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

% **Date of decision: 23 November, 2022**

+ W.P.(C) 7605/2021 & CM APPLs. 23777/2021, 4656/2022,
4659/2022(Add. Document)

MANOJ SHARMA

..... Petitioner

Through: Mr. Sukumar Pattjoshi, Sr,
Adv. with Ms. Poorvi Sinha,
Ms. Sanjana Srivastava, Mr.
Manish Kumar Shekhari, Ms.
Mrinal Bharti, Advs.

versus

KIRORI MAL COLLEGE & ORS.

..... Respondents

Through: Mr. Santosh Kumar and Mr.
Daksh Arora, Advs. for R-1.
Mr. Mohinder J. S. Rupal and
Ms. Shaifali Jain, Advs. for
University of Delhi.

CORAM:

HON'BLE MR. JUSTICE YASHWANT VARMA

YASHWANT VARMA, J. (ORAL)

1. The instant writ petition had been preferred for the respondents being commanded to implement the order dated 15 October 2020 passed by the Chief Commissioner for Persons with Disabilities in terms of the provisions of the **Rights of Persons with Disabilities Act, 2016¹**. A further direction was sought for the respondents allotting staff quarters to the petitioner here in the Kirori Mal College [“college”] on medical grounds.

2. The aforesaid issues arise in the backdrop of the petitioner contending that his younger daughter is physically challenged and

¹ The 2016 Act

impaired with 100% Profound Intellectual Disability. In view of the above and in light of the order of the Chief Commissioner, the petitioner contends that he is entitled to be accorded a suitable accommodation by the college and in the alternative to be permitted to occupy the present accommodation.

3. The petitioner had admittedly been accorded occupation rights of the quarter in question which stood reserved for the Warden of the college. The respondents had referring to the relevant rules which apply for allotment of staff quarters to officers, employees and teachers of the college and had taken a stand before the Commissioner that since the petitioner and his wife own a flat in the vicinity of the college, he is not entitled for allotment of a house in the college premises.

4. Undisputedly, the petitioner has during the course of these proceedings continued to occupy the accommodation in question which otherwise stands earmarked for the Warden of the college by virtue of the interim order dated 13 September 2021. The learned Judge in terms of that order and taking into account the fact that the term of the petitioner as a Warden was ending on 25 September 2021, directed that he would be permitted to occupy the quarter and be not evicted from the same.

5. The respondents upon notices being issued have filed a short counter affidavit in which they disclose that the petitioner was appointed as a permanent faculty member in the said college on 13 February 2015. He is stated to have been appointed as a Warden on 26 September 2015 for a term of 03 years. It was in connection with the

aforesaid appointment that the petitioner was allotted the Warden's residence which is located in the college premises. The college takes the position that the petitioner was always aware that the occupation of the Warden's residence was to be co-terminus with his tenure on that post. It is further disclosed that taking a compassionate view in the matter and in light of the personal circumstances of the petitioner, his term as a Warden was also extended for a further period of 03 years with effect from 26 September 2018. It is, however, their case that once the renewed tenure of the petitioner came to an end on 25 September 2021, he was obliged to vacate the same.

6. The respondent No.1 also refers to the rules of allotment of residences and more particularly Rule 5(i) thereof which reads thus:-

"No University accommodation shall be allotted to an employee of the University owing a house within a radius of 10 kms (Crow's flight) from the University. "

7. It is in the aforesaid backdrop that they contend that no accommodation can be allotted to the petitioner since he admittedly owns a house which is within 5 kms of the college. The Court may only note that the fact that the petitioner owns those residential premises in the vicinity of the college was neither denied nor questioned on its behalf.

8. The Commissioner had in terms of the order of 15 September 2020 while taking note of the stand taken by the college and notwithstanding the rules for allotment of residence being cited before it, observed that it would be incumbent upon the respondents to accept the request of the petitioner for allotment of teaching staff quarters on

medical grounds bearing in mind the disabilities with which his child was afflicted.

9. Mr. Pattjoshi, learned Senior Counsel appearing for the petitioner, has submitted that the issues which arise in the writ petition are liable to be examined and evaluated bearing in mind the fact that the 2016 Act itself is a beneficial piece of legislation. Learned Senior Counsel has taken the Court through the various rights which have been accorded legislative recognition under the 2016 Act with regard to persons with disabilities. Stress was also laid upon the fact that the respondents do not dispute the fact that the daughter of the petitioner is physically challenged. Learned Senior Counsel thus sought to contend that in light of the rights conferred upon a person with disabilities to live in the community as enshrined under the 2016 Act, the action of the respondents in requiring the petitioner to vacate the premises presently occupied by him is wholly arbitrary and illegal.

10. It was further contended that a conjoint reading of Sections 75, 76 and 77 of the 2016 Act would establish that the Commissioner stands sufficiently empowered to frame directions in order to secure and safeguard the interest of persons with disabilities. It was highlighted that the college had neither assailed the order of the Chief Commissioner nor had they conveyed any reasons for non-acceptance as contemplated under the Proviso to Section 76. Viewed in that light, it was the submission of learned senior counsel that the resistance to the petitioner being permitted to either occupy the Warden's residence or for the allotment of an alternative accommodation in light of the medical condition of the younger daughter is wholly arbitrary and

illegal. In support of his submissions, learned Senior Counsel sought to draw sustenance from the following decisions: -

1. **Bank of Baroda versus Susmita Saha**².
2. **Life Insurance Corporation of India versus Chief Commissioner for Disabilities Ministry of Social Justice & Empowerment**³.

11. Reliance was also placed on the decision rendered by a Division Bench of the Court in **Sambhavana vs. Union of India**⁴, where while dealing with the power of the authority to issue guidelines and which would bind departments and authorities, the Court had held as follows: -

“29. As far as the other relief claimed by the petitioner, i.e. issuance of a direction to the respondents to comply with the Office Order dated 26th February, 2013 supra is concerned, we had in our order dated 19th August, 2014 held that the guidelines contained therein were issued as per the directions of the Chief Commissioner for Persons with Disabilities who is an Authority appointed under Section 57(1) of the Act and cannot be treated as mere executive instructions and the said guidelines having been issued for effective implementation of the provisions of the Disabilities Act, have statutory force and are bound to be implemented by all Departments and Authorities. No arguments whatsoever were addressed on the said aspect by the learned counsel for the respondents during the hearing of the writ petition and therefore, we hold with respect to the said prayer that the respondent no. 2 - UPSC shall abide by the said guidelines for all times to come unless the same are varied in accordance with law.”

It would be relevant to note that the decision in **Sambhavana** was based upon the provisions made in Section 57 of the **Persons with Disabilities (Equal Opportunities, Protection Of Rights and Full**

² 2019 SCC OnLine Del 7846

³ 2002 SCC OnLine Del 1016

⁴ 2015 SCC OnLine Del 7790

Participation) Act, 1995⁵ and more particularly Section 57(1) thereof.

12. In **Bank of Baroda**, the Court had noticed the provisions of Section 76 of the Act and observed as follows: -

“16. In addition to above, Section 76 of the Act provides that whenever, the Chief Commissioner makes a recommendation to an authority in pursuance of clause (b) of Section 75, that authority shall take necessary action on it, and inform the Chief Commissioner of the action taken within three months from the date of receipt of the recommendation. However, where an authority does not accept a recommendation, it shall convey reasons for non-acceptance to the Chief Commissioner within a period of three months, and shall also inform the aggrieved person.

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30. A Chief Commissioner under the Act functions as a quasi-judicial authority and has ample powers to decide the issues entrusted to it. The orders passed by the Chief Commissioner are not to be ignored and must be given serious and due consideration and weightage. It has to be kept in mind that the Act is 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. 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.”

13. In **Life Insurance Corporation**, the Court had been called upon to deal with a direct challenge to the order passed by the Chief Commissioner. Since that decision essentially deals with the facts of

⁵ The 1995 Act

that particular case and does not expound any general principle of law which may have a bearing on the present writ petition, the Court does not propose to deal with the aforesaid decision.

14. Learned counsel appearing for the respondent College has submitted that the petitioner has unauthorizedly continued to occupy the premises which stand earmarked for the Warden of the college and has failed to vacate the same. According to learned counsel, he had no right to occupy the same once his term as a Warden had come to an end. Insofar as the prayer for allotment of teachers' accommodation on medical grounds is concerned, it was argued that since the petitioner owns a house in the vicinity of the college itself, the petitioner cannot be provided any official accommodation.

15. Learned counsel has also referred to the decisions rendered by the Supreme Court in **State Bank of Patiala versus Vinesh Kumar Bhasin**⁶ and **BSNL versus G. Sarvothaman**⁷. In **State Bank of Patiala**, the Supreme Court on a consideration of the provisions made in the Act observed as follows: -

“18. 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 the 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. In All India Indian Overseas Bank SC and ST Employees' Welfare Assn. v. Union of India [(1996) 6 SCC 606] , this Court, dealing with Article 338(8) of the Constitution of India

⁶ (2010) 4 SCC 368

⁷ (2013) 10 SCC

(similar to Section 63 of the Disabilities Act), observed as follows:
(SCC pp. 609 & 611, paras 5 & 10)

“5. It can be seen from a plain reading of clause (8) that the Commission has the power of the civil court for the purpose of conducting an investigation contemplated in sub-clause (a) and an inquiry into a complaint referred to in sub-clause (b) of clause (5) of Article 338 of the Constitution.

10. ... All the procedural powers of a civil court are given to the Commission for the purpose of investigating and inquiring into these matters and that too for that limited purpose only. The powers of a civil court of granting injunctions, temporary or permanent, do not inhere in the Commission nor can such a power be inferred or derived from a reading of clause (8) of Article 338 of the Constitution.””

16. Dealing with the nature of the power that the Chief Commissioner may exercise under the 1995 Act, the Supreme Court in **BSNL** had observed thus: -

“13. The Chief Commissioner under Section 59 of the 1995 Act has got only the power to examine the matters relating to “deprivation of rights” of persons with disabilities. The Commissioner can only examine whether the persons with disabilities have been deprived of any “rights” for which the Commissioner has to first examine whether the complainant has any “rights” under the laws. The Commissioner cannot confer or create any right for the appellants. The respondent could not establish that any right has been conferred on him and such right has been denied to him by the Department. The respondent wanted conferment of a right which was extended only to specific five categories of posts on the basis of the report of a High-Powered Committee. The Chief Commissioner has no power to direct inclusion of one more category among the identified categories and to grant the benefit. Under Section 59(b) the Chief Commissioner has got the power to look into the complaints with respect to the matters relating to non-implementation of laws, rules, bye-laws, regulations, executive orders, guidelines or instructions made or issued by the appropriate Government and the local authorities for the welfare and protection of rights of persons with disabilities. It is not the case of the respondent that the Department has failed to implement either any laws, rules or regulations. The respondent prayed for positive direction, claiming certain rights, which had not been conferred on him

either by any law, regulations or orders. Consequently, the directions given by the Chief Commissioner for the inclusion of TOA cadre among the identified categories cannot be sustained and the Commissioner while passing such order has exceeded the powers conferred on him under Section 59 of the 1995 Act.”

17. Having noticed the rival contentions, it would be pertinent to firstly observe that the 2016 Act is principally promulgated to ensure that persons with disabilities enjoy the rights of equality and are enabled to pursue their goals with dignity. The 2016 Act itself has come to be promulgated by Parliament in order to give effect to the United Nations Convention on the Rights of Persons with Disabilities. The 2016 Act by virtue of Sections 3 to 13 thus incorporates and adopts various salutary measures and safeguards for persons with disabilities.

18. It would, however, be pertinent to observe that insofar as the present case is concerned, the dispute does not relate to the preservation or protection of the rights of a person with a disability. Regard must be had to the fact that the allotment of the Warden’s quarter was not made by the college with reference to the daughter of the petitioner suffering from a disability or being physically challenged. That allotment was made by virtue of the appointment of the petitioner himself as the Warden of the college. The allotment undisputedly was to run coterminous with the appointment of the petitioner as a Warden.

19. Viewed in that backdrop, the Court finds itself unable to appreciate the assumption of jurisdiction or authority by the Chief Commissioner for the following reasons. It becomes pertinent to note that the daughter of the petitioner while being physically challenged

and suffering from disabilities is not conferred any right to occupy accommodation earmarked for staff, officers, and employees of the college. The right to occupy the quarter stood conferred upon the petitioner till such time as his term as a Warden was subsisting. The aforesaid conclusion of the Court stands fortified from the decision of the Supreme Court itself in **BSNL** where it was noted that the Chief Commissioner under the 1995 Act can only examine whether persons with disabilities have been deprived of rights. It must also be borne in mind that a family member of a persons with disability cannot seek a right to occupy accommodation earmarked for a Warden in purported extension of the rights that are otherwise recognized to inhere in persons with disabilities. It was in the aforesaid backdrop that the Supreme Court in **BSNL** had noted that the Commissioner would derive jurisdiction to invoke Section 59 and the powers conferred therein only if it be found that a person with disabilities had been deprived of a legal right. Obviously, the daughter of the petitioner has not been conferred a legal right to occupy the Warden's accommodation. At least no such right can be recognised to exist under the provisions of the Act.

20. The Court also bears in mind that the Commissioner under the 2016 Act and while passing orders under Section 76 essentially frames recommendations. Those orders while liable to be accorded due respect cannot be viewed or understood as being mandatory directions issued by a competent court, tribunal or other authority. The decision of this Court in **Bank of Baroda** is thus liable to be appreciated and understood in the aforesaid light. It would be pertinent to observe that the said judgment too was concerned with the enforcement of rights of

a handicapped candidate and the directions of protection which had been issued in her aid by the Chief Commissioner.

21. The Court additionally notes that it would have been permissible for it to consider the issuance of a prerogative writ requiring the respondents to implement and enforce the order of the Chief Commissioner provided the same did not fall foul of the relevant rules for allotment which apply. Since those rules undisputedly mandate that a staff quarter would not be allotted in favor of one who holds or occupies a residence within 10 kms of the educational institution, there was no jurisdiction or discretion available with the respondents to have acceded to the request made by the petitioner or to implement the recommendation made by the Chief Commissioner.

22. Accordingly, and for all the aforesaid reasons, the writ petition fails and shall stand dismissed.

YASHWANT VARMA, J.

NOVEMBER 23, 2022

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