State Of Karnataka And Anr vs H. Ganesh Kamath Etc. Etc on 31 March, 1983

Equivalent citations: 1983 AIR 550, 1983 SCR (2) 665, AIR 1983 SUPREME COURT 550, 1983 CRILR(SC MAH GUJ) 501, 1983 SCC(CRI) 514, 1983 UJ (SC) 345, (1983) 96 MAD LW 168, 1983 (2) SCC 402

Author: D.P. Madon

Bench: D.P. Madon, Sabyasachi Mukharji

PETITIONER:
STATE OF KARNATAKA AND ANR.

Vs.

RESPONDENT:
H. GANESH KAMATH ETC. ETC.

DATE OF JUDGMENT31/03/1983

BENCH:
MADON, D.P.
BENCH:
MADON, D.P.
MUKHARJI, SABYASACHI (J)

CITATION:
1983 AIR 550 1983 SCR (2) 665
1983 SCC (2) 402 1983 SCALE (1)321

ACT:
Karnataka Motor Vehicle Rules, 1983, Sub-rule (2) inserted in Rule 5 by the Notification No. H.D. 16 T.M.R. 73 dated July 7, 1976, whether inconsistent with and ultra vires of the provisions of sub-section 7 and 8 of Section 7 of the Motor Vehicles Act, 1939(Act IV of 1939)-words and phrases "for the time being disqualified for holding or obtaining a driving licence", meaning of.

HEADNOTE:
Under Section 7 of the Motor Vehicles Act, 1939, for the grant of a driving licence, a person (1) must not be disqualified as to age prescribed under Section 4; (ii) must submit a medical certificate in Form 'C', if he wishes to be a paid employee or to drive a transport vehicle, (iii) must

not be suffering from an disease or disability noted in Second Schedule and (iv) must pass to the satisfaction of the licensing authority the test of competence to drive specified in the Third Schedule. Under sub-section 7 of Section 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 and (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 respectively.

Sub-rules (2) and (3) of Rule 5 of the Karnataka Motor Vehicle Rules 1963 prescribing certain years of experience in driving before granting the licence was struck down by the Mysore High Court in Civil Lobo v. State of Mysore and Ors (1970) 2 Mys. L.J. 410 as repugnant to Sections 4 and 7 (8) of the M.V. Act

After the amendment of Section 21 (2) of the M.V. Act, by Act LVI of 1969 substituting clause (aa) in section 25 (2) of the M.V. Act with effect from October 1, 1970 by the impugned Notification No. H.D. 16 TMR 73 dated July 7, 1976, the State of Karnatka introduced a new sub-rule (2) in Rule 5 to the effect :" 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".

The applications for a licence for driving heavy motor vehicle of all the respondents who had either training earlier in a Government recognised Motor Training School or who were themselves running such schools and had trained many, were refused on the basis of sub-rule (2) of Rule 5. The High Court of Karnataka, following Civil Lobo's case once again struck down

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the impugned Notification introducing the sub-rule (2) of Rule 5 as ultra vires Section 4 and 7(8) of the M.V. Act, 1939. Hence the appeals by the State.

Dismissing the appeals, the Court

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HELD 1 : 1 Sub-rule (2) inserted in Rule 5 of the Karnataka Motor Vehicles Rules, 1963, by the Notification No. H.D. 16 TMR 73 dated July 7, 1976 was ultra vires the Motor Vehicles Act, 1939. [675 B-C]

1 : 2 Though the substituted clause (aa) inserted in sub-section (2) of Section 21 of the Act confers power upon State Government to make rules providing for the minimum qualifications of persons to whom licences to drive a transport vehicle are issued such power cannot include within its scope the power to make a rule contrary to the provisions of the Act conferring the rule making power. It is a well settled principle of interpretation of statutes

that the conferment of rule-making power by an Act does not enable the rule making authority to make a rule which travels beyond the scope of the enabling Act or which is inconsistent therewith or repugnant thereto. [674 C-E]

1 : 3 The provision of sub-rule (2) of Rule 5 are obviously inconsistent with the provisions of sub-sections (7) and (8) of Section 7 of the MV Act. The said sub-rule does, not merely prescribe a qualification not provided in the Act, but prescribes a qualification which is contrary to that provided in the Act. Under sub-section (8) of Section 7 on satisfying the conditions provided in sections 4 and 7 and on the payment of the requisite fee, the applicant becomes entitled to the grant of a driving licence. This right of an applicant for a licence to drive a heavy motor vehicle is sought to be whittled down by the said rule 5(2) and that too by providing a condition contrary to the provisions of Section 7(7) (a). [674 A-C]

Cyril Lobo v. The State of Mysore & Anr. (1970) 2 Mys. L.J.P. 410, approved.

2 : 1 The disqualification for holding or obtaining a licence would not include disqualifications prescribed by a rule made by virtue of the power conferred by clause (aa) of Section 21(2). [674 F]

2 : 2 Sections 15 to 17 of the Act prescribe the cases in which a person can be disqualified for holding or obtaining a driving licence. Section 18(1) provides that a person in respect of whom any disqualification order is made shall be debarred to the extent and for the period specified in such order for holding or obtaining a driving licence and the driving licence, if any, held by such person at the date of the order shall cease to be effective to such extent and during such period. [674 G-H]

2:3 The words in sub-sections (1) and (8) of Section 7, therefore, refer to a disqualification for holding or obtaining a driving licence incurred under sections 15 to 17 of the Act and not to any disqualification provided for in the rules. Had the intention of the Legislature been to provide also for a disqualification prescribed by the rules, sub sections (1) and (8) of section 7
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would have been suitably amended when clause (aa) was substituted for the old clause (aa) in Section 21(2) by inserting in the said sub-sections the words "under this Act or the rules made thereunder" or by inserting other appropriate words. [674 H; 675 A-B]

JUDGMENT:

CIVIL APPELLATE JURISDICTION : Civil Appeals Nos. 2488- 2491 of 1977 Appeals by Special leave from the Judgment and Order dated the 25th February, 1977 of the Karnatka High Court in

writ Petitions Nos. 6432,6433,6486 & 6526 of 1976 N.Nettar for the Appellant.

A.K.Sen, K.N.Bhatt, S.R.Bhatt and N.Ganapathy for the Respondents.

The Judgment of the Court was delivered by MADON,J. This group of four appeals by special leave is directed against a common judgment and order of the Karnataka High Court in four writ petitions whereby the High Court struck down sub-rule (2) inserted in rule 5 of the Karnataka Motor Vehicles Rules, 1963, by Notification No.HD 16 TMR 73 dated July 7,1976 as being ultra vires the Motor Vehicles Act, 1939 (Act 4 of 1939) (hereinafter referred to as 'the Act').

The Respondent in Civil Appeal No. 2488 of 1977 had obtained a learner's licence for driving heavy motor vehicles under the said Rules and had obtained training in Crown Motor Driving School, Bangalore, which was an Institution recognised by the Government of Karnataka under rule 30 of the said Rules. He also held a licence to impart training in driving heavy motor vehicles. After completion of his training he obtained a certificate from the said driving school and applied on July 22, 1976 through it for a licence to drive heavy motor vehicles. The Respondent in Civil Appeal No. 2489 of 1977 had applied on July 20, 1976 for a learner's licence to drive heavy motor vehicles. The Respondent in Civil Appeal No. 2490 of 1977 as also the Respondent in Civil Appeal No. 2491 of 1977 were both running schools for imparting training in driving heavy motor vehicles and each held a licence to impart training in driving heavy motor vehicles and had trained several persons. After successful completion of their training each of them had applied for a licence for driving heavy motor vehicles. All the aforesaid applications were rejected by the Licensing Authority on the ground that the Respondents did not satisfy the requirements of the impugned sub-rule (2) of rule 5. The respondents thereupon approached the Karnataka High Court under Article 226 of the Constitution of India by filing separate writ petitions. The High Court struck down the said sub-rule (2) of rule 5 on the ground that it was repugnant to the provisions of section 7 of the Act and allowed the said four writ petitions. The Appellants, who are the State of Karnataka and the concerned Regional Transport Officers, have filed these appeals by special leave against the said judgment and order.

To appreciate what the High Court held and the arguments advanced at the Bar before us, it is necessary to refer first to the relevant provisions of the Act. Section 2 of the Act is the interpretation clause. Clause (9) of section 2 prior to its amendment by Act 47 of 1978 defined a "heavy motor vehicle" as meaning "a transport vehicle or omnibus the registered laden weight of which, or a motor car or tractor the unladen weight of which, exceeds 11000 kilograms." By the aforesaid amending Act with effect from January 16, 1979, the said clause (9) was substituted by a new clause (9) and clause (9A) which define "heavy goods vehicle" and "heavy passenger motor vehicle" respectively. We are not concerned with these amendments in the present appeals. Clause (13) of section 2 defines a "light motor vehicle" as meaning "a transport vehicle or omnibus the registered laden weight of which, or a motor car or tractor the unladen weight of which, or a motor car or tractor the unladen weight of which, does not exceed 4000 kilograms." Clause (14) of section 2 prior to its amendment by the aforesaid amending Act defined a "medium motor vehicle" as meaning "any motor vehicle other than a motor cycle, invalid carriage, light motor vehicle, heavy motor vehicle or road- roller." By the said amending Act, with effect from January 16, 1979, Clause (14) was

substituted by a new clause (14) and clause (14A) which define "medium goods vehicle" and "medium passenger motor vehicle" respectively. We are equally not concerned with these amendments in the present appeals. Chapter II of the Act deals with licensing of drivers of motor vehicles. Section 3(1) of the Act prohibits any person from driving a motor vehicle in any public place unless he holds an effective driving licence authorizing him to drive the vehicle. It further prohibits any person from driving a motor vehicle in any public place as a paid employee or from driving a transport vehicle unless his driving licence specifically entitles him to do so. Section 4 prescribes the age limit in connection with the driving of motor vehicles. Under that section no person under the age of 18 shall drive a motor vehicle in any public place and subject to the provisions of section 14 no person under the age of 20 years shall drive a transport vehicle in any public place. Section 7 deals with the grant of driving licences. The relevant provisions of section 7 at the material time were as follows:

> "7. Grant of driving licence-
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> "(1) 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 or obtaining a driving licence may apply to the licensing authority having jurisdiction in the area-
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> for the issue to him of a driving licence. (3) 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 so requires, the application shall be accompanied by a medical certificate in Form C, as set forth in the First Schedule, signed by a registered medical practitioner.
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> (5) If, from the application or from the medical certificate referred to in sub-section (3), it appears that the applicant is suffering from any disease or disability specified in the Second Schedule or any other disease or disability which is likely to cause the driving by him of a motor vehicle of the class which he would be authorized by the driving licence applied for to drive to be a source of danger to the public or to the passengers, the licensing authority shall refuse to issue the driving licence.
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> (6) 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:

> (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,-
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> (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.

(8) 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 section 4 for driving a motor vehicle or is for the time being disqualified for holding or obtaining a driving licence:

It may be mentioned that in view of the insertion of new clauses (9),(9A),(14) and (14A) in section 2 by Act 47 of 1978 sub-section 7 of section 7 has also been amended so as to provide for a person passing the test for driving a heavy goods vehicle, a heavy passenger motor vehicle, a medium goods vehicle and a medium passenger motor vehicle. As all these amendments are subsequent to the writ petitions filed by the Respondents and came into force with effect from January 16, 1979, we are not concerned with them in these appeals.

The Second Schedule to the Act specifies the diseases and disabilities absolutely disqualifying a person for obtaining licence to drive a motor vehicle or a public service vehicle. The Third Schedule to the Act sets out in detail what the test of competence to drive should consist of. Section 21 of the Act confers rule-making power upon the State Governments. Sub-section (1) of that section is in general terms and confers powers upon a State Government to make rules for the purpose of carrying into effect the provisions of Chapter II of the Act. Without prejudice to the generality of the above power sub-section (2) of section 21 enumerates specific matters in respect of which a State Government may make rules. In pursuance of the power conferred by section 21 the Government of Mysore made the Mysore Motor Vehicles Rules, 1963, now known as the Karnataka Motor Vehicles Rules, 1963. Chapter II of the said rules deals with the licensing of drivers of motor vehicles. Rule 4 prescribes that the licensing authority for issue of driving licences shall be the Regional Transport Officer of the region concerned. Rule 6 confers powers upon the licensing authority to which applications are made for authorization to drive a transport vehicle, to make enquiries regarding the character and antecedents of the applicant notwithstanding that the applicant had previously passed the test. Rule 5 of this Chapter deals with the authorization to drive transport vehicles and the necessity for such authorization. Under sub-rule (1) of rule 5 no person is to drive a transport vehicle unless a licence shall have been granted or countersigned by the licensing authority. Sub-rules (2) and (3) of the said rule 5 as originally made provided as follows:

"(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.

(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.

Provided that for grant of authorization to drive Motor Cab, it shall be sufficient if the applicant has had two years' experience in driving any Motor Vehicle other than a Motor Cycle, and provided further that for grant of authorization to drive an Auto-rickshaw, no previous experience in driving shall be necessary."

The validity of sub-rules (2) and (3) of rule 5 was challenged before the Mysore High Court in Cyril Lobo v. State of Mysore & Ors.(1) The Court held that there was a clear repugnancy between sub-rules (2) and (3) of rule 5 on the one hand and sections 4 and 7(8) of the Act on the other and that for the said reason the said sub-rules were ultra vires of the Act.

By Act 56 of 1969 with effect from October 1, 1970, clause (aa) of section 21(2) of the Act was substituted. The said substituted clause (aa) provides as follows:

"(aa)the minimum qualifications of persons to whom licences to drive transport vehicles are issued, the time within which such qualifications are to be acquired by persons holding immediately before the commencement of the Motor Vehicles (Amendment) Act, 1969, licences to drive transport vehicles, and the duties, functions and conduct of such persons."

Thereafter by the aforesaid Notification No. HD 16 TMR 73 dated July 7, 1976, the impugned sub-rule (2) of rule 5 was made by the State of Karnataka. It provides 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 vehicles."

It was on the basis of this sub-rule that the Respondents' applications for driving licence were rejected by the licensing authority.

At the hearing of these appeals the correctness of the decision of the Mysore High Court in Cyril Lobo v. State of Mysore & Ors. was not challenged before us. What was, however, contended by the Appellants was that by reason of the substituted clause (aa) in subsection (2) of section 21, the State of Karnatka had the power to prescribe qualifications of persons to whom licences to drive transport vehicles are issued and that what the said rule 5

2) did was to prescribe additional qualifications which an applicant for a licence to drive a heavy motor vehicle was to possess before he became entitled to the grant of such licence, and that by

virtue of this specific power conferred upon the State Governments by section 21(2) (aa), the State of Karnataka could validly prescribe the qualifications laid down in Rule 5(2). On behalf of the Respondents it was submitted that rule-making power could not be so conferred as to enable the rule-making authority to travel beyond the scope of the parent Act or to frame a rule which is repugnant or contrary to an express provision of the parent Act.

The Karnataka High Court in its judgment under appeal has held that: the impugned rule 5(2) is repugnant to the provisions of sub-sections (7) and (8) of section 7 of the Act on the very same grounds upon which the original sub- rules (2) and (3) of Rule 5 were struck down by that Court in Cyril Lobo's case. That there is a repugnancy between the said rule 5(2) and section 7 of the Act, is apparent on a plain reading of these provisions. The qualifications for obtaining a driving licence are laid down in sections 4 and 7 of the Act. Section 4 prescribes the qualification as to age. Under sub-section (8) of section 7 a person who is not disqualified under section 4 for driving a motor vehicle and who is not for the time being disqualified for holding or obtaining a driving licence and who is not suffering from any disease or disability specified in the Second Schedule to the Act and has passed the test of competence to drive specified in the Third Schedule of the Act carried out in a vehicle of the type to which his application for a driving licence refers, is entitled, on payment of the prescribed fee, to be granted the driving licence applied for by him. It is pertinent to note that under section 7(7) the test of competence to drive is to be carried out in a vehicle of the type to which the application refers. Thus, what the Act contemplates and requires is competence in driving the type of vehicle in respect of which the applicant is desirous of obtaining a driving licence. Further, so far as the test of competence set out in the Third Schedule to the Act is concerned, for the purpose of part I of the test, a person who passes the test in driving a heavy motor vehicle is also to be deemed to have passed the test in driving any medium motor vehicle or light motor vehicle. Thus, for the purpose of passing the test of competence to drive a heavy motor vehicle a person is not required to possess any experience in driving a medium motor vehicle. The requirement of the said sub-rule 5(2) that an applicant for a licence to drive a heavy motor vehicle should satisfy the concerned licensing authority that he has had at least two years' experience in driving any medium motor vehicle necessarily implies that such applicant has possessed a licence to drive a medium motor vehicle for a period of at least two years. Thus, while from clause (a) of sub-section (7) of section 7 it automatically follows that a person who passes the test in driving a heavy' motor vehicle is to be deemed also to have passed the test in driving any medium motor vehicle, under the said sub-rule (2) of rule 5 he cannot obtain a licence to drive a heavy motor vehicle unless he has already possessed a licence to drive a medium motor vehicle and has experience in driving it for a period of at least two years which licence he could not obtain unless he has previously passed the test in driving a medium motor vehicle. Thus, the provisions of the said sub- rule (2) of rule 5 are obviously inconsistent with the provisions of sub-sections (7) and (8) of section 7. The said sub-rule does not merely prescribe a qualification not provided for in the Act, but prescribes a qualification which is contrary to that provided in the Act. Under sub- section (8) of section 7 on satisfying the conditions provided in sections 4 and 7 and on the payment of the requisite fee, the applicant becomes entitled to the grant of a driving licence. This right of an applicant for a licence to drive a heavy motor vehicle is sought to be whittled down by the said rule 5 (2) and that too by providing a condition contrary to the provisions of section 7(7) (a). Though the substituted clause (aa) inserted in sub-section (2) of section 21 confers power upon a State Government to make rules providing for the

minimum qualifications of persons to whom licences to drive a transport vehicle are issued, such power cannot include within its scope the power to make a rule contrary to the provisions of the Act conferring the rule-making power. It is a well settled principle of interpretation of statutes that the conferment of rule-making power by an Act does not enable the rule-making authority to make a rule which travels beyond the scope of the enabling Act or which is inconsistent there with or repugnant thereto.

On behalf of the Appellants reliance was placed upon the words "and who is not for the time being disqualified for holding or obtaining a driving licence" occurring in sub-section (1) of section 7 and upon the words "or is for the time being disqualified for holding or obtaining a driving licence" occurring in sub-section (8) of section 7. On the basis of these words it was submitted that the disqualification for holding or obtaining a driving licence would include not only disqualifications laid down in the Act but also a disqualification prescribed by a rule made by virtue of the power conferred by clause (aa) of section 21 (2). We are unable to accept this submission. Sections 15 to 17 of the Act prescribe the cases in which a person can be disqualified for holding or obtaining a driving licence. Section 18(1) provides that a person in respect of whom any disqualification order is made shall be debarred to the extent and for the period specified in such order from holding or obtaining a driving licence and the driving licence, if any, held by such person at the date of the order shall case to be effective to such extent and during such period. The words in sub-sections (1) and (8) of section 7 relied upon by the Appellants, therefore, refer to a disqualification for holding or obtaining a driving licence incurred under sections 15 to 17 of the Act and not to any disqualification provided for in the rules. Had the intention of the Legislature been to provide also for a disqualification prescribed by the rules, sub- sections (1) and (8) of section 7 would have been suitably amended when clause (aa) was substituted for the old clause (aa) in section 21(2) by inserting in the said sub-sections the words "under this Act or the rules made thereunder" or by inserting other appropriate words.

In our opinion, the Karnatka High Court was right in coming to the conclusion that sub-rule (2) inserted in rule 5 of the Karnataka Motor Vehicles Rules, 1963, by the said Notification No. HD 16 TMR 73 dated July 7, 1976 was ultra vires of the Act.

In the result, these appeals fail and are dismissed with costs.

S.R. Appeals dismissed.