

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **CM.No.230/2014 in W.P.(C) No.15828/2006**

Reserved on: 03.07.2014
Pronounced on: 17.07.2014

NATIONAL FEDERATION OF BLIND Petitioner
Through: Mr.S.K.Rungta, Petitioner-in-Person

Versus

UNION OF INDIA Respondent
Through: Mr.Sumeet Pushkarna, Adv. with
Ms.Sara Sundaram, Adv. for UOI.

CORAM:
HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

J U D G M E N T

: **Ms.G.ROHINI, CHIEF JUSTICE**

1. Against the order dated 19.12.2008 passed by this Court in W.P.(C) No.15828/2006, the respondent-Union of India preferred Civil Appeal No. 9096/2013 and the same was disposed of by the Supreme Court by judgment dated 08.10.2013. The writ petitioner has now come up with C.M. No.230/2014 alleging that the respondents failed to implement the directions of this Court in the order dated 19.12.2008 as well as the further directions issued by the Supreme Court in Civil Appeal No.9096/2013 and accordingly seeking revival of the writ petition. The petitioner also prays for certain other directions.

2. The brief facts are as under.

3. The writ petitioner is a Society registered under the Societies Registration Act, 1860. It is claimed that the petitioner society has been working for the protection of the rights of the blinds. The main writ petition

was filed by way of Public Interest Litigation assailing the alleged illegal action of the respondents in not giving reservation to the blind and low vision candidates in accordance with Section 33 of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 (for short Disabilities Act) in all its recruitments beginning from 1996 till date.

4. After hearing both the parties, this Court disposed of the writ petition on 19.12.2008 with the following directions:

“...We are in agreement with Mr. Rungta that the paragraph 14 of the OM dated 29.12.2005 is inconsistent with the provisions of Section 33 of the Disabilities Act.

17. In our opinion, in order to ensure proper implementation of reservation policy for the disabled and to protect their rights it is necessary to issue the following directions:

i. We direct the respondents to constitute a committee consisting of the Chief Commissioner for disabilities (Chairman), Joint Secretary, Department of Personnel & Training, Joint Secretary, Ministry of Social Justice and Empowerment, Joint Secretary, Department of Public enterprises, and Secretary, Staff Selection Commission to do the following acts in terms of this order:

(a) To solicit information with regard to recruitments made by departments/public sector undertakings/government companies from the date when the Disabilities Act came into force in 1996 and to work out backlog of vacancies for the disabled on the total cadre strength in different establishments within one month from the date of this order.

(b) To undertake special recruitment drive by organising centralised recruitment against backlog so worked out so as

to fill up the vacancies by utilising at least 50% of the vacancies available with the respective establishments for this purpose only.

(c) To organise further special recruitment drive as required so as to fill up the remaining backlog of vacancies by 31st December, 2010.

ii. Respondent No.1 will issue an appropriate order modifying the OM dated 29.12.2005 and the subsequent OMs consistent with this Courts order.

iii. The respondent No.1 shall issue instructions to all the departments /public sector undertaking/government companies declaring that the non observance of the scheme of reservation for persons with disabilities should be considered as an act of non-obedience and the Nodal Officer in departments/Public Sector undertakings/government companies responsible for the proper strict implementation of reservation for person with disabilities to be departmentally proceeded against for his default.

iv. The respondent No.1 is further directed to issue instructions to all the departments/public sector undertakings/government companies as well as recruiting agencies not to undertake recruitment for any department/public sector undertakings/government company unless the departmental/public sector undertaking/government company makes provisions for reservation for persons with disabilities in terms of the order of this Court and a clearance is granted by the Committee headed by the Chief Commissioner for Disabilities.

v. The Committee headed by the Chief Commissioner for Disabilities shall submit a status report on implementation of the above directions of this Court within three months from the date of this order.”

5. Aggrieved by the said order, the Union of India carried the matter to the Supreme Court and by judgment dated 08.10.2013 in Civil Appeal No.9096/2013, the Supreme Court issued the following directions:-

“54. In our opinion, in order to ensure proper implementation of the reservation policy for the disabled and to protect their rights, it is necessary to issue the following directions:

(i) We hereby direct the Appellant herein to issue an appropriate order modifying the OM dated 29.12.2005 and the subsequent OMs consistent with this Court's Order within three months from the date of passing of this judgment.

(ii) We hereby direct the "appropriate Government" to compute the number of vacancies available in all the "establishments" and further identify the posts for disabled persons within a period of three months from today and implement the same without default.

(iii) The Appellant herein shall issue instructions to all the departments/public sector undertakings/Government companies declaring that the non observance of the scheme of reservation for persons with disabilities should be considered as an act of non-obedience and Nodal Officer in department/public sector undertakings/Government companies, responsible for the proper strict implementation of reservation for person with disabilities, be departmentally proceeded against for the default.”

6. It is now pleaded by the writ petitioner in C.M.No.230/2014 that in terms of the directions of this court in W.P.(C) No.15828/2006, though the Union of India issued Office Memorandum dated 23.03.2009 constituting a

Committee, no further steps were taken during the pendency of the appeal before the Supreme Court. Therefore after the disposal of Civil Appeal No.9096/2013 by the Supreme Court, the writ petitioner submitted an application to the Department of Personnel and Training as well as the Department of Disabilities Affairs, Ministry of Social Justice and Empowerment seeking implementation of the judgments of the Supreme Court as well as this Court with regard to revival of the Committee constituted earlier and to amend the O.M. dated 29.12.2005 and all subsequent OMs providing for computation of reservation in accordance with the interpretation given by the Supreme Court of India to Section 33 and related issues. Pursuant thereto, though the Department of Personnel and Training issued a fresh O.M. dated 03.12.2013, it is alleged that the same is in total contravention of the directions issued by the Apex Court as well as this Court.

7. Therefore, the following directions are sought by the writ petitioner in CM No.230 of 2014:-

- a) To revive the Committee constituted in terms of High Court directions vide OM dated 23.03.2009 under the Chairmanship of Chief Commissioner for persons with disabilities and 1st meeting be convened within 15 days by issuing fresh Government Order.
- b) To amend the O.M. dated 29.12.2005 and all subsequent OMs forthwith to provide for computation of reservation in accordance with the interpretation given by the Hon'ble Supreme Court of India to Section 33 and related issues within a period of 15 days so as to ensure the proper computation of backlog vacancies by each establishment.

- c) To issue a fresh Office Memorandum superseding all Office Memorandums including office memorandum dated 03.12.2013 consistent with the directions of Hon'ble Supreme Court of India on the issue of manner of computation and maintenance of roster within a period of 15 days.
- d) To issue a fresh OM to all the establishments and PSUs informing them about the launch of special recruitment drive and also directing them to provide information on the backlog vacancies upto 31.12.2013 within a period of one month to the said committee and also directing them to seek clearance for any recruitment from the Committee in terms of the aforementioned directions of your lordships. This O.M. should also contain all the directions of your lordships as well as Hon'ble Supreme Court of India with a direction to adhere strictly to the same.
- e) To conduct special recruitment process within a period of two months to fill up the backlog vacancies so computed.

8. This Court directed the Union of India to file a status report regarding implementation of the directions issued by this Court as well as the Supreme Court of India. Accordingly, the Union of India filed the status report dated 21.05.2014 furnishing data of 40 Ministries/ Departments/ Organizations in which 1497 vacancies were identified and out of them, 321 vacancies were in Group-A, 200 vacancies in Group-B and the balance are Group-C and Group-D posts.

9. The Union of India filed another status report dated 30.06.2014 stating that in compliance with the directions of the Supreme Court the

Union of India issued OM dated 03.12.2013 modifying para-14 of the earlier OM dated 29.12.2005 and that apart, instructions were also issued to the effect that (i) posts shall be identified within a period of 3 months from the date of judgment of the Supreme Court and that (ii) non-observance of the provisions of reservation for persons with disabilities shall be considered as an act of disobedience and the nodal officer concerned in the department/public sector undertaking/government company responsible for the strict implementation of reservation for persons with disabilities shall be departmentally proceeded against for the default. It is further stated that the OM dated 03.12.2013 is in terms of the directions issued by the Supreme Court. It is also contended that in view of the judgment of the Supreme Court, there is no need to revive the committee constituted earlier in pursuance of the order of this Court in W.P.(C) No.15828/2006. So far as the backlog vacancies are concerned, it is explained that the Union of India carried out special recruitment drive for filling up of backlog vacancies of persons with disabilities which was launched on 15.11.2009 and was concluded on 31.03.2012 and that out of 6003 backlog vacancies, 2388 vacancies were filled up.

10. It is also stated that as per the information received from 58 various Departments/Ministries/Organizations as on 23.06.2014, the further identified vacancies are 5283 out of which 2301 vacancies are in Group-A and 67 vacancies are in Group-B and balance are in Group-C and Group-D. Many of the said Departments/Ministries/Organizations had informed that they had initiated action for filling up the said identified vacant posts.

11. However, it is vehemently contended by Sh. S.K. Rungta, the learned senior counsel appearing for the petitioner that the contention of the

respondent that the Supreme Court had allowed their appeal and that the order passed by this Court in W.P.(C) No.15828/2006 had merged with the judgment of the Supreme Court dated 08.10.2013 is untenable and misconceived. It is submitted by the learned Senior Counsel that in fact, the appeal was preferred by the Union of India only to the extent of the direction No.(ii) with regard to manner of computation of vacancies/posts to be reserved for the persons with disabilities in terms of Section 33 of the Act and maintenance of vacancy based roster and that the directions of this Court in para-(i) which were not challenged at all attained finality. Thus, according to the learned senior counsel, the respondents are bound to revive the Committee constituted earlier to ensure the proper compliance of the various directions issued by this Court while disposing of W.P.(C) No.15828/2006 apart from the further directions issued by the Supreme Court in Civil Appeal No.9096 of 2013.

12. We have also heard Shri Sumeet Pushkarna, the learned counsel appearing for Union of India.

13. For proper appreciation of the contentions advanced by the learned counsel for the petitioner, it is necessary for us to refer to some of the orders issued by the Union of India from time to time with regard to reservation for persons with disabilities and computation of the reservation.

14. After the enactment of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 which came into force with effect from 01.01.1996, the Government of India, Ministry of Personnel, Public Grievances and Pensions Department issued Office Memorandum (OM) dated 29.12.2005 clarifying certain issues with regard to reservation for persons with disabilities in posts and services under

the Government of India. According to the said OM, 3% of the vacancies **in case of direct recruitment** to Group A, B, C & D posts shall be reserved for persons with disabilities of which 1% shall be reserved for persons suffering from blindness or low vision. **In case of promotion to Group D and Groups C posts** in which the element of direct recruitment, if any, does not exceed 75%, three per cent of the vacancies shall be reserved for persons with disabilities of which one per cent shall be reserved for persons suffering from blindness or low vision.

15. So far as computation of reservation is concerned, Paragraph 13 of OM dated 29.12.2005 provided that the same shall be computed in case of Group C and Group D posts on the basis of total number of vacancies occurring in all Group C or Group D posts as the case may be, although the recruitment of the persons with disabilities would only be in the posts identified suitable for them. Even with regard to computation of reservation in promotion in Group C and Group D posts, it was provided that all vacancies in promotion quota shall be taken into account. **So far as Group A posts and Group B posts are concerned**, it was provided under Paragraph 14 of the OM dated 29.12.2005 that the reservation shall be computed on the basis of vacancies occurring in direct recruitment quota in all the identified Group A & B posts in the establishment.

16. Subsequently, another OM dated 26.04.2006 came to be issued directing all the establishments, departments and Public Sector Undertakings to maintain reservation roster registers beginning from 1996 by designating point Nos.1, 34 and 67 for persons with disabilities. There were also specific directions to carry forward the unutilized reservation.

17. The Union of India has also issued OM dated 10.12.2008 requiring all

the Ministries/Departments to take action to identify unfilled vacancies due to non-implementation of the provisions of Section 33 of the Disabilities Act and to treat the said vacancies as backlog vacancies for the current recruitment year.

18. In W.P.(C) No.15828 of 2006, it was contended before this Court by the writ petitioner that Para 14 of OM dated 29.12.2005 was inconsistent with the mandate of Section 33 of the Disability Act since it provides that reservation in Group A and B shall be computed on the basis of the vacancies occurring only in the identified posts in the establishment. It was pointed out by the writ petitioner that so far as the Group C and D posts are concerned, Para 13 provides that the reservation has to be worked out on the basis of vacancies in identified posts as well as unidentified posts in an establishment.

19. This Court agreed with the contention of the writ petitioner and accordingly disposed of W.P.(C) No.15828 of 2006 by order dated 19.12.2008 holding:

“.....In our opinion the words “every appropriate Government shall appoint in every establishment such percentage of vacancies not less three per cent... in the posts identified...” clearly indicates the intention of the legislature to provide at least 3% of reservation on the basis of the total number of posts in an establishment. The fact that persons belonging to disabled categories are to be appointed in the posts identified for such disabilities does not mean that 3% reservation is to be computed only on the basis of identified posts. The computation has to be with reference to the cadre strength.

.....

...Therefore, in our opinion, 3% reservation for disabled has to be computed on the basis of total strength of the cadre i.e. both

identified as well as unidentified posts.”

20. Accordingly, this Court directed the respondents to constitute a committee to do the various acts specified in Para 17(i)(a) to (c) of the said order. There was also a direction to the Union of India to issue an appropriate order modifying OM dated 29.12.2005 and the subsequent OMs consistent with the order of this Court.

21. In terms of the said directions, the Department of Personnel and Training had constituted a committee vide O.M. dated 23.03.2009 to work out the backlog vacancies for the persons with disabilities on the total cadre strength of each establishment and the said Committee prepared the format for seeking information from all Ministries and Departments of the Government of India. In pursuance thereof, information was also furnished to the Chief Commissioner for Persons with Disabilities who is the Chairman of the Committee by some of the organisations. However, no further steps were taken by the Committee in view of the interim order dated 06.11.2009 passed by the Supreme Court staying the directions issued by this Court while disposing of W.P.(C) No.15828 of 2006.

22. The order of this Court in W.P.(C) No.15828 of 2006 was assailed before the Supreme Court by the Union of India raising the following questions of law:

“A) Whether the impugned judgment/order is not against law?

B) Whether 3% reservation for disabled provided under Section 33 of the Persons with Disabilities (Equal Opportunities Protection of Rights and Full Participations) Act, 1995 has to be computed on the basis of total strength of the cadre i.e. both

identified as well as unidentified posts?

C) Whether the OM dated 29.12.2005 issued by DOPT Government of India is against the provisions of Persons with Disabilities (Equal Opportunities Protection of Rights and Full Participations) Act, 1995?"

23. After hearing both parties, the Supreme Court by judgment dated 08.10.2013 held:

“51.) Thus, after thoughtful consideration, we are of the view that the computation of reservation for persons with disabilities has to be computed in case of Group A, B,C and D posts in an identical manner viz., “**computing 3% reservation on total number of vacancies in the cadre strength**” which is the intention of the legislature. Accordingly, certain clauses in the OM dated 29.12.2005, which are contrary to the above reasoning are struck down and we direct the appropriate Government to issue new Office Memorandum(s) in consistent with the decision rendered y this Court.

52.) Further, the reservation for persons with disabilities has nothing to do with the ceiling of 50% and hence, **Indra Sawhney (supra)** is not applicable with respect to the disabled persons.

53) We also reiterate that the decision in **R.K. Sabharwal (supra)** is not applicable to the reservation for the persons with disabilities because in the above said case, the point for consideration was with regard to the implementation of the scheme of reservation for SC, ST & OBC, which is vertical reservation, whereas reservation in favour of persons with disabilities is horizontal.”

24. The Supreme Court had also rejected the contention of the Union of

India that reservation in terms of Section 33 has to be computed against identified posts only and observed as under with regard to the scope and purport of Section 33 of the Disabilities Act:

“...The proviso also justifies the above said interpretation that the computation of reservation has to be against the identified posts. Had the legislature intended to mandate computation of reservation against the identified posts only, there was no need for inserting the proviso to Section which empowers the appropriate Government to exempt any establishment either party or fully from the purview of the Section subject to conditions contained in the notification to be issued in the Official Gazette in this behalf. Certainly, the legislature did not intend to give such arbitrary power for exemption from reservation to persons with disabilities to be exercised by the appropriate Government when the computation is intended to be made against the identified posts.”

25. As could be seen, the Supreme Court held that the computation of reservation shall be against both identified and unidentified posts of all Groups i.e. Group A, B, C & D and that the computation of 3% reservation shall be on total number of vacancies in the cadre strength.

26. After the decision of the Supreme Court dated 08.10.2013, the Government of India, Ministry of Personnel, PG & Pensions issued a fresh OM dated 03.12.2013 modifying Para 14 of OM dated 29.12.2005. The relevant paragraph from the fresh OM dated 03.12.2013 reads as under:

“5. Keeping in view the directions of the Hon’ble Supreme Court, Para 14 of the OM dated 29.12.2005 is modified to the following extent:

“Reservation for persons with disabilities in Group

‘A’ or Group ‘B’ posts shall be computed on the basis of total number of vacancies occurring in direct recruitment quota in all the Group ‘A’ posts or Group ‘B’ posts respectively, in the cadre.”

27. The present CM came to be filed by the writ petitioner on 01.01.2014 seeking revival of the writ petition contending *inter alia* that the fresh OM dated 03.12.2013 which had completely ignored the manner of computation and maintenance of vacancy based roster is not in compliance with the directions of the Supreme Court in CA No.9096 of 2013 and therefore, the respondents shall be directed to issue a fresh OM. The further contention is that the Committee constituted in terms of the directions of this Court in W.P.(C) 15828 of 2006 has to be revived and all the establishments and Public Sector Undertakings shall be directed to provide information to the Committee with regard to the backlog vacancies upto 31.12.2013 and fill up the same by conducting special recruitment process.

28. It is submitted by Shri S.K. Rungta, learned Senior Counsel appearing for the petitioner that the Union of India’s appeal to the Supreme Court was confined only to the extent of Direction No.(ii) of this Court with regard to the modification of OM dated 29.12.2005 and subsequent OMs and thus, the rest of the directions of this Court i.e. Directions (i), (iii), (iv) & (v) with regard to the constitution of the Committee for the purpose of soliciting information from the Departments/Public Sector Undertakings/Government Companies about backlog vacancies and to undertake special recruitment drive, particularly not to undertake recruitment unless the Departments/Public Sector Undertakings/Government Companies makes provisions for reservation for persons with disabilities and a clearance is

granted by the Committee headed by the Chief Commissioner for Disabilities, remained intact.

29. Contesting the reliefs sought for in CM No.230 of 2014, it is contended by Shri Sumeet Pushkarna, the learned counsel appearing for the Union of India that the application itself is not maintainable in this Court since the petitioner is virtually seeking enforcement of the directions of the Supreme Court in Civil Appeal No.9096 of 2013. It is also contended that the petitioner cannot seek revival of the Committee constituted vide OM dated 23.03.2009 since there was no direction to that effect by the Supreme Court. The further contention of the learned counsel is that the fresh OM dated 03.12.2013 whereunder Para 14 of OM dated 29.12.2005 was modified is in conformity with the directions of the Supreme Court and therefore the contentions of the petitioner contra are untenable and unjustified. It is thus submitted by the learned counsel that the respondents have already implemented the directions of the Supreme Court in CA No.9096 of 2013.

30. Pointing out that the Supreme Court in the judgment dated 08.10.2013 had directed the 'appropriate Government' to compute the number of vacancies available in all the establishments and implement the same without default and that the Department of Personnel and Training shall issue instructions to all the Departments/Public Sector Undertakings/Government Companies for proper strict implementation of reservation for persons with disabilities, it is contended by the learned counsel for the Union of India that there is no need to revive the Committee. It is also submitted by the learned counsel that the respondent has been taking all the necessary steps for identification and filling up of the

identified vacant posts in Group A, B, C & D posts in various departments/Ministries/Organisations from which the information received has already been received.

31. In the light of the rival submissions noticed above, the first question that requires consideration by us is as to whether the present application is maintainable in this Court in view of the judgment of the Supreme Court on the appeal preferred against the order of this Court.

32. We may at the outset point out that this Court by order dated 19.12.2008 in W.P.(C) No.15828 of 2006 while issuing various directions in order to ensure proper implementation of reservation policy for the disabled and to protect their rights, directed the matter to be listed on 06.04.2009 and in the meanwhile the Committee headed by the Chief Commissioner for Disabilities was directed to submit a status report on implementation of the directions within three months from the date of the order. This undoubtedly goes to show that the matter is kept pending on the file of this Court for the purpose of monitoring the implementation of the directions issued by this Court.

33. It is no doubt true that on the Appeal preferred by the Union of India the Supreme Court held that the order of this Court in holding that the computation of reservation must be on the basis of total cadre strength was erroneous and that it should be on total number of vacancies in the cadre strength. However, it may be noted that though the manner of computation of reservation was altered, the direction with regard to modification of OM dated 29.12.2005 remained intact and the respondents are bound to implement the same. Now that the allegation in the present application is that the fresh O.M. issued by the respondents is not in conformity with the

law declared by the Supreme Court, it appears to us that the fresh OM dated 03.12.2013 cannot be said to have given rise to a new cause of action so as to compel the petitioner to challenge the same by instituting fresh proceedings.

34. In view of the conclusion that the present application is maintainable, we shall now proceed to consider whether the petitioner is entitled to the directions for setting aside the O.M. dated 03.12.2013 and for revival of the Committee and particularly for a direction that the Departments/Public Sector Undertakings/Government Companies cannot undertake recruitment unless provisions are made for reservation for disabled and a clearance is granted by the Committee.

35. Paragraph 13 of OM dated 29.12.2005 provides for computation of reservation for disabled in case of Group C and Group D posts and Paragraph 14 provides for computation of reservation for disabled in case of Group A and Group B posts. It is not in dispute that as per Paragraph 13, the modus of computation of reservation is on the basis of total number of vacancies, both identified and unidentified, in the cadre strength whereas Paragraph 14 confined it only to the identified posts. Therefore, Paragraph 14 was held by this Court as inconsistent with provisions of Section 33 of the Disabilities Act. However, this Court further held that the computation shall be with reference to the cadre strength. This was held to be erroneous by the Supreme Court and it was concluded in Civil Appeal No.9096 of 2013 that the reservation shall be computed in case of Group A, B, C & D posts in an identical manner viz. computing three per cent reservation on total number of vacancies in the cadre strength.

36. As pointed above, by fresh OM dated 03.12.2013 the modification to

the earlier OM dated 29.12.2005 was made only to the extent of Paragraph 14 and as per the amended Para 14, reservation for persons with disabilities in Group A or Group B posts shall be computed on the basis of total number of vacancies occurring in direct recruitment quota in all the Group A posts or Group B posts in the cadre.

37. We may at the outset point out that Para 14 as it stood prior to modification by OM dated 03.12.2013 also provided for reservation in direct recruitment quota in Group A and Group B posts and the same has been reiterated in the modified Para 14. So far as the computation is concerned, Para 14 as modified by OM dated 03.12.2013 made it clear that it should be on the basis of total number of vacancies in the cadre instead of vacancies occurring in the identified posts. The said modification, according to us, is in tune with the judgment of the Supreme Court wherein it was declared that the computation shall be in case of Group A, B, C & D posts in an identical manner and that the same shall be on total number of vacancies in the cadre strength.

38. However, the contention of Shri S.K. Rungta is that the reservation ought not to have been confined to the vacancies occurring in direct recruitment quota, but the same shall be extended even with regard to promotional and deputation posts. It is contended by the learned Senior Counsel that the cadre strength includes direct recruitment posts as well as promotional and deputation posts.

39. As we could see, this issue was not raised either before this Court or before the Supreme Court. The only contention was that the computation of reservation should not be confined to identified posts and that the same should be on total number of vacancies in the cadre strength and the same

was accepted by the Supreme Court. Having regard to the fact that the abovementioned contention was neither urged nor adjudicated either by this Court or by the Supreme Court, it is not open to the petitioner now to contend that the reservation ought to have been extended even with regard to promotion and deputation posts.

40. Two more questions that are required to be answered by us are-

(A) Whether the computation of reservation on total number of vacancies in the cadre strength in case of group A and B posts is possible in the absence of amendment to the other paragraphs in OM dated 29.12.2005 and

(B) Whether the petitioner is entitled to seek revival of the Committee headed by the Chief Commissioner of Disabilities for acting in terms of the directions of this Court in Para 17(i)(a) to (c).

41. Point (A):- The contention of Sh. S.K. Rungta is that in the absence of amendment to paragraph 15 (i) of O.M. dated 29.12.2005 it is not possible to implement the directions of the Supreme Court to compute 3% of reservation on total number of vacancies in the cadre strength.

42. Clause (i) of paragraph 15 reads:-

“Reservation in group A and group B posts is determined on the basis of vacancies in the identified posts only. Separate rosters for group A posts and group B posts in the establishment shall be maintained. In the rosters maintained for group A and group B posts, all vacancies of direct recruitment arising in identified posts shall be entered and reservation shall be effected the same way as explained above.”

43. A reading of the above Clause shows that it deals with only the

identified posts for determination of the reservation in group A and group B posts. On the contrary, Clause (d) to clause (h) of para 15 provide that all the vacancies in group C and group D posts shall be taken into consideration for effecting reservation and maintenance of rosters. Therefore, we find force in the submission of Sh. S.K. Rungta that computation of reservation in terms of the direction of the Supreme Court is not workable in the absence of suitable amendment to Para 15 also. However, we do not find any anomaly as such in the wording of modified Para 14 of O.M. dated 29.12.2005. Therefore, there is no need to strike off O.M. dated 03.12.2013, but the ends of justice would be met if the respondents are directed to make further modifications to O.M. dated 29.12.2005 for the purpose of computation of reservation as directed by the Supreme Court.

44. Point (B):- Coming to the next question i.e. whether the respondents are bound to revive the Committee that was constituted in pursuance of the directions of this court in W.P. No.15828/2006, we may at the outset point out that the said Committee was directed to be constituted for the purpose of- (i) soliciting information with regard to recruitments made from the date when the Disabilities Act came into force, (ii) working out backlog vacancies for the disabled on the total cadre strength in different establishments, (iii) undertaking special recruitment drive by organizing centralized recruitment against the backlog so worked out so as to fill up at least 50% of the available vacancies, (iv) organizing further special recruitment drive so as to fill up the remaining backlog of vacancies. A combined reading of the above directions shows that the purpose for which the Committee was directed to be constituted is to work out the backlog vacancies from the date when the Disabilities Act came into force in 1996

and to ensure filling up of at least 50% of the vacancies by undertaking special recruitment drive and to fill up the remaining backlog of vacancies within the time prescribed.

45. Coming to the directions issued by the Supreme Court there was no direction with regard to backlog vacancies, but the direction was to the appropriate Government to compute the number of vacancies available in all the establishments and identify the posts for disabled persons within a period of three months.

46. It is also relevant to note that whereas this court in Para 17 (iv) directed not to undertake recruitment for any Department/Public Sector Undertaking/Government Company unless the Department/Public Sector Undertaking/Government Company makes provisions for reservation for persons with disabilities and a clearance is granted by the Committee, the judgment of the Supreme Court did not contain any such direction at all.

47. It may also be pointed out that the Supreme Court in the concluding Paragraph i.e. Para 54 while issuing the directions observed:

“In our opinion, in order to ensure proper implementation of reservation policy for the disabled and to protect their rights, it is necessary to issue the following directions:-
.....”

48. It is conspicuous that the Supreme Court though reiterated the direction of this Court for modification of O.M. dated 29.12.2005 and the subsequent O.Ms as well as the direction with regard to consequences of non-obedience of implementation of reservation for disabled, there was no mention about the constitution of the Committee. Similarly, there was no

direction that the Union of India shall issue instructions to all the Departments/Public Sector Undertakings/Government Companies as well as recruiting agencies not to undertake recruitment unless provisions are made for reservation for persons with disabilities and a clearance is granted by the Committee headed by the Chief Commissioner for Disabilities.

49. Thus, it is clear that the directions issued by this Court in Para 17 of the order dated 19.12.2008 in W.P.(C) No.15828/2006 stood substituted by the directions issued by the Supreme Court in Para 54 of the judgment in Civil Appeal No.9096/2013. Therefore, the petitioner can seek enforcement of only those directions issued by the Supreme Court in Civil Appeal No.9096/2013 and nothing more.

50. For the aforesaid reasons, we are of the opinion that the relief sought by the petitioner for revival of the Committee and the other directions cannot be granted. As already expressed above, we are of the view that the modification made to Para 14 of O.M. dated 29.12.2005 alone vide fresh O.M. dated 03.12.2013 is not in compliance with the directions of the Supreme Court. Therefore, there shall be a direction to the respondents to make further modifications to O.M. dated 29.12.2005.

51. So as to avoid further loss of time as well as litigation, we deem it appropriate to direct the respondents to make such further modifications in consultation with the petitioner. For the said purpose, the petitioner is hereby permitted to submit a detailed representation proposing the required amendments to O.M. dated 29.12.2005 so as to ensure proper implementation of the judgment of the Supreme Court in Civil Appeal No.9096/2013. Such representation shall be made within four weeks from

today. On receipt of such representation, the respondents 1 & 2 shall consider the same and issue a fresh O.M. within six weeks thereafter after giving an opportunity of personal hearing to the petitioner.

CM is accordingly disposed of.

CHIEF JUSTICE

RAJIV SAHAI ENDLAW, J

JULY 17, 2014

anb/pmc/kks