

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.V.RAMAKRISHNA PILLAI

MONDAY, THE 27TH DAY OF JULY 2015/5TH SRAVANA, 1937

WP(C).No. 21386 of 2015 (W)

NAME AND ADDRESS OF THE PETITIONER(S) :

**ROBIN ROBERT,
ROBIN BHAVAN, ASHTAMUDI P.O.,
KOLLAM.**

BY ADV. SRI.O.D.SIVADAS

NAME AND ADDRESS OF THE RESPONDENT(S) :

**THE SECRETARY,
REGIONAL TRANSPORT AUTHORITY,
KOLLAM-691 001.**

BY GOVERNMENT PLEADER SMT.K.A.SANJEETHA

**THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION
ON 27-07-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

Msd.

WP(C).No. 21386 of 2015 (W)

APPENDIX

PETITIONER(S)' EXHIBITS :

**EXHIBIT P1: TRUE COPY OF THE PERMIT IN RESPECT OF STAGE CARRIAGE
NO.KL 05 W/7767.**

**EXHIBIT P2: TRUE COPY OF THE APPLICATION DATED 30-06-2015 SUBMITTED
BY THE PETITIONER.**

**EXHIBIT P3: TRUE COPY OF THE JUDGMENT IN W.P(C).NO.10502 OF 2014
DATED 08-04-2014 PASSED BY THIS HON'BLE COURT.**

RESPONDENT(S)' EXHIBITS :

NIL

//TRUE COPY//

P.A.TO JUDGE.

Msd.

A.V. RAMAKRISHNA PILLAI, J.

W.P.(C) No.21386 of 2015

Dated this the 27th day of July, 2015.

JUDGMENT

The petitioner is seeking a direction to consider Ext.P2 application for replacement of the vehicle.

2. The petitioner is an existing stage carriage operator on the route between Ashtamudi and Nedumonkavu. The permit is issued in respect of stage carriage No.KL-05 W/7767 and the permit is valid till 6.6.2017. The petitioner alleges that on account of bad condition of the vehicle, the petitioner applied for clearance certificate by retaining the vehicle under suspended animation and accordingly clearance certificate was granted. In order to resume service, the petitioner submitted an application for replacement on 30.6.2015. Admittedly, the incoming vehicle is aged more than the outgoing vehicle and on account of the above, the respondent has not granted replacement. It is submitted that make and model of the vehicle is not a sufficient reason to deny replacement. What is

to be looked into is the viability of the vehicle. As per rule 174 (2), it is the discretion of the authority to reject the application for replacement. It is pointed out that if the incoming vehicle, though aged, is fit in all respects than the original vehicle, then the authority has to exercise its discretion in the matter and grant replacement. However, the respondent is reluctant to consider the application on the ground that the incoming vehicle is not a later model vehicle. 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 Senior Government Pleader in the matter.

4. It is pointed out by the learned counsel for the petitioner that the incoming vehicle is fit to operate on the route. Similar matters were considered by this court and has held that the model of the vehicle shall not be the sole criteria to reject the application for replacement. The material question to be considered is whether the vehicle is roadworthy or not.

Therefore, the writ petition is disposed of directing the

respondent to consider and pass positive orders on Ext.P2, permitting replacement within a period of three weeks from the date of receipt of a copy of this judgment.

Sd/-
A.V. RAMAKRISHNA PILLAI
JUDGE

Scl.