

(1981) 02 KAR CK 0002
In the Karnataka High Court
Case No : WP 20776-20779/80

Narayana Rao K.D.

APPELLANT

Vs

State of Karnataka and Another

RESPONDENT

Date of Decision : 09-02-1981

Acts Referred:

Karnataka Motor Vehicles Rules, 1963 — Rule 4

Citation : (1981) 2 KarLJ 41

Hon'ble Judges : K. A. Swami, J

Judgement

1. In these petitions under Art. 226 of the Constitution, the petitioners have sought for a declaration that the condition attached to the Learner's Driving Licence by the 2nd respondent that the learner must appear for driving test after 90 days is unauthorised and also for issue of a writ in the nature of mandamus directing the 2nd respondent to take competence test of petitioners 1 and 2 to drive the motor vehicles for the driving of which they seek licence. The petitioners 1 and 2 are the trainees and petitioners 3 and 4 are the Motor Driving Schools.

2. The case of the petitioners is that whenever a learner's driving licence is issued by the 2nd respondent, he puts a rubber seal on it stating that the learner must appear for test after a period of 90 days. Annexures "A" and "B" pertaining to petitioners 1 and 2 respectively have been produced to show that the 2nd respondent has been prescribing such a condition.

3. It is submitted that it is not within the competence of the 2nd respondent to prescribe such condition as there is no provision either in the Motor Vehicles Act (hereinafter referred to as "the Act") or in the Karnataka Motor Vehicles Rules, 1963 (hereinafter referred to as "the Rules") enabling the 2nd respondent to direct the licensee to appear for driving test only after a period of 90 days.

3. On the contrary, it is contended on behalf of the respondents, by Sri U. Abdul Khader, learned High Court Government Pleader, that Rule 19 (4) of the Rules has been amended by the notification dated 14th November 1979 bearing No.

HD 12 TMR 79 and as a consequence thereof, the learner's licence will be valid for a period of 6 months instead of 3 months: therefore, it is open for the 2nd respondent who is the licensing authority to impose a condition that the licensee must appear for driving test after the expiry of 90 days.

4. Chapter II of the Act consisting of Ss. 3 to 21 relates to licencing of drivers of motor vehicles. Sub-section (1) of S. 3 of the Act directs that no person shall drive a motor vehicle in any public place unless he holds an effective driving licence issued to himself authorising him to drive the vehicle. It also further directs that no person shall so drive a motor vehicle as a paid employee or shall so drive a transport vehicle unless his driving licence specifically entitles him so to do. Sub-section (2) thereof empowers the State Government to prescribe conditions subject to which sub-section (1) shall not apply to a person receiving instruction in driving a motor vehicle. As per S. 4 of the Act, no person under the age of eighteen years shall drive a motor vehicle in any public place. Similarly sub-section (2) thereof provides that subject to the provisions of S. 14 of the Act, no person under the age of twenty years shall drive a transport vehicle in any public place. S. 7 of the Act, provides for grant of driving licence. According to sub-section (1) thereof, any person who is not disqualified under S. 4 of the Act for driving a motor vehicle and who is not for the time being disqualified for holding or obtaining a driving licence may apply to the licensing authority having the jurisdiction in the area as mentioned in clauses (i) to (iii) thereof for issue to him of a driving licence. Sub-section (6) thereof provides that no driving licence shall be issued to any applicant unless he passes to the satisfaction of the licensing authority the test of competence to drive specified in the Third Schedule. Sub-section (8) thereof provides that when an application has been duly made to the appropriate licensing authority and the applicant has satisfied such authority of his physical fitness and of his competence to drive and has paid to the authority such fee as the Central Government may, by rules made under the Act, specify, the licensing authority shall grant the applicant a driving licence.

5. The relevant rules to be noticed for the purpose of the present case are Rules 4, 12 (1) and (2), 19 (1) and (4), and 30 of the Rules. As per Rule 4 of the Rules, the Regional Transport Officer of the region concerned is the licensing authority for issue of driving licences.

Rule 19 provides for issue of Learner's driving licence. It also provides that sub-section (1) of S. 3 of the Act shall not apply to any person driving a motor vehicle in any public place specified by the licensing authority in the learner's driving licence during the course of receiving instructions or of gaining experience, in driving with the object of presenting himself for a test required by a sub-section (6) of S. 7 of the Act, so long as the driver is the holder of a learner's driving licence in Form 5 L. Lr. entitling him to drive the vehicle and there is besides the driver in the vehicle an instructor, a person duly licenced to drive the vehicle and sitting in such a position as to be able readily to control or stop the vehicle and there is affixed both to the front and rear of the vehicle a

plate or card of specified dimension with letter "L". Sub-rule (4) of Rule 19 provides that a learner's driving licence shall be valid for a period of six months and may be renewed for further period of six months. Further, the learner driver is required to be in the possession of learner's licence while receiving instructions and is required to produce the same on demand by any officer of the motor vehicles department or police department.

Rule 12(1) of the Rules provides that the test of competence to drive is as set forth in the Third Schedule to the Act and shall be conducted on production of a learner's licence in force, by the licensing authority or by a Inspector of Motor Vehicles. Sub-Rule (2) thereof provides that the applicant shall produce a serviceable vehicle of the class to which the application refers and present himself for the test at such time and place as may be specified by the licensing authority or by the testing officer.

Rule 30 of the Rules relates to school of motoring. It inter-alia provides that no person shall engage in the business of giving instruction for hire or reward in the driving of motor vehicles nor, shall any person advertise or otherwise publicly undertake to give such instruction, without a licence and constituting the said person as a school of motoring. Sub rules (10) and (11) of Rule 30 empower the licensing authority to approve by an order in writing the nature and duration of courses of instruction and the number of pupils to be instructed at any one time and the fees to be charged thereof and the fees so fixed shall not be varied without the prior approval of the authority. In exercise of the aforesaid powers under sub-rules (10) and (11) of Rule 30, the 2nd respondent, while renewing licence for the school of motoring of the 3rd petitioner has prescribed the conditions that the minimum period of training for the trainees shall not be less than 30 days and the maximum tuition fee fixed for the period per candidate shall be Rs. 150 only. All other conditions as required by Rule 30 have also been prescribed which are not necessary to be referred to. Rule 30(11) further provides that the fees fixed by the licensing authority shall not be varied without the prior approval of that authority. The fees is fixed on taking into consideration the duration of the training. It is pertinent to notice that Form 5 L.Lr., which is the form relating to the learner's driving licence, only provides for mentioning the areas in which the licensee may drive the vehicle during the period of his training or gaining experience. Thus, there is no column in Form 5 L.Lr. enabling the licensing authority, while issuing the licence to direct the licensee to appear for the driving test only after a period of 90 days.

Rule 12(2) of the Rules, which directs the applicant for a driving licence to produce a serviceable vehicle of the class to which the application refers and further directs him to present himself for the test at such time and place as may be specified by the licensing authority or by the testing officer, cannot also be interpreted to enable or to empower the licensing authority or the testing officer to add a condition to the learner's driving licence at the time of its issue that the licensee shall appear for test only after the expiry of 90 days. The said Rule

only enables the licensing authority or the testing officer to fix a date for conducting the test as and when the applicant for a driving licence appears before the licensing authority during the period when the learner's driving licence is in force and expresses his readiness to undergo the test to be conducted by the licensing authority or the testing officer.

6. Having regard to the fact that the period of training required to be given to the learners by a motor driving school is fixed as 30 days and also having regard to the fact that there is no other Rule or any provision in the Act enabling the licensing authority to direct the applicant while issuing the learner's driving licence to appear for the test only after the expiry of 90 days, the condition imposed by the licensing authority while issuing the learner's driving licence that the licensee must present himself for test only after the expiry of 90 days cannot be held to be either reasonable or within the competence of the licensing authority, as it is open for the learner to appear before the licensing authority for the test at any time after he undergoes training for a period of 30 days, in case the licensee is a student of a motor driving school. If an applicant is not a student of a motor driving school, there is no provision either in the Rules or in the Act that he must appear for the test only after gaining experience for a particular number of days. That being so, the licensing authority cannot while issuing the learner's driving licence, impose a condition that the licensee must appear for the test after the expiry of 90 days. Imposing of such a condition would not be reasonable having regard to the fact that gaining experience in driving with the object of presenting himself for the test would depend upon the individual efforts of the applicant inasmuch as he can devote considerable time every day and may gain the required experience in driving and present himself for a required test within a shorter period than 90 days. Whereas, in the case of an applicant receiving instructions from a motor driving school, the period of training is fixed by the licensing authority as 30 days. Therefore, looked from any point of view, the imposing of condition that the applicant should appear for test only after 90 days, cannot be held to be reasonable whether an applicant is or is not receiving instructions from a motor driving school.

7. The learned High Court Government Pleader replied upon the amendment made to sub-rule (4) of Rule 19 of the Rules by the notification dated 14th November 1979 bearing No. HD. 12 TMR. 79. The effect of the said amendment is that the learner's driving licence shall be valid for a period of six months and may be renewed for a further period of six months. The said amendment does not have any bearing on the question as to whether the licensing authority has got a power to impose a condition while issuing the learner's driving licence that he should appear for test only after 90 days. Such an exercise of power by the licensing authority not supported by the provisions contained in the Act and the Rules when the matter is purely governed by the Act and the Rules framed thereunder would amount to over-riding the provisions of the Act and the Rules and such a method will destroy the very basis of the rule of law and strike at the very root of orderly administration of law (See para 12) in *Mannalal Jain v. State*

of Assam, AIR. 1962 SC. 386.

8. For the reasons stated above, these writ petitions are allowed and it is held that the condition imposed by the 2nd respondent while issuing the learner's driving licence to the petitioners in WP. 20776 and 20777 of 1980 by directing them to appear for test only after the expiry of 90 days is invalid. Accordingly, the said condition as found in Ex. "A" and "B" is hereby quashed. The 2nd respondent is directed to allow the petitioners in WP. 20776 and 20777 of 1980 to appear for the test of competence to drive a motor vehicle for obtaining the driving licence in accordance with the provisions contained in the Act and the Rules.

9. Sri U. Abdul Khader, learned High Court Government Pleader, is permitted to file his memo of appearance on behalf of respondents in six weeks.