
(2019) 10 DEL CK 0252

In the Delhi High Court

Case No : Civil Writ Petition No. 2953 Of 2012

G.Hema Gowri

APPELLANT

Vs

Union Of India And Ors

RESPONDENT

Date of Decision : 14-10-2019

Acts Referred:

Rights Of Persons With Disabilities Act, 2016 — Section 17, 19

Citation : (2019) 10 DEL CK 0252

Hon'ble Judges : Dhirubhai Naranbhai Patel, CJ;C. Hari Shankar, J

Bench : Division Bench

Advocate : Ravi Gupta, Anshuman Sahni, Diva Mehta, Apurv Chandola, Rajesh Gogna, Kamaldeep, P.Upendra Sai, Satyakam, Akhil Dehlan

Final Decision : Disposed Of

Judgement

D.N. Patel, CJ

1. This public interest litigation has been preferred for the following prayers:-

"A. Mandamus, thereby directing the Respondents to frame a comprehensive policy for providing education for child with special needs and more particularly for the child with intellectually impaired and autism spectrum disorder cerebral palsy etc.

B. Mandamus, thereby directing the Respondents to frame the comprehensive specialized curriculum planning, implementation and evaluation procedure for the elementary/higher education to the child with intellectually impaired, autism spectrum disorder and cerebral palsy

C. Mandamus, thereby directing the Respondents, to frame the guidelines / directions for the purposes of providing the compatible and suitable infra structure, facilities etc. for the child with intellectual impairment, autism Spectrum Disorder and cerebral palsy."

2. Sections 17 and 19 of the Rights of Persons with Disabilities Act, 2016 (for

short "the Disability Act") read as under:-

"17. The appropriate Government and the local authorities shall take the following measures for the purpose of section 16, namely:-

(a) to conduct survey of school going children in every five years for identifying children with disabilities, ascertaining their special needs and the extent to which these are being met:

Provided that the first survey shall be conducted within a period of two years from the date of commencement of this Act;

(b) to establish adequate number of teacher training institutions;

(c) to train and employ teachers, including teachers with disability who are qualified in sign language and Braille and also teachers who are trained in teaching children with intellectual disability;

(d) to train professionals and staff to support inclusive education at all levels of school education

(e) to establish adequate number of resource centres to support educational institutions at all levels of school education;

(f) to promote the use of appropriate augmentative and alternative modes including means and formats of communication, Braille and sign language to supplement the use of one's own speech to fulfil the daily communication needs of persons with speech, communication or language disabilities and enables them to participate and contribute to their community and society;

(g) to provide books, other learning materials and appropriate assistive devices to students with benchmark disabilities free of cost up to the age of eighteen years;

(h) to provide scholarships in appropriate cases to students with benchmark disability;

(i) to make suitable modifications in the curriculum and examination system to meet the needs of students with disabilities such as extra time for completion of examination paper, facility of scribe or amanuensis, exemption from second and third language courses;

(j) to promote research to improve learning; and(k) any other measures, as may be required.

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19. (1) The appropriate Government shall formulate schemes and programmes including provision of loans at concessional rates to facilitate and support employment of persons with disabilities especially for their vocational training and self-employment.

- (2) The schemes and programmes referred to in sub-section (1) shall provide for-
- (a) inclusion of person with disability in all mainstream formal and non-formal vocational and skill training schemes and programmes;
 - (b) to ensure that a person with disability has adequate support and facilities to avail specific training;
 - (c) exclusive skill training programmes for persons with disabilities with active links with the market, for those with developmental, intellectual, multiple disabilities and autism;
 - (d) loans at concessional rates including that of microcredit;
 - (e) marketing the products made by persons with disabilities; and
 - (f) Maintenance of disaggregated data on the progress made in the skill training and self-employment, including persons with disabilities."

3. Learned counsel for the petitioner submitted that much is required to be done for intellectually challenged children of the age group 7-17 years and to give them vocational training as part and parcel of their curriculum. It is also submitted by the counsel for the petitioner that such children who have below average IQ and those with learning disabilities, are entirely different. Intellectually challenged/specially abled child describes below-average IQ and an inability to garner skills needed for daily living.

4. It is submitted by the counsel for the petitioner that suitable directions be given to the respondents for the intellectually challenged children. Some vocational training courses may be started but may not be limited to bakery, photography, sports, computer graphics, stationery, paper work, festival products etc.

5. It is further submitted by the learned counsel for the petitioner that a suitable direction be given to the respondents to constitute a Committee under the Chairmanship of Secretary, Department of Empowerment of Persons with Disabilities, Ministry of Social Justice and Empowerment, Government of India and the Committee may also include other Government officials and also members from leading private companies in Corporate Sector, Industry Associations, Chambers of Commerce, National Skill Development Council etc.

6. It is further submitted by learned counsel for the petitioner that the term of reference of the Committee must include drafting and implementation of nationwide plan to impart skill learning and vocational training to children with special needs starting from the age group of 7 - 17 years and to the persons with special needs, especially to those who are intellectually challenged/specially abled and to place such children/persons in gainful employment.

7. Furthermore, it is submitted by learned counsel for the petitioner that the aforesaid Committee be asked to consider the "Employment of Disabled People in

India - Base Line Report" prepared for the National Centre for Promotion of Employment for Disabled People ("NCPEDP") by the Diversity & Equal Opportunity Centre ("DEOC") and such other reports of the Government/ Private Bodies as well as considering the ILO Convention No.159 to guide the future course of action of the Government and lastly it is submitted by counsel for the petitioner that the Government of India should make all endeavours to ratify Vocational Rehabilitation and Employment (Disabled Persons) Convention, 1983.

8. Learned counsel appearing for the respondent submitted that the suggestions given by the petitioner have been received by the respondents and the respondents will consider the suggestions of the petitioner in accordance with law, rules and regulations and Government policies as early as possible and practicable. So far as the last suggestion regarding Government of India to make all endeavours to ratify the International convention is concerned, it is submitted by the counsel for the Union of India that the same is a sovereign function of the Union of India and it depends upon variety of factors for Union of India.

9. The aforesaid suggestions of the learned counsel for the petitioner, which are already put in black and white by the petitioner, is taken on record and a copy thereof has also been handed over to the petitioner, and hence we direct the respondents to consider these suggestions especially which are referred to in para-4 to 8 as well as 22 and 23 also in para-26 of the suggestions. Para-26 of the suggestions reads as under:-

"26. Thus, the petitioners wish to conclude with the following suggestions/seek directions along the following lines (these may not be considered as the only manner of going forward):

26.1 Direct the formation of a Committee under the Chairmanship of Secretary, Department of Empowerment of Persons with Disabilities, Ministry of Social Justice and Empowerment, Government of India.

26.2 The Committee should also include Other Government of India officials from Ministries/Departments that hold a stake and Members from leading Private Companies in the Corporate Sector, Industry Associations, Chambers of Commerce, National Skill Development Council, CBSE, Leading Educators in India; and other eminent personalities working to improve the lives of Children with Special Needs;

26.3 The Terms of Reference of the Committee must include drafting up and implementing of a Nationwide Plan to impart "skill learning and vocational training" to Children with Special Needs starting from the age group of 7 - 17 years and to Persons with Special Needs, especially to those that are intellectually challenged/specially abled, and to place such children/persons in gainful employment; which would help them develop as individuals away from the academic line and would also ensure that as they grow into adults, they can dream of attaining financial independence;

26.4 The Committee be asked to consider "The Employment of Disabled People in India - Base Line Report" and similar other Reports of Government / Private Bodies as well as considering the ILO Convention No.159 to guide the future course of action of the Government in this filed that could lead to finding practical solutions while drawing up the said Plan; and

26.5 The Government of India be asked to make its stance clear on ratifying of the Vocational Rehabilitation and Employment (Disabled Persons) Convention, 1983 (ILO Convention No.159)"

10. The respondents may constitute a Committee as suggested by the petitioner and can assign the work to the Expert Committee to formulate the Policy. The respondents may draft and execute the policy. So far as the International Treaty is concerned, it is left at the discretion of the respondents, whether to entertain the said treaty as a signatory or not.

11. With these observations, this writ petition is disposed of.