

Arup Kumar Maji

Vs.

The State of West Bengal & Ors.

Mr. D. K. Samanta,

Mr. Durga Prasad Dutta,

Mr. Sumanta Ganguly.

... for the appellant.

Mr. Amal Kumar Sen,

Mr. Lal Mohan Basu.

... for the respondents.

The State appears to have taken a stand before the Writ Court as well as in the instant Mandamus Appeal that the permission to replace the vehicle under the permit cannot be granted as it tantamounts to infraction of law and the norms prevalent in this regard.

Before we proceed further on the nuances of submissions advanced by the respective Counsels, it would be axiomatic to record the undisputed and admitted facts germane from the pleadings filed before this Court.

A joint application was made by the writ petitioner along with one Prabir Kumar Barat, Proprietor of M/s. Maa Kali Transport on the transfer of permit and the vehicle attached to the said permit. The erstwhile permit holder has signified to divest his right derived under the said permit in favour of the writ petitioner and the concerned authority, who is otherwise competent to take decision in this regard, took a decision in the form of a resolution dated 28th June, 2019 allowing such application; meaning thereby the permit as well as the vehicle attached thereto were transferred in favour of the writ

petitioner. Subsequently an application was made by the writ petitioner to replace the old vehicle attached under the aforesaid permit with a new vehicle, which appears to us to have been kept in suspended animation, as no decision has been surfaced as of this date.

The writ petition was taken out for issuance of Mandamus upon the authorities to permit such replacement, but the learned Single Judge disposed of the writ petition directing the authorities to implement Serial number 11 of the resolution dated 28th June, 2019 in respect of the old vehicle.

What is not reflected from the impugned order is made patent by Mr. Sen, learned Advocate appearing for the State, in his argument advanced before us. According to Mr. Sen, even if the prayer to transfer the permit is allowed, it does not take effect unless an endorsement is made on the permit obviously after verification of the documents.

The aforesaid submission at the first blush appears to us a bit confusing and we invited Mr. Sen to elaborate such submission and what can be gathered from his submission is that if the joint application with composite prayer is made and allowed by the authority, the subsequent holder of the permit will be not automatically loathed with the power to ply the old vehicle covered under the said permit unless the vehicle is also transferred in his name.

A shelter appears to have been taken under Section 82 of the Motor Vehicles Act, 1988 containing the provisions pertaining to the transfer of permit and it is sought to be contended by Mr. Sen that the said provision requires such formalities to be followed before the order in the form of resolution is

truly fructified. We constantly asked Mr. Sen whether there is any provision of such nature either in the parent Act or in the Rule, if there be any. The answer was negatived. Mr. Sen submits that all such submissions have been advanced on instruction received from the authorities and the same being the order of the day we are not impressed with the aforesaid submission.

The statutory authority cannot travel beyond the periphery of law and have to confine itself within the precinct thereof. The procedure not provided in the statute nor in the Rules cannot be surreptitiously picked by the authorities and projected as a deterrent against the beneficiary of the order to thwart the prayer, which was made subsequently.

Section 83 of the said Act permits the replacement of the vehicle with other vehicle under the same permit. The transfer of permit is one thing than the replacement of vehicle under the same permit.

In recent time the inhabitants of the globe are facing menace of the pollution, more particularly the air quality is not conducive for the healthy life. Several discourses are made to combat the pollution caused due to the emission of pollutant gas and the measures taken thereupon. The right to life enshrined under Article 21 of the Constitution of India inculcate and imbibe the right to quality life and during the pandemic healthy life as well.

The statutory authority may not sensitize themselves as they not only owe to the executive fiat, but to the society for which such system has been introduced. If the law does not put any fetter nor impede anything to be done, the decision must be in the welfare and for the benefit of the society and the

citizenry or the inhabitants of the globe and not arbitrary, whimsical and capricious. There is no rational or reasonability in putting such hurdle in the prayer for replacement of vehicle under the permit with the new model obviously for the reason that it would emit less pollutant gas.

The Act provides for such replacement, which cannot be circumscribed with unrealistic notion but has to be considered in the light of the survival of the creatures of the Earth.

The emphasis appears to have been made by the State on the fact that once the composite prayer is allowed, the segregation at the behest of the beneficiary of the said order is not permissible. We are not impressed for the simple reason that Section 82 of the said Act provides for transfer of permit and not the vehicle and, therefore, the authority cannot enforce something which is beyond the scope of the Section nor can take shelter of their wrong and seeking the blessings of Court to make out it right. Once the permit is transferred and an application is made for replacement of the vehicle attached to such permit, the authority has to consider such application without raising fringe or unsubstantiated issue, which neither germane from the Act or the Rules nor from any other valid documents enforceable in law.

We thus set aside the impugned order.

The respondent no. 4 is directed to consider the application filed by the appellant for replacement of the old vehicle covered under the said transferred permit with the new one and such decision shall be taken within six weeks from the date of the communication of this order strictly in the light of the observations made hereinabove as well as the law

applicable thereto.

It is, however, made clear that all formalities or the requirements for taking a final decision on the said application shall be complied by the writ petitioner as well as the authority keeping in mind the time limit indicated hereinabove.

(Harish Tandon, J.)

(Kausik Chanda, J.)