

\$~3 (2021 Cause List)

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

Date of Decision: November 29, 2021

+ W.P.(C) 13146/2021 with CM APPL. 41448/2021

ANMOL KUMAR MISHRA (MINOR) Petitioner
Through: Mr. Md. Nizamuddin Pasha,
and Mr. Aditya Samaddar,
Advocates.

versus

UNION OF INDIA AND ORS Respondents
Through: Mr. Rishabh Sahu, CGSC for
R-1/UOI.
Mr. Arjun Mitra, Advocate for
R-2 and R-3.

CORAM:
HON'BLE MR. JUSTICE PRATEEK JALAN

JUDGMENT

PRATEEK JALAN, J. (Oral)

The proceedings in the matter have been conducted through hybrid mode [physical and virtual hearing].

1. Notice in the present petition was issued on 23.11.2021. Mr. Arjun Mitra, learned counsel for the respondent Nos. 2 and 3-Indian Institute of Technology ["IIT"], Kharagpur and Joint Seat Allocation Authority (JoSAA) 2021 respectively, has taken instructions and submits that no counter affidavit is required. The petition can, therefore, be decided on the documents on record, and is taken up for hearing with the consent of learned counsel for the parties.

2. The petitioner seeks admission to IIT, Kharagpur for the Electronics and Electrical Communication Engineering Dual Degree (B.Tech. plus M.Tech.) course. He suffers from a condition of visual impairment called keratoconus, and applied for admission in the category of Persons with Disability [“PwD”]. He was admitted to the course of his choice pursuant to the Joint Entrance Examination [“JEE”] conducted by the respondents. However, his admission was cancelled, as reflected on the admissions portal on 31.10.2021, and communicated to him by a communication dated 09.11.2021. The reason stated for the rejection of his candidature is that the disability certificate submitted by him mentions that his disability is temporary and “likely to improve”.

Facts

3. The factual position is undisputed. The petitioner suffers from keratoconus, and originally submitted a disability certificate dated 14.01.2021, issued by the Issuing Medical Authority, South West, Delhi, Department of Empowerment of Persons with Disabilities, Ministry of Social Justice and Empowerment, Government of India. The certificate records that he has a 40% temporary disability in relation to both eyes as per the guidelines for assessing the extent of specified disability under the Rights of Persons with Disabilities Act, 2016 dated 04.01.2018 [“the Guidelines”] issued by the Government of India. The certificate is stated to be valid for one year, i.e. until 14.01.2022.

4. The petitioner was unsure of whether he satisfies the eligibility criteria of the PwD category and, therefore, addressed an email dated

21.04.2021 to each of the IITs. He mentioned in the said email that he has a certificate from a government hospital to the effect that he has 40% temporary disability under the “low vision” category, and that the certificate is valid for one year after which he has to re-check his disability and would be given a permanent disability certificate at that stage, if he qualifies. IIT, Kharagpur is the organizing institution for the JEE (Advanced) this year. The JEE office in IIT, Kharagpur informed the petitioner by an email dated 22.04.2021 that he is eligible to get a seat under the PwD category, subject to a valid PwD certificate and other eligibility criteria. He was asked to submit a PwD certificate with 40% disability in Form-II of the brochure of the JEE (Advanced) 2021 [“the brochure”]. An email received from IIT, Bombay has also been placed on record, which shows that the petitioner was told that he was eligible under the PwD category, subject to submission of a valid PwD certificate. However, in this email, he was directed to submit a certificate in Form-IV.

5. The petitioner was allotted a seat in the PwD category in the course of his choice and opted to “freeze his choice”, rather than to be considered for upgradation in subsequent rounds of allotment. He was required to have his PwD status verified, which was done at IIT, Kharagpur on 21.10.2021. An endorsement was made on his PwD category certificate, which reads as follows: -

“Documents verified. Temporary disability of 40% (Forty percent) due to low vision due to B/L Keratoconus which valid upto 14.01.2022.”

This was also reflected in the status on the admissions portal.

6. The petitioner was thereafter asked to submit the certificate in

Form-IV, which he obtained from DDU Hospital, Harinagar, New Delhi on 03.09.2021. The certificate was issued on the basis of the earlier disability certificate. It bears the same number as the original, and states that it is valid until 14.01.2022. A physical copy of the Form-IV certificate has been handed over in Court. It is an undisputed document and is taken on record. As with the original certificate dated 14.01.2021, it certifies that the petitioner suffers from a temporary disability of 40% in both eyes. In this certificate, however, it has also been mentioned that the petitioner's condition is "likely to improve", and it is on this basis that his candidature has ultimately been rejected.

Submissions

7. Mr. Md. Nizamuddin Pasha, learned counsel for the petitioner, submits that Clause 19.2 of the Guidelines specifically permits a temporary certificate if the condition is likely to worsen, and also for specific purposes, such as for pursuing education. He points out that a temporary certificate in cases of keratoconus is expressly contemplated. Mr. Pasha submits that neither the brochure published for this purpose, nor the Act makes a distinction between permanent and temporary disability. To the extent that the definition of "person with disability" in Section 2(s) of the Act itself contemplates a long-term impairment, the issuance of the certificate itself shows that the petitioner was suffering from a long-term impairment.

8. Mr. Pasha also submits that another candidate with a temporary disability has, in fact, been admitted to an engineering course on the basis of the same JEE examination. He has placed on record the certificate of the candidate in question (Anexure P-5 to the writ

petition) and the provisional seat allotment certificate issued to him (Anexure P-21 to the writ petition).

9. Mr. Mitra, on the contrary, submits that Clause 19.2 requires a disability be permanent to be certified. Mr. Mitra's contention is that the certificate dated 03.09.2021 finally submitted by the petitioner certified that his condition is likely to improve, and he was, therefore, not entitled to the benefit of reservation.

Analysis

10. The right of PwD candidates to secure reservation in higher educational institutions is provided under Section 32 of the Rights of Persons with Disabilities Act, 2016 ["the Act"]. The reservation is in respect of persons with benchmark disabilities ["PwBD"]. This term is defined in Section 2(r) of the Act. Where the specified disability is defined in measurable terms, it includes a person with not less than 40% of the specified disability. The term "specified disability" refers to disabilities mentioned in the Schedule to the Act. The Schedule to the Act, as far as visual impairment is concerned, includes persons with "low vision", into which category the petitioner admittedly falls.

11. The Ministry of Social Justice and Empowerment, Government of India has issued the Guidelines vide notification dated 04.01.2018 for evaluation and certification of specified disabilities. The Guidelines relate to various disabilities, including visual impairment. As far as visual impairment is concerned, the nature of the certification is provided for in Clause 19.2, and the assessment of impairment is provided in Clause 19.3. Clause 19.2 reads as follows: -

*“19.2. Nature of Certificate: **The medical authority will decide whether disability certificate should be temporary or permanent. The disability shall be permanent to be certified.** The certificate can be temporary if condition is likely to worsen and also for specific purposes such as for pursuing education. The need of reassessment, if required, should be clearly mentioned in the certificate with time frame. **In certain cases such as keratoconus, developmental defects, operated congenital cataract with corneal decompensation, operated congenital glaucoma with hazy cornea etc., the patient especially can be issued a temporary certificate.**”¹*

12. In the light of the provisions of the Act, and particularly the Guidelines, I am of the view that the petitioner’s case is merited. It may be noted that in the Act, the definition of “PwDs”, “PwBDs” and of “specified disability” do not *ex facie* distinguish between temporary and permanent disabilities. The definition of PwD, to the extent that it incorporates the necessity of long-term impairment, itself subsumes this requirement. The petitioner is undisputedly a PwBD whose certificate mentions that his impairment is to the extent of 40%. The Schedule of the Act, while enumerating specified disabilities, also does not make a distinction between permanent and temporary impairment in the context of visual impairment. In contrast, while dealing with “speech and language disability” in paragraph 1D of the Schedule to the Act, it is specifically mentioned that the disability arising out of conditions such as laryngectomy or aphasia affecting one or more components of speech and language due to organic or

¹ Emphasis supplied.

neurological causes must be permanent. In the absence of similar phraseology in paragraph 1B, which deals with visual impairment, no such condition can be read into the Act.

13. The Guidelines also recognize keratoconus as a condition in which a temporary certificate may be given. The general rule under Clause 19.2 is that a disability would be certified if it is permanent. However, temporary certificates are expressly contemplated if the condition is likely to worsen, and also for specific purposes, such as for pursuing education. This case falls within the second category.

14. The petitioner placed the entire matter before the IITs by way of correspondence prior to filling up his form or taking the JEE. He was advised that he was eligible under the PwD category, subject to a valid PwD certificate and other eligibility criteria. The validity of his certificate is not in issue. What is now being raised is that a temporary disability is a disqualification to avail of the reservation. The fact that the petitioner's disability was temporary and his certificate was valid only for a period of one year was disclosed by him in his correspondence. The position taken by the respondents in their response to his emails is, in my view, consistent with the Act and the Guidelines. To the contrary, the contention in the impugned communication dated 09.11.2021 is that he is not eligible for the very reason that he had disclosed to the respondents.

15. This is an unduly restrictive interpretation. The Act is a beneficial legislation. While dealing with an earlier legislation on the

same subject², the Supreme Court observed that the said Act was a social legislation for the benefit of PwDs and must be interpreted in order to fulfill its objectives³. The principle that beneficial legislations must be construed liberally with the objective of furthering their purpose is well settled⁴, and the same understanding must inform the interpretation of the Act. I am of the view that the impugned communication tends to adopt a restrictive interpretation which is not consistent with the object of the legislation. Of course, the benefits of the Act should be conferred upon those the legislature intended to be benefitted, but the Act does not make the distinction which the respondents have read into the legislative scheme.

16. Mr. Mitra submits that the case of a similar candidate with a temporary disability who was granted admission, is not a case of admission to IITs, but to one of the other institutions for which admissions are granted pursuant to the JEE (Mains) and not the JEE (Advanced). I am of the view that this distinction is of little relevance as the scheme of the reservation is similar.

Conclusion

17. For the aforesaid reasons, the writ petition succeeds, and the impugned communication of the respondents dated 09.11.2021 is

² The Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995

³ Union of India vs. National Federation of the Blind (2013) 10 SCC 772 [paragraph 37]

⁴ Reference may be made in this connection to two recent judgments of the Supreme Court: DDA vs. Virender Lal Bahri (2020) 15 SCC 328 dealing with the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 and Brahampal vs. National Insurance Co. (2021) 6 SCC 512 dealing with the Motor Vehicles Act, 1988.

quashed. The respondents are directed to take necessary consequential steps forthwith. There will be no order as to costs.

18. The pending application also stands disposed of.

PRATEEK JALAN, J.

NOVEMBER 29, 2021

'bp'

HIGH COURT OF DELHI



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