

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

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.

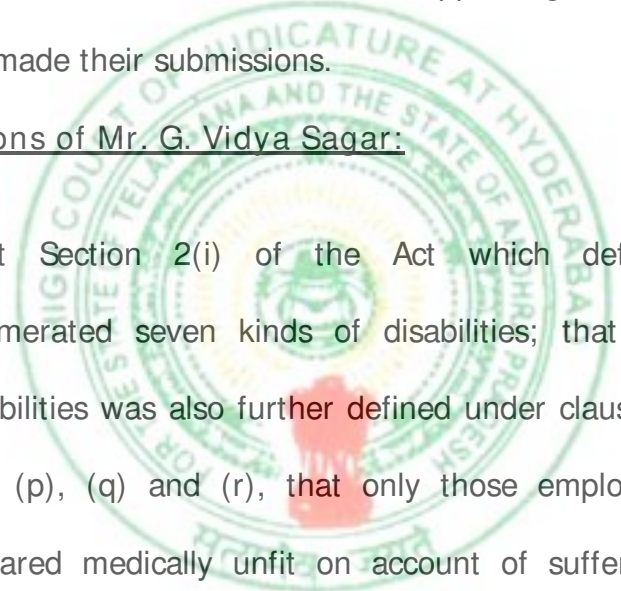
Stand of the appellants:

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:

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- (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. Angamuthamma*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.

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

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 *Gurudevdatla 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

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 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

