



W.P.No.34191 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 20.12.2022

CORAM:

THE HONOURABLE MR. JUSTICE N.SATHISH KUMAR

W.P.No.34191 of 2022

S.Vadivel

... Petitioner

Vs.

1. The Joint Transport Commissioner,
Chennai North, G-17, Polot No.3623,
New Avadi Road, Anna Nagar,
Chennai 600 040.
2. The Regional Transport Officer,
Regional Transport Office,
Licensing Authority, Transport Department,
Government of Tamilnadu, RTO Thiruvallur Road,
Tamilnadu 602 001.
3. The Inspector of Police,
C5, Vengal Police Station,
Thiruvallur District 601 103.

... Respondents

PRAYER: Writ petition filed under Article 226 of the Constitution of India, seeking Writ of Certiorarified Mandamus, calling for records relating to the order passed by the first respondent, vide proceeding order Se.Mu.A.No.35350/E2/2022 dated 13.12.2022, quash the same and direct the first respondent to revoke the order passed by the second respondent vide proceeding Order No.TN.20/2022/353 dated 01.11.2022.



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For Petitioner : Mr.L.Thiyagaiya

For Respondents : Mrs.R.Anitha, Special Govt.Pleader

ORDER

This writ petition has been filed to quash the order passed by the first respondent, vide proceeding order Se.Mu.A.No.35350/E2/2022 dated 13.12.2022 and consequently direct the first respondent to revoke the order passed by the second respondent vide proceeding Order No.TN.20/2022/353 dated 01.11.2022.

2. The petitioner was working as a driver in Municipal Transport Corporation, Padinallur Depot. On 01.10.2022, he drove the bus bearing registration No.TN 01 N 8752 PLI No.2735, Route No.505D from Redhills to Tiruvallur, and when he crossed the road, near Ayyamuniappa Chettiar Kalyana Mandapam, Vannianchathiram, Tiruvallur District, a rider of a two wheeler, namely Ranjith, under influence of Alcohol, hit the bus on the left side front footstep and fell down and immediately, he was sent to Hospital by Ambulance.



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3. According to the petitioner, without any proper investigation, the third respondent registered an FIR on 02.10.2022 against the petitioner for the offences punishable under Section 279 and 337 IPC and latter, the rider of the two wheeler succumbed to injuries and hence, the offence was altered under Section 304A IPC. Pursuant to the registration of FIR, the investigating Officer forwarded a Report along with driving licence of the petitioner on 07.10.2022 to the Regional Transport Officer to take action under Section 19 of the Motor Vehicles Act. Thereafter, a show cause notice dated 20.10.2022 was issued to the petitioner and it was properly replied by him, stating that despite the petitioner stopped the bus, the rider of the two wheeler under influence of Alcohol, hit the bus on the left side of front step, thereby sustained injuries.

4. The second respondent issued the impugned proceedings dated 01.11.2022, stating that as per the powers conferred to them under Section 19(1)(d) & (f) of Motor Vehicles Act r/w Rule 21 of Central Motor Vehicles Rule, 1989, suspended the petitioner's license for a period from 01.10.2022 to 31.03.2023. The second respondent, without



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properly investigating the case and without considering the representation of the petitioner, has issued the suspending order. The petitioner filed an Appeal before the first respondent, wherein, the period of suspending the license was reduced from 6 months to 3 months vide order dated 13.12.2022. Challenging the impugned orders passed by the first and second respondent, this writ petition has been filed.

5. The learned counsel for the petitioner submitted that the petitioner was temporarily suspended by the Transport Corporation and after Departmental enquiry, he was called to rejoin duty. However, without original driving license, the petitioner is not in a position to join duty. He further submitted that there is no allegation of rash and negligent driving against the petitioner, which resulted to cause accident, however, the first and second respondents passed the impugned stereo type orders, without considering any materials. He also submitted that only if the respondents found the ingredients, as per Section 19 of the Motor Vehicles, they can pass such order, but, no materials is available before them to pass the impugned orders and hence the impugned orders are liable to be set side.



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6. The learned Special Government Pleader submitted that, the power of impounding the license is very much available in Section 19 of the Motor Vehicles Act and Section 19(f) indicates that even any act is committed, which is likely to cause nuisance or danger to public, such power can be exercised by the Authority. Therefore, there is no necessity to interfere with the orders passed by the first and second respondent

7. Heard the learned counsel for the petitioner and the learned counsel for the respondents and I have perused the materials on record.

8. A perusal of the show cause notice reveals that, it does not specify the nature of allegation against the petitioner. Further, the show cause notice is silent about the alleged act of rash and negligent driving of the petitioner to cause such accident. Without any such details as stated above, the show cause notice was issued by the second respondent, only based on the communication sent by the investigating officer. Further, the second respondent passed the impugned order as if the criminal court finds the petitioner guilt of the offence, which is extracted hereunder.

" I have perused all the records and averments came before me and found that there is no reason to exonerate the Driving Licence holder



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from the charges framed against him and convinced that he has committed the offences as alleged."

Therefore, I Thiru S.Mohan, Motor Vehicles Inspector, RTO, Thiruvallur, as per the powers conferred to undersigned under Section 19(1)(d) & (f) of the Motor Vehicles Act, 1988, read with Rule 21 of Central Motor Vehicles Rules, 1989, hereby suspend the driving licence of S.Vadivel for a period of 01.10.2022 to 31.03.2023 (5 months and 30 days).

There is no material for arriving such findings by the second respondent.

The first respondent, who is the appellate authority also, without assigning any reason, has simply reduced the impound period from 6 months to 3 months and he has not even gone to the merits of the case. Such view of the matter, this Court finds that there is no allegation either in the show cause notice, or in the orders passed by the second and first respondents.

9. The powers under Section 19(1) of the Motor Vehicles Act cannot be invoked mechanically and there must be some materials to exercise such power by the original authority, and also to find out prima facie case for modifying the orders, by the appellate authority. Further,



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merely on the basis of accident alone, such power cannot be exercised for suspending the license.

10. A Division Bench of this Court, in its judgment in W.A.(MD).No.374 of 2009 dated 30.07.2009, held as follows.

10. 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)9c), 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. Inview of the above, the Writ Appeal is allowed, the order of the learned Judge is set aside and the writ petition is allowed. ...

Therefore, considering the above and also taking into account that the



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order has been passed by the authorities concerned, even without considering the representation of the petitioner and without going into the factual aspects, this Court is of the view that the impugned orders passed by the original authority as well as the appellate authority are cannot be sustained in the eye of law.

11. Accordingly, this writ petition is allowed and the impugned order passed by the first and second respondents are set aside. No costs. The second respondent is directed to return the original licence to the petitioner forthwith.

20.12.2022

Index: Yes/No
Internet: Yes/No
mst

To

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2. The Regional Transport Officer,
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N. SATHISH KUMAR, J.,
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