

(1985) 02 KAR CK 0043

In the Karnataka High Court

Case No : Writ Petition No's. 10507 of 1984 etc.

Rafi

APPELLANT

Vs

State of Karnataka

RESPONDENT

Date of Decision : 11-02-1985

Acts Referred:

Karnataka Motor Vehicles Act, 1988 — Section 21 (2) (aaa), 4, 7
Karnataka Motor Vehicles Rules, 1963 — Rule 5 (3) (a)

Citation : (1986) ILR (Kar) 1498

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

Bench : Single Bench

Advocate : K.J. Shetty and U.L. Narayana Rao, for the Appellant; L.M. Pandurangaswamy, HCGP, for the Respondent

Final Decision : Allowed

Judgement

K.A. Swami, J.—In all these Writ Petitions, provisions of Rule 5(3)(a) of the Karnataka Motor Vehicles Rules, 1963 (hereinafter referred to as "the Rules") inserted by the Karnataka Motor Vehicles (3rd Amendment) Rules, 1984 is challenged. Rule 5(3)(a) of the Rules has come into force on 30th May, 1984.

2. In most of these Writ Petitions, the petitioners are either the applicants for driving licence or the driving schools. Whereas only in two Writ Petitions viz., 10360 and 10361/1984 the Driving Schools are the petitioners. In respect of these petitions, Sri. L. M. Pandurangaswamy, Learned High Court Government Pleader has raised an objection that they have no locus standi inasmuch as they cannot be considered to be aggrieved persons since the impugned rule only affects the applicants who seek driving licence. It appears to me that the objection is well-founded. The validity of the Rule is challenged only on the ground that it is beyond rule making power conferred upon the State Government under the provisions of the Motor Vehicles Act (hereinafter referred to as "the Act"). The Rule in question does not affect the driving schools. Therefore, the petitioners in W.P. 10360 and 10361/1984 cannot be considered

to be aggrieved persons; as such, they have no locus standi. Accordingly, W.Ps. 10360 and 10361/1984 are dismissed.

3. Rule 5(3)(a) of the Rules reads thus:

"No authorisation to drive a transport vehicle shall be granted unless the applicant produces a valid certificate in proof of the same to the effect that he has studied upto the Seventh Standard Examination of any school recognised by the State Government.

The State Government shall notify the date from which this provision shall take effect."

4. The aforesaid impugned rule is framed in the purported exercise of power u/s 21(2) (aaa) of the Act which reads thus:

"The minimum educational qualifications of persons to whom licences to drive transport vehicles are issued after the commencement of the Motor Vehicles (Amendment) Act, 1978 and the time within which such qualifications are to be acquired by such persons."

5. It is the contention of the petitioners that the aforesaid provision only enables the State Government to frame the rules prescribing the qualifications applicable to persons to whom licences are issued and not to those who apply for licences. A similar rule was framed by the State Government in exercise of its power under Rule 21(2)(aa) of the Act. The said rule read as follows :

"No authorisation to drive a heavy motor vehicle shall be granted unless the applicant satisfied the licensing authority concerned that he has had atleast two years experience in driving medium motor vehicles".

This rule is struck down by this Court in a decision reported in H. Ganesh Kamath and Others Vs. The State of Karnataka and Others, , State of Karnataka and Another Vs. H. Ganesh Kamath and Others, State of Karnataka and Another Vs. H. Ganesh Kamath and Others, . It has been held by the Supreme Court that the aforesaid rule does not merely prescribe a qualification not provided for in the Act, but prescribes a qualification which is contrary to the provisions of the Act. It is also further held that though the substituted Clause (aa) inserted in Sub-section (2) of Section 21, confers power upon the State Government to make rules providing for minimum qualification of persons to whom licences to drive a transport vehicle are issued. Such power cannot include within its scope the power to make a rule contrary to the provisions of the Act conferring the rule making power. It is also pertinent to notice that, as pointed out by the Supreme Court, if the legislature had the intention of providing for disqualification prescribed by the rules Sub-sections (1) and (8) of Section 7 would have been suitably amended, when Clause (aa) was substituted for the old Clause (aa) in Section 21(2) of the Act by inserting in the said sub-section the words "under this Act" or the rules made thereunder or by inserting other appropriate words. Thus, it is clearly laid down by the Supreme Court that Section 21(2)(aa) does

not enable the State Government to prescribe a qualification by framing the rules. As far as the wording in Clause (aaa) of Sub-section (2) of Section 21 of the Act is concerned it is more or less identical to Clause (aa). Clause (aaa) deals with educational qualification whereas Clause (aa) deals with experience of an applicant seeking driving licence.

6. Section 4 of the Act prescribes a qualification to be possessed by a person seeking driving licence. Section 7 of the Act lays down procedure and also experience that has to be shown to have been gained by the applicant. Section 8 of the Act prescribes forms and contents of driving licence. Apart from these provisions, there is no other provision in the Act which enables the State Government to frame the rules prescribing educational qualifications to be possessed by a person seeking driving licence. As it is already pointed out the provisions contained in Clause (aaa) of Sub section (2) of Section 21 of the Act only enable the State Government to prescribe a qualification applicable to the persons to whom the licences to drive the transport vehicles are issued. It also further provides that such rules must also specify time within which such qualification are to be acquired by such persons. Thus a plain reading of Clause (aaa) of Sub-section (2) of Section 21 of the Act makes it clear that it does not enable the State Government to prescribe a qualification to be satisfied by persons who apply for licences to drive a transport vehicle. That being so, the impugned rule is clearly beyond the rule making power of State Government as such it is liable to be struck down.

For the reasons stated above, Rule 5(3)(a) of the Motor Vehicles Rules as inserted by Karnataka Motor Vehicles (Third Amendment) Rules, 1984 is hereby struck down. The State Government and its Officers are refrained from enforcing it.