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W.P.No.1337 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.09.2024

CORAM:

THE HONOURABLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

W.P.No.1337 of 2021
and W.M.P.Nos.1502 & 1503 of 2021

Raja Heavy Driving School
Rep. by its Proprietor,
S.Shanmugham,
29-A, 6th Cross Street,
Anna Nagar,
Chengalpattu – 603 001.

...Petitioner

-Vs-

1. The Additional Chief Secretary/
Transport Commissioner,
Chepauk,
Chennai – 600 005.

2. The Licensing Authority,
Regional Transport Office,
Chengalpattu.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, calling for the records of the impugned order of the second respondent in Memo No.6285/A3/2020 dated Nil.02.2020 and the consequential order of the first respondent in R.No.107888/HB1/2020 dated 21.11.2020 and to quash the same and further to direct the respondents to grant the renewal to the petitioner driving school.



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For Petitioner : Mr.M.Palani

For Respondents : Mr.C.Kathiravan
Special Government Pleader

ORDER

This writ petition has been filed challenging the order passed by the first respondent dated 21.11.2020, thereby dismissed the appeal filed by the petitioner and confirmed the order passed by the second respondent dated 19.02.2020, thereby rejected the application submitted for renewal of license of the petitioner's driving school.

2. The petitioner was originally granted license by the licensing authority viz., the second respondent herein under the provisions of Motor Vehicles Act and Central Motor Vehicles Rules. The license shall be valid for the period of five year and it can be renewed by the second respondent for the further period of five years. Accordingly, the petitioner's license was renewed from time to time. After final renewal, the license was expired on 23.03.2020. In order to renew the license, the petitioner ought to have submitted the application for renewal of license within a period of 60 days prior to the expiry of the



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license. However, the petitioner submitted application for renewal of his license with delay of 22 days in submission of the application. Therefore, only on that ground the second respondent rejected the application for renewal of his license. Aggrieved by the same, the petitioner preferred an appeal before the first respondent. The first respondent also dismissed the appeal by an order dated 21.11.2020 on different terms. Hence, the petitioner filed the present writ petition.

3. The learned counsel appearing for the petitioner raised two grounds. The first one is that, the renewal application submitted under Rule 25 of the Central Motor Vehicles Rules, 1989 has to be made before the licensing authority not less than sixty days before the date of expiry of the license. However, it does not provide any expressed clause to condone the delay in filing the application for renewal of license. When there is no expressed clause to condone the delay, Section 5 of the Limitation Act would apply. Therefore, the first respondent ought to have returned the application to file the condone delay petition for filing the application for renewal of license.



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3.1. He raised another ground that the appellate authority viz., the first respondent herein dismissed the appeal on completely different ground, that too on the instruction from the Additional Chief Secretary, Home (Tr.II) Department, letter dated 19.03.2020, in pursuance to the report of an investigating agency on the surprise check conducted on 24.10.2019. The licensing authority only has power to cancel or suspending the license. No other party has power to cancel the license. In support of his contention, he relied upon several judgments of this Court and the Hon'ble Supreme Court of India.

4. The second respondent filed counter and the learned Special Government Pleader appearing for the respondents submitted that there is no rule to condone the delay for filing the application for renewal of license of driving school. Further admittedly the petitioner submitted application for renewal of license of his driving school with delay of 22 days. Therefore, the second respondent rightly rejected the application for renewal of license. While confirming the order passed by the second respondent, the first respondent stated the reason that in view of the instructions issued by the Additional Chief Secretary to Government,



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Home department, to cancel the petitioner's license and therefore dismissed the appeal filed by the petitioner by confirming the order passed by the second respondent.

5. Heard the learned counsel appearing on either side and perused the materials placed before this Court.

6. Admittedly the petitioner submitted the application for renewal of driving school license with delay of 22 days. It is relevant to extract the Rule 25 of the Central Motor Vehicle Rules as follows :-

*“25. Duration of a licence and renewal thereof.—
A licence granted in Form 11 shall be in force for a period of five years and may be renewed on an application in Form 13 made to the licensing authority which granted the licence not less than sixty days before the date of its expiry:*

Provided that the validity of the said licence shall be subject to fulfilling the criteria as prescribed by the State Government, which shall be certified by the licensing authority or any other authority as may be prescribed for the purpose by the State Government on an annual basis.”



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7. There is no expressed provision under Rule 25 of the Central Motor Vehicle Rules, to file application for renewal of license with condone delay. Therefore, the only question arose in this petition is whether the time limit of sixty days prescribed under Rule 25 of the Central Motor Vehicles Rules for renewal of license would be extended by invoking the Section 5 of the Indian Limitation Act. It doesn't expressly exclude the applicability of Section 5 of the Limitation Act.

8. The applicability of Section 5 of the Limitation Act has been dealt with in detailed manner by the Hon'ble Supreme Court of India in the case of ***Mangu Ram Vs. Municipal Corporation of Delhi***, reported in ***(1976) 1 SCC 392***, and it was followed by the Hon'ble Three Judge Bench of the Hon'ble Supreme Court of India in the judgment reported in ***(2024) 7 SCC 91*** in the case of ***Mohd. Abaad Ali and anr Vs. Directorate of Revenue Prosecution Intelligence***, and held as follows :-

“6. This Court on its interpretation of sub-section (4) of Section 4174 of old CrPC and Section 29(2) of the old Limitation Act i.e. the Limitation Act, 1908 held that Section 5 of the Limitation Act would not apply in an



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application for leave to appeal under sub-section (3) of Section 417 of the old CrPC before the High Court, inasmuch as Section 417 is a special code in itself and the limitation prescribed therein is 60 days and the court has no power to relax such a limitation to condone the delay. Relying upon a Full Bench Judgment of the Bombay High Court [Anjanabal Yeshwantrao v. Yeshwantrao Daulatrao Dudhe] which held that Section 417(4) was special law within the meaning of Section 29(2) of the Limitation Act. Thus, the appeal was dismissed while relying on Section 29(2) of the old Limitation Act.

7. For ready convenience of this Court, Section 29(2) of the old Limitation Act is reproduced below:

"29. (2) Where any special or local law prescribes for any suit, appeal or application a period of limitation different from the period prescribed therefore by the first schedule, the provisions of Section 3 shall apply, as if such period were prescribed therefor in that schedule, and for the purpose of determining any period of limitation prescribed for any suit, appeal or application by any special or local law-

(a) the provisions contained in Section 4, Sections 9 to 18, and Section 22 shall apply only insofar as, and to the extent to which, they are not expressly excluded by such special or local law; and



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(b) the remaining provisions of this Act shall not apply."

8. A perusal of the aforesaid provision clearly shows that where there is a special or local law prescribing the period of limitation in any suit, appeal or application which is different from the period of limitation prescribed in the first schedule of the Limitation Act, the applicability of the Limitation Act will be only as regarding Section 4 and Sections 9 to 18 and 22 of the Limitation Act. The meaning thereby afforded is that Section 5 of the old Act was expressly excluded in cases where special law or local law provides for a period of limitation. The learned counsel for the appellant would argue that although in the present case, we are dealing with present Criminal Procedure Code, 1973 and the new Limitation Act, 1963 however, the provisions in the present Code for appeal against acquittal i.e. under Section 378 CrPC are of similar nature regarding the prescription of a period of limitation for filing an appeal and therefore the law as laid down by Kaushalya Rani, would apply in the present case as well.

9. This submission of the learned counsel is not correct. Subsequent to the decision of this Court in Kaushalya Rani, this Court in Mangu Ram v. MCD, while dealing with a similar problem of limitation (in an



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appeal against acquittal), distinguished Kaushalya Rani, as Kaushalya Rani was dealing with the old Criminal Procedure Code, 1898 and the old Limitation Act, 1908, where provisions were differently worded. Under Section 378 of the new CrPC read with Section 29(2) of the Limitation Act, 1963 though a limitation is prescribed, yet Section 29 (2) of the 1963 Act, does not exclude the application of Section 5.

10. Section 29(2) of the Limitation Act, 1963 reads as under:

"29. (2) Where any special or local law prescribes for any suit, appeal or application a period of limitation different from the period prescribed by the Schedule, the provisions of Section 3 shall apply as if such period were the period prescribed by the Schedule and for the purpose of determining any period of limitation prescribed for any suit, appeal or application by any special or local law, the provisions contained in Sections 4 to 24 (inclusive) shall apply only insofar as, and to the extent to which, they are not expressly excluded by such special or local law."

11. The crucial difference here is of applicability of Section 5 of the Limitation Act. In both the Limitation Acts i.e. the Limitation Act of 1908 and the present Limitation Act of 1963, the provision of extension of time of limitation is given in Section 5 of the two Acts.



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Whereas the 1908 Act specifically states that Section 5 will not apply when the period of limitation is given in special Acts, the 1963 Act makes Section 5 applicable even in the special laws when a period of limitation is prescribed, unless it is expressly excluded by such special law.

12. A comparative provision of Section 29(2) in the two Acts is given below:

<i>"Section 29(2) of the old Limitation Act of 1908</i>	<i>Section 29(2) of the new Limitation Act of 1963</i>
<i>29. (2) Where any special or local law prescribes for any suit, appeal or application a period of limitation different from the period prescribed therefor by the first schedule, the provisions of Section 3 shall apply, as if such period were prescribed therefor in that schedule, and for the purpose of determining any period of limitation prescribed for any suit, appeal or application by any special or local law: (a) the provisions contained in Section 4, Sections 9 to 18 and Section 22 shall apply only insofar as, and to the extent to which, they are not expressly excluded by such special or local law; and (b) the remaining provisions of this Act shall not apply.</i>	<i>2. (2) Where any special or local law prescribes for any suit, appeal or application a period of limitation different from the period prescribed by the Schedule, the provisions of Section 3 shall apply as if such period were the period prescribed by the Scheduled and for the purpose of determining any period of limitation prescribed for any suit, appeal or application by any special or local law, the provisions contained in Section 4 to 25 (inclusive) shall apply only insofar as, and to the extent to which, they are not expressly excluded by such special or local law.</i>



13. As *Kaushalya Rani* was decided under the provisions of the old Limitation Act of 1908, this Court in *Mangu Ram* distinguished *Kaushalya Rani* and held as under: (*Mangu Ram* case, SCC pp. 396- 97, para 7)

7. There is an important departure made by the Limitation Act, 1963 insofar as the provision contained in Section 29, sub-section (2), is concerned. Whereas, under the Limitation Act, 1908, Section 29, sub-section (2), clause (b) provided that for the purpose of determining any period of limitation prescribed for any suit, appeal or application by any special or local law, the provisions of the Limitation Act, 1908, other than those contained in Sections 4, 9 to 18 and 22, shall not apply and, therefore, the applicability of Section 5 was in clear and specific terms excluded, Section 29, sub-section (2) of the Limitation Act, 1963 enacts in so many terms that for the purpose of determining the period of limitation prescribed for any suit, appeal or application by any special or local law the provisions contained in Sections 4 to 24, which would include Section 5, shall apply insofar as and to the extent to which they are not expressly excluded by such special or local law. Section 29, sub-section (2), clause (b) of the Limitation Act, 1908 specifically excluded the applicability of Section 5, while Section 29, sub-section (2) of the Limitation Act, 1963, in clear and unambiguous



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terms, provides for applicability of Section 5 and the ratio of the decision in Kaushalya Rani case can, therefore, have no application in cases governed by the Limitation Act, 1963, since that decision proceeded the applicability of Section 5 was on ton of Section 29(2)(b) of the Limitation Act, 1908. Since under the Limitation Act, 1963, Section 5 is specifically made applicable by Section 29, sub-section (2), it can be availed of for the purpose of extending the period of limitation prescribed by a special or local law, if the applicant can show that he had sufficient cause for not presenting the application within the period of limitation. It is only if the special or local law expressly excludes the applicability of Section 5, that it would stand displaced. Here, as pointed out by this Court In Kaushalya Rani case the time-limit of sixty days laid down in sub -section (4) of Section 417 is a special law of limitation and we do not find anything in this special law which expressly excludes the applicability of Section 5. It is true that the language of sub-section (4) of Section 417 is mandatory and compulsive, in that it provides in no uncertain terms that no application for grant of special leave to appeal from an order of acquittal shall be entertained by the High Court after the expiry of sixty days from the date of that order of acquittal. But that would be the language of every provision prescribing a period of limitation. It is because a bar against entertainment of an



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application beyond the period of limitation is created by a special or local law that it becomes necessary to invoke the aid of Section 5 in order that the application may be entertained despite such bar. Mere provision of a period of limitation in howsoever peremptory or imperative language is not sufficient to displace the applicability of Section 5. The conclusion is, therefore, irresistible that in a case where an application for special leave to appeal from an order of acquittal is filed after the coming into force of the Limitation Act, 1963, Section 5 would be available to the applicant and if he can show that he had sufficient cause for not preferring the application within the time-limit of sixty days prescribed in sub-section (4) of Section 417, the application would not be barred and despite the expiration of the time-limit of sixty days, the High Court would have the power to entertain it."

9. Therefore, if the petitioner can show that he had sufficient cause for non preferring the application for renewal of license within the time limit of sixty days prescribed under Rule 25 of the Central Motor Vehicle Rules, he would not be barred and despite the expiration of the time limit of sixty days, since Section 5 of the Limitation Act would be available to the petitioner. This Court is very much satisfied with the



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reasons stated by the petitioner in the affidavit, for the delay in filing the application for renewal of license that, due to Covid-19 the petitioner could not able to submit application in time for his renewal of driving school license.

10. Insofar as the reasons stated by the appellate authority viz., the first respondent for rejecting the appeal filed by the petitioner that the Additional Chief Secretary to Government, Home (Tr-II) Department issued order to cancel the driving school license of the petitioner in pursuance of the report of the appropriate investigating authority in regard to the surprise check conducted on 24.10.2019 at the Regional Transport Office, Chengalpattu.

11. It is relevant to extract the Rule 28 of the Central Motor Vehicle Rules, 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



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(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.”

Thus, it is clear that the second respondent i.e., the licensing authority only has the power to suspend or revoke the license. In fact, before suspending or revoking license, the holder of license has to be given an opportunity of hearing.

12. Though the first respondent rejected the appeal filed by the petitioner as if the appeal for renewing the driving school license is infructuous, the reason stated in the order is that only on the basis of the order passed by the Additional Chief Secretary to Government Home (Tr-II) Department, dated 19.03.2020. Admittedly, the petitioner was not



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given an opportunity of hearing before cancellation of license issued to the petitioner. While exercising quasi judicial power, the first respondent must independently apply its mind before passing the order in the appeal. The first respondent ought not to have rejected the appeal on the basis of the order passed by the Additional Chief Secretary to Home Department.

13. That apart, the first respondent has no authority to cancel or suspend or revoke the license of the petitioner, since the licensing authority has only got the power to cancel, suspend or revoke the license viz., the second respondent. Therefore, the first respondent has to pass an order only based on the materials and he can never be influenced by any instructions or recommendations made by other officers. In other words, the first respondent is being a quasi judicial authority is not bound by any instructions or recommendations given by others, by virtue of the very jurisdiction that is exercised by the said authority.

14. In view of the above discussions, the impugned orders passed by the second respondent in Memo No.6285/A3/2020 dated 19.02.2020 and the consequential order of the first respondent in



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R.No.107888/HB1/ 2020 dated 21.11.2020, are hereby quashed. The second respondent is directed to renew the license of the petitioner's driving school forthwith, if otherwise the petitioner fulfilled the other conditions.

15. With the above directions, the Writ Petition stand allowed. Consequently, connected miscellaneous petitions are closed. There shall be no orders as to costs.

23.09.2024

Index : Yes/No
Speaking/Non Speaking order
Neutral Citation : Yes/No

rts

To

1. The Additional Chief Secretary/
Transport Commissioner,
Chepauk,
Chennai – 600 005.
2. The Licensing Authority,
Regional Transport Office,
Chengalpattu.



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G.K.ILANTHIRAIYAN. J.

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