



WEB COPY



W.P.No.20332 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.07.2023

CORAM

THE HONOURABLE MR. JUSTICE S.SOUNTHAR

W.P No.20332 of 2023

J.Balaji

...Petitioner

Vs.

1.The Regional Transport Officer
Kallakurichi
Kallalkurichi District.

2.The Inspector of Police,
Chinna Salem Police Station
Kallakurichi.

...Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Mandamus, directing the 1st respondent to return the original driving licence No.TN 27Z19950001956 of the petitioner to him.

For Petitioner : Mr.K.Hariharan

For Respondents : Mr.V.Naveen Kumar
Government Advocate



W.P.No.20332 of 2023

ORDER

The petitioner seeks a direction to the 1st respondent to return the original driving licence No.TN 27Z19950001956 of the petitioner which has been seized by the 2nd respondent and sent to the 1st respondent.

2. The petitioner is a driver in the Tamil Nadu State Transport Corporation Limited, Salem. While petitioner was driving the corporation bus on 14.06.2023, there was a fatal accident. Therefore, an FIR was registered against the petitioner in Crime No.322 of 2023 under Sections 279, 337 and 304(A) of IPC. The 2nd respondent, who is investigating the crime seized the driving licence of the petitioner and forwarded the same to the 1st respondent. The main grievance of the petitioner is that in spite of several requests made by him to the 1st respondent, he failed to return the same to the petitioner. It is also the case of the petitioner that accident had taken place only due to the fault of the rider of the two wheeler. There was no negligence on the part of the petitioner.

3. The learned counsel for the petitioner submits that the petitioner is not convicted by any Criminal Court and FIR filed against him is under



W.P.No.20332 of 2023

investigation. Therefore, the respondents cannot come to the conclusion with regard to the guilt of the petitioner when investigation is pending. It is also not a case of the respondent that the petitioner has committed any offence violating any other provisions of the Motor Vehicles Act. In view of the fact that the petitioner's driving licence is with the 1st respondent, the petitioner is unable to attend his duty from 15.06.2023. As a consequent, the petitioner is put to irreparable loss. The learned counsel for the petitioner further submits that if ultimately during investigation it is found that the petitioner has not committed any offence or after trial the petitioner is acquitted, the loss suffered by the petitioner due to seizure of driving licence cannot be compensated.

4. Hence, a direction may be issued to the 1st respondent to handover the driving licence to the petitioner. The learned counsel for the petitioner also relied upon the judgment in the case of ***P.Sethuram Vs The Licensing Authority, the Regional Transport Officer, the Regional Transport Officer, Dindigul*** reported in ***2010 Writ L.R.100***.



W.P.No.20332 of 2023

5. In P.Sethuram's case cited by the petitioner, an order passed by the Regional Transport Officer suspending the licence of the petitioner was challenged. This Court after referring Section 19 of Motor Vehicles Act, 1988 observes as follows:-

“8. 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. But in the case on hand, the licence of the appellant was impounded or retained by the police immediately after the accident. Thereafter, the respondent issued a show cause notice under Section 19(1) of the Act, after getting a report from the police. Therefore the impounding of the licence has actually preceded the issue of show cause notice.

10. Apart from the above, there is no allegation,



WEB COPY



W.P.No.20332 of 2023

either in the notice or in the order impugned in the writ petition, that the appellant is a habitual criminal or habitual drunkard, so as to attract Clause(a) of Section 19(1) of the Act. Similarly, neither the show cause notice nor the order impugned in the writ petition, imputes the appellant with any of the ingredients necessary under Clauses (b) to (h) of Sub Section (1) of Section 19 of the Act. Except stating that as per the report of the Inspector of Police, the appellant was guilty of rash and negligent driving, the impugned order does not indicate the category in Clauses (a) to (h) of Section 19(1), under which the case of the appellant would fall.

11.The respondent has, in the impugned order, preconcluded 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 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.



W.P.No.20332 of 2023

WEB COPY

12. In view of the above, the writ appeal is allowed, the order of the learned Judge is set aside and the writ petition is allowed. The respondent is directed to return the Driving Licence of the appellant, within a week of receipt of a copy of this order. However, it shall not preclude the respondent from initiating any action, if any of the contingencies specified in Clauses(a) to (h) of Section 19(1) of the Act, arises later or if any of the Rules as prescribed by the Central Government in pursuance of Section 19(1)(f) are violated. No costs. Consequently, connected miscellaneous petition is closed”.

6. The law laid down by the Hon'ble Division Bench of this Court in the abovesaid case is squarely applicable to the facts of the case on hand. The licence has been seized and forwarded to the 1st respondent and the same has not been handed over to the petitioner in spite of several requests made by him. The accident had taken place on 15.06.2023. Therefore, even after lapse of three weeks, the 1st respondent has not issued any notice under Section 19(1) of Motor Vehicles Act, 1988. In these circumstances, the 1st respondent is not justified in keeping the driving licence of the petitioner, without any justifiable cause. The action of the 1st respondent would amount to



W.P.No.20332 of 2023

impounding the licence even without hearing the petitioner.

WEB COPY

7. Therefore, this Court is inclined to issue a direction to the 1st respondent to hand over the driving licence of the petitioner immediately on receipt of this order. However, the order passed by this Court shall not preclude the 1st respondent from initiating any action under Section 19(1) of the Act r/w Rule 21 Central Motor Vehicles Rules, by following procedure contemplated under law.

8. With the above observations, this writ petition stands allowed. No costs.

12.07.2023

Index : Yes/No
Internet : Yes/No
Speaking Order/Non-Speaking Order
Neutral Citation Case : Yes/No
nr

Note: Issue order copy on 14.07.2023.



WEB COPY



W.P.No.20332 of 2023

S.SOUNTHAR, J.

nr

To

1.The Regional Transport Officer
Kallakurichi
Kallalkurichi District.

2.The Inspector of Police,
Chinna Salem Police Station
Kallakurichi.

W.P No.20332 of 2023

12.07.2023