

(2014) 02 KL CK 0172
High Court Of Kerala
Case No: W.P.(C) No. 18109 of 2011

Milan Petitioner

APPELLANT

Vs

Regional Transport Officer and
Others

RESPONDENT

Date of Decision: Feb. 6, 2014

Acts Referred:

- Motor Vehicles Act, 1988 - Section 10, 2

Citation: (2014) 1 ILR 1091

Hon'ble Judges: A.V. Ramakrishna Pillai, J

Bench: Single Bench

Advocate: T.A. Shaji, Senior Advocate, Advocate for the Appellant; R. Ranjith, Government Pleader, Advocate for the Respondent

Final Decision: Allowed

Judgement

1. Ext. P-7 by which the 1st respondent has chosen to reject the request of the petitioner to include three new vehicles in the driving school licence issued to the petitioner, insisting upon a requirement to have an instructor with 5 years' experience in each category of vehicles is under challenge in this writ petition.

2. The petitioner is running a motor driving school and he has been granted Ext. P-1 licence under Rules 24(1), 24(4) and 25 of the Central Motor Vehicles Rules, 1989. The petitioner alleges that he has appointed a qualified instructor as mandated by the Rules and he had made an application to include 3 new vehicles i.e. forklift, trailer and excavator in Ext. P-1 licence. He had paid the required fee also. However the 1st respondent by Ext. P-7 rejected the request with a direction to appoint a qualified instructor as per rules assigning the reason that the instructor should have a minimum driving experience of 5 years in each category of vehicle. This according to the petitioner is illegal and thus he has come up before this court.

3. In the counter-affidavit filed by the 2nd respondent State they have admitted the fact that the petitioner is running a driving school under Ext. P-1 licence. According to the State the instructor appointed by the petitioner has been authorized to drive light motor vehicle with effect from 20-10-1973, three wheeler with effect from 7-4-1986, motorcycle with gear with effect from 12-12-1997, heavy passenger motor vehicle with effect from 11-5-1979, heavy goods vehicle with effect from 13-2-2004. However they would contend that the licence for driving forklift, excavator and trailer issued to the instructor was only with effect from 2-8-2010. Therefore the respondent maintained the stand that the instructor had only six months experience on the date of the application. Therefore those vehicles could not be included within the purview of Ext. P-1; it was contended.

4. I have heard the learned senior counsel for the petitioner and the learned Government Pleader in the matter.

5. It was argued by the learned senior counsel for the petitioner that neither the Motor Vehicles Act, 1988 nor the rules made thereunder stipulate that the instructor should have the licence for the previous 5 years to drive each and every type of vehicle. According to the learned senior counsel, a minimum driving experience of 5 years in addition to the certificate in a course in motor mechanic or any other higher qualification in mechanical engineering is the only technical qualification prescribed under the rules. It was also pointed out that the ability to demonstrate and explain the functions of different components or parts of vehicles is the prescribed eligibility requirement. Therefore it was argued that the stand adopted by the 1st respondent that the petitioner's instructor should have driving experience in relation to the three type of vehicles sought to be included in Ext. P-1 is unwarranted. In this context, the learned senior counsel took me through Section 2 of the Act which defines the classes of vehicles. As rightly pointed out by the learned senior counsel the types of vehicles sought to be included in Ext. P-1 are not defined u/s 2. My attention was also invited to Section 10 of the Act which prescribes the form and contents of licence. It is relevant to note that Section 10 does not contemplate a classification of vehicles into different categories insisting upon a requirement of 5 years' experience for the instructor in each and every category of vehicles to impart instructions in each such category. Therefore such an insistence is illogical. If it is insisted upon, when a new category of vehicle is manufactured and introduced for the first time the benefit of an existing licence cannot be extended to those type of vehicles. Therefore, 5 years experience can be insisted upon only in general terms as long as it is not specifically expressed in the rules. In this context Rule 24 of the Central Motor Vehicles Rules, 1989 was also referred to by the learned senior counsel for the petitioner. Rule 24(3) (iv) makes it clear that the person who makes an application for licence should own and maintain at least one motor vehicle each of the type in which instruction is imparted in the school or establishment. Rule 24(3) (viii) (b) prescribes 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. Nowhere in the rules driving experience in relation to each category of vehicles for a minimum period of five years is insisted upon. Therefore there need not be any hesitation to hold that the reasoning on the basis of which the petitioner's request was rejected by the 1st respondent is illogical and cannot be allowed to stand.

6. Therefore the writ petition is allowed. Ext. P-7 is quashed so far as it directs the petitioner to have an instructor having driving experience of five years for each category of vehicles sought to be included in Ext. P-1.

It is hereby made clear that the petitioner is entitled to get Ext. P-1 licence extended to three categories of vehicle mentioned in Ext. P-5 application. Formal orders to this effect shall be issued by the 1st respondent within a period of two months. To facilitate an early action in the matter it shall be open to the petitioner to produce a copy of this judgment along with Ext. P-1 before the 1st respondent within a period of one month.