

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE THE CHIEF JUSTICE MR.S.MANIKUMAR

&

THE HONOURABLE MR. JUSTICE SHAJI P.CHALY

MONDAY, THE 23RD DAY OF NOVEMBER 2020 / 2ND AGRAHAYANA, 1942

WP(C).No.20500 OF 2020(S)

PETITIONER:

JAFFER KHAN, AGED 51,
S/O. OUKKAR HAJI, KARUVELIL HOUSE,
ARAKKAPPADI VILLAGE, VENGOLA P.O-683 547.

BY ADVS.SRI.PRAVEEN K. JOY
SRI.E.S.SANEEJ
SRI.M.P.UNNIKRISHNAN
SMT.M.K.SAMYUKTHA
SRI.N.ABHILASH
SMT.M.R.ESHRATH BAI
SMT.BEENA JOSEPH
SMT.SREELEKHA. P
SRI.DEEPURAJAGOPAL
SRI.T.A.JOY

RESPONDENTS:

- 1 UNION OF INDIA,
REP. BY SECRETARY, MINISTRY OF ROAD TRANSPORT
AND HIGHWAYS-110 001.
- 2 STATE OF KERALA,
REP. SECRETARY, MOTOR VEHICLES DEPARTMENT,
TRIVANDRUM-695 001.
- 3 THE TRANSPORT COMMISSIONER,
TRANSPORT COMMISSIONERATE, VAZHUTHACAUD,
TRIVANDRUM-695 014.
- 4 DEPUTY TRANSPORT COMMISSIONER,
NORTH ZONE, CIVIL STATION, ERANJIPALAM,
KOZHIKODE-673 020.

- 5 DEPUTY TRANSPORT COMMISSIONER,
CENTRAL ZONE, CIVIL STATION, CIVIL LANE ROAD,
KALYAN NAGAR, AYYANTHOLE, THRISSUR-680 003.
- 6 DEPUTY TRANSPORT COMMISSIONER,
SOUTH ZONE, KUDAPPANAKUNNU P.O,
TRIVANDRUM-695 044.
- 7 KERALA STATE ROAD TRANSPORT CORPORATION,
TRANSPORT BHAVAN, FORT P.O, TRIVANDRUM,
REP. BY MANAGING DIRECTOR-695 023.
- R1 BY ADV. SHRI P.VIJAYAKUMAR, ASG OF INDIA
R2 TO R6 BY SRI. P. SANTHOSH KUMAR, SPL G.P.
R7 BY ADV. SRI. P. C.CHACKO (PARATHANAM)

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
23-11-2020, ALONG WITH WP(C). NO. 20768/2020(S), THE COURT ON
THE SAME DAY DELIVERED THE FOLLOWING:

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE THE CHIEF JUSTICE MR.S.MANIKUMAR

&

THE HONOURABLE MR. JUSTICE SHAJI P.CHALY

MONDAY, THE 23RD DAY OF NOVEMBER 2020 / 2ND AGRAHAYANA, 1942

WP(C).No.20768 OF 2020(S)

PETITIONER:

POURAVAKASHA SAMRAKSHANA COUNCIL
REG. NO. KLM/TC/277/2014, PALLIMUKKU,
KARUNAGAPALLY, KOLLAM-690 519,
REPRESENTED BY ITS GENERAL SECRETARY,
AADINAD SHAJI, S/O. ALI KUNJU, KOCHUKAATHIKKAL,
AADINAD SOUTH, KATTILKADAVU P.O-690 542.

BY ADVS. SRI. M. P. ASHOK KUMAR
SMT.BINDU SREEDHAR
SHRI ASIF N.

RESPONDENTS:

- 1 UNION OF INDIA,
REPRESENTED BY IT'S SECRETARY,
MINISTRY OF ROAD TRANSPORT AND HIGHWAYS,
NEW DELHI-110 001.
- 2 STATE OF KERALA,
REP. BY THE PRINCIPAL SECRETARY TO GOVERNMENT,
TRANSPORT DEPARTMENT, GOVERNMENT SECRETARIAT,
THIRUVANANTHAPURAM-695 001.
- 3 THE TRANSPORT COMMISSIONER,
OFFICE OF THE TRANSPORT COMMISSIONER,
TRANS TOWER, VAZHUTHACAUD,
THIRUVANANTHAPURAM-695 014.

4 THE REGIONAL TRANSPORT OFFICER (ENFORCEMENT)
OFFICE OF THE TRANSPORT COMMISSIONER, TRANS TOWER,
VAZHUTHACAUD, THIRUVANANTHAPURAM-695 014.

R1 BY ADV. SHRI P.VIJAYAKUMAR, ASG OF INDIA
MR. K. ARJUN VENUGOPAL, CGC
R2 TO R4 BY SRI. P. SANTHOSH KUMAR, SPL G.P.

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
23-11-2020, ALONG WITH WP(C). NO.20500/2020(S), THE COURT ON
THE SAME DAY DELIVERED THE FOLLOWING:

“C.R”

JUDGMENT

Dated this the 23rd day of November, 2020

S. Manikumar, CJ

W.P.(C) No.20500 of 2020 is filed for the following reliefs:

- i. To issue writ, order or direction in the nature of mandamus or any other appropriate writ directing the respondents to implement strictly and in its full spirit, the provisions of Exhibit-P3 notification dated 28.11.2019 with regard to the fitting of Vehicle Tracking System and emergency buttons in public transport vehicles, in the interest of justice.
- ii. To direct the 3rd respondent – The Transport Commissioner, Trivandrum, or its subordinate officers to have strict checking in the matter with regard to the implementation of Exhibit-P3 notification dated 28.11.2019 and not to grant any exemption to any category of vehicle, as it would go against the scheme and objective of the scheme.

2. W.P.(C) No.20768 of 2020 is filed for the following reliefs:

- i. Issue a writ of mandamus or other appropriate writ or order commanding respondents 2, 3 and 4 viz., State of Kerala represented by the Principal Secretary to the Government, the Transport Commissioner, and the Regional Transport Commissioner, Thiruvananthapuram, to strictly enforce Section 136A of Motor Vehicles Act, 1988 and Rule 151A of Kerala Motor Vehicles Rules, 1989 to be equipped and fitted with Vehicle Location Tracking Device in all motor vehicles.

- ii. Direct respondents 2 to 4 not to allow any vehicles within the State, which is not equipped and fitted with vehicle location tracking devices.
- iii. Direct the respondents not to issue or renew fitness certificates to any vehicles in the State, which are not equipped or fitted with VLT devices and emergency buttons.

3. As both the writ petitions are filed for strict implementation of Vehicle Location Tracking Devices (VLTDs) in the motor vehicles, they are taken up together and disposed of by a common judgment

4. Facts leading to the filing of W.P.(C) No.20500 of 2020 are that the petitioner claims to be an Advisory Committee member of RAF (Road Accident Forum), for the State of Kerala. He is also a Human Rights Protection activist and was earlier president of Perumani Muslim Jamath Committee. Aggrieved by the non implementation of Government order dated 28.11.2016 and subsequent orders, he has approached this Court.

5. Petitioner has further stated that vide Exhibit-P1 notification dated 28.11.2016, amendment was made in the Central Motor Vehicle Rules, 1989, by incorporating Rule 125H, which mandates installation of VLTD and emergency button. As per the said notification, the statute comes into force with effect from 01.04.2018. Thereafter, through Exhibit-P2 notification dated 25.10.2018, Central Government has exempted all the vehicles from fitting VLTDs and emergency buttons till 31st December, 2018. Power was given to

the Government of the State and Union territories to notify the date of compliance of requirement.

6. Petitioner has further stated that in exercise of the powers conferred, State Government has issued Exhibit-P3 notification dated 28.11.2019, making 6 categories of public service vehicles to fix VLTDs and emergency buttons and also prescribed the time period, for each category of vehicles for installing tracking system and emergency buttons. The maximum time period fixed is now over. That being the situation, State Government have issued notification dated 17.02.2020 (Exhibit-P4), wherein again, extension was granted to KSRTC and stage carriages, and the reasons for such extension has been mentioned in the explanatory note.

7. Petitioner has further stated that in the year 2014, the Cabinet Committee on Economic Affairs has approved a scheme for enhancing the security for women in public road transport in the country. The objective of the scheme is to provide safe and secure public transport to the people of the country, particularly women and girl children, in the context of the "Nirbhaya case". With a view to achieve the said goal, Exhibit-P1 notification was issued by the Central Government, as early as in 2016. He has further contended that even though certain amendments and changes were made to Exhibit-P1 notification, the objective of the scheme is still in force. Moreover, the Central Government through various notifications under this scheme, had granted

wide and ample powers to the State Governments, to formulate policies and to effectively and efficiently implement the scheme.

8. Petitioner has further stated that though Exhibits-P3 and P4 notifications were issued by the State Government, no effective steps were taken by respondents 2 to 5. It is understood that the State could not set up the command and control for implementing the Vehicle Tracking System. Hence, according to the petitioner, it is necessary to effectively implement the Vehicle Tracking System and to ensure safe travelling of women and children, especially girls, in public passenger transport vehicles.

9. Petitioner has further stated that now, the State Government has extended the time for fixing the VLTD and emergency button to KSRTC and Stage carriers. However, with regard to the other categories of vehicles, respondents are not taking any efforts to check whether vehicle tracking systems and emergency buttons have been fitted, in strict compliance of the Government orders.

10. Petitioner has further stated that the issue as regards ensuring safety for women and children in the country is not fully resolved, even during the 74th year of Independence. The news regarding atrocities against women and children are coming up from different areas day by day. It is in this context, a scheme introduced with the motive to ensure safety of women, children and general public, is not being implemented due to the delay and

inefficiency on the part of respondents. In such circumstances, petitioner has filed the writ petition on the following grounds:

- A. The stand adopted by the respondents in not taking positive steps for implementing the scheme of installation of Vehicle Tracking system and Emergency buttons in the public service vehicles throughout the State, is highly illegal, arbitrary and against law.
- B. It has been specifically mentioned in Exhibi-P2 notification dated 25.10.2018 that after the expiry of the time period of exemption, the concerned State or Union Territory Government may notify the State for compliance of requirement as specified in pursuance of the said provision, in their respective State or Union territory as per the applicable law in regard to the public service vehicle registered upto 31.12.2018.
- C. It is further contended that Ext-P4 notification of the State Government dated 17.02.2020, extending time for Stage carriers and KSRTC is highly illegal. The explanatory note to the said notification has no basis. The same is only vague and created with totally non-maintainable points. Hence, interference from this Court is necessary in the matter.
- D. The Explanatory note to Exhibit-P4 notification enumerates that various associations of motor vehicle industry have approached the Government citing practical problems faced by them relating to the fitting of vehicle location tracking devices in vehicles, and requested to withdraw the decision of fitment of VLTDs mandatory or supply the VLTDs free of cost or in subsidized rate, since the industry is undergoing

financial constraints. Further, it states that the Managing Director of KSRTC has informed that in the current situation, the management is going through a severe financial crisis and is unable to produce buses for fitness tests after fitting VLTDs before 14.02.2020. It was for this reason, extension was granted for the two categories. The reason for requesting a time extension is not at all reasonable. The maximum cost of the device will be only below Rs.10,000/-. Proportional fare stage hike has been granted to the Private Bus Operators. Hence, time extension for this category is totally illegal and arbitrary, and the action of the State Government is against the scheme and its objective.

- E. It is further contended that with regard to the time period stipulated for fitting location tracking devices for other vehicles except KSRTC and Stage Carriers, the time period mentioned in Exhibit-P3 notification shall be in force. The provisions in Exhibit-P3 Government Notification in case of the other categories of vehicles, which has not been granted with extension, are to be implemented properly. The respondent authorities are having the responsibility and are duty bound to implement the scheme in strict sense. Even after the lapse of a reasonable period, there is delay in implementing the scheme. Hence, urgent orders may be issued forthwith.
- F. The scheme was introduced with a view to ensure safety for women and children in public transport, in the background of "Nirbhaya Case". The fitting of Tracking system and panic buttons are very much helpful in case of threat and danger.

That apart, the same would enable to track and find out the actual location of the vehicle. The fitting of GPS systems will be more helpful for ascertaining the speed and control of the vehicles. Similarly, a number of accidents and unhappy events can be avoided by properly implementing the GPS system in its full spirit. Therefore, it is only just and proper to issue necessary directions to the respondents to implement the notifications, without any further delay, in the interest of justice.

11. Facts leading to the filing of W.P.(C) No.20768 of 2020 are that the petitioner claims to be a registered Association viz., 'Pouravakasha Samrakshana Council' under the Travancore Cochin Literary, Scientific and Charitable Societies Registration Act, 1955, formed with the objective of doing voluntary work as regards road safety and to enlighten the general public about traffic culture by associating with the Motor Vehicles Department.

12. The issue involved in this writ petition is to the non-implementation of Section 136A of the Motor Vehicles Act, 1988 and Rule 151A of Kerala Motor Vehicles Rules, 1989, in respect of fitment of Electronic Monitoring System with location tracking devices, in all the public service vehicles and goods carriage vehicles.

13. Petitioner has further stated that Rule 125-H has been inserted in the Central Motor Vehicles Rules, 1989 w.e.f 01.04.2018, for providing Vehicle Location Tracking Device (VLTD, in short) and emergency button, in all the

public service vehicles, as defined under Section 2(35) of the Motor Vehicles Act, 1988. Thereafter, the State Government has also amended the Kerala Motor Vehicles Rules, 1989, by inserting Rule 151 A, making it mandatory that all the public service vehicles (any motor vehicle used or adapted to be used for the carriage of passengers for hire or reward, and includes a maxi-cab, a motor-cab contract carriage) except

- auto rickshaws/three wheelers
- e Rickshaws
- any transport vehicle for which no permit is required

registered on and after 1st January 2019, will have to be equipped and fitted with Vehicle Location Tracking (VLT) with emergency buttons. According to the petitioner, this regulation is being brought in to ensure safety of passengers, especially women.

14. Petitioner has further stated that the Central Government has given temporary exemption to all the public service vehicles registered upto December 31, 2018, for compliance of the requirements, after the amendments. It was clarified that after expiry of the time period of exemption specified, the concerned State or Union Territory will notify the date. Thereafter, Ministry of Road Transport and Highways, Government of Kerala, have issued an order dated 28.11.2019 (Exhibit-P2), granting exemption upto certain dates, from installation of GPS in the vehicles mentioned therein. Government of Kerala, by Circular No.19/2019 dated 1.1.2020, have appointed

the Regional Transport Officer (Enforcement), Thiruvananthapuram, as the Nodal Officer, for effective implementation of the scheme.

15. Petitioner has further contended that even though the cut off date fixed by the State Government for enforcement of Rule 151A of the rules, has expired long back, the requirement under the amended Act and the rules has not been implemented or enforced in the State. The non installation of VLT devices is against public interest. The intention of the respondents in not enforcing the fitment to goods vehicles is *mala fide* and would *tantamount* to corruption. In such circumstances, petitioner has filed this writ petition on the following grounds:

- A. It is the constitutional obligation of respondents 2 and 3 to implement and enforce amended provisions of Section 136A of Motor Vehicles Act, 1988 and Rule 151A of Kerala Motor Vehicles Rules, 1989, with regard to the fitment of VLT Devices in vehicles. The amendment was introduced consequent to the report submitted by Justice JS Varma Committee, after studying and evaluating various situations. State Government cannot delay the implementation of the amended provision under any circumstances.
- B. The cut-off date fixed by the State Government for the enforcement of Rule 151A regarding the fitting of vehicle location tracking devices, has already lapsed as on 29/02/2020. Still the State Government is dragging the matter due to the reasons best known to them.

- C. The goods vehicles owners in the State are financially and politically very powerful. The tipper Lorries in the State are mainly used for carrying mining products. Mining permit is granted only in selected places by the Geology Department as per the amended distant regulations. But, in many areas, mining operations are carrying on with the support of some officials. Once the GPS system is fitted it is very easy for authorities to track the movement of goods vehicles engaged in illegal activities. The motor vehicles are included both in the Union list and State list. As per the Central Act corresponding amendment has also been introduced in the Kerala Motor Vehicles Rules. It is learned that only in Kerala amended provision in the Central Motor Vehicles Rules is not enforced.
- D. It is the duty of the State to protect the life of the citizens. The amendments in the Act and the rules were introduced for the safety and protection of life of citizens. It was decided to install electronic devices in vehicles after in depth study. The State Government cannot risk the life of citizens for the sake of powerful vehicle owner lobbies. The GPS devices will receive satellite signals triangulating data such as location, speed, travel history, and driving patterns. This data can be collected by the vehicle owner as well as by a monitoring agency like the Transport Department. A control room will be set up to monitor movements of transport vehicles across the State. The details of each VLT device shall be uploaded on the VAHAN database by the VLT device manufacturer using its secured authenticated access. The VLT device manufacturers or their authorised

dealers, at the time of installation of VLT device in, public service vehicles, shall configure the Internet Protocol address (IP address) and Short Message Service Gateway (SMS gateway) details in the device for sending emergency alerts to the emergency response system of the State or Union Territory concerned.

- E. The consequence of permitting the goods vehicles not to be installed with VLTD is defeating the very purpose of registration and fitness and allowing the same is against the public policy also. Ultimately, if so permitted, it would dilute the spirit behind the amendment made in Rule 125-H of the Central Motor Vehicle Rules, 1989.
- F. According to the latest National Crime Records Bureau (NCRB in short) data a total 4,37,396 road accidents were recorded across India in 2019, resulting in the death of 1,54,732 people and injuries to another 4,39,262. Also, the majority (59.6 per cent) of road accidents were due to "over-speeding" which caused 86,241 deaths and left 2,71,581 people injured, as per the data. In 2018, India had reported 1,52,780 deaths in road crashes, while the figures stood at 1,50,093 in 2017. Altogether, in 2019, India reported 4,21,959 accidental deaths under various categories such as road crashes, forces of nature, negligent human conduct, up from 4,11,104 in 2018 and 3,96,584 in 2017. According to the statistics, 38 per cent victims of road accidents were riders of two-wheelers followed by trucks or lorries, cars and buses which accounted for 14.6%, 13.7% and 5.9% percent respectively. The NCRB functions under the Union Home Ministry.

- G. In pursuance to the series of notifications and orders issued by the 1st respondent, Ministry of Road, Transport & Highways ('MoRTH'), Government of India, as referred above, wherein all the Public Service Vehicle as defined under Section 2(35) of the Motor Vehicle Act, 1988 ('MV Act') and Vehicles requiring/having National permit shall mandatorily be equipped with the Vehicle Location Tracking device ('VLTD') along with one or more emergency button in compliance with the standard of AIS-140.
- H. Under Rule 118 of the Central Motor Vehicles Rules, 1989 Speed Governor.—(1) On and from the commencement of this rule, such transport vehicles as may be notified by 305 [the State Government] in the Official Gazette shall be fitted by the operator of such transport vehicle with a speed governor (speed controlling device) [conforming to the Standard AIS : 018, as amended from time to 127 time] in such a manner that the speed governor can be sealed with an official seal of the State Transport Authority or a Regional Transport Authority in such a way that it cannot be removed or tampered with without the seal being broken. (2) The speed governor of every transport vehicle shall be so set that the vehicle is incapable of being driven at a speed in excess of the maximum preset speed of the vehicle except down an incline.
- I. The Ministry of Road Transport and Highways has already issued a notification No. G.S.R-1095(E) dated 28th November, 2016, wherein Vehicle Location Tracking Device and Panic Buttons (VLT) are mandated to be fitted in all the public service vehicles w.e.f. 1st April, 2018. The aim and

object of amendment to Rule 125-H itself is self-explanatory. The amendment was carried out for public convenience and public safety. For the purpose of achieving the aim, it is directed to all the Licensing Authorities to issue registration and fitness certificates only after ensuring the installation of VLT Devices in the vehicles. It shall be the duty of the Government to ensure that the devices are of the prescribed standard.

- J. Trucks account for 69% of country-wide freight traffic in India, according to the Economic Survey 2018-19. In developed countries such as Australia, truck drivers may drive for 12 hours at a stretch at the most and that too, with half-hour breaks every five hours and at least six continuous hours of rest. Canada stipulates a 13-hour limit with a 15-minute break every two hours and eight continuous hours of rest, according to a 2018 study published by Danish Public Health Institute, Sydvestjysk Sygehus. However, India has few regulations related to training, working hours or periodic vision tests for those driving commercial vehicles.
- K. While the Motor Vehicles Act, 1988 and Central Motor Vehicles Rules, 1989 are Central Legislations, their enforcement is the responsibility of the State Governments. The Act prescribes conditions for regulation of all types of road transport, viz, passenger transport in public and private sectors, tourist transport, contract carriages and goods transport. Goods transport is predominantly in the private sector. Safety depends upon the condition of vehicles in the hands of competent and skilled drivers. The

other prerequisites of road safety are well-designed roads and strict enforcement of provisions of the Motor Vehicles Act. Most of the truck drivers are illiterate and do not receive proper training from motor driving schools. There is a dominant preference for national permits; around 68% of the truck owners had national permits, the balance 32% had state permits for their trucks. Due to the non installation of VLT Devices Transport Department did not have any information on the accident prone drivers, that many of the accidents were caused because of over speeding, that there was no data on accident analysis available in the department.

- L. Overloaded vehicles accounted for 10% of total accidents, 12% of fatalities and 27% of injuries, as per the 2018 Ministry of Road, Transport and Highways report. Overloaded trucks cause accidents for multiple reasons, viz., tyre burst, worn brakes, road collapse, loss of balance, and speed while negotiating inclines, as per the report. Overloading impacts the weightage of the vehicle and also impacts the centre of gravity, which in turn, impacts the physical movement of the vehicle. Similarly, partially loaded tanker trucks carrying liquids that slosh back and forth upset the natural centre of gravity of the truck. Overloading impedes the ability of the truck's ability to brake. Hence, to curb overloading and causing accidents, due to other above mentioned reasons, installation of VLT Devices is to be made mandatory.
- M. The issuance of fitness certificate to the Vehicles are governed by Section 56 of the Motor Vehicles Act and Rule

62 of the Central Motor Vehicles Rules. Hence, before issuing/renewing fitness certificate to the vehicles it is the responsibility of the Motor Vehicles Department to ensure that all types of vehicles are equipped and fitted with VLT Devices as provided under the amended Act and rules. But, in the State of Kerala, the Motor Vehicles Department is not insisting on VLT devices while issuing fitness certificates and also while registering new commercial vehicles. Ignoring the amended provision, the Motor Vehicle Authorities are issuing fitness certificates to the commercial vehicles. Before the issuance of registration or the renewal of fitness certificate under Rule 56 or Rule 62 of the Central Motor Vehicles Rules, 1989 to goods vehicles, it is mandatory that the vehicle should be fitted with VLT Device.

16. Kerala State Road Transport Corporation, represented by the Managing Director, Trivandrum (respondent No.7 in W.P.(C) No.20500/2020), has filed a counter affidavit, wherein it is contended as follows:

- A. Prayer No. II in the writ petition as regards not to grant any exemption to any category of vehicle, is unsustainable in law, for the reason that Exhibit-P1 notification is issued under Section 110(1) of the Motor Vehicles Act, 1988 and as per Clause (b) of sub-section (3) of Section 110, the 2nd respondent is having power and jurisdiction to exempt any motor vehicle or any class or description of motor vehicle under sub-section (1) of Section 110. Reference was also made to clause (b) of sub-section (3) of Section 110 of the Motor Vehicles Act, 1998.

- B. The 7th respondent has initiated the process for purchasing Vehicle Location Tracking Devices and invited tender dated 28.09.2020 for purchasing the 1st phase of the devices, and it is in the final stage. The 7th respondent is having 6200 buses and a huge amount is required for installation of the devices. Due to the surge of COVID-19, income of the KSRTC is drastically decreased, the schedule is conducting with heavy losses, and service is operating only fetching diesel expenses.
- C. Due to COVID-19 pandemic, the Central and State Governments have issued various directions for restriction of human activity. Accordingly, lockdown was declared on 23.03.2020 in the country and due to the lockdown, service of operation of the KSRTC was stopped from 24.03.2020 onwards and offices are also closed. Thereupon, after lifting up of lockdown, service operation of the KSRTC was partially started from 19.05.2020 onwards and only 50% of the office staff were engaged. KSRTC has 93 depots, 5 regional workshops and a central workshop which are located in various places from Parassala to Kasaragod. Many of the depots are closed due to containment zones and hot-spot, on several occasions. The service of the Corporation was interrupted for the last few months and the Corporation is getting only meagre revenue. The Corporation is struggling to maintain the operating cost, including payment of salary purchase of diesel and spare parts, pay insurance premium and payment pension etc. Even after lifting of the lockdown, only partial service with the condition of permitting only seating capacity of the passengers is

conducting. Prior to March, 2020, the average collection of the KSRTC was Rs.5.63 crores per day and now, the average collection is Rs.69 lakhs per day. Therefore, in a phased manner, the Vehicle Location Tracking Devices can be installed in the buses. In such circumstances, the 7th respondent prayed for dismissal of the writ petition.

17. Secretary to the Government, Transport Department, respondent No.2 in W.P.(C) No.20768/2020, has filed a statement, wherein it is contended as follows:

A. As per the Motor Vehicles (Amendment) Act, 2019, Union of India has amended the Motor Vehicles Act, 1988 and inserted Section 136A. Section 136A of the Act reads as follows:

"136A. Electronic monitoring and enforcement of road safety.-

(1) The State Government shall ensure electronic monitoring and enforcement of road safety in the manner provided under sub-section (2) on national highways, state highways, roads or in any urban city within a State which has a population up to such limits as may be prescribed by the Central Government.

(2) The Central Government shall make rules for the electronic monitoring and enforcement of road safety including speed cameras, closed-circuit television cameras, speed guns, body wearable cameras and such other technology.

Explanation.—For the purpose of this section the expression "body wearable camera" means a mobile audio and video capture device worn on the body or uniform of a person authorised by the State Government.'

B. Referring to sub section (2) of Section 1 of the Motor Vehicles (Amendment) Act, 2019, the 2nd respondent contended that, it

shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint and different dates may be appointed for different provisions of this Act and any reference in any such provision to the commencement of this Act shall be construed as a reference to the coming into force of that provision.

- C. The 2nd respondent further contended that the date of coming into force of various sections of the Act has been made effective as per notification published as S.O.3110(E) dated 28th August, 2019 as S.O.3311(E) dated 25.09.2020 respectively. The date of coming into force of Section 47 of the Amendment Act inserting Sec. 136A has not been notified so far by the Central Government. Also the rules provided under Sub-Section (2) of Sec. 136A of the Act has not been framed so far by the Central Government. In such circumstances, the enforcement of the provision of Section 136A is not possible for the time being.
- D. Respondent No.2 has further stated that with regard to the non implementation of Rule 151A of the KMVR Rules, 1989, the Central Government as per the CMV (12th Amendment) Rules, 2016 have inserted Rule 125 H in the Central Motor Vehicles Rule, 1989, providing for provision of vehicle location tracking device and emergency buttons w.ef. 01.04.2018. GSR 1095(E) dated 28.11.2016. The same reads thus:

"**125 H.** Provisions of vehicle location tracking device and emergency button:- I. All public service vehicles, as defined under Clause (35) of Section 2 of the Act, shall be equipped with or fitted with vehicle location tracking device and one or more emergency buttons :

Provided that this Rule shall not apply to the following category of vehicles, namely:- (i) two wheelers (ii) E-rickshaws (iii) three wheelers; and (iv) any transport vehicle for which no

permit is required under the Act. (2) The specifications, testing and certification of the vehicle location tracking device and emergency button referred to in Sub-Rule (1) shall be in accordance with AIS-140:2016, as amended from time to time, till such time the corresponding BIS specifications are notified under the Bureau of Indian Standards Act, 1986 (63 of 1986). (3) The vehicle location tracking device and emergency button referred to in Sub-Rule (1) shall be fitted by the manufacturer or their dealer or the respective operator, as the case may be, in accordance with AIS-140:2016 as amended from time to time, till such time the corresponding BIS specifications are notified under Bureau of Indian Standards Act, 1986" .

- E. The 2nd respondent further stated that later the Central Government have exempted all the vehicles from fitting Vehicle Location Tracking Devices and emergency buttons, till 31st December, 2018 as per the Notification No. SO 5454(E) dated 25.10.2018. Again, the Central Government have amended Rule 125 H of the CMV Rules as per the CMV (10th Amendment) Rules, 2019 (GSR 808(E) dated 23.10.2019 exempting item (iv) of rule 125 H ie; regarding "any transport vehicle for which no permit is required under the Act. Power was given to the State Government and Union Territories, to notify the date of compliance of the requirement.
- F. It is further stated that the State Government in exercise of the powers conferred under Clause (b) of sub section (3) of Section 110 of MV Act, have issued notification bearing S.R.O. No. 931/2019 dated 28.11.2019, making category of vehicles and the time period for each category for installing tracking systems and emergency buttons. Later, Government as per notification issued under G.O.(P) No.6/2020/Trans dated 17.02.2020 and published S.R.O. No.128/2020 dated 17.02.2020 have extended the date for compliance of VLTDS in respect of KSRTC buses and stage carriages upto 31.12.2020. In respect of educational

institutions buses and vehicles carrying school children, installation of vehicle location tracking devices is over. In respect of contract carriages, which are coming from outside the State, such installation may not be necessary. Detailed instructions vide Circular 19/2019 was issued by the Transport Commissioner for the effective implementation of the provisions regarding installation of VLTDs in the State of Kerala. In Para 4 of instructions it is clearly stated that those vehicles fitted with VLTDs shall only be given a Certificate of Fitness. Almost 50% of passenger vehicles and 30% of goods vehicles in the State were already fitted with VLTDs.

- G. It is further stated that Rule 125 of the Central Motor Vehicle Rules does not stipulate that VLTD should be implemented in goods vehicles. Therefore, in view of the COVID-19 epidemic and request from various quarters, Government have decided to amend notification S.R.O No.931/2019 dated 28.11.2019 to extend the date of installation of VLTDs in goods vehicles till 31.12.2020 and orders were issued as per Annexure R2(a) notification issued under G.O.(P) No.54/2020/Tran. dated 22.10.2020 and published vide S.R.O No.729/2020 dated 23.10.2020.
- H. It is further stated that as per Rule 125H of the Central Motor Vehicle Rules, VLTDs are not required for goods vehicles. The Central Government have the power to make rules in this regard. Hence, it has been decided to request MoRTH, to take steps to amend the Central Motor Vehicle Rules, 1989, to make it mandatory for Category N2 and Category N3 Goods vehicles to be fitted with VLTD and also to exempt small passenger vehicles registered before the date of enactment of Rule 125H

from VLTDs/GPS installation. For the foregoing reasons, the 2nd respondent prayed for dismissal of the writ petition.

18. On the grounds made in W.P.(C) No.20768 of 2020, Mr. M.P. Ashok Kumar, learned counsel for the petitioner, submitted that for the implementation of Motor Vehicles, Act, 1988, Union of India, represented by its Secretary, Ministry of Road Transport and Highways, New Delhi, respondent No.1, has already allotted about Rs.13 Crores. All the offices of the Motor Vehicle Department are to be equipped with modern instruments to monitor the VLT devices. For ensuring installation of most modern technical devices, the 1st respondent has already allotted funds to 15 States in India and Kerala is one among them. He further submitted that despite receipt of the fund, the Government of Kerala is exempting goods vehicles, due to extraneous consideration.

19. Learned counsel for the petitioner further submitted that by Exhibit-P2 notification dated 28.11.2019, certain category of goods vehicles were exempted from the provisions of the KMV Rules, 1989 upto 31.11.2019. However, in the said notification, goods vehicles were exempted from fitment of VLT devices only upto 29.02.2020. According to the learned counsel, the said date fixed by the Government was after accepting the report of the expert committee, appointed in that regard. Thereafter, Government of Kerala have issued Exhibit-P4 order dated 17.02.2020 amending Exhibit-P2

notification. Government has taken a decision not to grant exemption to goods vehicles, because the maximum number of accidents and various other illegal activities are taking place in the goods vehicles.

20. Learned counsel for the petitioner further submitted that this Court in W.P.(C) No.20500/2020, passed an interim order dated 30.9.2020 directing that steps have to be taken to install VLTDs, in respect of other categories of vehicles and, therefore, it is mandatory on the part of the State Government to ensure compliance. But, the State Government, based on the request made by the Association of Goods Motor Vehicle Industry, vide Exhibit-P5 notification dated 2.10.2020, have extended the time limit for installation of VLTD for goods vehicles upto 31.12.2020. Thus, the executive authorities are diluting the law by subverting the mandate.

21. Mr. Praveen K. Joy, learned counsel for the petitioner in W.P.(C) No.20500 of 2020, also made submissions in terms of the contentions recorded above.

22. Based on the counter affidavit of the KSRTC, 7th respondent in W.P.(C) No.20500/2020, and the statement of the Secretary to the Government, Transport Department, respondent No.2 in W.P.(C) No.20768/2020, Mr. P. C. Chacko, learned standing counsel for the KSRTC, and the the learned Special Govt Pleader submitted that though the Central Government have framed rules directing installation of VLTDs and later on exempted the same in respect

of goods carriage vehicles, Government of Kerala, in exercise of the powers conferred under Section 110 of the Motor Vehicles Act, 1988 framed Rule 151A of the Kerala Motor Vehicles Rules, 1989, directing all kinds of vehicles to be fitted with VLTDs, except two wheeler, E-rickshaw, three wheelers; and any transport vehicle for which no permit is required under the Act. They further submitted that in respect of educational institution buses, installation of the VLTD has been completed. Having regard to the COVID-19 pandemic, affecting the financial position of Kerala Road Transport Corporation, there is a delay in implementing Rule 151A of the rules and there is no willful or deliberate intention on the part of the Corporation or the State Government.

23. Learned Special Government Pleader further submitted that considering the request of the Association of Goods Carriages, time for fitting the vehicle location tracking devices has been extended upto 31.12.2020, but it is not a case of exemption, as argued by the learned counsel for the petitioner in W.P.(C) No.20678/2020. He further submitted that when power to grant exemption from fitting the VLTDs is conferred on the State Government, it can do so, but, having regard to the object of locating the vehicles, goods carriage vehicles are also included. He also submitted that the State Government has power to extend the time, having regard to the various factors stated supra, and extension of time granted cannot be said to be arbitrary or *mala fide*.

24. Learned Special Government Pleader further submitted that in the case of vehicles coming from other States to Kerala, there is a difficulty in implementing the scheme, and therefore, it is decided to address the Central Government. Finally, the learned Special Government Pleader submitted that Transport Commissionerate, Government of Kerala, has also issued Circular No.19/2019 dated 01.01.2020, appointing the Regional Transport Officer (Enforcement), Thiruvananthapuram, as the Nodal Officer, for Global Positioning System in the State. The Regional Transport Officer (Enforcement) in the respective districts will be the Nodal Officer for effective monitoring of GPS in the districts. Therefore it is submitted that Government of Kerala is taking all necessary steps to effectively implement installation of VLTDs, in all the vehicles, except those mentioned in Rule 151A of the Kerala Motor Vehicles Rules, 1989 and the contentions to the contrary, made in the writ petitions cannot be countenanced. For the above, he prayed to dismiss the writ petitions.

25. Heard learned counsel for the parties and perused the material available on record.

26. Before advertng to the submissions of the learned counsel for the parties with reference to the rules and notifications, let us consider a few statutory provisions.

27. Motor Vehicles Act, 1988 is an Act to consolidate and amend the law relating to motor vehicles. Section 2(35) of the Act defines "public service vehicles" as under:

"In this Act, unless context otherwise requires,--

(35) "public service vehicle" means any motor vehicle used or adapted to be used for the carriage of passengers for hire or reward, and includes a maxicab, a motorcab, contract carriage, and stage carriage;"

28. Section 56 of the Act speaks about certificate of fitness of transport vehicles and the same reads thus:

"56. Certificate of fitness of transport vehicles.-

(1) Subject to the provisions of sections 59 and 60, a transport vehicle shall not be deemed to be validly registered for the purposes of section 39, unless it carries a certificate of fitness in such form containing such particulars and information as may be prescribed by the Central Government, issued by the prescribed authority, or by an authorised testing station mentioned in sub-section (2), to the effect that the vehicle complies for the time being with all the requirements of this Act and the rules made thereunder:

Provided that where the prescribed authority or the authorised testing station refuses to issue such certificate, it shall supply the owner of the vehicle with its reasons in writing for such refusal.

[Provided further that no certificate of fitness shall be granted to a vehicle, after such date as may be notified by the Central Government, unless such vehicle has been tested at an automated testing station.]

[(2) The "authorised testing station" referred to in sub-section (1) means any facility, including automated testing facilities, authorised by the State Government, where fitness testing may be conducted in accordance with the rules made by the Central Government for recognition, regulation and control of such stations.]

(3) Subject to the provisions of sub-section (4), a certificate of fitness shall remain effective for such period as may be prescribed by the Central Government having regard to the objects of this Act.

(4) The prescribed authority may for reasons to be recorded in writing cancel a certificate of fitness at any time, if satisfied that the vehicle to which it relates no longer complies with all the requirements of this Act and the rules made thereunder; and on such cancellation the certificate of registration of the vehicle and any permit granted in respect of the vehicle under Chapter V shall be deemed to be suspended until a new certificate of fitness has been obtained:

[Provided that no such cancellation shall be made by the prescribed authority unless, --

(a) such prescribed authority holds such technical qualification as may be prescribed by the Central Government and where the prescribed authority does not hold the technical qualification, such cancellation is made on the basis of the report of an officer having such qualification; and

(b) the reasons recorded in writing cancelling a certificate of fitness are confirmed by an authorised testing station chosen by the owner of the vehicle whose certificate of fitness is sought to be cancelled:

Provided further that if the cancellation is confirmed by the authorised testing station, the cost of undertaking the test shall be borne by the owner of the vehicle being tested and in the alternative by the prescribed authority.]

(5) A certificate of fitness issued under this Act shall, while it remains effective, be valid throughout India.

[(6) All transport vehicles with a valid certificate of fitness issued under this section shall carry, on their bodies, in a clear and visible manner such distinguishing mark as may be prescribed by the Central Government.

(7) Subject to such conditions as the Central Government may prescribe, the provisions of this section may be extended to non-transport vehicles.]”

29. Section 110 of the Act speaks about the power of the Central Government to make rules and it reads thus:

"110. Power of the Central Government to make rules.-

(1) The Central Government may make rules regulating the construction, equipment and maintenance of motor vehicles and trailers with respect to all or any of the following matters, namely:--

(a) the width, height, length and overhang of vehicles and of the loads carried;

[(b) the size, nature, maximum retail price and condition of tyres, including embossing thereon of date and year of manufacture and the maximum load carrying capacity;]

(c) brakes and steering gear;

(d) the use of safety glasses including prohibition of the use of tinted safety glasses;

(e) signalling appliances, lamps and reflectors;

(f) speed governors;

(g) the emission of smoke, visible vapour, sparks, ashes, grit or oil;

(h) the reduction of noise emitted by or caused by vehicles;

(i) the embossment of chassis number and engine number and the date of manufacture;

(j) safety belts, handle bars of motor cycles, auto-dippers and other equipments essential for safety of drivers, passengers and other road users;

(k) standards of the components [including software] used in the vehicle as inbuilt safety devices;

(l) provision for transportation of goods of dangerous or hazardous nature to human life;

(m) standards for emission of air pollutants;

[(n) installation of catalytic convertors in the class of vehicles to be prescribed;

(o) the placement of audio-visual or radio or tape recorder type of device in public vehicles;

(p) warranty after sale of vehicle and norms therefor:]

Provided that any rules relating to the matters dealing with the protection of environment, so far as may be, shall be made after consultation with the Ministry of the Government of India dealing with environment.

(2) Rules may be made under sub-section (1) governing the matters mentioned therein, including the manner of ensuring the compliance with such matters and the maintenance of motor vehicles in respect of such matters, either generally in respect of motor vehicles or trailers or in respect of motor vehicles or trailers of a particular class or in particular circumstances 2[and such rules may lay down the procedure for investigation, the officers empowered to conduct such investigations, the procedure for hearing of such matters and the penalties to be levied thereunder.]

[(2A) Persons empowered under sub-section (2) to conduct investigations referred to in sub-section (2) shall have all the powers of a civil court, while trying a suit under the Code of Civil Procedure, 1908 (5 of 1908) in respect of the following matters, namely:--

- (a) summoning and enforcing the attendance of any person and examining him on oath;
- (b) requiring the discovery and production of any document;
- (c) receiving evidence on affidavit; and
- (d) any other matter as may be prescribed.]

(3) Notwithstanding anything contained in this section,--

- (a) the Central Government may exempt any class of motor vehicles from the provisions of this Chapter;
- (b) a State Government may exempt any motor vehicle or any class or description of motor vehicles from the rules made under sub-section (1) subject to such conditions as may be prescribed by the Central Government."

30. At the risk of repetition, Section 136A of the Motor Vehicles Act, which speaks about electronic monitoring and enforcement of road safety, reads thus:

"136A. Electronic monitoring and enforcement of road safety. --(1) The State Government shall ensure electronic monitoring and enforcement of road safety in the manner provided under sub-section (2) on national highways, state highways, roads or in any urban city within a State which has a population up to such limits as may be prescribed by the Central Government.

(2) The Central Government shall make rules for the electronic monitoring and enforcement of road safety including speed cameras, closed-circuit television cameras, speed guns, body wearable cameras and such other technology.

Explanation.-- For the purpose of this section the expression "body wearable camera" means a mobile audio and video capture device worn on the body or uniform of a person authorised by the State Government."

31. In exercise of the powers conferred by Sections 12, 27, 64, sub-section (14) of Section 88, Sections 110, 137, 164 and 208 read with Section 211 of the Motor Vehicles, Act, 1988 (59 of 1988) the Central Government have framed the Central Motor Vehicles Rules, 1989.

32. Rule 2(q) of the rules defines "Category N2" as hereunder:

"2. In these rules, unless the context otherwise requires.-

(q) "Category N2" means a motor vehicle used for carriage of goods and having a Gross Vehicle Weight exceeding 3.5 tonnes but not exceeding 12 tonnes."

33. Rule 2(r) of the rules defines "Category N3" as hereunder:

"2. In these rules, unless the context otherwise requires.-

(r) "Category N3" means a motor vehicle used for carriage of goods and having a Gross Vehicle Weight exceeding 2 tonnes."

Note.- For the motor vehicles, additional details and definitions specified in [IS 14272: 2011], as amended from time to time. Certificates issued prior to the date of implementation of IS: 14272:2011 in place of AIR: 053:2005 shall continue to be valid:]"

34. Notification dated 28.11.2016 issued by the Ministry of Road Transport and Highways [Exhibit-P1 in W.P.(C) No.20500/2020], by which, the Central Government have introduced Rule 125H of the Motor Vehicles Rules,

making a provision for installation of vehicle location tracking device and emergency buttons, reads thus:

“MINISTRY OF ROAD TRANSPORT AND HIGHWAYS
NOTIFICATION

New Delhi, the 28th November, 2016

G.S.R. 1095(E).— Whereas the draft rules further to amend the Central Motor Vehicles Rules, 1989, were published, as required under sub-section (1) of Section 212 of the Motor Vehicles Act, 1988 (59 of 1988), vide notification of the Government of India in the Ministry of Road Transport and Highways number G.S.R. 478 (E), dated the 2nd May, 2016 in the Gazette of India, Extraordinary, Part II, section 3, sub-section (i), inviting objections and suggestions from affected persons before the expiry of the period of thirty days from the date on which copies of the Gazette containing the said notification were made available to public;

And whereas, copies of the said Gazette notification were made available to the public on the 2nd May, 2016;

And whereas, the objections and suggestions received from the public in respect of the said draft rules have been considered by the Central Government.

Now, therefore, in exercise of the powers conferred by clause (k) of sub-section (1) of section 110 of the Motor Vehicles Act, (59 of 1988), the Central Government hereby makes the following rules further to amend the Central Motor Vehicles Rules, 1989, namely: —

1. (1) These rules may be called the Central Motor Vehicles (Twentieth Amendment) Rules, 2016.

(2) They shall come into force on the 1st day of April, 2018.

2. In the Central Motor Vehicles Rules, 1989, after rule 125 G, the following rule shall be inserted, namely.-

“125 H. Provision of vehicle location tracking device and emergency button.- (1) All public service vehicles, as defined under clause (35) of section 2 of the Act, shall be equipped with or fitted with vehicle location tracking device and one or more emergency buttons:

Provided that this rule shall not apply to the following category of vehicles, namely:-

- (i) two wheelers;
- (ii) E-rickshaw;
- (iii) three wheelers; and
- (iv) any transport vehicle for which no permit is required under the Act.

(2) The specifications, testing and certification of the vehicle location tracking device and emergency button referred to in sub-rule (1) shall be in accordance with AIS-140: 2016, as amended from time to time, till such time the corresponding BIS specifications are notified under the Bureau of Indian Standards Act, 1986 (63 of 1986).

(3) The vehicle location tracking device and emergency button referred to in sub-rule (1) shall be fitted by the manufacturer or their dealer or the respective operator, as the case may be, in accordance with AIS-140: 2016, as amended from time to time, till such time the corresponding BIS specifications are notified under the Bureau of Indian Standards Act, 1986."

[No.RT-11028/12/2015-MVL]
ABHAY DAMLE, Jt. Secy.

Note:- The principal rules were published in the Gazette of India, Extraordinary, Part-II, Section 3, sub-section (i) vide notification number G.S.R.590(E), dated the 2nd June, 1989 and last amended vide notification number G.S.R.1034(E) dated the 2nd November, 2016."

35. In exercise of the powers conferred by Sections 26, 28, 38, 65, 96, 107, 111, 138, 159, 176 and 213 of the Motor Vehicles Act, 1988 (Central Act 59 of 1988), the Government of Kerala have framed the Kerala Motor Vehicles Rules, 1989, and on 1.4.2018, Rule 151A was introduced from which speaks about provision of Vehicle Location Tracking Device and the same reads thus:

“151A Provision of Vehicle Location Tracking

Device.- (1) All public service vehicles, as defined under clause (35) of section 2 of the Act shall be equipped with or fitted with vehicle location tracking device and one or more emergency buttons and all goods carriage vehicles shall be provided with location tracking device:

Provided that this rule shall not apply to the following category of vehicles, namely:-

- (i) two wheeler;
- (ii) E-rickshaw;
- (iii) three wheelers; and
- (iv) any transport vehicle for which no permit is required under the Act.

(2) The specifications, testing and certification of vehicle location tracking device referred in sub-rule (1) shall be in accordance with AIS-140:2016, as amended from time to time, till such time the corresponding BIS specifications are notified under the Bureau of Indian Standards Act, 1986 (63 of 1986).

(3) The vehicle location tracking device referred to in sub-rule (1) shall be fitted by the manufacturer or their dealer or the respective operator, as the case may be, in accordance with AIS-140:2016, as amended from time till such time the corresponding BIS specifications are notified under the Bureau of Indian Standards Act, 1986 (63 of 1986)“

36. By notification dated 25.09.2018 issued by the Ministry of Road Transport and Highways [Exhibit-P2 in W.P.(C) No.20500/2020], Central

Government have exempted installation of vehicle location tracking device and emergency buttons till January, 2019, in all public services vehicles registered upto 31.12.2018. The Central Government has also empowered the State Governments/Union Territories, to specify the date for compliance of the requirements. Said notification reads thus:

"MINISTRY OF ROAD TRANSPORT AND HIGHWAYS
NOTIFICATION

New Delhi, the 25th October, 2018

S.O. 5454 (E).—In exercise of the powers conferred by clause (a) of sub-section (3) of section 110 of the Motor Vehicles Act, 1988 (59 of 1988), and in supersession of the notification of the Government of India in the Ministry of Road Transport and Highways published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (ii) vide number S.O.1663 (E), dated the 18th April, 2018, the Central Government hereby exempts upto the day of January, 2019 all public service vehicles registered upto the 31st day of December, 2018 from the provisions of clause (k) of sub-section 1 of section 110 of the Motor Vehicle Act, 1988:

Provided that after the expiry of the time-period of exemption specified above, the concerned State or Union Territory Government may notify the date for compliance of requirements, as specified in pursuance of the said provision, in their respective State or Union Territory, as per the applicable law in regard to the said for public service vehicles registered upto the 31st day of December, 2018.

[F. No. RT-11028/12/2015-MVL Pt. I]
PRIYANK BHARATI, Jt. Secy."

37. Pursuant to the above said notification of the Central Government, notification dated 28.11.2019 has been issued by the Additional Secretary, Transport (B) Department, Government of Kerala, [Exhibit-P3 in W.P.(C) No.20500/2020], which reads thus:

**"GOVERNMENT OF KERALA
TRANSPORT(B) DEPARTMENT
NOTIFICATION**

G.O.(P) No.41/2019/Tran
S. R. O. No. 931/2019

*28th November, 2019
Thiruvananthapuram*

WHEREAS, the Ministry of Road Transport and Highways, as per notification issued under S.O. 5454(E) dated 25th October, 2018 had exempted all the public service vehicles which are registered upto 31st December, 2018 from the provisions of clause (k) of sub-section (1) of section 110 of the Motor Vehicles Act, 1988 (Central Act 59 of 1988) till 1st January, 2019 and empowered the State or Union Territory Governments to notify the date for compliance of requirements as specified in pursuance of the said provision in their respective State or Union Territory after the expiry of the said time period;

AND WHEREAS, the Government have constituted an expert committee to implement the mandatory installation of Vehicle Location Tracking Devices in the State and the committee have recommended the Government to exempt the vehicles as detailed in the Schedule mentioned below hereto from the provisions of rule 151 A of the Kerala Motor Vehicles Rules, 1989;

AND WHEREAS, the Government of Kerala are satisfied that it is necessary, in public interest, to exempt the vehicles, as detailed in the Schedule mentioned below from the provisions of rule 151 A of the Kerala Motor Vehicle Rules, 1989;

NOW, THEREFORE, in exercise of the powers conferred by clause (b) of sub-section (3) of section 110 of the Motor Vehicles Act, 1988 (Central Act 59 of 1988), the Government of Kerala hereby exempt, in public interest, the category of vehicles mentioned in column (2) of the SCHEDULE below from the provisions of rule 151A of the Kerala Motor Vehicles Rules, 1989 upto a period mentioned in column (3) thereof, namely:-

Sl. No.	Category of Vehicle	Exempted upto
1	Educational Institutional Buses and vehicles carrying school children	30/11/2019
2	Contract Carriages (above 13 seats)	31/12/2019
3	KSRTC Buses	31/01/2019
4	Stage Carriages	14/02/2020
5	Goods Vehicles	29/02/2020
6.	Taxi service including online taxis	30/03/2020

By order of the Governor

C M AJAYAMOHAN,
ADDITIONAL SECRETARY

Explanatory Note

(This does not form part of the notification, but is intended to indicate its general purport.)

As per rule 151 A of the Kerala Motor Vehicle Rules, 1989, the Government made it mandatory that all public service vehicles as defined under clause (35) of section 2 of the Motor Vehicles Act, 1988 (Central Act 59 of 1988) shall be equipped with or fitted with vehicle location tracking device and one or more emergency buttons and all goods carriage vehicles shall be provided with location tracking device.

The Ministry of Road Transport and Highways vide notifications S.O. 5454(E) dated 25th October 2018 had decided to give exemption to all the public service vehicles which are registered upto 31st December, 2018 from the installation of Vehicle Location Tracking Device and emergency buttons till 1st January, 2019 and empowered the State or Union Territory Governments to. notify the date for compliance of requirements as specified in clause (k) of sub-section (1) of Section 110 of the Motor Vehicles Act, 1988 in their respective State or Union Territory, after the expiry of the said time period.

The Government have examined the matter in detail and an expert committee was constituted to implement the mandatory installation of Vehicle Location Tracking Devices in the State. The committee have recommended the Government the date upto which each category of vehicles are to be exempted. Government have accepted the recommendations of the committee and decided to issue notification in this regard.

The notification is intended to achieve the above object.”

38. From the above, it could be deduced that the Government of Kerala have constituted a committee to study the effective implementation of installation of VLTDs in the State, and accordingly, exempted installation of

Vehicle Location Tracking Devices upto the period, as indicated above.

39. Notification dated 17.02.2020 [Exhibit-P4 in W.P.(C) No.20500/2020), amendment to the notification dated 28.11.2019, reads thus:

“GOVERNMENT OF KERALA
Transport (B) Department
NOTIFICATION

G.O.(P) No.6/2020/Tran.

Dated, Thiruvananthapuram, 17th February, 2020

S.R.O. No.128/2020

In exercise of the powers conferred by clause (b) of sub-Section (3) of Section 110 of the Motor Vehicles Act, 1988 (Central Act 59 of 1988), the Government of Kerala hereby made the following amendment to the notification issued under G.O.(P) No.41/2019/Tran dated 28th November, 2019 and published as S.R.O No.931/2019 in the Kerala Gazette Extraordinary No.29187 dated 28th November, 2019 namely:-

AMENDMENT

In the SCHEDULE to the said notification,-

- (1) for the entries against serial No.3 in column (3), the entries “31/12/2020” shall be substituted;
- (2) for the entries against serial No.4 in column (3), the entries “31/12/2020” shall be substituted.

By order of the Governor,

K.R.JYOTHILAL,
Principal Secretary to Government”

Explanatory Note

(This does not form part of the notification, but is intended to indicate its general purport.)

As empowered by the Ministry of Road Transport and Highways through notification No. S.O. 5454(E) dated 25th October, 2018, State Government have notified the date for compliance regarding installation of Vehicle Location Tracking

Devices in respect of Stage Carriages and KSRTC Buses as 14.02.2020, vide notification published as S.R.O. No.931/2019 in the Kerala Gazette Extraordinary No.2918 dated 28th November, 2019.

Various Associations of Motor Vehicle Industry have approached Government citing the practical problems faced by them in the fitment of Vehicle Location tracking Devices in vehicles and requested to withdraw the decision of fitment of VLTDs mandatory or supply the VLTDs free of cost or in subsidised rate as the industry is undergoing financial constraints.

Managing Director, Kerala State Road Transport Corporation has informed that in the current situation the management is going through a severe financial crises and they are unable to produce buses for fitness test after fitting VLTDs before 14.02.2020. As a result, KSRTC will not be able to operate about 300 buses in the coming months due to the non-availability of certificate of fitness, which will lead to severe travel difficulties and further worsening the financial position of the Corporation. Hence, it is requested for exempting the KSRTC buses from the fitment of VLTDs or to extend the time limit considering their financial crises. Considering their request, Government have decided to extend the date for compliance of the same upto 31.12.2020 by making an amendment to the Schedule to the said notification.

The notification is intended to achieve the above object.”

40. Reading of the above, makes it clear that considering the representation of various associations of the Motor Vehicle Industry and the financial crisis of the Kerala State Transport Corporation, Government of Kerala have decided to extend the time for compliance of installing VLTDs upto 31.12.2020, and that there is no exemption, as submitted by the learned counsel for the petitioner in W.P.(C) No.20768/2020.

41. Notification dated 22.10.2020 [Exhibit-P5 in W.P(C) No.20768/2020) amending G.O(P) No.41/2019/Tran dated 28th November, 2019, reads thus:

GOVERNMENT OF KERALA
Transport (B) Department
NOTIFICATION

G.O.(P) No.54/2020/Tran.

Dated, Thiruvananthapuram, 22nd October, 2020

S.R.O No. 729/2020

In exercise of the powers conferred by clause (b) of sub-section (3) of section 110 of the Motor Vehicles Act, 1988 (Central Act 59 of 1988), read with sub-rule (I) of rule 151 A of the Kerala Motor Vehicles Rules, 1989, the Government of Kerala hereby make the following amendment to the notification issued under GO(P) No.41/2019/Tran dated 28th November, 2019 and published as S.R.O. No.931/2019 in the Kerala Gazette Extraordinary No.2918 dated 28th November, 2019, namely:

AMENDMENT

In the SCHEDULE to the said notification, for the entries against serial No.5 in column (3), the entries "31/12/2020" shall be substituted.

By order of the Governor,

K.R JYOTHILAL
Principal Secretary to Government

Explanatory Note

(This does not form part of the notification, but is intended to indicate its general purport.)

As empowered by the Ministry of Road Transport and Highways through notification No.S.O.5454(E) dated 25th October, 2018, State Government have notified the date of compliance for installation of Vehicle Location Tracking Devices in respect of various categories of vehicles vide notification published as S.R.O. No.931/2019 in the Kerala Gazette Extraordinary No.2918 dated 28th November, 2019.

Various Associations of Goods Motor Vehicle Industry have approached Government citing the practical problems faced by them in the fitment of Vehicle Location Tracking Devices in vehicles and requested to extend the time limit for installation of Vehicle Location Tracking Devices for goods vehicles upto 31st December, 2020 in the wake of Covid-19 pandemic.

Government have examined the matter and decided to extend the date for compliance for installation of Vehicle Location Tracking Devices in respect of goods vehicles upto 31st December, 2020 by amending the Schedule to the aforementioned notification.

The notification is intended to achieve the above object.”

42. Perusal of the above makes it clear that various associations of the Goods Motor Vehicle Industry have approached the State Government to extend the time limit for installation of VLTDs, for goods vehicles, upto 31st December, 2020, in the wake of COVID-19 pandemic, and accordingly extended the time for compliance.

43. Circular No.19/2019 dated 01.01.2020 issued by the Transport Commissioner, Transport Commissionerate, Thiruvananthapuram, is extracted hereunder:

“File No. MIT-5/33/2018-TC

Date:01/01/2020

Transport Commissionerate, 2nd Floor, Trans Towers,
Vazhuthacaud, Thycaud P.O., Thiruvananthapuram – 695 014.

Circular No.19/2019

Sub:- Motor Vehicle Department - Implementation of GPS system in vehicles -Instructions to the offices-issued-reg.

Ref:- 1. Notification No 1095(E) dated 28/11/2016 from Ministry of Road Transport & Highways.

2. G.O(P) No.27/2017/Trans dated 15/11/2017 from Kerala Transport Department.

As part of strengthening the road safety measures, as per references cited, vehicles used for public transport, school buses and other vehicles carrying students etc. have to be fitted with GPS systems.. The scheme aims to monitor vehicle traffic

offenses, ensure the safety of women and children traveling in vehicles and to provide assistance to vehicles involved in accidents without delay. The following instructions should be strictly complied by all officers for the effective implementation of this system.

1. Regional Transport Officer (Enforcement) Thiruvananthapuram has been appointed as the Nodal Officer for GPS Project in the State. The duties of the Nodal Officer are outlined in this Office Order No. MIT-5/33/2018/TC dated 13/12/2019.
2. Regional Transport Officers (Enforcement) in the respective districts will be appointed as Nodal Officers for effective monitoring of GPS systems in the districts.
3. The head of the office shall appoint a motor vehicle inspector in the respective office to monitor effectively the GPS systems in the offices.
4. It has been noticed that vehicles equipped with Vehicle Location Tracking Device are facing delay in getting approval in the offices through Suraksha-Mitr system. As such it is not possible to monitor the movements of these vehicles from the control rooms. Therefore Vehicles fitted with VLTD should be given approval without delay.
 - (a) For new vehicles, the VLTD should be approved by the inspecting officer through the Suraksha-Mitr system on the same day of registration and the certificate duly approved by the department and issued by the agency should be signed and submitted to the office along with the registration documents.
 - (b) Government as per G.O. (P) No. 41/2019/Tran dated 6.11.2019 have ordered to install VLTD on older vehicles in a time bound manner. Prior to the last date specified in the order, Department should conduct inspection whether those vehicles are fitted with VLTD from approved agencies and those vehicle owners who do not install this should be given notice to install the VLTD at the earliest. Fitness certificate shall be issued only for vehicles fitted with VLTD.
5. School vehicles should be inspected and verified that they are fitted with VLTD, and those school authorities who have not fitted VLTDs in their vehicles were instructed to fit the same without any delay.

6. During the inspection of the vehicle the inspecting officers should ensure that the VLTDs are functioning properly and if not take steps as per the above said instructions.

7. Complaints have been received that agencies selling VLTDs are facing delays in getting approval through the Suraksha-Mitr system. Therefore, application for accreditation of agencies will be approved within 14 days from the date of receipt of the application.

8. There is a Master Control Room functioning at the Head Office for monitoring GPS systems at the State level and for taking necessary instructions and steps. Duties to be performed regarding this are to be followed by the Nodal Officer as per the procedure laid down in MIT-5/33/2018-TC dated 13.12.2019.

9. Mini Control Rooms have been set up at all Regional Transport Offices to monitor GPS systems on district basis and to take necessary action. The District Nodal Officer are entrusted with this. The monitoring of vehicles running in the respective districts should be carried out through this and necessary steps will be taken.

10. The Joint Transport Commissioner (Enforcement) will be in charge of the overall control of the Master Control Room, Mini Control Room and GPS tracking of vehicles. The Enforcement Section at the Head Office will be responsible for handling various reports related to enforcement and issuing necessary instructions regarding this.

11. The reports requested from this office shall be collected by the Deputy Transport Commissioners through the District Nodal Officers and submitted to the Joint Transport Commissioner (Enforcement).

12. The above reports and the efficiency of vehicle monitoring via GPS and the functioning of the control rooms invariably should be included in the monthly meetings of the Deputy Transport Commissioners and the Transport Commissioner.

Monthly reports to be submitted

(A) Details of Accredited Agencies:- Follow-up action in this regard should be handled by the MIT-5 Section at the Head Office.

LIST OF FRANCHISEES						
Name of Office:				Month:		
Sl. No.	Name & Address of Franchisee	Name of Vendor	Date of Application	Date of Inspection	Date of Approval	Reason if pending

(B) Details of vehicles approved by Suraksha - Mitra:- Follow-up action in this regard should be handled by the MIT-5 at the Head Office.

LIST OF VLTD APPROVED VEHICLES			
Name of Office:		Month:	
Sl. No.	Class of Vehicle	Number of vehicles	Remarks

(C) Vehicle Inspection Report:- Follow-up action in this regard should be handled by the Enforcement Division at the Head Office.

VLTD CHECKING DETAILS						
Name of Office:				Month:		
Sl. No.	Class of Vehicle	No. of vehicles checked	No. of VLTD fitted vehicles	No. of vehicles VLTD not working	No. of vehicles not fitted with VLTD	Remarks

Your's faithfully,

M. R. AJITHKUMAR IPS
TRANSPORT COMMISSIONER"

44. From the above, it could be deduced that as early as on 01.04.2018, State of Kerala have brought out Rule 151A of the Kerala Motor Vehicles Rules, 1989, making it mandatory that all the public service vehicles, as defined under clause (35) of Section 2 of the Act shall be equipped with or fitted with vehicle location tracking device and one or more emergency buttons, and all the goods carriage vehicles shall be provided with location tracking device, except in two wheeler, E-rickshaw, three wheelers, and any transport vehicle for which, no permit is required under the Act. Accordingly, G.O(P) No.41/2019/Tran dated 28.11.2019 has been issued categorising six

types of vehicles to install the devices and exemption has been granted upto a certain period. At the risk of repetition, the time schedule is reproduced.

Sl. No.	Category of Vehicle	Exempted upto
1	Educational Institutional Buses and vehicles carrying school children	30/11/2019
2	Contract Carriages (above 13 seats)	31/12/2019
3	KSRTC Buses	31/01/2019
4	Stage Carriages	14/02/2020
5	Goods Vehicles	29/02/2020
6.	Taxi service including online taxis	30/03/2020

45. As rightly contended by Mr. P. Santhoshkumar, learned Special Government Pleader, that though the Central Government have exempted goods vehicles from the installation of Vehicle Location Tracking Devices, State of Kerala, in exercise of the legislative powers conferred under Section 110(3) of the Act, have introduced Rule 151A of of the Motor Vehicles Rules, 1989, making it mandatory that goods vehicles also have to install the VLTDs, with effect from 01.04.2018, and that, the Secretary to the Government, Transport Department, Government of Kerala, has issued orders periodically, extending the time for compliance, for the installation of VLTDs in the vehicles, mentioned in G.O.(P) No.41/2019/Tran dated 28.11.2019, and even appointed nodal officers for implementing installation of VLTDs. If that be so, we are unable to understand, as to how the Secretary to the Government, Transport Department, Thiruvananthapuram, in the statement dated 12.11.2020, could

submit that enforcement of Section 136A of the Motor Vehicles Act, 1988 is not possible for the time being.

46. It is the contention of the Government that pursuant to the introduction of Rule 151A of the Kerala Motor Vehicles Rules, 1989, with effect from 1.4.2018, installation of VLTDs in educational institution buses and vehicles carrying school children is over.

47. Kerala State Road Transport Corporation, 7th respondent in W.P.(C) No.20500 of 2020, has also stated that process for purchasing VLTDs has been initiated, tender has been invited on 28.09.2020 for purchasing the 1st phase of devices, and it is in the final stage. According to the KSRTC, there are 6200 buses and they have incurred huge expenses. Though COVID-19 pandemic has been cited as one of the reasons, besides payment of salary to the employees, expenditure incurred in maintenance etc., the same cannot be accepted for the reason, from 1.4.2018, Rule 151A of the Kerala Motor Vehicles Rules, 1989 is in force.

48. In fact restrictions due to COVID-19 pandemic started only in March 2020. Income and expenditure of the Kerala Road Transport Corporation is not a new feature, insofar as the Corporation is concerned. When the State Legislature, in exercise of the powers under Section 110(3) of the Motor Vehicles Act, 1988, has framed Rule 151A in the rules, and periodically issued orders, including Circular No.19/2019 dated 1.1.2020, appointing Nodal

Officers, for monitoring the implementation of installation of VLTDs and Emergency buttons, the same has to be done effectively, towards enforcement of the rule. Contention of the petitioner that action of the Government of Kerala, in extending the time for implementation of installation of VLTDs is arbitrary and *mala fide* cannot be accepted.

49. Since 1.4.2018, the date on which Rule 151A of the Kerala Motor Vehicles Rules, 1989 has come into force, and more than 2 ½ years have elapsed. That apart submission of the learned counsel for the petitioners that a sum of Rs.13 Crores is allotted for the purpose of equipping the offices of the Motor Vehicles Department in Kerala, has already been received by the Government of Kerala, is not specifically refuted by the respondents.

50. Having regard to the object of framing Rule 151A of the Kerala Motor Vehicles Rules, 1989, safety of the commuters, in particular, women and children, and taking note of the periodical orders issued by the Government of Kerala, a duty is cast upon them to implement the rule and the notifications, without any further delay. As regards enforcement of the rules, notifications and circular, the difficulty expressed by the Government with respect to the vehicles coming from other States, exempting the above said vehicles, is just and reasonable.

In the light of the above discussion, we dispose of the Writ Petitions directing the Secretary to the Government, Transport Department, State of

Kerala, Thiruvananthapuram, respondent No.2 in W.P.(C) No.20768 of 2020, to effectively implement Rule 151A of the Kerala Motor Vehicles Rules, 1989, notifications, and Circular No.19/2019, with effect from 1.1.2021.

Sd/-
S. MANIKUMAR
CHIEF JUSTICE

Sd/-
SHAJI P. CHALY
JUDGE

krj

APPENDIX IN W.P.(C) NO.20500/2020

PETITIONER'S/S EXHIBITS:

- EXHIBIT P1 PHOTOCOPY OF THE GOVERNMENT ORDER DATED 28.11.2016.
- EXHIBIT P2 PHOTOCOPY OF THE GOVERNMENT ORDER DATED 25.10.2018 WITH NO.SO 5454(E).
- EXHIBIT P3 PHOTOCOPY OF THE GOVERNMENT ORDER DATED 28.11.2019 WITH NO.SRO 931/2019 OF STATE OF KERALA.
- EXHIBIT P4 PHOTOCOPY OF THE GOVERNMENT NOTIFICATION DATED 17.02.2020 WITH NO. SRO NO.128/2020.
- EXHIBIT P5 PHOTOCOPY OF THE NEWS PUBLISHED IN THE HINDU (ONLINE).

RESPONDENTS' EXHIBITS:- NIL

APPENDIX IN W.P.(C) NO.20768/2020

PETITIONER'S/S EXHIBITS:

- EXHIBIT P1 PHOTOCOPY OF CERTIFICATE OF REGISTRATION ISSUED BY THE DISTRICT REGISTRAR AND REGISTRAR OF SOCIETIES, KOLLAM DT. 11/06/2014.
- EXHIBIT P2 PHOTOCOPY OF G.O(P) NO.41/2019/TRAN DT. 28/11/2019 ISSUED BY THE GOVERNMENT.
- EXHIBIT P3 PHOTOCOPY OF NEWS REPORT PUBLISHED IN MADHYAMAM DAILY DT. 14/09/2020 ALONG WITH ENGLISH TRANSLATION.
- EXHIBIT P4 PHOTOCOPY OF THE AMENDED GOVERNMENT NOTIFICATION G.O(P) NO.6/2020/TRAN DT. 17/02/2020
- EXHIBIT P5 PHOTOCOPY OF THE AMENDED GOVERNMENT NOTIFICATION GO(P) NO.54/2020/TRAN DT. 22/10/2020

RESPONDENTS' EXHIBITS:-

ANNEXURE-R2(A):- COPY OF THE G.O(P) NO.54/2020/TRAN. DATED 22.10.2020 AND PUBLISHED S.R.O. NO.729/2020 DATED 23.10.2020.

//TRUE COPY//

P.A. TO C.J.