



WEB COPY



Writ Petition No.5768 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 27/2/2023

C O R A M

THE HONOURABLE MR.JUSTICE N. SATHISH KUMAR

Writ Petition No.5768 of 2023

G. Kumar

...

Petitioner

Vs

1. The Inspector of Police
TIW Avadi Police Station
Poonamallee
Chennai 56.

2. The Licensing Authority-cum-
Regional Transport Officer
Poonamallee
Chennai 71.

...

Respondents

PRAYER : Petition filed under Article 226 of the Constitution of India
praying for the issuance of a writ of mandamus to direct the second
respondent to return the original driving license
(DL.No.TN2120030002819) to the petitioner forthwith.

For Petitioner

...

Mr.K.Hariharab

For respondents

...

Mr.N.Naveen Kumar
Government Advocate

- - - - -



ORDER

This writ petition has been filed to direct the second respondent to return the original driving license (DL.No.TN2120030002819) to the petitioner forthwith.

2. It is the case of the Writ Petitioner that he is a Driver of Metropolitan Transport Corporation of Chennai. On 11/2/2023, while he was driving the bus bearing registration No.TN-01-AN-2193, met with an accident due to which a motor cycle rider died. Pursuant to the accident the 1st Respondent registered a case against the petitioner in Crime No.98 of 2023 under Sections 279 & 304-A IPC and forwarded the FIR to the Judicial Magistrate, Poonamallee.

3. The first respondent while registering the FIR, collected the original driving licence of the petitioner, retained the same and on 15/2/2023, sent the original driving licence to the second Respondent and recommended to cancel the licence. The 2nd Respondent has not taken any penal action against the driving licence since the criminal case against the petitioner is pending investigation. The lower Court has not convicted the petitioner for rash and negligent driving. The Petitioner has sent a



representation to the second respondent on 16/2/2023, however, licence has not been returned to him. Hence he filed the instant writ petition.

4. Heard Mr.K.Hariharan, learned counsel for the petitioner.

5. Mr.N.Naveen Kumar, learned Government Advocate takes notice for the respondents.

6. Learned counsel appearing for the petitioner submitted that the police has no power to seize the licence and forward the same to the second respondent. The second respondent cannot impound the licence until the criminal court finds him guilty. Therefore, it is his contention that in many cases, this Court has held that retaining licence by the second Respondent is not permissible under law without any enquiry. The police also has no power to seize the licence. In such a view of the matter mere retaining the licence by the second respondent, in fact will have a serious consequences and will affect the drivers engaged by the Corporation and Government Undertakings. Therefore, seeks direction of this Court to release the licence.



7. Mr.N.Naveen Kumar, learned Government Advocate appearing for the respondents submitted that in view of sub-clause (4) of Section 206 of the Motor Vehicles (Amendment) Act, 2019, the police can very well seize the licence from the driver who caused an accident. Similarly under Section 19(1A) of the Motor Vehicles (Amendment) Act, 2019, second respondent viz., Licensing Authority-cum-Regional Transport Officer, has a power to suspend or revoke the licence. Hence, submitted that when the authority has power under the statute to seize the impugned licence, the same cannot be returned at this stage. Hence opposed the writ petition.

8. It is not disputed that immediately after the accident, the licence was seized by the first respondent and he appears to have forwarded the same to the second respondent. It is useful to refer the judgment of the Division Bench in ***Sethuram vs. The Licensing Authority reported in 2010 Writ L.R.100***, wherein, at para 8, the Hon'ble Division Bench has held that 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.

9. Similarly in ***S. Murugan vs. Licensing Authority [W.A.(MD) No.176 of 2009 dated 22.06.2009 Madurai Bench of Madras High Court]*** also the Division Bench took the same view, however, directed the respondent to return the licence as the 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.

10. Another judgment of Madurai Bench of Madras High Court, in ***S. Krishnan vs. The Licensing Authority [MANU/TN/1360/2012]*** the Hon'ble Division Bench, at para 6 held that Section 19 itself gives the power to the authority to disqualify a person from holding a driving licence when the licensing authority is satisfied after giving notice to the licensee and enumerated 10 disqualification clauses. One among them was Section 19 (1) (C) which clearly states that when the vehicle is used and a cognizable offence is made out all that is required is the authority should satisfy itself whether the petitioner has utilized the vehicle which resulted in a cognizable



offence. Admittedly, this petitioner had used the vehicle and caused the death of a person.

11. Following the above judgments, a learned single judge of this Court has also passed an order in ***K. Perumal vs. The Regional Transport Officer [W.P.(MD) No.9605 of 2022 dated 12.05.2022 – Madurai Bench of Madras High Court]***.

12. In one of the Writ Petitions filed before me, this Court has passed an order in ***S. Baskaran vs. The Inspector of Police [W.P.No.33204 of 2022 dated 09.12.2022 – Madras High Court]*** directing the authority to release the licence. However, in Para No.5 of the Order, this Court had directed the second respondent to await the final orders in the criminal proceedings and if the criteria as provided under Section 19(1) of the Motor Vehicles Act, 1988 is satisfied, second respondent is at liberty to initiate proceedings against the petitioner for suspension/revocation of the driving licence.

13. The observation made by me in the above Writ Petition that action under Section 19(1) of the M.V.Act, could be initiated only after the



criminal case is concluded is no longer good law, in view of the Division Bench Judgments referred above. In the above Division Bench judgments the power under Section 19 to suspend or revoke the licence by the licensing authority have been elaborately dealt with. In such a view of the matter, the contention that till the criminal courts finds the driver guilty of the offence, no action could be initiated under section 19 of the Act to revoke or suspend or impound the licence by the Licensing Authority cannot be accepted.

14. Now, with regard to the submission of Mr.N.Naveen Kumar, learned Government Advocate that the police can seize the licence in view of the amendment under Sections 206 and 19 of the Motor Vehicles Act. It is relevant to extract the provisions of the Motor Vehicles Act amended and inserted:

“ 206. Power of police officer to impound document.

(1) Any police officer or other person authorised in this behalf by the State Government may, if he has reason to believe that any identification mark carried on a motor vehicle or any licence, permit, certificate of registration, certificate of insurance or other document produced to him by the driver or person in charge of a motor vehicle is a false document within the meaning of



section 464 of the Indian Penal Code, 1860 (45 of 1860) seize the mark or document and call upon the driver or owner of the vehicle to account for his possession of or the presence in the vehicle of such mark or document.

(2) Any police officer or other person authorised in this behalf by the State Government may, if he has reason to believe that the driver of a motor vehicle who is charged with any offence under this Act may abscond or otherwise avoid the service of a summons, seize any licence held by such driver and forward it into the Court taking cognizance of the offence and the said Court shall on the first appearance of such driver before it, return the licence to him in exchange for the temporary acknowledgment given under sub-section (3).

(3) A police officer or other person seizing a licence under sub-section (2) shall give to the person surrendering the licence a temporary acknowledgment therefor and such acknowledgment shall authorise the holder to drive until the licence has been returned to him or until such date as may be specified by the police officer or other person in the acknowledgment whichever is earlier:



Provided that if any Magistrate, police officer or other person authorised by the State Government in this behalf is, on an application made to him, satisfied that the licence cannot be, or has not been, returned to the holder thereof before the date specified in the acknowledgment for any reason for which the holder is not responsible, the Magistrate, police officer or other person, as the case may be, may extend the period of authorization to drive to such date as may be specified in the acknowledgment.

(4) A police officer or other person authorised in this behalf by the State Government shall, if he has reason to believe that the driver of a motor vehicle has committed an offence under any of sections 183, 184, 185, 189, 190, 194C, 194D, or 194E, seize the driving licence held by such driver and forward it to the licensing authority for disqualification or revocation proceedings under section 19:

Provided that the person seizing the licence shall give to the person surrendering the licence a temporary acknowledgement therefor, but such acknowledgement shall not authorise the holder to drive until the licence has been returned to him.”



WEB COPY

15. On perusal of the above provisions sub-clause (1) give power to the police to seize the licence if the police has reason to believe that there is any mark or document relate to the vehicle is false.

16. Similarly sub-clause (2) empowers the police authorised by the State Government, if the police has reason to believe that the driver of motor vehicle who is charged with any offence under the Motor Vehicles Act, may abscond or otherwise, avoid the service of summons, seize any licence held by such driver and forward it to the Court concerned. The Court concerned can return the licence to the concerned parties.

17. Sub-clause (3) deals with the temporary acknowledgment by the Police Officer authorising the holder of driving licence to drive the vehicle until the licence returned to him.

18. Sub-Clause (4) empowers the police officer to seize the licence if he has reason to believe that the driver of the motor vehicle committed an offence under any of Sections 183, 184, 185, 189, 190, 194C, 194D, or 194E of the M.V. Act,



WEB COPY

19. A careful perusal of the Sub-Clause (4) of Section 206 of the Act makes it clear when the Police Officer has reason to believe that the offence committed in any of the Sections particularly in the Motor Vehicles Act, such an officer can seize the licence. On such seizure, acknowledgment to be given by the Police authorising the holder to drive vehicle until the licence is returned to him. Only the contingencies enumerate in Section 206 of the Act, the licence can be seized by the Police Officer.

20. Section 19(1) (A) Motor Vehicles (Amendment) Act, 2019 makes it clear that 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.

WEB COPY

21. Therefore, before any action taken under Section 19 of the Act, an opportunity has to be given by the Licensing Authority. Therefore, the seizure power of the police introduced under Section 206 of the Act is only in certain circumstances. Only if the police officer has reason to believe that offence has committed in any of the Sections 183, 184, 185, 189, 190, 194C, 194D, or 194E under sub-clause (4) of Section 206 of the M.V. Act, he can seize the licence and forward to the Licensing Authority. The combined reading of Clauses 1, 2, 3, and 4 of Section 206 of M.V. Act makes it clear that only three contingencies, the police officer can seize the licence. Particularly, when the identification mark or licence or the documents relating to the vehicle are false those documents can be seized under sub-clause (1).

22. The second contingency on which police officer can seize the licence is if any person charged under the M.V. Act, try to abscond or avoid service of summons, licence may be seized and temporary acknowledgement can be given. Another circumstances under Sub-clause 4 of Section 206 of the Act is when the Police Officer has reason to believe that the driver of a



motor vehicle has committed an offence under any of Sections 183, 184, 185, 189, 190, 194C, 194D, or 194E, of the M.V.Act, the licence can be seized by the Police Officer. The power vested under Section 206 for seizure of the licence is not automatic. Only when the Police Officer records the reasons to believe that any of the circumstances as narrated in Section 206 is attracted he can exercise such a power. The word “reason to believe” is defined under Section 26 of the Indian Penal Code which reads as follows:

“Section 26 of The Indian Penal Code

26. “Reason to believe”.—A person is said to have “reason to believe” a thing, if he has sufficient cause to believe that thing but not otherwise.

23. The word “reason to believe” excludes the mere suspicion or doubt. The word believe is very much a stronger word than suspect and involves the necessity of showing the circumstances that a reasonable man must have felt convinced his mind, that circumstances exists to proceed under section 206 of the M.V. Act. “Reason to believe” means belief which a reasonable man will entertain on the facts before him and it contemplates an objective based on the independent care and deliberation and the same



must be based on the good faith. In substance, the reason to believe means that a person must have a reason to believe if the circumstances are search that reasonable man would, by probable reasoning conclude or infer regarding the nature of the thing concerned. Such circumstances need not necessarily be capable of absolute conviction or inference but it sufficient such circumstances are creating a cause to believe by chain of probable reasoning leading to the conclusion or inference about the nature of the thing.

24. In such a view of the matter, even to exercise power under Section 206 the officer exercising the power has to record reasons in writing considering the facts and circumstances of the particular case. The seizure of the licence is not automatic. Without recording reasons obtaining to the facts and circumstances of the particular case such power cannot be exercised mechanically. With regard to exercise the power under section 19 of the Act by the RTA, it is relevant to note that before exercising such action a notice of opportunity to be given to the holder of licence. Sub-clause 2 of Section 19 makes it very clear that only the order under sub-clause 1 or Sub-clause 1A is made the holder of driving licence shall forthwith surrender his licence to the Licensing Authority making the order,



if the driving licence is not already ordinarily surrendered.

WEB COPY

25. In view of the above, this Court is of the view that seizure of the licence to take action under Section 19 is not mandatory. Irrespective of licence being surrendered or produced before the authorities, the action can be initiated by the authorities under Section 19 on the report submitted by the police. Therefore, this Court is of the view that merely on the basis of the FIR is registered particularly in the other IPC offences, the police officer cannot have power to seize the licence. If at all any action is contemplated under Section 19, they may forward a report to the concerned RTA to take action under Section 19 of the Act. On such report the licensing authority is satisfied any of the contingencies in clauses 1(a) to (h) of Section 19 and sub-clause 1A of the Act and after giving an opportunity to the holder of the licence may pass an order as contemplated in Section 19 of the Act. Accordingly this Court hold that the seizure of the licence in the given case is not valid in the eye of law.

N. SATHISH KUMAR, J



Writ Petition No.5768 of 2023

mvs.

WEB COPY

26. In the result, the writ petition is allowed and the second respondent is directed to return the licence, within a period of one week, from the date of receipt of a copy of this order. It is well open to the first respondent to send a report to the RTA for taking appropriate action. The RTA after providing an opportunity to the petitioner may proceed, under Section 19 of the M.V. Act and to pass an order on merits. No costs.

27/2/2023

Index : Yes / No

Internet: Yes

Speaking/non speaking order

Neutral Citation: yes/No

mvs.

To

1. The Inspector of Police, TIW Avadi Police Station
Poonamallee, Chennai 56.
2. The Licensing Authority-cum-Regional Transport Officer
Poonamallee, Chennai 71.

W.P.No.5768 of 2023