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

+ LPA 98/2019

DAYA SWAROOP

..... Appellant

Through: Mr.Jai Bansal, Adv. with Mr.Sudhir
Kumar, Adv.

Versus

DELHI TRANSPORT INFRASTRUCTURE Respondent

Through: Mr.Gautam Narayan, ASC with
Ms.Mahamaya Chatterjee, Ms.Shivani Vij, Adv.

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE V. KAMESWAR RAO

ORDER

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12.02.2019

C.M.No.6539/2019 (exemptions)

Allowed, subject to all just exceptions.

C.M.No.6541/2019 (delay of 17 days in filing the appeal)

For the reasons stated in the application, the delay in filing the appeal is condoned and the application is disposed of.

LPA No.98/2019 & 6540/2019 (stay)

1. Seeking exception to the order dated 20th November, 2018 passed by the writ Court in W.P.(C) No.1802/2018 and the subsequent order passed on 21st January, 2019 dismissing the review application being Rev.Pet.No.22/2019, the petitioner has filed this appeal under Clause 10 of the Letters Patent Act.
2. Challenge in the writ petition was made to an Office Memorandum dated 1st August, 2016 by which certain policies have been laid down for the

purpose of allotment and renewal of licence of shops/spaces/sites for commercial utilization at the Inter State Bus Terminals (ISBTs) of Delhi. The grounds raised are that the license issued under the policy to persons with disability is limited. It is the case of the petitioner that once a person with disability is successful in securing an allotment or a space, then he is entitled to be issued a license in perpetuity and merely issuing license on short term basis is not sufficient to rehabilitate a person with disability and, therefore, the policy which limits the grant of benefit is unsustainable.

3. The learned Writ Court took note of Section 37 of the Rights of Persons with Disabilities Act, 2016, the provision of reservation contained therein and came to the conclusion that under the statute it is mandatory for the Government and the local authorities to provide for scheme for reservation for persons with disabilities in the matter of allotment of land etc. It is an admitted position that the policy framed provides for reservation to the extent of 5% but the policy entitles a person to claim shop for a particular period and after lapse of the said period, another person with disability can avail of the benefit.

4. Placing reliance on an earlier judgment of this Court in the case of *Seema Tiwari & Ors. vs. Government of NCT of Delhi & Ors.*; **W.P.(C) 6335/2016** decided on 4th December, 2017 wherein the same Office Memorandum was considered and similar prayer rejected, the learned writ Court refused to interfere into the matter. Thereafter, an appeal was filed before this Court by the petitioner but it was withdrawn and, thereafter, a review application was filed and the review having also been dismissed, this appeal has been filed.

5. The only ground canvassed before us was that granting license for a

limited period does not serve the purpose of rehabilitating a disabled person and once the intention of the statute was to rehabilitate a disabled person, the reservation or the allotment should be in perpetuity and not for a short duration. Apart from the fact that in the case of *Seema Tiwari (Supra)* similar contentions were rejected but a decision of a coordinate Bench of this Court in **LPA No.793/2017** titled ***Anita Aghi & Ors. vs. Govt. of NCT of Delhi & Anr.*** decided on 15th December, 2017 has been brought to our notice wherein similar policy for allotment of space to persons with disability was considered and rejected.

6. In our considered view, the provisions of the statute and the scheme of the policy is to grant benefit to all disabled persons and, therefore, the license is granted, as per the policy, for a fixed period of time, namely, 3 or 5 years and after expiry of the said license, it is renewed by giving chance to another disabled person to avail of the benefit. Thereby the number of persons who can avail of the benefit are increased. If the contention of the petitioner is accepted, that is, once an allotment is made in favour of a person with disability, it would continue to remain in his name for all times to come and the right of other similarly situated disabled persons to reap the benefit of the statutory provision and get advantage of the State's largeness would be adversely affected. This could never be the intention of the law makers or the statutory provision

7. In our considered view, the policy makes out a proper scheme meeting the requirements of law for providing reservation to persons with disability in accordance with the statutory requirement and the learned writ Court in dismissing the writ petition on such consideration has not committed any error.

8. The writ Court having already considered the provision in *Seema Tiwari (Supra)* and having rejected it, we see no reason to take a different view in the matter. It may be taken note of that in the order passed on 15th December, 2017 in the case of *Anita Aghi (Supra)*, the observations and the findings recorded by the Division Bench in para-2 goes to show that when similar arguments were made and the Court was not inclined to accept the same a prayer was made for granting certain time for making alternate arrangements and only time was granted and when the matter travelled to the Supreme Court in SLP(C) No.2189/2018, finding no merit in the petition, the SLP was also dismissed by granting some time to vacate the premises.

9. Taking note of all these factors, we see no reason to make any indulgence into the matter, the appeal is accordingly dismissed.

CHIEF JUSTICE

V. KAMESWAR RAO, J

FEBRUARY 12, 2019

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