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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.04.2022

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

W.P.No.9055 of 2022
and W.M.P.No.8851 of 2022

C.Kanagaraj

.. Petitioner

Vs.

The Licensing Authority,
Puthur Main Road,
Pellamedu,
Coimbatore South,
Coimbatore 641 004.

.. Respondent

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Mandamus directing the respondent to return forthwith the petitioner original driving license bearing No.TN 37 19870001785, without any condition and without any endorsement and within a specified time as may be fixed by this Court.

For Petitioner : Ms.H.Nandhini
for Mr.R.Krishnaswamy

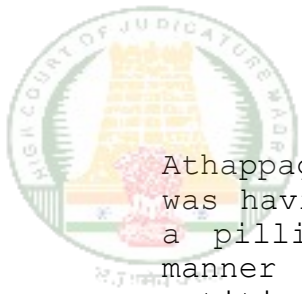
For Respondent : Mr.S.Arumugam
Government Advocate

O R D E R

This Writ Petition is filed by the petitioner for a direction to the respondent to return forthwith his original driving license bearing No.TN 37 19870001785, without any condition and without any endorsement and within a specified time as may be 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 a Driver in the Tamil Nadu State Transport Corporation (Coimbatore) Ltd. On 04.02.2022, while he was driving the Bus from Ukkadam and Sulur



Athappagoundenpudur, at about 7.30 a.m., a two wheeler rider who was having his two children on the front petrol tank, along with a pillion rider, drove the vehicle in a rash and negligent manner and in an attempt to overtake the Bus driven by the petitioner, lost his control and fell down near the left back wheel of the Bus. Due to the head injury, the rider and pillion rider of the two wheeler died on the spot. An FIR in Cr.No.45/2022 dated 04.02.2022 was registered against the petitioner under Sections 279, 337 and 304A of IPC. Based on the said FIR, the Inspector of Police, forcibly seized the petitioner's original driving license without any notice and without any order and handed over to the respondent. The respondent issued a show cause notice dated 11.02.2022 and the petitioner submitted his explanation on 04.03.2022. Whenever the petitioner approached the respondent office, they informed that license will not be returned for six months. As per Section 19 (1)(A) of the Act, license can be suspended only for a period of three months. The learned counsel appearing for the petitioner, without passing any order under Section 19(1) of the Act, either disqualifying or suspending or revoking the driving license of the petitioner, withholding the original driving license from 04.02.2022 is illegal, arbitrary and it is violation of Articles 14 and 21 of the Constitution of India. The learned counsel further submitted that criminal case against the petitioner is pending investigation in the FIR stage. The petitioner is not convicted by the competent Criminal Court for the offences mentioned in the FIR. Merely based on registration of FIR, the authorities have no power to withhold the driving license.

4. In support of his contention, the learned counsel for the petitioner relied on the following judgments and prayed for allowing the Writ Petition.

(i) 2010 Writ L.R. 100 [P.Sethuram Vs. The Licensing Authority, The Regional Transport Officer, The Regional Transport Office, Dindigul]:

"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



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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

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



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(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,-

(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



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(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 subsection (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 subsection (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 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



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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."

(ii) Order of the Madurai Bench of this Court dated



10.11.2020 made in W.P.(MD).No.15797 of 2020, [G.Arumugam Vs. The Regional Transport Officer, And Licensing Authority, Madurai North, Madurai and another], wherein the Madurai Bench of this Court has held as follows:

" 8.Admittedly, no final order has been passed by the first respondent under Section 19 of the Motor Vehicles Act impounding the licence of the petitioner. This being the case, the decisions relied upon by the learned counsel for the petitioner squarely applies to the facts of the instant case.

9.In the case on hand, even without passing any order for cancellation or suspension or revocation of the licence, the respondents have seized the driving licence of the petitioner. The petitioner is admittedly, employed as Driver in Tamil Nadu State Transport Corporation(Madurai) Ltd. He has to eke out his livelihood and therefore, without driving licence, he cannot continue his duty as a Driver with Tamil Nadu State Transport Corporation(Madurai)Ltd. Since no final order has been passed under Section 19 of the Motor Vehicles Act, the original licence of the petitioner will have to be necessarily returned back to the petitioner by the respondents.

10.For the foregoing reasons, this Court directs the respondents to return the petitioner's original driving licence bearing DL No.TN67 19980002634 to the petitioner, within a period of one week from the date of receipt of a copy of this order.

11.With the aforesaid direction, this writ petition is disposed of. No costs. Consequently, connected miscellaneous petition is closed."

5.The learned Government Advocate appearing for the respondent submitted that show cause notice was issued to the petitioner and the respondent will consider the representation of the petitioner and pass orders on the show cause notice within the time limit fixed by this Court.

6.Heard the learned counsel appearing for the petitioner as well as the learned Government Advocate appearing for the respondent and perused the entire materials available on record.

7.From the materials on record, it is seen that on 04.02.2022, while driving the Bus, accident occurred and FIR is registered against the petitioner in Crime No.45/2022. 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. In the present case, even without passing any order for cancellation or suspension or revocation of the licence, the respondent has seized the driving licence of the petitioner.

8. Considering the above facts and submissions of the learned counsel appearing for the petitioner as well as the learned Government Advocate appearing for the respondent, judgment of the Division Bench and order of Madurai Bench of this Court referred to above, the respondent is directed to return the original driving licence to the petitioner as early as possible, in any event within a week from today, i.e., on or before 19.04.2022, after getting necessary written undertaking and retaining photocopies of the original driving license and under due acknowledgement. The petitioner shall go over to the office of the respondent on any working day in the afternoon sessions between 02.00 P.M and 4.00 P.M and the original driving license shall be handed over to him under due acknowledgement.

9. It is made clear that the writ petitioner shall produce the original driving license as and when called for, make himself available for the criminal case to proceed and cooperate with the investigation.

With the above directions, this Writ Petition is disposed of. No costs.

Sd/-
Assistant Registrar (CS-VIII)

//True Copy//

Sub Assistant Registrar

gsa

To

The Licensing Authority,
Puthur Main Road,
Pellamedu,
Coimbatore South, Coimbatore 641 004.

+1cc to Mr.V.Ajoy Khose, Advocate, S.R.No.25200
+1cc to the Government Pleader, S.R.No.26144

W.P.No.9055 of 2022

BP (CO)
SB (19/04/2022)