

**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,
Email: comdis.delhi@nic.in
[Vested with powers of Civil Court under the
Rights of Persons with Disabilities Act, 2016]**

Case No. 541/1093/2018/10/5105-5109

Dated: 04.09.2019

In the matter of:

Sh. Nitin Bindlish,
295, DA Block, Shalimar Bagh,
Delhi-110088.

..... Complainant

Versus

The Chairman,
Delhi State Industrial & Infrastructure
Development Corporation Ltd.,
N-36, Bombay Life Building,
Connaught Circus, Rajeev Chowk,
Connaught Place,
New Delhi-110001.

..... Respondent No. 1

Secretary-cum-Commissioner,
Department of Industries,
Govt. of NCT of Delhi,
419, 4th Floor, FIE UdyogSadan,
Patparganj Industrial Area,
Patparganj, Delhi-110092.

.....Respondent No. 2

Date of Hearing: 23.08.2019

Present: Sh. Nitin Bindlish, complainant alongwith Sh. C.K. Jain.
Sh. Shahzeb Naqvi, AG-I, on behalf of Respondent No. 1.
Sh. B. Ramesh, Section Officer and Sh. Naveen on behalf
of Respondent No. 2.

ORDER

The above named complainant is a person with blindness. He lost sight at the age of 28 years. Vide his complaint received on 01.10.2018, he submitted that he is in the business of manufacturing of moulded

rubber parts for tractors and auto industry since 2008. He is running a factory at Rai, Sonapat, Haryana. He is a resident of Delhi and registered SSI unit with a valid registration. He is getting financial assistance from Punjab National Bank, Shalimar Bagh, New Delhi in the form of overdraft limit amounting to Rs. 25 Lakh from July, 2015 which was increased to Rs. 50 Lakh in January, 2018 due to better sales and production.

2. He further submitted that due to the long distance of his Unit from his residence in Delhi and other reasons like raw material and market for his products being in Delhi, it is extremely difficult for him to manage. It is not possible for him to shift his residence from Delhi. His father was helping him earlier. But it is not possible now as he had to undergo neuro-surgery recently and is nearly 70 years of age.

3. The complainant requested that an industrial plot of about 400 sq. mtrs. in any industrial area of Delhi like Narela, Badli, Mangolpuri, etc. may be allotted to him which will enable him to live a successful and respectful life.

4. Section 43 of the erstwhile Persons with Disabilities (Equal opportunities, Protection of Rights and full Participation) Act, 1995 (PwD Act) 1995 provided as under:

“The appropriate Governments and local authorities shall by notification frame schemes in favour of persons with disabilities, for the preferential allotment of land at concessional rates for-

(a) house;

(b) setting up business;

(c) setting up of special recreation centres;

(d) establishment of special schools;

(e) establishment of research centres;

(f) establishment of factories by entrepreneurs with disabilities.”

5. Section 37 of the Rights of Persons with Disabilities Act, 2016 (RPwD Act, 2016), which came into effect from 19.04.2017 after repealing the PwD Act, 1995, provides that *the appropriate Government and local authorities are mandated to frame schemes in favour of persons with benchmark disabilities (40% or more disabilities) and provide 5% reservation in allotment of land on concessional rates for various purposes which include setting up of business, enterprise, production units etc.*

6. The above provisions are mandatory and non-implementation within a reasonable time frame would amount to depriving persons with disabilities of their rights under the relevant Act. It would also amount to contravention of the provision in RPwD Act, 2016 which is punishable under Section 89 of the said Act.

7. Even Supreme Court had directed the State Governments and U.T. Administrations to frame the schemes under Section 43 of the PwD Act and any non-compliance should be brought to the notice of the concerned Commissioner for Persons with Disabilities.

8. The complaint was taken up with chairman, DSIIDC vide letter dated 15.10.2018 followed by reminders dated 28.10.2018 and 08.01.2019.

9. Divisional Manager(RL), DSIIDC vide letter dated 21.02.2019 informed that there was no scheme in DSIIDC for allotment of industrial plot to any section/class of people in NCT of Delhi. The application of Sh. Nitin Bindlish would be considered as and when a scheme/policy is initiated.

10. The complainant vide his rejoinder dated 18.02.2019 regretted that his continuous request is not being considered in the Government despite the RPwD Act, 2016 and the Government had not made the policy till date.

11. Upon considering the written submissions of the parties, a hearing was scheduled on 08.04.2019. During the hearing, Sh. Dinesh Chandra, Divisional Manager, who appeared on behalf of Chairman, Delhi State Industrial and Infrastructure Development Corporation (DSIIDC), submitted that DSIIDC is only an implementing agency for relocation of industries working in non-conforming areas of Delhi. They have no information whether 21,937 eligible applicants for relocation included any persons with disabilities. There was no scheme for preferential allotment of plots at concessional rate under PwD Act, 1995. The authority for framing policy is the Department of Industries, Govt. of NCT of Delhi which is headed by Principal Secretary/Secretary-cum-Commissioner, Industries.

12. The complainant who was accompanied by Sh. C.K. Jain, submitted that from the name, it is evident that DSIIDC's responsibility should not only be limited for relocation of industries. They are also responsible for development of the industries and hence for framing schemes. They should ensure compliance with the laws including PwD Act, 1995 Act and the RPwD Act, 2016. DSIIDC is also expected to advise the concerned Department on this matter especially after receipt of the representation of the complainant who, despite his blindness, is running an industry for last nearly 10 years and wants to relocate to Delhi for valid reasons mentioned in his representation dated 01.10.2018. He also expressed serious concern about the time taken even to know the responsible authority who would consider his request.

13. As per the complainant, there are nine plots of 360 Sq. Meter lying unallotted and unutilized in Narela since inception and no construction has been carried out in 15 plots.

14. Vide ROP dated 10.04.2019, Principal Secretary/Secretary-cum-Commissioner, Department of Industries, Govt. of NCT of Delhi was advised to submit why the complainant should not be allotted one of the vacant plots not being utilized and why a scheme under Section 37 (c) of the RPwD Act, 2016 should not be framed within a reasonable period of time of say three months and submit his/her version of the case.

15. The respondents were also directed to submit within 30 days the following information:

- i) Total number of Industrial plots allotted in Delhi since 1996 when the PwD Act, 1995 came into force; and
- ii) The number of industrial plots allotted to persons with disabilities on preferential basis at concessional rates under Section 43 of that Act or otherwise.

16. Respondent No.2 vide reply dated 17.05.2019 submitted as under:-

"In compliance with the orders dated 10.04.2019 of Hon'ble Court of Commissioner (Disabilities), the Department of Industries, GNCT of Delhi is submitting reply as under:

- (i) Under Section 33 of Delhi Industrial Development and Operation and Maintenance (DIDOM) Act 2010, the DSIIDC has submitted draft regulations for disposal of land, built up sheds & flatted factories under their control and ownership. The regulations for disposal have to be approved by GNCT of Delhi*

under the provisions of the Act for notifying regulations in the matter.

(II) The proposed regulations is under examination by the Law Department, GNCT of Delhi and as per the draft regulations for disposal of land, built up sheds and flatted factories following provisions have been made in chapter VII of the proposed regulations

“Policy for preferential allotment of various properties – PREFERENTIAL ALLOTMENT-(I) 1% reservation in allotment of industrial plots/ housing flats built up sheds and 5% reservation in allotment of shops/ kiosks will be provided to Persons with disability as defined in section 2 of the Persons with Disabilities (Equal Opportunities, Protection and Rights and Full Participation) Act, 1995. The above reservation will not be applicable in case of auction/ tender mode of disposal. Other conditions for preferential allotment are as under:-

(a) Allotment of housing flats/ built up sheds to persons with disability will be made at Ground Floor.

(b) The allotment of housing/flats/built up sheds/kiosks/ shops to persons with disability would be on hire purchase basis. The initial payment in case of hire purchase allotment would be 25% instead of 50% of the total cost applicable for general category. Rest of the amount would be taken in monthly instalment.

(c) The power for change of floor to persons with disability would be exercised by the Managing Director of DSIIDC.”

(iii) Meanwhile, policy guidelines has been received from Department of Social Welfare, GNCT of Delhi to amend existing Schemes etc. as per the provision of Section 37 of the Rights of

the persons with disabilities Act, 2016. The matter is under examination to suitably make changes in the proposed draft regulations for disposal of land, built up Sheds & flatted factories under the control and ownership of DSIIDC (Copy of Communication received from Department of Social Welfare, GNCT is annexed at Annexure-A).

(iv) As regards, Number of Industrial plots allotted in Delhi since 1996 when the 1995 Act come into force, it is to submit that the Industries Department is the Administrative Department of DSIIDC whereas Industrial plots in Delhi are being allotted by DDA also.

(v) No preferential allotment has also been made to the persons with disabilities on concessional rules under section 43 of the Act or otherwise while making allotment in para-(iv) above.

(vi) Since 21937 plots were allotted exclusively under relocation scheme of 1996, as approved by Hon'ble Supreme Court of India, and under the scheme plots were allotted to eligible applicants for shifting their industries from non conforming areas to conforming areas and as such there was no reservation policy under the scheme. Under this scheme whosoever applied and was eligible has been allotted plot/ flat for relocating his unit from non-areas to conforming area.

(vii) As such, considering the request of allotting plot to a person with disability who had never applied under the scheme in the year 1996 and having business in Haryana could not be accepted for the purpose of relocating at this stage. Moreover, entertaining such requests at this stage will open floodgates of

litigations in future from other rung of the society/ category of persons from other parts of the country.

(viii) Total number of industrial plots allotted to industrial units working in non-conforming areas of Delhi under relocation scheme are 21937. As the industrial plots have been allotted to the eligible industrial units only, no information was required to be retained by Industries Department regarding number of industrial plots allotted to persons with disability on preferential basis at concessional rates under section 43 of PwD Act or otherwise since there is no reservation to any community/ class or category of applicants.

(ix) To conclude, attention is invited to powers of the Hon'ble Supreme Court and High court to issue Writs of Certiorari and Prohibition against the public authorities to prevent excess of powers, be it Industries Department or State Commission for PWDs. The State Commission for PWDs may, therefore, take a considered view while questioning the validity of Relocation Policy implemented in consonance with orders of Hon'ble Supreme Court."

17. Sh. Saurav Kumar, Advocate filed a written statement on behalf of Respondent No. 1 (DSI IDC) on the next date of hearing on 21.05.2019 vide which it has been submitted that for the purpose of decongestion of residential and non-conforming areas of Delhi and also to avoid mass unemployment of persons engaged in the impermissible industrial units, "Relocation of Industries" Scheme was formulated in the year 1996 for shifting such industrial units in pursuance of Order dated 19.04.1996 of Hon'ble Supreme Court in IA No. 22 of CWP No. 4677 of 1985 – M.C. Mehta Vs UOI & Ors. The scheme was formulated by the Commissioner of Industries, GNCT of Delhi. The allotment of alternative plots/flatted factories could be done only to the industrial

units functioning in residential/non-conforming areas in Delhi prior to 1996 only. The work of implementation of relocation of the scheme of the Industries Department was entrusted to DSIIDC. It could not make a scheme for persons with disabilities in view of the various landmark decisions of Hon'ble Supreme Court with every public authority to work in its domain defined by the Government without encroaching into other public authority's domain. Since the complainant is having business in Haryana and was not an applicant under the scheme in the year 1996, his request for relocation at this stage cannot be accepted.

18. Vide ROP dated 26.06.2019, it was made clear that the information sought vide ROP dated 10.04.2019 related to the mandate under Section 43 of the PwD Act, 1995 which mandated the Government to frame schemes for preferential allotment of land at concessional rates for establishment of factories by entrepreneurs with disabilities. Therefore, the information about the total number of allotments made till 2016 and the number of persons with disabilities allotted land at concessional rates was sought. It was also pointed out that if no preferential allotments were made to persons with disabilities, then prima-facie eligible persons with disabilities may have got deprived of their entitlements under the mandatory provision of the said Act. It was, therefore, suggested that Respondent No. 2 could earmark some of the industrial plots, if any, for allotment to entrepreneurs with disabilities who wish to establish any factory in Delhi.

19. It was also recommended that the scheme under Section 37 (c) of the RPwD Act for 5% reservation in allotment of land at concessional rates for various purposes including for setting up of occupation/ business/ enterprise/ production centre should be framed on top priority as any delay in framing such policy/scheme would perpetuate deprivation of eligible persons with benchmark disabilities of their rights

to allotment of industrial plots after coming into force of the said Act w.e.f. 19.04.2017.

20. The representatives of Respondent No. 2 sought four weeks for submission of the information about the total number of industrial plots allotted in Delhi and the number of plots allotted to persons with disabilities at concessional rates. However, on 07.08.2019, the representatives of Respondent No.2 again referred to the allotment of 21937 plots allotted under "relocation scheme" of 1996 which is not relevant to the case.

21. On 23.08.2019, Sh. Vinod Kumar, Deputy Commissioner of Industries submitted a written statement as per which no industrial plot has been allotted by Industries Department from 1996 to 2016 except under "relocation scheme" and the question of allotment of industrial plots to persons with disabilities at concessional rates from 1996 to 2016 did not arise.

22. The complainant vide his e-mail dated 27.08.2019 submitted that neither the GNCTD nor the DSIIDC paid any attention to the directions given by the Hon'ble Supreme Court and Parliament of the country. They did not create any quota for allotment of industrial plots etc. to persons with disabilities. It shows that the GNCTD and DSIIDC have remained indifferent to the cause of persons with disabilities in this regard. Perhaps they have had no chance / cause to think about the same ever. Or else they would have made some rules and regulations in this regard and would have used the same to help a needy person like him, who is 100% visually impaired but genuinely qualified and fully determined to run an industry of his own. Why should a needy person like him be deprived of his rights and privileges for the lapses of the authorities? Respected Hon'ble LG should consider his request to allot an industrial plot of 300/400 sq. mt. in one of its industrial areas e.g.

Nerala, Badli, Mangolpuri out of many lying vacant / unused for years at the earliest possible.

23. From the submissions of the parties it is apparent that neither the “relocation scheme” considered the provision of section 43(f) of PwD Act, 1995 nor did the respondent No. 2 frame a scheme under that section thereby depriving persons with disabilities of their legitimate rights during more than 20 years of the life of PwD Act, 1995 which came into effect on 07th February 1996. The respondents have also not denied that there are unused industrial plots lying vacant in Narela for many years and there is an opportunity to undo the deprivation.

24. The strong determination of the complainant to be independent and to continue his manufacturing business despite acquiring blindness at the age of 28 years, is highly commendable. All concerned authorities and the community need to do whatever possible to support persons with disabilities like the complainant. In fact, such people should be welcomed by the Government and other authorities. Such an enterprise will provide employment not only to the complainant but also to other people with and without disability in Delhi. Decision in matters like this, must be taken expeditiously. The Industries Department, Govt. of NCT of Delhi should therefore try its best to find a way to accommodate the request of the complainant. It would be desirable and in conformity with India's commitment to give effect to the United Nations Convention on the Rights of Persons with Disabilities, to earmark some of the unused vacant industrial plots under relocation scheme or any other scheme for allotment to persons with benchmark disabilities of Delhi who wish to set up a fresh business or relocate from elsewhere. It would set an example of real economic empowerment of persons with disabilities and can be used for replication by other States. Any such provision will not be in conflict with Hon'ble Supreme Court's Judgment.

25. In light of the above discussion, the following recommendations are made:-

- (i) Some of the unused vacant industrial plots in NCT of Delhi under any scheme including “relocation scheme of 1996” should be earmarked for allotment to persons with benchmark disabilities for setting up or relocating their businesses or production centres, etc. through a draw of lots. The terms and conditions of eligibility may be decided by Industries Department in consultation with Department of Social Welfare and applications from eligible persons with disabilities should be invited for consideration for allotment of plots.
- (ii) The complainant may apply in response to such invitation and be considered alongwith other eligible applicants with disabilities. The allotment should be made within 3 months from the date of receipt of this order.
- (iii) The scheme under section 37(c) of the RPwD Act, 2016 be also finalised by respondent No. 2 and notified within 3 months from the date of receipt of this order.

26. This court be informed of 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 RPwD Act.

27. The case is disposed of with the above recommendations.

28. Given under my hand and the seal of the Court this 04th day of September, 2019.

(T.D. Dhariyal)
State Commissioner for Persons with Disabilities

Copy to:

1. Chief Secretary, GNCT of Delhi, Delhi Secretariat, I.P. Estate, New Delhi – 110002 for kind information.
2. Principal Secretary to Hon'ble Lt. Governor, 6, Raj Niwas Marg, Ludlow Castle, Civil Lines, Delhi 110054, for kind information for Hon'ble Lt. Governor.

(T.D. Dhariyal)
State Commissioner for Persons with Disabilities