

RAJASTHAN HIGH COURT

Vijay K. Agarwal

Vs.

State of Rajasthan

C.W.P. No. 1239 of 2000

(R.R. Yadav, J.)

12.02.2001

ORDER

R.R. Yadav, J.

1. The petitioner, Dr. Vijay Kumar Agarwal, has filed the present writ petition, to get the benefit of reservation in PG Medical Course, as envisaged under the Persons with Disabilities (Equal Opportunities Protection of Rights and Full Participation) Act, 1995 (Act No. 1 of 1996) (hereinafter referred as "the Act No. 1 of 1996"), with a further prayer to issue a writ of mandamus, mandating to the respondents, to provide him three per cent reservation in admission in PG Medical Course, on the basis of his result declared in Pre-PG Entrance Examination, 2000, under Ordinance 278-E of the Ordinances of the University of Rajasthan, framed under Section 30 of the University of Rajasthan Act, 1946.

2. The brief facts, which are relevant for decision of the present writ petition, are that the petitioner is an orthopedically handicapped person and had pursued MBBS Course from University of Rajasthan. At the time of admission to MBBS Course, he was admitted under the physically handicapped category, as there was reservation for physically handicapped persons, for pursuing MBBS Course. The petitioner passed his MBBS Examination, in the year 1998 and thereafter also, he completed his internship in January, 2000.

3. It is averred in paragraph-3 of the writ petition that the petitioner applied for Pre-PG Entrance Examination, 2000, for which, he has become eligible now as per Ordinances 278-E and 278-G of the University Ordinances, but at the time when his result was declared, there was no reservation provided for physically handicapped

persons, for pursuing studies of PG Courses, under Ordinance 278-E of the University Ordinances.

4. It is pertinent to mention here that during the course of arguments, it is conceded by the learned counsel for the parties that now, Ordinances 278-E and 278-G are amended, providing three per cent reservation to physically handicapped persons, in PG Courses and in PG Diploma Courses, which is made enforceable with effect from 20-11-2000. The amended Ordinances 278-E and 278-G which is made enforceable from 20-11-2000, is filed along with the reply filed by the University of Rajasthan and is marked Annexure-R/1.

5. After service of notice, the University of Rajasthan, has filed a detailed return, making averment that after receiving communication from the State Government, the University, without any delay, called a meeting of the Academic Council on 11-2-2000, and afterwards, a meeting of the Syndicate was also convened and it was resolved to recommend to accept the proposal of the State Government, for three per cent reservation under Ordinances 278-E and 278-G of the University Ordinances and the said ordinances were amended within the meaning of Section 30 of the University of Rajasthan Act, 1946. These amendments are prospective in nature and cannot be given retrospective effect by admitting the petitioner in PG Medical Course or PG Diploma Course of Academic Year 2000.

6. The respondents Nos. 1 and 3 have filed a joint return and it is averred, *inter alia*, that Chapter-V of Act No. 1 of 1996 relates to "Education", whereas, Chapter-VI of the said Act relates to "employment", which starts from Section 32 and ends with Section 41. Since Section 39 of the aforesaid Act falls under Chapter-VI, therefore, the petitioner is not entitled for admission in PG Medical Course as disabled student.

7. Heard the learned counsel for the parties.

8. It is admitted at the Bar that the petitioner falls within the definition of a "person with disability", as defined under Act No. 1 of 1996, which is a beneficial piece of legislation and made enforceable with effect from 7-2-1996.

9. It is urged by the learned counsel for the petitioner, Shri Sanjeev Prakash Sharma, that in view of the mandatory provisions, envisaged under Section 39 of Act No. 1 of 1996, providing all educational institutions, to reserve not less than three per cent

seats for persons with disabilities, the petitioner is entitled to be admitted to PG Medical Course, within the meaning of amended Ordinance 278-E of the University Ordinances. The learned counsel for the petitioner, in support of his contention, invited my attention to Section 39 of Act No. 1 of 1996, a perusal of which reveals 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.

10. Sri Narendra Jain, the learned counsel appearing on behalf of the respondent Nos. 1 and 3 refuted the aforesaid arguments, raised on behalf of the petitioner. Shri Jain strenuously urged that a close scrutiny of Act No. 1 of 1996, reveals that it is not confined to three per cent reservation only, but it gives an overall benefit in favor of the disabled persons. In support of his aforesaid contention, he invited my attention to Section 2(a) of Act No. 1 of 1996, wherein, "appropriate Government" is defined and Section 3 of the said Act, wherein, the Central Government, by notification, is required to constitute a body to be known as Central Co-ordination Committee, to exercise the powers, conferred on and to perform the functions assigned to it, under this Act. Sri Jain also invited my attention to Section 13 of Act No. 1 of 1996, which provides that every State Government shall, by notification, constitute a body to be known as the State Co-ordination Committee, to exercise the powers conferred on, and to perform the function assigned to it, under this Act. He further submits that under Section 26, appropriate Governments and local authorities are required to provide children with disabilities, free education. Similarly, under Section 27, appropriate Governments and local authorities are to make schemes and programmes, for non-formal education etc.

11. On the aforesaid premises, it is urged by the learned counsel for the respondent Nos. 1 and 3 that reservation of three per cent seats for persons with disabilities in all Government educational institutions and other educational institutions receiving aid from Governments, depend on constitution of Central Co-ordination Committee and State Co-ordination Committee and after making schemes and programmes in this regard.

12. The bottom-line argument of the learned counsel for the respondent No. 1 and 3, is that Chapter-V of Act No. 1 of 1996, makes provisions for educational facilities, which are to be provided by the appropriate Governments and local authorities, i.e.,

free education of children, whereas, Section 27 mandates all the appropriate Governments and local authorities, to make schemes for non-formal education etc. According to him, Section 39 does not find place in Chapter-V, giving detailed procedure to provide educational facilities to all children, e.g., free education and to make schemes and programmes for non-formal education, therefore, the petitioner is not entitled to three per cent reservation, for his admission to PG Medical Course, under unamended Ordinance 278-E of the University Ordinances. According to him, since Ordinance 278-E is amended and made enforceable with effect from 20-11-2000, therefore, the petitioner is not entitled for admission in PG Medical Course, giving it retrospective effect.

13. Sri R.A. Katta, the learned counsel appearing on behalf of the University of Rajasthan, adopted the aforesaid arguments, advanced by the learned counsel for the respondent Nos. 1 and 3.

14. I have given my thoughtful consideration to the rival contentions, raised at the Bar and perused the materials available on record.

15. A close scrutiny of the provisions, contemplated under Act No. 1 of 1996 lead towards an irresistible conclusion that under the said Act, Parliament has conferred two kinds of benefits for persons with disabilities : one, inter-dependent on the constitution of Co-ordination Committees by appropriate Governments and flow from making of schemes and programmes, whereas, other kind of benefits, specially, not less than three per cent reservation of seats in Government aided institutions flow from the date of enforcement of the said Act, with effect from 7th February, 1996. Former benefit conferred for persons with disabilities, under Act No. 1 of 1996 depends upon the constitution of Co-ordination Committees by appropriate Governments and making of the schemes and programmes, but at least, the latter benefit of reservation of not less than three per cent seats in all Government educational institutions and other educational institutions, receiving aid from Government, is not inter- dependent either on constitution of Co-ordination Committees by appropriate Governments, or from the date of making scheme and programmes. To my mind, reservation of three per cent seats in all educational institutions, receiving aid from Government, from the date of enforcement of the Act No. 1 of 1996, does not require framing of any scheme and programme, and an argument, contrary to it, is hereby repelled. However, as regards not less than three per cent reservation of posts, it is left open to be decided in some

other case, as such reservation requires to identify posts in the establishments, which can be reserved for persons with disabilities.

16. In the present case, subordinate law-making authority of University of Rajasthan, which is empowered to make Ordinances 278-E and 278-G, under the Rajasthan University Act, is to be tested on the anvil of mandatory provisions of Article 254(1) of the Constitution, which provides that if any provision of law made by Legislature of a State is repugnant to any provision of a law made by Parliament which Parliament is competent to enact, or to any provision of an existing law with respect to one of the matters enumerated in the Concurrent List, then, subject to the provisions of clause (2), the law made by Parliament, whether passed before or after the law made by Legislature of such State, or as the case may be, the existing law shall prevail and the law made by the Legislature of State shall, to the extent of repugnancy, be void.

17. Indisputably, the Act No. 1 of 1996, which is made enforceable with effect from 7-2-1996, falls within Item No. 25 of the Concurrent List of the Seventh Schedule of the Constitution, whereas, neither the University of Rajasthan Act, 1946, nor the Ordinances 278-E and 278-G, framed by University of Rajasthan, in exercise of its power under Section 30 of the said Act, making it enforceable with effect from 20-11-2000, have received the assent of the President, within the meaning of Article 254 (2) of the Constitution, therefore, on the date of declaration of result of the petitioner of his Pre- PG Examination, the law made by Parliament, whether passed before or after the law made by Rajasthan State Legislature, or as the case may be, the law made by the Parliament under Section 39 of the said Act, providing reservation not less than three per cent seats for persons with disabilities in all Government educational institutions and other educational institutions, receiving aid from the Government, would prevail and the law, contained under Section 30 of the University of Rajasthan Act, 1946 and Ordinances 278-E and 278-G, made by University of Rajasthan, in exercise of its power and the aforementioned section, to the extent of the repugnancy of Section 39 of Act No. 1 of 1996, would be void. It is made clear that the provisions made under Act No. 1 of 1996 are comparable to Section 30 of the Rajasthan University Act, 1946, which empowers the Rajasthan University, to make Ordinance. Since Section 30 of the Rajasthan University Act is inconsistent, being repugnant to the provisions made under Section 39 of Act No. 1 of 1996, therefore, within the meaning of Article 254(1) of the Constitution, the law made by State Legislature, and Ordinances 278-E and 278-G, made by University of Rajasthan, in exercise of its

power, under Section 30 of University of Rajasthan Act, 1946, to the extent of repugnancy to the provisions contained under Section 39 of Act No. 1 of 1996, were not enforceable against the petitioner and he was illegally denied admission in PG Medical Course.

18. The controversy about inconsistency in the Ordinances 278-E and 278-G and Section 39 of Act No. 1 of 1996, can be resolved from another angle. It is to be imbibed that by virtue of Section 39, all Government educational institutions and other educational institutions, receiving aid from the Government, are required to reserve not less than three per cent seats, for persons with disabilities. The aforesaid provision shall be deemed to be enforceable from the date of enforcement of Act No. 1 of 1996, with effect from 7-2-1996. The amendment, introduced by University of Rajasthan in exercise of its power under Section 30 of the Rajasthan University Act, 1946, amending Ordinances 278-E and 278-G, with effect from 20-11-2000, would be deemed to be implicit in the Ordinance from the date of enforcement of Act No. 1 of 1996, with effect from 7-2-1996 and by amending Ordinances 278-E and 278-G, which is made enforceable with effect from 20-11-2000, shall be deemed to have been made explicit by University of Rajasthan, in exercise of its power under Section 30 of the University of Rajasthan Act, 1946. In nut-shell, what was implicit under Ordinances 278-E and 278-G of University Ordinances, prior to 20-11-2000, that has been made explicit by amending the aforesaid Ordinances, with effect from 20-11-2000.

19. Coming to the bottom-line argument, raised by learned counsel for the respondent Nos. 1 and 3, to the effect that the petitioner is not entitled to get the benefit of three per cent reservation in the PG Medical Course, as Section 39 does not find place in Chapter-V relating to educational facilities provided for persons with disabilities, but it has been provided under Chapter-VI, dealing with employment of disabled persons. It is to be noticed that under Chapter-VI, Parliament has enacted Section 33, pertaining to reservation of posts, which 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 blindness or low vision; hearing impairment; and locomotors disability or cerebral palsy, in posts identified for each disability : provided that the appropriate Government may, having regard to the type of work carried on in any department or establishment, by notification, subject to such

conditions if any, as may be specified in such notification, exempt any establishment from the provisions of this section.

20. From the aforesaid discussion, it is crystal clear that reservation relating to employment is contemplated under Section 33 of Act No. 1 of 1996, and it has nothing to do with Section 39, which clearly mandates 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. It is true that Section 39 ought to have been placed under Chapter-V, below Section 31 of Act No. 1 of 1996, but its effect cannot be allowed to be nullified simply because, instead of placing it under Chapter-V, Parliament has placed it under Chapter-VI of the aforesaid Act.

21. Coming to academic efficiency and Excellency of the petitioner, for his admission in PG Medical Course, I have inquired from the learned counsel for the petitioner as well as the learned counsel appearing on behalf of the respondents. It is conceded at the Bar that qualifying marks, prescribed by the University, for admission in PG Medical Course, under Ordinance 278-E, is 396, whereas, the petitioner in the present case, has obtained 520 marks, therefore, from the marks obtained by the petitioner in the Entrance Examination, it cannot be said that due to admission of the petitioner in PG Medical Course, the academic excellence of the University would suffer.

22. During the course of arguments, I have also inquired from the learned counsel for the parties, whether due to six months interval after declaration of the result of Pre-PG Entrance Examination of the petitioner, if the petitioner is admitted in PG Medical Course, under Ordinance 278-E, it would affect the academic session of the University, or it would cause any administrative inconvenience to it. The answer of the learned counsel for the parties, is that under Ordinance 278-C(6) the examinations of D.M., M. Ch., M.D., M.S. and M.Sc. (Med.) will be held twice a year. The first examination for M.D., M.S. and M.Sc.(Med.) will be held on completion of three years' residency training and for D.M. and M. Ch., on completion of two years' training. The second examination will be held after six months. Candidates shall not be permitted (sic) more than two examinations in a year, with an interval of six months. In case of postponement of examinations, the students appearing at the postponed examination shall be governed by the same syllabus and scheme of examination, as were applicable to the original examination. The learned counsel for

the parties also invited my attention to Ordinance 278-C (7), which provides that every candidate presenting himself for any of these examinations shall submit to the Registrar, University of Rajasthan, through the Head of institution, a certificate of having completed his training under the guidance and to the satisfaction of a recognized guide/guides, the courses of study in the subjects of the branch in which he presents himself for the examination and certificate of his having acquainted himself with the subject allied to his specialty and approved by the guide.

23. A composite reading of Ordinance 278-C(6) and (7) leads to an inescapable conclusion that after completion of three years' residency training in a particular specialty, a candidate of Medical Branch, is required to obtain a certificate from his guide/guides, who guided him during the course of his studies in the specialty, in which, he presented himself for the examination. The composite effect of the aforesaid two Ordinances, is that after completing three years' training, a candidate is required to obtain a certificate from his guide, and only after obtaining a certificate from his guide, having acquainted himself with the subject allied to his specialty and approved by the guide, he would be entitled to appear in examination, after completion of three years. In such a way, if the petitioner is allowed to undergo the training of PG Medical Course, under the aforesaid provision, he would be entitled to appear in the examination only after obtaining a certificate from his guide, after completing three years' residency training, therefore, even if the petitioner is admitted today after six months, it is not going to affect his final examination, which is to commence after completion of three years and the period of three years is to be computed from the date of his admission. For the reasons, discussed hereinabove, the instant writ petition is allowed. The respondents are mandated to admit the petitioner, within three weeks from the date of receipt of certified copy of this order, as a handicapped person, in PG Medical Course, preferably in paediatrics specialty, subject to its availability in the medical college, having guides on the subject.

Cost is made easy.

Revision allowed.