

THE HON'BLE SRI JUSTICE C.V. NAGARJUNA REDDY
AND
THE HON'BLE SRI JUSTICE G. SHYAM PRASAD

W.A.No.1120 of 2015 & batch

W.A. Nos.1120, 1122, 1128, 1130 and 1131 of 2015;
55, 56, 74, 85, 224, 226, 230, 246, 412, 434, 500, 501, 515, 517, 521, 572, 582,
583, 584, 585, 592, 594, 598, 599 604, 610, 611, 614, 617, 618, 627, 628, 631,
656, 663, 664, 665, 666, 668, 669, 671, 672, 679, 680, 683, 684, 685, 686, 720,
725, 729, 756, 769, 771, 772, 773, 774, 775, 780, 800 and 803 of 2016; and
W.A. (SR) Nos.1469, 46592, 46681, 47747, 56640, 56805, 90953, 91031, 91049,
91145, 91170, 91186, 91199, 91212, 91220, 91231, 91253, 91268, 91280, and
91311 of 2016

Date :8-9-2016

W.A. No.1120 of 2015

Between :

Telangana State Road Transport Corporation
Rep. by its Managing Director,
Hyderabad
and others

.. Appellants

And

P. Ramesh

.. Respondent

Counsel for the Appellants: - Mr. G. Vidya Sagar, Senior Counsel, appearing for
Mr. B. Mayur Reddy, Standing Counsel for
Telangana State Road Transport Corporation

-Mr. Dammalapati Srinivas, Advocate General
for the State of Andhra Pradesh
appearing for Mr. S.V. Ramana,
Standing Counsel for A.P. State Road
Transport Corporation

Counsel for the Respondents: Mr. A. Jagan,
Mr. S.M. Subhan
Mr. T.S. Venkata Ramana
Mr. P. Govinda Rajulu
Mr. P. Venkateswar Rao
Mr. G. Rajesh
Mr. Naraparaju Avaneesh
Mr. A. G. Satyanarayana Rao
Mr. S.D. Gowd
Mr. D. Ramakrishna
Mr. Kallakuri Srinivasa Rao
Smt. K. Udaya Sri
Mr. N. Mukunda Reddy Ravi
Mr. Mohd. Ghouseuddin

The Court made the following :

COMMON JUDGMENT: *(per the Hon'ble Sri Justice C.V. Nagarjuna Reddy)*

Introduction:

This batch of Writ Appeals arise out of the Judgments of different learned single Judges allowing the Writ Petitions filed by the Drivers of the Telangana and the Andhra Pradesh State Road Transport Corporations, who were declared medically unfit to continue as Drivers. Though reasons may have slightly varied in their Judgments/Orders, the views of the learned Judges are concurrent with each other on the interpretation of Section 47 of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act 1995, (for short "the Act"). To put it briefly, all the learned Judges held that for being entitled to the benefits under Section 47 of the Act, the acquired disability of an employee need not necessarily fall within the definition of 'disability' under Section 2(i) and that irrespective of the nature of disability acquired by an employee, if such disability led to his being declared as not fit to continue in the post which he was holding prior to his acquiring the disability, he is entitled to the benefit of Section 47 of the Act.

The background facts:

2. The respondents have joined the erstwhile Andhra Pradesh State Road Transport Corporation (APSRTC) as Drivers. Consequent on the bifurcation of the State of Andhra Pradesh and creation of the State of Telangana, the APSRTC was divided into two Corporations, one each for the States of Andhra Pradesh and Telangana. As a part of the procedure, during the medical examination of the respondents by the Medical Board, they were found to have acquired disabilities such as Defective Distant

Vision, CVD RT Hemiparesis, mal-union of Left Tibia, Recurrentia Seizures (Convulsions), Seizure Disorder, Hepatocellular Carcinoma, Chronic Obstructive Pulmonary Disorder, Colour Blindness, to name a few. It is the common case of the parties that none of these disabilities finds a mention under the provisions of the Act. The service conditions of the respondents-Drivers are governed by the extant service Regulations and Circulars issued from time to time by the appellants-Corporation. As per the procedure being followed by the appellants-Corporations, the medically declared unfit Drivers are being provided with alternative employment, such as Conductors, Record Tracers or Shramiks, subject to their possessing the educational qualifications and physical fitness and in case they are unwilling to work in the alternative Posts offered based on the recommendations of the Medical Board, they are being retired from service on medical grounds and paid additional monetary benefit under Regulation 6A(5)(b) of the APSRTC (Service) Regulations 1964, upon obtaining their willingness vide Circular No.TD-15/2015, dated 14-5-2015 of the APSRTC.

Not being satisfied with the aforementioned measures taken by the appellants-Corporations, the medically unfit Drivers have requested both the Corporations to extend to them all the benefits as are made available under Section 47 of the Act. As these requests were declined by both the Corporations, the respondents have invoked the jurisdiction of this Court under Article 226 of the Constitution of India.

Substratum of the respondents' case:

3. The respondents pleaded before the learned single Judges that the Act is a piece of benevolent Legislation which protects every employee who acquired disability during the course of employment and that therefore the appellants cannot dispense with their services or reduce their ranks merely because the disability they have acquired rendered them unsuitable for the Posts they were holding, irrespective of whether such disability falls within the enumerated disabilities under Section 2(i) of the Act or not. In fortification of their plea, the respondents have placed heavy reliance on Section 47 of the Act, aided by case law, which we shall discuss in due course.

Stand of the appellants:

4. Both the appellants-Corporations in unison have pleaded that Section 2(i) of the Act defined 'disability'; that this definition is exhaustive and that wherever it occurs in the Act, it has to be understood in the light of the said definition. It was their further pleaded case that the Parliament has consciously limited the benefits under the Act to certain ailments which are enumerated as disabilities and the Court cannot expand the scope of the definition of 'disability' contrary to the legislative intent; that as none of the respondents has admittedly suffered any of the enumerated disabilities under Section 2(i) of the Act, they are not entitled to the benefits under Section 47 of the Act and that instead they are governed by the service Regulations of the appellants-Corporations and the Circulars issued by them from time to time.

As noted at the outset, the plea of the respondents/writ petitioners was found favour with the learned single Judges.

Before us, Mr. G. Vidya Sagar, learned Senior Counsel, assisted by Mr. B. Mayur Reddy, learned Standing Counsel, advanced his submissions on behalf of the Telangana State Road Transport Corporation (TSRTC) and its functionaries, in the Writ Appeals filed by them. Mr. Dammalapati Srinivas, learned Advocate-General for the State of Andhra Pradesh, assisted by Mr. S.V. Ramana, learned Standing Counsel for APSRTC, addressed his arguments on behalf of the said Corporation. Mr. A. Jagan and Mr. S.M. Subhan, learned Counsel appearing for the respective respondents, made their submissions.

5. Submissions of Mr. G. Vidya Sagar:

- (i) That Section 2(i) of the Act which defined 'disability' enumerated seven kinds of disabilities; that each of these disabilities was also further defined under clauses (l), (m), (n), (o), (p), (q) and (r), that only those employees who were declared medically unfit on account of suffering any of the aforesaid disabilities are entitled to the benefits under the Act; and that since admittedly none of the respondents have suffered any of those disabilities, the provisions of Section 47 of the Act are not attracted to them and consequently they are not entitled to the reliefs granted by the learned single Judges.
- (ii) That Section 2(i) which defined the word 'disability' used the phrase 'means' which connotes that it is an exhaustive definition

and not intended to be illustrative and that therefore all the learned single Judges have committed a serious error in applying the provisions of Section 47 of the Act and extending the benefits available thereunder to the respondents.

- (iii) That the employees of the Corporations are governed by the APSRTC (Service) Regulations 1964, that as per Regulation 6A(5)(b), on obtaining willingness of the medically unfit employees they are being paid additional monetary benefits besides being provided with alternative employment as Conductors, Sharmiks and Record Tracers and that therefore they are not entitled to the benefits under Section 47 of the Act; that some of the medically unfit drivers have received additional monetary benefits and that therefore they are estopped from claiming the benefits under Section 47 of the Act.

In support of his submissions, the learned Counsel has placed reliance on the Judgments of the Apex Court in *Union of India v. Devendra Kumar Pant and others*¹, *P. Kasilingam and others v. P.S.G. College of Technology and others*², *Indian City Properties Ltd. v. Municipal Commissioner of Greater Bombay and another*³, *Pushpa Devi v. Milkhi Ram*⁴, *Union of India v. Deoki Nandan Aggarwal*⁵ *Subramaniyan Swamy and others v. Raju, through Member, Juvenile Justice Board and another*⁶

¹ 2009(14) SCC 546

² 1995 Supp. (2) SCC 348

³ 2005(6) SCC 417

⁴ 1990(2) SCC 134

⁵ 1992 Supp. (1) SCC 323

⁶ (2014) 8 SCC 390

and of the Delhi High Court in *Hawa Singh v. Delhi Transport Corporation*⁷.

6. Submissions of the learned Advocate-General for the State of Andhra Pradesh :

- (i) That the Legislature has designedly identified seven disabilities under Section 2(i) of the Act and therefore an employee suffering one or more of the enumerated disabilities is a *sine qua non* for the application of the provisions of the Act in general, and Section 47 thereof, in particular.
- (ii) That it is not permissible to stretch a socio-economic Legislation such as the Act beyond the levels intended by the Legislation.

In support of his submissions, he has referred to and relied upon the Judgments in *Dalco Engineering Pvt. Ltd. v. Satish Prabhakar Padhye and others*⁸, *All Kerala Parents Association v. State of Kerala*⁹, *Deddappa and others v. Branch Manager, National Insurance Co. Ltd.*¹⁰, *Yudhishter v. Ashok Kumar*¹¹ and *State Bank of Patiala and others v. Vinesh Kumar Bhasin*¹².

7. Submissions of Mr. A. Jagan:

- (i) That the Act being a Legislation intended to achieve a social purpose, namely, to ensure full participation of disabled persons and protecting their rights, its provisions need to be given a liberal construction in view of the legislative intent.

⁷ 2012 LawSuit (Del) 332 = 2012(3) LLJ 564

⁸ 2010(4) SCC 378

⁹ 2003(2) WLN 692

¹⁰ 2008(2) SCC 595

¹¹ 1987(1) SCC 204

¹² 2010(4) SCC 368

- (ii) That the provisions of the Act made a clear distinction between the persons with disability and the employees who acquired disability and that therefore Section 47, which deals with the employees who acquired disability, has to be interpreted in a manner distinct from the provisions which deal with persons with disability.
- (iii) That the purpose of Section 47 of the Act is to prevent the establishments from dispensing with or reducing in rank of the employees who acquired disability during their service and also to prevent denial of promotions to them on the ground of their disability and therefore it is wholly irrelevant whether an employee has incurred the disability enumerated under Section 2(i) r/w. sub-clauses (l) to (r) thereof, or not, for extending the benefits under Section 47.

In support of his submissions, the learned Counsel has placed reliance on *K.V. Muthu v. Angamuthuamma*¹³, *Ramesh Mehta v. Sanwal Chand Singhvi*¹⁴, and *G. Muthu v. Management of Tamil Nadu State Transport Corporation (Madurai) Ltd.*¹⁵

8. Mr. S.M. Subhan, the learned Counsel has adopted the submissions of Mr. A. Jagan.

¹³ 1997(2) SCC 53

¹⁴ 2004(5) SCC 409

¹⁵ 2007(1) LLJ 9 (DB-Madurai Bench)

Legal regime:

9. Relevant provisions of the Act:

The long title of the Act presents a bird's eye view of the object and purposes of the Act, namely, giving effect to the Proclamation on the Full Participation and Equality of People with Disabilities in the Asian and Pacific Region. The introductory part of the Act gives the backdrop in which it was enacted. It is stated that the Meeting to launch the Asian and Pacific Decade of Disabled Persons 1993-2002 convened by the Economic and Social Commission for Asia and Pacific 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 Pacific Regions, and that India is a signatory to the said Proclamation and it was therefore considered necessary to implement the said Proclamation by making the Enactment.

The Act is divided into 14 Chapters. Chapter-I is exclusively devoted to 'Definitions'. Chapter-II deals with the constitution and composition of the Coordination Committee and the Central Executive Committee. Chapter-III deals with constitution, composition, functions and tenure of the State Coordination Committee and other related aspects. Chapter-IV envisages Prevention and early detection of disabilities. Chapter-V deals with obligations of appropriate Governments to provide access to free education of children with disabilities, setting up of special schools in Government and private sector for them and various other measures necessary to imparting education and promoting the welfare of such children. Chapter-VI contains the provisions relating to

employment of the persons with disabilities. Chapter-VII deals with affirmative action by the appropriate Governments by framing schemes in favour of persons with disabilities for the preferential allotment of land at concession rates for house, setting up of business, setting up of special recreation centers, establishment of special schools, establishment of research centers and establishment of factories by entrepreneurs with disabilities. Chapter-VIII envisages non-discrimination in transport sector, facilities to be provided in public buildings etc. This Chapter contains Section 47, which is the *prima donna* in the present context, and we shall discuss the same in detail hereafter. Chapter-XII provided for appointment of Chief Commissioner and Commissioners for persons with disabilities. The other Chapters need not be referred in the context of the present case.

We shall now discuss the relevant provisions of Chapters I, V and VI and VIII which have a vital bearing on the cases on hand.

Chapter I

Section 2(i) defined 'disability' as (i) Blindness; (ii) Low vision; (iii) Leprosy-cured; (iv) Hearing impairment; (v) Loco motor disability; (vi) Mental retardation; and (vii) Mental illness. Definitions for each of these disabilities have been separately provided under clauses (b), (e), (i), (n), (o), (q), (r) and (u). Clause (t) defined 'person with disability' as a person suffering from not less than forty per cent, of any disability as certified by a medical authority.

Chapter – V

Section 26 laid down that every appropriate Government shall ensure that every child with a disability has access to free education in an appropriate environment till he attains the age of eighteen years; endeavour to promote the integration of students with disabilities in the normal schools; promote setting up of special schools in Government and private sector etc.

Chapter – VI

Section 32, inter alia, charged the appropriate Governments with duty of identifying posts in the establishments which can be reserved for persons with disability. Section 33 postulated that every appropriate Government shall appoint in every establishment such percentage of vacancies not less than three per cent for persons or class of persons with disability of which one per cent each shall be reserved for persons suffering from blindness or low vision, hearing impairment, loco motor disability or cerebral palsy, in the posts identified for each disability. As this provision bears relevance in the context of the present cases, it is reproduced hereunder:

“Every appropriate Government shall appoint in every establishment such percentage of vacancies not less than three per cent for persons or class of 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) Loco motor disability or cerebral palsy, in the posts identified for each disability:

Provided that the appropriate Government 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.”

Chapter - VIII

Sections 45 and 47, which are included in Chapter-VIII – Non-discrimination, read as follows:

45. The appropriate Governments and the local authorities shall, within the limits of their economic capacity and development, provide for –

- (a) Installation of auditory signals at red lights in the public roads for the benefit of persons with visually handicap;*
- (b) Causing curb cuts and slopes to be made in pavements for the easy access of wheel chair users;*
- (c) Engraving on the surface of the zebra crossing for the blind or for persons with low vision;*
- (d) Engraving on the edges of railway platforms for the blind or for persons with low vision;*
- (e) Devising appropriate symbols of disability;*
- (f) Warning signals at appropriate places.*

47. (1) No establishment shall dispense with or reduce in rank, an employee who acquires a disability during his service.

Provided that, if an employee, after acquiring disability is not suitable for the post he was holding, could be shifted to some other post with the same pay scale and service benefits.

Provided further that if it is not possible to adjust the employee against any post, he may be kept on a supernumerary post until a suitable post is available or he attains the age of superannuation, whichever is earlier.

(2) No promotion shall be denied to a person merely on the ground of his disability.

Provided that the appropriate Government may, having regard to the type of work carried on in any establishment, by notification and subject to such conditions, if any, as may be specified in such notification, exempt any establishment from the provisions of this section.

10. As could be seen from the various provisions referred to above, the Act is mainly intended to cover three areas, namely, education, employment and various facilities in transport sector, public buildings and other places. Each of these aspects is included under separate chapters. The provisions relating to education to the persons with disability are included under Chapter-V, the provisions for employment are included under Chapter-VI and the provisions for protection of employees who acquired disabilities are included under Chapter-VIII.

11. The question that needs to be considered in the present appeals is whether the definition of 'disability' under Section 2(i) shall be literally applied as it appears in the Statute, or the Act permits any flexibility in the

construction of its definition, having regard to the context of the provision and the purpose for which it is made?

12. Section 26 falling under Chapter V enjoins on the appropriate Governments and local authorities to provide access to free education in an appropriate environment till every child with disability attains the age of eighteen years. Similarly, Sections 28 to 31 impose several responsibilities on the appropriate Governments for providing various amenities, a specific reference to which is not necessary in the present context. Sections 32 to 41 made it obligatory for appropriate Governments to identify the posts in the establishments which can be reserved for persons with disability and undertake various measures to impart training and provide access to information, relevant records in possession of any establishments etc. One needs to note in this context that various provisions are made in favour of persons who already suffered disability, for admission in the schools for the purpose of providing education to them and for securing employment.

13. Section 2(t) defined the phrase “person with disability” to mean ‘a person suffering from not less than forty per cent of any disability as certified by a medical authority’. The words “child with disability”/ “children with disabilities” under Chapter-V and ‘persons with disability’ appear to have been used as synonymous expressions, as no separate definition for child or children with disability has been provided under the Act. Therefore, in the context of Chapter-V relating to education, to claim benefits provided thereunder, a child must be suffering from not less than forty percent of any disability. When it comes to employment, persons

with disability are divided into two classes, i.e., one class of persons who are suffering from any of the disabilities, which shall necessarily mean the disabilities mentioned under Section 2(i), and the other class of persons are with disability of blindness or low vision, hearing impairment, loco motor disability or cerebral palsy. While a total of three per cent of vacancies are reserved for persons with disability reserved in an establishment in favour of persons with disability, one per cent out of it must be reserved for the second class of persons suffering any of the afore-mentioned three disabilities and the balance two per cent are reserved for the persons with other disabilities.

Interpretation of Statute – Definition Clause

14. The learned counsel for the appellants argued with a lot of dexterity that the definition 'disability' under Section 2(i) contains the words "means" leaving no scope for any flexibility while considering the nature of disabilities. The word "means", argued the learned counsel, indicates that the definition is inclusive nay, exhaustive, and not illustrative. They have placed heavy reliance on the judgment of the Supreme Court in *P. Kasilingam* (2 supra) in support of their submission. Contrarily the learned counsel for the respondents submitted that the effect of the word 'means' is neutralized by the words "unless the context otherwise requires".

In *Whirlpool Corporation v. Registrar of Trade Marks, Mumbai*¹⁶, the expressions "unless there is anything repugnant in the subject or

¹⁶ (1998) 8 SCC 1

context” and also “unless the context otherwise requires” were considered by the Apex Court and it was held as follows:

28. Now the principle is that all statutory definitions have to be read subject to the qualification variously expressed in the definition clauses which created them and it may be that even where the definition is exhaustive inasmuch as the word defined is said to mean a certain thing, it is possible for the word to have a somewhat different meaning in different sections of the Act depending upon the subject or context. That is why all definitions in statutes generally begin with the qualifying words, similar to the words used in the present case, namely 'unless there is anything repugnant in the subject or context'. Thus there may be sections in the Act where the meaning may have to be departed from on account of the subject or context in which the word had been used and that will be giving effect to the opening sentence in the definition section, namely 'unless there is anything repugnant in the subject or context'. In view of this qualification, the Court has not only to look at the words but also to look at the context, the collocation and the object of such words relating to such matter and interpret the meaning intended to be conveyed by the use of the words under those circumstances. [See : Vanguard Fire and General Insurance Co. Ltd. Madras v. Fraser & Ross : (AIR 1960 SC 971).

...
30. Since "Tribunal" is defined in Section 2 which, in its opening part, uses the phrase "Unless the context otherwise requires", the definition, obviously, cannot be read in isolation. The phrase "Unless the context otherwise requires" is meant to prevent a person from falling into the whirlpool of "definitions" and not to look to other provisions of the Act which, necessarily, has to be done as the meaning ascribed to a "definition" can be adopted only if the context does not otherwise require."

In *K. Balakrishna Rao and Others v. Haji Abdulla Sait and Others*¹⁷, the Supreme Court held as under:

"A definition clause does not necessarily in any statute apply in all possible contexts in which the word which is defined may be found therein. The opening clause of Section 2 of the principal Act itself suggests that any expression defined in that Section should be given the meaning assigned to it therein unless the context otherwise requires."

In *Ramesh Mehta* (14 supra), the Supreme Court held that a definition is not to be read in isolation and it must be read in the context of the phrase which would define it and that it should not be vague or ambiguous, that the definition of words must be given a meaningful

¹⁷ (1980) 1 SCC 321

application; and that where the context makes the definition given in the interpretation clause inapplicable, the same meaning cannot be assigned.

A three-Judge Bench of the Supreme Court in *Jagir Singh v. State of Bihar*¹⁸, while dealing with the expression 'unless the context otherwise requires' in the definition clause held as under:

*"The general rule of construction is not only to look at the words but to look at the context, the collocation and the object of such words relating to such matter and interpret the meaning according to what would appear to be the meaning intended to be conveyed by the use of the words under the circumstances. Sometimes definition clauses create qualification by expressions like "unless the context otherwise requires"; or "unless the contrary intention appears"; or "if not inconsistent with the context or subject-matter". "Parliament would legislate to little purpose," said Lord Macnaghten in *Netherseal Co. v. Bourne* [(1889) 14 AC 228] "if the objects of its care might supplement or undo the work of legislation by making a definition clause of their own. People cannot escape from the obligation of a statute by putting a private interpretation on its language." The courts will always examine the real nature of the transaction by which it is sought to evade the tax."*

In *S.K. Gupta v. K.P. Jain*¹⁹, while interpreting the word 'means' in the definition clause held that "where in a definition section of statute a word is defined to mean a certain thing, wherever that word is used in that statute, it shall mean what it is stated in the definition unless the context otherwise requires..."

In *K.V. Muthu* (13 supra), Section 2 of the Tamil Nadu Rent Act started with the words "in this Act, unless the context otherwise requires" as in the present case. Section 2(6-A) defined 'family' means 'spouse, son, daughter, grand-child or dependant parent.' A question arose whether a foster son falls within the meaning of 'son' under the said provision. Placing reliance on the words 'unless the context otherwise requires', the Supreme Court held that in the context in which the word

¹⁸ (1976) 2 SCC 942

¹⁹ (1979) 3 SCC 54

'family' is defined, a foster son also falls within the definition of 'family'.

In that context, the Supreme Court made the following observations:

"11. While interpreting a definition, it has to be borne in mind that the interpretation placed on it should not only be not repugnant to the context, it should also be such as would aid the achievement of the purpose which is sought to be served by the Act. A construction which would defeat or was likely to defeat the purpose of the Act has to be ignored and not accepted.

12. Where the definition or expression, as in the instant case, is preceded by the words "unless the context otherwise requires", the said definition set out in the section is to be applied and given effect to but this rule, which is the normal rule may be departed from if there be something in the context to show that the definition could not be applied."

From the ratio deducible from the case law dealing with the interpretation of the definition clause, it is clear that the qualifying words, such as, "unless the context otherwise requires" in the definition clause, whittle down the effect of the restrictive nature of the word 'means' and broadens the scope of the word defined under the section to suit the context in which it is used.

Classification – Article 14

15. A seven-Judge Constitution Bench of the Supreme Court in *Budhan Choudhry v. State of Bihar*²⁰, held as under:

"... It is now well established that while Article 14 forbids class legislation, it does not forbid reasonable classification for the purposes of legislation. In order, however, to pass the test of permissible classification two conditions must be fulfilled, namely, (i) that the classification must be founded on an intelligible differentia which distinguishes persons or things that are grouped together from others left out of the group; and (ii) that that differentia must have a rational relation to the object sought to be achieved by the statute in question. The classification may be founded on different basis; namely, geographical, or according to objects or occupations or the like. What is necessary is that there must be a nexus between the basis of classification and the object of the Act under consideration. It is also well established by the decisions of this Court that Article 14 condemns discrimination not only by a substantive law but also by a law of procedure."

²⁰ AIR 1955 SC 191

This judgment has attained the status of *locus classicus* and the ratio therein is being followed in all subsequent judgments on the aspect of classification.

In *E.P. Royappa v. State of Tamil Nadu*²¹, the Supreme Court explored a new dimension in Article 14 and pointed out that this Article is highly activist in magnitude and it embodies a guarantee against arbitrariness. It was held that Article 14 imbibes twin doctrines of equality and non-arbitrariness. It is instructive to reproduce the following passage from the said judgment.

“The basic principle which, therefore, informs both Articles 14 and 16 is equality and inhibition against discrimination. Now, what is the content and reach of this great equalising principle? It is a founding faith, to use the words of Bose, J., ‘a way of life’, and it must not be subjected to a narrow pedantic or lexicographic approach. We cannot countenance any attempt to truncate its all-embracing scope and meaning, for to do so would be to violate its activist magnitude. Equality is a dynamic concept with many aspects and dimensions and it cannot be “cribbed, cabined and confined” within traditional and doctrinaire limits. From a positivistic point of view, equality is antithetic to arbitrariness. In fact, equality and arbitrariness are sworn enemies; one belongs to the rule of law in a republic while the other, to the whim and caprice of an absolute monarch. Where an act is arbitrary it is implicit in it that it is unequal both according to political logic and constitutional law and is therefore violative of Article 14, and if it effects any matter relating to public employment, it is also violative of Article 16. Articles 14 and 16 strike at arbitrariness in State action and ensure fairness and equality of treatment.”

This view was re-affirmed in *Maneka Gandhi v. Union of India*²², and *R. D. Shetty v. International Airport Authority*²³.

In *Ajay Hasia v. Khalid Mujib Sehravard*²⁴, while referring to the afore-mentioned judgments, Bhagwati, J, who authored the above referred judgments, held as under:

²¹ (1974) 4 SCC 3

²² (1978) 1 SCC 248

²³ (1979) 3 SCC 489

²⁴ (1981) 1 SCC 722

“It must therefore now be taken to be well settled that what Article 14 strikes at is arbitrariness because an action that is arbitrary, must necessarily involve negation of equality. The doctrine of classification which is evolved by the courts is not paraphrase of Article 14 nor is it the objective and end of that article. It is merely a judicial formula for determining whether the legislative or executive action in question is arbitrary and therefore constituting denial of equality. If the classification is not reasonable and does not satisfy the two conditions referred to above, the impugned legislative or executive action would plainly be arbitrary and the guarantee of equality under Article 14 would be breached. Wherever therefore there is arbitrariness in State action whether it be of the legislature or of the executive or of an “authority” under Article 12, Article 14 immediately springs into action and strikes down such State action. In fact, the concept of reasonableness and non-arbitrariness pervades the entire constitutional scheme and is a golden thread which runs through the whole of the fabric of the Constitution.”

Purposive Interpretation

16. In *Babu Manmohan Das Shah v. Bishun Das*²⁵, the Supreme Court held that “the provisions of a statute must be construed in accordance with the language used therein unless there are compelling reasons such as where the literal construction would reduce the Act to absurdity or prevent manifest legislative purpose from being carried out.” In *Municipal Corporation of Greater Bombay v. Indian Oil Corporation*²⁶, the Supreme Court adopted the doctrine of purposive interpretation while construing the word ‘building’, for the purpose of levy of property tax under the Bombay Municipal Corporation Act to include ‘oil storage tanks’ within the definition of the said word and held that the language of a statutory provision is not a static vehicle of ideas and concepts and as ideas and concepts change, as they are bound to do in any country like ours with the establishment of a democratic structure based on egalitarian values, the meaning and content of the statutory provisions undergo a change. It was held that the law does not operate in vacuum and that it cannot be

²⁵ AIR 1967 SC 643

²⁶ 1991 Supp. (2) SCC 18

interpreted without taking into account the social, economic and political setting in which it is intended to operate. It was further held that “the Judge has to inject flesh and blood in the dry skeleton provided by the legislature and invest it with a meaning which will harmonize the law with the prevailing concepts and values and make it an effective instrument for delivering justice.” While construing the phrase ‘wood oil’, under the Kerala Forest Act, 1961, the Supreme Court in *Forest Range Officer v. P. Mohammed Ali*²⁷ repelled the plea that literal definition must be adopted to include ‘wood oil’, and held that “the literal interpretation given therein if given acceptance would lead to manifest frustration of the purpose of the Act. In its interpretation we have to keep at the back of our mind the purpose for which the Act and the Parent Act (Forest Conservation Act) seek to subserve.” In *M/s. Girdhari Lal and Sons v. Balbir Nath Mathur*²⁸, it was held that the courts can by ascertaining legislative intent place such construction on a statute as would advance its purpose and object.

In *Gurudevdatto VKSSS Maryadit v. State of Maharashtra*²⁹, the Supreme Court observed that “it is a cardinal principle of interpretation of statutes that the words of a statute must be understood in their natural, ordinary or popular sense and construed according to their grammatical meaning, unless such construction leads to some absurdity or unless there is something in the context or in the object of the statute to suggest to the contrary...”. In *Pandian Chemicals Ltd. v. C.I.T.*³⁰, the Supreme Court held that “the Rules of interpretation other than the literal rule would

²⁷ (1993) Supp. (3) SCC 627

²⁸ (1986) 2 SCC 237

²⁹ (2001) 4 SCC 534

³⁰ (2003) 5 SCC 590

come into play only if there is any doubt with regard to the express language used or if the plain meaning would lead to an absurdity.” In *Bhaiji v. Sub-Divisional Officer, Thandla*³¹ the Apex Court held that the plain words can be departed from when reading them as they are leads to patent injustice, anomaly or absurdity or invalidation of a law.

Quoting the words of Justice Frankfurter, “there is no surer way to misread a document than to read it literally”, Krishna Iyer, J, speaking for the Bench, in *Carew and Co. Ltd. v. Union of India*³², held that “the law is not ‘a brooding omnipotence in the sky’ but a pragmatic instrument of social order. It is an operational art controlling economic life, and interpretative effort must be imbued with the statutory purpose. No doubt, grammar is a good guide to meaning but a bad master to dictate. ...”

In *K.P. Varghese v. ITO*³³, the Supreme Court profitably relied upon the following famous words of Justice Learned Hand:

“...it is true that the words used, even in their literal sense, are the primary and ordinarily the most reliable, source of interpreting the meaning of any writing: be it a statute, a contract or anything else. But it is one of the surest indexes of a mature and developed jurisprudence not to make a fortress out of the dictionary; but to remember that statutes always have some purpose or object to accomplish, whose sympathetic and imaginative discovery is the surest guide to their meaning.”

“...the meaning of a sentence may be more than that of the separate words, as a melody is more than the notes, and no degree of particularity can ever obviate recourse to the setting in which all appear, and which all collectively create.”

and held as under:

“...The task of interpretation of a statutory enactment is not a mechanical task. It is more than a mere reading of mathematical formulae because few

³¹ (2003) 1 SCC 692

³² (1975) 2 SCC 791

³³ (1981) 4 SCC 173

words possess the precision of mathematical symbols. It is an attempt to discover the intent of the legislature from the language used by it and it must always be remembered that language is at best an imperfect instrument for the expression of human thought and as pointed out by Lord Denning, it would be idle to expect every statutory provision to be 'drafted with divine prescience and perfect clarity'..."

While considering the expression "is or has been a Judge of a High Court" in Section 16 of the Consumer Protection Act, 1986, in the context of appointment of a former Additional Judge of a High Court who was found unsuitable for being appointed as permanent Judge, the Supreme Court in *N. Kannadasan v. Ajoy Khose*³⁴ adopted the principle of purposive interpretation in holding that a person who had demitted office on account of impeachment or unsuitability is not eligible to be appointed as Chairman of a State Consumer Commission.

Equals cannot be treated unequally

17. Equality is the core facet of Article 14 of the Constitution of India and as its heading indicates, it prohibits the State from denying equality to any person before law or equal protection of the laws. Equality does not mean a mechanical application of law among all the persons who are not similarly situated. The essence of this Article lies in equals being treated equally.

In *State of Gujarat v. Shri Ambica Mills Ltd.*,³⁵ a Constitution Bench of the Supreme Court held that "equal protection of laws is a pledge of the protection of equal laws". In *State of Kerala v. N.M. Thomas*³⁶, a seven-Judge Constitution Bench of the Supreme Court lucidly explained

³⁴ (2009) 7 SCC 1

³⁵ (1974) 4 SCC 656

³⁶ (1976) 2 SCC 310

the concept of classification under Article 14, in paragraph 24 of the report, as under:

“Discrimination is the essence of classification. Equality is violated if it rests on unreasonable basis. The concept of equality has an inherent limitation arising from the very nature of the constitutional guarantee. Those who are similarly circumstanced are entitled to an equal treatment. Equality is amongst equals. Classification is, therefore, to be founded on substantial differences which distinguish persons grouped together from those left out of the groups and such differential attributes must bear a just and rational relation to the object sought to be achieved.”

In *Indra Sawhney v. Union of India*³⁷ the Supreme Court held that it is the constitutional principle that equals cannot be treated unequally and unequals cannot be treated equally based on Articles 14 and 16(1), overrides other considerations.

In *U.P. Power Corporation Limited v. Ayodhya Prasad Mishra and another*³⁸ the Supreme Court held that it is well settled that equals cannot be treated unequally and that it is equally well-settled that unequals cannot be treated equally.

In a recent judgment in *Virendra Krishna Mishra v. Union of India*³⁹, the Supreme Court observed as under:

“Equality before law and equal protection of laws is the quintessence of Right to Equality, a Fundamental Right guaranteed under the Constitution of India. Equals cannot be treated unequally, nay, they are to be treated equally. Right to such equality cannot be arbitrarily denied to the equals in the absence of a valid classification”

In the light of the law discussed hereinabove, we need to examine the real purport of Section 47.

³⁷ (2000) 1 SCC 168

³⁸ (2008) 10 SCC 139

³⁹ (2015) 2 SCC 712

The true purport of Section 47

18. This Section deals with an employee who acquires disability during his service, in contrast to a child or person already suffering with disability as provided for under Chapters V and VI respectively. While the persons under Chapters V and VI seek admission into educational institutions and claim employment, Section 47 deals with the persons who did not have any disability at the time of joining the employment but acquired the disability in the course of the employment. Thus, there is a fundamental difference in the class or category of persons which the Act dealt with between those falling under Chapters V and VI on one side, and those under Section 47 falling under Chapter VIII on the other side.

*Kunal Singh v. Union of India*⁴⁰

19. Indeed, what exactly is the scope of Section 47 is explained in *Kunal Singh* (40 supra). That is a case where the employee was a Constable. While he was on duty, he suffered an injury to his left leg resulting in its amputation. He was declared unfit to hold the post he was holding on the basis of the report of the Medical Board and discontinued from further service. The writ petition filed by him was dismissed by the High Court. In the appeal before the Supreme Court, the plea based on Section 47 of the Act was raised. The employer has raised a two-fold submission before the Supreme Court; one, that under Rule 38 of the Central Civil Services (Pension) Rules, 1972, the employee was granted invalidity pension and, two, that as per Section 2 of the Act, the employee is not a 'person with disability' as he is permanently incapacitated. While

⁴⁰ (2003) 4 SCC 524

finding that the employee suffered the disability falling under Section 2(i)(v) read with Section 2 of the Act, the Supreme Court analyzed the provisions of Sections 2 and 47 of the Act. The Apex Court in paragraph 9 of the judgment held as under:

“Chapter VI of the Act deals with employment relating to persons with disabilities, who are yet to secure employment. Section 47, which falls in Chapter VIII, deals with an employee, who is already in service and acquires a disability during his service. It must be borne in mind that Section 2 of the Act has given distinct and different definitions of “disability” and “person with disability”. It is well settled that in the same enactment if two distinct definitions are given defining a word/expression, they must be understood accordingly in terms of the definition. It must be remembered that a person does not acquire or suffer disability by choice. An employee, who acquires disability during his service, is sought to be protected under Section 47 of the Act specifically. Such employee, acquiring disability, if not protected, would not only suffer himself, but possibly all those who depend on him would also suffer. The very frame and contents of Section 47 clearly indicate its mandatory nature. The very opening part of Section reads “no establishment shall dispense with, or reduce in rank, an employee who acquires a disability during his service”. The Section further provides that if an employee after acquiring disability is not suitable for the post he was holding, could be shifted to some other post with the same pay scale and service benefits: if it is not possible to adjust the employee against any post he will be kept on a supernumerary post until a suitable post is available or he attains the age of superannuation, whichever is earlier. Added to this no promotion shall be denied to a person merely on the ground of his disability as is evident from sub-section (2) of Section 47. Section 47 contains a clear directive that the employer shall not dispense with or reduce in rank an employee who acquires a disability during the service. In construing a provision of social beneficial enactment that too dealing with disabled persons intended to give them equal opportunities, protection of rights and full participation, the view that advances the object of the Act and serves its purpose must be preferred to the one which obstructs the object and paralyses the purpose of the Act. Language of Section 47 is plain and certain casting statutory obligation on the employer to protect an employee acquiring disability during service.”

Dealing with the submissions of the employer that the employee was being paid invalidity pension, the Supreme Court held as under:

“We have to notice one more aspect in relation to the appellant getting invalidity pension as per Rule 38 of the CCS Pensions Rules. The Act is a special legislation dealing with persons with disabilities to provide equal opportunities, protection of rights and full participation to them. It being a special enactment, doctrine of generalia specialibus non derogant would apply. Hence Rule 38 of the Central Civil Service (Pension) Rules cannot override Section 47 of the Act. Further Section 72 of the Act also supports the case of the appellant, which reads:--

"72. Act to be in addition to and not in derogation of any other law.--The provisions of this Act, or the rules made thereunder shall be in addition to, and not in derogation of any other law for the time being in force or any rules, order or any instructions issued thereunder, enacted or issued for the benefits of persons with disabilities."

*Merely because under Rule 38 of CCS Pension Rules, 1972, the appellant got invalidity pension is no ground to deny the protection, mandatorily made available to the appellant under Section 47 of the Act. **Once it is held that the appellant has acquired disability during his service and if found not suitable for the post he was holding, he could be shifted to some other post with same pay-scale and service benefits; if it was not possible to adjust him against any post, he could be kept on supernumerary post until a suitable post was available or he attains the age of superannuation, whichever is earlier. It appears no such efforts were made by the respondents. They have proceeded to hold that he was permanently incapacitated to continue in service without considering the effect of other provisions of Section 47 of the Act.***

(emphasis supplied)

Though there was no occasion for the Supreme Court to deal with the issue whether the definition of 'disability' is illustrative or exhaustive, it nevertheless recognized the distinction between the 'disability' and 'person with disability' and further held that in the same enactment if two distinct definitions are given defining a word/expression, they must be understood accordingly in terms of the definition. It has also in no uncertain terms held that if an employee while in service acquires disability, he is entitled to the protection under Section 47 of the Act.

20. A Division Bench of the Madras High Court in *G. Muthu* (15 supra) had an occasion to deal with identical questions. There also, like in the present case, the employee suffered disability not enumerated in Section 2(i). In its painstaking decision, while referring to the words "unless the context otherwise requires" in Section 2, the Division Bench held that purposive construction of the definition clause has to be adopted and in that process the Court should not only look at the words but also look at

the context and the object of the provision. The Division Bench further held that while interpreting Section 47 of the Act, the definition of 'disability' under Section 2(i) cannot be literally adopted, as the said provision is independent of other provisions under Chapter IV to VII of the Act which are meant for the persons with disability, while Section 47 deals with the employees who acquired disability. It is useful to reproduce the relevant paragraphs of the judgment hereunder:

"15. Having regard to the special features contained in the said Section 47, providing for such a special benefit to an existing employee in an establishment when he acquires a 'disability' as held by us earlier, the application and implementation of the said provision will have to be ensured independent of various other benefits provided under the various other provisions falling under Chapters IV to VII of the Act which are meant for persons 'with disability'. Having regard to the said distinctive features contained in Section 47 of the Act, as compared to the other provisions, we are of the considered opinion that the context in which the benefit has been conferred under Section 47 stands apart from the context of all other provisions where various other benefits have been conferred. In other words, we are of the firm view that the opening set of expressions contained in the definition clause, namely Section 2, which denotes "unless the context otherwise requires" squarely gets attracted to Section 47 and therefore the definition of 'disability' as defined under Section 2(i) cannot be blindly applied to the term 'disability' which has been used in Section 47 of the Act. In other words, the term 'disability' used in Section 47 can draw support not only in respect of the defined 'disabilities' as contained in Section 2(i) of the Act but will also encompass such other 'disabilities' which would disable a person from performing the work which he held immediately prior to acquisition of such 'disability' and thereby entitle him to avail the benefits conferred under the said provision for having acquired such a 'disability'."

...

18. Therefore, we are unable to accept the arguments of the learned Counsel appearing for the respondent and we are in full agreement with the submissions made by the learned Counsel appearing for the appellant in this regard. As pointed out by the learned Counsel appearing for the appellant, since the opening phrase of Section 2 reads "unless the context otherwise requires" purposive construction to definition clause has to be adopted. The court should not only look at the words but also look at the context, the collocation and the object of such words relating to such matter and interpret the meaning intended to convey by the use of words under such circumstances. Thus a rigorous, literal and pedantic interpretation need not be attributed to Section 2(i) of the Act. We are, therefore, of the opinion that the intention of the law makers is not to restrict only to those categories of persons mentioned in Section 2(i) of the Act alone to be entitled to the benefits under the Act. If justifiable and reasonable approach is to be made, then it has to be held that Section 2(i) of the Act is not exhaustive.

19. Therefore, as argued by the learned Counsel for the appellant, while the provisions contained in Chapters IV to VII of the Act deals with "Persons with disability" Section 47 alone deals with " an employee who acquires a disability during his service". The said provision clearly says that no establishment shall dispense with or reduce in rank, an employee who acquires a disability during his service which means that the person who is employed in an establishment when he acquires a disability, his services cannot be dispensed with or there should be any reduction in rank. Further, the proviso to the said Section clearly states that if he is not suitable for the post he could be shifted to some other post with the same scale of pay and benefits. If it is not possible, he could be kept on a supernumerary post until a post is available or he attains the age of superannuation whichever is earlier. The said provision further states that no promotion shall be denied to any person merely on the ground of his disability. Thus, if we apply Section 47 of the said Act, the order of discharge passed by the respondent dated 26.03.2002 has no leg to stand."

We are in complete agreement with the view of the Madras High Court in *G. Muthu* (15 supra).

21. As could be seen from the language of Section 47, it is intended to protect the employee who acquires disability during his service from being dispensed with or reduced in rank and being denied promotion merely on the ground of his disability. In other words, while Chapters V and VI deal with the persons with existing disability, Section 47 deals with the employees who acquired disability. The Act does not define an employee who acquires a disability, unlike a person with disability. Viewed from this perspective Section 47 is a stand alone provision, distinct from the rest of the provisions. If we adopt the definition of 'disability' under Section 2(i) in its literal sense, it may lead to incongruous results, eg., a person may suffer a disability not enumerated under Section 2(i), but such disability may have rendered the employee unfit to hold the post which he was holding or for being promoted to the post to which he would have been normally promoted but for his disability; take another person who acquired one of the disabilities included under Section 2(i) rendering him

unfit to continue in the post which he was holding or to be promoted. In both cases the disability led to the common result, namely, the employees becoming unfit to continue in the posts they were holding or for being promoted. If we understand the word 'disability' in Section 47 in the light of the definition under Section 2(i), we will be creating two classes of employees; one, who acquired the disability enumerated under Section 2(i), and another, who acquired the disability not included under the said provision. Though the end result of suffering a disability in both the classes of employees is the same, the first mentioned class of employees will be protected by Section 47 and the second mentioned class of employees will be deprived of such protection. Is this the true intent of Section 47? Our answer should be an emphatic 'No'. When the whole purpose of Section 47 is to give protection to the employees who acquired "a disability" during their service, the nature of the disability is wholly irrelevant so long as such disability renders the employee unfit to continue in the post he was holding or for that matter, even for being promoted. In our opinion, giving the word 'disability' the restricted meaning as defined under Section 2(i) would result in creation of a classification which has no reasonable nexus with the object sought to be achieved. Such an interpretation falls foul of the doctrine of reasonable classification, lucidly explained in the case law discussed above and defeat the very purpose for which Section 47 is enacted.

22. Let us examine this aspect from another perspective. If the end result of a disability is causing inability in a person already in service to perform duties attached to the post he is holding, he cannot be treated

differently from a similarly situated employee with the only difference that the disability suffered by the former does not fall under Section 2(i) of the Act, unlike the latter whose disability falls under the said provision. Doing so would amount to treating equals as unequals which is forbidden by Article 14.

23. As observed by the Supreme Court in *Kunal Singh* (40 supra), no person would suffer a disability by choice. As a corollary, an employee cannot choose and suffer the disability so as to make his case fall under any of the disabilities enumerated under Section 2(i) to claim protection under the Act. Therefore, to say that the employer would lend protection (under Section 47) only to such category of employees who suffer the disabilities specified under Section 2(i), would be rendering the legislative intent behind enacting Section 47 dependent upon the fortuitous circumstances, i.e., the employer will be rewarding only one category of employees who had the providence of suffering any of the disabilities specified under Section 2(i), while leaving others who were not fortunate enough to suffer such a disability in the lurch. Such a classification, in our view, defeats the legislative object underlying Section 47 of the Act.

24. As held in *N.M. Thomas* (36 supra), those who are similarly circumstanced are entitled to an equal treatment. Classification is, therefore, to be founded on substantial differences which distinguish persons grouped together from those left out of the group and such differential attributes must bear a just and rational relation to the object sought to be achieved.

25. Indubitably, the object sought to be achieved by Section 47 of the Act is to protect the employees who acquired disability. To deny this protection, the State must show that the classification made by it is founded on substantial differences between the categories of employees who acquired disability enumerated under Section 2(i) and those who acquired disability not falling under the said definition. The phrase “substantial differences” in our opinion has a very significant meaning, in that, every difference between two groups does not justify the classification. But the difference must be so substantial that it must bear a just and rational relationship to the object sought to be achieved. When the object sought to be achieved by Article 47 of the Act is to lend protection to the employees who acquired disability, creation of an artificial classification among the employees based on the nature of the disability suffered by them, is not only unjust and irrational, but also it does not bear any rational nexus with the object sought to be achieved. In the absence of substantial difference between the two groups, both of them need to be treated as equals and equality among them needs to be maintained to prevent the action of the State from offending Article 14 of the Constitution.

Whether the medically unfit drivers cannot invoke Section 47 of the Act in view of Regulation 6A(5)(b) and various Circulars of the Corporation?

26. Rule 6A(5)(b) of the Service Regulations of the Corporation reads as under:

“6A. Retirement due to failure to conform to the requisite standard of physical fitness.

(1) to (4)

(5)(a)

(5)(b). In the case of retirement of a Driver on medical grounds he may be extended all terminal benefits apart from an Ex-gratia payment equivalent to One and Half month's emoluments (Pay + DA) last drawn, for each completed year of service or the monthly emoluments at the time of retirement on medical grounds multiplied by the balance months of service left before normal date of retirement whichever is less.

Service of more than 6 months shall be treated as one year."

Various Circulars are being issued from time to time providing for alternative employment to the medically unfit drivers, which include Conductor Grade-II, Shramik and Record Tracer, subject to their possessing educational qualifications and their fitness to hold the post. These benefits are extended to all the drivers who are declared medically unfit irrespective of the nature of the disability.

27. Mr. B. Mayur Reddy, learned counsel, placed heavy reliance on the judgment of the Supreme Court in *Sohan Lal v. State of Haryana*⁴¹. In that case, a Driver of Haryana Roadways was declared medically unfit and was consequently retired from service with effect from 31.3.1997 and granted additional compensation. He was unsuccessful in the industrial dispute raised by him under Section 10(1) of the Industrial Disputes Act, 1947. The Award of the Labour Court was confirmed by the High Court. While dismissing the civil appeal, the Supreme Court made the following observations:

"Insofar as the provisions of Section 47 of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 are concerned, we are of the view that the appellant having retired in the meantime, the said provisions of the Act will have no application. As the appellant has already been granted additional compensation under the scheme in force, we do not consider it appropriate to examine the entitlement of the appellant to any further benefits under the Act."

What is noticeable from this judgment is that the Supreme Court has not laid down as a proposition of law that a medically unfit driver who

⁴¹ (2014) 16 SCC 68

has received additional compensation is not entitled to invoke the provisions of Section 47 of the Act. No discussion on the aspects of waiver or estoppel is discernible from the judgment. As the judgment appears to have turned on its own facts, it cannot be treated as laying down any ratio to the effect that a disabled driver who received additional monetary compensation is not entitled to the protection of Section 47 of the Act.

28. The Act being a plenary legislation holding the field providing for protection to the disabled employees, the Service Regulations/Circulars of the Corporation must yield to the Act. In other words, the provisions of the Act override the Service Regulations and Circulars of the Corporations to the extent they are inconsistent with the provisions of the Act. Therefore, even if some of the disabled drivers were paid additional monetary benefits as per the aforementioned Regulations, they cannot be denied statutory protection on the ground of estoppel/waiver. The Corporations being 'State' under Article 12 of the Constitution of India, cannot act contrary to the mandatory statutory provisions and plead estoppel against the disabled drivers, some of whom may be even illiterates and some others, semi-literates. When the Corporations have failed to discharge their statutory obligation under the Act, it lies ill in their mouth to plead such estoppel. The law is well-settled that there cannot be estoppel against statute. If the Corporations are extending the benefits of Section 47 of the Act only to those drivers who suffered disabilities enumerated under Section 2(i) of the Act and denying the same benefit to other disabled drivers only for the reason that they suffered disabilities

other than those included in Section 2(i), the latter category of drivers are deprived of their fundamental right to equality under Article 14 of the Constitution of India. The fundamental rights, it is a trite law, cannot be waived. It is therefore idle to plead that such of those medically unfit drivers who have received the benefits under the Regulations/Circulars of the Corporations are not entitled to protection of Section 47 of the Act. The Corporations which are expected to function as model employers cannot be permitted to indulge in invidious discrimination by creating an artificial classification and raise the specious pleas of estoppel and waiver.

Case law cited by the learned counsel for the appellants:

Case law cited by Mr. G. Vidyasagar

Union of India v. Devendra Kumar Pant and others (1 supra)

29. The facts of this case need to be briefly discussed. A Lab Assistant in the Research Designs and Standards Organisation (RDSO), Ministry of Railways, was selected for the next higher post of Chief Research Assistant, with the condition that his promotion will be effective from the date of his submission of fitness certificate in B1 medical category. The promotee who held B2 category approached the Central Administrative Tribunal, Lucknow Bench, being aggrieved by the requirement of submission of B1 category certificate. The Tribunal dismissed his application. He has approached the Allahabad High Court of Lucknow Bench by way of a writ petition. In support of his challenge, he has relied upon Section 47(2) of the Act. The High Court allowed his plea and held that he cannot be denied promotion on the ground of his failure to fulfil the requirement of B1 category and directed that if he is found fit to B2

medical category, he must be given promotion. This order was challenged before the Supreme Court. The following question was framed by the Supreme Court:

“The question that arises for our consideration is whether refusal by the appellant to give effect to the promotion of the respondent unless he obtains fit certificate in B1 medical category, violates Section 47(2) of the Act. In short, what falls for our consideration in this case is the scope and purport of sub-section 47 of the Act, which provides that:

“47(2). No promotion shall be denied to a person merely on the ground of his disability.”

The Supreme Court referred to the judgments in *Kunal Singh* (40 supra) and *Union of India v. Sanjay Kumar Jain*⁴², and observing that the judgment in *Sanjay Kumar Jain* (42 supra) mainly dealt with the issue as to whether the railways could deny the benefit of Section 47(2) in the absence of a notification exempting it from the application of the said provision, held that the said judgment on the facts of the case before the Supreme Court had no relevance. Dealing with the various benefits extended under the Act depending upon the nature of the disability and extent of the disability, the Supreme Court made the following remarks, which are very significant:

“Different principles relating to non-discrimination apply depending upon the context in which the benefit is extended.”

The Court noticed the distinction between Sections 33 and 39 of the Act and held that Section 33 restricted reservation in employment to persons with only three kinds of disabilities, while Section 39 which provides for admission into educational institutions did not restrict the reservation only to certain categories of persons with disability. The Supreme Court also referred to Sections 44, 45 and 46 of the Act which deal with non-

⁴² (2004) 6 SCC 708

discrimination in transport, non-discrimination on the road and non-discrimination in the built environment and held that the benefits under the said provisions are user-specific in nature depending upon the nature of the disability. In that context of discussion, the following observations also assume great relevance.

“Therefore, the provisions of the Act cannot be applied mechanically to all persons with any and every kind of disability. It will be necessary to keep in view the object of the Act, identification of the category of persons for whom a particular beneficial provision has been made, and the extent of the benefit provided.”

Dealing with Section 47, the Court observed that it applies to post-employment situation, i.e., to those who are already in employment. Referring to sub-section (2) thereof, the Supreme Court held that the words ‘merely on the ground of his disability’ have to be interpreted to mean that the person who is otherwise eligible for promotion shall not be denied promotion merely or only on the ground that he suffers from a disability. The Supreme Court observed:

“...Thus, Section 47(2) bars disability per se being made a disqualification for promotion. To give an example, a person working as a Lower Division Clerk (LDC) suffering from the disability of low vision, cannot be denied promotion to the post of Upper Division Clerk (UDC) merely because of his disability. This is because the efficiency with which he functioned as an LDC will be the same while functioning as a UDC also and the disability as such will not affect his functioning in a higher post. But the position is different if the disability would affect the discharge of functions or performance in a higher post or if the disability would pose a threat to the safety of the co-employees, members of the public or the employee himself, or to the assets and equipments of the employer. If promotion is denied on the ground that it will affect the safety, security and performance, then it is not denial of promotion merely on the ground of his disability, but is denial of promotion by reason of the disability plus something more, that is adverse effect of the disability upon the employee’s performance of the higher duties or functions attached to the promotional post.”

The Court further held that the prescription of a minimum medical standard for promotion should be considered as such, and should not be viewed as denial of a promotional opportunity to a person with disability.

Citing an illustration, the Court observed that if a person not having a colour perception is denied appointment to the post of driver, he cannot complain that he is discriminated on the ground of his disability, that same would be the position where the colour perception is a required minimum standard for a particular post, that a person not possessing it is not being denied appointment or promotion on the ground of disability and that the denial is on the ground of non-fulfilment of a minimum required standard/qualification.

We are at a loss to know how this judgment helps the appellants in advancing their case. From the facts noted above, the issue whether the 'disability' referred to in Section 47 of the Act shall be given a restricted meaning vis-à-vis its definition under Section 2(i) of the Act, was neither discussed nor adjudicated. The Supreme Court, referring to the disability of lack of colour perception, observed that the same is neither blindness nor low vision and that therefore it is apparently not a disability under the Act. It has expressed a doubt whether a person lacking colour perception can claim to be a person entitled to any benefit under the Act. Having so observed, the Supreme Court proceeded to decide the case assuming that the employee was a "person with disability", and held that he was not entitled to the protection under Section 47(2) of the Act as the employee was not denied promotion merely on the ground of disability but for his not satisfying the prescribed requirement for holding the promotion post. The observations as reproduced above, in fact, fortify our view that the provisions of the Act need to be applied keeping in view the nature of the disability and the object of the provisions of the Act with reference to each

identified category of persons for whom a particular beneficial provision has been made, instead of making a mechanical application of the provisions (vide paragraphs 24 and 25 of the report).

P. Kasilingam and others v. P.S.G. College of Technology and others (2 supra)

30. In *P. Kasilingam* (2 supra) while construing the expression “means and includes” the Supreme Court held as follows:

“..A particular expression is often defined by the Legislature by using the word ‘means’ or the word ‘includes’. Sometimes, the words ‘means and includes’ are used. The use of the word ‘means’ indicates that “definition is a hard-and-fast definition, and no other meaning can be assigned to the expression than is put down in definition”. [See: Gough v. Gough : (1891) 2 QB 665; Punjab Land Development and Reclamation Corpn. Ltd. V. Presiding Officer, Labour Court : (1990) 3 SCC 682]. The word ‘includes’ when used enlarges the meaning of the expression defined so as to comprehend not only such things as they signify according to their natural import but also those things which the clause declares that they shall include. The words “means and includes”, on the other hand, indicate “an exhaustive explanation of the meaning which for the purposes of the Act, must invariably be attached to these words or expressions.” [See Dilworth v. Commissioner of Stamps : 1889 AC 99 (Lord Watson) and Mahalakshmi Oil Mills v. State of A.P. : (1989) 1 SCC 164]. The use of the words “means and includes” in Rule 2(b) would, therefore, suggest that the definition of ‘college’ is intended to be exhaustive and not extensive and would cover only the educational institutions falling in the categories specified in Rule 2(b) and other educational institutions are not comprehended.”

True, from a reading of the judgment it could not be gathered whether the definition clause in that case contained the words “unless the context otherwise requires”. We have already discussed the effect of these words in the judgments in *Whirlpool Corporation* (16 supra), *K. Balakrishna Rao* (17 supra), *Ramesh Mehta* (14 supra), *Jagir Singh* (18 supra), *S.K. Gupta* (19 supra) and *K.V. Muthu* (13 supra). Therefore, the case on hand falls in the category of the said cases. As the effect of the words ‘unless the context otherwise requires’ did not fall for interpretation in *P. Kasilingam* (2 supra), this judgment does not help the appellants.

Indian City Properties Ltd. v. Municipal Commissioner of Greater Bombay and another (3 supra)

31. This was a case where interpretation of Section 299 of the Bombay Municipal Corporation Act, 1888, fell for consideration. The said provision provided for acquisition of open land occupied by platforms, etc., within the regular line of a street and not occupied by a building, by the Bombay Municipal Corporation. The word 'building' was defined in Section 3(s) of the said Act which opens with the words "unless there be something repugnant in the subject or context". A question arose whether servant quarters, security cabin, the pump room, underground RCC tank with cylinder shape precast tank and the AC plant, are not buildings for the purpose of exclusion from Section 299. In that context, the Supreme Court held that the definition of the building is wide enough in taking to its fold the afore-mentioned structures and further observed that if the Municipal Corporation wants to give a restricted meaning to the definition of the building so as to exclude the afore-mentioned structures, the onus lies on it to justify such exclusion. Therefore, this judgment which turn on its own facts, is not in any manner helpful to the appellants.

Pushpa Devi v. Milkhi Ram (4 supra):

32. This judgment instead of helping the appellants, fully fortifies the view of ours that the Court has to examine the context in the light of the object of the Act and for the purpose for which the provision was made in interpreting the definition of a word. This was a case where interpretation of the word 'tenant' under proviso to Section 13(2)(i) of the East Punjab Urban Rent Restriction Act, 1949, fell for consideration. Section 13(2) of

the said Act provided that the landlord seeking eviction of his tenant shall apply to the Controller. In the proviso thereto, a protection is given to the tenant against eviction, if he pays or tenders the arrears of rent on the first hearing of application for ejectment. A question arose whether the word 'tenant' in the proviso to Section 13(2) shall be construed in the light of the definition of tenant under Section 2(h)(i) of the Act. It was argued on behalf of the landlord that the literal construction or strict construction based on the definition of the word "tenant" must be adopted while considering the proviso to Section 13(2)(i). While rejecting this argument, the Supreme Court has made the following significant observations.

"18. It is true when a word has been defined in the interpretation clause, prima facie that definition governs wherever that word is used in the body of the statute unless the context requires otherwise. "The context" as pointed out in the book Cross-Statutory Interpretation (2nd edn. p. 48) "is both internal and external". The internal context requires the interpreter to situate the disputed words within the section of which they are part and in relation to the rest of the Act. The external context involves determining the meaning from ordinary linguistic usage (including any special technical meanings), from the purpose for which the provision was passed, and from the place of the provisions within the general scheme of statutory and common law rules and principles.

19. The opening sentence in the definition of the section states "unless there is anything repugnant in the subject or context". In view of this qualification, the court has not only to look at the words but also to examine the context and collocation in the light of the object of the Act and the purpose for which a particular provision was made by the legislature. Reference may be made to the observations of Wanchoo, J. in Vanguard Fire and General Insurance Co. Ltd. v. M/s Fraser and Ross (AIR 1960 SC 971) where the learned Judge said that even where the definition is exhaustive inasmuch as the word defined is said to mean a certain thing, it is possible for the word to have a somewhat different meaning in different sections of the Act depending upon the subject or context. In that case, the learned Judge examined the construction of the word 'insurer' as used in Sections 33(1) and 2-D of the Insurance Act, 1938, in the light of the definition of that word under Section 2(9) thereof. The Insurance Act by Section 2(9) defines an 'insurer' as a person carrying on the business of 'insurance'. The question arose whether Sections 33(1) and 2-D did not apply to insurer who had closed his business completely as the definition of the word insurer in Section 2(9) postulates actual carrying on of the business. It was pointed out that in the context of Sections 33(1) and 2-D and taking into account the policy of the Act and the purposes for which the control was imposed on insurers, the word 'insurer' in the said sections also refers to insurers who were carrying on the business of insurance but have closed it.

*20. Great artistry on the bench as elsewhere is, therefore, needed before we accept, reject or modify any theory or principle. Law as creative response should be so interpreted to meet the different fact situations coming before the court. For, Acts of Parliament were not drafted with divine prescience and perfect clarity. It is not possible for the legislators to foresee the manifold sets of facts and controversies which may arise while giving effect to a particular provision. Indeed, the legislators do not deal with the specific controversies. When conflicting interests arise or defect appears from the language of the statute, the court by consideration of the legislative intent must supplement the written word with 'force and life'. See, the observation of Lord Denning in *Seaford Court Estate Ltd. v. Asher* [(1949) 2 KB 481, 498.]”*

In paragraph 21 of the judgment, the Supreme Court has adopted the purposive construction. The ratio that could be culled out from this judgment is that the Court has to necessarily interpret the words in the definition clause in order to suit the context in which the said interpretation is necessitated keeping in view the purpose which the Act intends to achieve rather than adopting a literal or strict construction of the word.

Union of India v. Deoki Nandan Aggarwal (5 supra).

33. This was a case where the respondent was elevated as a Judge of Allahabad High Court on 17.11.1977 and retired on 3.10.1983 on reaching the superannuation age of 62 years. As his length of service was less than 7 years, he was not entitled to normal pension proportionate to the completed years of service and he was entitled only to a lump sum yearly pension. The High Court Judges (Conditions of Service) Act, 1954 was amended with effect from 1.1.1986 liberalizing its provisions. The High Court applied the amended provisions to the retired Judge in such a manner as to calculate his pension proportionate to his five completed years of service as if limit of seven years service had been reduced to five years. It is in this context that the Supreme Court held that it is not the

duty of the Court either to enlarge the scope of the legislation or the intention of the legislature, when the language of the provision is plain, that, the court cannot rewrite the legislation for the reason that it had no power to legislate, and that the Court cannot add words to a statute or read words into it which do not exist. The Supreme Court, however, made the following remarks which are significant in the present context.

“...The courts adopt a construction which will carry out obvious intention of the legislature but cannot set at naught legislative judgment because such course would be subversive of constitutional harmony.

The Supreme Court further held that modifying the scheme will not come under the principle of affirmative action adopted by courts sometimes in order to avoid discrimination. From the facts of that case, it is clear that the Allahabad High Court modified the Pension Scheme itself in order to extend the benefit of the amended provisions of the High Court Judges (Conditions of Service) Act, 1954 to the petitioner before it. Thus, the facts of the said case bear no similarity to the facts of the cases on hand.

Subramanian Swamy and others v. Raju, through Member, Juvenile Justice Board and another (6 supra)

34. This judgment has been relied upon in support of the submission that the doctrine of reading down of a statute can be applied only if a literal reading and understanding of a statute attracts the vice of unconstitutionality. The Supreme Court held that in order to save a statutory provision from the unconstitutionality, the doctrine of reading down can be applied. In the case on hand, this court did not apply this doctrine and instead it has interpreted the word ‘disability’ by giving it a wider meaning than its definition under Section 2(i) of the Act by adopting purposive interpretation to suit the context in which the said word is used

in Section 47 of the Act. Even if this Court were to adopt the doctrine of reading down, such a course is perfectly valid as, if the word 'disability' is not read down, Section 47 would suffer from the vice of discrimination.

Hawa Singh v. Delhi Transport Corporation (7 supra)

35. A Driver of the Delhi Transport Corporation (for short, 'the Corporation') developed a serious heart ailment. An Automatic Implantable Cardioverter Defibrillator (AICD) was implanted by AIIMS. He was advised light duty by the Doctor. His request for grant of light duty was declined by the Corporation and its Medical Board by stating that if he does not perform as driver of passenger bus, he would be put on rest and would lose all his salary and allowances. When he refused to do his regular duty as Driver, he was put on rest and not paid salary. Initially he has filed a writ petition in the Delhi High Court and the same was transferred to the Central Administrative Tribunal (for short, 'the Tribunal'), as the Corporation was brought under its purview. The Tribunal rejected his plea forcing him to file a writ petition before the Delhi High Court. With the liberty granted to him, the Driver has filed a review petition before the Tribunal which has rejected the same on the reasoning that heart ailment resulting from a heart attack followed by implanting of an AICD does not find a mention in the list of disabilities mentioned in the Act. While confirming the order of the Tribunal, the Delhi High court held as under:

"It is clear from the above that, only a person with disability of the nature suffering mentioned in Section 2(i) of the Act is entitled to the benefit of Section 47 of the Disabilities Act. No doubt, in Kumar Bharat Prasad Narain Singh the learned Single Judge of this Court had held that even when a person suffers heart ailment, be as a consequence of his working with the employer, he would be entitled to the benefit of the Act. However, this judgment of the learned

Single Judge was over ruled by the Division Bench in LPA 1601/2005 decided on 14th December, 2005. The Division Bench held that the definition of 'disability' in Section 2(i) is an exhaustive one, and not an inclusive one and since heart ailment is not mentioned therein, a person suffering such ailments would not be treated as disabled within the meaning of Disabilities Act. In view thereof, the judgment of the Tribunal cannot be faulted with. It is clear that the approach of the Tribunal in the impugned order is in tune with the law laid down by this Court and, therefore cannot be faulted with."

When the judgment in *G. Muthu* (15 supra) was brought to the notice of the Division Bench, the Delhi High Court held that since a Division Bench has already taken the view in LPA No.1601 of 2005 that the definition of disability under Section 2(i) is an exhaustive one and not an inclusive one, they are bound by the said judgment and therefore it was not possible for them to rely upon the Madras High Court judgment in *G. Muthu* (15 supra). This judgment, in our opinion, did not embark upon a detailed discussion on the interpretation of various provisions of the Act, including Section 47. In any event, the judgments of other High Courts only have persuasive value and they do not bind us. We are also not persuaded to accept the view of the earlier judgment in LPA No.1601 of 2005 for the detailed reasons already assigned hereinbefore.

Case law cited by the learned Advocate General for the State of Andhra Pradesh

Dalco Engineering Pvt. Ltd. v. Satish Prabhakar Padhye and others (8 supra)

36. An employee of a Private Limited Company filed a writ petition in the High Court of Bombay against termination of his services on the ground of his acquiring disability. The High Court allowed the writ petition based on Section 47 of the Act. The employer has approached the Supreme Court *inter alia* with the plea that being a private limited company, it does not fall within the definition of the word "establishment"

under Section 2(k) of the Act. While holding that the definition of the said word is exhaustive, the Supreme Court held that a private limited company is not an 'establishment' and therefore the provisions of the Act have no application. In that context, the Supreme Court made the following observations on which the learned Advocate General has placed heavy reliance.

"We agree that the socio-economic legislation should be interpreted liberally. It is also true that courts should adopt different yardsticks and measures for interpreting socio-economic statutes, as compared to penal statutes and taxing statutes. But a caveat. The courts cannot obviously expand the application of a provision in a socio-economic legislation by judicial interpretation, to levels unintended by the legislature, or in a manner which militates against the provisions of the statute itself or against any constitutional limitations. In this case, there is a clear indication in the statute that the benefit is intended to be restricted to a particular class of employees, that is employees of enumerated establishments (which fall within the scope of "State" under Article 12). Express limitations placed by the socio-economic statute cannot be ignored, so as to include in its application, those who are clearly excluded by such statute itself."

In our opinion, the context in which the afore-noted observations were made is entirely different from that of the cases on hand. When the definition of 'establishment' gave no room for exception, the Supreme Court observed that the express limitations placed by the socio economic statute cannot be ignored, so as to include in its application, those who are clearly excluded by such statute itself. Therefore, in our opinion, this judgment has no application to the present cases.

All Kerala Parents' Association v. State of Kerala (9 supra)

37. All Kerala Parents' Association has approached the Kerala High Court with a plea that 3% of reservation of the seats in the educational institutions as well as the institutions receiving aid from the Government is not being provided to the persons with disabilities, as mandated by

Section 39 of the Act. A Division Bench of the Kerala High court has rejected the said plea interpreting Section 39 of the Act that it provided for reservation of posts in educational institutions and not the seats for students. The Supreme Court reversed this judgment by holding as under:

“It is well settled that when the language of any statutory provisions is clear and unambiguous, it is not necessary to look for any extrinsic aid to find out the meaning of the statute inasmuch as the language used by the Legislature is the indication of the legislative intent. We fail to understand as to how and on what principles of construction the High Court has given a construction to the provisions of Section 39 not only by doing violence to language of Section 39, but also rewriting the provisions of Section 39. If Section 39, as has been construed by the High Court, would be interpreted to mean it relates to employment merely because the provision occurs in the Chapter VI dealing with employment then the "educational institutions" would have to be interpreted to mean the Government post and the question of receiving aid from the Government would not arise at all. Natural and ordinary meaning of words should not be departed from unless it can be shown that legal context in which the words are used requires a different meaning. We have therefore no hesitation to come to the conclusion that the High Court was wholly in error in construing Section 39 of the Act to mean it relates to reservation in Government employment and not in relation to admission of students with disabilities in the Government institutions as well as educational institutions receiving aid from the Government.”

This judgment also, in our opinion, has no bearing on the issues in this batch of writ appeals, as the observations made by the Supreme Court were only in the context of interpretation of the provisions of Section 39 of the Act.

Deddappa and others v. Branch Manager, National Insurance Co. Ltd. (10 supra)

38. In this case, the owner of a motor vehicle had taken insurance for his motor vehicle for the period from 17.10.1997 to 16.10.1998. On 15.10.1997 he had paid premium, vide a cheque issued on 15.10.1997, which was dishonoured on 21.10.1997 due to insufficient funds. Consequently, the insurance company cancelled the insurance policy

under intimation to the owner of the vehicle and the RTO. An accident took place on 6.2.1998. In the course of the accident, the vehicle ran over a hut killing a girl sleeping therein. The father of the girl had claimed compensation before the Motor Accidents Claims Tribunal. Rejecting the objection of the insurance company that the insurance was not renewed beyond 16.10.1998, the Tribunal awarded compensation. The said order was reversed by the High Court. Confirming the reasoning of the High Court that the insurance policy was not in force, the Supreme Court, however, allowed the appeal by exercising its jurisdiction under Article 142 of the Constitution of India by directing the insurance company to pay the compensation and recover the same from the owner of the vehicle.

In that connection, the Supreme Court made the following observations:

“A beneficial legislation as is well known should not be construed in such a manner so as to bring within its ambit a benefit which was not contemplated by the legislature to be given to the party. In Regional Director, ESI Corpn. v. Ramanuja Match Industries [(1985) 1 SCC 218 (pp.224-25, para 10)] this Court held:

“10. ...We do not doubt that beneficial legislations should have liberal construction with a view to implementing the legislative intent but where such beneficial legislation has a scheme of its own there is no warrant for the Court to travel beyond the scheme and extend the scope of the statute on the pretext of extending the statutory benefit to those who are not covered by the scheme.”

We, therefore, agree with the opinion of the High Court.”

The afore-mentioned observations have been made while deciding the issue whether the contract of insurance was renewed by mere issue of cheque, which was admittedly dishonoured. Therefore, the ratio laid down in the said judgment cannot be applied in the context of the issues that arise in the present cases.

Yudhihster v. Ashok Kumar (11 supra)

39. In this case the Supreme Court has rejected the plea of the tenant that for the purpose of limitation imposed by clause (i)(a) of sub-section (3) of Section 13 of the Haryana Urban (Control of Rent and Eviction) Act, 1973, it should consider that the sale of the premises owned by the landlord was made to defeat the object of the said provision and to deny protection to the tenant, on the following reasoning:

“...If we read in such a manner the Act in question, the Act would expose itself to the vice of unconstitutionality. It is well-settled that though the Rent act is a beneficial legislation, it must read reasonably and justly. If more limitations are imposed upon the right to hold the property then it would expose itself to the vice of unconstitutionality. Such an approach in interpretation of beneficial statutes is not warranted.”

These observations were made on the afore-mentioned facts of the case which bear no similarity to the cases on hand.

State Bank of Patiala and others v. Vinesh Kumar Bhasin (12 supra)

40. The learned Advocate General relied upon the following observations of the Supreme Court.

“The grievances and complaints of persons with disabilities have to be considered by courts and Authorities with compassion, understanding and expedition. They seek a life with dignity. The Disabilities Act seeks to provide them a level playing field, by certain affirmative actions so that they can have adequate opportunities in matters of education and employment. The Act also seeks to ensure non-discrimination of persons with disabilities, by reason of their disabilities. But the provisions of the Disabilities Act cannot be pressed into service to seek any relief or advantage where the complaint or grievance relates to an alleged discrimination, which has nothing to do with the disability of the person. Nor do all grievances of persons with disabilities relate to discrimination based on disability.

Illustration:

Let us assume a case where the age of retirement in an organisation is 58 years for all class II officers and 60 years for all Class I officers. When a Class II officer, who happens to be a person with disability, raises a dispute that such disparity amounts to discrimination, it has nothing to do with disabilities. Persons with disability as also persons without disability may contend in a court of law that such a provision is discriminatory. But, such a provision, even if it is discriminatory, has nothing to do with the person's disability and there is no question of a person with disability invoking the provisions of the Disabilities Act, to claim relief regarding such discrimination."

The facts in that case do not even remotely resemble the facts in the present cases. That was a case where the alleged discrimination was not with reference to any of the provisions of the Act and therefore the Supreme Court made the above observations, which, in our opinion, are cited wholly out of context.

41. Summation

- (i) Section 2(i) of the Act starts with the words "unless the context otherwise requires". Therefore, notwithstanding the word 'means' deployed in Section 2(i), the word 'disability' must be given a meaning in the context in which it is used and the purpose for which Section 47 is enacted. [*K.V. Muthu v. Angamuthuammal* (13 supra), *Ramesh Mehta v. Sanwal Chand Singhvi* (14 supra), *Whirlpool Corporation v. Registrar of Trade Marks* (16 supra), *K. Balakrishna Rao and Others v. Haji Abdulla Sait and Others* (17 supra), , *Jagir Singh v. State of Bihar* (18 supra), *S.K. Gupta v. K.P. Jain* (19 supra) and];
- (ii) If the literal construction of the language used in the statute reduces its intendment to absurdity and prevents

manifest legislative purpose from being carried out, the method of purposive interpretation needs to be necessarily adopted by the Courts [*Babu Manmohan Das Shah v. Bishun Das* (25 supra), *Municipal Corporation of Greater Bombay v. Indian Oil Corporation* (26 supra), *Forest Range Officer v. P. Mohammed Ali* (27 supra), *M/s. Giridhari Lal and Sons v. Balbir Nath Mathur* (28 supra), *Gurudevdatla VKSSS Maryadit v. State of Maharashtra* (29 supra), *Pandian Chemicals Ltd. v. C.I.T.* (30 supra), *K.P. Varghese v. I.T.O.* (33 supra) and *N. Kannadasan v. Ajoy Khose* (34 supra)].

- (iii) In order to pass the test of reasonable classification, the classification must be founded (a) on an intelligible differentia which distinguishes persons or things that are grouped together from others left out of the group, and (b) that it must have a rational relation to the object sought to be achieved, failing which such classification constitutes class legislation forbidden by Article 14 [*Budhan Choudhry v. State of Bihar* (20 supra), *E.P. Royappa v. State of Tamil Nadu* (21 supra), *Maneka Gandhi v. Union of India* (22 supra), *R.D. Shetty v. International Airport Authority* (23 supra) and *Ajay Hasia v. Khalid Mujib Sehravardi* (24 supra);
- (iv) Equals must be treated equally. In the absence of substantial differences which distinguish persons grouped

together from those left out of the group bearing just and rational relation to the object sought to be achieved, such classification offends doctrine of equality enshrined under Article 14 of the Constitution (*State of Gujarat v. Shri Ambica Mills Ltd.* (35 supra), *State of Kerala v. N.M. Thomas* (36 supra), *Indra Sawhney v. Union of India* (37 supra), *U.P. Power Corporation Limited v. Ayodhya Prasad Mishra and another* (38 supra), and *Virendra Mishra v. Union of India* (39 supra).

- (v) Regulation 6A(5)(b) and Circulars of the Corporations are subservient to Section 47 of the Act. Mere acceptance of the benefits offered by the Corporations do not disentitle the disabled employees to claim protection under Section 47 of the Act.

Conclusion:

42. Section 47 of the Act is a stand alone provision which deals with the persons who acquired disability while in employment, as distinct from persons already with disability. Having regard to the context in which the phrase 'a disability' is required to be interpreted and the purpose for which Section 47 is enacted, if a disability results in the inability of the employee to discharge his duties attached to the post he was holding, he is entitled to the protection of Section 47 even if such disability is not enumerated under Section 2(i) of the Act.

Result:

43. For the afore-mentioned reasons, the writ appeals must fail. However, before concluding, we need to address two more aspects - (a) as to the benefits, if any, received by any of the disabled drivers who are parties to this litigation; and (b) the contingency of raising future claims by disabled drivers who have already been discontinued, received the monetary compensation as per the Corporations' Regulations and Circulars and did not move the Courts so far.

As regards (a) supra, as Section 47 of the Act affords full protection to disabled drivers, to confer the benefits on them under the Regulations/Circulars as well as under Section 47, amounts to unjust enrichment. Therefore, the Corporations are entitled to recover the benefits already received by the disabled drivers in terms of the Regulations/Circulars by deducting from the salaries payable to them consequent upon their reinstatement by virtue of this judgment, in easy instalments not exceeding Rs.5,000/- (Rupees five thousand only) per month. If the Corporations will not be able to recover the entire amounts through this process before any of the disabled drivers reaching their superannuation, they can recover the balance amounts from their retirement benefits.

Qua the category of disabled drivers in (b) supra, we direct that those disabled drivers who have already received the benefits under the Regulations/Circulars and have not approached this Court so far claiming protection under Section 47 of the Act, are not entitled to seek relief

based on this judgment, on the principle of laches and in order to prevent entertainment of stale claims and the settled claims from being unsettled.

Subject to the above conditions, all the writ appeals are dismissed.

As a sequel to dismissal of the writ appeals, pending miscellaneous petitions in these appeals shall stand disposed of as infructuous.

C.V. NAGARJUNA REDDY, J

G. SHYAM PRASAD, J

08-09-2016

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Note: LR copies to be marked.
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