
(2016) 03 KL CK 0157

In the High Court Of Kerala

Case No : W.P.(C) Nos. 19975, 19976 & 19977 of 2010 & 13408 of 2011 & 14921 & 16887 of 2012.

Shyamaladevi. A.K.

APPELLANT

Vs

The Regional Transport Officer, Kottayam

RESPONDENT

Date of Decision : 29-03-2016

Acts Referred:

Central Motor Vehicles Rules, 1989 — Rule 126, 126A, 2(q), 96(9)
Constitution of India, 1950 — Article 14, 19

Citation : (2016) 2 ILRKerala 762 : (2016) 2 KerLJ 508 : (2016) 2 KHC 469 : (2016) 2 KLT 441

Hon'ble Judges : Shaji P. Chaly, J.

Bench : Single Bench

Advocate : K.K. Chandran Pillai (Sr. Advocate), Ashok B. Shenoy and I. Dinesh Menon, Advocates, for the Appellant; V.P. Sathi and Eggly N. Elias, Government Pleader and N. Nagaresh, Assistant Solicitor General, for the Respondent

Final Decision : Dismissed

Judgement

Shaji P. Chaly, J. - These writ petitions are filed challenging the action of the respective Motor Vehicles Authority refusing to register or renew the fitness certificate etc. on the ground that the vehicles are not fitted with Anti-lock Braking System (ABS) as provided under sub-rule (9) of Rule 96 of the Central Motor Vehicles Rules. In the first three writ petitions captioned above and in W.P. (C) No. 14921 of 2012, the Constitutional validity of the said rule is under challenge. Since the subject matter of the writ petitions are similar in nature, they are disposed of together for convenience. The facts stated in W.P. (C) No. 19977 of 2010 are narrated hereunder for disposal of the writ petitions. However, the details of the vehicles are first referred so as to understand the nature of the vehicles in order to arrive at a finding as to whether they are covered under sub-rule (9) of Rule 96 of the Central Motor Vehicles Rules, 1989 (for short, CMV Rules).

W.P.(C) No. 19975 of 2010

2. The vehicle involved is Light Commercial Vehicle (LCV) Goods Carrier Truck-Tata 407. The said vehicle has an unladen weight of 2200 Kg. (2.2 tonnes) and gross weight of 4450 Kg. (4.45 tonnes). Since the vehicle number is not mentioned in the writ petition, I think it is only appropriate that the Engine Number and Chassis Number are mentioned. The Engine No. of the said vehicle is 497SPTC35JQZ629764 and Chassis No. is MAT35710598J27984 and is covered by Ext.P1 sale certificate. The said vehicle is registered with R.T.O., Kottayam.

W.P.(C) No.19976 of 2010

3. The vehicle involved is a LMV Goods Carriage bearing registration No. KL-38 A 2948. The said vehicle has an unladen weight of 2350 Kg. (2.35 tonnes) and a gross weight of 5700 Kg. (5.7 tonnes). The said vehicle is registered with R.T.O., Thodupuzha.

W.P.(C) No.19977 of 2010

4. The vehicle is a Light Goods Vehicle bearing Registration No. KL-6E-4787, having an unladen weight of 2300 Kg. (2.3 tonnes) and a gross weight of 5700 Kg. (5.7 tonnes). The said vehicle is registered with R.T.O., Idukki.

W.P.(C) No.14921 of 2012

5. The said vehicle is bearing registration No.KL-08 AS-5674 and is a LMV Goods Carrier Truck, having unladen weight of 2740 Kg. (2.74 tonnes) and gross vehicle weight of 5950 Kg. The said vehicle is registered with R.T.O., Thrissur.

W.P.(C) No. 13408 of 2011

6. The vehicle involved is having registration No.KL-08 AT/2601 and a LMV Goods Carriage having unladen weight of 2680 Kg. and gross vehicle weight of 4600 Kg. (4.6 tonnes). The vehicle is registered with R.T.O., Thrissur.

W.P.(C) No.16887 of 2012

7. The vehicle involved is having registration No.KL-08 AS-4879, having unladen weight of 2640 Kg. (2.64 tonnes) and gross vehicle weight of 6140 Kg. (6.14 tonnes).

8. All the aforesaid vehicles are having goods carriage permit and are permitted to carry all kinds of hazardous goods [Gas cylinders only]. The stand taken by the Motor Vehicles Authority is that the aforesaid vehicles are categorised in N2 category of vehicles and therefore after 01.10.2006 if they are meant for carrying hazardous goods and Liquefied Petroleum Gas, the said vehicles shall be fitted with ABS conforming to IS: 11852:2003 [Part-9]. Therefore, when these vehicles were taken to the authorities either for registration or for renewal of the permit, the same was declined, since they were not fitted with Anti-lock Braking System. In some of the writ petitions, the parties have approached this Court and secured direction for registration subject to certain conditions.

9. It is contended by the petitioner that the vehicle was registered temporarily

under Section 43 r/w Rule 94 of the Motor Vehicles Act, 1988. The manufacturer issued a certificate under Form 22A specifying the pollution standards. Thereafter the vehicle was produced for registration before the authority after payment of prescribed fees. But the same was refused to be registered on the ground that the vehicle has not complied with sub-rule 9 of Rule 96 of Central Motor Vehicles Rules. Thereupon petitioners moved this court and this court directed the authority to register the vehicles on condition that the vehicle is fitted with ABS within a period of three months. In accordance with the directions contained in Ext.P2 judgment, the vehicle was registered, as evident from Ext.P3 Registration Book. It is contended by the petitioner that in spite of his earnest efforts, he could not procure an Anti-lock Breaking System suitable to be fixed in the vehicle owned by the petitioner and therefore the petitioner is left with no other option than to challenge the statutory provision which provides for direction to fit the vehicle with ABS. Therefore, the petitioner was served with Ext.P4 order by the Registering Authority refusing to register the vehicle. It is thus challenging Ext.P4, petitioner has filed the above writ petition and also challenging the Constitutional validity of Rule 96(9) of CMV Rules.

10. Contention of the petitioner is that, the classification done as "N2" and "N3" does not create an intelligible differentia and that such a classification is unreasonable and it has no object sought to be achieved under the scheme of the Motor Vehicles Act. That apart, it is contended by the petitioner that as per Rule 126A of the Central Motor Vehicles Rules, the Testing agencies are required to conduct test of vehicles drawn from the production line of the manufacturer to verify whether these vehicles conform to the provisions of the Rules made under Section 110 of the Motor Vehicles Act. Therefore, a combined reading of Rule 126 and 126A reveal that every vehicle manufactured is supposed to be tested by either the testing agencies as per the procedures prescribed by the concerned agencies and that the vehicles are to be tested to conform to the provisions of the Rule made under Section 110 of the Motor Vehicles Act.

11. That apart, it is contended by the petitioner that once the prototype of the vehicle is tested and approved by the testing agency, the manufacturer is free to distribute the vehicles for use on road. Therefore, the prototype of the vehicles mentioned above also tested by the manufacturer and certified by the testing agency as per Rule 126A in order to conform to the provisions of the Rules made under Section 110 of the Act. In such circumstances, it is contended that if the vehicles did not conform to the provisions of the Central Motor Vehicles Rules, the vehicles would not have been granted certificate by the testing agency. That apart, it is the contention of the petitioner that, the manufacturer during manufacture of N2 and N3 category of vehicles may not be able to predict for what purpose the vehicles could be used, because N2 and N3 vehicles can be used for various applications as they are rigid trucks. The vehicles are sold by the manufacturer as drive away chassis on which body is built according to the intention of the purchaser. Therefore, the manufacturer may not comply with sub-rule 9 of Rule 96 of Central Motor Vehicles Rules, taking advantage of ambiguity

in the legislation.

12. It is also the contention of the petitioner that after the vehicles are purchased as drive away chassis, the purchaser may use it as trucks, trailers, double deckers etc. Therefore, it is contended that if compliance of sub-rule 9 of Rule 96 is insisted after its prototype certification, the same is not practical. That apart, it is also contended, if ABS is fitted by the local mechanic, the entire system of braking provided in the vehicle changes and amounts to material alteration as provided under Section 52 of the Motor Vehicles Act, which is not permitted. It is also the contention of the petitioner that, the vehicle is fitted with fittings for carrying LPG cylinders. However, it would not entitle a person to transport LPG or chemicals unless and until it is found to be in accordance with Rule 131 of the Central Motor Vehicles Rules. The respondent, alleging that the vehicle is intended to transport hazardous goods or LPG, has refused to register the vehicle stating that the vehicle is not fitted with ABS as required under the Rules specified above. It is also contended that trucks may be utilised for various purposes and refusal to register all vehicles for non-compliance of sub-rule 9 of Rule 96 of Central Motor Vehicles Rules is arbitrary and irrational. Therefore, it is contended by the petitioner that sub-rule 9 of Rule 96 of the Central Motor Vehicles Rules is unconstitutional being arbitrary and against the scheme of the Motor Vehicles Act, and the attendant Rules, and therefore seeks to declare the said provision as unconstitutional.

13. In the other writ petitions also similar contentions are raised by the petitioners.

14. Some of the vehicles involved in the above writ petitions are granted Goods Carriage permit and permitted to carry LPG cylinders on certain conditions especially on directions issued by this court in the writ petitions. In all the writ petitions, the petitioners have a contention that, due to the type and nature of vehicles, in order to change the brake system to ABS, they are not available in the market therefore the petitioners are unable to fit them as directed by the Motor Vehicles Authority. In some of the writ petitions, to that effect, letters issued by the manufacturers are produced. Therefore, the petitioners have taken a contention that since such brake systems are not available in the market, it is not practically possible to fit the vehicles with ABS. Moreover, a general contention is raised in the writ petitions to the effect that since Goods Carriage permits are issued permitting the petitioner to carry Gas cylinders, it was not legal on the part of the registering authority to insist for fitting with ABS for renewal of permits. That apart, it is also contended that N2 category vehicles which are directed to be fixed with ABS is a direction to the manufacturer and therefore if the manufacturer has not fitted the same with ABS, the Motor Vehicle Authorities are not competent to insist the purchasers of the vehicle to fit the vehicle with Anti-lock Braking System.

15. That apart, it is also contended that the vehicles are category N vehicles and are Goods vehicles and N2 and N3 classifications are made on the basis of the

Gross Weight of the vehicle. N2 and N3 category vehicles are defined in Rule 2 (q) and (r) respectively. Therefore, the petitioners have a contention that the vehicles belonging to them are not covered by Rule 2(q) so far as the Gross Weight of the vehicles are concerned, and therefore the authorities are not competent to insist to change the brake system to ABS.

16. Per contra, the respondents have filed a counter affidavit refuting the allegations and statements contained in the writ petitions. The thrust of the contention advanced by the respondents are that: As per sub-rule 9 of Rule 96 of the Central Motor Vehicles Rules, 1989, inserted by GSR No. 589 (E), dated 16.09.2005, the category of vehicles mentioned thereunder shall be fitted with Anti-lock braking system conforming to IS: 11852:2003 (Part-9).

17. That apart, it is also contended that Anti-lock Braking System is a safety system which prevents the wheel on a Motor Vehicle from locking up or ceasing to rotate while braking. That it offers improved vehicle control and decrease stopping distance on dry and especially slipping surface. The primary benefit of the Anti-lock Braking System is to increase the ability of the driver to maintain control of the vehicle rather than go into a skid. Sub-rule 9 of Rule 96 is inserted with an intention to make the braking system of motor vehicle more effective and thus increasing road safety. It is also contended that petitioner has not produced any study report so as to establish that ABS is inefficient and it is ineffective.

18. It is also contended that Rule 126 of the Central Motor Vehicles Rules, 1989 envisages that every manufacturer or importer of motor vehicles other than trailers and semi trailers shall submit the prototype of every vehicle to be manufactured or imported by them before the authorised testing agency specified by the Government in the Rule for granting a certificate by that agency as to the compliance of the provisions of the Act and Rules. That apart, it is also contended that the ABS may or may not be fitted before obtaining prototype approval certificate. But the categories of vehicles specified in Rule 96(9) would have been fitted with ABS so as to ensure braking system more effective since the extent of accidents caused by these categories of vehicles is unpredictable. That apart, it is also contended that it cannot be insisted that every manufacturer of the motor vehicles shall be fitted with ABS at the time of obtaining prototype certificate specified in Rule 126 because ABS is not mandatory for all categories of motor vehicles and it shall be fitted depending upon the purpose the vehicle is put to use. It is also contended that at the time of prototype test, it is not necessary to test the functioning of the Anti-lock Braking System. Like speed governor, the Anti-lock Braking System is a separate unit fitted in certain categories of vehicles which make the braking system more effective.

19. It is also contended that the fitment of Anti-lock Braking System is not violative of Section 52 of the Motor Vehicles Act, that as per Section 52 of the Motor Vehicles Act, no owner of the motor vehicle shall alter the vehicle that the

particulars contained in the certificate of registration are at variance with those originally specified by the manufacturer. That apart, it is also the contention of the respondents that alteration in this context means a change in the structure of vehicle resulting in its basic feature. Therefore, it is contended that while fitting ABS, the basic feature of the vehicle does not attain any change. That apart, it is also contended that the Anti-lock Braking System is insisted on category N2 and N3 vehicles and the Transport Commissioner has communicated the concerned notification to all the registering authorities and the same is insisted upon. That apart, it is also contended that this Court in W.P.(C) No. 21686/2009, dated 17.08.2009, has directed the Transport Commissioner to issue appropriate direction to all registering authorities to ensure that ABS is fitted with in all categories of vehicles described in Rule 96(9) of the Central Motor Vehicles Rules, 1989. It is in compliance of the said direction of this Court, necessary mandates are issued by the Transport Commissioner to all the Registering Authorities to insist upon fitment of ABS in N2 and N3 category of vehicles. In such circumstances, respondents contend that the action of the Registering Authority insisting for ABS to the vehicles involved in the writ petitions are in accordance with law. That apart, it is also contended that the vehicles involved in the writ petitions are having characteristics of N2 vehicles and the vehicles will come under Rule 2(q) of the CMV Rules.

20. Almost similar contentions are raised by the petitioners in the other writ petitions and the respondents have filed similar counter affidavits in the said writ petitions also.

21. Heard learned Senior Counsel Sri. K.K. Chandran Pillai appearing in W.P.(C) No.1 4921 of 2012, Sri. I. Dinesh Menon, Sri. Ashok B. Shenoy and others and learned Government Pleader Sri. Eggy N. Elias and Sri. N. Nagaresh, learned Assistant Solicitor General for the respondents.

22. The questions to be considered by this Court in the above writ petitions are two-fold:

(1) Whether the vehicles involved in the writ petitions come under N2 category so as to compel them to fit the vehicles with ABS; and

(2) Whether Rule 96(9) of the Central Motor Vehicles Rules is Constitutionally valid?

23. In order to consider Rule 96(9), I think it is only appropriate to extract below the relevant provision:

"96. Brakes.-(1) Every motor vehicle, other than a motor cycle, three wheeled invalid carriage, trailer or a road roller shall be equipped with two independent and efficient braking systems, namely, the parking-brake and foot-operated service-brake:

x x x x x x x

x x x x x x x

x x x x x x x

(9) The following category of vehicles shall be fitted with Anti-lock Braking System conforming to IS: 11852:2003 (Part 9):-

"(i) N2 and N3 category of vehicles other than tractor-trailer combination manufactured on and after the 1st day of October, 2006 meant for carrying hazardous goods and liquid petroleum gas;

(ii) N3 category vehicles manufactured on and after the 1st day of October, 2007, which are double decked transport vehicles;

(iii) N3 category vehicles manufactured on and after the 1st day of October, 2007, that are used as tractor-trailer combinations;

(iv) M3 category of buses that ply on all India Tourist Permit, manufactured on and after the 1st October, 2007."

24. Going by the contentions in the writ petitions, it is categoric and clear that the vehicles belonging to the petitioners were being used for transporting Gas cylinders in order to supply the same to the customers. Therefore, the question is whether the vehicle is carrying hazardous goods and Liquefied Petroleum Gas. Hazardous goods is not defined either under the Motor Vehicles Act or under the Rules. However, the dictionary meaning of "hazardous" is dangerous, uncertain etc. Therefore, a Gas cylinder filled with LPG is a hazardous goods coming under N2 category.

25. Learned counsel for the petitioners contended that the LPG mentioned under Rule 96(9) is only the LPG transported in bulk in capsule containers and that will not take in the Gas cylinders transported for delivery in small vehicles like the ones used by the petitioners. N2 category vehicles are defined under Rule 2(q) of the Central Motor Vehicles Rules, which read thus:

"2(q) "Category N2" means a motor vehicle used for carriage of goods and having a Gross Vehicle Weight exceeding 3.5 tonnes but not exceeding 12 tonnes".

26. N3 category vehicles are defined under Rule 2(r) of the said Rules, which reads as follows:

"2(r) "Category N3" means a motor vehicle used for carriage of goods and having a Gross Vehicle Weight exceeding 12 tonnes".

27. I have explained the specification of the vehicles earlier and from the records produced by the petitioners, it is categoric and clear that all the vehicles are exceeding 3.5 tonnes but not exceeding 12 tonnes. Therefore, all the vehicles involved in the writ petitions are N2 category vehicles, which thus means that Rule 96(9) of the Central Motor Vehicles Rules apply to the vehicles owned by the petitioners. Even though an argument is advanced to the effect that Rule 96(9)

applies only to the vehicles carrying LPG in bulk, I do not think so. Since no such categorisation is made under the Rules, such an argument cannot be sustained under law. Learned Senior Counsel has invited my attention to Rule 96A of the Central Motor Vehicles Rules and contended that the brake system that are applicable to the vehicles is taken care of under Rule 96A can be applied to the vehicles of the petitioners. I have gone through Rule 96A. Rule 96A deals with brakes for construction equipment vehicle with hydrostatic transmission is dealt with. So far as the vehicles of the petitioners are concerned, same will not come under such category. So, under any stretch of imagination, Rule 96A cannot be applied.

28. Therefore, I am of the considered opinion that the vehicles belonging to the petitioners will come under Rule 96 (9)(1) and under N2 category which is liable to be fitted with Anti-lock Braking System. Even though Advocate Ashok B. Shenoy has advanced an argument that Rule 96(9) applies to the manufacturers alone, I am unable to subscribe to such a view. Rule 96(9) is brought into the Rules with a laudable object of ensuring safety on public road by employing advanced braking system to the vehicles transporting hazardous goods and LPG. Such brake systems are a necessary requirement of the day, especially under the road conditions of this country and the State. The roads are not broad enough to contain such vehicles. That apart, many of the curves, bridges and the culverts are unscientifically constructed. The roads are not provided completely with median, consequent to which, chances of accidents by head on collision are on the higher side. This is more so, when the vehicles carrying hazardous goods and LPG are meeting with accidents. In such circumstances, the Rule brought into force by the Central Government to meet with such situations, the rule has to be treated with utmost strictness in order to achieve the purpose for which it was brought.

29. Now the question is whether Rule 96(9) is violative of Section 52 of the Motor Vehicles Act, as contended by many of the petitioners. Rule 52 of the Motor Vehicles Act deals with alteration in motor vehicles. Learned counsel for the petitioner, Sri. Dinesh Menon contended that when the motor vehicle authorities have directed the petitioners to alter the existing brake system in the vehicle, it violates Section 52 since the mandate under Rule 96(9) is an alteration of the motor vehicle. I have gone through Section 52 of the Act. Section 52 of the Act prohibits an owner of a motor vehicle from altering the vehicle so as to change the particulars contained in the certificate of Registration with those originally specified by the manufacturer, which thus means, the owner of a motor vehicle is prohibited by his own act and conduct from altering the vehicle. Here is a circumstance where a Rule was brought into force by which a more scientific braking system is directed to be fitted to certain category of vehicles in larger public interest. When a direction is issued by the Motor Vehicles Authority taking into account the Rule introduced, same is not an action on the part of the owner of the motor vehicle by carrying out any alteration. That apart, on a reading of Section 52, it is categoric and clear that the alteration that is

taken care of under the said provision is alteration of the nature interfering with the entry made in a Registration Book. There is no entry with respect to the nature of the brake system in the certificate of Registration. Viewed in that manner also, there is no alteration of the vehicle by introducing modern scientific braking system. That apart, the subsequent provisions of Section 52 persuade me to think that the provisions contained under Section 52 is not an absolute bar. Therefore, in my considered opinion, Rule 96(9) will not in any manner interfere with Section 52 of the Motor Vehicles Act.

30. That apart, it is also contended that the said rule is in violation of Rules 126 and 126A of the Central Motor Vehicles Rules. Rule 126 deals with prototype of every motor vehicle to be subject to test. Introduction of a brake system after purchase of the vehicle in view of the amended rule will not in any manner disturb Rule 126 or Rule 126A. Rule 126 is introduced in the Motor Vehicles Rules with the intention of granting a certificate to a manufacturer or importer by the Central Government as to the compliance of the provisions of the Motor Vehicles Act and the Rules made thereunder. Therefore, when Rule 96(9) is introduced into the Central Motor Vehicles Rules, the same will not in any manner interfere with existing Rules 126 or 126A. Therefore, the direction issued by the motor vehicles Authority in compliance with Rule 96(9) will not in any manner make the said rule violative of Rules 126 and 126A. So also, a contention is advanced that Rule 96(9) is violative of Article 14 of the Constitution of India. On a consideration of the submissions made by the counsel and taking into account the laudable object of Rule 96(9), I am not persuaded to think that the same is arbitrary, illegal or violative of any of the provisions of the Constitution of India. Such rules are introduced into existing provisions in order to meet with requirements and felt necessities of time. As I have already stated, such modern braking systems are necessary in order to ensure road safety. Viewed in that circumstances, contention put forth by the petitioners that, ABS is not available in the market to suit their vehicles is not a sustainable argument. Moreover, petitioners are prohibited only to use the vehicles as N2 category and there is no prohibition at all to ply the vehicles on road otherwise and in accordance with law. Therefore, none of the fundamental rights guaranteed to the petitioners under the Constitution of India is violated. Resultantly it is declared that sub-rule 9 of Rule 96 of the Central Motor Vehicles Rules is Constitutionally valid.

31. By taking into account the contentions put forth by the petitioners, evidence on record and Rule 96(9) of CMV Rules, I am of the considered opinion that the writ petitions are lacking bonafides and merit and therefore are not entitled to get any reliefs sought for. The order passed by the appropriate Motor Vehicles Authorities are in accordance with the terms of Rule 96(9) and therefore the writ petitions are liable to be dismissed. However, if the Motor Vehicles Authority finds that any further time is required to be granted to any of the petitioners for fitting their vehicles with Anti-lock Braking System within any stipulated time, this judgment will not stand in the way.

32. The writ petitions are dismissed accordingly, subject to the above observation.