

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.12296 OF 2016

Ashutosh Kumar Dariyapur Gola	...Petitioner
vs.	
The Film and Television Institution of India and Another	...Respondents

Mr. Kartikeya Bahadur a/w. Mr. S. Hajra i/b. Mr. Kranti, for the
Petitioner

Ms. Priyanka Telang, for Respondent Nos. 1.

ORDER RESERVED ON : 2nd MARCH, 2017
ORDER PRONOUNCED ON : 7th MARCH, 2017
CORAM : SHANTANU KEMKAR &
PRAKASH NAIK, JJ.

ORAL ORDER: (Per Shantanu Kemkar, J.)

. The Petitioner had applied to the first Respondent - Film and Television Institution of India at Pune for being admitted to the Post Graduate Diploma Course in Editing. After being shortlisted, he was medically examined by the Medical Officer, in his vision test, he was found to be colour blind, in the circumstances the admission was declined to the Petitioner, in view of the Film and Television Institution of India Entrance Examination Rules (for short "*FTII Rules*") providing therein that the candidates suffering from colour

blindness are not entitled to get the admission in various courses including the course in question.

2. Feeling aggrieved by the said communication/decision dated 1st September, 2016 rejecting the Petitioner's candidature for admission, the Petitioner has filed this Petition.

3. According to the Petitioner, “colour blindness” is neither a blindness nor a low vision within the meaning of Section 2(b) of The Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 (For short “*Act of 1995*”) and as such denial of admission on the basis of colour blindness is illegal. It is also the case of the Petitioner that the first Respondent has not taken into consideration the suitability of colour blind students for each individual course run by it but has arbitrarily put a clause in the eligibility criteria that the candidates suffering from colour blindness will not be suitable for the course which are not suitable for visually handicapped candidates. It is also the case that earlier two students having colour blindness were admitted in the first Respondent Institution and they are undergoing the course and presently are in

the second year. The Petitioner has further stated that first Respondent has assigned no reason as to how the colour blindness would affect the Petitioner's ability to pursue the said course.

4. The first Respondent has filed reply and stated that though the Petitioner was shortlisted for three years Post Graduate Diploma Course in Editing but as per the FTII Rules, the shortlisted candidates are required to undergo a medical test. In his medical test the Officer after examining the Petitioner has found that the Petitioner is colour blind (Red, Green, Blue in both eyes > 60%). He accordingly vide his report dated 28th July, 2016 (Exhibit F) opined that the Petitioner's colour blindness is a disqualification for admission of the Petitioner for the course of Editing. In reply it has been further stated that nature of studies and the professional assignments carried out during the academic session or in the professional life of a student for the course in question, demands in-depth knowledge of various colour shades, colours schemes, colour matching, colour continuity and distinguishing ability between different colours. It is further stated that the first Respondent- Institution had set up an Admission Committee comprising of experts from various fields (including

medical), to review the admission criteria in the Institute. The Admission Committee took into account all the issues that a colour blind student would face, during and after the completion of the course, and reached at a decision that colour blind candidates shall not be eligible for certain courses in the Institute including the course in question. In the circumstances, it has been stated that in view of the FTII Rules, the Petitioner was denied the admission. It has been stated that the colour blind students are forbidden from taking admission as the courses for Cinematography/Camera, Editing, video Editing, Art Direction and Animation. These are courses which require studies and professional assignments which demand in-depth knowledge of various colour shades, colours scheme, matching, colour continuity and detailed colour distinguishing ability. It is also submitted that it is impossible for a colour blind student to carry out the intensive studies & perform accurately in future professional life. In the circumstances, it has been stated that in the absence of any *malafide* or arbitrariness in fixing the eligibility criteria, the decision of the Admission Committee of the first Respondent not to grant admission to the Petitioner for the course in question needs no interference in a Petition under Art. 226 of the Constitution of India.

5. We have considered the averments made in the Petition and the arguments advanced by the learned counsel for the parties.

6. In order to appreciate the contentions raised by the learned counsel for the parties, it would be appropriate to extract the relevant portion of Rule 13 of the FTII Rules debarring the candidates suffering from colour blindness, reads thus :

(13) *As FTII provides audio-visual training, it is not possible to offer admission to the candidates having 100% physical disability. Also following courses conducted at FTII are not suitable for certain category(ies) of disability. (emphasis supplied).*

<u>Sr.</u>	<u>Name of the Course</u>	<u>Type of disability</u>
1	Diploma in Cinematography	Visually Handicapped (VH)
2	Certificate course in Electronic Cinematography	Visually Handicapped (VH)
3	Diploma in course Sound Recording and Sound Design	Hearing Handicapped (HH)
4	Certificate course in TV Sound and Engineering	Hearing Handicapped (HH)
5	Diploma course in Editing	Visually Handicapped (VH) Hearing Handicapped(HH)
6	Certificate course in Video Editing	Visually Handicapped (VH) Hearing Handicapped(HH)
7	Diploma course in Art Direction and Production Design	Visually Handicapped (VH)
8	Certificate course in Animation and Computer Graphics	Visually Handicapped (VH) Hearing Handicapped(HH)

Further, Orthopedic Handicapped (OH) candidate suffering from disability(ies) of One Leg (OL), Partially Deaf (PD) in case of Hearing Handicapped (HH) and Low vision in the case of Visually Handicapped (VH), with aid and appliances

(assistive kit) will be considered for all other courses. Candidates suffering from colour-blindness are not suitable for those courses which are not suitable for Visually Handicapped candidates. (emphasis supplied).

7. A perusal of the aforesaid Rule 13 of FTII Rules based upon the decision of the Admission Committee taken in the meeting held on 11th February, 2014 would make it clear that the first Respondent in its eligibility criteria have specifically provided that the candidates from colour blindness are not suitable for the six courses out of the eight courses described in the table.

8. The colour blindness is not defined under the Act of 1995. The Hon'ble Supreme Court in the case of **Union of India vs. Devendra Kumar Pant and Others**¹ after considering the definition of “Blindness” given in the Act of 1995 assumed it to be a disability by observing thus :

13. *Blindness is a disability defined in clause (b) of section 2 and refers to (I) total absence of sight or (ii) visual acuity not exceeding 6/60 or 20/200 (snellen) in the better eye with correcting lenses; or (iii) limitation of the field of vision subtending an angle of 20 degree or worse. 40% disability referred to in Section 2 (t) to identify persons with disabilities, will apply to categories (ii) and (iii) of section 2(b) but will be irrelevant in regard to persons with total absence of sight falling under category (i) of section 2(b).*

¹ (2009) 14 Supreme Court Cases 546.

Section 2(u) defines a "person with low vision" 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 the planning or execution of a task with appropriate assistive device". Lack of colour perception is neither blindness nor low vision and is therefore apparently not a disability under the Act. It is therefore, doubtful whether a person lacking colour perception can claim to be a person entitled to any benefit under the Act. Be that as it may. We will examine the issue assuming that respondent is a person with disability. (emphasis supplied).

Thereafter in the same judgment the Hon'ble Supreme Court in para 18 has observed thus :

18. Prescription of a minimum medical standard for promotion should be considered as such, and should not be viewed as denial of a promotional opportunity to a person with disability. We may illustrate. When an advertisement for the post of a police inspector prescribes a minimum height or a minimum chest measurements or a minimum physical stamina, a person who lacks the same and therefore denied appointment, cannot contend that he is discriminated on the ground of physical disability. Firstly being short or very thin or lacking stamina is not a physical disability but a physical characteristic. Therefore in such a situation the question of applicability of the Act does not arise at all. If a person not having a colour perception is denied appointment to the post of a driver, he cannot complain that he is discriminated on the ground of his disability. Same would be the position where the colour perception is a required minimum standard for a particular post. A person not possessing it is not being denied appointment or promotion on the ground of disability. The denial is on the ground of non- fulfillment of a minimum required standard/qualification. Viewed accordingly, it will be seen that section 47(2) is not attracted at all.

9. In the case of **Sajeesh Babu K. vs. N.K. Santhosh and**

Others² the Supreme Court had observed that “*in the absence of any allegation as to mala fide action on the part of the selectors or disqualification etc., interference by the High Court exercising extraordinary jurisdiction under [Article 226](#) of the Constitution of India is not warranted.*”

10. The Hon'ble Supreme Court in paragraph 16 has extracted paragraph 13 of the judgment of Constitution Bench in the case of **“The University Of Mysore And Anr. vs. C. D. Govinda Rao And Anr.”**³ in which following observations were made.

13. We are unable to see the point of criticism of the High Court in such academic matters. Boards of Appointments are nominated by the Universities and when recommendations made by them and the appointments following on them, are challenged before courts, normally the courts should be slow to interfere with the opinions expressed by the experts. There is no allegation about mala fides against the experts who constituted the present Board; and so, we think, it would normally be wise and safe for the courts to leave the decisions of academic matters to experts who are more familiar with the problems they face than the courts generally can be.

11. In para 18 of the judgment of **Sajeesh Babu K.** (supra) the Supreme Court had further observed that,

“In a matter of appointment/ selection by an Expert

² (2012) 12 Supreme Court Cases 106.

³ AIR 1965 S.C. 491.

Committee/Board consisting of qualified persons in the particular field, normally, the Courts should be slow to interfere with the opinions expressed by the experts , unless there is any allegation of mala fides against the experts who had constituted the Selection Committee”.

12. In the case of **“P.U. Joshi and Others vs. Accountant General”**⁴ the Supreme Court had observed that,

“The questions relating to the constitution, pattern, nomenclature of posts, cadres, categories, their creation/abolition, prescription of qualifications and other conditions of service including avenues of promotions and criteria to be fulfilled for such promotions pertain to the field of policy and within the exclusive discretion and jurisdiction of the State, subject, of course, to the limitations or restrictions envisaged in the Constitution of India and it is not for the statutory tribunal, at any rate, to direct the Government to have a particular method of recruitment or eligibility criteria or avenues of promotion or impose itself by substituting its views for that of the State.”

13. In view of the aforesaid legal position it is clear that the Court should show the deference to recommendations of expert Committee, particularly when no *malafide* have been alleged against the expert constituting selection Committee. The Court should not endeavor to sit in Appeal over the opinion of the experts. It is now well settled that normally it would be prudent, wholesome and safe for the Courts to leave the decision to the academicians and experts

⁴ (2003) 2 Supreme Court Cases 632.

as a matter of principle. The Courts must realise and appreciate its constraints and limitations in academic matters.

14. In the present case the Petitioner has not alleged *malafide* in not granting admission to him, by the first Respondent. So far as his averment that two students have been granted admission though they are also colour blind is not substantiated by any material like their medical examination certificate or as to in which course they have been admitted. Even otherwise, as held by the Supreme Court in the case of Gurusharan Singh and Ors. vs. New Delhi Municipal Committee and ors.⁵ that,

“The guarantee of equality before law is a positive concept and it cannot be enforced by a citizen or Court in negative manner. To put it in other words, if an illegality or irregularity has been committed in favour of any individual or a group of individuals, the others cannot invoke the jurisdiction of the High Court or the Supreme Court, that the same irregularity or illegality be committed by the State or an authority which can be held to be a State within the meaning of Art. 12 of the Constitution, so far such Petitioners are concerned, on the reasoning that they have been denied the benefits which have been extended to others although in an irregular or illegal manner. Such Petitioners can question the validity of orders which are said to have been passed in favour of persons who were not entitled to the same but they cannot claim orders which are not sanctioned by law in their favour on principle of equality before law. Neither Art. 14 of the Constitution conceives within the equality clause this

⁵ AIR 1996 SUPREME COURT 1175.

concept nor Art. 226 empowers the High Court to enforce such claim of equality before law. If such claims are enforced, it shall amount to directing to continuance and perpetuate an illegal procedure or an illegal order for extending similar benefits to continuance and perpetuate an illegal procedure or an illegal order for extending similar benefits to others. Before a claim based on equality clause is upheld, it must be established by the Petitioner that his claim being just and legal, has been denied to him, while it has been extended to others and in this process there has been a discrimination.”

Similarly, in the case of **Union of India and Anr. vs. International Trading Co. and Another**⁶ the Supreme Court had observed that,

“Two wrongs do not make a right. A party cannot claim that since something wrong has been done in another case; direction should be given for doing another wrong. It would not be setting a wrong right, but would be perpetuating another wrong. In such matters there is no discrimination involved. The concept of equal treatment on the logic of Article 14 of the Constitution cannot be pressed into service in such cases. What the concept of equal treatment presupposes is existence of similar legal foothold. It does not countenance repetition of a wrong action to bring both wrongs on a par. Even if hypothetically it is accepted that a wrong has been committed in some other cases by introducing a concept of negative equality the respondents cannot strengthen their case. They have to establish strength of their case on some other basis and not by claiming negative equality.”

Thus even assuming that other two students have been granted admission contrary to the Rules of FTII, the Petitioner cannot insist that he should also be admitted when as per the admission Rules of FTII he is not entitled.

⁶ (2003) 5 Supreme Court Cases 437.

15. In the circumstances when the expert body of the first Respondent having fixed the eligibility criteria and after due consideration have carved out six courses in which the candidates suffering from colour blindness are not found to be suitable for being given admission, the action of the first Respondent denying the admission to the Petitioner holding him to be not eligible, cannot be said to be illegal or arbitrary.

16. Keeping in view the aforesaid, we are of the view that the Petitioner being a candidate suffering from disability of colour blindness, he cannot claim admission in the course in question in which according to the FTII Rules framed by the expert body of the first Respondent he cannot be allowed.

17. As a result, in the absence of any *malafide* or arbitrariness on the part of the first Respondent rejecting the Petitioner's prayer for grant of admission, no case to invoke extraordinary jurisdiction under Article 226 of the Constitution of India is made out.

18. The Petition therefore fails and is hereby dismissed.

(PRAKASH D. NAIK, J.)

(SHANTANU S. KEMKAR, J.)