

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE C.S.DIAS

MONDAY, THE 12TH DAY OF JUNE 2023 / 22ND JYAISHTA, 1945

WP(C) NO. 14487 OF 2023

PETITIONER:

1 MUHAMMED KUNJU M I,
AGED 48 YEARS
S/O ISMAIL M.K.,
RESIDING AT MUKKADA HOUSE,
MUDICKAL P.O., PERUMBAVOOR,
ERNAKULAM DISTRICT -683547
BY ADVS.
G.HARIHARAN
PRAVEEN.H.
K.S.SMITHA
V.R.SANJEEV KUMAR
GENTLE C.D.
BIJOY SAM GEORGE

RESPONDENTS:

1 REGIONAL TRANSPORT OFFICER (ENFORCEMENT),
CIVIL STATION, AYYANTHOLE,
THRISSUR DISTRICT- 680003

2 JOINT REGIONAL TRANSPORT OFFICER (LICENSING AUTHORITY),
SUB-REGIONAL TRANSPORT OFFICE,
MUNICIPAL SHOPPING COMPLEX BUILDING,
PATTAL, PERAMBAVOOR, IRINGOLE P.O.,
SH 16, ERNAKULAM DISTRICT- 683545

3 TRANSPORT COMMISSIONER,
TRANS TOWERS, VAZHUTHACAUD,
THIRUVANANTHAPURAM -695014

4 STATE OF KERALA,
REPRESENTED BY THE PRINCIPAL SECRETARY TO GOVERNMENT,
TRANSPORT DEPARTMENT, SECRETARIAT,
THIRUVANANTHAPURAM -695001

5 UNION OF INDIA,
REPRESENTED BY THE PRINCIPAL SECRETARY TO GOVERNMENT,
MINISTRY OF ROAD TRANSPORT AND HIGHWAY,
SANSAD MARG, NEW DELHI-110001
BY ADV.SMT PARVATHY KOTTOL, GOVERNMENT PLEADER

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON
12.06.2023, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

C.S.DIAS, J.

W.P.(C.) No.14487 of 2023

Dated this the 12th day of June, 2023

JUDGMENT

The writ petition is filed to quash Ext.P5 proceedings passed by the first respondent invoking the provision of Section 19 of the Motor Vehicles Act, 1988 (in short 'Act').

2. The petitioner's case is that, he is a driver by profession holding Ext.P1 heavy driving license. The petitioner was served with Ext.P3 show cause notice asking him why his driving license shall not be suspended. Even though the petitioner submitted Ext.P4 objection to the notice, the second respondent has passed Ext.P5 proceedings suspending Ext.P1 license. Ext.P5 has been passed without hearing the petitioner.

Section 19 of the Act does not empower the Licensing Authority to suspend the driving license. The first respondent does not have the power to invoke the provisions of Sections 113 and 114 of the Act. Perhaps, the first respondent acting on Ext.P4 order passed by the Transport Commissioner has carried out the acts. Though the petitioner has a right to file a statutory appeal under Section 57 of the Act challenging Ext.P5 proceedings, in view of the interpretation given in Ext.P5, no useful purpose will be served in filing the appeal. Recently, it has become a practice of the Enforcing Officers to assert the powers of the Original Licensing Authority, without territorial jurisdiction, leaving the hapless drivers remediless. Ext.P5 proceedings are ex-facie illegal and unsustainable in law. Hence, the writ petition.

3. Heard; Sri.G.Hariharan, the learned

Counsel appearing for the petitioner, Smt.Parvathy Kottol, the learned Government Pleader appearing for respondents 1 to 4 and the learned Deputy Solicitor General of India appearing for the 5th respondent.

4. Sri.G.Hariharan, argued that there is absolutely nothing on record to substantiate that the petitioner has violated the provisions of the Motor Vehicles Act, by carrying overload in the vehicle that he was driving, as alleged by the respondents. Therefore, Ext.P5 proceedings may be quashed.

5. Smt.Parvathy Kottol, on the contrary, submitted that the petitioner has deliberately not produced the e-challan that was issued by the respondents at the time of carrying out the inspection of the vehicle. It was the petitioner who handed over the weighment certificate, which clearly establishes that the vehicle was

overloaded. It was on the strength of the weighment certificate that the respondents have issued Ext.P5 proceedings. The proceedings have been initiated to revoke licenses of those drivers who violate Section 19 read with Rule 21(8) of the Central Motor Vehicles Rules, 1989, in the light of the direction passed by this Court in **Anoop K.A. v. State of Kerala [2019 5 KHC 414]**. Hence, the writ petition is to be rejected at the threshold.

6. Section 19 of the Motor Vehicles Act empowers the Licensing Authority, after giving holder of the license an opportunity of being heard, to revoke the license, if the license holder has caused nuisance or danger to public.

7. Rule 21(8) of the Central Motor Vehicles Rules, 1989, unambiguously lays down that nuisance or danger to public includes carrying overload in a goods carriage vehicle.

8. Having considered the pleadings and

materials on record, and the rival submissions, particularly after perusing the e-challan and weighment certificate, this Court has no doubt in its mind that there is no illegality or arbitrariness on the part of the first respondent in issuing Ext.P3 show cause notice and the second respondent passing Ext.P5 proceedings, warranting interference by this Court under Article 226 of the Constitution of India. An order passed under Section 19(1) of the Act is appealable under Section 19(3) of the Act within thirty days from the date of receipt of a copy of the order.

9. In the case on hand, Ext.P5 proceedings was passed on 23.03.2023. The petitioner had filed this writ petition before this Court on 21.04.2023. In view of the pendency of this writ petition before this Court, I am of the view that the petitioner should be granted an opportunity

to challenge Ext.P5 proceedings under Section 19(3) of the Act before the Appellate Authority, after excluding the time period spent by the petitioner in bonafide prosecuting the writ petition before this Court. Hence, the petitioner would be at liberty, if so advised, to challenge Ext.P5 proceedings before the Appellate Authority under Section 19(3) of the Act.

Resultantly, I dispose of the writ petition as follows:

(i) The petitioner's prayer to quash Ext.P5 proceedings is rejected.

(ii) The petitioner may, if so advised, prefer an appeal under Section 19(3) of the Act before the Appellate Authority within two weeks from the date of receipt of a certified copy of this judgment.

(iii) If the petitioner prefers an appeal as directed above, the Appellate Authority shall

accept the appeal on file, treating it to be filed within the prescribed time period, consider and dispose of the same, in accordance with law and as expeditiously as possible, after affording the petitioner an opportunity of being heard.

(iv) Until such time orders are passed on the appeal, if it is filed within the above prescribed time period, the respondents are restrained from revoking Ext.P1 license of the petitioner.

Sd/-
C. S. DIAS
JUDGE

SKP/17-06

APPENDIX OF WP(C) 14487/2023

PETITIONER'S EXHIBITS:

EXHIBIT P1 A TRUE COPY OF THE HEAVY DRIVING LICENSE ISSUED BY THE 2ND RESPONDENT IN THE NAME OF THE PETITIONER WHICH IS VALID UPTO 25.04.2024

EXHIBIT P2 A TRUE COPY OF THE REGISTRATION STATUS OF VEHICLE NO. KL-41T-1271

EXHIBIT P3 A TRUE COPY OF SHOW CAUSE NOTICE DATED 01.03.2023 ISSUED BY THE 1ST RESPONDENT PROPOSING TO SUSPEND THE LICENSE OF PETITIONER

EXHIBIT P4 A TRUE COPY OF THE OBJECTION DATED 10.03.2023 SENT BY THE PETITIONER ADDRESSED TO THE 1ST RESPONDENT AGAINST EXHIBIT.P3 NOTICE

EXHIBIT P5 A TRUE COPY OF THE PROCEEDINGS DATED 23.03.2023 ISSUED BY THE 1ST RESPONDENT

EXHIBIT P6 A TRUE COPY OF THE OBJECTION DATED 28.03.2023 SENT BY THE PETITIONER ADDRESSED TO THE 1ST RESPONDENT

EXHIBIT P7 A TRUE COPY OF THE ORDER NO.A1/24/2022-TC DATED 09.02.2022 ISSUED BY THE 3RD RESPONDENT

RESPONDENTS' EXHIBITS:NIL

TRUE COPY

P.A.TO JUDGE