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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 27.08.2018

PRONOUNCED ON : 25.10.2018

CORAM:

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

W.P(MD)No.17811 of 2018

and

W.M.P. (MD) .No.15678 of 2018

M.Rajendran

.. Petitioner

Vs.

1. The Licensing Authority /
Regional Transport Officer,
Trichy West, Trichy.

2. The Inspector of Police,
Traffic South Investigation Wing,
Trichy City.

.. Respondents

PRAYER: Writ Petition has been filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Mandamus, to forbear the respondents from in any manner seizing original driving license of the petitioner or insisting the petitioner to produce the same even prior to initiation of proceedings and passing final orders under Section 19(1) of the Motor Vehicles Act for suspending the driving license of the petitioner.

For Petitioner : Mr.A.Rahul

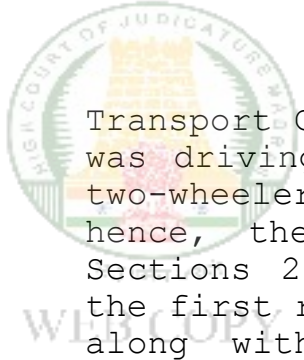
For respondents : Mr.D.Muruganandham,
Addl. Government Pleader

ORDER

This writ petition has been filed by the petitioner for issuance of a Writ of Mandamus, to forbear the respondents from in any manner seizing original driving license of the petitioner or insisting the petitioner to produce the same even prior to initiation of proceedings and passing final orders under Section 19 (1) of the Motor Vehicles Act suspending the driving license of the petitioner.

<https://hcservices.courts.gov.in/hcservices/>

2.The petitioner is working as a driver in the Tamil Nadu State



Transport Corporation (Kumbakonam) Limited. On 01.01.2018, while he was driving a bus bearing Registration No.TN-45-N-3127, a rider of two-wheeler, who attempted to overtake the bus, sustained injury and hence, the Police registered a case in Cr.No.2 of 2018 under Sections 279 and 337 I.P.C. against the petitioner. Subsequently, the first respondent called upon the petitioner to appear before him along with the said bus and original driving license. After examining the bus and the original driving license, the first respondent returned the original driving license to the petitioner and released the vehicle. On 30.03.2018, it is stated that the injured succumbed to the injuries. Hence, the second respondent Police insisted the petitioner to hand over his original driving license for forwarding the same to the first respondent for the purpose of taking action under Section 19 of the Motor Vehicles Act. But, the petitioner refused to hand over his original driving license stating that no notice has been served upon him by the first respondent for production of driving license. However, again the 2nd respondent insisted the petitioner to produce the original driving license and he has also sent a letter, dated 30.07.2018, to the Branch Manager of the Transport Corporation to take departmental action against the petitioner. Hence, the petitioner has come up with this petition seeking the aforesaid prayer.

3. The learned counsel appearing for the petitioner would submit that the investigation in the criminal case has not been completed and no final report has been laid against the petitioner and even before the completion of the criminal case, the respondents are trying to seize the petitioner's driving license. It is his further contention that even if it is seized, the respondents have no authority to retain the same. He would further submit that even before initiation of the proceeding under Section 19 of the Motor Vehicles Act, the first respondent has no authority to seize the license. In support of his contention, the learned counsel relied upon the decision reported in **2010 Writ L.R.100 (P.Sethuram Vs. the Licensing Authority, the Regional Transport Officer, Dindigul and others)**. Thus, he prayed for a direction to forbear the respondents from in any manner seizing the original driving license of the petitioner or insisting the petitioner to produce the same.

4. The learned Additional Government Pleader appearing for the respondents would submit that under the Motor Vehicles Act, the respondents have been empowered to seize the driving license and the Licensing Authority is also given power to cancel or temporarily suspend the license and therefore, the relief sought for by the petitioner cannot be granted. Thus, he prayed to dismiss the writ petition.

5. Heard the learned counsel appearing for both sides and perused the records carefully.

6. Admittedly, in this case, based on the registration of a criminal case, the original driving licence of the petitioner was



verified and later on, it was returned. But, after the victim succumbed to the injuries, the 2nd respondent has insisted the petitioner to hand over the original driving license for forwarding the same to the 1st respondent for the purpose of taking action under Section 19 of the Motor Vehicles Act.

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7. Section 19 of the Motor Vehicles Act, 1988 empowers the Licensing Authority to revoke or suspend the driving license for a specified period from holding, if any of the contingencies prescribed in Clauses (a) to (h) of Sub Section (1) of Section 19 of the Act arises. As per Sub-Section (1) of Section 19, such power can be exercised only after giving an opportunity of hearing to the licence holder and after recording the reasons for the same in writing. The Act does not empower the licensing authority to seize the license immediately after happening of any of the contingencies specified in Clauses (a) to (h) of Sub Section (1) of Section 19 of the Act. When the Act itself mandates that the Licensing Authority has to provide an opportunity of personal hearing, initially the licensing authority has to issue a show cause notice and after giving an opportunity of hearing and recording reasons in writing, it shall revoke or suspend the license. Admittedly, in this case, no show cause notice has been served upon the petitioner by the first respondent. But, it is stated that the second respondent / Police insisted for production of the license in order to forward the same to the first respondent.

8. Section 206 of the Motor Vehicles Act, 1988, empowers the Police Officer to impound the document. As per Sub-Section (2) of Section 206 of the Act, the Police Officer or other person authorised in that behalf by the State Government is empowered to seize the licence held by such driver, if he has reason to believe that the offender / driver may abscond and forward it to the Court taking cognizance of the offence and the said Court shall, on the first appearance of such driver before it, return the license to him in exchange of temporary acknowledgement given under Sub-Section (3) of Section 206. As per Sub-Section (3) of Section 206 of the Act, the Police Officer shall give to the person surrendering the licence a temporary acknowledgement therefor and such acknowledgement shall authorise the holder to drive until the licence is returned to him or until such date as may be specified therein.

9. Section 206 of the Act specifically contemplates that on production of the original driving license by the holder, the Police Officer has to issue temporary acknowledgement authorising the holder to drive the vehicle until the license is returned to him or until a date specified therein. The Police Officer cannot deny to issue such acknowledgment by simply saying that he will forward the same to the Licensing authority. But, as contemplated under the Act, after seizure of the license, the Police has to immediately forward the same to the Court and then only, if the holder wants to get return of license, he can approach the Court and get the license returned.



10. A Division Bench of this Court in the case in **P.Sethuram Vs. The Licensing Authority, Regional Transport Officer, Dindigul**, reported in **2010 Writ L.R. 100** has held in paragraph Nos.8 to 12 as follows:

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"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. More over, 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 (d) 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, pre-concluded 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."

11. From the above decision of the Division Bench of this Court, it is clear that the revoking / suspending of the licence shall be preceded by the issue of show cause notice and therefore, the first respondent before initiating action under Section 19 of the Act, has to issue show cause notice to the petitioner. Further, simply because the Police has registered a criminal case against the petitioner, it shall not pre-conclude that the petitioner is guilty of rash and negligent driving.

12. When the Act itself empowers the licensing authority to revoke / suspend the original driving license under certain contingencies by following the procedures, this Court cannot issue a blanket direction to the respondents not to seize the driving license of the holder or insist the holder to produce the same, especially when it is not known under what contingency the licensing authority wants to seize the driving license of the petitioner. However, at the same time, the first respondent, without following the procedures contemplated under the Act, cannot insist for production of the original driving license.

13. In view of the above, this Writ Petition stands disposed of with the following directions:

If at all the first respondent / Licensing Authority wants to take action against the petitioner under Section 19 of the Act, he has to issue show cause notice to the petitioner and after getting reply and giving an opportunity of hearing, the first respondent shall pass appropriate orders on merits and in accordance with law.

14. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(Protocol)

/True Copy/

Sub Assistant Registrar(CS-IV)

To

1. The Licensing Authority /
<https://hcservices.ecourts.gov.in/hcservices/>
Regional Transport Officer,
Trichy West, Trichy.



2. The Inspector of Police,
Traffic South Investigation Wing,
Trichy City.

+ 1 cc TO Mr.A.Rahul , Advocate in SR No. 92095

gcg

AE-DS/RSK/SAR4/15.11.2018/6P/4C

Order made in
W.P (MD) No.17811 of 2018
25.10.2018