

learned Court of Sh. Harshbir Sandhu, Civil Judge(Junior Division)-cum-Judicial Magistrate 1st Class, Malerkotla, which is on the first floor and the judicial complex at Malerkotla does not have any provision of a ramp or an escalator to facilitate any disabled person to attend the Court proceedings. The learned District Judge, Sangrur, vide order dated 17.11.2023, has dismissed the transfer application filed by the petitioner stating that no medical record has been annexed along with the application, which could have been easily remedied if an opportunity was granted by the learned Court below. It was also noted that civil suits have been filed through her attorney-Charandev Singh and therefore an inference was drawn that the petitioner is not appearing before the Court herself, taking away the petitioner's right to actively participate in the trial affecting her rights. Furthermore, the learned Court below opined that the petitioner has been visiting the chambers of her counsel, which is located on the third floor without any difficulty, indicating that she is not in any real difficulty.

3. On a specific query put by this Court, the learned State counsel, on instructions from ASI Harbaksh Singh, submits the Judicial Complex, Malerkotla has two courtrooms on the ground floor, two on the first floor and one on the top floor, and that there is no provision of a ramp or an escalator in the building.

4. Having heard learned counsel for the parties and after perusing the record, this Court finds force in the arguments advanced by learned counsel for the petitioner. Even if the civil suits are filed through attorneys, the petitioner has every right to present and monitor the Court proceedings as and when she desires. This Court is of the considered view that a more sensitive and empathetic view towards the plight of the disabled persons needs to be adopted.

5. The duty to ensure well being of persons with disabilities finds mention in the Twelfth Schedule of the Constitution of India, which was added by the 74th Amendment Act, 1992, with respect to Article 243W.

“Twelfth Schedule

9. Safeguarding the interests of weaker sections of society, including the handicapped and mentally retarded.”

The Rights of Persons with Disabilities Act, 2016, promotes the cause of creating a barrier free environment for persons with disabilities. The relevant sections are reproduced below:

“Section 2(w) “public building” means a Government or private building, used or accessed by the public at large, including a building used for educational or vocational purposes, workplace, commercial activities, public utilities, religious, cultural, leisure or recreational activities, medical or health services, law enforcement agencies, reformatories or judicial foras, railway stations or platforms, roadways bus stands or terminus, airports or waterways;

Section 40. Accessibility.—

The Central Government shall, in consultation with the Chief Commissioner, formulate rules for persons with disabilities laying down the standards of accessibility for the physical environment, transportation, information and communications, including appropriate technologies and systems, and other facilities and services provided to the public in urban and rural areas.

Section 44. Mandatory observance of accessibility norms.—

(1) No establishment shall be granted permission to build any structure if the building plan does not adhere to the rules formulated by the Central Government under section 40.

(2) No establishment shall be issued a certificate of completion or allowed to take occupation of a building unless it has adhered to the rules formulated by the Central Government.

Section 45. Time limit for making existing infrastructure and premises accessible and action for that purpose.—

(1) All existing public buildings shall be made accessible in accordance with the rules formulated by the Central Government within a period not exceeding five years from the date of notification of such rules:

Provided that the Central Government may grant extension of time to the States on a case to case basis for adherence to this provision depending on their state of preparedness and other related parameters.

(2) The appropriate Government and the local authorities shall formulate and publish an action plan based on prioritisation, for providing accessibility in all their buildings and spaces providing essential services such as all primary health centres, civil hospitals, schools, railway stations and bus stops.

Section 46. Time limit for accessibility by service providers.—

The service providers whether Government or private shall provide services in accordance with the rules on accessibility formulated by the Central Government under section 40 within a period of two years from the date of notification of such rules:

Provided that the Central Government in consultation with the Chief Commissioner may grant extension of time for providing certain category of services in accordance with the said rules.”

6. A two Judge bench of the Hon’ble Supreme Court in **Francis Coralie Mullin v. The Administrator, Union Territory of Delhi and others (1981) 1 SCC 608**, has recognised right to dignity as a facet of the right to life as provided by Article 21 of the Constitution of India. In **Rajive Ratauri v. Union of India and others (2018) 1 SCC 413**, a two Judge bench of the Hon’ble Supreme Court extended this rationale to hold the State responsible for providing adequate facilities to make government as well as private establishments accessible. Speaking through Justice A.K. Sikri, made the following observations:

*“13. Right to dignity, which is ensured in our Constitutional set up for every citizen applies with much more vigour in case of persons suffering from disability and, therefore, it becomes imperative to provide such facilities so that these persons also are ensured level playing field and not only they are able to enjoy life meaningfully, they contribute to the progress of the nation as well. In a recent judgment in **Jeeja Ghosh & Anr. v. Union of India & Ors., 2016(2) RCR (Civil) 1032 : 2016(3)***

Recent Apex Judgments (R.A.J.) 311 : (2016) 7 SCC 761 these aspects were highlighted by this Court in the following form:

37. *The rights that are guaranteed to differently-abled persons under the 1995 Act, are founded on the sound principle of human dignity which is the core value of human right and is treated as a significant facet of right to life and liberty. Such a right, now treated as human right of the persons who are disabled, has its roots in Article 21 of the Constitution...What are the dimensions of constitutional value of human dignity? It is beautifully illustrated by Aharon Barak [Aharon Barak, Human Dignity- The Constitutional Value and the Constitutional Right (Cambridge University Press, 2015)] (former Chief Justice of the Supreme Court of Israel) in the following manner:*

"The constitutional value of human dignity has a central normative role. Human dignity as a constitutional value is the factor that unites the human rights into one whole. It ensures the normative unity of human rights. This normative unity is expressed in the three ways: first, the value of human dignity serves as a normative basis for constitutional rights set out in the Constitution; second, it serves as an interpretative principle for determining the scope of constitutional rights, including the right to human dignity; third, the value of human dignity has an important role in determining the proportionality of a statute limiting a constitutional right."

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43. *All these rights conferred upon such persons send an eloquent message that there is no question of sympathising with such persons and extending them medical or other help. What is to be borne in mind is that they are also human beings and they have to grow as normal persons and are to be extended all facilities in this behalf. The subject of the rights of persons with disabilities should be approached from human rights perspective, which recognised that persons with disabilities were entitled to enjoy the full range of internationally guaranteed rights and freedoms without discrimination on the ground of disability. This creates an obligation on the part of the State to take positive measures to ensure that in reality persons with disabilities get enabled to exercise those rights. There should be insistence on the full measure of general human rights guarantees in the case of persons with disabilities, as well as developing specific instruments that*

refine and give detailed contextual content of those general guarantees. There should be a full recognition of the fact that persons with disability were integral part of the community, equal in dignity and entitled to enjoy the same human rights and freedoms as others. It is a sad commentary that this perception has not sunk in the mind and souls of those who are not concerned with the enforcement of these rights. The persons suffering from mental or physical disability experience and encounter nonpareil form of discrimination. They are not looked down by people. However, they are not accepted in the mainstream either even when people sympathise with them. Most common, their lives are handicapped by social, cultural and attitudinal barriers which hamper their full participation and enjoyment of equal rights and opportunities. This is the worst form of discrimination which the disabled feel as their grievance is that others do not understand them.

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46. It is the common experience of several persons with disabilities that they are unable to lead a full life due to societal barriers and discrimination faced by them in employment, access to public spaces, transportation, etc. Persons with disability are the most neglected lot not only in the society but also in the family. More often they are an object of pity. There are hardly any meaningful attempts to assimilate them in the mainstream of the nation's life. The apathy towards their problems is so pervasive that even the number of disabled persons existing in the country is not well documented."

7. The right to life enshrined in Article 21 of the Constitution of India, is not limited to mere animal-like existence but includes right to live a meaningful life, with dignity in the truest sense of the term. Lack of appropriate facilities in public buildings, especially judicial complexes, equates to denial of access to justice and amounts to discrimination against persons with disabilities. The State is obligated to create a level playing field and provide all necessary facilities to realise the fundamental rights guaranteed to its citizens by the Constitution, which also includes the right to move freely across the territory of India. A three Judge bench of the Hon’ble Supreme Court in **State of Himachal**

Pradesh and another v. Umed Ram Sharma and others (1986) 2 SCC 68

has categorically held that the right to accessibility is also a dimension of Article 21 of the Constitution of India. Therefore, this Court is of the considered view that the petitioner herein has as much of a right to participate in judicial proceedings qua her cause of action, as the next person, irrespective of whether the suit was filed through an attorney. Regardless, the petitioner is also required to testify as a witness in the criminal proceedings.

8. The tone-deaf view taken by the learned Court below by treating the situation with unwarranted apathy, cannot be condoned by this Court. Therefore, in view of the facts and circumstances of the case as well as the medical record of the petitioner (Annexure P-3), the impugned order dated 17.11.2023 (Annexure P-4) is hereby set aside. The learned District Judge, Sangrur is directed to assign the cases filed by the petitioner to any jurisdictional Courts situated at the ground floor.

9. Additionally, this Court deems it proper to take suo moto cognizance of the lack of appropriate infrastructure to make judicial complexes across the States of Punjab, Haryana and U.T. Chandigarh accessible to persons with disabilities, in public interest. Registry is directed to place the matter before the Hon’ble the Acting Chief Justice of this Court for listing before an appropriate bench in view of Section 44, 45 and 46 of the Rights of Persons with Disabilities Act, 2016.

10. Disposed of accordingly.

(HARPREET SINGH BRAR)
JUDGE

04.03.2024
Neha

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No