

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	Delivered on
05.06.2018	13.06.2018

CORAM:

THE HONOURABLE MR.JUSTICE K.K.SASIDHARAN

AND

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

W.A.No.1644 of 2016

and

C.M.P.No.20392 & 20393 of 2016

The Licensing Authority cum-
Regional Transport Officer,
Tiruchengode.

... Appellant

versus

A.P.Murugan

... Respondent

PRAYER: Appeal filed against the order passed by this Court dated 28.06.2016 passed in W.P.No.22039 of 2016.

PRAYER IN W.P.No.22039 of 2016:

Writ petition filed 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 25.05.2016 revoking the petitioners driving school license, and to quash the same.

For Appellant : Mr.V.Anandamurthy
Additional Government Pleader

For Respondent : Mr.K.Hariharan

J U D G M E N T

R.SUBRAMANIAN, J.

1. The challenge in this intra-Court appeal is to the order of the learned Single Judge dated 28.06.2016 made in W.P.No.22039 of 2016, in and by which, the Writ Petition filed by the respondent came to be allowed quashing the order of the

appellant viz., the The Licensing Authority cum - Regional Transport Officer dated 25.05.2016 canceling the driving school license issued to the respondent.

The Writ Petition came to be filed under the following circumstances:-

2. The respondent was running a driving school in the name of Sri Murugan Driving School at Tiruchengode. The license to run the said driving school was renewed on 17.11.2014 under R.No.52438/B5/2014 and was valid till 01.01.2020. While so, the appellant issued a notice dated 04.05.2016 framing certain charges against the respondent and seeking an explanation as to why the license granted should not be cancelled in terms of Rule 28 of the Central Motor Vehicles Rule, 1989. The respondent herein submitted his explanation on 09.05.2016. On receipt of the explanation, the appellant had conducted an enquiry and concluded that the charges leveled against the respondent were proved and hence, the case for cancellation of license under Rule 28 of the Central Motor Vehicles Rules, 1989 was made out. Upon the said finding, the appellant by his order dated 25.05.2016 cancelled the license issued to the respondent for running Driving School. Aggrieved by the said cancellation, the respondent had filed the above Writ Petition in W.P.No.22039 of 2016.

3. The said Writ Petition came to be allowed by this Court by relying upon the earlier judgment in W.P.Nos.31162 to 31164 of 2014, wherein, this Court had allowed similar Writ Petitions filed challenging the orders of suspension of driving license by the Competent Authority. Aggrieved by the order, quashing the cancellation of license, the appellant has come by way of this intra-Court appeal.

4. We have heard Mr.V.Anandamurthy, learned Additional Government Pleader appearing for the appellant and Mr.K.Hariharan, learned counsel appearing for the respondent.

5. Mr.V.Anandamurthy, learned Additional Government Pleader appearing for the appellant would contend that the power to suspend or revoke the license is available to the Authority under Rule 28 of the Central Motor Vehicles Rules, 1989. He would further submit that there was a violation of sub-Rule (3) of Rule 24 as well as Clause (i) of Rule 27 of the Central Motor Vehicles Rules, 1989. Once the said violations stood proved, the Authority had the power to cancel the license and such cancellation cannot be interfered with by this Court under Article 226 of the Constitution of India. He would also point out that Rule 29 of the Central Motor Vehicles Rules, 1989

provide for an appeal against the order made under Rule 28 to the Appellate Authority viz., Transport Commissioner.

6. Per contra Mr.K.Hariharan, learned counsel appearing for the respondent would contend that there was no violation of Rules by the respondent. It was the instructor who was employed by the respondent who had indulged in certain criminal activities and a prosecution was lodged against him and the same is said to be pending. The learned counsel would further point out that unless it is made out that the charges amounted to the ground specified under Rule 28 for cancellation of license, there cannot be an order cancelling the license. He would also invite our attention to the judgments of this Court in W.P.Nos.9989 and 9990 of 2014 dated 21.08.2014 and W.P.Nos.31162, 31163 and 31164 of 2014 dated 23.12.2014 in support of his submissions.

7. Insofar as the judgment in W.P.Nos.9989 and 9990 of 2014 are concerned, it was the case of suspension of the license to run the Driving School till disposal of the criminal case. On facts, the learned Single Judge [The Hon'ble Mr.Justice V.Ramasubramanian] found that there was no violation of any of the conditions stipulated in Rule 27 or the circumstances under which the power of suspension or revocation could be invoked under Rule 28 were shown to exist. It is in the back drop of such factual finding the learned Judge concluded that an order suspending the license till disposal of the criminal case cannot be passed.

8. The judgment in W.P.Nos.31162 to 31164 of 2014 dated 23.12.2014 in fact followed the earlier judgment referred to supra. In both the judgments cited supra, this Court had recognized the power of the licensing Authority to cancel the license, if a case for cancellation is made out as per Rule 28 of Central Motor Vehicles Rules, 1989. Rule 28 of Central Motor Vehicles Rules 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. "

9. Sub-Rule 3 of Rule 24 of the Central Motor Vehicles Rules which deals with the driving schools and establishments. Sub-Rule 3 of Rule 24 reads as follows:

"(3) The licensing authority shall, when considering an application for the grant or renewal of a licence under this rule, have regard to the following matters, namely:-

(i) The applicant and the staff working under him are of good moral character and are qualified to give driving instructions.

(ii) The premises where the school or establishment is proposed to be conducted is either owned by the applicant or is taken on lease by him or is hired in his name and it has adequate provision for conducting lecture and demonstration of models besides adequate parking area for the vehicles meant to be used for imparting instructions in driving: "

10. Rule 27 of the Central Motor Vehicles Rules which imparts the general conditions that are to be observed by the holder of license reads as follows:

"27. General conditions to be observed by the holder of a licence-- The holder of a licence granted under Rule 24 shall --

(a) maintain on an annual basis, a register in Form 14 and an alphabetical list of the names of the students admitted during the year;

(b) conduct the training course according to the syllabus specified in Rule 31;

(c) [* * *];

(d) issue to every student who has completed the course a certificate in Form 5;

(e) submit to the licensing authority which granted the licence such information

or return as may be called for by it from time to time for the purposes of this Chapter;

(f) not shift the school or establishment from the premises mentioned in the licence without the prior approval in writing of the licensing authority, which granted the licence;

(g) keep the premises of the school or establishment and the record and registers maintained by it at all reasonable times open for inspection by the licensing authority or by any person authorised in this behalf by the licensing authority;

(h) exhibit in a conspicuous manner on all the motor vehicles used for imparting instructions the name, full address of the school or establishment and the telephone number, if any, in bold letters;

(i) maintain a record separately for each trainee showing the number of driving hours spent every day in Form 15;

(j) display at a prominent place in its office the following:-

(i) the licence in original issued to the school or establishment by the licensing authority, and

(ii) the names and addresses of instructors employed by the school or establishment;

(k) not act in a manner calculated to mislead any person making an application to receive instructions from the school or establishment as to his ability to procure a licence for such person other than in accordance with these rules or to connive with any person in acts of commission or omission with a view to circumventing the provisions of this Chapter. "

11. A reading of the above Rules would go to show that the Licensing Authority has the power to suspend or revoke the license for failure to comply with the requirements specified in sub-Rule 3 of Rule 24 or violation of any of the provisions of Rule 27. It is not the case of the respondent that the procedure prescribed for cancellation of a license was not followed by the appellant. A show cause notice was issued to the respondent, he had sent his reply/ explanation and thereafter an opportunity has been given to the respondent before the impugned order cancelling the license came to be passed. Thus, what remains to

be considered is as to whether there was any violation of the requirements of Rule 24(3) or Rule 27 on the part of the respondent to enable the Licensing Authority to exercise the power of revocation of the license expressly conferred on him under Rule 28.

12. On facts, it is seen that the First Information Report in FIR.No.46 of 2004 was lodged against one Saravanan son of the respondent who also works as an instructor in the Driving School run by the respondent, accusing him of offences under Sections 120(b), 420, 468 IPC. The offence that was complained of, is falsification of no objection certificates issued by the Superintendent of Police for transfer of vehicles. The certificates that were seized from the said Murugan were found to have been forged ones created by him using the Godrej typewriter that was available with the respondent in his place of business. The said Godrej typewriter was also seized, therefore, it is clear that the premises of the driving school run by the respondent was used for creation of forged no objection certificates in the names of the Superintendent of Police of Namakkal, Salem and other places. As rightly contended by Mr.V.Anandamurthy, learned Additional Government Pleader, the very premises from which the driving school was run was the scene of crime. It is also seen from the records that has been produced that the said Saravanan, Instructor in the Driving School had issued certificates under Form 15 claiming that he had imparted training to various students of the Driving School run by the respondent on 08.08.2004, 09.08.2004, 10.08.2004 and 11.08.2004 from 3.00 p.m to 4.00 p.m.

13. From the letter issued by the Superintendent of the Sub-Jail, Tiruchengode dated 29.04.2016, it is seen that the said Saravanan was confined in prison between 07.08.2004 and 11.08.2004 and was released on bail only on 11.08.2004, therefore, it is clear that the instructor viz., Saravanan had issued certificates under Form 15 as if he had imparted training to various individuals during the period when he was actually in jail. These forms have been used to obtain license for such individuals.

14. As already pointed out, Clause (i) of sub-Rule (3) of Rule 24 requires an applicant and staff working under him should be of good moral character and qualified to give instructions. Clause (i) of Rule 27 requires the Driving School to maintain a record separately for each of the trainee showing the number of driving hours everyday in Form 15. The said Form 15 is a record which should be maintained by a Driving School to show the number of driving hours spent by a trainee everyday under the

instructors' supervision. A trainee cannot undergo training in driving when the instructor is in jail. The charges levelled above are very serious in nature and both the charges have been found to be proved by the Licensing Authority. Therefore, we are constrained to conclude that there has been a violation of Clause (i) of sub-Rule (3) of Rule 24 as well as Clause (i) of Rule 27 of the Rules.

15. A reading of Rule 28, which has already been extracted would show that a failure to comply with the requirements specified in sub-Rule (3) of Rule 24 or violation of any of the Rules of Rule 27 would be sufficient and a good ground for revocation of license. The Licensing Authority, therefore, had rightly concluded that the continuance of the license to the respondent Driving School would not be in public interest.

16. Unfortunately, the seriousness of the above violations were not highlighted before the learned Single Judge. It appears that the learned Government Advocate who had appeared before the learned Single Judge in the Writ Petition had infact submitted that the issue involved in the Writ Petition is covered by the earlier judgment cited supra.

17. On facts, we find that the earlier judgments are not applicable to the facts of this case. In fact, in both the judgments referred to supra this Court had upheld the power of the Licensing Authority to revoke the license. On facts, this Court found that the circumstances under which such power could be invoked did not exist.

18. Therefore, we are of the considered opinion that the order of the learned Single Judge passed solely on the basis of the earlier orders referred to supra cannot be sustained and needs to be interfered with. Accordingly, the Writ Appeal is allowed. The order of the learned Single Judge is set aside and the Writ Petition in W.P.No.22039 of 2016 will stand dismissed. However, in the circumstances there will be no order as to costs. Consequently, the connected Miscellaneous Petitions are also closed.

Sd/-

Assistant Registrar (CS-IX)

//True Copy//

Sub Assistant Registrar

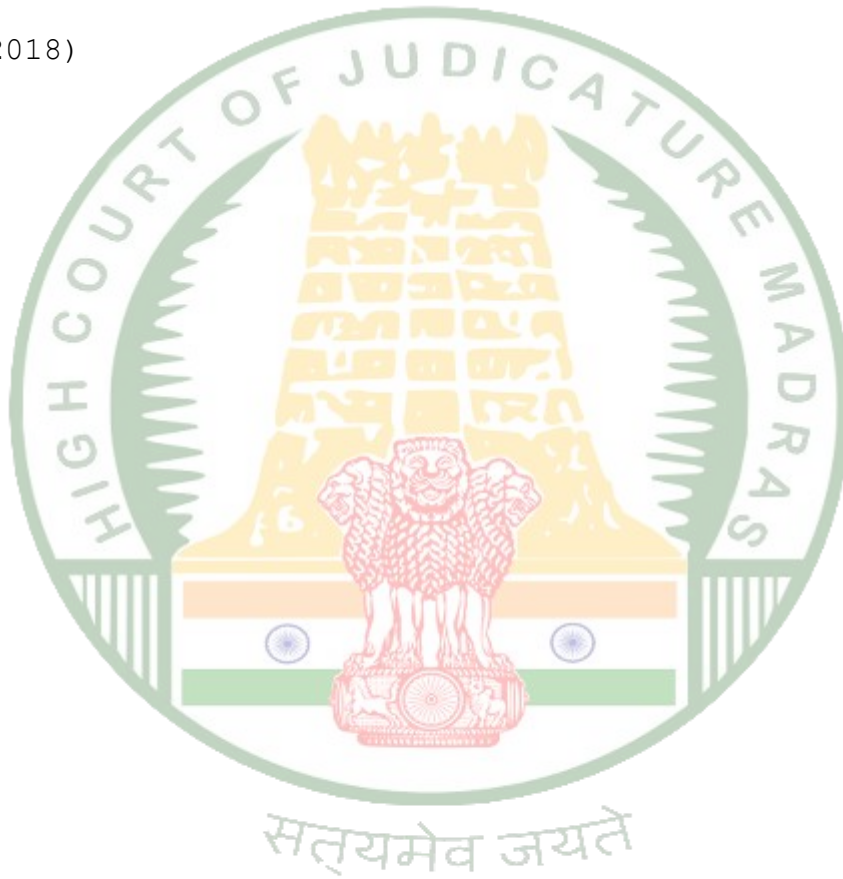
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To
The Licensing Authority cum-
Regional Transport Officer,
Tiruchengode.

+1cc to Mr.K.HARIHARAN, Advocate, S.R.No.37260

Pre-Delivery Judgment
in
W.A.No.1644 of 2016

kji(CO)
TR(20/06/2018)



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