
(2006) 06 KL CK 0046

In the High Court Of Kerala

Case No : Writ Petition (C) No. 39959 of 2003

VijayKumar

APPELLANT

Vs

State of Kerala

RESPONDENT

Date of Decision : 14-06-2006

Acts Referred:

Kerala Motor Vehicles Rules, 1989 — Rule 304, 334
Motor Vehicles Act, 1988 — Section 2(13), 2(14)

Citation : (2006) 3 KLT 546

Hon'ble Judges : Thottathil B. Radhakrishnan, J

Bench : Single Bench

Advocate : G. Sreekumar Chelur and Renjith B. Marar, for the Appellant; M.A. Fayaz, Government Pleader, for the Respondent

Judgement

Thottathil B. Radhakrishnan, J.—The petitioner, a doctor by profession, purchased a Mahindra Camper as per Ext. P1 sale certificate and applied for registration. The statutory authority required that the vehicle be painted in Highway yellow colour in terms of Rule 304 of the Kerala Motor Vehicles Rules, 1989, hereinafter referred to as "the Rules". This Writ Petition is filed challenging the said stand of the statutory authority and seeking a declaration that Rule 304 need not be complied with for the registration of the vehicle in question. A direction that no insistence shall be made to conform to Rule 304 of the Rules, is also sought for.

2. By interim order dated 18.12.2003, the second respondent was directed to register the vehicle on the undertaking of the petitioner that it will be used only for personal use of the petitioner and not for the purpose of carrying goods. That interim order was issued, essentially, on the basis of the undertaking of the petitioner in para (3) of the Writ Petition that he does not propose to use the said vehicle as a goods carriage vehicle. Following that interim order, the petitioner's vehicle was registered.

3. Rule 304 of the Rules provides that every goods vehicle shall be painted in Highway yellow colour, either fully or its front and rear portion. In understanding

the scope of the said Rule, the term "goods vehicle" has to be understood, following the definitions in the Motor Vehicles Act, 1988, hereinafter "the Act", for short. Section 2(14) of the Act provides that "goods carriage" means any motor vehicle constructed or adapted for use solely, for the carriage of goods, or any motor vehicle not so constructed or adapted when used for the carriage of goods. The use of the word "means" in the said definition clause excludes any other meaning being attached to the term "goods carriage". There is nothing in the context requiring otherwise. The use of the word "solely" in the said definition shows that when the construction or adaptation of a motor vehicle is not for the sole purpose of carriage of goods, the said vehicle cannot be treated as a goods carriage for the purpose of the Act or the Rules. Having particular regard to the sweep of Sub-sections 13 and 14 of Section 2 of the Act and the terms of Rule 304 of the Rules, it is predominantly clear that a vehicle, which is not solely used for the carriage of goods referable to Section 2(13), cannot be required to be painted in Highway yellow colour.

4. "Goods" is defined in Section 2(13) of the Act. That is an inclusive definition by which, anything carried by a vehicle other than equipments ordinarily used with the vehicle, is treated as goods and it includes livestock when carried. But it does not include living persons. The definition of "goods" specifically excludes luggage or personal effects carried in a motor car or in a trailer attached to a motor car or the personal luggage of passengers travelling in the vehicle.

5. However, the description of the vehicle in Ext.P1 is as a light goods vehicle (LGV) and it is further stated therein that it is of the goods category. So much so, it may not be appropriate for this Court in writ jurisdiction to go into the intricate question of any distinction between the nature of the user of the vehicle of the petitioner and to put it under any particular category, without the statutory authority under the Rules, first addressing itself on the issue and taking a decision in accordance with law. Sufficient power to decide such issue inheres in the Government, having regard to the fact that the Rules are framed by the Government and the Government are, under Rule 334 of the Rules, conferred with the power to exempt any motor vehicle or class of motor vehicles from all or any of the provisions of the Rules in Chapter VII, in which Rule 304 occurs.

6. In the aforesaid circumstances, this Writ Petition is disposed of directing that on an application by the petitioner to the competent authority in the Government, it will be first decided as to whether the vehicle of the petitioner is to be treated as a goods vehicle and if it is found to be so, any application of the petitioner for exemption in terms of Rule 334 will be entertained in accordance with law, considered and decision taken thereon. Let the needful, following this judgment, be done, upon the petitioner producing a copy of this judgment with a request and relevant materials. Pending such decision, the parties will continue to be governed by the interlocutory order dated 18.12.2003, reference to which has already been made.

The Writ Petition is disposed of with the above directions.