

(2009) 09 MAD CK 0117

In the Madras High Court

Case No : Writ Petition (MD) No's. 6900, 7905 of 2009 and M.P. (MD) No's. 1 and 2 of 2009

P. Duraisamy

APPELLANT

Vs

The Licensing Authority, The Regional Transport Officer

S. Chidambaram Vs The Licensing Authority cum
Regional Transport Officer

RESPONDENT

Date of Decision : 08-09-2009

Acts Referred:

Central Motor Vehicles Rules, 1989 — Rule 21
Motor Vehicles Act, 1988 — Section 134, 19(1)
Penal Code, 1860 (IPC) — Section 304(A)

Citation : (2009) 09 MAD CK 0117

Hon'ble Judges : R.S. Ramanathan, J

Bench : Single Bench

Advocate : S. Arunachalam, in W.P. MD No. 6900 of 2009 and A. Rahul, in W.P. MD No. 7905 of 2009, for the Appellant; V. Chellammal, Special Government Pleader, for the Respondent

Final Decision : Allowed

Judgement

R.S. Ramanathan, J.—Heard both sides.

2. W.P. (MD) No. 6900 of 2009:

The petitioner is a driver employed in the Tamil Nadu State Transport Corporation, Periyakulam branch. In respect of an accident that took place

on 01.07.2009, a case has been registered in Crime No. 368 of 2009 u/s 304(A) of I.P.C., by the Periyakulam Police against the petitioner, who

was the driver of that bus and the respondent has issued a show cause notice, dated 10.07.2009, u/s 19(1) of the Motor Vehicle Act, directing the

petitioner to show cause why his license should not be suspended. The petitioner submitted his explanation, dated 13.07.2009 stating that he was

not responsible for the accident. Nevertheless, the respondent, by his proceedings in R. No. 24720/A5/2009, dated 13.07.2009, suspended the driving licence of the petitioner for a period of six months with effect from 13.07.2009 to 12.01.2010.

3. W.P. (MD) No.7905 of 2009: The petitioner is a driver employed in the Tamil Nadu Transport Corporation and is working in the Karur

Depot. In respect of an accident of which he was the driver of the bus that took place on 22.05.2009, a show cause notice was issued to the

petitioner, dated 01.06.2009, u/s 19(1) of the Motor Vehicle Act, directing the petitioner to show cause why his driving licence should not be

suspended. The petitioner submitted his reply on 07.07.2009 stating that he was not responsible for the accident. Nevertheless, the respondent

passed the impugned order in Se.Mu.Aa.A. No. 21217/B4/2009 dated .07.2009, suspending the driving licence of the petitioner for a period of

six months with effect from 16.07.2009 to 15.01.2010.

4. In these two writ petitions, the petitioners challenged the order of suspension by the respondent.

5. The learned Counsel appearing for the petitioner, in both the writ petitions, submitted that a perusal of the impugned order would show that the

Authority has not applied his mind and passed the order making in the printed format, without stating any reason why the explanation of the

petitioner was not accepted.

6. The learned Counsel appearing for the petitioner further relied upon the judgment of this Honourable Court made in W.P.(MD) No.1637 of

2009, in the case of K. Kottiyappan v. The Licensing Authority, The Regional Transport Officer, The Regional Transport Office, Periyakulam

wherein this Court has deprecated the practise of issuing the order in the printed format. In that judgment it has been observed as follows:

The impugned order is in the printed format. It has been filled up by the respondent wherever the occasion arises. This Court in several

pronouncements had deprecated such practise by the authorities who has vested with quasi Judicial power to pass such orders using printed

format had passed the present impugned order by filling up the said form. Moreover, from the impugned order it could be seen that the respondent

has not assigned any reason why he has passed orders suspending the driving

license for a period of six months invoking Section 19(1) of the Motor Vehicles Act. No doubt, Section 19(1) contemplates revocation of the licence granted. But, however, the section makes it very clear that it can be done for the reasons to be recorded in writing and an order should be made to that effect. In the given case on hand as stated already no reasons has been assigned by the respondent why the driving licence has been suspended for a period of six months

7. The learned Counsel appearing for the petitioner further relied up on the Division Bench judgment of this Court made in W.A.(MD)No.339 of 2009, dated 24.07.2009 in the case of D. Edward Raj v. The Licensing Authority, The Regional Transport Officer, The Regional Transport

Office, Madurai South, Madurai, wherein this Court has held in para 9 as follows:

A bare reading of Section 19(1) shows that the Licensing Authority has the power to revoke any licence or disqualify a person if any of the contingencies prescribed in Clauses (a) to (h) of Sub Section (1) of Section 19 arises. Moreover, the power u/s 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.

Therefore, the learned Counsel appearing for the petitioner submitted that the impugned orders of the respondent, in both the writ petitions, are

liable to set aside, as it was passed without application of mind and no reason was stated and it has not been stated how the petitioner has violated

the various provisions under 19(1) of the Motor Vehicle Act.

8. On the other-hand, Mrs. V. Chellammal, the learned Special Government Pleader appearing for the respondent, in both the writ petitions,

submitted that the Division Bench of this Honourable Court has held in the reported judgment (2008)7 MLJ 296 in the case of V. Seetharaman v.

Regional Transport Officer, Madurai, in case of prosecution u/s 304-A of I.P.C., Section 19(1)(c) of the Motor Vehicle Act will be attracted.

Therefore, it was submitted by the learned Special Government Pleader, Mrs. V. Chellammal, that the petitioner having committed offence u/s

304-A of I.P.C, the respondent has justified in invoking Section 19(1)(c) of the Motor Vehicle Act and the order has been passed in accordance

with law and it cannot be set aside.

9. It is seen from the impugned order passed in W.P.(MD)No.6900 of 2009 that

as per the report of the Periyakulam Police in Crime No. 368 of

2009, the driver has driven the vehicle in a manner danger to the public and other vehicles and therefore, show cause notice was issued and the

explanation was received from the petitioner and perused and found not satisfactory and hence, the order of suspension was passed.

10. In respect of W.P. (MD) NO. 7905 of 2009, in the impugned order it has been stated that the petitioner by his rash and negligent driving

caused death to one person and it was recommended that the license of the petitioner was suspended and the petitioner submitted his explanation,

dated 07.07.2009 and his explanation was not accepted and the order of suspension was passed by the respondent.

11. It is further seen from the impugned orders passed in the above writ petitions, it was in the printed format in W.P. (MD) No. 7905 of 2009

and it has not been stated that whether the petitioner has caused death of the person or caused grievous injury to the persons by his rash and

negligent driving. Further no reason has been stated why the explanation of the petitioner cannot be accepted.

12. In the impugned order passed in W.P.(MD)No.6900 of 2009, it was stated that the petitioner was driving the vehicle in a manner danger to

the public and other vehicles. If that is the charge, it falls u/s 19(1)(d). As per Rule 21 of the Central Motor Vehicle Rules the following acts shall

constitute nuisance or danger to the public, namely -

1. Theft of motor vehicle.
2. Assault on passengers.
3. Theft of personal effects of passengers.
4. Theft of goods carried in goods carriages.
5. Transport of goods prohibited under any law.
6. Driver while driving a transport vehicle, engages himself in activity which is likely to disturb his concentration.
7. Abduction of passengers.
8. Carrying overload in goods carriages.
9. Driving at speed exceeding in specified limit.
10. Carrying persons in goods carriage, either inside the driver's cabin in excess of its capacity or on the vehicle, whether for hire or not.

11. Failing to comply with the provisions of Section 134.
12. Failure to stop when signalled to do so by any person authorised to do so.
13. Misbehaviour with and showing discourtesy to passengers, intimidating passengers or consignors and consignees of goods.
14. Smoking while driving public service vehicles.
15. Abandoning vehicle in a public causing inconvenience to other road users or to passengers in the vehicle.
16. Driving vehicle while under the influence of drink or drugs.
17. Interfering with any person mounting or preparing to mount upon any other vehicle.
18. Allowing any person to sit or placing things in such a way as to impede the driver from having a clear vision of the road or proper control of the vehicle.
19. Not stopping a stage carriage at approved stopping places for a sufficient period of time in a safe and convenient position upon demand or signal of the conductor or any passenger desiring to alight from the vehicle and unless there is no room in the vehicle, upon demand or signal of any person desiring to become a passenger.
20. Loitering or unduly delaying any journey and not proceeding to the destination as near as may be in accordance with the time-table pertaining to the vehicle, or, where there is no such time table, with all reasonable despatch.
21. Not driving a contract carriage, in the absence of a reasonable cause, to the destination named by the hirer by the shortest route.
22. the driver of a motor cab not accepting the first offer of hire which may be made to him irrespective of the length of the journey for which such offer is made.
23. The driver of a motor cab demanding or extracting any fare in excess to that to which he is legally entitled or refusing to ply motor cab.
24. Abandoning a transport vehicle as a mark of protest or agitation of any kind or strike in a public place or in any other place in a manner causing obstructions or inconvenience to the public or passengers or other users of such places.
25. Using mobile phone while driving a vehicle. and unless the person charges committed one of the above acts, he cannot be disqualified for

having committed any such act which is likely to cause nuisance or danger to public

13. A perusal of those 25 acts stated therein, the reason for which the petitioner was charged will not come under the category of the Acts stated

in Rule 21 and therefore, the order passed by the respondent in W.P. (MD) No. 6900 of 2009 is not in accordance with the provision of the Rule

framed therein.

14. Further as held by the learned single judgment in W.P.(MD)No.1637 of 2009 dated 04.03.2009, the order has been passed in the printed

format without assigning any reason and the order also makes it clear that the Authorities has not applied his mind.

15. Hence, the impugned order of the respondents are set aside and accordingly, these writ petitioners are allowed. However, the respondent is at

liberty to conduct the enquiry afresh and pass orders giving reasons. Consequently, connected Miscellaneous Petitions are closed. No costs.