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

+ W.P.(C) 10982/2016 and CM No. 42977/2016 (direction)

A.K. RASTOGI

..... Petitioner

Through Mr. Bharat Sangal, Ms. Vernika
Tomar and Ms. S. Sapdana Reddy,
Advocates

versus

MINISTRY OF CORPORATE AFFAIRS & ORS. Respondents

Through Mr. Gaurang Kanth, Ms. Biji Rajesh
and Ms. Eshita Baruah, Advocates

CORAM:

HON'BLE MR. JUSTICE SANJIV KHANNA

HON'BLE MR. JUSTICE CHANDER SHEKHAR

ORDER

% **16.12.2016**

1. On the last date of hearing, we had asked counsel for the respondents to obtain instructions and instructions so obtained would be placed on record.

2. Learned counsel for the respondents states that he has received instructions, and the letter dated 09.12.2016 has been placed on record. The contents of the letter have been reproduced below in entirety lest there be any confusion:-

**“Subject: WPC No. 10982/2016- A.K. Rastogi Vs.
UOI-REG.**

Sir.

I am directed to refer to your letter No. K & A/UOI/EB/22/11/16/3533 dated 22.11.2016, on the subject mentioned above, and to say that while

circulating the vacancies for the posts of Members in NCLT in August, 2015, one post each of Member (Technical) and Member (Judicial) in NCLT was not circulated, as the subject matter of applicability of provisions of PWD Act to those posts was under examination in consultation with the Ministry of Law. The matter was referred to the Ld Attorney General for his opinion.

2. The Law Officer had opined that Section 2 (k) of the Persons with Disabilities Act, 1995 provides for reservation in every establishment. “Establishment” has been defined under this Section as follows “Establishment means a corporation established by or under a Central, Provincial or State Act, or an authority or a body owned or controlled or aided by the Government or a local authority or a Government company as defined in Section 617 of the Companies Act, 1956 (1 of 1956) and included Departments of a Government.” The Law Officer has further said that the question as to whether these Tribunals will be covered by the definition under Section 2 (k). He has clarified that the definition under Section 2 (k) is precise. Establishment means certain entities described therein and includes a Government department. He has stated that the definition cannot be stretched to include a Court or a Tribunal with the trappings of a Court, doing judicial work including of the jurisdiction currently being exercised even by the High Court. The Law Officer has further clarified that the use of the word “means” followed by the word “includes” in a definition is clearly indicative of the legislative intent to make the definition exhaustive. Only those entities which fall within the definition would be covered and not others. In this regard the Ld. Attorney General has referred to “ Bharat Coop Bank (Mumbai) Ltd. Vs. Employees Union (2007) 4 SCC 65 .”

3. The Law Officer has concluded that in his opinion “reservation under the Persons with Disabilities (Equal

Opportunities, protection of Rights and Full Participation) Act 1995 would not apply for filling up of the posts of Members of the two Tribunals in question”. A copy of Ld. Attorney General’s Opinion dated 22.8.2015 is enclosed for reference. This was also was also informed (sic.) to M/o Social Justice & Empowerment by this Ministry.

4. This position may kindly be informed to the Hon’ble Court on the next date of hearing in the matter. As copy of the WP 10982/2016 has not been received in the Ministry, it is requested that a copy may kindly be sent urgently to the undersigned. Two months’ time may also be prayed for from the Hon’ble Court for filing of a Reply in the matter.

3. (sic.) This issues with the approval of the competent authority.

Encl: As above

Yours
faithfully,
Vineeth
Abraham

Under Secretary to the Govt. of India”

Thus, the letter records that there would be no reservation for the posts of Technical Member in the National Company Law Tribunal (NCLT) under the Persons with Disability (Equal Opportunities, protection of Rights and Full Participation) Act 1995.

3. The Principal Bench of the Central Administrative Tribunal in the impugned order dated 30.08.2016 has dismissed OA No. 100/2697/2016 observing as under:-

“1. Applicant, Shri A.K. Rastogi, claiming himself to be qualified and desirous of applying for the post of Technical Member in the reserved category of disabled persons in National Company Law Tribunal (NCLT), has preferred the instant OA, challenging the impugned requisition/advertisement dated 10.08.2015 (Annexure

A-1) for filling up 10 posts of Technical Members in NCLT, issued by the Government of India, Ministry of Corporate Affairs.

2. The main contention by the learned counsel pressed into service, is that, since the respondents have not reserved (3%) posts in the category of disabled persons in the impugned advertisement (Annexure A-1), so the respondents be directed to make reservation for persons with disability with respect to the advertised posts, is not only devoid of merit but misplaced as well, at this stage.

3. As is evident from the record that Ministry of Corporate Affairs has sent the impugned requisition (Annexure A-1) for filling up only 10 posts of Technical Member in NCLT, the 3% of 10 advertised posts, which comes to 0.03 vacancy, i.e., even much less than one posts. Therefore, it cannot possibly be said and the applicant cannot be heard to say, that he is entitled to be appointed in the reserved category of disabled persons, at this stage”.

4. The issue and contention raised by the petitioner whether or not the Persons with Disability (Equal Opportunities, protection of Rights and Full Participation) Act 1995 would be applicable for reservations to the post of Technical Member, thus remain unexamined and unadjudicated.

5. In these circumstances we set aside the impugned order and remand the matter to the Tribunal for consideration of the aforesaid issue and contention. OA No. 100/2697/2016 will be decided afresh without being influenced by the impugned order. We also clarify having not expressed any opinion on merits.

6. To cut short delay, the parties would appear before the Tribunal on 11.01.2017, when the date of hearing will be fixed.

7. The writ petition is disposed of without expressing opinion on merits.

SANJIV KHANNA, J

CHANDER SHEKHAR, J

DECEMBER 16, 2016
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