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W.P.No.21903 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :24.07.2023

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THE HONOURABLE MR. JUSTICE S.SOUNTHAR

W.P No.21903 of 2023

P.Kumar

...Petitioner

Vs.

1.The Regional Transport Officer,
Tirupur(South), Tirupur District.

2.The Inspector of Police,
Kankeyam Police station,
Kangeyam,Tirupur District.

...Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Mandamus, directing the 1st respondent herein to return the petitioner's Driving Licence bearing DL No.TN-33-Y-19940001373 forthwith.

For Petitioner : Mr.A.Ganesan

For Respondents : Mr.N.Naveen Kumar
Government Advocate

ORDER

The petitioner seeks a direction to the first respondent to return his Driving Licence bearing DL.No.TN-33-Y- 19940001373.



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2. According to the petitioner, he is working as a Driver in Tamil Nadu State Transport Corporation, Kovai Division, Tirupur Region, Kangeyam Branch. On 09.07.2023, when he was driving the bus bearing Registration No.TN-33-N-2651 from Kangeyam Town Bus Station to Tirupur, a motor cycle which was driven in the rash and negligent manner hit the bus and as a result both the rider and the pillion rider received fatal injury and died on the spot.

3. In connection with the accident, the second respondent registered a criminal case in Crime No. 85 of 2023 under Section 279, 337 & 304(A) of IPC against the petitioner and investigation is pending. On the very same day, the second respondent seized the petitioner's driving licence and forwarded the same to the first respondent for taking necessary action.

4. The petitioner made a request to the first respondent to return his driving licence on 11.07.2023. Even after the receipt of the petitioner's representation, the original driving licence has not been returned to him. Aggrieved by the same, the petitioner is before this Court.



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5.Mr.N.Naveen Kumar, learned Government Advocate, who takes notice for the respondents, on instructions submits that the first respondent has not received any request from the petitioner, seeking return of driving licence.

6. The first respondent is not entitled to retain the driving licence, unless he chooses to proceed under Section 19(1) of the Motor Vehicles Act, 1988 r/w Rule 21 of Central Motor Vehicles Rules, 1989. The said position was authoritatively held by the 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 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



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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, 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,



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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.”

7. A reading of above judgment by Division Bench would suggest the 1st respondent cannot pre conclude the issue with regard to guilt of petitioner when investigation is pending and when there is no finding by Criminal Court or Motor Vehicles Tribunal. Unless 1st respondent pass an order against petitioner for suspension of driving license on the grounds enumerated under law, that too after hearing him, it is not open to him to refuse return of driving license.

8. Therefore, the petitioner is directed to make a fresh representation to the first respondent, seeking return of his driving licence. The first respondent is directed to return the driving licence on receipt of the return request by the petitioner. This order will not come in the way of first respondent taking any



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action as per Section 19(1) of the Motor Vehicles Act, 1988 r/w Rule 21 of
Central Motor Vehicles Rules, 1989

9. With these clarifications, the writ petition is allowed. No costs.

24.07.2023

Index : Yes/No

Internet : Yes/No

Speaking Order/Non-Speaking Order

Neutral Citation Case : Yes/No

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Note: Issue order copy on 25.07.2023

To

1.The Regional Transport Officer,
Tirupur(South), Tirupur District.

2.The Inspector of Police,
Kankeyam Police station,
Kangeyam,Tirupur District.



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S.SOUNTHAR, J.
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