
(2006) 06 KL CK 0019
In the High Court Of Kerala
Case No : Writ Petition (C) No. 30022 of 2004

Gajendran

APPELLANT

Vs

R.T.O.

RESPONDENT

Date of Decision : 23-06-2006

Acts Referred:

Central Motor Vehicles Rules, 1989 — Rule 10, 6
Motor Vehicles Act, 1988 — Section 8(1), 8(3), 8(4)

Citation : (2006) 3 KarLJ 1006

Hon'ble Judges : Thottathil B. Radhakrishnan, J

Bench : Single Bench

Advocate : P. Ramakrishnan, for the Appellant; M.A. Fayaz, Government Pleader, for the Respondent

Judgement

Thottathil B. Radhakrishnan, J.—The petitioner is a physically challenged person. Aspiring to drive an autorickshaw, he applied for a learner's licence. He moved this Court since his application was not granted, Ext.P1 judgment was issued directing consideration of his case on the basis of relevant materials. Following this, petitioner produced Ext.P3 medical certificate. Thereupon, Ext.P4 was issued, whereby the petitioner was issued a learner's licence for invalid carriage. Challenging the same, the petitioner insists that he is entitled to be permitted to ply an autorickshaw and is eligible to be issued a learner's licence for an autorickshaw.

2. Ext.P3 medical certificate is issued by a doctor, an Eye and ENT Specialist. He has certified that the petitioner is medically fit to hold a driving licence despite post polio paralysis of both legs. The certificate also states that it has been personally ascertained that the movements needed for driving a vehicle is adequate. Armed with that certificate, the learned Counsel for the petitioner urged that in terms of Section 8(4) of the Motor Vehicles Act, 1988 hereinafter referred to as the "Act", the application of the petitioner ought to have been granted and that the said provision of law enables refusal to grant licence only on

the basis of the materials available from the application and from the medical certificate.

3. Per contra, the learned Government Pleader urged that Sub-section 4 of Section 8 of the Act cannot be construed in a limited and strict sense, as is urged on behalf of the petitioner, since any such construction will only result in danger to the public and to the passengers.

4. Sub-sections 3 & 4 of Section 8 of the Act read as follows:

(3) Every application under Sub-section (1) shall be accompanied by a medical certificate in such form as may be prescribed by the Central Government and signed by such registered medical practitioner, as the State Government or any person authorised in this behalf by the State Government may, by notification in the Official Gazette, appoint for this purpose.

Provided that no such medical certificate is required for licence to drive a vehicle other than a transport vehicle.

(4) If, from the application or from the medical certificate referred to in Sub-section (3), it appears that the applicant is suffering from any disease or disability which is likely to cause the driving by him of a motor vehicle of the class which he would be authorised by the learner's licence applied for to drive to be a source of danger to the public or to the passengers, the licensing authority shall refuse to issue the learner's licence:

Provided that a learner's licence limited to driving an invalid carriage may be issued to the applicant, if the licensing authority is satisfied that he is fit to drive such a carriage.

5. The paramount legislative intent in providing the licensing authority with such power, as is provided under Sub-section 4 of Section 8, is to ensure that driving a motor vehicle under the authorisation of a learner's licence shall not be a source of danger to the public or to the passengers. This is the purpose for which the licensing authority is directed that it shall refuse to issue learner's licence in a case where the applicant is suffering from any disease or disability, which is likely to cause the driving by him, to be a source of danger to the public or to the passengers.

6. The disability of a person has different shades in law. The medical certificate can be only with regard to the physical aspects regarding a person. To what extent such physical aspects have an impact on various matters is not, always, for the doctor to say. In the context of laws relating to compensation, while determining the loss of earning capacity, the effect of the injury or of the diminution of the physical powers on the earning capacity of the affected workman is a matter for the statutory authority to decide and the medical evidence remains in the realm of opinion as regards the physical aspect only. In the realm of compensatory jurisdiction relating to injuries arising out of motor accidents or otherwise, the relevance of medical evidence is again confined to

the exposition of the physical disablement of the victim. How far that has an impact on the question of compensation, is for the Tribunals or Courts to decide. The paramount consideration of Section 8(4) of the Act being as noticed in the preceding paragraph, it has to be left to the wisdom of the licensing authority to decide as to whether a person is disentitled from having a learner's licence and the licensing authority is expected to be well-versed with the manner in which vehicles are to be driven. He is the authority empowered as per the Statute to grant the licence. Obviously, therefore, the medical certificate, in terms of Section 8(3), has to be considered by the licensing authority and an appropriate decision taken. In this view of the matter, the medical certificate referred to in Sub-section 3 of Section 8 is not to be treated as the sole material on which the licensing authority should confine to, for the purpose of discharging his duties and responsibilities referable to Sub-section 4 of Section 8.

7. As can be noticed in this case, the doctor, who is an Eye and ENT Specialist, has certified in Ext.P3 that the petitioner is medically fit to hold a driving licence despite post polio paralysis of both legs. Rule 10 of the Central Motor Vehicles Rules, 1989, hereinafter, "the Rules", for short, requires that an application for learner's licence shall be accompanied by a medical certificate in Form 1-A unless the applicant is entitled to exemption under Rule 6. The medical certificate in Form 1-A, as prescribed by the Rules, requires the certifying medical practitioner to answer Yes/No to Questions (a) to (f) therein. Column (g) is left with the word "optional". The endorsement made in Ext.P3 that the petitioner is medically fit to hold a driving licence despite post polio paralysis of both the legs and that it has been personally ascertained that the movement needed for driving a vehicle is adequate, does not suit the context in which it is made in Ext.P3, having regard to the nature of the prescribed form, namely, Form 1-A, for issuance of medical certificate. Even from the common man's point of view, such a certificate by itself cannot be the foundation for a claim without the licensing authority being satisfied, on an appreciation of the abilities of an applicant from the point of view of a licensing authority, that the person is entitled to be granted a learner's licence. It is well within the licensing authority's power to consider each case, if necessary, by assessing whether the applicant will be able to drive the motor vehicle of the class in question, without being a source of danger to the public or to the passengers.

In the aforesaid circumstances, this Writ Petition is disposed of directing that the petitioner, if so advised, will appear before the licensing authority and the said authority will consider the case of the petitioner, having regard to the totality of the facts and circumstances, including the fitness of the petitioner for driving a motor vehicle, other than an invalid carriage. Let that be done within a period of two months from the date of receipt of a copy of this judgment and production of the same before the licensing authority along with any fresh materials, including any appropriate medical certificate, as provided by the Rules. It will also be open to the licensing authority to obtain a report, if needed, from the District Medical Board.