

*** THE HON'BLE THE CHIEF JUSTICE UJJAL BHUYAN
AND
THE HON'BLE MR JUSTICE C.V.BHASKAR REDDY**

+ W.A.No.659 OF 2021

% Date: 15-11-2022

Mr. Sanjeeva Reddy

... Petitioner

v.

\$ State of Telangana, Home Department,
Secretariat, Hyderabad, represented by Principal Secretary
and others.

... Respondents

! Counsel for the Appellant : Mr. K.Rama Subba Rao

^ Counsel for respondents : Mr. M. V. Rama Rao,
Special Government Pleader for Services

< GIST:

➤ HEAD NOTE:

? CASES REFERRED:

1. 2020 SCC OnLine SC 1172
2. 2012 (131) DRJ 583 (DB)
3. (2017) 14 SCC 1
4. (2021) 5 SCC 370
5. 1992 Supp (3) SCC 217
6. (2017) 3 SCC 504
7. (2013) 10 SCC 772
8. 2021 SCC OnLine SC 1112

THE HON'BLE THE CHIEF JUSTICE UJJAL BHUYAN
AND
THE HON'BLE MR JUSTICE C.V.BHASKAR REDDY

WRIT APPEAL No.659 OF 2021

JUDGMENT: *(Per the Hon'ble the Chief Justice Ujjal Bhuyan)*

Heard Mr. K.Rama Subba Rao, learned counsel for the appellant and Mr. M.V.Rama Rao, learned Special Government Pleader for Services representing the respondents.

2. This appeal is directed against the order dated 02.12.2021 passed by the learned Single Judge dismissing writ petition No.32524 of 2021 filed by the appellant as the writ petitioner.

2.1 Appellant had filed the related writ petition seeking the following reliefs:

To issue a writ, order or direction more particularly one in the nature of Writ of Mandamus or any other appropriate writ (i) declare that the Notification issued by the 2nd respondent *vide* R.C.No.41/Rect./Admn-2/2021, dated 04/07/2021 in so far as prescribing the cut-off marks for PWDs and OCs at 40%, OBCs at 35% and SC and STs at 30% as illegal, arbitrary and violative of the directions of the Hon'ble Supreme Court and (ii)

declare that the PWD candidates are eligible for cut-off marks on par with SC and ST candidates and (iii) consequently direct the respondents to evaluate Paper-II of the Writ Petitioner and consider him for further selection to the post of Assistant Public Prosecutor as per his eligibility and (vi) pass such order or other orders as this Hon'ble Court may deem fit and proper in the interest of justice.

3. By the order under appeal, learned Single Judge took the view that appellant knew about the minimum qualifying marks of 40 % as open category candidate to which he belonged; with no minimum marks being prescribed for persons with disabilities. Having participated in the written examination, it is not open to the appellant to turn around and contend that relaxation should be given to him in respect of minimum qualifying marks as a person with disabilities. Observing that at the best appellant can submit a representation before the respondents seeking relaxation of minimum qualifying marks under the quota for persons with disabilities, learned Single Judge however held that no such direction as has been sought for can be granted by the Court under Article 226 of the Constitution of India.

Accordingly, the writ petition was dismissed as having no merit.

4. Appellant is an orthopaedically challenged person having right lower limb impairment since birth due to post polio paralysis. Disability suffered by the appellant is to the extent of 57%.

5. Appellant obtained L.L.B. degree from University College of Law, Kakatiya University, Warangal in the year 2010. He got himself enrolled with the Bar Council on 30.09.2010 and since then he has been practising law as an advocate in Ranga Reddy District.

6. Second respondent issued notification dated 04.07.2021 calling for applications through online mode for direct recruitment to the post of Assistant Public Prosecutor (Category-7) in Telangana State Prosecution Service. Number of notified vacancies were 151 which were divided amongst multi-zone-I and II with 68 and 83 vacancies respectively. As per category-wise break up of vacancies, a total of two posts were reserved for orthopaedically handicapped between the two zones. It

was notified that the selection procedure would be through a written examination comprising of two papers. Paper-I for 100 marks would be of objective type, whereas Paper-II comprising of 100 marks would be of descriptive type. Note (iv) of clause 12 of the notification mentioned the minimum marks to be secured by a candidate in order to qualify in the written examination:- open category (OC) – 40%; backward class (BC) – 35%; scheduled caste (SC) - 30% and scheduled tribe (ST) – 30%.

7. It was further mentioned that only those candidates who qualify in Paper-I i.e., objective type would be eligible for evaluation of their Paper-II i.e., descriptive type.

8. Appellant belongs to OC category but is also covered by the quota for persons with disability particularly for the two posts reserved for orthopedically handicapped.

9. Appellant submitted application for the post of Assistant Public Prosecutor in terms of the notification

dated 04.07.2021 on 17.08.2021. He appeared in the written examination for both Paper-I and Paper-II on 24.10.2021.

10. While waiting for declaration of the results, appellant came to know that one Sri Pradip Kumar, an advocate, had submitted an e-mail representation dated 01.11.2021 to the second respondent wherein he had sought for reservation to be made available to persons with disabilities including orthopaedically handicapped. However, no decision was taken by the second respondent by lowering cut-off marks for persons with disabilities.

11. Thus, appellant despite being a person with disabilities was considered at par with open category candidates as he belonged to OC. Appellant secured 34 marks out of 100 marks in Paper-I, objective type. Since the cut-off marks for OC candidates was 40%, appellant's answer script for Paper-II was not verified as he did not secure more than the minimum qualifying marks for OC candidates. It was in such circumstances that appellant

had filed the related writ petition seeking a direction to the respondents to evaluate his Paper-II answer script in terms of the notification dated 04.07.2021 by treating the cut-off marks for persons with disabilities at 30% at par with SC/ST candidates. However, prayer of the appellant was not considered by the learned Single Judge and vide the order dated 02.12.2021, the related writ petition was dismissed.

12. Aggrieved, the present writ appeal came to be filed.

13. By order dated 08.07.2022, the writ appeal was admitted and respondents were directed to file counter affidavit since no counter affidavit was filed before the learned Single Judge. Order dated 08.07.2022 reads as follows:

This intra-court appeal has been preferred against the final order dated 02.12.2021 passed by the learned Single Judge dismissing W.P.No.31524 of 2021 filed by the appellant.

Appellant is a physically challenged person and had applied for the post of Assistant Public Prosecutor. Appellant failed to secure minimum 40% marks for the open category to which he belonged, having secured 34% marks. Learned Single Judge did

not agree with the contention of the appellant that appellant being a physically challenged candidate should be treated at par with reserve category candidates belonging to SCs and STs for which the minimum qualifying marks was fixed at 30%.

Let the appeal be admitted.

14. On the next date of hearing, i.e., on 22.08.2022, this Court referred to a decision of the Supreme Court in **Aryan Raj v. Chandigarh Administration**¹ (Civil Appeal No.2718 of 2020, decided on 08.07.2020). Learned counsel for the respondents was called upon to examine the said decision and to file counter affidavit positively by the next date since by that time counter affidavit was still not filed. Ultimately, respondents filed counter affidavit on 26.10.2022.

15. Stand taken in the counter affidavit is that appellant belongs to multi-zone-II, where there was one vacancy for orthopaedically handicapped which was notified in the notification dated 04.07.2021. Appellant had applied for and participated in the recruitment process as belonging to OC candidate and local to multi-

¹ 2020 SCC OnLine SC 1172

zone-II. He had secured 34 marks in Paper-I. Therefore, he was not qualified as the minimum qualifying marks for OC candidates was 40% in each paper. As per the said notification, evaluation of Paper-II would be done for those candidates who secure minimum qualifying marks in Paper-I. Appellant secured 34 marks in Paper-I. Since minimum qualifying mark for OC candidates was 40, appellant being an OC candidate was not selected. Already one candidate, i.e., Sri Babu Rao, has been selected and subsequently appointed under orthopaedically handicapped quota in multi-zone-II. That candidate has not been arrayed as a party respondent in the present proceeding.

15.1. It is further stated that in the notification dated 04.07.2021, minimum marks to be secured by a candidate in order to qualify in the written examination was 40% for OC, 35% for BC and 30% for SC and ST categories in each paper. No separate qualifying marks were prescribed for orthopaedically handicapped

candidates. Such a candidate was required to secure the minimum qualifying marks as per his/her category.

15.2. Supporting the judgment of the learned Single Judge, respondents have contended that appellant sat in the examination held pursuant to the notification dated 04.07.2021. Instead of raising challenge immediately, only when he did not qualify in Paper-I, he chose to file the related writ petition. Therefore, learned Single Judge was justified in rejecting the prayer of the appellant. Respondents have denied and contested the contention of the appellant that minimum qualifying marks for persons with disabilities should be at par with the minimum qualifying marks for SC/ST candidates.

16. Submissions made by learned counsel for the parties are on pleaded lines. Therefore, a detailed reference to the same is considered not necessary. In the hearing, learned counsel for the appellant placed reliance on the following decisions:

(1) **Anamol Bhandari v. Delhi Technological University**²;

and

(2) **Aryan Raj v. Chandigarh Administration** (Civil Appeal No.2718 of 2020, decided on 08.07.2020) (supra).

17. Learned counsel for the appellant further submits that in notification No.8 of 2015 dated 20.08.2015 issued by the Telangana State Public Service Commission for recruitment to the post of Assistant Executive Engineer in various engineering services, it was clearly mentioned that minimum qualifying marks to be eligible for interview was 40% for OC, 35% for BC and 30% for SC/ST/persons with disabilities. This pattern has been followed by the Telangana State Public Service Commission in the general recruitment for Group-II services vide the notification No.20 of 2015, dated 30.12.2015.

18. Submissions made by learned counsel for the parties have received the due consideration of the Court.

² 2012 (131) DRJ 583 (DB)

19. Division Bench of Delhi High in **Anamol Bhandari** (supra) was examining the requirement of reservation for persons with disabilities in the light of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995. The issue arose in the context of admission into the Delhi Technological University. Though the University had provided 10% concession of marks in the minimum eligibility requirement for candidates belonging to SC/ST but relaxation for persons with disabilities was only to the tune of 5%. This was challenged as being discriminatory. After elaborate deliberation, Delhi High Court observed that there is a need for mainstreaming of persons with disabilities in the general education system through inclusive education, holding that reservation for persons with disabilities would come under horizontal reservation which cuts-across all vertical categories, such as, SC, ST, BC and OC categories. According to Delhi High Court, a person with disabilities belonging to SC/ST categories enjoys the relaxation which is provided to SC/ST categories. Therefore, there is no reason not to grant the

same benefit/same concession to those disabled belonging to OC/BC categories as that would bring parity amongst all persons having physical disabilities irrespective of their vertical categories. It was held in no uncertain terms that people suffering from disabilities are equally socially backward as those belonging to SC/ST categories. Therefore, as per the constitutional mandate, they are entitled to atleast the same benefit of relaxation as given to SC/ST candidates. In the circumstances, Delhi High Court held that the provision giving only 5% concession in marks to persons with disabilities as opposed to 10% relaxation provided to SC/ST candidates was discriminatory.

20. Supreme Court in **Aryan Raj** (supra) approvingly referred to the Delhi High Court's decision in **Anamol Bhandari** (supra) and declared that Delhi High Court had correctly held that persons suffering from disabilities are also socially backward. Therefore, at the very least, they are entitled to the same benefits as given to SC/ST candidates. In the facts of that case, Supreme Court

declared that the qualifying marks of 35% for SC/ST candidates would also be available to persons with disabilities.

21. Before we proceed further, it would be apposite to advert to a few of the provisions of the successor Act i.e., Rights of the Persons with Disabilities Act, 2016 (briefly, ‘the Disabilities Act’ hereinafter).

22. It may be mentioned that the Disabilities Act has replaced the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 (referred to hereinafter as ‘the 1995 Act’). United Nations General Assembly adopted its Convention on the Rights of Persons with Disabilities on 13.12.2006. The said Convention laid down the following principles for empowerment of persons with disabilities:

- (a) respect for inherent dignity, individual autonomy including the freedom to make one's own choices, and independence of persons;
- (b) non-discrimination;
- (c) full and effective participation and inclusion in society;

- (d) respect for difference and acceptance of persons with disabilities as part of human diversity and humanity;
- (e) equality of opportunity;
- (f) accessibility;
- (g) equality between men and women;
- (h) respect for the evolving capacities of children with disabilities and respect for the right of children with disabilities to preserve their identities.

22.1. India is a signatory to the said Convention and ratified the same on 01.10.2007. To implement the principles laid down in the said Convention the Disabilities Act came to be enacted.

22.2. As per the Statement of Objects and Reasons, the 1995 Act was enacted to give effect to the Proclamation on the Full Participation and Equality of the People with Disabilities in the Asian and Pacific Region. The 1995 Act defined persons with disabilities as those having not less than 40% disability and identified seven categories of disabilities, namely, blindness, low vision, hearing impairment, locomotor disability, mental retardation, mental illness and leprosy-cured.

22.3. Over a period of time, the conceptual understanding of the rights of persons with disabilities has become more clear and there has been worldwide change in approach to handle issues concerning persons with disabilities.

22.4. In 2010, an expert committee was constituted which submitted its report in 2011 suggesting a draft bill relating to rights of persons with disabilities. Such report was a precursor to the enactment of the Disabilities Act.

22.5. Under the new law, more rights have been conferred on the disabled persons and more categories have been added. Access to justice, free education, role of local authorities, national fund and state fund for persons with disabilities have been created. As Supreme Court observed in **Justice Sunanda Bhandare Foundation v. Union of India**³, the Disabilities Act is noticeably a sea-change in the perception and requires a march forward look with regard to persons with disabilities and the role of the State authorities.

³ (2017) 14 SCC 1

22.6. 'Person with disability' has been defined in Section 2(s) of the Disabilities Act to mean a person with long term physical, mental, intellectual or sensory impairment which, in interaction with barriers, hinders his full and effective participation in society equally with others. Section 2(c) defines 'barrier' to mean any factor including communicational, cultural, economic, environmental, institutional, political, social, attitudinal or structural factors which hampers the full and effective participation of persons with disabilities in society. Then there is 'person with benchmark disability' which is defined in Section 2(r). "Person with benchmark disability" means a person with not less than forty per cent of a specified disability where specified disability has not been defined in measurable terms and includes a person with disability where specified disability has been defined in measurable terms, as certified by the certifying authority. Section 2(t) defines "person with disability having high support needs". It means a person with benchmark disability who needs high support.

23. Pausing here for a moment, as we have seen from the above, the basic thrust of the Disabilities Act is the emphasis on the full and effective participation of persons with disabilities in society. It is the duty of the State to ensure that persons with disabilities enjoy the right to equality and lead a life of dignity and respect.

24. In **Vikas Kumar v. Union Public Service Commission**⁴, it was a case arising out of denial of a scribe to the appellant in the civil services examination in view of the appellant suffering from writer's cramp. It was in that context that Supreme Court elaborately examined the contours of the Disabilities Act and how it is a significant improvement over the previous enactment. Supreme Court held that Articles 14, 19 and 21 of the Constitution applies with full force and vigour to the disabled. The Disabilities Act seeks to operationalise and give concrete shape to the promise of full and equal citizenship held out by the Constitution to the disabled and to execute its

⁴ (2021) 5 SCC 370

ethos of inclusion and acceptance. Supreme Court held as follows:

42. The fundamental postulate upon which the Disabilities Act is based is the principle of equality and non-discrimination. Section 3 casts an affirmative obligation on the Government to ensure that persons with disabilities enjoy : (i) the right to equality; (ii) a life with dignity; and (iii) respect for their integrity equally with others. Section 3 is an affirmative declaration of the intent of the legislature that the fundamental postulate of equality and non-discrimination is made available to persons with disabilities without constraining it with the notion of a benchmark disability. Section 3 is a statutory recognition of the constitutional rights embodied in Articles 14, 19 and 21 among other provisions of Part III of the Constitution. By recognising a statutory right and entitlement on the part of persons who are disabled, Section 3 seeks to implement and facilitate the fulfilment of the constitutional rights of persons with disabilities.

24.1. While analysing different provisions of the Disabilities Act, Supreme Court observed that the same is a landmark legislation which repealed the 1995 Act and brought Indian legislation on disability in line with the United Nations Convention on the Rights of Persons with Disabilities. Under the old regime, disability was simply

characterised as a medical condition devoid of any understanding of how disability is produced by social structures that cater to able-bodied persons and hamper and deny equal participation of persons with disabilities in the society. Thus, the Disabilities Act has a more inclusive definition of 'persons with disability' evidencing a shift from a stigmatising medical model of disability under the 1995 Act to a social model of disability which recognises that it is the societal and physical constraints that are at the heart of exclusion of persons with disabilities from full and effective participation in society.

24.2. Recognising the state of affairs created by centuries of sequestering and discrimination that this discrete and insular minority has faced for no fault on its part, the Disabilities Act aims to provide them an even platform so that they can contribute to the world in their own unique ways. It has given a powerful voice to the disabled who by dint of the way their impairment interacts with society, hitherto felt muted and silenced. The Disabilities Act says it loud and clear that persons with disabilities belong to

the society; that they matter; that they are assets, not liabilities; that they make the society stronger, not weaker.

25. It is in this context that special provisions have been provided for persons with benchmark disabilities in Chapter VI of the Disabilities Act. Sections 33 and 34 which deal with identification of posts for reservation and reservation are included in Chapter VI. As per Section 33, the appropriate government shall identify posts in the establishment which can be held by respective category of persons with benchmark disabilities in respect of the vacancies reserved in accordance with the provisions of Section 34; constitute an expert committee with representation of persons with benchmark disabilities for identification of such posts; and undertake periodic review of the identified posts at an interval not exceeding three years.

25.1. Section 34 provides for reservation to persons with disabilities. Section 34 being relevant is extracted hereunder:

34. Reservation:- (1) Every appropriate Government shall appoint in every Government establishment, not less than four per cent of the total number of vacancies in the cadre strength in each group of posts meant to be filled with persons with benchmark disabilities of which, one per cent each shall be reserved for persons with benchmark disabilities under clauses (a), (b) and (c) and one per cent for persons with benchmark disabilities under clauses (d) and (e), namely:

- (a) blindness and low vision;
- (b) deaf and hard of hearing;
- (c) locomotor disability including cerebral palsy, leprosy cured, dwarfism, acid attack victims and muscular dystrophy;
- (d) autism, intellectual disability, specific learning disability and mental illness;
- (e) multiple disabilities from amongst persons under clauses (a) to (d) including deaf-blindness in the posts identified for each disabilities:

Provided that the reservation in promotion shall be in accordance with such instructions as are issued by the appropriate Government from time to time:

Provided further that the appropriate Government, in consultation with the Chief Commissioner or the State Commissioner, as the case may be, may, having regard to the type of work carried out in any Government establishment, by notification and subject to such conditions, if any, as may be specified in such notifications exempt any

Government establishment from the provisions of this section.

(2) Where in any recruitment year any vacancy cannot be filled up due to non-availability of a suitable person with benchmark disability or for any other sufficient reasons, such vacancy shall be carried forward in the succeeding recruitment year and if in the succeeding recruitment year also suitable person with benchmark disability is not available, it may first be filled by interchange among the five categories and only when there is no person with disability available for the post in that year, the employer shall fill up the vacancy by appointment of a person, other than a person with disability:

Provided that if the nature of vacancies in an establishment is such that a given category of person cannot be employed, the vacancies may be interchanged among the five categories with the prior approval of the appropriate Government.

(3) The appropriate Government may, by notification, provide for such relaxation of upper age limit for employment of persons with benchmark disability, as it thinks fit.

25.2. From the above, it is evident that every appropriate government is under a mandate to appoint in every government establishment not less than four percent of the total number of vacancies in the cadre strength in each group of posts meant to be filled with persons with benchmark disabilities under clauses (a), (b) and (c) and

one per cent for persons with benchmark disabilities under clauses (d) and (e), as extracted above. If in any recruitment year, a vacancy earmarked for persons with disabilities cannot be filled up due to non-availability of a suitable person with benchmark disability or for any other sufficient reasons, such vacancy shall be carried forward to the succeeding recruitment year.

26. The concept of vertical reservation vis-à-vis horizontal reservation was explained by the Supreme Court in **Indra Sawhney v. Union of India**⁵ in the following manner:

812. We are also of the opinion that this rule of 50% applies only to reservations in favour of backward classes made under Article 16(4). A little clarification is in order at this juncture: all reservations are not of the same nature. There are two types of reservations, which may, for the sake of convenience, be referred to as 'vertical reservations' and 'horizontal reservations'. The reservations in favour of Scheduled Castes, Scheduled Tribes and other backward classes [under Article 16(4)] may be called vertical reservations whereas reservations in favour of physically handicapped [under clause (1) of Article 16] can be referred to as horizontal reservations. Horizontal

⁵ 1992 Supp (3) SCC 217

reservations cut across the vertical reservations — what is called interlocking reservations. To be more precise, suppose 3% of the vacancies are reserved in favour of physically handicapped persons; this would be a reservation relatable to clause (1) of Article 16. The persons selected against this quota will be placed in the appropriate category; if he belongs to SC category he will be placed in that quota by making necessary adjustments; similarly, if he belongs to open competition (OC) category, he will be placed in that category by making necessary adjustments. Even after providing for these horizontal reservations, the percentage of reservations in favour of backward class of citizens remains — and should remain — the same. This is how these reservations are worked out in several States and there is no reason not to continue that procedure.

27. This distinction was again explained by the Supreme Court in **Union of India v. M.Selva Kumar**⁶ as under:

22. Article 16 of the Constitution provides for equality of opportunity in matters of public employment. The State in terms of Article 16 of the Constitution provides two types of reservations i.e. a vertical or social reservation as provided for in Article 16 clause (4) and horizontal reservation which is referable to Article 16 clause (1). Special reservation in favour of physically handicapped,

⁶ (2017) 3 SCC 504

women, etc. under Article 16(1) or 15(3) of the Constitution are the instances of horizontal reservation.

23. A nine-Judge Bench in *Indra Sawhney v. Union of India* [1992 Supp (3) SCC 217 : 1992 SCC (L&S) Supp 1] had elaborately considered both the concepts of reservation. In para 812 of the said judgment, Justice B.P. Jeevan Reddy, has referred to both the types of reservations. It was held that horizontal reservations cut across the vertical reservation.

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28. Thus, there are two types of reservations i.e., vertical reservation and horizontal reservation. Reservations in favour of SC, ST and BC may be called vertical reservation, whereas reservation in favour of persons with disabilities or women can be referred to as horizontal reservation. As already pointed out above, horizontal reservation cuts across vertical reservation, what is called interlocking reservations. Persons selected against the quota for horizontal reservation will be placed in the appropriate category. If a person with disability belongs to SC/ST category, he will be placed in that quota by making necessary adjustments. Likewise, if

he/she belongs to OC, he/she will be placed in that category by making necessary adjustments. The result is that even after providing for horizontal reservation, the percentage of vertical reservation remains the same.

29. Supreme Court in **Union of India v. National Federation of the Blind**⁷ explained the nature of reservation for persons with disabilities. The above judgment was in the context of the earlier 1995 Act, i.e., Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995. Though this judgment is important for very many aspects, suffice it to say that this judgment categorically held that reservation for persons with disabilities is a horizontal reservation cutting across all categories of vertical reservation. Additionally, it was held that reservation for persons with disabilities would have to be computed on the basis of total vacancies in the strength of a cadre and not just on the basis of the vacancies available in the identified posts.

⁷ (2013) 10 SCC 772

30. Reverting back to the decision of the Delhi High Court in **Anamol Bhandari** (supra), as already discussed above, Delhi High Court has held that persons with disabilities are equally socially backward as those belonging to SC/ST categories. Therefore, they are entitled to the same benefit of relaxation as given to SC/ST categories. This view of the Delhi High Court has been approved by the Supreme Court in **Aryan Raj** (supra) wherein it has been held that persons with disabilities are also socially backward; at the very least they are entitled to the same benefits as given to SC/ST candidates.

31. In **Vikas Kumar** (supra) Supreme Court also discussed the principle of reasonable accommodation in the context of disability rights which finds its manifestation in the Disabilities Act. Supreme Court has explained that the principle of reasonable accommodation captures the positive obligation of the State and private parties to provide additional support to persons with disabilities to facilitate their full and effective

participation in society. Without reasonable accommodation, the fundamental rights enshrined in Articles 14, 19 and 21 will ring hollow. Reasonable accommodation is the instrumentality and an obligation of the society to enable the disabled to enjoy the constitutional guarantee of equality and non-discrimination. Reference was made to the observations in **Justice Sunanda Bhandare Foundation** (supra), where Justice R.M.Lodha (as he then was) speaking for the Bench observed that in matters of providing relief to those who are differently abled, the approach and attitude of the executive must be liberal and relief oriented and not obstructive or lethargic.

31.1. Supreme Court observed that the principle of reasonable accommodation has found a more expansive manifestation in the Disabilities Act. Supreme Court held as follows:

60. At the heart of this case lies the principle of reasonable accommodation. Individual dignity undergirds the Disabilities Act. Intrinsic to its realisation is recognising the worth of every person as an equal member of society. Respect for the

dignity of others and fostering conditions in which every individual can evolve according to their capacities are key elements of a legal order which protects, respects and facilitates individual autonomy. In seeking to project these values as inalienable rights of the disabled, the Disabilities Act travels beyond being merely a charter of non-discrimination. It travels beyond imposing restraints on discrimination against the disabled. The law does this by imposing a positive obligation on the State to secure the realisation of rights. It does so by mandating that the State must create conditions in which the barriers posed by disability can be overcome. The creation of an appropriate environment in which the disabled can pursue the full range of entitlements which are encompassed within human liberty is enforceable at law. In its emphasis on substantive equality, the enactment of the legislation is a watershed event in providing a legal foundation for equality of opportunity to the disabled.

61. As a social construct, disability encompasses features broader and more comprehensive than a medical condition. The Disabilities Act recognises that disability results in inequality of access to a range of public and private entitlements. The handicaps which the disabled encounter emerge out of disability's engagement with the barriers created by prejudice, discrimination and societal indifference. Operating as restraining factors, these barriers have origins which can be traced to

physical, social, economic and psychological conditions in society. Operating on the pre-existing restraints posed by disability, these barriers to development produce outcomes in which the disabled bear an unequal share of societal burdens. The legislation has recognised that remedies for the barriers encountered by the disabled are to be found in the social environment in which they live, work and cohabit with others. The barriers encountered by every disabled person can be remedied by recognising comprehensive rights as inhering in them; rights which impose duties and obligations on others.

62. The principle of reasonable accommodation acknowledges that if disability as a social construct has to be remedied, conditions have to be affirmatively created for facilitating the development of the disabled. Reasonable accommodation is founded in the norm of inclusion. Exclusion results in the negation of individual dignity and worth or they can choose the route of reasonable accommodation, where each individuals' dignity and worth is respected. Under this route, the "powerful and the majority adapt their own rules and practices, within the limits of reason and short of undue hardship, to permit realisation of these ends" (Reasonable Accommodation in A Multicultural Society, Address to the Canadian Bar Association Continuing Legal Education Committee and the National Constitutional and Human Rights Law Section, 7-4-1995, Calgary, Alberta at 1).

63. In the specific context of disability, the principle of reasonable accommodation postulates that the conditions which exclude the disabled from full and effective participation as equal members of society have to give way to an accommodative society which accepts difference, respects their needs and facilitates the creation of an environment in which the societal barriers to disability are progressively answered. Accommodation implies a positive obligation to create conditions conducive to the growth and fulfilment of the disabled in every aspect of their existence — whether as students, members of the workplace, participants in governance or, on a personal plane, in realising the fulfilling privacies of family life. The accommodation which the law mandates is “reasonable” because it has to be tailored to the requirements of each condition of disability. The expectations which every disabled person has are unique to the nature of the disability and the character of the impediments which are encountered as its consequence.

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66. As the Committee on the Rights of Persons with Disabilities (“the CRPD Committee”) noted in General Comment 6, reasonable accommodation is a component of the principle of inclusive equality. [CRPD Committee, General Comment 6 on Equality and Non-discrimination (2018) [GC 6], CRPD/C/GC/6, 26-4-2018, para 11.] It is a substantive equality facilitator. The establishment of this linkage between reasonable accommodation and non-discrimination thus creates an obligation

of immediate effect. [Lord, J.E., & Brown, R. (2010), “The role of reasonable accommodation in securing substantive equality for persons with disabilities: The UN Convention on the Rights of Persons with Disabilities”, *Critical Perspectives on Human Rights and Disability Law* (pp. 273-307) (Brill Nijhoff, at p. 279).] Under this rights-based and disabled-centric conceptualisation of reasonable accommodation, a failure to provide reasonable accommodation constitutes discrimination. Reasonable accommodation determinations must be made on a case-by-case basis, in consultation with the disabled person concerned. [CRPD Committee, GC 6 at para 25[c].] Instead of making assumptions about how the relevant barriers can be tackled, the principle of reasonable accommodation requires dialogue with the individual concerned to determine how to tackle the barrier. [Anna Lawson, “Reasonable Accommodation in the Convention on the Rights of Persons with Disabilities and Non-Discrimination in Employment: Rising to the Challenges?”, in Charles O'Mahony and Gerard Quinn (Eds.), *Disability Law and Policy : An Analysis of the UN Convention* (Dublin : Clarus Press, 2017), pp. 359-74, at 362.]

32. The decision in **Vikas Kumar** (supra) was applied with full force by the Supreme Court in the subsequent decision in **Avni Prakash v. National Testing Agency**⁸.

⁸ 2021 SCC OnLine SC 1112

33. Thus, in view of what we have discussed above, we are of the view that the approach of the respondents fall far short of the constitutional mandate and principles of disability rights vis-à-vis reasonable accommodation while dealing with the case of the appellant. Not providing minimum qualifying marks for persons with disabilities at par with SC/ST candidates is wholly untenable. This aspect of the matter, it appears, escaped the attention of the learned Single Judge. That apart, limiting reservation for persons with disabilities to only two vacancies out of 151 notified vacancies, is contrary to the mandate of Section 34 of the Disabilities Act as well as the law laid down in **National Federation of the Blind** (supra).

34. Accordingly, we set aside the order of the learned Single Judge dated 02.12.2021 passed in W.P.No.31524 of 2021 and allow the writ appeal by issuing the following directions:

- (1) Let the cut-off mark for persons with disabilities in the notification dated 04.07.2021 be treated at par with SC/ST categories i.e., 30%;
- (2) Those candidates belonging to the persons with disabilities category who had secured 30% or more marks in Paper-I, such as, the appellant who had secured 34 marks, their Paper-II shall be evaluated;
- (3) Upon evaluation of Paper-II, if any of such candidates including the appellant secures more marks than the candidate already selected, i.e., Sri Babu Rao, he/she shall be appointed as Assistant Public Prosecutor in any available vacancy without disturbing the appointment of Sri Babu Rao. If no vacancy is available, such a candidate shall be appointed by creating an ex-cadre post; and
- (4) The above exercise shall be carried out within a period of eight (8) weeks from the date of receipt of copy of this order.

Miscellaneous petitions, pending if any, shall stand closed.

UJJAL BHUYAN, CJ

C.V.BHASKAR REDDY, J

15.11.2022

Pln

Note: LR copy be marked.

(By order)

Pln