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W.P(MD).No.23820 of 202



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 17.10.2022

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THE HONOURABLE MR.JUSTICE MOHAMMED SHAFFIQ

W.P(MD).No.23820 of 2022

and

W.M.P(MD).No.17903 of 2022

S.Gopalsamy

... Petitioner

Vs.

The Regional Transport Officer,
The Regional Transport Office,
Alampatti,
Thirumangalam District,
Madurai 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 records pertaining to the impugned order passed by the respondent in TN58Z/2022/1236 dated 09.09.2022 quash the same and consequently direct the respondent to drop the action against the petitioner.

For Petitioner : Mr.G.M.Xavier
For Respondent : Mr.M.Ramesh
Government Advocate



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 four months from 13.08.2022 to 12.12.2023.

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

3. The learned counsel for the Petitioner submitted that on 13.08.2022, 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.322 of 2022 came to be registered by the jurisdictional Police for offences under Sections 279 and 337 of IPC. Thereafter, on 13.08.2022, the petitioner was directed to be present in the Police Station with original driving license. On the same day, his driving license was seized by the Inspector of Police and the same was handed over to the respondent for the purpose of taking action against the petitioner under Section 19(1) of Motor Vehicles Act. Thereafter, on 09.09.2022, the Petitioner approached the Office of the Respondent and submitted a representation for return of his driving license, which is stated to be denied. Hence, the Petitioner filed a writ petition before this Court in W.P.



(MD).No.23067 of 2022 seeking for a writ of Mandamus directing the Respondents to return the driving licence of the Petitioner. The impugned order came to be passed before orders were passed in that writ petition. The said writ petition was thus dismissed as infructuous. Now, 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 the Criminal Court nor the Claims Tribunal have pronounce on the guilt of the petitioner, the first 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 “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.



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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 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.”



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5. The show cause notice dated 14.07.2022 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”.

Though the petitioner has submitted his explanation dated 27.08.2022, there is no reference even to the same in the impugned order. 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 directs the respondents 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 taking appropriate action / proceeding, 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. If any, such proceedings are initiated, the same shall be conducted in accordance with the procedure contemplated under the relevant Act and Rules and in compliance with principles of natural



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

Consequently, connected miscellaneous petition is closed.

17.10.2022

Index : Yes / No

Internet : Yes/ No

Speaking Order/Non Speaking Order

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Note: Issue order copy on 02.11.2022.

To

The Regional Transport Officer,
The Regional Transport Office,
Alampatti,
Thirumangalam District,
Madurai District.



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MOHAMMED SHAFFIQ, J.

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