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IN THE HIGH COURT OF SIKKIM AT GANGTOK

WRIT PETITION (C) (PIL) No. 08 OF 2007

Paljor Bhutia,
Resident of Upper Sichey,
Gangtok, Sikkim.

...Petitioner

Versus

1. The State of Sikkim
Through Chief Secretary,
Tashiling Secretariat Building,
Government of Sikkim,
Gangtok.
2. The Secretary,
Social Justice, Empowerment and Welfare
Department,
Lower Secretariat Building,
Government of Sikkim,
Gangtok.
3. Secretary,
Department of Personnel, Adm. Reforms &
Training, Government of Sikkim,
Gangtok.
4. The Sikkim State Commissioner for Disabilities
Social Justice, Empowerment and Welfare
Department,
Lower Secretariat Building,
Government of Sikkim, Gangtok.
5. The Secretary,
Human Resource Development Department,
Government of Sikkim,
Tashiling Secretariat,
Gangtok.
6. The Secretary,
Sikkim Nationalised Transport,
Government of Sikkim,
Gangtok.

...Respondents

For the petitioner: Ms. (Dr.) Doma T. Bhutia, Advocate

For the respondents: Mr. Karma Thinlay, Government Advocate.

A.



Date of Hearing : 28.04.2009

Date of Judgment : 28.04.2009

**PRESENT: HON'BLE THE CHIEF JUSTICE
MR. JUSTICE AFTAB H. SAIKIA
HON'BLE MR. JUSTICE A.P. SUBBA, JUDGE**

JUDGMENT AND ORDER (ORAL)

Saikia, CJ

Heard Ms. (Dr.) Doma T. Bhutia, learned Counsel for the petitioner in the instant Public Interest Litigation (for short, 'PIL') and also heard Mr. Karma Thinlay, learned State Counsel who represents the official respondents.

2. It is alleged in this PIL that it is a sorry state of affairs in the State of Sikkim that the State Government, functioning and governing under the Constitution of India, being fully aware of the Fundamental Rights and the Directive Principles of State Policy as well as the Fundamental Duties contemplated under Part III, Part IV, Part IV A respectively covering a range of Articles from Article 12 to Article 51A including the beneficial legislations enacted in the interest of creating an egalitarian society under the promised concept of socio-economic Welfare State, has not yet implemented the provisions of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 (hereinafter referred to as, "the Act") in letter and spirit resulting in the total denial of those benefits and opportunities contemplated in the Act to

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the persons with disabilities. Through the instant PIL, the petitioner, an orthopaedically disabled person himself, being a public spirited person, has ventilated those grievances to benefit the persons with disabilities and has sought for various reliefs with the following prayers:

"In the above facts and circumstances of the case, the petitioner most humbly prays the Hon'ble High Court to kindly grant the following reliefs: -

- (i) The Respondents No.1 & 3 may be directed to extend the provision of reservation to the disabled persons for vacancies in Group-A posts as well.
- (ii) The Respondent No.1 & 3 may be directed to follow the process of roster service as provided by the Act, 1995 in the identified posts immediately for all the categories of disabled persons viz. Persons with locomotor disability or cerebral Palsy, visually impaired or blind and Hearing impaired as per section 32 and 33 of the Disability Act.
- (iii) The Respondents No.1 and 3 may be directed to advertise such identified posts in all recruitments with reservation of 3 percent each for all the three categories of the disabled persons as given in section 33 of the Disability Act.
- (iv) The Respondent No.1, 3, 5 & 6 may be directed to advertise all such posts for the Disable persons along with mentioning the necessary relaxations, exemptions and concessions mentioned therein viz. exemption of Application fees, relaxation in recruitment standards and reimbursements of travel expenses for appearing in written examinations and interviews etc.
- (v) The Respondent No.1 may be directed to provide reservation in posts or class of posts more than seventy five percent of which are filled up by promotions.
- (vi) The Respondents No.1 to 6 may be directed to produce the list of all vacancies that have been filled up so far by way of direct recruitment after the commencement of the Disability Act.

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- (vii) The Respondent No.1 may be directed to carry a special recruitment drive for disabled persons in all such identified posts which had to be filled up by way of reservation to the Disabled persons but were not filled up after the commencement of the Disability Act.
- (viii) The Respondent No.1 may be directed to provide for reservation for persons with disabilities belonging to their respective categories in all special recruitment drive for SC, ST, OBC, and Women and Ex-servicemen categories.
- (ix) The Respondent No.1 may be directed to frame proper policies for incentives to the employers in pursuance of the requirements of Section 41 of the Disability Act.
- (x) The Respondent No.3 to open a Special Employment Cell for persons with disabilities and to produce the lists of so far how many such persons were accommodated by them since the commencement of the Disability Act.
- (xi) The Respondent No.1 & 2 be directed to conduct proper survey of the persons with disabilities and the list be furnished before the Hon'ble Court within a reasonable time.
- (xii) The Respondent No.1 may be directed to provide the lists of beneficiaries and showing what facilities are provided to the persons with disabilities under Indira Awas Yojana and other social welfare schemes being run in the state before the Hon'ble Court.
- (xiii) Respondent No.1 may be directed to issue a government notification to provide job reservation in the private sectors like hotels, shops, travel agency etc.
- (xiv) The Respondent No.1 & 4 may be directed to issue a government notification to provide ramp in public buildings, adaptation of toilets for wheel chair users.
- (xv) The Respondents No.1 & 4 may be directed to construct ramps in court buildings and Paljor Stadium and provide support facilities for access to all government buildings in all over the state.
- (xvi) The Respondent No.1 be directed to provide inclusive education to all the disabled children of the state upto the age of 18 years and take necessary action in
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this regard as per the vision of the Disability Act, 1995.

- (xvii) The Respondent No.1 be directed to implement the guidelines and orders of the Hon'ble Apex Court in the matter of PUCL vs. Union of India and Ors. W.P. (civil) No.196 and provide support to the disabled persons under the various social welfare schemes being run in the State. "

3. Countering such allegations, grievances and contentions made in this PIL and advanced by Ms. Bhutia, the learned Counsel for the petitioner, the Official Respondents/the State of Sikkim have contested this PIL filing as many as four affidavits, namely,

- (i) Counter Affidavit dated 20.06.2007 filed on behalf of respondent No. 1 Chief Secretary, Government of Sikkim and respondent No. 3 Secretary, Department of Personnel, A & R and Training, Government of Sikkim,
- (ii) Counter Affidavit dated 23.06.2007 filed on behalf of respondent No. 4 Sikkim State Commissioner for Disabilities, Social Justice, Empowerment and Welfare Department, Government of Sikkim;
- (iii) Affidavit dated 23.06.2007 filed on behalf the respondent No. 5 Secretary, Human Resource and Development Department, Government of Sikkim; and
- (iv) Affidavit dated 21.06.2007 filed on behalf of respondent No. 6 Secretary, Sikkim Nationalised Department, Government of Sikkim.

4. Against all these affidavits the petitioner has also filed the rejoinder on 01.09.2007.



5. The Government's clear stand, as has been stated in those affidavits, is that they, being aware of the constitutional obligation, are committed to perform the statutory duties made incumbent upon the Government so as to deliver a good governance to the people of Sikkim. In fact, the Government has already been implementing 3 (three) per cent reservation policy for the person with disabilities in the public employment including other related provisions under the Act. However, till date some of the provisions stipulated in the Act have not been implemented.

6. Mr. Thinlay, the learned State Counsel, relying on those affidavits, has contended that the Government of Sikkim has been sincerely implementing the various provisions of the Act and has assured that the Government shall take all further necessary steps and required actions to implement the provisions of the Act. He has also asserted that the Government is keen to implement all the prayers made in this PIL as already quoted above. Nonetheless, according to Mr. Thinlay, the compliance of all the relevant provisions as contemplated in the Act and the prayers made in this PIL would require some time and those would be acted upon with due attention and care within a reasonable time.

7. Having considered the submissions made by the learned Counsel for the parties, particularly Mr. Thinlay, learned Counsel representing the State of Sikkim, and on careful perusal of the pleadings exchanged by and between the parties, we direct the State-respondents to take all necessary steps and actions for


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implementation of the Act in its letter and spirit as expeditiously as possible so that the benefits, protections and opportunities specified in the Act reach the beneficiaries at an earliest possible time.

8. We hope and trust that the Government of Sikkim in its administrative fairness, will deliver good governance to the people of Sikkim in general and the persons with disabilities in particular by implementing all the provisions of the Act so as to avoid any such grievances and complaints as reflected in this instant PIL.

9. In view of what has been stated, discussed and indicated, this writ petition stands disposed of.


Judge


Chief Justice.