Reportable

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.1886 OF 2007

Dalco Engineering Private Ltd. … Appellant

Vs.

Shree Satish Prabhakar Padhye & Ors. … Respondents

WITH

CIVIL APPEAL NO. 1858 OF 2007

Fancy Rehabilitation Trust & Anr. … Appellants

Vs.

Union of India & Ors. … Respondents

J U D G M E N T

R. V. RAVEENDRAN, J.

Facts in CA No.1886/2007 :

The appellant is a private limited company incorporated under the provisions of the Companies Act, 1956. The respondent – S.P. Padhye – (also referred to as 'the employee') was employed as a Telephone Operator by the appellant for more than two decades. The respondent's service was

terminated by the appellant with effect from 31.12.2000 on the ground that he had become deaf (85% reduction in ability to hear). The respondent complained to the Disability Commissioner, Pune, in regard to such termination, alleging that he was fit, able and normal when he joined service of the appellant and as he acquired the hearing impairment during the period of service, he should have been continued in employment in some suitable post. The Disability Commissioner made an order dated 12.10.2001 suggesting to the employer to undertake a social responsibility, by re-employing the respondent to discharge any other work. The suggestion was not accepted by the employer.

2. According to the respondent, the Commissioner, instead of making a mere suggestion, ought to have issued a direction to the employer, in exercise of jurisdiction under section 47 of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 ('the Act', for short). He therefore filed a writ petition seeking the following reliefs (i) quashing of the order dated 12.10.2001; and (ii) a direction to implement the provisions of the Disabilities Act by directing the employer to reinstate him in service in a suitable post, with retrospective effect from 1.1.2001, in the same pay-scale and service benefits. The High Court

allowed the said writ petition by judgment dated 23.12.2005, and directed the employer to reinstate the respondent and shift him to a suitable post with the same pay-scale and service benefits and with full back-wages. The High Court held that the respondent, though a private limited company, was an "establishment" as defined under section 2(k) of the Act and consequently section 47 of the Act enjoined it not to dispense with the services of its employee who acquired a disability.

Facts in CA No.1858/2007 :

3. The first Appellant is a Public Trust (for short the 'Trust') working for the benefit of the physically and mentally challenged persons, took up a house-keeping contract from the third respondent Company on 24.7.2000. The appellant employed several physically handicapped persons for executing the said contract. The third respondent terminated the appellant's contract on 18.7.2006. Feeling aggrieved, the appellant filed a complaint dated 22.7.2006 with the Disability Commissioner, Pune followed by a writ petition in the High Court for quashing the notice terminating the contract. The appellant also sought a direction for rehabilitation of the persons with disabilities who were employed by it for executing the said house-keeping contract, under the provisions of the Act. A Division Bench of the Bombay

High Court by judgment dated 19.9.2006 dismissed the writ petition holding that the third respondent was not an "establishment" within the meaning of section 2(k) of the Act and, consequently, the provisions of the Act did not apply and that the Disability Commissioner had no jurisdiction to issue any direction to the third respondent. It also held that the earlier decision in *S.P. Padhye* (which is the subject matter of the first case) was *per incuriam* as it ignored two binding decisions of this court - the Constitution Bench decision in *Sukhdev Singh v. Bhagatram Sardar Singh Raghuvanshi* [1975 (1) SCC 421] and the decision in *S.S. Dhanoa v. Municipal Corporation, Delhi* [1981 (3) SCC 431]. Feeling aggrieved, the appellants have filed this appeal.

Questions for decision

4) The employee relies on section 47 which provides that no *establishment* shall dispense with, or reduce in rank, an employee who acquires a disability during his service. Section 47 of the Act is extracted below :-

> "**47. Non-discrimination in Government employment.**—(1) No establishment shall dispense with, or reduce in rank, an employee who acquires a disability during his service:
>
> Provided that, if an employee, after acquiring disability is not suitable for the post he was holding, could be shifted to some other post with the same pay scale and service benefits:

> Provided further that if it is not possible to adjust the employee against any post, he may be kept on a supernumerary post until a suitable post is available or he attains the age of superannuation, whichever is earlier.
>
> (2) No promotion shall be denied to a person merely on the ground of his disability:
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> Provided that the appropriate Government may, having regard to the type of work carried on in any establishment, by notification and subject to such conditions, if any, as may be specified in such notification, exempt any establishment from the provisions of this section."

The term "establishment" employed in section 47 is defined in section 2(k) of the Act as follows :

> "**2. Definitions.**—In this Act, unless the context otherwise requires, --
>
> x x x x x
>
> (k) "establishment" means a corporation established by or under a Central, Provincial or State Act, or an authority or a body owned or controlled or aided by the Government or a local authority or a Government company as defined in section 617 of the Companies Act 1956 (1 of 1956) and includes Departments of a Government;"

5. The question is, having regard to the definition of the word 'establishment' of section 2(k) of the Act, whether the requirement relating to non-discrimination of employees acquiring a disability during the course of service, embodied in Section 47, is to be complied with only by authorities falling within the definition of State (as defined in Article 12 of the Constitution), or even by private employers. This leads us to the following two questions:-

(i) Whether a company incorporated under the Companies Act (other than a Government company as defined in section 617 of the Companies Act, 1956) is an "establishment" as defined in section 2(k) of the Act ?

(ii) Whether the respondent in the first case and the appellant in the second case are entitled to claim any relief with reference to section 47 of the Act ?

Re: Question (i)

6. Let us examine the meaning of the crucial word 'establishment' used in sub-section (1) of section 47 of the Act. The definition of the word 'establishment' in section 2(k), when analyzed, shows that it is an exhaustive definition, and covers the following categories of employers:

(i) a corporation established by or under a Central, Provincial, or State Act;

(ii) an authority or a body owned or controlled or aided by the Government;

(iii) a local authority;

(iv) a Government company as defined in Section 617 of the Companies Act, 1956; and

(v) Departments of a Government.

It is not in dispute that the employers in these two cases are companies incorporated under the Companies Act, 1956 which do not fall under categories (ii) to (v) specified in Section 2(k) of the Act.

7. The employee contends that a company incorporated under the Companies Act is a Corporation falling under the first category enumerated in section 2(k), that is 'Corporation established by or under a Central, Provincial or State Act', on the following reasoning : that a corporation refers to a company; that Companies Act is a Central Act; and that therefore a company incorporated and registered under the Companies Act is a Corporation established under a Central Act. He contends that the use of the words "by or under" is crucial. According to him, 'a corporation established by an Act' would refer to a corporation brought into existence by an Act; and a 'corporation established under an Act' would refer to a company incorporated under the Companies Act. On the other hand, the employer contends that the term 'Corporation established by or under a Central, Provincial or State Act' refers to a statutory Corporation which is brought into existence by a statute, or under a statute and does not include a company which is registered under the Companies Act. It is submitted that Companies Act merely facilitates and lays down the procedure for

incorporation of a company which, when incorporated, will be governed by the provisions of the said Act and therefore, a company registered under the Companies Act, is not a corporation established under an Act.

8. The words "a Corporation established by or under a Central, Provincial or State Act" is a standard term used in several enactments to denote a statutory corporation established or brought into existence by or under statute. For example, it is used in sub-clause (b) of Clause *Twelfth* of Section 21 of the Indian Penal Code ('IPC' for short) and Section 2(c)(iii) of the Prevention of Corruption Act, 1988 ('PC Act' for short). Both these statutes provide that a person in the service of a 'Corporation established by or under a Central, Provincial or State Act' is a public servant. The Prevention of Damage to Public Property Act, 1984 defines 'public property' as meaning any property owned by, or in the possession of, or under the control of (i) the Central Government (ii) any state government; or (iii) any local authority; or (iv) *any corporation established by, or under, a Central, Provincial or State Act;* or (v) any company as defined in Section 617 of the Companies Act, 1956; or (vi) any institution, concern or undertaking which the Central Government may, by notification in the Official Gazette, specify in that behalf provided that the Central Government

shall not specify any institution, concern or undertaking under that sub-clause unless such institution, concern or undertaking is financed wholly or substantially by funds provided directly or indirectly by the Central Government or by one or more State Governments, or partly by the Central Government and partly by one or more State Governments. Thus the term is always used to denote certain categories of authorities which are 'State' as contrasted from non-statutory companies which do not fall under the ambit of 'State'.

9. The meaning of the term came up for consideration in *S. S. Dhanoa vs. Municipal Corporation, Delhi and Ors*. - 1981 (3) SCC 431 with reference to section 21 of IPC. This Court held:

> "Clause Twelfth does not use the words "body corporate", and the question is whether the expression "corporation" contained therein, taken in collocation of the words "established by or under a Central, Provincial or State Act" would bring within its sweep a cooperative society. Indubitably, the Cooperative Store Limited is not a corporation established by a Central or State Act. The crux of the matter is whether the word 'under' occurring in Clause Twelfth of Section 21 of the Indian Penal Code makes a difference. Does the mere act of incorporation of a body or society under a Central or a State Act make it a corporation within the meaning of Clause Twelfth of Section 21. In our opinion, the expression *'corporation' must, in the context, mean a corporation created by the Legislature and not a body or society brought into existence by an act of a group of individuals*. A cooperative society is, therefore, not a corporation established by or under an Act of the Central or State Legislature.
>
> A corporation is an artificial being created by law having a legal entity entirely separate and distinct from the individuals who compose it with the

capacity of continuous existence and succession, notwithstanding changes in its membership. …….. The term 'corporation' is, therefore, wide enough to include private corporations. But, in the context of Clause Twelfth of Section 21 of the Indian Penal Code, the expression 'corporation' must be given a narrow legal connotation.

Corporation, in its widest sense, may mean any association of individuals entitled to act as an individual. But that certainly is not the sense in which it is used here. *Corporation established by or under an Act of Legislature can only mean a body corporate which owes its existence, and not merely its corporate status*, to the Act. For example, a Municipality, a Zilla Parishad or a Gram Panchayat owes its existence and status to an Act of Legislature. On the other hand, an association of persons constituting themselves into a Company under the Companies Act or a Society under the Societies Registration Act owes its existence not to the Act of Legislature but to acts of parties though, it may owe its status as a body corporate to an Act of Legislature.

There is a distinction between a corporation established by or under an Act and a body incorporated under an Act. The distinction was brought out by this Court in *Sukhdev Singh and Ors. v. Bhagatram Sardar Singh Raghuvanshi & Ors* - (1975) 1 SCC 421. It was observed :

> A company incorporated under the Companies Act is not created by the Companies Act but comes into existence in accordance with the provisions of the Act.

There is thus a well-marked distinction between a body created by a statute and a body which, after coming into existence, is governed in accordance with the provisions of a statute."

(emphasis supplied)

In *Executive Committee of Vaish Degree College v. Lakshmi Narain* - 1976 (2) SCC 58, this Court explained the position further:

> "In other words the position seems to be that the institution concerned must owe its very existence to a statute which would be the fountainhead of its powers. *The question in such case to be asked is, if there is no statute, would the institution have any legal existence.* If the answer is in the negative, then undoubtedly it is a statutory body, but if the institution has a separate existence of its own without any reference to the statute concerned but is merely

> governed by the statutory provisions it cannot be said to be a statutory body."
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> [emphasis supplied]

10. A 'company' is not 'established' under the Companies Act. An incorporated company does not 'owe' its existence to the Companies Act. An incorporated company is formed by the act of any seven or more persons (or two or more persons for a private company) associated for any lawful purpose subscribing their names to a Memorandum of Association and by complying with the requirements of the Companies Act in respect of registration. Therefore, a 'company' is incorporated and registered under the Companies Act and not established under the Companies Act. Per contra, the Companies Act itself establishes the National Company Law Tribunal and National Company Law Appellate Tribunal, and those two statutory authorities owe their existence to the Companies Act.

11. Where the definition of 'establishment' uses the term 'a corporation *established* by or under an Act', the emphasis should be on the word 'established' in addition to the words 'by or under'. The word 'established' refers to coming into existence by virtue of an enactment. It does not refer to a company, which, when it comes into existence, is governed in accordance

with the provisions of the Companies Act. But then, what is the difference between 'established *by* a central Act' and 'established *under* a central Act'? The difference is best explained by some illustrations. A corporation is established by an Act, where the Act itself establishes the corporation. For example, Section 3 of State Bank of India Act, 1955 provides that a Bank to be called the State Bank of India shall be constituted to carry on the business of banking. Section 3 of Life Insurance Corporation Act, 1956 provides that with effect from such date as the Central Government may by notification in the Official Gazette appoint, there shall be established a corporation called the Life Insurance Corporation of India. State Bank of India and Life Insurance Corporation of India are two examples of corporations established by "a Central Act". We may next refer to the State Financial Corporation Act, 1951 which provides for establishment of various Financial Corporations under that Act. Section 3 of that Act relates to establishment of State Financial Corporations and provides that the State Government may, by notification in the Official Gazette establish a Financial Corporation for the State under such name as may be specified in the notification and such Financial Corporation shall be a body corporate by the name notified. Thus, a State Financial Corporation is established under a central Act. Therefore, when the words "by and under an Act" are preceded by the words

"established", it is clear that the reference is to a corporation established, that it is brought into existence, by an Act or under an Act. In short, the term refers to a statutory corporation as contrasted from a non-statutory corporation incorporated or registered under the Companies Act.

12. There is indication in the definition of 'establishment' itself, which clearly establishes that all companies incorporated under the Companies Act are not establishments. The enumeration of establishments in the definition of 'establishment' specifically includes "a Government Company as defined in Section 617 of the Companies Act, 1956". This shows that the legislature, took pains to include in the definition of 'establishment' only one category of companies incorporated under the Companies Act, that is the 'Government Companies' as defined in Section 617 of the Companies Act. If, as contended by the employee, all Companies incorporated under the Companies Act are to be considered as 'establishments' for the purposes of Section 2(k), the definition would have simply and clearly stated that 'a company incorporated or registered under the Companies Act, 1956' which would have included a Government company defined under Section 617 of the Companies Act, 1956. The inclusion of only a specific category of companies incorporated under the Companies Act, 1956 within the

definition of 'establishment' necessarily and impliedly excludes all other types of companies registered under the Companies Act, 1956, from the definition of 'establishment'. It is clear that the legislative intent was to apply section 47 of the Act only to such establishments as were specifically defined as 'establishment' under section 2(k) of the Act and not to other establishments. The legislative intent was to define 'establishment' so as to be synonymous with the definition of 'State' under Article 12 of the Constitution of India. Private employers, whether individuals, partnerships, proprietary concerns or companies (other than Government companies) are clearly excluded from the 'establishments' to which section 47 of the Act will apply.

13. There is yet another indication in section 47, that private employers are excluded. The caption/ marginal note of section 47 describes the purport of the section as non-discrimination in *Government* employment. The word 'government' is used in the caption, broadly to refer to 'State' as defined in Article 12 of the Constitution. If the intention of the legislature was to prevent discrimination of persons with disabilities in any kind of employment, the marginal note would have simply described the provision as 'non-discrimination in employment' and sub-section (1) of section 47

would have simply used the word ‘any employer’ instead of using the word ‘establishment’ and then taking care to define the word ‘establishment’. The non-use of the words ‘any employer’, and ‘any employment’ and specific use of the words ‘Government employment’ and ‘establishment’ (as defined), demonstrates the clear legislative intent to apply the provisions of Section 47 only to employment under the State and not to employment under others. While the marginal note may not control the meaning of the body of the section, it usually gives a safe indication of the purport of the section to the extent possible. Be that as it may.

14. The learned counsel for the employee submitted that the decision in *Dhanoa* was rendered with reference to a penal statute; and that words or terms in such statutes are used in a restrictive and strict sense. He contended that definition of words and terms in a penal statute will not provide a safe guide to interpret the same words employed in socio-economic legislations. He further contended that the terms used in a socio-economic statute like Disabilities Act, providing for full participation and equality, for people with disabilities and to remove any discrimination against them vis-à-vis non-disabled persons, should be interpreted liberally. He submitted that any interpretation of the term ‘a corporation established by or under a central,

provincial or state Act' with reference to the Penal Code should not therefore be imported for understanding the meaning of that term when used in the Act. He referred to and relied upon the Statement of Objects and Reasons of the Act which states that India as a signatory to the Proclamation on the Full Participation and Equality of the People with Disabilities in the Asian and Pacific Region, enacted the Statute to provide for the following :

(i) to spell out the responsibility of the State towards the prevention of disabilities, protection of rights, provision of medical care, education, training, employment and rehabilitation of persons with disabilities;

(ii) to create barrier free environment for persons with disabilities;

(iii) to remove any discrimination against persons with disabilities in the sharing of development benefits, vis-à-vis non-disabled persons;

(iv) to counteract any situation of the abuse and the exploitation of persons with disabilities;

(v) to lay down a strategy for comprehensive development of programmes and services and equalization of opportunities for persons with disabilities; and

(vi) to make special provision of the integration of persons with disabilities into the social mainstream."

He submitted that keeping the said objects in view, the term 'establishment' should be extended to all corporations incorporated under the Companies Act 1956, irrespective of whether they are in the public sector or private sector.

14.1) He also relied upon the following principle of contextual interpretation enunciated by this Court in *Reserve Bank of India vs. Peerless General Finance and Investment Co. Ltd*., - 1987 (1) SCC 424:

> "Interpretation must depend on the text and the context. They are the bases of interpretation. One may well say is the text is the texture, context is what gives the colour. Neither can be ignored. Both are important. The interpretation is best which makes the textual interpretation match the contextual. *A statute is best interpreted when we know why it was enacted.* With this knowledge, the statute must be read, first as a whole and then section by section, clause by clause, phrase by phrase and word by word. If a statute is looked at, in the context of its enactment, with the glasses of the statute-maker, provided by such context, its scheme, the sections, clauses, phrases and words may take colour and appear different than when the statute is looked at without the glasses provided by the context. With these glasses we must look at the Act as a whole and discover what each section, each clause, each phrase and each word is meant and designed to say as to fit into the scheme of the entire Act. No part of a statute and no word of a statute can be construed in isolation. Statutes have to be construed so that every word has a place and everything is in its place."

14.2) He next relied upon the principle that words in a social welfare legislation should receive liberal and broad interpretation, stated by this Court in *Workman of American Express International Banking Corporation v. Management of American Express International Banking Corporation* - 1985 (4) SCC 71 :

> "The principles of statutory construction are well settled. Words occurring in statutes of liberal import such as social welfare legislation and human rights legislation are not to be put in Procrustean beds or shrunk to Liliputian dimensions. In construing these legislations the imposture of literal construction must be avoided and the prodigality of its misapplication must be recognized and reduced. Judges ought to be more

> concerned with the 'colour', the 'content' and the 'context' of such statutes (we have borrowed the words from Lord Wilberforce's opinion in *Prenn v. Simmonds* - 1971 (3) All ER 237). In the same opinion Lord Wilberforce pointed out that law is not to be left behind in some island of literal interpretation but is to enquire beyond the language, unisolated from the matrix of facts in which they are set; the law is not to be interpreted purely on internal linguistic considerations. In one of the cases cited before us, that is, *Surendra Kumar Verma v. Central Government Industrial Tribunal-cum-Labour Court* (1981) 1 SCR 789, we had occasion to say,
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> > Semantic luxuries are misplaced in the interpretation of "bread and butter" statutes. Welfare statutes must, of necessity, receive a broad interpretation. Where legislation is designed to give relief against certain kinds of mischief, the Court is not to make inroads by making etymological excursions."

14.3) He next relied upon the following observations in *Kunal Singh v. Union of India* - 2003 (4) SCC 524, where this Court, referring to the very section under consideration, observed thus :

> "Section 47 contains a clear directive that the employer shall not dispense with or reduce in rank an employee who acquires a disability during the service. In construing a provision of a social beneficial enactment that too dealing with disabled persons intended to give them equal opportunities, protection of rights and full participation, the view that advances the object of the Act and serves its purpose must be preferred to the one which obstructs the object and paralyses the purpose of the Act. Language of section 47 is plain and certain casting statutory obligation on the employer to protect an employee acquiring disability during service."

15. We agree that the socio-economic legislations should be interpreted liberally. It is also true that Courts should adopt different yardsticks and measures for interpreting socio-economic statutes, as compared to penal

statutes, and taxing statutes. But a caveat. The courts cannot obviously expand the application of a provision in a socio-economic legislation by judicial interpretation, to levels unintended by the legislature, or in a manner which militates against the provisions of the statute itself or against any constitutional limitations. In this case, there is a clear indication in the statute, that the benefit is intended to be restricted to a particular class of employees, that is employees of enumerated establishments (which fall within the scope of 'state' under Article 12). Express limitations placed by the socio-economic statute can not be ignored, so as to include in its application, those who are clearly excluded by such statute itself. We should not lose sight of the fact that the words "corporation established by or under a Central, Provincial or State Act" is a term used in several enactments, intended to convey a standard meaning. It is not a term which has any special significance or meaning in the context of the Disabilities Act or any other socio-economic legislations. It is a term used in various enactments, to refer to statutory corporations as contrasted from non-statutory companies. Any interpretation of the said term, to include private sector, will not only amount to overruling the clear enunciation in *Dhanoa* which has held the field for nearly three decades, but more importantly lead to the erasure of the distinction maintained in the Constitution between statutory corporations

which are ‘state’ and non-statutory bodies and corporations, for purposes of enforcement of fundamental rights. The interpretation put forth by the employee would make employees of all companies, public servants, amenable to punishment under the provisions of Indian Penal Code and Prevention of Corruption Act; and would also result in all non-statutory companies and private sector companies being included in the definition of ‘State’ thereby requiring them to comply with the requirements of non-discrimination, equality in employment, reservations etc.

16. The appellant next contended that the scheme of the Act, does not confine its applicability to government or statutory corporations. Reference is invited to some provisions of the Act to contend that obligations/duties/ responsibilities are fixed with reference to persons with disabilities, on establishments other than those falling under section 2(k) of the Act. It was submitted that section 39 casts an obligation on all educational institutions, to reserve not less than three percent of the seats for persons with disabilities. In fact, it is not so. Though, the marginal note of section 29 uses the words ‘all educational institutions’ with reference to reservation of seats for persons with disabilities, the section makes it clear that only government educational institutions and educational institutions receiving aid from the

government shall reserve not less than three percent seats for persons with disabilities. It is well recognized that an aided private school would be included within the definition of 'State' in regard to its acts and functions as an instrumentality of the State. Therefore, care is taken to apply the provisions of the Act to only educational institutions belonging to the government or receiving aid from the government and not to unaided private educational institutions. Further, section 39 of the Act, does not use the word 'establishment'. Reference is next made to the section 44 which requires non-discrimination in transport. This section requires establishments in the transport sector to take special measures (within the limits of their economic capacity) to permit easy access to persons with disabilities. The employee contends that this would mean that all establishments whether statutory corporations falling under the definition of section 2(k) of the Act or non-statuary corporations, or even individuals operating in the transport sector should comply with section 44 of the Act. We do not propose to consider whether Section 44 applies to non-statutory corporations in the transport sector, as that issue does not arise in this case. Further the use of the words "within the limits of their economic capacity" makes it virtually directory. Be that as it may.

Re : Question (ii)

17. As the appellant in CA No. 1886/2007 and the third respondent in CA No. 1858/2007, are not establishments, within the meaning of that expression in Section 2(k) of the Act, section 47 of the Act will not apply. In so far the CA No. 1858 of 2007, there is an additional factor. Third respondent therein was not the employer of any persons with disability. Therefore, in that case, the entire question is academic. In neither of the cases, any relief can be granted under section 47 of the Act.

18. Therefore CA No. 1886 of 2007 is allowed and CA No. 1858 of 2007 is dismissed resulting in the dismissal of the respective writ petitions. This will not come in the way of employee of any private company, who has been terminated on the ground of disability, seeking or enforcing any right available under any other statute, in accordance with the law.

_____J.
(R.V. RAVEENDRAN)

_____J.
(R. M. LODHA)

New Delhi. _____J.
March 31, 2010. (C. K. PRASAD)