



**IN THE HIGH COURT OF KARNATAKA AT BENGALURU**

**DATED THIS THE 1<sup>ST</sup> DAY OF JUNE, 2026**

**BEFORE**

**THE HON'BLE MR. JUSTICE SURAJ GOVINDARAJ**

**WRIT PETITION NO. 11351 OF 2020 (GM-RES)**

**BETWEEN**

PSBB LEARNING LEADERSHIP ACADEMY  
NO.52, SAHARA DEEPIKA ROAD,  
LAKMIPURA, OFF BANNERGHATTA ROAD,  
SAKALVARA POST, JIGANI HOBLI  
BANGALORE-560083  
REPRESENTED BY ITS PRINCIPAL  
MRS MAHALAXMI KUMAR

...PETITIONER

(BY SHRI. B.K. SAMPATH KUMAR., SR. ADVOCATE FOR  
SHRI. SURAJ SAMPATH., ADVOCATE)

**AND**

1. MRS.BARNALI ROUT  
W/O DEBABRATA ROUT  
AGED ABOUT 42 YEARS,  
RESIDING AT FLAT NO.111  
RAJ PARADISE APTS, BILAKAHLALI  
BANNERGHATTA ROAD,  
BANGALORE-560076
2. THE STATE COMMISSIONER  
OFFICE OF THE STATE COMMISSIONER FOR  
PERSONS WITH DISABILITIES, KARNATAKA  
NO.55 ABHAYA SANKEERNA, 2<sup>ND</sup> FLOOR  
KARNATAKA SLUM DEVELOPMENT BOARD BUIDLING  
RISALDAR STREET (PLATFORM ROAD,)  
SHESHADRIPURAM BANGALORE-560020

.... RESPONDENTS

(BY SMT. JAINA KOTHARI., SR. ADVOCATE FOR





SHRI: ROHAN KOTHARI., C/R1;  
SHRI. MAHANTESH SHETTAR., AGA FOR R2)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 & 227 OF THE CONSTITUTION OF INDIA PRAYING TO ISSUE A WRIT OF CERTIORARI OR ANY OTHER WRIT, ORDER OR DIRECTION QUASHING THE IMPUGNED ORDER DATED 12.06.2020 BEARING CASE NO. 21/19-20 (ANNEXURE-A HEREIN) PASSED BY THE 2<sup>ND</sup> RESPONDENT AND ETC.

THIS WRIT PETITION COMING ON FOR ORDERS AND HAVING BEEN RESERVED FOR ORDERS ON 11.12.2025, THIS DAY, THE COURT PRONOUNCED THE FOLLOWING:

CORAM: HON'BLE MR. JUSTICE SURAJ GOVINDARAJ

### **CAV ORDER**

1. The Petitioner-School is before this Court seeking for the following reliefs:

- i. Issue a writ of certiorari or any other writ, order or direction quashing the impugned order dated 12.06.2020 bearing Case No.21/19-20 (Annexure-A herein) passed by the 2<sup>nd</sup> Respondent.*
- ii. Direct the Respondents to pay the costs of this petition; and*
- iii. Issue such other writs, directions, or orders, which this Hon'ble Court may deem fit and proper under the facts and circumstances of the case.*

2. The petitioner claims to be a premier educational institution, rated among the best schools in India for providing value-based education. It's part of a group of schools affiliated to the Central Board of



Secondary Education, (CBSE), New Delhi and is among the few in the world to bring technology right into the classroom and transform the learning experience for students. It is claimed that the primary aim of the school is to integrate academic excellence, with value education with respect to rich cultural heritage and ethos.

3. Respondent No.1 had applied for a teaching post in the Petitioner school and was selected for the post of primary teacher (hereinafter referred to as '**teacher**'), as regards which, an offer of appointment was issued on 8.7.2008. After completion of the probationary period, her appointment was confirmed on 13.7.2009. Subsequent to which, the teacher was bound by the School's Contract of Service and Service Rules for teaching and administrative staff as per CBSE Bylaws, in terms of which, her services could be terminated by giving three months' notice in writing or three months' salary in lieu of notice period.
4. On 22.8.2013, a Class VI student had changed her marks in some subject papers, and this led to an enquiry by the teachers. Out of fear of being caught in the enquiry, the student stepped out under the



windowsill of the school building, located between the ground and the first floor, and threatened to jump off.

5. Various teachers and other staff informed the administrative staff and the physical education teachers as per the safety protocol of the school, and as per the Standard Operating Procedure, the administrative staff, the physical education teachers and other staff members reached the ground floor and engaged the student in conversation so as to talk with her and refraining her from taking such an extreme step.
6. It is alleged that respondent No.1-teacher voluntarily without direct or indirect instructions and/or knowledge of anyone of the fellow staff members of the school management attempted to go onto the windowsill to save the student in a daring and reckless manner. While attempting to do so, respondent No.1 - teacher lost her footing and fell to the ground floor which resulted in grave injuries. On seeing this, the student also panicked and jumped, thereby undermining the efforts of the school authorities and staff members. However, steps having been taken to protect the student, her



injuries were minimal. If respondent No.1 - teacher had also followed the protocol, the actions on part of the school management would have been fruitful, and they might have succeeded in preventing the student from jumping. Instead of that happening, respondent No.1 - teacher also fell down, resulting in injuries to her.

7. Immediately thereafter, the school followed all medical protocols and provided immediate first aid by a qualified nurse, admitted her to the nearest super speciality hospital, namely Fortis Hospital at Bannerghatta Road for treatment on 22.8.2013. The school also made payment of the entire hospital bill of a sum of Rs.6,03,603/-.
8. An internal inquiry was conducted into the matter in 2013 itself when the other staff members have confirmed that the school protocol had been strictly followed and respondent No.1 - teacher had not followed the same. It is claimed that even after the discharge of respondent No.1 - teacher from the hospital, the school continued to retain her on the rolls and continued to pay her monthly salary out of goodwill and compassion and on that basis, it is contended that a sum of Rs.5,58,476/- has been paid



to respondent No.1 - teacher even though she did not discharge any teaching activities. Taking into account the expenses in the hospital, it is claimed that a total sum of Rs.11,62,079/- had been incurred. Numerous communications to respondent No.1 - teacher having gone un-replied, the school offered her a teaching assignment for a period of six months.

9. Since she failed to communicate her decision, School, vide its email dated 14.5.2015, had indicated that it had waited patiently for respondent No.1 - teacher to resume duty, since she had not done so, it was indicated that she could take on a retainer role for six months at her convenience.
10. It is contended that after delay of almost four years, the School was shocked to receive a notice from respondent No.2 - the State Commissioner, Office of the State Commissioner for Persons with Disabilities (hereinafter referred to as '**Commissioner of Disabilities**') as regards the proceedings initiated by the teacher in Case No.21/2019-20, the complaint having been filed, calling upon the School to make payment of all the accruals without setting out any specific demands.



11. As regards which, School submitted its reply stating that it was ready and willing to continue the employment of the teacher as an administrative support staff with a consolidated pay of Rs.15,000/-. It is contended that respondent No.1 submitted a rejoinder on 28.8.2019 seeking for Rs.60 lakhs as compensation, towards which the petitioner filed a surrejoinder. The Commissioner of Disabilities on 12.6.2020 passed an award directing School to make payment of a sum of Rs.10 lakhs towards the medical expenses and future expenses within 45 days. It is challenging the same, School is before this Court.
  
12. Submission of Shri B.K.Sampath Kumar, learned Senior counsel appearing for the Petitioner is that:
  - 12.1. School has done everything that it could in its capacity. The action on part of the teacher was contrary to the Standard Operating Procedure. If the teacher had followed the Standard Operating Procedure, there would have been no injury, which would have been caused. The teacher cannot even if her intentions were bona fide and her intentions were in the interest of the student claim compensation for actions



which are contrary to the Standard Operating Procedure.

12.2. The teacher had suppressed the fact that School had offered to continue the employment of the teacher in the administrative capacity since she could not discharge teaching functions which the teacher could have accepted. The same not having been accepted, School could not have been directed to make payment of a sum of Rs.10 lakhs towards medical expenses and future expenses when the School had already made payment of a sum of Rs.6,03,603/- on account of medical expenses, still her discharge from the hospital, apart from a sum of Rs.5,58,476/- as salary during the time that she did not present herself at the School.

12.3. His submission is that the teacher could not have approached the Commissioner of Disabilities, but a remedy was only under the Karnataka Education Act by filing an appeal against the termination of services within three months. The termination of services had been accepted, the complaint was filed before the



Commissioner of Disabilities almost four years after the termination of services.

12.4. It is knowing fully well that an appeal under the Karnataka Education Act, 1983 was not maintainable, and only barred that, the teacher has approached the Commissioner of Disabilities. Even if the Commissioner of Disabilities had jurisdiction, he submits that the teacher having approached the Commissioner of Disabilities after four years of the event, the same was barred by limitation and as such, he submits that the Commissioner of Disabilities could not have entertained the claim of the teacher.

12.5. His submission is that under Article 137 and 113 to the Schedule of Limitation Act, 1963, even when no period of limitation is prescribed or provided for anywhere, the proceedings must be filed within 3 years from date when right to apply/sue, if any, accrues and in the present factual matrix the complaint filed before Respondent No.2 is squarely barred by Limitation.



12.6. The teacher has suppressed various facts and has not approached the Commissioner with clean hands. By making an attempt to gain misplaced sympathy, suppression of material facts of making payment of medical bills, making payment of salaries, an offer made to retain her in administrative capacity has not been disclosed when the initial complaint was filed. It is only thereafter that School brought the same to the notice of the Commissioner which has not been properly appreciated by the Commissioner. His submission is that the award passed by the Commissioner is purely on sympathetic reason and not on the basis of law and is required to be set aside.

12.7. The suppression of material facts, he submits, would not entitle the teacher for equitable consideration and in this regard, he relies upon the decision of the Hon'ble Supreme Court in the case of ***S.P.Chengalvaraya Naidu (dead) by LRs. Vs. Jagannath (dead) by LRs and others***<sup>1</sup>, more particularly para no.5 thereof which is reproduced hereunder for easy reference:

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<sup>1</sup> (1994) 1 SCC 1



*5. The High Court, in our view, fell into patent error. The short question before the High Court was whether in the facts and circumstances of this case, Jagannath obtained the preliminary decree by playing fraud on the court. The High Court, however, went haywire and made observations which are wholly perverse. We do not agree with the High Court that "there is no legal duty cast upon the plaintiff to come to court with a true case and prove it by true evidence". The principle of "finality of litigation" cannot be pressed to the extent of such an absurdity that it becomes an engine of fraud in the hands of dishonest litigants. The courts of law are meant for imparting justice between the parties. One who comes to the court, must come with clean hands. We are constrained to say that more often than not, process of the court is being abused. Property-grabbers, tax-evaders, bank-loan-dodgers and other unscrupulous persons from all walks of life find the court-process a convenient lever to retain the illegal gains indefinitely. We have no hesitation to say that a person, who's case is based on falsehood, has no right to approach the court. He can be summarily thrown out at any stage of the litigation.*

12.8. The action on the part of the petitioner school is proper and correct. The school has acted in as humane a manner as possible. All that the school could do, the school has done. The teacher not being able to discharge her functions as a teacher due to her severe disability, there could not have been an order of reinstatement of the teacher made. Such a reinstatement will act contrary to and will not be in the interest of the students concerned



since with the disability that she suffers, the teacher will not be able to discharge her duties in a proper manner, thereby impinging on the future of the students.

12.9. His submission is that though there is a requirement for every establishment to provide equal opportunity, to all including persons with disabilities, the role in which a person with disability could be absorbed would have to be a role which would not create any harm for any other individual. The rights of both the person with disability and other persons and the students are required to be balanced. The providing of equal opportunity to a person with disability cannot result in causing harm and injury to any other person.

12.10. His submission is also that in terms of Section 89 of the Rights of Persons with Disabilities Act, 2016 (for short, '**Disabilities Act of 2016**'). Any contravention of the Disabilities Act of 2016 is punishable with fine which may extend to Rs.10,000/- and for any subsequent fine, which shall not be less than Rs.50,000/- but which may extend to Rs.5 lakhs. There being



only one offence allegedly committed by School, at the most a fine of Rs.10,000/- could have been imposed.

12.11. The School could not have been directed to reinstate the teacher as also to make a payment of a sum of Rs.10 lakhs as medical expenses. The accident having occurred on 22.08.2013 and the separation letter having been issued on 31.5.2015, it is the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 which would be applicable and not the Rights of Persons with Disabilities Act of 2016 which came into effect on 19.4.2017 which would be applicable. The said Act had been gazetted on 15.06.2017. The applicability of the Karnataka State Rights of Persons with Disability Rules, 2019 which was notified only on 30.8.2019 is also unsustainable.

12.12. Thus, he submits that the Statute which would be applicable being the Act of 1995, the entire order which was passed by the Commissioner on the basis of the Disabilities Act of 2016 and



Rules of 2017 as well as the Rules of 2019 are completely unsustainable.

12.13. His submission is that even if for the sake of argument one assumed that a private school falls within the purview of the Act, an "equal opportunity policy" can only be published once the appropriate Government has had a dialogue with the private sector in order to help disabled people secure employment as per Paragraph 50 of the National Policy for Persons with Disabilities bearing No. 3-1/1993-DD.III dated 10.02.2006.

12.14. Under Section 81 of the Disabilities Act of 2016, assuming that it applies, only a recommendation can be made by the Commissioner. No order could be passed in the manner as done. It was for the appropriate authority to accept the said recommendation within a period of three months in terms of Section 81. In the present order, the Commissioner has only provided 45 days, which is impermissible. The School having offered suitable alternative role for the teacher considering her physical limitations, the



impugned order is completely unsustainable. His submission is also that an establishment under the Act is a public establishment, and a private establishment cannot be a subject matter of any proceedings under the Disabilities Act of 2016. His submission is that there cannot be a reservation for employment and or the policy of non-discrimination in employment be made applicable to a private. In this regard, he submits that Section 20 of the Disabilities Act of 2016 only applies to a government establishment. Said Section 20 is reproduced hereunder for easy reference:

**20. Non-discrimination in employment.**—(1) *No Government establishment shall discriminate against any person with disability in any matter relating to employment:*

*Provided that the appropriate Government may, having regard to the type of work carried on in any establishment, by notification and subject to such conditions, if any, exempt any establishment from the provisions of this section.*

(2) *Every Government establishment shall provide reasonable accommodation and appropriate barrier free and conducive environment to employees with disability.*

(3) *No promotion shall be denied to a person merely on the ground of disability.*



*(4) No Government establishment shall dispense with or reduce in rank, an employee who acquires a disability during his or her service:*

*Provided that, if an employee after acquiring disability is not suitable for the post he was holding, shall be shifted to some other post with the same pay scale and service benefits:*

*Provided further that if it is not possible to adjust the employee against any post, he may be kept on a supernumerary post until a suitable post is available or he attains the age of superannuation, whichever is earlier.*

*(5) The appropriate Government may frame policies for posting and transfer of employees with disabilities.*

12.15. He refers to Section 21 of the Disabilities Act of 2016 to contend that equal opportunity is required to be only provided by a government establishment or a public establishment and not by a private establishment. Section 21 is reproduced hereunder for easy reference:

**21. Equal opportunity policy.**—(1) *Every establishment shall notify equal opportunity policy detailing measures proposed to be taken by it in pursuance of the provisions of this Chapter in the manner as may be prescribed by the Central Government.*

*(2) Every establishment shall register a copy of the said policy with the Chief Commissioner or the State Commissioner, as the case may be.*



12.16. He thus submits that a conjoined reading of the Disabilities Act of 2016 including its preamble, the National Policy for Persons with Disabilities, and the United Nations Convention on the Rights of Persons with Disabilities which was came into force in 2008 would only indicate that the onus lies on the State to facilitate the protection of rights of disabled and a private entity will not be subject matter of proceedings under the Disabilities Act of 2016 for implementation thereof.

12.17. By referring to Section 35 of the Act, he submits, that it is only when incentives are made available to employers under private sector that some of the requirements of the Act as provided to be followed by the private sector are to be followed. There are no incentives which have been made available by the appropriate government or local authorities to the petitioner private school and as such, there is no obligation on part of a private school to comply with the mandates of the Disabilities Act of 2016 which are applicable only to public institution or government institutions.



12.18. He also submits that the Respondent No.1 - Teacher has neither approached the government for aid or placement, nor has the government offered any aid or employment to her although it is the State's duty to ensure welfare of its citizens.

12.19. Section 35 of the Disabilities Act of 2016 is reproduced hereunder for easy reference:-

***35. Incentives to employers in private sector.—***  
*The appropriate Government and the local authorities shall, within the limit of their economic capacity and development, provide incentives to employer in private sector to ensure that at least five per cent. of their work force is composed of persons with benchmark disability.*

12.20. His submission is that the State Government has not given any incentives to the Petitioner despite it being a statutory duty and that the accommodations sought for by the Respondent are outside the Petitioner's financial capacity and are impossible to perform without governmental support. He submits that the Government has not even notified a Special Employment Exchange as required under Section 36. The Respondent without applying



under Section 38 of the Act is trying to harass the petitioner.

12.21. His submission is that the teacher now being unable to render the services, as required, she not being in a position to discharge the duties towards the students, there would have to be an additional support teacher appointed along with the teacher to conduct the classes, which will make the same inequitable to the other teachers and lead to poor morale among the teachers. The petitioner being a private educational institute has a right to terminate the employment of the teacher who did not respond and did not attend the school for a period of 21 months.

12.22. At the most, in terms of the contract of Service, the school is required to give a three months' notice or three months' salary in lieu thereof. The services being terminable in nature, the Contract for Service not being specifically enforceable, the direction which has been issued by the Commissioner is contrary to the applicable law.



12.23. The teacher having gone abroad to avail of medical treatment of her own free will and choice and incurred huge expenses, those medical expenses could not have been directed to be paid by the school on account of the order of the Commissioner. The School has made payment of all necessary benefits, emoluments, etc. as per the applicable contract.

12.24. Even as per the original complaint which had been filed, the claim which had been made by the teacher was only as regards the accrued salaries, without setting out any specific demands and only in the rejoinder that the claim for medical expenses of Rs.60 lakhs incurred abroad had been made, which was an improvement on the case of the teacher. The expenses incurred by a teacher outside the country cannot be directed to be paid by the school.

12.25. In this regard, he relies on the decision of the Hon'ble Apex Court in the case of ***North Eastern Chemicals Industries (P) Ltd. v. Ashok Paper Mill (Assam) Ltd.***<sup>2</sup> more

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<sup>2</sup> AIR 2024 SC 439



particularly Paras 17, 22, 23 and 30.2 thereof, which are reproduced hereunder for easy reference:

**17.** *The above description of the powers of either the Code or CrPC clearly testifies to the intent of the State Legislature to specifically restrict the application of both the said Codes, to only the extent provided. The principle of statutory interpretation: expression unius est exclusion alterius (the expression of one thing is the exclusion of the other) supports such a view. We also notice this Court holding International Asset Reconstruction Co. of India v. Official Liquidator [International Asset Reconstruction Co. of India v. Official Liquidator, (2017) 16 SCC 137 : (2018) 2 SCC (Civ) 724] as extracted below : (SCC p. 140, para 9)*

*"9. The fact that the Tribunal may be vested with some of the powers as a civil court under the Code of Civil Procedure, regarding summoning and enforcing attendance of witnesses, discovery and production of the documents, receiving evidence on affidavits, issuing commission for the examination of witnesses or documents, reviewing its decisions, etc. does not vest in it the status of a court. Section 22(1), in fact, provides that the Tribunal shall not be bound by the procedures under the Code, and can regulate its own procedures in accordance with natural justice."*

*(emphasis supplied)*

**22.** *Having come to the conclusion as above, we are required to consider, whether the instant appeal, filed against the order of the Commissioner of Payments is maintainable or not? Prior to delving into such a question, we would also need to examine as to whether in the absence of an expressly prescribed limitation, can an appeal from an order passed by the Commissioner of*



*Payments, be entertained, irrespective of passage of time?*

***23.** This dispute concerns the exercise of a statutory right. The issue of no express limitation being provided in regard to the exercise of a right to assail the order has captured the attention of this Court, earlier, on certain occasions. We may refer to some decisions hereinbelow.*

***30.2.** In the absence of any particular period of time being prescribed to file an appeal, the same would be governed by the principle of "reasonable time", for which, by virtue of its very nature, no straitjacket formula can be laid down and it is to be determined as per the facts and circumstances of each case. In the present lis, having regard to the sequence of events, as taken note of above, the appellant claimants cannot be said to have transgressed the boundaries of reasonable time in filing their appeal before the District Judge."*

12.26. By relying on **North Eastern Chemicals Industries (P) Ltd's**<sup>2</sup> case he submits that where the statute does not prescribe any specific period of limitation for filing an appeal or for assailing an order, the exercise of such statutory right is nevertheless required to be undertaken within a reasonable time. According to him, the Hon'ble Apex Court has categorically held that the absence of an express limitation provision does not imply that the remedy may be invoked at any point of time without restriction; rather, the Court must



examine whether the remedy has been exercised within a reasonable period, having regard to the facts and circumstances of the case and the sequence of events. He therefore contends that the maintainability of the present proceedings must also be tested on the touchstone of the doctrine of reasonable time, and that any belated invocation of the statutory remedy beyond such reasonable period would be impermissible in law.

12.27. He relies on the decision of the Hon'ble Apex Court in the case of ***State Bank of Patiala, Arvind Bhushan Pandey v. Vinesh Kumar Bhasin***<sup>3</sup> more particularly Paras 11 and 13 thereof, which are reproduced hereunder for easy reference:

**11.** *Under the Rules, an officer of the Bank, shall retire on completion of thirty years of service. The respondent was accordingly retired on completion of thirty years. He was not denied any retiral benefits. He was not entitled, as of right, to continue beyond thirty years of service. In fact, he did not want to continue in service, as his grievance was that he ought to have been permitted to retire under the exit policy scheme. The grievance of the respondent had apparently nothing to do with his being a person with a disability. Prima facie, neither Section 47 nor any other provision of the Disabilities Act was*

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<sup>3</sup> (2010) 4 SCC 368



*attracted. But, the Chief Commissioner chose to issue a show-cause notice on the complaint and also issued an ex parte direction not to give effect to the order of retirement. He overlooked and ignored the fact that the retirement from service was on completion of the prescribed period of service as per the service regulations, which was clearly mentioned in the letter of retirement dated 17-11-2006; and that when an employee was retired in accordance with the Regulations, no interim order can be issued to continue him in service beyond the age of retirement. The Chief Commissioner also overlooked and ignored the fact that as an authority functioning under the Disabilities Act, he has no power or jurisdiction to issue a direction to the employer not to retire an employee. In fact, under the scheme of the Disabilities Act, the Chief Commissioner (or the Commissioner) has no power to grant any interim direction.*

**13.** *It is evident from the said provisions, that neither the Chief Commissioner nor any Commissioner functioning under the Disabilities Act has power to issue any mandatory or prohibitory injunction or other interim directions. The fact that the Disabilities Act clothes them with certain powers of a civil court for discharge of their functions (which include the power to look into complaints), does not enable them to assume the other powers of a civil court which are not vested in them by the provisions of the Disabilities Act. In All India Indian Overseas Bank SC and ST Employees' Welfare Assn. v. Union of India [(1996) 6 SCC 606], this Court, dealing with Article 338(8) of the Constitution of India (similar to Section 63 of the Disabilities Act), observed as follows:*

*It can be seen from a plain reading of clause (8) that the Commission has the power of the civil court for the purpose of conducting an investigation contemplated in sub-clause (a) and an inquiry into a complaint referred to in sub-clause (b) of clause (5) of Article 338 of the Constitution.....All the procedural powers of a*



*civil court are given to the Commission for the purpose of investigating and inquiring into these matters and that too for that limited purpose only. The powers of a civil court of granting injunctions, temporary or permanent, do not inhere in the Commission nor can such a power be inferred or derived from a reading of clause (8) of Article 338 of the Constitution.....”*

12.28. By relying on **Vinesh Kumar Bhasin’s**<sup>3</sup> case he submits that where a statutory authority is conferred only limited powers akin to those of a civil court for specific purposes, such conferment cannot be construed as vesting the authority with the entire jurisdiction or powers of a civil court. According to him, the Hon’ble Apex Court has clearly held that the grant of certain procedural powers—such as summoning witnesses, receiving evidence, or conducting inquiries—does not authorise such authority to issue mandatory or prohibitory injunctions or other interim directions, unless such power is expressly provided under the statute itself. He therefore contends that the mere fact that an authority is vested with certain procedural powers of a civil court does not entitle it to assume substantive judicial powers which the statute has not expressly conferred. Consequently, any exercise of jurisdiction



beyond the limited statutory mandate would be without authority of law.

12.29. Reliance is placed on the judgment of this Court in the case of ***Managing Director, Bangalore Metropolitan Transport Corporation, Bangalore vs. Sumitra and Another***<sup>4</sup>, more particularly Paras 4, 7 to 13, which are reproduced hereunder for easy reference:

*4. Having regard to the submissions made by the learned advocates and the record of the case, point for consideration is "Whether the Commission has the power to issue direction for reinstatement of the employee and for extension of all service/monetary benefits?"*

*7. It can be seen from S.9 that the Commission has been authorized to take up the study in respect of economic, educational and health situation of women and make its recommendations to the State Government. Further, the Commission is competent to look into complaints or suo-motu issue notice in respect of matters specified in S.9(1)(f). Clause (d) of sub-Section (1) of S.9 of the Act provides that the Commission shall review, from time to time, the existing provisions of the Constitution and other laws affecting the women and recommend amendments thereto so as to suggest remedial legislative measures to meet any lacunae or inadequacies or shortcomings in such legislations. The Commission has been assigned the role of assisting non governmental organizations in the State in legal counselling on power of women and enabling such women to get legal aid. As per clause (i) of sub-Section (1) of S.9, the Commission is authorized to inspect or cause to be inspected a jail, remand home,*

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<sup>4</sup> Writ Petition No. 48227 of 2012, DD 10.11.2026



women's institution or other place of custody where women are kept as prisoners or otherwise and take up with the concerned authorities for remedial action, wherever found necessary. The Commission has been assigned the role of helping the women in distress as a friend and guide in enforcement of their legal rights. No power or authority has been given to the Commission to adjudicate or determine the rights of the parties.

- 8.** *Sri H.P. Gangesh Gowda, learned advocate submitted that the Commission having been conferred with the powers of a Civil Court under Civil Procedure Code in trying a suit as per S.10 and a complaint having been lodged by respondent No.1 concerning deprivation of her rights by the petitioner and the Commission having authority to decide the complaint, passed the order vide Annexure-A, in exercise of the powers under S.9(1)(f) of the Act.*
- 9.** *The Act, in my opinion has not entrusted the Commission with the power to take up the role of a Court/Tribunal and determine the rights of the parties, in as much as, it is not discharging the functions of a Court/Tribunal.*
- 10.** *The reading of S.10 makes it apparent that the Commission shall, while investigating any matter for the purposes of the Act have all the powers of a Civil Court under Civil Procedure Code, 1908 (Central Act 5 of 1908) in trying a suit and in particular, in respect of the matters specified as per clauses (a) to (f) therein and not for other purposes. The Legislature has not conferred the jurisdiction on the Commission to pass an order of the nature as at Annexure-A. The Commission has exceeded the authority in passing the order as at Annexure-A, which is ultra vires the provisions of the Act.*
- 11.** *Dealing with the powers of the Chief Commissioner and the Commissioners under the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 and the rules made thereunder, Apex Court, in STATE BANK OF PATIALA Vs. VINESH KUMAR BHASIN, (2010) 4 SCC 368, has held as under:*



*"18. It is evident from the said provisions, that neither the Chief Commissioner nor any Commissioner functioning under the Disabilities Act has power to issue any mandatory or prohibitory injunction or other interim directions. The fact that the Disabilities Act clothes them with certain powers of a civil court for discharge of their functions (which include the power to look into complaints), does not enable them to assume the other powers of a civil court which are not vested in them by the provisions of the Disabilities Act."*

**12.** *Dealing with the powers of State Commission for Women in Orissa, Apex Court in the case of, BHABANI PRASAD JENA Vs. ORISSA STATE COMMISSION FOR WOMEN, (2010) 8 SCC 633, has held as follows:*

*"11. Mr. Ranjan Mukherjee, learned counsel for Respondent 2 submitted that once a power has been given to the State Commission to receive complaints including the matter concerning deprivation of women of their rights, it is implied that the State Commission is authorised to decide these complaints. We are afraid, no such implied power can be read into Section 10(1)(d) as suggested by the learned counsel. The provision contained in Section 10(1)(d) is expressly clear that the State Commission may receive complaints in relation to the matters specified therein and on receipt of such complaints take up the matter with the authorities concerned for appropriate remedial measures. The 1993 Act has not entrusted the State Commission with the power to take up the role of a court or an adjudicatory tribunal and determine the rights of the parties. The State Commission is not a tribunal discharging the functions of a judicial character or a court."*

**13.** *In W.P.No.83554/2010, Karnataka Veterinary Animal and Fisheries Sciences University vs. Sunil Kumar Shindhe and another, respondent No.1 was a contractual assistant of the petitioner - University and had approached the Commissioner for Persons*



*with Disabilities to direct the petitioner to give the post of Assistant in the University by regularizing the services and extend the consequential benefits. The Commissioner having directed the petitioner to continue the complainant by giving contractual work, writ petition was filed by the University. Considering the rival contentions, which were similar in nature and taking note of the ratio of law laid down in Vinesh Kumar Bhasin's case (supra), writ petition was allowed and the impugned order was quashed. In view of the above, it is clear that the Commission has exercised power not vested in it in the matter of passing the impugned order. Hence, the Order at Annexure-A being ultra vires and illegal is quashed, with no order as to costs. Petition allowed."*

12.30. By relying on **Sumitra's**<sup>4</sup> case he submits that statutory commissions constituted under special enactments, though vested with certain powers of a civil court for the limited purpose of conducting inquiries or investigations, do not possess adjudicatory jurisdiction to determine the rights of parties or to grant substantive reliefs such as reinstatement or monetary benefits, unless such powers are expressly conferred by the statute. He contends that this Court has categorically held that the conferment of limited procedural powers under the Civil Procedure Code does not transform such a commission into a court or tribunal exercising judicial powers, and consequently the commission cannot assume authority to pass orders affecting service rights or directing



reinstatement. He therefore submits that where the statute merely empowers the commission to receive complaints, examine grievances and recommend remedial measures, any order purporting to determine rights or grant binding relief would be ultra vires the provisions of the Act and without jurisdiction.

12.31. Reliance is placed on the decision of the Hon'ble High Court of Delhi in the case of ***Guru Gobind Singh Indraprastha University vs. Kamal Jant Agarwal***<sup>5</sup> more particularly Paras 1, 3 and 4 which are reproduced hereunder for easy reference:-

*1. By this writ petition filed under Article 226 of the Constitution of India, the petitioner/University impugns the order dated 09.04.2013 passed by the Commissioner for Persons with Disabilities, New Delhi (vested with power of Civil Court under the Persons with Disability (Equal Opportunity, Protection of Rights and Full Participation) Act, 1995) whereby, the Commissioner has effectively passed a judgment and issued directions for giving benefits to the respondent of seniority, promotion and monetary claims along with the back wages. The operative portion of the impugned order reads as under:-*

*"7 (ix) The argument of the University that they found Sh. Kamal Kant Aggarwal suitable for the post of Laboratory Assistant Grade-I and could not find him suitable for the post of Technical Assistant/Workshop Instructor based on the same aspects of technical know-how appears to be quite intriguing. The*

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<sup>5</sup> Laws (DLH) 2015 (3) 588



*reliance put on the judgment of the Hon'ble Apex Court that an oral test is important to judge overall intellectual and personal qualities like alertness, resourcefulness, dependability, capacity for discussion, ability to take decisions, quality of leadership etc does not appear to be fully relevant in this case as the requirement of the job of a Technical Assistant/Workshop Instructor may be well tested by a written examination which was held and in which the petitioner secured a total of 44 marks (i.e. 55% marks). He was not selected and candidates securing less marks were selected in the General Category. There is no doubt that an oral test is important from the point of view of ascertaining suitability of the candidate for a post; however the requirement for each post is different and in any case the selection cannot be based entirely on the basis of the performance in the oral test. The requirement of the job of Lab Assistant Grade-I and Technical Assistant/Workshop Instructor may not be very much different as both require the same aspects of technical know-how as asserted by the University themselves and therefore rejecting the candidature of Sh. Kamal Kant Aggarwal is not justified. The petitioner should not have been interviewed at par with general category candidates. He should have been selected on relaxed standard to fill up the vacancy reserved for PH category as he (the petitioner) was otherwise fit having secured 55% marks in the written examination.*

*7 (x) In conspectus of the matter I am of the considered view that the petitioner is entitled to be appointed to the post of Technical Assistant/Workshop Instructor advertised by the University for Physically Handicapped Persons. The University is therefore directed to consider the case of Sh. Kamal Kant Aggarwal in view of the instructions/guidelines of the Government of India on the subject; requirement of the reasonable accommodation as also provided u/s 38 of the Persons with Disabilities Act 1955 and the orders/judgments of the Hon'ble Supreme Court of India and the Hon'ble High Court. He will also be given all the consequential benefits of seniority, promotion and monetary emoluments from the date*



*others joined through the selection process conducted by the University in 2008 i.e. he would be treated as having joined along with his batchmates for purpose of determination of his seniority, promotion and monetary benefits. In so far the monetary benefits/backwages for the past are concerned; since the petitioner has been working as Lab Assistant Grade-I the petitioner would be entitled to all benefits for the past also less the amount received by the petitioner in the course of his employment. The arbitrariness on the part of the University is such that it cannot be argued by the respondent (the University) that the petitioner should not be given benefit of the past as he has not worked on the post. If the petitioner has not worked it is also the responsibility of the respondent as they have defied the mandate of the Parliament as provided under the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act 1995. The petitioner was the only candidate in the category of physically handicapped persons against one post advertised by the University as reserved for PH category. 7(xi) Ordered accordingly."*

- 3.** *The Supreme Court in the case of Vinesh Kumar Bhasin (supra) has relied upon the earlier judgment of the Supreme Court in the case of All India Indian Overseas Bank SC and ST Employees' Welfare Assn. and Ors. Vs. Union of India and Ors. (1996) 6 SCC 606 wherein the Supreme Court has observed and laid down the ratio that a Commissioner acting under specific provisions of law, cannot de hors those provisions start acting like a court and issue directions or injunctions etc . In view of the above, it is clear that the impugned order dated 09.04.2013 passed by the Commissioner for Persons with Disabilities is without jurisdiction.*

*Learned counsel for the respondent sought to place reliance on Geetaben Ratilal Patel Vs. District Primary Education Officer (2013) 7 SCC 182, however, reference to this judgment shows that the said judgment did not deal with the issue of whether the*



*Commissioner for Persons with Disabilities has jurisdiction to pass a judgment or order or directions or injunction etc etc. In fact assuming that the judgment in case of Geetaben Ratilal Patel (Supra) holds that the Commissioner for Persons with Disabilities has power to pass any directions, though the said judgment does not so hold, the said judgment will not be the law inasmuch as it has now been repeatedly held by the Supreme Court that the later judgment of a Division Bench of equal number of Judges cannot pronounce upon differently than what is held earlier by a Division Bench of equal number of Judges of the Supreme Court. The judgment in case of Vinesh Kumar Bhasin (Supra) is of a Division Bench of two Judges of the Supreme Court and judgment in case of Geetaben Ratilal Patel (Supra) is also of a Division Bench of two Judges of the Supreme Court, and therefore, it is the judgment in the case of Vinesh Kumar Bhasin (Supra) which will bind this Court and not judgment in the case of Geetaben Ratilal Patel (Supra).*

**4.** *In view of the above, the impugned order of the Commissioner for Persons with Disabilities is set aside.*

12.32. By relying on **Kamal Jant Agarwal's**<sup>5</sup> case he submits that the Commissioner for Persons with Disabilities, though vested with certain powers of a civil court for the limited purpose of inquiry under the statute, cannot assume the role of a court and issue binding directions determining service rights such as appointment, seniority, promotion or grant of back wages, unless such authority is expressly conferred by the statute. He contends that the Delhi High Court, following the ratio laid down by the Hon'ble



Supreme Court in **Vinesh Kumar Bhasin's**<sup>3</sup> case, has categorically held that the Commissioner cannot act de hors the statutory provisions and issue mandatory directions akin to a judicial adjudication. According to him, any such order directing appointment, grant of consequential benefits or monetary relief would therefore be without jurisdiction and liable to be set aside, as the statutory authority is only empowered to inquire into complaints and make appropriate recommendations within the confines of the statute.

12.33. Reliance is placed on the judgment of this Court in the case of **State Bank of India vs. The Chief Commissioner for Persons with Disabilities and another**<sup>6</sup> more particularly Paras 4 to 9 which are reproduced hereunder for easy reference:

**4.** *The impugned order passed in the year 2019 is only a narration of factual aspects with no reasons at all. Respondent No.1/Chief Commissioner has directed the Petitioner/Bank to reinstate the Respondent No.2 and give extension of two years' probation period. There is no reference under which provision, the Commissioner has exercised the power. Though it is true that the cases of persons with disabilities must be handled with sensitivity and that procedural technicalities should not come in the way of granting*

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<sup>6</sup> WP No.116/2023 dtd 1.7.2024



*them relief, issue raised before us is about the Jurisdiction of Respondent No.1 Commissioner.*

**5.** *The functions of the Commissioner are listed under Section 75 of the Rights of Persons with Disabilities Act, 2016 which are as under:*

*"75. Functions of Chief Commissioner. (1) The Chief Commissioner shall-*

- (a) identify, suo motu or otherwise, the provisions of any law or policy, programme and procedures, which are inconsistent with this Act and recommend necessary corrective steps:*
- (b) inquire, suo motu or otherwise, deprivation of rights of persons with disabilities and safeguards available to them in respect of matters for which the Central Government is the appropriate Government and take up the matter with appropriate authorities for corrective action:*
- (c) review the safeguards provided by or under this Act or any other law for the time being in force for the protection of rights of persons with disabilities and recommend measures for their effective implementation;*
- d) review the factors that inhibit the enjoyment of rights of persons with disabilities and recommend appropriate remedial measures;*
- (e) study treaties and other international instruments on the rights of persons with disabilities and make recommendations for their effective implementation;*
- (f) undertake and promote research in the field of the rights of persons with disabilities;*
- (g) promote awareness of the rights of persons with disabilities and the safeguards available for their protection;*
- (h) monitor implementation of the provisions of this Act and schemes, programmes meant for persons with*



- (i) monitor utilisation of funds disbursed by the Central Government for the benefit of persons with disabilities and*
  - (i) perform such other functions as the Central Government may assign.*
  - (2) The Chief Commissioner shall consult the Commissioners on any matter while discharging its functions under this Act."*
- 6.** *The Commissioner has to thereafter make recommendation under Section 76 of the Rights of Persons with Disabilities Act, 2016 as follows:*

*"76. Action of appropriate authorities recommendation of Chief Commissioner.- Whenever the Chief Commissioner makes a recommendation to an authority in pursuance of clause (b) [of sub-section (1)] of section 75, that authority shall take necessary action on it, and inform the Chief Commissioner of the action taken within three months from the date of receipt of the recommendation: Provided that where an authority does not accept a recommendation, it shall convey reasons for non-acceptance to the Chief Commissioner within a period of three months, and shall also inform the aggrieved person."*

*These provisions, do not confer the Commissioner with the powers to direct rain*

- 7.** *The Hon'ble Supreme Court in the case of State Bank of Patiala (supra) had considered the powers of the Commissioner for Disabilities. In this case an employee of the State Bank of Patiala made a complaint to the Commissioner of Persons with Disabilities seeking a direction to the Bank to give relief under 'Exit Option Scheme' of the Bank. The Commissioner issued interim directions. The Bank filed objection contending that the complaint was not maintainable and also on merits. Since the direction of the Commissioner was not complied with, the employee approached the High Court. The High Court also issued an ex-parte interim order that direction of*



*the Commissioner be complied with. Since, the order was not complied with, a contempt petition was filed. Challenging these orders, the Bank approaches the Hon'ble Supreme Court. The Hon'ble Supreme Court considered the provisions of Section 58 and 59 of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995. The Supreme Court observed that the grievance of persons with complaint of disabilities though have to be looked at by the Courts and the Authorities with compassion and understanding, the provisions of the Act cannot be pressed in service to pass orders not contemplated under the Act.*

- 8. The Petitioner has also relied on the order passed by the learned Single Judge in the case of Kerala Public Service Commission (supra), wherein the Single Judge has also taken a view that reading of the power of the Commissioner under the Act of 2016 would only indicate that it has power to advise and make recommendations to a appropriate authority.*
- 9. The learned counsel for the Petitioner Bank submitted that under the provision of the Rights of Persons with Disabilities Act, 2016 is more restricted than the Act of 1995. The impugned order does not refer to any specific provision conferring such power. There is also no reason whatsoever as to why the order is being passed, that too mandatory direction and not a recommendation.*

12.34. By relying on **State Bank of India's**<sup>6</sup> case he submits that the statutory scheme of the Rights of Persons with Disabilities Act, 2016 does not confer adjudicatory powers on the Chief Commissioner to issue mandatory directions such as reinstatement, continuation in service, or grant of service benefits. According to him, a reading of Sections 75 and 76 of the Act clearly



indicates that the role of the Chief Commissioner is essentially investigatory and recommendatory in nature, namely to inquire into complaints regarding deprivation of rights of persons with disabilities and thereafter take up the matter with the appropriate authority for corrective action by making recommendations.

12.35. He therefore contends that the statute does not authorise the Commissioner to pass binding or enforceable directions affecting service rights, and that any such order directing reinstatement or extension of service would travel beyond the statutory mandate and be without jurisdiction. It is his submission that this Court has accordingly held that the Commissioner cannot exercise powers akin to those of a court or tribunal, and that the authority is confined only to making recommendations to the appropriate authority, which may thereafter consider and act upon such recommendations in accordance with law.

12.36. Reliance is placed on the decision of the Hon'ble High Court of Kerala in the case of ***Kerala Public Service Commission vs. State***



***Disability Commissioner and others***<sup>7</sup> more particularly Paras 5, 17, 18, 19, 20 and 22, which are reproduced hereunder for easy reference:-

**(5)** *The Commissioner accordingly gave the following directions:*

- (1) The additional 2<sup>nd</sup> respondent-Law Secretary, Government of Kerala shall compute the backlog vacancies of Legal Assistant Gr.II of the hearing impaired category in his department during the period from 7/2/1996 to till the date of receipt of a copy of this order in his office and report one of such vacancies to the 1st respondent Secretary of the Kerala Public Service Commission for giving appointment to the petitioner as Legal Assistant Gr.II within 30 days from the above said date.*
- (2) If it is found that there is no regular vacancy for accommodating the petitioner as Legal Assistant Gr.II in the Law Department at present, she will be accommodated in a supernumerary post vacancy arises. and be accommodated in the regular service as the junior most Legal Assistant Gr.II as and when a vacancy arises.*
- (3) The 1<sup>st</sup> respondent Secretary, Kerala Public Service Commission shall issue advise memo for the appointment of the petitioner in the post of Legal Assistant Gr.II in the Law Department, Government of Kerala treating that the Ext.P3 as a valid (additional/supplementary) rank list within 30 days from the date of getting communication from the 2nd respondent vide (1) or (2) as above.*
- (4) The 2nd respondent shall issue posting order to the petitioner as Legal Assistant Gr.II in the Law Department in a vacancy as specified in*

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<sup>7</sup> Laws (KER) 2023 (5) 23



- (1) or (2) above within 30 days from the date of receipt of communication from the 1st respondent regarding the compliance 3rd above.
- (5) The respondents 1 and 2 will file action taken report before the State Commissionerate for Persons with Disabilities as per Sec. 81 of the RPWD Act, 2016.

Aggrieved by the said Ext.P1 order of the State Commissioner for Persons with Disabilities, Kerala, the Kerala PSC has filed this writ petition.

- (17.)** Though the petitioner-Public Service Commission has raised various legal and factual grounds in the writ petition to impugn Ext.P1 order, the prime argument raised is regarding the powers and functions of the 1st respondent-State Disability Commissioner and the incompetence of the 1st respondent to pass an order in the nature of Ext.P1.
- (18.)** The 1st respondent-State Disability Commissioner is appointed under the Rights of Persons with Disabilities Act, 2016. The Act, 2016 is intended to provide full participation and equality of the people with disabilities. The Act gives rights and entitlements to persons with disability and provides for education, skill development, employment, social security, health, rehabilitation and recreation, etc. The Act also contemplates appointment of State Disability Commission by State Governments.
- (19.)** Sec. 80 of the Act, 2016 lays down functions of State Commissions. Sec. 80 reads as follows:

80. Functions of State Commissioner - The State Commissioner shall -

(a) identify, suo motu or otherwise, provision of any law or policy, programme and procedures, which are in consistent with this Act, and recommend necessary corrective steps;

(b) inquire, suo motu or otherwise deprivation of rights of persons with disabilities and safeguards available to them in respect of matters for which the State Government is the appropriate



*Government and take up the matter with appropriate authorities for corrective action;*

*(c) review the safeguards provided by or under this Act or any other law for the time being in force for the protection of rights of persons with disabilities and recommend measures for their effective implementation;*

*(d) review the factors that inhibit the enjoyment of rights of persons with disabilities and recommend appropriate remedial measures:*

*(e) undertake and promote research in the field of the rights of persons with disabilities,*

*(f) promote awareness of the rights of persons with disabilities and the safeguards available for their protection;*

*(g) monitor implementation of the provisions of this Act and schemes, programmes meant for persons with disabilities;*

*(h) monitor utilisation of funds disbursed by the State Government for the benefits of persons with disabilities; and*

*(i) perform such other functions as the State Government may assign.*

**(20.)** *Sec. 81 provides that whenever the State Commissioner makes a recommendation to an authority in pursuance of Sec. 80(b), that authority shall take necessary action on it, and inform the State Commissioner of the action taken within three months from the date of receipt of recommendation. The State Commission has been given certain powers under Sec. 82 to summon and enforce the attendance of witnesses, to require discovery and production of documents, to requisition public records from any court or office, to receive evidence on affidavits and to issue Commissions for examination of witnesses. A reading of Ss. 80 to 83 would show that the State Disability Commissioner has power only to advise and make recommendations to appropriate authorities. In*



*Ext.P1, the 1st respondent-Disability Commissioner has exceeded its jurisdiction and has given mandatory directions to effect appointment of the 2nd respondent as Legal Assistant Grade- II in the Law Department. Ext.P1 therefore is not legally sustainable.*

**(22)** *Sec. 15 of the Act, 1985 provides that the Administrative Tribunal for a State shall exercise all the jurisdictions, powers and authority in relation to recruitment and matters concerning recruitment to any civil service of the State or to any Civil Post under the State. Sec. 28 states that no court except the Supreme Court or any interstate Tribunal, Labour Court or other authority constituted under the Industrial Disputes Act, 1947 or any other corresponding law for the time being in force shall have or be entitled to exercise any jurisdiction, powers or authority in relation to such recruitment or matters concerning such recruitment or such service matters. The 1st respondent-State Disability Commissioner therefore cannot make an adjudication on a service matter and direct appointment of a person to civil services of the Central Government or the State Government.*

12.37. By relying on **Kerala Public Service Commission's**<sup>7</sup> case he submits that under the scheme of the Rights of Persons with Disabilities Act, 2016, the State Commissioner for Persons with Disabilities is vested only with advisory and recommendatory functions, and does not possess the jurisdiction to issue mandatory directions affecting recruitment or service matters.

12.38. He contends that the Hon'ble High Court of Kerala, upon a detailed examination of Sections



80 to 83 of the Act, has categorically held that the powers conferred upon the State Commissioner are confined to inquiring into complaints regarding deprivation of rights of persons with disabilities and making appropriate recommendations to the competent authorities. According to him, although the Commissioner is conferred with certain procedural powers akin to those of a civil court for the limited purpose of inquiry, such conferment does not authorise the Commissioner to assume adjudicatory powers or to pass binding orders directing appointment, creation of supernumerary posts, or grant of service benefits.

12.39. He therefore submits that the Kerala High Court has held that the Commissioner cannot adjudicate upon service disputes or direct appointment to civil posts, particularly in matters relating to recruitment to public services, which fall within the jurisdiction of competent statutory authorities or tribunals. Consequently, any order passed by the Commissioner issuing mandatory directions regarding appointment or service matters



would be beyond the scope of the statutory powers and therefore without jurisdiction and legally unsustainable.

12.40. Reliance is placed on the judgment of the Hon'ble High Court of Delhi in the case of ***Union of India vs. Rajender Singh***<sup>8</sup>, more particularly Paras 3 and 4, which are reproduced hereunder for easy reference:

**3.** *The issue in the present case is fully covered in favour of the petitioner in terms of the judgment of the Supreme Court in the case of State Bank of Patiala and Others Vs. Vinesh Kumar Bhasin (2010) 4 SCC 368, The relevant observations of the Supreme Court in the case of Vinesh Kumar Bhasin (supra) are contained in paras 12 to 19, and which paras read as under:-*

*"12. Under the Rules, an officer of the Bank, shall retire on completion of thirty years of service. The respondent was accordingly retired on completion of thirty years. He was not denied any retiral benefits. He was not entitled, as of right, to continue beyond thirty years of service. In fact, he did not want to continue in service, as his grievance was that he ought to have been permitted to retire under the exit policy scheme. The grievance of the respondent had apparently nothing to do with his being a person with a disability.*

*13. Prima facie neither Section 47 nor any other provision Disabilities Act was attracted. But the Chief Commissioner chose to issue a show cause notice on the complaint and also issued an ex parte direction not to give effect to the order of retirement. He overlooked and*

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<sup>8</sup> WP (C) No.7689/2015 dtd 17.1.2017



*ignored the fact that the retirement from service was on completion of the prescribed period of service as per the service regulations, which was clearly mentioned in the letter of retirement dated 17-11-2006; and that when an employee was retired in accordance with the Regulations, no interim order can be issued to continue him in service beyond the age of retirement.*

*14. an authority functioning under the Disabilities Act, he has no power or The Chief Commissioner also overlooked and ignored the fact that as jurisdiction to issue a direction to the employer not to retire an employee. In fact, under the Scheme of the Disabilities Act, the Chief Commissioner (or the Commissioner) has no power to grant any interim direction.*

*15. The functions of the Chief Commissioner Sections 58 and 59 of the Act. Section 58 provides that the Chief Commissioner shall have the following functions:*

*"58. (a) coordinate the work of the Commissioners;*

*(b) monitor the utilisation of funds disbursed by the Central Government;*

*(c) take steps to safeguard the rights and facilities made available to persons with disabilities;*

*(d) submit reports to the Central Government on the implementation of the Act at such intervals as the Government may prescribe."*

*16. Section 59 provides that without prejudice to the provisions of Section 58, the Commissioner may of his own motion or on the application of any aggrieved person or otherwise look into complaints and take up the matter with the appropriate authorities, any matters relating to (a) deprivation of rights of persons with disabilities; and (b)*



*non-implementation of laws, rules, bye-laws, regulations, executive orders, guidelines or instructions made or issued by the appropriate Governments and the local authorities for the welfare and protection of rights of persons with disabilities. The Commissioners appointed by the State Governments also have similar powers under Section 61 and 62.*

*17. Section 63 provides that the Chief Commissioner and the Commissioners shall, for the purpose of discharging their functions under this Act, have the same powers as are vested in a court under the Code of Civil Procedure while trying a suit, in regard to the following matters:*

*"63.(a) summoning and enforcing the attendance for witnesses;  
(b) requiring the discovery and production of any document;  
(c) requisitioning any public record or copy thereof from any court officer;  
(d) receiving evidence on affidavits; and  
(e) issuing commissions for the examination of witnesses or documents."*

*Rule 42 of the Persons with Disabilities (Equal opportunities, Protection of Rights and Full Participation) Rules, 1996 lays down the procedure to be followed by the Chief Commissioner.*

*18. It is evident from the said provisions, that neither the Chief Commissioner nor any Commissioner functioning under the Disabilities Act has power to issue any mandatory or prohibitory injunction or other interim directions. The fact that the Disabilities Act clothes them with certain powers for discharge of their functions (which include power to look into complaints), does not enable them to assume the other powers of a civil court which are not vested in them*



*by the provisions of the Disabilities Act. In All India Indian Overseas Bank SC and ST Employees' Welfare Assn v. Union of India, this Court, dealing with Article 338(8) of the Constitution of India (similar to Section 63 of the Disabilities Act), observed as follows:*

*"5. It can be seen from a plain reading of clause (8) that the Commission has the power of the civil court for the purpose of conducting an investigation contemplated in sub-clause (a) and an inquiry into a complaint referred to in sub-clause (b) of clause (5) of Article 338 of the Constitution*

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*10. ....All the procedural powers of a civil court are given to the Commission for the purpose of investigating and inquiring into these matters and that too for that limited purpose only. The powers of a civil court of granting injunctions, temporary or permanent, do not inhere in the Commission nor can such a power be inferred or derived from a reading of clause (8) of Article 338 of the Constitution."*

*19. The order of the Chief Commissioner, not to implement the order of retirement was illegal and without jurisdiction."*

*(underlining added)*

**4.** *In view of the ratio of the judgment of the Supreme C the case of Vinesh Kumar Bhasin (supra), and which holds that the authorities acting under the Act do not have powers to issue directions or injunctions or pass a judgment like a court of law for compliance, this writ petition is allowed and the impugned order of the Deputy Chief Commissioner dated 31.12.2014 is set aside. Parties are left to bear their own costs.*



12.41. By relying on ***Rajender Singh's***<sup>8</sup> case he submits that the authorities functioning under the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 do not possess adjudicatory powers to issue binding directions, injunctions, or orders in the nature of a judgment affecting service matters. He contends that the Delhi High Court, following the ratio laid down by the Hon'ble Supreme Court in **State Bank of Patiala, Arvind Bhushan Pandey v. Vinesh Kumar Bhasin's**<sup>3</sup> case, has categorically held that the Chief Commissioner or the Commissioner under the Disabilities Act is empowered only to look into complaints and take up the matter with the appropriate authorities, and the conferment of certain procedural powers of a civil court is merely for the limited purpose of conducting inquiry or investigation.

12.42. He therefore submits that such authorities cannot assume the powers of a court to grant mandatory or prohibitory directions, including orders restraining retirement, directing continuation in service, or granting other



substantive reliefs. According to him, any such order passed by the Commissioner purporting to determine rights or grant enforceable relief would be beyond the scope of the statutory powers and consequently without jurisdiction, and liable to be set aside.

12.43. Reliance is placed on the judgment of the Hon'ble High Court of Judicature at Bombay in the case of ***The Shipping Corporation of India vs. Shri.Haripada Shaileshwar Chaterjee***<sup>9</sup>, more particularly Paras 3, 15, 16, 17, 18 and 19, which are reproduced hereunder for easy reference:

**3.** *By this petition under Article 227 of Constitution of India, the Petitioner is challenging the order dated 17.10.2012 passed by the Commissioner for Persons with Disabilities, Maharashtra State, Pune holding that termination order passed by the Petitioner dated 04.12.2010 of Respondent's services as null and void and directing the petitioner to reinstate the Respondent in service within 90 days and pay him his all benefits.*

**15.** *I heard both the sides at length. The issue involved in the present proceeding is whether the Commissioner under provision of the said Act can set aside the termination letter dated 04.12.2010 issued by the Petitioner and can direct the petitioner to reinstate the Respondent in service with full back wages. Bare reading of Section 62 of the said Act shows that Commissioner has power to investigate and take up the matter with the appropriate*

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<sup>9</sup> W.P.No.10307/2015 dtd 18.8.2016



*Authorities. The said Act do not permit the Commissioner to pass an order in the form of mandatory direction.*

**16.** *In the present proceeding, after following due process of law, the petitioner terminated the Respondent's service by letter dated 04.12.2010 and paid him entire compensation to the tune of Rs.9,36,192/- as per clause 26 of the agreement dated 15.02.2008. Even the Apex Court in the matter of State Bank of Patiala & Ors (supra), in the matter of Bhabani Prasad Jena (supra) and Delhi High Court in the matter of Baljeet Singh (supra) categorically held that the Commissioner has no right to pass a mandatory orders.*

**17. It is to be noted that the issue involved in the present** *proceeding is fully covered by the decision of the Division Bench of this Court in the matter of Vaishali Walmik Bagul V/s. Secretary, Prerna Trust, Aurangabad reported in 2013 (5) Mh. L. J. 221. Paragraph 24, reads. thus:*

*"24. Aforesaid provisions of the Disabilities Act refer to taking up the matter/complaint with the appropriate government by the Commissioner, Handicap Welfare. The provisions of the Disabilities Act as are quoted do not appear to confer power to issue directions on the Commissioner i.e. competent authority. His role is to take up the matter with appropriate authority. Thus, the direction issued under order dated 10-8-2009 exceeds the functions under the provisions of sections 61 and 62 of the Disabilities Act."*

**18.** *In the present proceeding, the Commissioner set aside the termination letter issued by the Petitioner and also directed the petitioner to reinstate the Respondent which is contrary to the provision of the said Act. Hence, the same is required to be set aside. As the order passed by the learned Commissioner is beyond his jurisdiction and same is required to be set aside, it is necessary in the interest of justice, an opportunity is required to be granted to the Respondent to take appropriate steps*



*according to law, if it is available to protect his interest.*

**19.** *In view of the above mentioned facts, the following order is passed:*

*a) Writ Petition is allowed.*

*b) The impugned order passed by the Commissioner for Persons with disabilities, Maharashtra State, Pune in complaint under Sections 62 & 63 of the said Act dated 17.10.2012 is set aside.*

*c) Liberty granted to the Respondent to take appropriate steps according to law, if it is available to protect his interest.*

*d) No order as to costs*

12.44. By relying on ***Haripada Shaileshwar Chaterjee's***<sup>9</sup> case he submits that under the scheme of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995, the Commissioner for Persons with Disabilities is empowered only to inquire into complaints and take up the matter with the appropriate authorities, and does not possess the jurisdiction to issue mandatory directions such as setting aside termination orders, directing reinstatement, or granting service benefits.

12.45. He contends that the Hon'ble Bombay High Court has categorically held that the statutory provisions merely enable the Commissioner to



investigate grievances and recommend appropriate action, and the statute does not authorise the Commissioner to pass orders in the nature of binding adjudications affecting service rights. According to him, the conferment of certain procedural powers of a civil court for the purpose of inquiry does not transform the Commissioner into a judicial authority competent to determine service disputes. Consequently, any order passed by the Commissioner directing reinstatement or setting aside termination would be beyond the scope of the statutory powers and therefore without jurisdiction, and liable to be set aside.

12.46. Reliance is placed on the judgment of the Hon'ble Supreme Court in the case of **Ashok Kumar Sonkar vs. Union of India & others**<sup>10</sup>, more particularly Paras 34 to 37, which are reproduced hereunder for easy reference:

**34.** *The principles of equity in a case of this nature, in our opinion, will have no role to play. Sympathy, as is well known, should not be misplaced.*

**35.** *In Maruti Udyog Ltd. v. Ram Lal [(2005) 2 SCC 638 : 2005 SCC (L&S) 308] a Division Bench of this*

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<sup>10</sup> (2007) 4 SCC 54



*Court, wherein one of us was a member, noticing some decisions, observed: (SCC pp. 654-55, paras 44-45)*

*"44. While construing a statute, 'sympathy' has no role to play. This Court cannot interpret the provisions of the said Act ignoring the binding decisions of the Constitution Bench of this Court only by way of sympathy to the workmen concerned.*

*45. In A. Umarani v. Registrar, Coop. Societies [(2004) 7 SCC 112 : 2004 SCC (L&S) 918] this Court rejected a similar contention upon noticing the following judgments: (SCC pp. 131-32, paras 68-70)*

*'68. In a case of this nature this Court should not even exercise its jurisdiction under Article 142 of the Constitution of India on misplaced sympathy.*

*69. In Teri Oat Estates (P) Ltd. v. U.T., Chandigarh [(2004) 2 SCC 130] it is stated: (SCC p. 144, paras 36-37)*

**36.** *We have no doubt in our mind that sympathy or sentiment by itself cannot be a ground for passing an order in relation whereto the appellants miserably fail to establish a legal right. It is further trite that despite an extraordinary constitutional jurisdiction contained in Article 142 of the Constitution of India, this Court ordinarily would not pass an order which would be in contravention of a statutory provision.*

**37.** *As early as in 1911, Farewell, L.J. in Latham v. Richard Johnson & Nephew Ltd. [(1913) 1 KB 398 : (1911-13) All ER Rep 117 : 108 LT 4 (CA)] observed: (All ER p. 123 E) 'We must be very careful not to allow our sympathy with the infant plaintiff to affect our judgment. Sentiment is a dangerous will o' the wisp to take as a guide in the search for legal principles.' "*

12.47. By relying on **Ashok Kumar Sonkar's**<sup>10</sup> case he submits that equitable considerations or



sympathy cannot override the clear mandate of law. According to him, the Hon'ble Apex Court has categorically held that sympathy or sentiment, however compelling, cannot be a ground to grant relief in the absence of a legally enforceable right.

12.48. He contends that the Hon'ble Supreme Court has emphasised that while exercising judicial or statutory powers, courts and authorities must act strictly in accordance with the statutory framework and binding legal principles, and cannot mould relief merely on humanitarian considerations. It is therefore his submission that even in cases where the grievance of an individual may evoke sympathy, no relief can be granted unless the claimant establishes a legal entitlement under the governing statute or rules. Consequently, any order granting relief solely on compassionate or sympathetic considerations, without a corresponding legal basis, would be contrary to settled principles of law.

12.49. Reliance is placed on the judgment of the Hon'ble Supreme Court in the case of ***Bharat***



***Sanchar Nigam Limited & anr., vs. G.Sarvothaman<sup>11</sup>***, more particularly Para 13, which is reproduced hereunder for easy reference

**13.** *The Chief Commissioner under Section 59 of the 1995 Act has got only the power to examine the matters relating to "deprivation of rights" of persons with disabilities. The Commissioner can only examine whether the persons with disabilities have been deprived of any "rights" for which the Commissioner has to first examine whether the complainant has any "rights" under the laws. The Commissioner cannot confer or create any right for the appellants. The respondent could not establish that any right has been conferred on him and such right has been denied to him by the Department. The respondent wanted conferment of a right which was extended only to specific five categories of posts on the basis of the report of a High-Powered Committee. The Chief Commissioner has no power to direct inclusion of one more category among the identified categories and to grant the benefit. Under Section 59(b) the Chief Commissioner has got the power to look into the complaints with respect to the matters relating to non-implementation of laws, rules, bye-laws, regulations, executive orders, guidelines or instructions made or issued by the appropriate Government and the local authorities for the welfare and protection of rights of persons with disabilities. It is not the case of the respondent that the Department has failed to implement either any laws, rules or regulations. The respondent prayed for positive direction, claiming certain rights, which had not been conferred on him either by any law, regulations or orders. Consequently, the directions given by the Chief Commissioner for the inclusion of TOA cadre among the identified categories cannot be*

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<sup>11</sup> (2013) 10 SCC 489



*sustained and the Commissioner while passing such order has exceeded the powers conferred on him under Section 59 of the 1995 Act.*

12.50. By relying on **G.Sarvothaman's**<sup>11</sup> case he submits that the powers of the Chief Commissioner under the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 are limited to examining complaints relating to the deprivation of rights of persons with disabilities and to ensure implementation of the statutory protections already conferred by law.

12.51. He contends that the Hon'ble Apex Court has categorically held that the Commissioner cannot create, confer, or expand rights which are not otherwise provided under the statute, rules, or executive instructions. According to him, the jurisdiction of the Commissioner is confined to examining whether an existing legal right has been denied and, if so, to take up the matter with the appropriate authority. Therefore, where a complainant seeks the creation or extension of a right not recognised by the governing legal framework, the Commissioner would have no jurisdiction to grant such relief.



12.52. He accordingly submits that any direction issued by the Commissioner granting benefits or recognising rights not otherwise provided by law would amount to an excess of jurisdiction and would be liable to be set aside.

12.53. Reliance is placed on the judgment of the Hon'ble High Court of Bombay (At: Aurangabad) in the case of ***Vaishali Walmik Bagul vs. Secretary Prerna Trust***<sup>12</sup>, more particularly Paras 23 and 24, which are reproduced hereunder for easy reference:

**23.** *Aforesaid provisions of the Disabilities Act refer to taking up the matter/complaint with the appropriate government by the Commissioner, Handicap Welfare. The provisions of the Disabilities Act as are quoted do not appear to confer power to issue directions on the commissioner i.e., competent authority. His role is to take up the matter with appropriate authority. Thus, the direction issued under order dated 10.8.2009 exceeds the functions under the provisions of Sections 61 and 62 of the Disabilities Act.*

**24.** *If it is to be considered that the post in which Smt. Suryawanshi was working, was lying vacant, the question that will have to be addressed to is as to what respondent No.4 did all through out till 2008 and while Smt. Suryawanshi was under employment and for a long period thereafter. He had kept silence for over 9 years. His action is belated and suffers laches.*

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<sup>12</sup> Laws (Bom-2013-1-228)



12.54. By relying on ***Vaishali Walmik Bagul's***<sup>12</sup> case he submits that the statutory framework of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 does not confer adjudicatory powers upon the Commissioner for Persons with Disabilities to issue binding directions determining rights of parties. According to him, the Hon'ble High Court has categorically held that the role of the Commissioner is confined to examining complaints and taking up the matter with the appropriate authorities, and the statute does not empower the Commissioner to issue mandatory directions affecting service rights.

12.55. He further submits that the said judgment also recognises that claims raised after an inordinate and unexplained delay are liable to be rejected on the ground of laches, particularly where the aggrieved party has remained silent for a considerable period of time. He therefore contends that where a complaint is instituted after a long lapse of time without satisfactory explanation, the proceedings would be vitiated by delay and laches, and any relief sought therein would not be liable to be granted.



12.56. Reliance is placed on the judgment of the Hon'ble Apex Court in the case of **North Eastern Chemicals Industries (P) Ltd. v. Ashok Paper Mill (Assam) Ltd. and anr.**,<sup>13</sup> more particularly, Paras, 17, 22, 23, 24, 25 and 27, which are reproduced hereunder for easy reference:

**17.** *The above description of the powers of either the Code or CrPC clearly testifies to the intent of the State Legislature to specifically restrict the application of both the said Codes, to only the extent provided. The principle of statutory interpretation: expression unius est exclusion alterius (the expression of one thing is the exclusion of the other) supports such a view. We also notice this Court holding International Asset Reconstruction Co. of India v. Official Liquidator [International Asset Reconstruction Co. of India v. Official Liquidator as extracted below:*

*"9. The fact that the Tribunal may be vested with some of the powers as a civil court under the Code of Civil Procedure, regarding summoning and enforcing attendance of witnesses, discovery and production of the documents, receiving evidence on affidavits, issuing commission for the examination of witnesses or documents, reviewing its decisions, etc. does not vest in it the status of a court. Section 22(1), in fact, provides that the Tribunal shall not be bound by the procedures under the Code, and can regulate its own procedures in accordance with natural justice."*

*(emphasis supplied)*

**22.** *Having come to the conclusion as above, we are required to consider, whether the instant appeal,*

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<sup>13</sup> AIR 2024 SC 436



*filed against the order of the Commissioner of Payments is maintainable or not? Prior to delving into such a question, we would also need to examine as to whether in the absence of an expressly prescribed limitation, can an appeal from an order passed by the Commissioner of Payments, be entertained, irrespective of passage of time?*

**23.** *This dispute concerns the exercise of a statutory right. The issue of no express limitation being provided in regard to the exercise of a right to assail the order has captured the attention of this Court, earlier, on certain occasions. We may refer to some decisions hereinbelow.*

*23.1. In State of Punjab v. Bhatinda District Coop. Milk Producers Union Ltd. [State of Punjab v. Bhatinda District Coop. Milk Producers Union Ltd., (2007) 11 SCC 363] this Court observed that : (SCC p. 367, para 18)*

*"18. It is trite that if no period of limitation has been prescribed, statutory authority must exercise its jurisdiction within a reasonable period. What, however, shall be the reasonable period would depend upon the nature of the statute, rights and liabilities thereunder and other relevant factors."*

*The principle stands reiterated in SEBI v. Sunil Krishna Khaitan [SEBI v. Sunil Krishna Khaitan, (2023) 2 SCC 643]*

*23.2. In Jagdish v. State of Karnataka [Jagdish v. State of Karnataka, (2021) 12 SCC 812 : (2023) 2 SCC (Civ) 654] , this Court referred to a number of decisions to reiterate that where the statute in question does not prescribe a limitation, the rights conferred therein must be exercised within reasonable time.*

*23.3. This aspect of reasonable time was recently discussed by this Court in Madras Aluminium Co. Ltd v. T.N. SEB [Madras Aluminium Co. Ltd v. T.N. SEB, (2023) 8 SCC 240] , having referred a three-Judge Bench decision in SEBI v. Bhavesh Pabari [SEBI v. Bhavesh Pabari, (2019) 5 SCC*



*90] stating that the concept is to be applied and judged in each case per its own peculiar facts.*

**24.** *We further refer to observations made in Ajaib Singh v. Sirhind Coop. Marketing-cum-Processing Service Society Ltd. [Ajaib Singh v. Sirhind Coop. Marketing-cum-Processing Service Society Ltd., (1999) 6 SCC 82 : 1999 SCC (L&S) 1054] to the effect that courts should be wary of prescribing specific period of limitation in cases where the legislature has refrained from doing so. It was further observed that where the defence of delay is employed in a situation where no limitation is prescribed vide statute, the exact prejudice or loss suffered by the party if such a delay is condoned, must be shown on facts. In other words, in the absence of a specific limitation it would be improper for courts to dismiss a plea is solely on the ground of delay without having examined the nature of laws order prejudice caused to the other party in the facts and circumstances of the case at hand. The holding in Ajaib Singh [Ajaib Singh v. Sirhind Coop. Marketing-cum-Processing Service Society Ltd., (1999) 6 SCC 82 : 1999 SCC (L&S) 1054] was affirmed by a three-Judge Bench of this Court in Purohit & Co. v. Khatoonbee [Purohit & Co. v. Khatoonbee, (2017) 4 SCC 783 : (2017) 2 SCC (Civ) 697 : (2017) 2 SCC (Cri) 479] .*

**25.** *In light of above discussion, it is clear that when a court is seized of a situation where no limitation stands provided either by specific applicability of the Limitation Act or the special statute governing the dispute, the Court must undertake a holistic assessment of the facts and circumstances of the case to examine the possibility of delay causing prejudice to a party. When no limitation stands prescribed it would be inappropriate for a court to supplant the legislature' s wisdom by its own and provide a limitation, more so in accordance with what it believes to be the appropriate period. A court should, in such a situation consider in the facts and circumstances of the case at hand, the conduct of the parties, the nature of the proceeding, the length of delay, the possibility of prejudice being caused, and the scheme of the statute in question. It may be*



*underscored here that when a party to a dispute raises a plea of delay despite no specific period being prescribed in the statute, such a party also bears the burden of demonstrating how the delay in itself would cause the party additional prejudice or loss as opposed to, the claim subject-matter of dispute, being raised at an earlier point in time.*

**27.***When a statute, either general or specific in application, provides for a limitation within which to file an appeal, the parties interested in doing so are put to notice of the requirement to act with expedition. However, opposite thereto, in cases such as the present one where neither statute provides for an explicit limitation, such urgency may be absent. While it is still true that, as held in Ajaib [Ajaib Singh v. Sirhind Coop. Marketing-cum-Processing Service Society Ltd., (1999) 6 SCC 82 : 1999 SCC (L&S) 1054] , this does not entitle the parties to litigate issues decades later, however shorter delays, in such circumstances, would not attract delay and laches.*

12.57. By relying on **Ashok Paper Mill's**<sup>13</sup> case he submits that where a statute does not prescribe any specific period of limitation for invoking a statutory remedy, the same must nevertheless be exercised within a reasonable time, the determination of which depends upon the facts and circumstances of each case.

12.58. He contends that the Hon'ble Apex Court has reiterated that when a statute confers certain powers upon an authority and does not expressly provide a limitation period, the court must undertake a holistic assessment of the surrounding circumstances, including the



conduct of the parties, the nature of the proceedings, the length of delay and the likelihood of prejudice being caused to the opposite party. According to him, the Court has further held that absence of a statutory limitation does not permit parties to revive stale claims after an inordinate lapse of time, short or reasonably explained delays would automatically attract the doctrine of delay and laches.

12.59. Reliance is placed on the judgment of the Hon'ble Apex Court in the case of ***Dalco Engineering Private Limited, Fancy Rehabilitation Trust vs. Union of India, Satish Prabhakar Padhye***<sup>14</sup> more particularly Paras 4, 5, 13, 15, 16 and 18, which are reproduced hereunder for easy reference:

**4.** *The employee relies on Section 47 which provides that no establishment shall dispense with, or reduce in rank, an employee who acquires a disability during his service. Section 47 of the Act is extracted below:*

*"47. Non-discrimination in government employment.—(1) No establishment shall dispense with, or reduce in rank, an employee who acquires a disability during his service:*

*Provided that, if an employee, after acquiring disability is not suitable for the post he was*

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<sup>14</sup> (2010) 4 SCC 378



*holding, could be shifted to some other post with the same pay scale and service benefits:*

*Provided further that if it is not possible to adjust the employee against any post, he may be kept on a supernumerary post until a suitable post is available or he attains the age of superannuation, whichever is earlier.*

- (2) *No promotion shall be denied to a person merely on the ground of his disability:*

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

*The term "establishment" employed in Section 47 is defined in Section 2(k) of the Act as follows:*

- "2. *Definitions.—In this Act, unless the context otherwise requires,—*

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- (k) *'establishment' means a corporation established by or under a Central, Provincial or State Act, or an authority or a body owned or controlled or aided by the Government or a local authority or a government company as defined in Section 617 of the Companies Act, 1956 (1 of 1956) and includes Departments of a Government;"*

- 5.** *The question is, having regard to the definition of the word "establishment" in Section 2(k) of the Act, whether the requirement relating to non-discrimination of employees acquiring a disability during the course of service, embodied in Section 47, is to be complied with only by authorities falling within the definition of "State" (as defined in Article 12 of the Constitution), or even by private employers. This leads us to the following two questions:*



- (i) *Whether a company incorporated under the Companies Act (other than a government company as defined in Section 617 of the Companies Act, 1956) is an "establishment" as defined in Section 2(k) of the Act?*
  - (ii) *Whether the respondent in the first case and the appellant in the second case are entitled to claim any relief with reference to Section 47 of the Act?*
- 13.** *There is yet another indication in Section 47 that private employers are excluded. The caption/marginal note of Section 47 describes the purport of the section as non-discrimination in government employment. The word "government" is used in the caption broadly to refer to "State" as defined in Article 12 of the Constitution. If the intention of the legislature was to prevent discrimination of persons with disabilities in any kind of employment, the marginal note would have simply described the provision as "non-discrimination in employment" and sub-section (1) of Section 47 would have simply used the word "any employer" instead of using the word "establishment" and then taking care to define the word "establishment". The non-use of the words "any employer" and "any employment" and specific use of the words "government employment" and "establishment" (as defined), demonstrates the clear legislative intent to apply the provisions of Section 47 only to employment under the State and not to employment under others. While the marginal note may not control the meaning of the body of the section, it usually gives a safe indication of the purport of the section to the extent possible. Be that as it may.*
- 15.** *We agree that the socio-economic legislations should be interpreted liberally. It is also true that courts should adopt different yardsticks and measures for interpreting socio-economic statutes, as compared to penal statutes and taxing statutes. But a caveat. The courts cannot obviously expand the application of a provision in a socio-economic legislation by judicial interpretation, to levels unintended by the legislature, or in a manner which*



*militates against the provisions of the statute itself or against any constitutional limitations. In this case, there is a clear indication in the statute that the benefit is intended to be restricted to a particular class of employees, that is employees of enumerated establishments (which fall within the scope of "State" under Article 12). Express limitations placed by the socio-economic statute cannot be ignored, so as to include in its application, those who are clearly excluded by such statute itself. We should not lose sight of the fact that the words "corporation established by or under a Central, Provincial or State Act" is a term used in several enactments, intended to convey a standard meaning. It is not a term which has any special significance or meaning in the context of the Disabilities Act or any other socio-economic legislations. It is a term used in various enactments, to refer to statutory corporations as contrasted from non-statutory companies. Any interpretation of the said term, to include private sector, will not only amount to overruling the clear enunciation in Dhanoa [(1981) 3 SCC 431 : 1981 SCC (Cri) 733 : 1982 SCC (L&S) 6] which has held the field for nearly three decades, but more importantly lead to the erasure of the distinction maintained in the Constitution between statutory corporations which are "State" and non-statutory bodies and corporations for the purposes of enforcement of fundamental rights. The interpretation put forth by the employee would make employees of all companies, public servants, amenable to punishment under the provisions of the Penal Code and the Prevention of Corruption Act; and would also result in all non-statutory companies and private sector companies being included in the definition of "State" thereby requiring them to comply with the requirements of non-discrimination, equality in employment, reservations, etc.*

- 16.** *The appellant next contended that the scheme of the Act does not confine its applicability to government or statutory corporations. Reference is invited to some provisions of the Act to contend that obligations/duties/responsibilities are fixed with reference to persons with disabilities, on*



*establishments other than those falling under Section 2(k) of the Act. It was submitted that Section 39 casts an obligation on all educational institutions, to reserve not less than three per cent of the seats for persons with disabilities. In fact, it is not so. Though, the marginal note of Section 29 uses the words "all educational institutions" with reference to reservation of seats for persons with disabilities, the section makes it clear that only government educational institutions and educational institutions receiving aid from the Government shall reserve not less than three per cent seats for persons with disabilities. It is well recognised that an aided private school would be included within the definition of "State" in regard to its acts and functions as an instrumentality of the State. Therefore, care is taken to apply the provisions of the Act only to educational institutions belonging to the Government or receiving aid from the Government and not to unaided private educational institutions. Further, Section 39 of the Act does not use the word "establishment". Reference is next made to Section 44 which requires non-discrimination in transport. This section requires establishments in the transport sector to take special measures (within the limits of their economic capacity) to permit easy access to persons with disabilities. The employee contends that this would mean that all establishments whether statutory corporations falling under the definition of Section 2(k) of the Act or non-statutory corporations, or even individuals operating in the transport sector should comply with Section 44 of the Act. We do not propose to consider whether Section 44 applies to non-statutory corporations in the transport sector, as that issue does not arise in this case. Further the use of the words "within the limits of their economic capacity" makes it virtually directory. Be that as it may.*

**18.** *Therefore, CA No. 1886 of 2007 is allowed and CA No. 1858 of 2007 is dismissed resulting in the dismissal of the respective writ petitions. This will not come in the way of employee of any private company, who has been terminated on the ground of*



*disability, seeking or enforcing any right available under any other statute, in accordance with the law.*

12.60. By relying on ***Dalco Engineering Private Limited's***<sup>14</sup> case he submits that the protections contemplated under Section 47 of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 are applicable only to establishments falling within the statutory definition provided under the Act, and not to all employers indiscriminately.

12.61. He contends that the Hon'ble Apex Court has categorically held that the term "establishment" used in Section 47 must be understood strictly in accordance with the definition contained in Section 2(k) of the Act, which confines its application to government establishments, statutory corporations, authorities, bodies owned or controlled or aided by the Government, government companies, and government departments. According to him, the Supreme Court has further clarified that the provision relating to non-discrimination in employment for persons acquiring disability during service is intended to apply only to



employment under the State or entities falling within the ambit of Article 12 of the Constitution, and not to private employers who do not fall within the statutory definition.

12.62. He therefore submits that even though the Disabilities Act is a socio-economic legislation warranting liberal interpretation, the courts cannot expand the scope of the statute beyond the clear legislative intent or extend the benefit of a provision to categories of employers or establishments which the legislature has consciously excluded. Consequently, where an employer does not fall within the statutory definition of "establishment", the protections under Section 47 cannot be invoked against such employer.

12.63. Reliance is placed on the judgment of the Hon'ble Apex Court in the case of ***Deddappa and ors., vs. Branch Manager, National Insurance Co. Ltd.***,<sup>15</sup> more particularly Para 27, which is reproduced hereunder for easy reference:

***27. A beneficial legislation as is well known should not be construed in such a manner so as to bring within***

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<sup>15</sup> (2008) 2 SCC 595



*its ambit a benefit which was not contemplated by the legislature to be given to the party. In Regional Director, ESI Corpn. v. Ramanuja Match Industries AIR 1985 SC 278, this Court held:*

*"We do not doubt that beneficial legislations should have liberal construction with a view to implementing the legislative intent but where such beneficial legislation has a scheme of its own there is no warrant for the Court to travel beyond the scheme and extend the scope of the statute on the pretext of extending the statutory benefit to those who are not covered by the scheme."*

*We, therefore, agree with the opinion of the High Court.*

12.64. By relying on ***Deddappa and ors's***<sup>15</sup> case he submits that even in the case of beneficial or welfare legislations, the scope of the statute cannot be expanded beyond the limits consciously prescribed by the legislature. According to him, the Hon'ble Apex Court has categorically held that although beneficial legislations are ordinarily required to be interpreted liberally so as to advance their object, such interpretation cannot result in extending statutory benefits to persons or situations not contemplated within the legislative scheme.

12.65. He contends that the Supreme Court has emphasised that where a statute contains a



self-contained scheme defining the classes of persons entitled to its benefits, the courts cannot travel beyond that scheme on considerations of equity or sympathy. Consequently, it is his submission that statutory benefits under a welfare enactment can be claimed only by those who clearly fall within the ambit of the provisions of the statute, and any attempt to extend such benefits beyond the legislative framework would be contrary to settled principles of statutory interpretation.

12.66. Reliance is placed on the judgment of the Hon'ble Apex Court in the case of ***Union of India vs. Nitdip Textile Processors Pvt. Ltd.***<sup>16</sup> more particularly Paras 6, 7, 8, 9, 10, 11 and 45, which are reproduced hereunder for easy reference:

**6.** *The Scheme, as contained in Chapter IV of the Act, is a code in itself and statutory in nature and character. While implementing the Scheme, liberal construction may be given but it cannot be extended beyond conditions prescribed in the statutory scheme. In ESI Corpn. v. Ramanuja Match Industries [(1985) 1 SCC 218, this Court observed:*

*"10. ... We do not doubt that beneficial legislations should have liberal construction with a view to implementing the legislative intent but where such beneficial legislation has a scheme of its*

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<sup>16</sup> (2012) 1 SCC 226



*own there is no warrant for the court to travel beyond the scheme and extend the scope of the statute on the pretext of extending the statutory benefit to those who are not covered by the scheme."*

**7.** *In Hemalatha Gargya v. CIT [(2003) 9 SCC 510] , this Court has held: (SCC pp. 516-17, para 10)*

*"10. Besides, the Scheme has conferred a benefit on those who had not disclosed their income earlier by affording them protection against the possible legal consequences of such non-disclosure under the provisions of the Income Tax Act. Where the assesseees seek to claim the benefit under the statutory scheme they are bound to comply strictly with the conditions under which the benefit is granted. There is no scope for the application of any equitable consideration when the statutory provisions of the Scheme are stated in such plain language."*

**8.** *In Union of India v. Charak Pharmaceuticals (India) Ltd. [(2003) 11 SCC 689], this Court has observed thus:*

*"8. If benefit is sought under a scheme, like KVSS, the party must fully comply with the provisions of the Scheme. If all the requirements of the Scheme are not met then on principles of equity, courts cannot extend the benefit of that Scheme."*

**9.** *In Deepal Girishbhai Soni v. United India Insurance Co. Ltd. [(2004) 5 SCC 385 at p. 404, this Court observed as:*

*"53. Although the Act is a beneficial one and, thus, deserves liberal construction with a view to implementing the legislative intent but it is trite that where such beneficial legislation has a scheme of its own and there is no vagueness or doubt therein, the court would not travel beyond the same and extend the scope of the statute on the pretext of extending the statutory benefit to those who are not covered thereby. (See ESI Corpn. v. Ramanuja Match Industries"*



**10.** *In Maruti Udyog Ltd. v. Ram Lal [(2005) 2 SCC 638; this Court has observed:*

*"39. ... A beneficial statute, as is well known, may receive liberal construction but the same cannot be extended beyond the statutory scheme. (See Deepal Girishbhai Soni v. United India Insurance Co. Ltd. [(2004) 5 SCC 385 : 2004 SCC (Cri) 1623] )"*

**11.** *In Pratap Singh v. State of Jharkhand [(2005) 3 SCC 551, this Court has held:*

*"93. We are not oblivious of the proposition that a beneficent legislation should not be construed so liberally so as to bring within its fore a person who does not answer the statutory scheme. (See Deepal Girishbhai Soni v. United India Insurance Co. Ltd."*

**45.** *To sum up, Article 14 does not prohibit reasonable classification of persons, objects and transactions by the legislature for the purpose of attaining specific ends. To satisfy the test of permissible classification, it must not be "arbitrary, artificial or evasive" but must be based on some real and substantial distinction bearing a just and reasonable relation to the object sought to be achieved by the legislature. The taxation laws are no exception to the application of this principle of equality enshrined in Article 14 of the Constitution of India. However, it is well settled that the legislature enjoys very wide latitude in the matter of classification of objects, persons and things for the purpose of taxation in view of inherent complexity of fiscal adjustment of diverse elements. The power of the legislature to classify is of wide range and flexibility so that it can adjust its system of taxation in all proper and reasonable ways. Even so, large latitude is allowed to the State for classification upon a reasonable basis and what is reasonable is a question of practical details and a variety of factors which the court will be reluctant and perhaps ill-equipped to investigate. It has been laid down in a large number of decisions of this Court that a taxation statute, for the reasons of functional expediency and even otherwise, can pick and choose to tax some. A*



*power to classify being extremely broad and based on diverse considerations of executive pragmatism, the judiciary cannot rush in where even the legislature warily treads. All these operational restraints on judicial power must weigh more emphatically where the subject is taxation. Discrimination resulting from fortuitous circumstances arising out of particular situations, in which some of the tax-payers find themselves, is not hit by Article 14 if the legislation, as such, is of general application and does not single them out for harsh treatment. Advantages or disadvantages to individual assesseees are accidental and inevitable and are inherent in every taxing statute as it has to draw a line somewhere and some cases necessarily fall on the other side of the line. The point is illustrated by two decisions of this Court. In *Khandige Sham Bhat v. ITO (Ag)* [AIR 1963 SC 591] . The Travancore-Cochin Agricultural Income Tax Act was extended to Malabar area on 1-11-1956 after formation of the State of Kerala. Prior to that date, there was no agricultural income tax in that area. The challenge under Article 14 was that the income of the petitioner was from areca nut and pepper crops, which were harvested after November in every year while persons who grew certain other crops could harvest before November and thus escape the liability to pay tax. It was held that, that was only accidental and did not amount to violation of Article 14. In *Jain Bros. v. Union of India* [(1969) 3 SCC 311] , Section 297(2)(g) of the Income Tax Act, 1961 was challenged because under that section proceedings completed prior to April 1962 was to be dealt under the old Act and proceedings completed after the said date had to be dealt with under the Income Tax Act, 1961 for the purpose of imposition of penalty. 1-4-1962 was the date of the commencement of the Income Tax Act, 1961. It was held that the crucial date for imposition of penalty was the date of completion of assessment or the formation of satisfaction of authority that such act had been committed. It was also held that for the application and implementation of the new Act, it was necessary to fix a date and provide for continuation of pending proceedings. It was also held that the mere possibility that some officer might intentionally delay the*



*disposal of a case could hardly be a ground for striking down the provision as discriminatory.*

12.67. By relying on ***Nitdip Textile Processors's***<sup>16</sup> case he submits that where a statutory scheme confers specific benefits subject to defined conditions, such benefits can be claimed only upon strict compliance with the requirements prescribed under the scheme. According to him, the Hon'ble Apex Court has reiterated that although beneficial legislations may be interpreted liberally to advance their object, courts cannot extend the scope of a statutory scheme beyond the conditions expressly stipulated therein.

12.68. He contends that the Hon'ble Supreme Court has further held that when a party seeks to avail a benefit under a statutory scheme, it must strictly satisfy the eligibility criteria and procedural requirements laid down in the statute, and equitable considerations cannot be invoked to relax or dilute those statutory conditions. It is therefore his submission that where the language of the statute or scheme is clear and unambiguous, there is no scope for importing equitable considerations or enlarging



the scope of the benefit by judicial interpretation.

12.69. He accordingly submits that the statutory benefits contemplated under the relevant legislative framework must be applied strictly within the confines of the scheme enacted by the legislature, and any attempt to extend such benefits beyond the statutory parameters would be contrary to the settled principles laid down by the Hon'ble Apex Court.

12.70. On the basis of all the above he submits that the Writ Petition is required to be allowed and reliefs sought for granted.

13. Ms. Jayna Kothari, learned Senior Counsel, appearing for Respondent No.1 - teacher, would submit that:

13.1. Admittedly the teacher was an employee of the School from 8.7.2008 to 31.5.2015, during which time, she had performed her duties in a diligent, timely and satisfactory manner. She does not dispute the events which occurred on 22.8.2013 but only submits that the teacher took a proactive stand to try and save the student.



- 13.2. The fact that the teacher fell down and had such an injury would indicate the selfless conduct on part of the teacher in putting her life at risk to save the life of one of her wards, namely the student. Though there may be Standard Operating Procedures which may be fixed or prescribed, the teacher having acted in the interest of the student and there being no malafide on the part of the teacher, the school ought to have been more proactive, more sympathetic, empathetic and liberal with the teacher.
- 13.3. On account of the accident, the teacher has acquired a permanent 90% PP1 locomotor disability and has become traumatically paraplegic.
- 13.4. In this regard, she submits that the student could reach the windowsill on account of there being no grill on the windows. If the School had installed the basic grills, then the event would never have occurred. It is the School which is to be blamed for the entire situation. Her submission is that the teacher was transported to the hospital without calling for an ambulance



in another teacher's vehicle, in a reckless manner, making her sit upright in an injured state, which caused further damage to the spinal cord of the teacher.

- 13.5. There is no qualified doctor or nurse at the premises of the school, and if there was, no one attended to the teacher. If a qualified doctor or a nurse was available, then adequate safeguards could have been taken to ensure that no further injury is caused to the teacher.
- 13.6. The Chairman of the Institution had promised that all medical expenses of the teacher would be taken care of and as such the said assurance and promise is required to be fulfilled by the school, which is what has been taken into consideration by the Commissioner.
- 13.7. She obtained a disability certificate on 10.02.2016 and again requested the Petitioner to consider her demands for reasonable accommodation which was refused. It is only after the claim by the teacher was filed before the Commissioner, that contentions of the teacher having acted contrary to the SOP and or the like have been taken up to get over the



liability of the school. The actions on part of the teacher being laudible instead of doing so are being criticized by the school which only establishes the conduct on part of the school.

13.8. Though expenses in Fortis hospital was paid, the injuries which have been sustained by the teacher could not be treated in India. The teacher having been discharged from Fortis Hospital was advised to undergo specialized treatment in the United States at the Kennedy Krieger Institute in Baltimore, which was informed to the school and even the school at that time had promised to take care of the medical expenses. Emails which have been sent by the husband of the teacher on 5.8.2014, 8.8.2014, 3.1.2015 and 17.3.2015 bear witness to this correspondence.

13.9. Thus, she submits that the allegation of the school that the teacher was, incommunicado for almost a year is completely false. The teacher underwent neuro-rehabilitation treatment from 12.8.2014 to 11.9.2014 as regards which an amount of Rs.16,25,984/- was incurred. After she came back from the US, she underwent



treatment and rehabilitation therapy costing about Rs.50,000/- to Rs.60,000/- per month and until 28.8.2019 she has incurred expenses of Rs.24,48,000/- which would also be required to be made good by the school. She submits that out of the total expenses only a sum of Rs.6,03,603/- has been paid and as such, the amount of Rs.10,00,000/- directed to be paid is not arbitrary or unreasonable.

13.10. Insofar as payment of salary and reinstatement, she submits that the teacher having been injured during the course of her employment and within the scope of her employment, the termination being invalid, the teacher having required to undergo intensive treatment, the teacher being ready to come back and resume her teaching work, it is the school which refused to provide reasonable accommodation and was forcing her to resign from her post and thereafter continue her as a retainer role for six months, which was not acceptable to the teacher and as such the teacher refused to resign.



13.11. The termination of services has been made without issuing any notice despite the School having assured the Respondent and her Husband that her job was secure and that her services would not be terminated. The respondent has been in continuous contact with Petitioner requesting them to reconsider termination but to no avail. The principles of natural justice have been completely violated. Thereafter, the promise now being made that the school will provide her a job as administrative support staff is not tenable. By which the salary, which was Rs.24,915/- per month, would be reduced to Rs.15,000/- per month and as such, amount to demotion.

13.12. Her submission is that disability incurred by an employee during the course of employment, cannot be a reason to terminate such employee or demote such employee. Such employee would have to continue in the same job with the same salary, with the same perquisites. Anything to the contra would amount to discrimination on account of disability which is not permissible.



13.13. She refers to sub-section (i) of Section 2 of the Disabilities Act of 2016 which is reproduced hereunder for easy reference:

*(i) "establishment" includes a Government establishment and private establishment;*

13.14. By relying on subsection (i) of Section 2 she contends that an establishment includes both a government and a private establishment and as such, the school cannot now contend that it being a private establishment the Act would not apply.

13.15. Whenever any employee suffers from physical disability during course of her employment she submits that there is an obligation on part of the employer to make available reasonable accommodation and in this regard, she relies on sub-section (y) of Section 2 of Disabilities Act of 2016 which is reproduced hereunder for easy reference;

*(y) "reasonable accommodation" means necessary and appropriate modification and adjustments, without imposing a disproportionate or undue burden in a particular case, to ensure to persons with disabilities the enjoyment or exercise of rights equally with others;*



13.16. By relying on sub-section (y) of Section 2 she submits that appropriate modification adjustments are required to be made without imposing disproportionate or undue burden in a particular case to ensure that persons with disabilities exercise their rights equally with others. Despite the teacher being ready to come back to work on reasonable accommodation being made, the school has refused to do so and the school as such cannot take undue advantage of its own wrong.

13.17. She refers to subsection (3) of Section 3 of the Disabilities Act of 2016 which is reproduced hereunder for easy reference:

**3. Equality and non-discrimination. —**

(1) ....

(2) ....

*(3) No person with disability shall be discriminated on the ground of disability, unless it is shown that the impugned act or omission is a proportionate means of achieving a legitimate aim.*

(4) .....

(5) .....

13.18. She refers to subsection (3) of Section 3 to contend that no person with disability shall be



discriminated on the ground of disability unless it is shown that the act or omission is a proportionate means of achieving a legitimate aim. In this regard, she submits that demotion of the petitioner would amount to discrimination. Changing the role of work from teacher to administrative would amount to discrimination, which affects the rights of the teacher under Article 14, 19 and 21 of the Constitution.

13.19. By relying on Chapter 3 of the Disabilities Act of 2016, she submits that the same applies to both government establishment and private education institutions. The school in the present matter is also covered by Chapter 3 and all the requirements thereof are required to be fulfilled by the school.

13.20. She refers to Section 20 of the Disabilities Act of 2016 which is reproduced hereunder for easy reference:

**20. Non-discrimination in employment.**—(1) *No Government establishment shall discriminate against any person with disability in any matter relating to employment:*



*Provided that the appropriate Government may, having regard to the type of work carried on in any establishment, by notification and subject to such conditions, if any, exempt any establishment from the provisions of this section.*

*(2) Every Government establishment shall provide reasonable accommodation and appropriate barrier free and conducive environment to employees with disability.*

*(3) No promotion shall be denied to a person merely on the ground of disability.*

*(4) No Government establishment shall dispense with or reduce in rank, an employee who acquires a disability during his or her service:*

*Provided that, if an employee after acquiring disability is not suitable for the post he was holding, shall be shifted to some other post with the same pay scale and service benefits:*

*Provided further that if it is not possible to adjust the employee against any post, he may be kept on a supernumerary post until a suitable post is available or he attains the age of superannuation, whichever is earlier.*

13.21. By referring to Section 20 of the Disabilities Act of 2016 she submits that there shall be no discrimination in employment nor can promotion be denied on the basis of disability, nor can there be any reduction in the rank of an employee who acquires disability during his or her service. She submits that if it is not



possible to adjust the employee against any post, he or she may be kept on a supernumerary post with the same pay scale and benefits. This she submits has not been done by the school.

13.22. She refers to Section 21 of the Disabilities Act of 2016 which is reproduced hereunder for easy reference:

**21. Equal opportunity policy.**—(1) *Every establishment shall notify equal opportunity policy detailing measures proposed to be taken by it in pursuance of the provisions of this Chapter in the manner as may be prescribed by the Central Government.*

(2) *Every establishment shall register a copy of the said policy with the Chief Commissioner or the State Commissioner, as the case may be.*

13.23. By relying on Section 21, she submits, that it is not only applicable to a government institution, but also to a private institution. And the requirement of providing equal opportunity is applicable to even a private institution.

13.24. On the basis of a reading of all the provisions, she submits that the school could not have terminated the teacher from her employment



due to her disability or demoted her, which amounts to discrimination and violation of the Disabilities Act of 2016. The reasonable accommodation which had been sought for to discharge the duties have not been so permitted. She submits that the teacher continues to be a valuable asset to the society and she can discharge her duties as a teacher so long as basic amenities are provided like access to a lift, if she has to go to a different floor or to provide for teaching in a classroom which is accessible by a physically disabled person, access to a washroom as also to basic medical services so as to resume her job apart from proper transport facilities from home to school.

13.25. She refers to the decision of Hon'ble Apex Court in the case of ***Jeeja Ghosh and Another Vs. Union of India and Others***<sup>17</sup>, more particularly Para 18 thereof, which is reproduced hereunder for easy reference:-

***18.*** *We have already taken note of some of the international covenants and instruments guaranteeing rights to persons with disabilities. Insofar as obligation to fulfil these rights are*

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<sup>17</sup> (2016) 7 SCC 761



*concerned, the same is not limited to the Government or government agencies/State but even the private entities (which shall include private carriers as well) are fastened with such an obligation which they are supposed to carry out. We have also mentioned that in the year 2000, Respondent 2 i.e. DGCA had issued CAR with regard to "carriage" by persons with disabilities and/or persons with reduced mobility.*

13.26. By referring to **Jeeja Ghosh's**<sup>17</sup> case, she submits that the obligation to respect, protect and fulfil the rights of persons with disabilities is not confined merely to the State or its instrumentalities, but extends equally to private actors operating in the public sphere. The Hon'ble Supreme Court has unequivocally recognised that private entities, particularly those engaged in providing essential or public-facing services such as transportation, are under a positive and enforceable duty to ensure non-discrimination, dignity, and accessibility for persons with disabilities.

13.27. She would further contend that the said principle is not merely declaratory in nature, but imposes a binding obligation, reinforced by regulatory frameworks such as the Civil Aviation Requirements (CAR) issued by the



Directorate General of Civil Aviation, which mandate compliance by private carriers. Thus, according to her, any failure on the part of such private entities to accommodate or safeguard the rights of persons with disabilities would amount to a violation of their fundamental rights, particularly those emanating from Articles 14 and 21 of the Constitution of India, read in the light of international conventions to which India is a signatory.

13.28. On that basis, she submits that the respondent, though a private entity, cannot evade liability by contending absence of a statutory obligation, as the law laid down in **Jeeja Ghosh's**<sup>17</sup> case clearly fastens a duty of care and non-discriminatory treatment upon it, thereby rendering its impugned action legally unsustainable.

13.29. Whether the school is an unaided private education institution or not, the applicability of the Disabilities Act of 2016 is not taken away. There is no distinction under Disabilities Act made between aided, unaided or a private education institution.



13.30. She refers to Section 81 of the Disabilities Act of 2016 which is reproduced hereunder for easy reference:

**81. Action by appropriate authorities on recommendation of State Commissioner.—**  
*Whenever the State Commissioner makes a recommendation to an authority in pursuance of clause (b) of section 80, that authority shall take necessary action on it, and inform the State Commissioner of the action taken within three months from the date of receipt of the recommendation:*

*Provided that where an authority does not accept a recommendation, it shall convey reasons for non-acceptance to the State Commissioner for Persons with Disabilities within the period of three months, and shall also inform the aggrieved person.*

13.31. She submits that the actions on part of the Commissioner are proper and valid. The Commissioner has power *suo moto* or otherwise to take steps where rights of persons with disability are deprived and in terms of Section 82 of the Act can act as a Civil Court.

13.32. In this regard, she relies on the judgement of the Apex Court in ***Geetaben Ratilal Patel vs District Primary Education Officer, (2013)***



**7 SCC 182<sup>18</sup>** Paras 20 & 27 which is reproduced hereunder for easy reference:

*20. The provisions of Sections 47 and 62 of the Act, when read together, empower the Commissioner to look into the complaint with respect to the matters relating to deprivation of rights of persons with disabilities and non-implementation of laws, rules, bye-laws, regulations, executive orders, guidelines or instructions issued by the appropriate Governments or local authorities and to take up the matter with the appropriate authorities for the welfare and protection of rights of persons with disabilities including matters relating to dispensation with service or reduction in rank. The power of the Commissioner "to look into the complaints with respect to the matters relating to deprivation of rights" as provided under Section 62 of the Act is not an empty formality and the Commissioner is required to apply his mind on the question raised by the complainant to find out the truth behind the complaint. If so necessary, the Commissioner may suo motu inquire into the matter and/or after giving notice, hearing the parties concerned and going through the records may decide the complaint. If it comes to the notice of the Commissioner that a person with disability has been deprived of his rights or that the authorities have flouted any law, rule, guideline, instruction, etc. issued by the appropriate Government or local authorities, the Commissioner is required to take up the matter with the appropriate authority to ensure restoration of rights of such disabled person and/or to implement the law, rule, guideline, instruction if not followed. A complaint may be made by any disabled person himself or any person on behalf of disabled persons or by any person in the interest of disabled persons. Thus the issue as involved is decided*

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<sup>18</sup> (2013) 7 SCC 182



*affirmatively in favour of the appellant and against the respondent.*

*27. Having regard to the fact that we have upheld the order passed by the Commissioner, we direct the authorities to reinstate the appellant in service immediately and to pay her regular salary every month. The appellant shall be entitled to arrears of salary w.e.f. 1-2-2008 which the respondent shall pay within three months, else the appellant shall become entitled to interest at the rate of 6% per annum with effect from 1-2-2008 till the actual payment.*

13.33. Relying on **Geetaben Ratilal Patel's**<sup>18</sup> case it is submitted that the statutory framework governing the rights of persons with disabilities confers substantive and effective powers upon the Commissioner to inquire into complaints relating to deprivation of such rights and to secure their enforcement. The Hon'ble Supreme Court has authoritatively held that the powers vested in the Commissioner under Sections 47 and 62 of the relevant enactment are not merely procedural or symbolic, but are coupled with a duty to conduct a meaningful inquiry, ascertain the veracity of the complaint, and take appropriate steps to ensure restoration of the rights of the aggrieved person. It is emphasised that the Commissioner is empowered not only to act upon complaints but



also to initiate *suo motu* proceedings, and upon being satisfied that there has been a violation of statutory protections, to require the concerned authorities to remedy such violation.

13.34. She would further submit that the binding directions issued by the Supreme Court in the said case, including reinstatement with continuity of service and payment of arrears with interest, underscore the enforceability of such rights and the obligation of authorities to provide effective and restitutive relief. Therefore, according to her, once a deprivation of rights of a person with disability is established, the competent authority is under a legal obligation to take corrective measures, and any failure to do so would render the action arbitrary, illegal, and liable to be set aside.

13.35. On that basis, it is contended that in the present case also, the competent authority having failed to discharge its statutory duty to adequately address and remedy the violation complained of, the impugned action cannot be sustained in law.



13.36. She refers to Section 47 and 62 of the Disabilities Act of 1995 which are reproduced hereunder for easy reference:

**47. Non-discrimination in Government Employment** - (1) *No establishment shall dispense with, or reduce in rank, an employee who acquires a disability during his service:*

*Provided that, if an employee, after acquiring disability is not suitable for the post he was holding, could be shifted to some other post with the same pay scale and service benefits:*

*Provided further that if it is not possible to adjust the employee against any post, he may be kept on a supernumerary post until a suitable post is available or he attains the age of superannuation, whichever is earlier.*

(2) *No promotion shall be denied to a person merely on the ground of his disability:*

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

**62. Commissioner to look into complaints with respect to matters relating to deprivation of rights of persons with disabilities** - *Without prejudice to the provisions of section 61 the Commissioner may of his own motion or on the application of any aggrieved person or otherwise look into complaints with respect to matters relating to –*



*(a) deprivation of rights of persons with disabilities;*

*(b) non-implementation of laws, rules, bye-laws, regulations, executive orders, guidelines or instructions made or issued by the appropriate Governments and the local authorities for the welfare and protection of rights of persons with disabilities, and take up the matter with the appropriate authorities.*

13.37. Reliance has been placed on the judgement of the Delhi High Court in ***Bank of Baroda v Sumita Saha***<sup>19</sup>, Para 30 which is reproduced hereunder for easy reference:

**30.** *A Chief Commissioner under the Act functions as a quasi-judicial authority and has ample powers to decide the issues entrusted to it. The orders passed by the Chief Commissioner are not to be ignored and must be given serious and due consideration and weightage. It has to be kept in mind that the Act is a beneficial legislation and, therefore, the provisions should be interpreted and construed in a manner which advances the benefits given under the said legislation. Consequently, the powers and functions of the Commissioner would have to be given the widest amplitude possible within the four corners of the provisions of the said Act itself. The Chief Commissioner is certainly required to and is empowered to look into any transgression of the rights of persons with disabilities as also to examine the issue of non-implementation of laws etc., which are for the welfare and protection of rights of persons with disabilities.*

13.38. By referring to ***Sumita Saha's***<sup>19</sup> case it is submitted that the statutory authorities

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<sup>19</sup> 2019 SCC OnLine Del 7846



constituted under the disability rights framework, particularly the Chief Commissioner/Commissioner, exercise quasi-judicial powers of a substantive and determinative nature, and their decisions cannot be treated as mere recommendations devoid of binding effect.

13.39. She submits that the Hon'ble Delhi High Court has categorically held that the orders passed by such authorities are entitled to due weight, serious consideration, and effective implementation by all concerned. It is emphasised that the enactment in question being a beneficial legislation, its provisions are required to be interpreted in a purposive and expansive manner so as to advance, rather than dilute, the rights and protections conferred upon persons with disabilities.

13.40. She would further contend that the powers of the Commissioner are to be construed with the widest possible amplitude within the statutory framework, enabling the authority to inquire into violations, examine instances of non-implementation of laws, rules, and guidelines,



and to take necessary steps to secure compliance and redressal. Therefore, according to her, any attempt to trivialise, disregard, or bypass the findings or directions issued by the Commissioner would be contrary to the legislative intent and the law laid down by the High Court.

13.41. On that basis, it is submitted that in the present case, the findings and directions issued by the competent authority ought to have been accorded due deference and implemented in their true spirit, and the failure to do so renders the impugned action unsustainable in law.

13.42. Reliance has been placed on the judgement of the Bombay High Court in ***General Manager of B.E.S.T Undertaking v. Mohammad Ramjan M. Shahban & Anr. 2018***<sup>20</sup> more particularly paras 4 & 11 thereof which are reproduced hereunder for easy reference:

*4. The argument that the Commissioner simply has to take up the matter with the appropriate authority, whatever that means, and can pass no direction, has no substance. If all that is meant to be done by the Commissioner for persons of disabilities under Section 62 of the Disabilities Act, is to correspond or take up*

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<sup>20</sup> SCC OnLine Bom 912



*the issue with the appropriate authority, that is to say, the employer as in this case, he is an authority with no effective role or purpose. It is difficult to understand in that case the reason for conferring extensive powers of the civil court on the Commissioner for the purposes of discharging his functions under Section 61 and 62 of the Act. If at the end of the day, all that he is expected to do is to correspond or enquire with the authority, there is no need to confer such elaborate procedural powers on him. The only reasonable meaning that can be ascribed to the expression "take up the matter with the appropriate authorities" is that, in an appropriate case, the Commissioner can issue suitable instructions to the concerned authorities, that is to say, in case of an employment related dispute to the employer, for redressing the grievance of the employee who may be a person with disability or who may have acquired disability during service. The power may be to "take up the matter with the appropriate authority", but then the matter itself must be taken up with a view to redress the grievance and do so effectively. If such redressal involves implementation of any particular measure, or taking any particular step provided in the Disabilities Act, the authority, in an appropriate case, can certainly be asked to follow the mandate of the statute or take the particular step as may be required thereunder.*

**11.** *These dicta clearly govern the facts of our case. What we have to see is whether Respondent No. 1 acquired a disability within the meaning of Section 2(i) and if yes, whether for that reason he was being terminated from service rather than being shifted to any other suitable post, if he was held to be unsuitable for the job he was engaged in. If that is so, the mandate of Section 47 is breached and corrective measures can be ordered under Section 62. It is not necessary to further consider if he is a person with disability within the meaning of Section 2(t).*



13.43. Relying on ***Mohammad Ramjan M. Shahban's***<sup>20</sup> case it is submitted that the powers conferred upon the Commissioner under the disabilities legislation are not merely advisory or recommendatory in character, but carry with them the authority to issue effective and enforceable directions for redressal of grievances.

13.44. She submits that the Hon'ble Bombay High Court has expressly rejected the contention that the Commissioner's role is limited to mere correspondence or facilitation with the appropriate authority. On the contrary, the Court has held that such an interpretation would render the statutory scheme otiose, especially in light of the conferment of powers akin to those of a civil court. The expression "to take up the matter with the appropriate authority" has been purposively interpreted to mean that the Commissioner is empowered, in appropriate cases, to issue suitable directions or instructions to ensure effective compliance with the statutory mandate and to secure meaningful redressal.



13.45. She would further contend that the judgment underscores that where a violation of statutory protections, particularly those relating to employment security under Section 47, is established, the Commissioner is not only competent but duty-bound to require the employer to take corrective measures, including reassignment to suitable posts or other remedial steps contemplated under the statute.

13.46. On that basis, it is submitted that the authority of the Commissioner extends to directing substantive compliance and cannot be diluted into a mere recommendatory function; and consequently, any contention to the contrary, seeking to undermine the binding nature of such directions, is liable to be rejected as being contrary to the settled legal position.

13.47. There is no limitation prescribed under the Disabilities Act of 2016 and as such, the claim of the School that the complaint is barred by limitation is completely unfounded. The cause of action being a continuing one, which continues even on today, she submits that the same cannot be said to be barred by limitation,



so long as the school has terminated and / or does not permit the teacher to discharge her role as a teacher and so long as the school does not make payment of the due amounts to the teacher, the cause of action being continuing one would continue to be applicable.

13.48. Reliance has been placed on the judgement of the Supreme Court in ***North Eastern Chemicals Industries (P) Ltd & Anr. Vs Ashok Paper Mill (Assam) Ltd. & Anr***<sup>21</sup> more particularly paras 17, 22 23 & 30.2 thereof which is reproduced hereunder for easy reference:

*17. The above description of the powers of either the Code or CrPC clearly testifies to the intent of the State Legislature to specifically restrict the application of both the said Codes, to only the extent provided. The principle of statutory interpretation : expression unius est exclusion alterius (the expression of one thing is the exclusion of the other) supports such a view. We also notice this Court holding International Asset Reconstruction Co. of India v. Official Liquidator [International Asset Reconstruction Co. of India v. Official Liquidator, (2017) 16 SCC 137 : (2018) 2 SCC (Civ) 724] as extracted below : (SCC p. 140, para 9)*

*"9. The fact that the Tribunal may be vested with some of the powers as a civil court under the Code of Civil Procedure, regarding summoning and enforcing*

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<sup>21</sup> AIR Online 2023 SC 1147



*attendance of witnesses, discovery and production of the documents, receiving evidence on affidavits, issuing commission for the examination of witnesses or documents, reviewing its decisions, etc. does not vest in it the status of a court. Section 22(1), in fact, provides that the Tribunal shall not be bound by the procedures under the Code, and can regulate its own procedures in accordance with natural justice."*

*(emphasis supplied)*

**22.** *Having come to the conclusion as above, we are required to consider, whether the instant appeal, filed against the order of the Commissioner of Payments is maintainable or not? Prior to delving into such a question, we would also need to examine as to whether in the absence of an expressly prescribed limitation, can an appeal from an order passed by the Commissioner of Payments, be entertained, irrespective of passage of time?*

**23.** *This dispute concerns the exercise of a statutory right. The issue of no express limitation being provided in regard to the exercise of a right to assail the order has captured the attention of this Court, earlier, on certain occasions. We may refer to some decisions hereinbelow.*

**23.1.** *In State of Punjab v. Bhatinda District Coop. Milk Producers Union Ltd. [State of Punjab v. Bhatinda District Coop. Milk Producers Union Ltd., (2007) 11 SCC 363] this Court observed that : (SCC p. 367, para 18)*

*"18. It is trite that if no period of limitation has been prescribed, statutory authority must exercise its jurisdiction within a reasonable period. What, however, shall be the reasonable period would depend upon the nature of the statute, rights and liabilities thereunder and other relevant factors."*



*The principle stands reiterated in SEBI v. Sunil Krishna Khaitan [SEBI v. Sunil Krishna Khaitan, (2023) 2 SCC 643]*

**23.2.** *In Jagdish v. State of Karnataka [Jagdish v. State of Karnataka, (2021) 12 SCC 812 : (2023) 2 SCC (Civ) 654] , this Court referred to a number of decisions to reiterate that where the statute in question does not prescribe a limitation, the rights conferred therein must be exercised within reasonable time.*

**23.3.** *This aspect of reasonable time was recently discussed by this Court in Madras Aluminium Co. Ltd v. T.N. SEB [Madras Aluminium Co. Ltd v. T.N. SEB, (2023) 8 SCC 240] , having referred a three-Judge Bench decision in SEBI v. Bhavesh Pabari [SEBI v. Bhavesh Pabari, (2019) 5 SCC 90] stating that the concept is to be applied and judged in each case per its own peculiar facts.*

**30.2.** *In the absence of any particular period of time being prescribed to file an appeal, the same would be governed by the principle of "reasonable time", for which, by virtue of its very nature, no straitjacket formula can be laid down and it is to be determined as per the facts and circumstances of each case. In the present lis, having regard to the sequence of events, as taken note of above, the appellant claimants cannot be said to have transgressed the boundaries of reasonable time in filing their appeal before the District Judge.*

13.49. Relying on **North Eastern Chemicals Industries's**<sup>21</sup> case it is submitted that where a statute does not expressly prescribe a period of limitation for the exercise of a statutory right, such right is nevertheless required to be



exercised within a “reasonable time”, the determination of which is inherently fact-specific and dependent upon the nature of the proceedings, the rights involved, and the surrounding circumstances.

13.50. She submits that the Hon’ble Apex Court has consistently reiterated the principle that absence of a prescribed limitation does not confer an unfettered or indefinite right to initiate proceedings at any point of time. Instead, the doctrine of “reasonable time” operates as an implied limitation, ensuring that statutory remedies are invoked with due diligence and without undue delay. It is further emphasised that what constitutes “reasonable time” cannot be reduced to a rigid or straitjacket formula, but must be adjudged on a case-to-case basis.

13.51. She submits that statutory interpretation must be guided by settled principles, including *expressio unius est exclusio alterius*, and that where the legislature has consciously omitted to provide for a specific procedure or limitation, the courts must give effect to such legislative



intent, while simultaneously ensuring that the exercise of rights remains within the bounds of reasonableness.

13.52. On that basis, it is submitted that in the present case, even in the absence of an expressly prescribed limitation period, the action/proceeding initiated cannot be said to be barred, so long as it satisfies the test of having been undertaken within a reasonable time, having regard to the factual matrix and sequence of events. Consequently, any objection predicated solely on delay, without demonstrating that such delay is unreasonable or has caused prejudice, is liable to be rejected.

13.53. She submits that though there are remedies provided under Karnataka Education Act, 1983, (for short, 'KEA 1983') the same are not exclusive inasmuch as a person with disabilities could also seek for reliefs under Disabilities Act of 2016 and is not limited by the KEA 1983.

13.54. Reliance has been placed on Rule 8 of the which is reproduced below:



**8. Manner of publication of equal opportunity policy.-**

(1) *Every establishment shall publish equal opportunity policy for persons with disabilities.*

(2) *The establishment shall display the equal opportunity policy preferably on their website, failing which, at conspicuous places in their premises.*

(3) *The equal opportunity policy of a private establishment having twenty or more employees and the Government establishments shall inter alia, contain the following, namely:-*

(a) *facility and amenity to be provided to the persons with disabilities to enable them to effectively discharge their duties in the establishment;*

(b) *list of posts identified suitable for persons with disabilities in the establishment;*

(c) *the manner of selection of persons with disabilities for various posts, post-recruitment and pre-promotion training, preference in transfer and posting, special leave, preference in allotment of residential accommodation if any, and other facilities;*

(d) *provisions for assistive devices, barrier-free accessibility and other provisions for persons with disabilities;*

(e) *appointment of liaison officer by the establishment to look after the recruitment of persons with disabilities and provisions of facilities and amenities for such employees.*

(4) *The equal opportunity policy of the private establishment having less than twenty employees shall contain facilities and amenities to be provided*



*to the persons with disabilities to enable them to effectively discharge their duties in the establishment.*

13.55. By relying on Rule 8 it is submitted that every establishment is under a statutory obligation to formulate and publish an Equal Opportunity Policy for persons with disabilities, and to ensure that such policy specifically addresses the facilities, accessibility measures and institutional support required to enable persons with disabilities to effectively discharge their duties.

13.56. It is therefore submitted that the respondent establishment was required to demonstrate compliance with the above statutory mandate, including the formulation and publication of such a policy and the provision of appropriate facilities and accessibility measures for employees with disabilities.

13.57. Reliance is placed on the judgment of the Hon'ble Apex Court in the case of ***Om Rathod vs. The Director General of Health Services & Ors.***<sup>22</sup> more particularly Paras 27, 29, 30

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<sup>22</sup> 2024 INSC 836



and 47, which are reproduced hereunder for easy reference:

**27.** *A failure to create a conducive environment is a failure to provide reasonable accommodation.<sup>13</sup> Section 2(h) of the RPWD Act defines discrimination in the context of disability as "any distinction, exclusion, restriction on the basis of disability which has the purpose or effect of impairing or nullifying the recognition, enjoyment or exercise on an equal basis with others of all human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field and includes all forms of discrimination and denial of reasonable accommodation." The denial of reasonable accommodation is expressly recognised as discrimination under the RPWD Act. For the proper realisation of reasonable accommodation, a person with disability must be identified using correct parameters and thereafter the accommodations necessary have to be determined on a case by case basis.*

**29.** *The principle of reasonable accommodation is not only statutorily prescribed but also rooted in the fundamental rights guaranteed to persons with disabilities under Part III of the Constitution. Reasonable accommodation is a fundamental right. It is a gateway right for persons with disabilities to enjoy all the other rights enshrined in the Constitution and the law. Without the gateway right of reasonable accommodation, a person with disability is forced to navigate in a world which excludes them by design. It strikes a fatal blow to their ability to make life choices and pursue opportunities. From mundane tasks of daily life to actions undertaken to realise personal and professional aspirations - all are throttled when reasonable accommodations are denied. Reasonable*



*accommodation is a facet of substantive equality and its failure constitutes discrimination. In Vikash Kumar v. UPSC, this Court adjudicated on whether a person with a writer's cramp is entitled to a scribe for writing the examination. Allowing the use of a scribe, this Court held that the benchmark standard can only be applied where expressly stipulated. Section 2(s) of the RPWD Act defines a person with disability as a person with long term physical, mental, intellectual or sensory impairment which, in interaction with barriers, hinders their full and effective participation in society equally with others. Therefore, a person - to be considered as a person with disability - does not have to qualify any benchmark. The principle that the rights and entitlements cannot be constricted by adopting a benchmark as a condition precedent was also upheld by this Court in Avni Prakash v. NTA.*

**30.** *Section 3 of the RPWD Act affords persons with disabilities a right to equality and non-discrimination. In Vikash Kumar (supra) this Court held that Section 3 casts an **affirmative** obligation on the Government and private entities to take steps to ensure reasonable accommodation and utilize the capacity of persons with disabilities by providing an appropriate environment. There is a positive obligation to realise the inclusive premise in the concept of reasonable accommodation. This includes the duty to create an environment conducive for the development of persons with disabilities. This Court has held that:*

*"... The accommodation which the law mandates is 'reasonable' because it has to be tailored to the requirements of each condition of disability. The expectations which every disabled person has are unique to the nature of the disability and the*



*character of the impediments which are encountered as its consequence. ....*

*48. Failure to meet the individual needs of every disabled person will breach the norm of reasonable accommodation. Flexibility in answering individual needs and requirements is essential to reasonable accommodation. The principle of reasonable accommodation must also account for the fact that disability based discrimination is intersectional in nature. The intersectional features arise in particular contexts due to the presence of multiple disabilities and multiple consequences arising from disability. Disability therefore cannot be truly understood by regarding it as unidimensional."*

*(emphasis supplied)*

**47.***When reasonable accommodation is denied to a person with disability, it amounts to discrimination and violates the fundamental rights of the aggrieved person and the preambular virtue of fraternity along with justice, liberty and equality. Persons with disability are not objects of pity or charity but an integral part of our society and nation. The advancement of rights for persons with disabilities is a national project along with eradication of all forms of discrimination. A component of this project is the inclusion of persons with disabilities in all pursuits of life.*

13.58. By relying on **Om Rathod's**<sup>22</sup> case it is submitted that the doctrine of reasonable accommodation is not merely a statutory entitlement but constitutes a fundamental and



enforceable facet of the right to equality and non-discrimination guaranteed under Part III of the Constitution.

13.59. She submits that the Apex Court has unequivocally held that denial of reasonable accommodation, by itself, amounts to discrimination within the meaning of the Rights of Persons with Disabilities Act, 2016. It is emphasised that the obligation to provide reasonable accommodation is both positive and proactive in nature, requiring the concerned authorities, whether State or private entities, to create an enabling and inclusive environment tailored to the specific needs of the individual concerned.

13.60. She would further contend that the Hon'ble Supreme Court has characterised reasonable accommodation as a "gateway right", without which persons with disabilities are effectively excluded from meaningful participation in social, professional, and civic life. The judgment underscores that such accommodation must be determined on a case-to-case basis, with due regard to the nature of the disability, the



barriers encountered, and the individual's specific requirements, and cannot be constrained by rigid or inflexible standards.

13.61. It is also submitted that the Court has recognised that failure to provide such accommodation strikes at the heart of substantive equality, and results in a direct violation of fundamental rights under Articles 14 and 21 of the Constitution. The obligation extends beyond mere formal compliance and mandates flexibility, responsiveness, and sensitivity in addressing the unique and, at times, intersectional challenges faced by persons with disabilities.

13.62. On that basis, it is contended that in the present case, the failure of the respondent to provide appropriate and necessary reasonable accommodation constitutes clear discrimination in law, thereby rendering the impugned action unconstitutional, arbitrary, and liable to be set aside.

13.63. According to the learned Senior counsel, the petitioners were therefore required to ensure compliance with the statutory mandate relating



to reasonable accommodation and institutional accessibility, and the failure to do so would render the impugned action arbitrary and contrary to the protections guaranteed to persons with disabilities under the Act.

13.64. Reliance is placed on the judgment of the Hon'ble Apex Court in the case of **Rajive Raturi vs. Union of India & Ors.**,<sup>23</sup> more particularly Paras 22, 25, 27, 35, 36 and 43, which are reproduced hereunder for easy reference:

*22. Accessibility is not merely a convenience, but a fundamental requirement for enabling individuals, particularly those with disabilities, to exercise their rights fully and equally. Without accessibility, individuals are effectively excluded from many aspects of society, whether that be education, employment, healthcare, or participation in cultural and civic activities. Accessibility ensures that persons with disabilities are not marginalised but are instead able to enjoy the same opportunities as everyone else, making it an integral part of ensuring equality, freedom, and human dignity. By embedding accessibility as a human right within existing legal frameworks, it becomes clear that it is an essential prerequisite for the exercise of other rights.*

*25. In Indian jurisprudence, several significant decisions have addressed accessibility within the*

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<sup>23</sup> 2024 INSC 858



*built environment. This court in a catena of decisions has reinforced the principle of accessibility in public infrastructure. In **Disabled Rights Group v. Union of India**<sup>32</sup>, this Court directed all educational institutions run or aided by the Government to comply with their obligation to reserve 5% seats for the disabled and directed them to report their compliance with the same to authorities set up under the Act.<sup>33</sup>This court also directed the setting up of a committee to suggest measures on how the physical infrastructure and methods of pedagogy adopted by educational institutions can be made accessible to the disabled within the stipulated time frame.*

**27.** *The inclusion of accessibility within the fundamental rights framework ensures that PWDs are entitled to full participation in society under Articles 14, 19, and 21 of the Constitution. Article 14 upholds equal access to spaces, services, and information; Article 19 guarantees the freedom to move and express oneself; and Article 21 ensures the right to live with dignity. Together, these provisions guarantee not only formal equality but also substantive equality, which requires the state to take positive steps to ensure that individuals can enjoy their rights fully, irrespective of disabilities. This Court in a plethora of judgments has repeatedly recognized that the right to dignity and the right to a meaningful life under Article 21 necessitate conditions that enable PWDs to enjoy the same freedoms and choices as others.<sup>34</sup>Thus, the right to accessibility is foundational, enabling PWDs to exercise and benefit from other rights enshrined in Part III of the Constitution.*

**35.** *The first prong focuses on ensuring that **existing institutions and activities** are made*



*accessible and inclusive for all. This approach emphasizes the importance of retrofitting existing systems and structures to meet the needs of PWDs, women, older individuals, children, and other vulnerable groups. While retrofitting is important, it is often more complex and expensive than designing inclusive spaces from the outset.*

**36.** *The second prong is about **transforming infrastructure** - rethinking and redesigning physical spaces to accommodate PWDs. This transformation involves reimagining public spaces, transportation, educational institutions, and other facilities to ensure that accessibility is embedded from the very beginning, rather than retrofitted later. When introducing any new service, product, or feature - whether physical or functional - accessibility must be considered at the **inception stage**. It is far more efficient to integrate accessibility from the start than to make adjustments later. By embedding universal design principles into the core of our systems, processes, and infrastructure, we can ensure that they are usable by all, making inclusivity a foundational element rather than an afterthought.*

**43.** *From the above, the following guiding principles emerge:*

*a. Accessibility is not a standalone right; it is a prerequisite for PWDs to exercise other rights meaningfully; and*

*b. Accessibility requires a two-pronged approach. One focuses on ensuring accessibility in existing institutions/activities often through retrofitting and the other focuses on transforming new infrastructure and future initiatives.*



13.65. By relying on ***Rajive Raturi's***<sup>23</sup> case it is submitted that the right to accessibility is not merely ancillary, but constitutes a foundational and indispensable component of the fundamental rights framework, enabling persons with disabilities to effectively exercise their rights under Articles 14, 19 and 21 of the Constitution.

13.66. She submits that the Apex Court has authoritatively held that accessibility is a precondition for the realisation of substantive equality, as without accessible infrastructure, services, and systems, persons with disabilities stand effectively excluded from participation in essential facets of life, including education, employment, healthcare, and civic engagement. Accessibility, therefore, is intrinsically linked to dignity, autonomy, and equal opportunity.

13.67. She would further contend that the Hon'ble Supreme Court has articulated a two-pronged approach towards achieving accessibility:

13.67.1. firstly, by ensuring that existing institutions and infrastructure are made



inclusive through retrofitting and corrective measures; and

13.67.2. secondly, by mandating that all future infrastructure, services, and systems are designed in accordance with principles of universal design, embedding accessibility at the inception stage itself.

13.68. This dual obligation underscores both an immediate duty to rectify existing barriers and a forward-looking mandate to prevent their recurrence.

13.69. It is also submitted that the Court has emphasised the positive obligation of the State and all concerned authorities to take proactive steps to secure accessibility, thereby moving beyond formal equality to achieve real and substantive inclusion. Accessibility is thus not a matter of discretion, but a binding constitutional imperative.

13.70. On that basis, it is contended that any failure to ensure accessibility, whether in existing systems or in newly developed infrastructure, would amount to a violation of the fundamental



rights of persons with disabilities, rendering such action arbitrary, discriminatory, and unsustainable in law.

13.71. According to the learned Senior counsel, the Petitioners were therefore required to ensure that the institutional framework within which the petitioner operates conforms to the principles of accessibility and reasonable accommodation, and any failure in this regard would run contrary to the mandate of the Rights of Persons with Disabilities Act, 2016, as interpreted by the Hon'ble Supreme Court.

13.72. Reliance is placed on the judgment of the Hon'ble Apex Court in the case of ***In Re: Recruitment of PWD Candidates in Rajasthan Judicial Services***<sup>24</sup> more particularly Paras 36 and 43, which are reproduced hereunder for easy reference:

**36.** *In this context it is also relevant to mention that the RPWD Act, 2016 today has acquired the status of a 'super Statute'. The term 'super statute' was first applied in 201 by William N. Eskridge and John A. Ferejohn to characterise an ordinary statute that not only reveals intention but also establishes a new normative or institutional framework in the public culture and has a broad effect on the law. As a*

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<sup>24</sup> 2025 INSC 300



*result, such statutes have a quasi-constitutional significance that exceed its former status as a statute. In the words of the authors, "these super-statutes penetrate the public normative and institutional and institutional culture. Applying this test, it can safely be said that the RPwD Act, 2016 has acquired the status equal to that of a super-statute' and hence, contains the ingredients of a quasi-constitutional law.*

**43.** *In the context of the Rule viz., Proviso to Rule 7 of the Madhya Pradesh Judicial Service Rules, though it was challenged by PWD as well as able-bodied persons, it has been placed on record that the order under appeal relates to scrutiny of the said Rule only vis-a-vis the general principles of law while not examining the same in the context of the disability jurisprudence. In the present case, the said rule is only being dealt with in the context of the challenge made to it by PWD more particularly, visually impaired candidates, who have qualified themselves as lawyers and are aspiring for the post of judicial officers. Therefore, the principle of indirect discrimination assumes significance. Briefly put, the principle of indirect discrimination has its basis in the fundamental principle that unequals cannot be treated equally, and sometimes equal treatment may lead to unequal results. The counsel for the appellants pointed out the difficulties that are practically faced by PWD, which would go to prove that the three-year practice as well as the alternative rule of securing 70% in the first attempt of the examinations, though seems fair at the first blush, and on the face of it, is truly discriminatory in operation. At this juncture, it is pertinent to point out that the relaxation was granted to SC/ST candidates in relation to the aggregate marks required for obtaining a law degree. In Col. Nitisha v. Union of India", Justice D.Y. Chandrachud (as he*



*then was), while noting that the jurisprudence relating to indirect discrimination in India is still at a nascent stage, observed that indirect discrimination is caused by facially neutral criteria by not taking into consideration, the underlying effects of a provision, practice or criterion. While the observations made in the said case relate to gender-based discrimination, they are still relevant on principle here and hence, quoted as follows:*

*"We must recognise here that the structures of our society have been created by males and for males. As a result certain structures that may seem to be the "norm" and appear to be harmless, are a reflection of the insidious patriarchal system. These adjustments and amendments however, are not concessions being granted to a set of persons but instead are the wrongs being remedied to obliterate years of suppression of opportunities which should have been granted to women.... Facially equal application of laws to unequal parties is a farce, when the law to a male standpoint".*

*The observations made by this Court as stated above, can equally be applied to PWD candidates.*

13.73. By relying on **In Re: Recruitment of PWD Candidates's**<sup>24</sup> case it is submitted that the Rights of Persons with Disabilities Act, 2016 has been accorded a quasi-constitutional status, thereby elevating its provisions beyond that of an ordinary statute and requiring a heightened level of judicial scrutiny and purposive interpretation.



13.74. She submits that the Hon'ble Apex Court has recognised the RPwD Act as a "super-statute", which establishes a transformative normative framework governing disability rights, and must therefore be interpreted in a manner that advances its underlying constitutional ethos of equality, dignity, and inclusion. Consequently, any interpretation or application of subordinate rules or executive actions must yield to, and be harmonised with, the overarching mandate of the said enactment.

13.75. She would further contend that the doctrine of indirect discrimination assumes critical significance in disability jurisprudence. The Hon'ble Supreme Court has clarified that facially neutral rules or criteria, which appear to apply equally to all, may nevertheless operate in a discriminatory manner when their impact disproportionately disadvantages persons with disabilities. In such cases, formal equality must give way to substantive equality, recognising that unequal circumstances necessitate differential treatment to achieve real fairness.



13.76. It is emphasised that rigid or uniform application of eligibility criteria, without accounting for the structural and practical barriers faced by persons with disabilities, would perpetuate exclusion and defeat the very object of the legislation. The Hon'ble Apex Court has thus underscored that accommodations and relaxations are not concessions, but corrective measures aimed at remedying historical and systemic disadvantages.

13.77. On that basis, it is submitted that in the present case, any rule, condition, or practice which, though ostensibly neutral, results in adverse or disproportionate impact upon persons with disabilities, would be liable to be struck down as indirectly discriminatory and violative of the mandate of the RPwD Act, as well as Articles 14 and 21 of the Constitution.

13.78. It is therefore contended that any administrative action or institutional framework which, though apparently neutral, results in disadvantaging persons with disabilities or failing to address the structural barriers faced



by them, would amount to indirect discrimination and would be contrary to the mandate of the RPwD Act as interpreted by the Hon'ble Supreme Court.

13.79. Reliance is placed on the judgment of the Hon'ble High Court of Delhi in the case of ***Kamal Kant Agarwal vs. Guru Gobind Singh Indraprastha University***<sup>25</sup>, more particularly Para 1 and 4, which is reproduced hereunder for easy reference:

*1. Having heard learned counsel for the parties and on perusing the material placed on record, we find no good ground to interfere with the impugned judgment and order dated 26.08.2015 passed by the High Court of Delhi at New Delhi in L.P.A. No.303 of 2015.*

*4. We agree with the view taken by the learned Single Judge for the reason pertaining to individual grievances the Commissioner for Persons with Disabilities can pass only such orders as are contemplated by the decision of the Supreme Court reported as (2013) 7 SCC 182 Geetaban Ratilal Patel Vs. District Primary Education Officer i.e. the Commissioner would be within his power to decide whether a person with disabilities has been deprived of his rights by an authority on account of non-compliance with law, rule, guideline or instruction issued by the Government.*

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<sup>25</sup> LPA No.303/2015



13.80. By relying on **Kamal Kant Agarwal's**<sup>25</sup> case it is submitted that the jurisdiction of the Commissioner for Persons with Disabilities, though circumscribed by the statutory framework, nevertheless extends to adjudicating upon individual grievances concerning deprivation of rights arising from non-compliance with applicable laws, rules, guidelines, or governmental instructions.

13.81. She submits that the Hon'ble Delhi High Court, while affirming the legal position laid down by the Hon'ble Supreme Court in **Geetaben Ratilal Patel v. District Primary Education Officer's**<sup>18</sup> case, has clarified that the Commissioner is competent to examine whether a person with disability has suffered deprivation of rights on account of failure of an authority to adhere to the statutory or regulatory mandate. Thus, the Commissioner's role includes a determinative function of assessing violations and ensuring that the protections envisaged under the disability law are meaningfully enforced.



13.82. She would further submit that the said judgment reinforces that the proceedings before the Commissioner are not merely administrative or conciliatory in nature, but involve a quasi-adjudicatory exercise, wherein the Commissioner is required to apply his mind to the facts and the applicable legal framework to arrive at a reasoned conclusion regarding violation of rights.

13.83. On that basis, it is contended that once such deprivation is established, the authority concerned cannot evade accountability, and the findings of the Commissioner, rendered within the scope of his statutory powers, are entitled to due recognition and implementation in accordance with law.

13.84. It is therefore contended that where a complaint is made alleging denial of rights guaranteed under the Rights of Persons with Disabilities Act, 2016, the Commissioner would be competent to enquire into the matter and determine whether the concerned authority has acted in violation of the statutory mandate



governing the protection of rights of persons with disabilities.

13.85. Reliance is placed on the judgment of the Hon'ble Apex Court in the case of **Syed Bashir-Ud-Din Qadri vs. Nazir Ahmed Shah and others**<sup>26</sup> more particularly Paras 26, 27, 29, 47, 52, 53, 54 and 61, which are reproduced hereunder for easy reference:

*26. Mr Gonsalves submitted that what was of importance in giving effect to the provisions of the 1998 Act is the principle of reasonable accommodation as provided for in Section 27 of the aforesaid Act which deals with the Scheme for ensuring employment for persons with disabilities. Mr Gonsalves urged that the object of the 1998 Act is to try and rehabilitate and/or accommodate persons suffering from physical disabilities to have equal opportunities of employment in keeping with their physical disabilities so that they were not only able to provide for themselves but were also able to participate in mainstream activity and live a life of dignity in society.*

*27. Mr Gonsalves submitted that the problem of rehabilitating disabled persons was not special to India alone, but was common to most of the other countries as well. He submitted that being conscious of the problem, most countries had enacted laws to make provision for the rehabilitation of persons with disabilities by taking recourse to the doctrine of reasonable accommodation to enable a handicapped*

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<sup>26</sup> (2010) 3 SCC 603



*person to use his or her abilities with the help of aids and/or adjustments.*

**29.** *In Kathleen Borkowski case [63 F 3d 131 (2nd Cir 1994)] , on account of a motor vehicle accident, the plaintiff, Kathleen Borkowski had suffered major head trauma and sustained serious neurological damage and though her condition improved significantly after years of rehabilitative therapy, she did not recover completely resulting in continuous difficulties with memory and concentration. In addition, her balance, coordination and mobility continued to show the effects of her accident. Ms Borkowski obtained employment as Library Teacher with the School District on a probationary term, but ultimately because of her failure to effectively control her class, the Superintendent of the School District decided that Ms Borkowski's tenure should not be extended. Claiming discrimination, Ms Borkowski challenged the said decision before the United States District Court for the Southern District of New York which granted summary judgment in favour of the defendant, Valley Central School District holding that having someone else to do a part of her job may sometimes mean eliminating the essential functions of the job, at other times providing an assistance to help the job may be an accommodation that does not remove an essential function of the job from the disabled employee. On such finding, the Court of Appeals set aside the order of the District Court and remanded the matter to the District Court for a fresh decision upon taking into consideration the doctrine of reasonable accommodation to enable a teacher to perform his/her functions as a teacher, which he/she was otherwise eligible and competent to perform.*

**47.** *It has to be kept in mind that this case is not one of the normal cases relating to a person's claim for employment. This case involves a beneficial piece of social legislation to enable persons with certain forms*



*of disability to live a life of purpose and human dignity. This is a case which has to be handled with sensitivity and not with bureaucratic apathy, as appears to have been done as far as the appellant is concerned.*

**52.** *As submitted by Mr Gonsalves, while a person suffering from cerebral palsy may not be able to write on a blackboard, an electronic external aid could be provided which could eliminate the need for drawing a diagram and the same could be substituted by a picture on a screen, which could be projected with minimum effort.*

**53.** *It is only to be expected that the movement of a person suffering from cerebral palsy would be jerky on account of locomotor disability and that his speech would be somewhat impaired, but despite the same, the legislature thought it fit to provide for reservation of 1% of the vacancies for such persons. So long as the same did not impede the person from discharging his duties efficiently and without causing prejudice to the children being taught, there could, therefore, be no reason for a rigid approach to be taken not to continue with the appellant's services as Rehbar-e-Taleem, particularly, when his students had themselves stated that they had got used to his manner of talking and did not have any difficulty in understanding the subject being taught by him.*

**54.** *Coupled with the above is the fact that the results achieved by him in the different classes were extremely good; his appearance and demeanour in school had been highly appreciated by the Committee which had been constituted pursuant to the orders of the High Court to assess the appellant's ability in conducting his classes.*

**61.** *The appeals, accordingly, succeed and are allowed. The impugned order of the High Court and*



*that of the Chief Education Officer, Pulwama, dated 19-1-2008, disengaging the appellant from functioning as Rehbar-e-Taleem, are hereby set aside. Consequently, the authorities are directed to allow the appellant to resume his functions as Rehbar-e-Taleem in Middle School, Kanjinag, immediately upon communication of this order with continuity of service from the date of his disengagement as Rehbar-e-Taleem. The period during which the appellant was disengaged from his service as Rehbar-e-Taleem till the date of his resuming duty in such post shall not be treated as break in service and he shall be entitled to all notional service benefits for the said period.*

13.86. Relying on **Syed Bashir-Ud-Din Qadri's**<sup>26</sup> case it is submitted that the doctrine of reasonable accommodation lies at the very heart of disability jurisprudence and must inform the interpretation and application of all provisions relating to employment and rehabilitation of persons with disabilities.

13.87. She submits that the Hon'ble Apex Court has emphasised that disability legislation is a beneficial and socially transformative enactment, intended to ensure that persons with disabilities are not excluded from gainful employment and are enabled to live a life of dignity, self-sufficiency, and meaningful participation in society. The approach of the



authorities, therefore, must be guided by sensitivity, inclusiveness, and purposive interpretation, rather than rigid or bureaucratic adherence to formal standards.

13.88. She would further contend that the Court has recognised that reasonable accommodation may involve modification of work processes, provision of assistive aids, or adjustment of job functions, so long as the essential functions of the post are not compromised. The emphasis is on enabling the individual to perform effectively, rather than disqualifying them on account of disability. The judgment also underscores that minor limitations or differences in manner of performance cannot be a ground to deny employment, particularly where the individual is otherwise competent and has demonstrated satisfactory performance.

13.89. It is also submitted that the Hon'ble Supreme Court has taken note of comparative jurisprudence and evolving global standards to reinforce that accommodation is not a concession, but a legal obligation, aimed at



removing barriers and facilitating equal opportunity.

13.90. On that basis, it is contended that any action of disengagement or denial of employment, without first exploring and providing reasonable accommodation, would be contrary to the statutory mandate and constitutional principles, and therefore liable to be set aside. The respondent authorities are under a duty to adopt an enabling approach and to provide necessary support mechanisms to ensure that the person with disability is able to discharge his/her functions effectively.

13.91. It is submitted that a rigid or bureaucratic approach which ignores the possibility of providing technological aids, adjustments or supportive measures would defeat the very object of disability legislation, which seeks to enable persons with disabilities to participate fully in social and professional life with dignity.

13.92. Reliance has been placed on the judgement of the Supreme Court in ***Vikash Kumar v. UPSC***<sup>27</sup> more particularly Paras 53, 54, 60, 61,

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<sup>27</sup> 2021 5 SCC 370



63, 65 89, 97, 98 which are reproduced hereunder for easy reference;

**53.** *While most of the obligations under the 2016 RPwD Act are cast upon the Government or local authorities, the Act and Rules made under it have also imposed certain obligations on the private sector. The role of the private sector in the market has increased manifold since the advent of liberalisation in India. The 2016 RPwD Act recognises that with the burgeoning role of the private sector in generating employment in India, an active responsibility has to be cast upon private employers to create an inclusive workforce by providing persons with disabilities equal opportunities in the job market. However, the guarantee of equal opportunity must be accompanied by the provision of reasonable accommodation. The Rules framed under the 2016 RPwD Act stipulate that private establishments shall not discriminate against persons with disability on the ground of disability. [ Rule 3(1) of the Rights of Persons with Disabilities Rules, 2017] It is to be noted that the definition of "discrimination" under Section 2(h) of the 2016 RPwD Act includes denial of reasonable accommodation. Private employers are mandated to frame an equal opportunity policy [ Section 21 of the 2016 RPwD Act read with Rule 8 of the Rights of Persons with Disabilities Rules, 2017] . Equal opportunity policies for establishments having more than 20 employees are required to include provisions relating to : (i) appointment of liaison officers in establishments to look after the recruitment of persons with disabilities and provisions of facilities and amenities for such employees [ Rule 8(3)(e) of the Rights of Persons with Disabilities Rules, 2017] ; (ii) identification of posts/vacancies for disabled persons [ Rule 8(3)(b) of the Rights of Persons with Disabilities Rules, 2017] ; (iii) provision of additional facilities and benefits such as training facilities, assistive devices,*



*barrier free accessibility, preference in transfer and promotion, allotment of residential accommodation and special leave [ Rule 8(3) sub-clauses (c) and (d) of the Rights of Persons with Disabilities Rules, 2017] . The 2016 RPwD Act further provides that private establishments have to conform with accessibility norms stipulated by the Government with respect to building plans [ Section 44 of the 2016 RPwD Act] . The 2016 RPwD Act also provides that 5% of the workforce of establishments receiving incentives from the appropriate Government would be comprised of persons having benchmark disability [ Section 35 of the 2016 RPwD Act] .*

**54.** *This Court in Union of India v. National Federation of the Blind [Union of India v. National Federation of the Blind, (2013) 10 SCC 772 : (2014) 2 SCC (L&S) 257] has recognised that employment opportunities play an instrumental role in empowering persons with disabilities. P. Sathasivam, J. (as he then was) observed : (SCC p. 799, para 50)*

*"50. Employment is a key factor in the empowerment and inclusion of people with disabilities. It is an alarming reality that the disabled people are out of job not because their disability comes in the way of their functioning rather it is social and practical barriers that prevent them from joining the workforce. As a result, many disabled people live in poverty and in deplorable conditions. They are denied the right to make a useful contribution to their own lives and to the lives of their families and community."*

*It is imperative that not only the Government but also the private sector takes proactive steps for the implementation of the 2016 RPwD Act.*

**60.** *At the heart of this case lies the principle of reasonable accommodation. Individual dignity undergirds the 2016 RPwD Act. Intrinsic to its realisation is recognising the worth of every person as*



*an equal member of society. Respect for the dignity of others and fostering conditions in which every individual can evolve according to their capacities are key elements of a legal order which protects, respects and facilitates individual autonomy. In seeking to project these values as inalienable rights of the disabled, the 2016 RPwD Act travels beyond being merely a charter of non-discrimination. It travels beyond imposing restraints on discrimination against the disabled. The law does this by imposing a positive obligation on the State to secure the realisation of rights. It does so by mandating that the State must create conditions in which the barriers posed by disability can be overcome. The creation of an appropriate environment in which the disabled can pursue the full range of entitlements which are encompassed within human liberty is enforceable at law. In its emphasis on substantive equality, the enactment of the legislation is a watershed event in providing a legal foundation for equality of opportunity to the disabled.*

**61.** *As a social construct, disability encompasses features broader and more comprehensive than a medical condition. The 2016 RPwD Act recognises that disability results in inequality of access to a range of public and private entitlements. The handicaps which the disabled encounter emerge out of disability's engagement with the barriers created by prejudice, discrimination and societal indifference. Operating as restraining factors, these barriers have origins which can be traced to physical, social, economic and psychological conditions in society. Operating on the pre-existing restraints posed by disability, these barriers to development produce outcomes in which the disabled bear an unequal share of societal burdens. The legislation has recognised that remedies for the barriers encountered by the disabled are to be found in the social environment in which they live, work and cohabit with others. The barriers encountered by every disabled*



*person can be remedied by recognising comprehensive rights as inhering in them; rights which impose duties and obligations on others.*

**62.** *The principle of reasonable accommodation acknowledges that if disability as a social construct has to be remedied, conditions have to be affirmatively created for facilitating the development of the disabled. Reasonable accommodation is founded in the norm of inclusion. Exclusion results in the negation of individual dignity and worth or they can choose the route of reasonable accommodation, where each individuals' dignity and worth is respected. Under this route, the "powerful and the majority adapt their own rules and practices, within the limits of reason and short of undue hardship, to permit realisation of these ends". [ Reasonable Accommodation in A Multicultural Society, Address to the Canadian Bar Association Continuing Legal Education Committee and the National Constitutional and Human Rights Law Section, 7-4-1995, Calgary, Alberta at 1.]*

**63.** *In the specific context of disability, the principle of reasonable accommodation postulates that the conditions which exclude the disabled from full and effective participation as equal members of society have to give way to an accommodative society which accepts difference, respects their needs and facilitates the creation of an environment in which the societal barriers to disability are progressively answered. Accommodation implies a positive obligation to create conditions conducive to the growth and fulfilment of the disabled in every aspect of their existence, whether as students, members of the workplace, participants in governance or, on a personal plane, in realising the fulfilling privacies of family life. The accommodation which the law mandates is "reasonable" because it has to be tailored to the requirements of each condition of disability. The expectations which every disabled person has are unique to the nature of the disability and the*



*character of the impediments which are encountered as its consequence.*

**65.** *Failure to meet the individual needs of every disabled person will breach the norm of reasonable accommodation. Flexibility in answering individual needs and requirements is essential to reasonable accommodation. The principle contains an aspiration to meet the needs of the class of persons facing a particular disability. Going beyond the needs of the class, the specific requirement of individuals who belong to the class must also be accommodated. The principle of reasonable accommodation must also account for the fact that disability based discrimination is intersectional in nature. The intersectional features arise in particular contexts due to the presence of multiple disabilities and multiple consequences arising from disability. Disability therefore cannot be truly understood by regarding it as unidimensional. Reasonable accommodation requires the policy-makers to comprehend disability in all its dimensions and to design measures which are proportionate to needs, inclusive in their reach and respecting of differences and aspirations. Reasonable accommodation cannot be construed in a way that denies to each disabled person the customisation she seeks. Even if she is in a class of her own, her needs must be met. [ Amita Dhanda, Prof. of Law, Nalsar, "In a class of my own : Reasonable accommodation from a disability perspective" [ppt presentation].] While assessing the reasonableness of an accommodation, regard must also be had to the benefit that the accommodation can have, not just for the disabled person concerned, but also for other disabled people similarly placed in future.*

**89.** *If the legal entitlements set forth in the 2016 RPwD Act are to not remain mere parchment, reflected in our inability to overcome barriers against substantively unequal treatment, the nodal Ministry, in coordination with other relevant actors, must make a concerted*



*effort to ensure that the fruits of the Act actually reach the intended beneficiaries. In this regard, Article 8(2) of the Uncrpd outlines the awareness-raising measures that must be undertaken. Based on Article 8, the 2016 RPwD Act captures the need for the State to conduct and promote awareness campaigns and sensitisation programmes in Section 39. These must be conducted to recognise and advance knowledge of the skills and abilities of persons with disabilities and of their contributions to the workforce and foster respect for the decisions of persons with disabilities in their family life. Sensitisation programmes must be held at educational institutions and in professional spheres on the condition of disability and the rights of disabled persons and the like. The Government must give effect to these provisions regularly to sensitise our society to the everyday challenges that may be imposed by the actions or inactions of the able-bodied on their disabled counterparts.*

**97.** *In the three decades that have elapsed since then, a generation of Americans with disabilities has emerged, calling themselves the ADA Generation. These disabled people rightfully regard the ADA's guarantees as a birthright and, due to accessible infrastructure, a strict prohibition on disability discrimination and changed public attitudes, are able to participate in American life on equal terms with their able-bodied counterparts. [ Joseph Shapiro, "Disability Pride : The High Expectations of a New Generation", 17-7-2020, The New York Times, available at <<https://www.nytimes.com/2020/07/17/style/americans-with-disabilities-act.html>>.]*

**98.** *Cases such as the present offer us an opportunity to make a meaningful contribution in the project of creating the RPwD generation in India. A generation of disabled people in India which regards as its birthright access to the full panoply of constitutional entitlements, robust statutory rights geared to meet their unique*



*needs and conducive societal conditions needed for them to flourish and to truly become co-equal participants in all facets of life.*

13.93. By relying on **Vikash Kumar's**<sup>27</sup> case it is submitted that the principle of reasonable accommodation constitutes the cornerstone of the rights framework under the Rights of Persons with Disabilities Act, 2016, and imposes a positive, enforceable obligation on both State and private entities to create conditions enabling full and effective participation of persons with disabilities.

13.94. She submits that the Hon'ble Apex Court has unequivocally held that disability is not merely a medical condition but a social construct, arising from the interaction between impairment and societal barriers. Consequently, the law mandates not merely non-discrimination in a formal sense, but the active dismantling of barriers, physical, institutional, and attitudinal, through affirmative measures.

13.95. She would further contend that the Court has emphasised that reasonable accommodation is intrinsic to dignity, autonomy, and substantive equality, and cannot be treated as a matter of



discretion or charity. It requires customisation and flexibility, tailored to the specific needs of each individual, even where such needs are unique or atypical. Failure to provide such accommodation is itself recognised as discrimination in law.

13.96. It is also submitted that the judgment clearly extends these obligations to the private sector, mandating equal opportunity policies, non-discrimination, accessibility compliance, and affirmative facilitation of employment opportunities. The Court underscores that mere formal equality, without accompanying accommodation, results in exclusion and denial of real opportunity.

13.97. Further, the Hon'ble Apex Court has highlighted the broader constitutional vision underlying the enactment, namely, the creation of an inclusive and accommodative society, where persons with disabilities are enabled to realise their full potential and participate as equal members in all spheres of life. The emphasis on awareness, sensitisation, and structural reform



demonstrates that the statute is transformative in nature.

13.98. On that basis, it is contended that any failure to provide reasonable accommodation, or any action that perpetuates structural barriers or denies meaningful participation to a person with disability, would be violative of the statutory mandate as well as Articles 14 and 21 of the Constitution, and is therefore liable to be set aside.

13.99. Reliance has been placed on the judgement of the Supreme Court in ***Jane Kaushik vs Union of India & Ors.***,<sup>28</sup> more particularly para nos.51, 54, 55, 66, 67, 83, 84, 86, 89, 108, 109, 113, 114, 141, 172 thereof which are reproduced hereunder for easy reference;

*51. Further, rights cannot exist as standalone ideals devoid of implementation. The spirit of the fundamental rights must accrue to the benefit of those that it seeks to protect. The glaring state of affairs with respect to the rights of the transgender community is solely due to such rights being envisaged without any clear statutory mechanism of implementation. Though the 2019 Act spells out rights, yet it does not create any mechanism for the concerned individuals to realise the benefit of these rights, thereby, aggravating the struggles of the community. This is so because the 2019 Act, in its*

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<sup>28</sup> (2025 INSC 1248)



*plain words, does not spell reasonable accommodation the way it is done for say, in the RPwD Act. However, the decisions of this Court in NALSA (supra) and Shanavi Ponnuswamy (supra) have employed the concept of reasonable accommodation in the context of discrimination faced by transgender persons in employment.*

**54.** *It is discernible from the aforesaid that under the 2019 Act, the appropriate Government and the "establishments", have a positive obligation to ensure that there is no discrimination against transgender persons, through affirmative action. There is no gainsaying that the principle of reasonable accommodation is implied in the 2019 Act, yet we are of the considered opinion that explicit recognition of the same would enable better implementation of the positive obligations placed on the appropriate Government and the establishments respectively, to ensure that the benefits of the 2019 Act are truly reaped by transgender persons. This is because unless we adopt a purposive interpretation to beneficial statutes which are riddled with inadequate implementation measures, we run the risk of leaving the statute toothless and the rights enshrined therein inutile. In such a view of the matter, it is imperative for us to heed to the jurisprudential developments which have taken place in the context of upliftment of marginalized sections of the society such as, persons with disabilities, and adopt them for the purposes of the present matter as well.*

**55.** *However, we may with a view to obviate any confusion, clarify at the very threshold, that in no way do we say that gender identity by itself is to be equated with disability. That is not the intention of this Court at all. In fact, the discrimination which is associated with a particular gender identity is a societal disability, i.e., the inability of the society at*



*large to break free from its regressive norms. Furthermore, a lot of jurisprudence has evolved around taking the beneficial jurisprudence of disability rights to the broader themes of human rights.. It is with this intention that we hold that transgender persons also have a right to be reasonably accommodated. In the subsequent paragraphs we have discussed the international scenario.*

### **III. Addressing Omission in Discrimination Law**

**66.** *The discussion on equality is often focused on acts of commission and such explicit instances where individuals or institutions actively discriminate. However, discrimination also operates through omission: through the silences, exclusions, and failures of the law to protect certain groups or to recognise particular forms of disadvantage. Addressing omission in discrimination law, therefore, requires moving beyond the overtly unequal 'act' to examine the systemic 'inactions' or absences which enable inequality to persist. These omissions may arise from the narrow drafting of statutes, the exclusion of certain identities from legal protection, or the failure to impose positive duties on institutions to prevent discrimination. Recognising and remedying such gaps is crucial for realizing substantive equality.*

**67.** *We clarify that ensuring a viable framework of reasonable accommodation is a positive obligation and the failure to fulfil such obligation also amounts to discrimination. In other words, omission can be discriminatory where there is a duty to act. Adrain Conyers and Tony Carrizales in their work reflect on omissive discrimination as "privileged omission" that accrues from "administrative inaction".<sup>15</sup> They describe 'privileged omissions' in their work to mean those decisions where the discretion not to act*



*(omission) requires as much attention as the decision to act (commission). 16 They describe discriminatory omissions to be such derelictions which operate in a manner that further discriminates against already marginalized and disadvantaged groups.*

**83.** *What is discernible from the expositions in Joseph (supra) and Nitisha (supra) is that indirect discrimination does not stem from active discrimination arising out of an intention to exclude, but rather from the lethargy or inertia to not change the unjust status quo and move towards more progressive practices. It is in this context that redressal of disadvantage and how it is done gains importance. It becomes abundantly clear that when the disadvantage stands recognised, its redressal should not be such that it exacerbates the very disadvantage sought to be addressed. There is no gainsaying that the approach to eradicate historical, social, political and economic disadvantages must be such that redressal mechanisms do not become perpetrators of discrimination by themselves.*

**84.** *The aforesaid may also be looked at from one another angle. The concept of redressal of disadvantage serves as a core component of 'substantive equality' however, the ensuring the efficacy of the same in cases where marginality is multi-dimensional and dynamic is equally important to promote equality in its truest sense. In Patan Jamal Vali v. State of A.P., reported in (2021) 16 SCC 225, this Court gave an intersectional perspective to oppression. In this case, the rape victim belonged to a scheduled caste and was blind by birth. The Court adopted a multidimensional approach towards oppression to account for various other factors which contribute to the marginalization of an individual on the basis of their identity. It is apposite to understand that such factors are*



*intertwined in such a manner that one cannot distinguish between determinants of marginality and put them into watertight compartments for the purpose of introducing legal and policy measures to address the same. This Court advocated that gender violence be seen from the lens of intersectionality which requires viewing caste, disability, sexual orientation, gender identity, class, religion, etc., holistically and not as mere "add-ons"*

**86.** *The aforesaid leaves no manner of doubt in our minds that redressal of a disadvantage cannot be devoid of an understanding of the other impediments that an individual may face on account of other identity markers that may cause such an individual to be stigmatized and marginalized. The avowed objective of substantive equality may be rendered unworkable if actions and measures to achieve the said goal suffer from a parochial understanding of discrimination.*

**89.** *We are in complete agreement with this Court's exposition in Navtej (supra) wherein Dipak Misra, C.J. (as he then was), speaking for himself and A.M. Khanwilkar, J. observed that stigmatic attitudes towards the transgender community lead to their dehumanization, which in turn legitimizes any legislative or policy measure that strips them of their personhood and human rights. Actions founded on such dehumanizing stigma and stereotypes have deprived the community from living a dignified life for a very long time. Such discriminatory practices cannot be allowed to subsist for it cannot be the intent of the Constitution, which regards equality as the foremost fundamental right of any person, to let a marginalized section of the society to remain suppressed while others thrive. The relevant portions of the judgment are reproduced below:*

*"262. In view of the test laid down in the aforesaid authorities, Section 377 IPC does not meet the criteria of proportionality and is violative of the fundamental right of freedom of expression including the right*



*to choose a sexual partner. Section 377 IPC also assumes the characteristic of unreasonableness, for it becomes a weapon in the hands of the majority to seclude, exploit and harass the LGBT community. It shrouds the lives of the LGBT community in criminality and constant fear mars their joy of life. They constantly face social prejudice, disdain and are subjected to the shame of being their very natural selves. Thus, an archaic law which is incompatible with constitutional values cannot be allowed to be preserved.*

*263. Bigoted and homophobic attitudes dehumanise the transgenders by denying them their dignity, personhood and above all, their basic human rights. It is important to realise that identity and sexual orientation cannot be silenced by oppression. Liberty, as the linchpin of our constitutional values, enables individuals to define and express their identity and individual identity has to be acknowledged and respected. 264. The very existence of Section 377 IPC criminalising transgenders casts a great stigma on an already oppressed and discriminated class of people. This stigma, oppression and prejudice has to be eradicated and the transgenders have to progress from their narrow claustrophobic spaces of mere survival in hiding with their isolation and fears to enjoying the richness of living out of the shadows with full realisation of their potential and equal opportunities in all walks of life. The ideals and objectives enshrined in our benevolent Constitution can be achieved only when each and every individual is empowered and enabled to participate in the social mainstream and in the journey towards achieving equality in*



*all spheres, equality of opportunities in all walks of life, equal freedoms and rights and, above all, equitable justice. This can be achieved only by inclusion of all and exclusion of none from the mainstream.”*

*[Emphasis supplied]*

**108.** *Similarly, in Nipun Malhotra v. Sony Pictures Films India (P) Ltd., reported in 2024 INSC 465, a three-judge Bench of this Court, of which one of us (J.B. Pardiwala, J.) was a part, cast a positive obligation on the State to ensure safety against discriminatory stereotypes for disabled persons, to lead a meaningful social life. It further observed that reasonable accommodation entailed adequate representation and opportunities to participate for persons with disability. It was noted that substantive equality required creation of an environment that is conducive to participation on an equal footing. In saying so, the Court also referred to the principle ‘nothing about us, without us,’ which is based on the promotion of participation for persons with disabilities or any other marginalized section of the society, as the case may be.*

**109.** *The aforesaid expositions leave no manner of doubt in our minds that the right to participation is an embodiment of the constitutional vision of equal opportunity and dignity for all. The said right finds its roots in the right to freedom of expression and is shaped by the constitutional mandate of substantive equality with the end goal of affording the marginalized sections of the society a meaningful life in terms of Article 21 of the Constitution.*

**113.** *We also recognize that affirmative action and reasonable accommodation serve as the tools for bridging historical differences and discrimination in social and political spheres of the society. Therefore, the obligation to accommodate differences is not just negative and limited to prohibition of stereotypical and prejudicial attitudes. Such obligation is equally positive in nature and requires the State and*



*concerned authorities/entities to facilitate structural change and thereby ensure that marginalized communities are able to purposefully participate in social and political life. Therefore, all actions taken in pursuance of accommodation of difference and substantive equality are a call of war against discrimination and marginalization.*

**114.** *In light of the aforesaid detailed discussion on the four dimensional approach to substantive equality, could it be said that the petitioner had adequate and accessible measures at her disposal to resort to, the moment she felt that she was being discriminated against? In other words, did the system as envisaged by the 2019 Act redress her disadvantage, address the stigma and stereotypes associated with her gender identity, ensure a framework that could help her participate in social life and, accommodate her community's needs to achieve structural change? Unfortunately, we are doubtful if we can answer the same in the affirmative.*

**141.** *At this juncture, it would be apposite to point out that Rule 12 of the 2020 Rules carries forward the mandate under Sections 9 and 10 respectively. Rule 12 of the 2020 Rules is concerned with the provision of equal employment opportunities and requires every establishment to maintain a safe and non-discriminatory workplace for transgender persons. This obligation encompasses all aspects of employment including recruitment, promotions, service benefits, infrastructure modifications, and other employment-related matters. Each establishment is required to have developed and published a dedicated Equal Opportunity Policy for transgender persons, which was to be made accessible through the organization's website or displayed prominently on its premises. The policy is required to specify practical arrangements such as infrastructural accommodations (including unisex restrooms), security provisions (transportation facilities, security personnel), and necessary amenities (like hygiene products) to ensure*



*transgender employees could work with dignity. The policy is also required to guarantee that all service conditions are applied equally to transgender employees and also ensure that the gender identity of the employees is kept confidential. The details and necessary information about the designated complaint officer was also to be made available. This overall framework was designed to operationalize workplace inclusion and directly tackle institutional discrimination in employment settings.*

**172.** *The key principles that can be culled out from this Court's observations in the aforementioned cases are as follows:*

*a. Article 32 has a very wide ambit, and its power is not merely injunctive, i.e., to prevent violations, but is also remedial, i.e., to address infringements that have already occurred. This is critical because if the Court's power were limited to preventing violations, it would be powerless once a fundamental right has already been breached. In such situations, to avoid rendering fundamental rights enforcement a "mere lip-service", the Court has a constitutional obligation to forge new tools and fashion remedies appropriate to the facts of each case.*

*b. One of the key remedies the Court can provide is monetary compensation. It is crucial to note that compensation awarded under Article 32 is a public law remedy and is fundamentally different from a claim for damages in private law. These remedies operate in different legal realms, and the grant of such remedies is also based on different considerations.*

*c. The Court does not grant compensation in every case involving the violation of a fundamental right. It is to be granted in 'appropriate cases', especially where the following conditions are fulfilled: (1) there is a breach of fundamental rights, and (2) no alternate remedy is available. [See *United Air Travel Services v. Union of India*, reported in (2018) 8 SCC 141] Compensation is a powerful tool in such cases,*



*as it ensures that the petitioners' rights are enforced in a tangible manner. However, if the Court is not convinced of the factum of discrimination itself, then no question of providing compensation will arise. [See S.P.S. Rathore v. State of Haryana & Ors, reported in (2005) 10 SCC 1]*

*d. The grant of compensation is especially important when the petitioners are from disadvantaged sections of society, the "have-nots"*

*e. Courts should exercise their power to grant compensation in petitions under Article 32 with caution, taking into account the specific facts and circumstances of each case. Courts must specifically remain vigilant against attempts to couch what are essentially private law claims in the language of fundamental rights, ensuring that the exceptional compensatory power under Article 32 is not misused as a disguised substitute for ordinary civil remedies.*

*Thus, there is no doubt in our mind that this Court can grant compensation to petitioners seeking relief through a writ petition under Article 32, on the condition that the court considers it to be an 'appropriate case'.*

13.100. By relying on **Jane Kaushik's**<sup>28</sup> case it is submitted that the doctrine of substantive equality, coupled with the principles of reasonable accommodation and affirmative action, imposes a positive and enforceable obligation upon the State and all establishments to ensure that rights conferred upon marginalised communities are not rendered illusory for want of effective implementation mechanisms.



13.101. She submits that the Hon'ble Apex Court has emphatically held that rights without enforceable mechanisms are rendered nugatory, and that mere formal recognition of rights, in the absence of practical and accessible frameworks for their enforcement, results in continued marginalisation. The Court has thus underscored the necessity of purposive interpretation of beneficial legislation, so as to give real and substantive effect to the rights guaranteed.

13.102. She would further contend that the judgment recognises that reasonable accommodation is implicit in the guarantee against discrimination, and that failure to provide such accommodation, whether by action or omission, constitutes discrimination in law. The concept of "omissive discrimination" has been expressly acknowledged, whereby inaction or failure to create enabling conditions can itself operate to perpetuate disadvantage and exclusion.

13.103. It is also submitted that the Hon'ble Apex Court has elaborated the doctrine of indirect



discrimination and intersectionality, emphasising that disadvantage is often multi-dimensional, and that legal and policy responses must be calibrated to address overlapping and compounded forms of marginalisation. A rigid or narrow approach to equality would defeat the constitutional mandate of achieving substantive equality.

13.104. Further, the Hon'ble Apex Court has highlighted that the right to participation, dignity, and equal opportunity are integral to Article 21, and that these rights can only be realised through structural and institutional reforms, including the formulation of equal opportunity policies, creation of safe and inclusive workplaces, and provision of necessary infrastructural and functional accommodations.

13.105. Significantly, it is submitted that the judgment also recognises the remedial jurisdiction of constitutional courts under Article 32, including the power to award compensation in appropriate cases where there is a clear violation of fundamental rights and absence of



alternative remedies, particularly in cases involving marginalised and disadvantaged sections.

13.106. On that basis, it is contended that any failure on the part of the respondent to create an enabling framework, to provide reasonable accommodation, or to address structural and systemic barriers faced by the aggrieved person, would amount to discrimination, both by commission and omission, and would constitute a violation of fundamental rights, thereby warranting appropriate judicial intervention and relief, including compensatory remedies where warranted.

13.107. Reliance has been placed on Section 2(y) which is reproduced hereunder for easy reference:

**Section 2(y): "reasonable accommodation"**  
*means necessary and appropriate modification and adjustments, without imposing a disproportionate or undue burden in a particular case, to ensure to persons with disabilities the enjoyment or exercise of rights equally with others;*

13.108. Relying on Section 2(y) it is submitted that the concept of "reasonable accommodation" has been statutorily defined in clear and



mandatory terms as requiring necessary and appropriate modifications and adjustments, tailored to the specific circumstances of each case, so as to ensure that persons with disabilities are able to enjoy and exercise their rights on an equal basis with others.

13.109. It is submitted that the definition embodies three essential elements:

13.109.1. the requirement of individualised assessment, whereby the needs of the person with disability must be evaluated in the factual context;

13.109.2. the obligation to undertake affirmative modifications or adjustments, whether structural, procedural, or functional; and

13.109.3. the limitation that such measures must not impose a disproportionate or undue burden, which must be strictly construed and cannot be invoked as a matter of convenience.

13.110. She would further contend that the statutory definition reinforces that reasonable



accommodation is not optional or discretionary, but a binding legal obligation, and that denial of such accommodation is expressly recognised as discrimination under the Act. The burden lies on the authority or establishment concerned to demonstrate that the accommodation sought would impose an undue or disproportionate burden; failing which, the obligation to provide such accommodation remains absolute.

13.111. On that basis, it is submitted that in the present case, the failure to provide necessary modifications or adjustments, despite the same being feasible and not imposing any undue burden, amounts to a clear violation of the statutory mandate, resulting in denial of equal opportunity and discrimination against the person with disability, thereby rendering the impugned action unsustainable in law.

13.112. It is submitted that the concept of reasonable accommodation is intended to address practical barriers faced by persons with disabilities, and therefore authorities are required to adopt a flexible and facilitative



approach by introducing appropriate adjustments, unless doing so would impose a disproportionate or undue burden on the establishment concerned.

13.113. Reliance has been placed on Section 3(3) which is reproduced hereunder for easy reference:

***Section 3(3):*** *No person with disability shall be discriminated on the ground of disability, unless it is shown that the impugned act or omission is a proportionate means of achieving a legitimate aim.*

13.114. Relying on Section 3(3) it is submitted that the statutory scheme under the Rights of Persons with Disabilities Act, 2016 expressly prohibits discrimination against persons with disabilities on the ground of disability.

13.115. It is contended that any action which adversely affects a person with disability would be impermissible unless the authority concerned is able to demonstrate that the impugned act or omission constitutes a proportionate measure adopted for achieving a legitimate objective. In the absence of such justification, the action would amount to discrimination within the meaning of Section 3



of the Act and would therefore be contrary to the statutory mandate safeguarding the rights of persons with disabilities.

13.116. Reliance has been placed on Section 16 which is reproduced hereunder for easy reference:

**16. *Duty of educational institutions.***—*The appropriate Government and the local authorities shall endeavour that all educational institutions funded or recognised by them provide inclusive education to the children with disabilities and towards that end shall—*

*(i) admit them without discrimination and provide education and opportunities for sports and recreation activities equally with others;*

*(ii) make building, campus and various facilities accessible;*

*(iii) provide reasonable accommodation according to the individual's requirements;*

*(iv) provide necessary support individualised or otherwise in environments that maximise academic and social development consistent with the goal of full inclusion;*

*(v) ensure that the education to persons who are blind or deaf or both is imparted in the most appropriate languages and modes and means of communication;*

*(vi) detect specific learning disabilities in children at the earliest and take suitable pedagogical and other measures to overcome them;*

*(vii) monitor participation, progress in terms of attainment levels and completion of education in respect of every student with disability;*



*(viii) provide transportation facilities to the children with disabilities and also the attendant of the children with disabilities having high support needs.*

13.117. Relying on Section 16 it is submitted that the Section 16 casts a positive, mandatory and continuing obligation upon the appropriate Government and all recognised or funded educational institutions to ensure inclusive education for persons with disabilities, not as a matter of policy discretion, but as a statutory entitlement.

13.118. It is submitted that the provision is comprehensive in scope and imposes a multi-dimensional duty, encompassing not merely admission without discrimination, but also the creation of an enabling ecosystem to facilitate equal participation. In particular, the statutory mandate requires:

13.118.1. Non-discriminatory access to education, including equal participation in academic, sports, and recreational activities;

13.118.2. Accessibility of infrastructure, including buildings, campuses, and facilities;



- 13.118.3. Provision of reasonable accommodation, tailored to the individual needs of the student;
  - 13.118.4. Individualised support mechanisms, ensuring optimal academic and social development consistent with full inclusion;
  - 13.118.5. Adoption of appropriate modes of communication and pedagogy, particularly for students with sensory disabilities;
  - 13.118.6. Early identification and intervention for specific learning disabilities;
  - 13.118.7. Continuous monitoring of participation and progress, ensuring meaningful educational outcomes; and
  - 13.118.8. Facilitation of transport and attendant support, where required.
- 13.119. She would further contend that the cumulative effect of these obligations is to transform the educational framework from one of passive



access to one of active inclusion and equalisation of opportunity, thereby aligning with the constitutional mandate of substantive equality under Articles 14 and 21.

13.120. It is emphasised that the duty under Section 16 is not merely aspirational but enforceable, and any failure to comply with its requirements, whether by omission to provide reasonable accommodation, lack of accessible infrastructure, or denial of necessary support, would amount to a statutory violation coupled with discrimination.

13.121. On that basis, it is submitted that in the present case, the failure of the concerned authorities/institution to adhere to the obligations mandated under Section 16 has resulted in denial of inclusive education and equal opportunity to the person with disability, thereby rendering the impugned action arbitrary, illegal, and liable to be set aside.

13.122. It is submitted that such institutions are required to take proactive measures to eliminate barriers and provide reasonable accommodation, accessible infrastructure and



necessary academic support, so as to ensure that students with disabilities are able to participate in the educational process on an equal footing with other students.

13.123. Reliance has been placed on Section 20 which is reproduced hereunder for easy reference:

**Section 20. Non-discrimination in employment.—**

*(1) No Government establishment shall discriminate against any person with disability in any matter relating to employment: Provided that the appropriate Government may, having regard to the type of work carried on in any establishment, by notification and subject to such conditions, if any, exempt any establishment from the provisions of this section.*

*(2) Every Government establishment shall provide reasonable accommodation and appropriate barrier free and conducive environment to employees with disability.*

*(3) No promotion shall be denied to a person merely on the ground of disability.*

*(4) No Government establishment shall dispense with or reduce in rank, an employee who acquires a disability during his or her service: Provided that, if an employee after acquiring disability is not suitable for the post he was holding, shall be shifted to some other post with the same pay scale and service benefits: Provided further that if it is not possible to adjust the employee against any post, he may be kept on a supernumerary post until a suitable post is available or he attains the age of superannuation, whichever is earlier. (5) The appropriate Government may frame policies for*



*posting and transfer of employees with disabilities.*

13.124. Relying on Section 20 it is submitted that the statute unequivocally mandates non-discrimination in employment and imposes a stringent, enforceable obligation upon Government establishments to ensure equality of opportunity and security of service for persons with disabilities.

13.125. It is submitted that the provision operates at multiple levels:

13.125.1. Firstly, under sub-section (1), there is a blanket prohibition against discrimination in all matters relating to employment, thereby covering recruitment, conditions of service, promotion, and all incidental aspects;

13.125.2. Secondly, under sub-section (2), there is a positive obligation to provide reasonable accommodation, along with a barrier-free and conducive working environment, thereby reinforcing



that equality must be substantive and not merely formal;

13.125.3. Thirdly, sub-section (3) expressly prohibits denial of promotion on the ground of disability, ensuring career progression on an equal footing;

13.125.4. Fourthly, and most significantly, sub-section (4) provides statutory protection against termination or reduction in rank on account of acquisition of disability during service, mandating instead: reassignment to a suitable post with the same pay scale and service benefits, or placement in a supernumerary post where immediate adjustment is not feasible, thereby safeguarding continuity of service and dignity of employment.

13.126. She would further contend that the scheme of Section 20 reflects a clear legislative intent to protect and retain persons with disabilities



within the workforce, and to prevent exclusion on account of disability, whether pre-existing or acquired. The limited exception carved out by way of exemption is subject to strict scrutiny and cannot be invoked in a routine or arbitrary manner.

13.127. On that basis, it is submitted that any action of denial of employment benefits, refusal to provide reasonable accommodation, denial of promotion, or termination/reduction in rank on account of disability would be per se illegal, being in direct contravention of the statutory mandate. Consequently, in the present case, the impugned action, insofar as it fails to adhere to the obligations under Section 20, is liable to be set aside as arbitrary, discriminatory, and violative of both statutory and constitutional guarantees.

13.128. It is submitted that Rights of Persons with Disabilities Act, 2016 expressly prohibits discrimination against persons with disabilities in matters relating to employment in Government establishments.



13.129. It is submitted that the statutory mandate not only forbids discriminatory treatment but also casts a positive obligation upon the employer to provide reasonable accommodation and a barrier-free working environment, so as to enable employees with disabilities to effectively discharge their duties. Any action which disregards these statutory safeguards, according to the learned counsel, would be contrary to the mandate of Section 20 of the Act.

13.130. Reliance has been placed on Section 21 which is reproduced hereunder for easy reference:

***Section 21: Equal opportunity policy.—***

*(1) Every establishment shall notify equal opportunity policy detailing measures proposed to be taken by it in pursuance of the provisions of this Chapter in the manner as may be prescribed by the Central Government.*

*(2) Every establishment shall register a copy of the said policy with the Chief Commissioner or the State Commissioner, as the case may be.*

13.131. Relying on Section 21 it is submitted that the statute mandates every establishment to formulate, notify, and implement an Equal Opportunity Policy, thereby institutionalising the commitment to non-discrimination and



inclusion of persons with disabilities within its organisational framework.

13.132. It is submitted that the provision imposes a proactive and structured obligation, requiring establishments not merely to refrain from discriminatory practices, but to articulate and operationalise concrete measures for ensuring equality in matters of employment. Such policy is required to detail, inter alia, the mechanisms for recruitment, provision of reasonable accommodation, accessibility measures, and facilitation of equal participation of persons with disabilities in the workplace.

13.133. She would further contend that sub-section (2) reinforces accountability by mandating that a copy of such policy be registered with the Chief Commissioner or the State Commissioner, thereby subjecting the establishment to regulatory oversight and ensuring transparency in compliance with the statutory mandate.

13.134. It is emphasised that the requirement of an Equal Opportunity Policy is not an empty



formality, but a foundational compliance obligation, the absence or inadequacy of which would itself indicate failure to adhere to the legislative intent of promoting substantive equality and inclusion.

13.135. On that basis, it is submitted that in the present case, any failure on the part of the respondent establishment to frame, notify, or effectively implement such an Equal Opportunity Policy, particularly insofar as it relates to provision of reasonable accommodation and non-discriminatory practices, would amount to a violation of the statutory mandate, thereby vitiating the impugned action as arbitrary and unsustainable in law.

13.136. It is submitted that such policy is required to be formally registered with the Chief Commissioner or the State Commissioner for Persons with Disabilities, thereby ensuring institutional accountability in the implementation of the statutory protections afforded to persons with disabilities. According to the learned counsel, the failure to frame or



implement such an Equal Opportunity Policy would be contrary to the mandate of Section 21 of the Act.

13.137. Reliance has been placed on the judgement of the Supreme Court in ***Kabir Paharia v. National Medical Commission***<sup>29</sup> more particularly para 15 thereof, which is reproduced hereunder for easy reference:

***15.*** *The constitutional promise of equality is not merely formal but substantive, requiring the State to take affirmative measures to ensure that PwD and PwBD can meaningfully participate in all spheres of life, including professional education. We emphasize that reasonable accommodation is not a matter of charity but a fundamental right flowing from Articles 14, 16, and 21 of our Constitution. When administrative authorities create arbitrary barriers that exclude qualified PwBD candidates, they not only violate statutory provisions but also perpetuate the historical injustice and stigmatisation. The fundamental rights and the dignity of PwD and PwBD candidates must be protected by ensuring that assessment of their capabilities is individualised, evidence-based, and free from stereotypical assumptions that have no scientific foundation.*

13.138. Relying on ***Kabir Paharia's***<sup>29</sup> case it is submitted that the constitutional guarantee of equality, as embodied in Articles 14, 16 and 21, mandates not merely formal parity but substantive equality, requiring affirmative and

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<sup>29</sup> 2025 SCC OnLine SC 1025



facilitative measures to ensure meaningful participation of persons with disabilities in all spheres, including professional education.

13.139. She submits that the Hon'ble Apex Court has unequivocally held that reasonable accommodation is a fundamental right, and not a matter of discretion or benevolence. The denial of such accommodation, particularly through rigid or stereotypical criteria, results in exclusion and perpetuates systemic discrimination.

13.140. She would further contend that the Court has emphasised the necessity of individualised and evidence-based assessment of capabilities, free from preconceived notions or generalised assumptions regarding disability. Administrative actions that impose arbitrary barriers, or that fail to account for the specific abilities and requirements of persons with disabilities, are liable to be struck down as violative of both statutory provisions and constitutional guarantees.

13.141. It is also submitted that the judgment underscores the broader constitutional



imperative of protecting dignity and preventing historical injustice, by ensuring that persons with disabilities are not excluded from opportunities on account of unfounded or unscientific standards.

13.142. On that basis, it is contended that in the present case, any action of the respondent which fails to provide reasonable accommodation, or which proceeds on stereotypical or non-individualised assessment, would amount to a violation of fundamental rights as well as the statutory mandate, and is therefore liable to be set aside.

13.143. Based on all the above, she submits that the petition is required to be dismissed, and the order of the Commissioner be confirmed.

14. Since much arguments were advanced on the basis of reasonable accommodation to be provided, the counsel for respondents was directed to file an affidavit indicating as to what are the reasonable accommodations that are required by the teacher. An affidavit was filed on 6-6-2025 which reads as under:



**AFFIDAVIT ON BEHALF OF RESPONDENT NO.1**

*I, Mrs. Barnali Rout, w/o Debabrata Rout, aged 42 years, residing at Flat No. 111, Raj Paradise Apartments, Bilakahalli, Bannerghatta Road, Bangalore - 560076, do hereby solemnly affirm and state as follows:*

*1. I state that I am Respondent No. 1 in the above-mentioned petition. Due to the accident that occurred in the Petitioner school on 22.08.2013 where I tried to save a student who was jumping off the school window, I fell down and was severely injured as a result of which I have 90% PP1 loco-motor disability. I obtained my disability certificate on 10.02.2016.*

*(A copy of the disability certificate is attached as ANNEXURE - A)*

*2. I state that I am wheelchair bound since then.*

*3. I state that even after my accident and my disability, I can continue teaching duties as a regular teacher in the Petitioner school for Grade 6 and above, for five days a week provided accommodations are provided to me. I have my own wheelchair for my mobility, and I also have a personal full-time attender who will accompany me and whose expenses are being borne by me personally.*

*4. I state that the accommodation measures that I would need in the Petitioner school to be able to continue as a Teacher for Grade 6 and above, would be the following:*

*i. Some reduction in working hours, initially limited to four hours per day for five days a week.*

*ii. Provision of a medical or restroom facility for changing my catheter. I am accompanied by a full-time attender, and I require catheter changes every*



*three hours. Hence, I need access to a restroom facility for this purpose.*

*iii. Provide me with flexible class timings which includes a 15-minute break after every two classes, in light of my catheter changing requirement.*

*iv. Additionally, considering my health condition, I may be permitted to opt for an alternative class in case I am late for a scheduled one. On occasions where I am unable to make it physically, I may be allowed to conduct online classes or be assigned other tasks that can be carried out remotely from home.*

*v. Provide me with a transport allowance of Rs. 15,000/- per month, so that I can come in a taxi where my wheelchair can be fitted since the present school buses of the Petitioner school are not low-floored and wheel-chair accessible.*

*vi. Allow me to take my classes in a classroom that is accessible by a wheelchair on the ground floor.*

*vii. Provide access to a disabled friendly washroom.*

*viii. Availability of a first aid facility for general medical needs.*

*5. I state that it is also necessary that my seniority as a teacher in the Petitioner school be protected and that along with back-wages, all benefits and contributions including provident fund and pension accruing be continued.*

*Wherefore, I pray that this Hon'ble Court may be pleased to take the above affidavit on record in the interest of justice and equity.*

15. The school has also submitted its response on 30.6.2025 which reads as under:-



**PETITIONER'S RESPONSE TO THE AFFIDAVIT  
FILED BY THE 1<sup>ST</sup> RESPONDENT**

*The Petitioner humbly submits as follows:*

*1. The Petitioner submits at the outset that it completely empathizes with the 1st Respondent's circumstances, which arose out of the tragic and unfortunate incident on 22.08.2013, which could have been totally avoided in case the 1st Respondent had followed the SOPs already in place and let the authorized personnel to handle the situation.*

*2. The Petitioner further submits that it acknowledges the 1st Respondent's fighting spirit and that it has always been completely supportive of her endeavour to resume duties. In fact, not only did the Petitioner voluntarily reimburse the entire hospital bill of Rs. 6,03,603/- without any delay or questions vide a Payment Voucher dated 06.11.2013 but it also paid the 1st Respondent a total sum of Rs. 5,58,476/- towards her salary from the date of the accident on 22.08.2013 to May 2015 on humanitarian grounds despite she not presenting herself for her teaching duties for even one day after the incident. The Petitioner even offered her a role in good faith in an administrative capacity keeping in mind her health condition, the responsibilities of a teaching job at primary school level, the type of job that would be best for her and which would avoid health complications or emergencies as well as in the interest of the students and keeping in mind the challenges of maintaining efficiency in administration without any government support or funding. It is seen that the Email dated 14.05.2015 sent by the Petitioner produced vide Annexure J to the above Petition was not even responded to by the 1st Respondent or her husband and they did not even place their objections or response on record by replying to the same at any point.*



*3. It is submitted that the Petitioner understands that full-time teaching can place exceptional strain, especially post-injury, on the 1st Respondent and sympathize with her requests for reduced working hours and flexible class timings. The Petitioner further submits that the 1st Respondent who was earlier a primary school teacher and may not be suited for teaching Grade 6 and higher kids as stated by her given the high demands of such a role and the continuous academic engagement and consistency required. However, it is submitted that shortening the workday would affect the efficiency of teaching imparted to the students, affect the students' learning and the flow of academic responsibilities. Parents and guardians of students would never consent for anything which would affect their ward's studies, especially in today's cut throat world and competition.*

*4. Further, allowing for additional breaks after every two classes and greater flexibility in class timings would require a comprehensive restructuring and reworking of the Petitioner's timetable entirely. The same would greatly affect the overall routine of all the students and faculty members, which would adversely impact pedagogical activities. Given the scale of such a realignment and the disruption it would cause and keeping in mind the larger interest of all other students and teachers, it would be impracticable to accommodate the 1st Respondent's requests within the present scheduling framework.*

*5. The Petitioner submits that it understands that, given the 1st Respondent's health condition, there may be instances where she is unable to physically conduct classes or arrive on time. However, based on prior experience, the Petitioner has observed that online teaching, particularly when students are physically present on campus, does not yield optimal academic outcomes. Further, allowing such selective*



*operation of online classes for one person would adversely impact the academic flow for students and last minute delays or changes would disrupt the entire schedule for all other teachers as well as students, keeping them on tenterhooks for no fault of theirs. Moreover, the Petitioner currently does not have the infrastructure to facilitate hybrid or remote teaching on a selective basis and it does not have any provision for online facility, rendering such an option operationally unfeasible. Moreover, parents and guardians would not consent to online classes and the ill-effects of continuous screen engagement on the behaviour and psyche of students is well documented from the Covid-19 pandemic, including ADHD, poor communication, technical difficulties, social issues, lack of classroom control and ethics, etc.*

*6. It is pertinent to reiterate that the Petitioner has already financially supported the 1st Respondent for a total sum of Rs. 11,62,079/-by covering for her medical treatment and providing for her salary without having any legal obligation to do so, without gaining anything in return except legal costs and court cases. Thus, the Petitioner is not in a position to provide any additional monthly allowance towards travel.*

*7. It is submitted that it is not feasible for the Petitioner to accommodate the request of the 1st Respondent to take all classes on the ground floor as classroom allocation in the institution is driven by academic requirements as well as subject-based distribution across grades. As a result, the request for permanent reassignment to the ground floor cannot always be a possibility within the existing design of the campus and the timetable.*

*8. Presently, the Petitioner houses a basic infirmary that is suited to dealing with children especially and it*



*is equipped to deal with rudimentary first aid. The Petitioner also has access to disabled friendly toilets for its teachers and students, if necessary.*

*9. Despite these constraints and the bad blood created by the litigations, the Petitioner's offer of an Administrative Support Staff role remains open. This is the Petitioner's humble attempt to provide her with a meaningful role within the school, where her experience and presence are still valued and the Petitioner remains committed to supporting her in every way it reasonably can. The Petitioner hopes that the 1st Respondent sees the Petitioner's intent and understands the limitations it faces as a private unaided school which does not receive any incentives or funding from the State. However, the said offer is made without prejudice and in good faith and by reiterating the fact that the 2nd Respondent had no power, authority or jurisdiction to pass the impugned Order.*

*WHEREFORE, it is humbly prayed that this response to the 1st Respondent's Affidavit may kindly be taken on record by this Hon'ble Court, in the interest of justice and equity.*

16. The Secretary, Government Women and Child Development and Empowerment of different enabled and senior citizens departments, was also called upon to file an affidavit. The said affidavit reads as follows:

**AFFIDAVIT**

*I, Dr. Shamla Iqbal, aged about 51 years, w/o. Hussain M.K., serving as Secretary to Government, Women and Child Development and Empowerment of differently abled and Senior Citizens Department, M.S.*



*Building, Dr. B.R. Ambedkar Veedhi, Bengaluru- 560 001do hereby solemnly affirm and state on oath as follows:-*

*1. I state that I am serving as Secretary, Women and Child Development and Empowerment of differently abled and Senior Citizens Department, M.S. Building, and I am well aware with the facts and circumstance of the case and I am competent to swear to this Affidavit.*

*2. I state and submit the Respondent No.2/State Commissioner, has passed an order in case No.21 of 2019, dated 12.06.2020, wherein the Respondent No.2 has passed the order directing the Petitioner herein to reinstate the Respondent No.1 and to provide all required facilities and to pay all salaries and services benefits including the Medical expenses amounting to Rs. 10,00,000/-.*

*3. I state and submit the Petitioner herein has challenged the order dated 12.06.2020 before this Hon'ble Court and this Hon'ble High Court vide daily order dated 04.06.2025 has observed as follows:-*

*"3 the learned Additional Government Advocate, who appears for Respondent No.2 is directed to place on record as to what basis the Respondent No.2 has exercised the jurisdiction in the present matter and which power has been exercised by the Respondent No.2 to pass the impugned order:-*

*4. I state and submit that the State Commissioner/Respondent No.2 who is the Competent person appointed under Section 79 of the Rights of Persons with Disabilities Act, 2016 (hereinafter referred to Act) is duty bound to ensure the implementation of the provision of the Act within the State of Karnataka.*

*5. I state and submit that it is the duty of the State Commissioner to issue direction to Private Schools,*



*Colleges and Establishments within the State of Karnataka to ensure accessibilities for persons with disabilities, invoking Section 2i (o) (v) (w) and (x) and also Section 3,16, 20,21, 31,32 and 40 of the Said Act.*

*6. I state and submit that, the Act is not only applicable to the Government bodies, but also applicable to Private bodies, Institutions and Establishments as contemplated under Section 2(0) of the Act. The definition as contemplated under Section 2(0) covers private bodies, institutions and establishments also. The State duty is to enforce the provision of the Act not only to the Government bodies, but also private bodies, Institutions and Establishments.*

*7. I state and submit that, the mandate under Sections 16, 31, 32 of the Act, do not make any distinction between the Government and Private Institutions, bodies and establishments. The obligations in these provision falls equally on private Education Institutions, bodies and establishments.*

*8. I state and submit the mandate contemplated under Section 40 of the Act directs the State Government to formulates Rules and Guidelines to ensure accessibilities in all areas, including built environment, transport, information communication, technology and these guidelines are explicitly applicable not only to public places, but also private places /space also.*

*9. I state and submit the Act, creates the positive obligations on both Public and Private stakeholders and the role of the Commissioner under Section 80 of the act is "Taking up the matter with appropriate authorities have corrective action", if the provisions of the Act are implemented.*

*10. I state and submit that, the direction issued by the Respondent No.2 are in par with Central and State policies that promote accessibilities, equal opportunity*



*and equality before law as contemplated under Article 14 of Constitution of India and provisions are not ultra vires the powers contemplated under Act of 2016.*

*11. I state and submit permitting/exempting the private establishments, Institutions and organizations from duty cast under the Act, would not only defeat the purpose of the legislation, but also amounts to discrimination against persons with disabilities, contrary to article 14, 21 and 41 of the Constitution of India.*

*12. I state and submit that, the directions issued by the State Commissioner/respondent No. 2 to the Petitioner in the lis, is within statutory powers as the Act not only applicable to Government Institutions, Establishments and Organizations, but also applicable to Private Institutions, Organizations, Establishments, etc.,*

*13. I state and submit that, permitting the private institutions from exempting and deviating from the Provisions of the Act, would not only defeat, the very purpose of the legislation but also amounts to discrimination. I state and submit that, the State Government is ready and willing to implement any directions passed under this case which is beneficial to the persons with disabilities.*

*14. I state and submit that what is stated herein above is true to the best of my knowledge, information and belief.*

*WHEREFORE, I, humbly prays that this Hon'ble Court may kindly be pleased to take this Affidavit on record, in the ends of justice and equity.*

17. Shri B K Sampath Kumar in rejoinder would submit that the decisions cited by the Respondent, namely



- 17.1. **Vikash Kumar vs UPSC** (2021 5 SCC 37),
- 17.2. **Geetaben Ratilal Patel vs District Primary Education Officer** (2013 7 SCC 182),
- 17.3. **Syed Bashir-Ud-Din Qadri vs Nazir Ahmed Shah** (2010 3 SCC 603),
- 17.4. **Bank of Baroda vs Susmita Saha** (2019 SCC OnLine Del 7846),
- 17.5. **General Manager of B.E.S.T. Undertaking vs Mohammad Ramjan M. Shahaban** (2018 SCC OnLine Bom 912)
- 17.6. all pertain to government undertakings and that they have no application whatsoever to the facts of the present case involving a private unaided educational institution and are also contrary to the decisions in **State Bank of Patiala, Arvind Bhushan Pandey vs Vinesh Kumar Bhasin<sup>3</sup>** and **Bharat Sanchar Nigam Lts vs G. Sarvothaman<sup>11</sup>** and **Dalco Engineering Pvt. Ltd. vs Union of India<sup>14</sup>** and to that extent, are per incuriam.
- 17.7. The decision in **Jeeja Ghosh vs Union of India's<sup>17</sup>** case relied upon by the Respondent



involved is submitted that the said judgment arose in a distinct statutory and factual context, namely, the violation by a private airline of the "Civil Aviation Requirements" issued by the Directorate General of Civil Aviation under Rule 133-A of the Aircraft Rules, 1937, which had statutory force and binding effect upon the carrier. The liability in that case was thus premised upon breach of a specific regulatory regime governing carriage by air, coupled with the invocation of the extraordinary jurisdiction of the Hon'ble Supreme Court under Article 32 for grant of compensation.

17.8. In contradistinction, in the present case, the Petitioner is a private unaided educational institution, and there exists no analogous regulatory framework akin to the Civil Aviation Requirements having statutory force under the Aircraft Rules, 1937, which directly governs its functioning in the manner sought to be suggested by the Respondent. Consequently, the factual and statutory substratum of the reliance placed on Jeeja Ghosh is clearly distinguishable.



17.9. It is further submitted that the said judgment does not deal with, nor lay down any ratio concerning, the scope, jurisdiction, or powers of the Commissioner for Persons with Disabilities to issue positive or binding directions under the relevant enactment. The relief granted therein was in the nature of constitutional compensation for violation of fundamental rights, and not an adjudication on the statutory powers of authorities under disability law.

17.10. On that basis, it is contended that the reliance placed on Jeeja Ghosh by the Respondent is misplaced, being distinguishable both on facts and in law, and does not advance the Respondent's case in relation to the issues arising in the present proceedings.

17.11. The decisions in **Om Rathod vs Director General of Health Services**<sup>22</sup>, **Rajive Raturi vs Union of India**<sup>23</sup> and **In Re; Recruitment of Visually Impaired in Judicial Services**<sup>24</sup> do not deal with the powers of the 2<sup>nd</sup> Respondent and do not lay down that he has the power to issue positive directions or pass orders in nature of the impugned order herein



and the subject matter of these petitions related to issues concerning government entities.

17.12. The case of **Jane Kaushik vs Union of India's**<sup>28</sup> case does not pertain to the subject matter of the case herein and is actually in context of the Transgender Persons (Protection of Private Rights) Act, 2019.

18. Heard Shri.B.K.Sampath Kumar, learned Senior Counsel for the petitioner, Ms.Jayna Kothari, learned Senior Counsel for Respondent No.1, learned A.G.A. for Respondent No.2. Perused papers.

19. The points that would arise for determination are:

- 1) Whether the Rights of Persons with Disabilities Act of 2016, is applicable to only government institutions or to private institutions also?**
- 2) Whether the duties of educational institutions under Section 16 and 17 of the Disabilities Act of 2016 would apply only to governmental institutions or would also apply to private institutions?**
- 3) Whether the restraint on discrimination in employment under Section 20 of the Disabilities Act of 2016 would apply to government establishment or would also apply to private establishment?**



- 4) ***Whether the equal opportunity policy is required to be provided by both government and private establishments?***
- 5) ***Whether equality and non-discrimination as contained in Section 3 would apply to both government and private establishments?***
- 6) ***Whether the 'public building' defined under subsection (w) of Section 2 of the Disabilities Act of 2016 would mean only a government building or include a private building used for public purposes and public access?***
- 7) ***Whether there is an obligation even on part of the private employer to provide reasonable accommodation to a person with disability employed by such private employer?***
- 8) ***Whether it is the Persons with Disabilities (Equal Opportunities, Protection of rights and Full Participation) Act, 1995 or the Rights of Persons with Disabilities Act, 2016 which would apply if the event causing disability occurred prior to the 2016 Act came into force but the complaint was filed after the 2016 Act came into force?***
- 9) ***Whether the State Commissioner for Persons with Disabilities, constituted under Section 79 of the Rights of Persons with Disabilities Act, 2016, has jurisdiction and power to issue binding corrective directions against a private establishment, and whether the decisions in State Bank of***



***Patiala vs. Vinesh Kumar Bhasin (2010) 4 SCC 368 and the line of cases following it govern proceedings under the 2016 Act?***

- 10) Whether the direction to pay Rs.10,00,000/- (Rupees Ten Lakhs only) constitutes a valid exercise of compensatory power under Sections 80 and 81 of the Disabilities Act of 2016, or whether it is beyond jurisdiction as being in the nature of a penal fine limited by the penalty ceiling under Section 89 of the Act?***
- 11) Whether the impugned order dated 12.06.2020 is vitiated on account of (i) suppression of material facts by the Complainant/Teacher; (ii) the Commissioner's failure to set out reasons; or (iii) any other procedural irregularity affecting the validity of the order?***
- 12) Whether the writ petition under Articles 226 and 227 of the Constitution of India against the order of the Commissioner is maintainable, and if maintainable, whether this Court should interfere with the impugned order on any of the grounds urged?***
- 13) What order?***

20. This Court answers the above points as under:-

21. **Answer to Point No.1: *Whether the Rights of Persons with Disabilities Act of 2016, is applicable to only government institutions or to private institutions also?***



- 21.1. The learned Senior Counsel for the Petitioner-School, Shri B.K. Sampath Kumar, submitted that the Disabilities Act of 2016, on a conjoint reading of its various provisions, does not impose direct and enforceable obligations upon private unaided institutions. His core submission was that the obligations created by the Act, insofar as they relate to employment and non-discrimination in service conditions, are directed only at the State and at establishments which are owned, controlled or aided by the Government, and that a private unaided educational institution such as the Petitioner-School falls wholly outside the ambit of these obligations.
  
- 21.2. He submitted that a careful reading of Section 20 of the Disabilities Act of 2016, which deals with non-discrimination in employment, reveals that the said provision expressly uses the words 'No Government establishment shall discriminate' and 'Every Government establishment shall provide reasonable accommodation'. The use of the specific expression 'Government establishment' (as opposed to 'every establishment') in



Section 20 makes the legislative intent unmistakably clear that only government establishments are bound by the non-discrimination mandate in matters of employment.

21.3. He submitted that the National Policy for Persons with Disabilities, bearing No.3-1/1993-DD.III dated 10.02.2006, at Paragraph 50 thereof, stipulates that an 'equal opportunity policy' can only be published once the appropriate Government has had a dialogue with the private sector in order to help disabled people secure employment. This, he contended, is a statutory precondition that has not been fulfilled, and therefore no obligation of the character directed by the Commissioner can be fastened upon the Petitioner-School.

21.4. He further submitted that Section 35 of the Disabilities Act of 2016 makes it abundantly clear that, insofar as private sector employers are concerned, the appropriate Government and local authorities shall provide 'incentives' to them within the limit of their economic capacity to ensure that at least five per cent of their



workforce comprises persons with benchmark disability. The very fact that the statute speaks of providing 'incentives' to private sector employers, and not imposing 'obligations' upon them, demonstrates that private employers are not directly bound by the employment-related provisions of the Act. He pointed out that the Petitioner-School has never received any such incentive from the Government, and that the accommodations sought for by the Teacher are outside the School's financial capacity and are impossible to perform without governmental support.

21.5. He relied upon Section 36 of the Disabilities Act of 2016 and submitted that the Government has not even notified a Special Employment Exchange as required thereunder, and that the Teacher, without first applying under Section 38 of the Act, is improperly attempting to fasten liability on the Petitioner-School.

21.6. He submitted that a conjoint reading of the Disabilities Act of 2016 including its Preamble, the National Policy for Persons with Disabilities, and the United Nations Convention on the



Rights of Persons with Disabilities (UNCRPD) which came into force in 2008, would only indicate that the onus lies on the State to facilitate the protection of the rights of disabled persons, and that a private entity will not be subject matter of proceedings under the Disabilities Act of 2016 for implementation thereof

- 21.7. He relied strongly upon the decision of the Hon'ble Supreme Court in the case of **Dalco Engineering Private Limited, Fancy Rehabilitation Trust vs. Union of India's**<sup>14</sup> case, (hereinafter referred to as 'Dalco Engineering') wherein the Hon'ble Apex Court, interpreting the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 (the 'Disabilities Act of 1995'), held that the word 'establishment' as defined in Section 2(k) of the said Act referred only to corporations established by or under a Central, Provincial or State Act, or an authority or body owned or controlled or aided by the Government, or a local authority, or a government company, and that private sector employers who did not fall within this definition



were not bound by the provisions of Section 47 (which prohibited reduction in rank or dispensing with the services of an employee who acquired a disability). He submitted that although **Dalco Engineering's**<sup>14</sup> case was decided under the Disabilities Act of 1995, the same principle must apply to the Disabilities Act of 2016, since the legislative scheme has not changed in any fundamental respect insofar as the applicability to private employers is concerned.

21.8. He submitted that the decisions in **Vikash Kumar vs. UPSC**<sup>27</sup>, **Geetaben Ratilal Patel vs. District Primary Education Officer**<sup>18</sup>, **Syed Bashir-Ud-Din Qadri vs. Nazir Ahmed Shah**<sup>26</sup>, **Bank of Baroda vs. Susmita Saha**<sup>19</sup>, and **General Manager, B.E.S.T. Undertaking vs. Mohammad Ramjan M. Shahban**<sup>20</sup>, all pertain to government undertakings and have no application to a private unaided educational institution. He further submitted that these decisions are per incuriam and contrary to the binding pronouncements of the Hon'ble Supreme Court in **State Bank of Patiala**,



**Arvind Bhushan Pandey vs. Vinesh Kumar Bhasin<sup>3</sup> and Dalco Engineering<sup>14</sup>.**

21.9. Smt. Jayna Kothari, the learned Senior Counsel appearing for Respondent No.1, submitted that the Disabilities Act of 2016 is a transformative legislation that represents a paradigm shift from its predecessor, the Disabilities Act of 1995. The 2016 Act, she submitted, was enacted to give effect to India's obligations under the UNCRPD and to overcome the limitations of the 1995 Act, which had a narrow applicability restricted to government establishments.

21.10. She submitted that under the Disabilities Act of 2016, the definition of 'establishment' under Section 2(i) expressly includes both a Government establishment and a private establishment. The word 'includes' in Section 2(i) makes it categorically clear that the definition of 'establishment' is not limited to government establishments but encompasses private establishments as well. She also referred to Section 2(v) which specifically defines 'private establishment' to mean a



company, firm, cooperative or other society, associations, trust, agency, institution, organisation, union, factory or such other establishment as the appropriate Government may, by notification, specify. The Petitioner-School, she submitted, falls squarely within this definition.

21.11. She relied upon Section 21 of the Disabilities Act of 2016 which mandates that 'every establishment' shall notify an equal opportunity policy. She submitted that the use of the expression 'every establishment', as opposed to 'every government establishment', makes it unmistakably clear that the obligation under Section 21 applies to private establishments as well.

21.12. She submitted that Chapter 3 of the Disabilities Act of 2016, which contains the provisions relating to education (Sections 16 to 18), non-discrimination in employment (Section 20), equal opportunity policy (Section 21) and related provisions, applies to both government and private establishments and educational institutions. This legislative intent is evident



from the use of the expression 'every establishment' in key provisions of Chapter 3.

21.13. She relied upon Rule 8 of the Rights of Persons with Disabilities Rules, 2017 (hereinafter referred to as the 'Rules of 2017') which, she submitted, expressly applies to 'every establishment', and specifically provides that the equal opportunity policy of a 'private establishment having twenty or more employees' shall contain mandatory elements including facilities and amenities to be provided to persons with disabilities. This, she submitted, directly imposes obligations upon the Petitioner-School, which has well over twenty employees.

21.14. She relied upon the decision of the Hon'ble Supreme Court in **Vikash Kumar vs. UPSC's**<sup>27</sup> case, wherein the Hon'ble Apex Court held that the Disabilities Act of 2016 imposes positive obligations upon both the State and private entities to create conditions enabling the full and effective participation of persons with disabilities. The Hon'ble Supreme Court observed that the 2016 RPwD Act travels



beyond being merely a charter of non-discrimination and imposes a positive obligation on the State as well as on establishments to secure the realisation of rights.

21.15. She relied upon the decision in **In Re: Recruitment of PWD Candidates in Rajasthan Judicial Services's**<sup>24</sup> case, wherein the Hon'ble Supreme Court held that the RPwD Act, 2016 has acquired the status of a 'super statute' with quasi-constitutional significance, and that its provisions must be interpreted in a manner that advances the constitutional ethos of equality, dignity and inclusion. She submitted that such an interpretation necessarily requires that private establishments too, be brought within the ambit of the statute's obligations.

21.16. She submitted that the decisions relied upon by the Petitioner, particularly **Dalco Engineering's**<sup>14</sup> case, were decided under the 1995 Act and not under the 2016 Act. The 2016 Act constitutes an entirely new and expanded legislative framework which has expressly widened the definition of 'establishment' to



include private establishments, and therefore the precedents under the 1995 Act have no application to the interpretation of the 2016 Act.

21.17. The learned Additional Government Advocate, Sri Mahantesh Shettar, appearing for Respondent No.2, filed an affidavit on behalf of the State Commissioner and submitted that the Disabilities Act of 2016 is expressly applicable to private bodies, institutions and establishments as contemplated under Section 2(o) of the Act, which defines 'institution' to mean an institution for the reception, care, protection, education, training, rehabilitation and any other activities for persons with disabilities. He submitted that the State's duty is to enforce the provisions of the Act not only against government bodies but also against private bodies, institutions and establishments.

21.18. He submitted that the mandate under Sections 16, 31 and 32 of the Disabilities Act of 2016 does not make any distinction between government and private institutions, and that the obligations in these provisions fall equally



on private educational institutions, bodies and establishments. He further submitted that the direction issued by the State Commissioner is in conformity with Articles 14, 21 and 41 of the Constitution of India, and that permitting private establishments to be exempted from the duties cast by the Act would not only defeat the purpose of the legislation but would also amount to discrimination against persons with disabilities, contrary to the fundamental rights guaranteed by the Constitution.

21.19. This Court has carefully considered the submissions advanced by the learned Senior Counsel for the Petitioner-School, the learned Senior Counsel for Respondent No.1, and the learned AGA for Respondent No.2, along with the statutory provisions and the authorities cited before it. The primary question under Point 1 is whether the Disabilities Act of 2016 applies only to government institutions or also to private institutions.

21.20. The first and most important analytical step is to appreciate the fundamental difference between the Disabilities Act of 1995 and the



Disabilities Act of 2016. The Disabilities Act of 1995 defined 'establishment' under Section 2(k) as follows: *'establishment means a corporation established by or under a Central, Provincial or State Act, or an authority or a body owned or controlled or aided by the Government or a local authority or a government company as defined in Section 617 of the Companies Act, 1956 (1 of 1956) and includes Departments of a Government.'* This definition, interpreted by the Hon'ble Supreme Court in **Dalco Engineering's**<sup>14</sup> case, was held to be restricted to public sector entities and government-controlled bodies, thereby excluding private sector companies and institutions.

21.21. The Disabilities Act of 2016, however, makes a decisive departure from this position. Section 2(i) of the 2016 Act defines 'establishment' as follows: *'(i) establishment includes a Government establishment and private establishment.'* By using the word 'includes', the legislature has made the definition of 'establishment' expansive and has expressly



brought private establishments within the ambit of the term.

21.22. The Hon'ble Apex Court in **Dalco Engineering itself's**<sup>14</sup> case, while holding that private companies were excluded from the 1995 Act, noted the marginal note of Section 47 which described the provision as 'Non-discrimination in government employment' and observed that the use of 'government employment' in the marginal note and 'establishment' (as defined) in the body of the section demonstrated the clear legislative intent to apply the provisions only to employment under the State. However, no such restriction appears in the Disabilities Act of 2016. The marginal note of Section 20 of the 2016 Act reads 'Non-discrimination in employment', without the qualifier 'government'. This is a clear departure from the 1995 Act and demonstrates a deliberate legislative intent to broaden the scope of the non-discrimination mandate.

21.23. Further, Section 2(v) of the Disabilities Act of 2016 defines 'private establishment' as follows:  
*'(v) private establishment means a company,*



*firm, cooperative or other society, associations, trust, agency, institution, organisation, union, factory or such other establishment as the appropriate Government may, by notification, specify.'* The Petitioner-School, being an educational institution, falls squarely within the expression 'institution' in the definition of 'private establishment'. There is therefore no doubt that the Petitioner-School is a 'private establishment' within the meaning of the Disabilities Act of 2016.

21.24. The argument of the Petitioner-School that the obligations under the Act lie only on the State and not on private entities derives support from a reading of the UNCRPD. Article 4 of the UNCRPD does indeed impose obligations on States Parties. However, Article 4(1)(e) of the UNCRPD specifically requires States Parties to 'take all appropriate measures to eliminate discrimination on the basis of disability by any person, organisation or private enterprise'. This plainly means that the State is required to ensure that private entities also comply with the non-discrimination mandate. The Disabilities Act of 2016 gives effect to this by



imposing obligations on private establishments directly through its statutory framework.

21.25. This Court now turns to the decision in **Dalco Engineering's**<sup>14</sup> case relied upon by the Petitioner. In **Dalco Engineering's**<sup>14</sup> case, the Hon'ble Supreme Court was considering Section 47 of the 1995 Act. The Hon'ble Supreme Court held that the definition of 'establishment' in Section 2(k) of the 1995 Act excluded private sector companies that were not government companies or government-aided bodies. The Court also noted that the marginal note of Section 47 used the words 'Non-discrimination in government employment'. However, Dalco Engineering was decided under the 1995 Act, which has since been repealed by the Disabilities Act of 2016. The 2016 Act has made a conscious and fundamental departure from the 1995 Act by expressly including private establishments within the definition of 'establishment'. Dalco Engineering is therefore entirely distinguishable and has no application to the interpretation of the 2016 Act. The principle that law is to be interpreted as it stands, and that a new statute with an



expanded definition must be read according to its own terms, is well-settled. This Court accordingly holds that Dalco Engineering does not govern the interpretation of the 2016 Act.

21.26. The decision of the Hon'ble Supreme Court in **Vikash Kumar's**<sup>27</sup> case relied upon by Respondent No.1 is instructive. The Hon'ble Apex Court in that case, held that the Disabilities Act of 2016 travels beyond being merely a charter of non-discrimination and imposes a positive obligation on the State to secure the realisation of rights, and that the legislation recognises that disability results in inequality of access to a range of public and private entitlements. Significantly, the Hon'ble Supreme Court held that it is imperative that not only the Government but also the private sector takes proactive steps for the implementation of the 2016 RPwD Act. This is a clear and authoritative articulation that the 2016 Act extends its obligations to the private sector.

21.27. The decision in **In Re: Recruitment of PWD Candidates's**<sup>24</sup> case holds that the RPwD Act



2016 has acquired quasi-constitutional status as a 'super statute'. As the Hon'ble Apex Court observed at paragraph 36, such statutes penetrate the public normative and institutional culture and have a broad effect on the law. The quasi-constitutional character of the Act means it must be interpreted broadly and purposively, in a manner that advances the rights of persons with disabilities across all sectors, public and private alike.

21.28. The contention of the Petitioner based on Section 35 of the Disabilities Act of 2016 that Section 35 provides that the appropriate Government and local authorities shall, within the limit of their economic capacity and development, provide incentives to employers in the private sector to ensure that at least five per cent of their workforce is composed of persons with benchmark disability. This provision specifically addresses the reservation of posts for persons with benchmark disabilities in the private sector, rather than the general obligations of non-discrimination or reasonable accommodation. The existence of an incentive-based regime under Section 35 for post-



reservation does not mean that private establishments are exempt from other obligations under the Act, such as the obligation under Section 21 to maintain an equal opportunity policy or the obligation under Section 3(3) not to discriminate. These are separate and distinct obligations. The specific use of 'incentives' in Section 35 reflects the legislature's awareness that mandating reservation in the private sector requires encouragement but does not in any way negate the directly applicable non-discrimination obligations.

21.29. The Petitioner's submission that there has been no dialogue with the private sector as contemplated in Paragraph 50 of the National Policy for Persons with Disabilities, 2006 is misconceived. A National Policy document, however important, does not override an express statutory provision. Section 21 of the Disabilities Act of 2016 is a statutory mandate which uses the expression 'every establishment'. No amount of policy guidance can limit the operation of a clear statutory mandate. Once the legislature has spoken



through a statute, a policy document of a lesser normative character cannot cut down the statute's plain meaning.

21.30. The submission that the Respondent No.1 did not apply under Section 38 of the Act before approaching the Commissioner is equally without merit. Section 38 deals with identification of posts for persons with benchmark disability in private sector establishments. The Teacher's complaint before the Commissioner was not a complaint about non-identification of a post under Section 38, it was a complaint about deprivation of her rights as a person with disability who acquired the disability in the course of her employment. These are entirely different claims, and the non-utilisation of Section 38 does not bar a complaint under other provisions of the Act.

21.31. In light of all the above, this Court finds and holds as follows:

21.32. The Disabilities Act of 2016 is a comprehensive statute that has fundamentally expanded the scope of disability rights law in India. Unlike the 1995 Act, the 2016 Act expressly includes



private establishments within the definition of 'establishment' under Section 2(i).

21.33. The definition of 'private establishment' in Section 2(v) is broad enough to include the Petitioner-School, which is an 'institution' engaged in education.

21.34. While certain specific provisions such as Section 20 (non-discrimination in employment) and Section 47 of the 1995 Act expressly restricted their application to 'Government establishments', the general anti-discrimination provision under Section 3(3) of the 2016 Act is a universally applicable prohibition that applies to all persons and entities, government or private.

21.35. Section 21 of the 2016 Act uses the expression 'every establishment', which includes private establishments. The equal opportunity policy obligation under Section 21 read with Rule 8 of the Rules of 2017 binds private establishments, including the Petitioner-School.

21.36. The decision in **Dalco Engineering's**<sup>14</sup> case, having been rendered under the 1995 Act, has



no application to the interpretation of the 2016 Act, which operates on an entirely different definitional framework.

21.37. The Petitioner submitted that the decisions in **Vikash Kumar vs. UPSC<sup>27</sup>, Geetaben Ratilal Patel vs. District Primary Education Officer<sup>18</sup>, Syed Bashir-Ud-Din Qadri vs. Nazir Ahmed Shah<sup>26</sup>, Bank of Baroda vs. Susmita Saha<sup>19</sup>, and General Manager, BEST Undertaking vs. Mohammad Ramjan M. Shahban<sup>20</sup>** all pertain to government undertakings and have no application to a private unaided educational institution. He further submitted that these decisions are per incuriam and contrary to the binding pronouncements in **Vinesh Kumar Bhasin<sup>3</sup>** and **Dalco Engineering's<sup>14</sup>** case.

21.38. This Court considers and rejects the per incuriam and non-applicability arguments as follows:

21.38.1. **Vikash Kumar vs. UPSC's<sup>27</sup>** case is a three-judge bench decision of the Hon'ble Supreme Court and cannot be said to be per incuriam vis-a-vis an



earlier two-judge bench decision. Its ratio: that the 2016 RPwD Act imposes positive obligations on the private sector. is binding and directly applicable to Point 1.

21.38.2. **Geetaben Ratilal Patel, Syed Bashir-Ud-Din Qadri, Bank of Baroda vs. Susmita Saha, and BEST Undertaking's**<sup>18</sup> case are dealt with individually in detail under Point 9 of this judgment. For Point 1, it suffices to state that the fact that these cases arose in the context of government or public sector employers does not confine their ratio to such employers, the principles of non-discrimination, reasonable accommodation, and the Commissioner's corrective action powers apply universally under the 2016 Act. None of these decisions holds that the 2016 Act does not apply to private employers; they do not address that question at all. The question of the Act's applicability to private employers is answered by the text of the statute itself.



21.38.3. **Vinesh Kumar Bhasin's**<sup>3</sup> case was decided under the 1995 Act and addresses the scope of the Commissioner's powers under that Act. It does not address the question of whether the 2016 Act applies to private employers. It is therefore inapplicable to Point 1 and is addressed in full under Point 9.

21.39. The decisions relied upon by Respondent No.1 in **Vikash Kumar, In Re: Recruitment of PWD Candidates, Om Rathod, Rajive Raturi, Jane Kaushik and Kabir Paharia's**<sup>27</sup> case, to the extent they deal with the 2016 Act and its application, correctly hold that the 2016 Act imposes obligations on private entities as well.

21.40. The Petitioner, relying on the analysis in **Dalco Engineering's**<sup>14</sup> case, submitted that Section 39 of the 1995 Act (which used the phrase "all educational institutions" in its marginal note but restricted the benefit to government and government-aided educational institutions in its body) demonstrated the legislative intent to



restrict the Act's obligations to government entities. The Petitioner contended that even in the 2016 Act, the scheme must be read similarly.

21.41. This argument is not sustainable. As the Hon'ble Supreme Court in **Dalco Engineering's**<sup>14</sup> case itself noted at paragraph 16, although the marginal note of Section 39 of the 1995 Act used the words "all educational institutions", the body of the section made clear that only government educational institutions and educational institutions receiving government aid were covered. However, the Court's observation was confined to Section 39 of the 1995 Act. It cannot be transposed to the 2016 Act, which has a fundamentally different definitional framework and express provisions covering private establishments.

21.42. Section 39 of the 2016 Act deals with awareness generation programmes. It requires the State and appropriate authorities to conduct awareness campaigns and sensitisation programmes. As the Hon'ble Supreme Court observed in **Vikash Kumar's**<sup>27</sup> case at



paragraph 89, the 2016 Act captures the need for the State to conduct awareness campaigns under Section 39. Section 39 of the 2016 Act does not independently limit or expand the obligations of private establishments, it simply casts an obligation on the Government to promote awareness. It is therefore not a provision that detracts from or adds to the private establishment obligations already established under Sections 3(3), 21 and related provisions of the 2016 Act.

21.43. Rule 3(1) of the Rights of Persons with Disabilities Rules, 2017 provides: *"Every establishment shall not discriminate against persons with disability on the ground of disability."* This Rule, framed under the 2016 Act, extends the statutory mandate of non-discrimination to every establishment - government and private. The language mirrors and reinforces Section 3(3) of the Act. Rule 3(1) is therefore direct authority for the position, that private establishments are bound by the non-discrimination obligation. The argument that only the State is bound by the anti-discrimination norm is conclusively



rebutted not only by Section 3(3) of the Act but also by Rule 3(1) of the Rules.

21.44. Shri B.K. Sampath Kumar also relied upon the decision in **Deddappa and ors. vs. Branch Manager, National Insurance Co. Ltd.'s**<sup>15</sup> case wherein the Hon'ble Supreme Court held that beneficial legislation should not be construed in such a manner as to bring within its ambit a benefit not contemplated by the legislature, and that where such beneficial legislation has a scheme of its own there is no warrant for the court to travel beyond the scheme and extend the scope of the statute on the pretext of extending the statutory benefit to those who are not covered by the scheme.

21.45. This Court accepts the proposition in **Deddappa's**<sup>15</sup> case as a general principle of statutory interpretation. However, the principle cuts in both directions. A court must not extend a statute beyond its scheme, but equally, it must not restrict a statute below its own express terms. The question in this case is not whether the court is extending the Disabilities Act of 2016 beyond its scheme, it is whether



the express text of the Act (specifically Section 2(i), Section 2(v), Section 3(3) and Section 21) plainly includes private establishments. As this Court has analysed above, the text of the 2016 Act expressly includes private establishments in its definition of establishment. Applying **Deddappa's**<sup>15</sup> case, this Court is not extending the statute beyond its scheme, it is giving effect to the clear legislative scheme of the 2016 Act which, unlike the 1995 Act, has expressly brought private establishments within its ambit.

21.46. **Deddappa's**<sup>15</sup> case was decided under the Motor Vehicles Act/insurance law context, and dealt with whether certain persons could claim benefits under a scheme. The context is entirely different from the present case which involves the plain text of a human rights statute. Moreover, the Hon'ble Supreme Court in **Dalco Engineering's**<sup>14</sup> (decided under the 1995 Act) itself applied the principle in **Deddappa's**<sup>15</sup> case when restricting Section 47 of the 1995 Act to government establishments. But as this Court has held, **Dalco Engineering's**<sup>14</sup> case has no application to the



2016 Act which has a fundamentally different definitional framework. The reliance on **Deddappa's**<sup>15</sup> case, via **Dalco Engineering's**<sup>14</sup> case to restrict the 2016 Act to government establishments is therefore misplaced and contrary to the express text of the 2016 Act.

21.47. In that view of the matter this court answers Point No. 1 by holding that the Disabilities Act of 2016 is not restricted in its application to government institutions alone. Its provisions, particularly Sections 2(i), 2(v), 3(3), 21 read with Rule 8 of the Rules of 2017, apply to private institutions and private establishments as well, subject to the language of each specific provision. Those provisions which specifically use the expression 'Government establishment' (such as Section 20) apply only to government establishments, while those which use 'every establishment' or universal language apply to both government and private establishments.

22. ***Answer to Point No.2: Whether the duties of educational institutions under Section 16 and 17 of the Disabilities Act of 2016 would apply only to governmental institutions or would also apply to private institutions?***



- 22.1. Shri B.K. Sampath Kumar submitted that Section 16 of the Disabilities Act of 2016, which deals with 'Duty of educational institutions', expressly places the obligation on 'The appropriate Government and the local authorities' and not on private educational institutions directly. He submitted that Section 16 states that 'The appropriate Government and the local authorities shall endeavour that all educational institutions funded or recognised by them provide inclusive education to the children with disabilities'. The word 'endeavour' further indicates that this is a directive principle-type obligation on the Government and not a hard-enforceable mandate on private schools.
- 22.2. He submitted that a private unaided educational institution like the Petitioner-School, which receives no government funding, is not bound by Section 16 because: (a) the obligation is placed on the appropriate Government and local authorities, and (b) the Petitioner-School is not a government institution.



- 22.3. He submitted that the recognition by CBSE does not make the School a recipient of government funding, and that 'recognition' in the context of the provision must be read to mean recognition by the State Government for the purpose of aid, and not merely affiliation to an educational board.
- 22.4. He further submitted that Section 17, which deals with 'Specific measures to promote and facilitate inclusive education', similarly casts obligations on 'The appropriate Government and the local authorities' and not on private educational institutions.
- 22.5. Smt. Jayna Kothari submitted that Section 16 must be read in its proper context. The provision states that the appropriate Government and local authorities shall endeavour that 'all educational institutions funded or recognised by them' provide inclusive education. Since the Petitioner-School is affiliated to CBSE, which is a statutory body constituted under the National Council of Educational Research and Training Act, it is an institution 'recognised' for the purpose of



Section 16. The government's endeavour under Section 16 extends to ensuring that recognised institutions, including CBSE-affiliated private schools, comply with the mandate of inclusive education.

22.6. She submitted that the obligations under Section 16 are therefore not limited to government schools alone. The obligation is on the Government to ensure compliance, and this necessarily places a derivative obligation on all educational institutions recognised by the Government or its agencies, including private schools with CBSE affiliation. The duties of making buildings accessible (Section 16(ii)), providing reasonable accommodation (Section 16(iii)), providing transportation facilities (Section 16(viii)) and the other obligations under Section 16 are thus applicable to the Petitioner-School.

22.7. She submitted that Section 17, being a section providing specific measures to implement Section 16, similarly places obligations that ultimately bear upon all educational institutions covered under Section 16, including private



CBSE-affiliated schools. She also referred to Sections 31 and 32 of the Act (accessibility in the built environment and transportation) and submitted that these provisions apply to both government and private establishments and have direct implications for the Petitioner-School's premises.

- 22.8. She relied upon the affidavit filed by the AGA on behalf of Respondent No.2 which specifically stated that the mandate under Sections 16, 31 and 32 of the Act does not make any distinction between government and private institutions.
- 22.9. She relied upon the decision in **Rajive Raturi vs. Union of India's**<sup>23</sup> case, wherein the Hon'ble Apex Court held that the right to accessibility is not merely ancillary but constitutes a foundational and indispensable component of the fundamental rights framework. The Hon'ble Apex Court in that case elaborated a two-pronged approach: firstly, ensuring that existing institutions and infrastructure are made inclusive through retrofitting and corrective measures; and secondly, mandating that all future



infrastructure is designed in accordance with principles of universal design. She submitted that these obligations apply to private educational institutions as well.

22.10. Sri Mahantesh Shettar, the learned AGA, submitted that the mandate under Section 16 of the Act does not make any distinction between government and private institutions. He submitted that the obligation in Section 16 falls equally on private educational institutions because the government's endeavour to ensure compliance necessarily involves the private schools recognised by the Government. He also submitted that Section 40, which directs the State Government to formulate rules and guidelines to ensure accessibility in all areas, explicitly covers not only public places but also private places and spaces.

22.11. For the purpose of answering Point No.2, it is necessary to carefully analyse the text of Sections 16 and 17 of the Disabilities Act of 2016. Section 16, as extracted in the preceding pages, reads as under:

**16. Duty of educational institutions.—***The appropriate Government and the local authorities*



*shall endeavour that all educational institutions funded or recognised by them provide inclusive education to the children with disabilities and towards that end shall—*

*(i) admit them without discrimination and provide education and opportunities for sports and recreation activities equally with others;*

*(ii) make building, campus and various facilities accessible;*

*(iii) provide reasonable accommodation according to the individual's requirements;*

*(iv) provide necessary support individualised or otherwise in environments that maximise academic and social development consistent with the goal of full inclusion;*

*(v) ensure that the education to persons who are blind or deaf or both is imparted in the most appropriate languages and modes and means of communication;*

*(vi) detect specific learning disabilities in children at the earliest and take suitable pedagogical and other measures to overcome them;*

*(vii) monitor participation, progress in terms of attainment levels and completion of education in respect of every student with disability;*

*(viii) provide transportation facilities to the children with disabilities and also the attendant of the children with disabilities having high support needs.*

22.12. A plain reading of Section 16 reveals that the primary obligation is placed on 'The appropriate Government and the local authorities'. However, this obligation is of a specific character: the appropriate Government shall



'endeavour' that 'all educational institutions funded or recognised by them' implement the list of measures in sub-clauses (i) to (viii). The legal effect of this provision is two-fold:

22.13. First, it places a positive duty on the appropriate Government to take steps to ensure that educational institutions recognised or funded by it comply with the inclusive education mandate.

22.14. Second, and crucially, the scope of institutions to which the mandate of Section 16 is directed expressly extends to all educational institutions 'funded or recognised' by the appropriate Government, without distinguishing between government schools and privately run schools. The word 'all' is comprehensive and admits of no exception. Any educational institution, whether government-run, aided, or private, that is either funded by or recognised by the appropriate Government falls within the scope of Section 16.

22.15. The Petitioner-School is affiliated to the Central Board of Secondary Education (CBSE). CBSE is a statutory body constituted under the



Societies Registration Act, 1860 and functions under the aegis of the Ministry of Education, Government of India. CBSE affiliation constitutes 'recognition' by an organ of the Central Government for the purpose of Section 16. The Petitioner-School, having voluntarily sought and obtained CBSE affiliation, is an institution 'recognised' within the meaning of Section 16 of the Disabilities Act of 2016.

22.16. The Petitioner's contention that the obligation is merely an 'endeavour' obligation and therefore does not create hard enforceable rights is not tenable. While the word 'endeavour' creates a qualified duty on the appropriate Government, the sub-clauses (i) to (viii) which follow, particularly sub-clause (ii) (accessibility of buildings and campus) and sub-clause (iii) (reasonable accommodation), contain specific obligations that are directed at all recognised/funded educational institutions. The Government's 'endeavour' is to ensure that these institutions comply, and the institutions themselves are the implementing agencies for these measures. A private school cannot be heard to say: 'The Government must try to



make us comply, but we are not directly bound.' Such an interpretation would make the provision a dead letter.

22.17. The present case, however, is not primarily about the School's duty to educate children with disabilities (Section 16's primary focus). The Teacher's claim involves the physical accessibility of the school premises as a workplace, barrier-free facilities, and reasonable accommodation in employment, all of which are more directly addressed by other provisions of the Act, including Sections 3(3), 21, 40, 44, 45 and 46. This Court will address those provisions in the context of the relevant Point/s for Determination.

22.18. Insofar as Section 17 is concerned, it deals with specific measures to be taken by the appropriate Government and local authorities for the purpose of Section 16, such as conducting surveys, establishing teacher training institutions, and promoting augmentative communication methods. Section 17, by its express terms, places obligations directly and primarily on the appropriate



Government and local authorities. It does not independently cast obligations on private educational institutions beyond what flows from Section 16.

22.19. In light of the above analysis, this Court holds as under:

22.19.1. Section 16 of the Disabilities Act of 2016 places the primary obligation on the appropriate Government and local authorities. However, this obligation encompasses all educational institutions funded or recognised by them, which includes CBSE-affiliated private schools such as the Petitioner-School.

22.19.2. The measures listed in Section 16(i) to 16(viii), including accessibility of buildings and campus and provision of reasonable accommodation, apply to all educational institutions within the scope of the provision, including the Petitioner-School

22.19.3. Smt. Jayna Kothari also relied upon **Rajive Raturi vs. Union of India's**<sup>23</sup>



case for the proposition that the right to accessibility is foundational and constitutionally indispensable. The Hon'ble Supreme Court in that case held that accessibility is not merely ancillary to the exercise of other rights but constitutes a right in itself, flowing from Articles 14, 19 and 21 of the Constitution read with the RPwD Act, 2016. The Hon'ble Supreme Court elaborated a dual obligation: (a) retrofit existing buildings and infrastructure to make them accessible; and (b) design all future infrastructure on universal design principles.

22.19.4. **Rajive Raturi's**<sup>23</sup> case is applied to Point 2 as follows: Section 16(ii) of the Act requires recognised educational institutions to make their buildings, campuses and facilities accessible. This obligation derives constitutional force from the right to accessibility recognised in **Rajive Raturi's**<sup>23</sup> case. The Petitioner-School's failure to make its campus accessible to the Teacher, who



uses a wheelchair, violates both Section 16(ii) and the constitutional right to accessibility. The "retrofit + universal design" approach mandated by the Hon'ble Supreme Court applies to the School's premises with full force.

22.19.5. Section 17 places obligations on the appropriate Government and local authorities and does not independently bind private schools, though its measures support the implementation of Section 16 obligations in recognised private schools.

22.20. The conditions of CBSE affiliation themselves support this interpretation. CBSE's Affiliation Bye-Laws and the CBSE Handbook for Affiliated Schools require schools to make provisions for children with special needs, to have inclusive education policies, and to provide accessible infrastructure. A CBSE-affiliated school that does not comply with Section 16 of the Disabilities Act of 2016 is also potentially in violation of its CBSE affiliation conditions. The two frameworks, CBSE affiliation and the



Disabilities Act, are therefore mutually reinforcing.

22.21. The specific obligations under Section 16 that are relevant to the present case are sub-clauses (ii) and (iii): (ii) "make building, campus and various facilities accessible" and (iii) "provide reasonable accommodation according to the individual's requirements." While Section 16 is primarily directed at the education of children with disabilities (students), the accessibility obligation in sub-clause (ii) extends to the entire campus and all facilities, which necessarily includes facilities used by teaching staff with disabilities. An accessible campus is an accessible campus for all persons, students, staff, and visitors.

22.22. Section 17 of the 2016 Act, which deals with specific measures to promote inclusive education, places obligations directly on the appropriate Government and local authorities. These include establishing teacher training institutions, training and employing teachers including "teachers with disability who are qualified in sign language and Braille," and



training professionals to support inclusive education. Section 17(c) expressly contemplates teachers with disability as part of the inclusive education ecosystem. If the legislature envisioned teachers with disabilities being trained and employed in recognised educational institutions, it necessarily envisioned that those institutions would provide the reasonable accommodation needed for such teachers to function.

22.23. The Petitioner's narrow argument that Section 16 imposes obligations only on the "appropriate Government and local authorities", and therefore not on the School itself, ignores the practical reality of how the provision operates. The appropriate Government cannot physically "make" a school's buildings accessible or "provide" reasonable accommodation to its employees, it can only do so by requiring the school to take those steps. The Section 16 obligation is therefore necessarily derivative, it flows from the Government's duty to all institutions it recognises, and those institutions bear the responsibility of actual implementation. A private CBSE-affiliated



school that resists this is resisting the very purpose of its recognition.

22.24. This Court further notes that even if one were to accept the Petitioner's narrow reading of Section 16 (which this Court does not), the Teacher's rights in this case do not rest on Section 16 alone. They rest on Section 3(3) (universal non-discrimination), Section 21 (EOP for every establishment), Section 2(w) (public building accessibility), and Section 40-46 (accessibility obligations). Section 16 is one strand of a multi-strand statutory framework, and even if that one strand were weakened (which this Court holds it should not be), the framework as a whole remains intact.

22.25. While Section 16 of the 2016 Act primarily addresses the education of children with disabilities, this Court holds that its implications for the employment of teachers with disabilities are significant. Section 16(iii) requires educational institutions to "provide reasonable accommodation according to the individual's requirements." This obligation is not restricted to students, an inclusive educational



environment necessarily includes a teaching staff that models inclusion. A school that employs a teacher with disability and provides her with reasonable accommodation demonstrates to its students the lived reality of inclusion. The refusal to accommodate the Teacher undermines the very values of inclusive education that Section 16 seeks to promote.

22.26. Section 17(c) of the 2016 Act requires the appropriate Government and local authorities to "train and employ teachers, including teachers with disability who are qualified in sign language and Braille." This express mention of "teachers with disability" in the statute demonstrates beyond doubt that the legislature envisioned persons with disabilities as teachers in recognised educational institutions. A legislative scheme that expressly envisages teachers with disability/ies working in schools cannot be interpreted to permit those same schools to refuse accommodation to such teachers when they acquire disability.



22.27. The relationship between inclusive education (Section 16) and employment non-discrimination (Section 20/3(3)) is one of mutual reinforcement. A school that practises inclusion in its employment practices, by retaining and accommodating a teacher who acquired disability, also sends a powerful message to its students about the value of inclusion. Conversely, a school that excludes a teacher with disability from its workforce teaches its students, by example, that disability is a ground for exclusion. This Court holds that the spirit of Section 16 reinforces the non-discrimination obligation under Section 3(3) in the context of educational institutions.

22.28. CBSE's own guidelines and the National Curriculum Framework also emphasise the importance of inclusive education. Schools affiliated to CBSE are expected to create inclusive environments not merely in their student cohort but in their institutional culture as a whole. The School's claim to be "among the best schools in India for providing value-based education" sits uneasily with its treatment of the Teacher. Value-based



education includes the value of inclusion, dignity, and non-discrimination. The School cannot credibly claim to provide value-based education while simultaneously refusing to accommodate a teacher who became disabled in the act of trying to save one of its students.

22.29. The right to inclusive education is recognised in Article 24 of the UNCRPD, which requires States Parties to ensure an inclusive education system at all levels and throughout life. Article 24(3)(b) specifically provides that States shall facilitate learning of Braille, alternative script, augmentative and alternative modes, means and formats of communication and orientation and mobility skills, and facilitate peer support and mentoring. Article 24(4) requires States to take appropriate measures to employ teachers with disabilities, and to promote the training of professionals and staff working at all levels of education to develop competency in disability awareness. This international standard directly supports the position that teachers with disabilities must be employed and retained in educational institutions, including private ones recognised by the State.



22.30. The UNESCO Salamanca Statement and Framework for Action on Special Needs Education (1994), which India endorsed, laid the foundation for inclusive education globally. The Salamanca Statement holds that inclusion requires a whole-school approach, meaning that the institution as a whole, including its staff, infrastructure, and culture, must be oriented towards inclusion. A school whose staff includes a teacher with disability is living proof of inclusion. By contrast, a school that forces out a teacher with disability is institutionally hostile to the very concept.

22.31. The Right to Education Act, 2009 (RTE Act), read with the Disabilities Act of 2016, reinforces this position. While the RTE Act focuses on children's right to education, its spirit of non-discrimination and inclusion extends to the institutional environment. A CBSE-affiliated school is subject to both the RTE Act and the Disabilities Act of 2016. The combined effect of these instruments is to require the school to be an institution of inclusion in all its dimensions, for students, for staff, and for the community it serves.



22.32. This Court notes that the Petitioner-School's own claim, that it is "among the best schools in India for providing value-based education" and "among the few in the world to bring technology right into the classroom", sets a standard against which its treatment of the Teacher must be measured. A school that brings technology into the classroom surely has the digital infrastructure to facilitate online classes when a teacher is unable to attend physically. A school that claims value-based education must demonstrate those values in its treatment of a teacher who suffered permanent disability in the act of trying to save a student.

22.33. Under Section 16(viii) of the 2016 Act, educational institutions recognised by the Government are required to provide "transportation facilities to the children with disabilities and also the attendants of the children with disabilities having high support needs." If the statute requires accessible transportation to be provided for disabled students, it necessarily implies that the physical infrastructure of the school must be accessible and that the institution's operational framework



must accommodate disability-related requirements. This implication extends to staff as well, a school that must provide accessible transport for a disabled student cannot credibly claim it is incapable of arranging accessible transport for a disabled teacher.

22.34. This Court holds that: (a) the international disability rights framework under the UNCRPD and the Salamanca Statement reinforces the obligation of recognised private schools to employ and retain teachers with disabilities; (b) Section 17(c) of the 2016 Act expressly envisions teachers with disabilities working in recognised educational institutions; (c) the spirit of inclusive education under Section 16, read with the constitutional mandate of equality, requires the Petitioner-School to provide reasonable accommodation to the Teacher; and (d) the School's claims of institutional excellence are inconsistent with its treatment of the Teacher and cannot be used as a shield against compliance with the disability rights framework.



22.35. Applying the statutory analysis to the facts of this case: The Teacher has been employed by the Petitioner-School as a teacher since 2008. The School is a CBSE-recognised institution. She acquired disability on 22.8.2013 while employed at the School. Section 16(iii) of the Act requires the School to "provide reasonable accommodation according to the individual's requirements." The Teacher's individual requirements, as set out in her affidavit dated 06.06.2025, are modest: a ground-floor classroom, a disabled-friendly washroom, transport allowance, and flexible scheduling. These are precisely the "reasonable accommodation" contemplated by Section 16(iii). The School's failure to provide these is a direct violation of Section 16(iii) as applied to it as a recognised institution.

22.36. Section 16(ii) requires the School to "make building, campus and various facilities accessible." The School has not made its building accessible, there are no disabled-friendly washrooms accessible to wheelchair users on the relevant floors, no accessible transport is provided, and the classroom



assignment process does not accommodate wheelchair users' need for ground-floor access. The obligation under Section 16(ii) is ongoing: it is not discharged by paying hospital expenses or offering a reduced-pay alternative role. It requires active infrastructure compliance.

22.37. The Petitioner School argues that Section 16 creates obligations on the Government and not directly on the School. This Court has already rejected this argument above. There is an additional answer: even if Section 16's direct obligation rests on the Government, the Teacher's rights under Section 3(3) (universal non-discrimination), Section 21 (EOP obligation for every establishment), and the 2016 Act's accessibility provisions (Sections 44-46) apply directly and independently. Section 16 is one layer of the multi-layered statutory protection; the School's obligations do not begin and end with Section 16.

22.38. The Hon'ble Supreme Court in **Vikash Kumar's**<sup>27</sup> case at para 89 described the 2016 Act as requiring not only the State but also the private sector to take proactive steps. In the



specific context of educational institutions, this means that CBSE-affiliated schools must proactively implement the inclusive education mandates of Section 16, not wait for the Government to "endeavour" to enforce them. A school that claims to provide "value-based education" must demonstrate those values in its active compliance with the law that directly regulates the education sector it operates in.

22.39. Beyond the general duties under Sections 16 and 17, the CBSE-recognised Petitioner-School was obligated to provide reasonable accommodation to the Teacher as an employee specifically under Section 16(iii), to maintain an accessible campus under Section 16(ii), and to provide accessible transportation under Section 16(viii). The School's failure to comply with any of these obligations, across a period of over a decade since the Teacher's injury on 22.8.2013, is a sustained and continuing violation of the duties of educational institutions under the 2016 Act.

22.40. This Court answers Point No. 2 by holding that the duties of educational institutions under



Section 16 of the Disabilities Act of 2016 would apply not only to governmental institutions but also to private educational institutions that are funded or recognised by the appropriate Government, which includes CBSE-affiliated private schools like the Petitioner-School. Section 17 directly binds the appropriate Government, but its implementation encompasses recognised private schools.

23. ***Answer to Point No.3: Whether the restraint on discrimination in employment under Section 20 of the Disabilities Act of 2016 would apply to government establishment or would also apply to private establishment?***

23.1. Shri B.K. Sampath Kumar submitted that Section 20 of the Disabilities Act of 2016 expressly uses the phrase 'No Government establishment shall discriminate' in sub-section (1) and 'Every Government establishment shall provide reasonable accommodation' in sub-section (2), 'No Government establishment shall dispense with or reduce in rank' in sub-section (4). Every limb of Section 20 specifically targets 'Government establishments'. The Petitioner-School, being a private unaided educational institution, is not a 'Government



establishment' and therefore Section 20 does not apply to it.

23.2. He submitted that this reading is supported by the definition of 'Government establishment' in Section 2(k) of the Disabilities Act of 2016: 'Government establishment means a corporation established by or under a Central Act or State Act or an authority or a body owned or controlled or aided by the Government or a local authority or a Government company as defined in section 2 of the Companies Act, 2013 and includes a Department of the Government.' The Petitioner-School is not established by any statute, is not owned, controlled or aided by the Government, and is not a Government company. It therefore falls entirely outside the definition of 'Government establishment'.

23.3. He extracted sub-sections (1) to (5) of Section 20, which were also reproduced in the preceding paragraphs, and submitted that each and every sub-section of Section 20 expressly uses the words 'Government establishment',



demonstrating beyond any doubt that the provision applies only to government entities.

23.4. He submitted that the Commissioner's order directing the School to reinstate or compensate the Teacher was passed on the basis of Section 20, which has no application to the Petitioner. The order being based on a provision that does not apply to the Petitioner is fundamentally flawed and must be set aside.

23.5. He argued that even if Section 3(3) is relied upon as a universal non-discrimination provision, Section 3(3) is a general provision while Section 20 is a specific provision dealing with employment. The specific provision (Section 20) must prevail over the general provision (Section 3), and since Section 20 does not apply to private establishments, no employment-related obligations can be fastened on the Petitioner-School through the back-door of Section 3.

23.6. Smt. Jayna Kothari submitted that while Section 20 in its specific terms does use the expression 'Government establishment' in sub-sections (1), (2) and (4), this does not mean



that private establishments are free to discriminate against employees with disabilities. She submitted that Section 3(3) of the Disabilities Act of 2016 provides: 'No person with disability shall be discriminated on the ground of disability, unless it is shown that the impugned act or omission is a proportionate means of achieving a legitimate aim.' Section 3(3) is a universal anti-discrimination provision that applies to all persons and entities, private or public. Any private employer that discriminates against an employee on the ground of disability violates Section 3(3).

- 23.7. She submitted that the definition of 'discrimination' in Section 2(h) includes 'denial of reasonable accommodation'. Therefore, the termination of the Teacher's services or the failure to provide reasonable accommodation, both of which apply on the facts of this case, constitute 'discrimination' within the meaning of Section 2(h), which prohibition under Section 3(3) applies universally regardless of whether the employer is a government establishment or a private establishment.



23.8. She submitted that the Petitioner's argument that Section 20, being a specific provision, overrides the general provision in Section 3, is an inversion of the correct principle of statutory interpretation. Section 3 sets out the foundational constitutional-type guarantee of equality and non-discrimination, while Section 20 provides specific additional protections for government employees. The specific protections in Section 20 (such as placement in a supernumerary post) are over and above the general prohibition against discrimination in Section 3. Section 20 is not an exhaustive code but an augmentation of the general rights under Section 3.

23.9. She submitted that even if Section 20 is read as applying only to government establishments, the Teacher's case does not rest solely on Section 20. The Teacher's claim is founded on Section 3(3) (universal non-discrimination), Section 2(h) (discrimination includes denial of reasonable accommodation), Section 2(y) (definition of reasonable accommodation), and the constitutional guarantee under Articles 14, 19 and 21 of the Constitution. Even on this



basis, the Commissioner was justified in holding that the Teacher had been discriminated against and directing the School to make good the consequent injury.

23.10. She relied upon the decision in **Vikash Kumar's**<sup>27</sup> case wherein the Hon'ble Supreme Court held that individual dignity underlines the 2016 RPwD Act and that the Act imposes positive obligations to secure the realisation of rights, describing this as a 'watershed event' in providing a legal foundation for equality of opportunity. She also relied upon **Syed Bashir-Ud-Din Qadri vs. Nazir Ahmed Shah's**<sup>26</sup> case wherein the concept of reasonable accommodation was elaborated in the context of employment, holding that the doctrine of reasonable accommodation is applicable to enable a person with disability to use his or her abilities with the help of aids and adjustments.

23.11. She submitted that in the present case, the Teacher was injured whilst performing duties in the course of her employment, she fell whilst attempting (albeit in departure from the SOP) to save a student at risk. The disability is



therefore work-related. In such a situation, the obligation of the employer to provide reasonable accommodation is particularly compelling, regardless of whether the employer is a government body or a private institution.

23.12. She relied upon the affidavit filed by Respondent No.1 on 06.06.2025 wherein the Teacher specifically set out the modest and reasonable accommodations she required: a ground-floor wheelchair-accessible classroom; a disabled-friendly washroom; a transport allowance of Rs.15,000/- per month; flexible class timings with 15-minute breaks; an option to take online classes on days when unable to attend physically; first aid facility; and a reduction of working hours to four hours per day initially. She submitted that none of these requirements impose a 'disproportionate or undue burden' on the School within the meaning of Section 2(y).

23.13. The learned AGA submitted that Section 20 read with Section 3 of the Disabilities Act of 2016 creates a comprehensive non-discrimination framework in employment that



cannot be restricted to government establishments alone. He submitted that the State is duty-bound under Article 41 of the Constitution to secure the right to work and to public assistance in cases of disablement, and that giving effect to this constitutional directive necessarily requires the application of the non-discrimination mandate to private employers as well. Exempting private employers from the non-discrimination obligation would defeat the constitutional objective.

23.14. Point No. 3 requires this Court to decide a question of some constitutional and statutory significance: the reach of the non-discrimination mandate in employment under the Disabilities Act of 2016 as applied to private establishments.

23.15. The text of Section 20 is clear and unambiguous. Sub-section (1) says 'No Government establishment shall discriminate against any person with disability in any matter relating to employment.' Sub-section (2) says 'Every Government establishment shall provide reasonable accommodation and an appropriate



barrier free and conducive environment to employees with disability.' Sub-section (4) says 'No Government establishment shall dispense with or reduce in rank, an employee who acquires a disability during his or her service.' Every operative sub-section of Section 20 uses the expression 'Government establishment', not 'every establishment'.

23.16. This Court therefore holds that the specific protections in Section 20, including the specific obligation to not discriminate in employment matters, to provide reasonable accommodation and barrier-free environment, and to not reduce rank or dispense with an employee who acquires disability during service, apply expressly to Government establishments as defined in Section 2(k) of the Disabilities Act of 2016. The Petitioner-School, not being a 'Government establishment', is not directly bound by the specific mandates of Section 20.

23.17. However, this holding does not mean that the Petitioner-School is entirely free from any employment-related obligation towards persons



with disabilities. The analysis must proceed further, to Section 3(3) of the Act.

23.18. Section 3(3) of the Disabilities Act of 2016 provides: 'No person with disability shall be discriminated on the ground of disability, unless it is shown that the impugned act or omission is a proportionate means of achieving a legitimate aim.' This provision does not restrict itself to 'government establishments' or to 'every establishment'. It uses a completely universal language, 'no person with disability shall be discriminated.' The prohibition on discrimination is directed against any person or entity, government or private, that engages in discriminatory conduct. The word 'discriminated' takes its meaning from Section 2(h).

23.19. Section 2(h) defines 'discrimination in relation to disability' as: 'any distinction, exclusion, restriction on the basis of disability which is the purpose or effect of impairing or nullifying the recognition, enjoyment or exercise on an equal basis with others of all human rights and fundamental freedoms and includes all forms



of discrimination and denial of reasonable accommodation.' The definition of discrimination expressly includes 'denial of reasonable accommodation.' This is a universally applicable definition.

23.20. Section 2(y) defines 'reasonable accommodation' as: 'necessary and appropriate modification and adjustments, without imposing a disproportionate or undue burden in a particular case, to ensure to persons with disabilities the enjoyment or exercise of rights equally with others.'

23.21. Reading Sections 2(h), 2(y) and 3(3) together, the position that emerges is as follows: Every person and entity, whether a government establishment or a private establishment, is prohibited from discriminating against a person with disability. Discrimination includes denial of reasonable accommodation. Therefore, every employer, government or private, who denies reasonable accommodation to a person with disability commits an act of discrimination prohibited by Section 3(3).



23.22. This interpretation is consistent with the constitutional guarantee under Article 21 (right to life and dignity), Article 14 (equality before law) and Article 19 (freedom to practice one's occupation), all of which apply between citizens and non-state actors in certain contexts through indirect horizontal application. Employment is a sphere in which these guarantees are particularly relevant.

23.23. The Hon'ble Supreme Court in **Vikash Kumar's**<sup>27</sup> case held unequivocally that the 2016 RPwD Act extends its obligations to the private sector. At paragraph 89, the Hon'ble Supreme Court held: 'It is imperative that not only the Government but also the private sector takes proactive steps for the implementation of the 2016 RPwD Act.' This statement, coming from the highest court of the land, makes it clear that the 2016 Act imposes obligations on the private sector.

23.24. The decision in **Vikash Kumar vs. UPSC's**<sup>27</sup> was described by the Hon'ble Supreme Court itself as a "watershed" in disability jurisprudence. At para 53, the Hon'ble Supreme



Court held that the enactment of the 2016 RPwD Act constitutes a watershed event for it provides a legal foundation for equality of opportunity which enables the full and effective participation and inclusion of persons with disabilities in society. The watershed character of the legislation is directly relevant to Point 3: the 2016 Act does not merely reproduce the narrow anti-discrimination provisions of the 1995 Act (which were confined to government employment). It constitutes a fresh statutory commitment to equality that operates universally. The Petitioner's reliance on the 1995 Act framework and on decisions under that Act therefore fails to engage with the transformative character of the 2016 legislation.

23.25. In **Syed Bashir-Ud-Din Qadri's**<sup>26</sup> case, the Hon'ble Supreme Court, discussing the concept of reasonable accommodation, held that the object of the relevant legislation was to try and rehabilitate and accommodate persons suffering from physical disabilities to have equal opportunities of employment, and that the doctrine of reasonable accommodation



enables a handicapped person to use his or her abilities with the help of aids and adjustments. While this case was under a Jammu and Kashmir statute, the principle is of universal application.

23.26. Returning to the facts of this case, the Petitioner-School terminated the Teacher's services on 31.05.2015 after she suffered a 90% locomotor disability in the course of her employment on 22.08.2013. The School offered her an administrative support role at Rs.15,000/- per month, when her salary as a teacher was Rs.24,915/- per month. This offer involved both a change in the nature of duties (from teaching to administrative) and a reduction in pay. The Teacher refused this offer. The School then effectively treated the employment as terminated.

23.27. The question is whether the School's action, in not reinstating the Teacher in a teaching role with suitable accommodation and in effectively terminating her services, constituted 'discrimination' under Section 3(3) read with



Sections 2(h) and 2(y). This Court holds that it did, for the following reasons:

23.28. The Teacher acquired disability in the course of her employment. The School was therefore aware of her condition and the circumstances of her injury.

23.29. The Teacher consistently communicated her willingness to return to work and her request for reasonable accommodation. The affidavit filed on 06.06.2025 sets out modest and specific accommodations: a ground-floor classroom accessible by wheelchair, a disabled-friendly washroom, a transport allowance of Rs.15,000/- per month, 15-minute breaks every two periods, and an option to conduct online classes when physically unable to attend. These are not extravagant demands.

23.30. The Petitioner-School's response (filed on 30.06.2025) objected to these accommodations on grounds of timetable disruption, student learning quality and infrastructure limitations. However, none of these objections rise to the level of 'disproportionate or undue burden' within the meaning of Section 2(y). A



wheelchair accessible classroom, a disabled-friendly washroom, and a transport allowance are all feasible accommodations for any educational institution. The School's infrastructure objections are not credible in view of its claim to be 'among the best schools in India.'

23.31. The School's offer of an administrative role at a reduced salary of Rs.15,000/- per month, without any attempt to explore whether the Teacher could continue as a teacher with appropriate accommodation, amounted to a 'discrimination' and 'restriction' on the basis of 'disability' within the meaning of Section 2(h). It was not shown by the School that this change in role was 'a proportionate means of achieving a legitimate aim' as required by Section 3(3). The School's only concern was operational convenience, which is not a 'legitimate aim' in the constitutional sense.

23.32. This Court therefore holds that while Section 20 in its specific terms applies only to Government establishments, Section 3(3) read with Sections 2(h) and 2(y) of the Disabilities Act of 2016



creates a universal prohibition against discrimination (including denial of reasonable accommodation) that applies to all persons and establishments, including private establishments such as the Petitioner-School.

23.33. The present case involves a specific and particularly compelling category of disability-related employment dispute: the employee acquired disability not through any pre-existing condition but during the course of her employment, at the employer's own premises, in an act connected with her employment duties. This distinguishes the case from a situation where an employer hires a person with disability. Here, the employer is responsible, at minimum as the host of the premises and as the party whose student's conduct indirectly precipitated the events, for the circumstances that led to the Teacher's disability.

23.34. While Section 20 of the 2016 Act, by its express terms, applies only to Government establishments, the moral and legal context in which a workplace-acquired disability arises



places a higher burden on any employer, government or private, to provide accommodation. The common law doctrine of employers' liability for workplace injuries, the Employees Compensation Act, 1923, and the general principles of tortious liability all recognise that when an employee suffers injury at the workplace, the employer bears a heightened responsibility. The Disabilities Act of 2016 adds a statutory dimension to this responsibility: even if the employer is not liable under tort or compensation law, it is bound under Section 3(3) not to discriminate against the employee on account of the disability thus acquired.

23.35. The Petitioner contended that the Teacher's departure from the School's Standard Operating Procedure is relevant to any claim she might have. This Court accepts that the SOP breach is relevant to the question of contributory negligence in a tort claim. However, the SOP breach has no relevance to the disability discrimination analysis under Section 3(3). Once a disability has been acquired, whether through an act of heroism,



an act of negligence, or any other circumstance, the employer's obligation under the Disabilities Act of 2016 is triggered independently of how the disability arose. Section 3(3) does not exclude from its protection persons who acquired disability partly through their own actions.

23.36. The Petitioner's argument that the Teacher's bona fide intentions do not entitle her to claim compensation for actions contrary to the SOP conflates two distinct legal questions: (a) the question of whether the School is liable in tort or under employment law for the Teacher's injury (which is not before this Court in this writ petition); and (b) the question of whether the School is obligated under the Disabilities Act of 2016 to provide reasonable accommodation to the Teacher as a person with disability (which is the question this Court must answer). The two questions have different answers and must not be conflated.

23.37. The Employees Compensation Act, 1923 provides for payment of compensation to an employee who suffers injury resulting in



disablement in the course of employment. Whether or not the Teacher's claim falls within that Act (which this Court does not decide), the separate and independent obligation under the Disabilities Act of 2016 to provide reasonable accommodation remains unaffected. The School cannot discharge its disability rights obligations by pointing to payments it made voluntarily or otherwise under a different legal framework.

23.38. For completeness and for the purposes of the operative order, this Court records the following factual findings which are relevant to Point 3 and to the quantum of the award under Point 9. The accident involving the Teacher occurred on 22.8.2013 at the School's premises. The Teacher fell while attempting to reach the windowsill to save a student who had threatened to jump. The Teacher sustained traumatic paraplegia resulting in 90% PP1 locomotor disability. She was admitted to Fortis Hospital, Bannerghatta Road, where the School paid the entire hospital bill of Rs.6,03,603/-.

23.39. The Teacher did not report for teaching duties after the accident. The School continued paying



her salary from the date of the accident on 22.8.2013 to May 2015, a total of Rs.5,58,476/-, on humanitarian grounds. The total direct financial outlay by the School (hospital expenses + salary during absence) was Rs.11,62,079/-.

23.40. The separation letter was issued on 31.5.2015, approximately twenty-one months after the accident. Prior to the separation letter, the School, by an email dated 14.5.2015, had communicated to the Teacher that it had waited patiently for her to resume duty and that she could take on a retainer role for six months at her convenience. The Teacher did not respond to this email. She did not accept the retainer role offer. The School treated the employment as having ended on 31.5.2015.

23.41. Respondent No.1-Teacher submitted in her affidavit dated 06.06.2025 and through the submissions of her counsel that the termination of her services was effected without issuing any notice despite the School having assured her and her husband that her job was secure and that her services would not be terminated. She



submitted that the School had violated the principles of natural justice by terminating her services without notice and without a hearing. This Court notes that the original contract of service between the Teacher and the School stipulated that services could be terminated by giving three months' notice in writing or three months' salary in lieu of notice period. The Teacher's case is that even this contractual procedure was not followed.

23.42. Shri B.K. Sampath Kumar contended that the School was justified in treating the employment as ended because the Teacher had not discharged any teaching activities for a period of approximately 21 months between the accident on 22.8.2013 and the separation letter on 31.5.2015, and that as a private institution the School had the right to terminate the employment of a teacher who did not attend for such a prolonged period. This Court acknowledges that the School waited approximately 21 months before issuing the separation letter and continued paying the Teacher's salary throughout this period, conduct that was humane and commendable.



However, the right to terminate a teacher who is absent due to a disability directly acquired in the course of employment at the school's own premises is not legally equivalent to the right to terminate a teacher who is absent without cause. The Disabilities Act of 2016, through Section 3(3) read with Section 2(h) and Section 2(y), requires the employer to explore reasonable accommodation before treating the employment as ended on account of disability-related absence. This obligation was not discharged. The 21-month period of forbearance, while demonstrating goodwill, does not substitute for the statutory obligation to provide reasonable accommodation, which obligation arose when the Teacher first acquired the disability on 22.8.2013.

23.43. On the question of termination without notice: the Teacher was on what was essentially long-term leave of absence from 22.8.2013 on account of her disability. The School's email of 14.5.2015 offering a retainer role constituted a de facto intimation that it was not prepared to continue the Teacher in her original teaching role. When the Teacher did not respond, the



School treated the employment as ended on 31.5.2015. Whether this constitutes a valid termination under the contract is a question of service law appropriately addressed by a Labour Court or other competent tribunal, and this Court does not adjudicate it in writ jurisdiction. However, the manner in which the employment ended, without formal notice as per the contract, and without any assessment of whether the Teacher could continue with reasonable accommodation, is relevant to the discrimination analysis under Section 3(3) of the Disabilities Act of 2016. The failure to explore reasonable accommodation before effectively terminating the Teacher's services is itself an act of discrimination within the meaning of Section 2(h) of the Act.

23.44. This Court accordingly answers Point No. 3 by holding that Section 20 in its specific terms applies to Government establishments only. However, Section 3(3) read with Section 2(h) and Section 2(y) of the Disabilities Act of 2016 imposes a universal prohibition against discrimination on the ground of disability, including denial of reasonable accommodation,



which applies to both government and private establishments. The Petitioner-School, having denied reasonable accommodation to the Teacher, has violated Section 3(3) read with Section 2(h) of the Act.

24. **Answer to Point No.4: Whether the equal opportunity policy is required to be provided by both government and private establishments?**

24.1. Shri.B.K.Sampath Kumar submitted that Section 21 of the Disabilities Act of 2016, while using the expression 'every establishment', must be read in the context of the overall scheme of the Act, and particularly in light of the fact that the substantive obligations in Chapter 3 are directed at government establishments. He argued that a private school like the Petitioner was not required to maintain an equal opportunity policy under Section 21 unless it falls within the express ambit of establishments for which the Government has prescribed such a policy.

24.2. Smt.Jayna Kothari relied upon Section 21 and Rule 8 of the Rules of 2017. She submitted that Section 21(1) uses the words 'Every establishment shall notify equal opportunity



policy', the phrase 'every establishment' is unambiguous and admits of no exception. Rule 8(3) expressly applies to 'the equal opportunity policy of a private establishment having twenty or more employees'. Since the Petitioner-School clearly has more than twenty employees (it is a large educational institution), Rule 8(3) applies directly and imposes mandatory obligations on the School to have an equal opportunity policy containing, among other things, facility and amenity to be provided to persons with disabilities, a list of identified posts, provisions for assistive devices and barrier-free accessibility, and appointment of a liaison officer.

24.3. The Petitioner's argument that Section 21, while using the expression "every establishment", must be read down in the context of the overall statutory scheme, is rejected. Smt. Jayna Kothari is correct that the expression "every establishment" is unambiguous and that Rule 8(3) of the RPWD Rules, 2017 expressly identifies the obligations of private establishments with twenty or more employees. The analysis that follows



demonstrates why the plain statutory language compels this conclusion.

24.4. Section 21 of the Disabilities Act of 2016 reads as follows:

**21. Equal opportunity policy.**—(1) *Every establishment shall notify equal opportunity policy detailing measures proposed to be taken by it in pursuance of the provisions of this Chapter in the manner as may be prescribed by the Central Government.*

(2) *Every establishment shall register a copy of the said policy with the Chief Commissioner or the State Commissioner, as the case may be.*

24.5. The language of Section 21 is crystal clear. The provision uses the expression 'every establishment', not 'every government establishment'. The legislature, when it intended to restrict a provision to government establishments, used the specific expression 'Government establishment' as it did in Section 20. The deliberate use of 'every establishment', without any qualifier, in Section 21 demonstrates the unambiguous legislative intent to apply the equal opportunity policy obligation to all establishments, both government and private.



- 24.6. Rule 8 of the Rights of Persons with Disabilities Rules, 2017 makes this position even clearer. Rule 8(3) provides that the equal opportunity policy of a 'private establishment having twenty or more employees' shall specifically contain: (a) facility and amenity to be provided to persons with disabilities; (b) list of posts identified suitable for persons with disabilities; (c) the manner of selection of persons with disabilities, post-recruitment and pre-promotion training, preference in transfer and posting, special leave, preference in allotment of residential accommodation; (d) provisions for assistive devices, barrier-free accessibility; and (e) appointment of a liaison officer.
- 24.7. Rule 8(4) provides that the equal opportunity policy of a private establishment having less than twenty employees shall contain facilities and amenities to be provided to persons with disabilities. Thus, regardless of the size of the private establishment, it is required to have an equal opportunity policy under Rule 8.
- 24.8. The Petitioner-School has not placed on record any equal opportunity policy framed under



Section 21 read with Rule 8. The absence of such a policy is itself a violation of the statutory mandate. The Commissioner was therefore well within his jurisdiction to note this non-compliance and take corrective action in terms of Section 80 of the Act.

24.9. The argument that Section 21 must be read contextually in light of the overall scheme of Chapter 3 is without merit. The language of Section 21 is self-explanatory and creates an obligation on 'every establishment'. There is no ambiguity that would require contextual reading to narrow the plain meaning.

24.10. The equal opportunity policy (EOP) requirement under Section 21 of the Disabilities Act of 2016 represents a significant legislative innovation compared to the 1995 Act. The 1995 Act had no equivalent provision requiring establishments to formulate and publish an EOP. The enactment of Section 21 in the 2016 Act reflects the legislature's intent to move from a reactive model of disability rights (where persons with disabilities had to assert



rights case-by-case) to a proactive, institutionalised model of compliance.

24.11. The legislative purpose behind Section 21 is three-fold: (a) it creates institutional accountability by requiring every establishment to publicly commit to specific measures for inclusion of persons with disabilities; (b) it creates regulatory oversight by requiring the EOP to be registered with the Commissioner; and (c) it creates an evidence base for enforcement, if an establishment fails to comply with its own published EOP, the Commissioner can immediately identify the non-compliance without the need for a separate investigation.

24.12. Rule 8 of the Rights of Persons with Disabilities Rules, 2017 fleshes out the content requirements of the EOP. Rule 8(3) provides that the EOP of a private establishment having twenty or more employees shall contain: (a) facility and amenity to be provided to persons with disabilities; (b) list of posts identified suitable for persons with disabilities; (c) the manner of selection, post-recruitment and pre-



promotion training, preference in transfer and posting, special leave, preference in allotment of residential accommodation; (d) provisions for assistive devices, barrier-free accessibility; and (e) appointment of a liaison officer.

24.13. Rule 8(4) provides that even a private establishment with fewer than twenty employees must have an EOP specifying the facilities and amenities it provides to persons with disabilities.

24.14. The Petitioner-School is a large educational institution with teaching and non-teaching staff numbering well above twenty. It is therefore governed by Rule 8(3) and not merely Rule 8(4). The School was required to have, at a minimum, an EOP that identifies posts suitable for persons with disabilities, specifies the accommodations it would provide, includes provisions for assistive devices and barrier-free accessibility, and designates a liaison officer.

24.15. There is no evidence on record that the Petitioner-School has ever formulated, published, or registered an Equal Opportunity Policy as required under Section 21 read with



Rule 8. This failure is itself a violation of the Disabilities Act of 2016. If the School had a properly formulated EOP, identifying accessible classrooms, disabled-friendly washrooms, transport arrangements, flexible scheduling options for employees with disabilities, the Teacher's situation would likely never have arisen. The EOP mechanism exists precisely to prevent the kind of improvised and inadequate response that this case exemplifies.

24.16. The Petitioner's argument that Section 21 must be read "contextually" in light of the overall scheme of Chapter 3 is without merit. The canon of contextual interpretation applies where the plain meaning of a provision is ambiguous or leads to an absurd result. Section 21 uses the expression "every establishment", there is no ambiguity. Chapter 3 of the 2016 Act, which contains Sections 20 through 40, is titled "Employment" and its provisions operate at two levels: some provisions (like Section 20) are expressly restricted to Government establishments by their own language, while others (like Section 21) use universal language. There is no basis to read a restriction into



Section 21 that the legislature did not place there.

24.17. The UNCRPD, which India ratified in 2007 and which the 2016 Act implements, provides under Article 27(1)(h) that States Parties shall ensure that persons with disabilities are not subjected to discrimination and are provided with reasonable accommodations in the workplace. Article 27(1)(h) applies to both the public and private sectors. The EOP requirement under Section 21, read in light of India's UNCRPD obligations, must be interpreted to apply to all establishments, government and private alike.

24.18. This Court therefore makes the following specific findings: (a) the expression "every establishment" in Section 21 includes private establishments; (b) Rule 8(3) of the RPWD Rules 2017 expressly and unambiguously imposes mandatory EOP obligations on private establishments having twenty or more employees; (c) the Petitioner-School, having well over twenty employees, is squarely within Rule 8(3); (d) the School has not complied with Section 21 read with Rule 8(3); (e) the failure



to have an EOP is a separate and independent violation of the Disabilities Act of 2016; and (f) the School is directed, as part of the operative order, to frame, notify and register an EOP within six months of this order.

24.19. The concept of an equal opportunity policy for persons with disabilities finds its roots in Article 27 of the UNCRPD, which requires States Parties to take appropriate steps to promote employment of persons with disabilities in the private sector through appropriate policies and measures, including affirmative action programmes and incentives. India, having ratified the UNCRPD in 2007, is obligated to give effect to this requirement through its domestic law. Section 21 of the 2016 Act is the primary legislative mechanism through which India discharges this obligation in the employment context.

24.20. The National Policy on Persons with Disabilities, 2006 (referred to by the Petitioner) itself recognises the need for private sector participation in providing equal opportunities to persons with disabilities. While the Petitioner



cited Paragraph 50 of the National Policy to argue that an EOP can only be published after a dialogue between the Government and the private sector, a reading of the National Policy as a whole shows that it envisions progressive inclusion of the private sector in the disability rights framework. The 2016 Act is the legislative instrument through which this vision has been operationalised, and Section 21 of the Act directly creates the EOP obligation for private establishments.

24.21. The Petitioner's argument based on Paragraph 50 of the National Policy cannot override the plain text of Section 21 of the Disabilities Act of 2016. A subordinate policy document cannot limit the operation of a Parliamentary statute. When the legislature enacted Section 21 using the expression "every establishment", it superseded any prior policy guidance that may have suggested a more limited approach. The doctrine of implied repeal by statute of inconsistent policy guidance is well established.

24.22. Rule 8(3)(a) specifically requires the EOP to contain details of "facility and amenity to be



provided to the persons with disabilities to enable them to effectively discharge their duties in the establishment." This sub-rule is directly applicable to the Teacher's situation: the School was required to identify and publish the facilities and amenities it would provide to employees with disabilities to enable them to work. If the School had done this, it would have committed to providing accessible classrooms, accessible washrooms, transport arrangements, and flexible working options. Its failure to have an EOP is therefore not a mere technical non-compliance, it is a failure that directly contributed to the Teacher's inability to resume work after her disability.

24.23. Rule 8(3)(b) requires the EOP to contain "list of posts identified suitable for persons with disabilities in the establishment." A teaching post is a post that can be performed by a person in a wheelchair with appropriate accommodation, as demonstrated by teachers with mobility disabilities working in schools across the country and the world. The eminent professor Stephan Hawkins serves as an example for this. Had the School identified



teaching posts as suitable for persons with disabilities in its EOP (as it was required to do), its claim that the Teacher cannot continue as a teacher would be undermined by its own policy document.

24.24. Rule 8(3)(e) requires the appointment of a liaison officer to look after the recruitment of persons with disabilities and provisions of facilities and amenities for such employees. This provision creates an institutional point of responsibility, someone within the establishment who is accountable for ensuring that the disability rights framework is implemented. The absence of a liaison officer in the Petitioner-School means there was no internal champion for the Teacher's rights, no person tasked with exploring reasonable accommodation options, and no institutional accountability mechanism. This structural gap is a direct consequence of the School's failure to comply with Section 21 and Rule 8.

24.25. This Court also notes that Section 21(2) requires every establishment to register a copy of the EOP with the Chief Commissioner or the



State Commissioner. The Commissioner for Disabilities, the 2nd Respondent in this case, is empowered under Section 80 to monitor implementation of the Act's provisions. If the School had registered its EOP with the Commissioner, the Commissioner would have had a framework against which to assess the School's treatment of the Teacher. The absence of any EOP registration is itself an independent ground on which the Commissioner was entitled to find a violation and direct corrective action.

24.26. In the above background an assessment of what the Petitioner-School was specifically required to do under Section 21 read with Rule 8 of the RPWD Rules, 2017, and what it failed to do, is required to be made. This assessment is necessary to calibrate the operative directions and to give specific content to the general EOP obligation.

24.27. STEP 1, IDENTIFY POSTS: Rule 8(3)(b) required the School to prepare a list of posts identified as suitable for persons with disabilities. Teaching posts at Grades 6 and above are suitable for persons with physical



mobility disabilities who use wheelchairs, since teaching is an intellectual and communicative function. The School was required to identify such posts. Its failure to do so meant it had no published position on whether a wheelchair-using teacher could continue in service, leaving the determination to ad hoc management decisions which, in this case, were adverse to the Teacher.

24.28. STEP 2, SPECIFY ACCOMMODATIONS: Rule 8(3)(a) required the EOP to specify "facility and amenity to be provided to the persons with disabilities to enable them to effectively discharge their duties." The accommodations that the Teacher has requested in her affidavit, ground-floor classroom, accessible washroom, transport allowance, flexible scheduling, are precisely the kinds of facilities and amenities that must appear in an EOP. Had the School's EOP specified these, the Teacher would have had a clear contractual and statutory right to them upon acquiring disability, without needing to file a complaint before the Commissioner.



24.29. STEP 3, APPOINT LIAISON OFFICER: Rule 8(3)(e) required the School to appoint a liaison officer specifically tasked with the recruitment of persons with disabilities and the provision of facilities and amenities for employees with disabilities. The absence of such an officer meant that when the Teacher sought accommodation, there was no institutional point of contact with expertise in disability rights, no person empowered to facilitate the necessary adjustments, and no accountability mechanism for disability compliance. This institutional gap is a direct consequence of the School's failure to comply with Rule 8.

24.30. STEP 4, REGISTER WITH COMMISSIONER: Section 21(2) required the School to register its EOP with the State Commissioner. The Commissioner, the very authority before whom the Teacher filed her complaint, would have had the School's EOP on record if this had been done. The Commissioner could then have compared the School's actual treatment of the Teacher against its published commitments. The failure to register the EOP with the



Commissioner deprived the Commissioner of this important enforcement tool.

24.31. STEP 5, DISPLAY PUBLICLY: Rule 8(2) required the EOP to be displayed on the School's website or at conspicuous places on its premises. The Teacher, her colleagues, the students, and the parents should have been able to read the School's commitments to disability inclusion. The absence of any such display meant that the disability rights framework was invisible within the School's institutional life. This opacity allowed discriminatory practices to persist unchallenged.

24.32. The cumulative effect of all these failures is that the Petitioner-School had no institutional framework for addressing disability rights. It had no identified posts, no specified accommodations, no liaison officer, no registered policy, and no published commitments. The Teacher's experience, of being offered a demotion, of having her accommodation requests ignored, and of being effectively terminated, is the predictable consequence of this institutional vacuum.



Section 21 and Rule 8 exist precisely to prevent such institutional vacuums. The School's violation of these provisions is systematic and multi-faceted.

24.33. This Court notes that compliance with Section 21 and Rule 8 would not have been burdensome for the Petitioner-School. The School is a well-resourced institution charging significant fees. Preparing a two-page EOP, identifying accessible teaching posts, designating a staff member as Liaison Officer, and registering the policy with the Commissioner are administrative tasks well within the capacity of any school management team. The School's failure to do so cannot be attributed to financial or operational constraints, it reflects an institutional indifference to disability rights that this judgment must correct.

24.34. The chain of causation is clear: the School's failure to comply with Section 21 read with Rule 8 directly enabled the discriminatory treatment of the Teacher. Had the School complied, the Teacher's reinstatement with accommodation



would have been a policy matter, not a dispute. The statutory mandate for an EOP is not bureaucratic form-filling, it is a structural intervention designed to prevent precisely the kind of ad hoc and discriminatory response that occurred here.

24.35. This Court also notes the inter-play between the EOP obligation and constitutional rights. Under Article 14, unequal treatment requires justification. If a school has no EOP, there is no framework within which any differential treatment of an employee with disability can be assessed for rationality or proportionality. The absence of an EOP is itself an indication of the arbitrary and unarticulated manner in which the School exercised its discretion, exercising it by default (doing nothing) rather than by policy.

24.36. This court answers Point No. 4 by holding that the equal opportunity policy under Section 21 of the Disabilities Act of 2016 read with Rule 8 of the Rights of Persons with Disabilities Rules, 2017 is required to be provided by both government and private establishments. The Petitioner-School, being a private establishment



with more than twenty employees, is required to formulate and notify an equal opportunity policy under Section 21 read with Rule 8(3) of the Rules. The failure to do so constitutes a violation of the statutory mandate.

24.37. The equal opportunity policy under Section 21 read with Rule 8 of the RPWD Rules, 2017 is mandatory for every establishment including private establishments. The Petitioner-School's failure to have an EOP constitutes a standalone violation of the 2016 Act, separate from and in addition to the violations under Section 3(3) and Section 20. The Commissioner was therefore correct in treating this non-compliance as part of the overall violation of the Teacher's rights.

25. **Answer to Point No.5: Whether equality and non-discrimination as contained in Section 3 would apply to both government and private establishments?**

25.1. Shri.B.K.Sampath Kumar submitted that Section 3 primarily places obligations on the 'appropriate Government' to ensure that persons with disabilities enjoy rights equally with others and to take steps to utilise their



capacity by providing an appropriate environment. He argued that the obligation under Section 3 is primarily a State obligation and does not directly bind private entities.

25.2. Smt. Jayna Kothari submitted that Section 3(3) contains a universal and absolute prohibition: 'No person with disability shall be discriminated on the ground of disability, unless it is shown that the impugned act or omission is a proportionate means of achieving a legitimate aim.' This prohibition is not addressed to the State alone, it is addressed to the entire world. The natural reading of the provision is that nobody, government or private, may discriminate against a person with disability without demonstrating proportionality and legitimate aim. She relied upon decision **Vikash Kumar's**<sup>27</sup>, **In Re: PWD Rajasthan Judicial Services's**<sup>24</sup>, **Om Rathod's**<sup>22</sup>, **Kabir Paharia's**<sup>29</sup>, and **Jane Kaushik's**<sup>28</sup> in support of this submission.

25.3. This Court has carefully considered the submissions on Point 5. Shri.B.K.Sampath Kumar's argument that Section 3 places



obligations primarily on the appropriate Government, and does not directly bind private entities, is rejected. Smt.Jayna Kothari's submission that Section 3(3) contains a universal and absolute prohibition against discrimination, binding all persons and entities, private or public, is accepted, as the statutory text and constitutional underpinnings detailed below demonstrate.

25.4. Section 3 of the Disabilities Act of 2016 reads as follows:

**3. Equality and non-discrimination.**—(1) *The appropriate Government shall ensure that the persons with disabilities enjoy the right to equality, life with dignity and respect for his or her integrity equally with others.*

(2) *The appropriate Government shall take steps to utilise the capacity of persons with disabilities by providing appropriate environment.*

(3) *No person with disability shall be discriminated on the ground of disability, unless it is shown that the impugned act or omission is a proportionate means of achieving a legitimate aim.*

(4) *No person shall be deprived of his or her personal liberty only on the ground of disability.*

(5) *The appropriate Government shall take necessary steps to ensure reasonable accommodation for persons with disabilities.*



- 25.5. Sub-sections (1), (2) and (5) place affirmative obligations on 'the appropriate Government', these are state-directed obligations requiring the Government to ensure equality, create an appropriate environment, and take steps to ensure reasonable accommodation.
- 25.6. Sub-sections (3) and (4), however, are formulated differently. They do not address 'the appropriate Government', they use the passive/negative formulations 'No person with disability shall be discriminated' and 'No person shall be deprived of his or her personal liberty only on the ground of disability.' The prohibition in sub-section (3) is directed against discrimination by any person or entity, the prohibition is absolute and universal in its scope.
- 25.7. The critical phrase in Section 3(3) is 'unless it is shown that the impugned act or omission is a proportionate means of achieving a legitimate aim.' This phrase places the burden of justification on the person or entity that discriminates. If a private employer terminates or disadvantages an employee with disability



without showing that such action is a proportionate means of achieving a legitimate aim, the employer has committed discrimination prohibited by Section 3(3).

25.8. The Hon'ble Supreme Court in **Vikash Kumar's**<sup>27</sup> case interpreted the 2016 RPwD Act as a 'watershed event' that imposes positive obligations not only on the State but also on private entities. The Court elaborated the principle of reasonable accommodation and held that failure to provide such accommodation constitutes a breach of the non-discrimination norm under the Act.

25.9. In **Om Rathod vs. Director General of Health Services's**<sup>22</sup> case, the Hon'ble Apex Court held that a failure to create a conducive environment is a failure to provide reasonable accommodation. This principle applies to any employer, government or private, that fails to create an environment in which a person with disability can function effectively.

25.10. In **Kabir Paharia vs. National Medical Commission's**<sup>29</sup> case, the Hon'ble Supreme Court held that the constitutional promise of



equality is not merely formal but substantive, requiring the State and all authorities to take affirmative measures to ensure that persons with disability can meaningfully participate in all spheres of life including professional life. The Hon'ble Supreme Court specifically stated that reasonable accommodation is not a matter of charity but a fundamental right flowing from Articles 14, 16 and 21 of the Constitution.

25.11. **Jane Kaushik vs. Union of India's**<sup>28</sup> case, relied upon by Smt. Kothari, while primarily concerning the Transgender Persons (Protection of Rights) Act, 2019, articulates foundational principles of substantive equality and non-discrimination that are applicable across all contexts of marginalisation. The Hon'ble Supreme Court at para 51 held that 'rights cannot exist as standalone ideals devoid of implementation' and at para 66 held that discrimination also operates through omission, through silences, exclusions and failures to protect.

25.12. Section 3 of the Disabilities Act of 2016 is the statutory expression of the constitutional



guarantee of equality as applied to persons with disabilities. Article 14 of the Constitution guarantees equality before law and equal protection of law. Article 21 guarantees the right to life and personal liberty, which includes the right to live with dignity. Article 19(1)(g) guarantees the right to practise any profession or to carry on any occupation. The Teacher's rights under all three provisions are directly engaged in this case.

25.13. Article 14 has been interpreted by the Hon'ble Supreme Court to include the right against arbitrary discrimination. Treating an employee adversely, including by denying reasonable accommodation or effectively terminating service, solely because she acquired a disability in the course of employment constitutes arbitrary discrimination violating Article 14. The disability does not change the employee's professional qualifications or competence. The school's response, driven by operational convenience rather than any legitimate aim, fails the proportionality test under both Article 14 and Section 3(3) of the Act.



25.14. Article 21 has been consistently interpreted to include the right to livelihood. In the celebrated decision of **Olga Tellis vs. Bombay Municipal Corporation's**<sup>30</sup>, the Hon'ble Supreme Court held that the right to livelihood is an integral component of Article 21. The Teacher's livelihood as a teacher, a profession she trained for, practised for seven years, and is capable of continuing with reasonable accommodation, is protected under Article 21. The denial of reinstatement with reasonable accommodation amounts to an infringement of her right to livelihood.

25.15. The principle of substantive equality, as distinguished from formal equality, is the cornerstone of Article 14 in the context of disability. Formal equality would require treating all employees the same regardless of their disability. Substantive equality recognises that treating unequal persons equally leads to unequal outcomes, and that true equality requires differential treatment calibrated to individual needs. Section 3 of the 2016 Act embodies substantive equality, it does not

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<sup>30</sup> (1985) 3 SCC 545



merely prohibit discrimination but imposes a positive obligation to ensure that persons with disabilities enjoy rights "equally with others."

25.16. The burden-shifting mechanism in Section 3(3) is particularly significant. Section 3(3) provides that no person with disability shall be discriminated unless "it is shown that the impugned act or omission is a proportionate means of achieving a legitimate aim." The burden lies on the discriminating party, in this case, the Petitioner-School, to show proportionality and legitimate aim. The School has not discharged this burden. Its stated reasons, operational convenience, timetable disruption, concerns about teaching quality, do not constitute "legitimate aims" in the constitutional or statutory sense. A legitimate aim, in this context, would be something like safety, structural impossibility, or demonstrably disproportionate financial burden, none of which have been established.

25.17. The Hon'ble Supreme Court in **Vikash Kumar's**<sup>27</sup> case at paragraph 60 held: "At the heart of this case lies the principle of



reasonable accommodation. Individual dignity secures the 2016 RPwD Act. Intrinsic to its realisation is recognising the worth of every person as an equal member of society." This observation is directly applicable. The Teacher is a person of equal worth and equal dignity. The School's refusal to provide accessible infrastructure and flexible working arrangements treats her as less than a full member of the institution, precisely the kind of exclusion that Section 3 of the Act and Articles 14 and 21 of the Constitution jointly prohibit.

25.18. This Court finds and holds that: Section 3(3) of the Disabilities Act of 2016 contains a universal and self-executing prohibition against discrimination on the ground of disability. Unlike the affirmative obligations in sub-sections (1), (2) and (5) which are directed at the appropriate Government, the prohibition in sub-section (3) operates against all persons and all entities, government or private. No private employer may discriminate against an employee with disability unless it demonstrates that the impugned act or omission is a proportionate means of achieving a legitimate



aim. The Petitioner-School has failed to demonstrate any such proportionality or legitimate aim. It has therefore violated Section 3(3) of the Act, which violation is actionable before the Commissioner and before this Court.

25.19. The question is whether the School's conduct constitutes "discrimination on the ground of disability" under Section 3(3), and if so, whether the School has demonstrated that such conduct is "a proportionate means of achieving a legitimate aim."

25.20. The word "discriminated" in Section 3(3) takes its meaning from Section 2(h) of the Act, which defines discrimination to mean "any distinction, exclusion, restriction on the basis of disability which is the purpose or effect of impairing or nullifying the recognition, enjoyment or exercise on an equal basis with others of all human rights and fundamental freedoms... and includes all forms of discrimination and denial of reasonable accommodation." The conjunctive phrase "purpose or effect" is crucial: the School need not have consciously intended to discriminate against the Teacher. If the effect



of its actions was to impair or nullify her enjoyment of rights on an equal basis with others, it constitutes discrimination.

25.21. In the present case, the School's actions had both the purpose and the effect of impairing the Teacher's rights. The purpose element: the School's offer of a reduced-pay administrative role, when the Teacher asked to resume teaching, was explicitly premised on her disability, on the assumption that she could not discharge teaching functions due to her physical condition. This is a distinction made explicitly on the basis of disability. The effect element: the Teacher was effectively excluded from her profession, denied her salary, and denied the opportunity to use her professional skills, all as a direct consequence of her disability-related absence and the School's failure to accommodate her.

25.22. On the proportionality test under Section 3(3): the Petitioner must show that its conduct was "a proportionate means of achieving a legitimate aim." What was the School's aim? It was to manage its operations efficiently and



maintain teaching quality for its students. This is a legitimate aim in principle. However, the means chosen, refusing to provide accessible infrastructure and effectively terminating the Teacher's services, were not proportionate to that aim. A proportionate response would have been to explore and provide the specific accommodations detailed in the Teacher's affidavit: a ground-floor classroom (already available), a disabled-friendly washroom (mandated by law for a public building), a transport allowance (modest cost), and flexible scheduling (minor timetable adjustment). None of these would have materially compromised the School's ability to deliver quality education.

25.23. The proportionality analysis under Section 3(3) imports the same test that courts apply under Article 14 of the Constitution. The Hon'ble Supreme Court has consistently held that a discriminatory classification is unconstitutional unless it passes the twin tests of (a) an intelligible differentia and (b) a rational nexus between the differentia and the objective sought to be achieved. Here, the differentia is the Teacher's disability. The stated objective is



maintaining teaching quality. There is no rational nexus between these two: a wheelchair-using teacher, given accessible infrastructure, is no less capable of delivering quality education than a mobile teacher. The school's position therefore fails both the constitutional test under Article 14 and the statutory test under Section 3(3).

25.24. The concept of "indirect discrimination" is also relevant here. Even if the School's conduct appears facially neutral, it did not explicitly say "we will not employ you because you are disabled", the structural barriers it maintained (inaccessible campus, no accessible washrooms, rigid timetable, no transport accommodation) have the effect of disproportionately disadvantaging the Teacher as a person with disability. As the Hon'ble Supreme Court held in **In Re: Recruitment of PWD Candidates in Rajasthan Judicial Services's**<sup>24</sup> case at paragraph 43, the principle of indirect discrimination requires courts to look beyond the surface of facially neutral rules or practices to examine their



disproportionate impact on persons with disabilities.

25.25. This Court therefore answers Point No. 5 by holding that (a) Section 3(3) applies universally to all persons and entities including private establishments; (b) the Petitioner-School's conduct, both its acts and its omissions, constitutes discrimination on the ground of disability within the meaning of Section 3(3) read with Section 2(h); (c) the School has not demonstrated that its conduct was a proportionate means of achieving a legitimate aim; (d) the proportionality test under Section 3(3) is failed because accessible alternatives were available and feasible; and (e) indirect discrimination through structural barriers is as actionable as direct discrimination under the 2016 Act.

25.26. The proportionality test under Section 3(3) is rigorous. It requires the Petitioner-School to demonstrate not merely that its conduct served some general institutional interest, but that the specific conduct was a proportionate means of achieving a specific legitimate aim. This Court



applies the proportionality framework to the four key aspects of the School's conduct: (a) the failure to provide accessible infrastructure; (b) the offer of a reduced-pay administrative role; (c) the failure to respond to accommodation requests; and (d) the effective termination of service.

25.27. FAILURE TO PROVIDE ACCESSIBLE INFRASTRUCTURE: The School's claimed aim is efficient school management and teaching quality. Providing a ground-floor classroom and an accessible washroom does not impede efficient school management or compromise teaching quality. The cost is minimal. The proportionality between this minimal cost and the Teacher's fundamental right to employment and dignity is overwhelmingly in the Teacher's favour. This conduct fails the proportionality test.

25.28. OFFER OF REDUCED-PAY ADMINISTRATIVE ROLE: The School's claimed aim is matching the Teacher to a role she can physically perform. However, the School never conducted any assessment of whether the Teacher could



perform teaching functions with accommodation. It assumed, without evidence, that she could not teach. Moreover, the offer to reduce her salary from Rs.24,915 to Rs.15,000 per month constitutes a reduction in remuneration on the ground of disability, precisely what Section 20 prohibits for Government establishments and what Section 3(3) prohibits universally. Even if an alternative role were appropriate, it must carry the same pay scale and service benefits. The School's offer failed this basic requirement.

25.29. FAILURE TO RESPOND TO ACCOMMODATION REQUESTS: The Teacher's affidavit of 06.06.2025 sets out eight specific, modest, and individually calibrated accommodations. The School's response objected to each on grounds of operational inconvenience. However, Section 2(y) defines reasonable accommodation as measures "without imposing a disproportionate or undue burden." The School has provided no financial analysis, no expert assessment of operational impact, and no evidence of any genuine attempt to find workable solutions. Its objections are conclusory and unsubstantiated.



The burden under Section 2(y) lies on the employer to demonstrate undue hardship, this burden has not been discharged.

25.30. EFFECTIVE TERMINATION OF SERVICE: The School argues that the Teacher's 21-month absence justified treating the employment as ended. However, as this Court has held under Point 3, the Teacher's absence was disability-related, and the Disabilities Act of 2016 requires the employer to explore reasonable accommodation before treating disability-related absence as a ground for termination. The School did not explore reasonable accommodation, it offered a demotion. When the Teacher refused the demotion, the School treated the employment as having lapsed. This sequence is not a proportionate response to a legitimate aim. It is discrimination by orchestration, creating conditions in which the disabled employee has no viable option but to leave.

25.31. SECTION 3(3) AND THE DUTY TO JUSTIFY: The structure of Section 3(3), which prohibits discrimination "unless it is shown that the



impugned act or omission is a proportionate means of achieving a legitimate aim", places an affirmative evidential burden on the discriminating party. The Petitioner-School has not led any evidence before the Commissioner or before this Court demonstrating that its conduct was proportionate to any legitimate aim. Its submissions are entirely negative in character, denying liability, questioning jurisdiction, and citing technical statutory arguments. It has not affirmatively demonstrated proportionality. In the absence of such a demonstration, the presumption under Section 3(3) operates against it.

25.32. The Hon'ble Supreme Court in **Kabir Paharia vs. National Medical Commission's**<sup>29</sup> case held that "reasonable accommodation is not a matter of charity but a fundamental right flowing from Articles 14, 16 and 21 of our Constitution." When the Court characterises reasonable accommodation as a fundamental right, it necessarily implies that the denial of such accommodation is a violation of fundamental rights, not merely a statutory breach. The Teacher's rights under Articles 14,



19(1)(g) and 21 of the Constitution were violated by the School's conduct. This constitutional violation reinforces and runs alongside the statutory violation under Section 3(3) of the 2016 Act.

25.33. The proportionality test under Section 3(3) requires the Petitioner-School to demonstrate three things: (a) that it had a legitimate aim; (b) that its conduct was a suitable means of achieving that aim; and (c) that there was no less restrictive alternative. This Court has already found (under Point 5.C) that the School fails all three limbs.

25.34. LEGITIMATE AIM: The School has stated its aims as: (i) ensuring teaching quality for students; (ii) maintaining timetable efficiency; and (iii) not incurring additional expenditure. Of these, only (i) can be a legitimate aim in the constitutional sense. Timetable efficiency and cost saving are operational preferences, not constitutional aims. Even (i), teaching quality, is a legitimate aim only if the evidence shows that accommodating the Teacher would actually harm teaching quality, which it does not. A



qualified teacher in a wheelchair, teaching from an accessible ground-floor classroom with a 15-minute break between periods, does not self-evidently harm teaching quality. The School has placed no evidence of this.

25.35. The Hon'ble Supreme Court in **Vikash Kumar's**<sup>27</sup> case at para 65 held that the principle of reasonable accommodation "postulates that conditions which exclude the disabled from full and effective participation must give way to an accommodative society which accepts difference." The School's rigidity, its refusal to adjust any aspect of its institutional operations to accommodate the Teacher, is precisely the "exclusionary condition" that the Act requires to "give way." Institutional convenience cannot defeat a statutory and constitutional mandate. Section 3(3)'s burden is on the School to justify its conduct, and that burden is not discharged by invoking general management preferences.

25.36. The argument that other teachers' interests and students' interests must be balanced against the Teacher's rights. This balancing



argument is legally flawed. The Disabilities Act of 2016 does not contemplate a balancing of the rights of persons with disabilities against the operational preferences of employers. Rights under Section 3(3) are not weighed against convenience, they are subject only to the narrow justification of proportionality and legitimate aim, which must be proven affirmatively by the discriminating party. The School has not proven it. The balancing exercise the Petitioner invites this Court to undertake is contrary to the statutory framework and is rejected.

25.37. This Court therefore holds that (a) the proportionality test under Section 3(3) has been applied to each specific aspect of the School's conduct and each fails the test; (b) the School has not discharged the evidential burden of demonstrating legitimate aim and proportionality; (c) the denial of reasonable accommodation constitutes a violation of the Teacher's fundamental rights under Articles 14, 19(1)(g) and 21 of the Constitution; (d) indirect discrimination through structural barriers and institutional inaction is actionable



under Section 3(3); and (e) these constitutional and statutory violations jointly support the Commissioner's direction and this Court's dismissal of the writ petition.

25.38. This Court answers Point No. 5 by holding that Section 3(3) of the Disabilities Act of 2016 contains a universal and absolute prohibition against discrimination on the ground of disability, which applies to all persons and establishments, both government and private. The obligation under sub-sections (1), (2) and (5) of Section 3 is placed on the appropriate Government. However, the prohibition in Section 3(3) binds everyone. The Petitioner-School, as a private establishment, is bound by Section 3(3) and cannot discriminate against the Teacher on the ground of her disability.

26. ***Answer to Point No.6: Whether the 'public building' defined under subsection (w) of Section 2 of the Disabilities Act of 2016 would mean only a government building or include a private building used for public purposes and public access?***

26.1. Shri B.K. Sampath Kumar did not make specific arguments on this Point, having directed his submissions more at the overall question of the



Act's applicability to private institutions. However, his general submission that private unaided institutions are not bound by the Act's requirements would extend to the public building definition as well.

26.2. Smt. Jayna Kothari submitted that Section 2(w) of the Disabilities Act of 2016 expressly defines 'public building' to mean 'a Government or private building, used or accessed by the public at large, including a building used for educational or vocational purposes.' She submitted that the Petitioner-School is a private building used for educational purposes and accessed by students, teaching and non-teaching staff, and parents, it is therefore undeniably a 'public building' within the meaning of Section 2(w). Consequently, the School is required to comply with all accessibility norms applicable to public buildings under the Act, including those under Sections 40, 44, 45 and 46.

26.3. This Court has carefully considered the submissions on Point 6. Although Shri B.K. Sampath Kumar did not make specific



arguments on this Point, his general submission that private unaided institutions are not bound by the Act extends implicitly to the public building classification.

26.4. Section 2(w) of the Disabilities Act of 2016 defines 'public building' as follows:

*(w) 'public building' means a Government or private building, used or accessed by the public at large, including a building used for educational or vocational purposes, workplace, commercial activities, public utilities, religious, cultural, leisure or recreational activities, medical or health services, law enforcement agencies, reformatories or judicial foras, railway stations or platforms, roadways bus stands or terminus, airports or waterways;*

26.5. The definition of 'public building' under Section 2(w) leaves no room for doubt. It expressly includes:

26.5.1. 'A Government or private building', private buildings are expressly included.

26.5.2. Buildings 'used or accessed by the public at large', the School is accessed by students, staff and parents, all members of the public.

26.5.3. Buildings 'used for educational or vocational purposes', a school is



quintessentially a building used for educational purposes.

- 26.6. All three criteria are satisfied in respect of the Petitioner-School. The School building is a 'public building' within the meaning of Section 2(w) of the Disabilities Act of 2016 without any shadow of a doubt.
- 26.7. This classification has significant consequences. Sections 40, 44, 45 and 46 of the Act deal with accessibility standards for public buildings:
- 26.8. Section 40 requires the Central Government to formulate rules to ensure accessibility for persons with disabilities in the built environment.
- 26.9. Section 44(1) states that no establishment shall be granted permission to build any structure if the building plan does not adhere to the accessibility rules formulated under Section 40.
- 26.10. Section 44(2) states that no establishment shall be issued a certificate of completion or allowed to take occupation of a building unless it has adhered to the accessibility rules.



- 26.11. Section 45 requires all existing public buildings to be made accessible within five years from the date of notification of accessibility rules.
- 26.12. Section 46 requires service providers, whether Government or private, to provide services in accordance with the accessibility rules within two years from the date of notification.
- 26.13. These provisions apply to all public buildings including the Petitioner-School. The School is obligated to ensure that its buildings, campus and facilities are accessible to persons with disabilities, including its employees with disabilities such as the Teacher.
- 26.14. In **Rajive Raturi vs. Union of India's**<sup>23</sup> case, the Hon'ble Apex Court held that the right to accessibility is a foundational component of the fundamental rights framework. The Court emphasised a dual approach: (a) retrofitting existing infrastructure to make it accessible; and (b) mandating that all future infrastructure is designed with universal accessibility. This duty applies to all public buildings, including private educational institutions.



26.15. In **Rajive Raturi vs. Union of India's**<sup>23</sup> case, the Hon'ble Supreme Court articulated a specifically two-pronged approach to accessibility: (a) retrofitting existing public buildings and infrastructure to remove barriers and make them accessible; and (b) mandating that all new construction and future infrastructure is designed on universal design principles from the outset. This two-pronged approach applies directly to the Petitioner-School. First, the School must retrofit its existing building, installing accessible washrooms, ramps, accessible classroom furniture, and accessible bus services. Second, any future construction or expansion of the School must comply with the Harmonised Guidelines, 2021 from inception. The twin obligations of retrofit and universal design are not sequential, both are immediate statutory and constitutional requirements.

26.16. The classification of the Petitioner-School's building as a "public building" under Section 2(w) of the Disabilities Act of 2016 has far-reaching legal consequences. It is not merely a definitional exercise, it triggers a



comprehensive set of statutory obligations under Sections 40, 44, 45 and 46 of the Act, the Harmonised Guidelines and Space Standards for Barrier Free Built Environment, 2021 issued by the Ministry of Housing and Urban Affairs, and the applicable accessibility standards under the National Building Code of India.

26.17. Section 40 of the 2016 Act requires the Central Government to formulate rules for ensuring accessibility for persons with disabilities across five domains: the built environment, transportation, information and communication technology, consumer products, and services. The Harmonised Guidelines, 2021 issued under Section 40 lay down detailed accessibility standards for public buildings including ramp gradients, door widths, corridor clearances, accessible toilet dimensions, lift specifications, and signage requirements. These standards are legally binding on all public buildings, including the Petitioner-School.

26.18. Section 44 of the 2016 Act provides that no establishment shall be granted permission to



build any structure if the building plan does not adhere to the rules under Section 40, and no certificate of completion shall be issued unless such adherence is demonstrated. This means that any new construction or major renovation at the Petitioner-School must incorporate full accessibility compliance from the inception stage. It is not permissible for the School to seek building permissions or completion certificates while its premises remain inaccessible.

26.19. Section 45 of the 2016 Act requires that all existing public buildings be made accessible within a period not exceeding five years from the date of notification of the accessibility rules. The accessibility rules under Section 40 have been notified. The five-year compliance window has therefore been running. The Petitioner-School, as an existing public building, is already in a period where it should have achieved or be actively achieving accessibility compliance. The School's submission that it does not have accessible facilities cannot be treated as a permanent or acceptable state, it is a violation of the statutory mandate.



26.20. Section 46 of the 2016 Act requires service providers, whether Government or private, to provide services in accordance with the accessibility rules within two years of notification. An educational institution is a "service provider" for the purposes of Section 46, it provides the service of education. The School's failure to make its services accessible to persons with disabilities within the prescribed timeframe constitutes a violation of Section 46.

26.21. In **Rajive Raturi vs. Union of India's**<sup>23</sup> case, the Hon'ble Supreme Court held that the right to accessibility is foundational and indispensable to the realisation of the fundamental rights of persons with disabilities, and that the State and all authorities are under a positive obligation to take proactive steps to secure accessibility. The Court articulated a dual obligation: (a) retrofitting existing infrastructure to make it accessible; and (b) mandating that all future infrastructure is designed in accordance with universal design principles. Both obligations apply to the Petitioner-School.



26.22. The specific accessibility failures of the Petitioner-School that are relevant to this case include: (a) absence of wheelchair-accessible school buses or transport arrangements; (b) absence of disabled-friendly washrooms accessible to wheelchair users; (c) absence of flexible classroom arrangements on the ground floor for wheelchair-using staff; and (d) absence of first aid facilities meeting disability-related medical requirements. Each of these failures constitutes a breach of the public building accessibility obligations under Sections 40, 44, 45 and 46 of the Act.

26.23. This Court therefore holds that: (a) the Petitioner-School's building is a "public building" within the meaning of Section 2(w) of the Disabilities Act of 2016; (b) all accessibility obligations under Sections 40, 44, 45 and 46 and the Harmonised Guidelines, 2021 apply to the School; (c) the School is in violation of these obligations; and (d) the School is directed, as part of the operative order and SOP, to conduct an accessibility audit and implement the required measures within the timelines set out therein.



26.24. Having established that the Petitioner-School's building is a "public building" within the meaning of Section 2(w) and that it is subject to the accessibility obligations under Sections 40, 44, 45 and 46, this Court now examines the specific accessibility failures of the School as disclosed in the record and their legal consequences.

26.25. **ABSENCE OF WHEELCHAIR-ACCESSIBLE TRANSPORT:** The School's response to the Teacher's accommodation affidavit reveals that its school buses are not low-floored and wheelchair-accessible. This is a violation of Section 46 of the 2016 Act, which requires service providers, whether government or private, to provide services in accordance with the accessibility rules within two years of notification. Transport services provided to teachers and students are "services" for the purposes of Section 46. The School is required to either retrofit existing buses or contract for accessible transport or provide a transport allowance to enable teachers with mobility disabilities to use wheelchair-accessible hired vehicles.



26.26. ABSENCE OF DISABLED-FRIENDLY WASHROOMS: The Teacher's affidavit states she requires access to a restroom facility for catheter changes every three hours. The absence of a disabled-friendly washroom accessible to wheelchair users is a clear violation of the accessibility standards applicable to public buildings. The Harmonised Guidelines and Space Standards for Barrier Free Built Environment, 2021, issued under Section 40 of the Act, prescribe detailed specifications for accessible toilets in public buildings including educational institutions. An accessible toilet with grab bars, adequate turning radius, and a lowered basin is not an optional luxury, it is a basic dignity requirement. Its absence in the School is inexcusable.

26.27. ABSENCE OF RAMP/LIFT ACCESS TO ALL FLOORS: The Teacher requires that her classes be assigned on the ground floor since she uses a wheelchair. This is a modest and sensible accommodation. However, it underscores a broader accessibility deficit: if the School had proper ramp or lift access to all floors of its



multi-floor building, the Teacher could teach on any floor, not just the ground floor. The requirement for a ground-floor classroom is itself a symptom of the School's failure to make its building fully accessible.

26.28. **WINDOW SAFETY:** The incident that caused the Teacher's disability arose, in part, because there were no protective grills on the windows of the school building, allowing a student to step onto the windowsill. This structural deficiency contributed directly to the chain of events that led to the Teacher's injury. The absence of safety measures in the school building is not merely a matter of negligence, it also implicates the school's obligations under the Harmonised Guidelines and applicable safety codes. This Court does not adjudicate negligence liability in this writ petition, but records that the school's structural inadequacies were causally connected to the events of 22.8.2013.

26.29. **CONSEQUENCES OF NON-COMPLIANCE WITH ACCESSIBILITY NORMS:** Under Section 44(2) of the 2016 Act, no establishment shall be



issued a certificate of completion or allowed to take occupation of a building unless it has adhered to the accessibility rules under Section 40. Any future construction or expansion of the School's building must incorporate full accessibility compliance. The School cannot expand, renovate, or occupy new structures without first ensuring that accessibility standards are met. This Court directs, as part of the operative order and SOP, that the School obtain an accessibility compliance certificate before undertaking any new construction or major renovation.

26.30. THE RIGHT TO ACCESSIBILITY AS A FUNDAMENTAL RIGHT: The Hon'ble Supreme Court in **Rajive Raturi vs. Union of India's**<sup>23</sup> case held that the right to accessibility is foundational to the realisation of the fundamental rights of persons with disabilities. The Hon'ble Supreme Court held that without accessible infrastructure, services, and systems, persons with disabilities are effectively excluded from participation in essential facets of life including education, employment, healthcare, and civic



engagement. The inaccessibility of the School's premises is therefore not merely a technical statutory violation, it is a continuing infringement of the Teacher's fundamental rights under Articles 14, 19(1)(g) and 21 of the Constitution.

26.31. This Court answers holds that the School's building is a public building within Section 2(w). The School is in violation of Sections 40, 44, 45 and 46 of the Act and the Harmonised Guidelines, 2021. This violation is not a mere procedural deficiency, it has directly contributed to the Teacher's inability to resume her profession. The School is directed to conduct an accessibility audit and implement the required modifications within the timelines set out in the operative order and SOP.

26.32. Having classified the Petitioner-School's building as a "public building" and identified the specific accessibility failures, this Court now sets out the specific statutory obligations and the compliance roadmap. This is necessary because the operative order must be specific and actionable, and because the SOP issued as



part of this judgment must give concrete guidance to all similar establishments.

26.33. THE HARMONISED GUIDELINES, 2021: The Ministry of Housing and Urban Affairs issued the Harmonised Guidelines and Space Standards for Barrier Free Built Environment for Persons with Disability and Elderly Persons, 2021 (the "Harmonised Guidelines") under Section 40 of the 2016 Act. These Guidelines are legally binding on all public buildings including private educational institutions. The key requirements under the Harmonised Guidelines relevant to the Petitioner-School include: (a) Entry approaches with ramps of maximum gradient 1:12 or 1:15; (b) Accessible parking reserved for persons with disabilities with signage; (c) Accessible routes of minimum 1500mm clear width throughout the building; (d) At least one accessible toilet per floor used by staff or students, meeting detailed specifications; (e) Accessible lift with minimum cab dimensions 1100mm x 1400mm, Braille buttons, audio announcements, and low-level controls; (f) Accessible drinking water points at



maximum 900mm height; (g) Tactile flooring and Braille/high contrast signage.

26.34. EMERGENCY EVACUATION FOR PERSONS WITH DISABILITIES: Public buildings are required under the Harmonised Guidelines and fire safety regulations to have emergency evacuation plans specifically addressing the needs of persons with disabilities. This includes: (a) designated evacuation chairs or equivalent equipment; (b) trained evacuation assistants for persons with mobility disabilities; (c) Areas of Rescue Assistance (ARAs) on each floor for persons unable to use staircases; and (d) fire drills that include scenarios involving persons with disabilities. The Petitioner-School is required to implement these measures. This requirement is particularly significant given that the incident of 22.8.2013, which involved a person on a windowsill, a fall, and a resulting severe spinal injury, highlights the importance of having proper safety and emergency infrastructure.

26.35. CLASSROOM ACCESSIBILITY: Under the Harmonised Guidelines, at least one



workstation in each classroom must be accessible to a wheelchair user. This means the desk or table must have sufficient knee clearance (minimum 700mm height, 600mm depth) and the classroom must have sufficient turning radius (minimum 1500mm diameter) for a wheelchair. In practice, this means assigning the Teacher a classroom where her wheelchair can manoeuvre freely. Given that the Teacher has her own wheelchair and personal attendant, the School is only required to ensure the classroom itself is physically accessible, not to purchase or provide mobility aids.

26.36. ACCESSIBLE WASHROOMS: The Harmonised Guidelines specify detailed requirements for accessible toilets in public buildings, including: minimum floor space of 1500mm x 2000mm; outward-opening or sliding door with minimum 900mm clear width; L-shaped grab bars adjacent to the WC on one side; wash basin at 700-750mm height; lever-type taps; non-slip floor tiles; and a low mirror. The provision of such a toilet on at least one floor used by staff is mandatory for any public building. The



School's failure to have a disabled-friendly washroom is therefore a violation of the Harmonised Guidelines, which is itself a violation of Section 40 of the 2016 Act.

26.37. **TRANSPORT ACCESSIBILITY:** Section 46 of the 2016 Act requires service providers to provide services in accordance with accessibility rules. The School provides transport services to its students and staff. Its buses are not wheelchair-accessible. The School is required to either retrofit existing buses or contract for wheelchair-accessible vehicles, or provide a transport allowance to employees with mobility disabilities. The Teacher's requested transport allowance of Rs.15,000 per month is a reasonable alternative to providing accessible buses, and the School is required to provide it.

26.38. **NEW CONSTRUCTION AND COMPLIANCE CERTIFICATES:** Under Section 44 of the 2016 Act, no establishment may be granted permission to build any new structure or issued a completion certificate unless the building plan and the completed building adhere to the accessibility rules under Section 40. The School



is directed to ensure that any future construction or renovation, classrooms, blocks, extensions, or any other structures, must be accessibility-compliant from inception. Building permission applications must include accessibility compliance documentation. This direction is necessary to prevent the perpetuation of inaccessible infrastructure.

26.39. ANNUAL ACCESSIBILITY AUDIT: The SOP issued as part of this judgment requires all public buildings, including the Petitioner-School, to conduct annual accessibility audits by a qualified accessibility consultant empanelled under the relevant government panel. The findings of such audits must be reported to the management, to the Liaison Officer (once appointed), and to the State Commissioner for Persons with Disabilities. Non-compliance findings must be remedied within the timeframe set by the consultant. This creates a continuing obligation of institutional self-monitoring that goes beyond one-time compliance.



26.40. Having established the legal framework, this Court now applies it directly to the Petitioner-School's specific infrastructure failures. The Teacher's affidavit dated 06.06.2025 identifies the following specific inaccessibility problems she faces at the School: (a) the School does not have a disabled-friendly toilet accessible to her; (b) the School's buses are not low-floored or wheelchair-accessible; (c) there is no ground-floor classroom assigned to her for teaching; (d) there are no designated break arrangements for her catheter care during the school day. Each of these is both a violation of the accessibility norms under the Harmonised Guidelines, 2021 and a failure of reasonable accommodation under Section 2(y) of the Act.

26.41. CATHETER CARE AND RESTROOM ACCESSIBILITY: The Teacher requires a restroom facility every three hours for catheter changes. This is a medically certified requirement arising from her spinal injury. The Harmonised Guidelines, 2021 mandate at least one accessible toilet per floor used by staff. An accessible toilet must have minimum floor space of 1500mm x 2000mm, an outward-



opening door of at least 900mm clear width, L-shaped grab bars adjacent to the WC, a wash basin at 700-750mm height, lever-type taps, and a non-slip floor. The Teacher's medical needs require exactly such a facility. The absence of a compliant accessible toilet is not a minor technical deficiency, it directly impacts the Teacher's ability to attend the School at all, and its absence constitutes both a Section 44-46 accessibility violation and a Section 3(3) discrimination by structural omission.

26.42. TRANSPORT: The School's buses are standard vehicles not adapted for wheelchair users. The Teacher uses a manual wheelchair. She cannot independently access a standard step-entry school bus. Section 46 of the Act requires service providers to make their services accessible. Bus transport is a service provided by the School. The School is therefore required to either: (a) retrofit at least one existing vehicle with a wheelchair accessible entry/ramp and restraint system; or (b) arrange for accessible transport by contracting with a provider of wheelchair-accessible vehicles; or (c) pay a transport allowance enabling the



Teacher to arrange her own accessible transport. The Teacher has requested option (c), a transport allowance of Rs.15,000/- per month. This is the least burdensome option for the School and must be accepted.

26.43. CLASSROOM ALLOCATION: The Teacher teaches from a wheelchair. She requires a ground-floor classroom where her wheelchair can manoeuvre freely and where she can access the whiteboard, the projector, and her students without physical barriers. Assigning her a ground-floor classroom involves no additional cost to the School, it merely requires a timetable adjustment. Section 44 of the Act, read with the Harmonised Guidelines, requires that at least one accessible workstation be provided in each teaching space. For a teacher who uses a wheelchair, an accessible classroom on the ground floor fulfils this requirement. The School's failure to provide this is a breach of Section 44.

26.44. EMERGENCY EGRESS: The Harmonised Guidelines and fire safety regulations require every public building to have emergency



evacuation procedures specifically addressing persons with mobility disabilities. These include Areas of Rescue Assistance (ARAs) on each floor, trained evacuation assistants, and evacuation equipment. Given that the accident that caused the Teacher's disability arose from an inadequately secured window and a fall (directly caused by the absence of window grills, a structural safety failure), the School's compliance with safety norms for its building is particularly critical. The provision of proper safety infrastructure, including grills on upper-floor windows, would have prevented the accident of 22.8.2013.

26.45. The cumulative effect of these infrastructure failures at the Petitioner-School is total inaccessibility for a wheelchair user. The Teacher cannot reach the School independently (no accessible transport), cannot access the upper floors (no accessible lift or ramp to upper classrooms), cannot use the restrooms (no accessible washroom), and cannot physically attend if her medical needs are not accommodated during the school day. This is precisely the "barrier" that Section 2(w) read



with Sections 44-46 of the Act is designed to dismantle. The School's building is a "public building" that has failed, categorically, to meet its statutory obligations to be accessible.

26.46. This Court answers Point No. 6 by holding that the expression 'public building' in Section 2(w) of the Disabilities Act of 2016 expressly includes private buildings used for educational purposes. The Petitioner-School, being a private building used for educational purposes and accessed by the public, is a 'public building' within the meaning of Section 2(w). The School is therefore required to comply with all accessibility norms applicable to public buildings under the Act.

27. ***Answer to Point No.7: Whether there is an obligation even on part of the private employer to provide reasonable accommodation to a person with disability employed by such private employer?***

27.1. Shri B.K. Sampath Kumar submitted that there is no obligation on a private employer to provide reasonable accommodation, since the provisions of the Disabilities Act of 2016 that mandate reasonable accommodation, specifically Section 20(2), are directed only at



Government establishments. He submitted that the Petitioner-School had in fact offered a reasonable alternative (administrative role) but the Teacher refused it. He further submitted that the accommodations sought by the Teacher, reduced hours, transport allowance, flexible timetable, online teaching options, are disproportionate burdens on a private unaided educational institution.

27.2. He submitted that any reinstatement of the Teacher in a teaching capacity would harm the interests of the students because: (a) the Teacher was a primary school teacher and may not be suited for teaching Grade 6 and above as stated by her; (b) shortening the workday would affect teaching quality; (c) allowing additional breaks and flexible timings would require restructuring the entire school timetable; and (d) online teaching for one teacher when students are physically present does not yield optimal outcomes.

27.3. He submitted that the right to equality of persons with disabilities cannot result in causing harm or injury to any other person,



particularly the students. The rights of the Teacher and the rights of the students must be balanced, and in this balance, the interests of the students, who have a right to quality education, must be given paramount weight.

27.4. He submitted that the Petitioner-School is a private educational institution without government funding and does not have the financial capacity to provide all the accommodations sought for without governmental support. He argued that the Government has not provided any incentives under Section 35 of the Act to facilitate such accommodation.

27.5. Smt. Jayna Kothari submitted that the obligation to provide reasonable accommodation flows from Section 2(y) read with Section 3(3) and Section 2(h) of the Disabilities Act of 2016, all of which apply universally and are not restricted to Government establishments. She submitted that Section 2(y) defines reasonable accommodation as 'necessary and appropriate modification and adjustments, without imposing



a disproportionate or undue burden in a particular case.' The burden of proving 'disproportionate or undue burden' lies on the employer, not on the employee with disability.

27.6. She submitted that the accommodations sought by the Teacher are modest and practical:

27.6.1. A ground-floor classroom accessible by wheelchair, any school building has ground floor classrooms.

27.6.2. A disabled-friendly washroom, this is a basic requirement mandated by the Act for public buildings.

27.6.3. A transport allowance of Rs.15,000/- per month, this is a reasonable amount to enable wheelchair-accessible transport.

27.6.4. 15-minute breaks every two periods, a minor adjustment to the timetable, not a wholesale restructuring.

27.6.5. Online teaching on days when physically unable to attend, a practical option, especially post-COVID when



every educational institution has online infrastructure.

27.6.6. First aid facility, mandatory for all establishments.

27.7. She submitted that the Teacher has her own full-time personal attendant and her own wheelchair, she is not asking the School to provide these. The School's objections about disruption to the timetable are grossly overstated. A school that claims to be 'among the best in India' and which 'brings technology right into the classroom' surely has the infrastructure and the capacity to make these modest adjustments.

27.8. She relied upon the decision in **Syed Bashir-Ud-Din Qadri's**<sup>26</sup>, wherein the Hon'ble Supreme Court discussed the American case of **Kathleen Borkowski vs. Valley Central School District's**<sup>31</sup>, where the question arose as to whether having someone assist a teacher with disability would amount to eliminating the essential functions of the job. The Court of Appeals in that case held that providing

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<sup>31</sup> 63 F 3d 131 (2nd Cir 1994)



assistance to enable a disabled teacher to perform functions that she is otherwise eligible and competent to perform is an accommodation that does not remove an essential function. She submitted that this principle applies squarely: the Teacher is eligible and competent to teach, providing accessible infrastructure to enable her to do so is not an elimination of the essential function of teaching.

27.9. She submitted that the Teacher has been a teacher since 2008, and her competence and dedication are beyond question, she risked her life to save a student. The School's claim that she is unsuitable for teaching Grade 6 and above (when she was a primary teacher) is an afterthought and not a ground that was raised when the Teacher expressed willingness to resume work. The School's genuine concern for student welfare cannot extend to denying the Teacher her livelihood and dignity.

27.10. She relied upon **Vikash Kumar's**<sup>27</sup> case at paras 60-65, where the Hon'ble Apex Court held that the principle of reasonable accommodation postulates that conditions



which exclude the disabled from full and effective participation must give way to an accommodative society which accepts difference. The Hon'ble Apex Court at para 65 held that failure to meet the individual needs of every disabled person will breach the norm of reasonable accommodation, and that flexibility in answering individual needs is essential to reasonable accommodation.

27.11. She submitted that the offer of an administrative role at Rs.15,000/- per month (when the Teacher's salary was Rs.24,915/- per month) is not a reasonable accommodation, it is a demotion in both status and pay. The Teacher was a teacher and has the right to continue as a teacher. Changing her role from teacher to administrative staff with a reduced salary amounts to discrimination under Section 3(3) and is not a 'proportionate means of achieving a legitimate aim' under Section 3(3).

27.12. Sri Mahantesh Shettar submitted that both public and private employers are obligated to provide reasonable accommodation to employees with disability. The State has a duty



to enforce this obligation against private employers, and the Commissioner's directions in the impugned order are within the scope of this enforcement mandate.

27.13. This Court has carefully considered all submissions, the question is whether a private employer is obligated to provide reasonable accommodation, and whether the specific accommodations sought by the Teacher impose a disproportionate or undue burden.

27.14. Section 2(y) defines reasonable accommodation as 'necessary and appropriate modification and adjustments, without imposing a disproportionate or undue burden in a particular case, to ensure to persons with disabilities the enjoyment or exercise of rights equally with others.' This definition contains three essential elements:

27.15. The modifications and adjustments must be 'necessary and appropriate', calibrated to the actual needs of the person with disability.

27.16. They must not impose 'a disproportionate or undue burden', there is a proportionality limit.



27.17. The purpose is to ensure the enjoyment or exercise of rights 'equally with others'.

27.18. The definition of 'discrimination' in Section 2(h) includes 'denial of reasonable accommodation'. Therefore, any employer who denies reasonable accommodation to an employee with disability is committing discrimination in the statutory sense.

27.19. Section 3(3) prohibits discrimination by any person or entity on the ground of disability. This prohibition applies universally, including to private employers.

27.20. Reading these provisions together, the conclusion is inescapable: every employer, including a private employer, is obligated to provide reasonable accommodation to employees with disability. The failure to do so amounts to discrimination prohibited by Section 3(3) read with Section 2(h) of the Act.

27.21. The Petitioner-School argues that the accommodations sought by the Teacher are disproportionate. This Court disagrees. The accommodations sought are:



27.22. A ground-floor classroom: The School is a multi-floor building. Ground floor classrooms are available. Assigning the Teacher a ground-floor classroom costs the School nothing except a minor timetable adjustment.

27.23. A disabled-friendly washroom: Section 2(w) classifies the School as a 'public building'. Public buildings are mandated under Sections 44, 45 and 46 of the Act to be accessible to persons with disabilities. A disabled-friendly washroom is not an optional luxury, it is a mandatory requirement. The School is already in violation of the accessibility norms by not having one.

27.24. Transport allowance of Rs.15,000/- per month: The School does not have wheelchair-accessible buses. The Teacher needs wheelchair-accessible transport. Rs.15,000/- per month for transport is a reasonable and proportionate cost for a school that charges significant fees from its students. This is particularly so because the Teacher's injury occurred on the School's premises in the course of her employment.



- 27.25. Flexible timetabling with 15-minute breaks: The Teacher has a catheter and requires a break every two periods for catheter changes. This is a medical necessity. A 15-minute break every two periods is a minor adjustment to the timetable.
- 27.26. Online teaching option on days when unable to attend: Post-COVID, every school in India has online teaching infrastructure. Allowing the Teacher to teach online on days when she is physically unable to attend is not a major systemic change.
- 27.27. First aid facility: This is a requirement for all schools under the relevant education regulations as well as under the Act.
- 27.28. None of the above accommodations impose a 'disproportionate or undue burden' on the Petitioner-School within the meaning of Section 2(y). The School has not provided any financial analysis or evidence to show that these accommodations are beyond its financial capacity. Its objections are operational convenience, not genuine hardship.



27.29. The concept of omissive discrimination, articulated by the Hon'ble Supreme Court in **Jane Kaushik vs. Union of India's**<sup>28</sup> case, is directly applicable to Point 5. At paragraph 66, the Hon'ble Supreme Court held that "discrimination also operates through omission: through the silences, exclusions, and failures of the law to protect certain groups or to recognise particular forms of disadvantage." The Hon'ble Supreme Court's observation extends beyond statutory silences to institutional silences, the failure of an employer to proactively create accessible infrastructure, to formulate an Equal Opportunity Policy, to identify suitable posts for persons with disabilities, and to appoint a Liaison Officer are all omissive acts that produce discriminatory consequences. The Petitioner-School's failure was not active exclusion of the Teacher but systematic omission: no EOP, no accessible washroom, no accessible transport, no timetable accommodation. This systematic omission is discrimination within the meaning of Section 3(3) read with Section 2(h) of the 2016 Act. The "proportionate means of



achieving a legitimate aim" test in Section 3(3) cannot be passed by a party that never took any steps to explore whether it could accommodate the Teacher, it just assumed it could not.

27.30. The Petitioner-School's argument that the Teacher, being a primary school teacher, is not qualified to teach Grade 6 and above, is not a legitimate ground to deny accommodation. The Teacher filed her affidavit stating she is willing to teach Grade 6 and above, she presumably assessed her own capabilities. The School raised no such objection at the time when the Teacher sought reinstatement. This appears to be a post-rejection rationalisation.

27.31. The Petitioner's submission that the interests of students must be balanced against those of the Teacher deserves consideration. This Court accepts that the students' right to quality education is important. However, the Petitioner has not demonstrated that a wheelchair-using teacher with appropriate accommodations will adversely affect the quality of teaching. Globally, teachers with disabilities teach



effectively with appropriate support. The School's assumption that the Teacher's disability necessarily renders her unable to teach at a high level is itself a form of stereotyping that the Disabilities Act of 2016 seeks to combat. As the Hon'ble Supreme Court observed in **In Re: PWD Rajasthan Judicial Services's**<sup>24</sup> case at para 43, the principle of indirect discrimination requires the court to examine whether facially neutral criteria operate in a discriminatory manner. The School's assumption that a wheelchair-using teacher will harm student learning is precisely the kind of unfounded stereotypical assumption that constitutes indirect discrimination.

27.32. The decision in **Syed Bashir-Ud-Din Qadri's**<sup>26</sup> is instructive. The **Kathleen Borkowski's**<sup>31</sup> case discussed therein shows that the question is not whether the accommodation is convenient for the employer but whether the essential function of the job (teaching) can be performed by the disabled employee with appropriate support. Teaching is an intellectual and communicative function, it does not require



physical mobility. A teacher in a wheelchair can teach as effectively as a teacher who walks.

27.33. The Hon'ble Supreme Court in **Vikash Kumar's**<sup>27</sup> case at paragraphs 59 through 65 elaborated the conceptual foundation of reasonable accommodation. At paragraph 61, the Hon'ble Supreme Court observed that disability, as a social construct, encompasses features broader and more comprehensive than a medical condition. The Hon'ble Supreme Court held that the 2016 RPwD Act recognises that disability results in inequality of access to a range of public and private entitlements, and that the handicaps encountered by the disabled emerge out of disability's engagement with the barriers created by prejudice, discrimination and societal indifference. The principle of reasonable accommodation, therefore, is not a concession but an instrument for dismantling these socially constructed barriers.

27.34. Applied to the present case, the social construct framing is particularly apt. The Teacher's disability is not the problem, the absence of a wheelchair-accessible classroom, the absence



of a disabled-friendly washroom, the absence of accessible transport, and the School's unwillingness to adjust its timetable constitute the socially constructed barriers that prevent the Teacher from resuming her teaching duties. None of these barriers arise from the Teacher's disability itself. All of them arise from the School's failure to make reasonable adjustments. The Hon'ble Supreme Court in **Vikash Kumar's**<sup>27</sup> case at paragraph 65 held that failure to meet the individual needs of every disabled person will breach the norm of reasonable accommodation, and that flexibility in answering individual needs is essential. The Teacher's specific needs, as set out in her affidavit, are precisely the type of individualised requirements that the Act mandates must be met.

27.35. The Hon'ble Supreme Court in **Syed Bashir-Ud-Din Qadri's**<sup>26</sup> case at paragraph 47 held that the case before it was "not one of the normal cases relating to a person's claim for employment." The Hon'ble Supreme Court recognised the exceptional character of a disability employment case, where a person's



life and livelihood are affected by a condition that is beyond their control, and where the appropriate response from society and employers is accommodation rather than exclusion. The present case is similarly exceptional: the Teacher did not choose to become disabled. She acquired the disability in an act of selfless courage within the School's own premises. The School's response, to offer her a demotion and then to treat the employment as ended, is precisely the kind of institutional indifference that the 2016 Act is designed to counter.

27.36. The Hon'ble Supreme Court in **Om Rathod vs. Director General of Health Services**'s<sup>22</sup> case at paragraph 27 held: "A failure to create a conducive environment is a failure to provide reasonable accommodation." This principle applies with full force in the present case. The School's failure to create a conducive environment, accessible classrooms, disabled-friendly washrooms, accessible transport, is itself a failure to provide reasonable accommodation within the meaning of Section 2(y) of the Act. It is not necessary for the



Teacher to have made a formal written request and been expressly refused (though she did make requests). The structural absence of accessibility infrastructure at the School constitutes a standing failure to provide reasonable accommodation.

27.37. The Hon'ble Supreme Court in **Jane Kaushik vs. Union of India's**<sup>28</sup> case at paragraph 66 held: "Discrimination also operates through omission: through the silences, exclusions, and failures of the law to protect certain groups or to recognise particular forms of disadvantage." The Hon'ble Supreme Court recognised what it termed "omissive discrimination", where inaction or failure to create enabling conditions can itself operate to perpetuate disadvantage and exclusion. This principle is directly applicable to the present case. The School did not take any active discriminatory act against the Teacher, it did not explicitly refuse her a job because she was in a wheelchair. But its consistent failure to provide accessible infrastructure, its failure to explore reasonable accommodation, and its passive treatment of the employment as ended constitute omissive



discrimination of exactly the character identified in **Jane Kaushik's**<sup>28</sup> case.

27.38. The cumulative effect of these case principles, disability as a social construct (**Vikash Kumar's**<sup>27</sup> case), the exceptional character of disability employment cases (**Syed Bashir's**<sup>26</sup> case), the principle that failure to create a conducive environment is failure to provide reasonable accommodation (**Om Rathod's**<sup>22</sup> case), and the recognition of ommissive discrimination (**Jane Kaushik's**<sup>28</sup> case), leads this Court to the firm conclusion that the Petitioner-School's conduct in this case constitutes discrimination against the Teacher within the meaning of Sections 2(h), 2(y) and 3(3) of the Disabilities Act of 2016.

27.39. At paragraph 51 of **Jane Kaushik vs. Union of India's**<sup>28</sup> case, the Hon'ble Supreme Court held: "Rights cannot exist as standalone ideals devoid of implementation." This observation is directly applicable to the present case. The Disabilities Act of 2016 confers rights to reasonable accommodation, accessible infrastructure, and an equal opportunity policy.



These rights cannot remain standalone ideals. They require implementation by every establishment, including the Petitioner-School. The School's argument that its obligations end at the level of aspiration (maintaining a good institutional culture, paying hospital expenses, offering a retainer role) misunderstands the statute. The Act does not contemplate partial or voluntary compliance, it mandates specific, measurable, enforceable obligations: an EOP under Section 21, accessible premises under Sections 44-46, and reasonable accommodation under Section 3(3). "Implementation" is not discretionary; it is the very substance of the right. The Commissioner was correct in passing the impugned order as a step towards actual implementation of the Teacher's rights.

27.40. In **Ashok Kumar Sonkar's**<sup>10</sup> case the Hon'ble Supreme Court at para 35 quoted the **Maruti Udyog Ltd. vs. Ram Lal's**<sup>32</sup> case observation that "while construing a statute, sympathy has no role to play." This principle is fully accepted by this Court. This judgment does not decide in the Teacher's favour on grounds of sympathy

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<sup>32</sup> (2005) 2 SCC 638



for her condition. It decides on the clear statutory text of Sections 2(h), 2(y), 3(3), 21, 80, 81 and 82 of the Disabilities Act of 2016. The School's conduct violates these provisions not because the Teacher's situation is sympathetic (though it is) but because the law mandates a different course of action.

27.41. The Hon'ble Supreme Court in **Syed Bashir-Ud-Din Qadri's**<sup>26</sup> case at paragraph 61 held that the principle of reasonable accommodation "is founded in the norm of inclusion." The Court held that exclusion results in the negation of individual dignity and worth, and that under the norm of inclusion, "the powerful and the majority adapt their own rules and practices, within the limits of reason and short of undue hardship, to permit realisation of these ends." The "powerful and majority" in this case is the School, a large, well-resourced educational institution. The "realisation of ends" is the Teacher's ability to resume her profession and earn her livelihood. The adjustments required of the School are modest, limited in scope, and well within the limits of reason. Refusing them



is a refusal to subscribe to the norm of inclusion that the 2016 Act enshrines.

27.42. Shri B.K. Sampath Kumar submitted that the Teacher had gone abroad for medical treatment of her own free will and choice and that those medical expenses, totalling Rs.16,25,984/- for treatment at the Kennedy Krieger Institute in Baltimore, cannot be directed to be paid by the School. He submitted that in the original complaint filed before the Commissioner, the claim was only in respect of accrued salaries without setting out specific demands, and it was only in the rejoinder that the claim for medical expenses of Rs.60 lakhs incurred abroad was made, which, he contended, was an improper improvement on the original case.

27.43. This argument is considered and rejected for the following reasons. First, the fact that the Teacher sought treatment abroad does not automatically disentitle her from claiming the expenses. The record shows that the Teacher was advised to undergo specialised neuro-rehabilitation treatment at the Kennedy Krieger Institute in Baltimore by her treating doctors



after she was discharged from Fortis Hospital, Bannerghatta Road. Treatment for traumatic paraplegia and 90% locomotor disability is highly specialised, and it is not disputed that such treatment was not available in India at that time to the required standard. The Teacher cannot be penalised for following medical advice.

27.44. Second, the correspondence on record, specifically the emails sent by the Teacher's husband on 5.8.2014, 8.8.2014, 3.1.2015 and 17.3.2015, establishes that the School was kept informed of the foreign treatment and that the Chairman of the institution had promised to meet all medical expenses. The School's now-denial of this promise is self-serving and is contradicted by the contemporaneous correspondence. The Chairman's promise to bear all medical expenses, made to the Teacher at a time when she was grievously injured in the School's premises in the course of her employment, created a binding obligation.

27.45. Third, on the "improvement" argument: it is settled law that a complaint or petition may be



supplemented by particulars at the stage of the rejoinder, and that such supplementation does not by itself vitiate the complaint if the opposite party has had an opportunity to respond. The School did respond to the Rs.60 lakhs claim through its surrejoinder. The Commissioner had the complete picture before passing the impugned order. The improvement of a claim in rejoinder, when the opposite party has had a full opportunity to meet it, cannot be used to invalidate the claim entirely.

27.46. Fourth, the Commissioner did not direct payment of Rs.60 lakhs as claimed. The Commissioner, after considering all the expenses incurred and the circumstances, directed payment of Rs.10 lakhs, which is a conservative amount constituting a fraction of the total medical expenses (Rs.6,03,603 at Fortis + Rs.16,25,984 in the US + approximately Rs.24,48,000 in ongoing therapy in India = total exceeding Rs.46 lakhs). The modest quantum of Rs.10 lakhs reinforces that the Commissioner exercised his discretion carefully and did not simply accept the Teacher's claim in full.



27.47. Shri B.K. Sampath Kumar submitted that the Teacher, being unable to discharge her full duties as a teacher, would require an additional support teacher to be appointed alongside her to conduct classes, which he contended would be inequitable to other teachers and would lead to poor morale. This argument deserves consideration but cannot be accepted.

27.48. The Teacher's affidavit dated 06.06.2025 does not seek an additional support teacher. She stated that she has her own personal full-time attendant whose expenses she bears herself. She is seeking to teach classes independently, from a wheelchair, in an accessible classroom. Teaching is a cognitive and communicative function, it does not require physical mobility. A teacher in a wheelchair can conduct classes, set assignments, evaluate papers, and interact with students exactly as a mobile teacher can. There is no basis for the assumption that the Teacher would require a co-teacher to assist her in teaching.

27.49. The Petitioner's argument that permitting the Teacher to work would be inequitable to other



teachers proceeds on an unstated assumption that the Teacher's presence would place additional burdens on colleagues. This assumption is unfounded. The modest timetable adjustments requested, a 15-minute break every two periods, ground floor classroom allocation, and an online option on specific days, do not require any other teacher to take additional work. These are structural accommodations for the School as an institution, not burdens placed on individual teachers.

27.50. The concern for the morale of other teachers, while not entirely without merit as a general management consideration, cannot be elevated into a legal ground to deny employment to a person with disability. If the argument were to be accepted, any employer could deny accommodation to a person with disability on the speculative ground that other employees might feel resentful. Such an outcome would be wholly inconsistent with the constitutional mandate of equality and the statutory mandate of the Disabilities Act of 2016.



27.51. The Petitioner submitted that shortening the workday to four hours per day would affect teaching quality and the flow of academic responsibilities, and that parents and guardians would not consent to anything affecting their wards' studies. The Petitioner also contested the transport allowance of Rs.15,000 per month.

27.52. On the reduced hours: the Teacher's affidavit states that she is seeking initially limited to four hours per day for five days a week. This is offered as an initial, transitional arrangement as she reintegrates into the school environment after more than a decade of absence due to disability. The word "initially" in the affidavit clearly signals that the Teacher expects to progressively increase her hours as she settles in. A four-hour teaching day is not an unusual or unacceptable arrangement, many teachers across the country work part-time schedules. The academic impact, if any, of a four-hour teaching day on any particular class is no different from a regular part-time teacher arrangement, which schools routinely manage.



27.53. The argument that parents would not consent is speculative and paternalistic. The Petitioner has placed no evidence of any parental objection. More fundamentally, a school cannot use the speculative concern of parental reaction to deny fundamental rights to its employees. Parents do not have a right to veto the employment terms of teachers, that is a matter between the school management and the teacher, regulated by law.

27.54. On the transport allowance of Rs.15,000/month: The Teacher requires wheelchair-accessible transport because the School's buses are not low-floored and wheelchair-accessible. This is not a luxury request, it is a functional necessity arising directly from the School's failure to provide accessible transport. The School by not having accessible transport forces the Teacher to arrange her own transport at her own cost. Rs.15,000 per month for wheelchair-accessible taxi or hired vehicle is a reasonable and proportionate cost in the city of Bengaluru, where the cost of daily commuting by hired vehicle runs to approximately Rs.500-700 per



day. This is a direct consequence of the School's non-compliance with accessibility norms and cannot be called a disproportionate burden. Section 2(y) requires that the accommodation not impose a "disproportionate or undue burden", a Rs.15,000 monthly transport allowance for a school of this size and fee structure manifestly does not clear that threshold.

27.55. All five arguments of the Petitioner directed at the specific accommodations sought by the Teacher are accordingly rejected. The accommodations requested are modest, medically necessary, and do not impose a disproportionate or undue burden on the Petitioner-School within the meaning of Section 2(y) of the Disabilities Act of 2016.

27.56. This court answers Point no.7 by holding that there is a definite obligation on private employers to provide reasonable accommodation to employees with disability, arising from Section 2(y) read with Section 2(h) and Section 3(3) of the Disabilities Act of 2016. The denial of such accommodation constitutes



discrimination. In the present case, the accommodations sought by the Teacher are modest, necessary and not disproportionate. The Petitioner-School's refusal to provide reasonable accommodation and its effective termination of the Teacher's services constitute discrimination on the ground of disability, violating Section 3(3) of the Act.

28. ***Answer to Point No.8: Whether it is the Persons with Disabilities (Equal Opportunities, Protection of rights and Full Participation) Act, 1995 or the Rights of Persons with Disabilities Act, 2016 which would apply if the event causing disability occurred prior to the 2016 Act came into force but the complaint was filed after the 2016 Act came into force?***

28.1. Shri B.K. Sampath Kumar submitted that the event causing the Teacher's disability occurred on 22.08.2013, long before the Disabilities Act of 2016 came into force on 19.04.2017. The Teacher's separation from service occurred on 31.05.2015, also prior to the 2016 Act. Therefore, he submitted, the applicable statute is the Disabilities Act of 1995 and not the 2016 Act. He submitted that the Commissioner's order, which was entirely based on the 2016 Act and the Rules of 2017 and the Karnataka



Rules of 2019, is fundamentally flawed because none of these statutes were in existence when the relevant events occurred.

28.2. He submitted that under the principle of retrospectivity, a statute that creates new obligations or affects vested rights cannot be applied to events that occurred before the statute came into force, unless the statute expressly provides for retrospective application. The Disabilities Act of 2016 does not expressly provide for retrospective application to events prior to its commencement. Therefore, the Commissioner's application of the 2016 Act to the events of 2013 and 2015 was without jurisdiction.

28.3. He submitted that under the Disabilities Act of 1995, as interpreted in **Dalco Engineering's**<sup>14</sup> case, the provisions regarding non-discrimination in employment (Section 47) applied only to establishments as defined in Section 2(k) of the 1995 Act, which excluded private establishments. Therefore, the Petitioner-School had no obligation under Section 47 of the 1995 Act and the



Commissioner's order based on the 2016 Act is completely unsustainable.

28.4. He also submitted that the complaint was filed almost four years after the termination of services. Under Articles 113 and 137 of the Schedule to the Limitation Act, 1963, even when no period of limitation is prescribed or provided for anywhere, proceedings must be filed within three years from the date when the right to apply or sue accrued. In the present case, the right to apply accrued in 2015 when the separation letter was issued. The complaint was filed in 2019, well beyond three years. The complaint is therefore barred by limitation and the Commissioner had no jurisdiction to entertain it.

28.5. He relied upon **North Eastern Chemicals Industries (P) Ltd. vs. Ashok Paper Mill (Assam) Ltd's<sup>2</sup>.**, case for the proposition that even where no specific limitation is prescribed, the remedy must be exercised within a 'reasonable time'. He submitted that a delay of approximately four years in filing the complaint



is unreasonable and the complaint was liable to be dismissed on this ground alone.

28.6. Smt. Jayna Kothari submitted that there is no prescribed period of limitation under the Disabilities Act of 2016 for filing a complaint before the State Commissioner. The absence of a prescribed limitation means that the complaint can be filed within a reasonable time. The Teacher obtained her disability certificate on 10.02.2016, only then did her rights and entitlements under the disability legislation crystallise. She made several attempts to engage with the School thereafter. When the School did not respond adequately, she filed the complaint in 2019.

28.7. She submitted that the cause of action in this matter is of a continuing nature. The Teacher's disability is permanent and continuing. The School's failure to provide reasonable accommodation, and its refusal to reinstate her or pay the outstanding medical expenses, are ongoing violations. A continuing cause of action is never barred by limitation.



- 28.8. She further submitted that the complaint was filed under the Disabilities Act of 2016, which was the law in force at the time of filing. The Commissioner adjudicated the complaint under the 2016 Act, which was the applicable statute at the time of adjudication. There is nothing retroactive about applying the 2016 Act to a complaint filed in 2019, the Act is being applied prospectively to an ongoing state of affairs.
- 28.9. She submitted that the Petitioner's reliance on **Dalco Engineering's**<sup>14</sup> case to argue that the 1995 Act applies is misplaced. **Dalco Engineering's**<sup>14</sup> case interpreted Section 47 of the 1995 Act and held that it applied only to government establishments. However, the teacher's complaint in the present case is not restricted to Section 47 of the 1995 Act. Her complaint extends to the denial of reasonable accommodation, non-compliance with accessibility norms, and violation of the anti-discrimination mandate, all of which are claims under the 2016 Act, which was the applicable law at the time of filing the complaint.



28.10. She also relied upon **North Eastern Chemicals Industries's**<sup>21</sup> case which she cited for the proposition that where no specific limitation is prescribed, the claim must be exercised within a reasonable time, and that a party raising a plea of delay must demonstrate actual prejudice. She submitted that the School cannot demonstrate any prejudice from the four-year period between the separation in 2015 and the filing of the complaint in 2019, particularly since the Teacher's disability is ongoing, the medical expenses are still being incurred, and the School's liability for the injury has always been known to it.

28.11. The learned AGA submitted that the Disabilities Act of 2016 is the applicable statute for proceedings initiated after its commencement. The Commissioner correctly applied the 2016 Act in adjudicating the complaint filed in 2019. The State is ready and willing to implement any directions passed under the 2016 Act that are beneficial to persons with disabilities.

28.12. Point No.8 involves two distinct legal questions:  
(a) which statute applies, the 1995 Act or the



2016 Act; and (b) is the complaint barred by limitation?

28.13. The first and most foundational aspect is the timeline: The injury occurred on 22.08.2013. The separation letter was issued on 31.05.2015. The Disabilities Act of 2016 came into force on 19.04.2017. The disability certificate was obtained on 10.02.2016. The complaint was filed in 2019.

28.14. In matters involving repealing statutes, the law to be applied depends upon the nature of the right or remedy claimed. Three scenarios arise:

28.14.1. Where the right is a vested right that crystallised under the old law, the old law applies.

28.14.2. Where the proceeding is initiated under the new law after its commencement, the new law applies both procedurally and substantively, unless retrospective application of the substantive provisions would affect vested rights.



28.14.3. Where the cause of action is continuing, the applicable law is the law in force at the time of each act constituting the continuing violation, and the remedial law is the law in force at the time of adjudication.

28.15. In the present case, the Petitioner's strongest argument is that the injury and the termination both occurred before the 2016 Act came into force. This argument has force insofar as it concerns the specific provisions that can be invoked for pre-2016 events. Under the 1995 Act, as held in **Dalco Engineering's**<sup>14</sup> case, Section 47 did not apply to private establishments. Therefore, at the time of the Teacher's separation in 2015, the specific protections under Section 47 of the 1995 Act were not available to her against the Petitioner-School.

28.16. However, the Teacher's complaint is not restricted to Section 47 of the 1995 Act. Her complaint extends to: (a) the denial of reasonable accommodation and the ongoing refusal of the School to provide appropriate



facilities even after the 2016 Act came into force; (b) the obligation of the School to have an equal opportunity policy under Section 21 of the 2016 Act; (c) the obligation to provide an accessible workplace under Section 3(3) read with Section 2(h) of the 2016 Act; and (d) the obligation arising under the UNCRPD.

28.17. The key observation is that the Teacher obtained her disability certificate on 10.02.2016, before the 2016 Act came into force (April 2017). She thereafter communicated with the School seeking reinstatement with reasonable accommodation. The School's refusal to provide reasonable accommodation and reinstate her CONTINUED after the 2016 Act came into force. This continuing refusal, post-April 2017, is squarely a violation of Section 3(3) read with Section 2(h) of the 2016 Act.

28.18. The complaint was filed in 2019, two years after the 2016 Act came into force. The Commissioner adjudicated the complaint in 2020, three years after the 2016 Act came into force. The 2016 Act was unquestionably in



force both at the time of filing and at the time of adjudication. The Commissioner correctly applied the 2016 Act to the facts before him.

28.19. This Court therefore holds that insofar as events occurring before 19.04.2017 (the commencement of the 2016 Act) are concerned, the 1995 Act would apply. However, insofar as the ongoing obligations of reasonable accommodation, equal opportunity policy and non-discrimination, all of which have a continuing character, are concerned, the 2016 Act applies from its commencement date. Since the complaint was filed in 2019 and the cause of action has a continuing character, it is the 2016 Act that governs.

28.20. The Petitioner relies upon Articles 113 and 137 of the Limitation Act, 1963 to contend that the complaint is barred by limitation. It is necessary to examine whether the Limitation Act applies to proceedings before the Commissioner under the Disabilities Act of 2016.

28.21. The Disabilities Act of 2016 does not prescribe any period of limitation for filing a complaint



before the State Commissioner. Section 80 empowers the Commissioner to inquire into deprivation of rights of persons with disabilities. Section 81 deals with action by appropriate authorities on recommendations of the Commissioner. Neither section prescribes any limitation period for filing a complaint.

28.22. The Limitation Act, 1963 applies to suits, appeals and applications as specified in the Schedule. The proceedings before the Commissioner under the Disabilities Act of 2016 are not 'suits, appeals or applications' in the conventional sense, they are statutory complaints before a quasi-adjudicatory authority. The Limitation Act therefore does not directly apply to such proceedings.

28.23. The Petitioner relies on Articles 113 and 137 of the Schedule to the Limitation Act, which deal with suits and applications for which no period of limitation is prescribed, generally fixing three years. However, as noted above, the proceedings before the Commissioner are not suits or civil court applications, they are statutory complaints. Article 113 applies to civil



suits and Article 137 applies to 'any other application.' Complaints before the Commissioner are not 'other applications' within the meaning of Article 137 of the Limitation Act.

28.24. Even if the principle of 'reasonable time' is applied, as held by the Hon'ble Supreme Court in **North Eastern Chemicals Industries's**<sup>2</sup> case, the question is whether the delay of approximately four years constitutes unreasonable delay in the circumstances of this case. This Court holds that it does not, for the following reasons:

28.25. The Teacher sustained severe injuries in 2013 and was hospitalised. She then underwent extensive rehabilitation treatment in the United States from August to September 2014. She returned to India and continued rehabilitation therapy. She obtained her disability certificate only on 10.02.2016. It was only after obtaining the disability certificate that her rights under the disability legislation fully crystallised and she was in a position to assert them.



28.26. She continued to communicate with the School after her return, as evidenced by her husband's emails in 2014 and 2015. The School itself sent an email on 14.05.2015 indicating a retainer role. The Teacher's response time includes the period of her treatment, rehabilitation and engagement with the School.

28.27. The separation letter (31.05.2015) + disability certificate (10.02.2016) + time taken for further engagement with the School + filing of complaint in 2019 = approximately 3.5 years from the disability certificate date to the complaint. This is not unreasonable given the Teacher's physical condition.

28.28. The cause of action is continuing in nature, the School continues to not reinstate her, continues to not provide accessible facilities, and continues to not pay the outstanding medical expenses. A continuing cause of action is never barred by limitation, as the limitation period runs fresh with each subsequent act constituting the violation.

28.29. The Hon'ble Supreme Court in **North Eastern Chemicals Industries's**<sup>2</sup> case at para 25 held



that 'when a court is seized of a situation where no limitation stands provided either by specific applicability of the Limitation Act or the special statute governing the dispute, the Court must undertake a holistic assessment of the facts and circumstances of the case to examine the possibility of delay causing prejudice to a party.' The Hon'ble Supreme Court further held at para 24 that 'the exact prejudice or loss suffered by the party if such a delay is condoned, must be shown on facts.' In the present case, the Petitioner-School has not shown any specific prejudice caused by the Teacher's delayed approach to the Commissioner. The School has been aware of its obligations since the accident in 2013. No evidence was destroyed or lost. No witness became unavailable. The School cannot claim prejudice from the Teacher's delay.

28.30. The question of which Act applies requires a careful examination of the transitional provisions. Section 102 of the Disabilities Act of 2016 provides: "The Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 is hereby



repealed." Section 101 provides for protection of things done under the repealed Act. However, Section 101(2) states that any action, suit, proceeding or prosecution pending under the 1995 Act shall be transferred to or continued under the corresponding provisions of the 2016 Act.

28.31. The complaint in the present case (Case No.21/2019-20) was filed in 2019, approximately two years after the 2016 Act came into force on 19.04.2017. It was not a proceeding pending under the 1995 Act. It was a fresh proceeding initiated under the 2016 Act. The Commissioner adjudicated it under the 2016 Act. The transitional provisions in Section 101 do not assist the Petitioner, they deal with proceedings initiated before the 2016 Act came into force, not fresh proceedings filed after commencement.

28.32. The Petitioner's argument that the 1995 Act applies because the relevant events (the accident in 2013, the separation in 2015) occurred before the 2016 Act commenced is flawed for the following reasons: (a) the



applicable law for proceedings before a statutory authority is ordinarily the law in force at the time the proceeding is initiated, not the law in force when the cause of action arose; (b) the complaint was filed in 2019 and adjudicated in 2020, both well after the 2016 Act came into force; (c) the cause of action is continuing, the School's failure to provide reasonable accommodation and the unresolved medical expenses constitute continuing violations that arise fresh each day; and (d) even applying the 1995 Act, the applicable provisions under that Act (Section 47 and the Commissioner's powers) have been the subject of judicial determination, and the outcome under the 1995 Act for a private employer would not be substantively different given this Court's findings on Section 3(3) of the 2016 Act.

28.33. The Petitioner submitted that The Karnataka State Rights Of Persons With Disability Rules, 2019 notified only on 30.8.2019, cannot have retrospective application to events of 2013-2015. This argument, while technically correct in its narrower scope, does not assist the Petitioner. The Commissioner's order is



grounded in the central 2016 Act and the central RPWD Rules, 2017, not exclusively in the Karnataka Rules of 2019. The Karnataka Rules of 2019 supplement the central framework but do not override or substitute it. The central Act and central Rules of 2017 were in force when the complaint was filed and adjudicated. Their application is prospective as to the complaint proceedings, even if the underlying events pre-date the Act.

28.34. The Teacher sustained injury on 22.8.2013. She was hospitalised and underwent surgery. She was discharged from Fortis Hospital and continued medical treatment. She underwent neuro-rehabilitation treatment at the Kennedy Krieger Institute in Baltimore from 12.8.2014 to 11.9.2014, during which period she was physically in the United States. She returned to India and continued rehabilitation therapy at a cost of Rs.50,000-60,000 per month. She obtained her disability certificate on 10.02.2016. Throughout this period, she was engaged in correspondence with the School through her husband, as evidenced by the emails of 5.8.2014, 8.8.2014, 3.1.2015 and



17.3.2015. She sought reinstatement with reasonable accommodation. The School issued its retainer-role email on 14.5.2015 and treated the employment as ended on 31.5.2015.

28.35. Against this factual matrix, the Teacher approached the Commissioner in 2019, approximately three years after obtaining her disability certificate. The period from the disability certificate (10.02.2016) to the complaint (2019) is approximately three years. During this period, the Teacher continued to incur medical expenses of Rs.50,000-60,000 per month. She was also recovering, undergoing therapy, and attempting to stabilise her medical condition. A person who is paraplegic and undergoing continuous medical treatment cannot be held to the same standard of promptness in initiating legal proceedings as a person in good health. The reasonable time doctrine, as held in **North Eastern Chemicals Industries's**<sup>2</sup> case at paragraph 27, does not attract laches for shorter delays in cases where no limitation period is prescribed. The three-year period in the present case is a "shorter delay" in the context of a continuing cause of



action, a severe disability, and ongoing medical treatment.

28.36. The Petitioner has not demonstrated any specific prejudice caused by the delay. The School has been aware of its obligations since 22.8.2013. The relevant documents, the SOP, the enquiry report, the hospital bills, the salary payment records, the correspondence, were all in the possession of the School throughout. No witness has become unavailable. No document has been lost. The School has been able to defend the claim fully with all relevant evidence before the Commissioner and before this Court. In the absence of demonstrable prejudice, the delay cannot operate as a bar to the Teacher's legitimate claim for compensation and accommodation.

28.37. The question of which Act applies, the 1995 Act or the 2016 Act, has a constitutional dimension in addition to the statutory analysis already conducted. The fundamental rights of the Teacher under Articles 14, 19(1)(g) and 21 of the Constitution are continuing rights. They do not crystallise at a single point in time and



lapse thereafter. The denial of reasonable accommodation and the Teacher's exclusion from her profession are ongoing infringements of these constitutional rights, fresh with each passing day. The Teacher is entitled to approach the Commissioner under the 2016 Act (which provides the specialised remedy) in respect of these continuing constitutional violations.

28.38. The Petitioner's contention that the 1995 Act applies must also be evaluated against the practical consequence of that argument. If the 1995 Act applied, then under the ratio of **Dalco Engineering's**<sup>14</sup> case, Section 47 of the 1995 Act (non-discrimination in employment) would not apply to the Petitioner-School at all, since **Dalco's**<sup>14</sup> case held that Section 47 applied only to "establishments" within the narrow definition in Section 2(k) of the 1995 Act, which excluded private employers. The Petitioner's own argument, taken to its logical conclusion, would mean that under the 1995 Act the Teacher had NO remedy against the School under the disability legislation. This Court must reject this outcome as constitutionally untenable. A person



who acquires severe disability in the course of employment at a private school, and who is then effectively turned away from her employment, cannot be left without a statutory remedy. The 2016 Act, which expressly covers private establishments through Sections 2(i), 2(v), and 3(3), provides that remedy, and this Court applies it.

28.39. The cumulative effect is that from the disability certificate date (10.02.2016) to the complaint filing (sometime in 2019) is approximately 3 years. In the context of a person with 90% locomotor disability undergoing continuous medical treatment and therapy, 3 years to file a complaint is entirely reasonable. The Hon'ble Supreme Court in **North Eastern Chemicals Industries's**<sup>2</sup> case at para 27 specifically held that "shorter delays" where no limitation period is prescribed do not attract delay and laches. Three years in these circumstances is a "shorter delay" within the meaning of that observation. No prejudice to the School has been demonstrated, the relevant documents were in its possession throughout, all witnesses



were available, and the School has been able to mount a full defence.

28.40. This Court answers Point No. 8 by holding that:

(a) Insofar as events prior to the commencement of the Disabilities Act of 2016 are concerned, the Disabilities Act of 1995 would apply. However, where the cause of action is continuing in nature (as in this case), the applicable law for the ongoing obligation of reasonable accommodation, non-discrimination and equal opportunity is the Disabilities Act of 2016, which was the law in force when the complaint was filed and adjudicated. (b) The complaint is not barred by limitation. There is no prescribed period of limitation under the Disabilities Act of 2016 for complaints before the Commissioner. The Limitation Act does not directly apply to such proceedings. Even applying the 'reasonable time' doctrine, the delay is justified by the Teacher's medical condition, ongoing rehabilitation, and continuing cause of action.

29. **Answer to Point No.9: Whether the State Commissioner for Persons with Disabilities, constituted under Section 79 of the Rights of**



**Persons with Disabilities Act, 2016, has jurisdiction and power to issue binding corrective directions against a private establishment, and whether the decisions in State Bank of Patiala vs. Vinesh Kumar Bhasin (2010) 4 SCC 368 and the line of cases following it govern proceedings under the 2016 Act?**

- 29.1. Shri B.K. Sampath Kumar submitted that the Commissioner did not have jurisdiction to pass mandatory directions upon the Petitioner-School, which is a private establishment. He submitted that the Commissioner, being a statutory authority vested with certain powers of a civil court for limited purposes of inquiry under Section 82, could only make recommendations under Section 81 and not pass binding orders. He relied upon decisions in **State Bank of Patiala vs. Vinesh Kumar Bhasin**<sup>3</sup>, **Managing Director BMTC vs. Sumitra**<sup>4</sup>, **Kamal Jant Agarwal vs. GGS Indraprastha University, State Bank of India vs. Chief Commissioner**<sup>6</sup>, **Kerala PSC vs. State Disability Commissioner, Union of India vs. Rajender Singh**<sup>8</sup>, and **Shipping Corporation of India vs. Haripada Shaileshwar Chaterjee**<sup>9</sup> for the proposition



that the Commissioner does not have power to issue mandatory directions.

29.2. He further submitted that **Bharat Sanchar Nigam Ltd. vs. G. Sarvothaman's**<sup>11</sup> case followed the ratio of **Vinesh Kumar Bhasin's**<sup>3</sup> case and held that the Commissioner has no power to issue mandatory directions. He submitted that **B.E.S.T. Undertaking vs. Mohammad Ramjan M. Shahban**<sup>20</sup>, **Bank of Baroda vs. Susmita Saha**<sup>19</sup>, and **Geetaben Ratilal Patel**<sup>18</sup> are per incuriam vis-à-vis **Vinesh Kumar Bhasin**<sup>3</sup> and **Dalco Engineering**<sup>14</sup>, and that they concern government undertakings and have no application to a private unaided institution.

29.3. He submitted that the decisions in **Om Rathod**<sup>22</sup>, **Rajive Raturi's**<sup>23</sup>, and **In Re: Recruitment of PWD Candidates in Rajasthan Judicial Services's**<sup>24</sup> do not deal with the powers of the 2nd Respondent-Commissioner and do not lay down that the Commissioner has the power to issue positive directions or pass orders in the nature of the



impugned order, since those petitions related to issues concerning government entities.

29.4. Smt. Jayna Kothari submitted that the Commissioner's order is a legitimate exercise of power under Section 80 read with Section 81 of the 2016 Act to take up the matter with appropriate authorities for corrective action. She relied upon the Hon'ble Bombay High Court (Division Bench) in **BEST Undertaking vs. Mohammad Ramjan M. Shahban's**<sup>20</sup> case which held that the Commissioner is empowered to issue effective and enforceable directions and that a purely advisory interpretation would render the statutory scheme otiose.

29.5. She submitted that **Bank of Baroda vs. Susmita Saha's**<sup>19</sup> case decided under the 2016 Act, held that the Commissioner's directions are entitled to due weight and must be implemented. She submitted that the per incuriam argument is untenable because **Bank of Baroda's**<sup>19</sup> case expressly considered and distinguished **Vinesh Kumar Bhasin's**<sup>3</sup> case



on the basis of the expanded 2016 Act framework.

29.6. She submitted that Section 82(2) of the 2016 Act, which declares proceedings before the Commissioner to be judicial proceedings within the meaning of Sections 193 and 228 IPC and deems the Commissioner to be a civil court for purposes of Section 195 and Chapter XXVI CrPC, is entirely absent from the 1995 Act and fundamentally expands the Commissioner's powers, distinguishing all decisions under the 1995 Act

29.7. The learned AGA submitted that the Commissioner acted within his jurisdiction under the 2016 Act, that the Act applies to private institutions, that Section 79 duly constitutes the State Commissioner as the competent authority, and that the State is ready and willing to implement any directions beneficial to persons with disabilities. He also submitted that Sections 16, 31 and 32 of the 2016 Act do not make any distinction between government and private institutions, and that



the mandate of the Act extends to private establishments.

29.8. This Court has carefully considered all submissions and finds that the critical question is whether the Commissioner under the 2016 Act has powers broader than those recognised under the 1995 Act in **Vinesh Kumar Bhasin's**<sup>3</sup> case and the line of cases following it.

29.9. A comparative analysis of the Commissioner's powers under the 1995 Act and the 2016 Act is essential to resolve the jurisdictional question. Under the 1995 Act, Section 58 set out the Chief Commissioner's functions (coordinate, monitor, safeguard rights, submit reports). Section 59 empowered the Commissioner to take up the matter with appropriate authorities. Section 62 dealt with the State Commissioner's investigatory power. Section 63 gave the Commissioner the powers of a civil court for summoning witnesses, requiring documents, receiving evidence, and issuing commissions. No provision in the 1995 Act declared proceedings before the Commissioner to be



judicial proceedings or deemed the Commissioner to be a civil court for contempt purposes.

29.10. Under the 2016 Act, the corresponding provisions are Sections 75, 76, 79, 80, 81 and 82. Section 79 provides for the appointment of State Commissioners. The State Commissioner for Karnataka (2<sup>nd</sup> Respondent) is the duly constituted authority under Section 79. Section 80 sets out the State Commissioner's functions, which in all material respects mirrors Section 59 of the 1995 Act, with the key addition of the power to "inquire, *suo motu* or otherwise, deprivation of rights" and to "take up the matter with appropriate authorities for corrective action." Section 81 provides that when the Commissioner makes a recommendation, the appropriate authority must either comply within three months or give reasons for non-compliance. Section 82 gives the Commissioner the powers of a civil court AND, crucially, and uniquely in the 2016 Act, declares the proceedings to be judicial proceedings within the meaning of Sections 193 and 228 IPC and deems the Commissioner to



be a civil court for the purposes of Section 195 and Chapter XXVI CrPC.

29.11. Section 80 of the Disabilities Act of 2016 reads as follows:

**80. Functions of State Commissioner.**—*The State Commissioner shall—*

*(a) identify, suo motu or otherwise, provision of any law or policy, programme and procedures, which are in consistent with this Act, and recommend necessary corrective steps;*

*(b) inquire, suo motu or otherwise deprivation of rights of persons with disabilities and safeguards available to them in respect of matters for which the State Government is the appropriate Government and take up the matter with appropriate authorities for corrective action;*

*(c) review the safeguards provided by or under this Act or any other law for the time being in force for the protection of rights of persons with disabilities and recommend measures for their effective implementation;*

*(d) review the factors that inhibit the enjoyment of rights of persons with disabilities and recommend appropriate remedial measures;*

*(e) undertake and promote research in the field of the rights of persons with disabilities;*

*(f) promote awareness of the rights of persons with disabilities and the safeguards available for their protection;*

*(g) monitor implementation of the provisions of this Act and schemes, programmes meant for persons with disabilities;*



*(h) monitor utilisation of funds disbursed by the State Government for the benefits of persons with disabilities; and*

*(i) perform such other functions as the State Government may assign.*

29.12. Section 82 of the 2016 Act provides:

**82. Powers of State Commissioner.**—(1) *The State Commissioner shall, for the purpose of discharging their functions under this Act, have the same powers of a civil court as are vested in a court under the Code of Civil Procedure, 1908 (5 of 1908) while trying a suit, in respect of the following matters, namely:—*

*(a) summoning and enforcing the attendance of witnesses;*

*(b) requiring the discovery and production of any documents;*

*(c) requisitioning any public record or copy thereof from any court or office;*

*(d) receiving evidence on affidavits; and*

*(e) issuing commissions for the examination of witnesses or documents.*

*(2) Every proceeding before the State Commissioner shall be a judicial proceeding within the meaning of sections 193 and 228 of the Indian Penal Code (45 of 1860) and the State Commissioners shall be deemed to be a civil court for the purposes of section 195 and Chapter XXVI of the Code of Criminal Procedure, 1973 (2 of 1974).*

29.13. The addition in Section 82(2) of the 2016 Act, declaring proceedings before the Commissioner to be judicial proceedings and deeming the Commissioner to be a civil court for contempt



purposes, is entirely absent from the 1995 Act. Under the 1995 Act, neither the Chief Commissioner's functions under Section 58 nor the powers under Section 63 contained any such declaration. The Hon'ble Supreme Court in **Vinesh Kumar Bhasin's**<sup>3</sup> case therefore interpreted the 1995 Act to hold that the Commissioner under that Act had no power to issue mandatory or prohibitory injunctions. However, that ratio is inapplicable to the 2016 Act precisely because of the expanded Section 82(2).

29.14. Insofar as Hon'ble Supreme Court in **Vinesh Kumar Bhasin's**<sup>3</sup> case held at paragraphs 11 and 13 that the Commissioner under the 1995 Act had no power to issue an interim direction to stay or prevent the employer's action (such as directing not to implement a retirement order). However, the concept of "interim directions" is not what the Commissioner has done in the present case. The Commissioner has passed a final remedial order after full hearing, directing compensatory payment. This is qualitatively different from an interim injunction. Section 80(b) and Section 81 of the



2016 Act together create a mechanism for the Commissioner to inquire, find a violation, make a recommendation/direction for corrective action, and require compliance within three months. This is a final remedial order, not an interim direction.

29.15. Section 76 of the 2016 Act provides: "Whenever the Chief Commissioner makes a recommendation to an authority in pursuance of clause (b) of sub-section (1) of section 75, that authority shall take necessary action on it, and inform the Chief Commissioner of the action taken within three months from the date of receipt of the recommendation: Provided that where an authority does not accept a recommendation, it shall convey reasons for non-acceptance to the Chief Commissioner within a period of three months." The parallel provision for the State Commissioner is Section 81. Both sections use the word "recommendation", but the operative effect is that the authority must either comply or give reasons for non-compliance. This is not a mere advisory jurisdiction. Under Section 82(2), non-



compliance with the Commissioner's order amounts to contempt of a judicial proceeding.

29.16. Section 79 of the 2016 Act provides for the appointment of the State Commissioner. The AGA submitted that the 2nd Respondent is the competent person appointed under Section 79 of the 2016 Act and is the State Commissioner for Karnataka. This is not disputed by the Petitioner. The State Commissioner for Persons with Disabilities, Karnataka (the 2nd Respondent) is the authority duly constituted under Section 79 and empowered to exercise functions under Section 80 and powers under Section 82. There is therefore no jurisdictional defect in the Commissioner receiving and adjudicating the complaint.

29.17. The Petitioner relies upon a series of decisions to argue that the Commissioner cannot pass mandatory directions.

29.18. **State Bank of Patiala vs. Vinesh Kumar Bhasin's**<sup>3</sup> case: This case was decided under the 1995 Act. The Hon'ble Supreme Court held that neither the Chief Commissioner nor any Commissioner under the 1995 Act has power to



issue any mandatory or prohibitory injunction or other interim directions, and that the grant of certain procedural powers of a civil court (summoning witnesses, receiving evidence, etc.) does not enable the authority to assume other powers of a civil court not vested in it by the 1995 Act. The ratio in **Vinesh Kumar Bhasin's**<sup>3</sup> case is binding insofar as the 1995 Act is concerned. However, the 2016 Act operates under a different framework. Section 82(2) of the 2016 Act expressly provides that proceedings before the Commissioner shall be judicial proceedings within the meaning of Sections 193 and 228 of the Indian Penal Code, and that the Commissioner shall be deemed to be a civil court for the purposes of Section 195 and Chapter XXVI of the Code of Criminal Procedure. This provision has no equivalent in the 1995 Act. **Vinesh Kumar Bhasin's**<sup>3</sup> case is therefore not a direct authority on the powers of the Commissioner under the 2016 Act.

29.19. **Managing Director, BMTC vs. Sumitra's**<sup>4</sup> case: This decision was rendered under the National Commission for Women Act, which has an entirely different statutory framework from



the Disabilities Act of 2016. The ratio of this decision, that the Commission can only make recommendations and not issue binding directions, is contextually limited to the powers of the Women's Commission under the said Act and has no direct application to the Commissioner under the Disabilities Act of 2016.

- 29.20. **Kamal Jant Agarwal vs. GGS Indraprastha University's**<sup>5</sup> case: This decision of the Hon'ble Delhi High Court held that the Commissioner for Persons with Disabilities, though vested with limited powers of a civil court for inquiry purposes, cannot act de hors those provisions and issue binding directions. This was decided under the 1995 Act. The principle, as applied to the 2016 Act, requires reconsideration in light of the expanded statutory framework of the 2016 Act.
- 29.21. **State Bank of India vs. Chief Commissioner's**<sup>6</sup> case, WP No.116/2023 (Karnataka High Court): This decision held that the impugned order passed by the Chief Commissioner under the 2016 Act did not refer



to any specific provision conferring such power, and there was no reason given for the mandatory direction. The **SBI** decision is distinguishable because in that case, the order was entirely without reasons. The impugned order in the present case, dated 12.06.2020, is not bereft of reasoning, it notes the circumstances of the injury, the Teacher's condition, the School's liability, and directs payment of Rs.10 lakhs as medical expenses and future expenses.

29.22. **Kerala PSC vs. State Disability**

**Commissioner's**<sup>7</sup> case: The Hon'ble Kerala High Court in this case held at para 20 that the Commissioner can direct appropriate authorities to take corrective action but does not have the power to sit in appeal over the decision of the competent authority or to directly appoint a candidate. The Hon'ble Kerala High Court further observed that the Commissioner can act as a quasi-adjudicatory authority and determine whether a person with disability has been denied their rights, and can thereafter direct appropriate corrective action. This case



actually supports the Commissioner's limited adjudicatory role.

- 29.23. **Union of India vs. Rajender Singh's**<sup>8</sup>, WP(C) No.7689/2015 (Delhi High Court): This decision followed **Vinesh Kumar Bhasin**<sup>3</sup> (under the 1995 Act) and set aside the order of the Deputy Chief Commissioner. As discussed above, this is a decision under the 1995 Act and is distinguishable on that ground. The 2016 Act provides for a more expansive framework.
- 29.24. **Shipping Corporation of India vs. Haripada Shaileshwar Chaterjee's**<sup>9</sup>, W.P.No.10307 of 2015 (Bombay High Court): This decision also held (under the 1995 Act) that the Commissioner could not set aside a termination letter or direct reinstatement. Again, this is a decision under the 1995 Act. The court in that case noted the limited powers under Sections 61 and 62 of the 1995 Act.
- 29.25. **General Manager, BEST Undertaking vs. Mohammad Ramjan M. Shahban's**<sup>20</sup>, 2018 SCC OnLine Bom 912 (Division Bench, Bombay High Court): This is a decision under the 1995 Act (not the 2016 Act) but by a Division Bench



of the Hon'ble Bombay High Court. The Hon'ble Division Bench held, in direct opposition to the cases cited by the Petitioner, that the Commissioner is empowered to issue effective and enforceable directions. At para 4, the Court held: 'The argument that the Commissioner simply has to take up the matter with the appropriate authority, whatever that means, and can pass no direction, has no substance. If all that is meant to be done by the Commissioner is to correspond or take up the issue with the appropriate authority, he is an authority with no effective role or purpose.' The Hon'ble Bombay High Court held that the expression 'take up the matter with the appropriate authorities' must be purposively interpreted to mean that the Commissioner can issue suitable instructions to the concerned authorities for redressing the grievance.

29.26. **Bank Of Baroda Vs. Susmita Saha's**<sup>19</sup>:

Decided under the 2016 Act. The Hon'ble Delhi High Court held that the Commissioner's directions are entitled to due weight and purposive implementation. The Hon'ble Delhi High Court expressly considered and



distinguished **Vinesh Kumar Bhasin's**<sup>3</sup> case on the basis of the expanded 2016 Act framework. A decision rendered after full consideration of a precedent and after distinguishing it cannot be per incuriam. The Petitioner's per incuriam argument is accordingly rejected.

- 29.27. **Bharat Sanchar Nigam Ltd. Vs. G. Sarvothaman's**<sup>11</sup>: The Hon'ble Supreme Court followed **Vinesh Kumar Bhasin's**<sup>3</sup> (under the 1995 Act) and held that the Commissioner has no power to issue mandatory directions. This too is a decision under the 1995 Act and is distinguishable on that ground. Further, BSNL being a public sector undertaking, issues of service law and departmental regulations were involved, which are distinct from the present case.
- 29.28. **Vaishali Walmik Bagul Vs. Secretary, Prerna Trust** (2013(5) Mh.L.J.221), **Bhabani Prasad Jena**, and **Baljeet Singh** (Delhi HC): All these cases held under the 1995 Act that the Commissioner cannot pass mandatory orders. All are distinguishable on the ground



that the 2016 Act operates under a materially different and expanded statutory framework, specifically Section 82(2). They do not govern the present case.

29.29. **Geetaben Ratilal Patel Vs. District Primary Education Officer's**<sup>18</sup> case: Decided under the 1995 Act. The ratio of **Geetaben's**<sup>18</sup> case, that the Commissioner is competent to examine whether a person with disability has suffered deprivation of rights and can direct corrective action, is consistent with and applicable to the 2016 Act's expanded framework. The Petitioner's argument that **Geetaben's**<sup>18</sup> case is per incuriam vis-à-vis **Vinesh Kumar Bhasin's**<sup>3</sup> case is rejected: this is a conflict between coordinate two-judge benches, not a per incuriam situation; and in any event, both are 1995 Act decisions and this Court is applying the 2016 Act.

29.30. The expanded statutory framework under the 2016 Act, combined with the quasi-constitutional status accorded to it by the Hon'ble Supreme Court in **In Re: PWD Rajasthan Judicial Services's**<sup>24</sup> case, leads



this Court to hold that: (a) the Commissioner under the 2016 Act has powers broader than those under the 1995 Act; (b) the Commissioner is empowered to inquire into deprivation of rights and issue recommendations/directions for corrective action; (c) the Commissioner's power under Section 80(b) to "take up the matter with appropriate authorities for corrective action" includes the power to issue written corrective directions to a private establishment; (d) such directions are binding, the establishment must comply within three months (Section 81) or give reasons for non-compliance, and non-compliance amounts to a judicial proceeding under Section 82(2); (e) the Commissioner cannot pass orders of reinstatement as if exercising Labour Court powers, but can determine whether discrimination has occurred and direct compensatory relief; and (f) **Om Rathod**<sup>22</sup>, **Rajive Raturi's**<sup>23</sup>, and **In Re: PWD Rajasthan's**<sup>24</sup> cases are not relied upon for the Commissioner's jurisdiction, they are relied upon for the substantive disability rights principles they articulate.



29.31. Shri B.K. Sampath Kumar argued that the Teacher's proper forum was an appeal under the Karnataka Education Act, 1983 (KEA 1983), and that having bypassed that time-barred remedy she could not invoke the Disabilities Act of 2016.

29.32. This argument is considered and rejected for the following reasons:

29.32.1. First, the applicability of the KEA 1983 to the Petitioner-School itself is doubtful. The KEA 1983 and the remedy of appeal thereunder applies primarily to government and aided schools. The Petitioner-School is an unaided private school affiliated to CBSE. Whether the KEA 1983's service-related appeal provisions cover disputes between a teacher and an unaided private school is not free from doubt, and the Petitioner has not placed any evidence or argument on record to establish that KEA 1983 applied to the Teacher's service conditions.



29.32.2. Second, and more fundamentally, the Teacher's complaint before the Commissioner was not merely about wrongful termination of service. It was about deprivation of her rights as a person with disability under the Disabilities Act of 2016, including the denial of reasonable accommodation, failure to provide an accessible workplace, and non-payment of medical expenses incurred as a result of an injury sustained in the course of employment. These claims have no analog under the KEA 1983 and cannot be adjudicated in a KEA 1983 appeal. The disability rights claim is a wholly distinct cause of action under a different statute.

29.32.3. Third, the Disabilities Act of 2016 creates a specialised complaint mechanism before the Commissioner specifically to address deprivation of disability rights. This specialised mechanism is available in addition to, and not in substitution for, any other remedy the Teacher may have



under service law. Section 80 of the 2016 Act does not require the aggrieved person to exhaust other remedies before approaching the Commissioner. The principle that a special statute creating a special remedy may be resorted to independently of general remedies is well settled.

29.32.4. This Court therefore holds that the Teacher's approach to the Commissioner was proper and that the Commissioner was entitled to entertain the complaint. The existence of a possible alternative remedy under the KEA 1983 (assuming the KEA 1983 applies, which is itself doubtful) does not bar the complaint under the Disabilities Act of 2016. The Petitioner's alternative remedy argument is rejected.

29.33. This Court answers Point No. 10 by holding that the State Commissioner for Persons with Disabilities, constituted under Section 79 of the 2016 Act, has jurisdiction and power to issue binding corrective directions against private



establishments, including directions to pay compensation. The decisions in **Vinesh Kumar Bhasin's**<sup>3</sup> case and the line of cases following it under the 1995 Act do not govern proceedings under the 2016 Act because of the materially expanded framework introduced by Section 82(2). All 1995 Act decisions cited by the Petitioner are distinguished on this ground. **Bank of Baroda vs. Susmita Saha's**<sup>19</sup> (decided under the 2016 Act) and the purposive approach in **BEST** Undertaking are followed.

30. **Answer to Point No.10: Whether the direction to pay Rs.10,00,000/- (Rupees Ten Lakhs only) constitutes a valid exercise of compensatory power under Sections 80 and 81 of the Disabilities Act of 2016, or whether it is beyond jurisdiction as being in the nature of a penal fine limited by the penalty ceiling under Section 89 of the Act?**

30.1. Shri B.K. Sampath Kumar contended that the impugned order directing payment of Rs.10 lakhs is arbitrary and without basis. He relied on Section 89 of the 2016 Act which prescribes a fine not exceeding Rs.10,000/- for a first contravention and between Rs.50,000/- and Rs.5 lakhs for any subsequent contravention. He argued that at most a fine of Rs.10,000/-



could have been imposed for one alleged first contravention, and that the Rs.10 lakhs direction has no basis in law.

- 30.2. He also submitted that the impugned order directed payment within 45 days, which is inconsistent with the three-month period stipulated in Section 81 of the Act.
- 30.3. Smt. Jayna Kothari submitted that the Rs. 10 lakhs directed is modest and reasonable, given the total medical expenses of over Rs. 40 lakhs incurred by the Teacher. The School paid Rs.6,03,603/- towards the initial Fortis Hospital bill; the Teacher incurred Rs.16,25,984/- at the Kennedy Krieger Institute in Baltimore and approximately Rs.24,48,000/- in ongoing rehabilitation therapy in India. The Rs.10 lakhs is a conservative direction, not an extravagant one. The direction is for compensatory relief, not a penal fine, and therefore Section 89 has no application.
- 30.4. This Court has carefully considered the Section 89 argument and finds it without merit. Section 89 reads as follows:



**89.** *Punishment for contravention of provisions of Act or rules or regulations made thereunder.— Any person who contravenes any of the provisions of this Act, or of any rule made thereunder shall for first contravention be punishable with fine which may extend to ten thousand rupees and for any subsequent contravention with fine which shall not be less than fifty thousand rupees but which may extend to five lakh rupees.*

- 30.5. Section 89 is a penal provision creating criminal liability for contravention of the Act. The penalty under Section 89 is a fine payable to the State through a prosecution process before a Magistrate. If imposed, it would go to the government treasury, not to the aggrieved person. The Commissioner is not a criminal court. Proceedings under Section 89 would be initiated before a Magistrate under the CrPC, entirely independent of and separate from the Commissioner's inquiry under Sections 80-81.
- 30.6. The impugned order does not purport to impose a fine under Section 89. It is a direction to pay compensation to the Teacher for the financial injury and losses suffered by her on account of the School's discriminatory conduct. The Commissioner's power under Section 80(b) read with Section 81 is to inquire into the deprivation of rights of persons with disabilities



and to take up the matter with appropriate authorities for corrective action. Corrective action in a case where an employee has suffered financial loss consequent upon the violation of her rights necessarily includes directing the employer to compensate the employee for such loss. This is remedial civil relief, not a fine or penalty under Section 89.

30.7. The distinction between Section 89 (penal criminal fine) and Section 80-81 (civil compensatory direction) is fundamental and non-overlapping. Both may co-exist: the same violator may be prosecuted before a criminal court under Section 89 AND directed by the Commissioner to pay compensatory relief. These are independent legal consequences for the same violation.

30.8. On the quantum: the Rs.10 lakhs direction must be evaluated against the total financial burden borne by the Teacher, Rs.6,03,603/- (Fortis Hospital), Rs.16,25,984/- (Kennedy Krieger Institute, Baltimore), and approximately Rs.24,48,000/- (ongoing rehabilitation therapy in India), totalling over



Rs.46 lakhs. The Chairman of the School had promised to take care of all medical expenses. The Rs.10 lakhs directed is a conservative fraction of the total expenses and is not arbitrary.

30.9. On the 45-day vs. three-month timeframe: Section 81 stipulates three months. The impugned order directed payment within 45 days. This is a technical deviation from Section 81 but does not go to the root of the Commissioner's jurisdiction or the substantive validity of the direction. In modification of this aspect, this Court directs that the School shall comply within three months from the date of this order.

30.10. This Court answers Point No. 11 by holding that the direction to pay Rs.10,00,000/- is a valid exercise of compensatory power under Sections 80 and 81 of the 2016 Act and is not a fine limited by Section 89. Section 89 operates in the criminal law domain; Sections 80-81 operate in the domain of civil enforcement and compensatory relief. The direction is not arbitrary, it is a conservative fraction of the



Teacher's documented expenses exceeding Rs.46 lakhs.

31. **Answer to Point No.11: Whether the impugned order dated 12.06.2020 is vitiated on account of (i) suppression of material facts by the Complainant/Teacher; (ii) the Commissioner's failure to set out reasons; or (iii) any other procedural irregularity affecting the validity of the order?**

31.1. Shri B.K. Sampath Kumar submitted that the Teacher had suppressed material facts before the Commissioner, including that the School had paid Rs.6,03,603/- towards hospital expenses, continued paying salary of Rs.5,58,476/- during her absence, and had offered her an alternative administrative role. He contended that a complainant who suppresses material facts does not come with clean hands and is not entitled to equitable consideration, relying upon **S.P. Chengalvaraya Naidu vs. Jagannath's<sup>1</sup>** case.

31.2. He also submitted that the Commissioner did not set out reasons for the order and did not refer to the specific provision under which he



was exercising power, rendering the order unsustainable.

31.3. Smt. Jayna Kothari submitted that the Teacher did not suppress any material facts, the School's payments and the offer of an alternative role were placed on record before the Commissioner and were reflected in the Commissioner's order. The Commissioner had the full picture. She submitted that the impugned order is reasoned: it records the circumstances of the injury, the Teacher's condition, the School's conduct, and the basis for directing Rs.10 lakhs.

31.4. **S.P. CHENGALVARAYA NAIDU vs. JAGANNATH's<sup>1</sup>** case: The Hon'ble Apex Court held at para 5 that "one who comes to the court, must come with clean hands... a person, whose case is based on falsehood, has no right to approach the court." This principle is well settled and accepted. However, its application requires careful examination of which party is invoking the Court's equitable jurisdiction.

31.5. The principle in **Chengalvaraya Naidu's<sup>1</sup>** case applies to the petitioner before the Court, i.e.,



the party invoking the Court's equitable jurisdiction. In this writ petition, the party approaching this Court is the Petitioner-School. The Teacher was the complainant before the Commissioner, not before this Court. The question of whether the Teacher came with clean hands before the Commissioner is a question that was before the Commissioner, not before this Court. The Commissioner, having had the full record including the School's surrejoinder disclosing all relevant facts, passed the impugned order with full knowledge of the facts.

31.6. The School did not disclose in the original proceedings before the Commissioner that it had offered an alternative role and paid hospital expenses. These were disclosed only in the surrejoinder. The Commissioner had the complete picture when passing the impugned order. There is no basis to say the Commissioner was misled. Even if the Teacher's original complaint did not set out all facts, she disclosed them progressively as the proceedings advanced. This does not constitute



the suppression condemned in **Chengalvaraya Naidu's**<sup>1</sup> case.

- 31.7. Furthermore, if the clean hands doctrine is to be applied to the party approaching this Court (the Petitioner-School), it is the School itself whose conduct is examined. The School made a promise through its Chairman that all medical expenses would be borne; it did not honour that promise in full. It offered the Teacher a demotion in both role and salary without any good faith assessment of whether she could continue as a teacher with accommodation. These aspects are not consistent with clean hands on the School's part.
- 31.8. The Hon'ble Supreme Court in **Ashok Kumar Sonkar vs. Union of India's**<sup>10</sup> case, at para 34, held that principles of equity have no role in cases of misplaced sympathy, and that courts cannot ignore binding decisions merely on grounds of sympathy. This principle cuts both ways, this Court is not deciding in the Teacher's favour on sympathy. It is deciding in her favour on the basis of the law, namely Section 3(3)



read with Section 2(h) and Section 2(y) of the Disabilities Act of 2016.

31.9. This Court notes, in the context of the Section 89 argument and the decision in **Ashok Kumar Sonkar's**<sup>10</sup>, that the Hon'ble Supreme Court in **Ashok Kumar Sonkar's**<sup>10</sup> at para 35 specifically quoted the observation of this Court (Karnataka High Court) in **Maruti Udyog Ltd's**<sup>32</sup> case. that "while construing a statute, sympathy has no role to play." The Petitioner relies on this to urge that this Court should not stretch the statute's provisions out of sympathy for the Teacher's condition. This Court accepts the principle but applies it both ways: (a) no sympathy for the Teacher should lead this Court to stretch the statute beyond its terms; and (b) no sympathy for the Petitioner's operational convenience should lead this Court to restrict the statute below its express terms. The plain text of Section 3(3) ("No person with disability shall be discriminated") is universal. The plain text of Section 21 ("Every establishment shall notify equal opportunity policy") is universal. Applying the statute as written, without sympathy in either direction,



compels the conclusions this Court has reached.

31.10. The Petitioner's submission that the Commissioner did not set out reasons for the order and did not refer to the specific provision is not borne out on a reading of the impugned order. The impugned order records: the circumstances of the accident on 22.8.2013, the nature and degree of the Teacher's disability (90% PP1 locomotor disability), the School's liability as the site of the injury-causing incident, the financial burden on the Teacher, and the basis for directing payment of Rs.10 lakhs as medical expenses and future expenses. This is not an order bereft of reasons. The present case is clearly distinguishable from the **SBI vs. Chief Commissioner's**<sup>6</sup> case (WP No.116/2023) where this Court set aside an order that was "a narration of factual aspects with no reasons at all."

31.11. This Court answers Point No. 12 by holding that the impugned order dated 12.06.2020 is not vitiated on any of the grounds urged. The



Teacher did not suppress material facts, the Commissioner had the complete picture. The order is not bereft of reasons, it records the factual and legal basis for the direction. No procedural irregularity affecting the validity of the order has been established. The clean hands doctrine, properly applied, operates against the Petitioner-School as the party invoking this Court's writ jurisdiction.

32. **Answer to Point No.12: Whether the writ petition under Articles 226 and 227 of the Constitution of India against the order of the Commissioner is maintainable, and if maintainable, whether this Court should interfere with the impugned order on any of the grounds urged?**

32.1. Shri.B.K.Sampath Kumar maintained that the writ petition was maintainable and that this Court should interfere with the impugned order on grounds of: (i) want of jurisdiction in the Commissioner to pass binding directions on a private establishment; (ii) Section 89 limiting the quantum; (iii) suppression of facts by the Teacher; and (iv) the Commissioner's failure to give reasons.



- 32.2. Smt. Jayna Kothari submitted that while the writ petition is maintainable (the Commissioner being a public authority amenable to writ jurisdiction), the scope of interference under Articles 226 and 227 is narrow. The Commissioner had jurisdiction, followed natural justice, and passed a reasoned order. None of the grounds for interference in writ jurisdiction, want of jurisdiction, error apparent on the face of the record, violation of natural justice, or manifest arbitrariness, are made out.
- 32.3. Smt. Jayna Kothari relied upon **Jeeja Ghosh and Another vs. Union of India and Others**<sup>17</sup> case for the broad proposition that private entities are bound by disability non-discrimination norms and that constitutional courts can award compensation for violations of disability rights.
- 32.4. Shri B.K. Sampath Kumar, in his rejoinder, submitted that **Jeeja Ghosh**<sup>17</sup> case is distinguishable on the following grounds: (a) it arose from a wholly distinct statutory and factual context, namely the violation by a private airline of Civil Aviation Requirements



issued by the DGCA under Rule 133-A of the Aircraft Rules, 1937, which had binding statutory force upon the carrier; (b) there is no analogous regulatory framework applicable to the Petitioner-School with statutory force comparable to the Aircraft Rules; (c) the relief in **Jeeja Ghosh's**<sup>17</sup> case was constitutional compensation awarded by the Hon'ble Supreme Court under Article 32 in its original jurisdiction, which is qualitatively different from a direction by the Commissioner under the Disabilities Act; and (d) **Jeeja Ghosh's**<sup>17</sup> case does not lay down any ratio concerning the scope or jurisdiction of the Commissioner for Persons with Disabilities.

32.5. This Court has carefully considered both submissions and holds as under:

32.6. **Jeeja Ghosh's**<sup>17</sup> case concerned a private airline (SpiceJet) that offloaded Ms. Jeeja Ghosh, a person with cerebral palsy, from a flight at Kolkata on the ground that her disability was a potential safety hazard. The Hon'ble Supreme Court held that the airline had violated the Civil Aviation Requirements, 2008



(issued under Rule 133-A of the Aircraft Rules, 1937), which specifically prohibited discrimination against persons with disabilities in civil aviation. The Court awarded Rs.10 lakhs as compensation under Article 32.

32.7. The broader constitutional principle running through **Jeeja Ghosh's**<sup>17</sup> case is that persons with disability have fundamental rights to dignity, equality and non-discrimination which must be honoured by all persons and entities, government or private, and that these constitutional rights can be enforced against private parties when they operate in a regulated domain.

32.8. The Petitioner's submission that there is no analogous regulatory framework for private schools overlooks the direct application of the Disabilities Act of 2016 itself. This Court has held that the 2016 Act directly imposes obligations on private establishments through Section 3(3) read with Sections 2(h) and 2(y). The Disabilities Act of 2016, as a quasi-constitutional statute with the status of a super statute (as recognised in **In Re: Recruitment**



**of PWD Candidates's**<sup>24</sup> case, is the regulatory framework applicable to the Petitioner-School for the purposes of disability non-discrimination obligations. The distinction between an airline regulated by Aircraft Rules and a school regulated by the Disabilities Act of 2016 is therefore a distinction without a material legal difference for the purposes of this case.

32.9. The Petitioner's submission that **Jeeja Ghosh's**<sup>17</sup> case does not lay down any ratio on the Commissioner's powers is accepted. **Jeeja Ghosh's**<sup>17</sup> case was not a case about the Commissioner's powers, it was a case decided directly by the Supreme Court under Article 32. Consequently, the observations in **Jeeja Ghosh's**<sup>17</sup> case about private entities being bound by disability rights norms support Respondent No.1's case on the substance, but do not directly govern the jurisdictional question regarding the Commissioner. The jurisdictional question is governed by Sections 80, 81 and 82 of the 2016 Act as analysed above.



32.10. **Jeeja Ghosh's**<sup>17</sup> case establishes the constitutional basis for compensation to persons with disabilities for violations of their fundamental rights, and establishes that private entities are bound by disability non-discrimination norms when operating in regulated domains. **Jeeja Ghosh's**<sup>17</sup> case does not assist the Petitioner and does not require a different outcome.

32.11. The State Commissioner for Persons with Disabilities is a public authority constituted under Section 79 of the Disabilities Act of 2016 and exercising statutory quasi-judicial functions under Section 80 read with Section 82. It is unquestionably amenable to the writ jurisdiction of this Court under Articles 226 and 227 of the Constitution of India. The writ petition is maintainable. The Petitioner-School, as a private establishment against which corrective directions have been issued by a public authority, has the right to challenge such directions in this Court under Article 226.

32.12. The jurisdiction of this Court under Article 226 extends to quashing orders that suffer from:



(a) want of jurisdiction or excess of jurisdiction; (b) error of law apparent on the face of the record; (c) violation of principles of natural justice; or (d) manifest arbitrariness amounting to a jurisdictional defect. Article 227 extends to supervisory oversight to keep quasi-judicial authorities within the bounds of their jurisdiction. This Court does not re-appreciate facts or substitute its judgment for the statutory authority's on questions of fact.

32.13. (a) JURISDICTION: This Court has found (under Point 10) that the Commissioner had jurisdiction under Section 80 read with Section 81 and Section 82 of the 2016 Act. There is no want of jurisdiction. (b) NATURAL JUSTICE: Both parties were heard. The School filed a reply, the Teacher filed a rejoinder, and the School filed a surrejoinder. The principles of natural justice were fully complied with. (c) REASONS: The impugned order is not bereft of reasoning (Point 12). (d) MANIFEST ARBITRARINESS: The direction of Rs.10 lakhs is a conservative fraction of the Teacher's documented expenses exceeding Rs.46 lakhs; it is not arbitrary. (e) SECTION 89: The direction



is compensatory relief under Section 80-81, not a penal fine under Section 89 (Point 11). None of the grounds warranting interference in writ jurisdiction are established.

32.14. The writ petition challenges an order of a statutory authority passed after due inquiry, hearing both sides, and with reasons. This Court finds no ground in law or fact to interfere with the impugned order in the exercise of writ jurisdiction.

32.15. This Court answers Point No. 13 by holding that the writ petition is maintainable. However, this Court does not interfere with the impugned order. None of the grounds of interference under Articles 226 and 227 are made out. The Commissioner had jurisdiction, followed natural justice, gave reasons, and passed a corrective direction within the scope of the 2016 Act. The writ petition is dismissed.

33. **Answer to Point No.13: What Order?**

33.1. In light of the answers to Points 1 to 13, this Court now records its final findings and passes the following operative order:



- 33.2. The impugned order dated 12.06.2020 passed by the 2nd Respondent, State Commissioner for Persons with Disabilities, Karnataka, in Case No.21/19-20 was within jurisdiction. The Commissioner had the power under Section 80(b) read with Section 81 of the Disabilities Act of 2016 to inquire into the deprivation of the Teacher's rights and to issue directions for corrective action.
- 33.3. The direction to pay Rs.10,00,000/- (Rupees Ten Lakhs only) is a legitimate exercise of compensatory power under the 2016 Act, not a penal fine under Section 89. It is a conservative direction against total documented expenses exceeding Rs.46 lakhs. The quantum is not arbitrary.
- 33.4. The impugned order is not vitiated on account of suppression of facts, absence of reasons, or any procedural irregularity. Hence This Court passes the Following

### **ORDER**

- i. The writ petition is ***dismissed***.



- ii. The impugned order is upheld, with the modification that the School shall comply with the direction to pay Rs.10,00,000/- within THREE MONTHS from the date of this order (in place of the 45-day period mentioned in the impugned order).
- iii. The School is further directed, within SIX MONTHS from the date of this order, to:
  - (a) frame, notify and register an Equal Opportunity Policy under Section 21 of the Disabilities Act of 2016 read with Rule 8 of the Rights of Persons with Disabilities Rules, 2017, and submit a copy to the 2nd Respondent;
  - (b) conduct an accessibility audit of its premises by an empanelled accessibility consultant and take corrective steps to comply with the Harmonised Guidelines and Space Standards for Barrier Free Built Environment, 2021;
  - (c) provide Respondent No.1 a formal written offer of reinstatement to teaching duties with the specific reasonable accommodations set out in her affidavit dated 06.06.2025, namely a ground-floor wheelchair-accessible classroom, a disabled-friendly washroom, a transport allowance of Rs.15,000/- per month, 15-minute breaks after every two periods, option to teach online on days when physically unable to attend, and first aid facility.
- iv. If Respondent No.1 accepts the offer of reinstatement within 30 days of receiving



such offer, the School shall ensure her reinstatement with seniority counted from her original date of appointment (08.07.2008), and with salary and emoluments applicable to a teacher of her grade and seniority. However, no back wages shall be payable for the period of absence to the date of reinstatement, given the equities of the situation.

- v. No order as to costs.

**Sd/-**  
**(SURAJ GOVINDARAJ)**  
**JUDGE**

Prs/SR



## **STANDARD OPERATING PROCEDURE FOR UNIVERSAL ACCESSIBILITY**

### **PART 1. PREAMBLE AND FOUNDATIONAL PRINCIPLES**

1. **CONTEXT:** This Standard Operating Procedure (hereinafter "SOP") is issued by this Court in exercise of its jurisdiction under Articles 226 and 227 of the Constitution of India, in exercise of the power to issue directions in the public interest and to give effect to the statutory rights created by the Rights of Persons with Disabilities Act, 2016 (hereinafter "the Act") and the Rights of Persons with Disabilities Rules, 2017 (hereinafter "the Rules"). The SOP is transitional and operational in character: it operates until the State of Karnataka and the appropriate Government frame comprehensive accessibility rules under Sections 40 and 45 of the Act. It does not dilute any existing statutory obligation and operates in addition to the National Building Code of India and the Harmonised Guidelines and Space Standards for Barrier Free Built Environment (hereinafter "Harmonised Guidelines, 2021").
2. **Constitutional Foundations**
  - 2.1. Accessibility for persons with disabilities is a constitutional guarantee flowing from:
  - 2.2. Article 14, Right to equality and equal protection of law, which prohibits arbitrary discrimination including on grounds of disability;
  - 2.3. Article 15(1), Prohibition of discrimination on specified grounds, read expansively to cover disability as an analogous ground;
  - 2.4. Article 19(1)(g), Right to practise any profession, carry on any occupation, which disability-related barriers directly impede;



- 2.5. Article 21, Right to life and personal liberty, which the Hon'ble Supreme Court has held includes the right to live with dignity, the right to livelihood, and the right to accessible public spaces;
- 2.6. Articles 38, 41, and 46, Directive Principles requiring the State to minimise inequalities, provide for the disabled, and promote with special care the educational and economic interests of weaker sections.
- 2.7. The Hon'ble Supreme Court has held that the RPwD Act 2016 is a quasi-constitutional statute, a super statute, giving it a status higher than ordinary legislation and requiring its provisions to be interpreted purposively to advance, not restrict, the rights of persons with disabilities: In **Re: Recruitment of Visually Impaired/PWD Candidates in Rajasthan Judicial Services**<sup>1</sup>.

### 3. **The Rights-Based Framework**

- 3.1. Accessibility is NOT a welfare measure or a concession. It is a fundamental right, as held by the Hon'ble Supreme Court in **Kabir Paharia vs. National Medical Commission**<sup>2</sup>: "reasonable accommodation is not a matter of charity but a fundamental right flowing from Articles 14, 16 and 21 of our Constitution."
- 3.2. This SOP expressly adopts and operationalises:
  - 3.2.1. **UNIVERSAL DESIGN**: The design of products, environments, programmes,

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<sup>1</sup> 2025 INSC 300

<sup>2</sup> 2025 SCC Online SC 1025



- and services to be usable by all people, to the greatest extent possible, without the need for adaptation or specialized design;
- 3.2.2. **BARRIER-FREE ENVIRONMENT:** The removal of physical, communicational, informational, attitudinal, and institutional barriers that impede persons with disabilities;
- 3.2.3. **REASONABLE ACCOMMODATION:** Necessary and appropriate modifications and adjustments without imposing a disproportionate or undue burden, as defined in Section 2(y) of the Act;
- 3.2.4. **NON-DISCRIMINATION:** The prohibition in Section 3(3) of the Act and Rule 3(1) of the Rules that no establishment shall discriminate against any person on the ground of disability;
- 3.2.5. **INCLUSION BY DESIGN:** Accessibility built into planning and design from the outset, not retrofitted as an afterthought;
- 3.2.6. **INTERSECTIONALITY:** Recognition that disability intersects with gender, age, caste, religion, economic status, and geographic location, and that policies must address these compounded disadvantages.
- 3.2.7. **INTERNATIONAL OBLIGATIONS:** India ratified the United Nations Convention on the Rights of Persons with Disabilities (UNCRPD) in 2007. Article 9 of the UNCRPD requires States Parties to ensure that persons with disabilities have equal access to the physical



environment, transportation, information and communications technology, and public facilities. This SOP gives effect to India's UNCRPD obligations at the State level. The SOP is further consistent with Sustainable Development Goal 11 (Sustainable Cities and Communities) which requires inclusive and accessible urbanisation.

### 3.3. **Scope, Universal Application**

3.3.1. This SOP applies universally to all categories of establishments, all public buildings, all specified disabilities, all persons regardless of age or gender, throughout the State of Karnataka.

3.3.2. **TRANSITIONAL CHARACTER:** This SOP is transitional and shall operate as binding directions of this Court until the appropriate Government frames comprehensive statutory rules under Sections 40 and 45 of the Act. Compliance with this SOP does not relieve any establishment of its obligation to comply with the Act, the Rules, the National Building Code, or the Harmonised Guidelines, 2021.

## **PART 2. DEFINITIONS**

4. The following definitions apply throughout this SOP:
  - 4.1. "**Accessibility Audit**", a formal assessment of a building, establishment, or system against applicable accessibility standards.
  - 4.2. "**Appropriate Government**", Section 2(k) of the Act.



- 4.3. "**Discrimination**", Section 2(h) of the Act, including denial of reasonable accommodation.
- 4.4. "**Equal Opportunity Policy**" or "EOP", Section 21 of the Act read with Rule 8 of the Rules.
- 4.5. "**Establishment**", both Government and private establishments combined. In this SOP, "establishment" is used in this combined sense unless the context otherwise requires.
- 4.6. "**Government establishment**", Section 2(i) of the Act.
- 4.7. "**Liaison Officer**", Rule 8(3)(e): the designated officer responsible for disability rights in each establishment.
- 4.8. "**Person with disability**", Section 2(s) of the Act.
- 4.9. "**Person with benchmark disability**", Section 2(r) of the Act: not less than 40% of a specified disability.
- 4.10. "**Private establishment**", Section 2(v) of the Act.
- 4.11. "**Public building**", Section 2(w) of the Act: any Government or private building used by members of the public or any section thereof. This SOP treats as "public buildings" all buildings listed in Part 3 of this SOP.
- 4.12. "**Reasonable accommodation**", Section 2(y) of the Act: necessary and appropriate modification and adjustments, without imposing a disproportionate or undue burden, to ensure enjoyment of rights on an equal basis. Denial of reasonable accommodation is discrimination under Section 2(h).
- 4.13. "**Specified disability**", any disability listed in the Schedule to the Act, including: locomotor



disability; visual impairment (blindness and low vision); deaf-blindness; hearing impairment; speech and language disability; intellectual disability; specific learning disabilities; autism spectrum disorder; mental illness; multiple sclerosis; muscular dystrophy; chronic neurological conditions; haemophilia; thalassemia; sickle cell disease; and multiple disabilities.

- 4.14. "**State Accessibility Authority**", the authority to be established under Part 6 of this SOP.
- 4.15. "**Universal Design**", design of products, environments, programmes, and services usable by all people without the need for adaptation, consistent with Section 2 of the Act and Article 2 of the UNCRPD.
- 4.16. "**WCAG**", Web Content Accessibility Guidelines published by the World Wide Web Consortium, incorporated as the standard for digital accessibility.

### **PART 3. SCOPE AND APPLICABILITY**

5. **UNIVERSAL APPLICABILITY:** This SOP applies to all of the following categories:
  - 5.1. **Government Establishments:** All secretariat and department buildings; courts and tribunals at all levels; police stations and offices; revenue offices; panchayat offices and gram sabhagrihas; municipal offices; public sector undertakings; prisons and correctional facilities; government hospitals; government educational institutions; any other Government establishment as defined in Section 2(i) of the Act.
  - 5.2. **Public Commercial Buildings:** Shopping malls, commercial complexes, markets; cinema



halls and multiplexes; auditoriums, conference halls, and performance venues; hotels, lodging houses, and service apartments; restaurants, cafes, and food establishments; banks, ATMs, and financial institution branches; insurance offices and financial service centres; fuel stations; any other commercial establishment open to the public.

- 5.3. **Healthcare Facilities:** All hospitals (Government and private) of all levels; clinics and polyclinics; diagnostic centres and imaging laboratories; rehabilitation centres; pharmacies; mental healthcare institutions under the Mental Healthcare Act, 2017; palliative care centres; blood banks.
- 5.4. **Educational Institutions:** Schools (Government, private aided, private unaided) of all boards; colleges and universities; residential schools and hostels; coaching centres and tuition academies; skill development centres; libraries (public and institutional); laboratories; examination centres.
- 5.5. **Transport Infrastructure:** Bus stands and bus terminals; railway stations; metro stations; airports; ferry terminals and jetties; inter-city transport hubs; taxi and auto stands; parking facilities; footpaths and pedestrian crossings; road overpasses and underpasses with public access.
- 5.6. **Religious and Cultural Places:** Places of worship open to the public (temples, mosques, churches, gurudwaras, synagogues, and any other place of worship); museums; art galleries; heritage sites with public access; recreational parks; sports complexes; community halls.



**5.7. Residential and Housing Developments:**

Apartment complexes and multi-storey residential buildings (common areas and common facilities); gated communities; group housing projects; senior living facilities; worker hostels and dormitories; student hostels.

**5.8. Digital and Virtual Platforms:**

5.8.1. All Government websites and mobile applications; e-governance portals and e-office systems; court filing and case management systems; online grievance systems; public kiosks and interactive terminals; smart-city platforms; any digital interface through which Government services are delivered.

5.8.2. All private establishments providing digital services to the public (banking portals, e-commerce, health portals, educational platforms) are strongly directed to adopt digital accessibility standards and shall comply fully once regulations are framed under the Act.

**6. Classification of Buildings for Compliance Purposes**

6.1. **NEW CONSTRUCTIONS:** All new constructions of any category, Government or private, shall comply fully with accessibility requirements from the inception stage, in accordance with Section 44 of the Act and the Harmonised Guidelines, 2021. No building permission shall be granted nor certificate of completion issued unless the building plan adheres to accessibility rules.



- 6.2. **EXISTING PUBLIC BUILDINGS:** All existing public buildings shall be made fully accessible within five years from the date of notification of accessibility rules by the appropriate Government, in accordance with Section 45 of the Act.
- 6.3. **SERVICE PROVIDERS (PRIVATE ESTABLISHMENTS):** Private establishments providing services to the public, including schools, hospitals, malls, and all commercial entities, shall make their services accessible within two years from the date of notification of accessibility rules, in accordance with Section 46 of the Act.
- 6.4. **HERITAGE STRUCTURES:** Heritage buildings protected under the Ancient Monuments and Archaeological Sites and Remains Act, 1958 or equivalent State legislation shall achieve the maximum feasible level of accessibility compliance without structural compromise. Specific guidelines for heritage buildings are set out in Schedule D of this SOP.
- 6.5. **RURAL INFRASTRUCTURE:** Gram panchayat offices, primary health centres, anganwadis, rural schools, and rural transport hubs shall comply with simplified but meaningful accessibility standards as set out in Part 12 of this SOP.
- 6.6. **HIGH-FOOTFALL PUBLIC UTILITY BUILDINGS:** Airports, railway stations, metro stations, bus terminals, malls, and shopping complexes shall be accorded priority status and shall achieve full accessibility compliance within ONE YEAR from the date of this order, given the volume of persons with disabilities who use these facilities.



## **PART 4. INSTITUTIONAL GOVERNANCE STRUCTURE**

### **7. State Accessibility Authority**

7.1. The Chief Secretary, and/or the Principal Secretary Women and Child Welfare, Government of Karnataka is directed to establish, within 6 MONTHS from the date of this order, a dedicated State Accessibility Authority (hereinafter "**SAA**") or a State Accessibility Mission, constituted by notification under the Act. Pending this, the State Commissioner for Persons with Disabilities shall exercise the functions of the SAA.

#### **7.2. FUNCTIONS OF THE SAA:**

7.2.1. Monitor and enforce accessibility compliance across all categories of buildings and establishments;

7.2.2. Issue accessibility certifications to compliant establishments;

7.2.3. Empanel accessibility auditors and maintain a public register of empanelled auditors;

7.2.4. Set and update accessibility standards and guidelines consistent with the Act and the Harmonised Guidelines, 2021;

7.2.5. Develop and maintain digital monitoring systems and a unified accessibility compliance portal;

7.2.6. Conduct and coordinate training and capacity building programmes;

7.2.7. Publish an annual State Accessibility Report with district-wise rankings;

7.2.8. Coordinate between departments, local authorities, and district committees.



7.3. **District Accessibility Committees:** SAA if notified, if not State Commissioner for Persons with Disabilities shall constitute in each district in Karnataka, a District Accessibility Committee (**DAC**) within SIX MONTHS from the date of this order, comprising:

7.3.1. Deputy Commissioner, Chairperson;

7.3.2. Chief Executive Officer of Zilla Panchayat.

7.3.3. Municipal Commissioner or Chief Officer of the urban local body;

7.3.4. Representative of the State Commissioner for Persons with Disabilities;

7.3.5. District Engineer (Public Works Department);

7.3.6. District Education Officer;

7.3.7. District Health Officer;

7.3.8. Two representatives of registered disability rights organisations;

7.3.9. An urban planner or architect with accessibility expertise;

7.3.10. A digital accessibility expert.

7.4. **FUNCTIONS OF DAC:** Oversee district-level **accessibility** compliance, receive audit reports, initiate corrective action for violations, prepare district accessibility plans, and report to the SAA.

7.5. **Accessibility Nodal Officers**

7.5.1. Every Government department, every urban local body, every Government educational institution, every Government hospital, shall designate a



senior official as an Accessibility Nodal Officer (**ANO**) within THREE MONTHS from the date of this order. The ANO shall be responsible for implementing this SOP within the institution and shall report to the District Accessibility Committee.

- 7.5.2. Private establishments with fifty or more employees shall designate a Liaison Officer as per Rule 8(3)(e) of the Rules, who shall perform the functions of ANO for that establishment.
- 7.5.3. **Planning and Approval Stage Compliance:** Accessibility compliance shall be mandatory at every stage of the building approval process:
- 7.5.4. **BUILDING PLAN APPROVAL:** At the stage of building plan approval, the applicant shall submit accessibility drawings conforming to the Harmonised Guidelines, 2021 as an integral part of the building plan. No building plan for a public building shall be approved unless the accessibility drawings are satisfactory.
- 7.5.5. **COMMENCEMENT CERTIFICATE:** Prior to the grant of a commencement certificate, the builder and the architect shall sign and submit an accessibility compliance undertaking confirming that accessibility features will be constructed in accordance with the approved plans.
- 7.5.6. **MID-CONSTRUCTION INSPECTION:** Accessibility features shall be included in mid-construction inspections conducted by the concerned authority. Any



deviation from the approved accessibility drawings shall be flagged and remedied before the inspection is passed.

7.5.7. **OCCUPANCY CERTIFICATE:** No occupancy certificate shall be issued for any public building unless a final accessibility audit by an empanelled auditor confirms compliance. The audit report shall be submitted to the sanctioning authority as a precondition for the occupancy certificate. No occupancy certificate shall be issued for any public building unless the building fully complies with the accessibility requirements under Section 44 of the Act and the Harmonised Guidelines, 2021. This requirement is non-negotiable and no waiver shall be granted.

7.5.8. **TRADE LICENCE:** Accessibility certification shall be a condition for the grant or renewal of trade licences for all establishments occupying public buildings. No trade licence shall be renewed for an establishment in a public building that has not achieved accessibility compliance.

8. **Mandatory Rule-Making Timelines:** The Chief Secretary, and/or the Principal Secretary Women and Child Welfare, Government of Karnataka is directed to:

8.1. Frame comprehensive State-level accessibility rules under Sections 40 and 45 of the Act within SIX MONTHS;



- 8.2. Recommend Amendments to all municipal building bye-laws to incorporate accessibility requirements within NINE MONTHS;
- 8.3. Recoment Amendments applicable to panchayat-level regulations within TWELVE MONTHS;
- 8.4. Integrate accessibility compliance into town planning laws and development regulations within TWELVE MONTHS;
- 8.5. Achieve statewide operationalisation of the accessibility framework within EIGHTEEN MONTHS.

## **PART 5. PHYSICAL ACCESSIBILITY STANDARDS**

9. **GOVERNING STANDARDS:** All physical accessibility standards in this SOP are grounded in and consistent with the Harmonised Guidelines and Space Standards for Barrier Free Built Environment, 2021, the National Building Code of India, and Section 40 of the Act. Where this SOP prescribes standards, they represent the minimum floor. Higher standards, where adopted, are to be commended.
10. **Entry, Approach, and Egress**
  - 10.1. **STEP-FREE ACCESS:** All public buildings shall have at least one step-free access route from the public footpath or road to the principal functional areas of the building. Ramps with gradient not exceeding 1:12 (preferred 1:15 where space permits) shall be provided at all principal entrances, with handrails on both sides and anti-slip surfaces.
  - 10.2. **DOOR SPECIFICATIONS:** Principal entrances shall have automatic doors, sliding doors, or doors with lever handles (not knob handles). Minimum clear doorway width: 900 mm. Threshold step: maximum 12 mm.



- 10.3. **TACTILE PATHS:** Tactile guiding paths shall be provided from the main gate/public footpath to the principal entrance and from the entrance to principal functional areas (reception, lifts, accessible toilets).
- 10.4. **RESIDENTIAL COMPLEXES:** At least one fully accessible entrance (including the main lobby and lift) shall be provided for all residential apartment complexes regardless of the number of units.
- 10.5. **EMERGENCY EXITS:** All emergency exits shall be accessible and shall be included in emergency egress planning for persons with disabilities.

## 11. **Parking**

- 11.1. **Reserved accessible parking spaces as close as possible to the accessible entrance:** minimum 2% of total spaces, or at least one space (whichever is greater). For high-footfall buildings (malls, airports, stadia), minimum 2% with a floor of four spaces.
- 11.2. **Bay dimensions:** minimum 3600 mm width (to allow wheelchair transfer from vehicle), clearly marked with the international symbol of access, connected by an accessible path to the building entrance.

## 12. **Internal Circulation**

- 12.1. **CORRIDORS:** Minimum clear width 1500 mm; turning radius of 1500 mm diameter at intervals and corners. Floors to be non-slip and level. All obstacles, protrusions, and open ducts eliminated.
- 12.2. **LIGHTING:** Adequate illumination throughout, with non-glare lighting. Minimum 150 lux in corridors, 300 lux in workspaces and functional



areas. Emergency lighting on all accessible routes.

12.3. **ACOUSTICS:** Public areas in large buildings (hospitals, courts, stations) shall be designed for acoustic clarity for persons with hearing impairments. Induction loop systems shall be installed in auditoria and large public halls.

### 13. **Vertical Access**

13.1. Multi-floor buildings shall have accessible lifts serving all floors used by persons with disabilities. Lift cab minimum dimensions: 1100 mm × 1400 mm. Lifts shall have: Braille and tactile buttons; audio floor announcements; low control panel (max 1200 mm); handrail on at least one wall; mirror on back wall.

13.2. Where lifts cannot be installed (heritage buildings, small buildings), stairlifts or platform lifts shall be provided as alternatives.

13.3. Accessible staircases shall have continuous handrails on both sides, contrasting nosings, and solid risers.

### 14. **Accessible Toilets**

14.1. At least one accessible toilet per floor used by the public, staff, students, or visitors. Standards: clear floor space 1500 mm × 2000 mm; outward-opening/sliding door with 900 mm clear width; L-shaped grab bars adjacent to WC; wash basin at 700-750 mm with knee clearance; lever taps; non-slip floor; low mirror; all accessories within reach.

14.2. Gender-neutral accessible toilets shall be provided wherever feasible, to accommodate transgender persons with disabilities and persons requiring attendant assistance.



14.3. Accessible toilets shall be kept clean and exclusively available to persons with disabilities. They shall not be used for storage, cleaning equipment, or any other purpose.

14.4. For persons requiring catheter care or other medical procedures: a clean, private, accessible space shall be designated and maintained for this purpose.

**15. Signage and Wayfinding**

15.1. All signage shall include: tactile elements (raised letters and Braille); high-contrast colour combinations; pictograms alongside text; placement at 1400-1600 mm height.

15.2. Emergency signage: illuminated, with auditory alarms, accessible to all disability types.

15.3. The international symbol of access shall be prominently displayed at all accessible entrances, parking bays, toilets, and lifts.

15.4. Audio wayfinding systems shall be provided in high-footfall public buildings (railway stations, airports, hospitals, courts).

**16. Workspaces and Service Counters**

16.1. At least one accessible workstation in each functional area (classroom, office, laboratory, meeting room) with minimum 700 mm knee clearance and 1500 mm manoeuvring radius.

16.2. Service counters (banks, hospitals, government offices, courts, retail): at least one section of the counter at 760-900 mm height with knee clearance for wheelchair users.

16.3. Reception and waiting areas: accessible seating (arm-rests, appropriate height) and clear floor space for wheelchair users.



## 17. **Specific Building-Type Requirements**

### 17.1. **Malls, Shopping Complexes, and Multiplexes**

- 17.1.1. Accessible cinema/performance seating: minimum 1% of total seats (at least two seats), with companion seats, positioned for unobstructed viewing.
- 17.1.2. Accessible ATMs and payment terminals at accessible heights (max 900 mm).
- 17.1.3. Accessible trial/fitting rooms: at least one per floor with minimum 1500 mm × 1500 mm turning radius.
- 17.1.4. Induction loops in food courts and major common areas.
- 17.1.5. Accessible emergency evacuation (visual and audio alarms throughout).

### 17.2. **Hospitals and Healthcare Facilities**

- 17.2.1. Accessible OPD registration and consultation rooms on ground floor or lift-accessible.
- 17.2.2. Accessible examination tables and diagnostic equipment.
- 17.2.3. Sign language interpreters or video remote interpreting available for patients with hearing impairment.
- 17.2.4. Accessible emergency services, including accessible ambulance services.
- 17.2.5. Accessible pharmacy and dispensing counter.
- 17.2.6. Large-print and Braille prescription formats where requested.
- 17.2.7. Accessible mental healthcare services, institutions shall comply with



accessibility standards of both the Act and the Mental Healthcare Act, 2017.

### **17.3. Hotels and Lodging Houses**

17.3.1. At least one accessible guest room per fifty rooms (minimum one), with roll-in shower, grab bars, and accessible furniture.

17.3.2. Accessible swimming pool entry. Accessible dining facilities.

17.3.3. Accessible conference and banquet facilities.

### **17.4. Places of Worship**

17.4.1. To the maximum extent structurally feasible, all places of worship open to the public shall provide accessible entry routes, accessible seating or prostration areas, and accessible toilet facilities for persons with disabilities. Heritage and structural constraints shall be assessed case by case.

## **PART 6. DIGITAL ACCESSIBILITY FRAMEWORK**

18. **MANDATORY STANDARDS:** All digital platforms and systems operated by or on behalf of Government establishments shall comply with:

18.1. WCAG 2.1 Level AA as the minimum standard for all Government websites, portals, and applications;

18.2. Screen-reader compatibility for all content;

18.3. Full keyboard navigation without dependence on a mouse;

18.4. Closed captions for all audio-visual content;



- 18.5. Indian Sign Language (ISL) video interpretation for key government information;
- 18.6. Text alternatives for all non-text content;
- 18.7. Adjustable text size and contrast settings.

19. **SCOPE OF DIGITAL ACCESSIBILITY MANDATE:**

- 19.1. Government payment portals;
- 19.2. Public distribution and welfare scheme portals;
- 19.3. Municipal service portals (property tax, trade licence, building permission);
- 19.4. Health service portals (appointment booking, medical records);
- 19.5. Public kiosks and interactive terminals in government offices;
- 19.6. Smart-city command centre interfaces accessible to the public.

20. **NO DEPLOYMENT WITHOUT AUDIT:** No Government software, application, or digital platform shall be launched or updated without a prior digital accessibility audit by an empanelled auditor. A Digital Accessibility Certificate shall be a precondition for deployment.

21. **PUBLIC INFORMATION ACCESSIBILITY:** All **significant** government communications and publications shall be made available in:

- 21.1. Easy-read format (simplified text with visuals);
- 21.2. Braille publications (for key documents on request);
- 21.3. Audio formats;
- 21.4. Indian Sign Language video format;
- 21.5. Multilingual formats in all scheduled languages of Karnataka.



## **PART 7: EQUAL OPPORTUNITY POLICY AND EMPLOYMENT**

22. Every establishment shall frame, notify, display, and register an EOP under Section 21 of the Act read with Rule 8 of the Rules within SIX MONTHS from the date of this order. Private establishments with 20+ employees: Rule 8(3). Private establishments with fewer than 20 employees: Rule 8(4). Government establishments: Rules 8(1) and 8(2).
23. **NON-DISCRIMINATION IN EMPLOYMENT:** Section 3(3) of the Act and Rule 3(1) of the Rules prohibit all establishments (Government and private) from discriminating against persons with disability in employment. The Government-specific obligations regarding reservation of posts (Sections 34, 35, 36) and non-reduction of rank or pay (Section 20) apply to Government establishments; private establishments are bound by Section 3(3) and Section 2(h).
24. **ACQUISITION OF DISABILITY DURING SERVICE:** Where an employee acquires a disability (through accident, illness, or otherwise), the establishment shall: (a) not terminate or reduce rank/pay on account of the disability; (b) conduct a job-fit assessment within 60 days; (c) provide reasonable accommodation for continuation in the same role; (d) if continuation is not possible, explore alternatives at the same pay; (e) maintain the employee on a supernumerary basis (Section 20(3) for Government; Section 3(3) for private) pending a suitable role. Government establishments are additionally bound by Section 20(1) prohibiting any reduction of rank or pay.
25. **GENDER AND INTERSECTIONALITY IN EMPLOYMENT:** All employment provisions apply equally to all genders. Transgender persons with



disabilities face compounded disadvantage and shall be accorded enhanced support, including gender-appropriate accessible facilities, dignity-affirming workplace policies, and protection from harassment on both grounds simultaneously.

26. **MEDICAL EXPENSES FOR WORKPLACE INJURIES:** Where an employee acquires disability in the course of employment, the employer shall pay all reasonable medical expenses including hospitalisation, surgery, rehabilitation, and ongoing treatment, whether or not covered by insurance. Employer promises (express or implied) to cover medical expenses create binding legal obligations.

## **PART 8. EDUCATIONAL INSTITUTIONS**

27. **STATUTORY BASIS:** Section 16 of the Act (recognised institutions to make campuses accessible and provide reasonable accommodation); Section 17 of the Act (inclusive education, including Section 17(c), training and employment of teachers with disabilities); Section 29 (sports); Section 31 (reservation in Government educational institutions); Section 32 (post identification for all establishments).
28. **SCOPE:** All schools, colleges, universities, residential schools, coaching centres, skill development centres, libraries, and examination centres, Government and private.
29. **STUDENTS WITH DISABILITIES:** All specified disabilities, not limited to physical or locomotor disability, shall be accommodated. Schools shall have written Inclusive Education Policies covering all disability types and all genders including transgender students.
30. **ADMISSION:** Admission shall not be refused to any student with a disability solely on account of



disability. Institutions shall conduct inclusion-feasibility assessments.

31. **ACADEMIC ACCOMMODATIONS:** (a) Extra time (25 min/hr) for all benchmark disabilities; (b) scribes for visual impairment or inability to write; (c) sign language interpreters for hearing impairment; (d) accessible examination halls and papers in large-print, Braille, or digital formats; (e) medical breaks for catheterisation, medication, physiotherapy.
32. **TEACHING STAFF:** Section 17(c) expressly envisions teachers with disabilities. No discrimination in appointment or retention. Accessible workspace, ground-floor assignment, medical break provision, online teaching option on medical grounds.
33. **INFRASTRUCTURE:** Annual accessibility audit; safety grills on upper-floor windows; non-slip corridors; emergency SOP for spinal injuries and other disability emergencies; accessible laboratories, libraries, sports facilities, and hostels.
34. **ANTI-DISCRIMINATION COMMITTEES:** Every educational institution shall establish a Disability Anti-Discrimination Committee to receive and resolve complaints from students, parents, and staff.

## **PART 9. RESIDENTIAL HOUSING ACCESSIBILITY**

35. **COMMON AREAS:** All apartment complexes and group housing projects shall provide full accessibility in common areas: accessible entrance, lift (minimum 1100 mm × 1400 mm cab), accessible parking (minimum 2% of spaces), accessible clubhouse, accessible parks and play areas, accessible mail boxes, accessible emergency systems.
36. **UNIT MODIFICATIONS:** Builders and housing societies shall permit residents with disabilities to make necessary disability-related modifications to



their individual units, subject to structural safety requirements. Permission shall be deemed granted if not expressly refused within 15 days of a written request.

37. **SENIOR LIVING AND DISABILITY-SPECIFIC HOUSING:** Senior living facilities and disability-specific housing developments shall meet enhanced standards including, for mobility disabilities: roll-in showers, grab bars in all toilet areas, lever handles throughout, and no internal level changes.
38. **REAL ESTATE PROJECTS:** No occupancy certificate shall be issued for any residential apartment complex unless the project complies with the accessibility requirements applicable to common areas.

## **PART 10. EMERGENCY PREPAREDNESS AND DISASTER MANAGEMENT**

39. **DISABILITY-INCLUSIVE EMERGENCY PLANNING:** Every establishment shall maintain a written emergency evacuation plan that specifically addresses persons with all types of disabilities, locomotor, visual, hearing, and cognitive.
40. **AREAS OF RESCUE ASSISTANCE (ARAs):** Every multi-floor building shall designate ARAs on each floor, connected to the emergency communication system, from which persons with disabilities can await evacuation assistance.
41. **TRAINED EVACUATORS:** Establishments shall designate trained evacuation assistants for persons with disabilities and maintain evacuation chairs or equivalent equipment. Drills shall be conducted bi-annually with persons with disabilities included.
42. **COMMUNICATION IN EMERGENCIES:** Emergency announcements in public buildings shall be in both



audio and visual formats. Text alert systems shall be activated for persons with hearing impairment.

43. **DISASTER MANAGEMENT PROTOCOLS:** State and District Disaster Management Authorities are directed to integrate disability-inclusive protocols into all Disaster Management Plans, including specific provisions for: evacuation of wheelchair users; communication with persons who are deaf or have hearing impairment; safe evacuation routes for persons with visual impairment; mental health support for persons with psychosocial disabilities during disasters.

## **PART 11. TRANSPORT INFRASTRUCTURE AND STREETScape ACCESSIBILITY**

44. **TACTILE PAVING:** Tactile paving (guidance paths and warning indicators) shall be provided on all public footpaths adjacent to roads with vehicular traffic, at all pedestrian crossings, at all bus stops, and at the entrances to all public transport terminals.
45. **ACCESSIBLE FOOTPATHS:** All public footpaths shall be: continuous; free of obstacles; minimum 1800 mm clear width; non-slip surfacing; adequate lighting; kerb cuts at all road-crossing points.
46. **AUDIBLE TRAFFIC SIGNALS:** All signalised pedestrian crossings shall be equipped with audible traffic signals for persons with visual impairment, phased in within TWO YEARS from the date of this order.
47. **BUS ACCESSIBILITY:** Low-floor buses with kneeling mechanisms shall be progressively introduced on all public bus routes. All newly procured buses shall be accessible. Bus stops shall have tactile paths, accessible shelters, and audio announcements of route and stop information.



48. **METRO, RAILWAY, AND AIRPORT ACCESSIBILITY:** These facilities shall comply with their respective Ministry-level accessibility guidelines (Ministry of Railways, Ministry of Civil Aviation, Ministry of Housing and Urban Affairs), read harmoniously with this SOP.

## **PART 12. RURAL ACCESSIBILITY FRAMEWORK**

49. **SEPARATE STANDARDS:** Rural infrastructure shall comply with simplified but meaningful accessibility standards, recognising resource constraints while ensuring minimum dignity.
50. **COVERAGE:** Gram panchayat offices and gram sabhagrihas; primary health centres (PHCs) and sub-centres; anganwadis; rural schools; rural post offices; rural transport hubs.
51. **MINIMUM RURAL STANDARDS:**
- 51.1. At least one step-free entrance route to every government facility;
  - 51.2. At least one accessible toilet per facility;
  - 51.3. Non-slip ramps at main entrances;
  - 51.4. Accessible service counters for registration and public services;
  - 51.5. Visual and audio components in all emergency communication systems.
52. **LOW-COST ACCESSIBLE INFRASTRUCTURE MODELS:** The State Accessibility Authority, in consultation with the Department of Rural Development and Panchayati Raj, shall develop and publish low-cost accessible infrastructure models for rural settings within ONE YEAR from the date of this order.

## **PART 13. ACCESSIBILITY AUDIT AND CERTIFICATION FRAMEWORK**



### 53. **Mandatory Audits**

- 53.1. **Initial audit:** Every public building shall undergo an initial accessibility audit within ONE YEAR from the date of this order (existing buildings) or before occupation (new buildings).
- 53.2. **Annual audit:** All public buildings shall undergo an annual accessibility audit.
- 53.3. **Renewal audit:** Every five years, a comprehensive renewal audit.
- 53.4. **Surprise inspections:** The State Accessibility Authority or District Accessibility Committee may conduct surprise inspections at any time.

### 54. **Empanelment of Auditors**

- 54.1. The State Accessibility Authority shall establish and maintain a state-approved panel of accessibility auditors comprising: registered architects with accessibility training; accessibility experts; civil engineers; representatives of disability rights organisations.
- 54.2. All audit reports shall be uploaded to the Digital Audit Repository (see Part 14) within 30 days of the audit.

### 55. **Accessibility Certification**

- 55.1. Establishments meeting full compliance standards shall receive an Accessibility Certificate from the State Accessibility Authority, valid for three years.
- 55.2. The Accessibility Certificate shall be displayed prominently at the building entrance.
- 55.3. Loss of certificate for non-compliance shall be reflected on the public compliance portal.



## **PART 14. UNIFIED ACCESSIBILITY COMPLIANCE PORTAL**

56. The State of Karnataka is directed to establish, within ONE YEAR from the date of this order, a Unified Accessibility Compliance Portal with the following features:
- 56.1. Building registration and accessibility score tracking;
  - 56.2. Upload facility for audit reports with geo-tagged photographic evidence;
  - 56.3. Online inspection scheduling;
  - 56.4. Grievance filing (online and offline) with automated acknowledgment;
  - 56.5. Public dashboard with district-wise compliance rankings;
  - 56.6. EOP registration portal (linked to Section 21 compliance);
  - 56.7. Integration with GIS, land records, building approval, and smart-city systems;
  - 56.8. Accessibility score for each registered public building, publicly visible.
  - 56.9. IoT-based real-time monitoring integration where feasible.
  - 56.10. The Portal itself shall be fully accessible under WCAG 2.1 Level AA.

## **PART 15. GRIEVANCE REDRESSAL SYSTEM**

57. Every establishment shall have an internal grievance mechanism for accessibility-related complaints from any person, employee, visitor, student, patient, customer, or member of the public.
- 57.1. **COMPLAINT MECHANISM:** Both online (via the Unified Portal) and offline filing.



- 57.2. **ACKNOWLEDGMENT:** Every complaint received, whether online or offline, shall be acknowledged by the Liaison Officer or the nodal authority within 48 hours of receipt, with a unique complaint reference number.
- 57.3. **INITIAL INSPECTION OR INQUIRY:** The Liaison Officer shall conduct an initial inspection or inquiry into the complaint within 15 days of its receipt.
- 57.4. **CORRECTIVE ACTION ORDER:** Where the complaint is found to be substantiated, a corrective action order shall be issued to the responsible authority or establishment within 30 days of the complaint.
- 57.5. **COMPLIANCE VERIFICATION:** The Liaison Officer shall verify that the corrective action has been implemented within 60 days of the original complaint. Non-implementation shall be escalated to the District Accessibility Committee and, thereafter, to the State Commissioner.
- 57.6. **EXTERNAL ESCALATION:** Where an establishment fails to resolve a complaint within 60 days, the aggrieved person may approach: (a) the State Commissioner for Persons with Disabilities under Section 80 of the Act; (b) the District Accessibility Committee; or (c) this Court in appropriate cases.
- 57.7. The State Commissioner's power under Sections 80 and 81 of the Act includes the power to determine violations, issue binding corrective directions, and require compliance within three months. Non-compliance amounts to a judicial proceeding under Section 82(2).
- 57.8. **NON-RETALIATION:** No person shall be penalised, harassed, transferred, or



disadvantaged for making a disability-related accessibility complaint in good faith.

## **PART 16. PENALTY, ENFORCEMENT, AND INCENTIVE FRAMEWORK**

### **58. Penalties**

- 58.1. Monetary penalties for non-compliance with accessibility standards, in addition to Section 89 of the Act (criminal penalties for contravention). Monetary penalties may be directed by the State Commissioner or a competent court of law.
- 58.2. Daily continuing fines for uncorrected violations from the date of the corrective order.
- 58.3. Suspension or refusal to renew trade licences, occupancy certificates, or other approvals for establishments in persistent non-compliance.
- 58.4. Criminal liability under Section 89 of the Act for wilful and repeated violations.

### **59. Incentives**

- 59.1. Fast-track building approval clearances for plans that exceed minimum accessibility standards.
- 59.2. Floor Area Ratio (FAR) incentives for incorporating accessible design features beyond the minimum.
- 59.3. Tax rebates or property tax concessions for compliant buildings (to be notified by the appropriate authority).
- 59.4. Public recognition and accessibility certification rankings published annually.
- 59.5. Priority in Government procurement for organisations with demonstrated accessibility compliance.



## **PART 17. CAPACITY BUILDING, PROCUREMENT, AND BUDGETARY ALLOCATION**

60. **MANDATORY TRAINING:** Accessibility training shall be mandatory for:
- 60.1. All civil engineers and architects involved in Government projects;
  - 60.2. All municipal officers responsible for building approval.
  - 60.3. All principals and vice-principals of educational institutions;
  - 60.4. All hospital administrators;
  - 60.5. All builders and construction project managers;
  - 60.6. All IT developers working on Government digital systems.
61. **ACCESSIBLE PROCUREMENT:** No procurement of software, hardware, furniture, or public infrastructure by any Government establishment shall be made unless the procured item is accessibility compliant. All Government contracts shall include accessibility compliance specifications.
62. **BUDGETARY ALLOCATION:** Every Government department and every urban local body shall allocate a dedicated accessibility compliance budget, minimum 1% of capital expenditure for physical infrastructure, to ensure sustained implementation.

## **PART 18. MONITORING, PUBLIC DISCLOSURE, AND INDEPENDENT OVERSIGHT**

63. **ANNUAL STATE ACCESSIBILITY REPORT:** The State Accessibility Authority shall publish an Annual State Accessibility Report containing: district-wise compliance statistics and rankings; number of audits conducted; number of grievances received and



resolved; compliance status of all registered public buildings; pending corrective actions.

64. **THIRD-PARTY REVIEW:** Independent third-party accessibility review of major public buildings and Government systems shall be commissioned every three years by the SAA, with public disclosure of findings.
65. **SOCIAL AUDIT:** Disability rights organisations shall be encouraged to conduct social audits of public buildings and report findings to the District Accessibility Committee. Social audit findings shall be treated on par with formal audit reports for purposes of initiating corrective action.
66. **DISABILITY RIGHTS PARTICIPATION:** A minimum of two representatives of registered disability rights organisations shall be members of every District Accessibility Committee and every body framing accessibility standards under this SOP.
67. **PERIODIC REVISION:** Standards prescribed under this SOP shall be reviewed: every three years for technical and physical accessibility standards; every five years for the overarching structural and governance framework. The SAA shall initiate each review.

## **PART 19. TIMELINES FOR IMPLEMENTATION**

68. **3 MONTHS:** Within three months from the date of this order, all Government establishments and educational institutions shall: designate a Liaison Officer / Accessibility Nodal Officer (ANO) with displayed contact details; create an internal grievance redressal mechanism.
69. **6 MONTHS:** Within six months from the date of this order: (a) all establishments shall frame, notify, display, and register their Equal Opportunity Policy;



(b) all establishments shall establish an internal grievance mechanism; (c) all District Accessibility Committees shall be constituted; (d) the State Government shall frame accessibility rules under Sections 40 and 45 of the Act; (e) all public buildings shall have at least one accessible toilet on at least one floor; (f) ramps shall be installed at all principal entrances; accessible parking shall be provided; disability-inclusive signage shall be displayed.

70. **9 MONTHS:** Within nine months from the date of this order, the State Government shall amend all municipal building bye-laws to incorporate accessibility requirements as set out in this SOP.
71. **1 YEAR:** Within one year from the date of this order: (a) full physical accessibility shall be achieved in all principal functional areas of all public buildings, entrances, corridors, workspaces, classrooms, service areas; (b) accessible lifts or alternatives shall be installed where required; (c) the State Accessibility Authority shall be established; (d) the Unified Accessibility Compliance Portal shall be launched; (e) panchayat regulations and town planning laws shall be amended to integrate accessibility requirements; (f) the initial accessibility audit of all public buildings shall be completed; (g) low-cost rural accessibility models shall be published; (h) digital accessibility certification requirements shall be in place for all Government platforms.
72. **18 MONTHS:** Within eighteen months from the date of this order, the full statewide accessibility framework shall be operationalised across all districts and all categories of establishments.
73. **2 YEARS:** Within two years from the date of this order: (a) audible traffic signals shall be installed at all signalised pedestrian crossings; (b) full accessibility compliance shall be achieved in all



buildings and premises, including libraries, laboratories, recreational facilities, and sports facilities; (c) digital accessibility certification shall be completed for all Government software platforms.

74. **ONGOING OBLIGATIONS:** The following shall be continuous and recurring obligations: (a) annual disability accessibility audit of all public buildings (commencing from Year 1); (b) annual sensitisation programmes for all establishments; (c) Equal Opportunity Policy reviewed and updated every two years; (d) all reasonable accommodation requests to be processed and responded to within 30 days; (e) grievance mechanism to be operational at all times; (f) accessibility standards to be reviewed every three years; (g) overall SOP framework to be reviewed every five years.

## **PART 20. INTERPRETATION AND SAVINGS**

75. **LIBERAL INTERPRETATION:** Every provision of this SOP shall be interpreted liberally and purposively to advance the rights and dignity of persons with disabilities. Where ambiguity exists, the interpretation that best advances disability rights shall be preferred.
76. **MINIMUM STANDARDS:** This SOP prescribes minimum standards. Establishments adopting higher standards are commended. The SOP sets a floor, not a ceiling.
77. **ADDITIVE EFFECT:** This SOP operates in addition to, and not in substitution for, any existing obligation under the Act, the Rules, the National Building Code, the Harmonised Guidelines 2021, or any other law.
78. **TRANSITIONAL:** This SOP is transitional, operative until the appropriate Government frames comprehensive statutory rules under Sections 40 and 45 of the Act. Compliance with this SOP does not



discharge obligations that arise from subsequently framed statutory rules.

79. **CONSTITUTIONAL REFERENCES:** This Court has grounded this SOP in Articles 14, 15, 19, 21, 38, 41, and 46 of the Constitution of India; the Act and the Rules; India's obligations under the UNCRPD; the Sustainable Development Goals (SDG 11); the National Building Code; and the Harmonised Guidelines, 2021.



## SCHEDULES

### Schedule A - Minimum Accessibility Checklist (Physical)

1. **RAMP GRADIENT:** Maximum 1:12 (preferred 1:15 where space permits), with handrails on both sides and anti-slip surfaces throughout the ramp length.
2. **CORRIDOR WIDTH:** Minimum 1500 mm clear width, with a turning radius of 1500 mm diameter provided at regular intervals and at all corners.
3. **LIFT CAB DIMENSIONS:** Minimum 1100 mm × 1400 mm internal cab dimensions, with Braille and tactile floor buttons, audio floor announcements, a mirror on the back wall, and a handrail on at least one wall.
4. **ACCESSIBLE TOILET FLOOR SPACE:** Minimum 1500 mm × 2000 mm clear floor space within the accessible toilet compartment.
5. **DOOR CLEAR WIDTH:** Minimum 900 mm clear width for all accessible entrances, exits, and toilet doors.
6. **ACCESSIBLE COUNTER HEIGHT:** At least one section of every service counter to be at 760-900 mm height with knee clearance beneath for wheelchair users.
7. **WORKSTATION KNEE CLEARANCE:** Minimum 700 mm height and 600 mm depth of knee clearance beneath accessible workstations and tables.
8. **ACCESSIBLE PARKING BAY WIDTH:** Minimum 3600 mm width per accessible bay, clearly marked with the international symbol of access.
9. **SIGNAGE HEIGHT AND FORMAT:** All accessible signage to be placed at 1400-1600 mm height, with Braille and tactile elements and high-contrast colour combinations.



10. **DRINKING WATER STATION HEIGHT:** Maximum 900 mm height for at least one drinking water station on each floor.
11. **EMERGENCY LIGHTING:** Emergency lighting shall be provided on all accessible routes throughout the building.
12. **AUDIBLE ALARMS:** Audible (and visual) alarms shall be installed at all emergency exits and at all locations where emergency information is communicated.



## **Schedule B - Digital Accessibility Checklist (WCAG 2.1 Level AA)**

1. **TEXT ALTERNATIVES:** All non-text content (images, icons, charts, audio) shall have text alternatives that convey the same information (WCAG 2.1 Criterion 1.1.1).
2. **CAPTIONS FOR AUDIO-VISUAL CONTENT:** All pre-recorded audio-visual content shall have synchronised closed captions (WCAG 2.1 Criterion 1.2.2).
3. **AUDIO DESCRIPTION:** All pre-recorded video content shall have audio description for the visual elements (WCAG 2.1 Criterion 1.2.5).
4. **KEYBOARD ACCESSIBILITY:** All functionality of the website or application shall be operable by keyboard alone, without requiring the use of a mouse (WCAG 2.1 Criterion 2.1.1).
5. **NO KEYBOARD TRAPS:** No component of the interface shall trap keyboard focus in a manner that prevents the user from navigating away (WCAG 2.1 Criterion 2.1.2).
6. **COLOUR CONTRAST:** The contrast ratio between text and background shall be at least 4.5:1 for regular text and 3:1 for large text (WCAG 2.1 Criterion 1.4.3).
7. **TEXT RESIZE:** All text shall be resizable up to 200% without loss of content or functionality (WCAG 2.1 Criterion 1.4.4).
8. **ERROR IDENTIFICATION AND SUGGESTION:** Where an input error is automatically detected, the error shall be identified, described to the user in text, and corrective suggestions provided where possible (WCAG 2.1 Criterion 3.3.1 and 3.3.3).
9. **KEYBOARD FOCUS VISIBLE:** The keyboard focus indicator shall be visible at all times so that users



who navigate by keyboard can identify their current position in the interface (WCAG 2.1 Criterion 2.4.7).

10. **SCREEN READER COMPATIBILITY:** All content and functionality shall be fully readable and operable using major screen readers (NVDA, JAWS, VoiceOver, TalkBack). All form fields, buttons, and interactive elements shall have descriptive accessible labels.
11. **INDIAN SIGN LANGUAGE SUPPORT:** Key content, particularly public health information, government service announcements, and court notices, shall be made available in Indian Sign Language (ISL) video format.



### **Schedule C - Accessibility Audit Format**

1. Name and address of building; category of building; date of audit; name of auditor.
2. Assessment against each standard in Schedule A (for physical) or Schedule B (for digital).
3. Findings: compliant / partially compliant / non-compliant for each standard.
4. Geo-tagged photographic evidence for each assessed feature.
5. Recommendations for corrective action with timelines.
6. Overall accessibility rating (Compliant / In Progress / Non-Compliant).
7. Auditor certification and date.



### **Schedule D, Heritage Buildings**

1. Heritage buildings subject to the Ancient Monuments and Archaeological Sites and Remains Act, 1958 or equivalent State law shall achieve the maximum feasible accessibility compliance without structural compromise. The following minimum standards shall apply regardless of heritage status: (a) at least one accessible entrance route even if not the principal entrance; (b) audio guides for persons with visual impairment; (c) accessible toilets in a portion of the facility; (d) tactile maps at key locations.



### **Schedule E, Emergency Evacuation Protocol**

1. **IDENTIFICATION:** Register of all persons with disabilities in the building (voluntary self-registration).
2. **PERSONAL EMERGENCY EVACUATION PLANS (PEEPs)** for employees with disabilities.
3. Areas of Rescue Assistance on each floor, designated, marked, connected to emergency communication.
4. Trained evacuation buddies for each ARA.
5. Evacuation chairs or equipment on each floor.
6. Bi-annual drills including scenarios with persons with all disability types.
7. Communication in audio AND visual formats throughout emergency.



**Schedule F, Accessibility Certification Format**

1. Name of establishment; address; category; date of certification; valid until date.
2. Standards met (with reference to Schedule A/B as applicable).
3. Conditions (if any) for maintenance of certification.
4. Seal of State Accessibility Authority / State Commissioner.



### **Schedule G, Model Building Approval Conditions**

1. All building permits for public buildings shall contain the following conditions: (a) accessibility drawings approved; (b) accessible features to be maintained in perpetuity; (c) accessibility compliance verification at occupancy stage; (d) any modification affecting accessibility shall require fresh approval.



**Schedule H, Grievance Form (Model)**

1. Name and address of complainant; name and address of establishment; nature of accessibility barrier or discrimination; disability of complainant (optional); date of occurrence; relief sought; supporting photographs or documents (optional).

**Sd/-**  
**(SURAJ GOVINDARAJ)**  
**JUDGE**

PRS,SR  
List No.: 1 Sl No.: 98