

(2012) 09 DEL CK 0550

In the Delhi High Court

Case No : Writ Petition (C) No. 4853 of 2012

Anamol Bhandari Through His Father/Natural Guardian

APPELLANT

Vs

Delhi Technological University

RESPONDENT

Date of Decision : 12-09-2012

Acts Referred:

Constitution of India, 1950 — Article 14, 21A

Citation : (2012) 131 DRJ 583

Hon'ble Judges : Rajiv Sahai Endlaw, J;A.K. Sikri, J

Bench : Division Bench

Advocate : R.S. Rana and Ms. Monika Rana and Mr. Rajan Mani, Amicus Curie, for the Appellant; Avnish Ahlawat, Advocate for DTU and Mr. Atul Kumar, Advocate for the respondent No. 2, for the Respondent

Final Decision : Allowed

Judgement

A.K. Sikri, (Acting Chief Justice)

1. Law mandates that that State provides reservation to the persons belonging to Scheduled Castes/Scheduled Tribes ("SC/ST" for the sake of brevity) Category. Law also puts an obligation on the State to provide reservation to the differently abled persons, who fit into the definition of "disability" as defined in Section 2(d) of Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 [hereinafter referred to as "Disabilities Act"]. In tune with this legal obligation, the provisions are made for providing such reservations to SC/ST categories on the one hand and the disabled persons on the other hand, not only in the employment, but for admissions to educational institutions as well. In order to ensure that these categories are able to get the fruits of these reservations in reality, and that provision does not remain only on papers, provision for relaxed standards are also made, i.e., rigours of the regours of standard applicable for General Category/Unreserved Categories are softened and relaxed for these categories. So far so good, as this is in tune with the Constitutional mandate. However, an importance issue which is raised by the

petitioner in the present petition is: whether the extent and quantum of this relaxation can be different for disabled qua SC/ST categories. To put it straight, the respondent, viz., Delhi Technological University (hereinafter referred to as the "DTU") has provided 10% of concession of marks in the minimum eligibility requirements for candidates belonging to SC/ST, but relaxation of 5% only is permissible for People with Disabilities ("PWD" in short). Whether different treatment to the two categories is permissible under law or it amounts to hostile discrimination insofar as PWD category is concerned, is the issue needs to be examined in the present petition. The petitioner passed his All India Senior School Certificate Examination, 2012, from Central Board of Secondary Education [CBSE] with English (Core), Mathematics, Physics, Chemistry and Computer Science as his subjects. Aggregate percentage in Physics, Chemistry and Mathematics (PCM), obtained by him, was 52.66%. He is a physically disabled persons having 50% disability due to right side hemiparesis called Moya-moya disease, as per the certificate annexed by him along with instant petition issued by Govind Ballabh Pant Hospital, New Delhi, Govt. of NCT of Delhi. With this kind of disability, indubitably, he is governed by the definition of disability under the Disabilities Act.

2. CBSE conducts All India Engineering/Architecture Entrance Examination (AIEEE), 2012 and the successful candidates, who appeared in this examination are allocated in various educational institutions imparting education in Engineering, which are affiliated to CBSE. Though DTU is a statutory and autonomous body, instead of conducting its own Entrance Examination for admission in Engineering course, it falls back on the AIEEE examination conducted by CBSE. Of course, it has its own admission process, procedure and rules. It has fixed eligibility criteria for admission into this course, for general candidates as 60% aggregate mark in PCM. However, concession for SC/ST candidates is allowed by the DTU at 10%. Thus, the minimum eligibility requirement for persons belonging to SC/ST becomes 50%. Relaxation given to PWD is, however, lesser, i.e., 5% marks in the minimum eligibility requirement for PWD, category (in which the petitioner falls) which means minimum mark to be obtained in PCM is 55%.

3. The petitioner appeared in the said AIEEE examination held in the year, 2012 and opted B.Tech. Computer Science trade. His rank in the said written examination was 2,54,918. The basic eligibility for admission in DTU for first Semester of Bachelor of Technology course is those who have appeared in AIEEE examination and candidates have been declared eligible for central counselling by CBSE. On the basis of his aforesaid result in AIEEE examination, he becomes eligible to be considered for admission in DTU. However, since the PCM marks of the petitioner in CBSE Class XII examination is 52.66%, whereas minimum eligibility for him is 55%, he is not being considered for admission for the said course in DTU. If the relaxation to PWD candidates is given at par with SC/ST candidates, i.e., to the extent of 10%, then he becomes naturally eligible to be considered in DTU. It is for this reason, the petitioner, feeling aggrieved by

disparity in treatment, has filed the present petition.

4. We would like to point out at this stage that another submission of the case set up by the petitioner in writ petition was that the CBSE has fixed 40% minimum marks as eligibility criteria in PCM and thus, the DTU cannot have different criteria. However, this plea was given up during the arguments and only the plea of discrimination qua SC/ST category was pressed and arguments were heard on that aspect. We would like to place on record that having regard to the importance of this issue, we had requested Mr. Rajan Mani (learned Amicus Curie) to assist in the matter. He has provided us very valuable assistance touching the core issue and we place on record our appreciation for his industrious efforts and passionate submissions.

5. In the counter affidavit filed by the DTU, it is mentioned that the CBSE conducts a common All India Engineering Examination for institutes who agree to participate in AIEEE examination of CBSE. There are more than four categories of institutes who are associated with CBSE. CBSE after conducting the exam prepares a merit list of the candidates. In this examination, even candidates secured minimum 45% marks in XIIth Class of CBSE is eligible to participate in the examination. On the basis of examination conducted by the CBSE, a merit list is prepared. The counselling is done by the CBSE for the associated institutes. It is emphasized that the DTU is an autonomous University, which comes under Technical Education Department of Govt. of NCT of Delhi. It decides its own admission policy. Well in advance, the petitioner was aware of the fact that even at the time of online registration that PWD are eligible to 5% marks as compared to 10% marks relaxation given to the SC/ST candidates. If he had any grievance, he should have approached the Court earlier. In any case, the Academic Council of the DTU to decide the procedure followed to the selection and the provision was made, after due deliberation and has a policy decision to grant 5% relaxation to PWD keeping the cut-off entry at 55%. Similar relaxation of 5% is available to the children/war widows of personnel of Armed Forces who were killed/disabled in action and these standards are in conformity with the University of Delhi where relaxation of 5% marks is given to PWD candidates.

6. The respondents have also mentioned that in B.Tech., 45 seats are reserved for PWD candidates (38 for Delhi and 7 for outsider Delhi). The total candidates who are admitted under this category are 23 and remaining 22 seats are converted back to respective main categories, i.e., General Category, OBC PH to OBC Category and so on.

7. On 31.8.2012, when the matter was listed for hearing, the case had to be adjourned as the arguing counsel for DTU was not present. While adjourning the matter, the DTU was directed not to fill one seat for the quota meant for Handicapped Persons and the exact orders passed in this behalf are as under:

4. At this stage, learned counsel for the petitioner submits that today is the last date for admission. From the counter affidavit filed by respondent NO.1 DTU, we

find that 45 seats are reserved for persons suffering from disability. Out of these, only 23 seats are filled from this category and respondent NO.1 is proposing to convert remaining 22 seats in general category. Since today's adjournment is occasioned because of the non presence of all counsel for respondent NO.1 DTU, respondent NO.1 DTU is directed not to fill one seat from the quota meant for handicapped persons.

8. During the arguments, when we put specific query to the learned counsel appearing for the DTU as to whether there was any rational or basis on record while fixing the limit of 5% relaxation to PWD category as opposed to 10% SC/ST categories, except accepting this was the position not only in Delhi University but also in some other educational institutions as well, no other answer or justification was given by the DTU. Umbrage of "Policy Decision" was taken contending that the Courts should not interfere with such policy decision of the academic institutions. The focus of the issue, however, has to be different. No doubt, the Courts are not to interfere with the policy decision of the Government and especially, educational institutions moreso, in those cases where the experts have deliberated on such issues and have taken conscious decision. However, limited inquiry is still permissible. It is within the powers of the Courts to undertake the exercise of ascertaining as to whether such a policy decision is arbitrary or discriminatory or offends equality Clause contained in Article 14 of the Constitution of India or is without application of mind. We have examined the matter from this angle.

9. With the support of constitutional and statutory provisions coupled with Government's own documents, Mr. Rajan Mani, learned Amicus Curie is able to substantiate this plea before us. Submission of Mr. Mani was that PWD, which is invisible minority and underprivileged class, suffers even more disadvantage than faced by persons belonging to SC/ST categories and therefore, they need at least the same treatment as the same as SC/ST categories if not better. Reasons for coming to this conclusion are stated here.

10. First document which needs to be referred to is the "National Policy for Persons with Disabilities" issued by Ministry of Social Justice and Empowerment, Government of India on 10.2.2006 in support of this submission. "Introduction" to the said Policy starts with constitutional spirit recording as under:

The Constitution of India ensures equality, freedom, justice and dignity all individuals and implicitly mandates an inclusive society for all including persons with disabilities. In the recent years, there have been vast and positive changes the perception of the society towards persons with disabilities can lead a better quality of life if they have equal opportunities and effective access to rehabilitation measures.

(Emphasis supplied)

11. This very National Policy recognizes the fact that education is the most effective tool for social and economic empowerment and therefore, if any

meaningful rights are to be given to PWD class, prime importance is to be given to educate the PWDs. That is the scheme of Disabilities Act itself.

12. Statistics of Socio-Economic studies reveal that there is abysmally low literacy and employment rates among the PWDs. Further, they face widespread social stigma and it is making disabled people among the most excluded in Indian Society. Children, i.e., disabled are five times more out of school than the average children. In a study conducted by Human Development Unit, South Asian Region to World Bank in May, 2007 on "People with Disabilities in India: From Commitments to Outcomes". Following startling revelation are made:

1.10. Numbers from a variety of reliable sources suggest that the real prevalence of disability in India could be easily around 40 million people, and perhaps as high as 80-90 million if more inclusive definitions of both mental illness and mental retardation in particular were used. The focus of this report is not on precise prevalence estimates of disability in India. However, the large range in estimates both of the number of disabled people and what is the composition of their impairments points to the need for improvements in public data collection efforts.

1.18. A second key social indicator that the NSS reports is education enrollment and attainment. Educational indicators were also captured for PWD in the 2001 census. The summary results are reported below, with more detailed analysis and econometric findings presented in the education chapter. Figure 1.7 presents educational attainment levels for PWD and the general population averaged across all age groups, using 2001 census data for both groups. It shows substantially higher rates of illiteracy among the FWD population relative to general, and conversely lower shares of FWD with higher levels of educational attainment. Across all PWD, illiteracy is 52 percent, versus only 35 percent in the general population. For specific disability categories, the illiteracy rates are higher again: with almost two thirds of both speech and mentally disabled people being illiterate. Conversely, those with locomotor disabilities have 44 percent illiteracy rate, significantly lower than the PWD average but still one quarter higher than the general population rate.

1.19. As with the general population, there are strong gender differences in educational attainment among FWD, with FWD female illiteracy rates on average 64 percent (against a male FWD average of 43 percent), and as high as 73 percent for the visually disabled. There are also strong locational differences as one would expect, with the total PWD illiteracy rate for rural areas as high as 57 percent, against a rate of 37 percent in urban areas.

1.20. While Figure 1.7 is important, of most immediate relevance is school attendance of the current batch of children in general education, as this is a group for whom improvements could occur in time to affect their lifetime attainment. Nationally representative figures from survey conducted in 2005 are presented in Figure 1.8 which show the proportion of children out of school along

various social indicators, including disability. (The share of disabled children who are out of school is dramatically higher than other major social categories, with the average out-of-school rate for CWD five and a half times the rate for all children, and around four times even that of the ST population (generally considered to have poor educational outcomes).

1.21. In addition to the very high average rates of out-of school children among disabled children, the rates among some disability categories are extremely high, with more than 60 percent of multiple disability and almost half of mentally disabled 6-13 year olds out of school. Even the lowest disability group (surprisingly, visual) have almost 30 percent of children in the general education group out of school. It is very clear from these numbers that India's hopes of reaching the educational MDGs are highly unlikely to be realized unless there is major improvement in getting CWD into school."

13. The National Policy, however, states that 51% persons with disabilities are illiterate and recognizes that it is a very much percentage. It also admits that there is a need for mainstreaming of the PWDs in the general education system through inclusive education. The relevant portion of the said Policy, in this behalf, reads as under:

II B. Education for Persons with Disabilities

20. Education is the most effective vehicle of social and economic empowerment. In keeping with the spirit of the Article 21A of the Constitution guaranteeing education as a fundamental right and Section 26 of the Persons with Disabilities Act, 1995, free and compulsory education has to be provided to all children with disabilities up to the minimum age of 18 years. According to the Census, 2001, fifty-one percent persons with disabilities are illiterate. This is a very large percentage. There is a need for mainstreaming of the persons with disabilities the general education system through Inclusive education.

(Emphasis supplied]

14. There is a commitment, in this Policy, to ensure inclusion and effective access to education to children with disabilities as contained in Para 32 thereof:

IV. Children with Disabilities

32. Children with disabilities are the most vulnerable group and need special attention. The Government would strive to:-

- a. Ensure right to care, protection and security for children with disabilities;
- b. Ensure the right to development with dignity and equality creating an enabling environment where children can exercise their rights, enjoy equal opportunities and full participation in accordance with various statutes.
- c. Ensure inclusion and effective access to education, health, vocational training along with specialized rehabilitation services to children with disabilities.

d. Ensure the right to development as well as recognition of special needs and of care, and protection children with severe disabilities.

(Emphasis supplied)

15. Other relevant provisions made in this National Policy are as follows:

II. Programmes of Rehabilitation

44. Medical, educational and social rehabilitation programmes will be developed with the assistance of medical and rehabilitation professionals and with the participation of persons with disabilities and their families, legal guardians and communities....

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IV. Education of Persons with Disabilities

48. It will be ensured that every child with disability has access to appropriate pre-school, primary and secondary level education by 2020. Special care will be taken to -

I...

II...

xxx

XX. Three percent reservation for persons with disabilities in admission to higher educational institutions shall be enforced. Universities, colleges and professional institutions will be provided financial support to establish Disability Centre to take care of educational needs of students with disabilities. They will also be encouraged to make classrooms, hostels, cafeterias and other facilities in the campus accessible to students with disabilities.

(Emphasis supplied)

16. Para 49 of this National Policy stipulates that The Ministry of Human Resources Development will be the nodal Ministry to coordinate all matters relating to the education of persons with disabilities. We are pointing out this provision specifically keeping in view the justifiable plea raised by Mr. Rajan Mani to the effect that in a matter like that it is the HRD Ministry, which could give appropriate directions to all such institutions so that there is uniformity in approach across the board.

17. It is, thus, recognized that without imparting proper education to persons suffering from disabilities, there cannot be any meaningful enforcement of their rights under the Act of the Constitution. Realizing this, the Government has taken certain initiative and adopted certain measures to fulfil its statutory and constitutional obligations. The Disability Act places responsibility on the society to make adjustments for disabled people so that they overcome various practical,

psychological and social hurdles created by their disability. The Act places disabled people at par with other citizens of India in respect of education, vocational training and employment. There have been and are a number of programmes, schemes and services for disabled people in India but there was no separate law to protect the rights of disabled people. The Act claims to fill that void. It seeks to establish a coherent and comprehensive framework for the promotion of just and fair policies and their effective implementation. It creates formal procedures, which hasten the process of full and total integration of the disabled in the society. It also aims at facilitating efficient enforcement of policies. The Act has specially made education of children with special need a basic focus. The main aim of PWD Act is also to define the responsibilities of the Central and State Governments with regard to the services for disabled persons. The Act aims to ensure full life to a disabled individual so as to enable him to make full contribution in accordance with his disability condition. As per the Act, the Central and State Governments are obliged to ensure that every child who is physically and mentally challenged has access to free and adequate education till the age of 18. The Act indicates that integrated education and special schools are required to be set up to meet the educational needs of children with disabilities. The Act also provides for introduction of non-formal education, provision of aids and appliances and creation of adequate teacher training facilities to prepare teachers for special and integrated schools.

18. It will also be relevant to mention that the issue of relaxation of marks to PWD people came up for consideration before the Supreme Court in W.P. (C) No. 116/1998 titled A.I. Confederation of Blind & Anr. Vs. U.O.I. & Anr. (decided on 19.3.2002). It was found therein that the relaxation was given to SC and ST candidates to the extent of 5% partially blind/low vision persons in that petition. Matter was studied by the Government which filed the counter affidavit agreeing to extend the same benefit to visually handicapped persons as was enjoyed by SC/ST candidates. In the order dated 19.3.2002 passed by the Apex Court in the said petition, relevant portion of the counter affidavit was extracted since this was the stand of the Union of India in that petition, we would like to reproduce the same here as under:

...3. It is humbly submitted that in pursuance of Section 32 of the Persons with Disabilities Act (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995, the appropriate government (Government of India) has updated the list of identified posts. This list has been issued vide Extraordinary Gazette Notification No. 178 dated 30.6.2001. In this list, the posts of University/College/School Teacher for the blind and low-vision have been listed at Sl. No. 24-27 on Page No. 592.

6. The Chief Commissioner for Person with Disabilities has taken cognizance of the arrangements provided by the University Grants Commission for persons with disabilities by way of extending 5% relaxation in cut-off marks, appearing in the NET for Junior Research Fellowship and Lectureship. Thus, the arrangement

extended by UGC is in consonance with the policy stand taken by Govt. of India insofar as relaxation in minimum standard is concerned. Relaxation in standards has been favoured only when the candidates belonging to reserved categories are not available on the basis of the general standard to till all the vacancies reserved for them.

7. The relaxation extended to SC & ST candidates as per Maintenance of Standard 1998 of the Universities, provides for a 5% relaxation from 55% to 50% in the marks obtained at Master's Degree. Since reservation for the disabled is called horizontal reservation which cuts across all vertical categories such as SC, ST, OBC & General. Therefore, all such blind/low-vision persons who belonged to SC, ST vertical category would automatically enjoy the benefit of 5% relaxation at the minimum qualifying marks obtained at Master's Degree level. Thus, only the blind and low-vision belonging to OBC & General categories are deprived of the relaxation of 5% marks at masters' level.

8. The blind/low-vision and other visually disabled persons belonging to SC & ST category are in any case enjoying the benefit of 5% relaxation in marks obtained at the master's level for appearing in the NET examination conducted by the UGC. By extending the same relaxation to particularly blind/low-vision and in general all disabled at par with SC & ST disabled would bring parity amongst all persons with disabilities irrespective of their vertical categories.

(Emphasis supplied)

19. The writ petition was disposed of taking note of the aforesaid stand. Thereafter, University Grants Commission issued instructions dated 05.6.2002 to the Registrars of the Universities including deemed Universities providing for relaxation in marks obtained in Master level in NET to all disabled persons.

20. Reference to the aforesaid judgment is made by us to highlight the decision taken by the Government, and accepted by the Supreme Court that reservation for disabled is called horizontal reservation which cuts across all vertical categories such as SC, ST, OBC & General. Therefore, what was recognized was that since PWDs belonging to SC/ST categories, i.e., vertical categories enjoyed the relaxation which is provided to SC/ST categories, there is no reason not to give the same benefit/concession to those disabled who are in General Category or Other Backward Class Category as that process only would bring parity among all persons' disparity irrespective of their vertical categories. This itself provides for justification to accord same concession, viz., 10% concession to PWDs as well, in all categories which is extended to those PWDs who fall in the category of SC/ST.

21. All the aforesaid clinchingly demonstrates that the people suffering from disabilities are equally socially backward, if not more, as those belonging to SC/ST categories and therefore, as per the Constitutional mandates, they are entitled to at least the same benefit of relaxation as given to SC/ST candidates.

22. We, therefore, hold that the provision giving only 5% concession in marks to PWD candidates as opposed to 10% relaxation provided to SC/ST candidates is discriminatory and PWD candidates are also entitled to same treatment. The mandate is, accordingly, issued direction the DTU to provide 10% relaxation. Thus, the minimum eligibility requirement for persons belonging to PWD becomes 50% in PCM. Since the petitioner becomes eligible to be considered for admission in B.Tech. Course of DTU, his case may accordingly be considered for admission and if found eligible for admission on that basis, the same be granted to him forthwith. Writ petition is allowed in the aforesaid terms.

No costs.