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ASHUTOSH KUMAR

v.

THE FILM AND TELEVISION INSTITUTE OF INDIA & ANR.

(Civil Appeal No. 7719 of 2021)

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APRIL 12, 2022

[SANJAY KISHAN KAUL AND M.M. SUNDRESH, JJ.]

- Education/Educational Institutions: Admission – Disability – Color Blindness –Diploma course in Editing in the Films and Television Institute of India – Appellant, colour blind person excluded from pursuing a course for Diploma in Editing in the Films and Television Institute of India, Pune(FTII) – Previous order by this Court that the appellant has to go through the process of selection de novo due to his color blindness – Appellant relying on the principle of reasonable accommodation, tried to persuade this Court to revisit its earlier observations – Thereafter, constitution of an expert Committee to opine on the aspect of colour blindness as a disqualification for admission in various courses – Recommendation by the Committee that individuals with color blindness should be permitted to enroll 'for all courses' offered by FTII and the color grading module in the existing Diploma in Film Editing Course curriculum, should either be excluded or made elective – Accepting the majority opinion of the Committee, it is held that the individuals with color blindness are required to be adopted by the FTII in its curriculum – Said direction would also be applicable to other film and television institutes following a similar educational curriculum – However, due to the passage of time and the earlier order passed by the Court, no relief could be granted to the appellant.*

Maqbool Fida Hussain v. Rajkumar Pandey & Ors., (2008) SCC Online Del 562; Vikash Kumar v. Union Public Service Commission & Ors. (2021) 5 SCC 370; Pranay Kumar Poddar v. State of Tripura & Ors., (2017) 13 SCC 351: [2017] 2 SCR 797 – referred to.

Case Law Reference

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[2017] 2 SCR 797

referred to

Para 40

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 7719 A
of 2021.

From the Judgment and Order dated 07.03.2017 of the High Court of Judicature at Bombay in Writ Petition (C) No.12296 of 2016.

Colin Gonsalves, Sr. Adv., Olivia Bang, Satya Mitra, M. Shoeb Alam, Mohd. Ovais, Advs. for the Appellant.

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Ms. Aishwarya Bhati, ASG, Amit Anand Tiwari, Ashutosh Jha, Ms. Priyanka Telang, Ms. Devyani Gupta, Ms. Manjula Gupta, Om Prakash Shukla, Gopal Jha, Ms. Manisha Chava, Sughosh Subramanyam, Amrish Kumar, Advs. for the Respondents.

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The Judgment of the Court was delivered by

SANJAY KISHAN KAUL, J.

1. The art is non-conformist in character!

We are reminded of Edgar Degas' poignant observation that "*Art is not what you see, but what you make others see.*"

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2. The respondent Institute is a premier Institute and one would expect it to encourage a liberal thought process and not put courses connected with films in any conformists' box. It is this thought process which made us pass the order on 30.11.2021 dealing with the aspect of colour blindness. We had sketched out that the colour blindness is not a form of blindness at all but a deficiency in the way you see colour. This medical condition makes it difficult to distinguish certain colours such as blue and yellow or red and green, and an estimated eight percent of the male population and less than one per cent of the female population have red and green colour deficiency, being the most common form of colour blindness.

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3. The *lis* which has arisen before us is from a fundamental question where a person who is colour blind is excluded from pursuing a course for Diploma in Editing in the Films and Television Institute of India, Pune(FTII)/respondent No.1. It is not necessary for us to get into the depth of the facts which already stand noticed in the aforementioned order or the respective submissions of the counsels made on that date. Suffice to say that instead of taking a call itself on whether colour blindness would be an aspect which would be an impediment in going through the course, we found it appropriate to form a committee to look

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A into the issue and connected issues. On suggestions from counsels for parties and our own path of discovery, we constituted a Committee of the following:-

“(i) Film Director Mr. Ravi K Chandran

B (ii) Colourist- Mr. Swapnil Patole

(iii) Script Ms. Shubha Ramachandra

Supervisor

(iv) Film Editor Mr. Akkineni Sreekar Prasad

C (v) Course Creator/ Mr. Rajasekharan

HOD, Editing

(vi) Ophthalmologist Dr. Jignesh Taswala

D (vii) Mr. Shoeb Alam, Advocate who was the counsel in the Committee appointed in *Praney Kumar Poddar vs. State of Tripura & Ors. (2017) 13 SCC 351.*”

4. We put a caveat at the inception itself that in view of the passage of time of almost six years, the respondent would have to go through the rigors of the process of a selection anew, but dependent on the fate of the order to be passed on consideration of the report of the Committee, E it had the potentiality to remove the impediment in the future on account of colour blindness, if the Committee so opined.

5. We also considered appropriate to facilitate a more comprehensive exercise by the Committee to opine on the aspect of colour blindness *qua* all the courses for which it is perceived as a F disqualification.

6. The report of the Committee has been placed before us. It is signed by all THE members except one i.e. Mr. K. Rajasekaran, HOD Editing, FTII who had some caveats which we will consider after noticing the report of the Committee.

G 7. The Committee rightly framed the two issues on which the opinion of the Committee was sought as under:

H “i. Whether the course *curriculum* provided for diploma in Editing can be successfully completed by the appellant who suffers from color blindness?

ii. To facilitate a more comprehensive exercise, the role of the committee would be to opine on the aspect of color blindness qua all the courses for which it is perceived as a disqualification.” A

KEY HIGHLIGHTS FROM THE COMMITTEE’S DISCUSSIONS B

8. The Committee held about eight online meetings. With a view to inform itself of the practice of admission of colour blind individuals prevalent in premier international institutes, it short listed and wrote to ten top international film and television institutes, but responses were received only from two of them. In the course of deliberations of the Committee, it was found that the appellant had not been examined by an expert Ophthalmologist to ascertain the nature and extent of his colour blindness as at the time of seeking admission in the FTII. The eye examination was by the Institute’s General Medical Officer. It is in view thereof that an application was filed before this Court on which orders were passed on 18.02.2022 for the Director, AIIMS to constitute a Committee at the earliest to examine the appellant to ascertain the nature and extent of colour visual deficiency. C

9. The report of the AIIMS prepared on 08.03.2022 records that the appellant had “*red and green colour vision deficiency as per the grading level of colour perception, the candidate is found to have colour perception (CP)4*”. D

10. The Committee has thereafter deliberated on all the aspects and has submitted its report. It carries various sections. E

11. The first section of the report deals with Ophthalmological perspective prescription of colour blindness. It discusses: (a) about colour blindness (b) the causes of colour blindness (c) types of colour blindness. F

12. Suffice to reproduce the (c) part of the report as under:

“c. Types of color blindness

(i) Red-green color blindness: G

The most common type of color blindness makes it hard to tell the difference between red and green. There are 4 types of red-green color blindness:

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 - DEUTERANOMALY is the most common type of red-green color blindness. It makes green look more red. This type is mild and doesn't usually get in the way of normal activities.
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 - PROTANOMALY makes red look more green and less bright. This type is mild and usually doesn't get in the way of normal activities.
 - PROTANOPIA and DEUTERANOPIA both make you unable to tell the difference between red and green at all.
- C
 - (ii) Blue-yellow color blindness:

This less-common type of color blindness makes it hard to tell the difference between blue and green, and between yellow and red. There are 2 types of blue-yellow color blindness:

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 - TRITANOMALY makes it hard to tell the difference between blue and green, and between yellow and red.
 - TRITANOPIA makes you unable to tell the difference between blue and green, purple and red, and yellow and pink. It also makes colors look less bright.
- E
 - (iii) Complete color blindness:

If you have complete color blindness, you can't see colors at all. This is also called monochromacy, and it's quite uncommon. Depending on the type, you may also have trouble seeing clearly and you may be more sensitive to light. Different types of color blindness cause problems seeing different colors.”

BAR TO FTII COURSES:

13. The Committee thereafter examined the bar to FTII courses on account of colour blindness, keeping in mind the various modules of

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the curriculum which may be a hurdle for admitting colour blind candidates, the significance and professional utility of such modules, colour blindness and the occupational role of the professional etc. in order to determine whether a colour blind candidate, who otherwise possessed creative potential, ought to be refused admission to a particular TV/Film making course.

14. As per the 2020 FTII prospectus, individuals with colour blindness are ineligible to be admitted to the following course:

“(i) Cinematography, (ii) Electronic Cinematography, (iii) Editing, (iv) Video Editing, (v) Art Direction and Production Design.”

15. It is the view of the committee that individuals with colour blindness should be permitted to enroll for all courses offered by the FTII. The reasoning which permeates this finding of the Committee is as under:

(a) Film and television creations are collaborative art forms. Restricting entry of colour blind candidates to film courses may sacrifice creative talent and stultify the development of the art. Inclusivity enriches this creative art form by introducing variety, any limitation can be overcome by assistance in the educational and professional life.

(b) It is not the role of FTII to decide for candidates their future prospects as a film/television professional. If learning limitation of the candidate can be overcome by making reasonable accommodation or with the help of an assistant, the candidate should be eligible for admission to courses offered by FTII.

(C) Film editing is the art, technique and practice of assembling shots into a coherent sequence and the job of an Editor is not simply to mechanically put piece of a film together, cut off film slates or edit dialogue scenes. The Film Editor must creatively work with the layers of images, story, dialogue, music, pacing as well as the actors performances to effectively “reimagine” and even re-write the film to craft a cohesive whole.

A FILM EDITING CURRICULUM AND COLOR GRADING:

16. The Committee thereafter examined the film editing curriculum and colour grading aspect which is a 20 minute module of colour grading in the fifth semester. It is opined that there is no relevance of the colour grading to the role of a professional Film Editor. A Colourist who is a specialized professional makes up for the colour enhancement, corrections etc.

17. The Committee has analyzed the historical perspective of the role which is as late as the year 2000 in the pre-digital film era. Film editing was carried out on black and white rushes and colour was added to the rushes subsequently. The Editor thus, had to only deal with the black and white rushes and had no requirement for colour vision. Thus the presence of colour blindness in a person did not prevent him from becoming an expert Film Editor.

18. Illustratively, Mr. Ravi K. Chandran, Cinematographer informed that Sir Roger Deakins CBE, is one of the acclaimed international Cinematographers and won an Oscar Award apart from being nominated 13 times for Oscar Awards for his Cinematographic works and has difficulty in operating new age digital equipments, for which he relies upon assistants. In fact Mr. Chandran opined that he himself relies on the help of assistants and professionals while handling complex new age digital equipments or to overcome any other limitation where he may need help with.

19. A significant aspect noticed was that the 2020 FTII prospectus did not contain refer to any particular kind or extent of colour blindness which may operate as a bar to admission but mentioned that candidates suffering from colour blindness/colour vision deficiency are ineligible to apply for specialization at serial Nos. 1,2,5, 6 and 7.

EXISTING COLOR EDITING CURRICULUM

20. The next aspect analyzed is the existing colour editing curriculum. On analysis of the FTII film editing curriculum, it was found that candidates with the following types of colour blindness i.e. Achromatopsia, Tritanopia, Deuteranopia and Protanopia may have difficulties in successfully completing the existing 20 minutes obstructive colour element grading module in the Diploma in Film Editing curriculum offered by the FTII, and individuals with other types of colour blindness

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will not have any problem in completing the existing curriculum. What is relevant to note is that the Committee has opined that “colour grading module” has no relevance or nexus with the role of a Film Editor. A

BEST PRACTICES IN FOREIGN FILM INSTITUTES:

21. The Committee, in order to better appraise itself, wrote to different premier international film Institutes to know their best practices. On the basis of the responses, *albeit* limited, it was found that there was no discrimination based on physical limitation etc. and if a fellow needed accommodation they would make a request to Students’ Affairs Office with a doctor’s note and no medical examination was required. B

22. In fact the response from CalArts further stated that “*all reasonable accommodation would be provided to enable a colour blind student to complete their course.*” The Committee opined that FTII, being an internationally acclaimed premier film Institute, should set an example by making reasonable accommodation for colour blind candidates. The art of film making is a collaborative art form and any limitations would be compensated by the team of professionals. Thus, the all inclusive approach followed by premier foreign Institutes supports a view that FTII too should open its doors to colour blind individuals. C D

BLACK AND WHITE FILMS:

23. The Committee thereafter has deliberated on black and white films which are an integral genre of the film industry where the colour blind individual will have no impediment in creating a black and white film. That itself has been opined as a good reason to not prevent colour blind individuals to the film schools. Illustrations have been given of black and white films which have received critical acclaim including Schindler’s List. E F

PHYSICAL/SENSORY LIMITATION & THE ARTS:

24. An interesting aspect of discussion is under the heading of physical & sensory limitation in arts which sets forth individuals with great eminence who have seen no bounds on account of colour blindness. G We would like to extract the same as under:

“o. PHYSICAL/SENSORY LIMITATIONS & THE ARTS: There are myriad instances of film professionals, artists, actors etc. who have excelled

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- A at their job despite their personal limitations. The following instances amplify the argument:
- B i. Madhu Ambat, a top Indian Cinematographer (also an FTII alumnus), has won the National Award for Best Cinematography thrice. He has shot over a 100 feature films in various languages. He suffered a paralytic attack at the age of 10, affecting his operating arm, but he has overcome his limitations to succeed in this physically demanding craft.
- C ii. Loren Long is a renowned illustrator who has worked on countless children's books, including Barack Obama 'Of Thee I Sing', despite his colorblindness. At art school, he learned color theory and ways to work around his disability. He says he has a heightened sense of values or saturation that helps him and works with the help of colleagues & family.
- D iii. An amputee, Sudha Chandran become an acclaimed Bharatnatyam dancer. With a Jaipur foot, Sudha went on to perform worldwide & has acted in countless movies and television shows.
- E iv. Pranav Lal, a blind photographer, captures images using sound.
- F v. Dame Evelyn Glennie a Grammy award winning, Scottish percussionist began to lose her hearing at the age of 8 and by age 12 was completely deaf. Together with her band teacher, she developed ways to feel the musical vibration through her hands, feet and face. She literally taught herself to truly 'listen' with the rest of her body.
- G vi. Helen Keller, an unforgettable lore. She graduated *summa cum laude* from Radcliffe in Harvard & published 12 books in a language she neither heard nor read. She was both deaf & blind.
- H vii. Rowan Atkinson with severe speech disabilities became a great actor, immortalizing Mr. Bean for generations to come.

viii. Ian Treherne is profoundly deaf & 95 % blind and a photographer. He shot portraits of the Tokyo 2020 Para-Olympic athletes. He also paints, makes films and plays music.” A

25. The two other aspects discussed including the use of prosthetic glasses are also being reproduced hereunder: B

“p. CODA: The 94th Academy Awards (2022)/Oscar Award, for Best Picture, Best Adapted Screenplay and Best Supporting Actor has been conferred on the film ‘CODA’ (Children of Deaf Adults). The film casts several deaf actors including Marlee Matlin, an Oscar and BAFTA (British Academy of Film and Television Arts) awardee herself. C

q. PROSTHETIC GLASSES: The use of prosthetic color vision correction glasses such as those marketed under the brand name *EnChroma* etc., which may reduce the impact of color blindness, should be encouraged and allowed to be used by colorblind candidates applying to the FTII in order to limit the impact of the condition.” D

CONCLUSIONS/ RECOMMENDATIONS:

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26. The conclusion and recommendations of the Committee under para IV are as under:-

“IV. CONCLUSIONS/RECOMMENDATIONS

After examination of all relevant issues and deliberations, the committee makes the following conclusions/recommendations in response to the references forwarded to it: F

a. In re. Court’s reference# 1: “Whether the course *curriculum* provided for diploma in Editing can be successfully completed by the appellant who suffers from color blindness?” G

Committee’s recommendations: The appellant Mr. Ashutosh Kumar who has Red and Green color vision deficiency and has color perception of CP4, as per H

- A the AIIMS Medical Board report, will have difficulty in completing the existing course curriculum of the diploma in Film and Editing course offered by the FTII. This is more particularly due to a twenty-minute ‘color grading module’ which is part of the Film Editing curriculum. However, the color grading module has no relevance to either the film editing course or to the film editor’s professional role (Mr. K. Rajasekaran, HoD Editing, FTII, does not agree that the color grading module is irrelevant to the film editing course).
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- C b. In re. Court’s Reference#2: “To facilitate a more comprehensive exercise, the role of the committee would be to opine on the aspect of color blindness qua all the courses for which it is perceived as a disqualification.”
- D Committee’s recommendation: It is the opinion of the committee that :
- E i. It is recommended that individuals with color blindness should be permitted to enroll for ALL courses offered by FTII. There should be no bar to admissions to the FTII for colorblind individuals. Any limitation can be overcome by an assistant in educational and professional life.
- F ii. FTII should make reasonable accommodation in their curriculum for candidates with color blindness, in all courses where there is a bar to the admission of colorblind individuals. For example, by providing elective/optional modules in the curriculum for those core credits which may require intensive color appreciation or in any other way.
- G iii. The color grading module in the existing Diploma in Film Editing Course curriculum, should either be excluded or made elective,
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thereby lifting the bar of admissions for A
individuals with color blindness.”

27. The aforesaid conclusions clearly show that all individuals with colour blindness should be permitted to enroll for all courses offered by FTII and any limitation can be overcome. The FTII should make accommodation in their curriculum for candidates with colour blindness and the 20 minutes obstructive element of colour grading module in the existing Diploma in Film Editing course curriculum should be excluded or made elective.

28. We must at the threshold appreciate the effort put in by the Committee in looking to all aspects and opining collectively except with one caveat. That caveat is from Mr. K. Rajasekaran, as noticed. Let us now turn to the caveat.

29. Mr. Rajasekaran somehow does not agree that the colour grading module is irrelevant to the film editing course as the role of FTII is to give all inclusive education. He has opined that the syllabus has been designed by experts and was further approved by the academic council and governing council and that opining in favour of the irrelevancy of colour grading module would be “*crossing the line and will also be challenging the knowledge of experts who have very thoughtfully designed this syllabus.*” The syllabus was designed in 2015. Seven years have passed. The hesitancy of Mr. Rajasekaran makes it appear he would not like to ruffle feathers in the Institute.

30. He has sought to emphasize *qua* other courses also that the colour blind students of Cinematography, art production and design will find it very difficult to carry out studies under these courses again based on syllabus being “*carefully and thoughtfully designed by experts.*”

31. Interestingly his final view is “wherever possible, FTII has already accommodated colour blinds in as many as 05 courses out of a total of 11”!

32. Thus, what he opines is a *status quo*. The FTII knows best, its experts know best. Don’t touch us! Despite the opinion of the expert panel set up by this Court and unanimous in its decision except one dissent.

33. With due respect, we do not find this course acceptable.

- A 34. The theme which permeates the report of the Committee is based on an appreciation of art and culture, of innovation, intuitiveness, unrestricted by impediments which can be overcome with assistance.
- B 35. We find ourselves wholeheartedly in agreement with the majority view of the Committee and thus, opine that the same is required to be adopted by the FTII in its curriculum. We do not believe that it impinges on the freedom of the FTII, as sought to be canvassed by the learned counsel for the respondent, but gives the FTII an even broader canvass in its pioneering efforts in the field. As the great photographer Ansel Adams once said, "*You don't make a photograph just with a camera. You bring to the act of photography all the pictures you have seen, the books you have read, the music you have heard, the people you have loved.*" We also opine that if there are other institutes carrying on a similar educational curriculum, they would also be required to adhere to the discussion on this subject as forms the conclusion of the Committee.
- C 36. We may only notice that possibly a mountain out of a molehill is being made as the particular module is a 20 minute module in the whole course curriculum and even the Committee has opined that it can be made elective.
- D 37. The passage of time and our earlier order unfortunately does not permit us to grant relief to the appellant though he has been a flag bearer to see that changes take place for others as also for him for the future.
- E 38. It does appear to be a case of "no jam today" but then sometimes there is a pioneering role played by individuals who may not immediately get the direct benefit.
- F 39. We can only hope that this report as adopted by us and the judgment would go further in a broader conspectus of appreciation of the art forms. We would do well to remember Aristotle, when he said that "*the aim of art is to represent not the outward appearance of things, but their inward significance.*" Although made in the context of art and the freedom of expression, it would also be apposite to reproduce observations made by one of us (Hon'ble Sanjay Kishan Kaul, J.) in *Maqbool Fida Hussain v. Rajkumar Pandey & Ors.* (2008 SCC OnLine Del 562):
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“114. Human personality can bloom fully and humanism can take deep roots and have its efflorescence only in a climate where all display an attitude of tolerance and a spirit of moderation.” A

40. We would have closed the proceedings with the aforesaid order but learned counsel for the appellant makes a valiant endeavour to persuade us to revisit our observations made in the order dated 30.11.2021 wherein we had opined that the appellant would have to go through the process *de novo*. The submission of the learned counsel is based on the principle of “*reasonable accommodation*” as enunciated in *Vikash Kumar v. Union Public Service Commission & Ors.*¹ and *Pranay Kumar Poddar v. State of Tripura & Ors.*² and he contends that the Court innovatively granted admission to the candidate exercising jurisdiction under Article 142 of the Constitution of India. B

41. He submits that the appellant had gone through the curriculum for about six months and he was found medically fit till this impediment came in his way. What he suggests is that the candidate should be accommodated in the next academic year by increasing the strength of the course by one person. C D

42. However, before we consider to embark on such a course, we must have the views of the Institute which will file a response in this behalf and endeavour to find a solution. The response be filed within two weeks as prayed for. E

43. Rejoinder if any, be filed within a week thereafter on this aspect. F

List for further proceedings on 10.05.2022.

Nidhi Jain and Amarendra Kumar
(Assisted by : Ajay, LCRA)

Directions issued.

¹ (2021) 5 SCC 370

² (2017) 13 SCC 351