

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :04.11.2015

CORAM:

THE HONOURABLE MR. JUSTICE R. MAHADEVAN

W.P.No.35529 of 2015 &
M.P.Nos.1 and 2 of 2015

L.Balaji

[Petitioner]

Vs

- 1 The Transport Commissioner,
Chepauk Chennai-5.
 - 2 The Deputy Transport
Commissioner (Incharge) Regional Transport,
Salem District.
 - 3 The Regional Transport Officer
Cum License Issuing Authority Attur,
Salem District.
 - 4 The Inspector of Police,
Vazhapadi Police Station,
Salem District.
- [Respondents]

Writ Petition filed under Article 226 of the Constitution of India for the relief of issuance of Writ of certiorarified mandamus to call for the records relevant to the order in Se.Mu.AA.No.0853/A3/2015, dated 16.09.2015 passed by the second respondent by confirming the order in Se.Mu.Order.No.E1/10515/2015, dated 23.06.2015 passed by the third respondent and quash the same as illegal, improper against the natural justice and thereby direct the respondents 1 to 4 to return the petitioner's driving license in D.L.No.TN27 V 20060000729 to enable him to drive vehicle.

For petitioner : Mr.M.V.Muralidaran

For respondents : Mr.R.Muthukumar, GA

ORDER

Heard the learned counsel for the petitioner and the learned Government Advocate, who took notice for the respondents and with their consent, the main writ petition itself is taken up for disposal.

2. This writ petition has been filed challenging the order dated 16.09.2015 passed by the second respondent by confirming the order i dated 23.06.2015 passed by the third respondent and to direct the respondents 1 to 4 to return the petitioner's driving license in D.L.No.TN27 V 20060000729 to enable him to drive the vehicle.

3. The case of the petitioner in short is that he is working as a driver in a private transport bus. On 04.03.2015, he started his trip to Vazhapadi at about 07.20 a.m. by driving the bus bearing registration No.TN-30 AK 7755 from Salem New Bus Stand by picking up the passengers. On the way to Vazhapadi, when he was crossing Chandrakulavalasu Village, which is much prior to Pelur I, an auto rickshaw carrying over load of passengers, which came from the opposite direction in a high speed, hit the bus on its right side, which lead to an accident and took away the life of five number of passengers, who travelled in the auto.

4. The 4th respondent, who visited the spot registered a case under Sections 279, 337, 338 and 304(A) of IPC in Crime No.170 of 2015, implicating the petitioner as accused by fixing the charges against him. On the spot itself, the driving licence of the petitioner was seized by the 4th respondent and the same was sent to the 3rd respondent for necessary action. The 3rd respondent, on 19.03.2015, has issued a show cause notice calling for petitioner's explanation and on 11.06.2015, the petitioner appeared and tendered his explanation by stating that he is not at all responsible for the said accident. However, the 3rd respondent, without taking into consideration the explanation submitted by the petitioner, passed an order dated 23.06.2015, cancelling the driving license permanently. Aggrieved over the same, the petitioner preferred an appeal before the 2nd respondent on 08.07.2015 and a reminder on 01.09.2015. The 2nd respondent appellate authority, without considering any of the grounds raised in the appeal and without affording any opportunity, has simply confirmed the order of the 3rd respondent by the impugned order. Aggrieved over the same, the petitioner is before this Court.

5. The learned counsel for the petitioner submitted that in identical circumstances, this Court in W.P.No.27103 of 2014 dated 13.10.2014 (Mani vs. Regional Transport Officer, Erode), has passed the following order:

"6. The issue involved in this Writ Petition is covered by the decision of this Court in a similar writ petition in W.P.(MD) No.16806 of 2013 dated 22.10.2013, wherein this Court has held as follow:

"7. In view of the said conclusion, I hold that the action of the respondent in retaining the license is illegal. At the

same time, in the present case, license was seized by the police, it is for the licensing authority to return the license to the police investigating the criminal case forthwith. On getting the driving license of the petitioner, the investigating officer shall issue acknowledgment, as provided in sub-section 3 of Section 206 of the Motor Vehicles Act and then produce the license before the jurisdictional Magistrate. The jurisdictional Magistrate shall thereafter return the license to the petitioner, as provided in Section 206(1) of the Motor Vehicles Act. On such return of the license to the petitioner, the petitioner shall execute a bond to the satisfaction of the jurisdictional Magistrate undertaking to produce the license, as and when required by the Court.

7. Therefore, this Writ Petition is allowed. The 1st respondent is directed to return the driving license to the Investigation Officer/2nd respondent in Crime No.116 of 2014 on the file of the 2nd respondent, who shall, in turn issue an acknowledgment to the petitioner and then produce the same before the jurisdictional Magistrate and the learned Magistrate, in turn, shall exercise his power under section 206(1) of the MV Act and return the license to the petitioner."

6. Learned counsel for the petitioner would further submit that in a similar case in P.Sethuram Vs. The Licensing Authority, The Regional Transport Officer, The Regional Transport Office, Dindigul (2010 Writ L.R. 100), a Division Bench of Madurai Bench of this Court directed the respondent therein to return the driving licence to the appellant therein. He would further submit that in yet another case in S.Duraivelu Vs. The Regional Transport Officer, West Tambaram, Chennai and Others (2013 Writ L.R. 843), this Court has followed the decision of the Division Bench and directed the respondents 1 and 2 therein to release the license of the petitioner therein, after removing the endorsement "suspended".

7. Learned Additional Government Pleader fairly submitted that the issue involved in the present writ petition is covered by the above said orders of this Court.

8. This Court has considered the submissions made by the learned counsel on either side. In P.Sethuram's case (cited supra), the Division Bench has categorically held that the pendency of a criminal case would not give jurisdiction to the

authority to cancel the licence and the authority has to wait for the outcome of the criminal case.

9. Hence, in the light of the above, the present Writ Petition is disposed of by directing the 3rd respondent to return the driving license, which was seized in respect of Crime No.170 of 2015 on the file of the Inspector of Police, Vazhapadi Police Station, Salem to the Investigation Officer, who shall, in turn issue an acknowledgment and then produce the same before the jurisdictional Magistrate and the learned Magistrate, in turn, shall exercise his power under section 206(1) of the Motor Vehicles Act and return the license to the petitioner. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Asst.Registrar (CS II)

/true copy/

Sub Asst. Registrar

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To

- 1 The Transport Commissioner,
Chepauk Chennai-5.
- 2 The Deputy Transport
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Salem District.
- 3 The Regional Transport Officer
Cum License Issuing Authority Attur,
Salem District.
- 4 The Inspector of Police,
Vazhapadi Police Station,
Salem District.

+1 cc to Mr.M.V.Muralidharan, Advocate, sr.60616

+ 1 cc to the Govt.Pleader, Sr 61762 (8/1/16)

W.P.No.35529 of 2015

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