

(2005) 01 GUJ CK 0008

In the Gujarat High Court

Case No : Special Civil Application No. 12076 of 2004

Hasankhan Gulamhussainkhan Khanjada	APPELLANT
Vs	
State of Gujarat	RESPONDENT

Date of Decision : 17-01-2005

Acts Referred:

Constitution of India, 1950 — Article 21, 226, 39, 5

Citation : (2005) 3 GLR 2633

Hon'ble Judges : K.M. Mehta, J

Bench : Single Bench

Advocate : Roopal R. Patel, for the Appellant; L.B. Dabhi, AGP, for the Respondent

Judgement

K.M. Mehta, J.—Hasankhan Gulamhussainkhan Khanjada, petitioner, has filed this petition with a prayer that this Court may issue a writ of mandamus or a writ in the nature of mandamus or any other appropriate writ, order or direction, directing the respondent to give admission to the petitioner in the PTC course either in granted or self finance institution. The petition was filed on 20th September, 2004.

2. The facts giving rise to this petition are as under:-

2.1 The petitioner herein is hailing from a remote village of the District of Vadodara. The petitioner had successfully parted New S.S.C. and H.S.C. Examinations in the year 1998 and 2001 respectively. The petitioner had secured 59.037% marks in the New S.S.C. Examination and had secured 68.83% marks in the H.S.C. examination.

2.2 It is the case of the petitioner that the petitioner is a 'disabled person' inasmuch as he is having short eye vision. The petitioner from his childhood had decided that in future he will take up such a line, that he can impart education to the students. The petitioner since having secured requisite marks in the H.S.C Examination, he was sure of getting admission in the P.T.C. course and filled the

form for getting admission in the said course in the year 2004-2005.

2.3 The petitioner had also obtained requisite certificates of marks and attached disabilities certificate with the said form as prescribed the rules and instructions for getting admission in the said course. He has annexed the said certificate of disability showing 30% vision disability.

2.4 The petitioner had filled in the form for the open category. The said rules though do not prescribe that the candidate who had filled in form open category shall be called for, before the disability scrutinizing committee, the petitioner was called for to be remain present before the said committee on 21.8.2004 at 9.00 a.m. in view of the letter dated 12.8.2004.

2.5 It is the case of the petitioner that accordingly he remained present before the said committee at the time mentioned in the said letter. It is the submission of the petitioner that without undertaking any further exercise, on seeing his disability certificate of 30%, he had been told orally that he is not entitled for getting admission the said course.

2.6 At that juncture, being aggrieved and dissatisfied with the said action, the petitioner filed this petition before this Court on 20th September, 2004. This Court on 21st September, 2004, has issued notice and passed orders from time to time.

2.7 During the pendency of the petition, it appears that, in view of the categorical statement of the petitioner that the committee did not examine petitioner, this Court passed further orders on 6th October, 2004, that petitioner may be examined by one Ophthalmic Surgeon, General Hospital, Gandhinagar. It appears that, pursuant to the said order, Ophthalmic Surgeon, General Hospital, Gandhinagar examined the petitioner and filed a report dated 8th October, 2004, that petitioner-patient is 30% blind. The said Ophthalmic Surgeon has carried out detailed examination in connection with vision - RE-6/6, LE-Pt refuses perception of light, LE - afferent pupillary reaction and other aspects. The said order has been produced by one H.K.Pondor, Jr.Suptd. Directorate of Primary Education, Gandhinagar, by the affidavit-in-reply dated 4th December, 2004.

2.8 As far as civil application is concerned, the petitioner has amended the prayer and stated that, as he is having 30% disability and therefore there is no reason left for not granting admission to him in PTC course, since the disability scrutinizing committee and subsequently this Court has directed to give admission to one Mahesh of Special Civil Application No. 11847 of 2004 who is having 20% disability, and therefore in view of the order of this court as the petitioner is having 30% disability and therefore he is entitled to the admission in the PTC course.

3. On behalf of the Government, Mr. L.B. Dabhi, learned AGP appears. He has relied upon the affidavit-in-reply dated 28th September, 2004. In para 5 of the affidavit, it has been stated that the petitioner along with application for

admission to PTC course has produced disability certificate whereby the petitioner is certified to be having 30% visual impairment disability. It is submitted that, as required vide the rules for admission to PTC course 2004-2005, the petitioner was referred to the committee constituted for verifying and scrutinizing disability of the candidate. The said committee examined the petitioner and opined that the petitioner is not a disabled person and is, therefore, not entitled to admission in PTC course. He has relied upon the examination report in this behalf, in which, as far as petitioner is concerned, in column No. 10 (nature of disability), it has been stated that the petitioner had a low vision and that has been duly certified that he has a low vision in column No. 11 also (nature of disability as per doctor certificate). As per medical certificate it has been 30% disability as far as vision is concerned. However, after the petitioner is examined, the committee opined that the petitioner is not a disabled person and, therefore, he is not entitled to admission in PTC course.

3.1 It is the contention of the learned AGP that the Committee has relied upon Rule 5.4 for arriving at the said decision and the decision of the committee is to be treated finally since the committee being an expert body has opined that the petitioner is not disabled person, the petitioner has no right to claim admission in PTC course and therefore the petition requires to be dismissed. It was also stated that this Court under Article 226 of the Constitution of India in its extra-ordinary jurisdiction may not entertain this petition when expert body opined this aspect.

3.2 It may be noted that Rule 5.4 which the learned AGP has relied upon which provides as under:

"5.4 Blind or Low Vision:

-----		Sr. No.		Category	Better
eye	Worse	eye	Percentage	and	or of Impairment

1. I 6/18 to 6/36 6/60					
to Nil 75% II 6/60 to 4/60 3/60 to Nil 75% III 3/60 to 1/60 F.C. at 1 fit to Nil					

3.3 Relying upon this rule and relying upon the report of the committee, the learned AGP stated that, as the petitioner is having 30% disability so far as vision is concerned, whereas, rule provides that there must be 75% disability and therefore the petitioner is not entitled to the same.

4. Ms. Roopal Patel, learned advocate for the petitioner has thereafter also filed rejoinder dated 6th October, 2004, in which it was again reiterated that the petitioner has 30% visual disability and three doctors of Sayaji General Hospital, Vadodara, have given disability certificate to that effect. It was further stated that, when the petitioner is having 30% visual disability and the certificate issued by the said hospital is not correct, then the respondent to state on oath as to where the rules prescribes that the petitioner cannot be given admission to PTC course as 30% disability disentitle him for the same.

4.1 The learned advocate for the petitioner has invited my attention to the various documents in this behalf which I have referred earlier. Learned advocate for the petitioner submitted that, once the petitioner is having a 30% disability, then as per the rules, if the person is disabled upto 75%, then the petitioner is entitled to get the admission as per the rules of the PTC.

4.2 Learned advocate for the petitioner submitted that, the petitioner is having a 30% disability is a statement of fact which is duly certified by Doctor at Annexure "R/1" page 32 as well as page 34 and further report of Ophthalmic Surgeon, Gandhinagar, and therefore, the respondent cannot dispute that decision today in this behalf.

4.3 Learned advocate for the petitioner has relied upon Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1955 (hereinafter referred to as "the Act"). She has relied upon object of the Act, preamble of the Act. It has been stated that the Act was enacted to give effect to the proclamation on the full participation and equality of the people with disabilities in the Asian and Pacific Region. She has relied upon objects and reasons of the said Act which reads as under:

"The meeting to launch Asian and Pacific Decade of the disabled Persons 1993 - 2002 convened by the Economic and Social Commission for Asia and Pacific Region, held at Beijing on 1st to 5th December, 1992 adopted the proclamation on the Full Participation and Equality of People with Disabilities in the Asia and the Pacific region. India is a signatory to the said proclamation and it is necessary to enact a suitable legislation to provide for the following:-

- (i) to spell out the responsibility of the State towards the prevention of disabilities, protection of rights, provision of medical care, education, training, employment and rehabilitation of persons with disabilities;
- (ii) to create barrier-free environment for persons with disabilities;
- (iii) to remove any discrimination against persons with disabilities in the sharing of development benefits, vis-a-vis, non-disabled persons;
- (iv) to counteract any situation of the abuse and the exploitation of persons with disabilities.
- (v) to lay down strategies for comprehensive development of programmes and services and equalization of opportunities for persons with disabilities; and
- (vi) to make special provision for the integration of persons with disabilities into the social mainstream."

4.4 The learned advocate for the petitioner has further relied upon the definition of "disability" means (i) blindness; (ii) low vision; (iii) leprosy-cured; (iv) hearing impairment; (v) locomotor disability; (vi) mental retardation; (vii) mental illness. The learned advocate, therefore, submitted that when this Court considered the case of the petitioner, then this Court may consider the objects and reasons of

the Act and also definition of disability wherein the case of the petitioner of 30% disability falls within the definition of low vision and, therefore, the petitioner is entitled to the same.

4.5 The learned advocate for the petitioner has relied upon the judgment of the Hon''ble Apex Court in the case of Javed Abidi Vs. Union of India and Others, where the Hon''ble Apex Court has also referred the case of Indian Airlines and held that "we think it appropriate to direct that those suffering from the aforesaid locomotor disability to the extent of 80% and above would be entitled to the concession from the Indian Airlines for travelling by Air within the country at the same rates as has been given to those suffering from blindness though there was no statutory provisions in this behalf.

4.6 The learned advocate has relied upon the Division Bench judgment of this Court also in the case of Palak Kailashchandra Jain v. Union of India and others decided by this Court (Coram: D.M.Dharmadhikari, C.J.(as he was then) and M.S.Shah, J.) wherein my learned Brother Mr. Justice M.S.Shah delivered the judgment on behalf of the Division Bench and the Division Bench has considered the provisions of the Act and ultimately in para 14 on page 308 where the Court directed the Government to provide reservation for disabled persons to the extent of 3% of seats in all educational institutions, owned or aided by the Government.

4.7 Learned advocate for the petitioner has relied upon the judgment of this Court in Special Civil Application No. 11847 of 2004 in the case of Laghava Maheshbhai Jayshankar v. State of Gujarat decided by this Court (Coram: M.R.Shah, J.) on 6th October, 2004, particularly para 5 on page 6 & 7, para 6 on page 7 & 8 which reads as under:

"... In that view of the matter, considering Instruction No. 4 as well as Rules for admission in PTC course when the opinion and finding of the Disablement Committee is final, there was no reason for the respondent not to grant admission to the petitioner in the reserved category of Handicapped. There is no requirement that 40% disability for visual impairment is required. The only requirement is examination by the Disablement Committee with regard to impairment. In that view of the matter, the action of the respondents in not granting admission to the petitioner in PTC course cannot be said to be legal and justified.

"... However, in view of the fact that the petitioner was found to be eligible for getting admission in PTC course in the reserved category of Handicapped by the Disablement Verification Committee, the petitioner was required to be granted admission in PTC course in the reserved category of Handicapped and, therefore, the action of the respondents, in not granting admission to the petitioner in PTC course in the reserved category of Handicapped requires to be quashed and set aside.

"Merely because the seats are filled-in, the petitioner cannot be made to suffer

for the illegality committed by the respondents in not granting admission to the petitioner more particularly in view of the fact that the petitioner is a Handicapped and suffering from visual impairment. It is also true that admissions in the PTC course are required to be granted considering the intake capacity. At the same time the petitioner also cannot be made to suffer more particularly when the petitioner is found to be Physically Handicapped."

4.8 It has also been stated by the petitioner that, pursuant to the order of this Court, the said Laghava Maheshbhai Jayshankar had also given admission in PTC course, and accordingly the petitioner has also amended the main petition as well as also filed civil application in this behalf.

4.9 The learned advocate has also relied upon the Division Bench judgment of Orissa High Court in the case of Ramchandra Tandi and Others Vs. State of Orissa and Others, particularly para 5 on page 229 the Division Bench has observed as under: (Per: Ajit Prasayat, J. (as he was then)).

"We are purplexed, pained that the State has taken absolutely untenable stand of its financial instability and need for financial austerity, if austerity measures are to be taken, they are to be taken at elsewhere."

4.9A Thereafter the Orissa High Court considered Article 39 of the Constitution and also judgment of the Hon"ble Apex Court in Francis Coralie Mullin v. Union Territory of Delhi reported in AIR 1981 SC 746 where the Hon"ble Apex Court has observed that Article 21 has been given paramount position in our Constitution. Right to life is the compendious expression of all those rights which the Courts must enforce because they are basic to be dignified enjoyment of life.

4.9B Thereafter in para 7 the Hon"ble Court has observed as under:

"A question is raised by the learned counsel for State about our jurisdiction. It is said that justice is blind, but Judges are not blind to the plight of the people. They are not deaf and dumb. They can hear the unspoken words of misery of the deaf and dumb boys, who need protection. Their hands are not paralysed. If the Court fails to wipe out tears from the eyes of those who deserve it, it would be handicapped. Helen Keller, the most famous handicap had said, "It is a fundamental right of everyone to realise himself, however imperfectly and contribute to the common good, however, little, "The State has a paramount duty to look after the welfare of children and more so in the case of handicapped children. Even if it is accepted that the deaf and dumb boys are not as restricted in the movement as highlighted by the State in its counter-affidavit, and its submission before Court, that is no justifiable reason for denying recognition, to the deaf and dumb section of the school, and refusal to provide financial assistance. We direct the State to grant recognition and to provide financial assistance to the said section. Let necessary steps be taken by the end of March, 1994."

CONCLUSIONS:

5. So far as question of disability is concerned, in my view, the following considerations will have to consider in this behalf.

5.1 Probably, it was for the first time in 1958 that an international covenant included the needs of disabled persons in Article 5 of discrimination (Employment and occupation) convention adopted by ILO. Under this article, the convention declared special measures in favour of various disadvantaged groups including people with disabilities to meet the specific needs to be an acceptance to forms of discrimination envisaged and prohibited by it. Later on, United Nation General Assembly vide its resolution No. 2865(XXVI) of 20th December, 1971 made the first International Proclamation on the Rights of Mentally Retarded Persons, one category of disabilities. Four years later, United Nation General Assembly adopted a declaration on the rights of disabled persons though resolution No. 3447 (XXX) of 9th December, 1975 which might be regarded as the most important document containing international commitment on the protection of the human rights of disabled persons.

5.2 Thus, it may be noticed that rights of people with disabilities were recognised by the member government of United Nations in the year 1975. But national action was imperative to guarantee these rights to them. There are two other major United Nation initiatives which helped the organisations of people with disabilities to persuade their respective governments for granting of fundamental human rights to this segment of society. While United Nation decade for disabled persons 1983-92 created an awareness among policy makers for promoting equality and participation of disabled persons, the Asian and Pacific Decade of Disabled Persons 1993-2002 proclaimed by United Nation concrete actions by the Governments in the region of the achievement of these goals. Adoption of the Standard Rules on the Equalisation of Opportunities for Persons with Disabilities by United Nation General Assembly in December, 1993 is yet another important international instrument in support of advocacy and realisation of these rights.

5.3 India being one of the most populous countries in Economic & Social Commission for Asian and Pacific region has undergone similar challenges in the area of recognition and grant of human rights to disabled persons.

5.4 The Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act establishes 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 programs, schemes and services for disabled people in India but so far there has been no separate law to protect the rights of disabled people. The new Act fills that void. Protection of the rights of people with disabilities was long overdue. Parliament has now enacted the Act with laudable objects and taking this important and progressive step. The glory of this historical achievement. The Act, is shared by people with disabilities and their families; NGOs working in this field

for and with the disabled, disability campaigners who have been fighting hard for this cause in India and abroad; the people in the media and Members of Parliament in Rajya Sabha and Lok Sabha who had voted unanimously for the Disability Bill.

5.5 The existing laws and the constitutional equality provision, if properly implemented, should ensure a fuller life with dignity to the disabled persons. The financial constraints cannot be put forth by the State for dealing with the implementation of the programmes reflected in the provisions of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995. There is a Constitutional obligation on the part of the State to ensure equal opportunity to all persons including disabled persons. This gives them a right to seek removal of their handicaps so as to place them on a competitive level with others by making supportive which can enable them to exercise their fundamental right to life to its fullest extent. Discrimination on the ground of disabilities should be penalised and the provider of a service should be duty bound to do all that is reasonable to accommodate the needs of a person with a disability by providing special treatment or facilities, if without such special treatment or facilities, it would be impossible or unduly difficult for such person to avail himself or herself of the service.

Re: (Only para 5.5) Article The Rights of Handicapped by Hon"ble and Respected Mr. Justice R.K.Abichandani from the Book of Human Rights Year Book 2001 - page 41 relevant page 50}

5.6 The very first sentence of the book "NO PITY" authored by Joseph P.Sheparo reads as under:

"Nondisabled Americans do not understand disabled ones."

We can only correct the aforesaid sentence is that it is attributed to Americans only whereas the harsh reality is that this statement has universal application. The sentence should have read:

"Nondisabled people do not understand disabled ones."

{Re: Article "Employment Rights of Disabled by Hon"ble Mr. Justice A.K.Sikri (Judge, Delhi High Court) - Human Rights Year Book 2001 p.95}

6. I have considered the facts and circumstances of the case. In my view, once the petitioner has produced a certificate that he has a 30% disability and Rule 5.4 provides that disability should be upto 75%, the petitioner has successfully proved his case that he is a disabled person and contention of the respondent that, as per Rule 5.4 only 75% disability there, then and then the petitioner is entitled to grant admission is not correct in eye of law. I have relied upon the certificate issued by Doctor and report submitted on 21st October, 2004, as well as further report of Ophthalmic Surgeon, General Hospital, Gandhinagar, who has also opined that petitioner is having 30% blind.

7. In my view, the rational approach of Rule 5.4 is that, if the disability is upto 75%, the same can be considered for the purpose of admission. I am fortified by the order of this Court in Special Civil Application No. 11847 of 2004 in the matter of Laghava Maheshbhai Jayshankar Vs. State of Gujarat decided on 6.10.2004 which I have referred earlier in this matter. In that case the disability was 40%, and the learned Judge has allowed the petition directing the respondent to give admission to the petitioner in PTC course for the Academic Year 2005-2006 in the reserved category of Physically Handicapped. Therefore, the view which appears to be more rational and logical is that if the disability is upto 75% the candidate is entitled to get admission in this behalf. In that behalf I have considered the object and reasons of the Act which I have mentioned in this behalf. I have also considered the judgment of the Hon''ble Apex Court in the case of Javed Abidi (supra), Division Bench judgment of this Court in the case of Palak Kailashchandra Jain (supra) and judgment of Orissa High Court in the case of Ramchandra Tandi (supra), all these judgments also supports the case that, in the case of handicapped persons, a liberal approach is to be considered. I have also considered the approach of the Court in connection with the handicapped people which I have referred in earlier para in this behalf. I have also considered the Article of Hon''ble Mr. R.K. Abichandani, J. on this aspect. The conclusion of said article I have mentioned and also article of Hon''ble Mr. A.K. Sikri, J. All these go to show that, when court approach, the petitioner who is a handicapped in this case have a 30% disability in eye, the court must consider the same in broad aspect. As Orissa High Court has put it if the Court fails to wipe out tears from the eyes of those who deserve it, it would be handicapped. Thus, the said decision further states that the State has a paramount duty to look after the welfare of children and more so in the case of handicapped children. Here the State has not properly considered this aspect and, therefore, I have to give directions to the State in this behalf.

8. The learned advocate for the petitioner stated that if this Court allows the petition, the admission is to be given for the Academic Year 2004-2005. However, it may be noted that for the Academic Year 2004-2005 very few months have been left out and it will be difficult for the student to compete with the ordinary students where the classes already started somewhere in July 2004, and I have been informed by the learned AGP that there is no vacancy in this behalf. I am, therefore, rejecting the prayer of the petitioner that the admission may be granted for the Academic Year 2004-2005.

9. Under the circumstances, the petition is allowed. It is directed that the petitioner be granted admission in the PTC course for the Academic Year 2005-2006 and that the petitioner will not have to compete with other persons on merits while granting admission in PTC course in the year 2005-2006.

10. For the reasons stated above, the present Special Civil Application is allowed. The action of the respondents, in not granting admission to the petitioner in PTC course in the reserved category of Physically Handicapped, is hereby quashed

and set aside. The respondents are directed to give admission to the petitioner in PTC course for the academic year 2005-2006 in the reserved category of Physically Handicapped in Government College. Rule is made absolute to the aforesaid extent with no order as to costs. D.S. permitted.