

**Dalco Engineering Private Ltd v. Shree Satish Prabhakar Padhye & Ors with  
Fancy Rehabilitation Trust & Anr v, Union of India & Ors, [2007] 1886**

**1) Reference Details**

Jurisdiction: Supreme Court of India  
Date of Decision: 31 March 2010  
Case Status: Concluded

**2) Facts**

Two cases were brought jointly before the Supreme Court of India which sought to challenge the same point of law.

*1) Dalco Engineering Private Ltd v Shree Satish Prabhakar Padhye & Ors [CA No. 1886/2007]*

The first appellant, Dalco Engineering Private Ltd (Dalco), was a private limited company incorporated under the provisions of the Companies Act 1956. The respondent, S.P. Padhye, was employed by Dalco as a Telephone Operator for over twenty years. The respondent's employment was terminated by the Dalco with effect from 31 December 2000 on the grounds that he had developed an 85% reduction in his ability to hear. The respondent complained to the Disability Commissioner stating that he had been fit and able when he began employment with Dalco and that his hearing impairment had developed during his period of employment. He alleged, therefore, that Dalco should have continued his employment, finding him a suitable alternative post. The Disability Commissioner made an order on the 12 October 2001 suggesting that Dalco re-employ the respondent to discharge any suitable work. This suggestion was rejected. The respondent claimed that the Disability Commissioner, instead of making a mere order, should have issued a direction under section 47 of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act 1995 (the Act). The respondent, therefore, filed a writ petition seeking the following remedies:

- 1) The quashing of the order dated 12 October 2001.
- 2) A direction to implement the provisions of the Act ordering the employer to re-instate him in a suitable post with retrospective effect from 1 January 2001, with the same pay and service benefits.

The High Court ruled in favour of the respondent in a judgment dated 23 December 2005 and directed Dalco to re-instate the respondent in a suitable post. The High Court found that Dalco, though a private limited company, was an "establishment" as defined by section 2(k) of the Act. It further held that section 47 of the Act required Dalco not to dispense with the services of an employee who had acquired a disability.

*2) Fancy Rehabilitation Trust & Anr v Union of India & Ors [1858/2007]*

The second appellant, *Fancy Rehabilitation Trust* (FRT), was a public trust working for the benefit of people with physical and mental disabilities. FRT took up a house-keeping contract with a private company on the 24 July 2000. FRT employed several people with disabilities to execute this contract. The private company terminated the contract on the 18 July 2006. FRT filed a complaint with the Disability Commissioner on the 22 July 2006, followed by writ petition to the High Court for the quashing of the notice terminating the contract. The High Court dismissed the writ petition on 19 September 2006, holding that the private company was not an "establishment" for the purposes of section 2(k) of the Act. It also held that the earlier decision in *S.P. Padhye* was incorrect as it ignored previous binding decisions of the High Court.

### **3) Law**

Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act 1995

Companies Act 1956

Indian Constitution

### **4) Legal Arguments**

*S.P. Padhye and FRT*

Both S.P. Padhye and FRT relied on section 47 of the Act which provides that no establishment shall dispense with, or reduce in rank, an employee who acquires a disability during his service. They contended that a company incorporated under the Companies Act is a corporation falling under the first category enumerated by section 2(k) of the Disabilities Act which states that an establishment includes a corporation established under a Central, Provisional, or State Act. They submitted that a corporation refers to a company, that the Companies Act is a Central Act and, therefore, a company incorporated and registered under the Companies Act is a corporation established under a Central Act.

They claimed that the use of the phrase “by or under” is crucial, claiming that “a corporation established *by* an act” would refer to a corporation brought into existence by an Act, and “a corporation established *under* an Act” would refer to a company incorporated under the Companies Act.

It was further contended that the terms used in a socio-economic statute such as the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act 1995, which aimed to provide full participation and equality, should be interpreted liberally. Relying on the “Statement of Objects and Reasons” of the Act, which states that India is a signatory to the Proclamation of the Full Participation and Equality of the People with Disabilities in the Asian and Pacific Region, S.P. Padhye and FRT argued that in order for the Act to realise its objectives, the term “establishment” should be extended to all corporations incorporated under the Companies Act, irrespective of whether they are public or private.

It was also submitted that the scheme of the Act does not confine its applicability to government or statutory corporations. Illustrating this point they put forward that section 39 of the Act obliges all educational institutions to reserve not less than 3% of their seats for persons with disabilities and section 44 requires non-discrimination in transport which includes taking special measures to permit access to persons with disabilities. Consequently, it was argued that this meant that all establishments whether statutory or non-statutory should comply with the Act.

*Dalco and the Union of India*

Dalco Engineering and the Union of India, on the other hand, submitted that that the term “corporation established by or under a Central, Provisional or State Act” refers to a statutory corporation that is brought into existence by a statute and does not include a company that is registered under the Companies Act.

### **5) Decision**

The Supreme Court (the Court) held in favour of the employers (Dalco and the Union of India) stating that a company is not *established* under the Companies Act and that an incorporated company does not owe its existence to the Companies Act. An incorporated company is formed by the act of seven or more persons (or two or more person for a private company) associated for any lawful purpose subscribing their names to a Memorandum of Association and by complying with the requirements of the Companies Act in respect of registration. Therefore, a company is incorporated and registered under the Companies Act and not established under it.

The word “established” refers to coming into existence by virtue of an enactment. It does not refer to a company, which, when it comes into existence, is governed in accordance with the provisions of the Companies Act. **The Court held that the term “established by or under” refers to a statutory corporation as contrasted from a non-statutory corporation incorporated or registered under the Companies Act.**

The Court held that the inclusion of only a specific category of companies incorporated under the Companies Act within the definition of “establishment” necessarily and impliedly excludes all other types of companies registered under the Companies Act from the definition of establishment. The Court asserted that the legislative intent was to define establishment so as to be synonymous with the definition of “State” under Article 12 of the Constitution of India and that private employers, whether individuals, partnerships, proprietary concerns or companies (other than Government companies) are clearly excluded from the “establishments” under section 47 of the Act.

The Court held that if it was the intention of the legislature to prevent discrimination of persons with disabilities in any kind of employment then the provision would have been described as “non-discrimination in employment” and the words “any employer” would have been used instead of “establishment”. The Court held that this demonstrated the clear legislative intent to apply the provisions of section 47 only to employment by the State and not to employment of others.

In respect to the argument, submitted by *S.P. Padhye and FRT*, that socio-economic statutes should be interpreted liberally, the Court agreed. However, they held that they could not expand the application of a provision of a socio-economic legislation by judicial interpretation to levels unintended by the legislature, or in a manner which militates against the provisions of the statute itself or any constitutional limitations. They held that in this instance there is a clear indication in the statute that the benefit is intended to be limited to a particular class of employees – that is employees of enumerated establishments. The term “corporation established by or under a Central, Provisional or State Act” is not a term which has any special significance or meaning in the context of the Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act 1995. It is a term used in various enactments to refer to statutory corporations to contrast from non-statutory corporations. The Court reasoned that any interpretation of the term which included the private sector would override the distinction maintained in the Constitution between statutory corporations which are “state” and non-statutory bodies and corporations.

The Court pointed out that only government educational institutions and educational institutions receiving aid from the government fall under section 39. Furthermore, section 39 of the Act does not use the word “establishment”. The Court did not consider whether section 44 applied to non-statutory corporations in the transport sector as that issue did not arise in the present case.

The Court held, consequently, that as Dalco and the private company (in the FRT case) were not establishments within the meaning of section 2(k) of the Act, Section 47 of the Act did not apply.

The respective writ permissions were both dismissed.