



2024 : DHC : 4246



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

Reserved on: 22 May 2024
Pronounced on: 24 May 2024

+ **W.P.(C) 12027/2023, CM APPL. 47177/2023 and CM APPL. 25829/2024****SARTHAK JHA**

..... Petitioner

Through: Mr. K.B. Jha and Mr. Shikha
Sharma Bagga, Advs.

versus

GOVT OF NCT OF DELHI AND ORS

..... Respondents

Through: Mr. Anuj Aggarwal, ASC,
GNCTD with Ms. Arshya Singh, Mr.
Siddhant Dutt and Ms. Mahak Rankawat,
Advocates for R1

Ms. Anita Sahani and Ms. Shruti Kapur,
Advs. for R2 and R3

Mr. Nishant Anand, Ms. Gunjan Bansal, Ms.
Pooja Singh and Mr. Aakash Chaprana, Mr.
Mayank Sachdeva Advocates for R6

CORAM:**HON'BLE MR. JUSTICE C.HARI SHANKAR****JUDGMENT****24.05.2024**

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W.P.(C) 12027/2023

1. The Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 ("the 1995 PWD Act") was repealed by Section 102(1) of the Right of Persons with Disabilities Act, 2016 ("the 2016 RPWD Act"). The concept of

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“mental retardation”, contained in the 1995 PWD Act and defined in Section 2(r)¹ thereof gave way, with the advance understanding of disabilities to the expression “intellectual disability”, as defined in Clause 2 of the Schedule to the 2016 RPWD Act, which reads thus:

“2. Intellectual disability, a condition characterised by significant limitation both in intellectual functioning (reasoning, learning, problem solving) and in adaptive behaviour which covers a range of every day, social and practical skills, including—

(a) “specific learning disabilities” means a heterogeneous group of conditions wherein there is a deficit in processing language, spoken or written, that may manifest itself as a difficulty to comprehend, speak, read, write, spell, or to do mathematical calculations and includes such conditions as perceptual disabilities, dyslexia, dysgraphia, dyscalculia, dyspraxia and developmental aphasia;

(b) “autism spectrum disorder” means a neuro-developmental condition typically appearing in the first three years of life that significantly affects a person's ability to communicate, understand relationships and relate to others, and is frequently associated with unusual or stereotypical rituals or behaviours.”

2. Though it is not of particular significance, it may be noted that “mental illness” is also defined in Clause 3 of the Schedule to the 2016 RPWD Act, which reads thus:

“3. Mental behaviour,—

“mental illness” means a substantial disorder of thinking, mood, perception, orientation or memory that grossly impairs judgment, behaviour, capacity to recognise reality or ability to meet the ordinary demands of life, but does not include retardation which is a condition of arrested or incomplete development of mind of a person, specially characterised by subnormality of intelligence.”

¹ (r) “mental retardation” means a condition of arrested or incomplete development of mind of a person which is specially characterised by subnormality of intelligence;



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3. The Schedule to the 2016 RPWD Act sets out the “specified disabilities”, for the purposes of Section 2(zc)² thereof.

4. The petitioner was born on 17 June 2003 and is presently 21 years of age. At the age of 12 years and 7 months, he was subjected to psychometric evaluation by a child psychologist. The evaluation, which was conducted in accordance with the guidelines issued by the Central Board of Secondary Education (CBSE), opined that the petitioner was suffering from Mild Mental Retardation (Mild MR). Certain facilitative measures were, therefore, proposed in the report of the child psychologist, which may be reproduced thus:

“• Sarthak has the option of studying one compulsory language as against two. This language should be in consonance with the overall spirit of the Three Language Formula prescribed by the Board. Besides one language any four of the following subjects be offered: Mathematics, Science, Social Science, another language, Music, Painting, Home Science, Introductory Information Technology, Commerce (Elements of Business) & Commerce (Elements of Book Keeping and Accountancy)

• He should not be made to repeat the class as it may further decrease his existing levels of confidence and self esteem.

• The school may provide some concessions like extra time; reading out the questions, make answers simple and short or can be in objective type questions since his fluency and automaticity with task is limited

• Encourage him on whatever relevant content he gives rather discouragement for spelling and grammar mistake.

NO CORPORAL PUNISHMENT.”

5. On the basis of the report of the child psychologist, the petitioner was granted admission to the Delhi Public School, Rohini,

² (zc) “specified disability” means the disabilities as specified in the Schedule;



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from where he completed schooling in 2022.

6. WP (C) 6605/2023 (*Justice For All v. GNCTD*) and orders passed therein:

6.1 Justice For All (JFA), a non-governmental organization run by the petitioner's father, who is a practicing Advocate, instituted WP (C) 6605/2023 before this Court as a Public Interest Litigation (PIL), complaining that the Guru Gobind Singh Indraprastha University (which is the main contesting respondent in the present case and is referred to, hereinafter, as "the GGSIPU") was not providing reservation to persons with disabilities (PWDs) to the extent of 5%, as required by the 2016 RPWD Act. It was alleged that the GGSIPU was still implementing the repealed 1995 PWD Act, which provided for a lesser percentage (3%) of reservation, only for persons suffering from physical disabilities. It was pointed out that the 2016 RPWD Act was more inclusive as it also took into account persons with intellectual disabilities, and required providing of 5% reservation, in educational institutions, for persons suffering with disabilities, including persons with intellectual disabilities.

6.2 While issuing notice in the writ petition on 17 May 2023, a Division Bench of this Court issued interim direction to the GGSIPU to provide reservation to PWD candidates for that academic session keeping in view the provisions of the 2016 RPWD Act.

6.3 Alleging that the GGSIPU was not implementing the above interim direction issued by this Court, JFA filed a contempt

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application in WP (C) 6605/2023. In the said contempt application, the GGSIPU filed an affidavit stating that it was providing reservation to the extent of 5% to all specially abled persons in all courses in accordance with the 2016 RPWD Act. Reproducing the averments contained in the said affidavit, the Division Bench disposed of the contempt application with the following observation:

“The respondents on affidavit have categorically stated that the respondent University is providing 5% reservation to specially abled persons. Therefore, in light of the affidavit, no further orders are required to be passed in the present contempt petition. The same stands disposed of accordingly.”

6.4 In view of the above affidavit and the order passed in the contempt application, the Division Bench went on, simultaneously, to dispose of WP (C) 6605/2023 on the same day. The order passed in the contempt application was extracted and, thereafter, the Division Bench observed and held thus:

“The aforesaid order makes it clear that the respondent University is providing reservation to the extent of 5% to specially abled persons in respect of all courses keeping in view the RPWD Act. Therefore, no further orders are required to be passed in the present PIL. The same stands disposed of accordingly.

The University as well as State Government are directed to ensure that in all educational institutions, *the statutory provisions governing the field under the RPWD Act are followed* and 5% reservation is provided to specially abled persons.

It is further made clear that the Respondent shall make all possible endeavour for filling up the seats meant for specially abled persons by providing reservation to all categories of specially abled persons.”

(Emphasis supplied)

6.5 While disposing of WP (C) 6605/2023, GGSIPU was, therefore, directed to provide 5% reservation to specially abled persons *under*

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the 2016 RPWD Act. No beneficial dispensation, beyond the provisions of the 2016 RPWD Act, therefore, can be claimed by the petitioner, or anyone else for that matter, on the basis of the orders passed in WP (C) 6605/2023.

7. Other relevant provisions

7.1 Chapter 9 of the 2023-2024 Admission Brochure governing admissions to, *inter alia*, the five year integrated BA LLB and BBA LLB courses in the GGSIPU provided, in paras 9.3 and 9.6, thus:

“9.3 Reservation Policy for USS/Affiliated Govt. Institutions and Affiliated Self Financing Colleges/Institutions other than Minority Institutions

The Reservation Policy for the University Schools, Government Institutes and Self Financing Colleges/Institutions affiliated with this University, other than minority institution, for the Academic Session 2023-24 is as:-

For University Schools of Studies and Government Institutions Located in NCT of Delhi	For Institutions Located in NCT of Delhi in except minority status institutions	Self Financing Institutions Located in NCR, outside Delhi except minority status institutions
85% of the sanctioned intake shall be allocated for Delhi Region wherein reservation of seats shall be as under: DSC - 15% DST - 7.5% DOBC - 27% DDEF – 5% DPWD–5%	85% of the sanctioned intake (minus the management quota which is 10% of total seats unless surrendered by the institution for common counselling) shall be allocated for Delhi Region wherein reservation of seats shall be as under:	85% of the sanctioned intake (minus the management quota which is 10% of total seats unless surrendered by the institution for common counselling) shall be allocated for Delhi Region wherein

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	DSC - 17% DST - 1% DDEF – 5% DPWD – as per policy of Govt of NCT of Delhi	reservation of seats shall be as under: DSC - 15% DST - 7.5% DDEF – 5% DPWD – as per policy of Govt of NCT of Delhi
15% of the sanctioned intake shall be allocated for outside Delhi Region wherein reservation of seats shall be as under: ODSC - 15% ODST - 7.5% ODDEF – 5% ODPWD – 5%	15% of the sanctioned intake (minus the management quota which is 10% of total seats unless surrendered by the institution for common counselling) shall be allocated for outside Delhi Region wherein reservation of seats shall be as under: ODSC - 15% ODST - 7.5% ODDEF – 5% ODPWD – as per policy of Govt of NCT of Delhi	15% of the sanctioned intake (minus the management quota which is 10% of total seats unless surrendered by the institution for common counselling) shall be allocated for outside Delhi Region wherein reservation of seats shall be as under: ODSC - 15% ODST - 7.5% ODDEF – 5% ODPWD – as per policy of Govt of NCT of Delhi

Note: Reservation for EWS category is applicable only in University School of Studies and Govt. Colleges, if affiliated. This will be implemented in accordance with the Govt. of India and Govt. of NCT of Delhi orders as applicable.

1 For Institutions funded by the Central Government, if affiliated, the seat matrix shall be as per the Orders of Government of India or Government of NCT of Delhi.

2 For minority institutions located both in the NCT of Delhi, and Outside NCT of Delhi in NCR, the seats are reserved as per the request of the Institution for the appropriate minority segment, and remaining seats thereafter shall be allocated with reservation as per the policy of the Govt. of NCT of Delhi.

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3 For institutions located in NCR, the bifurcation of seats (85% for Delhi Candidates and 15% for outside Delhi Candidates) is as per the policy received from Govt. of NCTD applicable for Academic Session 2023-24, if there is any change in this policy before the commencement of counseling/admissions in the current Academic Session, the same shall be applicable.

NOTE:

1. The candidate seeking admission under reserved categories has to mandatorily produce the caste/category certificate in his/her name at the time of Enrollment for Online Centralized Counselling. The certificate in the name of either of the parents (Mother/Father) is not acceptable and the candidate shall not be entitled/eligible for admission against reserved seats, even on the basis of any undertaking.

2. The reservation certificate should be issued from the respective state/region in which the reservation is claimed e.g. in case any candidate claims for the seat reserved for DSC/DST category then He/She has to bring SC/ST/ certificate issued by Govt. of NCT of Delhi and also should have passed his/ her qualifying exam from Delhi School/College.

3. 10% of the total seats will be allocated as management quota in Self Financing Affiliated Institutes only (unless surrendered by the College/Institute) seats as per the provisions of "Delhi Professional Colleges or Institutions Act 2007" and the Rules 2007 made thereafter and other instructions issued by Govt. of NCT of Delhi or GGSIP University. However, in University Schools of Studies, Minority status Institutions and Government Institutions, there will be no Management Quota.

4. Reservation in OBC category is not applicable at Master's level and Postgraduate Diplomas.

5. **In addition to original document as referred above, the candidate will also have to upload/submit/bring the relevant format as per Appendix 10 of Part F duly completed in original and signed which will become part of the Admission file.**

9.6 Persons with Disabilities (PWD)

PH/PWD seats in Government Colleges shall be 5% in accordance with the provisions of 'The Rights of Persons with Disabilities Act 2016' (PWD ACT) while it shall be as

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per policy of Govt. of NCT of Delhi in Self Financing Institutions. All the candidates who furnish PWD certificate from any Government Hospital located in Delhi or Outside Delhi under the provisions of ‘The Rights of Persons with Disabilities Act 2016, shall be eligible for claiming reservation on Delhi and Outside Delhi seats (based on the location of their qualifying exam). Reservation of seats for persons with benchmark disabilities is open to all specified categories.”

7.2 It is an admitted position that the policy of the Government of NCT of Delhi (GNCTD), to which Clause 9.6 of the Admission Brochure refers, is contained in the the Delhi Professional Colleges or Institutions (Prohibition of Capitation Fee Regulation of Admission Fixation of Non-Exploitative Fee and other Measures to Ensures Equity and Excellence) Act, 2007 (“the DPCIA”, hereinafter).

7.3 Insofar as reservation in higher education is concerned, Section 32(1)³ of the 2016 RPWD Act, requires all government institutions of higher education and other higher education institutions receiving aid from the government to reserve at least 5% seats for persons with benchmark disabilities. The institutions affiliated to the GGSIPU are governmental as well as non-governmental. The stand of the GGSIPU is that, by operation of Section 32(1) of the 2016 RPWD Act, its provisions apply only to the University School of Law and Legal Studies (USLLS) and to government institutions affiliated to the GGSIPU. Private colleges and self-financed institutions affiliated to the GGSIPU, such as the Vivekananda Institute of Professional

³ 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.



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Studies (VIPS) where the petitioner was admitted, according to the GGSIPU, are not covered by the 2016 RPWD Act.

8. As against this, Section 2(a)⁴ of the DPCIA makes its provisions applicable to all “unaided institutions affiliated to the GGSIPU imparting education in degree, diploma and certificate courses”. Government aided institutions are, therefore, not covered by the provisions of the DPCIA. The definition of “institution”, as contained in Section 3(1)⁵ of the DPCIA, covers all aided and unaided institutions affiliated with the GGSIPU, imparting education in specified disciplines, which include law and legal affairs.

9. Section 12⁶ of the DPCIA deals with allocation and reservation

⁴ 2. **Applicability.** – The provision of this Act shall apply to –
(a) Unaided institutions affiliated to a University imparting education in degree, diploma and certificate courses.

⁵ (1) “Institution” means a college or institution, aided or unaided, affiliated to a University, Imparting education in the following disciplines, namely:—

- (a) Engineering and Technology;
- (b) Medicine, Dentistry, Pharmacy, Ayurveda, Homoeopathy, Siddha, Nursing, Paramedical and the like;
- (c) Law and Legal Affairs;
- (d) Management;
- (e) Teachers
- (f) any other discipline as may be notified by the Government;

⁶ 12. **Allocation and reservation of seats.** –

- (1) In every institution, except the minority institution
 - (a) subject to the provisions of this Act, ten percent, of the total seats in an unaided institution shall be allocated as management seats;
 - (b) eighty five percent of the total seats, except the management seats, shall be allocated for Delhi students and the remaining fifteen percent seats for the outside Delhi students or such other allocation as the Government may by notification in the official Gazette, direct;
 - (c) supernumerary seats for non-resident Indians and any other category shall be as may be prescribed.
- (2) In the seats mentioned in sub-section (1), an institution shall reserve—
 - (a) seventeen percent seats for the candidates belonging to the Scheduled Castes category, one percent seats for the candidates belonging to the Scheduled Tribes category and such percentage of seats, for any other category including Other Backward Classes as may be prescribed;
 - (b) for seats not mentioned as allocated for Delhi students In sub-section (1), fifteen percent seats for candidates belonging to the Scheduled Castes category, seven and a half percent seats for the candidates belonging to the Scheduled Tribes category and such percentage of seats, for any other category as may be prescribed.

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of seats. Subject to reservation of seats for candidates belonging to Scheduled Castes (SC), Scheduled Tribes (ST) and Other Backward Classes (OBC), Section 12(2)(c) of the DPCIA requires 3% of the seats to be reserved for PWDs, as provided in the 1995 PWD Act. Reservation for PWDs in educational institutions was envisaged by Section 39⁷ of the 1995 PWD Act, and was available only in governmental educational institutions and other educational institutions receiving aid from the Governmental, to the extent of 3%. If Section 12(2)(c) of the DPCIA is to be read as incorporating, by reference, in it, Section 39 of the 1995 PWD Act, it would result in an anomalous situation, as Section 39 of the 1995 PWD Act applies only to Government and aided educational institutions, whereas the DPCIA applies only to unaided institutions. The words “as provided in” as implied in Section 12(2)(c) of the DPCIA have, therefore, to be interpreted as making applicable, to unaided institutions covered by DPCIA, 3% reservation for PWDs *as is applicable to Government and aided institutions under Section 39 of the 1995 PWD Act, mutatis mutandis*.

10. The contention of Mr. Khagesh Jha, learned Counsel for the petitioner is, therefore, that Clauses 9.3 and 9.6 of the Admission Brochure, read with Section 12(2)(c) of the DPCIA, provide 3% reservation, in self-financing institutions affiliated to the GGSIPU, for

(c) subject to clause (a) and clause (b) above,
three percent seats for persons with disabilities as provided in the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 (I of 1996), and, such percentage of seats for the wards of defence personnel and any other category, as may be prescribed.

⁷ 39. All educational institutions to reserve seats for persons with disabilities. — All Government educational institutions and other educational institutions receiving aid from the Government, shall reserve

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PWDs.

11. Mr. Jha submits that there can be no dispute about the fact that the petitioner is a PWD within the meaning of both of the 1995 PWD Act and the 2016 RPWD Act. Dr. Baba Saheb Ambedkar Hospital, being an accredited hospital under the Department of Empowerment of Persons with Disabilities (DEPD), Ministry of Social Justice and Empowerment has, on 5 July 2023, issued a Disability Certificate certifying that the petitioner is a case of intellectual disability within the meaning of the 2016 RPWD Act, with 50% permanent disability in relation to his brain. The petitioner has also been issued a Unique Disability ID (UDID) by the Government of India, certifying him as a person with permanent 50% intellectual disability.

12. The 1995 PWD Act does not make any reference to intellectual disability. “Person with disability” is defined in Section 2(t) of the 1995 PWD Act, as “person suffering from not less than forty per cent of any disability as certified by the medical authority”. The definition of “disability” in Section 2(i) of the 1995 PWD Act includes, in Clause (vi), “mental retardation”. A combined reading of the result of the psychometric evaluation of the petitioner, as conducted by the child psychologist Renu Goyal and the Disability Certificate dated 5 July 2023 issued by Dr. Baba Saheb Ambedkar Hospital makes it clear that the petitioner has 50% intellectual disability (under the 2016 RPWD Act) or mental retardation (under the 1995 PWD Act). Indeed, Mr. Yeeshu Jain, learned Counsel for the respondent, too, did not seek

not less than three per cent seats for persons with disabilities.

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to dispute this fact.

13. Mr. Jha contends that, in that view of the matter, the petitioner is entitled to the benefit of 3% reservation as provided by Section 12(2)(c) of the DPCIA.

14. In conjunction with the above, it is also relevant to refer to the Delhi Professional Colleges or Institutions (Prohibition of Capitation Fee, Regulation of Admission, Fixation of Non-Exploitative Fee and Other Measures to Ensure Equity and Excellence) Rules, 2007 (“the DPCIR”, hereinafter). “Persons with disabilities” is defined in Rule 2(f) of the DPCIR as meaning “persons with disabilities” as defined in the 1995 PWD Act. Rule 8 of the DPCIR deals with allotment of seats and sub-rule (2)(c)⁸ thereunder provides that 3% seats in each program of study, shall be reserved for PWDs, duly certified by the prescribed authority. Though the title of the clause is “Physically Challenged candidates”, Mr. Jha contends that, as the clause applies to all “persons with disabilities” and “persons with disabilities” is defined in Rule 2(f) as covering all persons with disabilities, physical or mental, the scope of Rule 8(2)(c) cannot, merely because of the title of the provision, be restricted only to physically challenged candidates. For the proposition that the scope of a provision cannot be restricted by its title, he relies on the judgment of the Supreme Court

⁸ (2) Every institution other than a minority institution, shall provide for seats in respect of management quota, wards of defence personnel, persons with disability and others in the manner as described below-

(c) Physically Challenged candidates. - Three percent of seats for each programme of study shall be reserved for persons with disability, duly certified by the prescribed authority.



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in *U.O.I. v. National Federation of the Blind*⁹.

15. Albeit not in the context of the eligibility or entitlement to admission, certain other provisions of the DPCIA are also relevant. Section 3(g) of the DPCIA defines “designated agency” as an agency designated by the Government for conducting the common entrance test and counselling for admission in the institutions. The GGSIPU has acknowledged, in its communication dated 6 September 2023, that it is a “designated agency” within the meaning of Section 3(g) of the DPCIA.

16. Section 4(14) of the DPCIA envisages cancellation of the registration a student or a candidate, which has been made in violation of any provision of the DPCIA, on the recommendation of the Admission Regulatory Committee (ARC) to the concerned university. The constitution of the ARC is defined in Section 4(1) of the DPCIA.

Sequence of events

17. Having cleared his Class XII as a student of the DPS, Rohini in 2022, the petitioner underwent the Common Law Admission Test (CLAT) UG 2023 conducted by the Consortium of National Law Universities, the score and rank obtained by the candidate of which are taken into consideration by the GGSIPU while admitting candidates in the five year integrated BA LLB and BBA LLB courses in the institutions affiliated with it.

⁹ (2013) 10 SCC 772



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18. The petitioner applied, thereafter, for admission to the five year integrated BA LLB course in GGSIPU and declared his sub-category as “physically handicapped”. Owing to certain technical reasons, the petitioner was unable to apply for participation in the first round of counselling conducted by the GGSIPU for admission to the BA LLB course. On 3 July 2023, the GGSIPU issued a notification for its second round of counselling, for which the petitioner registered on 9 July 2023. The said notice also provided thus:

“I (e) The Reservation for EWS category is applicable only in University School of Studies and Govt. affiliated Colleges only. This will be implemented in accordance with the Govt. of India and Govt. of NCT of Delhi orders as applicable. EWS Certificate should be issued after 31st March, 2023 stating valid for year 2023-2024.”

19. Though the notice provided that EWS reservation would be available only in the USLSS and Government colleges affiliated to the GGSIPU, there was no similar dispensation provided in respect of PWD reservation.

20. The petitioner submitted, with the application for registration in the second round of counselling, the Disability Certificate dated 5 July 2023 issued by Dr. Baba Saheb Ambedkar Hospital and the UDID issued by the Department of Empowerment of Persons with Disabilities. The GGSIPU allowed the petitioner to participate in the second round of counselling on 19 July 2023. Consequent on being found eligible for admission, the petitioner was selected for admission to the Vivekananda Institute of Professional Studies (VIPS), where he secured admission on 3 August 2023 and reported on 19 August 2023.

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21. Prior thereto, on 17 August 2023, GGSIPU wrote to the petitioner's father, pointing out that in the Admit Card issued to the petitioner for appearance in the CLAT UG 2023, the petitioner had claimed to belong to the Economically Weaker Section (EWS) and had not claimed reservation as a PWD. The petitioner was, therefore, queried as to whether he had registered himself as PWD while applying for the CLAT UG 2023.

22. On 5 September 2023, the GGSIPU wrote to the petitioner's father stating that (i) the DPCIA and DPCIR were not applicable to the petitioner and (ii) the 2016 RPWD Act applied only to Government and aided institutions and did not apply to self-financing institutions, which were governed by the DPCIA and DPCIR. No clear reason is forthcoming, however, in the said communication for the assertion that the petitioner was not entitled for admission as a PWD candidate under the DPCIA or the DPCIR, though the communication quotes the relevant provisions thereof. The communication concluded thus:

“15. It is to put it on record that as per the submissions of the University in affidavit and in accordance with the directions of the Hon'ble High Court of Delhi, University is duty bound to comply with the provisions of Rights of Persons With Disability Act, 2016 in accordance with Section 32 of the RPWD Act, 2016.

16. The provisions of RPWD Act, 2016 is only applicable to Government Institutes and Government Aided Institutes and in respect of unaided Institutes there is no directions in the RPWD Act, 2016. Therefore, the Act and the Rules prevailing as on date shall be applicable which mandates that the reservation for PWD category will be in accordance with the provisions of the Delhi Professional Colleges and institutions Act, 2007 and Rules, 2007 made thereunder.

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In view of the above facts, the matter is being examined and till final decision is taken by the University, no enrolment number will be issued in respect of your child in PWD category and accordingly, you are advised to ensure participation of your child in second spot round in general category for allotment of seats in the General category.”

23. It may also be noted that the communication also contained various allegations relating to the *bona fides* of the petitioner in having filed WP (C) 6605/2023 through his organization “Justice For All”, which was alleged to be abusive of the process of the Court. To my mind, these allegations ought not to have found any place in the communication dated 5 September 2023, especially as this Court not only entertained WP (C) 6605/2023 but had disposed of the said writ petition with a direction to the GGSIPU to provide reservation to PWDs in accordance with 2016 RPWD Act.

24. On 6 September 2023, the GGSIPU wrote to the Director of the VIPS, stating that, in its capacity as designated agency under the DPCIA, it was incumbent on the GGSIPU to ensure that all admissions in the institutions affiliated to the GGSIPU were made in accordance with law. The petitioner’s contention that the role of the designated agency ceased after admissions had been made was, therefore, explicitly denied. The following passages from the said order, which follow, deserve to be reproduced:

“8. You are hereby requested to kindly intimate Shri Khagesh B. Jha, the father of the candidate Sh. Sarthak Jha, to produce supporting documents on the basis of which Disability Card has been made and his failure to provide aforesaid requisite documents, it will be presumed that he does not have any document in this regard other than Disability Card.



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9. It is reiterated that admission of candidate Sarthak Jha, Application No. 121230004225, LLB Programme is not covered under the provisions of the said Act, 2007 and Rules, 2007 made thereunder. The University is implementing RPWD Act, 2016 in letter and spirit, however the said Act, 2016 is not applicable for Self Financing Institutions.

11. The cancellation order in respect of Sh. Sarthak Jha, Application No. 121230004225, LLB Programme will be issued in due course.”

In the case of self-financing institutions, the communication thus stated that the admissions had to be made in accordance with the DPCIA and DPCIR. Alleging that, thus viewed, the admission of the petitioner as a PWD category candidate under the GGSIPU in the VIPS was illegal, the communication stated that the order cancelling the petitioner’s admission would be issued in due course.

25. On 25 September 2023, a meeting of the ARC took place. In the said meeting, the GGSIPU advanced an entirely new objection to the admission of the petitioner under the GGSIPU, alleging that the petitioner had obtained admission in two colleges, whereas the candidate was permitted to enrol only in one college. Mr. Jha submits that besides this being an entirely new ground to dispute the validity of the petitioner’s admission, it was, on facts, incorrect. The GGSIPU was also restrained, in the said meeting, from taking any coercive action against the petitioner. I may note that the said objection, of the petitioner having taken admission in two colleges, was never urged by Ms Sahni, learned Counsel for the GGSIPU, before me.



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26. The petitioner has, in these circumstances, instituted the present writ petition before this Court, praying that the communications dated 5 September 2023 and 6 September 2023 be quashed and set aside and that his admission to the BA LLB course in VIPS be declared to be regular.

27. Mr. Jha places reliance on the judgment of the Supreme Court in *Indian Medical Association v. Union of India*¹⁰, particularly on paras 16 and 48 thereof, which read thus:

“16. The Board of Management of GGSIU, pursuant to Sections 27 and 6(2) of GGSIU Act, 1998, enacted Ordinance 30; vide Board of Management Resolution No. 31.5 dated August 25, 2006, entitled Reservation Policy for the Self-Financing Private Institutions affiliated with the Guru Gobind Singh Indraprastha University. The said Ordinance 30 states that "for making special provisions for the advancement of weaker sections of the society, and in particular of persons belonging to the Scheduled Castes and Scheduled Tribes" certain percentage of seats shall be reserved by every affiliated college. The reservations were as follows: (i) Scheduled Castes (15%); (ii) Scheduled Tribes (0.5%); (iii) Defence Category (5%); (iv) Physically Handicapped (3%); and (v) Supernumerary Seats for Kashmiri Migrants (one seat). The said reservations, it is explicitly acknowledged were being provided for pursuant to Clause 5 of Article 15 of the Constitution, which was inserted by Constitution (Ninety Third Amendment) Act, 2005, which became effective on 20-1-2006. Ordinance 30 of GGSIU also specifically left out educational institutions that are owned by minorities from being subject to the reservations policy enunciated by it.

48. In this light, we also opine that the Division Bench was correct in holding that Ordinance 30 of GGSIU to be inapplicable in this case on account of enactment of Delhi Act 80 of 2007. This is so, because Delhi Act 80 of 2007 is a later enactment, much more general, containing a complete code covering the entire terrain of admissions of students to professional unaided non-

¹⁰ (2011) 7 SCC 179



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minority institutions affiliated to all universities in NCT of Delhi, including GGSIU, with specific provisions therein regarding allocation of seats between Delhi and non-Delhi students, and reservations applicable in terms of those students falling within constitutionally permissible classes. However, the expression used by the Division Bench, that Ordinance 30 has "lost its relevance": to the extent that it may suggest a loss of general relevance is not correct. Considerable care ought to be exercised in delineating the applicability of unrepealed sections of a previous statute, even if they conflict with the provisions of a later statute with respect to some specific terrain of activities. After all, Ordinance 30 of GGSIU may be applicable with respect to many other situations, not involving the terrain covered by Delhi Act 80 of 2007."

28. I have heard Mr. Khagesh Jha, learned Counsel for the petitioner and Ms. Anita Sahani, learned Counsel for Respondents 2 and 3 at length.

Analysis

29. Effect of orders passed in *Justice For All*

29.1 At the outset, it may be noted that though Mr. Jha places considerable reliance on the orders dated 17 May 2023 and 25 July 2023 passed by the Division Bench of this Court in *Justice For All*, they do not really help the petitioner to any substantial extent. The order dated 17 May 2023 was an interim order passed on a *prima facie* view of the case. By the said order, the GGSIPU was directed to provide reservation to PWD candidate *keeping in view the 2016 RPWD Act* for the academic session 2023-2024. Alleging disobedience with the said direction, Justice For All filed a contempt application, which was disposed of, recording GGSIPU's statement that it was providing 5% reservation to specially abled persons *in*

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accordance with the 2016 RPWD Act. Having thus noted the order passed in the contempt application, the Division Bench proceeded on 25 July 2023 to dispose of WP (C) 6605/2023 with the direction to the GGSIPU *to follow statutory provisions governing the field under 2016 RPWD Act* and provide 5% reservation to specially abled persons in all educational institutions.

29.2 It is clear that this Court has, in its orders passed in WP (C) 6605/2023, required the GGSIPU to provide reservation to specially abled persons *in accordance with the 2016 RPWD Act*. The orders cannot be regarded as containing a blanket direction to the GGSIPU to provide 5% reservation in all institutions affiliated with it, to PWDs. The direction for granting reservation to PWDs, as contained in the orders passed in WP(C) 6605/2023, is rendered in the context of the 2016 RPWD Act.

29.3 There is substance, therefore, in Ms. Anita Sahani's submission that the orders passed in WP(C) 6605/2023 are applicable only within the parameters of the 2016 RPWD Act. No reservation, not forthcoming under the 2016 RPWD Act, can, therefore, be claimed by any PWD on the basis of the orders passed by the Division Bench in WP(C) 6605/2023.

30. Entitlement of petitioner to reservation under the 2016 RPWD Act

30.1 The next issue that arises for consideration is, therefore, whether the petitioner is entitled to reservation as a PWD under the

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2016 RPWD Act.

30.2 This question is answered by Section 32 of the 2016 RPWD Act, which is *pari materia* with Section 39 of the 1995 PWD Act. Section 32 of the 2016 RPWD Act, like Section 39 of the 1995 PWD Act restricts the availability of reservation to PWDs to Government institutions and the institutions aided by the Government. The VIPS is admittedly neither a Government institution nor an institution aided by the Government. Ms. Anita Sahani points out that the GGSIPU is, in fact, providing 5% reservation to PWDs in accordance with the 2016 RPWD Act in the USLLS and other Government institutions affiliated to the GGSIPU. The VIPS not being a Government institution or an institution aided by the Government, no PWD reservation can be claimed for admission to the VIPS under the 2016 RPWD Act or under the 1995 PWD Act. No benefit can, therefore, enure to the petitioner either under 2016 RPWD Act or under the 1995 PWD Act.

30.3 For this reason, too, therefore, the orders passed by this Court in WP (C) 6605/2023 do not help the petitioner in any way.

31. Entitlement of petitioner to benefit under Section 12(2)(c) of the DPCIA and Rule 8(2)(c) of the DPCIR

31.1 Mr. Jha submits that *de hors* the 2016 RPWD Act, the petitioner is nonetheless entitled to the benefit of Section 12(2)(c) of the DPCIA.

31.2 Ms. Sahani has sought to contend that Section 12(2)(c) of the DPCIA also provides reservation to PWDs only as available under the

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1995 PWD Act. Inasmuch as Section 39 of the 1995 PWD Act is restricted to Government institutions and institutions aided by the Government, her contention is that no PWD reservation entitlement in the matter of admission to the VIPS can be sought on the basis of Section 12(2)(c) of the DPCIA.

31.3 Mr. Jha contends, *per contra*, that if such an interpretation is adopted, Section 12(2)(c) of the DPCIA would be rendered otiose. He points out that Section 2(a) of the DPCIA clearly restricts its applicability to unaided educational institutions. That being so, Section 12(2)(c) of the DPCIA cannot be regarded as providing reservation to PWDs only in the matter of admission to Government or aided educational institutions. This would result in Section 12(2)(c) of the DPCIA as providing for a dispensation beyond the scope of applicability of the DPCIA itself and would result in Section 12(2)(c) effectively becoming *ultra vires* the DPCIA.

31.4 I find substance in Mr. Jha's contention.

31.5 There can be no dispute about the fact that the petitioner is a "person with disability" within the meaning of Rule 2(f) of the DPCIR. Rule 8(2)(c) of the DPCIR also provides that 3% seats for each program of study shall be reserved for persons with disability duly certified by the prescribed authority. The petitioner is in possession of a Disability Certificate, certifying that he suffers from 50% intellectual disability within the meaning of the 2016 RPWD Act, issued by the competent hospital under the said Act. He,



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therefore, also qualifies as a person suffering from disability within the meaning of the 1995 PWD Act, as the percentage of his disability is over 40%.

31.6 Section 12(2)(c) of the DPCIA provides 3% reservation to PWDs, as provided in the 1995 PWD Act. Section 39 of the 1995 PWD Act provides reservation for PWDs in Government and aided institutions. The words “as provided in” cannot quite obviously be read as incorporating, by reference, Section 39 of the 1995 PWD Act into Section 12(2)(c) of the DPCIA. If Section 12(2)(c) of the DPCIA were to be so interpreted, it would apply only to Government and Government aided institutions, whereas Section 2(a) of the DPCIA clearly ordains that the DPCIA applies only to unaided institutions. The words “as provided in” as implied in Section 12(2)(c) of the DPCIA have, therefore, to be as making applicable, *mutatis mutandis*, the beneficial dispensation contained in Section 39 of the 1995 of the PWD Act – and reiterated in Section 32 of the 2016 of the RPWD Act – to PWDs who fall within the scope of DPCIA, i.e. to the admission of PWDs to unaided educational institutions other than non minority educational institutions.

31.7 Para 48 of the report in *Indian Medical Association*, extracted in para 27 *supra*, clearly fortifies this position, by holding that the DPCIA contains “a complete code covering the entire terrain of admissions of students to professional unaided non-minority institutions affiliated to all universities in NCT of Delhi, including GGSIU ...” Ordinance 30 of the GGSIPU, which was sought to be



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pressed into service was, therefore, held to be inapplicable.

31.8 The petitioner being a PWD, and VIPS being an unaided educational institution to which the DPCIA and DPCIR apply, the petitioner is entitled to the benefit of Section 12(2)(c) of the DPCIA and Rule 8(2)(c) of the DPCIR.

32. Clause 9.6 of the Admission Brochure of the GGSIPU

32.1 This position is fortified by Clause 9.6 of the Admission Brochure of the five years integrated BA LLB and BBA LLB courses provided by the GGSIPU. The said clause provides for separate dispensations for admissions to Government colleges and to self-financing institutions affiliated to the GGSIPU. In the case of Government colleges, Clause 9.6 provides that 5% reservation would be available in accordance with 2016 RPWD Act. In the case of self-financing institutions such as VIPS, Clause 9.6 provides that the PWD reservation would be as per the policy of the GNCTD applicable to the self-financing institutions.

32.2 The GNCTD policy applicable to self-financing institutions is, admittedly, contained in the DPCIA and DPCIR. Clause 9.6 of the Admission Brochure, therefore, invokes, by reference, the provisions of the DPCIA and DPCIR.

32.3 The admission of the petitioner as a PWD candidate in the VIPS is also, therefore, in sync with Clause 9.6 of the Admission Brochure

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to the five years integrated BA LLB and BBA LLB courses in the GGSIPU.

33. Re. requirement of producing documents in support of Disability Certificate

33.1 The insistence, in para 8 of the impugned communication dated 6 September 2023, on the petitioner producing supporting documents on the basis of which he had been issued a Disability Certificate is, *ex facie*, completely unjustified. There is no allegation that the Disability Certificate was not genuine, or that it had been issued by an incompetent authority. The GGSIPU could not be allowed to sit in appeal over the Disability Certificate certified by the Dr Babasaheb Ambedkar Hospital and issued by the Department of Empowerment of Persons with Disabilities.

33.2 The requirement, envisaged in the impugned letter dated 6 September 2023, of the petitioner having to produce the documents on the basis of which he had been issued a Disability Certificate is, therefore, clearly illegal. It is so declared.

34. Re submission regarding change of category

34.1 Ms. Anita Sahni also sought to contend that the petitioner had, in fact, applied as a candidate belonging to the EWS, and had later changed his category to PWD and that such change of category was impermissible.



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34.2 Though an initial query had been made, in this regard, to the petitioner's father *vide* e-mail dated 17 August 2023, change of category is not cited as the ground for cancellation of the petitioner's admission in either of the impugned communications dated 5 September 2023 and 6 September 2023. It is not open to the GGSIPU, therefore, to seek to resuscitate this objection before this Court. An order has to stand or fall on the basis of the reasoning contained in it, and cannot be sought to be supported, even in a counter-affidavit filed in court, on any other ground.¹¹

34.3 That apart, the Document Verification Certificate and the Provisional Seat Allotment Letter, issued by the GGSIPU on 19 July 2023 after verification of the petitioner's documents, certify the petitioner to have applied as a Physically Handicapped (PH) candidate. That the petitioner is, indeed, a candidate suffering from intellectual disability cannot be denied.

34.4 I am not persuaded, therefore, to countenance, at this stage, an objection from the GGSIPU that the petitioner had originally applied as an EWS candidate, as a ground to defend the cancellation of his candidature.

35. As I have found the admission of the petitioner to be in accordance with law and the reservation available to PWDs in the five years integrated BA LLB and BBA LLB courses in the VIPS, I need not refer to other contentions advanced by learned Counsel including

¹¹ Refer **Mohinder Singh Gill v. Chief Election Commissioner, (1978) 1 SCC 405**



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the powers of the ARC and the applicability of Section 4(14) of the DPCIA.

Conclusion

36. For the aforesaid reasons, the impugned communications dated 5 September 2023 and 6 September 2023 are quashed and set aside, in so far as they treat the petitioner as ineligible for PWD reservation for admission to the five year integrated BA LLB and BBA LLB courses in the VIPS. The admission of the petitioner is held to be regular. The petitioner would be entitled to all consequential benefits.

37. The writ petition is allowed in the aforesaid terms, with no order as to costs.

CM APPL. 47177/2023 and CM APPL. 25829/2024

38. These applications do not survive for consideration and stand disposed of.

C.HARI SHANKAR, J

MAY 24, 2024

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