

**(2001) 07 KL CK 0013**  
**In the High Court Of Kerala**  
**Case No : W.A. No. 3417 of 2000 etc.**

State of Kerala

APPELLANT

Vs

Mary Joseph

RESPONDENT

---

**Date of Decision :** 27-07-2001

**Acts Referred:**

Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 — Section 2, 2(1), 26, 27, 28

**Citation :** (2001) 3 ILR (Ker) 299

**Hon'ble Judges :** K.S. Radhakrishnan, J;G. Sasidharan, J

**Bench :** Division Bench

**Advocate :** C.K. Pavithran, Government Pleader, for the Appellant; Abraham Vakkanal, for the Respondent

**Final Decision :** Allowed

---

## Judgement

K.S. Radhakrishnan, J.—In these appeal we are called upon to decide the question whether S. 39 of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 (Act 1 of 1996) (in short "the Act") obliges all Government and aided educational institutions of reserve not less than three per cent seats in professional degree courses in Engineering, Medical and Agricultural courses for persons with disabilities.

2. Writ Appeal No.2417 of 2000 is filed by State of Kerala, Commissioner for Entrance Examinations and the Director of Technical Education against the judgment in O.P. No. 16030 of 2000. Writ Petition was preferred by the respondent herein for a declaration that persons with disabilities as defined in the Act are entitled to not less than 3% of the total available seats in the Government Colleges for the year 2000/2001. Respondents also sought writ of certiorari to quash various provisions of the prospectus since it does not provide reservation of seats for persons with disabilities as per S. 39 of the Act. State took up the stand that as per prospectus three seats are reserved for physically and orthopaedically handicapped persons in the Medical and allied courses and

the seats for Engineering branch. It was pointed out that if S. 39 is applied as contended by the petitioners 134 seats would have to be ear-marked for persons with disabilities as defined in the Act which unsettle the entire selection process as well as the mandatory reservation to other categories. Learned Single Judge however disposed of the Writ Petition as per judgment dated 3.10.2000 stating as follows:

"As per the provisions of the Act 3% of seats have been reserved for the physically disabled persons. Even though a clear illegality is there, Government should see that in future years it should be corrected. I am not passing a general order as only petitioner has challenged the same. When framing prospects, respondents should see that provision of the Act are not violated".

3. W.A. No. 1584 of 2001 is filed against the interim order passed by the learned Single Judge in C.M.P. No. 21334 of 2001 in O.P. No. 13434 of 2001. Writ Petition was filed by All Kerala Parents' Association of Hearing Impaired (AKPAHI in short) and Kerala Samsthana Vikalanga Sangatana Ekopana Samithy for a declaration that persons with disabilities as defined in the Act are entitled to not less than 3% of the total available seats for admission to professional degree courses in the various Institutions in the State and it should be provided in the prospectus. They also sought a writ of certiorari to quash Ext. P6 prospectus in so far as it does not provide reservation for the physically disabled as mandated by S. 39 of the Act. Learned Single Judge took the view that in spite of the judgment of this court in O.P. No. 16030 of 2000, the same has not been complied with. The learned Judges passed the following order:

"In spite of Ext. P1 Judgment, no reservation is seen provided to persons with disability. In such circumstances there will be a direction to the respondent not to conduct the entrance examination as per Ext.P6 without suitably modifying Ext.P6 incorporating provision for reservation to persons with disability, as required in S. 39 of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995."

State of Kerala and the Commissioner for Entrance Examinations are aggrieved by the interim order and has filed the above Writ Appeal. We heard O.P. No. 13434 of 2001 also along with W.A. No. 1584 of 2001 W.A. No. 3417 of 2000. Counsel appearing for the petitioner in O.P. No. 13434 of 2001 Sri. Abraham Vakkanal submitted that the State of Kerala and the Commissioner for Entrance Examinations have committed an error in not complying with the judgment in O.P. No. 16030 of 2000. Counsel submitted that the Commissioner was bound to comply with S. 39 of the Act since 3% seats have not been reserved for the year 2001 for persons with disabilities as provided under the Act and that this Court is bound to give a direction to reserve seats in accordance with S. 39 of the Act and effect admissions in all Government and aided educational institutions.

4. Learned Government Pleader Sri. C.K. Pavithran on the other hand submitted that S. 39 of the Act was introduced with an intend to give employment in all

government institutions and other educational institutions which are receiving aid from the Government and not for the purpose of admission to professional courses like Medical, Engineering and Agricultural courses. Counsel submitted that admission to various professional courses is governed by prospectus issued by the Government from time to time. Counsel submitted that the object of the Act is mainly rehabilitation and employment and not for admission to professional degree courses in Engineering, Medical and other allied courses. In view of the controversy it is necessary to examine the scope of the Act and decide whether S. 39 would be made available for admission to professional courses like Medical, Engineering and Agricultural courses conducted by the Commissioner for Government Examinations.

5. Government of Kerala publishes prospectus every year for admission to professional degree course in the State of Kerala for engineering, medical and Agricultural courses. Prospectus states rules and regulations for admission to Engineering, Medical and Agricultural courses. Admission to all the above courses is regulated on the basis of merit as assessed in the Engineering and Medical/ Agricultural Entrance Examinations conducted by the Commissioner for Entrance Examinations. Prospectus provides for mandatory reservation leaving the seats set apart for the all India quota, Government of India nominees, special reserved quota, management quota and NRI quota, the remaining seats for each course will be distributed as per the mandatory reservation principles as contemplated in G.P.(P) 208/66/Edn. dated 2.5.1966 as modified from time to time. Fifty per cent of the seats are ear-marked for State merit and 15% for regional reservation. Twenty five per cent seats are ear-marked for socially and educational backward classes. Ten per cent seats are ear-marked for Schedule Caste/Scheduled Tribe candidates. Prospectus also provide for special reservation in clause 5.2. There is reservation for ex-serviceman also. Reservation for dependant of defence personnel, killed/missing/disabled in action was also provided. Prospectus also provide for reservation to children of freedom fighters. Ceylon/Burma repatriates, orthopaedically and other physically handicapped quota. Special reservation is also provided for Kalathilakom/Kalaprathiba/First Prize Winners/Inter-State Zonal or/and National University festivals. So also there is reservation for sports quota. Clause 5.2.20 deals with reservation for orthopaedically and other physically handicapped quota. The said provision is extracted below:

"5.2.20 Orthopaedically and other physically handicapped quota:

Candidates who have a minimum of 40% disability alone will be eligible to apply for this quota. A certificate of disability from the District Medical Board certifying the degree of percentage of disability has to be attached with the application form. The Commissioner for Entrance Examinations will publish the merit list, of eligible candidates, who opted under this quota. A committee to be constituted by the Government under the Chairmanship of the Commissioner for Entrance Examination consisting of medical experts will determine the suitability of these

candidates for a particular course. Only those candidates who are found to be physically suitable will be chosen for a course as only the physically fit can undergo the rigors of a professional course. The selection of such physically handicapped candidates, will be based on the merit in the Entrance Examination and suitability, and not on the basis of the degree of disability."

Annexure II(D)(1) of the Prospectus gives the break up of seats for medical and allied courses under special reservation which includes orthopaedically and other physically handicapped persons as well. Seats are ear-marked for other categories like Ex-serviceman, Defences, etc. The prospectus stipulates that candidates who have a minimum of 40% disability would be eligible to apply for admission but would be admitted if certified by a Medical Board due to the peculiar nature of the courses in Medicine, Engineering etc. Similar reservation is there for engineering stream as well. We are in these cases concerned with the question whether State is bound to reserve 3% seats for persons with disabilities as per S. 39 of the Act contrary to clause 5.2.20 which reserve altogether six seats to candidates having minimum 40% disability.

6. Statement of Objects and Reasons of the Act states that meeting to launch the Asian and Pacific Decade of the Disabled Persons 1993-2002 convened by the Economic and Social Commission for Asian and Pacific Region, held at Beijing on 1st to 5th December 1992 adopted the proclamation on the Full Participation and Equality of People with Disabilities in the Asia and Pacific Region. India was a signatory to the said Proclamation and it was necessary to enact a suitable legislation to provide for the following:

(i) to spell out the responsibility of the State towards the prevention of disabilities, protection of rights, provision of medical care, education, training employment and rehabilitation of persons with disabilities.

(ii) to create barrier free environment for persons with disabilities.

(iii) to remove any discrimination against persons with disabilities in the sharing of development benefits, vis-a-vis non-disabled persons.

(iv) to counteract any situation of the abuse and the exploitation of persons with disabilities.

(v) to lay down strategies for comprehensive development of programmes and services and equalisation of opportunities for persons with disabilities; and

(vi) to make special for the integration of persons with disabilities into the social mainstream.

It was proposed to provide for the constitution of Co-ordination Committee which would serve as the national focal point on disability matters and facilitate the continuous evolution of a comprehensive policy towards solving the problems faced by persons with disabilities. There is also provision for constitution of a Central Executive Committee which would be Chief Executive body of the Central

Co-ordination Committee and shall be responsible for carrying out the decision of the Central Co-ordination Committee. Provision for constitution of a State Co-ordination Committee is also there in the Act. State Co-ordination Committee is to be constituted by the State Government.

7. Chapter V of the Act deals with Education. S. 26 of Chapter V provides that appropriate Government and local authorities should provide children with disabilities, free education and for setting up of special schools. S. 27 of the Act provide that appropriate Government and local authorities should make schemes and programmes and non-formal education for children with disabilities. S. 28 provide that appropriate Government shall initiate or cause to be initiated research by official and non-governmental agencies for the purpose of designing and developing new assistive devices, teaching aids, special teaching materials or such other items as are necessary to give a child with disability equal opportunities in education. S. 29 provides that appropriate Government shall set up adequate number of teachers training institutions and assist the national institutes and other voluntary organisations to develop teachers training programmes specialising in disabilities so that requisite trained manpower is available for special schools and integrated schools for children with disabilities. S. 30 provides that the appropriate Government should prepare a comprehensive education scheme providing for transport facilities, supply of books etc. S. 31 stipulates and provide amaneusis to students with visual handicap. In Chapter V the heading of which is Education, there is no reservation of seats for admission to persons with disabilities in the Government or aided educational institutions.

8. Chapter VI deals with Employment. S. 32 of Chapter VI provides that appropriate Government shall identify posts in the establishment which can be reserved for persons with disability and at periodical intervals not exceeding three years, review the list of posts identified and up-date the list taking into consideration the developments in technology. S. 33 deals with reservation of posts. It stipulates that every appropriate Government shall appoint in every establishment such percentage of vacancies not less than 3% for persons or class of persons with disability of which one per cent each shall be reserved for persons suffering from blindness or low vision, hearing impairment and locomotor disability or cerebral palsy in the posts identified for each disability. S. 34 deals with establishment of special Employment Exchange. Provision for carry forward in excess of vacancies not filled up is provided in S. 36. S. 37 directs employers to maintain records. S. 38 provides for framing schemes for ensuring employment of persons with disabilities. S. 40 deals with vacancies to be reserved in poverty alleviation schemes. S. 41 provides that appropriate Government and the local authorities shall within the limits of their economics capacity and development provide incentives to employers both in public and private sectors to ensure that at least five per cent of their work force is composed of persons with disabilities.

9. We have indicated that the Heading of Chapter VI is "Employment". Chapter

VI consists of Ss. 32 to 41. All the Sections essentially deal with reservation and filling up of posts in various establishments. The word establishment is defined under S. 2(k) to include a body owned or controlled or aided by the Government which would take in all government and aided educational institutions as well. We have to read all the sections in Chapter VI with the heading given to the Chapter. When we read Ss. 33 to 38, 40 and 41 along with the Heading given to Chapter VI, i.e., "Employment" there is no difficulty because it pertains to employment. But when we may read S. 39 with the heading given to Chapter VI there is some doubt and ambiguity. We may extract S. 39 for easy reference.

"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."

10. State maintains the stand that S. 39 has also to be understood along with other Sections in Chapter VI with the heading pre-fixed, that is, "Employment" and not "Education". Education is dealt with in Chapter V. If the intention of the Legislature was to give reservation of seats in Government and aided educational institutions, it would have provided so in Chapter V dealing with Education and not in Chapter VI which deals with Employment.

11. S. 2(t) defines "person with disability" as follows:

"person with disability" means a person suffering from not less than forty per cent of any disability as certified by a medical authority."

The term "disability" has been defined in S. 2(i) as follows:

"disability" means -(i) blindness;(ii) low vision; (iii) leprosy cured;(iv) hearing impairment; (v) locomotor disability;(vi) mental retardation;(vii) mental illness.

12. Hearing impairment has been defined in S. 2(1) which means a loss of sixty decibels or more in the better ear in the conversational range of frequencies. "Leprosy cured person" has also been defined in S. 2(n) as any person who has been cured of leprosy but is suffering from loss of sensation in hands as well as loss of sensation and paresis in the eye-lid but with no manifest deformity, manifest deformity and paresis but having mobility in their hands and feet to enable them to engage in normal economic activity and extreme physical deformity as well as advanced age which prevents him from undertaking any gainful occupation. S. 2(b) defines blindness which refers to condition of a person suffering from any of the following conditions, namely, total absence of sight or visual acuity not exceeding 6/60 or 20/200 (snellen) in the better eye with correcting lenses. It also refers to limitation of the field of vision subtending an angle of 20 degrees or worse. "Locomotor disability" means disability of the bones, joints or muscles leading to substantial restriction of the movement of the limbs or any form of cerebral palsy. "Mental illness" is defined in S. 2(q) as any mental disorder other than mental retardation. "Mental retardation" is defined in

S. 2(r) as a condition of arrested or incomplete development of mind of a person which is specially characterised by subnormality of intelligence. "Person with low vision" is defined in S. 2(u) as a person with impairment of visual functioning even after treatment or standard refractive correction but who uses or is potentially capable of using vision for planning or execution of a task with appropriate assistive device. The disabilities defined in the Act would show those are serious disabilities not less than forty per cent. The Act does deal with persons of not less than forty per cent disabilities.

13. We have already indicated that S. 2(t) defines "person with disability" as a person suffering from not less than 40% of any disability as certified by a medical authority. It would be extremely difficult for a person with forty or more percentage of disability to undergo the course. S. 2(t) takes in person who is having more than 40% mental illness. In fact clause 5.2.20 of the prospectus reserves admission to candidates who are having minimum 40% disability to apply for admission for the professional courses in Engineering, Medical and allied courses. If the contention of the appellants is accepted all persons as defined in S. 2(t) including persons of extreme mental illness have to be admitted in not less than three per cent seats to be reserved in all government and aided educational institutions. If such a contention is accepted, the Commissioner has no other alternative but to admit all those persons who suffer disability between 40% and 100% to be admitted to various professional courses of Medical, Engineering and allied courses in the three percent seats. This would upset the percentages of quota ear-marked for other categories.

14. We have already indicated Chapter V deals with Education and Chapter VI deals with Employment. We have already indicated that to understand the meaning of S. 39 other Sections of Chapter VI have to be read along with heading of Chapter VI, namely Ss. 32 to 38, 40 and 41. When we read S. 39 along with Ss. 32 to 38, 40 and 41 with the Heading, it can be regarded as giving the key to the interpretation of the clause ranged under it. The same meaning that may be given to Ss. 32 to 38, 40 and 41 read with the Heading will have to be given to S. 39 as well. Heading must be treated as preamble to the provisions following them. It can explain ambiguous words. Since S. 39 cannot stand in isolation in Chapter VI, in order to understand the meaning of S. 39, we have to read the Section which precedes and the Section which succeeds. The Apex Court in *The Oriental Insurance Co. Ltd. etc. Vs. Hansrajbhai V. Kodala and Others etc. etc.*, held that for interpretation of the words of a Section language of the heading cannot be used to control the operation of the Section, but at the same time being part of the statute it prima facie furnishes some clue as to the meaning and purpose of the Section. In case of ambiguity or doubt the heading can be referred to as an aid in construing the provision. Heading indicates that the legislature has envisaged such a situation. The Apex Court in *K.P. Varghese Vs. Income Tax Officer, Ernakulam and Another*, held:

"It is now a well-settled rule of construction that where the plain literal

interpretation of a statutory provision produces a manifestly absurd and unjust result which could never have been intended by the legislature, the court may modify the language used by the legislature or even do some violence to it, so as to achieve the obvious intention of the legislature and produce a rational construction".

In *Philips India Ltd. Vs. Labour Court, Madras and Others*, the Apex Court held that intention of the legislature must be found by reading the statute as a whole. A reading of the entire instrument is referred to as an elementary rule in *AG v. HRH Prince Ernest Augustus* ( 1975 (1) All.E.R. 49) Lord Green in *Re Bidie (deceased)* ((1948) 2 All.E.R.995 held that while ascertaining the meaning of a clause in a statute the court must look at the whole statute, at what precedes and at what succeeds and not merely at the clause itself and to read the statute as a whole and ask oneself the question "In this State, in this context, relating to this subject matter, what is the true meaning of that word?". The Supreme Court in *Government of Andhra Pradesh and Others Vs. Dr. V. Nagaraju and Others*, while interpreting Andhra Pradesh Rules for admission to Postgraduate Courses in the Medical Colleges held that the meaning to be attributed to the expression "in service candidates" in R. 192(2) will have to be understood with reference to R.3(2) along with the explanation thereto which will make the intention of the parties clear. In *Hammer Smith & City Ry. v. Brand* (1869) LR 4 HLC 171 *Toronto Corporation v. Toronto Ry.* (1907) AC 315 *Ingils v. Rebertson* (1898) AC 616) etc. courts have taken the view that heading or title prefixed to Section or group of Sections can be referred to in construing an Act of legislature. In *Toronto Corporation v. Toronto Ry.* (1907) AC 315 it is held that heading is to be regarded as the key to the interpretation of the clauses ranged under it, unless the wording is inconsistent with such interpretation. It is also provided that headings should be treated as preambles to the provisions following them.

15. We have indicated that the prospectus restricts admission only to those persons who could cope with the rigour of the courses in Engineering, Medical and other allied courses. This restriction has been made in the prospectus for obvious reasons. Orthopaedically and other physically handicapped persons with more than 40% disability would not be able to cope with the rigour of the professional courses unless so certified by the Medical Board. Prospectus permits only those persons who are having minimum 40% disability to apply. For them suitable reservation has been made in clause 5.2.20 in the prospectus. For medical and allied courses three seats are earmarked for orthopaedically and other physically handicapped persons. A certificate of disability from the District Medical Board certifying the degree of percentage of disability has to be attached with the application form. A Committee to be constituted by the Government under the Chairmanship of the Commissioner for Entrance Examination consisting of medical experts will determine the suitability of these candidates for a particular course. Only those candidates who are found to be physically suitable will be chosen for a course as only the physically fit can undergo the rigours of a professional course.

16. We cannot visualise that the legislature had ever intended this reservation to persons who are having disability ranging from 40% to 100% be admitted to professional courses and to ear-mark quota for them without laying down any guidelines. When we understand the scope of S. 39 in the light of the heading given to that Chapter as well as in the light of the various provisions which precede and succeed S. 39, we have to take it that the word "seats" appearing in S. 39 would mean only "vacancies" or posts since the heading of that Chapter deals with only "employment". So also the Sections precede and succeed S. 39 is applied as contended by the petitioners, 134 seats will have to be reserved for persons who are having minimum 40% disability that would adversely affect the mandatory and special reservation made to other categories. The State Government is legally obliged to reserved seats not only to orthopaedically and physically handicapped persons, but to other categories of persons also under the mandatory and other reservation clauses. If 3% seats are ear-marked for persons with disabilities as contended by the petitioners, it would upset the entire scheme of reservation.

17. We therefore, hold that S. 39 of the Act is not intended to reserve seats in Medical Engineering and allied professional courses since S. 39 comes within chapter VI with the heading "Employment". S. 39 obliges to reserve 3% vacancies or posts in all Government or other educational institutions which receive aid from the Government and not for the purpose of reservation for admission to professional degree courses. It is so far declared. Commissioner for Entrance Examination would complete the selection process strictly on the basis of the prospectus and on the basis of the terms and conditions laid down in the prospectus.

18. We notice in the light of the order passed by this Court in O.P. No. 16030 of 2000 petitioner therein is now undergoing studies and has already completed one year. In such circumstances we are not inclined to disturb such admission. Direction given by this Court to the State Government as well as the Commissioner to reserve 3% seats for all those persons who are suffering from not less than 40% disability, in the professional degree courses in Engineering, Medical and allied courses is set aside.

19. Writ Appeals are allowed and O.P. No. 13434 of 2001 will stand dismissed.