

(1999) 09 GAU CK 0044
In the Gauhati High Court
Case No : Civil Rule No. 3461 of 1998

Smt. Binita Senapati

APPELLANT

Vs

State of Assam and others

RESPONDENT

Date of Decision : 06-09-1999

Acts Referred:

Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 — Section 2, 2(1), 2(1)(vi), 2(r), 2(t)

Citation : AIR 2000 Guw 1 : (2000) 1 GLT 199

Hon'ble Judges : J.N. Sharma, J

Bench : Single Bench

Advocate : H. Rahman and N. Baruah, Govt., Assam, for the Appellant; N.M. Lahiri, Amicus Curiae and N. Choudhury, for the Respondent

Final Decision : Dismissed

Judgement

J.N. Sarma, J.—This writ application has been filed by a person who is handicapped. She is suffering from shortening of the right lower limb with moderate stiffness of the right hip. Her percentage of disability is 45% as certified by the authority of Guwahati Medical College. Annexure-I and IA are the documents in support of her plea of disability.

2. The petitioner herein passed the Higher Secondary (Science) Examination from Cotton College, Guwahati. The petitioner applied for admission to the M.B.B.S. Course in the three Medical Colleges in the State of Assam under the Director of Medical Education, Assam. The petitioner claims that she is entitled to reservation of at least 3% of seats for disabled person for admission to the M.B.B.S. course in Medical Colleges of the State of Assam as per Section 39 of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995. That reservation was denied to her and hence this writ application.

3. There is a set of Rules for admission to the Medical Colleges of Assam and these Rules are known as Medical College of Assam and Regional Dental College

(Regulation of Admission of Under - Graduate Students) Rules. 1996 and it came into effect with effect from 1st of July, 1996. Rule 3 of the Rules provides for Conditions for Admission and Eligibility for Appearing in the Common Entrance Examination. Rule 3 (2) (c) provides for the qualifying marks to be obtained. Rule 3(2)(d) provides that the person must be found to be physically fit by the Medical Examination Board. Rule 6 provides for reservation of seats and the contention of the petitioner is 1 hat the Rule does not provide for reservation of handicapped persons as provided in Section 39 of the Act of 1995 as indicated above. As such this application for reservation of seats. Section 39 of the Act is quoted below:

39. All educational institutions to reserve seats for persons with disabilities Government educational institutions and other educational institutions receiving aid from Government, shall reserve not less than three per cent seats for persons with disabilities.

3A. As this matter is of importance so I called upon Sri N.M. Lahiri, Learned Advocate General, Meghalaya to assist the Court as Amicus Curiae.

4. I have heard Sri H. Rahman. Learned Advocate for the petitioner and Learned Govt. Advocate for the respondents and Shri N.M. Lahiri. Learned Advocate General. Meghalaya for the assistance of the Court Mr. Rahman brings to my notice a letter written by the Commissioner & Secretary to the Govt. of Assam. Social Welfare Department. Dispur, Guwahati. That letter is quoted below:

Kindly refer to this Department letter No. SWD 212/94/PL/5 dated 8th October, 1996 and subsequent letter dated 6th November, 1996 regarding 3% reservation for physically disabled persons-maintenance of records thereof.

It is impressed upon you that "The Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act" 1995 of Government of India has already been implemented with effect from 7-2-96. It has become obligatory on the part of each employer to maintain records of 3% reservation for the disabled as per Section 33 of the Act. It is also obligatory on the part of the Appointing Authorities to make appointment as per the Act.

I may, therefore, request you to kindly confirm whether such records are maintained and 3% reservation has been implemented. The number of persons appointed under this category may also be intimated to this Department.

With regards.

5. Sri Rahman submits that not making reservation of seats in M.B.B.S. course is a case of discrimination and violation of the provisions of the Act of 1995. A representation was submitted vide Annexure 2 dated 18-6-98 to make reservation, that representation is quoted below:

Sub : Special consideration for allotment of seats as Physically Handicapped Applicant for admission in the 1st Year M.B.B.S. course of Medical Colleges of

Assam under the provision of the "Person with Disabilities (Equal Opportunities, Protection of Right and Full Participation) Act, 1995.

Sir.

I have the honour to state that I am an applicant for admission in the 1st year MBBS course in any Medical College in Assam for the session 1998, vide my application No. 2840 in the prescribed form annexed to herewith.

In this context, I beg to state that Section 39 of the "Person with Disabilities (Equal Opportunities, Protection of Right and Full Participation) Act, 1995 interaction among other things," 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" (Copy of the (sic) is enclosed). In this regard this is to be stated that I fall under the category of disabled persons as defined in the Act, hereinbefore mentioned and I am registered as an Orthopaedically Handicapped person vide Identity Card bearing No. 906 dt. 14-8-96, issued by the Govt. of India. Ministry of Labour (copy enclosed).

Sir, while filling up the prescribed application form for admission in the 1st year MBBS course of Medical Colleges of Assam (Annexed to herewith), I do not find any appropriate column for filling up my condition of disability for claiming special consideration against reserved quota for 3% of seats as enumerated in the Act, hereinbefore mentioned. But the Engineering Colleges in Assam have reserved one seat for the Physically Handicapped persons in each Engineering College of Assam vide item of Information Brochure issued by the Director of Technical Education. Assam (copy of extract enclosed). Likewise one seat for each course of Science and Arts has been reserved in the Govt. College, Guwahati for physically Handicapped person vide College Admission prospectus (copy enclosed).

Under the circumstances stated above, it is requested of your kind favour to consider my candidature against three per cent reservation of seats meant for physically Handicapped persons, as Enumerated under the mandatory provisions of the "Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 in case. I do not come up under existing rules of selection procedure and for this act of kindness. I shall remain grateful to you."

6. The grievance of the petitioner is that the representation of the petitioner has not been disposed of. Let us have a look at the scheme of the Act in order to appreciate the facts.

7. The persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 (Act 1 of 1996) received the assent of the President on 1-1-96. The Act was brought in pursuance to the resolution taken by the Economic and Social Commission for Asia and Pacific at Beijing held on 1-5 December, 1992 with a view to adopting the proclamation on the full

participation and equality of people with disabilities in the Asia and Pacific region. A perusal of the object and the reasons of the Act shows that the basic purpose of the Act is to improve the living conditions of the persons with disabilities and to take them up to the standard of general people in matter of equality of opportunity, promotion of standard of living etc.

8. The Act is divided into 14 chapters and each Chapter deals with one subject matter. For example, Chapter 1 which is preliminary contains the definitions of the terms used in the Act. Section 2(1) defines "disability" which includes mental retardation also. Section 2 (r) defines "mental retardation" which means a condition of arrested or incomplete development of mind of a person which is specially characterised by sub-normality of intelligence. The term "persons with disabilities" has been defined at Section 2 (t) of the Act.

9. Chapter V of the Act is titled "Education" and it deals with all aspects relating to the rights and privileges guaranteed to the persons with disabilities under the Act. It starts from Section 26 and ends at Section 31. Section 26 (b) gives an indication "endeavour to promote the integrations of students with disabilities in the normal schools (emphasis supplied). This chapter nowhere provides for reservation of seats for candidates in educational institutions including institutions of scientific, technical and super technical areas. The legislature in its wisdom did not make any mention of such reservation in this chapter and as such, interpreting the statute otherwise may not be proper.

10. The petitioner in the case in hand has relied on Section 39 which falls in the Chapter VI the title of which is Employment. The chapter starts at Section 32 and ends at Section 41. A close scrutiny of the provisions of this chapter of the Act would show that this is a chapter solely meant for laying down provisions for the purpose of employment alone. Section 32 provides for identification of posts which can be reserved for persons with disabilities. Section 33 provides for reservation of posts the proviso of which empowers the Government to grant exemption to an establishment and as such, the same should be construed in the light of the very purpose of the chapter i.e., employment. This section reads as below:

39 : All educational institutions to reserve seats for persons with disabilities-

All Govt. educational institutions and other educational institutions receiving aid from the Government shall reserve not less than three per cent seats for persons with disabilities.

11. It must be interpreted that this section does not relate to the matter of education which was earlier discussed in Chapter V. By Section 39 three per cent of vacancies in Government educational institutions and other institutions have been reserved for appointment by the persons with disabilities. In an educational institution, there are non-teaching employees such as Administrator, clerk, cashier, peon etc. and it is not essential that the 3% of vacancies must include teaching staff as well.

12. On the other hand if the provision is given an interpretation to include reservation of seats for candidates seeking admission in Government educational institution then provisions laid down in Chapter V of the Act shall become redundant and otiose which is not permissible under the principle of harmonious construction.

13. Apart from that it appears from the very scheme of the Act that legislature never intended for reserving seats in the institutions covering scientific technical and Super technical areas. The very purpose of the Act is to entitle the persons with disabilities to live with dignity at par with other citizens and there should not be any element of neglect and disrespect towards them. They should avail all opportunities for adequate means of livelihood and development.

14. Extending the benefit of the Act for the purpose of admission to Medical College may not be in conformity with intention of legislature. Clamming a right of admission by stretching the provision of Section 39 of the Act may also amount to legal fallacy which can be tested by comparing two clauses of Section 2 alone, namely. Section 2 (r) and Section 2 (t).

15. Section 2 (1) says persons with at least forty per cent disability is a person with disability. Section 2 (1) (vi) provides that mental retardation is a disability and Section 2 (r) defines mental retardation which means a condition of arrested or incomplete development of mind of person which is specially characterised by sub-normality of intelligence. Read with Section 2 (r). Section 2 (1) includes a person with 100% mental retardation as a person with disability entitling him to the benefits in under the Act. Now if Section 39 goes to the extent of providing for reservation in admission in Medical College, that means 38 of the Seats of the Govt. Medical Colleges may have to be filled up by 100% mentally retarded people. This is an absurd proposition. Thus, shows that such an interpretation of Section 39 of the Act may not be permissible.

16. Thus it appears that the appropriate Govt. has not done any illegality unconstitutionally or arbitrariness in not providing for reservation for persons with disabilities in the matter of admission to Medical College.

17. That behalf the position, there is no merit in this writ application and the same is dismissed.