

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
Phone-011-23216002-04, Telefax: 011-23216005,
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[Vested with powers of Civil Court under the
Rights of Persons with Disabilities Act, 2016]

Case No. 809/1081/2019/03/ 8812 - 8813 Dated: 11/12/2019

In the matter of:

Sh. Subhash Chandra Vashishth

Advocate, Disability Justice,
B-14B, Vatika Apartments,
Mayapuri, New Delhi-110062.

.....Complainant

Versus

The Vice Chairman

Delhi Development Authority
D-Block, Vikas Sadan,
Near INA Market
New Delhi-110023

.....Respondent

Date of Hearing: 29.11.2019

Present: Sh. Manish Khari, (Proxy) Council for Advocate
Piyush Chandel on behalf of Respondent

ORDER

Sh. Subhash Chandra Vashishth, Advocate-Disability Justice filed a complaint vide email dated 11.03.2019 under the Rights of Persons with Disability, Act 2016 hereinafter referred to as the Act and submitted that there was no reservation for persons with disabilities in the proposed E-auction of commercial and residential property in Delhi as per Section 37 of the Act and that the PDF documents in the Website related to the auction were not accessible to persons with disabilities.

2. Section 37 and 47 of the Act are reproduced below:

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Section 37. The appropriate Government and the local authorities shall, by notification, make schemes in favour of persons with benchmark disabilities, to provide,—

(a) five per cent. reservation in allotment of agricultural land and housing in all relevant schemes and development programmes, with appropriate priority to women with benchmark disabilities;

(b) five per cent. reservation in all poverty alleviation and various developmental schemes with priority to women with benchmark disabilities;

(c) five per cent. reservation in allotment of land on concessional rate, where such land is to be used for the purpose of promoting housing, shelter, setting up of occupation, business, enterprise, recreation centres and production centres.

Section 47. (1) Without prejudice to any function and power of Rehabilitation Council of India constituted under the Rehabilitation Council of India Act, 1992, the appropriate Government shall endeavour to develop human resource for the purposes of this Act and to that end shall,—

(a) mandate training on disability rights in all courses for the training of Panchayati Raj Members, legislators, administrators, police officials, judges and lawyers;

(b) induct disability as a component for all education courses for schools, colleges and University teachers, doctors, nurses, para-medical personnel, social welfare officers, rural development officers, asha workers, anganwadi workers, engineers, architects, other professionals and community workers;

(c) initiate capacity building programmes including training in independent living and community relationships for families, members of community and other stakeholders and care providers on care giving and support;

(d) ensure independence training for persons with disabilities to build community relationships on mutual contribution and respect;

(e) conduct training programmes for sports teachers with focus on sports, games, adventure activities;

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(f) any other capacity development measures as may be required.

(2) All Universities shall promote teaching and research in disability studies including establishment of study centres for such studies.

(3) In order to fulfil the obligation stated in sub-section (1), the appropriate Government shall in every five years undertake a need based analysis and formulate plans for the recruitment, induction, sensitisation, orientation and training of suitable personnel to undertake the various responsibilities under this Act.

3. The complaint was therefore taken up with the respondent vide showcause-cum-hearing notice dated 25.03.2019 and the respondent was directed to make provision for reservation for persons with disabilities in accordance with Section 37 of the Act and ensure that all the documents uploaded in connection with the E-auction in accessible format well before the last date for application and submit para wise comments. A hearing was also scheduled on 02.05.2019.

4. On 02.05.2019, Sh. Piyush Chandel, Advocate for the respondent submitted that there is a quota of 5% for persons with disabilities in built up units such as shops/offices/stalls/ kiosks/ platforms. During the year 2018-19, two draw of lots were held and 30 built up units were allotted to persons with disabilities. He ensured that a formal reply would be submitted within two weeks.

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5. The respondent was directed to submit reply by 24.05.2019 with a copy thereof to the complainant for him to submit rejoinder by 31.05.2019 and if necessary, parties would be heard.

6. In light of the rejoinder filed by the complainant, the matter was heard on 21.08.2019. Sh. Subhash Chandra Vashishth stated that reservation for persons with disabilities as included in the Rights of Persons with Disabilities Act, 2016 was not provided in the advertisements of February and March, 2019 and thereafter. Further, 5% reservation under Section 37 of the Act has to be provided in the schemes for allotment of agricultural land and housing, allotment of land on concessional rates where such land is to be used for the purpose of promoting housing, shelter, setting up of occupation, business, enterprise, recreation centres and production centres.

7. The para-wise reply submitted by the DDA refer to Persons with Disabilities Act, 1995. It also did not clarify the process of implementing the reservation for persons with disabilities in allotment of shops, houses, residential plots, commercial plots, industrial plots, institutional plots, residential flats, kiosks etc.

8. Sh. Piyush Chandel, advocate for DDA stated that 5% reservation in accordance with the Rights of Persons with Disabilities Act, 2016 is being implemented in all the schemes. The allotment is made by draw of lots at different stages. 5% of the shops/kiosks/offices etc. are computed.

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These are identified and then distributed among the applicants with disabilities by draw of lots.

9. The above procedure adopted for allotment of shops was seen in the copy of the note-sheet dated 12.07.2019 for allotment of 42 shops/kiosks/offices through e-auction to the general public as well as through computerised draw of lots of various reserved categories including persons with disabilities.

10. While the above procedure for allotment of built up shops appeared reasonable and justified, a clarification whether the same procedure was followed in allotment of houses, residential plots, commercial plots, industrial plots, institutional plots, residential flats, kiosks etc. was also sought before the complaint was disposed of. The said clarification explaining the entire procedure which the common people could understand was sought by **15th September, 2019** in respect of all the concerned Departments, namely Deputy Director, Coordination & Housing, Dy. Director, Institutional Land and Dy. Director, Commercial Land.


11. Necessary modifications in the schemes/ notings/ advertisements/ communications should also be made with regard to various expressions/terms like "persons with disabilities" as these appear in the Rights of Persons with Disabilities Act, 2016. Persons with Disabilities (Equal Opportunity Protection of Rights and Full Participation) Act, 1995

has already been repealed. Further, 5% reservation is applicable to all the categories of disabilities mentioned in the Schedule to the Rights of Persons with Disabilities Act, 2016.

12. Till the hearing on 27.09.2019, it revealed from the record submitted by the respondent that there was no reservation in allotment of commercial plots which are allotted by e-auction and the highest bidder is allotted the land.

13. In light of the provision in Section 37(c) of the Act which clearly provides for 5% reservation for person with benchmark disability where such land is to be used for the purpose of promoting housing, shelter, setting up of occupation, business, enterprise, recreation centres and production centres. DDA was therefore directed to frame a scheme under Section 37(c) of the Act without any further delay for all the purposes mentioned in said sub-section and to submit the same to the appropriate authority for approval within one month vide ROP dated 27.09.2019.

14. Sh. Piyush Chandel, Council for DDA again sought two months for compliance of the Order/ ROP dated 22.08.2019 vide his email dated 05.11.2019. The respondent was directed to submit compliance by 26.11.2019 vide ROP dated 06.11.2019.


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15. On 29.11.2019, Sh. Manish Khari, (Proxy) Council for Sh. Piyush Chandel requested for adjournment as Sh. Chandel was away for an unavoidable family commitment.

16. As this matter is pending for more than 8 months, in view of the fact that the provision of Section 37(c) and Section 42 are very clear and mandatory, it is considered appropriate to pass an order and dispose of the matter. Accordingly, the following recommendations are made:

1) DDA should make a scheme/ incorporate in its existing scheme/ policy for 5% reservation for a persons with benchmark disabilities with appropriate priority to women with benchmark disability wherever mandated. It should be done in allotment of land on concessional rate where such land is to be used for the purpose of promoting housing, shelter, setting up of occupation, business, enterprise, recreation centres and production centres in respect of all the modes of allotment within 45 days from the date of receipt of this order.

2) It should be ensured that all the contents in audio, print in e-media, documents or information made available to the general public or uploaded in the website are accessible.

17. This court be informed about the action taken on the above recommendations within 3 months from the date of receipt of this order as required under Section 81 of the Act which provides as under:

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"Section 81. 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."

18. The complaint is disposed of.

19. Given under my hand and the seal of the Court this 11th day of December, 2019




(T.D. Dhariyal)

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