

[2013] 9 S.C.R. 1023

UNION OF INDIA & ANR.

v.

NATIONAL FEDERATION OF THE BLIND & ORS.

(Civil Appeal No. 9096 of 2013)

OCTOBER 08, 2013

[P. SATHASIVAM, CJI, RANJANA PRAKASH DESAI
AND RANJAN GOGOI, JJ.]

PERSONS WITH DISABILITIES (EQUAL OPPORTUNITIES, PROTECTION OF RIGHTS AND FULL PARTICIPATION) ACT, 1995:

s.33 - Reservation of posts for persons with disabilities - Held: Section 33 lays down that every appropriate Government has to appoint on a minimum of 3% vacancies in an establishment, persons with disabilities, out of which 1% each shall be reserved for (i) persons suffering from blindness and low vision, (ii) persons suffering from hearing impairment and (iii) persons suffering from locomotor or cerebral palsy - View of the High Court that computation of reservation must be on the basis of total cadre strength is clearly erroneous - s.33 establishes the intention of legislature viz. reservation of 3% for persons with disability should have to be computed on the basis of total vacancies in the strength of a cadre and not just on the basis of the vacancies available in the identified posts.

s. 33 - Reservation of posts for persons with disabilities - Held: The Section does not distinguish the manner of computation of reservation between Group A and B posts or Group C and D posts respectively -- Computation of reservation for persons with disabilities has to be done in case of Group A, B, C and D, posts in an identical manner viz., "computing 3% reservation on total number of vacancies in the cadre strength" -- Accordingly, certain clauses in OM

- A dated 29.12.2005, which are contrary to scheme of reservation, are struck down and appropriate Government is directed to issue new Office Memorandum(s) consistent with the decision rendered by the Court - In order to ensure proper implementation of reservation policy for disabled and to protect their rights, further directions given - Government of India, Department of Personnel and training O. M. dated 29.12.2005.

INTERPRETATION OF STATUTES:

- C *Construing of a provision - Held: While interpreting any provision of a statute the plain meaning has to be given effect and if language is simple and unambiguous, there is no need to traverse beyond the same.*
- D *Headings and marginal notes - Held: Heading of a Section or marginal note may be relied upon to clear any doubt or ambiguity in the interpretation of the provision and to discern the legislative intent -- When the Section is clear and unambiguous, there is no need to traverse beyond those words -- Therefore, the headings or marginal notes cannot control the meaning of the body of the section.*

SOCIAL JUSTICE:

- F *Reservation in employment for persons with disabilities - Held: Employment is a key factor in the empowerment and inclusion of people with disabilities -- It is an alarming reality that the disabled people are out of job not because their disability comes in the way of their functioning rather it is social and practical barriers that prevent them from joining the workforce -- Therefore, bringing them in the society based on their capabilities is the need of the hour - State has a categorical obligation under the Constitution of India and under various International treaties relating to human rights in general and treaties for disabled persons in particular, to protect the rights of disabled persons - Directions issued to*

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ensure proper implementation of reservation policy for persons with disability and to protect their rights. A

Respondent No. 1 filed a writ petition before the High Court in public interest seeking implementation of s. 33 of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 stating that the appellants failed to provide reservation to the blind and low vision persons and they were virtually excluded from the process of recruitment to the Government posts as stipulated under the said Act. It was asserted that despite statutory provisions and various executive orders, discrimination against the persons with disabilities continued in filling up the vacancies in various government departments. The stand of appellants was that the Office Memorandum (OM) dated 29.12.2005, issued by the Department of Personnel & Training, inter alia, provided a system for ensuring proper implementation of the provisions of the Act for the persons with disabilities. The High Court disposed of the petition directing the Union of India to modify the OM dated 29.12.2005 so as to be consistent with the provisions of s. 33 of the Act and issued several other directions. B
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In the instant appeal, the issues for consideration before the Court were: "(i) whether post base reservation must be adhered to or vacancy reservation; and (ii) whether the modus of computation of reservation on the basis of total number of vacancies (both inclusive of identified and unidentified) in the cadre strength would uniformly apply to Group A, B, C and D or would it be applicable only to Group C and D". F
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Disposing of the appeal, the Court

HELD: 1.1 Section 33 of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full H

A Participation) Act, 1995 provides for reservation of posts and s. 32 of the Act stipulates for identification of posts which can be reserved for persons with disabilities. The scope of identification comes into picture only at the time of appointment of a person in the post identified for disabled persons and is not necessarily relevant at the time of computing 3% reservation u/s 33 of the Act. In succinct, it was held in Ravi Prakash Gupta that s. 32 of the Act is not a precondition for computation of reservation of 3% u/s 33 of the Act rather s. 32 is the following effect of s. 33. [para 22 and 29] [1050-E; 1054-H; 1055-A]

Govt. of India through Secretary and Anr. v. Ravi Prakash Gupta & Anr. 2010 (7) SCR 851 = (2010) 7 SCC 626 - referred to.

D 1.2 There is a difference in computing reservation on the basis of total cadre strength and on the basis of total vacancies (both inclusive of identified and unidentified) in the cadre strength. The view of the High Court, in the impugned judgment, that the computation of reservation must be on the basis of total cadre strength is clearly erroneous on the face of it. Apart from the reasoning of this Court in Ravi Prakash Gupta, even a reading of s. 33 establishes vividly the intention of the legislature viz., reservation of 3% for persons with disability has to be computed on the basis of total vacancies in the strength of a cadre and not just on the basis of the vacancies available in the identified posts. There is no ambiguity in the language of s.33. [para 26 and 30] [1051-E-H; 1052-A; 1055-B-C]

G 1.3 A perusal of s. 33 reveals that the section has been divided into three parts. The first part is "every appropriate Government shall appoint in every establishment such percentage of vacancies not less than 3% for persons or class of persons with disability."

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This part mandates that every appropriate Government shall appoint a minimum of 3% vacancies in its establishments for persons with disabilities. Therefore, it cannot be said that reservation in terms of s. 33 has to be computed against identified posts only. [para 31] [1055-D-F]

1.4 The second part of s.33 starts as,"...of which one percent each shall be reserved for persons suffering from blindness or low vision, hearing impairment & locomotor disability or cerebral palsy in the posts identified for each disability," which makes it clear that it deals with distribution of 3% posts in every establishment among 3 categories of disabilities. The expression "of which" has to relate to appointing not less than 3% vacancies in an establishment and, in any way, it does not refer to the identified posts. Further, in the last portion of the second part the words used are "in the identified posts for each disability" and not "of identified posts". This can only mean that out of minimum 3% of vacancies of posts in the establishments 1% each has to be given to each of the 3 categories of disability viz., blind and low vision, hearing impaired and locomotor disabled or cerebral palsy separately and the number of appointments equivalent to the 1% for each disability out of total 3% has to be made against the vacancies in the identified posts. The attempt to read identified posts in the first part itself and also to read the same to have any relation with the computation of reservation is completely misconceived. [para 32] [1055-F-H; 1056-A-E]

1.5 The third part of s.33 is the proviso which reads, "Provided that the appropriate Government may, having regard to the type of 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." The proviso also justifies the

A interpretation that the computation of reservation has to be against the total number of vacancies in the cadre strength and not against the identified posts. [para 33] [1056-E-H; 1057-A-B]

B 1.6 Besides, s. 41 of the Act mandates the appropriate Government to frame incentive schemes for employers with a view to ensure that 5% of their work force is composed of persons with disabilities. On a conjoint reading of ss. 33 and 41, it is clear that while s. 33 provides for a minimum level of representation of 3% in the establishments of appropriate Government, the legislature intended to ensure 5% of representation in the entire work force both in public as well as private sector. [para 34] [1057-B-C, E-F]

D 1.7 Moreover, ss. 38 and 39 of the Draft Rights of Persons with Disabilities Bill, 2012 clarify all the ambiguities raised in the instant appeal. The intention of the legislature is clearly to reserve in every establishment under the appropriate Government, not less than 3% of the vacancies for the persons or class of persons with disability, of which 1% each shall be reserved for each of the three categories of disability. [para 35] [1059-C-D]

F 1.8 The Act is a social legislation enacted for the benefit of persons with disabilities and its provisions must be interpreted in order to fulfill its objective. Besides, it is a settled rule of interpretation that if the language of a statutory provision is unambiguous, it has to be interpreted according to the plain meaning of the said statutory provision. Court only interprets the law and cannot legislate it. It is the function of the Legislature to amend, modify or repeal it, if deemed necessary. [para 36 and 44] [1059-E-F; 1064-C-D]

H 1.9 The heading of a Section or marginal note may be relied upon to clear any doubt or ambiguity in the interpretation of the provision and to discern the

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legislative intent. When the Section is clear and unambiguous, there is no need to traverse beyond those words. Therefore, the headings or marginal notes cannot control the meaning of the body of the section. In the instant case, s.33 of the 1995 Act is clear and unambiguous. [para 45] [1064-D-F]

2.1 Section 33 of the 1995 Act does not distinguish the manner of computation of reservation between Group A and B posts or Group C and D posts respectively. As such, one statutory provision cannot be interpreted and applied differently for the same subject matter. [para 38] [1061-A-B]

2.2 This Court holds that computation of reservation for persons with disabilities has to be computed in case of Group A, B, C and D posts in an identical manner viz., "computing 3% reservation on total number of vacancies in the cadre strength" which is the intention of the legislature. Accordingly, certain clauses in the OM dated 29.12.2005, which are contrary to the scheme of reservation, as interpreted in the judgment, are struck down and the appropriate Government is directed to issue new Office Memorandum(s) consistent with the decision rendered by this Court. [para 51] [1067-B-D]

3. A perusal of Indra Sawhney would reveal that the ceiling of 50% reservation applies only to reservation in favour of other Backward classes under Art. 16(4) of the Constitution of India whereas the reservation in favour of persons with disabilities is horizontal, which is under Art.16(1) of the Constitution. In fact, this Court in the said pronouncement has used the example of 3% reservation in favour of persons with disabilities while dealing with the rule of 50% ceiling. Para 95 of the judgment clearly brings out that after selection and appointment of candidates under reservation for persons with disabilities they will be placed in the respective rosters of reserved category or open category respectively on the basis of

A the category to which they belong and, thus, the reservation for persons with disabilities per se has nothing to do with the ceiling of 50%. and, therefore, Indra Sawhney is not applicable with respect to the disabled persons. It is also reiterated that the decision in R.K. Sabharwal is not applicable to the reservation for the persons with disabilities because in the said case, the point for consideration was with regard to the implementation of the scheme of reservation for SC, ST & OBC, which is vertical reservation, whereas reservation in favour of persons with disabilities is horizontal. [para 41, 52 and 53] [1062-A-D; 1067-D-F]

D *Indra Sawhney v. Union of India and Others* 1992 (2) Suppl. SCR 454 = AIR 1993 SC 477; and *R. K. Sabharwal and Others v. State of Punjab and Others* 1995 (2) SCR 35 = (1995) 2 SCC 745 - held inapplicable.

E 4.1 Employment is a key factor in the empowerment and inclusion of people with disabilities. It is an alarming reality that the disabled people are out of job not because their disability comes in the way of their functioning rather it is social and practical barriers that prevent them from joining the workforce. Therefore, bringing them in the society based on their capabilities is the need of the hour. The Union of India, the State Governments as well as the Union Territories have a categorical obligation under the Constitution of India and under various International treaties relating to human rights in general and treaties for disabled persons in particular, to protect the rights of disabled persons. Even though the Act was enacted way back in 1995, the disabled people have failed to get required benefit until today. [para 20, 49 and 50] [1050-A-B; 1066-F-G; 1067-A-B]

H 4.2 In order to ensure proper implementation of the reservation policy for the persons with disability and to protect their rights, it is directed:

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(i) The appellant shall issue an appropriate order modifying the OM dated 29.12.2005 and the subsequent OMs consistent with this Court's judgment within three months. A

(ii) The "appropriate Government" shall compute the number of vacancies available in all the "establishments" and further identify the posts for disabled persons within a period of three months and implement the same without default. B

(iii) The appellants shall issue instructions to all the departments/public sector undertakings/Government companies declaring that non observance of the scheme of reservation for persons with disabilities should be considered as an act of non-obedience and Nodal Officer in department/public sector undertakings/Government companies, responsible for the proper strict implementation of reservation for person with disabilities, be departmentally proceeded against for the default. [para 54] [1067-G-H; 1068-A-D] C
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Prakash Nath Khanna & Anr. v. Commissioner of Income Tax & Anr. 2004 (2) SCR 434 = (2004) 9 SCC 686 - referred to. E

Case Law Reference:

2010 (7) SCR 851 referred to para 27 F
1992 (2) Suppl. SCR 454 held inapplicable para 40
2004 (2) SCR 434 referred to para 43
1995 (2) SCR 35 held inapplicable para 46 G

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 9096 of 2013.

From the Judgment and Order dated 19.12.2008 of the H

A High Court of Delhi at New Delhi in Writ Petition (Civil) No. 15828 of 2006.

B Indira Jaising ASG, S.P. Singh, Rajeev Nanda, Kiran Bhardwaj, B.V. Balram Das, B. Krishna Prasad, Anindita Pujari, Sarad Kumar Singhanian, R. Prabhakaran, G.S. Mani, Shunu Chauhan, Rameshwar Prasad Goyal for the appearing parties S.K. Rungta (In person).

The Judgment of the Court was delivered by

C **P. SATHASIVAM, CJI.** 1. Leave granted.

D 2. This appeal is directed against the final judgment and order dated 19.12.2008 passed by the High Court of Delhi at New Delhi in Writ Petition (C) No. 15828 of 2006 wherein the High Court interpreted Section 33 of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 (in short 'the Act') and issued various directions to be complied with by the appellants herein.

3. Brief facts:

E (a) National Federation of the Blind-Respondent No. 1 herein is an apex organization and a society registered under the Societies Registration Act, 1860, having its Head Office at New Delhi and is working for the protection of the rights of the visually challenged.

F (b) In the year 2006, Respondent No. 1 herein filed a writ petition before the High Court in public interest seeking implementation of Section 33 of the Act alleging that the appellants herein have failed to provide reservation to the blind and low vision persons and they are virtually excluded from the process of recruitment to the Government posts as stipulated under the said Act.

G (c) In the above backdrop, it is relevant to mention that way back in 1977, the erstwhile Ministry of Social Welfare,

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Government of India, made reservation in favour of the following three categories of disabled persons in Group C & D posts to the extent of 1 per cent each for the (i) Blind; (ii) Hearing and Speech Impairment; and (iii) persons suffering from locomotor disability. In the year 1986, the Department of Personnel & Training (DoPT), directed all the departments to take into account both identified and unidentified posts for working out the total number of vacancies to be reserved for each of the disabled categories. In spite of the above said executive order, various government departments and public sector undertakings did not give effect to the scheme of reservation which compelled Respondent No. 1 herein to organize a nation wide agitation, as a result of which, an agreement was arrived at between the parties on 27.08.1987 to undertake a Special Recruitment Drive for clearing up the backlog of vacancies.

(d) On 07.02.1996, the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 was brought into force making reservation of at least 3 percent posts in all government establishments to the extent of 1 per cent each for the persons suffering from (i) blindness or low vision; (ii) hearing impairment; and (iii) locomotor disability or cerebral palsy. After enactment of the said Act, Union of India issued various orders for ensuring proper implementation of the provisions of the Act for the persons with disabilities.

(e) Respondent No. 1 herein, by filing the above said petition before the High Court asserted that despite statutory provisions and various executive orders, discrimination against the persons with disabilities continued in filling up the vacancies in various government departments whereas it was contended by the other side that the Office Memorandum (OM) dated 29.12.2005, issued by the Department of Personnel & Training, inter alia provides a system for ensuring proper implementation of the provisions of the Act for the persons with disabilities.

(f) Vide order dated 19.12.2008, the High Court disposed of the petition directing the Union of India to modify the OM

A dated 29.12.2005 being inconsistent with the provisions of Section 33 of the Act and issued several other directions.

(g) Being aggrieved of the above, the appellants have preferred this appeal by way of special leave before this Court.

B (h) Tamil Nadu Handicapped Federation Charitable Trust, Smt S. Rajeswari and Association for Physically Challenged People Ordnance Clothing Factory filed applications for impleadment. Vide order dated 22.07.2011, this Court did not allow them to implead but to act as intervenors in the proceedings.

C 4. Heard Ms. Indra Jaisingh, learned Additional Solicitor General for the Union of India, Mr. S.K. Rungta, learned senior counsel (R-1) appearing in person and Mr. R. Prabhakaran, learned counsel for intervenors.

Submissions:

E 5. Ms. Indra Jaisingh, learned Additional Solicitor General for the Union of India, after taking us through various provisions of the Act and OM(s) issued by the Government of India submitted that the impugned judgment of the High Court is against the provisions of the Act. She further pointed out that the finding of the High Court that in terms of Section 33 of the Act, 3% reservation for the disabled persons has to be computed on the basis of total strength of the cadre, i.e., both identified as well as unidentified posts is erroneous. In any event, according to her, the direction of the High Court to work out backlog vacancies for the disabled persons on the total cadre strength in different establishments within one month from the date of the order is impractical and not executable. It is further highlighted that according to Section 33 of the Act, reservation to the persons with disabilities in an establishment shall be 3% of the vacancies arising in the posts which are identified for the persons with disabilities. The High Court, by the impugned judgment, disturbed the very basic system of the

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reservation of posts for the persons with disabilities. She further highlighted that the reservation for Group C and D posts is being calculated on the basis of the vacancies in identified as well as unidentified posts prior to the Act came into existence and in view of the provisions of Section 72 of the Act, continued in the same way, however, reservation for Group A and B posts is being calculated on the basis of the vacancies for identified posts as per the provisions of the Act.

6. On the other hand, Mr. S.K. Rungta, learned senior counsel (R-1) appearing in person submitted that in terms of the provisions of the Act, more particularly, Sections 32 and 33 of the Act, it is obligatory on the part of the Government establishments to provide at least 3% reservation of posts in the total cadre strength and not in the identified vacancies. He further pointed out that though the Act was passed in 1995 since then the provisions have not been strictly implemented. He prayed for further time bound direction for implementation of the same.

7. Mr. R. Prabhakaran, learned counsel for intervenors reiterated the submissions made by Mr. S.K. Rungta.

8. We have perused all the relevant materials and considered the rival submissions.

Relevant Provisions:

9. In order to answer the rival contentions, it is desirable to quote the relevant provision of the Act. Sections 2(a), 2(i), 2(j) and 2(k) of the Act read as under:

"2(a) "appropriate Government" means,-

- (i) in relation to the Central Government or any establishment wholly or substantially financed by that Government, or a Cantonment Board constituted under the Cantonment Act, 1924 (2 of 1924), the Central Government;

A (ii) in relation to a State Government or any establishment wholly or substantially financed by that Government or any local authority, other than a Cantonment Board, the State Government;

B (iii) in respect of the Central Co-ordination Committee and the Central Executive Committee, the Central Government;

(iv) in respect of the State Co-ordination Committee and the State Executive Committee, the State Government;

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2(i) "Disability" means-

(i) blindness;

D (ii) low vision;

(iii) leprosy-cured;

(iv) hearing impairment;

E (v) locomotor disability;

(vi) mental retardation;

(vii) mental illness;

F 2(j) "employer" means,-

(i) in relation to a Government, the authority notified by the Head of the Department in this behalf or where no such authority is notified, the Head of the Department; and

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(ii) in relation to an establishment, the Chief Executive Officer of that establishment;

2(k) "establishment" means a corporation established by or under a Central, Provincial or State Act, or an authority

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or a body owned or controlled or aided by the Government or a local authority or a Government company as defined in section 617 of the Companies Act, 1956 (1 of 1956) and includes Departments of a Government;"

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10. Among the above definitions, we are more concerned with the definition of "establishment" under Section 2(k) of the Act, which is an exhaustive definition and covers (i) a corporation established by or under a Central, Provincial or State Act, or (ii) an authority or a body owned or controlled or aided by the Government or a local authority, or (iii) a Government company as defined in Section 617 of the Companies Act, 1956 and (iv) Departments of a Government.

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11. Chapter VI of the Act deals with the employment of persons with disabilities. The relevant Sections of the said Chapter are as under:-

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"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;

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(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.

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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 reserved for persons suffering from-

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(i) blindness or low vision;

(ii) hearing impairment;

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A (iii) locomotor disability or cerebral palsy,
in the posts identified for each disability:

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

C **36. Vacancies not filled up to be carried forward.-**
Where in any recruitment year any vacancy under section 33, cannot be filled up due to non-availability of a suitable person with disability or, for any other sufficient reason, such vacancy shall be carried forward in the succeeding recruitment year and if in the succeeding recruitment year also suitable person with disability is not available, it may first be filled by interchange among the three 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:
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F 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 three categories with the prior approval of the appropriate Government."

G 12. In exercise of the powers conferred by sub-sections (1) and (2) of Section 73 of the Act, the Central Government enacted the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Rules, 1996.

H 13. After enactment of the above Act, in order to consolidate the existing instructions in line with the provisions of the Act, on 29.12.2005, Government of India, Department of Personnel and Training, issued certain instructions by way of

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an Office Memorandum (OM), with regard to the reservation for the persons with disabilities (physically handicapped persons) in posts and services. The said Office Memorandum specifically states that it shall supersede all previous instructions issued on the subject so far. Respondent No. 1 herein has commended various clauses of the OM dated 29.12.2005. The relevant clauses of the same are extracted hereinbelow:

"2. QUANTUM OF RESERVATION

(i) Three percent of the vacancies, in case of direct recruitment to Group A, B, C and D posts shall be reserved for persons with disabilities of which one per cent each shall be reserved for persons suffering from (i) blindness or low vision, (ii) hearing impairment and (iii) locomotor disability or cerebral palsy in the posts identified for each disability;

(ii) Three percent of the vacancies in case of promotion to Group D, and Group C posts in which the element of direct recruitment, if any, does not exceed 75%, shall be reserved for persons with disabilities of which one per cent each shall be reserved for persons suffering from (i) blindness or low vision, (ii) hearing impairment and (iii) locomotor disability or cerebral palsy in the posts identified for each disability.

3. EXEMPTION FROM RESERVATION:

If any Department/Ministry considers it necessary to exempt any establishment partly or fully from the provisions of reservation for persons with disabilities of which one percent each shall be reserved for persons suffering from (i) blindness or low vision, (ii) hearing impairment and (iii) locomotor disability or cerebral palsy in the posts identified for each disability, it may make a reference to the Ministry of Social Justice and Employment giving full justification

A for the proposal. The grant of exemption shall be considered by an Inter-Departmental Committee set up by the Ministry of Social Justice and Empowerment.

4. IDENTIFICATION OF JOBS/POSTS:

B The Ministry of Social Justice and Empowerment have identified the jobs/posts suitable to be held by persons with disabilities and the physical requirement for all such jobs/ posts vide their notification no. 16-25/99.NII dated 31.5.2001. The jobs/posts given in Annexure II of the said notification as amended from time to time shall be used to give effect to 3 per cent reservation to the persons with disabilities. It may, however, be noted that:

D (a) The nomenclature used for any job/post shall mean and include nomenclature used for other comparable jobs/ posts having identical functions.

E (b) The list of jobs/posts notified by the Ministry of Social Justice & Empowerment is not exhaustive. The concerned Ministries/Departments shall have the discretion to identify jobs/posts in addition to the jobs/posts already identified by the Ministry of Social Justice & Empowerment. However, no Ministry/Department/Establishment shall exclude any identified job/post from the purview of reservation at its own discretion.

F (c) If a job/post identified for persons with disabilities is shifted from one group or grade to another group or grade due to change in the pay-scale or otherwise, the job/post shall remain identified.

G 13. COMPUTATION OF RESERVATION:

H Reservation for persons with disabilities in case of Group C and Group D posts shall be computed on the basis of total number of vacancies occurring in all Group C or Group D posts, as the case may be, in the establishment, although

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the recruitment of the persons with disabilities would only be in the posts identified suitable for them. The number of vacancies to be reserved for the persons with disabilities in case of direct recruitment to Group C posts in an establishment shall be computed by taking into account the total number of vacancies arising in Group C posts for being filled by direct recruitment in a recruitment year both in the identified and non-identified posts under the establishment. The same procedure shall apply for Group D posts. Similarly, all vacancies in promotion quota shall be taken into account while computing reservation in promotion in Group C and Group D posts. Since reservation is limited to identified posts only and number of vacancies reserved is computed on the basis of total vacancies (in identified posts as well as unidentified posts), it is possible that number of persons appointed by reservation in an identified posts may exceed 3 percent.

14. Reservation for persons with disabilities in Group A posts shall be computed on the basis of vacancies occurring in direct recruitment quota in all the identified Group A posts in the establishment. The same method of computation applies for Group B posts.

15. EFFECTING RESERVATION - MAINTENANCE OF ROSTERS:

(a) all establishments shall maintain separate 100 point reservation roster registers in the format given in Annexure II for determining/effecting reservation for the disabled - one each for Group A posts filled by direct recruitment, Group B posts filled by direct recruitment, Group C posts filled by direct recruitment, Group C posts filled by promotion, Group D posts filled by direct recruitment and Group D posts filled by promotion.

(b) Each register shall have cycles of 100 points and each cycle of 100 points shall be divided into three blocks,

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A comprising the following points :

1st Block - point No.1 to point No.33

2nd Block - point No.34 to point No.66

B 3rd Block - point No.67 to point No.100

C (c) Points 1, 34, and 67 of the roster shall be earmarked reserved for persons with disabilities - one point for each of the three categories of disabilities. The head of the establishment shall decide the categories of disabilities for which the points 1, 34 and 67 will be reserved keeping in view all relevant facts.

D (d) All the vacancies in Group C posts falling in direct recruitment quota arising in the establishment shall be entered in the relevant roster register. If the post falling at point No.1 is not identified for the disabled or the head of the establishment considers it desirable not to fill up by a disabled person or it is not possible to fill up that post by the disabled for any other person, one of the vacancies falling at any of the points from 2 to 33 shall be treated as reserved for the disabled and filled as such. Likewise a vacancy falling at any of the points from 34 to 66 or from 67 to 100 shall be filled by the disabled. The purpose of keeping points 1, 34 and 67 as reserved is to fill up the first available suitable vacancy from 1 to 33, first available suitable vacancy from 34 to 66 and first available suitable vacancy from 67 to 100 persons with disabilities.

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G (e) There is a possibility that none of the vacancies from 1 to 33 is suitable for any category of the disabled. In that case two vacancies from 34 to 66 shall be filled as reserved for persons with disabilities. If the vacancies from 34 to 66 are also not suitable for any category, three vacancies shall be filled as reserved from the third block containing points from 67 to 100. This means that if no vacancy can be reserved in a particular block, it shall be
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carried into the next block.

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(f) After all the 100 points of the roster are covered, a fresh cycle of 100 points shall start.

(g) If the number of vacancies in a year is such as to cover only one block or two, discretion as to which category of the disabled should be accommodated first shall vest in the head of the establishment, who shall decide on the basis of the nature of the post, the level of representation of the specific disabled category in the concerned grade/post etc.

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(h) A separate roster shall be maintained for Group C posts filled by promotion and procedure as explained above shall be followed for giving reservation to persons with disabilities. Likewise two separate rosters shall be maintained for Group D posts, one for the posts filled by direct recruitment and another for posts filled by promotion.

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(i) Reservation in Group A and Group B posts is determined on the basis of vacancies in the identified posts only. Separate rosters for Group A posts and Group B posts in the establishment shall be maintained. In the rosters maintained for Group A and Group B posts, all vacancies of direct recruitment arising in identified posts shall be entered and reservation shall be effected the same way as explained above.

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**16. INTER SE EXCHANGE AND CARRY FORWARD
OF RESERVATION IN CASE OF DIRECT
RECRUITMENT**

(a) Reservation for each of the three categories of persons with disabilities shall be made separately. But if the nature of vacancies in an establishment is such that a person of a specific category of disability cannot be employed, the vacancies may be interchanged among the three

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A categories with the approval of the Ministry of Social Justice and Empowerment and reservation may be determined and vacancies filled accordingly.

B (b) If any vacancy reserved for any category of disability cannot be filled due to non-availability of a suitable person with that disability or, for any other sufficient reason, such vacancy shall not be filled and shall be carried forward as a 'backlog reserved vacancy' to the subsequent recruitment year.

C (c) In the subsequent recruitment year the backlog reserved vacancy shall be treated as reserved for the category of disability for which it was kept reserved in the initial year of recruitment. However, if a suitable person with that disability is not available, it may be filled by interchange among the three categories of disabilities. In case no suitable person with disability is available for filling up the post in the subsequent year also, the employer may fill up the vacancy by appointment of a person other than a person with disability. If the vacancy is filled by a person with disability of the category for which it was reserved or by a person of other category of disability by inter se exchange in the subsequent recruitment year, it will be treated to have been filled by reservation. But if the vacancy is filled by a person other than a person with disability in the subsequent recruitment year, reservation shall be carried forward for a further period upto two recruitment years whereafter the reservation shall lapse. In these two subsequent years, if situation so arises, the procedure for filling up the reserved vacancy shall be the same as followed in the first subsequent recruitment year.

G **19. HORIZONTALITY OF RESERVATION FOR PERSONS WITH DISABILITIES:**

H Reservation for backward classes of citizens (SCs, STs and OBCs) is called vertical reservation and the

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reservation for categories such as persons with disabilities and ex- servicemen is called horizontal reservation. Horizontal reservation cuts across vertical reservation (in what is called interlocking reservation) and person selected against the quota for persons with disabilities have to be placed in the appropriate category viz. SC/ST/OBC/General candidates depending upon the category to which they belong in the roster meant for reservation of SCs/STs/OBCs. To illustrate, if in a given year there are two vacancies reserved for the persons with disabilities and out of two persons with disabilities appointed, one belongs to a Scheduled Caste and the other to general category then the disabled SC candidate shall be adjusted against the SC point in the reservation roster and the general candidate against unreserved point in the relevant reservation roster. In case none of the vacancies falls on point reserved for the SCs, the disabled candidate belonging to SC shall be adjusted in future against the next available vacancy reserved for SCs.

20. Since the persons with disabilities have to be placed in the appropriate category viz. SC/ST/OBC/ General in the roster meant for reservation of SCs/STs/OBCs, the application form for the post should require the candidates applying under the quota reserved for persons with disabilities to indicate whether they belong to SC/ST/OBC or General category."

14. Clauses 21 and 22 of the said OM enable the Government for relaxation in age limit as well as standard of suitability.

15. After the OM dated 29.12.2005, based on the representations made by Respondent No. 1 herein, another OM dated 26.04.2006 came to be issued. The details and the directions contained in the said OM are as follows:

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A "Dated the 26th April, 2006

OFFICE MEMORANDUM

Sub: Reservation for the Persons with Disabilities

B The undersigned is directed to say that the Persons
with Disabilities (Equal Opportunities, Protection of Rights
and Full Participation) Act, 1995 which came into existence
on 01.01.1996 provides for reservation for persons with
C disability in the posts identified for three categories of
disabilities namely (i) blindness or low vision, (ii) hearing
impairment and (iii) locomotor disability or cerebral palsy.
Instructions have also been issued by this Department for
providing reservation for such persons. In spite of the Act
and the instructions of this Department, vacancies were not
D earmarked reserved or were not filled by reservation in
some establishments.

2. The matter has been considered carefully and it has
been decided that reservation for persons with disabilities
should be implemented in right earnest and there should
E be no deviation from the scheme of reservation,
particularly after the Act came into effect. In order to
achieve this objective, all the establishments should
prepare the reservation roster registers as provided in this
Department's O.M. No. 36035/3/2004-Estt (Res) dated
F 29.12.2005 starting from the year 1996 and reservation for
persons with disabilities be earmarked as per instructions
contained in that OM. If some or all the vacancies so
earmarked had not been filled by reservation and were
filled by able bodied persons either for the reason that
G points of reservation had not been earmarked properly at
the appropriate time or persons with disabilities did not
become available, such unutilized reservation may be
treated as having been carried forward to the first
recruitment year occurring after issue of this O.M. and be
H filled as such. If it is not possible to fill up such reserved

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vacancies during the said recruitment year, reservation would be carried forward for further two years, whereafter it may be treated as lapsed.

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3. It has been observed that some recruiting agencies declare in their advertisements that blind/partially blind candidates need not apply and that separate examinations would be conducted for visually handicapped candidates. Attention is invited to para 7 of this Department's O.M. No. 36035/3/2004-Estt (Res) dated 29.12.2005 which provides that persons with disabilities selected on their own merit will not be adjusted against the reserved share of vacancies. It means that persons with disabilities who are selected on their own merit have to be adjusted against the unreserved vacancies and reservation has to be given in addition. If visually handicapped candidates or any other category of handicapped candidates are debarred from applying on the ground that a separate examination would be conducted for them, chances of handicapped candidates being selected on their own merit would be eliminated. Thus, debarring of any category of handicapped candidates in the above manner is against the provisions contained in the aforesaid O.M. It is, therefore, requested that persons with disabilities should not be debarred from applying for the posts identified suitable for them and should be provided opportunity to compete for the unreserved vacancies as well by holding a common examination.

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4. Contents of this O.M. may be brought to the notice of all concerned.

Sd/-

(K.G.Verma)

Deputy Secretary to the Govt. of India"

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16. Another OM dated 10.12.2008, issued by the Department of Personnel and Training, was also brought to our

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A notice whereunder a Special Recruitment Drive to fill up the backlog reserved vacancies for the persons with disabilities was initiated. The said OM mainly speaks about filling up of "backlog reserved vacancies". Relevant portion of the said OM is extracted hereinbelow:

B "Dated the 10th December, 2008

OFFICE MEMORANDUM

C Sub: Special Recruitment Drive to fill up the backlog reserved vacancies for Persons with Disabilities

D The undersigned is directed to say that this Department's O.M. No. 36035/3/2004-Estt(Res) dated 29.12.2005 provides that if any vacancy reserved for any category of disability cannot be filled due to non-availability of a suitable person with that disability or for any other sufficient reason, such vacancy is not filled and is carried forward as a 'backlog reserved vacancy' to the subsequent recruitment year. In the subsequent recruitment year, the 'backlog reserved vacancy' is treated as reserved for the category of disability for which it was kept reserved in the initial year of recruitment and filled as such. However, if a suitable person with that disability is not available in the subsequent recruitment also, it may be filled by interchange among the three categories of disabilities, failing which by appointment of a person other than a person with disability. It may, thus, be seen that if a vacancy is earmarked reserved for any category of disability and a suitable person with that disability is not available to fill it up in the initial year of recruitment, it becomes a 'backlog reserved vacancy' for first subsequent recruitment year.

H 2. As per instructions existing prior to issue of O.M. dated 29.12.2005, if in any year, suitable physically handicapped candidates were not available to fill up a reserved vacancy, the vacancy was filled by an other category

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candidate and reservation was carried forward for a period of upto three recruitment years. In the event of non-availability of suitable persons with disabilities, the reserved vacancies were not kept unfilled. Thus there was no provision of backlog reserved vacancies of persons with disabilities prior to 29.12.2005. Nevertheless, it is possible that some Ministries/Departments/ establishments might have kept some vacancies earmarked reserved for the persons with disability unfilled due to non-availability of persons with disability. If there exist such vacancies, these will be treated as backlog reserved vacancies for the current recruitment year"

17. By issuing such directions, the Department of Personnel and Training directed all the Ministries/Departments to launch a Special Recruitment Drive and fixed target dates for fulfilling various stages.

Discussion:

18. In the light of the above statutory provisions as well as various clauses of the OM dated 29.12.2005, let us analyze whether the High Court was justified in passing the impugned judgment.

19. Before advertng to the rival contentions submitted by the appellants and the respondents, it is relevant to comprehend the background and the objective of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995.

20. India as a welfare State is committed to promote overall development of its citizens including those who are differently abled in order to enable them to lead a life of dignity, equality, freedom and justice as mandated by the Constitution of India. The roots of statutory provisions for ensuring equality and equalization of opportunities to the differently abled citizens in our country could be traced in Part III and Part IV of the

A Constitution. For the persons with disabilities, the changing world offers more new opportunities owing to technological advancement, however, the actual limitation surfaces only when they are not provided with equal opportunities. Therefore, bringing them in the society based on their capabilities is the
 B need of the hour.

21. Although, the Disability Rights Movement in India commenced way back in 1977, of which Respondent No. 1 herein was an active participant, it acquired the requisite
 C sanction only at the launch of the Asian and Pacific Decade of Disabled Persons in 1993-2002, which gave a definite boost to the movement. The main need that emerged from the meet was for a comprehensive legislation to protect the rights of persons with disabilities. In this light, the crucial legislation was
 D enacted in 1995 viz., the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 which empowers persons with disabilities and ensures protection of their rights. The Act, in addition to its other prospects, also seeks for better employment opportunities to
 E persons with disabilities by way of reservation of posts and establishment of a Special Employment Exchange for them.

22. For the same, Section 32 of the Act stipulates for identification of posts which can be reserved for persons with disabilities. Section 33 provides for reservation of posts and
 F Section 36 thereof provides that in case a vacancy is not filled up due to non-availability of a suitable person with disability, in any recruitment year such vacancy is to be carried forward in the succeeding recruitment year. The difference of opinion between the appellants and the respondents arises on the
 G point of interpretation of these sections.

23. It is the stand of the Union of India that the Act provides for only 3% reservation in the vacancies in the posts identified for the disabled persons and not on the total cadre strength of the establishment whereas Mr. S.K. Rungta, learned senior
 H counsel (R-1) appearing in person submitted that accepting the

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interpretation proposed by the Union of India will flout the policy of reservation encompassed under Section 33 of the Act. He further submitted that the High Court has rightly held that the reservation of 3% for differently abled persons in conformity with the Act should have to be computed on the basis of the total strength of a cadre and not just on the basis of the vacancies available in the posts that are identified for differently abled persons, thereby declaring certain clauses of the OM dated 29.12.2005 as unacceptable and contrary to the mandate of Section 33 of the Act.

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24. Two aspects of the impugned judgment have been challenged before this Court:-

- (a) The manner of computing 3% reservation for the persons with the disabilities as per Section 33 of the Act.
- (b) Whether post based reservation must be adhered to or vacancy based reservation.

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25. Now let us consider the reasoning of the High Court and the submissions made by the parties.

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26. Primarily, we would like to clarify that there is a sea of difference in computing reservation on the basis of total cadre strength and on the basis of total vacancies (both inclusive of identified and unidentified) in the cadre strength. At the outset, a reference to the impugned OM dated 29.12.2005 would, in unequivocal terms, establish that the matter in dispute in the given case is whether the latter method of computation of reservation will uniformly apply to the posts in Group A, B, C and D or will it be applicable only to Group C and D. The question pertaining to computation of reservation on the basis of total cadre strength does not even arise in the given circumstance of the case. However, the High Court, in the impugned judgment, went on to uphold the view that the computation of reservation must be on the basis of total cadre

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A strength which is clearly erroneous on the face of it. Inadvertently, the respondents herein have also adopted the same line of argument in their oral and written submissions. As a result, the point for consideration before this Court is whether the modus of computation of reservation on the basis of total number of vacancies (both inclusive of identified and unidentified) in the cadre strength will uniformly apply to Group A, B, C and D or will it be applicable only to Group C and D.

27. It is the stand of the Union of India that for vivid understanding of the reservation policy laid down under Section 33 of the Act, it is essential to read together Sections 32 and 33 of the Act. It was also submitted that a conjoint reading of the above referred sections, mandates only reservation of vacancies in the identified posts and not in all the posts or against the total number of vacancies in the cadre strength. However, it was also admitted that the computation of reservation is being done in respect of Group C and D posts on the basis of total number of vacancies (both inclusive of identified and unidentified) in the cadre strength since 1977. In fact, the abovesaid contention has been raised in *Govt. of India through Secretary and Anr. vs. Ravi Prakash Gupta & Anr.* (2010) 7 SCC 626 and, therefore, it is no longer res integra.

28. The question for determination raised in this case is whether the reservation provided for the disabled persons under Section 33 of the Act is dependent upon the identification of posts as stipulated by Section 32. In the aforementioned case, the Government of India sought to contend that since they have conducted the exercise of identification of posts in civil services in terms of Section 32 only in the year 2005, the reservation has to be computed and applied only with reference to the vacancies filled up from 2005 onwards and not from 1996 when the Act came into force. This Court, after examining the inter-dependence of Sections 32 and 33 viz., identification of posts and the scheme of reservation, rejected this contention and held as follows:-

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"25.The submission made on behalf of the Union of India regarding the implementation of the provisions of Section 33 of the Disabilities Act, 1995, only after identification of posts suitable for such appointment, under Section 32 thereof, runs counter to the legislative intent with which the Act was enacted. To accept such a submission would amount to accepting a situation where the provisions of Section 33 of the aforesaid Act could be kept deferred indefinitely by bureaucratic inaction. Such a stand taken by the petitioners before the High Court was rightly rejected. Accordingly, the submission made on behalf of the Union of India that identification of Grade 'A' and 'B' posts in the I.A.S. was undertaken after the year 2005 is not of much substance.

26. As has been pointed out by the High Court, neither Section 32 nor Section 33 of the aforesaid Act makes any distinction with regard to Groups A, B, C and D posts. They only speak of identification and reservation of posts for people with disabilities, though the proviso to Section 33 does empower the appropriate Government to exempt any establishment from the provisions of the said Section, having regard to the type of work carried on in any department or establishment. No such exemption has been pleaded or brought to our notice on behalf of the petitioners.

27. It is only logical that, as provided in Section 32 of the aforesaid Act, posts have to be identified for reservation for the purposes of Section 33, but such identification was meant to be simultaneously undertaken with the coming into operation of the Act, to give effect to the provisions of Section 33. The legislature never intended the provisions of Section 32 of the Act to be used as a tool to deny the benefits of Section 33 to these categories of disabled persons indicated therein. Such a submission strikes at the foundation of the provisions relating to the duty cast

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A upon the appropriate Government to make appointments in every establishment.

B 29. While it cannot be denied that unless posts are identified for the purposes of Section 33 of the aforesaid Act, no appointments from the reserved categories contained therein can be made, and that to such extent the provisions of Section 33 are dependent on Section 32 of the Act, as submitted by the learned ASG, but the extent of such dependence would be for the purpose of making appointments and not for the purpose of making reservation. In other words, reservation under Section 33 of the Act is not dependent on identification, as urged on behalf of the Union of India, though a duty has been cast upon the appropriate Government to make appointments in the number of posts reserved for the three categories mentioned in Section 33 of the Act in respect of persons suffering from the disabilities spelt out therein. In fact, a situation has also been noticed where on account of non-availability of candidates some of the reserved posts could remain vacant in a given year. For meeting such eventualities, provision was made to carry forward such vacancies for two years after which they would lapse. Since in the instant case such a situation did not arise and posts were not reserved under Section 33 of the Disabilities Act, 1995, the question of carrying forward of vacancies or lapse thereof, does not arise.

F 31. We, therefore, see no reason to interfere with the judgment of the High Court impugned in the Special Leave Petition which is, accordingly, dismissed with costs. All interim orders are vacated. The petitioners are given eight weeks' time from today to give effect to the directions of the High Court."

G 29. In the light of the above pronouncement, it is clear that the scope of identification comes into picture only at the time of appointment of a person in the post identified for disabled

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persons and is not necessarily relevant at the time of computing 3% reservation under Section 33 of the Act. In succinct, it was held in *Ravi Prakash Gupta* (supra) that Section 32 of the Act is not a precondition for computation of reservation of 3% under Section 33 of the Act rather Section 32 is the following effect of Section 33.

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30. Apart from the reasoning of this Court in *Ravi Prakash Gupta* (supra), even a reading of Section 33, at the outset, establishes vividly the intention of the legislature viz., reservation of 3% for differently abled persons should have to be computed on the basis of total vacancies in the strength of a cadre and not just on the basis of the vacancies available in the identified posts. There is no ambiguity in the language of Section 33 and from the construction of the said statutory provision only one meaning is possible.

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31. A perusal of Section 33 of the Act reveals that this section has been divided into three parts. The first part is "every appropriate Government shall appoint in every establishment such percentage of vacancies not less than 3% for persons or class of persons with disability." It is evident from this part that it mandates every appropriate Government shall appoint a minimum of 3% vacancies in its establishments for persons with disabilities. In this light, the contention of the Union of India that reservation in terms of Section 33 has to be computed against identified posts only is not tenable by any method of interpretation of this part of the Section.

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32. The second part of this section starts as follows: "...of which one percent each shall be reserved for persons suffering from blindness or low vision, hearing impairment & locomotor disability or cerebral palsy in the posts identified for each disability." From the above, it is clear that it deals with distribution of 3% posts in every establishment among 3 categories of disabilities. It starts from the word "of which". The word "of which" has to relate to appointing not less than 3% vacancies in an establishment and, in any way, it does not refer

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A to the identified posts. In fact, the contention of the Union of
India is sought to be justified by bringing the last portion of the
second part of the section viz. "...identified posts" in this very
first part which deals with the statutory obligation imposed upon
the appropriate Government to "appoint not less than 3%
B vacancies for the persons or class of persons with disabilities."
In our considered view, it is not plausible in the light of
established rules of interpretation. The minimum level of
representation of persons with disabilities has been provided
in this very first part and the second part deals with the
C distribution of this 3% among the three categories of disabilities.
Further, in the last portion of the second part the words used
are "in the identified posts for each disability" and not "of
identified posts". This can only mean that out of minimum 3%
of vacancies of posts in the establishments 1% each has to be
D given to each of the 3 categories of disability viz., blind and low
vision, hearing impaired and locomotor disabled or cerebral
palsy separately and the number of appointments equivalent to
the 1% for each disability out of total 3% has to be made
against the vacancies in the identified posts. The attempt to
read identified posts in the first part itself and also to read the
E same to have any relation with the computation of reservation
is completely misconceived.

33. The third part of the Section is the proviso which reads
thus: "Provided that the appropriate Government may, having
F regard to the type of 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." The proviso
also justifies the above said interpretation that the computation
G of reservation has to be against the total number vacancies in
the cadre strength and not against the identified posts. Had the
legislature intended to mandate for computation of reservation
against the identified posts only, there was no need for
inserting the proviso to Section which empowers the
H appropriate Government to exempt any establishment either

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partly or fully from the purview of the Section subject to such conditions contained in the notification to be issued in the Official Gazette in this behalf. Certainly, the legislature did not intend to give such arbitrary power for exemption from reservation for persons with disabilities to be exercised by the appropriate Government when the computation is intended to be made against the identified posts. A
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34. In this regard, another provision of the said Act also supports this interpretation. Section 41 of the said Act mandates the appropriate Government to frame incentive schemes for employers with a view to ensure that 5% of their work force is composed of persons with disabilities. The said section is reproduced hereinbelow: C

"41. Incentives to employers to ensure five per cent of the work force is composed of persons with disabilities.- The appropriate Government and the local authorities shall, within limits to their economic capacity and development, provide incentives to employers both in public and private sectors to ensure that at least five percent of their work force is composed of persons with disabilities." D
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Thus, on a conjoint reading of Sections 33 and 41, it is clear that while Section 33 provides for a minimum level of representation of 3% in the establishments of appropriate Government, the legislature intended to ensure 5% of representation in the entire work force both in public as well as private sector. F

35. Moreover, the intention of the legislature while framing the Act can also be inferred from the Draft Rights of Persons with Disabilities Bill, 2012, which is pending in the Parliament for approval. In Chapter 6 of the Bill, viz., Special Provisions for Persons with Benchmark Disabilities, similar sections like Sections 32 & 33 in the Act have been incorporated under Sections 38 and 39 which are as under:- G
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A **"Section 38. Identification of Posts which can be Reserved for Persons with Benchmark Disabilities:**

B Appropriate Governments shall - (a) identify posts in establishments under them which can be reserved for persons with benchmark disability as mentioned in section 39;

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

C **Section 39. Reservation of Posts for Persons with Benchmark Disabilities:-**

D (1) Every appropriate Government shall reserve, in every establishment under them, not less than 5% of the vacancies meant to be filled by direct recruitment, for persons or class of persons with benchmark disability, of which 1% each shall be of all posts reserved for persons with following disabilities:-

E i) blindness & low vision (with reservation of 0.5% of the vacancies for each of the two disabilities).

ii) hearing impairment & speech impairment.

F iii) locomotor disability including cerebral palsy, leprosy cured and muscular dystrophy.

iv) autism, intellectual disability and mental illness

G v) multiple disabilities from among i to iv above including deaf blindness

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

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(2) If sufficient number of qualified persons with benchmark disabilities are not available in a particular year, then the reservation may be carried forward for upto the next three recruitment years, and if in such succeeding recruitment years also a suitable person with benchmark disability is not available, then the post in the fourth year may be first filled by interchange among the categories of disabilities; and only when there is no person with any benchmark disability available for the post in that year, the vacancy may be filled by appointment of a person, other than a person with benchmark disability."

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A perusal of Sections 38 and 39 of the Bill clarifies all the ambiguities raised in this appeal. The intention of the legislature is clearly to reserve in every establishment under the appropriate Government, not less than 3% of the vacancies for the persons or class of persons with disability, of which 1% each shall be reserved for persons suffering from blindness or low vision, hearing impairment and locomotor disability or cerebral palsy in the posts identified for each disability.

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36. Admittedly, the Act is a social legislation enacted for the benefit of persons with disabilities and its provisions must be interpreted in order to fulfill its objective. Besides, it is a settled rule of interpretation that if the language of a statutory provision is unambiguous, it has to be interpreted according to the plain meaning of the said statutory provision. In the present case, the plain and unambiguous meaning of Section 33 is that every appropriate Government has to appoint a minimum of 3% vacancies in an establishment out of which 1% each shall be reserved for persons suffering from blindness and low vision, persons suffering from hearing impairment and persons suffering from locomotor or cerebral palsy.

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37. To illustrate, if there are 100 vacancies of 100 posts in an establishment, the concerned establishment will have to reserve a minimum of 3% for persons with disabilities out of which at least 1% has to be reserved separately for each of

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A the following disabilities: persons suffering from blindness or
low vision, persons suffering from hearing impairment and the
persons suffering from locomotor disability or cerebral palsy.
Appointment of 1 blind person against 1 vacancy reserved for
him/her will be made against a vacancy in an identified post
B for instance, the post of peon, which is identified for him in
group D. Similarly, one hearing impaired will be appointed
against one reserved vacancy for that category in the post of
store attendant in group D post. Likewise, one person suffering
from locomotor disability or cerebral palsy will be appointed
C against the post of "Farash" group D post identified for that
category of disability. It was argued on behalf of Union of India
with reference to the post of driver that since the said post is
not suitable to be manned by a person suffering from blindness,
the above interpretation of the Section would be against the
D administrative exigencies. Such an argument is wholly
misconceived. A given post may not be identified as suitable
for one category of disability, the same could be identified as
suitable for another category or categories of disability entitled
to the benefit of reservation. In fact, the second part of the
Section has clarified this situation by providing that the number
E of vacancies equivalent to 1% for each of the aforementioned
three categories will be filled up by the respective category by
using vacancies in identified posts for each of them for the
purposes of appointment.

F 38. It has also been submitted on behalf of the appellants
herein that since reservation of persons with disabilities in
Group C and D has been in force prior to the enactment and
is being made against the total number of vacancies in the
cadre strength according to the OM dated 29.12.2005 but the
G actual import of Section 33 is that it has to be computed against
identified posts only. This argument is also completely
misconceived in view of the plain language of the said Section,
as deliberated above. Even, for the sake of arguments, if we
accept that the computation of reservation in respect of Group
H C and D posts is against the total vacancies in the cadre

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strength because of the applicability of the scheme of reservation in Group C and D posts prior to enactment, Section 33 does not distinguish the manner of computation of reservation between Group A and B posts or Group C and D posts respectively. As such, one statutory provision cannot be interpreted and applied differently for the same subject matter.

39. Further, if we accept the interpretation contended by the appellants that computation of reservation has to be against the identified posts only, it would result into uncertainty of the application of the scheme of reservation because experience has shown that identification has never been uniform between the Centre and States and even between the Departments of any Government. For example, while a post of middle school teacher has been notified as suitable for the blind and low vision by the Central Government, it has not been identified as suitable for the blind and low vision in some States such as Gujarat and J&K etc. This has led to a series of litigations which have been pending in various High Courts. In addition, Para 4 of the OM dated 29.12.2005 dealing with the issue of identification of jobs/posts in sub clause (b) states that list of the jobs/posts notified by the Ministry of Social Justice & Empowerment is not exhaustive which further makes the computation of reservation uncertain and arbitrary in the event of acceptance of the contention raised by the appellants.

40. Another contention raised by the appellants is that the computation of reservation against the total vacancies in the cadre strength in Group A & B will violate the rule of 50% ceiling of reservation in favour of SC, ST and OBC as laid down by this Court in *Indra Sawhney vs. Union of India and Others* AIR 1993 SC 477. This contention is also not tenable and is against the abovesaid judgment. It is difficult to understand as to how the computation of reservation against total vacancies in the cadre strength in Group A and B will violate 50% ceiling when its computation on that basis in Group C and D will not violate the said ceiling. There is no rationale of distinguishing between

A the manner of computation of reservation with regard to Group A and B posts on the one hand and manner of computation of reservation with regard to Group C and D posts on the other on this ground.

B 41. A perusal of *Indra Sawhney* (supra) would reveal that the ceiling of 50% reservation applies only to reservation in favour of other Backward classes under Article 16(4) of the Constitution of India whereas the reservation in favour of persons with disabilities is horizontal, which is under Article 16(1) of the Constitution. In fact, this Court in the said
C pronouncement has used the example of 3% reservation in favour of persons with disabilities while dealing with the rule of 50% ceiling. Para 95 of the judgment clearly brings out that after selection and appointment of candidates under reservation for persons with disabilities they will be placed in the respective
D rosters of reserved category or open category respectively on the basis of the category to which they belong and, thus, the reservation for persons with disabilities per se has nothing to do with the ceiling of 50%. Para 95 is reproduced as follows:-

E "95.all reservations are not of the same nature. There are two types of reservations, which may, for the sake of convenience, be referred to as 'vertical reservations' and 'horizontal reservations'. The reservations in favour of
F Scheduled Castes, Scheduled Tribes and other backward classes [under Article 16(4)] may be called vertical reservations whereas reservations in favour of physically handicapped [under Clause (1) of Article 16] can be referred to as horizontal reservations. Horizontal reservations cut across the vertical reservations - what is called inter-locking reservations. To be more precise,
G suppose 3% of the vacancies are reserved in favour of physically handicapped persons; this would be a reservation relatable to Clause (1) of Article 16. The persons selected against this quota will be placed in the appropriate category; if he belongs to S.C. category he will
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be placed in that quota by making necessary adjustments; similarly, if he belongs to open competition (O.C.) category, he will be placed in that category by making necessary adjustments. Even after providing for these horizontal reservations, the percentage of reservations in favour of backward class of citizens remains - and should remain - the same....."

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42. Yet another contention raised by the appellants is that the reservation for persons with disabilities must be vacancy based reservation whereas Respondent No. 1 herein contended that it must be post based reservation as laid down by the High Court in the impugned judgment. Respondent No. 1 herein relied upon the heading of Section 33 of the Act, viz., 'Reservation of Posts', to propose the view that the reservation policy contemplated under Section 33 is post based reservation.

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43. It is settled law that while interpreting any provision of a statute the plain meaning has to be given effect and if language therein is simple and unambiguous, there is no need to traverse beyond the same. Likewise, if the language of the relevant section gives a simple meaning and message, it should be interpreted in such a way and there is no need to give any weightage to headings of those paragraphs. This aspect has been clarified in *Prakash Nath Khanna & Anr. vs. Commissioner of Income Tax & Anr.*, (2004) 9 SCC 686. Paragraph 13 of the said judgment is relevant which reads as under:

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"13. It is a well-settled principle in law that the court cannot read anything into a statutory provision which is plain and unambiguous. A statute is an edict of the legislature. The language employed in a statute is the determinative factor of legislative intent. The first and primary rule of construction is that the intention of the legislation must be found in the words used by the legislature itself. The question is not what may be supposed and has been

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A intended but what has been said. "Statutes should be
 construed, not as theorems of Euclid", Judge Learned
 Hand said, "but words must be construed with some
 imagination of the purposes which lie behind them". (See
 B *Lenigh Valley Coal Co. v. Yensavage*. The view was
 reiterated in *Union of India v. Filip Tiago De Gama of*
Vedem Vasco De Gama and Padma Sundara Rao v.
State of T.N.."

44. It is clear that when the provision is plainly worded and
 unambiguous, it has to be interpreted in such a way that the
 C Court must avoid the danger of a prior determination of the
 meaning of a provision based on their own preconceived
 notions of ideological structure or scheme into which the
 provision to be interpreted is somewhat fitted. While
 D interpreting the provisions, the Court only interprets the law and
 cannot legislate it. It is the function of the Legislature to amend,
 modify or repeal it, if deemed necessary.

45. The heading of a Section or marginal note may be
 relied upon to clear any doubt or ambiguity in the interpretation
 E of the provision and to discern the legislative intent. However,
 when the Section is clear and unambiguous, there is no need
 to traverse beyond those words, hence, the headings or
 marginal notes cannot control the meaning of the body of the
 section. Therefore, the contention of Respondent No. 1 herein
 F that the heading of Section 33 of the Act is "Reservation of
 posts" will not play a crucial role, when the Section is clear and
 unambiguous.

46. Further, the respondents heavily relied on a decision
 of the Constitution Bench in *R.K Sabharwal and Others vs.*
 G *State of Punjab and Others* (1995) 2 SCC 745 to substantiate
 their contention. Para 6 reads as under:-

"6. The expressions "posts" and "vacancies", often used
 in the executive instructions providing for reservations, are
 H rather problematical. The word "post" means an

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appointment, job, office or employment. A position to which a person is appointed. "Vacancy" means an unoccupied post or office. The plain meaning of the two expressions make it clear that there must be a 'post' in existence to enable the 'vacancy' to occur. The cadre-strength is always measured by the number of posts comprising the cadre. Right to be considered for appointment can only be claimed in respect of a post in a cadre. As a consequence the percentage of reservation has to be worked out in relation to the number of posts, which form the cadre-strength. The concept of 'vacancy' has no relevance in operating the percentage of reservation."

47. Adhering to the decision laid by the Constitution Bench in *R.K Sabharwal* (supra), the High Court held as follows:-

16. The Disabilities Act was enacted for protection of the rights of the disabled in various spheres like education, training, employment and to remove any discrimination against them in the sharing of development benefits vis-à-vis non-disabled persons. In the light of the legislative aim it is necessary to give purposive interpretation to section 33 with a view to achieve the legislative intendment of attaining equalization of opportunities for persons with disabilities. The fact that the vacancy-based roster is to be maintained does not mean that 3% reservation has to be computed only on the basis of vacancy. The difference between the posts and vacancies has been succinctly pointed out in the Supreme Court decision in the case of *R.K Sabharwal and Others vs. state of Punjab and Others* AIR 1995 SC 1371 wherein it was held that the word "post" means an appointment, job, office or employment, a position to which a person is appointed. "Vacancy" means an unoccupied post or office. The plain meaning of the two expressions make it clear that there must be a 'post' in existence to enable the vacancy to

A occur. The cadre-strength is always measured by the
 number of posts comprising the cadre. Right to be
 considered for appointment can only be claimed in respect
 of a post in a cadre. As a consequence the percentage
 of reservation has to be worked out in relation to the
 B number of posts which form the cadre-strength. The
 concept of 'vacancy' has no relevance in operating the
 percentage of reservation. Therefore, in our opinion, 3 %
 reservation for disabled has to be computed on the basis
 of total strength of the cadre i.e. both identified as well as
 C unidentified posts...."

48. However, the decision in *R.K Sabharwal* (supra) is not
 applicable to the reservation for the persons with disabilities
 because in the above said case, the point for consideration
 was with regard to the implementation of the scheme of
 D reservation for SC, ST & OBC, which is vertical reservation
 whereas reservation in favour of persons with disabilities is
 horizontal. We harmonize with the stand taken by the Union of
 India, the appellant herein in this regard. Besides, the judgment
 in *R.K Sabharwal* (supra) was pronounced before the date on
 E which the Act came into force, as a consequence, the intent of
 the Act must be given priority over the decision in the above
 said judgment. Thus, in unequivocal terms, the reservation
 policy stipulated in the Act is vacancy based reservation.

F **Conclusion:**

49. Employment is a key factor in the empowerment and
 inclusion of people with disabilities. It is an alarming reality that
 the disabled people are out of job not because their disability
 comes in the way of their functioning rather it is social and
 G practical barriers that prevent them from joining the workforce.
 As a result, many disabled people live in poverty and in
 deplorable conditions. They are denied the right to make a
 useful contribution to their own lives and to the lives of their
 families and community.

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50. The Union of India, the State Governments as well as the Union Territories have a categorical obligation under the Constitution of India and under various International treaties relating to human rights in general and treaties for disabled persons in particular, to protect the rights of disabled persons. Even though the Act was enacted way back in 1995, the disabled people have failed to get required benefit until today.

51. Thus, after thoughtful consideration, we are of the view that the computation of reservation for persons with disabilities has to be computed in case of Group A, B, C and D posts in an identical manner viz., "computing 3% reservation on total number of vacancies in the cadre strength" which is the intention of the legislature. Accordingly, certain clauses in the OM dated 29.12.2005, which are contrary to the above reasoning are struck down and we direct the appropriate Government to issue new Office Memorandum(s) in consistent with the decision rendered by this Court.

52. Further, the reservation for persons with disabilities has nothing to do with the ceiling of 50% and hence, *Indra Sawhney* (supra) is not applicable with respect to the disabled persons.

53. We also reiterate that the decision in *R.K. Sabharwal* (supra) is not applicable to the reservation for the persons with disabilities because in the above said case, the point for consideration was with regard to the implementation of the scheme of reservation for SC, ST & OBC, which is vertical reservation, whereas reservation in favour of persons with disabilities is horizontal.

Directions:

54. In our opinion, in order to ensure proper implementation of the reservation policy for the disabled and to protect their rights, it is necessary to issue the following directions:

- (i) We hereby direct the appellant herein to issue an appropriate order modifying the OM dated

A 29.12.2005 and the subsequent OMs consistent with this Court's Order within three months from the date of passing of this judgment.

B (ii) We hereby direct the "appropriate Government" to compute the number of vacancies available in all the "establishments" and further identify the posts for disabled persons within a period of three months from today and implement the same without default.

C (iii) The appellant herein shall issue instructions to all the departments/public sector undertakings/Government companies declaring that the non observance of the scheme of reservation for persons with disabilities should be considered as an act of non-obedience and Nodal Officer in department/public sector undertakings/Government companies, responsible for the proper strict implementation of reservation for person with disabilities, be departmentally proceeded against for the default.

D 55. Before parting with the case, we would like to place on record appreciation for Mr. S.K Rungta, learned senior counsel for rendering commendable assistance to the Court. The appeal is disposed of with the above terms.

F R.P. Appeal disposed of.