

THE HON'BLE SRI JUSTICE A. RAJASHEKER REDDY

WRIT PETITION No.18018 of 2002

Date:08.10.2015

Between:

1. The Chief General Manager, Telecom, A.P. Circle, M/s. Bharat Sanchar Nigam Ltd., (Formerly Department of Telecommunications Government of India), Doorsanchar Bhavan, Abids, Hyderabad-500 001, and another.

PETITIONERS

AND

P. Sathish, S/o. P. Nageswara Rao,
(Retired., Special Grade Teacher),
H.No.206, Velagaleru,
Penumantra Mandal,
West Godavari District.

RESPONDENTS

THE HON'BLE SRI JUSTICE A. RAJASHEKER REDDY

WRIT PETITION No.18018 of 2002

ORDER:

This writ petition is filed for issuance of writ of Certiorari to call for records pertaining to Case No.42/2001 on the file of the State Commissioner for Disabilities,

Hyderabad and to quash the order dated 29.12.2001.

Brief facts of the case are that the respondent, who is handicapped, attended the examination conducted by the petitioners-organisation (BSNL) for the post of Telecom Technical Assistant on 9/10.12.2000 in pursuance of the notification dated 10.04.2000 issued in Vartha Telugu Daily News paper against open category quota. In the said notification, reservation was provided only for ex-servicemen, SC/ST and BC/OBC, but no reservation was provided to physically handicapped candidates. The respondent made a complaint against the petitioners before the Court of State Commissioner, Disabilities, Andhra Pradesh, Hyderabad, for non-observation of reservation for physically handicapped candidates in the recruitment of Telecom Technical Assistants in BSNL, contending that the Department violated Section 33 of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 (for short 'the Act') in the recruitment process. The said complaint was registered as Case No.42 of 2001/S.I/954/2001 and the same was disposed of on 29.12.2001 with a direction to the petitioners to strictly implement the provisions of Section 33 of the Act and consider the candidature of the respondent as Orthopaedically Handicapped, if he is otherwise eligible for the post of Telecom Technical Assistant in A.P. Telecom Circle. Thereafter the respondent got issued notice dated 17.06.2002 to the petitioners to implement the orders of the Court of State Commissioner dated 29.12.2001. Challenging the same, the petitioners filed the present writ petition.

Learned counsel for the petitioners submits that the respondent ought not to have approached the State Commissioner having participated under open category in the examinations conducted by the BSNL in pursuance of the notification. He also contended that unless the notification specifically provides for reservation for physically handicapped persons, no appointment can be made under the said quota. He also submits that as the posts were not identified under the said quota, question of appointment of the respondent does not arise, especially after conclusion of the selection process. He also contended that the State Commissioner has no power to issue directions to consider the candidature of the respondent for appointment, which is beyond the powers conferred under the Act. He also contended that reservation for physically handicapped exists only to the posts of

JAO, JE (Civil & Electrical and Stenographers Group C) and there is no such reservation for physically handicapped for Telecom Technical Assistants recruitment in the notification issued on 10.04.2000.

On the other hand, Sri M.L. Narasimham learned counsel for the respondent submits that since the petitioners are bound to provide reservation under Section 33 of the Act, question of non-identification of posts cannot be a ground to deny appointment to the respondent under the said quota. He submits that the State Commissioner has power to issue such direction for implementation as per Sections 61 and 62 of the Act. In support of his contention the learned counsel relies on the judgment of the Apex Court in **Government of India through Secretary and another v. Ravi Prakash Gupta and another**

Admittedly, notification for appointment of Telecom Technical Assistants was issued on 10.04.2000. The said notification did not contain any provision for reservation in favour of physically handicapped persons. The respondent participated in the selection process under the open category and when he was unsuccessful, he approached the Court of State Commissioner under the Act, seeking implementation of the provisions of the Act. Once notification was issued, the respondent ought to have challenged the notification itself for non-provision of 3% reservation for Physically Handicapped persons as envisaged under Section 33 of the Act. But he unsuccessfully participated in the selection process, and thereafter, without challenging the notification, he approached the State Commissioner for providing posts under physically handicapped quota.

Sections 61 and 62 of the Act reads as under.

“61. Powers of the Commissioner:- The Commissioner within the State shall –

- a. co-ordinate with the departments of the State Government for the programmes and schemes for the benefit of persons with disabilities;
- b. monitor the utilisation of funds disbursed by the State Government;
- c. take step to safeguard the rights and facilities made available

to persons with disabilities;

- d. submit reports to the State Government on the implementation of the Act at such intervals as that Government may prescribe and forward a copy thereof to the Chief Commissioner.

62. Commissioner to look into complaints with respect to matters relating to deprivation of rights of persons with disabilities:-

Without prejudice to the provisions of Section 61 the Commissioner may of his own motion or on the application of any aggrieved person or otherwise look into complaints with respect to matters relating to –

- a. deprivation of rights of persons with disabilities;
- b. non-implementation of laws, rules, bye-laws, regulations, executive orders, guidelines or instructions made or issued by the appropriate Governments and the local authorities for the welfare and protection of rights of persons with disabilities,

and take up the matter with the appropriate authorities.”

As per Section 61 of the Act the State Commissioner can bring the grievances of the persons, who are entitled for the benefit under the Act, to the notice of the authorities. But the Act does not specifically confer any power to give directions to the authorities.

In the present case, the fact remains that notification dated 10.04.2000 does not contain the provision for reservation in favour of the physically handicapped persons. The petitioners, perhaps, might have violated the mandate of the Parliament envisaged under Section 33 of the Act, but however, as reservation was not provided for physically handicap persons in the notification dated 10.04.2000 the respondent cannot seek appointment under the said quota as a matter of right. If the direction of the State Commissioner has to be implemented, it may lead to several complications because other persons may prosecute litigation, and hence, the relief cannot be granted.

The decision relied on by the learned counsel in **Government of India through Secretary and another v. Ravi Prakash Gupta and another**, stands on a

different footing wherein reservation was made for Physically Handicapped persons.

Paragraphs 25 and 27 read as under.

25. Although, the Delhi High Court has dealt with the aforesaid questions, we wish to add a few observations of our own in regard to the objects which the legislature intended to achieve by enacting the aforesaid Act. The submission made on behalf of the Union of India regarding the implementation of the provisions of Section 33 of the Disabilities Act, 1995, only after identification of posts suitable for such appointment, under [Section 32](#) thereof, runs counter to the legislative intent with which the Act was enacted. To accept such a submission would amount to accepting a situation where the provisions of [Section 33](#) of the aforesaid Act could be kept deferred indefinitely by bureaucratic inaction. Such a stand taken by the petitioners before the High Court was rightly rejected. Accordingly, the submission made on behalf of the Union of India that identification of Grade 'A' and 'B' posts in the I.A.S. was undertaken after the year 2005 is not of much substance.

27. It is only logical that, as provided in [Section 32](#) of the aforesaid Act, posts have to be identified for reservation for the purposes of [Section 33](#), but such identification was meant to be simultaneously undertaken with the coming into operation of the Act, to give effect to the provisions of [Section 33](#). The legislature never intended the provisions of [Section 32](#) of the Act to be used as a tool to deny the benefits of [Section 33](#) to these categories of disabled persons indicated therein. Such a submission strikes at the foundation of the provisions relating to the duty cast upon the appropriate Government to make appointments in every establishment (emphasis added

As held by the Supreme Court, non-identification of posts is not a ground for not providing reservation in favour of the physically handicapped persons as mandated in Section 33 of the Act. That was a case where the respondent before the Supreme Court appeared under physically handicap quota and the notification provide for appointments under the said quota. In the circumstances, the Apex Court upheld the judgment of the High Court

In the present case, the facts are different as the notification dated 10.04.2000 does not provide for any reservation in favour of the physically handicap persons.

In view of the same, though the petitioners' action amounts to violation of the mandate under Section 33 of the Act, in view of the fact that the respondent has not challenged the notification dated 10.04.2000, this Court is not inclined to grant any relief to the respondent. This aspect has not been properly considered by the State Commissioner though raised by the petitioners before it. In view of the above

reasons, the writ petition is liable to be allowed.

Accordingly the writ petition is allowed and the order dated 29.12.2001 in Case No.42/2001 is quashed. As a sequel, miscellaneous petitions pending, if any shall stand closed. No order as to costs.

A. RAJASHEKER REDDY, J.

8th October, 2015

Js.