

IN THE HIGH COURT OF KERALA AT ERNAKULAM
PRESENT
THE HONOURABLE THE CHIEF JUSTICE MR.S.MANIKUMAR
&
THE HONOURABLE MR. JUSTICE SHAJI P.CHALY

Thursday, the 4th day of August 2022 / 13th Sravana, 1944
WP(C) NO. 25081 OF 2022(S)

PETITIONER:

BLESSEN BABY, AGED 19 YEARS, S/O. BABY M.C. MATTAPPILLIL HOUSE,
PANCODE P.O. PUTHENCRUZ, ERNAKULAM DISTRICT, PIN- 682 310

RESPONDENTS:

1. UNION OF INDIA, REPRESENTED BY SECRETARY MINISTRY OF SOCIAL JUSTICE AND EMPOWERMENT, SHASTRI BHAWAN, C-WING, DR. RAJENDRA PRASAD ROAD, NEW DELHI, PIN- 110 001
2. STATE OF KERALA, REPRESENTED BY CHIEF SECRETARY, GOVERNMENT SECRETARIAT, GOVERNMENT OF KERALA, TIRUVANANTHAPURAM PIN - 695 001
3. THE SECRETARY, SOCIAL JUSTICE DEPARTMENT OF KERALA STATE, ROOM NO. 620, 1ST FLOOR, SOUTH BLOCK, SECRETARIAT THIRUVANANTHAPURAM, PIN - 695 001
4. THE SECRETARY, GENERAL EDUCATION DEPARTMENT SECRETARIAT, THIRUVANANTHAPURAM, PIN - 695 001
5. THE DIRECTOR OF GENERAL EDUCATION, DEPARTMENT OF GENERAL EDUCATION, JAGATHI, THIRUVANANTHAPURAM, PIN- 695 014

Writ petition (civil) praying inter alia that in the circumstances stated in the affidavit filed along with the WP(C) the High Court be pleased to direct the 2nd respondent to frame rules for the children in need of special assistance in the State Schools for the SSLC, 1st year and 2nd year Higher Secondary examinations, without fixing any minimum percentage of disability for availing the benefits as provided under Section 4(2) and 17(i) of The Right of Persons with Disabilities Act 2016, pending disposal of the writ petition.

This petition coming on for admission upon perusing the petition and the affidavit filed in support of WP(C) and upon hearing the arguments of SHEJI P.ABRAHAM & O.K.MURALEEDHARAN, Advocates for the petitioner, SRI. S MANU, ASSISTANT SOLICITOR GENERAL OF INDIA for R1 and of SRI. N MANOJKUMAR, STATE ATTORNEY for R2 to R5, the court passed the following:

P.T.0

S. MANIKUMAR, CJ & SHAJI P. CHALY, J.

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Dated this the 4th day of August, 2022.

ORDER

S. MANIKUMAR,CJ.

Petitioner, a differently abled student, filed this writ petition as a Public Interest Litigation.

2. Earlier, when the petitioner was studying in Class X, his request for a scribe as per Section 4(2) and 17(i) of the Right of Persons with Disabilities Act, 2016 for the public examination was rejected by the authorities on the ground that the disability should be 40% or above for the assistance of a scribe for the SSLC examination for the year 2020. Aggrieved by the same, he approached this Court by filing W.P.(C) No. 4499 of 2020 and obtained Ext. P2 judgment dated 20.02.2020 in his favour.

3. In the writ appeal preferred by the respondents therein against Ext. P2 judgment, this Court, taking note of the directions issued by the Hon'ble Supreme Court in ***Vikash Kumar v. Union Public Service Commission & others*** [2021 SCC Online SC 84], directed the State Government to re-visit the guidelines in vogue and issued by the Government of Kerala and to issue fresh guidelines, after taking note of the guidelines issued or to be issued by the Ministry of Social Justice and Empowerment of the Government of

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India in tune with the directions issued by the Hon'ble Supreme Court. The petitioner has passed his Xth and XIIth standard examinations with the aid of a scribe, on the basis of the judgments in his favour.

4. Contending that the disability criteria is still 40% or above for the students in need of special assistance in the State Government schools for the SSLC and Higher Secondary Examinations and that the State Government has not framed any rules for the differently abled students as directed by this Court, this writ petition is filed seeking the following reliefs:

1. Issue a writ of mandamus directing the 2nd respondent to frame rules for the children in need of special assistance in the State schools for the SSLC, 1st year Higher Secondary and 2nd year Higher Secondary examinations, without fixing any percentage of minimum disability, for availing the benefits as provided under Section 4(2) and Sec. 17(i) of the Right of Persons with Disabilities Act, 2016.
2. To declare that Ext. P2 judgment of this Hon'ble Court is applicable to all students in need of special assistance in SSLC as well as first year Higher Secondary and 2nd year Higher Secondary Examination in the State Schools.
3. To declare that the disability of the students in need of support for their SSLC, first year and second year Higher Secondary Examinations in the State school shall be assessed by the authority

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as defined under Section 2(s) of the Right of Persons with Disabilities Act, 2016.

4. To Declare that all the differently abled students studying in the State schools coming under the definition of Section (2) S of the Right of Persons with Disabilities Act, 2016 are entitled for the assistance for their respective examinations.

5. On this day, when the matter came up for admission, Mr. Sheji P. Abraham, learned counsel for the petitioner, invited our attention to a recent judgment of the Hon'ble Supreme Court in ***Avni Prakash v. National Testing Agency (NTA) & Ors.*** [judgment dated 23.11.2021 in Civil Appeal No. 7000 of 2021], in which it is ordered thus:

“...In *Vikash Kumar* (supra), the UPSC placed reliance on the Civil Services Examination Rules 2018 to submit that only PwBD can be provided with the facility of a scribe. This Court held that the petitioner was entitled to reasonable accommodation in the form of being provided with the facility of a scribe for writing the UPSC examination even if he did not suffer from a benchmark disability. It is evident that despite the clarification of the position in law in *Vikash Kumar* (supra), the law continues to be violated and NTA has continued to restrict the grant of facilities only to PwBD. By way of abundant caution, we reiterate that the facility of

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reservation in terms of Section 32 is available to PwBD. Other facilities contemplated by the RPwD Act 2016 for PwD cannot be so restricted by an administrative order which would be contrary to the provisions of the statute.

...

56 In our view, the first respondent cannot be allowed to simply get away when confronted with the situation in hand whereby injustice has been caused to a student by standing behind the situation of a large competitive examination. Individual injustices originating in a wrongful denial of rights and entitlements prescribed under the law cannot be sent into oblivion on the ground that these are a necessary consequence of a competitive examination.

F Conclusion

57 Accordingly, in view of the above discussion, we conclude and direct as follows:

- (i) The relief sought by the appellant for holding a re-examination for the NEET (UG) is denied;
- (ii) The appellant was wrongfully deprived of compensatory time of one hour while appearing for the NEET without any fault of her own, despite her entitlements as a PwD and a PwBD. Accordingly, the first respondent is directed to consider what steps could be taken to rectify the injustice within a period of one week. Further, it shall take necessary consequential measures under intimation to the DGHS;

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(iii) In the future, the first respondent shall ensure that provisions which are made at the NEET in terms of the rights and entitlements available under the RPwD Act 2016 are clarified in the NEET Bulletin by removing ambiguity, as noticed in the present case;

(iv) Having due regard to the decision of this Court in **Vikash Kumar** (supra) and the statutory provisions contained in the RPwD Act 2016, facilities which are provided by the law to PwD shall not be constricted by reading in the higher threshold prescribed for PwBD;

(v) By way of abundant caution, it is clarified that for the purpose of availing of the reservation under Section 32 of the RPwD Act 2016 or an upper age relaxation as contemplated in the provisions, the concept of benchmark disability continues to apply; and

(vi) It was brought to our notice that the second respondent was ignorant about the facilities to which the appellant was entitled. There was an evident confusion between the authorities working at the first respondent as well. The persons working for the first respondent and exam centres like that of the second respondent should be sensitised and trained, on a regular basis, to deal with requirements of reasonable accommodation raised by PwDs.

58 The steps taken by the first respondent in furtherance of direction (ii) above in Paragraph 57 must be communicated

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to the Registry of this Court by filing a status report within a period of two weeks from the date of this judgment.”

6. Responding to the above, Mr. N. Manoj Kumar, learned State Attorney, submitted that the Government of Kerala has issued guidelines in the matter of extending concession to the candidates with special needs having 40% or more disability. He also invited our attention to Appendix -7 of Ext. P7 Notification, 2022 for the conduct of Second Year Higher Secondary Examination, 2022.

7. However, learned counsel for the petitioner submitted that irrespective of the percentage of disability, the benefits of Ext. P2 judgment may be extended to all the students in need of special assistance in SSLC as well as first year and second year Higher Secondary examinations.

8. Sri. S. Manu, learned ASGI, takes notice for the Union of India, rep. by Secretary, Ministry of Social Justice and Empowerment, New Delhi – 110 001, respondent No.1. Sri. N. Manoj Kumar, learned State Attorney, takes notice for State of Kerala, represented by the Chief Secretary, Government Secretariat, Thiruvananthapuram, the Secretary, Social Justice Department of Kerala State, Thiruvananthapuram, the Secretary, General Education Department, Thiruvananthapuram and the Director of General Education,

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Department of General Education, Thiruvananthapuram, respondent Nos. 2 to 5 respectively, and he seeks time to get instructions in the matter.

Post the matter on 23.08.2022.

sd/-
S. MANIKUMAR,
CHIEF JUSTICE.

sd/-
SHAJI P. CHALY,
JUDGE.

Rv



APPENDIX OF WP(C) 25081/2022

Exhibit P2

**COPY OF THE JUDGMENT OF THIS HON'BLE COURT DTD
20.02.2020 IN W.P.(C) NO. 4499/2020**

Exhibit P7

**COPY OF THE RELEVANT PAGES OF THE NOTIFICATION DTD
27.12.2021 FOR THE 2ND YEAR HIGHER SECONDARY
EXAMINATION IN MARCH 2022**

