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W.P. No. 33526 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.12.2023

CORAM

THE HON'BLE MR. JUSTICE P.D. AUDIKESAVALU

W.P. No. 33526 of 2023

and

W.M.P. Nos. 33351 and 33353 of 2023

E.Mani

... Petitioner

-VS-

1. The Inspector of Police,
Avadi, Traffic Investigation Wing,
Poonamallee,
Chennai – 600 056.

2. The Regional Transport Officer,
Licensing Authority,
Office of the Regional Transport Authority,
RTO, Poonamallee,
Tamil Nadu.

... Respondents

Prayer:- Writ Petition filed under Article 226 of the Constitution of India, 1950, praying to issue a Writ of Certiorarified Mandamus, calling for the records pertaining to the order dated 08.11.2023 passed by the Second Respondent in Show Cause Order No. TN12/2023/859, quash the same and consequently direct the Second Respondent to return forthwith Petitioner's original license bearing No. TN 09 19890001849 without any endorsement.



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For Petitioner : Mr. S.T.Varadarajulu
for Mr. S.Sakthivel

For Respondents : Mr. S.Rajkumar,
Additional Public Prosecutor (for R1)

Mr. U.Baranidharan,
Additional Government Pleader (for R2)

ORDER

Heard Mr. S.T.Varadarajulu, Learned Counsel appearing for the Petitioner, Mr. S.Rajkumar, Learned Additional Public Prosecutor, who takes notice for the First Respondent, and Mr. U.Baranidharan, Learned Additional Government Pleader, who takes notice for the Second Respondent, and perused the materials placed on record, apart from the pleadings of the parties.

2. The Petitioner is a driver in the Metropolitan Transport Corporation, Chennai and while on duty, the bus bearing Registration No. TN-01-AN-1443 driven by him had on 24.09.2023 met with an accident and his driving licence was seized by the First Respondent, who is investigating that accident, and forwarded to the Second Respondent as the Licensing Authority. While the matter stood as narrated supra, the Petitioner has been served with an Order in



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Show Cause No. TN12/2023/859 dated 08.11.2023 passed by the Second

Respondent suspending his driving licence for the period from 24.09.2023 to 23.03.2024 (5 months and 28 days) under Section 19(1)(d) & (f) of the Motor Vehicles Act, 1988 read with Rule 21 of the Central Motor Vehicles Rules, 1989. In that backdrop, relying on the decision of the Division Bench of this Court in ***P. Sethuram -vs- Licensing Authority, Regional Transport Officer, Dindigul*** (2010 WLR 100) holding that the provisions of the Motor Vehicles Act, 1988, (hereinafter referred to as 'the Act' for short) do not empower the Licensing Authority to suspend or revoke a driving licence for a first offence, the Petitioner has filed this Writ Petition.

3. Learned Additional Government Pleader appearing for the Second Respondent submits that certain amendments have been made to the Act, which have come into force from 01.09.2019 onwards and clause (4) in Section 206 and clause (1-A) in Section 19 have been inserted to the Act, which have bearing to the contentions raised in the Writ Petition and read as follows:-

"206. Power of police officer to impound document:-

....

(4) A police officer or other person authorised in this behalf by the State Government shall, if he has reason to believe that the



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driver of a motor vehicle has committed, an offence under any of Sections 183, 184, 185, 189, 190, 194-C, 194-D or 194-E, seize the driving licence held by such driver and forward it to the licensing authority for disqualification or revocation proceedings under Section 19:

Provided that the person seizing the licence shall give to the person surrendering the licence a temporary acknowledgement therefor, but such acknowledgement shall not authorise the holder to drive until the licence has been returned to him."

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

....

(1-A) Where a licence has been forwarded to the licensing authority under sub-section (4) of Section 206, the licensing authority, if satisfied after giving the holder of the driving licence an opportunity of being heard, may either discharge the holder of a driving licence or, it may for detailed reasons recorded in writing, make an order disqualifying such person from holding or



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obtaining any licence to drive all or any class or description of vehicles specified in the licence:-

- (a) for a first offence, for a period of three months;*
- (b) for a second or subsequent offence, with revocation of the driving licence of such person:*

Provided that where a driving licence is revoked under this Section, the name of the holder of such driving licence may be placed in the public domain in such manner as may be prescribed by the Central Government."

It is submitted that in view of the same, the lacunae highlighted by the Division Bench of this Court no longer exists, and the impugned action of seizing the driving licence of the driver of the vehicle involved in an accident by the Police Officer and forwarding it to the Licensing Authority, now has statutory backing and as such, that decision of the Division Bench of this Court would not have any applicability in cases where the accident has occurred after the amendments to the Act have come into force, as in the present one. It is also informed that pursuant to the recommendations made by the Committee on Road Safety appointed by the Hon'ble Supreme Court of India, after issuing Show Cause Notice dated 09.10.2023, the Licensing Authority by Proceedings in Show Cause No. TN12/2023/859 dated 08.11.2023 has suspended the driving licence



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of the Petitioner for the period from 24.09.2023 to 23.03.2024 (5 months and 28 days), which is challenged in this Writ Petition.

4. *Per contra*, Learned Counsel for the Petitioner highlights that the impugned order has been passed without issuance of any show cause notice in violation of principles of natural justice and that it has been purported to have been made under clauses (1)(d) and (f) in Section 19 of the Act read with Rule 21 of the Central Motor Vehicles Rules, 1989, and not in the exercise of power conferred by clause (1-A) in Section 19 of the Act. She further contends that even in clause (1-A) in Section 19 of the Act, the Licensing Authority has been empowered to disqualify a person from holding driving licence for a first offence for a period of three months, and the suspension of licence for a period exceeding that limit is without jurisdiction and the Licensing Authority would have to return the driving licence to the Petitioner. It is further pleaded that on account of seizure of the driving licence, the Petitioner is out of employment and any further delay in returning his driving licence causes hardship for his livelihood, which cannot be countenanced.

5. In response to the specific query raised by the Court as to whether the show cause notice was sent to the Petitioner, Learned Additional Government



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Pleader appearing for the Second Respondent has produced its copy, but he has not been able to produce any acknowledgment for its receipt. In such circumstances, it could be inferred that the impugned order has been passed without serving any show cause notice on the Petitioner. That apart, as rightly contended by Learned Counsel for the Petitioner, the maximum period of suspension could be three months from the date of seizure of the driving licence and cannot be imposed beyond that period.

6. In view of the foregoing discussion, this Court without expressing any view on the merits of the controversy involved in the matter, passes the following order:-

- (i) the impugned Order in Show Cause No. TN12/2023/859 dated 08.11.2023 passed by the Second Respondent is set aside;
- (ii) the Petitioner shall submit his explanation to the show cause notice dated 09.10.2023 (a copy of which has been received by his Counsel in Court today) to the Second Respondent by 11.12.2023;
- (iii) it shall be incumbent upon the Second Respondent to immediately consider the explanation submitted by the Petitioner for the show cause notice dated 09.10.2023 issued to him;



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(iv) if any other details or supporting documents are necessary, the

deficiencies in that regard shall be informed in writing by the Second Respondent to the Petitioner requiring the same to be furnished within two clear working days from the date of its receipt by him;

(v) an enquiry shall be conducted thereafter affording full opportunity of personal hearing to the Petitioner to explain his position in that regard;

(vi) a reasoned order shall be passed dealing with each of the contentions raised on merits and in accordance with law and the decision taken communicated under written acknowledgment;

(vii) in the event that the Second Respondent is not able to pass final orders within the period of three months from the actual date of seizure of the driving licence of the Petitioner by the First Respondent, the driving licence of the Petitioner shall be then forthwith returned to him with endorsement to the effect that the Petitioner shall not be precluded from driving the vehicles for which he is otherwise authorized from that date onwards, subject to the result of the proceedings in which final orders would follow later; and

(viii) the Second Respondent shall file report of such compliance by 31.12.2023 before the Registrar (Judicial) of the Court.



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In the result, the Writ Petition is disposed on the aforesaid terms.

Consequently, the connected Miscellaneous Petitions are closed. No costs.

01.12.2023

Index: Yes/No

NCC: Yes/No

Note: Issue order copy on 01.12.2023.

vjt

To

1. The Inspector of Police,
Avadi, Traffic Investigation Wing,
Poonamallee,
Chennai – 600 056.
2. The Regional Transport Officer,
Licensing Authority,
Office of the Regional Transport Authority,
RTO, Poonamallee,
Tamil Nadu.

Copy to

The Registrar (Judicial),
Madras High Court,
Chennai – 600 104.



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P.D. AUDIKESAVALU, J.

vjt

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