

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.03.2019

CORAM :

THE HON'BLE MR. JUSTICE D. KRISHNAKUMAR

W.P.No.5009 and 5011 of 2019, 3850 of 2019, 4270 of 2019,
5512 of 2019, 5832 of 2019 and 5926 of 2019

- 1 J.JAYACHANDRAN ... PETITIONER in WP No.5009 of 2019
- 1 T.AMBIRAJ ... PETITIONER in WP No.5011 of 2019
- 1 T.DURAI ... PETITIONER in WP No.3850 of 2019
- 1 K.SIVARAJ ... PETITIONER in WP No.4270 of 2019
- 1 A.DURAIRAJ ... PETITIONER in WP No.5512 of 2019
- 1 M.CHINNAN ... PETITIONER in WP No.5832 of 2019
- 1 D.VETRIVEL ... PETITIONER in WP No.5926 of 2019
- VS
- 1 INSPECTOR OF POLICE
MAYILADUTHURAI POLICE STATION
NAGAPATTINAM DISTRICT
- 2 THE LICENSING AUTHORITY CUM
REGIONAL TRANSPORT OFFICER
MAYILADUTHURAI
NAGAPATTINAM DISTRICT
... RESPONDENT in WP No.5009 of 2019
- 1 INSPECTOR OF POLICE
POLLACHI BAZAAR POLICE STATION,
POLLACHI
COIMBATORE DISTRICT
- 2 THE LICENSING AUTHORITY CUM
REGIONAL TRANSPORT OFFICER,
POLLACHI, COIMBATORE DISTRICT
... RESPONDENT in WP No.5011 of 2019

1 THE REGIONAL TRANSPORT OFFICER
KRISHNAGIRI KRISHNAGIRI DISTRICT

2 THE INSPECTOR OF POLICE
KALLAVI POLICE STATION
KRISHNAGIRI DISTRICT

3 THE BRANCH MANAGER
THE TAMIL NADU STATE TRANSPORT CORPORATION
(SALEM) LTD.
PALACODE BRANCH
DHARMAPURI DISTRICT

4 THE COMMISSIONER
TRANSPORT DEPARTMENT EZHILAGAM CHEPAUK
CHENNAI. (R4 SUO MOTU IMPEADED VIDE ORDER
DT 11/02/2019 MADE IN WP.NO.3850/19 BY DKKJ)

... RESPONDENT in WP No.3850 of 2019

1 THE REGIONAL TRANSPORT OFFICER
THIRUPPUR SOUTH THIRUPPUR DISTRICT

2 THE INSPECTOR OF POLICE
THIRUPPUR RURAL POLICE STATION
THIRUPPUR DISTRICT.

3 THE BRANCH MANAGER
THE TAMILNADU STATE TRANSPORT CORPORATION
COONOR BRANCH COIMBATORE ZONE.

... RESPONDENT in WP No.4270 of 2019

1 INSPECTOR OF POLICE
PERUR POLICE STATION COIMBATORE.

2 THE LICENSING AUTHORITY - CUM
REGIONAL TRANSPORT OFFICER
COIMBATORE WEST
COIMBATORE.

... RESPONDENT in WP No.5512 of 2019

1 INSPECTOR OF POLICE
TOWN POLICE STATION HOSUR
KRISHNAGIRI DISTRICT

2 THE REGIONAL TRANSPORT OFFICER
HOSUR KRISHNAGIRI DISTRICT

... RESPONDENT in WP No.5832 of 2019

1 THE REGIONAL TRANSPORT OFFICER
(RTO) LICENSING AUTHORITY REGIONAL
TRANSPORT OFFICE CHENNAI NORTH WEST NEW
AVADI RD ANNA NAGAR CHENNAI-600040

2 THE INSPECTOR OF POLICE
TRAFFIC INVESTIGATION WINGS
K-4 ANNA NAGAR POLICE STATION
CHENNAI-40

... RESPONDENT in WP No.5926 of 2019

PRAYER WP. 5009/2019: The Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus, directing the 2nd respondent to return the original Driving Licence (DL NO TN-49 1997 0003538) to the petitioner forthwith.

WP No.5011 of 2019:
Directing the 2nd respondent to return the original Driving Licence (DL NO TN- 41 1997 0003828) to the petitioner forthwith

WP No.3850 of 2019
directing the 1st respondent to return the petitioners driving license No. TN 29 19960004265 by considering the petitioners representation dated 25.12.2018 within the time framed by this Honourable Court

WP No.4270 of 2019
Directing the 1st respondent to return the petitioner s Original driving license by considering his representation dated 04.02.2019 within the time framed by this Honorable Court

WP No.5512 of 2019
Directing the 2nd respondent to return the Original Driving Licence (DL No.TN.37 1996 0006564) to the petitioner forthwith.

WP No.5832 of 2019
To direct the 2nd respondent herein to return the Petitioners Driving Licence bearing DL.No. TN29Z 1992 0000689 forthwith

WP No.5926 of 2019
directing the 1st respondent to return original Driving License No. TN- 20 198 9000 1043, issued on 09.06.1989 valid upto 07.06.2019 of the petitioner, which was seized in connection with Cr. No. 32/ TIW/ 2019 on the file of Inspector of Police, Traffic Investigation Wing, K-4, Anna Nagar Traffic Police Station, chennai- 600 040 the 2nd respondent, who shall, in turn issue an acknowledgment to the petitioner and then produce the

same before the jurisdictional Magistrate and the learned Magistrate, in turn, shall exercise his/ her power under Section 206 of the Motor Vehicles Act, 1988 and return the Driving License to the petitioner

For Petitioner : Mr.K.Hariharan
in WP. 5009& 5011/19 &
5512/2019

Mr.M.Selvam in WP. 3850/2019

Mr.K.Gandhi Kumar in WP. 4270/19

Mr.A.Genesan in WP. 5832/2019

Mr.R.Ravindran in WP. 5926/2019

For Respondents : Mr.P.H.Aravind Pandiyan, A.A.G.

Assisted by

Mr.V.Shanmugasundar,

Spl.G.P. For R1 & R2 in all WPs

Mr.Rajeni Ramadass for R3 & R4

in WP. 3850/19 & R3 in WP.4270/19

COMMON ORDER

In all the writ petitions, a writ of Mandamus is sought for, by directing the respondents to return the original driving licence impounded by the first respondent police.

2.The learned counsel appearing for the petitioners submits that the petitioners are driver under the State Transport Corporation and other departments. While they are in duty, an accident was occurred due to which the first respondent police registered a case against the petitioners under various sections of Indian Penal Code, especially under Section 279, 337, 338 of I.P.C. and copy of the F.I.R. has been forwarded to the concerned Judicial Magistrate Court and the investigation is still pending before the respondent police. The respondent police had seized the original driving licence. Even though representation made to the respondents, the original driving licence has not been returned to the petitioners. Hence, the petitioners have filed the writ petitions before this Court, seeking directions to the respondents to return the original driving licence.

3. The learned counsel appearing for the petitioners relied upon the earlier decision of the Division Bench of this

Court in P.SETHURAM VS. THE LICENSING AUTHORITY, THE REGIONAL TRANSPORT OFFICER, DINDUGAL [2010 WRIT L.R. 100], G.JAYAPRAKASH, SECRETARY, MUTHU NAIDU MEMORIAL HIGH SCHOOL, JAKKARPALAYAM, POLLACHI, COIMBATORE 642 202 VS. THE SECRETARY TO GOVERNMENT, EDUCATION DEPARTMENT, FORT ST. GEORGE, CHENNAI 600 009 AND TWO OTHERS [2010 WRIT L.R. 104] AND N.MAYILSAMY VS. THE INSPECTOR OF POLICE, TRAFFIC INVESTIGATING WING, MADUKKARAI POLICE STATION, COIMBATORE AND ANOTHER [W.P.No.6274 of 2018, dated 20.3.2018]. According to the learned counsel appearing for the petitioner, in the aforesaid decisions, this Court held that Section 19(1) of the Motor Vehicle Act empowers the Licensing Authority to disqualify a person for holding or obtaining any driving license for a specified period or to revoke any such license. Further, it is submitted that the power under Section 19(1) of the Act can be invoked only after providing an opportunity of being heard to the holder of license and for reasons to be recorded in writing. Therefore, the respondent authorities cannot impound or retain driving license immediately after the accident. Therefore, this Court directed the authority concerned to return the original driving license to the petitioners therein.

4. In the counter affidavit filed by the first respondent viz., the Transport Commissioner, it is stated as under:

After receipt of original driving licence, the licencing authorities are issuing show cause notice to the holder of driving licence by giving an opportunity of making their explanation as to why the holder of driving licence should not be disqualified from driving, for the stipulated period under the M.V. Act. The holder of the driving licence may submit his explanation and also pray to release the original driving licence. It is submitted that in most of the cases, no satisfactory reasons were given by the holder of the driving licence. It is further submitted that the Hon'ble Apex Court have constituted a Committee on Road Safety in letter F.No.05/2014/CoRS-Part-II dt.18.8.2015. The Committee has directed the States/Union Territories and their departments to suspend the licence for a period of not less than three months under Section 19 of M.V. Act read with Rule 21 of Central Motor Vehicle Rule 1989 for the irregularities as follows:

- i) Driving a speed exceeding the specified limit which in the Committee's view would also include red light jumping.
- ii) Carrying overload in goods carriages and carrying persons in goods carriages.
- iii) Driving vehicles under the influence of drink and drugs.
- iv) Using mobile phone while driving a vehicle.

With regard to disqualification of the licence under Section 19 of the Act, the licencing authorities have to follow the procedure as contemplated under the Act and pass final order on

the disqualification of the driving licence.

5. According to the learned Additional Advocate General appearing on behalf of the respondents, "Licensing Authority means an authority empowered to issue licenses under Chapter II or as the case may be Chapter III as per sub-section 20 of section 2 of Motor Vehicle Act, 1988. "Licensing Authorities means the Regional Transport Officer or the Additional Regional Transport Officer, as the case may be within his jurisdiction, shall be the Licensing Authority for issuing Driving Licence. The power exercisable by a police officer under the Act shall also be exercisable by an inspecting officer of the Transport department. As per sub Rule (1) of Rule 3 of Tamil Nadu Motor Vehicle Rules, 1989, the Inspecting Officer of the Transport department not below the rank of Motor vehicle Inspector Grade II and Section 206 of M.V. Act, 1988 empowers the police officials to impound the documents. It is further submitted that Section 206(1) empowers any police officers or other persons authorized by the State Government to impound the driving licences, permits, Certification of Registration, Certificate of Insurance, other documents produced before him by the driver or person incharge of a motor vehicle within the meaning of said section. If the driver of the vehicle has produced a false documents within the meaning of section 464 of I.P.C. shall seize the mark or document and call upon the driver or owner of the vehicle to account for his possession of or the presence in the vehicle such mark or document. Section 206(3) of M.V. Act, 1988 stipulates that a Police Officer or other person seizing a licence under sub section 2 of Section 206 shall give to the person surrendering the licence, a temporary acknowledgment therefor and such acknowledgment shall authorize the holder to drive the vehicle until the licence has been returned to him or until such date as may be specified by the Police Officer or any other person in the acknowledgement whoever is earlier.

6. The learned Additional Advocate General would submit that provision under Section 206 of M.V. Act was not brought to the notice of this Court at the time of earlier order passed, either before the Division Bench or before the Single Judge of this Court. According to the learned Additional Advocate General, Section 19(1) of M.V. Act empowers the Licensing Authority to disqualify a person for holding or obtaining any driving license for a specified period or to revoke any such license. It is submitted that the order of disqualification shall be issued by the Licensing Authorities in the format of proceedings by the Licensing Authorities. The copy of the proceedings will be marked to the Police Officer concerned, requesting him to withdraw the authorization issued during the issue of temporary acknowledgement. It is further submitted that the disqualification period shall be as stipulated under the M.V. Act. The disqualification of the driving licence can

be challenged by way of appeal before the Appellate Authority under the provisions of the Act.

7. Now, in the instant cases on hand, a criminal case has been registered and the same is pending before the Judicial Magistrate concerned. According to Section 206 of M.V. Act, the third respondent can impound the driving licence. The aforesaid provision has not been placed before this Court, while passing the earlier orders, relied upon by the learned counsel for the petitioner. It is further submitted that the petitioners are entitled to get temporary acknowledgment to drive the vehicle under Section 206 of the M.V. Act pending criminal case. The learned counsel appearing for the petitioner fairly conceded that provision under Section 206 of M.V. Act has not been brought to the notice of this Court in the decision relied on by the petitioner. According to the petitioner, Section 206 of M.V. Act also empowers the authority to issue the temporary acknowledgment. Therefore, the writ petitioner can approach the authority to seek temporary acknowledgment under Section 206 of the Motor Vehicle Act.

8 In the light of the submissions made by the parties, both the parties agreed to pass the following order:

i) The petitioner is permitted to make an application to the Regional Transport Officer concerned, within a period of one week from the date of receipt of a copy of this order.

ii) If any such application is received, the Regional Transport Officer concerned shall consider such application and pass appropriate orders for issuing temporary acknowledgement as per Section 206(3) of the M.V. Act within a period of one week thereafter.

iii) It is made clear that such application will be considered only on receipt of the original driving licence from the concerned Station House officer.

4. With the above directions, the writ petition is disposed of. No costs.

Sd/-

Assistant Registrar (CS-IV)

//True Copy//

Sub Assistant Registrar

vaan

To

1 INSPECTOR OF POLICE
MAYILADUTHURAI POLICE STATION,
NAGAPATTINAM DISTRICT.

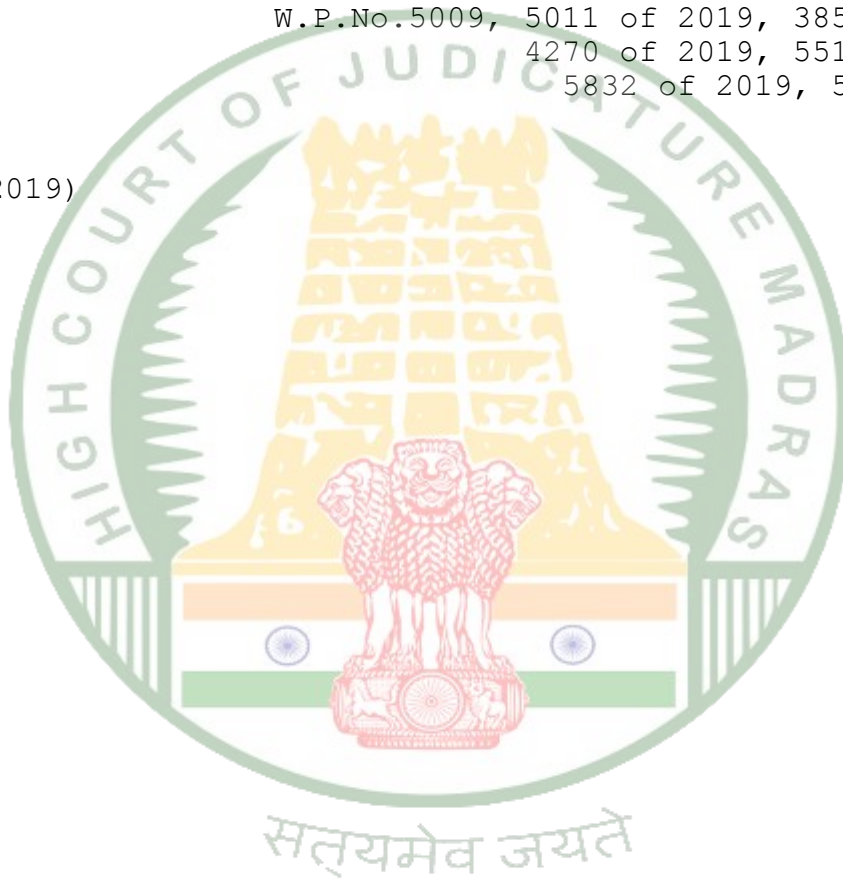
- 2 THE LICENSING AUTHORITY CUM
REGIONAL TRANSPORT OFFICER,
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POLLACHI BAZAAR POLICE STATION,
POLLACHI
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- 4 THE LICENSING AUTHORITY CUM
REGIONAL TRANSPORT OFFICER,
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- 5 THE REGIONAL TRANSPORT OFFICER
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- 6 THE INSPECTOR OF POLICE
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PERUR POLICE STATION COIMBATORE.
- 12 THE LICENSING AUTHORITY - CUM
REGIONAL TRANSPORT OFFICER
COIMBATORE WEST
COIMBATORE.
- 13 THE REGIONAL TRANSPORT OFFICER
HOSUR KRISHNAGIRI DISTRICT
- 14 THE REGIONAL TRANSPORT OFFICER
LICENSING AUTHORITY REGIONAL
TRANSPORT OFFICE CHENNAI NORTH WEST NEW
AVADI RD ANNA NAGAR CHENNAI-600040

15 THE INSPECTOR OF POLICE
TRAFFIC INVESTIGATION WINGS
K-4 ANNA NAGAR POLICE STATION
CHENNAI-40

+3cc to Mr.K.Hariharan, Advocate, S.R.No. 21148 to 21150
+1cc to Mr.M.Selvam, Advocate, S.R.No.21025
+1cc to Mr.R.Ravindran, Advocate, S.R.No. 20595
+1cc to Mr.K.Gandhi Kumar, Advocate, S.R.No. 20745

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KK(CO)
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