

क्रमांक:- प. 10(698) परि/स.सु./सर्वोच्च न्या. समिति/2016/22113 जयपुर, दिनांक : 03-10-16

कार्यालय आदेश 33/2016

विषय :- माननीय उच्चतम न्यायालय द्वारा गठित सड़क सुरक्षा समिति के निर्देश दिनांक 18.08.2015 की अनुपालना में ड्राइविंग लाईसेंस निलम्बित करने की प्रक्रिया के संबंध में।

विभाग के समसंख्यक कार्यालय आदेश संख्या 35/2015 दिनांक 20.10.2015 द्वारा माननीय उच्चतम न्यायालय द्वारा गठित सड़क सुरक्षा समिति के निर्देशों की अनुपालना हेतु कुछ प्रकरणों में लाईसेंस निलम्बन हेतु निम्न निर्देश जारी किए गए थे :-

- *1. निम्न प्रावधानों के उल्लंघन पर वाहन चालक का ड्राइविंग लाईसेंस केन्द्रीय मोटर वाहन अधिनियम, 1988 की धारा 19 सपठित केन्द्रीय मोटर यान नियम, 1989 के नियम 21 के अन्तर्गत कम से कम 3 माह के लिए अनिवार्य रूप से निलंबित किया जावे :-
- (i) निर्धारित गतिसीमा से तेज गति में वाहन चलाने
 - (ii) ट्रेफिक सिग्नल की लाल बत्ती का उल्लंघन करने पर।
 - (iii) भार वाहनों में क्षमता से अधिक माल परिवहन
 - (iv) भार वाहनों में यात्रियों का परिवहन करने पर।
 - (v) नशे में वाहन चलाने पर।
 - (iv) वाहन चलाते समय मोबाईल फोन का उपयोग करने पर। *

इस क्रम में माननीय उच्च न्यायालय, दिल्ली द्वारा सिविल रिट याचिका संख्या 2076/2016 एवं सी.एम. संख्या 8918/2016 में दिनांक 02.05.2016 को पारित निर्णय में उपरोक्त प्रकरणों में लाईसेंस निलम्बन हेतु पुलिस एवं परिवहन विभाग द्वारा अपनाई जाने वाली विधिक प्रक्रिया निर्धारित की गई है जो निम्नानुसार है :-

1. उल्लंघन पाए जाने पर सर्वप्रथम उल्लंघन कर्ता को वैध कारण बताओ नोटिस जारी किया जाए जिसमें उल्लंघन का विस्तृत ब्यौरा हो यथा तिथि, समय, स्थान, प्रावधान जिनका उल्लंघन किया गया है एवं माननीय उच्चतम न्यायालय द्वारा गठित सड़क सुरक्षा समिति के निर्देशों का उल्लेख।
2. इसके पश्चात मोटर वाहन अधिनियम, 1988 की धारा 19 (1) के अंतर्गत उल्लंघनकर्ता को सुनवाई का अवसर प्रदान किया जाए।
3. सुनवाई का अवसर देने के पश्चात् उल्लंघनकर्ता लाईसेंस धारक द्वारा प्रस्तुत जवाब/ मौखिक सुनवाई के दौरान उसके द्वारा दिए गए तथ्यों के प्रस्तुतीकरण के आधार पर विस्तृत आदेश जारी किए जाएं जिसमें मोटर वाहन अधिनियम, 1988 की धारा 19 (1) के अंतर्गत लाईसेंस निलम्बित करने/ नहीं करने के कारणों का विस्तृत उल्लेख हो।
4. उपरोक्तानुसार जारी निलम्बन आदेश उल्लंघनकर्ता लाईसेंस धारक के पते पर रजिस्टर्ड ए.डी. द्वारा प्रेषित किया जाए।
5. निलम्बन आदेश में यह टिप्पणी भी अंकित की जाए की लाईसेंस धारक को मोटर वाहन अधिनियम, 1988 की धारा 19 (3) के अंतर्गत आदेश जारी करने के दिनांक से एक माह की अवधि के भीतर सक्षम प्राधिकारी (संबंधित प्रादेशिक परिवहन अधिकारी) के समक्ष अपील प्रस्तुत करने का अधिकार उपलब्ध है।
6. सक्षम परिवहन प्राधिकार द्वारा उक्त अर्द्ध न्यायिक प्रक्रिया 90 दिन की अवधि में पूर्ण करने का प्रयास किया जाये, जो नहीं हो पाने की स्थिति में सक्षम प्राधिकार द्वारा पावती/सीज़र मीमो में उपयुक्त अवधि बढ़ाने का पृष्ठांकन किया जाए।
7. जिन प्रकरणों में मोटर वाहन अधिनियम की धारा 19 (1) के अंतर्गत सुनवाई का अवसर दिए बिना निलम्बन आदेश पारित कर दिया गया है एवं लाईसेंस धारक द्वारा व्यक्तिगत सुनवाई का मौका देने

का आग्रह किया जाता है, ऐसे प्रकरणों में अनुज्ञप्ति अधिकारी द्वारा उसे सुनवाई का अवसर देकर संशोधित आदेश पारित किया जा सकता है।

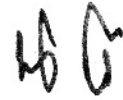
8. जिन प्रकरणों में लाईसेंस निलम्बित किए जाते हैं, उनमें अनुज्ञप्ति धारक का लाईसेंस निलम्बन अवधि तक अनिवार्य रूप से कार्यालय में जमा रहेगा एवं निलम्बन अवधि के समाप्त होने के पश्चात ही लाईसेंस धारक को लौटाया जाएगा।
9. माननीय उच्च न्यायालय दिल्ली द्वारा यह भी प्रतिपादित किया गया है कि मोटर वाहन अधिनियम की धारा 200 में प्रावधानों के उल्लंघन पर चालान प्रशमन करना किसी भी प्रकार से अनुज्ञप्ति अधिकारी द्वारा मोटर वाहन अधिनियम की धारा 19 के तहत लाईसेंस निलम्बित करने की शक्ति को प्रभावित नहीं करता है। अतः चालान प्रशमन के पश्चात धारा 19 (1) के तहत लाईसेंस निलम्बित करना double jeopardy की श्रेणी में नहीं आएगा।

माननीय दिल्ली उच्च न्यायालय द्वारा दिल्ली पुलिस एवं परिवहन विभाग द्वारा अपनाई जा रही प्रक्रिया को निष्पक्ष और उचित माना गया है। इस संबंध में माननीय दिल्ली उच्च न्यायालय द्वारा सिविल रिट याचिका संख्या 2076/2016 एवं सी.एम. संख्या 8918/2016 में दिनांक 02.05.2016 को पारित निर्णय की प्रति सुलभ संदर्भ हेतु संलग्न है।

अतः कार्यालय आदेश संख्या 35/2015 की निरन्तरता में आपको निर्देशित किया जाता है कि लाईसेंस निलम्बन के प्रकरणों में उपरोक्त वर्णित प्रक्रिया की पालना सुनिश्चित करें एवं पूर्व में जारी कार्यालय आदेश संख्या 35/2015 में दिए गए निर्देशों के अनुरूप प्रतिमाह की सूचना आगामी माह की 7 तारीख तक इस विभाग की ई-मेल आई.डी. addl.rs.tdr@rajasthan.gov.in पर अनिवार्य रूप से भिजवायें ताकि माननीय उच्चतम न्यायालय द्वारा गठित सड़क सुरक्षा समिति के समक्ष संकलित त्रैमासिक रिपोर्ट निर्धारित समयावधि में प्रस्तुत की जा सके।

आदेशों की पालना समयबद्ध रूप से सख्ती से सुनिश्चित की जाये। अवहेलना की स्थिति में संबंधित के विरुद्ध अनुशासनात्मक कार्यवाही अमल में लाई जाएगी।

संलग्न उपरोक्तानुसार।



(शैलेन्द्र अग्रवाल)
प्रमुख शासन सचिव एवं
परिवहन आयुक्त

क्रमांक:- प. 10(698) परि/स.सु./सर्वोच्च न्या. समिति/2016/ जयपुर, दिनांक 07-10-2016
प्रतिलिपि निम्न को सूचनार्थ/आवश्यक कार्यवाही हेतु :- 2218-26

1. अतिरिक्त महानिदेशक पुलिस (यातायात), राजस्थान जयपुर को।
2. उपायुक्त (पुलिस), यातायात, जयपुर।
3. समस्त प्रादेशिक/जिला परिवहन अधिकारी।
4. समस्त अधिकारीगण, परिवहन विभाग, मुख्यालय।
5. समस्त नोडल अधिकारी, सड़क सुरक्षा प्रकोष्ठ, परिवहन विभाग, राजस्थान, जयपुर।
6. सिस्टम एनालिस्ट, परिवहन विभाग को विभागीय वेबसाइट पर अपलोड कराने हेतु।
7. रक्षित पत्रावली।



उप परिवहन आयुक्त (सड़क सुरक्षा)

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

+ W.P.(C) 2076/2016 and CM No.8918/2016

% Date of Decision : 02nd May, 2016

ASHISH GOSAIN

.....: Petitioner

**Through: Mr. Abhijat, Mr.Puneet Mittal,
Mr.R.P. Singh and Mr.Sachin
Chaudhary, Advocates.**

versus

DEPARTMENT OF TRANSPORT & ANR Respondents

**Through: Mr. Rahul Mehra, Sr. Standing
Counsel, Mr. Anuj Aggarwal,
ASC with Mr. Aditya Swarup
Agarwal and Mr. H.K. Singh,
DCP, Insp. Mohaj Sinha, ASI
Virendra Singh and HC Pawan**

CORAM :-

HON'BLE MR. JUSTICE J.R. MIDHA

JUDGMENT (ORAL)

1. The petitioner has challenged the suspension order whereby his driving licence has been suspended under Section 19(1)(d) of the Motor Vehicles Act, 1988.

2. Factual matrix

2.1 The petitioner received a show cause notice dated 18th January, 2016 to show cause why he should not be disqualified for holding a driving licence under Section 19(1)(f) of the Motor Vehicles Act, 1988 read with Rule 21 of the Central Motor Vehicle Rules, 1989.

The relevant portion of the notice dated 18th January, 2016 is reproduced hereunder:

"Show Cause Notice"

Whereas, it has been informed by the Dy. Commissioner of Police (Traffic) that you have been challaned for the violation of Section 112(1)/183(1) of Motor Vehicle Act, 1988 and requested this office to suspend your driving license as per the directions of the Hon'ble Supreme Court Committee on Road Safety.

And, Whereas, the undersigned the licensing authority is empowered to disqualify you from holding a driving license for a specific period or revoke such license under section 19(1)(f) of Motor Vehicles Act 1988 read with Rule 21 of the Central Motor Vehicle Rules, 1989.

*And now, therefore in exercise of power conferred upon me in Motor Vehicles Act 1988 and Rules framed thereunder, you are hereby given an opportunity of making any representation you may wish within 10 days of issuance of this **SHOW CAUSE NOTICE**, failing which it will be presumed that you have nothing to say on your part and the undersigned shall take action as per the provisions of Motor Vehicles Act and Rules framed thereunder."*

2.2 The petitioner submitted the reply dated 27th January, 2016 in which the petitioner sought better particulars namely date/place of occurrence and nature of alleged offence to enable him to reply to the show cause notice. The petitioner also sought personal hearing before any decision is taken on the show cause notice. Relevant portion of the reply is reproduced hereunder:

"Please refer to your show cause notice No. MLO/SKK/15/794 dated 18.01.2016, received on 22.01.2016.

The aforesaid show cause notice under reply refers to a challan for the violation of section 112.1/183(1) of Motor Vehicles Act, 1988.

However, detailed particulars of the date, place of occurrence and nature of offence have not been mentioned. In absence thereof, I am unable to effectively respond to the show cause notice.

You are, therefore, requested to kindly provide better particulars of the alleged violation, to enable me to respond to the show cause notice under reply.

Further, I would also request for a personal hearing before any such decision on the show cause notice under reply is taken by your goodself."

2.3 Vide order dated 11th February, 2016, the Motor Licensing Officer suspended the petitioner's licence for a period of six months under Section 19(1)(d) of the Motor Vehicles Act. Relevant portion of the suspension order is reproduced hereunder:

"Suspension Order

In compliance of the direction by Hon'ble Supreme Court Committee on Road Safety to implement Road Safety Laws. The driving license of any person, who is prosecuted for the offence related to Over Speeding/Red Light Jumping/Over Loading in Goods Carriage/Carrying person in goods carriage/Driving vehicle under influence of liquor and drugs and using mobile phone while driving is to be suspended for a period of not less than 3 months.

And., whereas, the traffic police vide their letter No.970/Computer Centre/ Traffic dt.22.12.2015 forwarded by the MLO(Ops.) vide letter No.DC/Ops./2014/part file/6215-30 dt.07/01/2016 to this office intimated that you were challan for the above offence.

Whereas, the undersigned is not satisfied with your reply received by this office and therefore, the undersigned, Hem Raj, MLO, Central Zone, Sarai Kale Khan, New Delhi-110013 is hereby suspended DL No.0619940099561 in respect of Sh. Ashish Gosain s/o Narendra Kumar under the provision of section 19(1)(d) of Motor Vehicle Act, 1988 for Six months. You are hereby cautioned not to drive the vehicle as your

driving license has been blacklisted till completion of suspension process and you will be treated as without driving license and liable to any type of legal action.

Since, driving license is the property of the State Govt., if a defaulter does not deposit the license, he/she is liable to prosecuted by a criminal case U/S 406 of IPC, which provides a penalty of imprisonment of a term which may extend to 03 years, or with fine or with both criminal breach of trust."

3. **Grounds of challenge**

3.1 The show cause notice dated 18th January, 2016 issued by respondent no.1 is invalid inasmuch as it does not provide the relevant particulars, namely, date/place of occurrence and nature of the offence alleged to have been committed by the petitioner.

3.2 Vide dated 27th January, 2016, the Petitioner sought better particulars and personal hearing. However, respondent no.1 did not furnish the relevant particulars sought for by the petitioner.

3.3 The respondent did not afford any opportunity of hearing to the petitioner which is mandatory under Section 19(1) of the Motor Vehicles Act.

3.4 No reasons have been recorded in the impugned order. Respondent no.1 did not consider the petitioner's objections. The impugned order is a cyclostyled form in which the name of the petitioner and his driving licence number has been filled up which shows non-application of mind.

3.5 The show cause notice dated 27th January, 2016 refers to Section 19(1)(f) of the Motor Vehicles Act whereas the licence has been suspended under Section 19(1)(d) of the Motor Vehicles Act, 1988.

3.6 The petitioner had compounded the alleged offence upon payment of fine of Rs.400/- and therefore, the suspension of licence for the same offence amounts to double jeopardy. Once the offence has been compounded by payment of challan, the offender stands discharged and no further proceedings can be taken against such a person. Any further proceedings under the Motor Vehicle Act after composition are expressly prohibited by Section 200(2) of Motor Vehicles Act. Reference is also made to sub-Section (8) of Section 320 of the Code of Criminal Procedure which clearly prescribes the effect of composition of an offence namely, the acquittal of the accused with whom the offence has been compounded. Reliance is placed on *Principal Chief Conservator of Forests v. J.K. Johnson*, (2011) 10 SCC 794.

4. *Submissions of the respondents*

Mr. Rahul Mehra, learned senior standing counsel for Govt. of NCT of Delhi submits that the Supreme Court Committee on Road Safety has issued directions on 18th August, 2015 to the effect that the driving licences should be suspended for a period of not less than three months under Section 19 of the Motor Vehicles Act, 1988 read with Rule 21 of the Central Motor Vehicles Rules, 1989 in cases of driving at speed exceeding the specified limit, red light jumping, carrying overload in good carriages, carrying persons in good carriages, driving under the influence of liquor/drugs and using mobile phone while driving. It is submitted that compounding of the offence under Section 200 of the Motor Vehicles Act does not, in any manner, take away the right of the Licensing Authority to suspend the

licence under Section 19 of the Motor Vehicles Act. Reference is made to Sections 183 and 184 of the Motor Vehicles Act dealing with the offence of driving at excessive speed and driving dangerously, respectively, which can be compounded under Section 200(1) of the Motor Vehicles Act. Section 200 (2) of the Motor Vehicles Act provides that upon compounding of the offence, no further proceeding shall be taken in respect of such offence. However, the power to suspend the licence under Section 19 of the Motor Vehicles Act upon satisfaction of the Licensing Authority with respect to any of the conditions mentioned in Section 19(1)(a) to (h) is *dehors* the compounding of the offence under Section 200 of the Motor Vehicle Act. It is submitted that the respondents are complying with the directions of the Supreme Court Committee on Road Safety. However, it is not disputed that the opportunity of hearing has not been afforded to the petitioner.

5. **Relevant provisions**

5.1. **Section 19 of the Motor Vehicles Act, 1988**

"Section 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 (61 of 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 authorizes 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."

(Emphasis supplied)

5.2. Rule 21 of the Central Motor Vehicles Rules, 1989

"Rule 21-Powers of licensing authority to disqualify. For the purpose of clause (f) of subsection (1) of section 19, the commission of the following acts by holder of a driving licence shall constitute nuisance or danger to the public, namely:—

- (8) Carrying overload in goods carriages
xxx xxx xxx
- (9) Driving at speed exceeding the specified limit.
xxx xxx xxx
- (16) Driving vehicle while under the influence of drink or drugs.
xxx xxx xxx
- (25) Using mobile phone while driving a vehicle."

6. Directions of the Supreme Court Committee on Road Safety

6.1. Directions dated 18.08.2015 of the Supreme Court Committee

The Supreme Court Committee on Road Safety has issued directions dated 18th August, 2015 to the effect that the driving license should be suspended for not less than three months for high speed driving, carrying overload in goods carriage, carrying persons in goods carriage, drunken driving and using mobile funds while driving under Section 19 of the Motor Vehicles Act, 1988 read with Rule 21 of the Central Motor Vehicle Rules 1989. Relevant portion of the order dated 18th August, 2015 is reproduced hereunder:

"The Committee constituted by the Supreme Court of India to monitor and measure implementation of road safety laws in the country has had detailed discussions with the concerned Central Ministries and all the States/UTs on the trend of road accidents and fatalities. The data furnished by them have clearly established that the number of fatalities in India continues to be very high, causing serious emotional trauma and economic loss to the families of the deceased and the society. The compensation awarded to the victims by the Insurance Companies also runs into hundreds of crores of rupees every year.

2. The Committee has over the last one year issued directions to the States/UTs to establish institutional arrangements to promote road safety, undertake engineering measures to make roads safe, tighten enforcement together with promoting road safety education and establishing adequate trauma care facilities, and the Committee has been closely monitoring the action being taken by the States/UTs as directed by the Committee, the Committee on the basis of detailed analysis of traffic accidents and fatalities has come to the conclusion that unless strong and urgent measures are taken to deal with over speeding, drunken driving, red light jumping, violation of helmet laws and seat belt laws, use of mobile phones while driving, and over loading, the number of accidents and fatalities will continue to remain high.

3. The Committee is of the considered view that the States/UTs and their concerned Departments should take stern action against the violators of law and exercise of discretion under Section 19 of the Motor Vehicle Act, 1988 read with Rule 21 of the Central Motor Vehicle Rules, 1989 by passing an order disqualifying the offender from holding a driving license for a specified period and also by seeking imprisonment wherever it is provided under the law. The Supreme Court, while constituting the Committee, has also emphasised the necessity of strict and faithful enforcement of all existing laws and norms not only as an absolute principle of law as well as

for the high beneficial effects thereof.

4. The Committee, therefore, directs the States/UTs and their concerned Departments to take the following action forthwith:

Suspension of the licence for a period of not less than 3 months under Section 19 of the Motor Vehicle Act, 1988 read with Rule 21 of the Central Motor Vehicles Rules, 1989 for:

- (i) Driving at a speed exceeding the specified limit which in the Committee's view would also include red light jumping;
- (ii) Carrying overload in goods carriages and carrying persons in goods carriages;
- (iii) Driving vehicles under the influence of drink and drugs;
- (iv) Using mobile phone while driving a vehicle.

5. The Committee further directs that in case of driving a vehicle under the influence of drinks or drugs, the police should prosecute the offender and seek imprisonment as prescribed under Section 185 of the Motor Vehicle Act, 1988 even for the first offence."

(Emphasis supplied)

6.2. Directions dated 17.11.2015 of the Supreme Court Committee

Vide order dated 17th November, 2015, the Supreme Court Committee on Road Safety directed that in case of traffic violations, the traffic police should take possession of the driving license of the violator and forward it to the transport department who would suspend the license for a minimum period of three months under Section 19 of the Motor Vehicles Act 1988 read with Rule 21 of the Central Motor Vehicle Rules 1989. Relevant portion of the order dated 17th November, 2015 is reproduced hereunder: -

"2. During discussions the Committee had with the Central Ministries and Delhi Traffic Police on 6th November, 2015, it

was brought to the notice of the Committee that the Traffic Police has been implementing the directions issued by the Committee on 18th August, 2015 vigorously and is forwarding the cases to the Transport Deptt for suspension of Driving Licenses in case of above traffic violations. However, any action taken by the Transport Deptt could not be effective as the Driving License would remain with the violator who can use it with impunity and also evade the process of law.

3. This has been considered by the Committee in detail. The Committee directs that in case of above traffic violations, the Traffic Police should take possession of the Driving License of the violator and forward it to the Transport Deptt. of the concerned State/UT, who would suspend the License for a period of not less than 3 months under Section 19 of the Motor Vehicle Act, 1988 read with Rule 21 of the Central Motor Vehicles Rules, 1989. The Transport Deptt. would return the Driving License to the violator after the expiry of the said period."

(Emphasis supplied)

7. Delhi Police Circular dated 08th December, 2015 to implement the directions of the Supreme Court Committee on Road Safety.

Vide circular dated 08th December, 2015, the Special Commissioner (Traffic) of Delhi Police issued a circular dated 8th December, 2015 to implement the directions of the Supreme Court Committee on Road Safety. Relevant portion of the circular is reproduced hereunder:

"3. In order to comply with the above directions of the Supreme Court Committee on Road Safety, the following actions shall be taken by field functionaries of Traffic Unit so that the same are implemented in true letter & spirit: -

- I. Whenever a violator is challaned for over speeding, red light jumping, using mobile phone while driving or carrying passengers in goods vehicles, the driving license

(in originals) of the offender shall be seized by the enforcement officers and in lieu of that an acknowledge will be given to him wherein mentioning that that because of the violation (as mentioned above) committed by him/her, the driving licence has been seized and report will be sent to the concerned Transport Department/Authority of the respective State/UT for initiating proceedings for suspension of the driving license as per the direction of the Supreme Court Committee on Road Safety. A format of the Seizure Memo/Acknowledgement Slip is enclosed as Annexure-A. A proper record of such challans/seizures shall be maintained at the office of TI Circle, who in turn will write to the concerned Transport Department/Authority of respective State/UT on daily basis under proper receipt/ acknowledgement. The format for writing is enclosed as Annexure-B.

- II. For violation of Section 185 Motor Vehicles Act, 1988 (Drunken Driving), the challans are being sent to the Courts since it is non compoundable offence. Courts of Metropolitan Magistrates are generally fining the violators along with suspension of driving license at their end. The enforcement officers and TIs of the Circles while prosecuting the offender, shall write in the application before the Metropolitan Magistrates of their respective areas seeking imprisonment as prescribed under section 185 Motor Vehicles Act, 1988, even for the first offence, along with suspension of driving license citing the direction of the Supreme Court Committee. Necessary changes in E-Challan software should be done.*
- III. Since the powers to check overloaded vehicles are vested only with the officials of Transport Department, GNCT of Delhi, no action is required to be under taken by Delhi Traffic Police officers.*
- IV. Regarding implementation of the directions relating to the law of use of helmet which is either violated by either*

the main rider or the pillion rider, they should both be subjected to Road Safety Education and Counselling for not less than two hours before imposing of fine as prescribed under the Motor Vehicles Act, 1988. Similarly, those motorists who violate the seat belt law should also be subjected to Road Safety Education and Counselling before imposition of fine provisions of Motor Vehicles Act, 1988. All DCsP/T-Ranges and DCP/T-HQ-II in association with NGOs and other volunteer organisations will start Road Safety Education and Counselling at or near their respective offices or any other suitable location in their area. The daily figures of Road Safety Education and Counselling for these offences (separately) shall be properly maintained.

For implementation of the directions of the Supreme Court Committee, the traffic enforcement officers, before challaning the violators would keep the driving license (in original) for these offences (rider/pillion without helmet and driving without seat belt), for which acknowledgement slip shall be issued to the violators with a direction to attend the Road Safety Education and Counselling session at a designated place, preferably, the same day or the next day. After attending the session, the violator would produce the certificate of attending the counselling session before the enforcement officers, who shall challan the violator under relevant provision of Motor Vehicles Act, 1988 for the violation committed by him and his driving license shall be returned. A format of the Memo at the time of violator's driving license taken in possession for counselling is enclosed as Annexure-C."

8. **Findings**

8.1. India has the dubious distinction of having highest number of road accidents. According to the Road Transport Ministry report of 2014, a total of 4,89,400 road accidents were reported in 2014

resulting in 1,39,671 deaths i.e. an average of one road accident every minute resulting in one death every 4 minutes which is highest in the world. This Court agrees with the Supreme Court Committee on Road Safety that unless strong and urgent measures are taken to deal with speeding, drunken driving, red light jumping, the use of mobile phones while driving, and over loading, the number of accidents and fatalities will continue to remain high.

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:-

"Acknowledgement for seizing driving licence for initiating suspension proceedings in compliance of the directions of Supreme Court Committee on Road Safety"

Driving License No. _____ issued by _____

_____ valid upto _____ of Mr./Ms. _____

_____ S/o _____ R/o _____

_____ has been taken in possession for committing the offence of _____ (specify the offence along with section) on _____ (date) at _____ (time) at _____ (location) and information is being sent to the Transport Department/Authority _____ for initiating proceedings for suspension of driving licence under Section 19 of the Motor Vehicles Act, 1988 read with Rule 21 of the Central Motor Vehicles Rules, 1989, as per the directions of the Supreme Court Committee on Road Safety conveyed vide F. No.05/2014/CoRS-Part-III dated 18.08.2015. The driving license shall be liable for suspension for a period of not less than 03 months as per the directions of the Committee. The Committee vide its letter No.05/2014/CoRS-Part-III, dated 17.11.2015 had directed Delhi Traffic Police to take possession

of the Driving License of the violator also. The orders of the Supreme Court Committee on Road Safety dated 18.08.2015 and 17.11.2015 are available online on the web site of Delhi Traffic Police at the link <https://delhitrafficpolice.nic.in/about-us/notifications>.

Name & Signature of the Enforcement Officer

Rank and No. _____

Circle _____

Date _____

Note:- This acknowledgement shall entitle the offender to drive for a period of not more than 90 days, subject to extension of validity by the Transport Authority pending adjudication under the Motor Vehicle Act.

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:

"Transport Department: Government of NCT of Delhi

_____ Zone, Delhi - _____

F. No. TPT/MLO ____ /DTP/ ____ / ____ / Dated: -

Notice

Whereas, a communication no. _____ Delhi dated the _____ was received from _____

Whereas, vide above said communication, it is informed that the holder of driving license number _____ had

committed the offence of _____ under section
_____ Motor Vehicles Act, 1988 on
_____ at _____.

Whereas, the Challaning Officer has forwarded the license of violator for suspension under Section-19 of the Motor Vehicles Act, 1988 read with Rule 21 of Central Motor Vehicles Rules, 1989.

Whereas, as per the record the driving license No. _____ had been issued to Sh. _____ S/o _____ R/o _____ from this office as per provisions contained under Motor Vehicles Act, 1988 and rules made there under.

I, _____, Motor Licensing Officer, as per the powers conferred to undersigned under Section-19(1)(d) & (f) of the Motor Vehicles Act, 1988 read with Rule 21 of Central Motor Vehicles Rules, 1989, hereby call upon your explanation as to why your driving license should not be suspended under Section 19(1)(d) & (f) of the Motor Vehicles Act, 1988 and the relevant Rules made there under for a period not less than three months in compliance of the directions of Supreme Court Committee on Road Safety (F.No05/2014/CoRS-Part-III dated 18.08.2015 and F.No.05/2014/CoRS-Part-III dated 17.11.2015) available online on the web site of Delhi Traffic Police at the link <https://delhitrafficpolice.nic.in/about-us/notifications>. The reply must reach the undersigned within 10 days of issue of this letter, failing which ex parte decision will be taken. The personal hearing on your reply shall be provided to you by the undersigned on _____, at _____ (time) at _____ (place).

Motor Licensing Officer
_____ Zonal Office"

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.

8.6. There is no merit in the petitioner's plea that the suspension of a licence after the compounding of the offence would amount to double jeopardy. Section 19 can be invoked where the Licensing Authority is satisfied of the existence of conditions stipulated in Section 19(1)(a) to (h). The compounding of an offence under Section 200 of the Motor Vehicles Act does not, in any manner, affect the power of the licensing authority to suspend the licence under Section

19 of the Motor Vehicles Act. The suspension of a licence under Section 19 is not dependent upon the compounding of the offence by the accused. The suspension of the licence under Section 19(1) of the Motor Vehicles Act would not, therefore, amount to double jeopardy as contended by the petitioner.

8.7. This Court hopes that the Delhi Police as well as the Transport Department of Govt. of NCT of Delhi shall follow the due process of law in implementing the directions of the Supreme Court Committee on Road Safety.

8.8. In the present case, respondent no.1 has not afforded any opportunity of hearing to the petitioner as mandated by Section 19(1) of the Motor Vehicles Act and therefore, it would be appropriate to remand this matter back to respondent no.1.

9. Conclusion

For the reasons discussed hereinabove, this writ petition is allowed and the case is remanded back to respondent no.1 for affording an opportunity of hearing to the petitioner in terms of Section 19(1) of the Motor Vehicles Act, 1988. Vide reply dated 27th January, 2016, the petitioner had sought better particulars, namely, date, time and place of the alleged violation. Respondent no.1 shall furnish the better particulars to the petitioner within two weeks whereupon the petitioner shall submit his response to the show cause notice within a period of two weeks thereafter. Respondent No.1 shall afford an opportunity of hearing to the petitioner and shall thereafter pass a fresh order which shall be communicated to the petitioner. The

impugned order dated 11th February, 2016 shall remain in abeyance and the petitioner would be entitled to drive till the fresh order is passed by respondent No.1. If the petitioner is not satisfied with the order that may be passed, the petitioner would be at liberty to avail the remedy of appeal before the appellate authority under Section 19 (3) of the Motor Vehicles Act.

10. The pending application is disposed of.

11. Copy of this judgment be given *dasti* to counsels for the parties under signature of Court Master.

J.R. MIDHA, J.

MAY 02, 2016
dk/ak