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W.P.No.25880 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :05.09.2023

CORAM

THE HONOURABLE MR. JUSTICE S.SOUNTHAR

W.P No.25880 of 2023
and W.M.P.No.25320 of 2023

P.Kumaran

...Petitioner

Vs.

The Regional Transport Authority,
Tiruppur (South) Zone,
Tamil Nadu – 639 007.

...Respondent

Prayer: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Mandamus, directing the respondent to return the petitioner Original Driving Licence bearing No. TN57 20030007802, without any endorsement and within a specified time as may fixed by this Court.

For Petitioner : Mr.R.Krishnaswamy

For Respondent : Mr.R.U.Dinesh Raj Kumar
Additional Government Pleader



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ORDER

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The petitioner herein seeks a direction to the respondent to return his Original Driving Licence bearing No. TN57 20030007802.

2. According to the petitioner, he is working as a Driver in Tamil Nadu State Transport Corporation, Madurai Limited. On 30.07.2023, when he was driving the bus belonged to his employer, a motor cycle which was driven in the rash and negligent manner hit the bus and as a consequence, a motor cycle rider died. On 31.07.2023, a criminal case was registered against the petitioner in Crime No.834 of 2023 on th file of Palladam Police Station, under Sections 279 & 304 (A) of IPC and the said case is pending at the investigation stage. On the very same day, the Police from Palladam Police Station seized the petitioner's original driving licence and forwarded the same to the respondent herein for taking necessary action.

3.The respondent issued a Show Cause Notice dated 14.08.2023 to the petitioner under Section 19 (1)(d) & (f) of the Motor Vehicles Act, 1988, calling for explanation from the petitioner. The petitioner submitted an explanation to the respondent on 17.08.2023, stating that he was not rash



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negligent in diving and he was not responsible for accident. However, the 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.

4. Mr.R.U.Dinesh Raj Kumar, learned Additional Government Pleader who is taking notice for the respondent submits that Show Cause Notice has been issued to the petitioner and no orders have been passed so far.

5. Admittedly, a Criminal Case is filed against the petitioner and investigation is pending. In such circumstances, it is not for the respondent to decide whether the accident had occurred due to the negligence of the petitioner or not. The said question has to be decided by the Criminal Court or by the Motor Vehicle Tribunal. In such circumstances, the respondent is not justified in keeping the original driving license of the petitioner that too without passing any orders under Section 19(1) of the Motor Vehicles Act, 1988 r/w Rule 21 of Central Motor Vehicles Rules, 1989.



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6.The issue involved in this matter is squarely covered by the decision of the Hon'ble Division Bench of this Court in ***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 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



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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, 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."



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7. Therefore, the respondent is not justified in keeping the original driving license of the petitioner without passing any order under Section 19(1) of the Motor Vehicles Act, 1988 r/w Rule 21 of Central Motor Vehicles Rules, 1989. Therefore, this Court is inclined to issue a direction to the respondent to return the original driving license to the petitioner.

8. It is made clear that allowing of this Court will not preclude the respondent from taking action against the petitioner under Section 19(1) of the Motor Vehicles Act, 1988 r/w Rule 21 of Central Motor Vehicles Rules, 1989, if those provisions are otherwise attracted.

9. With this direction, the writ petition stands disposed of. No costs. Consequently, connected miscellaneous petition is closed.

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



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To
The Regional Transport Authority,
Tiruppur (South) Zone,
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S.SOUNTHAR, J.

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