



W.P.(MD) No.13848 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 14.06.2023

CORAM:

THE HONOURABLE MS.JUSTICE P.T.ASHA

W.P.(MD) No.13848 of 2023
and
W.M.P(MD) No.11693 of 2023

G.Vincent

Vs.

... Petitioner

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

2.The Licensing Authority/
Regional Transport Officer,
Marthandam,
Kanyakumari District.

... Respondents

Prayer :- Petition filed under Article 226 of the Constitution of India, praying for issuance of Writ of Certiorarified Mandamus, calling for the records relating to the impugned order of the second respondent in R.No.056508/B1/2021, dated 18.04.2022 and confirmed by the first



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respondent in Se.Mu.AA.No.24782/HB1/2022 dated 05.11.2022, quash the same and consequently direct the respondents herein to restore the licence No.MDM/8/KK/2006 to the petitioner for running his Driving School.

For Petitioner : Mr.B.Vasanthan

For Respondents : Mr.T.Amjadkhan
Government Advocate

ORDER

This writ petition is filed for issuance of writ of certiorarified mandamus calling for the records relating to the impugned order of the second respondent in R.No.056508/B1/2021, dated 18.04.2022 and confirmed by the first respondent in Se.Mu.AA.No.24782/HB1/2022 dated 05.11.2022 and quash the same and consequently, direct the respondents herein to restore the licence No.MDM/8/KK/2006 to the petitioner for running his driving school.



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2. It is the case of the petitioner that he is running a driving school in the name and style of Jency Driving School. This driving school is being run by him after obtaining necessary licence from the authorities concerned. It is his case that he had purchased the vehicle bearing registration No.TN-75-W-7999 by obtaining loan from Axis Bank, for which, he is liable to pay equated monthly instalments of Rs.17,718/-. On 11.10.2017, he had in his possession of Rs.16,500/-. He would submit that this is the amount due towards the loan instalment. While so, some persons claiming to be officials from the Vigilance and Anti-Corruption Wing collected the amount as unauthorized and unaccounted money. Thereafter, the petitioner was constrained to pledge the jewels of his wife and pay the monthly instalment on 15.07.2017. After the seizure of the amount, there was no further enquiry by Vigilance and Anti Corruption Wing and they had registered case in Crime No.7 of 2017 on 12.10.2017. Although, nearly five years have passed, no further action has taken place on the complaint. However, the second respondent, who is the Licensing authority issued a show cause notice dated 25.01.2002 calling for the petitioner's explanation with reference to the unaccounted



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money and why his licence should not be cancelled under Rule 24(3)(i) of the Central Motor Vehicle Rules, 1989 (herein after called as 'the Rules').

3. The petitioner would submit that he had submitted a detailed explanation on 15.03.2022 giving the reasons for having the said amount in hand. However, without even considering his explanation, the second respondent had revoked the licence exercising the powers conferred upon him under Rule 28(1)(d) of the Rules. Challenging the same, the writ petitioner is before this Court.

4. Mr.T.Amjadkhan, learned Government Advocate appearing on behalf of the respondent would submit that the amounts were seized, when the petitioner was present at the RTO's Office and this would speak volumes about why the same was with the petitioner. However, there is no proof to show that this amount was given to the officials in the RTO's Office.



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5. A reading of the impugned order passed by the second respondent would show that the petitioner has not been afforded a personal hearing and the petitioner has only submitted a reply, which has been taken into consideration. The petitioner has not been given an opportunity to substantiate the contentions made by him in his response. This matter was taken up on appeal to the first respondent, who has dismissed the same stating that the appeal has been filed belatedly.

6. From the affidavit, it appears that the impugned order of the second respondent has been sent through registered post on 21.05.2022, which was delivered to the petitioner on 24.05.2022 and the appeal had been preferred on 16.06.2022 which is well within the period stipulated under Rule 29 of the Rules. Therefore, the basis on which, the appeal has been dismissed, is baseless. That apart, Rule 28(1) clearly stipulates that orders can be passed by the Licensing Authority only after giving an opportunity of being heard to the licensee. A perusal of the impugned order passed by the second respondent thus clearly show that no opportunity of personal hearing has been given as contemplated under



Rule 28(1) of the Rules. Further, there has been no progress on the complaint filed by the Vigilance and Anti-Corruption Wing, though nearly 5 ½ years passed, since the amount was seized by them. The revocation of licence, in the following circumstances, is set out in Rule 28(1) of the Rules:-

“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.”

7. The impugned order has been passed under Rule 28(1)(d) of



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the Rules that is taken on violation of any provisions of Rule 27.

The reason for revoking the licence as set out in the impugned order by the second respondent dated 18.04.2022 does not come within contingencies as set out in Rule 27. Therefore, this Writ Petition is allowed and the impugned orders passed by the second respondent in R.No.056508/B1/2021, dated 18.04.2022 and confirmed by the first respondent in Se.Mu.AA.No.24782/HB1/2022, dated 05.11.2022, are set aside. The respondents are directed to restore the licence bearing No.MDM/8/KK/2006 to the petitioner. No costs. Consequently, connected miscellaneous petition is closed.

14.06.2023

NCC : Yes/No

Index : Yes/No

Internet : Yes/No

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To

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P.T.ASHA, J.

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