

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO. 2458 OF 2016

Sunita Gorakhnath Chahande	.. Petitioner
V/s	
State of Maharashtra & Ors.	.. Respondents

Mr. Atul Umekar for the petitioner.
Ms. Geeta Shastri, AGP for the State.

**CORAM: DR. MANJULA CHELLUR, CJ. &
M.S. SONAK, J.**

DATE : 19th DECEMBER 2016

P.C.:

The petitioner, who was working in the department of Mahila Arthik Vikas Mahamandal, is before us complaining not affording any opportunity to her in terms of section 47 of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 [for short “PWD Act”]. The very object why this enactment was introduced is very clear in the introduction itself that in terms of the meeting of Economic and Social Commission for Asia and Pacific convened at Beijing in December 1992 to launch the Decade of Disabled Persons between 1993 and 2002, and subsequent persuasion by all the stakeholders concerned, the present enactment came to be made by this PWD Act of 1995. The objects and reasons mentioned in the Statements of Objects and Reasons are very clear, which read as under:

“Statement of Objects and Reasons.- *The meeting to launch the Asian and Pacific Decade of the Disabled Persons 1993-2002 convened by the Economic and Social Commission for Asian and Pacific Region, held at Beijing on 1st to 5th December 1992, adopted the Proclamation on the Full Participation and Equality of People with Disabilities in the Asian and the Pacific Region. India is a signatory to the said Proclamation and it is necessary to enact a suitable legislation to provide for the following:-*

(i) *to spell out the responsibility of the State towards the prevention of disabilities, protection of rights, provision of medical care, education, training, employment and rehabilitation of persons with disabilities;*

(ii) *to create barrier free environment for persons with disabilities;*

(iii) *to remove any discrimination against persons with disabilities in the sharing of development benefits, vis-a-vis non-disabled persons;*

(iv) *to counteract any situation of the abuse and the exploitation of persons with disabilities;*

(v) *to lay down a strategies for comprehensive development of programmes and services and equalisation of opportunities for persons with disabilities; and*

(vi) *to make special provision for the integration of persons with disabilities into the social mainstream.*

2. *Accordingly, it is proposed to provide inter alia for the constitution of Co-ordination Committees and Executive Committees at the Central and State levels to carry out the various functions assigned to them. Within the limits of their economic capacity and development the appropriate Governments and the local authorities will have to undertake various measures for the prevention and early detection of disabilities, creation of barrier free environment, provision for rehabilitation services, etc. The Bills also provides for education, employment and vocational training, reservation in identified posts, research and manpower development, establishment of homes for persons with severe disabilities, etc. For effective implementation of the provisions of the Bill, appointment of the Chief Commissioner for persons with disabilities at the Central Level and Commissioners for persons with disabilities at the State level clothed with powers to monitor the funds disbursed by the Central and State Governments and also to take steps to safeguard the rights of the persons with disabilities is also envisaged.”*

2. It is clearly mentioned that for effective implementation of the provisions of the PWD Act, appointment of the Chief Commissioner for persons with disabilities both at the Central level and Commissioners for persons with disabilities at the State level

clothed with powers to monitor not only the funds disbursed by the Central and the State Government, but also to take steps to safeguard the rights of persons with disabilities. In terms of fulfilling such obligation, Chapter XII deals with the appointment of Chief Commissioner and other connected issues. So far as the Commissioner and his powers are concerned, it is clearly provided in section 61, which 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 steps 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.”

Section 62 of the PWD Act gives an outline of the jurisdiction, i.e. indicating the matters or subjects upon which the Commissioner can deal with all the complaints filed by the persons with disabilities.

3. The petitioner, in the present case, complains without even inquiring into whether she is capable of doing any other work vis-a-vis her disabilities, the authorities have retired her, therefore she is before this Court.

4. In order to consider whether the petitioner is capable of taking up any other work depending upon the nature of her disability or extent of her disability, is a matter which requires inquiry into the medical fitness vis-a-vis her capability to discharge any particular work available in the department concerned where she is working. Therefore, we are of the opinion that the Commissioner while looking into the complaint either on his own or on the application can inquire into the allegation of deprivation of rights of persons with disabilities and dispose of the matter suitably by giving instructions to the concerned officials of the department.

5. In the light of such provision made in the enactment where the Commissioner can take up the matter with appropriate authorities depending on the material produced by the applicant, we are of the opinion that the writ petitioner must exhaust such remedy prior to coming to this Court seeking directions under Article 226 of the Constitution of India.

6. The petitioner is at liberty to approach the concerned authorities in terms of the above enactment. We make it clear that

we have not dealt with the entitlement or the rights of the petitioner on merits.

7. With these observations, the writ petition is disposed of.

(M.S. SONAK, J.)

CHIEF JUSTICE