

**HIGH COURT OF TRIPURA  
AGARTALA**

WP(C)No.203 of 2021

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For Petitioner(s)	: Mr. R. Datta, Adv.
For Respondent(s)	: Mr. D. Bhattacharya, G.A. Ms. N. Chakma(Saha), Adv.

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

**Order**

**22/12/2021**

Heard Mr. R. Datta, learned counsel appearing for the petitioner as well as Mr. D. Bhattacharya, learned G.A. assisted by Ms. N. Chakma(Saha), learned counsel appearing for the respondents.

2. The grievance of the petitioner falls within a short compass. By means of this writ petition, the notification dated 15.10.2018 [Annexure-5 to the writ petition] has been challenged. That apart, Rule 68(d) of Tripura Motor Vehicles Rules, 1991 being ultra vires the Motor Vehicles Act, 1988 has also been challenged. Further, the petitioner has urged this Court for directing the respondents to accept the documents of the petitioner and to issue permit in respect of her Auto Rickshaw bearing registration No.TRT-1770.

3. Mr. R. Datta, learned counsel appearing for the petitioner has submitted that the similar controversy has been settled by this Court by the judgment dated 13.03.2020 delivered in WP(C)No.1193 of 2019 titled as **Sri Govinda Chandra Shil versus The State of Tripura and Others**. In the said judgment, having elaborately discussing Section 80 of the Motor Vehicles Act, 1988 and other relevant provisions, it has been observed as under:

[16] The second proviso below sub-Section 2 of Section 80 of the Motor Vehicles Act further postulates that where a Regional Transport Authority, State Transport Authority or any prescribed authority referred to sub section (1) of Section 66 refuses an application for grant of permit of any kind under this Act, he shall give to the

applicant, in writing, its reasons for refusal of the same afford and opportunity of being heard in this matter.

[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 Page 11 of 12 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 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.**

4. Mr. Datta, learned counsel has further submitted that the above judgment has been implemented by the respondents.

5. Mr. D. Bhattacharya, learned G.A. appearing for the respondents has submitted that without approaching the competent authority, the petitioner has straightway moved to this Court seeking reliefs as noted above. The petitioner may file the appropriate prayer for granting the permit to her vehicle and that will be considered by the competent authority in terms of the provisions of law.

6. There is sufficient force in the submission of Mr. D. Bhattacharya, learned G.A. appearing for the respondents. Hence, the petitioner is directed to file a prayer for granting permit for her vehicle. For that purpose, all the relevant documents will be submitted by the petitioner along with the said prayer for consideration by the competent authority. The State Transport Authority shall dispose of such representation/prayer within a period of fifteen days from the date when such prayer will be received by them having strict regard to the observation made by this Court in the judgment dated 13.03.2020 [**Sri Govinda Chandra Shil versus The State of Tripura and Others**]. If the petitioner is aggrieved by any action of the respondent or the authority, the petitioner may seek remedy of her grievance and for that, estoppel shall not operate against her.

In terms of the above, the writ petition stands disposed of.

No order as to costs.

**JUDGE**