

BEFORE THE DIRECTOR OF TRANSPORT & APPELLATE AUTHORITY,
FIRST FLOOR, JUNTA HOUSE AT PANAJI

Appeal No.4/2017/3931

Shri Ganpat L. Haldankar,
R/o. H.No. GAB 527,
Lima Vaddo, Porvorim, Bardez-Goa.

..... Appellant

V/s.

The Assistant Director of Transport (N),
Government of Goa,
Office at KTC Bus Stand,
Mapusa-Goa.

..... Respondent

O R D E R

1. The Appellant being aggrieved by the Order dated 24/07/2017 under No.ADT/(N)/MAP/Susp./2017/2123 passed by the Assst. Director of Transport (N), Mapusa-Goa, the Appellant herein preferred the present Appeal before Appellate Authority. The matter was heard on 05-09-2017, 28-09-2017 and final arguments were made by both the parties on 06-10-2017.

2. The brief facts of the Case as laid down by the Respondent is as under:-

2.1 It was reported by P.I. Traffic Cell, Panaji, that on 08/07/2017 at NH 17 Mercedes, that Shri Ganpat Laximan Haldankar, R/o. Lima Vaddo, Porvorim, Bardez-Goa, holder of Driving Licence No.GA03 2008 0139061 was found speaking on mobile phone while driving KTC Bus, bearing Registration No.GA-03-X-03325 and the driver was issued with checking report No.77080 dated 08/07/2017 by P.I. Traffic Cell, Panaji and subsequently the Case was forwarded to the Office of Assstt. Director of Transport(N), Mapusa-Goa, for suspension of Driving Licence as per directives of the Supreme Court vide Letter F.No.05/2014/CORS Part III dated 18/08/2015 and requested Licensing Authority for suspension of driving licence for not less than 03 months as per guidelines of the Supreme Court.

2.2 The Assistant Director of Transport & Licensing Authority, Mapusa vide order No.ADT/(N)/ MAP/Susp./2017/2123 dated 24/07/2017, after issuing show cause notices and giving an opportunity of hearing to the Appellant, passed order suspended Licence No. GA03 2008 0139061 of Shri Ganpat Laximan Haldankar for a period of 3 months.

2.3 The Appellant has submitted that the offence in this case was compounded by issuance of Challan on 08/07/2017. He stated and submitted that the composition of an Offence under Section 320 of Criminal Procedure Code has the effect of an acquittal of the Accused with whom the Offence has been compounded. Therefore the proceedings in this matter is in clear violation of Section 320 of Criminal Procedure Code. Therefore, for all legal purposes the Appellant/the Offender have been acquitted. The Appellant argued that this being the position no further proceedings/trial is permissible in law and that the impugned Order dated 24/07/2017 is liable to be quashed and set aside.

2.4 Further he submitted that as per Section 300 of Criminal Procedure Code, a person once convicted/acquitted is not liable to be tried for same offence. In this particular case, the Offender is already acquitted as stated herein above referred. Further proceedings in this matter is in clear violation of Section 300 of Criminal Procedure Code and as such the impugned order is therefore liable to be set aside on this ground also.

2.5 The Appellant also submitted that Respondent and Licensing Authority has failed in invoking the provisions of Section 19 of the Motor Vehicle Act in as much as none of the grounds specified under Section 19 are applicable to the facts and circumstances of this Case. The Impugned Order is therefore liable to be set aside on this ground also.

2.6 Appellant has stated that in the event the traffic police wanted to revoke/suspend the driving licence of the Appellant/Offender, the traffic police should not have allowed the Appellant/Offender to compound the offence and should have filed a Complaint before the concerned Judicial Magistrate for Trial. Admittedly, the traffic police did not choose to file a complaint before the Criminal Court and as such it was not open to the traffic police to approach the Trial Court praying for suspension or revocation of the driving license of the Appellant/Offender.

2.7 Appellant stated and submitted that the traffic police have no jurisdiction to approach the Respondent praying for suspension or revocation of the driving license of the Appellant/Offender. Likewise the Respondent has no jurisdiction to entertain the request of the traffic police for suspension or revocation of the driving license of the Appellant/Offender. In his arguments the Appellant pleaded that once the matter has been compounded by paying fine, no further action shall lie against the Appellant as the same would amount to double jeopardy. The Appellant has argued that he cannot be punished for two offences.

3.0 The Respondent stated that in exercise of the powers vested in him as per section 19(f) of CMV Act, read with section 21(25), of the CMV Rules, the licensing authority has the power to disqualify a person for a specified period for holding or obtaining any driving license to drive all or any classes or descriptions of vehicles specified in the license.

4.0 it is evident that the Appellant was caught red handed for using mobile phone while driving a KTCL bus No.GA-03-X-0325.

4.1 The Appellant was issued a checking report No.77080/02 in pursuant to which the Appellant thereafter compounded the offence by paying an amount of Rs.700/- (Rupees Seven Hundred only). Thereafter, a request for suspension of Motor Driving Licence No. GA03 2008 0139061 was made to the Licensing Authority, Mapusa, on above grounds.

4.2 A Show Cause Notice No.ADT/(N)/MAP/SUS/Case No.1003/2017/1982 dated 13/07/2017 was issued to the Appellant and the case was heard by the Licensing Authority on 19-07-2017 and 21-07-2017 and thereafter Order No ADT/(N)/ MAP/Susp./2017/2123 dated 24/07/2017 came to be passed by the Licensing Authority.

5.0 Having heard the arguments, it is noted that the Appellant is a driver of SRTU namely Kadamba Transport Corporation Limited. There is no doubt that the drivers of KTCL should display exemplary adherence to Road safety Standards and set example for other drivers to emulate. Talking on mobile phone while driving a vehicle is a major source of distraction to the driver and can lead to severe accidents thereby causing damage to life and property.

6.0 Distracted driving has been identified as an important risk factor in road traffic accidents. Mobile phone usage is a major source of driver distraction as it can induce drivers to take their attention off the road, thus making vehicle occupants more vulnerable to road crashes. The use of mobile phones while driving causes four types of mutually non-exclusive distractions; visual, auditory, cognitive and manual/physical. While visual distractions cause drivers to look away from the roadway, manual distractions require the driver to take their hands off the steering wheel, auditory distractions mask those sounds that are crucial for the driver to hear while driving and cognitive ones induce the driver to think about something other than driving.

7.0 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."

8.0 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 (9) Driving at speed exceeding the specified limit.

xxx xxx (16) Driving vehicle while under the influence of drink or drugs.

xxx xxx (25) Using mobile phone while driving a vehicle."

9.0 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."

10.0 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. 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.

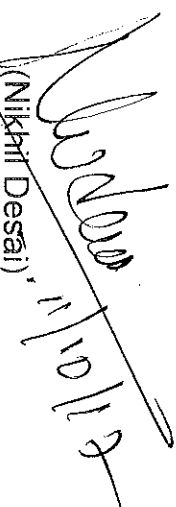
However, the power to suspend the licence under Section 19 of the Motor Vehicles Act upon satisfaction of the Licensing Authority with respect to any of the conditions mentioned in Section 19(1)(a) to (h) is, dehors the compounding of the offence under Section 200 of the Motor Vehicle Act. It is noted that the

respondent is complying with the directions of the Supreme Court Committee on Road Safety.

11.0 Considering the facts and circumstances, I therefore hold that 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.


I therefore dismiss the appeal and uphold the order No.ADT/(N)/MAP/Susp./2017/2123 dated 24/07/2017, passed by the Respondent and the Licensing Authority.

Given under my hand and seal of this office on this 11th day of October, 2017.


(Nikhit Desai)
Director of Transport &
Appellate Authority
Panaji-Goa

To

1. Shri Ganpat L. Haldankar, R/o. H.No. GAB 527, Lima Vaddo, Porvorim, Bardez-Goa.
2. The Assistant Director of Transport & Licensing Authority(N), Government of Goa, Office at KTC Bus Stand, Mapusa.


24/10/17