



2024:DHC:1474



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* IN THE HIGH COURT OF DELHI AT NEW DELHI

Reserved on : 13 February 2024Pronounced on : 26 February 2024

+ W.P.(C) 75/2024

SANJEEV KUMAR MISHRA

..... Petitioner

Through: Mr. Rahul Bajaj, Advocate

versus

JAWAHARLAL NEHRU UNIVERSITY

& ORS.

..... Respondents

Through: Mr. Subhrodeep Saha and Mr.
Kushal for Ms. Monika Arora, CGSC**CORAM:****HON'BLE MR. JUSTICE C. HARI SHANKAR****J U D G M E N T**

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26.02.2024**Issue**

1. The petitioner is a 100% visually disabled student, pursuing his M.A. in Sociology in the Jawaharlal Nehru University (JNU). He has not been allotted any hostel since the time he was admitted to the M.A. course on 23 November 2022. He has, therefore, approached this Court by means of the present writ petition, seeking that he be provided hostel accommodation.

Facts

2. On 1 August 2017, the petitioner was admitted to a combined



five year B.A.-M.A. programme in German in the JNU. Without completing the programme in the JNU, the petitioner left midway on 26 November 2020. However, as he had completed three years, he was awarded a B.A. degree in German.

3. During the course of his B.A. programme, the petitioner was allotted a room in the Kaveri Hostel which he occupied.

4. On 1 December 2020, the petitioner was admitted to the M.A. programme in the JNU in Political Science with specialisation in International Studies [M.A. (PISM)]. The JNU contends that, as the COVID-19 Pandemic was at its peak at the time, the petitioner was allowed to retain the hostel accommodation.

5. On 5 August 2021, while the petitioner was undertaking his M.A. (PISM) course, the petitioner was allotted a room in the Sabarmati Hostel, which is specifically meant for students suffering from physical disabilities. Consequently, on 15 September 2021, the JNU wrote to the petitioner requiring him to vacate his room in the Kaveri Hostel and shift to the room allotted to him in the Sabarmati Hostel. This letter finds no mention in the writ petition. It is acknowledged, however, in the writ petition that, though the petitioner was allotted a room in the Sabarmati Hostel, he continued to stay in the Kaveri Hostel. The JNU terms this as defiance of the directions contained in the notice dated 15 September 2021. Mr. Rahul Bajaj, who appears for the petitioner, states that it was because the petitioner had suffered a fracture. Nothing much turns on it.



6. The petitioner continued to retain the room in the Kaveri Hostel till the completion of his M.A. (PISM) course. As he did not vacate his room, a notice of eviction was issued to the petitioner on 2 November 2022 whereafter, on 3 November 2022, the petitioner was evicted from the room in the Kaveri Hostel.

7. On 23 November 2022, the petitioner was admitted to his third course in the JNU which was M.A. in Sociology.

8. No hostel accommodation was granted to the petitioner after he joined the said course, despite the petitioner having made requests in that regard.

9. The petitioner, in the circumstances, filed a complaint before the Chief Commissioner for Persons with Disabilities (CCPWD) entrusted to safeguard the rights of persons with disabilities under the Right of Persons with Disabilities Act, 2016 (hereinafter, referred to as “the RPWD Act”). It was contended by the petitioner in this complaint that the failure, on the part of the JNU, to grant the petitioner hostel accommodation after he had been admitted to the M.A. (Sociology) course on 23 November 2022 infringed Section 16 of the RPWD Act. The CCPWD was, therefore, requested to ensure that the situation was remedied at the earliest.

10. I may note that though the JNU in its counter affidavit to the present writ petition refers to a detailed and speaking order dated 31



August 2023 passed by it with respect to the petitioner's grievance, said order is not forthcoming on the record.

11. The JNU, in its reply dated 29 August 2023 to the CCPWD, raised several allegations regarding the conduct of the petitioner as a student with the JNU, which have also been repeated in the counter-affidavit filed before this Court. It is alleged that the petitioner was a trouble maker and a habitual complainant, who used to level baseless allegations against the warden and staff of the JNU. These allegations, needless to say, have no relevance whatsoever to the petitioner's right, if any, to grant of hostel accommodation. They do not, therefore, deserve even to be referred to in the present judgment. In case the petitioner was such a trouble maker, the Court fails to understand why no corrective measures were taken against him. Needless to say, the right of the JNU in that regard would, subject to the applicable rules, regulations, ordinances and statutes remain reserved. This Court makes no observations thereon.

12. Adverting to the relevant facts, the JNU, in its response to the CCPWD, submitted that the provisions of the JNU Hostel Manual did not entitle the petitioner to hostel accommodation, as he was pursuing a second Master's level course. Though the response did not make any reference to the relevant provisions of the Hostel Manual, the JNU has, in its counter affidavit to the writ petition identified these provisions as Clause 2.1.1 of the Hostel Manual and Clause (5) of Annexure X of the said manual. These provisions read thus :

“2.1.1 First Priority



(a) Students admitted to the full-time programmes who have passed their qualifying examination from places outside Delhi and are not residents of Delhi, excepting those who are admitted to a programme at a level at which the student already has a degree or has pursued studies in JNU at the same level with hostel accommodation.”

“(5) Allotment of hostel to P-III category students.

Every year a large number of students who have studied in Delhi/NCR region admitted in various programs of Centres/Schools apply for hostel accommodation. These students covered under least priority (P-III category) are also demanding hostel accommodation. Since, there is acute shortage of hostel seats, it is proposed that henceforth P-III category students will not be given hostel accommodation from Academic Year 2013-14; thereby prospective applicants get sufficient advance notice to continuing their study.”

13. As the complaint filed before the CCPWD was not resulting in any favourable outcome, the petitioner decided, on 29 October 2023, not to continue to prosecute the complaint. He has thereafter moved this Court by means of the present writ petition. The prayer clause in the writ petition reads thus :

“In the above premises, it is prayed that this Hon’ble Court may be pleased to:

- a) ISSUE an appropriate Writ, direction or order, including one directing the Respondent No. 1 to provide the Petitioner with hostel accommodation.
- b) ISSUE an appropriate Writ, direction or order directing Respondent No. 1 to revise the Hostel Manual disqualifying those pursuing their second masters in Respondent no. 1 institution from obtaining hostel accommodation and add a qualification that the rule does not apply to Persons with Disabilities.
- c) ISSUE an appropriate Writ, direction or order directing Respondent No.1 to pay compensation of Rs.10,00,000/- to the Petitioner for the mental agony and



pain caused as a result of the denial of hostel accommodation to the Petitioner for the first three semesters of his course.

d) In the alternative to prayers a and b, remand the matter to Respondent No. 3 institution and direct it to decide the issue in a time-bound manner and direct respondent no. 1 to abide by the directions of Respondent no. 3

e) Any other writ order or direction which this Hon'ble Court may deem fit and proper in the attendant facts and circumstances of the case.”

14. I have heard Mr. Rahul Bajaj, learned counsel for the petitioner and Mr. Subhrodeep Saha, learned counsel for the JNU, at length.

Rival contentions

Submissions of Mr. Rahul Bajaj on behalf of the petitioner

15. Mr. Bajaj, in arguments, restricts his prayer to grant of rent-free hostel accommodation to the petitioner.

16. Mr. Bajaj submits that the denial, by the JNU, of hostel accommodation to the petitioner violates Clause (3) of Annexure X to the Hostel Manual, consisting of the Note approved by the VC on 15 November 2012, which reads thus:

“(3) Allotment of hostel facility to all PH category students.

In addition, the hostel accommodation is allotted to all Physically Challenged students, irrespective of percentage of disability being admitted to various programs in Centres/Schools as against of 3% reservation laid down by the Government. Therefore, all PH students under P-I, P-II and P-III categories have been given hostel accommodation



during academic year 2012-2013.”

17. Mr. Bajaj has also placed reliance on clause (iii) of Section 16¹ [hereinafter “16(iii)”] of the RPWD Act read with the definition of “reasonable accommodation” as contained in clause (y) of Section 2² thereof. He has also pointed out that “denial of requisite accommodation” amounts to “discrimination” within the meaning of Section 2(h)³ of the RPWD Act. As such, by not providing hostel accommodation to the petitioner after he had joined his M.A. (Sociology) programme, Mr. Bajaj, submits that the JNU has clearly infringed Section 16(iii) of the RPWD Act.

18. Mr. Bajaj has also referred me to sub-sections (2) and (5) of Section 3⁴ of the RPWD Act. He submits that the responsibility to ensure reasonable accommodation for persons with disabilities is also cast on the appropriate Government by Section 3(5) who is also required to utilise the capacities of persons with disabilities by providing an “appropriate environment”. *Vide* Section 3(2)

¹ 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;

² (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;

³ (h) “discrimination” in relation to disability, means any distinction, exclusion, restriction on the basis of disability which is the purpose or effect of impairing or nullifying the recognition, enjoyment or exercise on an equal basis with others of all human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field and includes all forms of discrimination and denial of reasonable accommodation;

⁴ 3. **Equality and non-discrimination.** –

(2) The appropriate Government shall take steps to utilise the capacity of persons with disabilities by providing appropriate environment.

(5) The appropriate Government shall take necessary steps to ensure reasonable accommodation for persons with disabilities.



“appropriate environment” submits Mr. Bajaj would include hostel accommodation. The right for being provided reasonable accommodation by the JNU during the currency of his M.A. (Sociology) course is also, according to Mr. Bajaj, available to the petitioner by virtue of Section 5(1) and (2)⁵ of the RPWD Act. Moreover, he submits that Section 18⁶ of the RPWD Act, which also applies, requires the appropriate Government and local authorities to take measures to promote, protect and ensure participation of persons with disabilities in adult education and continuation of educational programme *equally with others*. The requirement of ensuring that persons with disabilities are allowed to participate in educational programmes equally with others, he submits, also in its wake, requires persons with disabilities, such as the petitioner, to be provided hostel accommodation while pursuing studies with the JNU, equally with others.

19. In support of his submissions, Mr. Rahul Bajaj has placed reliance on paragraphs 41, 42 to 44, 46, 48, 57, 58, 60 to 62 and 65 of the judgment of the Supreme Court in *Vikash Kumar v. UPSC*⁷. He has also placed reliance on paras 12 and 13 of the judgment of the Supreme Court in *Rajive Raturi v. U.O.I.*⁸ and on para 16 of the

⁵ 5. **Community life.** –

- (1) The persons with disabilities shall have the right to live in the community.
- (2) The appropriate Government shall endeavour that the persons with disabilities are,—
 - (a) not obliged to live in any particular living arrangement; and
 - (b) given access to a range of in-house, residential and other community support services, including personal assistance necessary to support living with due regard to age and gender.

⁶ 18. **Adult education.** – The appropriate Government and the local authorities shall take measures to promote, protect and ensure participation of persons with disabilities in adult education and continuing education programmes equally with others.

⁷ (2021) 5 SCC 370

⁸ (2018) 2 SCC 413



judgment of a learned Single Judge of this Court in *Lalit v. Govt. of NCT*⁹. He has also cited the judgment of the Supreme Court in *Patan Jamal Vali v. State of Andhra Pradesh*¹⁰.

20. Predicated on these decisions, Mr. Bajaj submits that it is no defence for the JNU to contend that they were providing several other facilities to students suffering with disabilities, or that the proscription against a student who is undertaking a second Masters' degree course in the JNU from being provided a hostel accommodation applied equally to everyone.

21. Mr. Bajaj further submits, apropos a defence to that effect which has been taken by the JNU in its counter-affidavit, that though the petitioner has a residential address at Vikas Puri, Vikas Puri is 21 km away from JNU and, as a student with 100% visual impairment, it is impossible for the petitioner to daily commute from Vikaspuri to JNU. It cannot therefore be contended by the JNU that the petitioner has a suitable alternate accommodation.

22. Mr. Bajaj has finally placed reliance on paras 23 to 27 of the judgment of this Court in *Akshansh Gupta v. Department of Science and Technology*¹¹ and on paras 5 to 7 of the judgment of the Supreme Court in *J.P Ravidas v. Navyuvak Harijan Uthapan Multi Unit Industrial Coop. Society Ltd.*¹².

⁹ 2010 SCC OnLine Del 1882

¹⁰ (2021) 16 SCC 225

¹¹ (2019) 259 DLT 554

¹² (1996) 9 SCC 300



Submissions of Mr. Subhrodeep Saha on behalf of the JNU

23. Responding to the submissions advanced by Mr. Bajaj, Mr. Subhrodeep Saha submits that denial of hostel accommodation to the petitioner, consequent to his enrolment in the second Masters degree course, was strictly in accordance with Clause 2.1.1 (a) of the JNU Hostel Manual, which excepted students who had completed their qualifying examinations from places outside Delhi and were not residents thereof from entitlement to hostel accommodation, if they already had a degree or were pursuing studies in the JNU at the same level with hostel accommodation. This exception, according to Mr. Saha, applies to the petitioner and, therefore, the petitioner was not entitled to seek hostel accommodation.

24. Additionally, Clause 3 in Annexure X to the Hostel Manual also excepts P-III category students from hostel accommodation. This exception also applies, in his submission, to the petitioner.

25. Mr. Saha submits that the petitioner is a 49 year old man, who is pursuing his third Masters' degree course with the JNU. He submits that there is an overwhelming element of public interest involved in restricting the availability of hostel facilities to students who are repeatedly pursuing one Masters course after the other from the JNU. Though he has not used the expression during oral arguments, the counter-affidavit of the JNU refers to this phenomenon as "ever-greening of tenancy".



26. Mr. Saha submits that, if a student such as the petitioner is permitted to hold on to his hostel accommodation in perpetuity, by electing to pursue one master's degree course after another, it would result in similarly situated persons, suffering from similar physical disabilities, not being able to secure hostel accommodation. The aim of the JNU is to ensure maximum exposure of students to the educational environment and it is with this aim in mind that the JNU has, per rule, not allowed hostel accommodation to a student who is undertaking a second masters' degree programme in JNU.

27. Mr. Saha assures that no person, not suffering from visual disability, would be allotted a room in preference to the petitioner, and that the room from which he was evicted would also be allotted only to a person suffering from physical disability.

28. Insofar as the RPWD Act is concerned, Mr. Saha submits that the JNU has more than amply fulfilled its mandate, as there are reasonable accommodations available for students suffering from physical disabilities. However, he submits that it may be impossible for the JNU to provide accommodation for all physically disabled students who seek to undertake education within its campus and, if it is not able to do so, it cannot be said to be infracting the RPWD Act in any way.

29. Mr. Saha further submits that, as Clause 2.1.1(a) applies to all disabled students equally, it cannot be said to violate Article 14 of the Constitution. Reliance has been placed by Mr. Saha, in this context,



on the decisions in *Jeeja Ghosh v. U.O.I.*¹³ and *Anuradha Bhasin v. U.O.I.*¹⁴.

30. Mr. Saha submits that the private interest of the petitioner has to yield to the larger public interest of ensuring maximum availability of hostel accommodation to students. In the process, if individual discomfort is caused, it cannot confer a right to seek a writ of mandamus from a court. He reiterates, in this context, that the petitioner is not without a place to stay, as was sought to be contended before this Court, but resides in Vikaspuri.

Submissions of Mr. Bajaj in rejoinder

31. In rejoinder, Mr. Bajaj only urges two points. The first is that no empirical data has been provided by the JNU with respect to students suffering from physical disabilities who were awaiting hotel accommodation and had a preferential right over the petitioner.

32. Secondly, he submits that, in view of the mandate of the RPWD Act and the law laid down by the judicial authorities on which he has placed reliance, resource constraints cannot be cited by the JNU as a ground to refuse hostel accommodation to the petitioner.

Analysis

A prefatory note

¹³ (2016) 7 SCC 761

¹⁴ (2020) 3 SCC 637



33. As Mr. Rahul Bajaj correctly says, the paradigm to deal with persons who are completely visually challenged is distinct and different. Persons who suffer from disabilities, as recognized by the RPWD Act, are no different from you or me. In one way or the other, each of us suffers from disabilities, known and unknown. Yet, we all have to function as a cohesive human whole. The RPWD Act, and all laws which strive to provide support to a person suffering from a disability, merely seek to neutralize the disability, so that the person's ability matches those of the rest of his peers, and they stand on an equal footing. This is the heart of the theory of equal opportunity, which pervades Article 14 and, indeed, the Constitution as a whole. It is because of this, that the more appropriate term to use would be "differently abled", rather than "disabled". Persons who are differently abled are as able as any of us; however, as their ability is *different*, it poses a challenge, when they seek to integrate with the societal whole. It is that *difference* that the RPWD Act seeks to eliminate. Given the means to tide over the difference, a differently abled person no longer remains differently abled, and becomes a part of the homogeneous human whole. It is then that, the difference in ability being neutralized, the individual is able to rise to his full stature, and invoke his innate talents and faculties to their fullest extent. In such a situation, the person who was otherwise regarded as "disabled" often equals, if not excels, his more redoubtable peers in the profession that he pursues. Mr. Rahul Bajaj is a luminescent example.



34. Inclusivity, and the need of integration into the mainstream of society, remaining thus at all times the *raison d'etre* of the RPWD Act and the entire movement towards neutralizing disabilities, cases dealing with “persons with disability” have to be approached with this prevailing consideration in the forefront. Mr. Bajaj is correct in his submission that any attempt at equalizing the differently abled with their peers itself infracts Article 14 of the Constitution, which frowns as much on inequality among equals, as on equality among the unequal¹⁵.

Clause 2.1.1(a) of the Hostel Manual

35. In so assiduously contending that Clause 2.1.1(a) of the Hostel Manual applies equally to everyone, therefore, Mr. Saha unconsciously supports the contention of Mr. Bajaj that the clause is discriminatory. A provision, whether in plenary or subordinate legislation or in any bye laws or guidelines which apply, may be facially discriminatory, or it may be facially equitable but discriminatory in its implementation. In either case, to the extent that the provision permits such discriminatory implementation, it becomes discriminatory in itself. Clause 2.1.1(a) is, as Mr. Bajaj concedes, facially equitable, as it applies equally to all, but, *in implementing the clause equally to the differently abled and their counterparts, the provision becomes discriminatory in its operation, or implementation.*

36. In the present case, moreover, even on the basis of the stand that



JNU is taking, Clause 2.1.1(a) has no application. The clause applies to “students admitted to the full-time programmes who have passed their qualifying examinations from places outside Delhi and *are not residents of Delhi*”. It is the JNU’s own case that the petitioner is a resident of Vikas Puri, New Delhi. Ergo, Clause 2.1.1(a) has no application at all.

37. The exception clause in Clause 2.1.1(a) can apply only where the case would otherwise fall within the main part of the clause. Inasmuch as the main part of Clause 2.1.1(a) does not apply, the case of the petitioner cannot be rejected by relying on the exception contained in Clause 2.1.1(a) either.

Clause (5) in Annexure X to the Hostel Manual

38. Neither can the JNU seek refuge in Clause (5) in Annexure X to the Hostel Manual. In the first place, neither side has placed, on record, any document which defines the categories P-I, P-II and P-III. Clause (5) specifically covers students in category P-III. Without knowing what category P-III covers, it is obviously impossible to come to a clear conclusion regarding the applicability of the Clause.

39. *Prima facie*, however, it appears that category P-III applies to students *who have studied in Delhi/NCR* and are admitted to the JNU. In such cases, the Clause appears to place the students in a low priority category probably because they have other means of stay in Delhi, having studied in Delhi before obtaining admission to the JNU.



In the case of the petitioner, though, his entire study, within Delhi, has been in the JNU. As such, the petitioner may not, *prima facie*, fall within Clause (5).

Assuming Clause 2.1.1(a) and Clause (5) in Annexure X were applicable

40. That said, Mr. Saha fails to appreciate the fact that Clauses 2.1.1 of the Hostel Manual, and Clause (5) of Annexure X thereto, cannot be applied to students who are differently abled, as doing so would amount to treating them equally to “able-bodied” (to use the felicitous expression employed by Mr. Rahul Bajaj) students, which would in turn result in unequals being treated as equals.

41. In a case such as the petitioner’s therefore, even if were to be assumed that either or both of Clauses 2.1.1 or Clause (5) in Annexure X to the Hostel Manual would apply, the JNU could, on the basis of the said clauses, have refused to offer the petitioner a hostel accommodation only if the JNU *could positively establish that, on the date when the petitioner was admitted to the MA course in Sociology, i.e., on 23 November 2022, differently abled students, senior in priority to the petitioner, were waiting to be accommodated against all available vacant rooms on that date.* The JNU has not even attempted to plead any such case.

42. The distinction that the JNU seeks to draw between students who are pursuing the same level of course – such as Masters – a second time with the JNU, and “fresh” students, has no legal basis to



sustain it. Both are students. The “*differentia*”, if at all there exists one, between differently abled students who have earlier pursued a course with the JNU, and those who are pursuing one for the first time, has no rational nexus with the object of ensuring that a student studying in the JNU, who is differently abled, has a place to stay. Any *differentia*, even if intelligible, which does not bear a rational nexus to the object of the concerned dispensation, be it legislative or executive, cannot sustain Article 14 scrutiny. A student who is pursuing a second Master’s degree course with the JNU, having already pursued and completed one, is as entitled to a place to stay as a student who is joining the JNU for the first time. The needs of one cannot be sacrificed at the altar of the needs of the other. The concept of “evergreening of tenancy” is a mythical and nebulous concept, which has no constitutional backing whatsoever. No conflict between private and public interest, therefore, arises in this case.

43. Any other interpretation of Clause 2.1.1(a) or of Clause (5) in Annexure X to the Hostel Manual would render the provisions, additionally, violative of the RPWD Act, as well as the decisions of the Supreme Court on the need for providing reasonable accommodation to the differently abled, cited by Mr. Rahul Bajaj and noted *supra*.

The RPWD Act

44. The need for educational institutions to comply, strictly, with the provisions of the RPWD Act stands underscored from the



following passage, from the judgment of the Supreme Court in *Justice Sunanda Bhandare Foundation v. U.O.I.*¹⁶:

“24. We have referred to certain provisions only to highlight that the 2016 Act has been enacted and it has many salient features. As we find, more rights have been conferred on the disabled persons and more categories have been added. That apart, access to justice, *free education*, role of local authorities, National fund and the State fund for persons with disabilities have been created. The 2016 Act is noticeably a sea change in the perception and requires a march forward look with regard to the persons with disabilities and the role of the States, local authorities, *educational institutions* and the companies. The statute operates in a broad spectrum and the stress is laid to protect the rights and provide punishment for their violation.”

45. Section 5 of the RPWD Act guarantees, to every person with disability, the “right to live in the community”. The expression “live in the community” is expansive and compendious, and includes, within itself, all aspects of a comfortable, cohesive, and integrated existence, with the ability and entitlement to all amenities, comforts, and indicia of a fulfilling and complete terrestrial tenure. The aim, quite obviously, is to ensure absolute parity between the conventionally and the differently abled.

46. Section 16(iii) clearly concretizes the petitioner’s case. The provision obligates every educational institution, funded *or recognized* by the appropriate Government – which would, therefore, include the JNU – to “provide reasonable accommodation” to every differently abled student, “according to the individual’s requirements”. The definition of “reasonable accommodation”, in Section 2(y), encompasses the incorporation of “appropriate modifications and

¹⁶ (2017) 14 SCC 1



adjustments ... to ensure to persons with disabilities *the enjoyments or exercise of rights equally with others*". The nature of such "enjoyments" would include provision for residential accommodation, regarding with Section 5(2)(b) casts a positive obligation on the Government. *Vis-à-vis* students studying within its portals, a parallel obligation would attach to the JNU. On this issue, the Supreme Court, in ***Disabled Rights Group v. U.O.I.***¹⁷, observed thus:

"15. It hardly needs to be emphasised that the Disabilities Act is premised on the fundamental idea that society creates the barriers and oppressive structures which impede the capacities of person with disabilities. Capability theorists like Martha Nussbaum are of the opinion that there cannot be a different set of capacities or a different threshold of capabilities for persons with disabilities. This raises the critical issue of *creating a level playing field whereby all citizens to have equality of fair opportunities to enable them to realise their full potential and experience well-being. To ensure the level playing field, it is not only essential to give necessary education to the persons suffering from the disability, it is also imperative to see that such education is imparted to them in a fruitful manner. That can be achieved only if there is proper accessibility to the buildings where the educational institution is housed as well as to other facilities in the said building, namely, classrooms, library, bathrooms, etc.* Without that physically handicapped persons would not be able to avail and *utilise the educational opportunity in full measure.*"

(Emphasis supplied)

47. The expression "utilise the educational opportunity in full measure", employed by the Supreme Court, is of immense significance. Every facility, as is necessary to enable the student to *avail and utilize the educational opportunity in full measure* has necessarily to be provided by the educational institution. Failure to do so is clear and transparent breach of the RPWD Act. Provision of a place to stay within the precincts of the institution, needless to say, is

¹⁷ (2018) 2 SCC 397



indispensable to availing the facilities provided by the institution in their full measure.

48. It is truly ironical, in this background, that the JNU is seeking to defend its case by relying on the fact that the petitioner – a 100% visually challenged student – has provided a residential address 21 km away from the JNU campus. The submission deserves no further comment.

49. In *Avni Prakash v. National Testing Agency*¹⁸, the Supreme Court held, in unequivocal terms, thus:

“The right to inclusive education is realised through the provision of reasonable accommodation. In *Vikash Kumar*, this Court emphasised that reasonable accommodation *is at the heart of* the principle of equality and non-discrimination espoused under the RPwD Act, 2016. The denial of reasonable accommodation to a PwD amounts to discrimination.”

50. No doubt, the RPWD Act does not obligate any institution to do the impossible. Law always leans towards reasonableness. If, for example, the JNU were to be flooded with differently abled students, and the influx was such that it was unreasonable to expect the JNU to accommodate everyone, no law, including the RPWD Act, would obligate the JNU to do so. But, for that, the JNU would have to place empirical data on the table to make out a case of the impossibility – or even impracticability – of compliance with the mandate of the RPWD Act. Para 78 of *Vikash Kumar* makes this position clear beyond doubt:

¹⁸ (2023) 2 SCC 286



“78. The party contending that a particular accommodation will impose a disproportionate or undue burden has to prove the same¹⁹. And such a justification has to be based on objective criteria. Further, the CRPD Committee has held that an assessment of reasonable accommodation must be made “in a thorough and objective manner, covering all the pertinent elements, before reaching a conclusion that the respective support and adaptation measures would constitute a disproportionate or undue burden for a State party”²⁰

51. No empirical data, whatsoever, has been provided by the JNU, to indicate that it would be unreasonable to expect the JNU to provide hostel accommodation to the petitioner. *Sans* any such data, the plea cannot sustain.

52. The provisions of the RPWD Act, needless to say, would have overarching priority over all provisions of the JNU Hostel Manual. Enforcement of the provisions of the Hostel Manual can only, therefore, be said to be lawful if it is in sync with the mandate of the RPWD Act. The JNU has to be acutely conscious of its obligations under the RPWD Act, and the law that has developed in that regard, while implementing the provisions of its Hostel Manual – or, for that matter, while taking any other executive or administrative decision.

Clause (3) in Annexure X to the Hostel Manual

53. In fact, the case of the petitioner squarely falls within Clause (3) in Annexure X to the Hostel Manual, which is a special dispensation for the differently abled. It clearly provides that, irrespective of the

¹⁹ CRPD Committee, GC 6, para 26[g].

²⁰ CRPD Committee, *JH v. Australia*, GE. 18-22328 (E), dated 31-8-2018, para 7.4.



category in which the student would otherwise fall – P-I, P-II or P-III – if he is physically challenged, he would be entitled *ipso facto* to hostel accommodation.

54. It is significant that, while placing such extensive reliance on Clause 2.1.1(a) and Clause (5) in Annexure X to the Hostel Manual to oppose the petitioner’s prayer, the JNU has not chosen to advance a single submission, either during oral arguments or in their written submissions, regarding the applicability of Clause (3) in Annexure X. The Clause, in my view, squarely applies. It supersedes, by its very words, Clause (5) in Annexure X, as it guarantees hostel accommodation to all differently abled students of the JNU, irrespective of the category in which they may fall. The JNU cannot, therefore, deny hostel accommodation to any of its differently abled students. Significantly, the very title of Clause (3) is “Allotment of hostel facility to *all* PH category students”. The petitioner is, without doubt, a “PH category student”. The petition is, therefore, entitled to succeed even on the basis of Clause (3) in Annexure X to the Hotel Manual.

Conclusion

55. The petitioner is, therefore, entitled, as of right, to hostel accommodation, provided by the JNU within its campus, free of cost, with all other entitlements to which a differently abled student is entitled under the law and the policies of the JNU, till completion of his Masters degree course in Sociology.



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56. The JNU is directed to provide, within a week from the pronouncement of this judgment, all such facilities to the petitioner.

57. The petition, therefore, succeeds and is allowed.

58. There shall be no orders as to costs.

C. HARI SHANKAR, J.

FEBRUARY 26, 2024

yg/dsn