

THE HIGH COURT OF DELHI AT NEW DELHI

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Judgment delivered on: 07.11.2014

+ **W.P.(C) 5963/2013 & CM NOS. 13141 & 15293/2013**

DRIVING SKILL INSTITUTE & RESEARCH (NGO) Petitioner

versus

GOVT. OF NCT OF DELHI & ANR.

..... Respondents

Advocates who appeared in this case:

For the Petitioner : Ms Anju Bhattacharya.

For the Respondents : Ms Zubeda Begum, Standing Counsel
(GNCTD) for Department of Transport,
GNCTD.

AND

+ **W.P.(C) 6913/2013 & CM No. 14967/2013**

**SIMONS MOTOR DRIVING TRAINING INSTITUTE
& RESEARCH SOCIETY**

..... Petitioner

versus

GOVT. OF NCT OF DELHI & ANR.

..... Respondents

Advocates who appeared in this case:

For the Petitioner : Mr N.S. Dalal.

For the Respondents : Ms Zubeda Begum, Standing Counsel
(GNCTD) for Department of Transport,
GNCTD.

CORAM:-

HON'BLE MR JUSTICE VIBHU BAKHRU

JUDGMENT

VIBHU BAKHRU, J (ORAL)

1. The petitioner (in W.P.(C) 5963/2013) impugns an administrative

order dated 05.09.2013 passed by Deputy Commissioner (Operations), Transport Department whereby all recognised institutes for providing qualification as recognised under Rule 11(2)(d) of the Central Motor Vehicles Rules, 1989 (hereafter the “Rules”) were directed to either shift the respective institutes at a distance of 2 kms or more from zonal offices of the transport department or suspend their operations.

2. The learned counsel for the petitioner has referred to a notification dated 30.06.2011 issued by the respondent Government under Rule 11(2)(d) of the Rules, which prescribes the criteria required to be fulfilled by an institute for being recognised for the purposes of issuing certificates as contemplated under Rule 11(2)(d) of the Rules. He submits that, in effect, the administrative order dated 05.09.2013 adds an additional condition to be fulfilled by an institute for being recognized for issuing certificates under Rule 11(2)(d) of the Rules.

3. The petitioners (in W.P.(C) 5963/2013 & W.P.(C) 6913/2013) impugn an administrative order dated 11.10.2013 whereby the Additional Commissioner (Operations) has directed 100% re-testing of all applicants, who had obtained certificates from authorized institutes under Rule 11(2)(d) of the Rules. The learned counsel for the petitioners contend that the administrative order dated 11.10.2013 has effectively negated the certificates granted earlier from authorized institutes under Rule 11(2)(d) of the Rules.

4. The administrative orders dated 05.09.2013 and 11.10.2013 are hereafter collectively referred to as ‘impugned orders’.

5. The principal controversy to be addressed is whether the statutory

guidelines could be amended or negated by way of an administrative order.

6. The provisions for issuing a Learner's Licence are contained in Rule 10, 11, 12 & 13 of the Rules. Rule 10 of the Rules contains provisions as to the application for a Learner's Licence. Rule 11 of the Rules provides for conduct of a 'preliminary test' for issuing a Learner's Licence to an applicant. In terms of Rule 11(1) of the Rules, an applicant for Learner's Licence has to present himself before a licence authority to take a test and satisfy the authority that the applicant possesses adequate knowledge and understanding of the matters specified therein. Rule 11(2) of the Rules provides for exemption/exclusion from application of Rule 11(1) of the Rules for certain class of applicants. This include applicants who have obtained certificates, to the effect that they have adequate knowledge and understanding as required under Rule 11(1) of the Rules, from a notified recognised institute. Rule 11(2)(d) of the Rules is relevant and reads as under:-

“Section 11(2)

(d) the holder of a certificate to the effect of the possession of adequate knowledge and understanding of the matters referred to in sub-rule (1), issued by any institution recognised and notified in this regard by the State Government.”

7. The Government of NCT, in exercise of powers conferred by Section 28(2)(a) and Section 2(41) of the Motor Vehicles Act, 1988 read with the Rules, issued a notification dated 30.06.2011, *inter alia*, specifying the conditions required to be fulfilled by an institute for being recognised for the purposes of Rule 11(2)(d) of the Rules. The said conditions read as under:-

- “(i) Any institution registered as Educational Society/NGO with the appropriate legal authority can apply.
- (ii) The institution should have experience of five years in running a motor driving training school.
- (iii) The institution should have experience of five year in road safety refresher training course.
- (iv) Must be a clean record holder since inception. There must not be any case of violation of provisions of Motor Vehicle Act 1988 and Rules against the institute.
- (v) Annual financial turnover of the institution should be Rs 25 lakh for last three consecutive years or 50 Lakh for the last financial year.
- (vi) The institution should have the facility to conduct skill tests with the help of computer/software system having sufficient question bank relating to syllabus of preliminary skill test approved by Transport Department. The learner's license evaluation software of the institution should be cross checked by MLO/Inspector of the Transport Department for correctness and fidelity.
- (vii) The computer system should further have security features like scan of photo, biometrics and finger print of the applicant and facility to maintain the record of each test paper along with the starting and end time of test.
- (viii) The institution should submit the details of signatory authorized by them to issue certificates as prescribed. The authorized signatory should be a person having degree in automobile/ mechanical engineering.
- (ix) The institution will be subject to inspection by

the designated Inspector of concerned Zone of the Transport Department, or any other official duly authorized by Transport Department, Government of National Capital Territory of Delhi.

- (x) The institution should have proper arrangement for CCTV Cameras installed in the test room with facility to maintain the recording for at least seven days and access provided to the Transport Department including the MLO office with static IP address through internet.
- (xi) At least 5000 certificates issued by the institution should have been evaluated and cross checked by MLO/ Inspector of the Transport Deptt.
- (xii) Application for authorization will be made in the Performa prescribed by the Transport Department, Government of National Capital Territory of Delhi.
- (xiii) The institution will submit daily online report of each Learning License test to the Transport Department, Government of National Capital Territory of Delhi. All MLOs will be provided with password to verify the Genuineness of the certificate issued by the institute.
- (xiv) Test venues will be inspected by the concerned Zonal MLO. Only one such venue will be authorized for each zone.
- (xv) Transport Department may appoint independent auditor to check the integrity of test conducted by the institution and on the basis of report if any discrepancy observed, recognition may be revoked at any time.
- (xvi) Authorization will be subject to Motor Vehicle Act and Rule framed there under and DMVR

1993 as amended time-to-time.”

8. A perusal of the aforesaid conditions indicate that the notification not only provides for the qualifying criteria but also a mechanism for inspection and maintaining the standards and integrity of test being conducted by the recognised institutes. It is relevant to note that the notification is in the nature of a delegated legislation since it is an exercise of statutory powers; thus, the same cannot be overridden or negated by any administrative order as it is well settled that the administrative orders are to be passed within the legislative framework and cannot supplant statutory provisions/guidelines.

9. Indisputably, the effect of the impugned order dated 05.09.2013 is to negate the recognition granted to the institutes, which have qualified the criteria as laid down in the notification dated 30.06.2011. The said institutes have invested substantial funds and efforts in building the necessary infrastructure for carrying out the requisite test and issuing certificates to the applicants, who clear the test. In my view, the institutes that have been recognised and notified by the Government of NCT cannot be denied the benefit of recognition, by an administrative order specifying further criteria/conditions in addition to those specified in the notification dated 30.06.2011.

10. In this view, if an additional condition is required to be introduced the same would necessarily have to be notified in accordance with law. A careful examination of the impugned order dated 05.09.2013 indicates that the Deputy Commissioner (Operations) had only directed that the institutes may be asked to shift. Thus, the impugned order dated 05.09.2013 would not be read as conclusive and it would be open for the petitioner to make a

representation to the respondents. If such representation is made, the respondent authorities shall examine the same and take an appropriate decision in accordance with law. If it is found that an additional condition with respect to a minimum distance between an institute and zonal office of the transport department is required to be introduced in public interest, the Government of NCT would issue an appropriate notification notifying the same.

11. Insofar as, the impugned order dated 11.10.2013 is concerned the said order has the effect of withdrawing the recognition granted to all institutes under Rule 11(2)(d) of the Rules and thus rendering Rule 11(2)(d) of the Rules redundant.

12. Apparently, the impugned order dated 11.10.2013 was passed as the concerned authorities found that more than 50% of the candidates who furnished certificates from various institutes, recognized under Rule 11(2)(d) of the Rules, had failed to qualify a re-test. This placed the rationale of recognising institutes to conduct tests and issue certificates, in question.

13. If it is found that the certificates have been issued by an institute without duly testing the qualifications of the candidates, the respondents would, undoubtedly, have the authority to de-recognise the institute. But, an administrative order which, in effect, repeals Rule 11(2)(d) of the Rules cannot be passed without following the due process in law.

14. In my view, the impugned order dated 11.10.2013 also suffers from an infirmity inasmuch as the concerned authority has failed to distinguish the institutes, which have diligently performed their functions in testing the knowledge of the candidates, from those institutes who have, apparently,

issued certificates without fully testing the knowledge of the candidates. This is evident from the information produced by the respondent (in W.P.(C) No.5963/2013) which indicates that 85.40% of the candidates who had received certificates from the petitioner institute had passed the re-test. Clearly, the petitioner institute could not be treated in the same manner as other institutes where the percentage of candidates who passed the re-test was significantly lower. It is well settled the treating un-equals in the same manner would also violate the mandate of Article 14 of the Constitution of India. In my view, the respondents authorities would have to examine the case of each institute separately and act within the framework of the Rules and the notification issue thereunder; a blanket administrative order negating a statutory Rule is impermissible.

15. In view of the aforesaid, the impugned order dated 11.10.2013 is set aside. I deem it appropriate that the petitioners be given an opportunity to make a representation to the respondent authorities who shall consider their case separately and take a decision as to the requirement of re-testing candidates of each institute separately. However, nothing shall prevent the transport authorities from re-testing an appropriate fraction of the number of candidates (by way of sample checking) to ensure that the requisite standards are maintained.

16. The writ petitions and all the pending applications are disposed of with the aforesaid directions.

VIBHU BAKHRU, J

NOVEMBER 07, 2014
MK/RK