

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.03.2018

CORAM

THE HONOURABLE MR.JUSTICE K.RAVICHANDRABAABU

WP.No.4700 of 2018

K.M.Sunder
S/o.P.Kumar

... Petitioner

versus

1. The Regional Transport Office
Kanchipuram District.
2. The Inspector of Police
B-4, Baluchetty Chathiram Police Station
Kanchipuram District. ... Respondent

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 of the pursuant to the order passed by the 1st respondent in R.No.34405/B2/2017 dated 27.11.2017 and to quash the same and to direct the 1st respondent to issue order for the return of the license to the petitioner.

For Petitioner : Mr.S.Thiruvengadam
For Respondents : Mr.S.Soundararajan
Government Advocate

O R D E R

Mr.S.Soundararajan, 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 27.11.2017, temporarily suspending the petitioner's driving license from 29.07.2017 to 28.01.2018, on the reason that the petitioner, while driving a Car on 29.07.2017 caused an accident which has resulted in loss of life of a rider of two wheeler.

3. It is stated that a criminal case in Crime No.409/2017 under section 304(A) IPC was registered against the petitioner and the same is still pending. The second respondent 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. 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 29.07.2017 to 28.01.2018. 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 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. Therefor, 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.

Sd/-
Deputy Registrar (CS)

//True Copy//

Sub Assistant Registrar

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To

1. The Regional Transport Office
Kanchipuram District.

2. The Inspector of Police
B-4, Baluchetty Chathiram Police Station
Kanchipuram District.

+1cc to the Government Pleader, S.R.No. 16699(20.03.2018)
+1cc to Mr.S.Thiruvengadam Advocate, S.R.No. 16146
(20.03.2018)

W.P.No.4700 of 2018

TR(13/03/2018)