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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ LPA 646/2017 & CM. Nos. 35972/2017 and 35973/2017
VIRENDER AGGARWAL Appellant
Through: Mr. Amanpreet Singh Rahi, Adv.
versus

DEPARTMENT OF EMPOWERMENT OF PERSONS WITH
DISABILITY Respondent
Through: Mr. Anurag Ahluwalia, CGSC with
Mr. Abhimanyu Singh, Adv. for UOI

CORAM:
HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE V. KAMESWAR RAO

ORDER
% **07.09.2018**

CM No. 35972/2018 (for exemption)

Exemption allowed, subject to all just exceptions.

Application stands disposed of.

**CM No. 35973/2017 (for additional documents under Order 41 Rule 27
CPC)**

This is an application filed by the appellant seeking permission to take the additional documents on record.

For the reasons stated in the application, the same is allowed and additional documents are taken on record. Application stands disposed of.

LPA 646/2017

1. The present appeal has been filed by the appellant challenging the order dated July 28, 2017 passed by the learned Single Judge in W.P. (C)

3478/2017, whereby the learned Single Judge has dismissed the writ petition.

2. It is the case of the appellant herein before the learned Single Judge that his daughter, Ms. Geetika Aggarwal, was born on August 19, 1985 with a congenital defect as she had only one kidney. She completed her Bachelors of Technology in Electronics and Commerce Engineering. She proceeded to take admission with University of Northumbria in England to pursue her Master of Science Course in Microelectronics and Communications Engineering. She completed the said course in the year 2010. Being a meritorious student, Geetika, was selected for pursuing the PhD Research Programme in the same university.

3. Her claim before the learned Single Judge was that being a person with disability, she be granted scholarship under the National Overseas Scholarship for Students with Disabilities announced by the respondent herein. Her application was rejected on the ground that she cannot be treated as a person with disability.

4. The learned Single Judge after noting provisions of the Rights of Persons with Disabilities Act, 2016, held that the disability is one which in interaction with any of the factors obstruct person with the disability to fully

and effective participate in the society. He further held in the case in hand, the appellant is not hindered in any manner in her interaction and effective participation in the society to the fullest extent.

5. Mr. Amanpreet Singh Rahi, learned counsel for the appellant makes similar submissions by drawing our attention to the disability certificate issued to the appellant. According to him, the appellant being a person with disability, her application for scholarship should have been favourably considered. He also relies upon the minutes of the High Powered Inter-Departmental Committee regarding inclusion of new categories of disabilities under the ambit of the Disability Act, 2016 to contend that a case of single kidney needs to be considered for inclusion in the new category of disabilities which has not been done in the said meeting.

6. The submissions made by Mr. Rahi are without any merit. It is the conceded case of the appellant that her case was not covered by the definition of “disability” under the Act of 1995, as enumerated under Section 2(i) of the 1995 Act, which have been noted by the learned Single Judge in para 5 of the impugned order. If that be so, the case of the appellant has to be seen from the perspective of act of 2016.

7. Insofar as 2016 Act is concerned, the learned Single Judge was

justified in concluding that a “person with disability” shall only be such person, who has long term physical, mental, intellectual or sensory impairment which in conjunction with “barriers”, as indicated in Section 2(c) of the Act, hinder the effective participation of a person with disability in society. According to the learned Single Judge, the case of the appellant is not one of such nature. The said conclusion cannot be faulted with.

8. The plea of Mr. Rahi that the appellant, being a person with one kidney, her case needs to be considered by the High Powered Inter-Departmental Committee for inclusion in the new category of Disabilities under the Act, 2016 is concerned, the same also does not impress us for the simple reason that it is for the rule making authority to consider such an inclusion. No mandamus can be issued to an authority to consider such inclusion as it is the discretion of the said authority whether to consider inclusion of such category of Disability under the provisions of the Act, 2016.

The appeal is dismissed.

CHIEF JUSTICE

V. KAMESWAR RAO, J

SEPTEMBER 07, 2018/aky