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27.02.2020.
d.p.

**Calcutta High Court
In the Circuit Bench at Jalpaiguri
Appellate Jurisdiction**

W.P.A. 966 of 2019

**Smt. Usha Sarkar & Anr.
-versus
The State of West Bengal & Ors.**

Mr. N.I. Khan.

...For the Petitioners.

**Mr. Hirak Barman,
Ms. Bedashruti Bose.**

...For the State.

Report in the form of an affidavit filed by the respondent No. 5 is taken on record.

The writ petition has been filed by two writ petitioners by putting in only one court fee.

The learned advocate appearing on behalf of the petitioners is directed to deposit the deficit court fees in course of the day. In default, the order passed herein shall be restricted in respect of the petitioner No.1 and the writ petition shall be deemed to have been dismissed in respect of the other.

The petitioners are the contract carriage permit holders in respect of three wheeler vehicle (Auto). The vehicles have become old due to passage of time. The petitioners intend to replace their vehicle with a better model vehicle.

The application of the petitioners for replacement were turned down by the Secretary, Regional Transport

Authority, Siliguri/Darjeeling by the impugned communication dated 17th December, 2019.

The rejection order mentions that as per provision of Section 83 of the Motor Vehicles Act, 1988 vehicles of similar nature can be replaced in place of the older version. The petitioner is required to place vehicle with seating capacity of 6+1 and vehicle with lower variant as to the seating capacity cannot be considered. Keeping in view the public safety and convenience of the passengers notification vide memo no. 53/1/MV dated 25th January, 2019 was issued to allow the existing 6+1, three wheeler city Auto to be replaced by 6+1 four wheeler city Auto maxi cab.

The petitioners intend to replace their old vehicle with a three wheeler vehicle having seating capacity of 6 persons including the driver. The same is a Water Cooled LPG driven vehicle. The petitioners have annexed the certificate issued by the Automotive Research Association of India in respect of the vehicle which they intend to ply.

The petitioners submit that the impugned order that has been passed is contrary to the notification issued by the Transport Department, Government of West Bengal on 14th August, 2018 wherein the Transport Department has adopted an Auto-rickshaw Policy of West Bengal, 2018. The policy has been adopted that no diesel-driven auto-rickshaw will be allowed to ply in the jurisdiction of Municipal Corporations in the State and all existing diesel-driven auto-rickshaws operated in such areas are to be replaced by suitable eco-friendly auto-rickshaws.

The petitioners submit that the four wheeler vehicle which the respondents have directed the petitioners to place by way of replacement is a diesel vehicle which will cause severe pollution to the environment.

The petitioners intend to follow the Auto-rickshaw Policy adopted by the State by replacing their old diesel-driven auto-rickshaw by an LPG driven three wheeler auto-rickshaw having seating capacity of 6 passengers.

The learned advocate appearing on behalf of the State respondents submits that the Regional Transport Authority has taken the decision in accordance with the Auto-rickshaw Policy adopted by the Transport Department of the State on 25th January, 2019. It has been submitted that several three wheeler auto-rickshaws have already been replaced by four wheeler vehicles.

The respondents rely upon an unreported order dated 4th November, 2019 passed by a coordinate Bench of this Court in WPA 405 of 2019 whereby under similar circumstances, the Court refused to intervene in the writ petition and dismissed the same.

The State prays for dismissal of the writ petition.

After hearing the submission made on behalf of both the parties, it appears that the Transport Department has adopted an Auto Rickshaw Policy on 14th August, 2018 for replacing diesel-driven auto-rickshaw by suitable eco-friendly auto-rickshaw. The vehicles which the petitioners propose to ply are eco-friendly auto-rickshaws.

There is no reason on the part of the respondents to reject the prayer of the petitioners by directing them to place a four wheeler vehicle in place of a three wheeler vehicle. According to law, replacement may be made with a vehicle of the same nature.

The petitioners rely 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 on the ground of proposing to place a vehicle with lesser seating capacity cannot be sustained and is hereby set aside.

In view of the provisions of the Motor Vehicles Act, 1988 and the Rules framed thereunder and in the light of the Auto Rickshaw Policy adopted by the Transport Department, Government of West Bengal on 14th August, 2018 the impugned order is liable to be set aside.

The order dated 17th December, 2019 passed by the Secretary, RTA, Siliguri/Darjeeling is accordingly, set aside.

The respondent No. 4 is directed to reconsider the prayer of the petitioners for replacement of their three wheeler diesel-driven auto-rickshaw with three wheeler LPG driven auto-rickshaw within a period of eight weeks from the date of communication of a copy of this order, after giving an opportunity of hearing to the petitioners or their authorized representatives. The said respondent shall pass a reasoned order and communicate the same to the petitioners within a fortnight thereafter.

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.

W.P.A. 966 of 2020 is disposed of.

There will be no order as to costs.

Urgent photostat certified copy of this order be supplied to the parties, if applied for, as early as possible.

(Amrita Sinha, J.)