

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 22.09.2017
CORAM

THE HON'BLE MS. INDIRA BANERJEE, CHIEF JUSTICE
AND
THE HON'BLE MR.JUSTICE M.SUNDAR

W.P.No.25009 of 2017
and
WMP.Nos.26394 to 26396 of 2017

All India Confederation of
Goods Vehicle Owners Association
rep. by its General Secretary, Rajindhar Singh
No.2/5136, Krishan Nagar
Ganga Mandir Marg, Dev Nagar
New Delhi-110005. ... Petitioner

Vs.

- 1 The Secretary (Home)
Transport Department
Fort st. George
Chennai-600 009.
- 2 The State Transport Authority
-cum-The Transport Commissioner
Chepauk
Chennai-600 005.
- 3 The Additional Director General of Police
State Traffic Planning Cell
Office of the Director General of Police
Dr.Radhakrishnan Salai
Chennai-600 004. .. Respondents

PRAYER: Petition under Article 226 of the Constitution of India seeking issuance of a writ of Certiorarified Mandamus calling for the records of the impugned Memorandum of the 3rd respondent Vide C.No.124/ Camp/ADGP-STPC/ 2017, dated 24.08.2017 with reference to the insistence to carry the original driving licence while driving vehicles and to quash the same and further direct the respondents to accept the duly attested true copies of the driving licence in so far as the vehicles of the members of the petitioner association is concerned.

(2)

For Petitioner : Mr.R.Subramanian
for Mr.S.Govindraman

For Respondents : Mr.T.N.Rajagopalan
Special Govt. Pleader

ORDER

(Order of the Court was made by the Hon'ble Chief Justice)

This writ petition, purportedly in public interest, filed by the All India Confederation of Goods Vehicle Owners Association, is directed against a memorandum of the Additional Director General of Police, State Traffic Planning Cell, being C.No.124/Camp/ADGP-STPC/2017, dated 24.08.2017, which is extracted herein below:

"Enclosed please find a copy of the letter received from the Transport Commissioner, Government of Tamil Nadu where in has instructed to prosecute those persons who are found to be driving without license. The prosecution of drivers driving without licenses should be launched under sections 130 and 171 of MV Act, 1988. It may be noted that Government has already made it mandatory to carry ORIGINAL Driving license while driving vehicles with effect from 1st September 2017."

2. In the affidavit in support of the writ petition, affirmed by Rajindhar Singh claiming himself to be the General Secretary of the All India Confederation of Goods Vehicle Owners Association, it is stated that goods vehicles ply in the country with necessary permit. There can be no doubt that a permit is necessary to operate a goods carriage. However, incidents of vehicles plying without permits are not unknown.

3. The main thrust of the challenge to the said memorandum is that drivers of goods vehicles cannot be prosecuted for not carrying their driving licences.

4. Section 3 of the Motor Vehicles Act, 1988 provides that no person shall drive a motor vehicle in any public place unless he holds an effective driving licence issued to him authorising him to drive the vehicle, and no person shall so drive a transport vehicle other than a motor cab or motor cycle hired for his own use or rented under any scheme made under sub-section (2) of section 75, unless his driving licence specifically entitles him so to do.

5. Sections 4, 5 and 6 of the Motor Vehicles Act, 1988 provide as follows:

"Section 4. Age limit in connection with driving of motor vehicles.-

(1) No person under the age of eighteen years shall drive a motor vehicle in any public place:

Provided that a motor cycle with engine capacity not exceeding 50 cc may be driven in a public place by a person after attaining the age of sixteen year.

(2) Subject to the provisions of section 18, no person under the age of twenty years shall drive a transport vehicle in any public place.

(3) No learner's licence or driving licence shall be issued to any person to drive a vehicle of the class to which he has made an application unless he is eligible to drive that class of vehicle under this section.

Section 5. Responsibility of owners of motor vehicles for contravention of sections 3 and 4.-

No owner or person in charge of a motor vehicle shall cause or permit any person who does not satisfy the provisions of section 3 section 4 to drive the vehicle.

Section 6. Restrictions on the holding of driving licences.-

(1) No person shall, while he holds any driving licence for the time being in force, hold any other driving licence except a learner's licence or a driving licence issued in accordance with the provisions of section 18 or a document authorising, in accordance with the rules made under section 139, the person specified therein to drive a motor vehicle.

(2) No holder of a driving licence or a learner's licence shall permit it to be used by any other person.

(3) Nothing in this section shall prevent a licensing authority having the jurisdiction referred to in sub-section (1) of section 9 from adding to the classes of vehicles which the driving licence authorises the holder to drive."

6. The requisite eligibility for driving a motor vehicle is that the driver should be at least 18 years of age. The minimum age for driving a transport vehicle is 20 years.

7. Section 9 of the Motor Vehicles Act, 1988 provides as follows:

"Section 9. Grant of driving licence.-

(1) Any person who is not for the time being disqualified for holding or obtaining a driving licence may apply to the licensing authority having jurisdiction in the area -

(i) in which he ordinarily resides or carries on business, or

(ii) in which the school or establishment referred to in section 12 from where he is receiving or has received instruction in driving a motor vehicle is situated, for the issue to him of a driving licence.

(2) Every application under sub-section (1) shall be in such form and shall be accompanied by such fee and such documents as may be prescribed by the Central Government.

(3) If the applicant passes such test as may be prescribed by the Central Government, he shall be issued the driving licence:

Provided that no such test shall be necessary where the applicant produces proof to show that -

(a) (i) the applicant has previously held a driving licence to drive such class of vehicle and that the period between the date of expiry of that licence and the date of the application does not exceed five years, or

(ii) the applicant holds or has previously held a driving licence to drive such class of vehicle issued under section 18, or

(iii) the applicant holds a driving licence to drive such class of vehicle issued by a competent authority of any country outside India, subject to the condition that the applicant complies with the provisions of sub-section (3) of section 8.

(b) the applicant is not suffering from any disability which is likely to cause driving by him to be a source of danger to the public; and the licensing authority may, for that purpose, require

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the applicant to produce a medical certificate in the same form and in the same manner as is referred to in sub-section (3) of section 8:

Provided further that where the application is for a driving licence to drive a motor vehicle (not being a transport vehicle), the licensing authority may exempt the applicant from the test of competence to drive a vehicle prescribed under this subsection, if the applicant possesses a driving certificate issued by any institution recognised in this half by the State Government.

(4) Where the application is for a licence to drive a transport vehicle, no such authorisation shall be granted to any applicant unless he possesses such minimum educational qualification as may be prescribed by the Central Government and a driving certificate issued by a school or establishment referred to in section 12.

(5) Where the applicant does not pass the test, he may be permitted to reappear for the test after a period of seven days:
Provided that where the applicant does not pass the test even after three appearances, he shall not be qualified to re-appear for such test before the expiry of a period of sixty days from the date of last such test.

(6) The test of competence to drive shall be carried out in a vehicle of the type to which the application refers:

Provided that a person who passed a test in driving a motor cycle with gear shall be deemed also to have passed a test in driving a motor cycle without gear.

(7) When any application has been duly made to the appropriate licensing authority and the applicant has satisfied such authority of his Competence to drive, the licensing authority shall issue the applicant a driving licence unless the applicant is for the time being disqualified for holding or obtaining a driving licence:

Provided that a licensing authority may issue a driving licence to drive a motor cycle or a light

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motor vehicle notwithstanding that it is not the appropriate licensing authority:

Provided further that the licensing authority shall not issue a new driving licence to the applicant, if he had previously held a driving licence, unless it is satisfied that there is good and sufficient reason for his inability to obtain a duplicate copy of his former licence.

(8) If the licensing authority is satisfied, after giving the applicant an opportunity of being heard, that he -

(a) is a habitual criminal or a habitual drunkard; or

(b) is a habitual addict to any narcotic drug or psychotropic substance within the meaning of the Narcotic Drugs and Psychotropic Substances Act, 1985 (61 of 1985); or

(c) is a person whose licence to drive any motor vehicle has, at any time earlier, been revoked,

it may, for reasons to be recorded in writing, make an order refusing to issue a driving licence to such person and any person aggrieved by an order made by a licensing authority under this sub-section may, within thirty days of the receipt of the order, appeal to the prescribed authority.

(9) Any driving licence for driving a motor cycle in force immediately before the commencement of this Act shall, after such commencement, be deemed to be effective for driving a motor cycle with or without gear.

(10) Notwithstanding anything contained in this section, the driving licence to drive E-cart or E-rickshaw shall be issued in such manner and subject to such conditions as may be prescribed."

8. Rule 139 of the Central Motor Vehicles Rules, 1989 framed in exercise of power under Sections 12, 27, 64, sub-section (14) of Section 88, Sections 110, 137, 164 and 208 read with Section 211 of the Motor Vehicles Act, 1988 provides as follows:

"Rule 139. Production of licence and certificate of registration.-

The driver or a conductor of a motor vehicle shall produce certificates of registration, insurance,

fitness and permit, the driving licence and any other relevant documents on demand by any police officer in uniform or any other officer authorized by the State Government in this behalf, and if any or all of the documents are not in his possession, he shall produce in person an extract or extracts of the documents duly attested by any police officer or by any other officer or send it to the officer who demanded the documents by registered post within 15 days from the date of demand."

9. A reading of the provisions of the Motor Vehicles Act, 1988 and in particular Section 3 thereof with Rule 139 of the Central Motor Vehicles Rules, 1989 makes it absolutely clear that no person can drive a motor vehicle unless a driving licence is issued to him and of course, driving licence of a kind which enables the driver to drive the particular kind of vehicle. For example, to drive a two wheeler, a licence permitting the holder to drive a two wheeler is necessary; for driving a four wheeler, a light motor vehicle licence is required; and for driving heavy goods vehicles, a heavy motor vehicle licence is required.

10. Rule 139 of the Central Motor Vehicles Rules, 1989 provides that a driver or conductor of a motor vehicle shall produce certificates of registration, insurance, fitness and permit. Rule 139 casts an obligation on the driver of any motor vehicle to produce his licence on demand.

11. Section 182 of the Motor Vehicles Act, 1988 provides as follows:

"Section 182. Offences relating to licences.-

(1) Whoever, being disqualified under this Act for holding or obtaining a driving licence, drives a motor vehicle in a public place or in any other place, or applies for or obtains a driving licence or, not being entitled to have a driving licence issued to him free of endorsement, applies for or obtains a driving licence without disclosing the endorsement made on a driving licence previously held by him shall be punishable with imprisonment for a term which may extend to three months, or with fine which may extend to five hundred rupees or with both, and any driving licence so obtained by him shall be of no effect.

(2) Whoever, being disqualified under this Act for holding or obtaining a conductor's licence, acts as a conductor of a stage carriage in a public place

or applies for or obtains a conductor's licence or, not being entitled to have a conductor's licence issued to him free of endorsement, applies for or obtains a conductor's licence without disclosing the endorsements made on a conductor's licence previously held by him, shall be punishable with imprisonment for a term which may extend to one month, or with fine which may extend to one hundred rupees, or with both, and any conductor's licence so obtained by him shall be of no effect."

12. The impugned memorandum merely warns drivers that driving without licence would attract prosecution. Under Section 3 of the Motor Vehicles Act, 1988 read with Section 182 of the said Act, driving without a licence is an offence.

13. Counsel appearing on behalf of the petitioner organization submitted that a reading of Rule 139 of the Central Motor Vehicles Rules, 1989 makes it patently clear that a licence is not to be carried by the licence holder. The same might, if required, be produced before the concerned authority.

14. According to the petitioner, the Motor Vehicles Act, 1988 does not contemplate prosecution of a person who carries duly attested true copies of the driving licence and other documents related to the vehicle while driving.

15. Counsel thus argued that the requirement in the impugned memorandum of prosecution of persons driving without licence is ultra vires the Motor Vehicles Act, 1988 or the Rules or Regulations framed thereunder.

16. Learned counsel argued that drivers of goods vehicles are unable to carry their licences in person for various reasons and such drivers would unnecessarily be subjected to harassment by the police.

17. An applicant for licence to drive a particular type of vehicle is required to first fill in a form, then procure a learner's licence and then take a driving test. After the test is successfully cleared, a licence is issued.

18. On a perusal of Rule 139 of the Central Motor Vehicles Rules, 1989, a driving licence is to be produced on demand by any police officer in uniform or any other officer authorized by the State Government in this behalf and in case the licence is not in his possession, he is to produce an extract or extracts of documents duly attested by any police officer or any other officer or send it to the officer who demanded the documents by

registered post within 15 days from the date of demand. A driver in possession of the licence is obliged to produce the licence on demand. There is nothing in the impugned memorandum which is patently contrary to the Motor Vehicles Act, 1988 or the Rules framed thereunder.

19. A driver is, as stated above, required to carry his licence with him, unless he is not in possession of the same. There is difference between having been granted a licence, being in possession of a licence and actually carrying the licence.

20. A person to whom licence is issued is a licence holder. No person can drive a motor vehicle unless he holds a licence to drive a motor vehicle of the kind. The moment possession of licence is made over to the licence holder, he is in possession of the licence. A driver may not, however, be in possession of a licence, inter alia, if he has made it over to the authorities concerned for renewal or otherwise, or has applied for a duplicate on the loss of the original, in which case, he may carry the official receipts and authenticated photocopies when he is driving. Accidental omission to actually carry licence on any particular day may attract some penalty, but would not entail punishment of incarceration for a considerable length of time.

21. As observed above, applicants for driving licence are required to first obtain a learner's licence, acquire expertise in driving, clear an examination, after which the driving licence is issued. To prevent accidents, it is imperative that vehicles are only driven by drivers with expertise to drive vehicles of the kind. To ensure that vehicles are driven by licenced drivers, it is absolutely imperative that licences are frequently checked. Unless licences are checked at random and licences are required to be produced on demand, the Rules with regard to driving of vehicles in accordance with a licence would be observed in their violation. Photocopies are never authentic and may not necessarily be an identical copy of the original. Some interpolations may also be almost impossible to detect at first glance, unless compared with the original.

22. We see no reason to interfere with the decision in the interest of security and traffic safety to check the driving licences of drivers. The arguments sought to be advanced are, in our considered view, thoroughly misconceived.

23. In our view, the impugned memorandum is in public interest. Interference with the impugned memorandum would be against public interest. The object of public interest

litigation is to make justice available to the public at large. It was often found that the economically or socially underprivileged, the deprived, the illiterate, the semi literate, the differently abled and other disadvantaged persons lacking adequate funds had no access to justice. To ensure that such persons were not denied their legitimate rights, a new branch of litigation known as public interest litigation and/or social interest litigation evolved. The Courts have also often suo motu initiated proceedings.

24. In pro bono publico proceedings, the Courts intervene when the Courts find that there has been callous neglect on the part of the State, a lack of probity in public life, abuse of power. Pro bono public interest litigation gives way to substantive concern for deprivation of rights. The rule of locus standi has been diluted. In public interest litigation, the Court is not simply a disinterested and dispassionate adjudicator, but an active participant in the dispensation of justice. The key factors in public interest litigation are deprivation of rights, need to secure the rights of a deprived class.

25. However, of late, the process of this Court is often misused in the guise of public interest litigation. Gross abuse of the process of public interest litigation is clogging the business of the Courts and consuming unnecessary judicial time which could have been spent in deciding more important issues involving the rights of citizens.

26. It is important that the Courts should discourage unjustified litigants at the initial stage itself and hold persons misusing the legal forum accountable.

27. In *Raunaq International Ltd. v. I.V.R. Constructions Ltd. And others*, AIR 1999 SC 393, the Supreme Court observed that public interest litigation should not be a mere cloak. The Court must be satisfied that there is some element of public interest involved in entertaining such a petition. The Court also cautioned that before entertaining a writ petition and passing an interim order, the overwhelming public interest should be taken into consideration.

28. In *State of H.P. v. A Parent of a Student of Medical College, Simla*, reported in (1985) 3 SCR 676, the Supreme Court held that public interest litigation is a weapon which has to be used with great care and circumspection. The Courts must be extremely careful to ensure that under the guise of redressing a public grievance, the Court does not encroach upon the sphere reserved by the Constitution to the Executive and the

Legislature. For the same reason, in a public interest litigation, the Court cannot interfere in matters of Government policy, except in cases of violation of constitutional rights.

29. It is trite that only because floodgates of cases will be opened, by itself may not be ground to close the doors of courts of justice. The doors of the courts must be kept open but the Court cannot shut its eyes to the ground realities while entertaining a public interest litigation. Exercise of self-restraint, thus, should be adhered to, subject of course to, just exceptions.

30. A policy decision taken by the respondents with a view to check motor accidents by reason of rash and negligent driving by unauthorized persons ought not to be interfered with in a so-called public interest litigation.

31. The writ petition is, therefore, not entertained and the same is disposed of. No costs. Consequently, W.M.P.No.26394 to 26396 of 2017 are closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To:

- 1 The Secretary (Home)
Transport Department
Fort st. George
Chennai-600 009.
- 2 The State Transport Authority
-cum-The Transport Commissioner
Chepauk
Chennai-600 005.
- 3 The Additional Director General of Police
State Traffic Planning Cell
Office of the Director General of Police
Dr.Radhakrishnan Salai
Chennai-600 004.

+lcc to Government Pleader Sr.No.70582

W.P.No.25009 of 2017

NMI (co)

SM:27.11.2017