

IN THE HIGH COURT OF JUDICATURE AT MADRAS
Dated: 02.11.2018

CORAM
THE HON'BLE MR.JUSTICE V.BHARATHIDASAN

Writ Petition No.12975 of 2018
&
W.M.P.Nos.15236 & 15237 of 2018

S.Prakashan

...Petitioner

-Versus-

1.The Inspector of Police,
Traffic Investigating Wing,
Coimbatore East Police Station,
Coimbatore.

2.The Licensing Authority-cum-
Regional Transport Officer,
Regional Transport Officer,
Coimbatore South, Coimbatore.

... Respondents

Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus calling for the records of the 2nd respondent relating to the order dated 27.04.2018 in Na.Ka.No.29469/B1/2018 suspending the driving license of the petitioner for a period of 6 months from 26.03.2018 to 25.09.2018 and to quash the same and for a consequential direction to the 2nd respondent for the return of the original driving license (DL No.TN 52 20080002099) to the petitioner forthwith.

For Petitioner : Mr.K.Hariharan

For Respondents : Mrs.Ramya Revathi,
Government Advocate
for R1 and R2

ORDER

This writ petition challenges the order passed by the 2nd respondent - Licensing Authority/Regional Transport Officer, Coimbatore South, Coimbatore, suspending the driving license of the petitioner herein under Section 19(1) of the Motor Vehicle Act [in short, 'the Act'] for a period of six months from 26.03.2018 to 25.09.2018.

2. The petitioner is working as stage carriage driver in Santhamani Bus Service, a private fleet operator. The bus bearing Regn. No.TN 42 J 9266 which was driven by the petitioner

involved in accident and upon a complaint criminal case has been registered against him by the 1st respondent police for offences under Sections 279 & 304-A of IPC. Since one of the offences alleged against petitioner is cognizable one, the licensing authority concerned had issued show cause notices to the petitioner invoking the provision in Section 19(1)(c) of the Act. Thereafter, appropriate enquiry was conducted and final order has also been passed by the 2nd respondent thereby suspending the license of the petitioner for a specified period. It is this order which is now under challenge in the instant writ petition.

3. The learned counsel for the petitioner submitted that the impugned order suspending the license of the petitioner has been passed by the licensing authority concerned in a cryptic manner in printed format wherein the name of the petitioner, registration number of the bus, and the period of suspension alone have been written in pen and no reason whatsoever has been assigned to arrive at such conclusion which is totally in violation of the provisions contained in Section 19(1) of the Act.

4. The learned counsel further submitted that the objection submitted by the petitioner was not considered and no proper enquiry has been conducted by the licensing authority. When an objection has been raised for the show cause notice the licensing authority is expected to consider the same and pass a reasoned final order and in the instant case the licensing authority concerned has not only failed to consider the objection raised by the petitioner, but, the authority had passed the impugned order mechanically in the ready-made form as well.

5. Per **contra**, the learned Government Advocate appearing for the police and the licensing authority contended that the petitioner has used his vehicle in the commission of cognizable offence and criminal case has been registered against him. Therefore, the licensing authority concerned invoking the provision in Section 19(1)(c) of the Act had issued show causes notice to the petitioner and upon considering the objection, final order has been passed suspending the license for a limited period. It is the admitted case of the petitioner that the criminal case has been registered against him which included a cognizable offence and as per Section 19(1) of the Act, the licensing authority concerned was satisfied that the petitioner used his vehicle in the commission of cognizable offence and, therefore, passed the impugned order suspending the license for a specified period. In the said circumstances, according to the learned Government Advocate, no other reason is required to be given in the order.

6. The learned Government Advocate further submitted that as against the order suspending the license, an appeal is provided under Section 19(3) of the Motor Vehicles Act and without availing such alternative remedy, petitioner cannot maintain the writ petition before this court.

7. I have considered the rival submissions carefully.

8. Before considering the rival submissions, this court is of the view, that it would be useful to refer to the relevant provision of Section 19(1) of the Act which read thus:

"19. Power of licensing authority to disqualify from holding a driving licence or revoke such licence.— (1) If a licensing authority is satisfied, after giving the holder of a driving licence an opportunity of being heard, that he —

... ..
... ..

(c) is using or has used a motor vehicle in the commission of a cognizable offence; or

... ..
... ..

(h) being a person under the age of eighteen years who has been granted a learner's licence or a driving licence with the consent in writing of the person having the care of the holder of the licence and has ceased to be in such care, it may, for reasons to be recorded in writing, make an order—

(i) disqualifying that person for a specified period for holding or obtaining any driving licence to drive all or any classes or descriptions of vehicles specified in the licence; or

(ii) revoke any such licence."

[Italics supplied]

9. A cursory reading of the above provisions would make it clear that it is mandatory on the part of the licensing authority to issue show cause notice to the holder of a driving license and the licensee should also be given an opportunity of being heard and after due enquiry, if the licensing authority is satisfied himself that the driving license is liable to be suspended on account of the contingency specified in the show cause notice, after recording reasons for the same, he may pass appropriate orders as enshrined in Section 19(1)(h)(i) or (ii)

of the Act. But, from a perusal of the impugned order, it could be seen that the licensing authority concerned in the instant case did not record any reason whatsoever for suspending the license and the impugned order has been passed in a total non application of mind. It could also been seen that that impugned order has been passed in the printed form without assigning any valid reasons for arriving at the satisfaction and the authority had simply filled in the name of the license and the period of suspension of license. Thus, the licensing authority in the instant case has flouted the mandatory procedures while invoking the power under Section 19(1) of the Act and on this ground alone the impugned order is liable to be set aside.

10. So far as the contention of the learned Government Advocate regarding the availability of alternative remedy of appeal is concerned, as the impugned order has been passed in total violation of the mandatory requirements and also in total non application of mind, this court is not inclined to relegate the petitioner to approach the appellate forum and instead, this court is inclined to set aside the impugned order and remit back the matter to the licensing authority concerned for reconsideration of the matter after issuing a fresh show cause notice afresh to the petitioner.

11. In the result, the writ petition is allowed and the impugned order passed by the licensing authority is set aside and the matter is remitted back for fresh consideration. The Licensing Authority concerned is directed to issue fresh show cause notice to the petitioner, conduct enquiry and pass appropriate orders on merits and in accordance with law by giving reasons for the same. During enquiry, the licensing authority shall give an opportunity of personal hearing to the petitioner. The above said exercise shall be completed within a period of six weeks from the date of receipt of a copy of this order. No costs. Consequently, connected WMPs are closed.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

kmk

To

- 1.The Inspector of Police,
Traffic Investigating Wing,
Coimbatore East Police Station,
Coimbatore.

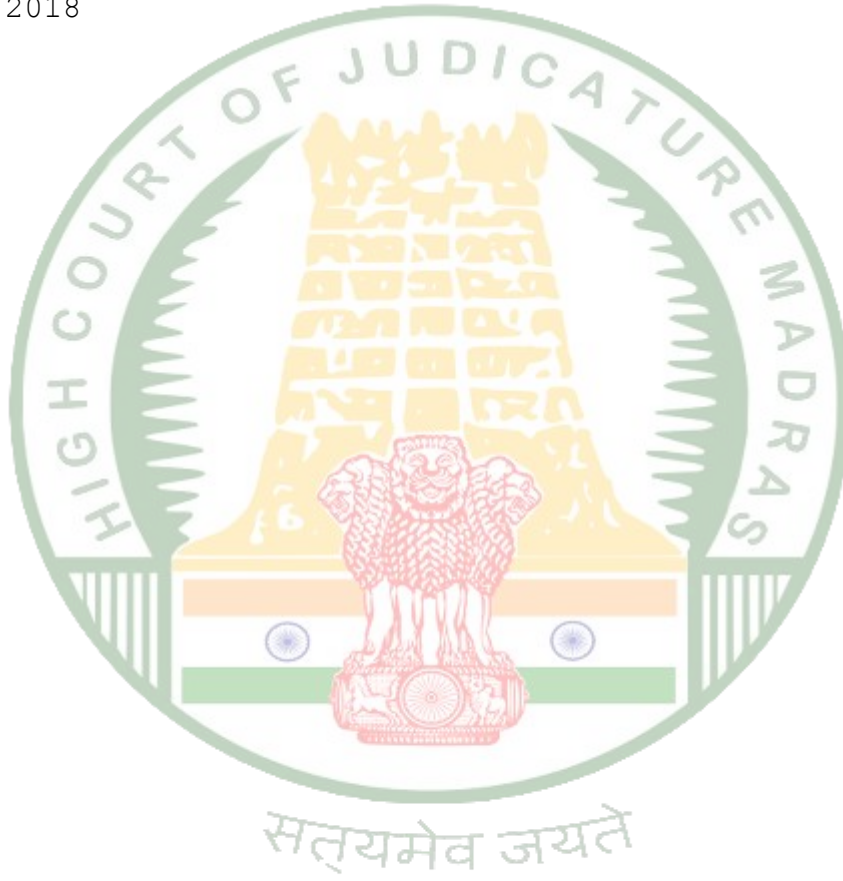
2.The Licensing Authority-cum-
Regional Transport Officer,
Regional Transport Officer,
Coimbatore South, Coimbatore.

+1cc to Mr.K.Hariharan, Advocate, S.R.No.75832

Writ Petition No.12975 of 2018

SK(CO)

rrs 07/12/2018



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