

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.03.2019

CORAM :

THE HON'BLE MR. JUSTICE D. KRISHNAKUMAR

W.P.Nos.5578, 5579, 5742 & 5745 of 2019

1.J.Kannan

...petitioner in W.P.No.5578 of 2019

2.M.Palanisamy

...petitioner in W.P.No.5579 of 2019

3.K.Shanmugavadivelu

...petitioner in W.P.No.5742 of 2019

4.G.Kamatchisundaram

...petitioner in W.P.No.5745 of 2019

Vs.

1 Inspector of Police
Koovathur police Station,
Kancheepuram District.

2 The Licensing authority cum
Regional Transport Officer,
Mathuranthagam,
Kancheepuram District

....respondents in W.P.No.5578 of 2019

3 Inspector of Police
Tiruchengode police Station,
Namakkal District.

4 The Licensing authority cum
Regional Transport Officer,
Tiruchengode,
Namakkal District

....respondents in W.P.No.5579 of 2019

5 Inspector of Police
Udumalpet police Station,
Tirupur District.

6 The Licensing authority cum
Regional Transport Officer,
Udumalpet,
Tirupur District.

....respondents in W.P.Nos.5742 & 5745 of 2019

PRAYER: The Writ Petitions are filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus,

(i) directing the 2nd respondent to return the original Driving Licence (DL No. TN-07/1998/708) to the petitioner forthwith (W.P.No.5578 of 2019).

(ii) directing the 2nd respondent to return the original Driving Licence (DL No. TN-36 1997 0003459) to the petitioner forthwith (W.P.No.5579 of 2019).

(iii) directing the 2nd respondent to return the original Driving Licence (DL No. TN-36 1980 0000219) to the petitioner forthwith (W.P.No.5742 of 2019).

(iv) directing the 2nd respondent to return the original Driving Licence (DL No. TN-41 2005 0004463) to the petitioner forthwith (W.P.No.5745 of 2019).

For Petitioner (in all Wps) : Mr.K.Hariharan

For Respondents (in all Wps): Mr.V.Shanmugasundar, Spl.G.P.

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 the Drivers 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, 304-A, 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 petitioners, 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. According to the learned Special Government Pleader 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.

5. The learned Special Government Pleader 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 Special Government Pleader, 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 acknowledgment. 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.

6. Now, in the instant cases on hand, a criminal case has been registered and the same is pending before the Judicial Magistrate concerned. As per Section 206 of M.V. Act, the first 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 petitioners. 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 petitioners 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 petitioners. According to the petitioners, Section 206 of M.V. Act also empowers the authority to issue the temporary acknowledgment. Therefore, the writ petitioners can approach the authority to seek temporary acknowledgment under Section 206 of the Motor Vehicle Act.

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

i) The petitioners are permitted to make the applications 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 applications are received, the Regional Transport Officer concerned shall consider such applications and

pass appropriate orders for issuing temporary acknowledgment as per Section 206(3) of the M.V. Act within a period of one week thereafter.

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

8. With the above directions, these writ petitions are disposed of. No costs.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

To

- 1 Inspector of Police
Koovathur police Station,
Kancheepuram District.
- 2 The Licensing authority cum
Regional Transport Officer,
Mathuranthagam,
Kancheepuram District
- 3 Inspector of Police
Tiruchengode police Station,
Namakkal District.
- 4 The Licensing authority cum
Regional Transport Officer,
Tiruchengode,
Namakkal District
- 5 Inspector of Police
Udumalpet police Station,
Tirupur District.

6 The Licensing authority cum
Regional Transport Officer,
Udumalpet,
Tirupur District.

+4cc to Mr.K.Hariharan, Advocate sr.nos.25257 to 25260
+1cc to Government Pleader sr.no.5578

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