

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE ANIL K.NARENDRAN

FRIDAY, THE 28TH DAY OF SEPTEMBER 2018 / 6TH ASWINA, 1940

WP(C).No. 31697 of 2018

PETITIONER:

MAJEED,  
AGED 47 YEARS,  
S/O.MOHAMMED,  
MARAKKARKANDY HOUSE,  
KANHIRAKUTTY PARAVANNA POST,  
TIRUR TALUK,  
MALAPPURAM DISTRICT.

BY ADV. SRI.C.M.MOHAMMED IQUBAL

RESPONDENT:

THE REGIONAL TRANSPORT OFFICER,  
TIRUR,  
POST TIRUR,  
MALAPPURAM DISTRICT,  
PIN-676 101.

SRI K.P.HARISH, SENIOR GOVERNMENT PLEADER

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON  
28.09.2018, THE COURT ON THE SAME DAY DELIVERED THE  
FOLLOWING:

**JUDGMENT**

The petitioner, who is the registered owner of Tata 407 pick up van, covered by Ext.P1 certificate of registration and Ext.P2 goods carriage permit, which was valid upto 14.02.2018 and Ext.P3 fitness certificate, which was valid upto 03.07.2018, has filed this writ petition under Article 226 of the Constitution of India, seeking a writ of mandamus commanding the respondent to renew the fitness certificate and goods carriage permit of the said vehicle, on production of the same. The petitioner has also sought for a writ of mandamus commanding the respondent to consider and pass appropriate orders on Ext.P5 representation, within a time limit to be stipulated by this Court.

2. Heard the learned counsel for the petitioner and also the learned Senior Government Pleader appearing for the respondent.

3. Ext.P1 certificate of registration of the goods vehicle with registration No.KL-55/M-19,

would show that the petitioner purchased the said vehicle under hire purchase agreement with HDB Financial Services Limited, Calicut. If the vehicle is covered by hire purchase agreement or hypothethication agreement, for considering any request made by the registered owner for renewal of the fitness certificate or goods carriage permit, such request should be supported by a no objection certificate from the financier or in the absence of any such no objection certificate, the registered owner has to comply with the statutory mandate of sub-sections (6) and (8) of Section 51 of the Motor Vehicles Act, 1988.

4. In **Shabu Sukumaran v. Regional Transport Officer, TVM and others [2018(2) KHC 470]**, after referring to the provisions under Section 51 of the Motor Vehicles Act, 1988, this Court has held that, as per sub-section (8) of Section 51, while applying for renewal of permit or for issuance of duplicate certificate of registration or for assignment of a new registration mark, the

registered owner shall submit the certificate, if any, obtained from the financier under sub-section (7) or, where no such certificate has been obtained, the communication received from the financier under that sub-section, or, as the case may be, a declaration that he has not received any communication from the financier within the period of seven days specified in that sub-section. In the said decision, this Court held further that, even in the case, in which financier has objected renewal of permit, registering authority has discretion to renew the permit, after affording the applicant an opportunity of being heard. In the said decision, this Court has also held that registering authority has to apply its mind to the objections, if any, raised by the financier and take an appropriate decision as to whether despite such objections of the financier, applicant is entitled for renewal of permit. Paragraphs 4 to 6 of the said decision reads thus:

"4. Section 51 of the Motor Vehicles Act

(hereinafter referred to as 'the Act' for short) deals with special provisions regarding motor vehicle subject to hire purchase agreement. Sub-section (6) of Section 51 provides that the registered owner shall, before applying to the appropriate authority, for the renewal of a permit under section 81 or for the issue of duplicate certificate of registration under sub-section (14) of Section 41, or for the assignment of a new registration mark under Section 47, or removal of the vehicle to another State, or at the time of conversion of the vehicle from one class to another, or for issue of no objection certificate under Section 48 or for change of residence or place of business under Section 49, or for the alteration of the vehicle under Section 52, make an application to the person with whom the registered owner has entered into the said agreement of hire purchase (such person being referred to as the financier) for the issue of a no objection certificate. Sub-section (7) of Section 51 provides that within seven days of the receipt of an application under sub-section (6), the financier may issue, or refuse, for reason which shall be recorded in writing and communicated to the applicant, to issue, the certificate applied for, and where the

financier failed to issue the certificate and also fails to communicate the reasons for refusal to issue the certificate to the applicant within the said period of seven days, the certificate applied for shall be deemed to have been issued by the financier.

5. Sub-section (8) of Section 51 provides that the registered owner shall, while applying to the appropriate authority for the renewal of any permit under Section 81, or for the issue of a duplicate certificate of registration, under sub-section (14) of Section 41, or while applying for assignment of a new registration mark under

Section 47, submit with such application the certificate, if any, obtained under sub-section (7) or, where no such certificate has been obtained, the communication received from the financier under that sub-section, or, as the case may be, a declaration that he has not received any communication from the financier within the period of seven days specified in that sub-section. As per Clause (a) of sub-section (9) of Section 51, on receipt of an application for the renewal of any permit or for the issue of duplicate certificate of registration or for assignment of a new registration mark in respect of a vehicle which is held under the said agreement, the

appropriate authority may, subject to the other provisions of this Act, in a case where the financier has refused to issue the certificate applied for, after giving the applicant an opportunity of being heard, either renew or refuse to renew the permit or issue or refuse to issue the duplicate certificate of registration or assign or refuse to assign a new registration mark.

6. The provisions under sub-section (9) of Section 51 of the Act would make it explicitly clear that even in a case in which the financier has objected the renewal of permit, the registering authority has the discretion to renew the permit, after affording the applicant an opportunity of being heard. Therefore, merely for the reason that the financier has refused to issue the certificate applied for under sub-section (7) of Section 51, the registering authority cannot reject an application made for renewal of contract carriage permit, in a mechanical exercise of power. Since certain discretion has been vested with the registering authority, in view of the provisions under sub-section (9) of Section 51 of the Act, the registering authority has to apply its mind to the objections, if any, raised by the financier and take an appropriate decision as to whether despite

such objections of the financier, the applicant is entitled for renewal of permit."

5. In the instant case, the petitioner moved Ext.P5 request before the respondent, even without complying with the statutory mandate of sub-sections (6) to (8) of Section 51 of the Act. The petitioner has made such request before the respondent, even without making a request before the financier of the vehicle for no objection certificate. In this writ petition, the financier of the vehicle is also not made a party. Going by the statutory mandate of sub-sections (6) to (8) of Section 51 of the Act, a request made by the petitioner for renewal of goods carriage permit of his pick-up van covered by Ext.P1 certificate of registration and Ext.P2 goods carriage permit cannot be considered behind the back of the financier.

In such circumstances, the petitioner is not entitled for any relief in this writ petition and the same is accordingly dismissed, however,



without prejudice to the right of the petitioner to move a fresh application before the respondent, after complying with the statutory mandate of sub-sections (6) to (8) of Section 51 of the Motor Vehicles Act.

Sd/-  
ANIL K.NARENDRA  
JUDGE

### APPENDIX

#### PETITIONER'S EXHIBITS:

EXHIBIT P1	THE TRUE COPY OF THE REGISTRATION CERTIFICATE NO.KL-55M-19 DATED 2.2.2013.
EXHIBIT P2	THE TRUE COPY OF THE GOODS CARRIAGE PERMIT DATED 15.2.2013.
EXHIBIT P3	THE TRUE COPY OF THE FITNESS CERTIFICATE DATED 4.7.2017.
EXHIBIT P4	THE TRUE COPY OF THE DRIVING LICENSE OF THE PETITIONER DATED 18.11.1992.
EXHIBIT P5	THE TRUE COPY OF THE REPRESENTATION SUBMITTED BY THE PETITIONER BEFORE THE RESPONDENT DAYTED 1.9.2018.

#### RESPONDENT'S EXHIBITS: NIL

//TRUE COPY//

P.A. TO JUDGE

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