

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE SATHISH NINAN

WEDNESDAY, THE 20TH DAY OF OCTOBER 2021 / 28TH ASWINA, 1943

WP(C) NO. 18895 OF 2021

PETITIONER:

EBIN VARGHESE, AGED 25 YEARS
S/O. VARGHESE, NUCHIYATT HOUSE, KILIYANTHARA (PO),
VILAMANA, KANNUR DISTRICT.

BY ADVS.
PHIJO PRADEESH PHILIP
P.V.ANOOP
K.V.SREERAJ

RESPONDENTS:

- 1 STATE OF KERALA, REPRESENTED BY ITS SECRETARY,
DEPARTMENT OF MOTOR VEHICLE DEPARTMENT, GOVERNMENT
SECRETARIAL, THIRUVANANTHAPURAM 695 001.
- 2 THE TRANSPORT COMMISSIONER, TRANSPORT COMMISSIONERATE,
TRANS TOWER, VAZHUTHACAUD, THIRUVANANTHAPURAM 695 001.
- 3 REGIONAL TRANSPORT OFFICER, CIVIL STATION, KANNUR 670
102.
- 4 SUB REGIONAL TRANSPORT OFFICER, IRITTY, KANNUR 670 703.

BY SR. GOVERNMENT PLEADER SRI. BIMAL K NATH

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON
20.10.2021, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

JUDGMENT

Petitioner is the owner of a vehicle bearing Registration No.KL 73-B-0777. Ext P1 is certificate of registration. The vehicle is classified as, Camper Van. Tax is paid as evidenced by Ext P2. On 07.08.2021 the vehicle was seized by the 3rd respondent Regional Transport Officer alleging various violations. The petitioner has been issued with Ext P6 e-Challan and Ext P7 notice in terms of Section 53 of the Motor Vehicles Act calling upon the petitioner to show cause why the registration of the vehicle shall not be suspended/cancelled. The petitioner has thereupon approached this Court seeking the following reliefs:

“(i) To issue a writ of certiorari, calling for the records leading upto Exhibit P6 E-Challan and Exhibit P7 notice and quash the same as illegal and violative of fundamental rights.

(ii) To issue a writ of mandamus or any other writ order or appropriate direction commanding the 3rd respondent to

release the vehicle bearing registration No.KL-73B-0777 siezed illegally from the house of the petitioner.

(iii) To issue a direction, directing the respondents not to initiate proceedings to cancel the Registration of the vehicle bearing Reg. No.KL 73 B 0777 which is owned by the petitioner.

(iv) Issue any other writ, order or direction as this Hon'ble Court deems fit in the circumstances of the case."

2. Heard Sri.Phiyo Pradeesh Philip, learned counsel for the petitioner and Sri.Bimal K. Nath, the learned senior Government Pleader.

3. On the vehicle in question, the 3rd respondent detected the following violations:

(i) Violation of Section 194(1A) of the Motor Vehicles Act, 1988 - The vehicle was used as a motor caravan fitted with carrier and two bicycles permanently fastened at rear and projecting laterally to both sides of the vehicle and protruding to the rear.

(ii) Violation of Rule 111 of the Central Motor Vehicles Rules - Vehicle was retrofitted with search

lights on the front without prior approval of the registering authority.

(iii) Violation of Rule 360 of the Kerala Motor Vehicles Rules and Rules 108, 106, 124, 124A of the Central Motor Vehicles Rules - Vehicle fitted with top lights, high intensity discharge lamps and LED clusters throughout the body of the vehicle, creating a dazzling effect.

(iv) Violation of the safety standards for lights notified under Rule 124 and 124A of the Central Motor Vehicles Rules -Vehicle fitted with LED lights emanating red lights to the front of the vehicle.

(v) Violation of Rule 100(2) of the Central Motor Vehicles Rules and judgment of the Honourable Supreme Court of India in W.P(C) No.265 of 2011 and the judgment of this Court in W.P(C) No.4720 of 2018 - Violation of visual transmission of light standards for windscreen and window glasses by pasting vinyl stickers, advertisements etc.

(vi) Violation of Section 113(3)(a) of the Motor

Vehicles Act r/w Rule 124 of the Central Motor Vehicles Rules - Unladen weight of the vehicle changed by unauthorised retrofits.

(vii) Violation of Section 39 and 41(6) of the Motor Vehicles Act r/w Rules 50 and 51 of the Central Motor Vehicles Rules - The registration mark is not exhibited in the prescribed size and manner as required.

(viii) Violation of Section 7 of the Motor Vehicles Taxation Act - The vehicle though converted as motor Caravan with effect from 11.11.2020, tax not paid for the same.

It is on the aforesaid violations that the e-Challan was issued, seizure effected, and notice issued to show cause why registration should not be suspended. On the violations alleged and noticed above, I do not find any reason to interfere with e-Challan issued against the petitioner. If the petitioner disputes any of the violations alleged, it is for him to defend the proceedings before the jurisdictional Magistrate's Court.

4. As regards the proceedings initiated under Ext P7 notice for suspension of registration, it is only a notice to show cause. The learned senior Government Pleader has produced Annexure R3(a) order dated 08.09.2021 passed by the authority consequent on Ext P7 notice. The said order is appealable under Section 57 of the Act. On the violations alleged, whether the registration is liable to be suspended/cancelled is a matter to be urged before and be considered by the authorities in terms of Section 53 and 54 of the Motor Vehicles Act. In view of the statutory remedy available, I do not consider it necessary or proper to entertain the challenge, in this writ petition.

5. The petitioner seeks for release of the vehicle on the allegation that the seizure was illegal. The learned senior Government Pleader, through the statement filed on behalf of 3rd respondent, has pointed out that, the violation/contravention of Section 39 of the Motor Vehicles Act sanctions seizure of the vehicle under

Section 207 of the Motor Vehicles Act. So also non-payment of tax also would entail in seizure and detaining of the vehicle under Section 11(1) of the Kerala Motor Vehicles Taxation Act. Therefore, the contention that the seizure was without authority is baseless.

6. In the statement filed on behalf of the 3rd respondent it has been stated that prosecution has been launched by the authorised officer under Section 213(5)(e) of the Motor Vehicles Act before the Additional Chief Judicial Magistrate Court, Thalassery. It is also stated that the vehicle is kept in Kannur Town Police Station under due intimation to the Additional Chief Judicial Magistrate Court.

On the above discussions, I do not find any merit in the writ petition. The writ petition fails and is accordingly dismissed.

Sd/-
SATHISH NINAN
JUDGE

APPENDIX OF WP(C) 18895/2021

PETITIONER EXHIBITS

- Exhibit P1 TRUE COPY OF THE REGISTRATION CERTIFICATE
ISSUED TO THE PREVIOUS OWNER.
- Exhibit P2 TRUE COPY OF THE TAX RECEIPT ISSUED BY THE
SRTO, SULTHAN BATHERY.
- Exhibit P3 TRUE COPY OF THE TAX RECEIPT DATED
01.12.2020.
- Exhibit P4 TRUE COPY OF THE CERTIFICATE ISSUED BY THE
ARAI DATED 19.10.2020.
- Exhibit P5 TRUE COPY OF THE PHOTOGRAPH OF THE 4TH
RESPONDENT ARBITRARILY SEIZING AND DRIVING
THE VEHICLE.
- Exhibit P6 TRUE COPY OF THE E CHALLAN BEARING CHALLAN
NO. KL48802210807162845 DATED 07.08.2021.
- Exhibit P7 TRUE COPY OF THE NOTICE DATED 10.8.2021.
- Exhibit P8 TRUE COPY OF THE REPLY DATED 24.08.2021
SUBMITTED BY THE PETITIONER BEFORE THE 4TH
RESPONDENT.