

IN THE HIGH COURT OF DELHI AT NEW DELHI

+ Writ Petition (Civil) no. 628/2007 & CM 1158/07

% Date of Decision: 16th May, 2008

HARPAL SINGH ... Petitioner
! Through: Mr. Manmohan Singh, Advocate
Versus

\$ UNION OF INDIA & ORS. Respondents
^ Through: Mr. Gaurav Duggal, Advocate for UOI.
Ms. Zubeda Begam, Advocate for
Respondent No. 4/GNCT.
Mr. Amiet Andlay, Advocate for R-2.

CORAM:

***HON'BLE MR. JUSTICE T.S. THAKUR**

***HON'BLE MS. JUSTICE VEENA BIRBAL**

1. Whether Reporters of local papers may 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

Veena Birbal, J.

1. This petition filed in public interest seeks writ of mandamus for directing the respondents to make a reasonable policy so as to provide treatment, financial assistance, occupation, home care etc. to poor cancer patients. The petitioner has further sought direction to the Union of India to introduce amendment to definition of "disability" in Section 2(i) of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995

hereinafter referred to as “the Act” so as to include a person suffering from cancer within that definition. Lastly, the petitioner has sought allotment of a kiosk/stall by DDA in his favour.

2. The petitioner avers that he is a patient of ‘left parietal astrocytoma’, a form of brain cancer which was detected in 1993. He was operated upon but due to his inability to perform his duties and strenuous tasks properly; his services were terminated in 1995 and he has been rendered jobless since then. He further states that his wife and children had also abandoned him and he is surviving on charity ever since his services were terminated.

3. The petitioner made representations dated 13.10.99 and 14.1.2000 to the Prime Minister for allotment of a kiosk/shop for setting up a STD/PCO Booth or Tea/Coffee Shop. It is further the case of petitioner that after waiting for several months, Delhi Development Authority, vide its letter No.F1(3)2000/OTA/CE/1276 dated 22.3.2000 sent him an out of turn allotment proforma for allotment of shop on compassionate grounds, which was duly filled and submitted on 9.6.2000. The petitioner did not receive any response to the same as a result of which he again wrote a letter

dated 12.2.2004 for allotment of a kiosk. Ultimately, he received letter No. F1(3)2000/OTA/CE/783 dated 8, March, 2004 from DDA stating that shops/kiosks cannot be allotted to the petitioner due to change of policy. It was also stated in the said letter that out of turn allotment of shops/kiosks would be made only to widows/wards of defence and paramilitary personnel who die in harness and no other category is eligible for such out of turn allotment. The petitioner was also advised to apply for allotment under "physically handicapped quota".

4. Further averments in the writ petition are that the petitioner then made another representation to DDA and to Joint Secretary, Ministry of Welfare, Government of Delhi, who is a secretary of the Central-Executive for State of Delhi, under the "Act" through an NGO namely 'Cansupport' to apprise it about the National Policy, if any, that addresses problems faced by persons suffering from cancer with special reference to the help, financial or otherwise, that Government provides to such persons or any scheme under the aforesaid Act for rehabilitation of cancer patients. A similar letter was also addressed to Joint Secretary, Ministry of Welfare,

Government of India but the petitioner did not receive any reply to the said letters.

5. The petitioner was then constrained to file a Civil Writ Petition, WP(C) NO. 18667/2004, seeking directions to the respondents to formulate a reasonable policy to provide better financial help/occupation to cancer patients. The petition was disposed of by a Division Bench of this Court with a direction to the Union of India to treat the writ petition as a representation of the petitioner and intimate the decision taken by the respondent to the petitioner within eight weeks. Since the petitioner did not receive any such decision, he initiated contempt proceedings by way of Contempt Petition (Civil) no. 1228/2005. During the course of pendency of contempt proceedings, the Cabinet Secretary to the Government of India filed an affidavit in response to the contempt petition stating that cancer is a disease and not a “disability” and, therefore, persons suffering from cancer cannot get the benefit under the various schemes of Government under the said Act. It was further stated in the reply that Government of India has implemented two schemes for cancer patients to provide financial assistance for medical treatment to the poor patients:

(i) **Health Minister's Direction Grant:** One time financial assistance for treatment in government hospitals upto Rs. 20000 is provided to poor patients whose annual income does not exceed Rs. 50000 per annum. The financial assistance is admissible for treatment in Government hospitals only. Central Govt./State Govt./ PSUs employees are not eligible for this grant.

(ii) **Rashtriya Arogya Nidhi:** This scheme is only for treatment of persons suffering from life threatening diseases including cancer and who are below the poverty line. The assistance is provided only for treatment in Government Hospitals.

In view of the said reply, the prayers of the petitioner were rejected and he was allowed to withdraw the contempt petition as not pressed vide orders dated May 24, 2006 and July 21, 2006. Thereafter, the present petition was filed.

6. The petitioner submits that respondent no. 5, DDA ought to have allotted a kiosk/stall to him on compassionate grounds but DDA arbitrarily rejected the petitioner's request for allotment of a kiosk on the ground that he was not eligible for such allotment due to change in the policy by the Government.

7. The petitioner submits that the decision of the Central Government and Delhi Development Authority violates the fundamental 'Right to Life' enshrined under Article 21 of the Constitution. Reliance is placed on the judgment of Supreme Court in *Olga Tellis vs. Bombay Municipal Corporation and Ors.* 1985 (3) SCC 545 to submit that the right to life includes livelihood and its deprivation, unless affected by a reasonable procedure established by law would be violative of Article 21 of the Constitution and 'if the right to livelihood is not treated as a part of constitutional right to life, the easiest way of depriving a person of his right to life, would be to deprive him of his means of livelihood to the point of abrogation. Such deprivation would not only denude the life of its effective content and meaningfulness but it would make life impossible to live.' Reliance is also placed on the decision of Supreme Court in *Pt. Parmanand Katara vs. Union of India & Ors.*, AIR 1989 SC 203, where the Apex Court observed that Article 21 casts an obligation upon the state to preserve the life of its citizens and on *Narendra Kumar Chandla vs. State of Haryana and others*, AIR 1995 SC 519, where it was held that Article 21 protects right to livelihood, as "integral facet of right to life." The petitioner submits that law is well settled that right to health is integral to the right to

life and Government has a constitutional obligation to provide health facilities to its citizens.

8. The petitioner contends that neither the Central Government nor the State Government of NCT of Delhi has any policy or scheme to provide financial help or rehabilitation to poor cancer patients. On the other hand, a person suffering from “disability” as enumerated under Section 2(i) of the Act, can avail various benefits available under various schemes under the aforesaid Act.

9. The respondents 1 and 2 in their counter affidavit have contended that the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 does not recognize diseases but only disabilities. It is also contended that the aforesaid Act deals with persons who suffer from more than 40% disability as enumerated in the Act and also those disabilities which are as a consequence of diseases like cancer, paralysis etc. The respondents have also contended that the present petition is filed for redressal of personal grievance of allotment of a kiosk/stall. It is further pointed out that petitioner was detected with the alleged disease in 1993 and the present petition has been filed in 2007. It is contended that substantial period of time has already passed which

would show that petitioner has recovered from alleged cancer. It is pointed out that there is no evidence placed on record to show that the petitioner is now suffering from cancer.

10. We have given our consideration to the contentions raised. The Act, has been enacted with an object to alleviate the condition of a person who is suffering from a permanent disability. It seeks to remove any discrimination faced by such persons. The aforesaid Act acknowledges the constitutionally unacceptable discrimination practiced against the permanently disabled for many years and seeks to correct that discrimination by unambiguously casting a positive obligation on the State and authorities of State to eliminate such discrimination.

11. Section 2(t) of the Act defines “person with disability” to mean a person suffering from not less than 40% of any disability as certified by a medical authority. “Disability” has been defined under Section 2(i) of the Act as follows:-

i. “disability” means-

- (i) blindness;
- (ii) low vision;
- (iii) leprosy-cured;
- (iv) hearing impairment;

(v) locomotor disability;

(vi) mental retardation;

(viii) mental illness;

12. It is not the case of petitioner that he is suffering from disability to the extent as is defined under Section 2(t) read with Section 2(i) of the Act. The petitioner has not stated the nature of his disability which he has to suffer due to cancer but has made a bald assertion that he is not able to perform strenuous physical activities. In *Union of India v. K.P. Singh, 2002(8) AD (Delhi) 515* the disability of the respondent was assessed at 9%. A Division Bench of this Court held that the respondent is not entitled to the benefits under the Act as he does not fulfill the criteria as laid down in the Act. The Court further observed that the policy decision as laid down must be strictly adhered to. Waiver of the policy is also not permissible in law as a result whereof not only a policy decision will be thrown to the wind, the right of the other may also be affected. In any event, there cannot be waiver against the Constitutional mandate. Such a waiver does not also pass the public interest test.

13. Insofar as directions for framing of policy and amendment to the Act are concerned, no such direction can be issued by a Court of Law. In *State of Himachal Pradesh. v. A Parent of a Student of Medical College, Simla and others*, 1985 (3) SCC 169, it was held as under:

“It is entirely a matter for the executive branch of the Government to decide whether or not to introduce any particular legislation. Of course, any member of the legislature can also introduce legislation but the court certainly cannot mandate the executive or any member of the legislature to initiate legislation, howsoever necessary or desirable the court may consider it to be. That is not a matter which is within the sphere of the functions and duties allocated to the judiciary under the Constitution.....”

In *Asif Hameed v. State of Jammu and Kashmir* (AIR 1989 SC 1899), the Supreme Court observed as under:

“When a State action is challenged, the function of the Court is to examine the action in accordance with law and to determine whether the legislature or the executive has acted within the powers and functions assigned under the Constitution and if not, the court must strike down the action. While doing so the court must remain within its self-imposed limits. The court sits in judgment on the action of a coordinate branch of the Government. While exercising power of judicial review of administrative action, the court is not an appellate authority. The Constitution does not permit the court to direction or advise the executive in matters of policy or to sermonize qua any matter which under the Constitution lies within the sphere of legislature or executive, provided these authorities do not transgress their constitutional limits or statutory powers.”

The Supreme Court in *State of Orissa v. Gopinath P. Dash*; 2006 AIR (SC) 651, while elaborating scope of judicial review of policy decision observed as under:

“The policy decision must be left to the Government as it alone can adopt which policy should be adopted after considering all the points from different angles. In matter of policy decisions or exercise of discretion by the Government so long as the infringement of fundamental right is not shown Courts will have no occasion to interfere and the Court will not and should not substitute its own judgment for the judgment of the executive in such matters. In assessing the propriety of a decision of the Government the Court cannot interfere even if a second view is possible from that of the Government.”

14. We find no merits in the petition and the same is accordingly dismissed.

Veena Birbal, J.

T.S. Thakur, J.

May 16, 2008
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