

In the Court of State Commissioner for Persons with Disabilities
National Capital Territory of Delhi
25-D, Mata Sundari Road, Near Guru Nanak Eye Centre, New Delhi-2
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(Vested with powers of Civil Court under the
Rights of Persons with Disabilities Act, 2016)

Case No. 4/1519/2017-Wel/CD/ 6442-43

Dated: 27/03/18

In the matter of:

Dr. Nitesh Tripathi
H.No. 241, Gali No. 11, B-Block,
Sant Nagar, Burari,
Delhi-110084.

.....Complainant

The Commissioner,
North Delhi Municipal Corporation,
4th Floor, Dr. S.P.M. Civic Centre,
New Delhi-110002.

.....Respondent

Date of hearing: 22.03.2018

Present: None

ORDER

The above named complainant, a person with 65% of locomotor disability vide his email dated 02.02.2017 submitted that the public toilets at Vivekanand Marg near Dr. SPM Civic Centre, New Delhi are not disabled friendly and there are no hand rails as well as ramps. Elevation from the ground level is not as per the standards. There is no separate toilet for women with disabilities. He further alleged that due to non-availability of public toilets, persons with disabilities have to face

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great difficulty even in one of the most prominent public places i.e. the HQ of North Delhi Municipal Corporation (North DMC). He, therefore, requested to take necessary action in order to protect the rights of persons with disabilities. He also attached the photographs of the toilets alongwith his email and requested to order an access audit of the site by deputing an officer of this Court.

2. The complaint was taken up with the respondent vide communication dated 20.02.2017 followed by reminders dated 29.03.2017 and 22.05.2017. As there was no response, a hearing was scheduled on 28.08.2017. However, none appeared on behalf of the respondent. Therefore, full details of the case and the relevant provisions of the Rights of Persons with Disabilities Act, 2016(the Act) were brought to the notice of the respondent vide Rop dated 05.09.2017. The relevant extract of the said RoP is reproduced below:-

".....Despite the fact that the complaint was taken up vide communication dated 20.02.2017 followed by reminders dated 29.03.2017 and 22.05.2017, no response whatsoever was received from the respondent which compelled this Court to schedule a hearing vide summons dated 17.08.2017. Unfortunately, even the summons have not evoked any response from the respondent. It is indeed a matter of concern for this court and persons with disabilities in general and the complainant in particular who has travelled a long distance and waited for more than two hours without any relief. The state of public toilets, as brought out by the complainant which is a basic need, in the national capital when Government of India has launched Accessible India Campaign and in the year of coming into force of the Rights of Persons

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with Disabilities Act, 2016, does not augur well for persons with disabilities as far as the enjoyment of their right is concerned.

2. This Court has taken suo-motu notice of inaccessible public places in National Capital Territory of Delhi and taken up with all the Civic Authorities and Urban Development Department, Govt. of NCT of Delhi vide notice dated 19.07.17 directing the respondents to show cause as to why the existing built environment meant for public use in the National Capital Territory of Delhi should not be made fully accessible to persons with disabilities as mandated in the Rights of Persons with Disabilities Act, 2016 and to submit their versions on or before 11.08.2017. However, while some of the respondents have submitted the status, North Delhi Municipal Corporation has not responded to that notice as well.

.....4. In the facts and circumstances of this case, I would like to bring to the notice of the Commissioner of North Delhi Municipal Corporation that besides exhibiting insensitivity towards the cause of persons with disabilities, the concerned functionaries of the Corporation also appear to be violating the mandatory provisions of the Rights of the Persons with Disabilities Act, 2016, thereby attracting the provisions of its Section 89 and 93,.....”

5. I would therefore request the Commissioner, North Delhi Municipal Corporation to impress upon the concerned officers to respond to the complainants/notices and submit a status report on the next date of hearing on 18.09.2017 at 11:30 a.m. failing which this Court will be constrained to take action for enforcing attendance and initiate action for invoking the provisions of the above mentioned sections of the Act for imposition of the penalties as provided in the Act.....”

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3. The RoP was sent to Sh. P.K. Gupta, the then Commissioner, North DMC under a D.O. letter dated 05.09.2017. On the next date of hearing on 18.09.2017, Sh. Dodrai, Superintending Engineer (Planning), Sh. D.D.Gulati, Executive Engineer, Sh. A.S. Khan, Asstt. Engineer & Sh. R.K. Aggarwal appeared on behalf of the respondent and they submitted that they had not yet received the copy of the complaint and the concerned authority for construction / modification of the toilets at Vivekanand Marg near Dr. S.P.M. Civic Centre is the Executive Engineer (Maintenance-II) S.P.M. City Zone. Sh. A.S. Khan, who is the concerned Asstt. Engineer (Maintenance). They further submitted that for modifications in the existing toilets and to make them disabled friendly, they would need funds and approval of the competent authority. This would take atleast three months after getting the budget from the competent authority.

4. The observation and directions of this Court vide RoP dated 18.09.2017 are reproduced below:

".....2. It seems that the notices sent from this Court since February, 2017 are not being marked to the concerned officers and consequently there has not been any action in the matter. It is only after I wrote a D.O. letter to the Commissioner, North DMC on 05.09.2017 that the officers from the Corporation have come to attend the hearing. But the only purpose this has served is that the concerned officers have been handed over the papers. Non-receipt of the notices and non-response has been observed in other cases as well and therefore the Commissioner, North DMC may like to look into the matter to streamline

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the flow of receipts to the appropriate and concerned officers for timely action. A copy of the Notice of Complaint to Show Cause dated 19.07.2017 and the copy of the complaint alongwith communication dated 20.02.2017 has been handed over to Sh. A.S. Khan, Asstt. Engineer (Maintenance) for taking appropriate action.

3. The time frame that Sh. A.S. Khan, has indicated for modifying existing toilets appears to be too long and therefore, the respondent is advised to complete the work in accordance with the above mentioned guidelines within a month of receipt of this record of proceedings and submit an Action Taken Report by 27.10.2017. If needed, this Court is willing to extend whatever assistance it can

4. This Court is also organising a Conference on **"Challenges and Strategies for Making Delhi a Model Barrier Free City"** and an Exhibition on **"Barrier Free World for All"** from 13-15th October, 2017 at India Gandhi National Centre for the Arts, New Delhi. Commissioner North DMC may like to depute all the concerned officers for that conference."

5. Unfortunately, none appeared on the next date of hearing on 02.11.2017 despite the facts that the concern of this Court was conveyed to the respondent a number of times. On the next date of hearing on 06.12.2017, the representatives of the respondent submitted that the estimates of Rs. 4.5 Lakh for making the two toilets in question

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at Vivekanand Marg near SPM Civic Centre was prepared and submitted by the Works Department for budget allocation to the Director-in-Chief, DEMS (Director of Environment Management Services) on 20.09.2017. The matter is being pursued with the DEMS Department. As per their information, the file was with Execution Engineer, DEMS-II on 12.10.2017 which was later moved to AE-II on 17.10.2017. It would take at least three months after allocation of budget.

6. Considering the disproportionate time taken by the concerned authorities of North DMC for a small, yet an essential facility being unavailable for use by persons with disabilities, the matter was again brought to the notice of the Commissioner, North DMC for his attention and a copy each of three RoPs and the D.O. letter were enclosed. Thereafter on none of the three dates of hearings i.e. 15.01.2018, 05.02.2018 & 22.03.2018 neither the concerned officers of the respondent appeared nor was any status report submitted.

7. It is pertinent to mention that a Work Shop on Legislative / Statutory Provisions on Accessibility and Fundamentals of Barrier Free Environment and Access Auditing of all municipal buildings falling in North DMC was organised for the civil engineers, architects and other senior officers of North DMC, which was presided over by the Commissioner North DMC himself on 01.03.2018. Provisions of Rights of Persons with Disabilities Act, 2016, Harmonised Guidelines and

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Space Standards for Barrier-Free Built Environment for Persons with Disabilities and Elderly Persons' issued by the Ministry of Urban Development, Govt. of India and the National Building Code and the concept of universal design, Access audit, etc. were explained. During the interaction with the participants, I specifically mentioned about the large number of complaints on inaccessible physical environment particularly the toilets in the NCT of Delhi including this complaint. Despite that, nothing seems to have happened for the reasons best known to the concerned officers of North DMC as the toilets in question remain inaccessible till date.

8. The provisions that mandate making physical environment accessible and the offences and penalties for violation of the provisions in the Act which have been repeatedly quoted in various orders / RoPs by this Court are reiterated :

"40. The Central Government shall, in consultation with the Chief Commissioner, formulate rules for persons with disabilities laying down the standards of accessibility for the physical environment, transportation, information and communications, including appropriate technologies and systems, and other facilities and services provided to the public in urban and rural areas.

41. (1) The appropriate Government shall take suitable measures to provide—

(a) facilities for persons with disabilities at bus stops, railway stations and airports conforming to the accessibility standards relating to parking spaces, toilets, ticketing counters and ticketing machines;

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(b) access to all modes of transport that conform the design standards, including retrofitting old modes of transport, wherever technically feasible and safe for persons with disabilities, economically viable and without entailing major structural changes in design;

(c) accessible roads to address mobility necessary for persons with disabilities.

(2) The appropriate Government shall develop schemes programmes to promote the personal mobility of persons with disabilities at affordable cost to provide for,—

(a) incentives and concessions;

(b) retrofitting of vehicles; and

(c) personal mobility assistance.

44. (1) No establishment shall be granted permission to build any structure if the building plan does not adhere to the rules formulated by the Central Government under section 40.

(2) No establishment shall be issued a certificate of completion or allowed to take occupation of a building unless it has adhered to the rules formulated by the Central Government.

45. (1) All existing public buildings shall be made accessible in accordance with the rules formulated by the Central Government within a period not exceeding five years from the date of notification of such rules:

Provided that the Central Government may grant extension of time to the States on a case to case basis for adherence to this provision depending on their state of preparedness and other related parameters.

(2) The appropriate Government and the local authorities shall formulate and publish an action plan based on prioritisation, for providing accessibility in all their buildings and spaces providing essential services such as all primary health centres, civil hospitals, schools, railway stations and bus stops.

46. The service providers whether Government or private shall provide services in accordance with the rules on accessibility formulated by the Central Government under section 40 within a period of two years from the date of notification of such rules:

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Provided that the Central Government in consultation with the Chief Commissioner may grant extension of time for providing certain category of services in accordance with the said rules."

89. *Any person who contravenes any of the provisions of this Act, or of any rule made thereunder shall for first contravention be punishable with fine which may extend to ten thousand rupees and for any subsequent contravention with fine which shall not be less than fifty thousand rupees but which may extend to five lakh rupees.*

93. *Whoever, fails to produce any book, account or other documents or to furnish any statement, information or particulars which, under this Act or any order, or direction made or given thereunder, is duty bound to produce or furnish or to answer any question put in pursuance of the provisions of this Act or of any order, or direction made or given thereunder, shall be punishable with fine which may extend to twenty-five thousand rupees in respect of each offence, and in case of continued failure or refusal, with further fine which may extend to one thousand rupees for each day, of continued failure or refusal after the date of original order imposing punishment of fine.*

9. Ministry of Social Justice and Empowerment (Department of Empowerment of Persons with Disabilities) vide Rule 15 of the Rights of Persons with Disabilities Rules, 2017 have already notified that every establishment shall comply with the standards for public building as specified in the Harmonised Guidelines and Space Standards for Barrier-Free Built Environment for Persons with Disabilities and Elderly Persons issued by the Ministry of Urban Development, Govt. of India in March 2016.

10. In view of the above, there has been a clear violation of Section 41 of the Act and Rule 15(1) (a) of the RPwD Rules, 2017 in this case. Considering inordinate delay in implementing the advice / recommendations so far made, no purpose may be served by

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scheduling hearings endlessly. Therefore, it will be expedient to dispose off the complaint and make final recommendations. Accordingly, the following recommendations are made for implementation by the respondent:

- (i) Public toilets at Vivekanand Marg near Dr. S.P.M. Civic Centre be made accessible for persons with disabilities strictly according to the Harmonised Guidelines and Space Standards for Barrier-Free Built Environment for Persons with Disabilities and Elderly Persons issued by the Ministry of Urban Development, Govt. of India within two months from the date of receipt of this order; and
- (ii) Functionaries responsible for delaying implementation of the advice / recommendations made in the RoP dated 18.09.2017 be identified and their names be intimated to this Court within two months from the date of receipt of this order alongwith the reasons as to why the recommendations were not implemented by them and why action should not be taken against them under relevant sections of Chapter XVI of the Act.

11. The respondent is directed to inform this Court of the action taken on the above recommendations within three months from the date of receipt of this order.

12. The matter is disposed off.

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13. Given under my hand and the seal of the Court this 27th day of March, 2018.



State Commissioner for Persons with Disabilities

(T.D. Dhariyal)

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