

(2011) 07 DEL CK 0162

In the Delhi High Court

Case No : Writ Petition (C) No. 4465 of 2011

Ranjana Verma

APPELLANT

Vs

AIIMS

RESPONDENT

Date of Decision : 15-07-2011

Acts Referred:

Constitution of India, 1950 — Article 226
Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 — Section 39

Citation : (2011) 07 DEL CK 0162

Hon'ble Judges : Kailash Gambhir, J

Bench : Single Bench

Advocate : A.B. Kaushik, for the Appellant; Mehmood Pracha, SLC AIIMS and Sumit Babbar, for the Respondent

Judgement

Kailash Gambhir, J.—By this petition filed under Article 226 of the Constitution of India, the Petitioner seeks to direct the Respondent to make appropriate provision of 3% reservation for the Physically Handicapped Persons in the course of M. Sc Nursing for the current session beginning August 2011.

2. The background facts which have led to the filing of the present petition are that the Petitioner is a young girl of 26 years having 50% permanent disability being physically handicapped. She obtained a degree of Bachelor of Science(Hons.) Nursing from AIIMS in 2009 and then applied for M. Sc in nursing in AIIMS for the current session beginning august 2011. The grievance raised by the Petitioner is that the Respondent AIIMS has made no provision for reservation for the disabled/handicapped persons and are thus violating the provisions of Section 39 of the Persons with Disabilities (Equal opportunities, Protection of Rights and Full Participation) Act, 1995.

3. Learned Counsel for the Petitioner submits that it is mandatory for the Respondent to make reservation for the handicapped as per the Persons with Disabilities Act and that the Respondent cannot flout the said provisions under

any circumstance. Counsel also submits that according to the prospectus, the Respondent has reserved seats for the SC/ST and OBC candidates and it is only the Handicapped who have been discriminated against.

4. Learned Counsel for the Respondent on the other hand submits that the Respondent has already completed the process to admit the students in the M. Sc. Nursing course and now if any adverse order is passed then it will lead to upsetting the whole admission process.

5. I have heard learned Counsel for the parties.

6. The Petitioner in the present case had applied to the two years Post Graduate course of M. Sc. Nursing for session starting August 2011 in AIIMS in the general category and her rank in the general category was at serial No. 31. The Petitioner had also participated in the counseling but she could not make it as her rank in the general category was much lower than the other candidates. The last date for submission of the application form was 30.4.2011 upto 1.00 P.M. Clearly in the said prospectus, no provision for physically handicapped persons in terms of Section 39 of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 was made. The Petitioner through the information given to her under the RTI Act came to know that no reservation to Orthopedic handicap is being done in B. Sc.(Hons) Nursing/M. Sc (Hons) Nursing Courses in the AIIMS, but even despite the said information given by the Respondent AIIMS to the Petitioner, the Petitioner did not seek any remedy to challenge the terms of the said prospectus wherein no provision for physically disabled was made by the Respondent AIIMS. It is also not in dispute that the Petitioner had applied in the general category and in that category her rank was lower than the other successful candidates. It is a settled legal position that for challenging the criteria of the selection, recourse to legal remedy should be taken at the earliest opportune time as with the change in the criteria many other candidates would become eligible or ineligible for admission.

7. In the light of the foregoing, no such directions can be given by this Court at this belated stage to make provision for 3% reservation for the physically handicapped category as already the process of admission for the said course is complete.

8. The Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 was enacted to give effect to the Proclamation on the full participation and equality of people with disabilities in the Asian and Pacific Region to which India is a signatory. This Act is undoubtedly a beneficial piece of social legislation and its provisions are mandatory in nature. Section 39 of the said Act reads as:

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.

Thus the provision was enacted to provide a level playing field to the disabled persons in the realm of education to have an attitude free of preconceived bias against these sufferers of fate. The court is mindful of the fact that the above said provision of 3% reservation in educational institutions cannot be done away with especially by the premier institutes such as the Respondents, as it would lead to bringing the spirit and object of the Act to naught.

9. However, the said reservation of 3% for the handicapped in the nursing courses of M. Sc would not have been advantageous for the Petitioner alone but for many other physically handicapped candidates who could have availed the benefit of the said reservation and tried their luck to seek admission in the said course. In any event of the matter, the Chief Commissioner for the persons with disabilities as appointed under the said Act is directed to take an action in this regard in consultation with the Nursing Council of India or any other concerned authorities on the issue of making such a provision of 3% reservation in terms of Section 39 of the Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 for future admissions in the said nursing course in the Respondent AIIMS. Steps in this regard shall be initiated by the Chief Commissioner immediately as to how the Respondent has not implemented the provisions of the said Act and to ensure that the decision is taken after given an opportunity to the Respondent to present its case. The registry is directed to send a copy of this order to the Chief Commissioner appointed under the Persons with Disabilities Act immediately.

10. With the above directions, the present petition stands disposed of.