

SAMBHAVANA

v.

UNIVERSITY OF DELHI

(Civil Appeal Nos.4722-4723 of 2013)

MAY 29, 2013

[DR. B.S. CHAUHAN AND DIPAK MISRA, JJ.]

Education – For visually impaired students – At the University level – Special needs of such students – Requirement of sensitivity – Held: Grievances raised by appellant-organisation relating to visually impaired students require more focus and sensitive approach – Legislative intendment relating to comprehensive education scheme is crystal clear – s.30(f) of the 1995 Act lays down suitable modification in the examination system and sub-section(g) requires restructuring of curriculum for benefit of children with disabilities – Said mandate of the statute to be given due weightage – A visually impaired student is entitled to receive special treatment – Respondent-University to live the role of Loco Parentis and show its concern and mitigate the grievances of visually impaired students as far as possible – Appellant-organisation permitted to submit representation indicating its grievances and views to Empowered Committee of the University within 3 days which shall then be dealt with by the Committee within a week – Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 – ss. 30 and 31 – United Nations Convention on the Rights of Persons with Disabilities – Art. 24 – Constitution of India, 1950 – Arts. 21 and 41.

The appellant-organisation invoked the jurisdiction of the High Court for issue of a writ in the nature of mandamus directing the respondent-University to make provisions to introduce a bridge course for students with vision impairment in the first year of four years under-

- A graduate programme so that they can easily pursue the foundation course and become part of mainstream education system; issue a direction to the respondent to introduce a foundation course in the second year of the four years under-graduate programme; command the
- B respondent to provide accessible reading materials and to make provisions for training of the teachers who will teach the students in “Mathematics” and “Science and Life” in the four years under-graduate programme and further to issue a writ or direction to the respondent to
- C provide representation to the persons with disabilities or organizations working for the cause of disability as the members of the Task Force, Academic Council, Executive Council or any other body of the Delhi University so that needs of the persons with disabilities can also be taken
- D into consideration while introducing a new four year under-graduate programme with multiple degree and framing appropriate syllabus for the said programme.

- Respondent-University produced a notification dated 14-5-2013 which indicated that an Empowered
- E Committee had been constituted consisting of fourteen academicians to look into the special needs of the students with disabilities and suggestions for suitable modifications would be made in curricula, mode of instructions and assessment to the Vice Chancellor of
 - F the University.

- The High Court directed the Empowered Committee to hear the suggestions made by the appellant-organisation and submit a report to the Vice Chancellor so that the Vice Chancellor could take a decision in
- G respect of this report. The action taken on that basis was directed to be made available to the Court by way of a report by the University on the next adjourned date.

- H While the High Court was still in seisin of the matter, the appellant-organisation approached this Court.

Disposing of the appeals, the Court

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HELD:1. Though the University had constituted an Empowered Committee and it has experts, yet the grievances raised by the appellant-organisation relating to visually Impaired students require more focus and sensitive approach. [Para 9] [281-A-B]

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2. On a careful reading of Section 30 of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995, the legislative intendment relating to comprehensive education scheme is crystal clear. Section 30(f) lays down suitable modification in the examination system and sub-section(g) requires restructuring of curriculum for the benefit of children with disabilities. The said mandate of the statute has to be given due weightage. Section 31 of the Act exposits the real concern of the legislature which is in tune with the international conventions. The Parliament has cast certain obligations under the State and Central Governments in this regard. It is requisite of them to develop special devices and aids so that a child with disability gets equal opportunity and comes to the main stream. A teacher imparting education to such visually impaired children should be absolutely competent and he must have the adequate training. Transport facilities, supply of books and uniforms and grant of scholarships are in a different sphere altogether. India has shown its concern by ratifying the United Nations Convention on the Rights of Persons with Disabilities, which has become operative from May, 2008. Article 24 of the said Convention deals with education of persons with disabilities. It gives emphasis on development of human potential, sense of dignity, self-worth and strengthening of respect for human rights and creativity. [Paras 10, 11] [282-C-G; 283-E]

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3. When the University has thought of imparting

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A education in a different way, it has to bear in mind the
 need of sensitivity and expected societal
 responsiveness. A visually impaired student is entitled to
 receive special treatment. Under the constitutional frame
 the State has to have policies for such categories of
 B people. Article 41 of the Constitution of India casts a duty
 on the State to make effective provisions for securing,
 inter alia, the rights of the disabled and those suffering
 from other infirmities within the limits of economic
 capacity and development. It is imperative that the
 C authorities look into the real grievances of the visually
 impaired people as that is the constitutional and statutory
 policy. The University has to live the role of Loco Parentis
 and show its concern to redress the grievances in proper
 perspective. [Para 12] [283-E-G]

D 4. The necessity of the visually impaired students
 should have primacy in the mind of the Empowered
 Committee of the University. Education for visually
 impaired students is a great hope for them and such a
 hope is the brightest bliss in their lives. History has
 E recorded with pride that some men with visual impairment
 have shown high intellectual prowess. The anguish and
 despondency in the life of Milton, the famous English
 poet, did not deter him to carry out the mission of his life.
 Lack of vision could not destroy his Will power. Needless
 F to say that he had the support of the society. The ancient
 sage "Ashtavakra" while laying down the traffic rules had
 categorically stated that the blind man has the first right
 on the road. Thus, emphasis has always been laid on the
 visually impaired persons for many a reason. However,
 G when this Court says so, it may not be understood to
 have said that otherwise impaired or disabled people are
 to be treated differently in the constitutional and statutory
 scheme. This Court has only laid emphasis on the
 visually impaired students for the purpose of present
 H case. It is the need of the present time that the University

shall look into the matter and mitigate the grievances of the visually impaired students as far as possible. The problem has remained unsolved. The same is required to be addressed to in an apposite manner. This is not to say that it has not at all been addressed but there has to be more focus, more empathy and more sensitivity. Therefore, the appellant-organisation is permitted to submit a representation indicating its grievances and the views to the said Committee within three days which shall be dealt with by the Committee within a week hence. [Para 12] [283-H; 284-A-F]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 4722-4723 of 2013.

From the Judgment & Order dated 15.05.2013 of the High Court of Delhi at New Delhi in W.P.(C) No. 2982 of 2013 and CM No. 5636 of 2013.

Pankaj Sinha, Anuj Castelino, Jyoti Mendiratta for the Appellant.

Pinky Anand, Mohinder Jit Singh, Prabal Bagchi for the Respondent.

The Judgment of the Court was delivered by

DIPAK MISRA, J. 1. Leave granted.

2. The appellant-organisation invoked the jurisdiction of the High Court of Delhi in WP(C) No. 2982 of 2013 for issue of a writ in the nature of mandamus directing the respondent-University to make provisions to introduce a bridge course for students with vision impairment in the first year of four years under graduate programme so that they can easily pursue the foundation course and become part of mainstream education system; issue a direction to the respondent to introduce a foundation course in the second year of the four years for under graduate programme; command the respondent to provide

- A accessible reading materials and to make provisions for training of the teachers who will teach the students in "Mathematics" and "Science and Life" in the four years under graduate programme and further to issue a writ or direction to the respondent to provide representation to the persons with disabilities or organizations working for the cause of disability as the members of the Task Force, Academic Council, Executive Council or any other body of the Delhi University so that needs of the persons with disabilities can also be taken into consideration while introducing a new four year under graduate programme with multiple degree and framing appropriate syllabus for the said programme.

3. Before the High Court, the respondent-University entered appearance and produced a notification dated 14th May, 2013 which indicated that an Empowered Committee had been constituted consisting of fourteen academicians to look into the special needs of the students with disabilities and suggestions for suitable modifications would be made in curricula, mode of instructions and assessment to the Vice Chancellor of the University. It was submitted that the Empowered Committee has been asked to submit an interim report on (a) measures that need to be taken to modify the curricula keeping in mind the special needs of persons with disability; (b) steps to be taken to improve availability of reading materials; and (c) to examine the measures currently in place in the internal assessment scheme and examination pattern and further changes that could be made in that regard. It was suggested before the High Court that the appellant-organisation could also make suggestions to the said Empowered Committee so that the same would be taken note of before the report is submitted to the Vice Chancellor.

4. An apprehension was expressed by the appellant-organisation that in the event the admission process commenced, some students with disabilities may face difficulty in admission and, therefore, the period stipulated for the

Empowered Committee to submit the report by 15th June, 2013 should be pre-poned so that the recommendations could be implemented by the Vice Chancellor before the admission process is completed. The High Court, considering the submissions raised at the Bar, directed as follows: -

“We direct the Empowered Committee constituted as per the notification dated 14th May 2013 to hear the suggestions made by the petitioner and submit a report to the Vice Chancellor by 7th June 2013 so that the Vice Chancellor could take a decision in respect of this report by 15th June 2013. The action taken on the basis of the order of this Court shall be made available to the Court by way of a report by the University on the next adjourned date. List on 03.07.2013.”

5. Though the matter has been adjourned by the High Court and it is in seisin of the matter, yet the appellant-organisation has approached this Court. Regard being had to the sensitive nature of the issue and the attention it deserves, this Court required the learned counsel for the appellant-organisation to serve a copy of the petition on the counsel for the learned counsel for the Delhi University and, accordingly, the respondent has entered appearance and filed the response.

6. Though prayer has been made to restrain the respondent-University from introducing the four year under graduate programme with multiple degrees which is the final outcome of the case, we are not inclined to pass any order of stay. However, we will proceed to deal with the matter keeping in view the submissions advanced by Mr. Pankah Kumar Sinha, learned senior counsel for the appellant and Ms. Pinki Anand, learned senior counsel for the University.

7. Before we advert to the submissions raised at the Bar, it is necessary to advert to the affidavit filed by the University. It is averred in the affidavit that the Empowered Committee consists of experts and some visually impaired experts from

- A All India Confederation of the Blinds and Eye Way are special invitees to attend the meetings. The primary objective of including those individuals was to obtain their perspective on visual impairment with regard to the new under graduate programme on the basis of their expertise and experiences.
- B The representation preferred by the appellant-organisation on 22nd May, 2013 has been referred to. The facilities that have been provided to the physically disabled students have been enumerated. The said aspects need not be stated in detail as that is not in the realm of controversy. However, as far as the
- C students with vision impairment are concerned, it is contended that the University has provided a Braille Library and funds have been earmarked for each college to obtain the necessary technologies to facilitate screen reading for visually impaired students; that the representation submitted by the appellant-
- D organisation has been considered by the Empowered Committee and taking note of the special needs of the students of the said category a report has been prepared by the Empowered Committee; and that the same shall be placed before the Academic Council. The report of the Empowered
- E Committee has been brought on record. The suggestions of the appellant-organisation have been referred to in the report. It is stated in the report that each of the suggestions has been carefully and objectively examined and recommendations have been made. The relevant part of the recommendations are reproduced hereinbelow: -

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“Recommendations:

On the basis of the deliberations of the committee the following recommendations are made:

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1. Curriculum:

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- A. No modification in curricula prescribed for the Courses under reference is called-for except, if and wherever applicable, substituting visual content with alternative content. It is further stated that both

- 'Building Mathematical Ability' and 'Science in Life' have equal importance for student with disabilities and non-disabled in day to day life. A
- B. Students studying these papers should be provided all requisite support and facilities to enable them to study these Courses efficiently and conveniently. The Faculties of mathematics and Science should be requested to provide a copy each of the essential diagrams, figures and charts and the same should be converted in accessible format by the EOC throughout sourcing. B C
- C. However, in case there are some students with disabilities who do not find it at all possible to study these papers despite support from the University, will have the choice to study two alternative papers Viz. History of Science and Communication and Personality Development. The Hon'ble Vice Chancellor may kindly get the syllabi of these Courses prepared. D
- D. Tutorials/remedial teaching sessions should be conducted in these two Courses to address individual student-difficulties and fill in the gaps on a regular basis throughout the two semesters. E

2. Mode of Instructions:

It is recommended that in the case of the visually impaired, the Course entitled "Science And Life" should be taught in the 1st semester and the Course entitled "Building Mathematical Ability" in the 2nd semester such an arrangement is possible within the existing structure of the foundation course under FYUP programme. It is further recommended that an orientation programme should be organized preferably in the 1st half of July, 2013 or during the early part of the 1st semester for college teachers

- A teaching maths and science with a view to familiarizing them with the pedagogy of teaching these papers to students with visual impairments and other disabilities. The programme will be of a duration of 10 days and will be organized by the Faculty of maths and science in collaboration with EOC. The teaching in this orientation programme will be done by the eminent experts in the field of teaching students with disabilities. The teachers should be requested to describe verbally the black board work for the benefit of students with disabilities. Special devices should be made available to various colleges by the University. The list is given as (annexure E).
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3. ***Accessible reading material and special devices:***

- D The concerned departments will identify and provide a reading package in English and Hindi to EOC who will get them converted in accessible formats by out sourcing."

8. Mr. Sinha, learned senior counsel has submitted that the recommendations do not really address the grievances in a seemly manner. In his written note he has, we must appreciably state, enumerated the difficulties that would be faced by the students who are visually impaired. He has categorized the problems and suggested that as far as Science and Life is concerned, it is the stand of the appellant-organisation that teaching of Science and Life does not require more orientation but needs special intensive training of manpower (teachers and non-teaching assistive staff) for at least one semester. He has dealt with the objectives and expected outcome and suggested the views. The views that have been given pertain to many a sphere. As far as Building Mathematical Ability is concerned, in the written note the learned senior counsel has given the views and there are also views relating to requirement and arrangements to be made to teach mathematics to visually impaired students. We are not enumerating the views and suggestions given in the note, for we are not experts and we do not intend to dwell upon the same in presenti.
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9. At this juncture, we are obliged to state that Though the University had constituted an Empowered Committee and it has experts, yet the grievances raised by the appellant-organisation relating to visually impaired students require more focus and sensitive approach. In this context, we may refer with profit to Section 30 of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 (for brevity "the Act"). It reads as follows: -

"30. Appropriate Governments to prepare a comprehensive education scheme providing for transport facilities, supply of books, etc. – Without prejudice to the foregoing provisions, the appropriate Governments shall by notification prepare a comprehensive education scheme which shall make provision for –

- (a) transport facilities to the children with disabilities or in the alternative financial incentives to parents or guardians to enable their children with disabilities to attend schools;
- (b) the removal of architectural barriers from schools, colleges or other institutions imparting vocational and professional training;
- (c) the supply of books, uniforms and other materials to children with disabilities attending school;
- (d) the grant of scholarship to students with disabilities;
- (e) setting up of appropriate fora for the redressal of grievances of parents regarding the placement of their children with disabilities;
- (f) suitable modification in the examination system to eliminate purely mathematical questions for the benefit of blind students and students with low vision;

- A (g) restructuring of curriculum for the benefit of children with disabilities;
- (h) restructuring the curriculum for the benefit of students with hearing impairment to facilitate them to take only one language as part of their curriculum."
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10. On a careful reading of the aforesaid provision, the legislative intendment relating to comprehensive education scheme is crystal clear. Section 30(f) lays down suitable modification in the examination system and sub-section(g) requires restructuring of curriculum for the benefit of children with disabilities. The said mandate of the statute has to be given due weightage. In this context, Section 31 of the Act is referred with profit: -

D **"31. Educational institutions to provide amanuensis to students with visual handicap. – All educational institutions shall provide or cause to be provided amanuensis to blind students and students with or low vision."**

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11. The aforesaid provision exposits the real concern of the legislature which is in tune with the international conventions. The Parliament has cast certain obligations under the State and Central Governments in this regard. It is requisite of them to develop special devices and aids so that a child with disability gets equal opportunity and comes to the main stream. A teacher imparting education to such visually impaired children should be absolutely competent and he must have the adequate training. Transport facilities, supply of books and uniforms and grant of scholarships are in a different sphere altogether. The grievance that has been accentuated by Mr. Sinha with real concern is that there has been on redressal of the grievances pertaining to modification in the examination system and restructuring of curriculum. Be it noted, India has

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H ratified the United Nations Convention on the Rights of Persons

with Disabilities. It has become operative from May, 2008. Article 24 of the said Convention deals with education of persons with disabilities. It gives emphasis on development of human potential, sense of dignity, self-worth and strengthening of respect for human rights and creativity. Article 24(4) of the Convention reads as follows: -

“4. In order to help ensure the realization of this right, States Parties shall take appropriate measures to employ teachers, including teachers with disabilities, who are qualified in sign language and/or Braille, and to train professionals and staff who work at all levels of education. Such training shall incorporate disability awareness and the use of appropriate augmentative and alternative modes, means and formats of communication, educational techniques and materials to support persons with disabilities.”

12. We are absolutely conscious that there is an enactment but India has shown its concern by ratifying the said Convention and, therefore, we have reproduced the same. When the University has thought of imparting education in a different way, it has to bear in mind the need of sensitivity and expected societal responsiveness. A visually impaired student is entitled to receive special treatment. Under the constitutional frame the State has to have policies for such categories of people. Article 41 of the Constitution of India casts a duty on the State to make effective provisions for securing, inter alia, the rights of the disabled and those suffering from other infirmities within the limits of economic capacity and development. It is imperative that the authorities look into the real grievances of the visually impaired people as that is the constitutional and statutory policy. The University has to live the role of Loco Parentis and show its concern to redress the grievances in proper perspective. Not for nothing Ralph Waldo Emerson had said “the secret of education is respecting pupil”. Thus, the necessity of the visually impaired students should have primacy in the mind of the

- A Empowered Committee of the University. Education for visually impaired students is a great hope for them and such a hope is the brightest bliss in their lives. History has recorded with pride that some men with visual impairment have shown high intellectual prowess. The anguish and despondency in the life
- B of Milton, the famous English poet, did not deter him to carry out the mission of his life. Lack of vision could not destroy his Will power. Needless to say that he had the support of the society. The ancient sage "Ashtavakra" while laying down the traffic rules had categorically stated that the blind man has the
- C first right on the road. Thus, emphasis has always been laid on the visually impaired persons for many a reason. When we say so, we may not be understood to have said that otherwise impaired or disabled people are to be treated differently in the constitutional and statutory scheme. We have only laid
- D emphasis on the visually impaired students for the purpose of present case. It is the need of the present time that the University shall look into the matter and mitigate the grievances of the visually impaired students as far as possible. We have already indicated that we are not experts. But we are disposed to think that the problem has remained unsolved. The same is required
- E to be addressed to in an apposite manner. We do not intend to say that it has not at all been addressed but there has to be more focus, more empathy and more sensitivity. Therefore, we permit the appellant-organisation to submit a representation indicating its grievances and the views to the said Committee
- F within three days which shall be dealt with by the Committee within a week hence.

13. The appeal is accordingly disposed of without any order as to costs.

B.B.B.

Appeals disposed of.