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W.P.No.35027 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.12.2022

CORAM

THE HONOURABLE MR.JUSTICE MOHAMMED SHAFFIQ

W.P.No.35027 of 2022

S.Ganesan

... Petitioner

Vs.

1.The Inspector of Police,
Tirupattur Town Police Station,
Tirupattur District.

2.The Licensing Authority cum Motor,
Vehicle Inspector,
Regional Transport Office,
Tirupattur T.K.,
Tirupattur District.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus, directing 2nd respondent herein to return the petitioner's original driving license D.L.No.TN23 Y 2008 002627 to the petitioner.

For Petitioner : Mr.D.Jagadeesan

For Respondents : Mr.N.Naveen Kumar
Government Advocate



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ORDER

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This Writ Petition has been filed praying for a Mandamus, to direct the second respondent to return the original driving license in D.L.No.TN23 Y 2008 002627 of the petitioner forthwith.

2. Heard Mr.D.Jagadeesan, learned counsel for the petitioner and Mr.N.Naveen Kumar, learned Government Advocate, takes notice for the respondents. By consent of both the parties, the Writ Petition is taken up for final disposal at the admission stage itself.

3. The learned counsel for the petitioner submitted that on 14.12.2022, the bus driven by the petitioner herein, was involved in a road accident resulting in death of a person. Pursuant to which, an FIR No.288 of 2022 came to be registered by the first respondent/Police for an offence under Sections 279 and 304(A) of IPC and thereafter, on 16.12.2022, the driving license of the petitioner was retained by the second respondent. The second respondent has not taken any penal action against the driving license of the petitioner since the criminal case filed against him, is under investigation. Thereafter, the petitioner



approached the Office of the second respondent on 20.12.2022 and submitted a representation for return of his driving license, which is pending consideration. Hence, the present Writ Petition.

4. The learned counsel for the petitioner submits that the petitioner was not given any show cause notice nor any enquiry is conducted. The petitioner was not involved in any accident previously. It is submitted by the learned counsel for the petitioner that the question that is raised in this Writ Petition stands resolved by a Division Bench of this Court in W.A.No.176 of 2009 and the said judgment is being followed consistently by this Court. It may be relevant to refer to the following portions of the said judgment, which reads as under:

“6. 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 specific 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



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licence, upon conviction of a person for an offence under Section 184.

7.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 restore to, is Section 19.

8.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 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 (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 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 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.”

9.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.

10.But in the case on hand, the licence of the appellant has been impounded or retained by the respondent, immediately after the accident on 18.3.2009. Admittedly, the show cause notice was issued only on 28.4.2009. Therefore, it is clear that the driving licence was retained, both without an order in writing and



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without affording an opportunity of being heard to the appellant. This is a clear violation of the provisions of the statute and hence the order of the learned Judge, dismissing the writ petition deserves to be set aside.”

6. This Court finds that inasmuch as admittedly, neither any show cause notice nor an enquiry having been made, the retention of the license is illegal, in view of the order of the Division Bench of this Court (*supra*). Hence, the second respondent is directed to return the driving licence of the petitioner, within a week from the date of receipt of a copy of this order. However, it shall not preclude the second respondent from proceeding further with the proceedings already initiated, if any, of the contingencies specified in Clauses (a) to (h) of Section 19(1) of the Motor Vehicles Act, 1988, has arisen or if any of the Rules as prescribed by the Central Government in pursuance of Section 19(1)(f) are violated.

7. With the above directions, this Writ Petition is allowed. No costs.

28.12.2022

Speaking/Non Speaking Order
Index : Yes/ No

Sni/Nst



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MOHAMMED SHAFFIQ, J.

Sni/Nst

To

- 1.The Inspector of Police,
Tirupattur Town Police Station,
Tirupattur District.
- 2.The Licensing Authority cum Motor,
Vehicle Inspector,
Regional Transport Office,
Tirupattur T.K.,
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