

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.09.2017

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THE HON'BLE Mr. JUSTICE M.DURAISWAMY

W.P.No.24219 of 2017

&

W.M.P.No.25596 of 2017

J.Naveenkumar

... Petitioner

Vs.

1. Inspector of Police,
Mettur Police Station,
Mettur, Salem District.

2. The Licensing Authority-cum-
The Regional Transport Officer,
Mettur, Salem District

... Respondents

Petition filed under Article 226 of The Constitution of India praying to issue a writ of certiorarified mandamus calling for the records of the 2nd respondent relating to the order made in Se.Mu.A.No.13452/A2/2017 dated 16.08.2017 suspending the driving licence (DL No.TN-30 W 20080000528) of the petitioner for a period of six months from 17.07.2017 to 16.01.2018 and to quash the same and consequently direct the 2nd respondent to return the original driving licence of the petitioner forthwith.

For Petitioner : Mr.K.Hariharan

For Respondents : Mr.P.V.Selvakumar,
Additional Government Pleader

ORDER

Mr.P.V.Selvakumar, Additional Government Pleader, takes notice for the respondents. By consent, the main Writ Petition itself is taken up for disposal at the admission stage.

2.The petitioner has filed the above Writ Petition to issue a writ of certiorarified mandamus to call for the records of the 2nd respondent relating to the order dated 16.08.2017 suspending his driving licence (DL No.TN-30 W 20080000528) for a period of six months from 17.07.2017 to 16.01.2018 and to quash the same and consequently direct the 2nd respondent to return his original driving licence forthwith.

3. According to the petitioner, he was working as a Driver in Jayalakshmi Bus Service, Salem. According to the petitioner, as per the FIR, when he was on duty on 14.07.2017 and while he was driving the Bus bearing Registration No. TN 30 AP 1040, an accident occurred and due to which a foot board traveller died. The 1st respondent, while registering the FIR, collected the original driving license of the petitioner and retained the same in the police station and on the same day, he sent the same to the 2nd respondent and recommended to cancel the driving license. The 2nd respondent, on 21.07.2017, issued a memo and asked to submit the explanation of the petitioner in person in the office of the 2nd respondent, within seven days from the date of receipt of the notice. On 16.08.2017, the petitioner gave his written explanation and asked to stop further proceedings since criminal case is pending before the Magistrate Court. However, on 16.08.2017, the 2nd respondent, without considering the same, has issued the impugned order suspending the licence for six months from 17.07.2017 to 16.01.2018, invoking Section 19(1)(C) of the Motor Vehicles Act.

4. The learned counsel for the petitioner submitted that the Criminal Case registered against the petitioner under Sections 279, 337 and 304(A) of IPC is pending investigation. The learned counsel further submitted that the 2nd respondent, even without examining any witness or any finding given by the Criminal Court, imposed the punishment by suspending the licence for six months. In support of his contention, the learned counsel relied upon a judgment of a Division Bench of this Court reported in 2010 Writ L.R. 100 [P.Sethuram V. The Licensing Authority, The Regional Transport Officer, Dindigul] wherein the Division Bench held as follows:

"...

10. 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(1) under which the case of the appellant would fall.

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."

5.As already stated, since the 2nd respondent has imposed the punishment suspending the licence for six months, even prior to the completion of trial against the petitioner in the Criminal case registered against him, the ratio laid down by the Division Bench of this Court in the above referred judgment squarely applies to the facts and circumstances of the present case.

6.Following the ratio laid down by the Division Bench in the judgment reported in 2010 Writ L.R. 100 [P.Sethuram V. The Licensing Authority, The Regional Transport Officer, Dindigul] the impugned order dated 16.08.2017 passed by the 2nd respondent is liable to be set aside. Accordingly, the same is set aside. The 2nd respondent is directed to return the Driving License of the petitioner within a week's time from the date of receipt of a copy of this order. However, it shall not preclude the 2nd respondent from initiating any action, if any of the contingencies specified in Motor Vehicles Act, arises later or if any of the Rules as prescribed by the Central Government, in pursuance of the provisions of the Act, are violated.

7.With these observations, the Writ Petition is allowed. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

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To

1. The Inspector of Police,
Mettur Police Station,
Mettur, Salem District.
2. The Licensing Authority-cum-
The Regional Transport Officer,
Mettur, Salem District

+1cc to Mr.K.Hariharan, Advocate, S.R.No.65226

+1cc to the Government Pleader, S.R.No.65642

W.P.No.24219 of 2017

CS V

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