

(2013) 09 AP CK 0066

Andhra Pradesh High Court

Case No: Writ Petition No. 26274 of 2013

The District Collector,
Adilabad and Others

APPELLANT

Vs

R. Swathi and Another

RESPONDENT

Date of Decision: Sept. 11, 2013

Acts Referred:

- Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 - Section 2(s), 33

Citation: (2013) 6 ALD 285

Hon'ble Judges: S.V. Bhatt, J; L. Narasimha Reddy, J

Bench: Division Bench

Final Decision: Disposed Off

Judgement

@JUDGMENTTAG-ORDER

L. Narasimha Reddy, J.

This writ petition is filed by the Government of Andhra Pradesh in Revenue Department feeling aggrieved by the order, dated 08.03.2013, in O.A. No. 3851 of 2012 on the file of the Andhra Pradesh Administrative Tribunal, Hyderabad. The O.A. was filed by the 1st respondent against the order passed by the 1st petitioner refusing to issue an order of appointment for the post of Village Revenue Officer (V.R.O.) The recruitment to the post of V.R.O. in Adilabad District was taken up by publishing a notification on 07.12.2011. The 1st respondent, who is a visually disabled person, submitted an application. In the selection process, she was successful and otherwise entitled to be issued orders of appointment. However, on the ground that she cannot discharge the functions of V.R.O., being 100% visually disabled, the 1st petitioner refused to issue orders of appointment. The 1st respondent pleaded before the Tribunal that the petitioners are under obligation to implement the provisions of the Persons with Disabilities (Equal Opportunities,

Protection and Full Participation) Act, 1995 (for short "the Act") and the post of V.R.O. was not exempted from the purview of the Act.

2. The petitioners opposed the O.A. They relied upon a memo, dated 03.01.2011, wherein, the issue pertaining to the reservation in favour of visually handicapped persons for the post of V.R.O. was dealt with and a decision was taken not to provide reservation, in view of the requirements under Rule 9(2)(ii)(b) of the A.P. Village Revenue Assistant Service Rules, 2005.

3. The Tribunal did not accept the contention of the petitioners and allowed the O.A. Hence, this writ petition.

4. Learned Government Pleader for Services-II for the petitioners submits that though it is the obligation of the Government to provide reservation in favour of the persons suffering with different kinds of disabilities, the requirements for effective discharge of the duties of the concerned post become relevant in this regard. He submits that the Parliament itself recognized that it is not always possible to provide reservation in favour of the persons with disabilities of all types and enabled the concerned Governments to carve out exceptions. He made reference to the proviso to Section 33 of the Act.

5. Learned counsel for the 1st respondent, on the other hand, submits that there is a statutory obligation on the State to provide reservation contemplated u/s 33 of the Act and the only means through which the reservations can be denied, is by publishing a notification in the Gazette, as defined u/s 2(s) of the Act. He submits that it is not even pleaded by the petitioners that a notification contemplated under the Act was issued and in that view of the matter, they cannot avoid their statutory obligation. He further submits that the order passed by the Tribunal does not suffer from any infirmity or illegality.

6. As a social security measure of very high order, the Parliament brought into existence, the Act in the year 1995. Various measures to improve the living conditions of the persons with disabilities are incorporated in the Act and the State and the Central Governments and their functionaries are placed under obligation to make special provisions for such persons, be it in the context of employment or other relevant matters. Section 33 of the Act deals with the reservation of posts and the extent thereof in favour of the persons with disabilities. It reads as under:

Reservation of Posts: Every appropriate Government shall appoint in every establishment such percentage of 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 or 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.

7. From this, it is clear that unless the appropriate Government takes an informal decision to exempt any work or service from the purview of Section 33 of the Act, the reservations provided under it would continue to apply. It is only when the decision so taken is made known through a notification, that the exemption would operate. Section 2(s) of the Act defines the "notification" as the one that is published in the official Gazette.

8. The petitioners, no doubt, have dealt with the matter pertaining to reservations on an earlier occasion. After taking into account the requirements under Rule 9(2)(ii)(b) of the A.P. Village Revenue Assistant Service Rules, 2005, it has been decided to exempt that service from the purview of Section 33 of the Act. It is brought to the notice of this Court that under the A.P. Village Revenue Assistant Service Rules, no Rule analogous to Rule 9(2)(ii)(b) is present.

9. Assuming that the decision of the Government applies by analogy to that service also, there is a serious impediment for the petitioners to operate it. It has already been observed that a notification under proviso to Section 33 of the Act is to be published in the Gazette. As of now, no notification was published in the Gazette for the post of V.R.O. and V.A.O. Hence, the petitioners are under obligation to implement Section 33 of the Act and if so done, the 1st respondent is entitled to be appointed.

10. Whatever be the merit or acceptability of the contention of the petitioners that the post of V.R.O. carries with it several primary and fundamental functions for which the ability of a person to identify the state of affairs before him or her physically is essential. There is no other alternative except to implement the reservation as long as there is no notification contemplated u/s 33 of the Act. It is fairly well-settled that where law requires a thing to be done in a particular manner, it shall be done in that manner or not at all. Reference in this regard can be made to the judgment of the Hon"ble Supreme Court in [Gujarat Electricity Board Vs. Girdharlal Motilal and Another](#),

11. Even at that stage, if the Government is of the view that the posts of V.R.O. and V.A.O. are such that the reservation in favour of 100% visually disabled cannot be made, necessary exercise contemplated under the Act must be undertaken. If the exemption is carved out in accordance with law, the 1st respondent can be entrusted with any duties that she can be placed in the post of similar cadre for which her disability is not an impediment.

12. The writ petition is accordingly disposed of. There shall be no order as to costs. The miscellaneous petition filed in this writ petition shall also stand disposed of. There shall be no order as to costs.