

THE NATIONAL ASSOCIATION OF THE DEAF AND ANR V. UNION OF INDIA & ANR, IN THE HIGH COURT OF DELHI, W.P. (C) NO. 6250/2010, DECIDED ON 24.11.2011

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The aforementioned Writ petition under Article 226 of Constitution of India was filed in the High Court at Delhi for issuance of Mandamus or appropriate direction towards the Respondent to grant driving licenses to deaf persons. It was petitioned that a Writ of Certiorari to be issued for quashing of any policy decision which creates any kind of restriction or limit on issuance of driving license to the deaf person.

Antecedent:

At the very beginning it needs to be addressed that a Writ Petition concerning issuance of Driving License to the Deaf was filed in the Supreme Court of India and was dismissed as it was withdrawn with permission to make representation before the concerned authority. Post such representation by the Petitioner before the Ministry of Surface Transport, who in response informed the Petitioner that the department was considering issuance of license to deaf along with Automative

Research Association of India, Director General of Health Services and National Road Safety Council.

In 2009, Petitioner No. 2's application for grant of learner's license under Motor Vehicles Rules, 1989 was rejected on the ground of hearing impairment.

Petitioner's Contention:

The petitioner argued that the deaf persons are protected under Person with Disabilities (Equal Opportunities Protection of Rights and Full Participation) Act, 1995 and are also entitled to be treated at par under Article 14 of the Constitution of India. Furthermore it was argued Motor Vehicles Act, 1988 provides for no provision which prohibits for grant of license to totally deaf persons. At this juncture it should also to be noted that the medical form does have question relating to deafness. The petitioner urged this to be unwarranted as authorities cannot deny license merely on the ground of deafness without any specific medical opinion or

certificate which vouches for the argument that it impairs or adversely affects the driving capability of an applicant.

The Petitioner further drew support from UN Multilateral Road Traffic Convention, 1952, UN Convention on Road Traffic, 1968, UN Convention on the rights of persons with disabilities ratified by India in 2007. The petitioner argued that a person with international driving license can drive in India even if he is deaf, which creates a situation against the ones with hearing impairment applying for driving license in India. The petitioner further bolstered his argument through studies which have found that due to the benefit of not undergoing auditory distractions, people with hearing impairment make safer drivers of motor vehicles than the others. In a survey by International Association Traffic and Safety Science in countries like Japan, the United States of America, Great Britain, Australia, and France have allowed to get a car driving license unless they suffer from another disability. It also can be seen that additional equipment were affixed to ensure safety standards.

Respondent's Argument

The Respondent submitted the Central Motor Vehicles Rule- Technical Standing Committee's 21st Meeting (2007) minutes
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that on several grounds decided not to recommend the person with hearing impairment to drive motor vehicles in India. Ministry of Road Transport and Highways also subscribed to the recommendation made by the committee. Respondent further submitted that the International Conventions which have been pressed into service were not applicable to the Indian Conditions and have been considered by an expert body only to conclude that they don't have much relevance with domestic traffic condition. It is unfair to draw comparisons with Indian Traffic Condition and that of developed nations. The respondent further argued the Motor Vehicles Act, 1988 if appropriately scrutinised, would reveal that there exists no absolute prohibition but lay certain conditions which are essential for safe driving.

The Court Observations

The Court took a note on all the arguments of the Petitioner and Respondent and the relevant statutes, rules, committee minutes and conventions.

The Court specifically read the provisions from the Central Motor Vehicles Act, 1988 w.r.t. Necessity for driving licence, Age limit in connection with driving of motor vehicles, Restrictions on the granting of learner's licences for certain vehicles,

Grant of learner's licence, Grant of driving licence further the court made specific reference to the rules under Motor Vehicles Rules, 1989 Medical certificate, Application for learner's licence, Application for a driving licence, Driving test and Form 1A. For sake of brevity same is not reproduced under this case comment.

By reading into the above provisions and rules the Court came to the opinion that there exist two kinds of licenses: (i) learners and (ii) driving license. While if an individual applies for non-transport learner's license the filling of medical certificate is not necessary. The applicant must act in accordance with Rule 11, 14, and fulfil rule 15 conditions to obtain learner or driving license. In the light of aforementioned provisions the Court took note of the the minutes of the meeting of the Ministry of Road Transport and Highways held on 9.12.2009 that:-

“(i) Indian roads have far more hazards than in those countries which have been referred to in the petition. This is evident from the fact that there is highest number of road facilities worldwide occurring due to road crash in India. Indian roads have dense vehicle population.

The pattern of driving is also mix. Besides, there is also lack of traffic discipline. While using the roads, it is predominantly required to give audio signal to the vehicles around to caution other drivers or for giving way. Such situations are not seen in developed countries.

(ii) Use of rear view mirror may not be a full proof solution because vehicles often are not fitted with such mirrors on both sides. Even if they are fitted on the vehicle, the users often fold them back.

(iii) In case of hilly roads, it is mandatory to blow horn on the sharp as well as blind corners. The driver would be in a dangerous position if he is unable to hear the audio signal.

(iv) While driving the vehicle, inside noise, such as running of engine, tyre noise etc. is an indicator for the health and safety of the vehicle. The deaf person will be in an unsafe situation because he will not be able together these signals.

(v) Luxury vehicles are often fitted with audio systems. Loud music inside the vehicle may pose unsafe situation but purely by the choice of the driver and

hence, cannot be made a ground for allowing deaf persons to drive.

(vi) The UN Convention on Rights of Persons with Disabilities does not qualify the extent of deafness.

(vii) In developed countries, there is a system for imparting training to deaf people in order to obtain driving licence. There is no such system prevalent in the country.

(viii) International Driving Permit is valid for one year only and thereafter even a foreign national is required to obtain the driving licence afresh as per the existing rules and regulations in the country. Thus, analogy given in this regard between the foreign national and Indian national is not correct.

(ix) Every year a large number of accidents took place in the country involving motor vehicles on roads. Many of them prove to be fatal. During the year 2007 alone, there were around 4.8 lakhs road accidents which killed around 1.15 lakh people and injured more than 5 lakhs person in India. While the Government has been making all efforts to bring down the rate of accidents substantially, it cannot afford to take the risk of endangering the

lives of deaf drivers as well as other road users.

Keeping in view of the above, the Committee did not recommend that deaf persons be allowed to drive motor vehicles in the country. The Committee, however, reiterated its earlier recommendations to endorse the views of health experts which was as follows:

-Hearing levels upto 60 db with use of hearing aid in better ear may be permitted for issue of driving licence for private vehicle and hearing level upto 40 db with hearing aid in better ear may be permitted for issue of driving licence for commercial vehicle. Persons suffering with severe and persistent vertigo should not be issued a driving licence.”

In the light of these observation the Court came to the opinion that persons who have hearing level upto 60 db with use of hearing aid in better ear may be permitted for issue of driving licence for private vehicle and hearing level upto 40 db with hearing aid in better ear may be permitted for issue of driving licence for commercial vehicle. Court rejected the the argument of the Petitioner, that if the persons with total deaf aren't permitted to hold driving

license it would lead to defeat the purpose of Person with Disabilities (Equal Opportunities Protection of Rights and Full Participation) Act, 1955 as it was a statute passed by the legislature to give effect to Proclamation on the Full Participation and Equality of People with Disabilities in the Asian and Pacific Regions (1992). The court looked into the provisions therein w.r.t. disability, hearing impairment, and how government should identify posts to reserve for persons with disability and how much post must be reserved. Hence it is apparent that the issuance of driving license stands on a different footing than reservation and education.

The Court keeping in view of the above position opined that by this committee minutes which is to be considered as a policy for the issue raised in the Writ Petition and does define certain criteria which needs to be fulfilled for issuance of driving license. It is not an arbitrary denial as one needs to look at the ground realities before incorporating or borrowing laws and practice from a third nation. Keeping all in mind if the Petitioner's writ is allowed then the objective of the legislation would be defeated.

The Court did take note of the Petitioner's Arguments on the capacity of certain person suffering from total deafness and there is prevalent practice in many countries where totally deaf may be granted driving license but keeping in view with the Policy decision and Indian context it is for the larger interest the writ petition is not justified. However, if an applicant is totally deaf and applies for learner's license without medical certificate then he must be called for test under rule 11 and if he clears then must be given Learner's License as per the statute and if he clears the subsequent test for driving license he must be granted one.

Reviewer's Comment

In my opinion the court did consider the arguments of both the petitioner and respondent. Only after taking due consideration of the International Convention, Practice around the world read along with the Motor Vehicles Act, Motor Vehicles Rules, and Person with Disabilities (Equal Opportunities Protection of Rights and Full Participation) Act it came to the conclusion which is indeed progressive. The Court correctly, did not out-rightly rule out the possibility of grant of driving license to the people with hearing impairment rather laid down that provided the conditions being met in

accordance with the Motor Vehicles Statutes.

The Court further observed correctly that although there does exist a practice in many foreign nations which provides for driving license to the hearing impairment but it would unfair to draw comparison with the developed nations and the infrastructural facility with the nation like India. Giving effect to International Convention for all practical purpose may not be feasible by all nations because economically and socially there do exist a stark difference. Indian Roads and traffic situation is at present is not prepared to provide to cater to people with total hearing disability keeping in view with the minimum safety standards.