



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 31.10.2011

CORAM:

THE HONOURABLE MR. JUSTICE K.N.BASHA
WRIT PETITION (MD) No.10832 OF 2011 and
M.P. (MD) Nos.1 and 2 of 2011

V.Anbalagan

.. Petitioner

vs.

1.The Deputy Transport Commissioner,
Thanjavur.

2.The Regional Transport Officer,
The Regional Transport Office,
Thanjavur.

.. Respondents

Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus after calling for the records from the 1st and 2nd respondents relating to the order of the 2nd respondent dated 15.7.2011 passed in Na.Ka.No.29156/E5/2011 and also order of the 1st respondent dated 11.8.2011 passed in R.No.1600/A2/11 modifying the order of the 2nd respondent, quash the same and consequently, direct the 2nd respondent to return the driving licence of the petitioner to him without any remarks.

For petitioners : Mr.S.Arunachalam

For respondent s : Mr.V.Pandi, Govt.Advocate

ORDER

Challenge in this petition is to the order passed by the second respondent dated 15.7.2011 in Na.Ka.No.29156/E5/2011 and the order of the first respondent dated 11.8.2011 in R.No.1600/A2/11 modifying the order of the 2nd respondent reducing the period of suspension of the driving licence of the petitioner herein, with a consequential direction to the second respondent to return the driving licence of the petitioner.

2. The learned counsel appearing for the petitioner would submit that the petitioner was appointed as a driver in the Tamil Nadu State Transport Corporation (Kumbakonam) Limited) on 10.10.2007 and when he was working at Thanjavur Town-II Branch of the Corporation, the bus driven by him met with an accident on 29.6.2011 resulting in the death of two persons and as a result, a criminal case was registered for the offence under Section 304A of the IPC in Crime No.122 of 2011. It is contended that the investigation is pending in the criminal case and even chargesheet is yet to be filed. It is further submitted that even the Motor Accident Claim Petition is also pending as on date and no final orders have been passed. The learned counsel would contend that inspite of the said position, the driving licence of the petitioner was suspended for a period of six months as per the orders of the second respondent herein and on appeal, the first respondent while confirming the order of suspension reduced the period of suspension of the driving licence from six months to four months as per his order dated 11.8.2011 and the said orders are under challenge in this Writ Petition.



3. It is contended that merely on the basis of the registration of F.I.R for offence under Section 304A of the IPC, both the respondents 1 and 2 have suspended the driving licence of the petitioner and as such, it would amount to pre-determination or pre-conclusion of the allegation that the petitioner had driven the bus in a rash and negligent manner without any proof.

4. The learned counsel appearing for the petitioner would place reliance on the decision of a Division Bench of this Court in the case of *P.Sethuram v. The Licensing Authority, The Regional Transport Officer, Dindigul (Madurai Bench) (D.B.) reported in 2010 Writ L.R.100* wherein the Division Bench has held that such an order of suspension of licence is liable to be quashed if the same was passed merely on the basis of registration of a criminal case against the driver for the offence under Section 304A of the IPC even before the conclusion of the criminal case and the Motor Accident Claim Petition before the Tribunal.

5. Heard the learned Government Advocate on the submission made by the learned counsel appearing for the petitioner. It is contended that the petitioner drove the said bus on the fateful day of the accident resulting in the death of two persons. It is pointed out that an F.I.R was registered for the offence under Section 304A of the IPC and on the basis of such materials, the second respondent has rightly suspended the driving licence of the petitioner for a period of six months and the first respondent viz., the appellate authority has reduced the period of suspension to four months.

6. This Court carefully considered the rival contention put-forward by either side and perused the entire materials available on record including the impugned orders passed by the respondents 1 and 2.

7. At the outset, it is to be stated that except the F.I.R. for the offence under Section 304A of the IPC, there is no other material available on record to come to the conclusion that the petitioner being the driver of the Transport Corporation Bus drove the said bus in a rash and negligent manner. It is seen that the criminal case is pending for investigation and even chargesheet is yet to be filed. As far as the Motor Accident Claim case is concerned, the same is also pending. Before the conclusion of the said criminal case and the Motor Accident Claim case, it is not desirable to arrive at a conclusion that the petitioner had driven the bus in a rash and negligent manner. It is seen that the driving licence of the petitioner was seized immediately after the registration of the F.I.R., and thereafter, the same was handedover to the second respondent herein. Thereafter, the second respondent passed the impugned order of suspending the driving licence of the petitioner for a period of six months and the said order was confirmed by the first respondent herein except reducing the period of suspension from six months to four months.

8. The learned counsel rightly placed reliance on the decision of a Division Bench of this Court in *P.Sethuram v. The Licensing*



Authority, The Regional Transport Officer, Dindigul, supra, wherein the Division Bench after incorporating the provision under Section 19 of the Motor Vehicles Act, 1988 has held in Paragraphs 11 and 12 as follows:-

"11. The respondent has, in the impugned order, precluded 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 the 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 appellant, within a week of receipt of a copy of this order..."

9. The view taken by the Division Bench is squarely applicable to the facts in this case and impugned orders have been passed suspending the driving licence of the petitioner merely on the ground of registration of F.I.R. under Section 304A of the IPC and the criminal case is pending for investigation and the Motor Accident Claim Petition is also pending before the Tribunal and as such, it would definitely amount to pre-conclusion or pre-determination of the commission of offence under Section 304A of the IPC on the allegation of rash and negligent driving of the bus.

10. In view of the aforesaid reason, this Court is constrained to set aside the impugned orders passed by the second respondent dated 15.7.2011 in Na.Ka.No.29156/E5/2011 and that of the first respondent dated 11.8.2011 in R.No.1600/A2/11 modifying the order of the second respondent. The second respondent is hereby directed to return the driving licence of the petitioner on the production of the order of this Court. It is made clear that the respondents are not precluded from taking any action in the manner known to law after conclusion of the criminal case. The Writ Petition is allowed. The connected Miscellaneous Petitions are closed. No costs.

Sd/-

Assistant Registrar(CO)

/True Copy/

Sub Assistant Registrar

To

1.The Deputy Transport Commissioner,Thanjavur.

2.The Regional Transport Officer,

The Regional Transport Office,Thanjavur.

+1cc to Mr.S.Arunachalam, Advocate, Sr.No.37267

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