

(2008) 02 DEL CK 0150

In the Delhi High Court

Case No : LPA 6 of 2008

State Council of Educational Research and Training

APPELLANT

Vs

Ravi Dwivedi

RESPONDENT

Date of Decision : 05-02-2008

Acts Referred:

Citation : AIR 2008 Delhi 97 : (2008) 102 DRJ 265

Hon'ble Judges : Dr. M.K. Sharma, C.J.;Reva Khetrapal, J

Bench : Division Bench

Advocate : Avnish Ahlawat, for the Appellant; Nemo, for the Respondent

Final Decision : Dismissed

Judgement

Mukundakam Sharma, C.J.—This appeal is directed against the order dated 21st November, 2007 passed by the learned Single Judge allowing the writ petition filed by the respondent herein. The respondent filed a writ petition in this Court seeking a direction to the appellant to admit him to a two year educational diploma course, i.e., DCET. Counsel appearing for the State points out that the said course is called the "ETT". Be that as it may, it can be stated that the said diploma course is being conducted in nine institutes run by the Government and ten privately managed ones with a total of 1640 seats in all. A prospectus was also issued by the State Council of Educational Research & Training wherein it was mentioned that 15% of the total seats are reserved for the candidates domiciled other than in Delhi. In view of the provisions of The Persons with Disabilities(Equal Opportunities, Protection of Rights and Full Participation) Act, 1995(hereinafter called as the "Act"), three per cent seats are reserved for physically handicapped candidates, under which three categories of handicaps/disabilities are envisaged:

(i) Orthopedically Handicapped;

(ii) Visual Handicapped; and

(iii) Hearing Impairment.

2. There is no dispute with regard to the fact that there are 49 seats reserved for the disabled. The respondent applied for being considered under the disabled quota, assuming that one per cent out of three per cent in terms of the Clause II(3)(C) at Sl. No. 4 would be reserved for candidates with hearing impairment. The respondent secured 50.02% marks. Since the respondent did not possess the cut off marks in the disabled category, he was denied admission.

3. The respondent challenged the aforesaid policy of the appellant of not compartmentalizing the three per cent disability quota, enabling candidates suffering from different disabilities to avail of the benefit, so that each category could avail of such reservation. The appellant asserts that like Section 33, u/s 39 of the aforesaid Act, such compartmentalization of quota must be done and in support of the said contention reference was made to the provisions of Section 2(1)(I)(iv) of the Act, which defines "Hearing Impairment" as meaning "loss of sixty decibels or more in the better ear in the conversational range of frequencies".

4. Even before the learned Single Judge reference was made to the aforesaid Section 2(1)(I)(iv), Section 33 as also 39 and other provisions of the Act, which were perused by the learned Single Judge, and on a harmonious interpretation of all the provisions the learned Single Judge concluded that the appellant acted in violation of provisions of Section 33 of the Act in not suitably providing for admission to persons who are hearing impaired, like the respondent. Consequently, it was ordered that the appellant should admit the respondent to the course and 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 aforesaid findings and conclusions are now challenged in this appeal which is filed by the State Council of Educational Research & Training contending, inter alia, that the interpretation given by the learned Single Judge to the provisions of Section 33 and 39 of the Act is erroneous. In support of the said contention, the counsel relied upon a decision of the Supreme Court in All Kerala Parents Association Vs. State of Kerala, .

5. We have considered the aforesaid contention of the counsel appearing for the appellant. So far Section 2(i) defines disability it also includes the expression "hearing impairment". "Hearing Impairment" is again defined in Clause 2(1) as meaning "loss of sixty decibels or more in the better ear in the conversational range of frequencies". Chapter V of the Act deals with the head "Education", wherein it is provided that it will be the responsibility of the appropriate Governments and the local authorities to provide children with disabilities free education. Section 29 of the Act provides that the appropriate Governments shall set up adequate number of teachers' training institutions and assist the national institutes and other voluntary organizations to develop teachers' training programmes specializing in disabilities so that requisite trained manpower is

available for special schools and integrated schools for children with disabilities. Section 33 of the Act provides that 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. In other words, the said legislation has envisaged that each one of the said three categories will have reservation to the extent of 1% each of the posts which are to be identified. So far Section 39 is concerned, the same also provides that 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.

6. The learned Single Judge has given harmonious construction to the aforesaid provisions of the statute and thereafter held that when provisions of both the Sections, i.e. Sections 33 and 39, are read together it is established that educational institutions shall have to provide for separate quotas for different categories of the disabled. It is also held that Section 33 cannot be said to be exhaustive of all sub-categories within the disabled and to that extent is merely illustrative.

7. The learned Single Judge on appreciation of the records found that 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 and 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. Having referred to the various decisions of the Supreme Court like *Gazula Dasaratha Rama Rao Vs. The State of Andhra Pradesh and Others*, and *Yogender Pal Singh and others Vs. Union of India* others, and following the ratio of the aforesaid decisions it was held that the reservation and filling up of as many as 31 seats in favor of the teachers working in DIETS is suspect. However, the learned Single Judge did not interfere with the aforesaid reservation provided so that the same may not at that stage lead to anomaly. However, it was held that the appellant acted in violation of Section 33 of the Act in not suitably providing for admission to persons who are hearing impaired, like the respondent.

8. In this connection, we may also refer to the Statement of Objects and Reasons of the Act which provides that one of the reasons for which the Act was enacted as a welfare legislation was to spell out the responsibility of the State towards the prevention of disabilities, protection of rights, provisions of medical care, education, training, employment and rehabilitation of persons with disabilities. A hearing impaired student is also facing disability and is required to be given education and is required to be rehabilitated as he is a person with disability which is recognized under the provisions of the aforesaid Act. That being the

position, the contention that Section 39 does not envisage any categorization and, Therefore, such reservation would not be available percentage wise to each of the categories, in our considered opinion, is a misplaced argument and cannot be accepted. The provisions of Section 33 are clear and the said Section gives a message as to how the persons with disabilities are required to be treated and how the posts are to be reserved when it specifically states that each one of the three categories would have one per cent each reserved seats in their favor. Section 39 envisages again three per cent seats for persons with disabilities, which is similar to Section 33. Same interpretation is required to be given that three of the categories as mentioned and highlighted in Section 33 are entitled to one percent seats each reserved for them. The same having been made applicable to the case in hand there was an illegality committed by the appellant, which was sought to be rectified by the impugned judgment.

9. So far the decision of the Supreme Court in All Kerala Parents Assn. Hearing Imp. and Anr. (supra), which is relied upon, is concerned, a bare perusal of the same would also indicate that the Supreme Court in the said decision held that the High Court was wholly in error in construing Section 39 of the Act to mean that it relates to reservation in Government employment and not in relation to admission of students with disabilities in the Government institutions as well as educational institutions receiving aid from the Government. In the said decision it was held that Section 39 of the Act deals with the reservation of seats for persons with disabilities in Government educational institutions as well as educational institutions receiving aid from the Government, and necessarily Therefore the provisions thereof must be complied with. In the said decision findings of the High Court in relation to Section 39 of the Act to mean that it relates to reservation in Government employment and not in relation to admission of students with disabilities were set aside. The facts in respect of which the said decision was rendered were in different context and are clearly distinguishable. Here is a case where the reserved seats for students with disabilities are being ordered to be distributed for all the categories as is being provided for under the provisions of Section 33 of the Act for the persons with disability of hearing impairment are also ordered to be accommodated.

10. In our considered opinion, the decision which is rendered by the learned Single Judge in no manner is contradictory or in conflict with the aforesaid decision of the Supreme Court. We find no reason to take a different view than what is taken by the learned Single Judge. The appeal has no merit and is dismissed. No costs.