

ഭരണഭാഷ - മാതൃഭാഷ

സുമി ജോസഫ്  
അസിസ്റ്റന്റ് ഫോറസ്റ്റ് കൺസർവേറ്റർ &  
ലെയ്സൺ ഓഫീസർ



O/o അസിസ്റ്റന്റ് ഫോറസ്റ്റ് കൺസർവേറ്റർ &  
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എൽ.ഒ/എ73/2020

തീയതി: 17.02.2020

സ്വീകർത്താവ്

പ്രിൻസിപ്പൽ ചീഫ് ഫോറസ്റ്റ് കൺസർവേറ്റർ  
ഹെഡ് ഓഫ് ഫോറസ്റ്റ് ഫോഴ്സ്  
തിരുവനന്തപുരം

സർ

വിഷയം : വാഹനങ്ങളിലെ വിൻറോ ഗ്ലാസ്സുകളിൽ സൺഫിലിം, കർട്ടൻ മുതലായവ ഉപയോഗിക്കുന്നത് സംബന്ധിച്ച്.

സൂചന: ബഹു. ഹൈക്കോടതിയുടെ നം. WP(C) 23021/2018 കേസ്സിൻറെ 28.10.2019 ലെ ഉത്തരവ്.

മേൽ വിഷയത്തിലേക്ക് അങ്ങയുടെ ശ്രദ്ധ സവിനയം ക്ഷണിക്കുന്നു. വാഹനങ്ങളുടെ വിൻഡോ ഗ്ലാസ്സുകളിൽ വാഹനങ്ങളിലെ സുതാര്യത മറയ്ക്കുന്ന തരത്തിൽ സൺഫിലിം, കർട്ടൻ മുതലായവ ഉപയോഗിക്കുന്നത് നിരോധിച്ചുകൊണ്ട് ബഹുമാനപ്പെട്ട ഹൈക്കോടതി സൂചന പ്രകാരം ഉത്തരവായിട്ടുള്ളതാണ്. എന്നാൽ വനംവകുപ്പിലെ ഏതാനും ഓഫീസർമാർ ടി വിധി ലംഘിക്കുന്നതായി ബഹു. കോടതിയുടെ ശ്രദ്ധയിൽപ്പെടുകയും, ആയതിനെതിരെ സ്വമേധയാ കേസെടുക്കുവാൻ നടപടികൾ സ്വീകരിക്കുകയും ചെയ്തിട്ടുള്ളതാണ്. മേൽ സാഹചര്യത്തിൽ ടി വിഷയം അങ്ങയുടെ അറിവിലേയ്ക്കും അനന്തരനടപടികൾക്കുമായി മേൽ വിധിപ്പകർപ്പ് സഹിതം ഇതോടൊപ്പം സമർപ്പിക്കുന്നു. ടി വിഷയം സംബന്ധിച്ച നിർദ്ദേശങ്ങൾ വനംവകുപ്പിലെ ബന്ധപ്പെട്ട എല്ലാ ഓഫീസർമാർക്കും നൽകണമെന്നുകൂടി അപേക്ഷിച്ചുകൊള്ളുന്നു.

വിജ്ഞാപനത്തോടെ,

അസിസ്റ്റന്റ് ഫോറസ്റ്റ് കൺസർവേറ്റർ &  
ലെയ്സൺ ഓഫീസർ

**IN THE HIGH COURT OF KERALA AT ERNAKULAM**

**Present:**

**THE HONOURABLE MR. JUSTICE ANIL K.NARENDRAN**

**Wednesday, the 27th day of March 2019/6th Chaithra, 1941**

**WP(C) No.7164/2019(U)**

**PETITIONER:**

**SAJI K.M., AGED 46 YEARS  
S/O.MICHAEL.K.V., KOCHUPURAKKAL HOUSE,  
PATTIKAD, THRISSUR.**

**RESPONDENTS:**

**THE DEPUTY TRANSPORT COMMISSIONER  
CENTRAL ZONE -1, THRISSUR-680001.**

**AND OTHERS**

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 stay all further proceedings pursuant to Exhibit P5 and P8 and to release the license to the petitioner pending disposal of the Writ Petition.

This petition again coming on for orders upon perusing the petition and the affidavit filed in support of WP(C) and this Court's order dated 19.03.19 and upon hearing the arguments of SRI.BASANT BALAJI, Advocate for the petitioner and of MR.P.C.CHACKO, Standing Counsel for Addl. R4, the court passed the following:

**P.T.O.**

**gr/**

41  
**ANIL K. NARENDRAN, J.**

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**W.P.(C) No.7164 of 2019**  
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**Dated this the 27<sup>th</sup> day of March, 2019**

**ORDER**

A counter affidavit has been filed by the additional 4<sup>th</sup> respondent.

The learned Special Government Pleader appearing for respondents 1 to 3 seeks a short time to get instructions as to whether for exhibition of advertisement in the vehicles owned by the Kerala State Road Transport Corporation, the State Government has laid down any conditions, as per the mandate of the first proviso to sub-rule (1) of Rule 191 of the Kerala Motor Vehicles Rules, 1989.

List on 02.04.2019.

H/o.

Sd/-

**ANIL .K .NARENDRAN, (JUDGE)**

bpr

/true copy/

  
29/3/19  
**ASSISTANT REGISTRAR**

28  
29/3/19

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE ANIL K.NARENDRAN

TUESDAY, THE 09TH DAY OF APRIL 2019/19TH CHAITHRA, 1941

WP(C).No.7164 of 2019

PETITIONER:

SAJI K.M. ,  
AGED 46 YEARS ,S/O.MICHAEL.K.V. ,  
KOCHUPURAKKAL HOUSE ,  
PATTIKAD, THRISSUR.

BY ADV. SRI.BASANT BALAJI

RESPONDENTS:

- 1 THE DEPUTY TRANSPORT COMMISSIONER,  
CENTRAL ZONE -1, THRISSUR-680 001.
- 2 THE REGIONAL TRANSPORT OFFICER,  
CHALAKUDY, THRISSUR-680 307.
- 3 THE ADDITIONAL LICENSING AUTHORITY/  
JOINT REGIONAL TRANSPORT OFFICER,  
JOINT REGIONAL TRANSPORT OFFICE,  
CHALAKUDY, THRISSUR-680307.

\*ADDL.R4

KERALA STATE ROAD TRANSPORT CORPORATION  
REPRESENTED BY ITS MANAGING DIRECTOR,  
TRANSPORT BHAVAN,EAST FORT,  
THIRUVANANTHAPURAM-695023.

\* IS SUO MOTU IMPEADED AS PER ORDER DATED 18.03.19 IN WPC  
7164/19.

R1-R3 SRI P.SANTHOSH KUMAR,SPECIAL GOVERNMENT PLEADER  
ADDL.R4 BY ADV. SRI.P.C.CHACKO, STANDING COUNSEL,  
KERALA STATE ROAD TRANSPORT CORPORATION

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR  
ADMISSION ON 09.04.2019, THE COURT ON THE SAME DAY  
DELIVERED THE FOLLOWING:

**“CR”****JUDGMENT**

The petitioner, who is a driver of Kerala State Road Transport Corporation (for brevity, 'KSRTC'), has filed this writ petition under Article 226 of the Constitution of India, seeking a writ of certiorari to quash Ext.P5 order dated 12.12.2018 of the 3<sup>rd</sup> respondent Joint Regional Transport Officer, Chalakudy, who is the Additional Licensing Authority, whereby his driving licence bearing No.8/5969/1996 stands suspended and he is disqualified from holding that driving licence for a period of three months from 12.12.2018 to 11.03.2019, under sub-section (1) of Section 19 of the Motor Vehicles Act, 1988 (for brevity, 'the MV Act') read with Rule 21 of the Central Motor Vehicles Rules, 1989 (for brevity, 'the CMV Rules'). The petitioner has also challenged Ext.P8 order dated 25.01.2019 of the 1<sup>st</sup> respondent Deputy Transport Commissioner, Thrissur, who is the Appellate Authority, whereby Ext.P6 appeal filed by the petitioner under sub-section (3) of Section 19 of the MV Act, against Ext.P5 order, stands rejected. The further relief sought

for is a writ of mandamus commanding the 3<sup>rd</sup> respondent to revoke the suspension of the petitioner's driving license and release the same without any endorsement or remarks.

2. On 11.03.2019, when this writ petition came up for admission, the learned Government Pleader sought time to get instructions.

3. On 18.3.2019, when this writ petition came up for consideration, after perusing Ext.P9 photograph this Court *suo motu* impleaded KSRTC, represented by its Managing Director as additional 4<sup>th</sup> respondent. The learned counsel for the petitioner was directed to serve a copy of this writ petition to Sri.P.C.Chacko, the learned Standing Counsel for KSRTC.

4. On 19.3.2019, when this writ petition came up for further consideration, the learned Standing Counsel for KSRTC, sought adjournment to address arguments on the statutory requirement under the CMV Rules regarding fitment of reflectors/reflective tapes on transport vehicles.

5. On 26.03.2019, additional 4<sup>th</sup> respondent has filed a counter affidavit. On 26.03.2019, when this writ petition came up for consideration, the learned Special Government Pleader

appearing for respondents 1 to 3 sought time to get instructions as to whether for exhibition of advertisement on the vehicles owned by KSRTC, the State Government has laid down any conditions, under the first proviso to sub-rule (1) of Rule 191 of the Kerala Motor Vehicles Rules, 1989 (for brevity, 'the KMV Rules').

6. Heard the learned counsel for the petitioner, the learned Special Government Pleader appearing for respondents 1 to 3 and also the learned Standing Counsel for additional 4<sup>th</sup> respondent KSRTC.

7. According to the petitioner, on 28.11.2018, at about 10.00 pm, while he was driving KSRTC bus bearing registration No.KL-15/A-1491 of Thrissur Depot, through National Highway-544 (old No. NH-47), the diesel pump of the vehicle failed and he had to stop the vehicle on the side of National Highway, near Panampilly Nagar, Chalakudy. After parking the vehicle on the extreme left side, the petitioner switched on the hazard lights, parking lights, passenger compartment lights and also the light for destination board. While the passengers were getting down, the petitioner heard a loud noise from the back side of the

vehicle. On getting down, the petitioner saw a motor cycle bearing registration No.KL-08/BB-6733 and the rider of that motor cycle lying on the road. The injured rider was taken to the hospital, who was declared dead by the doctor. The petitioner would contend that the accident occurred due to the negligence of the rider of the motor cycle. Based on the First Information Statement recorded on 29.11.2018 at 7.33 am, Ext.P2 FIR in Crime No.776 of 2018 of Chalakkudy Police Station, alleging offences under Section 283 and 304A of Indian Penal Code, 1860 was filed before the Judicial First Class Magistrate Court, Chalakudy. After investigation, the Police filed Ext.P3 final report dated 22.12.2018 before the Magistrate Court.

8. The 3<sup>rd</sup> respondent Additional Licensing Authority initiated proceedings against the petitioner, invoking the provisions under Section 19 of the MV Act, by issuing a show-cause notice. On the ground that the petitioner failed to offer satisfactory explanation to the show-cause notice, the 3<sup>rd</sup> respondent issued Ext.P5 order, whereby the driving licence of the petitioner stands suspended for a period of three months



from 12.12.2018 to 11.03.2019, under sub-section (1) of Section 19 of the MV Act read with Rule 21 of the CMV Rules. The petitioner filed Ext.P6 appeal before the 1<sup>st</sup> respondent Deputy Transport Commissioner, under sub-section (3) of Section 19 of the MV Act. The 1<sup>st</sup> respondent conducted a personal hearing on 14.01.2019, based on Ext.P7 notice dated 11.01.2019, and thereafter, dismissed that appeal by Ext.P8 order dated 25.01.2019, on the ground that there is no illegality in Ext.P5 order of the 3<sup>rd</sup> respondent Additional Licensing Authority in disqualifying the petitioner from holding the driving licence.

9. Along with the writ petition, the petitioner has produced Ext.P8 photograph of the vehicles (stated to have been taken immediately after the accident) in support of his contention that, when the diesel pump of KSRTC bus failed, he had taken all safety precautions while parking that vehicle and that, he had also switched on the hazard lights, parking lights, passenger compartment lights and also the light for destination board.

10. Chapter VII of the MV Act deals with construction,

equipment and maintenance of motor vehicles. Section 109 of the Act deals with general provision regarding construction and maintenance of vehicles and Section 110 deals with power of Central Government to make rules. As per sub-section (1) of Section 110, 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 matters enumerated in clauses (a) to (p) of sub-section (1). As per clause (e) of sub-section (1), the Central Government may make rules in respect to signalling appliances, lamps and reflectors. Section 111 deals with power of State Government to make rules. As per sub-section (1) of Section 111, a State Government may make rules regulating the construction, equipment and maintenance of motor vehicles and trailers with respect to all matters other than the matters specified in sub-section (1) of Section 110. Section 190 of the MV Act deals with using vehicle in unsafe condition. As per sub-section (2) of Section 192, any person who drives or causes or allows to be driven, in any public place a motor vehicle, which violates the standards prescribed in relation to road safety, control of noise

and air-pollution, shall be punishable for the first offence with a fine of one thousand rupees and for any second or subsequent offence with a fine of two thousand rupees.

11. Chapter V of the CMV Rules deals with construction, equipment and maintenance of motor vehicles. As per sub-rule (1) of Rule 92, no person shall use or cause or allow to be used in any public place any motor vehicle which does not comply with the provisions of Chapter V. As per the proviso to sub-rule (1), nothing contained in Rule 92 shall apply to vehicles manufactured prior to the coming into force of the Central Motor Vehicles (Amendment) Rules, 1993. As per sub-rule (2), nothing in Rule 92 shall apply to a motor vehicle enumerated in clauses (a) to (c).

12. Rule 102 of the CMV Rules deals with signalling devices, direction indicator and stop lights. As per sub-rule (1) of Rule 102, the signal to turn to the right or to the left shall be given by electrically operated direction indicator lamps on all motor vehicles including construction equipment vehicles and combined harvester, and such construction equipment vehicles and combined harvester be fitted and maintained so that

conditions enumerated in clauses (i) to (iii) of sub-rule (1) are met, i.e., (i) the direction indicator lamps shall be of amber colour which is illuminated to indicate the intention to turn, by a light flashing at the rate of not less than 60 and not more than 120 flashes per minute; (ii) the light emitted by the lamp when in operation shall be clearly visible from both front and rear of the vehicle; and (iii) the minimum illuminated area of each direction indicator shall be 60 square centimeters. As per the proviso to sub-rule (1) of Rule 102, nothing contained in this sub-rule shall apply to L1 category of motor cycles. As per sub-rule (2) of Rule 102, on all vehicles other than motor cycles, the intention to stop the vehicle (other than construction equipment vehicle having hydrostatic brakes) shall be indicated by two electrical stop lamps which shall be red in colour and shall be fitted one on each left and right-hand sides at the rear of the vehicle. The stop lamps shall light up on the actuation of the service brake control. In the case of motor cycle, the intention to stop the vehicle shall be indicated by one stop lamp at the rear which shall light up on the actuation of the control operating the brakes on the rear wheels.

13. Rule 103 deals with position of the indicator. As per sub-rule (1) of Rule 103, a direction indicator shall be fitted and every direction indicator shall be so designed and fitted that the driver of the vehicle including a construction equipment vehicle and combine harvester when in his driving seat is aware that it is operating correctly. As per sub-section (2), one year from the date of commencement of the Central Motor Vehicles (Amendment) Rules, 1993, every motor vehicle including a construction equipment vehicle and combine harvester other than motor cycles shall be equipped with such a device that when the vehicle is in an immobilized condition all the direction indicators flash together giving hazard warning to other road users.

14. Rule 104 of the CMV Rules deals with fitment of reflectors. As per sub-rule (1) of Rule 104, every motor vehicle manufactured on and after the 1<sup>st</sup> day of April, 2016, including trailers and semi-trailers, other than three wheelers and motorcycles shall be fitted with two red reflectors, one each on both sides at rear. Every motorcycle shall be fitted with at least one red reflector at the rear. Clauses (i) to (iv) of the proviso to

sub-rule (1) deal with fitment of reflectors in respect of vehicle of Categories N-1, N-2, N-3, M-2, and M-3. As per sub-rule (4) of Rule 104, on and after expiry of one year from the date of commencement of the Central Motor Vehicles (Amendment) Rules, 1999, the reflectors referred to in this rule and in Rule 110 shall be of reflex type conforming to AIS: 057:2005 till the corresponding BIS specifications are notified under the Bureau of Indian Standards Act, 1986. As per sub-rule (5) of Rule 104, on and from the date of commencement of the Central Motor Vehicles (Amendment) Rules, 1993, every motor vehicle and trailer of length exceeding 6 metres shall be fitted with two amber coloured reflex reflectors on each left hand and right hand of the vehicle, one set as close to the front end as possible and the other set as close to the rear end as possible. The height of the side reflectors above the ground shall not be more than 1500 mm. The area of each reflector shall not be less than 28.5 sq. cm. As per the proviso to sub-rule (5), in case the distance between the two side reflectors is more than 3 metres, additional intermediate side reflectors shall be fitted so that the distance between any adjacent side reflector is not more than 3

metres. Rule 104 of the CMV Rules reads thus;

**“104. Fitment of reflectors.-** (1) Every motor vehicle manufactured on and after the 1<sup>st</sup> day of April, 2006, including trailers and semi-trailers, other than three wheelers and motor cycles shall be fitted with two red reflectors, one each on both sides at their rear. Every motor cycle shall be fitted with at least one red reflex reflector at the rear:

Provided that in respect of the vehicles of-

- (ii) Category NI and Category N2, 3.5 tonnes and above but less than 7.5 tonnes Gross Vehicle Weight, manufactured on and after 1<sup>st</sup> day of April, 2009, shall be affixed at the front with a white reflective tape and at the rear with a red reflective tape running across the width of the body and the tape affixed at front and rear shall be not less than 20 mm width and shall conform to the requirement of Annexures 4, 5 and 6 of AIS:090-2005 till the corresponding BIS specifications are notified under the Bureau of Indian Standards Act, 1986 (63 of 1986).
- (iii) Category N3 and Category N2, 7.5 tonnes and above Gross Vehicle Weight manufactured on and after 1<sup>st</sup> day of April, 2009, shall be affixed at the front with a white reflective tape running across the width of the body and the tape affixed at the front shall not be less than 50 mm width and shall conform to the requirement of Annexures 4, 5 and

6 of AIS:090-2005 till the corresponding BIS specifications are notified under the Bureau of Indian Standards Act, 1986 (63 of 1986).

(iv) Category N3 including trailers or semi-trailers and category N2, 7.5 tonnes and above GVW along with trailers or semi-trailers, manufactured on and after 1<sup>st</sup> day of April, 2009, shall be affixed with reflective contour marking at the rear and side in accordance with AIS:090-2005 till the corresponding BIS specifications are notified under the Bureau of Indian Standards Act, 1986 (63 of 1986).

(v) Category M2 and M3, manufactured on and after 1<sup>st</sup> October 2009, shall be affixed at the front with white reflective tape and at the rear with red reflective tape running across the width of the body and the sides of M3 category vehicles shall be affixed with yellow reflective tape running across the length of the body but tapes so affixed shall not be less than 50 mm width and shall conform to Annexures 4, 5 and 6 of AIS:090-2005, till the corresponding BIS specifications are notified under the Bureau of Indian Standards Act, 1986 (63 of 1986).

(2) Every goods carriage vehicle including trailers and semi-trailers other than three wheeler shall be fitted with two white reflectors one each at the extreme right and left bottom corners in the front of the vehicle and facing to the front. The reflecting area of each reflector shall not



be less than 28.5 sq. centimetres, in the case of vehicles with overall length of more than 6 metres, and not less than 7 sq. centimetres in case of other vehicles.

(3) All trailers including semi-trailers, other than those drawn by three-wheeled tractors shall be fitted with the following reflex reflectors, namely,—

- (i) two white reflex reflectors in the front, one each at the right and left corners at a height not exceeding 1500 mm above the ground;
- (ii) two red reflex reflectors in the rear, one each at the right and left corners at a height not exceeding 1500 mm above the ground; and
- (iii) the area of the reflectors referred to above shall not be less than 28.5 sq. cm. in the case of trailers with overall length exceeding 6 metres and shall not be less than 7 sq. cm. in case of other trailers.

(4) On and after expiry of one year from the date of commencement of the Central Motor Vehicles (Amendment) Rules, 1999, the reflectors referred to in this rule and in Rule 110 shall be of reflex type conforming to AIS:057:2005 till the corresponding BIS specifications are notified under the Bureau of Indian Standards Act, 1986 (63 of 1986).

(5) On and from the date of commencement of the Central Motor Vehicles (Amendment) Rules, 1993, every motor vehicle and trailer of length exceeding 6 metres shall be fitted with two amber coloured reflex reflectors on each left hand and right hand of the vehicle, one set as close to the front end as possible and the other set as

close to the rear end as possible. The height of the side reflectors above the ground shall not be more than 1500 mm. The area of each reflector shall not be less than 28.5 sq. cm.:

Provided that in case the distance between the two side reflectors is more than 3 metres, additional intermediate side reflectors shall be fitted so that the distance between any adjacent side reflector is not more than 3 metres."

15. Rule 105 of the CMV Rules deals with lamps. As per sub-rule (1) of Rule 105, save as provided in the said rule, every motor vehicle, while being driven in public place during the period half an hour after sunset and at any time when there is no sufficient light, shall be lit with the lamps enumerated in clauses (a) to (d) of sub-rule (1), which shall render clearly discernible persons and vehicles on the road at a distance of one hundred and fifty five metres ahead. As per clause (a) of sub-rule (1) of Rule 105, a motor vehicle other than three-wheelers, three-wheeled invalid carriages and motorcycles shall have two or four head lamps. As per clause (i) of sub-rule (2), every motor vehicle other than a three-wheeler shall carry two rear lamps showing to the rear a red light visible in the rear

from a distance of one hundred and fifty five metres; and as per clause (ii) lamp, which may be the rear lamp or some other device, illuminating with a white light the whole of the registration mark exhibited on the rear of the vehicle, so as to render it legible from a distance of fifteen metres to the rear. Sub-rule (3) of Rule 105 specifies the power and height of front head lamps of a motor vehicle. As per sub-rule (4), the rear lamp shall be fixed either on the centre line of the vehicle or to the right hand side, and save in the case of transport vehicle, at a height of not exceeding one metre above the ground. As per sub-rule (5), in the case of a transport vehicle, the rear light may be fixed at such level as may be necessary to illuminate the registration mark. Rule 105 reads thus;

**“105. Lamps.-** (1) Save as hereinafter provided, every motor vehicle, while being driven in a public place, during the period half an hour after sunset and at any time when there is no sufficient light, shall be lit with the following lamps which shall render clearly discernible persons and vehicles on the road at a distance of one hundred and fifty five metres ahead:—

- (a) in the case of motor vehicle other than three-wheelers, three-wheeled invalid carriages and motorcycles, two or four head lamps;

- (b) in the case of three-wheelers and three-wheeled invalid carriages one or two head lamps;
- (bb) every two wheeler manufactured on and after 1<sup>st</sup> April, 2017 shall have one or two head lamps, conforming to the applicable standards in force for performance and installation requirements as notified by the Central Government from time to time vide according to sub-rule (1) of Rule 124 which shall automatically switch on when the engine is running;

Provided that, the above condition of the head lamp being lit when the engine is running is deemed to be satisfied if daytime running lamp is provided, conforming to the applicable standards in force for performance and installation requirements as notified by the Central Government from time to time, which shall be automatically lit if the engine is running:

Provided further that the daytime running lamp shall be lit off automatically if the engine is running and the head lamp is switched on;

- (c) in the case of a side car attached to a motor cycle one lamp showing a white light to the front;
- (d) in the case of construction equipment vehicle, two or four lamps showing to the front white light visible from a distance of one hundred and fifty five metres ahead.

(2) Every such motor vehicle other than a three-wheeler shall also carry—

- (i) two lamps (hereinafter referred to as the rear

lamp) showing to the rear a red light visible in the rear from a distance of one hundred and fifty-five metres; and in the case of a motor cycle one lamp showing a red light to the rear visible from a distance of seventy five metres; and

- (ii) lamp, which may be the rear lamp or some other device, illuminating with a white light the whole of the registration mark exhibited on the rear of the vehicle including construction equipment vehicle, and on the side in the case of construction equipment vehicle and combine harvester so as to render it legible from a distance of fifteen metres to the rear:

Provided that when a motor vehicle is drawing another vehicle or vehicles and the distance between such vehicles does not exceed 1.5 metres, it shall be sufficient if the last drawn vehicle carries a rear lamp or a lamp illuminating the rear registration mark:

Provided further that every construction equipment vehicle shall also carry two lamps showing to the rear red lights visible in the rear from a distance of one hundred and fifty five metres.

(3) On and from the commencement of the Central Motor Vehicles (Amendment) Rules, 1993, all the obligatory front head lamps of a motor vehicle other than motor cycles shall be as nearly as possible of the same power and fixed at a height as specified in Indian Standards IS: 8415—1977 (clause 4.1):

Provided that in the case of four-wheel drive cross

country vehicles, the maximum height of the said front head lamps may be as per limits specified in Indian Standards IS: 8415—1977 (clause 4.1.1):

Provided further that on and from the commencement of the Central Motor Vehicles (Amendment) Rules, 1993, all vehicles other than three-wheelers of engine capacity less than 500 CC, motor cycles and three-wheeled invalid carriages manufactured shall be fitted with two rear lamps showing red light to the rear.

(3-A) On and from the commencement of the Central Motor Vehicles (Sixth Amendment) Rules, 2000, all the obligatory front head lamps of a construction equipment vehicle shall be as nearly as possible of the same power and fixed at a height so that front visibility is maintained and farthest point of equipment/attachment is clearly seen by on-coming traffic.

(3-B) All the obligatory front head lamps of a combine harvester shall be as nearly as possible of the same power and fixed at a height so that the front visibility is maintained and farthest point of equipment or attachment is clearly seen by oncoming traffic.

(4) The rear lamp shall be fixed either on the centre line of the vehicle or to the right hand side, and save in the case of a transport vehicle, at a height of not exceeding one metre above the ground:

(5) In the case of a transport vehicle, the rear light may be fixed at such level as may be necessary to illuminate the registration mark.

(6) Every heavy goods carriage including trailers shall be fitted with a red indicator lamp of size of thirty centimetres by ten centimetres on the extreme rear most body cross beam and in the case of a vehicle not constructed with body in the rear, the indicator lamp shall be fitted near the right rear light above the rear number plate:

Provided that every construction equipment vehicle of an unconventional or extraordinary type in travel mode shall be fitted or installed with a red indicator lamp of size of not less than 100 square centimetres on the extreme rearmost point of the body.

(7) On and from the date of commencement of the Central Motor Vehicles (Amendment) Rules, 1999, every motor vehicle manufactured shall be fitted with at least one lamp which shall automatically be operated, throwing a white light to the rear, when the vehicle is being driven in the reverse gear.

(8) In the case of vehicles, other than three-wheelers of engine capacity not exceeding 500 CC, which are attached with trailers, all the lamps required to be fitted on the rear of the vehicle shall be fitted at the rear of the trailer.

(8-A) On the commencement of the Central Motor Vehicles (Sixth Amendment) Rules, 2000, every construction equipment vehicle shall be fitted with two lamps at the rear throwing light to the rear when the vehicle is being driven in the reverse gear and there shall also be an audible warning system operating when the

vehicle is being driven in the reverse gear, the audible warning system and the light being automatically operated when the vehicle is in reverse gear.

(8-B) Every combine harvester shall be fitted with two lamps at the rear throwing light to the rear when the vehicle is being driven in the reverse gear and there shall also be an audible warning system operating when the vehicle is being driven in the reverse gear so that the audible warning system and the light are automatically operated when the vehicle is in reverse gear.”

16. Rule 106 of the CMV Rules provides for deflection of lights. Sub-rule (1) of Rule 106 provides that, no head lamp showing a light to the front shall be used on any motor vehicle including agricultural tractor and construction equipment vehicle and combine harvester (whether fitted with single or dual head lamp) unless such vehicle is so constructed, fitted and maintained that the beam of light emitted therefrom meet the requirements of the respective safety standards notified under Rules 124 and 124A.

17. Rule 107 of the CMV Rules deals with top lights. As per Rule 107, every goods vehicle including trailer and semi-trailer other than three-wheelers and vehicles with overall width not exceeding 2.1 metres shall be fitted with two white lights at



the top right and left corners showing white light to the front and two red lights at the top right and left corners showing red light to the rear. The lights shall remain lit when the vehicle is kept stationary on the road during night and at the time of poor visibility. As per the proviso to sub-rule (1), in the case of goods carriage without a full body in the rear, provision for fitting of the top light at the rear shall not be necessary.

18. Rule 108 of the CMV Rules deals with use of red, white or blue light. As per sub-rule (4) of Rule 108, use of multi-coloured red, blue and white light shall be permitted only on vehicles specifically designated for such emergency and disaster management duties as may be specified by the Central Government. Rule 108 reads thus;

**“108. Use of red, white or blue light.-** (1) No motor vehicle shall show a red light to the front or light other than red to rear:

Provided that the provisions of this rule shall not apply to—

- (i) the internal lighting of the vehicle; or
- (ii) the amber light, if displayed by any direction indicator or as top light used on vehicle for operating within the premises such as airports, ports, mines and project sites, without going

outside the said premises on to public roads;

- (iii) [omitted]
  - (iv) the blinker type of red light with purple glass fitted to an ambulance van used for carrying patients or the warning lamps fitted on Road Ambulance in accordance with Annexure I of AIS - 125 (Part-1) – 2014;
  - (v) [omitted]
  - (vi) white light illuminating the rear number plate;
  - (vii) white light used while reversing;
  - (viii) plough light provided in agricultural tractors for illuminating the implement's working area on the ground in agricultural field operations.
- (2) [omitted]
  - (3) [omitted]
  - (4) Use of multi-coloured red, blue and white light shall be permitted only on vehicles specifically designated for such emergency and disaster management duties as may be specified by the Central Government.
  - (5) omitted
  - (6) On and after the 1<sup>st</sup> April, 2018, the top lights (warning lamps) fitted on Road Ambulances shall be in accordance with AIS:125 (Part 1) – 2014, as amended from time to time, for all types of ambulances specified therein, till the corresponding BIS specifications are notified under the Bureau of Indian Standards Act, 1986 (63 of 1986)."

19. In exercise of powers conferred under sub-rule (4) of

Rule 108 of the CMV Rules, the Central Government, vide Notification No.1374(E) dated 01.05.2017 specified that the vehicles on office duty which are designated for the following emergency and disaster management duties may be allowed to use multi-coloured red, blue and white light on its top, namely, (a) the duties relating to control of fire; (b) the duties by police, defence forces or paramilitary forces for maintenance of law and order; (c) the duties relating to management of natural disasters including earthquake, flood, landslide, cyclone, tsunami and man made disasters including nuclear disaster, chemical disaster and biological disaster. As per the said notification, the multi-coloured light shall not be put to use when the vehicle is not on the designated duty. Every year, the Transport Department of the State or Union Territory Administration, as the case may be, shall issue a public notice bringing to the notice of the general public the list of authorities to whom the permission to use the vehicles specified in clauses (a) and (b) has been granted and such vehicles shall display on its windscreen the sticker issued by such Transport Department, which shall be in the format prescribed in the notification dated

01.05.2017. As per the said notification, only one sticker shall be issued to the designated officer for one vehicle at one point of time.

20. Rule 109 of the CMV Rules deals with parking lights. As per Rule 109, every construction equipment vehicle, combine harvester and every motor vehicle other than motor cycles and three-wheeled invalid carriages shall be provided with one white or amber parking light on each side in the front. In addition to the front lights, two red parking lights one on each side in the rear shall be provided. The front and rear parking lights shall remain lit even when the vehicle is kept stationary on the road. As per the first proviso to Rule 109, these rear lamps can be the same as the rear lamps referred to in sub-rule (2) of Rule 105. As per the second proviso to Rule 109, construction equipment vehicles and combine harvesters, which are installed with flood light lamps or spot lights at the front, rear or side of the vehicle for their off-highway or construction operations, shall have separate control for such lamps or lights and these lights shall be permanently switched off when the vehicle is traveling on the road. Rule 111 of the CMV Rules, which deals with prohibition of

spot lights, etc., provides that no spot light or search light shall be carried on the front of any vehicle except in exceptional circumstances with the prior approval of the registering authority.

21. Rule 124 of the CMV Rules deals with safety standards of components. As per sub-rule (1) of Rule 124, the Central Government may, from time to time, specify, by notification in the Official Gazette, the standards or the relevant standards specified by the Bureau of Indian Standards of any part, component or assembly to be used in the manufacture of a vehicle including construction equipment vehicle and the date from which such parts, components or assemblies are to be used in the manufacture of such vehicle and on publication of such notification every manufacturer shall use only such of these parts, components or assemblies in manufacture of the vehicle. As per sub-rule (2) of Rule 124, every manufacturer shall get the prototype of the part, component or sub-assembly for which standards have been notified, approved from any agency as referred to in Rule 126 and in the case of tyre and rubber components from the Indian Rubber Manufacturers

Research Association, Thane, or in the case of compliance with notified Indian Standards from laboratory duly authorised by the Bureau of Indian Standards. On the basis of such approval, every manufacturer shall also certify compliance with the provisions of this rule in Form 22. As per sub-rule (4) of Rule 124, the procedure for type approval and establishing conformity of production for components listed in the Table to sub-rule (4), shall be in accordance with AIS:037 - 2004 till the corresponding BIS specifications are notified under the Bureau of Indian Standards Act, 1986.

22. Rule 125B of the CMV Rules deals with special requirement of transport vehicles that are driven on hills. As per sub-rule (1) of Rule 125B, on and from the 1<sup>st</sup> day of October 2006, such four wheeled transport vehicles as may be notified by the State Governments in the Official Gazette plying on such routes or areas on hilly terrains shall be fitted with fog lamp, power steering, defrosting and demisting system and that, the State Government would provide a lead time of six months for this purpose.

23. 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 Rules deal with every minute detail of construction and maintenance of a vehicle. In other words, the standards, sizes and specifications which the manufacturer of a vehicle is required to adhere to while manufacturing the vehicle are exhaustively dealt with under the Rules. What is permitted has been specifically provided for and what has not been specifically stated would obviously be deemed to have been excluded from these Rules. It would neither be permissible nor possible for the court to read into these statutory provisions, what is not specifically provided for. The provisions of the CMV 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 Apex Court held further that, the legislative intent attaching due significance to the 'public safety' is evident from the object and reasons of the MV Act, 1988, the provisions of the said Act and more particularly, the rules framed thereunder.

Paragraphs 18 to 21 and 28 of the said decision read thus;

**18.** From the above provisions, it is clear that the Rules deal with every minute detail of construction and maintenance of a vehicle. In other words, the standards, sizes and specifications which the manufacturer of a vehicle is required to adhere to while manufacturing the vehicle are exhaustively dealt with under the Rules. What is permitted has been specifically provided for and what has not been specifically stated would obviously be deemed to have been excluded from these Rules. It would neither be permissible nor possible for the Court to read into these statutory provisions, what is not specifically provided for. These are the specifications which are in consonance with the prescribed IS No. 2553 - Part 2 of 1992 and nothing is ambiguous or uncertain.

**19.** Let us take a few examples. Rule 104 requires that every motor vehicle, other than three wheelers and motor cycles shall be fitted with two red reflectors, one each on both sides at their rear. Every motor cycle shall be fitted with at least one red reflector at the rear. Rule 104A provides that two white reflectors in the front of the vehicle on each side and visible to oncoming vehicles from the front at night.

**20.** Rule 106 deals with deflections of lights and requires that no lamp showing a light to the front shall be used on any motor vehicle including construction equipment vehicle unless such lamp is so constructed, fitted and maintained that the beam of light emitted therefrom is



permanently deflected downwards to such an extent that it is not capable of dazzling any person whose eye position is at a distance of 8 metres from the front of lamp etc. Rule 119 and Rule 120 specify the kind, size and manner in which the horn and silencer are to be fixed in a vehicle.

**21.** These provisions 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.

xxx      xxx      xxx

**28.** The legislative intent attaching due significance to the 'public safety' is evident from the object and reasons of the Act, the provisions of the Act and more particularly, the Rules framed thereunder. ....”

24. The provisions under Rules 102 to 111 of the CMV Rules deal with every minute detail of the signalling devices, direction indicators, reflectors, reflective tapes, lamps, parking lights, etc. to be fitted in a motor vehicle. The said provisions deal with the number, position, colour and other specifications of such lamps, direction indicators, reflectors, etc. As per the mandate of sub-rule (1) of Rule 105 of the CMV Rules, every motor vehicle, while being driven in a public place, during the period half an hour after sunset and at any time when there is

no sufficient light, shall be lit with the lamps enumerated in clauses (a) to (d) of sub-rule (1) of the said Rule, which shall render clearly discernible persons and vehicles on the road at a distance of one hundred and fifty five meters ahead. As per clause (i) of sub-rule (2), the red light of the rear lamps of a motor vehicle, other than a motorcycle shall be visible in the rear from a distance of one hundred and fifty five meters and as per clause (ii) of sub-rule (2), the device illuminating the whole of the registration mark exhibited on the rear of a vehicle with a white light shall render the registration mark legible from a distance of fifteen meters to the rear. As per the mandate of sub-rule (3) of Rule 105, all the obligatory front head lamps of a motor vehicle other than a motorcycle shall be as nearly as possible of the same power and fixed at a height as specified in Indian standards I.S: 8415-1977 (clause 4.1.1). Similarly, sub-rule (4) of Rule 105 deals with the position and height of the rear lamp of a motor vehicle other than a transport vehicle; and sub-rule (5) deals with the position of rear light in the case of a transport vehicle. As per the mandate of Rule 109, which deals with parking lights, the front and rear parking lights shall

remain lit even when the vehicle is kept stationary on the road.

25. As per sub-rule (1) of Rule 102, the signal to turn to the right or to the left shall be given by electrically operated direction indicator lamps on all motor vehicles including construction equipment vehicles and combined harvester, and such construction equipment vehicles and combined harvester be fitted and maintained so that conditions enumerated in clauses (i) to (iii) of sub-rule (1) are met. As per clause (i) of sub-rule (1) of Rule 102, the direction indicator lamps shall be of amber colour which is illuminated to indicate the intention to turn, by a light flashing at the rate of not less than 60 and not more than 120 flashes per minute. As per sub-rule (1) of Rule 103 of the CMV Rules, a motor vehicle including construction equipment vehicle and combine harvester shall be fitted with a direction indicator and every direction indicator shall be so designed and fitted that the driver of the vehicle, when in his driving seat is aware that it is operating correctly. The motor vehicles specified under sub-rule (2) of Rule 103 shall be equipped with such a device that when the vehicle is in an immobilized condition all the direction indicators flash together

giving hazard warning to other road users.

26. The fitment of flashing light devices on a motor vehicle, other than as specifically provided under sub-rule (1) of Rule 102 of the CMV Rules, is legally impermissible, in view of the law laid down by the Apex Court in **Avishek Goenka [(2012) 5 SCC 321]** that, the standards, sizes and specifications which the manufacturer of a vehicle is required to adhere to while manufacturing the vehicle are exhaustively dealt with under the CMV Rules. What is permitted has been specifically provided for and what has not been specifically stated would obviously be deemed to have been excluded from the CMV Rules.

27. In exercise of powers conferred under sub-rule (4) of Rule 108 of the CMV Rules, the Central Government, vide Notification No.1374(E) dated 01.05.2017 specified that the vehicles on office duty which are designated for the emergency and disaster management duties enumerated in clauses (a) to (c), namely, (a) the duties relating to control of fire; (b) the duties by police, defence forces or paramilitary forces for maintenance of law and order; (c) the duties relating to

management of natural disasters including earthquake, flood, landslide, cyclone, tsunami and man made disasters including nuclear disaster, chemical disaster and biological disaster, may be allowed to use multi-coloured red, blue and white light on its top; however, the multi-coloured light shall not be put to use when the vehicle is not on the designated duty. In view of the law laid down by the Apex Court in **Avishek Goenka [(2012) 5 SCC 321]** use of multi-coloured red, blue and white light on the top of vehicles which are not designated for emergency duties as enumerated in clauses (a) and (b) of Notification No.1374(E) dated 01.05.2017 or the use of multi-coloured light when such vehicles are not on the designated duty, is legally impermissible.

28. As per the mandate of sub-rule (1) of Rule 249 of the KMV Rules, no person shall use and no person shall cause or allow to be used or to be in any public place any motor vehicle which does not comply with the rules contained in Chapter VII of the KMV Rules or with any order thereunder made by the competent authority. As per sub-rule (1) of Rule 360, the driver of a motor vehicle shall at all times when the lights of the motor

vehicle are in use so manipulate them that danger or undue inconvenience is not caused to any person by dazzling. As per sub-rule (2) of Rule 360, save when left within twenty-three metres of the nearest lighted lamp or the side of a public road having a system of lighting by electric lamps no person shall keep stationary any motor vehicle without exhibiting the parking lights thereon within the hours during which lights are otherwise required under these rules.

29. The Motor Vehicles (Driving) Regulations, 2017 (for brevity, 'the MV (Driving) Regulations, 2017') made by the Central Government, in exercise of the power conferred by Section 118 of the MV Act, and in supersession of the Rules of the Road Regulations, 1989, was notified vide G.S.R.634(E) dated 23.06.2017. Regulation 3, which deals with duty towards other road users and general public, provides that no vehicle shall be driven, stopped or parked on a road or in a public place in such a manner as is likely to endanger the safety of or cause inconvenience to other road users.

30. Regulation 5 of the MV (Driving) Regulations, 2017 deals with duties of drivers and riders. As per sub-regulation (4)

of Regulation 5, the driver and the riders shall take special care and precautions to ensure the safety of the most vulnerable road users such as pedestrians, cyclists, children, the elderly and the differently abled persons. As per sub-regulation (5) of Regulation 5, the driver shall ensure that his vehicle, while moving or when stationary, does not cause any hindrance or undue inconvenience to other road users or to the occupants of any properties. As per sub-regulation (14) of Regulation 5, the driver shall not, in any public place, drive a vehicle which, to his knowledge, has a defect, or which he could have discovered by exercising ordinary care, and on account of which defect the driving of the vehicle is likely to cause undue danger to the safety of the occupants of the vehicles or other road users. As per sub-regulation (15) of Regulation 5, if a technical defect is discovered in a vehicle while it is being driven, the driver shall take the vehicle off the road in the quickest possible manner.

31. Regulation 22 of the MV (Driving) Regulations, 2017 deals with stopping and parking. As per clause (b) of sub-regulation (2) of Regulation 22, a vehicle shall not be parked on a main road or at a stretch of a road where the notified

maximum speed limit is fifty kilometres per hour or more. Regulation 28 deals with vehicle breakdown. As per Regulation 28, in case a vehicle with more than two wheels has broken down at a place where it can be recognised in time as a stationary obstacle, (i) the hazard warning lights of the vehicle shall be switched on immediately; (ii) on highways and major roads with fast speed, reflective traffic warning triangles shall be placed at a distance of fifty meters behind the broken-down vehicle; and (iii) if there is a bend on the road where the vehicle is parked, reflective traffic warning triangles shall be placed before the bend.

32. Regulation 29 of the MV (Driving) Regulations, 2017 deals with action in case of vehicular accident. As per the provisions under Regulation 29, the drivers shall pull the vehicles out of the road immediately so that the vehicles are clear of oncoming traffic. The driver or drivers shall place reflective traffic warning triangles near or around the vehicles to alert other drivers, and turn on hazard warning lights. Regulation 29 of the MV (Driving) Regulations, 2017 reads thus;

**“29. Action in case of vehicular accident.-** (1) The



driver shall maintain absolute cool in case of an accident and do nothing that may harm the other driver or vehicle involved in the accident or any other person.

**(2) Minor accidents, -**

- (i) the driver or drivers, as the case may be, involved in the accident shall alight from the vehicle and take pictures of the vehicles, the occupants of the vehicles, any pedestrian or any other person or vehicle, whether motor vehicle or otherwise, and the accident scene, if possible;
- (ii) the drivers shall pull the vehicles out of the road immediately so that the vehicles are clear of on coming traffic;
- (iii) the driver or drivers shall place reflective traffic warning triangles near or around the vehicles to alert other drivers, and turn on hazard warning lights;
- (iv) the driver or the riders shall immediately call the police or ambulance or nearest hospital if anyone has been hurt;
- (v) The driver shall not leave the scene of an accident, even if it was a minor accident, until everything has been resolved to everyone's satisfaction.

**(3) Major accidents,-**

- (a) every person involved in the accident shall check himself and other occupants of the vehicle or vehicles involved in the accident to see if anyone has been injured;
- (b) if someone has been hurt, medical assistance and

- police shall be called immediately;
- (c) once the condition of the driver and the passengers or riders has stabilised, the persons involved in the accident shall try to take pictures of the persons and vehicles involved in the accident, including the registration plates of the vehicles and the accident scene;
  - (d) the driver or drivers involved in the accident shall move the vehicles vehicle off to the side of the road, if possible, at the earliest;
  - (e) if it is not possible to move the vehicle or vehicles, the driver or drivers involved in the accident shall remain in the area of the incident until the police arrives unless the same is not possible due to injuries sustained in the accident;
  - (f) the driver and the other occupants shall cooperate with the police authorities in the investigation of the accident;
  - (g) if involved in an accident with another vehicle, the drivers shall exchange the following information with that driver: name, address, phone number, insurance company, policy number, driving license number and registration number of the vehicle.
- (4) Interacting with the other driver,-**
- (i) once the initial shock wears off and it is apparent that no one has been seriously hurt, tempers may flare and all persons involved in the accident shall refrain from losing temper or provoking any other person or persons;

- (ii) the driver or any other occupant shall get the other driver's name, address, contact information and insurance details, and provide the same to him;
- (iii) if an amicable settlement cannot be made, call the police immediately;
- (iv) if police has been informed, all persons involved in the accident shall remain at the scene until the investigators arrive and permit them to leave."

33. Regulation 31 of the MV (Driving) Regulations, 2017 deals with vehicles lighting. As per sub-regulation (1) of Regulation 31, the driver shall use the specified lighting devices at nightfall and at dawn and at other times when visibility is poor. As per sub-regulation (2), the lighting devices of a vehicle shall at all times be kept in good working condition and no lighting device shall be obscured by any object or dirt. As per sub-regulation (3), no driver shall drive the vehicle with parking lights only, unless so directed by a police officer in uniform or any other authorised person; and use high beam inappropriately or for long duration or on well-lit roads. As per sub-regulation (4), high beam shall be dipped in good time on the approach of an oncoming vehicle or when driving close behind another vehicle. As per sub-regulation (5), the driver shall switch on the

fog light headlamps only when visibility is considerably affected due to fog, dust, storm, rain or snow and only with dipped head lamps.

34. In Writ Petition (C) No.295 of 2012 filed under Article 32 of the Constitution of India, by a public-spirited citizen, seeking enforcement of road safety norms and appropriate treatment of accident victims, the Apex Court constituted a 'Committee on Road Safety', vide its order dated 22.04.2014, and notified by the Ministry of Road Transport and Highways, Government of India, on 30.05.2014. In the said writ petition the Apex Court delivered a judgment dated 30.11.2017 - **S.Rajasekaran v. Union of India [(2018) 13 SCC 532]**. In the said decision, the Apex Court observed that all States and Union Territories are expected to implement the Road Safety Policy with all due earnestness and seriousness. The responsibility and functions of the Road Safety Council constituted in terms of Section 215 of the MV Act will be as recommended by the Committee on Road Safety constituted as per the order dated 22.04.2014 and Road Safety Councils should periodically review the laws and take appropriate

remedial steps whenever necessary. In paragraph 94.13 of the said decision, in the context of Lane Driving, the Apex Court held that the Ministry of Road Transport and Highways has already issued the Motor Vehicles (Driving) Regulations, 2017, vide G.S.R.634 (E) dated 23.06.2017, which should be implemented by the State Governments and Union Territories strictly. Paragraphs 94.1 to 94.25 of the said decision contains various directions issued by the Apex Court. In paragraph 95, the Apex Court has made it clear that, if there is any doubt or clarity is required in implementing those directions, the State Government or Union Territory concerned is at liberty to move the Committee on Road Safety.

35. In view of the provisions under Rules 102 to 111 of the CMV Rules, Rules 249 and 360 of the KMV Rules, the provisions under the MV (Driving) Regulations, 2017 and also the law laid down by the Apex Court in **Avishek Goenka [(2012) 5 SCC 321]** and **S.Rajaseekaran [(2018) 13 SCC 532]**, every motor vehicle shall be fitted with signalling devices, direction indicators, reflectors, reflective tapes, lamps, parking lights, etc. as per the mandate of the provisions under the CMV

Rules and such signalling devices, direction indicators, reflectors, reflective tapes, lamps, parking lights, etc. have to be maintained as such. As per the mandate of Rule 124 of the CMV Rules, every manufacturer shall get the prototype of the part, component or sub-assembly used in the manufacture of a vehicle, for which standards have been notified, approved from any agency referred to in Rule 126. Therefore, the signalling devices, direction indicators, reflectors, lamps, parking lights, etc. fitted on a motor vehicle by the manufacturer, after obtaining prototype approval for those parts under Rule 124 of the CMV Rules, has to be maintained as such.

36. In **Jijith and others v. State of Kerala and others [2019 (1) KHC 463]**, after referring to the provisions under Rule 102 to Rule 111 of the CMV Rules, this Court held that a motor vehicle shall be fitted with only the signalling devices, reflectors and lamps as specified thereunder. The number, position, colour and specifications of the lamps, direction indicators and reflectors are dealt with in detail in those provisions. As per the mandate of Rule 102 to Rule 111 of the CMV Rules, the lamps, direction indicators and reflectors fitted

on a motor vehicle has to be maintained as specified thereunder, failing which it cannot be said that such vehicle complies with the provisions of the MV Act and the rules made thereunder.

37. Clause (34) of Section 2 of the MV Act define 'public place' to mean a road, street, way or other place, whether a thoroughfare or not, to which the public have a right of access, and includes any place or stand at which passengers are picked up or set down by a stage carriage. As already noticed, as per Regulation 3 of the MV (Driving) Regulations, 2017, which deals with duty towards other road users and general public, no vehicle shall be driven, stopped or parked on a road or in a public place in such a manner as is likely to endanger the safety of or cause inconvenience to other road users. Sub-regulation (1) of Regulation 31 mandates that, the driver shall use the specified lighting devices at nightfall and at dawn and at other times when visibility is poor. Sub-regulation (2) of Regulation 31 mandates further that, the lighting devices of a vehicle shall at all times be kept in good working condition and no lighting device shall be obscured by any object or dirt. The use of a

motor vehicle in public place without maintaining the specified lighting devices, reflectors, etc. as per the provisions under the CMV Rules, is likely to endanger the safety of other road users. No person shall use or cause or allow to be used in any public place any motor vehicle which does not comply with the provisions of Chapter V of the CMV Rules, which deals with construction, equipment and maintenance of motor vehicles. Therefore, putting any object in front of such lighting devices, reflectors, etc. or 'tinting' such lighting devices (i.e., headlights, tail lights, etc.) or reflectors by fixing vinyl tint film sticker, is legally impermissible.

38. As held by the Apex Court in **Avishek Goenka [(2012) 5 SCC 321]** the provisions of the CMV 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. What is permitted has been specifically provided for and what has not been specifically stated would obviously be deemed to have been excluded from the CMV Rules. Therefore, no motor vehicle can be fitted with



any lights or lighting device other than those specifically provided under the provisions of the CMV Rules. As per the mandate of sub-rule (1) of Rule 360 of the KMV Rules, the driver of a motor vehicle shall at all times when the lights of the motor vehicle are in use so manipulate them that danger or undue inconvenience is not caused to any person by dazzling. Therefore, use of LED bar lights, LED flexible strip lights, after-market (Non-OEM) halogen driving lamps, etc. on a motor vehicle is legally impermissible.

39. As per the provisions under Regulations 28 and 29 of the MV (Driving) Regulations, 2017, in the case of breakdown of a vehicle with more than two wheels, the driver of that vehicle has to switch on the hazard warning lights of the vehicle immediately, and he shall place the reflective traffic warning triangles at appropriate place, to alert other drivers. In the counter affidavit filed by the additional 4<sup>th</sup> respondent KSRTC it has been stated that at the time of accident the indicators, brake lights, parking lights and the hazard lamps of KSRTC Bus bearing registration No.KL-15/A-1491 were in working condition and the hazard lamps were switched on. The said vehicle is also

having reflective tapes as stipulated in Rule 104 of the CMV Rules. The petitioner had reported that the roof lights and route board light were switched on at the time of accident. In the counter affidavit, it has also been stated that KSRTC Buses registered after the MV (Driving) Regulations, 2017 are having reflective traffic warning triangles. Steps are being taken to supply reflective warning triangles to other buses also, which will be supplied within two months.

40. The question as to whether, at the time of accident, KSRTC Bus bearing registration No.KL-15/A-1491 driven by the petitioner was having signalling devices, direction indicators, lamps, reflectors, reflective tapes, parking lights, etc. as specified under the relevant provisions of the CMV Rules; or such signalling devices, lamps, reflectors, etc. were maintained as specified thereunder; or the hazard lamps, parking lights, roof light and route board light were switched on, is a disputed question of fact, which cannot be adjudicated in writ proceedings under Article 226 of the Constitution of India. It is for the petitioner to substantiate the said fact before the fact finding authority.

41. On 26.03.2019, when this writ petition came up for consideration, the learned Special Government Pleader sought time to get instructions as to whether for exhibition of advertisement in the transport vehicles owned by KSRTC, the State Government has laid down any conditions, as per the mandate of the first proviso to sub-rule (1) of Rule 191 of the KMV Rules. Today, when the case is taken up for consideration, the learned Special Government Pleader would submit that he is yet to get instructions on this issue.

42. Rule 191 of the KMV Rules deals with prohibition of advertisement or writing on vehicles. Rule 191 reads thus;

**“191. Prohibition of advertisement or writing on vehicles.-** (1) No advertising device, figure or writing shall be exhibited on any transport vehicle, save as may be specified by the State or Regional Transport Authority by general or specific order and on payment of fee of Rs.20/- per 100 centimetre square for an advertisement in writing and Rs.40/- per 100 centimetre square for an electronic advertisement for a period of one year or part thereof for each vehicle:

Provided that in respect of vehicles of the State Transport Undertaking the Government may allow such advertisements subject to the conditions that they may lay down from time to time in this regard.

Provided further that if the advertisement is exhibited for 6 months or a period below 6 months, half of the fee prescribed as per Rule 191(1) shall be remitted.

(2) The matter of each advertisement intended to be exhibited on the vehicle shall be approved by the State or Regional Transport Authority.

(3) After the period for which permission is sanctioned for exhibiting advertisement on vehicle, order issued for exhibiting advertisement shall be surrendered before the State Transport Authority or Regional Transport Authority concerned.

(4) If the matter of advertisement exhibited on the vehicle is changed before the period for which sanction is accorded to exhibit the advertisement, fees prescribed as per sub-rule (1) shall be paid for the new advertisement.

Explanation.- For the purpose of this rule, electronic advertisement means an advertisement exhibited on a rolling screen, digital screen or electronic screen or advertisement exhibited on vehicles using any other devices which is not a part of the body of the vehicle."

43. Rule 192 of the KMV Rules deals with prohibition of painting or marking in certain manner. As per sub-rule (1) of Rule 192, no public service vehicle shall be painted in the pattern adopted by the vehicles of the Kerala State Road Transport Corporation with the combination of colours specified in clauses (i) to (iii) or with a colour which is the same as the

colour with which vehicles regularly used for carrying Government mail by or under a contract with Indian Posts and Telegraphs Department are painted. As per sub-rule (2), a vehicle carrying Government mail may be painted with a specified colour and exhibited in a conspicuous place upon a plate or plain surface on the vehicle the word 'Mail' in red colour on a white ground, each letter being not less than fifteen centimetres in height and of a uniform thickness of two centimetres. As per sub-rule (3), save in the case of a vehicle used for carrying Government mails, no motor vehicle shall be marked with any sign or inscription which includes the word 'Mail'.

44. In **Jijith's case (supra)** this Court held that the paintwork of every transport vehicle shall be maintained in a clean and sound condition, as contemplated by Rule 264 of the KMV Rules. While approving the matter intended to be exhibited on the vehicle, in exercise of the powers under sub-rule (2) of Rule 191 of the KMV Rules, the State or the Regional Transport Authority shall ensure that it does not cause distraction to the drivers of other vehicles and also cyclists and pedestrians on

public road. No approval under sub-rule (2) of Rule 191, shall be granted for exhibition of any advertisements, writings, figures, graphics, etc. on the body of a transport vehicle, at places intended for exhibiting the name and address of the operator as per clause (g) of Section 84 of the MV Act; the 'emergency information panel' as per Rule 134 of the CMV Rules for goods carriages used for transporting any dangerous or hazardous goods; the particulars enumerated in clauses (a) to (g) of Rule 93 of the KMV Rules; the name of the institution exhibited in educational institution bus and private service vehicle as per Rule 291 of the KMV Rules; etc. In the case of a stage carriage in respect of which uniform colour scheme has been implemented under Rule 264 of the KMV Rules, vide the decision of the State Transport Authority dated 04.01.2018, no approval under sub-rule (2) of Rule 191, shall be granted for exhibition of any advertisements, writings, figures, graphics, etc., over the three equally spaced white lines painted below the height of the wheel arch. Paragraphs 12 to 12.8 of the said decision read thus;

“**12. Paintwork:-** As per clause (xviii) of sub-section (2)

of Section 92 of the MV Act, a State Government may make rules for regulating the painting or marking of transport vehicle and display of advertising matters thereon, and in particular prohibiting the painting or marking of transport vehicles in such colour or manner as to induce any person to believe that the vehicle is used for the transport of mails. In exercise of the rule making power under the said clause, the State Government made Rule 191 of the KMV Rules, which deals with prohibition of advertisement or writing on vehicles; and Rule 264, which deals with paintwork or varnish.

**12.1.** Sub-rule (1) of Rule 191 of the KMV Rules provides that no advertising device, figure or writing shall be exhibited on any transport vehicle, save as may be specified by the State or Regional Transport Authority by general or specific order, and on payment of the fee prescribed in sub-section (1), for a period of one year or part thereof for each vehicle. As per Regulation 26 of the Driving Regulations, 2017, which deals with bar on traffic impairment, unless validly permitted by the competent authority under the MV Act or the rules made thereunder, no driver shall display any advertisement on the vehicle.

**12.2.** In **Hindustan Petroleum Corporation Ltd., Kochi v. State of Kerala and others (2016 (3) KHC 693)**, in the context of Rule 191 of the KMV Rules, this Court held that the said Rule provides for imposition of fee not only for advertisements, but also for figures or writings. After referring to the provisions under Rule 134 of the CMV Rules, which deals with 'emergency information panel' for

goods carriages used for transporting any dangerous or hazardous goods, this Court held that the writings contained in tanker trucks operated by Hindustan Petroleum Corporation Limited by exhibiting its name in large and bold letters, even though has the characteristics of imposing with fee as prescribed under Rule 191 of the KMV Rules, in view of the stipulations and prescriptions contained under Rule 134 of the CMV Rules, are not liable to be imposed with fee for such writings made on the tanker trucks. However, this Court made it clear that, if any inscriptions or writings are made on such transport vehicles inviting public attention for the products of the petitioner company, Rule 191 of the KMV Rules will come into play.

**12.3.** The contract carriage permits issued to the petitioners are granted under Section 74 of the MV Act. Section 84 of the MV Act deals with general conditions attaching to all permits. As per clause (g) of Section 84, the name and address of the operator shall be painted or otherwise firmly affixed to every vehicle to which the permits relates on the exterior of the body of that vehicle on both sides thereof in a colour or colours vividly contrasting to the colour of the vehicle centred as high as practicable below the window line in bold letters. Similarly, the particulars enumerated in clauses (a) to (g) of Rule 93 have to be legibly painted on every transport vehicle, save in the case of a motor cab or any motor vehicle belonging to the State or Central Government, on the left hand side of the vehicle, in English letters and numerals, each not



less than two and a half centimetres square. In the case of educational institution bus and private service vehicle, Rule 291 of the KMV Rules provides that the name of the institution shall be written conspicuously at the top of the front and rear ends and on the left side of the body of the vehicle and the writings shall be horizontal.

**12.4.**Rule 264 of the KMV Rules, which deals with paintwork or varnish, provides that the paintwork or varnish of every transport vehicle shall be maintained in a clean and sound condition and in accordance with the specifications, if any, laid down by the State or Regional Transport Authority. In exercise of the powers under Rule 264, uniform colour scheme has been implemented for different classes of stage carriages operating throughout the State as City/Town Services, Mofussil/Ordinary Services and Limited Stop/Ordinary Services, vide the decision dated 04.01.2018 of the State Transport Authority. The colour scheme prescribed as per the said decision of the State Transport Authority reads thus;

- |                                |  |
|--------------------------------|--|
| City/Town Services             | - Lime Green (colour value = #338e31) with three equally spaced white lines below the height of the wheel arch.    |
| Mofussil/Ordinary Services     | - Deep Sky Blue (colour value = #12bce0) with three equally spaced white lines below the height of the wheel arch. |
| Limited Stop Ordinary Services | - Maroon (colour value = #871414) with three equally spaced white lines below the height of the wheel arch.        |

As per the decision of the State Transport Authority dated

04.01.2018 a stage carriage shall be in the uniform colour scheme specified therein, with effect from 01.02.2018 and the Secretary of the Regional Transport Authority is directed to ensure the same at the time of producing the vehicle for certificate of fitness or renewal of certificate of fitness. It is also specified that no other graphics, figures or colour schemes other than those permitted under Rule 191 (exhibition of advertisement) of the KMV Rules shall be allowed.

**12.5.** As already noticed, the paintwork or varnish of every transport vehicle shall be maintained in a clean and sound condition, which is the mandate of Rule 264 of the KMV Rules. If the State or Regional Transport Authority has laid down any specifications like uniform colour scheme, the paintwork of the transport vehicle shall be in accordance with that specifications. Any figure or writing exhibited on the transport vehicle, other than the name and address of the operator to be painted or otherwise firmly affixed as per clause (g) of Section 84 of the MV Act; the 'emergency information panel' provided under Rule 134 of the CMV Rules for goods carriages used for transporting any dangerous or hazardous goods; the particulars enumerated in clauses (a) to (g) of Rule 93 of the KMV Rules, painted on the body of the vehicle; the name of the institution exhibited in educational institution bus and private service vehicle as per Rule 291 of the KMV Rules; etc., falls within the scope of Rule 191 of the KMV Rules. Any such figure or writing exhibited on the transport vehicle with an object to invite public attention and to promote the contract or stage

carriage service of the operator will attract the provisions of Rule 191 of the KMV Rules.

**12.6.** The exhibition of writings and figures on vehicles by its very nature are intended to attract attention, which would cause distraction to the drivers of other vehicles, cyclists and even pedestrians on the public road. Driver distraction is one of the major causes of road accidents, which is a situation where the attention of the driver is diverted to any other forms of activities, which may affect the concentration of driving activity as well as the safety of the passengers and others on public road. Earning of revenue by the State by the levy of fee under Rule 191 of the KMV Rules or generation of some additional income by the operator of the transport vehicle should not be at the cost of public safety. Therefore, exhibition of writings or figures with the sole object to invite public attention and to promote the contract or stage carriage service should not be permitted by levying fee under Rule 191 of the KMV Rules.

**12.7.** The paintwork of every transport vehicle shall be maintained in a clean and sound condition, as contemplated by Rule 264 of the KMV Rules. While approving the matter intended to be exhibited on the vehicle, in exercise of the powers under sub-rule (2) of Rule 191 of the KMV Rules, the State or the Regional Transport Authority shall ensure that it does not cause distraction to the drivers of other vehicles and also cyclists and pedestrians on public road. No approval under sub-rule (2) of Rule 191, shall be granted for exhibition of any

advertisements, writings, figures, graphics, etc. on the body of a transport vehicle, at places intended for exhibiting the name and address of the operator as per clause (g) of Section 84 of the MV Act; the 'emergency information panel' as per Rule 134 of the CMV Rules for goods carriages used for transporting any dangerous or hazardous goods; the particulars enumerated in clauses (a) to (g) of Rule 93 of the KMV Rules; the name of the institution exhibited in educational institution bus and private service vehicle as per Rule 291 of the KMV Rules; etc. In the case of a stage carriage in respect of which uniform colour scheme has been implemented under Rule 264 of the KMV Rules, vide the decision of the State Transport Authority dated 04.01.2018, no approval under sub-rule (2) of Rule 191, shall be granted for exhibition of any advertisements, writings, figures, graphics, etc., over the three equally spaced white lines painted below the height of the wheel arch.

**12.8.** In the instant case, the entire body of the petitioners' contract carriages is painted with writings, graphics and gigantic human figures, etc. causing distraction to other drivers and also to road users, as evident from Exts.R5(a) and R6(a) photographs, the photographs produced along with the report of the inspection team, and also the video and photographs of the inspection conducted on 14.08.2018, produced in two compact discs. The petitioners' contract carriages with such graphics, gigantic human figures, writings, etc. painted on the body (even at places intended for exhibiting the name and address of the

operator as per clause (g) of Section 84 of the MV Act; the particulars enumerated in clauses (a) to (g) of Rule 93 of the KMV Rules; etc.) cannot be treated as vehicles which comply with the provisions of the MV Act and the rules made thereunder, for the purpose of grant of certificate of fitness. Therefore, in order to use the vehicles as contract carriages, the petitioners will have to remove all such graphics, gigantic human figures, writings, etc., exhibited on their vehicles with an object to invite public attention and to promote their contract carriage services, and maintain the paintwork of their transport vehicles in a clean and sound condition, as contemplated by Rule 264 of the KMV Rules.”

45. In **Jijith's case (supra)** this Court held further that, in view of the provisions under Rule 100 of the CMV Rules 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. No approval under sub-rule (2) of Rule 191, shall be granted for exhibition of any advertisements, writings, figures, graphics,

etc. on the safety glasses of a transport vehicle, which shall always be maintained in such a condition that the visual transmission of light is not less than that prescribed under sub-rule (2) of Rule 100. Paragraph 13 to 13.9 of the said decision read thus;

“**13. Safety glass:-** Rule 100 of the CMV Rules deals with safety glasses. As per sub-rule (2) of Rule 100, the glass of the windscreen and rear window of every motor vehicle shall be such and shall be maintained in such a condition that the visual transmission of light is not less than 70%. The glasses used for side window are such and shall be maintained in such condition that the visual transmission of light is not less than 50% and shall conform to the standards specified in sub-rule (2). Rule 278 of the KMV Rules provides that, every vehicle shall be so constructed that save for the front pillars of the body, the driver shall have a clear vision both to the front and through an angle of ninety degrees to his right or left-hand side, as the case may be. The front pillars of the body shall be so constructed as to cause the least possible obstruction to the vision of the driver.

**13.1.**In **Avishek Goenka v. Union of India [(2012) 5 SCC 321]** 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/ 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. Paragraphs 39 and 40 of the said decision reads thus;

"39. The manufacturer of the vehicle may manufacture the vehicles with tinted glasses which have visual light transmission (VLT) of safety glasses windscreen (front and rear) as 70% VLT and side glasses as 40% VLT, respectively. No black film or any other material can be pasted on the windscreens and side glasses of a vehicle.

27. For the reasons aforesaid, we prohibit the use of black films of any VLT percentage or any other material upon the safety glasses, windscreens (front and rear) and side glasses of all vehicles throughout the country. The Home Secretary, Director General/ Commissioner of Police of the respective States/ Centre shall ensure compliance with this direction. The directions contained in this judgment shall become operative and enforceable with effect from 4.5.2012."

**13.2.** In **Avishek Goenka's case (supra)** the Apex Court held further that, the legislative intent attaching due significance to the 'public safety' is evident from the object and reasons of the MV Act, 1988, the provisions of the said Act and more particularly, the rules framed thereunder. The Apex Court noticed that use of black films certainly helps the criminals to escape from the eyes of the police and aids in the 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 Rule of Law and Public Interest as well. Paragraph 19 of the said decision reads thus;

“19. The legislative intent attaching due significance to the 'public safety' is evident from the object and reasons of the Act, the provisions of the Act and more particularly, the Rules framed thereunder. Even if we assume, for the sake of argument, that Rule 100 is capable of any interpretation, then this Court should give it an interpretation which would serve the legislative intent and the object of framing such rules, in preference to one which would frustrate the very purpose of enacting the Rules as well as undermining the public safety and interest. Use of these black films have been proved to be criminal's paradise and a social evil. The petitioner has rightly brought on record 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 jeopardized the security and safety interests of the State and 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 Rule of Law and Public Interest as



well.”

**13.3.**In **Avishek Goenka (2) v. Union of India [(2012) 8 SCC 441]** the Apex Court, while dismissing all applications filed seeking clarification and modification of the judgment in **Avishek Goenka's case [(2012) 5 SCC 321]** reiterated that, in terms of Rule 100 of the CMV Rules, no material including films of any visual transmission of light can be pasted on the safety glasses of the car and this law is required to be enforced without demur and delay. Paragraph 23 of the said decision reads thus;

“23. We are really not emphasizing on the security threat to the society at large by use of black films but it is a clear violation of law. Thus, we pass the following orders:

- (1) All the applications filed for clarification and modification are dismissed, however, without any order as to costs.
- (2) All the Director Generals of Police/Commissioners of Police are hereby again directed to ensure complete compliance of the judgment of this Court in its true spirit and substance. They shall not permit pasting of any material, including films of any VLT, on the safety glasses of any vehicle.
- (3) We reiterate that the police authorities shall not only challan the offenders but ensure that the black or any other films or material pasted on the safety glasses are

removed forthwith.

- (4) We make it clear at this stage that we would not initiate any proceedings against the Director Generals of Police/Commissioners of Police of the respective States/Union Territories but issue a clear warning that in the event of non-compliance of the judgment of this Court now, and upon it being brought to the notice of this Court, the Court shall be compelled to take appropriate action under the provisions of the Contempt of Courts Act, 1971 without any further notice to the said officers. We do express a pious hope that the high responsible officers of the police cadre like Director General/Commissioner of Police would not permit such a situation to arise and would now ensure compliance of the judgment without default, demur and delay.
- (5) Copies of this judgment be sent to all concerned by the Registry including the Chief Secretaries of the respective States forthwith."

**13.4.** In **Avishek Goenka's case (2)**, in the applications filed by the manufacturers and distributors of 'tinted films', one of the contentions raised was that in the day time when 'tinted films' are pasted upon the safety glasses, still the face and the body of the occupant of the car is visible from outside. In order to substantiate the said fact, certain

photographs were placed on record. The Apex Court, while dismissing the interlocutory applications observed that, the case put forward by the applicants is a case of change in law and not one of improper interpretation, which is not the function of the Apex Court, and that, the Court has interpreted Rule 100 of the CMV Rules as it exists on the Statute book. Paragraphs 17 to 19 of the said decision read thus;

“17. The manufacturer and distributors have placed certain material before us, including some photographs and reports of the American Cancer Society, to show that mostly skin cancer is caused by too much exposure to ultra - violet rays. From these photographs, attempt is made to show that in the day time when the films are pasted upon the safety glasses, still the face and the body of the occupant of the car is visible from outside. It is also stated that certain amendments were proposed in the Code of Virginia relating to the use of sun shading and tinting films, on the motor vehicles. Relying upon the material relating to America, it is stated that there are large number of cancer cases in USA and the framers of the law have amended the provisions or are in the process of amending the provisions. This itself shows that it is a case of change in law and not one of improper interpretation, which is not the function of this Court.

18. To counter this, the petitioner has filed a detailed reply supported by various documents.

This shows that tinted glasses have been banned in a number of countries and it is not permissible to use such glasses on the windows of the vehicle. Annexure-A1 and A3 have been placed on record in relation to New South Wales, Australia, Afghanistan and some other countries. He has also placed on record a complete research article on the cancer scenario in India with future perspective which has specifically compared India as a developing country with developed countries like USA and has found that cancer is much less in India despite the fact that most of the Indian population is exposed to ultra-violet rays for the larger part of the day for earning their livelihood for their daily works, business and other activities.

19. This controversy arising from the submissions founded on factual matrix does not, in our opinion, call for any determination before this Court. As already noticed, the Court has interpreted Rule 100 as it exists on the Statute book. The environment, atmosphere and geographical conditions of each country are different. The level of tolerance and likelihood of exposure to a disease through sun rays or otherwise are subjective matters incapable of being examined objectively in judicial sense. The Courts are neither required to venture upon such determination nor would it be advisable.”

(underline supplied)

**13.5.** The provisions under Rule 100 of the CMV Rules, which deals with safety glasses, makes it explicitly clear that the glass of the windscreen and rear window of every

motor vehicle shall always be maintained in such a condition that the visual transmission of light is not less than 70%. Similarly, the glasses used for side windows of every motor vehicle shall always be maintained in such a condition that the visual transmission of light is not less than 50%. The specifications for safety glasses, which the manufacturer of a motor vehicle is required to adhere to while manufacturing the vehicle are exhaustively dealt with under Rule 100 of the CMV Rules.

**13.6.** After referring to the aforesaid provisions in the CMV Rules, the Apex Court in **Avishek Goenka's case (supra)** 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. In **Avishek Goenka's case (2)**, the applications filed by the manufacturers and distributors of 'tinted films' seeking clarification and modification of the judgment in **Avishek Goenka's case (supra)** were dismissed, repelling their contention that in the day time when 'tinted films' are pasted upon the safety glasses, still the face and the body of the occupant of the car is visible from outside.

**13.7.** In view of the provisions under Rule 100 of the CMV Rules and the law laid down by the Apex Court in the decisions referred to supra, 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. No approval under sub-rule (2) of Rule 191, shall be granted for exhibition of any advertisements, writings, figures, graphics, etc. on the safety glasses of a transport vehicle, which shall always be maintained in such a condition that the visual transmission of light is not less than that prescribed under sub-rule (2) of Rule 100. Moreover, as per the mandate of Rule 278 of the KMV Rules, every vehicle shall be so constructed that save for the front pillars of the body, the driver shall have a clear vision both to the front and through an angle of ninety degrees to his right or left-hand side, as the case may be, and the front pillars of the body shall be so constructed as to cause the least possible obstruction to the vision of the driver.

**13.8.** In the instant case, Exts.R5(a) and R6(a) photographs, the photographs produced along with the report of the inspection team, and also the video and photographs of the inspection conducted on 14.08.2018, produced in two compact discs, would show that there are writings and figures on the safety glass fitted on the petitioners' contract carriages. The safety glass of the rear window of the petitioners' contract carriages is covered by gigantic human figures, thereby reducing visual transmission of light to 0% in respect of a considerably large area of the rear window. (See: Ext.R5(a); video VID20180814145841; etc.) The safety glass of the windscreen of the petitioners' contract carriages is covered by figures, writings, etc. The colour photographs produced along with the counter affidavits,

the inspection report and also the video and photographs of the inspection conducted on 14.08.2018, produced in two compact discs, would show that the safety glass of the rear window and that of the side windows of the petitioners' contract carriages are covered by sliding 'cloth curtains' and it appears that 'sun control' film, i.e., 'tinted film' is pasted on the safety glass of the rear and side windows.

**13.9.** When 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, as per the mandate of Rule 100 of the CMV Rules and the law laid down by the Apex Court in the decisions referred to supra, the petitioners' contract carriages with such writings, figures, sliding 'cloth curtains', 'tinted film' (if any), etc. cannot be treated as vehicles which comply with the provisions of the MV Act and the rules made thereunder, for the purpose of grant of certificate of fitness. Therefore, in order to use the vehicles as contract carriages, the petitioners will have to remove all such writings, figures, sliding 'cloth curtains', 'tinted film' (if any), etc. and maintain the safety glass in such a condition that the visual transmission of light is not less than that prescribed under sub-rule (2) of Rule 100 of the CMV Rules, and with a clear vision to the driver, both to the front and through an angle of ninety degrees to his right or left-hand side, as the case may be, as prescribed

under Rule 278 of the KMV Rules.”

46. Along with the counter affidavit of the additional 4<sup>th</sup> respondent KSRTC, Ext.R4(a) terms and conditions dated 25.09.2018 of tender for the display of advertisement in Kerala Urban Road Transport Corporation (KURTC) buses is placed on record. After referring to the said terms and conditions, the learned Standing Counsel for KSRTC would submit that exhibition of advertisement is not permitted on the safety glass of the windows and on the front side of the vehicle. Similarly, exhibition of advertisement is not permitted affecting the monogram of KURTC or any information provided by KURTC or any statutory writing or requirement in any manner.

47. The law laid down by this Court in **Jijith's case (supra)** is equally applicable in the case of transport vehicles owned/operated by KSRTC and KURTC. While approving the matter intended to be exhibited on a transport vehicle operated by KSRTC or KURTC, in exercise of the powers under Rule 191 of the KMV Rules, subject to the conditions, if any, laid down by the State Government under the first proviso to sub-rule (1) of Rule 191, the competent authority shall ensure that it does not



cause distraction to the drivers of other vehicles and also cyclists and pedestrians on public road. No approval shall be granted for exhibition of any advertisements, writings, figures, graphics, etc. on the body of a transport vehicle owned/operated by KSRTC or KURTC, at places intended for exhibiting the name and address of the operator as per clause (g) of Section 84 of the MV Act; the particulars enumerated in clauses (a) to (g) of Rule 93 of the KMV Rules; the reflectors and reflective tapes as per Rule 104 of the CMV Rules. Similarly, in view of the provisions under Rule 100 of the CMV Rules and the law laid down by the Apex Court in **Avishek Goenka's case [(2012) 5 SCC 321]** and **Avishek Goenka (2) [(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 transport vehicles owned/operated by KSRTC or KURTC, either by pasting any material upon the safety glass or by fixing sliding 'cloth curtains', etc. are legally impermissible. No approval under Rule 191, shall be granted for exhibition of any advertisements, writings, figures, graphics, etc. on the safety glasses of such transport vehicles, which shall

always be maintained in such a condition that the visual transmission of light is not less than that prescribed under sub-rule (2) of Rule 100 of the CMV Rules.

48. As per the mandate of sub-rule (1) of Rule 92 of the CMV Rules, no person shall use or cause or allow to be used in any public place any motor vehicle which does not comply with the provisions of Chapter V of the CMV Rules (which deals with construction, equipment and maintenance of motor vehicles). Therefore, the Enforcement Officers in the Motor Vehicles Department and also the Police have to take necessary action against the vehicles owned/operated by KSRTC and KURTC which are used in public place after tampering with the percentage of visual transmission of light of the safety glass of the windscreen, rear window and side windows of such vehicles, either by pasting any material upon the safety glass or by fixing sliding 'cloth curtains', etc. Action shall also be taken for exhibiting advertisements, figures, etc. causing distraction to the drivers of other vehicles and also cyclists and pedestrians on public road.

49. In view of the provisions under sub-rule (1) of Rule

92 of the CMV Rules, the law laid down by the Apex Court in the decisions referred to supra, and also the law laid down by this Court in **Jijith's case (supra)** no motor vehicle, including a Government vehicle, shall be allowed to be used in any public place, after tampering with the percentage of visual transmission of light of the safety glass of the windscreen, rear window and side windows, either by pasting any material upon the safety glass or by fixing sliding 'cloth curtains', etc. As per the mandate of sub-rule (2) of Rule 100 of the CMV Rules, the safety glass of the wind screen and rear window of every motor vehicle shall always be maintained in such a condition that the visual transmission of light is not less than 70% and that of the safety glass used for side windows is not less than 50%.

50. It is pertinent to note at this juncture the provisions under 'Policy on Roadside Advertisements' formulated by the Indian Road Congress, vide IRC:46-1972. Such a policy was introduced when it was noticed that advertisement can often distract the attention of drivers of motor vehicles and in that case a public hazard or nuisance. They may also obstruct the view of the drivers of fast moving vehicles and are then a public

danger. Para.2 of IRC:46-1972 deals with advertisement control; Para.3 deals with principles on advertisement control; etc.

51. The Ministry of Road Transport and Highways vide Circular No.RW/NH-33044/35/2001/S&R(R) dated 16.05.2002 has made it clear that no advertisement hoardings are permitted on National Highways within the Right of Way (ROW) except informatory signs of public interest such as hospitals, bus stations, etc. or advertisement of temporary nature announcing local events such as Mela, Flower Show, etc. Besides, IRC:46-1972 titled 'A Policy on Roadside Advertisements' published in 1972 should also be referred for comprehensive guidelines on advertisement control on National Highways.

52. The Ministry of Road Transport and Highways in its letter No.F.No.RW/NH-33044/18/2016/S&R(R) dated 07.09.2016 noticed that despite the Ministry's policy of not allowing roadside advertisements, hoardings on National Highways which cause distraction and is also one of the cause of accidents on National Highways, advertisement hoardings have

generally been noticed along the National Highways. Therefore, it was decided that the Regional Officers/ Engineering Liasoning Officers within their jurisdiction shall inspect the National Highways by prioritising heavily traffic National Highways and other National Highways in stages and submit inspection reports to the Ministry for further necessary action, along with their monthly reports. However, reports from the Regional Officers/Engineering Liasoning Officers are not being received by the Ministry and therefore, the Ministry vide letter dated 07.09.2016 directed all the implementing agencies and Regional Officers/Engineering Liasoning Officers to do joint inspection of all National Highways within their jurisdiction and sent a consolidated report regarding advertisement hoardings to the Ministry for further necessary action. A copy of the said letter is addressed to all Engineers-in-Chief and Chief Engineers of Public Works Departments of State/Union Territories dealing with National Highways and other Centrally Sponsored Schemes.

53. Since transport vehicles owned/operated by KSRTC and KURTC are regularly plying on National Highways, such vehicles shall not be permitted to exhibit any advertisements

which are likely to distract the attention of other drivers.

Earning of additional income by KSRTC or KURTC by the display of advertisements on their transport vehicles, under Rule 191 of the KMV Rules, should not be at the cost of public safety.

54. The challenge made in this writ petition is against Ext.P5 order dated 11.03.2019 of the 3<sup>rd</sup> respondent Additional Licencing Authority, whereby the driving licence of the petitioner stands suspended for the period from 12.12.2015 to 11.12.2019; and Ext.P8 dated 25.01.2019 of the 1<sup>st</sup> respondent Appellate Authority, whereby Ext.P5 order of suspension stands affirmed.

55. Section 19 of the MV Act deals with the power of the licensing authority to disqualify a person from holding a driving licence or to revoke such licence. As per sub-section (1) of Section 19, if a licensing authority is satisfied, after giving the holder of a driving licence an opportunity of being heard, that he (a) is a habitual criminal or habitual drunkard; or (b) is a habitual addict to any narcotic drug or psychotropic substance within the meaning of the Narcotic Drugs and Psychotropic Substances Act, 1985; or (c) is using or has used a motor

vehicle in the commission of a cognizable offence; or (d) has by his previous conduct as driver of a motor vehicle shown that his driving is likely to be attended with danger to the public; or (e) has obtained any driving licence or a licence to drive a particular class or description of motor vehicle by fraud or misrepresentation; or (f) has committed any such act which is likely to cause nuisance or danger to the public, as may be prescribed by the Central Government, having regard to the objects of the Act; or (g) has failed to submit to, or has not passed, the tests referred to in the proviso to sub-section (3) of Section 22; or (h) being a person under the age of eighteen years who has been granted a learner's licence or a driving licence with the consent in writing of the person having the care of the holder of the licence and has ceased to be in such care, it may, for reasons to be recorded in writing, make an order (i) disqualifying that person for a specified period for holding or obtaining any driving licence to drive all or any classes or descriptions of vehicles specified in the licence; or (ii) revoke any such licence. Rule 21 of the CMV Rules provides that for the purpose of clause (f) of sub-section (1) of section 19 of the MV

Act, the Commission of the acts made mention in clauses (1) to (25) of Rule 21 by a holder of a driving licence shall constitute nuisance or danger to public.

56. As per sub-section (3) of Section 19 of the MV Act, any person aggrieved by an order made by a licensing authority under sub-section (1) may, within thirty days of the receipt of the order, appeal to the prescribed authority, and such appellate authority shall give notice to the licensing authority and hear either party if so required by that party and may pass such order as it thinks fit and an order passed by any such appellate authority shall be final. The appellate authority notified under sub-section (3) of Section 19 of the MV Act is the Deputy Transport Commissioner.

57. **In Santu Thomas v. Joint Regional Transport Officer, Vaikom [2018 (1) KHC 437]**, this Court held that satisfaction of the licensing authority, after giving the holder of such licence an opportunity of being heard, of the existence of any of the circumstances made mention in clauses (a) to (h) of sub-section (1) of Section 19 of the MV Act is a pre-requisite to disqualify a person from holding a driving licence or to revoke



such licence under sub-section (1). Further, the licensing authority has to record reasons in writing for disqualifying a person for a specified period for holding or obtaining any driving licence to drive all or any classes or descriptions of vehicles specified in the licence, or for revoking any such licence. This Court held further that though an appeal under sub-section (3) of Section 19 of the MV Act is provided under an order of the licensing authority under sub-section (1) of Section 19, an order issued by the licensing authority on a printed/cyclostyled proforma with some insertions here and thereby filling the blanks makes the appellate jurisdiction nugatory and ineffective inasmuch as, such an order passed in a mechanical exercise of power will be of little assistance to the appellate authority while analysing the reasoning essential to such a decision. Paragraphs 8 to 12 of the said judgment read thus;

**"8.** The provisions under sub-section (1) of Section 19 of the Act makes it explicitly clear that, for disqualifying a person for a specified period for holding or obtaining any driving licence to drive all or any classes or descriptions of vehicles specified in the licence, or for revoking any such licence, the satisfaction of the licensing authority, after giving the

holder of such licencee an opportunity of being heard, of the existence of any of the circumstances made mention in clauses (a) to (h) of sub-section (1) is a prerequisite. Further, the licensing authority has to record the reasons in writing for disqualifying a person for a specified period for holding or obtaining any driving licence to drive all or any classes or descriptions of vehicles specified in the licence, or for revoking any such licence.

**9.** In the instant case, Ext.P3 proceedings of the respondent dated 27.10.2017 is on a printed/cyclostyled proforma with some insertions here or there and by filling the blanks, whereby the petitioner is disqualified under sub-section (1) of Section 19 of the Act from holding driving licence bearing No.40/2480/2005 for a period of one year, from 27.10.2017 to 26.10.2018. Ext.P3 proceedings, shows a mechanical exercise of power by the licensing authority and as such, the same is vitiated by total non-application of mind. The mandatory pre-requisites for an order under sub-section (1) of Section 19 of the Act, consistent with the principles of natural justice, are missing in Ext.P3.

**10.** In **Woolcombers of India Ltd. v. Woolcombers Workers Union, [(1974) 3 SCC 318]** the Apex Court, while considering the challenge made against an award under Section 11 of the Industrial Disputes Act, 1947 held that the giving of reasons in support of their conclusions by judicial and

quasi judicial authorities when exercising initial jurisdiction is essential for various reasons. First, it is calculated to prevent unconscious unfairness or arbitrariness in reaching the conclusions. The very search for reasons will put the authority on the alert and minimise the chances of unconscious infiltration of personal bias or unfitness in the conclusion. The authority will adduce reasons which will be regarded as fair and legitimate by a reasonable man and will discard irrelevant or extraneous considerations. Second, it is a well known principle that justice should not only be done but should also appear to be done. Unreasoned conclusions may be just but they may not appear to be just to those who read them. Reasoned conclusions, on the other hand, will have also the appearance of justice. Third, it should be remembered that an appeal generally lies from the decisions of judicial and quasi judicial authorities to the Apex Court by special leave granted under Article 136. A judgment which does not disclose the reasons, will be of little assistance to the Court. The Court will have to wade through the entire record and find for itself whether the decision in appeal is right or wrong. Therefore, the Apex Court emphasised that judicial and quasi judicial authorities should always give the reasons in support of their conclusions.

**11. In Assistant Commissioner, Commercial Tax Department v. Shukla and Brothers, [(2010) 4 SCC 785]** the Apex Court held that, the principle of

natural justice has twin ingredients; firstly, the person who is likely to be adversely affected by the action of the authorities should be given notice to show cause thereof and granted an opportunity of hearing and secondly, the orders so passed by the authorities should give reason for arriving at any conclusion showing proper application of mind. Violation of either of them could, in the given facts and circumstances of the case, vitiate the order itself. Such rule being applicable to the administrative authorities certainly requires that the judgment of the Court should meet with this requirement with higher degree of satisfaction.

**12.** Though an appeal is provided under subsection (3) of Section 19 of the Act before the appellate authority, Ext.P3 proceedings of the licensing authority, which is under challenge in this Writ Petition, virtually makes the appellate jurisdiction nugatory and ineffective, inasmuch as, such an order passed in a mechanical exercise of power will be of little assistance to the appellate authority while analysing the reasoning essential to such a decision. Therefore, no purpose will be served by relegating the petitioner to avail the statutory remedy provided under sub-section (3) of Section 19 of the Act against an order issued by the licensing authority under sub-section (1) of Section 19 of the Act on a printed/cyclostyled performa with some insertions here or there and by filling the blanks.”

58. In the instant case, neither Ext.P5 order nor Ext.P8 order reflects application of mind by the Additional Licensing Authority or the Appellate Authority as to the existence of any of the circumstances made mention in clauses (a) to (h) of sub-section (1) of Section 19 of the MV Act, which is a pre-requisite to disqualify a person from holding a driving licence or to revoke such licence under sub-section (1). Ext.P5 order shows a mechanical exercise of power by the Additional Licensing Authority and as such, the same is vitiated by total non-application of mind. Ext.P5 order virtually made the appellate jurisdiction nugatory and ineffective, inasmuch as, such an order passed in a mechanical exercise of power will be of little assistance to the Appellate Authority while analysing the reasoning essential to such a decision.

59. In the result, this writ petition is disposed of by setting aside Exts.P5 and P8 orders for the aforesaid reason; and by directing the 3<sup>rd</sup> respondent Additional Licensing Authority to pass fresh orders, strictly in accordance with law, with notice to the petitioner and after affording him an opportunity of being heard, as expeditiously as possible, at any

rate, within a period of one month from the date of receipt of a certified copy of this judgment.

60. It is made clear that this Court has not expressed anything on the merits of the contentions raised by the petitioner that, at the time of accident KSRTC Bus bearing registration No.KL-15/A-1491 driven by the petitioner was parked on the side of the National Highway with parking lights, hazardous lights, etc. switched on. It is for the petitioner to raise such contentions before the appropriate authority, at appropriate stage.

61. Registry shall forward a copy of this judgment to the Transport Commissioner, Kerala, who shall take necessary steps to ensure that the satisfaction of the licensing authority of the existence of any of the circumstances made mention in clauses (a) to (h) of sub-section (1) of Section 19 of the MV Act, which is a pre-requisite to disqualify a person from holding a driving licence or to revoke such driving licence, is reflected in the orders passed by the licensing authorities in the State in exercise of their powers under sub-section (1) of Section 19 of the MV Act.

62. The Transport Commissioner shall also take necessary steps to ensure that no motor vehicle, including a Government vehicle, is allowed to be used in any public place, after tampering with the percentage of visual transmission of light of the safety glass of the windscreen, rear window and side windows, either by pasting any material upon the safety glass or by fixing sliding 'cloth curtains', etc. and that, the safety glass of the windscreen and rear window of every motor vehicle is always maintained in such a condition that the visual transmission of light is not less than 70% and that of the safety glass used for side windows is not less than 50%, as per the mandate of sub-rule (2) of Rule 100 of the CMV Rules.

63. The Transport Commissioner shall also take necessary steps to ensure strict compliance of the provisions under Rules 102 to 111 of the CMV Rules and no motor vehicle shall be allowed to be used in any public place without maintaining the signalling devices, direction indicators, reflectors, reflective tapes, lamps, parking lights, etc. as specified thereunder, in good working condition; since the use of any motor vehicle in a public place without complying with

the mandatory requirements of the said rules is likely to endanger the safety of other road users. No motor vehicle shall be permitted to be used in public place putting any object in front of such lighting devices, reflectors, etc. or 'tinting' such lighting devices (i.e., headlights, tail lights, etc.) or reflectors by fixing vinyl tint film sticker. No motor vehicle shall be permitted to be used in any public place, which is fitted with any lights or lighting devices other than those specifically provided under the provisions of the CMV Rules. No motor vehicle shall be permitted to be used in a public place which is fitted with LED bar lights, LED flexible strip lights, after-market (Non-OEM) halogen driving lamps, etc. No transport vehicle, including the vehicles owned/operated by KSRTC and KURTC, shall be permitted to be used in any public place exhibiting advertisements, figures, writings, etc. which are likely to distract the attention of other drivers, cyclists and pedestrians. Exhibition of no such advertisements, figures, writings, etc. shall be permitted on the body of the transport vehicle at places intended for exhibiting the name and address of the operator as per clause (g) of Section 84 of the MV Act; the particulars



enumerated in clauses (a) to (g) of Rule 93 of the KMV Rules; the reflectors and reflective tapes as per Rule 104 of the CMV Rules; and also on the safety glass of the windscreen, rear window and side windows of a transport vehicle which has to be maintained as per the standards prescribed under sub-rule (2) of Rule 100 of the CMV Rules.

The Transport Commissioner shall take necessary steps to implement the provisions under the MV (Driving) Regulation, 2017 strictly, in view of the direction issued by the Apex Court in **S.Rajaseekaran's case [(2018) 13 SCC 532]**.

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

bpr/ami/yd

**APPENDIX**

**PETITIONER'S EXHIBITS:**

- EXHIBIT P1 TRUE COPY OF THE DRIVING LICENSE OF THE PETITIONER.
- EXHIBIT P2 TRUE COPY OF THE FIRST INFORMATION REPORT NO.776/2018 OF CHALAKUDY POLICE STATION.
- EXHIBIT P3 TRUE COPY OF THE FINAL REPORT NO. 619/18/22/12/18 SUBMITTED BY THE CHALAKUDY POLICE BEFORE THE JUDICIAL FIRST CLASS MAGISTRATE'S COURT, CHALAKUDY.
- EXHIBIT P4 TRUE COPY OF THE REQUEST FOR RELEASE OF THE DRIVING LICENSE SENT BY THE PETITIONER TO THE 2ND RESPONDENT DATED 07/10/2018.
- EXHIBIT P5 TRUE COPY OF THE ORDER NO.64/LA1/1728/2018 DATED 12.12.2018 PASSED BY THE 3RD RESPONDENT.
- EXHIBIT P6 TRUE COPY OF THE APPEAL FILED BY THE PETITIONER BEFORE THE 1ST RESPONDENT.
- EXHIBIT P7 TRUE COPY OF NOTICE ISSUED BY THE 1ST RESPONDENT TO THE PETITIONER DATED 11/01/2019.
- EXHIBIT P8 TRUE COPY OF THE ORDER NO.C/4359/2018/CZ DATED 25/01/2019 PASSED BY THE 1ST RESPONDENT.
- EXHIBIT P9 TRUE COPY OF THE PHOTOGRAPHS SHOWING THE BUS AS WELL AS MOTORCYCLE AT THE TIME OF ACCIDENT.

**RESPONDENTS' EXHIBITS:**

- EXHIBIT R4 (A) TRUE COPY OF THE TERMS AND CONDITIONS FOR TENDER FOR THE DISPLAY OF ADVERTISEMENT IN KSRTC BUSES DATED 25.09.2018.