

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 21.02.2017

Coram

THE HONOURABLE MR. JUSTICE RAJIV SHAKDHER

W.P.No.3454 of 2017

and WMP No.3426 of 2017

J.Arjunan

.. Petitioner

vs.

The Regional Transport Authority /
Licensing Authority,
Office of the Regional Transport Authority,
Thiruvallur.

.. Respondent

Prayer : Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus, after calling for the records pertaining to the order dated 13.01.2017, passed by the respondent in Se.Mu.Aanai.No.E5/43007/2016, quash the same and consequently direct the respondent to return forthwith the petitioner original licence bearing No.TN 09 19910010194, without any endorsement.

For Petitioner : Mr.V.Ajoy Khose

For Respondents : Mr.C.Jagadish

Special Government Pleader (Taxes)

ORDER

1. This is a writ petition, whereby, challenge has been laid to the order dated 13.01.2017, passed by the respondent, i.e., the Regional Transport Officer/Licensing Authority (in short "RTO").

1.1. By virtue of the impugned order, the RTO has suspended the petitioner's licence for the period spanning between 23.12.2016 and 22.06.2017.

2. Notice in this writ petition was issued on 13.02.2017, when I had directed the presence of the concerned Regional

Transport Officer and the Transport Commissioner.

2.1. Pursuant to the said order, Mr. Satyabrata Sahoo, I.A.S., Transport Commissioner, along with the concerned RTO/respondent have made themselves available today.

3. A perusal of the record would show that prior to the impugned order, a show cause notice dated 29.12.2016 (SCN) was issued to the petitioner, whereby, he was called to appear before the RTO.

3.1. Unfortunately, in the SCN, the date and month, when, the petitioner was required to appear before the RTO was not indicated.

3.2. Notwithstanding the gap in the SCN, it appears that the petitioner presented himself before the RTO and gave his explanation qua the SCN issued to him vide communication dated 11.01.2017.

3.3. Consequently, after considering the explanation, the impugned order was passed.

4. Learned counsel for the petitioner says that the reason why, the RTO proceeded to suspend the petitioner's license was on account of the fact that the vehicle assigned to the petitioner by the Tamil Nadu State Transport Corporation, (Villupuram) Limited, had met with an accident on 23.12.2016. and, as a result of the accident, a two wheeler rider succumbed to his injuries on the following day.

4.1. The record shows that it was on account of the accident, that, on 24.12.2016 itself, an FIR was registered against the petitioner being: Crime No.920 of 2016, under Sections 279 and 304-A of the IPC.

4.2. The petitioner claims that the police, during the course of the investigation, seized his driving license bearing No.TN09 19910010194; which was later handed over to the RTO.

4.3. As indicated above, consequent thereto, a SCN, was issued to the petitioner, to which, a reply dated 11.01.2017 was filed. In the reply, the petitioner took the stand that he was not responsible for the occurrence of the accident, and therefore, the original driving licence should be returned to him.

4.5. The RTO, however, as mentioned above, vide the impugned order dated 13.01.2017, suspended the petitioner's licence, ostensibly, in exercise of powers conferred upon him under Section 19(1)(c) of the Motor Vehicles Act, 1988 (in short the 1988 Act).

5. Having regard to the aforestated facts, the petitioner takes the stand before this Court that the driving licence should not have been suspended, as the concerned criminal court had not returned, as yet, a finding of guilt qua him.

5.1. For this purpose, learned counsel for the petitioner seeks to rely upon the following judgments :

- (i).P.Sethuram Vs. The Licensing Authority, The Regional Transport Officer, Dindigul, 2010 Writ L.R. 100 ; and
(ii).P.Kumararaja Vs. The Regional Transport Officer, The Regional Transport Office, Srirangam, Trichy, 2017-1-Writ L.R. 54.

6. On the other hand, Mr.C.Jagadish, learned Special Government Pleader, who appears for the respondent, says that notwithstanding the position of law that the RTO could not have suspended the license on the ground that the petitioner was involved in the accident without the concerned Court returning a finding of guilt qua him, the RTO had adequate powers vested in him under Section 19 of the 1988 Act, to ascertain as to whether or not the petitioner would pose a danger to public, if he is returned the driving licence and allowed to drive a vehicle on the roads of the city.

6.1. For this purpose, learned counsel for the respondent seeks to place reliance on the provisions of Section 19(1)(c), (d) and (f) of the 1988 Act. According to the learned counsel, these provisions would come to the aid of the RTO in discharging what he claims, is his public and statutory duty.

7. I have heard the learned counsels for the parties and perused the record.

8. According to me, in so far as the impugned order is concerned, it is flawed for the reason that it is based on a SCN, which was clearly, deficient in many ways.

8.1. Apart from the fact that the SCN did not indicate the date and month, on which, the petitioner was called upon to make himself available, it, even failed to, put to the petitioner, the charge, which was levelled against him.

8.2. In other words, the SCN did not indicate the provisions of law, which were proposed to be triggered against the petitioner.

8.3. The only aspect, which was mentioned in the SCN, was the matter pertaining to the accident, in which, the petitioner was involved. Pertinently, even this aspect was also referred to, rather, vaguely.

8.4. The RTO, however, while passing the impugned order took recourse to Section 19(1)(c) of the 1988 Act, though, there was no reference to the said provision in the SCN.

9. Consequently, in my view, the impugned order would have to be set aside. It is ordered accordingly.

9.1. The RTO is, however, directed to issue a fresh SCN articulating therein the relevant provisions of the 1988 Act,

which he seeks to trigger, if at all, against the petitioner. The SCN, if not issued, will be issued within a period of one week from the date of receipt of a copy of the order.

9.2. Furthermore, the RTO, while adjudicating upon the SCN, would also be free to ascertain the fitness of the petitioner to drive the vehicle of the class, for which, the license has been issued to him, while conducting such an exercise. Due opportunity will be given to the petitioner to meet the charge, if any, which is put across to him in the SCN.

9.3. If, the petitioner is subjected to a medical test, it shall be ensured that the medical test is conducted in a Government Hospital and that the report so generated forms part of the record.

9.4. The RTO will complete this exercise within six weeks from the date of receipt of a copy of the order.

9.5. The RTO will also pass a speaking order. A copy of the order will be supplied to the petitioner.

10. The captioned writ petition is disposed of, in the aforementioned terms. Resultantly, the pending application shall stand closed. There shall, however, be no order as to costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To
The Regional Transport Authority /
Licensing Authority,
Office of the Regional Transport Authority,
Thiruvallur.

Copy to :
The Transport Commissioner,
Government of Tamil Nadu,
Secretariat, Fort St. George, Chennai-600 009.

+1cc to the Government Pleader, S.R.No.11139

mv (CO)
md(22/02/2017)

W.P.No.3454 of 2017
and WMP No.3426 of 2017