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JAVED ABIDI

v

UNION OF INDIA AND ORS.

DECEMBER 17, 1998

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[K. VENKATASWAMI AND G.B. PATTANAIK, JJ.]

Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act 1995—Implementation of—Section 2(i)—Constitution of India—Article 14—Held, persons suffering from locomotor disability to the extent of 80 per cent and above entitled to concession from Indian Airlines at the rate given to persons suffering from blindness on furnishing certificate from the Chief District Medical Officer—Persons with locomotor disability would be a separate class by themselves because of their immobility and the restriction of the limbs—Held, further, Central and State Coordination Committees to endeavour to achieve objectives of the Act—Also Indian Airlines assuring that aisle chairs in aircrafts and ambulifts at major airports are to be provided, no further directions on that aspect needed—Proclamation on the Full Participation and Equality of People with Disabilities in the Region adopted at the Beijing meeting of the Economic and Social Commission for Asian and Pacific Region held between 1 and 5 December 1992.

F The petitioner approached the Supreme Court in a writ petition seeking directions for the implementation of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act 1995. He sought the provision of aisle chairs in every aircraft and ambulifts in all airports; 50 per cent concession to disabled persons as defined in Section 2(i) of the Act as was provided to visually impaired persons; appointment to the Central Coordination Committee only of disabled persons as defined in the Act; the appointment of Chief Commissioner and Commissioners under the Act; the constitution of the Central and State Executive Committees and of the Central and State Coordination Committees for implementing the Act.

H The Union of India and most States reported to the Court that they had constituted three Central and State Coordination Committees. Indian Airlines indicated that aisle chairs and ambulifts were being provided. It was, however, contended that concession to persons with blindness preceded the Act, and that given the economic condition of Indian Airlines, it was not feasible to

grant any further concessions, and that the Act is to be implemented to the extent of economic capacity. A

Allowing the petition, this Court

HELD: 1. While economic capacity is a germane consideration, the true spirit and object with which the Protection Act was enacted cannot be ignored. In the different types of disabilities mentioned in Section 2(i) of the Act, those suffering from locomotor disability would stand in a separate class by themselves because of their immobility and the restriction of their limbs. Bearing in mind the discomfort and harassment a person with locomotor disability would face while travelling by train, those suffering from locomotor disability to the extent of 80 per cent and above would be entitled to the concession from Indian Airlines for travelling by air within the country at the same rate as has been given to those suffering from blindness on their furnishing the necessary certificate from the Chief District Medical Officer certifying the extent of the disability. Such District Medical Officer wherein the disabled ordinarily resides will constitute a Board with a Specialist in Orthopaedics and one other Specialist who he thinks suitable for the purpose and would grant necessary certificate for that purpose. [615-E-F; 616-A-E] B

2. The Committees constituted by the Central Government and the State Governments must make earnest endeavour to achieve the objectives of the Act. The Proclamation on the Full Participation and Equality of People with Disabilities in the Region adopted at the Beijing meeting of the Economic and Social Commission for Asian and Pacific Region held between 1 and 5 December 1992 too must be borne in mind. [613-D-F] C

3. Indian Airlines having indicated that aisle chairs in aircrafts and ambulifts at major airports are to be provided, no further direction is necessary on this aspect. [614-F-G] D

CIVIL ORIGINAL JURISDICTION : Writ Petition (C) No. 326 of 1997.

(Under Article 32 of the Constitution of India.) G

Soli J. Sorabjee, Attorney General, K.N. Rawal, Additional Solicitor General, Dr. A.M. Singhvi, P.N. Mishra, Anis Dayal, Indra Makwana, V.G.Pragasam, Aruneshwar Gupta, R.S. Sodhi, Lokesh Kumar, Ms. S.A.Chitale, Ashok K. Srivasta, Ms. Sushma Suri, K.R. Nagaraja, Arvind Verma, Pradeep Misra, B.S. Chahar, Ms. Jyoti Chakar, Ashok Mathur, S.K. Agnihotri, K.K. Rai, H

A Ms. Smitha Inna, Ms. Anil Katiyar, D.S. Mehra, Ms. Hemantika Wahi, Ms. Amita. V. Duggal, Rajiv Mehta, Sunil Jain, G. Prakash, Ms. Beena Prakash, Ms. A. Subhashini, Sudhir Walia, Prem Malhotra, Ranjan Mukherjee, R.S.Jena, Anil Srivastava, K.B.Rohtagi, Ms. Aparna Rohtagi Jain, M.A. Krishnamurthy and Bankey Bihari for the appearing parites.

B The Judgment of the Court was delivered by

PATTANAIK, J. Shri Javed Abidi has filed the present Writ Petition under Article 32 of the Constitution seeking direction to the Union of India to implement the provisions of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995, alleging

C *inter alia* that though the Act is intended to grant opportunities to the people with disabilities for their full participation and the Act has come into operation with effect from 7.2.1996 but no effective steps are being taken for implementation of the provisions of the Act. The petitioner himself is an Orthopaedically impaired person and has incurred the disability within the meaning of Section 2(i)(v) of the Act. He appeared in person in this Court and successfully presented his case indicating several infirmities as well as callousness of the different organisations of the State in Implementing the provisions of the Act. In the Writ Petition the petitioner prayed for the following reliefs :-

E (a) Direct the Indian Airlines to immediately provide for aisle chairs in every aircraft;

(b) Direct the Indian Airlines to provide ambulift on all the Airports of the country;

F (c) Direct the Indian Airlines to provide 50% concession to all the disabled persons as defined in Section 2(I) of the Act because to provide this concession only to visually impaired persons is discriminatory and directly violative of the fundamental rights of the other disabled, as guaranteed under Article 14 of the Constitution of India;

G (d) Direct the Central Government to appoint only disabled persons defined under Section 2(1) of the Act as per the provisions of Section 3(2)(I) and not to include any other person who is not a disabled person under the Act;

H (e) Direct the Union of India to immediately appoint the Chief Commissioner and Commissioners as per Section 57 of the Act;

- (f) Direct the Central Government to immediately constitute the Central Executive Committee as defined under Section 9 of the Act; A
- (g) Direct all the State of the country to form their own State Coordination Committee as defined under Section 13 of the Act; B
- (h) Direct all the State Government to immediately constitute their respective State Executive Committee for the implementation of the Act; B
- (i) Direct the State Government to appoint a Commissioner for their States for proper implementation of the Act in the States of the Country;” C

As one of the grievance of the petitioner was that Central Government has not constituted the Central Co-ordination Committee under Section 3 of the Act and States also have not constituted the State Co-ordination Committees as required under Section 13 of the Act, this Court issued, notice to all the State Governments and the Union Territories by order dated 20th October, 1997 to get responses from them. Pursuant to the aforesaid notice the Union of India through its Secretary in the Ministry of Welfare Department filed an affidavit on 30th September, 1997, indicating the steps taken by the Union Government for implementation of the provisions of the Act including the Constitution of the Central Committee under Section 3 thereof. Different States also filed their respective affidavits indicating the constitution of the State Co-ordination Committees under Section 13. In view of the constitution of the Central Co-ordination Committee as well as the State Co-ordination Committees in most of the States we do not think any further direction is necessary in that regard, but, we hope and trust that the respective Committees will discharge their obligation under the Act so as to achieve the objectives for which the Act has been enacted. It may be borne in mind that the Economic and Social Commission for Asian and Pacific Region held a meeting at Beijing on 1st to 5th December, 1992 and adopted the Proclamation on the Full Participation and Equality of People with Disabilities in the Region and India is a signatory to the said Proclamation. The Act in question, was passed by the Parliament which intends to provide for the following as apparent from the Statements of Objects and Reasons :

“(i) to spell out the responsibility of the State towards the prevention of disabilities, protection of rights, provision of medical care, education, training, employment and rehabilitation of persons with disabilities; H

- A (ii) to create barrier free environment for persons with disabilities;
- (iii) to remove any discrimination against persons with disabilities in the sharing of development benefits, *vis-a-vis*, non-disabled persons;
- B (iv) to counteract any situation of the abuse and the exploitation of persons with disabilities;
- (v) to lay down a strategies for comprehensive development of programmes and services and equalisation of opportunities for persons with disabilities; and
- C (vi) to make special provision for the integration of persons with disabilities into the social mainstream."

The Committees constituted by the Central Government as well as by the respective State Governments must, therefore, make earnest endeavour to achieve the objectives, as indicated above, in exercise of their powers conferred

D under the Act.

The petitioner also made a specific grievance in the Writ Petition alleging the lack of facilities like providing aisle chair and ambulift by the Indian Airlines which according to the petitioner is a social obligation of the Airlines and the said Airlines must provide these minimum facilities to permit easy excess to the disabled persons particularly those who are orthopaedically impaired and suffer from locomotor disability. The Indian Airlines in course of the hearing of this Writ Petition indicated the steps taken by it in relation to providing of aisle chair in the aircraft and providing ambulift at different airports. Initially Indian Airlines had indicated that providing ambulift at major airports would be a costly affair but in its last affidavit filed in this Court it has been indicated that the major airports are going to be provided with ambulift and aisle chairs are now available in aircrafts to be used by disabled persons. Having considered the affidavits filed by the Indian Airlines we are satisfied that effective steps have been taken in that regard and it is not necessary for issuing any further direction on that aspect.

G One of the major grievance of the petitioner is that the Indian Airlines is not giving any concession to such disabled persons for their movement by air even though such concessions are being given to only blind persons, who are also disabled persons under the Act. According to Mr. Abidi, the petitioner in this case, the orthopaedically handicapped persons with Locomotor disability require the relief of concession for their travel by air more as it

becomes an impossible task for them to travel from one corner to the other corner of the country by train and there is no justification for the airlines not to grant such concessions to such people when the concession is made available to the blind people. Mr. Soli J. Sorabjee, the learned Attorney General appearing for the Indian Airlines on the other hand impressed upon the Court that the concession to the blind people was being given much prior to the commencement of the Act. According to Mr. Sorabjee, the learned Attorney General the economic condition of the Indian Airlines is such that it is not feasible to grant any further concession to any other category of disabled people and the Act itself postulates for providing facilities to the disabled persons within the limits of economic capacity. Detailed affidavits have been filed indicating the present economic position of the Indian Airlines. It has also been indicated in the said affidavits that the airlines is now reconsidering the question to withdraw such facilities to several group of citizens or to move the respective departments of the Government to get the reimbursement.

According to Mr. Sorabjee granting such concession to only disabled persons suffering from locomotor disability may be construed to be a discriminatory attitude towards them and, therefore, the Court should not issue such direction, but he does not dispute the fact that blindness is one of the disability under Section 2(i) of the Act and the Airlines is granting concession for travelling by Air to those suffering from the disability of blindness. While we agree with Mr. Sorabjee, learned Attorney General that the economic capacity is a germane consideration while deciding the question as to whether all persons suffering from disability as defined under Section 2(i) of the Act should be granted concession like blind persons for travelling by Air, at the same time we cannot ignore the true spirit and object with which the Act was enacted. To create barrier environment for persons with disability and to make special provision for the integration of persons with disabilities into the social mainstream apart from the protection of rights, provision of medical care, education, training, employment and rehabilitation are some of the prime objectives of the Act. In this context the question that arises for consideration is whether atleast persons suffering from locomotor disability to a particular extent can be granted the facility of concession while travelling by Air which facility is already being given to those suffering from the disability of blindness. When we consider the different types of disabilities mentioned in Section 2(i) of the Act and examine the same in relation to the difficulties one may face by travelling by train to far off places, say from Delhi to Trivandrum, those who are suffering from locomotor disability would stand

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- A by a separate class itself because of their immobility and the restriction of the limbs. It may not be difficult for a person with low vision or a person with hearing impairment or mental retardation or a person suffering from leprosy to travel by train even to far off places whereas a person suffering from locomotor disability above certain percentage of the same will find enormous difficulty in travelling by train or bus. We are considering the question of
- B such disabled persons in the context of granting them the facility of concession for travelling by Air. Having considered the affidavits filed by different parties and having considered the submissions made by Mr. Sorabjee appearing for Indian Airlines as well as Mr. Abidi, petitioner in person and bearing in mind the discomfort and harassment a person suffering from locomotor disability
- C would face while travelling by train particularly to far of places we are inclined to issue direction to the Indian Airlines to grant them the same concession which the Airlines is giving to those suffering from blindness. But each and every person suffering from such disability would not be entitled to get the concession in question, as it would depend upon the degree of disability. We think it appropriate to direct that those suffering from the aforesaid locomotor disability to the extent of 80% and above would be entitled to the concession from the Indian Airlines for travelling by Air within the country at the same rate as has been given to those suffering from blindness on their furnishing the necessary certificate from the Chief District Medical Officer to the effect that the person concerned is suffering the disability to the extent of 80%.
- E Such District Medical Officer wherein the disabled ordinarily reside will constitute a Board with Specialist in Orthopaedic and one other Specialist whom he thinks suitable for the purpose and examine the person and would grant necessary certificate for that purpose. We are quite conscious of the financial position of the Indian Airlines but yet we are issuing the aforesaid direction keeping in view the broad objectives of the Act, as already narrated,
- F and keeping in view the fact that concession is already being granted by the Airlines to the persons suffering from blindness. With these directions and observations the Writ Petition is disposed of.

G Before we conclude the matter we cannot but thank the petitioner who appeared in person and brought this matter to the notice of the Court which resulted in acceleration of the implementation of different provisions of the Act not only by the Union Government but also by the State Governments.

U.R.

Petition allowed.