

Make Tourist Destinations Accessible For Disabled: High Court Directs Tamil Nadu Govt

2022 Livelaw (Mad) 482

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

R. MAHADEVAN; J., J. SATHYA NARAYANA PRASAD; J.

W.P.(MD)No.19896 of 2018; 25/11/2022

K.R. Raja versus State of Tamil Nadu

PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus, to direct the respondents to take necessary steps to ensure the easy accessibility of all the tourism places in the State of Tamil Nadu for the person with disability in accordance with Chapter V, Section 29 of the Rights of Persons with Disabilities Act, 2016 especially Tirunelveli - Coutrallam Water Falls to participate in the recreational activities in accordance with law within the time stipulated by this Court.

For Petitioner: Mr. R. Alagumani; For Respondents: Mr. P. Thilak Kumar Government Pleader for R1 & R2

ORDER

R. MAHADEVAN, J.

The petitioner has preferred this writ petition in the nature of public interest litigation seeking a direction to the respondents to take necessary steps to ensure the easy accessibility of all the tourist places, especially Coutrallam Water Falls in Tirunelveli, State of Tamil Nadu, for the persons with disability, in accordance with Section 29 under Chapter V of the Rights of Persons with Disabilities Act, 2016, (in short, "the RPwD Act, 2016") within a time frame to be stipulated by this Court.

2. According to the petitioner, he is a physically challenged person and his lower limbs were afflicted due to inappropriate intramuscular injections administered for poliomyelitis, as a result of which, he could walk only with the help of two auxiliary crutches. One day, he got a chance to visit Coutrallam in Tirunelveli District, where his friends had enjoyed in the water falls after therapeutic body massage with herbal oil. His body muscle required such a therapeutic oil bath in the water falls to get relief from discomfort caused by using crutches, but owing to his disablement, he was unable to access. The said incident prompted the petitioner to file this writ petition for the aforesaid relief, so that the persons like him should not suffer and experience the nature's bounty as any other able bodied persons.

3. It is the submission of the learned counsel for the petitioner that as per Section 29 of the RPwD Act, 2016, the Government and local authorities should take measures to promote and protect the rights of all persons with disabilities to have a cultural life and to participate in recreational activities equally with others, but there are lacunas in implementing the enactment. The learned counsel further pointed out that the lack of safety measures and accessibility of the persons with disabilities to the waterfalls constitute gross negligence on the part of the Government and is discriminatory. Narrating the same, the petitioner submitted a representation dated 30.08.2018 to the respondent requesting to take necessary steps to ensure the easy accessibility of all the tourist places in the State, for the persons with disabilities, but the same has not been considered, till date. Therefore, the learned counsel prayed for appropriate direction to the respondent authorities in this regard.

4. On the other hand, the learned Government Pleader appearing for the respondents 1 and 2, at the outset, submitted that the Government has been treating

the physically challenged persons on par with other persons and has recently, commenced the work for a permanent pathway for people with disabilities to enjoy the beauty and feel the sea at Marina beach and hence, there is no discrimination / denial, as alleged by the petitioner. It is also submitted that the Government would take necessary steps for easy accessibility of the tourist places in the State for the persons with disabilities, in accordance with the provisions of the RPwD Act, 2016.

5. Heard the learned counsel for the petitioner and the learned Government Pleader appearing for the respondents 1 and 2 and also perused the materials available on record.

6. The relief sought in this public interest litigation is to direct the respondent authorities to ensure the easy accessibility of all the tourist places available in the state of Tamil Nadu, for the physically challenged persons.

7. At the first instance, it is pertinent to point out that as per the report of the World Health Organisation, 15% of the world's population (1 billion people) lives with some form of disability; and in India, more than 2.1% of the population live with some form of disability and the same is likely to increase in coming decades. Further, the report of the National Statistical Office (NSO)'s Elderly in India, 2021, proceeds to state that India's elderly population (aged 60 and above) is likely to grow by 41% i.e., 194 million in the year 2031, from 138 million in 2021. Thus, it is manifest that the number of persons with disabilities will rise in future and therefore, effective steps have to be taken by the Government and local authorities to protect the rights of the persons with disabilities by ensuring accessibilities in all walks of life.

8. In this context, it would be appropriate to refer to legal framework dealing with the rights of persons with disabilities.

(i) In 2006, the United Nations adopted the Convention on the Rights of Persons with Disabilities (CRPD), the first international human rights treaty, intending to protect the rights and dignity of the persons with disabilities. Its purpose is to promote, protect and ensure the full and equal enjoyment of all human rights and fundamental freedoms by all persons with disabilities, and to promote respect for their inherent dignity. The Convention adopts a comprehensive and holistic approach to raise awareness and to ensure the persons with disabilities' rights to accessibility, independent living and participation in all aspects of society. Article 16 is about Freedom from exploitation, violence and abuse; and focuses specially on the obligation for states parties to put in place effective legislation. In Article 30, the CRPD perceptively addresses these issues in the context of participation in cultural life, recreation, leisure and sport; and Article 30(5) provides for the right of persons with disabilities to participate "on an equal basis" in recreation and leisure activities. Thus, the CRPD brings to the forefront the right of people with disabilities to engage in cultural life, recreation and leisure activities.

(ii) During the last two Ad hoc sessions of the Convention, the drafters changed the preamble from 'States Parties recognize the right of persons with disabilities, on an equal basis with others...' to 'with a view to enabling persons with disabilities to participate on an equal basis with others ...'. This change was the result of a comment made by the European Union during the 6th Ad hoc session, which reads as follows:

"There is no express 'right' to recreational, leisure and sporting activities in the CESCR [Committee on Economic Social and Cultural Rights]. The language in the chapeau of para 4 is ambiguous on this point and should be amended accordingly. The chapeau's wording

may have been based on CEDAW Article 10(g), which addresses this issue as a matter of equality between women and men and not as a standalone right. The Report of the Ad hoc Committee (2005) in its sixth session stated that “there was general support to amend the chapeau to make it clear that the paragraph does not refer to an existing right to participate in sport and leisure activities.”

(iii) The RPwD Act, 2016, is a paradigm shift from a technical model of disability carrying with it the heavy burden of stigma under the 1995 Act to a model of disability that encompasses within its fold physical, mental, intellectual, social, psycho-social and other barriers that accompany disability which lie at the heart of exclusion of the disabled from realising their full potential and participating in society as full and equal members and citizens as contemplated by the framers of our Constitution. Section 2(s) of the RPwD Act, 2016 defines a "person with disability", which reads as follows:

"a person with long-term physical, mental, intellectual or sensory impairment which, in interaction with barriers, hinders his full and effective participation in society equally with others."

Section 2(c) defines "barrier", which means any factor including communicational, cultural, economic, environmental, institutional, political, social, attitudinal or structural factors which hampers the full and effective participation of persons with disabilities in society". As a significant development, the RPwD Act, 2016 incorporates the principle of 'reasonable accommodation' and it is defined in section 2(y), which reads below:

"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".

Section 3 of RPwD Act deals with equality and non-discrimination, which 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.

That apart, Section 29 states that the Government and local authorities should take steps to promote the right to equal participation in cultural and recreational life and the said provision reads as under:

"29. Culture and recreation.—

The appropriate Government and the local authorities shall take measures to promote and protect the rights of all persons with disabilities to have a cultural life and to participate in recreational activities equally with others which include,—

(a) facilities, support and sponsorships to artists and writers with disability to pursue their interests and talents;

- (b) establishment of a disability history museum which chronicles and interprets the historical experiences of persons with disabilities;
- (c) making art accessible to persons with disabilities;
- (d) promoting recreation centres, and other associational activities;
- (e) facilitating participation in scouting, dancing, art classes, outdoor camps and adventure activities;
- (f) redesigning courses in cultural and arts subjects to enable participation and access for persons with disabilities;
- (g) developing technology, assistive devices and equipments to facilitate access and inclusion for persons with disabilities in recreational activities; and
- (h) ensuring that persons with hearing impairment can have access to television programmes with sign language interpretation or sub-titles"

Thus, it is evident that the accessibility, effective participation and inclusion in the society are few of the rights for empowerment of persons with disabilities and the same have to be ensured to them, by the Government and local authorities as per law.

9. The Hon'ble Supreme Court in its decision in ***Vikash Kumar v. Union Public Service Commission and others [Civil Appeal No.273 of 2021 dated 11.02.2021]***, while considering the claim of the petitioner therein seeking the facility of a scribe for appearing the Civil Services Examination, has analysed in detail the provisions of the RPwD Act, 2016 and held that the same is a statutory recognition of the constitutional rights embodied in Articles 14, 19 and 21 among other provisions of Part III of the Constitution. It further went on to hold that ensuring a life of equal dignity, worth and non-discrimination along with reasonable accommodation, necessitates positive obligation on the State and private parties to provide additional support to persons with disabilities to facilitate their full and equal participation in society. For better appreciation, the relevant paragraphs of the said decision are extracted below:

"34. There is a critical qualitative difference between the barriers faced by persons with disabilities and other marginalized groups. In order to enable persons with disabilities to lead a life of equal dignity and worth, it is not enough to mandate that discrimination against them is impermissible. That is necessary, but not sufficient. We must equally ensure, as a society, that we provide them the additional support and facilities that are necessary for them to offset the impact of their disability. This Court in its judgment in *Jeeja Ghosh v. Union of India*, noted that a key component of equality is the principle of reasonable differentiation and specific measures must be undertaken, recognizing the different needs of persons with disabilities, to pave the way for substantive equality.

Justice A K Sikri stated in the above judgement:

"40. In international human rights law, equality is founded upon two complementary principles: non-discrimination and reasonable differentiation. The principle of non-discrimination seeks to ensure that all persons can equally enjoy and exercise all their rights and freedoms. Discrimination occurs due to arbitrary denial of opportunities for equal participation. For example, when public facilities and services are set on standards out of the reach of persons with disabilities, it leads to exclusion and denial of rights. Equality not only implies preventing discrimination (example, the protection of individuals against unfavourable treatment by introducing antidiscrimination laws), but goes beyond in remedying discrimination against groups suffering systematic discrimination in society. In concrete terms, it means embracing the notion of positive rights, affirmative action and reasonable accommodation."

(emphasis supplied)

35. The principle of reasonable accommodation captures the positive obligation of the State and private parties to provide additional support to persons with disabilities to facilitate their full and effective participation in society. The concept of reasonable accommodation is developed in section (H) below. For the present, suffice it to say that, for a person with disability, the constitutionally guaranteed fundamental rights to equality, the six freedoms and the right to life under Article 21 will ring hollow if they are not given this additional support that helps make these rights real and meaningful for them. Reasonable accommodation is the instrumentality – are an obligation as a society – to enable the disabled to enjoy the constitutional guarantee of equality and non- discrimination. In this context, it would be apposite to remember Justice R M Lodha's (as he then was) observation in Justice Sunanda Bhandare Foundation v. Union of India, where he stated:

“9...In the matters of providing relief to those who are differently abled, the approach and attitude of the executive must be liberal and relief oriented and not obstructive or lethargic...”

10. Such being the position of law, this court is of the view that the ideals of equality, dignity, worth and non-discrimination along with the principles of reasonable accommodation inspire the constitutional bulwark for enforcement of equality before the law, equal protection of law as well as equality of status and opportunity to the disabled. However, it is necessary that the Government and local authorities operationalise the same for fullest enjoyment of the rights of the persons with disabilities.

11. During the course of argument, the learned counsel for the petitioner drew the attention of this court to the notification issued by the Ministry of Tourism (M&C Division), Government of India, dated 15th June 2022, bearing File No. 5/7/2021-M&C, relating to draft version of the accessible tourism Guidelines for India, which emphasise on the need and necessity of accessible tourism to all, including the persons with disabilities and elderly people. It adopts an 'universal design approach' for inclusive tourism by providing information, accommodation, infrastructure, mobility and other services accessible to the disabled.

12. That apart, the State of Kerala has initiated 'Barrier-Free Kerala Tourism' to initiate steps in transforming tourist destinations and accommodation units disabled friendly, by developing guidelines in consultation with the stakeholders. Such initiative was also recognised at international level as an emerging global destination by the United Nations World Tourism Organisation.

13. Considering all those aspects, this court is of the opinion that accessible tourism is integral for equal participation of persons with disabilities in recreation and cultural life, like the other persons. It also applies to the senior citizens and elderly persons to experience and participate fully in their older years. Therefore, this court directs the Government to devise a programme in consultation with expert bodies, which includes persons with disabilities, to make tourist destinations in Tamil Nadu accessible for the disabled in accordance with the standards of accessibility as formulated under section 40 of the RPwD Act and other applicable guidelines; and prepare and publish a travel guide of disability-friendly and accessible tourist destinations.

14. This Writ Petition is disposed of with the aforesaid directions. There is no order as to costs.