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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.03.2022

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

W.P.No.5375 of 2022
and
W.M.P.No.5469 of 2022

D.Madhan Kumar

.. Petitioner

Vs.

The Regional Transport Authority,
Office of the Regional Transport Authority,
Pollachi - 642 001.

.. Respondent

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorarified Mandamus, calling for the records pertaining to the order dated 27.01.2022 passed by the Respondent in Show Cause No.TN41/2021/1002, quash the same and consequently direct the Respondent to return the petitioner forthwith his original license bearing No.TN41X20070003130 without any endorsement, within a specified time as fixed by this Court.

For Petitioner : Mr.V.Ajoy Khose

For Respondent : Mr.T.K.Saravanan
Government Advocate

O R D E R

This Writ Petition is filed challenging the order dated 27.01.2022 passed by the respondent in Show Cause No.TN41/2021/1002 and consequently, direct the respondent to return the petitioner forthwith his original license bearing No.TN 41X20070003130 without any endorsement, within a specified time as fixed by this Court.

2.By consent of the learned counsel appearing for the petitioner as well as the learned Government Advocate, who takes notice for the respondent, the Writ Petition is taken up for final disposal at the admission stage itself.



3.The petitioner is working as Driver in Tamil Nadu State Transport Corporation (Coimbatore) Limited from the year 2015 and was working at Palani Depot. On 16.10.2021, he was assigned duty to ply the bus between Palani and Coimbatore. At about 09.15 P.M., while he was nearing Karbhaka Vinayaka Mill, the rider of the motorcycle bearing Registration No.TN 57 BJ 1143, dashed on the bus and due to the same, both the rider and pillion rider of the motorcycle died on the spot. However, based on the complaint given by the wife of the victim, an F.I.R. was registered against the petitioner in Crime No.338 of 2021 on the file of the Gomangalam Police Station, Coimbatore District under Sections 279 and 304-A of I.P.C on 17.10.2021 and the original driving license of the petitioner was seized. Based on the letter and report sent by the Police to the respondent on 20.10.2021, the respondent issued a show cause notice dated 30.11.2021, directing the petitioner to appear in person within 10 days from the date of receipt of the said show cause notice. Therefore, the petitioner submitted his explanation in person on 31.12.2021, before the respondent and stated that he was not responsible for the alleged accident. The petitioner further stated that the F.I.R. was falsely registered against him without any enquiry, the investigation is pending and requested the respondent to drop further proceedings and to return the original driving license which was seized by the Police from Gomangalam Police Station. Without giving any opportunity of hearing, the respondent issued the impugned order dated 27.01.2022, suspending the original driving license of the petitioner for a period of six months from 19.10.2021 to 18.04.2022, invoking Section 19(1)(d) & (f) of the Motor Vehicles Act, 1988. Immediately after receiving the impugned order, the petitioner gave a representation to the respondent on 10.02.2022, requesting him to return the original driving license. No action was taken on the said representation. Hence, challenging the said impugned order dated 27.01.2022, the petitioner has come out with the present Writ Petition.

4.The learned counsel appearing for the petitioner submitted that F.I.R. registered against the petitioner is pending and criminal case is not ended against the petitioner. Only if the petitioner is convicted for cognizable offence, the respondent can suspend the license of the petitioner. The respondent has pre-determined the issue. In support of his contention, the learned counsel for the petitioner relied on the judgment reported in 2010 Writ L.R. 100 [P.Sethuram Vs. The Licensing Authority, The Regional Transport Officer, The Regional Transport Office, Dindigul] and prayed for allowing the Writ Petition. The relevant portion of the said judgment reads as follows:



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"4. Though there is, in fact, an alternative remedy of appeal available under Section 19(3) of the Act, a fundamental question is raised as to whether the mere registration of a criminal complaint and the involvement of a driver in a road traffic accident is enough to invoke the power to suspend or revoke a driving licence under the Act. Since a lot of cases of this nature have come up, we deem it fit not to send the appellant to avail the alternative remedy.

5. Section 19(1) of the Motor Vehicles Act, 1988, empowers the Licensing Authority to disqualify a person for holding or obtaining any driving licence for a specified period or to revoke any such licence. Similarly, a Court which convicts a person for an offence under the Act, is empowered by Section 20(1) to disqualify such person from holding a driving licence for a specified period. Section 21 makes a driving licence become suspended, if the holder of the licence had been previously convicted of an offence punishable under Section 184 and a case had been registered against him on the allegation of causing the death or grievous injury to one or more persons by dangerous driving. Section 22 empowers the Court to cancel or suspend the driving licence, upon conviction of a person for an offence under Section 184.

6. Obviously, Sections 20 and 22 are not applicable to the case on hand, since the action impugned in the writ petition did not arise out of the disqualification ordered by a Court. There is no allegation that the appellant was previously convicted for an offence under Section 184. Therefore Section 21 also has no application to the case on hand. Consequently, the only provision to which the respondent could resort to is Section 19.

7. Section 19 of the Motor Vehicles Act, 1988, reads as follows:-

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

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



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(a) is a habitual criminal or 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 licence or a licence to drive a particular class or description of motor vehicle by fraud or misrepresentation; or

(f) has committed any such act which is likely to cause nuisance or danger to 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 proviso to sub-section (3) of section 22; or

(h) being a person under the age of eighteen years who has been granted a learners licence or a driving licence with the consent in writing of the person having the care of the holder of the licence and has ceased to be in such care, it may, for reasons to be recorded in writing, make an order-

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



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(ii) revoke any such licence.

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

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

(b) if it is not a driving licence issued under this Act, endorse the disqualification upon it and send it to the licensing authority by which it was issued; or

(c) in the case of revocation of any licence, 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 licence:

Provided that where the driving licence 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 licence 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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8. A bare reading of Section 19(1) shows that the Licensing Authority has the power to revoke any licence or disqualify a person for a specified period from holding or obtaining a driving licence, if any of the contingencies prescribed in Clauses (a) to (h) of Sub Section (1) of Section 19 arises. Moreover, the power under Section 19(1) can be invoked only after giving an opportunity of being heard to the holder of the licence and for reasons to be recorded in writing.

9. But in the case on hand, the licence of the appellant was impounded or retained by the police immediately after the accident. Thereafter, the respondent issued the show cause notice under Section 19(1) of the Act, after getting a report from the police. Therefore the impounding of the licence has actually preceded the issue of show cause notice.

10. Apart from the above, there is no allegation, either in the notice or in the order impugned in the writ petition, that the appellant is a habitual criminal or habitual drunkard, so as to attract Clause (a) of Section 19(1) of the Act. Similarly, neither the show cause notice nor the order impugned in the writ petition, imputes the appellant with any of the ingredients necessary under Clauses (b) to (h) of Sub Section (1) of Section 19 of the Act. Except stating that as per the report of the Inspector of Police, the appellant was guilty of rash and negligent driving, the impugned order does not indicate the category in Clauses (a) to (h) of Section 19(1), under which the case of the appellant would fall.

11. The respondent has, in the impugned order, pre-concluded the issue that the appellant is guilty of rash and negligent driving, even before the Criminal Court or the Motor Accident Claims Tribunal went into the issue. Even to invoke Section 19(1)(c), it is necessary to show that the Motor Vehicle is used in the commission of a cognizable offence. Without making a specific averment regarding the same, the order suspending the driving licence cannot be taken to be passed after due application of mind.



after taking note of the availability of appellate remedy as the Regional Transport Officer has pre-determined the issue.

8.The ratio in the above judgment is squarely applicable to the facts of the present case. In the present case also, the criminal case is pending and the petitioner is not convicted for any cognizable offence. The petitioner is not convicted by any competent Criminal Court that he only drove the bus in a rash and negligent manner endangering public safety and caused the accident. Thus, the impugned order passed by the 1st respondent is non-est and illegal.

9.For the above reasons, the impugned proceedings dated 27.01.2022 passed by the respondent in Show Cause No.TN41/2021/1002, suspending the driving license of the petitioner for a period of six months from 19.10.2021 to 18.04.2022 is quashed and the Writ Petition is allowed. The respondent is directed to return the original Driving License to the petitioner within a week from the date of receipt of a copy of this order. However, it shall not preclude the respondent from initiating any action, if any of the contingencies specified in Motor Vehicles Act, arises later or if any of the Rules as prescribed by the Central Government, in pursuance of the provisions of the Act, are violated. Consequently, connected Miscellaneous Petition is closed. No costs.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

krk

To

The Regional Transport Authority,
Office of the Regional Transport Authority,
Pollachi - 641 001.

+1cc to Mr.V.Ajoy Khose, Advocate, S.R.No.20802
+1cc to the Government Pleader, S.R.No.21039

W.P.No.5375 of 2022

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