

(2008) 10 KL CK 0033

In the High Court Of Kerala

Case No : Writ Petition (C) No. 28829 of 2008-F

Viswambaran

APPELLANT

Vs

The State of Kerala and Others

RESPONDENT

Date of Decision : 14-10-2008

Acts Referred:

Motor Vehicles Act, 1988 — Section 83, 87

Citation : AIR 2009 Ker 53 : (2008) 4 ILR (Ker) 472 : (2008) 3 KLJ 687 : (2008) 4 KLT 674

Hon'ble Judges : V. Giri, J

Bench : Single Bench

Advocate : I. Dinesh Menon, for the Appellant; P.N. Santhosh (GP), for the Respondent

Judgement

V. Giri, J.—Petitioner operated a regular stage carriage on the route Moonupeedia - Anapuzha in Thrissur District. As per Ext.P1, permit was valid up to 16-4-2007. Petitioner submitted an application for replacement of his existing vehicle. The said application was rejected by the second respondent as per Ext.P3 order on the premise that the vehicle which was sought to be replaced is a later model vehicle than the" vehicle which is offered for replacement. Ext.P3 has been challenged in this writ petition. I do not propose to consider the correctness of the reasons contained in Ext.P3. The only question to be considered is whether Ext.P3 order is passed by an authority who has jurisdiction to do so. Section 83 of the Motor Vehicle Act reads as follows:

Replacement of vehicle: 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.

As per Rule 174(1) of the Motor Vehicle Rules if the holder of a permit desires at any time to replace a vehicle covered by the permit with another vehicle, he shall forward the permit and apply in the Form "P.V.A" with the fee prescribed in Rule 180 to the Transport Authority which granted the permit stating the reasons for

the proposed replacement. Rule 174(2) states that upon receipt of the application, the Transport authority may in its discretion, reject the application. Rule 133 of the Rules deals with power of the Regional Transport Authority to delegate certain of its functions to the Secretary. Rule 133(1)(i) reads as follows:

Power u/s 87 of the Act to grant or refuse a temporary permit.

What has been delegated or what was capable of being delegated by the RTA to the Secretary in the context of Section 83 of Act is only the power to allow replacement of one vehicle by another. If the Secretary is of the opinion that the application for replacement cannot be allowed he should place the application before the RTA and it is up to the RTA to take a decision in accordance with law. It is therefore contended that Ext.P3 is without jurisdiction.

2. I have heard the learned Government pleader. I find substance in the contention raised by the learned counsel for the petitioner. No doubt going by the provisions of General Clauses Act, the power to make a grant will include the power to refuse a grant also. But this general provision is subject to any specific provision that provides for the contra. Rule 133 permits the transport authority to delegate certain of its powers to the Secretary. It was perfectly open to the rule making authority to provide for delegation of the power available to the RTA u/s 83 of the Act to be delegated in its entirety to the Secretary RTA. But the rule making authority has specifically authorised delegation of the power otherwise available to the RTA u/s 83 of the Act to the grant of replacement of one vehicle by another. This restriction on the extent of power delegated seems to be a conscious one, as one could see from Rules 133(1)(a), (c), (d), (e), (g), (j) and (k). Therefore the power delegated is restricted to the power to allow replacement of one vehicle by another. In other words, the Secretary R.T.A as the delegatee is not empowered to reject an application u/s 83 of the Act seeking replacement of one vehicle by another. He can consider the application. He can allow the same. It is open to him to place an application before the RTA which of course is competent to deal with it in terms of Section 83 of the Act. But, he cannot reject the same.

In the result, this writ petition is allowed in part. Ext.P3 is quashed. The second respondent shall place Ext.P1 application filed by the petitioner for replacement of vehicle before the 2nd respondent within three weeks from the date of receipt of a copy of this judgment. Thereupon, the 2nd respondent shall consider and take appropriate decision within one month thereafter.