

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.11117 OF 2014

Maharashtra Rajya Vajane Mape
Parvana Dharak Sanghatana .. Petitioner.
Vs.
State of Maharashtra & Anr. .. Respondents.

Mr.Mihir Desai i/b Shri Swaraj S. Jadhav or the Petitioner.
Mr.Nitin Deshpande AGP for Respondent No.1.

CORAM : A.S. OKA & A.K. MENON, JJ.

DATED : 27TH JANUARY, 2015

P.C.

1. This writ petition seeks quashing of a circular dated 13-11-2014 issued under the Legal Metrology Act, 2009 by the Legal Metrology Department of the State of Maharashtra. The challenge is two fold. Firstly to the extent it requires passing of certain ability tests prior to renewal of licenses and secondly, the prerequisite in the circular to the effect that the applicant should not have been booked/arrested for any crime is also challenged.

2. The Petitioners are a registered trade union representing license holders who are aggrieved by the impugned circular dated 13.11.2014.

3. The petition is resisted by filing affidavit in reply of one Shri Balasaheb Kisan Zaware, Incharge Deputy Controller of the

Legal Metrology, Mumbai. The Respondents have contended that by virtue of Section 57 of the Legal Metrology Act, Section 23(1) they are entitled to lay down the requirements for granting/renewing licenses for manufacture, repair or sale any weight or measures. They rely on Section 52 of the Act providing for making power of the Central Government and Section 53 dealing with the Rule making power of the State Government. It is contended that pursuant to this power, the State of Maharashtra has framed the Maharashtra Legal Metrology (Enforcement) Rules, 2011 dealing with licensing of the manufacturer, repairer and dealer of weight or measures.

4. The relevant rules are reproduced below for ready reference :

“6. Licensing of manufacturer, repairer and dealer of weight or measure -

(1) Every manufacture or repairer of , or dealer in ,weight or measure shall make an application for the issue of a licence to the controller or such other Legal Metrology Officers, as may be authorized by him in this behalf in the appropriate form set LD-1, as out in Schedule II-A:

Provided that, no licence to repair shall be required by a manufacturer to repair the weight or measure manufactured by him and used in State, however, the manufacturer has to inform in advance to the concerned Legal Metrology Officer about the repairing,

Provided also that, a person who bona fide repairs any weight or measure owned or possessed by him shall not be required to obtain a licence referred in this sub-rule;

Provided further that, no licence shall be issued unless the applicant has passes technical ability test be specified by the Controller.

(2) Every manufacturer or repairer of, or dealer in weight or measure shall make an application for the renewal of a licence at least thirty days before the expiry of validity of the licence to the Controller or such other officer, as may be authorized by him in this behalf, in the appropriate form set out in schedule II-B :

Provided that, no licence shall be renewed unless the holder of licence has done such a minimum manufacture or repairing work as may be specified by the Controller without any reasonable cause.

(3)

(4) Every licence issued to a manufacturer, repairer, or dealer shall be valid for a period of one calendar year and may be renewed further for a period not exceeding five calendar years. By the controller or such other Legal Metrology Officer, as may be authorized by him in this behalf, on payment of necessary fee as specified in the schedule IV."

5. The State has contended that under the third proviso of Rule 6(1), no license shall be issued unless the applicant has passed a technical ability test as may be specified by the Controller of the

Legal Metrology. The State seeks to justify this requirement on the basis that globalisation and advent of new technologies requires them to ensure that a license holder who repairs the weight and measures fulfils to the prescribed standards. Such periodical tests are necessary and to ensure basic standards are maintained. For this reason a technical ability test has been prescribed which an applicant must pass prior to renewal of licenses. It is also necessary that no crime is registered against the name of an applicant and he must not have been arrested for any offence.

6. The affidavit further states that in case of technical offences like traffic offences the accused would not be arrested and therefore, it would be outside the purview of this specific requirement. However in one case involving misappropriation a police complaint has been lodged against one member who was then arrested.

7. We have heard the submissions of learned counsel on behalf of the petitioner and the State. On behalf of the petitioner it is submitted that several members of the Union are already license holders and are entitled to renewal of the license. Mr.Desai referred to Rule 6 Sub-Rule (4) in support of his contention that although the license issued to manufacturer, repairer or dealer shall be valid for one calendar year, it could be renewed for further period not exceeding five calendar years on payment of specified fees. He

submitted that even after expiry of five calendar years, the license can be renewed for a period of not exceeding a further five calendar years.

8. In this manner he submitted that the license holder is entitled, as of right, to renewal of his/her license without such pre-conditions such as passing of a technical ability test, especially in view of fact that he is already holding a license and therefore qualified. He further submitted that the requirement that there should be no offence registered against of the applicant or licensee is also not justifiable. It does not specify whether the crime is a serious crime or common traffic offence.

9. Mr.Deshpande, learned AGP on behalf of the State has met these contentions by relying upon the provisions of Act. He submitted that these prerequisites were to ensure basic compliances while granting licenses which are not to be granted to the persons who are accused of committing the criminal offences or who may not meet the basic abilities. It is further submitted that with passage of time, the technical ability test is very essential in order to maintain standards. He relied upon the form of the technical ability test which has been prescribed for the purpose of Rule 6(1). It would be convenient to make reference to the specific practical test that is contemplated prior to grant of licenses. The relevant text is reproduced below :

- "1. A weight given to you, find the fault and repair it in such a manner that it confirms to the standards established by the Act and Rules, made there under.*
- 2. For Liquid capacity measures :- e.g. Repair the given capacity measure, so that it confirms the standards established by the Act and Rules made there under.*
- 3. For Beam scale :- e.g. a beam scale given to you find the fault and repair it in such a manner that it confirm standards established by the Act and Rules, made there under.*
- 4. For counter Machine :- e.g. find the fault of given counter machine & repair the machine in such a manner that it confirm standards established by the Act and Rules, made there under.*
- 5. For platform Machine ; - e.g. find the fault a Dial / Steel yard type platform weighing scale Repair the scale in such manner that it confirms standards established by the Act and Rules, made there under".*

Mr.Deshpande submitted that these tests are basic but mandatory before a license is issued or renewed.

10. Having considered the submissions of the parties we are in agreement with the submissions of Mr.Deshpande that the technical ability test is mandatory. It is a matter of policy. It appears that the State has decided to set certain standards which have to be met prior to renewal of licenses and in view of technical ability

involved, it is not possible to accept the petitioner's version that such tests are unnecessary merely because the petitioners are already license holders.

11. We have reviewed the practical tests that have been specified pursuant to the aforesaid rules and we find that they are extremely basic. If such basic tests are required to be passed for ascertaining technical ability of the repairers/license holders, the State cannot be faulted. If the license holder/Applicant does not pass such basic tests, there will arise serious doubt as to ability of the person/s concerned. The State has already clarified that technically offences such as traffic offences are not to be considered for the purpose of disqualification. In paragraph 5 of the affidavit, the State has clarified that the requirement that the Applicant must not have a criminal record is mandatory.

12. In the facts of the case we believe the authorities are required to be vigilant while granting/renewing licenses under the Act. Accordingly, we find no reason that it would justify interference with the requirements for issue of fresh licenses or renewal of existing licenses. The petition is therefore dismissed with no order as to costs.

(A.K. MENON, J.)

(A.S. OKA, J.)