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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
RESERVED ON: **07.12.2017**
DELIVERED ON: **20.12.2017**

CORAM:

THE HONOURABLE MR. JUSTICE M. VENUGOPAL

AND

THE HONOURABLE MRS. JUSTICE R. THARANI

W.P. (MD) No. 6288 of 2017

and

W.M.P (MD) No. 16210 of 2017

Palraj

: Petitioner

.vs.

1. The Regional Transport Officer,
O/o. Regional Transport (Central),
K.K.Nagar,
Madurai - 20.
2. The Regional Transport Officer,
O/o. Regional Transport (South),
Palanganatham,
Madurai - 625 003.
3. The Regional Transport Officer,
O/o. Regional Transport (North),
K.Pudur,
Madurai - 625 007.
4. The Principal Secretary to Government,
Transport Department,
Secretariat,
Fort St. George,
Chennai -9.
5. R. Pandian
6. Anvar
7. M. Prabakaran
8. R. Muthu
9. P. Kasimayan
10. N. Jamaldeen
11. G. Guru
12. D. Suresh Kumar
13. V. Kannan
14. P. Mani
15. A. Sivaranjani
16. P. Ravi
17. P. Saranya
18. R. Mariasamy



19.G.Ganesan
20.Kattuva Ravuthar
21.M.Mohamed Salim
22.P.Palpandi
23.M.Alagarsamy
24.A.Ravichandran
25.S.Karthick Kumar
26.K.Thangamani
27.V.Jothi Krishnan
28.S.Saravanan
29.P.Thangapandi
30.S.Kasimayan
31.P.Arokiya Mary
32.A.Jeyaprakash
33.V.Priyakaruppan
34.R.Rajesh
35.P.Rajesh Muthukumar
36.M.Vasuki
37.T.Senthil Murugan

(R-4 is impleaded vide Court order dated 19.07.2017 in WP(MD)No.6288 of 2017)

(R-5 to R-37 are impleaded vide Court order dated 11.09.2017 in W.M.P(MD)Nos.12406, 12932 to 12934 of 2017)

: Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying this Court for issuance of a Writ of Mandamus forbearing the Respondents from granting permits to the 'Diesel Share Autos' instead of granting permits to the 'LPG Autos'.

For Petitioner : Mr.Thiagarajan,
Learned Senior Counsel for
M/s.Right Law Associates

For R-1 to R-4 : Mr.M.Govindan,
Special Government Pleader

For R-5 to R-37 : M/s.J.Anandhavalli

O R D E R

[Order of the Court was made by **M.VENUGOPAL, J.**]

The Petitioner has preferred the instant Writ Petition praying for passing of an order by this Court in forbearing the Respondents from granting permits to 'Diesel Share Autos' instead of granting permits to 'LPG Autos'.



2. Heard both sides.

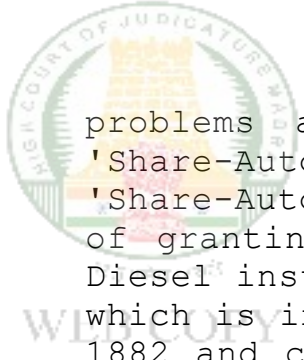
INTRODUCTION:

3. According to the Petitioner, there are about 14,000 share Autos, which are running on 'Diesel' in Madurai City and within the District Limits. The Drivers of the Share-Autos are stopping the Autos for picking up and dropping the passengers at any place. They occupy most of the carriage space at bus-stops and force the buses to halt in the middle of the roads. They are driving the Autos rashly and stopped the Autos at their will without giving signals. As a matter of fact, the Transport Authorities permitted that they can carry three passengers only, apart from the Driver in 'Diesel Autos', but the Drivers are carrying nine to ten passengers for a trip and the overcrowded Autos are one of the main reasons for traffic problems in the city.

4. The version of the Petitioner is that large number of Share-Autos, which are plying on Diesel are polluting the environment. Indeed, the Diesel emissions discharged from the 'Share-Autos' contribute to the development of Cancer, Cardiovascular and respiratory health effects and also polluting the Air, Water, Soil etc. The Central Government is granting permit only to the regular Autos, which are plying on Liquid Petroleum Gas(LPG) and ensuring the protection of Environment by preventing the 'Diesel Autos' like Delhi etc. The Respondents are granting permit and licence to the 'Share-Autos' ie., those who are applied for permit in respect of 'L.P.G Autos' against the terms and conditions of the Transport. Therefore, the Petitioner filed an Application under the Right to Information Act, 2005 before the First Respondent/Regional Transport Officer, Regional Transport(Central), K.K.Nagar, Madurai as regards the replacement of permit of the Share-Auto to the permit holders, the LPG Autos. However, there is no response.

5. The Petitioner proceeds to aver in this Writ Petition that he came to know of the letter dated 09.09.2016 sent by the First Respondent/Regional Transport Officer, Regional Transport (Central), K.K.Nagar, Madurai, to one Jayakumar intimating that from 14.08.2015 onwards, the Transport Department stopped granting permits to the Diesel Autos and also no permit was granted to the 'Diesel Autos' instead of granting permit to the 'LPG Autos'.

6. When the Petitioner had approached the Respondents and made an enquiry that if any Rule framed in granting permits to the 'Share-Autos' instead of granting permits of LPG Autos' on the basis of replacement, he was informed that he had no right to ask the Respondents to grant permits to the 'Share-Autos' as they are granting permit obeying the order of Higher Officials. He made a Representation dated 29.03.2017 with the good intention to safeguard the environment and to avoid traffic



problems and also requested them to prevent large number of 'Share-Autos' in Madurai City by stopping the permit to new 'Share-Autos'. Even thereafter, they are continuing the process of granting permits to the 'Share-Autos', which are running on Diesel instead of granting permits and licence to the 'LPG Autos', which is in violation of the provisions of the Motor Vehicles Act, 1988 and causing damages to the environmental protection. Hence, the Petitioner has filed the present Writ Petition praying for passing of an order by this Court restraining Respondents from granting permits to the Diesel Share Autos instead of granting permits to LPG Autos.

PETITIONER'S CONTENTIONS:

7. The Learned Senior Counsel for the Petitioner submits that the Respondents had failed to see that granting permits to the Diesel Autos instead of giving permits to the LPG Autos, is in violation of the Provisions enshrined under Section 83 of the Motor Vehicles Act, 1988.

8. The Learned Senior Counsel for the Petitioner projects an argument that the Respondents ought to have enforced the Traffic Rules and Regulations strictly to the Share-Autos, which are running in the Madurai City and also that, the Respondents had failed to see that large number of Share Autos are running on the Diesel in violation of the Provisions of the Environment (Protection) Act, 1986.

9. The Learned Senior Counsel for the Petitioner contends that the Petitioner has filed the present Writ Petition in the nature of 'Public Interest Litigation' on his behalf and on behalf of the residents of Madurai City. Furthermore, the plea of the Petitioner is that since the Respondents are violating the Provisions of Articles 21, 49 A, 51-A(g) of the Constitution of India and the Provisions of the Motor Vehicles Act, 1988, the present Writ Petition filed by the Petitioner is *per se* maintainable.

10. The Learned Senior Counsel for the Petitioner emphatically projects an argument that 'the Right to clean and healthy environment' is within the purview of Article 21 of the Constitution of India and to lend support to his contention, he places reliance on the decision of the Honourable Supreme Court of India in ***Municipal Corporation of Greater Mumbai and others v. Kohinoor CTNL Infrastructure Company and another*** reported in ***(2014) 4 Supreme Court Cases, at page 538***. Most specifically, the Learned Senior Counsel for the Petitioner in the aforesaid decision adverts to Paragraph No.30, at Page Nos.555 and 556 of the judgment, wherein it is observed as under:



"30. Besides, as pointed out by Mr.Divan, the requirement of having trees and open land around them is necessary from an environmental point of view, since there is already excessive concretisation, and a very serious reduction in open spaces at the ground level. It must be noted that the right to a clean and healthy environment is within the ambit of Article 21, as has been noted in *Amarnath Shrine, In re* in the following words: (SCC p.258, para 12)

"12. The scheme under the Indian Constitution unambiguously enshrines in itself the right of a citizen to life under Article 21 of the Constitution. The right to life is a right to live with dignity, safely and in a clean environment."

The right to a clean and pollution free environment, is also a right under our common law jurisprudence, as has been held by this Court in *Vellore Citizens' Welfare Forum v. Union of India* where this Court held: (SCC p.660, para 16)

"16. The constitutional and statutory provisions protect a person's right to fresh air, clean water and pollution-free environment, but the source of the right is the inalienable common law right of clean environment."

11. The Learned Senior Counsel for the Petitioner cites the decision of the Honourable Supreme Court of India in *Chaitanya Kumar v. the State of Karnataka and others* reported in *AIR 1986 Supreme Court*, at page 825, wherein it is observed as under:

"It is true that in a public interest litigation, those professing to be public spirited citizens cannot be encouraged to indulge in wild and reckless allegations besmirching the character of others but, at the same time, the Court cannot close its eyes and persuade itself to uphold publicly mischievous executive actions which have been so exposed. When arbitrariness and perversion are writ large and brought out clearly, the Court cannot shrink its duty and refuse its writ. Advancement of the public interest and avoidance of the public mischief are the paramount considerations. As always, the Court is concerned with the balancing of interests."



Where in a public interest litigation for setting aside grant of contract to bottle arrack, it was established that the executive action was arbitrary the High Court did not have option but to set aside the contract in spite of the fact that the allegation of bias against the Chief Minister was found to be false."

12. The Learned Senior Counsel for the Petitioner seeks in aid of the decision of the Honourable Supreme Court of India in **M.C.Mehta v. Union of India and others reported in (1991) 2 Supreme Court Cases, at 353**, at Special Page Nos.355 and 356, wherein at Paragraph No.7 it is observed as under:

"7.Our Constitution by the Forty-Second Amendment introduced Article 48-A as also Article 51-A into the Constitution. These Articles provide:

"48-A. Protection and improvement of environment and safeguarding of forests and wild life.- The State shall endeavour to protect and improve the environment and to safeguard the forests and wild life of the country."

"51-A. Fundamental duties.- It shall be the duty of every citizen of India:-

(g) to protect and improve the natural environment including forests, rivers and wild life, and to have compassion for living creatures."

The incorporation of protection of environment as an obligation of the State in the Directive Principles and the mandate in Article 51-A to the citizens of India as part of fundamental duty are indications of the Constitutional recognition of importance of environment on life-both the flora and the fauna."

13. Apart from that, the Learned Senior Counsel for the Petitioner in the above said decision, at Page No.358 refers to Paragraph No.15, wherein it is observed as follows:

"15.In course of the hearing of this matter we had called upon counsel to look at the problem not as an adversarial litigation but to come forward with useful deliberations so that something concrete could finally emerge for easing the situation. We were shown some literature and even gadgets which might help reduction of pollution. The question of eliminating use of motor spirit and replacement of battery operated two wheelers was also mooted. The Association of Indian Automobile



Manufacturers had made an application for intervention and was present in court."

14. The Learned Senior Counsel for the Petitioner refers to a news item/report of Times of India, Madurai edition, dated 06.12.2017 under the Caption '**Unicef: Pollution can damage child's brain permanently**', wherein it is *inter alia* mentioned as under:

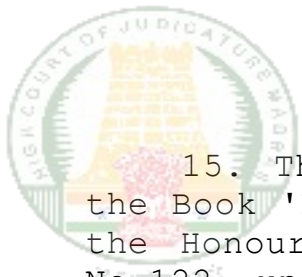
"The Unicef report also said that South Asia has the largest proportion of babies living in areas where air pollution is at least six times higher than international limits (10 micro-grams per cubic metre).

The UN body said globally 17 million babies under the age of one live in such highly polluted areas, of which an estimated 12.2 million live in South Asia, which is the highest. East Asia and the Pacific have 4.3 million babies breathing toxic air. The Unicef report, titled "Danger in the air", explains that brain damage can happen through several mechanisms. First, it stated, particulate matters can cause neuro-inflammation by damaging the blood-brain barrier- a thin, delicate membrane that protects the brain from toxic substances.

Second, exposure to specific as magnetite, can lead to oxidative stress which is often the cause of neurodegenerative diseases. Quoting multiple studies, the UN body said polycyclic aromatic hydrocarbons commonly found in areas of high automobile traffic contribute to a loss of or damage to white matter in the brain. White matter contains nerve fibres that are critical in helping neurons communicate across different parts of the brain. It is important for continued learning and development.

"Not only do pollutants harm babies' developing lungs, they can permanently damage their developing brains and, thus, their futures," Unicef executive director Anthony Lake said.

"A young child's brain is especially vulnerable because it can be damaged by a smaller dose of toxic chemicals compared to an adult's brain. Children are also highly vulnerable to air pollution because they breathe more rapidly and also because their physical defences and immunities are not fully developed'."



15. The Learned Senior Counsel for the Petitioner refers to the Book 'Environmental and Pollution Laws in India' (Volume I) by the Honourable Justice T.S.Doabia, at page No.777, at Paragraph No.122, under the head 'Constitution of pollutants', wherein it is mentioned as under:

"122. Constitution of Pollutants

Vehicle pollution contributes a significant amount of air pollution. Motor Vehicles cause pollution because the internal combustion engines which power them can never be 100% efficient. As a result, some of the products of incomplete combustion are emitted in the exhaust. Engines are powered by petrol-gasoline, diesel engines are used in virtually all lorries and buses and diesel operated small cars are also increasing in number. Pollutants from petrol-driven road vehicles pose a known risk to human health include carbon monoxide, hydrocarbons and nitrogen oxide."

16. The Learned Senior Counsel for the Petitioner draws the attention of this Court in the aforesaid book at Page No.777, at Paragraph No.125 and at Page No.778 at Paragraph Nos.126, 127, 128, wherein it is observed as follows:

"125. Hydrocarbons:

Hydrocarbons come from unburnt or partially burnt fuel. They have a number of direct effects on health, and are also one of the constituents of ozone, which is itself damaging to human health, causing coughs, impaired lung function, irritation of the eyes and breathing passages, and a tendency towards headaches.

126. Nitrogen oxide

Nitrogen oxide include both nitric oxide and nitrogen dioxide. The latter causes a range of health risks, including increased susceptibility to viral infections, lung irritation, and increasing the chances of susceptible people developing bronchitis and pneumonia. Asthmatics may be especially sensitive to nitrogen dioxide.

The air is polluted by the motor vehicles and the effect of such pollution on health are as follows:

**127. Motor Vehicle air pollution, effect of health**

Vehicle Exhaust Pollutant	Environmental Impact	Health Effects
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- | | | |
|--------------------|---|---|
| a. Carbon Monoxide | Helps increasing the building of methane important green-house gas. | Lethal in large doses affects central nervous system, aggravates heart disease, impairs oxygen carrying capacity of blood. |
| b. Nitrogen Oxide | Acid rains contributes to build up of ground level oxygen, green-house gas 2000 times as effective as carbon dioxide in retaining earth's heat. | Irritate or impair respiration, lessen resistance to infection. Ozone cause eye, nose, throat irritation cause damage to vegetable. |
| c. Hydro-carbons | Contributes to build up of ground level of Ozone. | Drowsiness, coughing eye irritation. |

128. Diesels and its mutagenic effects

Diesels are major sources of black smoke and a range of pollutants and probably more dangerous to human health than petrol (gasoline) engines. In Australia taxis are run By petrol, not by diesel but by Light Petroleum Gas (LPG). This is being introduced India also. European legislation is lagging far behind that in the United States. But then far fewer diesel operated vehicles are there in America. Practically, all the lorries and buses in Europe run on diesel engines. Diesel engines produce a different of pollutants as compared to petrol-driven cars. They have a number of clear advance Diesel engines do not emit lead, and generally have low pollutant emission if the properly maintained and tuned..."

17. Added further, the Learned Senior Counsel for the Petitioner in the aforesaid book at Page No.779 at Paragraph No.130 under the caption '**Water vapours and others constituents of air**', wherein it is among other things observed as under:

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"130. Water vapours and other constituents of air



"...When the air composition is disturbed and impurities like sulphur, ammonia, carbon monoxide, oxides of nitrogen, hydrogen sulphide and dust particles are present in the air, the purity of the air is destroyed and becomes polluted. This apart, there are some matters like dust of cement, sands, coal, asbestos, sulfuric acid, radio-active fly ashes also act as air pollutant."

19. The Learned Senior Counsel for the Petitioner points out that in the aforesaid book, at Paragraph No.137, it is mentioned as follows:

"137. The only way of controlling air pollution is to see that the norms laid down in rules namely the Central Motor Vehicles Rule 1989 are strictly adhered to. In particular rules 115 and 116 have to be complied with. It is accordingly felt that the State administration and Municipal authorities should see to it;

(a) that vehicles emitting smoke beyond the permissible levels are not allowed on the roads and at least not in those areas where there is congestion; and

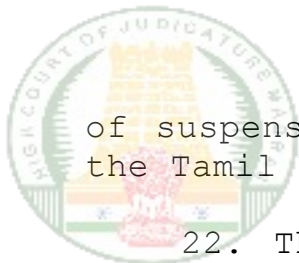
(b) wherever possible the State administration and Municipal authorities should insist upon the owners of the automobiles to have these catalytic converters.

(c) vehicles be not permitted to remain stationary in congested areas."

SUBMISSIONS OF RESPONDENT NOS.1 TO 4

20. Conversely, it is the submission of the Learned Special Government Pleader appearing for R-1 to R-4 that Diesel Auto-Rickshaw with seating capacity of 3 + 1 is entirely different from Diesel Share-Autos with seating capacity of 5 + 1, as per the definition of Rule 2(d) of the Tamil Nadu Motor Vehicle Rules, 1989. Further, it is represented on behalf of Respondent Nos.1 to 4 that if an owner of an ordinary Auto-Rickshaw plied with fuel of Petrol/Diesel/LPG misused the vehicle to carry more than three passengers, then, it will attract violation of permit conditions attached to the said permit and liable for action against the permit under Section 86(1) of the Motor Vehicle Act, 1988, which entails punishments either by way of suspension of permit or cancellation of permit.

21. At this stage, the Learned Special Government Pleader for R-1 to R-4 proceeds to state that the permit holder is also having liberty to avail the option of paying the compounding fee in lieu



of suspension of permit to a sum as tabulated under Rule 206 of the Tamil Nadu Motor Vehicle Rules, 1989.

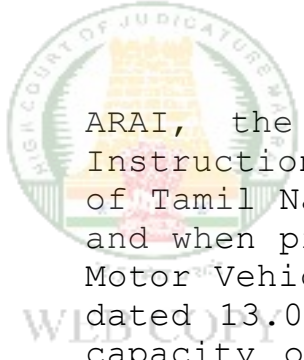
22. The Learned Special Government Pleader brings it to the notice of this Court that in the year 2010, based on the direction of the Transport Commissioner, Chennai, the Regional Transport Authority-cum-Collector of Madurai, the new Auto-Rickshaw permits were granted by the Respondents with effect from 14.05.2010 to ply in Madurai city as per Section 74 of the Motor Vehicle Act, 1988. Later, issuance of Auto-Rickshaw permits were stopped and consequent to the receipt of instructions from the Election Commission, Chennai, during 2011. After lifting of ban, granting of Auto-Rickshaw permits were continued from 29.04.2011 onwards.

23. Moreover, according to the Learned Special Government Pleader for R-1 to R-4, the Collector-cum-Regional Transport Authority, Madurai District opined that nearly 16199 Auto-Rickshaws, which are plying (including Diesel and Petrol operated vehicles) are sufficient and therefore, the Regional Transport Authority-cum-Collector, Madurai District, directed to stop issuance of new permits from 14.08.2015 as per communication dated 14.08.2015.

24. The Learned Special Government Pleader for R-1 to R-4 comes out with a plea that 'APE Autos' were issued with permits to be operated as a 'Contract Carriage Auto Rickshaw' only, as defined under Rule 2(d) of the Tamil Nadu Motor Vehicle Rules, 1989 with seating capacity of 3 + 1 in all and not as Share-Auto or as a Stage Carriage by picking up and settling down at any place as Stage Carriage.

25. The Learned Special Government Pleader for R-1 to R-4 points out that Rule 126 of the Central Motor Vehicle Rules 1989 enjoins that every manufacturer of a motor vehicle shall submit the proto type of the vehicle to be manufactured by them for test by the 'Vehicle Research and Development Establishment' of the Ministry of Defence of the Government of India or 'Automotive Research Association of India' Pune or the 'Central Farm Machinery Testing and Training Institute', Budri, Madhya Pradesh or "the Indian Institution of Petroleum", Dehradun or 'Central Institute of Road Transport', Pune or the 'International Centre for Automotive Technology', Manesar and such other agency as to the compliance of the Act and the Rules.

26. The Learned Special Government Pleader for R-1 to R-4 submits that M/s. Piaggio Vehicle Private Ltd., are manufacturing 'Ape Auto', for which 'Automotive Research Association of India, Pune (ARAI) (incorporated as an Industrial Organization affiliated to the Ministry of Industry, Government of India) had approved the design specification of 'Ape Auto' vide their Certificate No. AAEN0484 dated 07.12.2009 and based on the said certificate of



ARAI, the Transport Commissioner, Chennai had issued Circular Instructions to all the Regional Transport Officer in the State of Tamil Nadu to register the 'Ape Auto' (Diesel) type vehicles as and when produced, subject to the provisions of Chapter VII of the Motor Vehicle Act, 1988 and the Rule made thereunder as per letter dated 13.07.2010 (Registration Approval No.320/2010) with seating capacity of 3 + 1 in all. As such, the Petitioner's contention that Respondent Nos.1 to 4 had allowed 'APE Auto' to be operated with more number of passengers as against the permitted capacity of the vehicle, is an incorrect one.

27. The Learned Special Government Pleader refers to the order passed by this Court on 22.04.2015 in W.P(MD)No.4253 of 2015 (Alagarsamy v. Staete of Tamil Nadu, Rep. by its Principal Secretary (H), Transport Department III, Chennai and others), wherein this Court had issued four directions and the same for fuller and better appreciation is extracted as under:

"(i).G.O.No.772 Home (Transport III) Department dated 16.10.2014 issued in respect of three wheeler auto rickshaw, permitted to carry three passengers alone cannot be made applicable to three wheeler five seater auto rickshaw since both are different categories.

(ii) In respect of three wheeler auto rickshaws with the brand names Viz Ape, Ape city, Mahindra Alpa, Bajaj Altima by same or different manufacturers through permitted to carry only four persons in all, including the driver (3 + 1) should not be permitted to carry more than the permitted passengers.

(iii) Three wheeler auto rickshaws should not be permitted to have any additional fixtures making it convenient to carry more than the permitted passengers the additional fixtures made if any should be directed to be removed.

(iv) The District Collector cum Regional Transport Authority Madurai District 4th respondent and the Commissioner of Police, Madurai city and Madurai rural are directed to issue suitable instructions to intensify action, by the respective department and to avoid any complaint from the public."

28. The Learned Special Government Pleader for R-1 to R-4 projects an argument that this Court had directed to take appropriate and stringent action against the permit holders for plying the vehicle with excess passengers as against the permitted

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seating capacity of 3 in all, excluding the Driver and also to take action for an offence plying the Auto-Rickshaws with additional fixtures, by making it convenient to carry more passengers as against the permit and if any additional fixtures are found in the vehicle, they should be removed.

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29. The Learned Special Government Pleader for R-1 to R-4 submits that besides Diesel Autos, so many Buses, Lorries, Contract Carriage Heavy Diesel Operated Vehicles are plying all over the State of Tamil Nadu and in reality, Central Motor Vehicle Rule 115(6) provides as under:

"115(6) For Diesel Vehicles with Original Equipment Fitment - (I) in case of LPG fitments by vehicles manufacturers on new diesel vehicles, each model manufactured by vehicle manufacturers shall be type approved as per the prevailing mass emission norms as applicable for the category of new vehicles in respect of the place of it use;

(ii) O.E. Fitment LPG engine approved for specific appropriate engine capacity can be installed on the vehicle base model and its variants complying with the other requirements under these rules as applicable;

(iii) Tests for particulate matter and emission of visible pollutants (smoke) under these rules shall not be applicable; and

(iv) Prevailing COP procedures shall also be applicable;

(v) In case of limits for hydrocarbons, the mass emission formula as specified in sub-rule(1) shall be applicable."

30. The Learned Special Government Pleader adverts to Rule 115 (7) of the Central Motor Vehicle Rules, 1989, which stipulates that after expiry of a period of one year from the date on which the motor vehicle was first registered, every such vehicle shall carry a valid 'Pollution under Control' Certificate issued by an Agency authorised for this purpose by the State Government and that, the validity of the Certificate shall always be carried in the vehicle and produced on demand by the Officers referred to in sub-Rule (1) of Rule 116 of Central Motor Vehicle Rules, 1989.

31. The Learned Special Government Pleader points out that Rule 115(8) of the Central Motor Vehicle Rules, 1989, says that the Certificates issued under Sub-Rule 7 of Rule 115 shall remain effective and valid throughout India. In fact, Rule 115(9) of the Central Motor Vehicle Rules, 1989 speaks of 'Mass Emission Standards' for diesel vehicles also. Therefore, it is the



contention of Respondent Nos.1 to 4 that the Authorities competent to grant approval for registration of the vehicles, shall give approval for registration only, if the manufacturer satisfies the 'Mass Emission Standards' for Petrol/LPG/Diesel driven vehicles in terms of Rule 115 of Central Motor Vehicle Rules, 1989.

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32. The Learned Special Government Pleader draws the attention of this Court to the issuance of G.O.Ms.No.849 Home Transport III Department, dated 13.12.2011 by the Government of Tamil Nadu, whereby for imposing spot fine by the Checking Officials viz., Traffic Police not below the rank of Sub-Inspector of Police (Traffic) in the commissionarates including Traffic Police not below the rank of Inspector of Police in other parts of the State and also the Motor Vehicle Inspectors(Non-Technical) in the check-post of Transport Department and the Motor Vehicle Inspectors Grade I and Grade II of the Transport Department in their respective jurisdiction, had been assigned.

33. The Learned Special Government Pleader contends that by virtue of G.O.Ms.No.849 dated 13.12.2011, Checking Officials are empowered to collect Rs.1000/- as spot fine or Rs.2000/- in respect of second and subsequent offences for driving the vehicle or allowing to drive a vehicle for violation of 'Air Pollution Standards' as per Section 190(2) of the Motor Vehicle Act, 1988.

34. It is projected on the side of Respondent Nos.1 to 4 that the the owner of an Auto-Rickshaw is bound to employ an qualified Driver, who is having a valid driving licence to drive the Auto-Rickshaws and if the vehicle is found driven by an unqualified Driver or causes to allow to be driven by an unauthorised person, then, the owner and Driver are liable for punishments for violation under Section 3 of the Motor Vehicle Act, 1988, which is punishable under Sections 180, 181 and 181(1) of the Motor Vehicles Act, 1988.

35. The Learned Special Government Pleader for R-1 to R-4 contends that the First Respondent had furnished a reply dated 09.09.2016 in and by which, grant of new permits to new Auto-Rickshaws were stopped since from 14.08.2015 as per the direction of the Collector-cum-Regional Transport Authority, Madurai and further, the Regional Transport Authority, Madurai had admitted to replace the existing damaged vehicles due to accidents, major repairs etc., by new Auto-Rickshaws in the place of existing ones.

36. The Learned Special Government Pleader points out that the Collector-cum-Regional Transport Authority, Madurai, had now taken a fresh decision to allow the replacement of existing vehicles only by new Auto-Rickshaws including Petrol/LPG/Diesel driven vehicles as in the event of existing vehicles becomes old one and ~~as per Section 83 of the Motor Vehicle Act, 1988 read with Rule 201 of the Tamil Nadu Motor Vehicle Rules, 1989.~~



37. It is the contention of Respondent Nos.1 to 4 that Section 83 of the Tamil Nadu Motor Vehicle Act, 1988, speaks about replacement of vehicles and Rule 201 of the Tamil Nadu Motor Vehicle Rules, 1989, also refers to replacement of vehicles and in fact, as per the provisions of the Motor Vehicle Act and Rules, Auto-Rickshaws operated on fuels either by Petrol, Diesel or L.P.G would not affect the 'nature' or 'type' of the vehicle.

38. The Learned Special Government Pleader informs this Court that awareness is created among the travelling public to avoid dangerous travelling and in fact, the Respondents 1 to 4 are continuing the checking of all classes of Motor Vehicles including 'Ape Type Autos', who indulge in illegal plying.

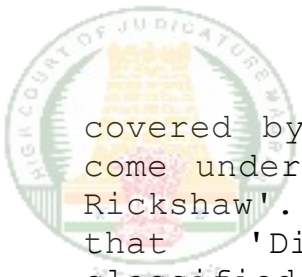
39. The Learned Special Government Pleader for R-1 to R-4 strenuously contends that substitution of one vehicle by another, generally arises under the following situations/circumstances and the same are mentioned as under:

"(1) In the case of non-transport category of vehicle such as motor cycles and motor cars if the owner wants to replace his vehicle, he may sell the old vehicle or retain it with himself and he may buy any other vehicle as per his choice. No prior permission of the Registering Authority is required for that purpose.

(2) In the case of transport category of vehicles for which permit is required, if the permit holder wants to replace the existing vehicle he may either surrender the permit before the concerned Transport Authority and obtain a fresh permit for the new vehicle to be acquired. This procedure is generally followed by the permit holders where there is no restrictions in the grant of fresh permit and where permits are issued liberally.

(3) In cases where there is restriction in the grant of fresh permit the other option for the permit holders of transport vehicles is to retain the permit and replace the existing vehicle by another vehicle. In that case, prior permission of the transport authority is required under Section 83 of the Motor Vehicles Act, 1988 for replacing the existing vehicle which is covered by a particular permit by another vehicle."

40. The Learned Special Government Pleader for R-1 to R-4 submits that the Words 'Same Nature' employed in Section 83 of the Motor Vehicles Act, 1988, implies that the existing vehicle



covered by a particular permit and the replacing vehicle should come under the same 'category' or 'type' of vehicle namely 'Auto Rickshaw'. That apart, it is the stand of Respondent Nos.1 to 4 that 'Diesel operated Auto-Rickshaw' cannot be differently classified as a vehicle of 'Different Nature' for the purpose of replacement and therefore, it is contented that replacement of 'Petrol/LPG operated Auto-Rickshaw' by a 'Diesel operated Auto-Rickshaw', is legally permissible under Section 83 of the Motor Vehicles Act, 1988.

41. The Learned Special Government Pleader for R-1 to R-4 refers to the **order dated 30.07.2008 in W.P.No.26794 (w) 2007 with CAN No.10122 of 2007 (Monorama Roy v. State of West Bengal and Others)**, wherein it is observed that the expression 'Same Nature' implies the 'Same Category' or 'Type of Vehicle' and the determining factor for testing as to whether two vehicles are of same nature or not, cannot be the seating capacity of the respective vehicles or other aspects.

42. The Learned Special Government Pleader for R-1 to R-4 refers to the portion of the order dated 30.07.2008 in the aforesaid W.P.No.26794(W) 2007 with CAN No.10122 of 2007, wherein it is observed as under:

"....On merit, submission of the petitioner is that under the provisions of Section 83 of the Motor Vehicles Act, the holder of a permit has been given the liberty to replace a vehicle covered by the permit by any other vehicle of the same nature. The petitioner's case is that both the vehicles of the petitioner fit the description of 'omnibus' as defined in Section 2(29) of the Motor Vehicles Act, 1988, and hence they are vehicles of the same nature. The expression 'omnibus' has been defined in the said Act as 'omnibus means any motor vehicle constructed or adapted to carry more than six persons excluding the driver.

In support of his submissions on this point, he has relied on a decision of the Hon'ble High Court of Karnataka in the case of Yashodara Kadamba vs. K.S.T.A.T, reported in 1988 Kant LJ-I-501.

On this count, it was argued that the expression 'same nature implies the same category or type of vehicle and the determining factor for testing as to whether two vehicles are of same nature or not cannot be the seating capacity or the respective vehicles."

43. The Learned Special Government Pleader brings it to the notice of this Court to an **order dated 13.03.2015 in W.P(C)No.5728**



of 2015 (M) in *Rapheal Mathew v. the Secretary, Regional Transport Authority Thrissur*, wherein it is observed as follows:

"... In the Kerala Motor Vehicles Rules, 1989 sub-Rule (3) of Rule 174 defines the 'material difference' as being one which is more than 25% of the gross vehicle weight or seating capacity and it does not deal with the fuel."

44. The Learned Special Government Pleader for R-1 to R-4 points out that the State of Karnataka in regard to the replacement of one vehicle covered by permit to another, have framed Rule 79 of the Karnataka Motor Vehicle Rules, 1989 and the same was taken note of by a Division Bench of the High Court of Karnataka in the judgment dated 30.05.2013 in W.A.No.2594 of 2009 (MV) (between Sri H.Praabhakar, S/o.Mariyalppaiah, Sri gurulakshmi Motors, Shimoga District and Sri.K.N.Venugopala S/o.K.Nagabhusan Rao, Hosanagara Taluk, Shimoga District and the Secretary, Regional Transport Authority, Shimoga). The Said Rule runs as under:

"79(1).If a holder of a permit desires at any time to replace any vehicle covered by the permit by another vehicle, he shall forward the permit and apply in Form KMV 51 to the Transport Authority by which the permit was granted, stating the reasons why the replacement is desired and shall also simultaneously-

(I) if the replace vehicle is in his possession, forward the certificate of registration of that vehicle; or

(ii) if the replace vehicle is not in his possession, state any material particulars in respect of which replace vehicle will differ from the vehicle to be replaced.

(2) On receipt of an application under sub-rule (1), the Transport Authority, may, subject to the provisions of 1[Sub-rule(3)],

grant permission for replacement, notwithstanding the fact that replace vehicle differs in material respects and capacity from the vehicle to be replaced.

(3) The Transport Authority may, for reasons to be recorded and communicated to the applicant, reject any application made to it under sub-rule (2), if the holder of the permit has contravened any provisions



thereof or has been deprived of possession of the vehicle proposed to be replaced under any hire-purchase agreement."

45. The Learned Special Government Pleader refers to the **order of the Kolkata High Court dated 29.03.2011 in W.P.No.5495 (W) of 2011 (between Sujit Kumar Dutta v. the State of West Bengal & others)**, wherein it is observed as follows:

"... Section 2 of the Act defines motor vehicles of different nature and that replacement of a vehicle could not be allowed under the provision provided under Section 83 of the Act only if the replacing vehicle is totally different in nature, class, seating capacity, wheelbase etc. from existing vehicle to be replaced vehicle."

46. In short, it is the plea of Respondent Nos.1 to 4 that LPG/Petrol driven Auto-Rickshaws and Diesel driven Auto-Rickshaws are to be considered as of the same nature so long as they comply with the definition of 'Auto-Rickshaw' with regard to the construction and seating capacity.

47. The Learned Special Government Pleader for R-1 to R-4 refers to the decision in **K.Kumar v. The Secretary, State Transport Authority** reported in **AIR 2002 Madras 78**, wherein at special page No.82, at Paragraph No.9, the impugned order was ultimately set aside by remanding back the matter to the Respondents therein for re-consideration of the application filed by the Petitioner therein dated 30.01.2001 for replacement of vehicle and the relevant portion, is observed as follows:

"9.For all the above reasons, the impugned order is set aside and the matter is remanded back to the respondent for re-consideration of the application filed by the petitioner dated 30.01.2001 for replacement of the vehicle bearing Regn. No.TN-49-A-2233 with another vehicle bearing Regn. No.TN-09-X-3999 in accordance with the parameters of Rule 75 of 'the Rules' and without reference to the loss of revenue to the Government."

48. The Learned Special Government Pleader for R-1 to R-4 points out that in the judgment in **W.A.Nos.1466 & 1470 of 2017 dated 18.07.017 (between Shaju v. The Regional Transport Authority, Ennakulam)**, at Paragraph Nos.10, it is observed as under:

"10.Learned Government Pleader then submitted that this restriction has been placed for safety of the passengers. We fail to understand how safety of



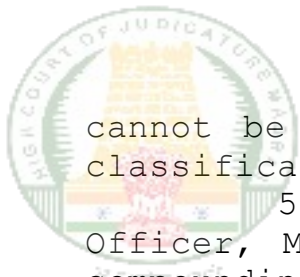
passengers would be jeopardised, if the vehicle is replaced by an order vehicle, subject of course to the vehicle being certified as road worthy. If the vehicle is road worthy, then it cannot be said that by replacing a vehicle with an order road worthy vehicle the safety of passengers would in any manner 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."

49. The Learned Special Government Pleader also cites the order passed by this Court in **W.P.No.15645 of 2015 (between A.Ramachandran v. Regional Transport Authority, Thiruvannamalai)**, wherein it is observed as under:

"24.In view of the above discussion, since the petitioner had applied for replacement of vehicles of different nature having the seating capacity of 57 in all instead of the vehicles having the seating capacity of 27 in all, which are alone permitted under the present permit, which was renewed upto 19.08.2017, the relief sought for by the petitioner cannot be granted, as has been rightly held by the respondents, as there is a bar under Section 83 of the Act. For the foregoing reasons, the writ petition is liable to be dismissed and accordingly, the same is dismissed confirming the order of the Tribunal. However, there will be no order as to costs."

50. While winding up, the Learned Special Government Pleader for R-1 to R-4 says that both the L.P.G/Petrol-operated Auto-Rickshaw and Diesel-operated Auto-Rickshaw are constructed and permitted to carry not more than three passengers excluding the Driver for hire or reward and having less than four wheels, fulfil the requirement of 'Auto-Rickshaw' as defined in Rule 3(d) of Tamil Nadu Motor Vehicle Rules, 1989. Apart from that, it is represented on behalf of R-1 to R-4 that although source of energy for mechanical propulsion are different, both the types of Auto-Rickshaws are of 'same nature' for the purpose of replacement under Section 83 of the Motor Vehicles Act, 1988. Also that, they specify the overall dimensions as specified for 'Auto-Rickshaw' in the Central Motor Vehicle Rules, 1989. To put it precisely that the two types of Auto-Rickshaws do not 'differ in any material respects' within the meaning of the term 'Auto-Rickshaw' and to put it succinctly, the replacement of such types of 'Auto-Rickshaws are permissible under Rule 202(ii) of the Tamil Nadu Motor Vehicles Rules, 1989.

51. Apart from that, it is also the stand of Respondent Nos.1 to 4 that the Transport Authority is vested with discretionary powers to permit such replacement and the discretion



cannot be said to be excessive or arbitrary, when the type and classification of the vehicle remains the same.

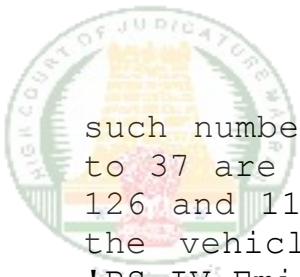
52. According to the First Respondent/Regional Transport Officer, Madurai(Central), the Transport Department had collected compounding fee along with the details of permit suspended cases and the same is shown as under to point out that effective and stringent action and proper checking of Auto-Rickshaws are being done/carried out by the Transport Officials and the checking carried out by the Police Officials with a view to curb the irregularities pointed out by the Writ Petitioner

Name of the office	period	No.of check repord issued	Nature of overload cases	Irregularities detections	Permit cancelled cases	Permit suspended cases	Amount of CF/ Fine collected
RTO (south)	2013-14	850	240	2 81	-	-	91450
	2014-15	392	120	14 132	-	40	28450
	2015 to 07/2016	365	124	139 220	-	320	91950
RTO Central)	2013-14	386	178	79 129	-	257	402700
	2014-15	277	154	68 50	-	227	291350
	04/16 to 07/16	53	29	13 11	-	24	21800
RTO (North)	2013-14	227	153	153 227	-	-	124750
	2014-15	169	87	87 169	-	9	135900
	2015-16	761	88	88 761	-	374	79400
	From 04/2016 to 07/2016	88	39	39 88	-	23	368350
Total		3957	1332	765 2054	-	1477	1999900

and therefore, for the above reasons, the present Writ Petition filed by the Petitioner in the nature of 'Public Interest Litigation', is to be dismissed by this Court.

SUBMISSIONS OF RESPONSENT NOS.5 TO 37:

53. In response, the Learned counsel for R-5 to R-37 submits that the process to be followed for evaluation of road-worthiness involves obtaining of 'Certificate of Prototype Approval' from the agencies authorised under Rule 126 of the Central Motor Vehicle Rules, 1989. Thereafter, the 'Vehicle Approval Certificate' is to be forwarded to the State Authorities and the said Authorities as per requirement and existing limits on the number of vehicles, shall proceed with the granting of permit to such vehicles, in



such numbers. Insofar as the vehicle belongs to Respondent Nos.5 to 37 are concerned, they had obtained the Certificate under Rules 126 and 115 of the Central Motor Vehicle Rules, 1989. That apart, the vehicle purchased by Respondent Nos.5 to 37 satisfies with 'BS-IV' Emission Standards'.

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55. The Learned Counsel for R-5 to R-37 points out that the Petitioner is unaware of the statutory distinction between 'Auto-Rickshaw' and 'Share Auto-Rickshaw' and the distinction is so independent and devoid of 'fuel utilised'.

56. The Learned Counsel for R-5 to R-37 submits that the Fourth Respondent had addressed a letter No.09148-H3-2017, dated 30.03.2017 addressed to all the Zonal Officers in Tamil Nadu, All the Regional Transport Officers in Tamil Nadu and all the Motor Vehicle Inspectors of Unit Offices, on the aspect of Registration of - LMV Three Wheeler Passenger Vehicle - 'APE City Diesel BS-IV' in the State of Tamil Nadu, wherein M/s.Piaggio Vehicles Private Limited, Chennai, had applied for permission to register the new model 'APE City Diesel BS-IV' in Tamil Nadu manufactured by M/s.Piaggio Vehicles Private Limited, Pune, and further, it was mentioned that they had produced the relevant Certificate issued by 'ARAI, PUNE' for compliance to the Central Motor Vehicle Rules, 1989. Apart from the above, the above said letter of the Fourth Respondent dated 30.03.2017 refers to the following:

"The ARAI/PUNE has certified its compliance to the Central Motor Vehicles Rules, 1989 vide their certificate No.AAMN 0049, Dt. 09.02.2017. The vehicle complies with B.S.IV emissions norms, as prescribed in Government of India Notification No.GSR 487 (E), dated: 12.06.2015, applicable to Rule 115(17) C of Central Motor Vehicles Rules, 1989 effective from 01.04.2016.

The permission to register the above model vehicle is issued on the basis of ARAI/PUNE certificate of compliance. This Authority reserves the right to cancel/withdraw the permission granted in case of any fraud/misrepresentation when it surfaces and comes to the knowledge of this Authority. The manufacturer/dealer shall produce the ARAI/PUNE Certificate if and when demanded by the Registering Authority.

All the Registering Authorities except Chennai City and the Metropolitan areas lying in Tiruvallur and Kancheepuram Districts are requested to register the vehicle subject to the provisions of Motor Vehicles Act, 1988 and Rules made thereunder.



All Zonal Joint Transport Commissioners and Zonal Deputy Transport Commissioners are requested to acknowledge the receipt of circular. They are also requested to obtain, and keep the acknowledgements from the respective Regional Transport Officers of their Zones."

57. The Learned Counsel for R-5 to R-37 relies on the decision of this Court in *K.Kumar v. The Secretary, State Transport Authority* reported in AIR 2002 Madras 78, wherein at special page Nos.80 and 81, at Paragraph Nos.5 & 6, it is observed as under:

"5. Before adverting to the rival contentions, it would be appropriate to extract the relevant section and rule of the Act and Rules respectively.

"Section 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.

Rule 75. Replacement of a vehicle covered by a permit.-- (1) If a holder of a permit desires at any time to replace any vehicle covered by the permit by another vehicle, he shall forward the permit and apply in Form P. Rep. A, to the State Transport Authority by which the permit was granted, stating the reasons why the replacement is desired and shall also simultaneously.--

(i) if the replacer vehicle is in his possession, forward the certificate of registration of that vehicle: or

(ii) if the replacer vehicle is not in his possession, state any material particulars in respect of which the replacer vehicle will differ from the vehicle to be replaced.

(2) On receipt of an application under Sub-rule (1), the State Transport Authority may subject to the provisions of these rules, grant permission for replacement, notwithstanding the fact that the replacer vehicle differs in material respects and capacity from the vehicle to be replaced.

(3) The State Transport Authority may, for reasons to be recorded and communicated to the applicant, reject



any application made to it under Sub-rule (1) if the holder of the permit has contravened any provisions thereof or has been deprived of possession of the vehicle proposed to be replaced under any hire-purchase agreement." Under Section 83 of "the Act", the holder of a permit may replace any vehicle covered by the permit by any other vehicle of the same nature with the permission of the authority by which the permit was granted. The State Government is empowered to frame rules regarding the grant of permit including the permission for replacement under Section 96 of "the Act". By virtue of the said power, Rules have been framed, known as Pondicherry Motor Vehicles Rules, 1989. Under Rule 75(2) of "the Rules". If an application is filed for replacement of a vehicle covered by a permit, the Transport Authority may subject to the provisions of the said rule grant permission for replacement notwithstanding the fact that the replacer vehicle differs in material respects and capacity from the vehicle to be replaced. Under Sub-section (3) of Rule 75 the State Transport Authority is empowered to reject any application for replacement of the vehicle covered by a permit for reasons recorded and communicated to the applicant, if the holder of the permit has contravened any provisions thereof and has been deprived of the possession of the vehicle proposed to be replaced under any hire purchase agreement. In the said rule, the circumstances under which the State Transport Authority may grant permission for replacement or reject such application for replacement have been specifically indicated. The impugned order rejecting the application of the petitioner for replacement has been made on account of fall of revenue to the Government.

6. It is therefore now to be considered as to whether the respondent while exercising the power under Rule 75 of "the Rules" can reject the application of the petitioner for replacement of the vehicle on the ground of fall of revenue. In order to decide the validity of the impugned order, it is to be first considered as to whether while considering the application for replacement the respondent performs either quasi-judicial or administrative functions. The issue is not *res Integra*. While considering the similar powers of the authorities under Sections 47, 48, 57, 60, 64 and 64A under the Motor Vehicles



Act, 1939 for considering the application for stage carriage permit, grant of stage carriage permits, application for granting permit, appeals and revisions as against the grant of permit, the Supreme Court in the judgment (B. Rajagopal Naidu v. The State Transport Appellate Tribunal, Madras) has held that "it is well settled that Sections 47, 48, 57, 60, 64 and 64-A deal with quasi-judicial powers and functions and when the applications are made for permits under the relevant provisions of "the Act", they are considered on the merits, particularly in the light of evaluation of the claim of the respective parties, the transport authorities are exercising quasi-judicial powers and are discharging those functions by quasi-judicial orders. When the respondent acts as a quasi-judicial authority has necessarily to consider the application within the parameters of the rules made under Section 96 of "the Act", published in the Official Gazette in conformity with Section 212 of "the Act". When once the rules framed are published in the Official Gazette, the rules become statutory rules which have force of law. Law is well settled that when the power is given to the authorities under a Statute, such power should be exercised in the same manner prescribed by the Statute. Assuming any power which would render any order passed by the authorities a nullity. Applying the above ratio, it is to be held that the respondent is empowered to consider the application filed under Section 83 of "the Act" only within the parameters of Rule 75 of "the Rules". As per Sub-rule (2) of Rule 75, an applicant for replacement of vehicle covered by a permit is entitled to apply for the same and on receipt of such application, the State Transport Authority grants permission for replacement notwithstanding the fact that the replacer vehicle differs in material respects and capacity from the vehicle to be replaced. Of course, under Section 67 of "the Act", the State Government is empowered to issue directions to the State Transport Authority and Regional Transport Authority by notification in the Official Gazette, having regard to the advantage offered to the public, trade and industry by the development of motor transport, the desirability of coordinating road and rail transport, the desirability of preventing the deterioration of the road system and the desirability of preventing uneconomic competition among holders of permits in respect of the vehicle by



fixing of fares and freights for stage carriages, contract carriages and goods carriages, the prohibition or restriction of the conveying of long distance goods traffic generally, or of specified classes of goods by goods carriages, any other matter which may appear to the State Government necessary or expedient for giving effect to any agreement entered into with the Central Government or any other State Government. In my view, the reason given in the impugned order namely the loss of revenue to the Government cannot be considered as one of the reasons enumerated under Section 67 of "the Act". Moreover, the Instruction of the Secretary, Transport Department, Pondicherry has not been notified in the Official Gazette also obviously the same was not issued by virtue of the powers conferred under Section 67 of "the Act". In the circumstances, it would not be proper on the part of the respondent to consider the application of the petitioner and reject the same on the ground of loss of revenue to the Government, The duty of the authority to consider the application shall be independent by applying its mind only with reference to Rule 75 of "the Rules" and the reason as to the loss of revenue will not fall within the ambit of the said Rule. When once it is held that the reason for rejection of the application falls outside the ambit of Rule 75, the impugned order based upon the said reason cannot be sustained as the authority who exercises the quasi-judicial power has only relied upon the instructions given by the Secretary. Transport Department of Union Territory of Pondicherry without reference to the Rule and such order of quasi-judicial authority cannot be sustained."

54. The Learned Counsel for Respondent Nos.5 to 37 proceeds to point out that norms for grant of permit does not include the 'fuel used' and the contra averments of the Petitioner are clearly unsustainable. She further contends that Respondent Nos.5 to 37 are sought only replacement in respect of auto-rickshaw and that the Writ Petitioner, who is a Consultant as regards the sale of old auto-rickshaws, has filed the present Writ Petition with no element of 'Public Interest' and therefore, the same is to be dismissed.

AN APPRAISAL:

58. It is to be borne in mind that Section 74 of the Motor Vehicles Act, 1988, speaks of 'Grant of Contract Carriage Permit'. As a matter of fact, in granting the 'Contract Carriage Permit', the number of 'Contract Carriage Vehicles' plying in the region,



is to be considered. Undoubtedly, the Regional Transport Authority has the power to prescribe restrictions on the number of Contract Carriages operated in a specified area or route. Indeed, this power shall be carried in the interests of public to restrict the numbers, with a view to have free flow of traffic and to avoid accidents.

59. It is to be remembered that the purport of Rule 88 of the Central Motor Vehicles Rules, 1989 read with relevant Sections viz., Sections 81 and 83 of the Motor Vehicles Act, 1988, is that they treat the 'Vehicle' and the 'Permit' as separate. If the provisions of the Motor Vehicles Act is considered in real, correct perspective, then, it means that for a new vehicle duly replacing the permit as amended is a permit contemplated by the Law and therefore, obtaining of an order for replacement of the old vehicle and also securing the suitable amendment of the permit will, in the eye of Law amounts to obtaining a permit.

60. The term 'same nature' in Section 83 of the Motor Vehicles Act, 1988 means, the vehicle of similar type ie., passenger vehicle. In other words, the character of a vehicle cannot be changed. The meaning intended to be conveyed is that the nature of the vehicle should not be lost.

61. In view of the fact that Petrol/Diesel/LPG Auto-Rickshaws are designed and constructed and permitted to carry not more than three passengers excluding the Driver for hire or reward and having three wheels and they undoubtedly, satisfy the requirement of 'Auto-Rickshaw' as per definition of Rule 3(d) of Tamil Nadu Motor Vehicle Rules, 1989.

62. It is to be noted that notwithstanding the fact that in regard to the 'mechanical propulsion', the source of energy are different and yet, both the types of Auto-Rickshaws are of 'similar nature' for the purpose of replacement under Section 83 of the Motor Vehicles Act, 1988. The replacement of such type of 'Auto-Rickshaws', is permissible under Rule 202(ii) of the Tamil Nadu Motor Vehicles Rules, 1989.

63. Furthermore, Rule 115 of the Central Motor Vehicles Rules, 1989 says that all motor vehicles, which are more than one year old from the date of initial registration are to carry 'Pollution Control Certificate' with a view to achieve the standards prescribed for emission of smoke from the motor vehicle.

64. At this stage, this Court aptly points out the decision in **Fahimunnisa v. Additional Secretary.. Regional Transport Authority**. (1994) 1 ACC 129: (1993) 3 Karn LJ 213, wherein it is observed and held that the provisions of Section 83 of the Motor



Vehicles Act, 1988 read with Rule 79 of the Karnataka Motor Vehicles Rules, 1989, do not prohibit replacement by an older vehicle, so long as the replacer vehicle had a valid 'Fitness Certificate'.

65. In this connection, it is not out of place for this Court to make a significant mention that a permit, which was amended to give effect for replacement of a vehicle in accordance with the provisions of Sub-Section (2) of Section 59 of the Motor Vehicles Act, 1939, does not become a new permit and the old permit continues with the only difference that it originally covered another vehicle and after replacement, covered a new vehicle.

66. Also, this Court recalls the decision in **S.H. Abbas v. Karnataka STAT, 2001 (2) ACC 177 (Kant)**, wherein it is observed and held that replacement cannot be refused if the permit holder did not contravene any permit conditions and lost possession of vehicle under Rule 79(3) of Karnataka Motor Vehicles Rules, 1989.

67. It cannot be forgotten that the words 'covered by permit' mean that any vehicle mentioned in the permit. If a valid permit is subsisting, then, even if the vehicle mentioned in that permit is lost or otherwise parted with, it cannot be said that no replacement can be ordered against the vehicle mentioned in the permit as per the decision in **Automobile Transport Rajasthan (P.) Ltd. v. Regional Transport Authority** reported in **AIR 1968 Raj 334 (DB)**.

68. One cannot brush aside an important fact that Petrol/LPG operated Auto-Rickshaw and Diesel operated Auto-Rickshaw are of the same nature and as per the definition of the word 'Auto-Rickshaw' mentioned in clause (d) of Rule 3 of the Tamil Nadu Motor Vehicles Rules, 1989, they are of the same nature, in the considered opinion of this Court. At best, the difference between the afore stated two Auto-Rickshaws is that the source of mechanical propulsion of the vehicle is from an alternative fuel viz., Petrol or LPG or diesel and as such, replacement of a Petrol/LPG operated Auto-Rickshaw by a Diesel operated Auto-Rickshaw is legally tenable and very much permissible as per Section 83 of the Motor Vehicles Act, 1988, as opined by this Court.

69. Dealing with the aspect of the term 'Public Interest Litigation', it is to be pointed out that a Court of Law is to be extremely careful and to act with circumspection to see that under the guise of redressing a public grievance it does not encroach upon the purview reserved by the Constitution to the Executive and Legislature. In short, a Court of Law cannot embark upon a venture to bring the State Government to bring in a legislation. Further, 'Public Interest Litigation' cannot be made use of to settle private disputes/personal vendetta.



70. Undoubtedly, the term 'Public Interest Litigation' is an antithesis of private or self interest. Public Interest Litigation should not be allowed to be pressed into service as a tool to satisfy or take grudge based on personal vendetta against the concerned Respondents. No wonder, 'Public Interest Litigation' is to be restricted to prevent mischief if any in public service. Justifiable executive actions should not be disapproved so as to satisfy an oblique motive of the writ Petitioner. It is to be remembered that Public Interest Litigation does not enable the Court to travel beyond the four corners of Law.

71. Insofar as the conditions precedent for 'Issuance of Mandamus', it is to be pointed out that in order to obtain a writ or order, an applicant must show that he has a legal right to perform of a legal duty as per the decision of the Honourable Supreme Court in **Geep Flashlight Industries Ltd.Vs. Union of India (UOI) and Ors.** reported in **1977 SC page 456**. It is to be noted that a Mandamus would not be issued to direct a Government to refrain from enforcing the provisions of a valid Law.

72. There is no two opinion of a prime fact that 'Public Interest Litigation' is a weapon, which is to be pressed into service with utmost Care, Caution and Circumspection, so that behind the veil of 'Public Interest', a private malice or vested interest/publicity or attention seeking, is not brought to the fore.

73. Insofar as Environment Law is concerned, it is a legal development in the year 1970. Section 2(1)(c) of the National Green Tribunal Act, 2010, enjoins as under:

2(1)(c). "environment" includes water, air and land and the inter-relationship, which exists among and between water, air and land and human beings, other living creatures, plants, micro-organism and property;"

74. Section 2(1)(e) of the National Green Tribunal Act, 2010, deals with 'handling' and Section 2(1)(f) of the Act refers to "hazardous substance". Section 2(1)(g) of the Act defines as follows:

"2(1)(g) "injury" includes permanent, partial or total disablement or sickness resulting out of an accident;"

75. The definition of Section 2(1)(m) of the National Green Tribunal Act, 2010 points out that substantial question relating to environment means an instance of violation of environmental obligation which leads to; (i) such environmental consequences



which are affecting or may affect the community or handful of individuals; (ii) substantially damages the environment or property; or (iii) damages public health which can be broadly measured. Being a substantial question pertaining to environment, the criteria for seeking seeking the jurisdiction of Tribunal is that such question must necessarily arise out of implementation of the legislations mentioned in Schedule I of the Act.

76. While showering the original jurisdiction on the Tribunal, the Legislature in its wisdom has permitted the Tribunal to entertain and determine such civil matters, which relates to enforcement of any legal right pertaining to environment and not just limited to the statutory rights as available under the seven statutes mentioned in Schedule I.

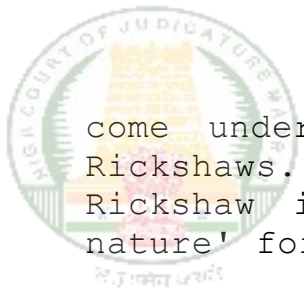
77. At this juncture, this Court worth recollects and recalls the decision of the Honourable Supreme Court of India in **M.C.Mehta v. Union of India** reported in **AIR 1987 SC 1086**, wherein it is observed that 'Right to live in pollution free environment' is an integral part of Fundamental Right to live as per Article 21 of the Constitution of India.

78. Undoubtedly, 'Right to Live' (which includes pollution-free water and air) for full enjoyment of life safe and hygienic environment, is fundamental under Article 21 of the Constitution of India.

79. From the above, it is clear that Section 14 of the National Green Tribunal Act, 2010, speaks of 'Tribunal to settle disputes'. Really speaking, the Tribunal is vested with original as well as appellate jurisdiction under the National Green Tribunal Act, 2010 in regard to environmental matters. The Petitioner has not approached the National Green Tribunal, Chennai, for redressal of his grievance relating to the issue(s) of 'Environment'.

80. As far as the present case is concerned, even though the Petitioner has styled the instant Writ Petition under the caption 'Public Interest Litigation', considering the fact that he being a Consultant for the sale of old Auto-Rickshaws, obviously, has a private interest and if fact, there is no public interest involved in the present Writ Petition. Furthermore, the aspect of carcinogenic and mutagenic effects of the gases emitted by Diesel Autos may not be quite relevant to the issue/controversy of 'Grant/Replacement of Vehicle Permits', as opined by this Court. It cannot be stated that the Auto-Rickshaws purchased by Respondent Nos.5 to 37 only cause vehicular pollution. Apart from that, replacement of Petrol/LPG operated Auto-Rickshaw as Diesel operated Auto-Rickshaw, is legally permissible as per Section 83 of the Motor Vehicles Act, 1988.

81. Added further, the words 'same nature' in Section 83 of the Motor Vehicles Act, 1988 connotes that the existing vehicle covered by a particular permit and the replacement vehicle should



come under the same category or type of vehicle viz., Auto-Rickshaws. Viewed in that perspective, a Diesel operated Auto-Rickshaw is not to be classified as a vehicle of 'different nature' for the purpose of replacement.

DISPOSITION:

82. In the upshot of detailed qualitative and quantitative discussions and on an overall consideration of surrounding facts and circumstances of the present case, this Court comes to an inevitable conclusion that the Petitioner is not entitled to seek the relief of 'Mandamus' restraining the Respondents from granting permits to the Diesel Share Autos instead of granting permits to L.P.G Autos. Viewed from that angle, the Writ Petition fails.

83. In fine, the Writ Petition is dismissed. No Costs. Consequently, connected, Writ Miscellaneous Petition is closed.

Sd/-

Assistant Registrar

/True Copy/

Sub Assistant Registrar

To:

1. The Regional Transport Officer,
O/o. Regional Transport (Central),
K.K.Nagar, Madurai - 20.
2. The Regional Transport Officer,
O/o.Regional Transport(South),
Palanganatham, Madurai - 625 003.
3. The Regional Transport Officer,
O/o.Regional Transport (North),
K.Pudur, Madurai - 625 007.
4. The Principal Secretary to Government,
Transport Department,
Secretariat,
Fort St. George, Chennai -9.

+1cc to M/s.J.Anandhavalli, Advocate Sr.No.93985

+1cc to Spl.Government Pleader Sr.No.94330

+1cc to M/s.Right Law Associates, Advocate Sr.No.93886

+1cc to Mr.A.Rajaram, Advocate Sr.No.94103

PM

VB/SV/MMS/SAR4/09/01/2018/30P/9C