

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
PUBLIC INTEREST LITIGATION NO. 70 OF 2002**

1. ILS Legal & Center & 6 ors. Petitioners

Versus

1. State of Maharashtra & 9 orsRespondent

Mr. Amogh Paralikar for the Petitioners.

Mr. A.A. Kumbharkoni, Associate Advocate General with

Mr. V. P. Malwankar for the respondents No. 1,3, 4 & 5

Mr. J.K. Mistry i/b M/s. Sanjay Udeshi & Co. for respondent No. 10.

Mr. P.D. Ghandy with Mr. H.N. Vakil i/b M/s. Mulla & Mulla and Cragie Blunt
& Caroe for respondent No. 11.

Mr. V.R. Dhond with Mr. H. Toor i/b M/s. Crawford Bayley & Co. for respondent
No. 12.

Mr. Vatsal Mehta i/b M/s. B.K. & Girdharlal for respondent No. 13.

Ms. S. Ajith Kumar for respondent No. 14- BMC.

Mr. R.S. Apte for the intervenor.

CORAM : R. M. LODHA &

S.A. BOBDE, JJ.

DATED : 07TH SEPTEMBER, 2006

P.C. :

1. In the order dated 9th August, 2006, the earlier two orders of 19th October, 2005 and 15th February, 2006 were referred. By the order dated 19th October, 2005 the Court directed the Chief Secretary, State of Maharashtra to take necessary steps to fill all the positions of disabled persons in the State of Maharashtra on or before 31st December, 2005. The said order was not complied with and all the positions for the physically handicapped persons were not filled by 31st December, 2005. Then on 1st February, 2006, another Affidavit was filed by the Chief Secretary and time upto 31st December, 2006 was sought for filling the backlog of 3% reservation for physically handicapped persons. By the order dated 15th February, 2006 the Court did not accede to the request of the State Government to extend time upto 31st December, 2006, but extended the time

upto 31st July, 2006. Even by that time the backlog of 3% reservation for physically handicapped persons was not filled by the State Government. Constrained thereby, in the order dated 9th August, 2006 the Court observed that the fact that 9120 posts in different cadres and categories yet to be filled shows that there is non compliance of the order by the State Government in filling the backlog for physically handicapped persons and notice was issued to the Chief Secretary to show cause why action be not initiated and taken against the State Government for non-compliance of the orders dated 19th October, 2005 and 15th February, 2006. In pursuance thereof, an Affidavit has been filed by Dr. D. K. Shankaran, the Chief Secretary, Government of Maharashtra. In his Affidavit he states that as far as vacancies that have arisen before 31st October, 2005 are concerned, 8080 posts are actually filled which amounts to 77.19% of the total reserved posts for handicapped persons. In other words, the Chief Secretary in his Affidavit admits that for the vacancies that have arisen upto 31st October, 2005, 22.81% of the total reserved posts for handicapped persons are yet to be filled. That clearly shows that despite the two orders passed by this Court on 19th October, 2005 and 15th February, 2006, 22.81% of the total reserved posts for handicapped persons remain to be filled. To put it differently, despite the Courts directions, the handicapped persons have been deprived of the employment in the State to the extent of 22.81%. The fact that 22.81% of the total reserved posts for handicapped persons remained to be fulfilled clearly demonstrates non compliance of the directives issued by this Court on 19th October, 2005 and 15th February, 2006.

2. It is curious to note that in his Affidavit, the Chief Secretary has invited our attention to the letter dated 8th March, 2006 sent by him to Additional Chief Secretary, Principal Secretary, Secretary, Department Heads, the Collectors and Chief Executive Officers of Zilla Parishad for compliance of the orders dated 19th October, 2005 and 15th February, 2006. However, despite the fact that the aforesaid orders of this Court remained uncomplied, there is no whisper in the Affidavit of the Chief Secretary about the action taken against the defaulting departments who failed to comply not only with the directives of this Court, but also his own directive contained in the letter dated 8th March, 2006. The explanation sought to be given by taking shelter that some of the posts are required to be filled by Public Service Commission, Rural Department and the School Education Department does not appear to be of substance. The fact of the matter is that large number of posts reserved for handicapped persons (the quota of 3%) remain to be filled despite the repeated orders of this Court. In this backdrop the statement by the Chief Secretary that all the departments of the State Government have taken sincere efforts to clear the backlog is nothing but a hollow statement. We find that inaction and omission on the part of the State Government in filling the entire backlog of posts reserved for handicapped persons is eloquent and convinces us that had the State Government sincerely desired to fill the entire backlog of posts reserved for handicapped persons, there

was no reason why the entire backlog could not have been filed. Seen thus, we find the Affidavit of the Chief Secretary unsatisfactory.

3. The counsel for the petitioners seriously disputed the correctness of the correctness of the figure given in the Affidavit dated 4th September, 2006. Our attention was invited to the Affidavit filed by Shri Jagdeo Narsing Rathod in another Public Interest Litigation No. 129 of 2003 to demonstrate that the figures given by the Chief Secretary in his Affidavit dated 4th September, 2006 does not reflect the correct state of affairs about the backlog of posts reserved for handicapped persons. Confronted with this difficulty, Mr. Ashutosh Kumbhakoni, the Associate Advocate General submitted that further Affidavit shall be filed by the Chief Secretary clarifying the entire position.
4. We, accordingly, pass the following order:
 - (i) The Associate Advocate General shall ensure that the Advocates for the petitioners in this Writ Petition as well as in Writ Petition No. 129 of 2003 are given inspection of the record and registers of all 27 departments referred to in Exhibit-A for the purposes of finding out total sanctioned strength in each of the said departments, the vacancies which arose in such departments for the period from 1st September, 1996 to 31st October, 2005 and 1st November, 2005 to 30th June, 2006, number of posts reserved for persons suffering from (a) blindness or low vision, (b) hearing impairment and (c) locomotor disability or cerebral palsy, the number of reserved posts actually filled out of the vacancies which arose during the period and the backlog of reserved posts for handicapped persons.
 - (ii) The inspection shall be made available in the office of the Secretary, Department of Social Justice on 14th September, 2006 at 5.30 p.m. and on the subsequent dates that may be convenient to the parties. However, the inspection shall be completed within two weeks from today.
 - (iii) We R.K. Gaikwad, direct Mr. Commissioner appointed under Section 60 of The Persons With Disabilities (Equal Opportunities Protection of Rights For Full Participation) Act, 1995 to file an Affidavit within three weeks from today indicating the exact number of vacancies of reserved posts for handicapped persons available in various departments of the State Government until 30th June, 2006. He shall also take steps in ensuring that the backlog of reserved posts for handicapped persons as on 30th June 2006 is filled by the State as expeditiously as possible and in no case later than three months from today. For effective execution of his powers under Section 61 of the Act 1995, the Commissioner may exercise the powers vested in the

Civil Court under the Code of Civil Procedure by summoning and enforcing the attendances of witnesses; requiring discovery and production of documents; requisitioning and public record or copy thereof from any Court or office and all other necessary acts as provided under the Act.

- (iv) The aforesaid direction shall not be construed to absolve the State Government, the Chief Secretary and other Secretaries of various departments in implementation of the orders dated 19th October, 2005 and 15th February, 2006.
- (v) Until the backlog of reserved posts for handicapped persons as on 30th June, 2006 is filled up by the State Government in to, the State Government and its 27 departments referred to in Exhibit-A shall stand frozen until the backlog of reserved posts for handicapped persons as on 30th June, 2006 is filled in its entirety.
- (vi) The Chief Secretary in his Affidavit shall also indicate the names of persons in the category 2(f) of Section 13 of the Act of 1995 for nomination to the State Coordination Committee if all the five persons in that category have not been nominated so far. Stand over to 5th October, 2006.

Sd/-
[R.M. LODHA, J.]

Sd/-
[S.A. BOBDE, J.]