

Nilesh Singhal Vs. State of M.P. and ors.

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Court : Madhya Pradesh

Decided On : Feb-26-2008

Reported in : [2008(118)FLR871]

Judge : J.K. Maheshwari, J.

Appellant : Nilesh Singhal

Respondent : State of M.P. and ors.

Judgement :

ORDER

J.K. Maheshwari, J.

1. By filing this petition a blind citizen has knocked the door of this Court for enforcement of the mandate of law known as 'Persons with Disability (Equal Opportunities, Protection of Rights and Full Participation) Act,1995' (for brevity hereinafter referred to as 'the Act'), seeking protection of the umbrella of justice delivery system. The non-enforcement of the provisions of the said Act in true spirit and sense is writ at large to establish social justice envisaged under the Constitution of India.

2. Petitioner had passed intermidate 10+2, B.A.and M.A.in Political Science in first class in 1997, and secured second position in the merit list of Devi Ahilya Vishwavidyalaya, Indore. Being a blind he has filed disability certificate showing

100% absence of sight. It is further pleaded that the M.P.Public Service Commission had issued an advertisement for recruitment to various posts, wherein he had appeared and got selected in preliminary and mains exam. But in oral interview he was not permitted to participate and denied the benefit of reservation to the persons with disability as per the provisions of the Act, however, sufferer otherwise he may be appointed on the posts reserved for disabled persons. Shri Anil Trivedi, Learned Counsel appearing for petitioner has drawn my attention to various provisions of the Act and also on the judgments of the Apex Court as well as of other High Courts and urged that mandate of the law of the said Act is the pious obligation of the executive authorities of the State to implement it, for upliftment of the weaker section and to secure social order in the society. Ignorance is amounting to denial of the social justice, which is the soul of Constitution of India.

3. Per contra, Shri A.S.Gokhale and Shri L.R.Bhatnagar, Govt.Advocates, have filed various circulars issued by the Govt.of Madhya Pradesh through General Administration Department dated 30.5.97, 19.12.97, 19.3.98 and 13.10.99, whereby it is contended that the Govt.of M.P. having full consensus to the Act of 1995 and intended to uplift the disabled persons accordingly, the percentage of reservation has been enhanced from 3% to 6% and have also notified those posts in hundred point roster making it reserve to the candidates of persons with disabilities, therefore, the Govt.of M.P.is having true spirit to act upon and implement the mandate of law. It is further said that recently the General Administration Department has further issued a circular on 31.3.2005 in concise form to show their commitment, to extend the benefit of reservation to the citizens of handicapped category. However, on account of issuance of various instructions for implementation of the provisions of the Act, the grievance as putforth in this petition is devoid of any merit and substance, hence it is liable to be dismissed.

4. On the other hand the M.P.Public Service Commission, which is a body constituted for selection and appointment to public employment in the State of Madhya Pradesh, by filing its reply has contended that implementation of the mandate of law in the matter of reservation is to be done by the Govt. of Madhya Pradesh. It is the State Govt., who decides the number of vacant posts available in

the department, percentage of reservation in each category and class then made requisition to the Commission for selection on those posts. In furtherance to the said requisition, the Commission advertises the posts and after following the procedure for selection, makes recommendation for appointment. In view of the above facts, it is said that the Public Service Commission had discharged their duty, and made the recommendation on the posts as requisitioned for appointment by the State Government. In the present case it is specified that in 1997 and 1998, 39 posts were advertised for selection of Co-operative Inspectors/Co-operative Extension Officers, out of which two posts were reserved for disabled candidates other than 'Blind, Deaf & Dumb. In 1999, 50 posts of Co-operative Inspectors/Co-operative Extension Officers were advertised, out of which, three posts were kept reserved for disabled persons (orthopaedically handicapped). In the year 1999, 24 posts of Additional Asstt. Development Commissioner were advertised out of which, one post was reserved for Scheduled Tribe orthopaedically Handicapped person. In the 2000, 20 posts of Block Development Officer were published, out of which, one post of General category and one for Scheduled Caste were reserved to Orthopaedically Handicapped persons. However, it is the State Govt., who had not requisitioned the posts providing reservation to the blinds, deaf and dumbs, however, the Public Service Commission is not at fault in not making any recommendation to them. It is said that until and unless the requisition is sent for, by the Government to extend the benefit of reservation to blinds, deaf and dumb, the Commission is not in a position to make recommendation in their favour. In view of the said submissions, prayer is made to dismiss the petition.

5. After having heard Learned Counsel appearing for the parties on 25.2.2008 and as per the request of the Govt. Advocate a day's time was allowed to produce the Notification, if any, issued for the purpose of the proviso to Section 33 of the said Act. Today at the time of hearing, learned Govt. Advocate is not in a position to file any such Notification, accordingly the hearing is concluded. After hearing, I am of the opinion that by afflux of time, no direction for appointment of petitioner pursuance to his selection in 1998-99 may be issued after nine years, but looking to the issue of public importance of the blinds, deaf and dumb and down trodden, who are denied the equal opportunities in public employment, by the ingenuity of bureaucratic system despite having best intended legislation, academically, I have

decided to deal with the issue on merit.

6. The preamble of the Constitution of India provides equality of status and opportunities to the citizens and to promote them among all. Article 21 envisages life and personal liberty, which includes livelihood. Part IV of the Constitution makes it obligatory by Article 38 upon the State Govt. to secure a social order and to promote for welfare of the people in society by uplifting them socially, economically, educationally and politically sound. The Government must minimise the inequalities in income, and made endeavour to eliminate inequalities in status, facilities and opportunities, not only amongst individuals but also amongst groups of people residing in different areas or engaged in different vocations. Thus, a citizen, who is blind or of low vision or having hearing impairment or having locomotor disability or cerebral palsy having right to live with dignity, status and to get equal opportunities in public employment and the State Government is duty bound to promote the welfare of such people and to secure the social order.

7. It is the common experience that the persons having disability are unable to lead their life properly and facing discrimination in employment, they are most neglected in the families and society, however could not have yet been uplifted. No meaningful attempts were made to join them with main stream of the society and the country. T.R.Dye, policy analyst, in his book Understanding Public Policy says: 'Conditions in society which are not defined as a problem and for which alternatives are never proposed, never become policy issues. Government does nothing and conditions remain the same.' The said quotation applies to the disabled in true sense. In fact the conditions of the disabled have not been defined as a problem, however, not remained as public issue to the politicians and the bureaucrats. This issue has been focussed by NGOs, authors, human right groups, who are fighting to restore their life with dignity. Until and unless realisation comes in the mind of politicians, bureaucrats and policy makers, that the right of a disabled citizen is also a human right, the class of these persons may not get status and to secure social order in the society of our country. In Asian and Pacific countries, primarily with this end in view, started the decade of disabled persons from the year 1993 till 2002. A meeting was held in Beijing on 1st to 5th December, 1992 called the 'Meet to Launch the Asian and Pacific Decades of

Disabled persons. In this meeting Asian and Pacific countries adopted the Proclamation on the 'Full Participation and Equality of People with Disabilities in the Asian and Pacific Regions'. To give effect to this proclamation Parliament in India passed the enactment known as 'Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995'.

8. In order to appreciate the intended benefit of reservation provided under the Act some relevant provisions are referred here. Section 2(a) 'appropriate Government' meaning thereby a Central Government or any establishment wholly or substantially financed by that Government, or a Cantonment Board constituted under the Cantonment Act, 1924 and in relation to a State Govt. or any establishment wholly or substantially financed by that Govt. or any local authority, other than the Cantonment Board, the State Government; Section 2(b) defines 'blindness' whereby the person suffers from total absence of sight or visual acuity not exceeding 6/60 or 20/200 (snellen) in the better eye with correcting lenses; or limitation of the field of vision subtending an angle of 20 degree or worse. Section 2(e) defines 'cerebral palsy' meaning thereby a group of non-progressive conditions of a person characterised by abnormal motor control posture resulting from brain insult or injuries occurring in the pre-natal, peri-natal or infant period of development. Section 2(i) defines 'disability' meaning thereby blindness, low vision, leprosy-cured, hearing impairment, locomotor disability, mental retardation and mental illness. Section 2(1) defines 'hearing impairment' means loss of sixty decibels or more in the better ear in the conversational range or frequencies. Section 2(n) defines 'leprosy cured person' which means any person who have cured of leprosy but is suffering from 'loss of sensation in hands or feet as well as loss of sensation and paresis in the eye and eye-lid but with no manifest deformity; manifest deformity and paresis but having sufficient mobility in their hands and feet to enable them to engage in normal economic activity; extreme physical deformity as well as advanced age which prevents him from undertaking any gainful occupation may be construed as per above. Section 2(o) defines locomotor disability means disability of the bones, joints or muscles leading to substantial restriction of the movement of the limbs or any from of cerebral palsy. Section 2(q) defines 'mental illness' means any mental disorder other than mental retardation. Section 2(r) 'mental retardation' means a condition of arrested or incomplete

development of mind of a person which is specially characterized by subnormality of intelligence. Section 2(t) defines 'person with disability' means a person suffering from not less than forty per cent of any disability as certified by a medical authority. Section 2(u) defines 'person with low vision' means a person with impairment of visual functioning even after treatment or standard refractive correction but who uses or is potentially capable of using vision for the planning or executing of a task with appropriate assistive device. Chapter-II of the said Act deals with Central Co-ordination Committee and Chapter-III deals with State Co-ordination Committee, where under the Central or the State Government may constitute a body to exercise the powers and functions assigned under the Act. The said Chapter further deals with terms and conditions of the appointments and powers of the Committee. Chapter-IV give enormous powers to the appropriate Government to prevent occurrence of disabilities. Chapter-IV also provides that appropriate Governments and local authorities to provide free education to the children with a disability and to make schemes and programmes for formal education to them. Chapter-VI deals with the issue of employment whereunder as per Section 32 the appropriate Government shall identify the posts in the establishment which can be reserved for the persons with disability and may be reviewed at periodical intervals not exceeding three years. Section 33 provides reservation of posts, whereby appropriate Government shall appoint in every establishment such percentage of vacancies not less than three percent for persons or class or 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. Proviso of Section 33 confers a discretion to the appropriate Government, who 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. Section 34 enumerates that employer in every establishment shall furnish such information or return as may be prescribed in relation to vacancies appointed for persons with disability that have occurred or about to occur in that establishment to such Special Employment Exchange as may be prescribed and the establishment shall thereupon comply with such requisition. Section 35 specifies that any person authorised by Special

Employment Exchange in writing shall have access to any relevant record or document in the possession of any establishment. Section 36 makes it obligatory on the employer to maintain the record of the persons with disability employed in the establishment in such form and in such a manner as prescribed by the authority. Section 38 gives power to the appropriate Government and local authorities, who shall by notification formulate schemes for ensuring employment of persons with disabilities. Section 39 specifies that all education institutions to reserve seats for persons with disabilities. Section 40 specifies that not less than 3% vacancies may be available in all poverty alleviation schemes for the benefit of persons with disabilities. Section 41 specifies the Government is under obligation to offer incentive to the employer both in public and private sectors to ensure at least 5% of the work force is composed of persons with disabilities. Chapter-VII provides that persons with disabilities must be given allotment of land and houses at concessional rates and on preference. Chapter-VIII makes it clear that persons with disabilities should be given special measures and they are not required to be discriminated in transport, on the roads, in the economic capacity and development and in the Government employment. Chapter-IX and X enumerates about the research and manpower development, and recognition of the institutions for persons with disabilities. Chapter-XI provides for institution for persons with severe disabilities. Chapter-XII related to execution of the said provisions by appointing Chief Commissioner and Commissioners to achieve ultimate object specified in Chapter 13, by which the appropriate Government is bound to provide social security to the persons with disabilities.

9. Thus, entire scheme of the Act makes it clear that persons with disabilities are required to be uplifted since education, employment and to provide them all opportunities to get status in every walk of life, which is in accordance with the basic structure of our Constitution and to uphold the object specified in the preamble of the Constitution of India. Thus the enactment, persons with disability (Equal Opportunities, Protection of Rights and the Participation) Act, 1995 is the best intended legislation. In the case in hand the meritorious blind citizen, who has passed the preliminary and main examination of M.P. Public Service Commission has not been offered to participate in the oral interview only because he was a blind and looking to the nature of the duties attached to the post, however, by

giving a purposive interpretation, the mandate of the said Act and the right of reservation, which was available to him, has denied.

10. The Government in their return is unable to deny or discard the protection of the said Act, on the contrary by filing various Circulars, it has conveyed to Court that the Government is vigilant enough to protect the right of such class of the persons and issued various Circulars in their favour. But surprisingly the ingenuity of the clutches of the executive fiat of the bureaucraties of the State Govt. has been brought on record by the return of the Public Service Commission, whereby the reservation to the persons with disability was made available only to orthopaedically handicapped, no solace was offered to blind, deaf and dumb because the State Govt. had made the requisition of posts to be reserved to other than blind or of low vision or deaf and dumb, thus, the person, who is handicapped with locomotor disability, and popularly known as orthopaedically handicapped were only extended the benefit of reservation. Thus, the stand of the State Government and the policies, which showers protection of reservation to blind, deaf and dumb is available only on papers, as apparent from the return and documents produced by Public Service Commission. Therefore, it is to be held that by the ingenuity of the bureaucratic system has set at naught the implementation of best piece of intended legislation denying the benefit of reservation to the blinds, deaf and dumb and cerebral palsy.

11. In the case of National Federation of Blind v. Union Public Service Commission and Ors. reported in (2005)¹ PDD 268, the Apex Court has observed that visually handicapped constitute a significant section of our society and as such it is necessary to encourage their participation in every walk of life. It is further considered that Ministry of Welfare, Government of India has undertaken various measures to utilize the potentialities of the visually handicapped persons. The Central Government has provided the reservation minimum to the extent 3% to group 'C' and 'D' posts to the physically handicapped persons including blind and partially blind. The Apex Court after perusing various circulars directed the Government of India and the Union Public Service Commission to promote the visually (blind and partially blind persons) and to permit them to compete the examination, which is held by Union Public Service Commission. It was further

held that they shall be provided facility of writing Civil Services Examination either in Braille-script or with the help of a scribe.

12. The Apex Court in other case of Bhagwan Dass and Anr. v. Punjab State Electricity Board reported in (2008) 1 SCC 579, observed and highlighted the highly insensitive and apathetic attitude harboured by some of us, living a normal healthy life, towards those unfortunate fellowmen who fell victim to some incapacitating disability. The facts of the case reveal that officers of the Punjab State Electricity Board were quite aware of the statutory rights of appellant No. 1 and their corresponding obligation yet they denied him his lawful dues by means that can only be called disingenuous. In this case the Apex Court dealt with the argument of purposive interpretation, as officers of the Board were acted to the best of interest of the Board, but such argument was declined with the observation that still under the old mindset it would appear to them just not right that the Board should spend good money on someone who was no longer of any use, but they were quite wrong, seen from any angle. The Apex Court has further observed that from the narrow point of view the officers were duty bound to follow the law and it was not open to them to allow their bias to defeat the lawful rights of the disabled employee. It is further observed that from the larger point of view the officers failed to realise that the disabled too are equal citizens of the country and have as much share in its resources as any other citizen. Ultimately it is held that the denial of their rights would not only be unjust or unfair to them and their families but would create larger and graver problems for the society at large. What the law permits to them is no charity or largesse but their right as other equal citizens of the country.

13. The High Court of Andhra Pradesh in the case of Perambaduru Murali Krishna and Ors. v. State of Andrah Pradesh and Ors. reported in (2005) 1 PDD (CC) 231, has observed that the State Government is itself competent to make the law on the point while recruiting through Public Service Commission and the reservation to the blinds or low vision, hearing impairment ought to have been allowed. Similarly Punjab & Haryana High Court in the case of Surnder Kumar v. Panjabi University and Ors. reported in (2005) 1 PDD (CC) 72 has directed to extend the benefit of the mandate of the Act of 1995 and in terms of the directives issued in the case of National Federation of Blind (supra).

14. I have also come across to the Division Bench judgment of this Court in the case of Medical Council of India v. nitin Mantri and Ors. reported in I.L.R.(2007) M.P. 1065, whereby this Court has touched the issue of purposive interpretation and held that the persons with visual disability may not be made entitled to seek admission in the medical college in view of the guidelines issued by Medical Council of India. The said matter was related to the admission to the medical colleges, which are governed by Section 39 of the Act and the decision is based on a letter dated 5.7.2001 of a joint meeting of Medical Council of India, whereby the visually handicapped have not not been considered suitable for the studies of MBBS course. Thus, in view of the said letter and with a view of purposive interpretation the benefit of reservation made available to them by Section 39 of the Act was denied. In the case in hand, the benefit of reservation is claimed on the basis of the provisions of Section 32 and 33 of the Act and the Apex Court has also interpreted it, even by giving purposive interpretation in the case of Bhagwan Dass (supra).

15. The perusal of language of Section 32 of the Act of 1995 makes it clear that the appropriate Government shall identify the posts in the establishment, which can be reserved for the person with disability. Section 33 specifies the reservation of the posts, by which the appropriate Government shall mandatorily appoint such percentage of disabled persons not less than 3% in every establishment from blindns or low vision, deaf and dumb, locomotor disability or cerebral palsy. The proviso of Section 33 gives an exemption to the appropriate Government, for purposive interpretation, whereby having regard to the work carried out in the department or establishment of the said Government by way of Notification and subject to conditions, if any, may exempt any establishment from the implementation of the provisions of this Section. However, the joint reading of Section 32 and 33 makes it amply clear that the Government is duty bound to identify the posts in the establishment to which the reservation must be made to the blinds or of low vision, hearing impairment and physically handicapped persons. By issuing a Notification and subject to the conditions so mentioned any of the establishment may be exempted from the purview of reservation. Thus, it is clear that to exempt any establishment, from reservation of Sections 32 and 33 of the Act, a Notification is required to be published in the Govt.Gazette, as defined

under Section 2(s). In the present case no such notification has been brought to my notice despite giving an opportunity to the State Govt.to produce the same. In such circumstances, the only irresistible conclusion may arrive, that even after issuing various circulars by the State to uplift the mandate of the Act of 1995, its real benefit has not been extended to the petitioner as well as to the class of blind, low vision, deaf and dumb and cerebral palsy, it was made available only the orthopaedically handicapped persons.

16. In view of the foregoing discussion, I am of the considered view that the State Government has failed to discharge its obligation, commensurate to Article 21 and 38 of the Constitution of India, to secure social order and to protect the disabled persons signifying their participation in every walk of life. The Government has failed to equate the disabled persons with other citizens and denied their legal rights envisaged in the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act,1995, which is amounting to denial of social justice, though their rights are protected by rule or law. It is neither charity, bounty or largesse in the hands of Govt.but their rights are equal to other citizens of the country. Thus, in the facts, the stand taken by the State Government is attractive enough on the papers but not in reality, which reflects from the documents produced by Public Service Commission, therefore, the action of the Government is unjust, unfair to the disabled persons and their families, and creates greater problem to them and to society at large.

17. Thus, in view of the foregoing discussion, the ingenuity of the bureacrats in non-implementation of the mandate of the Act of 1995 and non-implementation of their circulars is a writ at large and compelled me to command them, directing, to recognise the beneficial piece of legislation and to implement it and establish the rule of law to secure social recognition to such class of persons, accordingly I am constrained to issue following directions.

i) The State Government is directed to implement the mandate of the act, 'The Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act,1995 and the provisions of the rules made thereunder, by issuing appropriate instructions in this regard to all the departments of the State

Government.

ii) The State Government is further directed to identify the posts of the disabled including the posts of blind or low vision, hearing impairment or locomotor cerebral palsy and the benefit be made available to the candidates of such class in future employment as specified in Section 32 and 33 of the Act.

iii) It is further directed that until and unless any establishment is exempted by way of issuing a notification, the mandate of Section 32 and 33 of the Act of 1995 be not flouted with by the authorities/officials in any manner and on violation of the same, they must be dealt with in accordance with the provisions of law.

iv) The State Government is directed to strictly adhere to the reservation to all three categories with the ratio of 1:1 in minimum or as observed by them in their own circular dated 31.3.2005, 2:2 for each class.

v) A copy of this order be also parted with the Chief Secretary of Madhya Pradesh for its circulation to all the concerned departments of the State Government and local bodies, which fall within the purview of appropriate Government for its real implementation and to secure social justice in the State of Madhya Pradesh.

vi) The Government is also directed to give wider publicity by print and electronic media indicating the rights of reservation to the disabled persons and the notification of exemption, if any, be issued to them.

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