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20.02.2024
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IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

W.P.A. No. 28316 of 2023

Palash Das
Vs.
West Bengal Human Rights
Commission & Ors.

Mr. Palash Das
... petitioner in person

Mr. Sk. Md. Galib,
Ms. Tanwishree Mukherjee
...for the State

Mr. Arijit Dey
...for the Baranagar Municipality

Mr. Jishnu Chowdhury,
Mr. Chayan Gupta,
Mr. Saaqib Siddiqui
...for the HIDCO

1. The petitioner, appearing in person with leave of Court, contends that he is 100 per cent disabled and consequentially, suffers immeasurably.
2. It is submitted that due to the physical challenge to the petitioner, the petitioner does not have any physical sensitivity from abdomen downwards.
3. As such, he has issues regarding continence, which prevents the petitioner from moving far outside his home to carry on or initiate a business and do other activities. It is submitted that the

petitioner's fundamental right to live includes the right to get adequate support from the State with regard to the medical treatment and financial support of the petitioner.

4. That apart, it is contended that although a space was offered two kilometers away from the petitioner's house under a previous Scheme and a direction of the court for setting up a business, such space is far away from the petitioner's home, considering the petitioner's condition. Also, the said space is usually waterlogged and unsuitable for setting up a business.

5. It is further submitted that the State ought to provide amenities for supporting the petitioner and grant regular medical assistance, which is required by the petitioner due to his disability.

6. Learned counsel for the State submits a report and argues that the Scheme for Economic Rehabilitation of the Adult Persons with Disabilities, 2011 is available for people with disabilities such as the petitioner. However, under the provisions of the Scheme, the eligibility required is that the upper limit of monthly income of the family of such adult person with disability must not exceed Rs.3000/- per month. In the present case, as per the self-declaration of the petitioner, his family's monthly income exceeds the said amount.

7. Upon query of Court, the petitioner submits that there is an existent Card under the “Swasthya Sathi” Scheme floated by the State Government in the name of his mother, under which the petitioner’s mother and her entire family, including the petitioner, is entitled to get free medical treatment from Government Hospitals.

8. The State further argues that the State can provide a mobile cart for the petitioner to set up business, taking a sympathetic view of the condition of the petitioner, through the local municipality.

9. However, at the present juncture, the said municipality does not have any available fixed vacant space for the petitioner to start his business.

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.

22. Let a copy of this order be forwarded to all the respondents for taking due action thereon.

23. The parties shall act on a server copy of this order without insisting upon prior production of a certified copy thereof for the purpose of compliance.

24. The report filed by the State today be kept on record.

25. There will be no order as to costs.

26. Urgent photostat certified copies of this order, if applied for, be made available to the parties upon compliance of all necessary formalities.

(Sabyasachi Bhattacharyya, J.)