

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.08.2015

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THE HONOURABLE MR.JUSTICE M.SATHYANARAYANAN

W.P.No.25811 of 2015

and

M.P.No.1 of 2015

R.Kulandaivelu

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Petitioner

Vs.

1.The Tamil Nadu State Transport Corporation
Coimbatore Ltd,
Rep. by its The General Manager,
Coimbatore Division, Ondiputhur Branch-I,
Coimbatore District.

2. The Regional Transport Officer(Licensing Authority)
Regional Transport Office (Central),
Dr.Balasundaram road,
Coimbatore Dt. Respondents

Prayer: Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus directing the 2nd respondent to call for the records relating to the proceedings of Rc.No.25903 dated 08.06.2005 and quash the same and consequently to direct the 2nd respondent to return his ORIGINAL DRIVING LICENSE forthwith without any endorsement.

For Petitioner : Mr.R.Jaikumar

For Respondents : Mr.P.Paramasivados (R1)
Mr.S.Gunasekaran (R2)
Government Advocate

O R D E R

By consent, the writ petition is taken up for final disposal.

2.The petitioner is employed as a driver in the services of the first respondent. On 10.04.2015, the bus belonging to the first respondent which was driven by the petitioner, dashed against the two wheeler and consequently, the rider of the motor cycle sustained injuries and lost his life and in this regard a case was registered by the Special Sub Inspector of Police, Traffic Investigation Wing, (East), Coimbatore City in Crime No.297/2015 on 10.04.2015 for the alleged offences under sections 279, 337, 304 (A) I.P.C. and the driving licence of the petitioner was also seized.

3. The Sub Inspector of the Police vide communication dated 11.4.2015 addressed to the second respondent informed that the driving licence of the petitioner is in his custody and also requested him to take necessary steps to cancel the licence and accordingly the second respondent vide impugned proceedings dated 08.06.2015 after giving number of hearing to the petitioner who is the holder of the licence, has concluded that the accident has occurred due to rash and negligent driving and the petitioner is disqualified from holding the licence for a period of six months. Challenging the legality of the same, the petitioner has come forward with this writ petition.

4. The learned counsel for the petitioner would submit that admittedly the petitioner has no previous offence as per the version of the prosecuting agency and the petitioner is the first offender and Section 21 of the Motor Vehicles Act, 1988 shall not be attracted to the facts of the case. Section 19 of the said Act would come into picture to the present case on hand. The learned counsel for the petitioner drawn the attention of this Court to the Judgment reported in CDJ Law Journal in Writ Appeal (MD) No.374 of 2009 (P.Sethuram v. The Licensing Authority, The Regional Transport Officer, Dindigul) dated 30.07.2009 and submits that in the above cited Judgment, scope of Section 19 of the Motor Vehicles Act came for consideration. The Division Bench in the said Judgment, has held as follows:

"Apart from the above, there is no allegation, either in the notice or in the order impugned in the writ petition, that the appellant is a habitual criminal or habitual drunkard, so as to attract clause (a) of Section 19 (1) of the Act. Similarly, neither the show cause notice nor the order impugned in the writ petition, imputes the appellant with any of the ingredients necessary under Clauses (b) to (h) of Sub Section (1) of Section 19 of the Act. Except stating that as per the report of the Inspector of Police, the appellant was guilty of rash and negligent driving, the impugned order does not indicate the category in Clauses (a) to (h) of Section 19 Section 19(1), under which the case of the appellant would fall.

11. The respondent has, in the impugned order, pre-concluded that issue that the appellant is guilty of rash and negligent driving even before the Criminal Court or the Motor Accident Claims Tribunal went into the issue. Even to invoke Section 19 (1)(c) it is necessary to show that the Motor

Vehicle is used in the Commission of cognizable offence. Without making a specific averment regarding the same, the order suspending the driving licence cannot be taken to be passed after due application of mind.

12. In view of the above, the Writ Appeal is allowed, the order of the learned Judge is set aside and the writ petition is allowed. The respondent is directed to return the driving licence of the appellant, within a week of receipt of a copy of this order. However, it shall not preclude the respondent from initiating any action, if any of the contingencies specified in Clauses (a) to (h) of Section 19(1) of the Act, arises later or if any of the Rules as prescribed by the Central Government in pursuance of Section 19 (1) (f) are violated. No costs. Consequently, connected miscellaneous petition is closed."

5. Since, none of the ingredients constitute under Section 19 of the Act to the facts of the case, the learned counsel for the petitioner prays to set aside the impugned order disqualifying the driving licence of the petitioner for a period of six months.

6. Per contra, Mr. S. Gunasekaran, learned Government Advocate, who accepts notice for the second respondent has submitted that the due to rash and negligent driving of the petitioner, the accident occurred, resulting in the death of the motor cycle rider and taking into consideration of the gravity of offence and other facts and the circumstances, the licence of the petitioner was seized and thereafter the impugned order dated 08.06.2005 has been passed disqualifying the petitioner from holding the licence for six months.

7. This Court has carefully considered the rival submissions and perused the materials on record.

8. The Division Bench in the above cited Judgment, has extensively considered the scope of Section 19 of the Act and held that the impugned order which was the subject matter of the challenge has pre-concluded the issue that the appellant is guilty of rash and negligent driving even before the Criminal Court or the Motor Accident Claims Tribunal went into the issue and even without making a specific averment regarding the same, the order suspending the driving licence cannot be taken to be passed after due application of mind.

9. A Perusal of the impugned order discloses that it has been prepared in the standardised format and necessary columns have not

been filled up/struck off and the second respondent's order concludes that the accident was due to negligent and rash driving of the petitioner. In the light of the said judgment, the said conclusion raised by the second respondent, is unsustainable and the impugned order warrants interference.

In the result, the Writ Petition is partly allowed and the impugned order of the second respondent dated 08.06.2005 is set aside. The second respondent is directed to return the original driving licence forthwith to the petitioner. However, it shall not pre-conclude the respondent from initiating any action, if any of the contingencies specified in Clauses (a) to (h) of Section 19(1) of the Act, arises later or if any of the Rules as prescribed by the Central Government in pursuance of Section 19 (1) (f) are violated and may also proceed in accordance with law subject to the result of the criminal prosecution. No costs. Consequently, connected Miscellaneous petitions are closed.

Sd/-
Asst.Registrar (CS IV)

/true copy/

Sub Asst. Registrar

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To

1. The General Manager,
Tamil Nadu State Transport Corporation,
Coimbatore Ltd.
Coimbatore Division,
Ondiputhur Branch - I
Coimbatore District.
2. The Regional Transport Officer (licensing Authority)
REgional Transport Officer (Central),
Dr.Balasundaram Road,
Coimbatore Dt.

+1 cc to Mr.T.Fenn Walter Associates, Advocate, sr.44347

+1 cc to Govt. Pleader, Advocate, sr.44191

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