

MYSORE HIGH COURT

Cyril Lobo

Vs

State of Mysore

Writ Petns. Nos. 1382, 1383 and 1914 of 1970

(M. Sadasivayya, C.J. and D.M. Chandrashekhar, J.)

31.08.1970

JUDGMENT

D.M. Chandrashekhar, J.

1. The petitioner in W. P. No. 1382 of 1970 is a helper in a motor-lorry. He had applied to the Regional Transport Officer, Managlore (hereinafter referred to as the R. T. O.), for issue of a license to drive heavy motor vehicles. His application was rejected by the R. T. O. on the ground that he did not possess experience as provided by sub-rules (2) and (3) of Rule 5 of the Mysore Motor Vehicles Rules, 1963, (hereinafter referred to as the Rules). The petitioner has challenged the validity of sub-rules (2) and (3) of Rule 5. He has also challenged the Notification of the Government dated 11-3-1970 by which Rule 5 has been amended by deleting sub-rule (7) therein. He has also prayed for a mandamus directing the R. T. O. (Respondent 2) to issue him the driving license as applied for.

2. The petitioners in W. Ps. Nos. 1383 and 1914 of 1970 are owners of Motor Driving Schools in which training is imparted in driving motor vehicles, including light, medium and heavy motor vehicles. These Schools issue driving certificates to persons who have undergone training therein. These two petitioners have also challenged the validity of sub-rules (2) and (3) of R. 5 and the deletion of sub-rule (7) of that Rule.

3. As all these three petitions involve common question of law, we have heard them together and we are deciding them by this common order.

4. We may now look at the relevant statutory provisions.

5. Chapter II of the Motor Vehicles Act, 1939, (Central Act 4 of 1939) (hereinafter referred to as the Act), deals with licensing of drivers of motor vehicles.

6. Sub-section (1) of Section 3 provides, inter alia, that no person shall drive a motor vehicle in any public place unless he holds an effective driving license issued to himself authorizing him to drive the vehicle; and that no person shall so drive a motor vehicle as a paid employee or shall so

drive a transport vehicle unless his driving license specifically entitles him as so to do.

7. Sub-section (2) of Section 3 provides that a State Government may prescribe the conditions subject to which sub-section (1) shall not apply to a person receiving instruction in driving a motor vehicle

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8. Section 4 of the Act reads :

4. (1) No person under the age of eighteen years shall drive a motor vehicle in any public place.

(2) Subject to the provisions of Section 14, no person under the age of twenty years shall drive a transport vehicle in any public place.

9. Sub-section (1) of Section 7 provides that any person who is not disqualified under Section 4 for driving a motor vehicle and who is not for the time being disqualified for holding a driving license, may apply to the authority empowered by the State Government to grant licenses (hereinafter referred to as the Licensing Authority), for the issue to him of a driving license.

10. Sub-section (3) of Section 7 provides, inter alia, that where an application is for a license to drive as paid employee or to drive a transport vehicle, the application shall be accompanied by a medical certificate.

11. Sub-section (8) of Section 7 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 ₹ 11, the Licensing Authority shall grant him a driving license unless he is disqualified under Section 4 for driving a motor vehicle or is for the time being disqualified for holding or obtaining a driving license.

12. Sub-section (2) of Section 21 empowers a State Government to make rules for the purpose of carrying into effect the provisions of Chapter II.

13. Under Cl. (i) of sub-section (2) of Section 21, such rules may provide for the control of schools or establishments for the instruction of drivers of motor vehicles and for the acceptance of driving certificates issued by such schools or establishments as qualifying the holder for exemption from Part I of the test specified in the Third Schedule. Form 'D' in the First Schedule to the Act sets out the form of driving license including the authorization to drive a transport vehicle.

14. The Third Schedule to the Act sets out the details of competence to drive motor vehicles.

15. In exercise of the rule making powers conferred by several Sections of the Act, the Government of Mysore made the Mysore Motor Vehicles Rules, 1963.

16. Chapter II of these Rules deals with licensing of drivers of Motor vehicles.

17. Rule 5 in this Chapter deals with the authorization to drive transport vehicles and the necessity for such authorization.

18. Sub-rule (1) of Rule 5 provides that no person shall drive a transport vehicle unless a driving license has been granted or counter-signed by the Licensing Authority.

19. Sub-rule (2) of Rule 5 reads : (2) No authorization to drive a medium transport vehicle under Section 3 (1) of the Act, shall be granted unless the applicant satisfies the licensing authority, that he has had at least one year's experience in driving any motor vehicle, other than a motor cycle.

20. Sub-rule (3) of Rule 5 reads :

"(3) No authorization to drive a heavy transport vehicle or a stage carriage or a contract carriage (other than Motor Cab and Auto Rickshaw) shall be granted unless the applicant satisfies the licensing authority that he has had at least three years' experience in driving any medium motor vehicle."

21. The proviso to sub-rule (3) states, inter alia, that for grant of license to drive a Motor Cab, it shall be sufficient that the applicant has two years' experience of driving any motor vehicle (other than a motor-cycle).

22. Sub-rule (7) of Rule 5 which has been deleted by the Notification of the Government dated 11-3-1970 read as follows :-

"(7) Nothing contained in sub-rules (2) and (3) shall apply to persons who have received instructions in the driving of Heavy Motor Vehicles or Medium Motor Vehicles from a School of Motoring licensed under Rule 30 and obtained a certificate referred to in sub-rule (7) of the said Rule."

23. Sub-rule (1) of Rule 30 provides, inter alia, that no person shall engage in the business of giving instructions for hire or reward in the driving of motor vehicles, without a license.

24. The conditions to be fulfilled for a license for a school of motoring have been set out in other sub-rules of Rule 30.

25. Mr. K. J. Shetty, learned counsel for the petitioners, contended that sub-rules (2) and (3) of Rule 5 are invalid as they are inconsistent with the provisions of the Act. Elucidating his contention Mr. Shetty submitted that the effect of sub-rules (2) and (3) is that in order to obtain a license to drive heavy transport vehicles, a person should have at least one year's experience in driving a motor vehicle (other than a motor-cycle) and subsequently at least three years' experience in driving medium vehicle; that under Section 4 read with Section 7, no person shall be eligible to drive any kind of motor vehicle unless he has completed the age of 18 years; and that the combined effect of Sections 4 and 7 and sub-rules (2) and (3) of Rule 5, is that no person shall be eligible to get a license to drive heavy transport vehicles unless he is not below the age of 22 years, and has also four years' experience in driving motor vehicles of which three years' experience shall be in driving any medium motor vehicle.

26. The learned Government Pleader, who appeared for the State and the R. T. O.. did not dispute the above position.

27. Mr. Shetty argued that while sub-section (8) of Section 7 provides that a person who is not below the age of twenty years and who satisfies the licensing authority of his physical fitness and competence to drive, applies for a license to drive transport vehicle and has paid the necessary fee and is not disqualified for the time being for holding or obtaining such license, the Licensing Authority shall grant him such license, it is not competent for the Rules to provide that no person shall be granted a license to drive a medium transport vehicle unless he is not below 19 years of age and has in addition one year's experience in driving any motor vehicle or that no person shall be granted a license to drive a heavy transport vehicle or a stage carriage unless he is not below 22 years of age and has in addition four years' experience of driving motor vehicles of which three years' experience shall be in driving medium motor vehicles. Mr. Shetty said that in other words the disqualification of age as contemplated by R. 5. for getting a license to drive medium transport vehicles or heavy transport vehicles, is different from what is provided in Section 4 and that Rule 5 also requires the following additional qualifications :

- (i) a minimum experience of one year's driving in the case of an application for license, to drive medium transport vehicles;
- (ii) a minimum experience of four years' driving of motor vehicles of which three years' experience shall be of driving medium motor vehicles, in the case of an application for license to drive heavy transport vehicles.

28. The learned Government Pleader did not dispute the above legal position also.

29. Mr. Shetty contended that as the effect of sub-rules (2) and (3) is to insist on an age limit which is really in excess of that prescribed in Section 4 and also to insist on experience of one year and four years for the purpose of obtaining a license to drive medium transport vehicles and a license to drive heavy transport vehicles respectively, these sub-rules are inconsistent with Section 4 and Section 7 (8) and that hence sub-rules (2) and (3) of Rule 5 should be declared as void on ground of being . repugnant to the provisions of the Act.

30. In the counter-affidavit filed on behalf of the State, sub-rules (2) and (3) of Rule 5 are sought to be justified on the ground that the periods of experience provided in them constitute irreducible minima required for acquiring necessary competence for driving the classes of vehicles referred to in those sub-rules. In justification of the deletion of sub-rule (7) of Rule 5, it has been stated in the counter affidavit that that sub-rule was framed to provide exemption from the operation of sub-rules (2) and (3) of R. 5 to such of those persons who receive intensive training in authorized Motor Training Schools, but in practice it was found that the exemption provided was being misused on a large scale resulting in increase of accidents on roads and that hence, the Government deleted sub-rule (7).

31. The learned Government Pleader contended that sub-rules (2) and (3) of Rule 5 have merely prescribed additional qualifications over and above those provided by Section 4 and Section 7 (8), and that if the license to drive medium and heavy transport vehicles are issued to those who fulfill the qualifications prescribed both in the Act and in the Rules, there will be obedience to the provisions of both the Act and the Rules and that hence it cannot be said that there is any

repugnancy between these sub-rules and any of the provisions of the Act.

32. The question as to when two laws can be said to be repugnant, was considered by the Supreme Court in *Tika Ramji v. State of Uttar Pradesh*¹, the Supreme Court quoted with approval the following statement of law on the point by B. N. Rau, J. in *G. P. Stewart v. B. K. Roy Chaudhury*²,

"It is sometimes said that two laws cannot be said to be properly repugnant unless there is a direct conflict between them, as when one says 'do' and the other 'don't', there is no true repugnancy, according to this view, if it is possible to obey both the laws. For reasons which we shall set forth presently, we think that this is too narrow a test: there may well be cases of repugnancy where both laws say 'Don't' but in different ways.

For example, one law may say, 'No person shall sell liquor by retail, that is, in quantities of less than five gallons at a time' and another law may say, 'no person shall sell liquor by retail, that is, in quantities of less than ten gallons at a time.' Here, it is obviously possible to obey both laws, by obeying the more stringent of the two, namely the second one; yet it is equally obvious that the two laws are repugnant, for to the extent to which a citizen is compelled to obey one of them, the other, though not actually disobeyed, is nullified." The principle deducible from the English cases, as from the Canadian cases, seems therefore to be the same as that enunciated by Issacs, J. in the Australian 44 hour case 37 CLR 466, if the dominant law has expressly or impliedly evinced its intention to cover the whole field then a subordinate law in the same field is repugnant and therefore inoperative. Whether and to what extent in a given case, the dominant law evinces such an intention must necessarily depend on the language of the particular law."

33. It appears to us that the dominant law, namely, the Act evinces an intention to cover the field of qualifications and disqualifications for issue of licenses to drive various kinds of motor vehicles. Hence, it cannot be said that there is no repugnancy between the provisions of Section 4 and Section 7 (8) and sub-rules (2) and (3) of Rule 5. While sub-section (8) of Section 7 read with Section 4 provides that a person who is not below the age of twenty years and fulfils the test of competence to drive a transport vehicle, should be issued a license to drive such vehicle, the effect of sub-rules (2) and (3) of Rule 5 is not to permit issuing such licenses unless the applicant for license to drive a medium transport vehicle is, not below the age of nineteen years and has also an experience of driving motor vehicles for a minimum period of one year and unless the applicant for license to drive a heavy transport vehicle is not below the age of twenty-two years and has also experience of driving motor vehicles

¹AIR 1956 SC 676. At p. 699

²AIR 1939 Cal 628

for a period of not less than four years of which three years' experience shall be in driving any medium motor vehicle.

34. Besides, under sub-section (7) of Section 7, the criterion for issue of a license to drive a particular category of vehicle, is the competence to drive a vehicle of that category, while under sub-rules (2) and (3) the criterion for issuing licenses to drive medium and heavy transport vehicles, is not the competence to drive vehicles of the respective category but the length of experience in driving vehicles of the categories specified in those sub-rules.

35. We think there is clear repugnancy between sub-rules (2) and (3) of Rule 5 on the one hand and Section 4 and Section 7 (8) on the other.

36. Hence, we strike down sub-rules (2) and (3) of Rule 5 as being ultra vires of the Act, and therefore, void. Once sub-rules (2) and (3) of Rule 5 are held to be invalid, the continuance or deletion of sub-rule (7) of Rule 5, is not of any materiality. Consequently, we do not consider it necessary to go into the question of validity of deletion of sub-rule (7) of Rule 5.

37. In view of our having struck down sub-rules (2) and (3) of Rule 5, we direct the Regional Transport Authorities of Mangalore and Bangalore (who are respondents in these petitions) to consider the applications of applicants (whether they are trainees from recognized Motor Training Schools or otherwise) for driving licenses, without reference to sub-rules (2) and (3) of R. 5, but after testing the competence of those applicants in accordance with the provisions of the Act.

38. In the circumstances of these cases, we direct the parties to bear their own costs in these petitions.
Petitions allowed.