

ITEM NO.3

COURT NO.5

SECTION XIV

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal (C) No(s). 39321/2012

(Arising out of impugned final judgment and order dated 07/09/2012 in WPC No. 8229/2011 passed by the High Court Of Delhi At New Delhi)

REENA BANERJEE & ANR.

Petitioner(s)

VERSUS

GOVT. OF NCT OF DELHI & ORS.

Respondent(s)

(with appln. (s) for permission to file additional affidavit and permission to file additional documents and permission to file synopsis and list of dates and office report)

Date : 26/03/2015 This petition was called on for hearing today.

CORAM : HON'BLE MR. JUSTICE DIPAK MISRA
HON'BLE MR. JUSTICE PRAFULLA C. PANT

Mr. Vivek Tankha, Sr. Adv. (AC)
Mr. D. Kumanan, Adv.

For Petitioner(s) Mr. Colin Gonsalves, Sr. Adv.
Ms. Jubli Momalia, Adv.
Ms. Smita Choudhary, Adv.
Ms. Jyoti Mendiratta, Adv.

For Respondent(s) Ms. Pinky Anand (ASG)
Ms. Saudamini Sharma, Adv.
Mr.P.K. Dey, Adv.
Mr. Mohan Prakash Gupta, Adv.
Ms. Rashmi Malhotra, Adv.
Mr.Sudhanshu Sharma, Adv.
Mr. R.S. Nagar, Adv.
Mr. D.S. Mahra, Adv.

Ms. Rajani Ohri Lal, Adv.

UPON hearing the counsel the Court made the following
O R D E R

Mr. V.K. Tankha, learned senior counsel, who was requested to go and visit the home made for the mentally retarded persons, i.e., Asha Kiran, has given his suggestions, a copy of which shall

be served within three days on all the concerned parties. Mr. Colin Gonsalves, learned senior counsel appearing for the petitioner submitted that he has perused the suggestions and he will file a convenience volume of suggestions and serve a copy on the learned counsel for the parties and thereafter the comprehensive directions can be issued. Mr. Gonsalves has also filed a report of some members of the Advisory Committee of Asha Kiran. A copy thereof be served on all concerned with a week from today. Response thereto, if any, be filed within four weeks after the date of service.

At this juncture, we may note with profit that the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation Act, 1995 (for short, the '1995 Act') defines 'disability' under Section 2(i) of the Act which reads as follows :

"(i) 'disability' means--

- (i) blindness;
- (ii) low vision;
- (iii) leprosy-cured;
- (iv) hearing impairment;
- (v) locomotor disability;
- (vi) mental retardation;
- (vii) mental illness."

Section 25 casts a duty on the appropriate Government and local authorities to take certain steps for the prevention of occurrence of disabilities. It reads as follows :

"25. Appropriate Governments and local authorities to take certain steps for the prevention of occurrence of disabilities.--Within the limits of their economic capacity and development, the appropriate Governments and the local authorities, with a view to preventing the occurrence of disabilities, shall-

- (a) undertake or cause to be undertaken surveys, investigations and research concerning the cause of occurrence of disabilities;
- (b) promote various methods of preventing disabilities;
- (c) screen all the children at least once in a year for the purpose of identifying "at-risk" cases;
- (d) provide facilities for training to the staff at the primary health centres;

(e) sponsor or cause to be sponsored awareness campaigns and disseminate or cause to be disseminated information for general hygiene, health and sanitation;

(f) take measures for pre-natal, parental and post-natal care of mother and child;

(g) educate the public through the pre-schools, schools, primary health centres, village level workers and anganwadi workers;

(h) create awareness amongst the masses through television, radio and other mass media on the causes of disabilities and the preventive measures to be adopted."

Section 26 to 31, which occur in Chapter V which deals with Education, read as follows :

"26. Appropriate Governments and local authorities to provide children with disabilities free education, etc.--The appropriate Governments and the local authorities shall-

(a) ensure that every child with a disability has access to free education in an appropriate environment till he attains the age of eighteen years;

(b) endeavor to promote the integration of students with disabilities in the normal schools;

(c) promote setting up of special schools in Government and private sector for those in need of special education, in such a manner that children with disabilities living in any part of the country have access to such schools;

(d) endeavor to equip the special schools for children with disabilities with vocational training facilities.

27. Appropriate Governments and local authorities to make schemes and programmes for non-formal education, etc.-- The appropriate Governments and the local authorities shall by notification make schemes for-

(a) conducting part-time classes in respect of children with disabilities who having completed education up to class fifth and could not continue their studies on a

whole-time basis;

(b) conducting special part-time classes for providing functional literacy for children in the age group of sixteen and above;

(c) imparting non-formal education by utilizing the available manpower in rural areas after giving them appropriate orientation;

(d) imparting education through open schools or open universities;

(e) conducting class and discussions through interactive electronic or other media;

(f) providing every child with disability free of cost special books and equipments needed for his education.

28. Research for designing and developing new assistive devices, teaching aids, etc. - The appropriate Governments shall initiate or cause to be initiated research by official and non-Governmental agencies for the purpose of designing and developing new assistive devices, teaching aids, special teaching materials or such other items as are necessary to give a child with disability equal opportunities in education.

29. Appropriate Governments to set up teachers' training institutions to develop trained manpower for schools for children with disabilities. - The appropriate Governments shall set up adequate number of teachers' training institutions and assist the national institutes and other voluntary organizations to develop teachers' training programmes specializing in disabilities so that requisite trained manpower is available for special schools and integrated schools for children with disabilities.

30. Appropriate Governments to prepare a comprehensive education scheme providing for transport facilities, supply of books, etc. -Without prejudice to the foregoing provisions, the appropriate Governments shall by notification prepare a comprehensive education scheme which shall make Provision for-

(a) transport facilities to the children with disabilities or in the alternative financial incentives to parents or guardians

to enable their children with disabilities to attend schools;

(b) the removal of architectural barriers from schools, colleges or other institutions, imparting vocational and professional training;

(c) the supply of books, uniforms and other materials to children with disabilities attending school;

(d) the grant of scholarship to students with disabilities;

(e) setting up of appropriate fora for the redressal of grievances of parents regarding the placement of their children with disabilities;

(f) suitable modification in the examination system to eliminate purely mathematical questions for the benefit of blind students and students with low vision;

(g) restructuring of curriculum for the benefit of children with disabilities;

(h) restructuring the curriculum for benefit of students with hearing impairment to facilitate them to take only one language as part of their curriculum.

31. Educational institutions to provide amanuensis to students with visual handicap.--All educational institutions shall provide or cause to be provided amanuensis to blind students and students with or low vision."

At this juncture, we may note certain other provisions occurring in Chapter VII that deals with affirmative action. Section 42 and 43 read thus :

"42. Aids and appliances to persons with disabilities.-- The appropriate Governments shall by notification make schemes to provide aids and appliances to persons with disabilities.

43. Schemes for preferential allotment of land for certain purposes.-- The appropriate Governments and local authorities shall by notification frame schemes in favor 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 centers;
- (d) establishment of special schools;
- (e) establishment of research centers;
- (f) establishment of factories by entrepreneurs with disabilities."

Regard being had to the aforesaid provisions, we are disposed to think that all the State Governments have a definite role to see that the Act is properly implemented and the persons under disability which includes the mentally challenged persons are taken care of as commanded by the Act. We are absolutely conscious that this case has arisen from an order passed by the High Court of Delhi relating to the Home, namely, 'Asha Kiran' made for mentally challenged persons, yet the pathetic situation of this category of persons which have been highlighted before us in other States cannot be ignored or marginalised. On the contrary, we are obliged to think, occasion has arisen so that there can be a comprehensive study of the situation where this class of people are treated with dignity, respect and as far as practicable feel a part of the main stream of life. We are not oblivious of the fact that in every case, it may not be possible but there has to be an attempt to identify the possibility. We have been apprised at the Bar that the said effort has not been made and, if made, that is not adequate enough to meet the real challenge.

In view of the aforesaid, we direct the impleadment of Union of India, all the States and Union Territories. Mr. Gonsalves, learned senior counsel appearing for the petitioners submits that Ms. Smita Chaudhary, his assisting counsel, shall file a memorandum, describing the competent authority of Union of India, all the States and Union Territories represented by the Principal Secretary Health as well as Secretary, Women and Child Social Welfare Department, to be indicated in the memorandum. Once the memorandum is filed, the Registry shall issue notice to the Union of India and all the States and Union Territories so that they can file their respective responses. In addition, the Registry shall hand over the notices to Ms. Smita Chaudhary, to enable her to serve the notices along with the orders passed in this case on the standing counsel for the States so that they can, so that they can, in turn, intimate the competent authorities of the States and Union Territories so that responses can be filed in quite promptitude. Ms. Smita Chaudhary shall also serve the copies of the suggestions given given by all concerned as well as the report of the members of the Advisory Committee to the learned counsel for the Union of India and all the States and Union Territories so that they can apprise themselves about the

suggestions given and compare and analyse about the ground reality prevailing in their States.

This Court hopes and trusts that the Union of India and all the States and Union Territories shall respond without taking recourse to any kind of subterfuge and none should take adversarial position for the present cause has its own sacrosanctity.

Call on 08.07.2015.

(Gulshan Kumar Arora)
Court Master

(H.S. Parasher)
Court Master