

IN THE HIGH COURT OF KERALA AT ERNAKULAM
PRESENT
THE HONOURABLE MR. JUSTICE ANIL K.NARENDRAN

Thursday, the 28th day of October 2021 / 6th Karthika, 1943
CONTEMPT CASE(C) NO. 1728 OF 2021 IN WP(C) 39574/2018

PETITIONERS/PETITIONERS IN WP:

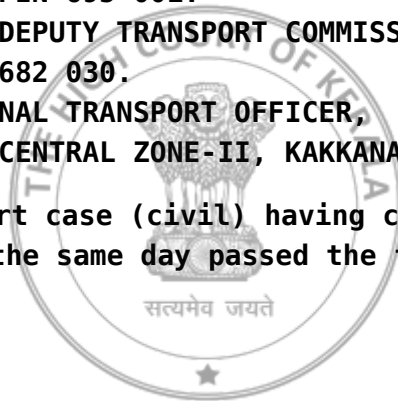
1. ANOOP K.A., AGED 41, S/O ABDUL RAHMAN, KOOLIYADEN HOUSE, VALAYANCHIRANGARA. P.O, PERUMBAVOOR, ERNAKULAM, PRESIDENT, ALL KERALA TRUCK OWNERS ASSOCIATION.
2. SUBIN PAUL, AGED 42, S/O.E.P. PAULOSE, EDAYENAL HOUSE, KERINAD. P.O, PUTHENCRUZ, ERNAKULAM DISTRICT, SECRETARY, ALL KERALA TRUCK OWNERS ASSOCIATION.

BY ADVS.P.K.SREEVALSAKRISHNAN,K.R.PRATHISH,

RESPONDENTS/RESPONDENTS IN WP:

1. K.R. JYOTHYLAL, SECRETARY, MOTOR VEHICLE DEPARTMENT, SECRETARIAT, THIRUVANANTHAPURAM, PIN-695 001.
2. MR.AJITH KUMAR, TRANSPORT COMMISSIONER, MOTOR VEHICLE DEPARTMENT, THIRUVANANTHAPURAM, PIN-695 001.
3. SHAJI MADHAVAN, THE DEPUTY TRANSPORT COMMISSIONER, CENTRAL ZONE-II, KAKKANAD, ERNAKULAM-682 030.
4. KUNJUMON. K.P, REGIONAL TRANSPORT OFFICER, REGIONAL TRANSPORT OFFICE ENFORCEMENT, CENTRAL ZONE-II, KAKKANAD, ERNAKULAM-682 030.

This Contempt of court case (civil) having come up for orders on 28.10.2021, the court on the same day passed the following:



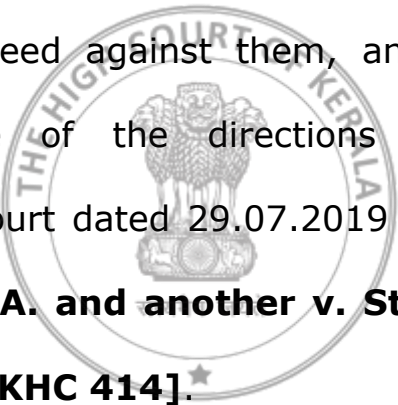
P.T.O.

ANIL K. NARENDRAN, J.

Contempt Case (Civil)No.1728 of 2021

Dated this the 28th day of October, 2021

ORDER

The petitioners have filed this Contempt Case (Civil) invoking the provisions under Section 12 of the Contempt of Courts Act, 1971 and Article 215 of the Constitution of India, to issue notice to the respondents herein, frame charges against them, proceed against them, and punish them for wilful disobedience of the directions contained in the judgment of this Court dated 29.07.2019 in W.P.(C)No.39574 of 2018 [**Anoop K.A. and another v. State of Kerala and others - 2019 (5) KHC 414**].

2. The petitioners, who are owners of goods carriages and also the President and Secretary respectively of All Kerala Truck Owners Association, have filed W.P.(C)No.39574 of 2018 under Article 226 of the Constitution of India, seeking a writ of mandamus commanding respondents 1 to 4 to take steps to strictly implement Ext.P1 directions issued on 18.08.2015 by the Supreme Court Committee on Road Safety. The petitioners have also sought for a writ of mandamus commanding the

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respondents to consider Ext.P2 representation dated 08.08.2018 made before the 2nd respondent Transport Commissioner and take necessary action against goods carriages carrying overload, as per the provisions under the Motor Vehicles Act, 1988 and the Central Motor Vehicles Rules, 1989.

3. In **Anoop K.A. [2019 (5) KHC 414]** this Court noticed that, grant of national permits in respect of goods carriages under sub-section (12) of Section 88 of the Motor Vehicles Act, read with Rule 90 of the Central Motor Vehicles Rules is for the purpose of encouraging long distance inter-state road transport. In view of the prohibition contained in clause (7) of Rule 90, goods carriages which are issued with national permits in States other than State of Kerala shall not be permitted to pick up or set down goods between two points in the State of Kerala. In view of the provisions under clause (8) of Rule 21 of the Central Motor Vehicles Rules, carrying overload in goods carriages shall constitute an act, which is likely to cause nuisance or danger to the public, for the purpose of clause (f) of sub-section (1) of Section 19 of the Motor Vehicles Act. As held in **V. Rajendran [2011 SCC**

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OnLine Mad 1397] and **Peethambaran [2012 (3) KHC 917]**, the power of the Licensing Authority under sub-section (1) of Section 19 for making an order disqualifying the holder of driving licence for a specified period for holding or obtaining any driving licence to drive all or any classes or descriptions of vehicles specified in the licence; or revoke any such licence, is not dependent upon a conviction of the offender. The said power can be invoked immediately upon the commission of the offence, where the Licensing Authority is satisfied of the existence of the conditions stipulated in that provision. As held in **Ashish Gosain [AIR 2016 Delhi 162]**, compounding of an offence under Section 200 of the Motor Vehicles Act does not, in any manner, affect the power of the Licensing Authority in exercising its power under sub-section (1) of Section 19 of the said Act. As held by the Apex Court in **Paramjit Bhasin v. Union of India [(2005) 12 SCC 642]**, compounding can be done either before or after the institution of the prosecution in respect of the enumerated offences in Section 200 of the Motor Vehicles Act. However, after compounding an offence punishable under Section 194 of the Act relating to excess load, that excess load cannot be permitted to be carried in the

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vehicle concerned. Such carriage would amount to infraction of Section 113 of the Act. The intention of uploading the excess load is apparent from a bare reading of sub-section (1) of Section 194. The liability to pay charge for uploading of the excess load is fixed on one who drives a vehicle or causes a motor vehicle to be driven in contravention of the provisions of Sections 113, 114 and 115 of the Act.

4. In **Anoop K.A.** this Court noticed that as per sub-regulation (1) of Regulation 35 of the Motor Vehicles (Driving) Regulations, 2017, the driver shall at all times ensure that loads, including load restraints and loading equipment, in the vehicle are stowed and restrained in such manner that these cannot slip, fall over, roll around, fall off the vehicle or produce avoidable noise, even in an emergency braking situation or if the vehicle swerves suddenly. As per sub-regulation (2), no driver shall drive in any public place a motor vehicle which is loaded in a manner which is likely to cause danger to any person. As per sub-regulation (3), the load or any part thereof, or any other object in the vehicle shall not extend laterally beyond the sides of the body or to the front or to the rear or exceed in height or weight the limits specified in the

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certificate of registration of the vehicle.

5. In **Anoop K.A.** this Court held that, in view of the law laid down in **V. Rajendran v. Regional Transport Officer, Thanjavur [2011 SCC OnLine Mad 1397]**, **Peethambaran T.R. v. Additional Licensing Authority and another [2012 (3) KHC 917]**, **Ashish Gosain v. Department of Transport and another [AIR 2016 Delhi 162]**, **Ajith v. State of Kerala and others [2017 (1) KHC 328]**, **S. Rajaseekaran v. Union of India [(2014) 6 SCC 36]**, **S. Rajaseekaran v. Union of India [(2018) 13 SCC 532]**, and **Paramjit Bhasin v. Union of India [(2005) 12 SCC 642]**, and also the directions issued by the Supreme Committee on Road Safety in Ext.P1, in cases in which offences like driving at a speed exceeding the specified limit; carrying overload in goods carriages; driving vehicles under the influence of drinks and drugs; using mobile phone while driving a vehicle; etc. are detected, the duly authorised police officers and the officers of the Motor Vehicles Department shall forthwith forward the driving licence of the driver of the vehicle to the Licensing Authority, for initiating proceedings under sub-section (1) of Section 19 of the Motor Vehicles Act.

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The compounding, if any, of the offence under Section 200 of the Motor Vehicles Act (either before or after the institution of any prosecution) shall not in any manner affect the proceedings initiated by the Licensing Authority under sub-section (1) of Section 19 of the said Act.

6. In **Anoop K.A.** this Court directed respondents 1 and 2, namely, the State of Kerala and the Transport Commissioner, Kerala, to take necessary steps, through duly authorised police officers and the officers of the Motor Vehicles Department, including respondents 3 and 4, namely, the Deputy Transport Commissioner, Central Zone-II, Ernakulam and the Regional Transport Officer, Ernakulam, to ensure strict implementation of the Road Safety Policy and also the provisions under the Motor Vehicles Act and the Motor Vehicles (Driving) Regulations, 2017 in the State of Kerala, as directed by the Apex Court in **S. Rajasekaran [(2018) 13 SCC 532]**. In view of the law laid down in **V. Rajendran [2011 SCC OnLine Mad 1397]**, **Peethambaran T.R. [2012 (3) KHC 917]**, **Ashish Gosain [AIR 2016 Delhi 162]**, **Ajith [2017 (1) KHC 328]**, **S. Rajasekaran [(2014) 6 SCC 36]**, **S. Rajasekaran [(2018) 13 SCC 532]**, and **Paramjit**

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Bhasin [(2005) 12 SCC 642], and also the directions issued by the Supreme Committee on Road Safety in Ext.P1, in cases in which offences like driving at a speed exceeding the specified limit; carrying overload in goods carriages; driving vehicles under the influence of drinks and drugs; using mobile phone while driving a vehicle; etc. are detected, the duly authorised police officers and the officers of the Motor Vehicles Department shall forthwith forward the driving licence of the driver of the vehicle to the Licensing Authority, for initiating proceedings under sub-section (1) of Section 19 of the Motor Vehicles Act. This Court ordered that, stern action shall be taken against the use of goods carriages and trailers in contravention of the provisions of Section 113 or Section 114 or Section 115 [which deals with power to restrict the use of vehicle] of the Motor Vehicles Act or clause (7) of Rule 90 of the Central Motor Vehicles Rules, and also for carrying persons in contravention of sub-regulations (2) and (3) of Regulation 32; for carrying load in contravention of sub-regulations (1) and (2) of Regulation 35 of the Motor Vehicles (Driving) Regulations, 2017. This Court further ordered that, considering the increase in the number of 'hit and run' accidents reported

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every year, stern action shall be taken against the use of motor vehicles, including goods carriages and trailers, in contravention of the provisions under Regulation 36 of the Motor Vehicles (Driving) Regulations, 2017, i.e., against the use of motor vehicles on public roads without displaying the registration plates as prescribed by the Motor Vehicles Act and the rules made thereunder.

7. Along with this Contempt Case, the petitioners have produced Annex.A3 and Annex.A4 Truck Chit/Gate Pass dated 22.07.2021 and 20.09.2021 issued by SUPPLYCO regarding transportation of 30,000 Kg and 20,000/- kg rice in two goods carriages to PDS Depot Ottappalam and PDS Sub Depot Changanassery, respectively. The petitioners have produced Annex.A5 series of photographs taken during the 2nd week of September, 2021 regarding plying of goods carriages carrying overload through MC Road. In view of the provisions under clause (8) of Rule 21 of the Central Motor Vehicles Rules, carrying overload in goods carriages constitute an act, which is likely to cause nuisance or danger to the public, for the purpose of clause (f) of sub-section (1) of Section 19 of the Motor Vehicles Act. Regulation 35 of the Motor Vehicles

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(Driving) Regulations, 2017 prohibits projection of loads in vehicles. Some of the photographs are regarding plying of goods carriages carrying huge logs projecting beyond the 'load body', i.e., the loading platform of the vehicle, in a manner which is likely to cause danger to other road users. The loads carried in those goods carriages are extending laterally beyond the sides of the 'load body' and projecting to the front and to the rear. As evident from the photographs the loads carried in those goods carriages even exceeds in height and weight the limits specified in the certificate of registration of such vehicles. In view of the prohibition contained in Regulation 35, no driver shall drive in any public place a goods carriage carrying huge logs projecting beyond the 'load body', which is likely to cause danger to other road users. Since plying of such vehicles on public place flouting the statutory provisions referred to hereinbefore and also the direction contained in the judgment of this Court in **Anoop K.A.** is likely to cause danger to other road users, this is a fit case in which this Court can exercise its inherent powers under Article 215 of the Constitution of India, in order to ensure the safety of the most vulnerable road users such as pedestrians, cyclists, children,

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elderly persons and differently-abled persons.

8. In **Anoop K.A.** this Court noticed that, in view of the provisions under clause (8) of Rule 21 of the Central Motor Vehicles Rules, carrying overload in goods carriages shall constitute an act, which is likely to cause nuisance or danger to the public, for the purpose of clause (f) of sub-section (1) of Section 19 of the Motor Vehicles Act. Rule 21 was substituted by G.S.R.584(E) dated 25.09.2020, with effect from 01.10.2020. Now, in view of the provisions under clause (8) of sub-rule (1) of Rule 21, carrying overload in goods carriages shall constitute an act of nuisance or danger to the public for the purpose of clause (f) of sub-section (1) of Section 19 of the Act. As per sub-rule (2) of Rule 21, details of driving licences disqualified or revoked by the licensing authority shall be recorded chronologically in the portal and such record shall be reflected on a regular basis on the portal.

9. Considering the increase in the number of 'hit and run' accidents reported every year, in **Anoop K.A.** this Court ordered that, stern action shall be taken against the use of motor vehicles, including goods carriages and trailers, in contravention of the provisions under Regulation 36 of the

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Motor Vehicles (Driving) Regulations, 2017, i.e., against the use of motor vehicles on public roads without displaying the registration plates as prescribed by the Motor Vehicles Act and the rules made thereunder. Rule 50 of the Central Motor Vehicles Rules deals with form and manner of display of registration marks on motor vehicles. As per clause (b) of sub-rule (2) of Rule 50, the registration mark shall also be painted on the right and left side on the body of the vehicle in the case of a transport vehicle. As per sub-rule (3) of Rule 50, the registration mark shall be exhibited in two lines, the State code and registering authority code forming the first line and the rest forming the second line, one below the other. Rule 51 deals with size of letters and numerals of the registration mark. In some of the goods carriages in Ext.P5 series of photographs the registration mark is not painted on the right and left side on the body of those vehicles.

10. The mandate of sub-regulation (2) of Regulation 36 of the Motor Vehicles (Driving) Regulations, 2017 is that the registration plates on the front and at the rear of the vehicle shall be clearly visible and legible and no object whatsoever or dirt shall obstruct clear view of the entire registration plate. As

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per sub-regulation (4) of Regulation 36, no load or other goods shall be placed on a motor vehicle in such manner as to fully or partly hide the registration plate. Some of the goods carriages in Ext.P5 series of photographs, huge logs projecting beyond the 'load body' fully hide the registration plate on the rear and partially hide the registration plate on the right and left side on the body of those vehicles. As per sub-rule (5) of Rule 105 of the Central Motor Vehicles Rules, in the case of a transport vehicle, the rear light may be fixed at such level as may be necessary to illuminate the registration mark. Most of the transport vehicles including goods carriages plying in the State do not have rear light necessary to illuminate the registration mark.

11. The 2nd respondent Transport Commissioner, the 3rd respondent Deputy Transport Commissioner and also the 4th respondent Regional Transport Officer shall file individual affidavits before this Court explaining the action, if any, taken in terms of the directions contained in the judgment of this Court dated 29.07.2019 in W.P.(C)No.39747 of 2018. In the said affidavit they shall furnish the details of the goods carriages which were booked for carrying overload in

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contravention of Section 113 or Section 114 of Section 115 of the Motor Vehicles Act, after the judgment of this Court dated 29.07.2019. In the said affidavit they shall state as to whether, after compounding under Section 200 of the Act, the offence punishable under Section 194 for driving vehicle exceeding permissible weight, the excess load was permitted to be carried in the vehicle concerned, in contravention of Section 113 of the Act. In the said affidavit they shall also furnish the driving licence particulars of the drivers of the goods carriages, which were booked for carrying overload, and also the details of the proceedings initiated by the licensing authority in order to disqualify them from holding driving licence for a specified time or to revoke such licence, under clause (f) of sub-section (1) of Section 19 of the Act. The 2nd respondent Transport Commissioner shall state as to whether, with effect from 01.10.2020, the details of driving licences disqualified or revoked by the licensing authority are recorded chronologically in the portal and such record are reflected on a regular basis on the portal, as per the mandate of sub-rule (2) of Rule 21 of the Central Motor Vehicles Rules. In the said affidavit, the 2nd respondent Transport Commissioner shall also

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state action, if any, taken against the use of goods carriages on public roads without displaying the registration mark in the manner specified under the provisions of the Central Motor Vehicles Rules and also the Motor Vehicles (Driving) Regulations.

12. The petitioners shall file an application to correct the description of the 1st respondent "Principal Secretary to Government, Transport Department" in the cause title and also in the memo of charges.

List on 17.11.2021 at 4.00 pm.



Sd/-

**ANIL K. NARENDRAN
JUDGE**

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APPENDIX OF CON.CASE(C) 1728/2021

- EXHIBIT P1** TRUE COPY OF THE DIRECTION ISSUED BY THE SUPREME COURT COMMITTEE ON ROAD SAFETY HEADED BY ITS CHAIRMAN JUSTICE K.R. RADHAKRISHNAN DATED 18/08/2015.
- EXHIBIT P2** TRUE COPY OF THE REPRESENTATION SUBMITTED BEFORE THE 2ND RESPONDENT TRANSPORT COMMISSIONER, THIRUVANANTHAPURAM DATED 08/08/2018.
- Annexure A3** TRUE COPY OF THE GATE PASS DATED 22.07.2021 ISSUED BY THE SUPPLYCO TOWARDS THE TRANSPORTATION OF THE RICE TO OTTAPPALAM.
- Annexure A4** TRUE COPY OF THE GATE PASS DATED 20.09.2021 ISSUED BY THE SUPPLYCO TOWARDS THE TRANSPORTATION OF THE RICE TO CHANGANASSERY.
- Annexure A5** PHOTOGRAPHS OF THE OVERLOADED GOOD CARRIERS DURING THE 2ND WEEK OF SEPTEMBER 2021.
- EXHIBIT P5** TRUE COPY OF THE OVERLOADED VEHICLE ACCIDENT REPORT OF THE TIMES OF INDIA DATED 12/03/2017.

