

**IN THE COURT OF APPEAL OF THE DEMOCRATIC SOCIALIST REPUBLIC OF SRI LANKA**

In the matter of an Application for Orders in the nature of Writs of Certiorari and Mandamus under and in terms of Article 140 of the Constitution of the Democratic Socialist Republic of Sri Lanka.

**CA (Writ) Application No: 30/2018**

1. Colombo District Driving School Owners' Association.
2. A.S. Jayantha,  
Chairman,  
Colombo District Driving School Owners' Association.

1<sup>st</sup> and 2<sup>nd</sup> Petitioners at 67/E/B/1,  
Katuwawala, Boralesgamuwa.

**PETITIONERS**

Vs.

1. A.H.K. Jagath Chandrasiri  
Commissioner General of Motor Traffic.
2. Sanjiva Bandukeithi,  
Commissioner (Driving License),  
Department of Motor Traffic, Werahera.
3. J.A.S. Jayaweera,  
Assistant Commissioner (Technical).

1<sup>st</sup> and 3<sup>rd</sup> Respondents at  
Department of Motor Traffic,  
P.O. Box No. 533-341, Elvitigala Mawatha,  
Colombo 5.

4. Nimal Siripala De Silva,  
Minister of Transport and Civil Aviation.

5. G.S. Vithanage,  
Secretary,  
Minister of Transport and Civil Aviation.

4<sup>th</sup> and 5<sup>th</sup> Respondents at  
7<sup>th</sup> Floor, Sethsiripaya – II Stage,  
Battaramulla.

### **RESPONDENTS**

**Before:** **Arjuna Obeyesekere, J / President of the Court of Appeal**

**Counsel:** Vishwa Guneratne for the Petitioners

Sumathi Dharmawardena, P.C., with Dr Charuka Ekanayake, State  
Counsel for the Respondents

**Argued on:** 19<sup>th</sup> October 2020

**Written Submissions:** Tendered on behalf of the Petitioner on 6<sup>th</sup> March 2020 and 13<sup>th</sup>  
January 2021

Tendered on behalf of the Respondents on 5<sup>th</sup> September 2019

**Delivered on:** 21<sup>st</sup> May 2021

### **Arjuna Obeyesekere, J., P/CA**

The 1<sup>st</sup> Petitioner is the Colombo District Driving School Owners Association, a registered Trade Union under the Trade Union Ordinance. Its membership comprises of approximately sixty Driving Schools registered in the Colombo District. The 2<sup>nd</sup> Petitioner is the Chairman of the 1<sup>st</sup> Petitioner and is the owner of 'Jayantha Driving School'.

In this application, the Petitioners are seeking a Writ of Certiorari and a Writ of Mandamus, which, if granted, would make it mandatory for every person applying for a driving license to tender together with their application, a certificate issued by a driving school, even where such person may not have attended a driving school to be trained how to drive.

As a consideration of the above relief requires an interpretation of Regulation 8 of the Motor Traffic (Driving Schools, Driving Instructors and Assistant Driving Instructors) Regulations No. 1 of 2015 published in Extraordinary Gazette No. 1939/4 dated 2<sup>nd</sup> November 2015, marked 'P5', it would be useful to commence by considering the applicable legal provisions relating to driving schools and the registration of such schools.

In terms of Section 139F(1) of the Motor Traffic Act No. 14 of 1951, as amended (the Act), no person shall carry on the business of a driving school except under the authority and in accordance with the terms and conditions of a license issued by the 1<sup>st</sup> Respondent, the Commissioner General of Motor Traffic. A 'driving school' has been defined in Section 139N of the Act to mean an '*establishment where persons are given instruction in the driving of motor vehicles for a fee or reward*'.

While the procedure to apply for a driving school license is set out in Section 139G(1) of the Act, Section 139G(2) provides as follows:

*"No driving school license shall be issued to any person unless he –*

- (a) possesses or has at his disposal the prescribed kind of motor vehicles to be used for driving instruction and driving tests in the driving school;*
- (b) has the facilities to carry on the driving school in a proper or satisfactory manner and employ licensed driving instructors in that school."*

In terms of Section 139M of the Act, Regulations may be made *inter alia* regulating the activities of driving schools and prescribing the manner in which driving schools should be conducted. The Minister of Transport and Civil Aviation has accordingly made the said Regulations No. 1 of 2015 marked 'P5'. Regulation 1 thereof provides

that the Regulations shall apply in respect of new driving schools, as well as in respect of existing driving schools, with effect from 1<sup>st</sup> January, 2017.

In terms of Regulation 3 of '**P5**', any person who applies for registration of the business of a driving school shall have *inter alia* facilities for delivering lectures with a displaying system model of a motor vehicle and facilities for technical training.

Regulation 6 provides as follows:

*"The person who carries on a business of a Driving School shall –*

- (a) report to the Commissioner General within one week of any changes to the respective Driving School;*
- (b) issue a receipt for fees received from learners and retain the duplicate or counterfoil;*
- (c) include the license number of the Driving School in any correspondence, notice or advertisement regarding the Driving School;*
- (d) not issue or publish any notice or advertisement which is misleading and deceptive;*
- (e) obtain prior approval of the Commissioner General for publishing notices and printing advertisements;*
- (f) not engage any person as a Driving Instructor or Assistant Driving Instructor who does not possess a valid Driving Instructors License;*
- (g) only use a vehicle for which a Certificate of Fitness has been issued and approved by the Department for training purposes;*
- (h) not engage or permit the instructors to engage in any malpractice or irregularity;*
- (i) be responsible for proper maintenance of records, registers, books and accounts;*

- (j) to make all payments of fees and charges required under these regulations; and*
- (k) be personally liable under any written law if the provisions of these regulations have not been complied with.”*

In terms of Regulation 7 of **‘P5’**:

*“ Every Driving School shall maintain a register which shall include the following information –*

- (a) Name, address and age of trainees;*
- (b) Date of registration;*
- (c) Date of commencement of the training session, time of commencement at the wheel, kilometers driven, time of conclusion at the wheel, amount of lecture hours of theoretical training on mechanical knowledge, ethics, road signs and road rules;*
- (d) Instructors’ names; and*
- (e) Vehicle numbers.”*

While the syllabus and curriculum to be followed by the driving school when providing the training is set out in Regulation 23, Regulation 8, which is the Regulation that has given rise to this application, reads as follows:

*“At the end of the training course the Driving School shall issue a Certificate to the learner stating that the training course has been successfully completed, to enable the learner to attach the said Certificate to the application for a Driving License at the time of the practical test.”*

The Petitioners state that in May 2017, the 3<sup>rd</sup> Respondent, the Assistant Commissioner of Motor Traffic (Technical) made it mandatory for every person applying for a driving license to produce a certificate issued in terms of Regulation 8.

However, the said decision had been reversed by the 1<sup>st</sup> Respondent, as reflected in the letters dated 2<sup>nd</sup> May 2017 and 4<sup>th</sup> May 2017 issued by the 2<sup>nd</sup> Respondent marked '**P8**' and '**P9**' respectively. Aggrieved by the said decision, the Petitioners filed this application, seeking *inter alia* the following relief:

- a) A Writ of Certiorari to quash the decision in '**P8**' and '**P9**' not to require a certificate in terms of Regulation 8 at the practical test conducted for the issuance of driving licenses;
- b) A Writ of Mandamus directing the 1<sup>st</sup> Respondent to give effect to Regulation 8.

In order to succeed with the Writ of Certiorari, the Petitioners must establish that the Respondents have acted illegally, unreasonably or that there has been a procedural impropriety in the decision making process. Similarly, for the Petitioners to succeed with the prayer for the Writ of Mandamus, they must establish that they have a legal right to the performance of a public duty by the Respondents.<sup>1</sup>

The argument of the learned Counsel for the Petitioners was that even though members of the 1<sup>st</sup> Petitioner provide a Certificate in terms of Regulation 8 to all its trainees, the 1<sup>st</sup> Respondent has failed to make it mandatory for those applying for a driving license to produce such certificate. The position of the learned Additional Solicitor General is that Regulation 8 has been imposed as part of the overall scheme to regulate driving schools. He submitted further that regulating driving schools and mandating qualifications for those applying for a driving license are two separate issues.

It is clear that the Regulations '**P5**' have been introduced to regulate the business of driving schools for which the 1<sup>st</sup> Respondent has the authority to issue licenses in terms of Section 139G. The stringent requirements that must be followed by a licensee have been set out in detail in Regulations 6 and 7. Having conducted the training, Regulation 8 imposes an obligation on the driving school to issue to every licensee, the Certificate specified in Regulation 8. The learned Additional Solicitor General has quite rightly submitted that the requirement to provide a trainee with a certificate has been imposed as part of the regulation of a driving school.

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<sup>1</sup> See *Ratnayake and Others vs C.D.Perera and others* [1982] 2 Sri LR 451.

Furthermore, as claimed by the Petitioners, all driving schools issue the said certificate to all their trainees. Hence, the necessity for this Court to make it mandatory that a driving school issue such certificate **to its trainees** does not arise.

I shall now consider if the submission of a certificate specified in Regulation 8 can be made mandatory in respect of all those who are applying for a driving license, irrespective of the applicant having attended a driving school. Prior to doing so, it would be useful to briefly consider the provisions of the Act relating to the issuance of a driving license.

Section 122(1) of the Act provides that for the purposes of the Act, motor vehicles shall be divided into the classes specified in the Schedule to that Section. Section 122A(1) provides for three categories of permits or licenses in respect of motor vehicles, namely:

- (a) Learner's permit;
- (b) Driving License for light motor vehicles; and
- (c) Driving license for heavy motor vehicles.

In terms of Section 123(2), a person who does not hold a driving license and who wishes to learn or to be permitted to drive a motor vehicle shall make an application to the 1<sup>st</sup> Respondent for a Learner's Permit. The 1<sup>st</sup> Respondent shall, having conducted a theory examination for the purpose of ascertaining whether the applicant is competent to be granted a Learner's Permit, and having satisfied himself that the applicant has successfully completed the said examination and complied with the other requirements specified therein, issue such person with a Learner's Permit. Such person shall thereafter apply and obtain an 'L' permit, which shall entitle such person to drive a vehicle on the road accompanied at all times by a person in possession of a driving license. On completion of a period of three months from the date of issue of such permit, the holder of a Learner's Permit shall be eligible to apply to convert his Learner's Permit into a Regular Driving License. It would thus be seen that it is not mandatory that a person seeking a Learners Permit

or having obtained a Learner's Permit in order to drive a vehicle must register him/her self with a driving school licensed by the 1<sup>st</sup> Respondent.

In terms of Section 124(1), every application for a driving license to drive a light motor vehicle shall be accompanied *inter alia* by a medical certificate certifying that the applicant is physically fit and mentally alert to drive a motor vehicle. Section 124(2) provides that every applicant for a driving license shall prove to the satisfaction of the 1<sup>st</sup> Respondent that he/she has been a learner driver for at least three months from the date that he obtained the 'L' plate. Additional requirements have been specified in Section 124(3) with regard to a driving license to drive a heavy motor vehicle. It is noted that Section 124(2) does not, for good reason, make it mandatory that a certificate from a driving school should form part of the application for a driving license, as such a requirement would mean that every applicant should have attended a driving school.

Section 125(2) reads as follows:

*"No driving licenses shall be issued to any person unless he has, within the thirty days immediately preceding the date on which the license is required, passed a driving test conducted by the Commissioner or by some other person authorised for the purpose by the Commissioner, and satisfied the Commissioner or such other person, as the case may be-*

*(a) that he is competent to drive, without danger to the public and with due consideration for other users of the road, a motor vehicle of the class or classes for which the license is required; and*

*(b) that he is full conversant with the contents of the highway code."*

The Act has not made it mandatory for a person who wishes to obtain a driving license to join a driving school or to produce a certificate stating that he has completed a training course in driving. Therefore it cannot be made mandatory for a person who applies for a driving license to produce a certificate from a driving school. I am therefore in agreement with the submission of the learned Additional Solicitor General that the production of a certificate from a driving school in terms of



Regulation 8 of 'P5' is not a mandatory requirement for a person applying for a license. To impose such a requirement which is not provided for in the Act by way of Regulations would be *ultra vires* the provisions of the Act. I am therefore in agreement with the learned Additional Solicitor General that the application of the Petitioner is misconceived in law.

In the above circumstances, I do not see any legal basis to grant the relief prayed for by the Petitioners. This application is accordingly dismissed, without costs.

**President of the Court of Appeal**