

**In the Court of State Commissioner for Persons with Disabilities
National Capital Territory of Delhi
25-D, Mata Sundari Road, Near Guru Nanak Eye Centre, New Delhi-2
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(Vested with powers of Civil Court under the
Rights of Persons with Disabilities Act, 2016)

Case No. 441/1031/2018/08/9854-55

Dated:20/09/2018

In the matter of:

Ms. Asheeta Mendiratta,
E-mail: asheetamendiratta 19 @ gmail.comComplainant

Versus

The Director,
State Council of Educational Research and Training,
Varun Marg,
Defence Colony,
New Delhi-110024.Respondent

Date of hearing: 19.09.2018

Present: Ms. Asheeta alongwith Sh. Sunil Kumar, complainant
Sh. Sushil Kumar & Sh. Gopal Sharma on behalf of the
respondent.

ORDER

The above named complainant, a person with thalassemia major (benchmark disability) vide her email dated 15.08.2018, submitted that she applied for Diploma in Elementary Education through State Council of Educational Research and Training (SCERT), Govt. of Delhi for 2018. However, the new categories of disabilities included in the Rights of

Persons with Disabilities Act 2016, hereinafter referred to as the Act, have not been included in the prospectus. She had no option but to apply under the general category. Subsequently, she met the SCERT officials alongwith her parents and pointed out the anomaly and submitted a representation. She requested that she should be considered for admission under the category of persons with disabilities.

2. The complaint was taken up under the Act, with the respondent vide Show Cause-Cum-Hearing Notice dated 27.08.2018.

3. It was brought to the notice of the respondent that thalassemia is one of the specified disabilities as per Section 2 (zc) of the Act and item 4(b) of the Schedule to the Act and that under Section 32 of the Act not less than five percent seats are to be reserved for persons with benchmark disabilities.

4. Respondent was therefore directed to show cause why the complainant should not be admitted against a reserved seat for persons with benchmark disabilities and in case she is not admitted, to appear on 19.09.2018. The complainant was directed to submitted her rejoinder, if any within a week of receipt of the reply from respondent alongwith a copy of her disability certificate.

5. Respondent vide reply dated 06.09.2018 submitted as under:

“1. SCERT at present is a state affiliating body comes under School Education of Govt. of NCT of Delhi, not under the Higher Education, therefore, the competent authority of Govt. of NCT of Delhi has approved the existing provision of PwD reservation which has been followed since last many years. In view of the above submission SCERT has not violated provisions of the Act mentioned at Para 2 of your letter dated 27.08.2018, reproduced below:-

And whereas thalassemia is one of the specified disabilities as per Section 2 (zc) of the Act and item 4(b) of the Schedule of the Act. The respondent was further informed that Section 32 of the Act mandates that “All Government institutions of higher education and other higher education institutions receiving aid from the Government shall reserve not less than five percent seats for persons with benchmark disabilities”.

2. The above submission of SCERT may kindly be taken on record and accordingly, you are requested to dispose of the SCN-Cum-Hearing Notice dated 27.08.2018 in terms of submission made above.

This issues with the prior approval of the competent authority.

Yours faithfully,

*(Mukesh Yadav)
Controller of Exams”*

6. During the hearing, representatives of the respondent produced the prospectus for session 2018-20 for Diploma in Elementary Education (D.El.Ed.) and submitted that the provisions in the Prospectus are decided on the recommendation of the Admission Committee approved by the Secretary (Education), GNCT of Delhi. Any change in the provision needs to be considered by the Admission Committee of SCERT. The provisions of the prospectus were followed and therefore there is no violation of the Act.

7. Complainant submitted a copy of the disability certificate bearing No. NDMC /Thal/013 dated 01.032018 issued by Dr. Kriti Nanal,CMO Charak Palika Hospital, NDMC, Moti Bagh, New Delhi. As per the said certificate of disability, the complainant is a case of 'Thalassemia Major' and has benchmark disability. The condition is not likely to improve and hence reassessment is not necessary. She reiterated that as there was no provision in the online admission process, it was not possible for her to apply as a candidate with benchmark disability. She further submitted that she should be given admission in an institution closer to her residence in Rajinder Nagar as she has to go to NDMC Charak Palika Hospital at Moti Bagh, New Delhi for blood transfusion 2-3 days in a month.

8. It is observed that as per Chapter 4 of the Prospectus, 85% seats are reserved for those candidates who have passed qualifying examination (12th pass) from school / study centre located in National Capital Territory (NCT) of Delhi and 15 % seats are reserved for candidates who have passed the qualifying examination (12th pass) from school / study center outside NCT of Delhi. Category wise distribution of reservation of seats in Govt. DIETS for persons with disabilities against 85% seats (pass out of NCTD) is as under:

Persons with Disability (OI) – 1% (9) seats

Persons with Disability (VI) – 1% (09) Seats

Persons with Disability (HI) – 1% (08) Seats

05 seats were reserved for persons with disabilities against 15 % seats (pass out of outside NCTD) @ 3%.

9. It is also observed that in the prospectus for session 2018-20, reservation has been provided in accordance with Section 39 of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) **Act, 1995** which reads as under:

“39. All Government educational institutions and other educational institutions receiving aid from the Government, shall reserve not less than three per cent seat for persons with disabilities.”

10. Allocation of 3% reserved seats only for the three categories of disabilities i.e. locomotor disability, visual impairment and hearing impairment therefore is not in accordance with the provisions of section 39 of the Persons with Disabilities Act, 1995. The reserved seats were required to be kept for all the 07 categories of disabilities mentioned in the said Act. However, the Persons with Disabilities Act, 1995 has since been repealed and replaced by the Rights of Persons with Disabilities Act, 2016 (the Act) which has come into force w.e.f. 19th April, 2017. As per Section 32 of the said Act:

“(1) All Government institutions of higher education and other higher education institutions receiving aid from the Government shall reserve not less than five per cent seats for persons with benchmark disabilities.

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

11. ‘Institution of Higher Education’ or ‘Higher Education’ has not been defined in the Act. However, in Annexure-II to the All India Survey on Higher Education uploaded in the website of Ministry of Human Resource Development, Govt. of India, Higher Education is defined as *the education, which is obtained after completing 12 years of schooling or equivalent and is of the duration of at least nine months (full time) or after completing 10 years of schooling and is of the duration of at least 3 years. The education may be of the nature of General, Vocational, Professional or Technical education* <http://mhrd.gov.in/sites/upload_files/mhrd/files/ebook/ebook_files/annexures/Annexure-2.pdf>. As per Wikipedia, ‘Higher Education’ is an *optional final stage of formal learning that occurs after completion of secondary education* <https://en.wikipedia.org/wiki/Higher_education>. Therefore, Diploma in Elementary Education (D.El.Ed) will fall under the category of ‘Higher Education’. The level of a course of study cannot be determined on the basis of the Department it is placed in.

12. Thus, there is no justification for not providing reservation for persons with benchmark disabilities in admission to Diploma in

Elementary Education (D.El.Ed) under section 32 of the Act on the ground that the SCERT has been placed under the School Education of Govt. of NCT of Delhi and not under the Higher Education.

13. In view of the provision in Section 32 of the Act, the respondent is directed to consider the complainant as a person with benchmark disability for admission to Diploma in Elementary Education (D.El.Ed.) against one of the reserved seats for persons with benchmark disabilities preferably in an institution closer to her residence against 85% seats for the candidates passed qualifying examination from NCT of Delhi as the complainant passed out from Delhi. If necessary, an additional seat be created to ensure that she is admitted as per her merit amongst the candidates with benchmark disabilities at the earliest possible as she has already missed the classes for more than a month. The respondent is further directed to ensure that not less than 5% of the seats are reserved for persons with benchmark disabilities in accordance with the section 32 of the Act in all the Higher Education courses and the provision be made in the prospectus accordingly. It is made clear that the provision in Section 32 of the Act is mandatory and self effectuating and therefore reservation of seats for persons with benchmark disabilities under the said section cannot be postponed. It does not require the approval of any other authority. Non-compliance of

the provision would attract penalty under section 89 of the Act which may extend to Rs. 10,000/- and for any subsequent contravention with fine which shall not be less than Rs. 50,000/- but which may extend to Rs. 5 lakh. It may also be noted that 5% of the reserved seats for persons with benchmark disabilities are to be kept open for all the categories of persons with benchmark disabilities included in the Schedule to the Act and the reserved seats are not meant for persons with disabilities.

14. An Action Taken Report on the above directions be intimated to this Court by 01.10.2018.

15. The complaint is disposed off.

16. Given under my hand and the seal of the Court this 20th day of September, 2018.

(T.D. Dhariyal)
State Commissioner for Persons with Disabilities