

14. AVNI PRAKASH v. NATIONAL TESTING AGENCY

C ANUNANDA*

Abstract

The case comment analyses the Supreme Court of India's judgment in Avni Prakash v. National Testing Agency (2021), a pivotal decision highlighting the rights of disabled persons, particularly within the framework of competitive examinations. The case involved Avni Prakash, a NEET candidate with dysgraphia, who was denied additional time even after a request during the written examination, a provision supported by the Rights of Persons with Disabilities Act, 2016, and the Ministry of Social Justice and Empowerment's guidelines for conducting Written Examination for Persons with Benchmark Disabilities issued on 29.08.2018. The Supreme Court's ruling ascertained that rights provided to persons with disabilities should not be limited by benchmark disability criteria (disability of 40% or more) set out in Chapter VI of the Rights of Persons with Disabilities Act, 2016 (RPwD, 2016). This judgment emphasised the importance of inclusive education and reasonable accommodation, reaffirming that the denial of compensatory time violated Sections 3 and 17 of the RPwD Act, 2016, as well as the principles of equality and non-discrimination recognised by the Constitution. More importantly, this case underscores the judiciary's crucial role in balancing individual rights with broader societal interests, reinforcing the commitment to equality and non-discrimination in education and beyond.

First, this case comment delves into the facts of the case, followed by the critical analysis of the decision of the Bombay High Court, pointing out the reason why the case came before the Hon'ble Supreme Court. Then, it deals with the intricacies relating to the rights and entitlements of 'persons with disabilities and persons who are categorised into 'persons with benchmark disabilities' and how the Apex Court interpreted the same. The case comment will concentrate on the Supreme Court's affirmation of the imperative need for reasonable accommodation in order to fulfil rights guaranteed to disabled

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persons by the Constitution of India. In conclusion, it would delve deeply into how the Hon'ble Apex Court struck a balance between individual rights and the common good while redressing injustice to the aggrieved appellant.

Keywords: *Rights of persons with disabilities, Inclusive Education, Right to Equality, NEET Examination, Compensatory Time.*

INTRODUCTION

Human rights challenges frequently provide courts with the challenging task of striking a fine balance between the rights of an individual and the broader societal interests of a significant population. From one perspective, it is imperative for courts to uphold and protect the fundamental rights and liberties of individuals, thereby guaranteeing defence against unwarranted encroachment by the state or any other institution. The aforementioned rights span the domains of personal autonomy, privacy, and dignity. However, it is crucial to note that courts also have the obligation to take into account the wider well-being of society. Courts need to carefully consider how the exercise of one's rights may negatively impact society as a whole. This process involves careful consideration of several factors to achieve a harmonious equilibrium that upholds the principles of both societal well-being and individual liberties. The intricate and multifaceted nature of this undertaking underscores the fundamental need for judicial sagacity in safeguarding human rights while advancing collective welfare. Recently, the Supreme Court of India had to face the same situation when the rights of a disabled person were violated during a competitive examination, and redressing the injustice would affect lots of students who took the examination. The Judgment was delivered on December 14, 2021, and the Court in this case analysed the obligations under the NEET Bulletin, the distinction between Persons with Disabilities (PwD) and Persons with Benchmark Disabilities (PwBD), and emphasised the right to inclusive education.

BACKGROUND

This verdict was rendered by the Apex Court in the matter of *Avni Prakash v. National Testing Agency¹ and others* hold substantial importance within the realm of disability rights and education. The matter pertained to the scrutiny of the extent to which provisions for the right of the disabled person under the Rights of Persons with Disabilities Act 2016 (RPwD Act) and the National Eligibility cum Entrance Test (NEET) Bulletin 2021 are applicable in written examinations.

The appellant, in this particular case, suffered from dysgraphia. She expressed a desire to appear in the NEET, which is a prerequisite for admission into an undergraduate medical programme. Due to her condition, she requested an additional hour, in addition to the three hours allocated, to complete the test. Despite the initial assurance from the exam conducting agency that she would be allotted one hour, her paper was forcibly collected after three hours. As a result, she invoked the jurisdiction of the High Court under Article 226², claiming the need for a new examination to be held, incorporating all essential accommodations.

FLAW IN THE HON'BLE HIGH COURT DECISION

According to the guidelines given by the Union Ministry of Social Justice and Empowerment (MoSJE) in the Government of India, individuals such as Prakash are eligible to receive a minimum of one hour of compensatory time for a three-hour examination. In the High Court of Bombay, the National Testing Agency (NTA), responsible for organising the examination, contended that the individual in question was required to provide a disability certificate according to the form provided in the NEET Bulletin 2021's "Appendix VIII-A" from an NTA-recognised centre to be eligible for compensatory time. Despite the revelation that the NTA had made an error, as the submission of the Prescribed Certificate is only required during the admission process, the High Court declined to provide any kind of redress to Prakash.

After scrutinising the relevant provisions applicable in the present case, including the MoSJE's guidelines for conducting Written Examinations for PwBD and the NEET

¹ *Avni Prakash v National Testing Agency and Ors*, [2021] SCC OnLine SC 1112

² *Avni Prakash* (n 1)

Bulletin 2021, the Supreme Court concluded that it was recommended that all recruiting agencies, academic/examination bodies, and other entities within the administrative jurisdiction of each ministry or department to make sure that compliance was maintained with respect to the compensatory time, granting requirement of minimum one hour for three hours examination, in the absence of availing of a scribe. It was clear that the certificate specified in “Appendix VIII-A” is exclusively applicable during the counselling and admission process, and is not relevant during the examination phase. This is apparent from the prescribed format that requires candidates to provide their examination rank, which is only obtainable after the candidate has taken the examination and the results have been announced. In addition, it is necessary for the student to include their NEET roll number, which is communicated to them a mere four days prior to the examination day. Also, in *Vidhi Himmat Katariya v. State of Gujarat*³, the Court noted that the certificate stated in “Appendix VIII-A” is required for admission to medical courses.

Here, the High Court was under the impression that in order to request an additional hour of compensatory time during the examination, obtaining an “Appendix VIII-A” certificate from a certified centre was necessary. There appears to be a clear confusion among the authorities at the initial response, resulting in a tragic incident that has adversely impacted the lawful rights and entitlements of a student with a documented impairment. In situations like these, the appellate courts play a critical role in resolving these issues, ensuring justice, and protecting the integrity of the legal system by rectifying errors made by lower courts.

PWD v PWBD

The primary issue raised before the Court pertains to whether the appellant has the right to receive one hour of compensatory time due to her status as a PwD, as outlined in the Guidelines for Written Examination issued by the MoSJE and NEET Bulletin 2021. To determine this, the Court first tried to explain the difference between Persons with Disability and Persons with Benchmark Disability and the rights attributable to them.

³ *Vidhi Himmat Katariya v State of Gujarat* (2019) 10 SCC 2

The term "benchmark disability" pertains to the condition of possessing a disability that meets or exceeds a minimum threshold of 40%⁴, as stipulated by the RPwD Act of 2016 and dealt with under Chapter VI of the Act. The Court's verdict in *Vikash Kumar v. Union Public Service Commission*⁵ explicitly stated that "the notion of benchmark disability is relevant within the framework of the provisions outlined in Chapter VI of the RPwD Act 2016, specifically titled 'Special Provisions for Persons with Benchmark Disabilities'".

The rights and privileges bestowed upon PwD are delineated in Chapter II of the RPwD Act 2016. RPwD Act's section 3 encompasses the responsibility of the relevant governing body to guarantee that PwD is afforded the right to equality, a life characterised by dignity, and the same level of respect for their integrity as their non-disabled counterparts, Section 3 necessitates that the relevant governmental body undertake requisite measures to guarantee the provision of reasonable accommodation for individuals with disabilities.

The Supreme Court was of the opinion that the rights and entitlements granted to persons with disabilities (PwD) should not be limited by requiring a baseline disability as a prerequisite or eligibility criterion for accessing these rights. It is important to note that when a legislation has granted rights and entitlements to persons with disabilities (PwD), that are broader in scope than those associated with a benchmark disability, it is not permissible to diminish or weaken these rights by interpreting them in the context of a benchmark disability⁶.

RIGHT TO INCLUSIVE EDUCATION AND REASONABLE ACCOMMODATION

The Convention on the Rights of Persons with Disabilities 2006 (CRPD)⁷ acknowledges the necessity of establishing inclusive education systems for effectively upholding the right to education for disabled persons. The RPwD Act of 2016 gives legal standing to the idea of inclusive education in India. The concept is defined in Section 2(m) of the Act as:

⁴ Rights of Persons with Disabilities Act 2016, s 2 (r)

⁵ *Vikash Kumar v Union Public Service Commission* (2021) 5 SCC 370

⁶ *Vikash Kumar* (n 5) [37], [40]

⁷ Convention on the Rights of Persons with Disabilities (adopted 13 December 2006, entered into force 3 May 2008) 2515 UNTS 3

“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.”⁸

Section 17 under Chapter III encompasses distinct measures aimed at promoting and facilitating inclusive education for students with disabilities.⁹ The obligation is to provide appropriate adjustments in the curriculum and test format to meet the needs of individuals with disabilities, like providing Extra-Time or Scribe Facility. Persons with Disabilities (PwD) is an inclusive term that spans a broader category, within which Persons with Benchmark Disabilities (PwBD) can be identified as a subset. The aforementioned differentiation also applies to endeavours conducted within the framework of Section 17, which aims to foster the implementation of inclusive education.

The fulfilment of the right to inclusive education is accomplished by guaranteeing the provision of appropriate accommodations. The Supreme Court took note of its decision in *Vikas Kumar*¹⁰ in which it was held that “reasonable accommodation is at the heart of the principle of equality and non-discrimination espoused under the RPwD Act 2016.” It was also noted that “For individuals with disabilities, the constitutionally protected fundamental rights to equality, the six freedoms, and the right to life as outlined in Article 21 may lack substance if they are not accompanied by the necessary assistance that enables the practical realisation and significance of these rights.”¹¹ In the present case, it was held that the individual in question had been deprived of a reasonable accommodation, resulting in a breach of the State's affirmative duty¹².

REDRESSING INJUSTICE: *INDIVIDUAL RIGHTS V. COMMON GOOD*

As per the perspective put forth by the initial respondent, instances of prejudice resulting from an incorrect implementation of the regulations controlling the examination are deemed to be an acceptable albeit regrettable outcome. However, it is imperative to

⁸ (n 4) s2(m)

⁹ (n 4) s 17

¹⁰ *Vikas Kumar* (n 5)

¹¹ *Vikas Kumar* (n 5)

¹² *Avni Prakash* (n 1) [50]

acknowledge that the repercussions for a student who endures such hardship are undeniably significant, as his whole career and future can change irretrievably. To enable the successful integration of individuals with disabilities into society, a goal that is unquestionably beneficial and intended by the legislation is that the legal safeguards established for this purpose be diligently enforced. Any violation of these entitlements must be subject to legal accountability. The absence of accountability renders responsibility and power incompatible with the principles enshrined in our Constitution.

When it came to the determination of the reliefs applicable to the appellant, the court acknowledged its limited authority due to the binding nature of precedent¹³, thus precluding the possibility of a re-examination. The Court also considered the remedy of awarding extra marks to the aggrieved candidate but came to a conclusion, on the basis of the written submissions made by the Respondents, that granting her additional marks, even in proportion to her current score, would disrupt the rankings of candidates positioned higher than her, as out of 2684 candidates, the appellant placed 1721 in the category for people with impairments. Additionally, it might affect the scheduling of the counselling sessions that are undertaken as a component of the admissions procedure. The court recognised that any method to remedy the injustice caused to the one student, in this case, would prejudicially affect the rights of all other students, within the abstract number of 15 lakh students who wrote the exam. Moreover, the lives of these individuals would be affected by an unintentional but significant mistake made by the authority. However, Any manifest injustice done to a single person cannot be said to be excused and rights denied by claiming that it is an inevitable consequence of competitive examinations.

Hence, in this case, the Apex Court decided the matter by granting autonomy to the statutory body (NTA) to determine the specific measures to be taken to address the current situation. However, it also emphasised that these measures should include regular sensitisation programs, training for exam centres, and the proper administration of codified exam conduct rules to ensure that persons with disabilities are treated with dignity and respect.

¹³*National Testing Agency v Vaishnavi Vijay Bhopale* (2021) SLP(Civil) No.17027/2021

The Court took a balanced approach by preserving the autonomy of the statutory body while prioritising individual dignity, human rights, and administration of due process. In a resolute stance, the court rebuffed the National Testing Agency's contention, positing that the revelation of the NEET examination outcomes should preclude Prakash from seeking redress, contending that rectifying her situation would disrupt the established hierarchy of candidates who had outperformed her. Indeed, embracing such a line of argumentation would have inevitably consigned Prakash's rights to a state of irretrievable neglect and oblivion. Consequently, the court imposed upon the National Testing Agency the duty to devise and submit an appropriate remedial course of action to rectify the prevailing circumstance. Thus, even though the court, due to its limitations, could not grant the most favourable relief to the student, the court did this in a manner that acknowledged the importance of safeguarding individual human rights.