

(2015) 09 SC CK 0127

In the Supreme Court Of India

Case No : C.P.(C) No. 499 of 2014 in C.A. No. 9096 of 2013

National Federation of The Blind

APPELLANT

Vs

Sanjay Kothari

RESPONDENT

Date of Decision : 01-09-2015

Acts Referred:

Constitution of India, 1950 — Article 129
Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 — Section 33, 47, 47(2)

Citation : (2015) 4 RCR(Criminal) 297 : (2015) 9 SCALE 611

Hon'ble Judges : Ranjan Gogoi, J;N.V. Ramana, J

Bench : Division Bench

Final Decision : Disposed Of

Judgement

1. This contempt petition has been filed alleging willful disobedience of the directions contained in Para 54 of the judgment and order dated 8th October, 2013 passed by this Court in Civil Appeal No. 9096 of 2013 titled as Union of India and Anr. v. National Federation of the Blind and Ors. The operative directions contained in the aforesaid paragraph of the judgment of the Court dated 8th October, 2013 are as follows:

(i) We hereby direct the Appellant herein to issue an appropriate order modifying the OM dated 29.12.2005 and the subsequent OMs consistent with this Court's order within three months from the date of passing of this judgment.

(ii) We hereby direct the "appropriate Government" to compute the number of vacancies available in all the "establishments" and further identify the posts for disabled persons within a period of three months from today and implement the same without default.

(iii) The Appellant herein shall issue instructions to all the departments/public sector undertakings/Government companies declaring that the non observance of the scheme of reservation for persons with disabilities should be considered as

an act of non-obedience and Nodal officer in department/public Sector undertakings/Government companies, responsible for the proper strict implementation of reservation for person with disabilities, be departmentally proceeded against for the default.

We have heard Shri S.K. Rungta appearing in person, Shri R.S. Suri, learned senior Counsel for the intervenor, Mr. Mukul Rohtagi, learned Attorney General as well as Mr. Ranjit Kumar, Learned Solicitor General.

2. Shri Rungta has primarily urged that contempt of this Court's order has been committed by the Respondent by not making provision for reservation in promotion and also by not identifying the posts against which the persons with disabilities can be appointed and in not making such appointments. Shri Rungta has submitted that notwithstanding the efflux of a long period of time since the Act came into force and the directions of this Court dated 8th October, 2013, a large number of vacancies remained unfilled and even those vacancies which have been filled up constitute a negligible percentage of persons with impaired vision. Drawing the attention of the Court to paragraph 51 of the judgment, Shri Rungta submitted that this Court had clearly and categorically held that the provisions of the Act with regard to reservation would apply in the matter of promotion; however, no steps in this regard have been taken by the Union till date. All such acts and lapses on the part of the Union are in clear breach of this Court's order and, therefore, the appropriate authority of the Union including the impleaded Respondents are liable to be dealt with under the Contempt of Court's Act and Article 129 of the Constitution.

3. Shri Suri, learned senior Counsel appearing for the intervenor has submitted that in a writ petition before the Bombay High Court dealing with the issue of reservation in promotion, orders were passed holding that the decision of this Court in Union of India and Anr. v. National Federation of the Blind and Ors. (supra) provided for reservation in promotion and the special leave petition by the Union of India against the Bombay High Court judgment has been dismissed. In such circumstances, the issue with regard to reservation in promotion, according to Shri Suri, is no longer open and the Union is duty bound to give effect to such reservation.

4. Controverting the submissions advanced by Shri Rungta and Shri Suri, the learned Attorney has drawn our attention to Section 47 of the Act - The Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 which is in the following terms:

47. Non-discrimination in Government employment

.....(2) No promotion shall be denied to a person merely on the ground of his 20 disability:

Provided that the appropriate Government may having regard to the type of work carried on in any establishment, by notification and subject 25 to such

conditions, if any, as may be specified in such notification, exempt any establishment from the provisions of this Section.

5. The learned Attorney General has contended that apart from the aforesaid, there is no other provision in the Act dealing with promotions. On the strength of Section 47(2) it cannot be contended that the Act provides for reservations in the matter of promotion. On the Other hand, Shri Ranjit Kumar, learned Solicitor General has placed before the Court the additional affidavit filed on behalf of the Union of India dated 29.05.2015 to show the steps taken by the Union to fill up over 15,000 identified vacancies. In this regard the learned Solicitor General has placed before the Court a compilation of the latest position which would go to show that 5629 posts earmarked for persons with disabilities have been so filled up whereas steps have been taken for filling up of over 6,000 posts whereas in respect of another about 3400 posts, the recruitment process is likely to be initiated shortly. The learned Solicitor General has further submitted that the Union is committed to fill up the 6,000 posts for which process has been initiated by the end of December, 2015 and for the 3400 posts for which process is yet to be initiated by February, 2016. Insofar as reservation in promotion is concerned, it is argued by the learned Solicitor General that nowhere in the judgment the Court had any occasion to deal with the said issue; neither the directions issued by this Court including those in paragraph 51 are capable of being construed in the manner in which Shri Rungta and Shri Suri have argued.

6. At the outset the grievance raised by Shri Rungta with regard to low representation of visually handicapped persons in the identified/earmarked posts may be taken up. We have noticed that in the additional affidavit of the Union dated 29.05.2015, it has been stated that the Chief Commissioner for Disabilities had already been associated by the Union in the matter of working out the percentage of vacancies and that the Chief Commissioner for Disabilities has in fact raised a query with regard to the low representation of persons with impaired vision in the earmarked vacancies as against persons who are orthopaedically handicapped or hearing impaired persons. This is an issue which the Union would take up with the Chief Commissioner for Disabilities and further action in the matter of filling up posts will be in consultation with the said authority.

7. We have considered the rival submissions advanced on behalf of the parties on the merits of the matter. In view of the compilation placed before the Court by the learned Solicitor General, details of which have been noted and the unambiguous and unequivocal stand taken with regard to the commitment of the Union to fill the posts for which process has been started or is to start soon, as indicated above, we cannot hold that there is any willful disobedience of the order of this Court. Filling up of over 15,000 posts is a task of considerable magnitude involving several departments/ministries/establishments requiring different/separate process of recruitment. Induction of persons with disabilities in such large numbers to which the Union is committed, in our considered view, is a

positive step undertaken in tune with the constitutional philosophy and the judgment of this Court. In the above circumstances, we will have no occasion to issue any further direction in the matter and we accordingly close the aforesaid chapter in the light of the undertaking and commitment given on behalf of the Union of India before this Court.

8. Insofar as the reservation in promotion is concerned, the issue can be viewed from the perspective of the questions that had confronted the Court in Civil Appeal No. 9096 of 2013 as set out in paragraph 24 of the order of the Court which is to the following effect:

24. Two aspects of the impugned judgment have been challenged before this Court:

(a) The manner of computing 3% reservation for the persons with the disabilities as per Section 33 of the Act.

(b) Whether post based reservation must be adhered to or vacancy based reservation.

9. Para 51 of the order on which reliance has been placed by Shri Rungta must be viewed in the context of the questions arising for answer before the Court i.e. the manner of computation of vacancies in case of Groups A, B, C and D posts. All that the Court in the aforesaid paragraph 51 has held is that the manner of such identification must be uniform in the case of all the groups viz. A, B, C and D. Nothing beyond the above should be read in paragraph 51 of the Courts' order as aforesaid.

10. Coming to the point urged by Shri Suri with regard to the dismissal of the Union's special leave petition all that needs to be noticed is that the order dated 12.09.2014 dismissing SLP(C) No...../2014 (CC No(s). 13344/2014) is an order of dismissal simpliciter. In the absence of any reasons, we cannot speculate as to the basis for the dismissal ordered by this Court.

11. Having answered the questions arising for determination in the manner indicated above we will have no reason to keep this contempt petition pending any further. The contempt petition is accordingly disposed of in terms of our conclusions and observations as above. Having answered the issue of reservation in promotion in the manner indicated above, the application for clarification filed by the Union of India with regard to the said issue would stand answered in the above terms.