

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.02.2018

CORAM

THE HONOURABLE MR.JUSTICE K.RAVICHANDRABAABU

Writ Petition No.3841 of 2018
and
W.M.P.No.4710 of 2018

T.Rajasekar

.. Petitioner

Vs.

1. The Licensing Authority/
Regional Transport Officer,
Thiruvavarur.

2. The Licencing Authority/
Regional Transport Officer,
Mannargudi.

.. Respondents

Writ petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorarified Mandamus to call for the records pertaining to the order dated 25.01.2018 passed by the 1st respondent in Se.Mu.Aa.No.1321/A6/2018, and quash the same and consequently direct the respondents to return forthwith the petitioner original driving license bearing No.TN-22 19950007788 without any endorsement and within a specified time as may be fixed by this Court.

For Petitioner: Mr.R.Krishnaswamy

For Respondents: Mr.B.Anandan,
Government Advocate

O R D E R

Mr.B.Anandan, learned Government Advocate takes notice for the respondents and by consent of the parties, the main writ petition itself is taken up for final disposal.

2. The petitioner is aggrieved against the order of the first respondent dated 25.01.2018 suspending the petitioner's driving license commencing from 25.01.2018 to 24.07.2018, on the reason that F.I.R has been registered against the petitioner for causing an accident.

3. It is stated that a criminal case in Crime No.19/2018 under section 304(A) IPC was registered against the petitioner and the same is still pending. The respondents seized the driving license of the petitioner 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. He further submitted that when the show cause notice was served on the petitioner, the petitioner gave a representation as an explanation to the show cause notice on 25.01.2018, but on the same day, i.e., on 25.01.2018, the impugned order was passed. Hence, the impugned order was passed without hearing the petitioner and without providing sufficient opportunity to the petitioner. 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 an appeal.

6. Heard both sides.

7. It is not in dispute that the petitioner's license was suspended for the period commencing from 25.01.2018 and 24.07.2018. 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 and the respondents are directed to return the driving license forthwith. 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 Motor Vehicles Act, arises later or if any of the Rules as prescribed by the Central Government in pursuance of Section 19(1)(f) of the Act, are violated. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS-V)

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Sub Assistant Registrar

vsi

To

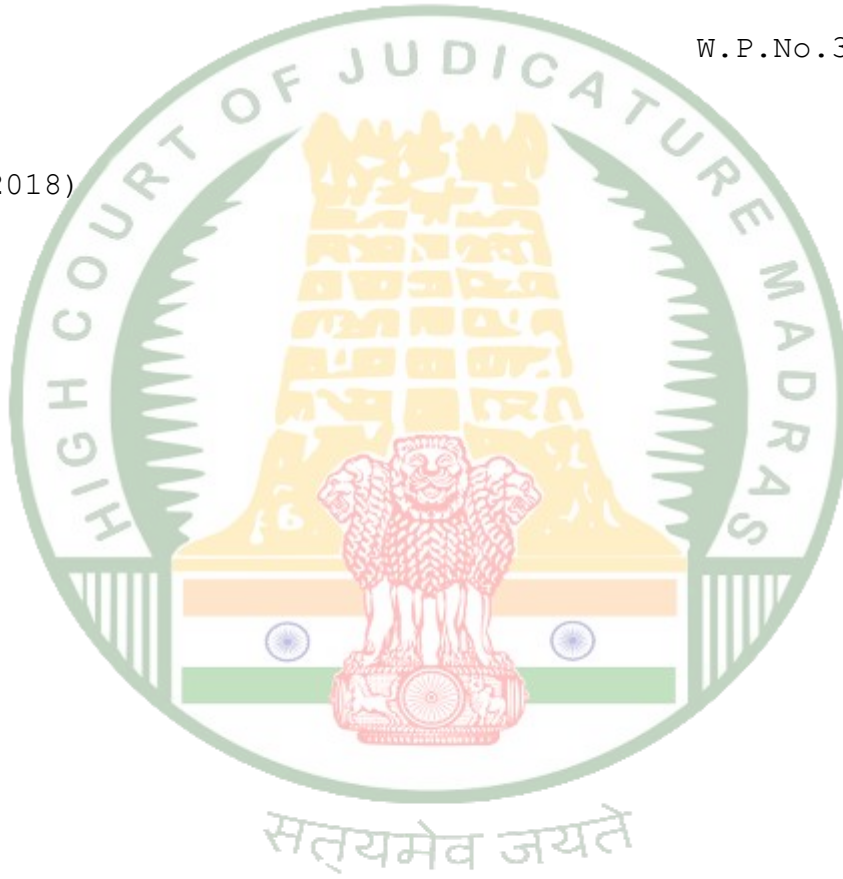
1.The Licensing Authority/
Regional Transport Officer,Thiruvavarur.

2.The Licencing Authority/
Regional Transport Officer, Mannargudi.

+ 1 cc to Mr. V. Ajoy Khose, Advocate Sr.13115
+ 1 cc to Mr.Government Pleader Sr.14029

W.P.No.3841 of 2018

(CS-V)
EU(26/02/2018)



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