

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.01.2020

CORAM:

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

W.P.No.32052 of 2017

K.Rajendran

.. Petitioner

Vs

1.The Appellate Authority,
Joint Commissioner of Road Transport,
Salem Division,
Salem.

2.The Regional Transport Officer,
Attur, Salem District.

.. Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India seeking a writ of certiorarified mandamus to call for the records pertaining to the passing of the impunged orders by the first respondent vide proceedings No.276/A3/2016, dated 27.04.2016, consequent upon the second respondent proceedings R.No.29294/B1/2015, dated 29.01.2016, and quash the same and direct the respondents to issue Driving License to the petitioner to Drive Heavy Vehicle carrying Hazardous Substance (goods).

For petitioner (change of vakalat : Mr.S.Doraiswamy
for Mr.V.Elangovan
filed on 13.1.2020 in SR.No.1599/2020)

For Respondents सत्यमेव जयते : Mr.N.Srinivasan, AGP

ORDER

Heard Mr.S.Doraiswamy, learned counsel, assisted by Mr.V.Elangovan, learned counsel for the petitioner and Mr.N.Srinivasan, learned Additional Government Pleader for the respondents. With the consent of either parties, the writ petition is taken up for final disposal.

2. The petitioner is aggrieved by the order passed by the first respondent dated 27.04.2016 rejecting the appeal petition filed by the petitioner refusing to renew the heavy vehicle driving license issued to the petitioner with special

permission to drive the heavy vehicle carrying Hazardous Substances, by affirming the order passed by the second respondent dated 29.01.2016.

3. The petitioner was issued with a heavy vehicle driving license in the year 1994 with an endorsement permitting him to drive heavy vehicle carrying hazardous substances. During the year 2008, the petitioner met with an accident, in which, he lost 3 phalanges in his right hand. The petitioner stated to have appeared before the Doctor, who, after examination, found that the petitioner is fit to drive the heavy vehicle. Accordingly, he was issued with driving license to drive heavy vehicle and it was valid upto 05.04.2015. When the petitioner sought for renewal with endorsement to drive heavy vehicle carrying hazardous substances, the second respondent rejected the same by order dated 13.01.2015.

4. The petitioner would state that the order of rejection is not tenable, because, the second respondent did not take into consideration of the certificate issued by the Doctor. The petitioner challenged the said order dated 13.01.2015 by filing a writ petition in W.P.No.3234 of 2015 and the said writ petition was disposed of by order dated 18.02.2015. Operative portion of the order reads as follows:-

"7. Except the two grounds, namely, that the doctors had given him certificate that he is fit to drive the heavy vehicle and hence, the act of the respondent is arbitrary and unjust and that the act of the respondent is violative of Article 21 of the Constitution, the petitioner has not raised any other grounds.

8. However, at the outset, it is relevant to note that when the petitioner applies for renewal of the driving license that expires on 05.04.2015, the authority is empowered to insist the medical certificate to ascertain the physical fitness. Admittedly, the petitioner lost one phalanx in all his three fingers in the year 2008. Thereafter, he has been driving the vehicle, except for the short period of suspension, that has been imposed by the authorities. Hence, the action of the respondent in rejecting the renewal of license amounts to deprivation of livelihood of the petitioner and as such, I am of the view that the impugned order dated 13.01.2015 is liable to be quashed.

9. In the result, this writ petition is allowed and the impugned order is set aside and the petitioner may be permitted to drive the heavy vehicle, which he was driving prior to the suspension and during the currency of the driving license as the driving license was not cancelled, but it was only suspended. This Court makes it clear that if the petitioner seeks for renewal of his heavy vehicle driving license, the petitioner shall comply with the mandatory provisions of the Motor Vehicles Act, 1988, including that of the production of medical certificate issued by the competent authority. No costs. Consequently, connected miscellaneous petition is closed."

By the above order, rejection order passed by the second respondent dated 13.01.2015 was set aside and the petitioner was permitted to drive heavy vehicle, which he was driving prior to the suspension and during the currency of the driving license as it was not cancelled. Further, the Court made it clear that if the petitioner seeks for renewal of his heavy vehicle driving license, he shall comply with the mandatory provisions of the Motor Vehicles Act, 1988, including that of the production of medical certificate issued by the competent authority.

5. Pursuant to the order passed by this Court, the petitioner had applied for renewal of his license along with medical certificate. However, the second respondent, by order dated 29.01.2016, rejected the same on the ground that if the petitioner is permitted to drive the heavy vehicle, it will endanger the public. Aggrieved by the same, the petitioner preferred an appeal before the first respondent. It appears that the first respondent had referred the matter to a Special Committee, who assessed the petitioner's capability to handle heavy vehicles and submitted a report and based on the report, the first respondent, by order dated 27.04.2016, rejected the appeal petition by observing among other things that the petitioner cannot have full steering control in his right hand. The petitioner has through his counsel sent a legal notice dated 27.09.2016 stating that the respondents are guilty of having disobeyed the direction issued by the Court in the earlier writ petition and they are liable to be punished under the Contempt of Courts Act. The second respondent sent a reply dated 17.10.2016 stating that the petitioner did not submit his application for renewal of his license by complying with the mandatory provisions as directed the Court and therefore, it was returned to the petitioner, but, he resubmitted only on 22.07.2015.

6. Further, it is submitted that the second respondent has considered the matter and rejected the application assigning reasons and the said order was also confirmed by the appellate authority. Thereafter, the petitioner filed a contempt petition No.504 of 2017 and by order dated 12.04.2017, the contempt petition was closed giving liberty to the petitioner to challenge the impugned order. This is how the petitioner is before this Court.

7. The second respondent, in his counter affidavit, has reiterated the stand taken in the impugned order and submitted that the Special Expert Committee has given a report after inspecting the ability to drive the vehicle by the petitioner stating that if the petitioner is allowed to drive the heavy vehicle with hazardous substances, due to his disability on his right hand, it may endanger the public, pedestrians and road users and it also taking into consideration that not only the medical fitness is sufficient, but, should fulfill the mandatory provisions under the Act and Rules framed thereunder.

8. Learned counsel appearing for the petitioner has produced before the Court a medical certificate issued by the Government Mohan Kumaramangalam Medical College Hospital, Salem, by which, the Regional Medical Board of the said hospital has certified the medical fitness of the petitioner for driving heavy vehicles. In the disability certificate issued by the Medical Board dated 27.09.2017, an endorsement has been made to the following effect:-

"As per Associate Professor in
Physical and Medical Rehabilitation opinion,
He is ELIGIBLE TO DRIVE HM Vehicle without
Modification."

9. The above medical certificate shows that the disability caused to the petitioner will not hamper to him to drive the heavy vehicle. However, the petitioner seeks for an endorsement in the heavy vehicle driving license permitting him to drive heavy vehicle carrying hazardous substances. It is not clear as to whether the Medical Board was aware of this fact and whether the petitioner represented that he wants to drive the heavy vehicle carrying hazardous substances. The finding of the Medical Board is to the following effect:-

Associate Professor, PMR
20/09/17

A case of (R) hand - partial amputation
Thumb - intact
F2 - Through MP
F3 - Through PIP
F4 - Through PIP
F5 - intact

Cylindrical grasp - good
Spherical grasp - good
Hook - absent
grip strength - fair
Can manipulate steering of HMV with bimanual control
Spine / Both LL - Normal
Eligible to drive a Heavy Motor Vehicle without any modification.

Sd.....
Dr.K.Nithya Manoj, M.B.B.S., MD(PMR) ., DPMR.,
Reg. No.69227
Associate Professor in Physical Medicine,
Govt. Mohan Kumaramangalam Medical College
Hospital,
Salem - 636 001.

10. The above certificate issued in the year 2017 shows that the petitioner is fit to drive heavy vehicle. The present writ petition is being heard by this Court at this juncture and in the opinion of the Court, if the Medical Board certifies that the petitioner's grip in his right hand is good and he can drive the vehicle without modification, the Special Expert Committee constituted by the Transport Department, which consist of Motor Vehicle Inspector, cannot supersede and sit in the judgment over the findings of the Medical Board. However, the Medical Certificate does not show that the petitioner has expressed his desire to drive heavy vehicle carrying hazardous substances. In any event, the certification was done in September, 2017, and this Court is of the view that if one more certification is done at this juncture and if in the opinion of the Medical Board, if the petitioner is fit, then the respondents should consider the application for renewal of his heavy vehicle license with special endorsement to drive heavy vehicle carrying hazardous substances.

11. In the light of the above, the writ petition is allowed and the impugned orders are set aside and the matter is remitted back to the second respondent. The second respondent is directed to address the Dean of the Government Mohan Kumaramangalam Medical College Hospital, Salem, to constitute a Special Medical Board to examine the petitioner for his fitness to drive heavy vehicle at the first instance and then his fitness to drive heavy vehicle carrying hazardous substances. An officer from the office of the second respondent should be available in the hospital premises to enable the Medical Board to seek for any clarification, because, it is stated that certain special requirements are there to drive heavy vehicle carrying hazardous substances. Subject to the certificate by the Medical Board, the second respondent is directed to consider the case of the petitioner by receiving an application for

renewal and pass orders on merits and in accordance with law. The second respondent is directed to address the Dean of the Government Mohan Kumaramangalam Medical College Hospital, Salem, within a period of two weeks from the date of receipt of a copy of this order and follow up the matter so that the final order can be passed not later than two months from the date on which the Medical Board renders its opinion. No Costs.

Sd/-
Assistant Registrar(CS-VI)

// True Copy//

Sub Assistant Registrar

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To

1. The Appellate Authority,
Joint Commissioner of Road Transport,
Salem Division,
Salem.
2. The Regional Transport Officer,
Attur, Salem District.
3. The Dean,
Government Mohan Kumaramangalam Medical College Hospital,
Salem.

+1cc to Mr.Doraisamy, Advocate, SR.No.6458.
+1cc to Spl GP SR.No.6690.

GMR(CO)
CSR: 24.02.2020

सत्यमेव जयते

W.P.No.32052 of 2017

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