

Delhi High Court

The National Assn. Of The Deaf ... vs Union Of India And Another on 14 February, 2011

Author: Dipak Misra, Chief Justice

* IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment Reserved on: 3rd January, 2011

% Judgment Pronounced on: 14th February, 2011

+ W.P.(C) 10849/2009

THE NATIONAL ASSN. OF THE DEAF
THROUGH ITS JOINT SECY. & ANR.

..... Petitioners

Through: Mr. Colin Gonsalves, Sr. Adv. with
Mr. Pankaj Sinha, Mr. Anuj Castleno,
Advocate

versus

UNION OF INDIA & ANR.

..... Respondents

Through

Mr. A.S. Chandhiok, ASG with
Mr.B.V. Niren, Mr. Sandeep Bajaj,
Advocates

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE SANJIV KHANNA

1. Whether reporters of the local papers be allowed to see the judgment? Yes

2. To be referred to the Reporter or not? Yes

3. Whether the judgment should be reported in the Digest? Yes DIPAK MISRA, CJ In this public interest litigation, the National Association of the Deaf and another describing themselves as pro bono publico have invoked the inherent jurisdiction of this Court under Article 226 of the Constitution of India for issue of a writ of mandamus or appropriate direction commanding the respondents to grant driving licences to deaf persons and further to issue W.P.(C) 10849/2009 Page 1 of 36 a writ of certiorari for quashing of any policy decision restraining or creating any kind of restriction on the part of the deaf persons to get the driving licences.

2. The factual matrix, as unfurled in the writ petition, are that the petitioner No.1 is a voluntary non-government organization and the petitioner No.2 is a person whose hearing is impaired. The aim of the petitioner No.1 organization is to promote the rights and equality of life of deaf and hard of hearing individuals in India and to foster a united front of deaf people across the different states of India and to promote equal rights at all levels in all fields of life and to encourage the interaction of the deaf people through meetings at both national and regional levels. It is put forth that a writ

petition being WP(C) No. 208/2006 was preferred before the Apex Court which was dismissed as withdrawn on 8.5.2006 permitting the petitioner No.1 to make a representation to the concerned authorities. Thereafter, the petitioners submitted a representation on 22.2.2007 to the Secretary of the Ministry of Surface Transport asking for issuance of driving licence to the deaf persons. In response to the said representation, a communication was sent on 10.4.2007 by the concerned department of the Government of India informing that the department was considering the matter of issuing driving licence to deaf persons with Automotive Research Association of India, Director General of Health Services and National Road W.P.(C) 10849/2009 Page 2 of 36 Safety Council and it was further intimated that taking note of the Central Motor Vehicle Rules, 1989 (for short â the 1989 Rules') and discussing with the Technical Standing Committee, the issue was under consideration. As pleaded, various other communications were sent but nothing was further responded.

3. It is apt to note that the petitioner No.2 had applied for driving licence under the 1989 Rules for grant of learner's licence on 24.6.2009 which was rejected on the ground that he was suffering from hearing impairment. It is contended that the deaf persons are protected under the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 (for brevity â the 1995 Act') and they are constitutionally entitled to be treated at par under the umbrella of Article 14 of the Constitution of India. It is urged that in the Motor Vehicles Act,1988 (hereinafter referred to as â the 1988 Act') and the Rules framed thereunder, though there is no prohibition for grant of licence to totally deaf persons, yet on the medical form, questions are included in relation to deafness. That apart, in the certificate of medical evidence, there is a provision for detailing the deafness of the applicant which is totally unwarranted. It is contended that the authorities cannot deny the licence merely on the ground of deafness without any specific medical opinion or aid of any certificate whether deafness, per se, impairs or affects the driving skills of an applicant. W.P.(C) 10849/2009 Page 3 of 36

4. Be it placed on record, the petitioners have referred to UN Multilateral Road Traffic Convention of 1952, UN Convention on Road Traffic of 1968, Section 2(i) of the 1995 Act and the United Nation's Convention on the persons with disabilities (hereinafter referred to as â the disability convention') which was ratified by India in October, 2007 to pyramid the contention that a person who has an international driving licence can drive in India though he is deaf and a deaf person in India if goes abroad can get an international driving licence and would be eligible to drive in India whereas he is not entitled to get a driving licence under the 1988 Act on the ground that he suffers from hearing impairment. It is urged that an anomalous situation has crept in since there are two categories of persons and the classification between a person who is deaf and gets a licence from the international quarters and a deaf person in India who is not in a position to get the same does not stand the test of Article 14 of the Constitution and, in fact, invites the frown of the said Article.

5. It is contended that the Delhi Police has already answered the queries under its section â FAQs', that a deaf person can drive a private motor car. It is urged that a person being deaf does not suffer from any incapability to drive as driving is almost entirely a visual activity with approximately 95% of information required for driving being obtained visually. It is set forth that due to lack of auditory distraction, the deaf people have the focus and W.P.(C) 10849/2009 Page 4 of 36 the concentration

far better than ordinary persons to drive the vehicle. It is the stand in the petition that various studies have been conducted in the international arena in this regard. The International Association of Traffic and Safety Sciences carried out a survey on countries like Japan, United States, Great Britain, Germany, France and Australia and found out that the said countries have allowed their people to get a car driving licence unless they suffer from another disability. What are the other equipments to be attached to a vehicle when a licence is given to a deaf person in France, New Zealand, USA, California, Florida, United Kingdom, Denmark, Germany, Belgium and Thailand has been highlighted. It is contended that there is no rationale or justification in denying a person who is deaf to drive a vehicle and that apart, there is no conclusive evidence that a deaf person can never drive a vehicle and would be a source of danger. It is put forth that denial of licence to deaf persons is counter to the provisions contained in the 1995 Act. It is also highlighted that if certain equipments like developed visual mirrors are provided or made imperative, a deaf person can always drive a vehicle. Emphasis has been laid on the aspect that between a deaf in India and a deaf who travels abroad and obtains an international driving licence, discrimination is created and such distinction ruthlessly leads to inapposite classification which plays foul of Article 14 of the Constitution.

6. An affidavit has been filed by the respondents contending, inter alia, W.P.(C) 10849/2009 Page 5 of 36 that the grant of driving licence to deaf persons was discussed in the 21st meeting of the Central Motor Vehicles Rules - Technical Standing Committee wherein it was held that the Ministry of Road Transport & Highways should have a meeting with the Director General of Health Services and Medical Experts and accordingly, a meeting was held on 19.9.2007. The minutes of the said meeting have been brought on record as Annexure-R1. The Committee, considering the various aspects, has not recommended the above persons to be allowed to drive motor vehicles in India on many grounds. It is the stand in the affidavit that the matter was referred to the Ministry of Health and Family Welfare for their opinion and the Ministry has re-examined the matter in the meeting of experts held on 18.2.2010 and expressed its views reiterating the comments of the experts submitted on 8.10.2007 and 27.11.2009. In view of the same, the recommendation of the Central Motor Vehicle Rules - Technical Standing Committee and Ministry of Health and Family Welfare, the Ministry of Road Transport and Highways proposed not to allow deaf persons to drive motor vehicles in the country. It is worth noting that the Ministry of Road Transport and Highways had acceded to the recommendations made by the Central Motor Vehicle Rules - Technical Standing Committee, Director General of Health Services and Medical experts.

7. We have heard Mr. Colin Gonsalves, learned senior counsel along W.P.(C) 10849/2009 Page 6 of 36 with Mr. Pankaj Sinha and Mr. Anuj Castleno, learned counsel appearing for the petitioners and Mr. A.S. Chandhiok, learned Additional Solicitor General along with Mr.B.V. Niren and Mr. Sandeep Bajaj, learned counsel appearing for the respondents.

8. Mr. Gonsalves, learned senior counsel, has raised the following contentions in support of the writ petition:

(a) In the 1988 Act and the Rules framed thereunder, there is no complete prohibition to allow a totally deaf person to drive motor vehicle or not to issue a driving licence and in the absence of such

a prohibition, the decision to the contrary by a policy making authority is totally invalid.

(b) It is not disputed that if a deaf person from India goes abroad and if the said country permits the said person to have a driving licence, an international driving licence, that person is eligible to drive in India whereas the said deaf person being in India is not entitled to get a licence which is arbitrary and hence, invites the wrath of Article 14 of the Constitution of India.

(c) India is a party to many international conventions which deal with persons with disability, especially with the disability relating to deafness and, hence, the same cannot be given an indecent burial in the name of policy making.

(d) As per the provisions of the 1995 Act which is a special piece of W.P.(C) 10849/2009 Page 7 of 36 legislation, persons who suffer from disability are required to be given special consideration and special treatment has to be bestowed on them. Reference has been made to Section 2(i) which describes hearing impairment. The policy decision which restricts the grant of driving licence under the 1988 Act has not taken into consideration the effect and impact of the beneficial provisions contained in the 1995 Act and, therefore, deserves to be quashed.

(e) When the Delhi Police in its website has already given the information that there is no reason why a completely deaf person cannot drive a vehicle, the policy making authority has taken a very restricted and narrow view which smacks of arbitrariness.

9. Mr. Chandhiok, learned ASG combating the aforesaid submissions, has proponed as follows:

(i) The contention that the policy decision runs counter to the 1995 Act and, hence, deserves to be lanceded is sans substance inasmuch as the 1995 Act refers to a different field and the policy decision has been taken under the provisions of the 1988 Act and it is in accord with the letter and spirit of the said enactment.

(ii) The international conventions which have been pressed into service are not applicable to the Indian conditions and the said facets have been taken into consideration by an expert body and studied in that W.P.(C) 10849/2009 Page 8 of 36 context and, therefore, the policy stands the test of Article 14 of the Constitution of India.

(iii) The submission that in abroad certain countries grant driving licences to the deaf persons and they are in a position to drive private vehicles in India has nothing to do with the Indian conditions and more so barring a bald statement, nothing else has been stated in that regard and hence, the said ground does not merit any consideration.

(iv) The uploading in the Delhi Police website about the entitlement of a deaf person to get a licence does not have any impact on the decision taken by the authorities who have a role to take the decision and in any case, these kinds of answers to queries do not really relate to policy making matters.

(v) If the 1988 Act and the Rules framed thereunder are appositely scrutinized, it would be quite clear that there may not be total prohibition but there are certain conditions precedent to be satisfied and hence, the challenge is absolutely unsustainable.

10. To appreciate the submissions raised at the bar, it is seemly to refer to certain provisions of the 1988 Act. Section 2(10) which defines "driving licence" reads as follows:

"driving licence" means the licence issued by a competent authority under Chapter II authorising the W.P.(C) 10849/2009 Page 9 of 36 person specified therein to drive, otherwise than as a learner, a motor vehicle or a motor vehicle of any specified class or description."

11. Section 3(1) which occurs in Chapter II deals with the necessity for driving licence. It reads as follows:

3. Necessity for driving licence. (1) No person shall drive a motor vehicle in any public place unless he holds an effective driving licence issued to him authorising him to drive the vehicle; and no person shall so drive a transport vehicle [other than [a motor cab or motor cycle] hired for his own use or rented under any scheme made under sub-section (2) of section 75] unless his driving licence specifically entitles him so to do."

12. Section 4 of the Act deals with age limit in connection with driving of motor vehicles. The said provision reads as follows:

4. Age limit in connection with driving of motor vehicles. - (1) No person under the age of eighteen years shall drive a motor vehicle in any public place: Provided that [a motor cycle with engine capacity not exceeding 50 cc] may be driven in a public place by a person after attaining the age of sixteen year.

(2) Subject to the provisions of section 18, no person under the age of twenty years shall drive a transport vehicle in any public place.

(3) No learner's licence or driving licence shall be issued to any person to drive a vehicle of the class to which he has made an application unless he is eligible to drive that class of vehicle under this section."

13. Section 7 provides restrictions on the granting of learner's licences for certain vehicles. It reads as follows:

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â 7. Restrictions on the granting of learner's licences for certain vehicles. - (1) No person shall be granted a learner's licence to drive a transport vehicle unless he has held a driving licence to drive a light motor vehicle for at least one year.

(2) No person under the age of eighteen years shall be granted a learner's licence to drive motorcycle without gear except with the consent in writing of the person having the care of the person desiring the learner's licences.

14. Section 8 deals with grant of learner's licence. The relevant portion of Section 8 is reproduced below:

â 8. Grant of learner's licence. (1) Any person who is not disqualified under section 4 for driving a motor vehicle and who is not for the time being disqualified for holding or obtaining a driving licence may, subject to the provisions of section 7, apply to the licensing authority having jurisdiction in the area -

(i) in which he ordinarily resides or carries on business, or

(ii) in which the school or establishment referred to in section 12 from where he intends to receive instruction in driving a motor vehicle is situate, for the issue to him of a learner's licence.

(2) Every application under sub-section (1) shall be in such form and shall be accompanied by such documents and with such fee as may be prescribed by the Central Government.

(3) Every application under sub-section (1) shall be accompanied by a medical certificate in such form as may be prescribed by the Central Government and signed by such registered medical practitioner, as the State Government or any person authorised in this behalf by the State Government may, by notification in the Official Gazette, appoint for this purpose.

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[Provided that no such medical certificate is required for licence to drive a vehicle other than a transport vehicle.] (4) If, from the application or from the medical certificate referred to in sub-section (3) it appears that the applicant is suffering from any disease or disability which is likely to cause the driving by him of a motor vehicle of the class which he would be authorised by the learner's licence

applied for to drive to be a source of danger to the public or to the passengers, the licensing authority shall refuse to issue the learner's licence;

Provided that a learner's licence limited to driving an invalid carriage may be issued to the applicant, if the licensing authority is satisfied that he is fit to drive such a carriage.

(5) No learner's licence shall be issued to any applicant unless he passes to the satisfaction of the licensing authority such test as may be prescribed by the Central Government.

(6) When an application has been duly made to the appropriate licensing authority and the applicant has satisfied such authority of his physical fitness under sub-section (3) and has passed to the satisfaction of the licensing authority the test referred to in sub-section (5), the licensing authority shall, subject to the provisions of section 7, issue the applicant a learner's licence unless the applicant is disqualified under section 4 for driving a motor vehicle or is for the time being disqualified for holding or obtaining a licence to drive a motor vehicle:

Provided that a licensing authority may issue a learner's licence to drive a motor cycle or a light motor vehicle notwithstanding that it is not the appropriate licensing authority, if such authority is satisfied that there is good reason for the applicant's inability to apply to the appropriate licensing authority.â W.P.(C) 10849/2009 Page 12 of 36

15. At this juncture, we may refer with profit to Section 9 that deals with grant of driving licence. The relevant portion of the said provision is reproduced below:

"9. Grant of driving licence. - (1) Any person who is not for the time being disqualified for holding or obtaining a driving licence may apply to the licensing authority having jurisdiction in the area -

(i) in which he ordinarily resides or carries on business, or

(ii) in which the school or establishment referred to in section 12 from where he is receiving or has received instruction in driving a motor vehicle is situated, for the issue to him of a driving licence.

(2) Every application under sub-section (1) shall be in such form and shall be accompanied by such fee and such documents as may be prescribed by the Central Government [(3) If the applicant passes such test as may be prescribed by the Central Government, he shall be issued the driving licence:

Provided that no such test shall be necessary where the applicant produces proof to show that -

(a) (i) the applicant has previously held a driving licence to drive such class of vehicle and that the period between the date of expiry of that licence and the date of the application does not exceed five years, or

(ii) the applicant holds or has previously held a driving licence to drive such class of vehicle issued under section 18, or

(iii) the applicant holds a driving licence to drive such class of vehicle issued by a competent authority of any country outside India, subject to the condition that the W.P.(C) 10849/2009 Page 13 of 36 applicant complies with the provisions of sub-section (3) of section 8,

(b) the applicant is not suffering from any disability which is likely to cause driving by him to be a source of danger to the public; and the licensing authority may, for that purpose, require the applicant to produce a medical certificate in the same form and in the same manner as is referred to in sub-section (3) of section 8:

Provided further that where the application is for a driving licence to drive a motor vehicle (not being a transport vehicle), the licensing authority may exempt the applicant from the test of competence to drive a vehicle prescribed under this sub-section, if the applicant possesses a driving certificate issued by any institution recognised in this half by the State Government.] (4) Where the application is for a licence to drive a transport vehicle, no such authorisation shall be granted to any applicant unless he possesses such minimum educational qualification as may be prescribed by the Central Government and a driving certificate issued by a school or establishment referred to in section 12.

[(5) Where the applicant does not pass the test, he may be permitted to re-appear for the test after a period of seven days:

Provided that where the applicant does not pass the test even after three appearances, he shall not be qualified to re-appear for such test

before the expiry of a period of sixty days from the date of last such test.] (6) The test of competence to drive shall be carried out in a vehicle of the type to which the application refers:

Provided that a person who passed a test in driving a motor cycle with gear shall be deemed also to have passed a test in driving a motor cycle without gear.

(7) When any application has been duly made to the appropriate licensing authority and the applicant has W.P.(C) 10849/2009 Page 14 of 36 satisfied such authority of his Competence to drive, the licensing authority shall issue the applicant a driving licence unless the applicant is for the time being disqualified for holding or obtaining a driving licence :

Provided that a licensing authority may issue a driving licence to drive a motor cycle or a light motor vehicle notwithstanding that it is not the appropriate licensing authority:

Provided further that the licensing authority shall not issue a new driving licence to the applicant, if he had previously held a driving licence, unless it is satisfied that there is good and sufficient reason for his inability to obtain a duplicate copy of his former licence.â

16. Section 27 confers power on the Central Government to make rules.

Section 27(b), (c), (d), (e), (f), (h) and (i) which are relevant for the present purpose are reproduced below:

â (b) providing for the form in which the application for learner's licence may be made, the information it shall contain and the documents to be submitted with the application referred to in sub-section (2) of section 8;

(c) providing for the form of medical certificate referred to in sub-section 3 of section 8;

(d) providing for the particulars for the test referred to in sub-section (5) of section 8;

(e) providing for the form in which the application for driving licence may be made, the information it shall contain and the documents to be submitted with the application referred to in sub-section (2) of section

9;

(f) providing for the particulars regarding test of competence to drive, referred to in sub-section (3) of section 9;

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(g) xxx

(h) providing for the form and contents of the licences referred to in sub-section (1) of section 10 ;

(i) providing for the form and contents of the application referred to in sub-section (1) of section 11 and documents to be submitted with the application and the fee to be charged;â

17. Section 9 deals with grant of driving licence. Sub-section (2) provides that every application for grant of driving licence has to be submitted in such form and be accompanied by such fee and such documents as may be prescribed by the Central Government. Sub-section (3) of the said section stipulates that if the applicant passes such test as may be prescribed by the Central Government, he shall be issued the driving licence. The other provisions relate to the role of the licensing authority and the effect of failure in the test, the grant of further opportunity, the disability which is likely to be, a cause of driving by him to be a source of danger to the public and the grounds on which a licence can be denied.

18. Presently, we shall refer to the relevant Rules of the 1989 Rules. Rules 5 which deals with medical certificate is as follows::

â 5. Medical certificate.-- (1) Every application for the issue of a learner's licence or a driving licence or for making addition of another class or description of a motor vehicle to a driving licence or for renewal of a driving licence to drive a vehicle other than a transport vehicle shall be accompanied by a self- declaration as to the physical fitness as in Form 1 and W.P.(C) 10849/2009 Page 16 of 36 every such application for a licence to drive a transport vehicle shall be accompanied by a medical certificate in Form 1-A issued by a registered medical practitioner referred to in sub-section (3) of section 8.

(2) An application for a medical certificate shall contain a declaration in Form 1.

(3) A medical certificate issued in Form 1-A shall be valid for a period of one year from the date of its issue. It shall be accompanied by a passport size copy of the photograph of the applicant.â

19. Rule 10 deals with application for learner's licence. Rule 11 provides for preliminary test. Rule 14 prescribes mode of application for a driving licence. Rule 15 stipulates what should be taken care of while carrying out the driving test. Rule 21 empowers the licencing authority to disqualify. The Rules which are relevant for the present are as under:

â 10. Application for learner's licence.--An application for the grant or renewal of a learner's licence shall be made in Form 2 and shall be accompanied by,--

(a) save as otherwise provided in rule 6, a medical certificate in - [Form 1-A].

(b) three copies of the applicant's recent passport size photograph,

(c) appropriate fee as specified in rule 32,

(d) the case of an application for [transport vehicle], the driving licence held by the applicant.

11. Preliminary test. (1) Save as otherwise provided in sub-rule (2), every applicant for a learner's licence shall present himself before the licensing authority on such W.P.(C) 10849/2009 Page 17 of 36 date, place and time, as the licensing authority may appoint, for a test and satisfy such authority that the applicant possesses adequate knowledge and understanding of the following matters, namely:

(a) the traffic signs, traffic signals and the rules of the road regulations made under section 118;

(b) the duties of a driver when his vehicle is involved in an accident resulting in the death or bodily injury to a person or damage to property of a third party;

(c) the precautions to be taken while passing an unmanned railway crossing; and

(d) the documents he should carry with him while driving a motor vehicle.

[(1-A)In determining as to whether an applicant possesses adequate knowledge and understanding of the matters referred to in sub-rule (1), the licensing authority shall put to the applicant questions of objective type such as specified in Annexure VI.

Explanation. For the purpose of this sub-rule, adequate knowledge means answering correctly at least 60 per cent of the questions put to him.] (2) Nothing contained in sub-rule (1) shall apply to the following class of applicants, namely:

- (a) the holder of an effective driving licence,
- (b) the holder of a driving licence which has expired but five years have not elapsed,
- (c) the holder of a learner's licence issued or renewed after the commencement of these rules, [(d) the holder of a certificate to the effect of the possession of adequate knowledge and understanding of the matters referred to in sub-rule (1), issued by any institution recognized and notified in this regard by the W.P.(C) 10849/2009 Page 18 of 36 State Government.] X X X X

14. Application for a driving licence.--[(1)] An application for a driving licence shall be made in Form 4 and shall be accompanied by,--

- (a) an effective learner's licence to drive the vehicle of the type to which the application relates;
- (b) appropriate fee as specified in rule 32, for the test of competence to drive and issue of licence;
- (c) three copies of the applicant's recent [passport size photograph];
- (d) save as otherwise provided in rule 6, a medical certificate in [Form 1-A];
- (e) a driving certificate in Form 5 issued by the school or establishment from where the applicant received instruction, if any.

(2) An application for an International Driving Permit shall be made in Form 4-A and shall be accompanied by--

- (a) valid driving licence issued by the licensing authority under these rules;

- (b) appropriate fee as specified in rule 32;
- (c) three copies of the applicant's recent passport photograph;
- (d) a medical certificate in Form 1-A;
- (e) valid proof of Indian Nationals;
- (e) valid proof of passport; and
- (g) valid proof of visa, wherever applicable.

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15. Driving test.--(1) No person shall appear for the test of competence to drive unless he has held a learner's licence for a period of at least [thirty days].

(2) The test of competence to drive referred to in sub- section (3) of section 9 shall be conducted by the licensing authority or such other person as may be authorised in this behalf by the State Government in a vehicle of the type to which the application relates.

(3) The applicant shall satisfy the person conducting the test that he is able to--

- (a) adjust rear-view mirror;
- (b) take suitable precautions before starting the engine;
- (c) move away safely and smoothly straight ahead at an angle, while at the same time engaging all gears until the top gear is reached;
- (d) to change to the lower gears quickly from the top gear when the traffic conditions warrant such change;
- (e) change quickly to lower gears when driving downhill;
- (f) stop and re-start the vehicle on a steep upward incline making proper use of the hand-brake or of the throttle and the foot-brake without any rolling back, turn right and left corners correctly and make proper use of the rear-view mirror before signalling;

(g) overtake, allow to be overtaken, meet or cover the path of other vehicles safely and take an appropriate course of the road with proper caution giving appropriate signals;

(h) give appropriate traffic signals at the appropriate time, in clear and unmistakable manner by hand or by electrical indicators fitted to the vehicle;

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(i) change the lanes with proper signals and with due care;

(j) stop the vehicle in an emergency or otherwise, and in the latter case, bring it to rest at an appropriate course on the road safely, giving appropriate signals;

(k) in the case of vehicle having a reverse gear, driving the vehicle backwards, reverse it into a limited opening either to the right or left under control and with reasonable accuracy;

(/) cause the vehicle to face in the opposite direction by means of forward and reverse gears;

(m) take correct and prompt action on the signals given by traffic signs, traffic lights, traffic controllers, policemen and take appropriate action on signs given by other road users;

(n) act correctly at pedestrian crossings, which is not regulated by traffic lights or traffic police, by giving preference to persons crossing the roads;

(o) keep well to the left in normal driving;

(p) regulate speed to suit varying road and traffic conditions;

(q) demonstrate general control of the vehicle by confident steering and smooth gear changing and braking as and when necessary;

(r) make proper use of the rear-view mirror before signalling, beginning manoeuvring, moving away, altering the course to overtake, turning right or stopping;

(s) use proper side when driving straight, turning right, turning left and at junction of the road;

(t) make proper use of accelerator, clutch, gears, brakes (hand and foot) steering and horn;

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(u) anticipate the actions of pedestrians, drivers of other vehicles and cyclists;

(v) take precautions at cross roads and on road junctions with regard to:-

(i) adjustment of speed on approach,

(ii) proper use of rear-view mirror,

(iii) correct positioning of the vehicle before and after turning to the right or left,

(iv) avoidance of cutting right hand corners,

(v) looking right, left and right again before crossing or emerging;

(w) concentrate in driving without his attention being distracted and to demonstrate the presence of mind;

(x) show courtesy and consideration for the safety and convenience of other road users, such as pedestrians, drivers of other motor vehicles or cyclists.â

20. Presently, we shall refer to the Forms. Form 1-A which deals with medical certificate and relates to Rules 5(1), 5(3), 7, 10(a), 14(d) and 18(d) is reproduced below:

FORM 1-A [See Rule 5(1), 3(), 7, 10(a), 14(d) and 18(d)] Medical Certificate

1. Name of the Applicant

2. Identification marks (1)

(2)

3. (a) Does the applicant to the best of your judgment suffer from any defect of vision? Is so, has it been corrected by Yes/No.

W.P.(C) 10849/2009 Page 22 of 36 suitable spectacles?

(b) Can be applicant to the best of your judgment, readily distinguish the pigmentary colours, red and green? Yes/No.

(c) In your opinion, is he able to distinguish with his eye sight at a distance of 25 metres in good day light a motor car number plate? Yes/No.

(d) In your opinion, does the applicant suffer from a degree of deafness which would prevent his hearing the ordinary Yes/No.

sound signals?

(e) In your opinion, does the applicant Yes/No.

suffer from night blindness?

(f) Has the applicant any defect or deformity or loss of member which would interfere with the efficient performance of his duties as a driver? Is Yes/No.

so give your reasons in details.

(g) Optional

(a) Blood group of the applicant (if the applicant so desires that the info may be noted in his driving licence).

(b) RH Factor of the applicant (if the applicant so desires that the info may be noted in his driving licence).

Declaration made by the applicant in Form-I as to his physical fitness is attached.
Certificate of Medical Fitness I Certify that:

(i) I have personally examined the applicant Shri/Smt./ Kum _____.

(ii) That while examining the applicant, I have directed special attention to his/her distant vision.

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(iii) While examining the applicant, I have directed special attention to his/her hearing ability, the condition of the arms, legs, hands and joint of both extremities of the applicants; and

(iv) I have personally examined the applicant for reaction time, side vision and glare recovery, (applicable in case of persons applying for a licence to drive goods carriage carrying goods of dangerous or hazardous nature to human life). And, therefore, I certify that, to the best of my judgment, he/she is medically fit/not fit to hold a driving licence.

The applicant is not medically fit to hold a licence for the following reasons:

Signature:

1. Name and designation of Medical Officer/ Practitioner (Seal)
2. Registration Number of Medical Officer.

Signature or thumb impression of the candidate Date.....â

21. On a perusal of the aforesaid statutory provisions and the Rules which we have reproduced hereinabove, it is manifest that there are two categories of licence, namely, learner's licence and the driving licence. For obtaining learner's licence, in respect of non transport vehicles, the filing of medical certificate is not necessary. As has been stipulated in Rule 11, the applicant is required to present himself before the licensing authority on such date, place and time for a test and satisfy the said authority that he possesses adequate knowledge and understanding of the matters as prescribed in Rule 11 of the 1989 Rules. Similarly, for obtaining the driving licence, the applicant should be eligible and must satisfy the competent authority W.P.(C) 10849/2009 Page 24 of 36 conducting the test by meeting the criteria stipulated in Rules 14 and 15 of the 1989 Rules. This being the statutory provision, we do not perceive that an application is to be rejected by the competent authority at the threshold without carrying out the requisite tests depending upon the application, namely, learner's licence or driving licence.

22. At this juncture, we may refer to the affidavit of the respondents which contains the minutes of the meeting of the Ministry of Road Transport and Highways held on 9.12.2009 which has been brought on record as Annexure R-1. It is worth noting that the special meeting was held in pursuance of the order passed by this Court. In the said meeting, the opinion of the health experts has been reiterated. The reasons for the same is reproduced below:

â 4. The issue was discussed in detail by the members and the Committee reached the following conclusion:

(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.

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(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 to gather 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.

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5. 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:

â 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.â

23. The aforesaid minutes have been treated to be a policy decision. On a scrutiny of the said decision, it is luminescent 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. The submission of Gonsalves, learned senior counsel for the petitioners, is that the persons who are totally deaf are also eligible to get the driving licence under the Act and the denial of the same defeats the very purpose of the 1995 Act. To appreciate the said submission, it is appropriate to refer to the scheme of the 1995 Act. The said statute was enacted to give effect to the proclamation on the full participation and equality of the people with disabilities in the Asian and Pacific regions. As is seen, it was a result of the meeting to launch the Asian and Pacific Decade of Disabled Persons 1993-2002 convened by the Economic and Social Commission for Asia and Pacific held at Beijing on 1 st to 5th December, 1992 which adopted the Proclamation on the Full Participation and Equality of People with Disabilities in the Asian and Pacific Regions and further India is a signatory to the said proclamation. Section 2(i) of the 1995 Act defines â disabilityâ as:

â 2(i) â disabilityâ means -

(i) blindness;

(ii) low vision;

(iii) leprosy-cured;

(iv) hearing impairment;

(v) locomotor disability;

(vi) mental retardation;

(vii) mental illness;

Clause (l) defines "hearing impairment" as follows:

(l) "hearing impairment" means loss of sixty decibels or more in the better year in the conversational range of frequencies;

24. Chapter IV of the Act mandates how the Government and local authorities shall provide to children with disability free education; make schemes and programmes for non-formal education; research for designing and developing new assistive devices, teaching aids, etc. to set up teachers training institutions to develop trained manpower for schools for children with disabilities; to prepare a comprehensive education scheme providing for transport facilities, supply of books and to provide amanuensis to blind students and students with low vision.

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25. Chapter VI deals with "employment". Section 32 deals with identification of posts which can be reserved for persons with disability. The said provision is reproduced below:

32. Identification of posts which can be reserved for persons with disabilities.-

Appropriate Government shall -

(a) identify posts, in the establishments, which can be reserved for the persons with disability;

(b) at periodical intervals not exceeding three years, review the list of posts identified and up-date the list taking into consideration the developments in technology.

26. Section 33 which deals with reservation of posts reads as follows:

33. Reservation of posts.- Every appropriate Governments shall appoint in every establishment such percentage of vacancies not less than three per cent for persons or class of persons with disability of

which one per cent each shall be reserved for persons suffering from-

(i) blindness or low vision;

(ii) hearing impairment;

(iii) locomotor disability or cerebral palsy, in the posts identified for each disability:

Provided, that the appropriate Government may, having regard to the type of work carried on in any department or establishment by notification subject to such conditions, if any, as may be specified in such notification, exempt any establishment from the provisions of this section.â W.P.(C) 10849/2009 Page 29 of 36 On a reading of these provisions, it is clear as day that certain posts are to be identified where reservation can be made. Reservation in employment and education would stand on a different footing as compared to getting driving licence.

27. Mr. Gonsalves has commended us to the decision in Syed Bashir-ud- din Qadri v. Nazir Ahmed Shah & Ors., (2010) 3 SCC 603 wherein the Apex Court was dealing with Section 22 of the Jammu & Kashmir Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1998. In that context, their Lordships have held thus:

â 47. It has to be kept in mind that this case is not one of the normal cases relating to a person's claim for employment. This case involves a beneficial piece of social legislation to enable persons with certain forms of disability to live a life of purpose and human dignity. This is a case which has to be handled with sensitivity and not with bureaucratic apathy, as appears to have been done as far as the appellant is concerned.

48. As has been indicated hereinbefore, the object of the 1998 Act is to provide equal opportunities, care, protection, maintenance, welfare, training and rehabilitation to persons with disabilities. Section 2(d)(v) recognizes "locomotor disability" which is the result of cerebral palsy. Locomotor disability has also been separately defined in Section 2(j) to mean disability of the bones, joints or muscles leading to substantial restriction of the movement of the limbs or any form of cerebral palsy.

49. A "person with disability" has been defined in Section 2(p) to mean a person suffering from not less than 40% of any disability as certified by a Medical Authority. Keeping the same in mind, Chapter V of the 1998 Act provides for employment of persons with W.P.(C)

10849/2009 Page 30 of 36 disabilities. Section 21 deals with identification of posts which can be reserved for persons with disabilities.

X X X X

53. It is only to be expected that the movement of a person suffering from cerebral palsy would be jerky on account of locomotor disability and that his speech would be somewhat impaired, but despite the same, the Legislature thought it fit to provide for reservation of 1% of the vacancies for such persons. So long as the same did not impede the person from discharging his duties efficiently and without causing prejudice to the children being taught, there could, therefore, be no reason for a rigid approach to be taken not to continue with the appellant's services as Rehbar-e-Taleem, particularly, when his students had themselves stated that they had got used to his manner of talking and did not have any difficulty in understanding the subject being taught by him.

54. Coupled with the above is the fact that the results achieved by him in the different classes were extremely good; his appearance and demeanour in school had been highly appreciated by the Committee which had been constituted pursuant to the orders of the High Court to assess the appellant's ability in conducting his classes.

X X X X

58. The High Court appeared to be insensitive to the fact that as a victim of cerebral palsy, the appellant suffered from a slight speech disability which must have worsened on account of nervousness when asked to appear before the Court to answer questions. As has been submitted by Mr. Gonsalves, the intimidating atmosphere in which the appellant found himself must have triggered a reaction which made it difficult for him to respond to the questions put to him.

X X X X

60. We are convinced that the approach of the local authorities, as well as the High Court, was not in consonance with the objects of the 1998 Act and scheme of the State Government to fill up a certain percentage of W.P.(C) 10849/2009 Page 31 of 36 vacancies with disabled candidates, and was too pedantic and rigid. The order of the High Court cannot, therefore, be sustained and has to be set aside.

As is evident from the factual matrix, the matter related to reservation of vacancy for the category of persons with disabilities like blindness or low vision, hearing impairment, locomotor disability or cerebral palsy for the posts identified for each disability, the reservation for a post and grant of driving licence to deaf person are two different facets and the said decision is distinguishable.

28. There can be no doubt that the special law shall prevail or have overriding effect over the general law. When the courts are confronted with a situation where two statutes are conflicting, the courts' approach should be to find out which of the two apparently conflicting provisions is more general and which is more specific. Thus, in the case of inconsistency between the provisions of two enactments, both of which can be regarded as special in nature, the conflict has to be resolved by reference to the purpose and policy underlying the two enactments and the clear intendment conveyed by the language of the relevant provisions therein. In this context, we may refer to some citations in the field. In *LIC v. D.J. Bahadur*, (1981) 1 SCC 315, the Apex Court has held thus:

â The legal maxim *generalibus specialibus non derogant* is ordinarily attracted where there is a conflict between a special and a general statute and an argument of implied W.P.(C) 10849/2009 Page 32 of 36 repeal is raised. Craise states the law correctly : (Craise on Statute Law, 1963 Edn. pp.376:

â The general rule, that prior statutes are held to be repealed by implication by subsequent statutes if the two are repugnant, is said not to apply if the prior enactment is special and the subsequent enactment is general, the rule of law being, as stated by Lord Selbourne in *Seward v. Vera Cruz* (1884) 10 AC 59, 68, â that where there are general words in a later Act capable of reasonable and sensible application without extending them to subjects specially dealt with by earlier legislation, you are not to hold that earlier and special legislation indirectly repealed, altered, or derogated from merely by force of such general words, without any indication of a particular intention to do so. There is a well-known rule which has application to this case, which is that a subsequent general Act does not affect a prior special Act by implication. That this is the law cannot be doubted, and the cases on the subject will be found collected in the third edition of Maxwell is *generalibus specialibus non derogant* -

i.e. general provisions will not abrogate special provisions.' When the legislature has given its attention to a separate subject and made provision for it, the presumption is that a subsequent general enactment is not intended to interfere with the special provision unless it manifests that intention very clearly. Each enactment must

be construed in that respect according to its own subject-matter and its own terms.â

29. In Ajoy Kumar Banerjee v. Union of India, (1984) 3 SCC 127, 153, the Apex Court has held thus:

â The question what is the general law and what is the special law and which law in case of conflict would prevail would have arisen and that would have necessitated the application of the principle "Generalia W.P.(C) 10849/2009 Page 33 of 36 specialibus non derogant". The general rule to be followed in case of conflict between two statutes is that the later abrogates the earlier one. In other words, a prior special law would yield to a later general law, if either of the two following conditions is satisfied:

(i) The two are inconsistent with each other.

(ii) There is some express reference in the later to the earlier enactment.

If either of these two conditions is fulfilled, the later law, even though general, would prevail.â

30. In Ashoka Marketing Ltd. v. Punjab National Bank, (1990) 4 SCC 406, the Apex court has observed thus:

â One principle of statutory interpretation which is applied is contained in the latin maxim : *leges posteriores priores contraries abrogant*, (later laws abrogate earlier contrary laws). This principle is subject to the exception embodied in the maxim : *generalia specialibus non derogant*, (a general provision does not derogate from a special one). This means that where the literal meaning of the general enactment covers a situation for which specific provision is made by another enactment contained in an earlier Act, it is presumed that the situation was intended to continue to be dealt with by the specific provision rather than the later general one.

In the case of inconsistency between the provisions of two enactments, both, of which can be regarded as special in nature, the conflict has to be resolved by reference to the purpose and policy underlying the two enactments and the clear intendment conveyed by the language of the relevant provisions therein.â

31. The aforesaid principle can only be attracted if a particular statute is a special statute and there is inconsistency between the general provision and a W.P.(C)

10849/2009 Page 34 of 36 special one. As has been indicated earlier the 1988 Act and the 1995 Act deal with different fields. Thus, the contention raised by Mr.Gonsalves is sans substance and, hence, we are compelled to repel the same.

32. We will be failing in our duty if we do not note the other submission of Mr.Gonsalves that certain persons who are totally deaf have the capacity to drive vehicles. He has referred to prevalent practices in many other countries. The learned senior counsel has laid emphasis on the international standard. On a perusal of the policy decision, we find that the experts have fixed a standard regard being had to the Indian conditions. The grounds ascribed in the policy decision as Mr.Chandhiok, learned Additional Solicitor General, would submit are meant to protect the collective at large from the road accidents. Thus, the claim put forth by the petitioners that they should be granted driving licence and should not be debarred from getting a licence, per se, is not justified. 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 clarify¹ that if an applicant is totally deaf, he has 1 th Corrected vide order dated 18 February, 2011.

W.P.(C) 10849/2009 Page 35 of 36 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. We are not inclined to direct that the special conditions which are permitted by other countries for grant of licence to the persons who are completely deaf as the same, we are disposed to think, is in the domain of the legislature, for the legislature understands the prevalent conditions in a set up where separation of power is an insegregable facet of the basic structure of the Constitution of India.

33. The writ petition is accordingly disposed of without any order as to costs.

CHIEF JUSTICE SANJIV KHANNA, J FEBRUARY 14, 2011 Pk/dk W.P.(C) 10849/2009 Page 36 of 36