
(2011) 09 MAD CK 0311

In the Madras High Court

Case No : Writ Petition (MD) . No.10275 of 2011

M. Anantha Amirtharaj

APPELLANT

Vs

The Regional Transport Officer, Thanjavur

RESPONDENT

Date of Decision : 09-09-2011

Acts Referred:

Constitution of India, 1950 — Article 226
Motor Vehicles Act, 1939 — Section 60(1), 86(1)
Motor Vehicles Act, 1988 — Section 184, 185, 19, 19(1), 19(2)
Penal Code, 1860 (IPC) — Section 279, 304(A), 337

Citation : (2011) 09 MAD CK 0311

Hon'ble Judges : S. Manikumar, J

Bench : Single Bench

**Advocate : T.A. Ebenezer, for the Appellant; T.S. Mohammed Mohideen
Additional Government Pleader, for the Respondent**

Final Decision : Dismissed

Judgement

The Honourable Mr. Justice S.Manikumar

1. Mandamus has been sought for directing the Regional Transport Officer, Thanjavur, to return the Petitioner's driving licence immediately.

2. It is the case of the Petitioner that on 04.06.2011, when he was on duty in a Transport Corporation Bus, an untoward accident occurred within Thanjavur Traffic Investigation Wing Police Limit, in which, a person injured had succumbed to death. An F.I.R. was registered against the Petitioner u/s 304(A) of the Indian Penal Code on the file of the Thanjavur Traffic Investigation Wing Police Station. The Petitioner was released on bail and on 07.06.2011, the Respondent issued a show cause, directing the Petitioner to show cause as to why his driving licence should not be cancelled. When the Petitioner was taken to the police station, his licence was seized by the Respondent. Hence, he has filed the present Writ Petition.

3. The Petitioner has questioned the authority of the Regional Transport Officer, to withhold the driving licence, on the ground inter alia that the Regional Transport Officer, Thanjavur has no jurisdiction, till a finding is recorded by the Court of competent jurisdiction/Tribunal, on the aspect of rash and negligent driving.

4. The issue as to whether the licensing authority has powers to withhold the driving licence, until the proceedings under Sections 19 and 21 of the Motor Vehicles Act are concluded, or when a case for dangerous driving u/s 304(A) of the Indian Penal Code is pending, has been considered by this Court in W.P.(MD) No. 8067 of 2011, dated 20.07.2011. It is useful to extract paragraph Nos. 4 to 37 of the said order dated 20.07.2011, which are as follows:

4. In order to adjudicate the contentions, it is necessary to extract few provisions from the Motor Vehicles Act. Section 19 of Motor Vehicles Act, 1988 gives power to the licensing authority to disqualify from holding a driving licence or revoke such licence and the same reads as follows:

19. Power of licensing authority to disqualify from holding a driving licence or revoke such licence. -(1)If a licensing authority is satisfied, after giving the holder of a driving licence an opportunity of being heard, that he-

(a) is a habitual criminal or a habitual drunkard; or

(b) is a habitual addict to any narcotic drug or psychotropic substance within the meaning of the Narcotic Drugs and Psychotropic Substances Act, 1985; or

(c) is using or has used a motor vehicle in the commission of a cognizable offence; or

(d) has by his previous conduct as driver of a motor vehicle shown that his driving is likely to be attended with danger to the public; or

(e) has obtained any driving licence or a licence to drive a particular class or description of motor vehicle by fraud or misrepresentation; or

(f) has committed any such act which is likely to cause nuisance or danger to the public, as may be prescribed by the Central Government, having regard to the objects of this Act; or

(g) has failed to submit to, or has not passed, the tests referred to in the proviso to Sub-section (3) of Section 22; or

(h) being a person under the age of eighteen years who has been granted a learner's licence or a driving licence with the consent in writing of the person having the care of the holder of the licence and has ceased to be in such care, it may, for reasons to be recorded in writing, make an order-

(i) disqualifying that person for a specified period for holding or obtaining any driving licence to drive all or any classes or descriptions of vehicles specified in the licence; or

(ii) revoke any such licence.

(2) Where an order under Sub-section (1) is made, the holder of a driving licence shall forthwith surrender his driving licence to the licensing authority making the order, if the driving licence has not already been surrendered, and the licensing authority shall,-

(a) if the driving licence is a driving licence issued under this Act, keep it until the disqualification has expired or has been removed; or

(b) if it is not a driving licence issued under this Act, endorse the disqualification upon it and send it to the licensing authority by which it was issued; or

(c) in the case of revocation of any licence, endorse the revocation upon it and if it is not the authority which issued the same, intimate the fact of revocation to the authority which issued that licence:

Provided that where the driving licence of a person authorises him to drive more than one class or description of motor vehicles and the order, made under Sub-section (1), disqualifies him from driving any specified class or description of motor vehicles, the licensing authority shall endorse the disqualification upon the driving licence and return the same to the holder.

(3) Any person aggrieved by an order made by a licensing authority under Sub-section (1) may, within thirty days of the receipt of the order, appeal to the prescribed authority, and such appellate authority shall give notice to the licensing authority and hear either party if so required by that party and may pass such order as it thinks fit and an order passed by any such appellate authority shall be final.

5. Section 20 of the Motor Vehicles Act, 1988 deals with the power of Court to disqualify driving licence, which reads as follows:

20. Power of Court to disqualify.-(1)Where a person is convicted of an offence under this Act or of an offence in the commission of which a motor vehicle was used, "the Court" by which such person is convicted may, subject to the provisions of this Act, in addition to imposing any other punishment authorised by law, declare the persons so convicted to be disqualified, for such period as the Court may specify, from holding any driving licence to drive all classes or description of vehicles, or any particular class or description of such vehicles, as are specified in such licence:

Provided that in respect of an offence punishable u/s 183 no such order shall be made for the first or second offence.

(2) Where a person is convicted of an offence under Clause (c) of Sub-section (1) of Section 132, Section 134 or Section 185, the Court convicting any person of any such offence shall order the disqualification under Sub-section (1), and if the offence is relatable to Clause (c) of Sub-section (1) of Section 132 or Section 134, such disqualification shall be for a period of not less than one month, and if

the offence is relatable to Section 185, such disqualification shall be for a period of not less than six months.

(3) A Court shall, unless for special reasons to be recorded in writing it thinks fit to order otherwise, order the disqualification of a person-

(a) who having been convicted of an offence punishable u/s 184 is again convicted of an offence punishable under that section,

(b) who is convicted of an offence punishable u/s 189, or

(c) who is convicted of an offence punishable u/s 192:

Provided that the period of disqualification shall not exceed, in the case referred to in Clause (a), five years, or, in the case referred to in Clause (b), two years or, in the case referred to in Clause (c), one year.

(4) A Court ordering the disqualification of a person convicted of an offence punishable u/s 184 may direct that such person shall, whether he has previously passed the test of competence to drive as referred to in Sub-section (3) of Section 9 or not, remain disqualified until he has subsequent to the making of the order of disqualification passed that test to the satisfaction of the licensing authority.

(5) The Court to which an appeal would ordinarily lie from any conviction of an offence of the nature specified in Sub-section (1) may set aside or vary any order of disqualification made under that Sub-section notwithstanding that no appeal would lie against the conviction as a result of which such order of disqualification was made.

6. Section 21 of the Motor Vehicles Act, 1988 deals with the suspension of driving licence in certain cases, which reads as follows:

21. Suspension of driving licence in certain cases.-

(1) Where, in relation to a person who had been previously convicted of an offence punishable u/s 184, a case is registered by a police officer on the allegation that such person has, by such dangerous driving as is referred to in the said Section 184, of any class or description of motor vehicle caused the death of, or grievous hurt to, one or more persons, the driving licence held by such person shall in relation to such class or description of motor vehicle become suspended-

(a) for a period of six months from the date on which the case is registered, or

(b) if such person is discharged or acquitted before the expiry of the period aforesaid, until such discharge or acquittal, as the case may be.

(2) Where, by virtue of the provisions of Sub-section (1), the driving licence held by a person becomes suspended, the police officer, by whom the case referred to in Sub-section (1) is registered, shall bring such suspension to the notice of the

Court competent to take cognizance of such offence, and thereupon, such Court shall take possession of the driving licence, endorse the suspension thereon and intimate the fact of such endorsement to the licensing authority by which the licence was granted or last renewed.

(3) Where the person referred to in Sub-section (1) is acquitted or discharged, the Court shall cancel the endorsement on such driving licence with regard to the suspension thereof.

(4) If a driving licence in relation to a particular class or description of motor vehicles is suspended under Sub-section (1), the person holding such licence shall be debarred from holding or obtaining any licence to drive such particular class or description of motor vehicles so long as the suspension of the driving licence remains in force.

7. Section 184 of the Motor Vehicles Act is extracted hereunder:

184. Driving Dangerously. -Whoever drives a motor vehicle at a speed or in a manner which is dangerous to the public, having regard to all the circumstances of the case including the nature, condition and use of the place where the vehicle is driven and the amount of traffic which actually is at the time or which might reasonably be expected to be in the place, shall be punishable for the first offence with imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, and for any second or subsequent offence, if committed within three years of the commission of a previous similar offence with imprisonment for a term which may extend to two years, or with fine which may extend to two thousand rupees or with both.

8. It is worthwhile to extract the meaning of the word, "suspension" given in the Dictionaries.

Suspension, as per Wharton's Law Lexicon, 14th Edn., is a temporary stop or hanging up as it were of a right for a time, also a censure on ecclesiastical persons, during which they are forbidden to exercise their office or take the profits of their benefices.

"Suspension" means, "action of debarring or state of being debarred, especially, for a time, from a function or privilege; temporary deprivation of one's office or position, or again, state of being temporarily kept from doing or deprived of something.

Suspension as per Black's Law Dictionary: 7th Edn. Pg.1460 means, (1) to interrupt; postpone; defer

(2) to temporarily keep a person from performing a function, occupying an office, holding a job or exercising a right or privilege.

As per Stroud's Judicial Dictionary, "Suspension" or "Suspense" is a temporal, ie., temporary, "Stop of Mans" Right (Cowel). Suspension, as per Bauvier's Law Dictionary, Vol.II, means a temporary stop of right, of a law, and the like. As per

the Ramanatha Iyer's Dictionary, suspension means temporary intervention or cession of something (as) office, work or labour.

The act of debarring for a time from a function or privilege". It means a temporary deprivation of once office or position. [K.J. Aiyar's Judicial Dictionary, 14th Edn.]

Suspension, according to Oxford Dictionary, means, "The action of suspending or condition of being suspended, the action debarring especially for a time from, a function or privilege, temporary deprivation of one's office or position or again, state of being temporarily kept from doing or deprived of something.

Suspension is, to defer; to debar from any privilege, office employment, et., for a time being. Hemanta Kumar Bhattacharjee Vs. S.N. Mukherjee,

Suspension connotes temporary cessation of something as right, work or labour. The basic idea underlying the root word, "suspend" and all its derivatives is that a person while holding an office and performing its functions of holding a position or privilege should be interrupted in doing so and debarred for the time being from further functioning in the office or holding the position and privilege. He is intercepted in the exercise of his functions of his employment of the privilege and put aside, as it were, for a time, excluded during the period from his functions or privileges. Such is the concept of a suspension order. Reference can be made to the decision in Abid Mohammad Khan Vs. The State, .

"A conditional withholding, interruption, or delay; as, the suspension of a payment on the performance of a condition.

9. In V. Seetharaman v. The Regional Transport Officer, Madurai South reported in (2008 3 L.W 433), the licence of the Petitioner therein has been suspended after issuing show-cause notice. The show-cause notice reads as follows

Report dated 07.12.2007 of the Motor Vehicle Inspector, Grade I, Madurai South.

Whereas, the Motor Vehicle Inspector, Grade-I, had recommended for revocation of the licence granted to you for causing a fatal accident. You are hereby called upon to show cause as to why your license should not be revoked or suspended within 7 days of this notice. Failing which, it will be considered that you do not have any cause to show and without further intimation your license will be revoked or suspended u/s 19(1) of the Motor Vehicles Act.

10. The petitioner therein submitted his explanation disputing the manner in which the accident occurred. After considering the explanation, by an order dated 08.01.2008, u/s 19(1) of the Motor Vehicles Act, 1988, the licence was suspended from 01.02.2008 to 31.07.2008, by the licensing authority, Madurai South. The holder of the licence was directed not to drive any motor vehicles

11. The grounds of challenge of the order of suspension were as follows:

a. The authority has failed to see that mere involvement of the Petitioner in a fatal

accident case does not per se attract disqualification, unless the driver, by his previous conduct as driver of Motor vehicle has shows that his driving is likely to be attended with danger to the public as per the mandate of Section 19(a)(d) of the Motor Vehicles Act, 1988.

b. The impugned order did not reflects the total non-application of mind by the authority and does not reflect the subjective satisfaction required to be made under the said Section.

c. The motor vehicle report was not furnished and that there was violation of principles of natural justice.

12. Considering the grounds raised, Hon"ble Mr. Justice S. Nagamuthu, passed an order dated 14.02.2008, in W.P.(MD) No. 1266 of 2008, rejecting the contentions and at para 4, it has been held as follows:

4. A perusal of the order would go to show that a show cause notice was issued on 07.12.2007, for which the Petitioner has submitted his explanation on 27.12.2007. He has not asked for copy of any document. There is also no dispute that the vehicle driven by him met with an accident. u/s 19(1) Sub Clause (c) of the Motor Vehicles Act, if the motor vehicle driven by a driver has been involved in the commission of cognizable offence, certainly, the authorities have got power to disqualify the person, after recording the reasons. Thus, I do not find any merit in the argument that the order is not a speaking order and that the principles of natural justice have not been followed. In any even, the impugned orders appealable to the authority as prescribed u/s 19(3) of the said Act. When the Petitioner has an alternative efficacious remedy, the writ petition cannot be maintained before this Court under Article 226 of the Constitution of India.

13. When the matter was challenged by way of an appeal in W.A.(MD) No. 205 of 2008, it was inter alia contended that even though an offence u/s 304-A Indian Penal Code is cognizable, the language of the section indicates that the offence is committed when there is a rash and negligent driving and a person, who is alleged to have committed an offence u/s 304-A by rash and negligent driving, cannot be said to have "used the motor vehicle in the commission of a cognizable offence.

14. According to the Appellant therein, the provisions contained in Section 19(1) (c) would be applicable only, where, the person concerned deliberately used the Motor Vehicle in the commission of offence and not where the cause of rash and negligent driving of motor vehicle, u/s 304-A is committed. Rejecting the contention, a Division Bench, cited supra, at paragraph 10, has held as follows:

The power to revoke the licence is granted to the authority with a view to prevent a person unworthy of driving a vehicle from driving temporarily or even permanently. If the interpretation suggested by the Learned Counsel for the Appellant is accepted, even a person, who drives a vehicle negligently and recklessly and causes death, will continue to drive the vehicle in future with

impunity with the existing licence. Such interpretation would give rise to starting consequences and defeat the very purpose of incorporating Section 19 of the Motor Vehicles Act. Therefore, the interpretation suggested by the Learned Counsel for the Appellant, is not acceptable.

15. The dictum laid down in the above said judgment is that when there is rash and negligent driving and when the Petitioner alleged to have committed an offence u/s 304-A, the competent authority, with a view to prevent a person from continuing to drive the vehicle in favour of the existing licence, can resort to the suspension.

16. In *P. Sethuram Vs. The Licensing Authority, The Regional Transport Officer*, in the above reported judgment, the Division Bench was pleased to quash the order of suspension on the ground that there was no allegation either in the notice or in the impugned order made in the above writ petition that the Appellant therein was a habitual criminal or habitual drunkard so as to attract Clause (a) of Section 19 of the Act.

17. The Division Bench has further observed that the Licensing Authority has pre-concluded the issue that the Appellant therein was guilty of rash and negligent, even before the criminal court or the Motor vehicles claims Tribunal went into the case. There is absolutely no quarrel over the judgment that the licensing authority cannot hold the licence as guilty of rash and negligent driving, when it is the function of the Court of competent jurisdiction or the claims Tribunal to adjudicate the aspect of rash and negligent driving. Also, when the show-cause notice or the impugned order, does not impute the Appellant with any of the ingredients, necessary under clause (b) to (h) of Sub-section (1) of Section 19 of the Act., the Division Bench has set aside the order of suspension.

18. Though the Division Bench, tested the correctness of the order of suspension, with due respect, this Court is of the view that the issue as to whether, the licence can be directed to surrender the licence, u/s 19(2) of the Act, pending proceedings under 19(1) was not raised and answered. Section 19(2) reads as follows:

19(2). Where an order under Sub-section(1) is made, the holder of a driving licence shall forthwith surrender his driving licence to the licensing authority making the order, if the driving licence has not already been surrendered, and the licensing authority shall,

(a) if the driving licence is a driving licence issued under this Act, keep it until the disqualification was expired or has been removed; or

(b) if it is not a driving licence issued under this Act, endorse the disqualification upon it and send it to the licensing authority by which it was issued: or

(c) in the case of revocation of any licence, endorse, the revocation upon it and if it is not the authority which issued the same, intimate the fact of revocation to the authority which issued that licence.

Provided that where the driving licence of a person authorises him to drive more than one class or description of motor vehicles and the order, made under Sub-section (1), disqualifies him from driving any specified class or description of motor vehicles, the licensing authority shall endorse the disqualification upon the driving licence and return the same to the holder.

19. Section 19 empowers the competent authority to pass an order under Sub-Section 19 and when an order Sub-Section 1 is made, the holder of the driving licence shall forthwith surrender his driving licence to the licensing authority making the order, if the driving licence has not already been surrendered. Thus, reading of the Section makes it clear that surrendering of the licence is done at two stages, when he is called upon to do so, before an order under Sub-section (1) of Section 19 is passed on immediately thereafter. Thus impliedly the Section also makes it clear that there is a power conferred on the licensing authority to insist for surrendering the licence, till the adjudication is completed u/s 19(1) of the Act. Therefore, it cannot be contended that the competent authority has no power or authority to retain the driving licence, till the adjudication is completed and final orders are passed, u/s 19(1) of the Act.

20. In W.P. Nos. 18042 and 18490 of 2010, the orders of the licensing authority, suspending the licences to the Petitioners therein were challenged. Reliance was also placed on the Division Bench judgment of this Court in *A. Sekar v. The Regional Transport Officer* reported in (2010 WLR 100). The orders of suspension came to be passed, after issuance of show-cause notices. While considering the plea of the Petitioners therein, that licences have been suspended, even before the conviction was recorded by a Court of competent jurisdiction and taking note of the large number of accident cases, registered in the State, for the years 1993 to 2009, Hon'ble Justice Mr. Paul Vasanthakumar, at paragraph 12 to 16 held as follows:

12. The Division Bench of this Court in the decision reported in 2010 WLR 100 (cited supra), while deciding the issue of suspension of the driving licence held that suspending a licence has got civil consequences. Therefore only after issuing show cause notice an order could be passed. In the said case no show cause notice was issued and without mentioning the commission of a cognisable offence, the suspension order was passed. Therefore this Court held that the said order was passed without due application of mind.

13. In the cases on hand, as already stated, show cause notices were issued to the Petitioners and the Petitioners' representations and objections were also considered, apart from giving opportunity to the Petitioners to appear in person in respect of the Petitioner in W.P. No. 18042 of 2010. The offence alleged against the Petitioners are also taken note of by the Respondent and death of one person each in these writ petitions and thereafter it was thought fit to suspend the driving licence of the Petitioners for a period of six months. The said orders are passed based on public interest and to prevent danger to public, bearing in mind the prevention such accident by the Petitioners for certain period

viz., six months. Therefore the provisions contained in Section 19(1)(f) empowers the Respondent in these cases to pass the impugned orders, i.e, to prevent danger to the public.

14. It is the fact that number of accidents and death due to the accidents are increasing year after year due to several factors, including careless and indisciplined driving; drunken driving; using cell phone while driving; sleepy driving; etc. The statistics available regarding road accidents from 1993 to 2009 in the State of Tamil Nadu are as follows:

"GOVERNMENT of TAMIL NADU

State Transport Authority

ROAD ACCIDENT DATA FROM 1993 TO 2009

TAMIL NADU

--YEAR Fatal Greivous Injury Minor Injury Non-Injury Total

N.A N.P.K N.A N.P.I N.A N.P.I N.A Accidents

1993 6528 7349 3562 5100 17957 27226 6878 34925

1994 7027 7798 4199 6091 18950 28789 6861 37037

1995 7974 8773 4440 6380 21661 31922 7610 41685

1996 8079 9028 4474 7383 22151 31198 7493 42197 1997 7947 8755 4542
6567 23362 34010 8352 44203 1998 8510 9801 6562 8525 23862 33970 7789
46723 1999 8734 9653 5276 7287 27231 34157 6845 48086 2000 8269 9300
5278 8496 29137 44910 6239 48923 2001 8579 9571 5442 8354 30963 45928
6994 51978 2002 9012 9939 5830 8697 32183 46433 6478 53503 2003 8393
9275 5163 8557 31600 46685 5869 51025 2004 8733 9507 4875 7642 33222
49641 5678 52508 2005 8844 9760 5214 7815 34669 54152 5151 53878 2006
10055 110 09 4630 6833 36262 57508 4198

55145 2007 11034 12036 4498 6873 39494 64226 4114

59140 2008 11813 12784 4426 6696 39193 63555 4977

60409 2009 12727 13746 4448 6721 39676 63783 3943

60794

N A: No of Accidents

N P K: No of persons killed

N P I: No of persons Injured

Source: DGP, Chennai"

The number of road accidents and the causes for such accidents during the year

2009 in the state of Tamil Nadu are as follows: "Government of Tamil Nadu
State Transport Authority

NUMBER of ROAD ACCIDENTS ACCORDING TO CAUSES
DURING THE YEAR 2009 (FROM JANUARY "2009 TO
DECEMBER "2009)

State: TAMIL NADU

NUMBER of ROAD ACCIDENTS ACCORDING TO CAUSES

Types of Causes Fatal Greivous Minor Non Total

Injury Injury Injury Accidents

N.A N.P.K N.A N.P.I N.A N.P.I N.A

Fault of Driver 11494 12438 4091 6216 35636 57593 3731 54952

Fault of

Passenger

Other than Driver 261 287 73 94 857 1202 64 1255

Fault of

Pedestrian 464 479 150 187 1695 2561 20 2329 Fault of Mechanical Defect 103
108 38 56 446 697 34 621

Bad Road 117 121 46 86 404 647 47 614 Bad Weather 9 13 6 6 65 109 8 88

Others 279 300 44 76 573 974 39 935

Total 12727 13746 4448 6721 39676 63783 3943

60794

N A-NO. of ACCIDENTS.

N P K -NO. of PERSONS KILLED.

N P I -NO. of PERSONS INJURED

Source: DGP, Chennai"

The above data indicate gradual increase of fatal and

grievous injury accidents. The percentage of accidents caused by the drivers"
negligence is 90.31%. Thus, strict implementation of the provisions of the Motor
Vehicles Act, 1988 is the present day requirement not only at the time of issuing
driving licence, but also even after the licence is issued.

15. The Division Bench judgment cited supra nowhere states that unless a

person is convicted by a criminal court no suspension of licence be ordered. The said judgment only states that prior to the order of suspension notice shall be given to the licensee and his objection shall be considered. The said procedure is stated in Section 19(1) of the Act. Strict implementation of the provisions of the Motor Vehicles Act, 1988, by the authorities concerned will have deterrent effect on the drivers in future and definitely they will be careful in future, which will in turn minimise the number of accidents. Therefore it should be treated as a right decision by the authorities concerned.

16. Since the Petitioners are involved in criminal case for the commission of accident, due to which one person each died, the order passed by the Respondent in these writ petitions suspending the licence of the Petitioners for a period of six months after issuing notice and considering their explanation are declared valid and there is no illegality in the said orders. There are no merits in the writ petitions and the same are dismissed. No costs. Connected miscellaneous petitions are also dismissed.

21. Motor Vehicles Act is a comprehensive Code, containing all features which covers, grant of permits, usage of the vehicles, description of the vehicles, different kinds of licences required for different clauses of licence, transfer of ownership etc., and it empowers the licensing authorities, to disqualify, suspend or revoke the licences, depending upon the factors enumerated in the Sections. Restricting to operate the vehicles, are measures to temporarily or permanently to curtail the rights of the licencees, considering the safety of the road users, including general public. Public interest is the predominant consideration while taking appropriate action by the licensing authority or the Court, as the case may be. In this context, it is worthwhile to extract few decisions, as to how a statute has to be interpreted.

(i) It is impossible to separate law from morality because public law is, and always has been, a reflection of the morality of those who make the laws.(How Does Law Relate to Morals by Rav.B. Horovitz)

(ii)There are two units of enquiry, while interpreting the statutory provisions. Statutory context and the intention of the Parliament - and the Judge must seek to harmonise the two [Cross"s "Statutory Interpretation" (Second Edn.), at Page 21]

(iii)The universe of meanings is neither a sound-proof system nor a nisy babel. We have guidelines, not rituals. The rule is not, always literalism, for that sounds like bigotry. Nor is it whatever the interpreter chooses, like historicity, sociology, contextuality and a host of fancy-dress fashions, for that will create unwarranted variances and supersede the law-maker by a side-wind. Words used designedly by trained draftsmen and authenticated by purposeful legislators, must possess a mandate, a meaning and a mission. That is Its sense. Union of India (UOI) Vs. Sankalchand Himatlal Sheth and Another,

(iv)The current and correct view of the interpretative process is that words must

be given their literal" or "ordinary" meaning unless there are compelling reasons, recognised by canons of construction, to the contrary. Authorised Officer, Thanjavur and Another Vs. S. Naganatha Ayyar and Others,

(v)Where a statute confers particular powers without prejudice to the generality of a general power already conferred, the particular powers are only illustrative of the general power and do not in any way restrict the general power. [D.K. Trivedi v. State of Gujarat (AIR 1986 SC 1323 : 1986 SCC Suppl. 20)]

(vi)The Courts strongly lean against any construction which tends to reduce a statute to a futility. The provision of a statute must be so construed as to make it effective and operative on the principle *ut res magis valeat quam pereat*. Tinsukhia Electric Supply Co. Ltd. Vs. State of Assam and others,

(vii) In construing a statute, the Court has to ascertain the intention of the law making authority in the backdrop of the dominant purpose and the underlying intendment of the said statute and that every statute has to be interpreted without any violence to its language and applied as far as its explicit language admits consistent with the established rule of interpretation. [Mohan Kumar Singhania and Ors. v. Union of India and Ors. (AIR 1992 SC 1 : AIR 1991 SCW 2646 : 1991 Lab IC 2334 Para 67)].

(viii). The Courts have a duty to construe the provisions of a statute to advance the cause of justice and facilitate the day to day working of the statute to serve the public interest and achieve the objective of social betterment. Gauri Shankar Gaur and Others, etc. Vs. State of U.P. and Others,

(ix)The words of a statute are to be first understood in their natural, ordinary or popular sense and phrases and sentences are construed according to their grammatical meaning unless that leads to some absurdity or unless there is something in the context or in the object of the statute to suggest the contrary. Mohammad Ali Khan and Others Vs. Commissioner of Wealth Tax, New Delhi,

(x)Law Courts exist for the society and in the event law Courts feel the requirement in accordance with principles of justice, equity and good conscience, the law Courts ought rise up to the occasion to meet and redress the expectation of the people. Secretary, H.S.E.B Vs. Suresh and Others etc. etc.,

(xi).The provision in the statute has to be understood in its ordinary natural sense, unless the Court finds that the provision sought to be interpreted is vague or obscurely worded. Steel Authority of India Ltd. and Others etc. etc. Vs. National Union Water Front Workers and Others etc. etc.,

(xii).The Court's jurisdiction to interpret a statute can be invoked when the same is ambiguous. It cannot enlarge the scope of legislation or intention when the language of provision is plain and unambiguous. It cannot add or subtract words to a statute or read something into it which is not there. It cannot re-write or recast legislation. [Nasiruddin v. Sita Ram Agarwal (AIR 2003 SCW 908)]

(xiii) A statute must be construed as a workable instrument. *Ut res magis valeat quam pereat* is a well-known principle of law. *Balram Kumawat Vs. Union of India (UOI) and Others*,

22. Section 19 of the Act empowers the licensing authority to disqualify the holder of a licence, after providing an opportunity of personal hearing. To address the argument that only after final determination of the offence the licence can be suspended, it is necessary to examine the Provision 19(1)(c), which is extracted here under:

19(1)(c). is using or has used a motor vehicle in the commission of a cognizable offence.

23. Section 19(1)(c) clearly states that "is using or used a motor vehicle in the Commission of a cognizable offence", the legislature has used both past and present tenses, while considering the usage of the vehicle, in commission of a cognizable offence. The word "commission" is now sought to be interpreted, as one of final determination by the Court, after trial.

The word, "Commission", as explained in "CHAMBERS DICTIONARY" is, "the act of committing; the state of being commissioned or committed; that which is committed.

As per "OXFORD ENGLISH DICTIONARY", "commission" means, an action of committing a crime or offence.

In "JUDICIAL DICTIONARY", the word, "commit" is defined as to perpetrate, as a crime; to perform as an act.

As per the "ADVANCED LAW LEXICON" by P. Ramanatha Aiyar, III Edition, the word, "commission in criminal law" is defined as "doing or perpetration; the performance of an act.

"Commit" as per "STROUD'S JUDICIAL DICTIONARY", this word, sometimes include an act or omission.

"COLLINS COBUILD ADVANCED LEARNERS ENGLISH DICTIONARY" the word, "commit" is defined as,

If someone commits a crime or a sin, they do something illegal or bad.

(v) As per BLACK'S LAW DICTIONARY, "commission" means, an act of doing or perpetrating acts as a crime.

(vi) As per MERRIAM WEBSTER'S COLLEGIATE ENGLISH DICTIONARY -11th Edition, "commission" means, an act of something of a crime.

24. Section 184 provides for punishment of imprisonment to a maximum period of six months, or with fine which may extend to one thousand rupees for the first offence and for any second or subsequent offence, if committed within three years of the commission of a previous similar offence with imprisonment for a

term which may extend to two years, or with fine which may extend to two thousand rupees or with both. Thus it could be seen in the event of any repetition of the commission of offence u/s 184 of Motor Vehicles Act, 1988, an enhanced punishment is provided. Section 304-A Indian Penal Code reads as follows:

304-A. Causing death by negligence-Whoever causes death of any person by doing any rash or negligent act not amounting to culpable homicide, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

It should be borne in mind that Section 304-A I.P.C., entails a severe punishment than Section 184 of the Motor Vehicles Act.

25. An important aspect to be noted is that, the expression used in Sub-section (c) of Section 19 of Motor Vehicles Act is, "in using or used in the commission of a cognizable offence". The Section does not state that the licensee should be convicted or any finding has to be recorded as to his guilt, in the commission of any cognizable offence. Therefore, this Court is of the view that the interpretation sought to be made by the Petitioner to the provisions of Motor Vehicles Act that, only after arriving at a finding, the licensing authority can suspend or disqualify, to drive the vehicle or revokes the licence, for a specified would be an infringement to the statutory provision, which in my view that even during the pendency of a criminal case registered, when the holder "of the licence" is using or has used the vehicle in the commission of a cognizable offence.

26. If the interpretation of the Petitioner has to be accepted, then the licensing authority has to remain as a mute spectator to all the illegal acts of the licensee, even if the vehicle is continuously used in the commission of any offences, till the criminal Court records a finding. That would run contrary to Section 19 of Motor Vehicles Act, which specifically uses the expression, "used or using the vehicle", in commission of a cognizable offence. The Section does not state, "conclusion", it only states "commission". The purpose in giving a separate caption, "dangerous driving", would mean that such dangerous driving in causing death or grievous hurt to one or more persons can be taken note of the licencing authority to exercise his power to disqualify or suspend or revoke, depending upon the facts and circumstances of the case.

27. While interpreting the provisions of the Act, this Court is of the view that, the principle of harmonious construction has to be applied to give effect to both the provisions under Sections 19 and 21 of the Motor Vehicles Act. Where u/s 19(1) (c), the words, "using or has used in the commission of a cognizable offence is used" whereas, in Section 21 of the Act, the word, "convicted" is used. Useful reference can be made to the following decisions:

(i) In Anwar Hasan Khan Vs. Mohammad Shafi and Others, , the Supreme Court, at Paragraph 8, held as follows:

For interpreting a particular provision of an Act, the import and effect of the meaning of the words and phrases used in the statute have to be gathered from the text, the nature of the subject-matter and the purpose and intention of the statute. It is a cardinal principle of construction of a statute that effort should be made in construing its provisions by avoiding a conflict and adopting a harmonious construction. The statute or rules made thereunder should be read as a whole and one provision should be construed with reference to the other provision to make the provision consistent with the object sought to be achieved. The well-known principle of harmonious construction is that effect should be given to all the provisions and a construction that reduces one of the provisions to a "dead letter" is not harmonious construction.

(ii) In *Shri. R.S. Pillai Vs. Smt. M.L. Peratchi @ Selvi and 10 others*, , a Division Bench of this Court, at Paragraphs 23 held as follows:

23. Before we take up such an exercise, the settled legal position in interpreting the statutes has to be borne in mind. It is settled law that the statute must be read as a whole and this principle equally applies to different parts of the same Section *Balasinor Nagrik Cooperative Bank Ltd. Vs. Babubhai Shankerlal Pandya and Others*, .

No provision in the statute and no word in the Section may be construed in *Syed Hasan Rasul Numa and others Vs. Union of India and others*, .

Where the language of the provision is plain, clear and unambiguous, only the plain meaning of the provision is to be adopted so as to avoid any hardship or absurdity resulting therefrom *R.S. Raghunath Vs. State of Karnataka* and another, and *Mohammed Ali Khan v. W.T. Coimr.* AIR 1997 SC 1165.

(iii) Again in *M. Sathyanathan Vs. The District Collector and The Assistant Director, (Geology and Mines)*, , this Court held that,

8. It is well-settled principle of interpretation that a statute is to be interpreted on its plain reading; in the absence of any doubt or difficulty arising out of such reading of a statute defeating or frustrating the object and purpose of an enactment, it must be read and understood by its plain reading. However, in case of any difficulty or doubt arising in interpreting a provision of an enactment, courts will interpret such a provision keeping in mind the objects sought to be achieved and the purpose intended to be served by such a provision so as to advance the cause for which the enactment was brought into force. If two interpretations are possible, the one which promotes or favours the object of the Act and purpose it serves, is to be preferred. At any rate, in the guise of purposive interpretation, the courts cannot rewrite a statute. A purposive interpretation may permit a reading of the provision consistent with the purpose and object of the Act, but the Courts cannot legislate and enact the provision either creating or taking away substantial rights by stretching or straining a piece of legislation. *Vide Sri Ram Saha Vs. State of West Bengal and Others*, .

(iv) In *R. Sridharan v. Presiding Officer* reported in 2008 (6) MLJ 1181, at Paragraph 41, this Court has held that,

41. Interpretation of a Statutory provision should be to find out the intention of the legislature and that has to be understood with due regard that the object of the legislation also. The word employed in the Statute will acquire meaning and content depending upon the context in which they are used. The word should not be torn out by the context and by interpretation, it would make another provision Otiose/redundant and such interpretation should not be adopted.

28. Section 22 of the Motor Vehicles Act, 1988 deals with suspension or cancellation of driving licence can be made on conviction, which reads as follows:

22. Suspension or cancellation of driving licence on conviction.-(1) Without prejudice to the provisions of Sub-section (3) of Section 20 where a person, referred to in Sub-section (1) of Section 21 is convicted of an offence of causing, by dangerous driving as is referred to in Section 184 of any class or description of motor vehicle the death of, or grievous hurt to, one or more persons, the Court by which such person is convicted may cancel, or suspend for such period as it may think fit, the driving licence held by such person insofar as it relates to that class or description of motor vehicle.

(2) Without prejudice to the provisions of Sub-section (2) of Section 20, if a person, having been previously convicted of an offence punishable u/s 185 is again convicted of an offence punishable under that section, the Court, making such subsequent conviction, shall, by order, cancel the driving licence held by such person.

(3) If a driving licence is cancelled or suspended under this section, the Court shall take the driving licence in its custody, endorse the cancellation or, as the case may be, suspension, thereon and send the driving licence so endorsed to the authority by which the licence was issued or last renewed and such authority shall, on receipt of the licence, keep the licence in its safe custody, and in the case of a suspended licence, return the licence to the holder thereof after the expiry of the period of suspension on an application made by him for such return:

Provided that no such licence shall be returned unless the holder thereof has, after the expiry of the period of suspension, undergone and passed, to the satisfaction of the licensing authority by which the licence was issued or last renewed, a fresh test of competence to drive referred to in Sub-section (3) of Section 9 and produced a medical certificate in the same form and in the same manner as is referred to in Sub-section (3) of Section 8.

(4) If a licence to drive a particular class or description of motor vehicles is cancelled or suspended under this section, the person holding such a licence shall be debarred from holding, or obtaining, any licence to drive such particular class or description of motor vehicles so long as the cancellation or suspension of the driving licence remains in force.

29. A bare reading of Sections 19 to 22 of the Motor Vehicles Act, makes it clear that both the Licensing Authorities as well as a Court of competent jurisdiction, which try a person for an offence under the penal laws and or under the Motor Vehicles Act, 1988, are empowered to disqualify a person from holding a driving licence or suspend or revoke the same, as the case may be. The power to disqualify a holder of a licence after arriving at the conclusion of guilty of the offence is entirely different than the power conferred on the Licensing authority, when the holder of licence, is using or has used the vehicle in the commission of a cognizable offence.

30. Reading of Section 19 of Motor Vehicles Act, 1988, makes it clear that if a licensing authority is satisfied, after giving the holder of a driving license an opportunity of being heard, that he, "by using or used a motor vehicle in the commission of cognizable offence", such authority can disqualify the holder of licence, for a specified period, for holding or obtaining any driving licence to drive all or any classes or descriptions of vehicles specified in the licence or he can even revoke the licence. It is also to be noted that the legislature has also clearly demarcated the powers of the Courts and the licensing authorities, as to when the licence can be suspended or revoked, when there is commission of a cognizable offence or for conviction of an offence. Sections 19 and 21 deal with the powers of the Licensing authority. Sections 20 and 22 deal with the powers of the Court. The circumstances under which the holder of the licence can be disqualified for a specified period in Section 19(1) are different from the one in Section 21. Both operate under different sphere. Section 19(1) speaks of commission of cognizable offence in contra to Section 21, which speaks about previous conviction u/s 184 of the Motor Vehicles Act. The usage of the words, "commission of a cognizable offence" and "conviction", in two different sections in the enactment and the power to suspend or disqualify, as the case may be, for specific and definite reasons set out in the Sections, have to be given their plain and literal meaning. To say that only after conviction or arriving at the conclusion, a licence can be suspended or licensee can be temporarily disqualified would render Section 19 of the Motor Vehicle Act, as redundant.

31. The words "used" or "using" the motor vehicle in the commission of a cognizable offence, in the opinion of this Court, is not unambiguous and that the licensing authority is empowered to disqualify the holder of driving licence or revoke the driving license, after providing an opportunity of being heard, and it is not necessary that only after recording a finding that the holder of licence is guilty of an offence, under the provisions of Motor Vehicles Act, suspension or disqualification can be made.

32. Section 19(c) does not refer to an offence u/s 184 of Motor Vehicles Act, it states all offences which are cognizable in nature. In a given case, where the licensee is alleged to have involved in a heinous crime of murder or alleged in trafficking contraband, such as Narcotics and Psychotropic Drugs, or smuggling, or any other serious offence by using or used the motor vehicle, the offences

being illustrative, then it cannot be contended that till the completion of trial, the licensee cannot be disqualified or the licence cannot be suspended or revoked.

33. In the instant case, where the Petitioner has caused death of a person, by using a motor vehicle, it cannot be said that, until the Court of Criminal jurisdiction, finds him guilty and convicts him, or records acquittal for the offences, he was tried, he should be allowed to drive the motor vehicle.

34. Under the provisions of the Motor vehicles Act, the licensing authority is empowered to issue appropriate licences and to disqualify/suspend the licence for any period. The argument of the Learned Counsel for the Petitioner that even if a person is alleged to have committed a serious crime under Sections 279, 337 and 304-A I.P.C. like the instant case, for causing the death of a person, he should be allowed to drive the vehicle, ignoring the fact, that he has allegedly caused a death of a person is legally and morally not acceptable to this Court. What is contemplated under the provisions of the Motor Vehicles Act, 1988 is only an opportunity of being heard. For disqualifying or suspending the licence, no regular enquiry is contemplated. Statutory provisions do not contemplate a regular enquiry, as that of a departmental enquiry to arrive at a conclusion as to whether the holder of licence, has committed a cognizable offence or not. It only states "using or used in the commission of an offence". A finding of guilt or acquittal for reason to be recorded, can be made only by a Court of competent jurisdiction, if the holder of licence is tried for any offence under Motor Vehicles Act, 1988 or for any other cognizable offence, under the penal provisions, when the motor vehicle is used or is being used. When similar argument was advanced in the case of suspension of a Motor Vehicle Permit, this Court after considering the rival submissions, in *Dhanmull Sowcar Vs. The Regional Transport Authority, Salem and Another*, , has held as follows:

12. What is contemplated under Sub-section (1) of Section 86 is that before cancellation of suspension, the holder of the permit should be given an opportunity to submit his explanation. This Court in *Dhanmull Sowcar Vs. The Regional Transport Authority, Salem and Another*, , dealt with a question, as to whether Section 86 of the Motor Vehicles Act, 1939, contemplates examination of any witness before suspending the permit and at Paragraphs 7 to 10, held as follows:

7. The authorities proceeded against the Petitioner for contravention of Clause (b) of Section 60(1) of the Motor Vehicles Act. Sub-section (1) of Section 60 enumerates six categories of matters and provides that, should a contravention occur in respect of any of these, the permit may be cancelled or suspended for such period as the appropriate authority deems fit. There is a proviso to this which runs:

Provided that no permit shall be cancelled, unless an opportunity has been given to the holder of the permit to furnish his explanation.

It will be noticed that this section does not require that the authorities concerned

should record any evidence. Therefore, it is not possible to say that, when the Secretary of the Regional Transport Authority declined to record the evidence of the constable whom the Petitioner referred to, he contravened any provision of the statute. The next thing to remember is that the authorities referred to in this Sub-section have not been given power to summon witnesses or to enforce their attendance. The omission in the statute in this respect suggests that it was not the intention of the legislature that the authorities in question should examine any witnesses. It may also be mentioned that the Petitioner did not offer to produce the constable before the Secretary, Regional Transport Authority, for his examination.

8. Another circumstance may be mentioned here. All that the proviso to Sub-section (1) of Section 60 requires is that, before a permit is cancelled", the holder of the permit should be given an opportunity to furnish his explanation. The suspension of a permit is a less serious penalty than its cancellation. Even as regards cancellation, all that the statute requires is that the operator should be given an opportunity to furnish his explanation. It seems to stand to reason that in respect of the lesser penalty the statute could not have required that a more elaborate procedure should be followed.

9. When we examine the scheme of the Act, it will be found that contraventions of its provisions and of the rules made thereunder are placed in two categories. In one category is placed those contraventions, for which the offender may be prosecuted and punished in the ordinary criminal courts. Such matters are provided for in Chapter 9 of the Act. In respect of other contraventions what I may call departmental action is provided for. This is a very summary method, and all that the authorities concerned are required to do is to give the person proceeded against an opportunity to furnish his explanation. It follows that all that he required is that the person proceeded against should be notified what the allegations against him are and that he should be given an opportunity to explain them. The further comment I would make is that the right of the Petitioner to ply a stage carriage vehicle is derived under the Act. The extent of that right and the circumstances under which that right is liable to be curtailed, abridged or withdrawn are all provided for in the Act and the rules framed thereunder. and so long as these have been complied with the Petitioner cannot properly complain. But this does not mean that the proper authorities are precluded from examining the witnesses and in a proper case they would be exercising a wise discretion if they do examine witnesses produced by a party. All that I would say at this stage is that, under the statute, a person placed in the position of the Petitioner has no right to insist that his witnesses should be examined when he is being proceeded against for a transgression of any of the matters enumerated in Sub-section (1) of Section 60.

35. In the above reported judgment, this Court held that in matters relating to suspension of permit, being a less serious penalty, for contravention of permit conditions and for violation of the Motor Vehicles Act, the procedure to be

followed by the authorities is purely summary in nature and it is suffice that the holder of the permit is given an opportunity to explain the irregularities noticed at the time of check.

36. When the legislature has prescribed a procedure for revocation or suspension or disqualification of a holder of licence, Courts cannot add or import, a regular enquiry into the provision to arrive at any specific finding, regarding the guilt of the offence for which the licensee is charged. Yet another reason for rejecting the submission of the Petitioner is that, when the Court of competent jurisdiction is empowered to record a finding of dangerous driving or any other offence to which, the licensee is charged and tried, there is a possibility that the Licensing authority could arrive at a contrary finding of fact. The jurisdiction of the Court to arrive at a finding of guilt of an offence or the claims Tribunal to record a finding of negligence, cannot be transgressed by the licensing authority. The licensing judicial authority cannot usurp the powers of the Court, to record any finding of guilt of the offence. No doubt F.I.R. is a document, which sets the criminal law in motion for proceeding against the offender under the penal laws or under the penal provision of the Motor Vehicles Act, yet the same can be taken note of by the licensing authority, for exercising the powers under the Motor Vehicles Act, for placing restriction on driving, when the holder of licence has caused the death or grievous hurt, by his dangerous driving. When a crime has been registered against the holder of licence, for dangerous driving, the authorities under Motor Vehicles Act should be permitted to take appropriate action.

37. In the light of the discussion, this Court is not inclined to issue the Mandamus prayed. Hence, this Writ Petition is dismissed.

5. It is also brought to the notice of this Court that the order made in W.P.(MD) No. 8067 of 2011 has been challenged by the writ Petitioner therein and that a Division Bench of this Court in W.A.(MD) No. 856 of 2011, dated 08.09.2011, has dismissed the appeal of the driver as follows:

This Writ Appeal is directed against the order of the learned Single Judge dated 20.07.2011 made in W.P.(MD). No. 8067 of 2011, by which the learned Single Judge, after considering the entire issue elaborately, has dismissed the said Writ Petition, which was filed by the Appellant herein challenging the order of the Respondent herein and for a direction to the Respondent to return the driving license, which was denied on the ground that a complaint has been lodged against the Appellant.

2. Inasmuch as the said complaint is still pending as-on-date and the power of suspension of license is available to the Respondent, which is not in dispute, we do not see any reason to interfere with the order of the learned Single Judge. In the result, the Writ Appeal fails and the same stands dismissed. However, it is always open to the Appellant to have the relief claimed, either after the criminal case has ended in his favour or after the investigation is over and final report is filed to the effect that no case is made out for the purpose of the Court to take

cognizance.

6. In view of a judgment of the Division Bench of this Court, cited supra, Mandamus sought for by the Petitioner cannot be granted. Hence, the Writ Petition stands dismissed. No costs.