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W.P.No.25544 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.08.2023

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THE HONOURABLE MR. JUSTICE S.SOUNTHAR

W.P No.25544 of 2023

P.Shanmugavel

...Petitioner

Vs.

1.The Inspector of Police,
Santhavasal Police Station
Tiruvannamalai District.

2.The licensing Authority cum-
Regional Transport Officer,
Arani,
Tiruvannamalai District.

...Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Mandamus, directing the 2nd respondent herein to return the original driving license (DL No.TN7220100001054) to the petitioner.

For Petitioner : Mr.K.Hariharan

For Respondents 1 : Mr.C.E.Pratap,
Government Advocate (Crl.side)

For respondent 2 : Mr.N.Naveen Kumar
Government Advocate



W.P.No.25544 of 2023

ORDER

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

2. According to the petitioner, he is a driver of State Express Transport Corporation, Chennai. On 15.08.2023, when he was driving the bus belonged to his employer, it met with an accident and as a consequence, a motor cycle rider died. The first respondent registered the First Information Report against the petitioner in Crime No.436 of 2023 under Sections 279 & 304-A of IPC and the said case is pending at the investigation stage. The 1st respondent also seized the original driving licence from the petitioner and forwarded the same to the 2nd respondent.

3. The petitioner made a representation to the 2nd respondent on 18.08.2023 requesting him to return the original driving licence. However, the 2nd respondent failed to return the driving licence and consequently the petitioner is not in a position to attend his work and the same results in deprivation of petitioner's right to livelihood.



W.P.No.25544 of 2023

WEB COPY

4. Mr.N.Naveen Kumar, learned Government Advocate takes notice for the 2nd respondent on instructions, submits that till date the petitioner has not approached the 2nd respondent seeking return of original driving licence.

5. The 2nd respondent is not entitled to retain the original driving licence unless he decides to proceed against the petitioner under Section 19(1) of Motor Vehicles Act,1988 r/w Rule 21 Central Motor Vehicles Rules. It is not open to the 2nd respondent to come to a conclusion about the guilt of the petitioner when the investigation is pending. The guilt of the petitioner has to be determined either by the Criminal Court after trial or by the Motor Accident Claim Tribunal. In these circumstances, the 2nd respondent is not justified in retaining the original driving licence. This position was very well settled by 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 Officer, Dindigul*** reported in ***2010 Writ L.R.100***. The relevant observations of the Hon'ble Division Bench of this Court reads as follows:-



W.P.No.25544 of 2023

WEB COPY

“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, 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



W.P.No.25544 of 2023

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.

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



W.P.No.25544 of 2023

WEB COPY

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. In view of the law laid down by the Hon'ble Division Bench of this Court, there is no impediment for the 2nd respondent to handover the original driving licence if request is made by the petitioner in this regard.

7. In view of the stand taken by the learned Government Advocate for the 2nd respondent that the 2nd respondent has not received any request from the petitioner so far, the petitioner is directed to submit a representation to the 2nd respondent and if any such representation is made by the petitioner, the 2nd respondent is directed to return the original driving licence bearing (DL No.TN7220100001054) to the petitioner immediately.



W.P.No.25544 of 2023

WEB COPY

8. This order will not come in the way of 2nd respondent taking any action against the petitioner under Section 19(1) of the Motor Vehicles Act, 1988 r/w Rule 21 Central Motor Vehicles Rules, by following procedure contemplated under law.

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

30.08.2023

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



W.P.No.25544 of 2023

S.SOUNTCHAR, J.

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W.P No.25544 of 2023

30.08.2023