

THE HIGH COURT OF SIKKIM: GANGTOK
(Civil Extra-Ordinary Jurisdiction)

SINGLE BENCH: THE HON'BLE MR. JUSTICE A. MUHAMED MUSTAQUE, CHIEF JUSTICE

W.P. (C) No. 60 of 2022

SHRI RAVI TAMANG,

S/o Dhan Bahadur Tamang,

Aged about 35 years,

Resident of Majitar Compound, Melli Road,

Near Jorethang,

P.O. Majitar Bazar, P.S. Jorethang,

Namchi District, Sikkim – 737121

... **Petitioner**

Versus

- 1. STATE OF SIKKIM,**
Through its Chief Secretary,
Tashiling Secretariat,
Gangtok, Sikkim – 737101.
- 2. THE DEPARTMENT OF PERSONNEL,**
Administrative Reforms and Training,
Through the Secretary,
Government of Sikkim,
Tashiling Secretariat,
Gangtok, Sikkim – 737101.
- 3. THE SIKKIM PUBLIC SERVICE COMMISSION,**
Through its Secretary,
Old Tourism Building, M.G. Marg,
Gangtok, Sikkim – 737101.
- 4. SHRI SANTOSH KUMAR SHARMA,**
Lower Division Clerk,
Office of Power and Energy Department,
Jalipool Saramsa,
P.O. and P.S. Ranipool,
Sikkim – 737102.
- 5. SHRI ANIL KUMAR SHARMA,**
Lower Division Clerk,
Office of the Superintendent of Police,

A. Prologue

In a universe governed by legal principles, where relationships are defined by law, the perceived neutrality of those laws can itself become an impediment. In this case this Court has to deal with such an issue where a legal classification fails to preserve the inherent distinctions among the members of the class it created. The litigation arose from a seemingly neutral classification that groups individuals with total blindness and those with low vision within the same category. Although the legality of such classification is not under direct challenge in these proceedings, this Court is not precluded from addressing the broader and transcending issues that arise in the realm of public employment, where manifestations of discrimination become evident. Public employment under the State is a matter within the exclusive domain of the State. Therefore to what extent the State will be able to adopt measures that would balance the distinct interests of identifiable sub-classes is the point required to be considered in this case. The Court has to consider the question whether sub-classification is essential or not to achieve substantive equality in the realm of equal opportunity in public employment.

B. Factual background

2. The petitioner, Ravi Tamang, is a *bonafide* resident of Sikkim and a person with disability, having lost his eyesight completely (100%) at the age of three. The Sikkim Public Service Commission (SPSC), through the Secretary (Respondent No. 3), issued an advertisement *vide* Advertisement No. 06/SPSC/EXAM/2017 dated

13.06.2017, inviting applications from eligible local candidates for filling up of 100 (Hundred) posts of Lower Division Clerk (LDC). The advertisement specified that 04 (four) of these posts were reserved for Persons with Disability (PwD), particularly for candidates with blindness and low-vision.

3. The Petitioner successfully cleared the written examination and was subsequently declared eligible to appear for the viva voce. However, when the final list of selected candidates was published towards the end of January 2018, neither the Petitioner nor any of the other visually impaired candidates who had appeared for the viva voce, along with the Petitioner, were included in the selection list.

4. Subsequently, in the year 2022, Respondent No. 3 issued an advertisement *vide* Advertisement No. 08/SPSC/EXAM/2022 dated 06.08.2022 to fill 100 (Hundred) posts of LDC, in which only one post was reserved for PwD under the category of "Blindness and low vision". When the Petitioner attempted to submit his application online, he encountered a technical issue, as the application system did not accept 100% blindness as a valid entry. As a result, he was compelled to state his disability as 99% blindness in order to complete the form, apprehending that this discrepancy might later operate to his disadvantage. It seems that the said online module for submitting applications was later rectified to accept applications from the candidates having 100% blindness and the Petitioner had submitted his online form and appeared for the written examination as well.

5. It has come out that the candidates with a benchmark disability of low-vision have been selected and appointed. Benchmark disability is fixed at 40%. The Petitioner therefore, would submit preferring candidates having low-vision overlooking the claim of totally blind is discriminatory and is against the Article 16 of the Constitution of India. The Petitioner thus, seeks separation of the low-vision candidates from the category of blind and low-vision.

6. This Court need not delve into the issue concerning the selection of candidates with low-vision, inasmuch as the prevailing classification treats both blind and low-vision candidates as constituting a single category. Within such a unified category, merit alone ordinarily governs selection, unless a specific mechanism is devised to accommodate and reflect the differing needs and capabilities arising from distinct disabilities.

7. It is not in dispute that the Respondents are more meritorious than the Petitioner. However, this Court cannot overlook that such a homogenized classification may result in a denial of substantive equality. The inherent differences in the nature and extent of disabilities between blind and low-vision candidates bear directly upon their respective capacities to compete, particularly in the context of access to public employment opportunities. Treating unequals as equals, in such circumstances, risks undermining the very objective of equality under the law. Thus, the court proposes to issue direction for consideration of differing needs in the light of law to be stated hereafter.

C. Origin of the concept of Reasonable Accommodation and Indirect Discrimination.

8. The concept of reasonable accommodation emerged in the United States after the enactment of the *Equal Employment Opportunity Act of 1972*, which sought to address discrimination in employment. Initially, the term was applied to religious discrimination, requiring employers to accommodate employees' religious practices unless doing so caused undue hardship. Later, the concepts of reasonable accommodation and undue hardship gained greater legal significance with the enactment of the *Americans with Disabilities Act of 1990*, after which they became central to legal scholarship and judicial interpretation¹.

9. Reasonable accommodation challenges the traditional idea of equality as formal equality, which emphasizes "even-handedness" and aims to treat everyone in the same way. This formal approach tends to overlook individual differences, as people are ultimately grouped under the general category of human beings, ignoring their specific needs by treating them as if they lack distinct characteristics requiring attention. While such indifference to the unique traits of individuals or groups may be appropriate in certain anti-discrimination contexts, it is especially inadequate for persons with disabilities, since equal treatment can amount to a subtle form of discrimination. Formal equality fails to effectively advance the rights

¹Leticia de Campos Velho Martel, "Reasonable Accommodation: The New Concept from an Inclusive Constitutional Perspective" 14 *International Journal on Human Rights* (2011).

of persons with disabilities because it cannot account for their particular needs. Unlike race, where the primary demand is to be treated the same, persons with disabilities seek both similar treatment (where they are alike) and different treatment (where they differ). This is why the concept of reasonable accommodation is essential within anti-discrimination frameworks, as it centers on addressing individual needs.

10. The emphasis on individual needs is what makes reasonable accommodation effective in addressing the inequalities that persons with disabilities have historically experienced. The concept of reasonable accommodation thus enables a transition from formal equality to substantive equality. Substantive equality first acknowledges that every person, simply by being human, has the right to participate equally in society despite their differences. It also considers that people have different ways and capacities to participate, depending on their individual characteristics.

11. The Convention on the Rights of Persons with Disabilities calls on states to go beyond the limited idea of formal equality where everyone is treated the same regardless of their circumstances and instead embrace a more substantive and meaningful form of equality. It emphasizes the importance of “reasonable accommodation,” which involves making necessary and appropriate adjustments based on the specific needs of individuals with disabilities. This concept recognizes that true equality cannot be

achieved through uniform treatment alone; rather, it must consider each person's unique situation and context².

12. The United Nations uses this term in the Convention on the Rights of Persons with Disabilities, saying refusal to make accommodation results in discrimination. It defines "reasonable accommodation" in Article 2 as: "Reasonable accommodation means necessary and appropriate modification and adjustments not imposing a disproportionate or undue burden, where needed in a particular case, to ensure to persons with disabilities the enjoyment or exercise on an equal basis with others of all human rights and fundamental freedoms;"³

13. As noticed in the case of **Lieutenant Colonel Nitisha and Others. v. Union of India**⁴, the Apex Court observed as follows:-

".....

58. The genesis of the doctrine can be traced to the celebrated United States Supreme Court judgment in *Griggs v. Duke Power Co.* The issue concerned manual work for which the prescribed qualifications included the possession of a high school education and satisfactory results in an aptitude test. Two facts about the case bear emphasis. First, due to the inferior quality of segregated school education, African-American candidates were disqualified in higher numbers because of the aforementioned requirements than their white counterparts. Second, neither of these two requirements was shown to be significantly related to successful job performance.

59. Construing the prohibition on discrimination embodied in Title VII of the Civil Rights Act of 1964, Burger, C.J. held: (*Griggs case*), SCC OnLine US SC para 11)

"11. ... The Act proscribes not only overt discrimination but also practices that are fair in form, but discriminatory in operation."

²Frederic Megret and Dianah Msipa, "Global Reasonable Accommodation: How the Convention on the Rights of Persons with Disabilities Changes the Way We Think about Equality" 30 *South African Journal on Human Rights* 262-264 (2014).

³Convention on the Rights of Persons with Disabilities, 2006, art. 2.

⁴(2021) 15 Supreme Court Cases 125.

He went on: (Griggs case, SCC OnLine US SC para 14)

"14. ... good intent or absence of discriminatory intent does not redeem employment procedures or testing mechanisms that operate as "built-in headwinds" for minority groups and are unrelated to measuring job capability."

On the question of the standard of justification for rebutting a charge of indirect discrimination, the Court held as follows: (Griggs case, SCC OnLine US SC para 11)

"11.... The touchstone is a business necessity. If an employment practice which operates to exclude Negroes cannot be shown to be related to job performance, the practice is prohibited. "

Griggs, therefore, laid the groundwork for the thinking that meaningful equality does not merely mean the absence of intentional inequality. A statutory manifestation of disparate impact was codified in US law in the shape of the Civil Rights Act, 1991. Section 105 of the Civil Rights Act, 1991 makes a practice causing disparate impact a prima facie violation. The presumption can be rebutted by establishing that the practice is linked to the job and business. This can be overcome by a showing of alternative, equally efficacious, practices not causing disparate impact.

....."

14. Canada is also regarded as one of the early origins of the concept of reasonable accommodation. During the 1970s, while the United States was actively shaping this principle, Canada maintained a more conservative approach to discrimination law, largely because doctrines such as adverse impact discrimination were not yet recognized. Over time, however, Canada adopted from the United States both the ideas of adverse impact discrimination and reasonable accommodation. Subsequently, the principle evolved more extensively within the Canadian legal framework, and Canadian judicial decisions became influential authorities on the subject.

15. In **Ontario Human Rights Commission v. Simpsons-Sears Ltd⁵**, the Supreme Court of Canada established a foundational

⁵1985 SCC OnLine Can SC 75.

principle of reasonable accommodation. The matter concerned an employee who, after joining the Seventh-day Adventist Church, was unable to work on Saturdays due to sincere religious beliefs. As the employer required all full-time employees to work Saturdays under a general scheduling policy, she was reduced to part-time employment when she could not comply.

16. The Court held that discrimination is not limited to deliberate or direct conduct. A rule that is neutral on its face and uniformly applied may still be discriminatory if its practical effect imposes a disadvantage on a person because of religion or another protected ground. This was recognized as adverse effect discrimination.

17. The Court further held that once such discrimination is shown, the employer has a duty to take reasonable steps to accommodate the employee, unless accommodation would result in undue hardship. This requires sincere and practical efforts to modify schedules, policies or working conditions so far as reasonably possible, without causing excessive cost, serious disruption or substantial interference with business operations. It is specified in the paragraphs as outlined below:

“.....

23. Accepting the proposition that there is a duty to accommodate imposed on the employer, it becomes necessary to put some realistic limit upon it. The duty in a case of adverse effect discrimination on the basis of religion or creed is to take reasonable steps to accommodate the complainant, short of undue hardship: in other words, to take such steps as may be reasonable to accommodate without undue interference in the operation of the employer's business and without undue expense to the employer. Cases such as this raise a very different issue from those which rest on direct discrimination. Where direct discrimination is shown the employer must justify the rule, if such a step is possible under the enactment in question, or it is struck down. Where there is adverse effect discrimination on account of creed the offending order or rule will not necessarily be struck down. It will survive

in most cases because its discriminatory effect is limited to one person or to one group, and it is the effect upon them rather than upon the general work force which must be considered. In such a case there is no question of justification raised because the rule, if rationally connected to the employment, needs no justification; what is required is some measure of accommodation. The employer must take reasonable steps towards that end which may or may not result in full accommodation. Where such reasonable steps, however, do not fully reach the desired end, the complainant, in the absence of some accommodating steps on his own part such as an acceptance in this case of parttime work, must either sacrifice his religious principles or his employment.

.....”

18. As noticed in Lieutenant Colonel Nitisha and Others

(supra), the Apex Court has mentioned as follows:-

“

55. Hugh Collins and Tarunabh Khaitan explain the concept of indirect discrimination using Aesop’s Fable of the Fox and the Stork. They note:

“Aesop’s fable of the fox and the stork invokes the idea of indirect discrimination. The story tells how the fox invited the stork for a meal. For a mean joke, the fox served soup in a shallow dish, which the fox could lap up easily, but the stork could only wet the end of her long bill on the plate and departed still hungry. The stork invited the fox for a return visit and served soup in a long-necked jar with a narrow mouth, into which the fox could not insert his snout. Whilst several moral lessons might be drawn from this tale, it is often regarded as supporting the principle that one should have regard to the needs of others, so that everyone may be given fair opportunities in life. Though formally giving each animal an equal opportunity to enjoy the dinner, in practice the vessels for the serving of the soup inevitably excluded the guest on account of their particular characteristics.”

56. “Another excellent formulation of the doctrine can be found in the opinion of Advocate General Maduro of the Court of Justice of the European Union (“CJEU”). He notes that the distinctive attribute of direct discrimination is that the discriminator explicitly relies on a suspect classification (prohibited ground of discrimination) to act in a certain way. Such classification serves as an essential premise of the discriminator’s reasoning. On the other hand, in indirect discrimination, the intention of the discriminator, the reasons for his actions are irrelevant. He pertinently observes:

“In fact, this is the whole point of the prohibition of indirect discrimination: even neutral, innocent or good faith measures and policies adopted with no discriminatory intent whatsoever will be caught if their impact on persons who have a particular characteristic is greater than their impact on other persons.”

.....”

D. Medical Difference between Blindness and Low-Vision.

19. Blindness generally refers to severe or profound loss of vision, where a person has little or no usable sight even after best possible treatment or correction. According to the World Health Organization, blindness includes persons whose visual acuity in the better eye is worse than 3/60 (or equivalent severe field loss). Total blindness describes those who have a complete lack of light perception, documented as no light perception (NLP). Only about 15% of people with eye disorders have total blindness, and the majority of those with visual impairment have some level of vision.⁶

20. "Total Blindness" was the term used in India in 1970 which referred to persons having no perception of light. The multicentric survey of blindness in seven centers by the Indian Council of Medical Research in 1971–1974 reported the prevalence of "Total Blindness" (VA less than 20/400 in better eye with spectacle correction). The document of the "National Plan for Prevention of Visual Impairment and Control of Blindness" launched in 1976 does not include any definition of blindness. A Central Coordination Committee gave the definition of blindness as (a) vision of 20/200 or less with best possible spectacle correction.

21. Low-vision refers to partial but significant vision loss where some useful sight remains, but ordinary glasses, contact lenses,

⁶P. Vashist, S.S. Senjam, V. Gupta, N. Gupta and A. Kumar, "Definition of Blindness under National Programme for Control of Blindness: Do We Need to Revise It?" 65(2) *Indian Journal of Ophthalmology* 92 (2017).

medicine, or surgery cannot fully restore vision. The World Health Organization classifies low vision (older ICD categories) as visual acuity less than 6/12 but equal to or better than 3/60 in the better eye with best correction.⁷

22. Low-vision is a permanent visual impairment, broadly defined as a best-corrected visual acuity (BCVA) worse than 20/40 in the better eye, substantial visual field loss, or substantial loss of contrast sensitivity that is not correctable by refraction, medical treatment, or surgery. Low-vision describes those whose vision cannot be fully corrected by conventional methods such as glasses, contact lenses, medicine, surgery, magnification aids, or assistive technology. Low-vision services that may improve a patient's reading ability include environmental changes (such as better lighting), low-vision optical aids, and eccentric viewing training.⁸

E. Do persons who are blind and those with low-vision warrant distinct consideration in matters of public employment?

23. The question that arises is whether blind and low-vision persons require separate consideration in matters of public employment.

⁷National Technical Assistance Center on Blindness & Low Vision, available at: <https://www.ntac.blind.msstate.edu/resources/definitions-blindness-and-low-vision#:~:text=Blindness%20is%20defined%20as%20visual,services%20provide rs%20use%20it%20extensively>. (last visited on Apr. 13, 2026).

⁸P. Shah, S.G. Schwartz, S. Gartner, I.U. Scott and H.W. Flynn, "Low Vision Services: A Practical Guide for the Clinician" 10 *Therapeutic Advances in Ophthalmology*(2018).

24. In **Ravinder Kumar Dhariwal & Another v. Union of India and Others**⁹, the Apex Court has held in paragraph 37 as follows:-

“

37. Article 14 of the Indian Constitution states that “[t]he State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India”. The right to equality under the Indian Constitution has two facets – formal equality and substantive equality. While formal equality means that every person, irrespective of their attributes, must be treated equally and must not be discriminated against; substantive equality is aimed at producing equality of outcomes through different modes of affirmative action. The principle of reasonable accommodation is one of the means for achieving substantive equality, pursuant to which disabled individuals must be reasonably accommodated based on their individual capacities. Disability, as a social construct, precedes the medical condition of an individual. The sense of disability is introduced because of the absence of access to facilities.

84. Article 2 of the CRPD defines “discrimination on the basis of disability” in the following terms:

“2. ... “Discrimination on the basis of disability” means any distinction, exclusion or restriction on the basis of disability which has the purpose or effect of impairing or nullifying the recognition, enjoyment or exercise, on an equal basis with others, of all human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field. It includes all forms of discrimination, including denial of reasonable accommodation.”

85. While the CRPD recognises the denial of reasonable accommodation as discrimination based on disability, it also specifically imposes a positive duty on States under Article 5 (3) to take all appropriate steps to ensure the provision of reasonable accommodation.

86. Article 27 of the CPRD in the context of work and employment, inter alia, imposes the following obligations on State Parties to:

- (i) Recognise the right to work and employment of persons with disabilities;
- (ii) Prohibit discrimination in matters of employment; and
- (iii) Provide reasonable accommodation at the workplace.

87. The relevant provisions of Article 27 are extracted below:

“27. Work and employment.- (1) States Parties recognise the right of persons with disabilities to work, on an equal basis with others; this includes the right to the opportunity to gain a living by work freely chosen or accepted in a labour market and work environment that is open, inclusive and accessible to persons with disabilities. *States Parties shall safeguard and promote the*

⁹(2023) 2 SCC 209.

realization of the right to work, including for those who acquire a disability during the course of employment, by taking appropriate steps, including through legislation, to, inter alia:

(a) Prohibit discrimination on the basis of disability with regard to all matters concerning all forms of employment, including conditions of recruitment, hiring and employment, continuance of employment, career advancement and safe and healthy working conditions;

(b) Protect the rights of persons with disabilities, on an equal basis with others, to just and favourable conditions of work, including equal opportunities and equal remuneration for work of equal value, safe and healthy working conditions, including protection from harassment, and the redress of grievances...

...

(i) Ensure that reasonable accommodation is provided to persons with disabilities in the workplace.

...

(k) Promote vocational and professional rehabilitation, job retention and return-to-work programmes for persons with disabilities." (emphasis added)

88. The Committee on the Rights of Persons with Disabilities in General Comment Six provides that to achieve de facto equality in the workplace and to fulfil the duty of providing reasonable accommodation under Article 5 (3), the States parties, inter alia, should:

(i) Promote the right to supported employment, which includes work assistance;

(ii) Recognise denial of reasonable accommodation as discrimination and also prohibit multiple and intersectional discrimination and harassment;

(iii) Allow proper transition into and out of employment in a non-discriminatory manner; and

(iv) Provide equal and effective access to benefits and entitlements, such as retirement and unemployment benefits. These entitlements must not be infringed through exclusion from employment, aggravating the situation of exclusion.

....."

25. The Apex Court in **Vikash Kumar v. Union Public Service Commission and Others**¹⁰ has recognized reasonable accommodation with intrinsic individual dignity and held in paragraphs 60 to 65 as follows:-

¹⁰(2021) 5 SCC 370.

“

60. At the heart of this case lies the principle of reasonable accommodation. Individual dignity undergirds the 2016 RPwD Act. Intrinsic to its realisation is recognising the worth of every person as an equal member of society. Respect for the dignity of others and fostering conditions in which every individual can evolve according to their capacities are key elements of a legal order which protects, respects and facilitates individual autonomy. In seeking to project these values as inalienable rights of the disabled, the 2016 RPwD Act travels beyond being merely a charter of non-discrimination. It travels beyond imposing restraints on discrimination against the disabled. The law does this by imposing a positive obligation on the State to secure the realisation of rights. It does so by mandating that the State must create conditions in which the barriers posed by disability can be overcome. The creation of an appropriate environment in which the disabled can pursue the full range of entitlements which are encompassed within human liberty is enforceable at law. In its emphasis on substantive equality, the enactment of the legislation is a watershed event in providing a legal foundation for equality of opportunity to the disabled.

61. As a social construct, disability encompasses features broader and more comprehensive than a medical condition. The 2016 RPwD Act recognises that disability results in inequality of access to a range of public and private entitlements. The handicaps which the disabled encounter emerge out of disability's engagement with the barriers created by prejudice, discrimination and societal indifference. Operating as restraining factors, these barriers have origins which can be traced to physical, social, economic and psychological conditions in society. Operating on the pre-existing restraints posed by disability, these barriers to development produce outcomes in which the disabled bear an unequal share of societal burdens. The legislation has recognised that remedies for the barriers encountered by the disabled are to be found in the social environment in which they live, work and cohabit with others. The barriers encountered by every disabled person can be remedied by recognising comprehensive rights as inhering in them; rights which impose duties and obligations on others.

62. The principle of reasonable accommodation acknowledges that if disability as a social construct has to be remedied, conditions have to be affirmatively created for facilitating the development of the disabled. Reasonable accommodation is founded in the norm of inclusion. Exclusion results in the negation of individual dignity and worth or they can choose the route of reasonable accommodation, where each individual's dignity and worth is respected. Under this route, the “powerful and the majority adapt their own rules and practices, within the limits of reason and short of undue hardship, to permit realisation of these ends”.

63. In the specific context of disability, the principle of reasonable accommodation postulates that the conditions which exclude the disabled from full and effective participation as equal members of society have to give way to an accommodative society which accepts difference, respects their needs and facilitates the creation of an environment in which the societal barriers to disability are progressively answered. Accommodation implies a positive obligation to create conditions conducive to the growth and fulfilment of the disabled in every aspect of their existence — whether as

students, members of the workplace, participants in governance or, on a personal plane, in realising the fulfilling privacies of family life. The accommodation which the law mandates is “reasonable” because it has to be tailored to the requirements of each condition of disability. The expectations which every disabled person has are unique to the nature of the disability and the character of the impediments which are encountered as its consequence.

64. For instance, for a visually impaired person, the reasonable accommodation she requires might consist of screen magnification software or a screen reader [which can speak out the content on a computer screen in a mechanical voice]. It might also consist of content being made available in Braille and a sighted assistant. In the same way, for someone with a hearing impairment, reasonable accommodation could consist of speech-to-text converters, access to sign language interpreters, sound amplification systems, rooms in which echo is eliminated and lip-reading is possible. Similarly, for a person with dyslexia, reasonable accommodation could consist of access to computer programmes suited to meet their needs and compensatory time.

65. Failure to meet the individual needs of every disabled person will breach the norm of reasonable accommodation. Flexibility in answering individual needs and requirements is essential to reasonable accommodation. The principle contains an aspiration to meet the needs of the class of persons facing a particular disability. Going beyond the needs of the class, the specific requirement of individuals who belong to the class must also be accommodated. The principle of reasonable accommodation must also account for the fact that disability based discrimination is intersectional in nature. The intersectional features arise in particular contexts due to the presence of multiple disabilities and multiple consequences arising from disability. Disability therefore cannot be truly understood by regarding it as unidimensional. Reasonable accommodation requires the policy-makers to comprehend disability in all its dimensions and to design measures which are proportionate to needs, inclusive in their reach and respecting of differences and aspirations. Reasonable accommodation cannot be construed in a way that denies to each disabled person the customisation she seeks. Even if she is in a class of her own, her needs must be met. While assessing the reasonableness of an accommodation, regard must also be had to the benefit that the accommodation can have, not just for the disabled person concerned, but also for other disabled people similarly placed in future.

.....”

26. Reliance may also be placed on **Jeeja Ghosh & Anr. v. Union of India & Ors.**¹¹, wherein the Supreme Court of India dealt with the humiliating deboarding of a passenger with disability (cerebral palsy) from an aircraft and affirmed that persons with disabilities are

¹¹ 2016 Supreme(SC) 365; (2016) 7 Supreme Court Cases 761.

entitled to dignity, equality, accessibility, and reasonable accommodation.

“

36. The rights that are guaranteed to differently abled persons under the Act, 1995 are founded on the sound principle of human dignity which is the core value of human right and is treated as a significant facet of right to life and liberty. Such a right, now treated as human right of the persons who are disabled, has its roots in Article 21 of the Constitution. Jurisprudentially, three types of models for determining the content of the constitutional value of human dignity are recognised. These are: (i) Theological Models, (ii) Philosophical Models, and (iii) Constitutional Models. Legal scholars were called upon to determine the theological basis of human dignity as a constitutional value and as a constitutional right. Philosophers also came out with their views justifying human dignity as core human value. Legal understanding is influenced by theological and philosophical views, though these two are not identical. Aquinas and Kant discussed the jurisprudential aspects of human dignity based on the aforesaid philosophies. Over a period of time, human dignity has found its way through constitutionalism, whether written or unwritten. Even right to equality is interpreted based on the value of human dignity. Insofar as India is concerned, we are not even required to take shelter under theological or philosophical theories. We have a written Constitution which guarantees human rights that are contained in Part III with the caption “Fundamental Rights”. One such right enshrined in Article 21 is right to life and liberty. Right to life is given a purposeful meaning by this Court to include right to live with dignity. It is the purposive interpretation which has been adopted by this Court to give a content of the right to human dignity as the fulfillment of the constitutional value enshrined in Article 21. Thus, human dignity is a constitutional value and a constitutional goal. What are the dimensions of constitutional value of human dignity? It is beautifully illustrated by Aharon Barak [Aharon Barak “Human Dignity – The Constitutional Value and the Constitutional Right” Cambridge University Press (2015)] (former Chief Justice of the Supreme Court of Israel) in the following manner:

“The constitutional value of human dignity has a central normative role. Human dignity as a constitutional value is the factor that unites the human rights into one whole. It ensures the normative unity of human rights. This normative unity is expressed in the three ways: first, the value of human dignity serves as a normative basis for constitutional rights set out in the constitution; second, it serves as an interpretative principle for determining the scope of constitutional rights, including the right to human dignity; third, the value of human dignity has an important role in determining the proportionality of a statute limiting a constitutional right.”

37. All the three goals of human dignity as a constitutional value are expanded by the author in a scholarly manner. Some of the excerpts thereof, are reproduced below which give a glimpse of these goals:

“The first role of human dignity as a constitutional value is expressed in the approach that it comprises the foundation for all of the constitutional rights. Human dignity is the central argument for the existence of human rights. It is the rationale for them all. It is the justification for the existence of rights. According to Christoph Enders, it is the constitutional value that determines that every person has the right to have rights...

The second role of human dignity as a constitutional value is to provide meaning to the norms of the legal system. According to purposive interpretation, all of the provisions of the constitution, and particularly all of the rights in the constitutional bill of rights, are interpreted in light of human dignity...

Lastly, human dignity as a constitutional value influences the development of the common law. Indeed, where common law is recognized, judges have the duty to develop it, and if necessary modify it, so that it expresses constitutional values, including the constitutional value of human dignity. To the extent that common law determines rights and duties between individuals, it might limit the human dignity of one individual and protect the human dignity of the other.”

38. We should, therefore, keep in mind that CAR instructions have also been issued keeping in view the spirit of human dignity enshrined in Article 21 and the right that are to be ensured to such persons. The underlying message in all these provisions is the acknowledgment that human rights are individual and have a definite linkage to human development, both sharing common vision and with a common purpose. Respect for human rights is the root for human development and realisation of full potential of each individual, which in turn leads to the augmentation of human resources with progress of the nation. Empowerment of the people through human development is the aim of human rights.

39. In international human rights law, equality is founded upon two complementary principles: non-discrimination and reasonable differentiation. The principle of non-discrimination seeks to ensure that all persons can equally enjoy and exercise all their rights and freedoms. Discrimination occurs due to arbitrary denial of opportunities for equal participation. For example, when public facilities and services are set on standards out of the reach of persons with disabilities, it leads to exclusion and denial of rights. Equality not only implies preventing discrimination (example, the protection of individuals against unfavourable treatment by introducing anti-discrimination laws), but goes beyond in remedying discrimination against groups suffering systematic discrimination in society. In concrete terms, it means embracing the notion of positive rights, affirmative action and reasonable accommodation. The move from the patronising and paternalistic approach to persons with disabilities represented by the medical model to viewing them as members of the community with equal rights has also been reflected in the evolution of international standards relating specifically to disabilities, as well as in moves to place the rights of persons with disabilities within the category of universal human rights. {See – Report of United Nations Consultative Expert Group Meeting on International Norms and Standards Relating to Disability 10-2-2001}.

40. Earlier the traditional approaches to disability have depicted it as health and welfare issue, to be addressed through care provided to persons with disabilities, from a charitable point of view. The disabled persons are viewed as abnormal, deserving of pity and are, and not as individuals who are entitled to enjoy the same opportunities to live a full and satisfying life as other members of society. This resulted in marginalising the disabled persons and their exclusion both from the mainstream of the society and enjoyment of their fundamental rights and freedoms. Disability tends to be couched within a medical and welfare framework, identifying people with disabilities as ill, different from their non-disabled peers, and in need of care. Because the emphasis is on the medical needs of people with disabilities, there is a corresponding neglect of their wider social needs, which has resulted in severe isolation for people with disabilities and their families.

41. However, the nations have come a long way from that stage. Real awareness has dawned on the society at large that the problems of differently abled are to be viewed from human rights perspective. This thinking is reflected in two major declarations on the disability adopted by the General Assembly of the United Nations on December 20, 1971 and thereafter in the year 1975. The position was reiterated in the Beijing Conclave by the Government of Asian and Pacific Countries that was held from December 01-05, 1992 and in order to convert the resolutions adopted therein into reality, the Indian Parliament also passed the enactment, i.e. Act, 1995.

42. All these rights conferred upon such persons send an eloquent message that there is no question of sympathising with such persons and extending them medical or other help. What is to be borne in mind is that they are also human beings and they have to grow as normal persons and are to be extended all facilities in this behalf. The subject of the rights of persons with disabilities should be approached from human rights perspective, which recognised that persons with disabilities were entitled to enjoy the full range of internationally guaranteed rights and freedoms without discrimination on the ground Page No. 30 of 33 of disability. This creates an obligation on the part of the State to take positive measures to ensure that in reality persons with disabilities get enabled to exercise those rights. There should be insistence on the full measure of general human rights guarantees in the case of persons with disabilities, as well as developing specific instruments that refine and given detailed contextual content of those general guarantees. There should be a full recognition of the fact that persons with disability were integral part of the community, equal in dignity and entitled to enjoy the same human rights and freedoms as others. It is a sad commentary that this perceptions has not sunk in the mind and souls of those who are not concerned with the enforcement of these rights. The persons suffering from mental or physical disability experience and encounter nonpareil form of discrimination. They are not looked down by people. However, they are not accepted in the main stream either even when people sympathies with them. Most common, their lives are handicapped by social, cultural and attitudinal barriers which hamper their full participation and enjoyment of equal rights and opportunities. This is the worst form of discrimination which disabled feel as their grievance is that others do not understand them.

43. As pointed out in the beginning, the very first sentence of the book "NO PITY" authored by Joseph P. Shapiro reads:

"Non disabled Americans do not understand disabled ones."

The only error in the aforesaid sentence is that it is attributed to Americans only whereas the harsh reality is that this statement has universal application. The sentence should have read:

"Non disabled people do not understand disabled ones."

For, non-disabled people generally look upon disabled ones with pity. The general feeling is that these 'invalid people' are incapable of doing anything in life. They are burden on the society which the society bear. Of course, they sympathize with disabled persons. They may even want to willingly bear the burden. They may help them financially or otherwise. However, what they do not understand is the feeling of the people with disabilities. Disabled people no longer see their physical or mental limitations as a source of shame or as something to overcome in order to inspire others. What non-disabled people do not understand is that people with disabilities also have some rights, hopes and aspirations as everyone else. They do not want to depend on others. They want to brave their disabilities. They want to prove to the world at large that notwithstanding their disabilities they can be the master of their own lives. They can be independent. They can be self-reliant. They do not want sympathies of non-disabled. They want to be trusted. They want to be treated as valued member of the society who can contribute to the development and progress of the society. For this they want the proper environment to grow. Our society automatically under-estimates the capabilities of people with disabilities. People with disabilities want this change in the thinking of non-disabled. It is the thinking of Disability Rights Movement, USA that it is not so much the disabled individual who needs to change, but the society. Says disability rights activist Judy Heumann:

"disability only becomes a tragedy for me when society fails to provide the things we need to lead our lives-job opportunities, or barrier-free buildings, for example. It is not a tragedy to me that I am living in a wheel chair."

48. We would like to conclude this judgment by observing that to most disabled persons, the society they live in is a closed door which has been locked and the key to which has been thrown away by the others. Helen Keller has described this phenomena in the following words:

"Some people see a closed door and turn away. Others see a closed door, try the knob and if it doesn't open, they turn away. Still others see a closed door, try the knob and if it doesn't work, they find a key and if the key doesn't fit, they turn way. A rare few see a closed door, try the knob, if it doesn't open and they find a key and if it doesn't fit, they make one!"

These rare persons we have to find out."

27. In **Ravinder Kumar Dhariwal** (*supra*), in paragraph 77 opined as follows:

"....."

77. Since disability is a social construct dependent on the interplay between mental impairment with barriers such as social, economic and historical among other factors, the one-size-fits-all approach can never be used to identify the disability of a person. Disability is not universal but is an individualistic conception based on the impairment that a person has along with the barriers that they face. Since the barriers that every person faces are personal to their surroundings – interpersonal and structural, general observations on "how a person ought to have behaved" cannot be made.

....."

28. In **Deepshikha v. Medical Council of India & Ors.**¹², while considering the validity of exclusionary criteria framed by the Medical Council of India, the Hon'ble Delhi High Court expressly recognized that sub-classification within the broad category of locomotor disability may be constitutionally permissible where founded upon functional requirements and a rational nexus with the object sought to be achieved. As observed in paragraph 38 of the said judgment, relying upon **Transport and Dock Workers Union v. Mumbai Port Trust**¹³, the Court held that Article 14 does not prohibit reasonable classification, provided the policy reasonably classifies persons for achieving its object and treats equally all persons belonging to a well-defined class. The Court reiterated the settled twin tests of permissible classification, namely:

(i) that the classification must be founded on an intelligible differentia distinguishing persons grouped together from others left out of the group; and

(ii) that such differentia must have a reasonable relation to the object sought to be achieved.

¹²2015 SCC OnLine Del 9482.

¹³(2011) 2 SCC 575.

29. Further, in paragraph 39, referring to **Dr. Subramanian Swamy v. Director, CBI**¹⁴, the Court reaffirmed that the Constitution permits the State to determine, by the process of classification, what should be regarded as a class for purposes of legislation. It was emphasized that though some degree of inequality may arise from segregation of one class from another. Such segregation is valid so long as it is rational and not artificial or evasive. The qualities forming the basis of classification must bear a reasonable relation to the legislative object.

30. In paragraph 40, while referring to **S. Seshachalam v. Bar Council of Tamil Nadu**¹⁵, the Court reiterated that Article 14 forbids class legislation but does not forbid reasonable classification. It was clarified that the classification must not be arbitrary, artificial or evasive, but should rest upon real and substantial distinctions having a just and reasonable relation to the object sought to be achieved. Article 14 is attracted only where equals are treated differently without any reasonable basis.

31. Thereafter, applying the aforesaid principles, the Court concluded in paragraph 41 that the distinction drawn between persons with locomotor disabilities of upper limbs and persons with locomotor disabilities of lower limbs had a rational basis and reasonable nexus with the object sought to be achieved, and therefore could not be held violative of Article 14. Thus, the aforesaid authority clearly demonstrates that even within the

¹⁴(2014) 8 SCC 682.

¹⁵(2014) SCC Online SC 1011.

umbrella category of locomotor disability, sub-classification has been judicially recognized as permissible where functional differences exist and where such differentiation is supported by a legitimate objective. The precedent, therefore, supports the proposition that internal classification within a disability category is not per se unconstitutional, provided it satisfies the test of reasonableness under Article 14.

32. In the case of **Khandige Sham Bhat and K. Krishna Bhatta v. Agricultural Income-tax Officer, Kasaragod and another**¹⁶, the Apex Court has opined as follows:-

“

(7) At the outset it would be convenient to notice briefly the law on the doctrine of classification. The law on the subject is well settled and it does not require restatement in extenso. It would suffice if we notice the principles relevant to the enquiry. The law has been neatly and succinctly summarised in *Ram Krishana Dalmia v. Justice S. R. Tendolkar*, 1959 SCR 279 at pp. 296-297: (AIR 1958 SC 538 at pp. 547-548) thus:

“It is now well established that while Art. 14 forbids class legislation, it does not forbid reasonable classification for the purposes of legislation. In order however, to pass the test of of permissible classification two conditions must be fulfilled, namely, (i) that the classification must be founded on an intelligible differentia which distinguished persons or things that are grouped together from others left out of the group and, (ii) that the differentia must have a rational relation to the object sought to be achieved by the statute in question. The classification may be founded on different basis, namely, geographical, or according to objects or occupations or the like. What is necessary is that there must be a nexus between the basis of classification and the object of the Act under consideration. It is also well established that Art. 14 condemns discrimination not only by a substantive law but also by a law of procedure.” Though a law ex facie appears to treat that all that fall within a class alike, if in effect operates unevenly on persons or property similarly situated, it may be said that the law offends the equality clause. It will then be the duty of the court to scrutinise the effect of the law carefully to ascertain its real impact on the persons or property similarly situated. Conversely, a law may treat persons who appear to be similarly situate differently; but on investigation they may be found not

¹⁶AIR 1963 SC 591 (V 50 C 92).

to be similarly situate. To state it differently, it is not the phraseology of a statute that governs the situation but the effect of the law that is decisive. If there is equality and uniformity within each group, the law will not be condemned as discriminative, though due to some fortuitous circumstances arising out of a peculiar situation some included in a class get an advantage over others, so long as they are not singled out for special treatment.

.....

(9)The object for making the classification was not to discriminate against the agriculturalists of the Madras area but to bring them into line with the agriculturalist from the rest of the Kerala State in so far as the tax liability to pay agricultural income-tax was concerned. The existing law had therefore to be appropriately adapted for securing this end. In these circumstances, can it be said that there was no reasonable nexus between the classification and the object of the legislation. The object of the legislation thus was to impose agricultural income-tax on assesseees in the Madras area and also in respect of the period between November 1, 1956, and March 31, 1957 which could not be done under the pre-existing law. The differences between the two parts of that state have reasonable nexus to the said object. Because of the said differences the Legislature thought that the definition of "previous year" should be so amended in respect of the Madras area that the assesseees in that area may not escape payment of agricultural income-tax in respect of the period after the said area formed part of the Kerala State. ... For the reasons already stated, we hold that the classification in the present case is founded on intelligible differentia between the assesseees of the two parts of the state, and that the said differences have rational relationship to the object of the Amending Act.

....."

F. Priority to More Disadvantaged Among Equals.

33. The reasoning adopted by the High Court of Karnataka in **The State of Karnataka v. Ms. Latha H.N.**¹⁷ deserves endorsement.

The Court correctly recognized that blindness, in itself, cannot lead to a presumption that a candidate is unfit to perform public functions, and that any exclusion based on preconceived notions or stereotypes would offend the constitutional guarantee of equality. It was further held that where both candidates with complete blindness and those with low vision are equally capable of

¹⁷2024:KHC:45381-DB.

discharging the duties of the post, preference may legitimately be extended to the more disadvantaged category. In paragraph 3.4, it has been stated that:

"3.4. For the purpose of preferential treatment, as between the candidates of 'low vision' and the candidates of 'absolute blindness', the priority avails to the later since they are more disadvantageously placed qua the former subject to the condition that the blindness does not come in the way of discharging duties attached to the post."

34. The reasoning adopted by the Bombay High Court in **Harshad Govind Jadhav & Ors. v. State of Maharashtra & Ors.**¹⁸, in paragraph 14 commends itself for acceptance:

"14. Thus, while we are unable to accede to the demand made by the Petitioners for reserving 50% of posts falling to the share of "blindness and low vision" category for totally blind candidates, we do take note of the grievance raised by the Petitioners about totally blind candidates not securing fair deal as compared to low vision candidates in the matter of public employment. From Affidavits filed in the petitions, it appears that the participation of totally blind candidates in State services appears to be grim. Most of the reserved posts under Section 34(1)(a) appear to be filled up through low vision candidates. Considering the above ground reality, the State Government had issued GR dated 18 June 2007 for grant of priority to persons possessing higher degree of disabilities. After coming into effect of the Act of 2016, it appears that no further affidavit has been filed on behalf of the State Government pointing out the steps taken for ensuring adequate participation by totally blind candidates in State services. Mr. Chandurkar has drawn our attention to the GRs dated 20 April 2023 and 31 July 2025. However, it is seen that GR dated 20 April 2023 deal with grant of reservation in the matter of promotion up to lowest rank of Group-A service to persons with disabilities. Similarly, GR dated 31 July 2025 stipulates the procedure for implementation of reservation under the Act of 2016 in the matter of direct recruitment. However, GR dated 31 July 2025 does not make any specific provision for increasing participation by totally blind candidates in State services. In our view, therefore, it would be appropriate to direct the State Government to consider the issue and to take appropriate steps to ensure better participation by totally blind candidates in the State services....."

G. Conclusion and Direction

35. Upon an analysis of the principle of reasonable accommodation, viewed through the lens of dignity, it becomes

¹⁸2025:BHC-AS:36583-DB.

evident that disability and dignity are inseparable. Disability law recognizes the right of both blind and low-vision persons to live with dignity, proportionate to the challenges and physical limitations they endure. Disability and dignity are fundamentally interconnected. The recognition of dignity affirms that every individual, irrespective of disability, is entitled to respect, autonomy, and equal rights. It also imposes a positive obligation to identify and dismantle barriers whether visible or structural that impedes the full realization of such dignity.

36. While the law classifies blindness and low-vision under a single category for the purpose of reservation, such classification does not mandate identical treatment within that category. Classification into one group is for the purpose of fixing a ceiling limit of one percent to have an outer limit of reservation for such a group. Grouping them together does not preclude differentiated consideration, particularly when their physiological conditions and functional capacities are inherently distinct. A person with low vision, though impaired, retains some degree of sight and may perform certain functions with difficulty. In contrast, a blind person suffers from a total absence of vision and faces a qualitatively different level of limitation.

37. The definition of “person with disability” under Section 2(s) of the Rights of Persons with Disabilities Act, 2016 emphasizes the interaction between impairment and societal barriers that hinder full and effective participation. This necessitates an understanding of disability in functional terms. Further, the Act recognizes “benchmark disability” as a threshold of not less than forty percent

of a specified disability, and within the Schedule of the Act, it distinctly identifies “blindness” and “low vision” as separate conditions, thereby acknowledging their differing nature and impact.

38. In the context of public employment under Article 14 of the Constitution of India and Article 16 of the Constitution of India, the crucial consideration is whether blind and low-vision persons can be treated as equals in terms of opportunity. If individuals with inherently unequal functional capacities are made to compete on the same footing, it would amount to treating unequals as equals, thereby undermining the guarantee of substantive equality.

39. The principle of reasonable accommodation requires that differing needs be acknowledged and addressed. Failure to do so would reduce equality to a mere formality and defeat the very purpose of disability law, which is to ensure meaningful inclusion and uphold dignity. Disability law is not merely declaratory of rights; it is transformative in intent, aimed at enabling full participation within the constitutional framework.

40. The responsibility to operationalize these principles in public employment lies with the State. While the law provides for a broad classification, it does not restrict the State from evolving appropriate mechanisms for sub-classification within that category. Such sub-classification may be based on merit, functional capacity, or other relevant criteria, so long as it serves to balance competing interests and promote fairness.

41. If the State fails to account for the distinct disadvantages faced by different groups within the disabled category, it risks denying genuine equality of opportunity, particularly to those who are more severely disadvantaged. Therefore, in designing any framework of sub-classification, the State must take into account the unique challenges faced by blind and low-vision persons and ensure that the approach is responsive to their differing needs.

42. Substantive equality demands not uniform treatment, but a nuanced approach that addresses real disparities. Reasonable accommodation, as a legal principle, exists precisely to integrate individuals into the broader social structure and to eliminate discrimination arising from rigid uniformity.

43. It is well established that sub-classification is constitutionally permissible, as recognized in various judicial pronouncements of the Supreme Court and High Courts. Accordingly, the State Government is directed to consider the issue of sub-classification within the category in light of the above principles within a period of three months.

44. Accordingly, the writ petition being, **WP(C) No.60 of 2022**, stands disposed of as above.

Chief Justice

Approved for Reporting: Yes
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