

[2023] 14 S.C.R. 464 : 2023 INSC 261

**CASE DETAILS**

ARNAB ROY

v.

CONSORTIUM OF NATIONAL LAW UNIVERSITIES & ANR.

(Writ Petition (Civil) No. 1109 of 2022)

MARCH 17, 2023

**[DR. DHANANJAYA Y CHANDRACHUD, CJI,  
PAMIDIGHANTAM SRI NARASIMHA AND  
J. B. PARDIWALA, JJ.]**

**HEADNOTES**

**Issue for consideration:** The issue specifically addressed by the petitioner relates to the facilities for candidates who intend to avail of a scribe in the Common Law Admission Test (CLAT) 2023.

**Rights of Persons with Disabilities Act, 2016 – Following the decision of the Supreme Court in Vikash Kumar Vs. Union Public Service Commission & Ors., by an Office Memorandum dated 10.08.2022, guidelines have been formulated by the Ministry of Social Justice and Empowerment:**

**Held:** Paragraph 4 of the Office Memorandum stipulates that all recruitment agencies, academic/examination bodies under the administrative control of each Ministry/Department may be advised appropriately to ensure compliance of the guidelines – In pursuance of the interim directions of the Court, the Consortium of National Law Universities extended necessary facilities to PwD candidates in terms of the statement which was tendered before the Supreme Court. [Paras 11, 12]

**Rights of Persons with Disabilities Act, 2016 – The CLAT advertisement was issued on 28.08.2022 and the registration closed on 18.11.2022 – The Consortium issued its set of guidelines on 24.11.2022 and the entrance test was conducted on 18.12.2022 – Petitioner urged guidelines to be issued together with the advertisement:**

**Held:** It was directed that in future, the guidelines which shall be applicable for the facilities which should be extended to PwD candidates are to be notified sufficiently in advance and, in any event, together with the advertisement by which the schedule for the CLAT is placed in the public domain – This would ensure that candidates are not left in a state of uncertainty and know precisely the nature of the facilities and reasonable accommodation which has been made available to them consistent with the provisions of the Rights of Persons with Disabilities Act, 2016. [Para 17]

**Rights of Persons with Disabilities Act, 2016 – Directions issued to the Consortium conducting CLAT:**

**Held:** CLAT directed that, in the future, formulate the modalities in a manner consistent with its formulation which was placed on the record before the Supreme Court so as to obviate any inconvenience to PwD candidates – The consortium shall also take due steps to ensure that its guidelines are consistent with the Office Memorandum dated 10.08.2022 issued by the Ministry of Social Justice and Empowerment, Department of Persons with Disabilities. [Para 19]

**Rights of Persons with Disabilities Act, 2016 – In the Common Law Admission Test, the Consortium had sought to prohibit scribes if they are (a) above the 11th grade in educational attainment; or (b) affiliated to any test-preparatory organisation or examination coaching centre – Propriety:**

**Held:** In this backdrop, it is necessary, in order to maintain the integrity and sanctity of the examination, that the scribe does not provide independent answers to the MCQs based on their own knowledge or experience and hence the two-fold restriction has been imposed – Moreover, it has been submitted that in any event, if a candidate has any difficulty in engaging a scribe, the Consortium is ready and willing to provide a scribe so that the candidate is not prevented from appearing for the entrance test – Therefore, the request of the Consortium is allowed to the extent of its assertion that the scribe who is selected should not be qualified above the 11th standard and should not be associated with any test-preparatory organisation or examination coaching centre. [Paras 22, 27]

**Rights of Persons with Disabilities Act, 2016 – Facilitation of a scribe to the candidates – Where the consortium provides scribe, at least two days’ time should be provided so as to enable the candidate to interact with the scribe:**

**Held:** In other words, candidates appearing for the CLAT can either bring their own scribe or if it is not possible to do so, request the Consortium to provide a scribe who is then made available to the candidate – It was 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 – The scribe is required in the case of a visually challenged candidate to read out and write the responses to the MCQs – In order to familiarise the scribe and the aspirant candidate, it is but proper that sufficient time for interaction of two days should be provided – The guidelines also make a similar stipulation. [Para 26]

#### **LIST OF CITATIONS AND OTHER REFERENCES**

*Vikash Kumar Vs Union Public Service Commission & Ors.* (2021) 5 SCC 370 – relied on.

#### **OTHER CASE DETAILS INCLUDING IMPUGNED ORDER AND APPEARANCES**

CIVIL ORIGINAL JURISDICTION: Writ Petition (Civil) No. 1109 of 2022.

(UNDER ARTICLE 32 OF THE CONSTITUTION OF INDIA)

With

Miscellaneous Application (Diary No. 8493 of 2023)

#### **Appearances:**

Nikhil Nayyar, Sr. Adv., N. Sai Vinod, Abhinav, Advs. for the Petitioner.

Mrs. Aishwarya Bhati, A.S.G., Siddharth Aggarwal, Sr. Adv., Arun Sri Kumar, Ms. Pritha Srikumar, Anirudh G., Ms. Arshiya Ghose, Mrs. Lalita Kaushik, Aman Sharma, Yashraj Singh Bundela, Manvinder Singh Rathore, Manvendra Singh Rathore, Shashwat Parihar, Shaswat Parihar, Amrish Kumar, Raj Bahadur Yadav, Advs. for the Respondents.

By Courts Motion

**JUDGMENT / ORDER OF THE SUPREME COURT**

**JUDGMENT**

**DR. DHANANJAYA Y CHANDRACHUD, CJI**

1. The petitioner who is a lawyer and disability rights activist moved these proceedings under Article 32 of the Constitution of India for challenging certain conditions which were imposed for the conduct of the Common Law Admission Test 2023<sup>1</sup>. CLAT was scheduled on 18 December 2022. The issue specifically addressed by the petitioner relates to the facilities for candidates who intend to avail of a scribe.

2 The petitioner avers that he was personally aware that at least 13 visually impaired candidates would be denied the assistance of a scribe because of the conditions belatedly imposed by the Consortium of National Law Universities<sup>2</sup> less than four weeks before the date of the examination.

3. The petitioner has highlighted certain specific concerns, based on the decision of this Court in *Vikash Kumar Vs Union Public Service Commission & Ors*<sup>3</sup>. The first among these concerns is that the Consortium has denied the right to a scribe to candidates who do not have a benchmark disability though they have a genuine difficulty in writing. In this context, reliance has been placed on the following principle which was laid down in the decision in *Vikash Kumar*, while elaborating on the statutory entitlement of Persons with Disabilities<sup>4</sup> under the Rights of Persons with Disabilities Act 2016 :

“To confine the facility of a scribe only to those who have benchmark disabilities would be to deprive a class of persons of their statutorily recognized entitlements. To do so would be contrary to the plain terms as well as the object of the statute.”

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1 “CLAT”

2 “Consortium”

3 (2021) 5 SCC 370

4 “PwDs”

4. Apart from the above grievance, the petitioner submitted that the Ministry of Social Justice and Empowerment of the Union of India had, in its guidelines of 29 August 2018, prescribed that in case a candidate is allowed to bring his own scribe, the qualification should be one step below the qualification of the candidate taking the examination. On the other hand, in the present case, the Consortium had sought to prohibit scribes if they are (a) above the 11<sup>th</sup> grade in educational attainment; or (b) affiliated to any test-preparatory organisation or examination coaching centre.

5. As a consequence of the above restriction, it was urged that a PwD candidate cannot appoint a scribe who is currently enrolled in the 12<sup>th</sup> grade. Moreover, the exclusion of students enrolled in any examination coaching centre, it was urged, would eliminate nearly every 10<sup>th</sup> and 11<sup>th</sup> grade student since all students are likely to be enrolled in coaching centres for preparation of competitive entrance examinations.

6. The third and final grievance is that the Consortium has abdicated its positive obligation to provide scribes for those candidates who are unable to engage or find a scribe because of financial and other accessibility constraints.

7. Bearing in mind the fact that the CLAT is a nationwide examination and the issues which were raised by the petitioner would affect PwD candidates in general, this Court entertained the proceedings on 15 December 2022. At that stage, the CLAT was scheduled two days thereafter, on 18 December 2022. In response to a suggestion of the Court, requesting the Consortium to resolve the issues which were raised before the Court, the following formulation was submitted on its behalf before the Court :

“1 Pursuant to the judgment of the Hon’ble Supreme Court of India in *Vikash Kumar v Union Public Service Commission and Others* (2021) 5 SCC 370, the Consortium of National Law Universities (the “Consortium”) make the following reasonable accommodation for candidates appearing for the CLAT 2023 :

(i) with a specified disability covered under the definition in Section 2(s) of the Rights of Persons with Disabilities Act, 2016

(the “Act”) but not covered under the definition under Section 2(r) of the Act, i.e., persons having less than 40% specified disability, and

(ii) who have difficulty in writing.

- 2 Such candidates as aforesaid who have secured a government medical certificate/disability certificate indicating that they fall within the category described in para 1 above may be permitted the assistance of a scribe to write the CLAT 2023. Any such candidate may apply to the Coordinator having charge over their allotted Test Centre by email.
- 3 Any scribes must meet the qualification criteria for scribes set out in the Consortium’s ‘Guidelines for Persons with Benchmark Disabilities (“PwDs”) / Specially Abled Persons (“SAPs”) dated November 24, 2022.
- 4 The Consortium shall also provide appropriate support to those candidates with benchmark disabilities and candidates described in para 1 above who request such facilities, on a case-by-case basis, in order to complete the CLAT 2023 successfully. In the event any such candidate requires any support in this regard, they may contact the Consortium at [clat@consortiumofnlus.ac.in](mailto:clat@consortiumofnlus.ac.in).
- 5 This statement shall be circulated to all candidates appearing for the CLAT 2023 at their registered email address with immediate effect.”

8. This Court directed that the above statement would guide the conduct of the ensuing examination. The first respondent was directed to ensure that no disabled student is denied access to the ensuing examination and that all necessary facilities by way of reasonable accommodation are provided, having regard to the provisions of the Rights of Persons with Disabilities Act 2016 and the judgment of this Court in *Vikash Kumar* (supra). The first respondent was also directed to place an updated status report including the number of disabled candidates who applied in the ensuing CLAT and the facilities which were extended to them.

9. In pursuance of the above directions, an affidavit has been filed by the Consortium. An affidavit has also been filed in these proceedings by the Union of India in the Department of Empowerment of Persons with Disabilities<sup>5</sup> of the Ministry of Social Justice and Empowerment<sup>6</sup>.

10. Following the decision of this Court in *Vikash Kumar* (supra), by an Office Memorandum dated 10 August 2022, guidelines have been formulated by the MSJE. This was in pursuance of an expert committee which was constituted to implement the decision in *Vikash Kumar*. Paragraph 3 of the Office Memorandum is extracted below :

- “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) These guidelines may be called as 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.
  - (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 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-I.
  - (c) The medical authority for the purpose of certification as mentioned in point (b) above should be a multi-member authority comprising the following:-

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5 “DEPWD”

6 “MSJE”

- i. Chief Medical officer/Civil Surgeon/Chief District Medical Officer.....Chairperson
- ii. Orthopedic/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. 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.
- (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.”

11. Paragraph 4 of the Office Memorandum stipulates that all recruitment agencies, academic/examination bodies under the administrative control of each Ministry/Department may be advised appropriately to ensure compliance of the guidelines.

12. In pursuance of the interim directions of this Court, the Consortium extended necessary facilities to PwD candidates in terms of the statement which was tendered before this Court.

13. The issue which now survives is with regard to the modalities which would be followed for future examinations to be conducted by CLAT.

14. The first aspect which has been drawn to the attention of the Court is that the CLAT advertisement was issued on 28 August 2022 and the registration closed on 18 November 2022. The Consortium issued its set of guidelines on 24 November 2022 and the entrance test was conducted on 18 December 2022.

15. Mr Nikhil Nayyar, senior counsel appearing on behalf of the petitioner, submits that the above sequence of events would indicate that the guidelines were issued over three months after the initial advertisement notifying CLAT. There is no reason, it was urged, why the guidelines could not be issued together with the advertisement so as to ensure that PwD candidates are not reduced to a state of uncertainty in regard to the facilities which should be made available to them during the course of the entrance test.

16. There is a considerable degree of merit in the above submission. As a matter of fact, we may also note that Mr Siddharth Aggarwal, senior counsel appearing on behalf of the Consortium has also fairly submitted that the guidelines could have been notified much earlier so as to provide certainty to the students appearing for the entrance test.

17. We accept the submission which has been urged on behalf of the petitioner and direct that in future, the guidelines which shall be applicable for the facilities which should be extended to PwD candidates are to be notified sufficiently in advance and, in any event, together with

the advertisement by which the schedule for the CLAT is placed in the public domain. This would ensure that candidates are not left in a state of uncertainty and know precisely the nature of the facilities and reasonable accommodation which has been made available to them consistent with the provisions of the Rights of Persons with Disabilities Act 2016.

18. During the course of hearing, Mr Nikhil Nayyar, senior counsel has placed certain suggestions on the record. Mr Nayyar states that some of these suggestions have already been incorporated in the interim directions of this Court dated 15 December 2022 as well as in the guidelines of the Ministry of Social Justice and Empowerment dated 10 August 2022.

19. We direct that CLAT shall, in the future, formulate the modalities in a manner consistent with its formulation which was placed on the record before this Court so as to obviate any inconvenience to PwD candidates. The consortium shall also take due steps to ensure that its guidelines are consistent with the Office Memorandum dated 10 August 2022 issued by the Ministry of Social Justice and Empowerment, Department of Persons with Disabilities. This Court has been apprised of the fact that the consortium also makes arrangements to provide a scribe to any candidate with disabilities who is unable to secure a scribe on his own so as to ensure that no candidate would be unable to appear in the entrance test.

20. The guidelines which have been prescribed by the Consortium stipulate that the scribe who is engaged by a candidate should not (a) qualified above the 11<sup>th</sup> standard or (b) affiliated to any test-preparatory organization or examination coaching centre. The above guideline is sought to be challenged on the ground that the Office Memorandum dated 10 August 2022 issued by the Ministry of Social Justice and Empowerment stipulates only that if the examination body provides a scribe, it shall be ensured that qualification of the scribe is not more than the minimum qualification criteria of the examination. However, the Office Memorandum provides that the qualification of the scribe should always be matriculate or above. The Office Memorandum also states that in case the candidates are allowed to bring their own scribe, the qualification of the scribe should be one step below the qualification of the candidate taking the examination.

21. Mr. Nikhil Nayyar, senior counsel submitted that the restriction which has been imposed by the Consortium to the effect that the scribe

should not be above the 11<sup>th</sup> standard or be affiliated to any test-preparatory organisation or coaching centre is irrational.

22. On the other hand, Mr. Siddharth Aggarwal, senior counsel appearing on behalf of the consortium, emphasised the circumstances in which such a restriction has been imposed. Senior counsel submitted that the entire examination consists of Multiple Choice Questions (MCQs).

In this backdrop, it is necessary, in order to maintain the integrity and sanctity of the examination, that the scribe does not provide independent answers to the MCQs based on their own knowledge or experience and hence the twofold restriction has been imposed. Moreover, it has been submitted that in any event, if a candidate has any difficulty in engaging a scribe, the Consortium is ready and willing to provide a scribe so that the candidate is not prevented from appearing for the entrance test.

23. The affidavit which has been filed on behalf of the Consortium indicates that at the CLAT which was conducted on 18 December 2022, 292 candidates belonged to the PwD category. Of these candidates 211 appeared for the under graduate-CLAT while 81 candidates appeared for the post graduate-CLAT. 49 candidates brought their own scribe. There were 33 requests for providing additional accommodation including 16 requests for the provision of a scribe. The Consortium provided a scribe in 15 instances whereas one candidate withdrew the request for a scribe.

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* (supra). 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 11<sup>th</sup> 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 is 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. The scribe is required in the case of a visually challenged candidate to read out and write the responses to the MCQs. In order to familiarise the scribe and the aspirant candidate, it is but proper that sufficient time for interaction of two days should be provided. The guidelines also make a similar stipulation.

27. We, therefore, allow the request of the Consortium to the extent of its assertion that the scribe who is selected should not be qualified above the 11<sup>th</sup> standard and should not be associated with any test-preparatory organisation or examination coaching centre.

28. The nature and contents of the Guidelines cannot be frozen for the future. The Consortium would be at liberty to modify the Guidelines bearing in mind the exigencies of the situation and the constantly evolving nature of the knowledge and experience gained in conducting CLAT particularly in the context of the rights of PwD candidates. In the event that any further difficulties are encountered by PwD candidates, those may be brought to the notice of the Consortium well in advance so that suitable remedial measures can be taken consistent with their statutory entitlements.

29. The Writ Petition and the Miscellaneous Application are accordingly disposed of.

30. Pending applications, if any, stand disposed of.