
(2013) 02 KL CK 0055
In the High Court Of Kerala
Case No : Writ Petition (C) No. 927 of 2011

Sainaba

APPELLANT

Vs

Regional Transport Authority

RESPONDENT

Date of Decision : 25-02-2013

Acts Referred:

Motor Vehicles Act, 1988 — Section 113, 113(1)

Citation : (2013) 1 KHC 824 : (2013) 2 KLJ 452 : (2013) 1 KLT 822

Hon'ble Judges : V. Chitambaresh, J

Bench : Single Bench

Advocate : K.V. Gopinathan Nair, Saju J. Vallyara, G. Chitra, P. Deepak, Aparna Rajan, G. Prabhakaran, R. Padmakumari and I. Dinesh Menon, for the Appellant; P.M. Saneer, Sr. Government Pleader, for the Respondent

Final Decision : Dismissed

Judgement

V. Chitambaresh, J.—Can the State Government ban the use of four wheeled buses to operate as stage carnages taking into consideration the safety of passengers? The issue crops up in the wake of a circular issued by the State Government prohibiting the grant of stage carriage permits to four wheeled buses. The alarming number of accidents involving four wheeled buses had invited much public criticism forcing the Government of Kerala to re-think about the grant of stage carriage permits for such vehicles. A Division Bench of this court in W.A. No. 205672003 and connected cases filed against the proceedings of the Regional Transport Authority insisting for atleast six wheeled buses observed as follows:

Being a general issue, we are of the opinion that the matter requires examination at the hands of the State Government, so that the Government could pass appropriate orders, depending upon the topography of each area. It was conceded by the appellants/writ petitioners that the Government have got a power u/s 113(1) of the Motor Vehicles Act to decide such issues of general application through out the State. Since the Government have power to prescribe

such conditions, the Government be directed to examine the various pros and cons of the matter and pass appropriate orders thereon in accordance with law. The Government could issue appropriate direction which is applicable through out the State. Before passing orders, it would be appropriate that the Government will hear the bus owners association.

2. The Secretary of the Transport (B) Department of the State in obedience to the directions in the judgment above heard the representatives of the bus owners association and collected the relevant inputs. The Government of Kerala later examined the matter in detail and prohibited the grant of stage carriage permits to four wheeled buses by G.O.(P) No. 67/2011/Tran. dated 30.11.2011. The Government Order inter alia states as follows:

Government have examined the matter in detail and found that operational cost of a mini/medium or heavy stage carnages does not differ much, except in the initial investments. Vehicles with six wheels also will serve the same purpose which has lower centre of gravity and more area of contact with the road and hence more stability and reduce chances for overturning. Passengers especially the standing passengers may not be a stable load and hence the weight of the passengers may tilt the centrifugal force while negotiating curves or even while overtaking a vehicle. Overloading of vehicles cannot be controlled with the existing infrastructure of the department in all types. Vehicle with certain description of standards, restrictions, minimum comfort, maximum safety to the passengers with various facilities under rules alone can be allowed to be used as stage carriage operations.

After examining the various pros and cons of the matter, it is felt there is no need to issue stage carriage permits to the vehicles having four wheels.

3. The above Government Order is challenged by the permit holders and owners of four wheeled buses and Mr. K.V. Gopinathan Nair, Advocate led the arguments on their behalf in these bunch of Writ Petitions. Mr. P.M. Saneer, Government Pleader appeared on behalf of the Government of Kerala who deserves a rich encomium for the earnestness he exhibited to support the Government action.

4. I shall at the outset quote Section 113 of the Motor Vehicles Act, 1988 (the "Act" for "short") which clothes the Government, of Kerala to issue orders akin to the one in hand and impugned in these Writ Petitions.

Section 113. Limits of weight and limitations on use -(1) The State Government may prescribe the conditions for the issue of permits or (transport vehicles) by the State or Regional Transport Authorities and may prohibit or restrict the use of such vehicles in any area or route.

(2) xxx xxx xxx

(3) xxx xxx xxx

(4) xxx xxx xxx.

It is too well known that a major portion of the roads in the State of Kerala pass through hilly terrains and accidents frequently occur in steep gradients and in places having sharp curves. A six wheeled bus having four wheels at the back and two wheels at the front provides better stability to the vehicle adding to the safety of the passengers which may include standing commuters and children. More number of wheels at the front would perhaps affect the maneuverability of the vehicle and not so at the back which would in fact give a cushioning effect to the passengers. The possibility of the vehicle getting capsized on account of the puncture of a tyre is less for a six wheeled bus since it can very well withstand the laden weight with the remaining tyres.

5. I did peruse the brochures published by the Land Transport Safety Authority, Wellington, New Zealand which gives an insight to the stability of heavy vehicles being plied on the public roads. The same speaks about the Static Roll Threshold which describes the maximum amount of lateral (sideways) acceleration a heavy vehicle can handle without rolling over. There is a tremendous difference between a four wheeled car or jeep having less height and a tall bus with standing passengers maneuvering a curve at a high speed along the public road. The chances of the bus rolling over is very much high whereas a car or a jeep may at best slide out in view of the height of the vehicles especially when the roads are slippery during rainy season. A six wheeled bus can definitely resist the roll over as it retains better grip over the road and can maintain its balance more easily than a four wheeled bus in similar circumstances.

6. I conclude that the Government Order prohibiting the grant of stage carriage permits to four wheeled buses has been issued with a laudable object in a bid to curtail the road accidents in the State. It is reported that motor vehicles tax has been paid for most of the four wheeled buses upto the quarter ending 31.3.2013 and that a few of the route permits even extend beyond that date. I permit the operation of stage carriage services with four wheeled buses either on the basis of regular permit or temporary permit only upto 31.3.2013 and not beyond. The permit holders are free to replace the vehicles on the route covered by such permits with six wheeled buses or more with effect from 1.4.2013 of course subject to approval by authority. Mr. Saju J. Vallyara, Advocate appearing on behalf of a few of the petitioners points out that the proto type of the vehicles had been got approved by the manufacturer as required under Rule 126 of the Central Motor Vehicles Rules. It is his case that the four wheeled buses have been so certified to be fit to be used as stage carriages and that it would be unreasonable for any State Government to place a restriction in the light of the Central Motor Vehicles Rules. But the Government of Kerala is well within its powers to curb the grant of stage carriage permits to four wheeled buses taking note of the topography of the State and the infrastructure of the Motor Vehicles Department, Instances of the stage carriages being overloaded during peak hours cannot be lost sight of and very, little is done to off load the excess passengers by the police. I however clarify that this judgment pertains to use of four wheeled buses as stage carriages and the use of the same for educational or

hospital purposes has not been dealt with.

The Writ Petitions fail and are dismissed. No costs.