

**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. 988/1141/2019/06/ 3652-3657

Dated: 22.07.2019

In the matter of:

SUO-MOTU

Versus

The Principal Secretary,
Department of Law, Justice & Legislative Affairs
Government of NCT of Delhi,
8th Level, C-Wing, Delhi Secretariat,
Players Building, I.P. Estate,
New Delhi – 110002.

..... **Respondent**

Date of hearing: 18.07.2019

Present: Sh. Lovleen, Additional Secretary (Law) and Sh. M.B.
Malhotra, Dy.Secretary (Law) on behalf of Respondent.

ORDER

Section 84 and 85 of the Rights of Persons with Disabilities Act,
2016 hereinafter referred to as an Act, provide as under:

“84. For the purpose of providing speedy trial, the State Government shall, with the concurrence of the Chief Justice of the High Court, by notification, specify for each district, a Court of Sessions to be a Special Court to try the offences under this Act.

85. (1) For every Special Court, the State Government may, by notification, specify a Public Prosecutor or appoint an advocate, who has been in practice as an advocate for not less than seven years, as a Special Public Prosecutor for the purpose of conducting cases in that Court.”

2. Rule 51 of the Delhi Rights of Persons with Disabilities Rules, 2018, herein after referred to as Delhi RPwD Rules, prescribes the terms and conditions of appointment of public prosecutors to be appointed in the Special Courts and is reproduced below:

“51. Appointment of Public Prosecutor-

(1) The Public Prosecutor to be appointed in every Special Court shall have-

(a) practical experience of handling cases preferably of persons with disabilities;

(b) experience at the Bar of not less than seven years; and

(c) shall be well versed with local language and customs.

(2) The fee and other remunerations of the Special Public Prosecutor specified or appointed under sub- section (1) of section 85 of the Act shall be the same as that of Public Prosecutor

appointed by the Government of National Capital Territory of Delhi under the Code of Criminal Procedure, 1973 (1 of 1974) for conducting the cases before a court of session.”

3. Secretary (Social Welfare), GNCT of Delhi was requested to take action for specifying the Special Courts and Special Public Prosecutors vide letter dated 25.01.2018. Social Welfare Department vide letter dated 27.02.2018 informed that the Department of Law, Justice and Legislative Affairs had approached the Hon'ble High Court for the purpose.

4. Thereafter the matter was taken up with the Department of Law, Justice and Legislative Affairs, Govt. of NCT of Delhi vide letter dated 08.03.2018 followed by reminders dated 27.04.2018, 16.05.2018, 26.06.2018 and D.O. letter dated 31.12.2018 and letter dated 20.02.2019. Registrar General, Hon'ble High Court of Delhi was also requested to intimate the status.

5. Vide letter dated 28.05.2018 and 10.07.2019, Registrar General, High Court of Delhi informed that no request to designate Special Courts under the Act had been received from Govt. of NCT of Delhi. However, a request from the District and Sessions Judge (North), Rohini, Delhi had been received and was pending consideration of the Hon'ble Court.

6. As there was no response even after lapse of sufficient time, vide Show-Cause-Cum-Hearing Notice dated 17.06.2019, Department of Law, Justice and Legislative Affairs was directed under Section 80.(b) of the Act to show cause why the Special Courts and Special Public Prosecutors should not be specified in each district by 11.07.2019 and if the same was not done by the said date, it was decided to hold a hearing on 18.07.2019 under Section 82 of the Act and Rule 49 of Delhi RPwD Rules.

7. Joint Registrar (Gazette-I) High Court of Delhi vide letter dated 10.07.2019 informed as under :

“Sub: Notice to show cause-cum-hearing notice – Case No.F.988/1141/2019/06/2764 dated 17.06.2019.

Sir,

I am directed to refer to the copy of Notice to show cause-cum-hearing dated 17.06.2019 issued by your Court in the case mentioned above and to inform that this Court vide letter dated 08.10.2018 (Annexure-‘A’) had already made recommendation to the Govt. of NCT of Delhi to issue necessary notification with regard to designation of Court of Additional Sessions Judge-02 in each District as Special Court to try the offences under the Rights of Persons with Disabilities Act, 2016. Thereafter, the Addl. Secretary, GNCTD, Department of Law, Justice & LA vide this Court’s letter dated 17.12.2018 (Annexure-‘B’) was again informed about the said recommendations. However, no response has been received from them till now.

Yours faithfully,

(Krishan Kr. Sharma)
Joint Registrar (Gazette-I) for Registrar General

8. On 18.07.2019, Sh. Loveleen, Additional Secretary (Law, Justice,& LA) and Sh. M.B. Malhotra, Dy. Secretary (Law) appeared and submitted reply dated 18.07.2019, which is reproduced below:

“Sub: Notice to show cause-cum-hearing notice – Case No.F.988/1141/2019/06/2764 dated 17.06.2019.

Sir,

In pursuance to your show cause-cum-hearing notice for non designating the Special Court and Special Public Prosecutor in each district in accordance with the provision of Sections 84 and 85 of the Rights of Persons with Disabilities Act, 2016 and Rule 51 of the Delhi Rights of Persons with Disabilities Rules, 2018, it is submitted that Hon’ble High Court of Delhi vide letter dated 8.10.2018 had already made recommendations to the Govt. of NCT of Delhi to issue necessary notification for designating the Court of Addl. Sessions Judge-02 in each District as Special Court to try the offences under the Rights of Persons with Disabilities Act, 2016.

The matter was processed for issue of notification immediately after receipt of recommendation from Hon’ble High Court of Delhi and the file is under process since then. The file was last sent to the Hon’ble Minister (Law), Govt. of NCT of Delhi on 03.07.2019 with the request to place the proposal before the Hon’ble Lt. Governor of Delhi for taking further action for issue of

notification. The file is under consideration with Hon'ble Minister (Law) Office since 03.07.2019 (copy of file monitoring is enclosed).

After receipt of your aforesaid notice, a letter dated 11.7.2019 has also been sent to the office of Hon'ble Minister (Law) to expedite the proposal in view of notice issued by the State Commissioner for Persons with Disabilities (copy enclosed). However, the same is awaited.

This issues with the prior approval of the Principal Secretary (Law, Justice & LA), Govt. of NCT of Delhi.

Yours sincerely,

*(Loveleen)
Addl. Secretary (Law, Justice & LA)"*

9. In view of the above, Addl. Secretary (Law, Justice & LA) requested that at least one month may be allowed and the developments in the matter would be regularly intimated to this court.

10. During the course of hearing, Sh. G.P. Singh, Secretary to Hon'ble Minister, Law, who was contacted on telephone, informed that the file would be sent back soon with Hon'ble Minister's comments.

11. After detailed interaction during the hearing, it appeared that there was lack of consensus on whether the notification can be issued with the approval of the Hon'ble Minister of Law or it has to be approved by and issued in the name of the Hon'ble Lt. Governor of Delhi.

12. All concerned need to appreciate that Section 84 and 85 of the Act are mandatory. The Act, which has been enacted to give effect to the United Nations Convention on the Rights of Persons with Disabilities after ratifying the said Convention, must be implemented in right earnest and with promptitude. Failing this, the very purpose of enacting one of the most comprehensive and forward looking legislations for empowerment of persons with disabilities and their inclusion in the society will surely be lost. If implementation of a simple yet mandatory provision of the Act is allowed to be entangled in the procedural disputes, the high expectations and hopes that this Act has generated amongst persons with disabilities in the NCT of Delhi will be shattered. It also would give an impression that the right holders and the authorities are not serious enough in implementing the socially beneficial legislation and are indifferent to protecting their rights who still remain one of the most marginalised sections of the society.

13. Although no time frame for specifying Special Courts has been prescribed, yet inordinate delay in implementing the mandatory provision of Act actually amounts to contravention of the said sections of the Act and the Rules made thereunder and may attract penal action under section 89 of the Act.

14. It is learnt that notifications for appointment of Presiding Officers of Family Courts and appointment of Notaries have recently been issued after the intervention of Hon'ble High Court of Delhi.

15. In view of the fact that more than two years have elapsed since the Act came into effect on 19.04.2017 and the stalemate between the concerned apex authorities, no purpose will be served by granting a month's time as requested during the hearing and keeping this case pending as neither the provisions of the Act/ Rules nor the prescribed procedures and the orders of Hon'ble Courts on the subject are likely to be changed in a month or two. I therefore consider it appropriate to dispose of the matter with the following recommendations in the larger interest of persons with disabilities:

- (i) Principal Secretary, Law, Justice and LA, Govt. of NCT of Delhi should implement the recommendation of the Hon'ble High Court of Delhi that Additional Sessions Judge-02 of each court be specified as Special Court to try the offences under the Act and specify Special Public Prosecutors for conducting the cases in the Special Courts within 10 days of receipt of this order being the requirement of the law.
- (ii) The copy of the notification(s) be submitted to Registrar General, Hon'ble High Court of Delhi and the State commissioner for Persons with Disabilities by 06.08.2019.
- (iii) If the Special Courts and Special Public Prosecutors are not specified and the notification (s) is / are not received by 06.08.2019, Registrar General, Hon'ble High Court of Delhi is requested to place a copy of this order before Hon'ble Chief Justice of High Court of Delhi for information and necessary action so as to ensure that the concerned authorities specify Special

Courts and Special Public Prosecutors as mandated under Section 84 and 85 of the Act and Rule 51 of the Delhi RPwD Rules without further loss of time.

16. Principal Secretary, Law, Justice and LA and Registrar General, High Court of Delhi are advised to inform the State Commissioner for Persons with Disabilities of the action taken on the recommendations within three months from the date of receipt of this order as required under Section 81 of the Act.

17. The case is accordingly disposed of.

18. Given under my hand and the seal of the Court this 22th day of July, 2019.

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

Copy to:

1. Chief Secretary, Govt. of NCT of Delhi, Delhi Secretariat, IP Estate, New Delhi – 110002, Email: csdelhi@nic.in : For information.
2. Principal Secretary to Hon'ble Lt. Governor of Delhi, Rajniwas, Delhi, Email: seclg@nic.in : For information of the Hon'ble Lt. Governor of Delhi.
3. Secretary to Hon'ble Minister of Law, Justice and LA, Room No. 808, A-Wing, Delhi Secretariat, New Delhi-110002, Email: minlawtpt.delhi@nic.in : For information of Hon'ble Minister of Law.
4. The Registrar General, High Court of Delhi, Sher Shah Road, New Delhi-110503, Email: rg.dhc@nic.in : For information and necessary action on Para 15. (iii) of this order.
5. Secretary (Social Welfare Deptt.), GLNS Complex, Delhi Gate, New Delhi, Email: pssw@nic.in : For information.

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