



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. 13205/1102/2022

Complainant:

Shri Rahul Bajaj,
R/o 001, Block 12, Sarvapriya Vihar Apartments,
New Delhi-110016
Email: rahul.bajaj1038@gmail.com

Affected Person: The complainant, a person with 100% Visual Impairment

Respondents:

- (1) The Director,
Practo Technologies Pvt. Ltd. [PTPL]
3rd Floor, Salarpuria Symbiosis, Arekere,
Bannerghatta Main Road, Bangalore-560076 (Karnataka)
Email: sid@practo.com
- (2) Directorate General of Health Service (DGHS),
Ministry of Health and Family Welfare,
Government of India,
Nirman Bhawan, New Delhi -110001
Email: sandhya.k@nic.in
- (3) The Secretary,
Ministry of Information & Broadcasting,
Room No 552, A wing Shastri Bhawan,
New Delhi-110001
Email: secy.inb@nic.in

1. Gist of Complaint:

1.1 The complainant filed a complaint dated 22.03.2022 regarding inaccessibility of Website, Mobile and Tablet and non-compliance with the standards of accessibility as prescribed under rules.

1.2 The Complainant submitted that he is unable to effectively access the Practo iOS application due to various accessibility barriers which inter alia include the following:

- a. The home screen of the app is thoroughly unorganized and completely inaccessible with a screen reading software. Some buttons are not labelled at all. Some others have nonsensical labels such as 'tertiary half one image label' and 'secondary third subtitle label';
- b. The second page is also completely unlabeled and inaccessible;

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- c. Even if one is somehow able to indicate one's health need and find search results, the results are inaccessible. This is because all the information as to a given doctor viz. how much they charge, what their work experience is, etc., is presented in open go, rather than being presented as different data points;
- d. The lab testing information is similarly provided in a jumbled up fashion in one go;
- e. The app randomly crashes of its own accord from time to time; and
- f. Owing to all of these barriers combined, the experience of accessing the app for the complainant is akin to a sighted person being required to access an app in a foreign language that he does not understand.

1.3 The complainant alleged that Respondent No.1 did not comply with the provisions of Section 46 of the Rights of Persons with Disabilities Act, 2016 [RPwD Act, 2016] even after the Act brought into force on April 19, 2017 and that the Rules were notified on June 15, 2017; and the expiry of the time period for compliance.

1.4 The complainant has stated to have addressed series of representations to Respondent No.1, urging it to remedy these accessibility barriers, but no avail.

2. Submissions made by the Respondents:

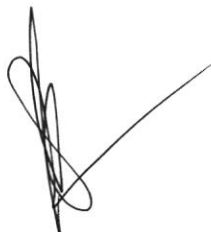
2.1 The Respondent No.1 – PTPL – filed a reply dated 14.06.2022 and inter-alia denied the allegations made by the complainant. However, the respondent Practo Technologies Private Limited expressed their willingness to make its technology platform accessible for people who are specially abled, which is in consonance with their company's objective of making the platform accessible for everyone. To achieve the above, the Respondent No.1 prayed to grant a time period of nine (9) months for making its platform accessible to visually challenged persons.

2.2 DGHS filed their reply dated 20.05.2022 and has submitted that Ministry of Information & Broadcasting would be the appropriate body to take appropriate action in this regard.

3. Hearing: The case was heard via Video Conferencing by the Commissioner for Persons with Disabilities on **19.07.2022**. The following persons were present during the hearing:

- (1) Shri Rahul Bajaj, complainant in person along with Shri Amar Jain
- (2) Shri Jagannath Nanda, Advocate; Shri Anshul Mittal, Legal Officer for Respondent No.1
- (3) Dr. Rupali Roy, ADG for Respondent No.2

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4. Observations & Recommendations:

4.1 Complaint is filed against the private company which has developed an app named 'Practo'. This is an app which provides a platform on which medical services are available for anyone who intends to use the app. The private company is Respondent No. 1.

4.2 Respondent No. 2 is Directorate General of Health Services which is attached office of Department of Health & Family Welfare.

4.3 Complainant submits that the app is not accessible for person with visual impairment because of various accessibility barriers. Complainant has pointed out following accessibility barriers:

- Home screen is unorganized and inaccessible with a screen reading software.
- Second page is unlabeled and inaccessible.
- Various results obtained after providing inputs are inaccessible.

4.4 Complainant submits that the Respondent No. 1 has violated Section 46 of RPwD Act and Rule 15 of RPwD Rules.

4.5 Relief sought by the Complainant is direction to conduct an accessible audit of the app called 'Practo' and submit Accessibility Audit Report along with statement of remedial actions within 3 months. Further direction to Respondent No. 1 for time bound compliance.

4.6 Respondent No.1 submitted that they are willing to make the app accessible for all divyangjan. They sought time for 9 months to achieve the target because the task involves 'severe engineering efforts'.

4.7 Respondent No. 2, Director General of Health Services, M/o Health & Family Welfare has submitted that the issue relates to Ministry of Information & Broadcasting hence that ministry is appropriate authority to take necessary action.

4.8 During online hearing Respondent No.1, Practo Technologies Pvt Ltd. submitted that they are ready to make necessary modifications and changes in its app, however raised two issues. Firstly, it is not bound by the guidelines which require establishments to provide service in accordance with the rule on accessibility. Secondly, there are no government guidelines which can be followed on this point hence, the Respondent No.1 lacks direction in which it has to proceed.

4.9 At the very outset this Court appreciates the fact that the Respondent No.1 is ready to make necessary changes and modifications. However, this Court is not inclined to accept the arguments forwarded by the Respondent No.1.

4.10 Most relevant provision on this Section 46 of Rights of Persons with Disabilities Act, 2016 (RPwD Act, 2016) which is mentioned below -:

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“SECTION 46 - Time limit for accessibility by service providers. - The service providers whether Government or private shall provide services in accordance with the rules on accessibility formulated by the Central Government under section 40 within a period of two years from the date of notification of such rules:

Provided that the Central Government in consultation with the Chief Commissioner may grant extension of time for providing certain category of services in accordance with the said rules.”

4.11 This provision lays down time limit for accessibility for service providers. As per the provision, service providers have to provide services in accordance with government rules made under Section 40 of RPwD Act, 2016 relating to accessibility. Time limit prescribed for providing service is ‘2 years’ from the date of notification of guidelines. The term used in Section 46 is ‘service providers, whether government or private’. Mere reading of this section leaves no doubt that the provision is applicable on private establishments as well. Term ‘whether government or private’ leaves no room for debate whether this provision is applicable on private establishments or not.

4.12 As far as Section 40 is concerned, it provides that appropriate government shall formulate rules laying down standards of accessibility for divyangjan on various kinds of services and infrastructure which is provided to public, which is inclusive of ‘information & technology including appropriate technologies and systems. Section is mentioned below -:

“SECTION 40 – Accessibility - The Central Government shall, in consultation with the Chief Commissioner, formulate rules for persons with disabilities laying down the standards of accessibility for the physical environment, transportation, information and communications, including appropriate technologies and systems, and other facilities and services provided to the public in urban and rural areas.”

4.13 From the combined reading of Section 40 and Section 46 it becomes clear that private establishments, which are providing information & technology services are bound to make their services and infrastructure accessible for divyangjan in accordance of Section 40 and Section 46.

4.14 Another provision which is important for this discussion is Rule 15 of Rights of Persons with Disabilities Rules, 2017. This provision is relevant for private as well as the government establishments. In sub-rule (1) it imposes responsibility on ‘every establishment’ to comply with the standards relating to physical environment, transport and ‘information & communication technology’. Further, in Clause 3 of sub-rule (1) term ‘information & communication technology is further elaborated as website standard as specified in the guidelines for Indian Government websites, as adopted by Department of Administrative Reforms and Public Grievances, Government of India; (ii) documents to be placed on websites shall be in Electronic Publication (ePUB) or Optical Character Reader (OCR) based pdf format. Rule 15 is mention below -:

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“15. Rules for Accessibility.-

(1) Every establishment shall comply with the following standards relating to physical environment, transport and information and communication technology, namely :-

(a) standard for public buildings as specified in the Harmonised Guidelines and Space Standards for Barrier Free Built Environment for Persons With Disabilities and Elderly Persons as issued by the Government of India, Ministry of Urban Development in March, 2016;

(b) standard for Bus Body Code for transportation system as specified in the notification of the Government of India in the Ministry of Road Transport and Highways, vide number G.S.R. 895(E), dated the 20th September, 2016;

(c) Information and Communication Technology- (i) website standard as specified in the guidelines for Indian Government websites, as adopted by Department of Administrative Reforms and Public Grievances, Government of India; (ii) documents to be placed on websites shall be in Electronic Publication (ePUB) or Optical Character Reader (OCR) based pdf format: Provided that the standard of accessibility in respect of other services and facilities shall be specified by the Central Government within a period of six months from the date of notification of these rules.

(2) The respective Ministries and Departments shall ensure compliance of the standards of accessibility specified under this rule through the concerned domain regulators or otherwise.”

4.15 Again in this Rule term used is ‘every establishment shall comply with ...’. Hence, it is important to look into the meaning of term ‘establishment’. RPwD Rules, 2017 do not define term ‘establishment’ separately. The term is defined in Section 2(i) of Rights of Persons with Disability Act, 2016. It is crystal clear from the reading of the section that private establishments are included in the definition of ‘establishment’.

“Section 2(i) - “establishment” includes a Government establishment and private establishment.”

Moreover, it is also noteworthy to mention that term establishment is preceded by another term ‘every’, which makes it certain that framers of the rule intended to bring both private as well as the government establishments under the ambit of Rule 15 of RPwD Rules, 2017.

4.16 Further, Rule 15 in sub-rule (2) entrusts ‘respective ministries and departments’ with responsibility to ensure that the standards of accessibility have to be complied with. Term ‘respective ministries’ means ministry which has been

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entrusted upon to look into affairs relating to particular subject. In case of Practo Technologies, Respondent No. 1, the subject Respondent No. 1 is dealing with is directly relating to 'health services'. Respondent No. 1 is using app and other information and communication technologies tools to provide health services. Director General of Health Services (Respondent No. 2) is the department which is entrusted upon to look into affairs relating to health services. Hence, it cannot shift its responsibility upon Ministry of Information & Technology. During online hearing, Respondent No. 2 shifted its stand which it took in its written reply, Respondent No. 2 submitted that it is ready to take responsibility to ensure that Rule 15 is followed by Respondent No. 1, i.e. Practo Technologies Pvt. Ltd.

4.17 Another issue which was raised by the Respondent No. 1 was relating to absence of guidelines and hence, there is no 'direction' to move forward. It is noteworthy to mention that there are various guidelines in place which have to be complied by the Respondent. For instance, Guidelines for Indian Government Websites ("GIGW") and notification issued by Bureau of Indian Standards, which has notified IS17801 Parts 1 and 2 in relation to Accessibility of Information & Communication Technology Products and Services. Hence, the contention of the Respondent No. 1 relating to guidelines is devoid of any substance.

4.18 Summarizing the observations made in preceding paragraphs, this Court concludes following -:

- a) Private establishments, such as the Respondent No. 1 in the present Complaint is bound by Section 46 read with Section 40 of RPwD Act, 2016.
- b) Private establishments, such as the Respondent No. 1 in the present Complaint is bound by Rule 15 of RPwD Rules, 2017.
- c) There are government guidelines on the subject matter of accessibility of website, apps and other Information & Communication Technology platforms. These existing guidelines are applicable on private establishments, such as the Respondent No. 1 in the present Complaint.
- d) Private establishments, such as the Respondent No. 1 in the present Complaint is bound to comply with existing government guidelines in terms of Rule 15 of RPwD Rules, 2017 and also in terms of Section 46 read with Section 40 of RPwD Act, 2016.
- e) Respondent No. 2, Director General of Health Services, M/o Health & Family Welfare is the concerned ministry under Rule 15(2) of RPwD Rules, 2017.
- f) Respondent No. 2, Director General of Health Services, M/o Health & Family Welfare is bound by duty entrusted under Rule 15(2) of RPwD Rules, 2017.

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4.19 This Court recommends that Respondent No. 1, i.e. Practo Technologies Pvt. Ltd. shall comply with the government guidelines and shall make necessary modifications within 6 months and not later than 9 months from receiving the copy of this Recommendation-Order, to its app and other Information & Communication Technology platforms to make such platforms accessible for divyangjan. Further this Court recommends that Respondent No. 2, Director General of Health Services, M/o Health & Family Welfare shall fulfill its duty under Rule 15(2) and ensure that the platforms of Respondent No. 1 are accessible for divyangjan.

4.20 Considering the wider social aspect of the issue of accessibility, this Court decides to use its powers under Section 75(1)(h) of RPwD Act, 2016 and decides to take cognizance of the issue of non-accessibility and hence it decides that this Court shall hold another hearing **on September 20, 2022 (Tuesday)** to monitor the implementation of Section 40 and 46 of RPwD Act, 2016 and Rule 15 of RPwD Rules, 2017.

Dated: 24.08.2022


(Upma Srivastava)
Commissioner
for Persons with Disabilities