

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

MONDAY,THE 23RD DAY OF FEBRUARY 2015/4TH PHALGUNA, 1936

WP(C).No. 5120 of 2015 (L)

PETITIONER(S):

MUHAMMED SHA,
S/O.LATHEEF, PAZHAYAVEEDU, ANAPPARA
PATHANAMTHITTA

BY ADV. SRI.O.D.SIVADAS

RESPONDENT(S):

THE SECRETARY, REGIONAL TRANSPORT AUTHORITY
PATHANAMTHITTA - 689 645.

BY GOVERNMENT PLEADER SRI.R. RANJITH

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 23-02-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WP(C).No. 5120 of 2015 (L)

APPENDIX

PETITIONER(S)' EXHIBITS

EXT.P-1: COPY OF THE PERMIT ISSUED IN RESPECT OF THE VEHICLE NO.KL 05 Q/2251

EXT.P-2: COPY OF THE APPLICATION DATED 5.2.2015 WITH CHALLAN.

EXT.P-3: COPY OF THE RELEVANT PORTION OF THE R.C BOOK OF THE INCOMING VEHICLE (KL 05 Q/2251).

EXT.P-4: COPY OF THE RELEVANT PORTION OF THE R.C BOOK OF THE OUTGOING VEHICLE (KL 34/5455).

EXT.P-5: COPY OF THE PROCEEDINGS DATED 7.2.2015

EXT.P-6: COPY OF THE NOTIFICATION NO.G.O(P) NO.85/2013/TRAN DATED 30.8.2013

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P.A. To Judge

K.VINOD CHANDRAN, J

W.P.(C).No. 5120 of 2015

Dated 23rd February, 2015

JUDGMENT

The petitioner sought for replacement in a regular permit which was declined as per Ext.P5. The petitioner has a regular permit, Ext.P1, between Vayyattupuzha - V. Kottayam. He sought for replacement of the vehicle which was endorsed in the regular permit. The regular permit was endorsed with stage carriage having registration No.KL 05 Q/2251 with a seating capacity of 48. The present vehicle sought to be endorsed in the permit is having registration No.KL-34/5455 which has the seating capacity of 38. The Secretary has placed it before the RTA, since the Secretary does not have the power to reject the application for replacement and could only grant it, if it is permissible.

2. Obviously, the Secretary, in Ext.P5, has found that there is no grant possible on the facts. The reason for such finding is that, there is revenue loss. A notification has also been referred to as G.O.(P).No. 85/2013/Tran. Dated 30.08.2013.

3. Rule 174 of the Kerala Motor Vehicles Rules, 1989 (for short 'the Rules') speaks of replacement of vehicles in a permit. The replacement as per sub-rule (2) is within the discretion of the Transport Authority and the Transport Authority could reject the application for any of the reasons stated in clause (a) to (d). Clause (b) refers to the new vehicle proposed differing in material respects from the old. Sub-rule (3) of Rule 174 provides that, if there is no difference in material respects, then, replacement may be allowed and if there is material difference then the application shall

be treated as if it is one for a fresh permit. The 'Note' to the Rule specifies as to what the material difference is.

4. The material difference which could be taken note of by the Transport Authority under Rule 174 is specified as difference of 25% of the Gross Vehicle Weight or seating capacity, as the case may be. The above notification incorporates a proviso, which provides that this is applicable for the first replacement only. The proviso to sub-rule (3) is that, sub-rule (3) would be applicable only for the first replacement. It is beyond comprehension as to what the proviso intends to bring in, because sub-rule (3) specifically speaks of the difference in material respects of a vehicle sought to be replaced and also by a 'Note', specifies the material difference to be any difference in Gross Vehicle Weight or seating

capacity beyond 25%. If that is restricted to the first replacement alone, what follows is that any further replacement can be without looking at the difference in material respects, at all.

5. In any event, the above notification has no application in the case of the petitioner herein. The petitioner had originally been operating a vehicle having 38 seats. Later, an application was filed for replacement with a vehicle having 48 seats. That was allowed since the material difference was not beyond 25%. Now the petitioner seeks replacement again with a vehicle having 38 seats, ie: the seating capacity of the original vehicle, endorsed with the regular permit. Hence, there can be no material difference found on facts. Ext.P5 would stand set aside. The replacement application shall be considered *de hors* the

notification and will be granted within a period of two weeks from today.

Writ petition disposed of.

SD/-

K.VINOD CHANDRAN
Judge

Mrcs

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