
(2024) 11 RAJ CK 1316

In the Rajasthan High Court, Jodhpur Bench

Case No : Civil Special Appeal (Writ) No. 953 Of 2023, Connected with Civil Writ Petition No. 18826 Of 2018

Oil And Natural Gas Corporation Limited

APPELLANT

Vs

Ranjan Tak

RESPONDENT

Date of Decision : 29-11-2024

Acts Referred:

Motor Vehicles Act, 1988 — Section 163(A), 164

Citation : (2024) 11 RAJ CK 1316

Hon'ble Judges : Rekha Borana, J

Bench : Division Bench

Advocate : Vishal Singhal, Anamika Baghmar, Lalit Parihar

Final Decision : Disposed of

Judgement

Manindra Mohan Shrivastava, CJ

1. The right to access to justice and right to equality and equal treatment claimed by a person with disability are ingrained in the basic human right in addition to it being recognised under the Constitution of India and given effect to by the law makers while enacting the Rights of Persons with Disabilities Act, 2016 (hereinafter referred to as 'the Act of 2016'). However, those principles enshrined in texts, at times, find difficult to be operated on ground realities majorly because of attitudinal behaviour and approach which lacks sensitivity and utter disregard to right to equality.

Our observations as above are the basis for decision making in the case in hand.

2. Quintessential facts relevant and necessary for adjudication of the controversy involved and as adumbrated in the factual jargon disclosed in the pleadings of the parties and various documents on record are stated infra:

2.1 Advertisement No. 3/2018 (R&P) was issued by the appellant-Oil and Natural Gas Corporation Limited (hereinafter referred to as 'the Corporation') inviting

applications for appointment to the post of Materials Management Officer. Out of total 49 notified posts as many as 19 posts were reserved for visual handicapped persons whereas one post was earmarked for hard of hearing handicapped persons. It was specifically mentioned in the advertisement that the posts were suitable for OA(One Arm), OL(One Leg), BL(Both Legs), HH(Hearing Impaired) and LV(Low Vision) category of persons.

2.2 Respondent No. 1-writ petitioner, who is visually impaired suffering from 30% disability of vision, at the highest of his morale and spirit, submitted his application form online as an OBC candidate. It is relevant to mention here that Respondent No. 1-writ petitioner did not claim benefit of reservation as physically handicapped candidate. Respondent No. 1-writ petitioner was found meritorious and offered appointment vide order dated 25.09.2018, subject to production of certificate of medical fitness from the medical officer of the appellant-Corporation. When Respondent No. 1-writ petitioner was subjected to medical examination, the Board formed an opinion that as per the medical certificate, Respondent No. 1-writ petitioner does not have binocular vision and there is impairment in his left eye to the extent of 30%. It appears that the aforesaid disability was treated as medical unfitness.

2.3 As Respondent No. 1-writ petitioner was not allowed to join, he submitted a representation to the appellant-Corporation mainly on the ground that he could not be denied appointment on the ground of medial fitness when persons of his category with greater degree of visual impairment were considered and given benefit of reservation and offered appointment.

2.4 However, the representation of Respondent No. 1-writ petitioner came to be rejected vide impugned communication dated 27.11.2018 stating thus:

"3. As per the medical norms of ONGC, the candidate should have good Binocular Vision. For regular appointment one-eyed persons are to be regarded as unfit. However, as indicated in ONGC MER-1 form, it has been mentioned that you do not have Binocular Vision. As per the Medical Fitness Certificate issued by I/c-Medical Services. ONGC, Mumbai, you have been declared medically unfit, as you are not fulfilling the above condition."

2.5 Aggrieved by the rejection of the candidature, Respondent No. 1-writ petitioner preferred writ petition and claimed that he having secured a position on the basis of merit in OBC category, could not be denied appointment on the ground of medical unfitness merely because he was not considered against the posts reserved for physically handicapped category because those who were offered appointment under physically handicapped category suffered from higher degree of impairment of 40% and above. Therefore, even though Respondent No. 1-writ petitioner may not be entitled to claim benefit of reservation against the post reserved for physically handicapped candidate, he could not be treated as medically unfit.

2.6 The stand taken by the appellant-Corporation before the learned Single

Judge was that the appellant-Corporation has limited 19 posts for persons with visual impairment and more than that, the persons suffering with visual impairment could not be offered appointment on the post of Materials Management Officer as Respondent No. 1-writ petitioner was having only 30% visual impairment and therefore, he could not claim appointment under physically handicapped category and, therefore, he had to be considered as OBC candidate only. Thus, Respondent No. 1-writ petitioner was not found medically fit against the posts reserved for OBC candidates.

2.7 The stand taken by the appellant-Corporation did not find favour with the Writ Court. Learned Single Judge, having not only scanned the provisions contained in the Act of 2016 but also the spirit of law, came to the conclusion that this was a case of discrimination on the ground of disability and it not only violated the provisions contained in the Act of 2016 and the rules made thereunder, but also human right as well as constitutional right of Respondent No. 1-writ petitioner. It is this order which is in assail at the instance of the appellants before this Court in this intra-court appeal.

3. The arguments, which did not find favour with the learned Single Judge, have again been reiterated before this Court by learned Senior Counsel appearing on behalf of the appellant by submitting that Respondent No. 1-writ petitioner, while submitting application form offered his candidature for appointment to the post of Materials Management Officer, did not claim benefit of reservation as physically handicapped candidate as his disability was not up to the benchmark disability to entitle him to claim consideration against the posts reserved for physically handicapped category. Therefore, he had to be considered as a candidate belonging to OBC category subject to his medical fitness. When Respondent No. 1-writ petitioner was medically examined, visual impairment to the extent of 30% was detected by the medical board. Therefore, Respondent No. 1 could not be considered for appointment because persons suffering from disability of various kinds are entitled to be considered for appointment only against the posts reserved for physically handicapped candidates and not outside those posts.

4. Further submission of learned Senior Counsel appearing on behalf of the appellants is that even though all the posts reserved for visually impaired persons under physically handicapped category may not have been filled up, yet Respondent No. 1 could not be considered for appointment by relaxing the criteria against vacant reserved posts of physically handicapped category as that would be contrary to the terms and conditions of the advertisement and the rules of horizontal reservation for physically handicapped category candidates. Respondent No. 1-writ petitioner, while submitting application form, never claimed reservation as person belonging to physically handicapped category/disabled category as he only claimed reservation as OBC candidate. Therefore, Respondent No. 1-writ petitioner was required to be medically fit for the post. In support of his submission, learned Senior Counsel placed reliance on the decision

of Division Bench of this Court in the case of Piyush Kaviya &

Others Vs. The Rajasthan Public Service Commission & Others Writ No. 198/2018 and batch of appeals decided on 10.04.2018..

5. Per contra, learned counsel for Respondent No. 1-writ petitioner would submit that the learned Single Judge has allowed the writ petition having found that posts of Materials Management Officer were identified suitable for visually handicapped category persons and as many as 19 posts were reserved for those persons. That means, looking to the nature of duties and responsibilities of the posts of Materials Management Officer, a person suffering from visual disability was medically fit despite disability barriers. Learned counsel would further submit that 19 posts were reserved for physically handicapped category persons who suffered from visual disability of 40% or more, subject to maximum limits under physically handicapped category. Merely because, Respondent No. 1-writ petitioner was not considered against the posts reserved for physically handicapped category as he did not claim benefit of reservation as physically handicapped candidate, his right to be considered as an OBC candidate on the basis of merit could not be denied on the ground of medical fitness, otherwise that would amount to discrimination based on disability. Learned counsel for Respondent No. 1, in support of his arguments, has placed reliance on the decision of Allahabad High Court in the case of Yogesh Dutt Vs. Union of India & Others Writ petition No. 35898 of 2009 decided on 18.03.2011.

6. We have heard learned counsel for the parties, given our anxious consideration to the submissions made as also perused the order passed by the learned Single Judge which has been assailed in this intra-court appeal.

7. Learned Single Judge has allowed the writ petition on the seminal issue as to whether it is permissible under the law to deny a candidate belonging to physically handicapped category equal treatment and to discriminate him on the ground of disability. It has been declared by the learned Single Judge, "In case a post has been held suitable for a particular type of disability and if a person suffers from such disability, he cannot be declared medically unfit, simply because he has not claimed reservation or his disability is less than the benchmark fixed for making him entitled to claim reservation".

8. Submission of learned Senior Counsel for the appellants does not merit acceptance. The reasons for such conclusion of ours would be clear from our analysis on the basis of statutory scheme of the Act of 2016, spirit of law and approach required to be adopted while ensuring that persons suffering from disability are not to be discriminated because of their disability.

9. By way of advertisement referred to above, the appellants invited applications for appointment on various posts including the post of Materials Management Officer. Total 49 vacancies of the above posts were advertised. Posts were also reserved for various categories both in vertical as well as horizontal reservation. While vertical reservation was provided for SC, ST and OBC category candidates,

horizontal reservation was also provided. The advertisement clearly shows that the posts of Materials Management Officer were duly identified as suitable for persons with disability and the category of disability for which reservation provided was identified as OA, OL, BL, HH and LV. 19 posts were reserved for visually handicapped candidates and one post was reserved for hearing impaired candidate. It is not in dispute that Respondent No. 1-writ petitioner, while submitting application form, disclosed his category as OBC, but did not claim the benefit of reservation by claiming himself to be a person belonging to physically handicapped category. This obviously was for the reason that the degree of disability of visual impairment with which Respondent No. 1 was suffering was only 30%, which was lower than the minimum degree of disability of 40%, i.e. benchmark disability which could entitle him to claim reservation as a candidate belonging to physically handicapped category.

10. Respondent No. 1, as the record shows, has been found to be meritorious student. Learned Single Judge has mentioned in the impugned order that it was not a case of visual impairment due to any genetic background by birth, but was result of an accident when a ball hit one eye of Respondent No. 1 in his younger age. Learned Single Judge has rightly noted that despite having visual disability to the extent of 30%, the morale and spirit of Respondent No. 1-writ petitioner never lowered down. He was a brilliant having obtained B.Tech Degree from one of the most premier technical institutions of the country, i.e., Indian Institute of Technology, Roorkee. Respondent secured 81.48% marks in the recruitment examination held by the appellant-Corporation and secured 10th position in the order of merit. Marathon efforts made by Respondent No. 1-writ petitioner to excel in the field of education and competition both only highlights and motivates all handicapped persons that disability is not to be taken as a curse and can always be overcome by hard work and determination.

11. It is not in dispute that the post of Materials Management Officer was identified for certain categories of disabilities including visual disability category. That means, the experts held that a person suffering from visual impairment disability up to a certain degree is able to perform duties and functions of the post of Materials Management Officer like any other normal human being and those kinds of disabilities which were mentioned by the appellants do not come in the way of considering those candidates for appointment.

12. The concept of reservation of posts in public employment for the persons with disabilities is a statutory scheme as provided in the Act of 2016. Identification of certain posts for being filled from amongst certain categories of persons with disabilities is a statutory declaration that the disability does not come in the way of discharging duties and functions assigned to a post qua which the disability has been identified. Whether or not reservation is provided, such identification of posts renders persons with disabilities as identified physically and medically fit for appointment irrespective of reservation benefits.

13. India having ratified the United Nations Convention on the Rights of Persons

with Disabilities (UNCRPD) in 2007, also enacted the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 which conferred several rights and entitlements to the persons with disabilities. Over a period of time, the conceptual understanding of the rights of persons with disabilities has become more clear and, there has been worldwide change in approach to handle the issues concerning the persons with disabilities. In order to cope up with the changing situation, challenges and to make more effective the law, ensuring non-discriminatory treatment and access to equality of justice, based on recommendations of an expert committee, a more comprehensive legislation was enacted by the Legislature, namely, the Rights of Persons with Disabilities Act, 2016. The new Act, i.e. the Act of 2016 seeks to confer the persons with disabilities various rights such as right to equality, life with dignity, respect for his or her integrity etc. equally with others. Apart from other progressive provisions, the Act of 2016 inter alia makes specific provisions with regard to duties and responsibilities

of the appropriate Government. Another important salient feature has been the increase in reservation for posts from 3% to 5%, in the vacancies for persons or class of persons with benchmark disabilities in every establishment and reservation of seats for students with benchmark disabilities in higher educational institutions and also public employment opportunities with higher degree of equality guaranteed.

14. Word, “discrimination” has been given a very comprehensive and wide meaning under Section 2(h) of the Act of 2016 as below:

“2. Definitions.—In this Act, unless the context otherwise requires,—

(a)

(b)

(h) “discrimination” in relation to disability, means any distinction, exclusion, restriction on the basis of disability which is the purpose or effect of impairing or nullifying the recognition, enjoyment or exercise on an equal basis with others of all human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field and includes all forms of discrimination and denial of reasonable accommodation;”

15. Section 3 of the Act of 2016 guarantees equality and non-discrimination in following terms:

“3. Equality and non-discrimination.—(1) The appropriate Government shall ensure that the persons with disabilities enjoy the right to equality, life with dignity and respect for his or her integrity equally with others.

(2) The appropriate Government shall take steps to utilise the capacity of persons with disabilities by providing appropriate environment.

(3) No person with disability shall be discriminated on the ground of disability,

unless it is shown that the impugned act or omission is a proportionate means of achieving a legitimate aim.

(4) No person shall be deprived of his or her personal liberty only on the ground of disability.

(5) The appropriate Government shall take necessary steps to ensure reasonable accommodation for persons with disabilities.”

16. Sections 33 and 34 of the Act of 2016 make special provisions for the persons with benchmark disabilities for the purpose of identification of posts for reservation. As per Section 33 of the Act of 2016, the appropriate Government is obliged under the law to identify the posts in the establishments which can be held by respective category of persons with benchmark disabilities in respect of the vacancies reserved in accordance with the provisions of Section 34. Section 33 of the Act of 2016 further envisages constitution of an expert committee with representation of persons with benchmark disabilities for identification of such posts and also obliges the appropriate Government to undertake periodic review of the identified posts at an interval not exceeding three years.

17. Section 34 of the Act of 2016 imposes an obligation on the appropriate Government to appoint in every Government establishment, not less than 4% of the total number of vacancies in the cadre strength in each group of posts meant to be filled with persons with benchmark disabilities of which, 1% each shall be reserved for persons with benchmark disabilities under clauses (a), (b) and (c) thereof and 1% for persons with benchmark disabilities under clauses (d) and (e). Blindness and low vision has been specified under clause (a) of Section 34(1) of the Act of 2016.

18. On a close scrutiny, it is revealed that vide Section 33 of the Act of 2016, posts are to be identified for reservation. The posts have to be identified as those which can be held by respective categories of persons with benchmark disabilities in respect of the vacancies reserved. Therefore, the purpose of identification is to ensure reservation as mandated under Section 34 of the Act of 2016.

The term, ‘person with benchmark disability’ has been defined in Section 2(r) of the Act of 2016 whereas the term ‘person with disability’ has been defined under Section 2(s) of the Act of 2016. The aforesaid definition clauses are reproduced hereunder:

“2. Definitions.—In this Act, unless the context otherwise requires,—

(a)

(b)

(r) “person with benchmark disability” means a person with not less than forty per cent. of a specified disability where specified disability has not been defined in measurable terms and includes a person with disability where specified disability has been defined in measurable terms, as certified by the certifying

authority;

(s) "person with disability" means a person with long term physical, mental, intellectual or sensory impairment which, in interaction with barriers, hinders his full and effective participation in society equally with others;"

We find that while the term, 'person with disability' has a wide definition, the term, 'person with benchmark disability' is a class of those persons with disability who suffer from disability of not less than 40% of a specified disability where specified disability has not been defined in measurable terms and includes a person with disability where specified disability has been defined in measurable terms, as certified by the certifying authority.

19. A conjoint reading of Sections 33 and 34 of the Act of 2016, keeping in view the definition of 'person with disability' and 'person with benchmark disability' would reveal that benefit of reservation is available against those posts which are identified and can be held by respective category of persons with benchmark disabilities. Therefore, reservation as provided under Section 34 of the Act of 2016 against identified posts is to be provided to persons with disabilities who fulfil the requirement of benchmark disabilities and not otherwise. However, once the appropriate Government identifies the posts in the establishments which can be held by respective category of persons with benchmark disabilities, it becomes statutory declaration that such posts can be held by persons with particular kind of benchmark disability. In the present case, once the posts of Materials Management Officer have been identified by the appropriate Government which can be held by persons of disabled category, namely, OA, OL, BL, HH and LV, it results in two consequences. First, if a person suffering from disability is having benchmark disability, he/she would be considered for reservation as provided under Section 34 of the Act of 2016. However, if a person, who though suffers from disability but does not meet the requirement of benchmark disability, his/her disability being of a lower degree, i.e. below 40%, though he/she may not be entitled to be considered against the vacancies reserved for physically handicapped category, at the same time, he/she cannot be held to be medically unfit.

20. As a logical corollary thereto, once the post of Materials Management Officer could be filled up by a person suffering from visual disability to the extent of 40%, the same could be filled up by a person suffering from lower visual disability as well. Merely because he/she does not suffer from higher degree of disability, i.e., disability of more than 40%, he/she cannot be declared medically unfit for the post.

21. In the present case, what precisely has been done by the appellants is that as Respondent No. 1-writ petitioner did not claim reservation as physically handicapped candidate, he has been found medically unfit as suffering from visual impairment of 30%.

It defies all logic and reasoning that though a person suffering from benchmark

disability of 40% may be offered appointment against the posts reserved for physically handicapped category, a candidate of the same category with lower degree of disability is treated as medically unfit. Such a candidate may not be entitled to benefit of reservation under physically handicapped category, nevertheless in view of the statutory declaration by the appropriate Government that the posts can be filled up and occupied by persons of particular disability, the medical board cannot again consider him/her medically unfit to occupy the post merely because he/she has not claimed appointment against reserved category posts. That is completely illogical and, if we may say so, perilously borders perversity. Learned Single Judge in the light of aforesaid considerations has allowed the writ petition filed by Respondent No. 1.

22. The illegal action of the appellants has left Respondent No. 1-writ petitioner in lurch by cursing the nature for giving him lesser injury or impairment. If Respondent No. 1-writ petitioner would have suffered from higher degree of disability, i.e., 40%, he would have been considered for appointment against the posts reserved for physically handicapped candidates. Though, below benchmark disability may disentitle a candidate for being considered against the posts reserved for physically handicapped candidates, once the post is identified for a particular kind of disability, there is no question of treating such candidate medically unfit. Learned Single Judge has rightly observed that Respondent No. 1-writ petitioner would relentlessly repent and think- 'Alas! I was more disabled.'

23. Learned Single Judge has also noted that as against 19 posts reserved for visually impaired candidates, only 11 posts have been empanelled. In any case, Respondent No. 1-writ petitioner has been able to compete and on merits having secured much more marks even than the cut off of general category, his claim is based on equality of treatment and not based on reservation which unfortunately has been denied by complete misinterpretation and misconstruction of the provisions contained in the Act of 2016 as also in utter violence of the spirit of the laws protecting the interests of the disabled category candidates.

24. Reliance placed by learned counsel for the appellants on the decision in the case of Piyush Kaviya & Others Vs. The Rajasthan Public Service Commission & Others (supra) is completely distinguishable. That was a case where it was held that correction in the application form beyond stipulated period would not be permissible. On the other hand, decision of Allahabad High Court in the case of Yogesh Dutt Vs. Union of India & Others (supra) supports the view taken by us and importantly declares that the Act of 2016 provides for integration of persons with disabilities into the social main stream and to lay down a strategy for comprehensive opportunities for persons with disabilities and for their education, training, employment and rehabilitation amongst other responsibilities. There are examples and examples of persons who instead of severe disability have immensely contributed to the society. Stephen William Hawking-a British theoretical physicist was a world-renowned scientist with career span of over 40 years. He overcame the disability, to be one of the foremost scientist in the world

and was an academic celebrity and Honorary Fellow of the Royal Society of Arts, a lifetime member of the Pontifical Academy of Sciences and was awarded the Presidential Medal of Freedom, the highest civilian award in the United States. We have many such examples of persons with disabilities who have excelled well and proved to be better than other persons in all walks of life whether it be music, law, science or sports.

25. While dealing with persons with disabilities, a public functionary is required to act with higher degree of sensitivity, objectivity and in furtherance, not only laws, but also the spirit of the Act of 2016. Equality of treatment is not merely a statutory right, but a fundamental right which is at stake in the present case. Denial of such right not only violates the Constitution or Statue, but also the basic human right of specially abled persons to live with dignity. Learned Single Judge rightly observed that the treatment meted out to Respondent No. 1 amounts to rubbing salt to such injury by denying Respondent No.1 his legitimate and legal right and make him think the worst that the ball should have caused 10% more injury so that his merit would not be trampled upon and he could get appointment at least against the reserved posts. We would add by saying that denial of appointment to Respondent No. 1 has added insult to injury which must be deprecated.

That is the reason why in the beginning of our judgment, we have observed that it is the attitudinal barrier which is the matter of concern. Section 2, clause (c) of the Act of 2016, in that context, defines the word, 'barrier' as below:

"2. Definitions.—In this Act, unless the context otherwise requires,—

(a)

(b)

(c) "barrier" means any factor including communicational, cultural, economic, environmental, institutional, political, social, attitudinal or structural factors which hampers the full and effective participation of persons with disabilities in society;"

26. We hope and trust that the appellants while dealing with persons with disabilities will act free from such barrier which hampers the full and effective participation of the persons with disabilities in the society. We are also of the view that present is a fit case where cost should be imposed upon the appellants.

27. In the result, the appeal is dismissed with cost of Rs. 50,000/- (Rupees Fifty Thousands) payable by the appellants to Respondent No. 1 within a period of two months.