

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.12.2017

CORAM

THE HONOURABLE MR.JUSTICE RAVICHANDRABAABU

WP.No.31440 of 2017

and

WMP.Nos.34549 & 34550 of 2017

S.Thangavel

S/o.Sellappanaidu

... Petitioner

versus

1.The Regional Transport Authority/
Licensing Authority / Erode (East)
Office of the Regional Transport Authority
Kollukattumedu, Lakkapuram Post
Erode - 638 002.

2.The Regional Transport Authority
Licensing Authority
Office of the Regional Transport Authority
Ottanchathram, Dindigul-624 619. ... Respondents.

Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorarified mandamus, calling for the records pertaining to the order dt.31.10.2017 in Se.Mu.Order No.48831/E1/2017 passed by the 1st respondent and received by the petitioner on 10.11.2017, quash the same and consequently, direct the respondents to return forthwith the petitioner original driving license bearing No.TN-47 19860000546, without any endorsement and within a specified time as may be fixed by this Hon'ble Court.

For Petitioner : Mr.R.Krishnaswamy

For Respondents : Mr.K.J.Sivakumar

Government Advocate

O R D E R

Mr.K.J.Sivakumar, learned Government Advocate takes notice for the respondents. By consent, the main writ petition itself is taken up for final disposal at the admission stage itself.

2. The petitioner is aggrieved against the order of the first respondent dated 31.10.2017, temporarily suspending the petitioner's driving license from 04.10.2017 to 03.04.2018, on the reason that the petitioner, while driving a bus on 30.09.2017 caused an accident which has resulted in loss of life of a person.

3. It is stated that a criminal case in Crime No.223/2017 under sections 279 and 304(A) IPC was registered against the petitioner and the same is still pending. The Inspector of Police, Arachalur Police Station seized the driving license of the petitioner and sent the same to the first respondent and consequently, the present impugned order is passed, after issuing the show cause notice to the petitioner.

4. Learned counsel appearing for the petitioner submitted that suspending the petitioner's driving license is erroneous, especially, when the criminal case filed against the petitioner is pending and not ended against him. He further submitted that the explanation given by the petitioner to the show cause notice was not considered by the first respondent in a proper perspective manner. Learned counsel relied on the Division Bench decision of this Court reported in 2010 Writ L.R. 100 (P.Sethuram vs. The Licensing Authority, The Regional Transport Officer, The Regional Transport Office, Dindigul) and a single Judge decision made in W.P.No.16958/2013 dated 01.07.2013 reported in 2013 Writ L.R.843 (S.Duraivelu vs. The Regional Transport Officer, West Tambaram, Chennai & 2 others).

5. Learned counsel appearing for the respondents submitted that the petitioner can avail the alternative remedy of filing appeal.

6. Heard both sides.

7. It is not in dispute that the petitioner's license was suspended for the period commencing from 04.10.2017 to 03.04.2018. It is also not in dispute that the criminal case filed against the petitioner is still pending and has not reached its finality. Similar question has arisen before the Division Bench of this Court as to whether the Licensing Authority can suspend the license merely because the criminal case was registered against the driver in respect of a road traffic accident. The Division Bench, while considering the said issue and also considering the objection that an appeal has to be filed against the said order has found in paragraph No.11 as follows:

11. The respondent has, in the impugned order, preconcluded 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. Even to invoke Section 19(1)(c), it is necessary to show that the Motor vehicle is used in the commission of a 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.

8. While considering the objection with regard to the availability of alternative remedy of appeal is concerned, the Division Bench has rejected such contention. The very same decision was followed by the learned single Judge of this Court reported in 2013 Writ L.R.843 (S.Duraivelu vs. The Regional Transport Officer, West Thambaram, Chennai & 2 others) wherein the learned Judge has observed in paragraph No.4 as follows:

4. The license of the petitioner was suspended solely on the ground that he was involved in a criminal case under Section 304-A IPC. The criminal case is still pending. The factum of involvement of the petitioner in an offence under Section 304-A of the Indian Penal Code would not give any jurisdiction to the respondent to suspend the license. Therefore, I am of the view that the respondent was not justified in suspending the license of the petitioner.

9. Accordingly, the writ petition is allowed and the impugned order is set aside. However, it shall not preclude the respondents 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 petitions are closed.

Sd/-
Assistant Registrar(CS-VII)

//True Copy//

Sub Assistant Registrar

mk

To

1.The Regional Transport Authority/
Licensing Authority / Erode (East)
Office of the Regional Transport Authority
Kollukattumedu, Lakkapuram Post
Erode - 638 002.

2.The Regional Transport Authority
Licensing Authority
Office of the Regional Transport Authority
Ottanchathram, Dindigul-624 619.

+ 1 cc to Mr.V. Ajay Khose, Advocate SR.86102
+ 1 cc to the Government Pleader Sr.86881

W.P.No.31440 of 2017

CS-VII
EU(12/12/2017)



WEB COPY