

(2003) 05 PAT CK 0022

In the Patna High Court

Case No : L.P.A. No. 733 of 2002 and C.W.J.C. No. 9804 of 2002

Mamta Kumari

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 07-05-2003

Acts Referred:

Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 — Section 2, 60

Citation : (2003) 4 PLJR 704

Hon'ble Judges : Ravi S. Dhavan, C.J;R.N. Prasad, J

Bench : Division Bench

Advocate : Kamal Kishore Mishra, for the Appellant; A.N. Singh, Rajeshwar Prasad for State, Anil Kumar Srivastava and K.P. Sinha, for the Respondent

Judgement

1. This matter relates to aspects under the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 and other cognate legislation in the matter relating to persons with disabilities.

2. No useful purpose will come if the Court goes into criticism on what has not been done in the State of Bihar. Clearly, nothing has been done to implement plans under this Act. A faint plea was being made by one of the State counsel Mr. Rajeshwar Prasad, G.P. 6 that something has been done in 2002. This is not enough. May be, this plea has been given on instructions as if to side track the issue that nothing has been done. Taking care of the disabled is an obligation of the State under a legislation which has been framed by the Parliament. There is no escape from this. Then, there is an obligation on the present generation to leave a better world for next generation and take care of those who cannot take care of themselves. This is what the Act is about.

3. May be the State has a department known as the Social Welfare department but if this Act has failed in its implementation then, the State, of Bihar has failed in its social welfare programmes. A State government which champions reservations, needs to be reminded that this Act is about affirmative action. In

the implementation of it the government of Bihar has failed miserably.

4. At present, the State has not implemented, in letter and spirit, the provision, of the 1995 Act. But a beginning has to be made.

5. Yesterday's proceedings told the Court of three blind schools in the State of Bihar. Today one counsel for the intervenor informs the Court that one blind school is existing since 1992. The balance which remains is that the State of Bihar, at best could establish only two schools for the blind since the Act came and even this is subject to verification. What the content of the school is, the Court would not know unless somebody will inform the High Court. For the time being, let the State of Bihar take notice on what exactly disability means. This is referred to in Section 2(h)(i) which is reproduced:

"disability" means--

- (i) blindness;
- (ii) low vision;
- (iii) leprosy-cured;
- (iv) hearing impairment;
- (v) locomotor disability;
- (vi) mental retardation;
- (vii) mental illness

6. For instance, if the Government of Bihar has a Social Welfare Department it cannot turn a blind eye to blind children who will remain illiterate unless a programme is available for them for their disability to be taught to read and write with the Braille method. This is an example. Children afflicted with polio are the obligation of the State. If the State government will not take care of children who are stricken with polio, it will be a shame. This is also an example area. Many can be recited.

7. But the job of the Court is not to give a list so that the State government may plan on it. This is the job of the State Government and the Court has no hesitation in certifying that the State of Bihar did not care for the disabled within the meaning of the Act. It is absolutely shameful. Any member of the public then can ask the State government what is the worth of a social welfare department if the disabled has not been taken care of.

8. Further, it needs to be noticed that when the Court made an inquiry whether the State government has appointed a Commissioner for persons with disabilities within the meaning of the Act, the answer was in the negative. The Act, in Section 60, emphasises who shall not, be qualified for appointment as a Commissioner unless he has special knowledge or practical experience in respect of matters relating to rehabilitation. It is, thus, that the Court today asked a

State Doctor (Dr. K.P. Sinha) to assist the Court in this matter and help the government where medical related advice is needed. Though, there is no dearth of experts in Bihar. But, the State government has no inclination to plan.

9. Further, the State may also notice entry No. 26 in Eleventh Schedule of the Constitution (Social Welfare, including welfare of the handicapped and mentally retarded).

10. Let the State of Bihar place a plan before the Court that centres in every district of Bihar will be available in reference to the disabled identifying in the first phase, children with disabilities within the meaning of Section 2(h)(i) of the Act. Even, this will be a mediocrity because the Act requires the planning of all persons with disabilities. The latter part the State government may do on its own. Let the implementation plan be before the Court when the matter is listed next. Let it begin with children.

11. On the next occasion, Standing counsel will intimate the Court of the grants which were received to take care of the disabled whether these grants came from the Central Government or from international organisations or working within the framework of United Nations and World Health Organisation.

12. Put up next week, i.e., on 15 May, 2003 under the same heading.