

**In the High Court at Calcutta
Constitutional Writ Jurisdiction
Appellate Side**

Before:
The Hon'ble Justice Lapita Banerji

WPA 970 of 2023

Sujata Bora

Vs.

Coal India Limited & Ors.

For the petitioner : Mr. Soumya Majumder, Adv.
Mr. Dilip Kumar Sadhu, Adv.

For the respondent No. 1 : Mr. Amitesh Banerjee, Adv.
Mr. Sayan Banerjee, Adv.
Mr. Diptendu Acharjee, Adv.

Hearing concluded on : 03.08.2023.

Judgment on : 10.08.2023.

Lapita Banerji, J:- An advertisement was published by Coal India Limited (CIL) vide Advertisement No. 1/2019 for recruitment of Management Trainees. The petitioner applied for the post of Management Trainee in Personnel and HR discipline. The petitioner applied as a reserved candidate in the Visually Handicapped (VH) category. The Reservation for PwD (Persons with Disabilities) candidates is made on horizontal basis. For being *eligible* to apply in the PwD category the percentage of disability would have to be 40% or above. The petitioner's Certificate of Disability was dated April 17, 2012, on the basis of which the petitioner applied. The petitioner was selected for the interview.

2. By a communication dated July 1, 2021 the petitioner was called for Document Verification (DV) and Initial Medical Examination (IME). It was intimated by the said communication that in case the petitioner failed to report for DV or IME then the petitioner's provisional selection, to the post of Management Trainee, shall stand automatically cancelled. The writ petitioner appeared for IME on September 23, 2021. She was declared to be **unfit** as a candidate since she was not only suffering from visual disability but also suffering from Residual Partial Hemiparesis.

3. Mr. Majumder, learned Counsel appearing on behalf of the petitioner submitted that under Section 34 of Rights of Persons with Disabilities Act, 2016, Reservation was required to be made not only for persons who were visually handicapped but also for persons who suffered multiple disabilities.

4. Section 34 of the 2016 Act is reproduced hereinafter:

34. Reservation.—(1) *Every appropriate Government shall appoint in every Government establishment, not less than four per cent. of the total number of vacancies in the cadre strength in each group of posts meant to be filled with persons with benchmark disabilities of which, one per cent. each shall be reserved for persons with benchmark disabilities under clauses (a), (b) and (c) and one per cent. for persons with benchmark disabilities under clauses (d) and (e), namely:—*

(a) blindness and low vision;

(b) deaf and hard of hearing;

(c) locomotor disability including cerebral palsy, leprosy cured, dwarfism, acid attack victims and muscular dystrophy;

(d) autism, intellectual disability, specific learning disability and mental illness;

(e) multiple disabilities from amongst persons under clauses (a) to (d) including deaf-blindness in the posts identified for each disabilities:

Provided that the reservation in promotion shall be in accordance with such instructions as are issued by the appropriate Government from time to time:

Provided further that the appropriate Government, in consultation with the Chief Commissioner or the State Commissioner, as the case may be, may, having regard to the type of work carried out in any Government establishment, by notification and subject to such conditions, if any, as may be specified in such notifications exempt any Government establishment from the provisions of this section.

(2) Where in any recruitment year any vacancy cannot be filled up due to non-availability of a suitable person with benchmark disability or for any other sufficient reasons, such vacancy shall be carried forward in the succeeding recruitment year and if in the succeeding recruitment year also suitable person with benchmark disability is not available, it may first be filled by interchange among the five categories and only when there is no person with disability available for the post in that year, the employer shall fill up the vacancy by appointment of a person, other than a person with disability:

Provided that if the nature of vacancies in an establishment is such that a given category of person cannot be employed, the vacancies may be interchanged among the five categories with the prior approval of the appropriate Government.

(3) The appropriate Government may, by notification, provide for such relaxation of upper age limit for employment of persons with benchmark disability, as it thinks fit.

5. He submitted that partial hemiparesis is a form of Locomotor disability. Since such Locomotor disability was coupled with Visual disability, the petitioner was squarely covered under Section 34 (1)(e) of the 2016 Act.

6. This Court after hearing the submissions of the parties, called for a Report from the Director, National Institute for Locomotor Disabilities (NILD)/ Divyangjan, on the question whether Partial Hemiparesis could be considered to be a Locomotor disability. From the report dated April 24/27, 2023 issued

by the Director NILD, it transpired that Partial Hemiparesis is a type of a Locomotor disability. Therefore, it was contended on behalf of the petitioner that the petitioner should have been considered to be a person with multiple disabilities under 13(1)(e) of the 2016 Act.

7. By a notification dated July 29, 2013 issued by the Ministry of Social Justice and Empowerment (Department of Disability Affairs) the list of posts for

- a) Locomotor impaired
- b) Hearing impaired and
- c) Visually impaired

persons were notified under the Persons with Disability (equal opportunity protection of Rights and Full Participation) Act, 1995. However, the said list was held not to be exhaustive. The Ministries, Departments, Public Sector Undertakings and Autonomous Bodies could further supplement the list.

8. By a subsequent Notification dated January 4, 2021 the Central Government expanded the categories of PwDs after consideration of the Categories under the Rights of Persons with Disabilities Act, 2016. Benefits were to be given to the categories of PwDs under Section 34 (1) of the Act.

9. Under Section 33 of the 2016 Act, the sub-committees formed by the Central Government under the notification dated July 29, 2013 submitted the Reports to the Expert Committee. The Expert Committee considered the Reports of the sub-committees in a meeting held on November 19, 2019, finalised its recommendations and submitted its Report to the Central

Government, for consideration. Based on the Recommendations of the Expert Committee, the Central Government notified the posts in Group A, B, C and D identified suitable for persons with benchmark disability. The posts identified by notification January 4, 2021 superseded the list of posts identified vide notification dated July 29, 2013. Certain relevant clauses of the 2021 notification is reproduced hereinbelow:

Note 5: If a post having identical nature and place job with respect to any identified post, the post should be construed to be identified even even if the post has a different nomenclature and/or is placed in a different group.

Note 6: This list will be the principal list in respect of the posts identified suitable or persons with bench mark disabilities. However, in a case a list o post is separately identified by any Central Government establishment, the list having wider range of identified categories (i.e. having more sub-categories under each category) would prevail.

Note 7: In case a post is identified suitable or more than one sub-category under a broad category individual Central Ministries or Departments or Public Sector Undertakings or Autonomous Bodies should conduct recruitment for all the sub-categories and cannot suo-moto choose one particular sub-category for appointment.

Note 8: It is for the Central Ministries or Departments or Public Sector Undertakings or Autonomous Bodies to verify the authenticity of the certificate of disability and examine suitability of the candidate in terms of functional requirements before appointment against any identified post”.

10. Mr. Majumder submitted that identification of the posts were not necessary for consideration of the petitioner’s candidature under Section 34 (1)(e) of the 2016 Act.

11. Once the legislature intended to include people with multiple disabilities satisfying the criteria of benchmark disability, they could not have been excluded by giving a literal meaning to the 2013 Notification.

12. The Recruitment Notification was published in 2019 after the enactment of the 2016 Act. Therefore, the authorities were aware that vacancies had to be reserved for persons with multiple disabilities.

13. He drew the attention of the Court to Section 102 of the 2016 Act to argue that anything done or any action taken under the said Act, notwithstanding the repeal of the Persons with Disability (Equal Opportunity Protection of Rights and Full Participation) Act, 1995 shall be **deemed** to have been done or undertaken under the corresponding provisions of the Act. Therefore, the action taken under Section 32 and 33 of the 1995 Act would be **deemed** to be undertaken under Section 34 of the 2016 Act.

14. Sections 32 of the 1995 Act is reproduced herein below:

32. Identification of posts which can be reserved for persons with disabilities.-Appropriate Governments shall-

(a) identify posts, in the establishments, which can be reserved for the persons with disability;

(b) at periodical intervals not exceeding three years, review the list of posts identified and up-date the list taking into consideration the developments in technology.

Section 33 of the 1995 Act is reproduced hereinunder:

33. Reservation of posts.- 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 reserve for persons suffering from-

(i) blindness or low vision;

(ii) hearing impairment;

(iii) locomotor disability or cerebral palsy,

in the posts identified for each disability:

Provided that the appropriate Government may, having regard to the type or 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.

Any recruitment process which may have started under the 1995 Act and July 2013 Notification will have to follow the provisions of the 2016 Act.

15. He also referred to the statement of objects and reasons of the 2016 Act to submit that over a period of time, there has been worldwide change to approach handling of the issues concerning Persons with Disability. The fact that the Persons with Disability enjoy various rights such as right to equality, life with dignity, respect for his and her integrity equally with others were considered to be the objectives for passing of the 2014 Bill which was subsequently enacted on December 27, 2016.

16. Mr. Banerjee, learned Counsel appearing on behalf of the respondents/CIL submitted that the writ petition suffers from gross suppression of material facts. The petitioner was aware of the categories in which PwDs could apply as Management Trainees. She applied in VH category relying on a Disability Certificate issued on April 7, 2012. After her candidature was rejected in IME on September 23, 2021, the petitioner disclosed a certificate dated January 2, 2021 issued by the Joint Director of Health Services, Jorhat to show that she suffered from Partial Hemiparesis and also Blindness. The petitioner was physically disabled as well as visually handicapped to the extent of 70%. Since, the petitioner has approached the Court with unclean hands her candidature ought to be rejected. Attention of the Court was drawn to the confirmation made by the petitioner to the effect that she belonged to the PwD category and sub-category. The petitioner

confirmed/vouched that any deviation/discrepancy found at a later stage regarding the PwD category would lead to cancellation of the candidature.

17. Mr. Banerjee, strongly urged that the respondent/CIL being a PSU was not under any obligation to include the petitioner in the multiple disabilities category under 34(1)(e) of the 2016 Act since, the Central Government notified the same on January 4, 2021. The Recruitment process had already started in 2019, prior to the Central Government identifying the posts for newly included categories in 34 (1)(d) and 34 (1)(e) of the 2016 Act. There was no obligation on the part of CIL to reserve vacancies in the said categories in the Recruitment Notification at a later date. Such statutory obligation on the part of the employer to reserve vacancies for 34(1)(d) and (e) categories would only arise in cases where the recruitment process was initiated after the notification identifying posts was published on January 4, 2021 pursuant to the 2016 Act.

18. Considering the rival submissions of the parties and the materials placed on records. This Court is of the view-

i. The advertisement was issued in 2019 for recruitment of Management Trainees.

ii. Under the 1995 Act, posts were to be reserved for candidates suffering from - a) Locomotor disability/cerebral palsy
b) Hearing impairment and
c) Blindness/low vision.

iii. By a notification dated July 29, 2013 the Ministry of Social Justice and Empowerment reserved posts for Persons with Disabilities under the 1995 Act.

iv. However, such list was not held to be exhaustive.

v. The Ministries, PSUs, Departments of Government, Autonomous Bodies were permitted to further expand or supplement the said list.

vi. The 2016 Act expanded the categories of Persons with Disabilities.

vii. Under Section 34 (1)(e) of the 2016 Act Persons with Multiple Disabilities would have to be considered for reservation.

viii. The notification identifying the posts under 34(1)(d) and 34(1)(e) was published by the Government on January 4, 2021 during the continuation of the recruitment process.

ix. The Initial Medical Examination of the petitioner was conducted on September 9, 2021, after the publication of the notification dated January 4, 2021.

x. There is no indication or reasoning put forward by CIL why posts were not reserved by way of publication of a corrigendum to 2019 recruitment notification when the recruitment process was admittedly not completed by January 2021.

xi. The CIL had a statutory obligation to reserve posts for Persons with Benchmark Disability in all the 5 categories once the

Central Government identified such posts for reservation, if not before under the 2016 Act.

xii. The CIL also despite being a Public Sector Undertaking did not seek clarification from the Government prior to issuance of 2019 Recruitment Notification, despite its statutory obligation under the 2016 Act.

xiii. Even if the argument on behalf of the CIL is accepted that the obligation in reserve posts in terms of 34 (1)(d) and 34(1)(e) did not arise prior to earmarking of/identification of the posts by the Central Government, still no justifiable reason for not reserving such posts after the notification dated January 4, 2021 was shown.

xiv. Even if CIL chose to initiate the Recruitment process under the 1995 Act relying on the 2013 Notification, once the 2021 Notification was published, CIL was under an obligation to continue the said recruitment process in terms of Section 34 of the 2016 Act, taking into consideration Section 102 of the 2016 Act.

xv. Therefore, this Court finds no justification in rejection of the candidature of the petitioner on the ground of being **unfit** due to her suffering from multiple disabilities.

xvi. This Court cannot accept the submission of Mr. Banerjee that since the application has not been filed in the requisite form for persons suffering from multiple disabilities, the candidature of the

petitioner in the said category cannot be considered in the present recruitment process.

xvii. Mr. Banerjee relies on a Judgment reported in (2021) 9 SCC 208 (**The State of Kerala & Others vs. Leesamma Joseph**). The Supreme Court while considering the issue of reservation in the promotional posts, held that mode of identification of the posts was a pre-requisite to appointment, but such appointment could not be frustrated by refusing to comply with such pre-requisite.

xviii. This Court is of the view that once the posts have been identified by the Notification dated January 4, 2021, CIL being a PSC could not frustrate the object of the statute by refusing to give appointment to the petitioner in multiple disabilities category. It was incumbent upon the CIL to suitably modify the Recruitment Notification keeping in mind Section 102 of the Act.

xix. Had this CIL complied with its statutory obligations the issue regarding arbitrary appointment of the writ petitioner in breach of principles of Natural Justice would not have arisen. Mr. Banerjee relied upon a decision reported in (2010) 1 SCC 234 (**Bharat Amratlal Kothari & Anr. Vs. Dosukhan Samadkhan Sindhi & Others.**), for the contention that normally the Court will grant only those reliefs as specifically prayed for by the petitioner.

xx. The facts on which such a finding was arrived at are completely different from the facts of the present case. There the appellant no. 1 lodged a complaint against transportation of 2000 goats and sheep being transported in 8 trucks, in a cramped manner. Denying them food and water was cruelty in itself to the animals. The complaint was quashed without taking into account the contents thereof. The examination of the complaint lodged by the appellant no. 1 prima facie indicated commission of the offences by the accused.

xxi. Before investigation could be completed or Report could be submitted to the Competent Court, the High Court came to a premature conclusion that no offence were under Section 279 of Indian Penal Code and under Sections 5, 6 and 8 of the Bombay Animal Preservation Act, 1954 was made out against the accused and quashed the criminal proceedings.

xxii. It was held that such a relief could not be granted to the accused who had not approach the High Court for quashing of the FIR. The owners of the goats and sheep filed a writ petition seeking custody of their livestock. In such a case the single Judge's decision to quash the complaint against the accused without filing of an Affidavit or such a prayer been made in the writ petition was not appreciated by the Supreme Court.

xxiii. The Supreme Court held that the ground for quashing of criminal proceedings was not taken into consideration by the High Court. The High Court did not hear the complainant before quashing the proceedings. The said grievance of the appellant/complainant could not be ignored by the Apex Court, in the peculiar facts of the case. The facts of that case cannot be equated with the present case, where the petitioner has prayed for recruitment in the PwD category.

xxiv. Furthermore, this Court finds that the power to mould relief is always available to the court possessed with the power to issue high Prerogative Writs. In order to do complete justice it can mould the relief, depending upon the facts and circumstances of the case. A beneficial reference can be made to an Apex Court's Judgment reported in (2011) 1 SCC 484 (**M. Sudakar vs. V. Manoharan and Others**).

xxv. In (2013) 10 SCC 772 (**Union of India & Anr. Vs. National Federation of the Blind and Others**) it has been held that the scope of identification of the posts comes into picture only at the time of appointment of a person in a post identified for disabled persons. It was not necessarily relevant at the time of computing 3 percent reservation under Section 33 of the 1995 Act. Therefore under Section 32 of the 1995 Act earmarking was not a precondition for computation of reservation of 3 percentage. However, it was held that Section 32 should

follow Section 33 of the 1995 Act. *Reservation* has to be made prior to *identification*.

19. In the light of the Special Bench's Judgment in **National Federation of the Blind and Others** (supra) this Court holds that under Section 34 of the 2016 Act, the respondent/CIL should have reserved required percentage of the total vacancies for the categories of candidates stipulated under Section 34. It is only at the time of appointment, the issue of identification of such posts for which the reservation has been made, would have become relevant.

20. In the light of the discussion above, this Court sets aside and/or quashes the result of the IME dated September 23, 2021 declaring to the petitioner to be **unfit** for *Multiple disabilities*.

21. However, this Court cannot lose sight of the fact that the petitioner has approached this Court after completion of the recruitment process. Rights may have already been settled in favour of candidates who have applied in the PwD category in the 2019 recruitment process. This Court is not willing to unsettle such rights of the candidates who have already been recruited.

22. In order to do justice between the parties, this Court holds that the petitioner will be allowed to participate in the present recruitment process in the reserved category of Persons with Disabilities. The recruitment process of the petitioner will be considered from the stage of IME. The petitioner will be *eligible* to appear before the IME, and if found eligible for recruitment, she will be given such appointment as a Management Trainee upon compliance of all

the necessary formalities, in terms of the appropriate rules/regulation/scheme or guidelines of CIL.

23. With the direction aforesaid **WPA 970 of 2023** is **disposed of**.

24. All parties to act on server copy of this Order as downloaded from the official website of this Hon'ble Court.

25. Urgent certified photocopy of this judgment, if applied for, be supplied to the parties upon compliance of all the requisite formalities.

(Lapita Banerji, J.)