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IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

K.M. JOSEPH; PAMIDIGHANTAM SRI NARASIMHA, JJ.

CIVIL APPEAL NOS. 1453-1454 OF 2022 ARISING OUT OF SLP (CIVIL) NOS. 13834-13835 OF 2018; FEBRUARY 17, 2022

REGIONAL TRANSPORT AUTHORITY & ANR.

VERSUS

SHAJU ETC.

Motor Vehicles Act, 1988 - Section 83 - Kerala Motor Vehicle Rules,1989 - Rule 174(2)(c) - Rule 174(2)(c) [which enables road transport authority to reject an application for replacement if the proposed vehicle is older than the one covered under the existing permit] is valid - Rule 174 (2) (c) is neither ultra vires the Act, nor has overridden Section 83 - Kerala HC Judgment in Regional Transport Authority vs. Shaju [ILR 2017 (3) Ker. 720] set aside. *(Para 1, 23, 24)*

Motor Vehicles Act, 1988 - Section 83 - Kerala Motor Vehicle Rules,1989 - Rule 174(2)(c) - The purpose and object of mandating replacement by a vehicle of the same nature in Section 83 is only to ensure that the scrutiny and the conditions that were undertaken and imposed at the time of the grant continue even during the subsistence of the permit Rule 174 (2) (c) is intended to ensure that the conditions under which a transport permit is granted is not diluted when the vehicle covered by the permit is sought to be replaced by a new vehicle. *(Para 15)*

Motor Vehicles Act, 1988 - Section 56, 59 and 83 - Kerala Motor Vehicle Rules,1989 - Rule 174(2)(c) - Rule 174 (2) (c) made by the State Government to enable replacement of the vehicle under a Transport permit, does not impinge upon the powers of the Central Government with respect to fixation of the age of the vehicle, or fitness of the vehicle conferred upon it under Sections 56 and 59 in Chapter IV. The scrutiny under Rule 174 is only to enable the Authority to ensure that the subsisting permit is not interrupted and at the same time public interest is not compromised by deviating from the permit. The Rule will have no bearing on the power of the Central Government and as such it would not be ultra vires the provisions of the Act. *(Para 13.6)*

Motor Vehicles Act, 1988 - Section 83 - Kerala Motor Vehicle Rules,1989 - Rule 174(2)(c) - The vehicle which the Authority may not approve for replacement under section 83 on the ground that it is older than the vehicle covered under the permit, can be used as a transport vehicle within the State. There is no prohibition for such a usage as the said vehicle may continue to be fit and within the age limit prescribed by the Central Government. The rigour of Rule 174 (2) (c) is only in the context of a subsisting transport permit and not as a condition for transport vehicles as such. *(Para 13.7)*

Motor Vehicles Act, 1988 - Section 83 - The expression "same nature" is confined only to, mean "a bus by bus, a mini-bus by mini-bus and not bus by a minibus…." is not a correct way to read the provision. There is no need to restrict the meaning of an expression same nature - The phrase, of the same nature seen in the context of provisions proximate to Sections 83, relating to duration and renewals of permits (Section 81), transfer of permits (Section 82) lend clarity to the meaning of the expression. Same nature must necessarily relate to the same nature of the vehicle in the permit. The question to be asked is the nature of the vehicle under the permit. What kind of a vehicle was that? How was that connected to the permit granted? Does the new vehicle serve the same purpose as the old vehicle was serving under the permit? *(Para 21.3, 13.4)*

Motor Vehicles Act, 1988 - Section 83 - A scrutiny of the vehicle, stand alone, irrespective of its relation with the permit becomes an irrelevant consideration for the purpose of Section 83 - the scope of scrutiny is limited only to examining if the vehicle is of same nature as in the permit. *(Para 13.2,13.3)*

Motor Vehicles Act, 1988 - Section 83 - Kerala Motor Vehicle Rules,1989 - Rule 174(2)(c) - Replacement of a vehicle during the subsistence and continuation of a transport permit is only an incident in the working of a transport permit. While addressing such an incident, the Authority cannot be oblivious of the history and background in which the permit is granted. *(Para 21.2)*

Motor Vehicles Act, 1988 - Section 72 - Grant of a transport permit is an important function that the statutory authority under the Act would perform. *(Para 18.1)*

Interpretation of Statutes - Subordinate Legislation - A subordinate legislation must be interpreted to effectuate the statutory purpose and objective. *(Para 21.1)*

(Arising out of impugned final judgment and order dated 18-07-2017 in WA No.1470/2017 18-07-2017 in WA No. 1466/2017 passed by the High Court Of Kerala At Ernakulam)

For Petitioner(s) Mr. Santosh Krishnan, Adv. (Amicus Curiae) Mr. G. Prakash, AOR

J U D G M E N T

PAMIDIGHANTAM SRI NARASIMHA, J.

1. Leave granted.

2. Section 83 of the Motor Vehicles Act, 1988 enables replacement of the vehicle covered under an existing transport permit by another vehicle *of the same nature*. Can a State Government make Rules, enabling the road transport authority to reject an application for replacement if the proposed vehicle is older than the one covered under the existing permit? This is the question we are tasked to answer. For the analysis and the reasoning that will follow, we have held that Rule 174(2)(c) of the Kerala Motor Vehicle Rules,1989 is valid and salutary and does not go beyond the scope of Section 83. We will first refer to the basic facts and the statutory provisions before analyses and determination.

Facts:

3.1 The Respondent was granted a stage carriage operator permit, P.St. 7/362/2012 dated 7.5.2017 in respect of vehicle number KL-41L-1017, a 38-Seater, 2016 model by the Regional Transport Authority (hereinafter referred to as 'Authority') to conduct transport service on the route Pattimattam-Kakkanad in Kerala. On 19.5.2017, the Respondent applied to the Authority under Section 83 of the Motor Vehicles Act, 1988 (hereinafter referred to as 'Act') read with Rule 174 of the Kerala Motor Vehicle Rules, 1989 (hereinafter referred to as 'Rules') for grant of permission to replace the vehicle covered under his permit with another vehicle KL-17E-997, a 33-Seater, 2006 model. Alleging inaction on the part of the Authority, the Respondent filed a Writ Petition before the High Court of Kerala on 12.6.2017. The Learned Single Judge disposed of the writ

petition on 13.06.2017 by merely directing the State and the Authority to consider the application on the ground of road-worthiness alone and without reference to the model of the vehicle.

3.2 Aggrieved by the Single Judge's decision, the Authority preferred Writ Appeals No.1466/2017 before the Division Bench of the High Court of Kerala. Another Writ Appeal No.1470/2017 dealing with similar facts and issues was also taken up along with this case. The Division Bench by the impugned judgment dated 18.07.2017 dismissed the Writ Appeals holding that Rule 174(2) (c) of the Kerala Motor Vehicle Rules, 1989 goes beyond the provision of the Act. The Court concluded:-

"*When in exercise of delegated authority, the subordinate authority i.e., the State, makes the rules, the rules have to be consistent with the Act. The Rules cannot override the Act or restrict the ambit of the Act. When the expression is vehicle of same nature, then if Rule 174(2)(c) restricts that an older vehicle cannot be brought in, it would be restricting the right conferred to a person by the provisions of the Act. Surely such an exercise by a delegate cannot be permitted. Rules have to be consistent with the Act and not restricting or in derogation thereto. Rules to that extent cannot thus be held to be consistent with the Act and would have to be held to be inoperative.*"

3.3 With these findings the Division Bench dismissed the Appeals. It is this order that is challenged before this Court. We heard Sh. G Prakash, Advocate for the appellant State and the Authorities and Sh. Santosh Krishnan, Amicus Curiae.

Contentions:

4.1 Shri G. Prakash, learned counsel on behalf of the State and Authority submitted that the purpose of Rule 174(2)(c) is to ensure the safety of the travelling public and therefore the prohibition for replacement of a vehicle covered under a permit with an older model would be legal and justified as it will also ensure that the vehicle of the 'same nature' as prescribed under Section 83. Alternatively, it is also submitted that the requirement under Rule 174(2)(c) must be seen in the context of *discretion* to be exercised by the Authority while considering the application for replacement. It is his case that rejection is not automatic as it is within the power of the Authority to either accept or reject the request the application for a good and a valid reason. He further submits that as there was no specific challenge to Rule 174(2)(c), the

High Court was not justified in declaring the Rule as inoperative. In light of these submissions, he urged for the impugned judgment to be set-aside and the Rule be upheld.

4.2 Since there was no appearance on behalf of the Respondents, we requested Shri Santosh Krishnan to assist us as Amicus Curiae and he readily accepted the assignment and ably assisted us by filing written submissions supporting the judgment of the High Court. The primary submission of the Amicus Curiae is that the State Government does not have the legislative competence to make the impugned Rule. He argued that matters relating to prescription of conditions, methodology for verification and even certification of fitness of vehicle (Section 56 read with the Rule 62) as well as the power to fix the age limit of a motor vehicle (Section 59) fall within the province of the Central Government and therefore, the State Government does not have the competence to make Rules 174(2)(c). He would urge that a collateral challenge to the impugned order on the ground of competence is legally permissible. He drew our attention to Rules made in other States to demonstrate that none of them have made a Rule akin to Rule 174(2)(c) that touches upon the fitness of a vehicle. He concluded by submitting that the impugned decision of the High Court has held the field for over four years and has also been followed in subsequent cases and therefore this Court may not interfere while exercising jurisdiction under Article 136.

5. The following issues arise for our consideration:

i. Whether Rule 174(2)(c) of Kerala Motor Vehicles Rules, 1989 is *ultravires* the provisions of the Act as the power with respect to prescription of age limit of a motor vehicle is in the exclusive domain of the Central Government?

ii. Whether Rule 174(2)(c) of the Kerala Motor Vehicles Rules, 1989 travels beyond and contrary to Section 83 of the Motor Vehicles Act, 1988?

iii. What is the scope of the discretion exercised by the Authority in exercise of its power under Rule 174(2)(c) of the Kerala Motor Vehicles Rules, 1989?

iv. Whether the Respondents can challenge the legality of Rule 174(2)(c) without specifically praying for the same in the Writ Petition and whether the High Court is justified in permitting such a submission?

v. Whether the fact that the impugned judgment has held the field over last few years and has been followed in subsequent orders is in itself a sufficient ground to reject the appeals?

Act and the Rules:

6.1 Rule 174(2)(c) of the Kerala Motor Vehicles Rules, 1989 provides as under: -

"Rule 174. Permit - Replacement of vehicles:

(1) 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 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 and shall,

(a) if the new vehicle is not in his possession, state the material particulars in respect of which the new vehicle differs from the old: and

(b) if the new vehicle is in his possession, forward the certificate of registration hereof

(2) Upon receipt of the application, the Transport Authority may in his discretion, reject the application -

(a) if it has previous to the date of receipt of the application given reasonable notice of its intention to reduce the number of Transport Vehicles of that class generally or in respect of the route or area to which the permit applies; or

(b) if the new vehicle proposed differs in the material respects from the old; or

(c) if the new vehicle proposed is older than the one sought to be replaced; or

(d) if the holder of the permit has contravened the provisions thereof or has been deprived of possession of the old vehicle under the provisions of any agreement of higher purchase, hypothecation or lease.

(3) if the new vehicle proposed does not differ in material respects from the old, the application for replacement of the vehicle may be

allowed. If there is material difference between the two vehicles, the application shall be treated as if it were for a fresh permit."

6.2 The power relatable to replacement of the vehicle is provided in Section 83 of the Act: -

*"83. **Replacement of vehicles**: 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."*

7. Having noticed the Rule in question and the relatable statutory provision, we will now consider the issues in seriatim.

Issue (i): Whether Rule 174(2)(c) of Kerala Motor Vehicles Rules 1989 is *ultra-vires* the provisions of the Act as the power with respect to prescription of age limit of a motor vehicle is in the exclusive domain of the Central Government?

8.1 Section 83 is an enabling provision. It allows a permit holder to replace the vehicle covered under the transport permit. The right to replace the vehicle under a permit is subject to the permission of the Authority. The right, as well as the power to grant permission, are subject to the condition that the vehicle to be replaced is '*of the same nature*' .

8.2 The expression, '*of the same nature*' can have multiple meanings. [In *Geeta B.Rao v. Secretary, Karnataka State Transport Authority,* 1994 2 Karn LJ 703, the Karnataka High Court, while following an earlier judgment *Yeshodhara Kadamba v. KSRAT*, ILR1988 KAR 2447 held that the expression "nature" is distinct from the expression "capacity" that existed prior to its amendment and observed, "*firstly, on a plain understanding of the meaning of the Section can mean, vehicle of a similar type, i.e., a passenger vehicle. It only means that a tourist vehicle cannot be replaced by a stage carriage or a goods-vehicle. In other words, the 'character' of the vehicle cannot be changed. The meaning intended to be conveyed is that the characteristic of the vehicle should not be lost.*"]. This phrase, in its natural expression would only mean having similar features. But then, would '*same*' mean similar, identical, equivalent, comparable,

interchangeable or related? Likewise, would the expression "nature" mean type, feature, texture, make, model, design, or generation?

8.3 These are open textual expressions, used in the normal course to convey a meaning which the legislature would not have intended to be read in a pedantic manner. When the words in the Section allow multiple interpretations, Courts of Law have developed the art and technique of finding the correct meaning by looking at the words in their context. This approach is beautifully expressed by Justice O. Chinnappa Reddy in the case of ***Reserve Bank of India v. Peerless General Finance Investment Co. Ltd And Ors.*** (1987) 1 SCC 424. We would notice similar approach adopted by this Court in *Municipal Corporation of City of Hubli v. Subha Rao Hanumatharao Prayag and others* (1976) 4 SCC 830 *Vijayawada Municipal Corporation v. Andhra Pradesh State Electricity Board and Another* (1976) 4 SCC 548.

"33. Interpretation must depend on the text and the context. They are the bases of interpretation. One may well say if the text is the texture, context is what gives the colour. Neither can be ignored. Both are important. That interpretation is best which makes the textual interpretation match the contextual. A statute is best interpreted when we know why it was enacted. With this knowledge, the statute must be read, first as a whole and then section by section, clause by clause, phrase by phrase and word by word. If a statute is looked at, in the context of its enactment, with the glasses of the statutemaker, provided by such context, its scheme, the sections, clauses, phrases and words may take colour and appear different than when the statute is looked at without the glasses provided by the context. With these glasses we must look at the Act as a whole and discover what each section, each clause, each phrase and each word is meant and designed to say as to fit into the scheme of the entire Act. No part of a statute and no word of a statute can be construed in isolation. Statutes have to be construed so that every word has a place and everything is in its place……"

9. As the text by itself has not conferred certainty to the meaning of the expression – *of the same nature,* we have to examine the phrase in context

of the words in the Section, the neighboring provisions, the Chapters, Parts and its location in the Statute as a whole.

10. The Motor Vehicles Act, 1988 regulates matters such as, licensing of the drivers of motor vehicles in Chapter II, licensing of conductors of stage carriages in Chapter III, registration of motor vehicles in Chapter IV, control of transport vehicles in Chapter V, state transport undertakings in Chapter VI, control of traffic in Chapter VIII, no fault liabilities in Chapter X, insurances in Chapter XI, establishments of Tribunals in Chapter XII, penalties in Chapter XIII, apart from the miscellaneous provisions in Chapter XIV. For the purpose of this case, it is sufficient to examine the phrase in the context of Chapter IV relating to Registration of Motor Vehicles and Control of Transport Vehicles in Chapter V.

11.1 Chapter IV lays out the general regulatory regime for registration of motor vehicles, transfer of ownership, certification of fitness, age limit of vehicles and also provides for the rulemaking powers of the Central as well as the State Governments. The purpose and object of this Chapter is to regulate driving of a motor vehicle in any public place and with this endeavor. Section 39 prohibits any person from driving a motor vehicle without its registration. The Central Government is empowered to lay down norms and prescribe procedures for registration, fees, maintenance of registers, registration numbers (RC), time limits for renewal etc. Fixing the terms and conditions for grant of Certificate of fitness and fixation of age limits of the vehicle is the exclusive domain of the Central Government under Sections 56 and 59.

"Section 56. Certificate of fitness of transport vehicles:

(1) Subject to the provisions of sections 59 and 60, a transport vehicle shall not be deemed to be validly registered for the purposes of section 39, unless it carries a certificate of fitness in such form containing such particulars and information as may be prescribed by the Central Government, issued by the prescribed authority, or by an authorized testing station mentioned in subsection (2), to the effect that the vehicle complies for the time being with all the requirements of this Act and the rules made thereunder;…."

11.2 Following the power vested in it, the Central Government enacted the Central Motor Vehicles Rules, 1989. Rule 62 laying down the procedure for grant of a certificate.

"Rule 62. Validity of certificate of fitness:

(1) A certificate of fitness in respect of a transport vehicle granted under Section 56 shall be in Form 38 and such certificate when granted or renewed shall be valid for the period as indicated below……..."

11.3 Similarly, we notice the power of the Central Government to prescribe age limit of a vehicle is in Section 59. The provision to the extent it is relevant for the purpose of the case is as under: -

"Section 59: Power to fix the age limit of motor vehicle –

(1) The Central Government may, having regard to the public safety, convenience and objects of this Act, by notification in the Official Gazette, specify the life of a motor vehicle reckoned from the date of its manufacture, after the expiry of which the motor vehicle shall not be deemed to comply with the requirements of this Act and the rules made thereunder:

Provided that the Central Government may specify different ages for different classes or different types of motor vehicles."

11.4 There is a distinction between the rule-making power given to the Central Government on one hand and to the State Government on the other. Section 64 is the rule-making power of the Central Government, enabling it to lay down the norms and procedures to be followed for implementation of provisions in the Act. Sub-sections (m) and (n) of Section 64 are relevant for our purposes, wherein it is provided that: -

"Section 64: Power of Central Government to make rules:

The Central Government may make rules to provide for all or any of the following matters namely: –

(m) the form in which the certificate of fitness shall be issued under sub-section (1) of Section 56 and the particulars and information it shall contain;

(n) the period for which the certificate of fitness granted or renewed under Section 56 shall be effective."

11.5 In contrast, the rule-making power of the State Government is as the executing agency for implementing of the provisions of the Act. For this purpose, Section 65 enables the State Government to make such Rules as are necessary for execution. Crucial words in the Rule making power of the State are noted below with added emphasis: -

"Section 65: Power of State Government to make rules: (1) A State Government may make rules for the purpose of carrying into effect the provisions of this Chapter other than the matters specified in Section 64."

12.1 Chapter V relates to the regulatory regime of the State Governments with respect to Transport vehicles. It prohibits transportation without a valid permit under Section 66. Control of road transport vested in the State Government under Section 67, is to ensure, (a) advantages to the public, trade and industry by the development of motor of transport, (b) coordination of road and rail transport, (c) prevent deterioration of the road system and also to (d) prevent uneconomic competition among holders of permits. For this purpose, the State Government can issue directions to the State and Regional Transport Authorities established under Section 68. Right to Appeal against the decisions of State or Regional Transport Authority is provided under Section 89 and Revisional powers are under Section 90, followed by a bar on Civil Courts Jurisdiction under Section 94. Under this Chapter State Government alone has power to make rules. While Section 95 relates to the rule making power of the State Government with respect to stage and contract carriages, Section 96 relates to the general power of the State Government to make rules for the purpose of Chapter V. It is important to note that there is no power for the Central Government to make rules under Chapter V.

12.2 There are different types of transport vehicles, for which there are different requirements and separate permits to be granted. For example, (i) applications for stage carriages permits are covered under Section 70, procedure for the same is provided under Section 71 and the power to grant the transport permit for stage carriages is provided under Section 72. (ii) Applications for contract carriages are covered under Section 73 and the power to grant is in Section 74. (iii) Scheme for renting motor cabs is under Section 75, (iv) private service vehicle permits are covered under Section 76, (vii) applications, consideration and grant of goods carriage permits are provided in Sections 77, 78 and 79.

12.3 The general norms with respect to applications and the procedure to be followed is provided under Sections 79 and 80. Duration and renewal of permits is governed by Section 81 and the transfer of a permit is prescribed in Section 82. Replacement of a vehicle under a permit with any other vehicle, the provision with which we are concerned in this case, is provided in Section 83. General conditions applicable to all permits, the forms in which the permits may be granted, and the power and procedure of cancellation are provided in Sections 84, 85 and 86. The legal regime relating to operation and use of permit outside the region is provided in Sections 87 and 88.

13.1 It is in the above referred statutory scheme that the submission of the Amicus needs to be considered.

13.2 The statutory scheme under Chapter V generally provides for the powers of the State Government to deal with *transport vehicles* except under Section 88 of the Act where the powers are subject to the rules made by the Central Government. It provides not only the procedure for grants of permits, but also the mechanism by which vehicles used for transportation are regulated. It is in this context that Section 83 relating to replacement of a vehicle occurs. The placement of Section 83 in Chapter V is a recognition of the need to provide a seamless mechanism for replacement of a vehicle during subsistence of a transport permit. Seen in the context of Chapter V relating to transport vehicles, it becomes clear that the provision is intended only to enable the owner to work his permit without any interruption even if there is a need to replace the vehicle covered by the permit. There is no other purpose. It is intended to be a simple transaction and this is reason why the scope of scrutiny is limited only to examining if the vehicle is of *same nature* as in the permit. This is all that is required.

13.3 It is but natural that the replacement would require the Authority to grant the necessary permission as they are the regulators. When an application made under Section 83 is taken up, the Authority is cognizant of the fact that there is a valid and a subsisting permit and the permit holder seeks to continue operating the permit and it is only for this reason that he is seeking replacement of the vehicle. The context in which his scrutiny is called upon, is only to ensure that the conditions of the permit are not deviated from. Therefore, when the statute says *same nature*, it is only relatable to the permit. The scrutiny is not of the *vehicle* in itself but the vehicle in relation to the permit. It is for this reason

that a scrutiny of the vehicle, stand alone, irrespective of its relation with the permit becomes an irrelevant consideration for the purpose of Section 83.

13.4 The phrase, *of the same nature* seen in the context of provisions proximate to Sections 83, relating to *duration and renewals of permits* (Section 81), *transfer of permits* (Section 82) lend clarity to the meaning of the expression. *Same nature* must necessarily relate to the *same nature* of the vehicle in the permit. The question to be asked is the nature of the vehicle under the permit. What kind of a vehicle was that? How was that connected to the permit granted? Does the new vehicle serve the same purpose as the old vehicle was serving under the permit?

13.5 Questions *relating* to the vehicle or *about* the vehicle are matters of concern in Chapter IV, under which the Central Government is empowered to set the norms for the fitness or the age limit of the vehicle. Chapter V, on the other hand contains the legal regime with respect to operations of transport vehicles. It is under this Chapter that the Parliament intended that there must be a provision for replacement of a vehicle covered under a permit so that the permit granted could continue and subsist till the end of its tenure. Chapters IV and V operate in their own field subserving the purpose and objects mentioned therein.

13.6 For the reasons stated above, we are of the view that Rule 174 (2) (c) made by the State Government to enable replacement of the vehicle under a Transport permit, does not impinge upon the powers of the Central Government with respect to fixation of the age of the vehicle, or fitness of the vehicle conferred upon it under Sections 56 and 59 in Chapter IV. The scrutiny under Rule 174 is only to enable the Authority to ensure that the subsisting permit is not interrupted and at the same time public interest is not compromised by deviating from the permit. The Rule will have no bearing on the power of the Central Government and as such it would not be *ultra vires the provisions of the Act.*

13.7 There is yet another aspect which can lend a certain amount of clarity to this position. The vehicle which the Authority may not approve for replacement under section 83 on the ground that it is older than the vehicle covered under the permit, can be used as a transport vehicle within the State. There is no prohibition for such a usage as the said vehicle may continue to be fit and within the age limit prescribed by the Central Government. The rigour of Rule 174 (2)

(c) is only in the context of a subsisting transport permit and not as a condition for transport vehicles as such.

13.8 For the reasons stated above, we are not inclined to accept the submission that Rule 174(2)(c) is *ultra vires* the provisions of the statute.

Issue (ii): Whether Rule 174(2)(c) of the Kerala Motor Vehicles Rules, 1989 travels beyond and contrary to Section 83 of the Motor Vehicles Act, 1988?

14. By the order impugned, the Division Bench of the High Court held that Rule 174 (2) (c) being inconsistent with the Act should be held to be inoperative. The reasoning adopted by the High Court is as under:

"9. We may now come to the Act. Section 83 clearly predicates replacement of the vehicle by vehicle of the "same nature". The Legislature have used the expression purposely. They could have used various other expressions. To us, the expression is clear. Same nature would mean; a bus by a bus, a mini bus by a mini bus, an air-conditioned bus by an air- conditioned bus, a truck by a truck and not a bus by a mini bus and an airconditioned bus by a non-air-conditioned bus or mini bus by a regular bus; that is the only restriction. When in exercise of delegated authority the subordinate authority i.e. the State, makes the rules, the rules have to be consistent with the Act. The Rules cannot override the Act or restrict the ambit of the Act. When the expression is vehicle of same nature, then if Rule, 174(2)(c) restricts that an older vehicle cannot be brought in, it would be restricting the right conferred to a person by the provisions of the Act. Surely such an exercise by a delegate cannot be permitted. Rules have to be consistent with the Act and not restricting or in derogation thereto.The Rules to that extent cannot thus be held to be consistent with the Act and would have to be held to be inoperative."

15. We are of the opinion that Rule 174 (2) (c) is intended to ensure that the conditions under which a transport permit is granted is not diluted when the vehicle covered by the permit is sought to be replaced by a new vehicle. The purpose and object of mandating replacement by a vehicle of the *same nature* in Section 83 is only to ensure that the scrutiny and the conditions that were undertaken and imposed at the time of the grant continue even during the

subsistence of the permit. The legal regime involved in the grant of the permit as evidenced by the statutory provisions, rules, forms and certification establish this principle. We will explain this position.

16.1 Section 83 is to be understood only in the context of a subsisting permit. The present is a case of a stage carriage permit, the application for which is to be made under Section 70. When an application under Section 70 for grant of a stage carriage permit is made, it shall contain particulars such as (i) the type and seating capacity of the vehicle [Section 70(1)(b)]; (ii) the number of vehicles to be kept in reserve; and (iii) such other details as may be prescribed. Such application should also be accompanied by the documents as may be prescribed [Section 70(2)]. Section 70 of the Act may be noticed:

*"**Section 70. Application for stage carriage permit**: (1) An application for a permit in respect of a stage carriage (in this Chapter referred to as a stage carriage permit) or as a reserve stage carriage shall, as far as may be, contain the following particulars, namely:-*

(a)…

(b) the type and seating capacity of each such vehicle;

(c) the minimum and maximum number of daily trips proposed to be provided and the time-table of the normal trips.

….

(f) such other matters as may be prescribed.

(2) An application referred to in sub-section (1) shall be accompanied by such documents as may be prescribed."

16.2 In furtherance of the statutory prescriptions under Section 70, and in exercise of the power to make Rules, the State Government made the Kerala Motor Vehicle Rules, 1989. In Chapter V of the Rules relating to control of transport vehicle, Rule 143 prescribe the application for permits and Rule 144 provides the Forms of such permits.

***Rule 143. Application for permits** -- The application for a permit shall be in the following form*

Permit Form

(a) stage carriage P.St.S.A

(b)contact carriage P.Co.S.A

(c) private service vehicle permit P.Pr.S.A

(d) goods carriage P.Gd.S.A

(e) temporary permit P.Tem.A

(f) spl perm u/s 88 (8) of the Act P.Sp.A

***Rule 144. Form of permits** -- Permits shall be issued in the following forms:*

Permit Form

(a) stage carriage P.St.

(b)contact carriage P.Co.

(c) private service vehicle permit P.Pr.S.A

(d) goods carriage P.Gd.S.A

(e) temporary permit P.Tem.A

(f) spl perm u/s 88 (8) of the Act P.Sp.A

16.3 As per the P.St.S.A form provided for in Rule 144 for grant of a stage carriage permit is formulated and appended, which comprises of various particulars that an applicant must fill and submit. The Form is as under: -

"FORM P.St.S.A

APPLICATION FOR PERMIT IN RESPECT OF STAGE CARIAGE/RESERVE STAGE CARRIAGE

1. Full Name

....

7. Type of vehicle

***8.** (i) Seating capacity (Excluding Driver and Conductor) (ii) Maximum laden weight*

***9.** Time table proposed*

....."

17.1 It is evident from the above, the statutory scheme under Section 70 requiring an application for a transport permit to provide material particulars include the requirement of indicating the *type of vehicle* is also incorporated in the Rules made by the State Government. The Rules, followed by the Forms require details of the *type of the vehicle*s to be furnished. The need to call for information about the vehicle becomes relevant when we notice the requirement of Section 71, relating to the procedure and consideration of the applications. Section 71 is as under:

"Section 71. Procedure of Regional Transport Authority in considering application for stage carriage permit.—

(1) A Regional Transport Authority shall, while considering an application for a stage carriage permit, have regard to the objects of this Act:

(2) A Regional Transport Authority shall refuse to grant a stage carriage permit if it appears from any time-table furnished that the provisions of this Act relating to the speed at which vehicles may be driven are likely to be contravened:

Provided that before such refusal an opportunity shall be given to the applicant to amend the time- table so as to conform to the said provisions.

(3) (a) The State Government shall, if so directed by the Central Government having regard to the number of vehicles, road conditions and other relevant matters, by notification in the Official Gazette, direct a State Transport Authority and a Regional Transport Authority to limit the number of stage carriages generally or of any specified type, as may be fixed and specified in the notification, operating on city routes in towns with a population of not less than five lakhs.

(b) Where the number of stage carriages are fixed under clause (a), the Government of the State shall reserve in the State certain percentage of stage carriage permits for the scheduled castes and the scheduled tribes in the same ratio as in the case of appointments made by direct recruitment to public services in the State.

(c) Where the number of stage carriages are fixed under clause (a), the Regional Transport Authority shall reserve such number of permits for the scheduled castes and the scheduled tribes as may be fixed by the State Government under sub-clause (b).

(d) After reserving such number of permits as is referred to in clause (c), the Regional Transport Authority shall in considering an application have regard to the following matters, namely:-

(i) financial stability of the applicant;

(ii) satisfactory performance as a stage carriage operator including payment of tax if the applicant is or has been an operator of stage carriage service; and

(iii) such other matters as may be prescribed by the State Government:

Provided that, other conditions being equal, preference shall be given to applications for permits from-

(i) State transport undertakings;

(ii) co-operative societies registered or deemed to have been registered under any enactment for the time being in force;

(iii) ex-servicemen; 2[or]

[(iv) any other class or category of persons, as the State government may, for reasons to be recorded in writing consider necessary;]"

17.2 Under Section 71, if the Central Government, in exercise of its powers restricts the number of vehicles depending on the road conditions and other relevant factors, the State Government shall direct the Authorities to limit the number of stage carriages etc. The consequence of limiting the stage carriages, coupled with the provision for reservation in favour of Schedule Castes and Schedule Tribes will necessarily compel the Authorities to prioritize competing applicants on the basis of certain prescriptions. These are statutorily prescribed under Section 71 (3)(d) read with proviso.

17.3 Having considered the applications under Section 70, following the procedure laid down under Section 71, the stage carriage permission is granted by the authority under Section 72. Even at the stage of grant, the Authority is

empowered to prescribe certain conditions for the operation of the grant. Section 72, to the extent that it is relevant for our purpose is as under:

*"**Section 72. Grant of stage carriage permits.***

*(1) Subject to the provisions of section 71, a Regional Transport Authority may, on an application made to it under section 70, grant a stage carriage permit in accordance with the application or with **such modifications as it deems fit or refuse to grant such a permit**:*

Provided that no such permit shall be granted in respect of any route or area not specified in the application.

*(2) The Regional Transport Authority, if it decides to grant a stage carriage permit, may grant the permit for a stage carriage **of a specified description** and may, subject to any rules that may be made under this Act, **attach to the permit any one or more of the following conditions**, namely:*

(i)….

(x) that vehicles of a specified type fitted with body conforming to approved specifications shall be used

(xi) that specified standards of comfort and cleanliness shall be maintained in the vehicles;

(xxiv) any other conditions which may be prescribed."

17.4 In compliance of Section 72, when a stage carriage permit is granted, Rule 159 of Kerala Motor Vehicle Rules, 1989 mandatorily prescribes that a permit shall bear the registration mark of the vehicle.

*"**Rule 159. Permits - entry of registration marks compulsory: - Time for entry***

(1) No permit shall be issued before entering the registration mark of the vehicle to which it relates has been entered therein.

(2) When the applicant is unable to produce the certificate of registration on the date of his application for permit, owing to the fact that he is not on that date in possession of the vehicle duly

registered, or for some other reason, the applicant shall within one month of the sanctioning of the application by the Transport Authority or such longer period or periods not exceeding four months in the aggregate as the Authority may specify, produce the certificate of registration of the vehicle before that Authority so that the particulars of the registration mark may be entered in the permit. In the event of any applicant failing to produce the certificate of registration within the period specified by the Transport Authority, the Authority may revoke its sanction of the application.

(3) The power vested in a Transport Authority under sub-rule (2) shall also be exercised by its delegate in respect of orders passed under the delegated powers."

18.1 Grant of a transport permit is an important function that the statutory authority under the Act would perform. This Court had an occasion to consider the serious consequences of motor accidents leading to large number of deaths and injuries to human body. This unfortunate fact was noted by this Court in ***S. Rajaseekaran v. Union of India and Ors***. (2018) 13 SCC 532 (Judgment dated 30.11.2017).

"*90. During this hearing, we sought to impress upon all concerned that road safety issues should be taken seriously both by the Central Government as well as by the State Governments. We also noted that huge amounts running into hundreds of crores of rupees had been earmarked for road safety and it was also highlighted that a very large number of deaths had been taking place due to road accidents. We noted that the insurance companies had spent an amount of Rs. 11,480 crores by way of compensation for deaths, injuries, third-party property damage and other damage due to road accidents during the financial year 2015-2016.*

91. On 7.11.2016 we again noted that there was one death almost every three minutes as a result of road accidents. Unfortunately, the legal heirs of half the victims were not compensated (perhaps being unaware of their entitlement)….."

18.2 If this reality has to be addressed, the primary obligation is on the transport regulates the Authorities. The scrutiny that they must exercise in granting licences and permits in today's world is much more than ever. At the same time, Courts have the obligation to interpret the provisions of the statute and the rules made thereunder in a manner that will sub-serve an effective scrutiny by the regulator. This Court, as well as the High Courts have approached the problem in this perspective and in fact, the judgments that we will advert to, not only underline and emphasise the importance of the information of the vehicle in the application for permit, but also approved the condition of a maximum age of the vehicle prescribed by the Authorities.

19.1 In the case of ***Sheelchand and Co. v. State Transport Appellate Authority, Gwalior***, (1963) SCC Online MP 44 the Division Bench of the High Court of Madhya Pradesh upheld the condition of the Authority which prescribed that the Bus must be of 1962 model. The Court held:

"Under section 48(3), the RTA may grant the permit for a service of stage carriages of a specified description… Clause (xxiii) gives the RTA the authority to attach "any other condition which may be prescribed". The power to prescribe such a condition flows not from any of the clauses of section 48(3) but from the substantive provision of sub-section (3) itself. That sub-section says that the RTA may grant a permit for the service of sage carriages of a specified description. If the stage carriage for which a permit can be granted can be of a "specified description" then it follows that the RTA has the power to say that the stage carriage for which the permit has been granted shall be of a particular year of manufacture. Specific description of a stage carriage is not confined to its class, name, maker, number of cylinders or horsepower, but also includes the year of manufacture..... The whole idea and requiring that the service of a stage carriage shall be run with a stage carriage of a particular year of manufacture is to ensure reliability and efficiency of service and the safety of the travelling public. Section 47 and 48 of the Act, read together, clearly show that the statutory powers to issue permits with certain conditions of stage carriages or not meant for the benefit and protection of permit holders but are meant for the benefit of the general public." M/s. Goa Highways

Operators v. State Transport Authority, Goa, Daman, and Diu (1976) SCC Online GDD 19.

19.2 The Division Bench judgment of the High Court of Madhya Pradesh was approved by this Court in the case of ***Subhash Chandra v. State of U.P***, (1980) 2 SCC 324 wherein Justice Krishna Iyer in his inimitable expression observed as under:

"3…. The State must remember that it has responsibilities not merely to minibus owners, but also to avoid the daily tragedies on the Indian highways under the little wheels of these whirling carriages. Section 51(2) Motor vehicles act, 1939, is geared to public safety, not private profits and cast a solemn duty not to be deterred by any pressure except the pressure of social justice to Indian lives moving in buses, walking on roads or even standing on margins. If the top killer - road accident - is to be awarded death sentence, Section 51 and like provisions must receive severe enforcement. In this spirit - although backtracking from 4-year-old vehicles to 7-year-old models - the State imposed condition 18. This was challenged artfully but unsuccessfully before the High Court and is attacked before us as ultra-vires Section 51(2) of the Act. We will examine briefly the submissions to reach the conclusion that mere lexical legalism cannot sterilize the sensible humanism writ large on Section 51(2)(c). It is not ultra vires Indian law every condition to save life and limb is intra wires such salvation reprovision. This perspective of social justice simplifies the problem and upholds the High Court.

4…. The short question is whether the prescription that the bus shall be at least a 7-year-old model one is relevant to the condition of the vehicle and its passenger's comparative safety and comfort on our chaotic highways. Obviously, it is. The older the model, the less the chances of the latest safety measures being built into the vehicle. Every new model incorporates new devices to reduce danger and promote comfort. Every new model assures its age to be young, fresh and strong, less likely to suffer sudden failures and breakages, less susceptible to wear and tear and mental fatigue leading to unexpected collapse…

We have no hesitation to hold, from the point of view of human rights of road users, that the condition regarding model of the permitted bus is within the jurisdiction and not to prescribe such safety clauses is abdication of statutory duty.

5. ….We are clear that a later model is a better safeguard and, more relevantly to the point, the year of the make and the particulars of the model or part of the description."

This judgment is followed by this Court in a subsequent decision in the case *S.K. Bhatia and Ors. v. State of U.P and Ors.* (1983) 4 SCC 194.

20.1 The principles and observations made by the Full Bench of the High Court of Kerala on the powers and duties of the Authorities while considering competing applications for grant of a permit are noteworthy. Of course, the Court was dealing with a slightly different issue, i.e., whether an applicant for stage carriage permit who has given the particulars of the vehicle he proposes to put on road should be preferred over an applicant who does not provide such information before-hand. The Full Bench of the Kerala High Court held as under:

"10. As repeatedly pointed out in the various decisions of the Supreme Court and the High Courts, the paramount consideration that should weigh with the Regional/State Transport Authority in taking a decision regarding the grant of a stage carriage permit is the advancement of public interest. Such decision will have to be reached by the authority on a comparative evaluation of the qualifications possessed by the various applicants as on the date of consideration of the subject by it. If, on the date of consideration of the applications, an applicant is found to be possessed of a vehicle of the required specifications regarding its model, seating capacity etc. and if in respect of other matters he is found to be possessed of better qualifications than a rival applicant who might have furnished the particulars of his vehicle in his application itself it will not be in the public interest and, hence, also legally not right to overlook the superior claims of the former and prefer the latter for the grant of the permit merely on the ground of his having furnished in his application particulars of his

vehicle. As already observed by us, an application for the grant of a stage carriage permit cannot be treated as invalid merely on the ground that it does not contain particulars of the vehicle proposed to be used for the service nor can the applicant be disqualified or excluded from consideration on the said ground. If all other qualifications are equal as between the two applicants, one of whom had furnished in his application the particulars of his vehicle and the other had furnished such particulars only at a later stage before the matter was taken up for consideration by the Regional/State Transport Authority and the vehicle offered by the latter is found to be of a later model and better quality (providing better comforts for the passengers) than the vehicle offered by the former, the Regional/State Transport Authority will be perfectly justified in taking the view that it will be in the public interest to grant the permit to the applicant who has offered the better vehicle (see Ikram Khan v. The State Transport Appellate Tribunal, (1976) 4 SCC 1 : AIR 1976 SC. 2333). However, if in such a case the vehicles offered by both the applicants are found to be substantially of the same type, quality, model etc. and if in respect of other matters both the applicants are equally qualified it will be open to the Regional/State Transport Authority in its discretion to prefer for the grant the applicant who had furnished the particulars of his vehicle in the application itself treating the said circumstance as aground for tilting the balance as between the two persons whose qualifications are equal in all other respects."

20.2 The judgment of the Full Bench of the Kerala High Court has been followed in a number of cases. [*Bheem Singh Bhati v. State of MP and Ors.* (2013) SCC Online MP 8381; *Ushakumari v. Abdul Azeez & Ors* (2000) SCC Online Ker 269]. In another case of ***Babu Goverdhan***, [*Maharashtra State Road Transport Corporation v. Babu Goverdhan Regular Motor Service and Ors.* (1969) 2 SCC 746] this Court emphasised on the importance of the requirement of Form P.St.S.A along with the stage carriage permit application. It was held that the Form is an integral part of the legal regime which the State Government is authorised to take note of. The importance of furnishing all the details of a

vehicle has also been affirmed in the case of ***Shaheed Khan*** *[Shaheed Khan v. State of MP (2011)* SCC Online MP 2228].

"79. In the instant case we have already held that the conditions imposed by the impugned amendments in the Rules of 1994 are with a view to ensure safe, secure and convenient transport services to the passengers to provide cheaper and safer facilities to rural public, to protect and preserve the road conditions, for better traffic management and to reduce traffic on long routes thereby reducing chances of untoward incidents and accidents and as such are in the interest of public at large. It is, therefore, clear that although we have already held that the petitioners do not have a fundamental right to operate stage carriages even otherwise, the impugned amendments in the rules are in consonance with and in furtherance of the object and purpose of the Act and are reasonable restrictions which can legitimately be imposed as provided by and permissible under Article 19(6) of the Constitution of India on the fundamental right to trade and commerce granted under Article 19(1) (g) of the Constitution of India."

21.1 The reasoning adopted by the Division Bench in the impugned order that Rule 174 (2) (c) has overridden the Act is not correct because a subordinate legislation must be interpreted to effectuate the statutory purpose and objective. The Rule should enable the transport Authorities considering applications for replacement to insist upon the permit holder to abide by the same rigour and regulation that he was put to when the permit was granted. In our view, the High Court has not appreciated the context in which Rule 174 (2) (c) read with Section 83 is to be construed.

21.2 The Section as well as the Rule are to be seen in the context of Chapter V relating to *control of transport vehicles* with respect to which the State Government has the jurisdiction and power grant and regulate transport permits. Rule 174 (2) (c), gives effect to that regulatory regime of the State. Replacement of a vehicle during the subsistence and continuation of a transport permit is only an incident in the working of a transport permit. While addressing such an incident, the Authority cannot be oblivious of the history and background in which the permit is granted.

21.3 Further, the assumption in the impugned judgment that the expression *"same nature"* is confined only to, mean *"a bus by bus, a mini-bus by mini-bus and not bus by a minibus…."* is not a correct way to read the provision. There is no need to restrict the meaning of an expression *same nature.* In fact, expressions such as this are better kept open ended to enable courts to subserve the needs of changing circumstances. [*Madan Singh Shekhawat v. Union of India* (1999) 6 SCC 459, Para 15; *Kailash Chand and Anr v. Dharam Dass* (2005) 5 SCC 375, Para 12 and 13; *Bangalore Turf Club Limited v. Regional Director, Employees' State Insurance Corporation* (2014) 9 SCC 657, Para 61.*]*

21.4 Having examined Rule 174 (2) (c), intended to implement the purpose of section 83 and also having examined Section 83 in the context of Chapter V, in contrast to Chapter IV, we are of the view that the rule is neither beyond nor contrary to Section 83.

Issue (iii): <u>What is the scope of the discretion exercised by the authority in exercise of its power under Rule 174(2)(c) of the Kerala Motor Vehicles Rules, 1989</u>?

22.1 Rule 174 (2) provides that, *upon receipt of an application, the Transport Authority may in his discretion reject an application, (c) if the new vehicle proposed is older than the one sought to be replaced.* Learned counsel on behalf of the State submitted that, it is not as if applications seeking replacement of a vehicles, older than the one's covered by the Transport permit would stand rejected by the operation of the rule. It is his case that the Authority is given the power to exercise its discretion before rejecting an application on the said ground.

22.2 Discretion is to be exercised wherever necessary in order to render the exercise of power reasonable, fair and non-arbitrary. Discretion could be express or implied. Rule 174(2) is a provision where the Government has expressly enabled the Authority to apply discretion, wherever necessary, while exercising the power to grant replacement of a vehicle under a permit. This discretion will have to be exercised reasonably, fairly as the facts and circumstance would clearly demonstrate. For instance, where the vehicle sought to be substituted is marginally and inconsequentially older than the vehicle covered under the permit, the Authority may perhaps be justified in permitting such an application. The Authority will also bear in mind the

circumstances in which the permit holder was chosen in cases of comparative merit under which the rival applicants would have offered their own vehicles. Needless to say, that if the exercise of the discretion is not based on just reasonable and non-arbitrary principles, such a decision would be vulnerable and subject to correction in appeal and a further review. There is no need to delve on this issue any further.

Issue (iv):Whether the Respondents can challenge the legality of Rule 174(2)(c) without specifically praying for the same in the Writ Petition and whether the High Court is justified in permitting such a submission?

23. As we have held that Rule 174 (2) (c) is neither *ultra vires* the Act, nor has overridden Section 83, as held by the High Court, there is no need to deal with this issue.

Issue (v):Whether the fact that the impugned judgment which has held the field over last few years and has been followed in subsequent orders is in itself a sufficient ground to reject the appeals?

24. The Special Leave Petition against the order impugned was filed immediately after the decision of the Division Bench of the High Court and the matter has been pending adjudication before this Court. Apart from the fact that the matter has been sub-judice, the decision that we have arrived at is based on the interpretation of statutory provisions and the principles concerning construction of subordinate legislation. As the judgment of the High Court is contrary to law, it is compelling and inevitable that we set aside the judgment and rule upon the correct position of law.

For the reasons stated above, we set aside the judgment of the High Court in Writ Appeal Nos. 1466 and 1470 of 2017, by holding that Rule 174 (2) (c) is *intra vires* the provisions of the Act and also Section 83 of the Motor Vehicles Act. The appeals are allowed.

25. Before parting with this case, we would like to record our deep appreciation for extremely valuable assistance provided by the learned Amicus Curiae, Shri Santosh Krishnan.