

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.09.2016

CORAM:

THE HON 'BLE MR. JUSTICE T.S.SIVAGNANAM

Writ Petition No.24751 of 2016

& W.M.P.No.21154 of 2016

S.Amirthaganesan

... Petitioner

Versus

1. The Transport Commissioner,
Ezhilagam, Chepauk, Chennai - 600 005
2. The Regional Transport Officer,
Regional Transport Office,
Thiruvavarur

... Respondents

Prayer:- Petition filed under Article 226 of the Constitution of India, seeking for the issuance of Writ of Certiorarified Mandamus to call for the records relating to the order passed by the first respondent in his proceedings vide R.No.40939/H1/2015, dated 30.05.2016, confirming the order passed by the second respondent vide his proceedings Memo No.28047/A4/2015, dated 28.07.2015, to quash the same and to consequently direct the second respondent to renew the licence granted to Sri Gajendran Driving School, No.1/103, Mudaliyar Street, Thiruvavarur.

For Petitioner : Mr. C.Munusamy

For Respondents : Mr. V.S.Ramesh, Govt. Advocate

सत्यमेव जयते

O R D E R

Heard Mr.C.Munusamy, learned counsel appearing for the petitioner and Mr. V.S.Ramesh, learned Government Advocate appearing for the respondents. By consent of the learned counsel for both sides, the writ petition is taken up for final disposal.

2. The petitioner was running a driving school, in the name and style of Sri Gajendran Driving School, from 27.01.1997 and stated to impart training to persons, to obtain a driving licence.

3. The petitioner would submit that he has complied with all the conditions imposed and his driving school is one of the best schools in and around the Thiruvavarur Town. The petitioner himself has obtained the driving licence, to drive all categories of vehicle in the year 1983 and he has also undergone training at Ashok Leyland Driver Training Center, Namakkal, even in the year 2003, for training the instructors of the Driving Schools. The petitioner's driving school has all facilities, such as, Office room, lecture hall, demonstration hall, Space for Traffic Education, toilets and parking space for two wheelers and four wheelers and the licence has been renewed periodically upto 27.01.2012, after having been satisfied that the petitioner has complied with all the requirements, in terms of Circular No.62 of 2011.

4. While so, the second respondent issued a notice, dated 30.05.2016, to the petitioner stating that the petitioner has not complied with the conditions in Circular Nos.43 of 2007 and 62 of 2011. This notice, however, did not specifically mention as to what are all the violations, which the petitioner has committed. The petitioner submitted a reply, on 22.07.2015. Thereupon, the second respondent passed an order, cancelling the petitioner's licence on certain grounds, which appeared to be certain technical compliance required as per the said circulars. They being, Road Plan Board, Service Chart, etc., The petitioner preferred an appeal against the said order before the first respondent, who has rejected the Appeal Petition, by order dated 30.05.2016.

5. The learned counsel for the petitioner would submit that the impugned orders are the outcome of non-application of mind and the entire proceedings is a malafide exercise of powers on the part of the second respondent, due to certain personal animosity. Further, it is submitted that the order passed by the appellate authority is a non-speaking order and for frivolous reasons, the licence, which the petitioner had possessed from the year 1997, has been abruptly cancelled.

6. The learned Government Advocate appearing for the respondents, while seeking to sustain the impugned orders, referred to the counter affidavit filed by the second respondent, which sets out the factual issues (which led to the passing of the impugned orders) and reiterates that the petitioner has not satisfied the conditions laid down, within the time permitted.

7. After hearing the learned counsel for both parties and after perusing the materials placed on record, the first thing to be pointed out is that the order passed by the first respondent is a non-speaking order. The first respondent has not referred to any of the contentions raised by the petitioner, more particularly, the stand taken by him that all facilities are in existence and he has fulfilled all the requirements mentioned in the said circulars. Thus, on that ground alone, the order passed by the first respondent is liable to be set-aside.

8. This leads to the secondary question, as to whether the order passed by the second respondent, dated 28.07.2015, is just and proper. It cannot be disputed that the Driving School should comply with all the statutory requirements as well as the circulars issued from time to time by the Transport Commissioner (s). This is, because of the importance attached to the proper training for driving of all kinds of vehicles. Therefore, there cannot be any concession on the said part and every driving school is required to comply with all the conditions. As pointed out earlier, in the show cause notice, dated 30.12.2014, the second respondent did not mention specifically as regards the violations, but only generally referred to the circulars and directed the petitioner to comply with the circulars.

9. The petitioner contended that his driving school is fully in compliance with the said circulars. Thereafter, it appears that no inspection was conducted and straightaway the order, cancelling the driving licence, has been passed by the second respondent. On a perusal of the reasons given in the impugned order, dated 28.07.2015, it is seen that most of them are technical requirements, which can always be fulfilled, if not already fulfilled. Therefore, this can hardly be taken to be the reason for cancelling the licence. Probably, the second respondent was of the view that, to ensure compliance, the petitioner should be put on terms and if he had given sometime for compliance, he would have complied with the conditions imposed for licence. Therefore, the cancellation of the licence for the alleged violation of the conditions in the circulars appears to be disproportionate penalty compared with the alleged charge against the petitioner.

10. For the above reason, this Court having come to the conclusion that the punishment imposed on the petitioner is disproportionate, the order, dated 28.07.2015, is set-aside for such reason.

11. The learned counsel for the petitioner would state that the petitioner has complied with all the requirements and even if there are few more requirements to be complied with, he

will fully comply with all the requirements and the driving school licence may be restored.

12. The submission of the learned counsel for the petitioner is taken on record.

13. In the light of the above, this writ petition is allowed, the impugned orders, dated 30.05.2016 and 28.07.2015, are set-aside and the petitioner is granted fifteen (15) days time (from the date of receipt of a copy of this order) to fully comply with all the requirements, in terms of Circular No.62 of 2011 and intimate the same to the second respondent, in writing. On such intimation being received, the second respondent shall inspect the driving school of the petitioner and thereafter proceed to evaluate the same and if found in order, shall restore the petitioner's licence. Needless to state that the second respondent shall act in an unbiased manner without in any manner being influenced by the earlier decision taken by him, which has been set-aside by this Court. No costs. Consequently, the connected WMP is closed.

-s/d-

Assistant Registrar

True Copy

Sub-Assistant Registrar

srk
To

1. The Transport Commissioner,
Ezhilagam, Chepauk,
Chennai - 600 005

2. The Regional Transport Officer,
Regional Transport Office,
Thiruvavarur

+2 ccs to Government Pleader High Court Madras
sr 52523/16, 52385/16

+1 cc to Mr.C.Munusamy Advocate sr 52381/16

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