

Supreme Court of India

Prajwala vs Union Of India & Ors on 4 March, 2009

Author:

Bench: K.G. Balakrishnan, P. Sathasivam, J.M. Panchal

REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL ORIGINAL JURISDICTION

WRIT PETITION(C) NO.56 OF 2004

PRAJWALA

...PETITIONER.

VERSUS

UNION OF INDIA & ORS.

...RESPONDENTS.

WITH

W.P.(C) NO.576/2004,

W.P.(C) NO.580/2003

W.P.(C) NO.212/2003

ORDER

W.P.(C) NO.576/2004 The Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995, (Act No.1 of 1996) passed by the Parliament and it came into force with effect from 7.2.1996. The petitioner under Public Interest Litigation filed this petition alleging that despite the commencement of this Act No.1 of 1996, many of the State Governments or the local authorities in the various States have not fully implemented Section 43 of the Act. Section 43 of the Act reads as follows:

"43. Schemes for preferential allotment of land for certain purposes.- The appropriate Government and local authorities shall be notification frame schemes in favour of persons with disabilities, for the preferential allotment of land at concessional rates for -

- (a) house;
- (b) setting up business;

- (c) setting up of special recreation centres;
- (d) establishment of special schools;
- (e) establishment of research centres;
- (f) establishment of factories by entrepreneurs disabilities."

This Court issued notice to the various State Governments and the State Governments have filed counter affidavit and also indicated various steps taken by the respective Government to implement Section 43 of the Act. Some of the States have candidly admitted that they have not implemented Section 43 of the Act. For example, the State of Arunachal Pradesh stated that this is not so far implemented in the State. Some of the State Governments stated that Section 43 was partially implemented and for allotment of land for certain purposes as indicated in Section 43, some percentage of reservation made in favour of disabled persons. By the statements of the State Governments, it appears that only marginal benefits are given as indicated in Section 43 of the Act. No State has come forward with specific plea that schemes have been formulated either by the State or by the local authorities and percentage of reservation has already been made in favour of the disabled persons.

Under the above circumstances, we direct that whenever the State Governments or local authorities allot land for various purposes indicated in Section 43 of the Act and various items indicated in Section 43, preferential treatment be given to the disabled persons and the land shall be given at concessional rate. The percentage of reservation may be left to the discretion of the State Governments/local authorities. However, total percentage of disabled persons shall be taken into account while deciding the percentage. The Act has also been provided for appointment of Chief Commissioner to look after the complaints of person with disabilities. Section 62 enables the Commissioner to look into complaints with respect to matters relating to deprivation of rights of persons with disabilities.

We had already directed various State Governments to appoint Chief Commissioner as well as Commissioner and if any person feel that the State Governments/local authorities are not extending the benefits to the persons who are entitled to get such benefits under Section 43 of the Act, he would be at liberty to make complaint to the appropriate authorities as envisaged under the provisions of the Act.

The writ petition is disposed of accordingly.

.....CJI (K.G. BALAKRISHNAN)J (P. SATHASIVAM)J (J.M. PANCHAL) NEW DELHI;

MARCH 4, 2009.