



Writ Petition No.23555 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON :19.09.2023

PRONOUNCED ON :04.10.2023

CORAM

THE HONOURABLE MR.JUSTICE S.SOUNTHAR

Writ Petition No.23555 of 2023

WMP.No.23072 of 2023

P.Kalyani,
Proptx:Lavanya Heavy Driving School,
14/5, Valliyammal Nagar,
Cuddalore,
Cuddalore District.

... Petitioner

Vs

1.The Licensing Authority cum-Regional Transport Officer,
Cuddalore.
2.The Transport Commissioner,
Chepauk, Chennai – 5.

... Respondents

PRAYER : Writ Petition filed Under Article 226 of the Constitution of India, to issue a writ of Certiorari calling for the records of the 1st respondent made in Pro.R.No.02/C2/2023, dated 01.08.2023 cancelling the petitioner's driving school licence and to quash the same.

For Petitioner : Mrs.S.Radha Gopalan
for M/s.K.Hariharan

For Respondents : Mr.R.U.Dinesh Rajkumar
Additional Government Pleader



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ORDER

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This writ petition is filed challenging the order passed by the 1st respondent cancelling the licence granted to the petitioner for running a driving school.

2. The petitioner is running a heavy driving school in Cuddalore. On 31.05.2023, the Vigilance and Anti Corruption Wing had conducted a raid in 1st respondent's office and during the trap operation, unaccounted money was recovered from some persons including the petitioner's husband viz., Pandian. Therefore, a show cause notice was issued to the petitioner on 20.07.2023, calling upon the petitioner to explain why action should not be taken against her for violation of Rule 24(3) (i) of Central Motor Vehicle Rules and Rule 197 of Tamil Nadu Motor Vehicle Rules. Not satisfied with explanation offered by the petitioner, the 1st respondent passed the impugned order revoking the licence granted to the petitioner for running a heavy driving school. Aggrieved by the same, the petitioner is before this Court.



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3. The learned Senior counsel appearing for the petitioner by taking this Court to Rule 24(3) (i) of Central Motor Vehicle Rules submitted that the conditions mentioned therein have to be considered only at the time of considering the application for grant or renewal of the licence and 1st respondent ought not to have considered the same for the purpose of revoking the licence. The learned Senior counsel further submitted that the other ground mentioned in the impugned order that vehicle used by the petitioner's driving school for imparting driving skills to students had no fitness certificate is untenable in law as the vehicle in the name of driving school cannot be treated as a transport vehicle and consequently requires no fitness certificate. She further submitted that other provisions referred to in the impugned order namely Section 192 of Motor Vehicle Act and Rule 117 of Tamil Nadu Motor Vehicle Rules are not relevant for the purpose of cancellation of licence for driving school. In support of her contention, the learned counsel relied on the judgment of this Court in ***State by Public Prosecutor Vs. Kandaswami and Krishnan*** reported in ***1972 (4) LW Criminal 71***.



4. Per contra, Mr.R.U.Dinesh Raj Kumar, learned Additional Government Pleader appearing for the respondents contended that against the impugned order passed under Rule 28 of Central Motor Vehicle Rules, revoking the licence issued to the petitioner, an appeal remedy is available under Rule 29 and in view of availability of alternative remedy, the writ petition filed by the petitioner without availing alternative remedy is liable to be dismissed.

5. The learned Additional Government Pleader by taking this Court to the counter affidavit filed by the 1st respondent submitted that during the raid conducted by Vigilance and Anti Corruption Wing in the 1st respondent's office, unaccounted money of Rs.76,500/- was seized from the petitioner's husband one Pandian. It was further submitted that though the licence for running driving school stands in the name of the petitioner, the said Pandian has been in actual administration of the school. The recovery of unaccounted money from Pandian in the raid conducted in first respondent's office clearly violates Rule 24(3) (i) of Central Motor Vehicle Rules and therefore, the impugned order passed by the 1st respondent cancelling the licence is justified. The learned Government Advocate



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further submitted that the petitioner by using the vehicle whose fitness certificate was already expired put the life of the students in jeopardy and hence the licence of the petitioner was revoked by the 1st respondent.

6. In her reply, the learned Senior Counsel appearing for the petitioner contended that under Rule 28 of Central Motor Vehicle Rules before passing any adverse order, the 1st respondent is required to offer an opportunity of hearing to the person concerned. In the case on hand, though show cause notice was issued to the petitioner and she was given an opportunity to submit her explanation, no opportunity of personal hearing was afforded to the petitioner and hence the principles of natural justice are violated. Since the principles of natural justice are violated, the petitioner is entitled to invoke the jurisdiction of this Court without availing alternative remedy. In this regard, the learned Senior counsel relied on the judgment of this Court in Mahendra and Mahendra Limited Vs The Joint Commissioner (CT) Appeal, Chennai -6 in Writ Appeal No.493 of 2021.

7. It is not in dispute that in a raid conducted by Vigilance and Anti Corruption Wing in the 1st respondent's office unaccounted money was



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recovered from one Pandian, husband of the petitioner. Though it was contended on behalf of the petitioner said Pandian is neither the licence holder nor the employee of driving school, the fact remains said Pandian is the husband of the petitioner. In fact, in the preamble portion of the affidavit, it is clearly mentioned that the petitioner is the wife of Pandian and in Paragraph No.3 of the affidavit, it is clearly admitted said Pandian is the husband of the petitioner. However, the petitioner proceeded to raise a plea that said Pandian is neither the licence holder nor the employee of the driving school. In the counter affidavit filed by the 1st respondent, it is specifically averred that though licence stood in the name of the petitioner, the actual administration of the driving school is being looked after by husband of the petitioner namely Pandian. Whether, the said Pandian is actively involved in the administration of the driving school of the petitioner or not is a disputed question of fact which cannot be gone into conveniently in writ proceedings. Rule 24(3) (i) of Central Motor Vehicle Rules, reads as follows:

The licence 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.

8. Rule 28 of Central Motor Vehicle 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,—

- suspending the licence for a specified period; or*
- 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.”



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9. A perusal of Rule 28 r/w Rule 24 would make it clear, if a licence holder failed to comply with requirements specified in Sub Rule(3) (i) of Rule 24, the licence is liable to be suspended or even revoked after giving opportunity of hearing to the licence holder.

10. In the case on hand, according to the petitioner, in the raid conducted by Vigilance and Anti Corruption Wing in the 1st respondent's office unaccounted money was recovered from husband of the petitioner. It is also contended, the husband of the petitioner is in ostensible control of the driving school. When Rule 24(3) (i) mandates the applicant for driving school and the staff working under him are of good moral character and are qualified to give driving licence, the same would take within it's sweep the person in ostensible control of driving school or the agent of the licence holder. In such circumstances, the contention raised by the learned Senior counsel for the petitioner, the requirements mentioned under Rule 24(3) (i) under Central Motor Vehicle Rules can be taken into consideration only at the time of considering the application for grant or renewal of licence is not acceptable to this case in view of specific provision under Rule 28(1) (a). Rule 28 (1) (a) and Rule 24(3) (i) have to be read conjointly. Therefore, the



circumstances, mentioned in the show cause notice clearly attract the above said provisions. However, in her reply, the petitioner has not offered any plausible explanation regarding recovery of unaccounted money from her husband. The question whether Pandian is in ostensible control of the driving school or not is disputed question of fact which cannot be gone into conveniently in writ proceedings. As contended by the learned Additional Government Pleader appearing for the respondents, against the order revoking the licence under Rule 28 of Central Motor Vehicle Rules, an appeal shall lie under Rule 29 before the head of the Motor Vehicle's Department. Had the petitioner availed the appeal remedy, the said authority could have gone into the question of disputed facts.

11. Rule 28 of Central Motor Vehicle Rules only says the licence can be suspended or revoked after giving the holder of licence an opportunity of being heard. It does not say, the holder of licence shall be afforded with opportunity of personal hearing. In the case on hand, admittedly, before passing impugned order, a show cause notice was issued to the petitioner and she has also submitted an explanation. In such circumstances, the principles of natural justice enshrined in Statutory Rule is complied with. In



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the absence of a specific provision requiring opportunity of personal hearing, the failure to afford an opportunity of personal hearing cannot be treated as violation of principles of natural justice. Therefore, the contention raised by the learned Senior counsel appearing for the petitioner for maintaining the writ petition without availing alternative remedy of appeal is not acceptable to this Court. Therefore, this Court holds that principles of natural justice are not violated in the present case.

12. In view of the discussions made earlier, this Court comes to a conclusion that the present writ petition is not maintainable in view of availability of alternative remedy of appeal under Rule 29 of Central Motor Vehicle Rules. The petitioner is entitled to raise all the points raised in the writ petition before the Appellate Authority by filing an appeal under Rule 29. It is needless to say, the petitioner is entitled to exclude the time taken before this Court in prosecuting this writ petition namely date of filing of writ petition (09.08.2023 to the date of receipt of copy of this order) while computing the limitation for filing appeal before the Appellate Authority.



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13. With this observation, this Writ Petition stands dismissed. . No costs. Consequently, connected miscellaneous petition is closed.

Note: Registry is directed to return the original of the impugned order to the counsel for the petitioner.

04.10.2023

Index : Yes/No
Speaking order: Yes/No
Neutral citation: Yes/No
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S.SOUNTHAR, J.

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To

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2.The Transport Commissioner,
Chepauk, Chennai – 5.

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