

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.09.2018

CORAM

THE HON'BLE MR.JUSTICE V.BHARATHIDASAN

W.P.No.23198 of 2018

and

W.M.P.Nos.27099 & 27100 of 2018

P.Kothandan

...Petitioner

Vs

1.The Transport Commissioner,
Cheupauk,
Chennai - 600 005..

2.The Assistant License Issuing Authority,
Regional Transport Office,
Thiruvannamalai,
Thiruvannamalai District.

3.The Regional Transport Officer,
Regional Transport Office,
Krishnagiri, Krishnagiri District.

4.The Inspector of Police,
Mathur Police Station,
Krishnagiri District.

5.The Branch Manager,
Tamil Nadu State Transport Corporation,
(Villupuram Limited),
Thiruvannamalai Zone,
Thiruvannamalai, Sidco - III,
Thiruvannamalai District.

...Respondents

PRAYER : Petition filed Under Article 226 of the Constitution of India, to issue a Writ of Certiorari to call for the records relevant to the order in Se.Mu.No.82/26823 dated 06.08.2018 passed by the third respondent and to quash the same as illegal, improper, unreasonable, arbitrary and against the principles of natural justice and thereby enable the petitioner to join and continue his service in the fifth respondent Transport Corporation.

For Petitioner : A.Rajesh Kanna

For Respondents : Mr.A.N.Thambidurai for R1 to R4
Special Government Pleader

: Mr.P.Kannan Kumar for R5
Standing Counsel.

O R D E R

This writ petition challenges the order passed by the third respondent Regional Transport Officer, Krishnagiri District, suspending the driving license of the petitioner herein under Section 19(1) of the Motor Vehicle Act [in short, 'the Act'].

2. The petitioner is working as driver in Tamil Nadu State Transport Corporation. The bus bearing Regn. No.TN 25 N 0434 which was driven by the petitioner involved in accident and upon a complaint, criminal case has been registered against him by the fourth respondent police for offences under Sections 279 & 304-A of IPC in Crime NO.205/2018. Since 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, an enquiry was conducted and final order has also been passed by the third 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 and the period of suspension alone has been written in pen and no reason whatever 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 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 Special Government Pleader 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 cause 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 Special Government Pleader, no other reason is required to be given in the order.

6. The learned Special Government Pleader 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 reads 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 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 Special Government Pleader 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, fair opportunity of hearing shall be given 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 Miscellaneous Petitions are also closed.

Sd/-
Assistant Registrar (CS-VII)

//True copy//

Sub Assistant Registrar

dna

To

- 1.The Transport Commissioner,
Cheupauk,
Chennai - 600 005..
- 2.The Assistant License Issuing Authority,
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Thiruvannamalai District.
- 3.The Regional Transport Office,
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Tamil Nadu State Transport Corporation,
(Villupuram Limited),
Thiruvannamalai Zone,
Thiruvannamalai, Sidco - III,
Thiruvannamalai District.

+1cc to Mr.A.Rajeshkanna, Advocate SR.No.67685

+1cc to Government Pleader SR.No.68141

W.P.No.23198 of 2018
and

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SKV (CO)
GMY (03/12/2018)