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W.P(MD).No.22508 of 202



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 26.09.2022

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THE HONOURABLE MR.JUSTICE MOHAMMED SHAFFIQ

W.P(MD).No.22508 of 2022

and

W.M.P(MD).No.16698 of 2022

M.R.Ravi

... Petitioner

Vs.

The Regional Transport Officer,
The Regional Transport Office,
Thiruchenthur,
Thoothukudi District.

...Respondent

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, calling for the pertaining to the impugned order passed by the Respondent in TN92/2022/184, dated 16.08.2022 quash the same and consequently direct the Respondent to drop the action against the Petitioner.

For Petitioner : Mr.G.M.Xavier

For Respondent : Mr.P.Subbaraj

Special Government Pleader

ORDER

This writ petition has been filed challenging the impugned order, dated 16.08.2022, whereby, the Petitioner's driving licence is suspended for a period of five months and thirty days from 05.07.2022 to 04.01.2023.



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2. Mr.P.Subbaraj, learned Special Government Pleader takes notice for the Respondent.

3. The learned counsel for the Petitioner submitted that on 04.07.2022, the bus, driven by the Petitioner herein, was involved in a road traffic accident resulting in death of a person. Pursuant to which, an FIR in Crime No.134 of 2022 came to be registered by the Aathur Police for offences under Sections 279, 337 and 304 (A) of IPC. Thereafter, on 04.07.2022, the Petitioner was directed to be present in the Aathur Police Station with original driving licence. On that day, the Petitioner's license was seized by the Inspector of Police, Aathur Police Station and handed over to the Respondent. The Petitioner received a show cause notice, dated 28.07.2022 on 10.08.2022. Thereafter, on 12.08.2022, the Petitioner submitted a representation before the Respondent for return of his driving license. The impugned order has been passed as under:

“I have perused all the records and averments came before me and found that there is nor reason to exonerate the Driving Licence holder from the charges framed against him and convinced that he has committed the offences as alleged.

Therefore, I G.Sampathkumar, Regional Transport Officer, RTO, Tiruchendur, 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 Ravi.M.R. for a period of 05-July-2022 to 04-January-2022 (5Months and 30 days).”

Aggrieved, the Petitioner has filed the present writ petition challenging the impugned order, dated 16.08.2022.

4. It is submitted by the learned counsel for the Petitioner that when neither the Criminal Court nor the Claims Tribunal have pronounce on the guilt of the Petitioner, the Respondent has prejudged the issue by passing the impugned order suspending the driving licence. It was further submitted that though the petitioner had submitted his objections, the impugned order has been passed on a gross non-application of mind. It is also submitted that the above issue is covered by a decision of this Court in W.P(MD)No.5635 of 2021, wherein, it was held as follows:

“5.I carefully considered the rival contentions and went through the materials on record. The impugned order is vulnerable on more grounds than one. Though the petitioner had given his explanation and the same was sent by registered post on 22.01.2021, the second respondent has proceeded in the matter as if no explanation was given. That apart when neither the Criminal Court nor the Claims Tribunal have pronounced on the guilt of the petitioner, the second respondent has chosen to prejudge the issue. The petitioner was also not given any opportunity of personal



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hearing, though it is specifically contemplated by Section 19(1) of the Motor Vehicles Act, 1988.

6.A Hon'ble Division Bench of this Court in the decision reported in **2010 Writ L.R. 100 (P.Sethuram v. The Licensing Authority, The Regional Transport Officer, Dindigul)** has held as follows:-

“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.”

7. Respectfully following the same,, the order impugned in this writ petition is quashed. The writ petition is allowed. The respondents are directed to return the petition mentioned original driving license to the petitioner immediately and without any delay. No costs.”

5. The show cause notice dated 28.07.2022 stated that personal hearing shall be provided on receipt of the reply, as could be seen from the following extract:

“The personal hearing on your reply shall be provided to you by the undersigned”.



However, no personal hearing was granted and as seen from the portion of the order extracted above the rejection appears to be mechanical. In any view, the order having been passed without granting personal hearing after stating that personal hearing would be granted vitiates the proceedings.

6. In view of the same, this Court is inclined to set aside the impugned order dated 16.08.2022 and further direct the Respondent 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 Respondent from proceeding further, after granting the Petitioner a personal hearing and thereafter pass orders in accordance with law by taking appropriate action in terms of Section 19 of the Motor Vehicles Act.

7. With the above directions, this Writ Petition is allowed. No costs. Consequently, connected miscellaneous petition is closed.

26.09.2022

Index : Yes / No
Internet : Yes/ No
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To
The Regional Transport Officer,
The Regional Transport Office,
Thiruchenthur, Thoothukudi District.



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MOHAMMED SHAFFIQ, J.

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