

In the Court of State Commissioner for Persons with Disabilities
National Capital Territory of Delhi
25-D, Mata Sundri Road, Near Guru Nanak Eye Centre, New Delhi.
Phone-011-23216002-04, Telefax: 011-23216005,
Email: comdis.delhi@nic.in

[Vested with powers of Civil Court under the
Rights of Persons with Disabilities Act, 2016]

Case No. 1045/1041/2019/07/ 9121-9122

Dated: 31/12/2019

In the matter of:

Ms. Akansha Anand
D/o Shri Parmanand,
Sector-2, Rajendra Nagar,
Ghazabad, (UP)-201005.

..... Complainant

Versus

The Principal,
College of Art,
Govt. of NCT of Delhi,
20-22, Tilak Marg,
New Delhi-110001.

..... Respondent No. 1

Date of Hearing of the complainant: 23.12.2019

ORDER

The above named complainant, a person with 45% locomotor disability sent a copy of her email dated 21.07.2019 addressed to Delhi College of Art, the Minister of Education, Govt. of Delhi, Ministry of Human Resource Development, Govt. of India and to this Court alongwith another copy of her application dated 20.07.2019 to the Principal, College of Art. In her

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applications, she submitted that she applied for admission to BFA – Applied Art (2019-20). During the entrance examination on 30.07.2019, she requested for extra time to complete her paper but she was not given the same. As per the result declared on 15.07.2019, only one candidate with disability was shown qualified against three seats reserved for persons with disabilities. She did not figure in the list of qualified candidates and the College of Art also did not show the statement of marks of the qualified / non-qualified candidates. She also submitted that there is no different merit for general candidates and candidates with disabilities. All students have to obtain 50% marks in entrance examination. She contended that she should have been given extra time in the entrance examination and therefore she should be given a chance for admission.

2. Ms. Akansha Anand also filed a complaint dated 20.07.2019 received on 23.07.2019 to the State Commissioner with identical contents. She was informed that as per Ministry of Social Justice and Empowerment, Department of Empowerment of Persons with Disabilities, Govt. of India OM No. F. 34-02/2015-DD-III dated 29.08.2018, a candidate with disability is required to submit a certificate issued by CMO (Civil Surgeon / Medical Superintendent of Government Health Care Institution) regarding physical limitation to write as per Appendix-I. She was advised to submit a copy of the certificate. Vide her letter dated 13.09.2019 she submitted that when

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she had already submitted her certificate with benchmark disability, there was no need of Appendix-I, since there is no such provision in the Rights of Persons with Disabilities Act, 2016. She also suspected that two vacant seats reserved for persons with disabilities may have been sold. She raised the issue that the respondent college had prescribed the same qualifying marks i.e. 50% in entrance examination for general students as well as for candidates with disabilities.

3. The complaint was taken up with the respondent vide Notice dated 18.10.2019 under the Rights of Persons with Disabilities Act, 2016 hereinafter referred to as the Act.

4. Professor Meera, Head of Office, College of Art, vide her letter dated 08.11.2019 submitted that the entrance examination for BFA (foundation) has two practical papers and one theory paper. In the theory paper a candidate has to attempt 30 questions in half an hour and no candidate ever applied for any extra time. The complainant also did not apply or seek any extra time thus there was no violation of any provision of the Act. However, extra time will be given to candidates who seek prior approval.

5. In her rejoinder dated 15.11.2019 the complainant contended that the respondent college had not mentioned about the application for extra time in its prospectus. It was an obligation on the part of respondent. There was no question of applying for the same. Hence since the respondent college was

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aware about her 45% locomotor disability, it was mandatory for them to allow extra time. She also submitted that the respondent college failed to consider the fact that she was entitled for relaxation in percentage of marks also as per the judgement titled National Federation of Blind and Others Vs. State of Rajasthan, vide CWP No. 4907/2019, 607/2016 and 24073/2017 of Hon'ble High Court of Rajasthan (Jaipur Bench) Dated 22.07.2019. She alleged that the respondent compared her with general candidates which is against the provisions related to persons with disabilities. She therefore, prayed that the respondent college should be directed to consider the claim of the complainant and give her admission in the BFA (Applied Art) including painting, print making, sculpture, visual communication and history in 2019-20 session.

6. In response to the rejoinder, Prof. B.S. Chauhan, Officiating Principal vide letter dated 12.12.2019 submitted that the college provides relaxation as per norms to candidates with disabilities and admissions are allotted as per merit prepared for each category as per student intake in each subject.

7. The complainant was also heard on 23.12.2019 alongwith her father and Advocate. They put forth the same arguments as given in their written submissions. It was made clear to them that there was no provision in the Act for providing extra time to candidates with disabilities. The provision in the Act is to provide writer and reasonable accommodation. The provision

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of scribe / reader/ lab assistant and extra time is given in OM No. F. 34-02/2015-DD-III Dated 29.08.2018 of Ministry of Social Justice & Empowerment, Deptt. of Empowerment of Persons with Disabilities and in order to avail the facility of scribe / reader / lab assistant, Clause IV of the said OM provides as under:

"In case of persons with benchmark disabilities in the category of blindness, locomotor disability (both arm affected-BA) and cerebral palsy, the facility of scribe / reader/lab assistant shall be given, if so desired by the person."

In case of other category of persons with benchmark disabilities, the provision of scribe/reader/ lab assistant can be allowed on production of a certificate to the effect that the person concerned has physical limitation to write, and scribe is essential to write examination on his behalf, from the Chief Medical Officer / Civil Surgeon/ Medical Superintendent of a Government health care institution as per proforma at Appendix-

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8. Section XII of the said OM also provides for extra time / compensatory time of not less than 20 minutes per hour of examination for persons who are allowed use of scribe / reader / lab assistant. All the candidates with benchmark disability not availing the facility of scribe may be allowed additional time of minimum of one hour for examination of 3 hours duration. Clause IV is very clear that a candidate wanting to avail the facility of scribe / reader / lab assistant or has limitation in writing including that of speed has to inform the authorities in advance. As per the certificate of disability dated 04.12.2019 issued by Chief Medical Officer Ghaziabad the complainant has 45% locomotor disability due to deformity (R) and (L) foot with loss of equines both side contracture (R) thumb, deformity both hands. Therefore as the complainant has deformity in both hands and had not opted for scribe while she was not required to produce certificate regarding physical limitation to write, she was required to inform her requirement in advance. Therefore, the claim of the complainant for extra time without making a request in advance cannot be accepted.

9. Hon'ble High Court of Rajasthan, Jaipur Bench vide order dated 22.07.2019 in CWP No. 4907/2019, 6074/2016 and 24073/2017 in the matter of National Federation of Blind and Others Vs. State of Rajasthan & Others has ruled that the relaxation of 20% marks in the REET examination should be given to persons with disabilities. Respondent in this case has


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not clarified the extent of relaxation granted to candidates with disabilities in order to fill the remaining two seats in BFA (Applied Art) course by candidates with benchmark disabilities. In the light of this, the following recommendations are made:

- (i) Respondent should re-examine the record and see if the complainant and other candidates with benchmark disabilities could have been admitted against the two reserved seats by relaxation of 20% mark in entrance examination. If so, two candidates with benchmark disabilities in their order of merit amongst themselves including the complainant should be offered admission against the said two reserved seats for them.
- (ii) If any candidate with benchmark disabilities making to the list of successful candidates on relaxed standard to the extent of 20% marks wishes to be admitted despite a substantial period of academic session is already over, the respondent college should admit them within 15 days of the receipt of this order, if necessary, by creating additional seats.

10. This Court be informed of the action taken on the above recommendations within three months from the date of receipt of this


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order as required under Section 81 of the Act which is reproduced below:

"Whenever the State Commissioner makes a recommendation to an authority in pursuance of clause (b) of section 80, that authority shall take necessary action on it, and inform the State Commissioner of the action taken within three months from the date of receipt of the recommendation:

Provided that where an authority does not accept a recommendation, it shall convey reasons for non-acceptance to the State Commissioner for Persons with Disabilities within the period of three months, and shall also inform the aggrieved person."

11. The complaint is disposed of.

12. Given under my hand and the seal of the Court this 31st day of December, 2019



(Signature)
(T.D. Dhariyal) 21.12.19

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