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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.07.2023

CORAM

THE HONOURABLE MR. JUSTICE S.SOUNTHAR

W.P No.21677 of 2023

M.Sureshbabu ...Petitioner

Vs.

1.The Inspector of Police
Baluchettychatram Police Station
Kancheepuram District.

2.The Licensing Authority cum-
Regional Transport Officer
Kancheepuram
Kancheepuram District. ...Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Mandamus, directing the second respondent herein to return the original driving license (DL.No.TN21 20090005861) to the petitioner forthwith.

For Petitioner : Mr.K.Hariharan

For Respondents : Mr.N.Naveen Kumar
Government Advocate

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O R D E R

The petitioner herein seeks a direction to the second respondent to return his original driving licence.

2. According to the petitioner, he is a driver of State Transport of Villupuram. On 02.07.2023, when he was driving the bus belonged to his employer, it met with an accident and as a consequence, the rider of the motor cycle died. The first respondent registered the First Information Report against the petitioner in Crime No.448 of 2023 under Sections 279 & 304 -A of IPC and the said case is pending at the investigation stage.

3. The first respondent seized the original driving licence of the petitioner and forwarded the same to the second respondent. The petitioner requested the return of the original driving licnece. However, till date, the second respondent has not returned the original driving licence of the petitioner. Therefore, the petitioner is not in a position to report to duty.

4. The learned counsel for the petitioner submitted that the accident did not occur due to the negligence of the petitioner and therefore, the

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second respondent is not justified in retaining the original driving licence without passing any order in accordance with law.

5. Mr.N.Naveenkumar, learned Government Advocate takes notice for the respondents and on instructions submitted that the second respondent has not received any representation from the petitioner seeking return of the original driving license.

6. Admittedly, only an FIR is pending against the petitioner and investigation is still going on. Till date, no charge sheet has been filed against the petitioner. In such circumstances, the second respondent is not justified in retaining the driving licence especially without passing any order for suspension of the same in accordance with law.

7. The issue involved in this matter is covered by the decision of the Hon'ble Division Bench of this Court in the case of ***P. Sethuram Vs. The Licensing Authority, The Regional Transport Officer, The Regional Transport Office, Dindigul, reported in 2010 Writ L.R.100,*** wherein it was held that the licensing authority is not entitled to pre-conclude the issue and

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come to a conclusion that the petitioner is guilty of rash and negligent driving even before the Criminal Court or Motor Accident Tribunal gives a formal finding to that effect. The relevant portion of the decision of the Hon'ble Division Bench reads thus:

> *"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 o the appellant was impounded or retained by the police immediately after the accident. Thereafter, the respondent issued the 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, 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,*

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neither the show cause notice nor the order impugned in the writ petition, imputes the appellant with any of the ingredients necessary under Clause (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 Clause (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 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."

8. The law laid down by the Hon'ble Division Bench in the above said case law is squarely applicable to the case on hand. The second respondent is not entitled to retain the driving licence of the petitioner without passing any order and that too after hearing the petitioner.

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9. In view of the stand taken by the second respondent that he has not received any representation from the petitioner, the petitioner is directed to give a fresh representation seeking return of the licence. If any such representation is submitted by the petitioner, the second respondent shall return the original driving licence (DL No.TN21 20090005861) to the petitioner immediately.

10. However, the order passed by this Court will not preclude the second respondent from initiating any action under Section 19(1) of the Motor Vehicles Act, 1988 r/w Rule 21 of Central Motor Vehicles Rules, 1989 and pass orders on merits, after hearing the petitioner in accordance with law.

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

21.07.2023

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

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