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In the Court of the State Commissioner for Persons with Disabilities  
National Capital Territory of Delhi  
25- D, Mata Sundari Road, Near Guru Nanak Eye Centre, New Delhi-110002  
Phone-23216003-04, Telefax: 23216005 Email:comdis.delhi@nic.in

Case Nos.1140/1108/2019/09 &  
(as per the list of 429 respondents  
enclosed)

8976-86

Dated: 24/12/2019

In the matter of :

SUO-MOTU


Versus

The Hotel and Restaurant Members of  
The Federation of Hotel & Restaurant  
Association of India, GNCT of Delhi

.....Respondents

ORDER

It was observed by the State Commissioner for Persons with Disabilities (SCPD), GNCT of Delhi that barrier free access to many hotels and restaurants in NCT of Delhi was not as per the standards prescribed in the *Harmonised Guidelines and Space Standards for Barrier Free Built Environment for Persons with Disabilities and Elderly*, Harmonised Guidelines in short, issued by Ministry of Urban Development and notified by Ministry of Social Justice and Empowerment (Department of Empowerment of Persons with Disabilities) in the Rights of Persons with Disabilities Rules, 2017 (RPWD Rules) vide notification dated 15.6.2017 mandating that the said standards for "public buildings" shall be complied by every "establishment".

  
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2. Many owners of hotels and restaurants were also not aware about the mandatory requirements for making the 'public Buildings' and 'public facilities and services' accessible within a fixed time frame. The information about the status of barrier free access for persons with disabilities to hotels and restaurants was also not forthcoming from the related Departments/ Authorities.
3. However, Ms. Preeti Bhardwaj, Advocate on behalf of FHRAI in Case No. 324/1101/2018/06 (Titled : Suo Motu Vs FHRAI, Department of Excise, Entertainment and Luxury Tax, Department of Trade & taxes, GNCT of Delhi) provided a list of 429 hotels and restaurants in NCT of Delhi alongwith their e-mails and informed that they had not received the requisite information and details from all their Members.
4. As per Section 80(b) of the Rights of Persons with Disabilities Act, 2016, hereinafter referred to as the Act, State Commissioner shall *inquire, suo motu or otherwise deprivation of rights of persons with disabilities and safeguards available to them in respect of matters for which the State Government is the appropriate Government and take up the matter with appropriate authorities for corrective action. Section 80 (f) and 80(g) of the Act also respectively require the State Commissioner to promote awareness of the rights of persons with disabilities and the safeguards available for their protection and monitor implementation of the provisions of this Act and schemes, programmes meant for persons with disabilities.*

5. The State Commissioner therefore decided to take up with the 429 Members of the FHRAI under Section 80(b) of the Act vide Show Cause Notice dated 19.09.2019. In the said notice, it was brought to the notice of the President, FHRAI that FHRAI was requested vide letter dated 14.06.2018 to direct all the hotel and restaurant owners in the NCT of Delhi to ensure that their premises have all the accessible features in accordance with the standards prescribed in the Harmonised Guidelines and prepare an Action Plan to make every 'public building' and 'public facility and service' accessible to persons with disabilities by 15.06.2022 and 15.06.2019 respectively and to share the same with this Court in a format, by 15.07.2018. The said notice was followed by reminder dated 18.10.2019.

6. Commissioners of North DMC, SDMC and EDMC and Chairman, NDMC were also requested vide letter dated 27.10.2019 to direct the hotel and restaurant owners in their respective jurisdictions to incorporate all the accessible features in the built environment and the facilities and services provided by them. Except Chairman, NDMC, the 3 DMCs issued the advisories to the concerned hotels and restaurant owners. Chairman, NDMC should take a serious note of this and direct the concerned officers to comply with the notices/summons and respect the law especially socially beneficial legislation meant for persons with disabilities who happen to be one of the most marginalised sections of the society.

7. The list of 38 hotels and restaurants from whom the status was received is annexed as Annexure-I to this order. While some hotels have given

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elaborate information and details about the facilities created for persons with disabilities such as 'The Lalit', Park Inn by Radisson, Ahuja Residency, Hotel Royal Plaza, Ashoka Road, Hotel Classic Diplomat, Le-Meridien, rest of the 38 hotels and restaurants who responded have given limited details of the facilities.

8. As the compliance reports were not received from a majority of hotels and restaurants, a hearing was scheduled at Delhi Secretariat on 16.12.2019 under Section 82 of the Act vide Summons dated 27.11.2019.

9. Before proceeding further, it will be in the fitness of things to look at the relevant provisions of the Act/Rules, the Harmonised Guidelines and the Guidelines for Approval of Hotels at Project Stage and Star Classification/re-classification of Operational Hotels, the Terms and Conditions and the Check List of facilities issued by Ministry of Tourism for better appreciation of the matter.

10. Section 2(w) and 2(x) of the Act define 'public buildings' and 'public facilities and services' as under:-

*"(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,*

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reformatories or judicial foras, railway stations or platforms, roadways bus stands or terminus, airports or waterways.

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

11. **Section 40** provides as under:-

"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."

12. **Section 44** mandates

"(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."

13. Section, 45 and 46 of the Act prescribe the time limit for making existing infrastructure and premises accessible and action plan for that purpose and the time limit for accessibility by service providers respectively. The said sections are re-produced below:-

*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:*

*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."*

14. Rule 15 of the Rights of Persons with Disabilities Rules, 2017 notified by Ministry of Social Justice and Empowerment (Department of Empowerment for persons with disabilities) on 15.06.2017 provides,

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"(1) Every establishment shall comply with the following standards relating to physical environment, transport and information and communication technology, namely :-

(a) standard for public buildings as specified in the Harmonised Guidelines and Space Standards for Barrier Free Built Environment for Persons With Disabilities and Elderly Persons as issued by the Government of India, Ministry of Urban Development in March, 2016;


(b) standard for Bus Body Code for transportation system as specified in the notification of the Government of India in the Ministry of Road Transport and Highways, vide number G.S.R. 895(E), dated the 20th September, 2016;

(c) Information and Communication Technology-

(i) website standard as specified in the guidelines for Indian Government websites, as adopted by Department of Administrative Reforms and Public Grievances, Government of India;

(ii) documents to be placed on websites shall be in Electronic Publication (ePUB) or Optical Character Reader (OCR) based pdf

format:

  
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*Provided that the standard of accessibility in respect of other services and facilities shall be specified by the Central Government within a period of six months from the date of notification of these rules.*

*(2) The respective Ministries and Departments shall ensure compliance of the standards of accessibility specified under this rule through the concerned domain regulators or otherwise."*

For the purpose of this case, Rule 15(1) (a) and (c) are relevant, though the respondents need to also comply with Rule 3(c) with regard to the accessibility of their websites and the documents uploaded in the websites.

15. In Chapter 4 of the Harmonised Guidelines, building have been classified into different categories. At 4.2 under the heading 'Other Categories', (i) Assembly Halls (ii) Cafeterias and Restaurants and (iii) Hotels have been placed. For each category and sub-category, the requirement to access the premises/facilities have been given. For example, the parking, the entry, the toilets, the rooms the ratio of total number of seats and the number of spaces required for wheel chair users, the measurement of spaces in the hotels, the design of the tables, height of the counters, the aisle space, etc. have been. For requirements/measures of various facilities, Chapter 4, 5, 9 & 12 are relevant. However, for any specific construction/built facility, the requirements and the measurements may also be available elsewhere in the harmonised guidelines.

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16. The guidelines issued by Ministry of Tourism (HR Division) vide letter dated 8-TH-1(3)/2013-Pt.I dated 19.01.2018 provided the facilities for guests with disabilities. The same need to be aligned with the requirements and the measurements provided in the Harmonised Guidelines.

17. It will be desirable that Ministry of Tourism puts together the relevant provisions/requirements/measurement and designs for various facilities in the hotels and restaurants irrespective of their category in a smaller booklet by extracting the same from the Harmonised Guidelines. The booklet should be uploaded in the website of Ministry of Tourism, FHRAI and each Hotel and Restaurant and appropriate directives should be issued to every hotel and restaurant owner to ensure compliance with the provisions of the Act and the Harmonised Guidelines. There can be no exception in this regard as the provisions of the Act quoted above are mandatory and contravention of any provision of the Act or Rule made thereunder is punishable under Section 89 of the Act which is reproduced below:-

*Section 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.*

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18. On the day of hearing on 16.12.2019 which was scheduled from 10.30 AM to 12.00 Noon and from 12.00 Noon to 1.30 PM, at Delhi Secretariat, 116 representatives of the respondent hostels and restaurants appeared.

19. The provisions of the Act, the Rules, the Harmonised Guidelines of Ministry of Urban Development and the Guidelines of Ministry of Tourism were explained to those present. It was also made clear to them that the 'public building' and 'public facilities and services' as defined in the Act is mandatorily to be made accessible for persons with disabilities in accordance with the standards prescribed in the Harmonised Guidelines by 15.06.2022 and 15.06.2019 respectively. There was no provision in the Act or the Rules for any exemption from the requirement of ensuring accessibility to persons with disabilities as per standards. As on date, the Central Government, the only competent authority has also not extended the time frame. The respondents were therefore advised to prepare an Action Plan so as to ensure every 'public building' owned or used by them and every 'facility and service' provided by them is made accessible before the deadlines. Beyond the said dates, they will be liable to be punished under section 89 of the Act

20. The respondents were also informed that the GNCT of Delhi with the concurrence of the Chief Justice of the Hon'ble Delhi High Court has designated Additional Sessions Judge-02 as a Special Court in every District to try the offences under the Act. Any non-compliance by the respondents may therefore be tried by the concerned Special Courts.

21. Sh. S.P. Mehta, Advocate representing FCMC Distributor Pvt. Ltd., A-217, Okhla Industrial Area Phase-I, New Delhi submitted that the organisation is not a hotel or a restaurant and therefore requested that they should be exempted from the hearing which was accepted, though its built environment which falls under the definition of 'public building' has to be made accessible.

22. Sh. Rakesh Bhattacharya representing Tacobell Restaurant, Ambience Mall, Vasant Kunj contended that since their restaurants are in the Ambience Mall, it is the responsibility of the Mall to ensure accessibility and therefore they should be exempted. It was made clear to him that it is the responsibility of the service provider to ensure accessibility to persons with disabilities irrespective of whether the owner of the Mall does it or not. The owners/operators of the restaurants have the option to shift to a place which is accessible.

23. Sh. R.S. Singh, representing Hotel Consult Orient, Rajendra Place submitted that the company is a Consulting Company for designing the hotels and therefore it is not covered. Since the premises from where the organisation is providing the consultancy services is a 'public building/public facility/service/service', the premises and the services will have to be made accessible.


24. The representatives of the Pioneer Restaurant, Connaught Place submitted that the building where the restaurant is housed is a Heritage Building and neither the narrow entry of the toilet can be widened and made

accessible nor any authority would allow them to carry out any modification in the design. They wanted that they should be exempted. As already mentioned, there is no provision for any such exemption in the Act.

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

- (i) All the respondents should carry out a proper accessibility audit of their 'public buildings' and 'public facilities and services' and make them accessible to persons with disabilities in accordance with the Harmonised Guidelines within the time frame prescribed in the Act.
- (ii) FHRAI should continue to make efforts to reach out to more members and direct them to ensure accessibility to persons with disabilities in accordance with the provisions of the Act/Rules.
- (iii) The concerned Civic Authorities should consider the requests of hotels and restaurants for modification of their premises, if the same is for the sole purpose of making their premises accessible for persons with disabilities. If required, the relevant rules should be relaxed wherever required in view of the provision in **Section 80(a)** of the Act which provides.

*"The State Commissioner shall identify, suo motu or otherwise, provision of any law or policy, programme and*

  
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*procedures, which are inconsistent with this Act, and recommend necessary corrective steps."*

- (iv) Ministry of Tourism should examine their guidelines issued on 19.01.2018 and align them with the requirements and the measurements, designs prescribed in the Harmonised Guidelines preferably in consultation with the experts in the field and issue fresh guidelines and prepare a booklet on accessibility standards for Hotels and Restaurants of all category. The guidelines and the booklet be uploaded in the websites of Ministry of Tourism, FHRAI and all the Hotels and Restaurants should be directed to provide a link to the same in their respective websites.
- (v) Commissioners of North DMC, EDMC and SDMC, Chairman NDMC, Ministry of Tourism, Govt. of India should ensure incorporation of a condition that the premises and services and facilities provided conform to the prescribed standards in the Harmonised Guidelines for accessibility to persons with disabilities for issuing/renewing any license/permission to run hotel/restaurant service from their respective jurisdiction.
- (vi) All the Hotels and Restaurants should provide menu in Braille, large fonts and in accessible format for print disabled.

  
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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 which reads as under;

*"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."*

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

28. Given under my hand and the seal of the Court this 24<sup>th</sup> day of December, 2019.



*(T.D. Dhariyal)* 24-12-19

**State Commissioner for Persons with Disabilities**

**Encl.:- As above**

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**Copy for information and necessary to:**

1. Chief Secretary, GNCT of Delhi, Delhi Secretariat, I.P. Estate, New Delhi – 110002 for kind information.
2. The Secretary, Ministry of Tourism, GOI, Room No. 109, Transport Bhawan, 1 Parliament Street, New Delhi - 110011.
3. The Secretary, Department of Empowerment of Persons with Disabilities Paryavaran Bhawan, Ministry of Social Justice & Empowerment, 5th Floor, Antyoday Bhavan, Lodhi Road, CGO Complex, Pragati Vihar, New Delhi, Delhi 110003 GOI, Shastri Bhawan, New Delhi-110001.

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4. The Pr. Secretary, Urban Development, GNCT of Delhi, 9<sup>th</sup> level, Delhi Secretariat, IP Estate, New Delhi-110002.
5. The Pr. Secretary, Department of Social Welfare, GNCT of Delhi, GNLS Complex, Delhi Gate, New Delhi-110002.
6. The Commissioner, North DMC, 4<sup>th</sup> Floor, Civic Centre, Minto Road, New Delhi-110002
7. The Commissioner, EDMC, 419, Udyog Sadan, Patpar Ganj, Industrial Area, Delhi-110092
8. The Commissioner, SDMC, 9<sup>th</sup> Floor, Civic Centre, Minto Road, New Delhi-110002
9. The Chairman, New Delhi Municipal Council, Palika Kendra, Parliament Street, New Delhi-110001. (Also refer paa-6).
10. The President, The Federation of Hotel & Restaurant Association of India, B-82, 8<sup>th</sup> floor, Himalaya House, 23, K.G. Marg, New Delhi-110001.

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