

(2020) 07 CAL CK 0031

Calcutta High Court (Appellete Side)

Case No: Writ Petitions (WP) No. 5526(W) Of 2020, Civil Application (CAN) No. 3286, 3358 Of 2020

Tanveer Singh

APPELLANT

Vs

Director, Directorate Of
Transport And another

RESPONDENT

Date of Decision: July 8, 2020

Acts Referred:

Motor Vehicles Act, 1988 â€” Section 19, 21, 183, 183(1)(i), 184, 189, 200, 200(1), 202, 208#Central Motor Vehicles Rules, 1989 â€” Rule 21#Constitution Of India, 1950 â€” Article 226

Citation: (2020) 07 CAL CK 0031

Hon'ble Judges: Sabyasachi Bhattacharyya, J

Bench: Single Bench

Advocate: Anjili Nag, Krishna Rao

Final Decision: Allowed

Judgement

Sabyasachi Bhattacharyya, J

CAN 3286 of 2020 is an application for urgent hearing of the writ petition. In view of the urgency involved due to the consequence of the impugned

orders and since such prayer is not specifically objected to by the Respondents, the writ petition, bearing WP 5526 (W) of 2020 and CAN 3358 of

2020 are taken up for hearing. CAN 3286 of 2020, thus, stands allowed.

CAN 3358 of 2020 contains a challenge which is supplementary to the main writ petition. It prays for quashing of Order No. 1336 dated June 15, 2020

passed by the Respondent No. 2, which is consequential to the Order No. 1202 dated May 26, 2020, also issued by the Respondent No. 2 and

impugned in the writ petition. As such, CAN 3358 of 2020 and WP 5526 (W) of 2020 are taken up together for hearing.

Both sides have argued orally and also filed their written notes of arguments in the meantime. The parties exchanged affidavits, computer print-outs of

which are also on record.

The crux of the challenge in the writ petition is that vide Order No. 1202 dated May 26, 2020 the Respondent No. 2, that is, the Andaman and Nicobar

Islands Licensing Authority, Directorate of Transport, had directed the petitioner to deposit a penalty of Rs. 10,000/- unilaterally without hearing the

petitioner, for alleged dangerous driving, under Section 184 of the Motor Vehicles Act, 1988 (as amended) [in short, "the M.V. Act"]. It was

mentioned in the order, as communicated to the petitioner, that in the event of non-deposit of such penalty amount within three days from the date of

receipt of the order with the Cashier, Directorate of Transport, Port Blair, the registration of the alleged offending vehicle, bearing no. AN 01 P 8000,

shall be cancelled and the driving license of the owner shall be suspended for a period of five years.

The petitioner filed the present writ petition challenging the aforesaid order dated May 26, 2020.

During pendency of the writ petition, in view of the petitioner having not complied with the impugned order dated May 26, 2020, the respondent no. 2

(Licensing Authority), vide subsequent Order No. 1336 dated June 15, 2020, suspended the driving license (No. AN0120080034159) of the petitioner

for a period of three months and the petitioner was directed to surrender his license to the In-charge, Road Safety Cell immediately on the receipt of

the said order. In the said order itself, it was gratuitously mentioned that if the petitioner had any grievance against the order, he might prefer an

appeal to the Appellate Authority, that is, the Secretary (Transport) / Commissioner (Transport). It was recorded that the said order dated June 15,

2020 was passed ""in exercise of the powers conferred under M.V. Act 1988"".

The petitioner thus filed CAN 3358 of 2020, challenging the consequential Order No. 1336 dated June 15, 2020, in aid of the main writ petition, which

is also being heard with the main matter.

Learned counsel for the petitioner argues that the Respondent-authority lacked the inherent jurisdiction to pass the impugned orders dated May 26,

2020 and June 15, 2020. Section 184 of the M.V. Act deals with punishment for dangerous driving. Authority to arrest for such offence is vested in

the police under Section 202 of the said Act. Section 208 thereof, on the other hand, postulates the provisions for taking cognizance of the said offence

by a court of law. Thus, nowhere in the M.V. Act, the petitioner argues, is found any provision empowering the respondent no. 2 (Licensing

Authority) to impose penalty for violation of Section 184 of the M.V. Act.

Laying stress on the stand taken by the respondents in their affidavit-in-opposition, that the intention of the first impugned order dated May 26, 2020

was to call the petitioner for compounding the offences of the petitioner and that in case of no such compounding taking place, to initiate prosecution

against the petitioner, the petitioner argues that such stand is belied by the second impugned order dated June 15, 2020, whereby the petitioner's driving

license was suspended straightaway for non-compliance with the previous order.

Moreover, it is submitted, the licensing authority may suspend a driving license under Section 21 of the M.V. Act only if a person is previously

convicted of an offence under Section 184, when a case is registered by a police officer under the latter section where the allegation of death or

grievous hurt is made against the accused. In the present case, however, none of such criteria was fulfilled and the suspension of license took place as

a consequence of non-compliance of the parent order dated May 26, 2020. As such, both the parent order and the consequential order, which are

challenged in the present proceeding, were issued without jurisdiction.

In the event the order dated May 26, 2020 was a notice under Section 200 of the M.V. Act (which it was patently not), a prosecution would have been initiated as a consequence of non-compliance of such order and the subsequent consequential order dated June 15, 2020 would not have been passed.

Learned counsel for the petitioner argues further that the petitioner was not afforded any opportunity of hearing before passing the impugned orders.

The petitioner submits that availability of alternative remedy cannot come in the way of granting relief in the present case, since the petitioner has

made out a sufficient case of the respondent no. 2 having acted without jurisdiction. Not only was no objection as to maintainability of the writ petition

taken by the respondents at any time during hearing of the writ petition, the writ petition is also otherwise maintainable in terms of the Supreme Court

judgment rendered in Whirlpool Corporation v. Registrar of Trade Marks, Mumbai, reported at (1998) 8 SCC 1.

Lastly, the petitioner prays that both the impugned orders be quashed with costs, since the petitioner was restrained from using his driving licence

during the pendency of the writ petition.

Learned counsel for the respondents argues that the respondent no.2, being the licensing authority, acted as an officer in terms of a Gazette

Notification dated September 23, 2019, published under the authority conferred by Section 200 (1) of the M.V. Act [annexed as Annexure R3 (at

page 80) to the respondents' affidavit-in-opposition] in issuing the order dated May 26, 2020. Such order, the respondents contend, was in effect a

notice to compound the offence by the petitioner. A general argument is also made that the sole intention was to act against ""elements which indulge

in violation of the legal provisions related to Motor Vehicle Act like over speeding, racing and dangerous driving etc. making the road and other public

places unsafe for themselves as well as others road users"", as pleaded in the respondents' written notes of arguments. Since the petitioner neither

appeared before the respondent no. 2 to compound the offence nor deposited the penal amount, the respondent no. 2 had allegedly sent a written

complaint to the SDPO, South Andaman for taking appropriate steps.

The respondents cite the Supreme Court judgment rendered in *S. Rajasekharan v. Union of India & Ors.*, reported at (2014) 6 SCC 36, for the

proposition that the authorities of the Union and State Governments responsible are required to implement all existing laws and norms, including the

provisions of the M.V. Act, which are in force, in the right earnest and with all vigour. A Committee was formed by the Supreme Court, under the

Chairmanship of Hon'ble Justice K. S. Radhakrishnan to ensure the success of the process undertaken, constant supervision of the implementation of

the directives given by the Supreme Court to the Central and State Governments. Included in the actions directed by the said Committee was

suspension of the license for a period of not less than three months under Section 19 of the M.V. Act, read with Rule 21 of the Central Motor

Vehicles Rules, 1989 for certain offences as stated in the written notes of arguments of the respondents (at the third page thereof). The failure of the

petitioner to come forward to compound the offence under Section 184 of the M.V. Act is cited by the respondents as the reason prompting the

issuance of a report for prosecution against the petitioner and, allegedly in terms of the Supreme Court guidelines, the licensing authority (respondent

no. 2) to suspend the driving license of the petitioner for a period of 3 months vide Order No. 1336 dated June 15, 2020.

It is reiterated in the respondents' written notes of arguments that the petitioner was found driving the vehicle-in-question dangerously in a public place,

causing danger to the life of fellow "road users and persons near road" and violated the provisions of Section 184, read with Sections 183 and 189 of

the M.V. Act, thus causing the respondent no. 2, allegedly under the powers conferred by the Gazette Notification dated September 23, 2019, to issue

'notice' to the petitioner vide Order dated May 26, 2020 by "calling upon the petitioner to deposit the fine amount" (as stated by the respondents in their

written notes of arguments).

According to the respondents, the petitioner ought to have appeared before the respondents who had issued to notice to compound the offence and to

have expressed the petitioner's unwillingness to compound the offences. In such event, the respondents would have proceeded with prosecution as per

law. However, instead of doing so and/or availing of other remedies to present his grievances before the superior officers such as Additional

Commissioner (Transport) and Commissioner (Transport), the petitioner filed the instant writ petition.

Learned counsel for the respondents further argues that the intention behind the 'notice' dated May 26, 2020 was not to penalize the petitioner without

the petitioner's willingness since, as admitted by the respondents, although it is not mandatory that the authorized officer can always compound the

offence, such action is conditional upon the willingness of the petitioner. In absence of such expression of willingness to compound the offences,

prosecution before the appropriate court is to follow, as per the respondents' written notes of arguments (page 5 thereof). Review or appeal were the

options available to the petitioner, if aggrieved by the quantum of fine, before the authorized officers while compounding the offence as provided under

the Andaman and Nicobar Motor Vehicle Rules, 2006 (which are not annexed to the written notes or affidavit-in-opposition of the respondents).

Thus, the respondents argue, the writ petition is liable to be dismissed. A consideration of the arguments of the parties would necessarily involve a

consideration of the provisions of the M.V. Act, which are set out below: ""Motor Vehicles Act, 1988 (as amended till date) :-

19. Power of licensing authority to disqualify from holding a driving licence or revoke such licence.-- (1) If a licensing authority is satisfied, after giving

the holder of a driving licence an opportunity or being heard, that he--

(a) ã, is a habitual criminal or habitual drunkard; or

(b) is a habitual addict to any narcotic drug or psychotropic substance within the meaning of the Narcotic Drugs and Psychotropic Substances Act,

1985 (61 of 1985); or

(c) is using or has used a motor vehicle in the commission of a cognizable offence; or

(d) has by his previous conduct as driver of a motor vehicle shown that his driving is likely to be attended with danger to the public; or

(e) has obtained any driving licence or a licence to drive a particular class or description of motor vehicle by fraud or misrepresentation; or

(f) has committed any such act which is likely to cause nuisance or danger to the public, as may be prescribed by the Central Government, having

regard to the objects of this Act; or

(g) has failed to submit to, or has not passed, the tests referred to in the proviso to sub-section (3) of section 22; or

(h) being a person under the age of eighteen years who has been granted a learner's licence or a driving licence with the consent in writing of the

person having the care of the holder of the licence and has ceased to be in such care, it may, for reasons to be recorded in writing, make an order--

(i) disqualifying that person for a specified period for holding or obtaining any driving licence to drive all or any classes or descriptions of vehicles

specified in the licence; or

(ii) revoke any such licence.

(1A) Where a licence has been forwarded to the licensing authority under sub-section (4) of section 206, the licensing authority, if satisfied after giving

the holder of the driving licence an opportunity of being heard, may either discharge the holder of a driving licence or, it may for detailed reasons

recorded in writing, make an order disqualifying such person from holding or obtaining any licence to drive all or any class or description of vehicles

specified in the licence -

(a) for a first offence, for a period of three months;

(b) for a second or subsequent offence, with revocation of the driving licence of such person;

Provided that where a driving licence is revoked under this section, the name of the holder of such driving licence may be placed in the public domain

in such manner as may be prescribed by the Central Government.

(2) Where an order under sub-section (1) or sub-section (1A) is made, the holder of a driving licence shall forthwith surrender his driving licence to

the licensing authority making the order, if the driving licence has not already been surrendered, and the licensing authority shall,--

(a) if the driving licence is a driving licence issued under this Act, keep it until the disqualification has expired or has been removed; or

(b) if it is not a driving licence issued under this Act, endorse the disqualification upon it and send it to the licensing authority by which it was issued; or

(c) in the case of revocation of any licence, endorse the revocation upon it and if it is not the authority which issued the same, intimate the fact of

revocation to the authority which issued that licence:

Provided that the driving licence shall be returned to the holder at the end of the period of disqualification only if he successfully completes the driver

refresher training course.

(2A) The licence holder whose licence has been suspended shall undergo the driver refresher training course from a school or establishment licenced

and regulated under section 12 or such other agency, as may be notified by the Central Government.

(2B) The nature, syllabus and duration of the driver refresher training course shall be such as may be prescribed by the Central Government.

(3) Any person aggrieved by an order made by a licensing authority under sub-section (1) or sub- section (1A) 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.

20. Power of Court to disqualify.-- (1) Where a person is convicted of an offence under this Act or of an offence in the commission of which a motor

vehicle was used, the Court by which such person is convicted may, subject to the provisions of this Act, in addition to imposing any other punishment

authorised by law, declare the persons, so convicted to be disqualified, for such period as the Court may specify, from holding any driving licence to

drive all classes or description of vehicles, or any particular class or description of such vehicles, as are specified in such licence:

Provided that in respect of an offence punishable under section 183 no such order shall be made for the first or second offence.

(2) Where a person is convicted of an offence under clause (c) of sub-section (1) of section 132, section 134 or section 185, the Court convicting any

person of any such offence shall order the disqualification under sub-section (1), and if the offence is relatable to clause (c) of sub-section (1) of

section 132 or section 134, such disqualification shall be for a period of not less than one month, and if the offence is relatable to section 185, such

disqualification shall be for a period of not less than six months.

(3) A Court shall, unless for special reasons to be recorded in writing it thinks fit to order otherwise, order the disqualification of a person--

(a) who having been convicted of an offence punishable under section 184 is again convicted of an offence punishable under that section,

(b) who is convicted of an offence punishable under section 189, or

(c) who is convicted of an offence punishable under section 192:

Provided that the period of disqualification shall not exceed, in the case referred to in clause (a), five years, or in the case referred to in clause (b), two

years or, in the case referred to in clause (c), one year.

(4) A Court ordering the disqualification of a person convicted of an offence punishable under section 184 may direct that such person shall, whether

he has previously passed the test of competence to drive as referred to in sub-section (3) of section 9 or not, remain disqualified until he has

subsequent to the making of the order of disqualification passed that test to the satisfaction of the licensing authority.

(5) The Court to which an appeal would ordinarily lie from any conviction of an offence of the nature specified in sub-section (1) may set aside or vary any order of disqualification made under that sub-section notwithstanding that no appeal would lie against the conviction as a result of which such order of disqualification was made.

21. Suspension of driving licence in certain cases. - (1) Where, in relation to a person who had been previously convicted of an offence punishable

under section 184, a case is registered by a police officer on the allegation that such person has, by such dangerous driving as is referred to in the said

section 184, of any class or description of motor vehicle caused the death of, or grievous hurt to, one or more persons, the driving licence held by such

person shall in relation to such class or description of motor vehicle become suspended -

(a) for a period of six months from the date on which the case is registered, or

(b) if such person is discharged or acquitted before the expiry of the period aforesaid, until such discharge or acquittal, as the case may be.

(2) Where, by virtue of the provisions of sub-section (1), the driving licence held by a person becomes suspended, the police officer, by whom the case

referred to in sub-section (1) is registered, shall bring such suspension to the notice of the Court competent to take cognizance of such offence, and

thereupon, such Court shall take possession of the driving licence, endorse the suspension thereon and intimate the fact of such endorsement to the

licensing authority by which the licence was granted or last renewed.

(3) Where the person referred to in sub-section (1) is acquitted or discharged, the Court shall cancel the endorsement on such driving licence with

regard to the suspension thereof.

(4) If a driving licence in relation to a particular class or description of motor vehicles is suspended under sub-section (1), the person holding such

licence shall be debarred from holding or obtaining any licence to drive such particular class or description of motor vehicles so long as the suspension

of the driving licence remains in force.

....

183. Driving at excessive speed, etc. - (1) Whoever drives or causes any person who is employed by him or subjects someone under his control to

drive a motor vehicle in contravention of the speed limits referred to in section 112 shall be punishable in the following manner, namely:-

(i) where such motor vehicle is a light motor vehicle with fine which shall not be less than one thousand rupees but may extend to two thousand

rupees;

(ii) where such motor vehicle is a medium goods vehicle or a medium passenger vehicle or a heavy goods vehicle or a heavy passenger vehicle with

fine which shall not be less than two thousand rupees, but may extend to four thousand rupees; and

(iii) for the second or any subsequent offence under this sub-section the driving licence of such driver shall be impounded as per the provisions of the

sub-section (4) of section 206. (2)

(3) No person shall be convicted of an offence punishable under sub-section (1) solely on the evidence of one witness to the effect that in the opinion

of the witness such person was driving at a speed which was unlawful, unless that opinion is shown to be based on an estimate obtained by the use of

some mechanical or electronic device.

(4) The publication of a time table under which, or the giving of any direction that any journey or part of a journey is to be completed within a specified

time shall, if in the opinion of the court it is not practicable in the circumstances of the case for that journey or part of a journey to be completed in the

specified time without contravening the speed limits referred to in section 112 be prima facie evidence that the person who published the time table or

gave the direction has committed an offence punishable under sub-section (1).

184. Driving dangerously.--Whoever drives a motor vehicle at a speed or in a manner which is dangerous to the public, or which causes a sense of

alarm or distress to the occupants of the vehicle, other road users, and persons near roads, having regard to all the circumstances of the case including

the nature, condition and use of the place where the vehicle is driven and the amount of traffic which actually is at the time or which might reasonably

be expected to be in the place, shall be punishable for the first offence with imprisonment for a term which may extend to one year but shall not be

less than six months or with fine which shall not be less than one thousand rupees but may extend to five thousand rupees, or with both, and for any

second or subsequent offence if committed within three years of the commission of a previous similar offence with imprisonment for a term which

may extend to two years, or with fine of ten thousand rupees, or with both.

Explanation. - For the purpose of this section, -

(a) jumping a red light;

(b) violating a stop sign;

(c) use of handheld communications devices while driving;

(d) passing or overtaking other vehicles in a manner contrary to law;

(e) driving against the authorised flow of traffic; or

(f) driving in any manner that falls far below what would be expected of a competent and careful driver and where it would be obvious to a competent

and careful driver that driving in that manner would be dangerous, shall amount to driving in such manner which is dangerous to the public.

....

189 Racing and trials of speed. - Whoever without the written consent of the State Government permits or takes part in a race or trial of speed of any

kind between motor vehicles in any public place shall be punishable with imprisonment for a term which may extend to three months, or with a fine of

five thousand rupees, or with both, and for a subsequent offence shall be punishable with imprisonment for a term which may extend to one year, or

with fine of ten thousand rupees; or with both.

....

200. Composition of certain offences. - (1) Any offence whether committed before or after the commencement of this Act punishable under section

177, section 178, section 179, section 180, section 181, section 182, sub- section (1) or sub-section (3) or sub-section (4) of section 182A, section

182B, sub-section (1) or sub-section (2) of section 183, section 184 only to the extent of use of handheld communication devices, section 186, section

189, sub-section (2) of section 190, section 192, section 192A, section 194, section 194A, section 194B, section 194C, section 194D, section 194E,

section 194F, section 196, section 198, may either before or after the institution of the prosecution, be compounded by such officers or authorities and

for such amount as the State Government may, by notification in the Official Gazette, specify in this behalf.

Provided that the State Government may, in addition to such amount, require the offender to undertake a period of community service.

(2) Where an offence has been compounded under sub-section (1), the offender, if in custody, shall be discharged and no further proceedings shall be

taken against him in respect of such offence.

Provided that notwithstanding compounding under this section, such offence shall be deemed to be a previous commission of the same offence for the

purpose of determining whether a subsequent offence has been committed:

Provided further that compounding of an offence will not discharge the offender from proceedings under sub-section (4) of section 206 or the

obligation to complete a driver refresher training course, or the obligation to complete community service, if applicable.

....

202. Power to arrest without warrant. - (1) A police officer in uniform may arrest without warrant any person who in his presence commits an

offence punishable under section 184 or section 185 or section 197:

Provided that any person so arrested in connection with an offence punishable under section 185 shall, within two hours of his arrest, be subjected to a

medical examination referred to in sections 203 and 204 by a registered medical practitioner failing which he shall be released from custody.

(2) A police officer in uniform may arrest without warrant any person, who has committed an offence under this Act, if such person refuses to give

his name and address.

(3) A police officer arresting without warrant the driver of a motor vehicle shall if the circumstances so require take or cause to be taken any steps he

may consider proper for the temporary disposal of the vehicle.

....

206. Power of police officer to impound document. - (1) Any police officer or other person authorised in this behalf by the State Government may, if

he has reason to believe that any identification mark carried on a motor vehicle or any licence, permit, certificate of registration, certificate of

insurance or other document produced to him by the driver or person in charge of a motor vehicle is a false document within the meaning of section

464 of the Indian Penal Code, 1860 (45 of 1860) seize the mark or document and call upon the driver or owner of the vehicle to account for his

possession of or the presence in the vehicle of such mark or document. (2) Any police officer or other person authorised in this behalf by the State

Government may, if he has reason to believe that the driver of a motor vehicle who is charged with any offence under this Act may abscond or

otherwise avoid the service of a summons, seize any licence held by such driver and forward it to the Court taking cognizance of the offence and the

said court shall on the first appearance of such driver before it, return the licence to him in exchange for the temporary acknowledgment given under

sub-section (3). (3) A police officer or other person seizing a licence under sub-section (2) shall give to the person surrendering the licence temporary

acknowledgment therefor and such acknowledgment shall authorise the holder to drive until the licence has been returned to him or until such date as

may be specified by the police officer or other person in the acknowledgment, whichever is earlier:

Provided that if any Magistrate, police officer or other person authorised by the State Government in this behalf is, on an application made to him,

satisfied that the licence cannot be, or has not been, returned to the holder thereof before the date specified in the acknowledgment for any reason for

which the holder is not responsible, the Magistrate, police officer or other person, as the case may be, may extend the period of authorization to drive

to such date as may be specified in the acknowledgement.

(4) A police officer or other person authorised in this behalf by the State Government shall, if he has reason to believe that the driver of a motor

vehicle has committed an offence under any of sections 183, 184, 185, 189, 190, 194C, 194D, or 194E, seize the driving licence held by such driver and

forward it to the licensing authority for disqualification or revocation proceedings under section 19:

Provided that the person seizing the licence shall give to the person surrendering the licence a temporary acknowledgment therefor, but such

acknowledgment shall not authorise the holder to drive until the licence has been returned to him.

....

208. Summary disposal of cases.-- (1) The Court taking cognizance of any offence (other than an offence which the Central Government may by

rules specify in this behalf) under this Act,--

(i) may, if the offence is an offence punishable with imprisonment under this Act; and

(ii) shall, in any other case, state upon the summons to be served on the accused person that he--

Ã, (a)Ã, may appear by pleader or in person; or

Ã, (b)Ã, may, by a specified date prior to the hearing of the charge, plead guilty to the charge and

remit to the court, by money order, such sum (not exceeding the maximum fine that may be imposed for the offence) as the Court may specify, and

the plea of guilt indicated in the money order coupon itself:

Provided that the court shall, in the case of any of the offences referred to in sub-section (2), state upon the summons that the accused person, if he

pleads guilty, shall so plead in the manner specified in clause (b) and shall forward his driving licence to the court with his letter containing such plea.

(2) Where the offence dealt with in accordance with sub-section (1) is an offence specified by the Central Government by rules for the purposes of

this sub-section, the court shall, if the accused person pleads guilty to the charge and forward his driving licence to the court with the letter containing

his plea, make an endorsement of such conviction on his driving licence.

(3) Where an accused person pleads guilty and remits the sum specified and has complied with the provisions of sub-section (1), or as the case may

be, sub-sections (1) and (2), no further proceedings in respect of the offence shall be taken against him nor shall he be liable, notwithstanding anything

to the contrary contained in this Act, to be disqualified for holding or obtaining a licence by reason of his having pleaded guilty.

.....

It is evident that the entry under the first column of Serial No. 1 of the Gazette Notification dated September 23, 2019 empowered all officers above

the rank of Motor Vehicle Inspector of the Transport Department, Officers of and above the rank of Sub- Inspector of A & N Police Department and

Assistant Sub-Inspectors and above of the Traffic Branch of A & N Police to compound the offences punishable under the sections of the M.V. Act

as specified in the corresponding third column. Before going into the question as to whether the said sections are attracted to the present case, it

would be relevant to consider the Notification dated September 10, 2007 issued by the Secretariat, Andaman and Nicobar Administration at Port Blair

(annexed at page 84 of the affidavit-in-opposition of the respondents), which specifies, inter alia, that the Assistant Director (Transport) would be

authorized to function as Regional Transport Officer II, who shall, as per the same Notification, carry out the works relating to issuance/renewal of

driving license, among other functions. Hence the said officer acts as the licensing authority. Since the Assistant Director (Transport) is obviously an

officer ""of and above the rank of Motor Vehicle Inspector of the Transport Department"", as contemplated in the first column of Serial No. 1 of the

Gazette Notification dated September 23, 2019, the licensing authority has also been vested by the said Notification with the power to compound

traffic offences compoundable under the Sections enumerated in the third column of the first serial. Since the said Notification was issued under

Section 200 (1) of the M.V. Act, it can be presumed to be a legally valid and enforceable piece of delegated legislation.

Proceeding on such premise, since the impugned parent order dated May 26, 2020 was issued ex facie for an alleged violation under Section 184 of

the M.V. Act, as amended till then [wrongly quoted as ""the MV (Amendment) Act 2019], by ""driving dangerously in public place causing danger to

the life of fellow road users and persons near roads"", as stated in the said order itself, we have to examine the scope of empowerment of the licensing

authority to compound such an offence. Since the respondents have also sought to invoke the provisions of Section 183 and 189 of the M.V. Act, the

intersecting field of operation of the said sections and the empowerment envisaged in the Gazette Notification of September 23, 2019, respectively, is

also required to be examined, leaving the validity of the invocation of Sections 183 and 189 for a little later.

Out of the immediately aforementioned sections, the Notification dated September 23, 2019 covers only some parts, being Section 183 (1) (i), Section

184 [limited to item (c) of the explanation] and Section 189 in its entirety. As regards Section 183, sub-section (1), clause

(i), only speed limit violations relating to light motor vehicles are envisaged. Explanation (c) of Section 184 relates to use of handheld communications

devices while driving. Section 189 covers unauthorized racing and trials of speed. However, none of the above apply to the present case, simply

because the parent impugned order dated May 26, 2020 specifically mentions ""driving dangerously in public place causing danger to the life of fellow

road users and persons near roads"" as the petitioner's offence, which, although may be a phrase culled out from the body of Section 184 of the M.V.

Act, is not covered by any of the acts mentioned as ""driving in such manner which is dangerous to the public"" in the Explanation clauses of Section

184. At the worst from the petitioner's point of view, clause (f) of the Explanation could be arguably applicable but, in the absence of any particular

allegation of the petitioner having committed the act described in clause (f) being specifically mentioned in the order dated May 26, 2020, the

applicability of the said section has to be construed strictly, since the same is a penal provision. In any event, clause (c) of the Explanation, which is

quoted above, is not applicable by any stretch of imagination as per the order dated May 26, 2020 itself. An act comprising an offence has to be

specifically penned down for the alleged offender to be aware of the charges levelled against her/him so that the offender can set up an appropriate

defence. Such a specific enumeration is missing in the parent order. Since no offence, as contemplated under Sections 183 (1) (i) and/or under Section

189 of the M.V. Act, has been mentioned even vaguely in the order of the respondent no. 2 dated May 26, 2020, the question of slapping charges

against the petitioner under those provisions does not arise, hence denuding the respondent no. 2-authority of any jurisdiction as conferred by the

Gazette Notification dated September 23, 2020 on it.

Moreover, contrary to the arguments of the respondents, the impugned orders dated May 26 and June 15, 2020 (the latter being merely a consequence

of non-compliance of the former) do not even vaguely mention any intention to compound offences under Section 183 and 189 with Section 184. Only

the bare language of a portion of Section 184 has been copied in the Order dated May 26, 2020, without any specific allegation as to the exact nature

of dangerous driving allegedly perpetrated by the petitioner. Hence the petitioner's allegation as to the respondent no. 2 having inherent lack of

jurisdiction to pass the order dated May 26, 2020 is ex facie evident from the order itself.

The subsequent order dated June 15, 2020, being merely an off-shoot and consequence of the May 26 order, is automatically rendered void and

unlawful, since the same merely sought to enforce the void order dated May 26, 2020.

That apart, as far as the second impugned order dated June 15, 2020 is concerned, there is no provision of such suspension of driving licence by a

licensing authority as a consequence of non-compliance of the order of levy of a fine of Rs. 10,000/- dated May 26, 2020, which itself is de hors the

powers conferred on the licensing authority, either under the M.V. Act or the Notification dated September 23, 2019, under the law. As rightly argued

on behalf of the petitioner, it was beyond the authority or jurisdiction of the licensing authority to pass either of the impugned orders, hence rendering

both void ab initio and unenforceable in law.

The argument as regards the alleged intention of the respondents to compound other offences under Sections 183 and 189, with Section 184, of the

M.V. Act is patently an afterthought and was never reflected in either of the impugned orders. No iota of opportunity was given to the petitioner to

agree or disagree to the compounding of any other offence than that contemplated in Section 184, which was the only quoted section in the impugned

orders. In fact, the respondent no. 2 acted as judge, jury and executioner in straightaway communicating the unilateral and unreasoned decision to levy

a fine of Rs. 10,000/- and consequential penal action in the event of non-compliance.

The vague, generic arguments as to addressing violation of the legal provisions related to Motor Vehicle Act like over speeding, racing and dangerous

driving etc. making the road and other public places unsafe for themselves as well as other road users, as introduced only in the respondents'

arguments, also comprise of afterthoughts and do not cut much ice in the present context.

Although Section 202 of the M.V. Act may not be relevant here, since the same revolves around arrest by the police without warrant, which is

dissimilar to the present case, Section 206 provides for seizure of the driving licence for violation of various provisions including the relevant ones, that

is, Sections 183, 184 and 189, the same has to be effected by a police officer or other person authorised in this behalf by the State Government (here,

the Lieutenant General since the Islands are a Union territory), which power is not vested with the licensing authority, as discussed above.

Section 208 of the M.V. Act, cited by the petitioner, vests the court with the power to take cognizance of offences as specified therein. As such, the

licensing authority does not come into the picture at all.

Section 19 of the M.V. Act reposes some powers on the licensing authority regarding disqualification from holding a driving license or revoking such

license, but restricts such powers to the yardsticks mentioned therein, which are not satisfied in the instant case. Moreover, the said provision

essentially gives a prior opportunity of being heard, which was denied in the present case, in any event.

Section 20 confers power upon the court to disqualify a convict from holding any driving licence, Section 21 deals with persons having a previous

conviction of an offence punishable under Section 184 of the M.V. Act, which condition is not satisfied in the present case even from a plain reading

of the impugned orders.

Section 22 of the said Act speaks of cancellation or suspension of the driving license of a convicted person, that too by a court of law, thus eliminating

itself from the domain of the licensing authority.

The judgment of S. Rajasekharan (*supra*) is inapplicable, as the licensing authority inherently lacked jurisdiction to pass the impugned orders. Whirlpool

Corporation (*supra*) could have been applicable in general terms, since alternative remedy is not an absolute bar to invocation of the writ jurisdiction;

however, in the present case, there is a patent lack of jurisdiction evident from the face of records in the exercise of jurisdiction by the respondent no.

2, as evidenced from the impugned orders, thereby attracting the writ jurisdiction of this court. A review or appeal, as suggested by the respondents,

would be entirely out of place and illusory in the circumstances.

In view of the above discussions, the impugned orders, being Order No. 1202 dated May 26, 2020 and Order No. 1336 dated June 15, 2020, are

patently without jurisdiction and de hors the law governing the field. As such, neither of those can stand the scrutiny of a judicial review under Article

226 of the Constitution of India and are thus quashed and set aside.

The respondents are directed to return the petitioner's driving licence to the petitioner within a week from date.

However, the respondents and/or any other competent authority under the M.V. Act shall not be debarred, by the observations and/or conclusion of

the present order, from taking appropriate legal action against the petitioner, if otherwise justiciable in law. It will be open to the appropriate authorities

to proceed in accordance with law for taking proper legal action in respect of any offence under the M.V. Act, if committed by the petitioner.

WP 5526(W) of 2020 and CAN 3358 of 2020 are thus allowed, thereby quashing the orders impugned therein, bearing Order No. 1202 dated May 26,

2020 and Order No. 1336 dated June 15, 2020, in terms of the above observations.

However, since this court has not entered into the merits of the allegations against the petitioner, there shall be no order as to costs.

Urgent certified website copies of this order, if applied for, be made available to the parties upon compliance with the requisite formalities.