sng

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
PIL-CJ-LD-VC-NO.45 OF 2020

National Association of Blind .. Petitioner
Versus
Bombay Municipal Corporation, .. Respondents
Through its Commissioner and Another.

--

Dr.Uday P. Warunjikar, Advocate for the Petitioner.

Mr.A.V.Bukhari, Senior Advocate with Ms. K.H. Mastakar, Advocate for the Respondents.

--

CORAM : DIPANKAR DATTA, CJ &
G.S. KULKARNI, J

RESERVED ON: SEPTEMBER 28, 2020

PRONOUNCED ON : OCTOBER 28, 2020

JUDGMENT: (PER DIPANKAR DATTA, CJ.)

1. The petitioner before us is a trust registered under the provisions of the Bombay Public Trusts Act, 1950. Exhibit "A" to the writ petition is a copy of the profile of the petitioner. It's existence dates back to the year of India attaining independence. Majorly, the petitioner is involved in activities to do away with blindness, wherever possible, and wherever it

is not so possible, to empower the visually challenged to play a proactive role in the society, the disability notwithstanding.

2. In this petition under Article 226 of the Constitution of India, which is claimed to have been instituted in public interest (hereafter "PIL", for short), the petitioner has mounted a challenge to a circular dated May 26, 2020 issued by the General Administration Department of the Brihan Mumbai Mahanagar Palika (hereafter "the Corporation", for short). It is claimed by the petitioner that the effect of the impugned notification is to withdraw a benefit, which was earlier extended to the physically disabled employees of the Corporation, with retrospective effect leaving such employees high and dry. The petitioner also claims that such an action of the Corporation is an affront to the rights that are made available to the physically disabled under the Rights of Persons with Disabilities Act, 2016 (hereafter "the RPWD Act", for short) and to equal treatment in public employment under Article 16 of the Constitution of India. According to the petitioner, the physically disabled employees of the Corporation have been discriminated against and the arbitrary withdrawal of benefit particularly in the wake of the

pandemic evinces lack of sensitivity and compassion and thus, amenable to judicial review of this Court and liable to be struck down.

3. Having noted what the grievance of the petitioner precisely is, we may proceed to note certain averments in the PIL petition. It is revealed from "Facts in brief" (paragraph 10 onwards of the PIL petition) that, in excess of 250 employees, who are visually impaired, are engaged in the establishment of the Corporation; that, the Ministry of Personnel, Public Grievance and Pension of the Government of India issued a direction on March 27, 2020 directing all the concerned ministries and the departments that the employees, who are physically disabled, ought to be exempted from attendance while the roster of the staff to attend to essential services is drawn; that, on April 21, 2020, the State of Maharashtra issued a 'Government Resolution' whereby persons with disability were exempted from attending their offices during the lockdown period; and that, the respondents, instead of continuing to follow the directions issued by the Central Government and/or the State Government, issued the impugned circular dated May 26, 2020, in modification of its

earlier circulars (whereby physically disabled employees were exempted from attending offices) stipulating that the absence of persons with disability be treated as permissible leave in respect of those who find it difficult to attend the office. Paragraph 14 of the PIL petition being relevant for a decision, is quoted in its entirety hereunder:

> "14. In these circumstances, it is submitted that the respondent herein is thus not implementing the said directions in the true spirit. On the other hand, the employees who are persons with disability are facing financial difficulties. It is submitted that the respondents have directed to treat the absence of the disable persons as permissible leave. However, it is the duty of the employer to provide necessary infrastructure, as well as duty of the State to provide necessary modes and means of transport and travel for the disabled persons. In view of the same, it is submitted that as of today it is difficult for the normal or the person with regular eye sight to travel and reach at the place of working. In the present situation the citizens are avoiding touching each other. They are not shaking hands with each other. Social distancing is being maintained. However, so far as the persons with disabilities, more particularly blind or low vision candidates are concerned, they are required assistance of somebody while travelling, crossing road etc. However, during this pandemic situation, due to COVID 19 apprehension, nobody is ready to touch a blind person if he or she is travelling and needs assistance."

Resting on all the aforesaid averments, it is the further case of the petitioner that the Corporation ought to have exempt persons with disability from attending to essential services and treat their absence as special leave without loss of pay; in other words, their absence ought to have been treated as leave simplicitor without any financial loss being caused to them.

4. The petitioner has referred to the case of a visually impaired employee of the Corporation, Zanwar Dilip Govindram. The salary slip of such employee for the month of July 2020 shows 'nil', meaning thereby that he was not paid a farthing having absented himself from work. According to the case run in the PIL petition, treating such an employee's absence period during the lockdown as leave without pay on the part of the Corporation is unreasonable and arbitrary and being opposed to the provisions of the RPWD Act compelled the petitioner to knock the doors of the Court not for any private benefit but for securing to the physically disabled employees of the Corporation benefits that they are entitled to in law. Such assertions are followed by the "Grounds" and

based thereon, the petitioner has urged the Court to grant relief as claimed in the PIL petition.

5. The Corporation has opposed the PIL petition by filing an affidavit-in-reply as well as an affidavit-in-sur-rejoinder.

6. The first objection raised by the Corporation is to the maintainability of the PIL petition. According to it, the petitioner has raised a dispute in relation to a "service matter" and, therefore, no PIL petition would be maintainable in regard thereto. The second objection is in respect of the financial implications. The Corporation claims to have employed 1150 persons with disability in all, out of which 278 employees are visually impaired. If such physically disabled employees are granted special leave without loss of pay, the Corporation would be required to pay approximately Rs.12,22,35,300/- inclusive of Rs.2,75,22,000/- for visually impaired employees. Having regard to the dearth of financial resources, requiring the Corporation to pay Rs.12,22,35,300/- would be a burden which the Corporation may not be in a position to shoulder in these difficult times when taking care of health of the citizenry has been its

primary concern. It is the further contention of the Corporation that it has granted relaxation in respect of attendance to approximately 283 employees, who are more than 55 years old and having health issues like diabetes, high blood pressure, renal problem, etc. They have also been treated at par with the employees having physical disability. If the physically disabled are held entitled to special leave without loss of pay, the possibility of the employees in excess of 55 years of age having health problem claiming similar treatment on the same principle as the physically disabled would require the Corporation to pay Rs.4,22,58,97,500/- for the period between March 23, 2020 and June 30, 2020, which will adversely affect its revenue. Thirdly, it is urged that the petitioner in the guise of a public interest litigation has espoused the cause of only one employee, viz, Zanwar Dilip Govindram, to ensure that he receives benefits in respect of a service dispute, although the same relief, if at all, could be obtained if such employee had approached the writ court. The fourth objection, referable to paragraph 10 of its sur-rejoinder, is to the extent of benefits that are made available to a physically disabled employee which a normal employee is

not entitled to. The assertion in this regard is that the physically disabled employees' interests are well taken care of and that in addition thereto, the Corporation has no obligation to grant special leave with pay to such employees. The fifth objection, which is a technical one, is with regard to non-joinder of a necessary party. According to the Corporation, the State of Maharashtra should have been impleaded as respondent since the petitioner has sought to rely on Government Resolutions issued by it; not having so impleaded, this PIL petition is defective and liable to be dismissed. The sixth objection of the Corporation is that the circulars issued by the State Government and relied upon by the petitioner are not *ipso facto* applicable to the Corporation. The circulars of the State Government are applicable to its employees and not to the Corporation's employees for whom separate service regulations are in force. Finally, it is asserted that the employees on whose behalf the PIL petition has been instituted have alternate remedy to approach the appropriate forum for redressal of their grievances and legality and propriety of the circular dated May 26, 2020 cannot be the

subject matter of a petition that is filed citing involvement of public interest.

7. Appearing in support of the PIL petition, Dr. Warunjikar referred to the provisions of the RPWD Act as well as the Statement of Objects and Reasons for its enactment upon repeal of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 (hereafter "the 1995 Act" for short). Our attention was further drawn to Chapter VIII of the RPWD Act and it has been his submission that a duty is cast on the appropriate Government to provide for access to transport and access to information and communication for persons with disabilities. He has contended that the RPWD Act being a social welfare legislation enacted specially for persons with disabilities, no matter what the financial constraints are, focus ought to be on promotion of the interests of the physically disabled as well as to achieve the purposes for which such legislation was brought into existence. Referring to paragraph 14 of the PIL petition, extracted supra, it is the categorical submission of Dr. Warunjikar that during the lockdown period, the Corporation failed and/or neglected to make suitable arrangements for

transporting the physically disabled to their respective work places and that such failure and/or neglect severely impeded the physically disabled employees of the Corporation to report for duty. It has also been his submission that owing to the distancing norms put in place by the Central Government, coming into contact with a fellow citizen was regarded as a risky proposition and even if a visually impaired employee desired to report for duty, he would be deprived of the help and assistance that he would expect under normal circumstances of the pre-pandemic days when fellow citizens voluntarily came forward to help and assist the visually impaired. According to Dr. Warunjikar, the Central Government as well as the State Government in such circumstances decided to extend special benefits for the physically disabled exempting them from attendance at their respective work places without affecting pay. However, despite having accepted and implemented such noble intention for some time, the Corporation, all on a sudden, decided to withdraw such exemption and substituted it by allowing its physically disabled employees to avail of permissible leave and thereafter leave without pay. Such an action is utterly

discriminatory. Continuing his arguments further, Dr. Warunjikar contended that the Corporation being an establishment within the meaning of the RPWD Act unnecessarily resorted to insensitive and inhuman acts to the detriment and prejudice of its physically disabled employees despite the safe-guards enshrined in the special legislation introduced by the Parliament conferring varied rights on a determinate class, not necessarily limited to rights relating to employment. By referring to the averments made in the affidavit-in-rejoinder and the documents annexed thereto, Dr. Warunjikar brought to our notice that several disabled employees of the Corporation including the said Dilip Govindram Zanwar did not receive a single farthing for the months of July and August, 2020 since they had exhausted their permissible leave. He urged that on the date the PIL petition was presented before this Court, the petitioner could not have access to the particulars of all the physically disabled employees of the Corporation except the said Dilip Govindram Zanwar and that was the reason for citing his instance in the PIL petition. The objection taken in the affidavit-in-reply by the Corporation that the petition is designed as a public

interest litigation to secure benefits for only one employee, i.e. the said Dilip Govindram Zanwar, is thoroughly misconceived. It was also urged on behalf of the petitioner that the objection to the maintainability of the PIL petition is without substance.

8. Based on the aforesaid submissions, Dr. Warunjikar prayed that the Corporation's circular dated May 26, 2020 to the extent it withdraws the exemption earlier granted to its physically disabled employees be set aside and for declaration that such physically disabled employees of the Corporation, even during the period of their absence from duty during the days of the lockdown, would be entitled to financial benefits as earlier decided by the Corporation.

9. Opposing the PIL petition on behalf of the Corporation, Mr. Bukhari, learned senior advocate invited our attention to the affidavit-in-reply and the affidavit-in-sur-rejoinder. The defence taken by the Corporation therein has been noted by us above and hence, the same is not repeated.

10. Mr. Bukhari has cited the decisions rendered by the Supreme Court in Dr. Duryodhan Sahu v. Jitendra Kumar Mishra, reported in AIR 1999 SC 114, Dattaraj Nathuji

Thaware v. State of Maharashtra, reported in (2005) 1 SCC 590, and Seema Dhamdhere v. State of Maharashtra, reported in (2008) 2 SCC 290, in support of the proposition that a public interest litigation concerning service matters is not maintainable and, therefore, this PIL petition should be summarily dismissed. It has further been vehemently contended by Mr. Bukhari that no interference is warranted on facts and in the circumstances, even if the PIL petition were held to be maintainable. According to him, the Corporation is not bound to follow each and every decision taken by the Government; although nothing prevents the Corporation from adopting any decision taken by the Government. In the present case, the Corporation considered it fit and proper not to so adopt, for, the conditions of service of the employees would be governed in terms of the provisions of the Mumbai Municipal Corporation Act, 1888 (hereafter “the Corporation Act”, for short) and the service regulations framed thereunder and such regulations do not conceive of exempting any employee from attending duty without loss of pay. Next, Mr. Bukhari contended that this petition is disguised to secure benefits for only one physically disabled employee and that the

petitioner has not produced any letter of authority that each and every physically disabled employee of the Corporation has authorized the petitioner to raise grievance on their behalf. It has also been contended by Mr. Bukhari that various facilities have been provided by the Corporation for the physically disabled employees, which are not made available to other employees, and the decision contained in the circular dated May 26, 2020 being dictated by reasons of public interest, the Court ought to stay at a distance.

11. Mr. Bukhari, accordingly, prayed that this PIL petition be dismissed.

12. Having noted from the respective pleadings the concern expressed by the petitioner as well as the nature of relief claimed by it together with the defence thereto raised by the Corporation and upon hearing the rival contentions, we are tasked to decide basically the following questions:

i. Is the PIL petition maintainable?

ii. Should the first question be answered in the affirmative, does the impugned circular of the Corporation warrant judicial interdiction?

iii. What relief, if any, ought to follow provided the second question is also affirmatively answered?

Question No.1

13. The Supreme Court, in no uncertain terms, has made it clear in several of its decisions that the *locus standi* of a party instituting any litigation in public interest in relation to any specific remedy sought for, has to be primarily ascertained at the threshold, more so if an objection is raised in the nature of a demurrer. Having regard to the objection raised by Mr. Bukhari to the maintainability of this PIL petition, we venture to decide the same here and now.

14. As a prologue to our discussion, we can do no better than trace the origin of 'public interest litigation' in India. The decision of the Constitution Bench comprising of seven Judges of the Supreme Court in S.P. Gupta v. Union of India, reported in 1981 Supp SCC 87, considered to be the parent decision on the jurisprudence of 'public interest litigation', continues to provide appropriate guidance for entertaining PIL petitions. The Supreme Court noticed the traditional rule in regard to *locus standi*, i.e., judicial redress is available only to a person who has suffered a legal injury by reason of violation

of his legal right or legally protected interest by the impugned action of the State or a public authority or any other person or who is likely to suffer a legal injury by reason of threatened violation of his legal right or legally protected interest by any such action. Thereafter, the Court proceeded to consider the exceptions to such rule that were evolved by the courts over the years. We extract below relevant passages from the decision :

> *"17. It may therefore now be taken as well established that where a legal wrong or a legal injury is caused to a person or to a determinate class of persons by reason of violation of any constitutional or legal right or any burden is imposed in contravention of any constitutional or legal provision or without authority of law or any such legal wrong or legal injury or illegal burden is threatened and such person or determinate class of persons is by reason of poverty, helplessness or disability or socially or economically disadvantaged position, unable to approach the court for relief, any member of the public can maintain an application for an appropriate direction, order or writ in the High Court under Article 226 and in case of breach of any fundamental right of such person or determinate class of persons, in this Court under Article 32 seeking judicial redress for the legal wrong or injury caused to such person or determinate class of persons. ... We may also point out that as a matter of prudence and not as a rule of law, the court may confine this strategic exercise of*

> *jurisdiction to cases where legal wrong or legal injury is caused to a determinate class or group of persons or the constitutional or legal right of such determinate class or group of persons is violated and as far as possible, not entertain cases of individual wrong or injury at the instance of a third party, where there is an effective legal-aid organisation which can take care of such cases.*
>
> ***
>
> *24. But we must be careful to see that the member of the public, who approaches the court in cases of this kind, is acting bona fide and not for personal gain or private profit or political motivation or other oblique consideration. The court must not allow its process to be abused by …".*
>
> (emphasis supplied)

15. Law thus seems to be well-settled that a person acting *bona fide* and having sufficient interest in the proceeding of a public interest litigation will alone have the *locus standi* and can approach the Court to wipe out the tears of the poor, the disadvantaged and the needy being either a person or a determinate class of persons who, though suffering from violation of his/their Fundamental Rights or other legal rights, is/are not in a position to pursue his/their legal remedy, and not a person who institutes such

proceedings for personal gain or private profit or political motive or any oblique consideration.

16. However, the objection here is not so much as to the lack of *locus standi* of the petitioner to institute the PIL petition on any of the disentitling factors referred to in the preceding paragraph, but that essentially a service dispute is made the subject matter of a PIL petition which is not competent. We are, therefore, not required to explore the credentials of the petitioner or its motive to institute the PIL petition as such, but to confine ourselves to ascertain whether the PIL petition seeks resolution of a service dispute and even if it were so, could such dispute forming the subject matter of a PIL petition be decided by this Court. For answering these questions, we would as of necessity seek guidance from the decisions of the Supreme Court cited at the Bar and those referred to therein as well as some others, which have a bearing on the question of maintainability of this PIL petition.

17. We shall start with consideration of the law laid down in Dr. Duryodhan Sahu (supra). The said decision was rendered on a reference to a larger bench and seems to be the

first case where the Court was called upon to decide whether an Administrative Tribunal constituted under the Administrative Tribunals Act, 1985 (hereafter "the 1985 Act", for short) can entertain a public interest litigation. Incidentally, it is the first of the two questions arising for decision in that case noted in paragraph 2. In all the three applications before the Administrative Tribunal, out of which the civil appeals before the Court arose, the prayers were identical. The substance of the allegations was that the petitioner, Dr. Sahu, did not possess the qualifications prescribed for the post of Lecturer and the Government in order to accommodate him created another post which was not advertised. It was alleged that the petitioner had exerted influence over the authorities concerned and managed to secure the appointment. According to the applicants, the appointment was not only *mala fide* and illegal but it was also against public interest. Despite objection raised by Dr. Sahu and the concerned Government, the Tribunal ruled in favour of maintainability of the applications and while restraining appointment of Dr. Sahu as Lecturer, directed selection and appointment of Lecturer afresh in accordance with law upon

an advertisement being published in this regard. The Court while answering the reference observed that the question as to maintainability of a public interest litigation before the Tribunal depends for its answer on the provisions of the 1985 Act. Analyzing the provisions of the 1985 Act, the Court shared the views expressed by the Orissa Administrative Tribunal in Amitarani Khuntia v. State of Orissa, reported in 1996 (1) Orissa LR (CSR) 2, that an application for redressal of grievances under section 19 of the 1985 Act could be filed only by a 'person aggrieved' within the meaning thereof and a private citizen or a stranger having no existing right to any post and not intrinsically concerned with any service matter is not entitled to approach the Administrative Tribunal. For the reasons assigned in the decision, the Court ultimately answered the first question in the negative and held that the Administrative Tribunal constituted under the 1985 Act cannot entertain a public interest litigation at the instance of a total stranger.

18. In our considered opinion, Dr. Duryodhan Sahu (supra) is a decision of the Supreme Court which authoritatively lays down the law that an Administrative

Tribunal constituted under the 1985 Act cannot entertain a public interest litigation (emphasis supplied). The Court was not even remotely called upon to decide whether a writ petition under Article 226 of the Constitution, styled as a public interest litigation, could be instituted involving a 'service matter'. This decision has been considered in subsequent decisions (to which we propose to chronologically refer, right now) to have laid down a law which we are left to wonder whether, in fact, it did.

19. Ashok Kumar Pandey v. State of West Bengal, reported in (2004) 3 SCC 349, is the first in a long line of decisions of the Supreme Court where the view was taken that Dr. Duryodhan Sahu (supra) holds that in *"service matters PILs should not be entertained"* and that inspite thereof, *"the in-flow of so-called PILs involving service matters continues unabated in the courts and strangely are entertained"*. The said decision was rendered on a petition under Article 32 of the Constitution of India, purportedly filed in public interest, seeking an order that the death sentence imposed on the accused by the relevant sessions court, affirmed in appeal by the high court as well as the Supreme

Court, needs to be converted to a sentence of life in prison because there has been no execution of the death sentence for a long time. The observations noted in italics at the beginning of this paragraph were made by the Court in paragraph 16 of its decision while sounding a caution that time has come to weed out petitions which, though titled as public interest litigation, are in essence something else; although, the Article 32 petition before the Court was not a PIL involving 'service matter'.

20. B. Singh (Dr.) v. Union of India, reported in (2004) 3 SCC 363, is the next decision where the same view was taken that Dr. Duryodhan Sahu (supra) holds that in service matters PILs should not be entertained. There, a petition under Article 32 of the Constitution was filed questioning the propriety of respondent no.3 being considered for elevation as a Judge. While holding that the petition carries the attractive brand name of a 'public interest litigation' but smacks of everything that a public interest litigation should not be, the Court dismissed it with costs of Rs.50,000/-. Appointment of a Judge of a high court is an appointment to a high Constitutional office and having regard to another decision of

fairly recent origin of the Supreme Court, to which we shall refer at a later part of this judgment, such appointment does not partake the character of a 'service matter' over which the Administrative Tribunal under the 1985 Act has jurisdiction.

21. In Dattaraj Nathuji Thaware (supra), a member of the legal profession was found to have abused the process of law by instituting a public interest litigation against respondents 6 and 7 with a view to blackmail them and was even caught red handed accepting 'blackmailing money'. The same observation is found in this decision too that in Dr. Duryodhan Sahu (supra), the Supreme Court held that in service matters PIL petitions should not be entertained.

22. Gurpal Singh v. State of Punjab, reported in (2005) 5 SCC 136, comes next in order of chronology. On a writ petition styled as public interest litigation, the relevant high court held that the appointment of the appellant as Auction Recorder of the Market Committee, Patran was invalid. It was held that *"when a particular person is the object and target of a petition styled as PIL, the court has to be careful to see whether the attack in the guise of public interest is really intended to unleash a private vendetta, personal grouse or*

some other mala fide object". Relying on Dr. Duryodhan Sahu (supra), the Court set aside the decision of the high court holding that it was indefensible.

23. The next decision is Neetu v. State of Punjab, reported in AIR 2007 SC 758. In support of the appeal, learned counsel for the appellant submitted that in service matters, PIL is not maintainable; and the writ petition, filed because of personal animosity, can by no stretch of imagination be considered to be a public interest litigation. The Supreme Court held that the writ petition itself was not maintainable and that PIL is not to be entertained in service matters.

24. Seema Dhamdhere (supra) comes next in the series. There, *inter alia*, a PIL petition was presented before this Court questioning the transfer of a police personnel (investigating officer) in the midst of an investigation under the Code of Criminal Procedure, 1973. The Court observed that the parameters of public interest litigation in matters of service have been highlighted in many cases and while disposing of the appeals it was ultimately held that the order

of the high court refusing to stall investigation did not require interference.

25. Interestingly, the six decisions i.e., Ashok Kumar Pandey (supra), B. Singh (Dr.) (supra), Dattaji Nathuji Thaware (supra), Gurpal Singh (supra), Neetu (supra) and Seema Dhamdhere (supra), are authored by the same learned Judge and hence similar views have been echoed therein based on the Court's reliance on the law laid down in Dr. Duryodhan Sahu (supra).

26. There are, at the least, five other decisions of the Supreme Court and innumerable decisions of various high courts which have relied on Dr. Duryodhan Sahu (supra) and/or the other decisions referred to above to hold that in service matters a PIL petition would not be maintainable.

27. We proceed to note the five decisions of the Supreme Court only, since the same are binding on us.

28. Hari Bansh Lal v. Sahodar Prasad Mahto, reported in (2010) 9 SCC 655, is the first one. The Court noted the law laid down in Dr. Duryodhan Sahu (supra), yet, held that a PIL petition, not suffering from want of *bona fide* or ill-motive, and filed to challenge the appointment of an ineligible

candidate would lie before a high court. It was held there that a petition for a writ of quo warranto would be maintainable if it were shown that an appointment had been made in contravention of statutory rules.

29. Next, in Girjesh Shrivastava v. State of Madhya Pradesh, reported in (2010) 10 SCC 707, the Supreme Court quoted the following sentence from paragraph 18 of the decision in Dr. Duryodhan Sahu (supra):

> *"18. … If public interest litigations at the instance of strangers are allowed to be entertained by the [Administrative] Tribunal, the very object of speedy disposal of service matters would get defeated."*

and held that the:

> *"Same reasoning applies here as a public interest litigation has been filed when the entire dispute relates to selection and appointment."*

30. The third is Bholanath Mukherjee v. Ramakrishna Mission Vivekananda Centenary College, reported in (2011) 5 SCC 464. While referring to B. Singh (Dr.) (supra), the Court in paragraph 49 observed that the tendency of disgruntled employees disguising pure and simple service dispute as

public interest litigation has been repeatedly disapproved. Ayaaubkhan Noorkhan Pathan v. State of Maharashtra, reported in (2013) 4 SCC 465, is the fourth one. In paragraph 15, the clear view expressed is that the Court has consistently held filing of a public interest litigation not being permissible so far as 'service matters' are concerned.

31. The fifth and the last is the decision in Madan Lal v. State of Jammu and Kashmir, reported in (2014) 15 SCC 308. There, the proceedings did not arise out of a public interest litigation. Referring to the guidelines of the Court and the earlier decisions, referred to therein holding that since public interest litigation in service matters cannot be entertained, the civil appeals were dismissed.

32. We have noticed above the law laid down in the decision in Dr. Duryodhan Sahu (supra). Relying on it, there are binding decisions of the Supreme Court that a public interest litigation in respect of a service dispute would not be maintainable. That the decision in Dr. Duryodhan Sahu (supra) did not arise out of entertainment of a PIL petition by a high court under Article 226 of the Constitution of India in relation to a 'service matter' has, perhaps, remained

unnoticed for the last two decades. Despite our perception that the law may have developed along apparently a mistaken line of thought that Dr. Duryodhan Sahu (supra) is the authority for a particular proposition of law which may not be so on a deeper reading thereof, but bearing in mind the dicta that in the Constitutional scheme of justice dispensation in our country a high court is bound by the law declared by the Supreme Court, notwithstanding that such court may not have had the occasion to consider the particular point arising before the said high court, we would now attempt a reconciliation of the law laid down in Dr. Duryodhan Sahu (supra) with the views expressed in the decisions subsequent thereto. This is because of the reasons that it is the quality of certainty, which is absolutely important in law, and also it is our duty to make the law predictable instead of leaving it uncertain.

33. It is not difficult to flesh out the real reason for the conclusion that a public interest petition in a 'service matter' is not maintainable before a Court exercising power under Article 32/226 of the Constitution.

34. In Gurpal Singh (supra), caution has been sounded that every Court must be careful in nipping in the bud an attack in the guise of public interest intended to unleash a private vendetta, personal grouse or some other *mala fide* object. The pleadings in Bholanath Mukherjee (supra) were founded on the personal grievance of the appellants as seniormost teachers and they had not approached the Court as educationists. It was held that voicing of a service related dispute by disgruntled employees disguised as a PIL is not maintainable. Girjesh Shrivastava (supra) decries attempts to invalidate selection and appointment on public posts at the instance of strangers.

35. The underlying idea seems to be that the mechanism of 'public interest litigation' having been conceived for the greater public good, the main relief claimed in a PIL petition must not be intended for securing any benefit for an individual holding a public office or for depriving an individual holding a public office of any benefit that has accrued to him, at the instance of the appointee's competitors or even at the instance of a stranger, since no public interest is served thereby.

36. There is, however, an exception to this rule that the Supreme Court itself has carved out. If an appointment of an ineligible candidate is made to a public office, a stranger cannot apply before the Administrative Tribunal to have such appointment set aside based on the law laid down in Dr. Duryodhan Sahu (supra); but a writ for quo warranto might lie as held in Hari Bansh Lal (supra).

37. Also, at this stage, we wish to refer to the decision in State of Punjab v. Salil Sablokh, reported in (2013) 5 SCC 1, wherein it was also held that appointment of a Judge of a high court is not a 'service matter'. There, the Court was called upon to consider whether the writ petition instituted by the respondent in public interest challenging the appointment of the Chairman, Punjab Public Service Commission was maintainable. Considering the averments made in the writ petition, the learned Judge presiding over the Division Bench in His Lordship's judgment held that the PIL petition having been instituted for espousing the cause of the general public of the State of Punjab and to ensure that a man of ability and integrity is appointed as Chairman of the PSC, it cannot be held that the writ petition is just a service matter in which

only the aggrieved party has the *locus* to initiate a legal action in the court of law. After considering the decisions in Dr. Duryodhan Sahu, (supra), Dattaraj Nathuji Thaware (supra), Ashok Kumar Pandey (supra), Hari Bansh Lal (supra) and Girjesh Shrivastava (supra), His Lordship held that in such decisions the Supreme Court *"found that the nature of the matter before the Court was essentially a service matter and this Court accordingly held that in such service matters, the aggrieved party, and not any third party, can only initiate a legal action"*.

38. Having comprehended the gamut of case laws on the point, let us now take a look at some of the decisions of the Supreme Court on 'precedents' and what constitutes the 'ratio decidendi' of a decision having the effect of a binding precedent.

39. We start by referring to an English decision rendered at the dawn of the last century. It is the decision in Quinn v. Leatham, reported in 1901 AC 495. Lord Halsbury laid down the law in clear terms that a decision is an authority for what it actually decides, and not what logically follows from it. This observation has been approvingly referred

to by the Supreme Court in several of its decisions to which we need not refer in any great detail.

40. Moving on to the relevant decisions of the Supreme Court, we wish to refer to Abdul Kayoom v. CIT, reported in AIR 1962 SC 680, first. It contains an instructive passage, reading as follows:

> "*19. … Each case depends on its own facts and a close similarity between one case and another is not enough because even a single significant detail may alter the entire aspect. In deciding such cases, one should avoid the temptation to decide cases (as said by Cardozo) by matching the colour of one case against the colour of another. To decide, therefore, on which side of the line a case falls, the broad resemblance to another case is not at all decisive.*
>
> * * *
>
> *Precedent should be followed only so far as it marks the path of justice, but you must cut the dead wood and trim off the side branches else you will find yourself lost in thickets and branches. My plea is to keep the path to justice clear of obstructions which could impede it.*"
>
> (emphasis supplied)

41. In Regional Manager, FCI v. Pawan Kumar Dubey, reported in AIR 1976 SC 1766, the Court explained what constitutes the ratio decidendi of a case by holding that it is the rule deducible from the application of law to the facts and

circumstances of a case which constitutes its ratio decidendi and not some conclusion based upon facts which may appear to be similar; one additional or different fact can make a world of difference between conclusions in two cases even when the same principles are applied in each case to similar facts.

42. In Krishena Kumar v. Union of India, reported in (1990) 4 SCC 207, the Court was examining what was the ratio decidendi of the decision in D.S. Nakara v. Union of India, reported in (1983) 1 SCC 305 and how far that would be applicable to a class of retirees. Caution was sounded in the following terms:

> *"19. The doctrine of precedent, that is being bound by a previous decision, is limited to the decision itself and as to what is necessarily involved in it. It does not mean that this Court is bound by the various reasons given in support of it, especially when they contain 'propositions wider than the case itself required'."*

43. The Supreme Court in Haryana State Financial Corporation v. Jagdamba Oil Mills, reported in (2002) 3 SCC 496, on the topic of following binding precedents held as follows:

> *"19. Courts should not place reliance on decisions without discussing as to how the factual situation fits in with the fact situation of the decision on which reliance is placed. Observations of courts are not to be read as Euclid's theorems nor as provisions of the statute. These observations must be read in the context in which they appear. Judgments of courts are not to be construed as statutes. To interpret words, phrases and provisions of a statute, it may become necessary for Judges to embark upon lengthy discussions but the discussion is meant to explain and not to define. Judges interpret statutes, they do not interpret judgments. They interpret words of statutes, their words are not to be interpreted as statutes.*
>
> ***
>
> *21. Circumstantial flexibility, one additional or different fact may make a world of difference between conclusions in two cases. Disposal of cases by blindly placing reliance on a decision is not proper."*

(emphasis supplied)

44. Having noted the propositions of law, as are evident from a reading of the aforesaid decisions, we are of the considered opinion for the reasons that follow that neither Dr. Duryodhan Sahu (supra) nor the long line of decisions that have relied on it holding that a PIL in service matters cannot be entertained, would not stand in the way of answering the

first question that we have formulated in the affirmative. A common thread runs along all these decided cases under consideration of the Supreme Court, ~ no public spirited body of persons/association/organization had petitioned the Court seeking relief on behalf of a determinate class of persons who, in terms of the Directive Principles of State Policy and a social welfare legislation introduced in line therewith, are entitled to special treatment but have been deprived of the same by violation of their statutory rights, as well as for securing compliance of the provisions whereof the Court is approached in public interest. It is this common thread that distinguishes all such decisions from the case at hand and provides the flexibility to view the objection on maintainability from a different angle.

45. The pleadings in the PIL petition have been perused. The petitioner has averred in its petition that the employees of the Corporation who are physically disabled have been given a raw deal by reason of discriminatory treatment. Facilities that should have been offered to enable such employees to report for duty at their workplace during the pandemic have not been provided. This is not merely a

grievance voiced by the petitioner, which stems from any "service matter" but, in fact, is a grievance that runs deep and has its root in alleged failure of the Corporation to comply with the provisions of the RPWD Act in letter and spirit which, according to the petitioner, is a legal wrong and a legal injury caused to a determinate class of persons. If, indeed, by colouring the concern raised as one relatable to a 'service matter' the Corporation is allowed to succeed in its objection to the maintainability of this PIL petition, we can anticipate serious consequences ensuing and genuine grievances remaining unaddressed in a public interest litigation. Suppose, an authority within the meaning of Article 12 of the Constitution employs staff on Group D posts and taking advantage of the current uncertain employment opportunities in the country continues to exploit them with a looming threat of termination from service should they raise their voice. Such staff may have a remedy before the forum made available by the 1985 Act but having regard to perceived long drawn procedure associated with such proceedings leading to likely drainage of whatever financial resources they have and/or some other disability, such staff are not desirous of pursuing

their legal remedy lest in the process they antagonize their masters and lose their job and livelihood. Now, if a public spirited person were to bring the plight of such exploited staff to the notice and knowledge of a high court by a PIL petition, should it be thrown out at the threshold turning a blind eye to the alleged exploitation by taking the view that a PIL petition is not maintainable in a 'service matter' and such staff having individual cause of action ought to raise their grievance before the Administrative Tribunal under the 1985 Act? Applying the same logic, if inhuman working conditions of workmen, who form the labour class, and deprivation of welfare amenities by an employer are brought to the notice of a high court in a public interest litigation, should the petition be thrown out on the ground that remedy is available before the Industrial Tribunal under the Industrial Disputes Act, 1947? The answers to these questions, in our considered view, ought to be in the negative. No doubt, there are fora established to redress grievances of staff/workmen; but if the road to approach the specialized tribunals is inaccessible for them, their grievance, though real and genuine, would never be addressed. *Ubi jus ibi remedium* would always remain on

paper for them. To address a concern of such nature as well as the present nature raised in this PIL petition, we are minded to hold that the ratio of the decision of the Supreme Court in Bandhua Mukti Morcha v. Union of India, reported in (1984) 3 SCC 161, would be squarely attracted. There, the right of everyone in this country to live with human dignity and free from exploitation was recognized and it was held that this right to live with human dignity enshrined in Article 21 derives its life breath from the Directive Principles of State Policy and particularly clauses (e) and (f) of Article 39 and Articles 41 and 42.

46. Having read all the authorities and the tests laid down therein for entertaining a PIL petition, we can safely hold as follows:

(a) that, this PIL petition is not a camouflage to foster personal disputes;

(b) that, behind the beautiful veil of public interest, an ugly private malice, vested interest and/or publicity seeking is not lurking;

(c) that, this PIL petition is not intended to besmirch the character of others;

(d) that, the information given in the PIL petition is sufficient to show the gravity and seriousness involved; and

(e) that, this PIL petition is not mischievous seeking to assail an executive action for oblique motives.

The first question is thus answered by overruling the objection of the Corporation that this PIL petition is 'not maintainable'.

Question No.2:

47. An answer to the question would have to be given looking at the provisions of the RPWD Act and the rules framed thereunder, other relevant legislation, the decisions of the Central Government and the State Government taken from time to time during the pandemic as well as the circulars of the Corporation dated May 26, 2020 and those preceding it. However, before embarking on that journey, it would be profitable to trace the history of the RPWD Act.

48. It is often said that law is a great leveler when it comes to achieving the objective of ushering in and maintaining order in society. The law manifests itself through legislation enacted by the Parliament/Legislatures and

subordinate legislation. While remaining soaked in varying shades of sanctions, law contributes immeasurably in creation of an atmosphere of such social order that no person is left as inferior for any reason merely attributable to his/her religion, race, caste, sex, creed, birth or disability. A whole stream of provisions comprising Articles 14 to 18, 21, 23, 29 and Article 30 in Part III and Articles 39, 39A, 41 to 43A and Articles 45 to 47 in Part IV of the Constitution of India are devoted to the aforesaid cause.

49. Article 41 forming part of Part IV of the Constitution titled 'Directive Principles of State Policy' obligates the State to make effective provisions for securing the right to work, to education and to public assistance in cases of unemployment, old age, sickness and disablement, within the limits of its economic capacity and development. It is noteworthy that power to legislate on any matter pertaining to disability having been vested with the State by enlisting 'relief of the disabled and unemployable' at Entry 9 of the State List under the Seventh Schedule of the Constitution notwithstanding, it was felt necessary to give effect to *the Proclamation on the Full*

Participation and Equality of the People with Disabilities in the Asian and Pacific Region. Coupled with the obligation that Article 41 casts on the State, the said constitutional directive found substantial expression in the Parliament's enactment of the 1995 Act. Such a legislation, enacted in exercise of the Parliament's powers under Article 253 of the Constitution of India, received the assent of the President of India on January 1, 1996.

50. The statement of the object and reasons thereof read thus:

> *"An Act to give effect to the Proclamation on the Full Participation and Equality of the People with Disabilities in the Asian and Pacific Region.*
>
> *WHEREAS the Meeting to Launch the Asian and Pacific Decade of Disabled Persons 1993-2002 convened by the Economic and Social Commission for Asia and Pacific held at Beijing on 1st to 5th December,1992, adopted the Proclamation on the Full Participation and Equality of People with Disabilities in the Asian and Pacific Region;*
>
> *AND WHEREAS India is a signatory to the said Proclamation;*
>
> *AND WHEREAS it is considered necessary to implement the Proclamation aforesaid".*

51. The 1995 Act aimed at bringing people with disabilities to the mainstream and ensuring their participation in various fields by affirmative action. It made provisions for both prevention of disability and the promotion/development of the disabled by providing them education, employment, vocational training, etc. After the 1995 Act came into force, a provision for reservation of seats in educational institutions and government services was also made for the physically disabled.

52. With passage of time, it was felt that the 1995 Act left much to be desired notwithstanding its disabled-right centric approach and other provisions meant for the well-being of persons with disability. To be precise, the said legislation lacked provisions for protection against discrimination. It had taken into account only seven types of disabilities, while there were numerous to be accounted for. There were no special provisions therein for persons with benchmark disabilities. While the 1995 Act attempted to provide social security by means of financial assistance and insurance coverage, the equally important aspect of recreational therapy was left out.

It also lacked teeth in that the penal provisions therein were less intimidating and less deterring and the relevant authorities thereunder did not have much power of enforcement.

53. These aspects were deliberated upon and the Government of India formulated the National Policy for Persons with Disabilities for the first time in February 2006. The said policy focused on the following:

i) Physical Rehabilitation, including early detection and intervention, counseling and medical interventions and provision of aids and appliances and also development of rehabilitation professionals;

ii) Educational Rehabilitation which includes vocational training; and

iii) Economic Rehabilitation, for a dignified life in society.

54. On December 13, 2006, the United Nations General Assembly adopted its Convention on the Rights of Persons with Disabilities. India ratified the said Convention on the Rights of Persons with Disabilities on October 01, 2007 and in order to implement the said Convention, the RPWD Act came

to be enacted. The statement of the object and reasons thereof read thus:

> *"An Act to give effect to the United Nations Convention on the Rights of Persons with Disabilities and for matters connected therewith or incidental thereto.*
>
> *WHEREAS the United Nations General Assembly adopted its Convention on the Rights of Persons with Disabilities on the 13th day of December, 2006.*
>
> *AND WHEREAS the aforesaid Convention lays down the following principles for empowerment of persons with disabilities,—*
>
> *(a) respect for inherent dignity, individual autonomy including the freedom to make one's own choices, and independence of persons;*
>
> *(b) non-discrimination;*
>
> *(c) full and effective participation and inclusion in society;*
>
> *(d) respect for difference and acceptance of persons with disabilities as part of human diversity and humanity;*
>
> *(e) equality of opportunity;*
>
> *(f) accessibility;*
>
> *(g) equality between men and women;*
>
> *(h) respect for the evolving capacities of children with disabilities and respect for the right of children with disabilities to preserve their identities;*

AND WHEREAS India is a signatory to the said Convention;

AND WHEREAS India ratified the said Convention on the 1st day of October, 2007;

AND WHEREAS it is considered necessary to implement the Convention aforesaid".

55. The RPWD Act is aimed at fulfilling the obligations enumerated in the United Nations Convention on the Rights of Persons with Disabilities (UNCRPD), to which India is a signatory and covers as many as 21 disabilities as against 7 disabilities covered by the 1995 Act. The General Assembly of the United Nations has passed several resolutions dealing with the rights of the mentally and physically disabled, emphasising that disabled persons have the rights as regards human dignity, civil and political rights, entitlement to measures to ensure their self-reliance, the right to treatment, education and rehabilitation, the right to economic and social security, the right to live with their families, the right to have their special needs taken into account in economic and social planning and the right against discrimination, abuse and exploitation, apart from the fact that the disabled persons enjoy all rights available to other human beings.

56. In this backdrop, the concern expressed by the petitioner in relation to discriminatory treatment meted to the physically disabled employees of the Corporation, brought to our notice, has to be addressed.

57. We have noted that the impugned circular dated May 26, 2020 issued by the Corporation refers to two of its previous circulars dated April 13, 2020 and April 17, 2020 as well as Government Resolution dated April 21, 2020. These are neither annexed to the PIL petition as exhibits nor is any pleading available in relation thereto. However, having been referred to in the impugned circular, we had the occasion to look into the same after translation of its contents from Marathi to English. Let us note its contents, together with other relevant office memoranda issued by the Government of India.

58. Immediately after the lockdown was announced, the Ministry of Personnel, Public Grievances and Pensions, Department of Personnel and Training, Government of India issued an office memorandum on March 27, 2020 intimating all concerned Ministries/Departments that *"while drawing up roaster of staff who are required to attend essential services*

within their respective Ministry/Department" it may be kept *"in mind that employees, who are persons with disabilities (PwD) are exempted"*.

59. Insofar as the Government of Maharashtra is concerned, it issued a Government Resolution dated April 21, 2020. The aforesaid office memorandum dated March 27, 2020 was one of several documents that were considered and decision was taken. Relevant portions from such resolution read as under:

> "Under this Department's Government Resolutions referred to at Nos.2, 3, 4 and 7 above, issued from time to time, in view of implementing various preventive measures in order to prevent the spread of Corona Virus (COVID-19) in the offices in the State as well as in order that the officers/employees in the State should not get contracted to the said disease, instructions have been given to control the total attendance of employees in the Government offices.
>
> 2. In this regard, under the Central Government's Order dated 27 March 2020 referred to at no.8 above, instructions have been given regarding exempting disabled employees from attending office for providing essential services. Pursuant thereto, Maharashtra State Disabled Employees' Union, by the Letter referred to at No.9 above, has made demand to give exemption to all the disabled employees from attending office during the period of lockdown as immunity of disabled

> persons is not that good as compared to ordinary public as well as it is becoming difficult and troublesome for disabled persons to face the difficulties about transport, arising at eleventh hour.
>
> 3. In the aforesaid situation, all the disabled officers/employees are hereby exempted by this resolution, from attending the Government offices for carrying out the work during the period of lockdown in the State.
>
> 4. The said order shall be applicable till further orders."

60. Close on the heels of the aforesaid Government Resolution, the Corporation issued a circular bearing No.MOM/59 dated April 30, 2020. To the extent relevant, it reads as under:-

> "7. As per Circular No.MOM/10, date 13.04.2020 and Circular No.MOM/15, date 17.04.2020, the orders were issued to give exemption only to the handicapped employees in the essential services, working in Greater Mumbai Municipal Corporation, from attending the office, from the date 23.03.2020 to the date 30.04.2020 in order that they should not get affected by corona virus and to allow them to complete the work assigned to them, by staying at home if possible. Since the immunity power of the handicapped persons is not so good as compared to the ordinary person and it is becoming difficult and troublesome to the handicapped persons to face the difficulties arising at the eleventh hour, in respect of transportation, it is directed as per Government Resolution No.Samay

> 2020/M.No.35/18 (O.&M.), date 21.04.2020, to make amendment in the said circular and to give exemption from attending the government offices for carrying out the work, in the lockdown period. In pursuance thereof, the officers/the exemption is being granted to the Officers/Staff, working in Greater Mumbai Municipal Corporation, till the date 15/5/2020 from the next date of the issuance of the said circular.
>
> The execution of the aforesaid circular shall remain in effect from the next day of the issuance of the said circular.
>
> Proper directions should be given to all the concerned to execute the above Circular."

It is, therefore, clear from the above extract that while reiterating the terms of its previous circulars dated April 13 and 17, 2020, the Corporation also decided to follow the Government Resolution dated April 21, 2020 and thereby exempted physically disabled employees from attending their workplace till May 15, 2020.

61. This was followed by a circular bearing No.MOM/71 dated May 8, 2020. Paragraph 5 of such circular reads as under:-

> "5. As mentioned in Circular No.MOM/19, dt. 30.04.2020, Disabled Employees, working in Greater Mumbai Municipal Corporation, have been exempted from attending the duties for next 15 days from the date 01/05/2020. However, by making revision in the said order,

> admissible leave should be sanctioned even to such exempted disabled employees."

Although by the circular dated April 30, 2020 exemption was granted without any condition to be operative till May 15, 2020, the Corporation decided to make a revision with retrospective effect, quite arbitrarily and without any reason whatsoever, the effect of which would result in the period of absence of the physically disabled employees during May 1, 2020 till May 8, 2020 (i.e., the date of issuance of the circular) being treated as 'admissible leave', continuance of the lockdown notwithstanding.

62. What followed is the impugned circular bearing No.MOM/168 dated May 26, 2020. Despite noting the humane decisions taken earlier upon consideration of the decision of the State Government, the Corporation extended the terms of the earlier circular dated May 8, 2020 till May 31, 2020. Paragraph 2 of the Circular reads as under:-

> "2. As per Circular No.MOM/59 Dtd.30/04/2020, it has been mentioned to grant exemption to the disabled persons from remaining present on duty during the lock down period as the immunity power of disabled person is not so good as compared to the ordinary people and as it is very difficult and

> troublesome for these disabled persons to face the difficulties during travelling which arise at the eleventh hour. Accordingly, as per Circular No.MOM/71 Dtd. 08/05/2020, it was clearly mentioned that admissible leave should be sanctioned to all the disabled employees from the date 01/05/2020 to date 15/05/2020, who have been exempted from remaining present on duty. Now, by carrying out amendment therein, the leave may be sanctioned to the disabled workers/employees/officers who have been exempted from 31/05/2020, admissible as per the provisions of Municipal Corporation Service Rules."

63. The net result of the aforesaid decisions expressed in the circulars dated May 8 and 26, 2020 is that a physically disabled employee, not having leave to his credit, would forfeit his right to receive pay if he chooses to remain absent and has to survive without pay for not reporting for duty and rendering work that he is required in terms of the Service Regulations.

64. We have no hesitation to favour the view that the Central Government as well as the State Government exempted physically disabled employees from reporting at their respective work places during the lockdown period bearing in mind the ground situation and the hardships and inconveniences that could be faced by them. It is truism that

apart from very few physically disabled employees bearing strength of character and believing that the particular disabilities from which they suffer do not impede their normal life and have a resolve to do things all by themselves, others who are not so strong and resolute are at a clear disadvantage compared to employees without physical disabilities when it comes to the question of rendering work of any nature. They require help not for doing the work entrusted to them but to facilitate their preparedness to do such work. Whatever public conveniences and comforts normal employees without any physical disability might enjoy are obviously not available in equal measure to the physically disabled, which has to be borne in mind by every employer and looked at in a different perspective. The petitioner may not be incorrect in contending that during the pre-pandemic days, people who were otherwise inclined to assist the physically disabled employees by lending a helping hand are not daring to offer help and assistance, lest they themselves get infected by the virus. It is in such a scenario that the Central as well as the State Government thought it fit to grant exemption not only to its physically disabled employees but those working in

organizations under them. Although it is the stand of the Corporation that it is not bound by such decisions of the appropriate Government, we find that initially the Corporation had also decided in favour of similar exemption being granted to its physically disabled employees. A change in the mindset resulting in revision of the earlier decision, as is revealed, does not appear to be backed by consideration of any tangible evidence of the physically disabled employees not facing any inconvenience or discomfort while travelling to their workplaces or reference to any incident that could act as a trigger for such decision. If, indeed, the Corporation was not inclined to offer financial benefits like pay to the physically disabled employees who do not report for duty, it was the duty of the Corporation as a model employer to make special arrangements for public transport or special measures to ensure hassle-free travel by its physically disabled employees to their respective work places. We had inquired from Mr. Bukhari whether such facilities were made available or not, to which we have received an evasive answer; therefore, no other option is left to us but to ascertain from the pleadings the stand of the Corporation. In none of the two affidavits filed by

the Corporation, paragraph 14 of the PIL petition has been dealt with. We, therefore, applying the doctrine of non-traverse hold that the Corporation had not made any special arrangements for ensuring that its physically disabled employees do not face any hindrance while reporting for duty. The right of fair access is a right guaranteed by the RPWD Act. Though section 41 of the RPWD Act casts a duty on the State Government to provide for facilities of the nature referred to therein, nothing prevented the Corporation as a local authority to approach the State Government for taking suitable measures to provide facilities/access of the specified nature for its physically disabled employees. Having regard to section 2(b) of the RPWD Act, 'appropriate Government' in relation to a local authority like the Corporation is the State Government. There being nothing on record to suggest that the Corporation did approach the State Government for supporting its physically disabled employees by providing facilities/access to reach their workplaces during the challenging times posed by the pandemic, the conclusion is inescapable that it did not discharge its duty.

65. Law is well settled that any action of the authority within the meaning of Article 12 of the Constitution having civil consequences must be in compliance with the principles of natural justice. While withdrawing the exemption, the Corporation may not have been under any obligation to give the physically disabled employees opportunity of hearing; but the Corporation was not absolved of assigning reasons so that its decision could be tested by applying the doctrine of proportionality. We have looked in vain for the reasons in the said circulars and hold the action to be not only without the support of reasons but also vulnerable on application of the doctrine of proportionality.

66. Next, the Corporation's stand that it is not bound either by any decision of the Central Government or the State Government in the matter of grant of exemption from reporting for duty, is taken up for consideration. We have no hesitation to record that the Corporation's flip-flop has really intrigued us. As discussed above, the Corporation initially implemented the decisions contained in the office memorandum dated March 27, 2020 and the relevant Government Resolutions ending with the one dated April 21,

2020. However, since May 8, 2020, a complete volte face ensued without any apparent reason. It has not been explained to us why initially the Corporation granted the exemption and thereafter decided to withdraw it. This volte face deserves to be viewed seriously and disapproved strongly. Although not expressly referred to therein, the decisions taken by the Central Government and the State Government to exempt its physically disabled employees from reporting for duty can be seen to have the Disaster Management Act, 2005 (hereafter "the 2005 Act", for short) as the sources of their power to grant relief. True it is, neither the Central Government nor the State Government directed that such decisions would also apply to employees of local authorities like the Corporation, but nothing prevented the Corporation from adopting its spirit and extending similar relief of exemption to its physically disabled employees. This is precisely what the Corporation initially did, but withdrew such relief subsequently without reason. Being a local authority within the meaning of section 2(b) of the 2005 Act, the Corporation is bound under section 41 thereof to give effect to the measures that the State Government in the State

Plan proposes, to give relief to people affected by a disaster like the present pandemic. The State Government having thought of giving relief to its physically disabled employees by exempting them from reporting for duty without any strings being attached, and the Corporation also having decided to extend similar relief to its physically disabled employees, such employees' legitimate expectations of being treated at par with other physically disabled public employees were dealt a cruel blow with the Corporation deciding to withdraw the relief of exemption. While it could be true that only such of the directions of the State are binding on it as referred to in section 520C of the Corporation Act, it is incomprehensible as to why the Corporation instead of treading the same path of giving relief to its physically disabled employees should have taken a different path entailing adverse consequences for them without plausible explanation. Such discrimination at the instance of an Article 12 authority can hardly be justified and accepted. The other argument that the physically disabled employees are entitled to benefits referred to in paragraph 10 of the sur-rejoinder affidavit is of no relevance and we hold it to be without substance having regard to the

fact that such benefits, if even there were no pandemic, would have been extended to them. The relief of exemption, we are inclined to the view, ought to have been regarded and extended as a 'special relief', over and above other relief, considering the havoc wreaked by the pandemic all over the State. That the physically disabled employees are entitled under the RPWD Act to be viewed differently from able bodied employees and that in terms of the 2005 Act they were entitled to be given protection from the disaster, unfortunately, escaped the notice of the Corporation. Considering the circulars, we do not fully agree with Mr. Bukhari's argument that the Corporation is not bound to follow the relevant office memorandum/Government Resolution referred to above, for, the Corporation could have drawn inspiration from the same; and, we record acceptance of Dr. Warunjikar's argument that the Corporation by the impugned action has shown its inhuman and insensitive face, much to the detriment and prejudice of its physically disabled employees.

67. We further hold that the Corporation's stand that its revenues would be eroded if physically disabled employees

are granted leave without affecting their pay is thoroughly misconceived. Equally without substance is the stand that extending relief of exemption from duty to the physically disabled employees would give rise to a cause of action for employees above 55 years of age to claim similar exemption. The Corporation ought to have avoided creating a situation where the physically disabled employees are not to be worse off in these unimaginably hard times and left without pay, if they had no leave to their credit. The Corporation is a creature of the statute with specific obligations to discharge for the interest of the people and not a private employer working with a mindset of earning profits. Being an authority within the meaning of Article 12 of the Constitution, adherence to the Constitutional norms and ethos and extending the beneficent provisions of the extant statutes to those deserving of it should not have been done away with by the Corporation. While discharging its statutory obligations, the Corporation has to ensure that its physically disabled employees receive fair opportunity commensurate with their needs as well as facilities/access that the RPWD Act postulates, and also that they do not suffer for any other

disability not attributable to them. The economics part has to be taken care of by the Corporation. Those employees, who are more than 55 years old, not having any difficulty to report for duty might have been asked to stay away from work keeping in mind their health conditions, since they form the vulnerable class and if suffering from co-morbidity could be susceptible to the virus attack. They do not stand at par with physically disabled employees who have been granted exemption for special reasons. If relief is to be denied only on the ground that the Corporation's purse would be pinched, we have no doubt in our minds that it would amount to validation of acts *ultra vires* the Constitution. We, thus, find no justifiable reason to accept Mr. Bukhari's contention that financial burden is at all a sound reason that could stand in our way of granting relief claimed in the PIL petition.

68. Regarding Mr. Bukhari's contention that no letter of authority has been produced by the petitioner, we perceive this to be a contention raised in desperation. We cannot be oblivious to the fact that God has not been so kind to the physically disabled employees for whose benefit this petition has been filed. We cannot expect that each of these employees

would either approach us by filing individual petitions to espouse their grievances and for enforcement of their rights, or that they have to authorize the petitioner to espouse their cause. The whole purpose of a public interest litigation could be frustrated if such narrow outlook and approach were accepted. Public interest litigation, as found above, seeks to secure relief for those who may not be aware of their legal rights, or even if aware, are either not in a position to pursue their remedy for lack of financial resources or on other valid grounds. We see no reason to agree with the proposition raised. They cannot be rendered helpless by resorting to technicalities as canvassed on behalf of the Corporation.

69. The final objection regarding non-joinder of a necessary party, we are constrained to hold, has been urged to be rejected. Neither has the petitioner claimed any relief against the State Government, which would have been a necessary party in such a situation, nor are we proposing to grant any relief against it. Being thoroughly without any merit, the objection is overruled.

70. The impugned circular of the Corporation dated May 26, 2020 cannot, thus, stand judicial scrutiny and this PIL petition deserves judicial interdiction.

Question no.3

71. For the reasons discussed above, we declare the action of the Corporation to withhold the monetary benefits to the physically disabled employees with retrospective effect, as assailed, to be illegal. We also hold that such employees would be entitled to all normal monetary benefits, which ought not to have been withheld by the Corporation during the period of pandemic. Also, in view of the law laid down in paragraph 20 of the decision in Comptroller and Auditor General v. K.S. Jagannathan, reported in AIR 1987 SC 537, we hold that this is indeed a proper case where, in order to prevent injustice resulting to the concerned parties, the Court ought to pass an order or give directions which the Corporation should have passed or given had it properly and lawfully exercised its discretion. While granting an order in terms of prayer clause (a) of this PIL petition, we direct the Corporation to ensure that none of the physically disabled employees, who have not reported for duty during the

pandemic are denied pay benefits which they would have been entitled to, but for the pandemic and had they reported for duty. The monetary benefits that each employee is entitled shall be calculated and released in their favour in two equal monthly installments as early as possible, the first of which should reach them before Diwali and the second within 45 days of payment of the first installment.

72. The PIL petition, accordingly, succeeds without any order for costs.

(G.S.KULKARNI, J) (CHIEF JUSTICE)

73. Later, Ms. Mastakar, learned advocate for the Corporation, prays for stay of operation of the order. The prayer is considered and refused.

Jayant V. Salunke

Digitally signed by Jayant V. Salunke
Date: 2020.10.28 19:48:04 +0530

(G.S.KULKARNI, J) (CHIEF JUSTICE)