

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.04.2018

CORAM :

THE HONOURABLE MR.JUSTICE V.PARTHIBAN

W.P.No.23964 of 2014 and
M.P.No.1 of 2014

C.A.Murugan

... Petitioner

-Vs-

The Licensing Authority,
Regional Transport Office,
Meenambakkam (irru) Aalandur,
Chennai 600 016.

... Respondent

Prayer : Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, to call for the records of the respondent relating to the impugned order vide no in Sae.Mou.Aa.Yen.B3/53440/2011 dated 24.06.2011 and to quash the same as illegal and consequently directing the respondent to return the driving license of the petitioner and to follow the Judgment given by this Hon'ble Division Bench reported in 2010, Writ Law Report 100.

For Petitioner : Mr.R.Y.George Williams
For Respondent : Ms.P.Rose Kamalam
Government Advocate

O R D E R

Heard Mr.R.Y.George Williams, learned counsel for the petitioner and Ms.P.Rose Kamalam, learned Government Advocate appearing for the respondent.

2. The petitioner has approached this Court, seeking the following relief:-

"To issue a Writ of Certiorarified Mandamus, to call for the records of the respondent relating to the impugned order vide no in Sae.Mou.Aa.Yen.B3/53440/2011 dated 24.06.2011 and to quash the same as illegal and constitutently directing the respondent to return the driving license of the petitioner and to follow the Judgment given by this Hon'ble Division Bench reported in 2010, Writ Law Report 100."

3. The case of the petitioner is as follows:-

The petitioner was the owner of the vehicle bearing No.TSR 6030 and he was having valid driving license to drive the vehicle. On 07.04.2011, the vehicle in which the petitioner was driving, met with an accident and due to the impact of the accident, a pedestrian died. Thereafter, an FIR was registered in Crime No.656/2011 for an offence under Section 279, 304(A) of the Indian Penal Code.

4. After registering of the FIR, the respondent issued notice to the petitioner, directing him to show cause as to why his license should not be revoked under the provisions of the Motor Vehicles Act. In reply to the show cause notice, the petitioner has submitted that it was not his fault, it was the fault of the victim who led to the accident. However, without considering the representation, the respondent passed an order on 24.06.2011, revoking the license granted to the petitioner with effect from 29.06.2011, without even waiting for verdict in the criminal case in regard to the FIR registered against the petitioner. In the said circumstances, the order of revoking the license granted to the petitioner is put to challenge in the present writ petition.

5. The learned counsel for the petitioner would submit that it is not open to the authority to revoke the license straight away without any legal conclusion as to the culpability of the petitioner in the accident. Even before the criminal case could come to the conclusion in regard to the guilt of the petitioner, the respondent had acted hastily within few weeks of the accident and revoked the license and thereby pronounced the guilt of the petitioner. Therefore, he would submit that the action of the respondent is per se unjust, arbitrary and cannot be sustained in law.

6. The learned counsel for the petitioner would also draw the attention of this Court to the order passed by the learned Division Bench of this Court, in the case of P.Sethuram Vs. The Licensing Authority, reported in 2010, Writ L.R.100, wherein, the learned Division Bench of this Court dealt with the similar circumstances and held that it is not open to the licensing authority to revoke the license even before the issue could be concluded by the Criminal Court or Motor Accident Claims Tribunal. The learned counsel would draw the attention of this Court to paragraph Nos.8 to 12 of the Division Bench order which is extracted below:-

"8. A bare reading of Section 19(1) shows that the Licensing Authority has the power to revoke any licence or disqualify a person for a specified period from holding or obtaining a driving licence, if any of the contingencies prescribed in Clauses (a) to (h) of

Sub Section (1) of Section 19 arises. Moreover, the power under Section 19(1) can be invoked only after giving an opportunity of being heard to the holder of the licence and for reasons to be recorded in writing.

9. But in the case on hand, the licence of the appellant was impounded or retained by the police immediately after the accident. Thereafter, the respondent issued the show cause notice under Section 19(1) of the Act, after getting a report from the police. Therefore, the impounding of the licence has actually preceded the issue of show cause notice.

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, precluded 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.

12. In view of the above, the Writ Appeal is allowed, the order of the learned Judge is set aside and the writ petition is allowed. The respondent is directed to return the driving licence of the appellant, within a week of receipt of a copy of this order. However, it shall not preclude the 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. No costs."

Therefore, the learned counsel would submit that the revocation of license is contrary to the principle laid down by the learned Division Bench and therefore, the same has to be interfered with.

7. Upon notice, learned Government Advocate appearing for the respondent, entered appearance and filed a detailed counter affidavit.

8. Per contra, the learned Government advocate appearing for the respondent would submit that since the petitioner had been booked for offending under Section 304 (A) of the Indian Penal Code, because of his rash and negligent driving, the authority felt that it was not in public interest for continuing the license of the petitioner. Therefore, the authority had issued show cause notice to the petitioner and only after obtaining a reply from the petitioner, the impugned order came to be issued. Therefore, the impugned action by the authority cannot be assailed successfully by the writ petitioner.

9. This Court having considered the rival submissions of either side, is of the view that there is some merit in the contention put forth by the learned counsel for the petitioner that even before the Criminal Court could come to the conclusion on the issue whether there was an act of rash and negligent driving on the part of the petitioner, the respondent had immediately revoked the license granted to the petitioner. Such hasty action by the respondent in revoking the license without following the scheme of the Motor Vehicles Act, particularly, Section 19, cannot be sustained in law at all. In fact, the impugned action of the respondent runs contrary to the principle laid down by the learned Division Bench of this Court in the above reported case.

10. Moreover, it appears that the license of the petitioner was revoked by the impugned action within a matter of few weeks from the date of the accident and this Court does not see any justification for such action on the part of the respondent as this Court is of the view that the respondent ought to have waited for the verdict of Criminal Court or the Motor Accident Claims Tribunal. Such forgone conclusion pronouncing the guilt of the petitioner by the respondent, is per se illegal and cannot be sustained in law at all.

11. In view of the above circumstances, this Court has no hesitation in allowing the writ petition. Therefore, the impugned order in Sae.Mou.Aa.Yen.B3/53440/2011 dated 24.06.2011, is hereby set aside. The authority shall take consequential steps to return license to the petitioner, within a period of two weeks from the date of receipt of a copy of this order and if he so advised, proceed against him in terms of the provisions of the Motor Vehicles Act and on the basis of any finding given by the Criminal Court or Motor Accident Claims Tribunal initiated in pursuance of the subject accident.

12. With the above direction, the writ petition stands allowed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Asst.Registrar (CS VII)

/true copy/

Sub Asst. Registrar

gsk

To

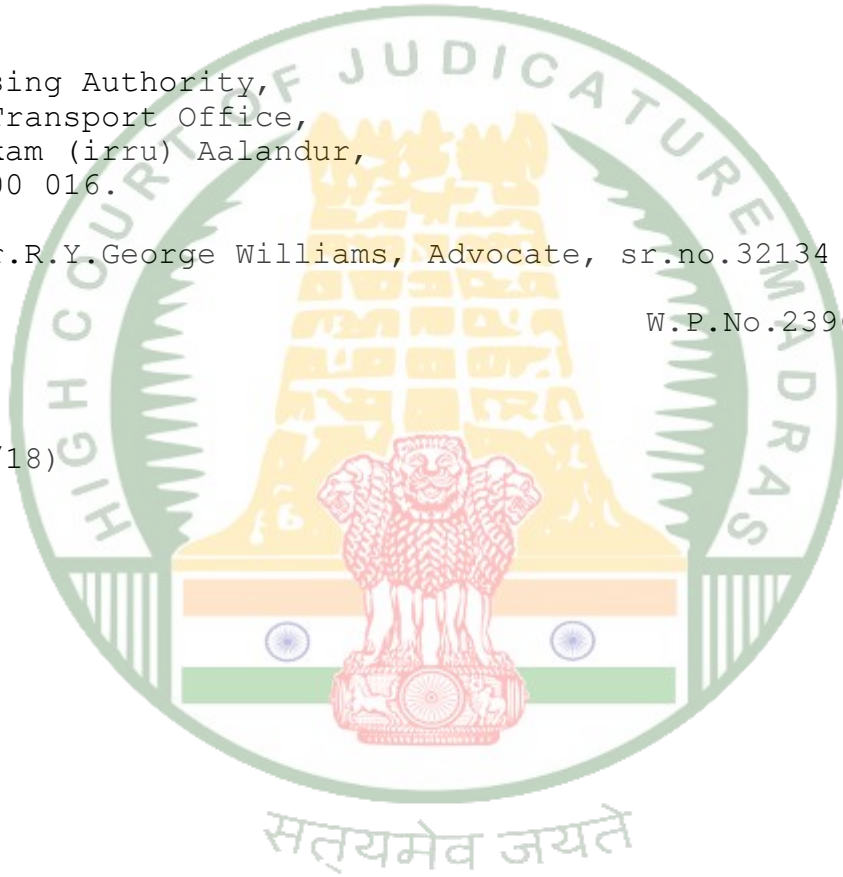
The Licensing Authority,
Regional Transport Office,
Meenambakkam (irru) Aalandur,
Chennai 600 016.

+1cc to Mr.R.Y.George Williams, Advocate, sr.no.32134

W.P.No.23964 of 2014

SSI (CO)

RRK (04/06/18)



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