

(1998) 08 KL CK 0038
In the High Court Of Kerala
Case No : O.P. No. 18575 of 1997-J

V.S. Liaquath Ali Khan

APPELLANT

Vs

State of Kerala and Others

RESPONDENT

Date of Decision : 06-08-1998

Acts Referred:

Kerala Motor Vehicles Rules, 1989 — Rule 267
Motor Vehicles Act, 1988 — Section 146, 52

Citation : AIR 1999 Ker 22

Hon'ble Judges : K.S. Radhakrishnan, J

Bench : Single Bench

Advocate : T.M. Abdul Latiff, for the Appellant; G.P.N. Reghuraj and P.V. Jyothi Prasad, for the Respondent

Final Decision : Dismissed

Judgement

K.S. Radhakrishnan, J.—Petitioner is running a driving school by name Banu Motor Driving School. For the purpose of driving school for imparting instructions petitioner purchased a private service vehicle bearing registration No. KLH 4876. Vehicle is having a seating capacity of 47 which he wanted to reduce as six. According to petitioner, if the seating capacity is reduced, he need pay fesser amount towards insurance premium.

2. Petitioner therefore submitted an application before the second respondent u/s 52 of the Motor Vehicles Act for reducing the seating capacity from 47 to 6. Application was rejected by the Registering Authority stating that the seats fitted in the vehicle as per Rule 267 of the Kerala Motor Vehicles Rules cannot be reduced. According to the Registering Authority, the basic intention of the use of the vehicle at the time of manufacture of the vehicle will be defeated by reducing the seating capacity and it is a national wastage as well. Petitioner is aggrieved by the said order and has approached this Court.

3. According to petitioner, petitioner's vehicle is a private service vehicle, which is used for imparting training to the students. The vehicle is not used as a

passenger vehicle and there will not be any change of character of the vehicle by reducing the seating capacity. Counsel submitted that Rules 268 and 269 of the Rules are intended for providing passenger comfort, protection, etc. It is also his contention that every year petitioner has to pay an amount of Rs. 5,000/- towards insurance coverage reckoning the number of seats. If the seats are reduce, he could save insurance premium considerably.

4. Counter-affidavit has been filed on behalf of the second respondent. It is stated if the seating capacity is reduced to six, the vehicle lose its character as a private service vehicle. Further, capacity for seating accommodation is what is meant by seating capacity, it would depend upon design, horse power, unladen weight, etc.

5. While interpreting Section 52 of the Motor Vehicles Act, a Division Bench of this Court in Joint R. T.O., Alwaye v. Joshi (1996) 1 KLT 196 and T.K. Radhamani Vs. Joint Regional Transport Officer, Mattancherry, took the view that even if the number of seats are reduced, that will not change the in-built seating capacity of the vehicle and therefore al-terption of particulars contained in the registration certificate does not arise at all. This Court held registering authority could issue registration certificate only with regard to the seating capacity and not with regard to. seats provided by the owner. The above principle laid down by the Division Bench was accepted by a Full Bench of this Court in Vishwanatha Menon v. Addl. Registering Authority (1998) 2 KLT 112 (FB)

6. Full Bench held that there is no necessity of consideration of application u/s 52 at all since the reduction in number of seats would not amount to alteration which would require permission u/s 52 of the Act. Tax liability, as held by the Full Bench, would depend upon the number of passengers permitted to carry in the vehicle.

7. Number of passengers permitted to carry would depend upon the permit issued to the particular vehicle. Questions as to whether permit holder has made application for making modifications in the permit, what are the conditions to be satisfied for such change, or modification in the permit and whether the authorities can refuse permission to modify the permit once granted only for the reason of consequential reduction in revenue are not matters for this Court to go into i n this proceeding. In this case we are concerned with only the question as to whether petitioner"s application for reducing the seating capacity would lie u/s 52 of the Act. Therefore in a case where there is a vehicle which has got definite sealing capacity as designed by the manufacturer, no permission is necessary u/s 52 of the Act for reducing the number of seats, since no such alteration has to be made in the entry regarding seating capacity of the registration certificate. Seating capacity would continue to be the same irrespective of the reduction of the actual number of seats.

8. Therefore I do not find any illegality in the second respondent rejecting the application of the petitioner for reducing the seating capacity. As I have already

mentioned, reduction in tax depends upon the permit obtained by the petitioner. If the permit fixes number of passengers, the tax revenue would depend upon that permit in accordance with the Motor Vehicles Taxation Act.

9. Contention of the petitioner is that if the seats are reduced by reducing the seating capacity he could save payment of insurance premium. According to me, that question does not arise in this case, since that also evidently depends upon the permit granted by the authority, but not by way of reducing the seating capacity which is not permissible u/s 52 of the Act.

In the said circumstances, Original Petition lacks merits and the same is dismissed.