

JUSTICE SUNANDA BHANDARE FOUNDATION

v.

U.O.I. & ANR.

(Writ Petition (Civil) No. 116 of 1998)

MARCH 26, 2014

**[R.M. LODHA, SUDHANSU JYOTI MUKHOPADHAYA
AND DIPAK MISRA JJ.]**

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

*Differently abled persons - Writ petition with regard to
visually disabled persons - Seeking reservations of 1% of
identified teaching posts in Universities and Colleges in terms
of the Act - Held: The beneficial provisions of the Act cannot
be allowed to remain only on paper for years and thereby
defeating the very purpose of such law and legislative policy
-- All those upon whom obligation has been cast under the
Act have to effectively implement it -- Role of governments
in such a matter has to be proactive -- Differently abled
citizens must be accorded best and special attention -- This
is true equality and effective conferment of equal opportunity
- Pursuant to interim orders, UGC has acted in compliance
of the Act -- Central Government, State Governments and
Union Territories are directed to implement provisions of the
Act immediately and positively by the end of 2014 in all
respects including with regard to visually disabled persons.*

**The petitioner filed Writ Petition (Civil) No. 116 of 1998,
seeking, inter alia implementation of the provisions of the
Persons with Disabilities (Equal Opportunities, Protection
of Rights and Full Participation) Act, 1995 (the '1995 Act'),
and reservation of 1% of the identified teaching posts in
the faculties and college of various Universities for usually**

A disabled persons in terms of s. 33 of the 1995 Act. Initially, Union of India through its Secretary, Ministry of Welfare and University Grants Commission (U.G.C.) through its Chairperson were impleaded as party respondents. The Court further ordered impleadment of the States, the Union Territories, the Chief Commissioner for Persons with Disabilities, Ministry of Social Justice and Empowerment, Government of India and the Commissioners for Persons with Disabilities of various States and Union Territories to be impleaded as party respondents. Pursuant to the interim orders passed by the Court, U.G.C. was stated to have acted in compliance of the 1995 Act. On 19.07.2006, the Court directed the Union of India and the State Governments to file their responses in the form of affidavits. Some of the States filed their responses.

Disposing of the petitions, the Court

HELD:

More than 18 years have passed since the 1995 Act came to be passed and yet there are problems in its implementation. The 1995 Act has to be implemented in the letter and spirit. The beneficial provisions of the 1995 Act cannot be allowed to remain only on paper for years and thereby defeating the very purpose of such law and legislative policy. The Union, the States, the Union Territories and all those upon whom obligation has been cast under the 1995 Act have to effectively implement it. As a matter of fact, the role of the governments in the matter such as this has to be proactive. Differently abled citizens must be accorded best and special attention. This is true equality and effective conferment of equal opportunity. This Court, accordingly, directs the Central Government, the State Governments and the Union Territories to implement the provisions of the 1995 Act

JUSTICE SUNANDA BHANDARE FOUNDATION v. 115
U.O.I. & ANR.

immediately and positively by the end of 2014 in all respects including with regard to visually disabled persons. [para 10, 11, 14 and 15] [118-H; 119-A-D, D-G; 120-B] A

CIVIL ORIGINAL JURISDICTION : Under Article 32 of the Constitution of India. B

Writ Petition (Civil) No. 116 of 1998.

WITH

W.P. (C) No. 115 of 1998. C

W.P. (C) No. 430 of 2000.

C.A. Nos. 6442 and 6443 of 1998.

Suryanarayana Singh, Addl. AAG, S.S. Shamsbery, A.A.G., Ambar Qamaruddin, C.K. Sucharita, Aniruddha P. Mayee, Prashant Kumar, Rajiv Mehta, B. Balaji, Susmita Lal, Anuvrat Sharma, Sanjay R. Hegde, Anil Kumar Tandale, Sapam Biswajit Meitei, Khwairakpam Nobin Singh, T.V. George, Pragati Neekhra, Leena Singh, Ranjan Mukherjee, Gulshan Bajwa, Anil Shrivastav, P.V. Yogeswaran, Gopal Singh, P.N. Gupta, K.V. Mohan, Rachana Srivastava, Sunil Fernandes, P.N. Ramalingam, Abhijit Sengupta, Kamendra Mishra, R. Sathish, Satish Vig, Praveen Swarup, Jagjit Singh Chhabra, V.N. Raghupathy, Balaji Srinivasan, Bansuri Swaraj, Nirnimesh Dube, Hemantika Wahi, Sunita Sharma, B.P. Singh, D.S. Mahra, Arun K. Sinha, Sushma Suri, Ashok Mathur, Ranbir Singh Yadav, C.D. Singh, Sanjay Visen, Abhishek Chaudhary, Anil Katiyar, M.A. Krishna Moorthy, Corporate Law Group, Niranjana Singh, Rajeev Sharma, Dharmendra Kumar Sinha, D. Bharathi Reddy, Shibashish Misra, V.G. Pragasam, Balasubramaniam, K.V. Jagdishvaran, G. Indira, A. Subhashini, G. Prakash, Sumita Hazarika, Arun Mathur, Ashok S. Pillai, G.N. Reddy, Debojit, M. Bala Shivudu, Shreekant N. Terdal, Suchitra Atul Chitale, P. Parmeshwaran, T.V. Ratnam, Anil K. Jha, Gopal Prasad, V.D. Khanna, K. Enatoli Sema, Sbudhada H

A Deshpande, Amit Kumar, Anip Sachthey, Mohit Paul, Sandeep Singh, Harshvardhan Singh Rathore, Amit Sharma for the appearing Parties.

Petitioner-In-Person (for WP (C) No. 430 of 2000).

B The Judgment of the Court was delivered by
R.M. LODHA, J.

Writ Petition (Civil) No. 116 of 1998

C 1. In this Writ Petition filed by the petitioner - a charitable trust, the prayers made are (i) for implementation of the provisions of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 (for short, '1995 Act'), (ii) direction for the reservation of 1% of the identified teaching posts in the faculties and college of various Universities in terms of Section 33 of the 1995 Act, and (iii) D for declaration that denial of appointment to the visually disabled persons in the faculties and college of various Universities in the identified posts is violative of their fundamental rights guaranteed under Articles 14 and 15 read with Article 41 of the Constitution of India.

E 2. Initially, two respondents, namely, (one) Union of India through its Secretary, Ministry of Welfare and (two) University Grants Commission (U.G.C.) through its Chairperson were impleaded as party respondents.

F 3. On 07.10.1998, the Court ordered impleadment of the States and so also the Union Territories and, accordingly, respondent Nos. 3 to 34 were impleaded as party respondents.

G 4. On 13.09.2001, the Court directed the Chief Commissioner for Persons with Disabilities, Ministry of Social Justice and Empowerment, Government of India to be impleaded as party respondent and consequently it has been impleaded as respondent No. 35.

H 5. Then on 18.02.2009, the Court directed Commissioners for Persons with Disabilities of various States and Union Territories to be impleaded as party respondents

JUSTICE SUNANDA BHANDARE FOUNDATION v. 117
U.O.I. & ANR. [R.M. LODHA, J.]

and consequently respondent Nos. 36 to 70 have been impleaded who are Commissioners for Persons with Disabilities in different States and Union Territories. A

6. Certain interim orders have been passed by this Court from time to time. B

7. Insofar as U.G.C. (respondent No. 2) is concerned, the Court was informed on 19.03.2002 through counter affidavit that U.G.C. has acted in compliance of the 1995 Act. In paras 3, 6, 7 and 8 of the counter affidavit filed on behalf of the Chief Commissioner for Persons with Disabilities, it was stated : C

"3. It is humbly submitted that in pursuance of Section 32 of the Persons with Disabilities Act (Equal Opportunities Protection of Rights and Full participation) Act, 1995, the appropriate government (Government of India) has updated the list of identified posts. This list has been issued vide Extraordinary Gazette Notification No. 178 dated 30.6.2001. In this list, the posts of University/College/School Teacher for the blind and low-vision have been listed at Sl. No. 24-27 on page No. 592. D

6. The Chief Commissioner for Person with Disabilities has taken cognizance of the arrangements provided by the University Grants Commission for persons with disabilities by way of extending 5% relaxation in cut off marks, appearing in the NET for Junior Research Fellowship and Lecturership. Thus, the arrangement extended by UGC is in consonance with the policy stand taken by Govt. of India in so far as relaxation in minimum standard is concerned. Relaxation in standards has been favoured only when the candidates belonging to reserved categories are not available on the basis of the general standard to fill all the vacancies reserved for them. E

7. The relaxation extended to SC & ST candidates as per Maintenance of Standard 1998 of the Universities, F

G
H

A provides for a 5% relaxation from 55 % to 50% in the marks obtained at Master's Degree. Since reservation for the disabled is called horizontal reservation which cuts across all vertical categories such as SC, ST, OBC & General. Therefore, all such blind/low-vision persons who
B belonged to SC, ST vertical category would automatically enjoy the benefit of 5 % relaxation at the minimum qualifying marks obtained at Master's Degree level. Thus, only the blind and low vision belonging to OBC & General categories are deprived of the relaxation of 5 % marks at
C masters' level.

8. The blind/low-vision and other visually disabled persons belonging to SC & ST category are in any case enjoying the benefit of 5% relaxation in marks obtained at the master's level for appearing in the NET examination conducted by the UGC. By extending the same relaxation to particularly blind/low-vision and in general all disabled at par with SC & ST disabled would bring parity amongst all persons with disabilities irrespective of their vertical categories."
D

E 8. Thus, insofar as U.G.C. is concerned, this Court in the order 19.03.2002 observed that nothing survives for consideration and the matter is disposed of as against U.G.C.

F 9. On 19.07.2006, the Court directed the Union of India and the State Governments to file their responses in the form of affidavits within a period of four weeks, failing which it was observed that the Court may be compelled to direct personal appearance of the Chief Secretaries of the concerned States though the Court would like to avoid in making such a direction.
G Some of the States have filed their responses and some have not.

H 10. Be that as it may, the beneficial provisions of the 1995 Act cannot be allowed to remain only on paper for years and thereby defeating the very purpose of such law and legislative

policy. The Union, States, Union Territories and all those upon whom obligation has been cast under the 1995 Act have to effectively implement it. As a matter of fact, the role of the governments in the matter such as this has to be proactive. In the matters of providing relief to those who are differently abled, the approach and attitude of the executive must be liberal and relief oriented and not obstructive or lethargic. A little concern for this class who are differently abled can do wonders in their life and help them stand on their own and not remain on mercy of others. A welfare State, that India is, must accord its best and special attention to a section of our society which comprises of differently abled citizens. This is true equality and effective conferment of equal opportunity.

11. More than 18 years have passed since the 1995 Act came to be passed and yet we are confronted with the problem of implementation of the 1995 Act in its letter and spirit by the Union, States, Union Territories and other establishments to which it is made applicable.

12. Ms. Sunita Sharma, learned counsel for the Union of India, informs us that insofar as Union of India is concerned, it has implemented the provisions of the 1995 Act and the reservation of 1% of the identified teaching posts in the faculties and college of various Universities in terms of Section 33 of the 1995 Act has been done.

13. In our view, the 1995 Act has to be implemented in the letter and spirit by the Central Government, State Governments and Union Territories without any delay, if not implemented so far.

14. We, accordingly, direct the Central Government, State Governments and Union Territories to implement the provisions of the 1995 Act immediately and positively by the end of 2014.

15. The Secretary, Ministry of Welfare, Government of India, the Chief Secretaries of the States, the Administrators

A of Union Territories, the Chief Commissioner of the Union of India and the Commissioners of the State Governments and Union Territories shall ensure implementation of the 1995 Act in all respects including with regard to visually disabled persons within the above time.

B 16. Writ Petition is disposed of in the above terms.

Writ Petition (Civil) No. 115 of 1998, Writ Petition (Civil) No. 430 of 2000, Civil Appeal No. 6442 of 1998 and Civil Appeal No. 6443 of 1998

C Writ Petitions and Appeals are disposed of in terms of the judgment passed today in Writ Petition (Civil) No. 116 of 1998.

2. No costs.

D 3. Interlocutory Applications for intervention and impleadment filed in Civil Appeal No. 6442 of 1998, in view of the above, do not survive and they stand disposed of as such.

R.P.

Petitions disposed of.