



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 29.09.2016

C O R A M

WEB COPY

THE HONOURABLE DR.JUSTICE S.VIMALA

Writ Petition (MD) No.14624 of 2014

P.Kumararaja

.. Petitioner

Vs.

The Regional Transport Officer,
The Regional Transport Office,
Srirangam, Trichy.

.. Respondent

Prayer: Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Mandamus directing the Respondent to return the driving license of the petitioner bearing D.L.No.TN28-19940000246 to him forthwith.

For petitioner ... Mr.R.Murugan

For Respondent ... M/s.S.Kumar

Additional Government Pleader

O R D E R

This is a writ of Mandamus seeking direction to the respondent to return the driving license of the petitioner bearing D.L.No.TN28-19940000246 to him forthwith.

2.Heard the learned counsel for the petitioner and learned Government Advocate for the respondent.

3.The petitioner was appointed as a driver in the Tamil Nadu State Transport Corporation, Salem, from 08.04.2009. Later on, he was transferred to Namakkal Branch and while functioning as a driver, on 04.08.2014, there was an accident involving the bus belonging to the Transport Corporation. On the same day, First Information Report was registered in Crime No.233 of 2014 on the file of Thottiam Police Station, in which, the petitioner was shown as accused. A case was registered under Sections 279 and 304 (A). The police seized the driving license of the petitioner and handed over the same to the respondent. The petitioner had been making demand for return of the driving license, but the respondent declined to return the driving license on the ground that action is proposed to be taken against the petitioner herein.

<https://hcservices.ecourts.gov.in/hcservices/>

4.The respondent issued a show cause notice dated 08.08.2014, stating that the Inspector of Police, Thottiam, has



recommended cancellation of driving license. An explanation was called for from the petitioner, as to why the license should not be cancelled under Section 19(1)(c) and 21 of the Motor Vehicle Act.

5. The contention of the learned counsel for the petitioner that the respondent has no right to retain the driving license and as held by this Court in the order made in W.P.(MD)No.18186 of 2013, dated 14.11.2013, it is only the police, who have power to seize the driving license and to produce the same before the concerned Judicial Magistrate Court and not to the respondent. In the said order, it has also been held that the respondent has to hand over the driving license to the Investigating Officer, who shall in turn issue the acknowledgement to the petitioner, then to produce the same before the learned Judicial Magistrate.

6. Section 206 of the M.V.Act deals with the power of police officer to impound a driving licence which reads as follows:-

"206. Power of police officer to impound document. - (1) Any police officer or other person authorised in this behalf by the State Government may, if he has reason to believe that any identification mark carried on a motor vehicle or any licence, permit, certificate of registration, certificate of insurance or other document produced to him by the driver or person in charge of a motor vehicle is a false document within the meaning of section 464 of the Indian Penal Code, (45 of 1860.) seize the mark or document and call upon the driver or owner of the vehicle to account for his possession of or the presence in the vehicle of such mark or document.

(2) Any police officer or other person authorised in this behalf by the State Government may, if he has reason to believe that the driver of a motor vehicle who is charged with any offence under this Act may abscond or otherwise avoid the service of a summons, seize any licence held by such driver and forward it to the Court taking cognizance of the offence and the said Court shall on the first appearance of such driver before it, return the licence to him in exchange for the temporary acknowledgment given under sub- section (3).

(3) A police officer or other person seizing a licence under sub- section (2) shall give to the person surrendering the licence a temporary acknowledgment therefor and such acknowledgment shall authorise the holder to drive until the licence has been returned to him or until such date as may be specified by the police officer or other person in the acknowledgment, whichever is



earlier: Provided that if any magistrate, police officer or other person authorised by the State Government in this behalf is, on an application made to him, satisfied that the licence cannot be, or has not been, returned to the holder thereof before the date specified in the acknowledgment for any reason for which the holder is not responsible, the magistrate, police officer or other person, as the case may be, may extend the period of authorization to drive to such date as may be specified in the acknowledgment."

6.1. From the perusal of Section 206(2), It is apparent that the power of the Police, who seized the Driving Licence is not automatic as soon as the Driver is charged with any offence, but the power is given only when the Police Officer has reason to believe that the Driver may abscond otherwise avoid service of a summon.

7. So far as the power of Licensing Authority is concerned, it is governed by Section 19 of the Motor Vehicles Act. This provision deals with the power of the licensing authority. As per clause (c) of sub-section (1) of Section 19 of the MV Act, the licensing authority has got the power to disqualify a person from holding the licence on the ground that he is using or has used a motor vehicle in the commission of a cognizable offence. On the same ground, the licensing authority may also revoke such driving licence. If once such an order is passed, the remedy for the aggrieved is to file an appeal to the appellate authority as provided in sub-section (3) of Section 19 of the MV Act. Sub-Sections 1 to 3 of Section 19 of the MV Act read as follows:

"19. Power of licensing authority to disqualify from holding a driving licence or revoke such licence.-- (1) If a licensing authority is satisfied, after giving the holder of a driving licence an opportunity of being heard, that he--

(a) is a habitual criminal or a habitual drunkard; or
(b) is a habitual addict to any narcotic drug or psychotropic substance within the meaning of the Narcotic Drugs and Psychotropic Substances Act, 1985; or

(c) is using or has used a motor vehicle in the commission of a cognizable offence; or

(d) has by his previous conduct as driver of a motor vehicle shown that his driving is likely to be attended with danger to the public; or

(e) has obtained any driving licence or a licence to drive a particular class or description of vehicle by fraud or misrepresentation; or

(f) has committed any such act which is likely to cause nuisance or danger to the public, as may be prescribed by the Central Government, having regard to the objects of this Act; or

(g) has failed to submit to, or has not passed, the



tests referred to in the proviso to sub-section (3) of Section 22; or

(h) being a person under the age of eighteen years who has been granted a learner's licence or a driving licence with the consent in writing of the person having the care of the holder of the licence and has ceased to be in such care;

it may for reasons to be recorded in writing, make an order--

(i) disqualifying that person for a specified period for holding or obtaining any driving licence to drive all or any classes or descriptions of vehicles specified in the licence; or

(ii) revoke any such licence.

(2) Where an order under sub-section (1) is made, the holder of a driving licence shall forthwith surrender his driving licence to the licensing authority making the order, if the driving licence has not already been surrendered and the licensing authority shall,--

(a) if the driving licence is a driving licence issued under this Act, keep it until the disqualification has expired or has been removed; or

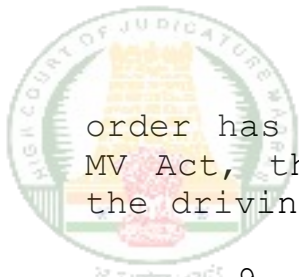
(b) if it is not a driving licence issued under this Act, endorse the disqualification upon it and send it to the licensing authority by which it was issued; or

(c) in the case of revocation of any licence, endorse the revocation upon it and if it is not the authority which issued the same, intimate the fact of revocation to the authority which issued that licence:

Provided that where the driving licence of a person authorises him to drive more than one class or description of motor vehicles and the order, made under sub-section (1) disqualifies him from driving any specified class or description of motor vehicles, the licensing authority shall endorse the disqualification upon the driving licence and return the same to the holder.

(3) Any person aggrieved by an order made by a licensing authority under sub-section (1) may, within thirty days of the receipt of the order, appeal to the prescribed authority, and such appellate authority shall give notice to the licensing authority and hear either party if so required by that party and may pass such order as it thinks fit and an order passed by any such appellate authority shall be final."

8. The above provisions would go to show that the licensing authority has not no power to retain the licence without passing an order under sub-section (1) of Section 19 of the MV Act. As provided in Sub-Section (2) of Section 19 of the MV Act, after an



order has been passed under Sub-Section (1) of Section 19 of the MV Act, the holder of the driving licence is bound to surrender the driving licence to the licensing authority.

9. In the reported judgment, Rule 21 of the Central Motor Vehicles Rules, 1981, which defines as to what constitute nuisance or danger to public as dealt with in Clause (c) and (f) of Sub-section 1 of Section 19 of M.V.Act, has been referred to:

"1) If a licensing authority is satisfied, after giving the holder of a driving licence an opportunity of being heard, that he--

(a)

(b)

(c) is using or has used a motor vehicle in the commission of a cognizable offence; or

(d)

(e)

(f) has committed any such act which is likely to cause nuisance or danger to the public, as may be prescribed by the Central Government, having regard to the objects of this Act; or

(g)

(h)

(i)

(ii) revoke any such licence."

10. So far as the use of the vehicle under Section 19 (1) (c) is concerned, whether it is the mere use of the vehicle or the negligent use or intentional use of the vehicle is yet another question to be addressed.

11. This Court, in the reported decision, has taken the view that only if the vehicle is used in the commission of offence, i.e., when the vehicle itself is used as a tool to commit any other offence and does not denote when the vehicle itself is accidentally involved in the occurrence leading to a cognizable offence. In other words, there is a distinction between involvement of a vehicle and use of the vehicle.

12. Under such circumstances, without passing any orders under Section 19(1) of the Act, the respondent has no authority to retain the driving license. In other words, the power of the respondent is only to initiate proceedings either to cancel or ~~revoke the driving~~ license and without initiating the proceedings and concluding the enquiry, the respondent has no authority to retain the driving licence.



13. When the Police Officer seizes a driving licence, he is expected to give a temporary acknowledgement and such acknowledgement would have the effect of authorizing the holder to drive until the license has been returned to him. This authorization may be extended either by the Police Officer or by the Court.

14. This Court in several cases have followed the earlier order passed by this Court directing the respondent to hand over the license to the Investigating Officer, who in turn shall, after issuing acknowledgement to the driver, shall produce the same to the Court. In this case, that process is not ordered, as the petitioner is made to suffer from the year 2014.

15. Under the stated circumstances, the act of the respondent in retaining the driving licence from the year 2014, amounts to deprivation of livelihood of the petitioner. Therefore, the respondent is directed to return the driving license to the petitioner on receipt of a copy of this order forthwith.

16. It is made clear that the petitioner must hand over the driving license, if an order is passed under Section 19(1) of M.V.Act by the respondent or on the direction by the Court to surrender the driving license for the purpose of making endorsement.

With the above observation and direction, the writ petition is disposed of. No costs.

Sd/-

Assistant Registrar(Co)

/True copy/

Sub Assistant Registrar

To:

The Regional Transport Officer,
Srirangam, Trichy..

+1cc to M/s.R.Murugan, Advocate SR.No.57314

+1cc to Special Government Pleader sR.No.57758

rj2/ar

sm:KM:7.11.2016:6P/4C

Writ Petition (MD) No.14624 of 2014