

IN THE HIGH COURT OF DELHI AT NEW DELHI

SUBJECT : Disabilities Act, 1995

Date of Decision: April 16, 2009

W.P.(C) 50/2009

SAMBHAVANA ORGANIZATION Petitioner
Through: Mr. Rajan Mani and Mr. R. Kumar, Advocates.

versus

RASHTRIYA VIRJANAND ANDH KANYA VIDYALAYA SOCIETY &
ANR. Respondents
Through: Mr. Rajiv Ghawana, Advocate for
Respondent No. 1.
Mr. Darpan Wadhwa, Advocate for
Respondent No. 2.

CORAM:
HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE NEERAJ KISHAN KAUL

NEERAJ KISHAN KAUL, J. (ORAL)

1. The petitioners claim to be a group of visually impaired disabled persons who are actively working for the cause of persons with disabilities in matters of employment, education and accessibility. The present petition has been filed against the non-implementation by the respondents of the relevant provisions of The Rehabilitation Council of India, Act 1992 which require that the special teachers for disabled students, being rehabilitation professionals possess the qualification of degree or diploma in special education recognized by the Rehabilitation Council of India (hereinafter referred to as 'RCI') and are registered with the RCI. It is stated in the petition that pursuant to advertisement dated 27th February, 2008, the respondents have, in September, 2008, appointed the teachers without the said qualifications in respondent No. 1's school for visually impaired children in direct contravention of the orders of the Deputy Chief Commissioner for Persons with Disabilities dated 2nd April, 2008, 8th May, 2008 and 6th August, 2008. It is also the grievance of the petitioners that respondent No. 1 has not implemented the relevant provisions of the Persons with Disabilities Act, 1995 and the applicable regulations for 3% reservation for persons with disabilities, in the advertisement dated 27th February, 2008 for the teaching and non-teaching posts in

respondent No. 1's special school for the visually impaired children. The petitioners have sought quashing of the appointments to the posts of school teachers for the visually impaired children made by the respondent pursuant to an advertisement dated 27th February, 2008 in the cases where the appointed special teachers do not have a degree or diploma in special education recognized by the RCI or are not registered with the RCI as 'rehabilitation professionals' and for directions to the respondents to issue a corrigendum to the said advertisement rectifying the eligibility qualifications of the special teachers for the disabled students to be a degree or diploma in special education recognized by the RCI and registration with RCI. The petitioners have also sought directions to the respondents to implement 3% reservation for disabled persons in vacancies advertised by respondent No. 1 under Section 33 of the Persons with Disability Act, 1995 and to implement proper reservation roster for the disabled persons for the purpose.

2. Counter-affidavits on behalf of respondent Nos. 1 and 2 have been filed. Rather brief counter-affidavit filed by respondent No. 2 states that a Case No. 4068 of 2008 was filed in the court of the Deputy Chief Commissioner for Persons with Disabilities in the name of 'Sh. Pratap Singh Bist Vs. RVAK Vidyalaya and others' and that the court directed the Department to go through the 100-point roster and make the reservation at Sl. Nos. 1, 34, 67 and so on. It is also stated that the vacancies were again advertised on 30th May, 2008 with proper provision for reservations and that two posts were advertised (one for Braille Proof Reader Visually Handicapped and the other for PGT Sanskrit Visually Handicapped). It is also stated in the said affidavit that two physically challenged persons are already working in the school, one as PGT and the other as Ayah. It is also submitted by respondent No. 2 that the above action was taken with the satisfaction of the Deputy Chief Commissioner for Persons with Disabilities. It is also the stand of the Department that respondent No. 1 was recognized on 26th July, 1996 by the Department of Education with the direction to follow the rules of the Department. The respondent No. 1 in the counter-affidavit filed by them has stated that the school being run by it is an integrated one and not a special school, as alleged by the petitioners. It is the contention of respondent No. 1 that the student seeking education in the school being run by them are from both categories i.e. blind/partial blind and students with normal vision and since the school is an integrated school and not a special school, therefore, the rules and regulations framed by RCI cannot be made applicable. It is further stated that respondent No. 1 has been recruiting teaching staff and non-teaching staff as per the rules and regulations framed by the Directorate of Education, Government of NCT of Delhi.

3. Today, during the course of hearing, order dated 26th March, 2009 passed by the Chief Commissioner for persons with disabilities in the matter of 'Sh. Pratap Singh Bist Vs. Rashtriya Virjanand Ansh Kanya Sr. Secondary School' was placed before the Court. The complainant is the General Secretary of the petitioner organization and had submitted a complaint dated 17th December, 2007 before the Chief Commissioner alleging non-provision of 3% reservation to persons with disabilities by the respondent school therein in their advertisement published in Hindustan Times dated 25th November, 2007. It was further alleged in the said complaint that the advertisement did not stipulate education qualifications of diploma in special education for teaching staff

even though the recruitment rules of Delhi Government and Rehabilitation Council of India prescribe for such qualification for special educators.

4. We have perused the order passed by the Chief Commissioner. The order in extenso discusses the relevant provisions of Rehabilitation Council of India Act, 1992 and the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995. The contention of the complainant before the Chief Commissioner as also of the petitioner in the present writ petition is that the respondent's Institution is a special school, fully funded by the Education Department of the Government of Delhi and, therefore, it is mandatory for it to provide reservations to persons with disabilities and also to follow the guidelines prescribed by statutory authorities and recruitment rules adopted by the Government. The Chief Commissioner has stated in his order that the respondent school started as a special school and vocational training center in the year 1950 and it was receiving 95% grants from Delhi Government. The Chief Commissioner then went on to hold that though the respondent's school claimed that it was an integrated school, the documents submitted indicate that normal children constitute only a few percent of the total number of students studying in the school and accordingly the respondent's school was thus bound to follow the Act, rules and regulations of the State Government including the provisions under the RCI Act and the PWD Act. The Chief Commissioner also observed that the respondent's school was receiving grants from Education Department and had been following the recruitment rules of the Education Department which had not framed separate recruitment rules for appointment of teachers and staff in the special schools. It took note of the fact that the respondents pleaded that this lapse was intentional and due to ignorance of provisions of RCI/PWD Act and that on learning about these provisions, they had taken steps to ensure their implementation. The Chief Commissioner also expressed its displeasure at the fact that despite enactment of the Rehabilitation Council of India Act and Persons with Disabilities Act, way back in 1992 and 1995 respectively, the Education Department of the Government of Delhi is unaware of their provisions and that its rules and regulations were not in accordance with the provisions of these two Acts. The Chief Commissioner further noted that despite clarifications and directions issued by the Chief Commissioner during the hearings dated 2nd April, 2008 and 8th May, 2008, wherein the respondents had been directed to rectify the eligibility conditions so as to bring them in line with the provisions under the RCI Act as well as to reserve one vacancy each in group 'A', 'B', 'C' and 'D' for appropriate sub-category of persons with disability through a corrigendum, respondent Nos. 1 and 2 proceeded with recruitments against the advertisement dated 27th February, 2008 without rectifying the eligibility criteria. The Chief Commissioner arrived at a finding that the selected candidates could not be termed as 'rehabilitation professionals' as defined under the RCI Act as they neither possess the recognized rehabilitation qualifications nor were enrolled in the RCI Register. The Chief Commissioner disposed of the complaint with directions including a direction to the respondent to amend the recruitment rules for special schools funded/run by the Education Department so that they are in accordance with the provisions under the RCI Act and PWD Act as also to re-advertise and fill the vacancies by calling applications from rehabilitation professionals having appropriate qualifications and also provide for reservation/relaxation to persons with disabilities in accordance with the PWD Act. A

direction was also given to maintain reservation roster of group 'A', 'B', 'C' and 'D' for direct recruitment and for group 'C' and 'D' for promotion in accordance with the DOP&T OM and to indicate the points of the roster against which the vacancies fall for all future advertisements.

5. In view of the said order passed by the Chief Commissioner for Persons with Disabilities, nothing further survives in the present writ petition. Needless to say that it would be open to the parties to challenge the said order if they so choose to do, in accordance with law. It is relevant to mention here that the Department of Education, Government of Delhi has stated before this Court, that it is bound and governed by the RCI and the PWD Act and that it will ensure compliance with the same in future. It is also stated by the Department of Education that the RCI and PWD Act and the relevant rules and regulations will apply with equal force to integrated schools as well. The Department of Education has made a grievance about the direction issued by the Chief Commissioner with regard to accommodating the 15 candidates selected against similar vacancies occurring in other schools aided by the Department of Education within six months. We refrain from expressing any view on the said direction as that is not a subject matter of the present petition. Needless to say that it is open to the Directorate of Education to avail of proper remedy before the appropriate Forum in accordance with law, in case it is aggrieved by the said direction.

6. The present writ petition is accordingly disposed of but with no order as to costs.

Sd/-
NEERAJ KISHAN KAUL, J

Sd/-
CHIEF JUSTICE