

Gujarat High Court

State Of Gujarat & Anr vs This Is An Application For Review ... on 9 May, 2014

C/MCA/2440/2013

CAV JUDGMENT

MCA24402013Cj2.doc

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

MISC.CIVIL APPLICATION (FOR REVIEW) NO. 2440 of 2013

In

WRIT PETITION (PIL) NO. 58 of 2013

FOR APPROVAL AND SIGNATURE:

HONOURABLE THE CHIEF JUSTICE Sd/-

MR. BHASKAR BHATTACHARYA

HONOURABLE MR.JUSTICE

J. B. PARDIWALA

Sd/-

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===== 1 Whether Reporters of Local Papers may be allowed Yes to see the judgment ?

2 To be referred to the Reporter or not ? Yes 3 Whether their Lordships wish to see the fair copy No of the judgment ?

4 Whether this case involves a substantial question No of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ? 5 Whether it is to be circulated to the civil judge ? No =====

BLIND PEOPLE ASSOCIATION Versus STATE OF GUJARAT & ANR.

===== Appearance:

MR KISHOR M PAUL, ADVOCATE for the Applicant. MR PK JANI, GOVERNMENT PLEADER for the Opponent No. 1 MR ANSHIN H DESAI, ADVOCATE for the Opponent No. 2

===== CORAM:

HONOURABLE THE CHIEF JUSTICE MR. BHASKAR BHATTACHARYA C/MCA/2440/2013 CAV JUDGMENT and HONOURABLE MR.JUSTICE J.B.PARDIWALA Date : 09/05/2014 CAV JUDGMENT (PER : HONOURABLE THE CHIEF JUSTICE MR. BHASKAR BHATTACHARYA)

1. This is an application for review of our order dated 13 th September 2013 by which we dismissed the Public Interest Litigation being WP [PIL] No. 2440 of 2013 filed by the petitioner wherein it challenged a notification dated 12th February 2013 issued by the State-respondent in terms of proviso to section 33 of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 [hereinafter referred to as the Act] while filling up the post of Vidhya

Sahayaks. The petitioner further prayed for a direction upon the respondent to issue a fresh notification in terms of the said proviso enabling 100% blind persons to get opportunity in the primary schools.

2. In order to appreciate the question, it will be appropriate to refer to the provisions contained in section 33 of the Act and also the notification dated 12th February 2013 challenged in the application. Those are quoted below:-

"33. Reservation of posts. - Every appropriate Government shall appoint in every establishment such percentage of C/MCA/2440/2013 CAV JUDGMENT vacancies not less than three per cent for persons or class of persons with disability of which one per cent each shall be reserved for persons suffering from -

(i) blindness of low vision;

(ii) hearing impairment;

(iii) locomotor disability or cerebral palsy, in the posts identified for each disability:

Provided that the appropriate Government may, having regard to the type of work carried on in any department or establishment, by notification subject to such conditions, if any, as may be specified in such notification, exempt any establishment from the provisions of this section."

2.1 The notification dated 12th February 2013 is quoted below:

"NOTIFICATION Education Department Sachivalaya, Gandhinagar Dated the : 12th February, 2013 NO:GH/SH/PRE-112010/SF/22 K:- In exercise of the powers conferred by section 33 of the persons with Disabilities [Equal opportunities, protection of Rights and full participation] Act, 1995, the Government of Gujarat hereby prescribes the percentage of reservation as under for the disabilities mentioned against each category with regard to the vacancies in the cadre of Vidyasahayak/Primary school Teachers for Physically handicapped persons.

Category of disability

Percentage of Reservation

[i] Blindness or low vision

1.5%

[1] Persons having vision more than 40% but less than 75%,

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[2] In case of music teacher, person having

100 percent blindness will be eligible. [ii] Locomotor disability or cerebral palsy. 1.5% OA-one Arm, OL - one leg, OAL-one Arm and one leg [iii] Hearing impairment NIL
By order and in the name of Governor of Gujarat.

Sd/-

[Yogesh Raval] Under Secretary to Government of Gujarat

3. After going through the above provisions of the Act, we find that the notification challenged in the application had been issued by an "appropriate government" in terms of proviso to section 33 of the Act after taking into consideration the nature of the work required to be performed by Primary Teachers. The Act has given authority to appropriate government to issue such notification having regard to the nature of work to be carried on in any establishment. Thus, the competence of the appropriate government to issue such notification is well established.

4. We also, while dismissing the Public Interest Litigation, recorded that for a primary teacher, it is impossible to perform work attached to his post if he happens to be hearing impaired and thus, the appropriate government rightly excluded the benefit of reservation to category of hearing impaired and extended such benefit to the other C/MCA/2440/2013 CAV JUDGMENT two categories of disabled persons.

5. By this application, the petitioner has contended that in our above order, there is an error apparent on the face of the record inasmuch as even for blind candidates, ratio was fixed in the notification that persons having vision of more than 40% and less than 75% would be placed under reserved category and for music teacher, persons having 100% blindness would be eligible.

6. Mr. Paul, the learned advocate appearing on behalf of the applicant, has strenuously contended that in the primary division of Gujarat education, there is no post for music teacher and thus, the aforesaid clause enabling reservation of 100% blind person for music teacher was uncalled for and in that event, persons having vision of less than 40% have been deprived.

7. We find that in the Act, "blindness" has been defined in section 2(b) of the Act, which reads as under:

(b). "blindness" refers to a condition where a person suffers from any of the following conditions, namely;-

(i). total absence of sight; or

(ii). visual acuity not exceeding 6/60 or 2/200 (snellen) in the better eye with correcting lenses; or

(iii). limitation of the field of vision subtending an angle of 20 degrees or worse;

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8. On consideration of the provisions contained in section 33 read with section 2(b) of the Act, we find that the State Government has been given right to exempt the application of the provisions of the Act by giving appropriate notification. By virtue of the notification in question, we have found that the persons having vision to the extent of 40% to 75% are eligible for reservation and in case of music teacher, 100% blind are also entitled. Mr. Jani, the learned Government Pleader appearing on behalf of the State-respondent, has submitted that although at present there is no post of music teacher in the primary section, in future, if any post of music teacher is created, such candidates will get benefit; otherwise, Mr. Jani contends that having regard to the nature of work to be performed by a Teacher in a primary school, it is difficult to accommodate 100% blind persons for teaching of other subjects than music, and that is why the aforesaid notification was issued after taking into consideration the scope of creating the post of music teacher in a school.

9. After hearing the learned counsel for the parties, we find that as the State Government has been given power to relax the application of the provisions of the Act to a particular category of handicapped candidates having regard to the nature of the work they are required to perform, there is no illegality in issuing the notification by which the quota for reservation for hearing impaired person has been withdrawn and equally distributed between the other two categories C/MCA/2440/2013 CAV JUDGMENT by restricting the benefit to the persons having impaired vision to the extent of 40% to 75% for the time being, and in future, if the post of music teacher is created for primary section, to even persons with 100% blindness. The discretion exercised by the State Government cannot be said to be arbitrary. We, thus, find that there is no error, not to speak of any error apparent on the face of the records for review of our order dated 13th September 2013. The application is, thus, dismissed. No costs.

Sd/-

(BHASKAR BHATTACHARYA, CJ.) Sd/-

(J.B.PARDIWALA, J.) mathew