

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ WP(C) No. 7844/2013 & CM Nos. 16648/2013 (stay) &
9014/2014

% **10th March, 2015**

THE ORIENTAL INSURANCE COMPANY LTD. Petitioner

Through: Mr. Rahul Ranjan Verma, Adv.

versus

THE CHIEF COMMISSIONER & ANR. Respondents

Through: Ruchir Mishra, Adv. for R-1.

Mr. V.M.Handa, Adv. for R-2.

CORAM:
HON'BLE MR. JUSTICE VALMIKI J.MEHTA

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

1. By this writ petition filed under Article 226 of the Constitution of India, petitioner/employer questions the order passed by the Chief Commissioner for Persons with Disabilities dated 20.9.2013 whereby the Chief Commissioner passed the following directions:-

“11. In the light of above, the respondent is directed to shift the complainant to some other post that carries the same pay scale and service benefits as the Development Officer (Marketing) which the complainant is holding at present, if he needed to be shifted. The complainant must not be shifted

to the post of Assistant which carries a lower pay scale than the Development Officer (Marketing). If it is not possible for the respondent to adjust the complainant against any post which carries the same scale and the service benefits as attached to the post of Development Officer (Marketing), then the respondent is directed to keep the complainant on a supernumerary post until a suitable post is available or he attains the age of superannuation whichever is earlier.”

2. Counsel for the petitioner relies upon a recent judgment of the Supreme Court in the case of ***State Bank of Patiala & Ors. Vs. Vinesh Kumar Bhasin (2010) 4 SCC 368*** in which the Supreme Court has held that the Chief Commissioner acting under the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 has no power to issue various directions in the nature of a judgment or injunction etc. The Supreme Court in the case of ***Vinesh Kumar Bhasin (supra)*** has relied upon the earlier judgment of the Supreme Court in the case of ***All India Indian Overseas Bank SC and ST Employees' Welfare Assn. and Ors. Vs. Union of India and Ors. (1996) 6 SCC 606*** wherein the Supreme Court has said that a Commission's power is restricted as per the particular provision and the Commission cannot act like a court and start passing judgments, issuing injunctions etc. The relevant paras of the judgment in the case of ***Vinesh Kumar Bhasin (supra)*** read as under:-

“13. Prima facie neither Section 47 nor any other provision of the Disabilities Act was attracted. But, the Chief Commissioner chose to issue a show-cause notice on the complaint and also issued an ex parte direction not to give effect to the order of retirement. He overlooked and ignored the fact that the retirement from service was on completion of the prescribed period of service as per the service regulations, which was clearly mentioned in the letter of retirement dated 17-11-2006; and that when an employee was retired in accordance with the regulations, no interim order can be issued to continue him in service beyond the age of retirement.

14. The Chief Commissioner also overlooked and ignored the fact that as an authority functioning under the Disabilities Act, he has no power or jurisdiction to issue a direction to the employer not to retire an employee. In fact, under the Scheme of the Disabilities Act, the Chief Commissioner (or the Commissioner) has no power to grant any interim direction.

15. The functions of the Chief Commissioner are set out in Sections 58 and 59 of the Act. Section 58 provides that the Chief Commissioner shall have the following functions:

- “58. (a) coordinate the work of the Commissioners;
- (b) monitor the utilisation of funds disbursed by the Central Government;
- (c) take steps to safeguard the rights and facilities made available to persons with disabilities;
- (d) submit reports to the Central Government on the implementation of the Act at such intervals as the Government may prescribe.”

16. Section 59 provides that without prejudice to the provisions of Section 58, the Commissioner may of his own motion or on the application of any aggrieved person or otherwise look into complaints and take up the matter with the appropriate authorities, any matters relating to (a) deprivation of rights of persons with disabilities; and (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. The Commissioners appointed by the State Governments also have similar powers under Section 61 and 62.

17. Section 63 provides that the Chief Commissioner and the Commissioners shall, for the purpose of discharging their functions under this Act, have the same powers as are vested in a court under the Code of Civil Procedure while trying a suit, in regard to the following matters:

“63.(a) summoning and enforcing the attendance for witnesses;

(b) requiring the discovery and production of any document;

(c) requisitioning any public record or copy thereof from any court or officer;

(d) receiving evidence on affidavits; and

(e) issuing commissions for the examination of witnesses or documents.”

Rule 42 of the Persons with Disabilities (Equal opportunities, Protection of Rights and Full Participation) Rules, 1996 lays

down the procedure to be followed by the Chief Commissioner.

18. It is evident from the said provisions, that neither the Chief Commissioner nor any Commissioner functioning under the Disabilities Act has power to issue any mandatory or prohibitory injunction or other interim directions. The fact that the Disabilities Act clothes them with certain powers of a civil court for discharge of their functions (which include power to look into complaints), does not enable them to assume the other powers of a civil court which are not vested in them by the provisions of the Disabilities Act. *In All India Indian Overseas Bank SC and ST Employees' Welfare Association v. Union of India : 1996 (6) SCC 606* this Court, dealing with Article 338(8) of the Constitution of India (similar to Section 63 of the Disabilities Act), observed as follows:(SCC pp.609 & 611, paras 5 & 10)

“5. It can be seen from a plain reading of Clause (8) that the Commission has the power of the civil court for the purpose of conducting an investigation contemplated in Sub-clause (a) and an inquiry into a complaint referred to in Sub-clause (b) of Clause (5) of Article 338 of the Constitution

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10. All the procedural powers of a civil court are given to the Commission for the purpose of investigating and inquiring into these matters and that too for that limited purpose only. The powers of a civil court of granting injunctions, temporary or permanent, do not inhere in the Commission nor can such a power be

inferred or derived from a reading of Clause (8) of Article 338 of the Constitution.”

19. The order of the Chief Commissioner, not to implement the order of retirement was illegal and without jurisdiction.” (emphasis added)

3. Therefore, in view of the settled law laid down in the judgment in the case of *Vinesh Kumar Bhasin (supra)*, the respondent no.1 herein being the Chief Commissioner for Persons with Disabilities had no power to pass the impugned order by passing directions which have been reproduced above.

4. In view of the above, the writ petition is allowed and the impugned order of the Chief Commissioner for Persons with Disabilities dated 20.9.2013 is set aside. No costs.

MARCH 10, 2015
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VALMIKI J. MEHTA, J.