

WRIT PETITION NO.235/2003

Mr. Augusto T. Saude Noronha,
House No.219, Veroda,
Cuncolim, Salcete, Goa. Petitioner.

V/s.

1. State of Goa,
through its Chief Secretary,
Secretariat, Panaji, Goa.

2. Director of Transport,
Government of Goa,
Junta House, Panaji, Goa. Respondents.

Mr. M.P. Amonkar, Advocate for the petitioner.

Mr. Guru Shirodkar, Addl. Govt. Advocate for the
respondents.

CORAM: F.I. REBELLO, J.

DATE: JUNE 27, 2003.

ORAL JUDGMENT :

Rule. Respondents waive service. Heard
forthwith.

2. The petitioner is a holder of a permit
for inter-State route. He applied for replacement of
the vehicle in respect of which the permit was issued.
That application came to be rejected by order dated
20.8.2001 by the Director of Transport. The
petitioner herein being aggrieved by the said order,
preferred an appeal which was numbered as S.T.A.T.
Appeal No.4 of 2002 (new). The appeal came to be

dismissed by order date 10.3.2003. The appellate Authority did not find any merit in the contentions advanced on behalf of the petitioner herein.

3. Replacement of the vehicle is permissible under the provisions of the Motor Vehicles Act, 1988 considering Section 83 which provides that 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. The other relevant provisions are Section 70 which is application for stage carriage permit and Section 72 which is in respect of grant of stage carriage permit. Sub-Section (2) of Section 72 provides as to what are the conditions which may be attached to the permit, one of which the maximum number of passengers and the maximum weight of luggage that may be carried on the stage carriage, either generally or on specified occasions or at specified times and seasons.

Rules have also been framed by the State Government which are known as the Goa Motor Vehicles Rules, 1991. Rule 89 provides for replacement of a vehicle. Sub-Rule (2) provides that the Regional Transport Authority may, subject to the provisions of sub-rule (3) and after ensuring that the other

conditions for granting a permit are fulfilled, grant permission for such replacement. Under sub-rule (3), it is further directed that the Regional Transport Authority may for reasons to be recorded and communicated to the applicant, reject any application made to it under sub-rule (1) if the holder of the permit has contravened any provisions thereof or has been deprived of possession of the vehicle proposed to be replaced under any hire purchase agreement. Therefore, under these sub-rules, there are specific provisions under which the R.T.A. may reject the application. We really are not concerned with that, as in the instant case, it is not the case of the respondents that the petition was barred for any of the reasons set out in sub-rule (3).

Other relevant rule is Rule 79, wherein it is provided that the permit in respect of stage carriage may be subject to one or more of the conditions contained therein.

4. On behalf of the petitioner, it is contended that the stage carriage permit can only be issued in favour of the vehicle which is defined under Section 2(40) of the Act which means a motor vehicle constructed or adapted to carry more than six passengers excluding the driver for hire or reward at

separate fares paid by or for individual passengers, either for the whole journey or for stages of the journey. The other two relevant sub-sections are sub-rule (22) which defines "maxicab" with which we really are not concerned and (29) which is "omnibus" means any motor vehicle constructed or adapted to carry more than six persons excluding the driver. The contention of the petitioner is that it must be a vehicle which would fit into the definition of "omnibus" as otherwise the Act does not provide for any other vehicle which can be granted a stage carriage permit, except for "maxicab". It is therefore, contended that the respondents misdirected themselves in law in not permitting the petitioner to replace his vehicle.

On the other hand, on behalf of the respondents, it is contended that the vehicle in respect of which the petitioner was holding a permit was having capacity of 50 + 18; whereas the replacement sought is of 27 + 11. It is, therefore, pointed out that the vehicle which is sought to be replaced will not fulfil the conditions of the permit under which the earlier permit was granted and consequently, no fault can be found with the action of the respondent No.2 in refusing the permit.

5. After having heard the learned Counsel for the parties, in my opinion, respondent No.2 did not correctly address himself to the issue which ought to be addressed. Section 83 merely provides that when an application is moved for replacement of a vehicle, the authority who has granted permit, may grant permit to replace any vehicle covered by the permit by any other vehicle of the same nature. In other words, the expression 'nature' must be a vehicle which is capable of being run as a stage carriage. That would not end the matter as while granting the stage carriage permit, it is open to the respondents to consider the other conditions for grant of permit, namely Sections 70 and 72. While considering the application for replacement, it will be open to the respondent No.2 to consider if the vehicle which is sought to be replaced, is otherwise unsuitable to run on the road, considering the interest of the travelling public. This will be a relevant consideration which respondent No.2 can address itself to. From the record one does not find whether this particular aspect or other aspects have been answered. Merely because the earlier permit spoke about higher number of passengers to be carried, that by itself necessarily cannot result in refusing to permit the replacement on the ground that the vehicle offered as replacement has lesser number of seats. The test really would be

whether the vehicle can run as a stage carriage and while so running whether it will be without causing any inconvenience to the passengers or the travelling public. If the second respondent comes to the conclusion that it is unsuited then it is open to the respondent No.2 to reject the application. If the second respondent comes to the conclusion otherwise the vehicle can be run then the mere fact that the capacity is less, will not be a relevant consideration. At any rate, all questions can be left open for consideration.

6. For the aforesaid reasons, the impugned orders are liable to be set aside and the matter is remanded to the second respondent to consider the petitioner's application afresh, considering the provisions of the Act, Rules and what has been set out in this Judgment.

7. In the light of that, the following Order:

Rule made partly absolute inasmuch as the order dated 20.8.2001 rejecting the application and the order of the G.S.T.A.T. dated 10.3.2003 dismissing the appeal are set aside. The matter is remanded to the respondent No.2 to dispose of the

petitioner's application for replacement according to law, considering what is set out hereinabove. There shall be no order as to costs.

F.I. REBELLO, J.

SSM.