HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

S.B. Civil Writ Petition No. 3789/2024

Smt. Bhanwri W/o Late Shri Fatta Ram Siyag, Aged About 45 Years, R/o Village Post Gogelao, Tehsil And District Nagaur (Raj.).

----Petitioner

Versus

1. State Of Rajasthan, Through Commissioner, Department Of Transport, Government Of Rajasthan, Jhalana Institutional Area, Jhalana Doongri, Jaipur.
2. The Joint Transport Commissioner (Rules), Department Of Transport, Government Of Rajasthan, Jhalana Institutional Area, Jhalana Doongri, Jaipur.
3. The Regional Transport Officer, Ajmer.
4. The District Transport Officer, Nagaur, District Nagaur.

----Respondents

For Petitioner(s) : Mr. Vivek Firoda

For Respondent(s) : Mr. Sajjan Singh Rathore, AAG with Mr. Rajendra Singh

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HON'BLE MS. JUSTICE REKHA BORANA

Order

Reportable

07/10/2024

1. The present writ petition has been preferred against the order dated 23.02.2024 (Annex.12) whereby the application as preferred by the petitioner for transfer of the license issued to her husband, for running the motor driving school, has been rejected.

2. The facts are that a license for running a Motor Driving School (hereinafter referred to as, 'the School') was issued to late Shri Fatta Ram, husband of the present petitioner. The said license was time to time renewed and holds valid till the year 2027. Unfortunately, Shri Fatta Ram expired in the year 2023 and the petitioner therefore, vide application dated 30.10.2023,

prayed for transfer of the license in her name. However, the said application has been rejected vide the order impugned dated 23.02.2024 on the ground that there is no provision in the Central Motor Vehicles Rules, 1989 (hereinafter referred to as, 'the Rules of 1989') or in the Motor Driving School Registration Scheme, 2018 (hereinafter referred to as, 'the Scheme of 2018') for transfer of the license.

3. Learned counsel for the petitioner submits that although the license in question was valid upto the year 2027, the respondent-Department directed for closing down of the School only on the premise of death of the licensee i.e. husband of the petitioner. Learned counsel submits that it was not a case of breach of any of the conditions of the license and hence, the license which was valid till the year 2027, could not have been terminated only on the premise that there was no provision prescribing for transfer of license in the name of successor/legal representative of the deceased.

Learned counsel submits that if the successor/legal representative is qualified in terms of the Scheme of 2018, the license ought to have been transferred in name of such successor/ legal representative.

4. In support of his submission, learned counsel relied upon a judgment of the Madras High Court in the case of ***V. Krishnasamy vs. The Licensing Authority-cum-Regional Transport Officer & Anr.; Writ Petition No.29797 of 2008*** (decided on 20.01.2009) wherein the Court, in an akin situation, observed that in cases where one of the legal heirs fulfills all the qualifications prescribed under Rule 24 of the Rules of 1989, there

cannot be any impediment for the licensing authority to consider the question of transmission. Therein, the Court observed that a blind rejection of the request for transfer or transmission by the Transport Commissioner, cannot be permitted.

5. Learned counsel also relied upon a circular issued by the State of Uttar Pradesh wherein a specific provision for transfer of the license in name of a successor, on the death of the licensee, has been incorporated.

6. Learned counsel, while making the aforesaid submissions, argued that in absence of any specific provision, the Court can *suo motu* direct for an equitable relief to be granted in favour of the petitioner.

7. Per contra, learned Additional Advocate General appearing on behalf of the State submitted that there being no specific provision for transfer of a license in favour of a successor/legal representative on death of the licensee, no such order could have been passed by the licensing authority and rightly so. Learned AAG submitted that even otherwise, an amendment has been introduced in the Scheme of 2018 and as per the said amendment, the petitioner would be under an obligation to apply fresh and she would be entitled for a license if found eligible in terms of the amended provisions.

8. Heard learned counsel for the parties and perused the material available on record.

9. The copy of the judgment as passed by the Madras High Court in the case of ***V. Krishnasamy*** (supra) and the circular of State of U.P. are taken on record.

10. What is admitted on record is that a license/authority letter for establishment of a motor driving school was issued in favour of husband of the petitioner on 19.11.2012. The said license having been renewed from time to time and the same being valid till 07.11.2027 is also not under dispute. An application for transfer of the license/authority letter in her name was preferred by the petitioner on 30.10.2023 on the unfortunate demise of her husband on 03.06.2023. However, on no action been taken upon her application, she preferred a writ petition (S.B. Civil Writ Petition No.1192/2024) whereby vide order dated 30.01.2024, the respondent authorities were directed to decide the application as filed by the petitioner within a period of four weeks.

11. It is only in pursuance to the said order that the application as preferred by the petitioner was decided vide impugned order dated 23.02.2024 whereby the same was rejected on the premise that there is no provision in the Rules of 1989 or in the Scheme of 2018 for transfer of a Motor Driving School license. The licensing authority, vide the said order, proceeded on to observe that the license as issued in favour of the School, would be deemed to have been cancelled and hence, directed the petitioner to deposit the same with the respondent-Department with immediate effect.

12. In the specific opinion of this Court, the approach of licensing authority cannot be said to be in terms of the equitable principles of law. Evidently, the application of the petitioner has been rejected on the premise that there is no provision prescribing for transfer of license but then, a bare perusal of the Scheme of 2018 makes it clear that there is no provision for automatic cancellation of the license on death of a licensee, either. In absence of any

provision for automatic cancellation of a license on the death of a licensee, the licensing authority could not have proceeded on to cancel the same too.

13. Further, it is evident on record that the license has been sought to be cancelled only on the premise of there being no provision for transfer of the same. It is not the case of the respondents that any of the conditions of the license had been breached or that the petitioner was not qualified in terms of the Scheme of 2018 to be granted the said license.

14. True it is that there is no specific provision providing for transfer of license on the death of a licensee but then, there is no specific provision even restraining for the same. Meaning thereby, the Rules of 1989 and the Scheme of 2018 are silent on the aspect as to what would be the consequence on the death of a licensee. Neither do they provide for automatic cancellation of the license nor for transfer of the same in favour of the successor/legal representative of the licensee.

15. In the specific opinion of this Court, in such a situation, it is the bounden duty upon the Courts to balance the equities and to ensure the grant of equitable relief. As is the settled position of law, in the matters where the statute is silent regarding any eventuality, the Courts would not be handicapped to pass appropriate orders to grant an equitable relief so as to justify the interest of justice and to balance the equities in favour of the contesting parties.

The said settled principle of law has been reiterated time and again by the Hon'ble Apex Court and in its recent judgment of ***Central Council for Research in Ayurvedic Sciences and Ors.***

vs. Bikartan Das and Ors.; AIR 2023 SC 4011 while discussing the two cardinal principles of extraordinary jurisdiction under Article 226(3) of the Constitution of India, the Hon'ble Apex Court held as under:

> *"51...It is perfectly open for the writ court, exercising this flexible power to pass such orders as public interest dictates & equity projects. The legal formulations cannot be enforced divorced from the realities of the fact situation of the case. While administering law, it is to be tempered with equity and if the equitable situation demands after setting right the legal formulations, not to take it to the logical end, the High Court would be failing in its duty if it does not notice equitable consideration and mould the final order in exercise of its extraordinary jurisdiction. Any other approach would render the High Court a normal court of appeal which it is not."*

16. While reiterating the basic principle that justice, good conscience and equity plays a supplementary role in enabling the Courts to mould the relief in accordance with the circumstances, the Hon'ble Apex Court in its judicial pronouncement in the case of ***M. Siddiq (D) thr. L.Rs. Vs. Mahant Suresh Das and Ors.; 5 (2020) SCC 1*** observed as under:

> *"673. The common underlying thread is that justice, good conscience and equity plays a supplementary role in enabling courts to mould the relief to suit the circumstances that present themselves before courts with the principle purpose of ensuring a just outcome. Where the existing statutory framework is inadequate for courts to adjudicate upon the dispute before them, or no settled judicial doctrine or custom can be availed of, courts may legitimately take recourse to the principles of justice, equity and good conscience to effectively and fairly dispose of the case. A court cannot abdicate its responsibility to decide a dispute over legal rights merely because the facts of a case do not readily submit themselves to the application of the letter of the existing law.* ***Courts in India have long availed of the principles of justice, good conscience and equity to supplement the incompleteness or inapplicability of the letter of the law with the ground realities of legal disputes to do justice between the parties. Equity, as an essential component of justice, formed the final step in the just adjudication of disputes. After taking recourse to legal principles from varied legal systems, scholarly written***

> ***work on the subject, and the experience of the Bar and Bench, if no decisive or just outcome could be reached, a judge may apply the principles of equity between the parties to ensure that justice is done****. This has often found form in the power of the court to craft reliefs that are both legally sustainable and just."*

17. Further, as held in ***S.S. Bola & Ors. vs. B.D. Sardana & Ors.; AIR 1997 SC 3127*** "Equity steps to where the law has left yawning gap". Meaning thereby, it is the settled principle that when there is no law operating the field, the Courts are required to exercise its equity jurisdiction. When no positive law is discernible, Courts turn to equity as a source of applicable law.

18. Keeping into consideration, the above settled principle, coming on to the present matter, it is an admitted position that law is silent as to what would be the fate of a license which was issued totally in accordance with law, on the death of a licensee. Dealing with an akin situation and the same provisions of law, the Madras High Court in the case of ***V. Krishnasamy*** (supra) observed as under:

> *"4. The stand taken by the respondents is that a license granted to a person to run a Driving School, cannot automatically get transferred or transmitted by way of succession, since the person holding the license is required to have certain qualifications prescribed under Rule 24. In other words, the license to run a Driving School is not treated exactly like a right in property.* ***But is does not mean that the respondents cannot even examine the claim of a person who in law inherits the property of the deceased Licensee, in terms of the Rules. In such cases, if one of the legal heirs fulfills all the qualifications prescribed under Rule 24, there cannot be any impediment for the Licensing Authority to consider the question of transmission****.*
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> *5. As a matter of fact, the learned counsel for the petitioner brought to my notice a letter issued by the Transport Commissioner bearing No.88352/ H2/2003 dated 5.2.2004 by which the Transport*

> *Commissioner has take a similar stand. In such circumstances,* ***the blind rejection of the request for transfer or transmission by the Transport Commissioner, cannot be permitted****. Consequently the writ petition is disposed of with a direction to the first respondent to consider the eligibility of the petitioner with reference to Rule 24 of the Central Motor Vehicles Rules, 1989 and to pass appropriate orders, if the petitioner is found to be qualified in accordance with the Rule 24. This exercise shall be done by the first respondent, within a period of eight weeks from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petition is closed."*

19. Further, the circular dated 27.04.2023 as issued by the Transport Department of the Government of U.P. also deserves reference wherein a specific provision for transfer of a license in favour of one of the successors/legal representatives on death of the licensee has been provided. Clause 9 of the said circular is reproduced hereunder:

> *"(9) Driving Training School संस्थान के स्वामी की मृत्यु होने की दशा में उत्तराधिकार प्रमाण पत्र के आधार पर उत्तराधिकारी का नाम लाइसेंस पर अंकित किया जायेगा। एक से अधिक उत्तराधिकारी होने की दशा में सभी उत्तराधिकारियों से एक शपथ पत्र प्राप्त करते हुए किसी एक उत्तराधिकारी के नाम संस्थान का लाइसेंस जारी किया जा सकेगा।"*

20. In view of the overall analysis; the above judicial pronouncements; and in view of the basic principle governing equity, justice and good conscience, this Court is also of the clear view that the blind rejection of the request of the petitioner for transfer of the license only on the premise of there being no provision for the same, cannot be held to be good and cannot be permitted.

21. So far as the amended provision in the Scheme of 2018 is concerned, evidently, the same could not have a retrospective application. The license as issued in the year 2012 cannot be subjected to the amended provision introduced subsequently. But then, the petitioner would definitely be required to qualify in terms of the Rules of 1989 which governed the parties at the time when the license was issued.

22. As a consequence of the above discussion, the order impugned dated 23.02.2024 is hereby quashed and set aside. The respondent authorities shall be under an obligation to consider the application dated 30.10.2023 as preferred by the petitioner, *denovo,* and consider the eligibility of the petitioner with reference to Rule 24 of the Rules of 1989. If the petitioner is found to be qualified in terms of Rule 24 of the Rules of 1989, appropriate orders for transfer of the license issued in favour of her husband, be passed in her favour. However, if the petitioner is not found qualified in terms of Rule 24 of the Rules of 1989, the respondent authorities shall be at a liberty to proceed in accordance with law.

Appropriate time for filing the documents in support of her qualification in terms of Rule 24 of the Rules of 1989, shall be granted to the petitioner before passing the final order. The order be passed by the respondent authorities positively, within a period of eight weeks from the receipt of a copy of this order.

23. Before parting, this Court cannot restrain itself from reminding the State of the basic fact that the Constitution of India casts a duty upon the State to bear into mind, the basic principle of promoting the welfare of the people, while framing laws and

policies. Hence, as a word of advise, it is expected of the State of Rajasthan to take up the issue in larger public interest and consider the inclusion of some provision for transfer of the license in the name of successor/legal representative on the death of a licensee, in the Scheme/Rules governing issuance of the license for running of a Motor Driving School.

It is expected of the learned AAG to advise the State appropriately.

24. With the above observations, the present writ petition is **disposed of**.

25. Stay petition and all pending applications, if any, also stand **disposed of**.

(REKHA BORANA),J

379-T.Singh/-