

HIGH COURT OF KERALA**Bench : Justice N. Nagares****Date of Decision: 5th March 2024**

W.P.(C) No. 38402 of 2023

SEBASTIAN JACOB**VS****The Transport Commissioner****The Joint Regional Transport Officer, Angamaly****The Joint Regional Transport Officer, Kozhikode****The Motor Vehicle Inspector, Kozhikode****Legislation:**

Motor Vehicles Act, 1988

Subject: Challenge to the validity of Circular No.9/2019 dated 15.10.2019 related to the renewal of driving licenses.**Headnotes:**

Motor Vehicles Act, 1988 – Renewal of Driving License – Requirement of Competency Test – The Court deliberated on the legality of Ext.P9 Circular dated 15.10.2009 concerning the renewal of driving licenses under the Motor Vehicles Act, 1988. The petitioner challenged the requirement of undergoing a competency test for renewing a driving license that had expired more than a year ago but less than five years. [Para 5-7, 11-13]

Interpretation of Sections 9(3) and 15(4) of the Motor Vehicles Act, 1988 – Examined – The Court analyzed the provisions of Section 9(3), which waives the need for a competency test if the application does not exceed five years from the expiry date, and Section 15(4), which mandates a test if the renewal application is made over a year after the expiry. [Para 14-17]

Decision – Upholding of Ext.P9 Circular – The Court upheld the validity of Ext.P9 Circular, agreeing with its alignment with the 2019 amendments to the Motor Vehicles Act. It held that applicants seeking to renew their driving license more than one year after expiry must undergo a competency test. [Para 18-20]

Writ Petition – Dismissal – In view of the legal requirements under the Motor Vehicles Act, as amended, the Court dismissed the writ petition, allowing the respondents to proceed with Exts.P6 and P8 show-cause notices in accordance with the law. [Para 20]

Referred Cases:

None .

Representing Advocates:

For Petitioner: Aswin Gopakumar, Anwin Gopakumar, Aditya Venugopalan, Nikitha Susan Paulson, Shallet K. Sam, Saranya Babu, Mahesh Chandran.

For Respondents: Sreejith V.S., Government Pleader.

J U D G M E N T

~ ~ ~ ~ ~ ~ ~ ~ ~

The petitioner seeks to declare that Ext.P9 Circular dated 15.10.2009 issued by the 1st respondent is ultravires the provisions of the Motor Vehicles Act, 1988 and consequently quash the same by issuance of a writ of certiorari.

2. On 02.11.2000, the petitioner was granted Ext.P1 Driving Licence by the Regional Transport Officer, Puttur, Karnataka. Thereafter, the petitioner went to UAE for employment. Ext.P1 Driving Licence was valid up to 30.10.2020. From UAE, the petitioner obtained Ext.P2 Driving Licence from the licensing authority of UAE. Ext.P2 Driving Licence is valid up to 14.04.2026. The petitioner could not renew Ext.P1 Driving Licence due to Covid-19 pandemic.

3. The petitioner arrived in Kerala in the month of June, 2022 and applied for renewal of Ext.P1 Driving Licence on 15.07.2022. The 3rd respondent-Joint RTO renewed the licence extending its validity till 14.07.2032, as per Ext.P3. The petitioner submitted Ext.P4 application to replace his laminated Driving Licence with Smart Card Driving Licence. To the surprise of the petitioner, the petitioner was served with Ext.P6 show-cause notice dated 16.10.2023 which directed the petitioner to appear before the 2nd respondent Joint RTO within seven days and to furnish reply. The petitioner states that he was not in a position to appear before the 2nd respondent and therefore submitted Ext.P7 request seeking time to reply.

4. The 2nd respondent again issued Ext.P8 show- cause notice dated 30.10.20203. On enquiry, the petitioner learnt that the show-cause notice has been issued as the petitioner did not undergo a competency road test while renewing his licence, as mandated in Ext.P9 Circular No.9/2019 dated 15.10.2019.

5. The petitioner states that Ext.P9 Circular is clarificatory in nature. As per Ext.P9 Circular, any person applying for renewal of Driving Licence after one year of expiry but before five years, will have to submit an application for learners licence and the applicant will have to undergo driving test and competency road test to get the licence renewed.

6. The petitioner points out that as per Section 9(3) (a)(i) of the Motor Vehicles Act, 1988, no such test shall be necessary where the applicant produces proof to show that the applicant has previously held a Driving Licence and that the period between the date of expiry of that licence and that of the application does not exceed five years. The petitioner further pointed out that as per proviso to Section 15(4) of the Motor Vehicles Act, if the application is made, more than one year after the Driving Licence has ceased to be effective, the licensing authority shall refuse the renew the Driving Licence unless the applicant undergoes and passes the test of competence to drive.

7. According to the petitioner, a conjoint reading of Sections 9(3) and 15(4) would show that the applicants applying for

renewal of Driving Licence need not undergo such tests if the application has been preferred after one year of expiry but before five years.

8. I have heard the learned counsel for the petitioner and the learned Government Pleader representing the respondents.

9. The petitioner was granted Ext.P1 Driving Licence by the RTO, Puttur on 02.11.2000. The licence is valid from 31.10.2000 to 30.10.2020. The petitioner could not renew Ext.P1 licence before the period of its expiry. The petitioner submitted application for renewal of Driving Licence on 15.07.2022. The Joint RTO, Koduvally granted renewal and issued Ext.P3 renewed Driving Licence with issue date 02.11.2000 and valid up to 14.07.2032.

10. When the petitioner submitted an application to replace his laminated Driving Licence with Smart Card Driving Licence, the petitioner was issued with Ext.P6 showcause notice alleging that the renewal of his Driving Licence was illegal. By Ext.P8 communication, the petitioner was required to furnish Fitness Certificate in Form 1-A.

11. The petitioner contends that renewal of Driving Licence is stated to be illegal as the petitioner has not undergone the test of competence to drive, for renewal of licence. According to the petitioner, a conjoint reading of Section 9(3)(a)(i) and Section 15(4) of the Motor Vehicles Act, 1988 would show that applicants applying for renewal of licence after one year of expiry but before five years, need not attend the test of competence to drive. The direction to the contrary contained in Ext.P9 Circular No.9/2019 dated 15.10.2019, is illegal.

12. The 2nd respondent filed a statement in the writ petition. According to the 2nd respondent, when the petitioner submitted application for replacement of Driving Licence to SRTO, Angamaly, the Motor Vehicle Inspector turned suspicious about the genuineness of the licence issued by the SRTO, Koduvally to the petitioner and hence show-cause notice was issued. The petitioner failed to explain how he was issued renewed licence without undergoing test of competence to drive. The Driving Licence of the petitioner was impounded for taking further action under Section 19 of the Motor

Vehicles Act. On the basis of preliminary enquiry by a Motor Vehicles Inspector, an enquiry is ordered.

13. The argument of the petitioner is that since the petitioner has applied for renewal of Driving Licence within a period of five years from the date of expiry of earlier licence, in view of Section 9(3)(a)(i) and Section 15(4) of the Motor Vehicles Act, 1988, the petitioner need not undergo a test of competence to drive. The petitioner therefore challenges Ext.P9 Circular.

14. Sub-sections (1) to (3) of Section 9 read as follows:

9. Grant of driving licence —

(1) Any person who is not for the time being disqualified for holding or obtaining a driving licence may apply to any licensing authority in the State —

- (i) in which he ordinarily resides or carries on business, or
- (ii) in which the school or establishment referred to in

section 12 from where he is receiving or has received instruction in driving a motor vehicle is situated, for the issue to him of a driving licence. (2) Every application under sub-section (1) shall be in such form and shall be accompanied by such fee and such documents as may be prescribed by the Central Government.

(3) If the applicant passes such test as may be prescribed by the Central Government, he shall be issued the driving licence:

Provided that no such test shall be necessary where the applicant produces proof to show that—

(a)(i) the applicant has previously held a driving licence to drive such class of vehicle and that the period between the date of expiry of that licence and the date of the application does not exceed five years, or

(ii) the applicant holds or has previously held a driving licence to drive such class of vehicle issued under section 18, or

(iii) the applicant holds a driving licence to drive such class of vehicle issued by a competent authority of any country outside India, subject to the condition that the applicant complies with the provisions of sub-section (3) of section 8,

(b) the applicant is not suffering from any disability which is likely to cause the driving by him to be a source of danger to the public; and the licensing authority may, for that purpose, require the applicant

to produce a medical certificate in the same form and in the same manner as is referred to in sub-section (3) of section 8:

Provided further that a driving licence for driving an adapted vehicle may be issued to the applicant, if the licensing authority is satisfied that he is fit to drive such motor vehicle. Clause (a)(i) to the first proviso to Section 9(3) would indicate that for grant of Driving Licence, no prescribed test is necessary, if the applicant produces proof to show that the applicant has previously held a Driving Licence and that the period between the date of expiry of that licence and the date of the application does not exceed five years.

15. However, the Motor Vehicles Act, 1988 has undergone comprehensive amendments as per Act No.32 of 2019 with effect from 01.09.2019. Though Section 9(3) did not undergo amendment, Section 15 which specifically deals with renewal of Driving Licences, was subjected to amendment. After the amendment, Section 15 reads as follows:

15. Renewal of driving licences —

(1) Any licensing authority may, on application made to it, renew a driving licence issued under the provisions of this Act with effect from the date of its expiry:

Provided that in any case where the application for the renewal of a licence is made either one year prior to date of its expiry or within one year after the date of its expiry, the driving licence shall be renewed with effect from the date of its renewal:

Provided further that where the application is for the renewal of a licence to drive a transport vehicle or where in any other case the applicant has attained the age of forty years, the same shall be accompanied by a medical certificate in the same form and in the same manner as is referred to in sub-section (3) of section 8, and the provisions of sub-section (4) of section 8 shall, so far as may be, apply in relation to every such case as they apply in relation to a learner's licence.

(2) An application for the renewal of a driving licence shall be made in such form and accompanied by such documents as may be prescribed by the Central Government.

(3) Where an application for the renewal of a driving licence is made previous to, or not more than one year after the date of its expiry, the fee payable for such renewal shall be such as may be prescribed by the Central Government in this behalf.

(4) Where an application for the renewal of a driving licence is made more than one year after the date of its expiry, the fee payable for such renewal shall be such amount as may be prescribed by the Central Government:

Provided that the fee referred to in subsection (3) may be accepted by the licensing authority in respect of an application for the renewal of a driving licence made under this sub-section if it is satisfied that the applicant was prevented by good and sufficient cause from applying within the time specified in sub-section (3):

Provided further that if the application is made more than one year after the driving licence has ceased to be effective, the licensing authority shall refuse to renew the driving licence, unless the applicant undergoes and passes to its satisfaction the test of competence to drive referred to in subsection (3) of section 9.

(5) Where the application for renewal has been rejected, the fee paid shall be refunded to such extent and in such manner as may be prescribed by the Central Government.

(6) Where the authority renewing the driving licence is not the authority which issued the driving licence it shall intimate the fact of renewal to the authority which issued the driving licence.

16. The 2nd proviso to Section 15(4) mandates that if the application (for renewal of Driving Licence) is made more than one year after the Driving Licence ceased to be effective, the licensing authority shall refuse to renew the Driving Licence unless the applicant undergoes and passes to its satisfaction the test of competence to drive referred to in Section 9(3).

17. Indeed there is certain incongruity between Clause (a)(i) to the proviso to Section 9(3) and the 2nd proviso to Section 15(4). But, as far as renewal of Driving Licences is concerned, we have to hold that if application for renewal of Driving Licence is made after one year of the period of previous licence, one has to undergo the test of competence to drive, for two reasons.

18. Firstly, Section 9 deals with grant of Driving Licence whereas Section 15 deals with renewal of licence. The petitioner's case is one of renewal of licence. Therefore, the petitioner will have to satisfy the requirement under the 2nd proviso to Section 15(4) which mandates passing of driving competency test, if the application is made more than one year after the Driving Licence ceased to be effective.

19. Secondly, the intention of lawmakers is clear from the amendments brought about in the year 2019, whereby Section 15 relating to renewal of licence is amended so as to make the test of competency to drive is made mandatory for renewal, if the application is made after one year of the expiry of the previous licence. In such circumstances, I find that Ext.P9 Circular is in tune with the amendments to the Motor Vehicles Act brought about in the year 2019.

20. Admittedly, the petitioner has made the application for renewal of Driving Licence only after one year of the expiry of the previous Driving Licence. The petitioner has to therefore undergo test of competency to drive, for the purpose of renewal of Driving Licence. In the facts of the case, I do not find any reason to quash Ext.P9 Circular.

21. As the petitioner has approached this Court at the show-cause stage, the writ petition is dismissed. The respondents will be at liberty to proceed with Exts.P6 and P8 in accordance with law.

© All Rights Reserved @ LAWYER E NEWS

*Disclaimer: Always compare with the original copy of judgment from the official website.