



सत्यमेव जयते

न्यायालय मुख्य आयुक्त दिव्यांगजन

COURT OF CHIEF COMMISSIONER FOR PERSONS WITH DISABILITIES (DIVYANGJAN)

दिव्यांगजन सशक्तिकरण विभाग/Department of Empowerment of Persons with Disabilities (Divyangjan)

सामाजिक न्याय और अधिकारिता मंत्रालय/Ministry of Social Justice and Empowerment

भारत सरकार/Government of India

Case No. 12149/1141/2020

Complainant:

Shri Shibu S.V.
Charuvila Puthen Veedu,
Chakkuvarakkal P O, Kunnicode,
Kollam, Kerala-691508; Email: shibusv2017@gmail.com
Mobile: 7012639622

....Complainant No.1

Shri Ramdas Shivhare
R/o Flat No.30, SBI Officers Flat,
G-Block, East of Kailash, Delhi-110005
Email: ramdas.shivhare@gmail.com

....Complainant No.2

Smt. Pulela Venkata Satya,
W/o Sri S. Sanyasi Rao
At-Battogoudo Street,
PO-Parlakhemundi, Pin-761200
Email: ssanyasirao30@gmail.com;

....Complainant No.3

Respondent:

Department of Heavy Industry,
Through: Secretary,
Ministry of Heavy Industries and Public Enterprises,
Block No.14, CGO Complex,
Lodhi Road, New Delhi-110003
Email: shioff@nic.in

....Respondent No.1

National Highway Authority of India
Through: Chairman,
G 5 & 6, Sector-10, Dwarka, New Delhi-110075
Email: tis@nhai.org

....Respondent No.2

Department of Revenue,
Ministry of Finance,
Through: Secretary,
North Block, New Delhi-110001
Email: rsecy@nic.in

....Respondent No.3

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(कृपया भविष्य में पत्राचार के लिए उपरोक्त फाईल/केस संख्या अवश्य लिखें)

(Please quote the above file/case number in future correspondence)

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1. Gist of Complaint

1.1 The Complainant No.1, Shri Shibu S.V., is a person with low vision with 50% visual impairment. He filed a complaint regarding injustice to other persons with disabilities in providing GST concession benefit on purchase of vehicles except persons with orthopaedic physical disability.

1.2 According to the Clause 4 of the Order No.12(42)/2015-AEI dated 24.10.2019, issued by Department of Heavy Industry, Ministry of Heavy Industries and Public Enterprises, only the persons with Orthopaedic Physical Disability who are having equal to or greater than 40% disability irrespective of the fact that the applicant drives the vehicle himself or otherwise, can avail the GST concession benefit on purchase of vehicles. The complainant further submitted that so many people suffer from various disabilities, but only one section is entitled to this benefit which is denial of justice to the rest.

1.3 The matter was taken up with the respondent on 29.07.2020 for submission of comment. Despite reminder dated 01.10.2020, no comment was received from the Respondent No.1.

1.4 Complainant No.2, Shri Ramdas Shivhare, a person with 100% visual impairment filed a similar complaint (**Case No.12312/1092/2020**). He submitted that so far, concession in GST and Road Tax are only available for the persons with orthopedic physical disability as per the notification No. 14/2019-Integrated Tax Rate dated 30th September 2019 and people with other disabilities still paying full GST and Road Tax while purchasing a new car. He further concern was of inequality while people except with orthopaedic disabilities are charged for Toll Tax, vide Notification dated 08.06.2016 of National Highways Authority of India. As per the said notification concern department is offering such exemption from the mentioned taxes only for the Orthopedically Disabled Persons. The complainant No.2 prayed that –

(i) the benefit of the Concessional GST on purchase of car, Road Tax and Toll tax be given to him being a person with disability;



(ii) the notification issued by Government of India, Ministry of Heavy Industries and Public Enterprises Department of Heavy Industry should be amended to include all categories of PWDs in availing benefits of Exemption in GST concession and Road Tax, on buying vehicles, and the Technical condition "Of Modification In Vehicle" should be removed for all PWDs in availing the tax benefits;

(iii) the Department of Heavy Industry and National High-Way Authority of India may be directed to amend their orders to provide respective facilities to all PWDs and lift the technical condition of Modified Vehicle; and

(iv) National High-Way authority of India may be directed to extend the facility of Toll Exemption to PWDs irrespective of their disability in using the facility of Fastag too; and

(v) the mandatory requirement of Self Driving for the PWDs in availing the above mentioned exemptions should be removed as there are many categories of PWDs, who require help of others in driving their vehicles.

1.5 The Complainant No.3, Smt. Pullela Venkata Satya, a person with 60% Locomotor Disability (Rights Leg and Right Arm) in her complaint (**Case No.12313/1092/2020**) submitted that she cannot move without person assistance. She is also suffering from cardiac problems. She cannot travel neither by train nor by bus; and is compelled to travel in her own car which bears Registration No. OD 20 5536 and is registered in the name of her husband. Her husband being a senior citizen is unable to drive car, so a paid driver is engaged for journey. During journey NHAI highways toll operators insist her to pay toll fee. She feels that it is the violation of the orders regarding exemption of toll fee from vehicle carrying physically disabled person. She requested if having a Zero Value Fastag can give exemption from toll fee.

2. **Hearing:** The case was heard via Video Conferencing by Commissioner for Persons with Disabilities on **10.11.2020**. The following were present:



- (1) Shri Shibu S.V.; Shri Ramdas Shivhare; Ms. Pullela Venkata Satya, complainants
- (2) Prof. Vikas Gupta, University of Delhi; and Shri Pankaj Sinha, Advocate on behalf of complainants
- (3) Shri Satyarth Sinha; and Shri Anand Kumar Singh, Director for the Respondent No.1
- (4) Shri Abhishek Verma, for the respondent No.3

3. Observation/Recommendations:

3.1 Similar question arises from these batches of complaints in which the Complainants have asked for following reliefs -

(a) In SHIBU S.V. v. DEPARTMENT OF HEAVY INDUSTRIES, MINISTRY OF HEAVY INDUSTRIES & PUBLIC ENTERPRISES, Complainant is suffering from 50% low visual impairment has sought concession in Goods and Services Tax paid at the time of buying four wheel vehicle, for all persons belonging to Pwd category.

(b) In RAMDAS SHIVHARE v. DEPARTMENT OF HEAVY INDUSTRIES, MINISTRY OF HEAVY INDUSTRIES & PUBLIC ENTERPRISES, complainant is 100% visually impaired and has sought exemption in GST paid at the time of purchasing four wheel vehicle, Road Tax, Toll Tax for all the persons belonging to PwD category and asked this court to remove technical condition of modifying the vehicle for exemption for various taxes.

(c) In PULELLA VENKAT SATYA v. DEPARTMENT OF HEAVY INDUSTRIES, MINISTRY OF HEAVY INDUSTRIES & PUBLIC ENTERPRISES, complainant who is physically challenged has sought toll tax exemption while using the car not purchased on her own name.

3.2 Common complaint which is made by all the complainants is that exemption in taxes, particularly GST, is given to persons with orthopaedic disability only. Hence, resulting in discrimination with persons, who



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are suffering from disability other than orthopaedic disability. Prima Facia, these complaints point out discrimination among sub-categories of persons with disability.

3.3 Similar question came before Hon'ble Supreme Court in JAVED ABIDI v. UNION OF INDIA, decided on 17.12.1998. Hon'ble Supreme Court dealt with question whether persons suffering from locomotor disability can be granted the facility of concession while travelling by air which facility was already being given to those suffering from disability of blindness. To resolve the issue Hon'ble Court adopted a unique approach. Court put itself into the shoes of the persons suffering from various types of disabilities. Court anticipated and compared the difficulties which may be faced by the persons suffering from different types of disabilities. Court reached to the conclusion that in case of travelling by train, person who may be suffering from locomotor disability would stand by a separate class itself because of his mobility and restrictions of the limbs. Similarly, situation would not be difficult for a person with low vision for a person with hearing impairment. **Thereafter, court reached to the conclusion that travel concession must be given to all persons with disabilities irrespective of type on disability they may be suffering from.**

3.3 In the present complaints similar approach is adopted for deciding the issue.

3.4 Any person suffering from complete blindness shall never be able to drive the vehicle by himself. Similarly, RTO rules of various States also prohibit people suffering from hearing impairment from driving vehicles. On the similar grounds, Orthopaedic disability also cannot drive vehicle without making necessary modification. **Hence, it is safe to conclude that persons belonging to PwD category always face some kind of challenge to drive vehicle by themselves, irrespective of type of disability they suffer from.**

3.5 Therefore, this court concludes that orthopaedic disability do not form class in themselves and given GST concession to persons with orthopaedic




disability only cannot be said to be proportionate means of achieving a legitimate aim hence this practice constitutes violation of equality rights of persons belonging to Persons with Disabilities as guaranteed under Rights of Persons with Disabilities Act, 2016.

3.5 Accordingly, this court recommends that the respondents, i.e. Department of Heavy Industries, Ministry of Heavy Industries and Public Enterprises and Department Of Revenue, Ministry of Finance, Union of India shall amend necessary rules in order to give concessions in GST, Road Tax, Toll Tax to **all persons belonging to PwD category, irrespective of type of disability they suffer from.**

4. Accordingly the case is disposed off.

Dated: 01.12.2020


(Upma Srivastava)
Commissioner
for Persons with Disabilities

