

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.02.2020

CORAM

THE HON'BLE MR. JUSTICE P.D. AUDIKESAVALU

W.P. No. 34002 of 2019

T.M. Elumalai

... Petitioner

-vs-

1. The Inspector of Police,
Maraimalai Nagar Police Station,
Kancheepuram District.
 2. The Licensing Authority cum Regional Transport Officer,
Chengalpattu,
Kancheepuram District.
- ... Respondents

Prayer:- Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus, directing the Second Respondent herein to return the original driving licence (DL No. TN 32 Y 1998 0000891) to the Petitioner forthwith.

For Petitioner :Mr. K. Hariharan

For Respondents:Mr. R. Venkatesh, Government Advocate

O R D E R

Heard Mr. K. Hariharan, Learned Counsel for the Petitioner, Mr. R. Venkatesh, Government Advocate appearing for the Respondents and perused the materials placed on record, apart from the pleadings of the parties.

2. The Petitioner is a driver in the Tamil Nadu State Transport Corporation and while on duty, the bus bearing registration no. TN 21 N 1941 driven by him had met with an accident on 09.11.2019. The Police Officer investigating the accident had seized the driving licence of the Petitioner on 09.11.2019 and forwarded the same to the Licensing Authority, and despite representation made by him, it had not been returned to him. In that backdrop, relying on the decision of the Division Bench of this Court in P. Sethuram -vs- Licensing

Authority, Regional Transport Officer, Dindigul (2010 WLR 100) holding that the provisions of the Motor Vehicles Act, 1988, (hereinafter referred to as 'the Act' for short) do not empower the Licensing Authority to suspend or revoke a driving licence for a first offence, the Petitioner has filed this Writ Petition for a direction to the Licensing Authority to return his driving licence.

3. Learned Special Government Pleader appearing for the Respondent submits that certain amendments have been made to the Act, which have come into force from 01.09.2019 onwards and clause (4) in Section 206 and clause (1-A) in Section 19 have been inserted to the Act, which have bearing to the contentions raised in the Writ Petition and read as follows:-

"206. Power of police officer to impound document:-

.....

(4) A police officer or other person authorised in this behalf by the State Government shall, if he has reason to believe that the driver of a motor vehicle has committed, an offence under any of Sections 183, 184, 185, 189, 190, 194-C, 194-D or 194-E, seize the driving licence held by such driver and forward it to the licensing authority for disqualification or revocation proceedings under Section 19:

Provided that the person seizing the licence shall give to the person surrendering the licence a temporary acknowledgement therefor, but such acknowledgement shall not authorise the holder to drive until the licence has been returned to him."

"19. Power of licensing authority to disqualify from holding a driving licence or revoke such licence:-

.....

(1-A) Where a licence has been forwarded to the licensing authority under sub-section (4) of Section 206, the licensing authority, if satisfied after giving the holder of the driving licence an opportunity of being heard, may either discharge the holder of a driving licence or, it may for detailed reasons recorded in writing, make an order disqualifying such person from holding or obtaining any licence to drive all or any class or description of vehicles specified in the licence:-

(a) for a first offence, for a period of three months;

(b) for a second or subsequent offence, with

revocation of the driving licence of such person:

Provided that where a driving licence is revoked under this Section, the name of the holder of such driving licence may be placed in the public domain in such manner as may be prescribed by the Central Government."

It is submitted that in view of the same, the lacunae highlighted by the Division Bench of this Court no longer exists, and the impugned action of seizing the driving licence of the driver of the vehicle involved in an accident by the Police Officer and forwarding it to the Licensing Authority, now has statutory backing and as such, that decision of the Division Bench of this Court would not have any applicability in cases where the accident has occurred after the amendments to the Act have come into force, as in the present one. It is also informed that pursuant to the recommendations made by the Committee on Road Safety appointed by the Hon'ble Supreme Court of India, after issuing Show Cause Notice dated 20.11.2019, the Licensing Authority by order No. 50430/A3/2019 dated 03.02.2020 has suspended the driving licence of the Petitioner for the period from 09.11.2019 to 08.05.2020, and a copy of the same has been produced, which is placed on record. Learned Counsel for the Petitioner acknowledges its receipt.

4. In response to the aforesaid submissions made, Learned Counsel for the Petitioner highlights that the aforesaid order of suspension dated 03.02.2020 passed by the Licensing Authority has been purported to have been made under clauses (1)(d) and (f) in Section 19 of the Act read with Rule 21 of the Central Motor Vehicles Rules, 1989, and not in the exercise of power conferred by clause (1-A) in Section 19 of the Act. He further contends that even in clause (1-A) in Section 19 of the Act, the Licensing Authority has been empowered to disqualify a person from holding driving licence for a first offence for a period of three months and as the driving licence of the Petitioner has been seized on 09.11.2019, the aforesaid period of three months has also now lapsed, and the suspension of licence for a period exceeding that limit is without jurisdiction and the Licensing Authority would have to return the driving licence to the Petitioner. It is further pleaded that on account of seizure of the driving licence, the Petitioner is out of employment and any further delay in returning his driving licence causes hardship for his livelihood and as such, expeditious decision would have to be taken by the Licensing Authority in the matter.

5. Having regard to the aforesaid submissions made, this Court without expressing any view on the correctness or entitlement of the claim made on behalf of the Petitioner, leaves it open to

the Petitioner to impeach the order dated 03.02.2020 passed by the Licensing Authority suspending the driving licence of the Petitioner before the proper forum in the manner recognized by law.

6. The Writ Petition is disposed on the aforesaid terms. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

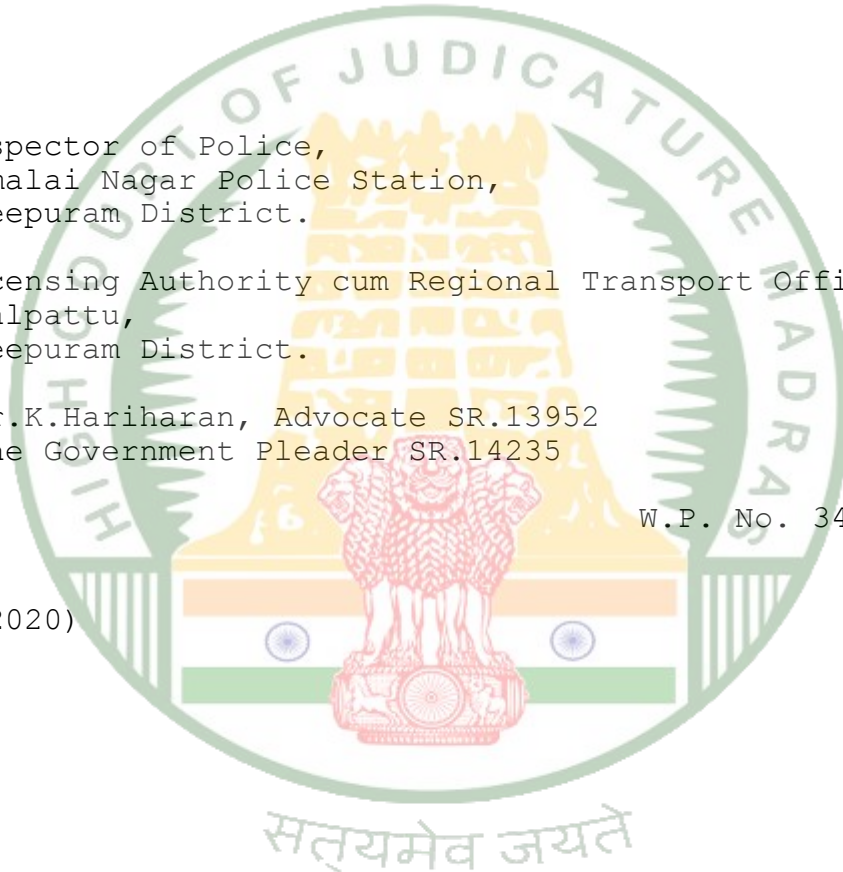
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To

1. The Inspector of Police,
Maraimalai Nagar Police Station,
Kancheepuram District.
2. The Licensing Authority cum Regional Transport Officer,
Chengalpattu,
Kancheepuram District.

+1cc to Mr.K.Hariharan, Advocate SR.13952
+1cc to the Government Pleader SR.14235

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GJ(CO)
CB(04/03/2020)



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