

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.01.2018

CORAM

The HON'BLE MS.INDIRA BANERJEE, CHIEF JUSTICE
AND
The HON'BLE MR.JUSTICE ABDUL QUDDHOSE

W.P.No.1030 of 2018

Foundation for Rights of Young
Child (Foryouchild),
A registered Trust, represented
by its Managing Trustee
Dr.K.Shanmugavelayutham,
No.3, Ayyavu Street,
Ayyavu Colony,
Aminjikarai,
Chennai - 600 029. .. Petitioner-in
Person

vs.

- 1.The State of Tamil Nadu,
rep. by Principal Secretary to Government,
Department for the Welfare of
Differently Abled Persons,
Secretariat,
Chennai - 600 009.
- 2.State Commissioner for Differently Abled,
No.5, Kamarajar Salai,
Lady Willington College Campus,
Chennai - 600 005. .. Respondents

PRAYER : Writ Petition filed under Article 226 of the
Constitution of India for issuance of a writ of mandamus
directing the first respondent to frame the Rights of Persons
with Disabilities Act, 2016 Rules and notify it in the Tamil
Nadu Government Gazette.

For Petitioner	: Dr.K.Shanmugavelayutham Petitioner-in-person
For Respondents	: Mr.T.N.Rajagopalan Government Pleader (i/c)

ORDER

(Order of the Court was made by the Hon'ble Chief Justice)

This writ petition by way of public interest litigation has been filed seeking a writ of mandamus directing the first respondent to frame Rules under The Rights of Persons with Disabilities Act, 2016.

2. Section 101 of the said Act provides as follows:

"101. (1) The State Government may, subject to the condition of previous publication, by notification, make rules for carrying out the provisions of this Act, not later than six months from the date of commencement of this Act.

(2) In particular, and without prejudice to the generality of foregoing powers, such rules may provide for all or any of the following matters, namely:-

(a) the manner of constituting the Committee for Research on Disability under sub-section (2) of section 5;

(b) the manner of providing support of a limited guardian under sub-section (1) of section 14;

(c) the form and manner of making an application for certificate of registration under sub-section (1) of section 51;

(d) the facilities to be provided and standards to be met by institutions for grant of certificate of registration under sub-section (3) of section 51;

(e) the validity of certificate of registration, the form of, and conditions attached to, certificate of registration under sub-section (4) of section 51;

(f) the period of disposal of application for certificate of registration under sub-section (7) of section 51;

(g) the period within which an appeal to be made under sub-section (1) of section 53;

(h) the time and manner of appealing against the order of certifying authority under sub-section (1) and manner of disposal of such appeal under sub-section (2) of section 59;

(i) the allowances to be paid to nominated Members of the State Advisory Board under sub-section (6) of section 67;

(j) the rules of procedure for transaction of business in the meetings of the State Advisory Board under section 70;

- (k) the composition and functions of District Level Committee under section 72;
- (l) salaries, allowances and other conditions of services of the State Commissioner under sub-section (3) of section 79;
- (m) the salaries, allowances and conditions of services of officers and staff of the State Commissioner under sub-section (3) of section 79;
- (n) the composition and manner of appointment of experts in the advisory committee under sub-section (7) of section 79;
- (o) the form, manner and content of annual and special reports to be prepared and submitted by the State Commissioner under sub-section (3) of section 83.
- (p) the fee or remuneration to be paid to the Special Public Prosecutor under sub-section (2) of section 85;
- (q) the manner of constitution of State Fund for persons with disabilities under sub-section (1), and the manner of utilisation and management of State Fund under sub-section (2) of section 88;
- (r) the form for preparation of accounts of the State Fund for persons with disabilities under sub-section (3) of section 88.

(3) Every rule made by the State Government under this Act shall be laid, as soon as may be after it is made, before each House of the State Legislature where it consists of two Houses, or where such State Legislature consists of one House, before that House."

3. Section 101 of the said Act empowers the State Government, subject to the condition of previous publication, to make by notification, Rules for carrying out the provisions of the Act, not later than six months from the date of commencement of the said Act.

4. Section 101 of the said Act casts an obligation on the State Government to make Rules within six months. However, in our view, the time stipulation in Section 101 of the said Act is directory and not mandatory. In the absence of any prescription in the said Act of the consequences of failure to adhere to the time schedule for publication of Rules, delay in publication of the Rules would not render the Rules invalid. It could not have been the intention of the Parliament that for delay in making

the Rules for carrying out the provisions of the Act, the Act itself could be rendered otiose.

5. We are informed by the learned Government Pleader (in-charge) that draft Rules have already been framed. The Rules shall be published and notified as per law at the earliest, preferably within two months, upon compliance of the requisites of Section 101, including the requirement to place the Rules before the State Legislature.

6. The Rules shall positively be finally notified within two months from date.

7. The writ petition is disposed of. No costs.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

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To:

1.The Principal Secretary to Government,
Department for the Welfare of
Differently Abled Persons,
Secretariat,
Chennai - 600 009.

2.State Commissioner for Differently Abled,
No.5, Kamarajar Salai,
Lady Willington College Campus,
Chennai - 600 005.

+ 1 cc to Government Pleader Sr.6580

+ 1 cc to Dr.K.Shanmugavelayutham, Advocate Sr.6580

W.P.No.1030 of 2018

KAN(CO)
EU(12/02/2018)

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