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W.P.No.24444 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.08.2023

CORAM

THE HONOURABLE MR. JUSTICE S.SOUNTHAR

W.P No.24444 of 2023

and

W.M.P.No.23878 of 2023

G.Karuppusamy

...Petitioner

Vs.

1.The Inspector of Police
Erode Taluk Police Station,
Erode

2.The Licensing Authority cum-
Regional Transport Officer,
Perundurai,
Erode District.

...Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, for issuance of a Writ of Certiorarified Mandamus, calling for the records of the second respondent made in Show cause No.TN56/2023/250 dated 26.07.2023 suspending the driving license of the petitioner for a period of 5 months and 29 days from 29.6.2023 to 28.12.2023 and to quash the same. Consequently



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direct the second respondent to return the original driving license (DL No.TN36-19970001092) to the petitioner forthwith.

For Petitioner : Mr.K.Hariharan

For Respondents : Mr.C.E.Pratap
Government Advocate for R1

: Mr.N.Naveenkumar,
Government Advocate for R2

ORDER

The petitioner herein has come up with this Writ Petition challenging the order passed by the second respondent dated 26.07.2023 suspending the driving license of the petitioner from 29.06.2023 to 28.12.2023.

2. Heard, the learned counsel for the petitioner, Mr.C.E.Pratap, learned Government Advocate appearing for the first respondent and Mr.N.Naveenkumar, learned Government Advocate appearing for the second respondent. By consent of both the counsel, the Writ Petition is take up for final disposal.



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3. The impugned order has been passed by the second respondent by invoking its power under Section 19 (1) (d) & (f) of the Motor Vehicles Act, 1988 r/w Rule 21 of Central Motor Vehicles Rules, 1989. The petitioner is working as a driver in the Tamil Nadu State Transport Corporation Coimbatore. On 29.06.2023, when the petitioner was driving a bus belonging to the said corporation, an accident had occurred. As a result of the accident, the rider of the motor cycle died. In this regard, the First Information Report filed against the petitioner in Crime No.199 of 2023 on the file of the Inspector of Police, Erode Taluk Police Station, Erode, under Sections 279 and 304-A of IPC.

4. The first respondent seized the driving license of the petitioner and forwarded the same to the second respondent. The second respondent issued a show cause notice to the petitioner directing him to explain as to why the driving license should not be cancelled under Section 19 (1) (d) & (f) of the Motor Vehicles Act, 1988 r/w Rule 21 of Central Motor Vehicles Rules, 1989.



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5. The petitioner submitted an explanation stating that he was not at all responsible for the accident and the same had occurred only due to the negligent driving of the deceased. A criminal case filed against the petitioner is pending against. In the mean time, the second respondent passed the impugned order by invoking Section 19 (1) (d) & (f) of the Motor Vehicles Act, 1988 r/w Rule 21 of Central Motor Vehicles Rules, 1989.

6. Section 19 (1) (d) & (f) of the Motor Vehicles Act, 1988, reads thus:

“19. Power of licensing authority to disqualify from holding a driving licence or revoke such licence:-

(1) if a licensing authority is satisfied, after giving the holder of a driving licence an opportunity of being heard, that he-

....

....

(d) has by his previous conduct as drive of a motor vehicle shown that his driving is likely to be attended with danger to the public; or

(f) has committed any such act which is likely to cause nuisance or danger to public, as may be prescribed by the Central Government, having regard to the objects of this Act;



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7. Rule 21 of Central Motor Vehicles Rules, 1989, reads thus:

*“21.Powers of licensing authority to disqualify:-
For the purpose of clause (f) of sub-section (1) of Section 19,
the commission of the following acts by holder of a driving
licence shall continue nuisance or danger to the public,
namely:-*

- (1) Theft of motor vehicle.*
- (2) Assault on passengers.*
- (3) Theft of personal effects of passengers*
- (4) Theft of goods carried in goods carriage.*
- (5) Transport of goods prohibited under
any law.*
- (6) Driver while driving a transport vehicle,
engages himself in activity which is likely to disturb his
concentration.*
- (7) Abduction of passengers.*
- (8) Carrying overload in goods carriages.*
- (9) Driving at speed exceeding the
specified limit.*
- (10) Carrying persons in goods carriage,
either inside the driver's cabin in excess of its capacity or
on the vehicle, whether for hire or not.*



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(11) Failing to comply with the provisions of

WEB COPY *Section 134.*

(12) Failure to stop when signalled to do so by any person authorised to do so.

(13) Misbehaviour with and showing discourtesy to passengers, intimidating passengers or consignors and consignees of goods.

(14) Smoking while driving public service vehicles.

(15) Abandoning vehicle in a public place causing inconvenience to other road users or to passengers in the vehicle.

(16) Driving vehicle while under the influence of drink or drugs.

(17) Interfering with any person mounting or preparing to mount upon any other vehicle.

(18) Allowing any person to sit or placing things in such a way as to impede the driver from having a clear vision of the road or proper control of the vehicle.

(19) Not stopping a stage carriage at approved stopping places for a sufficient period of time in a safe and convenient position upon demand or signal of the conductor or any passenger desiring to alight from the



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vehicle and unless there is no room in the vehicle, upon demand or signal of any person desiring to become a passenger.

(20) Loitering or unduly delaying any journey and not proceedings to the destination as near as may be in accordance with the time-table pertaining to the vehicle, or, where there is no such time table, with all reasonable dispatch.

(21) Not driving a contract carriage, in the absence of a reasonable cause, to the destination named by the hirer by the shortest route.

(22) The driver of a motor cab not accepting the first offer of hire which may be made to him irrespective of the length of the journey for which such offer is made.

(23) The driver of a motor cab demanding or extracting any fare in excess to that to which he is legally entitled or refusing to ply motor cab.

(24) Abandoning a transport vehicle as a mark of protest or agitation of any kind or strike in a public place or in any other place in a manner causing



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*obstructions or inconvenience to the public or passengers
or other users of such places.*

*(25) Using mobile phone while driving a
vehicle.*

8. Under Section 19 (1) (d) of the Motor Vehicles Act, 1988, if the licensing Authority is satisfied by the previous conduct of the licensee holder that his driving is likely to cause danger to the public, it can pass orders disqualifying him from holding license.

9. In the case on hand, the second respondent has not recorded a finding that he is satisfied by the previous conduct of the petitioner that his driving is likely to cause danger to the public. Therefore, the ingredients of under Section 19 (1) (d) of the Motor Vehicles Act, 1988, is not satisfied.

10. Under section 19 (1) (f) of the Motor Vehicles Act, 1988, if the licensee has committed any act which is likely to cause nuisance or danger to the public, it can disqualifying him from holding license. The expression “which is likely to cause nuisance or danger to the public” is explained under Section Rule 21 of Central Motor Vehicles Rules, 1989. Under the said Rule



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twenty five instances were mentioned as acts which would cause nuisance or danger to the public.

11. In the impugned order it is not stated by the second respondent that how the act of the petitioner comes within any one of the 25 acts mentioned under Rule 21 of Central Motor Vehicles Rules, 1989. As far as fatal accident case is concerned, the First Information Report is filed against him and the matter is pending investigation.

12. Admittedly, no charge sheet has been filed against the petitioner. Therefore, in the absence of any indication in the order how the act of the petitioner comes within any of the 25 acts mentioned under Rule 21 of Central Motor Vehicles Rules, 1989, the order passed by the second respondent suspending license of the petitioner is bad in law.

13. The Hon'ble Division Bench of this Court in ***P.Sethuram Vs. The Licensing Authority, The Regional Transport Officer, The Regional***



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Transport Office, Dindigul, reported in 2010 Writ L.R.100, held that if the

Licensing Authority comes to the conclusion that the Licensee is guilty of rash and negligent driving even before the Criminal Court or Motor Accidents Tribunal gives a finding with regard to that issue, the same cannot be accepted. Relevant portion of the decision of the Hon'ble Division Bench in this regard in paragraph 10 & 11 are extracted below:

“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, preconcluded the issue that the appellant is guilty of rash and negligent driving, even before the Criminal Court or the Motor



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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.”

14. In the case on hand, admittedly, the investigation is still pending. Therefore, the licensing Authority cannot come to any opinion that the petitioner's driving was rash and negligent. In fact, in the impugned order, the second respondent has not indicated anything regarding his satisfaction with regard to any one of the 25 instances mentioned under Rule 21 of the Central Motor Vehicles Rules r/w Section 19(1) (f) of the Motor Vehicles Act, to enable him to suspend the license. Therefore, the order passed by the second respondent is bad in law and consequently, the same is quashed.

15. Accordingly, this Writ Petition is allowed. No costs. Consequently, connected Miscellaneous Petition is closed.

22.08.2023

Index : Yes
Internet : Yes



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Speaking Order/Non-Speaking Order
Neutral Citation Case : Yes
dna

Note: Issue order copy on 25.08.2023.



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S.SOUNTHAR, J.
dna

To

- 1.The Inspector of Police
Erode Taluk Police Station,
Erode
- 2.The Licensing Authority cum-
Regional Transport Officer,
Perundurai,
Erode District.

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