
(2007) 07 P&H CK 0074
In the Punjab And Haryana At Chandigarh
Case No : CWP No. 11959 of 2006

Rohan Sood

APPELLANT

Vs

Union of India (UOI) and Another

RESPONDENT

Date of Decision : 17-07-2007

Acts Referred:

Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 — Section 3, 47, 9

Citation : (2007) 07 P&H CK 0074

Hon'ble Judges : Ajai Lamba, J; Adarsh Kumar Goel, J

Bench : Division Bench

Advocate : H.S. Sidhu, for the Appellant; Rajiv Sharma, for respondent No.1 and Harsh Aggarwal, for respondent No.2, for the Respondent

Judgement

Adarsh Kumar Goel, J.—This petition challenges order Annexure P-4, whereby prayer of the petitioner for exemption from passing the subject of Mathematics was turned down by Central Board of Secondary Education, New Delhi, respondent No.2. Case of the petitioner is that he was suffering from disability called Autism, which has been described in the petition as a mental disability and a spectrum disorder which is marked by difficulty and retardation in imagination cognitive development and social adjustment. It is a major handicap like dyslexia. Under Bye law No.24, framed by respondent No.2, there is a provision for exemption to Spastic, Blind, Physically Handicapped and Dyslexic children. The said provision is as under:

Exemption to Spastic, Blind, Physically Handicapped and Dyslexic children.

i. Blind, Physically Handicapped and Dyslexic student appearing for the Secondary School Examination or Senior School Certificate Examination is permitted to use an amanuensis and shall be allowed an additional one hour (60 minutes) time for each paper.

ii. The Board will consider the Physio-therapeutic exercises as equivalent to Physical

and Health Education course of the Board.

iii. Dyslexic, Spastic candidates and candidates with visual and hearing impairment have the option to studying one compulsory language as against two.

This language should be in consonance with the overall spirit of the three Language Formula prescribed by the Board. Besides one language, any four of the following subjects be offered.

-Mathematics, Science and Technology, Social/Science, another language, Music, Painting, Home Science and Introductory Information Technology.

2. The petitioner appeared in Class 10th examination of the CBSE in March, 2006 and cleared five subjects out of six. He got compartment in Mathematics. His father made a representation that he be treated to have passed by applying the exemption clause, which was rejected. He appeared in the compartment examination in July, 2006 under protest and submitted a representation that if he was not granted exemption, he may opt out of the mainstream schooling, which may hamper his integration and lead to adverse consequences. Thereafter, the petitioner filed the present petition in this Court on 2nd of August, 2006, relying upon the provisions of The Persons With Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 (for short, the 1995 Act) and National Trust for Welfare of Persons with Autism, Cerebral Palsy, Mental Retardation and Multiple Disabilities Act, 1999 (for short, the 1999 Act).

3. In the reply filed on behalf of respondent No.2, a preliminary objection has been taken that the petitioner was a student in West Bengal and his candidature was sent from West Bengal. His examination centre was also in West Bengal and therefore, no cause of action accrued within the jurisdiction of this Court. It is further pointed out that for compartment in Mathematics, he was allotted Centre No.041 in Ludhiana at his request on the ground that his father being in army has been transferred. He never applied for exemption under Byelaw No.24 prior to his appearance in the main examination. He was not suffering from the disease mentioned in the bye-law. He secured good marks in all other subjects. He did not produce any certificate from the Medical Officer/Assistant Surgeon of a Government Hospital, as required under Bye-law No.25.

4. In the replication, it has been pointed out that since in compartment examination the petitioner appeared from Ludhiana centre, cause of action accrued to him within the jurisdiction of this Court. Reliance has been placed on judgment of the Honble Supreme Court in Kusum Ingots and Alloys Ltd. Vs. Union of India (UOI) and Another, . It has been further stated that the petitioner had produced a report from a competent medical expert being Annexure P-1.

5. We have heard learned Counsel for the parties and perused the record.

6. Learned Counsel for the petitioner referred to the definition of disability under the 1995 Act and provisions enabling the Government to prepare various schemes and issue various directions. Reference was also made to provisions of

the 1999 Act defining autism and person with disability. Reference was then made to Byelaw No.24 already reproduced above. According to Clause (iii), Dyslexic, Spastic candidates and candidates with visual and hearing impairment have the option, inter-alia, to appear in four of the subjects specified therein. According to learned Counsel for the petitioner, the petitioner was suffering from the handicap of dyslexia. Learned Counsel for respondent No.2 submitted that the medical report (Annexure P-1), does not show that the petitioner was suffering from dyslexia. Only inference drawn is that he was suffering from autistic spectrum disorder. Conclusion in the medical report is as under:

7. One of the most important issues that need to be highlighted is that Rohan needs stability and certain level of consistency in his life. Till now, the frequent postings, innumerable school changes and the constant move from one place to another have not helped him to settle down in a place and make friends. Keeping in mind his special needs, he requires a sense of belonging and a support network that living in a community provides. Therefore, we would strongly suggest that the family should seriously reconsider their plans and make arrangements for Rohans future which would keep all these issues in mind. We have considered the rival submissions. Following questions arise for consideration:

(i) Whether jurisdiction of this Court is barred?

(ii) Whether the petitioner is entitled to exemption under bye-law No.24 framed by respondent No.2 referred to above by being "Dyslexic"?

8. Before proceeding further in the matter, it may be observed that persons with disabilities ought to be provided equal opportunities in every walk of life. To achieve this object, several legislative and executive measures have been taken including enactment of 1995 Act and 1999 Act. Bye-law No.24 framed by respondent No.2 is also a step in that direction. Noticing the developments in this regard, the Hon'ble Supreme Court in *Indian Banks' Asscn. v. Devkala Consultancy Service* AIR 2004 SC 2615 observed:

53. The Parliament has enacted "The Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995" (the 1995 Act). The Chapter V of the 1995 Act deals with education. Section 28 provides for research for designing and developing new assistive devices, teaching aids, etc. for the disabled persons. Section 29 mandates appropriate Governments to set up teachers' training institutions to develop trained man power for schools for children with disabilities. Chapter IX of the said Act provides for research and manpower development which includes grant of financial incentives to Universities to enable them to undertake research. Chapter XI provides for institution for persons with severe disabilities whereas Chapter XIII provides for social security. It is no gainsaying that despite the 1995 Act came into force on or about 1st January, 1996 only a beginning has been made to implement the beneficial provisions thereof but a lot, lot more is required to be done.

54. In India, the number of disabled people is around 100 million, and there are approximately 160 million victims, direct and vicarious, of disablement. National as also international efforts to combat this situation are on but the task is a gigantic one. The General Assembly of the United Nations has passed several resolutions dealing with the rights of the mentally and physically disabled emphasising that the disabled persons have the rights as regard human dignity, civil and political rights, entitlement to measures to ensure their self-reliance, the right to treatment, education and rehabilitation, the right to economic and social security, the right to live with their families, the right to have their special needs taken into account in economic and social planning and the right against discrimination, abuse and exploitation, apart from the fact that the disabled persons enjoy all rights available to other human beings.

55. It may not be necessary for us to delve deep into the non-implementation or part implementation of the provisions of the 1995 Act at the hands of the State but we are not oblivious of the fact that it may not be possible to achieve the legislative target for the Central Government or State Government alone.

56. We are also not oblivious that the Parliament enacted that the National Trust for Welfare of Persons with Autism, Cerebral Palsy, Mental Retardation and Multiple Disabilities Act, 1999 providing for constitution of a National Trust which would provide for maintenance allowance for persons with disabilities, the object being to enable the disabled persons to live independently within the community, to deal with problems of such persons who do not have family support, to facilitate the realisation of equal opportunities; protection of rights, full participation of such persons; to evolve a procedure for appointment of guardians or trustees for such persons requiring protection.

57. We are, furthermore, aware that the Ministry of Social Justice and Empowerment had taken the following actions to implement the provisions of the aforementioned Acts:

- (i) Notification of Central Co-ordination Committee as per S. 3 of the Act;
- (ii) Notification of Central Executive Committee as per S. 9 of the Act;
- (iii) Creation of post of Chief Commissioner, Deputy Chief Commissioner, and Staff for Office of Chief Commissioner;
- (iv) Five core groups of experts and officials of relevant Ministries have been set up to make recommendations and formulate schemes to give effect to various provisions of the Act. These are (a) Group on Prevention, Early Detection and Intervention; (b) Vocational training and employment; (c) Education, including pre-school education; (d) Barrier free environment; (e) Women and children with disabilities;
- (v) National Fund for People with Disabilities set up on 11-8-1983 has been activated and assistance has been sanctioned to non-Government agencies. 17 projects have been sanctioned under the scheme;

(vi) A new scheme -the Viklany Bandhu has been formulated to provide training to disabled volunteers;

(vii) A National Programme for Rehabilitation of Persons with Disabilities has been submitted to the Planning Commission for establishment of infrastructure for realizing the Act. The programme contemplates the establishment of a District Level Rehabilitation Centre, two multi-purpose rehabilitation workers at the Block/PHG level; two community based rehabilitation workers at the Gram Panchayat level;

(viii) To support entrepreneurial activity by the disabled, the National Hindicapped Finance and Development Corporation has been operationalised with effect from 2410-1997;

(ix) The proposal for the National Trust for Welfare of Persons with Autism, Cerebral Palsy, Mental Retardation and Multiple Disabilities with a corpus fund of Rs. 100 crores has been approved by the Cabinet.

56. This Court as also the High Courts have taken proactive views in the matter of implementation of the rights of the disabled.

59. In National Federation of Blind Vs. Union Public Service Commission and Others, , the Court directed the Government and the UPSC to permit blind and partially blind eligible candidates to compete and write the Civil Services Examination in Braille script or with the help of a scribe. It also recommended to the Government to decide the question of providing reservations to visually handicapped persons in Groups "A" and "B" posts in the Government and Public Sector Enterprises.

60. In Javed Abidi v. Union of India (1998) 1 SCC 467, the Court directed Indian Airlines to give concessions to orthopaedically handicapped persons suffering from locomotor disability to the extent of 80% for travelling by air in India. The Court was mindful of the financial position of Indian Airlines and yet felt that this direction was in keeping with the objectives of the Disabilities Act and was in consonance with the concession already given by Indian Airlines to visually disabled persons.

61. Kunal Singh Vs. Union of India (UOI) and Another, saw the Court interpreting the Disabilities Act in a manner so as to further its objective. The Court opined that S. 47 of the Act mandates that an employee who acquires a disability during service must be protected. If such an employee is not protected, he would not only suffer himself, but all his dependants would also undergo suffering. Therefore, merely granting him pension would not suffice, but there must also be an attempt to secure him alternative employment.

62. Despite the progressive stance of the Court and the initiatives taken by the Government, the implementation of the Disabilities Act is far from satisfactory. The disabled are victims of discrimination in spite of the beneficial provisions of the Act.

9. We now proceed to deal with the questions formulated.

Re:Q.No.(i)

10. Facts noticed in the earlier part of the judgment shows that the petitioner has appeared in the compartment in July 2006 in Ludhiana and representation on his behalf had also been made after he had shifted to Ludhiana. Merely because, the petitioner had appeared in the main examination from West Bengal will not be a ground to bar jurisdiction of this Court, as part of cause of action has certainly arisen within the territorial jurisdiction of this Court. We, therefore, hold that this Court has jurisdiction to deal with the matter.

Re: Q.No.(ii)

11. We have already extracted the medical report in the earlier part of the judgment which does not categorically show that the petitioner was suffering from "Dyslexia". Though, objection has been raised on behalf of respondent No.2 that exemption should be sought by a candidate before appearing in examination and not after having taken a chance and failed. Though strictly speaking, this objection may have merit but the court does not adopt a too legalistic approach while dealing with a case requiring consideration of social justice being kept in mind. At the same time, the Court does not have expertise in absence of specific medical opinion, to hold that the petitioner is suffering from "Dyslexia". Definition of "autism" has been given in the 1999 Act as under: autism means a condition of uneven skill development primarily affecting the communication and social abilities of a person, marked by repetitive and ritualistic behaviour. No statutory definition of "Dyslexia" has been brought to our notice from any statutory provisions, though exemption has been provided for "Dyslexic" children under the bye-law. Reference to available literature shows that word "Dyslexia" comes from the Greek and means difficulty with words. "Dyslexia" has been defined as under:

12. Dyslexia is a specific learning difficulty which is neurobiological in origin and persists across the lifespan. It is characterized by difficulties with phonological processing, rapid naming, working memory, processing speed and the automatic development of skills that are unexpected in relation to an individuals other cognitive abilities. These processing difficulties can undermine the acquisition of literacy and numeracy skills, as well as musical notation, and have an effect on verbal communication, organization and adaptation to change. Their impact can be mitigated by correct teaching, strategy development and the use of information technology. ([http://www.bdadyslexia.org.uk/what is dyslexia.html](http://www.bdadyslexia.org.uk/what%20is%20dyslexia.html))

13. In above circumstances, we are unable to give a finding that the petitioner was suffering from "Dyslexia", particularly having regard to his performance in other subjects. Before parting with our order, we are of the view that it may be desirable for respondent No.2 to consider laying down procedure for determining eligibility of persons who have been granted exemption under bye-law No.24, such as notifying a panel of experts competent to give requisite certificates,

which can be acted upon. We also make it clear that if the petitioner furnishes to respondent No.2, clear evidence of his falling within the exemption clause, this order will not debar respondent No.2 from reconsidering the matter in accordance with law.

14. With the above observations, the petition is disposed of.