LAWBY 26
Experience law effortlessly

LAWBY 26

FROM THE HOUSE OF ORIGIN LAW LABS

Aug, 2024
Vol 18

LAWBY WRITES

The not so accessible rights of the persons with disabilities

Visit Us
https://lawby26.com/

EDITORIAL

P Arun Sugavaneshvar
Founder

The not so accessible rights of the persons with disabilities

"My disability exists not because I use a wheelchair, but because the broader environment isn't accessible"- Stella Young, Australian comedian and journalist.

Just place yourself in the position of having a high fever that lands you in bed for a week. If you need regular care and facilities to help you get back on feet, then think about the perpetual circumstance of persons with disabilities.

Section 3 (1) of the Rights of Persons with Disabilities Act, 2016 (RPwD Act) mandates the Government to ensure right to equality, life with dignity and respect for persons with disability. **Section 41 of the RPwD Act, mandates the Government to ensure access and to provide facilities for persons with disabilities at bus stops, railway stations, airports, parking spaces, toilets and ticketing spaces.** It further provides under Section 44 that no establishment may be given permission to construct a building if the building plan doesn't comply with the rules prescribed by the Central Government facilitating access to PwD. **Section 45 further mentions that all existing public buildings shall be made accessible to PwD within a period not exceeding 5 years from the date of notification of the Central Government rules.**

It is noteworthy that the Reserve Bank of India (RBI) in its Circular DBOD. No. Leg BC. 91 /09.07.005/2007-08 dated June 4, 2008, advised banks that all banking facilities, such as cheque book facility including third-party cheques, ATM facilities, Net banking facilities, locker facilities, retail loans, credit cards etc., must be invariably offered to visually challenged persons without any discrimination as they are legally competent to contract. **Also, through Circular DBOD.No. Leg.BC.123 /09.07.005/2008-09 dated April 13, 2009, RBI advised banks to take necessary steps to provide all existing ATMs / future ATMs with ramps and to make at least one-third of new ATMs installed as talking ATMs with Braille keypads.**

In the case of ***M. Karpagam vs. Commissionerate for the Welfare of differently abled and Others W.P.No.11850 of 2021,*** the Madras High Court, while directing the State Government official to ensure compliance with PwD Act, 2016 observed that "it is imperative that all public buildings, including Court houses, must have access that may be used by persons with disabilities". It further stated that "Toilets must also be installed in public buildings which may be used by persons with disabilities". **In the case of *K. R. Raja vs. The State of Tamilnadu and Others W.P.(MD) No.19896 of 2018, decided on 25.11.2022*, the Madras High Court ordered the State Government to devise a programme in consultation with experts to make tourist destinations accessible for PwD.**

The fabric of our society has at its core the rule of inclusivity, which the Government needs to pay further attention to. There may be bottlenecks in executing legal provisions, but finding a way to serve the people better, especially PwD, is a task we cannot take lightly.

LEGAL CRISPS

Validity of unilateral appointment of arbitrator

-Seethala B

The Madras High Court set aside an arbitral award where the respondents unilaterally appointed the arbitrator without informing the petitioners, who had also not been notified of such hearings. This was established in the case of ***Vipul Kumar Tulsian and Anr vs M/s.Sundaram Finance Ltd [Arb.O.P (Com.Div.) No.282 of 2023]***, where the petitioners who had a loan agreement with the respondent defaulted after the 14th instalment. Despite their attempts to settle, including hypothecation of the subject vehicle as a security for the due amount, the petitioners only learned about the arbitral award during the execution proceedings.

The High Court observed that the respondents neither sent notice u/s 21 of the Arbitration and Conciliation Act, 1996 nor provided a copy of the arbitration award. The Court referred to the case of ***Perkins Eastman Architects DPC vs. HSCC(India) Ltd. [2019 SCC OnLine SC 1517]***, where it was contended that in the absence of any express agreement mentioning unilateral appointment of an arbitrator, such appointment of the arbitrator is null and void, and consequently, any award passed by the said Arbitrator is liable to be set aside.

The court held that the arbitrator's appointment was unilateral as it was without the petitioner's consent, violating section 12(5) of the Act. The court further stated that "in the present case, it appears that the award has been passed without giving any opportunity to the petitioners and therefore, the award is suffered with the violation of principles of natural justice also." Hence, the award was set aside and a new arbitrator was appointed.

The Interplay Between POSH Act And POCSO Act

-Nithyaparvathy R G

In the case of ***B.P.S v. The State of Maharashtra(Spl. Case/0000305/2023),*** the victim, a standard VII student, was sexually harassed by a teacher at school. The FIR was filed four years after the occurrence because the victim did not report it. The incident came to light after a similar situation occurred with the victim's friend. In this case, a POSH inquiry was conducted under the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 (POSH Act), and the accused staff was dismissed from the school. Also, the FIR was initially filed under sections 7 and 11(1) of the Protection of Children from Sexual Offences Act, 2012 (POCSO Act), with Sections 8, 10, and 12 added later. As a result, the accused was arrested and is being tried at the District and Sessions Court in Pune.

In the case of ***P. K. N. v. Union of India (WP. CT 86 of 2021)***, the Calcutta High Court found that the POSH Act applies even when the complainants are students and the complaint has been registered under the POCSO Act. The Court was hearing an appeal against the Central Administrative Tribunal's order dated October 10, 2021, which upheld the dismissal of the accused teacher of the Central Government-aided school in Sikkim, against whom 67 female students had made sexual harassment allegations.

The Court redefined 'aggrieved woman' to encompass a woman of any age, whether employed or not, who claimed to have been subjected to any act of sexual harassment by the respondent in the workplace.

CASE CHRONICLE

Specific performance and Agricultural land transfers- SC

-Sowmiya R K

The Supreme Court's recent ruling has significant implications for the enforcement of specific performance in contracts involving agricultural land under the Zamindari Abolition Act, 1950. The Court held that under Section 19(b) of the Specific Relief Act, 1963, specific performance can be enforced against subsequent purchasers unless they are bona fide purchasers without notice of the original contract.

In the case of ***Maharaj Singh & Ors. v. Karan Singh (dead) Thr. Lrs & Ors. [Civil Appeal No. 6782 of 2013]***, the original plaintiffs sought specific performance of an agreement dated December 1, 1981, where the first defendant had agreed to sell land for Rs. 20,300, with Rs. 7,000 paid in advance. Despite demands, the first defendant did not execute the sale deed and instead sold portions of the land to subsequent defendants in 1983.

The Trial Court ruled in favour of the plaintiffs, finding that the subsequent purchasers were not bona fide as they failed to perform due diligence. The Court decreed specific performance, directing all defendants to execute the sale deed and deliver possession to the plaintiffs. This decision was upheld on appeal.

The Supreme Court emphasized that an agreement for sale is not rendered void by the absence of immediate statutory permissions, and vendors must seek such permissions. It further clarified that the plaintiffs need not seek cancellation of subsequent sale deeds executed in favour of informed third parties. Instead, these subsequent purchasers could be directed to join the original vendor in executing the sale deed.

BEYOND THE OBVIOUS

Misfeasance in torts

-Sri Sai Kamalini M S

Misfeasance is an essential aspect of tort law, and it refers to the improper performance of a lawful act that causes harm to another person. This improper act may be due to carelessness or mistake, especially by the person who is in the position. For example, a public official who is responsible for cleaning, leaving the wet floors without any notice and doctors using unsterile instruments while carrying out surgery.

This concept is different from malfeasance, which means intentionally performing an illegal act to cause harm to another person. It is also different from nonfeasance, where a person intentionally fails to perform a required duty or obligation. Hence, the intention makes this concept different from the other concepts. In most cases of misfeasance, the negligence is unintentional, and the duty of care is breached due to improperly performing a lawful act.

There are various cases where this concept is recognized. In the case of ***Jasbir Kaur vs. the State of Punjab [1995ACJ1048],*** a hospital was held liable for missing the newborn baby, and later, the baby was found to be attacked by stray cats. The hospital was held to be negligent in their actions as it was duty to keep the premises properly. The concept is also used in case of public offences, where deliberate maladministration and also other unlawful acts causing injury are considered to be misfeasance in public offences.

MEET THE TEAM

Nithyaparvathy R G

Junior Legal Consultant

Seethala B

Junior Legal Consultant

Sowmiya R K

Junior Legal Consultant

Sri Sai Kamalini M S

Junior Legal Consultant