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ASHOK KUMAR GIRI

v.

GOVT. OF INDIA AND ORS.

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(Civil Appeal No. 4476 of 2016)

APRIL 27, 2016

[FAKKIR MOHAMED IBRAHIM KALIFULLA

AND S. A. BOBDE, JJ.]

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*Person with Disabilities, (Equal Opportunity, Protection of Rights and Full Protection) Act, 1995 – ss. 32, 33 – Reservation for differently abled persons – Computation of – Held: Reservation for differently abled persons would have to be computed on the basis of total vacancies of the cadre and not on the basis of the vacancies available in the identified post, namely, at the time of notification calling for applications to fill up the available vacant vacancies – Order passed by the High Court set aside and matter remitted to back to the High Court to decide the writ petition afresh in light of the decision in *National Federation of the Blind and Others’s case.*

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**Union of India and Another v. National Federation of the Blind and Others* 2013 (9) SCR 1023:(2013) 10 SCC 772 – relied on.

Case Law Reference

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2013 (9) SCR 1023 relied on Para 5

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 4476 of 2016.

From the Judgment and Order dated 20.10.2014 of the Division Bench of the High Court of Judicature at Patna in L. P. A. No. 303 of 2014.

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Ms. Rani Chhabra, Ms. Priyanka Sony, Advs. for the Appellant.

Neeraj Kishan Kaul, ASG, Ms. Sunita Rani Singh, Sanyat Lodha, Sarfrez Ahmed, D. S. Mahra, Advs. for the Respondents.

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The following Order of the Court was delivered

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ORDER

Leave granted.

Heard learned counsel for the appellant and Mr. N.K. Kaul, learned Additional Solicitor General of India for the respondents.

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By the impugned order, the Division Bench of the High Court of Patna, while taking note of the fact, namely, the number of vacancies which were sought to be filled up at the instance of Respondent Nos.2 and 3, took the view that based on the vacancies notified when the 3% reservation provided for under the Persons with Disabilities (Equal Opportunity, Protection of Rights and Full Protection) Act, 1995, since it worked out to 0.27 post there was no scope to reserve any post under the said category. With that view, the Division Bench declined to grant any relief to the appellant to claim reservation as a disabled person falling under the definition of the said Act. At the time, when this special leave petition was moved before us, taking note of the legal position, namely, 3% reservation for the disabled persons can only be at the first instance ascertained based on the cadre strength and not based on the vacancies, while issuing notice, we directed the parties to examine the said legal position. In fact, subsequently, Mr. Kaul, himself, when he appeared on 16.12.2015, came forward to examine the legal position in the light of Three-Judge Bench decision of this Court in **Union of India and Another v. National Federation of the Blind and Others**, reported in (2013) 10 SCC 772.

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Today, when this appeal was heard, the learned Additional Solicitor General fairly pointed out the ratio laid down by this Court as set out in paragraph 30, which reads as under:-

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“30. The question for determination raised in this case is whether the reservation provided for the disabled persons under Section 33 of the Act is dependent upon the identification of posts as stipulated by Section 32. In **Ravi Prakash case**, the Government of India sought to contend that since they have conducted the exercise of identification of posts in civil services in terms of Section 32 only in the year 2005, the reservation has to be computed and applied only with reference to the vacancies filled up from 2005 onwards and not from 1996 when the Act came into force. This

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A Court, after examining the inter-dependence of Sections 32 and 33 viz., identification of posts and the scheme of reservation, rejected this contention and held as follows:-

B “25. ... The submission made on behalf of the Union of India regarding the implementation of the provisions of Section 33 of the Disabilities Act, 1995, only after identification of posts suitable for such appointment, under Section 32 thereof, runs counter to the legislative intent with which the Act was enacted. To accept such a submission would amount to accepting a situation where the provisions of Section 33 of the aforesaid Act could be kept deferred indefinitely by bureaucratic inaction. Such a stand taken by the petitioners before the High Court was rightly rejected. Accordingly, the submission made on behalf of the Union of India that identification of Groups A and B posts in the I.A.S. was undertaken after the year 2005 is not of much substance.

D 26. As has been pointed out by the High Court, neither Section 32 nor Section 33 of the aforesaid Act makes any distinction with regard to Groups A, B, C and D posts. They only speak of identification and reservation of posts for people with disabilities, though the proviso to Section 33 does empower the appropriate Government to exempt any establishment from the provisions of the said Section, having regard to the type of work carried on in any department or establishment. No such exemption has been pleaded or brought to our notice on behalf of the petitioners.

F 27. It is only logical that, as provided in Section 32 of the aforesaid Act, posts have to be identified for reservation for the purpose of Section 33, but such identification was meant to be simultaneously undertaken with the coming into operation of the Act, to give effect to the provisions of Section 33. The legislature never intended the provisions of Section 32 of the Act to be used as a tool to deny the benefits of Section 33 to these categories of disabled persons indicated therein. Such a submission strikes at the foundation of the provisions relating to the duty cast upon the appropriate Government to make appointments in every establishment.

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29. While it cannot be denied that unless posts are identified for the purposes of Section 33 of the aforesaid Act, no appointments from the reserved categories contained therein can be made, and that to such extent the provisions of Section 33 are dependent on Section 32 of the Act, as submitted by the learned ASG, but the extent of such dependence would be for the purpose of making appointments and not for the purpose of making reservation. In other words, reservation under Section 33 of the Act is not dependent on identification, as urged on behalf of the Union of India, though a duty has been cast upon the appropriate Government to make appointments in the number of posts reserved for the three categories mentioned in Section 33 of the Act in respect of persons suffering from the disabilities spelt out therein. In fact, a situation has also been noticed where on account of non-availability of candidates some of the reserved posts could remain vacant in a given year. For meeting such eventualities, provision was made to carry forward such vacancies for two years after which they would lapse. Since in the instant case such a situation did not arise and posts were not reserved under Section 33 of the Disabilities Act, 1995, the question of carrying forward of vacancies or lapse thereof, does not arise.

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31. We, therefore, see no reason to interfere with the judgment of the High Court impugned in the Special Leave Petition which is, accordingly, dismissed with costs. All interim orders are vacated. The petitioners are given eight weeks' time from today to give effect to the directions of the High Court."

Having regard to the said authoritative pronouncement by this Court that 3% reservation for differently abled persons will have to be computed on the basis of total vacancies of the cadre and not on the basis of the vacancies available in the identified post, namely, at the time of notification calling for applications to fill up the available vacant vacancies, it is imperative for the High Court to examine the said position by applying the various deliberations and reasoning drawn in the above decision of this Court and also by calling upon the parties, in particular,

- A the respondents herein to furnish the details as regards the cadre strength and the available vacancies, if any, to be provided for in the respective reserved posts. In the light of above judgment, based on such additional information to be furnished by the respondents as well as any information to be furnished on behalf of the appellant, it will be appropriate for the
- B Division Bench to come to a definite conclusion, whether or not the appellant will be entitled for any relief to be granted in the writ petition.

Therefore, while setting aside the impugned judgment, remit the case back to the High Court for deciding the writ petition afresh, in the light of the judgment of this Court referred to above.

- C With the above observations and directions, the appeal stands disposed of.

Nidhi Jain

Appeal disposed of.