IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated :: 17.08.2016

CORAM:

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P.No.23775 of 2016

and W.M.P.Nos.20368 and 20369 of 2016

M.Duraimani ... Petitioner

versus

1.The Managing Director,
Tamil Nadu State Transport Corporation Ltd.,
37, Mettupalayam road,
Coimbatore 641 043.

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

Writ Petition filed under Art.226 of the Constitution of India praying for a Writ of ertiorari to call for the records of the 2nd respondent vide memo no.TN66 21/2016 dated 23.6.2016 and quash the same as illegal arbitrary.

For petitioner ... Mr.A.Rajendiran
For respondents ... Mr.S.Sairam, for 1st respondent
Mr.K.J.Sivakumar,G.A.,for 2nd respondent

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 18.6.2016, the bus belonging to the respondents which was driven by the petitioner, dashed against a person who attempted to cross the road and consequently, the said person sustained injuries and lost his life and in this regard a case was registered by the Traffic Investigation Wing, Coimbatore, in Crime No.397/2016 for the alleged offences under sections 279, 304 (A) I.P.C. and the driving licence of the petitioner was also seized.

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3. The Sub Inspector of the Police vide communication dated 20.6.2016 addressed to the second respondent informed that the driving licence of the petitioner is in his custody and also requested the authority to take necessary steps to cancel the licence. Accordingly, the second respondent vide impugned proceedings dated 23.6.2016 has directed the petitioner to appear in person and put-forth his case. Challenging the legality of the same, the petitioner has come forward with this writ petition.

4. The legal issue would be whether the license could be suspended or could be seized before the petitioner is held guilty of rash and negligent driving by the criminal Court. This issue is no longer res integra in view of the judgment of this Court in Writ Appeal (MD) No.374 of 2009 (P.Sethuram v. The Licensing Authority, The Regional Transport Officer, Dindigul) dated 30.07.2009. In the above judgment, scope of Section 19 of the Motor Vehicles Act was considered by the Division Bench and it was 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.
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> 12. In view of the above, the Writ Appeal is allowed, the order of the learned Judge is set

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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 of 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. 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 therein was 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. The above judgment squarely applies to the case on hand.

6. In the result, the Writ Petition is allowed and the second respondent is restrained from proceeding further with the impugned memorandum dated 23.6.2016. No costs. Consequently, connected Miscellaneous petitions are closed.

Sd/-
Asst. Registrar.

/true copy/

Sub Asst. Registrar.

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To

1.The Managing Director,
Tamil Nadu State Transport Corporation Ltd.,
37, Mettupalayam road,Coimbatore 641 043.

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

+1 CC to M/s. A. Rajendiran, Advocate, Sr.No.46916
+1 CC to M/s. S. Sairaman, Advocate, Sr.No.47020

W.P.No.23775 of 2016

AK (CO)
MD : 15/09/2016

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