

CRITICAL ANALYSIS: VIKASH KUMAR V. UNION PUBLIC SERVICE COMMISSION

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ABSTRACT

The case of Vikash Kumar v. UPSC¹ has dealt with the issue of whether the law should become the mouthpiece of the social consensus. Justice DY Chandrachud, through this judgment, has once again pointed out that the Indian Constitution does not work just for the benefit of the majority. This judgment is one of the many steps needed for the upliftment and advancement of the differently-abled. The article has attempted to analyze this path-breaking judgment in light of the principles of equality and inclusivity.

Keywords: UPSC, Law, Constitution.

BRIEF FACTS AND PROCEDURAL HISTORY

Vikash Kumar, the appellant, suffered from dysgraphia. He is an MBBS graduate but decided to pursue civil services. He declared his locomotor disability in his 2017 civil services exam application form. Following his declaration, a scribe was provided to him to be able to write the exam. DoPT issued new rules for the civil services examination in the Civil Services Examination Rules 2018. It provided that candidates must write their papers themselves, and ascribe will not be provided except for blind candidates, candidates with locomotor disability, or cerebral palsy.

In his application for the 2018 examination, the appellant declared himself to be a person with 40% or more disability and requested the UPSC for a scribe. UPSC rejected the request stating that the required criterion was not met. The appellant also endeavoured to appear for the Combined Medical Services Examination 2017 conducted with the support of the UPSC. Ram Manohar Lohia Hospital, Delhi's medical board, denied a disability certificate to the appellant. Appellant filed a plea before the Central Administrative Tribunal against the denial of ascribing to him. The Tribunal passed an interim order wherein it directed the UPSC to provide ascribe to the appellant. But the appellant's result was withheld.

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¹ Special Leave Petition (C) No. 1882 of 2021.

The Tribunal dismissed the appellant's plea on the ground that the appellant could not fulfill the criteria for a scribe since Ram Manohar Lohia Hospital denied him the disability certificate. The Tribunal also rejected the certificate issued by the National Institute of Mental Health and Neuro Sciences (NIMHANS) because the certificate did not mention the extent of the disability. The Tribunal even questioned the maintainability of the plea of the appellant since the relief sought was in the arena of policy matters, and the Tribunal desisted from interfering.

As a result, the appellant filed a writ petition before the Delhi High Court to challenge the legality of Civil Services Examination Rules 2018. The appellant obtained a medical certificate from NIMHANS stating that the appellant suffers from dysgraphia and will need a scribe for his examinations. Division Bench of the Delhi High Court declined to interfere with the observations of the Tribunal on the basis that the appellant did not qualify in the preliminary stage of Civil Services Examination 2018, and therefore, the relief sought was rendered futile. However, the court granted permission to the appellant to file another plea before the Tribunal on a future date. The appellant appealed against this order.

COURT'S OBSERVATIONS

The apex court observed that the case raises some core issues relating to the actual realization of equal opportunity and access to the differently-abled and their continued pursuit for dignity. As part of the proceedings, the Supreme Court directed the AIIMS to establish a medical board and evaluate the appellant's condition and provide expert opinion on the following question:

- 1) Can the appellant be termed a 'person with a disability under section 2(s) of the Rights of Persons with Disabilities Act, 2016 (hereinafter referred to as 'the act')?
- 2) What is the extent of the appellant's disability?
- 3) Does his disability meet the benchmark disability under section 2(r) and section 2(zc) of the act?

The board opined that the appellant's disability is a "chronic neurological condition" known as bilateral Writer's Cramp. Appellant can be termed as a 'person with a disability under the Rights of Persons with Disabilities act, 2016 with the extent of the disability at 6%. However,

this does not meet the “benchmark disability.” AIIMS report stated that the appellant suffers from a specified disability mentioned in entry IV of the Schedule to the act.

COURT’S DECISION

The Hon’ble Supreme Court allowed the appeal and set aside the impugned judgment and order of the High Court of Delhi. The appellant was allowed to entail the facility of a scribe to appear for the Civil Services Examination or any other competitive selection examination conducted by the government’s authority. The Ministry of Social Justice and Empowerment was directed to ensure that proper guidelines are framed to regulate and facilitate scribe facilities for persons with disability within three months of receiving the certified copy of this judgment. This has to be done in consultation with the public, specifically with the differently-abled and the organizations that represent them.

ANALYSIS

The fundamental reasoning behind the Rights of Persons with Disabilities act, 2016 is the principle of equality and non-discrimination. Section 3 of the act provides an affirmative declaration of this intention– equality, and non-discrimination to persons with disabilities without the containment of a benchmark disability.’ Section 3 represents a statutory recognition of the fundamental rights embodied in Articles 14, 19, and 21 of the Constitution. All the other provisions of the act follow this basic principle enshrined in section 3 and apply in specific circumstances to ensure fundamental rights to persons with disabilities.

It is not enough to term discrimination against the differently-abled as ‘impermissible’ for them to be able to live a dignified life. This is, of course, necessary, but just not sufficient. The Supreme Court also observed that the principle of reasonable differentiation and specific measures is an essential component of the right to equality. We must recognize the distinct needs for us to have substantive equality². Equality goes beyond just compensating discrimination against groups that are suffering systematic discrimination. Equality entails the principle of reasonable accommodation. Reasonable accommodation has to be made on a case-to-case basis, with the consultation of the person concerned³. Minimal involvement of the differently-abled in the policy-making process leads to their voice not being heard. The

² Jeeja Ghosh v. Union of India, (2018) 2 SCC 397.

³ Convention on the Rights of Persons with Disabilities - General comment No. 6 (2018) on equality and nondiscrimination,(2018), <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G18/119/05/PDF/G1811905.pdf?OpenElement>.

reasonable differentiation principle has an expansive meaning under the act. The act puts most obligations on the government or local bodies, but some are also on the private sector. The apex court has recognized employment opportunities as an essential instrument for empowering the differently-abled⁴. Provision of a scribe cannot be construed as a privilege on a particular candidate; instead, it is the recognition of affirmative duties of the government. Except for specific statutory circumstances where the 'benchmark disability' has to be applied, it is contrary to the statute's text and intent to deny the inherent rights of differently-abled on the ground of a 'benchmark' disability. UPSC erred in confining the facility of scribes to only those with benchmark disabilities as this would deprive an entire class of persons of their constitutionally recognized rights.

The apprehension of misuse of the scribe facility is no ground to deprive a whole class of citizens of statutorily recognized rights. This undue suspicion of a possibility of wrongdoing is unwarranted. The chances of the system being skirted are the same with able-bodied persons. There is no valid ground for differently-abled to bear the brunt of maintaining the standards of competitive examinations by forcing them to give up their legal entitlements on a mere possibility of misuse. UPSC itself is losing because of this rigid system. Highly competent people are being forced into the private sector. UPSC already has a system for punitive actions against candidates who try to circumvent the system. There is no need to put different liabilities on different classes of people. The decision of the apex court to allow the appellant scribe facility is a welcome step towards the long road of inclusivity and equality.



⁴ Union of India v. National Federation of the Blind, (2013) 10 SCC 772.