

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.02.2017

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THE HONOURABLE MR.JUSTICE RAJIV SHAKDHER

W.P.No.3448 of 2017

S.Nadamuni

... Petitioner

Vs.

- 1 The Transport Commissioner
Chepauk
Chennai - 600 005.
 - 2 The Assistant License Issuing Authority,
O/o. Regional Transport Office,
Unit Office, Tiruttani,
Thiruvallur District.
 - 3 The Regional Transport Officer
O/o. Regional Transport Office,
Chinmaya Nagar, Virugambakkam,
Chennai - 600 092.
 - 4 The Inspector of Police
Traffic Investigation Wing
R4 Pondy Bazaar Police Station
T.Nagar, Chennai - 600 017.
 - 5 The Branch Manager,
Metropolitan Transport Corporation,
Iyyappanthangal Depot,
Chennai - 600 056.
- ... Respondents

Prayer:

Petition filed under Article 226 of the Constitution of India to issue a Writ of Mandamus directing the respondents 1 to 4 to return the petitioner's driving license in D.L.No.TN 2020050005747 enable him to join and continue his service in the 5th respondent transport corporation.

For Petitioner : Mr.B.Sundarapandian

For Respondents: Mr.R.Venkatesh for R1 to R4
Government Advocate
Mr.P.Kannan Kumar for R5

O R D E R

1.Issue Notice. Mr.R.Venkatesh, learned Government Advocate, accepts notice on behalf of respondents 1 to 4. Mr.P.Kannan Kumar, learned counsel accepts notice on behalf of the fifth respondent. With the consent of the learned counsels for parties, the writ petition is taken up for hearing and final disposal.

2.The petitioner seeks a direction from this Court qua, respondent nos.1 to 4 for return of driving licence bearing no.D.L.No.TN 2020050005747.

3.The said prayer in the writ petition has been made in the background of the following brief facts:

3.1.The petitioner claims to have been appointed as a Driver with the fifth respondent on 24.02.2014.

3.2.The petitioner further avers that on 17.01.2017, when he was driving a bus bearing Registration no.TN 01 N 8993, it met with an accident with a motor cycle. As a result of the accident, the rider of the motor cycle suffered head injury and consequently, died.

4.It is further stated by the petitioner that in view of the aforesaid, the fourth respondent registered an F.I.R. against the petitioner, on that very date i.e., 17.01.2017, under Sections 279 and 304 A of IPC. The petitioner claimed that, on 18.01.2017, the fourth respondent seized his licence and handed over the same to the third respondent.

5.The petitioner's grievance is that his driving licence has been seized without issuing him show cause notice, as contemplated under Section 19 of the Motor Vehicles Act, 1988 (in short, 'the 1988 Act'). The petitioner claims that he has made a representation dated 20.01.2017 to the respondents for securing the release of his driving licence.

6.Learned counsel for the petitioner, in the background of the aforesaid fact, says that, the driving licence cannot be retained by the respondents, till such time the petitioner is convicted.

7.On the other hand, learned counsels appearing for the respondents says that the fourth respondent has the necessary powers to cancel the licence, albeit, after following the procedure, prescribed under Section 19 of the 1988 Act.

8.I have heard the learned counsels appearing for the parties and perused the records.

9.A similar issue arose before me, in a case titled: R.Velu -vs- The Inspector of Police, H2, Guduvancheery Police Station, Kancheepuram District and another. The said case was numbered as: W.P.No.43182 of 2016. The said writ petition was disposed of by me, vide order dated 12.12.2016. The observations made therein, being relevant, are extracted herein below:

"6.Based on the aforesaid facts, the petitioner's counsel argues that the second respondent has no authority to seize the petitioner's driving licence prior to a finding of conviction being returned, by the concerned criminal court. In support of his submissions, learned counsel for the petitioner relies upon the following judgments:

i. P.Sethuram vs. The Licensing Authority, The Regional Transport Officer, Dindigul (Madurai Bench), 2010 Writ L.R. 100;

ii. G.Jayaprakash vs. The Secretary to Government & Others, 2010 Writ L.R. 104;

iii. R.Ravi vs. The Regional Transport Officer, Transport Department, Chennai, 2015 (2) CTC 626;

iv. Order in W.P.No.23179 of 2016 (between M.Rathinakumar and The Inspector of Police, Traffic Investigating Wing and Another) decided on 12.07.2016.

5. On the other hand, learned counsel for the respondents says that the second respondent has the power to revoke the licence pursuant to powers conferred in that behalf under Section 19 of the Motor Vehicles Act, 1988 (in short, the 1988 Act).

6. I have heard the learned counsel for the parties. According to me, while there is no doubt that the second respondent would have the power to revoke the licence or even disqualify the licence holder from holding a driving licence, that power can be exercised only if the provisions of the said section are scrupulously followed.

6.1.The second respondent, inter alia, is required to issue in the first instance a show cause notice. The show cause notice, in turn, should necessarily advert to the clause or clauses of sub-section (1) of Section 19 which are proposed to be triggered against the noticee. The noticee is required to be given an opportunity to present his case, and, only thereafter, can any punitive orders be passed against the noticee, i.e. holder of the driving licence.

6.2.The mere pendency of a criminal case, which may, in given circumstances, lead an acquittal, is not a good enough reason to seize the driving licence pending trial in the criminal case. Therefore, the power that the second respondent seeks to exercise under Section 19 of the Motor Vehicles Act, 1988, has to be exercised in consonance with the provisions of the said section and other appurtenant powers conferred under the 1988 Act and Rules framed thereunder."

10.Accordingly, in line with the observations contained in the said order, this writ petition is disposed of with a direction to the third respondent to consider and deal with the representation dated 20.01.2017 preferred by the petitioner.

10.1.While doing so, the third respondent i.e., the Regional Transport Officer, will bear in mind the provisions of the 1988 Act and the judgments of this Court referred to above.

10.2.Needless to say, the third respondent will act with due expedition and conclude the exercise, not later than eight (8) weeks from the date of receipt of a copy of the order.

11.The writ petition is disposed of, in the aforementioned terms. However, there shall be no order as to costs.

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Sd/-
Assistant Registrar(CS VI)
//True Copy//

Sub Assistant Registrar

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To

- 1 The Transport Commissioner
Chepauk
Chennai - 600 005.
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- 5 The Branch Manager,
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Iyyappanthangal Depot,
Chennai - 600 056.

+1cc to Mr.A. Rajesh Kanna, Advocate, S.R.No.9265
+1cc to Mr.P. Kannan Kumar, Advocate, S.R.No.9321
+1cc to the Government Pleader, S.R.No.9526

PVS (CO)
Eu 02.03.17

सत्यमेव जयते

W.P.No.3448 of 2017

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