



W.P.(MD)No.22471 of 2022

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 23.09.2022

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THE HONOURABLE MR.JUSTICE MOHAMMED SHAFFIQ

W.P.(MD)No.22471 of 2022

and

W.M.P(MD).No.16661 of 2022

X.Jesus Britto

... Petitioner

Vs.

The Regional Transport Officer,
The Regional Transport Office,
Dindigul District.

... Respondent

PRAYER : Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorarified Mandamus calling for the records pertaining to the impugned order passed by the Respondent in TN57/2022/620 dated 09.09.2022 and quash the same and consequently, direct the Respondent to drop the action against the Petitioner.

For Petitioner : Mr.G.M.Xavier

For Respondent : Mr.M.Ramesh
Government Advocate



W.P.(MD)No.22471 of 2022

WEB COPY

ORDER

This Writ Petition has been filed challenging the impugned order, dated 09.09.2022, whereby, the Petitioner's driving licence is suspended for a period of three months from 05.08.2022 to 05.11.2022.

2. Mr.M.Ramesh, learned Government Advocate takes notice for the Respondent.

3. The learned counsel for the Petitioner submitted that on 27.07.2022, 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.194 of 2022 came to be registered by the Police for offences under Sections 279 and 304 (A) of IPC. Thereafter, on 28.07.2022, the Petitioner was directed to be present in Saanarpatti Police Station. On that day, the vehicle was inspected as well as the Petitioner's license was retained by the Inspector of Police, Saanarpatti. Hence, the Petitioner filed a Writ Petition before this Court in W.P.(MD).No.18321 of 2022 seeking for a



W.P.(MD)No.22471 of 2022

WEB COPY

Writ of Mandamus directing the Respondent therein to return the driving licence of the Petitioner. On 25.08.2022, this Court directed the Respondent therein to complete the enquiry within a period of three weeks from the date of receipt of a copy of that order, while directing the Petitioner to give his objections to the show cause notice within a period of one week from the date of receipt of copy of the order. Pursuant thereto on 27.08.2022, the Petitioner approached the Office of the Respondent and submitted a representation for return of his driving license. The impugned order is passed stating that “Explanation not accepted”. Aggrieved, the Petitioner has filed the present Writ Petition challenging the impugned order, dated 09.09.2022.

4. It is submitted by the learned counsel for the Petitioner that when neither Criminal Court nor Claims Tribunal have pronounced 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 by merely stating



W.P.(MD)No.22471 of 2022

WEB COPY

“explanation not accepted”. It is also submitted that the above issue is covered by a decision of this Court 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 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



W.P.(MD)No.22471 of 2022

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 08.08.2022 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”.

Though the Petitioner has submitted his explanation dated 27.08.2022, there is no reference even to the same in the impugned order.



W.P.(MD)No.22471 of 2022

Thus, it would clearly show gross non-application of mind and violation of principles of natural justice, inasmuch as personal hearing was also not extended.

6. In view of the same, this Court is inclined to set aside the impugned order dated 09.09.2022 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.

23.09.2022

Index : Yes / No

Speaking Order : Yes / No

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Note: Issue order copy by 29.09.2022



W.P.(MD)No.22471 of 2022

WEB COPY To

The Regional Transport Officer,
The Regional Transport Office,
Dindigul District.



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W.P.(MD)No.22471 of 2022

MOHAMMED SHAFFIQ, J.

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**W.P.(MD)No.22471 of 2022
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23.09.2022