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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.01.2022

CORAM

THE HONOURABLE MR.JUSTICE R.SURESH KUMAR

W.P. No.28063 of 2021
and
W.M.P. No. 29635 of 2021

P.Jeevarathinam

... Petitioner

-Vs-

1. The Regional Transport Officer,
(Licensing Authority),
Tambaram, Chennai - 600 045.
2. The Regional Transport Officer,
(Licensing Authority),
Thiruvanmaiur, Chennai - 600 041.

... Respondents

PRAYER : Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of Writ of Mandamus directing the respondents to forthwith return the petitioner's original driving license No.TN07Z19910000061 in the light of the order in W.P. No. 22578 of 2021 dated 22.10.2021 following the judgment reported in 2010 WLR 100 and in the light of the representation made by the petitioner on 03.12.2021.

For Petitioner : Mr.V.Vijay Shankar

For Respondents : Mr.V.Manoharan
Additional Government Pleader

O R D E R

The prayer sought for herein is for a Writ of Mandamus directing the respondents to forthwith return the petitioner's original driving license No.TN07Z19910000061 in the light of the order in W.P. No. 22578 of 2021 dated 22.10.2021 following the judgment reported in 2010 WLR 100 and in the light of the representation made by the petitioner on 03.12.2021.

2. The case of the petitioner is that, the petitioner was working as a Driver at the Metropolitan Transport Corporation Limited in Thiruvanmaiur Branch from 2007 onwards.

3. The petitioner while in duty, on 28.10.2021 was driving



the vehicle with Registration No.TN 01 8718 between Thiruvananthapuram and Tambaram and it met with an accident, due to which, a two wheeler rider died and therefore, it has become a fatal accident.

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4. The said issue since was reported to the Police, they registered an FIR at Chrompet Police Station in FIR No.308 of 2021 dated 28.10.2021 for the alleged offences punishable under Sections 279 and 304(A) of IPC.

5. Also the Police had seized the driving license of the petitioner and handed over to the respondent Regional Transport Officer.

6. In the criminal case, the investigation is yet to be completed. However, insofar as the driving license seized by the Police handed over to the Regional Transport Officer is concerned, the Regional Transport Officer has not conducted any enquiry however, he has retained the same without returning the driving license to the petitioner, which according to the petitioner is unlawful and unjustifiable, as such kind of retention of the driving license without authority of law is impermissible.

7. On these grounds, the present Writ Petition has been filed to issue a mandamus to the respondents to return back the driving license of the petitioner by considering his representation dated 03.12.2021. Therefore, the present Writ Petition has been filed with the aforesaid prayer.

8. Heard Mr.V.Vijay Shankar, learned counsel appearing for the petitioner who would submit that, the accident taken place on 28.10.2021 and on the same day, the driving license of the petitioner was seized and handed over to the Regional Transport Officer concerned, i.e., respondent herein. Without conducting any enquiry under Section 19 of the Motor Vehicles Act, 1988, since the respondents has retained the driving license of the petitioner which is impermissible or unlawful. Therefore, the petitioner is entitled for a direction by way of mandamus. Hence, the learned counsel seeks indulgence of this Court to issue a direction to the respondents to hand over the driving license to the petitioner pending decision to be taken in any enquiry to be contemplated in this regard by the respondents or pending decision of the criminal case, where the investigation is yet to be completed.

9. However, Mr.V.Manoharan, learned Additional Government Pleader appearing for the respondents would submit that, insofar as the power of the Regional Transport Officer to conduct an enquiry under Section 19 of the Act is concerned, which is



altogether a different issue which is no way connected with the criminal case pending against the petitioner and in this regard, the Regional Transport Officer can issue a show cause notice to the petitioner and after getting a reply and if need arises, after giving an opportunity of being heard to the petitioner, an enquiry can be completed and final order shall be passed under Section 19 of the Motor Vehicles Act by the respondent Regional Transport Officer and once such an order is passed depending upon the outcome of the order under the enquiry under Section 19 of the Act, a further decision can be taken whether the driving license of the petitioner can be return back or to be retained by suspending the same or impounding the same for a maximum period of six months by way of punishment as has been contemplated under the said provision of the Act.

10. I have considered the said rival submissions made by the learned counsel appearing for the parties and have perused the materials placed before this Court.

11. The issue raised in this Writ Petition is not a new one or first time has been raised before this Court, as number of such cases have already been dealt with by this Court and in one such case in W.P.(MD).No.13365 of 2021 where an exhaustive procedure, as has been pointed out by the learned Additional Government Pleader under Section 19 of the Motor Vehicles Act, 1988, has been considered and after considering the same, I passed an order where direction was given to the Licensing Authority to issue a show cause notice by initiating proceedings under Section 19 of the Act to the holder of the license, if not already issued and once such notice is issued within a time frame, the license holder should respond to the said show cause notice and on receipt of reply or show cause from the license holder, enquiry shall be completed at the earliest possible time by giving an opportunity to the license holder and accordingly to decide whether the license holder has violated any of the provisions of the Motor Vehicles Act as well as the Rules made thereunder and if so, what kind of penalty is to be imposed against him can also be decided. In case, the Licensing Authority, after such enquiry, comes to the conclusion that, there has been no violation on the part of the license holder, the license in question can be returned back to the license holder as for such action, there could be no further impediment.

12. In order to appreciate the said view taken by this Court, the relevant portion of the said order in the aforesaid judgment is quoted herein for easy reference.

"8.In respect of these kind of controversy, a number of orders had been passed by this Court where the law had been held that, without having resorted to a limited enquiry to be conducted in this regard



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and to come to a conclusion that the licence holder has committed any offence or violated any provisions of the Act as well as the rules made thereunder, the licence cannot be retained or revoked or the holder of the licence cannot be disqualified.

9. In this context, Section 19 of the Motor Vehicles Act reads thus:

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 a 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 ; 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 the 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 learner's 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



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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 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 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."

10.If we look at the provisions of Section 19 of the Act, it makes it clear that, if it is satisfied after giving the holder of the licence, an opportunity of being heard, if he has committed any offence or has made any violation, the licensing authority, for the reasons to be recorded in writing, can make an order disqualifying the person for a specified period for holding or obtaining any driving licence to drive any class or description of vehicle specified in the licence or revoke any such licence.

11.That apart, Sub~Section 1 (A) of Section 19 was recently inserted by Motor Vehicles Amendment Act, 2019 (Act 32 of 2019), which came into effect from 19.08.2019 under which, if a licence has been forwarded to the licensing authority under



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Sub~Section 4 of Section 206, the licensing authority if satisfied after giving holder of the driving licence, an opportunity of being heard may either discharge the holder of the driving licence or it may have detailed reasons recorded in writing make an order disqualifying such persons from holding or obtaining any licence all or any of the class or description of vehicle. For the first offence, such punishment shall be for a period of three months and for second and subsequent offence, the revocation shall be the penalty.

12. These are all the procedures contemplated under Section 19 of the Motor Vehicles Act.

13. Since the statutory duty cast upon the licensing authority that is the respondent herein, he has initiated such proceedings by issuing show cause notice on 19.07.2021 seeking show cause from the petitioner which had been properly responded by the petitioner by giving reply dated 20.07.2021. Now, the ball is in the Court of the respondent so as to immediately conduct an enquiry, of course a limited enquiry, to verify as to whether the petitioner had violated any provisions of the Act as well as the rules made thereunder or any other punishable offences have been committed by him.

14. In this context, it is to be reminded that, merely because a fatal accident had been reported where the vehicle driven by the petitioner is involved, it cannot be presumed that the petitioner has committed a punishable offence as that has to be decided only by the competent Court, where a case would be conducted by the concerned police. However, at this juncture, a limited enquiry can be undertaken by the respondent only to verify whether any provisions of the Act as well as the rules made thereunder had been violated by the petitioner. Only for the said purpose, enquiry as contemplated under Section 19 of the Act can go on and after completing such enquiry, if the respondent comes to a conclusion that none of the provisions of the Act as well as the rules has been violated, it is open to the respondent to release the licence to the petitioner. Therefore, after adopting this procedure as has been contemplated under Section 19 of the Act, needful can be done and the final order in this regard shall be passed by the respondent within a timeframe to be fixed by this Court.



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15. In that view of the matter, this Writ Petition is disposed of with the following order:- that there shall be a direction to the respondent to consider the reply given by the petitioner dated 20.07.2021, pursuant to the show cause notice dated 19.07.2021 issued by the respondent and in this regard, after giving a notice conduct a personal enquiry and thereafter final order shall be passed by taking into account the aforesaid observations made in this order and such final order shall be passed within a period of thirty days from the date of receipt of a copy of this order.

16. It is needless to mention that, depending upon the outcome of the final order to be passed, as indicated above, by the respondent, the petitioner shall work out his remedy accordingly. It is also needless to mention that once notice is issued, the petitioner shall cooperate and appear before the respondent for completing the enquiry as indicated above."

13. In view of the aforesaid order passed by this Court which has been consistently followed in number of such cases, which are similarly placed that of the petitioner's case, this Court is inclined to dispose of this Writ petition with the following orders:

(i) that the respondents are hereby directed to issue a show cause notice under Section 19 of the Motor Vehicles Act to the petitioner within a period of one week from the date of receipt of a copy of this order by giving one week time to the petitioner to give reply to the show cause and on receipt of the same, the petitioner shall give reply to the said show cause notice within one week period thereafter and on receipt of reply from the petitioner, the respondents shall complete the enquiry and pass final orders under Section 19 of the Act within a period of two weeks thereafter.

(ii) It is needless to mention that, depending upon the outcome of the decision to be taken on the enquiry to be conducted in this regard by the respondents, the decision as to whether, the driving license of the petitioner has to be return back to the petitioner or it should be impounded by way of punishment for the maximum period of six months can be decided and accordingly, such final orders can be taken effect.



14. With these directions, this Writ Petition is disposed of. However, there shall be no order as to costs. Consequently, connected Miscellaneous Petition is closed.

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Sd/-
Assistant Registrar(CS III)

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Sub Assistant Registrar

rap / vji

To

1. The Regional Transport Officer,
(Licensing Authority),
Tambaram, Chennai - 600 045.
2. The Regional Transport Officer,
(Licensing Authority),
Thiruvananthapuram, Chennai - 600 041.

+1cc to Mr.V.Vijay Shankar, Advocate, S.R.No.292
+1cc to the Government Pleader, S.R.No.329

W.P. No.28063 of 2021 and
W.M.P. No. 29635 of 2021

RLD(CO)
CT 06/01/2022