

Madras High Court

P. Rajaprabakaran (Minor) Rep. By ... vs The Secretary To Government Of ... on 1 January, 2005

Author: D Murugesan

Bench: D Murugesan

ORDER D. Murugesan, J.

1. In exercise of power under Article 162 of The Constitution of India, the Government of Tamil Nadu issued an order known as Policy Government Order identifying, among other things, the source for admission of candidates to medical/dental courses for the academic year 2004-2005. In terms of the said Government Order, the Director of Medical Education issued the prospectus in regard to the eligibility of the candidates for admission and their educational qualification, entitlement for consideration under rule of reservation, method of selection and admission, reserving certain seats under special category including reserving 3% seats for physically handicapped candidates. Clause 15(iv) of the prospectus reads as under:-

"3% of the total number of seats available in Government/Self-financing Medical/Dental Institutions are reserved for the Physically disabled candidates. The reservation of seats will be provided for the category of locomotory disorders of lower limbs between 50% to 70% and the other conditions for admission into MBBS/BDS Courses will be applicable as in the case of general category.

The candidates are required to produce a certificate from the District Medical Board of the area concerned constituted for this purpose assessing the nature and the extent of physical disability in the format prescribed in the Annexure-III.

The medical certificate received without the specific recommendations of the District Medical Board will not be considered for selection under the Special Category."

In the said clause, the Government reserved 3% of the total number of seats available to Government/self-financing medical/dental institutions for the physically disabled candidates. The Government also prescribed the criteria for consideration and admission of candidates as against the said 3% seats, whereby candidates with locomotory disorders of lower limbs between 50% and 70% were alone made eligible.

2. The petitioner has passed the Higher Secondary Course examination conducted by the State in the academic year 2003-2004 and secured 260.38 aggregate marks. He belongs to Most Backward Community. As the petitioner is physically disabled due to "residual polio (left lower limb)", which was assessed at 48% disability, applied for admission to the first year M.B.B.S. Degree course as against the seats reserved for physically handicapped candidates. As Clause 15(iv) mandated that the candidates with 50% to 70% disability alone were entitled for consideration and the disability of the petitioner having been assessed only at 48%, he was disentitled for consideration. The petitioner has questioned the said Clause 15(iv) on the ground that after the introduction of Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 (hereinafter

referred to as "the Act"), a person with disability "suffering from not less than 40% of any disability as certified by a medical authority", the prescription of between 50% and 70% disability in the prospectus is opposed to the provisions of the said Act.

3. Mr. R. Subramanian, learned counsel for the petitioner would submit that inasmuch as the disability of the petitioner has been assessed at 48% which is more than 40% as prescribed under Section 2(t) of the Act for entitlement to seek admission as against the 3% seats reserved by the State Government in terms of Section 39 of the Act, the denial of admission is only on the basis of the impugned Clause 15(iv) and hence the said Clause is invalid and opposed to the Act.

4. Mr. R. Muthukumaraswamy, learned Additional Advocate General, on the other hand, would contend that Section 2(t) refers only the minimum disability at 40% and by that section the State is not disentitled from prescribing the percentage of disability for consideration of the candidates over and above 40%. In view of the said section, the State cannot prescribe the disability which is less than 40% for consideration of candidates for admission as against the seats earmarked for physically disabled persons.

5. In view of the above rival submissions, the issue that arises for consideration is as to whether the prescription of disability between 50% and 70% in Clause 15(iv) is illegal and invalid.

6. Until the recent past there was no comprehensive law for persons with disabilities. The first attempt was made in July, 1980 when a Working Group was set up to make a study on the issue. In the International Year of disabled persons, a draft legislation known as "Disabled Persons (Security & Rehabilitation) Bill, 1981" was prepared. A committee was constituted in the year 1987-88 under the Chairmanship of the former Judge of the Supreme Court. Though the said committee submitted its report even during the year 1988 making wide ranging recommendations concerning the various aspects of rehabilitation namely, prevention, early intervention, education, training, employment etc., no law was enacted. The Economic and Social Commission for Asia and the Pacific at its 40th Session held at Beijing in the year 1992 adopted its Resolution 48/3 which proclaimed the period 1993-2002 as the Asia and the Pacific decade of Disabled Persons with a view to give impetus to the implementation of World Programme of Action in the economic and social commission for Asia and Pacific region beyond 1992. The resolution emphasised on enactment of legislation aimed at equal opportunities for people with disabilities, protection of their rights and prohibition of abuse and neglect of these persons and discrimination against them. India is also one of the signatories to the said resolution. By virtue of Article 253 of The Constitution of India, as the Parliament could enact law even in respect of a subject of State list in order to give effect to international conference, the Act was enacted in the year 1995 to spell out the responsibility of the State towards the prevention of disabilities, protection of rights, provision of medical care, education, training, employment and rehabilitation of persons with disabilities; to create barrier-free environment for persons with disabilities; to remove any discrimination against persons with disabilities in the sharing of development benefits, vis--vis non-disabled persons; to counteract any situation of the abuse and the exploitation of persons with disabilities; to lay down a strategy for comprehensive development of programmes and services and equalization of opportunities for persons with disabilities; and to make special provision of the integration of persons with disabilities into the social mainstream.

7. As the Act is aimed, among other things, towards prevention of disabilities, protection of rights, provision of medical care, education, training, employment and rehabilitation of persons with disabilities, it provided the constitution of Central Coordination Committee, Central Executive Committee, State Coordination Committee and the State Executive Committee with specific functions. Chapter IV contemplates prevention and early detection of disabilities. Under Section 25 of the Act, among other things, the State within its limits, economic capacity and development is obligated to carry out certain measures to prevent the occurrence of disabilities. Chapter V relates to education. Among other obligations, in terms of Section 39, it should reserve not less than 3% seats for persons with disabilities in all government educational institutions and other educational institutions receiving aid from the Government. Chapter VI relates to employment of disabled persons. Chapter VII relates to affirmative action in respect of aids and appliances to persons with disabilities and schemes for preferential allotment of land for certain purposes namely, house, setting up business, etc. Chapter VIII relates to the non-discrimination in transport on the road and in Government employment. Chapter X relates to recognition of institutions for persons with disabilities. Chapter XIII relates to the social security of disabled persons.

8. A combined reading of the above provisions spells out the overall responsibility of the State towards the prevention of disabilities, protection of rights, provision of medical care, education, training, employment and rehabilitation of persons with disabilities. As the issue relates to education of persons with disabilities, I shall refer to some of the provisions of the Act relating to the same. Section 2(i) defines "disability" as (i) blindness; (ii) low vision; (iii) leprosy-cured; (iv) hearing impairment; (v) locomotor disability; (vi) mental retardation; (vii) mental illness. Section 2(o) defines "locomotor disability" as meaning disability of the bones, joints or muscles leading to substantial restriction of the movement of the limbs or any form of cerebral palsy. Section 2(t) defines "person with disability" as meaning a person suffering from not less than forty percent of any disability as certified by a medical authority. In terms of Section 39, the State Government shall reserve not less than 3% seats for persons with disabilities in all government educational institutions and other educational institutions receiving aid from the Government. The Act is a social beneficial enactment and all the more so when it deals with disabled persons intended to give them equal opportunities, protection of rights and full participation. While construing the provisions of social beneficial enactment, the objects of the Act must be preferred to interpret the provisions made in advancement of the disabled persons. The Act is a comprehensive legislation not only restricted to the preference and opportunities in the education, but also in employment etc. As far as the enactment is concerned, the State is mandated to earmark such percentage of seats which shall not be less than 3% for persons with disabilities in all government educational institutions and other educational institutions receiving aid from the Government. In accordance with the said provision, 3% of the total seats had been reserved under Clause 15(iv). This reservation is in accordance with the said section. In view of the above, the contention of the petitioner as to whether the prescription of 50% to 70% disability for entitlement for consideration as against 3% seats is illegal, invalid and contrary to Section 2(t) of the Act must be considered.

9. This leads us to the question as to the power of the Government to prescribe higher percentage of disability for entitlement to admission. The provision of Section 39 mandates a minimum of 3% seats for persons with disabilities. The power of the State Government to prescribe a machinery and

also the criteria for admission of qualified students to medical and engineering colleges run by the Government and the Government aided colleges came up for consideration before the Supreme Court in "R. Chitralekha and Anr. v. State of Mysore and Ors.". In that case, even the power of the Government in prescribing the higher percentage of marks which a student should obtain for getting admission in the medical or engineering colleges over and above the minimum qualification prescribed by the University was approved and was held by the Supreme Court that such exercise of power does not contravene the minimum qualification prescribed by the University. In "Kumari Chitra Ghosh and Anr. v. Union of India and Ors.", the Supreme Court has held that the Government which bears the financial burden of running the medical college is entitled to lay down the criteria for eligibility and the Government cannot be denied the right to decide from what sources the admission will be made. The Supreme Court has further held that such power is essentially a question of policy and depends inter alia on an overall assessment and survey of the requirements as to the source and eligibility. Apart from communal reservation, in terms of Article 15(4) of The Constitution of India, the State identifies certain seats to be filled under special category. In addition to the above, 3% seats is also reserved for physically disabled persons. The eligibility norms, qualifications, age and the source for admission vest within the State and the State is empowered to prescribe such of those eligibility norms, minimum qualifications, age, etc., in exercise of power under Article 162 of The Constitution of India.

10. Section 2(t) of the Act defines "person with disability" as a person suffering from not less than forty percent of any disability as certified by a medical authority. The provision contemplates the minimum percentage of disability for entitlement to the opportunities, protection of rights and full participation under the Act. A plain reading of the said section should only lead to the conclusion that the State cannot prescribe less than 40% of disability. As the State is empowered to identify the source of admission and the eligibility norms, it is empowered to prescribe such of those norms, which are not inconsistent with the provisions of Section 2(t) of the Act. Considering the very limited seats available for admission to medical/dental courses in the State, the State is always empowered to prescribe such eligibility norms as required depending upon the availability of seats. Considering the same the State had prescribed 50% to 70% disability as eligibility criteria for consideration to admission as against the 3% seats. Though Section 2(i) defines "disability" as blindness; low vision; leprosy cured; hearing impairment, locomotor disability; mental retardation and mental illness, for the equal opportunities, protection of rights and full participation, all the disabilities cannot be treated alike. In case of blindness, a further definition as to the "blindness" is contemplated under Section 2(b) of the Act as meaning a person suffers from any of the conditions of total absence of sight; visual acuity not exceeding 6/60 or 20/200 in the better eye with correcting lenses or limitation of the field of vision subtending an angle of 20 degree or worse. Equally "cerebral palsy" has been defined under Section 2(e), "hearing impairment" under Section 2(l) and "mental retardation" under Section 2(r). Insofar as the case of a person with disability of blindness, though an equal opportunity is contemplated in service, he cannot be considered for the post of driver. Restriction of a person suffering from total absence of sight for employment as a driver cannot be called as deprivation of his right to employment under the Act. Similarly, a person with mental retardation cannot be considered for the post of teacher. In the teeth of the distinct definitions and the entitlement to the job opportunities and education, the definition should be construed with reference to the opportunities, protection of rights and full participation. The

provision should be therefore construed only in the context of nature of job and education and in which event the prescription of eligibility shall necessarily vest with the State Government depending upon the requirement of the disabled persons either for job opportunities or for education. If Section 2(t) of the Act is read keeping the above in mind, it should be understood only as empowering the State Government to prescribe the eligibility norms/criteria without offending the minimum eligibility prescribed under the Act. As Section 2(t) refers only a minimum eligibility of 40% disability, the decision of the State in prescribing 50% to 70% of disability under Clause 15(iv) of the prospectus cannot in any way be construed as offending the provisions of Section 2(t) of the Act.

11. Mr. R. Subramanian, learned counsel for the petitioner relied upon the Supreme Court judgment in "Kunal Singh v. Union Of India and Anr. and contended that the petitioner is entitled for consideration as he has 48% disability, which is more than the disability prescribed under Section 2(t). That was a case where Section 47 of the Act was considered by Their Lordships of the Supreme Court. Section 47 of the Act relates to "non- discrimination in Government employment". In that case a Constable of Special Service Bureau suffered an injury in his left leg while he was on duty, which resulted in amputation of the leg. Based upon the report of a medical board, he was invalidated from service. While considering the right of such persons for suitable employment the Supreme Court held that the disability cannot be a ground to permanently incapacitate an employee as, under the provisions, he is entitled for consideration to alternate and suitable employment in the same establishment. The said judgment is not applicable to the facts of the present case.

12. In view of the above, the prescription of 50% to 70% disability as an eligible norm for consideration to admission as against 3% seats cannot be considered as illegal, invalid or in any way contravening the provisions either under Section 2(t) or under Section 39 of the Act. Accordingly, the writ petition fails and the same is dismissed. No costs.