

19th July,
2022
(AK)
05

W.P.A 14318 of 2022

Smt. Priyasha Bhattacharyya
Vs.
The State of West Bengal and others

Mr. Phiroze Edulji
Ms. Amrita Panja Moulick
...for the petitioner.

Mr. Amal Kumar Sen
Mr. Jaladhi Das
...for the State.

The petitioner prays for quashing of an order dated 20.5.2022 passed by the Assistant Commissioner of Police, Traffic Department, Kolkata. By the impugned order, the Driving Licence of the petitioner was suspended for 90 days from the date of interception. The petitioner prayed for release of the Driving Licence by a mail of 21.5.2022 by which the petitioner also attached copies of proof of payment of the penalty.

The documents on record show that the petitioner's car was intercepted on 19.5.2022 while the petitioner was driving from South City Mall to her residence in New Alipore. The petitioner's car was intercepted by the Traffic Sergeant (respondent no. 6) at the Southern Avenue-Lake Gardens interception. The photograph of the car with the registration number gives the particulars of violation and

shows that the petitioner was driving at a speed of 62.1 km/hr whereas the speed limit on the particular road was 30 km/hr.

Learned counsel appearing for the petitioner and the State have made their arguments on the legality of the action of the police to suspend the Driving Licence of the petitioner based on the relevant provisions of The Motor Vehicles Act, 1988 and the Notification issued by the Transport Department of the Government of West Bengal. Counsel appearing for the petitioner also places an order of a Coordinate Bench dated 4.7.2019 in WP No.11780(W) of 2019 where, on similar facts, the Court gave interim relief to the petitioner. Counsel also relies on a judgment of the Delhi High Court reported in *AIR 2016 Delhi 162* in support of the contention that the police does not have the authority to suspend a driving licence.

Section 2(20) of the Motor Vehicles Act, 1988 defines a “licensing authority” to mean an authority empowered to issue licences under Chapter II or Chapter III, as the case may be. Chapter II deals with licensing of drivers of motor vehicles and Chapter III deals with licensing of conductors of stage carriages. Chapter II is relevant for the present proceeding. Section 3 of the Act debars a person from driving a motor vehicle in any public place unless the person holds an effective driving licence issued for the purpose of authorising the person

to drive the vehicle. Section 19 entitles the licensing authority to disqualify from holding a driving licence or revoking a driving licence. Section 19 lists 8 conditions (a-h) for disqualification or revocation of licence upon satisfaction of the licensing authority and after giving the holder of the driving licence an opportunity of being heard. The order passed by the licensing authority must also contain reasons and be given in writing. Section 19(1A) which was brought into effect from 2019 provides for a situation where a licence has been forwarded to the licensing authority under section 206(4) whereupon the licensing authority may either discharge the holder of a driving licence or disqualify such person from holding or obtaining any licence after giving him an opportunity of being heard.

Chapter VIII provides for limits of speed in relation to control of traffic. Section 112 empowers the State Government to issue appropriate notifications for restricting the speed of motor vehicles in the interest of public safety and for fixing maximum or minimum speed limits as it may think fit. Section 206 empowers a police officer to impound document. Sub-section (4) of section 206 empowers the police officer to seize the driving licence held by the driver if the officer has reason to believe that the driver of a motor vehicle has committed an offence under section 183, 184 and other sections

mentioned in 206(4). Sections 183 and 184 relate to driving at excessive speed and driving dangerously respectively. The police officer shall then forward the seized licence to the licensing authority for disqualification or revocation under section 19.

The above provisions of the Motor Vehicles Act, 1988 show that only a licensing authority can disqualify a person from holding or obtaining a driving licence or revoke such licence [19(1)(i) and (ii)]. The order of disqualification may also be given by the licensing authority under 19(1A) of the Act. Licensing authority has been defined in section 2(20) and does not include any authority other than an authority empowered to issue licences. Section 206 refers to the power of the licensing authority to disqualify or revoke under section 19 and limits the power of a police officer to impound a document; this is by restricting the power of the police only to seize the driving licence and forward it to the licensing authority for disqualification or revocation under section 19. The Notification dated 23.11.2016 relied upon by the State empowers the Deputy Commissioner of Police (Traffic) and Superintendent of Police of the Districts to act in terms of section 19 for disqualifying offending drivers or revoking their licences if it is found necessary for the purpose of ensuring effective control of traffic under Chapter VIII of the Act. This

Notification also finds mention in the order of the Deputy Commissioner of Police, Traffic dated 15.12.2016. Although, this Notification refers to section 19 of the Act, there is no evidence whether the relevant provisions of the West Bengal Motor Vehicles Rules, 1989 have been amended to reflect the authorization given to the Police. The Notification in fact mentions that the Rules will be suitably amended in due course.

Since the Motor Vehicles Act gives the power, in no uncertain terms, to the licensing authority and limits the power of the police to disqualify a person or revoke his licence under the Act, this Court is of the view that a later Notification issued by the State Transport Department cannot override the provisions of the parent Act. This is particularly so where the effect of the subsequent Notification alters and modifies the power of the licensing authority under the Act, particularly under sections 19 and 206 thereof. The directions given to the State / U.Ts by the Supreme Court Committee on Road Safety dated 18.08.2015 is by way of a recommendation and for the object of road safety. The communication does not seek to alter the provisions of the Motor Vehicles Act. Notification under a provision of any statute must be in aid of and in sync with the statutory scheme. The Notification in the present case results in confusion as to the licence-impounding powers of the authority mentioned in the Act.

The resulting uncertainty must hence be resolved in favour of the petitioner.

As the Court is of the view that the Assistant Commissioner of Police, Traffic Department did not have the power to suspend the licence of the petitioner, the impugned order of 20.05.2022 is quashed. The concerned respondents shall release the Driving Licence of the petitioner within a period of 2 weeks from the date of communication of this order.

Although relief has been given to the petitioner in the present case strictly on the basis of the relevant statutory provisions, this Court is however of the view that the reason given in paragraph 3 of the writ petition for violating the speed-limit of the road trivializes the issue of road safety. The petitioner has admitted to over-speeding and has also come before this Court almost after 2 months from the date of the impugned order. The excuse for over speeding is no ground at all since the petitioner should have a sufficient eco-system in place and not become a risk to other travelers on the road.

WPA No. 14318 of 2022 is disposed of with the above directions and observations.

Urgent Photostat certified copy of this order, if applied for, be supplied to the parties after fulfillment of the requisite formalities.

(Moushumi Bhattacharya, J.)