

Case Note¹

National Federation of the Blind, Maharashtra & Anr

v.

The High Court of Judicature of Bombay

2018 SCC Online Bom 931

General Summary

The present judgment arises from a Writ Petition filed before the Principal Bench of the Bombay High Court by the 1st Petitioner and a Public Interest Litigation filed before the Aurangabad Bench by the 2nd Petitioner, subsequently transferred to the Principal Bench. The Coram was composed of Justice Naresh.H.Patil and Justice G.S. Kulkarni and the judgment was delivered by Justice Patil on May 3rd 2018.

The petitions related to an advertisement issued by the administrative side of the Bombay High Court (hereinafter the “Respondent”) for recruitment to various posts and involved the question relating to the scope of applicability of the Rights of Persons with Disabilities Act, 2016 (hereinafter “Act of 2016”) to the administrative side of a High Court. The principal issue before the court was whether the Respondent was bound by Section 33 and Section 34 r/w. Section 2(k) of the Act of 2016 while recruiting new personnel to various vacant posts. The court answered the question in the affirmative and partly allowed the petitions by directing the Respondent not to fill 4% of the total posts and to comply with the provisions of the Act of 2016.

Facts of the Case

- A.** The Respondent issued advertisements on 27th March 2018 in the local newspaper at the district level and on 28th March 2018 in its official website for filling up vacancies for posts of Stenographers (LG), Junior Clerk and Peon/Hamal in the District Courts across the State of Maharashtra. **(Para 4)**
- B.** In the recruitment process initiated, the Respondent provided reservation only to the extent of 1% for “hearing impaired” and “one leg affected” for the position of Junior Clerk. This was in non-compliance with the Act of 2016 which had expanded the scope of such reservations. **(Para 4 & 29)**

¹ This Case Note has been prepared by the *Organising Committee* of the ILS NAJW Competition, 2018-19. The participants are expected to rely primarily on the judgment and use this Case Note only as a structured supplement. Due caution has been taken in preparing this case note and in case of any inadvertent error in terms of the narration of facts or reasoning involved, the judgment is to be regarded as final and authoritative on the same..The *Organising Committee* shall not be responsible for any such inadvertent error that influences the submissions of the participants.

C. The said advertisement and the resultant recruitment process were thus challenged before the Bombay High Court. The 1st Petitioner was the National Federation of the Blind, Maharashtra, a trust registered under the Bombay Public Trust Act, 1950 and a society registered under the Societies Registration Act, 1860 that represented the cause of visually impaired persons. The 2nd Petitioner was Sachin Bhaurao Chavan, a 100% blind candidate, who was expecting the opportunity to compete with other candidates for the vacant posts. **(Para 3)**

Reliefs Sought

- i) To call for record and proceedings relating to the said Advertisements and the resultant recruitment process and after verifying its legality, validity and propriety, to quash and set aside the advertisement and the recruitment process.
- ii) To issue a writ of mandamus or a writ in the nature of mandamus directing the Respondent to issue the advertisements afresh for filling up the vacant posts and to properly implement the Act of 2016 by providing appropriate reservation to the physically handicapped candidates including visually impaired/blind candidates as per Section 33 *r/w*. Section 34 of the Act of 2016.
- iii) To consider the candidature of the 2nd Petitioner and other similarly situated persons represented by the 1st Petitioner pursuant to the Advertisement. **(Para 2)**

Submissions Made

I. Petitioners:

- i. The Respondent is bound to comply with the Act of 2016 by providing reservation to the extent mentioned therein. The reservation provided as per the Act of 1995 is not enough in light of the newly added provisions of the Act of 2016. **(Para 4)**
- ii. The Respondent falls within the definition of the State under Article 12 of the Constitution of India qua the recruitment process and also falls under the definition of “*Government Establishment*” under Section 2(k) of the Act of 2016. The Respondent had specifically made the Act of 1995 applicable to it and under the Act of 2016, the appropriate government has not granted any exemption to the Respondent from Section 33 *r/w* 34 of the said Act vide the second proviso to Section 34. Thus, the Respondent is under an obligation to issue advertisements conforming with the Act of 2016. **(Para 7)**
- iii. The recruitment process is in anticipation of future vacancies of around 2500 posts and further anticipated vacancies of 5000 to 6000 posts. A waiting list of candidates would be prepared that would be considered at the time of appointment in the coming 2 years after

the recruitment process. A denial of opportunity now would defeat the purpose of this social welfare legislation. **(Para 7)**

- iv. The lack of equal opportunity to disabled persons to participate in public employment would amount to discrimination **(Para 9)**

*(The judgments cited by the Petitioners are mentioned in **Para 8**)*

II. Respondent:

- i. The Advertisement is for recruitment of staff to District Courts that does not fall under the definition of “*Government Establishment*” under Section 2(k) of the Act of 2016. Neither the Act of 1996 nor the Act of 2016 is applicable to services of judiciary and judicial establishments such as High Courts and District Courts. Part VI of the Constitution governs these institutions. The appointment of staff is made under Article 229 by the Chief Justice of the High Court(s) making the High Court a constitutional establishment not falling under the definition of “*Government Establishment*” even though the State and the Central Government fund the High Court. Thus, Section 33 *r/w* Section 34 of the Act of 2016 is inapplicable. **(Para 5, 6 & 10)**
- ii. As against the sanctioned strength of 9131 Junior Clerks, only 8499 are working and there is a vacancy of 652 posts. Similarly, in case of Peons, there are 709 vacancies and a total vacancy of over 1580 when considering all the relevant posts. Consequently, there is urgent need for recruitment. A large number of applications numbering to 3,94,686 has been made and cancellation of the recruitment process and the subsequent restarting will not be in the interest of justice and the institution due to undue consumption of time. **(Para 6)**
- iii. The Respondent with regard to the staff recruitment, adopted the recruitment process as provided in the Act of 1996 by its own choice and the Act of 2016 cannot be imposed by a mandate of law. Appropriate decisions on the applicability of the Act of 2016 are yet to be taken and will be taken accordingly. **(Para 11)**
- iv. The lack of identification of posts makes Section 34 of the Act of 2016 inapplicable to the present case. **(Para 25)**

*(The judgments cited by the Respondents are mentioned in **Para 11**)*

III. Advocate General for the State of Maharashtra:

- i. The Respondent falls under the definition of State under Article 12 of the Constitution of India and thus could fall under the definition of “*Government Establishment*” under Section 2(k) of the Act of 2016. As such, the Respondent is obliged to carry out the mandate of the Act. **(Para 12)**

- ii. A writ of mandamus or in the nature of mandamus cannot lie against the Chief Justice of the High Court to draft rules and guidelines under Article 229 to include reservation as under the Act of 2016. However, the power of the Chief Justice to appointment staff is subject to Article 16(1). **(Para 13)**
- iii. A mode of recruitment applied in *C.G. Govindan v. State of Gujarat* is possible in the facts of the present case thereby allowing present recruitment process to be completed and appropriate decisions to be taken by the Respondent as regards applicability of the Act of 2016 while initiating fresh recruitment process **(Para 13)**

(The judgments cited by the Advocate General are mentioned in Para 13)

The Judgment

1. The Respondent falls within the definition of Section 2(k) of the Act of 2016 in light of its previous administrative decisions and orders of the High Court in identical petitions. **(Para 15)**

Para relevant to this conclusion are **Para 16-19** discussing the administrative proceedings, decisions and other related documents. Also read **Para 23 & 24** for other related content.

2. The Respondent falls within the definition of the State under Article 12, thereby coming under the ambit of a writ of mandamus. **(Para 22)**

Para relevant to this point are **Para 20-22** referring to various Supreme Court judgments relating to the Constitutional obligations of the High Court(s), the nature of the power of the Chief Justice of the High Court under Article 229.

3. Lack of identification of posts cannot deprive the beneficiaries of the Act of 2016 of their rights and other benefits under the Act, being a social welfare legislation. **(Para 25)**

Relevant paragraphs supporting this conclusion are **Para 25 & 26** referring to cases decided by the Supreme Court relating to the question of identification of posts and vacancies, and the nature of the Act of 2016 among others.

The Relief

The Act of 2016 has to be implemented in letter and spirit. In the present case, the solution has to be such that it does not prejudice the rights of the beneficiaries of the Act or the rights of the applicants for the recruitment process. The recruitment process will thus continue without being quashed provided that 4% of posts are kept vacant to be filled after the identification of posts by the Respondent and a special drive for recruitment of disabled persons to such vacancies.

TABLE OF CASES

The following cases were referred or mentioned in the judgment.

Petitioner

Sr. No.	Case Name	Citation
1.	Dalco Engineering v. Satish Prabhakar Padhye	(2010) 4 SCC 378
2.	Sudeepti Sharma v. State of Punjab	2013 SCC Online P & H 16263
3.	Babita Pathak & Ors. v. High Court of Delhi & Ors.	2013 SCC OnLine Del 761
4.	Nishant S. Diwan v. High Court of Delhi	2014 SCC OnLine Del 1257
5.	Sarika v. State of U.P	2013 SCC OnLine All 5321

Respondent

Sr. No.	Case Name	Citation
1.	State of Bihar v. Bal Mukund Sah	(2004) 4 SCC 640
2.	Government of India and Anr. v. Ravi Prakash Gupta and Anr.	(2010) 7 SCC 626
3.	Union of India and Anr. v. National Federation of the Blind and Ors.	(2013) 10 SCC 772

Advocate General

Sr. No.	Case Name	Citation
1.	Dalco Engineering v. Satish Prabhakar Padhye	(2010) 4 SCC 378
2.	Naresh Shridhar Mirajkar v. State of Maharashtra	(1973) 4 SCC 225
3.	Dashrath v. High Court of Judicature	2016 (6) Mh.L.J. 74
4.	Renu v. District and Sessions Judge, Tis Hazari	(2014) 14 SCC 50
5.	Government of India and Anr. v. Ravi Prakash Gupta and Anr	(2010) 7 SCC 626
6.	Syed Bashir-Ud-Din Qadri v. Nazir Ahmed Shah and Ors.	(2010) 3 SCC 603
7.	Riju Prasad Sarma and Ors. v. State of Assam and Ors.	(2015) 9 SCC 461

8. Shamrao Shripat Tamgade v. State of Maharashtra 2006(6) Mh.L.J. 524 and Ors.
9. C.G. Govindan v. State of Gujarat and Ors. (1998) 7 SCC 625
10. P. Kasilingam and Ors. v. P.S.G. College 1995 Supp (2) SCC 348 Technology and Ors.
11. Dashrath Keshavji Pande and Ors. v. High Court of 2016 (6) Mh.L.J. 74 Judicature at Bombay

Other Cases cited in the Judgment

Sr. No.	Case Name	Citation
1.	H. C. Puttaswamy and Ors. v. Hon'ble Chief Justice of Karnataka High Court, Bangalore and Ors.	AIR 1991 SC 295
2.	Riju Prasad Sarma and Ors. v. State of Assam and Ors. (Supra)	(2015) 9 SCC 461
3.	Pradeep Kumar Biswas v. Indian Institute of Chemical Biology.	(2002) 5 SCC 111
4.	Naresh Shridhar Mirajkar v. State of Maharashtra	AIR 1967 SC 1
5.	Poonam v. Sumit Tanwar	(2010) 4 SCC 460
6.	Justice Sunanda Bhandare Foundation v. Union of India and Anr	(2017) 14 SCC 1