

(2007) 11 DEL CK 0047
In the Delhi High Court
Case No : Writ Petition (C) 6819 of 2007

Ravi Dwivedi

APPELLANT

Vs

S.C.E.R.T.

RESPONDENT

Date of Decision : 21-11-2007

Acts Referred:

Constitution of India, 1950 — Article 14, 15, 16, 226
Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 — Section 2(1), 2(1)(I)(iv), 33, 39

Citation : (2007) 10 ILR Delhi 181 Supp

Hon'ble Judges : S. Ravindra Bhat, J

Bench : Single Bench

Advocate : Sugriva Dubey, for the Appellant; Avinash Ahlawat, for the Respondent

Final Decision : Allowed

Judgement

S. Ravindra Bhat, J.—This petition under Article 226 of the Constitution raises important issues in relation to the rights of disabled persons. The petitioner seeks directions to the respondent, hereafter called "SCERT" to admit him to a two year educational diploma course, i.e DCET. The petitioner case sought admission to the Diploma Course in Elementary Teaching conducted under the supervision of the District Institute of Education and Training (hereinafter the "DIET") and the State Council for Educational Research and Training (hereinafter the "SCERT"), Delhi. This diploma course is being conducted in nine Government run institutes and ten privately managed ones with a total of 1640 seats in all. According to the Prospectus 2007-2009 issued by the SCERT, 15% of the total seats are reserved for the candidates domiciled other than Delhi. Three percent seats are reserved for physically handicapped candidates, under which three categories of handicaps/disabilities are entitled to be considered, namely,

(i) Orthopaedically Handicapped

(ii) Visual Handicapped and

(iii) Hearing Impairment.

2. There are a total of 49 seats reserved for the disabled. A total of 31 seats are reserved in favour of wards of Delhi School Teachers and wards of SCERT and DIET employees. The petitioner applied under the disabled quota, assuming that one percent out of three percent, reserved in terms of Clause II (3) (C) at Sl. No. 4 would be reserved for candidates with hearing impairment. Since he did not possess the cut off marks in the disabled category he was denied admission. It is not in dispute that he secured 50.02% marks. During the hearing, it transpired that the last admission list was published on 30th October, 2007.

3. The petitioner challenges the Respondent's policy of not compartmentalizing the three percent disability quota, enabling candidates suffering from different disabilities could avail of reservation. The petitioner asserts that like Section 33, u/s 39 of The Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995, (hereafter called "the Act") such compartmentalization of quota must be done. Section 2(1)(I)(iv) of the Act includes hearing impairment as a "disability"; Section 2(1) defines "Hearing impairment" as meaning "loss of sixty decibels or more in the better year in the conversational range of frequencies". The other relevant portions are reproduced below:

33. Reservation of posts- Every appropriate Government shall appoint in every establishment such percentage of vacancies not less than three per cent. For persons or class of persons with disability of which one per cent. Each shall be reserved for persons suffering from-

i) blindness or low vision;

ii) hearing impairment;

iii) locomotor disability or cerebral palsy,

In the posts identified for each disability.

XXXXXXXXXX

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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.

4. The petitioner submits that it is inequitable to treat students from the other two categories within the disability quota equally, since, orthopaedically handicapped persons can learn or teach through all the sources as the general candidates and the students coming from visually handicapped group have the means to learn through the Braille System. Unfortunately those candidates who are in the third category are totally disabled as they cannot speak and have to

express their feelings by way of actions and signs. Further, if the disability quota is almost completely availed of by the orthopaedically handicapped (who have recourse to the regular means of learning) then the other categories will go unrepresented. Moreover, it is important to train the persons suffering from hearing impairment so that they in turn are able to impart education to similarly situated people. Serious exception is taken to the present system of allotment of seats, the cut off marks in the seats reserved for the wards of Delhi School Teachers and employees of SCERT/DIET are less than the cut off marks in the disability quota, in fact lesser than the petitioner marks. This, it is urged on behalf of the petitioner, violates Article 14 of the Constitution of India, since it gives an unfair advantage to a candidate who does not suffer from any disability and disadvantage. No less than 31 seats are reserved for such persons, and the cut off marks for them too was 50.02%.

5. The Respondents"- who do not deny applicability of the Act, nor dispute that they are "establishment" under its provision, state that u/s 39 of the Act, 3% seats are to be reserved and there is no separate bifurcation amongst the three different categories of physically handicapped. The bifurcation is mandated with u/s 33 with respect of appointment in every establishment. So far as educational institutions are concerned, they have reserved 3% seats for persons with disability which includes all three categories of physically handicapped. It is also submitted that cutoff marks will vary according to merit of the candidates applying each category and no comparison can be made. The cut off marks for candidates with disabilities in private DIETS was 63% for Delhi candidates, and for those outside Delhi, it was 67%. The petitioner, on the other hand, being a non-Delhi candidate, secured 50.2%. Also, in the Teachers Training Educational Institutes under the control of the SCERT there is no provision for providing teacher training through special system required for the hearing and speech impaired candidates. Therefore, it is not possible to provide for a separate quota for such candidates.

6. The right against discrimination is a basic freedom that every human being is entitled to. All societies that aspired to ensure political equality and civil rights, even while succeeding, neglected a large chunk of humanity: those who were physically infirm, or under some form of disability. Legal systems, indeed societies largely viewed such persons as dependant and objects of pity, needing special services, instead of capable of serving, and entitled to equal rights to participation. The realization that stereotypical responses undermined the essential humanity, and denied dignity to such large body of citizens has come, but rather late. The march has begun, but it is slow, and has many, many miles to go before the promise of fulfillment can be spotted.

International Conventions

7. Article 1 of the Universal Declaration of Human Rights asserts human sensitivity and moral responsibility of every State; and that

all human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood.

The next international instrument recognizing the need to make special provision for disabled persons and ensure equality to them was Resolution 3447 (XXX) the General Assembly of the United Nations, dated 9 December 1975, entitled "Declaration on the Rights of Disabled Persons". The relevant portion of the declaration stated as follows:

Disabled persons have the inherent right to respect for their human dignity.

Disabled persons, whatever the origin, nature and seriousness of their handicaps and disabilities, have the same fundamental rights as their fellow-citizens of the same age, which implies first and foremost the right to enjoy a decent life, as normal and full as possible.

8. The International Labor Organization, in the wake of declaration of 1981 by the United Nations General Assembly as International Year of Disabled Persons, with the theme "full participation and equality", adopted the "Vocational Rehabilitation and Employment (Disabled Persons) Convention, 1983". Article 3 of the Convention called for member-states to formulate, implement and periodically review a national policy on vocational rehabilitation and employment of disabled persons.

9. The World Health Organization (WHO) estimates that there are 278 million hearing impaired persons in the world. 70 million people in India, suffer from disabilities; they constitute 6% of the population of the country. 3.5% of these disabled suffer from hearing impairment; 2 million are speech handicapped. It is estimated that 400,000 individuals suffer from the multiple disability of deaf-blindness. WHO defines hearing impairment as follows:

Hearing impairment and deafness are serious disabilities that can impose a heavy social and economic burden on individuals, families, communities and countries. Children with hearing impairment often experience delayed development of speech, language and cognitive skills, which may result in slow learning and difficulty progressing in school. In adults, hearing impairment and deafness often make it difficult to obtain, perform, and keep employment. Both children and adults may suffer from social stigmatization and isolation as a result of hearing impairment.

The burden of hearing impairment and deafness falls disproportionately on the poor, because they are unable to afford the preventive and routine care necessary to avoid hearing loss, or to afford hearing aids to make the condition manageable. Hearing impairment can also make it more difficult to escape poverty by slowing progress in school and the workplace, and placing people in social isolation.

The cost of special education and lost employment due to hearing impairment

can also impose a substantial economic burden on countries.

<http://www.who.int/mediacentre/factsheets/fs300/en/print.html> (accessed on 20th November, 2007 at 23:02 hrs)

10. From the above facts, it is apparent that there is a need to appreciate the shift in the perception of rehabilitation: from mere physical/medical rehabilitation to that of social rehabilitation. This shift is reflected in the Act, and recognized in the National Policy for Persons with Disabilities, 2006 prepared by the Ministry of Social Justice and Empowerment, Government of India. Education and employment are the key components of the efforts to socially rehabilitate the disabled. As per Census 2001, there are 2, 35, 886 disabled persons in Delhi. Out of this 24,246 suffer from speech/hearing disability. Out of the total disabled population only 49% are literate and a mere 34% employed.

11. The principle of equality enshrined in Articles 14, 15 and 16 of the Constitution of India is substantive in nature. It guarantees the right to differential treatment to the oppressed and disadvantaged. Therefore differential treatment ought to accrue to the differently abled. This is statutorily reflected in Sections 33 and 39 of the Persons with Disabilities Act. While the former provides for reservation of not less than three percent of the posts in government institutions in favour of the disabled, the latter mandates all education institutions managed or aided by the Government to reserve three percent of seats to the disabled.

12. The Respondents rely upon the distinction between section 33 and section 39 to submit, that, while section 33 provides for a one percent reservation for each of the three categories mentioned, within the three percent of posts reserved for the disabled as a whole, Section 39 does not do so. Hence, they submit that they need not separately reserve 1% for each one of the categories of disabled mentioned in section 33.

13. The Act is a piece of benevolent social legislation. It has been repeatedly held that benevolent enactments ought to be given liberal and expansive interpretation, and not narrow or restrictive construction (Madan Singh Shekhawat Vs. Union of India and Others, ; Deepal Girishbhai Soni and Others Vs. United India Insurance Co. Ltd., Baroda, ; and Babu Parasu Kaikadi (Dead) by Lrs. Vs. Babu (Dead) through Lrs.,). If this Court were to agree with the Respondents, the interpretation would defeat the objective of enacting Section 33. Section 39 needs to be interpreted in the light of Section 33. The provision of separate quota for the different categories of the disabled in government posts will only be effective if there are trained persons from those categories to avail them and Section 39 seeks to achieve the same. As the court is interpreting a benevolent social welfare legislation, its purpose must be given the paramount consideration. The provision in Section 39, and its structure cannot therefore create a limitation upon the obligation to provide for separate categories, even u/s 33. If such interpretation were not to be preferred, the purpose and object of

providing for affirmative action u/s 33 would be defeated; even though hearing impaired persons are deemed to be suffering disabilities, they would nonetheless in effect stand deprived of any chance to secure its benefit, so far as reservation u/s 33 is concerned. Therefore, section 39 has to be read together with Section 33, and educational institutions will have to provide for separate quotas for different categories of the disabled.

14. Section 33 is not exhaustive of all sub-categories within the disabled and to that extent is merely illustrative. If separate quotas are not provided, there is a danger of the disability quota being availed of only by one category of disabled, because the other groups could be disadvantaged because of their condition. Teachers who can specially train such candidates will have to come from within that category, and the present policy adopted by the SCERT does not facilitate the entry of such candidates in teacher training institutes. Therefore, the argument of the Respondents that there are no special instructors for those candidates whose hearing has been impaired must fail, as irrelevant. No such reservation was indicated in the brochure for admission, nor was it ever indicated; besides in view of the definition of "disability" as including hearing impairment, the respondents have a positive obligation to ensure appropriate measures for teaching such candidates, wherever the eventuality arises.

15. The comparison of cut off marks prescribed for the disabled candidates and the candidates who are wards of Delhi School Teachers and employees of SCERT/DIET, in this case, is telling. The purpose for providing reservations to the disabled was to enable them access to institutions, which otherwise would not be possible because the general examination and evaluation methods are not suited to their physical limitations. The reserved candidates from the disabled category are put in a disadvantageous position in comparison to the candidates from the wards of staff/teacher category, it will result in blatant violation of the principle of equality in Article 14. Such a policy would only enforce existing hierarchies and perpetuate inequalities. It was held-although in the context of public employment- that preference or reservation in favour of wards or children cannot pass muster under Article 16 of the Constitution of India, in *Gazula Dasaratha Rama Rao Vs. The State of Andhra Pradesh and Others*, and in *Yogender Pal Singh and others Vs. Union of India others*, . The reservation and filling up of such 31 seats in favour of teachers working in DIETS therefore is suspect. To that extent, the petitioners' grievance that his claim is denied unjustifiably, and such seats are given to some others on the basis of a principle which is Constitutionally indefensible, appears to be well founded.

16. From the above discussion, I conclude that the respondents acted in violation of Section 33 of the Act in not suitably providing for admission to persons who are hearing impaired, like the petitioner. Although the discussion in the preceding paragraph had concluded that the reservation in favour of children of teachers etc is suspect, it would not be fair or appropriate in these proceedings, to interdict or disturb those admissions, as such candidates are not before the court.

17. David Granger, in his poem "Just a thought" described the plight of a person with disability, denied that dignity which inheres in every human being: .. I want a job, a life, a chance,

But I don't get a second glance

I'm viewed as ill or incomplete

All I need is a chance to compete.

The travails of the petitioner would be endless if no meaningful relief is given, in these proceedings. In view of the findings recorded above, the respondents are hereby directed to admit the petitioner to the course. In case no vacancy exists, or in the likelihood of his being unable to satisfy attendance norms, in case of his admission at this stage, he shall be admitted to the course for the next academic session, 2008-2009. The respondents are hereby directed to report compliance with these directions, within two weeks.

The writ petition is allowed in the above terms but without any order as to costs. Order dasti.