

IN THE HIGH COURT OF KARNATAKA AT BANGALORE
(ORIGINAL JURISDICTION)

W.P. No. _____ / 2018

BETWEEN

1. Virupakshappa Saravoonda
S/o Ramappa Saravoonda,
Aged about 29 years
Residing at # 11/7, 21st Main
22nd Cross, Vijaya Nagar
Bangalore - 581 111

2. Dinesh Kumar
S/o Sharanabasappa Biradar,
Aged about 29 years
Residing at LIG 59, Shanti Nagar
MSK Mill Road,
Gulbarga - 585 103

...PETITIONERS

AND

1. Karnataka State Public Services Commission
Udyog Souda, Daerah Devaraj Urs Road
Near Vidhan Souda,
Bengaluru - 560001

2. State Government of Karnataka
Transport Department
1st Floor, 'A' Block, TTMC Building,
Shantinagar,
Bengaluru - 560 027
Represented by the Commissioner of Road and Transport

3. State Government of Karnataka
Department of Women and Child Development and
Empowerment of Differently Abled and Senior Citizens
M.S. Building, Dr. B. R. Ambedkar Road,
Bengaluru – 560 001
Represented by its Principal Secretary

4. Office of the State Commissioner for Persons
with Disabilities
40, Tambuchetty Road, Near-IDBI Bank
Cox Town,
Bengaluru - 560005

5. Union of India
Through the Ministry of Road and Transport
Sansad Marg, Gokul Nagar
Sansad Marg Area
New Delhi – 110 001

...RESPONDENTS

**MEMORANDUM OF PETITION UNDER ARTICLES 226 AND 227 OF THE
CONSTITUTION OF INDIA 1950**

The Petitioners submit as follows:

1. The present petition has been brought by the Petitioners challenging the recruitment process of Respondent No. 1 for the post of Inspector of Motor Vehicles and the provisional list of candidates released on 30.06.2017 selected for the said post, released by Respondent No. 1. Respondent No. 1 in its Notification No. R(2) 1312/2015-16/PSC dated 04.02.2016 ("**Notification dated 04.02.2016**") invited applications for 11 posts of Regional Transport Officer and 150 posts of Inspector of Motor Vehicles. Of the 150 posts advertised for appointment of Inspector of Motor Vehicles, 8 posts have been identified and reserved for persons with hearing impairments. However, despite the said reservation, the Petitioners, being persons with hearing impairments, have not been able to apply for the post of Inspector of Motor Vehicles, as Respondent No. 2 has refused to grant a driving license for heavy goods vehicles and heavy passenger motor vehicles to persons with hearing impairment, thus nullifying the effect of the job being identified and reserved for persons with hearing impairment. Further, the provisional list released by Respondent No. 1 has not selected any person with a hearing impairment, contrary to the law and the notifications issued by the Government of

Karnataka in this regard. Aggrieved by the actions of Respondent Nos. 1 and 2, which are contrary to the law and policy of the Government of Karnataka, the Petitioners have filed this petition.

BRIEF FACTS:

2. The Petitioners are both persons with disabilities having hearing impairment and fall within the scope of the Rights of Persons with Disabilities Act, 2016. The Petitioner No.1 has 55% hearing impairment and the Petitioner No. 2 has 62% hearing impairment.

(A copy of the Disability Certificate dated 21.02.2014 of Petitioner No. 1 is annexed hereto and marked as **ANNEXURE – A**)

(A copy of the Disability Certificate dated 27.03.2014 of Petitioner No. 2 is annexed hereto and marked as **ANNEXURE – B**)

3. It is submitted that the Petitioners are interested in applying for the post of Motor Vehicles Inspector. This post has been identified as being suitable to be carried out for persons with hearing impairment, by the Ministry of Social Justice and Empowerment, vide Notification No. 16-15/2010-DD-III dated 29.07.2013. Further, the Respondent No. 3 i.e. Department of Women & Child Development & Empowerment of Differently Abled and Senior Citizens has also identified the post of Inspector of Motor Vehicles, falling under Group C, as being capable of being held by persons with disabilities, and within all the categories of persons with disabilities this post has been identified as being reserved for persons with hearing impairment and locomotor disability, vide Notification No. WCD 13 PHP 2014 dated 04.08.2015. This was done under Section 32 (1) of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995, identifying posts for which reservation be provided for persons with disabilities. This identification and reservation of posts falls under Section 33 of the new Rights of Persons with Disabilities Act 2016.

(A copy of the extract of the Notification No. 16-15/2010-DD-III dated 29.07.2013 is annexed herein and is marked as **ANNEXURE – C**)

(A copy of the Notification No. WCD 13 PHP 2014 dated 04.08.2015 is annexed hereto and marked as **ANNEXURE – D**)

4. In this background, the Respondent No. 1 issued Notification dated 04.02.2016 calling for applications from eligible and interested candidates for 11 posts of Regional Transport Officer and 150 posts of Inspector of Motor Vehicles. The Notification dated 04.02.2016 sets out the eligibility conditions, the manner of application for the posts as well as other details such as reservations for various categories of persons and age relaxations provided, if any. Out of the 150 posts to be filled for Inspector of Motor Vehicles, the reservation provides for persons with disabilities is as follows:

	No. of posts	Posts reserved for PH (Hearing Impaired and Locomotor Disability)
Original cadre	127	5
Hyderabad – Karnataka region	23	3
Total	150	8

(A copy of the Notification dated 04.02.2016, issued by Respondent No. 1 is annexed hereto and marked as **ANNEXURE – E**)

5. Further, the Notification dated 04.02.2016 also relaxed the age limit for persons with disabilities by extending the prescribed maximum age by 10 years. It is evident that the Government of Karnataka, through Respondent Nos. 1 and 2, have recognised that persons with hearing impairment are capable of fulfilling the role and responsibilities of an Inspector of Motor

Vehicles. The eligibility requirements for the post of Inspector of Motor Vehicles are provided as follows:

- a. Minimum general educational qualification of a pass in X standard;
- b. Holder of a diploma in Automobile Engineering / Mechanical Engineering of three years duration awarded by the State Board of Technical Education or a degree in Automobile Engineering / Mechanical Engineering from a recognised University;
- c. Working experience of at least one year in a reputed automobile workshop which undertakes repair of both light motor vehicles, heavy goods vehicles and heavy passenger motor vehicles fitted with petrol and diesel engine.
- d. Must be a holder of a current driving license to drive motor cycle, heavy goods vehicles and heavy passenger motor vehicles.

6. Vide letter No. TC/Reg-2/Viva-200/2004-05 dated 28.07.2005, Respondent No. 2 had already directed that persons with hearing impairments may be sanctioned driving licenses on satisfaction of the hearing level of the candidates and after submission of the concerned medical certificates. The Petitioners, who are both hearing impaired, were interested in applying for the post of the Inspector of Motor Vehicles. They have been granted regular driving licenses. With respect to the post of Inspector of Motor Vehicles, the Petitioners have fulfilled the eligibility requirements except for a driving license for motor cycle, heavy goods vehicles and heavy passenger motor vehicles.

(A copy of the letter No. TC/Reg-2/Viva-200/2004-05 dated 28.07.2005 is annexed hereto and marked **ANNEXURE – F**)

(A copy of the driving licenses of the Petitioners are annexed herein and are marked as **ANNEXURE – G collectively**)

(A copy of the experience letters of the Petitioners are annexed herein and are marked as **ANNEXURE – H collectively**)

7. Thereafter, on 04.02.2016, Petitioner No. 2 attempted to apply for the post of Inspector of Motor Vehicles. However, as both Petitioners only held a driving license for light motor vehicles and did not possess a driving license for a heavy goods vehicles and heavy passenger motor vehicles, both of them were unable to complete the application form since the application form required them to enter their driving license number authorizing them to drive heavy motor vehicles. They were both therefore unable to apply for the post of Inspector of Motor Vehicles.

8. Significantly, the Petitioners being hearing impaired are not even being allowed to apply for an obtain a driving license for heavy goods vehicles and heavy passenger motor vehicles by the Road Transport Authority on the ground that such driving licenses were not granted to persons with disabilities. Hence, while the post of Inspector of Motor Vehicles is identified as being capable of being held by persons with hearing impairment, such persons, like the Petitioners, are not permitted to test for and obtain a driving license for heavy motor vehicles which is one of the eligibility requirements for the said post, thus defeating the very purpose of identification and reservation.

9. It is pertinent to note that the Petitioners have all other eligibility requirements. However, due to not having a license for heavy motor vehicles, the Petitioners were unable to apply for the post of Inspector of Motor Vehicles, despite 8 seats being reserved for persons with hearing impairments. In view thereof, the Petitioner No. 1 addressed a letter dated 15.02.2016 to Respondent No. 4 stating that the Road Transport Authority had intimated him that driving licenses would not be issued to persons with hearing impairments, on account of which Petitioner No. 1 was unable to complete his application for the post of Inspector of Motor Vehicles on time. Further, Petitioner No. 2 addressed a letter dated 06.02.2016 to Respondent No. 1 seeking a clarification on how Respondent No. 1 had

reserved seats for physically handicapped persons when the Road Transport Authority is refusing to issue driving licenses to physically handicapped persons. The Petitioner No. 2 also addressed a letter dated 26.02.2016 to Respondent No. 2 seeking a similar clarification.

(A copy of the letter dated 15.02.2016 addressed by Petitioner No. 1 to Respondent No. 4 is annexed hereto and marked as **ANNEXURE – J**)

(A copy of the letter dated 06.02.2016 addressed by Petitioner No. 2 to Respondent No. 1 is annexed hereto and marked as **ANNEXURE – K**)

(A copy of the letter dated 26.02.2016 addressed by Petitioner No. 2 to Respondent No. 2 is annexed hereto and marked as **ANNEXURE – L**)

10. In response to Petitioner No. 2, Respondent No. 1 addressed a letter dated 22.02.2016 referring to the letter dated 06.02.2016 and stating that the Notification dated 04.02.2016 was issued on the basis of the revised proposal submitted by Respondent No. 2 and for more information the concerned department may be contacted, as Respondent No. 1 is only a selection authority.

(A copy of the letter dated 22.02.2016 addressed by Respondent No. 1 to Petitioner No. 2 is annexed hereto and marked as **ANNEXURE – M**)

11. The Petitioners had also made representations to the Respondent No. 4 in this regard. Therefore, the Respondent No. 4 addressed a letter dated 24.02.2016 to the Respondent No. 1 asking them to consider whether vehicle driving license is required for the post of Motor Vehicle Inspector as providing an exemption from the same would provide opportunities to eligible disabled candidates and further requested Respondent No. 1 to take action in the matter, provide information to the appellant on the action taken and submit a report to Respondent No. 4.

(A copy of the letter dated 24.02.2016 addressed by Respondent No. 4 to Respondent No. 1 is annexed hereto and marked as **ANNEXURE – N**)

12. The Respondent No. 4 also addressed a letter dated 04.03.2016 to Respondent No. 2 stating that 5% reservation has been provided for persons with disabilities under Group "C" for the post of Inspector of Motor Vehicles. However, as the driving license was required for the purposes of the application, the eligible disabled candidates were unable to apply for the post. Respondent No. 4 requested that, in view of SL No. 206 where the Central Government has identified Group "C" posts for persons with hearing impairment having capacity to drive with the help of suitable accessories, the selection process be conducted after issuance of the vehicle driving license or an exemption be provided to candidates with disabilities from submitting a driving license.

(A copy of the letter dated 04.03.2016 addressed by Respondent No. 4 to Respondent No. 2 is annexed hereto and marked as **ANNEXURE – P**)

13. In view of the letter dated 24.02.2016 addressed by Respondent No. 4, Respondent No. 1 addressed a letter dated 04.03.2016 to Respondent No. 2 stating that Respondent No. 4 has requested an exemption from possessing a driving license for candidates with disabilities so that they may be considered for the post. The letter further requested Respondent No. 2 to consider the matter and take a decision on the request as Respondent No. 1 is not authorised to decide on the same.

(A copy of the letter dated 04.03.2016 addressed by Respondent No. 1 to Respondent No. 2 is annexed hereto and marked as **ANNEXURE – Q**)

14. Thereafter, the Respondent No. 2 addressed a letter dated 21.04.2016 to the Respondent No. 2 Transport Department stating that with regard to the appointment of Inspector of Motor Vehicles for the 150 empty posts, Respondent No. 4 had requested that an exemption be granted to persons with disabilities from obtaining vehicle driving license but normally, vehicle driving license is not issued in normal cases to persons with disabilities. The letter further stated that the qualifications for the post and the Motor

Vehicles Act, 1988 specifies that candidates should hold vehicle driving license compulsorily, and exemption is not provided to disabled candidates and further, that Respondent No. 2 and the State Government do not have the power to carry out an amendment to the Motor Vehicles Act, 1988. Therefore, Respondent No. 2 suggested that the opinion of the Central Government may be obtained in the matter.

(A copy of the letter dated 21.04.2016 addressed by Respondent No. 2 is annexed hereto and marked as **ANNEXURE – R**)

15. Due to the inaction of Respondent Nos. 1 and 2 in ensuring that persons with disabilities are able to apply for the post of Inspector of Motor Vehicles, the Respondent No. 4 once again addressed a letter dated 24.06.2016 to the Respondents No. 1 and 2. The letter further noted that upon registering the matter suo moto before the Court of Commissioner of Disabled Persons, it was learnt that no action has been taken on the instruction given by Respondent No. 4, which is a clear violation of Section 32 of the Disabled Persons (Equal Opportunity, Protection of Rights and Full Participation) Act, 1995. Therefore, Respondent No. 4 once again requested that candidates having hearing impairment be considered in the recruitment process or that the Notification dated 04.02.2016 be cancelled and a fresh notification with amendment be issued for giving persons with hearing impairment the opportunity along with general candidates.

(A copy of the letter dated 24.06.2016 addressed by Respondent No. 4 be annexed hereto and marked as **ANNEXURE – S**)

16. Pursuant to the request for the opinion of whether persons with disabilities may be issued driving licenses for heavy motor vehicles, vide letter No. RT-11201/40/2014-MVL dated 28.10.2016, the Respondent No.5 directed the Principal Secretaries (Transport)/The Secretaries (Transport)/The Transport Commissioners of all the States/UT Administrations except the Government of Tamil Nadu and Gujarat and the Secretary

(Home/Transport), Government of Tamil Nadu and Gujarat, to consider the applications for driving licenses to hearing impaired applicants under Section 8(4) of the Motor Vehicles Act, 1988, and stated as follows:

“2. Driving is primarily a visual function with little inputs from hearing. Many developed countries give hearing impaired people the privilege of being able to drive. If a person is rehabilitated with hearing amplification (hearing aid or cochlear implant) and can hear reasonably with the same then there seems little reason to deprive him or her of a driving license. For patients not fully rehabilitated some countries do grant the privilege to drive. This is important with regard to opportunities we wish to grant to the disabled. It is well recognized that the loss of hearing does not pre-se impact the ability to drive. As an added precaution, should be added to display on the card a sign indicating the driver is hearing impaired. All such applicants should take a stringent driving test under the actual road condition circumstances as is the case for normal individuals.”

(A copy of the letter No. RT-11201/40/2014-MVL dated 28.10.2016 is annexed hereto and marked as **ANNEXURE – T**)

17. The Respondent No. 5, thereafter once again re-iterated and informed the Deputy Secretary, Respondent No. 2 that the Ministry had issued a circular dated 28.10.2016 to all the State Governments, on this matter.

(A copy of the letter dated 13.06.2017 is annexed hereto and marked as **ANNEXURE – V**)

18. Despite all of the above correspondence and clarification issued by the Respondent No.5 that hearing impaired persons could be issued driving licenses, which would naturally include driving licenses for heavy vehicles as well, the Respondent No. 2 did not take any action to provide the same. Hence, while noting that while 8 seats had been reserved in favour of

persons with disabilities without granting an exemption in advance, thereby not making it possible for disabled candidates to submit their applications, the Respondent No. 4 passed the following order under Section 62(b) of the Disabled Persons (Equal Opportunity, Protection of Rights and Full Participation) Act, 1995:

ORDER

Ordered by instructing the Commissioner, Transport Department to take necessary action to issue the driving license of H.T.V. and L.T.Vs. to the hearing impaired who can drive the vehicle and later by giving opportunity to the hearing disabled for selection to the post of Motor Vehicle Inspectors in the Notification of the Karnataka Public Service Commission in No. R(2) 131/2015-16.PSC, dated: 04-02-2016 , for conducting the selection process, to submit the proposal again to the Karnataka Public Service Commission.”

(A copy of the order dated 27.11.2017 of Respondent No. 4 is annexed hereto and marked as **ANNEXURE – W**)

19. However, despite the direction of the Respondent No. 5 vide letter dated 28.10.2016 and despite the repeated requests and order dated 27.11.2017 of Respondent No. 4, Respondent No. 2 has refused to grant driving licenses authorising persons with disabilities to drive motor cycle, heavy goods vehicles and heavy passenger motor vehicles.

20. However, in the meantime, the Respondent No. 2 has released the provisional list of candidates on 30.06.2017 selected for the post of Inspector of Motor Vehicles along with the details of the place and time for conducting the medical examination of such candidates. In this provisional selection list, not a single candidate with hearing impairment has been selected, despite 8 posts being reserved for them, only because no hearing impaired persons are being provided licenses for motor cycle,

heavy goods vehicles and heavy passenger motor vehicles which is one of the eligibility conditions.

(A copy of the list of provisional candidates selected by Respondent No. 2 is annexed hereto and marked as **ANNEXURE – X**)

21. Further, the medical examination of the candidates has been completed as on date and the Petitioners apprehend that Respondent No. 2 will release the final list of candidates without giving the Petitioner the opportunity to apply for the post, despite the directions of the Ministry of Road & Transport that driving license for motor cycle, heavy goods vehicles and heavy passenger motor vehicles may be granted to persons with hearing impairments, issued vide letter dated 28.10.2016 and reiterated vide letter dated 13.06.2017.

22. Being aggrieved by the inaction of and outright refusal by Respondent No. 2 in granting driving licenses for persons with disabilities to drive motor cycle, heavy goods vehicles and heavy passenger motor vehicles, and having no other alternative and equally efficacious remedy, the Petitioners have filed the present writ petition before this Hon'ble Court. The Petitioners have not filed any other Petition either before this Hon'ble Court or any other Court in respect of this course of action. The Petition is filed on the following, among other grounds:

GROUND

23. **THAT** Section 33 of the Rights of Persons with Disabilities Act, 2016 ("RPD Act") mandates the identification of posts in establishments which can be held by respective category of persons with benchmark disabilities and Section 34 mandates that every appropriate Government shall appoint not less than 4% of the total number of vacancies for a post as persons with benchmark disabilities. Reservation of seats in Government establishments for persons with disabilities was also recognised in

Sections 32 and 33 of the erstwhile Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995. In the instant case, Respondent Nos. 1 and 2 have failed to appoint any persons with hearing impairment, being persons with disabilities, to the post of Inspector of Motor Vehicles despite the same having been identified by the Respondent No. 3 and the Respondent No. 5 as posts that may be held by persons with disabilities.

24. **THAT** the Respondent Nos. 3 and 5, in reserving the post of Inspector of Motor Vehicles for persons with hearing impairment, have recognised that persons with hearing impairments are capable of fulfilling the duties and responsibilities of an Inspector of Motor Vehicles. In view thereof, 8 seats have been reserved to ensure adequate representation of persons with disabilities, in accordance with the Rights of Persons with Disabilities Act, 2016. It is evident from Notification No. 16-15/2010-DD-III dated 29.07.2013 that the nature of job and working conditions mentioned therein are capable of being performed by a person with hearing impairment. Further, Respondent No. 1 has specifically excluded persons suffering from blindness and short sight from applying for the role of Inspector of Motor Vehicles.

25. **THAT** despite the reservation of 8 posts of Inspector of Motor Vehicles for persons with hearing impairment, Respondent No. 2, by refusing to grant a driving license for motor cycle, heavy goods vehicles and heavy passenger motor vehicles, which is one of the eligibility criteria prescribed vide Notification dated 04.02.2016, has made it impossible for the Petitioners to apply for the post of Inspector of Motor Vehicles. The failure of Respondent No. 2 to make provisions for grant of driving license for motor cycle, heavy goods vehicles and heavy passenger motor vehicles to persons with hearing impairment, despite the said post being identified for

persons with hearing impairment, smacks of arbitrariness and is in violation of Article 14 of the Constitution of India, 1950.

26. **THAT** as per Section 3 of the RPD Act, every appropriate government is under a legal mandate to ensure that persons with disabilities are able to enjoy the right to equality and the appropriate Government shall take steps to utilize the capacity of persons with disabilities by providing appropriate environment. However, the conduct of Respondent No. 1 with respect to proceeding with the call for applications by way of Notification dated 04.02.2016 for the post of Inspector of Motor Vehicles, during the pendency of resolution of the issue by the Central Government and the inaction of Respondent No. 2 with respect to the issuance of driving licenses to persons with disabilities is in violation of the letter, intent and spirit of the RPD Act.

27. **THAT** despite the mandate of Section 3 that no person with disability shall be discriminated on the ground of disability, unless the actions taken are a proportionate means of achieving a legitimate aim and despite the opinion of the Central Government vide letter dated 28.10.2016 that persons with disabilities can be granted a driving license, the Respondent No. 2 is refusing to grant driving licenses to persons with hearing impairment to drive motor cycle, heavy goods vehicles and heavy passenger motor vehicles. It is submitted that the Respondent Nos. 1 and 2, by refusing to grant driving license for motor cycle, heavy goods vehicles and heavy passenger motor vehicles to the Petitioners despite 8 posts of Inspector of Motor Vehicles being identified and reserved for persons with hearing impairments, are discriminating against the Petitioners without any intelligible or rational reason for the same.

28. **THAT** the Respondent No. 5 in its letter dated 28.10.2016 directed that applications for driving licenses of persons with hearing impairments must

be considered as per para 2 of the letter, while deciding the application under Section 8(4) of the Motor Vehicles Act, 1988. The term 'driving license' includes all driving licenses, without any exceptions. Therefore, where an applicant is able to take a driving test under actual road condition circumstances for motor cycle, heavy goods vehicles and heavy passenger motor vehicles, the Petitioners submit that there exists no valid ground on which driving license for such vehicles may be denied to the Petitioners, particularly in view of the directions of the Respondent No. 5 categorically directing that 'driving licenses' may be granted to persons with hearing impairment.

29. **THAT** as per the letter dated 28.10.2016 of the Respondent No. 5, if a person has been rehabilitated with a hearing aid for hearing amplification, then there is no reason to deny such person a driving license. Further, it is noted that loss of hearing alone does not impact the ability to drive and driving licenses may be granted to applicants with hearing impairments subject to a driving test under actual road condition circumstances, similarly as in the case of normal individuals. As per the letter dated 28.10.2016, Respondent No. 2 is required to administer a driving test to persons with disabilities, including persons with hearing impairment, for granting a driving license for motor cycle, heavy goods vehicles and heavy passenger motor vehicles. However, the Respondent No. 2 has refused to do so and as such, its actions are contrary to and in violation of the directions of the Respondent No. 5.

30. **THAT** the Hon'ble Supreme Court, while deciding a petition praying for the implementation of the Persons with Disabilities Act, 1995 in letter and spirit in ***Justice Sunanda Bhandare Foundation vs. Union of India***, (2014) 14 SCC 383 has observed:

“9.Be that as it may, the beneficial provisions of the 1995 Act cannot be allowed to remain only on paper for years and thereby defeating the very purpose of such law and legislative policy. The Union, States, Union Territories and all those upon whom obligation has been cast under the 1995 Act have to effectively implement it. As a matter of fact, the role of the governments in the matter such as this has to be proactive. In the matters of providing relief to those who are differently abled, the approach and attitude of the executive must be liberal and relief-oriented and not obstructive or lethargic. A little concern for this class who are differently abled can do wonders in their life and help them stand on their own and not remain on mercy of others. A welfare State, that India is, must accord its best and special attention to a section of our society which comprises of differently abled citizens. This is true equality and effective conferment of equal opportunity.”

31. **THAT** the Hon'ble Delhi High Court in ***National Association for the Deaf &Anr vs. Union of India*** (W.P. (C) 10849/2009), while deciding a petition under Article 226 of the Constitution of India, 1950 on whether driving licenses can be granted to persons with hearing impairments, has observed:

“As has been stated earlier, for grant of a learner's licence, filing of medical certificate is not required but the applicant is required to go through the test as stipulated under Rule 11 of the 1989 Rules. For grant of a driving licence, one has to satisfy the conditions precedent as postulated under Section 9 and pass the test as stipulated under Rule 15 of the 1989 Rules. The claim of further privilege by totally deaf persons as a special category, in our consideration, is not permissible. However, we are obliged to

clarify that if an applicant is totally deaf, he has to be called for the test if he applies for a learner's licence without the medical certificate and if he passes the test as required under Rule 11, he shall be granted the learner's licence as that is the statutory requirement. Similarly, if a person belonging to the said category satisfies the necessary criteria, he shall be allowed to obtain the licence."

32. **THAT** in a similar fact situation as in the present case where the Tamil Nadu Public Services Commission invited applications for Motor Vehicle Inspector Grade – II, the Madras High Court held in ***R.Sharavanan vs. The Transport Commissioner*** (W.P. No. 9812 of 2012) that Government Departments cannot deny appointment to physically challenged persons once posts are identified. While directing that the petitioner be issued an appointment order, the court relied on the decision of the Supreme Court in *BhagwanDass&Anr vs. Punjab State Electricity Board* (2008 (1) SCC 579) which held:

"...From a narrow point of view the officers were duty bound to follow the law and it was not open to them to allow their bias to defeat the lawful rights of the disabled employee. From the larger point of view the officers failed to realise that the disabled too are equal citizens of the country and have as much share in its resources as any other citizen. The denial of their rights would not only be unjust and unfair to them and their families but would create larger and graver problems for the society at large. What the law permits to them is no charity or largess but their right as equal citizens of the country."

33. **THAT** the Respondent No. 5 has clearly recognized, in its letter dated 28.10.2016 that persons with hearing impairments can be granted driving licenses like normal individuals on the fulfilment of the conditions

prescribed by law. The Petitioners submit that no exemption is being sought from obtaining a driving license for motor cycle, heavy goods vehicles and heavy passenger motor vehicles and in fact, the Petitioners are merely seeking that the driving license for motor cycle, heavy goods vehicles and heavy passenger motor vehicles be issued to them on fulfilling the driving test under actual road condition circumstances, in accordance with the directions of the Respondent No. 5. However, Respondent No. 2 has refused to grant persons with hearing impairments such driving licenses without any discernible rationale and in complete disregard of the directions of the Respondent No. 5.

34. **THAT** the actions of Respondent No. 1 in releasing a provisional list of candidates selected for the post of Inspector of Motor Vehicles, where not a single candidate selected is a person with disabilities, and thereafter conducting their medical examination, despite the express reservation of 8 seats in favour of persons with hearing impairments and locomotor disability (one leg), is contrary to the statutory and constitutional rights of persons with disabilities, the RPD Act and Respondent No. 1's own Notification dated 04.02.2016. Moreover, the said provisional list, which does not name a single candidate with a disability despite the reservation of 8 seats in favour of persons with hearing impairment and locomotor disability, was released after the opinion of the Respondent No. 5 was received on the issue that persons with hearing impairments can be granted all driving licenses.

GROUND FOR INTERIM RELIEF

35. The Petitioners submit that the impugned provisional list of candidates under the Notification dated 04.02.2016 has been released and the subsequent medical examination of the provisionally selected candidates has been conducted in complete disregard of the terms of the Notification dated 04.02.2016, the directions of the Ministry of Road & Transport vide

letters dated 28.10.2016 and 13.06.2017 and the Rights of Persons with Disabilities Act, 2016.

36. This Petition has been filed seeking that Respondent No. 2 consider the applications of the Petitioners and grant a driving license for motor cycle, heavy goods vehicles and heavy passenger motor vehicles so that the Petitioners are able to apply for the post of Inspector of Motor Vehicles. The Petitioners submit that if the said relief is not granted prior to the completion of the selection process, despite the express reservation of 8 seats for persons with hearing impairment and locomotor disability (one leg), for the post of Inspector of Motor Vehicles, the present Petition would become infructuous and the Petitioners would suffer immeasurable harm by being deprived of an avenue of employment and income. Therefore, it is imperative that the Hon'ble High court stay the selection process that is underway for the appointment of Inspector of Motor Vehicles in the State of Karnataka during the pendency of proceedings under this Petition.

PRAYER

WHEREFORE, in light of the above facts and circumstances, the Petitioners most respectfully pray that this Hon'ble Court be pleased to:

- A. Issue a writ in the nature of mandamus directing the Respondent No. 2 to allow the Petitioners to apply for and give the test for driving license for heavy goods vehicles and heavy passenger motor vehicles and grant the 'heavy motor vehicles' driving license on fulfilment of the conditions prescribed under the Motor Vehicles Act, 1988;
- B. Issue a writ in the nature of mandamus to Respondent No. 1 to issue a Corrigendum to the impugned Notification granting additional time for applications from persons with hearing impairment and to permit the Petitioners to submit their applications for the post of Inspector of Motor Vehicles called for vide Notification dated 04.02.2016 produced

herein as **ANNEXURE – E** after obtaining the driving license for motor cycle, heavy goods vehicle and heavy passenger motor vehicles, and further direct the Respondent No. 1 to consider the applications of the Petitioners before releasing the final list of selected candidates; and

C. Grant any other relief, which the Hon'ble Court deems fit in the circumstances of the case in the interests of justice and equity.

INTERIM PRAYER

In view of the aforesaid facts and circumstances, pending hearing and final disposal of the above Petition, it is most respectfully prayed that the Hon'ble Court be pleased to stay the ongoing selection process of candidates for the post of Inspector of Motor Vehicles being undertaken by Respondent No. 1 pursuant to Notification dated 04.02.2016 produced herein as **ANNEXURE – E** and not to fill up the 8 posts of Inspector of Motor Vehicles that have been reserved for persons with disabilities with candidates from the general category; and pass any other such orders which the Hon'ble Court deems fit in the circumstances of the case in the interests of justice and equity.

Place: Bangalore

Counsel for the Petitioners

Date:

JAYNA KOTHARI

Address for Service:

Ashira Law

D6, Dona Cynthia Apartments,

35 Primrose Road

Bangalore – 560025