of the registering authority, or by reason of replacement of engine, without such approval, to the registering authority within whose jurisdiction he resided and shall forward the certificate of registration to that authority together with the prescribed fee "in order that particulars of the alteration may be entered therein".

8.6 A minute examination of the provisions makes it clear that the expression "particulars of the alteration may be entered therein" as contained in Section 52(4) of the New Act, now reads as "in order that particulars of the registration may be entered therein" in the Amended Act. It is crystal clear that the word "registration" in the Amended Act is an obvious typographical mistake, which has been inadvertently incorporated instead of the word "alteration". What is intended is that the particulars of the alteration made in a vehicle should be incorporated in the certificate of registration.

8.7 Sections 52(5) and 52(6) of the New Act, have been now re-enacted as Sections 52(4) and 52(5) of the Amended Act respectively. The Amended Act, however, contains an important explanation, which was absent in the Old Act or the New Act. The explanation is to the effect that, for the purpose of Section 52,

"alteration" means a change in the structure of a vehicle which results in a change in its basic feature.

9. Section 52(1) of the Amended Act obviously is not very happily worded. By altering the vehicle the particulars contained in the certificate of registration cannot be a variance with those specified by the manufacturers. The certificate of registration contains some of the vital particulars of the vehicles. The real meaning is that the particulars of alteration to be incorporated in the Certificate of Registration as contemplated in Section 52(3) of the Amended Act are at variance with those originally specified by the manufacturer. When the provision is read in the light of the explanation, it is obvious that changes or modification which do not result in a change in basic feature need not be considered as an alteration within the meaning of Section 52 of the Amended Act.

.....

11.1 A comparison of the relevant provisions contained in the Old Act and the New Act with the provisions of the Amendment Act clearly indicates that the Legislature has dispensed with the requirement of obtaining permission relating to every change or modification effected in a motor vehicle. In fact, the 1988 Act itself has been amended in such a manner as to make it unnecessary for seeking permission to make such minor change or modification. Moreover, every minor change or modification is not necessarily considered as an alteration within the meaning of Section 52 of the Amended Act. In the present case, the RTO has practically applied the provisions, which were available before the amendment was effected in 2000, without taking note of such amendment."

23 It has been observed by the High Court of Madras that an alternation in the vehicle is not permissible which may be at variance with the particulars contained in the certificate of registration which contains vital particulars of the vehicle and the permissible changes or modifications and which do not result in change in the basic feature, need not be considered as alternation within the meaning of section 52 of the Amended Act.

24. The decision in the case of K.S. Rajesh Kumar v. The Additional Registering Authority of Kerala High Court delivered on 1.2.2010 has also been referred to wherein the question of alteration in the vehicle came up for consideration. The passenger vehicle was purchased as defined in section 2(17) of the M.V. Act. The petitioner wanted to convert the same into the vehicle that could be used as a cinema outdoor unit by fixing a generator set therein. The Court held that the petitioner has not made any alteration to either the chassis or the body of the vehicle as the manufacturer has manufactured only the chassis of the vehicle and not its superstructure. In place of the seats meant for passengers, the petitioner was fitting only a generator which alteration was permissible. There was no violation of the provisions of section 52.

25. The decision in Mohd. Javeed v. Union of India & Ors. (2001) 9 ALD 88 = 2009 1 ALT 507 has also been referred by the learned amicus curiae. In the said

case chassis were changed. The Court held that the chassis is the base frame of a motor vehicle and no doubt is an important feature of the vehicle. Whether the change of the chassis would amount to change in the structure of the vehicle. The replacement became necessary on account of the accident. There was no other change in the structure of the vehicle. It was held that section 52(3) enables the owner of the vehicle to replace the engine of the vehicle but the factum of replacement has to be reported to the Authority within

14 days. On the same analogy, the Court held that the chassis was changed by the manufacturer with the approval of the insurance company and the bank and change became necessary due to the damage caused to the chassis owing to the accident. Thus the refusal of registration was held to be bad in law and set aside. In fact, there was no change of chassis except the replacement in the said case.

26. The decision in *V.N. Dharmakrishnan v. Deputy Commissioner of Transport*, AIR 2006 Mad. 340 has also been placed for consideration. The question arose whether a Delivery Van Goods Carrier can be altered as an ambulance. The Court held it to be a clear violation of the provisions of the M.V. Act and using goods carriage as an ambulance for which permit had already been canceled, cannot be condoned on the ground that the 5th respondent was rendering some free service. The decision turned on its own facts.

27. The very object of the amendment of section 52(1) by Act 27/2000 is to prohibit alteration of a vehicle as provided including the change of tyres of higher capacity. The amended section 52(1) has specified the extent to which vehicle cannot be altered. A reading of the provisions makes it clear that no vehicle can be altered in a manner where particulars in the certificate of registration are at variance with those "originally specified by the manufacturer". The proviso to sub-section (1) permits modification of the engine, or any part thereof, of a vehicle for facilitating its operation by a different type of fuel or source of energy including battery etc., such modification is permissible to be carried out subject to such conditions as may be prescribed. The second proviso to section 52(1) empowers the Central Government to prescribe specifications, conditions for approval, retro-fitment and other related matters for such conversion kits. The Central Government has power to grant an exemption for alteration of vehicles for any specific purpose. Section 52(2) authorizes a State Government to issue a notification and permit any person owning not less than 10 transport vehicles to alter any vehicle owned by him so as to replace the 'engine' with an engine of the same make and type, without the approval of the Registering Authority. Section 52(3) provides that where the alteration has been made without the approval of the Registering Authority, obviously the one which is permissible in the motor vehicle, the owner of the vehicle has to report the same within 14 days to make an entry in the particulars of the registration. The provisions of section 52(2), (3), (4) and (5) have to be read harmoniously. The Explanation to section 52 says that "alteration" means a change in the structure of a vehicle which results in a change in its basic feature. The alterations which do not

change the basic features are outside the purview of alteration.

28. The object and the clear intent of amended section 52 is that the vehicle cannot be so altered that the particulars contained in the certificate of registration are at variance with those "originally specified by the manufacturer". The manufacturer issues sale certificate in Form 21 which has been framed under Rule 47(1)(a) of the Central Rules. Rule 47(1)(a) is extracted hereunder :

"47. Application for registration of motor vehicles.-- (1) An application for registration of a motor vehicle shall be made in Form 20 to the registering authority within a period of 1[seven days] from the date of taking delivery of such vehicle, excluding the period of journey and shall be accompanied by--

(a) sale certificate in Form 21;"

29. The particulars are to be specified by the manufacturer. An application for registration of the motor vehicle has to be filed in Form 20. It has to accompany a sale certificate issued by the manufacturer or dealer etc. as the case may be as provided in Rule 47(1)(a) and (d). Form 20 is extracted hereunder:

"APPLICATION FOR REGISTRATION OF A MOTOR VEHICLE

(To be made in duplicate if the vehicle is held under an agreement of Hire-Purchase/Lease/Hypothecation and a duplicate copy with the endorsement of the Registering Authority to be returned to the Financier simultaneously on Registration of motor vehicle)\

To

The Registering Authority,

.....

1. Full name of person to be registered as Registered Owner son/Wife/daughter of

2. Age of person to be registered as Registered owner

3. Permanent address (Electoral Roll/Life Insurance Policy/Passport/ Pay slip issued by any office of the Central Government/State Government or a local body/ Any other document on documents as may be prescribed by the State Government/Affidavit sworn before an Executive Magistrate or a First Class Judicial Magistrate or a Notary Public to be enclosed)

4. Temporary address/ Official address, if any

5. Duration of stay at the present address

6. PAN number (optional)

7. Place of birth

8. If place of birth is outside India, when migrated to India

9. (Omitted)
10. Name and address of the Dealer or Manufacturer from whom the vehicle was purchased (sale certificate and certificate of roadworthiness issued by the manufacturer to be enclosed)
11. If ex-army vehicle or imported vehicle, enclose proof. If Locally manufactured Trailer/Semi-trailer, enclose the Approval of design by the State Transport Authority and note the proceedings number and date of approval
12. Class of vehicle (if motorcycle, whether with or without gear)
13. The motor vehicle is
- (a) a new vehicle,
- (b) ex-army vehicle,
- (c) imported vehicle
- (d) in-use E-rickshaw or E-cart
14. Type of body
15. Type of vehicle
16. Maker's name
17. Month and year of manufacture
18. Number of cylinders
19. Horse power
20. Cubic capacity
21. Maker's classification or if not known, wheel base
22. Chassis No. (Affix Pencil print)
23. Engine Number or Motor Number in case of Battery Operated Vehicles
24. Seating capacity (including driver)
25. Fuel used in the engine
26. Unladen weight
27. Particulars of previous registration and registered number (if any)
28. Colour or colours of body wings and front end

I hereby declare that the motor vehicle has not been registered in any State in India.

ADDITIONAL PARTICULARS TO BE COMPLETED ONLY IN THE CASE OF
TRANSPORT VEHICLES OTHER THAN MOTOR CAB

29. Number, description, size and ply rating of tyres, as declared by the manufacturer

(a) Front axle =

(b) Rear axle =

(c) Any other axle =

(d) Tandem axle =

30. Gross vehicle weight

(a) as certified by manufacturer Kgms

(b) To be registered Kgms

31. Maximum axle weight

(a) Front axle= Kgms

(b) Rear axle= Kgms

(c) Any other axle=..... Kgms

(d) Tandem axle= Kgms

32. (a) Overall length.....

(b) Overall width.....

(c) Overall height

(d) Over hang

The above particulars are to be filled in for a rigid frame motor vehicle of two or more axles for an articulated vehicle of three or more axles or, to the extent applicable, for trailer, where a second semi-trailer or additional semitrailer are to be registered with an articulated motor vehicle. The following particulars are to be furnished for each such semi-trailer.

33. Type of body.....

34. Unladen weight

35. Number, description and size of tyres on each axle

36. Maximum axle weight in respect of each axle

37. The vehicle is covered by a valid certificate of Insurance under Chapter XI of

the Act Insurance Certificate Or Cover Note No

Date of (Name of company) Valid from to

38. The vehicle is exempted from insurance The relevant order is enclosed

39. I have paid the prescribed fee of Rs. Date.....

Note.- The motor vehicle above described is--.....

Signature or thumb impression of the person to be registered as registered owner

(i) Subject to Hire-purchase agreement/lease agreement with

(ii) Subject to hypothecation in favour of

(iii) Not held under Hire-purchase agreement, or lease agreement or subject to Hypothecation Strike out whatever is inapplicable, if the vehicle is subject to any such agreement the signature of the Financier with whom such agreement has been entered into is to be obtained.

.....

Signature of the financier with whom an Signature or thumb impression of the registered Agreement of Hire-purchase, Lease owner or Hypothecation has been entered into.

CERTIFICATE OF INSPECTION OF MOTOR VEHICLE

Certified that the particulars contained in the application are true and that the vehicle complies with the requirements of the Motor Vehicles Act, 1988 and the Rules made thereunder.

Date

Ref. No.....

.....

Signature of the Inspecting Authority

Name.....

Designation

OFFICE ENDORSEMENT

Office of the.....

The above-said motor vehicle has been assigned the Registration

number..... and registered in the name of the applicant and the vehicle is subject to an agreement of Hire-purchase/Lease/Hypothecation with the Financier referred above.

Date.....

Signature of the Registering Authority

To

The Financier

.....
....

(To be sent by registered post acknowledgment due)

Specimen signature or thumb-impression of the person to be registered as Registered Owner and Financier are to be obtained in original application for affixing and attestation by the Registering Authority with office seal in Forms 23 and 24 in such a manner that the part of impression of seal or a stamp and attestation shall fall upon each signature.

Specimen signature of the Financier Specimen Signature of Registered Owner

1) 1)

2) 2)....."

30. Form 21 as provided in Rule 47(a) and (d) contain sale certificate issued by the manufacturer same is extracted hereunder:

"Form 21

SALE CERTIFICATE

(To be issued by manufacturer or dealer or registered E-rickshaw or E-cart Association (in case of E-rickshaw or E-cart) or officer of Defence Department (in case of military auctioned vehicles) for presentation along with the application for registration of a motor vehicle).

Certified

that.....

(brand name of the vehicle) has been delivered by us to..... on..... (date)

Name of the buyer

Son/wife/daughter of

Address (Permanent)

(Temporary)

The vehicle is held under agreement of hire-purchase/lease/hypothecation with.....

The details of the vehicle are given below :

1. Class of vehicle
2. Maker's name.....
3. Chassis No.....
4. [Engine number or motor number in the case of Battery Operated Vehicles]
5. Horsepower or cubic capacity.....
6. Fuel used
7. Number of cylinders
8. Month and year of manufacture
9. Seating capacity (including driver)
10. Unladen weight
11. Maximum axle weight and number and description of tyres (in case of transport vehicle)
 - (a) Front axle.....
 - (b) Rear axle
 - (c) Any other axle
 - (d) Tandem axle
12. Colour or colours of the body
13. Gross vehicle weight
14. Type of body

[Signature of the manufacturer or dealer or Officer of Defence Department or registered E-rickshaw or E-cart Association]

*Strike out whichever is inapplicable."

31. The certificate of registration has to be issued in Form 23 as provided in Rule 48 of the Central Rules. Rule 48 deals with the issue of the certificate of registration under Rule 47. Rule 48 is extracted hereunder :

"48. Issue of certificate of registration.-- On receipt of an application under rule 47 and after verification of the documents furnished therewith, the registering authority shall, subject to the provisions of section 44, issue to the owner of the motor vehicle a certificate of registration in Form 23 or Form 23A, as may be

specified in the Notification issued by the concerned State Government or Union Territory Administration [within the period of thirty days from the receipt of such an application]:

[Provided that where the certificate of registration pertains to a transport vehicle it shall be handed over to the registered owner only after recording the certificate of fitness in Form 38 [within the period of thirty days from the date of receipt of such an application].]"

32. The vehicle has to comply with the provisions of the Rules contained in Chapter V of the Central Rules as provided in Rule 92(1). Rule 92(1) has to be read as subservient to the provisions contained in section 52 of the Act and what is prohibited therein to allow the same is not the intendment of the rules contained in the Chapter. Various provisions in Chapter V are additional safeguards to what is prohibited in section 52(1) that is to say, what has been specified originally by the manufacturers and once that has been entered in the particulars in the certificate of registration, cannot be varied. No vehicle can be altered so as to change original specification made by manufacturer. Such particulars cannot be altered which have been specified by the manufacturer for the purpose of entry in the certificate of registration. It is provided in Rule 126 of the Central Rules, prototype of every type of vehicle is subject to test. The provisions of Rule 126 intend for fitness of vehicle to be plied on the road by the agencies which are specified therein. Approval and certification of motor vehicles for compliance to these rules shall be in accordance with the AIS: 017-2000. Rule 93 deals with overall dimensions of the motor vehicles such as width, length, height, overhang etc. No doubt about it that the vehicle has to be in conformity with the rules also but Rules cannot be so interpreted so as to permit the alteration as prohibited under section 52(1) of the Act. The alteration under the Rules is permissible except as prohibited by section 52. The specification of the rules would hold good with respect to the matters as not specifically covered under section 52(1) and not specified therein by manufacturer. The emphasis of section 52(1) is not to vary the "original specifications by the manufacturer". Remaining particulars in a certificate of registration can be modified and changed and can be noted in the certificate of registration as provided in section 52(2), (3) and (5) and the Rules. Under section 52(5), in case a person is holding a vehicle on a hire purchase agreement, he shall not make any alteration except with the written consent of the original owner.

33. In our considered opinion the Division Bench in the impugned judgment of the High Court of Kerala has failed to give effect to the provisions contained in section 52(1) and has emphasized only on the Rules. As such, the decision rendered by the Division Bench cannot be said to be laying down the law correctly. The Rules are subservient to the provisions of the Act and particulars in certificate of registration can also be changed except to the extent of the entries made in the same as per the specifications originally made by the manufacturer. Circular No.7/2006 is also to be read in that spirit. Authorities to act accordingly.

34. Resultantly, the impugned judgment cannot be sustained and is hereby set aside. The appeals are allowed.