
(2011) 07 CAL CK 0048
In the Calcutta High Court
Case No : Writ Petition No. 10184 (W) of 2011

Payel Sarkar

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 18-07-2011

Acts Referred:

Constitution of India, 1950 — Article 41
Disability Act, 2009 — Section 2
Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 — Section 2(I)

Citation : (2011) 07 CAL CK 0048

Hon'ble Judges : Tapen Sen, J

Bench : Single Bench

Advocate : Subrata Mukhopadhyay, Kaushik Chanda and Basabi Rai chowdhury, for the Appellant; Amber Majumdar and Basudeb Bandyopadhyay for Respondent Nos. 2 and 3, Farook M. Razack, Ld. Addl. Solicitor General and Priyanka Bhutoria, for Union of India, for the Respondent

Judgement

Tapen Sen, J.—In this Writ Petition, the Petitioner, Payel Sarkar, has prayed for the issuance of a Writ of or in the nature of a Writ of Mandamus commanding upon the Respondent No. 3 (Indian Institute of Hotel Management, through its Principal, Taratalla Road, Kolkata) to admit her as a student on the basis of her selection in the Joint Entrance Examination, 2011. She has also prayed that the Respondent No. 3 should be Ordered to treat her Medical Reports as sufficient Certificates for purposes of being admitted.

2. The Petitioner has stated that she suffers from a learning disability, commonly known as "DYSLEXIA". It appears that the Petitioner was a student of Class - 12 of the Kendriya Vidyalaya at Fort William, but was informed sometime in January, 2010 that she would not be allowed to appear in the All India Senior School Certificate Examination due to shortage of attendance in school. The mother of the Petitioner made several representations before various authorities including the Principal, the Assistant Commissioner, Regional Office, Kendriya Vidyalaya

Sangathan requesting them to allow her to appear in the said examinations after condoning the attendance on medical grounds. It further appears that on or about 21st January, 2010 a letter was handed over to the mother of the Petitioner informing her that since Payel's attendance was only 59%, she would therefore not be allowed to appear in the said examination.

3. Being aggrieved, the Petitioner moved this Court vide W.P. No. 3956 (W) of 2010 and by a judgment dated 3.3.2010, another Hon'ble Single Judge of this Court, Biswanath Samadder, J. came to the conclusion that it was more than clear that Payel may be suffering from a special learning disability. The aforementioned conclusion was based on a perusal of various records including the Report of the Therapist, who had given a conclusion, upon conducting a psycho-educational assessment that Payel's poor performance could be attributed to -

- High level of impulsivity;
- Poor frustration tolerance;
- Inadequate development of study skills;
- Poor sense of responsibility.

In the same Assessment Report, the Educational Therapist had also recorded as follows:

Organization skill

:

Adequate

Visual reasoning

:

Adequate

Numerical concepts

:

Adequate

Listening comprehension

:

Adequate

Reading

:

Mildly deficated

Written Expression

:

Poor for Grade X

4. The Hon"ble Single Judge came to the conclusion that Payel may be suffering from "a special learning disability" and that her poor attendance in the School can be attributed to her mental orientation since it was clear from the psychiatric evaluation that she had developed a sort of phobia with the approach of the date of the examinations. In Paragraph 10, the bye-laws of the Board were taken into consideration and special bye-law No. 4 (under Chapter 4) was also considered and it appears that under the said bye-law No. 24, students suffering from the "special learning disability", known as Dyslexia, and students, who were spastic as well as candidates with visual and hearing impairment, had the option of studying only one compulsory language as against two.

Reverting to this case however, it is evident that the Petitioner ultimately was allowed to appear and she passed the said examination with good marks. This would be evident from the statement made in Paragraph 10 read with the News Item brought on record at Page 31 of the Writ Petition.

5. On 20th January, 2011, the Petitioner was examined by a Medical Board of the Kolkata Medical College Hospital and according to the opinion of the Board, Payel was suffering from learning disorder and that she needed continuous supervision and support for continuing the academics. This would be evident from Annexure "P-3". On 17th February, 2011 the Petitioner got herself examined by a clinical Psychologist whose assessment was that Payel was suffering from specific learning disorder - reading disorder and disorder of written expression. Thereafter, on 13th April, 2011 the Petitioner approached the Handicapped Board, but the Associate Professor, Department of Psychiatry, however, gave an opinion that at present there is No. provision to issue Disability Certificate in the case of special learning disorder but however, she is referred to NIMH, Kolkata for opinion regarding provisions of Handicapped Certificate according to the Persons with Disability Act. Thereafter the Petitioner went to the National Institute for mentally Handicapped Regional Centre, Kolkata and registered herself for getting a Disability Certificate. However, the authorities of the said Institute informed her that it was not authorized to issue such a Disability Certificate.

6. In spite of all these, the Petitioner did not lose hope and she appeared in the All India Joint Entrance Examination organized by the National Council for Hotel management and Catering Technology, which was held on 16.4.2011. She appeared as a physically challenged student and when the results came out on 2.5.2011, the Petitioner was found successful. Thereafter, an on-line mock counselling for the selected candidates was held in May, 2011 and the Petitioner was allotted the Indian Institute of Hotel Management, Taratolla Road, Kolkata (Respondent No. 3). She was also asked to report at the Admission Centre on

17.06.2011 between 9.30 to 5.00 P.M. This would be evident from Annexure "P-7".

7. Thereafter, the Petitioner went to the campus of the Indian Institute of Hotel Management on 17.06.2011 for admission, but she was shocked when admission was denied to her on the ground that she did not have nor could she produce the Handicap Certificate as per Clause 5.6 of the Joint Entrance Examination, 2011, Information Brochure. Clause 5.6 (d) of the said Brochure requires Physically Challenged candidates to attach a copy of the Physically Handicapped Certificate issued by the Chief Medical Officer (CMO), Central Government / State Government / Municipal Corporation run Hospitals. The said Clause reads as follows:

5.6 Who qualify for admission under Physically Challenged Candidates

(a) Orthopedically Challenged Candidates Only those Orthopedically Challenged candidates who have locomotion disability or cerebral palsy with locomotion impairment of minimum of 40% and maximum of 75% falling in the following categories are eligible to apply.

B.L. - Both Legs affected but not arms.

O.A.-One Arm affected (R or L)

a. Impaired reach

b. Weakness of grip

c. Ataxia

O.L.- One Leg affected (R or L)

M.W.-Muscular Weakness and limited Physical endurance.

(b) Visually Handicapped Candidates:

Only those visually challenged candidates who suffer from any one of the following conditions are eligible to apply.

i. Visual acuity not exceeding 6/60 or 20/200 (Swollen) in the better eye with correcting lenses.

ii. Limitation of the field of vision subtending an angle of 20 degree or worse.

(c) Hearing Impaired Candidates

Only those Hearing impaired candidates having disability between 40% to 75% shall be eligible.

(d) Learning Disability (Dyslexia) Subject to availability of seat after adjusting all the admission to other admissible disable category u/s 2(I) of PWD Act, 1995.

Medical Certificate issuing Authority for Physically Challenged Candidates

At the time of submission of application, Physically Handicapped candidates will be required to necessarily attach the copy of Physically Handicapped Certificate issued by Chief Medical Officer (CMO) Central Govt./State Govt./Municipal Corporation run Hospitals only. Such candidates are required to produce the original Medical Certificate both at the time of Counselling and at the time of Admission to the Institute. In case of any dispute in determining the eligibility under PH Category, the matter will be referred to Ministry of Social Justice, Govt. of India and decision of the said Ministry will be binding on both parties. (Quoted)

8. According to the Petitioner and as has been stated in Paragraph 18, she produced all other medical documents and certificates before the concerned authorities but they refused to accept them as medical certificate for physically challenged candidates.

9. Based on the aforesaid grievances, the Petitioner has come to this Court with a grievance that the action of the Respondent No. 3 in denying admission on such a ground was arbitrary and, therefore, she has prayed for the reliefs, which have been set out at the outset.

10. An Affidavit-in-Opposition has been filed by the Respondent Nos. 2 and 3. It has been sworn by the Principal / Secretary of the Respondent No. 3. He has stated that in April, 2011, he received a letter dated 18.04.2011 issued by the Commissioner (Disabilities), Government of West Bengal informing him that the Petitioner, Payel Sarkar, had appeared in the Joint Entrance Examinations and although she was very diligent and sincere, had been suffering from inaccurate reading with omissions, additions and disorders of words since 2000 and after running from one Doctor to the other, it was diagnosed as a "Specific Learning Disorder". He also referred to the opinion of the Board of three Doctors of the Medical College, Kolkata (See Annexure "P-3" at Page 33 of the Writ Petition) who had reiterated the same. The Commissioner (Disabilities) also informed him that due to ignorance or some other reason, the parents of the Petitioner did not get their daughter certified from a competent Medical Board and that her case had been referred to the National Institute of Mental Retardation (NIMH), Kolkata Regional Centre. He has stated that since it would take some time and the procedure for admission in the institute may, by that time, be over, he requested that the Petitioner be treated as a special case for admission in the said Institution. This is Annexure "R-1" to the said Affidavit-in-Opposition. Receiving the said letter, the Principal appears to have written to the Director (A&F), National Council for Hotel Management and Catering Technology at Noida wherein he forwarded the letter dated 18.4.2011 (Annexure "R-1") referred to above for his perusal and action. This would be evident from Annexure "R-2".

11. In the meantime, on or about 2.6.2011 the Principal received a letter from the mother of the Petitioner requesting his co-operation in the matter. This letter is Annexure "R-3".

12. In reply, the Principal wrote on 3.6.2011 and informed the mother of the

Petitioner that the matter was under the jurisdiction of the National Council for Hotel Management and Catering Technology and, therefore, all correspondence regarding the above subject, may be made with the Council's Office at the address given therein i.e. A-34, Sector - 62, Institutional Area, Noida - 201 309 (UP). This letter is Annexure "R-4". The Principal has further stated that on or about 17.06.2011, the mother of the Petitioner personally met him and he advised her that the Petitioner may opt for the SC Category by dropping the SC-PH Category as there may be a fair chance of getting admission in that category. However, the Petitioner insisted that she would continue to be in the SC-PH Category. According to the further case of the Principal, candidates having learning disability (Dyslexia) as per the Joint Entrance Examination - Information Brochure 2011, shall be considered after adjusting all the admission to other admissible disabled category u/s 2(i) of the PWD Act, 2009. He has stated that from the records available and after adjusting the eligible candidates, there are still some seats available in the Central Government run Institutions as well as private and State Government run Institutions. The Principal has further stated that u/s 2(i) of the PWD Act, 1995, Dyslexia is not covered under the disabled category. It is the further case of the Petitioner that the State of West Bengal has formulated a Bill for persons with disabilities, but till date the said Bill has not been passed.

13. Under the aforementioned facts and circumstances this Principal has stated that under the PWD Act, 1995 Dyslexia was not a disability u/s 2(i) thereof and the Petitioner could not produce any certificate in respect of Dyslexia. Consequently, in Paragraph 11, the Principal has stated that the Writ Petition is misconceived and should be dismissed.

14. Having considered the aforementioned rival contentions of the parties, this Court is of the view that the stand taken by the Respondents is extremely unfortunate. "Dyslexia" is known worldwide as a disorder of development where a person finds it difficult to read or write properly and confuses letters, but it does not suggest lack of normal intelligence (See Medical Dictionary edited by P.H. Collin, 6th Indian Reprint 1992, Page 103). The Collins Cobuild Advanced Learners English Dictionary published by Harper Collins, 4th Edition, 2003 defines Dyslexia as "if someone suffers from Dyslexia, they have difficulty with reading because of a slight disorder of their brain". Etymologically, the word "Dyslexia" is based on the Greek word lexis "speech" (See Revised and Updated Illustrated Oxford Dictionary). From a perusal of the records of this case, it is evident that even the Medical College Hospital, by its Certificate dated 28.1.2011, issued by a Board of that Hospital, was of the view that the Petitioner was suffering from learning disorder and needed continuous supervision and support for continuing academics. This Certificate, for purposes of taking the Petitioner and giving her admission, ought to have been considered sufficient because the Persons with Disabilities Act, 1995 does not define "Dyslexia". This Court, therefore, finds it strange that although the National Council for Hotel Management and Catering Technology, in its Information Brochure 2011,

recognizes this disorder and puts "Dyslexia" under the category of "Physically Challenged Candidates", yet it insists at Clause 5.6(D), that admission would be subject to availability of seat after adjusting all the admission to other admissible disabled category u/s 2(i) of the PWD Act, 1995. This would be evident from reading Clause 5.6(D) itself, which has been quoted above. In other words, the National Institute of Hotel Management and Catering Technology, knowing fully well that "Dyslexia" has not yet been included in the Statute being the "Persons with Disability Act, 1995", insists that after adjustment of all seats under the PWD Act, it would then consider a candidate suffering from Dyslexia. This itself is an irrational approach because if the Institute has recognized this disorder under the "Physically Challenged" category and if the Institute knew that this disorder is not included in the PWD Act, 1995, it could not have therefore insisted for a Certificate under that Statute as has been mentioned in the Brochure itself and as stated in their Affidavit-in-opposition. Consequently, the certificate issued by the Board of Medical College and Hospital should be considered to be a sufficient Certificate for purposes of admitting the Petitioner in the Institute. The action of the Respondent No. 3 in refusing to admit her only because the Petitioner could not produce any Certificate under the PWD Act is an arbitrary action because the concerned Officers are not entitled to issue a Certificate for Dyslexia. Consequently what has been stated in Paragraph 9 amounts to an expectation that the Petitioner would perform an impossibility. If the PWD Act does not prescribe Dyslexia in its category of disabilities, then how could the Institute refuse to admit the Petitioner merely on the ground that she could not produce any Dyslexia Certificate under the said PWD Act, 1995. The law is well settled that a person cannot be compelled to perform an impossibility (*lex non cogit ad impossibilia*) and if somebody compels a person to perform an impossibility, then, in the opinion of this Court, such compulsion is clearly arbitrary. Another aspect that cannot be lost sight of is the Right to life as enshrined under the Constitution of India. This right, by a number of judgments, has now been given an extended dimension and it has been liberally interpreted so as to mean something more than mere survival and mere existence or animal existence. It includes all those aspects of life which go to make a person's life meaningful, complete and worth-living. This right, read with Article 41 of the Constitution of India which though included in the Chapter containing the Directive Principles of State Policy, is nevertheless, meant to be followed and it lays down that the State shall, within the limits of its economic capacity and development, make effective provisions for securing the Right to Work, to Education. It is unfortunate that in the face of Article 41, No. provisions have been made in the "Persons with Disability Act, 1995" for inclusion of this disorder in the category of disabilities. The learned Solicitor General was, therefore, requested by this Court to assist and he submitted that "Dyslexia" is a learning difficulty characterized by specific problem in learning to read, write and spell despite sufficient educational experience. However, he was not able to dispute the contention that Dyslexia can be managed effectively with targeted teaching and support. This was what the Medical Certificate also said when its Board mentioned that Payel needed

continuous supervision and support for continuing academics.

15. For the foregoing reasons, this Court comes to the conclusion that the action of the Respondents in denying admission to the Petitioner was arbitrary and illegal. This Court also does not appreciate the stand of the Commissioner (Disabilities), Government of West Bengal, who has said that the Petitioner's case has been referred to the National Institute of Mental Retardation, Kolkata Regional Centre. This Court does not at all understand as to why the Petitioner's case was referred to such a Centre as if, she was mentally retarded person. Such persons only suffer from a learning difficulty but it cannot be said that they are mentally retarded. Such a view is, therefore, strongly deprecated by this Court.

16. Under the circumstances, this Writ Petition is allowed and the Respondent No. 3 is directed to admit the Petitioner immediately on the basis of her selection in the Joint Entrance Examination and to treat the aforesaid Certificate issued by the Board of the Medical College Hospital (Annexure "P-13") as a sufficient Certificate for purposes of making good the deficiency of not having a Certificate under the PWD Act, 1995 since that statute has not even bothered to include Dyslexia as a disability. The Writ Petition is allowed. There shall be No. Order as to costs.

17. The appropriate Governments are directed to consider the desirability of bringing about an amendment in the PWD 1995. A copy of their judgment therefore be handed over both to the Learned Advocate General, Govt. of West Bengal and to the Learned Additional Solicitor General, Govt. of India.

18. Upon appropriate Application(s) being made, urgent Xeroxed Certified copy of this Judgment, may be given/issued expeditiously subject to usual terms and conditions.