

S/L. 44.
March 4, 2020.
MNS.

W. P. No. 4360(W) of 2020

Suryaneel Das
Vs.
The State of West Bengal and others

Mr. Suryaneel Das

... petitioner in person.

Mr. Amal Kumar Sen,
Ms. Ashima Das (Sil)

...for the respondent-authorities.

The grievance of the petitioner is that while the petitioner, in his parked car around BK/BL park in the Bidhan Nagar area, was engaged in telephonic conversation, two middle aged men in civil clothes came up to the petitioner and asked him to disconnect the phone and also asked him to step out of the car in order to answer to the queries of a third man. The petitioner, being unsure of the identity of the persons, did not oblige at first and instead requested the respondents-in-question to show their valid identity proofs.

On such request, no such proof was provided by the respondents, but they started intimidating and threatening the petitioner. Ultimately, the driving licence of the petitioner was seized, without issuance of any temporary authorization slip, as contemplated in Section 206(3) of the Motor Vehicles Act, 1988.

It is submitted by the petitioner, who appears in person with the leave of this Court, that only a purported compound slip was handed over to the petitioner, that too without clearly disclosing the personal details, including the name, of the compounding officer.

It is alleged that although the petitioner challenged such allegation that the petitioner had parked his vehicle in a 'no parking' zone, and asked the reason for being so harassed, the said persons compelled the petitioner to hand over his driving licence and gave in return, that too upon insistence of the petitioner, only the compound slip, a copy of which is annexed at page- 19 of the instant writ petition.

The petitioner submits that as per Section 130 of the 1988 Act, the driver of a motor vehicle in any public place shall, on demand by any police officer *in uniform*, (emphasis supplied), produce his licence for examination subject to the proviso therein.

In the present case, it is alleged that the police personnel, claiming to be so, were not in uniform and, as such, were, in any event, not entitled to seize the driving licence of the petitioner.

The petitioner also cites a judgment reported at **(2004) 4 CHN 380 (Dipankar Dutta Vs. State of West Bengal)**, wherein a co-ordinate Bench of this Court had held *inter alia* that the alleged offender, in case of a seizure under Section 206(2) of the Motor Vehicles Act, has an opportunity to defend himself. Insistence on admitting the offence and paying the penalty is nothing but violation of fundamental right of a citizen guaranteed under the Constitution of India, depriving the alleged offender of his right of hearing which, it was held, amounts to violation of the principles of Natural Justice.

It was specifically held that when commission of an offence punishable under the 1988 Act is detected, the police officer concerned cannot compel the alleged offender to sign on the compound slip. The police officer, it was held, must be aware that he must give a chance to the alleged offender to either face trial before the appropriate court or to

compound the offence and shall act in terms of the desire expressed by the alleged offender accordingly.

In that regard, several directions were given on the police authorities in general, directing them to act in terms of the said order, as well as an earlier order passed in the judgement reported at 1998(3) CLT 304.

Learned counsel appearing for the respondents submits that it is apparent from the compound slip that the sections with which the petitioner was charged were Sections 122 read with Section 177 of the 1988 Act. Since Section 177 enables a fine of Rs.100/- to be imposed for the first offence for any of the offences provided under the 1988 Act, for which no penalty was provided, the Sub-Inspector of Police, namely, one Biswajit Das, wrongly named as Jiban Ray in the cause title of the present writ petition, was on a raid on the particular evening and found that the petitioner had parked his car violating the no parking rule of the 1988 Act and causing hindrance to public thoroughfares inside the block, the said Sub-Inspector had confronted the petitioner with such charge.

Upon furnishing a written instruction filed by the Inspector-in-Charge of the Bidhan Nagar East Police Station, learned counsel for the respondents submits that on demand, the petitioner failed to state reasonable and sufficient explanation for such unlawful behavior. Thus, the Sub-Inspector of Police, namely Biswajit Das, issued a compound slip to the petitioner for violation of no parking rule and seized the driving licence of the petitioner as produced the latter.

Learned counsel for the respondents fairly submits that the Officer-in-question has handed over the driving licence of the petitioner to learned counsel and if necessary,

pursuant to the direction of this court, the respondents are ready to return the said licence to the petitioner here and now.

Learned counsel for the respondents further submits that under Section 206(2) of the 1988 Act, any police officer or other person authorised in that behalf by the State Government may, if he has reason to believe that the driver of a motor vehicle who is charged with any offence under this Act, may abscond or otherwise avoid the service of a summons, seize any licence held by such driver and forward it to the court taking cognizance of the offence and the said court shall, on the first appearance of such driver before it, return the licence to him in exchange for the temporary acknowledgment given under sub-section (3) of Section 206 of the 1988 Act.

However, in the instant case the *mala fides* of the Sub-Inspector of Police, namely, Biswajit Das, is patent from his action in seizing the driving licence of the petitioner without issuing any acknowledgment which would act as a temporary licence for the petitioner in the first place.

Secondly, as rightly pointed out by the petitioner, the duty to produce a licence and certificate of registration only arises under Section 130 of the 1988 Act, Sub-section (1) of which provides that the driver of a motor vehicle in any public place shall on demand by any police officer in uniform produce his licence for examination.

In the present case, nothing has been disclosed as to the police being in uniform when they seized the driving licence and, as such, there was no duty cast upon the petitioner, who was the driver of the vehicle-in-question, to hand over his licence at all and the seizure of the licence was palpably under coercion on the part of the police officer involved, who was not even in uniform.

Moreover, Section 206(2) of the 1988 Act categorically specifies that only if the police officer concerned has reason to believe that the driver of a motor vehicle, who is charged with any offence under the Act, may abscond or otherwise avoid the service of a summons, seize any licence held by such driver and forward it to the court taking cognizance of the offence.

In the present case, even in the written instruction, nothing has been disclosed to show that the concerned police officer had any reason whatsoever to believe that the petitioner had any intention to abscond or otherwise avoid the service of summons.

Thus, even if the officer-in-question thought it fit to charge the petitioner with the offence contemplated in Section 122 of the 1988 Act, he could at best take resort to Section 177 of the 1988 Act and impose a fine of Rs.100/- as stipulated for a first offence.

In the present case, it is categorically submitted that the police had no provision, as far as the Bidhan Nagar East Police Station is concerned, to accept penalty in cash or card for violation of any provision of the Motor Vehicles Act or any other fine. However, such inefficiency of the police in not having the facility to accept cash by grant of receipt and/or by a credit or debit card is inexcusable, since, if the alternative is to seize the driving licence of the driver is concerned, it would be disproportionate with the alleged offence itself.

As such, on all the counts indicated above, namely that the Officer-in-question was not in uniform, as envisaged in Section 130 of the 1988 Act, he seized the driving licence of the petitioner without any opportunity to the driver/petitioner to pay the fine then and there, since it is admitted by the police in the written instruction that they have no provision for accepting the penalty in cash or card for violation of any provision of the

Motor Vehicles Act, as well as since no acknowledgment as envisaged under Section 206(3) of the 1988 Act was handed over to the petitioner, the said act of the police in seizing the driving licence of the petitioner is palpably illegal. In the event the Sub-Inspector-in-question was of the opinion that an offence under Section 122 of the 1988 Act was committed by the petitioner, the said Sub-Inspector could at best claim a fine of Rs.100/- from the petitioner as per Section 122 of the 1988 Act.

In the absence of any facility being available with the police to accept such fine in cash or by card at the spot of the alleged offence, the police cannot, under any circumstances, seize the driving licence of the petitioner and/or haul up the petitioner in any manner for such an offence, in view of the specific and limited scope of Section 177 of the 1988 Act.

Hence, the action of the respondent no. 2, being the Sub-Inspector of Police, Bidhan Nagar East Police Station, namely, Biswajit Das, (wrongly described in the cause title as Jiban Ray) in seizing the driving licence of the petitioner was palpably illegal.

Moreover, since the condition provided under Section 206(2) of the 1988 Act is not even indicated to have been satisfied from the written instruction given by the Inspector-in-Charge of the Bidhan Nagar East Police Station, as filed in court today, the seizure of such driving licence was palpably illegal.

This, coupled with the conduct of the police officer in not even issuing a temporary acknowledgment, itself reeks of *mala fides* on the part of the police. The petitioner was under no duty, it is reiterated, under Section 130 of the 1988 Act to produce his driving licence even for examination since the police officer in question was not in uniform. As such, in the absence of any *prima facie* evidence that the police gave an opportunity to

the petitioner to put in the fine on the spot of the raid, as admitted by the police in their written instruction, since they have no provision to accept fine in cash or in card for violation of any provision of the 1988 Act, the very action of the police in seizing the driving licence and clamping a case under Sections 122/177 of the 1988 Act is *mala fide* and ought to be quashed.

Accordingly, W. P. No. 4360(W) of 2020 is disposed of by directing the Sub-Inspector of Police, Bidhan Nagar East Police Station, Biswajit Das, to immediately return the driving licence through his counsel to the petitioner.

It may be recorded that, as per such direction, the driving licence of the petitioner is handed over here and now to the petitioner by learned counsel for the respondents.

In view of the discussions above, the case registered by the Sub-Inspector-in-question against the petitioner, having no feasible basis, and being tainted with palpable *mala fides*, is also quashed.

The respondents are restrained from proceeding any further with the complaint lodged against the petitioner, if any, on the basis of the seizure of the petitioner's driving licence, as alleged in the present writ petition.

Any such complaint, if made, and consequential case, if registered, is deemed to stand quashed by virtue of this order.

The Sub-Inspector-in-question is cautioned to follow due process of law in future, in case of seizure of driving licences and in conducting himself with alleged offenders. Since a police officer is supposed to be a protector of justice, a much higher obligation is expected from the officers of the police than a common citizen with regard to protecting the law by following due process of law.

There will be no order as to costs.

Urgent photostat certified copies of this order, if applied for, be made available to the parties upon compliance with the requisite formalities.

(Sabyasachi Bhattacharyya, J.)

