



\$~R-101

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ W.P.(C) 8763/2016 & CM APPL. 35897/2016

LAYAK MASIH

.....Petitioner

Through: Mr. Shri Singh, Mr. Satyam
Thareja, Ms. Vasundhara
Nagrath, Ms. Surabhi Vaya
and Mr. Pratyaksh Sikodia,
Advs.

versus

STATE OF NCT OF DELHI & ANR

.....Respondents

Through: None.

CORAM:

HON'BLE MR. JUSTICE PURUSHAINDR KUMAR KAURAV

ORDER

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10.07.2024

1. This petition is directed against the suspension order of driving license dated 20.06.2016 issued by the Transport Department.
2. The solitary grievance raised by the petitioner rests on the violation of the principles of natural justice inasmuch as no show cause notice was issued to the petitioner as mandated under Section 19 of the Motor Vehicles Act, 1988 [**“Act”**].
3. Learned counsel appearing for the petitioner submits that the petitioner has taken unequivocal plea in the writ petition stating therein that no show cause notice was served on the petitioner before the impugned order dated 20.06.2016 was passed. The respondents in their counter affidavit in paragraph nos. 10 and 11 have stated as under:-

“10. That accordingly, in pursuance to the request of the ACP/TE, Office of the Dy. Commissioner of Police Traffic(TE), Delhi vide No.833/Computer Center/Traffic dated 26.10.2015 at New Delhi, the Petitioner was issued a show cause notice dated 21.11.2015 the then



Motor Licensing officer of the Zonal office. It should be noted that the said show cause notice and challan was issued as per the directions of the Supreme Court Committee on Road Safety. A Copy of the show cause notice dated 21.11.2015 is annexed herewith as Annexure A-5.

11. That, vide show cause notice dated 21.11.2015 the Petitioner was granted an opportunity to reply within 10 days of the issue of the notice, but the Petitioner, never appeared to represent or file the reply to the said show cause notice.”

4. The petitioner in his rejoinder affidavit in paragraph nos.7 and 10 states as under:

“7. In rejoinder to paragraph 7 of the Affidavit of Respondent, it is stated that the contents of paragraph 7 are self explanatory and in support of the contention of the Petitioner. It is stated that the copy of the alleged Show Cause Notice dated 21.11.2015 (which was allegedly served upon the Petitioner) details offences under Section 21(16) of Central Motor Vehicle Rules, 1989 which is also stated in the Suspension Order dated 20.06.2016. However, the offence which was allegedly committed by the Petitioner was under Section 21(12) of the Central Motor Vehicle Rules, 1989. The Petitioner could not be expected to actually show cause without being given any details of date, time and place and also, incorrectly stating the offence committed by the Petitioner.

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10. In rejoinder to paragraph 10 of the Affidavit of Respondent, it is stated that the contents of paragraph 10 are baseless and wrong. The Petitioner never received Show Cause Notice dated 21.11.2015. It is stated that the Show Cause Notice dated 21.11.2015 annexed with affidavit of Respondent states that Petitioner was challenged for offence of drink and driving which was never committed by Petitioner as has been admitted by the Respondent.”

5. It is thus seen that the requirement of issuance of the show cause notice before taking any action for suspension of driving license is mandatory, as can be seen from a bare perusal of Section 19 of the Act and any action in contravention thereto, is unsustainable.

6. The aforesaid legal position has also been reinforced by the decision of this Court in the case of **Ashish Gosain v. Department of Transport**¹. The relevant paragraphs of the said decision are extracted as under:-

¹ 2016 SCC OnLine Del 2868



“8.2. The directions issued by the Supreme Court Committee on the Road Safety for suspension of licence for a period of not less than three months under Section 19 of the Motor Vehicles Act in cases of driving at excessive speed, overloading, drunken driving and using mobile phone while driving, warrant strict implementation by Delhi Police as well as Transport Department. However, the Delhi Police as well as the Transport Department have to follow due process of law which is as under : -

8.2.1. A valid show cause notice giving the particulars of the violation i.e. date, time and place, reference to relevant provisions violated and the directions of the Supreme Court Committee on the Road Safety.

8.2.2. An opportunity of hearing in terms of Section 19(1) of the Motor Vehicles Act, 1988.

8.2.3. The suspension order containing reasons in terms of Section 19(1) of the Motor Vehicles Act.

8.3. Mr. Rahul Mehra, learned senior standing counsel for Govt. of NCT of Delhi submits that in order to implement the directions of the Supreme Court Committee on Road Safety, the respondents have formulated the following procedure:

8.3.1. In cases of violations specified in the directions of the Supreme Court Committee on the Road Safety, the concerned police officer/enforcement officer shall seize the driving licence for initiating proceedings for suspension of licence under Section 19 of the Motor Vehicles Act read with Rule 21 of the Central Motor Vehicles Rules, 1989. The acknowledgement of the seizure of the driving licence shall notify the driving licence holder that the driving licence is liable to be suspended for a period of not less than three months in terms of the directions of the Supreme Court Committee on Road Safety. The revised acknowledgment format is reproduced hereunder : -

8.3.2. The licence seized by the Enforcement Officer shall be forwarded to the Motor Licensing Officer of the Transport Department who shall thereafter issue a show cause notice to the licence holder to show cause why his licence should not be suspended under Section 19(1)(d) and (f) of the Motor Vehicles Act read with Rule 21 of the Central Motor Vehicles Rules, 1989 in terms of the directions of the Supreme Court Committee on the Road Safety. The revised draft notice format is reproduced hereunder:-

8.3.3. The Motor Licensing Officer shall afford a hearing to the driving licence holder, who seeks the same in his reply. The suspension order shall be passed after considering the reply and the submissions made by the licence holder at the time of oral hearing. The suspension order shall be sent to the driving licence



holder by Regd. AD Post. The suspension order shall carry a note that the driving licence holder is entitled to an appeal under Section 19(3) of the Motor Vehicles Act before the Appellate Authority within a period of one month from the date of the order.

8.3.4. The competent Transport Authority shall endeavour to complete the adjudicatory process preferably within a period of 90 days, failing which suitable period of extension shall be endorsed upon the acknowledgment/seizure memo by the said competent authority.

8.4. The procedure formulated by the Delhi Police and the Transport Department is fair and reasonable. Let the same be implemented forthwith.

8.5. In cases where the Suspension Order has already been passed without affording an opportunity of hearing under Section 19(1) of the Motor Vehicles Act, and the license holder seeks a personal hearing; there is no impediment in the Motor Licensing Officer giving a fresh opportunity of hearing and passing a revised order.”

[emphasis supplied]

7. Thus, what is required to be examined by this Court is whether the show cause notice has been duly served upon the petitioner or not. Since the petitioner has unequivocally taken a stand that the same has not been served on the petitioner, it was incumbent upon the issuing authority to have adduced sufficient material to satisfy that the same has been duly served. Except making an averment in the counter affidavit which has been controverted by the petitioner, there is no other material. Even a perusal of the show cause notice which has been placed on record would also indicate that the same does not contain any signatures and appears to have been extracted from the computer database.

8. It is thus seen that the respondents might have prepared the show cause notice in their system/record, but the same inadvertently could not have been served on the petitioner.

9. Since the legal position, as has been discussed hereinabove, is unassailable, the Court does not find it appropriate to examine any other



aspect of the matter and instead deems it appropriate to set aside the impugned order dated 20.06.2016 on that score alone.

10. Accordingly, the instant petition is allowed and the impugned order dated 20.06.2016 stands set aside.

11. The petition stands disposed of along with pending application.

PURUSHAINDRA KUMAR KAURAV, J

JULY 10, 2024/p