

IN THE HIGH COURT OF KERALA AT ERNAKULAM  
PRESENT

THE HONOURABLE MR. JUSTICE ANIL K.NARENDRAN

Wednesday, the 7<sup>th</sup> day of July 2021 / 16th Ashadha, 1943

WP(C) NO. 23021 OF 2018(C)

**PETITIONER:**

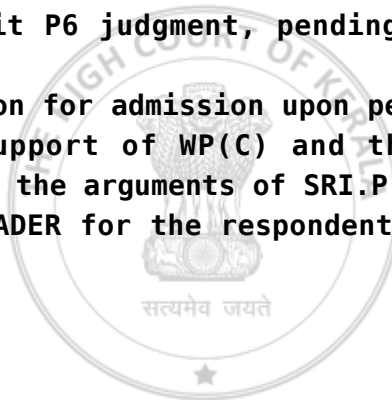
THE PRINCIPAL, SABARI PTB SMARAKA H.S.S ADAKKAPUTHUR, OTTAPALAM.

**RESPONDENTS:**

1. THE ADDITIONAL REGISTERING AUTHORITY, OTTAPALAM -679101.
2. ADDL.R2. P.M.SHAJI, MOTOR VEHICLES INSPECTOR, SUB REGIONAL TRANSPORT OFFICE, SBI BUILDING, NEAR MUNICIPAL BUS STAND, OTTAPALAM, PIN 671 521. ADDITIONAL 2ND RESPONDENT SUO MOTU IMPLEADED AS PER ORDER DATED 05/09/2019.
3. ADDL R3, THE TRANSPORT COMMISSIONER, KERALA, TRANSPORT COMMISSIONERATE, 2ND FLOOR, TRANS TOWERS, VAZHUTHACAUD, THYCAUD P.O, THIRUVANANTHAPURAM-695 014 IS SUO MOTU IMPLEADED AS PER ORDER DATED 28-10-2019 IN WP(C)23021/2018.THIRUVANANTHAPURAM

Writ petition (civil) praying inter alia that in the circumstances stated in the affidavit filed along with the WP(C) the High Court be pleased to issue an interim order directing the respondent to provisionally endorse the class of vehicle as Educational Institution Bus in Exhibit P5 certificate of registration without insisting on compliance with rule 125(C) of the Central Motor Vehicles, 1989 in the light of the dictum laid down in Exhibit P6 judgment, pending disposal of the above Writ Petition.

This petition coming on for admission upon perusing the petition and the affidavit filed in support of WP(C) and this Courts order dated 09.04.2021 and upon hearing the arguments of SRI.P.DEEPAK Advocate for the petitioner, GOVERNMENT PLEADER for the respondents, the court passed the following:





W.P.(C)No.23021 of 2018

:-1-:

**ANIL K. NARENDRAN, J.****W.P.(C)No. 23021 of 2018****Dated this the 7<sup>th</sup> day of July, 2021****ORDER**

In **Avishek Goenka v. Union of India [(2012) 5 SCC 321]**, after referring to the provisions under Rules 100, 104, 104A, 106, 119 and 120 of the Central Motor Vehicles Rules, 1989, the Apex Court held that the provisions of the said Rules demonstrate the extent of minuteness in the Rules and the efforts of the framers to ensure, not only the appropriate manner of construction and maintenance of vehicle, but also the safety of other users of the road. The legislative intent attaching due significance to 'public safety' is evident from the object and reasons of the Motor Vehicles Act, 1988, the provisions of the said Act and more particularly, the rules framed thereunder.

2. In **Avishek Goenka**, the Apex Court prohibited the use of black films of any visual transmission of light percentage or any other material upon the safety glasses, windscreens (front and rear) and side glasses of all vehicles throughout the country. The Apex Court ordered that the Home Secretary, Director General/

W.P.(C)No.23021 of 2018

:-2-:

Commissioner of Police of the respective States/Centre shall ensure compliance with the direction contained in the judgment, which shall become operative and enforceable with effect from 04.05.2012. In the said decision, the Apex Court found that, use of black films has proved to be a criminal's paradise and a social evil. The unanimous view of various police authorities right from the States of Calcutta, Tamil Nadu and Delhi to the Ministry of Home Affairs that use of black films on vehicles has jeopardised the security and safety interests of the State and the public at large. This certainly helps the criminals to escape from the eyes of the police and aids in commission of heinous crimes like sexual assault on women, robberies, kidnapping, etc. If these crimes can be reduced by enforcing the prohibition of law, it would further the cause of the rule of law and public interest as well.

3. Justice Verma Committee was constituted by the Government of India, vide Notification No.SO(3003)E dated 23.12.2012 to look into possible amendments of the Criminal Law to provide for quicker trial and enhanced punishment for criminals committing sexual assault of extreme nature against women. The immediate cause for the constitution of the Committee was the

W.P.(C)No.23021 of 2018

:-3-:

brutal gang rape of a young woman in Delhi, in a public transport vehicle, in the late evening of 16.12.2012. Chapter 10 of the report dated 23.01.2013 deals with provision of adequate safety measures and amenities in respect of women. After referring to the law laid down by the Delhi High Court in **Court on its Own Motion v. Union of India [(2007) 139 DLT 244]** and also the law laid down by the Apex Court in **Avishek Goenka v. Union of India [(2012) 5 SCC 321]** prohibiting the use of black films of any visual transmission of light percentage or any other material upon the safety glasses, windscreens (front and rear) and side glasses of all vehicles throughout the country, the Committee observed as follows in Para.6 of the report;

"6. A cursory glance on any of India's roads at any time of day or night will show that these directions of the Supreme Court are being openly flouted by all and sundry. It saddens the Committee to note that the police forces of this country enforce these directions, and indeed law, only when orders are passed by various courts, and then again, only take action for a few days." (underline supplied)

4. In **Jijith and others v. State of Kerala and others [2019 (1) KHC 463 : 2018 SCC OnLine Ker 8262]** this Court held that, in view of the provisions under Rule 100 of the Central

W.P.(C)No.23021 of 2018

:-4-:

Motor Vehicles Rules, 1989 and the law laid down by the Apex Court in **Avishek Goenka v. Union of India [(2012) 5 SCC 321]** and **Avishek Goenka (2) v. Union of India [(2012) 8 SCC 441]**, tampering with the percentage of visual transmission of light of the safety glass of the windscreen, rear window and side windows of a motor vehicle, either by pasting any material upon the safety glass or by fixing sliding 'cloth curtains', etc. are legally impermissible. In **Saji v. Deputy Transport Commissioner [2019 (3) KHC 836 : 2019 SCC OnLine Ker 2047]** this Court held that the law laid down in **Jijith** is equally applicable in the case of transport vehicles owned/operated by KSRTC, KURTC and also Government vehicles. In the judgment dated 28.10.2019 in W.P. (C)No.23021 of 2018 [**Principal, Sabari PTB Smaraka H.S.S v. Additional Registering Authority and others - 2020 (2) KHC SN 9 : 2020 (2) KLJ 662 : 2019 SCC OnLine Ker 7998**] this Court directed the Transport Commissioner, Kerala, among other things, to take necessary steps to ensure through the concerned officers in the Motor Vehicles Department that no motor vehicle, including a Government vehicle, is permitted to be used in any public place, after tampering with the percentage of visual

W.P.(C)No.23021 of 2018

:-5-:

transmission of light of the safety glass of the windscreen, rear window and side windows, by pasting stickers, tint films upon the safety glass or by fixing sliding cloth curtains, etc., in violation of sub-rule (2) of Rule 100 of the Central Motor Vehicles Rules.

5. In the order dated 09.04.2021 in W.P.(C)No.23021 of 2018, this Court noticed that, as evident from the statement filed on behalf of the Transport Commissioner, Kerala, on 23.03.2021, large number of vehicles are being permitted to be used in public place with cooling films and curtains, in contravention of the directions contained in the judgment of the Apex Court and this Court, prohibiting the use of such materials on the windscreen, rear window and side windows of motor vehicles. In the said order, this Court noticed that, even after the filing of the action taken report on 24.11.2020, large number of vehicles including Government vehicles are being permitted to be used in public place using cooling films, curtains, etc., which is evident from the fact that 5775 vehicles were booked for using cooling films, curtains, etc., in the special drive 'Operation Screen' conducted for the period from 17.01.2021 to 20.01.2021. The State Police Chief has to issue circular dated 14.12.2020, after the action taken report filed by the

W.P.(C)No.23021 of 2018

:-6-:

Joint Transport Commissioner (Enforcement) on 24.11.2020, directing removal of window curtains, bull bars, sun films, etc., from the vehicles of Police Department. The said circular was followed by circular dated 30.12.2020 issued by the Home Department, whereby all Government Departments are instructed to ensure that none of the vehicles under their administrative control use curtains/dark films or any materials, which affects the visual light transmission percentage, through the windscreens/ windows.

6. In Para.9.3 of the order dated 09.04.2021 in W.P. (C)No.23021 of 2018, this Court recorded the submission made by the learned Special Government Pleader that the enforcement officers in the Motor Vehicles Department and also the police shall ensure strict compliance of the directions contained in the judgment of the Apex Court and that of this Court prohibiting the use of cooling films, curtains, etc. on the windscreen, rear window and side windows of motor vehicles and that, they shall also ensure strict compliance of the directions contained in Circular No.69/CAMP/ADGP (HQ)/2019 dated 14.12.2020 of the State Police Chief and that contained in Circular No.G3/858/2019/Home dated



W.P.(C)No.23021 of 2018

: -7- :

30.12.2020 issued by the Government of Kerala, Home Department.

7. Though, the Apex Court in **Avishek Goenka [(2012) 5 SCC 321]** prohibited the use of black films or any other materials upon the safety glasses, windscreens and side glasses of all vehicles throughout the country, since use of such films and other materials certainly help the criminals to escape from the eyes of the police and aids in commission of heinous crimes like sexual assault on women, robberies, kidnapping, etc., even after nearly a decade, the directions issued by the Apex Court are being openly flouted by all. Several vehicles with cooling films pasted on the safety glass, which are even fitted with sliding cloth curtains, are even now permitted to be used in public place and some of such vehicles are seen parked on the side of the road in front of the High Court Building, with 'garlands' hanging on the rear-view mirror fitted on windscreen, in order to identify the political party. The enforcement agencies in the Motor Vehicles Department and the Police are not taking any action against such vehicles.

8. In Para.128 of the judgment dated 28.10.2019 in W.P. (C)No.23021 of 2018 this Court directed the additional 3<sup>rd</sup>

W.P.(C)No.23021 of 2018

:-8:-

respondent Transport Commissioner to take necessary steps to ensure through the concerned officers in the Motor Vehicles Department that no motor vehicle, including transport vehicle, is permitted to be used in any public place, without displaying the registration mark on a licence plate having the specification prescribed in clause (vi) of sub-rule (1) of Rules 50 and 51 of the Central Motor Vehicles Rules and Regulation 36 of the Motor Vehicles (Driving) Regulations, 2017; and without 'rear registration plate (mark) illuminating lamp', illuminating the space accommodating the rear registration plate. The registration mark on every motor vehicle shall be displayed clearly and legibly using fonts having 'uniform thickness'. The display of registration mark using 'fancy fonts' or 'decorative fonts', shall not be permitted.

9. In Para.11.9 of the order dated 09.04.2021 in W.P. (C)No.23021 of 2018, this Court noticed that despite the specific directions contained in the judgment of this Court dated 28.10.2019, motor vehicles other than those carrying the constitutional authorities and other dignitaries specified in Part I and Part II of Schedule II of the State Emblem of India (Regulation of Use) Rules, 2007/dignitaries specified in clauses (1) to (7) of

W.P.(C)No.23021 of 2018

:-9:-

Paragraph 3.44 of the Flag Code of India, 2002 are being permitted to be used in public place displaying emblems and flags. In most of such vehicles the registration mark is not displayed in the form and manner specified under Rules 50 and 51 of the Central Motor Vehicles Rules, on a licence plate having the size of 500 × 120 mm. Letters, words and symbols other than the registration mark are inscribed or written on the registration plate of such vehicles, in violation of the provisions under sub-regulation (3) of Regulation 36 of the Motor Vehicles (Driving) Regulations, 2017.

10. In Paras.10.3 and 10.4 of the order dated 09.04.2021 in W.P.(C)No.23021 of 2018, this Court noticed that, large number of motor vehicles are being permitted to be used in public place, in violation of the safety standards prescribed in AIS-008/AIS-009/2001/AIS-030/2001. The light emitted from the additional headlamps/lamps/flashing lamps installed on such vehicles is capable of dazzling the drivers of the oncoming vehicles and also the pedestrians. The video contents of the alterations made to the lighting, light signaling devices and reflectors, by replacing the prototype approved parts with after-market LED lights, or by 'tinting' the headlights, tail lights, indicators, day time running light,

W.P.(C)No.23021 of 2018

:-10-:

etc., by fixing vinyl tint film sticker are being uploaded on online video platforms like 'YouTube' by the registered owners of such vehicles or by vloggers.

11. In addition to this, large number of motor vehicles are being permitted to be used in public place without displaying the registration mark, clearly and legibly, using fonts having 'uniform thickness', on a licence plate having the prescribed specification. The video contents of the alterations made to registration plates of two-wheelers by altering the position of the registration plate on front and rear and even by replacing the high security number plate are being uploaded on online video platforms like 'YouTube' by the registered owners of such vehicles or by vloggers.

12. Motor vehicles other than those carrying the constitutional authorities and other dignitaries specified in Part I and Part II of Schedule II of the State Emblem of India (Regulation of Use) Rules, 2007/ dignitaries specified in clauses (1) to (7) of Paragraph 3.44 of the Flag Code of India, 2002 (which is extracted hereibefore in Para.11.3) are being permitted to be used in public place displaying emblems and flags. In most of such vehicles, letters, words and symbols other than the registration mark are

W.P.(C)No.23021 of 2018

:-11-:

inscribed or written on the registration plate, in violation of the provisions under sub-regulation (3) of Regulation 36 of the Motor Vehicles (Driving) Regulations, 2017. Such name boards are being permitted on motor vehicles owned by co-operative societies, societies, Non-Governmental Organisations, Public Private Partnerships, etc., as noticed hereinbefore in Para.11.12. The name of the State Government and also the name of this Court is permitted to be exhibited on vehicles, in violation of Section 3 of the Emblems and Names (Prevention of Improper Use) Act, 1950. The designation of the Law Officers and Central Government Counsel of this Court is being permitted to be written on the registration plate of their motor vehicles.

13. Even after the order of this Court dated 09.04.2021 in W.P.(C)No.23021 of 2018, vehicles are being permitted to be used in public place exhibiting name boards, inscribed or written on the registration plate, in violation of the provisions under sub-regulation (3) of Regulation 36 of Motor Vehicles (Driving) Regulations, 2017. Such name boards are seen inscribed or written on the registration plate of the vehicles of Government Pleaders and Central Government Counsel and even the vehicles used by the

W.P.(C)No.23021 of 2018

:-12-:

Judicial Officers in the District Judiciary. The registration mark on every motor vehicle, including that owned by Government Pleaders, Central Government Counsel, Judicial Officers in the District Judiciary and also vehicles owned/used by the Central Government/ State Government Departments and also vehicles used for carrying constitutional authorities/dignitaries has to be displayed on a registration plate, as per the statutory mandate of Rules 50 and 51 of the Central Motor Vehicle Rules, read with sub-regulation (3) of Regulation 36 of the Motor Vehicles (Driving) Regulations.

14. The learned Special Government Pleader seeks a short time to get instructions as to whether the name board of the Government Pleader/Central Government Counsel is inscribed or written on the registration plate of any motor vehicle, in violation of the above statutory madate.

15. List on 14.07.2021 at 2.00 p.m.

16. The submission made by the learned Special Government Pleader that some more time is required for filing an action taken report of the 3<sup>rd</sup> respondent Transport Commissioner, on account of Covid-19 restrictions, is recorded.

Registry to give a copy of this order to Registrar General and

W.P.(C)No.23021 of 2018

:-13:-

Registrar (District Judiciary), for information and necessary action.

**Sd/-  
ANIL K. NARENDRAN  
JUDGE**

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