

*Constitutional Writ*  
**Present : The Hon'ble Mr Justice Jayanta Kumar Biswas**  
**Judgment on : May 5, 2010**

**W.P.No.15658(W) of 2009**  
**Dilip Kumar Palmal**  
**-vs-**  
**State of West Bengal & Ors.**

**Points:**

REVIEW      Application for review made before the Regional Transport Authority- Review whether permissible- The Motor Vehicles Act, 1988, S 83

**Facts:**

The Regional Transport Authority, Paschim Medinipur granted the petitioner a permanent stage carriage permit for the route Medinipur–Ramgarh extended upto Sizua via Pirakata, Lalgah, Khasjungle, Bramandiha, Goaltore.He submitted an application under s.83 of the Motor Vehicles Act, 1988 for permission of the RTA to replace the vehicle covered by the permit by a new higher model vehicle. The transport authority issued an order permitting him to replace the vehicle covered by the permit by “a New/better, BS-II, III or similar of Category or B.S.II Model of Bus.” The petitioner submitted an application requesting the transport authority to reconsider its decision and permit him to replace the vehicle covered by the permit by a non-BSII new higher model vehicle. But the transport authority did not give any attention to his application. Being aggrieved the petitioner filed this instant writ petition.

**Held:**

It is evident from the decision of the transport authority dated June 4, 2009 that it did not say why it was not inclined to permit the petitioner to replace the vehicle covered by the permit by a new higher model vehicle. The order of the transport department dated February 9, 2007 entitled the petitioner to make the request. By totally ignoring the request the transport authority failed to discharge its statutory duty. The transport authority does not possess any power to review its s.83 decision dated June 4, 2009. Hence, though the petitioner's request for reconsideration of the decision was quite justified, it cannot be said that by not reviewing the decision the transport authority once again failed to discharge its statutory duty. But when the fact of non-consideration of the request was pointed out, the rule of fairness created an obligation of the transport authority to

respond to the application. It ought to have responded. Its unfair silence rightly led the petitioner to this court.

**Paras-7 & 8**

Mr. R.N. Mahata  
Mr. P.B. Mahata                   ...for the petitioner

Mr. N.I. Khan  
Mr. A. Mukherj                   ....for the state

**The Court :**

The petitioner in this art.226 petition dated August 28, 2009 is seeking a mandamus commanding the respondents to permit him to replace his vehicle covered by the permit by a new higher model vehicle, and not by a BS-II vehicle as ordered by the RTA.

2. The Regional Transport Authority, Paschim Medinipur granted the petitioner a permanent stage carriage permit for the route Medinipur–Ramgarh extended upto Sizua via Pirakata, Lalgarrh, Khasjungle, Bramandiha, Goaltore. He submitted an application under s.83 of the Motor Vehicles Act, 1988 for permission of the RTA to replace the vehicle covered by the permit by a new higher model vehicle.

3. Considering the petitioner’s s.83 application, the transport authority issued an order dated June 4, 2009, Annexure P2 at p.22, permitting him to replace the vehicle covered by the permit by “a New/better, BS-II, III or similar of Category or B.S.II Model of Bus.” The transport authority did not say why it was not inclined to permit him to replace the vehicle covered by the permit by a non-BS-II new higher model vehicle.

4. In the light of the Government of India Notification Nos. GSR 927(E) dated December 5, 2003 and GSR 686(E) dated October 20, 2004 mentioning how BS-II and BS-III emission norms would be followed from April 1, 2005 in the States and the Union Territories, the O.S.D and E.O. Deputy Secretary, Transport Department, Government of West Bengal issued an order No.408-WT/3M-51/2006 dated February 9, 2007 asking all the District Magistrates to comply with the following requirements:

“1. No new permit as well as no replacement of vehicle against an existing permit can be allowed within KMA except BS-III vehicles [Except 3-wheelers for which BS-II norms should be maintained].

2. No new permit as well as no replacement of vehicles can be allowed within Non-KMA area except BS-II vehicle. However, in respect of areas partly falling within KMA, BS-III vehicle is required for this purpose.

3. BS-II vehicles may be allowed for registration in respect of National Permit. All India Tourist Permit in terms of Clause 1 of the Notification No. G.S.R.686(E) dt. 20.10.2004 of the Ministry of Shipping, Road Transport & Highways, Government of India.

4. Replacement of existing vehicle may be allowed against new vehicle of higher model only, on examination of each individual case on merit as a matter of exception only with the approval of the Government.”

5. In view of the order of the transport department dated February 9, 2007, the petitioner submitted an application dated August 5, 2009, Annexure P4 at p.26, requesting the transport authority to reconsider its decision dated June 4, 2009 and permit him to replace the vehicle covered by the permit by a non-BSII new higher model vehicle. Since the transport authority did not give any attention to his application, he brought this petition.

6. The principal question is whether the transport authority was under any obligation to consider the petitioner’s application requesting it to reconsider its decision dated June 4, 2009.

7. As noted hereinbefore the petitioner submitted the s.83 application requesting the transport authority to permit him to replace the vehicle covered by the permit by a new higher model vehicle. It is evident from the decision of the transport authority dated June 4, 2009 that it did not say why it was not inclined to permit the petitioner to replace the vehicle covered by the permit by a new higher model vehicle. The order of the transport department dated February 9, 2007 entitled the petitioner to make the request. By totally ignoring the request the transport authority failed to discharge its statutory duty.

8. But the transport authority does not possess any power to review its s.83 decision dated June 4, 2009. Hence, though the petitioner’s request for reconsideration of the decision was quite justified, it cannot be said that by not reviewing the decision the transport authority once again failed to discharge its statutory duty. But when the fact of non-consideration of the request was pointed out, the rule of fairness created an obligation of the transport authority to respond to the application. In my opinion, it ought to have responded. Its unfair silence rightly led the petitioner to this court.

9. In my opinion, it is necessary in the interest of justice to set aside the s.83 decision of the transport authority dated June 4, 2009 and direct the transport authority to decide the petitioner’s s.83 application afresh in the light of the Government Order dated February 9, 2007.

10. For these reasons, I allow this petition, set aside the decision of the transport authority dated June 4, 2009 and order as follows. Within eight weeks from the date of communication of this order and after giving the petitioner opportunity of hearing, the transport authority shall decide the

petitioner's s.83 application in the light of para.4 of the Government Order dated February 9, 2007. If the Government is approached for approval, then it shall give decision within four weeks from the date of receipt of the proposal. Decisions shall be communicated to the petitioner. No costs. Certified xerox.

(Jayanta Kumar Biswas, J)

sb