

(2001) 09 DEL CK 0108
In the Delhi High Court

Commissioner of Police and Others

APPELLANT

Vs

Mukesh Kumar and Another

RESPONDENT

Date of Decision : 05-09-2001

Acts Referred:

Citation : (2002) 1 ACC 82

Hon'ble Judges : Sharda Aggarwal, J;B.A. Khan, J

Bench : Division Bench

Judgement

B.A. Khan, J.—All these petitions involving common question of facts and law are being disposed of by this common judgment.

2. Petitioners issued an advertisement inviting applications for the post of Constable (Driver). The candidates amongst other things were required to possess and hold a "Current Driving license" for heavy vehicles. The respondents applied for the post along with their revalidated/renewed licenses and were selected for appointment after taking in trade and physical test. Their selection was, however, made provisional subject to verification of their antecedents/character, fitness etc. and it appears that during this verification exercise it was noticed that they had secured the licenses when they were underage. Petitioners took up the matter with concerned Transport Authority who had different Explanations to offer. They eventually put respondents on notice informing them that their licenses were illegal having been issued in contravention of Section 4(2) of M.V. Act and requiring them to show cause why their candidature be not cancelled. They replied to these notices claiming that these were renewed and revalidated by the concerned Licensing Authority after they had attained 20 years of age and, Therefore, could not be treated illegal and that they were no more disabled from driving a transport vehicle in a public place. Their Explanation was but rejected and their candidature cancelled by orders passed by petitioner's authority.

3. Respondents challenged this by filing OAs before Tribunal which were allowed by impugned Tribunal judgment requiring petitioners not to deny appointment to

them for this if they were otherwise eligible and qualified for such appointment. While doing this, Tribunal noticed that respondents had attained 20 years requisite prescribed age at the time of renewal of their licenses and applying for the post and took the view that their licenses could not be treated illegal.

4. Petitioners feel aggrieved of this and have challenged Tribunal orders in these petitions on the plea that respondents' licenses were void ab initio having been issued in contravention of Section 4 of M.V. Act and that they were also competent to cancel their candidature because of their undesirability for the job. Their Counsel Ms. Ahlawat submitted that this had put a question mark on their integrity also rendering them unsuitable for the post in a police force. She cited a Supreme Court judgment in *Delhi Administration v. Sushil Kumar* 1997 SCC (L and S) 492, in support holding that denial of appointment to a candidate on the ground, of undesirability in police was not improper.

5. respondents' case, on the other hand, is that they were fully eligible for the post on the date of filing of their applications and so were their renewed licenses valid on that date after they had attained the requisite age of 20 years. It is contended by them that petitioners had no locus standi to hold their driving licenses as illegal/ invalid on their own which could be done only by the Licensing Authority under relevant Sections 16,17 and 19 of M.V. Act. It is also pointed out by them that Section 4(2) of M.V. Act only prohibited driving of a transport vehicle in a public place by a person who was less than 20 years of age and that it did not render an otherwise validly issued license held by an underage person automatically void or illegal unless it was revoked by the competent Licensing Authority on permissible grounds contained in Section 19 and in accordance with the procedure prescribed in M.V. Act.

6. All it comes to is whether a driving license issued to an underage person would automatically become invalid or void without it being revoked/cancelled in accordance with the procedure contained in M.V. Act even though it was renewed/ revalidated after the holder had attained the requisite prescribed age and whether an authority other than Licensing Authority could declare it invalid or illegal on its/ his own.

7. Chapter-II of M.V. Act, 1988 deals with licensing of motor vehicles. Section 3 provides that no person can drive a motor vehicle without an effective license. Section 4 prescribes different age limits for driving different types of vehicles. No person under 16 years can drive without a license, under 18 years a motor-cycle and under 20 years a transport vehicle. Section 19 deals with grant of a driving license after an applicant satisfies the conditions and requirements prescribed therein and establishes that he was otherwise not disqualified to hold a license. Section 15 provides for renewal of license and some additional requirements in case of a transport vehicle license. Section 16 empowers the Licensing Authority to revoke the license on grounds of disease and disability and Section 19 on the grounds contained therein. It also confers power on the Licensing Authority to disqualify a person for holding a driving license on any one of the grounds

contained therein.

8. What emerges from a combined reading of all these provisions is that a person can't drive a vehicle in a public place without a license and without attaining the prescribed requisite age. It is also implied that an underage person does not qualify for grant of license though there is no specific bar for its issuance related to age bar. It also comes out that all questions involving grant or refusal of a license or its revocation or cancellation or even disqualification are to be determined and adjudged by a Licensing Authority in accordance with the procedure provided by the Act.

9. The question that arises, Therefore, is where a license was issued to an underage person for whatever reason, whether by mistake, inadvertence or misrepresentation, fraud, etc. does it automatically render such license void on being noticed and by whosoever or would it require to be declared so under the prescribed statutory procedure. It does not appear to us that such a license would be void ab initio unless it was declared so by the competent Licensing Authority in accordance with the procedure established by law for the purpose. Because it would require to be examined as to how and in what manner such licenses were issued by the authority and whether it was obtained by any fraud or misrepresentation to render it liable for revocation/cancellation and for this, the authority would have to adopt the prescribed procedure and satisfy the requirements of natural justice, etc. Even the Licensing Authority would not be able to revoke/cancel it or to treat it invalid and illegal sua motu what to talk of any other extraneous authority and if " it was acted upon later when the holder had crossed the age bar and had overcome the prohibition to drive the vehicle in a public place, it could not be brushed aside or discarded merely because it was issued when the person was underage.

10. It is a different matter that an employer may not accept it for some other reason but it can't be declared illegal by him in supersession or usurpation of powers enjoyed by the Licensing Authority under the Act to deny consideration of appointment to the holder.

11. Petitioners have, in the present case, treated respondents' licenses as illegal on their own and ignoring that they had got these revalidated/renewed by the Licensing Authority after attaining the requisite prescribed age and without seeking their revocation/cancellation by the authority in accordance with prescribed statutory procedure. Though they had referred the matter to respective authorities who had one Explanation or the other to offer, but this had not resulted in the revocation of these licenses. It was also not petitioner's case that respondents had obtained these by fraud or misrepresentation. Their show cause notice only declared these licenses illegal and without alleging that these were obtained by any unfair means or were tainted on any of the grounds contained in Section 19.

12. Moreover, .it is overlooked that the respondents did not suffer from any

disqualification or disability on the date they applied for the post. They held revalidated/renewed licenses on that date after they had attained the requisite prescribed age. It would, Therefore, be unnecessary to determine whether such revalidation related back to the date of issuance of their licenses because they were admittedly eligible and competent to drive a transport vehicle on the date of applying for the post and, Therefore, no disqualification, if any, incurred by them in the past could be invoked against them to deny them the consideration for appointment.

13. There is no dispute that an employer would be within his rights to do so on the ground of undesirability of the candidate but such undesirability would require to be alleged and indicated. It was not enough to say that issuance of licenses to respondents ignoring age bar at the relevant time itself made them undesirable for the post unless it was further alleged that they had procured these licenses by fraud or unfair and questionable means. There is no such charge in the show cause notice issued to them nor in the order cancelling their candidature and, Therefore, it can't be accepted that their candidature was cancelled because of their undesirability.

14. All this is not to suggest that respondents had acquired any vested right to hold the post on the strength of their selection but what is meant to be underscored is that their candidature could not be cancelled on the basis adopted by petitioners.

15. For all this, these petitions are dismissed and impugned orders passed by Tribunal are affirmed.