

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.1119/1101/2019/09/7704-7706

Dated 07/11/2019

In the matter of:

Sh. Kaustubh Chatterjee

301, Ganga Tower 2 Sector-D

Pocket 6 Vasant Kunj

New Delhi-110070.

.....Complainant

Versus

President

Resident Welfare Association

Ganga Apartments Sector-D

Pocket 6 Vasant Kunj

New Delhi-110070.

.....Respondent

Date of hearing: 04.11.2019

Present: Complainant on phone.

Sh.Akshay Naagar, Advocate for Respondent

ORDER

The above named complainant, a person with 90% locomotor disability and a wheel chair user vide his email dated 7.9.2019 submitted that he is living at 301, Ganga Tower 2, Sector D, Pocket 6, Vasant Kunj, New Delhi-110070. He alleged that the Resident Welfare Association (RWA) has constructed pillars and put up gates with locks on the ramp leading to his residential block that impede and hinder the

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passage for persons like him who is completely dependent on his wheelchair. Those are also barriers for free movement for elderly. He further submitted that those barriers were removed last year after a humiliating persuasion but have again been installed. This has affected his morale and dignified living as these are barriers to carry on his life routine independently. He has also enclosed photographs of how the bollards and the gates have been put in front of the ramps provided by Delhi Development Authority for barrier free access to the residential flats.

2. The complainant requested to take necessary action and address the issue by getting the barriers around his building and surrounding area removed. He also pointed out that this is an offence under the Rights of Persons with Disabilities Act, 2016 hereinafter referred to as the Act.

3. The Show-Cause-Cum-Hearing Notice dated 18.09.2019 was issued to the respondent and the following provision of Section 5 of the Act was also brought to his / her notice, which is reproduced as under:

"(1) The persons with disabilities shall have the right to live in the community.

(2) The appropriate Government shall endeavour that the persons with disabilities are -

(a) not obliged to live in any particular living arrangement; and

(b) given access to a range of in-house, residential and other community support, services, including personal assistance necessary to support living with due regard to age and gender.";

4. A hearing which was scheduled on 16.10.2019 was initially postponed to 19.11.2019 but was pre-poned on the request of the complainant received vide his email dated 30.10.2019 stating inter-alia

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that he is facing daily harassment because of the impediments on the ramps and further requested that needful be done for his security apprehensions.

5. The respondent vide his reply dated 16.10.2019 submitted that the complaint is highly motivated at the instance of some disgruntled elements of the society who could not succeed in elections of the governing body including his mother. In order to hinder smooth functioning of the RWA, these disgruntled elements have filed multiple litigations against the governing body of the society and the same are pending before various courts. They have now made differently abled people as scapegoats. Governing body has installed bollards and the gates in front of ramps as various delivery and courier service persons recklessly enter the society on motorcycles. Many other people also park their vehicles in the compound injuring some elderly residents and children. Since the ramps were being used recklessly by some motorcyclists, it was deemed fit by the society to install small gates on the ramps in the interest of the residents. There are multiple entry points and the gates have been installed only at strategically important points so that no hindrance is caused for entrance of the residents. Additionally, being conscious of inconvenience that may be caused to the complainant, additional security guard to man the entry gates have been deployed to open the said gates for convenience of the residents and the complainant. The governing body has offered a set of keys of the gates on the ramps to the complainant, but he refused to accept the same. As per the respondent, the complainant has not suffered any difficulty or inconvenience due to installation of these doors on the vulnerable ramps. He has been instigated by the opposite group of disgruntled people.

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6. Before holding the hearing, I personally visited the site on 04.11.2019 and observed that DDA has provided the ramps with double railings for easy access of persons with disabilities and elderly which is the requirement of the building bye-laws and the provisions of the Act. But the ramp leading to the lift area for the complainant's house on 3rd floor is blocked by the locked gate and the bollards. It was also observed that the cars were parked in front of such gates. The other ramp on the left has 3 bollards and hence the wheel chair cannot pass through the narrowed space. The complainant or any person on wheel chair with walking frame or crutches will have to take a detour and use the space on the side of a ramp blocked by bollards and also negotiate a step which is not well kept. A wheel chair user will have to be lifted to come on the road. The ramp from the back side is not well maintained. Even other persons need to use a very narrow space between the railings and the locked gate which is likely to hurt the person passing through the space.

7. The Act envisages barrier free access to all the built environment which includes "**public buildings**" and "**public facilities & services**" have been defined in Section 2(w) and 2(x) of the Act which are reproduced below:

"2(w) 'public building' means a Government or private building, used or accessed by the public at large, including a building used for educational or vocational purposes, workplace, commercial activities, public utilities, religious, cultural, leisure or recreational activities, medical or health services, law enforcement agencies, reformatories or judicial foras, railway stations or platforms, roadways bus stands or terminus, airports or waterways.

2(x) 'public facilities and services' includes all forms of delivery of services to the public at large, including housing, educational and vocational trainings, employment and career advancement, shopping or

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marketing, religious, cultural, leisure or recreational, medical, health and rehabilitation, banking, finance and insurance, communication, postal and information, access to justice, public utilities, transportation”

8. Section 5 and Section 40 to 46 of the Act envisage and mandate that every place, service and facility which is open to use by the public has to be barrier free irrespective of its ownership by a Govt. agency or any private individual.

9. In the light of the above, installing the gates, locking them and putting bollards on the ramps by the respondent is clearly in violation of the provisions of the Act. The respondent should ensure better vigil, create awareness among the residents about the provisions of the Act, sensitise them about the specific needs and the rights of persons with various disabilities and extend 'reasonable accommodations' so that persons with disabilities can enjoy their rights on equal basis with others and live a dignified life.

10. DDA should also monitor from time to time that the assets that have been created by the Authority are well maintained and are put to use for which these are meant, particularly the facilities for barrier free access to persons with disabilities.

11. During the course of hearing, Sh. Akshay Naagar, Advocate for the respondent, informed that the complainant had also reported the matter of the DCP of the area and the SHO also visited the site 2-3 days ago.

12. The complainant was heard on telephone who confirmed that he had filed a complaint with the DCP Office as his right to barrier free access has been infringed.

13. I appreciate the action taken by the concerned DCP/ SHO which is also in compliance with the Circular No. 28/2017 dated 25.10.2017 of

the Office of the Commissioner of Police directing all the DCs(P) to take necessary action to make the IOs aware of the provisions of Act and to ensure its effective implementation. The said circular also draws the attention towards the duty of the police officers and the Executive Magistrates given in Section 7 of the Act and to the offences in case of contravention of any provision of the Act/Rules.

14. It will be in the fitness of things for me to also bring to the notice of all concerned that Section 89 of the Act provides as under:

"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 Rs. 10,000/- and for any subsequent contravention with fine which shall not be less than Rs. 50,000/- but which may extend to Rs. 5 Lakh".

15. In the light of the foregoing, the following recommendations are made:

- (i) The respondent should remove within three days from the date of receipt of this order the bollards and the gates from the ramps meant for barrier free access of persons with disabilities and elderly. If necessary, assistance of the police and the civic authorities may be taken.
- (ii) Vice-Chairman, DDA should instruct all the concerned officers to ensure regular monitoring of its colonies across Delhi and ensure that the barrier free access of persons with disabilities to the built environment in the residential colonies developed by DDA, is not restricted in any manner by the RWA or any other person.

[Signature]
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16. This Court be informed of the action taken on the above recommendations within three months from the date of receipt of this order as required under Section 81 of the Act, which is reproduced below:

"Whenever the State Commissioner makes a recommendation to an authority in pursuance of clause (b) of section 80, that authority shall take necessary action on it, and inform the State Commissioner of the action taken within three months from the date of receipt of the recommendation:

Provided that where an authority does not accept a recommendation, it shall convey reasons for non-acceptance to the State Commissioner for Persons with Disabilities within the period of three months, and shall also inform the aggrieved person."

17. A copy of this order is also being emailed to Sh. Akshay Naagar, Advocate for the respondent at advocate.akshaynaagar@gmail.com.

18. The complaint is disposed of.

19. Given under my hand and the seal of the Court this 07th day of November, 2019.



State Commissioner for Persons with Disabilities

(T.D. Dhariyal) 7.11.19

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Copy to:

1. The Vice-Chairman, Delhi Development Authority, B-Block, 1st Floor, Vikas Sadan, New Delhi-110023 w.r.t. para 15 (ii) of this order.

(Signature)
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