

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE THE CHIEF JUSTICE MR.NAVANITI PRASAD SINGH

&

THE HONOURABLE MR. JUSTICE RAJA VIJAYARAGHAVAN V

TUESDAY, THE 18TH DAY OF JULY 2017/27TH ASHADHA, 1939

WA.No. 1466 of 2017 () IN WP(C).19513/2017

AGAINST THE JUDGMENT IN WP(C) 19513/2017 DATED 13-06-2017

APPELLANT(S)/RESPONDENTS IN W.P. (C) :

1. THE REGIONAL TRANSPORT AUTHORITY
ERNAKULAM - 682 030.
2. THE SECRETARY
REGIONAL TRANSPORT AUTHORITY, ERNAKULAM - 682 030.

BY SPL. GOVERNMENT PLEADER SRI. P. SANTHOSH KUMAR

RESPONDENT(S)/PETITIONER IN W.P. (C) :

SHAJU, S/O. KURIAKOSE,
MADATHIPARAMBIL HOUSE,
EDATHALA P.O., ALUVA.

R BY SRI.P.DEEPAK

THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON 18-07-2017,
ALONG WITH W.A.1470/17, THE COURT ON THE SAME DAY DELIVERED
THE FOLLOWING:

sou.

C.R.
Navaniti Prasad Singh, C.J. & Raja Vijayaraghavan V., J.

W.A. Nos. 1466 & 1470 of 2017

Dated this the 18th day of July, 2017

JUDGMENT

Navaniti Prasad Singh, C.J.

The State has preferred these appeals challenging the judgment and order of the learned single Judge passed in two writ petitions. Since the question involved and the issues raised are identical, with the consent of learned Government Pleader, these two matters are taken up together for final disposal at this stage itself. For convenience, we refer to the facts narrated in W.P.(C) No. 19513 of 2017 against which W.A. No.1466 of 2017 is filed.

2. The writ petitioner who is the sole respondent was granted a stage carriage operator permit in respect of vehicle No.KL-41L-1017. Due to certain reasons, he submitted an application to the Secretary, Regional Transport Authority for permission to replace the vehicle. The permission was virtually rejected on the ground that the vehicle that is being sought to be

brought in for replacement of the permitted vehicle was manufactured 10 years prior to the vehicle for which permit was granted. Being aggrieved by this non-action on part of the respondent, the writ petition was filed. The learned single Judge allowed the writ petition clearly holding that it was road worthiness and viability of the vehicle which has to be considered and not the model of the vehicle, meaning thereby, the year of manufacture of the vehicle.

3. We have heard learned counsel for the appellant-State at length and we see no reason to interfere.

4. However, as the matter has been argued at length with much persuasion, we would like to record our findings in that regard. Right to replace the vehicle has been dealt with in Section 83 of the Motor Vehicles Act, 1988 which is quoted hereunder :

"83. Replacement of vehicles.- The holder of a permit may, with the permission of the authority by which the permit was granted, replace any vehicle covered by the permit by any other vehicle of the **same nature.**"

(emphasis supplied)

5. Corresponding to the above quoted Section we have Rule 174 of the Kerala Motor Vehicle Rules, 1989 and the material portion thereof is sub-rule (2) and (3) which are quoted hereunder :

"174. Permit-Replacement of vehicles - xxx xxx xxx

(2) Upon receipt of the application, the Transport Authority may in his discretion, reject the application-

- (a) if it has previous to the date of receipt of the application given reasonable notice of its intention to reduce the number of Transport Vehicles of that class generally or in respect of the route or area to which the permit applies; or
- (b) if the new vehicle proposed differs in material respects from the old; or
- (c) if the new vehicle proposed is older than the one sought to be replaced; or
- (d) if the holder of the permit has contravened the provisions thereof or has been deprived of possession of the old vehicle under the provisions of any agreement of hire purchase, hypothecation or lease.

(3) If the new vehicle proposed does not differ in material respects from the old, the application for replacement of the vehicle may be allowed. If there is material difference

between the two vehicles, the application shall be treated as if it were for a fresh permit.

[Provided that this is applicable for the first replacement only.]”

6. It is submitted on behalf of the State that Rule 174(2)(c) clearly stipulates that the new vehicle proposed should not be older than the vehicle sought to be replaced and this being so, the Secretary, Regional Transport Authority was within his discretion not to grant permission for replacement. Discretion being there, no one can complain, is the submission.

7. We do not find the word discretion used either in the Section or Rule, but we would accept the submission of the learned Government Pleader that when Section 83 talks of permission, it would be a discretion. Learned Government Pleader further submits that it being a matter of discretion and/or permission bestowed on a statutory authority, it was within his right to allow or to disallow, as if the discretion was an absolute discretion of the authority. We cannot agree, for we must remember that we are living in times when Constitution of India reigns supreme. Article 19(1)(G) and Article 14 of the

Constitution have not been abrogated. There cannot be a concept of absolute discretion.

8. To the contrary, as held in the case of **Julius v. Bishop of Oxford** [(1880) 5 AC 214] as followed by Courts in India repeatedly, including the Apex Court, in **Hirday Narain v. Income-Tax Officer, Bareilly** [AIR 1971 SC 33] where discretionary power is conferred on a statutory authority and if conditions are satisfied for exercise of the discretion, then the discretion becomes a duty. An officer cannot be heard to say that it was my discretion and it is my decision whether to exercise it or not. Thus seen there is no absolute discretion.

9. We may now come to the Act. Section 83 clearly predicates replacement of the vehicle by vehicle of the "same nature". The Legislature have used the expression purposely. They could have used various other expressions. To us, the expression is clear. Same nature would mean; a bus by a bus, a mini bus by a mini bus, an air-conditioned bus by an air-conditioned bus, a truck by a truck and not a bus by a mini bus

and an air-conditioned bus by a non air-conditioned bus or mini bus by a regular bus; that is the only restriction. When in exercise of delegated authority the subordinate authority i.e. the State, makes the rules, the rules have to be consistent with the Act. The Rules cannot override the Act or restrict the ambit of the Act. When the expression is vehicle of same nature, then if Rule, 174(2)(c) restricts that an older vehicle cannot be brought in, it would be restricting the right conferred to a person by the provisions of the Act. Surely such an exercise by a delegatee cannot be permitted. Rules have to be consistent with the Act and not restricting or in derogation thereto. The Rules to that extent cannot thus be held to be consistent with the Act and would have to be held to be inoperative.

10. Learned Government Pleader then submitted that this restriction has been placed for safety of the passengers. We fail to understand how safety of passengers would be jeopardised, if the vehicle is replaced by an older vehicle, subject of course to the vehicle being certified as road worthy. If the vehicle is road

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worthy, then it cannot be said that by replacing a vehicle with an older road worthy vehicle the safety of passengers would in any manner be jeopardised. Nothing has been brought on record to even substantiate such a submission.

Thus, we find no merit in these appeals. They are accordingly dismissed.

**Navaniti Prasad Singh,
Chief Justice**

**Raja Vijayaraghavan V.,
Judge**

ttb/18/07