

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.03.2017

CORAM

THE HONOURABLE MR.JUSTICE K.RAVICHANDRABAABU

Writ Petition No.41302 of 2016

M.Balasubramanian

... Petitioner

Vs.

1. The Regional Transport Officer,
Pollachi,
Coimbatore District.

2. The Inspector of Police,
Kinathukadavu Police Station,
Coimbatore District.

... Respondents

Writ petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus to call for the records of the impugned order of the 1st respondent made in R.No.37659/23/2016 dated 28.10.2016 for suspending the petitioner's Driving Licence and consequently direct the first respondent herein to return the petitioner's Driving Licence bearing D.L.No.TN-4120010002910 which is valid up to 29.07.2017 after removing the endorsement suspended forthwith.

For Petitioner : Mr.A.Ganesan

For Respondents : Mr.M.Elumalai,
Government Advocate

O R D E R

Mr.M.Elumalai, 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 1st respondent dated 28.10.2016 temporarily suspending the petitioner's driving license from 09.09.2016 to 08.03.2017, on the reason that the petitioner, while driving a bus on 08.03.2016 caused an accident which has resulted in loss of life of a person who was riding a two wheeler.

3. It is stated that a criminal case in Crime No.333/2016 under sections 279 and 304-A IPC was registered against the petitioner and the same is still pending. The 1st respondent seized the driving license of the petitioner and consequently, the present impugned order is passed, after issuing the show cause notice to the petitioner. A counter affidavit is filed by the respondent wherein it is stated that the suspension of the license for temporary period was made in accordance with law and therefore, this Court need not interfere with the same.

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 1st 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 first respondent 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 09.09.2016 to 08.03.2017. 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 Tambaram, 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 first respondent 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.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

vsi/dsa

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To

1. The Regional Transport Officer,
Pollachi,
Coimbatore District.

2. The Inspector of Police,
Kinathukadavu Police Station,
Coimbatore District.

+lcc to Mr.Ganesan, Advocate, S.R.No.14505
+lcc to the Government Pleader, S.R.No.15305

MG(CO)
RS(17/03/2017)

W.P.No.41302 of 2016



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