

IN THE HIGH COURT OF KERALA AT ERNAKULAM
PRESENT
THE HONOURABLE DR. JUSTICE KAUSER EDAPPAGATH
Friday, the 3rd day of May 2024 / 13th Vaisakha, 1946
WP(C) NO. 10798 OF 2024

PETITIONERS:

1. PRASAD M., S/O. MURUGAN, AGED 38 YEARS, THERIYIL VEEDU, ATHIYANNUR,ARALAMOODU P.O., NEYYATTINKARA, THIRUVANANTHAPURAM, PIN-695123
2. KUNJUMHAMMED M.S, S/O. SYED KUNJU, AGED 72 YEARS,SHA MANZIL, KOTTAPURAM, ALANGAD P.O., ERNAKULAM DISTRICT, PIN-683511
3. NAZAR USMAN, S/O. CM USMAN, AGED 53 YEARS, VILAYIL VEEDU, MADANVILA, PERUMATHURA P.O., THIRUVANANTHAPURAM, PIN-695303
4. NAUSHAD A., S/O. ABUBAKKAR, AGED 44 YEARS, JEELANI MANZIL, KALLIYODE, PANA VOOR P.O., NEDUMANGAD, THIRUVANANTHAPURAM, PIN-695568

RESPONDENTS:

1. THE UNION OF INDIA, REPRESENTED BY SECRETARY, MINISTRY OF ROAD TRANSPORT AND HIGHWAYS TRANSPORT BHAWAN, 1, PARLIAMENT STREET, NEW DELHI, PIN-110001
2. STATE OF KERALA, REPRESENTED BY SECRETARY ,MOTOR VEHICLES DEPARTMENT, TRANSPORT COMMISSIONERATE ,2ND FLOOR, TRANS TOWERS,VAZHUTHACAUD, THYCAUD P.O. ,THIRUVANANTHAPURAM, KERALA, PIN-695014
3. THE STATE TRANSPORT COMMISSIONER, KERALA TRANSPORT COMMISSIONERATE ,2ND FLOOR, TRANS TOWERS,VAZHUTHACAUD, THYCAUD P.O. ,THIRUVANANTHAPURAM, KERALA, PIN-695014
4. THE DIRECTOR, CENTRE FOR CONTINUING EDUCATION KERALA, CHARACHIRA, KOWDIAR P.O., THIRUVANANTHAPURAM, KERALA, PIN-695003
5. THE DIRECTOR , INSTITUTE OF DRIVER TRAINING AND RESEARCH ,KANDANAKAM, KALADY (PO), EDAPPAL, MALAPPURAM DISTRICT, KERALA, PIN-679582
6. REGIONAL TRANSPORT OFFICER,ERNAKULAM 2ND FLOOR CIVIL STATION KAKKANAD,VAZHAKKALA, KOCHI, KERALA, PIN-682030

Writ petition (civil) praying inter alia that in the circumstances stated in the affidavit filed along with the WP(C) the High Court be pleased to stay the implementation of Ext P5 and Exhibit P6, pending disposal of this writ petition.

This petition again coming on for orders upon perusing the petition and the affidavit filed in support of WP(C), this court's order dated 18.03.2024 and upon hearing the arguments of M/S. M.B.SANDEEP, K.P.SREEJA, ASWATHY JAYARAJ & VISHNU K.K., Advocates for the petitioners, CENTRAL GOVERNMENT COUNSEL for R1 & SHRI. P. SANTHOSHKUMAR, SPL. GOVERNMENT PLEADER for R2 to R6, the court passed the following:

DR.KAUSER EDAPPAGATH, J.

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WP(C) Nos.10615, 10644, 10798, 13187,
16622 & 16737/2024

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Dated this, the 3rd day of May, 2024

ORDER

All these writ petitions have been filed challenging Circular No.4/2024 dated 21/2/2024 issued by the Transport Commissioner of Kerala. As per the Circular, key changes were made and new regulations were introduced for driving test. WP(C) Nos.10798/24, 16737/24 and 16622/24 have been filed by the owners of the driving schools imparting training in driving. WP(C) No. 10615/2024 has been filed by All Kerala Motor Driving School Instructors and Workers Association and WP(C) No. 10644/2024 has been filed by the registered organization representing the motor driving schools in the State. WP(C) No.13187/2024 has been filed by an applicant who applied to obtain a driving licence.

2. The learned counsel for the petitioners submitted that the new Circular would be implemented from 2/5/2024 onwards and they pressed for an interim order to stay the implementation

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of the same. Hence, the learned counsel for the petitioners as well as the learned Government Pleader were heard on the interim relief sought.

3. The petitioners mainly challenged the Circular as one issued without authority and violates various provisions of the Motor Vehicles Act and Rules. The learned counsel for the petitioners argued before me that the power to frame Rules and prescribing guidelines for conducting driving test and issuance of licence is vested only with the Central Government and the Transport Commissioner has no power or authority to issue any such Circular. Any executive order that is violative or inconsistent with the provisions of the Central Motor Vehicles Act and Rules will not have any legal footing, submitted the counsel. They have further submitted that if the impugned Circular is implemented, it will substantially affect the rights of the driving school operators as well as the aspirants for licence. The learned counsel appearing for the petitioner in WP(C) No.13187/2024 additionally submitted that the petitioner therein has already obtained a learner's licence and is awaiting for his final driving test. Ext.P2 Circular seeks to apply retrospectively to him and those

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applicants who have passed their learner's test before 1/5/2024 while the current format of driving test was in existence to undertake the final driving test in a new format which is impermissible in law.

4. The challenge raised by the petitioners regarding the competency of the Transport Commissioner to issue the Circular in question is a larger issue to be decided in the writ petition. The question that arises for consideration now is whether the petitioners have made out a case for staying the implementation of the Circular.

5. Chapter II of the Motor Vehicles Act, 1988 deals with the driving of motor vehicles. Section 9 of the Act deals with the grant of driving licence and the test of competence in driving is conducted as per Rule 15 of the said Motor Vehicles Rules, 1989. Section 12 of the Act provides for the licencing and regulation of schools or establishments for imparting instruction in driving of motor vehicles. The driving training shall be in accordance with the syllabus prescribed in Rule 31 of the Central Motor Vehicles Rules. A perusal of the Circular would show that it is intended to streamline the procedure for the test of competence in driving in

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harmony with Rule 15 of the Central Motor Vehicles Rules prescribed for the conduct of the test of competence in driving the motor vehicles. Being the head of the Motor Vehicle Department as prescribed in Rule 405 of the Kerala Motor Vehicles Rules, 1989 formed under the provisions of Section 213 of the Motor Vehicles Act, the Transport Commissioner is competent to issue instructions which are not in violation of any of the provisions of the Act or Rules. Key changes in the Circular include limiting the number of driving test applicants supervised by a Motor Vehicle Inspector per day to 30. Additionally, vehicles with automatic gear transmission and electric vehicles are prohibited from use in the driving test. Moreover, driving schools are required to use vehicles no older than 15 years equipped with dash board cameras for testing purposes. It appears that the instructions in the Circular were issued considering the innovational improvements in vehicular mechanism and engineering, traffic conditions prevailing in the State, increasing number of road accidents in the State and to require imparting instructions in driving as per the syllabus prescribed in Rule 31 of the Central Motor Vehicles Rules.

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6. When Circular No.27/2013 was issued by the Transport Commissioner in the year 2013 to introduce basic infrastructure facilities for driving school, it was challenged before this court in several writ petitions. The challenge was made mainly on the ground that it was one issued by the Transport Commissioner without authority since the framing of regulation for driving schools falls within the exclusive premises of the Central Government. It was held by this court in Ext.R2(a) judgment that prescription made in the Circular for a uniform procedure and standard in the matter of licencing of driving schools is perfectly in order and falling within the power of the Transport Commissioner. It was found that if the instructions in the Circular do not run counter to the Central Motor Vehicles Rules, then there could be no allegation of lack of power raised against the Transport Commissioner who acts as the head of the Transport Department as prescribed in Rule 405 of Kerala Motor Vehicles Rules framed under Section 213 of the Motor Vehicles Act. A perusal of the impugned Circular *prima facie* shows instructions therein do not run counter to, but appear to be harmonious with the provisions of the Central Motor Vehicles Rules and issued to

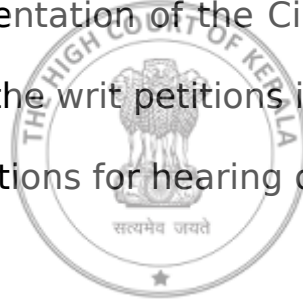
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bring standard in driving test in the light of the increasing number of road accidents, considering public safety which is the prime object of the Motor Vehicles Act. So far as the contention regarding the retrospective application of the Circular is concerned, the applicant in WP(C) No.13187/2024 cannot be heard to contend that the Circular will not apply to him in as much as he is yet to appear for the final driving test.

7. For the reasons stated above, I see no reason to grant a stay for the implementation of the Circular. Hence, the interim relief sought for in all the writ petitions is declined.

Post the writ petitions for hearing on 21/5/2024.



Sd/-

DR. KAUSER EDAPPAGATH

JUDGE

Rp

APPENDIX OF WP(C) 10798/2024

Exhibit P5

**TRUE COPY OF CIRCULAR 4/2024 ISSUED BY TRANSPORT
COMMISSIONER ON 21.02.2024**

Exhibit P6

**TRUE COPY OF CIRCULAR NO. 07A1/7/2024-KL07 ISSUED BY
THE REGIONAL TRANSPORT OFFICER, ERNAKULAM**

