

(2015) 01 KL CK 0250

In the High Court Of Kerala

Case No : W.A. No. 1377 of 2014 in W.P.(C) 24655 of 2014

Wayanad Muslim Orphanage Muttill

APPELLANT

Vs

The Additional Registering Authority

RESPONDENT

Date of Decision : 09-01-2015

Acts Referred:

Motor Vehicles Act, 1988 — Section 41(4)

Citation : (2015) 01 KL CK 0250

Hon'ble Judges : Ashok Bhushan, A.C.J;A.M. Shaffique, J

Bench : Division Bench

Advocate : G. Hariharan and Praveen H., for the Appellant; Girija Gopal, Special Government Pleader, Advocates for the Respondent

Final Decision : Dismissed

Judgement

A.M. Shaffique, J.

1. This appeal is filed by the writ petitioner challenging the judgment dated 23/09/2014 in W.P.C. No. 24655/2014, whereby the learned Single Judge dismissed the writ petition filed by the petitioner.

2. The writ petition is filed seeking for a direction to register the vehicle of the petitioner as a private service vehicle for personal use (non transport) and for a further direction to the respondent to accept one-time tax applicable to motor cars and private service vehicles for personal use having value of more than Rs. 5 lakhs and upto Rs. 10 lakhs.

3. The facts involved in the writ petition would disclose that the petitioner, being a Society claiming to do charity work by conducting an orphanage for the welfare of children, purchased a nine seater vehicle as per invoice dated 26/07/2014. According to the petitioner, the vehicle is purchased exclusively for the use of students. Further it is stated that the Society has under it a lot of educational institutions from Lower Primary School to Engineering Colleges and other higher-level educational institutions.

4. According to the petitioner, they approached the Registering Authority to register the vehicle as a private service vehicle for personal use. Reliance is placed on the judgment in *Jagan Thomas Vs. State of Kerala and Others*, (2013) 1 ACC 186 : AIR 2012 Ker 154 : (2012) 2 KLJ 363 . Since the Authority did not register the vehicle as a private service vehicle for personal use, petitioner has approached this court.

5. The learned Single Judge found that insofar as the dominant use of the vehicle is for the educational institution and the vehicle was purchased in the name of Secretary and not in the name of an individual, the intention is to use the vehicle in its business activities and therefore the writ petition was dismissed.

6. It is, impugning the aforesaid judgment, that the appeal has been filed. The learned counsel submits that the vehicle is a private service vehicle for personal use and has to be registered as a non transport vehicle.

7. Apparently, no documents had been produced to indicate the class of vehicle as approved by the manufacturer. In fact, the Registering Authority has not taken any decision in the matter so far. Only after a decision is taken and the vehicle is registered in a particular classification, it might be possible for this Court to adjudicate the rival claims.

8. The learned counsel however relied upon *Jagan Thomas*" case (supra) and *Marson Cheriyan Vs. The Transport Commissioner* . Cheriyan's case (supra) is already set aside by this Court. This Court formed an opinion that classification of the vehicle has to be incorporated based on the certificate issued by the manufacturer of the vehicle as approved by the recognised agency. In *Jagan Thomas*" case (supra) the issue was relating to the question whether private service vehicle was for personal use or for the trade or business of the registered owner. Reference was made to the notifications dated 19/06/1992 and 05/11/2004 issued under Section 41(4) of the Motor Vehicles Act, 1988 indicating that a private service vehicle registered in the name of an individual, if used solely for personal purpose, can be registered as a non transport vehicle. It is, based on the said notifications, that the learned Single Judge opined that registration cannot be denied to the vehicle as a private service vehicle for personal use.

9. Going by the facts of the present case, the said judgment has no application. As rightly pointed out by the learned Government pleader, the petitioner Society is running a lot of educational institutions. Even to avail the benefit of any of the notifications referred to in *Jagan Thomas*" case (supra), the matter has to be taken up before the Registering Authority, which has not been done so far. The writ petition is therefore premature.

In the result, this appeal is dismissed with liberty to the petitioner to approach the Registering Authority for registration of the vehicle.