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**(2016) 08 KL CK 0038**  
**In the High Court Of Kerala**  
**Case No : WP(C).No. 15431 of 2016**

Jayapraksh. K.

APPELLANT

Vs

State of Kerala

RESPONDENT

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**Date of Decision :** 19-08-2016

**Acts Referred:**

Constitution of India, 1950 — Article 226  
Motor Vehicles Act, 1988 — Section 4, 8, 9

**Citation :** (2016) 4 ILRKerala 591 : (2016) 3 KerLJ 795 : (2016) 4 KLT 172

**Hon'ble Judges :** Mr. Shaji P. Chaly, J.

**Bench :** Single Bench

**Advocate :** Sri. K. Mohammed Faisal Naha, Advocate, for the Petitioner; Sri. Paul Varghese, Senior Government Pleader, for the Respondents

**Final Decision :** Allowed

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## Judgement

Mr. Shaji P. Chaly, J.—This writ petition is filed by the petitioner seeking direction to the 3rd respondent to conduct computerized learner's test and all necessary test for obtaining learner's licence by receiving applications of the applicants from petitioner's driving school, and for other related reliefs. Material facts for the disposal of the writ petition are as follows:

2. Petitioner is conducting 3 Driving Schools within the limits of Thirurangadi Sub Regional Transport Office. Petitioner's schools are having students from various parts of the district and also from neighbouring districts due to effective and good training. That apart, it is contended that, as per Section 8(1)(ii) and Section 9(1)(ii) of the Motor Vehicles Act, 1988 [hereinafter called "the Act"], the students of a driving school are entitled to apply for learner's licence and also secure Driving Licence from RTO office having jurisdiction in the area where the school situates. According to the petitioner, students of petitioner's driving schools are entitled to apply before Sub Regional Transport Office, Thirurangadi. When they applied for learner's licence and remitted necessary fees, they were provided with opportunity to appear for the test. But however, when the students

appeared for the computerized learner's test on the dates specified, 3rd respondent refused to conduct the test. The reason stated by the 3rd respondent is that, 2nd respondent has issued a circular not to accept application from students with temporary address of driving school's jurisdiction, till the staff pattern of the Sub Regional Transport Office is increased. A notice to that effect was also published in the notice board. Therefore, even female students had to return due to the indifferent attitude of the 3rd respondent, without any opportunity of participating in the test. It is in this background, this writ petition is filed seeking appropriate direction.

3. The 3rd respondent has filed a counter affidavit disputing the contentions and statements made by the petitioner in the writ petition. Even though 3rd respondent is able to comprehend with the point of law put forth by the petitioner that any person who undergoes learner's test with the petitioner's driving school is entitled to apply for licence with the office at Thirurangadi, due to shortage of staff, the applications are unable to be processed and difficult to carry on with the driving test. Therefore, it is contended that, till such time the staff pattern is improved, submission of application before the Thirurangadi Office and processing it has become impossible. It is also stated that, the test conducting facility available at present is also not to the expectation and the authority finds it difficult to cater to the needs of all the applicants for appearance for the test from the schools conducted by the petitioner. Moreover, reliance is placed on Ext.R3(b) circular/letter issued by the 2nd respondent directing the Motor Vehicles authorities to process the applications for learner's licence and licence as per the stipulations contained thereunder. Petitioner has filed a reply affidavit reiterating the stand adopted in the writ petition, and dispute the statements and reasons adopted for not entertaining the applications.

4. Heard learned counsel for the petitioner and learned Senior Government Pleader, and perused the documents and pleadings put forth by the respective parties.

5. The prime contention advanced by the petitioner is on the basis of Sections 8 and 9 of the Act. Section 8(1) and clauses (i) and (ii) are extracted for convenient disposal of this writ petition:

"8. Grant of learner's licence.- (1) Any person who is not disqualified under Section 4 for driving a motor vehicle and who is not for the time being disqualified for holding or obtaining a driving licence may, subject to the provisions of Section 7, apply to the licensing authority having jurisdiction in the area-

(i) in which he ordinarily resides or carries on business, or

(ii) in which the school or establishment referred to in Section 12 from where he intends to receive instruction in driving a motor vehicle is situate, for the issue to him of a learner's licence."

6. On a reading of Section 8(1)(ii), it is clear, an applicant can apply to the office of the authority in whose jurisdiction, the school or establishment referred to in Section 12 from where he intends to receive instruction in driving motor vehicle, is situated. Therefore, going by the provisions of law, the contentions put forth by the petitioner are legally sustainable. Merely because the Transport Commissioner issued a circular/letter, interdicting the respective statutory authority from entertaining applications, cannot be the mandate to be observed by the authorities in view of the peremptory stipulations contained under Section 8(1)(ii) of the Act.

7. It is well-settled, no authority is empowered to issue any circular to overturn any provisions of law. Going by the circular/letter issued by the Transport Commissioner, in which reliance is placed by the respective statutory authority, to decline test to the applicants from the schools of the petitioner shows, same is in absolute violation of Section 8 of the Act. The said circular read thus:

"C1/5803/TC/2013

Transport Commissionerate, Keralam

Trans Towers, Thiruvananthapuram. Dated: 13-06-2013

From

The Transport Commissioner

To

All Deputy Transport Commissioners

All Regional Transport Officers

All Joint Regional Transport Officers

Sir,

Sub:- Motor Vehicles Department - Changing of driving test centre - Directions issuing of - Reg.

Ref:- 1. U.O. Note No.M-IT3/4100/TC/13 dated 18-05-2013.

2. Circular No.04/2013.....

Attention is invited to the above references. It has come to the notice of the department that many candidates are applying for changing the driving test centre without any justifiable reasons and with some ulterior motives. In this circumstance, the following directions are issued in continuation of Circular No.04/2013 for strict compliance:

1. The change of address or temporary enrolment in any driving school shall not be entertained except in the case of those who reside or stay for official or business purpose in the jurisdiction of that testing centre.

2. For changing the date of driving test, the applicant shall submit request for changing the date of driving test before the Licencing Authority/Additional Licencing Authority by stating the specific reasons for the same. Date of driving test shall not be preponed without specific reason and proof.

It may also be noted that changing the date of driving test without specific reason and including more candidates for driving test than the permitted number will be viewed seriously.

Sd/-

Transport Commissioner".

Further, Section 9(1)(ii) of the Act provides that any person who is not disqualified for the time being from holding or obtaining a licence, is entitled to apply to the office concerned within the jurisdiction the school of driving is situated for grant of licence. In the circumstances, I have no hesitation to hold that Ext.R3 (b) circular to the extent it interferes with the provisions of Sections 8(1)(ii) and 9(1)(ii) of the Act, is illegal, arbitrary and unsustainable under law. Therefore, Sections 8 and 9 of the Act, makes it clear, petitioner is entitled to succeed in this writ petition.

8. Accordingly, there will be a direction to the 3rd respondent to receive applications from the students of the driving schools conducted by the petitioner and process the same in terms of Sections 8 and 9 of the Act.

9. The writ petition is allowed with the aforesaid directions.