

IN THE WEST BENGAL ADMINISTRATIVE TRIBUNAL  
BIKASH BHAVAN, SALT LAKE CITY  
K O L K A T A - 7 0 0 0 9 1

Present :-

The Hon'ble Justice Soumitra Pal  
CHAIRMAN

-AND-

The Hon'ble Mr.P.Ramesh Kumar  
MEMBER( A )

J U D G E M E N T

-of-

Case No. - OA-1535 of 2012 : Ashis Kumar Bose & Another. ....Applicants

-Vs-

The State of West Bengal & others....Respondents

Case No. - OA-1567 of 2012 : Subir Kumar Ghosh and Others. ....Applicants

-Vs-

The State of West Bengal & others....Respondents

Case No. - OA-814 of 2013 : Tarun Chakraborty & Others .....Applicants

-Vs-

The State of West Bengal & others....Respondents

Case No. - OA-976 of 2013 : Bijay Shankar Shaw and Others.....Applicants

-Vs-

The State of West Bengal & others....Respondents

Case No. - OA-397 of 2016 : Rajen Ghosh .....Applicants

-Vs-

The State of West Bengal & others....Respondents

For the Applicants : Mr. K. Bhattacharya,  
Mr. U. K. Majumder,  
Advocates.

For the State Respondents : Mr. J. Majumder,  
Government Pleader.  
Mr. S. Ghosh,  
Mr. M. N. Roy,  
Mr.S.N.Ray  
Mr.B.P.Roy  
Advocates.

For the Private Respondents : Mr. K. Basu,  
Mrs. S. Mitra,  
Advocates.

For the Private Respondent No. 43 : Mr. P. S. Das,  
Advocate.

Since issues are identical OA-1535 of 2012, OA-1567 of 2012, OA-814 of 2013, OA-976 of 2013 and OA-397 of 2016 are taken up for hearing analogously.

In the applications the applicants, challenging the panel prepared for the post of Police Driver in Kolkata Police Department, Government of West Bengal, have prayed for an order to give them appointments after reassessing their candidature. It appears that the Kolkata Police Recruitment Board issued a notice dated 20<sup>th</sup> March, 2006 whereby applications were invited from eligible candidates for the post of Police Driver in Kolkata Police. The petitioners, who were contractual drivers under the establishment of Kolkata Police, Home Guard, Head Quarter, applied and participated in the selection process held on 5<sup>th</sup> August, 2012 and 6<sup>th</sup> August 2012. As later the applicants came to learn that the respondent authorities were going to appoint candidates, including the private respondents, who do not possess licence to drive heavy vehicles, the instant applications were filed challenging the recruitment process, the relevant portion of the prayer, as evident from the application, being OA-1535 of 2012, is as under:

*“(a) An order do issue directing the concerned respondent authorities to revoke/ cancel the panel so prepared for the post of “Police Driver in Kolkata Police Department”, Govt. of West Bengal.*

*(b) A further order to issue directing the concerned respondents authorities to give appointment to the petitioners after re-assessing their candidature.*

*(c) An order do issue directing the respondent authorities to transmit all the records pertaining to the said selection process for the post of "Police Driver in Kolkata Police Department", Govt. of West Bengal, before this Hon'ble Tribunal so that conscionable justice can be done".*

After the matter was admitted orders were passed for filing reply and rejoinder. Reply and rejoinder were filed and are on record. The matter was heard and on 19<sup>th</sup> July, 2013 applications were allowed by passing an order, the relevant portion of which is as under:

*"Thus, on hearing all the sides, when from the admission of the State Respondents, we find that there has been clear violation of the Recruitment rule and terms of the advertisement, we must hold that the entire selection process was bad in Law and that cannot be sustained and naturally, the result and effect shall also go.*

*We, therefore, allow this application by quashing the panel of the selected candidates and at the same time by setting aside their appointment with a direction to the recruitment authority to hold fresh selection in terms of the recruitment rule after making fresh advertisement with only clause that if persons already appointed acquired heavy vehicle license before holding fresh selection test, they may be given chance to participate in the selection process and not otherwise. We, however, direct that the entire selection process must be completed considering the emergent situation as highlighted by the State Respondent within a period of 6 months from communication of this order. All the parties are to act accordingly. The application is allowed".*

Aggrieved, the State respondents filed Writ Petition, being WPST-321 of 2013 along WPST-317 of 2013, WPST-362 of 2013, WPST-385 of 2013 and WPST-9 of 2017, which were allowed by the High Court by passing a judgement delivered on 8<sup>th</sup> September, 2017, the relevant portion of which is as under:

*“The Judgments cited by the writ petitioners are binding upon us wherein the correct position of the law has also been noted by the Apex Court.*

*The unsuccessful candidate had no undefiable right to be appointed, they cannot turn around after participating in the selection process for challenging the same.*

*Even in case there was material illegality or any unfairness in the selection process, the unsuccessful candidates could have challenged the same but in that case it was obligatory upon them in law and also according to the principles of natural justice to have impleaded the successful candidates providing them an opportunity of hearing. Since this has not been done principles of natural justice have been violated.*

*Though we have noted that arguments of the petitioner regarding the fact that the successful candidates were eligible for appointment as law had been amended at that relevant point of time but we refrain to give any findings on these issues as we are inclined to remand the matter to the Tribunal for re-hearing of the case after providing opportunity of all the successful candidates who have adversely affected by the order impugned.*

*However, before re-hearing we direct that the applicants in the O.A. 1535 of 2012 / respondents herein in the writ petition will implead all the successful candidates. The matter shall be heard afresh by the learned Tribunal affording an opportunity of hearing to the successful candidates. We make it clear that we have remanded this matter only on the ground of violation of principles of natural justice and non-joinder of necessary and proper parties. Therefore, the learned Tribunal shall not be influenced by any other observations we have made in this judgment.*

*For all the reasons stated above the appeal succeed and the order impugned passed by learned Tribunal in O.A. 1535 of 2012 is quashed.*

*However, there will be, no order as to costs.*

*The judgment passed in W.P.S.T. 321 of 2013 shall govern all the cases namely, W.P.S.T. 317 of 2013, W.P.S.T. 362 of 2013, W.P.S.T. 385 of 2013 and W.P.S.T. 9 of 2017”.*

Against the judgement passed by High Court special leave petitions were preferred before the Supreme Court which on 14<sup>th</sup> May, 2018 were dismissed.

After the matter was remanded before the Tribunal, additional reply was filed on behalf of the State respondents. The added private respondents also filed reply. The applicants filed a rejoinder to the reply filed by the State respondent and the private respondents which are on record.

Mr.Kamalesh Bhattattacharya, learned advocate appearing on behalf of the applicants relying on the original application and the rejoinder and referring to the reply filed by the State authorities submitted that as the advertisement dated **12<sup>th</sup> February, 2012** stipulated that a candidate must have a licence to drive heavy vehicles and not mere licence to drive and as the private respondents were not having licence to drive heavy vehicles, and were not eligible to be appointed, their appointments may be quashed. Referring to the reply filed it was submitted that as earlier before the Tribunal as the State respondents had accepted the stand of the applicants, the authorities are estopped from taking a different stand. Referring to **sections 2(16) 2 (17) 2(21), 10(2) of the Motor Vehicles Act, 1988** it was submitted that as statute categorizes the vehicles into light motor vehicles and heavy motor vehicle on the basis of laden weight, the action of the respondents in appointing the private respondents having light motor vehicle licence is arbitrary and illegal. In support of his submission reliance has been placed on the judgment passed in *Oriental Insurance Co. Ltd. v. Angad Kol*: **2009 (11) SCC 356**.

**Mr.Joytosh Majumder** learned Government Pleader, appearing on behalf of the State respondents submits that it is to be noted that applications were invited to the post of drivers to drive 2940 vehicles which

included 61 heavy motor vehicles, 118 medium motor vehicles and 2761 light motor vehicles which consisted of 1267 small cars, 7 battery cars and 1487 motor vehicles. Submission was with the amendment of the Motor Vehicles Act, 1988 in 1994, the concept of light motor vehicles and heavy motor vehicles for the grant of licence has been done away with which is clear from a reading of Section 10(2) wherein after amendment sub sections f-h have been omitted and all carriages are recognized as light motor vehicles. According to him a transport vehicle would include medium goods vehicle, medium passenger motor vehicle, heavy goods vehicle, heavy passenger motor vehicle which before amendment found place in Section 10(2) (e) to (h) and the effect of amendment with effect does not exclude transport vehicle from the purview of section 10 (2) (d) and section 2 (41) of the Act, that is light motor vehicle. In this regard reliance has been placed on the judgment passed in [Mukund Dewangan Vs. Oriental Insurance Company Limited: \(2017\) 14 Supreme Court Cases 663](#). Relying on the judgement in [State of Kerala v. Mar Apparem Kuri Company Ltd: 2012 \(7\) SCC 106](#) it was submitted that as the advertisement for recruitment was issued keeping in mind the inclusive definition of transport vehicle in section 10 (2), in view of Article 254 of the Constitution of India since Motor Vehicles Act is a central Act which prevails over the State Act, State has to accept the provisions contained in the Motor Vehicles Act. That apart as the applicants could not secure the cut off marks, they were not within the zone of consideration and thus were not selected. Assuming the private respondents were wrongly selected in view of the principles of law laid down in [Amlan Jyoti Borooh Vs. State of Assam 2009 \(3\) SCC 227](#) as the applicants had subjected themselves to the selection process now they cannot turn around and question the same.

Mr.K.Basu, learned advocate appearing on behalf of the private respondents submits that as the definition of transport vehicle is inclusive as evident from the amendment of the Motor Vehicles Act and as the applicants participated in the selection process and not having succeeded, they cannot now challenge the said selection process.

In order to appreciate the issue it is appropriate to refer to the relevant portion of the employment notice for recruitment of Police Driver in Kolkata Police which is as under: **“(iv) Technical qualification:- The applicant must possess a valid Driving License to drive heavy vehicles”**. It is evident that a driver of a vehicle must possess a valid driving licence to enable him to drive heavy vehicles. Evidently after amendment (f)-(h) of sub-section 10(2) have been omitted. The position of law in this regard has been laid down by in **Mukund Dewangan (supra)** and explained as follows:

*“From the aforesaid principles, it is apparent that plain and simple meaning has to be given to Section 10 (2). When the legislature has not amended the provision, we cannot rewrite the definition of Section 2 (21) of “light motor vehicle” and Section 10(2)(d) and full effect has to be given to the omission which has been made in the provisions of Sections 10(2) (e) to (h), by substituting transport vehicle under Section 10 (2) (e), and plain and literal interpretation of existing provisions and amended provisions has to be made. When the legislature has not amended the aforesaid provisions it is not for the court to legislate by making insertion in Section 10 (2) (e). What has not been provided in the statute with a purpose, cannot be supplied by the courts. The court has to construe a provision and not to act as a legislature. In other words, interpretation as suggested by the insurers would mean rewriting of the provision, which is not permissible in the light of the aforesaid discussion” (paragraph 39).*

In the said judgement the Supreme Court thereafter held .....

*“Section 10 of the Act requires a driver to hold a licence with respect to the class of vehicles and not with respect to the type of vehicles. In one class of vehicles, there may be different kinds of vehicles. If they fall in the same class of vehicles, no separate endorsement is required to*

*drive such vehicles. As light motor vehicle includes transport vehicle also, a holder of light motor vehicle licence can drive all the vehicles of the class including transport vehicles. It was pre-amended position as well the post-amended position of Form 4 as amended on 28-3-2001. Any other interpretation would be repugnant to the definition of "light motor vehicle" in Section 2(21) and the provisions of Section 10(2)(d), Rule 8 of the 1989 Rules, other provisions and also the forms which are in tune with the provisions. Even otherwise the forms never intended to exclude transport vehicles from the category of "light motor vehicles....."(paragraph 59).*

It was ultimately held by the Supreme Court that .....

*"The effect of the amendment made by virtue of Act 54 of 1994 w.e.f. 14-11-1994 while substituting clauses (e) to (h) of Section 10 (2) which contained "medium goods vehicle" in Section 10(2) (e), "medium passenger motor vehicle" in Section 10(2)(f), "heavy goods vehicle" in Section 10(2)(g) and 'heavy passenger motor vehicle" in Section 10(2)(h) with expression "transport vehicle" as substituted in Section 10(2)(e) related only to the aforesaid substituted class only. It does not exclude transport vehicle, from the purview of Section 10(2)(d) and Section 2(41) of the Act i.e. light motor vehicle". (paragraph 60.3).*

As noted prior to amendment in 1994 of the Motor Vehicles Act, the licence for transport vehicle was covered under Section 10(2) in five categories. Licence for 'Light Motor Vehicle' has been provided in Section 10(2)(d). The expression 'Transport Vehicle' has been inserted by 1994 amendment after deleting the four categories of vehicles. Significantly Section 2(21) and Section 2(47) were untouched by 1994 amendment. Therefore, the definition of 'Light Motor Vehicles' has to be given its full effect and read with Section 10(2)(d), it is clear that 'Light Motor Vehicle' is also a 'Transport Vehicle'. A driver holding a 'Light Motor Vehicle' licence in effect is holding a licence for 'Transport Vehicle' as specified in Section



2(21) of the Act. To put it in another way a licence issued to a driver to run a 'Light Motor Vehicle' gets an authorization to drive a 'Transport Vehicle' as interpreted by the Supreme Court in Mukund Dewangan (supra). Hence keeping in the mind the law laid down by the Supreme Court particularly with regard to the amendment of the Motor Vehicles Act in 1994, since the private respondents were holding licence to drive 'Light Motor Vehicle', which is in effect an authorization to drive 'Transport Vehicle' which is within the same class, though there may be different kinds of vehicles including heavy vehicle, the submission on behalf of the applicants cannot be accepted. Hence for the reasons are aforesaid, the applications are dismissed. No order as to cost.

**(P. RAMESH KUMAR)**  
**MEMBER (A)**

**(SOUMITRA PAL)**  
**CHAIRMAN**