

17.12.2021 Present: Mr. Rajnish Maniktala, Senior Advocate with Mr. Naresh K. Verma, Advocate, for the petitioner.

Mr. Ashok Sharma, Advocate General with Ms. Ritta Goswami, Additional Advocate General, for respondents No.1 to 3/State.

Mr. Ajay Sharma, Sr. Advocate with Ms. Kavita Kajal, Advocate, for respondent No.4.

Mr. Vinod Chauhan, Advocate, for respondents No.5 & 6.

Respondent No.7 ex parte.

Mr. Shyam Singh Chauhan, Advocate, for respondent No.8.

This writ petition was filed by Himachal Parivahan Mazdoor Sangh way back in the year 2018. Number of orders have been passed by this Court in this matter since then. When the matter was listed before this Court on 27.11.2018, the Court noted the reluctance by the petitioner and several other litigants in availing the remedy of appeal before the Law Secretary, who was given the charge of the State Transport Appellate Tribunal. One of the contentions was that even though he is a Senior District and Sessions Judge, but he invariably remains occupied with a lot of administrative work. The learned Advocate General, appearing for the State before this Court assured that the matter will be taken up with the State Government for sending a proposal to the High Court for constituting an independent Tribunal to decide the appeals, arising under the Motor Vehicles Act, 1988. When the matter was listed before the Court thereafter on 13.12.2018, the learned Advocate General, submitted that the matter has been discussed at the highest level for compliance of order dated 27.11.2018 and at

his request, further time of three weeks' was granted to do the needful.

2. When the matter was next listed before the Court on 07.03.2019, the Court noted that there is a strong demand by the Members of the Bar that an exclusive Tribunal in terms of the Motor Vehicles Act, 1988, to be presided over by a Senior District & Sessions Judge, should be constituted in the state for expeditious disposal of the matters arising under the said Act. The Court observed that it finds merit in the submissions made on behalf of the Members of the Bar and directed the State Government to send a proposal to the High Court, alongwith basic infrastructure, comprising Court Room, Chambers and other related facilities to be provided to the Tribunal. Thereafter, when the matter was next listed on 17.04.2019, the learned Advocate General, sought more time to seek appropriate instructions for compliance of aforesaid order dated 07.03.2019. The Court posted the matter for further hearing on 13.06.2019. Thereafter, when the matter was taken up on 13.06.2019, it was noted that the orders of this Court passed on 27.11.2018 & 07.03.2019, have not yet been complied with. Learned Deputy Advocate General prayed for and was granted further two weeks' time to comply with the said orders. The Court observed that this opportunity shall be now treated as last and final. In case no compliance is made even within the extended period, respondent No.1 was required to remain present in person to assist the Court on the next date. The matter was ordered to be listed on 25.07.2019. Thereafter on 25.07.2019, the matter was adjourned to 26.08.2019.

3. When the matter was next listed on 26.08.2019, on this date, the Court categorically observed that *"We doubt whether the Secretary (Law) will be entitled to discharge the quasi judicial functions that are entrusted by the Motor Vehicles Act, 1988 to a Tribunal. Therefore, for the present, in the absence of a proper Tribunal constituted under the Act, the merits of the case of the petitioner may have to be independently gone into."* The matter was thereafter fixed for final hearing on 23rd September, 2019, on which date, the Court observed that until and unless the orders dated 27.11.2018 & 07.03.2019, are recalled or modified, the State could not unilaterally take a decision to show its inability to constitute Tribunal under the Motor Vehicles Act, 1988 expeditiously and that the stand taken in the affidavit of the Principal Secretary (Transport) to the Government of Himachal Pradesh, was rejected. The learned Additional Advocate General, sought time to seek further instructions. Therefore, the matter was adjourned to 23.10.2019.

4. When the matter was listed on 27.02.2020, an application filed by the respondents-State for modification of orders dated 27.11.2018 and 07.03.2019, was taken up for hearing, but the learned Additional Advocate General, sought time to make submissions and the matter was ordered to be listed on 05.03.2020, on which date, again, the learned Advocate General reiterated the earlier stand that the State Transport Appellate Tribunal, under the Motor Vehicles Act, has already been constituted by entrusting/conferring the powers to the Secretary (Law) to the Government of Himachal Pradesh, vide Notification

dated 15th July, 1971. This Court thereupon, in para-4 of the said order dated 05.03.2020, observed as under:-

“It is observed that until and unless power is conferred on an Authority, it cannot be said to be an Authority for the purpose of discharging the duties of Appellate Tribunal. The Secretary (Law) has to discharge his administrative duties as Secretary (Law) to the Government and in no way, can be considered as an Appellate Tribunal for the purpose of entrusting the powers of an Appellate Tribunal under the Motor Vehicles Act.”

5. The matter was then again ordered to be posted on 06.04.2020, but due to restricted functioning of the Court during interregnum on account of COVID-19 pandemic, it was not listed and has been listed now today. The respondents-State has now filed purported compliance report, stating therein that a meeting for setting up of Transport Appellate Tribunal in the State was held on 21st December, 2020, under the Chairmanship of Chief Secretary, Government of Himachal Pradesh and attended by various other officers. In the said meeting, it was decided that one of the options could be to confer appropriate powers on the Waqf Tribunal, so that, it could discharge the duties of the Transport Appellate Tribunal. But thereafter, another meeting for creation of an exclusive and separate Transport Appellate Tribunal was held on 15.02.2021 under the Chairmanship of Chief Secretary to the Government of Himachal Pradesh. In that meeting, the information supplied by the Revenue Department was placed before the Committee. It was informed that staff and infrastructure is available

with the Waqf Tribunal. It was also apprised that, at present, 55 cases are pending with the Waqf Tribunal for adjudication, out of which, 38 cases are of civil nature and 17 cases pertain to Scheduled Castes and Scheduled Tribes matter. The Principal Secretary (Law) informed that at present about 101 cases are pending for adjudication before the State Transport Appellate Tribunal.

6. It is quite surprising that the State Government, despite specific orders repeatedly passed by this Court, has failed to send the proposal for setting up independent Tribunal. In subsequent orders, this Court has taken note of the fact that the State Government has not so far taken any decision to set up an independent State Transport Appellate Tribunal and has been dillydallying the matter for the last four years. This Court in its earlier orders dated 26.08.2019 and 05.03.2020 clearly observed that the Law Secretary cannot discharge the quasi judicial functions of the Tribunal and rightly so because for him to preside over the Tribunal while simultaneously working as Law Secretary of the State could give rise to conflict of interest because he may have to in that capacity deal with matter involving interest of State.

7. The first requirement for the State Government as per Section 89(2) for the State Government would be to notify the constitution of such number of Tribunals, depending upon the work load, as it may deem fit, for the State of Himachal Pradesh. Once when the Tribunal is constituted, it has to be given all the paraphernalia, including building and necessary staff. As to who should be posted as Presiding Officer in the Tribunal and whether

one Presiding Officer of the Tribunal should be given additional charge of another Tribunal, would be a matter to be decided by the High Court on administrative side once the regular Tribunal is constituted by the State Government in consultation with the High Court.

8. Having regard to the series of orders passed, this Court now deems it appropriate to positively direct the respondents-State to finally notify the constitution of the Tribunal within one month and also provide the paraphernalia including building, necessary staff and other infrastructure, as per the workload available with the Tribunal, within a period of one month thereafter.

9. List this matter on 25th February, 2022 to see the compliance of the order.

**(Mohammad Rafiq)
Chief Justice**

**(Sabina)
Judge**

December 17, 2021
(Yashwant)