

03  
27.02.2020  
Court No.2  
DC

CIRCUIT BENCH OF  
CALCUTTA HIGH COURT  
AT JALPAIGURI  
APPELLATE SIDE

**WPA 31 of 2020**

**Shyamal Paul**  
**Vs.**  
**The State of West Bengal & Ors.**

Mr. N. I. Khan  
Mr. Debajit Kundu.....for petitioner

Mr. Debabrata Dhar  
Ms. Paramita Sahu.....for the State

The petitioner is a contract carriage permit holder. The vehicle No. WB-73/4108 is endorsed in his permit. As the vehicle of the petitioner developed technical problems and became old due to passage of time, the petitioner applied before the respondent authority for replacement of the old vehicle with a better model vehicle.

The application for replacement of the vehicle of the petitioner not being considered by the respondent authority the petitioner approached this Court by filing a writ petition being WPA 581 of 2019. The said writ petition was disposed of on 11-11-2019 by directing the respondents to consider the application for replacement.

The Secretary, Regional Transport Authority considered the prayer of the petitioner and passed the impugned order dated 28<sup>th</sup> November, 2019 rejecting his prayer.

The ground for rejection is that the seating capacity of the previous vehicle was 38 whereas the seating capacity of the present vehicle is 31. The Secretary of the Regional Transport Authority was of the opinion that the petitioner was supposed to replace the old vehicle with a new one which is of the same nature. The petitioner was directed to produce the vehicle of the same nature of seating capacity for replacement of the vehicle.

The petitioner is aggrieved by the said order.

The petitioner submits that the provision of the Motor Vehicles Act does not lay down any rule with regard to the 'nature' of the vehicle for the purpose of replacement.

The petitioner relies upon an unreported judgment delivered by a Co-ordinate Bench of this Court on 29-03-2011 in W.P.5495(W) of 2011 (Sujit Kumar Dutta vs. the State of West Bengal & Ors.) on similar facts challenging the rejection of replacement on the ground of the new vehicle having a lesser seating capacity. The Court was of the opinion that in the absence of guidelines, the authorities ought not to have rejected the prayer for replacement on the ground that the

vehicle proposed to be placed has a lesser number of seats.

The Court held that Rule 153(2)(ii) of the West Bengal Motor Vehicles Rules, 1989 confers unguided power or discretion to the authority to reject an application for replacement. The said Rule 153(2)(ii) is unworkable and cannot be acted upon. The Court relied upon an unreported judgment passed in WP 26794(W) of 2007 with CAN 10122 of 2007 (Manorama Roy vs. State of West Bengal & Others) at the time of passing the aforesaid order.

Applying the principles as laid down in the case of Sujit Kumar Dutta (supra), the impugned order of the Secretary, Regional Transport Authority, Darjeeling/Siliguri, rejecting the prayer of the petitioner for replacement cannot be sustained and is hereby set aside.

The respondent No. 4 being the Secretary, Regional Transport Authority, Darjeeling is directed to consider the prayer of the petitioner for replacement, strictly in accordance with law, within a period of 8 weeks from the date of communication of a copy of this order.

The petitioner is directed to forward a copy of the unreported judgment dated 29-03-2011 in WP 5495 (W) 2011 (Sujit Kumar Dutta vs. State of West of West Bengal & Ors.) to the Regional Transport Authority,

Darjeeling at the time of communication of a copy of this order.

The said respondent shall afford an opportunity of hearing to the petitioner prior to taking a decision in the matter and the petitioner shall be entitled to place the document in respect of the vehicle No. WB 95/1624 which he proposes to ply in the route in question.

The writ petition is disposed of.

Urgent certified Photostat copy of this order, if applied for, be supplied to the parties upon observance of requisite formalities.

**(Amrita Sinha, J. )**