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

+ **W.P.(C) 6597/2014 and CM APPL. 15694/2014**

AMBEDKAR UNIVERSITY OF DELHI Petitioner

Through: Mr Mohinder J.S. Rupal, Mr
Hardik Rupal, Mr Prang and Mr
Koushik Ghosh, Advocates.

versus

GOVT. OF NCT OF DELHI & ORS. Respondents

Through: None.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER

% **19.07.2019**

VIBHU BAKHRU, J

1. None appears for the respondents.
2. It is seen that none had appeared for the respondents on the previous occasions as well. In the circumstances, this Court does not consider it apposite to defer the hearing of the present petition to await the representation on behalf of the respondents.
3. The petitioner is a University established by Government of National Capital Territory of Delhi and had filed the present petition impugning an order dated 20.08.2014 (hereafter 'the impugned order') passed by respondent no.2 (Commissioner for Persons with Disabilities – hereafter 'the Commissioner').
4. The Commissioner had passed the impugned order on a

complaint filed by respondent no.3 (Dr Ram Kishan) alleging that the petitioner was not implementing the provision of Sections 33 and 39 of the Persons with Disabilities Act, 1995 (hereafter 'the 1995 Act').

5. The petitioner claims that it has complied with the provisions of Sections 33 and 39 of the 1995 Act and had earmarked posts to be filled by persons with disabilities. The controversy, essentially, relates to whether petitioner is required to fill the post of an Associate Professor (School of Education Studies) by appointing persons with disabilities.

6. Before proceeding further, it would be relevant to refer to Sections 33 and 39 of the Act, which reads as under:-

“33. 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) Bearing 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.

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39. All Government educational institutions and other educational institutions receiving aid from the Government, shall reserve not less than three per cent seat for persons with disabilities.”

7. It is apparent from the above that Section 39 of the 1995 Act relates to reserving seats in Educational Institutions. The said Section would have no relevance to the controversy raised by respondent no.2 which essentially relates to reservations of posts (teaching and non-teaching) for persons with disabilities.

8. There is no dispute that the petitioner is required to reserve at least 3% posts for persons with disabilities. On 01.07.2013, respondent no.3 had filed a complaint before the Commissioner pointing out that the advertisements issued by the petitioner for filling up various posts did not indicate post-wise seats that were reserved for persons with disabilities. It is stated that the petitioner accepted the above on 08.07.2013 and made a statement before the Commissioner that it would comply with all provisions of the 1995 Act. The petitioner also, unequivocally, stated that it would cure the deficiency in the advertisements issued and indicate the category wise reservations for disabled persons by issuing a separate advertisement.

9. Thereafter, the Vice Chancellor of the petitioner University constituted a Committee comprising of experts in the field for, *inter alia*, identifying posts to be filled up by persons with specified disabilities and to implement the reservation policy.

10. On 12.02.2014, the Committee so constituted submitted a report

for implementing the reservation policy and the same was accepted by the Academic Council of the petitioner on 04.03.2014. The Academic Council also resolved that specific faculty positions for specific disabilities be earmarked and further directed that such faculty positions be identified in consultation with various schools.

11. The petitioner states that thereafter, on 22.05.2014, the Senior Management Team, comprising of Deans of all schools / Heads of all division discussed the matter of reserving 3% faculty positions for persons with disabilities. It was noted that the petitioner had received clear instructions that seats would have to be filled for both Visually Handicapped (VH) and Orthopedically Handicapped (OH) for all categories, namely, Assistant Professor, Associate Professor and Professors. It was also noted that the seats reserved for persons with disabilities would have to be filled by following a roster system, that is, to ensure that vacancies are filled in a numerical order in a manner so as to ensure that 3% reservation is maintained. The senior management team considered the list of five positions from different schools which were identified to be reserved for persons with disabilities.

12. The details of five posts identified for being reserved for persons with disabilities are set out below:-

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School/Subject	Name of the Post	No. of post(s)	Category
<u>Centre for English Language Teaching</u>	Associate Professor	One	VH
<u>School of Human Studies Disability</u>	Professor	One	OH

Studies			
School of Liberal Studies: Comp. Lit. & Trans. Studies	Assistant Professor	One	VH
School of Culture and Creative Expression	Associate Professor	One	OH
School of Law, Governance & Citizenship	Assistant Professor	One	VH

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13. The above posts were also notified and a corrigendum was published in a daily newspaper (The Hindu) on 11.06.2014 and was also published on the website of the petitioner.

14. Respondent no.3 was not satisfied with the above and once again filed a representation, *inter alia*, alleging that reservation had not been provided for posts identified as per the government norms and no posts had been reserved for the Discipline of Education. He also stated that no reservation had been made on the roster points as per notification dated 29.12.2005 issued by Department of Personnel and Training (DoPT).

15. The Commissioner accepted the aforesaid contentions and passed the impugned order directing the petitioner to include the post of Associate Professor (School of Education Studies) in the advertisement issued for posts to be filled by appointment of persons with disabilities. The Commissioner directed that the said posts be also included in the advertisements by way of a corrigendum.

16. Mr Rupal, learned counsel appearing for the petitioner submits that the directions issued by the respondents are beyond the powers of

Commissioner as specified under Sections 61 and 62 of the 1995 Act. He relied on the decision of this Court in ***Jaikishan Aggarwal v. Union of India and Ors.: W.P.(C) 8299/2009, decided on 09.07.2018*** and the decision of the Supreme Court in ***State Bank of Patiala and Ors. V. Vinesh Kumar Bhasin: 2010 (4) SCC 368*** in support of his contention.

17. Section 61 of the 1995 Act specifies the powers of the Commissioner and Section 62 of the 1995 Act enables the Commissioner to “look into complaints” with respect to the specified matters. Sections 61 and 62 of the 1995 Act are set out below:-

“61. The Commissioner within the State shall-

- (a) Coordinate with the departments of the State Government for the programmes and schemes, for the benefit of persons with disabilities;
- (b) Monitor the utilization of funds disbursed by the State Government;
- (c) Take steps to safeguard the rights and facilities made available to persons with disabilities.
- (d) Submit reports to the State Government on the implementation of the Act at such intervals as that Government may prescribe and forward a copy thereof to the Chief Commissioner.

62. Without prejudice to the provisions of section 61 the Commissioner may of his own motion or on the application of any aggrieved person or otherwise look into complaints with respect to matters relating to---

- (a) Deprivation of rights of persons with disabilities;

(b) Non-implementation of laws, rules, bye-laws, regulations, executive orders, guidelines or instructions made or issued by the appropriate Governments and the local authorities for the welfare and protection of rights of persons with disabilities, And take up the matter with the appropriate authorities.”

18. It is relevant to note that Section 62 is similarly worded as Section 59 of the 1995 Act which enables the Chief Commissioner to look into the complaints with respect to the specified matters.

19. In ***Shah Afzal (Md.) v. Medical Council of India and Anr.: 2010 VI AD (Delhi) 762***, the Division Bench of this Court had examined the provisions of Section 59 of the 1995 Act and had held that the Chief Commissioner is empowered to look into complaints and take up the matter with the appropriate authority, however, the orders and directions issued by him cannot be elevated to status of an order passed by a Court. The relevant extract of the said decision is set out below:-

“27. We also notice that Section 59 begins with the word “without prejudice to the provisions of Section 58” and empowers the Chief Commissioner to look into the complaints (either on his own motion or on an application by an aggrieved person or otherwise) with respect to matters relating to (a) deprivation of rights of persons with disabilities; (b) non-implementation of laws, rules, byelaws, regulations, executive orders, guidelines or instructions made or issued by the appropriate Governments and the local authorities for the welfare and protection of rights or persons with disabilities and to take up the matter with the appropriate authorities. We are mindful of the fact that we are dealing with a beneficial legislation and, therefore, the provisions should be

interpreted and construed in a manner which advances the benefits given under the said legislation. Consequently, the powers and functions of the Commissioner would have to be given the widest amplitude possible within the four corners of the provisions of the said Act itself. We cannot, of course, while giving a liberal interpretation, travel beyond the provisions of the Act or some other statutory provisions which could never have been the intention of Parliament. Therefore, the expressions “look into complaints” and “to take up the matter with the appropriate authorities” cannot be elevated to the status of a case in court and an order or judgment passed by a court. The Chief Commissioner is certainly required to and is empowered to look into any transgression of the rights of persons with disabilities as also to examine the issue of non-implementation of laws etc. which are for the welfare and protection of rights of persons with disabilities, but, having considered the complaint, the Chief Commissioner is required to take up the matter with the appropriate authorities so as to prevent and or remove any deprivation of rights of persons with disabilities and also to ensure implementation of the laws for the welfare and protection of the rights of persons with disabilities. There is no doubt that, for certain purposes, the Chief Commissioner as also the Commissioners, by virtue of Section 63 of the said Act, have been given certain powers of a civil court while trying a suit. However, such powers are exercisable by the Chief Commissioner for summoning and enforcing the attendance of witnesses, requiring the discovery and production of any documents, requisitioning any public record or copy thereof from any court or office, receiving evidence on affidavits and issuing commissions for the examination of witnesses or documents. The powers are limited to such matters only and do not entail that because such powers in certain matters have been given to the Chief Commissioner and the Commissioners, as the case may be, they are to be equated with civil courts. That is certainly

not the intention of the legislature and that is not how we read it.

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29. Going back to Section 59 of the said Act, we find that the Chief Commissioner has only been empowered to look into complaints and to take up the matter with the appropriate authorities. Once the Chief Commissioner has looked into the complaint and has come to a 'decision' and thereupon the Chief Commissioner takes up the matter with the appropriate authorities, the said authorities cannot contend that the view of the Chief Commissioner can be totally ignored or side-stepped. We feel that once the Chief Commissioner takes a view on a particular complaint and then takes up the matter with an appropriate authority, if such view is permissible in law, then the appropriate authority would be obliged to redress and remove the grievance of the complainant. In case the concerned authority does not take any action whatsoever, it would then be open to the aggrieved person to approach the High Court under Article 226 for an appropriate writ, direction or order, if he makes out a case of deprivation of a right or non-implementation of laws, rules etc. providing for the welfare and protection of rights of persons with disabilities. But, this does not mean that the order or direction given by the Chief Commissioner, by itself, is elevated to the status of an order passed by a court."

20. The aforesaid decision was also followed by this Court in ***Jaikishan Aggarwal v. Union of India and Ors.*** (*supra*).

21. In ***State Bank of Patiala and Ors. v. Vinesh Kumar Bhasin*** (*supra*), the Supreme Court had referred to the provisions of the 1995 Act and had observed as under:-

“It is evident from the said provisions, that neither the Chief Commissioner nor any Commissioner functioning under the Disabilities Act has power to issue any mandatory or prohibitory injunction or other interim directions. The fact that the Disabilities Act clothes them with certain powers of a civil court for discharge of their functions (which include power to look into complaints), does not enable them to assume the other powers of a civil court which are not vested in them by the provisions of the Disabilities Act.”

22. In view of the above, the contention that directions issued by the Commissioner in the impugned order are beyond his powers are merited. The impugned order is, accordingly, set aside. However, it is clarified that this would not preclude the Commissioner to take up the matter with the appropriate authorities for issuance of the necessary directions. Respondent no.3 is also not precluded from availing all remedies as available in law.

23. The petition is disposed of with the aforesaid observations.

24. The pending application is also disposed of.

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VIBHU BAKHRU, J

JULY 19, 2019
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