

WEST BENGAL HUMAN RIGHTS COMMISSION

File No.22/SMC/2022

Present

1. Mr. Justice Jyotirmay Bhattacharya - Chairperson
2. Mrs. Justice Madhumati Mitra - Member
3. Mr. Naparajit Mukherjee - Member

The West Bengal Human Rights Commission took suo motu cognizance on a news item Times of India dated 08-12-2022 which is captioned as ***“Vocalist Rashid Khan driver drunk, say cops; family denies charge, alleges bribe demand, harassment”***. The W.B.H.R.C. issued a notice to Commissioner of Police, Kolkata to submit a report on the basis of the news item. The Commissioner of Police, Kolkata forwarded the report of Dy. Commissioner of Police, East Division, Kolkata vide his Memo No.989/RPT+Enclo dt.18/01/2023. The report stated that on 07/12/2022 around 03.00 hrs. Sergeant, Kaustav Mondal of Beliaghata Traffic Guard intercepted the vehicle of Ustad Rashid Khan which was being driven by his driver and the Manager was seated in the car near Chingrighata crossing. On suspicion, breath analyzer test of the driver was carried out when the result indicated 66.7

mg./100 ml. alcohol being present in his blood. This was beyond normal limit. Photo copy of breath analyzer report and emergency medical treatment slip issued by C.N.M.C&H, Kolkata were annexed with this report. Driver was prosecuted under Motor Vehicles Act and message sent to Mrs. Jayita Basu Khan, wife of Rashid Khan and the car along with driver and the Manager were deposited at Pragati Maidan Police Station. The report stated that Mrs. Khan and her daughter came to the Police Station in early hours of the morning and misbehaved with the duty officer. Later, Ustad Rashid Khan arrived at the Police Station and took charge of the vehicle after completion of due formalities. The local police denied allegation of misbehaviour with Mrs. Khan and there was no evidence of police demanding money as bribe from Mrs. Khan. The report commented that Mrs. Jayita Basu Khan was never asked by police to appear at the Police Station rather she was informed by a private Advocate for some professional issues. The driver of the vehicle had a blood alcohol content of 66.7 mg./100 ml. which was beyond normal limit. There was no demand of money as bribe. ON the contrary, the Advocate of Mrs. Khan informed that Rs.6000/- would have to be deposited as fine for release of the detained driver of the vehicle.

2. The West Bengal Human Rights Commission raised a number of queries which were all replied time to time by Dy.

Commissioner of Police, East Division, Kolkata as well as D.C (Traffic). Lastly, not being satisfied with the various report submitted by Kolkata Police authorities the W.B.H.R.C. directed its Investigating Wing to verify the medical report issued by C.N.M.C & H on 06/12/2022 in respect of driver, Ranjit Ojha whether blood alcohol test was actually performed on the accused in terms of Section 203 of M.V. Act. The Investigating Wing of W.B.H.R.C. was also directed to ascertain when the breath analyzer used by traffic police December 7, 2022 (the date of incident) was last calibrated and rules for calibration of such equipment.

3. The Investigating Wing of W.B.H.R.C. submitted its report in which they stated that the medical officer, Dr. Probal Bandyopadhyay of C.N.M.C&H, who was on duty at emergency on 05/12/2022, 08 p.m. to 06/12/2022 08 a.m. stated that Shri Ranjit Ojha, accused, was examined by him. He stated that the hospital does not have any facility to draw blood for examination of blood alcohol content and had written the figures and the medical certificate as supplied by police authorities on conventional methods of breath analyzer test. He further added that this breath analyzer test is accurate from 06 to 12 hours after consumption. The M.S.V.P. of C.N.M.C.&H confirmed that there was no facility for drawing blood for examination of blood alcohol content in the hospital.

The website of "Alcovisor Jupiter" which is the company for breath analyzer equipment stated that normally the calibration of equipment, is to be done within a year but external calibration check should be done every 30 days.

Conclusion :

4. The West Bengal Human Rights Commission is of the view that on the early hours of the morning of December 7, 2022 around 03.00 hrs. Sergeant, Kaustav Mondal of Belighata Traffic Police intercepted vehicle No.WB06R0955 driven by Ranjit Ojha, son of Shri B. Ojha of 3, Gour Mohan Ghosh Road, P.S.Bhowanipore, Kolkata - 700025 and found, on being subject to breath analyzer test, that alcohol content was 66.7 mg./100 ml. which was above standard limit provided in Section 185 (a) "has, in his blood, alcohol exceeding 30 mg. per 100 ml. of blood detected in a test by a breath analyzer." Since the blood alcohol content was above the prescribed limits, the vehicle and the driver were both sent to Pragati Maidan P.S. where they were released later after observing formalities like payment of fine etc. In the meantime, intimation was auto generated and sent to Mrs. Jayita Basu Khan, wife of Ustad Rashid Khan the owner of the vehicle involved in the incident. She then appeared at the Police Station along with her daughter and an Advocate. According to police report, there was an altercation wherein she allegedly misbehaved. The matter

later settled by way of payment of fine and release of the detained driver and vehicle. The allegation of taking bribe by police/demanding bribe was not substantiated.

The W.B.H.R.C. further examined provisions of Section 185 read with Section 203 and 204 of M.V. Act, 1988. The W.B.H.R.C. is of the view that when Section 185 M.V. Act is applied it should be read conjointly with Section 203 and 204 M.V. Act. In other words, since the offence u/s 185 of M.V. Act is non-compoundable in nature (very serious) as per provisions of M.V. Act laboratory test u/s 204 becomes mandatory.

Section 185 of Motor Vehicles Act is a penal provision. Language used in Section 203 of M.V. Act has clearly indicated that the offence under Section 185 of the said Act is not only non-compoundable but also cognizable in nature. That means, this Section empowers a police officer in uniform to arrest a person without warrant when the breath test carried out by him indicates the presence of alcohol exceeding the permissible limit.

Section 203 and Section 204 of M.V. Act prescribe two different modes for ascertaining the presence of alcohol in the blood of the person who is alleged to have committed an offence punishable under Section 185 of M.V. Act at two different stages. Section 203 of M.V. Act prescribes breath test of the suspect who is alleged to have committed the offence under

Section 185 of the M.V. Act. Section 203 of the M.V. Act is an enabling Section which empowers the police officers in uniform to arrest the suspect, if his breath test indicates the presence of alcohol in the blood of that suspect. On the other hand, Section 204 of M.V. Act prescribes laboratory test and the provisions contained in this Section come to play when a person has been arrested under Section 203 of M.V. Act. Explanation to Sub-Section 3 of Section 204 of the M.V. Act has made it clear that for the purpose of Section 204, the 'laboratory test' means the analysis of a specimen of blood made at a laboratory established, maintained or recognized by the Central Government or a State Government. Sub-Section 3 of Section 204 of M.V. Act has made it clear that the results of a laboratory test made in pursuance of this Section shall be admissible in evidence. The procedure and the safeguards to prosecute an offender for Commission of an alleged offence under Section 185 of the M.V. Act have been laid down in Section 203 and 204 of the said Act. Section 203 of the Act prescribes breath test and empowers the police officer in uniform to arrest a person for alleged commission of an offence under Section 185 of the Act, if his breath test indicates presence of alcohol exceeding the permissible limit, and Section 204 of the Act prescribes blood test of the said arrested person whose breath test indicates the presence of alcohol exceeding

the prescribed limit and also for blood test of the person who refuses breath test.

A conjoint reading of both the Sections clearly show that both the sections have laid down certain procedures and safeguards which are required to be followed to take action against a person for alleged commission of an offence under Section 185 of M.V. Act. In order to take action against any person for his alleged commission of an offence under Section 185 of M.V. Act it would be reasonable and justified that such person shall be required to provide a specimen of his blood for a laboratory test as per the provision of Section 204 of the M.V. Act.

Therefore, police should not prosecute solely on results of breath analyzer test (Section 185 M.V. Act) and that as per Section 204 a registered medical practitioner should draw a specimen of blood of the accused person for laboratory test. The provisions of Section 185, Section 203 and 204 M.V. Act are annexed with this recommendation for ready reference.

The provisions for calibration of breath analyzer, normally used by the police for detecting drunk drivers, were examined by the Commission. IN the instant case the print out supplied by the police authorities indicated that the breath analyzer instrument used on December 7, 2022 was last calibrated on 30th April, 2022 which indicates that it was done

nearly 8 months ago. However, the GD Entry 302 of Beliaghata TP Guard mentions date of incident as 06-12-2022 (03:22 hrs.). Reason for this discrepancy is unknown. Although, the manual of Alcovisor Jupiter states that calibration could be done annually but for accuracy the same should be done on a monthly basis. This is furthermore insisted by the fact that breath analyzers are used on various persons which leads to deposit of foreign elements in the body of the instrument thereby affecting accuracy of measurement. To reiterate, exclusive dependence on breath analyzer for prosecuting a person u/s 185 M.V. Act is not in the letter and spirit of M.V. Act as Section 203 and 204 mandates laboratory test in respect of persons arrested or detained for drunk driving. In the instant case since the driver and vehicle were detained at PRAGATI MAIDAN P.S. and subsequently produced for medical examination at C.N.M.C.&H, legally his blood specimen should have been drawn for blood alcohol test as mandated in Section 204 M.V. Act which unfortunately was not done. Also, as per admission of M.S.V.P. of C.N.M.C&H, there is no provision in hospital for conducting such tests.

5. In view of above the West Bengal Human Rights Commission recommends following:


- (a) Government may issue direction to all police authorities that blood alcohol test be done by drawing


blood specimen (as a confirmatory test) for persons being prosecuted u/s 185 M.V. Act in accordance with the procedure as laid down in Sections 203 and 204 M.V. Act since section 185 M.V. Act is a non-compoundable & serious offence.

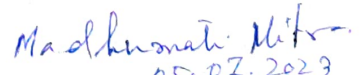
(b) Equipment used for breath analyzer test should be calibrated every 30 days in order to maintain its accuracy.

6. Special Secretary, W.B.H.R.C. is directed to send authenticated copy of the recommendations to the Chief Secretary, Govt. of West Bengal. Chief Secretary, Govt. of West Bengal should inform the Commission about the action taken or proposed to be taken on the recommendations within a period of 3 (three) months from the date of receipt of this communication.

Ld. Registrar, W.B.H.R.C is directed to upload the recommendations in the website.


(N. Mukherjee)
Member


(Justice Jyotirmay Bhattacharya)
Chairman
05.07.2023


05.07.2023
(Justice Madhumati Mitra)
Member