

Form J(1)

**CALCUTTA HIGH COURT
IN THE CIRCUIT BENCH AT JALPAIGURI
Constitutional Writ Jurisdiction
Appellate Side**

**Present :
The Hon'ble Justice Bibek Chaudhuri**

**WPA 66 of 2023
Debabrata Sarkar
Vs.
State of West Bengal & Ors.**

**For the Petitioner : Mr. Sankar Nath Mukherjee,
Mr. Niraj Gupta,
Ms. Mousumi Das.**

**For the State : Mr. Subir Kumar Saha,
Ms. Bedashruti Bose.**

Heard & Judgment On : 7th February, 2023.

(Bibek Chaudhuri, J.)

The petitioner is the holder of permit of permanent stage carriage (bus) for the route Jalpaiguri to Mal via Metelli since 4th February, 2002 issued by the Regional Transport Authority, Jalpaiguri. Initial permit was granted for five years and thereafter it was renewed time to time at the interval of five years. At present the said permit is valid till 3rd July, 2023. It is the case of the petitioner that a bus bearing registration No.WB29A 7832 is endorsed to the said permit having seating capacity of 52 persons including the driver. It is further stated by the petitioner that initially another vehicle bearing registration No.WB71-7178 was

endorsed to the said permit having seating capacity of 42 persons including driver. In the month of March, 2021 the petitioner made an application seeking permission for replacement of the endorsed vehicle bearing No.WB 29A-7832 by another vehicle of same nature having seating capacity in between 41-44 seats with better model and specification. In the month of August, 2022 the petitioner got a copy of the resolution of the Board Meeting dated 28th February, 2022 and came to learnt that his application for replacement of vehicle was rejected on the ground that “if seating capacity is reduced, Govt. Tax will also be reduced. Hence rejected.” The petitioner again filed a representation to the respondent No.2 for reconsideration of his application of replacement of vehicle with 42 persons’ seating capacity instead of 52 seating capacity. The said representation was also rejected vide Board Meeting dated 23rd September, 2022 on the ground that the replaced vehicle is not of the same nature as per Section 83 of the Motor Vehicles Act.

It is submitted by Mr. Mukherjee, learned Advocate for the petitioner that Section 83 of the Motor Vehicles Act states:-

“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.”

It is submitted by Mr. Mukherjee that Section 83 clearly predicates replacement of the vehicle by vehicle of the same nature. The Legislature have used the expression purposely. They could have various other expressions. To us, the expression is clear. Same nature would mean; a bus by a bus, a mini bus by a mini bus, an air-conditioned bus by an air-conditioned bus, a truck by a truck and not a bus by a mini bus and an air-conditioned bus by an non-air-conditioned bus or mini bus by a regular bus; that is the only restriction. When in exercise of delegate authority the subordinate authority, i.e., the State, makes the rules, the rules have to be consistent with the act the rules cannot override the Act or restrict the ambit of the Act. When the expression is vehicle of same nature, then if Rule, 174(2)(c) restricts that an older vehicle cannot be brought in, it would be restricting the right conferred to a person by the provisions of the Act. Surely such an exercise by a delegate cannot be permitted. Rules have to be consistent with the Act and not restricting or in derogation thereto. Rules to that extent cannot thus be held to be consistent with the act and would have to be held to be inoperative. In support of his contention Mr. Mukherjee refers to a decision of the Hon'ble Supreme Court in **Regional Transport Authority & Anr. vs. Shaju etc.** reported in **(2022) SCC OnLine SC 209**.

It is further submitted by Mr. Mukherjee that the respondent authority initially granted permit for a stage carriage having seating

capacity of 42 persons. Subsequently, the said bus was replaced with the bus that is present ply through the route. Therefore, when initial permit was for a bus having 42 seating capacity, the petitioner's prayer for replacement with another bus of better specification with 42 seating capacity and not to have been rejected by the respondent.

Learned Advocate for the State, on the other hand, submits that the instant writ petition is not maintainable in view of the fact that Section 89 of the MV Act provides for appeal against an order of refusal to grant permission under Section 83 of the said Act.

It is also submitted by the learned Advocate for the respondents drawing my attention to Section 70 of the said Act which deals with the application for stage carriage permit that an application for permit in respect of a stage carriage shall contain certain particulars. One of such mandatory particular is the type and seating capacity of the vehicle.

In reply it is submitted by Mr. Mukherjee that Section 89 is not applicable in the State of West Bengal because no appellate tribunal under the Motor Vehicles Act has been established in the State. It is further submitted by the learned Advocate for the petitioner that Section 70 deals with initial grant of permit. Section 70 does not have any manner of application while considering petitioner's prayer under Section 83 of the Act. Therefore, argument advance by the learned Advocate for the respondent cannot be accepted.

Having heard the learned Counsels for the parties I like to record at the outset that the learned Counsel for the petitioner has hopelessly misconstrued the ratio of the decision in the case of Shaju (supra). The said decision deals with constitutional validity of Rule 174(2)(c) of the Kerala Motor Vehicle Rules, 1989 in relation to Section 83 of the Motor Vehicles Act. In paragraph 33 of the said report the Hon'ble Supreme Court recorded the observation of the Division Bench of the High Court at Kerala. Ultimately in paragraph 48 the Hon'ble Supreme Court held:

“48. The reasoning adopted by the Division Bench in the impugned order that Rule 174 (2)(c) has overridden the Act is not correct because a subordinate legislation must be interpreted to effectuate the statutory purpose and objective. The Rule should be enable the transport Authorities considering applications for replacement to insist upon the permit holder to abide by the same rigour and regulation that he was put to when the permit was granted. In our view, the High Court has not appreciated the context in which Rule 174(2)(c) read with Section 83 is to be construed.”

Close perusal of the judgment of the Hon'ble Supreme Court shows that the Apex Court was pleased to deal with Section 70, Section 71, Section 72 and Section 83 of the MV Act while deciding the issue arrived before it. It is specifically recorded by the Hon'ble Supreme Court that the transport authorities considering the applications for replacement shall insist upon the permit holder to abide by the same rigour and regulation that he was put to when the permit was granted.

In view of such circumstances, Section 70(1)(d) is required to be considered by the transport authority while considering the application for replacement of vehicle under Section 83 of the MV Act.

It is true that the petitioner was granted permit for stage carriage permit initial having 42 members of persons' seating capacity. Subsequently, on his application the said vehicle was replaced by WB 73-9058 having 52 seating capacity. Thus, it is clear that the original vehicle was replaced by WB 73-9058 on the ground that the said bus was having higher seating capacity. If the petitioner wants to replace the said vehicle bearing registration No.WB73-9058 take only be replaced by another vehicle by another vehicle having same seating capacity. In view of the above discussion I have no other alternative but to hold that the specific act of the respondents rejecting the prayer of the petitioner is not contrary to the provision of the MV and the impugned order does not violate any legal right of the petitioner.

Accordingly the writ petition is dismissed on contest however, without cost.

(Bibek Chaudhuri, J.)