

**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD****R/WRIT PETITION (PIL) (WRIT PETITION (PIL)) NO. 46 of 2023**

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NATIONAL FEDERATION OF THE BLIND

Versus

STATE OF GUJARAT & ANR.

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Appearance:

MR. S.K.RUNGTA, SR. ADV. WITH MS. KRUTI M SHAH(2428) for the
Applicant(s) No. 1MR. KAMAL B. TRIVEDI, ADVOCATE GENERAL WITH MR. KRUTIK
PARIKH AND MR. VINAY VISHEN, AGPS for the Opponent(s) No. 1,2

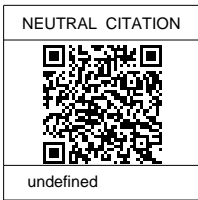
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**CORAM: HONOURABLE THE CHIEF JUSTICE MRS. JUSTICE
SUNITA AGARWAL**

and

HONOURABLE MR. JUSTICE PRANAV TRIVEDI**Date : 04/10/2024****ORAL ORDER****(PER : HONOURABLE THE CHIEF JUSTICE MRS. JUSTICE SUNITA AGARWAL)**

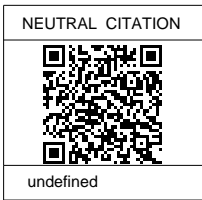
This Public Interest Litigation has been initiated with the sole objective of full and effective implementation of the Rights of Persons with Disabilities Act, 2016 (hereinafter referred to in short as ‘the Act, 2016’) specifically Section 34 of the said Act for providing reservation in every government establishment, as also the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 (hereinafter referred to in short as ‘the Act, 1995’) so as to implement the directions contained in the judgment and order dated 08.10.2013 passed by the Apex Court in



Union of India and Another vs. National Federation of the Blind and Others [(2013) 10 SCC 772].

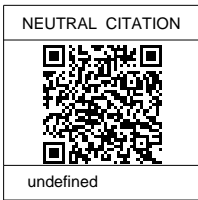
2. The learned senior advocate Mr. S.K.Rungta, appearing for the petitioner, has invited attention of the Court to the order dated 13.03.2024 passed by this Court, whereby the Chief Secretary, the Government of Gujarat, was required to ensure implementation of Section 34 of the Act, 2016 by identification of the posts in the cadre strength in each group of posts meant to be filled with persons with benchmark disability. Pursuant to the said order, the data from time to time was placed before the Court, which was sought to be assailed Mr. S.K.Rungta, the learned senior advocate for the petitioner with the categorical assertion that the computation of the vacancies in the cadre strength meant to be filled up with persons with benchmark disability has not been made as per the requirement of the Act, 2016.

3. It was argued that the categorical direction of the Apex Court in **National Federation of the Blind (supra)** is to the effect that the computation of the reservation for persons with disabilities has to be made in case of four group of posts, such as Group 'A', 'B',



‘C’ and ‘D’ posts in an identical manner viz. computing 3% reservation of total number of vacancies in the cadre strength, as per the intention of the Legislature. It was clarified therein that reservation for persons with disabilities has nothing to do with the ceiling of 50%, inasmuch as, the said reservation is horizontal. It was also noted that categorical obligations are provided under the Constitution of India and under various International Treaties relating to Human Rights in General and Treaties for disabled persons, in particular, to protect the rights of the disabled persons. The Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1955 (hereinafter referred in short as ‘the Act, 1955’) was enacted.

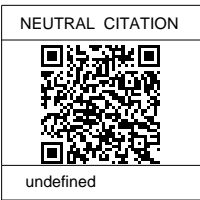
4. It was observed therein that even though the Act was enacted way back in the year 1955 with effect from 07.02.1996, disabled people have failed to get the required benefits, as a result many disabled persons are living in poverty and in deplorable conditions. The reality is that the disabled people are out of job not because of their disability comes in the way of their functioning rather it is a social and practical barriers that prevent them from joining the work force. They are denied the right to make useful contribution



to their own lives and to the lives of of their families and community. The plain and simple meaning was assigned to the Section 33 of the Act, 1995 for reservation of posts, on the aspects of manner of computing 3% reservation for the persons with disability as per Section 33 of the Act and whether the post based reservation must be adhered to or vacancies based reservation. It was clarified by the Apex Court that the plain and unambiguous meaning of Section 33 is that every Appropriate Government has to appoint minimum of 3% vacancies in an establishment out of which 1% each shall be reserved for persons suffering from blindness and low vision, persons suffering from hearing impediment and persons suffering from locomotor disability or cerebral palsy.

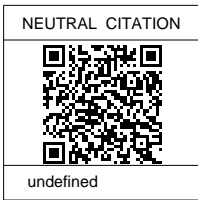
5. The illustration given in paragraph No. '38' of the said decision placed before us by Mr. Rungta, the learned senior advocate, is relevant to be noted hereinunder :-

“To illustrate, if there are 100 vacancies of 100 posts in an establishment, the concerned establishment will have to reserve a minimum of 3% for persons with disabilities out of which at least



1% has to be reserved separately for each of the following disabilities: persons suffering from blindness or low vision, persons suffering from hearing impairment and the persons suffering from locomotor disability or cerebral palsy. Appointment of 1 blind person against 1 vacancy reserved for him/her will be made against a vacancy in an identified post for instance, the post of peon, which is identified for him in group D. Similarly, one hearing impaired will be appointed against one reserved vacancy for that category in the post of store attendant in group D post. Likewise, one person suffering from locomotor disability or cerebral palsy will be appointed against the post of "Farash" group D post identified for that category of disability. It was argued on behalf of Union of India with reference to the post of driver that since the said post is not suitable to be manned by a person suffering from blindness, the above interpretation of the Section would be against the administrative exigencies. Such an argument is wholly misconceived. A given post may not be identified as suitable for one category of disability, the same could be identified as suitable for another category or categories of disability entitled to the benefit of reservation. In fact, the second part of the Section has clarified this situation by providing that the number of vacancies equivalent to 1% for each of the aforementioned three categories will be filled up by the respective category by using vacancies in identified posts for each of them for the purposes of appointment."

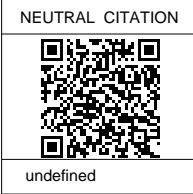
6. It was held that the intention of the Legislature is clearly to reserve in every establishment under the Appropriate Government not less than 3% of the vacancies for the persons or class of



persons with disability, of which 1% each shall be reserved for the persons with disabilities in the manner provided under Section 33 of the Act, 1995, in the posts notified for each disability. It was held that computation of reservation has to be against the total approved vacancies in the cadre strength and not against the notified posts. The Legislature mandates every Appropriate Government to appoint minimum of 3% vacancies in its establishments for persons with disabilities.

7. With the enforcement of the Rights of Persons with Disabilities Act, 2016 with effect from 27th December, 2016, the reservation percentage has been increased from 3% to 4% and two more benchmark disabilities under Clauses (d) and (e) have been added in Section 34 of the Act, 2016. The sub-section(2) of Section 34 of the Act, 2016 provides for carry forward principle and the method of filling up the backlog vacancies in the following manner

“34(2) Where in any recruitment year any vacancy cannot be filled up due to nonavailability of a suitable person with benchmark disability or for any other sufficient reasons, such vacancy shall be carried forward in the succeeding recruitment year and if in the succeeding recruitment year also suitable person with benchmark

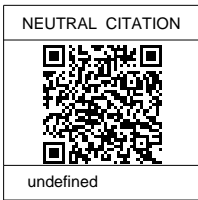


disability is not available, it may first be filled by interchange among the five categories and only when there is no person with disability available for the post in that year, the employer shall fill up the vacancy by appointment of a person, other than a person with disability:

Provided that if the nature of vacancies in an establishment is such that a given category of person cannot be employed, the vacancies may be interchanged among the five categories with the prior approval of the appropriate Government.”

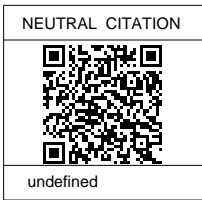
8. Section 41 of the Act, 1995 mandates the Appropriate Government to frame incentive scheme for the employers with a view to ensure that 5% of their work force is composed of persons with disabilities. The joint reading of Section 33 and Section 41 of the Act, 1995, thus, did make it clear that the Legislature though intended to ensure 5% of reservation in the entire work force both in the public as well as private sector, it provided a minimum level of representation of 3% in the establishment of the Appropriate Government.

9. The issue in the present petition is about the method in which the directions contained in the judgment of the Apex Court in **National Federation of the Blind (supra)** has been implemented.



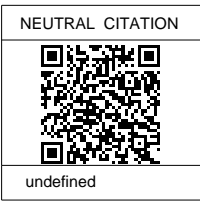
10. It is an admitted fact of the matter that in the State of Gujarat, the Act of 1955 has been implemented only in the year 2000. There has been no reservation in compliance of Section 33 of the Act, 1955 between the years 1996 to 2000. In the similar manner, the Act of 2016 was implemented only in the year 2021. The result is that 3% of the vacancies which were meant for persons with disabilities in the Government establishments were not filled up by providing reservation against the total number of vacancies in the cadre strength in each group of posts. The Legislative mandate has not been implemented. The question, thus, is of filling up the backlog vacancies for effective representation of persons with disabilities in the State of Gujarat so as to help them to break the social and practical barriers and to live their lives with dignity, to overcome the poverty and provide succor to their family.

11. The personal affidavit of the Chief Secretary of the Government of Gujarat dated 10.09.2024 has been placed before us by the learned Advocate General, wherein it is stated that on an inquiry it was transpired that any vacancy, which has not been subjected to complete process of selection even though vacant,



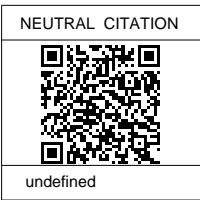
cannot be treated as a backlog vacancy. As understood by the Chief Secretary in his words in the affidavit, what is required to be taken into consideration is the factum of number of posts that have been advertised for recruitment till date and on the basis thereof, the number of vacant posts (category-wise vacancies) reserved for persons with disabilities is to be arrived at. The whole exercise was required to be carried out afresh with a view to compute the number of posts reserved for the persons with disabilities that ought to have been filled.

12. It is further stated that in the peculiar circumstance, the State Government has already initiated the fresh exercise for computation of the posts to be filled for the persons with disabilities in each department including the public sector undertaking / government sector of the State etc. and the data for 27 departments is annexed. With the chart appended with the said affidavit, it is stated that the benefit of reservation as prescribed under the Act, 1955 has been applied in the State of Gujarat for the recruitment undertaken in consonance with the notification dated 19.02.2000 and the total number of posts that were to be reserved and filled by the persons with disabilities of each category in every recruitment exercise



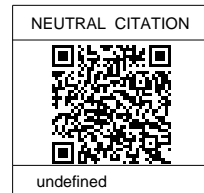
undertaken from the date of implementation of the notification dated 19.02.2000 can be looked into in the chart. The posts which were actually filled up and the number of posts which could not be filled up have been shown therein. Similarly, the reservations as per the Act, 2016 has been applied in the State of Gujarat in consonance with the Government Resolution dated 17.09.2021 with total number of posts reserved and filled with persons with disabilities, actually filled and remained vacant, have been shown therein. It is, thus, sought to be submitted that those posts which remained vacant as a result of the implementation of the reservations rules, are only few and the column 6C of the table, as referred in the affidavit, shows the number of posts that are required to be filled up in the subsequent recruitment exercises undertaken by the respective government departments are actually zero against most of the posts.

13. The learned senior advocate Mr. Rungta for the petitioner has confronted the stand of the Chief Secretary and the chart appended with his affidavit. On a query made by the Court from the learned Advocate General about the computation made in the chart, it



became clear that there was a clear misunderstanding in the mind of the Chief Secretary of the Government of Gujarat in the matter of implementation of the Act, 1955 and the Act, 2016. The manner in which the calculation has been done and the details provided with respect to the recruitment exercise undertaken from 2000 to 2020 and after 17.09.2021 when the State has decided to implement the Act, 1995 and Act, 2016 respectively, shows that there is complete lack of understanding in the matter of reservation for implementation of both the enactments.

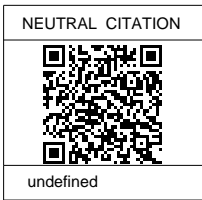
14. We may state that the provisions of the Act were required to be implemented forthwith, as it was a Parliamentary Act and non-implementation has resulted into deprivation of the benefit of reservation to the persons with disabilities in the State of Gujarat. There is a requirement for computation of backlog vacancies, which were required to be filled in a particular recruitment year after enforcement of the Act, 1995, and which could not be filled because of the apathy of the State Government. There is also a requirement of computation of backlog vacancies as per the Act, 2016, which has been implemented after a period of 5 years from



its enactment. The identification of vacancies for reservation under the Act, 1995 and the Act, 2016 was Legislative mandate of the Parliamentary Legislation, which was enacted to give effect to the Proclamation on the Full Participation and the Equality of the People with Disabilities in the Country. The Act, 2016 has been brought into force to give effect to the United Nations Convention on the Rights of Persons with Disabilities and for the matters connected there with and incidental thereto.

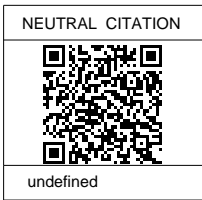
15. Moreover, the Apex Court's judgment in **National Federation of the Blind (supra)** came on 8th October, 2013. In spite of that, not giving full effect to the Act, 2016 in the State of Gujarat, invite contempt of the Apex Court decision by the State Government. The requirement is to remedy the situation forthwith.

16. During the course of deliberations, it was agreed by the learned counsel for the parties that the computation of the backlog vacancies which were not notified and filled in between the year 1996 to 2000 and 2016 to 2021 as per the mandate of the Act, 1995 and 2016, would be a humongous exercise. As a positive step



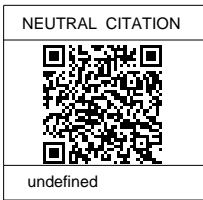
to remedy the situation, it was suggested by Mr. Rungtta, the learned senior advocate appearing for the petitioner that there is a via media for identification of the backlog vacancies, which is to count the number of persons of each category of disability already working in the each group of posts namely Group 'A', 'B', 'C' and 'D' posts in the cadre strength, and then apply 4% reservation as provided under the Act of 2016. For illustration, 1% of posts in the cadre strength of Group-'D' is taken into consideration if persons with disabilities working in the said group having benchmark disability of blindness or low vision, form 1% of the posts in the cadre strength, there would be no further need to compute the vacancy, and if there is shortfall in the said category of disability (1% for blindness or low vision) in the said group (Group-'D'), there would be a backlog.

17. It is further pointed out from the record that such an exercise was undertaken by the Ministry of Personnel , P.G. & Pensions, Department of Personnel and Training, Government of India, pursuant to the order of the Apex Court in Contempt Petition No. 499 of 2014 arising out of the judgment and order dated 8th October, 2013 in **National Federation of the Blind (supra)**. The



Department of Personnel and Training has conducted an exercise for computation of posts of unfulfilled vacancies for persons with disabilities and backlog vacancies for filling up over 15000 posts with recruitment calendar for conducting special recruitment drive for persons with disability in a time-bound manner, which was placed before the Apex Court and the scheme framed by the Department of Personnel and Training was approved. The suggestion is that the State of Gujarat can take assistance of the Department of Personnel and Training of the Central Government, which has conducted this exercise in the year 2015 itself.

18. When this suggestion was brought before this Court, Mr. Kamal Trivedi, the learned Advocate General appearing for the State gave an assurance to the Court that the State Government is committed to implement the Act, 1996 and the Act, 2016 to give full effect to the rights of persons with disabilities, to provide them equal opportunity and full participation in the State of Gujarat, so as to remove discrimination against the persons with disabilities. The learned Advocate General has assured the Court that the State would coordinate with the Department of Personnel and Training,



Government of India would find out a solution to rectify the situation by computation of the backlog vacancies so as to prepare a plan for holding Special recruitment drive.

19. On the assurance, in order to provide opportunity to the State Government to undo the wrong, we post the matter on **22.11.2024**.

The Chief Secretary, the State of Gujarat is cautioned to be mindful of the requirement of law before making any statement on oath in the Court of law.

(SUNITA AGARWAL, CJ)

(PRANAV TRIVEDI, J)

C.M. JOSHI/pps