H. Ganesh Kamath and Others Vs The State of Karnataka and Others

Court: Karnataka High Court

Date of Decision: Feb. 25, 1977

Acts Referred: Constitution of India, 1950 â€" Article 131A, 228A
Karnataka Motor Vehicles Rules, 1963 â€" Rule 5 (2), 5 (3)
Motor Vehicles Act, 1939 â€" Section 7 (4), 7 (6), 7 (7), 7 (8)

Citation: AIR 1977 Kar 165 : (1977) 1 KarLJ 277

Hon'ble Judges: M.K. Srinivasa Iyengar, J; C. Honniah, J

Bench: Division Bench

Advocate: K.J. Shetty, for the Appellant; K.S. Puttaswamy, A.G.A., for the Respondent

Judgement

Srinivasa Iyengar, J.
In these four petitions, amendment to the Karnataka Motor Vehicles Rules, 1963, by Notification No. HD 16 TMR

73 dated 7th July 1976, introducing sub-r. (2) to R. 5 is challenged. Rule 5 (2) is as follows:

(2) No authorisation to drive a heavy motor vehicle shall be granted unless the applicant satisfies the licensing authority concerned that he has had

at least two years) experience in driving any medium Motor Vehicle.

It is contended that the said sub-rule is repugnant to the provisions in the Motor Vehicles Act (Central Act IV of 1939) (hereinafter called the

''Act''), and accordingly ultra vires.

2. The petitioner in the first writ petition had obtained a learner''s licence to learn driving heavy motor vehicles under the Karnataka Motor Vehicles

Rules, 1963 (hereinafter called the ''Rules'') and obtained training in Crown Motor Driving School, Mangalore, which was an institution recognised

by the Government of Karnataka under R. 30 of the Rules and held licence to Impart training In driving heavy motor Vehicles. After completion of

the training, he obtained a certificate from the School and, applied through the said school, for licence to drive heavy motor Vehicles, on 22nd July

1976. But the Licensing Authority rejected his application referring to the notification under which R. 5 (2) was introduced and holding that the

petitioner had not complied with the requirements of R. 5 (2) and his application to offer test of competence for issue of licence for driving heavy

motor vehicles was to be rejected.

3. The petitioner in the second writ petition applied for learner''s licence to drive heavy motor vehicles on 20th July 1976. That application was

also rejected referring to the notification dated 7th July 1976.

4. The petitioners in the other two writ Petitions are persons who have been running schools for imparting training in driving heavy motor vehicles.

Their grievance is that they held license to impart training in driving heavy motor vehicles and trained several persons and even after successful

completion of the training the applications of those persons were rejected on the basis of R. 5 (2) on the ground that the applicants must have had

two years'' experience in driving medium motor vehicles and this is opposed to the Provisions of the Motor Vehicles Act and R. 5 (2) is therefore

ultra vires.

5. A common question is involved in these petitions and accordingly they are disposed of by this order.

6. On behalf of the State (respondent No. 1) a Preliminary objection has been raised. It is contended that in view of Art. 228-A(3) of the

Constitution of India, a Bench consisting of a minimum number of 5 Judges has to hear the matter.

7. Article 228-A (so far as is relevant for our purpose) is as follows

(1) No High Court shall have jurisdiction to declare any Central Law to be Constitutionally invalid.

(2) Subject to the provisions of Article 131-A, the High Court may determine all questions relating to the constitutional validity of any State law.

(3) The minimum number of Judges who shall sit for the purpose of determining any question as to the constitutional validity of any State law shall

be five:

8. The requirement of Five Judges is for determining any question involving constitutional validity of a State law. Article 366, Clause 26-A defines

''State Law'' and the rule in the instant cases comes within the ambit of Clause 26-A (f). It is imperative that the Bench should consist of a minimum

number of five Judges, if, the determination is of a question as to the constitutional validity of a State Law, i. e., if a State Law Is contended to be

constitutionally Invalid. The challenge to the State law must be touching the constitution either as violative of any right conferred, under the

Constitution or offending any particular Provision thereof.

9. Making of a rule by virtue of the power conferred under the Act is a subordinate legislation. The rule can be challenged on the ground that it

takes away or abridges the rights conferred in PartIII of the Constitution or that it offends any other provision of the Constitution. The rule may

also be challenged, on the ground that it is beyond the power conferred on the delegate by the Act or that it is re- to some provision of the Act and

is, therefore, ultra vires. Only in the former case, it can be, said that the challenge to the validity raises a question touching the Constitution and the

question for determination would be the constitutional validity of the rule. In the second category no such question touching the constitutional

validity arises and the invalidity urged would not amount to a constitutional question or involve any determination of the constitutional validity of the

rule. The provision in Article 228-A, expressed in another form, implies that it is not necessary to constitute a Bench of five Judges if the invalidity

of a State law Is not raised on the ground that it is constitutionally in valid but is otherwise invalid.

10. In the instant case the rule is being challenged on the ground that it is ultra vires the provisions in the Act. It does not involve any question of

constitutional validity and therefore the requirement of Art. 228-A(3) does not apply. The preliminary objection raised on be- half of the State is

accordingly overruled.

11. In regard to the main contention that R. 5 (2) is repugnant to the provisions in the Act, reliance has been placed on the provisions of Ss. 7 and

8 of the Act and also on a decision of this Court in Ceril Lobo v. State of Mysore (1970) 2 Kar LJ 410 : AIR 1971 Mys 18.

12. Chapter II of the Motor Vehicles Act deals with licensing of drivers of motor vehicles, Section. 4 prescribes that no person under the age of

18 years shall drive a motor vehicle in any Public place and subject to the provisions of S. 14, no person under the age of 20 years shall drive a

trans-port vehicle in any Public place. Section 2 defines "heavy motor vehicle", "light motor vehicle" and "medium motor vehicle". Under S. 7 (1) a

Person who is not disqualified under 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 the issue to him of a driving licence. Section 7 (3) provides that where the application is for a driving

licence to drive as a paid employee or to drive a transport vehicle, or where in any other case the licensing authority for reasons to be stated in

writing requires, the application has to be accompanied by a medical certificate in Form C signed by a registered medical practitioner. Section 7

(4) requires copies of photographs being sent along with the application in regard to these two categories. Section 7 (6) 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. Section 7 (7) is as follows:

(7) The test of competence to drive shall be carried out in a vehicle of the type to which the application refers, and, for the purposes of Part-I of

the test

(a) a person who passes the test in driving a heavy motor vehicle shall be deemed also to have passed the test in driving any medium motor vehicle

or light motor vehicle;

(b) a person who passes the test in driving a medium motor vehicle shall be deemed also to have passed the test in driving any light motor vehicle.

Section 7 (8) provides that 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 a fee of eleven rupees, the licensing authority shall grant

the applicant a driving licence unless the applicant is disqualified under S. 4 for driving a motor vehicle or is for the time being disqualified for

holding or obtaining a driving licence.

13. A mere reading of R. 5 (2) and the "provisions in S. 7 (7) of the Act will show that the former is plainly contrary to and repugnant to the

provisions of the Act. While under S. 7 (7) the test of cont. petence to drive should be of a vehicle of the type to which the application refers (i. e.,

if the application is for driving licence in respect of a heavy motor vehicle, the competence should be tested in a heavy vehicle), the impugned rule

provides that the licensing authority concerned should be satisfied that the applicant has had at least two years" experience In driving any medium

Motor Vehicle. While S. 7 (7) (a) Provides that a person who has passed the test in driving a heavy motor vehicle shall be deemed also to have

Passed the test in driving -any medium motor vehicle or light motor vehicle, R. 5 (2) ignores it Land further requires that the applicant should satisfy

the licensing authority that he has had two years" experience in driving any medium Motor Vehicles. While S. 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 under 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 R. 5 (2) makes a provision which is inconsistent with the provisions in the Act and actual-nullifies the provisions in the

Act. It is well settled that the rule-making body should act within the powers conferred by the parent Act and cannot make a rule contrary to the

provisions in the Act or inconsistent therewith. As has been pointed out above R. 5 (2) is clearly contrary to the provisions in the Act and

repugnant to it and is, therefore, ultra vires the A'' C t.

14. In 1969 the State Government had framed Rr. 5 (2) and 5 (3) prescribing similar Periods of experience to drive medium transport vehicle and

heavy transport vehicle or stage carriage or contract carriage. These provisions were challenged as being repugnant to S. 7 and the contention was

upheld by this Court in the case referred to above. The new provision in R. 5 (2) is similar to the provision considered in that decision. The

reasoning therein equally applies to the instant cases.

15. The learned Government Advocate, however, submitted that S. 21 (2) (aa) which was substituted by amendment (by Act 56 of 1969) makes

provision for the rules prescribing minimum qualifications of persons to whom licence to drive transport vehicles are issued and this enabling

provision could not be availed of in sustaining R. 5 (2) and (3) which had been struck down as ultra vires the Act in the decision cited above, and

the present rule having been made subsequent to the introduction of S. 21 (2) (aa) should be held to be competent. We do not find any substance

in this argument. The validity of the rule has to be tested on the basis whether it is or is not repugnant or ultra vires the powers conferred, under the

Act. ,The provision in S. 21 (2) (aa) for fixing minimum qualifications of persons to whom licence to drive transport vehicles are issued cannot be

interpreted as per- framing of a rule contrary to the provisions in S. 7 of the Act or nullify the effect of those provisions. As has been pointed out,

the "provisions in the rule are repugnant to the -provisions in the Act and hence ultra vires the Act and accordingly R. 5 (2) of the Rules 1976

made pursuant to Notification No. HD16 TMR 73 dated 7th July 1976 is struck down as being ultra vires the Act and therefore void. We direct

that the licensing authorities shall consider the applications of the petitioners in W. Ps. 6432 and 6433 of 1976 for driving licences without

reference to the aforesaid R. 5 (2) and in accordance with the provisions of the Act,

16. These writ petitions are allowed. The petitioners shall be entitled to the costs from respondent No. 1. Advocate''s fee Rs. 250/- one set.

17. Writ petitions allowed.