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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% ***Date of Decision: October 14th, 2026***

\# **CNR No. DLHC010730722024**

\+ **W.P.(C) 14922/2024**

ANU ARAVIND P .....Petitioner

Through: Mr. Dushyant Kishan Kaul, Mr. Jaimon Andrews, Mr. Piyo Harold and Mr. Adhishwar Suri, Advocates.

versus

DEPARTMENT OF EMPOWERMENT OF PERSONS WITH DISABILITIES MINISTRY OF SOCIAL JUSTICE AND EMPOWERMENT .....Respondent

Through: Mr. Devvrat Yadav, Mr. Kartik Sharma, Mr. M. Chawla and Ms. Pearl Sharma, Advocates for R1.
Mr. Sayid Marzook Bafaki, Ms. Lakshmi Sree P, Mr. Risvi Muhammad, Mr Vaisakh S., Advocates for R2 and 3.

CORAM:
HON'BLE MR. JUSTICE AMIT MAHAJAN

AMIT MAHAJAN, J. *(Oral)*

1. By the present petition filed under Article 226 of the Constitution of India, the Petitioner seeks a direction to Respondent No. 1, the Department of Empowerment of Persons with Disabilities, Ministry of Social Justice and Empowerment (hereafter ***'DEPwD'***), to include Mayer-Rokitansky-Küster-Hauser Syndrome Type-II

(hereafter ***'MRKH Syndrome Type-II'***) as a specified disability under the Rights of Persons with Disabilities Act, 2016 (hereafter ***'RPwD Act'***). The Petitioner also assails the communications dated 20.02.2023 and 10.10.2023 (hereafter ***'impugned communications'***), by which the Petitioner's request for inclusion of MRKH Syndrome Type-II as a disability in the RPwD Act was rejected.

2. Succinctly stated, the Petitioner suffers from MRKH Syndrome Type-II, a congenital condition marked by the absence of the uterus and the upper part of the vagina, along with right renal agenesis. On the recommendation of the Kerala State Human Rights Commission, the Government of Kerala issued G.O. (Ms) No. 165/2017/H&FWD dated 18.11.2017, classifying *'congenital absence of uterus'* as 50% disability. Thereafter, on 08.03.2018, the Disability Assessment Board, Government Taluk Headquarters Hospital, Koyilandy, certified the Petitioner as having 50% disability.

3. The Petitioner appeared in NEET-2018 and secured All India Rank 69012. The Petitioner's claim for admission to the MBBS course under the *quota* for persons with disabilities was rejected, as her condition was not a specified disability under the Schedule to the RPwD Act.

4. Aggrieved thereby, the Petitioner approached the Hon'ble High Court of Kerala *vide* W.P.(C) No. 20639/2018, which came to be dismissed by the learned Single Judge by judgment dated 11.07.2018. The appeal preferred thereagainst, being W.A. No. 1739/2018, was also dismissed by the Division Bench by judgment dated 29.08.2018, with liberty to the Petitioner to approach the Central Government for

inclusion of her condition in the Schedule. The relevant observations of the Division Bench are as under:

> *"6. We have examined the contentions raised by the rival counsel as also the reasonings given by the learned Judge for dismissing the Writ Petition. In our assessment, since the Petitioner's disability is not included in the Schedule under the 2016 Act and is not recognised by the MCI and is kept out of the admission prospectus,* ***the decision to deny her admission in the disabled quota seats, cannot be faulted. Therefore we are inclined to agree with the decision of the learned Judge who dismissed the Writ Petition. Under such circumstances, we find the Writ Appeal to be devoid of merit and the same is not entertained.*** *We however, make it clear that nothing in this judgment should incapacitate the Petitioner from* ***approaching the Central Government for inclusion of her type of disability in the Schedule to the 2016 Act****, to enable her to pursue future benefits, under the 2016 Act.*
> *With the above order, the case is disposed of."*
>
> *(emphasis supplied)*

5. Thereafter, the Petitioner made a representation to the Ministry of Law and Justice, Government of India dated 07.10.2018 seeking inclusion of her condition as a specified disability. As the same remained undecided, the Petitioner approached the Hon'ble High Court of Kerala in W.P.(C) No. 5146/2019. By judgment dated 28.03.2019, the Hon'ble High Court of Kerala directed that the representation be decided within three months. Subsequently, the said direction came to be modified vide order dated 02.03.2021 in R.P. No. 1212/2019; the said direction, which was originally issued to the Ministry of Human Resource Development (Higher Education Wing), was modified as a direction to the DEPwD, that is, Respondent No. 1.

6. In the meantime, the High-Powered Inter-Departmental

Committee constituted to consider inclusion of new disabilities (hereafter ***'the Committee'***) considered MRKH Syndrome in its second meeting held on 03.01.2023. The view of the Committee was conveyed to the Government of Kerala by letter dated 20.02.2023, in response to the letter dated 10.02.2023. Thereafter, by letter No. 30-66/2023 DDIII dated 10.10.2023, Respondent No. 1 disposed of the representation dated 07.10.2018 of the Petitioner. The relevant portion of the said letter reads as under:

> *"2.In this regard, it is to convey that there is a High-Powered Inter Departmental Committee to consider the proposal regarding inclusion of new disabilities in the list of specified disabilities under RPwD Act, 2016. The committee, in its second meeting, considered the representation regarding inclusion of MRKH syndrome as specified disability. The committee noted that the* ***said syndrome is a congenital anomaly but not a ground for being considered a disability as the functioning of the individual in daily life is not affected. The committee was also of the view that if any of the condition including MRKH syndrome in long run manifests into an impairment leading to restrictions in daily life, the same is already covered in the Act as specified disability****. This position has already been conveyed to Government of Kerala vide letter dated 20/2/2023 (copy enclosed).*
> *3.In view of above your representation dated 7.10.2018 stands disposed of."*
>
> *(emphasis supplied)*

7. Aggrieved by the same, the Petitioner has preferred the present petition.

8. The learned counsel for the Petitioner submits that the Petitioner suffers from MRKH Syndrome Type-II. He submits that besides the absence of the uterus and the upper part of the vagina, the condition is also associated with right renal agenesis in her case and

that the Disability Assessment Board, Government Taluk Headquarters Hospital, Koyilandy, a duly constituted Medical Board, has certified the Petitioner as having 50% disability on 08.03.2018. This is well above the threshold of 40% for benchmark disability under Section 2(r) of the RPwD Act.

9. He further submits that the Government of Kerala has itself classified 'congenital absence of uterus' as 50% disability vide G.O. dated 18.11.2017, and that Respondent No. 1 has failed to take the same into account.

10. He further submits that Section 2(s) of the RPwD Act defines a *'person with disability'* broadly, with reference to a long-term impairment which, in interaction with barriers, hinders full and effective participation in society. He submits that the statutory definition requires consideration of long-term impairment and the barriers that may hinder full and effective participation in society.

11. *Per contra*, the learned counsel for Respondent No. 1 submits that the inclusion of a new category of specified disability rests with the Central Government under clause 6 of the Schedule to the RPwD Act. It is a matter of policy that cannot be directed by this Court. He submits that the request of the Petitioner was duly considered by the Committee in its meeting held on 03.01.2023. The Committee was chaired by the Secretary, DEPwD, and comprised medical experts from AIIMS, DGHS, ICMR and Lady Hardinge Medical College.

12. He submits that the Committee was of the view that a disability arises only when the activity of daily life is hindered due to an impairment. Since MRKH Syndrome is a congenital anomaly that

does not affect the functioning of the individual in daily life, the Committee found no basis to include it as a separate specified disability.

13. He further submits that the Committee applied the same yardstick to several other conditions, such as diabetes, cystic fibrosis and single kidney, none of which was recommended for inclusion. He submits that if MRKH Syndrome Type-II, in the long run, results in an impairment that restricts daily life, the same is already covered under the appropriate category of specified disability and can be assessed accordingly. He, therefore, submits that no separate inclusion of the condition in the Schedule is warranted, and the present petition deserves to be dismissed.

14. I have heard learned counsel for the parties and perused the record.

15. The foremost relief sought by the Petitioner is a mandamus to Respondent No. 1 to include MRKH Syndrome Type-II as a specified disability. The Petitioner also seeks quashing of the impugned communications on the ground that they are arbitrary.

16. Before turning to the merits, this Court must first consider the scope of its jurisdiction under Article 226 of the Constitution. It shall then examine whether the decision of Respondent No. 1, refusing to include the Petitioner's condition, is arbitrary so as to call for interference by this Court.

Scope of Judicial Review

17. It is trite law that a writ of mandamus cannot be issued to the legislature to enact a law, nor to the executive to exercise its delegated

legislative power in a particular manner. In ***Supreme Court Employees' Welfare Assn. v. Union of India* : (1989) 4 SCC 187**, the Hon'ble Supreme Court held as under:

> *"51.There can be no doubt that no court can direct legislature to enact a particular law. Similarly, when an executive authority exercises a legislative power by way of subordinate legislation pursuant to the delegated authority of a legislature, such executive authority cannot be asked to enact a law which he has been empowered to do under delegated legislative authority."*

18. To the same effect, in ***Mallikarjuna Rao v. State of A.P.* : (1990) 2 SCC 707**, the Administrative Tribunal had directed the State Government to amend its service rules. The Hon'ble Supreme Court set aside the said direction and held as under:

> *"11. The observations of the High Court which have been made as the basis for its judgment by the Tribunal were only of advisory nature. The High Court was aware of its limitations under Article 226 of the Constitution of India and as such the learned Judge deliberately used the word "advisable" while making the observations. It is neither legal nor proper for the High Courts or the Administrative Tribunals to issue directions or advisory sermons to the executive in respect of the sphere which is exclusively within the domain of the executive under the Constitution. Imagine the executive advising the judiciary in respect of its power of judicial review under the Constitution. We are bound to react scowlingly to any such advice.*
>
> *xxx*
>
> *13. The Special Rules have been framed under Article 309 of the Constitution of India. The power under Article 309 of the Constitution of India to frame rules is the legislative power. This power under the Constitution has to be exercised by the President or the Governor of a State as the case may be. The High Courts or the Administrative Tribunals cannot issue a mandate to the State Government to legislate under Article 309 of the Constitution of India.* ***The courts cannot usurp the functions assigned to the executive under the Constitution***

> ***and cannot even indirectly require the executive to exercise its rule making power in any manner.*** *The courts cannot assume to itself a supervisory role over the rule making power of the executive under Article 309 of the Constitution of India."*
>
> *(emphasis supplied)*

19. This principle was reiterated in ***State of H.P. v. Satpal Saini :*** **(2017) 11 SCC 42**. Wherein, the Hon'ble High Court had directed the State Government to amend Section 118 of the H.P. Tenancy and Land Reforms Act, 1972 within ninety days. Setting aside the said direction, the Hon'ble Supreme Court held as under:

> *"6. The grievance, in our view, has a sound constitutional foundation. The High Court has while issuing the above directions acted in a manner contrary to settled limitations on the power of judicial review under Article 226 of the Constitution. A direction, it is well settled, cannot be issued to the legislature to enact a law. The power to enact legislation is a plenary constitutional power which is vested in Parliament and the State Legislatures under Articles 245 and 246 of the Constitution. The legislature as the repository of the sovereign legislative power is vested with the authority to determine whether a law should be enacted. The doctrine of separation of powers entrusts to the court the constitutional function of deciding upon the validity of a law enacted by the legislature, where a challenge is brought before the High Court under Article 226 (or this Court under Article 32) on the ground that the law lacks in legislative competence or has been enacted in violation of a constitutional provision. But judicial review cannot encroach upon the basic constitutional function which is entrusted to the legislature to determine whether a law should be enacted. Whether a provision of law as enacted subserves the object of the law or should be amended is a matter of legislative policy. The court cannot direct the legislature either to enact a law or to amend a law which it has enacted for the simple reason that this constitutional function lies in the exclusive domain of the legislature. For the Court to mandate an amendment of a law as did the Himachal Pradesh High Court is a plain usurpation of a power entrusted*

to another arm of the State. There can be no manner of doubt that the High Court has transgressed the limitations imposed upon the power of judicial review under Article 226 by issuing the above directions to the State Legislature to amend the law. The Government owes a collective responsibility to the State Legislature. The State Legislature is comprised of elected representatives. The law enacting body is entrusted with the power to enact such legislation as it considers necessary to deal with the problems faced by society and to resolve issues of concern. The courts do not sit in judgment over legislative expediency or upon legislative policy. This position is well settled. Since the High Court has failed to notice it, we will briefly recapitulate the principles which emerge from the precedent on the subject.

7. In Mallikarjuna Rao v. State of A.P.2 and in V.K. Sood v. Deptt. of Civil Aviation this Court held that the court under Article 226 has no power to direct the executive to exercise its law-making power.

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12. The judiciary is one amongst the three branches of the State; the other two being the executive and the legislature. Each of the three branches is co- equal. Each has specified and enumerated constitutional powers. The judiciary is assigned with the function of ensuring that executive actions accord with the law and that laws and executive decisions accord with the Constitution. The courts do not frame policy or mandate that a particular policy should be followed. The duty to formulate policies is entrusted to the executive whose accountability is to the legislature and, through it, to the people. The peril of adopting an incorrect policy lies in democratic accountability to the people. This is the basis and rationale for holding that the court does not have the power or function to direct the executive to adopt a particular policy or the legislature to convert it into enacted law. It is wise to remind us of these limits and wiser still to enforce them without exception."

(emphasis supplied)

20. Thus, it is well settled that this Court, in exercise of its jurisdiction under Article 226 of the Constitution, cannot direct the legislature, or the executive exercising delegated legislative power, to

enact or amend a law. The scope of judicial review in such matters is confined to examining whether the decision of the authority is arbitrary or contrary to law.

21. It is relevant to note that the list of specified disabilities is contained in the Schedule, which is a part of the RPwD Act enacted by Parliament. The only way to *'include'* a disability is by a notification of the Central Government under clause 6 of the Schedule. Therefore, this Court cannot issue a mandamus directing the Central Government to notify MRKH Syndrome Type-II as a specified disability.

Statutory Framework

22. The RPwD Act was enacted to give effect to the United Nations Convention on the Rights of Persons with Disabilities **('UNCRPD')**. It replaced the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995, which recognised only seven disabilities, and enlarged the list to twenty-one specified disabilities.

23. The expression 'person with disability' has been defined under ***Section 2(s)*** of the RPwD Act, which reads as under:

> *"2. In this Act, unless the context otherwise requires,—*
> *xxx*
> *(s) "person 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;"*

24. Section 2(s) of the RPwD Act defines person with disabilities to have three elements. *First*, there must be an impairment which is long-term. *Second*, it must be physical, mental, intellectual or sensory.

Third, the impairment, along with barriers, must hinder the person's full and effective participation in society on an equal basis with others.

25. The term *'barrier'*, in turn, has been defined under Section 2(c) of the RPwD Act to mean any factor, including communicational, cultural, economic, environmental, institutional, political, social, attitudinal or structural factors, which hampers the full and effective participation of persons with disabilities in society. Combined reading of Sections 2(c) and 2(s) of the RPwD Act makes it clear that the mere existence of an impairment is not sufficient. It is only when the impairment, in interaction with such barriers, hinders the person's participation in society on an equal basis with others that the person falls within the ambit of a *'person with disability'*.

26. Insofar as the expression *'specified disability'* is concerned, the same has been defined under Section 2(zc) of the RPwD Act to mean *"the disabilities as specified in the Schedule"*. The Schedule enumerates the specified disabilities under five broad heads: physical disability (comprising locomotor disability, visual impairment, hearing impairment, and speech and language disability), intellectual disability, mental behaviour disability, disability caused due to chronic neurological conditions and blood disorders, and multiple disabilities. Further, clause 6 of the Schedule empowers the ***Central Government to notify "any other category"*** as a specified disability.

27. It is imperative to advert to the expression ***'person with benchmark disability'***, which is defined under Section 2(r) of the RPwD Act. The same reads as under:

> *"(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;"*

28. The Hon'ble Supreme Court explained this scheme in detail in ***Vikash Kumar v. Union Public Service Commission*** **: (2021) 5 SCC 370**. The relevant paragraphs read as under:

> *"38.* ***The concept of a benchmark disability under Section 2(r) cannot be conflated with the notion of disability under Section 2(s). The definition in Section 2(r) applies in the case of a specified disability.*** *The expression "specified disability" is defined in Section 2(zc) to mean the disabilities as specified in the Schedule. … The Central Government has been empowered to notify any other category as a specified disability.*
> *39. The concept of benchmark disabilities under the 2016 RPwD Act has specifically been adopted in relation with the provisions of Chapter VI and Chapter VII. Chapter VI contains special provisions for persons with benchmark disabilities. Among those provisions is Section 31 (free education for children with benchmark disability), Section 32 (reservation in higher educational institutions), Section 33 (identification of posts for reservation), Section 34 (reservation), Section 36 (Special Employment Exchange) and Section 37 (Special Schemes and Development Programmes). Chapter VII contains special provisions for persons with benchmark disabilities in need of high support. Thus, the concept of benchmark disabilities has been adopted by the legislation bearing in mind specific provisions which are contained in the law for persons meeting this description."*
> *(emphasis supplied)*

29. It is thus evident that the benefit of reservation under Section 32 of the RPwD Act is available only to a '*person with benchmark disability*' under Section 2(r) of the RPwD Act, and cannot be claimed merely on the strength of a percentage of disability.

30. To qualify as such, the condition must first fall within a *'specified disability'* under the Schedule, or a category notified by the Central Government under clause 6 thereof. Only thereafter does the question of assessing its extent at not less than 40% under Section 56 of the RPwD Act, and its certification under Sections 57 and 58 of the RPwD Act, arise

31. It is pertinent to throw light on the minutes of the meeting of the Committee held on 03.01.2023, placed on record by Respondent No. 1 along with its counter affidavit. The Committee considered sixteen conditions in that meeting. The Committee had drawn a distinction between a disability and a medical condition in the following words:

> *"… there is a clear distinction between disability and medical condition. The RPwD Act, 2016 mainly focuses on disability. All the above mentioned conditions relate to specific diseases only. Any person suffering from these disease conditions, if in the long term, develops any of the specified disabilities mentioned in the Schedule of the RPwD Act, 2016, is already covered within the ambit of the said Act."*

32. Proceeding on this basis, the Committee recorded its broad view and its view on MRKH Syndrome as under:

> *"5. The Committee deliberated each of the conditions vis-a-vis the practices followed in various countries and also in accordance the definition of persons with disability as specified under Section 2 (s) of the Act.* ***Broadly the Committee was of the view that disability would arise only when activity of daily life is hindered due to an impairment.*** *… Moreover, if any of these conditions in the long run manifests into an impairment leading of restrictions in daily life activities, the same is already covered in the Act as specified disability under appropriate category. …*
> *xxx*
> *15. (MRKH) Syndrome —* ***The Committee noted that this is a congenital anomaly but not a ground for being considered a***

disability as the functioning of the individual in daily life is not affected."

(emphasis supplied)

33. On a careful perusal of the record, this Court finds no arbitrariness or perversity in the view taken by the Committee. Pertinently, the test of whether daily functioning is affected flows from Section 2(s) of the RPwD Act itself. The Committee is an expert body comprising medical experts from AIIMS, DGHS, ICMR and Lady Hardinge Medical College, and it applied the same yardstick to other conditions as well, including diabetes, cystic fibrosis and single kidney. There is, thus, no hostile discrimination against the condition of the Petitioner. Nothing on record shows any hindrance in her daily life that the Committee failed to consider.

34. This Court is not unmindful of the difficulties faced by the Petitioner. The concerns of the Petitioner about social stigma are real and deserve sympathy. However, sympathy alone cannot be a ground to issue a direction that the law does not permit. Whether such social barriers justify treating MRKH Syndrome as a disability is a matter that the Committee and the Central Government are best placed to weigh.

35. In view of the aforesaid discussion, this Court finds that the impugned communications dated 20.02.2023 and 10.10.2023 do not suffer from any illegality, arbitrariness or perversity that calls for interference under Article 226 of the Constitution.

36. Needless to say, the dismissal of this petition shall not preclude the Petitioner from making a fresh representation to Respondent No. 1 if any new medical material comes to light. If the Petitioner makes

any such representation, it shall be considered in accordance with law.

37. The present petition is dismissed in the aforesaid terms.

38. Pending application(s), if any, also stand disposed of.

AMIT MAHAJAN, J

OCTOBER 14, 2026
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