



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 10.09.2018

PRONOUNCED ON : 24.09.2018

CORAM:

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

W.P(MD)No.16541 of 2013

and

M.P. (MD) .Nos.1 to 3 of 2013

V.Dhanabal

.. Petitioner

Vs.

1.The Deputy Transport Commissioner,
Trichy Region,
Trichy.

2.The Licensing Officer,
The Regional Transport Office,
Srirangam,
Trichy.

.. Respondents

PRAYER: Writ Petition has been filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorarified Mandamus, to call for the records from the 1st and 2nd respondents relating to the order of the 2nd respondent dated 05.07.2013 passed in Se.Mu.Order No.13935/A3/2013 and also order of the 1st respondent dated 23.09.2013 passed in Se.Mu.Order No.1172/A3/13, modifying the order of the 2nd respondent, quash the same and consequently direct the 2nd respondent to return the driving licence of the petitioner to him without any remarks.

For Petitioner : Mr.S.Arunachalam

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

ORDER

This writ petition has been filed by the petitioner challenging the order passed by the first respondent and second respondent, dated 05.07.2013 and 23.09.2013 and for a direction to the respondents to return the driving licence of the petitioner without any remarks.



2. The petitioner is working as a driver in the Tamil Nadu State Transport Corporation (Kumbakonam) Limited. On 30.04.2013, while he was driving a bus bearing Registration No. TN-45-N-2389, a cyclist, who was coming in the opposite direction, fell down on the road and he was under the influence of alcohol and at the request of the passengers, the petitioner stopped the bus and as the injured was in need of immediate medical treatment, he sent him to the hospital through ambulance and subsequently, the said person succumbed to the injuries. But, the Police, falsely implicating the petitioner, registered a case in Cr.No.135 of 2013 under Sections 279 and 304(A) I.P.C. and subsequently, the driving licence of the petitioner was seized by the Police, who in turn forwarded the same to the second respondent. On 09.05.2013, the second respondent issued show cause notice to the petitioner. On 28.06.2013 the petitioner submitted his written explanation. But, the second respondent, without conducting any enquiry and without examining any eyewitnesses, has passed the impugned order suspending the driving licence of the petitioner from 28.06.2013 to 27.12.2013. Aggrieved by the said order, the petitioner has filed an appeal before the first respondent. The first respondent, though upheld the order of the second respondent, modified the order by reducing the suspension period from 6 months to 4 months. Challenging the said orders, the petitioner is before this Court.

3. The learned counsel appearing for the petitioner would submit that there was no accident caused by the petitioner and the original driving licence of the petitioner was seized by the Police only based on the registration of a criminal complaint. By relying on a decision of a Division Bench of this Court reported in **2010 Writ L.R.100 (P.Sethuram Vs. the Licensing Authority, the Regional Transport Officer, Dindigul and others)**, the learned counsel for the petitioner submitted that the respondents ought not to have suspended the driving licence of the petitioner based on the registration of a criminal complaint. He would further submit that though the first respondent issued show cause notice and the petitioner appeared before him and explained the occurrence, the second respondent, without conducting any further enquiry and without recording any reasons, has simply suspended the licence of the petitioner and the same was affirmed by the first respondent in the appeal. Thus, he prayed to set aside the impugned orders and to return the original driving licence.

4. The learned Additional Government Pleader appearing for the respondents submitted that the suspension of the licence of the petitioner has been made by the second respondent after conducting enquiry and the first respondent, though upheld the order of the second respondent, has reduced the suspension period, considering the submission of the petitioner and therefore, the same need not be interfered with.



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 seized and later on, it was suspended by the respondents. But, there is no reason assigned by the respondents in the impugned order for suspension of the licence of the petitioner for a period of six months. When a question arises for consideration as to whether mere registration of a criminal complaint and the involvement of a driver in a road traffic accident is enough to invoke the power to suspend or revoke a driving licence under the Act, a Division Bench of this Court has 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:

"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 involved 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 (1) 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."

7. The above decision is squarely applicable to the case on hand as in this case also the order of suspension has been made on the pre-conclusion of the issue that the petitioner is guilty of rash and negligent driving and without giving any reason for such suspension.

8. In view of the above, the impugned order passed by the respondents are set aside and the respondents are directed to delete the endorsement made on the driving licence of the petitioner about the suspension and to return the original driving licence to the petitioner. 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 Act, arises later or if any of the Rules as prescribed by the Central Government in pursuance of Section 19(1)(f) are violated.

9. This Writ Petition stands disposed of accordingly. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS-I)

// True Copy //



To

1. The Deputy Transport Commissioner,
Trichy Region,
Trichy.

2. The Licensing Officer,
The Regional Transport Office,
Srirangam,
Trichy.

Order made in
W.P (MD) No. 16541 of 2013
24.09.2018

GCG

TR/RP/SAR-I (24.09.2018) 5P 3C