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* IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of decision:-15th March, 2024.

+ W.P.(C) 445/2023 and CM APPL. 1752/2023, 67351/2023

AKSHAT BALDWA & ORS.

..... Petitioners

Through: Mr. Rahul Bajaj and Ms. Mahoor Ghani, Advocates (M: 8825050490).

versus

YASH RAJ FILMS & ORS.

..... Respondents

Through: Mr. Abhishek Malhotra and Ms. Srishti Gupta, Advocates for R-1 (M: 9310322455).

Mr. Ravi Prakash, CGSC with Ms. Astu Khandelwal, Mr. Farman Ali, Mr. Taha Yasin, Mr. Yasharth and Ms. Usha Jamnal, Advocates for R-2 and 3 (M: 9015697073).

Mr. Devvrat Joshi and Mr. Angad S Makkar, Advs. for R-4 (M: 9897896284).

Mr. Nitin Sharma, Mr. Kuber Mahajan and Ms. Deepika Pokharia, Advocates for R-5 (M: 9958393111).

Mr. Pranav Sarthi and Ms. Ayushi Chaurasia, Advocates for R-6.

CORAM:

JUSTICE PRATHIBA M. SINGH

JUDGMENT

Prathiba M. Singh, J.

1. This hearing has been done through hybrid mode.



2. The present petition has been filed by four Petitioners who are citizens, out of whom, Petitioner Nos.1, 2 and 4 are visually impaired and Petitioner No.3 is hearing impaired. Petitioner No.1 is a law student at National Law School of India University, Bengaluru, Petitioner Nos.2 and 4 are qualified lawyers. Petitioner No.3 is the Joint Secretary & Executive Director of the National Association for the Deaf.

3. In the instant case, the Petitioners, who are consumers of audio-visual entertainment, have filed the present petition, highlighting the challenges faced by persons with disabilities in accessing audio-visual content both in traditional theatres and online streaming platforms. The issue in the present petition underscores the broader question of disability rights, particularly the right of individuals with disabilities to enjoy public and private spaces without discrimination.

4. It is highlighted by the Petitioners that the existing physical and virtual spaces predominantly cater to able-bodied individuals, thereby excluding persons with disabilities from enjoying equal access. As per the Petitioners, the said exclusion arises from a systemic oversight by planners and providers who design and distribute services assuming a predominantly able-bodied audience. Consequently, it is urged that persons with disabilities are denied their fundamental rights and freedoms guaranteed under the Constitution of India and other international treaties. Special measures are thus required to be taken to enable the specially-abled people to enjoy products and services available to all. Such an approach, according to the Petitioners, would be in tune with the constitutionally guaranteed Right to Equality as laid down in the Preamble as also in Article 14 of the Constitution of India.



5. It is highlighted by the Petitioners that the United Nations Convention on the Rights of Persons with Disabilities (*hereinafter, 'the CRPD'*) serves as a crucial framework in this regard, emphasizing the equal enjoyment of human rights and fundamental freedoms by all individuals, regardless of disability. CRPD defines disability broadly, and mandates the States to ensure accessibility across various domains, including transportation, information, and communication technologies. Reliance is placed on laws in foreign jurisdictions such as the Americans with Disabilities Act, 1990 (*'ADA'*) which mandates accessibility in public spaces, including digital platforms. Legal actions against entities like Netflix, Harvard, and MIT underscore the importance of digital accessibility, resulting in settlement agreements requiring these entities to improve accessibility features. The Petitioners also claim that the World Wide Web Consortium's Web Content Accessibility Guidelines (*WCAG*), particularly version 2.1, serves as an international standard for digital accessibility. Many jurisdictions, including Europe with the European Accessibility Act, 2019, base their digital accessibility legislation on WCAG principles.

6. In India, in line with CRPD, the Rights of Persons with Disabilities Act, 2016 (*hereinafter, 'RPWD Act'*) was enacted, which addresses accessibility concerns, affirming the State's obligation to formulate rules ensuring accessibility standards in both physical and digital environments. Through the present writ, the Petitioners seek to enforce their rights under the RPWD Act, for ensuring equal access to audio-visual content for persons with disabilities, both in physical and digital spaces, in accordance with national and international legal frameworks and standards.

7. Coming to the facts of the present case, the petition was filed seeking



directions against the Respondent No. 1 -Yash Raj Films which is the producer of the film ‘*Pathaan*’, the two Ministries i.e., Respondent No. 2 - Ministry of Information and Broadcasting (‘*MIB*’) and Respondent No. 3 - Department of Empowerment of Persons with Disabilities, as also, the Respondent No. 4 - Amazon Seller Services Private Limited, which operates an Over-The-Top (*hereinafter*, ‘*OTT*’) platform namely, Amazon Prime Video, on which the said film was released on 28th April, 2023.

8. The Petitioners seek enforcement of various rights and accessibility requirements, as prescribed under the provisions of the RPWD Act. The prayers sought in the present petition are extracted below:

“The Petitioners, therefore, pray that in the facts and circumstances of the present case this Hon’ble Court may be pleased to issue writ of mandamus or any other appropriate writ or direction to:

A. Directing Respondent No. 1 to provide AD and subtitling/captioning for the movie Pathaan, in theatres, Over-the-Top streaming platforms (through Respondent No. 4) and any other media in which the movie is made available;

B. A direction to Respondent No. 2 and 3 to take appropriate steps in effecting the provision for audio description and subtitling/captioning for the movie Pathaan;

C. A Direction to Respondent No. 2 and 3 to promptly notify standards of accessibility for captioning/subtitling and audio description; and

Pass such other and further orders / directions / writs as this Hon’ble Court may deem fit and proper in the facts and circumstance of the case.”



9. The case of the Petitioners is that, though various rights have been recognized for ‘persons with disabilities’ under the RPWD Act, most films which are released in India are not catering to disabled persons, despite the said RPWD Act, having been enacted more than 5-6 years ago.

Submissions

10. Mr. Rahul Bajaj, Petitioner No.2 appearing in person, made the following submissions on 16th January, 2023:

- i. There are various tools that help make films disabled - friendly, but none of them have been implemented in the film ‘*Pathaan*’.
- ii. The film ‘*Pathaan*’ is slated for release in theatres on 25th January, 2023. However, apart from the subtitles having been approved by the Central Board of Film Certification (*hereinafter*, ‘*CBFC*’), the said film does not make available audio description and closed captions. Even the approved subtitles are in the English language, instead of being in the language of the film, i.e., Hindi, and this makes it almost impossible for hearing and visually impaired persons to enjoy the said film.
- iii. The producers of the film ‘*Pathaan*’ ought to be directed to add the audio description, subtitles, and closed captions, before the release of the said film.
- iv. The two Ministries, i.e., Respondent Nos.2 and 3, be directed to notify the required standards for accessibility to persons who are hearing and visually impaired. On this aspect, he further submits that even though certain guidelines have been issued in



the past, the same have not been implemented by the Ministries, and there are no sanctions for non-compliance of the same. Thus, a large number of films do not take the necessary steps to provide these tools which make the films disabled-friendly.

- v. Reliance is placed upon the judgment of the Supreme Court in ***Rajive Raturi v. Union of India, [(2018) 2 SCC 413]***.
- vi. Further reliance is placed upon the judgment of the Supreme Court in ***Vikash Kumar v. UPSC and Ors., [2021 SCC Online SC 84]***.

11. On a specific query from the Court as to how visually impaired persons are able to enjoy films in a theatre, Mr. Bajaj had submitted that, in certain foreign countries, theatres themselves make provisions for headphones to be plugged into the seats in the theatre, through which audio description is relayed in an audio format. However, in India, such facilities are not available in most film theatres. Despite this being the position, persons with visual impairment can enjoy the audio description of the films through certain mobile applications which can be downloaded on a smartphone, so long as the producer has an arrangement with the said mobile applications and provides the requisite audio description of the film to the application. It is submitted that there are two mobile applications available in India, namely, 'XL Cinema' and 'Shazacin', which provide such facilities for visually impaired persons.

12. On behalf of the Respondent No.1 - Producer - Yash Raj Films, Mr. Abhishek Malhotra, Id. Counsel made the following submissions on 16th January, 2023:

- i. The film '*Pathaan*' has already been approved by the CBFC.



At the time of approval, the Producer has already submitted the subtitles for the film in the English language. The Producer has also received the certification for the film, which is stated to be released in theatres on 25th January, 2023.

- ii. The Producers have entered into an arrangement with the OTT platform - Amazon Prime Video, for the OTT release of the film 'Pathaan' which scheduled to be released on 28th April, 2023.
- iii. In principle, the stand of the Producers is that it would be willing to take any reasonable steps which may be required in order to ensure that its films are enjoyed by hearing and visually impaired persons as well.

13. On behalf of the Respondent Nos.2 and 3 - Ministries, it was pointed out by Id. Counsel that the MIB had issued certain directions to the Film Producers Association, as also, to the CBFC, way back in October, 2019, to use audio description and subtitles/closed captions in all films.

14. After hearing parties on 16th January, 2023, this Court had observed that the petition raised important issues as to accessibility to various modes of entertainments for the hearing and visually impaired persons. The Court had considered Section 42 of the RPWD Act 2016 which obliged the Government to take measures to ensure that content is available in all formats which are accessible to persons with disabilities. The said provision reads as under:

“42. Access to information and communication technology.—The appropriate Government shall take measures to ensure that,—
(i) all contents available in audio, print and



*electronic media are in accessible format;
(ii) persons with disabilities have access to electronic media by providing audio description, sign language interpretation and close captioning;
(iii) electronic goods and equipment which are meant for every day use are available in universal design.”*

15. The Court was apprised that various measures could be taken by film producers to make the film accessible to hearing and visually impaired persons. Some of them are :

- **Audio description** - which is a verbal depiction of key visual elements in media and live productions. This involves description of the visuals on screen to enable imagination by the hearing impaired;
- **Subtitling** - which provides a text alternative for the dialogue of video footage – the spoken words of characters, narrators and other vocal participants, in the original language itself, as also, in the dubbed language in case of dubbed movies; and
- **Closed Captions** - which not only supplement dialogue but other relevant parts of the soundtrack – describing background noises, phones ringing, and other audio cues that need describing,

These features would be integral to the enjoyment of films for persons with disabilities.

16. In view of the fact that special measures were required to be taken to enable the disabled persons to experience watching of a film in a movie theatre, the Court had opined that persons with disabilities ought not to be denied such an experience. Insofar as the film ‘*Pathaan*’ is concerned, the Court had thereafter directed on 16th January, 2023 as under:

“19. Thus, in the interim, it is directed as under:



a. Insofar as the theatrical release of the film 'Pathaan' is concerned, since the said film is slated for release on 25th January, 2023, no directions are being passed.

b. However, insofar as the release of the film 'Pathaan' on the Respondent No.4's 'Amazon' OTT platform is concerned, the following directions are issued:

i. The Respondent No.1 - Producer shall prepare the audio description, the subtitles in the Hindi language, as also, the closed captions in both English and Hindi languages, and submit that same to the CBFC for approval, by 20th February, 2023.

ii. Upon the same being submitted, the CBFC shall consider the re-certification of the film 'Pathaan', along with the audio description, the subtitles in the Hindi language, and the closed captions in both English and Hindi languages.

iii. CBFC shall take a decision on re-certification of the said film by 10th March, 2023.

c. If the Respondent No.1 - Producer wishes to enable greater accessibility for the film 'Pathaan', in theatres, it may contact the operators of the mobile applications 'XL Cinema' and 'Shazacin', or other similar applications, if any, to explore the possibility of providing audio description, subtitles, and closed captions.

d. Insofar as the issue of having an overall and holistic solution to the questions raised in the present petition is concerned, it is deemed appropriate to implead the Indian Broadcasting and Digital Foundation (IBDF) as Respondent No.5 in the present petition. In addition, the Indian Motion Pictures Producers' Association (IMPPA) shall also be impleaded in this matter as Respondent No.6. Issue notice to the newly impleaded Respondent Nos.5 and 6, without payment of process fee, through the following particulars:



Respondent No.5:

Indian Broadcasting and Digital Foundation (IBDF)

Address: C-301, C-302 & C-303, Ansal Plaza, Third Floor,

Khel Gaon Marg, New Delhi - 110 049, India.

Mobile No.: +91 11 4379 4400

Email: ibdf@ibdfindia.com

Respondent No.6:

Indian Motion Pictures Producers' Association (IMPPA)

Address: G-1 to 7, Crescent Tower, Off New Link Road Oshiwara, Nr. Dhiraj Gaurav Heights, Andheri West Mumbai, Mumbai City, MH 400053

Email: indiafilm@gmail.com

Phone No.: 022 62390666 / 022 62390777 / 022 62390888

Mobile No.: 8879031147 / 771507277

e. Considering the nature of the reliefs sought in this matter, the Ministry of Electronics and Information Technology (MeitY) is also impleaded as Respondent No.2(a). Mr. Farman Ali, ld. Counsel accepts notice on behalf of Respondent Nos. 2(a) as well.”

17. In terms thereof, a status report was to be filed. On the next date, i.e. 6th April, 2023, the Court was informed that insofar as ‘Pathaan’ film is concerned, in the OTT release, the audio description as also the same language sub-title and close captioning was provided.

18. Thus, only the issue relating to overall solution in respect of implementation and the statutory provisions and other directions to make accessibility of films to hearing and visually impaired persons was to be



considered.

19. Various submissions were made on 6th April, 2023, based on Sections 42, 89, and 90 of the RPWD Act, Rule 15 of the Rights of Persons with Disabilities Rules, 2017, among others. Additionally, the circular dated 1st October 2019 from the Government of India, which was communicated to various stakeholders, was also considered. After reviewing the said circular and the parties' submissions, the Court noted that urgent implementation of the circular was necessary. Despite the Government's directions to include certain features, it was evident that producers and various platforms had not implemented them.

20. The definition of public facilities and services under Section 2(x) of the RPWD Act was also considered and the Court vide order dated 6th April, 2023 directed as under:-

“19. A perusal of the above provision would show that public services and facilities has been defined in a very broad manner and include leisure or recreational facilities as well. In view thereof, this Court is of the opinion that while the directions in respect of the movie ‘Pathaan’ have been implemented, a broad stakeholder consultation would be required in order to ensure that the RPWD Act as also the circular issued on 1st October, 2019 are implemented both in letter and spirit.

20. Accordingly, it is directed that the Ministry of Information and Broadcasting along with the other relevant Ministries may hold a stakeholder consultation with the following sets of stakeholders:

- i. Film producers both in national and regional languages.*
- ii. OTT platforms which are operating in India.*
- iii. Television Broadcasters- Indian Broadcasting & Digital Foundation (IBDF)/News Broadcasters &*



Digital Association (NBDA)

- iv. *Association of theatre owners*
- v. *Organizations for disabled persons.*
- vi. *Film Distributors*
- vii. *Service providers who run the delivery platforms in theatres such as XL Cinema.*
- viii. *Bureau of Indian Standards*
- ix. *Manufacturers of hardware and*
- x. *Software developers of accessibility features.*
- xi. *Any other stakeholders as the Ministry may consider appropriate.*

21. In the stakeholder consultation, discussions would be held in respect of the manner in which the provisions of the RPWD Act and Rules as also the circular which has been issued on 1st October, 2019 can be implemented. The Ministry is free to frame guidelines in this regard and the draft guidelines may be placed on record before the Court by the next date of hearing.

22. The Ministry of Information and Broadcasting may also bear in mind the draft 'Accessibility Standards for Television Programmes for Hearing Impaired' which have been put up for stakeholder consultation vide notice dated 3rd November, 2021, while suggesting the framework of the future guidelines. The Bureau of Indian Standards has published standards on accessibility of ICT products and services (IS17802) which should also be contemplated while considering the framework of the draft proposed guidelines.

23. Let the stakeholder consultation be concluded by the end of August, 2023 and the status report be filed by 10th September, 2023."

21. As can be seen from the directions given above, the Government was directed to hold broad stakeholder consultations to discuss the manner of implementation of the various accessibility features. On the said date, the



Court had also directed sign language interpreters to be provided for the hearing in this case.

22. On 26th September, 2023, the Court was informed by the MIB that Expression of Interests (EOI) were invited from various consulting agencies for providing advance technology solutions '*Providing advanced technology solutions for accessibility in films for persons with disabilities, including hearing and visual impairment.*'

23. The Court was also informed by the Ministry that in June and July, 2023, stakeholder consultations were held. The Film Federation of India and (FFI) and the South Indian Film Chambers of Commerce (SIFCC) had raised certain practical concern which were also captured in the order dated 26th September, 2023. The Court had then opined that if some flexibility is shown by the Industry, the said concerns could be easily addressed and hence it was directed that the Film Federation of India (FFI) and the South Indian Film Chambers of Commerce (SIFCC) as also CBFC should be impleaded in the present matter.

24. Subsequently, on 2nd November, 2023, the MIB placed on record the minutes of meetings dated 19th October, 2023, held under the chairmanship of Mrs. Neerja Sekhar, Additional Secretary I&B. Following persons were stated to have attended the said meeting :-

- *“the representatives of the National Institute for the Empowerment of Persons with Visual Disabilities, Dehradun;*
- *Ali Yavar Jung, National Institute of Speech and Hearing Disabilities (AYJNISHD), Mumbai;*
- *Chief Commissioner for Persons with Disabilities (Divyangjan),*
- *Department of Empowerment of Persons with*



Disabilities (Divyangjan),

- *Ministry of Social Justice & Empowerment and the Indian Sign Language Research and Training Center (ISLRTC)”*

25. Vide order dated 2nd November, 2023, it was recorded that various concerns raised by different sections of the society and the producers etc. were all considered during the consultation process. Some reservations were expressed in respect of the cost of incorporation of accessibility features. Since the producers of Pathaan were represented, it was then ascertained that that the cost of providing all the features was a sum of Rs. 6 lakhs for the movie Pathaan. The relevant observations in the order dated 2nd November 2023 are as under:

“6. Insofar as the cost is concerned, the Court notes that in the case of the film Pathaan the expense that was incurred in order to provide audio description, sub-titling, captioning, was to the tune of approximately Rs.6 lakhs, which in the opinion of this Court, would not be high especially in respect of popular films, which have the large budget. Insofar as the technology is concerned, in the minutes of the meeting it is recorded that technological solutions are increasingly becoming available. One such API provider is present in Court. If the Ministry of I&B deems it fit, it may contact such API providers including the entity i.e. M/s Brajma Intelligent System Pvt. Ltd. for exploring as to which are the best technological solutions and provide the details of such entities to producers and other stakeholders .

7. Insofar as the issue of piracy is concerned, Mr. Bajaj, ld. Counsel submits that the same shall be curtailed to a great extent by insisting upon RPWD certificate verification for persons with disabilities before such facilities are made available to them.



Lastly, insofar as the viewers' experience is concerned, the Ministry of I&B is already considering all the concerns which have been raised. In respect thereof, the conclusion of the minutes of the meeting dated 19th October, 2023 is as under:

“9. The participants felt that the Accessibility Standards have to be made mandatory and the Ministry should be able to ensure its implementation. It was felt that closed captioning, audio description and Indian Sign Language could be made compulsory at the time of application for film certification from the CBFC and various technological solutions available in the market can be used by the film producers. These solutions will become more affordable with time, with more and more users and developers in the market.”

26. On the said date, it was submitted by the Ministry had submitted that the accessibility guidelines i.e., ‘Accessibility Standards for Television Programmes for Hearing Impaired’ (hereinafter, ‘the Guidelines’) were under preparation and that the same would be released in public domain within two to four weeks. In view thereof, the Court had directed as under:-

“9. Accordingly, let the Ministry of I&B as a first step publish the draft guidelines and then after receiving the stakeholders' comments, process the guidelines for approval of the concerned Ministry. Let the status report qua the same be placed on record on the next date of hearing.

10. At this stage, Mr. Bajaj submits that in the interregnum, the films which are to be released and do not have necessary audio descriptions, captions etc. ought to be released in a manner accessible to persons with disabilities.

11. Accordingly, it is directed that in case of any request is received from persons with disabilities, the



Ministry of I&B shall forward the same to the Producers of the films. In addition, the Petitioners or any other stakeholders are free to write to the producers or the Ministry of I&B requesting incorporation of such features. If the said request is not met with positive approval, an application may be moved before this Court. “

27. In the meantime, on 22nd December, 2023 an application was also moved in this petition seeking inclusion of accessibility features for the films “*Jawan*” and “*Hi Papa*”. Insofar as these films were concerned, both film producers agreed to provide the accessibility features on the OTT platforms. On the said date, the Court had also directed that since the stakeholder comments were to be received by 31st January, 2024, further status report would be filed by the Ministry. Insofar as further inclusion of accessibility features in the two films was concerned, the MIB was directed to identify and designate a specific officer who can deal with these issues.

28. Today, an affidavit dated 14th March, 2024 has been placed on record by the Under Secretary to the MIB. In terms of the said affidavit, the concerned Ministry has reported that the Guidelines were published on the website for inviting comments and detailed deliberations were held on 1st March from 11.30 a.m. The Ministry is now in the process of finalising the guidelines. The relevant portion of the affidavit is set out below:-

4. *In this regard, it is respectfully submitted that the Answering Respondent has framed 'Draft Guidelines of Accessibility Standards in the Public Exhibition of Feature Films in Cinema Theatres for Persons with Hearing and Visual Impairment' laying down Accessibility Standards for public exhibition of feature films for persons with hearing and visual impairment. The*



Guidelines would be applicable for those feature films that are certified by the Central Board of Film Certification (CBFC) for public exhibition in cinema halls/movie theatres for commercial purposes. The focus of these guidelines is not only on the content but also on the information and assistive devices needed by persons with disabilities to enjoy films in cinema theatres.

5. *The said Draft Guidelines were published on the websites of the Answering Respondent and the CBFC for inviting comments from all stakeholders by 15th February, 2024. In response, comments and suggestions were received from various stakeholder groups, including filmmakers, cinema owners, disability rights organizations, individuals and film industry bodies. Subsequently, detailed deliberations on the Draft Guidelines were held with all parties concerned on 1st March 2024 from 11:30 AM. Fruitful and elaborate deliberations were made during the meeting in which almost all participants offered comments and suggestions. Accordingly, it is submitted that the Answering Respondent is now in the process of finalizing the guidelines for mandatory implementation of accessibility standards for cinema viewing for the benefit of persons with hearing and visual disabilities.*
6. *With respect to designation of a special officer on a permanent basis or a mechanism for the purpose of dealing with the incorporation of accessibility features in such content, it is respectfully submitted that upon completion of all formalities for notifying the accessibility guidelines, Under Secretary (Films -1) shall be designated to hear and consider representation for providing accessibility features in feature films.
Copy of the instructions received in this regard to the undersigned is annexed herewith and is marked*



as ANNEXURE A-1.

29. Mr. Bajaj, Id. Counsel appearing for the Petitioners submits that in view of the fact that consultation has now concluded, the Guidelines ought to be finalised and should be notified within a time bound manner. He further submits that insofar as designation of an officer on a permanent basis mechanism for the purpose of dealing with the incorporation of accessibility features is concerned, since the status report now records that such an officer shall be designated after the notification of the finalised accessibility guidelines, the same ought to be done in a speedy manner. He submits that momentum that has been built in recent times and accessibility features are being included in various films, would be completely defeated, if the same is permitted to be postponed.

30. Mr. Bajaj further submits that the Guidelines should also include a grievance redressal mechanism, detailing how grievances would be addressed if the specified features are not incorporated. Additionally, he submits that a representation regarding four more films has been sent to the MIB, but no response has been received yet.

31. On behalf of the intervenor, it is submitted that *qua* the films 'Fighter', 'La Pata Ladies', 'Article 370' and 'Shaitan', accessibility features have been included both for theatrical and for OTT release.

32. Mr. Ravi Prakash, Id. CGSC appears for the Ministry further submits that the Ministry is fully intending to notify the Guidelines as soon as possible. He prays for time up until 1st August, 2024 for notification for the said Guidelines considering the fact that the responses of all the concerned stakeholders have been received and need to be considered in detail.

33. He further submits that insofar as designation of an officer is



concerned, once the Guidelines are in place, the Guidelines would themselves mention the mechanism for redressal of grievances. He further submits that insofar as the mandatory implementation of guidelines, once notified, are concerned, the Ministry is attempting to reduce the time period within which the same should be mandatory in accordance with the spirit of the RPWD Act.

34. The Court has heard the Id. Counsels for the parties and the intervenors as also some of the producers who are present. The initial facts as captured above, would show that the present writ petition was initially filed only in respect of the feature film 'Pathan'. However, considering the stand of the MIB which vide its circular dated 1st October, 2019 had made it clear that such features should be incorporated and bearing the broader relief sought in the writ petition, various directions have been passed to find comprehensive solution. One of the reliefs prayed in this writ petition also includes a prayer for notification of standard for accessibility for captioning, sub-titling and audio description. The Draft Guidelines have now been published by the MIB. The stakeholders' comments have also been given to the MIB.

35. The law laid down by Id. Supreme Court both in *Rajive Raturi v. Union of India*, [(2018) 2 SCC 413] is as under:

*“The position of law as to the right to accessibility has been reiterated by Justice A.K. Sikri, speaking for the Supreme Court, in **Rajive Raturi v. Union of India**, [(2018) 2 SCC 413], wherein the Court observed as under:*

“12) The vitality of the issue of ‘Accessibility’ vis-a-vis visually disabled persons’ right to life can be gauged



clearly by this Court's judgment in State of Himachal Pradesh & Anr. v. Umed Ram Sharma, where the right to life under Article 21 has been held broad enough to incorporate the right to accessibility. Relevant paragraphs of this judgment have been reproduced below:

“Read in the background of Article 38(2) every person has right under Article 19(1)(d) to move freely throughout the territory of India. He has also the right under Article 21 to his life which embraces not only physical existence of life but the quality of life and for residents of hilly areas, access to road is access to life itself. Therefore, to the residents of the hilly areas as far as feasible and possible society has constitutional obligation to provide roads for communication in reasonable conditions. Denial of that right would be denial of the life as understood in its richness and fullness by the ambit of the Constitution.”

* * *

13) Right to dignity, which is ensured in our Constitutional set up for every citizen applies with much more vigour in case of persons suffering from disability and, therefore, it becomes imperative to provide such facilities so that these persons also are ensured level playing field and not only they are able to enjoy life meaningfully, they contribute to the progress of the nation as well. In a recent judgment in *Jeeja Ghosh v. Union of India*, these aspects were highlighted by this Court in the following form:

37. The rights that are guaranteed to differently-abled persons under the 1995 Act, are founded on the sound principle of human dignity which is the core value of human right and is treated as a significant facet of right to life and liberty. Such a



right, now treated as human right of the persons who are disabled, has its roots in Article 21 of the Constitution. Jurisprudentially, three types of models for determining the content of the constitutional value of human dignity are recognised. These are: (i) Theological Models, (ii) Philosophical Models, and (iii) Constitutional Models. Legal scholars were called upon to determine the theological basis of human dignity as a constitutional value and as a constitutional right. Philosophers also came out with their views justifying human dignity as core human value. Legal understanding is influenced by theological and philosophical views, though these two are not identical. Aquinas and Kant discussed the jurisprudential aspects of human dignity based on the aforesaid philosophies. Over a period of time, human dignity has found its way through constitutionalism, whether written or unwritten. Even right to equality is interpreted based on the value of human dignity. Insofar as India is concerned, we are not even required to take shelter under theological or philosophical theories. We have a written Constitution which guarantees human rights that are contained in Part III with the caption “Fundamental Rights”. One such right enshrined in Article 21 is right to life and liberty. Right to life is given a purposeful meaning by this Court to include right to live with dignity. It is the purposive interpretation which has been adopted by this Court to give a content of the right to human dignity as the fulfilment of the constitutional value enshrined in Article 21. Thus, human dignity is a constitutional value and a constitutional goal. What are the dimensions of constitutional value of human dignity? It is beautifully illustrated by Aharon Barak (former Chief Justice of the Supreme Court of Israel) in



the following manner:

“The constitutional value of human dignity has a central normative role. Human dignity as a constitutional value is the factor that unites the human rights into one whole. It ensures the normative unity of human rights. This normative unity is expressed in the three ways: first, the value of human dignity serves as a normative basis for constitutional rights set out in the Constitution; second, it serves as an interpretative principle for determining the scope of constitutional rights, including the right to human dignity; third, the value of human dignity has an important role in determining the proportionality of a statute limiting a constitutional right.”

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40. In international human rights law, equality is founded upon two complementary principles: non-discrimination and reasonable differentiation. The principle of non-discrimination seeks to ensure that all persons can equally enjoy and exercise all their rights and freedoms. Discrimination occurs due to arbitrary denial of opportunities for equal participation. For example, when public facilities and services are set on standards out of the reach of persons with disabilities, it leads to exclusion and denial of rights. Equality not only implies preventing discrimination (example, the protection of individuals against unfavourable treatment by introducing anti-discrimination laws), but goes beyond in remedying discrimination against groups suffering systematic discrimination in society. In concrete terms, it means



embracing the notion of positive rights, affirmative action and reasonable accommodation. The move from the patronising and paternalistic approach to persons with disabilities represented by the medical model to viewing them as members of the community with equal rights has also been reflected in the evolution of international standards relating specifically to disabilities, as well as in moves to place the rights of persons with disabilities within the category of universal human rights. (See Report of United Nations Consultative Expert Group Meeting on International Norms and Standards Relating to Disability, 10-2-2001.)

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43. All these rights conferred upon such persons send an eloquent message that there is no question of sympathising with such persons and extending them medical or other help. What is to be borne in mind is that they are also human beings and they have to grow as normal persons and are to be extended all facilities in this behalf. The subject of the rights of persons with disabilities should be approached from human rights perspective, which recognised that persons with disabilities were entitled to enjoy the full range of internationally guaranteed rights and freedoms without discrimination on the ground of disability. This creates an obligation on the part of the State to take positive measures to ensure that in reality persons with disabilities get enabled to exercise those rights. There should be insistence on the full measure of general



human rights guarantees in the case of persons with disabilities, as well as developing specific instruments that refine and give detailed contextual content of those general guarantees. There should be a full recognition of the fact that persons with disability were integral part of the community, equal in dignity and entitled to enjoy the same human rights and freedoms as others. It is a sad commentary that this perception has not sunk in the mind and souls of those who are not concerned with the enforcement of these rights. The persons suffering from mental or physical disability experience and encounter nonpareil form of discrimination. They are not looked down by people. However, they are not accepted in the mainstream either even when people sympathise with them. Most common, their lives are handicapped by social, cultural and attitudinal barriers which hamper their full participation and enjoyment of equal rights and opportunities. This is the worst form of discrimination which the disabled feel as their grievance is that others do not understand them.

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46. It is the common experience of several persons with disabilities that they are unable to lead a full life due to societal barriers and discrimination faced by them in employment, access to public spaces, transportation, etc. Persons with disability are the most neglected lot not only in the society but also in the family. More often they are an object of pity. There are hardly any meaningful



attempts to assimilate them in the mainstream of the nation's life. The apathy towards their problems is so pervasive that even the number of disabled persons existing in the country is not well documented.”

36. Similar is the view taken in ***Vikash Kumar v. UPSC and Ors., [2021 SCC Online SC 84]***, wherein the Court held that the State, as also, private parties are mandated to provide reasonable accommodation to persons with disabilities. The relevant extracts of the said judgment are set out below:

44. The principle of reasonable accommodation captures the positive obligation of the State and private parties to provide additional support to persons with disabilities to facilitate their full and effective participation in society. The concept of reasonable accommodation is developed in section (H) below. For the present, suffice it to say that, for a person with disability, the constitutionally guaranteed fundamental rights to equality, the six freedoms and the right to life under Article 21 will ring hollow if they are not given this additional support that helps make these rights real and meaningful for them. Reasonable accommodation is the instrumentality – are an obligation as a society – to enable the disabled to enjoy the constitutional guarantee of equality and non-discrimination. In this context, it would be apposite to remember Justice R M Lodha's (as he then was) observation in *Sunanda Bhandare Foundation v. Union of India*, where he stated:

“9...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 and not obstructive or lethargic...

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53. **While most of the obligations under the 2016**



RPwD Act are cast upon the government or local authorities, the Act and rules made under it have also imposed certain obligations on the private sector. The role of the private sector in the market has increased manifold since the advent of liberalisation in India. The RPwD Act 2016 recognizes that with the burgeoning role of the private sector in generating employment in India, an active responsibility has to be cast upon private employers to create an inclusive workforce by providing persons with disabilities equal opportunities in the job market. However, the guarantee of equal opportunity must be accompanied by the provision of reasonable accommodation. The Rules framed under the 2016 RPwD Act stipulate that private establishments shall not discriminate against persons with disability on the ground of disability. It is to be noted that the definition of discrimination under Section 2(h) of the 2016 RPwD Act includes denial of reasonable accommodation. Private employers are mandated to frame an equal opportunity policy. Equal opportunity policies for establishments having more than 20 employees are required to include provisions relating to (i) appointment of liaison officers in establishments to look after the recruitment of persons with disabilities and provisions of facilities and amenities for such employees; (ii) identification of posts/vacancies for disabled persons; (iii) provision of additional facilities and benefits such as training facilities, assistive devices, barrier free accessibility, preference in transfer and promotion, allotment of residential accommodation and special leave. The 2016 RPwD Act further provides that private establishments have to conform with accessibility norms stipulated by the Government with respect to building plans. The 2016 RPwD Act also provides that 5% of the workforce of establishments receiving incentives from the appropriate Government would be comprised of persons having benchmark disability.”



37. A perusal of the above judgments would show that accessibility is crucial and is enforceable as a legal right. Even private parties have to ensure that ‘reasonable accommodation’ measures are taken in order to enable greater accessibility for the hearing and visually impaired persons. A hearing or visually impaired person, may get easy physical access to a film theatre but may not be able to enjoy the film at all, if measures to make it enjoyable are not taken by the other stakeholders, including producers, theatre managers, OTT platforms, etc. The State has a positive obligation to ensure that all steps, that are reasonably possible, are taken in this direction.

38. In terms of the above-mentioned judgments of the Supreme Court, it is to be noted that the RPWD Act was itself enacted in 2016 and almost eight years have passed since then. As per the Act, non-provision of accessibility features would, in fact, constitute an offence under the Act. However, considering the current position wherein the producers and technology providers need to co-ordinate with each other and the MIB has also sought further time to notify the guidelines, the following directions are issued:

- i. The guidelines shall now be finalised by the MIB and shall be notified on or before 15th July, 2024. It is made clear that the said guidelines shall make the provision of accessibility features mandatory and provide a reasonable period for compliance by all stakeholders, in an expeditious manner.
- ii. In the meantime, insofar as any representations which are received by the MIB for inclusion of accessibility features in films are concerned, one Under Secretary from the MIB shall be nominated as the



designated officer for receipt of such representations. The representations if received, shall be responded to within three working days and attempt shall be made that even in the *interregnum*, while the Guidelines are to be notified, that such features are included in features films, including on OTT platforms. The contact details of the said Under Secretary shall be published on the website by 10th April 2024, by the MIB.

39. The Guidelines upon being notified, any remedies which the Petitioner or any other stakeholders would have, are left open, as this Court has not examined the validity or legality of the said guidelines which are yet to be notified and are only in draft form.

40. The Court records its commendation to the sign language interpreters who are also present today. The Fee to the interpreters be also paid by the worthy Registrar General of this Court.

41. If the notification is not issued by 15th July, 2024, the Petitioners are free to seek revival of the writ petition.

42. Writ petition is disposed of with all pending applications, if any.

PRATHIBA M. SINGH
JUDGE

MARCH 15, 2024

mr/bh