

Gujarat High Court

Heta Dharmang Baxi (Minor) vs Union Of India & 4 on 21 July, 2015

C/SCA/8935/2014

ORDER

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION NO. 8935 of 2014

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HETA DHARMANG BAXI (MINOR)....Petitioner(s)

Versus

UNION OF INDIA & 4....Respondent(s)

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Appearance:

MR BIREN A VAISHNAV, ADVOCATE for the Petitioner(s) No. 1

MR NIRAJ ASHAR AGP for the Respondent(s) No. 3 - 4

MR ANKIT SHAH, ADVOCATE for the Respondent(s) No. 1 - 2

MR DEVANG VYAS, ADVOCATE for the Respondent(s) No. 1 - 2

MS MANISHA LAVKUMAR, ADVOCATE for the Respondent(s) No. 5

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CORAM: HONOURABLE MR.JUSTICE K.M.THAKER

Date : 21/07/2015

ORAL ORDER

Heard Mr. Vaishnav, learned advocate for the petitioner, Mr. Ashar, learned AGP for the respondent Nos. 3 and 4 and Mr. Ankit Shah, learned advocate for the respondent Nos. 1 and 2.

The petitioner has taken out present petition with a grievance against the respondents on the ground that the "juvenile diabetes" is not included as "disability" or special disability under the provisions of Persons with Disabilities Page 1 C/SCA/8935/2014 ORDER (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 and in the Drafts Rights of Persons with Disabilities Bill, 2012 and 2014.

Learned advocate for the petitioner submitted that in the proposed / draft bill "Hemophilia" and "Thalassemia" are proposed to be included in the "special disabilities", however, without any reason "juvenile diabetes" is not included and its reference is not made even in the draft / proposed bill.

Learned advocate for the petitioner relied on various data including the provisions under the Americans with Disabilities Act, 1990 and submitted that the petitioner's request for including 'juvenile diabetes' as one of the "disabilities" under the provisions of the Act deserves consideration.

So far as the respondent - State is concerned unfortunately State Government has shown utter insensitivity and indifference on part of the Page 2 C/SCA/8935/2014 ORDER State Government is of such extent that State Government has not even taken trouble to file its response and explanation as to why it does not consider appropriate to take any action for appropriate amendment in the law.

Even Central Government took its own time and after repeated reminders by the Court to place on record the decision, ultimately, on 13.7.2015 submitted communication dated 4.11.2013. Relevant part of the communication dated 4.11.2013 is mentioned in the order dated 13.7.2015. However, for easy reference the said communication is quoted herein below:-

"I am directed to refer to SCA No. 10785 of 2013 filed in the Hon'ble High Court of Gujarat titled Ms. Heta Dharmang Baxi vs. Union of India and others and to say that the Persons with Disabilities (protection of Rights, Equal Opportunities and Full Participation) Act, 1995 is the principal legal instrument for the empowerment of Person with disabilities. Section 2(i) of the said Act provides definition of Person with Disabilities and each form of disabilities has been separately. As per the existing provisions of this Act, person suffering Page 3 C/SCA/8935/2014 ORDER from Diabetes Mellitus Type I or Juvenile Diabeted is not categorised as persons with disabilities.

However, the said Act had been reviewed and it was decided to replace the said Act with a new legislation. Accordingly after detailed deliberation process, the 'Draft Rights for Persons with Disabilities' (RPWD) Bill, 2012 was prepared and circulated among the State / Uts for consideration. The observation of the Petitioner seems to stem from the provisions of the said Bill as available on the website of the Ministry. Based on the comments received from the States / Uts, the Draft RPwD Bill, 2012 has been further reviewed and an enabling provision has been proposed to include additional category of disabilities under specified categories of disabilities under clause 2(ff) of the RPWD Bill, 2013. However, the final shape of the Bill would depend on the outcome of deliberation in Parliament and other competent agencies.

2. It is further submitted that Ministry of Health and Family Welfare has also examined the issue of inclusion of Diabetes Mellitus (Type I) in the category of disability. They are of the view that Diabetes Mellitus Type I or Juvenile Diabetes is a disease like any other endocrine deficiency disease and is not associated with any permanent loss of bodily structure or function, per se, which can be included in Disability in the Persons with Disability (equal Opportunities, Protection of Rights and Full Participation) Act, 1995. However, disability, if any, caused by this chronic disease in due course of time is already included Page 4 C/SCA/8935/2014 ORDER in the PWD Act, 1995.

The relief prayed for by the petitioner requires amendment in the law. It is in the realm of and prerogative of legislature.

Thus, so far as the relief prayed for by the petitioner is concerned, legislative action is required. It is for the legislature to take appropriate decision, in its wisdom and to take appropriate action.

From the communication by respondent No.1 it appears that issue of including "Diabetes Mellitus Type I" i.e. "juvenile diabetes" is considered by the respondent no.1 and the respondent no.1 seems to have decided otherwise on the ground or understanding that the said disease is not associated with any permanent loss of bodily structure or function which can be included in the definition / expression "disability" under the Act.

In this view of the matter, any relief as prayed for by the petitioner cannot be granted in Page 5 C/SCA/8935/2014 ORDER this proceedings.

Consequently this petition is disposed of in light of the said communication and decision by respondent No.1. Notice is discharged.

(K.M.THAKER, J.) Suresh* Page 6