

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.6.2016

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THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

Writ Petition No.22039 of 2016

and

WMP.No.18841 of 2016

A.P.Murugan

...Petitioner

Vs.

The Licensing Authority-cum-
Regional Transport Officer,
Tiruchengode.

...Respondent

PETITION under Article 226 of The Constitution of India praying for the issuance of a Writ of Certiorari to call for the records of the respondent made in R.No.20855/B1/2016 dated 25.5.2016 revoking the petitioner's driving school licence and to quash the same.

For Petitioners : Mr.K.Hariharan

For Respondent : Mr.A.Zakkir Hussain,
Govt.Advocate

ORDER

Mr.A.Zakkir Hussain, learned Government Advocate takes notice for the respondent. Heard both. By consent, the writ petition itself is taken up for final disposal.

2. The petitioner challenges an order passed by the respondent revoking the driving school licence issued to the petitioner. The reason for passing such an order is on the ground that the petitioner is involved in a criminal case and the same is pending on the file of the Judicial Magistrate, Tiruchengode and a charge sheet has been laid in Cr.No.46 of 2004 for offences under Section 120B, 420 and 468 of the Indian Penal Code.

3. Under similar circumstances, this Court had an occasion to consider the correctness of the orders of revocation of driving school licence, when a criminal case is pending, in W.P.Nos.31162 to 31164 of 2014 wherein this Court, by a common

order dated 23.12.2014, set aside the orders impugned therein following an order passed in the earlier writ petitions in W.P.Nos.9989 to 9990 of 2014 dated 21.8.2014. At this stage, it will be beneficial to refer to the relevant portions of the order dated 23.12.2014, which read as follows :

"4. The third person's licence (Mr.H.Ravik Jan) was also suspended on the same day by similar order bearing same proceedings issued in respect of the petitioners in W.P.Nos.31162 & 31163 of 2014, viz. R.No.49415/,3/2013 dated 18.3.2014, filed Writ Petitions before this Court in W.P.Nos.9989 and 9990 of 2014, challenging the order of suspension, by contending that criminal complaint has been registered in 2013 and no progress has taken place and that the respondents does have power to invoke Rule 28 of the Central Motor Vehicle Rules, 1989 to suspend the licence. This Court after considering the submissions of either side, allowed the Writ Petition. The operative portion of the order reads as follows:

'4. As seen from the impugned orders, a criminal complaint in Crime No. 61 of 2013 was registered on the file of Inspector of Police, District Crime Branch, Dharmapuri on 28.12.2013 for alleged offence under Sections 465, 468 and 471 IPC against the petitioner as well as persons, who got licences. So far, no charge sheet has been filed. A period of eight months has now elapsed from the date of registration of the criminal complaint. Therefore, I do not know when the charge sheet will be filed and when the criminal case will get disposed of.

5. Though the respondent has powers to suspend the licence of a Driving School, the power to suspend has to be invoked in terms of Rule 28 of the Central Motor Vehicle Rules, 1989. Rule 28 reads as follows:

28. Power of the licensing authority to suspend or revoke licence:

(1) If the licensing authority which granted the licence is satisfied, after giving the holder of the licence an opportunity of being heard, that he has -

(a) failed to comply with the requirements specified in sub-rule (3) of Rule 24; or

(b) failed to maintain the vehicles in which instructions are being imparted in good condition; or

(c) failed to adhere to the syllabus specified in Rule 31 in imparting instruction; or

(d) violated any other provision of Rule 27, it may, for reasons to be recorded in writing, make an order -

(i) suspending the licence for a specified period; or

(ii) revoking the licence.

(2) Where the licence is suspended or revoked under sub-rule (1) the licence shall be surrendered to the licensing authority by the holder thereof.

6. The case of the petitioner will not fall under clause (a) of sub-rule(1) of Rule 28 of the said Rules. It will not fall under clause (b) and (c) also. At the most, the case of the petitioner could be brought within the purview of clause (d) of sub-rule (1) of Rule 28, which relates to violation of provisions of Rule 27 of the said Rules.

7. Rule 27 stipulates certain general conditions to be observed by the holder of a licence. The conditions stipulated in clauses (a) to (j) may not also apply to the case of the petitioner. Clause (k) of Rule 27 requires the holder of the licence to run a Driving School, not to act in a manner calculated to mislead any person making an application. Any alleged violation of Rule 27 (k) should be the subject matter of enquiry to be conducted before the order is passed under Rule 28. Such an enquiry does not fall within the purview of Criminal Court. The alleged offence cannot be traced to Rule 27 (k). Therefore, in these circumstances, there cannot be an order suspending the licence of a Driving School, on the basis of a criminal complaint, for the period upto the disposal of the criminal case. The impugned orders are therefore set aside and the writ petitions

are allowed. No costs. Connected M.Ps are closed.'

5. It is submitted by the learned counsel for the petitioners that the order passed by this Court has been implemented by the respondent Department by order dated 18.11.2014. In fact in paragraph No.6 of the counter affidavits, the order passed by this Court has been referred to.

6. The learned Additional Advocate General submitted that the Government have taken a decision to file an Appeal as against the order in W.P.Nos.9989 and 9990 of 2014 dated 21.8.2014.

7. However, till date no appeal has been preferred. In fact the respondent Department while implementing the order, has implemented it after obtaining legal opinion from the learned Government Pleader. Be that as it may, the petitioners being similarly placed persons as that of the writ petitioner in W.P.Nos.9989 and 9990 of 2014 namely Mr.H.Ravik Jan, whose order of suspension having been passed on the same day and in the same proceeding number and this Court having quashed the said proceeding, finds no reason to differentiate the petitioners herein from that of the petitioner in W.P.Nos.9989 and 9990 of 2014.

8. Accordingly, following the order passed in W.P.Nos.9989 and 9990 of 2014, these Writ Petitions are allowed and the impugned orders are set aside. However, this order shall not in any manner prejudice the rights of the Department in prosecuting the criminal complaints."

4. The learned Government Advocate also agrees that the issue involved in this writ petition is squarely covered by the above referred to order.

5. In the light of the above, the writ petition is allowed and the impugned order is set aside. However, this order will not, in any manner, prejudice the rights of the Department in prosecuting the criminal case against the petitioner, which is

pending on the file of the Judicial Magistrate, Tiruchengode. No costs. Consequently, the above MP is closed.

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Sd/-
Asst.Registrar

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Sub Asst. Registrar

To

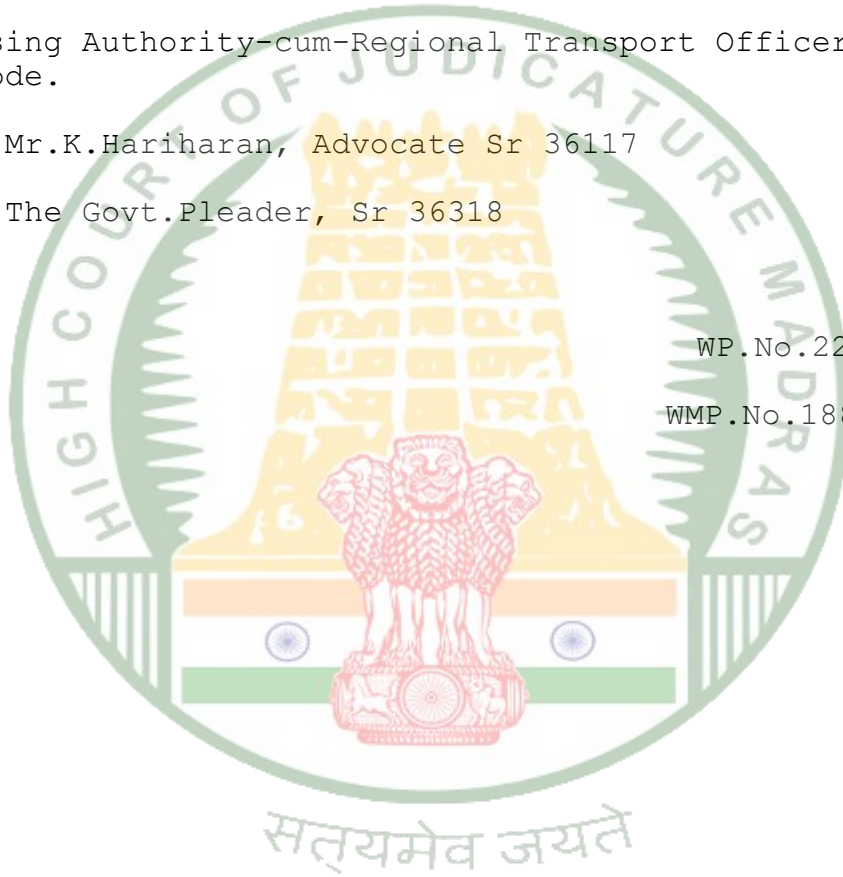
The Licensing Authority-cum-Regional Transport Officer,
Tiruchengode.

+ 1 cc to Mr.K.Hariharan, Advocate Sr 36117

+ 1 cc to The Govt.Pleader, Sr 36318

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&
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