

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:-

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

WEDNESDAY, THE 28TH DAY OF JANUARY 2015/8TH MAGHA, 1936

W.P.(C).No.31215 of 2013 (B)

PETITIONER(S):-

SARAVANANP.,
SOUTH PAVADY, KOLLENGODE, PALAKKAD DISTRICT.

BY ADVS.SRI.SAJEEV KUMAR K.GOPAL
SRI.R.HARISHANKAR.

RESPONDENT(S):-

1. THE REGIONAL TRANSPORT OFFICER (LICENSING AUTHORITY),
PALAKKAD, PIN-678 001.
2. THE SUB INSPECTOR OF POLICE
KOLLENGODE POLICE STATION, KOLLENGODE, PIN-678 506.

R1 & R 2 BY GOVERNMENT PLEADER SRI.R.RANJITH.

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
28-01-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WP(C).No.31215 of 2013 (B)

APPENDIX

PETITIONER(S)' EXHIBITS:-

- EXT.P1 : COPY OF THE RECEIPT REGARDING PAYMENT OF MONEY,
DATED 3.9.2013.
- EXT.P2 : COPY OF THE REPLY SUBMITTED BY THE PETITIONER TO THE
SHOWCAUSE NOTICE DATED 23.07.2013.
- EXT.P3 : COPY OF THE ORDER NO.9/2133/2013 ISSUED BY THE
1ST RESPONDENT DISQUALIFYING THE DRIVING LICENSE
DTD.23.7.2013.

RESPONDENT(S)' EXHIBITS:-

- EXT.R1(a) TRUE PHOTO COPY OF THE ORDER NO.L3/2133/2013
DATED 19.12.2013.

vku/-

(true copy)

K.Vinod Chandran, J.

W.P.(C).No.31215 of 2013-B

Dated this the 28th day of January, 2015

JUDGMENT

The petitioner impugn Exhibit P3 order before this Court. The Licensing Authority, however, has filed Exhibit R1(a), which is said to be in supersession of the earlier order Exhibit P3.

2. Admittedly the petitioner was a Conductor in a stage carriage and on detection of an offence under the Kerala Police Act, 2011 [for brevity "Police Act"], a charge was registered against the Conductor for carrying tobacco items in the stage carriage. Proceedings were obviously initiated under Section 34 of the Motor Vehicles Act, 1988 [for brevity M.V.Act"] for cancellation of the Conductor's Licence. However, by Exhibit P3 it was stated that the Driving Licence of the petitioner is cancelled from 23/07/2013 to 22/01/2014.

3. The petitioner challenges Exhibit P3 on two grounds; one that the Court before which the crime has been laid, thought it fit not to impose any punishment of cancellation of licence as provided under Section 35 of the M.V.Act and, hence, the Licensing Authority's power to that extent would stand excluded. The further

contention is with respect to the petitioner being a Conductor and holding a valid Conductor's Licence under the M.V.Act and cancellation made by Exhibit P3 is of the Driving Licence.

4. The contention with respect to the Authority's power under Section 34 being excluded cannot be sustained. Obviously under Section 34 and Section 35, the Licensing Authority and the Court have been conferred with the power to disqualify the holder of a Conductor's Licence. So long as the Court has not thought it fit to impose such a disqualification it cannot be said that the Licensing Authority's power is excluded.

5. In this context, Exhibit R1(a) would assume significance. Exhibit R1(a) purportedly has been passed by the very same authority in supersession of the earlier order [Exhibit P3]. Exhibit R1(a) would indicate that personal hearing was conducted on 23.07.2013 and an order passed as indicated in Exhibit P3. The Authority, on the ground that there were some typographical errors, passed Exhibit R1(a) in supersession of the earlier order, cancelling the Conductor Licence between 23.07.2013 to 22.01.2014. Primarily it is to be noticed that there is no power of supersession granted to the Licensing Authority; nor is even the power of review conferred on the Licensing Authority under Section 34 of the M.V.Act.

6. A reading of Exhibit P3 would indicate that there is no typographical error which could have been corrected by the Authority. The order proceeds on the premise that the licensee was a Driver who had caused an accident by reason of careless driving and the Authority has invoked its power to penalise the offender and to ensure deterrence among “dangerous drivers”. There is no typographical error which could have been corrected by the Licensing Authority. Exhibit P3 is passed without any application of mind to the facts of the case or the law governing it. It is to be noticed that the order Exhibit R1(a) is substantially different from Exhibit P3 and admittedly no hearing was conducted before the same was passed. Absolutely no reliance can be placed on Exhibit R1(a).

7. Exhibit R1(a) is *non-est* in the eye of law. Exhibit P3 would stand set aside for reason of the same having not considered the issue in the proper perspective. The Authority can proceed against the petitioner, if so advised, after issuing proper notice.

The writ petition is allowed with the above observation.

Sd/-
K.Vinod Chandran
Judge

vkul/-

-// true copy //-