



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 11.03.2022

CORAM:

THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P. (MD) No.4041 of 2022

R.Ganesan

... Petitioner

/vs./

1.The Licensing Authority,
Regional Transport Officer,
Madurai North,
Madurai.

2.The Inspector of Police,
Appanthirupathy Police Station,
Madurai District.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Mandamus, to direct the respondents 1 and 2 to return the petitioner's original driving licence bearing DL.No.TN 22 19850003307, forthwith to the petitioner as enable to join the duty before the state transport corporation, within the time stipulated by this Court.

For Petitioner : Mr.MU.Sharavanan

For Respondents : Mr.M.Prakash

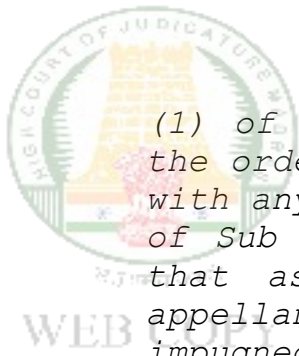
Additional Government Pleader

ORDER

The petitioner has challenged the impugned notice calling upon him to show cause as to why his driving licence should not be suspended for having alledgedly caused an accident on 04.12.2021 at about 07.15 p.m. while driving the bus bearing Registration No.TN-58-N-1625, belonging to the State Transport Corporation.

2.The learned counsel for the petitioner submits that invocation of powers under Section 19(1)(c) of the Motor Vehicles Act, 1988 (hereinafter referred to as Act) is without authority of law. A reference was made to the decision of the Division Bench of this Court in the case of **P.Sethuram Vs. The Licensing Authority, The Regional Transport Officer, Dindigul** reported in **2010 Writ L.R. 100**, wherein under similar circumstance, the Division Bench of this Court observed as under:-

'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.''

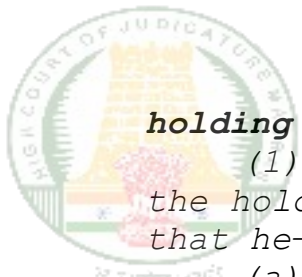
3. Opposing the prayer, the learned Additional Government Pleader for the respondents submits that pursuant to the impugned notice dated 18.02.2022, a further order has been passed by the 1st respondent on 02.03.2022, by suspending the licence of the petitioner under Section 19 (1) (d) and (f) of the Act r/w Rule 21 of the Central Motor Vehicles Rules, 1989.

4. The learned Additional Government Pleader for the respondents further submits that the petitioner has an alternate remedy by way of appeal before the concerned Deputy Transport Commissioner under Rule 15 of the Tamil Nadu Motor Vehicles Rules, 1989 and therefore, the writ petition is liable to be dismissed.

5. I have considered the arguments advanced by the learned counsel for the petitioner and the learned Additional Government Pleader for the respondents and perused the provisions of the Act.

6. Section 19 of the Motor Vehicles Act, 1988, reads as under:-

'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.

(1-A) Where a licence has been forwarded to the licensing authority under sub-section (4) of Section 206, the licensing authority, if satisfied after giving the holder of the driving licence an opportunity of being heard, may either discharge the holder of a driving licence or, it may for detailed reasons recorded in writing, make an order disqualifying such person from holding or obtaining any licence to drive all or any class or description of vehicles specified in the licence—

(a) for a first offence, for a period of three months;

(b) for a second or subsequent offence, with revocation of the driving licence of such person:

Provided that where a driving licence is revoked under this section, the name of the holder of such driving licence may be placed in the public domain in such manner as may be prescribed by the Central Government.

(2) Where an order under sub-section (1) 54[or sub-



section (1-A)] 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 the driving licence shall be returned to the holder at the end of the period of disqualification only if he successfully completes the driver refresher training course.

(2-A) The licence holder whose licence has been suspended shall undergo the driver refresher training course from a school or establishment licenced and regulated under Section 12 or such other agency, as may be notified by the Central Government.

(2-B) The nature, syllabus and duration of the driver refresher training course shall be such as may be prescribed by the Central Government.

(3) Any person aggrieved by an order made by a licensing authority under sub-section (1) or sub-section (1-A) 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.''

7. In the impugned notice, a reference is made to Section 19(1) (c) of the Act. Though Section 19 of the Act does not speak about the circumstances, under which a licence may be suspended, sub-clause (2-A) to Section 19 of the Act however states that the licence holder, whose licence has been suspended, shall undergo the driver refresher training course from a school or establishment licenced and regulated under Section 12 or such other agency, as may be notified by the Central Government. Sub-clause (2-A) to Section 19 of the Act was inserted in the year 2019, vide Motor Vehicles (Amdt.) Act 2019, dated 09.08.2019. The power to suspend a driving licence is spelt out in Sections 21 and 22 of the Act, which read as under:-

'21. Suspension of driving licence in certain cases.-



(1) Where, in relation to a person who had been previously convicted of an offence punishable under Section 184, a case is registered by a police officer on the allegation that such person has, by such dangerous driving as is referred to in the said Section 184, of any class or description of motor vehicle caused the death of, or grievous hurt to, one or more persons, the driving licence held by such person shall in relation to such class or description of motor vehicle become suspended—

(a) for a period of six months from the date on which the case is registered, or

(b) if such person is discharged or acquitted before the expiry of the period aforesaid, until such discharge or acquittal, as the case may be.

(2) Where by virtue of the provisions of sub-section (1), the driving licence held by a person becomes suspended, the police officer, by whom the case referred to in sub-section (1) is registered, shall bring such suspension to the notice of the Court competent to take cognizance of such offence, and thereupon, such Court shall take possession of the driving licence, endorse the suspension thereon and intimate the fact of such endorsement to the licensing authority by which the licence was granted or last renewed.

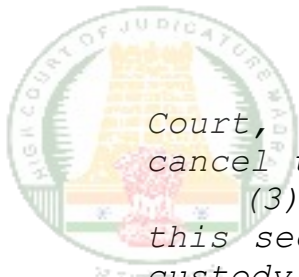
(3) Where the person referred to in sub-section (1) is acquitted or discharged, the Court shall cancel the endorsement on such driving licence with regard to the suspension thereof.

(4) If a driving licence in relation to a particular class or description of motor vehicles is suspended under sub-section (1), the person holding such licence shall be debarred from holding or obtaining any licence to drive such particular class or description of motor vehicles so long as the suspension of the driving licence remains in force.

22.Suspension or cancellation of driving licence on conviction.—

(1) Without prejudice to the provisions of sub-section (3) of Section 20 where a person, referred to in sub-section (1) of Section 21 is convicted of an offence of causing, by such dangerous driving as is referred to in Section 184 of any class or description of motor vehicle the death of, or grievous hurt to, one or more persons, the Court by which such person is convicted may cancel, or suspend for such period as it may think fit, the driving licence held by such person is so far as it relates to that class or description of motor vehicle.

(2) Without prejudice to the provisions of sub-section (2) of Section 20, if a person, having been previously convicted of an offence punishable under Section 185 is again convicted of an offence punishable under that section, the



Court, making such subsequent conviction, shall, by order, cancel the driving licence held by such person.

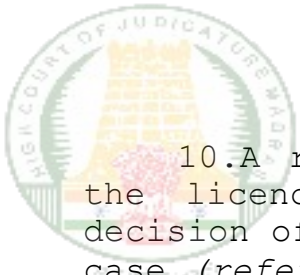
(3) If a driving licence is cancelled or suspended under this section, the Court shall take the driving licence in its custody, endorse the cancellation or, as the case may be, suspension, thereon and send the driving licence so endorsed to the authority by which the licence was issued or last renewed and such authority shall, on receipt of the licence, keep the licence in its safe custody, and in the case of a suspended licence, return the licence to the holder thereof after the expiry of the period of suspension on an application made by him for such return:

Provided that no such licence shall be returned unless the holder thereof has, after the expiry of the period of suspension, undergone and passed, to the satisfaction of the licensing authority by which the licence was issued or last renewed, a fresh test of competence to drive referred to in sub-section (3) of Section 9 and produced a medical certificate in the same form and in the same manner as is referred to in sub-section (3) of Section 8.

(4) If a licence to drive a particular class or description of motor vehicles is cancelled or suspended under this section, the person holding such a licence shall be debarred from holding, or obtaining, any licence to drive such particular class or description of motor vehicles so long as the cancellation or suspension of the driving licence remains in force.''

8. Section 19 (1) (d) of the Act applies to the situation, where a person, who has been given licence, by his previous conduct as Driver of motor vehicle shows that his driving is likely to be attended with danger to the public. This conclusion can be arrived at after due notice to the holder of driving licence.

9. In this case, admittedly the petitioner has been given a notice. The petitioner has challenged the said notice. The petitioner appears to have given a reply, which has now culminated in an order dated 02.03.2022 bearing R.No.9411/A4/2022. However, invocation of Sections 21 and 22 of the Act referred to in the show cause notice is not attracted as Section 21 of the Act will apply to the situation, where there is a conviction. Section 22 of the Act will apply without prejudice to the provisions of sub-section (3) of Section 20, where a person referred to in sub-section (1) of Section 21 is convicted of an offence of causing, by such dangerous driving as is referred to in Section 184 of any class or description of motor vehicle the death of, or grievous hurt to, one or more persons, the Court by which such person is convicted may cancel, or suspend for such period as it may think fit, the driving licence held by such person is so far as it relates to that class or description of motor vehicle.



10.A reading of Section 19 (1) (d) of the Act indicates that the licence can be cancelled even before the conviction. The decision of the Hon'ble Division Bench of this Court in P.Sethuram's case (referred to *supra*) indicates that it has been rendered in the context Section 19 (1) (c) of the Act is using or where such person has used a motor vehicle for the commission of a cognizable offence. The situation that was under contemplation before the Division Bench is different from the situation under contemplation under Section 19 (1) (d) of the Act. Thus, the ratio of the said decision cannot be applied to the facts of the present case. There is therefore no merits in this writ petition.

11.Accordingly, the writ petition stands dismissed with liberty to the petitioner to challenge the order passed by the 1st respondent dated 02.03.2022 bearing R.No.9411/A4/2022 in accordance with law, within a period of 30 days from the date of receipt of a copy of this order. No costs.

Sd/-

Assistant Registrar(CS-I)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

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To

1.The Licensing Authority,
Regional Transport Officer,
Madurai North,
Madurai.

2.The Inspector of Police,
Appanthirupathy Police Station,
Madurai District.

+1 CC to M/s.SPL GP (SR-12226[F] dated 15/03/2022)

W.P. (MD) No.4041 of 2022

ss (CO)

TR(31.03.2022) 7P 4C