

**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT**

DATED : 01.08.2018

CORAM:

THE HONOURABLE MR.JUSTICE M.GOVINDARAJ

W.P (MD) No.22943 of 2017 and W.M.P (MD) Nos.19269 & 19270 of 2017
W.P (MD) No.3634 of 2013 and M.P (MD) No.2 of 2013
W.P (MD) No.3635 of 2013 and M.P (MD) No.2 of 2013
AND
W.P (MD) No.18852 of 2013 and M.P (MD) No.2 of 2013

W.P (MD) No.22943 of 2017:

Tamilnadu Illakuraka and Kanaraga Vakana
Payirchi Palli Urimaiyalarkal Nala Sangam,
represented through its
Secretary,
A.John Martin

... Petitioner

Vs.

1.The State of Tamil Nadu,
represented by its
Secretary to Government,
Transport Department,
Fort St. George,
Chennai - 600 009.

2.The Special Commissioner
and Transport Commissioner,
Transport Department,
Chepauk,
Chennai - 5.

... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, praying for issuance of a writ of Certiorari to call for the records of the Circular passed by the second respondent in Circular No.62 of 2011 vide its proceedings in Letter R.No.51018/H1/07, dated 11.11.2011, in respect of clauses 3.1.24.2 and 3.1.24.3 and quash the same.

For Petitioner

: Mr.C.Vakeeswaran

For Respondents

: Mr.S.Dhayalan
Government Advocate**W.P (MD) No.3634 of 2013:**

<https://hcservices.ecourts.gov.in/hcservices/>
K.Abdul Rahim

... Petitioner



Vs.

1.The State of Tamil Nadu,
represented by its
Secretary to Government,
Transport Department,
Fort St. George,
Chennai - 9.

2.The Special Commissioner and
Transport Commissioner,
Transport Department,
Chepauk,
Chennai - 600 005.

3.The Regional Transport Officer,
Manaparai Road,
Prattiyur,
Trichy - 17.

... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, praying for issuance of a writ of Certiorari to call for the records of the second respondent in Circular No.62 issued by the second respondent vide its proceedings in Letter R.No.51018/H1/07, dated 11.11.2011 and quash the impugned clause No.3.1.45 of Circular No.43/2007 amended in Circular No.62/11 and clause Nos.3.1.24.2, 3.1.7 of the Circular No.62 dated 11.11.2011.

For Petitioner
For Respondents

: No appearance
: Mr.S.Dhayalan
Government Advocate

W.P(MD)No.3635 of 2013:

S.Natarajan

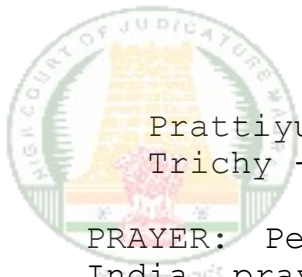
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For Petitioner : No appearance

For Respondents : Mr.S.Dhayalan
Government Advocate

W.P(MD)No.18852 of 2013:

K.Abdul Rafeek

... Petitioner

Vs.

1.The State of Tamil Nadu,
represented by its
Secretary to Government,
Transport Department,
Fort St. George,
Chennai - 9.

2.The Special Commissioner and
Transport Commissioner,
Transport Department,
Chepauk,
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3.The Regional Transport Officer,
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PRAYER: Petition filed under Article 226 of the Constitution of India, praying for issuance of a writ of Certiorari to call for the records of the second respondent in Circular No.62 issued by the second respondent vide its proceedings in Letter R.No.51018/H1/07, dated 11.11.2011 and quash the impugned clause No.3.1.45 of Circular No.43/2007 amended in Circular No.62/11 and clause Nos.3.1.24.2, 3.1.7 of the Circular No.62 dated 11.11.2011.

For Petitioner : No appearance

For Respondents

: Mr.S.Dhayalan
Government Advocate

**COMMON ORDER**

W.P(MD)No.22943 of 2017 has been filed seeking a writ of Certiorari to call for the records of the Circular passed by the second respondent in Circular No.62 of 2011 vide its proceedings in Letter R.No.51018/H1/07, dated 11.11.2011, in respect of clauses 3.1.24.2 and 3.1.24.3 and quash the same.

2. W.P(MD)No.3634 of 2013 has been filed seeking a writ of Certiorari to call for the records of the second respondent in Circular No.62 issued by the second respondent vide its proceedings in Letter R.No.51018/H1/07, dated 11.11.2011 and quash the impugned clause No.3.1.45 of Circular No.43/2007 amended in Circular No.62/11 and clause Nos.3.1.24.2, 3.1.7 of the Circular No.62 dated 11.11.2011.

3. W.P(MD)No.3635 of 2013 has been filed seeking a writ of Certiorari to call for the records of the second respondent in Circular No.62 issued by the second respondent vide its proceedings in Letter R.No.51018/H1/07, dated 11.11.2011 and quash the impugned clause No.3.1.45 of Circular No.43/2007 amended in Circular No.62/11 and clause Nos.3.1.24.2, 3.1.7 of the Circular No.62 dated 11.11.2011.

4. W.P(MD)No.18852 of 2013 has been filed seeking a writ of Certiorari to call for the records of the second respondent in Circular No.62 issued by the second respondent vide its proceedings in Letter R.No.51018/H1/07, dated 11.11.2011 and quash the impugned clause No.3.1.45 of Circular No.43/2007 amended in Circular No.62/11 and clause Nos.3.1.24.2, 3.1.7 of the Circular No.62 dated 11.11.2011.

W.P(MD)No.22943 of 2017:

5. The petitioner is an association of driving schools, namely, Tamilnadu Ilakuraka and Kanaraga Vakana Payirchi Palli Urimaiyalarkal Nala Sangam. The said association of the petitioner is duly registered under the Tamil Nadu Societies Registration Act, 1975. The members of the association driving schools are trained instructors.

6. As per Section 12 of the Motor Vehicles Act, 1988, the Central Government may make rules for the purpose of licensing and regulation of schools or establishments for imparting instruction in driving of motor vehicles, as specified hereunder:

"12.Licensing and regulation of schools or establishments for imparting instruction in driving of motor vehicles.- (1) The Central Government may make rules for the purpose of licensing and regulating, by the State Governments, schools or establishments (by whatever name called) for imparting instruction in driving of motor vehicles and matters connected therewith.



(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:-

(a) licensing of such schools or establishments including grant, renewal and revocation of such licences;

(b) supervision of such schools or establishments;

(c) the form of application and the form of licence and the particulars to be contained therein;

(d) fee to be paid with the application for such licences;

(e) conditions subject to which such licences may be granted;

(f) appeals against the orders of refusal to grant or renew such licences and appeals against the orders revoking such licences;

(g) conditions subject to which a person may establish and maintain any such school or establishment for imparting instruction in driving of motor vehicles;

(h) nature, syllabus and duration of course or courses for efficient instruction in driving any motor vehicle;

(i) apparatus and equipments (including motor vehicles fitted with dual control) required for the purpose of imparting such instructions;

(j) suitability of the premises at which such schools or establishments may be established or maintained and facilities to be provided therein;

(k) qualifications, both educational and professional (including experience), which a person imparting instruction in driving a motor vehicle shall possess;

(l) inspection of such schools and establishments (including the services rendered by them and the apparatus, equipments and motor vehicles maintained by them for imparting such instruction);

(m) maintenance of records by such schools or establishments;

(n) financial stability of such schools or establishments;

(o) the driving certificates, if any, to be issued by such schools or establishments and the form in which such certificates shall be issued and the requirements to be complied with for the purposes of issuing such certificates;

(p) such other matters as may be necessary to carry out the purposes of this section.

(3) Where the Central Government is satisfied that it is necessary or expedient so to do, it may, by rules made this behalf, exempt generally, either absolutely or subject to such conditions as may be specified in the rules, any class of schools or establishments imparting instruction in driving of motor vehicles or matters connected therewith from the provisions of this section.



(4) A school or establishment imparting instruction in driving of motor vehicles or matters connected therewith immediately before the commencement of this Act whether under a licence or not, may continue to impart such instruction without a licence issued under this Act for a period of one month from such commencement, and if it has made an application for such licence under this Act within the said period of one month and such application is in the prescribed form, contains the prescribed particulars and is accompanied by the prescribed fee, till the disposal of such application by the licensing authority."

7. Rule 24 of the Central Motor Vehicles Rules, 1989, speaks about the driving schools and establishments. As per clause (viii) to sub-rule (3) of Rule 24, the qualification prescribed reads as under:

"24. Driving schools and establishments.-

(3) The licensing authority shall, when considering an application for the grant or renewal of a licence under this rule, have regard to the following matters, namely:-

(viii) The applicant or any member of the member of the staff employed by him for imparting instructions possesses the following qualifications, namely:-

(a) a minimum educational qualification of a pass in the 10th standard;

(b) a minimum driving experience of five years in addition to a certificate in a course in motor mechanics or any other higher qualification in mechanical engineering from an institution established by the Central or a State Government or from an institution recognised by the Board of Technical Education of a State Government;

(c) thorough knowledge of traffic signs specified in the Schedule to the Act and the regulations made under Section 118;

(d) ability to demonstrate and to explain the functions of different components, parts of the vehicles;

(3) adequate knowledge of English or the regional language of the region in which the school or establishment is situated:

Provided that any person who has served as an Instructor for a period of not less than 5 years immediately before the commencement of these rules, is exempted from the requirements of this sub-



clause."

8. Based on these Rules, the Transport Department of the Government of Tamil Nadu issued a Circular No.43/2007, regulating the licensing conditions of the driving schools in Letter No.51018/H1/07, dated 31.10.2007, imposing certain conditions. The conditions were challenged in a batch of writ petitions in W.P.No.35479 of 2007, etc., batch. This Court, by common order dated 28.10.2009, in W.P.No.35479 of 2007, etc., batch of cases, has confined the area of challenge on the basis of the statements made by the learned Advocate General on behalf of the Government. The relevant portion of the order is extracted as under:

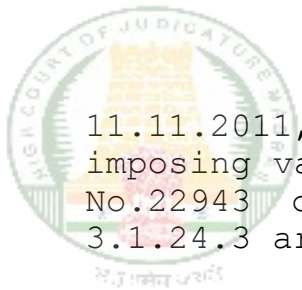
"5. At the outset, Mr.P.S.Raman, learned Advocate General, straightaway conceded that paragraphs 3.1.10 and 3.1.48 would not be enforced. Paragraph 3.1.10 imposes an obligation upon the driving schools to obtain solvency certificates for an amount of not less than Rs.3 lakhs. The learned Advocate General submitted that in respect of existing driving schools, such solvency certificates would not be insisted upon. Similarly, paragraph 3.1.48 prohibits the use of public roads for imparting training and the learned Advocate General fairly conceded that it would go against the very object of the circular to produce skillful drivers. Training in driving may not be complete unless the skill is tested on a public road. Moreover, this cannot be a condition precedent for the grant of a license. It is a condition, even if found necessary, cannot be enforced before the issue of a license for establishing a driving school. It may be open to the respondents to stipulate that the initial stages of training should be imparted only in an open area/ground. But the final stage of training or at least the testing of the driving skills of a person, may have to be on a public road. Therefore the learned Advocate General submitted that these paragraphs of the impugned circular would be suitably modified.

6. Therefore the area of dispute has now narrowed down to (i) the prescription regarding buildings, infrastructure and amenities and (ii) the age and maintenance of the vehicles used by these driving schools."

9. The said order was challenged before the Division Bench of this Court in W.A.Nos.613, 633, 634, 635, 817 and 889 of 2010 and also before the Honourable Supreme Court in S.L.P(Civil)No.30899 of 2010 and the common order dated 28.10.2009, passed in W.P.No.35479 of 2007, etc., batch of cases, was confirmed.

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10. Thereafter, vide Letter No.51018/H1/07, dated



11.11.2011, the respondents issued another Circular No.62/2011, imposing various conditions. Insofar as the writ petition in W.P(MD) No.22943 of 2017 is concerned, the condition Nos.3.1.24.2 and 3.1.24.3 are under challenge, which read as under:

"3.1.24.2. The instructor shall undergo virtual training for one month either at the Institute of Road Transport, Gummidipoondi - Tharamani or in the training school of Ashok Leyland, Namakkal, GDN Advanced Driving School, Coimbatore as per the syllabus prescribed in the enclosed Annexure-D. After every two years period, the instructors shall have to undergo refresher training courses and pass the same.

3.1.24.3. Refresher course for a period of two days every year, shall have to be undergone as per the syllabus prescribed in the enclosed Annexure-E."

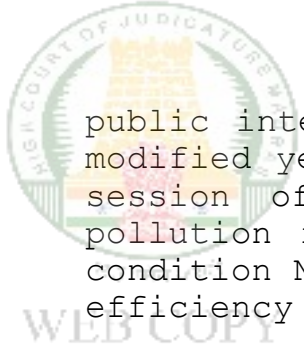
11. As per these conditions, the instructors shall undergo virtual training for one month and two days refresher course every year as per the syllabus prescribed therein.

12. The grievance of the petitioner is that they are all well trained instructors and they are training the people for several decades. The regulation imposed for licensing the driving schools, is highly arbitrary and it is contravening the statute. By way of an administrative instruction, the respondents cannot prevail over the statute and therefore, the circular imposing conditions in excess of statutory provisions is illegal.

13. The respondents 1 and 2 filed a counter affidavit and contended that the syllabus prescribed by them are not in violation of Section 12(1) of the Motor Vehicles Act, 1988 and Rule 24 of the Central Motor Vehicle Rules, 1989. However, it is the contention of the respondents that the Regional Transport Officers are administering the affairs of the Transport Department.

14. As per Section 213 of the Motor Vehicles Act, 1988, the State Government, for the purpose of carrying into effect the provisions of this Act, established a Motor Vehicles Department and appointed officers.

15. As per Rule 426 of the Tamil Nadu Motor Vehicle Rules, 1989, the Transport Department Officers are appointed who shall exercise the powers and perform the duties assigned to them from time to time. Therefore, pursuant to the Circular issued by the Commissioner, Transport Department, by virtue of powers conferred on them by the statutory provisions the officers are discharging their duties and therefore, the Circular issued by the Commissioner of Transport Department is not illegal or perverse. It was issued with an object to improve the efficiency of the instructors for training the learners in a better manner so as to train up the drivers in



public interest and safety of road users. Further, the Circular is modified year to year and new features like, fire-fighting methods, session of public road safety, stress management, video show, pollution norms and training on quality trainers, are included in condition No.3.1.24.2. Therefore, the object to improve the efficiency of the trainers cannot be found fault with.

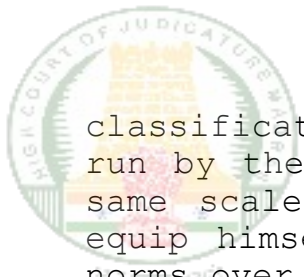
16. As per Rule 24(1) of the Central Motor Vehicle Rules, 1989, the Regional Transport Officers are empowered to grant or renew a licence for running a driving school and the claim of the petitioner that it ultra vires their powers, is not sustainable and the writ petition shall be dismissed.

17. From a reading of Section 12 of the Motor Vehicles Act, 1988, it is clear that the Central Government may make rules for the purpose of licensing and regulating, by the State Governments, schools or establishments for imparting instruction in driving of motor vehicles and matters connected therewith.

18. Insofar as the qualifications for the instructors are concerned, it is prescribed under Rule 24 of the Central Motor Vehicle Rules, 1989. A reading of the clause (viii) to sub-rule (3) of Rule 24 of the Central Motor Vehicle Rules, 1989, which is extracted supra, would show that the minimum educational qualification is a pass in 10th Standard; a minimum driving experience of five years in addition to a certificate in a course in motor mechanics or any other higher qualification in mechanical engineering from an institution established by the Central or a State Government or from an institution recognised by the Board of Technical Education of a State Government and adequate knowledge of English or the regional language of the region in which the school or establishment is situated. An instructor who served for more than 5 years is exempted from the requirements of clause (viii) to sub-rule (3) of Rule 24 of the Central Motor Vehicle Rules, 1989.

19. If this requirement under Rule 24(3) of the Rules is fulfilled, the licensing authority shall grant or renew the licence within a period of 90 days from the date of receipt of such application. So, it is very clear that the Central Government has specifically issued qualification for being an instructor. But, in the impugned circular, under clause 3.1.24.2, the State Government imposed a condition that an instructor shall undergo virtual training for one month at three institutes prescribed by them. There is no reason as to why those three institutes alone were chosen. Further, for every two years period, the instructors were directed to undergo the refresher training course and pass the same.

20. Apart from this, refresher course for two days every year, shall have to be undergone as per the syllabus prescribed in the annexure enclosed. In fact, all the training schools form one single class. There cannot be any discrimination or



classification of a class within the same. Whether the institute is run by the Government or a private, they should be weighed by the same scale. If a person is not qualified, he can be directed to equip himself as per the Rules. If he satisfies the qualification norms over and above what is prescribed under the Act and the Rules, the conditions cannot be imposed by way of administrative instructions. It is not in dispute that all the petitioners possess the necessary qualifications and are licenced to run their respective schools. They cannot be forced to undergo training from another driving school similarly placed in contravention of the statute.

21. Insofar as the Clause Nos.3.1.24.2 and 3.1.24.3 in Circular No.62 of 2011 vide proceedings in Letter R.No.51018/H1/07, dated 11.11.2011, imposing a regulation does not reveal any reasonable reasons to the object sought to be achieved and in excess of the Act and Rules, shall be construed as ultra vires. Such regulation is not sustainable in the eye of law and accordingly, they are struck off.

22. In the result, W.P(MD)No.22943 of 2017 is allowed. No costs. Consequently, the connected writ miscellaneous petitions are closed.

W.P(MD)Nos.3634, 3635 and 18852 of 2013:

23. Though there is no representation on behalf of the petitioners in W.P(MD)Nos.3634, 3635 and 18852 of 2013, the issue that revolves around in these writ petitions, is similar to that of the writ petition in W.P(MD)No.22943 of 2017.

24. Therefore, in the light of the order passed by this Court in W.P(MD)No.22943 of 2017, the other writ petitions in W.P(MD)Nos.3634, 3635 and 18852 of 2013 are also allowed on similar lines. No costs. Consequently, the connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (P AND A)

// True Copy //

Sub Assistant Registrar(CS)

To

1.The Secretary to Government,
State of Tamil Nadu,
Transport Department,

<https://hcservices.ecourts.gov.in/hcservices/>

Fort St. George, Chennai - 600 009.



2.The Special Commissioner
and Transport Commissioner,
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Chepauk, Chennai - 5.

3.The Regional Transport Officer,
Manaparai Road,
Prattiyur, Trichy - 17.

+1cc to Mr.C.VAKEESWARAN, Advocate, SR.No. 76529

+1cc to M/s.Special Government Pleader,SR.No. 76582

W.P(MD)No.22943 of 2017
and W.M.P(MD)Nos.19269 & 19270 of 2017

W.P(MD)No.3634 of 2013
and M.P(MD)No.2 of 2013

W.P(MD)No.3635 of 2013
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AND
W.P(MD)No.18852 of 2013
and M.P(MD)No.2 of 2013

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