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

Date of Decision: 06th November, 2020

+ W.P.(C) 3471/2020 & CM APPL. 12299/2020

JAVED ABIDI FOUNDATION Petitioner

Through: Ms. Sanchita Ain, Advocate

versus

UNION OF INDIA & ORS. Respondents

Through: Mr. Kirtiman Singh, CGSC with
Mr. Rohan Anand, Advocate for R-1
& 2/UOI.
Ms. Monika Arora, Advocate for
R-3/JNU.

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE PRATEEK JALAN

J U D G M E N T

D.N. PATEL, Chief Justice (*Oral*)

The proceedings in the matter have been conducted through video conferencing.

1. This Public Interest Litigation has been preferred with the following prayers:

“a) Issue a writ in the nature of mandamus or any other appropriate writ directing the Respondent No. 3 to issue an appropriate admission policy and e-Prospectus modifying the impugned admission policy and e-Prospectus consistent with the RPWD Act, 2016 and reserve seats not less than 5% of the total number of seats for PWD candidates and

compute the seats reserved for PWD candidates on the basis of the total number of seats without dividing them between different Schools/Centres.

b) Issue a writ in the nature of mandamus or any other appropriate writ directing Respondents No. 1 and 2 to issue instructions to all Government institutions of higher education and other higher education institutions receiving aid from the Government stating that the non-observance of the scheme of reservation of persons with disabilities would be considered as an act of disobedience and strict action would be taken against those institutions found to violate Section 32 of the Act; and

c) Pass any other/further order(s) as this Court may deem fit and proper in the interest of justice.”

SUBMISSIONS OF THE PARTIES

2. Learned counsel appearing for the petitioner submitted that as per the Rights of Persons with Disabilities Act, 2016 (hereinafter referred to as “the Act, 2016” for the sake of brevity), minimum 5% reservation should be maintained for students with benchmark disabilities in Higher Education Institutions like respondent No.3 – Jawaharlal Nehru University.

3. Learned counsel appearing for the petitioner has submitted that the respondent No.3 – Jawaharlal Nehru University is not maintaining the aforesaid minimum percentage of reservation in the Admission Process of the students in various schools/centres.

4. Learned counsel appearing for the petitioner has taken this Court to Admission Policy of the respondent No.3 – University, especially Clauses 3, 4, 6 and 7 and it is submitted that Clause 7 provides for 5% horizontal reservation for persons with disabilities with minimum disability to the

extent of 40%. Previously also, a similar writ petition, being W.P.(C) 3817/2018 (**National Federation of Blind v. Union of India & Ors.**), was instituted and it was observed by this Court that respondent No.3 – University cannot violate the mandate of the law.

5. It is further submitted by the learned counsel for the petitioner that in total disregard to Section 32 of the Act, 2016, the respondent No.3 – University is giving admission to the students in various branches. In some of the categories, the seats reserved for Persons with Disabilities (hereinafter referred to as “PWD students”) are as low as 2.5% and the total number of seats reserved for PWD candidates comes to only 4.86%.

6. Learned counsel appearing for the petitioner has taken us to Annexure P-3 to the memo of this writ petition and has stated that for various programmes of studies, the reservation for PWD students is less than 5% which is in violation of Section 32 of the Act, 2016.

7. Learned counsel appearing for the petitioner has relied upon the aforementioned decision rendered by this Court in **National Federation of Blind v. Union of India & Ors.**; 2018 SCC Online Del 12367 as well as the decision rendered by the Hon’ble Supreme Court in the case of **Justice Sunanda Bhandare Foundation v. Union of India & Anr.**; (2017) 14 SCC 1.

8. We have heard the learned counsel appearing for the respondent No.3 – Jawaharlal Nehru University who has submitted that A detailed counter affidavit has been filed by the respondent No.3.

9. It is submitted by the learned counsel for the respondent No.3 – University that the respondent – Jawaharlal Nehru University is providing 5% reservation to PWD category students for the Academic Year 2020-21

and the same has been clearly mentioned in the e-Prospectus of the University and the Admission Policy and Procedure 2020-21.

10. It is also submitted by the counsel for the respondent No.3 – University that the provisions of the Act, 2016, the Rules made thereunder, the regulations of the University and the Admission Policy also provide for 5% reservation for PWD students.

11. It is further submitted by the counsel for the respondent No.3 that clause 7.1(b) of the Admission Policy and Procedure prescribes for the reservation for the PWD students. The said Admission Policy and Procedure for the Academic Year 2020-21 is at Annexure P-5 to the memo of this writ petition.

12. It is submitted by learned counsel for the respondent No.3 – University that this provision in the Admission Policy and Procedure was incorporated because of the decision rendered by this Court in the case of **National Federation of Blind v. Union of India & Ors.**; 2018 SCC Online Del 12367 (Annexure P-2 to the memo of this writ petition).

13. It is further submitted by the learned counsel appearing for the respondent No.3 that in case of courses having less than 9 seats, the clubbing of seats is done at the respective school/centre level so that the qualified PWD candidates are not left out from getting reservation in certain courses of schools/centres.

14. Learned counsel for the respondent No.3 has placed reliance upon paragraph 4 onwards of the additional affidavit filed by the respondent No.3. Learned counsel has also placed reliance upon Annexures-1 and 2 to the memo of additional affidavit on behalf of respondent No.3 which is in a tabular format, giving the details of the total number of seats, the seats

reserved for PWD students and which also reveals aggregate percentage after clubbing of seats out of 100.

15. It is further submitted by the learned counsel for respondent No.3 especially after reading Annexure-2 that in M.Phil. through E-entrance, the aggregate percentage after clubbing of seats out of 100 is 6.74%. Similarly, for M.Phil. through NET JRF is 5%, for Ph.D. through JNUUE is 6.36% and for Ph.D. through NET JRF is 7.6%.

16. Similarly, Annexure-1 which is annexed with the additional affidavit of the respondent No.3 – University has been pointed out to this Court in detail and it has been submitted that, after clubbing of the courses, as stated hereinabove, there is no violation of the provisions of the Act, 2016 and the reservation is minimum 5% for PWD students and hence this writ petition may not be maintained by this Court.

REASONS

17. Having heard learned counsel for both the sides and looking to the facts and circumstances of the case, it appears that several grievances have been ventilated by the petitioner that Jawaharlal Nehru University is not maintaining minimum 5% reservation for PWD students which is in violation of Section 32 of the Rights of Persons with Disabilities Act, 2016. We have issued notice upon respondents and detailed counter affidavits have been filed by Jawaharlal Nehru University – respondent No.3.

18. For ready reference, Section 32 of the Rights of Persons with Disabilities Act, 2016 reads as under:

“Section 32. Reservation in higher educational institutions.

(1) All Government institutions of higher education and other higher education institutions receiving aid from the

Government shall reserve not less than five per cent seats for persons with benchmark disabilities.

(2) The persons with benchmark disabilities shall be given an upper age relaxation of five years for admission in institutions of higher education.”

19. As per the counter affidavit filed by the respondent No.3, paragraph (i) reads as under:

“(i). That the contents of sub-para (i) are denied in toto being wrong, misconceived and based on incorrect interpretation of law and facts. It is humbly submitted that the University is committed to provide 5% reservation to PWD category in all programmes for Academic Year 2020-2021 and the same has been clearly mentioned in the e-prospectus of the University and the Admission Policy 2020-2021. The rules and regulations of the University are in compliance of the Disability Act, 2016. It is submitted that a bare perusal of the ready-reckoner shows that the first reservation seat to PWD category goes on the 9th point, i.e. if intake of a school or center is 9 seats, one seat would be reserved for PWD candidate.

*The idea behind the reckoner is to benefit the PWD candidates and ensure reservation in almost all the courses taught in various schools/ centers of the University. In case of M.Phil. and Ph.D., in some centers within a school, if the intake is less than 9, it would put a PWD candidate at disadvantage (as reservation cannot be operationalized if seats are less than 9). In pursuance of the decision of this Hon'ble Court in '**National Federation of the Blind v. Union of India & Ors.**', the University has enacted the provision 7.1(b) of the Admission Policy which states that-*

“PWD category reservations shall be implemented/operated grouping seats wherever seats are less than 10 and keeping it floating by clubbing such seats to ensure at least 1 seat for

PWD category. Wherever qualified candidate is available within these 10 seats and adjusting his/her category against the respective category to which he/she belongs. Further, if still numbers of seats are less than 5%, decision to fill up these seats from among the qualified PWD category candidates, wherever available, may lie with the Vice-Chancellor to ensure filling up of maximum seats in PWD category in compliance with Disability Act 2016."

The said provision clearly indicates that in case the intake is less than 9 seats, the recourse to the provision shall be taken. An illustration would clarify the position-

In case of School of International Studies, the Centre for Chinese Studies has an intake of 8 seats and the Centre for Korean Studies has an intake of 2 seats, both in M.Phil. programme. As per the ready-reckoner, there is no reserved seat for PWD category, however, before the declaration of the result the intake of the said two schools shall be clubbed making the total intake to 10 seats and thus providing reservation of 1 seat for PWD category student who has attained higher score. It is pertinent to mention here that the above example of clubbing of seats of aforementioned centers is only illustrative in nature. In the said manner, the seats of centers where intake is less than 10 are clubbed to achieve the mandate of 5% reservation for PWD category students.

*A copy of said ready-reckoner has been attached herewith as **Annexure-I.**"*

20. In view of the aforesaid submission of the respondent No.3, when the intake in any of the course is less than 9, then clubbing is permissible as per the decision rendered by this Court in **National Federation of Blind v. Union of India & Ors.**; 2018 SCC Online Del 12367.

21. For ready reference, paragraphs 8, 9 and 10 of the aforesaid decision read as under:

“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 W.P.(C) 3919/2014 decided on March 4, 2015; Students Federation of India v. Union of India 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), (2017) 14 SCC 1; Union of India v. National Federation of Blind, (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.”
(emphasis supplied)

22. In pursuance to the aforesaid decision rendered by a Division Bench of this Court, there was a revised Admission Policy and Procedure floated by the respondent No.3 for the next Academic Year.

23. As per Admission Policy and Procedure of Jawaharlal Nehru University for the Academic Year 2020-21, Clause 7 is for reservations. For ready reference, Clause 7 of the Admission Policy and Procedure of Jawaharlal Nehru University for the Academic Year 2020-21 (Annexure P-5) reads as under:

“7. Reservations:

7.1 Reservation of Seats: 27% seats for OBC, 15% seats for SC, 7.5% seats for ST and 5% seats for person with disability (PWD) as per the reservation policy of the Government of India (with minimum disability to the extent of 40%) in pursuance of Provisions of Rights of Persons with Disabilities Act 2016.

Reservation of 5% seats in respect of PWD candidates shall be done horizontally, as per the Government of India Guidelines/Policy.

a) Reservation for EWS: The persons belonging to EWSs who are not covered under the scheme of reservation for SCs, STs and OBCs shall get 10% reservation in Admission to various programmes of study except M.Phil and Ph.D.

b) PWD category reservations shall be implemented/operated grouping seats wherever seats are less than 10 and keeping it floating by clubbing such seats to ensure at least 1 seat for PWD category. Wherever qualified candidate is available within these 10 seats and adjusting his/her category against the respective category to which he/she belongs. Further, if still number of seats are less than 5%, decision to fill up these seats from among the qualified PWD category candidates, wherever available, may lie with the Vice-Chancellor to ensure filling up of maximum seats in PWD category in compliance with Disability Act 2016.

7.2 Relaxation for admission to the programmes for M.Tech, MPH, PGDE, M.A./M.Sc./MCA, B.A.(Hons.)1st year, B.Sc.-

M.Sc. integrated programme and part-time programmes: (except for B.Tech and MBA, the criteria for the said courses are given separately in the concerned section of the e-Prospectus): The SC/ST and Person with Disability (PWD) candidates who have passed the qualifying examination irrespective of their percentage of marks are eligible to appear in the Entrance Examination. All OBC category (non-creamy layer) candidates are eligible to 10% relaxation in the percentage of marks in the qualifying examination in relation to open category.

7.3 Relaxation for admission to M.Phil programmes

A relaxation of 5% marks from 55% to 50% or an equivalent relaxation of grade may be allowed in the qualifying degree for those belonging to SC/ST/OBC (non-creamy layer)/Differently-abled and other categories of candidates as per the decision of the UGC from time to time, or for those who had obtained their Master's Degree prior to 19th September, 1991. The eligibility marks of 55% (or an equivalent grade in point scale wherever grading system is followed) and the relaxation of 5% to the categories mentioned above are permissible based only on the qualifying marks without including the grace mark procedures.

7.4 Relaxation for admission to Ph.D programmes.

A relaxation of 5% marks from 55% to 50%, or an equivalent relaxation of grade may be allowed in the qualifying degree for those belonging to SC/ST /OBC (non-creamy layer)/Differently-abled and other categories of candidates as per the decision of the UGC from time to time;

7.5 All SC/ST /OBC and EWS candidates are required to submit certificate in respect of their claims from the authorized officers as notified by the Government of India for the purpose from time to time.

7.6 The person with Disability (PWD) candidates are required

to submit a certificate form authorized Medical Doctors/Hospitals indicating the extent of physical disability as per the Disability Act 2016. The percentage of disability is duly verified/recommended by the Chief Medical Officer /Medical Board of the University before the benefit is extended to the candidate.

7.7 Candidates belonging to SC/ST/OBC/PWD and EWS category who are selected on their own merit with General Category candidates are not counted under reserved quota. In programmes where viva voce is prescribed candidates belonging to SC/ST/OBC/PWD/EWS and General Category will be called for Viva-voce under their respective category at that stage. Further in final merit, reserved category candidates qualifying on their own merit should be adjusted in UR Category as per GoI rules.

7.8 The University has a provision to offer up to 15% (Supernumerary) of the seats in each programme (other than M.Phil and Ph.D) of study to Foreign Nationals. These seats are over and above the intake fixed for each programme of study.

Note: The admission of Foreign students for M.Phil and Ph.D programmes may be considered in compliance with UGC 2016 Regulations regarding number of research scholars faculty (i.e. Professor/Associate Professor/Assistant Professor) can supervise. Foreign students shall be offered seats only if seats are left vacant in any discipline after being offered to Indian candidate who have appeared in JNU EE.

(emphasis supplied) ”

24. In view of the aforesaid decision rendered by the Division Bench of this Court, and in view of the aforesaid reservation policy incorporated in the Admission Policy by Jawaharlal Nehru University – respondent No.3, it appears that the reservations for the persons with disabilities have been

provided for in accordance with law by the respondent No.3. These provisions of the Admission Policy have been put in practice by the respondent No.3.

25. Respondent No.3 has stated in paragraphs 5 to 9 of its additional affidavit which reads as under:

*“5. That in case of courses having less than 9 seats, **the clubbing of seats is done at the respective School/Centre level so that the qualified PWD candidates are not left out from getting reservation in certain courses of Schools/Centers.** The said clubbing of seats is only done at the time of declaration of results and the same leads to increase in number of seats for PWD students The effect of such clubbing of seats on actual number of seats available for PWD category students has been worked out in the Table 1 attached herewith as **Annexure-I.** Further, a Table 2 indicating percentage of reserved seats after clubbing has been attached herewith as **Annexure-2.***

6. That on perusal of the said Table, it is clear that actual number of seats meet the mandate of 5% reservation for PWD category. In case there is no Centre in a School or Special Centre, seats have been clubbed for science or non-science schools (For example, Sr. no. VIII-XV of the Table).

7. That while providing reservation after such clubbing in a school, the PWD candidate who has achieved the highest score across all the Centers of a School (whose seats have been clubbed) is offered the reserved seat. In case more than one seat becomes available for reservation after clubbing in a particular School the same process is followed to offer the next seat to highest scorer in other Center within the School to make equitable reservation in all Centers. In case the clubbing is required to be done for more than one School, similar process is followed.

8. That it is pertinent to mention here that Clause 7.1 (b) is a special operational arrangement made by the University in

*pursuance of the directions of this Hon'ble Court and no such provision is defined by the UGC or MHRD. The University sought advice from UGC on the said matter, however, owing to no response from UGC such a provision of clubbing was introduced. A copy of the letter dated 30.01.2019 seeking advice of UGC has been attached herewith as **Annexure-3**.*

9. That in case of any shortfall in programmes other than M.Phil. and Ph.D., similar process shall be followed for such programmes and the decision to fill-up the seats from among the qualified PWD category candidates, wherever available, may lie with the Vice Chancellor to ensure compliance of the mandate under Disability Act, 2016.”

26. In view of the aforesaid facts of the case, clubbing of the seats have been done by the respondent No.3 – University. For ready reference, Annexure-2 to the additional affidavit filed by the respondent No.3 reads as under:

Program of studies	Total No. of seats	Seats reserved for PWDs	Aggregate percentage out of 100	<u>Total Seats after Clubbing</u>	Aggregate percentage after clubbing of seats out of 100
M.Phil through E-entrance	326	15	4.60%	<u>22</u>	<u>6.74%</u>
M.Phil through (NET JRF)	40	1	2.50%	<u>2</u>	<u>5%</u>
Ph.D. through (JNU EE)	377	15	3.97%	<u>24</u>	<u>6.36%</u>
Ph.D. through	171	6	3.50%	<u>13</u>	<u>7.60%</u>

(NET JRF)					
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(emphasis supplied)

27. In view of the aforesaid facts and circumstances of the case, it appears that the respondent No.3 has maintained provision of minimum 5% reservation for PWD category and the same has been mentioned in e-Prospectus of the respondent No.3 – University which is in consonance with the provisions of the Rights of Persons with Disabilities Act, 2016.

28. Clause 7.1(b) of the Admission Policy (Annexure P-5 to the memo of this writ petition) mandates for implementation of reservation for PWD category students whenever seats are less than 10 by clubbing such seats to ensure that atleast 1 seat for PWD category may be assigned. From Annexure-1 to the memo of additional affidavit filed by the respondent No.3, it is clear that the respondents are maintaining 5% seats for PWD candidates in horizontal reservation and is distributed across all the categories – for SC, ST, OBC and UR for M.Phil. and Ph.D. programmes.

29. During the course of hearing, learned counsel for the petitioner expressed an apprehension that, despite the procedure of clubbing outlined above, the number of admitted candidates with disability may fall short of 5%, if candidates are not available in the schools/ courses in which reservation has been provided, although there are candidates with disability who have applied in other schools/ courses. Learned counsel for respondent no. 3 – University, upon instructions, assured the Court that the University is duty-bound to ensure that the minimum reservation of 5% is in fact being realised. Moreover, it is assured by the learned counsel appearing for respondent No.3 – University that as per Clause 7.1(b), the respondent –

University shall abide by the provisions of the Act, 2016 and if still number of seats are less than 5%, the decision to fill up these seats from among the qualified PWD category candidates, whenever available, may lie with the Vice-Chancellor to ensure filling up of maximum seats in PWD category in compliance with the Rights of Persons with Disabilities Act, 2016.

30. Learned counsel for respondent no. 3- University also assured the Court that the procedure and mechanism of clubbing will be publicised in detail in subsequent academic years, to ensure that candidates are fully aware of the provisions and able to decide which schools and courses to apply to.

31. In view of the aforesaid facts and reasons, the respondent No.3 – Jawaharlal Nehru University is complying with the provisions of the Rights of Persons with Disabilities Act, 2016 in prescribing and in giving reservations in admission to various schools in Jawaharlal Nehru University.

32. We expect from the respondent No.3 – Jawaharlal Nehru University that they shall maintain minimum 5% reservation for the persons with disabilities in accordance with the provisions of the Act, 2016 in future also.

33. Hence, we see no reason to give any further directions in this writ petition and the same is therefore disposed of with the above observations.

CHIEF JUSTICE

PRATEEK JALAN, J

NOVEMBER 6, 2020/kks

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