

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 24.09.2019

PRONOUNCED ON : 26.09.2019

CORAM

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

Writ Petition No.26858 of 2019 and
W.M.P.No.26272 of 2019

S.Lazer

...

Petitioner

Vs

The Regional Transport Officer,
Regional Transport Office,
Tirupur South,
Tirupur District - 641 605.

...

Respondent

Prayer :- This Writ Petition is filed under Article 226 of the Constitution of India for a writ of Certiorari calling for the records in connection with procedure order No.27047 E3-19 on the file of the respondent dated 30.07.2019 and quash the same.

For Petitioner :Mr.R.Sivaraman

For Respondent :Mr.N.Inbanathan,
Additional Government Pleader

सत्यमेव जयते
ORDER

The petitioner's driving licence was seized by the respondent pending enquiry, with regard to the motor accident happened on 03.07.2019 at Avinashi Palayam causing death of a two wheeler rider. To the show cause notice, the petitioner has given his explanation on 30.07.2019. Based on the explanation, the respondent has passed order suspending the driving licence temporarily between 05.07.2019 and 04.01.2020. The said order is impugned in this writ petition.

2.The learned counsel for the petitioner would submit that the driving licence cannot be suspended temporarily unless the petitioner is held guilty and convicted by a Court. The

respondent has passed the impugned order without Authority and without considering his representation. In support of his submission, the learned counsel would rely upon the judgment of this Court rendered in V.Subramani vs. The Regional Transport Officer (W.P.No.37249 of 2016 dated 24.11.2016).

3.Per contra, the respondent has filed counter affidavit wherein, it is stated that, on receipt of the complaint copy regarding the fatal accident caused by the petitioner, the Licensing Authority in exercise of power under Section 19(1) of the Motor Vehicle Act, 1988 (hereinafter referred to as "the Act") has issued a show cause notice to the petitioner on 22.07.2019. The petitioner appeared in person and gave his explanation on 30.07.2019. After giving him opportunity of hearing, the order of temporary suspension of licence was ordered. Considering the materials placed and the explanation given by the petitioner, the order passed on merits and in accordance with law under procedure contemplated under the Act. Hence, the writ petition has to be dismissed.

4.The learned Additional Government Pleader appearing for the respondent add that the judgment cited by the petitioner is in respect of revocation of licence before the criminal case concluded in conviction. Whereas, the present case is temporary suspension of driving licence under Section 19 of the Motor Vehicle Act. Hence, the order passed by the respondent cannot be faulted.

5.Since, there are some misunderstanding on the powers of the Licensing Authority in cancelling the driving licence permanently and suspension of licence, it is necessary to do a thorough analysis of law, on this point.

6.First, it is necessary to extract Sections 19, 21 & 22 of the Motor Vehicle Act, 1988:-

"19. Power of licensing Authority to disqualify from holding a driving license or revoke such license -

(1) If a licensing Authority is satisfied, after giving the holder of a driving license an opportunity of being heard, that he -

(a) is a habitual criminal or a habitual drunkard;
or

(b) is a habitual addict to any narcotic drug or psychotropic substance within the meaning of the Narcotic Drugs and Psychotropic Substances Act, 1985 (61 of 1985);or

(c) is using or has used a motor vehicle in the commission of a cognizable offence; or

(d) has by his previous conduct as driver of a motor vehicle shown that his driving is likely to be attended with danger to the public; or

(e) has obtained any driving any driving license or a license to drive a particular class or description of motor vehicle by fraud or misrepresentation; or

(f) has committed any such act which his likely to cause nuisance or danger to the public, as may be prescribed by the Central Government, having regard to the objects of this Act; or

(g) has failed to submit to, or has not passed, the tests referred to in the provision to sub-section (3) of section 22; or

(h) being a person under the age of eighteen years who has been granted a learner's license or a driving license with the consent in writing of the person having the care of the holder of the license and has ceased to be in such care,

it may, reasons to be recorded in writing, make an order-

(i) disqualifying that person for a specified period for holding or obtaining any driving license to drive all or any classes or descriptions of vehicles specified in the license; or

(ii) revoke any such license.

(2) Where an order under sub-section (1) is made the holder of a driving license shall forthwith surrender his driving license to the licensing Authority making the order, if the driving license has not already been surrendered, and the licensing Authority shall,-

(a) if the driving license is a driving license issued under this Act, keep it until the disqualification has expired or has been removed, or

(b) if the not a driving license issued under this Act, endorse the disqualification upon it and sent it to the licensing Authority by which it was issued; or

(c) in the case of revocation of any license, endorse the revocation upon it and if it is not the Authority which issued the same, intimate the fact of revocation to the Authority which issued that license.

Provided that where the driving license of a person authorises him to drive more than one class or description of motor vehicles and the order, made under sub-section (1) disqualifies him from driving any specified class or description of motor vehicles, the licensing Authority shall endorse the disqualification upon the driving license and return the same to the holder.

(3) Any person aggrieved by an order made by a licensing Authority under sub-section (1) may, within thirty days of the receipt of the order, appeal to the prescribed Authority, and such appellate Authority shall give notice to the licensing Authority and hear either party if so required by that party and may pass such order as it thinks fit and an order passed by any such appellate Authority shall be final.

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21. Suspension of driving license in certain cases-

(1) where, in relation to a person who had been previously convicted of an offence punishable under section 184, a case is registered by a police officer on the allegation that such person has, by such dangerous driving as is referred to in the said section 184, of any class or description of motor vehicle caused the death of, or grievous hurt to, one or more persons, the driving license held by such person shall in relation to such class or description of motor vehicle become suspended-

(a) for a period of six months from the date on which the case is registered, or

(b) if such person is discharged or acquitted before the expiry of the period aforesaid, until such discharge or acquittal as the case may be.

(2) Where by virtue of the provisions of sub-section (1), the driving license held by a person becomes suspended, the police officer, by whom the case referred to in sub-section (1) is registered, shall bring such suspension to the notice of the Court competent to take cognizance of such offence, and thereupon, such Court shall take possession of the driving license, endorse the suspension thereon and intimate the fact of such endorsement to the licensing Authority by which the license was granted or last renewed.

(3) Where the person referred to in sub-section (1) is an acquitted or discharged the Court shall cancel the endorsement on such driving license with regard to the suspension thereof.

(4) If a driving license in relation to a particular class or description of motor vehicles is suspended under sub-section (1), the person holding such license shall be debarred from holding or obtaining any suspension of the driving license remains in force.

22. Suspension or cancellation of driving license on conviction-

(1) Without prejudice to the provisions of sub-section (3) of section 20 where a person, referred to in sub-section (1) of section 21, is convicted of an offence of causing, by such dangerous driving as is referred to in section 184 of any class or description of motor vehicle the death of, or grievous hurt to, one or more person, the Court by which such person is convicted may cancel, or suspend for such period as it may think fit, the driving license held by such person is so far as it relates to that class description of motor vehicle.

(2) Without prejudice to the provisions of sub-section (2) of section 20, if a person, having been previously convicted of an offence punishable under section 185, is again convicted of an offence punishable under that section, the Court, making such subsequent conviction, shall, by order, cancel the driving license held by such person.

(3) If a driving license is cancelled or suspended under this section, the Court shall take the driving license in its custody, endorse the cancellation or, as the case may be, suspension, thereon and send the driving license so endorsed to the Authority by which the license was issued or last renewed and such Authority shall, on receipt of an license, keep the license in its safe custody, and in the case of a suspended license, return the license to the holder thereof after the expiry of the period of suspension on an application made by him for such return:

Provided that no such license shall be returned unless the holder thereof has, after the expiry of the period of suspension, undergone and passed, to the satisfaction of the licensing Authority by which the license was issued or last renewed, a fresh test of competence to drive referred to in sub-section (3) of section 9 and produced a medical certificate in the same form and in the same manner as is referred to in sub-section (3) of section 8.

(4) If a license to drive a particular class or description of motor vehicles is cancelled or suspended under this section, the person holding such a license shall be debarred from holding, or obtaining, any license to drive such particular class or description of motor vehicles so long as the cancellation or suspension of the driving license remains in force."

7. In *P. Sethuram v. The Licensing Authority, The Regional Transport Officer, Dindigul (Madurai Bench)* (2010 Writ L.R 100), this Court has held that, it is not permissible for the Regional

Transport Officer to suspend the driving licence immediately upon occurrence of an accident or without issuance of show cause notice presuming negligence against the Driver. Procedure established by law ought to be followed and finding from the criminal Court on a conviction may be supportive of such suspension.

8.The said judgment has been wrongly understood by some of the licence holders that the Licensing Authority in no circumstances can suspend licence temporarily or disqualify a person holding licence.

9.In law, If any of the eight circumstances which is stated under Section 19 of the Motor Vehicles Act, satisfied then, the Licensing Authority can disqualify a person from holding licence however, he can do so only after affording an opportunity to invoke the power under Section 19. Conviction in a criminal case is not a sine qua non. It is only when the Licensing Authority proposed to invoke the power under Section 21 of the Act, the conviction under Section 184 of the Act is a mandatory requirement.

10.As far as the power of Licensing Authority under Section 19(1) of the Act is concerned, if he is of the opinion after enquiry that, the licensee is using or used the motor vehicle for any commission of cognizable offence under Section 19(1)(c) of the Act or, he has committed such act likely to cause nuisance or danger to public as may be prescribed by the Central Government, having regard to the object of this Act, under section 19(1)(f) of the Act, he can disqualify the person/licensee from holding the licence for a specific period.

11.On many occasions, this Court has found that the Licensing Authority retain the driving licence of Drivers particularly Transport Corporation Drivers who involved in accident.

12.Order under Section 21 of the Act before conviction in a criminal case for offences under Section 184 of the Act is not legally sustainable; while exercising power under Section 19 of the Act, they are supposed to cause notice, in the manner known to law; give them opportunity to explain and thereafter, the Licensing Authority has to form opinion and pass orders in exercise of power under Section 19 of the Act.

13.The Courts can interfere if there is any violation of the procedure stated in Section 19 of the Act. In some cases, the Licensing Authority has erroneously invoked the power under Section 21 of the Act for temporary cancellation of licence even before the criminal case is concluded in conviction of the licensee. In such circumstances, the Court has entertained and quashed the order of suspension of licence. So, in order to streamline the powers exercised by the Licensing Authority in exercise of the power under Section 19 of the Act, this Court is bound to give the following directions:-

“(i)The power exercised under Section 19 of the Act and power exercised under Section 21 of the Act are on different circumstances. Section 21 of the Act can be invoked only after rash and negligent driving of the licensee is proved beyond the doubt before the court of law and leading to his conviction. Whereas, Section 19 of the Act can be invoked by Licensing Authority even without any criminal case is pending, if there are materials before him to show that the vehicle has involved in a criminal case or in a case pending or the Driver has caused or likely to cause danger to the public.

(ii)Whenever, the Licensing Authority exercise the power under Section 19(1) of the Act, he has to first ensure that the proper opportunity is given to the licensee and after getting his explanation, if he is satisfied that the act of the licensee has caused nuisance or danger to the public then, he can pass appropriate order. Without affording opportunity, no order has to be passed.

(iii)Whenever, the licence of a Driver is retained, if the Licensing Authority intends to proceed under Section 19 of the Act, such proceeding has to be initiated within a period of 15 days from retention of the licence. The enquiry proceedings, shall be concluded, within a period of 30 days from the date of causing notice seeking explanation.

(iv)In this case, the respondent has already passed an order of temporary suspension of licence. If the petitioner is aggrieved, he is at liberty to work out his remedy to prefer appeal under Section 19(3) of the Act before the appellate Authority.”

14.With the above directions, the writ petition is disposed of. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Asst.Registrar (Insp cell)

/true copy/

Sub Asst. Registrar

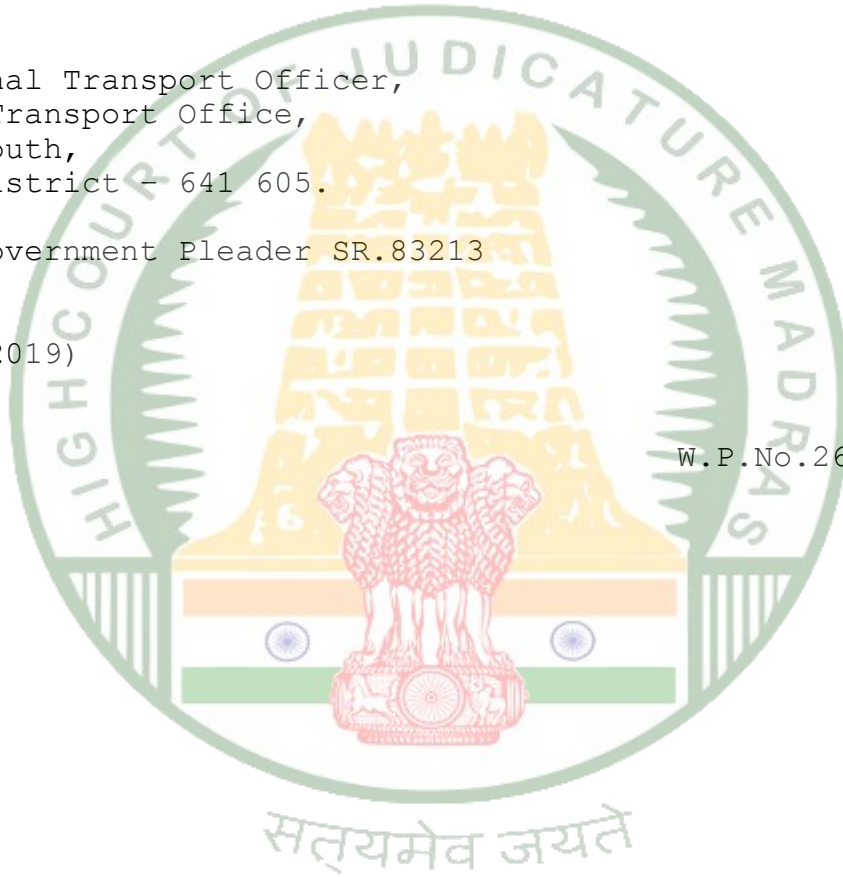
jbm
To

The Regional Transport Officer,
Regional Transport Office,
Tirupur South,
Tirupur District - 641 605.

+1cc to Government Pleader SR.83213

PP(CO)
CB(30/09/2019)

W.P.No.26858 of 2019



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