**HIGH COURT OF ANDHRA PRADESH: AMARAVATI**

**CHIEF JUSTICE J.K. MAHESHWARI**
**AND**
**JUSTICE B. KRISHNA MOHAN**

**WRIT APPEAL No.302 of 2020**

*(Through Video Conferencing)*

The State of Andhra Pradesh, rep. by its
Principal Secretary, School Education
Department, Secretariat, Velagapudi,
Guntur District, A.P., and others … Appellants

Versus

Mulavesala Alaka Sreemukha, D/o.M.A.Mangamma,
aged about 23 Years, Occ:unemployee,
R/o.Chukkavanipalem Village, S-Kota Mandal,
Vizianagaram District … Respondents

Counsel for appellants : GP for Services-I

Counsel for the respondent : G.Tuhin Kumar

**ORAL JUDGMENT**

**Dt:17.12.2020**

**Per J.K. Maheshwari, CJ**

This appeal arises out of the order dated 03.03.2020 passed in W.P.No.9576 of 2019, whereby learned single Judge has set aside notification No.768/TRC-1/2018 dated 26.10.2018 issued by the appellants-Department, having found the same to be in violation of the provision of Section 34 of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 (in short "the Act"). The learned single Judge, while referring Section 34 of the Act and the response so filed by the appellants/respondents in paragraph 6, recorded a finding that, when

the Act prescribes reservation with a particular type of disability, Government Order cannot override the mandate the provisions of the Act.

2. We have heard the Govt. Pleader appearing on behalf of the appellants and in particular the stand so taken by the State Government. As per the said stand, the State Government has not denied for grant of reservation, but relied upon the G.O., which is issued prior to the coming into force of the new Act. In paragraph 7 of the response filed by them before the learned single Judge, it is explained by them that as per the Rights of Persons with Disabilities Act, 2016 (Act 49 of 2016), a fresh G.O., i.e., G.O.Ms.No.4 Dept for W.C.D&S dated 09.02.2019 has been issued providing 4% reservation for the categories so specified in the said Act. But, for the purpose of the notification which was issued on 26.10.2018 after the commencement of the Act 49 of 2016, reliance is placed on the old G.O., inter alia, contending that after issuance of G.O., by the Government, they may be in a position to comply with the provisions of Act 49 of 2016. An attempt has been made by the Govt. Pleader appearing on behalf of the appellants that after participation in the process of selection, respondent/writ petitioner cannot approach the Court, but it is to be noticed that no such plea has been taken in the response filed before the learned single Judge and the Govt. Pleader is not in a position to show even a single line of such defence in their response. In that view of the matter, the plea which has not been

taken before the learned single Judge cannot be allowed to be taken at this stage, in particular, when the learned single Judge found that the action of the Government is contrary to the provisions of Act 49 of 2016, which is a beneficial legislation brought for the benefit of the persons with disabilities.

3. For the foregoing reasons, we are not inclined to interfere with the order passed by the learned single Judge.

4. The writ appeal fails and is accordingly dismissed. No order as to costs. As a sequel, all the pending miscellaneous applications shall stand closed.

**J.K. MAHESHWARI, CJ** **B. KRISHNA MOHAN, J**

MRR