

(2002) 08 PAT CK 0116
In the Patna High Court
Case No : L.P.A. No. 733 of 2002

Mamta Kumari

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 27-08-2002

Acts Referred:

Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 — Section 13

Citation : (2002) 4 PLJR 706

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

Bench : Division Bench

Advocate : Kamal Kishore Mishra, for the Appellant; Rajeshwar Prasad, for State and Jitendra Singh, for Zila Parishad, for the Respondent

Final Decision : Dismissed

Judgement

Ravi S. Dhavan, C.J.—The enactment known as The Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995, caters to a special class of citizen, the incapacitated. This is human rights problem. The Act itself is result of, as mentioned in the order dated 23.8.2002 (reported in Mamta Kumari Vs. The State of Bihar and Others, a convention known as Economic and Social Commission for Asian and Pacific Region, held at Beijing on 1st to 5th December, 1992.

2. In the matter before the Court six cases have been filed before the High Court. The person with disability had to present six cases to seek relief. He is a clerk who was employed by the Zila Parishad. Earlier he had to come to the High Court on four occasions. He is Sardanand Tiwary. He was born disabled, he says in one of his cases, but while in service, was paralysed. His first case was C.W.J.C. No. 7748/96. He complained to the High Court that he is a handicapped employee. He was seeking salary during the period of his illness. The matter had to be examined by the department concerned. He did not receive salary with the result that he filed a contempt petition M.J.C. No. 3003/97. As a result, of these

proceedings a cheque was handed over representing arrears of his salary. But, the aspect of emoluments not being paid to the disabled employee continued. He filed his third case C.W.J.C. No. 10915/99. A medical board of the State department certified that he is not fit to work but he did report for work. This means that the issue whether he was being accepted for work or not was kept alive by the department. He had been dismissed because he was unable to work, the department said. On this third petition, the High Court ordered that should Sarda Nand Tiwary, Petitioner, be found to be entitled to any further monetary benefits then the Respondent authorities should calculate and pay the same at an early date preferably within three months. The Petitioner challenged this order by a Letters Patent Appeal. This Petitioner had been dismissed from service. His sin? His disability. This Letters Patent Appeal is pending. This was fourth case.

3. The condition of Sarda Nand Tiwary deteriorated. The next case was filed by his daughter seeking direction that if her father was incapable then she should be considered for appointment, on compassionate appointment under the Rule of Harness in public services. The Zila Parishad resisted the proposition. It said her case does not come under compassionate appointment category. The writ petition was dismissed (C.W.J.C. No. 6096/2002). The daughter has filed a Letters Patent Appeal (L.P.A. No. 733/2002). This Letters Patent Appeal is also pending. The court has before it the Letters Patent Appeal filed by her father who, in effect, seeks entitlement to emoluments with full medical leave and a Letters Patent Appeal of his daughter pleading that her father is as good as dead and that she should receive a job on the principle of compassionate ground applicable In public services.

4. The disability of Sarda Nand Tiwary is one which the law recognises under "The Persons with Disabilities (Equal Opportunities Protection of Rights and full participation) Act, 1995. The question before the Court is that the law may recognise disability but has the State Government adopted the law so that the benefits of law be considered for the disabled. Unfortunately, in Bihar the Act has yet to see implementation. It is a sad story. It has been seven years since it was enacted. The State Government is escaping responsibility in avoiding the disabled. The record before the court shows no serious efforts were made to take the Act for the disabled seriously. No one, amongst those who are responsible to implement the Act, have shown neither inclination nor time to devote attention in detail to implement the Act.

5. But when a petition comes before the High Court the Court cannot shirk its shoulder and avoid the answer when a citizen seeks to claim reliefs which are statutory under an affirmative legislation.

6. The Court issued notice on this matter to the State. The State is fully conscious about the implementation of the enactment. Yesterday, the Court ordered that notice be sent to the Chief Minister through counsel. Today the Court considered submissions made by the State counsel.

7. Before the Court a note was put up as a report as to how the Act may have been implemented. It will be appropriate that this note is reproduced.

Rule 13

(Rule 13 is an error acknowledged in court by State Counsel it should Section 13)

As per the Disability Act, 1995, State Co-ordination Committee has already been constituted vide resolution No. 4061 dated the 5th August 96. As all the members of the committee have completed the term of three years, the reconstitution of the committee is under process.

Rule 19

As per the Disability Act, 1955 (sic), a State Executive Committer has already been constituted vide Resolution No. 4062 dated 5.8.96. As all the members of the committee have already completed the term of three years, the reconstitution of the committee is under process.

The last meeting of the State Executive Committee was held on 8.6.2002 under the chairmanship of Commissioner-cum-Secretary, Social Welfare, Govt. of Bihar, Patna.

Rule 25

As per the Disability Act, 1995, a block wise survey of disabled persons is being conducted by the State Govt. For this purpose the State Govt. has provided Rs. 20.20 lakhs in its budget for the year 2002-03.

To prevent the occurrence of disabilities, the door to door Pulse-polio drive and Vitamin d "A" Campaign has been launched by the State Govt, with the help of World Bank. At regular intervals, the doses of Polio vaccine vitamin "A" is being administered to the children.

Awareness Campaigns for General hygiene, health and sanitation have been launched by the State Govt. In this work, the para medical staff and Aganwadis Sevikas/Sahayikas have been engaged.

The health deptt. has been asked to act upon the other provisions of this rule.

Rule 26

Three blind High Schools and five Deaf and Dumb middle schools are being run by the State Govt. where students are provided free education, lodging, fooding, clothing, books and medical facilities.

To impart vocational training to the disabled students, a vocational training institute is also being run by the State Govt.

Besides these, the Education Deptt. of the State Govt. has been requested to take steps to implement the provisions made in this rule.

An stipend of Rs. 40/ P.M./ Rs. 200/- P.M. and Rs. 250/- P.M. is given to each and every disabled students studying in class I to VIII, Class IX to graduate classes and post graduate classes respectively from the level of the State" Govt.

Rule 32

The personnel and administrative Deptts. of the State Govt. has been asked to identify the posts to be reserved for persons with disabilities and this work is under process.

Rule 33

The (sic) percent posts have already been reserved in the Govt. serv. ices for persons with disabilities by the State Govt. vide resolution No. 251 dated 18.10.2000.

Rule 34.

A special employment exchange has been established at Patna by the State Govt. for disabled persons.

Rule 39

The Education Deptts. has been asked to ensure the reservation of not less than three percent seats for persons with disabilities in all Govt. educational institutions and other educational institution receiving aid from the Govt.

Rule 42

The aids and appliances are provided to persons with disabilities by District Rural Development Agencies and N.G.O.'s under AIDEP Schemes.

Rule 43

The Revenue Deptts. of the State Govt. has been asked to ensure for preferential allotment of land at concessional rate to person with disabilities for certain purpose.

Rule 45

The concerned Deptts. and authorities have been asked to make rovisions for barrier free construction at all the public places for easy access to persoos with disabilities.

A general notice has been published in daily news papers to act upon this rule as soon as possible.

Rule 60

The Director, Social Welfare has been notified as Commissioner for persons with disabilities.

All District Magistrates of the State are going to be notified as Additional State

Commissioner, disabilities.

Rule 66

For the rehabilitation of the persons with disabilities, setting up of five District Rehabilitation Centre is under process and the State Govt. is deciding to entrust this work to the Indian Red Cross Society, Bihar Branch and for this, necessary formalities are being processed in consultation with the IRCS, Bihar Branch.

The State Govt, has declared the Bihar State backward classes Finance Corporation as State Channelising Agency, for National Handicapped Finance Development Corporation for providing loans to persons with disabilities for their self employment and rehabilitation. The State Govt. is also taking decision to make the Bihar State Women Development Corporation as the additional State Channelising Agency for the National Handicapped Finance Development Corporation.

8. The reference to rule is accepted as a mistake. Instead of "frule" it should read as "section". This alone perhaps shows that the State has yet to be conscious of the Act when dealing with the Act or the Rules.

9. The Court took up the items one by one. In the net result what has come out is that nothing concrete has been done. The note itself recites that instructions are being given to the departments concerned or the District Magistrates concerned. A faint plea was put up before the Court that departments are not responding. This is no answer for the High Court. It may be for the Chief Secretary or the Chief Minister. A senior bureaucrat, a Secretary to the State Government is himself certifying that the bureaucracy below him does not respond. Did he take the responsibility and the obligation to ensure that it does? Has the administration below him collapsed?

10. The class of persons to which enactment addresses itself is the physically weak and unfit; those who cannot defend themselves but the law comes to their aid. Whether they are blind or lame or those who cannot hear, they are the responsibility of the State. This enactment with a social objective is meant to mitigate hardship as a social welfare programme for the ultimate goal a welfare State. Concrete steps have to be taken. The High Court has a case of a person covered under the Act, which has generated six cases. But the court has also made it clear that this matter will also have to be dealt with for the benefit of all the disabled in the State as a class, not one person. The reason is simple. If the State will not have determination to implement the provision of the Act, this one person before the Court will not get the benefits under the Act.

11. The Court has the record of the State before it. It does not present any better picture than the apprehension expressed by the Court in its order dated 23.8.2002. In fact, the file begins with five star conventions being attended by the officials in the national capital at prestigious institutions. Five star conventions whose luxury was savoured for the day of the convention.

Thereafter, the disabled or the Act meant nothing to the State of Bihar, until the High Court sent a reminder.

12. The court is adjourning this matter for three weeks. The court will expect a full plan, in letter and spirit, to implement the Act.

13. Let a copy of this order along with copy of order dated 23.8.2002 be sent to the Chief Minister through the State Counsel.