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**(2009) 08 SIK CK 0001**  
**In the Sikkim High Court**

Md. Nasiruddin Ansari

APPELLANT

Vs

National Hydro-Electric Power Corporation and Others

RESPONDENT

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**Date of Decision :** 27-08-2009

**Acts Referred:**

**Citation :** (2010) 125 FLR 1007 : (2010) 2 LLJ 273 : (2010) 3 SLR 14

**Hon'ble Judges :** Aftab H. Saikia, C.J.; A.P. Subba, J

**Bench :** Division Bench

**Final Decision :** Dismissed

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## Judgement

Aftab H. Saikia, C.J.—Heard Mr. S.K. Sarraf and Mr. S.K. Kharka, learned Counsel for the petitioner. Also heard Mr. A.K. Upadhyaya, learned senior counsel assisted by Mr. Ashim Chettri, learned Counsel representing the respondents Nos. 1, and 3 and Mr. J.B. Pradhan, learned Additional Advocate General with Mr. S.K. Chettri, learned State counsel appearing for the respondents Nos. 4, 5 and 7 as well as Mr. D.K. Singh, learned Counsel for respondent No. 6.

2. The petitioner, having suffered permanent disability due to amputation of his left hand on being electrocuted with loss of earning Capacity of 85% while working under a contractor, i.e. P.W.6 who was in the service with the principal i.e. the respondents Nos. 1, 2 and 3, National Hydro-Electric Power Corporation (for short, "NHPC"), has instituted this writ proceeding basically against NHPC alleging that NHPC has violated the provisions of the Persons with Disabilities (Equal "Opportunities, Protection of Rights and Full Participation) Act, 1955 (for Short, "the Act").

3. The petitioner has also questioned in the instant writ petition the validity of the judgment and order dated March 26, 2008 passed by respondent No. 4, the Chief Commissioner for Persons with Disabilities, New Delhi (for short, "the Chief Commissioner") complaining violation of principle of natural justice.

4. For vindication of the grievances, as narrated in this writ petition, the petitioner has made the following prayers:

(a) A Writ in the nature of mandamus directing the respondent Nos. 1, 2 and 3 to properly implement Section and comply with Section 33 of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995.

(b) A Writ in the nature of Prohibition directing the respondent Nos. 4 to 7 to kindly take into judicial consideration the complaint of your petitioner herein and to dispose of the same after duly complying with the principles of natural justice.

(c) A Writ in the nature of mandamus, or any other appropriate Writ, directing the respondent Nos. 4 to 7 herein to properly implement, enforce and administer the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995, and the Sikkim Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Rules, 2001 in accordance with Law; and/or pass such other order/orders and/ or direction/directions as to Your Lordships may deem fit and proper in the interests of justice."

5. All the respondents, including the private respondent, have appeared in terms of the notices served upon them and the main respondent Nos. 1, 2 and 3 i.e. NHPC have also filed their counters.

6. The petitioner has also annexed to this writ petition the judgments and orders dated March 26, 2008 and February 18, 2006 passed by the learned Chief Commissioner and the learned Commissioner for Workmen's Compensation, Sikkim, Gangtok respectively (Annexure P-5 and P-6 to the writ petition respectively).

7. On meticulous examination and scanning of the averments made in the pleadings and the judgments and orders as indicated above including the relevant documents placed on record, it transpires that the petitioner was not an employee under NHPC rather he was working as an employee of contractor so engaged himself with NHPC. Though the petitioner has mentioned that he was working under respondent No. 6 Premchand Agarwal, the learned Counsel appearing for Premchand Agarwal has stoutly and vehemently objected to such employment to the petitioner under him.

8. In this regard, when the learned Counsel for the petitioner is being pointedly asked, he is not in a position to show any such documents or papers to substantiate the petitioner's claim that he was ever working under respondent No. 6.

9. The clear stand of NHPC is that since the petitioner was not an employee under them, he is not entitled to get any such relief under the Act against them as claimed in the instant writ petition.

10. The facts in brief may, for proper resolution of the dispute, be noted herein. It is alleged by the petitioner that while working as an electrician With NHPC under the contractor i.e. respondent No. 6, he got electrocuted on January 19,

1993. As a result of such electrocuted injury, his left hand was amputated on January 20, 1993.

11. The petitioner, seeking adequate compensation, approached the Court of Commissioner for Workmen Compensation, Sikkim, Gangtok by filing a Miscellaneous Case No. 1/2002 in the year 2002 and the learned Commissioner by his order dated February 18, 2006, as mentioned above, fixing the liability upon NHPC being the principal, in terms of Section 12 of the Workmen's Compensation Act, 1923 (for short "the Compensation Act") awarded a compensation to the tune of Rs. 1,08,013/- with a direction to make the payment within 30 days.

12. It is stated on behalf of the petitioner that he has got the awarded amount. It is also submitted on behalf of the petitioner that against the order of compensation dated February 18, 2006 passed by the Commissioner, no appeal has been preferred in the Hon"ble High Court or any other appropriate forum.

13. Meanwhile, the Chief Commissioner constituted Under the Act, issued a public notice on February 7, 2007, as reflected in the Annexure P-1 appended to the writ petition, for holding a Mobile Court for redressal of grievances of Persons with Disabilities fixing the date on February 24, 2007 at the Community Hall, Namchi in South District of Sikkim.

14. Pursuant to such public notice, the petitioner also appeared before the Chief Commissioner with his grievances. It is complained in the writ petition that the Chief Commissioner held the hearing of the case of the petitioner being numbered as Case No. 3781/2007 at New Delhi on March 17, 2008 ex parte instead of Sikkim and passed the judgment and order dated March 26, 2008 at New Delhi without hearing him.

15. In the said case before the Chief Commissioner, NHPC filed replies against the show cause issued by the Chief Commissioner and in their reply NHPC took the categorical stand that the petitioner was never an employee under NHPC and there was no, employer, and employee relationship between the petitioner and NHPC. According to them, he was an employee of one contractor namely Premchand Agarwal engaged by Ranjit Power Station by NHPC Limited and that being the position, the complainant was not entitled to get any relief under the Act.

16. However, the Chief Commissioner had, rejecting the petitioner's claim ex parte, made the following observation in his judgment and order dated March 26, 2008:

6. In view of the above submissions of the complainant, neither of the requests of the complainant can be enforced. However, keeping in view the fact that the complainant acquired disability while in employment of the contractor, who was working for the respondents, the respondents are advised to consider the complainant and give him preference while making recruitment against the

reserved vacancies in future. The matter is disposed of accordingly.

17. Mr. Upadhyaya, the learned senior counsel appearing for NHPC, has strongly argued that the petitioner was not an employee under NHPC and as such the provisions of the Act especially either Section 33 which provides:

Reservation of posts.--Every appropriate Government shall appoint in every establishment such percentage of vacancies not less than three per cent for persons or class of persons with disability of which one per cent each shall be reserved for persons suffering from--

(i) blindness or low vision;

(ii) hearing impairment;

(iii) locomotor disability or cerebral palsy, in the posts identified for each disability:

Provided that the appropriate Government may, having regard to the type of work carried on in any department or establishment, by notification subject to such conditions, if any, as may be "specified in such notification, exempt any establishment from the provisions of this Section."

or Section 47, which stipulates:

Non-discrimination in Government employment - (1) No establishment shall dispense with, or reduce in rank, an employee who acquires a disability during his service:

Provided that, if an employee, after acquiring disability is not suitable for the post he was holding, could be shifted to some other post with the same pay scale and service benefits:

Provided further that if it is not possible to adjust the employee against any post, he may be kept on a supernumerary post until a suitable post is available or he attains the age of superannuation, whichever is earlier.

(2) No promotion shall be denied to a person merely on the ground of his disability:

Provided that the appropriate Government may, having regard to the type of work carried on in any establishment, by notification and subject to such conditions, if any, as may be specified in such notification, exempt any establishment from the provisions of this Section.

cannot be enforced by the petitioner against NHPC.

18. Despite our repeated queries, the learned Counsel appearing for the petitioner is unable to show any such relevant or effective materials as regards his employment either under respondent No. 6 or NHPC.

19. We have also closely perused the entire records that being made available

before us. We do not find therein any such documents whatsoever to show about the engagement of the petitioner either with the contractor namely respondent No. 6 or NHPC.

20. That being the position, having considered the entire matter thoroughly; we are of the considered view that the petitioner is not entitled to get any relief under the Act as prayed for.

21. In view of what has been stated and observed hereinabove, this writ petition appears to be bereft of any merit and the same stands dismissed accordingly.

22. However; before parting with the judgment, keeping in view the permanent disablement of the petitioner, who is personally present before this Court at the time of hearing and also considering his poor economic condition, we would like to reiterate, in the interest of justice, the observation made by the Chief Commissioner in paragraph 6 of the judgment and order dated March 26, 2008 as quoted above and accordingly we say that the respondents, i.e. NHPC may consider the case of the petitioner for his recruitment against any such reserved vacancies under the Act.

23. We hope and trust that such consideration shall be undertaken at the earliest possible date as and when such vacancy arises. The petitioner is directed to make a detailed application ventilating all his grievances so narrated in this writ petition before the Competent Authority, particularly respondent No. 2, the Chief Engineer, Ranjit Hydro-Electric Power Corporation, South Sikkim within a period of one month from today.

24. Be it mentioned that the dismissal of the writ petition shall not be bar to consider the case of the petitioner as indicated above.