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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.03.2022

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

W.P.NO.6386 OF 2022
AND W.M.P.NO.6465 OF 2022

B.Shanmugavel

.. Petitioner

Vs.

1. Inspector of Police,
TIW, Poonamallee Police Station,
Chennai 56.
2. The Licensing Authority cum-
Regional Transport Officer,
Ambattur,
Chennai 53.

.. Respondents

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 of the 2nd respondent made in Se.Mu.order No.3867/A3/2022 dated 24.02.2022 suspending the driving license of the petitioner for a period of six months from 28.01.2022 to 28.07.2022 and to quash the same, consequently direct the 2nd respondent to delete the endorsement of suspension of the license and return the original driving license to the petitioner forthwith.

For Petitioner : Mr.K.Hariharan

For Respondents : Mr.R.Kumaravel
Additional Government Pleader

O R D E R

This Writ Petition is filed calling for the records of the 2nd respondent made in Se.Mu.order No.3867/A3/2022 dated 24.02.2022, suspending the driving license of the petitioner for a period of six months from 28.01.2022 to 28.07.2022 and to



quash the same, consequently direct the 2nd respondent to delete the endorsement of suspension of license and return the original driving license to the petitioner forthwith.

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

3. The petitioner is working as a Driver in the Metropolitan Transport Corporation of Ambattur Depot. On 28.01.2022, while he was driving the Bus bearing Registration No. TN-01/N-9635, an accident occurred and due to which, a motorcycle rider died. The 1st respondent registered an FIR against the petitioner in Crime No. 67 of 2022 under Sections 279 & 304 - A of IPC and seized the driving license of the petitioner. The 1st respondent forwarded the driving license of the petitioner to 2nd respondent and recommended to cancel the driving license of the petitioner. The 2nd respondent issued a show cause notice dated 03.02.2022 as to why the driving license of the petitioner should not be cancelled. The petitioner appeared before the 2nd respondent on 23.02.2022 and submitted his explanations. The 2nd respondent, without considering the explanations, suspended the driving license of the petitioner for six months from 28.01.2022 to 28.07.2022. The petitioner has come out with the present Writ Petition challenging the said order.

4. The learned counsel appearing for the petitioner submitted that FIR 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 2nd respondent can suspend the license of the petitioner. The 2nd 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:

"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.



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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-

(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



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(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

(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,-



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(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."

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



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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.

12. In view of the above, the Writ Appeal is allowed, the order of the learned Judge is set aside and the writ petition is allowed. The respondent is directed to return the driving licence of the appellant, within a week 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 Clauses (a) to (h) of Section 19(1) of the Act, arises later or if any of the Rules as prescribed



by the Central Government in pursuance of Section 19(1)(f) are violated. No costs. Consequently, connected miscellaneous petition is closed."

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5. Mr. R. Kumaravel, learned Additional Government Pleader appearing for the respondents submitted that the petitioner caused fatal accident and it is a cognizable offence. In view of the same, the 2nd respondent suspended the petitioner's license. Against the impugned order, an appellate remedy is available under section 19 (3) of the Motor Vehicles Act, 1988. Without availing the appellate remedy, the petitioner has approached this Court by way of the present Writ Petition, which is not maintainable and prayed for dismissal of the Writ Petition.

6. Heard the learned counsel appearing for the petitioner as well as the learned Additional Government Pleader appearing for the respondents and perused the entire materials available on record.

7. From the materials on record, it is seen that on 28.01.2022, while the petitioner was driving the Bus, a fatal accident occurred and FIR is registered against the petitioner in Crime No. 67 of 2022. The said criminal case is pending and petitioner is not convicted for any cognizable offence. In similar facts, in the judgment reported in 2010 Writ L.R. 100 (referred to above) relied on by the learned counsel appearing for the petitioner, the Division Bench of this Court has held that the license can be suspended only when the driver is convicted for cognizable offence and pending criminal case, suspension of driving license is not valid. The respondents 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) of the Motor Vehicles Act, it is necessary to show that the Motor Vehicle is used in the commission of a cognizable offence and without making a specific averment regarding the same, the order suspending the driving license cannot be taken to be passed after due application of mind. In view of the above, the Division Bench quashed the order of the Regional Transport Officer, suspending the Driving License, even after taking note of the availability of appellate remedy as Regional Transport Officer has predetermined 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 impugned order shows the non-application of mind of the 2nd respondent as he has stated that explanation given by the petitioner is not acceptable/not



submitted explanation. This shows, in a mechanical manner, the 2nd respondent has passed the impugned order, which is non-est and illegal.

For the above reasons, the impugned order made in Se.Mu.order No.3867/A3/2022 dated 24.02.2022 suspending the driving license of the petitioner for a period of six months from 28.01.2022 to 28.07.2022 is quashed and the Writ Petition is allowed. The respondents are directed to return the 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 respondents 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. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

gsa

To

1. The Inspector of Police,
TIW, Poonamallee Police Station,
Chennai 56.
2. The Licensing Authority cum-
Regional Transport Officer,
Ambattur,
Chennai 53.

+1cc to Mr.K.Hariharan, Advocate, S.R.No.18685

W.P.No.6386 of 2022

SSV(CO)
PM/22/03/2022