

(2009) 08 KAR CK 0038
In the Karnataka High Court
Case No : Writ Petition No. 18261 of 2009

Dr. S.J. Rajalakshmi

APPELLANT

Vs

The Secretary, Medicial Education

RESPONDENT

Date of Decision : 03-08-2009

Acts Referred:

Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 — Section 3, 39

Citation : (2010) 124 FLR 879 : (2010) 1 KarLJ 676 : (2009) 4 KCCR 3068

Hon'ble Judges : B.S. Patil, J

Bench : Single Bench

Advocate : S. Shobha, appears as Party in Person, for the Appellant; B. Manohar, AGA, for the Respondent

Final Decision : Allowed

Judgement

B.S. Patil, J.—In this writ petition, petitioner is seeking a direction to the respondent to allot her MDS seat in Orthodontics at Government Dental College, Bangalore at Government fees structure of Rs. 20,000/- under the "Physically Handicapped" quota.

2. Petitioner is a Graduate in Bachelor of Dental Surgery at Oxford Dental College. She met with a tragic road accident and became a paraplegic with 75% physical disability with loss of control, both Motor and Sensory of the lower limbs and is certified as Physically disabled.

3. Petitioner appeared for the Post Graduate Entrance Test ("P.G.E.T" for short) conducted by the Rajiv Gandhi University of Health Sciences on 1st February 2009 claiming reservation for Physically Handicapped and also under 2A Category. As per Section 39 of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 (for short "the Act"), 3% reservation for "Physically Handicapped" is provided. However, in the Seat Matrix issued by the State Government, only one (1) seat is reserved for "Physically Handicapped" candidate. Petitioner claims that reservation to Physically

Handicapped ought to have been provided out of 523 seats. Petitioner contends that as per the Seat Matrix, 33% seats in the Private Non-minority Colleges and 20% of the seats in the Private Minority Colleges were declared as Government Seats. However, no reservation has been provided for the "Physically Handicapped" category even in these seats also.

4. Though petitioner raised objections and sought the benefit of reservation under the "Physically Handicapped" category, her request has not been considered. She approached the Competent Authority, namely the Commissioner for Persons with Disabilities appointed under the Act to deal with the grievances of the physically challenged persons. He has passed an order dated 12.06.2009 vide Annexure-A holding that the Government was required to give 3% reservation in respect of Government Seats including the seats in Private Non-Minority and Minority Institutions. As the petitioner is not given the benefit of reservation and is denied a seat in M.D.S. Course, she has approached this Court in this Writ Petition.

5. Mother of the Petitioner, Dr. S. Shobha has addressed her arguments representing her daughter and has submitted that the action of the respondent-Authority is illegal and contrary to the provisions of the Act. She has taken the Court through the pleadings and the documents. It is urged that had the reservations, as contemplated u/s 39 of the Act, been provided, the petitioner would have secured a seat for the M.D.S. Course. She has further contended that her disabled daughter is deprived of the opportunity of higher education due to the illegal action on the part of the respondent-Authorities.

6. The State Government has filed its statement of objections. It has stated that in the entire state of Karnataka there is only one Government Dental College at Bangalore imparting Post Graduate Course and that there are no Aided Dental Colleges in the state of Karnataka. The total seats available in the Government Dental College to the Post Graduate Degree and Diploma Course are 21. Out of 21 seats, 10 seats are reserved to be allotted under the All India quota. Remaining 11 seats are to be filled up under the Entrance Test Quota. Out of 11 seats, 3% of the seats have been reserved to the physically handicapped persons which comes to about 0.33%. In order to fulfill the obligation u/s 39 of the Act, one M.D.S seat in Community Dentistry has been reserved for "Physically Handicapped" persons for the academic year 2009-10. It is further stated that the Petitioner herein is the 6th candidate in the physically handicapped category in the rank list and the candidate who stood first under this category has been given a seat reserved for "Physically Handicapped" persons and hence question of reserving one more seat to the petitioner under this category did not arise. It is also stated that the contention of the petitioner that there are 523 seats in the State of Karnataka and the Government ought to have reserved 16 seats to the persons with disability is totally misconceived as the provisions of the Act will not be applicable to the seats in Private Colleges which are Unaided Institutions. It is also contended that, the State Government cannot insist on the Private

Educational Institutions which do not receive any aid from the Government to implement the State's policy of reservation for granting admission on lesser percentage of marks in the light of the Judgment of the Apex Court in T.M.A. Pai Foundation and Others Vs. State of Karnataka and Others, as clarified in the case of P.A. Inamdar and Ors. v. State of Maharashtra and Ors. (2005) 6 SCC 537.

7. It is, however, stated in the objections that as per the Consensual Agreement with the Unaided Private Institutions, the State Government is getting certain percentage of seats for which reservation is made in favour of the Scheduled Castes, Scheduled Tribes and other Backward Community students. It is further stated in paragraph 7 of the statement of objections that the Government has intention to formulate a policy and take appropriate decision for reserving 3% of the seats for the physically handicapped persons in Government seats in private Dental Colleges for the next academic year.

8. It is also urged by the State Government that admission to the Post Graduate and Diploma Courses was required to be completed on or before 31.05.2009 as per the calendar of events fixed pursuant to the directions issued by the Apex Court in the case of Medical Council of India Vs. Madhu Singh and Others, referred to and reiterated in the case of Mridul Dhar (Minor) and Another Vs. Union of India (UOI) and Others, and hence the process of admission is completed. Therefore, no admission can be made beyond the said date for any reason as ruled by the Apex Court.

9. In the light of the respective contentions urged by the Counsel for the parties, the point, that arises for consideration is

Whether the State Government is right and justified in not reserving 3% seats for persons with disabilities in respect of Post Graduate Seats in Private Non-Minority and Minority Institutions for the M.D.S. Course?

10. The main defence of the State Government is that the seats secured by the State Government as Government Seats under the quota of Private Minority and Non-Minority Institutions at 20% and 30% respectively do not attract the provisions of Section 3 of the Act as they are not seats in the Aided Dental Colleges in the State of Karnataka or in any Government Dental College.

11. it is true, Dental Colleges are not aided colleges and there is only one Government Dental College in the State of Karnataka where under only 11 seats are to be filled up under the Karnataka Entrance Test quota. But, the fact remains that under the Consensual Agreement, the State secures as its share 30% seats from the Private Non-Minority Institutions and 20% seats from the Minority Institutions. These seats fall to the share of the Government and they will be treated as Government Seats to be allotted on merit and also as per the reservation provided for different categories. It is not in dispute that the Government is applying the policy of reservation for Scheduled Caste, Scheduled Tribes and other Backward Classes to these seats while allotting the same on the basis of merit. If that is so, it is un-understandable how the State Government

can contend that so far as "Physically Handicapped" class is concerned, these seats cannot be made use of. In fact, it is necessary to observe that "Physically Disabled" persons are entitled for such benefit as the need is greater so far as their condition is concerned. Preferential treatment for them is a necessity taking into account the physical disability that they are suffering from. Therefore, the State Government is not justified in denying reservation to "Physically Handicapped" persons while allotting Government Seats which fall to the share of the State Government under the Consensual Agreement.

12. It is also important to notice here that very rarely very few disabled persons successfully face challenges of life and obtain degrees and aspire for the Post Graduate Professional course. In order to provide opportunities in higher education to these deserving disabled persons, it is necessary for the State to implement the provisions of the Act by providing reservation for them. Unfortunately, the State Government has failed in doing so in this case. The State Government shall have to take immediate action to provide reservation for this class of disabled persons in the Post Graduate/Professional Courses in terms of the provisions of the Act. It has to be therefore held that the omission on the part of the State in providing reservation to "Physically Handicapped" in respect of the Post Graduate Course for the current academic year for the Government Seats in Private Non-Minority and Minority Institutions is illegal.

13. The contention of the petitioner that in respect of the total number of 523 seats reservations ought to have been provided for "Physically Handicapped" persons, cannot be accepted. The provisions of Section 39 of the Act are very clear in this regard. Section 39 reads as under-

39. All educational Institutions to reserve seats for persons with disabilities.- All Government educational institutions and other educational institutions receiving aid from the Government, shall reserve not less than, three per cent seats for persons with disabilities.

14. As is clear from the stand of the State Government, there is only one Government Dental College at Bangalore imparting Post Graduate course and there are no aided colleges in the State of Karnataka. The total seats available in the Government Dental College to the Post Graduate Degree and Diploma Course is 21, out of which 10 seats are reserved to be allotted under All India Quota and the remaining 11 seats are to be filled up under the Post Graduate Entrance Test quota. Apart from this, due to the Consensual Agreement, the State Government has got. 30% share in the Private Non-Minority Institutions and 20% in the Private Unaided Minority Institutions. Therefore the reservation for "Physically Handicapped" must have been effected taking into consideration the 11 seats in the Government Dental College, Bangalore and the 30% and 20% seats that, fall to the share of State Government from the Private Non-Minority and Minority Unaided Institutions respectively by applying 3% reservation on the total number of such seats for Physically Handicapped persons. Allotment on the basis of merit ought to have been made by the State Government interse among the Physically

Handicapped persons. Admittedly this exercise is not done.

15. Unfortunately admission to the Post Graduate Degree and Diploma Courses have been completed on 31.05.2009. The calendar of events is fixed pursuant to the judgment of the Apex Court in Medical Council of India Vs. Madhu Singh and Others, and Mridul Dhar (Minor) and Another Vs. Union of India (UOI) and Others, . The calendar of events is required to be compulsorily observed by the Institutions and the Authorities concerned. Since the admissions have already been completed for the current academic year, no direction can be issued to the respondent to undertake this exercise afresh at this stage. However, it is necessary to make it clear that if the petitioner stands a chance on her merit and is entitled for the benefit under the "Physically Handicapped" category based on the merit for the current academic year 2009-10, then there is absolutely no reason why she should not be provided a seat during the next academic year, For the mistake committed by the State Government, the eligible candidate belonging to "Physically Handicapped" category cannot be denied the seat, particularly when she has been knocking at the doors of justice. Petitioner may not get the benefit for the current year, but if she is entitled otherwise, she cannot be denied admission in the "Physically Handicapped" category for the next academic year.

16. Therefore, for the foregoing reasons, I pass the following order.

i) Writ Petition is allowed in part.

ii) State Government is directed to follow the provisions contained u/s 39 of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 and earmark 3% seats for the "Physically Handicapped" persons out of the seats in the Government College and the share of the State Government in the Seats of Private Colleges for which Entrance Test is to be conducted in the Professional Course in question for the academic year 2010-11 onwards ;

iii) The respondent shall consider the case of the petitioner and decide if she is entitled for allotment of a seat under the "Physically Handicapped" category by applying 3% reservation on the basis of her merit. If it is found that the petitioner is entitled for a seat and would have been allotted a seat under "Physically Handicapped" category had the reservation to this category been made applicable to the current year, then a seat shall be allotted to her in the next academic year.

iv) State Government is directed to pay Rs. 10,000/- as cost to the Petitioner within a period of two weeks from today.