

Item-6. 30-08-2024

sg Ct. 29

MAT 562 of 2024

Palash Das
Versus
West Bengal Human Rights Commission & Ors.

Mr. A. Roy

... For the appellant

Sk. Md. Galib

Ms. Sujata Mukherjee

...For the State respondents

1. The appeal is arising out of an order dated 20th February, 2024 passed by the learned Single Judge in a writ petition in which the petitioner claims that he has 100% disable and consequently suffers immeasurably and the State has not taken due care to address the plight of the petitioner or similarly placed disable persons as the State has the obligation to ensure that disable persons can leave with dignity.

2. The learned Single Judge upon consideration of the submission of the parties, disposed of the writ petition with the following observations:

“10. Upon considering the arguments of the parties, a dilemma is faced by the Court. There is a limit up to which a court of law can dictate the Schemes and the policy decisions of the State. This is to honour the separation of powers between the Executive and the Judiciary. Any State has limited funds which have to be allocated according to the various policies, priorities and schemes of the State, to be decided by the elected Government, which cannot be deviated from beyond a certain limit by courts of law.

11. However, the petitioner definitely has a point in that his right to life, ensured under the Constitution, also

includes the right to live a life of dignity and for such purpose, the petitioner requires some financial support from the State.

12. The exigencies of the petitioner are, in fact, different from a common person having a medical issue. The petitioner requires round-the-clock assistance, for which substantial amounts of money are required. In the absence of such assistance, the petitioner is, at present, in an ignoble condition.

13. Hence, this Court is of the opinion that insofar as the setting up of a business is concerned, due to lack of space on the part of the concerned municipality, for the present a mobile cart which is to be provided to the petitioner can be arranged, which will also alleviate the issue of distance between the place of business and the residence of the petitioner.

14. However, it has to be kept in mind that the needs of the petitioner are special. Hence, even if the State does not have any direct scheme for persons such as the petitioner, since the petitioner's body is not capable of any sensitivity from abdomen downwards, the State is required to furnish further assistance to the petitioner financially for medical/para-medical support in that regard.

15. In view of the above observations, W.P.A. No. 28316 of 2023 is disposed of by directing the respondent nos. 7 and 8 to ensure that a mobile cart for setting up a business of the petitioner is offered to the petitioner including a parking space for keeping such cart near the residence of the petitioner, within a week from date.

16. It will be, however, at the option of the petitioner whether to accept the same or not. Insofar as the medical condition of the petitioner is concerned, the petitioner shall be entitled to take the benefits of the Swasthya Sathi

Card, which is available to the petitioner's mother in the family. However, over and above such medical assistance, the petitioner shall also be entitled to place monthly bills to the State for the minimum medical assistance required by the petitioner for providing an attendant to look after the petitioner, who preferably has to have some paramedical experience.

17. Subject to the petitioner furnishing such bills every month with supporting documents, the respondent no. 8, that is, the District Magistrate and Additional Commissioner for Persons with Disabilities, shall reimburse the said amount to the petitioner, upon a scrutiny that the expenses are reasonably required to be incurred by the petitioner in view of his condition.

18. Such disbursement shall be made by the respondent no. 8 within a week from the bills being placed every month. Such bills shall be placed by the petitioner within the tenth day of each month, starting from March 10, 2024.

19. Over and above the above facilities, in the event any further scheme is floated for persons such as the petitioner, it will be open to the petitioner to avail of such scheme independently and irrespective of the directions made above.

20. It is expected that the State shall take adequate measures to float a scheme at the earliest in order to grant additional medical support to people in situations such as the petitioner, who have 100 per cent disability and cannot cater for themselves in their daily lives.

21. It is expected that such scheme shall be floated at the earliest upon due deliberation at various levels of the Government, preferably within two months from date.

3. The petitioner is aggrieved by this order. The

petitioner contends that having regard to his physical condition, it is well-nigh impossible for him to do business of the kind mentioned in paragraph 15 of the said petition.

4. This appeal was heard from time to time. On 17th May, 2024, we directed the Commissioner for Persons with Disabilities to consider the representation of the appellant and file a report on the adjourned date. We also directed the State to take appropriate measures regarding floating of scheme at the earliest in order to grant medical support to people who were similarly placed as that of the petitioner i.e. the persons with 100% disability.

5. The representation was considered by the Commissioner and disposed of by the following suggestions:

“According to the correspondence vide Memo No- 965/SW(DN), Dated-12.06.2024 the General Manager, District Industry Center, North 24 Pgs has provided information vide Memo No- 172/DIC/N 24 Parganas Date- 13.06.2024 regarding arrangement of a permanent place to Sri Palash Das resident of 145/8 Baruipara Lane, P.O- Alam Bazar, P.S- Baranagar, North 24 Parganas suitable place to carry out business. It has been informed that they have explored their Karma Tirthas (KT), database in search of vacant stall so that it could be given to Sri Palash Das for the purpose above.

In doing so, they have located following two Karma Tirthas (KT), keeping in mind the residential address, physically challenged condition of Sri Palash Das and the spirit of the order of Hon'ble Calcutta High Court in connection with MAT No- 562 of 2024 in the matter of Palash Das -Vs- The State of West Bengal & Ors. These Karma Tirthas (KT) are currently in the following state-

i) KT at Telenipara under Barrackpore-II Dev. Block. Non-operational stalls present at the moment.

ii) KT at Naihati under Naihati Municipality. Non-operational stalls present at the moment.

Further a letter was issued to the Additional District Magistrate (LR), North 24 Parganas vide Memo No-966/SW(DN), Dated-12.06.2024 and requested to arrange for any suitable land as per the spirit of Order of Hon'ble Calcutta High Court is available at his end.

Considering from all aspects an offer letter is issued to Sri Palash Das vide Memo No- 1240/SW(DN), Dated-25.07.2024 for providing permanent place to carry out business at any one of the two Karma Tirthas (KT) with available non-operational and vacant stalls which have been located, keeping in mind the spirit of the order of Hon'ble Calcutta High Court in connection with MAT No-562 of 2024.

These Karma Tirthas (KT) are currently in the following state-

i) KT at Telenipara under Barrackpore-II Dev. Bloc. Non-operational stalls present at the moment.

ii) KT at Naihati under Naihati Municipality. Non-operational stalls present at the moment.

6. In addition to the aforesaid, it has been submitted that the District Magistrate has been informed by the Special Secretary to the Government of West Bengal to furnish the following information i.e.:

(i) copies of medical bills of the petitioner starting from 10.3.2024 along with your specific opinion regarding rationality/admissibility of such bills raised in case of High Support Need PwD like the petitioner

(ii) CMOH vetted estimation monthly remunerations as usually charged by an attendant having some paramedical experience in case of disabled persons like the petitioner, to enable the authorities to take appropriate steps for reimbursement.”

7. It has been assured on behalf of the State respondents that the State shall attend to the medical needs of the petitioner and reimburse medical bills raised by the petitioner in addition to any other medical facility as directed by the Hon’ble Justice Sabyasachi Bhattacharya. However, the State is yet to float a scheme.

8. The persons with disability requires special attention and the State is under an obligation to implement and follow the provision of the Rights of Persons with Disabilities Act, 2016. We feel that the State with all earnestness must float a scheme or SOP for taking care of their needs and provide adequate medical support. They are entitled to live with dignity and shall not be deprived of equality of opportunity.

9. On such consideration, we direct the Special Secretary, Women and Child Development and Social Welfare Department to float a scheme in terms of the order passed by the learned Single Judge at the earliest and not later than three months from the date of communication of this order by Mr. Galib, the learned Counsel appearing on behalf of the respondents.

10. The petitioner shall in the meantime respond to the communication dated 16th August, 2024 and make his choice.

11. It is needless to mention that the State shall be

obliged to provide all medical facilities to the petitioner as and when required and shall reimburse all medical bills.

12. The matter stands disposed of with the aforesaid modification.

13. The report of the office of the District Social Welfare Section, North 24 Parganas dated 16th August, 2024 filed by Mr. Galib in Court today is taken on record.

14. Urgent Photostat certified copy of this order, if applied for, be supplied to the parties upon compliance of all requisite formalities.

(Soumen Sen, J.)

(Uday Kumar, J.)