
(2014) 12 DEL CK 0156
In the Delhi High Court
Case No : Writ Petition (Civil) 4290/2014

Anmol Kumar

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 09-12-2014

Acts Referred:

Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 — Section 32

Citation : (2015) 147 DRJ 491

Hon'ble Judges : Manmohan, J

Bench : Single Bench

Advocate : Ravi Chandra Prakash and Mukesh Kumar Singh, Advocate for the Appellant; Yudhishter Sharma and Arjun Mitra, Advocate for the Respondent

Judgement

Manmohan, J.—The issue that arises for consideration in the present proceeding is whether the lowest of the cut-off marks amongst General (GE) , Other Backward Classes (Non Creamy Layer) [OBC (NCL)], Scheduled Castes (SC) and Scheduled Tribes (ST) candidates is applicable to Persons with Disability (PwD) candidates at the time of allocation of seats.

2. The relevant facts of the present case are that on 15th May, 2013, the petitioner passed his intermediate examination from Bihar Intermediate Education Council with 63.20% having 316 marks out of 500 marks. He cleared JEE (Main) 2013, but did not clear JEE (Advanced) , IIT 2013.

3. On 15th November, 2013, the petitioner applied for appearing in JEE (Advanced) 2014 in OBC (NCL) PwD category. On 03rd May, 2014, petitioner was declared pass in JEE (Main) 2014 and became eligible to it for the JEE (Advanced) 2014. On the same date, the petitioner filled up his JEE (Advanced) 2014 form and uploaded his marksheet of X, XII, OBC (NCL) certificate and PwD certificate. On 19th June, 2014, the respondents declared result of JEE (Advanced) 2014 wherein the petitioner was ranked 40 in OBC (NCL) PwD in merit list. The petitioner was asked to apply for online Choice Filling between

20th and 24th June, 2014. On 21st June, 2014, the petitioner applied for his online choice in 55 branches in Engineering for allotment of a seat.

4. In the first round of counselling on 01st July, 2014, the petitioner was provisionally allotted Chemical Engineering, four-year B.Tech. Course at IIT Bombay by the respondents. As the seat was allotted to the petitioner, he was asked to make a payment of Rs. 20,000/-. On 02nd July, 2014, petitioner made payment to the respondents. Thereafter, on 03rd July, 2014, the petitioner uploaded all the documents i.e. Marksheet of XII, Bank Challan with his declaration as per Norms.

5. On 04th July, 2014, the petitioner received an E-mail from respondents stating that due to a mistake, the provisional admission fee charged was Rs. 20,000/-. He was informed that as per norms, he was required to pay the fee applicable to the general category students, i.e., Rs. 60,000/-. It is the petitioner's case that his category is OBC(NCL) PwD and as per norm he was required to pay only Rs. 20,000/-.

6. On 06th July, 2014, the petitioner received a second E-mail wherein it was stated that his aggregate marks in qualifying examination were less than the top 20 percentile cut-off marks for his Board in his category and was informed that his admission offer stood cancelled.

7. Aggrieved by the said E-mail, the petitioner filed the present writ petition. In the writ petition, it has also been prayed that the respondents should prepare separate category of OBC (NCL) PwD in the same way as it did in 2012 and 2014 in accordance with para 3.4 of Prospectus of JEE (Advanced)2014. In 2013, respondents had clubbed PwD with OBC and cut-off for admission in the State of Bihar for joint category was 322 marks.

8. It is pertinent to mention that petitioner had been awarded 316 marks in the 10+2 Board examination in 2013 and as his marks were less than 2013 cut- off marks in OBC category, he was not granted admission.

9. Today, Mr. Ravi Chandra Prakash, learned counsel for petitioner contends that keeping in view the orders passed by the Supreme Court, the PwD candidates should be given the same relaxation as SC/ST candidates in terms of eligibility of admission. He states that a decision to this effect was even taken by the Joint Admission Board for JEE (Advanced) 2014.

10. Mr. Prakash states that the lowest of cut-off marks amongst GE, OBC(NCL) , SC/ST was 309, whereas the petitioner had obtained 316 marks. Consequently, he states that petitioner is entitled to admission.

11. Mr. Prakash in support of his submission relies upon the Division Bench judgment of this Court in Anamol Bhandari Through His Father/Natural Guardian Vs. Delhi Technological University, .

12. On the other hand, Mr. Arjun Mitra, learned counsel for respondents No. 2

and 3 states that the reliefs as prayed for are not tenable since there is no challenge to the rules of JEE (Advanced) 2013 or 2014 as applicable to the petitioner. The relevant portion of the rules contained in Prospectus of JEE (Advanced) - 2014 relied upon by Mr. Mitra is reproduced hereinbelow:-

"3.4. Performance Criteria in Qualifying Examination (QE)

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Candidates who passed their QE in 2013 will be considered on the basis of the top 20 percentile cut off marks of their boards in 2013. Candidates, who passed in 2013 and would improve their performance of QE in 2014, will be considered on the basis of 2014 cut off marks of their respective Boards in their respective category."

13. Mr. Mitra further states that the Division Bench judgment of this Court in *Anamol Bhandari (Minor)* through his father/Natural Guardian (*supra*) was not in the knowledge of respondents No. 2 and 3 and it was only during the course of the arguments the said judgment was noticed. He, however, states that if the petitioner is granted any relief at this stage, it would have the potential of opening flood gates of litigations, which is neither desirable nor equitable. Mr. Mitra contends that allowing the present petition would cause great prejudice to all other similarly situated candidates who did not get admission.

14. Mr. Mitra lastly submits that even if this Court were to conclude that there was some infirmity with the 2013 rules, the same need not result in an order striking down the rules since writ jurisdiction is discretionary and relief need not be given even if some error has been committed.

15. Having heard learned counsel for parties, this Court is of the opinion that the issue that arises for consideration in the present proceedings is no longer *res integra*. A Division Bench of this Court in *Anamol Bhandari (Minor)* through his father/Natural Guardian (*supra*) has held that reservation, for disabled is horizontal reservation which cuts across all vertical categories such as SC, ST, OBC and GE.

16. The Division Bench in the aforesaid case relied upon the counter- affidavit filed by Union of India in the Supreme Court in W.P.(C) 116/1998 wherein it was stated that by extending relaxation to all persons with disabilities at par with SC and ST disabled would bring parity amongst all persons with disabilities irrespective of their vertical categories. The relevant portion of *Anamol Bhandari (Minor)* through his father/Natural Guardian (*supra*) is reproduced hereinbelow:-

"1.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.

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3. 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%.

4. 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.

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19. 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 v. U.O.I. (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 S1. 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]

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21. 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."

(emphasis supplied)

17. Even respondents No. 2 and 3 in their counter-affidavit have admitted that the lowest of the cut-off marks amongst all categories is applicable to PwD category at the time of allocation of seats. The relevant portion of the said counter-affidavit is reproduced hereinbelow:-

"4. In the JEE (Advanced) 2013, the cut off marks in the QE for a PwD candidate was the same as that of the main category to which he belonged; it is pertinent to mention that none of the State Boards / CBSE provide any information or data with respect to the percentile cut off marks for PwD candidates. Therefore, keeping in view the directions passed by the Hon"ble Supreme Court that PwD candidates should be given the same relaxation as SC/ST candidates, in terms of eligibility of admission, it was decided by the Joint Admission Board, that for JEE (Advanced) 2014, the lowest of the cut-off marks amongst GE, OBC (NCL) , SC and ST be made applicable to PwD candidates at the time of allocation of seat. "

(emphasis supplied)

18. In view of the aforesaid categorical judgment as well as the admission in the counter-affidavit, this Court is of the view that the lowest cut-off marks amongst GE, OBC (NCL) , SC and ST candidates have to be made applicable to the PwD candidates at the time of allocation of seats. Since in the present case the lowest cut-off marks in four categories is 309, this Court is of the view that petitioner with 316 marks is eligible for admission.

19. This Court is of the opinion that respondents No. 1 and 2's apprehension that grant of any relief to the petitioner would open flood gates of litigation, is unfounded as the petitioner is the only candidate who had approached this Court before the seat allocation process had been completed. It is also pertinent to mention that petitioner had filed the present writ petition within ten days of issuance of the impugned letter dated 6th July, 2014 by virtue of which petitioner's admission was cancelled in OBC (NCL) PwD category.

20. This Court is also of the view that respondents No. 1 & 2's ignorance or lack of knowledge of judgment of this Court in Anamol Bhandari (Minor) through his father/Natural Guardian (supra) would make no difference. It is settled law that ignorance of law is no excuse. In any event, this Court is of the view that in case of doubt, beneficial interpretation in favour of persons with disability should be accepted.

21. Consequently, present writ petition is allowed and the impugned e-mail dated 6th July, 2014 is quashed. Respondents No. 2 and 3 are directed to grant admission to the petitioner within two weeks.