

In the Court of Commissioner for Persons with Disabilities
25- D, Mata Sundari Road, Near Guru Nanak Eye Centre, New Delhi-2
Phone-23216002-04, Telefax: 23216005
Email : comdis.delhi@nic.in

[Vested with power of Civil Court under the Persons with Disability (Equal Opportunity, Protection of Rights and Full Participation) Act, 1995]

Case No. 4/913/2015-Wel/CD/201-03

Dated: 29.4.15

In the Suo-Moto matter

- 1. Sh.Balvinder Kumar**
Vice Chairman
Delhi Development Authority
Vikas Sadan, INA
New Delhi
- 2. Dr.Puneet Kumar Goel**
Commissioner
South Delhi Municipal Corporation
9th Floor, Dr.S.P.M Civil Centre
J.L.N.Marg, New Delhi
- 3. Ms.Anusuiya**
Director
Keya Restaurant
122/124, Ground Floor, DLF Promenade Mall
Nelson Mandela Marg
Vasant Kunj, New Delhi.

.....Respondents

ORDER

1. The Chief Commissioner for Persons with Disabilities Government of India taking suo-moto cognizance of newspaper and TV channel reports relating to denial of entry to Sh.Nipun Malhotra by Keya Restaurant DLF Promenade Mall Vasant Kunj New Delhi on 6th March 2015 directed that the matter be taken up with the concerned authorities in Government of NCT of Delhi immediately with a view to ensuring that the rights of the Persons with Disabilities are not infringed.
2. Following the direction of the Chief Commissioner for Persons with Disabilities Government of India notices were issued to Vice Chairman Delhi Development Authority,

Commissioner South Delhi Municipal Corporation and Director Keya Restaurant to attend the hearing in the matter. During the course of the hearing it was submitted by the Advocate of the Respondent No.3 that **Quote** "the powers of this Hon'ble Court are restricted and limited to regulating and dealing with the statutory functions of the State insofar as providing education, training, employment, medical care and other government related benefits to the persons with disabilities and that the powers of the commissioner conferred under the Persons with Disabilities Act in no way relate to the matters for which no duty to regulate has been cast upon the Commissioner under the provisions of the said Act. This Hon'ble Court has only to secure the rights of the persons with disabilities as much as they are granted lawfully under the Persons with Disabilities Act 1995 and not beyond. That the power of this Hon'ble Court u/s 61 (c) to take steps to safeguard the rights and facilities made available to persons with disabilities is restricted to such rights and facilities that are made available to persons with disabilities under the said act and thus the Commissioner is to take steps to safeguard such rights that are provided for under the said Act and not beyond. It has been held time and again that this Hon'ble Court/Commissionerate has the powers of a civil court only limited and restricted to the powers as clearly set out in the Persons with Disabilities Act 1995 and not beyond. Also this Hon'ble Court does not have the jurisdiction to intervene in the private matters of persons with disabilities more so since the premises of the respondent is a private property and the right to entry therein is a common law right of admission reserved that is well recognized within the ambit of the legal dominion. That u/s 62 of the said Act the power of the Commissioner to look into complaints pertaining to deprivation of rights of persons with disabilities is to be construed and interpreted in accordance with the intent and object of the said legislation. Thus the reference of deprivation of rights of persons with disabilities u/s 62 pertains to the rights as granted under the said Act and that there shall not be any discrimination in the implementation or providing of rights and privileges granted therein. Therefore the said cannot be said to apply in the instant case" **Unquote**. In the reply on merits it has been stated that **Quote** "the respondent herein is a Director of Keya Kinoosh Restaurant and it is stated that as such the respondent had no interaction with Mr.Nipun Malhotra and was not present at the time of the incident on 6th March 2015. However the present response of the respondent is based on the statement of Mr.Premjit Kumar Director Operations in-charge of the gate and entry into Keya who was personally present at the time of the incident and also upon thoroughly verifying the facts and circumstances and doing due diligence into the said incident. That on weekends as is

the practice in several restaurants all over Delhi Keya also has a policy of couple entry only by which manner the management regulates the entry for the safety and comfort of its guests present inside and that there is no discrimination whatsoever in implementing the said policy. That after a couple of untoward incidents at Keya in the past not only has the security been enhanced but the management has become extra cautious and utmost importance is given to the safety and comfort of the guests already present inside by regulating entry at the gate. There is no policy at Keya whatsoever that disallows/restricts the entry of persons with disabilities. That without discriminating against any individual on any basis Keya observes the universal accepted policy of right to admission reserved which being a private right any restaurant is bound to exercise. The premises at Keya have been disabled friendly since its inception wherein the premises has a ramp for allowing access from within the mall into the premises and there is always a wheelchair present at the premises for the use of any person if required. It is pertinent to mention that the entire staff at Keya have always been trained and informed to be gentle and responsive to the needs of the persons with disabilities and to give equal treatment to one and all as is the norm in hospitality. " **Unquote.** The Director Operations of Keya Restaurant also filed a reply stating **Quote** " that on the evening of Holi (6th March 2015) there were a large number of people coming in an intoxicated state from their daytime Holi celebrations at the restaurant door wanting to get inside. As per restaurant rules and policy on weekends (Friday and Saturday) festive days and on days when high footfall is expected the entry is restricted to couples only. The said policy is keeping in line with verbal directions given by the district DCP after the Nirbhaya Incident whereby it was said that stag/single entry should be discouraged. Therefore on 6th March 2015 in the interest of women safety and security of the guests seated inside we were extra cautious in not allowing larger groups of single men that particular evening which discretion is reasonably exercised at all times. On weekends as is the practice in several restaurants all over Delhi we have a policy of couple entry only and the management makes it a point to regulate the entry for the safety and comfort of its guests present inside and that there is no discrimination whatsoever in implementing the said policy. After a couple of untoward incidents at Keya in the past we have not only increased security and have become extra cautious but give utmost importance to the safety and comfort of the guests already inside by regulating entry at the gate. At approximately 9.00 PM on 6th March 2015 three ladies approached the gate Manager Mr.Adil requesting a table (without any prior booking) for themselves and five other men with them. They were politely informed about our inability to accommodate

them due to a higher male ratio and keeping in line with the restaurant policy. They insisted that they had come from far and had come well planned to enjoy the evening in Keya. Though the ratio was not even we accommodated them taking into consideration of a 60/40 ratio of their group. While entering they informed us that three more male friends would be joining them at a later point. At that point we very clearly expressed our inability to accommodate more persons in the group due to non-availability of seating as well as the fact that it would become a larger group of single men keeping in mind the facts and circumstances on that day. We even requested them that we could assist them in booking a table elsewhere but they insisted on continuing their evening in Keya. Around 9.30 PM three gentlemen including Mr.Nipun Malhotra (who was seated in an electric wheelchair) came to the gate demanding entry wanting to join the aforementioned group. We politely apologized to this all male group and informed them of the situation that particular day and our inability to accommodate them since it was couples entry on Friday. Moreover once they joined their friends inside the whole group would become a substantially large group of men. Despite being informed the same they repeatedly insisted on getting entry. At that point there were a few elder ladies exiting from the restaurant when Mr.Nipun Malhotra intentionally tried to go forward towards the entry gate and the wheelchair suddenly jerked towards the metal detector (DFMD). As an instant human reflex Mr.Adil at the gate extended his arm to prevent him from bumping into one of the ladies exiting from the restaurant. It is also pertinent to mention that their group was not the only one to be refused entry as there were other male groups also who were refused entry for the very same reason and therefore there was no discrimination or insensitivity towards Mr.Malhotra or towards any of his friends. Again and again Mr.Malhotra and his friends were explained politely about our inability to accept larger male groups on this day due to the caution being exercised also on account of Holi. At one point he jokingly asked if he would be allowed entry the next time if accompanied by a lady companion. We emphatically informed him that we would welcome him back any day he preferred as we had welcomed him on his earlier visits at our restaurant. Thereafter the entire group willingly left peacefully and smiling. Mr.Malhotra has been a visitor of the restaurant on previous occasions also and as per his own admission he was always treated well and with regard at Keya on his previous visits. Later that evening at 10.25 PM we received an email seemingly sent by Mr.Malhotra's associate expressing that Mr.Malhotra had taken a personal offence to the refusal of entry to him and his male friends on account of him being specially abled. We were extremely shocked at his

interpretation of the sequence of events since Mr.Nipun Malhotra had been to our restaurant on earlier occasions and was welcomed and served with respect and dignity however this time he decided to take the refusal personally. We thereafter apologized to Mr.Malhotra via phone as well as SMS and also to the gentlemen who had sent the email via a reply email for any hurt or inconvenience that may have been caused to him as the intention was not to do so. Sir I would also like to humbly submit that I have been a part of the hospitality industry for over 25 years having worked with the Oberio chain of hotels for 11 years as well as overseas for another 10 years. In the essence of hospitality where the motto is Guest is God I along with my team have always endeavoured to provide service to all our guests with utmost respect and dignity and without any prejudice or bias at any time." **Unquote.** The representative of the South Municipal Corporation of Delhi stated **Quote** "The site of Restaurant Keya at DLF Promenade Mall Vasant Kunj was inspected and during the course of inspection it has been found that the said restaurant is located at Ground floor of the DLF Promenade Mall Vasant Kunj and entry of this restaurant is two steps higher than the Ground Level of the mall. At the time of inspection no ramp for entry of the said restaurant was found at site however during the course of inspection employees of the restaurant have placed a wooden piece at stairs as temporary ramp. Later on in order to ascertain the factual position the site was once again inspected and no ramp was found at side. However there was provision of lift and ramp at main entry of mall." **Unquote.** The Counsel for Keya Restaurant however refuted the reply filed by the representative of South Municipal Corporation of Delhi in a separate reply in which it has been stated that **Quote** "that it is correct that the restaurant is located at Ground Floor of the DLF Promenade Mall and the entry point from within the mall has two steps to enter the restaurant and for the convenience of elderly people and differently abled persons, sturdy removable ramps are present in the restaurant premises which are used at the entrance on an as per need basis. Since the entrance to Keya Kainoosh is not very wide and keeping in mind that we have elderly people, women in high heels and children coming to dine with us it is not feasible for us to have a permanent ramp constructed. If we have a permanent ramp then there is always the fear of accidents as people can slip on them keeping in mind the paucity of space. Be that as may there is no building bylaw or regulation of the mall that would mandate us in law to have a permanent ramp. It is reiterated that sturdy removable ramps are always available in the restaurant premises and have been used in the past when differently abled persons have visited the restaurant. However it is impossible to present the ramp at all times at the entrance of the

restaurant. Keya was and is a disabled friendly restaurant and all sincere efforts are made to accommodate all persons as per their special needs at all times. Therefore it is incorrect for the Building department, South Zone South Delhi Municipal Corporation in their status report under reply herein to declare that no ramp was found at that restaurant." **Unquote.**

3. The counsel who appeared on behalf of the Vice Chairman of Delhi Development Authority filed an application stating that **Quote** "Delhi Development Authority has no role in the matter and the violation of the provisions of the Persons with Disabilities Act (Equal Opportunity, Protection of Rights and Full Participation) Act, 1995 if any by Keya Restaurant. And since Delhi Development Authority does not have any role the Delhi Development Authority name may kindly be deleted from the array of parties " **Unquote.**
4. The Deputy Health Officer of South Delhi Municipal Corporation in his reply stated that **Quote** "The restaurant has been granted Health Trade License under section 417/421 of the DMC Act 1957 for running the trade of eating house with 98 seats. The license is valid up to 31.3.2016. The restaurant was inspected by Deputy Health Officer South Zone along with Area Public Health Inspector on 8.3.15. The restaurant is running in two portions, the right side of the premises is family restaurant and left side is bar. The premises found neat and clean, well ventilated and white washed adequately lighted and in good condition. The kitchen also found in good condition. Three tub washing systems exist in the kitchen. The utensils found neat and clean and in good condition. There is sufficient area for seating capacity for 98 seats and height of the premises is sufficient. The restaurant premises are free from flies and insects. There is proper hand washing facility for staff and customers. The premises is structurally sound and in good condition. Hygienic condition of the food handlers is good. Regarding denial of entry to Mr.Nipun Malhotra in the restaurant it is clarified that as per provisions under DMC Act 1957 there is no any clause defined to regulate/control the permission of entry/denial of any customer in any restaurant/eating house. " **Unquote.**
5. I have carefully gone through the replies of the representative of Commissioner South Delhi Municipal Corporation, Vice Chairman Delhi Development Authority and the Keya Restaurant. It would be necessary to know that India is a signatory to Proclamation on full participation and equality of people with disabilities adopted at the ESCAP (Economic and Social Commission for Asia and Pacific) meeting in December 1992 under which 1993-2002 was declared as Decade of Disabled Persons which has been subsequently extended to 2003-2012 at the 58th Session of ESCAP. India is also a signatory of Biwako Millennium Framework which inter-alia sets out targets for access to built environments.

India is also a signatory to the UN Convention on the rights of Persons with Disabilities which came into force on 3.5.2008. It contains inter-alia recommendations related to Accessibility (Article 9) and Participation in cultural life recreation leisure and sport (Article 30). The essence of these provisions is that State Parties shall take appropriate measures to ensure that disabled persons have access to the physical environment, transportation, information and communications, including information and communications technologies and systems and to other facilities and services open or provided to the public both in urban and in rural areas on an equal basis with others. These measures shall include the identification and elimination of obstacles and barriers to accessibilities and shall apply to buildings, roads, transportation and other indoor and outdoor facilities, including schools housing, medical facilities and workplaces. Further the Parties shall recognize the rights of persons with disabilities to take part on an equal basis with others in cultural life and shall take all appropriate measures to ensure that persons with disabilities enjoy access to places for cultural performances or services such as theatres, museums, cinemas, libraries and tourism services and as far as possible enjoy access to monuments and sites of national cultural importance.

6. The Ministry of Urban Development is the nodal Ministry for implementation of barrier free built environment for the disabled and elderly persons as envisaged in Section 46 of "The Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act 1995. The Para 51 (iv) of National Policy for Persons with Disabilities adopted by the Government provides that full adoption of comprehensive building Bye-laws and space standards for barrier free built environment shall be ensured. Effort will be made to ensure adoption of the byelaws and space standards by all the States, municipal bodies and Panchayati Raj institutions in the country. These authorities will ensure that all newly constructed buildings for public use are barrier free.
7. The Ministry of Urban Development has prepared Model Building Bye-laws which contain provisions for providing access to various public buildings by disabled and elderly persons. These Building Byelaws have been sent to the State Governments, Union Territories, Delhi Development Authority, Municipal Corporation of Delhi, New Delhi Municipal Committee etc for adoption. Further the building plans for the public buildings are approved by respective Urban Local Bodies or Development Authorities and while approving the same provisions for barrier free environment are required to be taken into account.

8. The principal occupancy for which a building or a part of a building is used or intended to be used is the basis for the purpose of classification of a building and includes subsidiary occupancies which are contingent upon it. The buildings are classified as Residential Buildings, Educational Buildings, Institutional Buildings, Assembly Buildings, Business Buildings, Mercantile Buildings, Industrial Buildings, Storage Buildings, Hazardous Buildings. The Gazette Notification S.O 917(E) 28th August 2002 contains changes notified by the Ministry of Urban Development which have been incorporated in Delhi Building Byelaw 1983.
9. The response of the representative of Delhi Development Authority is quite surprising as the object of the Authority is to promote and secure the development of Delhi according to plan and it has power to acquire; hold; manage and dispose of land and other property etc and when land is disposed off it is with certain conditions inter-alia conditions relating to obligation of the agency/individual who purchases land etc in complying with the provisions of the Building Bye-laws including those meant for ensuring accessibility features for persons with disabilities. The reply of the Counsel of Delhi Development Authority therefore is factually/legally not tenable as it is the responsibility of Delhi Development Authority to ensure enforcement of the Building Bye-laws of the public buildings constructed under their control. As may be seen the building laws promoting barrier free built environment for the disabled persons are required to be enforced by the Municipal Corporation of Delhi, New Delhi Municipal Council Delhi Development Authority etc. It is therefore not correct to say that Delhi Development Authority has/had no role to play in the matter.
10. The averments of the counsel for Keya Restaurant seem self contradictory as on one hand it is contended that the management is fully committed to providing and facilitating infrastructural facilities/services to the persons with disabilities and stating also in writing that the Commissioner for Persons with Disabilities has no jurisdiction to intervene in the private matter of disabled persons and that the Right of Admission is Reserved. The issue raised in public domain/social media does not remain a private affair. Sh.Nipun Malhotra a disabled person was not allowed entry in to the Restaurant which according to him (Sh.Nipun Malhotra) was refused due to his disability. The newspapers and TV channels reported discrimination to a disabled person. The contention of the counsel for Restaurant therefore does not sustain as it is not based on firm foundation of facts/relevant law. The persons with disabilities should enjoy access to places for cultural performances or services such as theatres, museums, cinemas, libraries and tourism service etc. The

argument that the premises of the Restaurant is private property is not valid in as much as that a building housing premises of a Restaurant for general public is a public building i.e a premises visited by public at large. The management of the Restaurant will therefore be well advised to be sensitive to facilitate access of the premises to the disabled persons. The Right of Admission when it is stated to be Reserved presupposes compliance with certain terms and conditions and therefore the management also owes responsibility in providing facilities/services at least for easy access of the premises. The Counsel of Keya Restaurant further stated that the power of this Court u/s 61 (c) is restricted to such rights and facilities that are made available to persons with disabilities under the said Act and thus the Commissioner is to take steps to safeguard such rights that are provided for under the said Act and not beyond and that it has been held time and again that this Hon'ble Court/Commissioner has the powers of a Civil Court only limited and restricted to the powers as clearly set out in the Persons with disabilities Act 1995 and not beyond. The Commissioner can look into any issue relating to deprivation of rights of persons with disabilities of his own motion [Section 62 (a) of the Act] and if the powers of the Commissioner for Persons with Disabilities were limited only to the powers for ensuring attendance; getting evidence etc the Commissioner would not be able to conclude the inquiries/proceedings etc and not draw any conclusions and the issues/grievances raised by a petitioner would remain unresolved and that perhaps was not the intention of the law makers. A perusal of Section 63(2) of the Act indicates that every proceeding before the Commissioner is a judicial proceeding and it would be imperative to conclude the proceedings and decide issues raised before the Commissioner. The Hon'ble Supreme Court of India in Civil Appeal No.9324 of 2012 titled Geetaben Ratilal Patel Vs District Primary Education on 2 July 2013 upheld the power of the Commissioner for Persons with Disabilities under Section 62 of the Persons with Disabilities Act 1995 and ruled that the powers of the Commissioner to look into the complaints with respect to the matters relating to deprivation of rights as provided under Section 62 of the Act is not an empty formality and the Commissioner is required to apply his mind on the question raised by the complainant to find out the truth behind the complaint. If so necessary the Commissioner may suo moto inquire into the matter and/or after giving notice, hearing the concerned parties and going through the records may decide the complaint. If it comes to the notice of the Commissioner that a person with disability has been deprived of his rights or that the authorities have flouted any law, rule, guideline, instruction etc issued by the appropriate Government or local authorities, the Commissioner is required to take up the

matter with the appropriate authority to ensure restoration of rights of such disabled person and/or to implement the law, rule, guideline, instruction if not followed. Further the Hon'ble High Court of Delhi in WP (C) No. 8337/2005 in the case of All India Institute of Medical Science V/s The Chief Commissioner for Persons with Disabilities has held that **Quote** "Para 12. It is a well settled rule of interpretation that while construing welfare legislations, a beneficial rule of construction should be adopted. (State of Tamil Nadu v. Sabanayagam, (1973) 1 SCC 813; Workmen v. Firestone Tyre & Rubber Co. Ltd, (1973) 1 SCC 813) The construction so placed must effectuate their objectives and also effectuate the rights conferred by the legislation to the disadvantaged. If that is so, rights of the disabled can be safeguarded only if the powers of the authorities created under the Disabilities Act are to be given their widest possible construction. Sections 58(c) and 59 (a) give ample power to the Chief Commissioner to take necessary action, in order to safeguard the rights and facilities made available to the disabled and to look into complaints regarding deprivation of their rights. The position of law in this regard has been summarized in Dilbagh Singh v. Delhi Transport Corporation 2006 (1) LLJ 480 thus: "22..By virtue of Sections 59, that authority has fairly wide powers to make, inter alia, suo motu enquiry into instances of violations of provisions of the Act; including deprivation of rights of persons with disabilities. He also has the power to look into complaints, under Section 62. Rule 42 of the Rules framed in 1996 under the Act prescribes the procedure to be followed while investigating into complaints; the Chief Commissioner can "decide" the matter ex-parte, and decide, on merits, after hearing the parties (sub-rule 8). Powers of a civil court, in regard to matters specifically listed, inhere with the Chief Commissioner (Section 63(1)); proceedings before him are deemed to be judicial proceedings under Sections 193 and 228 of the Indian Penal Code (Section 63(2)). It can therefore, safely be concluded that the powers and duties of the authority are akin to a quasi judicial tribunal, charged with deciding issues entrusted to it. 23. The Act does not, expressly provide that the orders/decisions of the authority bind the establishment/ government body concerned. However, the statutory provisions noted above give sufficient indication that its functions are not purely recommendatory; it decides the issue of entitlements of individuals. In such a situation, it must necessarily be inferred, in the absence of any provision to the contrary, that full and effectual adjudicatory powers were granted by the statute. To this end, the maxim "ubi aliquid conceditur, conceditur et id sine quo res ipsa esse non potest" (Where anything is conceded, there is conceded also anything without which the thing itself cannot exist) can be invoked." **Unquote.**

11. The Restaurant is located on the ground floor in DLF Promenade Mall Vasant Kunj and the entry is two steps higher than the ground level of the Mall. The Inspecting Officer of the South Zone of South Delhi Municipal Corporation did not find any ramp at the entry of the said Restaurant, however a wooden piece had been placed to act as a temporary ramp and when the site was visited without giving notice to the management of the Restaurant even the temporary ramp was not found at the entry. The claim of the management that they are sensitive enough in dealing with disabled persons therefore is not borne out by the ground level situation. It would be appreciated that one of the most important requirements to make the disabled persons feel part of the mainstream Society is to facilitate their access to all public buildings like malls; restaurants; business; private mercantile buildings etc and to that extent the Society as a whole is required to respond positively to providing such an access. All the concerned authorities are therefore required to enforce compliance of the changes incorporated in Delhi Building Bye-Laws 1983 vide Gazette Notification S.O.917(E) dated 28.8.2002 by the Ministry of Urban Development Government of India. The managements of theatres, museums, cinemas, libraries, tourism services, restaurants etc should be in the vanguard for ensuring availability of accessibility infrastructure in all the buildings to facilitate the Persons with Disabilities.

12. Ordered accordingly.



Done under my hand and the seal of the Court this 29th day of April, 2015.

K.S. Mehra
29/4/15

(K.S. Mehra)
Commissioner

Court of Commissioner (Disabilities)
National Capital Territory of Delhi
Room No. - 1
25-D, Mata Sundari road, New Delhi-02