

**HIGH COURT OF TRIPURA  
AGARTALA**

**WP(C) 87 of 2021**

---

For Petitioner(s)	: Mr. Raju Datta, Adv.
For Respondent(s)	: Mr. K De, Addl. GA

---

**HON'BLE MR. JUSTICE S. TALAPATRA**

**Order**

**30.11.2021**

Heard Mr. Raju Datta, learned counsel appearing for the petitioner as well as Mr. K De, learned Addl. GA appearing for the respondents No. 1 to 3.

The controversy raised in this petition falls within a short compass. Indisputably, the petitioner is owner of two auto rickshaws bearing registration No. TR-01-A-3183 and TR-01-4039 along with other auto rickshaws. According to the petitioner, his livelihood is totally dependent on the earning from the business of plying the auto rickshaws as passenger vehicles. In response to a notice issued by the Joint Transport Commissioner, the petitioner appeared before him with all original documents which he was asked to bring for inspection by the said authority. But the permit for plying those auto rickshaws on the public road had not been issued. In respect of the petitioner's other auto rickshaws, the issuance of permit was delayed or denied in terms of Rule 68(d) of the Tripura Motor Vehicles Rules, 1991. The said rule provides as follows:

**“(d) Without prejudice to the generality of foregoing provisions of this rule, if the application is for a new contract**

**carriage permit or for renewal of such a permit, of a three wheeler, other than E-rickshaw or E-cart, the State Transport Authority (STA) shall summarily reject the application, if he is satisfied that, the applicant has already been issued with such a permit on a previous occasion."**

The said rule was incorporated by the Tripura Motor Vehicles (7<sup>th</sup> Amendment) Rules, 2018.

Mr. Dutta, learned counsel has submitted that the petitioner had taken all initiatives to impress upon the respondents that such action is clearly violative of Article 14 of the Constitution of India and therefore, the renewal of permit be done without further delay but that had not happened. The petitioner had therefore filed a writ petition being WP(C) 1193/2019 for quashing the notification dated 15.10.2018 by which the Tripura Motor Vehicles (7<sup>th</sup> Amendment) Rules, 2018 was published to give effect.

By the judgment dated 13.03.2020 [Annexure-9 to the writ petition], this Court was pleased to direct the respondents as follows:

**[17] Mr. Bhattacharjee, learned GA has therefore submitted for purpose of implementing this part of the Act (vide Section 80 of the Motor Vehicle Act), the State government can acquire competence under Section 96 (2)(xxxiii) of the Motor Vehicle Act, 1988. Therefore, the state inheres jurisdiction to frame the rule in the form of Rule 68(d) of the Tripura Motor Vehicles Rules, 1991. However, Mr. Bhattacharjee, learned GA has submitted that the court may permit the respondents to take the decision in accordance with the law in respect of replacement as prayed by the petitioner and other similarly situated persons. Since, no such decision has been taken, it cannot be assumed that Rule 68 (d) of the Tripura Motor Vehicle Rules, 1991 has been given effect to.**

**[18] In view of the above statement and reserving the right in favour of the petitioner to challenge the said Rule 68(d) of the Tripura Motor Vehicle Rules, 1991 in future, this writ petition is being disposed of by the following direction. The respondents, particularly the State Transport Authority shall consider the prayer of the petitioner made under Section 80, Motor Vehicles Act, 1988. While taking such decision, the respondents shall consider that Rule 68 (d) of the Motor**

Vehicles Act, as incorporated by way of amending the principal Act, has not been given any retrospective operation and the petitioner has the right under Section 83 to get the replacement subject to the permission of the State Transport Authority. In *GT Venkataswamy Reddy vs. State Transport Authority and others* reported in (2016) 8 SCC 402, the apex court had occasion to observe in respect of the similar challenge as under:

**"Once things get frozen, the frozen stage can be changed only by way of a permitted process. when by virtue of the Act, the permit stood frozen, as on the date the scheme was published, then, if the said frozen stage is to be altered or modified, the provision by which such modification or alteration can be effected can be only by applying which is the legally permissible manner in which such frozen stage can be altered or modified. Any other manner in which the said frozen stage is sought to be altered or modified, that is totally prohibited under the statutory provisions. Therefore, if under the scheme, if the permit gets frozen, within the prescriptions contained under the scheme and if a variation is to be considered for that permit either by way of increase in the number of trips or addition of vehicle without any modification or alteration effected .. it will be wholly prohibited under the provisions ... such variation applied for can never even be considered by any of the authorities. That will be the consequential effect of the referred section in *GT Venkataswamy Reddy*."**

[Emphasis added]

[19] What we have observed that in view of giving effect to Rule 68(d) of the Tripura Motor Vehicle Rules, no express transitional provisions have been provided in the said rules. But we will not make further observations in view of the direction as narrated.

Having observed thus and without any observation on the merit of the challenge, the respondents are directed to consider the application of the petitioner for replacement within 30(thirty) days from the day when a copy of this order would be made available to the respondents. It is needless to say if the petitioner is aggrieved by any action of the respondents, he will be at liberty to approach this court again. Even he would be allowed to challenge constitutionality and legality of Section 68(d) of the Tripura Motor Vehicles Rules, 1991, if that is found essential in the changed circumstances."

Mr. Datta, learned counsel has further submitted that the said direction as reproduced above has been complied by the respondents.

While filing the writ petition, the petitioner had not inadvertently incorporated the registration numbers of two auto rickshaws in the previous writ petition. Renewal of route permit was also denied in terms of the said sub-rule. The present writ petition has been filed for purpose of seeking similar relief based on the similar contention as raised in the earlier writ petition.

According to Mr. Datta, learned counsel appearing for the petitioner it would be apparent from the previous judgment that the Tripura Motor Vehicles (7th Amendment) Rules, 2018 as notified by the notification dated 15.10.2018 is *ultra vires* having been in contrast to Section 96 of the Motor Vehicles Act, 1988 and that plea was accepted by this Court.

Be that as it may, since Mr. K De, learned Addl. GA has fairly submitted that the controversy raised in the writ petition is squarely covered by the judgment dated 13.3.2020, Annexure-9 to this writ petition.

In view of the said statement made by Mr. De, learned Addl. GA, this court will not delve deep into the controversy as there is no disagreement in the Bar that the present controversy is covered by the judgment dated 13.03.2020 delivered in WP(C) 1193/2019 [annexure-9 to this writ petition].

In view of the above observation, the petitioner is entitled to get the similar benefit as has been extended to the writ petitioner of WP(C) 1193/2019. Hence, the respondents are directed to consider the application of the petitioner for replacement within 30

days from the day when a copy of this order will be made available to the respondents. It is further directed that on such replacement, the Joint Transport Commissioner shall issue a fresh permit.

It is needless to say that if the petitioner is aggrieved by any order of the respondent, he will be at liberty to approach this court again. Even his right to challenge the constitutionality of Rule 68(d) of the Tripura Motor Vehicles Rules, 1991 is protected by this order.

In terms of the above, this petition stands allowed and disposed of. A copy of this order be supplied to the counsel for the parties.

**JUDGE**



सत्यमेव जयते