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

Reserved on: 5th July, 2019
Pronounced on: 23rd July, 2019

+ W.P. (C) 9740/2018 & CM APPL. 37948/2018

VAIBHAV BAJAJ Petitioner
Through: Mr. Rajan Mani, Adv.

versus

SRI GURU GOBIND SINGH COLLEGE OF COMMERCE
AND ORS. Respondents

Through: Mr. A. P. S. Ahluwalia, Sr.
Adv. with Mr. S. S. Ahluwalia
and Mr. Mohit Bangwal, Adv.
for R-1
Mr. Santosh Kumar and Mr.
Bibin Kurian, Adv. for R-2
Mr. Mohinder J S Rupal, Adv.
for University of Delhi

CORAM:
HON'BLE MR. JUSTICE C. HARI SHANKAR

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J U D G M E N T

1. The petitioner, Mr. Vaibhav Bajaj, suffers from a Specific Learning Disability in the area of reading, comprehension, spelling and writing skills and mathematics, known, alternatively, as dyslexia. The summary of findings as well as the recommendations, consequent to the assessment by the Institute of Child Development and Adolescent Health, Moolchand Medicity, as contained in the report issued by the said Institute, read thus:

“On Weschler Adult Performance Intelligence Scale, he obtained an IQ of 94 indicating Average level of current intellectual functioning. On NIMHANS Battery of Specific Learning Disability, the findings are suggestive of a short attention span along with Specific-learning disability (Dyslexia) in the area of reading, comprehension, spelling and writing skills and mathematics. Significant deficits were also seen in the area of auditory memory.

RECOMMENDATIONS

- Psycho education with the parents regarding his current functioning and difficulties faced so that the pressure and expectations are reality based.
- The child may benefit from remedial education and so regular follow up with the special educator is advised.
- Provision of extra time as per the CBSE guidelines will help him cope better. Provision of a scribe can be considered.
- Assignments and examination papers to be marked for content and ideas while ignoring handwriting and spelling mistakes.
- In future the child should avoid taking in subjects with a math baseline.
- Use of different study techniques like breaking the task into chunks, elaborative rehearsal instead of rote learning, mnemonics etc. should be promoted and he should be motivated to use better learning strategies.
- Consistent and graded reinforcement will help him deal well with the number work.
- Structured study schedule and effective study skills along with strategy building will impart Vaibhav the right confidence.

- Training in effective time management will help him prioritize tasks the right way.
- Child should be encouraged to engage in creative writing and active reading of non academic material to develop expressive skills.
- Regular feedback coupled with positive reinforcement should be used with the child.
- Liaison with school for observation and feedback.”

A subsequent assessment of the petitioner, on 3rd August, 2018, by the Dr. Ram Manohar Lohia Hospital, resulted in an identical report. Pursuant thereto, a Certificate of Disability was issued, by the said Hospital, certifying the petitioner to suffer from Specific Learning Disability, to the extent of 40%.

2. Consequent to clearing the XII Class examination, conducted by the Central Board of Secondary Education (CBSE) with 43.7% marks, the petitioner registered, for admission to undergraduate courses conducted by the University of Delhi (hereinafter referred to as “the University”), for the academic year 2018-2019, on 5th June, 2018.

3. The present writ petition avers that, on account of his disability, the petitioner was in need of substantial familial support, to pursue his studies, which necessitated admission in a college, as proximate as possible, to his residence, which is at Ashok Vihar, Delhi. For this reason, the petitioner desired, as his first choice of college, admission

to the Sri Guru Gobind Singh College of Commerce (Respondent No. 1 herein, and referred to, hereinafter, as “SGGC”), against the quota of vacancies available for disabled candidates. As his second choice, the petitioner sought admission to the Kirori Mal College (Respondent No. 2 herein, and referred to, hereinafter, as “KMC”), located about 6 km from his residence. However, the cut-off marks, for admission under the quota of seats reserved for students suffering from disability, as announced by both the said Colleges, being higher than the marks scored by the petitioner, he could not secure admission to either of the said colleges. According to the writ petition, after releasing a number of cut-off lists, the SGGC and KMC both closed admissions, for candidates suffering from disability.

4. It is alleged, in the writ petition, that the SGGC and KMC were both defaulters, in the matter of preserving 5% of the seats, for admission to undergraduate courses, for persons with disability, as required by Section 32 of the Right of Persons with Disabilities Act, 2016 (hereinafter referred to as “the RPWD Act”). The final list of students, admitted to undergraduate courses, for the 2018-2019 academic session, by the SGGC, as released on 30th August, 2018 indicated that 13 students, suffering from disability, were admitted by the said College. This, avers the writ petition, did not conform to the 5% requirement contemplated by the RPWD Act. The KMC, for its part, did not release any list of students, suffering from disability, who had been admitted to undergraduate courses conducted by it. It is averred, in the writ petition, that, as per the Admission Brochure released by the University, the SGGC and the KMC had 596, and

1232, seats, respectively, available for admission to undergraduate courses conducted by them for the 2018-2019 academic session, so they were required to reserve at least 30, and 62, seats, respectively, for admitting students suffering with disability, in view of the mandate of the RPWD Act. Of these, on a proportionate basis, 6 seats in the SGGC and 12 seats in the KMC, it is submitted in the writ petition, were required to be reserved for persons suffering from intellectual/learning disabilities, such as the petitioner. Where candidates seeking admission to such seats, such as the petitioner, were available, it is contended that the said Colleges could not be permitted to divert the seats to any other quota or category, or to allow the seats to lapse.

5. Reliance has also been placed, in the above context, by the petitioner, on Circular No. Acad. I/082/PwD/2015/581, dated 4th July, 2015, issued by the University, the relevant paragraphs of which may be reproduced thus:

“In supersession of this office letter no. Aca. 1/2012-13/354/PWD/ dated 30th April 2012, the following modalities for implementation of reservation for Persons with Disabilities (PWD) for admission to various Under-graduate/Post-graduate Courses and M. Phil Programmes in the Universities/Colleges, approved by (the Competent Authorities, are hereby notified for necessary compliance by all concerned:

1. Delhi University and its constituent/affiliated colleges/institutions shall reserve not less than 3% seats in admissions for persons with disabilities (hereinafter called PWD) as defined in the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full

Participation) Act, 1995 (No. I of 1996) (hereinafter referred to as the PWD Act).

2. This reservation shall be applicable irrespective of the method and mode of admissions, such as Direct Admission, through Entrance Test, Interview etc.

3. This 3% reservation may be calculated on the total number of seats available for admissions in a particular college/institution/department and in a particular year. However, the implementation of this reservation will be course wise.

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5. As per section 39 of the PWD Act, it is a statutory obligation on the part of the University and its constituent/affiliated colleges/institutions to fill all seats reserved for Persons with Disabilities.

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7. Relaxation to the extent of 5% in the minimum marks, will be given to the candidates belonging to persons with disabilities (PWD) category to determine their eligibility on merit for admission to the course concerned.

8. In case, after giving 5% relaxation, the reserved seats still remain vacant, further relaxation would be given to the extent required in order to fill up all the reserve seats.

9. It should be ensured that at least 3% persons with disabilities are admitted every year in every college/institution and in every department of the University if such PWD candidates are available as per norms prescribed above.

10. a) The 3% reservation for persons with disabilities, as prescribed in Section 39 of the

PWD Act, covers all categories of disability is as defined in the said Act. Full logistical purposes this three per cent reservation may be provided in the following manner:

“1% for persons with blindness or low vision, 1% for those with loco motor disabilities and or cerebral palsy, including dyslexia (notification no. Aca. I/2015-2016/PWD/533 dated 05.06.2015), 1% for the hearing impaired.”

b) If sufficient number of candidates are not available in one or more of the above three sub-categories of disabilities, the remaining reserve seats for PWDs may be distributed by interchanged among the above disability sub-categories where such candidates are available. So far as possible, equal distribution of seats among various disability sub- categories may be ensured.

c) If sufficient number of candidates are not available, then persons belonging to the remaining disability sub- categories, as defined in the PWD Act, may be considered till the 3% seats for persons with disabilities are filled up.”

6. The writ petition further avers that, in these circumstances, left with no option, the petitioner had to secure admission to the B.Com. course conducted by the Sri Aurobindo College, which is located 28 km from his residence. The distance between the petitioner’s residence and the said College, it is averred, would render it difficult for the petitioner to adequately pursue his studies in the said College.

7. It is in these circumstances that, complaining that the SGGC and the KMC have defaulted in complying with the requirement of

preserving 5% of the total seats, available for admission to the undergraduate courses conducted by them, for students suffering with disability, as required by the RPWD Act, the petitioner has moved this Court, invoking the extraordinary jurisdiction vested in it by Article 226 of the Constitution of India.

8. Separate counter-affidavits, in response to the writ petition, have been filed by the SGGC and the KMC.

9. The SGGC contends, in its counter-affidavit, that, being bound, as it is, by the Circular, dated 4th July, 2015 *supra*, issued by the University, it had necessarily to implement reservation, for students with disability, to the extent of 5%, on a course-wise basis. For the B. Com. course conducted by it, the SGGC points out, 154 seats were available, 5% of which worked out to 7.5 seats, which would be rounded-off to 8. The counter-affidavit avers that, in fact, 8 seats were filled in the B.Com. course, from students suffering from disability within the meaning of the RPWD Act.

10. The SGGC has further contended that the Circular dated 4th July, 2015, on which the petitioner placed reliance, was issued in the context of the PWD Act of 1995, which stood repealed by the RPWD Act of 2016. The said instructions, therefore, it is contended, ceased to be applicable after the RPWD Act came into force. After the RPWD Act came into force, it was sought to be contended that fresh guidelines were issued by the University, as contained in the Bulletin of Information released by it. Clause 9.3 thereof dealt with reservation

of seats of persons with disabilities, and one may extract the relevant portions, thereof, thus:

“9.3 Reservation of Seats for Persons with Disabilities (PwD) (Supernumerary Seats)

As per the provisions of Rights of Persons with Disabilities Act, 2016, not less than five percent (5%) seats are reserved for Persons with Benchmark Disabilities. “Person with benchmark disability” means a person with not less than forty percent (40%) of a specified disability where specified disability has not been defined in measurable terms and includes a person with disability where specified disability has been defined in measurable terms, as certified by the certifying authority. It may be noted that the erstwhile Persons with Disabilities Act, 1995, under which reservation for Persons with Disabilities in admissions was provided earlier has now been repealed.”

11. It is further sought to be averred, by the SGGC, that the process of fixing of cut-offs was very scientific and the cut-offs were gradually lowered for all categories, to accommodate the required number of category of candidates suffering from disabilities within the meaning of the RPWD Act. Excessive lowering of the cut-off, it is contended, would result in over admissions. Equally, it is sought to be submitted, the College could not be held responsible if, for certain courses, sufficient students, suffering from disability, were not available.

12. It is also pointed out that, as the seats reserved for candidates with disabilities are supernumerary in nature, they are never diverted

but remain vacant, if sufficient candidates, with disability, are not available to fill up the seats in any particular course. Even so, it is reiterated, for the academic session 2018-19, all 8 seats available for persons suffering from disabilities in the B.Com. course conducted by the SGGC, have been filled up. Thereby, submits the SGGC, its obligation under the RPWD Act, also stands discharged.

13. Additionally, it is pointed out, that if the SGGC had admitted the petitioner, who had scored only 43.7% in his XII Class Examination, it would have resulted in a flood of complaints from students, suffering from disability, who had scored between 43.7% and 70%. As such, it is reiterated, that the College was required to gradually lower the cut-off in order to avoid over admissions.

14. The KMC has, in its counter-affidavit, averred that, for the academic session 2018-19, 85 seats were available for the B.Com. course, 5% of which worked out to 4.25, which, on being rounded-off to the nearest whole number, resulted in 4 seats required to be reserved for candidates with disability. All the 4 seats, it is submitted, were filled in the very first cut-off list, from candidates who had had scored between 90.75% and 89.25%.

15. As such, it is submitted by the respondents, that the writ petition is devoid of merit and deserved to be dismissed.

Submissions at the Bar

16. Arguing on behalf of the petitioner, Mr. Rajan Mani first drew my attention to the recommendation, contained in the medical report of the petitioner, to the effect that counseling and company of his parents was necessary for his well-being. On the basis thereof, it is sought to be contended that the petitioner was entitled to be educated at a college reasonably proximate to his residence.

17. Mr. Mani, thereafter, drew my attention to Sections 32 and 34 of the RPWD Act, specifically to clause (iii) of Section 16, which deals with the duty of educational institutions, and reads thus:

“16. Duty of educational institutions.

The appropriate Government and the local authorities shall endeavour that all educational institutions funded or recognised by them provide inclusive education to the children with disabilities and towards that end shall—

(iii) provide reasonable accommodation according to the individual’s requirements;”

18. In conjunction therewith, Mr. Mani draws my attention to the definition of “reasonable accommodation”, as contained in clause (y) of Section 2, of the RPWD Act, which may be reproduced thus:

“(y) “reasonable accommodation” means necessary and appropriate modification and adjustments, without imposing a disproportionate or undue burden in a particular case, to ensure to persons with disabilities the enjoyment or exercise of rights equally with others;”

19. Mr. Mani submits that, for the academic session 2018-19, the SGGC had total 600 seats, of which 6 seats were required to be reserved for persons with intellectual disability and that the KMC had 1200 seats, of which, too, 12 seats were required to be served for persons with intellectual disabilities. He draws my attention to the fact that the seats reserved for persons with intellectual disability were supernumerary in nature and would not, therefore, eat into any of the sanctioned vacancies. He also places reliance on the Circular dated 4th July, 2015 (*supra*), as well as the judgment, dated 12th November, 2018, of this Court in [*National Federation of the Blind v. Union of India*], 2018 X AD(Delhi) 37].

20. Arguing *per contra*, Mr. A. P. S. Ahluwalia, learned Senior counsel, appearing for the respondent/SGGC, points out, firstly, that the petitioner had misrepresented, in sub para (iii) of para 4 of the writ petition that he had “succeeding in passing the CBSE XII standard examination in April, 2018 with 43.7% marks and qualified for admission to the undergraduate B.Com course under University of Delhi”. In fact, Mr. Ahluwalia points out, that the petitioner cleared the said examination only after undergoing the “compartment” in August, 2018, by which time admission to seats reserved for persons with disability, in the college, stood closed. Mr. Ahluwalia points out that the petitioner had, in fact, never applied for admission to the SGGC and that this Court would obviously not direct admission to be granted to a candidate who had not applied for admission in the first place. He also submits that, as per the guidelines issued by the

University, the reservation for persons with disability was required to be implemented course-wise.

21. Mr. Mani, arguing in rejoinder, seeks to meet the submission, of Mr. Ahluwalia, regarding the petitioner never having applied for admission to the SGGC – or, for that matter, to the KMC – by submitting that his client had applied in the centralized portal of the University and that the portal, as it operated, permitted only students, who had scored marks equally to or in excess of the stipulated cut-off, for any particular college, to apply, online, for admission to such college. As the marks obtained by his client in Class XII Examinations were less than the cut-offs fixed by the SGGC and the KMC, for admission to the B.Com. course, conducted by them for the 2018-19 academic session, Mr. Mani submits that his client was unable to apply in either of the said Colleges.

22. Mr. Mani seeks, while on the point, to fault the SGGC, as well as the KMC, for fixing the same cut-off for all students suffering with disabilities, pointing out that there was qualitative difference between a student who suffered, for example, a locomotive disability – which did not impact her, or his, intellectual or learning ability in any manner – *vis-a-vis* a student who suffered from learning disability, such as his client.

23. Fixing of the same cut-offs for these two categories of students, Mr. Mani would seek to submit, was *ex-facie* arbitrary and could never meet with the approval of law.

24. In fine, Mr. Mani reiterates his prayer that his client be granted admission to the B.Com. course either in the SGGC or in the KMC.

Analysis

25. The prayer clause, in the writ petition, filed by the petitioner, reads thus:

“(a) Issue a writ of mandamus or any other appropriate writ, order or direction, directing the Respondent No.1 and No. 2 colleges to offer admission in their B.Com course to the Petitioner in the quota for intellectually disabled persons for the academic year 2018-19;

(b) Pass such other and further orders as this Hon'ble Court may deem fit and proper.”

26. There is considerable substance in the submission, of Mr. Ahluwalia, that the petitioner, never having applied for admission either to the SGGC or in the KMC, no mandamus, directing either of the said Colleges to admit the petitioner, could possibly be issued. Applying for admission, needless to say, would be a *sine qua non*, for admission to be granted.

27. Mr. Mani, fairly, does not dispute the fact that his client had not applied for admission, either in the SGGC or in the KMC, but points out that he had applied on the centralized portal of the University, and pleads that he was unable to apply to either of the said Colleges only because he could not secure the requisite cut-off, for such admission.

The responsibility for his client being unable to secure the requisite cut-off, for seeking admission in the SGGC or to the KMC, Mr. Mani would further submit, could not be laid at his client's door, as the decision, of the said colleges, to fix the same cut-off, for admission to all candidates suffering from disability, was *ex facie* unsustainable on fact as well as in law. Candidates suffering from learning disabilities, Mr. Mani would seek to submit that his client stood on an entirely different pedestal, as compared to candidates suffering from other forms of disability, such as, for example, loco motor disability or auditory disability. Equating these two categories of candidates would, Mr. Mani, submit, amount to treating unequals as equals, and would infract Article 14 of the Constitution of India.

28. At first blush, the submission of Mr. Mani is undeniably attractive. There is merit in this contention, of Mr. Mani, that fixation of the same cut-off, for students suffering from intellectual or learning disabilities, and students suffering from other categories of disability is *ex facie* arbitrary. Such fixation would, in the opinion of this Court, also infringe Article 14 of the Constitution of India, as there is, indeed, a qualitative distinction, between students who suffer from intellectual disabilities, and students suffering from other categories of disabilities and if, while fixing cut-offs for admission to the college, this distinction is lost sight of, the decision to fix cut-offs may itself become perilously vincible to being classified as arbitrary.

29. Having said that, however, what next? The fact remains that the petitioner did not score the cut-offs fixed for admission to the B. Com.

course conducted either by the SGGC or by the KMC. In fact, the petitioner's marks, as scored in his XII Class Examination, were far lower than the cut-off fixed for candidates suffering from disability in either of these Colleges.

30. No doubt, for candidates suffering from intellectual disabilities, it may have been necessary, or at least appropriate, for the colleges to fix a cut-off substantially lower than that fixed for candidates suffering from other forms of disability. No such mandate is, however, to be found in the RPWD Act. Even if the Court were to hold the fixation of the same cut-off, for candidates suffering from different disabilities, to be *ex facie* unsustainable, it is not possible for the court to travel the extra mile and to determine the level, or point, at which such cut-off would require to be fixed. The cut-off fixed for students suffering from disability, by the SGGC and by the KMC, were 70% and 89.25% respectively. Assuming that insisting on this cut-off, for candidates suffering from intellectual or learning disability, cannot be approved in law, the Court cannot, as a sequitur or corollary thereto, direct admission of the petitioner, who has scored only 43.7% in his XII Class Examination. No mandamus, to the said effect can, regrettably, be issued by the Court.

31. The possibility of any further discussion, on this aspect, would, in any manner, stand foreclosed, as the petitioner has not chosen to challenge the cut-offs fixed by the SGGC, or the KMC, for admission of candidates with disability, or the manner in which these cut-offs were determined.

32. This Court also admits its inability to subscribe to the submission, of Mr. Mani, relying on the medical reports of the petitioner, that he was entitled to be educated in a college proximate to his place of residence. The recommendations in the report of the Institute for Child Development and Adolescent Health, Moolchand Medicity, indicate, no doubt, that proximity to his family and his parents was, given the petitioner's medical condition, advisable. That cannot, however, be extrapolated to result in any enforceable right, in the petitioner's favour, to necessarily be admitted to a college near his residence.

33. Mr. Mani has also not been able to draw my attention to any provision, statutory or in the form of administrative or executive instructions, entitling the petitioner as of right to be educated in a college within any fixed distance from his place of residence.

34. *Ubi jus, ibi remedium.* The *sine qua non*, for a mandamus to issue, is a legally enforceable right in the claimant, resulting in a legally enforceable duty on the opposite party. *Sans* any enforceable legal right, no mandamus can be issued.

35. Equally, writs cannot be issued, by any court governed by the rule of law, solely on the basis of sympathy or compassion. Compassion must always temper, but may never substitute, justice which, in its turn, cannot be administered, by a court, in a manner which would derogate from the law as it exists. It is true that law

should never be applied in a manner which should sacrifice, at its alter, justice; equally true, however, is it that justice should never be dispensed in a manner which would violate the law, which is the vehicle thereof.

36. A considerable chunk of the debate, at the bar, was devoted to the issue of whether the provision for reservation, for candidates with disabilities, could be implemented, by the colleges, on a course-wise basis. One feature that immediately comes to notice, regarding this submission, is that, while the circular dated 4th July, 2015, undoubtedly provided that reservations for students with disabilities would be implemented on a course-wise basis, no such caveat is to be found in the guidelines issued under the RPWD Act. In the absence of any such stipulation in the guidelines issued under the RPWD Act, however, it may be possible to argue that colleges could not be permitted to implement “PWD reservation”, on a course-wise basis, in such a manner as to result in non-compliance with the mandate of Section 32 of the RPWD Act, which would require each college to necessarily fill 5% of its total seats in any academic year, with students with disabilities. This statutory mandate cannot be jettisoned by resorting to the concept of course-wise reservations, which, if anything, finds place only in the Circular dated 4th July, 2015 and nowhere else.

37. No occasion arises, however, for me to enter further into this debate, in view of my opinion, already expressed hereinabove that, having never applied for admission to either to the SGGC or to the

KMC and having failed to secure the cut-offs fixed for students with disabilities in the said colleges, the petitioner cannot claim, in his favour, any enforceable legal right as to justify issuance of a mandamus, by this Court, directing his admission to either of the said colleges.

38. The reliance, by the petitioner, on the judgment of this Court, in *National Federation of Blind (supra)*, too, in my view, does not advance his case to any appreciable extent. That case did not deal with a situation, such as the present, in which, for failure to secure the prescribed cut-offs, the candidates, whose cause the petitioner in that case was seeking to espouse, could not apply for admission to the college (s) of their choice.

39. This Court, in the said decision, essentially held that compliance with Section 32 of the RPWD Act was mandatory. There can be no cavil with this proposition. At the same time, as has already been held by me hereinabove, this Court cannot return any finding, in law, that the cut-offs, for admission of candidates with intellectual or learning disability, in the SGGC or KMC, were required to be lowered to the point where the petitioner would become eligible to secure such admission.

40. This court empathizes with the petitioner. Dyslexia is known to be an unfortunate, though rarely a disabling, disorder, and there are several instances of dyslexics, who have not only been ingratiated into the mainstream of society but have made names for themselves.

Notable, among them, may be counted Alexander Graham Bell, Lewis Carroll and Leonardo da Vinci. Integration of dyslexics into the mainstream, therefore, is the need of the hour and dyslexics can hardly be allowed to remain, in this day and age, on the fringes of society.

41. Having said that, however, it would be for the University, or the Colleges, to fix cut-offs, for the admission of dyslexics and with persons suffering from intellectual or learning disabilities, at an appropriate or realistic level, so that they are able to secure admission and pursue their studies. As things stand, the fact remains that the petitioner has been unable to secure the cut-off marks fixed either by the SGGC or by the KMC for admission to the B.Com. course, of students suffering from disabilities, and, for this reason, has also been unable to apply to admission to either of the said colleges.

42. That being so, this Court regrets that it is not possible for this Court to issue any mandamus to admit the petitioner in either of the said Colleges, as the writ petition would seek to pray.

43. The writ petition is accordingly dismissed, with no order as to costs.

C. HARI SHANKAR, J

JULY 23, 2019/dsn