

(1980) 12 KL CK 0011
In the High Court Of Kerala
Case No : O.P. No. 1748 of 1980-G

V.P. Antony

APPELLANT

Vs

Licensing Authority and Another

RESPONDENT

Date of Decision : 11-12-1980

Acts Referred:

Kerala Motor Vehicles Rules, 1989 — Rule 10
Motor Vehicles Act, 1939 — Section 14, 21(1), 21(2), 4, 4(2)

Citation : AIR 1981 Ker 116

Hon'ble Judges : George Vadakkal, J

Bench : Single Bench

Advocate : P.V. Cherian, for the Appellant; Govt. Pleader, for the Respondent

Final Decision : Dismissed

Judgement

George Vadakkal, J.—The petitioner applied for and obtained a licence to drive light vehicles on 3-4-1978. Within three years thereof, to be precise on 18-4-1980, he submitted Ext. P-5 application to obtain a licence to drive a transport vehicle which admittedly is a heavy motor vehicle falling both within Sub-sections (9) and (9A) of Section 2 of the Motor Vehicles Act, 1939. As per Ext. P-6 endorsement the petitioner was told that since he has not completed three years after obtaining licence to drive light motor vehicles Ext. P-5 application is returned. The application also was returned to the petitioner. This was for the reason that proviso to Rule 10 of the Kerala Motor Vehicles Rules, 1961 provides that no authorisation to drive a heavy motor vehicle other than a car or tractor shall be granted unless the applicant satisfies the licensing authority concerned that he has had previous experience in driving light or medium motor vehicle or both together for a period of 3 years. The proviso proceeds to deal with authorisation to drive a medium motor vehicle about which I am not concerned in this case. The stipulation in the proviso as aforesaid as regards experience in driving light or medium motor vehicles or both together for a period of 3 years in order to obtain a licence to drive a heavy motor vehicle, is

impugned in this petition as ultra vires of the rule making power of the State u/s 21 of the Act.

2. Section 21 of the Act enables a State Government to make rules for the purpose of carrying into effect the provisions of Chapter II beginning with Section 3 and ending with Section 21. Chapter II concerns licencing of drivers of motor vehicles. It is in exercise of the powers conferred u/s 21 also to make rules for the purpose of carrying into effect the provisions of Chapter II that the Kerala State has framed the Kerala Motor Vehicles Rules, 1961. The attack on the provision impugned is that the provision contravenes Section 4 of the Act and particularly Sub-section (2) thereof. It is also contended that the provision as aforesaid prescribing qualification of experience in the proviso to Rule 10 offends the scheme contained in Sections 7 and 8 of the Act and particularly Sub-section (8) of Section 7. I shall examine the contention as aforesaid hereunder,

3. Section 4 reads:

"4. Age limit in connection with driving of motor vehicles. -- (1) No person under the age of eighteen years shall drive a motor vehicle in any public place.

(2) Subject to the provisions of Section 14, no person under the age of twenty years shall drive a transport vehicle in any public place." The submission with reference to this section is that the effect of the provision in the proviso to Rule 10 of the Rules as regards experience qualification is that no one who has not yet attained 21 years of age would be entitled to obtain an authorisation to drive a heavy motor vehicle. Elaborating this submission it is pointed out that under subsection (1) no person under the age of eighteen years is entitled to obtain authorisation to drive any motor vehicle in any public place and counting three years" experience therefrom, only one who has attained 21 years would be entitled to obtain an authorisation to drive a heavy motor vehicle. This, as submitted by the learned counsel for the petitioner, would contravene Sub-section (2) of Section 4 whereunder the prohibition is only that a person under the age of 20 years shall not drive a transport vehicle in any public place.

3A. The argument as advanced is ingenious, but I am not able to accept the same. It cannot for a moment be contended that a person who is 21 is under the age of 20 years. If that be so, how the experience qualification prescribed in the proviso to Rule 10 would offend Subsection (2) of Section 4 is beyond my comprehension.

4. The learned counsel for the petitioner took me through the several provisions contained in Sections 7, 8 and 14 and submitted that the proviso as aforesaid to Rule 10 is contrary to the scheme contained in the aforesaid provisions. Section 7, to begin with Sub-section (1) thereof says that one who is not disqualified u/s 4 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 for an authority to drive a motor vehicle in the manner stated therein. This sub-section itself stipulates that even though the applicant may not be disqualified u/s 4 (S.

4 concerns only with the age qualification), the licensing authority will be guided in the matter of issuing licence by qualifications prescribed elsewhere in the Act or the Rules, as the case may be for Sub-section (1) says: "and who is not for the time being disqualified for holding or obtaining a driving licence may apply to the licensing authority", In other words, Section 7 (1) indicates that the licensing authority is to be satisfied of not only the qualification that is prescribed u/s 4 of the Act but of other qualifications prescribed elsewhere also.

5. Sub-section (3) of Section 7 provides that where the application is for a driving licence to drive as paid employee or to drive a transport vehicle or where the licensing authority for reasons to be stated in writing so requires, the application shall be accompanied by a medical certificate in Form C, as set forth in the First Schedule, signed by a registered medical practitioner. Under Sub-section (4) of Section 7 every application for a driving licence to drive as a paid employee and every application for a driving licence to drive a transport vehicle shall be accompanied by three clear copies of a recent photograph of the applicant. Under Sub-section (5) if it appears to the licensing authority either from the application or from the medical certificate produced by the applicant that he is suffering from any of the diseases or disabilities mentioned in the Second Schedule or any other disease or disability which is likely to cause the driving by him of a motor vehicle of the class which he may be authorised by the driving licence applied for to drive to be a source of danger to the public or to the passengers, the licensing authority shall refuse to issue the driving licence. The learned counsel referred me to clause (b) of the proviso to Sub-section (5). Under that clause, the applicant may, except where he suffers from a disease or disability specified in the Second Schedule, require that he be subjected to a test as regards his fitness or ability to drive a motor vehicle of a particular construction or design, and, if he passes such test to the satisfaction of the licensing authority and is not otherwise disqualified, the licensing authority shall grant him a driving licence to drive such motor vehicle as the licensing authority may specify in the driving licence. Sub-section (6) of Section 7 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. The next sub-section that is referred to me by the learned counsel in reliance of his contention is Sub-section (8) of Section 7. It will be advantageous to read that section :

"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 this Act, specify the licensing authority shall grant the applicant driving licence unless the applicant is disqualified u/s 4 for driving a motor vehicle or is for the time being disqualified for holding or obtaining a driving licence."

6. Much reliance is placed by the learned counsel appearing on behalf of the

petitioner on Sub-section (8) of Section 7 extracted above. The submission is that when an application has been duly made to the licensing authority and the applicant satisfies that authority of his physical fitness and of his competence to drive and when he has paid such fee as is specified, the licensing authority shall grant the applicant a driving licence, unless he is disqualified u/s 4 from driving a motor vehicle and is for the time being disqualified for holding or obtaining a driving licence. According to the learned counsel for the petitioner, it is imperative on the part of the licensing authority to issue a licence when an applicant has submitted an application in accordance with Sub-section (1) of Section 7 and the applicant satisfies the authority of his physical fitness and of his competence to drive and he has paid to the concerned authority the required fee. It is submitted further that the only factor that the licensing authority can then consider is as to whether he is disqualified u/s 4 of the Act. This submission forgets the following provision towards the end of Sub-section (8) namely :-- "or is for the time being disqualified for holding or obtaining a driving licence", This clause in Sub-section (8) would certainly indicate that the licensing authority has to be satisfied not only of the fact that there is a duly made application, that the applicant is physically fit and competent to drive, that he has paid to the authority the required fee and that he is not disqualified under Section 4, but also that he is not disqualified for holding or obtaining a driving licence, with reference to some provision of law, be it under the statute or under the rules, other than that provided in Section 4 of the Act. This clause is in tune with the provision in Sub-section (1) of Section 7 whereunder only a person who is not disqualified u/s 4 for driving a motor vehicle and "who is not for the time being disqualified for holding or obtaining a driving licence", could apply for a licence. (emphasis supplied). Mark that u/s 7 (1) the applicant should be one who is not disqualified for obtaining a driving licence as also for holding the same and that under the last clause mentioned in Sub-section (8) the licensing authority has to consider whether the applicant is disqualified for obtaining a driving licence or for holding the same. The question is where to look for the other qualifications that Sub-sections (1) and (8) of Section 7 refer to.

7. The learned counsel for the petitioner referred me to Section 8 of the Act and particularly to Sub-section (2) thereof and to Section 14. Section 8 (1) prescribes the Form in which a driving licence other than a driving licence issued u/s 14 is to be made. That provision says that the signature or the thumb-impression given on the form of application for the driving licence is to be affixed thereto and in the case of a driving licence to drive as a paid employee or to drive a transport vehicle one of the photographs referred to in Sub-section (4) of Section 7 shall also be affixed thereto. The scheme of Sub-section (2) of Section 8 is that for each kind of the motor vehicles enumerated as (a) to (g) it is necessary to obtain different licences or authority to drive the same. In other words, a driving licence for one category of motor vehicle enumerated in Sub-section (2) of Section 8 would not enable or entitle the licensee to drive another kind of motor vehicle unless he is armed with a licence for driving that category of motor

vehicle also. Now it is necessary to notice that of the different categories of motor vehicles mentioned in Sub-section (2), one is light motor vehicle, another is medium goods vehicle, another is medium passenger motor vehicle, another is heavy goods vehicle and still another is heavy passenger motor vehicle. If these different kinds or categories of motor vehicles require different licences authorising the holder thereof to drive particular category or categories of motor vehicles, it goes without saying that while Section 4 and Section 7 govern all categories of motor vehicles mentioned in Sub-section (2) (unless exempted by the particular provision therein), the State Government is competent to make rules stipulating further qualifications or additional qualifications for each category of motor vehicles. If the contention advanced on behalf of the petitioner that on being satisfied of the fact that there is a duly made application, that the applicant is physically fit, that he is competent to drive, that he has paid the required fee and that he is not disqualified u/s 4 an applicant is entitled to obtain a licence, then Section 21 of the Act enabling a State Government to make rules for the purpose of carrying into effect the provisions of Chapter II in the Act relating to licensing of drivers of Motor Vehicles, would become otiose. The argument is that any qualification other than that is mentioned in Sub-section (8) of Section 7 need not be looked into or considered by the licensing authority. In fact the argument goes to the extent of submitting that any such additional qualification would be contrary to the scheme revealed by the provisions contained in Sections 4, 7 and 8 of the Act.

8. In support of the contention advanced on behalf of the petitioner as aforesaid the learned counsel for the petitioner relies on the decision of the Karnataka High Court in *H. Ganesh Kamath and Others Vs. The State of Karnataka and Others*, . No doubt this decision to a certain extent supports the submission made by the learned counsel for the petitioner. The reason for holding so is stated by that High Court as follows:

"While Section 7 (8) provides that a licence shall be granted when the application has been duly made and where the applicant has satisfied the authority of his physical fitness and of his competence to drive the particular type of vehicle and has paid the prescribed fee and he is not disqualified u/s 4 from driving the motor vehicle or for the time being is disqualified from holding or obtaining a driving licence, the rule provides that notwithstanding all these conditions being satisfied, no authorisation for driving heavy motor vehicles shall be granted unless the applicant satisfies that he has had at least two years" experience in driving medium motor vehicles. The Rule 5 (2) makes a provision which is inconsistent with the provisions in Act and actually nullifies the provisions in the Act.

9. With respect, the principle stated aforesaid and the arguments advanced before me fail to take note of the fact that both u/s 7 (1) and Section 7 (8) it is necessary to consider the question as to whether the applicant for licence is disqualified for the time being for holding or obtaining a driving licence. No doubt

a rule inconsistent with any of the provisions of the statute under which the same has been made cannot be upheld. But so long as the rule prescribes a qualification in addition to those prescribed by the statute and that qualification in no way contravenes any of the provisions of the Act, the same has to be upheld as to be within the rule-making power of the rule-making body. As already indicated, the scheme of the provisions referred to above is that the State Government is also enabled to make rules for the purpose of carrying out the provisions relating to licensing of drivers of motor vehicles. If that be so, the State Government is competent to make a rule prescribing qualifications for obtaining licence for driving motor vehicle in addition to any one of the qualifications stipulated or prescribed by any of the provisions of the Act provided the same does not contravene any such provision. For example the State cannot make a rule prescribing a lower age than that prescribed u/s 4. But, it is my firm view that it can prescribe a qualification raising the minimum age from that prescribed u/s 4 or one which in effect so raises the minimum age. It cannot be said that such a prescription would contravene Section 4.

10. The above discussion will reveal that apart from the prescription contained in the Act, u/s 21 the concerned State Government can also prescribe qualifications not contrary to those prescribed by any of the provisions of the statute. So far as the case on hand is concerned, it has already been said that the provision in the proviso to Rule 10 cannot be said to contravene Section 4 of the Act as contended for on behalf of the petitioner. It cannot also be said that the only qualifications of which the licensing authority is to be satisfied for giving a licence are such as those mentioned in Sub-section (8) of Section 7 as contended for relying on the decision of the Karnataka High Court referred to above.

11. In view of what is stated hereinbefore there is no merit in the contention advanced on behalf of the petitioner that the rule making body, namely, the State Government has travelled beyond its rule making power in incorporating the proviso to Rule 10 in the Kerala Motor Vehicles Rules, 1961, founded on Sections 4, 7 and 8 of the Act already discussed. The learned counsel for the petitioner argued that I should take note of Sub-section (7) (a) of Section 7 of the Act also. The contention is that under the aforesaid clause a person who passes the test in driving a heavy goods vehicle shall be deemed also to have passed the test in driving any medium goods vehicle or light motor vehicle and that under the body of Sub-section (7), the test of competence to drive shall be carried out in a vehicle of the type to which the application refers. The premise of the argument is that one may apply to test his competence to drive any category of motor vehicle including a heavy vehicle and that it is peremptory on the part of the licensing authority to test the competence with reference to such category of vehicle. The further submission is that under Clause (a) of Sub-section (7), if one passes the test of competence to drive a heavy vehicle, he shall be deemed also to have passed the test in driving any medium goods vehicle or light motor vehicle. It is a settled rule of construction of statutes that as far as possible all the provisions in the statute and all the provisions in a section have to be

construed harmoniously avoiding contradiction between different parts of the statute and different provisions in a section. Applying that principle, so far as the construction of Section 7 is concerned, it is necessary to understand Sub-section (7) as not enabling an applicant for licence to pick and choose the particular category of vehicle for which he seeks for licence irrespective of other considerations like whether he is qualified or not with reference to the provisions of the Act and the Rules. If the argument advanced on behalf of the petitioner with reference to Sub-section (7) of Section 7 is accepted, the result would be the licensing authority would not be competent to consider whether an applicant is physically fit, whether he has paid the required fee and whether he is of the age mentioned in Section 4 of the Act. The scheme of the Act cannot be said to be such that a person who is not qualified for obtaining a driving licence to drive a particular category of motor vehicle may require that his competence to drive that category of vehicle may be tested as stated in Sub-section (7). If such person is qualified for obtaining a driving licence with reference to the qualifications prescribed in that behalf by law, be it by the provisions of the statute or by the provisions in the rules, then the question arises whether he is competent to drive and he may require that his competence in that behalf may be tested. On that applicant passing such a test, then Clause (a) of Sub-section (7) says that he shall be deemed also to have passed the test for driving medium goods vehicle or light vehicle. In this view there is no merit in the contention now advanced on behalf of the petitioner with reference to Sub-section (7) of Section 7.

12. The learned counsel for the petitioner also at this juncture referred to Section 15 of the Act. I do not find anything therein which would support the contentions advanced on behalf of the petitioner. That provision enables the licensing authority for giving show cause notice and for affording an opportunity of being heard when a particular person is disqualified for a specified period for holding or obtaining any driving licence or licences to drive a particular class or description of vehicle on the ground mentioned in that section.

13. Another argument advanced on behalf of the petitioner is that Section 21 (2) (aa) enables the State Government only to prescribe the minimum qualification of persons to whom licences to drive transport vehicles are issued and the time within which such qualifications are to be acquired by persons holding immediately before the commencement of the Motor Vehicles (Amendment) Act, 1969, licences to drive transport vehicles, and the duties, functions and conduct of such persons. The argument is that the State Government under this clause is enabled to prescribe qualifications only in respect of persons already holding licences before the commencement of the Motor Vehicles (Amendment) Act, 1969. No doubt one part of the afore-said clause is to that effect, namely the first part. Under the latter part "the minimum qualifications of persons to whom licences to drive transport vehicles are issued" can be prescribed by the State Government u/s 21 (2) (aa). Even otherwise I would think in view of the generality of power under Sub-section (1) the particular provision contained in

Sub-section (2) of Section 21 would not take away the power of the State Government to frame the rule prescribing minimum qualifications with reference to which licences are to be issued.

The result is, there is no merit in this writ petition. The same fails and is dismissed. In the circumstances of the case, there will be no order as regards costs.