

(2014) 01 GUJ CK 0139

In the Gujarat High Court

Case No : Special Civil Application No. 7999 of 2001

Yusufbhai Hatimbhai Kachwala

APPELLANT

Vs

Municipal Commissioner

RESPONDENT

Date of Decision : 24-01-2014

Acts Referred:

Constitution of India, 1950 — Article 10, 14, 16, 21, 226

Citation : (2014) 3 GLH 472 : (2014) 2 GLR 985

Hon'ble Judges : Rajesh H. Shukla, J

Bench : Single Bench

Advocate : Roopal R. Patel, Advocate for the Appellant; H.S. Munshaw for Respondent Nos. 1 to 3 and Kkashyap Pujara, A.G.P. for Respondent No. 4, Advocate for the Respondent

Final Decision : Partly Allowed

Judgement

Rajesh H Shukla, J.—Present petition has been filed under Arts. 14, 16, 21 and 226 of the Constitution of India for the prayer that appropriate writ, order or direction may be issued directing the respondent to allot small plot of land in the vicinity of his residence and has prayed a consequential relief. The facts of the case briefly summarized are that the petitioner has claimed that he has been meted out by an arbitrary and discriminatory treatment and has been deprived of for allotment of the space for running telephone booth, which has resulted into violation of the fundamental rights as guaranteed under Arts. 14, 16 and 21 of the Constitution of India. It is contended that the petitioner has passed S.S.C. Examination and met with an accident in the year 1993 and received serious injuries on his right leg. After treatment, which lasted for more than 2 years he has recovered but has suffered disablement to the extent of 54%. The certificate of disability is also produced. It is the case of the petitioner that even after the disability, he is doing his work of plying rickshaw, but he had got pain in the spinal cord and as per the medical advice he had to leave the vocation of driving rickshaw to earn his livelihood. Therefore, he has been advised to start S.T.D./

P.C.O. booth, which may also help in earning livelihood. Therefore, he has requested and the respondent No. 3 recommended for him the allotment of S.T.D./P.C.O. booth. Thereafter, also he gave legal notice and had also approached Social Security Department (Social Defence Department). It is specifically contended that the persons with lesser percentage of disability have been allotted such booths, which is stated in Para 6 of the petition. Therefore, he has claimed that appropriate direction may be issued as he has been discriminated in the allotment of such booths on the ground of discrimination and equal opportunity. Further, though reference is not made in the petition, learned Advocate Ms. Roopal Patel for the petitioner has referred to the provisions of Persons with Disability (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 ("the Disability Act" for short).

2. The affidavit-in-reply has been filed by the respondent No. 4, the Deputy Director of Social Defence Department and it has been contended that Municipal Commissioner has allotted 100 places for rehabilitation of educated unemployed handicapped/blind persons for running S.T.D./P.C.O. booths. It is stated that applications were invited by the Social Defence Department through advertisement in the newspaper and 424 applications were received. The committee was constituted for allotment of such S.T.D./P.C.O. booth to rehabilitate the unemployed educated handicapped/blind persons. It is specifically stated that the Committee has framed the policy as stated in the reply that the persons having 80% disability would be entitled for allotment of S.T.D./P.C.O. booth. It is also stated that 158 applications had been taken into considerations and 99 applicants having 80% and above disability, have been selected for such allotment. The recommendation has been made by the Social Defence Officer to the Municipal Commissioner vide communication at Annexure-C. It is also stated that the application of the petitioner has not been received by the Social Defence Department within the stipulated time and the present petition has been filed in absence of making any application. It is specifically contended that a person who is having 54% disability is not entitled for allotment of any such booth, as it would be against the norms and the regulations. There is further affidavit-in-reply filed by respondent No. 4 dated 12-11-2009 clarifying the order of the Hon''ble Court dated 10-2-2009. It is also contended that:

There was only 100 places, against 424 applicants. I further say and submit that out of 100 places, 91 places have been already allotted to the respective applicants who are having disability of 80% or more than 80%. I respectfully say and submit that so far as remaining 9 places are concerned, they are to be filled up from the waiting list as per the percentage of disability. I further say and submit that letter dated 5-1-2004 is already annexed with the affidavit-in-reply filed by the deponent herein at page No. 41 and on the next page i.e. page No. 42 number of applications in the waiting list are 36.

3. It is stated in Para No. 3 of the further affidavit-in-reply by respondent No. 4 that:

I respectfully say and submit that Nodal Agency namely Blind People Association (India) addressed a letter dated 6-3-2007 to the deponent herein which it is stated that out of 91 allotted places the Ahmedabad Municipal Corporation has filled up only 10 places and the list of the 10 applicants and the place are also mentioned in the aforesaid letter dated 6-3-2007. I further say and submit that out of aforesaid 10 allotted applicants who have been allotted places, 3 applicants have refused for the same. I further say and submit that so far as aforesaid 3 places are concerned, the office of the deponent herein has addressed letter dated 7-3-2007 to the Ahmedabad Municipal Corporation proposing name of the 3 applicants out of which 2 have been proposed from the waiting list and 1 is proposed as per the recommendation of the Gujarat Vigilance Commissioner. Copies of the letter dated 6-3-2007, addressed by the Blind People Association (India) along with the letter dated 7-3-2007 addressed to the Commissioner, Ahmedabad Municipal Corporation by the deponent herein are annexed herewith and marked as Annexure-R-I. I respectfully say and submit that so far as identification of the place of telephone booth is concerned, the same is to be carried out by the Ahmedabad Municipal Corporation and the same is to be allotted by the Chairman of the said Committee i.e. Commissioner, Ahmedabad Municipal Corporation.

4. Heard learned Advocate Ms. Roopal Patel for the petitioner, learned Counsel Shri H.S. Munshaw for respondent Nos. 1 to 3 and learned A.G.P. Shri Kkashyap Pujara for respondent No. 4.

5. Learned Advocate Ms. Roopal Patel for the petitioner has submitted that as stated in the petition, the petitioner was plying rickshaw, and thereafter, he met with an accident. She submitted that as a result of the said accident and the injuries, he has suffered 54% disability, for which disability certificate has been also produced. She submitted that the petitioner had tried his vocation even after injuries but, he has been advised that he should do light work. Therefore, he had applied for such telephone booth through Social Defence Department. She has referred to the details and submitted that there have been allotments made by the Committee, which is referred. However, the respondent authority have not considered the case of the petitioner, which has led to filing of the present petition. She pointedly referred to the averments with regard to the allotments of such space of telephone booths to other people with lesser disability. Therefore, as the representation has not been decided, the present petition has been filed and the same may be allowed. She has submitted that it would amount to violation of the fundamental rights of equality before law, inasmuch as, though the petitioner is fulfilling the criteria as a handicapped person, he has not been considered at all by the Committee, which has laid down some criteria that the people with 80% disability may be considered. She submitted that the policy or the decision is to provide employment/opportunity to such disabled/blind persons and the petitioner is also fulfilling the criteria. She has, therefore, submitted that though the petitioner is disabled, which has been medically certified, he cannot be kept out of the consideration on the ground that

the percentage of disability suffered by him is less. She has also stated that once the broad guidelines had been laid down, it will not be open for the Committee to further lay down any criteria, by which the eligible persons can be deprived of the right. Therefore, the present petition may be allowed.

6. Learned Counsel Shri H.S. Munshaw for respondent Nos. 1 to 3 has stated that there is no discrimination as the Corporation has given advertisement, pursuant to such welfare scheme to provide some kind of employment to the handicapped/blind persons to enable them to earn livelihood. Therefore, the public advertisement has been given, and based on such advertisement, the Committee was appointed by respondent No. 4, which has scrutinized the relevant evidences including the percentage of disability. He has submitted that as per the policy, the list has been forwarded to the Director of Social Defence Department and they have processed the applications for such allotment, where the Corporation has no say. He, therefore, submitted that it is the Committee, which has taken the decision and applications have been processed and verified based on the relevant material. He has further submitted that like any other case, when number of applications are received, they are required to be scrutinized and some criteria is fixed out of the eligible candidates for the purpose of further selection. He submitted that assuming in case of employment, everybody who is eligible may apply, but depending upon the merits of the case and having the higher percentage, the candidate is selected. He, therefore, submitted that though every person with a disability up to certain percentage may be eligible and may apply, however, when such applications are more as compared to number of booths are available, as stated in the affidavit-in-reply by respondent No. 4, they had appointed a Committee which has scrutinized all the applications and the allotments have been made. He submitted that the persons with higher disability have been selected for allotment, which cannot be said to be arbitrary or discriminatory. He also submitted that in fact, the petitioner who has not applied for and making grievance, as if he has applied within a stipulated time and his case may be considered, which cannot be said to be deprivation of his fundamentals rights guaranteed under Art. 14 of the Constitution of India. He, therefore, submitted that the petitioner may approach the respondent No. 4 for redressing his grievance and his case may be considered with others. He also referred to the Government Resolution dated 11-9-2002 with regard to the policy and submitted that it cannot be said that there is any violation of such policy.

7. Learned A.G.P. Shri Kkashyap Pujara for respondent No. 4 has referred to the papers as well as the affidavit-in-reply filed on behalf of respondent No. 4. He has also referred to the Government Resolution dated 11-9-2002, which provides for such policy regarding rehabilitation of the unemployed educated handicapped/blind persons by allotment of S.T.D./P.C.O. booths to earn livelihood. However, learned A.G.P. Shri Pujara submitted that as stated in the affidavit-in-reply, the Committee has been constituted, which has considered all the applications, which have been received, and thereafter, the decision has been taken, which cannot be said to be arbitrary. He also submitted that the petitioner has not made any

application. He further submitted that in fact if the persons, who have been allotted, are having more disabilities, and therefore, they have been allotted such space for the booths. He, therefore, submitted that no grievance can be made by the petitioner. He pointedly referred to the communication by the Social Defence Officer to the Municipal Commissioner, consists of different details with regard to number of applications were 157, out of which 91 applicants have been further bifurcated with all the type of disabilities and also the percentage of disability. He pointedly referred to these details and submitted that persons with 85% disability and persons with 80% disability have been allotted space and there are 13 places, which have been left, have been given to the persons who have disabilities up to 80%. He also stated that as far as the persons having disability of 80%, the allotment has been made to their respective places of residences. He, therefore, submitted that the present petition may not be entertained.

8. In view of these rival submissions, it is required to be considered whether the present petition can be entertained or whether the petitioner deserves a fair treatment in the matter of allotment of S.T.D./P.C.O. booth, in light of the Disability Act, as discussed above and also the human right convention.

The universal declaration of Human Rights has led to other treaties and covenants including the convention on the rights of persons with disabilities. The underlying object was to have some legal framework and the convention on the rights of persons with disabilities made an effort is in that direction. Article 10 provides for right to life. State parties reaffirm that every human being has the inherent right to life and shall take all necessary measures to ensure its effective enjoyment by persons with disabilities on an equal basis with others. Thus, an endeavour is made to promote and protect the human rights of persons with disabilities in civil, cultural, economical, political and social life. Instead of that the persons with disabilities face barriers and to make such convention effective the obligations are cast on the respective governments that the persons with disabilities have the rights to full and equal enjoyment of all human rights and fundamental freedom by all persons with disabilities. As a result thereof, to protect the rights of disabled persons in India Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 has been made by the Parliament.

9. The Hon'ble Apex Court has made observation in a judgment reported in Javed Abidi Vs. Union of India and Others, , providing that the persons with locomotor disability should be granted some concession. In this background, when there is also a policy as stated above, to provide space for running the stall to earn livelihood, the respondent authorities have also through the Social Welfare Department has made the policy for rehabilitation and employment to such persons by allotment of S.T.D./P.C.O. booth. Therefore, it is not that there is no such policy or awareness, but rather it is a manner of implementation or the procedure which requires more sensitive approach in implementation of such programme or the policy. The contentions which have been raised that the

persons with disability up to 80% are considered and on the basis of the details, the allotment has been made on a scrutiny of the records including the percentage or the extent of disability. Therefore, the case of the person like the petitioner could be considered on the same footing, if he is fulfilling the eligibility criteria.

Therefore, the submission made by learned Advocate Ms. Roopal Patel for the petitioner that the respondents or the Committee cannot lay down the criteria, which cannot be accepted inasmuch as, though the broad guidelines may have been laid down for the avowed object of implementation of some policy, at the same time, implementation or consideration of the eligible candidates which are more in number than availability of the space, suitable measures can be taken. Thus, it is not the matter of entitlement, but rather priority and eligibility. The petitioner who is also having disability, would be entitled under the policy, as discussed above read with the statutory provisions and human right declaration, but when the State or the Authorities are evolving some policy in furtherance of such object, they may have to evolve some criteria for the implementation of such policy.

10. Therefore, the moot question is that if the person having disability of more than 50% is eligible to claim the benefit of such policy, the fixation of criteria by the committee at higher percentage of disability i.e. 80% in the present case, can be regarded as illegal or arbitrary. As stated above, the person would be eligible with lesser percentage of disability, as required under the law i.e. 50% and however, when there are more persons forming a class claiming the benefit, the same has to be rationalized on the basis of some parameters or the criteria. Therefore, the committee may have to consider the higher percentage of disability as one of the relevant factors or the criteria, according to which such allotment of S.T.D./P.C.O. booth or the benefit can be given. At the same time, the authority also have to consider that when the person is undisputedly falling with that group or the category, disability percentage and the further criteria which is decided by them, the benefit should be extended as far as possible. Therefore, if the person with the disability at the higher percentage (80%) are not claiming, then the allotment can be made to such eligible persons with lesser percentage of disability, instead of keeping such S.T.D. booth or space vacant without allotment. It is required to be mentioned that it is a matter of priority or the arrangement in order of higher percentage of disability and it is not the question of clarification of eligibility. The person with disability is qualified and eligible to get a benefit under the policy on equal footing, once it is shown that the necessary certificate that he has disability as required under the statutory provisions like the Disability Act.

11. Thus, in this background, the authorities are required to consider the case of persons like the petitioner having lesser disability or different kind of disabilities with sensitivity and flexibility, instead of going by any rigid rule, formula or criteria. At the same time, there may not be any discrimination or arbitrariness,

some parameters have to be fixed for such relaxation while deciding such policy. Therefore, as referred by learned Counsel Shri Munshaw with regard to the procedure when the allotment of P.C.O. booth or the space are left without any allotment, it could have been allotted to the persons with lesser percentage of disability like the petitioner, instead of keeping it vacant or denying them for any such opportunity.

12. The respondents, are therefore, directed to consider the case of the petitioner in light of the Government Resolution and the policy for allotment of the space for the S.T.D./P.C.O. booth near to his place of residence as far as possible. As could be seen from the record and the submissions that there are some places, which have been left, and the case of the petitioner can also be considered with sensitivity and humanitarian approach by the respondents, provided he is fulfilling the criteria for such allotment, as per the advertisement. It is also required to be added that the Social Security Department (Social Defence Department) may also be considered the case of the petitioner on more sympathetic and humanitarian approach with utmost flexibility permissible at their end, which would act in furtherance of their own policy, regarding such rehabilitation of such disabled persons. The petition itself may be treated as representation and the learned Advocate for the petitioner is directed to hand over the copy of the said petition to both learned A.G.P. for respondent No. 4-State as well as learned Counsel Shri Munshaw for respondent Nos. 1 to 3, who in turn will impress upon their respective clients to consider the same, preferably within three months, from receipt of this order, with humanitarian approach.

13. The respondent No. 4 is also directed to take assistance from the Blind People Association, Vastrapur for implementation of such policy as the persons with disability would include different types of disabilities like blindness, locomotor disability etc. The Registry is, therefore, also directed to send a copy of this order to the Director, Blind People Association, Vastrapur who intturn will take positive steps to co-operate with the respondent No. 4 in assisting and implementing the policy in public interest. With the aforesaid observations and directions, the present petition stands allowed to the aforesaid extent. Direct Service is permitted.