JUSTICE SUNANDA BHANDARE FOUNDATION A

v.

UNION OF INDIA AND ANOTHER

(I.A. No.10 of 2015)

In

(Writ Petition (Civil) No. 116 of 1998) B

APRIL 25, 2017

[DIPAK MISRA, A. M. KHANWILKAR AND MOHAN M. SHANTANAGOUDAR, JJ.]

Right of Persons with Disabilities Act, 2016 – Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 – Issuance of directions by this Court in *Justice Sunanda Bhandare Foundation vs Union of India *to State Governments and Union Territories to implement the provisions of the 1995 Act – Filing of IA to issue directions to Central Government, State Government and Union Territories to comply with the said judgment – Compliance report filed, however, compliance not complete – Parliament, realizing the national need of the rights of the persons under disability and commitment to the Convention of the United Nations General Assembly, repealed the 1995 Act and brought in 2016 Act – 2016 Act visualizes sea change and conceives of actualization of the benefits engrafted under the said Act – Conferment of more rights on the disabled persons, more categories added, and access to justice, free education, role of local authorities, National fund and State fund for persons with disabilities created – In given circumstances, mandatory to scan the anatomy of significant provisions of the Act and see that they are implemented – State Governments and Union Territories to comply with the requirements of the 2016 Act and file the compliance report within the stipulated time.* C D E F

Adjourning the matter, the Court

HELD: 1.1 The Parliament, realizing the national need of the rights of the persons under disability and commitment to the Convention of the United Nations General Assembly, repealed the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 and brought in The Rights of Persons with Disabilities Act, 2016. The said 2016 Act has G H

A been brought into existence to give effect to the United Nation Convention on the Rights of Persons with Disabilities and for matters connected therewith or incidental thereto. The 2016 Act visualizes a sea change and conceives of actualization of the benefits engrafted under the said Act. The whole grammar of
B benefit has been changed for the better, and responsibilities of many have been encompassed. In such a situation, it becomes obligatory to scan the anatomy of significant provisions of the Act and see that the same are implemented. The laudable policy inherent within the framework of the legislation should be implemented and not become a distant dream. Immediacy of action
C is the warrant. [Paras 8, 9][739-E-F; 740-F-G]

1.2 The 2016 Act has been enacted and it has many salient features. More rights have been conferred on the disabled persons and more categories have been added. That apart, access to justice, free education, role of local authorities, National fund
D and the State fund for persons with disabilities have been created. The 2016 Act is noticeably a sea change in the perception and requires a march forward look with regard to the persons with disabilities and the role of the States, local authorities, educational institutions and the companies. Emphasis is there on the special court, speedy trial and special public prosecutor. The statute
E operates in a broad spectrum and the stress is laid to protect the rights and provide punishment for their violation. [Para 23] [746-F-H]

1.3 Regard being had to the change in core aspects, the States and the Union Territories are directed to file compliance
F report keeping in view the provisions of the 2016 Act within the stipulated period. The States and the Union Territories must realize that under the 2016 Act their responsibilities have grown and they are required to actualize the purpose of the Act, for there is an accent on many a sphere with regard to the rights of
G the disabilities. When the law is so concerned for the disabled persons and makes provision, it is the obligation of the law executing authorities to give effect to the same in quite promptitude. The steps taken in this regard would be concretely stated in the compliance report within the time stipulated. When the States are directed, a duty is cast also on the States and its
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authorities to see that the statutory provisions that are enshrined and applicable to the cooperative societies, companies, firms, associations and establishments, institutions, are scrupulously followed. The State Governments shall take immediate steps to comply with the requirements of the 2016 Act and file the compliance report so that this Court can appreciate the progress made. [Para 24] [747-A-D]

Justice Sunanda Bhandare Foundation v. Union of India and Another* **[2014] 4 SCR 113 : 2014 (14) SCC 383; *Union of India and Another v. National Federation of the Blind and Others* **[2013] 9 SCR 1023 : 2013 (10) SCC 772 – referred to.**

Case Law Reference

[2014] 4 SCR 113	**referred to**	**Para 1**
[2013] 9 SCR 1023	**referred to**	**Para 2**

CIVIL ORIGINAL JURISDICTION : Inetrlocutary Application No.10 of 2015 in Writ Petition (Civil) No.116 of 1998.

Under Article 32 of the Constitution of India.

S. S. Shamshery, AAG, Mrs. V. Mohana, A. K. Sanghi, Sr. Advs., Manali Singhal, Santosh Sachin, Ms. Vinita Sashidharan, Rohit Kaul, Tejasvi Kumar, S. Sarfaraz Karim, Deepak Singh Rawat, Ambar Qamaruddin, Dr. Monika Gusain, Abhijit Sengupta, Pawan Shri Aggarwal, Abhishek Chaudhary, Anil Kumar Tandale, Anil Shrivastav, Rituraj Biswas, Aniruddha P. Mayee, A. Selvin Raja, Anuvrat Sharma, Arjun Garg, Arun K. Sinha, Sapam Biswajit Meitei, Naresh Kumar Gaur, M. N. Singh, Ashok Kumar Singh, Ashok Mathur, B. Balaji, C. D. Singh, Ms. Sakshi Kakkar, Shaivali Choudhary, Soumitra G. Chaudhuri, Chanchal Kumar Ganguli, C. K. Sasi, Dharmendra Kumar Sinha, D. S. Mahra, Gopal Singh, Manish Kumar, Ms. Varsha Poddar, G. Prakash, Jishnu M. L., Mrs. Priyanka Prakash, Mrs. Beena Prakash, Manu Srinath, Gulshan Bajwa, Jagjit Singh Chhabra, Kamlendra Mishra, K. V. Mohan, M. A. Krishna Moorthy, Nirnimesh Dube, P. N. Gupta, P. N. Ramalingam, Prashant Kumar, Praveen Swarup, Shikhar Garg, Ganesh Bapu, P. V. Yogeswaran, Rajeev Sharma, Rajiv Mehta, Rajiv Nanda, Rameshwar Prasad Goyal, Ranbir Singh Yadav, Ranjan Mukherjee, R. Sathish, Mrs. Anil Katiyar, Satish Vig, Mrs. D. Bharathi Reddy, Sangram S. Saron, Shree Pal Singh, Shuvodeep Roy, Sunil Fernandes,

A Tapesh Kumar Singh, Kumar Anurag Singh, Mohd. Waquas, Aditya Pratap Singh, T. V. George, V. G. Pragasam, S. Prabu Ramasubramanian, V. N. Raghupathy, Ms. A. Subhashini, Bhupesh Narula, K. V. Jagdishvaran, Ms. G. Indira, Ms. Hemantika Wahi, Ms. K. Enatoli Sema, Edward Belho, Amit Kumar Singh, K. Luikang Michael, Ms. Elix Ganmei, Z. H. Issac Haiding, PratapVenugopal, Ms. Surekha Raman, Ms. Niharika, Aman Shukla, Ms. Kanika Kalsyarasan, M/s. K. J. John & Co., Ms. Niranjana Singh, Aviral Saxena, Sukrit Kapur, Ms. Monika, Nitya Madhusoodanan, Ms. Rachana Srivastava, Ms. Sumita Hazarika, Ms. Sushma Suri, Ms. Susmita Lal, Pankaj Sinha, Ms. Rajkumari Banju, M. Yogesh Kanna, Ms. Nithya, Mrs. Maha Lakshmi, Pratap Sarathi, R. K. Rathore, Ms. Ritu Bhardwaj, Raj Bahadur, Guntur Prabhakar, Ms. Prerna Singh, Ms. Sunita Sharma, Ms. Rekha Pandey, B. K. Prasad, G. M. Kawoosa, M. Shoeb Alam, Manoj R. Sinha, Mahaling Pandarge, Nishant Ramkantrao Katneshwarkar, S. Udaya Kumar Sagar, Mrityunjai Singh, Amit Sharma, Ankit Raj, Ms. Aruna Mathur, Avneesh Arputham, Ms. Anuradha Arputham, Amit Arora, Advs. for the Respondents.

The Judgment of the Court was delivered by

DIPAK MISRA, J. 1. The instant interlocutory application was filed to issue directions to the Central Government, State Governments and Union Territories to comply with the judgment rendered in ***Justice Sunanda Bhandare Foundation vs. Union of India and Another***[1]. In the said case, a three-Judge Bench took note of various orders passed in the writ petition, especially the prayer for implementation of the provisions of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 (for brevity, 'the 1995 Act') and for declaration that denial of appointment to the visually disabled persons in the faculties and college of various universities in the identified posts is violative of their fundamental rights guaranteed under Articles 14 and 15 read with Article 41 of the Constitution of India and opined that the 1995 Act is to be treated as an enactment for empowerment of the persons under disability and further expressed its concern with regard to the apathy shown by various State Governments and the instrumentalities of the States.

2. Sitting in a time-machine, we may make a fruitful reference to the decision rendered in ***Union of India and Another versus National Federation of the Blind and Others***[2]. The Court, in the said case,

[1] (2014) 14 SCC 383

[2] (2013) 10 SCC 772

after referring to Section 33 of the 1995 Act, which dealt with reservation of posts and adverting to various aspects, directed as follows:- A

> "In our opinion, in order to ensure proper implementation of the reservation policy for the disabled and to protect their rights, it is necessary to issue the following directions:
>
> (i) We hereby direct the appellant herein to issue an appropriate order modifying the OM dated 29.12.2005 and the subsequent OMs consistent with this Court's Order within three months from the date of passing of this judgment. B
>
> (ii) We hereby direct the "appropriate Government" to compute the number of vacancies available in all the "establishments" and further identify the posts for disabled persons within a period of three months from today and implement the same without default. C
>
> (iii) The appellant herein shall issue instructions to all the departments/public sector undertakings/Government companies declaring that the non observance of the scheme of reservation for persons with disabilities should be considered as an act of non- obedience and Nodal Officer in department/public sector undertakings/ Government companies, responsible for the proper strict implementation of reservation for person with disabilities, be departmentally proceeded against for the default." D E

3. In the said case, the Court laying emphasis on the concept of employment, expressed thus:-

> "Employment is a key factor in the empowerment and inclusion of people with disabilities. It is an alarming reality that the disabled people are out of job not because their disability comes in the way of their functioning rather it is social and practical barriers that prevent them from joining the workforce. As a result, many disabled people live in poverty and in deplorable conditions. They are denied the right to make a useful contribution to their own lives and to the lives of their families and community. F G
>
> The Union of India, the State Governments as well as the Union Territories have a categorical obligation under the Constitution of India and under various International treaties relating to human rights in general and treaties for disabled persons in particular, to H

A protect the rights of disabled persons. Even though the Act was enacted way back in 1995, the disabled people have failed to get required benefit until today."

4. In the case of the present petitioner, that is, ***Justice Sunanda Bhandare Foundation*** *(supra)*, the three-Judge Bench was concerned B with the implementation of the 1995 Act. In that context, it observed as under:-

"Be that as it may, the beneficial provisions of the 1995 Act cannot be allowed to remain only on paper for years and thereby defeating the very purpose of such law and legislative policy. C The Union, States, Union Territories and all those upon whom obligation has been cast under the 1995 Act have to effectively implement it. As a matter of fact, the role of the governments in the matter such as this has to be proactive. In the matters of providing relief to those who are differently abled, the approach and attitude of the executive must be liberal and relief oriented D and not obstructive or lethargic. A little concern for this class who are differently abled can do wonders in their life and help them stand on their own and not remain on mercy of others. A welfare State, that India is, must accord its best and special attention to a section of our society which comprises of differently E abled citizens. This is true equality and effective conferment of equal opportunity."

5. Proceeding further, it expressed its agony in the following manner:-

"More than 18 years have passed since the 1995 Act came to be F passed and yet we are confronted with the problem of implementation of the 1995 Act in its letter and spirit by the Union, States, Union Territories and other establishments to which it is made applicable."

6. After expression of the said anguish, the Court issued the G following directions:-

"In our view, the 1995 Act has to be implemented in the letter and spirit by the Central Government, State Governments and Union Territories without any delay, if not implemented so far.

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The Secretary, Ministry of Welfare, Government of India, the Chief Secretaries of the States, the Administrators of the Union Territories, the Chief Commissioner of the Union of India and the Commissioners of the State Governments and the Union Territories shall ensure implementation of the 1995 Act in all respects including with regard to visually disabled persons within the above time."

7. It is submitted by Ms. Manali Singhal, learned counsel appearing for the petitioner that after the judgment was delivered, applications were filed by the petitioner to file the compliance report. Learned counsel for the petitioner has filed a revised convenience chart depicting compliance of the 1995 Act. The final observations made by the learned counsel has been produced before us in a tabular chart. We think it appropriate to reproduce the same:-

"FINAL OBSERVATIONS

S. No.	Respondent State	Remarks/Observations w.r.t Compliance Of The Act
1	UGC	• Only an approximate 1/3rd of the seats for the teaching & non-teaching staff have been filed wherein the Act requires 3% of the seats to be filed.
2	State of Jharkhand	• Yet to comply with provisions of **S.29** (Teacher's training Institution) as it is not been specified. • **S.30** (Comprehensive Education Scheme), **40** (Poverty Allevation Schemes) & **41** (Incentives to Employers) of the Act have also not been complied with. • Compliance of the provisions of **S.44** (Non- Discrimination In Transport) - **46** (Non- Discrimination in the built environment) has not been complied with. • **S. 49** (Financial Incentives to Universities for Research) not complied with and the same is still under consideration. • No compliance of **S.68** (Social Security – Unemployment Allowance) by the State. The affidavit is silent about the compliance of **S.68** (Unemployment Allowance).

3	**State of Rajasthan**	• Affidavit is silent on the compliances of **S.28** (Assistive Devices, Hearing Aids), **31** (Amanuensis to Children with Visual Impairment), **39** (Reservation of Seats), **48** (Research), **49** (Financial Incentives to Universities for Research) **& 67** (Social Security Programmes) of the Act. • Under the provisions of **S. 48** (Research) with regard to Research & manpower Development no report or Status Report has been brought out.
4	**State of Punjab**	• No provisioning of incentives to employers to ensure 5 % of the workforce be of PWDs. Non-compliance of **S.41** (Incentives to Employers). • Non-compliance of **S.28** (Assistive Devices, Hearing Aids), **48** (Research) **& 49** (Financial Incentives to Universities for Research). Qua Promotion.
5	**State of Tamil Naidu**	• The compliance of **S. 49** (Financial Incentives to Universities for Research) has not been brought out by the State. • The compliance of **S. 56** (Institution for Persons with Severe Disabilities) not brought out by the State. • The compliance of **S. 66-68** (Social Security Programmes) has not been carried out by the State adequately as no clarity has been given on the Rehabilitation Aspect. (only a limited amount has been allocated for the rescue scheme and only persons affected Leprosy and found begging are accommodated in rehabilitation homes). • Compliance of **S. 43** (Preferential Allotment of Land) not specified.
6	**STATE OF KARNATAKA**	• State has not filed the affidavit in consonance to the Order dt. 26.4.2016 as it remains silent on major issues w.r.t the compliances of Sections **28** (Assistive Devices, Hearing Aids), **41** (Incentives to Employers), **48** (Research), **49** (Financial Incentives to Universities for Research), **66 & 67** (Social Security Programmes) of the PWD Act.

7	**STATE OF BIHAR**	• "State Co-ordination Committee" have not been reconstituted, thus non compliance of **S.13.** • Compliance of the provision of **S.41** (Incentives to Employers) has not been depicted. • The affidavit is silent on the compliance of **S.67 & 68** (Social Security Programmes) of the Act.
8	**UT of Puducherry**	• Silent on **S. 25(a)- 25(h)** (Prevention and Early Detection), **S. 27-30** (Non-Formal Education), **S. 38** (Schemes for Employment) - **41** (Incentives to Employers) **& 43** (Preferential Allotment of Land) . • Further, the affidavit is silent on **S. 44-47** (Discrimination w.r.t Transport and Built Ins & Government Jobs), **48-49** (Research and Incentives to Universities), **67-68** (Social Security) and even **S. 73** (Government Rules).
9	**UT of Andaman and Nicobar Islands**	• Provisions of **S. 32** (Identification of Posts) are still at implementation stage as the State has requested Heads of various Departments for the compliance of provisions of the Section. • No compliance of **S. 34** (Special Employment Exchange), further no compliance/action taken of **S. 34-44** (Employment and Benefit Related Schemes). • Rules as prescribed under the provisions of **S. 73** (Government Rules) are not framed.
10	**NCT of Delhi**	• The affidavit is silent on the Special Employment Exchange under **S. 34** (Special Employment Exchange) of the Act. • No Compliance of **S. 41** (Incentives to Employers). State is not offering incentives to private/public employers to ensure that at least 5% of the work force is composed of persons with disabilities.

11	State of Manipur	• In compliance of S. 25(a) (Prevention and Early Detection) of the PWD Act it is stated that survey has not been undertaken for detecting causes of occurrence of disabilities sue to constraints of experienced manpower and infrastructure. • Affidavit is silent on setting up special employment exchange for PWDs as required under S. 34 of the PWD Act. • Affidavit admits non compliance of S. 41 (Incentives to Employers) of the PWD Act. • Affidavit admits non compliance of S. 42 (Aids and Appliances) of the PWD Act due to non-availability of funds. • Affidavit admits non compliance of S. 67 (Social Security) of the PWD Act due to lack of funds.
12	UT of Chandigarh	• Not complied with S. 41 (Incentives to Employers) and further no compliance has been carried in furtherance to S. 67-68 (Social Security) of the PWD Act.
13	State of UP	• Provisions of S. 30 (Comprehensive Education Scheme) qua restructure of curriculum are still under consideration. • Compliances under S. 41 (Incentives to Employers) of the act are still under consideration
14	State of Tripura	• Compliance of the provisions of S. 28 (Assistive Devices, Hearing Aids), 48 & 49 (Research and Incentives to Universities) w.r.t promotion of research & manpower development have not been brought out either in any way as per the mandate of the Act.
15	State of Gujarat	• Compliance of the provisions of S. 28 (Assistive Devices, Hearing Aids) has not been brought out in the affidavit. • No steps have been taken w.r.t the compliance of S. 40 (Poverty Allevation Schemes) of the Act. • Compliance of the provisions of S. 41 (Incentives to Employers) has not been brought out.

16	**State of Assam**	• Provisions of **S. 28** (Assistive Devices, Hearing Aids) have not been complied with. • Compliance of the provisions of **S. 67** (Social Security) has not been brought out in the State affidavit as it is yet to be framed.
17	**State of Arunachal Pradesh**	• Affidavit is silent on the implementation of other provisions of the Act. • Affidavit only speaks of Compliance of Sections **33** (Reservation of Posts), **68** (Social Security) **& 42** Aids and Appliances) of the Act.
18	**State of Goa**	• In Compliance under the provisions of **S. 28** (Assistive Devices, Hearing Aids) of the Act. State Gov. is still in the process of formulating schemes for education of children with special needs through Directorate of Education. • Further there have been no compliance being carried out for the provisions under the **Sections 41** (Incentives to Employers), **S. 43** (Preferential Allotment of Land) - **45** (Non-Discrimination in Road) of the Act. • The Affidavit is silent w.r.t the implementation under **Sections 48, 49** ((Research and Incentives to Universities)), **56** ((Institution for Persons with Severe Disabilities)) **& 57** (Chief Commissioner of PWDs).
19	**State of Meghalaya**	• The affidavit is silent on the Compliances to be carried with the various provisions of the PWD Act except **S. 39** (Reservation of Seats).
20	**State of Sikkim**	• No projects in the State have been taken under the provisions of **S. 48** (Research).

21	**State of Chattisgarh**	• Affidavit is silent on the provision regarding restructuring of curriculum for the benefit of children with disabilities, and provisioning of amaneusis as mandated under S. 30-31 of the PWD Act. • Affidavit is silent on compliance of Section 44 qua non-discrimination in transport. Regarding provisioning of insurance schemes for PWDs the affidavit states that there is no separate insurance scheme for PWDs. Employees with disabilities are covered under the Group Insurance Schemes of the State.
22	**State of Nagaland**	Affidavit is not in compliance of the Order dt. 26.04.2016, however the earlier affidavit shows the following :- • Affidavit silent on formation of State Co-ordination Committee and State Executive Committee as mandated respectively under **S. 13 and 19** of the PWD Act, 1995 • Affidavit is silent on the implementation of Preventive and early detection measures as provided in **S. 25(a) – 25 (h).** • Affidavit is silent on the implementation of non-formal education schemes or programmes, research for designing and developing new assistive devices, teaching aids etc., setting up of teacher training institutions, transport facilities, provisioning of amanuensis etc as mandated under **S. 27-31.** • Affidavit is silent on implementation of provisions of **S. 34-37** on furnishing information to employment exchange and **S. 40-41** on maintenance of records by the employers and vacancies to be reserved in poverty alleviation schemes. • Affidavit is silent in implementation of most of the provisions mandated under **S. 44, 47** for ensuring non-discrimination in transport, and govt employment to PWDs.

		• Affidavit is silent on implementation of **S. 48-49** qua research and manpower development initiatives. • Affidavit is silent on implementation of **S. 50-51** qua appointment of competent authority. • Affidavit is silent on implementation of **S. 56** qua establishment and maintenance of institutions for persons with severe disabilities. • Affidavit is silent on implementation of social security schemes as mandated under **S. 67-68**. • Affidavit is silent on formation of rules under **S. 73** by the appropriate government for carrying out the provisions of PWD Act.
23	**UT of Lakshadweep**	Affidavit is not in compliance of the Order dt. 26.04.2016, however the earlier affidavit shows the following :- • Affidavit is silent on setting up of special schools as mandated under **S. 26(b)-(d)** of the PWD Act, 1995. • Affidavit is silent on implementation of **S. 28** qua research for designing and developing new assistive devices, teaching aids etc. • Affidavit is silent on implementation of **S. 31** on provision of amanuensis to the students with visual impairment. • Affidavit is silent on implementation of provisions of **S. 41** qua incentives to the employers to ensure 5 % of the work force composed of person with disabilities. • Affidavit is silent on implementation of **S. 56** qua establishment and maintenance of institutions for persons with severe disabilities. • Affidavit is silent on implementation of social security insurance schemes for employees as mandated under **S. 67**. • Affidavit is silent on formation of rules under **S. 73** by the appropriate government for carrying out the provisions of PWD Act

24	**State of Uttrakhand**	Affidavit is not in compliance of the Order dt. 26.04.2016, however the earlier affidavit shows the following :- • Though the Affidavit speaks of compliance of provisions of **S. 26-31** but lot more requires to be done like , schemes for non formal education, vocational training centres, research for designing and developing new assistive devices, curriculum restructuring, forum for redressal of grievances of parents of children with disabilities, provision of amanuensis etc. • Though the Affidavit speaks of compliance of provisions of **S. 32-41** but lot more requires to be done like provisioning of 3 % reservation of seats in all educational institutions, incentives to employers, schemes for preferential allotment of land etc. • Affidavit itself states that the provisions of **S. 48-49 & 56** are yet to be complied with.
25	**State of Andhra Pradesh**	• In compliance of provision of **S. 56** establishment of a spinal injury centre at Visakhapatnam is under consideration and establishment of four homes for destitute ages and crippled is also under consideration.
26	**State of Madhya Pradesh**	• Establishment of special schools for visually, hearing and mentally impaired children is being proposed in 41 districts of the State. **S. 26** (Free education to CwDs) has not been complied in its entirety) • No measures in compliance to **S. 29** (Teachers Training Institution) have not been complied. • With regard to **S. 30** (Comprehensive Education Scheme) the affidavit is silent on the aspect of restructuring of the curriculum.

		• The affidavit his silent on **S. 46** (Non-Discrimination in the built environment). • The affidavit is silent on the compliance on the Implementation of provisions of **S. 47** (Discrimination in Government Jobs). • The affidavit is silent on the implementation aspect of the **S. 49** (Financial Incentives to Universities for Research).
27	**State of J&K**	• No affidavit has been filed in compliance to Order dt. 26.04.2016. However, the State earlier had filed an affidavit wherein it was stated that the PWD Act, 1995 is not applicable to the State of J&K.
28	**State of West Bengal**	• Though the affidavit speaks on the compliance of S. 26-31 of PWD Act, 1995 however lot more requires to be done like vocational training facilities, conducting special part time classes, initiation of research for designing and developing new assistive devices and teaching aids, setting up of teacher's training institution, etc. • Affidavit is silent on compliance of provisions of Sections 34 of PWD Act, 1995 For provisioning of special employment exchange. • Affidavit is silent on promotion of research and manpower development, and appointment of competent authority as mandated S. 48-50 of the PWD Act, 1995. • Affidavit is silent on implementation of S. 56 of the PWD Act, 1995 regarding establishment of institutions with persons of severe disabilities.
29	**UT of Dadra & Nagar Haveli**	• The affidavit is silent on the Compliances w.r.t the **Sections 31-32** (Amanuensis to Children with Visual Impairment) **(Identification of Posts), 34-41** (Employment and Benefit Related Schemes) , **48-49** (Research) **&** (Financial Incentives to Universities for Research) , **56** ((Institution for Persons with Severe Disabilities)f)and **66-68** (Social Security Programmes).

30	**State of Haryana**	• Affidavit is silent on provisioning of teacher's training institution for person to teach children with disabilities as mandated under **S. 29** (Teacher's training Institution) of the PWD Act. Affidavit is silent on initiation of research for designing and developing new assistive devices and teaching aids, setting up of teacher's training institution etc. as mandated under **S. 30-31** (Comprehensive Education Scheme) & (Amanuensis to Children with Visual Impairment) of the PWD Act. • In compliance of **S. 73** (Government Rules) of the PWD Act Rules have yet not been finalized.
31	**State of Maharashtra**	• Compliances have been carried out by the State Government.
32	**Union Territory of Daman And Diu**	• No compliances or reports have been presented with regard to the provisions of **Sections 26-32** (Education and assistive devices for Children PWDs), **34-55** and **57-68**. The affidavit is silent w.r.t the aforementioned sections.
33	**State of Kerala**	• The state has assured various measures and various schemes but no status has been presented on the progress/implementation of the projects made so far.
34	**State of Odhisha**	• Non-compliance of **S.45** as the funds received have not been utilised. • Non- compliance of **S. 49** as no action has been carried out.
35	**State of Himachal Pradesh**	• In reference to compliance of **Section 68** (Social Security Schemes) of the PWD Act state govt submits that of such scheme is being implemented. Only Disability Relief Allowance is being provided to 41,961 persons with disabilities.

36	**State of Mizoram**	• **S.41** (Incentives to Employers) not complied, due to financial constraints
37	**State of Telangana**	• State submits that it is in the process of forming various committees and departments as they have been divided due to its bifurcation with the Andhra Pradesh.
38	**Department of Women and Child Empowerment**	• Compliances with regard to **S. 49** (Financial Incentives to Universities for Research) **& 66** (Social Security Programmes) are still at the implementation stage."

Learned counsel for the petitioner submits that there has been no complete compliance of the judgments passed by this Court. She has submitted that the reasons for non-compliance are the perceptible though all the States and Union Territories should have complied with the various provisions of the 1995 Act.

8. It is necessary to mention here that we have reproduced the tabular chart so that each State can know what the other States have done and who has failed to comply and take steps on the path of complete compliance. Before they could do what the 1995 Act envisages, the Parliament, realizing the national need of the rights of the persons under disability and commitment to the Convention of the United Nations General Assembly, repealed the 1995 Act and brought in The Rights of Persons with Disabilities Act, 2016 (for short, 'the 2016 Act'). The said 2016 Act has been brought into existence to give effect to the United Nation Convention on the Rights of Persons with Disabilities and for matters connected therewith or incidental thereto. We think it appropriate to reproduce the preamble of the Act:-

> "An Act to give effect to the United Nations Convention on the Rights of Persons with Disabilities and for matters connected therewith or incidental thereto.
>
> WHEREAS the United Nations General Assembly adopted its Convention on the Rights of Persons with Disabilities on the 13th day of December, 2006;

AND WHEREAS the aforesaid Convention lays down the following principles for empowerment of persons with disabilities,

(a) respect for inherent dignity, individual autonomy including the freedom to make one's own choices, and independence of persons;

(b) non-discrimination;

(c) full and effective participation and inclusion in society;

(d) respect for difference and acceptance of persons with disabilities as part of human diversity and humanity;

(e) equality of opportunity;

f) accessibility;

(g) equality between men and women;

(h) respect for the evolving capacities of children with disabilities and resect for the right of children with disabilities to preserve their identities;

AND WHEREAS India is a signatory to the said Convention;

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

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

Be it enacted by Parliament in the Sixty-seventh Year of the Republic of India as follows:"

9. The 2016 Act visualizes a sea change and conceives of actualization of the benefits engrafted under the said Act. The whole grammar of benefit has been changed for the better, and responsibilities of many have been encompassed. In such a situation, it becomes obligatory to scan the anatomy of significant provisions of the Act and see that the same are implemented. The laudable policy inherent within the framework of the legislation should be implemented and not become a distant dream. Immediacy of action is the warrant.

10. We may note with profit that sub-section (2) of Section 1 of the 2016 Act stipulates that the said Act shall come into force on such date as the Government may, by notification in the Official Gazette, appoint.

11. Ms. V. Mohana, learned senior counsel appearing for the Union of India has filed the Gazette Notification issued by the Ministry of Social Justice and Empowerment dated 19th April, 2017, which provides as follows:- A

> "In exercise of the powers conferred by sub-section (2) of Section 1 of the Rights of Persons with Disabilities Act, 2016 (49 of 2016), the Central Government hereby appoints 19th day of April, 2017, as the date on which the said Act shall come into force." B
>
> Thus, the Act has come into force with effect from 19th April, 2017.

12. Sections 2(c), 2(h), 2(k), 2(m), 2(v) and 2(zb) define "barrier", "discrimination", Government establishment", "inclusive education", "private establishment" and "Special Employment Exchange" respectively. Ms. Manali Singhal, learned counsel appearing for the petitioner would submit that the preamble of the 2016 Act and the dictionary clause have expanded the horizon of the rights of the persons with disabilities. C D

13. In this context, Sections 2(p), 2(r) and 2(s) are worthy of reference. They read as under:-

> "2(p) "local authority" means a Municipality or a Panchayat, as defined in clause (e) and clause (f) of article 243P of the Constitution; a Cantonment Board constituted under the Cantonments Act, 2006; and any other authority established under an Act of Parliament or a State Legislature to administer the civic affairs; E
>
> 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; F
>
> 2(s) "persons 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." G

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14. Section 12 deals with access to justice. It reads as follows:-

Access to justice

(1) The appropriate Government shall ensure that persons with disabilities are able to exercise the right to access any court, tribunal, authority, commission or any other body having judicial or quasi-judicial or investigative powers without discrimination on the basis of disability.

(2) The appropriate Government shall take steps to put in place suitable support measures for persons with disabilities specially those living outside family and those disabled requiring high support for exercising legal rights.

(3) The National Legal Services Authority and the State Legal Services Authorities constituted under the Legal Services Authorities Act, 1987 (39 of 1987) shall make provisions including reasonable accommodation to ensure that persons with disabilities have access to any scheme, programme, facility or service offered by them equally with others."

(4) The appropriate Government shall take steps to –

(a) ensure that all their public documents are in accessible formats;

(b) ensure that the filing departments, registry or any other office of records are supplied with necessary equipment to enable filing, storing and referring to the documents and evidence in accessible formats; and

(c) make available all necessary facilities and equipment to facilitate recording of testimonies, arguments or opinion given by persons with disabilities in their preferred language and means of communications."

15. Section 16(d) deals with the duty of educational institutions. Section 17 lays postulates for specific measures to promote and facilitate inclusive education. Section 18 deals with the adult education and provides that the appropriate government and the local authorities shall take measures to promote, protect and ensure participation of persons with disabilities in adult education and continuing education programmes equally with others. Section 19 deals with vocational training and self-employment.

16. Section 24 occurs in Chapter V, where the heading is 'social security, health, rehabilitation and recreation'. Section 25 deals with health care. Section 31 deals with free education for children with benchmark disabilities. Section 32 which deals with reservation in higher educational institutions, reads as follows:-

"32. **Reservation in higher educational institutions**

(1) All Government institutions of higher education and other higher education institutions receiving aid from the Government shall reserve not less than five per cent. Seats for persons with benchmark disabilities.

(2) The persons with benchmark disabilities shall be given an upper age relaxation of five years for admission in institutions of higher education."

17. Section 33 deals with identification of posts for reservation and Section 34 provides for reservation. Section 35 dealt with incentives to employers in private sector. These provisions, being of significance, are reproduced below:-

"33. **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

A cent. for persons with benchmark disabilities under clauses (d) and (e), namely:—

(a) blindness and low vision;

(b) deaf and hard of hearing;

B (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;

(e) multiple disabilities from amongst persons under clauses (a) C 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:

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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 E exempt any Government establishment from the provisions of this section.

(2) Where in any recruitment year any vacancy cannot be filled up due to non- availability of a suitable person with benchmark disability or for any other sufficient reasons, such vacancy shall F be carried forward in the succeeding recruitment year and if in the succeeding recruitment year also suitable person with benchmark disability is not available, it may first be filled by interchange among the five categories and only when there is no person with disability available for the post in that year, the employer shall fill up the vacancy by appointment of a person, G other than a person with disability:

Provided that if the nature of vacancies in an establishment is such that a given category of person cannot be employed, the vacancies may be interchanged among the five categories with the prior approval of the appropriate Government.

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(3) The appropriate Government may, by notification, provide for such relaxation of upper age limit for employment of persons with benchmark disability, as it thinks fit.

35. **Incentives to employers in private sector**

The appropriate Government and the local authorities shall, within the limit of their economic capacity and development, provide incentives to employer in private sector to ensure that at least five per cent of their work force is composed of persons with benchmark disability."

18. As is noticeable, under the 1995 Act, the Parliament had shown its concern and provided for reservation for many categories and this Court by various judgments had directed for implementation of the Act and some States have implemented the provisions to a certain extent.

19. We will be failing in our duty if we do not take note of Section 84 that makes provision for creation of special court for speedy trial to try the offences under the 2016 Act. Section 85 stipulates for appointment special public prosecutor. Thus, emphasis is on the special court, speedy trial and special public prosecutor.

20. Under Chapter XVI, offences and penalties have been dealt with. Section 89 provides for punishment for contravention of provisions of Act or rules or regulations made thereunder. The said Section reads as follows:-

"89. **Punishment for contravention of provisions of Act or rules or regulations made thereunder**

Any person who contravenes any of the provisions of this Act, or of any rule made thereunder shall for first contravention be punishable with fine which may extend to ten thousand rupees and for any subsequent contravention with fine which shall not be less than fifty thousand rupees but which may extend to five lakh rupees."

21. Section 90 deals with offences by companies. It is extracted hereunder:-

"90. **Offences by companies**

Where an offence under this Act has been committed by a company, every person who at the time the offence was

A committed, was in charge of, and was responsible to, the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:

Provided that nothing contained in this sub-section shall render
B any such person liable to any punishment provided in this Act, if he proves that the offence was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such offence.

(2) Notwithstanding anything contained in sub-section (1), where
C an offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to any neglect on the part of any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to
D be proceeded against and punished accordingly. State Fund for persons with disabilities. Punishment for contravention of provisions of Act or rules or regulations made thereunder.

Explanation : For the purposes of this section,—

E a) "company" means any body corporate and includes a firm or other association of individuals; and

(b) "director", in relation to a firm, means a partner in the firm."

22. Section 92 deals with punishment for offences of atrocities and Section 93 provides for punishment for failure to furnish information.

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23. We have referred to certain provisions only to highlight that the 2016 Act has been enacted and it has many salient features. As we find, more rights have been conferred on the disabled persons and more categories have been added. That apart, access to justice, free education, role of local authorities, National fund and the State fund for persons
G with disabilities have been created. The 2016 Act is noticeably a sea change in the perception and requires a march forward look with regard to the persons with disabilities and the role of the States, local authorities, educational institutions and the companies. The statute operates in a broad spectrum and the stress is laid to protect the rights and provide punishment for their violation.

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24. Regard being had to the change in core aspects, we think it apposite to direct all the States and the Union Territories to file compliance report keeping in view the provisions of the 2016 Act within twelve weeks hence. The States and the Union Territories must realize that under the 2016 Act their responsibilities have grown and they are required to actualize the purpose of the Act, for there is an accent on many a sphere with regard to the rights of the disabilities. When the law is so concerned for the disabled persons and makes provision, it is the obligation of the law executing authorities to give effect to the same in quite promptitude. The steps taken in this regard shall be concretely stated in the compliance report within the time stipulated. When we are directing the States, a duty is cast also on the States and its authorities to see that the statutory provisions that are enshrined and applicable to the cooperative societies, companies, firms, associations and establishments, institutions, are scrupulously followed. The State Governments shall take immediate steps to comply with the requirements of the 2016 Act and file the compliance report so that this Court can appreciate the progress made.

25. The compliance report to be filed by the States shall be supplied to the learned counsel for the petitioner, learned counsel for the Union of India as well as to the learned counsel for the applicant/intervenor so that they can assist the Court.

26. The Registry is directed to send a copy of the order passed today to the Chief Secretaries of the States and the Administrators of the Union Territories.

27. Let the matter be listed on 16th August, 2017.

Nidhi Jain

Matter adjourned.