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IN THE HIGH COURT OF BOMBAY AT GOA
WRIT PETITION NO. 687 OF 2024
WITH
MISC. CIVIL APPLICATION NO. 2925 OF 2024(F)

1. The Manager, Canara Bank,
Mr. Nilanchal Prasad Jena,
36 years of age, having office at
Canara Bank, NGPDA Colony,
Alto Porvorim, Bardez, North Goa,
Goa-403521

2. The Regional Manager,
Canara Bank, Mr. Rati Kanta Dora,
50 years of age, having office at
Canara Bank, 1st Floor, Mathias Plaza,
18th June Road, Panaji, Goa.

3. The Canara Bank,
Through the Regional Manager,
Mr. Rati Kanta Dora, 50 years of
Age, having office at Canara Bank,
1st Floor, Mathias Plaza,
18th June Road, Panaji, Goa

....PETITIONERS

Versus

1. Sagar Jawdekar, major in age,
R/o 7-C, Patto Colony,
Government Qtrs, Opposite
Ruchi Hotel, Panaji, Goa,
403001

2. The Court of the State Commissioner
For Person with Disabilities, 1st floor,
Building B, Goa Housing Board,

New market complex, Porvorim Goa.

3. The Regional Director,
Reserve Bank of India,
7th Floor, Gera Imperium-III
Patto, Panaji Goa.

....RESPONDENTS

**WITH
MISC. CIVIL APPLICATION NO. 2925 OF 2024(F)
IN
WRIT PETITION 687 OF 2024**

The Court of the State Commissioner
For persons with Disabilities,
Through the State Commissioner
Mr. Guruprasad Pawaskar,
1st Floor, Building B, Goa Housing Board,
New Market Complex, Porvorim, Goa.

...APPLICANT

In the matter of;

1. The Manager, Canara Bank,
Mr. Nilanchal Prasad Jena,
36 years of age, having office at
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Reserve Bank of India,
7th Floor, Gera Imperium-III
Patto, Panaji Goa.

....RESPONDENTS

Mr. D. Lawande with Mr. Shrikrishna alias Amogh Sawaikar for
the Petitioner.

Mr. Vithal Naik, Advocate for Respondent No. 1.

Mr. Rahul Bajaj with Ms. Taha Bin Tasneem and Mr. Nigel J.
Fernandes, Advocates for Respondent No.2

Mr. Gaurang Panandikar, Advocate for the Respondent No. 3.

CORAM:

BHARAT P. DESHPANDE, J

RESERVED ON:

21st November, 2024.

PRONOUNCED ON:

02nd December, 2024

JUDGEMENT :

1. Rule.
2. Rule is made returnable forthwith.
3. Heard finally with consent of the parties.
4. The petition is filed with the following prayers:-

(a)For a writ of certiorari, any other writ, order or direction in the nature of certiorari calling for the records and proceedings of the Impugned Order dated 24/07/2024 passed in Case No.05/ComPwDs/2024-25/681(Sagar Jawdekar V/s The Manager Canara Bank and 2 ors) on the file of the Court of State Commissioner for Persons with Disabilities/Respondent No.2, and upon perusing the legality, propriety and correctness of the impugned Order dated 24/07/2024, be pleased to quash and set aside the Impugned Order dated 24/07/2024.

(b)For an Order of this Hon'ble Court staying the operation/implementation /execution of the Impugned Order dated 24/07/2024 during the pendency,

adjudication and subsequent disposal of the present petition.

(c)Ex-parte ad interim order in terms of prayer clause (B) herein above.

(d)Any other order as this Hon'ble Court may deem fit and proper.

5. The Petitioners are the officers of Canara Bank who are challenging the order passed by the Commissioner for Persons with disabilities dated 24/07/2024.

6. Mr. Lawande would submit that the complaint was lodged by Respondent No. 1, who is claiming to be the father of a disabled child, with Respondent No. 2/State Commissioner for persons with disabilities, making some allegations against the Manager of the branch at Panaji about inhuman treatment given to him, when he went to the branch on 04th of January 2024 for depositing a cheque in the joint account of himself and the disabled child, and also requested to operate the account which had become dormant.

7. Mr. Lawande would submit that on the receipt of the notice from the Commissioner, the Petitioner appeared and filed a reply disclosing the facts which happened on that day

and claimed that the Petitioners only asked Respondent No.1 to comply with KYC formalities and produce relevant documents, so that account would be reactivated for the reason it became dormant, as it was not operated for a long time

8. Mr. Lawande would submit that the cheque which Respondent No. 1 wanted to deposit was accepted and credited into the joint account. However, in absence of KYC formalities, it was not possible for the Manager to allow one to operate the account.

9. Mr Lawande would submit that there are circulars from their own Bank as well as from Reserve Bank of India (RBI) in the form of guidelines where the Manager is duty-bound to obey such guidelines. He would submit that the Manager simply tried to implement the guidelines by informing Respondent No. 1 to complete KYC guidelines, however, he was not ready to do so.

10. Mr Lawande would submit that RBI guidelines show that the mandatory requirement has to be followed when an account becomes dormant. If the Manager allows operation of

the account without KYC formalities, he would be facing Departmental proceedings.

11. Mr Lawande would submit that the document of disability which was shown by Respondent No. 1 was found valid only upto the year 2012 and accordingly, such document could not have been accepted. He submitted asking Respondent No. 1, who is the father of a disabled child to complete KYC formalities as per the guidelines of the Bank and RBI, by no stretch of imagination would be discrimination against the disabled child. He submits that the disabled child was not present along with Respondent No. 1 in the Bank. Though Respondent No. 1 is the caregiver of a disabled person and came to the Bank since he along with the disabled child is having a joint account, there was absolutely no misbehaviour or discrimination as against the disabled child, which could have given any power to the Commissioner to initiate proceedings.

12. Mr. Lawande would submit that the powers of the Commissioner under the said Act are only recommendatory in nature. He is not entitled to issue any directions. The Commissioner is certainly not having any power to penalise

any person. Mr. Lawande would submit that the impugned order would clearly go to show that the Commissioner considered himself as a Court and clearly observed in the operative part that it is necessary to impose punishment on Petitioners.

13. While inviting attention to the various provisions of the Rights of Persons with Disabilities Act 2016 (RPWD for short), Mr Lawande would submit that since there is no provision of any penal imposition qua the Commissioner, the order must be considered as perverse and without jurisdiction

14. Mr. Lawande would fairly submit that the powers of Commissioner are recommendatory in nature and he is entitled to certain measures to the concerned Department or the Authority, however, there is no power to impose penalty and there is no power to consider such Authority as a Court.

15. Mr. Lawande would submit that the entire order nowhere shows any redressal of the grievance raised by Respondent No. 1 before it. The authority could have satisfied or recommended that there is no need or that KYC formalities qua the disabled persons could be waived. However, the

impugned order is silent about the actual difficulty portrayed by Respondent No. 1 before him.

16. Mr. Lawande would submit that the Petitioners allowed Respondent No. 1 to deposit the cheque and asked him to furnish the relevant documents, including Aadhaar card so that account could be revived as it was kept dormant. He would further submit that the complaint which is lodged by Respondent No. 1 dated 04/01/2024 itself shows, that Respondent No. 1 came not only for depositing the cheque but also with an application to operate the account which is in the name of the minor/disabled child. He would further submit that the complaint except disclosing the word ‘ill-treatment’, nowhere discloses the actual ingredients of such ill-treatment. He would submit that the reply filed by the Petitioners before the concerned Commissioner was not at all considered while passing the impugned order

17. Finally, Mr. Lawande would submit that the impugned order imposing penalty and asking the Manager to volunteer at Sanjay Centre for Special Education for a period of eight days and also to issue a written public apology to the Complainant, and that such apology must be displayed

prominently in the Bank premises, to acknowledge the wrong doing and reaffirm the commitment, is clearly beyond the power of the Commissioner.

18. As far as the directions to the Divisional Manager to implement the Mandatory Sensitivity Awareness Training Program for all the employees is concerned, he submits that such instructions could be considered as recommendations of the Commission by the concerned authority. However, he submits that the tenor of the impugned order is not recommendatory in nature, but is a direction and mandate, which is clearly beyond the powers of the Commissioner.

19. Mr Lawande placed reliance on following decisions: **(a) *Syed Yakoob Vs. K. S. Radhakrishnan and others, AIR 1964 SC 477, (b) The Assistant Provident Fund Commissioner Vs. M/s Nirmitee Holidays (P) Ltd., order dated 30.08.2010 in WP.615 of 2009; and (c) M/s Vardhaman Ispat Udyog Vs. HPSEB Ltd. & Anr. Decided on 27.03.2024 in CMPMO No. 449 of 2023***

20. Per contra, Mr. Naik appearing for Respondent No. 1 strongly contended that Respondent No. 1 who is the father of the disabled child visited the Bank on 04/01/2024, only for

the purpose of depositing the cheque. However, the Branch Manager behaved in a very rudely manner and was not listening to the Respondent No. 1. He submits that the cheque was deposited only on 08.01.2024, i.e. after a period of four days would clearly go to show that the incident happened on 04/01/2024, wherein Respondent No. 1 was not allowed to deposit the cheque.

21. Mr. Naik would submit that the circular issued by the Bank itself shows that even if an account is dormant, the cheques/deposit could be accepted with consent of the Branch Manager. Accordingly, Respondent No. 1 approached the Branch Manager, however, he was treated indifferently. Though, Mr Naik admit that the disabled child was not present in the bank along with the father. It is his contention that refusing to accept the cheque in the name of the child is itself an injustice or injury as well as discrimination, which has to be dealt with sternly

22. Mr. Naik, while relying upon the provisions of section 80(b) and 81 of the Act of 2016 would submit that there are powers to the Commissioner even to recommend and according to him, the impugned order is only a

recommendation and there is no penalty. He would submit that directing the Branch Manager to attend Sanjay School for special education for specially-abled persons to sensitise himself cannot be termed as punishment

23. Mr. Naik would further submit that the father of the disabled child was treated in very rude and indifferent manner, and therefore, his complaint was taken up by the Commissioner. He submits that the Branch Manager as well as the Regional Manager was present during the hearing, and even the Regional Manager has tendered an apology for and on behalf of the Bank. Thus, he submits that the material submitted by Respondent No. 1 before the Commissioner was proved, and accordingly, the impugned order was passed, which requires no interference.

24. Mr. Rahul Bajaj appearing for Respondent No.2/Commissioner tried to justify his own order by submitting that the commission is entitled to take necessary steps under Section 89, which includes imposing fine. He submits that the inquiry clearly reveals that the incident took place and therefore it was proper on the part of the commission to impose such conditions. While relying upon the

various provisions of the act, circulars, and even the handbook issued by Supreme Court of India, concerning persons with disabilities. he would submit that section 89 gives powers to the commission to impose penalties

25. Mr. Bajaj, placed reliance on following decisions: **(a) *Dilbag Singh Vs. Delhi Transport Corporation, 2005(84)DRJ 208* and (b) *Vikash Kumar Vs. Union Public Service Commission and others, (2021) 5 SCC 370.***

26. Rival contentions fall for determination as under:

27. Mr. Lawande is justified in pointing out that Respondent No. 2 an Authority who has passed an impugned order in the capacity of quasi-judicial authority. Accordingly, Respondent No. 2 though made a party to the present proceedings, is not required to justify his own orders or argue the matter unless there are personal allegations made against such authority. Similarly, it is not necessary for such authority to file reply affidavit to justify its action other than what is recorded in the impugned order. The quasi-judicial authority, even if made as a party to the proceedings, cannot justify its own order by

filings reply affidavits and by arguing the matter in support of its own orders.

28. In the case of **Syed Yakoob (supra)** the Constitutional Bench of the Apex Court in Para 19 has observed that the authority and Tribunal though are proper and necessary parties but unless allegations are made against them which need a reply from them, it is not usual for the authorities to be represented by lawyers in the Court. In ordinary cases their position is like that of a Court or other Tribunals against whose decisions Writ Proceedings are filed: they are not interested in merits of the dispute in any sense, and so their representation by lawyer in such proceedings is only unnecessary or even inappropriate.

29. In the case of **Assistant Provident Fund Commissioner (supra)** the learned Single Judge of this Court observed that the Petitioner therein was discharging quasi-judicial function while allowing the appeal preferred by the Respondents and as such it would be not permissible for the said quasi-judicial authority to challenge the order passed by the Appellate Authority, reversing his own order. Permitting such an exercise would be subversive of judicial

discipline. It is settled that an authority while discharging quasi-judicial functions cannot challenge the order passed by the Appellate authority reversing his/her order. An authority exercising judicial/quasi-judicial functions is not even supposed to defend its own orders.

30. The matter in hand, would clearly go to show that the order passed by Respondent No. 2 is clearly within the powers of provisions of the RPWD Act of 2016 and more particularly, the powers available with the Commissioner which are found in Sections 80, 81 and 82 of the Act. It is clear from the above provisions that Respondent No. 2 as a State Commissioner acted in a quasi-judicial manner to adjudicate complaint lodged by Respondent No. 1. Thus, when there are no personal allegations against Respondent No. 2, he is not supposed to file any affidavit in reply to the Petitioner and more particularly, with regard to the merits of the matter. It is for this reasons, the affidavit and even the application filed by Respondent No. 2 for vacating the interim stay granted by this Court on 16/10/2024 needs to be rejected. The quasi-judicial authority must speak through its own order. Such quasi-judicial authority cannot consider itself as aggrieved by any

interim or final order passed by a Higher Court. The quasi-judicial authority is considered to be impartial with the matter and is not required to take side of any party to the matter adjudicated before it.

31. In this matter, surprisingly, Respondent No. 2 preferred an application bearing Misc. Civil Application No.(F) 2925 of 2024 seeking vacation of interim stay granted by this Court vide order dated 16/10/2024. He tried to justify his own action and the contentions raised by Respondent No. 1 in the complaint. Such attempt on the part of Respondent No. 2 would clearly show that quasi-judicial authority is not considering himself as impartial. He is not supposed to take side of one party and that too before the Higher Court wherein his own order is challenged. If such a recourse is allowed to be adopted, it would be certainly against the settled proposition of law and would clearly send a message that the concerned quasi-judicial authority failed to act in an impartial manner while deciding the said matter. Once a decision is passed whether it is correct or otherwise, such quasi-judicial authority is not entitled either to defend or otherwise such order before

the Appellate Authority unless any personal allegations are made against it.

32. **Syed Yakoob (*supra*)** would certainly apply to the matter in hand and accordingly, the application filed by Respondent No.2 need not be entertained at all. Similarly, his submissions advanced in order to defend his own orders also cannot be considered, though such opportunity was given to his Advocate who appeared and tried to justify his own actions.

33. The interim order passed by this Court was after hearing the learned counsel for the Petitioner and even though the Respondent No. 1 who is considered to be the complainant and the victim did not file any such application for vacation of interim stay. Infact Respondent No. 1 is the person who is affected by such interim order. Respondent No. 2 therefore cannot be permitted to argue the matter with regard to the application for vacation of stay. Application is therefore rejected.

34. Coming back to the main matter, once it is observed that Respondent No. 2 being a quasi-judicial authority, cannot defend its own orders, except when there are personal

allegations against him. In this matter, admittedly, there are no personal allegation levelled against Respondent No. 2. Thus, the contentions raised by the learned counsel on behalf of the Respondent No. 2 trying to defend and explain his own orders, need not be looked into, however, the Court is certainly required to look into the contents of the orders which is challenged in this Court, qua the grounds raised in the petition.

35. Some of the relevant provisions of the RPWD Act needs to be taken into account.

36. Section 2 deals with definitions wherein Sections 2(d) defines caregiver and means any person including parents and other family members who with or without payment provide care, support, or assistance to a person with a disability.

37. In this matter, Respondent No. 1 is coming within the definition of caregiver.

38. Section 2(h) defines discrimination, in relation to disability means any distinction, exclusion, restriction on the basis of disability which is 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 and includes all forms of discrimination and denial of reasonable accommodation.

39. Section 2(s) defines person with disability and means a person with a long term physical, mental, intellectual or sensory impairment which in interaction with the barriers, hinders is full and effective participation in society equally with others.

40. Section 2(x) deals with public facilities and services and includes all forms of delivery of services to the public at large.

41. Chapter II deals with rights and entitlements wherein Section 3 mandates the appropriate Government to ensure that the persons with disability enjoy the right to equality, life with dignity and respect for his or her integrity equally with others.

42. Section 6 deals with protection from cruelty and inhuman treatment wherein it is the duty of the appropriate Government to take measures to protect the persons with

disabilities from being subjected to torture, cruel, inhuman or degrading treatment.

43. Section 7 deals with protection from abuse, violence and exploitation and mandates the appropriate Government to take such measures to protect the persons with disability from all forms of abuse, violence and exploitation.

44. Chapter XII provides that the appointment of Chief Commissioner and Commissioners, their functions, etc. It includes the Commissioner for State who has to be appointed as per the provisions of Sections 79. Respondent No. 2 is admittedly, appointed by the State of Goa as the Commissioner for disabilities as provided under Section 79. Thus, the functions of the State Commissioner and the action by the appropriate authorities on recommendation of the State Commissioner as well as powers of the State Commissioner are provided under Section 80, 81 and 82 which reads thus:

80. Functions of State Commissioner.- The State Commissioner shall-

(a) identify, suo motu or otherwise, provision of any law or policy, programme and procedures, which are in consistent with

this Act, and recommend necessary corrective steps;

(b) inquire, suo motu or otherwise deprivation of rights of persons with disabilities and safeguards available to them in respect of matters for which the State Government is the appropriate Government and take up the matter with appropriate authorities for corrective action;

(c) review the safeguards provided by or under this Act or any other law for the time being in force for the protection of rights of persons with disabilities and recommend measures for their effective implementation;

(d) review the factors that inhibit the enjoyment of rights of persons with disabilities and recommend appropriate remedial measures;

(e) undertake and promote research in the field of the rights of persons/ with disabilities;

(f) promote awareness of the rights of persons with disabilities and the safeguards available for their protection;

- (g) monitor implementation of the provisions of this Act and schemes, programmes meant for persons with disabilities;
- (h) monitor utilisation of funds disbursed by the State Government for the benefits of persons with disabilities; and
- (i) perform such other functions as the State Government may assign.

81. Action by appropriate authorities on recommendation of State Commissioner. - Whenever the State Commissioner makes a recommendation to an authority in pursuance of clause (b) of section 80, that authority shall take necessary action on it, and inform the State Commissioner of the action taken within three months from the date of receipt of the recommendation:

Provided that where an authority does not accept a recommendation, it shall convey reasons for non-acceptance to the State Commissioner for Persons with Disabilities within the period of three months, and shall also inform the aggrieved person.

82. Powers of State Commissioner. - (1) The State Commissioner shall, for the purpose of

discharging their functions under this Act, have the same powers of a Civil Court as are vested in a Court under the Code of Civil Procedure, 1908 (5 of 1908) while trying a suit, in respect of the following matters, namely: -

- (a) summoning and enforcing the attendance of witnesses;*
- (b) requiring the discovery and production of any documents;*
- (c) requisitioning any public record or copy thereof from any Court or office;*
- (d) receiving evidence on affidavits; and*
- (e) issuing commissions for the examination of witnesses or documents.*

(2) Every proceeding before the State Commissioner shall be a judicial proceeding within the meaning of sections 193 and 228 of the Indian Penal Code (45 of 1860) and the State Commissioners shall be deemed to be a Civil Court for the purposes of section 195 and Chapter XXVI of the Code of Criminal Procedure, 1973 (2 of 1974)

45. A careful reading of the above provisions would go to show that the functions of State Commissioner are found in Section 80 wherein it is clearly provided that he is an authority having recommendatory powers to take corrective steps

whenever it is found that the provisions of the law and policies are not properly implemented or there are discrepancies or violations of the provisions.

46. Section 80(a) as quoted above would clearly reveal that the functions and powers of the State Commissioner is recommendatory in nature.

47. Section 81 deals with action to be taken by the appropriate authorities on receiving recommendations from the State Commissioner. The powers of the State Commissioner for the purpose of discharging his functions under this Act are that of a Civil Court, while trying a suit only in respect of summoning and enforcing attendance of witnesses, requiring the discovery and production of documents, requisitioning any public record, receiving evidence on affidavits, issuing commissions for examination of witnesses. It also provides that such proceedings conducted before the State Commissioner shall be a judicial proceeding within the meaning of Sections 193 and 228 of Indian Penal Code and that the State Commissioner shall be deemed to be a Civil Court for the purpose of Section 195 and Chapter XXVI of the Civil Procedure Code. Thus, the powers of a Civil Court

given to the State Commissioner are restricted for the purpose as mentioned above. It cannot be designated as a regular Civil Court. It is a commission/authority dealing with quasi-judicial matters. Thus, the commission has to consider itself as a quasi-judicial authority and not a regular Civil Court. The provisions of C.P.C., IPC and Cr.P.C. are applied only for a restrictive purpose and to protect the Commissioner while performing such duties as an authority from any frivolous proceedings or criminal case/prosecution.

48. One more aspect is required to be noted here that the entire provisions regarding protection rights and entitlements are only with regards to disabled persons and not extended to the caregiver. Keeping in mind the above specific provisions and more specifically, Section 80 and 81 of the Act, it has to be concluded that the functions of the State Commissioner is only recommendatory in nature and such recommendations must be forwarded to the appropriate authorities for the purpose of implementation.

49. The above provisions nowhere entrust the State Commissioner to pass any order or event to take any punitive action against any person.

50. Mr. Naik appearing for the Respondent No. 1 tried to justify that powers under Section 80 and 81 of the said Act, includes the powers to impose punishment. He also tried to submit that the impugned order has to be looked into as a recommendation made to the higher authorities of the concerned Bank which they are obliged to follow and there is nothing punitive in nature as tried to be projected.

51. Mr. Bajaj appearing for the Respondent No. 2 tried to submit that the State Commissioner is having powers to enforce as well as to punish. He would submit that there is handbook issued by the Apex Court concerning persons with disabilities and claimed that on page 41 it is observed that Section 89 of the Act contemplates imposition of fine and penalties which can be imposed by the Chief and the State Commissioner. Above submissions are clearly devoid of merit. The handbook first of all cannot be considered as an authority though it is published by the Supreme Court of India in its administrative side. Section 89 comes under Chapter XVI which deals with offenses and penalties. The handbook refers to the enforcement mechanism and suggests that Public Sector Institutions as well as Business establishments must have

reasonable accommodation and accessibility to the disabled persons and if the Chief and the State Commissioners observed that there are some contraventions of such accessibility and reasonable accommodation, they can impose fine for first and subsequent contravention. It nowhere suggests that the State Commissioner while performing his duty as a quasi-judicial authority and entertaining any grievance or complaint is entitled to punish any individual.

52. Provisions of Section 89 would be available with the Special Court which are found in Section 84 of the Said Act. Even otherwise, it is not the case that there are contravention of the provisions of the Act or Rules, or regulations by the Petitioners or their establishment. Thus, the contentions raised by Mr. Bajaj cannot be accepted as far as the impugned order is concerned.

53. In the case of **Dilbagh Singh(supra)** the Petitioner was ordered to be prematurely retired from service, which he challenged before the concerned Chief Commissioner who failed to give any relief. In that context Delhi High Court has observed that the Chief Commissioner has ample power to enquire into the instances of violations of the provisions of the

Act including deprivation of rights of persons with disabilities. The proceedings conducted by the Chief Commissioner are deemed to be Judicial proceedings which are akin to quasi-judicial Tribunal who is empowered to decide issues entrusted to him.

54. Infact above observations of Delhi Court would fortify that such authority/Commissioner is a quasi-judicial authority. However, it is also equally true that unless any power is given to such quasi-judicial authority to impose a punishment, such power cannot be assumed or invoked.

55. For the sake of arguments, even if it is considered that the State Commissioner is having power to impose fine as provided under Section 89, it specifically gives the Jurisdiction and power to impose fine to the extent of Rs.10,000/- for the first contravention and Rs.50,000/- for the specific contravention which may extend to Rs.5,00,000/-. However, the matter in hand would clearly go to show that no such fine was imposed as tried to be argued by Mr. Bajaj regarding powers of imposing penalty. What the State Commissioner did in the matter is clearly not coming within the specific powers and duties assigned to him under the Act.

56. The impugned order would go to show that the complaint of Respondent No. 1 was considered and thereafter notices were issued to the present Petitioner to appear and file their say. Even the Officers of RBI were also present who assured that sensitisation of staff would be continued to avoid further incidents. However, there is absolutely no observation as to what discrimination was faced by the person with disability. Admittedly, Respondent No. 1 who is the caregiver visited the Bank and not along with the person with disability. The incident which took place involves the caregiver and not the person with disability.

57. Definition in Section 2(h) as quoted above of the discrimination is related only to a person with disability and the Act nowhere discloses about any so called discrimination meted out alone to the caregiver. However, it is required to note here that Respondent No. 1 is the father and the caregiver of the disabled child who visited the Bank for the purpose of depositing the cheque issued in the name of the disabled child. The allegations of misbehaviour with the caregiver cannot be directly attributed to discrimination against the disabled person. At this stage, it is necessary to note that even a

caregiver should not be treated in any manner discriminating against him. However, the matter in hand will have to be looked into on the basis of what happened on 04/01/2024 in the Bank that too when the Respondent No. 1 alone visited for a specific purpose.

58. Mr. Naik would submit that the incident took place on 04/01/2024 when Respondent No. 1 went to the Bank to deposit the cheque in an account which became dormant for not operating for long. He submits that the Manager and the staff members, behaved rudely with Respondent No. 1 and did not allow him to deposit the cheque.

59. However, perusal of the complaint lodged by Respondent No. 1 on 04/01/2024 would reveal that it was not the one which has been argued by Mr. Naik. The Visit of Respondent No. 1 was not only for depositing of cheque but with an intention to allow him to operate/restart his account which is in the joint name along with the disabled child. Thus, the reply filed by the Petitioners before the State Commissioner assumes importance. It is a fact that the impugned order is clearly silent about the reply filed by the Petitioners and he even did not deliberate upon it.

60. The Bank circulars including RBI circulars produced on record would go to show that once an account becomes dormant and inoperative for a particular period, it can be revived only by a specific procedure to be adopted. The Petitioners Bank circular is produced on record along with the circular issued by Reserve Bank of India. The circular dated 13/01/2024 issued by Reserve Bank of India mandates that the certificate with regard to persons with disabilities is required to be obtained in order to avoid any disadvantage or misuse of their accounts. It also shows that Guardian certificate issued by the concerned authorities including the disability certificates and other documents are required.

61. Petitioner Bank in consonance with the Reserved Bank circulars, issued guidelines in connection with inoperative accounts. It says that if an account is not operated for two years, it has to be classified as inoperative and except certain transactions, cannot be activated without performing the formalities. It says that the debit other than service charges, access interest credited etc, in an inoperative account are to be permitted only after reactivating inoperative accounts. Such accounts should be transferred to operative, after obtaining a

suitable letter, identity proof, address proof afresh to make the account KYC complaint, from the Account Holder and operations are permitted only after getting approval from the Manager incharge of the Department or the Branch Incharge. It only permits deposit of cheques and that too, with the permission of the Concerned Manager incase the account is inoperative.

62. It further says that inoperative accounts could be reactivated by taking all precautionary measures as applicable to operations in new account and it shall also be made applicable to such re-activated accounts. Further operations in such account could be allowed after due diligence as per the risk category of the customers and also by ensuring the genuineness of transactions, verification of signatures, identity, etc. For the revival of inoperative accounts, the branches shall obtain a suitable request letter from the Account Holder along with documentary proof for identity and address.

63. In the light of the above guidelines and direction issued by the Reserve Bank of India, let us examine the complaint lodged by Respondent No. 1 with the State Commissioner on

04/01/2024 and the reply of the Petitioners before the State Commissioner.

64. The contents of the complaint reads thus:

*Shri Guruprasad pawaskarji
Hon.Comissioner Disability Goa.*

Sir.

This is to inform you that my Daughter who was a student of Sanjay school porvorim.we were told to open an Account in Syndicate Bank some years back.now changed to Canara bank. Last few years I cannot operate the account due to some reasons I have received the Cheque the amount earlier I had deposited in a private company. Today morning I visited this branch to deposit the amount in cheque and also I had brought the application to restart my account which is on the name of Gautami jawdekar I have brought whatever the documents minimum required, and also brought birth certificate of her and some other documents but we

don't have the Adhar card of her. As she was not cooperating to Adhar officials. so her card could not take place.

Today morning I have visited the branch office of Canara Bank porvorim branch 2 where the Manager had given very ill treatment to me and he don't wanted to listen to my problem. I was telling him that our child is a special child having 5% IQ. Even then he was insisting on Aadhar or some other document and she told me if you wanted to withdraw account you can withdraw. After discussion I have tried to contact yourself Mr commissioner and then I told him to speak to commissioner he told me I am not interested his behaviour and treatment he was giving highly objectionable finally I wanted to show my card he told me don't want to see. this is very objectionable and he was scolding me like anything. if I help you then tomorrow I will be in trouble I

was his statement.I told him I can help you, then he started quarrelling with me I don't want your help. Was his statement. As a father of special child I felt it very difficult if they treat like this to me what about other people how he made it other people. Mr commissioner pleas look into the matter. This is my humble request to you.

Thanking you, your faithfully

Sagar jawdekar.

65. It clearly shows that Respondent No. 1 claimed that he is the father of the disabled child and he along with the said child holds an account in the Bank. He admits that the said account is not operated for last few years. He went to the Bank along with the cheque to deposit the amount and also carried an application to restart his account. He claimed that he carried documents which are required along with a certificate, but he was not carrying the adhar card of the disabled child. When he visited the Bank, the Manager was not listening to him as well as to his problem though he informed the Manager that the child is a special child. However, the Manager was insisting on

adhaar card and some other documents. The Manager also informed him that if he allowed him to operate the account without the documents, he will be in trouble.

66. The reply filed by the Petitioners before the State Commissioner also reiterate the above things. The Manager insisted upon the Adhaar Card and other documents for the purpose of reviving the said account. In the entire complaint there is no whisper that the Bank or the Manager refused to accept the cheque. Admittedly, the cheque was deposited and the amount was credited into the account on 08/01/2024. Mr. Lawande while justifying the delay of four days would submit that even if a cheque is deposited, it has to be approved by the Manager and normally it takes few days to carry out the procedure.

67. Thus, the main grievance of the complainant /Respondent No. 1 is not allowing him to operate a dormant account. At this stage it is necessary to note that though it is a joint account of the disabled child along with Respondent No.1, the disabled child was not present in the branch. At the most the Respondent No. 1 who is claiming to be a caregiver,

was asked to produce necessary documents for the purpose of revival of the said account.

68. Circulars issued by the Reserve Bank of India would clearly go to show that the holder of the said account which is dormant is duty bound to submit the documents afresh which includes the identity of the person along with other relevant documents. In this case the disability certificate or the identity card is valid only upto the year 2012. Thus, showing such documents and that too without any Adhaar card of the disabled child, the Manager was not supposed to allow the Respondent No.1 to operate the account.

69. The allegations in the complaint is regarding rude behaviour of the Manager with Respondent No.1 and not with the disabled person. No doubt the account is a joint account and the cheque was in the name of disabled child, however there is no exemption which has been pointed out by the Respondents for a disabled person or the care giver from production of documents afresh for operating a dormant account.

70. At this stage, it is also necessary to note that if there is any rude behaviour or indifferent attitude on the part of

Manager is concerned cannot be stretched to the imagination of a discrimination as found in Section 2(h) qua the disabled child. The Manager was right in insisting of fresh documents for the purpose of revival of the said account. When the Reserve Bank of India has issued circulars, the officer of the bank is duty bound to follow it. If such officer is following his duty and informing the person who is considered to be a caregiver to submit documents, it cannot be considered as discrimination against a disabled person.

71. The impugned order though records that the Regional Manager was present during the hearing and apologised on behalf of the Bank for his rude behaviour towards the complainant, cannot be considered as accepting what is mentioned in the complaint. Admittedly, the Regional Manager was not present during the alleged incident. The Branch Manager has filed a specific reply before the State Commissioner wherein he has clearly disclosed as to what happened on that day and why he did not allow the Respondent No. 1 from operating the account on that day. This contention in the reply filed by the Branch Manager is not at all reflected or considered by the State Commissioner.

72. Besides, the operative part of the impugned order would clearly go to show that Respondent No. 2 deemed it necessary to impose punishment for the misconduct. These wordings would clearly demonstrate that Respondent No. 2 assumed the power of the Court for the purpose of imposing punishment, which is not available with him under any provision of the Act. His powers are only recommendatory in nature.

73. He further observed that traditional punitive measures such as fines may not be adequately addressed, the underlying issues of ignorance and sensitivity. He failed to disclose under which provision of the Act he is empowered to impose such punishment.

74. The operative part of the impugned order would go to show that the Branch Manager is punished to volunteer at Sanjay School for special education for a period of 8 days and such volunteering will involve direct interaction with the children participating in daily activities. Secondly, the branch Manager is directed to issue a written public apology to the complainant and that such apology must be displayed prominently in the Bank premises to acknowledge the wrong doing and reaffirm the commitment to respectful and inclusive

conduct. These two aspects are clearly punitive in nature and nowhere provided under the Act giving power to the Commissioner to impose on a particular individual.

75. The remaining portion of the operative order could be considered as recommendatory in nature thereby asking the concerned Bank to create awareness by training programs amongst their employees in connection with the provisions of the said Act. As far as such observations which are found to be recommendatory in nature, Mr. Lawande fairly submits that the same could be considered in an appropriate manner and the bank will abide by it.

76. In sum and substance, it is clear that the State Commissioner cannot impose such punitive measures or punishment even by taking recourse to Section 89 of the Act. What is provided therein is only the imposition of a fine. When the Act nowhere provides or directs any person to give public written apology, such directions are considered to be without jurisdiction. Accordingly, both these directions issued to the Branch Manager to volunteer for 8 days in Sanjay School and to issue written public apology are required to be quashed and set aside. Remaining portion of the operative order would be

considered as recommendations of the Commissioner and it would be appropriate for the Petitioner Bank to look into it in the matter as provided under the Act.

77. Having said so directions/punitive actions imposed against the Manager of the Bank in the impugned order needs to be quashed and set aside. Whereas the other aspects could be considered as recommendations.

78. Rule is made absolute in above terms.

79. Parties shall bear their own cost.

BHARAT P. DESHPANDE, J.