

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 24..01..2019
CORAM

THE HON'BLE MR.JUSTICE V.BHARATHIDASAN

Writ Petition No.1779 of 2019
and
W.M.P.No.1977 of 2019

P.Jayakumar

... Petitioner

-Versus-

The Licensing Authority /
Regional Transport Officer,
Veerapandi Pirivu,
Thiruppur South,
Thiruppur.

... Respondent

Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorari fied Mandamus, calling for the records relating to the order of the respondent dated 13.11.2018 passed by the respondent in Se.Mu.No.38392-E-318 and quash the same and for a consequential direction to the respondent to return the driving license of the petitioner bearing No. TN 37 1987 0007615 forthwith to him without any endorsement within a time frame to be fixed by this court.

For Petitioner : Mr.R.Krishnaswamy
For Respondent : Mr.R.Govindasamy,
Spl. G.P.

ORDER

This writ petition challenges the order passed by the respondent - Licensing Authority / Regional Transport Officer, Tiruppur South, 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 the Tamil Nadu State Transport Corporation. The bus bearing Regn. No.TN 38 N 3169, which was driven by him, had involved in an accident and upon a complaint criminal case has been registered against him by the Inspector of Police, Palladam in Crime NO.1053 of 2018 on 19.10.2018 for alleged offences under Sections 279 and 304-A

of IPC. Since one of the offences alleged against petitioner is cognizable one, the licensing authority concerned had issued show cause notice 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 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 power under Section 19(1) of the Act can be invoked only after giving an opportunity of being heard to the holder of the license and for the reasons to be recorded in writing, but, in the instant case, the respondent did not adhere to the mandatory provisions in Section 19(1) of the Act and had passed the impugned order in a cryptic manner without assigning any reason to arrive at such conclusion which is not only in total violation of the provisions contained in Section 19(1) of the Act, but, contrary to the principles of natural justice as well.

4. Per contra, the learned Special Government Pleader contended that the licensing authority upon considering the explanation submitted by the petitioner and based the materials available before him had passed impugned order thereby impounding the driving license of the petitioner for a specified period. It is the admitted case of the petitioner that 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.

5. The learned Special Government Pleader further added 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.

6. I have considered the rival submissions carefully.

7. 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]

8. A cursory reading of the above provisions would make it clear that it is mandatory on the part of the licensing authority to issue a 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.

9. In the instant case, admittedly, the license of the petitioner was impugned immediately after the accident. Thereafter, as it could be seen from the impugned order, the respondent issued the show cause notice under Section 19(1) of the Act, after getting a report from the police. Further, on a perusal of the impugned order it could be seen that, the explanations offered by the petitioner were not at all considered by the licensing authority and he has simply impounded the license without assigning any reason therefor. Therefore, the impugned order is liable to be quashed. Further, the licensing authority before passing the impugned order, ought to have afforded an opportunity of hearing to the

petitioner. On this ground also, 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 show cause notice afresh to the petitioner.

11. For the foregoing reasons, the impugned order requires interference at the hands of this court and the matter needs to be remitted back to the authority concerned for initiating a proceeding afresh against the petitioner under Section 19 of the MV Act.

12. In the result, the writ petition is disposed of 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 conduct an enquiry afresh and pass appropriate orders on merits and in accordance with law by giving reasons in support of his conclusion. 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.

Sd/-

Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

kmk /
To

1.The Licensing Authority / Regional Transport Officer,
Veerapandi Pirivu, Tiruppur South, Tiruppur.

+1cc to Mr.V.Ajoy Khose , Advocate SR.No. 5545
+1 CC TO GOVERNMENT PLEADER SR.NO. 6483

W.P.No.1779 of 2019

A.SK(29/01/2019)