

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

THURSDAY, THE 5TH DAY OF FEBRUARY 2015/16TH MAGHA, 1936

WP(C).No. 27379 of 2013 (V)

PETITIONER(S):

**M.K ARAVINDAKSHAN
S/O.M.S.KRISHNAN, PROPRIETOR
ARAVIND MOTOR DRIVING SCHOOL,
ALATHARA, PUNNAYOORKULAM
THRISSUR RESIDING AT MULAKKAL HOUSE, CHITTANJUR P.O.
KUNNAMKULAM, THRISSUR DISTRICT.**

BY ADV. SRI.C.B.SREEKUMAR

RESPONDENTS:

- 1. REGIONAL TRANSPORT OFFICER
REGIONAL TRANSPORT OFFICE, THRISSUR, PIN-600 003.**
- 2. JOINT REGIONAL TRANSPORT OFFICER
JOINT REGIONAL TRANSPORT OFFICE, GURUVAYUR
PIN-680101.**
- 3. JOINT REGIONAL TRANSPORT OFFICER
KODUNGALLUR, PIN-680664.**

BY GOVERNMENT PLEADER SRI.V.K.RAFEEQ

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 05-02-2015,
ALONG WITH WPC. 66/2014 AND CONNECTED CASES, THE COURT ON THE
SAME DAY DELIVERED THE FOLLOWING:**

PJ

APPENDIX

PETITIONER(S)' EXHIBITS

- EXHIBIT P1 :** TRUE COPY OF THE LICENSE NO.L1/05/1996/R DT.9-11-2012.
- EXHIBIT P2 :** TRUE COPY OF THE REPLY SUBMITTED BY THE PETITIONER BEFORE R1 DT.20-7-2013.
- EXHIBIT P3 :** TRUE COPY OF THE SHOW CAUSE NOTICE NO.L1-3566/13/R DT.12-6-2013 ISSUED BY R1.
- EXHIBIT P4 :** TRUE COPY OF THE LETTER OF CONSENT ISSUED BY JOSEPH C.A.IN FAVOUR OF PETITIONER.
- EXHIBIT P5 :** TRUE COPY OF THE AFFIDAVIT SWORN BY THE INSTRUCTOR.
- EXHIBIT P6 :** TRUE COPY OF THE LICENSE OF THE NON TRANSPORT VEHICLE.
- EXHIBIT P7 :** TRUE COPY OF THE CERTIFICATE OF REGISTRATION OF THE VEHICLE NO.KL.08 S01954
- EXHIBIT P7A :** TRUE COPY OF THE CERTIFICATE OF REGISTRATION OF THE VEHICLE NI.KL.10A 3820.
- EXHIBIT P8 :** TRUE COPY OF THE JUDGMENT IN WPC 20554 OF 2013 (T) DT.19-8-2013 OF THIS HON'BLE COURT.
- EXHIBIT P9:** TRUE PHOTOCOPY OF THE NEWS ITEM APPEARED IN MATHRUBHUMI DAILY DATED 4/12/13
- EXHIBIT P10:** TRUE PHOTOCOPY OF THE ORDER NO.1/3566/10 TYR DATED 17/10/13 OF THE LICENSING AUTHORITY, THRISSUR.

RESPONDENT(S)' EXHIBITS

NIL.

/ TRUE COPY /

P.S. TO JUDGE

“C.R.”

K. Vinod Chandran, J

W.P(C) Nos.27379 of 2013,
66 of 2014, 1099 of 2014, 6037 of 2014,
8518 of 2014, 11203 of 2014,
11209 of 2014, 23004 of 2014 &
1384 of 2015

Dated this the 05th day of February, 2015

J U D G M E N T

The petitioners in the above writ petitions are aggrieved with the circulars issued by the Transport Commissioner dated 15.11.2013 and 13.08.2014 numbered as Circular Nos.27/13 and 10/13. The petitioners essentially challenge the said circulars as one issued without authority, since the framing of regulations for driving schools fall within the exclusive premise of the Central Government.

2. An identical issue with respect to a circular issued by the Transport Commissioner in the State of Tamil Nadu, came up for consideration before the High Court of Judicature at Madras and a Division Bench upheld the same, in the decision reported as **2010 (6) MLJ 449 [South India Driving School Owners Federation and Others v. State of Tamil Nadu]**. A reading of the terms of the circular, as is discernible from the judgment would indicate that the

circular issued in the State of Tamil Nadu was more stringent than that, which is impugned herein, but is identical insofar as the issuance made by the Transport Commissioner and the subject being regulation of driving schools.

3. The Division Bench considered the impact of Sections 12, 27 and 28 of Chapter II of the Motor Vehicles Act, 1988 [for brevity "MV Act"]. Section 27 is the power conferred on the Central Government and Section 28 speaks of power conferred on State Governments to make rules to implement the provisions of the said chapter; which power of the State Government is specifically excluded only, insofar, as the matters specified in Section 27. The Division Bench of the Madras High Court noticed the exclusion in Section 28 to those matters specified in Section 27. Section 12, is the only provision in the MV Act, dealing with the licensing and regulation of schools or establishments, for imparting instruction for driving of motor vehicles. Section 12 was found to be not specifically included in Section 27. The power of the State Government to make rules with respect to Section 12 was hence found to be on the State Government under Section 27.

4. The power of the Transport Commissioner was traced to Rule 426 of the Tamil Nadu Motor Vehicles Rules, wherein the Transport Commissioner was spoken of as the Head of the Transport Department and the subordinate officers were found to be obliged to carry out the instructions and orders issued by the Transport Commissioner from time to time. The Circular, brought in, to provide for uniformity in procedure and standard of licensing and regulation of driving schools, all over the State, was held to be perfectly competent. Having gone through the said judgment, this Court is in respectful agreement with the proposition laid down therein. Rule 405 of the Kerala Motor Vehicles Rules, 1989 [for brevity “KMV Rules”] is *in pari materia* with the aforementioned Rule 426.

5. The learned counsel appearing for various petitioners in the present cases, however, contend that Clause (m) of Section 27, wherein regulation of schools or establishments for imparting instructions in driving motor vehicles, was not noticed by the Division Bench of the Madras High Court. Section 12 itself confers power on the Central Government to make rules and the Central Motor

Vehicles Rules, 1989 [for brevity “CMV Rules”] having provided for the same; the State Government or the Transport Commissioner cannot frame different standards for regulation of driving schools, is the argument.

6. Clause (m) of Section 27, is with respect to specifying the fees payable under sub-section (2) of Section 8, sub section (2) of Section 9 and sub-sections (3) and (4) of Section 15 and for the grant of learners license and grant of renewal of driving licenses and licenses for the purpose of regulating driving schools and establishments. Hence, it cannot be said that the power for regulation of driving licenses have been conferred under Section 27.

7. However, Section 12 (1) reads as under:-

(1) The Central Government may make rules for the purpose of licensing and regulating, by the State Governments, school of establishments (by whatever name called) for imparting instruction in driving of motor vehicles and matters connected therewith”.

8. The specific words employed in Section 12 would show that the Central Government could make rules for the purpose of licensing and regulating, by State Government, schools or

establishments for imparting instructions in driving. Hence, even the said provision recognised the power, of licensing and regulating of driving schools, to be on the State Government. The Central Government has been given the power to make rules to provide for such licensing and regulation; by the State Government. The rules so framed by the Central Government are under the CMV Rules; specifically from Rule 24 to Rule 32.

9. The present circular issued by the Transport Commissioner is also to bring uniformity in procedure and standard, throughout the State, insofar as the issuance of licenses for driving schools are concerned and to regulate their operations. If such prescription does not run counter to the CMV Rules, then, there could be no allegation of lack of power, raised against the Transport Commissioner who acts as Head of the Transport Department, as specified in Rule 405 of the KMV Rules, framed under Section 213 of the M V Act.

10. The objections raised as against the circulars impugned in the aforesaid cases, are with respect to the specific area for a lecture hall, a separate space mandated for demonstration

hall and the additional provision for parking space. The petitioners also object to the working hours prescribed by Circular No.10/14 which restricted the working between 10.00 a.m to 5.00 p.m. The restriction for admission of a batch of 16 students, as against one single vehicle, owned by the driving school owner, is also assailed.

11. The prescription of working hours is mitigated; since the Transport Commissioner, has brought out a subsequent circular, indicating that the working hours prescribed, is only the working hours of the office of the driving school; during which period, the proprietor or the person authorised by the proprietor, was to be present mandatorily in the office premises; to facilitate inspection by the Department authorities. Hence imparting of training could be done even beyond the working hours stipulated in the circular. No objection subsists as of now, as against the working hours, specified; on clarification being issued by the Transport Commissioner.

12. The provision for a specific area is objected to, on the ground that there is absolutely no logic behind such prescription since a driving school having two candidates and that having 40

candidates would have to provide the space as required in the circular. The mandate for the parking space is objected to, only to the extent, of the same being directed to be adjacent to the building, in which the driving school is carried on. The restriction of 16 candidates for a batch in a school with one vehicle, is said to be against the provisions of the CMV Rules, which requires only a minimum of one vehicle for carrying on a driving school. The driving schools could admit as many students, at their volition, even if they have only one vehicle, is the contention.

13. The provision for a minimum space for the lecture hall and demonstration hall cannot be objected to, on the ground that it is opposed to logic. Situations may arise when a particular driving school has only one student. However, so long as the driving school has one vehicle, even as per the circular, the driving school can, at a time impart training to 16 students. Hence the mere fact that in a particular batch, a driving school has only one student, would not stand against a minimum floor area, for the lecture and demonstration hall. CMV Rules also, by Rule 24(3)(ii) speaks of adequate provision for conducting lectures and demonstration of

models. The demonstration hall has to contain the models and has also to accommodate the students, who are to be given such demonstration. The space requirement for demonstration halls and lecture halls, as per the circular is only of 150 sq.ft., and that cannot at all be said to be an arbitrary prescription. The said specification is harmonious with the provisions of the CMV Rules and is only an adequate area specification.

14. The restriction of 16 students cannot at all be said to be against the provisions of the CMV Rules. The CMV Rules prescribe ownership and maintenance, only of a minimum of one motor vehicle, each of the type in which instruction is intended to be imparted in the driving school. If the Transport Commissioner provided for a different minimum, than that provided in the CMV Rules, then, probably, the same would be in violation of the Rules. However, here, the restriction is only to a batch of students being confined to 16 students as against one vehicle owned by a driving school.

15. The minimum training period for each category of vehicles, as provided under sub section (2) and (3) of the CMV

rules are respectively, 21 to 30 days. The trainees are also to be trained with actual driving of 10 hours; for non-transport vehicles, and 15 hours for transport vehicles as provided under sub-rule (4) of Rule 31. Hence, taking the first, which is one of the prescriptions, into account, if a student is to be imparted training for 21 days; and with 10 hours of actual driving; then, he would have to be given training for a minimum of half hour in a day. Even if , the entire working hours are taken into account, from 8.00 a.m to 6.00 p.m; a school with one vehicle could impart training, for only 20 students on a particular day. The entire period between 8.00 a.m. to 6.00 p.m., definitely cannot be utilised for actual driving and necessarily lectures and demonstration are required. The restriction of a batch of 16 would hence, definitely be a reasonable prescription.

16. None of the conditions in the Circular are in violation of the CMV Rules. Only if any of the conditions run counter to the prescription in the CMV Rules would there be a question of repugnancy. The prescription made for a uniform procedure and standard, in the matter of licensing of driving schools, is perfectly in order and falling within the powers of the Transport Commissioner

under Rule 405 of the KMV Rules. Writ petitions would hence stand dismissed.

17. With respect to two writ petitions, the learned counsel would submit that the space available is almost 150 sq.ft. and for slight difference, their applications have been rejected. In W.P(C) No.11209/2014 the space available is 149.5sq.ft. as against the requirement of 150 sq.ft. and in the case of W.P(C) No. 23004/14, the space available is less by 57 cms. The petitioners therein would rely on Ext.P4 produced in W.P(C) No.23004/2014 to seek consideration of their renewal, despite the minimum requirement of 150 sq.ft., as per the circular.

18. Ext.P4 is a communication issued by the Transport Commissioner to the President of the Association wherein it has been stated that instructions have been issued to the licensing authorities to give slight concession in the minimum required space for existing driving schools. This Court cannot place any reliance on Ext.P4 since, the Transport Commissioner has not specified the exact relaxation which has to be granted to the existing driving schools. The statement that the licensing authorities have been

instructed to grant “slight relaxation”, would only result in arbitrary exercise of such power and would militate against the uniformity sought to be achieved by the Circulars. The Transport Commissioner would have to be specific and would have to lay down the relaxation, if the Commissioner is of the opinion that such relaxation could be given. This Court would not say anything further on that aspect since the same is within the exclusive discretion of the Transport Commissioner.

19. In W.P(C)11209/2014, there is an additional objection, with respect to title of the building, in which the driving school is conducted. The additional 4th respondent is said to have filed a civil suit in which the title of the land and building is said to be in dispute. In any event, considering the fact that the petitioner therein had been continuing from the year 2004, the mere filing of a suit or the pendency of a dispute cannot lead to a rejection of renewal, on that respect alone; unless there is a final order or an interim order by a competent civil court, restricting the continuance of the petitioner in the building. The rejection; by Exhibit P2 in that writ petition is set aside and there shall be a direction for fresh

consideration. Definitely any renewal granted would be subject to the decision of the Civil Court, where the dispute is pending adjudication.

20. The petitioner in W.P(C)1384/2015 has a specific contention that, his application being prior to the circular, has to be considered, *de hors* the circular. The petitioner contends that the application was not considered, only by reason of the files being misplaced in the office of the Department. If it had been considered, within the stipulated time, then, definitely, the same would have been renewed, *de hors* the circular, is the plea. The petitioner relies on Exts.P3 and P4 to substantiate the contention of an application having been filed prior to the circular and the reason for non consideration.

21. Ext.P3, definitely, indicates that the application was filed on 30.08.2013, prior to the circular. However, no reliance can be placed on Ext.P4 since it is a communication addressed to the Department, in which the petitioner himself states that the application was not considered, since the files are misplaced. The rejection of application by Ext.P5 would indicate otherwise, since

the application is specifically referred to in the said memo. As to the delay in consideration; the application was filed 30.08.2013 and the Circular was introduced on 15.11.2013. The rejection of the application was made on 05.02.2014, As long as there is no specific time prescribed under the Rules, for a renewal, the petitioner cannot bank on any delay caused to contend that the circular would not be applicable to him. It is also trite that merely because, an application was filed, there is no right accrued on such person, for consideration in terms of law, as it existed at the time of filing, since any subsequent rule or regulation, which comes into force before consideration is made, would have to be taken into account.

22. There is also a contention raised, with respect to the circular; prescribing the parking to be specifically adjacent to the building of the driving school. The petitioners expressed their inability to provide such a space especially within the towns and cities where there are space constraints. The Transport Commissioner has to look into whether the provision of parking space could be made proximate to the driving schools, and not adjacent to it; which the Transport Commissioner would consider

WPC.Nos.27379/2013 & : 14 :
connected cases

after hearing the stake holders.

The writ petitions insofar as the challenge against the circular fails and the same are dismissed. Parties to suffer their respective costs.

Sd/-
K. Vinod Chandran,
Judge.

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PA to Judge