



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.06.2023

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THE HONOURABLE MR. JUSTICE N. ANAND VENKATESH

W.P Nos.7096 & 11535 of 2023

and

W.M.P.No.7173 of 2023

W.P No.7096 of 2023

P.Bubalan

Sre Mahaganapathy Driving School
Makkiripalayam, Sowthapuram P.O.,
Kumarapalayam Taluk, Namakkal District
PIN 638 008.

... Petitioner

vs.

1 The Licensing Authority/
Regional Transport officer
Kumarapalayam

2 Transport Commissioner
Ezhigam, Chepauk
Chennai 9.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorari calling for the records of the first Respondent made in R.No.9268/B2/2022 dated 24.02.2023 and quash the same.

W.P No.11535 of 2023

P.Bubalan

Sre Mahaganapathy Driving School



Makkiripalayam, Sowthapuram P.O.,
Kumarapalayam Taluk, Namakkal District
PIN 638 008.

... Petitioner

vs.

The Licensing Authority/
Regional Transport officer
Kumarapalayam

... Respondent

Prayer: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Mandamus directing the Respondent to consider the renewal application of the Petitioner dated 23.04.2018 which application is filed for the renewal of the Petitioner's driving school license bearing No.3/2018 dated 23.04.2018.

For Petitioner : Mr.M.Palani
(in both Petitions)
For Respondents : Mr.S.Mythreye Chandru
Special Government Pleader
(in both Petitions)

ORDER

The issue involved in both these writ petitions are common and hence, they are taken up together, heard and disposed of through this common order.

2. WP No.7096 of 2023 has been filed challenging the proceedings of the 1st respondent in R.No.9268/B2/2022 dated 24.02.2023, wherein the 1st respondent has cancelled the driving



school license issued in favour of the petitioner with immediate effect and had directed the petitioner to surrender the original driving school license.

3. The brief facts of the case are that the petitioner was issued driving school license under the Motors Vehicles Act in the year 2013. This license was issued under Rule 24 of the Central Motor Vehicle Rules. The license was issued for five years and it was renewed from time to time. The last such renewal took place on 22.04.2018 and it was given upto 22.04.2023.

4. On 30.09.2021, the Anti-vigilance squad of the Motor Vehicles Department conducted a surprise check. At that point of time, they seized a bag from the two wheeler of the petitioner and a sum of Rs.13,100/- was found inside the bag. A complaint was prepared and the petitioner was asked to sign in the statement that was prepared. According to the petitioner, he was forced to sign the complaint prepared by Anti-vigilance squad.



5. The 1st respondent issued a show cause notice dated 30.12.2021, calling upon the petitioner to explain his possession of a sum of Rs.13,100/- and the petitioner was called upon to show cause as to why the license given in favour of the petitioner should not be canceled for violation of Rule 24(3) (i) of the Motor Vehicles Act. The petitioner gave his explanation dated 07.01.2022 and in the said explanation, the petitioner explained as to how he came in possession of a sum of Rs.13,100/-.

6. The grievance of the petitioner is that the 1st respondent passed the impugned order without assigning any reasons and had straight away proceeded to cancel the license issued to the driving school on the ground that the petitioner had violated Rule 24 (3) (i) of the Central Motor Vehicles Rules, 1989. Aggrieved by the same, the present writ petition has been filed before this Court.

7. The respondents have filed a counter affidavit. The relevant portions in the counter affidavit are extracted hereunder :-

4. I respectfully submit that it seems that the said statement



was forwarded to the Government under LR.No.RC 317/2021/TPT/NK dated 22.10.2021 and based upon the said letter, the Government issued instruction under Lr.No.65561/Tra.II.A/2021 dated 25.11.2021 to the Transport Commissioner, recommending to cancel the license of the petitioner's driving school. Based upon that instruction, the Transport Commissioner sent a letter to Thiruchengode R.T.O. Office under the Lr.R.No.40190/HB1/2021 dated 21.12.2021 under which the first respondent office was functioning as unit office, to take necessary action as per the Government letter as against the petitioner's driving school.

5. I respectfully submit that when the occurrence was taken place, this office was functioning as a unit office, attached to the Thiruchengode R.T.O office. Based upon the instruction of the Transport Commissioner, the Regional Transport Officer, Tiruchengode issued a show cause notice dated 30.12.2021 to the petitioner inter alia, stating that on 30.09.2021 the Anti-Corruption and Vigilance Squad of the Police Department made a surprise check in the office of the first respondent and while so, the Anti-Corruption and Vigilance Squad seized an unaccounted money to the tune of Rs. 13,100/- from the petitioner and as such the seizure of the said money from P.Bubalan, the proprietor of Sree Mahaganapathy driving School is in violation of Rule 24(3)(1) of the Central Motor Vehicles Rules which deals with regard to the moral character and qualification of the Proprietor of the driving school, why action shall not be taken as against him by cancelling he driving school license under Rule 28 of the Central Motor Vehicles Rules and therefore directed him to submit his



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explanation within seven working days from the receipt of the said show cause notice. The petitioner filed his planation, denying the charges which was received by the Regional Transport Office, Tiruchengode on 07.01.2022.

6. In the meanwhile, the unit office at Kumarapalayam which was attached to Tiruchengode R.T.O office was upgraded as R.T.O office and consequently this office also issued a show cause notice based upon the instruction of the Transport Commissioner under show cause notice dated: 13.10.2022. In the show cause notice it is clearly stated that, from P.Bubalan, Proprietor of Sree Mahaganapathy Driving School the Anti-Corruption and Vigilance Squad seized an unaccounted money of Rs.13,100/- on 30.09.2021 While conducted a surprise check in the office and therefore he was directed to submit his explanation as to why his driving school license should not be cancelled, as the possession of such money is in violation of Rule 24(3)(1) of the Central Motor Vehicles Rules.

7. On receipt of the said show cause notice, the petitioner filed a detailed explanation, denying the allegations on 18.11.2022. The petitioner Thiru. Bubalan in his explanation stated that, "during the said check, the anti-Corruption and Vigilance Squad



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did not find any incriminating material or anybody guilty for any commission or omission within the office premises and therefore they went outside the office premises and looking for the persons to find fault with them. While so, the Vigilance Squad caught me rein who at that time was standing outside the office premises and checked my bag which was placed on my bike, parked outside the office premises and from that bag the Vigilance Squad seized a sum of 5.13,100/- and prepared a statement against me and forced me to sign in the said statement and after obtaining the statement from me herein, the Anti-Corruption and Vigilance Squad left the office."

8. After the receipt of the explanation and in terms of the letter of both the government and Transport Commission and the conduct of the petitioner in possessing the unaccounted money of Rs.13,100/- is in violation of Rule 24(3) (i) of the Central Motor Vehicles Rules and as the explanation offered by the petitioner is not satisfactory. Hence, I licensing authority cancelled the license, invoking Rule 28(2) of the Central Motor Vehicles Rules which order is quite legal and valid.

9. I respectfully submit that in as much as, as against the impugned order, an effective alternative remedy is provided under Rule 29 of the Central Motor Vehicles Rule and therefore



when the effective alternative remedy is available to the petitioner, the present writ petition is not maintainable.

8. Heard Mr.M.Palani learned counsel for the petitioner and Mr.S.Mythreye Chandru,learned Special Government Pleader for respondents.

9. The learned counsel for the petitioner questioned the legality of the impugned order passed by the 1st respondent on the following grounds :-

(a) The 1st respondent was exercising a quasi judicial power and hence, the 1st respondent must independently apply his mind before passing the order and whereas, the counter affidavit reveals the fact that the order was passed based on the instructions issued by the Government and the recommendation made by the Transport Commissioner.

(b) The impugned order passed by the 1st respondent does not show as to how the petitioner had violated Rule 24 (3)



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(i) of the Rules and there was absolutely no material before the 1st respondent to come to the conclusion that the petitioner lacked good moral character.

(C) The alternative remedy of appeal will not be an efficacious remedy for the petitioner since the appeal lies before the Transport Commissioner under Rule 29 of the Rules and the impugned order itself has been passed on the recommendation made by the Transport Commissioner and hence, the appeal remedy is illusory.

(d) The issue involved in the present case is covered by the earlier orders passed by this Court in WP Nos. 2382 etc of 2022 dated 21.06.2022 and WP Nos.4627 etc., of 2022 dated 13.07.2022.

10. Per contra, the learned Special Government Pleader appearing on behalf of the respondents by producing the original files pertaining to the case submitted that there was a vigilance report based on an enquiry conducted on the instructions given by the Government and in the vigilance enquiry, it was found that the



petitioner was involved in activities which lacked good moral character and it perpetuated corruption. Hence, the 1st respondent took steps to cancel the license issued in favour of the petitioner after following the procedure provided under the Rules. The learned Special Government Pleader further submitted that the petitioner has an efficacious remedy of appeal under Rule 29 of the Rules and without exhausting this remedy, the present writ petition is not maintainable before this Court. The 1st respondent had applied his mind on the explanation given by the petitioner for the show cause notice and only thereafter, the impugned order came to be passed by the 1st respondent. The issue involved pertains to the unaccounted money to the tune of Rs.13,100/-, which was in possession of the petitioner and the reason assigned by the petitioner for possessing this money is a factual issue which can be gone into if an appeal is filed before the competent authority and this Court will not get into the factual disputes in exercise of its jurisdiction under Article 226 of the Constitution of India. In the light of these submissions, the learned Special Government Pleader sought for dismissal of these writ petitions.



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11. This Court has carefully considered the submissions made on either side and the materials available on record.

12. There is no dispute with regard to the fact that the petitioner was having a valid license to run the driving school up to 22.04.2023. It seems that a surprise inspection was conducted by the Anti Vigilance unit and a sum of Rs.13,100/- was seized from a bag which was available in the two wheeler belonging to the petitioner. According to the 1st respondent, this amount was unaccounted and a criminal case also came to be registered in Crime No.5 of 2021 by the Vigilance and Anti-corruption branch, Namakkal and the petitioner has been arrayed as A4 in this case. This FIR is pending investigation and the final report is yet to be filed.

13. The 1st respondent was exercising a quasi judicial function under Rule 28 of the Rules. According to the 1st respondent, the petitioner violated Rule 24(3)(i) of the Rules which provides that the licensee and the staff working under him should be of good moral



character. The unaccounted money that is alleged to have been seized from the petitioner is put against the petitioner to show that the petitioner did not possess good moral character and he had indulged in corrupt activities.

14. The show cause notice was issued by the 1st respondent calling upon the petitioner to explain about his possession of a sum of Rs.13,100/- which was seized from him. On receipt of the show cause notice, the petitioner gave a reply dated 07.01.2022 and the petitioner has explained his possession of the sum of Rs.13,100/- in the following manner :-

அதன் பின் அவர்கள் அலுவலகத்திலிருந்து சற்று தொலைவில் இருந்த ஜெராக்ஸ் கடைக்கு சென்று அங்கிருந்து அனைத்து வாகனங்களிலும் இருந்து ஆரேழு பைகளை எடுத்து வந்து அதையும் சோதனை செய்தனர் அதை அவர்களே முதல் தகவல் அறிக்கையிலும் தெரிவித்துள்ளார்கள் அதில் என்னுடைய வண்டியில் மாட்டி வைத்திருந்த என்னுடைய துணிப்பையும் எடுத்துவந்து இந்த பை யாருடையது என கேட்டனர் நானும் என்னுடைய பையை அடையாளம் கண்டு அது என்னுடையது என தெரிவித்தேன், ஆதில் என்ன இருக்கிறது என கேட்டார்கள்.

அதற்கு நான் மறுநாள் காலையில் (01.10.2021) மகாராஜபிரா மாநிலம் புனேவில் உள்ள மத்திய சாலை ஆராய்ச்சி பயிற்சி மையத்தில் எங்களால் ஏற்களவே பதிவு செய்துள்ள



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படி (04,05,06/10.2021 தேதிகளில்) எங்களுடைய பயிற்சி திறன் மேம்பாட்டு பயிற்சியில் கலந்து கொள்ள வேண்டி நான் மறுநாள் காலை (01.10.2021) மற்ற ஓட்டுனர் பயிற்சிபள்ளி உரிமையாளர்களுடன் சேர்ந்து பெங்களுர் சென்று அங்கிருந்து இருந்தது பயிற்சி நடைபெறும் மகாராஜபிரா மாநிலம் புனேவில் உள்ள மத்திய சாலை ஆராய்ச்சி பயிற்சி மையத்தில் இடத்திற்கு விமானம் மூலம் செல்ல உள்ளதாகவும் அதற்காக பையில் துணி மற்றும் எனது பயிற்சி பள்ளியின் உரிமம் என்னுடைய ஓட்டுனர் உரிமம் மற்றும் விமான பயணத்திற்கான பயண சீட்டு பயண செலவுக்காக பணம் சுமார் பதிமூன்றாயிரம் ரூபாய் உள்ளதாக தெரிவித்தேன்.

15. The only material before the 1st respondent was the FIR which was pending investigation and the explanation that has been given by the petitioner for the show cause notice. How far the explanation given by the petitioner can be acted upon, is a matter which ought to be enquired. In view of the same, there was absolutely no material before the 1st respondent to come to a conclusion that the sum of Rs.13,100/- was unaccounted and it was used by the petitioner only for corrupt practice. It is too far fetched to come to such a conclusion at such a preliminary stage. The investigation is pending and no final report has been filed till date in the criminal case and the 1st respondent ought to have waited atleast



till a final report is filed to see if there are any *prima facie* materials against the petitioner. Whereas, on reading the impugned order of the 1st respondent, it is seen that the 1st respondent had straight away come to the conclusion that the petitioner is a person, who is lacking in good moral character.

16. There is yet another ground which directly touches upon the legality of the order passed by the 1st respondent. The counter affidavit of the 1st respondent filed before this Court shows that the order was passed based on the instructions issued by the Government and the recommendation made by the Transport Commissioner to cancel the license. Atleast in two places in the counter affidavit (Paragraph 4 and Paragraph 8), this fact has been reiterated. It is therefore apparent that the quasi judicial authority had acted upon the instructions of the Government and the recommendation of the Transport Commissioner and hence, the decision arrived at by the 1st respondent is unsustainable. A quasi judicial authority has to pass an order only based on the materials available at the time of enquiry and he can never be influenced by any instructions or



recommendations made by other authorities. In other words, a quasi judicial authority is not bound by any instructions or recommendations given by others, by virtue of the very jurisdiction that is exercised by the said authority. Unfortunately, in this case, the recommendation has come from the Transport Commissioner and it is the transport commissioner, who is the Appellate Authority under Rule 29 of the Rules. Therefore, the appellate remedy that is put against the petitioner is merely illusory and it is not an efficacious remedy available to the petitioner. Even if the petitioner files an appeal under Rule 29, the transport commissioner who had already recommended for the cancellation of the license will only confirm the order passed by the 1st respondent. In other words, the order passed by the Transport commissioner will be viald by the confirmation bias.

17. The earlier orders referred supra and which were brought to the notice of this Court, has dealt with the scope of Rule 24 of the Rules. While dealing with the same, this Court has held that the quasi judicial authority had acted on the dictates of the superior and



hence, the order stood vitiated. The orders that were brought to the notice of this Court also covers the issue involved in these writ petitions.

18. In the light of the above discussion, this Court holds that the impugned order passed by the 1st respondent in R.No.926/B2/2022 dated 24.02.2023 smacks with illegality and hence, the same is liable to be interfered by this Court and accordingly, the same is quashed.

19. The petitioner had submitted his application for renewal of the license since the period of license came to an end on 22.04.2023. During the pendency of these writ petitions, interim orders were issued by this Court to temporarily permit the petitioner to run his driving school. Since the impugned order passed by the 1st respondent has now been set aside by this Court, there shall be a direction to the 1st respondent to deal with the application submitted by the petitioner for renewal of the license of the driving school and such renewal shall be granted forthwith in line with the relevant



rules.

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20. In the result, these writ petitions are allowed in the above terms. It goes without saying that the present order was passed mainly on the ground that there was no material available against the petitioner. It all will depend upon how the criminal proceedings progresses . Ultimately, if the criminal proceedings shows *prima facie* materials against the petitioner, it is always left open to the authority to initiate fresh proceedings at that point of time. The order passed in these writ petitions will not come in the way of the authority to initiate fresh proceedings at that point of time. No costs. Consequently, the connected miscellaneous petition is closed.

19.06.2023

Index : Yes/No
Internet : Yes/No
Speaking Order/Non-Speaking Order
Neutral Citation Case : Yes/No

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19

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