
(1981) 07 KAR CK 0046
In the Karnataka High Court
Case No : WP 4012 etc./81

Venu, K.

APPELLANT

Vs

State of Karnataka and Others

RESPONDENT

Date of Decision : 07-07-1981

Acts Referred:

Karnataka Motor Vehicles Rules, 1963 — Rule 12
Motor Vehicles Act, 1988 — Section 7(6)

Citation : (1983) 1 KarLJ 409

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

Judgement

1. All these writ petitions are connected, and common questions of law and fact arise for consideration. The petitioner in each of the WPs 4012 and 5861 of 1981 is an applicant before the Regional Transport Officer, Bangalore, for grant of a Driving Licence to drive heavy vehicles as a paid employee. The petitioner in WP No. 4013/81 has applied for a driving licence to drive an autorikshaw. The petitioners in WPs 4014 and 4015 and 5862 of 1981 are motor driving schools. The prayers made in these writ petitions are to declare that the endorsement made by the Regional Transport Officer, Bangalore, on the application of each of the petitioners in WPs 4012, 4013 and 5861 of 1981, that he has failed in part I, is null and void and to quash the same and further to issue a mandamus to the Regional Transport Officer, Bangalore, to grant the necessary driving licence to each one of the applicants.

2. In these writ petitions, allegations of mala fides have been made against the 3rd respondent (the Regional Transport Officer, Bangalore). The respondents also in their statement of objections have taken a stand that the petitioners have come into possession of the original applications as filed by each of the petitioners in WPs 4012, 4013 and 5861 of 1981 by foul means, therefore, those documents should not be looked into and on that score alone the relief should be denied to them. Allegations relating to mala fides made by the petitioners have been denied by the respondents. Similarly the allegations made by the respondents against the petitioners regarding the obtaining of the original

applications also have been denied by the petitioners. But during the course of arguments, learned counsel for the petitioners has submitted that the allegations relating to mala fides need not be gone into having regard to the fact that the respondents have admitted that the Inspector of Motor Vehicles has first conducted the test of competence to drive and has issued a certificate to each of the applicants for having passed the test. Similarly, the learned Government Advocate, Sri Doddakalegowda has also submitted that the allegations made by the respondents against the petitioners about the obtaining of the original applications by the petitioners in WPs 4012, 4013 and 5861 of 1981 need not be gone into and may be treated as given up. In view of these submissions, it is not necessary for the Court to go into the allegations of mala fides made by the petitioners against the Regional Transport Officer, Bangalore, and also the allegations of foul play regarding the obtaining of the original applications made against the petitioners by the respondents.

3. Leaving aside the aforesaid questions, the only question that is urged in these writ petitions is as to whether the Regional Transport Officer is entitled to conduct a re-test when once the Inspector of Motor Vehicles as a testing Officer conducts the test and issues a certificate that the applicant has passed the necessary test. The learned counsel for the petitioners has placed reliance on R. 12 of the Karnataka Motor Vehicles Rules, 1963 (hereinafter referred to as "the Rules") and also S. 7 (8) of the Motor Vehicles Act, (hereinafter referred to as "the Act"). On the contrary, the learned Government Advocate has placed reliance on sub-sec. (12) of S. 2 and sub-secs. (1), (6) and (8) of Ss. 7 and 21 of the Act, and also Rr. 4, 12, 13 and 367 of the Rules. The contention of the learned Government Advocate is that the Regional Transport Officer being the licensing authority as per R. 4 of the Rules, under sub-sec. (6) of S. 7 of the Act, the applicant has to pass to the satisfaction of the licensing authority the test of competence to drive as specified in the third Schedule; therefore, irrespective of the fact that the Inspector of Motor Vehicles has conducted the test and has issued a certificate that each one of the applicants has passed the necessary test, it is still open for the Regional Transport Officer in order to get himself satisfied about the driving ability or competence of the applicant to conduct a re-test. According to the learned Government Advocate, it is in the exercise of this power that the Regional Transport Officer has conducted the re-test and has held that each one of the applicants has failed in Part I. Though it is denied that the 3rd respondent (RTO, Bangalore) has conducted the re-test of each of the applicants, but during the course of arguments, this contention is not pressed and the case is argued on the basis of a legal contention that it is not open for the Regional Transport Officer to conduct another test when once the Inspector of Motor Vehicles, as a testing Officer, has conducted the test and has issued the required certificate.

4. No doubt, sub-sec. (6) of S. 7 of the Act, specifically 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 as specified in the III Sch. to

the Act. But, in exercise of the power under S. 21 of the Act, the State Government has framed the necessary Rules. R. 12 specifically provides that the test of competence regarding driving can be conducted either by the licensing authority or by an Inspector of Motor Vehicles. Form No. "A" (proforma of the application), as set forth in the I Sch. of the Act, itself provides for issue of a certificate of test of ability to drive by the testing authority. As per R. 12 of the Rules, the Inspector of Motor Vehicles as a testing officer is empowered to conduct the test of competence to drive as set forth in the III Sch. to the Act. That being so, sub-sec. (6) of S. 7 of the Act, will have to be read along with the Rules framed in that regard. When R. 12 of the Rules specifically says that the test of competence to drive as specified in Sch. III to the Act, can be conducted either by the licensing authority or by an Inspector of Motor Vehicles, it is clear that the test conducted by the Inspector of Motor Vehicles must, in law, be regarded as the test conducted by the licensing authority. Therefore, in a case where the test of competence is conducted by an Inspector of Motor Vehicles and a certificate of test of ability to drive the required vehicle for having passed the test specified in the III Sch. to the Act. is issued by him. the applicant must in law be deemed to have passed the test of competence of drive as specified in the III Sch. to the Act, to the satisfaction of the licensing authority as per sub-sec. (6) of S. 7 of the Act and the licensing authority has to issue a licence if all the other requirements are satisfied. Therefore, Once there is a test conducted by the Inspector of Motor Vehicles and on the basis of that test, he has issued a certificate as provided in the Form itself, it is not open for the licensing authority to ignore the certificate and to proceed to conduct a fresh test and then to decide on the basis of a fresh test as to whether a licence has to be issued or not. If the contention of the learned Government Advocate is to be accepted, R. 12 of the Rules would be rendered otiose. No superfluity is to be attributed to the legislature or to the Rule making authority. An interpretation leading to such a situation should normally be avoided. When R. 12 of the Rules provides that either the licensing authority or an Inspector of Motor Vehicles can conduct the test, it means the test conducted by an Inspector of Motor Vehicles is as good as the test conducted by the licensing authority itself. Therefore, the contention of the learned Government Advocate that the Regional Transport Officer being the licensing authority it is still open for him to conduct a re test and then to decide on the basis of a re test as to whether the licence is to be granted or not, cannot be accepted. Thus, it will have to be held that the endorsement made by the Regional Transport Officer that each one of the applicants has failed in Part I is null and void and is liable to be quashed.

5. The learned Government Advocate has also placed reliance on R. 367 of the Rules. In my opinion, the said Rule has no relevance. Under the said Rule, the Transport Commissioner is empowered to perform any of the functions of a Regional Transport Officer, Asst. Regional Transport Officer or Inspector of Motor Vehicles Similarly under the said Rule, a Regional Transport Officer or Asst. Regional Transport Officer may also perform the functions of an Inspector of

Motor Vehicles. Thus, it is clear that the said Rule does not in any way help us to come to a conclusion that it is open for the Regional Transport Officer to conduct a re test after the required test is conducted by the Inspector of Motor Vehicles and a certificate is issued by him that the applicant has passed the test specified in the III Sch. to the Act.

6. It is also urged by the learned Government Advocate that WPs 4014, 4015, 5861 and 5862 of 1981 filed by the Motor Driving Schools are not maintainable inasmuch as they cannot be considered to be aggrieved persons. It is not necessary to decide this question as nothing turns upon that in view of the fact that the applicants for grant of licence are also the, petitioners.

7. For the reasons stated above, the Rule is made absolute. The endorsement made on the application of each of the petitioners in WPs 4012, 4013 and 5861 of 1981 by the Regional Transport Officer, Bangalore, that the applicant has failed in Part I, is hereby quashed. Consequently, a writ of mandamus shall issue to the 3rd respondent (Regional Transport Officer, Bangalore) to issue the necessary driving licence to the petitioners in WPs 4012, 4013 and 5861 of 1981 within a fortnight from to-day if all the other requirements are satisfied.