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W.P. No. 3886 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.03.2024

CORAM

THE HON'BLE MR. JUSTICE P.D. AUDIKESAVALU

W.P. No. 3886 of 2024

and

W.M.P. No. 4207 and 4209 of 2024

V.Boopathi

... Petitioner

-VS-

1. The Inspector of Police
J-2, Adyar, Traffic Investigation Wing
Besant Nagar
Chennai – 600099.
 2. The Regional Transport Officer
Licensing Authority
Office of the Regional Transport Authority
RTO – Chennai – South
Tiruvanmiyur, Chennai – 41.
 3. The Regional Transport Officer
Licensing Authority
No. 145/3, Balakrishna First Street
Kasipuram, Tondiarpet
Chennai – 600081.
- Respondents

...

Prayer:- Writ Petition filed under Article 226 of the Constitution of India, 1950, praying to issue a Writ of Certiorarified Mandamus, calling for the records pertaining to the order dated 07.02.2024 passed by the Second Respondent in Show Cause Order No. TN07/2024/6 quash the same and consequently direct the Third Respondent to return forthwith Petitioner Original



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Licence bearing No. TN04 19970002654 without any endorsement.

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For Petitioner : Mr. S.Sakthivel

For Respondents : Mr. P.Ganesan (RR2 & 3)

Mr. J.Subbiah (R1)
Government Advocate (Criminal Side)

ORDER

Heard Mr. S.Sakthivel, Learned Counsel for the Petitioner, Mr. J.Subbiah, Learned Government Advocate (Criminal Side) appearing for the First Respondent and Mr. P.Ganesan, Learned Counsel appearing for the Second and Third Respondents and perused the materials placed on record, apart from the pleadings of the parties.

2. The Writ Petition challenges the order in Show Cause Order No. TN07/2024/6 dated 07.04.2024 passed under Section 19(1-A) of the Motor Vehicles Act, 1988, by which the driving licence of the Petitioner has been cancelled for the period from 27.12.2023 to 26.03.2024 (2 months 28 days).

3. In this context, reference must be made to Section 19(3) of the Motor Vehicles Act, 1988, which provides that any person aggrieved by an order made



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by a licensing authority under sub-section (1-A) may, within thirty days of the receipt of the order, appeal to the prescribed authority, and such appellate authority shall give notice to the licensing authority and hear either party if so required by that party and may pass such order as it thinks fit and an order passed by any such appellate authority shall be final.

4. It must, at once, be emphasized that the Hon'ble Supreme Court of India in *Assistant Collector of Central Excise -vs- Dunlop India Limited* [(1985) 1 SCC 260] has precisely explained the legal position relating to the exercise of discretionary powers under writ jurisdiction when an alternative remedy exists, in the following words:-

"3. Article 226 is not meant to short-circuit or circumvent statutory procedures. It is only where statutory remedies are entirely ill-suited to meet the demands of extraordinary situations as for instance where the very vires of the statute is in question or where private or public wrongs are so inextricably mixed up and the prevention of public injury and the vindication of public justice require it that recourse may be had to Article 226 of the Constitution. But then the Court must have good and sufficient reason to by-pass the alternative remedy provided by



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statute. Surely matters involving the revenue where statutory remedies are available are not such matters. We can also take judicial notice of the fact that the vast majority of the petitions under Article 226 of the Constitution are filed solely for the purpose of obtaining interim orders and thereafter prolong the proceedings by one device or the other. The practice certainly needs to be strongly discouraged.”

In ***Nivedita Sharma -vs- Cellular Operators Association of India*** [(2011) 14 SCC 337], advertent to the previous decisions with regard to the rule of self-restraint when an alternative remedy is available to the aggrieved person, the Hon'ble Supreme Court of India has emphasized that when a statutory forum is created by law for redressal of grievance, a Writ Petition should not be ordinarily entertained ignoring that statutory dispensation. Further, the law has been restated by the Hon'ble Supreme Court of India in ***Radha Krishan Industries -vs- State of Himachal Pradesh*** [(2021) 6 SCC 771] as extracted below:-

“27.1. The power under Article 226 of the Constitution to issue writs can be exercised not only for the enforcement of fundamental rights, but for any other purpose as well.



27.2. *The High Court has the discretion not to entertain a writ petition. One of the restrictions placed on the power of the High Court is where an effective alternate remedy is available to the aggrieved person.*

27.3. *Exceptions to the rule of alternate remedy arise where : (a) the writ petition has been filed for the enforcement of a fundamental right protected by Part III of the Constitution; (b) there has been a violation of the principles of natural justice; (c) the order or proceedings are wholly without jurisdiction; or (d) the vires of a legislation is challenged.*

27.4. *An alternate remedy by itself does not divest the High Court of its powers under Article 226 of the Constitution in an appropriate case though ordinarily, a writ petition should not be entertained when an efficacious alternate remedy is provided by law.*

27.5. *When a right is created by a statute, which itself prescribes the remedy or procedure for enforcing the right or liability, resort must be had to that particular statutory remedy before invoking the discretionary remedy under Article 226 of*



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the Constitution. This rule of exhaustion of statutory remedies is a rule of policy, convenience and discretion.

27.6. *In cases where there are disputed questions of fact, the High Court may decide to decline jurisdiction in a writ petition. However, if the High Court is objectively of the view that the nature of the controversy requires the exercise of its writ jurisdiction, such a view would not readily be interfered with.”*

In such circumstances, the Petitioner has not been impeded from canvassing what is sought to be agitated in this Writ Petition in the aforesaid statutory remedy and there is no acceptable explanation from the Petitioner for not having availed it. Viewed from that perspective, this Court is not inclined to express any view on the merits of the controversy involved in the matter.

In the result, the Writ Petition, which does not deserve to be entertained, is dismissed. No costs.

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Index: Yes/No

NCC: Yes/No

Note: Issue order copy by 22.04.2024.



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P.D. AUDIKESAVALU, J.

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