

Gulshan Kumar
v.
Institute of Banking Personnel Selection & Ors.

(Writ Petition (Civil) No. 1018 of 2022)

03 February 2025

[J.B. Pardiwala and R. Mahadevan,* JJ.]

Issue for Consideration

Matter pertains to extending the benefits for Persons with Benchmark Disabilities-PwBD candidates to all persons with disabilities-PwD candidates in writing their examinations.

Headnotes[†]

Rights of Persons with Disabilities Act, 2016 – Rights of persons with disabilities – Persons with disabilities-PwD and Persons with Benchmark Disabilities-PwBD – Discrimination – Petitioner, diagnosed with Focal Hand Dystonia, type of Writer’s Cramp, classified as chronic neurological condition, and assessed with 25% permanent disability – He applied for various examinations conducted by different recruitment bodies, however, not provided with any facilities available to PwD, such facilities restricted only to the PwBD – Writ petition by the petitioner seeking directions to respondents to provide the petitioner with the facility of a scribe, compensatory time and all other facilities, considering his disability status for examinations – Clarification by the court that respondent No.2-State Bank of India not to insist on the requirement of a benchmark disability for the facility of a scribe – Pursuant thereto, the petitioner provided with a scribe and compensatory time during the examinations – Case of the petitioner that though the Office Memorandum dt 10.08.2022 came to be issued by Union of India in accordance with the directions of this Court in Vikas Kumar’s case, it failed to incorporate the essence of reasonable accommodation, the true meaning and purpose of the Act, all benefits relating to PwBD candidates, not extended to PwD candidates, only selective facilities were extended, as such contains defects:

Held: Principle of reasonable accommodation is central to ensure equality for all the persons with disabilities; and denying the

^{*} Author

Digital Supreme Court Reports

facility of scribe or compensatory time, constitutes discrimination under the Act – Artificial distinction and bifurcation drawn between PwD and PwBD disabilities (40% disabled or more) is sought to be diminished by extending various rights to candidates with disabilities that were earlier limited only to those with benchmark disabilities – Examination bodies are stressed upon to implement accessibility measures, to prevent discrimination and provide equal opportunities for the persons with disabilities – Rights of disabled persons are less instructive and more general and that, right to education, right to equality, and right against discrimination accorded to them will only be truly realized, when State structures form policies, laws, and rules to provide equal access and reasonable accommodation to such persons – All the benefits given to PwBD candidates must also be extended to PwD candidates, and there can be no discrimination between the candidates in granting facilities such as scribes, compensatory time except for reservation, in writing the examinations – Certain defects and lacunas in the guidelines issued by respondent No. 5, as well as in the implementation of this Court's directions, resulting in different authorities following disparate procedures – Thus, urgent need for uniform memorandum for examinations applicable to all PwD candidates, and responsibility of respondent no. 5 to ensure its proper and just compliance – Guidelines issued by respondent no.5 pursuant to the directions of this Court, to be enforced, by extending the benefits for PwBD candidates to all PwD candidates in writing their examinations – Direction to respondent no.5 to revisit the guidelines, remove the restrictions and grant relaxations in a reasonable manner and re-notify the same – Constitution of India – Art.32. [Paras 10, 12, 13, 15, 17, 19]

Rights of Persons with Disabilities Act, 2016 – Persons with disabilities – Guidelines by the nodal agency-Government of India pursuant to the directions of this Court in Vikas Kumar's case – Enforcement – Benefits extended for PwBD candidates to be extended to all PwD candidates in writing their examinations – Directions to Government of India to revisit the Office Memorandum dated 10.08.2022, remove the restrictions, grant relaxations in a reasonable manner and re-notify the same:

Held: Directions to all authorities to uniformly follow guidelines issued and ensure strict adherence – Periodic sensitization drive to

Gulshan Kumar v. Institute of Banking Personnel Selection & Ors.

be carried out at educational institutions – Setting-up of grievance redressal portal – Re-notification of the existing guidelines – Extension of validity of scribe certificate – Setting up of incentive programs for scribes – Allowing candidates time prior to examination to familiarise with the scribe – Offer choice of examination modes to PwD candidates – Penal action against authorities on failing to follow the guidelines – Sensitisation of the authorities, to address the reasonable accommodation needs of PwDs – Ensure strict compliance with the Vikash Kumar’s case and Avni Prakash’s case as well as the provisions of the RPwD Act, 2016, with a special focus on ‘reasonable accommodation’. [Para 19]

Case Law Cited

Vikas Kumar v. Union Public Service Commission and Others [2021] 12 SCR 311 : (2021) 5 SCC 370 – relied on.

Avni Prakash v. National Testing Agency (NTA) & Others [2021] 11 SCR 891 : (2021) SCC Online SC 1112; *Arnab Roy v. Consortium of National Law Universities and Another* [2023] 14 SCR 464 : (2024) 5 SCC 793; *Kaushal Kishor v. State of Uttar Pradesh and Others*, Writ Petition (Criminal) No. 113 of 2016 : [2023] 8 SCR 581 – referred to.

Moore v. British Columbia (Education) [2012] 3 SCR; *Mental Disability Advocacy Center (MDAC) v. Bulgaria*, Complaint No. 41/2007 dated 03.06.2008; *International Association Autism Europe v. France*, Complaint No. 13/2002; *G.L. v. ITALY*, Application No. 59751/15 dated 10.12.2020; *T.H. v. Bulgaria*, Application no. 46519/20 dated 11.07.2023; *XXXX v. HR Rail SA* Judgment of the Court (Third Chamber) dated 10.02.2022 in Case C-485/20 – referred to.

List of Acts

Constitution of India; Rights of Persons with Disabilities Act, 2016.

List of Keywords

Persons with Benchmark Disabilities-PwBD candidates; Persons with disabilities-PwD candidates; Rights of persons with disabilities; Focal Hand Dystonia, type of Writer’s Cramp; Chronic neurological condition; 25% permanent disability; Facility of scribe;

Digital Supreme Court Reports

Compensatory time; Disability status for examinations; Benchmark disability; Office Memorandum dated 10.08.2022 issued by Union of India; Reasonable accommodation; Conditions/benefits relating to PwBD candidates, not extended to PwD candidates; Principle of reasonable accommodation; Periodic sensitization drive; Grievance redressal portal for persons with disabilities; Re-notification of existing guidelines; Extension of validity of scribe certificate; Setting up of incentive programs for scribes; Compliance with Vikash Kumar's case and Avni Prakash's case; Right to education; Right to equality; Right against discrimination; Choice of examination modes.

Case Arising From

CIVIL ORIGINAL JURISDICTION: Writ Petition (Civil) No. 1018 of 2022

(Under Article 32 of the Constitution of India)

Appearances for Parties

Rushabh Vidyarthi, Prannv Dhawan, Ms. Meenakshi Pahuja, Vikas Jain, Aviral Saxena, Ms. Shrawani, Hardik Jayal, Advs. for the Petitioner.

Vaibhav Dang, Amrendra Kumar Mehta, Sanjay Kapur, Shreekant Neelappa Terdal, Sharath Nambiar, Vatsal Joshi, Akshit Pradhan, Rajan Kumar Chourasia, Gaurang Bhushan, Arun K. Sinha, Rakesh Singh, Advs. for the Respondents.

Judgment / Order of the Supreme Court

Judgment

R. Mahadevan, J.

1. This writ petition has been filed as a Public Interest Litigation invoking jurisdiction under Article 32 of the Constitution of India, seeking a writ of mandamus directing the Respondent Nos.1 to 4 to provide the petitioner with the facility of a scribe, compensatory time and all other facilities, to which he may be entitled, under the law, considering his disability status for the upcoming examinations, the details of which are tabulated below:

Gulshan Kumar v. Institute of Banking Personnel Selection & Ors.

Examinations	Conducting Bodies	Date(s)
Common Recruitment Process of Recruitment of Probationary officers/ Management trainees	First Respondent	26/11/2022 or any other date
State Bank of India (Junior Associate & Sales)	Second Respondent	12/11/2022 or any other date
State Bank of India Probationary officer (PO)	Second Respondent	17/12/2022 to 20/12/2022 or any other date
Staff Selection Commission's Combined Graduate Level (CGL)	Third Respondent	1/12/2022 to 13/12/2022 or any other date
Bihar Staff Selection Commission's Combined Graduate Level	Fourth Respondent	26/11/2022 or any other date

The petitioner has also sought a direction to the Respondent No.5 to initiate suitable action against the examining bodies that have failed to adhere to the guidelines issued by the Respondent No.5 / Government of India, Ministry of Social Justice and Empowerment, Department of Empowerment of Persons with Disabilities (Divyangjan) *vide* Office Memorandum in F.No.29-6/2019-DD-III dated 10.08.2022.

2. *Vide* order dated 15.12.2022,¹ this court clarified that the Respondent No.2 shall not insist on the requirement of a benchmark disability within the meaning of the Rights of Persons with Disabilities Act, 2016² for the facility of a scribe, having due regard to the judgment

1 "1. Mr. Sanjay Kapur, counsel appearing on behalf of the State Bank of India (the second respondent) states that a communication has been addressed by the second respondent to the petitioner requiring the petitioner to produce necessary documents so as to allow him the facility of a scribe for the selection test.

2. We clarify that the second respondent shall not insist on the requirement of a bench mark disability within the meaning of the Rights of Persons with Disabilities Act 2016 for the facility of a scribe having due regard to the judgment of this Court in *Vikas Kumar vs Union Public Service Commission and Others* [(2021) 5 SCC 370].

3 Liberty to serve the Standing Counsel for the State of Bihar, who shall take instructions insofar as the fourth respondent is concerned.

4 List the Petition on 30 January 2023.

2 For short, "the RPwD Act, 2016"

Digital Supreme Court Reports

of this Court in *Vikas Kumar v. Union Public Service Commission and Others*.³

- 2.1. Pursuant to the aforesaid order, the petitioner was provided with a scribe and compensatory time during the examinations conducted by the Respondent No.2 / State Bank of India, on 12.11.2022 and 17.12.2022 respectively, for the posts of Clerk and Probationary Officer.
3. Though at the first blush, the reliefs sought in this writ petition may appear to have become infructuous due to the efflux of time, considering the nature of the issue involved herein, we deem it fit and appropriate to delve into the same and arrive at a possible solution, so as to streamline the legal position which has been settled to an extent, and to ameliorate the plight of the persons with disabilities.⁴ The pleadings raised by the parties are restricted to this specific scope.

BRIEF FACTS

4. It is stated by the petitioner herein that he belongs to 'Teli' Caste which falls under the category of Other Backward Class in the State of Bihar. In 2017, soon after completing his degree, the petitioner was diagnosed with Focal Hand Dystonia, a type of Writer's Cramp, classified as a chronic neurological condition. Under the RPwD Act, 2016, he was assessed with 25% permanent disability and was issued with a Unique Disability ID by the Primary Health Care Centre, Rajgir, Nalanda, Bihar. On 12.07.2021, after evaluation, the National Institute of Mental Health and Neuro-Sciences Centre (NIMHANS), Bangalore, issued a certificate in favour of the petitioner recognising his need for a scribe in written examinations. Pursuant to the same, he appeared for his post-graduate final year examination with the assistance of a scribe. Thereafter, he applied for various examinations conducted by different recruitment bodies, however, he was not provided with any facilities available to PwD candidates. According to him, such facilities were restricted only to the Persons with Benchmark Disabilities.⁵ Feeling aggrieved, the petitioner is before us.

3 (2021) 5 SCC 370

4 For short, "the PwD"

5 For short, the "PwBD"

Gulshan Kumar v. Institute of Banking Personnel Selection & Ors.**CONTENTIONS**

5. The learned counsel for the petitioner submitted that the petitioner is a PwD as defined under Section 2(s) of the RPwD Act, 2016. In the application forms issued by the respondents for recruitment, there was no clause for PwD candidates to seek the facilities of scribe, compensatory time, *etc.* Such clause was made available only for PwBD candidates. As a result, the petitioner was unable to apply for these facilities and consequently, could not write the examination effectively.
 - 5.1. The learned counsel further pointed out that the respondents have acted in derogation to the principles enshrined by this Court in *Vikash Kumar (supra)*, wherein, it was held that it would be discriminatory to restrict the facilities of a scribe for only PwBD candidates. That apart, in *Avni Prakash v. National Testing Agency (NTA) & Others*,⁶ this Court has emphatically clarified that Benchmark Disability is not a precondition to obtain a scribe or compensatory time in examinations. Despite the same, the respondents continue to remain oblivious to the actual legal position and ignorant towards their obligations. Therefore, the petitioner has come to this court with the present writ petition for the above stated relief.
6. Denying the averments made by the petitioner, the Respondent Nos.1, 2 and 4 filed separate replies in the form of counter affidavits, which were reiterated by their respective learned counsel, during the course of arguments before us. The learned counsel appearing for the Respondent No.3 also made his submissions. The sum and substance of the contentions raised on the side of the respondents are as follows:
 - 6.1.1. It is submitted that the Respondent No.1 / Institute of Banking Personnel Selection, Mumbai, is not a 'State' as defined under Article 12 of the Constitution of India and is, instead, a Public Trust registered under the Bombay Public Trust Act, 1950 and also a Society registered under the Societies Registration Act, 1860. According to the Respondent No.1, it is not a statutory body established under any specific statute, but an autonomous body, that provides services to participating

Digital Supreme Court Reports

banks and other organizations in conducting tests to fill up the actual reported vacancies. The activity of the Respondent No.1 in conducting the examination / selection is voluntary in nature and no public function is discharged by them. Further, it does not receive any financial aid from the Government or its entity and is not controlled in any manner either by the Government of India or its Departments. Moreover, in the judgment dated 29.04.2019 passed by this Court in Civil Appeal No.4455 of 2019 in *Rajbir Surajbhan Singh vs. The Chairman, Institute of Banking Personnel Selection, Mumbai*, it was specifically held that the Respondent No.1 is not amenable to the writ jurisdiction under Article 32 or Article 226 of the Constitution of India. Thus, this writ petition is not maintainable against the Respondent No.1 and the same is liable to be dismissed on this ground alone.

- 6.1.2. However, it is submitted that the Respondent No.1 has been acting in accordance with the judgments of this Court in *Vikas Kumar (supra)* and *Avni Praksh (supra)* as well as the Office Memorandum dated 10.08.2022 issued by the Respondent No.5 and the option to seek a scribe and compensatory time for the candidates mentioned in the said Office Memorandum will be duly incorporated into the application forms for all future examinations conducted by them.
- 6.1.3. Additionally, it is submitted that the Respondent No.1 is merely a Service Provider to Respondent No.2 (SBI) and conducts online examination as per its mandate. It extends the facility of IBPS-Candidate Grievance Lodging and Redressal Mechanism to the aggrieved candidates. Thus, according to the Respondent No.1, it has neither violated the fundamental rights of the petitioner under Articles 14, 19 (I) (g) & 21 of the Constitution of India nor has it remained ignorant towards its obligation.
- 6.2. It is submitted that the Respondent No.2 is a statutory body incorporated and constituted under the State Bank of India Act, 1955. While submitting the application forms, the petitioner did not opt/ apply for the facility of a scribe. However, in accordance with the order of this court dated 15.12.2022, the Respondent No.2 permitted the petitioner to appear for

Gulshan Kumar v. Institute of Banking Personnel Selection & Ors.

the examination, and the petitioner subsequently, wrote the examination with the assistance of a scribe and applicable compensatory time. Thus, according to the Respondent No.2, they have complied with the directions issued by this Court as well as the guidelines framed in the Official Memorandum dated 10.08.2022.

- 6.3. It is submitted that the Respondent No.4 / Bihar Staff Selection Commission is governed by section 8 of the Bihar Staff Selection Commission Act, 2002, which requires it to formulate procedure for selection for different services/posts with prior approval from the State Government. The State Government of Bihar *vide* Letter No. 3433 dated 09.10.2007 approved the procedure for selection for different services / posts, which included providing facilities of a scribe and extra time to blind or low vision candidates. Subsequently, *vide* Letter No. 9529 dated 01.07.2015 the State Government extended the said facilities to candidates who are unable to write due to the permanent absence of hand/hands or those suffering from cerebral palsy. Finally, in view of the Office Memorandum dated 29.08.2018 issued by the Respondent No.5, the State Government issued Letter No. 11 / AA.-Nyay-30 /2021 Sa/Pra. 10668 dated 29.06.2022 extending the benefits of providing facilities of a scribe and extra time to all the candidates with 'Benchmark Disabilities'. It is further submitted that as per clause 7(vi) of the advertisement published on 14.04.2022, the Respondent No.4 provided the benefits of scribe to PwBD i.e., Blind or low vision candidates, whose disability was 40% or more and who opted for such facilities. It is also submitted that the petitioner did not approach the Respondent No. 4 with a request to provide a scribe, and hence, he is not entitled to claim any relief in this writ petition.
7. We have considered the submissions made by the learned counsel appearing for the parties and also perused the materials available on record.

LEGAL POSITION

8. Before proceeding further, we may take note of the legal framework and judicial precedents rendered by this Court as well as by other

Digital Supreme Court Reports

countries, connected to the issue involved herein. The RPwD Act, 2016 emphasizes the rights of disabled persons to participate in examinations with necessary accommodations. The relevant provisions read as under:

Section 2(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.

Section 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.

Section 2(h)

“discrimination” in relation to disability, means any distinction, exclusion, restriction on the basis of disability which is the purpose or effect of impairing or nullifying the recognition, enjoyment or exercise on an equal basis with others of all human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field and includes all forms of discrimination and denial of reasonable accommodation.

Section 2(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.

Section 2(r)

“Person with benchmark disability” means a person with not less than forty per cent of a specified disability where

Gulshan Kumar v. Institute of Banking Personnel Selection & Ors.

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.

Section 16

Duty of educational institutions. — The appropriate Government and the local authorities shall endeavour that all educational institutions funded or recognised by them provide inclusive education to the children with disabilities and towards that end shall—

(i)...

(ii)...

(iii) provide reasonable accommodation according to the individual's requirements;

(iv) (viii)

Section 17

Specific measures to promote and facilitate inclusive education. — The appropriate Government and the local authorities shall take the following measures for the purpose of section 16, namely: —

(a) (h)

(i) to make suitable modifications in the curriculum and examination system to meet the needs of students with disabilities such as extra time for completion of examination paper, facility of scribe or amanuensis, exemption from second and third language courses;

(j)....(k)...

Section 18

Adult education. — The appropriate Government and the local authorities shall take measures to promote, protect and ensure participation of persons with disabilities in adult education and continuing education programmers equally with others.

Digital Supreme Court Reports

Indian decisions

9. This Court has reinforced the rights of PwD through several landmark judgments, a few of which and the relevant observations therein are extracted below, for better appreciation:

- (i) Vikash Kumar (supra):

“52. The principle of reasonable accommodation has found a more expansive manifestation in the 2016 RPwD Act. Section 3 of the 2016 RPwD Act goes beyond a formal guarantee of non-discrimination by casting affirmative duties and obligations on the Government to protect the rights recognized in Section 3 by taking steps to utilize the capacity of persons with disabilities “by providing appropriate environment”. Among the obligations which are cast on the Government is the duty to take necessary steps to ensure reasonable accommodation for persons with disabilities. The concept of reasonable accommodation in Section 2(y) incorporates making “necessary and appropriate modification and adjustments” so long as they do not impose a disproportionate or undue burden in a particular case to ensure to persons with disability the enjoyment or exercise of rights equally with others. Equality, non- discrimination and dignity are the essence of the protective ambit of the 2016 RPwD Act.

56. Section 17(i) requires suitable modifications in the curriculum and examination system to meet the needs of students with disabilities such as: (i) extra time for completion of examination (ii) the facility of scribe or amanuensis (iii) exemption from second and third language courses. The guarantee under Section 17(i) is not confined to persons with benchmark disabilities but extends to students with disabilities. It is thus evident that the legislature has made a clear distinction between disability and benchmark disability. Section 20 provides a mandate of non-discrimination in employment. Under Section

Gulshan Kumar v. Institute of Banking Personnel Selection & Ors.

21, every establishment is under a mandate to notify equal opportunity policies setting out the measures which will be adopted in pursuance of the provisions of Chapter IV. Chapter V provides guarantees for social security, health, rehabilitation and recreation to persons with disabilities.

57. When the Government in recognition of its affirmative duties and obligations under the 2016 RPwD Act makes provisions for facilitating a scribe during the course of the Civil Services Examination, it cannot be construed to confer a largesse. Nor does it by allowing a scribe confer a privilege on a candidate. The provision for the facility of a scribe is in pursuance of the statutory mandate to ensure that persons with disabilities are able to live a life of equality and dignity based on respect in society for their bodily and mental integrity. There is a fundamental fallacy on the part of the UPSE/DoPT in proceeding on the basis that the facility of a scribe shall be made available only to persons with benchmark disabilities. This is occasioned by the failure of the MSJE to clarify their guidelines. The whole concept of a benchmark disability within the meaning of Section 2(r) is primarily in the context of special provisions including reservation that are embodied in Chapter VI of the 2016 RPwD Act. Conceivably, Parliament while mandating the reservation of posts in government establishments and of seats in institutions of higher learning was of the view that this entitlement should be recognized for persons with benchmark disabilities.

63. In the specific context of disability, the principle of reasonable accommodation postulates that the conditions which exclude the disabled from full and effective participation as equal members of society have to give way to an accommodative society which accepts difference, respects their needs and facilitates the creation of an environment in which the societal barriers to disability are progressively answered.

Digital Supreme Court Reports

Accommodation implies a positive obligation to create conditions conducive to the growth and fulfilment of the disabled in every aspect of their existence — whether as students, members of the workplace, participants in governance or, on a personal plane, in realising the fulfilling privacies of family life. The accommodation which the law mandates is “reasonable” because it has to be tailored to the requirements of each condition of disability. The expectations which every disabled person has are unique to the nature of the disability and the character of the impediments which are encountered as its consequence.

92. Before concluding, we also intend to issue a broader direction to the Union Government in the Ministry of Social Justice and Empowerment to ensure the framing of proper guidelines which would regulate and facilitate the grant of a facility of a scribe to persons with disability within the meaning of Section 2(s) where the nature of the disability operates to impose a barrier to the candidate writing an examination. In formulating the procedures, the Ministry of Social Justice and Empowerment may lay down appropriate norms to ensure that the condition of the candidate is duly certified by such competent medical authority as may be prescribed so as to ensure that only genuine candidates in need of the facility are able to avail of it.

(ii) Avni Prakash (supra):

“Right to inclusive education

40. 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

Gulshan Kumar v. Institute of Banking Personnel Selection & Ors.

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:

“2. (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;”

41. 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) 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% seats under Section 32.

42. 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.

Digital Supreme Court Reports

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;”

The right to inclusive education is realised through the provision of reasonable accommodation. In Vikash Kumar [Vikash Kumar v. UPSC, (2021) 5 SCC 370 : (2021) 2 SCC (L&S) 1] , 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 : (SCC p. 399, para 44)

“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.”

Gulshan Kumar v. Institute of Banking Personnel Selection & Ors.

- (iii) Arnab Roy v. Consortium of National Law Universities and Another⁷

“24. In a situation such as the present, the Court must have due regard, undoubtedly to the need for reasonable accommodation consistent with the provisions of the Rights of Persons with Disabilities Act, as interpreted in the decision in Vikash Kumar. Equally, it would not be appropriate to ignore the genuine concerns which have been set up on behalf of the Consortium bearing on the need to maintain the integrity of the entrance test.

25. It is from this perspective that the Consortium has, in its Guidelines required that the candidate should not be above the 11th standard and in addition should not be affiliated with any test-preparatory or examination coaching centre. At the highest, a candidate could have a grievance if no such scribe meeting the said description is available. But as already noted above, the Consortium has taken upon itself the obligation to provide a scribe who meets with the stipulations which are contained in the Guidelines.

26. In other words, candidates appearing for the CLAT can either bring their own scribe or if it not possible to do so, request the Consortium to provide a scribe who is then made available to the candidate. During the course of the hearing, it has been agreed that where the Consortium provides a scribe, at least two days’ time should be provided so as to enable the candidate to interact with the scribe. We are of the view that this is fair and proper. ...”

10. Thus, it can be easily deduced from the above decisions that the principle of reasonable accommodation is central to ensure equality for all the persons with disabilities; and denying the facility of scribe or compensatory time, constitutes discrimination under the RPwD Act, 2016. This Court also wishes to diminish the artificial distinction and

Digital Supreme Court Reports

bifurcation drawn between candidates with disabilities and those with benchmark disabilities (40% disabled or more) by extending various rights to candidates with disabilities that were earlier limited only to those with benchmark disabilities. Further, the examination bodies are stressed upon to implement accessibility measures, ensure that the examination centres are physically accessible and equipped to accommodate disabled candidates and ensure strict compliance of the RPwD Act, 2016 to prevent discrimination and provide equal opportunities for the persons with disabilities.

Foreign decisions

11. The rights of the PwD have been recognized by the courts functioning in other countries. In this regard, a few of the decisions rendered by the foreign courts and the relevant paragraphs can be referred to as under:

(i) MOORE v. BRITISH COLUMBIA (EDUCATION)⁸

“28.....It is accepted that students with disabilities require accommodation of their differences in order to benefit from educational services.

39. Notably, however, the 1985 Manual said that “special education shares the basic purpose of all education: the optimal development of individuals as skillful, free, and purposeful persons, able to plan and manage life and to realize highest potential as individuals and as members of society” (s. 3.1 (emphasis added)). It added that “[a]ll children should be afforded opportunities to develop their full potential”

62. Meiorin and Grismer also directed that practices that are neutral on their face but have an unjustifiable adverse impact based on prohibited grounds will be subject to a requirement to “accommodate the characteristics of affected groups within their standards, rather than maintaining discriminatory standards supplemented by accommodation for those who cannot meet them” (Grismer, at para. 19).

Gulshan Kumar v. Institute of Banking Personnel Selection & Ors.

- (ii) Mental Disability Advocacy Center (MDAC) v. Bulgaria⁹
[European Committee of Social Rights]

“37. The Committee considers that all education provided by states must fulfil the criteria of availability, accessibility, acceptability and adaptability. It notes in this respect General Comment No. 13 of the Committee on Economic, Social and Cultural Rights of the United Nations International Covenant on Economic, Social and Cultural Rights on the right to education. In the present case, the criteria of accessibility and adaptability are at stake, i.e. educational institutions and curricula have to be accessible to everyone, without discrimination and teaching has to be designed to respond to children with special needs.”

- (iii) International Association Autism Europe v. France¹⁰ [European Committee of Social Rights]

“48. As emphasised in the General Introduction to its Conclusions of 2003 (p. 10), the Committee views Article 15 of the Revised Charter as both reflecting and advancing a profound shift of values in all European countries over the past decade away from treating them as objects of pity and towards respecting them as equal citizens – an approach that the Council of Europe contributed to promote, with the adoption by the Committee of Ministers of Recommendation (92) 6 of 1992 on a coherent policy for people with disabilities. The underlying vision of Article 15 is one of equal citizenship for persons with disabilities and, fittingly, the primary rights are those of “independence, social integration and participation in the life of the community”. Securing a right to education for children and others with disabilities plays an obviously important role in advancing these citizenship rights. This explains why education is now

⁹ Decision in Complaint No. 41/2007 dated 03.06.2008

¹⁰ Complaint No. 13/2002

Digital Supreme Court Reports

specifically mentioned in the revised Article 15 and why such an emphasis is placed on achieving that education “in the framework of general schemes, wherever possible”. It should be noted that Article 15 applies to all persons with disabilities regardless of the nature and origin of their disability and irrespective of their age.

49. Article 17 is predicated on the need to ensure that children and young persons grow up in an environment which encourages the “full development of their personality and of their physical and mental capacities”. This approach is just as important for children with disabilities as it is for others and arguably more in circumstances where the effects of ineffective or untimely intervention are ever likely to be undone. The Committee views Article 17, which deals more generally, inter alia, with the right to education for all, as also embodying the modern approach of mainstreaming. Article 17(1), in particular, requires the establishment and maintenance of sufficient and adequate institutions and services for the purpose of education. Since Article 17(1) deals only with children and young persons it is important to read it in conjunction with Article 15(1) as far as adults are concerned.”

(iv) G.L. v. ITALY¹¹ [European Court of Human Rights]

“52. As regards the prohibition set forth in Article 14 of the Convention, the Court reiterates that discrimination means treating differently, without an objective and reasonable justification, persons in similar situations, and that “no objective and reasonable justification” means that the distinction in issue does not pursue a “legitimate aim” or that there is not a “reasonable relationship of proportionality between the means employed and the aim sought to be realised”.

Gulshan Kumar v. Institute of Banking Personnel Selection & Ors.

53. When examining a case under Article 14 of the Convention, the Court must have regard to developments in international and European law and respond, for example, to any emerging consensus as to the standards to be achieved. To that effect, the Court notes the importance of the fundamental principles of universality and non-discrimination in the exercise of the right to education, which are enshrined in many international. It further emphasises that those instruments have recognised inclusive education, aimed at promoting equal opportunities for all, particularly for persons with disabilities. Inclusive education therefore forms part of the States' international responsibility in this sphere."

(v) **T.H. v. BULGARIA**¹² [European Court of Human Rights]

"109. In that context the Court considers it sufficient to emphasise that:

(a) Article 14 of the Convention prohibits discrimination on grounds of disability, which falls under the rubric "other status";

(b) Such discrimination can consist not only in less favourable treatment on grounds of a disability without a reasonable and objective justification but also in a failure to provide "reasonable accommodation" for someone with a disability;

(c) The notion of "reasonable accommodation" in this context must be understood in the sense ascribed to it by Article 2 of the 2006 United Nations Convention on the Rights of Persons with Disabilities (2515 UNTS 3) 1, in whose light Article 14 of the Convention must be read when being applied in this domain: "necessary and appropriate modification and adjustments not imposing a disproportionate or undue burden, where needed in a particular case, to

Digital Supreme Court Reports

ensure to persons with disabilities the enjoyment or exercise on an equal basis with others of all human rights and fundamental freedoms;

(d) “Reasonable accommodation” in the field of education can take different material or non-material forms – for instance, teacher training, curricular adaptation or appropriate facilities, depending in particular on the disability in question – and it is not for the Court to define its modalities in a given case, the national authorities being much better placed to do so, it being emphasised however that those authorities must take great care with the choices that they make in this respect.”

(vi) XXXX v HR Rail SA¹³

“38. In that regard, it should be recalled that Directive 2000/78 must, as far as possible, be interpreted in a manner that is consistent with the UN Convention. Article 2, third indent of the UN Convention provides that discrimination on the grounds of disability includes all forms of discrimination, including denial of reasonable accommodation.”

12. Thus, it is clear from the above that the rights of disabled persons are less instructive and more general and that, right to education, right to equality, and right against discrimination accorded to them will only be truly realized, when State structures form policies, laws, and rules to provide equal access and reasonable accommodation to such persons.

DISCUSSION

13. The law is settled that all the benefits given to PwBD candidates must also be extended to PwD candidates, and there can be no discrimination between the candidates in granting facilities such as scribes, compensatory time, etc., except for reservation, in writing

¹³ Judgment of the Court (Third Chamber) dated 10.02.2022 in Case C-485/20

Gulshan Kumar v. Institute of Banking Personnel Selection & Ors.

the examinations. Earlier, the office memorandum dated 29.08.2018¹⁴ came to be issued, dealing with the entitlements and benefits for PwBD candidates for all examinations irrespective of its nature and irrespective of the authority conducting the examination.

14. Notably, the Respondent No.5 issued Office Memorandum dated 10.08.2022, in compliance with the directions issued by this Court in *Vikash Kumar* (Supra). In the said Office Memorandum, based on the recommendation of the Expert Committee, certain guidelines were issued for conducting written examination for persons with specified disabilities covered under the definition of Section 2(s) of the RPwD Act, 2016, but not covered under the definition of Section 2(r) of the said Act, i.e. persons having less than 40% disability and having difficulty in writing. For better appreciation, the relevant paragraphs of the said Office Memorandum read as under:

“2. Keeping in view the above order of the Hon’ble Supreme Court, an Expert Committee was constituted to consider the issue and suggest guidelines accordingly. The Committee noted that there are various types of clinical problems that can affect the writing capacity. After careful consideration of the matter, the Committee recommended that sole criteria for grant of scribe and compensatory time should be based on assessment of the capability of a person to write.

3. The Committee accordingly recommended the following guidelines for conducting written examination for persons with specified disabilities covered under the definition of Section 2(s) of the RPwD Act, 2016 but not covered under the definition of Section 2(r) of the said Act, i.e. persons having less than 40% disability and having difficulty in writing.

(a).....

(b) The facility of scribe and/or compensatory time shall be granted solely to those having difficulty in writing subject to production of a certificate to the effect that person

¹⁴ For short, “the 2018 OM”

Digital Supreme Court Reports

concerned has limitation to write and that scribe is essential to write examination on his/her behalf from the competent medical authority of a Government healthcare institution as per proforma at Appendix-1.

(c) The medical authority for the purpose of certification as mentioned in point (b) above should be a multi-member authority comprising the following:-

i. Chief Medical officer/Civil Surgeon/Chief District Medical Officer..... Chairperson

ii. Orthopaedic/PMR specialist

*iii. Neurologist, if available**

iv. Clinical Psychologist/Rehabilitation Psychologist/ Psychiatrist/Special Educator

*v. Occupational therapist, if available**

vi. Any other expert based on the condition of the candidate as may be nominated by the Chairperson.

(the Chief Medical Officer/Civil Surgeon/Chief District Medical Officer may make full efforts for inclusion of neurologists, occupational therapist from the nearest District or the Medical College/Institute, if the same is not available in the District)”*

(d) The candidate should have the discretion of opting for his own scribe or request the Examination Body for the same. The examination body may also identify the scribe to make panels at the District/Division/State level as per the requirements of the examination. In later instances the candidates should be allowed to meet the scribe two days before the examination so that the candidates get a chance to check and verify whether the scribe is suitable or not.

(e) In case the examination body provides the scribe, it shall be ensured that qualification of the scribe should not be more than the minimum qualification criteria of the examination. However, the qualification of the scribe should always be matriculate or above.

Gulshan Kumar v. Institute of Banking Personnel Selection & Ors.

In case the candidate is allowed to bring his own scribe, the qualification of the scribe should be one step below the qualification of the candidate taking examination. The person opting for own scribe should submit details of the own scribe as per proforma at Appendix-II.

(f) There should also be flexibility in accommodating any change in scribe in case of emergency. The candidates should also be allowed to take different scribe for writing different papers especially for languages. However, there can be only one scribe per subject.'

(g) The candidate should be allowed to use aids and assistive devices such as prosthetics & orthotics, hearing aid as mentioned in para 2 of the certificate issued by medical authority as per Appendix I.

(h) Compensatory time not less than 20 minutes per hour of the examination should be allowed for persons who are eligible for getting scribe. In case the duration of the examination is less than an hour, then the duration of the compensatory time should be allowed on pro-rata basis. Compensatory time should not be less than 5 minutes and should be in the multiple of 5.

(i) The examination bodies shall modify their application forms to incorporate specific needs of this category of persons. In case, any incident has been reported after filling up the form, the examination bodies shall inform the candidates to obtain medical certificate as per these guidelines for facilitating grant of scribe and/or compensatory time.

(j) As far as possible the examination for such persons may be held at ground floor. The examination centres should be accessible for persons with disabilities.

(k) These guidelines are applicable to written examinations conducted by central recruitment agencies as well as academic institutions. The States/UTs may adopt these guidelines or issue similar guidelines to maintain uniformity.

Digital Supreme Court Reports

(l) These guidelines are independent of the Guidelines for conducting written examination for persons with benchmark disabilities issued by the Department of Empowerment of Persons with Disabilities on 29.08.2018.

(m) The examining bodies shall ensure strict vigilance to check misuse of facility of scribe.

4. All the recruitment agencies, Academics/Examination Bodies etc. under the administrative control of each Ministry/Department may be advised appropriately to ensure compliance of implementing these guidelines.

5. The above guidelines are issued with the approval of Hon'ble Minister (Social Justice & Empowerment).

14.1. The aforesaid Office Memorandum dated 10.08.2022 was forwarded by the Government of India, Ministry of Finance, Department of Financial Services, *vide* communication No.FZ-3/3/2022-SCT dated 10.11.2022 to all recruitment agencies / examination bodies, for strict compliance.

15. It is the grievance of the petitioner herein that though the aforesaid Office Memorandum dated 10.08.2022 came to be issued by the Respondent No.5 in accordance with the directions of this Court, it fails to incorporate the essence of reasonable accommodation and underscores the true meaning and purpose of the RPwD Act, 2016. According to the petitioner, the said Office Memorandum contains the following defects:

- (i) As per the directions of this Court in *Vikash Kumar (supra)* and *Avni Prakash (supra)*, all conditions/benefits found in Paras I to XVII of the 2018 OM relating to PwBD candidates, were required to be extended to PwD candidates. However, the Respondent No.5 came up with a separate Office Memorandum granting selective facilities, without any justification for restricting the facilities for PwD candidates.
- (ii) The Judgment in *Vikash Kumar (supra)* mandates that any disability imposing a barrier to a candidate writing an examination should be remedied by extending the necessary facilities. In the case of blind or low vision candidates, the disability does not prevent them from “writing” *per se*, but it certainly imposes

Gulshan Kumar v. Institute of Banking Personnel Selection & Ors.

a barrier to writing the examination. However, clause (3) of the Office Memorandum only extends facilities to candidates who have “difficulty in writing”. Furthermore, Clause 3(b) of the Office Memorandum creates confusion and a problematic situation, where the rights of PwD candidates to receive facilities in examinations can be denied simply because their disability is not related to “writing”. This contradicts the entire purpose of the Act. Therefore, this court may direct the Respondent No.5 to strike down the restrictions in clause (3) and 3(b) and extend examination relaxations to all PwD candidates, regardless of the nature, type, or form of disability.

- (iii) The Office Memorandum does not provide for any facilities other than a scribe and compensatory time. For instance, the 2018 OM includes provisions that as far as possible, PwBD candidates should have the option to choose the mode of taking the examination, such as in Braille, on a computer, in large print, or even by recording their answers. These are also feasible as examining bodies can easily use technology to convert question papers into large prints, e-text or Braille, and can also convert Braille text into English or regional languages. However, the same does not find any mention in the said Office Memorandum. The Office Memorandum also sets specific criteria (both educational and otherwise) for a scribe. Quite often, candidates face significant challenges in finding a suitable scribe and ensuring their presence on the day of the examination. At the same time, while the 2018 OM allowed candidates to use a computer or other technological means for taking the exam, this option was not extended to PwD candidates in the present OM. Therefore, the petitioner states that if candidates are permitted to type their answers on computers, it would eliminate the need for a scribe and also address the concerns of the examining body regarding malpractice by reducing human interaction.
- (iv) The Office Memorandum fails to prescribe a grievance redressal mechanism to address instances where any relaxations are denied to PwD candidates. As a result, the only remedy available to such candidates who are denied the benefit of such relaxations, is to approach a writ court and seek redress for the grievance.

Digital Supreme Court Reports

- 15.1. The petitioner further highlighted the problems and inconveniences faced by him during the examination process, which are as follows: (i) The application forms for recruitment did not include provisions for PwD candidates, and the requisite facilities were only provided upon specific requests from applicants; (ii) Compensatory time was not displayed on the screen, leading to a failure by the invigilators to provide the facility to PwD candidates; (iii) Some recruitment agencies refused to provide the facilities of a scribe and extra time to PwD candidates, citing that such provisions were contrary to the policy decisions of their respective departments; (iv) In certain cases, the facilities of a scribe and extra time were denied because the invigilators were not informed about the court orders mandating strict compliance with such provisions; (v) In various examinations, the benefits were provided only to PwBD candidates, due to a lack of coordination and proper implementation. Thus, according to the petitioner, these issues have a serious detrimental effect on the candidates, and as a result, the guidelines framed by Respondent No. 5 should be reconsidered and amended.
16. On the other hand, the respondents categorically stated in their replies and submissions that they have been following the directions of this Court as well as the guidelines issued by Respondent No. 5 in the Office Memorandum dated 10.08.2022.
17. However, there have been instances where examination bodies refused to extend the benefits available to PwD candidates due to the absence of a clear-cut grievance redressal mechanism, which continues to cause inconvenience and injustice to several candidates, including the petitioner herein. Further, the petitioner demonstrated that there are certain defects and lacunas in the guidelines issued by Respondent No. 5, as well as in the implementation of this Court's directions, resulting in different authorities following disparate procedures. This lack of uniformity causes confusion, discrimination, and undermines the efficiency and effectiveness of the examination process. Therefore, in our opinion, there is an urgent need for a uniform memorandum for examinations applicable to all PwD candidates, and it is the responsibility of Respondent No. 5 to ensure its proper and just compliance.

Gulshan Kumar v. Institute of Banking Personnel Selection & Ors.

18. It is also to be pointed out that the constitution bench of this Court in *Kaushal Kishor v. State of Uttar Pradesh and others*¹⁵ considered the question as to whether fundamental rights under Articles 19 and 21 of the Constitution can be claimed against anyone who is not a state instrumentality, and answered the same in the affirmative with a majority of 4:1. It was clarified that rights under Articles 19 and 21 can be enforced even against private entities and it overrides the principle laid down in *Rajbir* (supra). Hence, the contention of the Respondent No.1 that they are not amenable to writ jurisdiction cannot be countenanced by us. It is noteworthy mentioning that the Office Memorandum clearly stated that the guidelines are applicable to all the authorities. As such, the benefits conferred by the statute should be provided for all the PwD candidates and they cannot be denied on the ground of absence of accountability and/or lack of duty on enforceability.
19. In the ultimate analysis, we are of the considered view that the guidelines issued by the Respondent No.5 pursuant to the directions of this Court, have to be enforced, by extending the benefits for PwBD candidates to all PwD candidates in writing their examinations, without any hindrance. Accordingly, we direct the Respondent No.5 to revisit the Office Memorandum dated 10.08.2022, remove the restrictions and grant relaxations in a reasonable manner and incorporate the following aspects and thereby, re-notify the same afresh, within a period of two months:
- (i) direct all the authorities / recruitment agencies / examining bodies to uniformly follow the guidelines issued by the Respondent No.5, which is the nodal agency and ensure strict adherence through periodic surveys / verification;
 - (ii) carry out periodic sensitization drive at educational institutions to raise awareness among the examination conducting bodies so as to ensure that the OM's are effectively implemented;
 - (iii) set up a grievance redressal portal to register complaints, which would permit the candidates to approach it first before approaching the court of law;
 - (iv) inspect the guidelines framed by different authorities and re-notify the existing guidelines with an aim to ensure compliance;

15 Writ Petition (Criminal) No. 113 of 2016

Digital Supreme Court Reports

- (v) extend the validity of the scribe certificate (currently being valid only for 6 months) to prevent the long wait time after applying, especially, in rural areas;
 - (vi) set up Incentive programs for scribes to ensure their availability and provide necessary training;
 - (vii) provide some time prior to the examination to allow the candidates to familiarize themselves with the scribe to ensure that there is a sense of comfort while communicating with the scribe during the examination;
 - (viii) offer PwD candidates a choice of examination modes, such as scribe, braille, large print, audio recording of answers, etc.;
 - (ix) take penal action against authorities / officials in charge of decision- making process, who fail to follow the guidelines set out by the Respondent No.5 and formulate guidelines which exclude PwD;
 - (x) sensitise the persons working for the respondent authorities, and train them on a regular basis, to address the reasonable accommodation needs of PwDs; and
 - (xi) ensure strict compliance of the letter and spirit of the judgments in *Vikash Kumar* and *Avni Prakash* as well as the provisions of the RPwD Act, 2016, with a special focus on 'reasonable accommodation'.
20. With the aforesaid directions, this writ petition stands disposed of. No costs. Connected Miscellaneous application(s), if any, shall stand disposed of.

Post the matter after two months "for reporting compliance".

Result of the case: Writ petition disposed of.