

CASE DETAILS

MOHAMED IBRAHIM

v.

THE CHAIRMAN & MANAGING DIRECTOR & ORS.

(Civil Appeal No.6785 of 2023)

OCTOBER 16, 2023.

[S. RAVINDRA BHAT AND ARAVIND KUMAR, JJ.]

HEADNOTES

Issue for consideration: The appellant is aggrieved by a judgment of the High Court, which dismissed his petition, claiming arbitrariness in the declining of his candidature as Assistant Engineer (Electrical) by the Tamil Nadu Generation and Distribution Corporation Limited (TANGEDCO Corporation or employer), on the ground that he was colour blind.

Service Law – Disability – Colour blindness – After the medical examination, the appellant was informed that he had colour defective vision (colour blindness) – Corporation cancelled appellant’s selection – Appellant’s services were terminated – Propriety:

Held: TANGEDCO, has nowhere indicated in express terms, that colour vision deficiency, in any form or degree, is a bar to employment for AE – The facts of the case demonstrate that the appellant is fit, in all senses of the term, to discharge the duties attached to the post he applied and was selected for – Yet, he is denied the position, for being “disabled” as he is colour blind – At the same time, he does not fit the category of PWD under the the Rights of Persons with Disabilities Act, 2016 – The objective material on the record shows that the colour vision impairment is mild – Yet, TANGEDCO’s concerns cannot be characterised as unreasonable – However, TANGEDCO is under an obligation to work under the framework of “reasonable accommodation”, which is defined by Section 2 (y) of the 2016 Act – Reasonable accommodation thus, is “appropriate modification and adjustments” that should be taken

by the employer, in the present case, without that duty being imposed with “disproportionate or undue burden” – TANGEDCO- the employer expresses its willingness to accommodate the appellant – However, the post offered, i.e., Junior Assistant by the employer, is inconsistent with the appellant’s qualification which cannot be offered to him – The hierarchy of posts in the corporation indicates that the primary inspection responsibilities of technical nature are upon Junior Engineers, who oversee the work of Technical Assistants, and that of Linemen – It is evident that the AE works at a position of overseeing supervisory work of Junior Engineers – This could involve, at the field stage, satisfaction after visual inspection – Sufficient safeguards (whenever the appellant’s services in that regard are absolutely essential, and he is deployed on some occasions) can be taken, to ensure that he is accompanied by those without any colour vision deficiencies or impairments – Therefore, TANGEDCO, the respondent corporation, is directed to appoint and continue the appellant in its service, as AE (Electrical) at the appropriate stage of the grade of pay, from the date he was terminated from service, or his appointment was cancelled, and accommodate him in a suitable department, where he can be given appropriate responsibilities. [Paras 20, 25, 26, 27, 28]

LIST OF CITATIONS AND OTHER REFERENCES

Jeeja Ghosh v. Union of India [2016] 4 SCR 638; *Ravinder Kumar Dhariwal v. Union of India* [2021] 13 SCR 823; *Vikash Kumar v. Union Public Service Commission* [2021] 12 SCR 311 – relied on.

Tusharkumar Karsanbhai Vinzuda v. State of Gujarat SCA No.8611/2020, decided on 08.02.2022; *Bhavesh Khimabhai Pandit v. State of Gujarat* 12 SCA 2916/2022, decided on 11.02.2022; *Tushar Karsanbhai Vinzubhai v. Paschim Gujarat Vij Co. Ltd.* C/LPA 331/2022, decided on 23.09.2022; *Nandkumar Narayanrao Ghodmare v. State of Maharashtra* [1995] (Supp 4) SCR 565; *Pranay Kumar Poder v. State of Tripura* [2017] 2 SCR 797; *Ashutosh Kumar v. Film and Television Institute of India* [2022] 16 SCR 1094 – referred to.

Sutton Et Al. v. United Air Lines, Inc 527 US 471 (1999) – referred to.

**OTHER CASE DETAILS INCLUDING IMPUGNED
ORDER AND APPEARANCES**

CIVIL APPELLATE JURISDICTION : Civil Appeal No.6785 of 2023.

From the Judgment and Order dated 30.07.2021 of the High Court of Judicature at Madras at Madurai in WAMD No.1506 of 2021.

Appearances:

A Velan, Ms. Navpreet Kaur, Mritunjay Pathak, Aditya Raj Singh, Mehmood Umar Faruqui, TS Nanda Kumar, Advs. for the Appellant.

T. Harish Kumar, Navneet Dugar, Subham Kothari, Ms. Preethi G, Advs. For the Respondents.

JUDGMENT / ORDER OF THE SUPREME COURT**JUDGMENT****S. RAVINDRA BHAT, J.**

1. Leave granted. With consent the appeal was heard finally. The appellant is aggrieved by a judgment of the Madras High Court¹, which dismissed his petition, claiming arbitrariness in the declining of his candidature as Assistant Engineer (hereafter “AE”) (Electrical) by the Tamil Nadu Generation and Distribution Corporation Limited- (hereafter referred to as TANGEDCO or “Corporation” or “employer” variously), on the ground that he was *colour blind*. It is undeniable that he had completed the graduate degree course in electrical engineering, had also qualified in the recruitment process, and was selected for the post of AE.

2. The brief facts of this case are that the appellant was appointed as Assistant Engineer (Electrical) by the Superintendent’s Office, Karur in 2015² and he joined the services on 31.3.2017³. The corporation informed⁴

1 WA (MD) No. 1506/2021 dt. 30.7.2021.

2 A notification No. 01/15 dated 28.12.2015 was published for direct recruitment to the posts of Assistant Engineer (Electrical), Assistant Engineer (Mechanical) and Assistant Engineer (Civil) in the Respondent Corporation.

3 vide Memo No. 029721360IAdm.I./A1/ F. Appt. order/2017-7 dated 31.03.2017 by the Superintendent Office, Karur.

4 vide letter of selection bearing No. 024396/ 108/G.55/G.551/2015 dated 30.03.2017.

the appellant about his selection and asked him to report to office of the Superintendent, Karur on 15.04.2017. Later, he was asked to produce a Physical Fitness Certificate from the Senior Civil Surgeon Government Hospital, Kumbakonam after medical examination. After the examination, the appellant was informed that he had colour defective vision (colour blindness). By outpatient receipt (dated 15.04.2017) he was referred to Assistant Surgeon, Govt. Hospital, Musiri, Trichy District. The Asst. Surgeon confirmed that he had colour blindness and referred him to the Medical Board/ Ophthalmology department of MGM Trichy. The Superintendent's Office at Karur wrote letter dated 31.10.2017 to the Medical Board, Thanjavur Medical College Hospital, requesting the appellant's medical examination and a report based on that examination. The Regional Medical Board (hereafter "RMB") asked the appellant to appear for medical examination; he was told by the medical officer that the report would be forwarded to the corporation. A report dated 23.02.2018⁵, from RMB, Thanjavur was sent to the respondent, stating that: " *Fitness cannot be given for the patient since norms regarding colour vision not provided by the employer (TNEB)*".

3. Aggrieved, appellant approached the Madras High Court, which by order dated 11.03.2019⁶ directed the employer to decide the case in accordance with the RMB Report. The Medical Board, Thanjavur issued Report dated 05.07.2019 for the persons with Disabilities in consideration of the appellant's case. Subsequently, the corporation's office sent a letter, cancelling the appellant's selection, pursuant to the medical report dated 5.12.2019. The appellant's services were terminated with effect from 14.05.2020.

4. Aggrieved, the appellant approached the Madras High Court⁷ through appropriate proceedings under Article 226. The High court by order dated 17.03.2021 allowed the petition and directed appointment of the appellant to the post of AE (Electrical), with effect from 31.03.2017 (the date of his original appointment) and observed:

5 bearing No. 13278/MB/2017.

6 In WP(MD)No. 2255/2019.

7 W.P.(MD) No.15115 of 2020.

“7. The Superintending Engineer, in his letter dated 15.04.2017, has assumed that the petitioner had ‘‘colour blindness’’ which, was not backed with any medical report. Likewise, the Chief Engineer (Personal), in the impugned order of rejection has also termed the petitioner’s eye condition as ‘‘colour blindness’’. On the contrary, the medical experts attached to the Ophthalmological Department of the two Hospitals referred above, were clearly of the view that there was only a ‘defective colour vision’ and not ‘‘colour blindness’’. There is a huge difference between ‘‘colour blindness’’ and ‘defective colour vision’. In the case of defective colour vision, the person with such defect could perform his normal routine life, if the defectiveness is minimal and probably, if the defectiveness was to be maximum, may be such candidate may have some inconvenience in his routine vision.

8. Admittedly, such norms have not been prescribed in the notification dated 28.12.2015 calling for applications to the post of Assistant Engineer (Electrical), nor does the recruitment regulations of TANGEDCO prescribe these norms. While the medical experts have not certified the fitness of the petitioner’s colour vision, the respondents seem to have unilaterally come to a conclusion that the defectiveness in ‘colour vision’ opined by the medical expert, would be to such a percentage as to hamper the regular duties of an Assistant Engineer (Electrical). Such a decision is not based on intelligible differentia. No reliance has been placed on expert reports or any other material for the respondents to arrive at such a conclusion. “

9. The impugned order seems to place much reliance on the duties, responsibilities and functions for the post of an Assistant Engineer (Electrical). In order to ascertain as to whether a candidate holding the post would be disentitled or unfit to perform such duties, functions or responsibilities, the determination requires to be made on the basis of some materials supported by the reports of medical experts. In the absence of such materials or medical report and merely relying upon the duties, functions and responsibilities for the post of Assistant Engineer (Electrical), would be illogical and baseless and hence, such reasoning rendering the petitioner ‘unfit’, could be termed as ‘arbitrary’.”

5. Aggrieved by the above single judge order of the High Court, the employer- TANGEDCO, preferred writ appeal⁸ before the Division Bench of the High Court. The bench was of the opinion that employer had taken all relevant facts into consideration and having regard to the nature of the duties to be discharged in relation to the post i.e., AE by the appellant and observed:

“7. All that TANGEDCO communicated to the petitioner was that the special committee constituted to look into the petitioner’s case had opined that the petitioner would not be fit to discharge the duties involved in such post. There is always a presumption that a statutory body or an authority answering to that description under Article 12 of the Constitution would have acted in a reasonable manner and would have taken relevant considerations into account before passing an order or arriving at a decision. While such presumption may be rebuttable, the writ petitioner does not indicate any manifest arbitrariness in the impugned decision of TANGEDCO for the Court to perceive the same to be grossly disproportionate to the condition that the writ petitioner suffers from or the handicap that accompanies such condition.”

6. Aggrieved, the appellant approached this court under Article 136 and argued that the initial notification⁹ for the post did not specify any qualifying criteria with regard to vision or colour blindness. Therefore, it was submitted that the absence of any specific qualifying criteria in the notification, TANGEDCO’s action preventing the appellant from joining his duties is arbitrary and illegal. It was further argued that, following the High Court order dated 11.03.2019¹⁰, the appellant was examined by the RMB, Thanjavur and in its report, the expert opined that the appellant had defective colour vision; its report was not specific about whether the condition could affect his duties as there *were no specified visual norms for colour vision*. In fact, the RMB also noted that the employer had not set out the required norms and it was hence not possible to opine whether the appellant could or

8 W.A.(MD) No.506 of 2021.

9 No. 1/2015 dated 28.12.2015

10 In W.P.(MD)No. 2255/2019.

could not perform his duties. The appellant relied upon the report of Aravind Eye Hospital and Post-Graduate Institute of Ophthalmology, Chennai which stated that he could identify red as orange colour and green and blue as lighter shades of those colours.

7. This court, by its order dated 24.1.2023, requested TANGEDCO to explore the feasibility of accommodating the appellant. TANGEDCO, in its additional affidavit, submitted that such accommodation was not possible since the appellant was selected for a particular post which requires him to be in the field for at least 10 years of his career. This role involved visual inspection of machinery with specific colour coding. TANGEDCO further submitted that the AE's post is a technical position which involve colour coded cables and gadgets that require awareness of colours. The lack of their awareness could pose a risk to the appellant's safety and that of general public.

8. TANGEDCO, in its additional affidavit, urged that the appellant had not joined its services, nor worked for a day. His colour blindness came to light before he was permitted to join duty and hence, the provisions of Disabilities Act would not be applicable. This court, by order dated 5.4.2023, directed an independent ophthalmologist to facilitate the visual examination of the appellant and give its report in sealed colour. The report was received, after which TANGEDCO reiterated its original position, declining to accommodate the appellant in any position- administrative, planning, or other general department. The appeal was heard, in these circumstances.

9. TANGEDCO admits that there are no norms fixed by it as eligibility conditions for selection to the post of AE, vis-à-vis colour vision norms. However, it argued that as a public employer, the fitness of a selected candidate to discharge the functions required of the post, advertised, and for which a candidature is held out by an eligible applicant, having proper colour vision, is a necessary criterion. It was highlighted that an AE holds a fairly responsible position, inasmuch as initially the holder of the post, has to carry out routine inspections, to verify the work done by Linemen, Technical assistants, who are then supervised by Junior Engineers-II. Counsel for TANGEDCO, after obtaining instructions, on the previous date of hearing, stated that the appellant can be accommodated as Junior Assistant, *in view of his being an engineering graduate, as holder of a*

degree, and that “*the promotional avenues for the post of Junior Assistant/ Administration are Assistant/Administration, Administrative Supervisor, Assistant Administrative Officer, Administrative Officer and Senior Administrative officer and all these posts does not have any Technical, colour related, electrical live environment nature of work.*”

Contentions

10. TANGEDCO relies upon two single judge decisions of the Gujarat High Court (*Tusharkumar Karsanbhai Vinzuda v. State of Gujarat*¹¹ and *Bhavesh Khimabhai Pandit v. State of Gujarat*¹²) and a Division Bench judgment in *Tushar Karsanbhai Vinzubhai v. Paschim Gujarat Vij Co. Ltd.*¹³. In these three judgments, Gujarat High Court dealt with colour blindness of candidates, who had applied for the post of Technical Assistants, in electrical utilities [much like TANGEDCO] and after considering the report of the experts upheld the rejection of application for recruitment on the ground that the post required its holder to “*deal with live wires, especially during installation where the colour of the wires is of prime importance*”. Reliance was also placed on *Sutton Et Al. v. United Air Lines, Inc.*¹⁴ where the claimants had possessed poor visual acuity (20/200 on one eye and 20/400 in another eye). The appellants had sought employment as commercial airlines pilots which were declined based upon federal aviation administration certification qualifications. The standard prescribed was a vision of 20/100. The US Supreme Court, upon an interpretation of the term “disability” under the relevant law¹⁵ held that it was a condition which was a physical or mental impairment that substantially limits one or more of the life activities of such individual, was held that the claim was not established. The Court held that:

“To be substantially limited in the major life activity of working, then, one must be precluded from more than one type of job, a specialized job, or a particular job of choice. If jobs utilizing an individual’s skills (but perhaps not his or her unique talents) are available, one

11 SCA No.8611/2020, decided on 08.02.2022.

12 SCA 2916/2022, decided on 11.02.2022.

13 C/LPA 331/2022, decided on 23.09.2022.

14 527 US 471 (1999).

15 42 U. S. C. § 12102(2)(A).

is not precluded from a substantial class of jobs. Similarly, if a host of different types of jobs are available, one is not precluded from a broad range of jobs.”

11. TANGEDCO, in its additional affidavit states that its Chief Engineer (Personnel), by her additional affidavit disclosed its stated position that appellant’s colour blindness came to light before he was permitted to join duties and further that:

“6. I humbly state that the Petitioner applied for the post of Assistant Engineer and the same is a technical position which will involve cables and other gadgets having colour coding. I state that being so it is extremely essential to be aware of the colours, lack of which, would result in risk to the petitioner’s own safety and that of the general public and also the equipments installed for Generation and Distribution of supply to the public.

*7. I humbly submit that the Assistant Engineers/Electrical (Trainee) has to work both in the field and in the offices to complete their training period. An Assistant Engineer cannot be utilized completely for office works for almost ten years or more and thereafter in the promoted post of Assistant Executive Engineer also. The colour defectiveness will certainly impair the petitioner’s ability to perform the duties and responsibilities of Assistant Engineer/Electrical (Trainee). The petitioner herein with the qualification of a Bachelor of Engineering in Electrical and Electronics Engineering and having colour defectiveness cannot be considered to be accommodated in the **same post** i.e. Assistant Engineer/Electrical (Trainee) in TANGEDCO.”*

12. During the course of hearing, Mr. Mehmood Umar Faruqui, an AOR who was present in the courtroom offered his assistance. He had collected considerable case laws and literature on this subject. The court expresses its gratitude for his valuable contribution and efforts.

13. On behalf of the appellant, Mr. A. Velan, learned Advocate had appeared. It was argued that the report of the Sankara Nethralaya Hospital which was sought, dated 26.05.2023 used the reputed “Ishihara Pseudo Isochromatic Plates” based test. The material portion of the test revealed that he had mild colour vision deficiency. The conclusions of the Sankara Nethralaya Eye Hospital were as follows:

“3. On the above tests, he was diagnosed to have mild colour vision deficiency.

a) With Ishihara colour vision screening test except for the demo plate, he did not provide correct response to other plates.

b) With AO - HRR test, he was able to identify the demo plates and with the diagnostic plates, he responded for two of the milder form protan plates.

c) In FM 100 hue test, he was able to perform without any delay and he reconfirmed that he understood the test.

d) He was able to perform the wire matching test with fluency (Figure 1).

e) On signal test, he was making errors and confused it with yellow.

4. He was then taken to the “on the field test” for observing his capabilities at work station. The test was conducted at the work station of TANGEDCO situated at 141, Anna Salai, Chennai-600 002). He was asked to read out the colours of the display panels appeared on the monitor of the computer system. He was making errors when the colour comes closer to yellow. He was misreading that colour as lighter shade of green which is actually yellow.

5. On the control panel large display unit, he was asked to read out signals and also the numbers written in various colours. He was able to read the numbers and text without any difficulty. He was also able to identify the coloured arrow marks. (We are unable to provide picture as we were not allowed to take photo quoting confidentiality).

6. At the Chennai Distribution Control Unit, he was asked to identify the colours on the distribution line charts. He was able to identify majority of the colours but made errors with colours yellow and green closely placed.

7. He was also made to identify wires in the control room station. He identified majority of the colours but made errors with brown and orange coloured wires and also with green and yellow coloured wires.

8. *After the field visit, dilated fundus examination was performed. Retina, macula and optic nerve head appeared to be normal for both eyes.* ”

OBSERVATION:

1. *With the above findings observed during the examination conducted and considering his job profile, we conclude that he could encounter errors while reading the distribution line charts which is crucial for the job profile of AE’s to make judgment on the running of the lines.*

2. *He also has confusion when it comes to lighter shades of colours of green and red.* ”

14. The appellant also relies upon *Nandkumar Narayanrao Ghodmare v. State of Maharashtra*¹⁶ where the court had to deal with an aspirant to the position of Agriculture Officer. He was assessed to colour blindness. The court directed that the disorder or so-called defect should not constitute a bar to appointment and that he should be provided employment, commensurate with the organisation’s other requirements. The court was of the view that except some posts, there were other positions in the cadre that needed no perfect colour vision and that persons with colour blindness would also be accommodated. The court therefore directed the State to grant employment. Reliance also was placed upon the more recent judgment in *Pranay Kumar Poder v. State of Tripura*¹⁷ where the Court highlighted the features of the Ishihara colour vision test. It was emphasized that colour vision deficiency is neither impairment of vision and in that sense falling within the disability spectrum calling for treatment under the Rights of Persons with Disabilities Act, 2016 nor is it of such condition as to bar sufficiently qualified persons’ entitlement to be employed in an organization that can accommodate her educational attainments and talents. Learned counsel also relied upon *Ashutosh Kumar v. Film and Television Institute of India*¹⁸ where like in the present case, the expert body which is the All India Institute of Medical Sciences (AIIMS) reported that the petitioner suffered from colour vision deficiency.

16 1995 (Supp 4) SCR 565.

17 2017 (2) SCR 797.

18 [2022] 16 S.C.R 1094.

The FTII had refused him admission. The court referred to the technical experts' report, and stated that the overall emphasis of the course- the admission of which was sought placed emphasis on appreciation of art and culture, of innovation, intuitiveness unrestricted by impediments which can be overcome by assistance. The court was therefore of the opinion that that despite the colour vision deficiency, the applicant should be granted admission.

15. It is further pointed out that in the hierarchy of posts, the junior most would be a lineman; the next in line would be a Technical Assistant, who is a diploma holder; above whom would be the Junior Engineer (Grade-II). It was emphasized that the Junior Engineer (Grade-II) would thus supervise and oversee the work of Technical Assistants and Lineman who would be the individuals or employees responsible to actually visit the site. The AE would be in a position therefore, fourth in the hierarchy above the Lineman, Technical Assistant and Junior Engineer (Grade-II). It was highlighted -based upon the organizational division of the corporation that there are several branches where Assistant Engineers are accommodated. For instance, the AE who functions as a Section Officer, can also be asked to participate as AE (Substation Maintenance). In other words, these posts are inter-changeable. Likewise, the AE (Shift Engineer) is inter-changeable with Substation Maintenance Department AEs. The AEs are also expected to work in the office of the Superintending Engineer (SE). They can be deployed to work as AE (Material Management) or AE (CAUP) in the office of the Executive Engineer or even as AE (General) in the office of the SE office only. The AE (General) in the office of the SE can interchangeably use for AE (Lines) in the Substation.

16. It was argued that there are sufficient safeguards to ensure that a person like the appellant can be posted in a position in not merely in one department but several departments or units which may not require actual field participation. It is also emphasized that the mandate of accommodation or reasonable accommodation requires the employer to ensure that every person's talent is utilized to the utmost, within the limitations that she or he is placed in, inadvertently. Therefore, the employer in the present case, was clearly under a duty to accommodate the appellant and continue with his employment.

Analysis and Conclusions

17. As noticed earlier, TANGEDCO, has nowhere indicated in express terms, that colour vision deficiency, in any form or degree, is a bar to employment for AE. Its broad argument that a candidate's level of medical fitness necessary for the discharge of functions and responsibilities, required of the post, is unexceptionable. Yet, that broad formulation is not sufficient ground for it to deny the *possibility of any form of accommodation*. The need-nay, the entitlement of the appellant to some form of accommodation, in this case, is undeniable, because he is a graduate in electrical engineering. This implies that he has more than basic or essential knowledge of the subject; he has awareness and experience in respect of identification of functions of various kinds of electrical equipment and appliances. A precondition for successfully completing a course in electrical engineering, is practical experience during the course, about the functions of such equipment and appliances, the possible defects and solutions for their breakdown. The facts of this case instruct us that there is nothing on record to suggest that whatever condition the appellant had, was without his awareness; his academic performance, skill and proficiency, during the course of his education nowhere appears to have highlighted the colour vision deficiency, which appears to have been discovered after his selection. As a condition for his selection, he cleared the public examination successfully, and appears to have also participated in the viva voce or interview, successfully.

18. The provisions of the Rights of Persons with Disabilities Act, 2016 (hereafter "the Act") were preceded by the previous law, the Persons with Disabilities (Equal Opportunities, Protection of Rights, and Full Participations) Act, 1995. The previous law, was enacted by Parliament pursuant to our country becoming a signatory to the Proclamation on the Full Participation and Equality of the People with Disabilities in the Asian and Pacific Region¹⁹. The earlier Act, as well as the Act have set out provisions to enable participation, and empowerment of persons with disability (PWD), including affirmative action for their admission to educational institutions,

¹⁹ A Meeting held 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.

entry level reservations in established controlled by the state or its agencies, and general provisions to enable physical access to institutions; it also mandates provisioning of existing institutions, to accommodate PWDs, in physical infrastructure, and at all points to enhance full participation and functioning of such individuals. Its provisions defining “disability” and persons with disabilities²⁰, are fairly elaborate; interestingly these concepts are defined in an inclusive manner, lead to potentialities for their use. However, at the same time, the actual benefits in the form of affirmative action are defined by a specific category of PWDs (orthopaedical, visual, hearing, mental, etc.) and tied to the context of “benchmark” disabilities²¹, which entitles those PWDs who qualify with a certain threshold of disability (40 per cent or more) to the affirmative action and other similar benefits²².

20 Section 2 (s) defines as follows: “*person with disability*” means a person with long term physical, mental, intellectual or sensory impairment which, in interaction with barriers, hinders his full and effective participation in society equally with others;’

21 Which is defined by Section 2 (r): “*“person with benchmark disability” means a person with not less than forty per cent. of a specified disability where specified disability has not been defined in measurable terms and includes a person with disability where specified disability has been defined in measurable terms, as certified by the certifying authority;*”

22 Section 33 of the Act reads as follows: **Identification of posts for reservation-** The appropriate Government shall—

(i) identify posts in the establishments which can be held by respective category of persons with benchmark disabilities in respect of the vacancies reserved in accordance with the provisions of section 34;

(ii) constitute an expert committee with representation of persons with benchmark disabilities for identification of such posts; and

(iii) undertake periodic review of the identified posts at an interval not exceeding three years.

34. Reservation. — (1) Every appropriate Government shall appoint in every Government establishment, not less than four per cent. of the total number of vacancies in the cadre strength in each group of posts meant to be filled with persons with benchmark disabilities of which, one per cent. each shall be reserved for persons with benchmark disabilities under clauses (a), (b) and (c) and one per cent. for persons with benchmark disabilities under clauses (d) and (e), namely:—

(a) blindness and low vision;

(b) deaf and hard of hearing;

(c) locomotor disability including cerebral palsy, leprosy cured, dwarfism, acid attack victims and muscular dystrophy;

(d) autism, intellectual disability, specific learning disability and mental illness;

The nature of inclusion of specified categories *only to the exclusion of other categories of disabilities*, on the one hand, and the eligibility of a threshold, in the opinion of this court, constitute barriers.

19. The Act contains a general non-discriminatory provision:

“3. Equality and non-discrimination.

(1) The appropriate Government shall ensure that the persons with disabilities enjoy the right to equality, life with dignity and respect for his or her integrity equally with others. (2) The appropriate Government shall take steps to utilise the capacity of persons with disabilities by providing appropriate environment.

(3) No person with disability shall be discriminated on the ground of disability, unless it is shown that the impugned act or omission is a proportionate means of achieving a legitimate aim.

(4) No person shall be deprived of his or her personal liberty only on the ground of disability.

(5) The appropriate Government shall take necessary steps to ensure reasonable accommodation for persons with disabilities.”

20. The twin conditions of falling within defined categories, and also a threshold condition of a minimum percentage, of such disabilities, in fact are a barrier. The facts of this case demonstrate that the appellant is fit, in all senses of the term, to discharge the duties attached to the post he applied and was selected for. Yet, he is denied the position, for being “disabled” as he is colour blind. At the same time, he does not fit the category of PWD under the lexicon of the universe contained within the Act. These challenges

(e) multiple disabilities from amongst persons under clauses (a) to (d) including deaf-blindness in the posts identified for each disabilities:

Provided that the reservation in promotion shall be in accordance with such instructions as are issued by the appropriate Government from time to time:

Provided further that the appropriate Government, in consultation with the Chief Commissioner or the State Commissioner, as the case may be, may, having regard to the type of work carried out in any Government establishment, by notification and subject to such conditions, if any, as may be specified in such notifications exempt any Government establishment from the provisions of this section.

traditional understandings of what constitute “disabilities”. The court has to, therefore, travel beyond the provisions of the Act and discern a principle which can be rationally applied.

21. In *Jeeja Ghosh v. Union of India*²³ this court observed:

“40. 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.”

22. *Ravinder Kumar Dhariwal v. Union of India*²⁴ highlighted on the right to equality and underlined the two aspects: formal equality and substantive equality. It stated that substantive equality aims at producing equality of outcomes, and in the context of the case, observed that 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.”* The court recollected *Vikash Kumar v. Union Public Service Commission*²⁵, which held as follows *“The principle of reasonable accommodation acknowledges that if disability” should be remedied and opportunities are “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*

23 [2016] 4 SCR 638.

24 [2021] 13 SCR 823

25 [2021] 12 SCR 311

the route of reasonable accommodation, where each individual's dignity and worth is respected."

23. It was also noted that provisions of Chapters VII and VIII of the Act are in furtherance of the principle of reasonable accommodation which is a component of the guarantee of equality. This has been recognised by a line of precedent. This court, in multiple cases has held that the principle of reasonable differentiation, recognising the different needs of persons with disabilities is a facet of the principle of equality.

24. The significant impact of *Vikash Kumar* (supra) is that the case dealt with a person with a chronic neurological condition resulting in Writer's Cramp, experiencing extreme difficulty in writing. He was denied a scribe for the civil services exam by the UPSC, because he did not come within the definition of person with benchmark disability (40% or more of a specified disability). This court, rejected this stand, and held him to be a person with disability. It was also stated that the provision of scribe to him fell within the scope of reasonable accommodation. The Court said:

"... 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..."

25. The appellant is, for all purposes, treated as a person with disability, but does not fall within the categories defined in the Act, nor does he possess the requisite benchmark eligibility condition. The objective material on the record shows that the colour vision impairment is mild. Yet, TANGEDCO's concerns cannot be characterised as unreasonable. However, TANGEDCO is under an obligation to work under the framework of "reasonable accommodation", which is defined by Section 2 (y) as follows:

"(y) 'reasonable accommodation' means necessary and appropriate modification and adjustments, without imposing a disproportionate or undue burden in a particular case, to ensure to persons with disabilities the enjoyment or exercise of rights equally with others;.."

26. Reasonable accommodation thus, is “*appropriate modification and adjustments*” that should be taken by the employer, in the present case, without that duty being imposed with “*disproportionate or undue burden*”. TANGEDCO- the employer expresses its willingness to accommodate the appellant. Yet the position it offers, is highly inadequate: that it is belated, is beside the point. In the considered view of this court, the post offered, i.e., Junior Assistant, is inconsistent with the appellant’s qualification which cannot be offered to him; the offer is a mere palliative gesture, which he justifiably rejected.

27. TANGEDCO, during the hearing was unable to show how it employing the appellant in one of the many departments or units [as AE (Material Management) or AE (CAUP) in the office of the Executive Engineer or even as AE (General) in the office of the SE or as AE (General)] is not possible. The hierarchy of posts further indicates that the primary inspection responsibilities of technical nature are upon Junior Engineers, who oversee the work of Technical Assistants, and that of Linemen. It is evident that the AE works at a position of overseeing supervisory work of Junior Engineers. This could involve, at the field stage, satisfaction after visual inspection. Sufficient safeguards (whenever the appellant’s services in that regard are absolutely essential, and he is deployed on some occasions) can be taken, to ensure that he is accompanied by those without any colour vision deficiencies or impairments. TANGEDCO’s units and organizational structure, in this court’s opinion, have sufficient possibility for accommodating the appellant in a unit or department which may not require utilization of skills that involve intense engagement with colour. As stated earlier, these are AE (General) in SE office, AE (CAUP) in EE office; AE (Material Management). The TANGEDCO, is under an obligation to ensure that the appellant is therefore, suitably accommodated in any such general department or establishment.

28. In view of the foregoing discussion, the impugned judgment cannot stand; it is set aside. TANGEDCO, the respondent corporation, is directed to appoint and continue the appellant in its service, as AE (Electrical) at the appropriate stage of the grade of pay, from the date he was terminated from service, or his appointment was cancelled, and accommodate him in a suitable department, where he can be given appropriate responsibilities.

The appellant shall also be entitled to 50% of full arrears of salary, and all allowances, and his service shall be reckoned from the original date of appointment, (which was later cancelled), with full continuity. The appeal is allowed in these terms, without order on costs.

Headnotes prepared by:
Ankit Gyan

Appeal allowed.