

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.V.RAMAKRISHNA PILLAI

MONDAY, THE 10TH DAY OF AUGUST 2015/19TH SRAVANA, 1937

WP(C).No. 21247 of 2015 (E)

PETITIONER :

**JAYA S., AGED 38 YEARS,
NANDANAM, CHIRAKKADAVAM,
KAYAMKULAM, ALAPPUZHA**

BY ADV. SRI.G.PRABHAKARAN

RESPONDENTS :

- 1. THE SECRETARY
REGIONAL TRANSPORT AUTHORITY CUM
REGIONAL TRANSPORT OFFICER,
(RTO) ALAPPUZHA-688 001**
- 2. THE REGIONAL TRANSPORT AUTHORITY,
ALAPPUZHA, REPRESENTED BY ITS SECRETARY-688 001**

BY GOVERNMENT PLEADER SRI.K.A. SANJEETHA

**THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION
ON 10-08-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

bp

WP(C).No. 21247 of 2015 (E)

APPENDIX

PETITIONER(S)' EXHIBITS

- EXT.P1: THE TRUE COPY OF THE RELEVANT APPLICATION DT 16/6/15.**
- EXT.P2: THE TRUE COPY OF THE CHELAN RECEIPT DT. 16/6/15.**
- EXT.P3: THE TRUE COPY OF THE COVERING LETTER SUBMITTED BY THE
 PETITIONER BEFORE THE 1ST RESPONDENT DT. 16/6/15.**
- EXT.P4: THE TRUE COPY OF THE JUDGMENT DT. 20/2/14 IN WPC NO 5085/14**

RESPONDENT(S)' EXHIBITS : NIL.

//TRUE COPY//

P.A. TO JUDGE

bp

A.V. RAMAKRISHNA PILLAI, J.

W.P.(C) No. 21247 of 2015

Dated this the 10th day of August, 2015.

JUDGMENT

The petitioner is seeking a direction to the first respondent to consider Ext.P1 application for replacement.

2. The petitioner is the regular stage carriage permit holder operating on the route between Kayamkulam and Pandalam, now operating with KL 29/A 5544, a 2008 model vehicle with a seating capacity of 38 seats. The regular permit renewed is valid upto 1.4.2016. The petitioner alleges that as the existing vehicle requires replacement, the petitioner obtained a later 2003 model vehicle KL 4/N 6750 with a seating capacity of 48 and sought for replacement. The secretary, RTA when received Ext.P1 replacement application, is keeping the same, without any authority of law and also directly against the rules and the specific decision of this Court. The petitioner further alleges that replacement of vehicle is governed by Section 83 of Motor Vehicles Act, which can be

carried out by the RTA and the rule 133(1) (i) authorizes the Secretary, RTA to allow the replacement but the Secretary, RTA has no jurisdiction to reject the replacement application. This position of law has been clarified by this Court as per 2008 (4) KLT 674 (Viswanathan v. State of Kerala) and others. If there is any material difference between the incoming vehicle and outgoing vehicle at best it need be treated as a fresh permit which the formality of grant of permit alone need be carried out as per rule 174 of the Kerala Motor Vehicles Rules; it is alleged. However, the replacement of vehicle has to be allowed at any rate and the delay in considering the same is without jurisdiction, malafide and illegal. It is well settled that if the incoming vehicle is in a better condition, the replacement is permissible with an inferior model vehicle. In the instant case though the incoming vehicle is an inferior model vehicle entire maintenance works are completed and that vehicle is in excellent condition. If the replacement of vehicle is not allowed, immediately, it would affect the public

as the existing service would come to an immediate stop. It is with this background, the petitioner has come up before this Court.

3. I have heard the learned counsel for the petitioner and the learned Government Pleader in the matter.

As the petitioner is intending to offer a road worthy vehicle having the higher seating capacity though older than the existing vehicle, the writ petition is disposed of directing the first respondent to consider and pass appropriate orders on Ext.P1 application within a period of three weeks from the date of receipt of a copy of this judgment.

Sd/-
A.V. RAMAKRISHNA PILLAI
JUDGE

Scl.