

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 1ST DAY OF APRIL, 2024

BEFORE

THE HON'BLE MR. JUSTICE SACHIN SHANKAR MAGADUM

WRIT PETITION NO. 264 OF 2024(S-RES)

BETWEEN:

PROF. DR. KAUSHIK MAJUMDAR

...PETITIONER

(By Sri. B C SEETHA RAMA RAO, ADVOCATE)

AND:

- 1 . INDIAN STATISTICAL INSTITUTE
203, B T ROAD, KOLKATTA - 700108
REP BY THE DIRECTOR
- 2 . INDIAN STATISTICAL INSTITUTE
BANGALORE CENTRE
8TH MILE, MYSORE ROAD
RVCE POST, BENGALURU – 560059
REP BY THE HEAD OF THE CENTRE
- 3 . THE STATE COMMISSIONER FOR RIGHTS OF
PERSONS WITH DISABILITIES
NO. 55, II FLOOR, ABHAYA SANKEERNA

KARANTAKA SLUM DEVELOPMENT BOARD BUILDING
RISALDAR STREET, SESHADRIPURAM,
BENGALURU - 560 020
REPRESENTED BY ITS COMMISSIONER

...RESPONDENTS

(By Sri. MADHUKAR DESHPANDE, ADVOCATE FOR R-1
AND R-2; R-3 SERVED)

THIS WP IS FILED UNDER ARTICLES 226 & 227 OF THE CONSTITUTION OF INDIA PRAYING TO a) QUASH THE DIRECTION DATED 06/09/2023 ISSUED BY THE R2 CENTRE HEAD TO THE ACCOUNTS SECTION OF THE R2 AS PER ANNEXURE-E REF. NO. HO. 13/790 AND ETC.,

THIS PETITION HAVING BEEN HEARD AND RESERVED FOR ORDERS ON 28.03.2024, COMING ON FOR PRONOUNCEMENT OF ORDERS THIS DAY, THE COURT MADE THE FOLLOWING:

ORDER

The captioned petition is filed assailing the impugned direction dated 6.9.2022 issued by respondent No.2 – Indian Statistical Institute Centre Head to the Accounts Section of respondent No.2 to withhold payment of HRA to petitioner with immediate effect. The said direction is under challenge.

2. The facts leading to the case are as under:

The petitioner who was appointed as an Assistant Professor at respondent No.2-Indian Statistical Institute (ISI) in 2009 and who is physically handicapped, utilizing an electric chair for mobility has knocked the doors of the writ Court questioning the cessation of house rent allowance by respondent No.2-Institute citing the provision of Guest House which fails to adequately meet the ends of petitioner as per the Rights of Persons with Disabilities Act, 2016 (for short "Act, 2016"). Respondents 1 and 2-Institute have filed statement of objections and the petition is contested on the premise that the petitioner is provided a guest house and therefore, the institute is not under obligation to pay house rent allowance. Respondent No.2 has contended that since petitioner is residing in the guest house, claim of house rent allowance amounts to profiteer and therefore,

respondent No.2 was justified in issuing direction to Accounts Section to withhold payment of house rent allowance.

3. Heard the learned counsel for the petitioner and learned counsel for respondent No.2.

4. The petitioner, who has excelled in his academic career despite being diagnosed with polio and having 85% orthopedic disability, applied for a faculty position at ISI in 2006 and was subsequently selected as an Assistant Professor in 2008. However, despite his qualifications and contributions to the field, the petitioner faced numerous challenges related to accommodation upon joining the Bangalore Centre of ISI. Despite expressing his preferences for the Kolkata campus, he was directed to join the Bangalore Centre. Prior to his joining, the petitioner communicated his physical condition and accommodation requirements to the Head of the Bangalore Centre through email,

which was acknowledged. This communication serves as evidence of the institution's awareness of the petitioner's needs prior to his arrival.

5. Upon his arrival, however, the petitioner found himself lodged in a single room accommodation in the Campus Guest House, a situation he expected to be temporary. However, this temporary arrangement has persisted since 2009, with no efforts made by respondent-Institute to provide suitable accommodation befitting the petitioner's stature and physical challenges. The guest house accommodation provided to the petitioner lacks basic amenities essential for someone with physical disabilities. For instance, the petitioner is forced to cook his own food due to the absence of regular dining facilities in the guest house. Furthermore, the guest house room does not have a kitchen, compelling the petitioner to prepare his meals in the toilet area, where a heating

point is available. Such conditions not only compromise the petitioner's dignity but also pose serious health and safety risks.

6. Despite the petitioner's contributions to the institution, including bringing in significant research funding and international experience, respondent-Institute has failed to address his basic accommodation needs. This failure reflects a disregard for the rights and well-being of individuals with disabilities and highlights systemic shortcomings within the institution's administration.

7. The Apex Court in the case of **Vikas Kumar .vs. Union of Public Commissioner¹** has observed as under:

"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.

¹Civil Appeal No.273/2021 / Special Leave Petition (C) No.1882/2021 11/02/2021

...

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..." (2018) 2 SCC 397.

...

44. As a social construct, disability encompasses features broader and more comprehensive than a medical condition. The RPwD Act, 2016 recognizes 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 recognized that remedies for the barriers encountered by the disabled are to be found in the social environment in which they live, work and co-habit with others. The barriers encountered by every disabled person can be remedied by recognizing comprehensive rights as inhering in them; rights which impose duties and obligations on others.

45. 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 realization of these ends."

46. 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 Reasonable Accommodation 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 realizing 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.

47. For instance, for a visually impaired person, the reasonable accommodation she requires might consist of screen magnification software or a screen reader [which can speak out the content on a computer screen in a mechanical voice]. It might also consist of content being made available in Braille and a sighted assistant. In the same way, for someone with a hearing impairment, reasonable accommodation could consist of speech-to-text converters, access to sign language interpreters, sound amplification systems, rooms in which echo is eliminated and lip-reading is possible. Similarly, for a person with dyslexia, reasonable accommodation could consist of access to computer programmes suited to meet their needs and compensatory time.

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 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 customization she seeks. Even if she is in a class of her own, her needs must be met. 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.

49. As the Committee on the Rights of Persons with Disabilities noted in General Comment 6, reasonable accommodation is a component of the principle of inclusive equality. It is a substantive equality facilitator. The establishment of this linkage between reasonable accommodation and non-discrimination thus creates an obligation of immediate effect. Under this rights-based and disabled-centric conceptualization of reasonable accommodation, a failure to provide reasonable accommodation constitutes discrimination. Reasonable accommodation determinations must be made on a case-by-case basis, in consultation

with the disabled person concerned. Instead of making assumptions about how the relevant barriers can be tackled, the principle of reasonable accommodation requires dialogue with the individual concerned to determine how to tackle the barrier.

8. Therefore, the duty of an Institute to provide better working conditions to specially disabled persons is not just a moral imperative but also a legal obligation under various disability rights and legislations and international conventions.

9. In summary, institutes have legal and ethical duty to provide better working conditions for specially disabled persons, encompassing accessibility, reasonable accommodations. This Court has taken cognizance of the fact that petitioner is one of the leading experts in the field of Human

Electroencephalogram(EEG) and Electrocorticogram (ECoG) signal processing in India.

10. Petitioner being physically handicaped relies on an electric chair for mobility. Since his appointment in 2009, petitioner has faced challenges regarding suitable accommodation which is denied by respondent No.2-Institute for reasons best known to it. Despite assurance spanning over 19 years, the Institute has failed to provide proper quarters leaving the petitioner to reside in one room guest house. This Court has taken cognizance of the photographs produced by the petitioner and the same depicts a very sorry state of affairs. This Court is really perturbed and disturbed by the conduct of the Institute in the manner in which the petitioner is treated.

11. Upon careful examination of the present facts and in consideration of the Act, 2016, it is evident that petitioner is entitled to reasonable accommodation by the employer. The provision of one room guest house to an Professor of a Premier Institute coupled with respondent No.2-Institute's prolonged delay in providing proper quarters, constitutes a failure to fulfill its obligation under the law. The cessation of house rent allowance vide impugned direction further compounds the petitioner's difficulties disregarding petitioner's needs and rights as a person with a disability.

12. Mindful of petitioner's rights and the Institute's obligation under the law, this Court hereby proceeds to pass the following:

ORDER

(i) The writ petition is allowed.

(ii) The impugned direction dated 6.9.2023 issued by the Centre Head to the Accounts Section of Respondent No.2 as per Annexure-E is hereby quashed.

(iii) Respondent No.2 shall reinstate the house rent allowance for the petitioner forthwith until suitable and adequate accommodation in accordance with the Act, 2016 is provided including the HRA withheld from September 2023.

(iv) Respondent No.2 is directed to expedite the process of building new quarters for the petitioner ensuring that it meets all accessibility and accommodation requirements specified under the Act, 2016.

(v) Respondent-Institute is hereby reminded of its obligation under the Act, 2016 and its urge to take proactive measures to

ensure the inclusion and well being of all employees with disabilities.

Sd/-
JUDGE

*alb/-