
(2002) 07 KL CK 0030
In the High Court Of Kerala
Case No : O.P. No. 30560 of 2000

Krishnamoorthy

APPELLANT

Vs

The Transport Commissioner

RESPONDENT

Date of Decision : 10-07-2002

Acts Referred:

Central Motor Vehicles Rules, 1989 — Rule 15, 15(3)
Motor Vehicles Act, 1988 — Section 28

Citation : (2003) 1 ACC 154 : (2002) 2 KLJ 693

Hon'ble Judges : R. Rajendra Babu, J

Bench : Single Bench

Advocate : T.A. Shaji, M.A. Asif and P.M. Indu, for the Appellant; M.J. Rajasree, Government Pleader, for the Respondent

Final Decision : Dismissed

Judgement

R. Rajendra Babu, J.—The 2nd petitioner is. the proprietress of the driving school A2Z at Ernakulam. The 1 st petitioner who was learning motor driving in the above driving school applied for a driving licence before the 2nd respondent. The 3rd petitioner is the All Kerala Motor Driving School Association licensed to impart instructions in driving. All the petitioners joined in filing this O.P. to quash Ext. P2 circular and Ext P3 test sheet issued by the 1st respondent, the Transport Commissioner.

2. The first petitioner has been issued with a learner's licence by the 2nd respondent, the Asst. Licensing Authority. The 1st respondent, the Transport Commissioner, had issued Ext. P2 circular No. 20/98 dt. 25.7.98 prescribing the guidelines by which the candidates appearing for driving test will have to drive the vehicle in a "H" track so far as four wheeler vehicles are concerned and a "8" track in respect of two wheelers. Further, the 1st respondent has issued Ext. P3 test sheet showing the manner in which the vehicles are to be driven engaging the forward and reverse gears for taking "H" track and "8" track. Ext. P2 circular and Ext. P3 test sheet are sought to be quashed by the petitioners alleging that

the Transport Commissioner was not competent to issue any such circulars and it was in violation of the provisions of the Motor Vehicles Act and the Central Motor Vehicles Rules and hence ultra vires, illegal and unsustainable.

3. Heard the learned counsel for the petitioners and the learned Government Pleader.

4. The learned counsel for the petitioners submitted that Ext. P2 circular issued by the Transport Commissioner was illegal and unenforceable as he was not competent or had any authority to issue such a circular. It was further submitted that the Central Government has already framed rules for the conduct of the tests and the issue of licences and the Central Government alone was competent to issue any circular regarding the conduct of the tests. Hence the Transport Commissioner was incompetent to issue any such circulars or directions regarding the conduct of the tests for the issue of licences. Ext. P2 circular prescribes the procedure for conducting the driving test Rule 15 of the Central Motor Vehicles Rules deals with driving tests. Sub-rule (3) says that the applicant shall satisfy the person conducting the test that he is able to perform the matters prescribed in clauses (a) to (x) of Sub-rule (3). Clause (k) of the above sub-rule which is relevant in this context, reads:

"in the case of vehicle having a reverse gear, driving the vehicle backwards, reverse it into a" limited opening either to"the right or left under control and with reasonable accuracy;"

The learned Government Pleader submitted that Ext. P2 circular was issued strictly in accordance with Rule 15(3) and for complying with clause (k) a procedure had to be introduced for testing the ability and accuracy of the candidate and it was with the above intention that tracks "H" and "8" had been prescribed. The learned Government Pleader further submitted that considering the increase in the number of motor vehicles and the traffic accidents day by day, the High Power Committee had recommended rigorous tests for testing the competence of the candidate to drive before the issue of licence and they had insisted for the implementation of such rigorous tests. In fact it was on the recommendation of the High Power Committee that Ext. P2 circular had been issued. A careful consideration of the above circular and Rule 15(3) of the Central Motor Vehicles Rules would reveal that the circular was issued strictly in accordance with Rule 15(3) of the Central Motor Vehicles Rules and without prescribing any such concrete procedure, I do not think that the test of competence to drive cannot be effectively and properly be conducted. Sub-r. (2) of Rule 15 says that the test of competence has to be conducted by the licencing authority or other persons as authorised in this behalf by the State Government. The Officers of the Motor Vehicles Department of the State have to conduct the test of competence of the candidates. Exts. P2 and P3 were issued by the Transport Commissioner who was the head of the concerned Motor Vehicles Department to follow a uniform and systematic procedure in testing the competence or the ability of the candidate to drive. As the tests are to be

conducted by the concerned officer of this State, the Transport Commissioner was the proper and competent person to issue instructions as to how the tests are to be conducted in a uniform and systematic way and how records are to be prepared and maintained. Further Section 28 of the Motor Vehicles Act had authorised the State Government to make rules for the purpose of carrying into effect the provisions of Chapter II of the Motor Vehicles Act which deals with the issue of driving licence. Rule 405 of the Kerala Motor Vehicles Rules says that the officials of the Motor Vehicles Department shall exercise powers and perform duties as per the Act and the Rules and shall carry out the instructions and orders issued by the Transport Commissioner from time to time. The validity of Exts. P2 and P3 had been considered by this Court in *All Kerala Motor Driving School Workers Welfare Association v. State of Kerala* (1999 (2) KLT 217) and after a detailed consideration this Court has found that the circulars are legal and proper. I am in respectful agreement with the above approach and I find no reasons to quash Exts. P2 and P3. Hence the contention that Exts. P2 and P3 were issued by an incompetent person cannot be accepted.

5. Ext. P2 circular begins with its object as follows:

"With a view to ensure that driving tests are conducted systematically and rigorously as mentioned in the Circular referred above, the specifications for the conduct of tests are ordered below:

XXX XXX XXX XXX"

17 guidelines are prescribed in Ext. P2. Ext. P3 test sheet shows the manner in which the vehicle has to be driven through the track by engaging the forward and reverse gear. It is a real test to ascertain the ability and accuracy of a candidate to move a vehicle in forward and reverse gear in a limited space. Such a test is absolutely necessary to test the ability and accuracy of a candidate. The circulars are intended to test the ability and competency of the candidate and without such a circular issued by the Transport Commissioner prescribing a uniform procedure for testing the competency or ability of a candidate appearing for the test, I do not think that Sub-rule (3) of Rule 15 can be effectively implemented. When the number of traffic accidents are alarmingly increasing day by day, the issue of driving licences should be after rigorous test of competency. In fact more rigorous tests are to be introduced in addition to Exts. P2 and P3 before the issue of licences, taking into consideration the enormous increase in the number of vehicles and the traffic accidents occurring every day. It is regrettable to note that the All Kerala Motor School Association also joined in this O.P. challenging the validity of Ext. P2 circular. By challenging Exts. P2 and P3, the 2nd petitioner had exposed the quality of training they are imparting to their students and it is a matter which the licencing authorities are to consider whether their licence has to be retained or not.

In the result this O.P. is dismissed.