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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 27.06.2022

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

W.P.(MD)No.13311 of 2022

A.Sivakumar ... Petitioner

Vs.

1. The Regional Transport Officer,
   The Regional Transport Office,
   Thanjavur.

2. The Inspector of Police,
   Traffic Investigation Wing Police Station,
   Thanjavur-City,
   Thanjavur. ... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Mandamus directing the respondents to return the driving license of the petitioner bearing D.L.No.TN- 49-20040006392 forthwith.

For Petitioner : Mr.A.Balaji
For Respondents : Mr.P.Subbaraj
Special Government Pleader

O R D E R

This Writ Petition has been filed seeking mandamus to direct the respondents to return the driving license of the petitioner bearing D.L.No.TN- 49-20040006392 forthwith.

2. The case of the petitioner is that he is a Driver of the Tamil Nadu State Transport Corporation (Kumbakonam) Limited and now, he is employed at Thanjavur Mofussil. On 13.12.2021, he was allotted to work in a bus bearing Registration No.TN-68-N-0955 and during the trip, at about 8.45 a.m, he was driving the bus towards Bazar near Palliagraharam, there was an accident. Hence, an FIR in crime No.133 of 2021 was registered by the second respondent police for the offence under Sections 279 and 337 of IPC.

3. It is the further case of the petitioner that on 20.05.2022, the petitioner was directed to produce the bus for inspection before the Motor Vehicle Inspector. On that day, the vehicle was inspected as well as the petitioner's licence was retained by the Motor

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Vehicle Inspector. Thereafter, on 31.05.2022, the petitioner approached the Office of the first respondent and also gave a representation to return his driving license, which was denied. Hence, the present Writ Petition.

4. The learned counsel for the petitioner submits that the petitioner was not given any show cause notice and no enquiry was conducted. The petitioner was not involved in any accident previously. The Motor Vehicle Inspector can revoke or disqualify any licence issued to the licensee only under Section 19 of the Motor Vehicles Act. In this case, none of the provisions of Section 19 of the Motor Vehicles Act is attracted. Further, the petitioner was not called for any enquiry and the retention of the licence is illegal. Due to the retention of licence by the Motor Vehicle Inspector, the petitioner is not assigned any duty and he is facing loss of pay. It is further submitted that a Division Bench of this Court in W.A.(MD) No.176 of 2009 had deprecated such act of retaining the licence without following the procedure.

5. The learned Special Government Pleader for the respondents submitted that since the petitioner is involved in a cognizable offence case, his licence has been retained as per section 19(C) of the Motor Vehicles Act.

6. Heard the learned counsel appearing for the petitioner as well as the learned Special Government Pleader for the respondents and perused the materials available on record.

7. Upon hearing of the learned counsels on either side, it appears that the petitioner is a Driver of the Tamil Nadu State Transport Corporation and he met with an accident on 13.12.2021. Thereafter, FIR was registered against him and the first respondent seized the driving licence of the petitioner. Though the petitioner made a representation on 31.05.2022 to return the licence, the first respondent failed to return the same.

8. This Court finds that retention of the licence of the petitioner is improper and without issuing any show cause notice to the petitioner, the driving licence was seized and till date, it is retained by the first respondent without any authority. At this juncture, this Court would like to extract the relevant portion of the judgment of the Hon'ble Division Bench of this Court in W.A.(MD) No.176 of 2009 dealing with the powers of the authorities to impound the driving licence as below:-

> '*5.Therefore the question that falls for consideration in this appeal is as to whether the respondent has a power to impound the driving licence of a person involved in a road traffic accident.*

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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 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 lince.*
>
> *(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*

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(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:

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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 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.'

9. On a perusal of the above judgment, it would reveal that the Authorities have no power to impound the driving licence, but they can take action for cancellation of licence. But, in the present case, without issuing any show cause notice, the driving licence was impounded. In view of the law settled by the Division Bench of this Court, this Court is of the view that without any authority, the

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respondents cannot retain the driving licence and they have to return the same to the petitioner. Hence, this Court directs the first respondent to return the driving licence to the petitioner on or before 01.07.2022.

10. With the above direction, the Writ Petition stands disposed of. No costs.

Sd/-

Assistant Registrar (AE)

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28/06/2022

Sub Assistant Registrar(CS)

vji

To

1. The Regional Transport Officer,
   The Regional Transport Office,
   Thanjavur.

2. The Inspector of Police,
   Traffic Investigation Wing Police Station,
   Thanjavur-City,
   Thanjavur.

+1 CC to M/s.SPL.GP (SR-28514[F] dated 28/06/2022)

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