

Avni Prakash vs National Testing Agency (Nta) on 23 November, 2021

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Bench: A S Bopanna, Dhananjaya Y Chandrachud

Reportable

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

Civil Appeal No. 7000 of 2021
(Arising Out of SLP (C) No.18591 of 2021)

Avni Prakash

....Appellant

Versus

National Testing Agency (NTA) & Ors.

.... Respondents

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2 This appeal arises from a judgment of a Division Bench of the High Court of Judicature at Bombay dated 29 October 2021. The High Court dismissed the appellant's petition under Article 226 of the

Constitution. 3 The appellant suffers from Dysgraphia, which is a specified disability listed in Entry 2(a) of the Schedule to the Rights of Persons with Disability Act 2016¹. The appellant has been diagnosed with a 40 per cent permanent disability, falling within the statutory definition of a ‘person with benchmark disability’² under Section 2(r) of the RPwD Act 2016. The appellant claims that as a person with disability³, she is entitled to reasonable accommodation and certain relaxations. Among them is the benefit of “inclusive education” by a suitable modification to the examination system, as mandated by Section 17(i) of the RPwD Act, 2016. The Ministry of Social Justice and Empowerment has issued guidelines for conducting “Written Examination for Persons with Benchmark Disabilities” on 29 August 2018⁴. These guidelines govern the examinations of all students covered by the RPwD Act 2016. They are to be followed by all examining authorities and educational institutions conducting regular or competitive examinations. The National Testing Agency – the first respondent, is “RPwD Act 2016” “PwBD” “PwD” “Guidelines on Written Examinations” PART A responsible for conducting the National Eligibility cum Entrance Test⁵ for admission to under-graduate medical courses. The appellant urges that the Guidelines on Written Examinations are referenced in clauses 5.3 and 5.4 of the Information Bulletin of the National Eligibility cum Entrance Test (UG)-2021⁶ issued by the first respondent, and are hence binding on them.

4 The appellant appeared for the NEET on 12 September 2021. Given her PwD status, she claimed a relaxation in terms of an additional hour of compensatory time, as against the total time of three hours prescribed for regular candidates. The appellant was allotted the second respondent (Thakur College of Engineering and Technology, Kandivali [East], Mumbai) as her centre for undertaking the NEET. The appellant averred that the second respondent was ignorant of the grant of special facilities that had to be provided to PwD candidates. The grievance of the appellant is that the second respondent had initially assured her that facilities for PwD, if prescribed in the rules, would be provided to her. However, towards the end of the scheduled duration of three hours, her answer sheet was “forcibly” collected together with the category of regular students appearing for the examination depriving her of compensatory time.

5 On 23 September 2021, the appellant moved a writ petition under Article 226 of the Constitution before the High Court of Judicature at Bombay. Among other alternative reliefs, she sought a direction to the first respondent to hold a fresh “NEET” “NEET Bulletin 2021” PART A examination for the appellant while accommodating her with all relaxations and benefits to which she was entitled under the rules and regulations. 6 On 11 October 2021, the High Court passed the following interim order:

“1. The petition seeks an order and direction against the respondent no.1 to re-appear for NEET Entrance Test by providing her with compensatory time and all other relaxations/ benefits that she is entitled to by virtue of her “person with disability” status.

2. It is the case of the petitioner that she obtained disability certificate on 6th June 2021 from Sion Hospital certifying that the petitioner was suffering from Dysgraphia and recommending the remedial measures. The petitioner obtained another certificate of learning disability on 15th September, 2021 issued by the Sion Hospital.

3. The petitioner produced these certificates with the respondent no. 2 college, who conducted the said NEET test on behalf of the respondent no.1. It is the case of the petitioner that the petitioner being disabled, could not complete the paper within three hours assigned for the said test and had been requesting for an additional hour time to complete the said test. The respondent no.2 however did not grant additional hour. By ad-interim order dated 30th September 2021, this Court directed the respondent nos.1 and 3 not to declare the result of the petitioner.

4. Mr. Rodrigues, learned counsel for the respondent no.1 on the other hand strongly placed reliance on the information Bulletin issued by the respondent no.1 for NEET (UG-21) and more particularly clauses 5.3.1, 5.3.3, 5.3.4, 5.3.5, 5.4(b) and Appendix XIII-A and Appendix-B. He submits that the petitioner not having obtained disability certificate as per the format prescribed in Appendix XIII-A and Appendix-B read with the above referred clauses of the said information Bulletin, the petitioner was not entitled to get additional one hour compensatory time for the examination of three hours assigned for examination under clause 5.4 of the said information Bulletin. It is submitted by the learned counsel on instruction that if the petitioner produces the disability certificate from one of the centres recognized by the respondent no. 1 referred in Appendix VIII-B, the case of the petitioner would be considered.

PART A

5. It is not in dispute that the respondent no. 3 college permitted the petitioner to appear for the said NEET test though the petitioner had produced the learning disability certificate issued by the Sion Hospital without raising any objection. It is the case of the petitioner that the petitioner had made a request to give the benefit of clause 5.4(b) for compensatory time of one hour for the examination of three hours. The petitioner had not used the facility of any scribe.

6. In view of the statement made by the learned counsel for the respondent no.1 and in view of the fact that the petitioner has already appeared in the said test without raising any objection by the respondent no.2, we direct the respondent no.1 to take appropriate decision on the application of the petitioner for re- appearing in the said test keeping in mind the principles laid down by the Hon'ble Supreme Court in case of Vikash Kumar vs. Union Public Services Commission & Others, (2021) 5 SCC 370 i.e. of reasonable accommodation by making adjustments to enable disabled person to effectively counter the barriers posed by disability person and sympathetically. Learned counsel for the petitioner agrees to produce the certificate from one of the agency prescribed in the said Information Bulletin at Appendix VIII-B within one week from today. The respondent no.1 shall consider the certificate obtained by the petitioner from one of the agency prescribed Appendix VIII-B within one week from the date of the petitioner producing such certificate and shall communicate the decision that would be taken by the respondent no.1 to the petitioner within two days the date of taking a decision. It is made clear that this order shall not be used as a precedent in any other matter.

7. Place the petition on board for admission first on board on 28th October, 2021. Parties to act on the authenticated copy of this order.” (emphasis supplied) 7 In furtherance of the interim order of the High Court, the appellant stated that she approached the Grant Government Medical College, Mumbai (the sixth respondent) on 12 October 2021, but was informed that the certificate in the format prescribed under Appendix VIII-A is applicable at the time of admission when a PwD PART A candidate is claiming reservation and not for claiming relaxation and benefits during the examination. For further clarification, the appellant approached the Directorate of Medical Education and Research (the fifth respondent). The fifth respondent reiterated that the certificate under Appendix VIII-A cannot be issued before the declaration of results.

8 On 26 October 2021, an additional affidavit was filed by the appellant placing relevant material to indicate that a certificate conforming to Appendix VIII-A is issued only after the declaration of results and was required only at the time of seeking admission. By the impugned judgment dated 29 October 2021, a Division Bench of the High Court dismissed the appellant’s writ petition. While dismissing the petition, the High Court has noted that the statement which was made on behalf of the first respondent that the appellant’s case would be considered if a certificate is produced from one of the centres referred in Appendix VIII-B was incorrect and was made by the counsel due to a “miscommunication”. Despite noting the appellant’s contention that she is not required to obtain any such certificate from the agency prescribed in Appendix VIII-B, the High Court declined to entertain the petition for the following reasons:

“7. It is not in dispute that the certificate produced by the petitioner from Sion Hospital was not from one of the designated agency prescribed in Appendix-VIII-B. It is also not in dispute that even pursuant to the opportunity granted by this Court on 11th October, 2021 to the petitioner to produce the certificate in terms of the statement made by the learned counsel for the petitioner, the petitioner has not produced the certificate from the said agency prescribed in Appendix VIII-8 even at this stage.

PART A

8. We are therefore not inclined to grant prayer clause (a) thereby allowing the petitioner to appear for the NEET Entrance Test by providing her with the compensatory time, and all other relaxations/benefits that she is claiming to be entitled to by virtue of her person with the purported disability status.....” 9 Nonetheless, the Division Bench observed that if the appellant submits a representation to the first respondent, that would be duly considered within four weeks. The High Court has also adverted to an ad-interim order dated 28 October 2021 of this Court in a Special Leave Petition under Article 136 of the Constitution instituted by the first respondent (National Testing Agency v. Vaishnavi Vijay Bhopale⁷). This Court has stayed an interim order of the High Court directing a fresh examination in that case. Relying on the interim order of this Court dated 28 October 2021, the High Court vacated its interim order and dismissed the writ petition filed by the appellant.

10 We have heard Mr Rushabh Vidyarthi, learned counsel appearing for the appellant and Mr Rupesh Kumar, learned counsel for the first respondent, who has appeared on caveat. Since the dispute essentially concerns the appellant and the first respondent, notice to the other respondents is dispensed with.

Special Leave Petition (C) 17027 of 2021 PART B B Applicable laws and guidelines B.1 Guidelines for Written Examination 11 On 29 August 2018, the Ministry of Social Justice and Empowerment (Department of Empowerment of Persons with Disabilities) issued guidelines for conducting a written examination for PwBD. The Guidelines for Written Examinations underscore the need for a comprehensive policy. In this regard, Paragraph 1, Clause II stipulates:

“II. There should be a uniform and comprehensive policy across the country for persons with benchmark disabilities for written examination taking into account improvement in technology and new avenues opened to the persons with benchmark disabilities providing a level playing field. Policy should also have flexibility to accommodate the specific needs of case-to-case basis.” Paragraph 1, Clause III provides that there is no need to stipulate separate criteria for regular and competitive examinations. The remaining guidelines prescribe several facilities by way of reasonable accommodation. Broadly, they provide for the following entitlements:

- (i) The facility of Scribe/Reader/Lab Assistant to a PwBD who has limitation in writing including that of speed, at their option;
- (ii) An option of choosing the mode for taking the examinations such as Braille, computer, or large print; and
- (iii) Compensatory time for appearing in the examination.

PART B 12 Paragraph 1, Clause XII of the Guidelines for Written Examinations provides for compensatory time in the following terms:

“The word “extra time or additional time” that is being currently used should be changed to “compensatory time” and the same should not be 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. In case the duration of the examination is less than an hour, then the duration of additional time should be allowed on pro-rata basis. Additional time should not be less than 5 minutes and should be in the multiple of 5.” Paragraph 2 of the notification issuing the guidelines stipulates that they should be “scrupulously followed”. All recruitment agencies, academic/examination bodies etc. under the administrative control of each ministry or department were to be advised to ensure compliance.

B.2 NEET Bulletin 2021

13 Chapter V of the NEET Bulletin 2021, issued by the first respondent, deals with “Counselling And Reservation For Admission To MBBS And BDS Courses”. In compliance with the Ministry of Social Justice and Empowerment’s Guidelines for Written Examination, Clause 5.4 deals with the facilities to be provided to PwBD candidates while appearing in the examination. Clause 5.4 is extracted below:

“5.4 Facilities for PwBD candidates to appear in the exam As per the Guidelines issued by the Department of Empowerment of Persons with Disabilities (Divyangjan) under PART B the Ministry of Social Justice & Empowerment from time to time on the subject “Written Examination for Persons with Benchmark Disabilities”, a candidate with one of the benchmark disabilities (as defined in Section 2(r) of RPwBD Act, 2016) holding a Disability Certificate in the format prescribed in Appendix-VIII-A is entitled to the following facilities:

- a. The facility of Scribe, in case he/she has a physical limitation and a scribe is essential to write the Examination on his/her behalf, being so certified by a CMO/Civil Surgeon/Medical Superintendent of a Govt. Health Care Institution in the format given at Appendix- VIII-C. However, as a measure of caution and due to the prevailing circumstances of COVID-19 Pandemic, such candidate is required to bring his/her own Scribe alongwith a Letter of Undertaking given at Appendix-VIII- D, for using own scribe in the format.
- b. Compensatory time of one hour for the Examination of three hours duration, whether such candidate uses the facility of Scribe or not.

[.....] Note:

1. The minimum degree of disability should be 40% (Benchmark Disability) in order to be eligible for availing reservation for persons with specified disability (For details refer to Appendix-VIII).
2. The extent of “specified disability” in a person shall be assessed in accordance with the “Guidelines for the purpose of assessing the extent of specified disability in a person included under the Rights of Persons with Disabilities Act, 2016 (49 of 2016)” notified in the Gazette of India by the Ministry of Social Justice and Empowerment [Department of Empowerment of Persons with Disabilities (Divyangjan)] on 4th January 2018.
3. No change in the category will be entertained after the last date specified by NTA for NEET(UG)-2021 Registration and no subsequent changes will be effective after the declaration of NTA NEET (UG) Score 2021.” PART B

14 Appendix VIII-A of the NEET Bulletin 2021 provides for the format for a certificate of disability. The relevant portion of the prescribed form for such a certificate is extracted below:

“ Appendix-VIII-A CERTIFICATE OF DISABILITY (As per Gazette Notification No MCI-18(1)/2018-Med./187262 dated 5th Feb 2019/13th May-2019 for Admission to Medical Courses in All India Quota) [....] Certificate No. _____ Dated _____ Name of the Designated Centre (as per Appendix-VIII-B) _____ This is to c e r t i f y t h a t D r . / M r . / M s . _____ Aged _____ Y e a r s S o n / D a u g h t e r o f M r . _____ R/o _____ NEET Application No. _____ NEET Roll No. _____ Rank No. _____ has the following Disability (Name of the Specified Disability) _____ in (percentage) of _____ (in words) _____ (in Figures) • Please tick on the Specified Disability [Assessment to be done in accordance with the Gazette Notification No. So76(E) dated 4th January 2018 of the Department of Empowerment of Persons with Disability (Divyangjan), Ministry of Social Justice & Empowerment]:

S/No. Disability Type of Disability Specified Disability Type PART B

1. Physical A. Locomotor [.....] Disability Disability B. Visual Impairment C. Hearing Impairment D. Speech & Language Disability

2. Intellectual a. Specific Disability Learning Disabilities (Perceptual Disabilities, Dyslexia, Dysgraphia, Dyscalculia, Dyspraxia & Development Aphasia) b. Autism spectrum disorders [.....]” (emphasis supplied)

15 Appendix VIII-B provides for a list of authorised centres for the issuance of disability certificates. Appendix VIII-C provides for a format for a certificate regarding the physical limitation of an examinee to write the examination. The relevant portion of this certificate is extracted below:

“ Appendix-VIII-C CERTIFICATE REGARDING PHYSICAL LIMITATION IN AN EXAMINEE TO WRITE PART C This is to certify that I have examined Mr/Ms/Mrs _____ (name of the candidate with disability), a person with _____ (nature and percentage of disability as mentioned in the certificate of disability), S/o / D/o _____ a resident of _____ (Village/District/State) and to state that he/she has physical limitation which hampers his/her writing capabilities owing to his/her disability.

[...]”

C Submissions

16 Mr Rushabh Vidyarthi, learned counsel appearing on behalf of the appellant has urged the following submissions:

(i) In 2017, the appellant's school teachers suspected her to have a typical

case of learning disabilities and advised her to seek an urgent diagnosis. The appellant was referred to LTMG Sion Hospital, Paediatric Neurodevelopment Centre where she was diagnosed with "Dysgraphia", popularly known as a "writer's cramp";

(ii) On 6 June 2017, a certificate of disability was issued to the appellant by the LTMG Sion Hospital, Paediatric Neurodevelopment Centre. In March 2019, the appellant appeared for the class 10 CISCE examination where she was allowed the facility of a scribe. The appellant passed the class X examination with an aggregate of 92.5 per cent marks;

(iii) In September 2021, the appellant passed her class XII examinations with an aggregate of 87.4 per cent marks and a best-of-four special score of 90.25 per cent;

PART C

(iv) In anticipation of appearing for the NEET, the appellant approached Grant Medical College on 28 July 2021. She was directed to Cooper Hospital Mumbai and thereafter to LTMG Sion Hospital for carrying out requisite tests and for renewal of her earlier certificate dated 6 June 2017. The LTMG Sion Mumbai provided the appellant with a disability certificate dated 7 September 2021. However, they misspelt the name of her mother and the certificate was sent back for correction. The corrected certificate was issued on 15 September 2021 and uploaded by the Department of Empowerment of Persons with Disabilities, on the website of the Ministry of Social Justice and Empowerment, on 23 September 2021;

(v) The admit card for the NEET required her to state her PwD status, which she answered in the affirmative;

(vi) On 12 September 2021, the allotted examination centre did not grant her the compensatory hour on the ground that the centre was not informed of such a rule and "forcibly" collected her answer sheet along with the general category students; and

(vii) The appellant lodged a protest with the first respondent by an email dated 12 September 2021 to which she received an auto-generated reply dated 13 September 2021.

17 Aggrieved by this, the appellant instituted a writ petition before the High Court of Judicature at Bombay. The following submissions were urged to assail the impugned judgement:

PART C

(i) Initially, when the appellant's writ petition came up before the Division Bench of the High Court on 30 September 2021, the first respondent requested for an adjournment to seek instructions on the grievance of the appellant and to make a statement on whether she could re-appear for the NEET;

(ii) On 11 October 2021, the counsel for the first respondent stated before the High Court that since the appellant did not have a disability certificate in the prescribed format, she would be entitled to a compensatory hour only if she produced a disability certificate from one of the centres recognized by the first respondent in Appendix VIII-B to the NEET Bulletin 2021. The counsel for the first respondent stated that her case could be considered upon production of a valid certificate. It was in this backdrop that the High Court directed the first respondent to take an appropriate decision on the application of the appellant for re-appearing in the NEET;

(iii) Since the fifth and sixth respondents refused to issue the certificate in the format prescribed in Appendix VIII-B, the appellant approached the High Court with permission to file an affidavit and implead the fifth and sixth respondents. On 25 October 2021, the High Court permitted the appellant to file an affidavit for placing this development on the record. The appellant thereupon filed an affidavit;

(iv) In the hearing held before the High Court on 11 October 2021, the first respondent urged that the appellant had not obtained a certificate in terms of Appendix VIII-A. The appellant responded by submitting that the PART C certificate prescribed in Appendix VIII-A is applicable only at the stage of counselling and admission, and not at the stage of the examination. This is evident from the format which mandates that the candidate has to fill their rank secured in the examination which evidently is not available until a candidate appears in an examination and the results are declared.

Furthermore, the certificate requires the candidate to mention a NEET roll number which is notified only four days prior to the date of the examination. Hence, it would be impractical to presume that a candidate would be able to secure an Appendix VIII-A certificate within a time gap of mere four days. Yet, the Division Bench incorrectly dismissed her petition for failure to produce the Appendix VIII-A certificate on the day of the NEET;

(v) The first respondent has misunderstood the different stages and distinct relaxations which are granted to a student with a specified disability. The grant of compensatory time is an intrinsic element of the requirement of an inclusive education under Section 17(i) of the RPwD Act 2016. In

distinction from this, reservation in higher educational institutions is provided in Section 32 of the RPwD Act 2016. The former is comprised in Chapter III while the latter is prescribed in Chapter VI; and

(vi) The Guidelines for Written Examination dated 29 August 2018, formulated by the Ministry of Social Justice and Empowerment, have to be followed by all examining bodies, including the first respondent. PART C 18 Mr Rupesh Kumar, learned counsel appearing on behalf of the first respondent has urged the following submissions:

(i) The appellant had appeared in NEET and attempted 84 out of 180 questions.

She answered 50 questions correctly and 34 incorrectly, and was awarded 166 marks out of 720 marks;

(ii) The appellant secured Rank 1721 in the PwD category, Rank 206003 in the General category, and her All India Rank for counselling is 661699;

(iii) The first respondent considered the case of the appellant and deliberated over whether some relief could be granted to the appellant, such as by awarding proportionate marks. However, a total of 15,44,275 candidates appeared for the examination, for whom the All India Rank list has been sent to the Directorate UR of Health Services to conduct counselling for admission. Any alteration in the result at this stage would cause prejudice to the candidates ranked above the appellant;

(iv) The alteration of the rank list may also cause further delays in the completion of the admission process; and

(v) To bring more clarity and sensitization towards the requirement of Scribe and 'compensatory time' for the NEET (UG) 2022, guidelines would be issued to all stakeholders (such as candidates, invigilators and superintendents). The candidate would have to declare their disability status, type of disability and whether they would be requiring compensatory time in the application form. Along with this, the application form would require the certificate of disability PART D to be uploaded at the time of registration. Further, the admit card of the candidate would reflect these details. In addition to this, several guidelines would be issued to the invigilators, centre superintendents and city coordinators to avoid the present situation.

19 The rival submissions come up for analysis.

D Analysis

20 The grievance of the appellant, as we have noted in the prefatory part of this

judgment, is that on 12 September 2021, the allotted examination centre did not grant her the compensatory hour on the ground that the centre was not informed of such a rule. As noted earlier,

Dysgraphia is contemplated as a specified disability in Entry 2(a) of the Schedule to the RPwD Act, 2016 which is as follows:

“Specified Disability

2. Intellectual disability, a condition characterised by significant limitation both in intellectual functioning (reasoning(sic), learning, problem solving) and in adaptive behaviour which covers a range of every day, social and practical skills, including—

(a) “specific learning disabilities” means a heterogeneous group of conditions wherein there is a deficit in processing language, spoken or written, that may manifest itself as a difficulty to comprehend, speak, read, write, spell, or to do mathematical calculations and includes such conditions as perceptual disabilities, dyslexia, dysgraphia, dyscalculia, dyspraxia and developmental aphasia;

(b) “autism spectrum disorder” means a neuro-developmental condition typically appearing in the first three years of life that significantly affects a person's ability to communicate, understand relationships and relate to others, and is PART D frequently associated with unusual or stereotypical rituals or behaviours.” (emphasis supplied) Dysgraphia causes impaired handwriting and demonstrates inconsistent handwriting, poor spelling and spacing, transcription difficulties and difficulties in coherence. Through the appellant’s certificates dated 6 June 2017 and 23 September 2021, it is evident that she is a PwBD having dysgraphia, for the purposes of Section 2(r) of the RPwD Act 2016.

21 The crux of the matter urged before this Court is whether the appellant was entitled to an hour’s worth of compensatory time owing to her PwD status under the NEET Bulletin 2021 and the Guidelines for Written Examination issued by the Ministry of Social Empowerment and Justice on 29 August 2018. D.1 Obligations under the NEET Bulletin 2021 22 The roles, powers and functions of the first respondent are specified in the NEET Bulletin 2021. Para 2.3 of the NEET Bulletin 2021 contains necessary disclaimers and clarifies the functions of the first respondent. The relevant sub-clauses are extracted below:

“2.3.1. The responsibility of NTA is limited to inviting online applications, the conduct of the entrance test, declaration of the result, and providing All India Rank (AIR) to the Directorate General of Health Services, Ministry of Health and Family Welfare, Government of India.

2.3.2. The Information contained in this Information Bulletin relating to the pattern of exam, syllabus, eligibility criteria for appearing in NEET (UG), the quota of seats, reservation, PwBD, admission norms /procedure pertaining to the PART D concerned courses are as per the norms set out by the respective Regulatory Bodies.

2.3.3 The Result and All India Rank of NEET (UG) will be prepared /notified by NTA as per the norms/criteria fixed by the NMC / DGHS (for MBBBS/BDS) and by CCIM

(for BAMS/BSMS/BUMS) and by CCH (for BHMS).

2.3.4 Hence, in case of any doubt/ dispute; the Information in respect of the above-mentioned subject matters, as provided in the respective regulations/notifications of the concerned Regulatory Bodies, shall be considered as authentic and final.” The above extract indicates that the role of the first respondent is to notify online applications, conduct an entrance test, declare the result and provide the All India Rank to the Directorate General of Health Services 8 . The information which is specified in the NEET Bulletin 2021, including in regard to the pattern of examination, syllabus, eligibility, quotas of seats for reservation, PwBD, and admission norms/procedures are in accordance with the norms prescribed by the concerned regulatory bodies. Consequently, in the event of doubt or dispute, the information provided by the regulations/notifications of the regulatory bodies are to be treated as authentic and final.

23 Para 5.3 of the NEET Bulletin 2021 specifically provides guidelines for PwD candidates. They are in the following terms:

“5.3 Guidelines for PwD Candidates 5.3.1. The candidates with a Disability shall be considered for admission in medical course against 5% of the total seats, in accordance with the criteria “DGHS” PART D prescribed under the Regulation on Graduate Medical Examination (1997) as amended upto 13.05.2019 (Please see Appendix-VIII). The PwBD Certificate for this purpose shall be in the format as given at Appendix-VIII-A and from the designated Centres as given at Appendix-VIII-B 5.3.2. For AIIMS: In accordance with RPwD Act 2016, PwD Reservation on a Horizontal & Category basis will be followed subject to evaluation by the Medical Board of Institute to determine eligibility.

5.3.3 Candidates who consider themselves eligible for this category are advised to ensure their eligibility by getting themselves examined at any Government Medical College/District Hospital/Government Hospital. Such Government Medical College/District Hospital/Government Hospital shall issue a Disability Certificate in reference with Chapter VII of the Rights of Persons with Disabilities Rules, 2017. Such a Disability Certificate is issued as per the Schedule to the Rights of Persons with Disabilities Act, 2016 and the Guidelines for the purpose of assessing, the extent of specified disability in a person included under the Rights of Persons with Disabilities Act, 2016 notified in the Gazette of India by the Ministry of Social Justice and Empowerment [Department of Empowerment of Persons with Disabilities (Divyangjan)] on 4th January 2018 and does not confer any right on any candidate to seek admission in a medical course under PwBD Quota. The aforesaid Certificate shall be to ascertain whether a candidate can apply to NTA for appearing in NEET (UG) – 2021 under the PWBD Quota only.

5.3.4. Thereafter, the candidates, upon selection under PWBD Category, shall have to produce a Disability Certificate issued by the Disability Assessment Board, which shall have assessed the candidate in reference with criteria prescribed under the Regulations on Graduate Medical Education, 1997 as amended upto 14.05.2019. Thus, it is relevant that the candidates after a declaration of the result have to appear before the Disability Assessment Board so as to determine whether they may register or participate in the common online Counselling towards admission in medical courses. In case candidates are found to be Ineligible by the Disability Assessment Board, in reference with criteria prescribed under the Regulations on Graduate Medical PART D Education, 1997 as amended on 14.05.2019, they may not register or participate in the common online Counselling and any online provisional allotment of the medical college shall be entirely fraudulent on the part of the candidate. It is relevant that physical verification of various certificates including academic as well as Disability Certificate is only upon reporting for admission to the medical college.

5.3.5. It is further clarified that the certificates issued by the authorized Centres (Appendix-VIII-B) designated for the purpose of DGHS, shall only be considered for admission to the medical courses and no other certificate issued by any other Government Medical College/District Hospital/Government Hospital will be accepted.

5.3.6. The Disability Certificate to be issued in the format given in Appendix-VIII-A (vide DGHS Notice Ref. No. U-

11011/04/2020/05-MEC dated 26.10.2020) has to be issued by the designated Centres (Appendix-VIII-B) as per the criteria prescribed under the Regulations on Graduate Medical Education (1997) as amended upto 14.05.2019 w.r.t. common counselling conducted by MCC / DGHS for All India Quota seats and for Medical Institutions that are subject to common counselling of MCC/ DGHS.

5.3.7. Likewise, the designated Counselling Authorities of State/UT Governments shall constitute Disability Assessment Boards/Centres for assessing the suitability of the candidate in reference with criteria prescribed under the Regulations on Graduate Medical Education (1997) as amended upto 14.05.2019 and shall notify the same on their respective websites.

5.3.8. The reservation policy, as prescribed by the government from time to time will be followed by the admitting institutes. The candidates are advised to look for the details at the time of admission.” (emphasis supplied) 24 Para 5.3.1 clearly indicates that a PwD shall be considered for admission to the medical courses for five per cent of the total seats in accordance with the criteria specified in the Regulations on Graduate Medical Education 1997 as amended up to PART D 13 May 2019. The PwBD certificate for this purpose is to be prepared in the format prescribed in Appendix VIII-A and from a designated centre specified in Appendix VIII-B. 25 Appendix VIII contains the Graduate Medical Education Regulations (Amendment) 2019. The amendment provides that Appendix H of the ‘Regulations on Graduate Medical Education 1997’, dealing with the admission of students with

“specified disabilities” under the RPwD Act 2016 with respect to MBBS admission, would be substituted with “Appendix H-1”. Appendix H-1 specifies the following notes:

“Appendix “H-1” Guidelines regarding admission of students with “Specified Disabilities” under the Rights of Persons with Disabilities Act, 2016 with respect to admission in M.B.B.S. Course.

Note: 1. The “Certificate of Disability” shall be issued in accordance with the Rights of Persons with Disabilities Rules, 2017 notified in the Gazette of India by the Ministry of Social Justice and Empowerment [Department of Empowerment of Persons with Disabilities (Divyangjan)] on 15th June 2017.

2. The extend of “specified disability” in a person shall be assessed in accordance with the “Guidelines for the purpose of assessing the extent of specified disability in a person included under the Rights of Persons with Disabilities Act, 2016 (49 of 2016)” notified in the Gazette of India by the Ministry of Social Justice and Empowerment [Department of Empowerment of Persons with Disabilities (Divyangjan)] on 4th January 2018.

3. The minimum degree of disability should be 40% (Benchmark Disability) in order to be eligible for availing reservation for persons with specified disability.

[.....]” (emphasis supplied) PART D 26 Appendix VIII-A contains a format of the certificate of disability. Significantly, this certificate provides for the rank obtained by the candidate in the NEET examination and the roll number. Evidently, the certificate at Appendix VIII-A cannot be issued at a stage before the candidate appears for the NEET examination and the declaration of results. In fact, the certificate bears an endorsement that it has to be issued as per the Gazette notification dated 5 February 2019 / 13 May 2019 for admission to medical courses in the All India Quota.

27 Para 5.3.3 of the NEET Bulletin 2021 requires candidates who consider themselves to be eligible for this category (PwD) to ensure their eligibility by getting themselves examined at a government medical college/district hospitals/ government hospitals which would issue a disability certificate with reference to Chapter VII of the Rights of Persons with Disabilities Rules 2017. Such a certificate is issued in pursuance of the schedule to the RPwD Act 2016 and the guidelines notified by the Ministry of Social Justice and Empowerment on 4 January 2018. Para 5.3.3 clarifies that this certificate does not confer a right to seek admission in a medical course under the PwBD quota.

28 Upon selection under the PwBD category, the candidate has to produce a disability certificate issued by the Disability Assessment Board as per the specific guidelines under Para 5.3.4. The Board would assess the candidates with reference to the criteria prescribed under the Regulations on Graduate Medical Education 1997, as amended up to 14 May 2019. Hence, after the declaration of the result, PwBD candidates have to appear before the Disability Assessment Board to PART D determine whether they may register or participate in the common online counselling for admission to a medical course.

29 Para 5.3.5 specifies that the certificates (Appendix VIII-B) issued by centres authorized by the DGHS shall only be considered for admission to the medical courses. Para 5.3.6 also stipulates that the disability certificate issued in the Appendix VIII-A format, by a centre designated under Appendix VIII-B, shall be issued in terms of the criteria regulating common counselling. 30 The above discussion indicates that the first respondent, as a testing agency, has been assigned specific functions which are clarified in the NEET Bulletin 2021. The present case demonstrates that the appellant who suffers from dysgraphia with a disability of 40 per cent has suffered a tragedy of errors in the process leading up to admissions for the graduate medical courses in 2021, over which she had no control.

31 The first respondent, as a testing agency, was duty-bound to comply with the Guidelines on Written Examination dated 29 August 2018, prescribed by the Ministry of Social Justice and Empowerment. The grievance of the appellant is that she was deprived of the compensatory additional one hour for attempting the examination, simply because the second respondent (the designated centre) was unaware of the rights of PwD candidates and the corresponding obligations on the second respondent. This state of affairs reflects the responsibility of the first respondent to ensure that personnel at examination centres are trained and provided with clear PART D guidelines for the implementation of the provisions made for PwD. In the absence of adequate training, rights conferred on candidates with “specified disabilities” by Parliament, are set at naught.

32 The tragedy of errors that has taken place in the present case is compounded by the manner in which the case proceeded before the High Court. On 11 October 2021, the first respondent’s counsel informed the High Court that the appellant was not entitled to get an additional one hour of compensatory time because of a failure to obtain a disability certificate in Appendix VIII-A from a centre designated in Appendix VIII-B. In the face of this statement, the counsel for the appellant agreed to produce a certificate from an authorized agency in Appendix VIII-B of the NEET Bulletin 2021, within a week. The High Court accordingly directed the first respondent to consider the certificate within a week of its production by the appellant.

33 It is unfortunate that the first respondent issued such instructions to its counsel. The statement of the first respondent before the High Court on 11 October 2021 was plainly contrary to the provisions of the NEET Bulletin 2021. Para 5.4(b) of the NEET Bulletin 2021 (extracted above) indicates that the appellant was entitled to compensatory time of one hour for an examination of three hours, irrespective of her reliance on a scribe. Para 5.3 indicates that the requirement of a certificate in Appendix VIII-A applies after the results are declared. If this were not so, there is no purpose in requiring the candidate to disclose the rank which is obtained in the NEET. It is as clear as daylight from paras 5.3.1, 5.3.3, 5.3.4 and 5.3.5 that a PART D certificate issued by a designated centre under Appendix VIII-B is to be considered only at the stage of admission. Yet, in the teeth of the specifications in paras 5.3.1, 5.3.3 and 5.4(b) of the NEET Bulletin 2021, the High Court was led to believe that an Appendix VIII-A certificate from a designated centre specified in Appendix VIII-B was required to seek an extra hour of compensatory time. There is evident confusion between the authorities working at the first respondent, which has led to a tragedy affecting the legitimate rights and entitlement of a student who suffers from a specified disability.

D.2.1 Distinction between PwD and PwBD

34 In the decision in *Vikash Kumar v. Union Public Service Commission*⁹, this

Court categorically observed that the concept of benchmark disability is applicable in the context of the provisions contained in Chapter VI of the RPwD Act 2016, which is titled ‘Special Provisions for Persons with Benchmark Disabilities’. These provisions include:

(i) Section 31- free education for children with benchmark disabilities;

(ii) Section 32- reservation in higher educational institutions;

(iii) Section 33- identification of posts for reservation;

(iv) Section 34- reservation;

(v) Section 35- incentives to employers in the private sector;

(vi) Section 36- special employment exchange; and

(2021) 5 SCC 370 [“Vikash Kumar”]

PAR

(vii) Section 37- special schemes and development programmes.

35 The expression ‘person with benchmark disability’ is defined in Section 2(r) as follows:

“Section 2 (r) “person with benchmark disability” means a person with not less than forty per cent. of a specified disability where specified disability has not been defined in measurable terms and includes a person with disability where specified disability has been defined in measurable terms, as certified by the certifying authority;” The concept of benchmark disabilities is thus specifically with reference to the provisions of Chapter VI of the RPwD Act 2016. In contrast with the definition in Section 2(r), the expression ‘person with disability’ is defined in Section 2(s) as follows:

“(s) “person with disability” means a person with long term physical, mental, intellectual or sensory impairment which, in interaction with barriers, hinders his full and effective participation in society equally with others;”

36 The rights and entitlements conferred upon PwD are specified in Chapter II. Among those rights, Section 3 embodies the duty of the appropriate government to ensure that PwD enjoy the right to equality, a life with dignity and respect for their integrity equally with others. Section 3 provides as follows:

“3. Equality and non-discrimination.—(1) The appropriate Government shall ensure that the persons with disabilities enjoy the right to equality, life with dignity and respect for his or her integrity equally with others. (2) The appropriate Government shall take steps to utilise the capacity of persons PART D with disabilities by providing appropriate environment. (3) No person with disability shall be discriminated on the ground of disability, unless it is shown that the impugned act or omission is a proportionate means of achieving a legitimate aim. (4) No person shall be deprived of his or her personal liberty only on the ground of disability. 8 (5) The appropriate Government shall take necessary steps to ensure reasonable accommodation for persons with disabilities.” Sub-section (5) of Section 3 requires the appropriate government to take necessary steps to ensure reasonable accommodation for PwD. Section 4 requires the appropriate government and all local authorities to take measures to ensure that women and children with disabilities enjoy rights equal with others.

37 These rights and entitlements which are conferred upon PwD cannot be constricted by adopting the definition of benchmark disability as a condition precedent or as a condition of eligibility for availing of the rights. Benchmark disability, as defined in Section 2(r), is specifically used in the context of Chapter VI. Undoubtedly, to seek admission to an institution of higher education under the 5 per cent quota, the candidate must, in terms of Section 32(1)10, fulfil the description of a PwBD. But equally, where the statute has conferred rights and entitlements on PwD, which is wider in its canvass than a benchmark disability, such rights cannot be abrogated or diluted by reading into them the notion of benchmark disability. This Section 32 reads as follows:

32. Reservation in higher educational institutions.—(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.

PART D has been clarified in the judgment of this Court in Vikash Kumar (supra) where it was observed thus:

“37. Both as a matter of textual construction and bearing in mind the purpose and object underlying the term, it is necessary to emphasise that the definition in Section 2(s) cannot be constricted by the measurable quantifications tagged with the definition under Section 2(r).

....

39. The concept of benchmark disabilities under the 2016 RPwD Act has specifically been adopted in relation with the provisions of Chapter VI and Chapter VII. Chapter VI contains special provisions for persons with benchmark disabilities. Among those provisions is Section 31 (free education for children with benchmark disability), Section 32 (reservation in higher educational institutions), Section 33 (identification of posts for reservation), Section 34 (reservation), Section 36 (Special Employment Exchange) and Section 37 (Special Schemes and Development Programmes). Chapter VII contains special provisions for persons with benchmark disabilities in need of high support.

Thus, the concept of benchmark disabilities has been adopted by the legislation bearing in mind specific provisions which are contained in the law for persons meeting this description.

40. Conflating the rights and entitlements which inhere in persons with disabilities with the notion of benchmark disabilities does disservice to the salutary purpose underlying the enactment of the 2016 RPwD Act. Worse still, to deny the rights and entitlements recognised for persons with disabilities on the ground that they do not fulfil a benchmark disability would be plainly ultra vires the 2016 RPwD Act.” (emphasis supplied) In Vikash Kumar (supra), the UPSC placed reliance on the Civil Services Examination Rules 2018 to submit that only PwBD can be provided with the facility of a scribe. This Court held that the petitioner was entitled to reasonable accommodation in the form of being provided with the facility of a scribe for writing the UPSC examination even if he did not suffer from a benchmark disability. It is PART D evident that despite the clarification of the position in law in Vikash Kumar (supra), the law continues to be violated and NTA has continued to restrict the grant of facilities only to PwBD. By way of abundant caution, we reiterate that the facility of reservation in terms of Section 32 is available to PwBD. Other facilities contemplated by the RPwD Act 2016 for PwD cannot be so restricted by an administrative order which would be contrary to the provisions of the statute. D.2.2. Right to Inclusive Education 38 Education plays a key role in social and economic inclusion and effective participation in society. Inclusive education is indispensable for ensuring universal and non-discriminatory access to education. The Convention on Rights of Persons with Disabilities recognises that inclusive education systems must be put in place for a meaningful realisation of the right to education for PwD. Thus, a right to education is essentially a right to inclusive education. In India, the RPwD Act 2016 provides statutory backing to the principle of inclusive education. Section 2(m) defines inclusive education as:

“(m) "inclusive education" means a system of education wherein students with and without disability learn together and the system of teaching and learning is suitably adapted to meet the learning needs of different types of students with disabilities;”

39 The RPwD Act 2016 contains salutary provisions on the rights of PwD to inclusive education in Chapter III. Section 17, which forms a part of Chapter III, entails specific measures to promote and facilitate inclusive education for students with disabilities. Among other inclusive measures in Section 17, is sub-section (i) PART D which prescribes a duty to make suitable modifications in the curriculum and examination system to meet the needs of students with disabilities. This duty can be fulfilled by providing extra time for the completion of examination papers and/or the facility of a

scribe. The provision of inclusive education is not limited to children with disabilities but extends to adults with disabilities. Section 18 provides that the government and local authorities are duty-bound to take measures to promote, protect and ensure participation of PwD in adult education and continuing education programmes on an equal footing with others. Chapter VI prescribes special provisions for persons with benchmark disabilities, including reservations in higher educational institutions of not less than 5 per cent seats under Section 32. 40 The provisions for reservation in Chapter VI specifically for PwBD are distinct from the provisions in Chapter III for PwD. PwD encompasses a wider group of which PwBD is a sub-set. This distinction extends to efforts under Section 17 to promote inclusive education.

41 Above all, the RPwD Act 2016 contains provisions mandating reasonable accommodation. The expression “reasonable accommodation” is defined in Section 2(y), which reads as under:

“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;” PART D The right to inclusive education is realised through the provision of reasonable accommodation. In Vikash Kumar (supra), 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. It is the positive obligation of the State to create the necessary conditions to facilitate the equal participation of disabled persons in society. This Court observed thus:

“44. The principle of reasonable accommodation captures the positive obligation of the State and private parties to provide additional support to persons with disabilities to facilitate their full and effective participation in society. The concept of reasonable accommodation is developed in section (H) below. For the present, suffice it to say that, for a person with disability, the constitutionally guaranteed fundamental rights to equality, the six freedoms and the right to life under Article 21 will ring hollow if they are not given this additional support that helps make these rights real and meaningful for them.

Reasonable accommodation is the instrumentality—are an obligation as a society—to enable the disabled to enjoy the constitutional guarantee of equality and non-discrimination...” 42 It is clear in the present case that the appellant was denied her entitlement to reasonable accommodation and the State failed to fulfil its positive duty of protecting her right to inclusive education. The Guidelines for Written Examination dated 29 August 2018 issued as an Office Memorandum by the Ministry of Social Justice and Empowerment, hold the field insofar as the written examinations for PwD candidates are concerned. In Vidhi Himmat Katariya v. State of Gujarat¹¹ a three judge Bench (2019) 10 SCC 20 PART D of this Court observed that the certificate under Appendix VIII-A is applicable while seeking admission to medical courses:

“The relevant essential eligibility criteria is required to be considered when the petitioners were to get admission in the MBBS course under PwD quota. It is required to be noted and so stated in the reply affidavit filed on behalf of the MCI that the Expert Committee submitted the report – “Guidelines for admission of persons with Specified Disabilities”, which was placed before the Executive Committee of the Council in its meeting held on 5.6.2018 wherein after due discussion and deliberations it was decided to approve the same. It was also decided that the said Expert Committee Report should be communicated to the Ministry of Health & Family Welfare in view of the schedule for counselling for admission to MBBS course for the academic year 2018-19. However, for admission for the academic year 2018-19, it was at the stage of a draft notification and the Graduate Medical Education Regulations, 1997 were not amended in light of the recommendations of the Expert Committee constituted by the MCI which has issued the Disability Guidelines, this Court directed to give admission as per the unamended Graduate Medical Education Regulations, 1997. However subsequently and before the admission for the academic year 2019-20 are given, notification dated 04.02.2019 has been published and the Graduate Medical Education Regulations, 1997 have been amended, as above. Therefore, in the facts and circumstances of the case, it cannot be said that ‘Rules of the game are changed midway’, as sought to be contended on behalf of the petitioners. As observed hereinabove, the essential eligibility criteria as per Appendix ‘H’ is required to be considered at the time when the candidates were seeking admission in the medical course under PwD category. It is also required to be noted that even the candidates seeking admission in PwD quota are required to appear before the concerned Medical Board at the time of actually seeking admission and after NEET result is declared. Therefore, the relevant date for considering the essential eligibility criteria as per Appendix ‘H’ shall be the date on which the candidates – petitioners sought admission in the MBBS course under PwD quota. Much prior thereto, notification dated 4.2.2019 has been issued and published and therefore the respective PART D petitioners shall be governed by notification dated 04.02.2019.” (emphasis supplied)

43 In terms of the provisions of RPwD Act 2016, there is a clear distinction between the rights available to a candidate such as the appellant at the stage of the examination (in terms of the provisions of Section 17(i) falling under Chapter III) and the rights applicable at the stage of admission (under Section 32 falling under Chapter VI) of the RPwD Act 2016. There was a gross miscarriage of justice in this case by the High Court directing the appellant, who is aggrieved by the denial of a compensatory one hour, to seek a certificate in terms of Appendix VIII-A, on the basis of a statement made by the counsel for the first respondent. It is noteworthy that the confusion has also arisen because of the manner in which NEET Bulletin 2021 has been drafted. A clear-eyed information bulletin must provide a distinction between the rights that are available to PwD candidates at the stage of the examination and the rights which are available in terms of reservation after the results of the NEET are declared. As a result of the ambiguity in the NEET Bulletin 2021, and the absence of adequate training to the second respondent which was allotted as the appellant’s centre, the appellant lost the benefit of a compensatory hour during the course of the entrance

examination.

44 This injustice was compounded by the manner in which the proceedings took place before the High Court where the instructions given to the counsel for the first respondent were in the teeth of the rights and entitlements available in terms of the Guidelines for Written Examination dated 29 August 2018 and para 5.4(b) of the PART E NEET Bulletin 2021. The Guidelines for Written Examination hold the field for all examinations attempted by PwDs. As a matter of fact, it would appear that para 5.4(b) of the NEET Bulletin 2021 seeks to enforce and implement this requirement. As a consequence of these compounding errors, the appellant has suffered a grave injustice.

E Redressing the injustice

45 The line of submissions urged before this Court by the first respondent seems

to suggest that besides the provisions under Para 5.3 and 5.4 of the NEET Bulletin 2021, it proposes to issue further guidelines to stakeholders, especially to (i) candidates; (ii) invigilators; (iii) centre supervisors; (iv) observers; and (v) city coordinators. However, this does not address the issue at hand, which is the steps that the first respondent must take to deal with cases such as that of the appellant where the student has been made to suffer. This suffering was, firstly, a consequence of inadequate knowledge at the designated centre (the second respondent), in regard to the facilities available to PwD students; and secondly, by an element of ambiguity in the instructions framed in the NEET Bulletin 2021. 46 One way of looking at the matter, as the first respondent would have the Court do, is to accept that in a competitive entrance examination such as the NEET, a large body of candidates appears across the country. According to the viewpoint espoused by the first respondent, individual cases of prejudice caused by an improper application of the norms governing the examination constitute an PART E acceptable, though unfortunate, consequence. The other way of looking at the problem is that while the first respondent must utilise the experience gained in conducting the NEET process to proactively take steps to fill up deficiencies, the examination process must continue to account for the need to rectify injustice caused to a student, who played no role in causing such injustice. The number of cases where such injustices take place maybe a few or more than that (the Court has not been apprised of the statistical figure); but it cannot be ignored that for a student who is made to suffer, the consequence is indeed serious. The entire course of a career depends upon the proper conduct of the NEET and, as in the present case, the application of a binding norm prescribed by the Ministry of Social Justice and Empowerment for the benefit of students suffering from disabilities. It is no answer for an authority bound by the dicta of law and the Constitution, to throw up its hands in despair, instead of attempting to remedy the injustice which is caused to a student. A judge cannot ignore that behind the statistics is a human face, reflecting the aspirations, joy and tears of a student and her family. 47 In the present case, the appellant does not claim misfeasance on the part of the first respondent but plain and simple negligence in complying with the rights and entitlements provided to PwDs under the RPwD Act 2016. For effective participation of the students with disabilities in the society, which undoubtedly is the salutary object of the legislation, the safeguards which are provided by the law must be duly enforced and any breach of entitlement must be answerable at law. Responsibility and power

without accountability are an anathema to our Constitution. PART E 48 The first respondent is justified in taking the stance that a re-examination cannot be ordered for one student. The option of a re-examination for a single student would also stand eschewed by a decision of a two judge Bench of this Court in National Testing Agency v. Vaishnavi Vijay Bhopale¹². on 12 November 2021. The Court had dealt with a case where a petition had been filed before the High Court for a direction to the first respondent to re-examine certain students by conducting a separate NEET examination, before the declaration of results, for admission to under-graduate medical courses for 2021-2022. The first and second respondents, in that case, had appeared in the NEET on 12 September 2021 and were in the same examination room. At the time of distribution of the question papers and the answer booklet, there was a mix-up and different booklets and answer sheets that did not match the code were given to them. In accordance with the instructions to students, the respondents reported the mix up between the answer sheet and the booklet to the invigilators. The invigilators did not rectify the mistake pointed out by the respondents and within the short time which remained, the respondents answered as many questions as they could. In pursuance of an interim order of the High Court dated 7 October 2021, the first respondent suggested that the answer key would be implemented for scoring/evaluation of the 6 candidates in whose cases there was a mix up in the distribution of the test booklet code and OMR sheets as per the sequence of questions given in the test booklet code. However, the High Court on 20 October 2021 directed the NTA to hold a fresh SLP(Civil) No.17027 of 2021 [“Vaishnavi Vijay”] PART E examination for the two candidates. On 28 October 2021, this Court stayed the judgment of the High Court and requested the Solicitor General to suggest a course of action to be adopted in respect of the two students “who have suffered due to the fault of the invigilators”. When the proceedings were taken up by this Court, on 12 November 2021, the Solicitor General informed the Court that the results of the NEET (UG) had been declared and that the answer sheets of the two candidates had been corrected on the basis of the suggestion which was given by the first respondent to the High Court. The concession made by NTA was recorded by this Court in its order dated 12 November 2021:

“The Ld. Solicitor General submitted that the answer sheets of respondent Nos.1 and 2 have been corrected on the basis of the suggestion that was given by the petitioner to the High Court. Without insisting on the test booklet code and OMR sheets being different, the answers given by the petitioners have been evaluated. ” Against this backdrop, the Bench consisting of Justice L Nageswara Rao and Justice B R Gavai set aside the order of the High Court directing the holding of a fresh examination. The Court observed thus:

“There is no dispute that there was a mix up in distribution of the answer sheets and the test booklet where the code is different. Realising that a wrong answer given to a question would attract negative marks and also relying upon the instructions given to the candidates, respondent Nos. 1 and 2 pointed out to the invigilators that the correct answer sheet with a proper code has to be provided to them.

We have perused the answer sheets of respondent Nos. 1 and 2 and the marks given to respondent Nos. 1 and 2 from the material furnished by the learned Solicitor General on 28.10.2021. They have attempted most of the questions. No PART E

negative marks have been given to them. We find substance in the submissions of Mr. Choudhary that due to the loss of precious time, respondent Nos. 1 and 2 could not answer all the questions and we also appreciate the mental state of mind of respondent Nos. 1 and 2 due to the confusion.

Though, we sympathize with the cause of respondent Nos.1 and 2, we find it difficult to direct re-examination for them alone. Therefore, we set aside the direction given by the High Court to the petitioner to conduct re-examination for respondent Nos.1 and 2.” 49 The above extract indicates that during the course of the proceedings before the High Court, the first respondent having realized that the mistake had occurred due to the fault of the invigilators which was not rectified, took steps to alleviate the hardship to the two students to the extent that was practical. In view of the benefit extended by the first respondent to the students, this Court held that the direction to conduct a fresh examination could not be sustained.

50 In the present case, the appellant had sought a re-examination where she would be allowed compensatory time as mandated by the Guidelines for Written Examination and the NEET Bulletin 2021. We are in agreement with the view in Vaishnavi Vijay (supra) that holding a fresh examination is neither practicable nor proper. Holding a fresh examination will delay medical admissions and cause uncertainty and chaos. To that extent, the denial of the relief sought for conducting a fresh examination for the appellant is not disturbed. At the same time, we are of the view that the first respondent must factor in the possibility of such errors occurring in the process of conducting the NEET. The manner in which the first respondent deals PART E with cases of serious prejudice, as occasioned in the present case, has to be decided by it as an expert agency.

51 This Court would eschew the course of dictating the manner in which the grievance should be rectified, leaving it to the discretion of the testing agency which is entrusted with the overall responsibility of conducting the examination. The first respondent took certain steps as noted above in Vaishnavi Vijay (supra). Similarly, in the present case, we are of the categorical view that the first respondent cannot shirk or abrogate its responsibility to rectify the injustice which has been caused to the appellant. The first respondent may consider extrapolation of the marks awarded to the appellant or grant compensatory marks. Similar to the steps in Vaishnavi Vijay (supra), the first respondent could also consider adopting a ‘no negative marks’ scheme. We are not restricting the first respondent to only the above options and will leave the decision on the modalities of remedying the injustice caused to the appellant to the first respondent. The injustice which has resulted is clearly due to a breach in observing the entitlements due to the appellant under the RPwD Act 2016. 52 During the course of the hearing, the first respondent urged that sixteen lakh students appeared for the NEET and hence injustice to a “one-off” student cannot be remedied. In the written submissions which have been filed on behalf of the first respondent, the following statement has been submitted in regard to the candidature of the appellant vis-à-vis, other candidates.

PART E “3. Re (a):

The Petitioner had appeared in NEET (UG) 2021 on 12.09.2021 as a candidate in General (UR)-PwD Category. She had attempted 84 out of 180 questions. She has

answered 50 questions correctly and 34 questions incorrectly and, accordingly she has been awarded 166 marks out of 720 marks during the result declared on 01.11.2021. Accordingly, she has qualified in NEET (UG) 2021 and has secured the following Ranks for admission to MBBS/BDS Courses:

• All India Rank for Counselling- 661699 • General (UR)- 206003 • PwD- 1721 The Rank of the Petitioner has been juxtaposed with the other PwD Candidates of NEET (UG) 2021, as follows:

Category	General	EWS	SC	ST	OBC	Total
		All India				
Registered	1801	533	740	243	2883	6200
Qualified	783	262	278	76	1285	2684*
Qualified upto						
	538	199	150	34	800	1721
AI_Rank						
661699*						

Out of 2684 candidates qualified in PwD Category, her Rank is 1721 State-Maharashtra Registered 225 109 117 25 444 920 Qualified 85 46 51 8 200 390@ Qualified upto 58 36 29 2 124 249 AI_Rank 661699 @ Out of 390 candidates of PwD Category, her Rank is 249 *All India Rank of the Petitioner- 661699 The Respondent No.1 has duly considered the case of the Petitioner to try to find out some solution including awarding the additional proportionate marks. However, it has been observed that there are in total 15,44,275 candidates (out of total registered candidates 16,14,777) who had appeared in NEET(UG) 2021 on 12.09.2021 for which result has already been declared on 01.11.2021 and All India Rank has already been forwarded on 09.11.2021 by the Respondent No.1 to the PART E Directorate UR of Health Services, M/o Health & Family Welfare, Govt. of India to conduct counselling for admission to MBBS/BDS Courses for the academic year 2021-21. Therefore, any alteration in the result, at this stage, will cause serious prejudice to the numerous candidates who are presently ranked above the Petitioner but, would have to be placed below her, thereby disturbing the Ranks of other candidates. None of such students are before this Hon'ble Court and, may result in further complications/litigations. Further, it may also affect the counselling process which may result into delay in the completion of admission process."

53 The above statement indicates that the appellant has secured an All India Rank of 1721 out of 2684 candidates qualified in the PwD category. In relation to the State of Maharashtra, the appellant has secured rank 249 out of 390 candidates in the PwD category. The first respondent has stated that approximately 15.4 lakh candidates appeared at the NEET (UG) 2021 on 12 September 2021 for which the result was declared on 1 November 2021 and the All India Rank was forwarded on 9 November 2021 to the Ministry of Health and Family Welfare, Government of India to conduct counselling for admission. It was submitted that alteration of the result at this stage would prejudicially affect other candidates who are ranked above the appellant.

54 In essence, the above submissions boils down to the first respondent informing the Court that in an examination of such large proportions where over 16 lakh students registered and over 15 lakh students appeared, it would not be possible to undo the injustice which has been done to a single candidate. The first respondent must remember that all authority under the law is subject to responsibility, and above all, to a sense of accountability. The first respondent is PART F governed by the rule of law and by the constitutional requirement of observing fairness. Behind the abstract number of '15 lakh students' lie human lives that can be altered due to the inadvertent, yet significant errors of the first respondent. 55 The first respondent, as an examining body, was bound to scrupulously enforce the Guidelines for Written Examinations dated 29 August 2018 which provides for specific relaxations. The appellant has suffered injustice by a wrongful denial of these relaxations and a lack of remedy by this Court would cause irretrievable injustice to the life of the student. The RwpD Act 2016 prescribing beneficial provisions for persons with specified disabilities would have no meaning unless it is scrupulously enforced.

56 In our view, the first respondent cannot be allowed to simply get away when confronted with the situation in hand whereby injustice has been caused to a student by standing behind the situation of a large competitive examination. Individual injustices originating in a wrongful denial of rights and entitlements prescribed under the law cannot be sent into oblivion on the ground that these are a necessary consequence of a competitive examination.

F Conclusion

57 Accordingly, in view of the above discussion, we conclude and direct as follows:

- (i) The relief sought by the appellant for holding a re-examination for the NEET (UG) is denied;

PART F

- (ii) The appellant was wrongfully deprived of compensatory time of one hour

while appearing for the NEET without any fault of her own, despite her entitlements as a PwD and a PwBD. Accordingly, the first respondent is directed to consider what steps could be taken to rectify the injustice within a period of one week. Further, it shall take necessary consequential measures under intimation to the DGHS;

(iii) In the future, the first respondent shall ensure that provisions which are made at the NEET in terms of the rights and entitlements available under the RPwD Act 2016 are clarified in the NEET Bulletin by removing ambiguity, as noticed in the present case;

(iv) Having due regard to the decision of this Court in Vikash Kumar (supra) and the statutory provisions contained in the RPwD Act 2016, facilities which are provided by the law to PwD shall not be constricted by reading in the higher threshold prescribed for PwBD;

(v) By way of abundant caution, it is clarified that for the purpose of availing of the reservation under Section 32 of the RPwD Act 2016 or an upper age relaxation as contemplated in the provisions, the concept of benchmark disability continues to apply; and

(vi) It was brought to our notice that the second respondent was ignorant about the facilities to which the appellant was entitled. There was an evident confusion between the authorities working at the first respondent as well. The persons working for the first respondent and exam centres like that of PART F the second respondent should be sensitised and trained, on a regular basis, to deal with requirements of reasonable accommodation raised by PwDs. 58 The steps taken by the first respondent in furtherance of direction (ii) above in Paragraph 57 must be communicated to the Registry of this Court by filing a status report within a period of two weeks from the date of this judgment. 59 The appeal is disposed of in the above terms.

60 Pending application(s), if any, shall stand disposed of.

.....J. [Dr Dhananjaya Y Chandrachud]
.....J. [A S Bopanna] New Delhi;

November 23, 2021