

*** IN THE HIGH COURT OF DELHI AT NEW DELHI**

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Date of decision: November 12, 2018

+ W.P.(C) 3817/2018, CM Nos. 15143/2018, 18933/2018 & 18935/2018

NATIONAL FEDERATION OF THE BLIND Petitioner

Through: Mr. S.K. Rungta (Sr. Adv.) petitioner
in person with Mr. Shivankur Shukla,
Adv.

versus

UNION OF INDIA & ORS Respondents

Through: Mr. Dev. P. Bhardwaj, CGSC for R1
Ms. Monika Arora, SC (JNU) with Mr.
Harsh Ahuja, Mr. Kushal Kumar, Ms.
Vibha Tripathi, Advs. for R3/JNU with
Mr. M.K. Pachori, Deputy Registrar
for JNU

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE V. KAMESWAR RAO

V. KAMESWAR RAO, J. (ORAL)

1. The present petition has been filed by the petitioner Federation *inter alia* seeking relief that the selection to M.Phil / Ph.D and Ph.D. courses in respondent no.3 has to be on relaxed standards and on the basis of the marks obtained both in written examination and viva-voce.

2. It is the submission of Mr. S.K. Rungta, learned Sr. Counsel / representative of the petitioner that in terms of Section 32 of the Persons with Disabilities (Equal Opportunities, Protection

of Rights and Full Participation) Act, 2015 (for short 'Disabilities Act'), all Government Institutions of Higher Education receiving aid from the Government have to strictly reserve not less than 5% of seats for persons with disabilities. According to him as against 723 seats in the academic session 2018-19, only 32 seats have been reserved for persons with disabilities. The said figure has been quantified by the University by applying the Central Educational Institutions (Reservation in Admission) Act, 2006, which stipulates vide Section 3 that the reservation of seats in admission in Central Educational Institutions shall be out of the annual permit strength in each School / Centre.

3. It is his submission that the reservation for disabled persons has to be on the basis of total number of seats by taking Schools / Centres together. He also submits that for the academic year 2018-19, the University has not granted reservation where the number of seats in each school / centre is less than 9. In other words, one seat is reserved in each School / Centre where there are minimum 9 seats. According to him, when Section 32 of the Disabilities Act, 2015 mandates that not less than 5% seats must be reserved for persons with disabilities, the respondents under the garb of applying

the Act of 2006 cannot reduce the reservation for persons with disabilities to less than 5%. In other words, the Act of 2006 cannot govern the manner of computation of seats to be reserved for persons with disabilities.

4. On the other hand, Ms. Monika Arora, learned counsel appearing for the respondent no.3 / University submits that the implementation of reservation for PWD category at 5% for all the courses offered in the academic year 2018-19 is in pursuance to the Disabilities Act, 2016. She submits that JNU is having 11 Schools and 4 special centers which are offering M.Phil / Ph.D. Courses. In order to compute reservation, a reservation ready reckoner duly approved by the competent authority is referred to. She concedes that reservation computed may not be on the total number of seats / intake, but on the basis of seats distributed from ready reckoner, for example, JNU may indicate total 100 seats for Ph.D. Ideally, reservation for PWD horizontally should be for 5 seats. However, the total 100 seats must have a break-up of the course offered by various Schools / Centres with varied intake from minimum one seat to any number of seats. Therefore, if reservation ready reckoner is applied to say 7 seats in a particular centre, it may not

result in reservation for PWD. According to her, it is for this reason that the seats offered to PWD category comes to 32 instead of 36 @ 5%. She also states though total 33 number of qualified candidates were invited for viva-voce from PWD category for both the courses against total intake of 32, only 20 candidates qualified in the viva-voce as (i) reservation can be granted only where provision has been kept for reservation of a particular category centre-wise/ school-wise; (ii) the university permits maximum three choices to each candidate in each programme. According to her, out of 20 candidates qualified for viva-voce, 15 have got admission.

5. We note that an application has been filed by the petitioner seeking admission with regard to two candidates, namely, Deepak Mishra and Dharamveer Yadav, who according to Mr. Rungta have been denied admission on the ground that the reservation in the courses of study (Sanskrit and Comparative Political Theory) in which they were seeking admission is one each.

6. Ms. Arora has drawn our attention to an additional affidavit filed by the University wherein following has been stated:

“In pursuance of The Rights of Persons with Disabilities Act, 2016, the competent authority of the University has agreed to grant admission to two PWD candidates

namely Shri Dharamveer Yadav in M.Phil / Ph.D. (Comparative Political Theory) and Shri Deepak Mishra in M.Phil / Ph.D. (Sanskrit).

In M.Phil / Ph.D. (Sanskrit) the total intake for Academic Year 2018-19 as per University Grants Commission (Minimum Standards and Procedure for Award of M.Phil / Ph.D. Degrees) Regulations, 2016 was 19 and the total joined candidates is 18. Thus, the Respondent University can offer admission to Shri Deepak Mishra without violating the UGC (Minimum Standards and Procedure for Award of M.Phil / Ph.D Degrees) Regulations, 2016.

In M.Phil / Ph.D. (Comparative Political Theory) the total intake for Academic Year 2018-19 as per University Grants Commission (Minimum Standards and Procedure for Award of M.Phil / Ph.D. Degrees) Regulations, 2016 was 7. All 7 candidates were given admission, granting admission to one more candidate (Shri Dharamveer Yadav) is not permissible under Clause 6.5 of the UGC Standards and Procedure for Award of M.Phil / Ph.D. Degrees) Regulations, 2016. However, JNU will carry out the direction given by the Hon'ble Court and request that the Hon'ble Court may please give any necessary directions in this regard."

7. Having noted the aforesaid position, the only issue that remains to be decided is whether Dharamveer Yadav is entitled to admission in "Comparative Political Theory" stream. The justification given by the University is that in view of University Grants Commission (Minimum Standards and Procedure for Award of M.Phil / Ph.D. Degree) Regulations, 2016, the intake for M.Phil / Ph.D. is 7 and any deviation would be in violation of the said

Regulations and all the 7 seats having been filled, no admission can be granted to the petitioner.

8. The justification given by the University is appealing but we cannot ignore the fact that Dharamveer Yadav despite qualifying the selection process could not get admission as there was only one reserved seat for a disabled candidate and not two. Also, we find that many reserved seats, at least 15 have gone waste as no person with disability could get qualified, against the said seats. In such an eventuality and in peculiar facts of this case, the Court is of the view that the Respondent No.3 shall increase the intake to 8 in the “Comparative Political Theory” stream, which shall be supernumerary, which shall get lapsed after Dharamveer is awarded the degree. His admission shall also consume one seat of the unfilled seats reserved for PWD, which could not be filled for want of candidates.

9. That apart, this court is of the view that the respondents cannot dilute the mandate of the Section 32 of the Disabilities Act, and reduce the reservation to less than 5%. This is what has been held by this court in the cases of ***Sambhavana v. Union of India and Ors. W.P.(C) 3919/2014 decided on March 4, 2015; Students***

Federation of India and Ors. v. Union of India and Ors. W.P(C) 3032/2017 decided on October 1, 2018 and the Supreme Court in the cases of *Justice Sunanda Bhandare Foundation v. Union of India (UOI) and Ors. (2017)14 SCC 1; Union of India and Ors. v. National Federation of Blind and Ors. 2013 10 SCC 772,*

10. It is for the University to work out the mandate of the Act, so that every person with disability, who qualifies get admission. But in no case they can violate the mandate.

CM Nos. 15143/2018, 18933/2018 & 18935/2018

Dismissed as infructuous.

V. KAMESWAR RAO, J

CHIEF JUSTICE

NOVEMBER 12, 2018/jg