
(2003) 09 KAR CK 0004
In the Karnataka High Court
Case No : Writ Petition No. 33616 of 2001

Prabhakar Y.D. and Another	Vs	APPELLANT
State of Karnataka and Another		RESPONDENT

Date of Decision : 01-09-2003

Acts Referred:

Motor Vehicles Act, 1988 — Section 9, 9 (5)

Citation : AIR 2003 Kar 466 : (2003) 5 KarLJ 514 : (2003) 4 KCCR 382 SN

Hon'ble Judges : R. Gururajan, J

Bench : Single Bench

Advocate : S.V. Shastri, for the Appellant; Suresh, High Court Government Pleader, for the Respondent

Final Decision : Dismissed

Judgement

R. Gururajan, J.—Petitioner is seeking for the following prayers:

1. Issue a writ of certiorari quashing Annexure-D insofar as it pertains to the insistence of submission of fresh application and fresh licence fee during the period mentioned under Sub-section (5) of Section 9 of the Act.
2. Issue a writ of mandamus prohibiting the respondents from insisting upon submission of fresh application and fresh licence fee during the period mentioned under Sub-section (5) of Section 9 of the Act and the provision thereunder is concerned.
2. The first petitioner has obtained training for driving motor vehicle from the second petitioner. He has obtained learner's licence in Form 3 attached to the Motor Vehicles Act, 1988. After completion of the training, he applied for issue of a driving licence in Form 4 of the Act. He has also paid the prescribed fee under Rule 32 of the Central Motor Vehicles Rules, 1989. Thereafter, he underwent a competence test conducted by the concerned officer attached to the second respondent in which he did not pass. When he again appeared for the test, he was asked to submit a fresh application along with the fee. According to the first

petitioner, insistence on fresh application along with fresh fee is unnecessary.

3. Second petitioner is a registered training school engaged in imparting training to various categories of motor vehicles to the aspirants as permitted under the licence issued by the authorities under the provisions of the Act and the Rules framed thereunder. The candidate who completes the training after obtaining learner's licence in order to get a Driving Licence is required to subject himself to a competence test. The candidate who wants to have a driving licence has to submit the application in Form 4 along with fees which is required to be paid by means of a challan and that thereafter a competence test will be conducted by the officer of the concerned RTO. If such of those candidates fail in the test, the authorities concerned are insisting upon submitting a fresh application along with fresh fee for the competence test for issue of Driving Licence. Petitioner refers to Section 9 and Rule 14. Petitioner made a representation and in the absence of any consideration, writ petition was filed in W.P. No. 30167 of 2001. This Court disposed of the same by an order dated 8-8-2001. Thereafter an endorsement has been issued in terms of Annexure-D. Annexure-D is challenged in by the petitioners this petition.

4. Heard the learned Counsels for the parties and perused the material on record.

5. Section 9 deals with grant of driving licence. It states that any person who is not for the time being disqualified for holding or obtaining a driving licence may apply to the licensing authority having jurisdiction in the area, in which he ordinarily resides or in which the school where he is receiving instruction in driving is situated.

6. Section 9(5) provides that where the applicant does not pass the test, he may be permitted to reappear for the test after a period of seven days; provided that where the applicant does not pass the test even after three appearances, he shall not be qualified to reappear for such test before the expiry of a period of sixty days from the date of last such test.

7. Rule 14 provides for an application for a driving licence in the light of Section 9. Admittedly, in the case on hand, petitioners made a representation stating therein that once the application submitted in Form 4 along with prescribed fee for obtaining a driving licence, the applicant is entitled to get himself tested for four competent tests. When this representation was made, respondents have issued an endorsement stating therein that the said contention is not acceptable in the light of statutory provisions. Let me see as to whether the endorsement fits into the four corners of the Act.

8. Section 9(5) provides for reappearance after a period of 7 days. The proviso further provides that where the applicant does not pass the test even after three appearances, he shall not be qualified to reappear for such test before the expiry of a period of sixty days from the date of last such test. A careful reading of the said proviso would show that a gap of seven days is provided for reappearing for the test if an applicant fails and in the event of three failures 60 days time is

fixed for the next test. Rule 14 also is to be noticed at this stage. It provides for an application for a driving licence. Rule 32 provides for a fee of Rs. 50/-. The contention of the learned Counsel for the petitioner is that three failures are recognised in terms of Section 9(5) and therefore insistence on fresh application and fresh fee is unnecessary. This argument of the learned Counsel if accepted would result in misunderstanding the object of Section 9 read with Rules.

9. The object of Section 9(5) is only to provide an opportunity for a repeater in the event of a failure and a time schedule is fixed in the Act. That would not mean that there should be no application and no fees as argued by the learned Counsel. Any such understanding would be ruinous to the very understanding of the Act. The section is very clear with regard to payment. It is not possible to read something more into the section for the purpose of interpretation of the section read with rules in the case on hand. Therefore, the argument of the learned Counsel, of no fresh application and no fresh fee for three tests has to be rejected by this Court. What is provided u/s 9(5) is only an opportunity with time schedule and nothing else. Once the argument of the petitioner is rejected, the endorsement has to be upheld. The said endorsement is based on right understanding of Section 14(b) of the Act.

10. Before concluding, this Court can take judicial notice of innumerable accidents in the State and in and around Bangalore. Not a day goes without accident. Either in Old Madras Road between Bangalore and Mulbagal/Nelamangala/Bijapur/Mangalore, in Shigaon or Haveri Cross. Most of the accidents are attributable to reckless driving of the vehicle without caring for human life and human misery. In these circumstances, this Court is of the view that the authorities are to ponder over to arrest this unfortunate accidents resulting in loss of life in addition to misery. One method that can be adopted is to put a ceiling of only three purposeful tests for the purpose of driving licence. If a person is unable to pass the driving test in three attempts, I do not think that any further concession can be shown to him. It is not unknown that ceiling is fixed in the matter of examinations. Hence, in the case on hand, I deem it proper to observe that the Government may take note of this judgment and effect necessary amendment thereby creating a ceiling of only three attempts for obtaining licence in the larger interest of saving human life and in the larger interest of avoiding accidents as a whole in the State. This three test ceiling is to be fixed after providing sufficient safeguards for a sincere applicant in the matter of test by the officials, and see that a honest and sincere aspirant is not deprived of his/her driving licence.