

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.6818 OF 2013

Ms. Naman Varma

.. Petitioner.

Vs.

The Director,

The Indian Institute of

Technology,Mumbai & Ors.

.. Respondents.

**WITH
CIVIL APPLICATION NO.2402 OF 2013
IN
WRIT PETITION NO.6818 OF 2013**

The Director,

The Indian Institute of

Technology,Mumbai & Ors.

.. Petitioners.

Vs.

Ms. Naman Varma

.. Respondent.

Mr. Ratan Samal with Mr. Manohar Samal i/b M/s. Ratan Samal Associates for the Petitioner and respondent in CA No.2402/2013.

Mr. Aseem Naphade with Mr. Nhikil Shetty i/b M/s. M.V. Kini & Co. for the Respondent Nos.1 and 2.

Ms. Madhubala Kajale with Mr.A.R.Varma for Respondent No.3 – Union of India.

**CORAM : M. S. SANKLECHA &
A. K. MENON, JJ.**

RESERVED ON : 22ND FEBRUARY, 2018

PRONOUNCED ON : 17TH APRIL, 2018

JUDGMENT (PER A.K. MENON, J.)

1. By this writ petition, the petitioner seeks a writ of mandamus under Article 226 of the Constitution of India directing the respondent-institute to consider the application form filled by the petitioner under the Physical Disability (PD) category and admit the petitioner to the course of Master of Design 2013 batch.

2. The facts in brief leading to the present petition are as under : The petitioner is a resident of Mumbai and has secured degree in Bachelor of Design (Product Design) from Symbiosis International University. She suffers from a learning disability known as 'Dyscalculia'. As a school student, while appearing for Secondary Board examination, the petitioner was granted a special privilege both in terms of time and marks by the Maharashtra State Board for Secondary and Higher Secondary Education. She relies upon a certificate granting privilege dated 17th June, 2006 and 19th August, 2006. Even in the Junior College while undergoing studies for Class XI and XII special concession were given by the concerned college. She has relied upon the certificate granting this privilege on account of said learning disability. It is contended that despite her learning disability the Symbiosis Institute of Design found her to be a good student in the Product Design faculty and her candidature was recommended for graduate studies in design. Apparently

dyscalculia is directly associated with the disability in dealing with numbers.

3. On or about 25th November, 2012 the petitioner states that she made an online application through website of the Indian Institute of Technology under Common Entrance Exam for Master Design known as CEED 2013. It is her case that the application form did not contain any provision requiring learning disability to be declared. The application form was therefore filled in under the general category. CEED 2013 consisted of two parts, Part A and Part B. The petitioner appeared for both exams. The requirement of the respondent IIT was said to be minimum 64% in the general category to enable the applicant/student to secure admission in the course. In the OBC category the student required 57.6% and for SC/ST/PD category requirement was 32%. On or about 26th December, 2012, the results of the petitioner's examination in respect of Part 'A' for entry into IIT was declared. The petitioner had secured 50 marks out of 100 marks in the Part 'A' examination results. Thus, not making the entry as required under the general category which required minimum percentage of 64% so as to declare her result in Part 'B' for the IIT admission. The petitioner noted that qualifying marks in Part 'A' exams for PD category was only 32% as indicated in the mark-sheet. A copy of the mark-sheet has been annexed at Exhibit-G to the petition. The mark-sheet contained reference to the SC/ST/PD category.

4. In the above circumstances, the petitioner was set thinking, if PD indicates physical disability, would she qualify under that category for admission on account of learning disability. The petitioner made an inquiry about the PD category since one of the conditions mentioned in the application form required any discrepancy to be clarified within a period of 15 days. The petitioner states that she had submitted a learning disability certificate and requested the college to consider her in the PD category since she had scored 50 marks as against 32 required under the PD category and she was directed to file a fresh form, a copy of which is annexed at Exhibit-J. According to her, this fresh form was duly accepted and acknowledged by the respondent-institute. Thus, the petitioner approached the respondent institute by letter dated 27th December, 2012 stating that a learning disability should also be considered under the Physical Disability category on the basis of one of the conditions that any discrepancy should be brought to the notice of the CEED within 10 days. This was followed by another letter dated 4th January, 2013. However, the Professor and Head of the Industrial Design Center at IIT, Mumbai informed the petitioner that under the Ministry Guidelines, the PD is applicable only in case of (i) Physical Disability (loco motor and cerebral palsy) (ii) visual impediments (iii) speech and hearing impediments. Thus, indicating that the petitioner cannot be classified under the PD category.

5. It was thereafter that the petitioner sought legal opinion with regard to

her admissibility to the respondent Institute under the category of persons with learning disability. The legal opinion received by the petitioner on 13th February, 2013 was to the effect in view of the provisions of the Act, the petitioner would classify to be a person with disability under the Act. This view was supported by the decisions of Delhi High Court in Disabled Right Group Vs. Delhi University CWP 155 of 2004 dated 16th June, 2004 and in Dr. Rama Shanna Vs. University of Delhi, 106 (2003) DLT 97. It was in view of the aforesaid legal opinion that the petitioner again approached the Professor and Head of Industrial Design Center, IIT, Mumbai claiming that she would be entitled to PD category as a person with disability. However, Professor and Head of the Industrial Design Center, IIT, Mumbai informed the petitioner that she is not eligible for admission as she has made an application in the general category and learning disability does not fall within the ambit of Physical Disability under the ministry guidelines. The petitioner claims that the Head of Department IDC of the respondent was appraised of the legal opinion obtained by the petitioner and the fact that learning disability is also one form of disability contemplated under the Act and the petitioner's application should be considered. Meanwhile the IDC informed the mother of the petitioner that IDC had difficulty in considering the case since the petitioner was assessed for CEED in the general category and that she had not qualified in that category. It was contended that under the Ministry guidelines the PD category would only cover Physical Disability, Visual impairment, Speech and Hearing

Impairment and therefore HOD IDC had difficulty in considering learning disability under PD category and further it was suggested that the petitioner could request CEED to consider learning disability under the PD category.

6. On 6th March, 2013 the petitioner made a representation to the Deputy Chief Commissioner, Ministry of Social Justice and Empowerment Department, of Disability Affairs at New Delhi. By the said representation, the petitioner pointed out her predicament. In response thereto, the Deputy Chief Commissioner of Persons with Disabilities informed the Director, IIT that the Chief Commissioner had advised the respondent to consider the admission of the petitioner in post graduate design course after submission of disability certificate issued by the authorised medical authority. The said communication dated 8th April, 2013 inadvertently appears to have mentioned the petitioner's disability as Dyslexia instead of Dyscalculia. In any event, it is the petitioner's case that despite said communication the petitioner's case has not been considered by the respondent.

7. A personal hearing was thereafter set up by the Court of the Chief Commissioner wherein the petitioner and the respondents were directed to appear. While the petitioner was present, none appeared on behalf of the respondents. The petitioner's say was recorded. The respondent not having attended the hearing before the Court of the Chief Commissioner addressed a communication dated 6th May, 2013 was received by the Court of the Chief

Commissioner from the Registrar, IIT, Mumbai wherein it was stated that the petitioner had applied for CEED 2013 which is a qualifying round subject to further tests and interview and the application of the petitioner was not in the PD category that she wished to change to the PD category after the results were announced and while applying for admission to the Master of Design (M.Des) course in the Industrial Design Center of the IIT Mumbai (IDC). CEED does not permit to change the category and the petitioner had not qualified in CEED course under general category cut off which was required to evaluate CEED part B and only if part B was evaluated it would entail a chance to appear for tests to be conducted by IDC.

8. It is contended that the petitioner did not qualify in CEED 2013 and therefore her application vide the fresh form, for admission to M.Des at the IDC could not be considered. The petitioner's parents attended the hearing before the Court of the Chief Commissioner on the scheduled date i.e. 25th June, 2013. The respondents did not appear. On behalf of the petitioner it was contended that as on date of the submission of online application for CEED 2013 she was not aware that the PD category existed and therefore she applied under the general category. She learnt of the PD category only when the results were declared on 26th December, 2012. The mother of the petitioner had apparently met the HOD IDC and requested him to consider the case of the petitioner in the PD category, but she was informed that the disability certificate submitted

was of 2006 and a fresh certificate should be obtained. It is thereafter that the petitioner had obtained a fresh certificate dated 4th January, 2013 from the Learning Disability Clinic, K.E.M. Hospital, Parel and the same came to be submitted on 17th January, 2013.

9. The petitioner then received a call from Professor Roy the HOD IDC asking the petitioner to meet him along with the CEED application form. Since the petitioner was at that time studying at Pune she was called to provide particulars. On 18th January, 2013 all requisite papers sought by Professor Roy were submitted and the petitioner's mother was informed that the papers submitted will be placed before the Dean for his consideration. At that stage the petitioner's mother was uncertain whether the PD category was provided for in the online application form of CEED. On behalf of the petitioner meanwhile the application form seeking admission to CEED course was submitted on 18th January, 2013 along with certificate of disability dated 4th January, 2013 issued by the K.E.M. Hospital, Mumbai. This form was accepted. The petitioner's mother also submitted a copy of the judgment of the Delhi High Court in case of *Dr. Rama Shanna vs. University of Delhi and Others*¹ in which the University of Delhi had by an affidavit recorded the fact that Vice Chancellor of the University has granted his approval under 3% disability quota for the persons suffering from dyslexia with 40% or more disability as contemplated under Section 39 of the Act. The Delhi High Court

1 2003 SCC Online Del 720

in its order observed that in the opinion of the Director General of Health Services and the revised view of the Chief Commissioner of Persons with Disabilities, the University can certainly include dyslexics with 40% or more disability for the grant of benefits under Section 39 of the Act. In view of the said submissions the Chief Commissioner directed the respondent IIT to clarify whether the PD category was mentioned in the online application or not and the candidates selected under the PD category. Apparently, no reply was received to the said direction.

10. It was in the above background that the petitioner approached this Court by filing this petition. The respondent filed an affidavit dated 2nd August, 2017 opposing the admission and grant of interim relief. Pending the final disposal of the petition, the petitioner sought an interim direction to declare the Part B exam results by considering Part A results under PD category and directions to the respondents to disclose whether 3% reserved quota under the category of Persons with Disability (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 (Act) has been filled.

11. In the affidavit dated 2nd August, 2013 the respondent admits that the paramount interest of the Institute is to help the examinees while planning each stage of the examination and conducting it in a most student friendly manner. There are no malafides or malice against the petitioner and all

allegations were sought to be denied. Having examined relevant records made available to the deponent by the department handling the Common Entrance Exam for Designs CEED 2013, it is contended that there is no inaction on the part of CEED or other authorities and for considering the process of registration for CEED 2013, the petitioner has not mentioned her category as that of a Person with Disability and that it was essential to mention the category properly but she did so only after the exam. Even on the day of the exam, she did not seek change of category. It was further pointed out that the course has already commenced since 28th June, 2013. Therefore the petition should not be entertained.

12. The deponent has explained that CEED is conducted on all India level and there are two question papers Part A and Part B. Part A is evaluated first. If the candidate qualifies in Part A, then only Part B is evaluated for M.Des course. According to the respondent, the petitioner did not qualify for Part A and therefore Part B was not evaluated. In order to qualify for the Master of Design 2013 it was necessary to qualify in both Part A and Part B, only then would a candidate be eligible to apply for admission and merely by qualifying in Part A and Part B there will be no guarantee that the candidate will get admission in IIT, Mumbai by qualifying in CEED after obtaining sufficient remarks in Part A and Part B. The respective institutes conduct written test and interview.

13. On 5th August, 2013 the petition was admitted, the respondents were directed to consider the petitioner for admission to M.Des Programme and for that purpose to declare the petitioner's result in Part 'B' examination conducted by CEED by considering the petitioner as falling under the category of persons with disability in the Part 'A' examination. This Court relied upon the Delhi High Court order dated 13th January, 2010 and 12th March, 2010 in Writ Petition (L) No.10055 of 2004 Disabled Rights Group Vs. Delhi University & Ors. which in turn referred to the affidavit of the Deputy Commissioner for Disabilities relying upon the opinion of Directorate General of Health Services that dyslexia can be considered as a disability under the mental retardation category under the Act. The respondents were also directed to permit the petitioner to attend classes in the Post Graduate courses in M.Des. without prejudice to the rights and contentions of the parties. Besides, it was clarified that the selection process for taking a final decision in admitting the petitioner to a post graduate course in M.Des in the PD category i.e. category of persons with disability, could be carried out by the respondents. Thereafter, in accordance with the directions of the Court, the Part 'B' results of the examination was declared and the petitioner was declared "pass" under the PD category.

14. A further affidavit dated 30th August, 2013 of the same deponent records that as per the interim order dated 5th August, 2013 the petitioner was

permitted to attend classes in the post graduate course in Master Design without prejudice to the rights and contentions of the parties. In the meantime, IIT had verified the contents of Part B answer book of the petitioner along with three candidates under the general category with similar scores so that the identity of the petitioner is not revealed to the team of examiners. The examiners chosen were those who had examined all the CEED answer books and based on the CEED 2013. The cut-off marks in Part B for general category was 59%, for OBC 53.10% and SC/ST/PD 39.33%. The petitioner had obtained 35 marks out 100 which was lower than the PD category cut-off. Hence the petitioner had not qualified to be admitted to M.Des programme under PD category. It is further stated that a Committee comprising the faculty as appointed by the respondent has conducted written and studio tests followed by an interview on 14th August, 2013, as it is normal selection process. While assessing the petitioner the tests and interview included examining the candidates of various abilities such as creativity, imagination, sketching, articulation, material dexterity, knowledge of materials and processes and aesthetic sensitivity. Based on this assessment the petitioner had scored a total of 32.75 marks i.e. less than the cut off marks of 50 required in case of PD slot. Hence the deponent has stated that the petitioner is not entitled to pursue the M.Des program with the IDC in the PD category. The petitioner has not challenged the fact that she has not qualified under the PD category in the IDC test consisting of studio and written test followed by an interview. However, we

specifically asked the parties whether pointed attention to the above facts was drawn when the interim orders were being passed by the Court. The Counsel for the parties state that specific attention was not drawn of the Court to the above test and the petitioner failing it. This led the Court to pass interim orders under which the petition completed her course. This fact was brought to the attention of the Court for the first time on 29th July, 2016. This aspect of the matter was not adverted to in any of the interim orders passed by this Court as it appears that none of the two parties had drawn attention of the Court to the same. Therefore, the interim order dated 5th August, 2013 was continued and the petitioner was allowed by virtue of the Court's order to complete her course for M. Des at the respondents' Institute. All interim orders were passed specifically stated that it is without prejudice to the rights and contentions of the parties.

15. A third affidavit of Dr. R. Premkumar, who is the Registrar of the respondent no.1-Institute has also been filed. He has contended that the petitioner has made no allegations of any illegality or in propriety in assessment of Part B and the subsequent admission tests where she has not succeeded. The petitioner had not qualified with cut-off marks even in the PD category. The marks required in Part B in order qualify for IDC admission test was 39.33 marks whereas the petitioner has scored only 35 marks in Part B. She had thus failed to obtain minimum passing marks. The affidavit further

discloses that a valid CEED scorecard only entitles a candidate to apply for various design programmes in the country and based on the scores in CEED he/she could apply to various institutes which then conduct their own admission tests as part of the selection process. The petitioner has on 4th September, 2013 made a reference to the fact that 11 candidates had been admitted to the course and reference is made to the scorecard of those candidates. The deponent states in respect of those 11 candidates states that SC/ST/PD qualifying marks printed on the official scorecard is only a cut-off to obtain a valid CEED scorecard which entitles a candidate to apply for various design programmes. The IDC at IIT Bombay also has an admission test for its M.Des programme. According to the deponent 11 candidates have not only qualified in CEED but have also passed the admission tests in IDC, IIT Bombay before being granted admission to the M.Des programme and the petitioner has allegedly misled the court by withholding information about requirement of the additional admission test of IDC, IIT Mumbai.

16. The deponent has further stated that the petitioner's counsel and her mother had made allegations about alleged ego issues that the Professors had displayed all of which were made across the bar and no affidavit is filed alleging malice against the petitioner by any of the professors. It is expressly stated in the affidavit that continuing orders of the Court did not confer any right on the petitioner and that a wrong precedent would otherwise be set

even after a candidate is comprehensively disqualified in the admission process is allowed to complete the course. The high degree of principles and procedures followed by the IIT Bombay in fairness of examination held has been adverted to.

17. The Court therefore found that the interests of justice would be served only if the respondent is directed to permit the petitioner to attend the classes in the post graduate course in Master of Design without prejudice to the rights and contentions of the parties. On 4th September, 2013 a further order came to be passed directing the respondent nos.1 and 2 to place the Admission Rules of the respondent institution on record and directing the petitioner to appear for mid term examination December 2014. Though by an interim order dated 7th May, 2014 permitting the petitioner to continue in the second year came to be challenged before the Supreme Court in SLP 18275 of 2014, the SLP came to be disposed of and the High Court was requested to hear the matter.

18. A Civil Application taken out by the petitioner came to be disposed of since the petitioner stated that she had repeated the term and had cleared the examination in Nature of Materials and Processes under further orders of this Court. On 10th December, 2014 the counsel for the respondent no.3 placed on record the petitioner's results for the three Academic Semesters 2013-1, 2013-2 and 2014-1 and this Court also directed the respondent to accept the

petitioner's fees for the fourth semester and permitted the petitioner to appear at the examination. Accordingly, the matter was scheduled to be heard on 19th January, 2015. In an affidavit filed on 29th July, 2016 the Division Bench hearing the matter found that a false statement was made by Mr. Chintamani Joglekar in the affidavit dated 30th August, 2013 wherein he contended that the passing marks belonging to PD category is 39.33% whereas counsel appearing on behalf of the respondent after verifying the record conceded that passing marks for a candidate belonging to PD category is 25%. In view of this statement, the Court issued notice to Mr. Chintamani Joglekar as to why action under the provisions of Section 181 and 182 of the Indian Penal Code should not be initiated against him and why procedure under Section 340 of the Criminal Procedure Code should not be followed. The matter thereafter came to be adjourned to 12th August, 2016.

19. Vide order dated 31st August, 2017 passed on the administrative side this petition along with civil application No.2402 of 2013 came to be assigned to this Court.

20. Mr. Samal, learned counsel for the petitioner has taken us through the pleadings in the petition. Mr. Samal submitted that pursuant to the interim order passed by this Court from time to time, he stressed upon the fact that the petitioner, who was suffering from dyscalculia i.e. learning disability was

granted privilege for appearing class XI and XII examination. In CEED 2013 the petitioner had secured 50 marks in general category. On the next date the petitioner submitted a request along with learning disability certificate to consider the petitioner under PD category. It is Mr. Samal's case that the office of IIT, Mumbai directed the petitioner to submit latest disability certificate. After obtaining the one from K.E.M. Hospital, it is the petitioner's case that on 18th January, 2013 she was directed to fill an application form under PD category which she did, when she was informed that the learning disability does not fall within ambit of physical disability.

21. Mr. Samal has taken us through various interim orders passed and it is his contention that the petitioner is entitled to succeed in view of the Supreme Court having taken a view in similar circumstances in a case of *Visveswaraiah Technological University and Anr. vs. Krishnendu Halder and Ors*² in which case two students, who were admitted in the year 2007-08 by virtue of the interim order, continued their studies and were to complete the course in few months. In the facts and circumstances of that case the Court found that their admissions should not be disturbed but should be regularised and they should be permitted to appear for examination. He, therefore, submitted that in the instant case the petitioner being similarly placed and having completed examinations in all semesters and having passed all examination be treated as admitted in the course and therefore it is submitted that the petition may be

² (2011) 4 SCC 606

allowed. Mr. Samal also relied upon the copies of the scorecard of 11 other students who were admitted to the course and in respect of whom qualifying marks were shown as 25 for the SC/ST/PD category.

22. As against qualifying marks, 11 students have secured marks in excess of 50, all of whom had obtained under general category. Apparently, there were no candidates under OBC/SC/ST or PD category. He submitted that in the face of qualifying marks being shown as 25 and the petitioner having admittedly secured 32 the contention of the respondent that the passing marks were 39.33% is incorrect. He, therefore, submitted that at all material times the petitioner has been admitted to have been qualified.

23. The application form filled by the petitioner in Product Design course bears Application No.C134564A. The form in question has an option for SC/ST/OBC/NC category and PD category. The certificates are required to be attached with the form. Mr. Samal submitted that the petitioner had submitted a form along with certificate dated 18th March, 2006 issued by Lokmanya Tilak Hospital, Sion which assessed her as suffering from dyscalculia only. Mr. Samal further submitted that since HOD IDC had indicated that the petitioner should provide upto date certificate, a fresh certificate was obtained from K.E.M. Hospital Parel dated 4th January, 2013 which certified her as having dyscalculia. Mr. Samal relied upon the admit card issued by CEED 2013 and the results secured by the petitioner. The IDC test results declared

are as under :

CEED Marks (out of 25)	Written Test (out of 25)	Studio Test (out of 10)	Interview (out of 40)	Total Marks (out of 100)
8.75	8	4	12	32.75

24. Mr. Samal also filed a document setting out the admission procedure for M. Des Product Design (2013-14) which reveals that the document is for internal use providing for details and which was provided by the respondent in view of pendency of this matter. A copy of the application form filled online is also produced before us which reveals that personal details are entered as under :

“Personal Details

Application Number	C134564A
Name of the Applicant	Naman Varma
Date of Birth	12/25/1991
Gender	Female
Birth Category	General
Nationality	Indian
<u>Physical Disability</u>	“N”

(emphasis supplied).

In view of judgment in the case of Visveswaraiah Technological University and Anr. (supra) Mr. Samal contended that the admission of the petitioner is liable to be regularised and she should be awarded the degree.

25. Mr. Naphade, learned counsel appearing on behalf of the respondent-institute questioned maintainability of the petition. Mr. Naphade submitted that CEED examination is conducted in two parts Part A and Part B. Only if the candidate succeeds in Part A, would the results of Part B be declared. He submitted that CEED is an examination which does not by itself ensure admission to the M. Des course. If a candidate secures requisite marks in CEED he or she is required to attend a further test and interview at IIT, Mumbai. CEED is an all India examination which would enable the candidate concerned to apply to various institutes for design programme course in the country and is not an examination that would entail automatic admission in the M. Des programme of IIT, Mumbai. He submitted that after a candidate succeeds in CEED he/she is entitled to apply for IDC M. Des programme at IIT, Mumbai. The IDC admission test invitation is sent to the top 100 candidates and the general category candidate is required to secure at least 59% marks, an OBC candidate is required to secure 53.10% and PD category candidate is required to secure 39.33%. Only if candidates secure these marks in respective categories are they entitled to be invited to attend the IDC admission tests of the IIT Mumbai which includes written test and studio interview. In the instant case it is submitted that the petitioner had secured only 50% marks in Part A of CEED instead of the requisite 64%. She had not applied under PD category but had applied under the general category.

Although she was not entitled to declaration of Part B results, by an order of this Court, Part B results were declared which revealed that the petitioner has secured 35 marks. It is for Part B examination that the requisite marks were 50% for general category candidate, 45% for OBC candidate and 25% for PD category candidate. He submitted that these are the very marks which were displayed on the scorecard of the CEED and in the instant case the petitioner having secured 50% she had not obtained minimum requisite 64% marks under the general category in Part A.

26. Mr. Naphade further submitted that although she was not eligible, by virtue of the interim order of this Court which was passed without prejudice to the rights and contentions of the parties, the petitioner's result for Part B was declared and she was invited to the admission tests of the IDC wherein she secured only 35% marks whereas the requisite marks were 39.33%. He submitted that this aspect of the matter had been misconstrued by the petitioner, resulting in the petitioner alleging perjury by Mr. Joglekar. Since the Court had already passed interim orders without prejudice to the parties rights and contentions, she was permitted to write admission test and appear for studio interview. In the IDC test the petitioner had not qualified. Mr. Naphade submitted that perjury notice may be discharged for the reasons set out in the affidavit dated 11th August, 2016 which has been tendered today. We shall deal with the aspect of this matter a little later.

27. Reference was made to an affidavit of Mr. Joglekar dated 11th August, 2016 in support of his request for discharge of the perjury notice wherein the entire process of selection and admission of the students in IDC has been set out. Mr. Naphade pointed out that CEED office and IDC are separate entities having their own rules. The CEED examination is conducted on behalf of the Ministry of Human Resource Development for post graduate courses in design programme. IDC is a department of IIT Mumbai that offers M. Des course at IIT, Mumbai. CEED office is nationally conducted examination by GATE and Joint Admission Test (JAM). It is conducted by CEED office on behalf of Ministry of Human Resource Department. IDC department offers Master in PhD and Design. As far as the petitioner is concerned, CEED does not accept change in the category of birth-date from last date for CEED 2013 which was 5th December, 2012. CEED Part A results were declared on 24th December, 2012 but not Part B since the petitioner did not qualify in Part A and obtaining CEED scorecard does not guarantee a candidate a seat in IIT, Mumbai. CEED results were not provided as the petitioner did not qualify for Part A and she did not have scores of Part B. She submitted a certificate for learning disability only after declaration of results. CEED office refused to accept changes since the deadline had passed.

28. Pursuant to the interim order of this Court the CEED office arranged to evaluate Part B which task was undertaken and she secured 35 marks in Part B.

The petitioner did not qualify under the general category therefore she could not apply under various design programmes. As far as the IDC M.Des programme is concerned all persons who had a valid CEED score could apply. The petitioner could not apply as she did not have a valid CEED score. There were 61 seats in all categories. There were three applicants under the PD category but none had applied for Product Design which the petitioner desired. As far as other invitations to the admission under product design programme of IIT were concerned, the marks required were 64% in general category, 53.10% under OBC category and 39.3% in PD category as aforesaid. The basic minimum required for other listing in the final selection for product design programme were CEED 2013 25 marks, written test out of 25 marks, studio test out of 10 marks and interview out of 40 marks and the minimum passing marks for Product Design programme was 75% for general category, 67.5% for OBC and 50% for SC/ST/PD.

29. No PD candidates were called for the IDC admission test qualified under PD category 2013. The petitioner also did not qualify to be called for the IDC admission test. She secured CEED 2013 8.75 marks in the written test 8 marks, in the studio test 4 marks and interview 12 marks. The total marks obtained by the petitioner were 32.75 which is much lower than the required 50 marks. In the circumstances, her performance at the admission test did not qualify for IDC programme and it is therefore submitted that if despite

standard of fairness that the institute has exhibited, the petitioner is admitted, it would be major blow to the standards maintained by the institute.

30. Mr. Naphade submitted that as far as IIT was concerned, dyscalculia was not one of the disabilities that has been contemplated inasmuch as the communication from the head of department Exhibit-L dated 4th March, 2013 to the petition the IDC had expressed difficulty in considering the petitioner's case for learning disability and that she should request CEED to consider her under PD category. He submitted that even otherwise the certificate submitted by the petitioner was not in specified form under the Act.

31. Mr. Naphade further submitted that definition of disability contained in Section 2(i) must be read with Section 2(r) which deal with "mental retardation". He further submitted that certificate required to be obtained under the Act should be from a medical authority as defined under Section 2(p). Furthermore, the petitioner would be a person with disability as defined under Section 2(i). For the ease of reference we reproduce below the aforesaid definitions :

"2(i) "disability" means :-

- (i) blindness;*
- (ii) low vision;*
- (iii) leprosy-cured;*
- (iv) hearing impairment;*
- (v) locomotor disability;*

- (vi) mental retardation;*
- (vii) mental illness;*

Section 2

“(p) “medical authority” means any hospital or institution specified for the purposes of this Act by notification by the appropriate Government.”

Section 2

“(r) “mental retardation” means a condition of arrested or incomplete development of mind of a person which is specially characterised by sub-normality of intelligence.”

Section 2

“(t) “person with disability” means a person suffering from not less than forty percent of any disability as certified by a medical authority.”

32. According to Mr. Naphade even assuming that the petitioner had learning disability in the form of dyscalculia it would be covered under the definition of “mental retardation” which as we have seen above is a condition of arrested or incomplete development of mind of a person which is specially characterised by sub-normality of intelligence. We are unable to agree with this contention of Mr. Naphade.

33. The dictionary meaning of dyscalculia is difficulty in learning comprehending arithmetic, such as “difficulty in understanding numbers,

learning how to manipulate numbers, and learning facts in mathematics.” In some cases it is known as mathematics learning disability. Thus, in order to claim benefit of disability under the Act the person concerned would have to qualify with 40% disability as certified by hospital or institute specified for the purpose by notification by the appropriate Government. In the present case we find that the L.T.M.G. Sion was an institute notified by the State Government for the aforesaid purpose. Mr. Naphade submitted that Sion hospital which has certified the petitioner's condition is not the “proper authority” as defined under the Act and therefore, ought not to be accepted as correct. It is also contended that the Act by itself does not take into consideration a concept of learning disability.

34. Mr. Naphade then relied upon the judgment in *Dr. Raman Khanna (supra)* wherein the Delhi High Court had an occasion to consider the issue pertaining to claim of disability and to extend statutory benefit to 1% candidates suffering from locomotor disability. A reference was made by the Delhi High Court to Section 33 of the Act. Section 33 provides for creation of vacancies not less than 3% of persons and class of person with disability of which 1% each would be reserved for blindness or low vision, hearing impairment and locomotor disability. This of course makes reference to “establishment” defined under Section 2(k) meaning a corporation established by or under a Central, Provincial or State Act, or an authority or a body owned

or controlled by the Government or a local authority or Government company as defined in Section 617 of the Companies Act, 1956 and includes Departments of a Government.

35. As far as the perjury notice is concerned, Mr. Naphade submitted that a notice came to be issued as a result of apparent misunderstanding of the contents of the affidavit of Mr. Joglekar. He made reference to passing marks at 32.75 for M.Des programme as against 25 marks for qualification for part B. He pointed out that 25 marks was indeed passing marks for PD category in the Part B of CEED whereas the petitioner has qualified with 35 marks. However, she had failed to secure marks in part A under the general category. Belated category change, which was sought is not permissible. As far as the IDC interview was concerned, subject to short listing set out above, the candidate under PD category would be required to secure 39.33 marks whereas the petitioner secured only 35 marks. Secondly, in the admission test, the petitioner secured only 32.75 marks although required marks were 50 for the PD category, for OBC category mark required were in 59 marks and for general category admission 75 marks were required. The petitioner was not entitled to apply since she has not obtained necessary qualifying marks in the IDC admission test.

36. Mr. Naphade has tendered a further affidavit of Shri Joglekar dated 11th August, 2016 wherein he contends that he is not served with notice

pursuant to order dated 9th July, 2016 directing issuance of notice. He came to learn of the order from the administration of the respondent. He is no longer employed with IIT, Bombay and waived service of notice and affirmed truth and contents of earlier affidavits dated 2nd August, 2013 and 30th August, 2013. He has referred to and mentioned cut off marks in Part B CEED which were fixed by the Industrial Design Center, a Department of IIT for the purpose of admission and these cut off marks were different from the qualifying marks.

37. If the candidates did not achieve the minimum weightage marks for a category, the seats are left vacant. He has described the entire process of selection of IDC IIT Bombay. In the affidavit of Dr.R.Premkumar dated 5th December, 2014, he has reiterated that he is acquainted himself for relevant records and selecting CEED Organizing committee and admission committee of IDC IIT Bombay before referring to affidavit. He has apologized if there was any lapse on his part and stated that he has no reason to make a mis-statement or false statement. In fact it appears that the deponent cannot be faulted. The statement made by him in earlier affidavits are now being correctly explained. The relevance of 25 marks being qualifying marks for CEED refers to qualifying marks in part B and not part A. Thus, we have no reason to sustain the perjury notice which in our view deserves to be dismissed.

38. On behalf of the Union of India Ms. Kajale submitted to the orders of the

court.

39. Having heard counsel for the parties at length, we find that under the scheme devised for the admission process to the programme M.Des an aspiring student would be required to first appear for the CEED examination. As we have seen the CEED test is carried out as a preliminary pre-qualification to enable the student of design to apply to Universities offering the M.Des course. In doing so the student is required to attempt two parts, Part-A and Part-B. An applicant in the general category is required to obtain 64% marks in Part-A in the OBC and SC/ST/PD category the Part-A qualifying marks are 57.6% and 32%. Only if the student obtains these marks in Part-A will Part-B of the paper be evaluated. In the present case the petitioner proceeded on the basis that she had obtained 50 marks in Part-A. This by itself would not entitle the petitioner to qualifying, since the minimum marks required was 64% for the General category that she had applied in.

40. We find the student did not apply under the PD category despite the admission form making a provision for the same. She has subsequently, after declaration of the Part-A results contended that she was entitled to be granted the concession in the PD category and be treated as a PD category applicant, so that she could avail of the concessional 32% qualifying marks. The PD option was available in the on-line application form for CEED 2013 but the petitioner

had clearly answered in the negative. It appears that at this stage she was unaware that learned disability is also one of the disabilities which could entail concessions. Nevertheless the contention of Mr. Samal that dyscalculia amounts to a physical disability cannot be accepted. Dyscalculia is a disability that affects the mental process. Thus answer in the CEED application form to the question whether the petitioner does not suffer from physical disability appears to be correct. However, in the application form for admission to the M.Des programme the petitioner selected the PD option attaching an Opinion Certificate given by the Learning Disability Clinic, Sion Hospital which mentioned that the petitioner suffered only from dyscalculia which is a learning disability. Physical and neurological assessment is certified to be normal. Vision and hearing were also normal. The fresh certificate obtained from the Learning Disability Clinic at KEM hospital also mentions dyscalculia as part of the Education Assessment. The Physical and Neurological assessments are both seen to be normal. In this view of the matter, we do not see how petitioner could take advantage of the 'physical disability' option.

41. In facts of the present case, the petitioner appears to have approached the IIT vide letter dated 27th December, 2012 under the misconception that she had applied for IDC entrance test where in fact the form she had filled was for CEED form and not IDC form. IDC form was only submitted much later on 18th January, 2013 when the institute was making endeavor to consider the

petitioner's case but which could not be considered due to obvious reasons. Even subsequent communication dated 24th January, 2013 (wrongly mentioned as 2012) while filling online CEED form the petitioner's mother had contended that she had applied under general category instead of PD category. In fact the online application was made for CEED examination and not for IDC.

42. The petitioner has succeeded in various examinations but initially had not qualified in the admission process. Disqualification on the basis of the CEED score cannot be faulted. The petitioner did not claim concessions under the PD category before the test but she claimed the benefit of learning disability after the CEED result was declared. Thereafter she applied under the PD category for the entrance examination to M.Des. This by itself would not in our view be of any assistance to the petitioner. The Part B result were not liable to be declared in the first place, however they were declared pursuant to order of this Court. Even assuming that part-B result could have been declared on the basis that petitioner had qualified in CEED part-A in the PD category, declaration of the Part-B result would only entail eligibility to apply for the M.Des programme of IDC, IIT Mumbai. Even without this Court specifically passing orders, the IIT Mumbai proceeded to conduct further pre-admission tests required to be cleared to be eligible to be offered a seat in the IDC which the petitioner failed to clear.

43. To suggest that the petitioner suffered from mental retardation so as to fit into the category of physical disability would be an extreme unfair and inappropriate conclusion, since in our view mental retardation clearly indicates of incomplete development of mind which is necessary sub-normality of intelligence. In our view sub-normality of intelligence is a requisite ingredient of mental retardation as defined under the Act. Applying the test to the present petitioner would undoubtedly not be justified since the petitioner has admittedly not demonstrated sub-normality of intelligence, otherwise she would not have appeared and cleared various examinations for the past four years. Furthermore, she has been certified as suffering from dyscalculia which is learning disability and which has not been taken into consideration in the Act of 1995. On the other hand if one examines the definition of "mental illness" under section 2(q) it refers to mental disorder other than "mental retardation". This would have been more appropriate conclusion that could be drawn in the facts of the present case since at the best dyscalculia may be considered as disorder which large number of persons are admittedly suffering from.

44. The Act does not define learning disability. At the same time what is contemplated by CEED was only physical disability and not learning disability. It is for this reason that HOD IDC had suggested that the petitioner should approach CEED to consider learning disability under PD category. CEED is

no doubt a programme conducted at the all India level. A reference to the web page of CEED describes CEED programme as one where CEED qualified students are required to secure M. Des and PhD courses in various institutes and this scorecard is normally valid for a particular period of time. Various institutes participate in CEED which includes IITs and other private institutions. Although we are not in a position to ascertain whether web page of CEED contains same description in the year 2012-13, we have no hesitation in accepting the contention of the IIT that since CEED does not by itself ensure a candidate of a seat in the M. Des programme of IIT, Mumbai, obviously it entitles a student to apply in any of the institute listed which would recognise a CEED certificate.

45. In our view to make special provision for the integration of persons with disabilities into the social mainstream would be one of the heads under which an educational institute could provide for learning disability. Furthermore, as part of strategy for comprehensive development of programmes and services and equalization of opportunities for persons with disabilities also would be a relevant head under which an educational institution makes special provisions for persons with learning disability. The material aspect of the CEED examination application is categorization as General, Other Backward Classes and the SC/ST/PD category. The first of these two categories, namely, general, OBC/SC/ST are not categories which are contemplated under the Act. As far as

the Act is concerned, the Petitioner may be a person with disability but CEED and IDC have proceeded on the basis that only physical disability could be considered but that too if it is declared at the stage of application. In the course of submissions of counsel, we called upon Mr. Samal to provide with a copy of online application filled by the petitioner which he fairly submitted that was not available with the petitioner since it was not properly "saved". However, on behalf of IIT, Mumbai we have since been provided with a copy of online application form which is seen to be downloaded on 12th September, 2014. The application form is for CEED 2013. The personal details contained in column of physical disability in which the petitioner is seen to have entered alphabet "N" presumably stating "No".

46. This indicates that at the time when online form was filled the petitioner was aware that physical disability category is available and learning disability was not specifically mentioned. It is not as if the petitioner was unaware of the learning disability since she already availed of concessional facility since 2006 on account of her learning disability. The question is whether at the time when the application for CEED 2013 was filled in the petitioner made any attempt to claim benefit of concessional qualification contemplated under the PD category. This is one aspect which will be crucial to determine whether it was a bonafide claim. It is evident that when online form was filled the petitioner did not claim benefit of learning disability. Besides this it appears

that the petitioner has herself not filled up online form. Since the entry made against query “Have you done the transaction ?” is answered with a letter “N” meaning “No”. Thus, the person who filled the application form on behalf of the petitioner also was clear about the fact that PD category was probably not applicable. CEED 2013 was held on 25th November, 2012 and the petitioner for first time claimed the benefit of lower qualifying marks on 27th December, 2012 i.e. after the marks for part A were published. There appears to be confusion in the petitioner's understanding of two different stages for securing admission in the M. Des programme conducted by the respondent. This confusion appears to be fueled by the fact that both CEED 2013 as well as M. Des courses are conducted by the IIT. CEED is a qualifying examination which entitled the qualifying student to apply to various course with IIT and other institutions offering the design programmes and the M. Des programme is conducted by IIT which requires special qualification and which the petitioner has not qualified for, in accordance with the standards set by the respondent.

47. Apropos the decision of the Delhi High Court in Dr. Khanna (Supra), in our view the petitioner cannot claim benefit of Section 33 which falls under Chapter VI specifically deals with “Employment”. The petitioner's case would fall under Chapter V dealing with “Education” which requires appropriate Governments and local authorities to support free education, vocational

training and which requires Government to prepare CEED for conducting part time classes with children with disabilities providing functional literacy, imparting non-formal education and generally education through open schools providing devices teaching aids etc. Chapter V which consists of Section 26 to 31 promotes Government participation in ensuring assistance for students with disabilities although no specific reference is to be found in Chapter V to learning disability. The emphasis seems to be on providing separate systems for such children upto age of 18 by providing them in applicable cases with free education and promote integration to the students in normal schools equipping special schools for children with disabilities, part time classes for those who could not continue education beyond standard V. No provision of the Act appears to consider specific situation that the petitioner faces today. The statement and objects of the Act sets out that India is a signatory of the said proclamation and it is 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 a strategies for comprehensive development of programme and services and equalization of opportunities for persons with disabilities; and

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

48. The petitioner has otherwise been found to have completed the course and has stated that only the degree has to be awarded which the IDC is unwilling to do in view of the fact that the petitioner had not qualified in Part-A in the General category, whereas even in the IDC entrance tests the petitioner had failed to qualify since she has failed to secure the requisite marks in the written test, studio test and interview. The question which therefore needs to be considered can be said to be in two parts. Firstly where dyscalculia can be taken to be a physical disability ? In our view the answer to this is in the negative. Consequently and even assuming dyscalculia can be taken to be a physical disability it is certainly is related to the mental faculties and as such widely recognised as a learning disability. Then in such event whether benefit can be extended to the petitioner by regularising the admission and awarding her the degree because she has passed all examinations held during the year 2013, 2014 and 2015 to grant her that relief would amount to exercising

powers under Article 142. In other words, whether the petitioner would be entitled to take advantage of the fact that she had subsequently cleared all examinations for the years. 2013, 2014 and 2015 and whether this court can within its extraordinary jurisdiction under Article 226 pass an order directing the IIT to award the degree to do complete justice.

49. During the course of the hearing, we asked Mr. Naphade, learned Counsel for the respondents that what would be the correct understanding of the word “PD” in forms issued by the respondents institute. Mr. Naphade, very fairly stated that PD would mean persons with disability and not restricted itself only to persons with physical disability. Therefore, even if we accept that the petitioner was entitled to be considered in the PD category i.e. persons with disability category, yet the facts remains that even in that category, the petitioner has not passed the IDC test. The conduct and results of the IDC test have not been disputed by the petitioner. In these circumstances, it was as much necessary for the petitioner as well as the respondents to bring the aforesaid results of the IDC test to the specific attention of the Court when interim orders were passed without prejudice to the rights and contentions of the respective parties. This would ensure that the petitioner is not put to a disadvantage of having to continue her education at the IIT Institute even though finally it may be found that she could not have been admitted for the Course.

50. In the above view, we have to necessarily hold that the petitioner has not qualified to be admitted for M.Des programme of the respondent Institute under the category of PD i.e. persons with disability. However, the facts remains that the petitioner has successfully completed the course and the interest of justice would possibly demand that the petitioner be awarded the degree so as to do justice between the parties.

51. However, we find that the issue which arises for our consideration is whether the benefit can be extended to the petitioner by regularizing her admission and awarding her a degree because she has passed all examinations held during the years 2013, 2014 and 2015. For that purpose whether while exercising powers under Article 226 of the Constitution can we exercise powers which are available to the Apex Court under Article 142 of the Constitution of India and direct the IIT to award the degree to the petitioner so to do complete justice between the parties.

52. In the judgment of *Visveswaraiah Technological University (supra)* the Supreme Court duly empowered under Article 142 of the Constitution observed that the admission of the students concerned was on the basis of interim orders of the Court and therefore had ought not to be disturbed, but regularised. In the instant case also the petitioner had proceeded to had been assessed on the basis of the orders of this Court passed from time to time, but regularising the

admission was within the discretion of the Supreme Court. Article 142 of the Constitution empowers the Supreme Court to pass such orders as are necessary for doing complete justice in any cause or matter pending before it and any decrees so passed or orders so made shall be enforced throughout the territory of India. This provision is effectively meant to do complete justice between parties by supplementing the legal framework and not supplanting it.

53. In *B. C. Chaturvedi vs. Union of India* (1995) 6 SCC 749 the Supreme Court held that the High Court being the Court of preliminary jurisdiction has inherent powers to do complete justice between the parties similar to the Supreme Court powers under Article 142. In that case even the punishment imposed by the disciplinary authority in departmental enquiry was disproportionately excessive so as to shock the judicial conscience. The High Court, it held, can modify punishment by moulding the relief. The Court observed the fact that there is provision similar to Article 142 in relation to the High Court's powers can be no ground to think that the High Court cannot do complete justice in the facts of *B. C. Chaturvedi*. (*supra*). Absence of provision like Article 142 is not material as High Court too can exercise such power being a Court of plenary jurisdiction, but this power is not as wide as that which the Supreme Court has under Article 142.

54. In *Sanchalakshri vs. VijayaKumar Raghuvirprasad Mehta and*

Anr. (1998) 8 SCC 245 a three Bench Judge of the Supreme Court held that only the Supreme Court has power under Article 142 to pass such decree or such order as is necessary for doing complete justice held in the absence of analogous provisions, the High Court and Tribunal do not have similar powers. In contradistinction in *Sanchalakshri(supra)*, the three Judge Bench of the Supreme Court while considering *B.C Chaturvedi (supra)* observed that observation made by Hansaria, J in B. C. Chaturvedi had no relevance in the case of *Sanchalakshri*, since *Sanchalakshri* was not concerned with the case where the High Court or Tribunal found difficulty in granting appropriate relief because of some technicalities of rules or procedures even though justice demanded it. Moreover it was observed that the views expressed by Hansaria, J. were expression of a personal view and that Hansaria, J. had agreed with what the other two learned judges held as regards the powers of the High Court to interfere with the order of penalty and therefore it would not be correct to say that the Supreme Court in *B.C. Chaturvedi (supra)* has accepted the view that the High Courts possess the same power which the Supreme Court has under Article 142 of the Constitution for doing complete justice even in the absence of such specific provision.

55. In view of the above, we are of the opinion that the decision in *Visveswaraiah Technological University (supra)* whereby the Supreme Court decided that it was appropriate not to disturb the status quo they obtained

would be of no assistance to the present petitioner. In the facts of the present case and given the decision of the Supreme Court in *Sanchalakshri (supra)* this Court lacks the power to pass an Order today directing the Respondent no. 1 IIT to treat the petitioner as admitted and to issue appropriate degree and thereby do complete justice between the parties.

56. After this matter was reserved for orders and in view of the view we have taken as regards powers of the High Court to do complete justice in the matter of this nature, we invited further submissions of counsel on both sides considering the view taken by the Supreme Court in *Sanchalakshri (supra)*. Accordingly, we heard parties and their Advocates on 18th November, 2017 and 22nd February, 2018. Mr.Samal, learned counsel appearing on behalf of the petitioner submitted a compilation of documents pertaining to factual aspects of CEED Information Brochure, 2013, IDC Admission brochure of 2017, relevant extract of IIT Act, 1961. He sought to contend that CEED and IIT had a common Chairman. He submitted that all enquiries about CEED were required to be made at the GATE office which was under the control of the Chairman, GATE, who was also Chairman of IIT Bombay. He relied upon clause 1.9 of the CEED Information Brochure 2013 and submitted that the admission brochure of IDC IIT Bombay also indicated that IDC was administered by IIT and since the institution was involved in both CEED evaluation and IDC admission were the same having a common Chairman all deficiencies would have been rectified by

the IIT itself.

57. As far as legal position is concerned, Mr.Samal placed reliance upon some additional judgments in the case of (i) *Writ Petition (Civil) 292 of 2006 Disabled Rights Group and Anr. Vs. Union of India & Ors.* in which the Supreme Court considered the issue pertaining to persons with disabilities and reservation of seats in Educational institutions. (ii) He also relied upon the decision in the case of *Secretary, ONGC Ltd. and Anr. Vs. V.U. Warriar (2005) 5 SCC 245*. He relied upon the observations in paragraph 27 and the quote from the case of *Sangram Singh Vs. Election Tribunal, Kotah AIR 1955 SC 425* which observed that the High Courts' powers are purely discretionary and no limits can be placed upon that discretion but it must be exercised along recognised lines and not arbitrarily. One of the limitations imposed by the Courts on themselves is that they will not exercise jurisdiction in this class of case unless substantial injustice has ensued, or is likely to ensue. Mr.Samal submitted that the principle embodied in the judgment of Sangram Singh (Supra) had been quoted with approval in various decisions including that of ONGC Ltd. (supra) and submitted that the powers of this Court to do substantial justice is apparent and should be exercised.

58. On the other hand Mr. Naphade submitted that in several cases this Court has observed that the power under Section 142 could not have been

exercised by the High Courts, particular reference was made to the case of *Mohan Das Issardas Vs. A. N. Sattanathan & Anr. (1955) ILR Bombay 318* wherein he relied upon the observations of the Supreme Court that exhibit the same respect for *obiter dicta* of the Supreme Court that we did for those of the Privy Council and it is as much necessary in the interests of judicial uniformity and judicial discipline that all the High Courts must accept as binding the *obiter dicta* of the Supreme Court in the same spirit as the High Courts accepted the *obiter dicta* of the Privy Council.

59. Mr. Naphade thereafter placed reliance on the decision of the Supreme Court in the case of *Anil Kumar Jain Vs. Maya Jain (2009) 10 SCC 415* in which power of the High Courts to do complete justice to the parties came to be considered in the context of a matrimonial dispute. The Supreme Court observed that the High Courts will not have powers similar to those exercised by the Supreme Court under Article 142 of the Constitution and the Civil Court and the High Courts cannot pass orders permitting divorce by consent under Section 13-B of the Hindu Marriage Act, 1955 without waiting for expiry of the statutory period of six months. In effect it is only the Supreme Court which can exercise extraordinary powers under Article 142 and can do complete justice to the parties.

60. In our view there can be no uncertainty over the powers of the High

Courts while exercising the writ jurisdiction. The High Courts do not have powers to pass an order to do complete justice to the parties similar to those the Supreme Court would pass under Article 142. The Division Bench of this Court made similar observations in the Family Court Appeal No.91 of 2016 by the order dated 15th March, 2017 in the context of Section 13-B of the Hindu Marriage Act. Paragraph 12 of the order reads as follows :

“12. Though we are completely satisfied that the marriage between the parties is irretrievably broken down, we are unable to help the Appellant in this case. The only ray of hope for him is to approach the Apex Court and seek the decree of divorce on that ground.”

61. In the instant case, we find that the respondent challenged the interim order dated 7th May, 2014. The Supreme Court while disposing of the SLP requested the High Court to decide the main petition as early as possible and preferably before 30th December, 2014 failing which the High Court was to decide Civil Application No.4202 of 2013 filed for vacating the interim relief. However, the applicant made no efforts to have civil application heard and the civil application remained pending. In the meantime respondent no.1 has continued further tests as contemplated by IDC and also permitted the petitioner to attend classes and complete the entire course. The respondent has expressed its inability to award the degree to the petitioner.

62. One more argument pressed into service by Mr. Naphade is that in any case disability certificate was not in proper form as contemplated under the Act. We are not impressed by this submission since it was never the case of the respondent that the benefit of PD category could not be granted to the petitioner on account of the disability certificate not being in particular form. We are of the view that although the petitioner may be entitled to be declared successful in the course we are unable to grant her any further relief in this petition for want of necessary powers under Article 226 to declare the petitioner as having passed M.Des program held by IDC. In the circumstances we pass the following order :

- (i) Petition disposed of in above terms.
- (ii) Perjury notice issued to Shri Chintamani Prabhakar Joglekar dated 29th July, 2016 is discharged.
- (iii) In view of disposal of the petition, Civil Application No.2402 of 2013 is also disposed of. No order as to costs.

(A. K. MENON, J.)

(M. S. SANKLECHA,J.)