

(2001) 05 RAJ CK 0010

In the Rajasthan High Court

Case No : Civil Special Appeal (W) No. 112 of 2001

The State of Rajasthan and Another

APPELLANT

Vs

Dr. Vijay Kumar Agrawal and Another

RESPONDENT

Date of Decision : 11-05-2001

Acts Referred:

Constitution of India, 1950 — Article 226
Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 — Section 39

Citation : AIR 2001 Raj 358 : (2001) 3 WLC 11

Hon'ble Judges : V.S. Kokje, J;Khem Chand Sharma, J

Bench : Division Bench

Advocate : Narendra Jain, for the Appellant; S.P. Sharma, (for No. 1) and R.A. Katta, (for University of Raj.), for the Respondent

Final Decision : Dismissed

Judgement

1. Dr. Vijay Kumar Agarwal, respondent No. 1, (hereinafter referred to as the "writ petitioner") filed a writ petition against the State of Rajasthan, University of Rajasthan and Convenor. Central PG Admission Board and Principal, SMS Medical College, Jaipur, contending therein that it was incumbent upon the respondents in the writ petition to reserve at least 3 per cent seats for physically handicapped persons but they were not doing so and therefore, by a writ of mandamus they be compelled to provide at least 3 per cent reservation to physically handicapped persons in pre-P.G. Entrance Examination for admission to M.D./M.S./Diploma Courses.

2. The contention of the writ petitioner was based on the provisions of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 (in short "the Act"). Section 39 of the Act requires all Government educational Institutions and other educational institutions receiving aid from the Government to reserve not less than 3 per cent seats for persons with disabilities.

3. The respondents in the writ petition contended in reply to the writ petition that the Pre-P.G. Examination and the P.G. Courses in Medical Sciences were governed by Ordinance 278-E and 278-G of the University of Rajasthan and there was no reservation provided to disabled persons in those Ordinances. It was further contended that Section 39 of the Act fell under the Chapter which related to employment and therefore, Section 39 of the Act did not apply to admission in Post Graduate Courses. For the aforesaid reasons. It was contended that the State Government and the University of Rajasthan were not obliged to provide for reservation to disabled persons.

4. The learned Single Judge allowed the writ petition and directed the University of Rajasthan to admit the writ petitioner in the P.G. Medical Course as handicapped person preferably in Paediatric speciality. Against this order of the learned single Judge, the present appeal is filed.

5. At the hearing, learned counsel for the appellants submitted that the impugned order is based on an erroneous view. It was submitted that the State Government had already taken a decision to provide for reservation for physically handicapped persons in admission to Medical Courses but that decision could be made effective from the date of appropriate amendments made by the University of Rajasthan in its Ordinances and not prior to that. It was also submitted that on 20-11-2000, the University has amended Ordinances 272, 278-E and 278-G providing reservation for physically handicapped persons in admissions to medical courses and therefore, the provisions of Section 39 of the Act came into effect on 20-11-2000. It was contended that the learned single Judge in effect, held that these amendments in the Ordinances will have retrospective effect from the date of enforcement of the Act i.e. 7-2-1996. Learned counsel for the appellants submitted that despite coming into force of the Act on 7-2-1996 and despite Section 39 of the Act, so long as the Ordinance was not amended by the University, there was no question of granting of admission on the basis that reserved quota for the physically handicapped candidates existed. It was further contended that Section 39 of the Act does not provide that 3 per cent reservation of seats for physically handicapped persona shall be deemed to have come into existence from the date of enforcement of the Act. It was contended that all that Section 39 of the Act requires is that the Government educational institutions and other educational institutions receiving aid from the Government shall reserve not less than 3 per cent seats for persons with disabilities. According to the learned counsel, the words "shall reserve" connote a directive to the Government educational institutions and other educational institutions receiving aid from the Government, to make provision for such reservation. I such provisions are not made, action may be taken against the institutions but it cannot be presumed that the quota exists right from the date the Act was enforced.

6. Learned counsel for the Respondent writ petitioner, on the contrary, supported the impugned order and submitted that Section 39 of the Act was a clear

mandate to the institutions and there could be no escape from that provision.

7. We have heard learned counsel and carefully pondered over the points involved. It is true that Section 39 of the Act directs the Government and Government aided educational institutions to reserve not less than 3 per cent seats for persons with disabilities. It is also true that the reservation have to be provided by framing rules of admission or amending the existing rules. But it is also true that the words "shall reserve" leave nothing to the discretion of the Institutions and in that sense, they are a mandate to the institutions which cannot be flouted. The net result is that from 7-2-1996 when the Act was enforced and Section 39 of the Act came into force, all the Government educational Institutions and Government aided Institutions were under a legal duty to reserve not less than 3 per cent seats for persons with disabilities. That this has been not done from 1996 till 20-11-2000, shows that there was a gross dereliction of duty to follow the law on the part of the respondents in the writ petition. Though reservation had to be provided by following the procedure of framing or amending the Rules, it does not mean that the writ petitioner who came to the Court complaining that Section 39 of the Act was not being followed by the respondents, could be frustrated by saying that the procedure was not amended by the University or the State Govt. and they had failed to discharge their duty under the law. The writ petitioner was within his rights to Invoke the writ jurisdiction of this Court for redressal of his grievance that he was being put to loss because of respondents not following the provisions of Section 39 of the Act and his case cannot be defeated only because the State Government and the University had not discharged their duty of amending the rules and Ordinances to bring them in conformity with Section 39 of the Act which obliges the Govt. and Govt. aided institutions to reserve not less than 3 per cent seats for persons with disabilities. Rules or no rules, the learned single Judge had jurisdiction to enforce Section 39 of the Act by issuing a mandamus directing the authorities to give benefit of reservation as required u/s 39 of the Act, to the writ, petitioner. In this view of the matter, the writ petitioner was entitled to the relief granted to him by the learned single Judge.

8. So far as the lengthy discussions entered into by the learned single Judge on the retrospective operation of the Ordinance, we do not consider that such discussion was necessary for decision of the case.

9. Learned counsel for the respondents in the writ petition, also pointed out that it was not certain that the writ petitioner could have got admission to the Course if reservations had been initially provided. According to the appellants, there may be several other handicapped candidates who could be better entitled to admission in that category and the writ petitioner alone should not get benefit without verification of the fact as to whether he was the most meritorious candidate in the handicapped category. The argument is attractive on the face of it. But the difficulty has been created by the inaction of the State alone. If statutory reservation had been provided in time, there would have been no

occasion for the writ petitioner to complain and no occasion for this Court to decide the controversy. When the writ petitioner alone thought of challenging the inaction of the appellants, his case cannot be defeated on the ground that he may not be the most meritorious handicapped candidate entitled to admission in the reserved category. Since only the writ petitioner has come to this Court, there is nothing wrong if he alone gets the benefit,

10. The next contention of the learned counsel for the appellants was that in any case, the learned single Judge could not have directed admission to the writ petitioner in Paediatric speciality. This argument does not have any force because the learned single Judge has only directed that the writ petitioner be granted admission to P.G. medical course preferably in Paediatric speciality. This is not a mandate to grant admission in Paediatric speciality itself. It only obliges the appellants to state reasons if they are unable to grant admission to the writ petitioner in Paediatric speciality.

11. For all these reasons, we do not find any force in this appeal. It is hereby dismissed.