

SUPREME COURT OF INDIA

Disabled Rights Group

Vs.

Union of India

WP(Civil)No.292 of 2006

(A.K.Sikri and Ashok Bhushan,JJ.,)

15.12.2017

JUDGMENT

A.K.Sikri,J.,

1. Three issues are raised in this petition which is filed in public interest, for the benefit of persons suffering from ‘disability’ as per the definition contained in the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation Act) 1995 (hereinafter referred to as the ‘Disabilities Act, 1995’) which now stands repealed and is replaced by the Rights of Persons with Disabilities Act, 2016 (hereinafter referred to as the ‘Disabilities Act, 2016’). The first issue related to the non-implementation of 3% reservation of seats in educational institutions as provided in Section 39 of the Disabilities Act, 1995 and Section 32 of the Disabilities Act, 2016. Second equally important issue raised in this petition, which is intimately connected with the first issue, is to provide proper access to orthopaedic disabled persons so that they are able to freely move in the educational institution and access the facilities. Third issue pertains to pedagogy i.e. making adequate provisions and facilities of teaching for disabled persons, depending upon the nature of their disability, to enable them to undertake their studies effectively. We may state at the outset that though the petition as originally filed had confined these issues only to law colleges. In view of the fact that these issues are of seminal importance, this Court decided to extend the coverage by encompassing all educational institutions.

2. As can be discerned from the number assigned to this writ petition, it was filed in the year 2006 and, thus, is pending for eleven years. The reason was that this Court has been calling for the status report(s) from the respondents/Government Authorities from time to time about the implementation of the Disabilities Act insofar as provisions relating to the aforesaid aspects are concerned. Since the matter was ripe for passing final orders and directions, we deemed it proper to hear the counsel for the parties at length so that the writ petition is disposed of by giving final directions in this behalf. (I)Re: 3% Reservation of Seats in Educational Institutions

3. Section 39 of the Disabilities Act, 1995 reads as under:

“Section 39 : All Government educational institutions and other educational institutions receiving aid from the Government, shall reserve not less than three per cent seat for persons with disabilities.”

4. As per this provision, all Government educational institutions as well as other educational institutions which are receiving aid from the Government are supposed to reserve seats for the benefit of persons with disabilities, which reservation shall not be less than 3%. Thus, 3% of the seats is the minimum reservation and it can be even more than 3%. This provision had come up for discussion before this Court in *All Kerala Parents Association of the Hearing Impaired v. State of Kerala*¹ and the Court issued following directions therein:

“We...hold that Section 39 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 provision thereof must be complied with.”

5. Disabilities Act, 2016 makes more exhaustive provisions insofar as providing of educational facilities to the persons with disabilities is concerned. Section 31 confers right to free education upon children with benchmark disabilities who are between the age of 6 to 18 years. This provision is made notwithstanding anything contained in the Rights of Children to Free and Compulsory Education Act, 2009. Section 32 makes provisions for reservation in higher educational institutions. Section 34 provides for reservation in employment. Since, we are concerned with reservation of seats in educational institutions and as Section 32 directly deals with the same, we reproduce that provision hereunder:

“32. (1) All Government institutions of higher education and other higher education institutions receiving aid from the Government shall reserve not less than five per cent. seats for persons with benchmark disabilities.

(2) The persons with benchmark disabilities shall be given an upper age relaxation of five years for admission in institutions of higher education.”

6. The educational institutions covered by this provision are not only the Government institutions of higher education but all those higher education institutions which are receiving aid from the Government. Other pertinent aspect is that the extent of reservation is increased from 3% under Disabilities Act, 1995 to 5% under this Disabilities Act, 2016. One more important improvement made in Disabilities Act, 2016 over the earlier Act is that such provisions are made for ‘persons with bench mark disabilities’. This expression is defined in Section 2(r) which reads as under:

“Section 2(r) “person with benchmark disability” means a person with not less than forty per cent. of a specified disability where specified disability has not been defined in measurable terms and includes a person with disability where specified disability has been defined in measurable terms, as certified by the certifying authority.”

7. It, thus, hardly needs to be emphasised that such educational institutions are bound to reserve seats from persons suffering from disability. Notwithstanding the same, grievance of the petitioner is that the educational institutions have not been adhering thereto.

8. No doubt, some progress is made in this behalf after the filing of this present petition and monitoring of the case by this Court, there is a need for complying with this provision to full extent. Accordingly, we direct that all those institutions which are covered by the obligations provided under Section 32 of the Disabilities Act, 2016 shall comply with the provisions of Section 32 while making admission of students in educational courses of higher education each year. To this end, they shall submit list of the number of disabled persons admitted in each course every year to the Chief Commissioner and/or the State Commissioner (as the case may be). It will also be the duty of the Chief Commissioner as well as the State Commissioner to enquire as to whether these educational institutions have fulfilled the aforesaid obligation. Needless to mention, appropriate consequential action against those educational institutions, as provided under Section 89 of the Disabilities Act, 2016 as well as other provisions, shall be initiated against defaulting institutions. (II) & (III) Re: Provision for accessibility as well as facilities

9. In another judgment pronounced today itself in the case of *Rajive Raturi v. Union of India & Ors.* (Civil Appeal No. 243 of 2005 with Anr.), this very Bench has given detailed directions for making appropriate provisions for accessibility of handicapped persons, though the scope of that petition was confined to persons suffering from visual impairment. However, various aspects discussed and directions given for making suitable provisions in this behalf would benefit persons suffering from other disabilities as well. Therefore, the position of law discussed in detail in the said judgment and the directions issued therein need not be repeated for the sake of brevity. We would, however, recapitulate following provisions contained in Disabilities Act, 2016:

Section 2(i) - ‘establishment includes a Government establishment and private establishment’ Section 2(k) - ‘Government establishment’ means a corporation established by or under a Central Act or State Act or an authority or a body owned or controlled or aided by the Government or a local authority or a Government company as defined in section 2 of the Companies Act, 2013 (18 of 2013) and includes a Department of the Government.

Section 2(v) - “private establishment” means a company, firm, cooperative or other society, associations, trust, agency, institution, organisation, union, factory or such other establishment as the appropriate Government may, by notification, specify; (w) “public building” means a Government or private building, used or accessed by the public at large, including a building used for educational or vocational purposes, workplace, commercial activities, public utilities, religious, cultural, leisure or recreational activities, medical or health services, law enforcement agencies, reformatories or judicial foras, railway stations or platforms, roadways bus stands or terminus, airports or waterways; Section 2(w) - “public building” means a Government or private building, used or accessed by the public at large, including a

building used for educational or vocational purposes, workplace, commercial activities, public utilities, religious, cultural, leisure or recreational activities, medical or health services, law enforcement agencies, reformatories or judicial foras, railway stations or platforms, roadways bus stands or terminus, airports or waterways;

Section 2(zd) - “transportation systems” includes road transport, rail transport, air transport, water transport, para transit systems for the last mile connectivity, road and street infrastructure, etc;

Section 2(ze) - “universal design” means the design of products, environments, programmes and services to be usable by all people to the greatest extent possible, without the need for adaptation or specialised design and shall apply to assistive devices including advanced technologies for particular group of persons with disabilities.

Section 2(b) - “appropriate Government” means,—

(i) in relation to the Central Government or any establishment wholly or substantially financed by that Government, or a Cantonment Board constituted under the Cantonments Act, 2006 (41 of 2006), the Central Government;

(ii) in relation to a State Government or any establishment, wholly or substantially financed by that Government, or any local authority, other than a Cantonment Board, the State Government. Section 16 mandates the appropriate Government and the local authorities to endeavour that all educational institutions funded or recognised by them provide inclusive education to the children with disabilities and towards that end shall make buildings, campus and various facilities accessible.

Section 25(1)(b) mandates the appropriate Government and local authority to take necessary measures for the persons with disabilities to provide barrier-free access in all parts of Government and private hospitals and other health care institutions and centres. Section 40 mandates the Central Government to frame Rules and laying down the standards of accessibility for physical environment, transportation system, information & communication system and other facilities & services to be provided to the public in urban and rural areas. Rule 15 deals with accessibility standards for public buildings, passenger bus transport and information and communication technology. As regards public buildings, the accessibility standards prescribed under the Harmonised Guidelines and Space Standards for barrier-free built environment for persons with disabilities and elderly persons issued by Ministry of Urban Development have been adopted. This implies that all the public buildings are now required to conform to these standards.”

10. It hardly needs to be emphasised that Disabilities Act is premised on the fundamental idea that society creates the barriers and oppressive structures which impede the capacities of person with disabilities. Capability theorists like Martha Nussbaum are of the opinion that there cannot be a different set of capacities or a different threshold of capabilities for persons

with disabilities. This raises the critical issue of creating a level playing field whereby all citizens to have equality of fair opportunities to enable them to realise their full potential and experience well-being. To ensure the level playing field, it is not only essential to give necessary education to the persons suffering from the disability, it is also imperative to see that such education is imparted to them in a fruitful manner. That can be achieved only if there is proper accessibility to the buildings where the educational institution is housed as well as to other facilities in the said building, namely, class rooms, library, bathrooms etc. Without that physically handicapped persons would not be able to avail and utilise the educational opportunity in full measure.

11. Various theories on different models of disability have emerged, namely, the Social Model of Disability, the Medical Model of Disability, the Rights Base Model of Disability, the Model of Ethical and Philosophical Status, the *Economic Model of Disability etc*². It is not necessary to delve into these different models of disabilities. However, for the purpose of the present case, some comments are required on the Social Model of Disability. The Social Model of Disability locates disability as being socially constructed through the creation of artificial attitudinal, organisational and environmental barriers. Impairment is regarded as being a normal part of the human condition, with everyone experiencing impairment differently and having different access needs. Life is accepted as including negative experiences, and impairment may be - but is not necessarily - one of them. Disabled people are defined as being people who experience the unnecessary barriers created by society within their daily life. Social Model of disability has gained ground in the international debate. This views disability as a social construct and emphasizes society's shortcomings, stigmatization and discrimination in its reaction to persons with disability. It distinguishes between functional impairments (disability) both of a physical and psychological nature, and the loss of equal participation in social processes that only arises through interaction with the social setting (handicap). These developments have contributed to a new (WHO) model, which bears in mind social as well as functional and individual factors in its classification of health and health-related areas. Keeping in view the above, proper facilities are need to be provided to differently-abled persons while having higher education.

12. Insofar as the rights base approach is concerned, that has been narrated in detail in Rajive Raturi's judgment. We may add that a basic underline assumption, which is well recognised, is that everyone can learn; there is no such person as one who is ineducable; and that, accordingly, all disabled persons (from whatever disability they are suffering) have right to get not only minimum education but higher education as well. Not making adequate provisions to facilitate proper education to such persons, therefore, would amount to discrimination. Such requirement is to ensure that even a student with disability, after proper education, will be able to lead an independent, economically self sufficient, productive and fully participatory life. This rights-based approach is an inclusive approach which class for the participation of all groups of the population, including disadvantaged persons, in the development process. Inclusive development builds on the idea of 'Society for All' in which all people are equally free to develop their potential, contribute their skills and abilities for the common good and to take up their entitlements to social services. It emphasises strengthening the rights of the people with disabilities, and foster their participation in all

aspects of life. A disability is only actually a disability when it prevents someone from doing what they want or need to do. A lawyer can be just as effective in a wheelchair, as long as she has access to the courtroom and the legal library, as well as to whatever other places and material or equipment that are necessary for her to do her job well. A person who can't hear can be a master carpenter or the head of a chemistry lab, if he can communicate with clients and assistants. A person with mental illness can nonetheless be a brilliant scholar or theorist³. The aforesaid discussion amply justifies right of access to students with disabilities to educational institutions in which they are admitted.

13. It would be pertinent to mention at this stage that in the guidelines for development grant to colleges framed by the University Grants Commission (UGC), the UGC has specifically made provisions concerning 'schemes for persons with disabilities'. There is a specific scheme in respect of Higher Education for Persons with Special Needs (HEPSN). This HEPSN scheme has three components, namely, (i) Establishment of Enabling Units for differently-abled persons. The function of this unit as enumerated therein includes creating awareness about the needs of differently-abled persons, and other general issues concerning their learning. This special unit is to be guaranteed by a faculty member to be nominated by the Head of the Institution.

(ii) Component 2 of the scheme deals with providing access to differently-abled persons. For this purpose, UGC agreed to make a one-time grant of up to Rs.5 lakhs per college during the Plan period. To enable these institutions to make special arrangements in the environment for their mobility and independent functioning and to ensure that all existing structures as well as future construction projects in their campuses are made disabled friendly.

Third component deals with providing special equipment to augment educational services for differently-abled persons. It recognises that differently-abled persons require special aids and appliances for their daily functioning and that the higher educational institutes may need special learning and assessment devices in this behalf. In addition, visually challenged students need Readers. Thus, colleges are encourage to procure such devices such as computers with screen reading software, low-vision aids, scanners, mobility devices etc.

14. The petitioner had filed a compilation on February 22, 2016 containing suggestions, in the form of Guidelines, insofar as making adequate infrastructure for providing proper access and also teaching facilities (Pedagogy) for differently-abled persons are concerned:

(I) INFRASTRUCTURE

(a) University/College Campus Barrier-free campus environment according to the provisions of Section 45 and Section 46 of the Persons with Disability Act, 1995 and further according to 2001 guidelines issued by the Chief Commissioner for Persons with Disabilities entitled "Planning a Barrier Free Environment". Some specific examples - where a building is of more than 2 storeys, mandatory provision for lifts. Straight and barrier-free paths, removal of obstacles such as plants, furniture or

bicycles adjacent to doors, entrances, on the steps or in corridors. Unnecessary interior decoration of areas should be avoided where the same leads to impairment of the mobility of disabled persons.

(b) On Campus Accommodation Priority assignment of on-campus/college hostel accommodation. Rooms assigned preferably on the ground floor. Suitable room and bathroom modifications in hostel such as provision of ramps and special fittings/adjustable furniture to facilitate mobility and comfort. Availability of attendant/helper/ assistant, as required, to help the disabled student with mobility and orientation in hostel. Special on-campus transportation on as-needed basis. Where no on-campus accommodation is provided, scheme for financial assistance to the disabled student for expenses for off-campus accommodation and related requirements such as helper/attendant, transport to/from campus, etc.

(c) Classroom For visually impaired - Braille symbols at appropriate places in classroom buildings to assist with orientation. Auditory signals in elevators and lifts leading to classrooms. For students with low vision, adequate lighting in the classroom via natural light or adequate provision of bulbs, tube lights, etc. Provision for recording of lectures. Power plug points for visually impaired students to fit in their aids and appliances such as audio recorder, laptop, computer etc. Classroom acoustics to be designed so that all audio communication is clearly audible. For orthopaedic impaired - Classrooms in locations accessible to wheelchair users. Ramps in classroom buildings and adaptations in toilets for wheelchair users and orthopaedic disabled persons. Seating priority in classrooms with adequate space for wheelchair users to move around. Avoidance of teaching platforms as being difficult to access for orthopaedic impaired persons. For hearing impaired - Clear and prominent signs indicating locations of courses and classrooms to assist with orientation. Seating for the hearing impaired student as well as a note-taker, located such that lip movement of instructor and sign language interpreter can easily be seen.

(d) Science Laboratories Structure and layout modifications of the laboratories for safety and comfort of the visually impaired and orthopaedic impaired/wheelchair users. Use of Braille instruction sheets and tactile visual material. Availability of assistants for help with laboratory activities, particularly where some risk is involved, such as handling of chemicals. Sign language interpreters for hearing impaired.

(e) Libraries For visually impaired students, Braille section and fully accessible computer systems with scanning facilities, JAWS software and Braille embossers for printing. For low vision students, large print books and computers equipped with text enlarging software. Digital libraries. Library cataloguing on computer with JAWS. Sign language interpreters as required for hearing impaired.

(f) Pedagogy (Teaching) For visually impaired - Course material in accessible formats such as Braille, audio books and electronic formats such as e-files in 'daisy' format. Availability of readers, note takers, scribes. Suitable curriculum modification

and assistance esp. for scientific/pictorial/graphical material and science laboratories. Computers with screen reading software, accessible library and reference materials. Availability of tape recorders/ digital voice recorders.

For orthopaedic impaired - Note takers and scribes, as required, especially for persons with upper limb impairment. Suitable curriculum modification and assistance, especially in science laboratories.

For hearing impaired - Note takers for classroom and provision of laptop/computer for note taking. Sign language interpreters for communication support in seminars, meetings, discussions and at all university/college functions. Suitable curriculum modification and assistance for science laboratories. Sub-titling of classroom video material. Technological support for any other necessary and appropriate technology, including computer technology, to assist the hearing impaired student with learning.

(g) Examination and Testing Modifications Extension of time, use of reader/scribe, use of computer/laptop. Availability of question papers in accessible formats, including large print, Braille, audio, daisy format. Option of writing exams on computer with screen reading software. Modification of pictorial and graphical material for visually impaired.

(h) University/College Administration Scribes, helpers and sign language interpreters for disabled students in interactions with university/college administration, especially for the admission process, meetings with staff/principal, on-campus company recruitment interviews and communication with college officials such as career counsellors, student counsellors, psychologists and any other person attached to the university/college who provides services of any type to the students. Special admissions window for disabled students. Sensitivity training on disability to administrative and pedagogic staff.

(i) Sports, Culture, Recreation and Leisure Facilities Universities/colleges to ensure that cultural/recreational programs take into account need of students with disabilities to provide for their full participation in such programs. Some specific examples in sports: running courses/tracks to be straight where visually impaired and orthopaedic impaired students are participating. Special sporting events to be conducted such as cricket for visually impaired and special events according to para-olympic norms for orthopaedic impaired. International norms to be modified where necessary to suit the needs of the disabled students. Trainers to be sensitized towards disability and inclusion and respective societies/associations to ensure that the information about events/contests reaches the disabled students also. Similarly, cultural activities with adequate modifications to be made available. For example, disabled students to be enabled to take part in theatre, literary, dance and music activities with the help of assistants. Hearing impaired students to be provided with an interpreter for sports and cultural activities of various types.”

15. Based on the aforesaid suggestions, the petitioner made written submissions on February 22, 2016, seeking following directions:

“(a) For an order directing the UGC to carry out an inspection of the 3% reservation record of respondent Nos. 11, 12 and 13 to ensure that 3% reservation for persons with disabilities are complied with, including the backlog.

(b) For an order directing the UGC to inspect all institutions of higher education to ensure that these institutions are made disabled friendly and make a report to the Central Executive Committee and the State Executive Committees who will, in turn, ensure that the institutions are made disabled friendly.

(c) For an order directing the UGC to consider the “Guidelines for Accessibility for Students with Disabilities in Universities/Colleges” submitted by the petitioner pursuant to the order of this Court dated December 09, 2010 and after making such changes as deemed fit, to issue directions to all institutions of higher education, including law colleges, for compliance within a specified period.”

16. After coming into force the Disabilities Act, 2016, further directions are sought in tune with the provisions contained in the said Act, in the following manner:

“(d) For an order directing the Central Government under Section 40 of the Disabilities Act, 2016 to frame the rules for persons with disabilities laying down the standards of accessibility for colleges, universities and other higher educational institutions, including pedagogical measures such as reasonable accommodation, modifications and aids and appliances for lectures, curricula, teaching materials, laboratories, libraries, examinations, classrooms and hostels etc. within six months from today; and for a direction to the appropriate Governments to implement the said rules within two years from the notification of the said Rules in accordance with Section 46.

(e) For an order directing the Central Government to take into consideration the Guidelines for Accessibility for Students with Disabilities in Universities/Colleges, as submitted by the petitioner, in accordance with this Court’s order dated January 20, 2011, while framing the Rules under Section 40 of the Act.

(f) For an order directing the Central Government to create an audit template in conformity with the Rules for accessibility in higher educational institutions referred to in (m) above, and for a direction to the appropriate Governments (Central and State Governments, UGC, BCI) to conduct an audit of all higher educational institutions within six months from today and to put all the audit reports on a website.

(g) For an order directing the UGC, the Central and the State Governments to invite applications from higher educational institutions for funding under the various

schemes for accessibility and to release funds in accordance thereof to facilitate accessibility measures in the educational institutions.

(h) For an order directing all higher educational institutions to make their institutions accessible in accordance with the Act and the Rules within two years of the notification of the rules; and for mandatory formation in each institution of the Enabling Unit for disabled students as per UGC scheme 'HEPSN' to ensure monitoring and implementation of the standards and guidelines contained in the Rules.

(i) For an order directing the Central and State Advisory Boards to monitor the implementation of the Act and Rules and the orders of this Court to ensure compliance.”

17. There cannot be any dispute that the suggestions given by the petitioner, which are reproduced above, appear to be reasonable and are worthy of implementation. However, at the same time, it would be appropriate to consider the feasibility thereof particularly with regard to the manner in which these can be implemented. This task can be undertaken by the UGC. Likewise, the directions which are sought by the petitioners are in consonance with the provisions contained in the Disabilities Act, 2016. In these circumstances, we dispose of these writ petitions with the following directions:

“(i) While dealing with the issue of reservation of seats in the educational institutions, we have already given directions in para 8 above that the provisions of Section 32 of the Disabilities Act, 2016 shall be complied with by all concerned educational institutions. In addition to the directions mentioned therein, we also direct that insofar as law colleges are concerned, intimation in this behalf shall be sent by those institutions to the Bar Council of India (BCI) as well. Other educational institutions will notify the compliance, each year, to the UGC. It will be within the discretion of the BCI and/or UGC to carry out inspections of such educational institutions to verify as to whether the provisions are complied with or not.

(ii) Insofar as suggestions given by the petitioner in the form of “Guidelines for Accessibility for Students with Disabilities in Universities/Colleges” are concerned, the UGC shall consider the feasibility thereof by constituting a Committee in this behalf. In this Committee, the UGC would be free to include persons from amongst Central Advisory Board, State Advisory Boards, Chief Commissioner of State Commissioners appointed under the Disabilities Act. This Committee shall undertake a detailed study for making provisions in

respect of accessibility as well as pedagogy and would also suggest the modalities for implementing those suggestions, their funding and monitoring, etc. The Committee shall also lay down the time limits within which such suggestions could be implemented. The Expert Committee may also consider feasibility of constituting an in-house body in each educational institution (of teachers, staff, students and parents) for taking care of day to day needs of differently abled persons as well as for

implementation of the Schemes that would be devised by the Expert Committee. This exercise shall be completed by June 30, 2018.

(iii) Report in this behalf, as well as the Action Taken Report, shall be submitted to this Court in July, 2018. On receipt of the report, the matter shall be placed before the Court.

ORDER

The writ petitions are disposed of with the following directions:

(i) While dealing with the issue of reservation of seats in the educational institutions, we have already given directions in para 8 above that the provisions of Section 32 of the Disabilities Act, 2016 shall be complied with by all concerned educational institutions. In addition to the directions mentioned therein, we also direct that insofar as law colleges are concerned, intimation in this behalf shall be sent by those institutions to the Bar Council of India (BCI) as well. Other educational institutions will notify the compliance, each year, to the UGC. It will be within the discretion of the BCI and/or UGC to carry out inspections of such educational institutions to verify as to whether the provisions are complied with or not.

(ii) Insofar as suggestions given by the petitioner in the form of "Guidelines for Accessibility for Students with Disabilities in Universities/Colleges" are concerned, the UGC shall consider the feasibility thereof by constituting a Committee in this behalf. In this Committee, the UGC would be free to include persons from amongst Central Advisory Board, State Advisory Boards, Chief Commissioner of State Commissioners appointed under the Disabilities Act. This Committee shall undertake a detailed study for making provisions in respect of accessibility as well as pedagogy and would also suggest the modalities for implementing those suggestions, their funding and monitoring, etc. The Committee shall also lay down the time limits within which such suggestions could be implemented. The Expert Committee may also consider feasibility of constituting an in-house body in each educational institution (of teachers, staff, students and parents) for taking care of day to day needs of differently abled persons as well as for implementation of the Schemes that would be devised by the Expert Committee. This exercise shall be completed by June 30, 2018.

(iii) Report in this behalf, as well as the Action Taken Report, shall be submitted to this Court in July, 2018. On receipt of the report, the matter shall be placed before the Court.

Pending application(s), if any, stands disposed of accordingly.

Judgment Referred.

¹(2002) 7 Scale 0198

² For detailed discussion, see *Theoretizing the Models of Disability Philosophical Social and Medical Concepts-An Empirical Research based on existing Literature* by Shanimon. S. and Rateesh. K. Nair

³ We have a celebrated examples of John Nash, a noted mathematician who earned laurels by getting noble prize and Stephen Hawkins.