

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :15.12.2015

CORAM:

THE HONOURABLE MR. JUSTICE R. MAHADEVAN

W.P.No.36965 of 2015

&

M.P.Nos.1 and 2 of 2015

N. Durairaj

[Petitioner]

Vs.

1. The Regional Transport Officer
Office of the Regional Transport Officer
Thanneer Pandal Thuraimangalam Post
Perambalur - 621 220

2. The Inspector of Police
Perambalur Police Station Perambalur

[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 of the I Respondent in respect of the final order passed in Na.Ka.29480/A6/2015 dated 16.11.2015 and to quash the same as illegal and consequently direct the I Respondent to return my original driving license bearing number TN 28/1991/0003068. (Prayer amended as per order dated 30.11.2015 made in M.P.No.3/15)

For petitioner : Mr.J.Michael Visuvasam

For respondents : Mr.M.S.Ramesh, AGP

ORDER

Heard the learned counsel for the petitioner and the learned Additional Government Pleader, 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 show cause notice dated 31.08.2015 and to direct the 1st respondent to return the original driving license of the petitioner bearing number TN 28/1991/0003068.

3. The case of the petitioner in short is that he is a driver by profession. He has obtained a driving license on 16.12.1991 from the R.T.O., Namakkal vide driving licence bearing number TN 28/1991/0003068, which is valid till 30.11.2017.

The petitioner is a driver in Tamil Nadu Transport Corporation, Karur Branch - I, with employee No.14967. On 29.08.2015, in the course of employment, the bus bearing registration No.TN 45 N 3645 from Karur to Chennai via Thuraiyur, while nearing Vadakku Madhavi Junction, due to the negligent driving of a two wheeler, in which three persons were travelling, the two wheeler dashed against the bus resulting in the alleged road accident.

4. The 2nd respondent, who registered a case under Sections 279 and 304(A) of IPC in Crime No.707 of 2015, on 30.08.2015 against the petitioner alleging rash and negligent driving causing death of three persons travelling in the Moped bearing Registration No.TN 46 L 2608 has also impounded the original driving licence of the petitioner. Thereafter, the petitioner received a show cause notice dated 31.08.2015 from the 1st respondent as to why action should not be initiated against the petitioner by temporary suspension/cancellation of driving licence, by calling for explanation, for which, the petitioner personally handed over a written reply dated 21.09.2015. Thereafter, nothing was heard from the respondent. Thereafter, the petitioner once again sent a written representation dated 07.10.2015, by registered post, requesting to consider his explanation dated 21.09.2015 and to return the original driving license. But, till date, there is no response. Hence, 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". He also brought to the attention of this Court the following decisions rendered by the Madurai Bench of this Court to return the driving license to the petitioners therein

(i) reported in (2011) 1 MLJ 75 (C.Gandhirajan vs. Licensing Authority, Regional Transport Office (Madurai Central), Madurai

(ii) in W.P.(MD)No.16806 of 2013 dated 22.10.2013 (V.Kumaravel vs. The Regional Transport Officer, Trichy)

and also a recent decision of a learned Single Judge of this Court reported in 2015 (2) CTC 626 (R.Ravi vs. The Regional Transport Officer, Chennai, which also in favour of the petitioner therein.

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 1st respondent to return the driving license, which was seized in respect of Crime No.707 of 2015 on the file of the Inspector of Police, Perambalur Police Station, Perambalur 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.

rg Sd/-
Asst.Registrar

rue copy/

Sub Asst. Registrar

To

1. The Regional Transport Officer
Office of the Regional Transport Officer
Thanneer Pandal Thuraimangalam Post
Perambalur - 621 220.
2. The Inspector of Police
Perambalur Police Station Perambalur.

+ 1 cc to Mr.J.Michael Visuvasam, AdvocateSr 67328.

+ 1 cc to The Govt.Pleader, Hct, Mds. Sr 67638.

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