

\$~16

\*IN THE HIGH COURT OF DELHI AT NEW DELHI

+

W.P.(C) 5666/2017

%

Reserved on : 17<sup>th</sup> August, 2017  
Date of decision : 22<sup>nd</sup> August, 2017

COURT ON ITS OWN MOTION

..... Petitioner

Through : Mr. S.K. Rungta, Sr. Adv. as  
*amicus curiae* with Mr.  
Shivankar Shukla, Adv.

versus

UNION OF INDIA & ORS

..... Respondents

Through : Mr. Jagjit Singh, Sr. Standing  
Counsel with Mr. Preet Singh,  
Adv. for Railways.  
Mr. Sudhir Nandrajog, Sr. Adv.  
With Mr. Mohinder J.S. Rupal,  
Adv. for Delhi University.

**CORAM:**

**HON'BLE THE ACTING CHIEF JUSTICE**

**HON'BLE MR. JUSTICE C.HARI SHANKAR**

**JUDGMENT**

**GITA MITTAL, ACTING CHIEF JUSTICE**

1. On 7<sup>th</sup> July, 2017, a report captioned as “*Train door shut, disabled misses M.Phil test at DU*” appeared at page 8 of the New Delhi Edition of the national daily, The Times of India. It disclosed that a visually impaired student who had a reserved ticket to travel to Delhi for appearing in the entrance examination for the M.Phil (Sanskrit) Course for the academic year 2017, which was conducted by the University of Delhi on 5<sup>th</sup> July, 2017, was prevented from

boarding the coach reserved for the disabled in the Gorakhdham Express train operated by the North-Eastern Railways at the Unnao Railway Station despite his best efforts.

2. Moved by the manner in which the rights of a physically disabled person had been infringed, and the inaccessibility of the railway network to the disabled as a mode of access, this court was compelled to take *suo-motu* cognizance of the matter on the 7<sup>th</sup> of July 2017. Notice was issued to the following authorities/persons who were directed to be arrayed as respondents:

- (i) **Union of India**  
*through Secretary, Ministry of Railways  
Rail Bhawan, Rafi Marg,  
New Delhi.*
- (ii) **North-Eastern Railways**  
*through General Manager,  
Gorakhpur, Pin Code-273012.*
- (iii) **University of Delhi**  
*through Registrar,  
Vishvavidyalaya Marg,  
Delhi-110007.*
- (iv) **Mr. Vaibhav Shukla**  
*(address to be disclosed by Delhi University).*

3. The cognizance by us, as a result, came to be registered as the present writ petition and notice was issued on the following points :

*“(i) Issue notice to the respondents detailed in para 10 above to show cause as to the **measures which are in place and/or***

***proposed to be taken with regard to all disabled persons desirous of using the Indian Railways.***

***(ii) The action taken against the persons who were occupying the coach for the disabled in the Gorakhdham Express in the early hours of 5<sup>th</sup> July, 2017.***

***(iii) Mr. Jagjit Singh, learned senior standing counsel accepts notice on behalf of respondent nos. 1 and 2.***

***Mr. Mohinder J.S. Rupal, learned standing counsel for the University of Delhi accepts notice on behalf of respondent no.3.***

***(iv) Mr. S.K. Rungta, Senior Advocate and Dr. Anita Ghai, Professor, Jesus & Merry College (Mobile 9811154957) are appointed as Amicus Curiae in this matter.***

***(v) The respondents shall file a disability-wise status report within ten days from today setting out the facilities which are available to the measures which are in place and which are proposed to be taken.***

***(vi) A direction is issued to the University of Delhi to examine the possibilities of conducting an examination for Mr. Vaibhav Shukla to enable him to secure admission, if he qualifies for the course and session for which he had applied.”***

***(Emphasis supplied)***

4. In response to the notice to show cause, we have been ably assisted by Mr. Jagjit Singh, Id. Senior Standing Counsel for the respondent nos.1 and 2; Mr. Mohinder J.S. Rupal, Advocate for University of Delhi who has been led by Mr. Sudhir Nandrajog, Senior Advocate in making submissions, as well as by Mr. S.K. Rungta, Senior Advocate who was appointed as *amicus curiae* in the matter by us.

5. Mr. Vaibhav Shukla, the person affected, arrayed as respondent no.4 has also been appearing in the court and has filed affidavits stating the sequence of events which transpired in the early hours of the night intervening 4<sup>th</sup>/ 5<sup>th</sup> July, 2017 as well as his efforts to board the train.

6. So far as issues flagged by us at serial nos.(i), (ii) and (v) are concerned, the matter is being considered by the Committee of experts, appointed by this court, whose deliberations are being facilitated by the railways. These issues have been scheduled to be listed on the 5<sup>th</sup> of September 2017 when we shall examine the report of the Committee.

7. The present judgment is therefore, confined to consideration on the issue noted by us at serial no.(vi) above regarding the possibilities of conducting an entrance examination for Mr. Vaibhav Shukla to enable him, if he qualifies the same, to secure admission to the M.Phil (Sanskrit) course in the session for which he had applied in the physically disabled category.

**Factual background**

8. Mr. Vaibhav Shukla, a blind student of the Delhi University (respondent no.4 herein) has filed an affidavit dated 24<sup>th</sup> July, 2017 placing his predicament and the absolutely shocking experience which he has undergone on the night intervening 4<sup>th</sup>/5<sup>th</sup> July, 2017 due to the acts and omissions of the State.

9. Mr. Vaibhav Shukla was a student of the Delhi University (respondent no.4 herein). A bright student who, as per the admission form placed by the respondent before us, had secured 86.40% marks in the CBSE examination in 2012. He pursued his higher education in the Delhi University securing 81.91% marks in his B.A. (Hons.) (Sanskrit). Thereafter he pursued his M.A. (Sanskrit) (Program) from the St. Stephen's College, Delhi. In the hearing on 17<sup>th</sup> August, 2017, we were informed that, even in his M.A.(Sanskrit) examination, Mr. Vaibhav Shukla (respondent No.4 herein) has secured 69.2% marks, even though his marks for certain answers (internal included) have not been added therein.

In this background, the respondent no.4 had applied for undertaking the entrance examination for admission to the M.Phil (Sanskrit) course for 2017-18 in Delhi University under the reserved category for persons with disability.

10. As per the affidavit dated 26<sup>th</sup> July, 2017 filed by Delhi University respondent no.3, in the M.Phil (Sanskrit) course for the academic year 2017-18, there were only two seats reserved for candidates under the persons with disability category. Apart from respondent no.4, there were two other candidates being Lakshman Tiwari and Bikash Mandal, both being physically disabled. The reporting time for the entrance test for this course, which was scheduled for 5<sup>th</sup> July, 2017, was 07:00 a.m. The examination was scheduled from 08:00 a.m. to 10:00 a.m.

11. The University of Delhi has placed before us the application forms of the respondent no.4 and two other applicants, which disclose the following qualifications :

“Application for M.Phil in Sanskrit

xxx	xxx	xxx			
<b>Department</b>	Sanskrit	<b>Programme</b>	M.Phil	<b>Centre Choice</b>	Delhi
<b>Name</b>	Vaibhav Shukla		<b>Category</b>	Unreserved	
xxx	xxx	xxx			

**Educational Qualification**

<b>Examination Passed</b>	<b>Subject/Stream</b>	<b>Board/University</b>	<b>Year</b>	<b>Maximum Marks</b>	<b>Marks Obtained</b>	<b>Percentage/CGPA</b>
10+2	Art	CBSE	2012	500	432	86.40
B.A. (Hons)	Sanskrit	University of Delhi	2015	2200	1802	81.91
M.A.	Sanskrit	University of Delhi	2017	Result Awaited	Result Awaited	Not applicable”

“Application for M.Phil in Sanskrit

xxx	xxx	xxx			
<b>Department</b>	Sanskrit	<b>Programme</b>	M.Phil	<b>Centre Choice</b>	Varanasi
<b>Name</b>	Lakshman Tiwari		<b>Category</b>	Unreserved	
xxx	xxx	xxx			

**Educational Qualification**

<b>Examination Passed</b>	<b>Subject/Stream</b>	<b>Board/University</b>	<b>Year</b>	<b>Maximum Marks</b>	<b>Marks Obtained</b>	<b>Percentage/CGPA</b>
10+2	Art	B.S.E.B., Patna	2011	500	356	71.20
B.A. (Hons)	Sanskrit	Banaras Hindu University	2014	1000	725	72.50
M.A.	Sanskrit	Banaras Hindu University	2017	Result Awaited	Result Awaited	Not applicable
B.Ed	B.Ed	University of Delhi	2015	1000	625	62.50”

**“Application for M.Phil in Sanskrit**

xxx	xxx	xxx				
<b>Department</b>	Sanskrit	<b>Programme</b>	M.Phil	<b>Centre Choice</b>	Kolkata	
<b>Name</b>	Bikash Mandal	<b>Category</b>	SC			
xxx	xxx	xxx				

<b>Educational Qualification</b>						
<b>Examination Passed</b>	<b>Subject/Stream</b>	<b>Board/University</b>	<b>Year</b>	<b>Maximum Marks</b>	<b>Marks Obtained</b>	<b>Percentage/CGPA</b>
10+2	Art	WBCHSE	2010	500	293	58.60
B.A. (Hons)	Sanskrit	University of Gour Banga	2013	800	364	45.50
M.A.	Sanskrit	Pondicherry University	2017	1900	1505	79.21
B.Ed	B.Ed	University of Gour Banga	2014	1400	878	62.71”

12. The above manifests that despite his physical disability, respondent no.4 is highly accomplished.

13. The respondent no.4, who was in Unnao, had to reach Delhi for participating for this entrance examination. Vaibhav Shukla – respondent no.4, first booked his ticket in Farakka Express (Train No. 13483) from Unnao to Delhi vide PNR No.6402990607 in the 3<sup>rd</sup> A.C.

compartment. Even though he waited at the station up to the time of departure of the train from Unnao station on 3<sup>rd</sup> July, 2017, his waitlisted booking in this train could not be confirmed.

Immediately thereafter, Vaibhav Shukla booked his ticket in the Jharkhand Sampark Kranti (*Train No. 12825*) vide PNR No.6503369931 for the 4<sup>th</sup> of July 2017 which departs from Kanpur at 01:55 pm and reaches Delhi at 09:00 p.m. on the same date. He was assigned a confirmed reservation of Berth No.41 in Coach B-1, in this train. However, unfortunately, the Jharkhand Sampark Kranti did not reach the Kanpur Station up to 3:30 pm. No information of its expected time of arrival was given which created doubt in the mind of the respondent no.4 as to the possibility of his getting delayed in reaching his destination.

14. In this background, the respondent no.4 decided to catch the Gorakhdham Express (*Train No. 12555*) which was scheduled to depart from Unnao at 10:45 pm on 4<sup>th</sup> July, 2017 reaching Delhi in the early morning at 5:55 a.m. of the 5<sup>th</sup> of July 2017. To do so, Vaibhav Shukla rushed to the Unnao station from Kanpur Station with his driver. Unfortunately, even the Gorakhdham Express did not reach Unnao at its scheduled time of arrival.

15. The respondent no.4 discloses that while he was waiting for the Gorakhdham Express, at about 12:05 a.m., the Bihar Sampark Kranti (*Train No. 12656*) stopped at the Unnao Station even though it did not have a scheduled stop. All efforts of Vaibhav Shukla to board the Bihar Sampark Kranti were unsuccessful because the train was over

crowded and there was no room to board the train. When requested to help, the guard of the train expressed his inability to do so.

16. The Gorakhdham Express reached the Unnao station only at about 12:15 a.m., way beyond its scheduled time of arrival at 10:45 p.m. The respondent no.4, accompanied by his driver, went to board the coach reserved for the disabled which was located next to the engine. The reserved coach had been locked from inside. Despite every effort by the respondent no.4 as well as his driver, the door of the coach was not opened by the persons who had been permitted to occupy it. As a result, the respondent no.4 was physically prevented from boarding the reserved coach of the train, his only mode of transport to Delhi.

17. Despite having made every possible and reasonable effort to reach the examination centre, the respondent no.4 was thus actually physically prevented from reaching the Delhi University on time to appear in the entrance examination in the M.Phil (Sanskrit) Course scheduled on 5<sup>th</sup> July, 2017. It has to be stated that the complicity of the railways, an agency of the State, which failed to ensure the access to the reserved compartment to the respondent no.4, admittedly a disabled person who was holding a reservation for the same, is absolute.

18. The above factual narration is not disputed on behalf of the railways before us.

19. So how should this visually impaired person be treated? What relief can be given to him to ensure equality? Is this court helpless to do so?

Would not, in the given circumstances, it be permissible for this court to direct the University of Delhi – the respondent no.3 to hold the entrance examination for the physically impaired victim? The University of Delhi has staunchly opposed grant of any relief to the respondent no.4. It is therefore, necessary to consider the rights involved, the statutory regime and the contours of the jurisdiction of the writ court to mould relief.

**Recognized rights and entitlements of persons with disabilities**

20. The Constituent Assembly drafting the Constitution of India undertook not only a most difficult task of carving out an egalitarian society from the divergence provided by religions, communities, races, linguistic identities, beliefs and practices in India, but also recognized the marginalization of those with disabilities.

21. The significance attached in the Constitution, to non-discrimination and equality, is evident from the fact that Article 14 incorporates both expressions - “*equality before the law*” as well as “*equal protection of laws*”. The same is more positively and affirmatively recognized in Articles 15 to 18 of the Constitution of India. Article 15, in fact, attempts to eradicate discrimination against the citizens on the ground of religion, race, caste, sex and place of birth or any of them. Clause (3) of Article 15 prevents the State from making any special provision for women and children.

22. In consonance with right guaranteed by Article 14, Article 16 also provides equality of opportunity in matters of public employment.

Articles 16(1) and (2) of the Constitution give effect to the equality before law guaranteed by Article 14 and to the prohibition guaranteed by Article 15 (1) which is *not* relevant for the present consideration.

23. Article 16 of the Constitution of India reads thus :

***“16. Equality of opportunity in matters of public employment - (1) There shall be equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State.***

*(2) No citizen shall, on grounds only of religion, race, caste, sex, descent, place of birth, residence or any of them, be ineligible for, or discriminated against in respect or, any employment or office under the State.*

*(3) Nothing in this article shall prevent Parliament from making any law prescribing, in regard to a class or classes of employment or appointment to an office under the Government of, or any local or other authority within, a State or Union territory, any requirement as to residence within that State or Union territory prior to such employment or appointment.*

*(4) Nothing in this article shall prevent the State from making any provision for the reservation of appointments or posts in favor of any backward class of citizens which, in the opinion of the State, is not adequately represented in the services under the State.*

*(5) Nothing in this article shall affect the operation of any law which provides that the incumbent of an office in connection with the affairs of any religious or denominational institution or any member of the governing body thereof shall be a person professing a particular religion or belonging to a particular denomination.”*

24. Articles 38 to 46 are further Constitutional provisions which have a bearing on the rights guaranteed under Article 14, and would

also include rights of the disabled as they include a socially just society. In this regard, we may usefully extract Clause (1) of Article 38 which obligates the State to undertake the following:

***“38 (1) The State shall strive to promote the welfare of the people by securing and protecting as effectively as it may a social order in which justice, social, economic and political, shall inform all the institutions of the national life.***

xxx

xxx

xxx”

25. By virtue of the Constitution (Forty-fourth Amendment) Act, 1978, Clause (2) of Article 38 was inserted, which reads as follows:

***“(2) The State shall, in particular, strive to minimize the inequalities in income, and endeavor to eliminate inequalities in status, facilities and opportunities, not only amongst individuals but also amongst groups of people residing in different areas or engaged in different vocations.”***

*(Emphasis by us)*

26. So far as the present consideration is concerned, we may also extract Article 46 contained in Part IV of the Constitution, which reads as follows:

***“46. Promotion of educational and economic interests of Scheduled Castes, Scheduled Tribes and other weaker sections The State shall promote with special care the educational and economic interests of the weaker sections of the people, and, in particular, of the Scheduled Castes and the Scheduled Tribes, and shall protect them from social injustice and all forms of exploitation.”***

*(Emphasis by us)*

27. “Disability” has been defined as the absence of competent physical, intellectual, or moral powers; impairment of earning capacity; loss of physical function that reduces efficiency; inability to work. In legal terms, it is the incompetence to do any legal act. Disability may be absolute, which, while it continues, may be partial, as minority, lunacy and drunkenness. These conditions, that is, minority, insanity or lunacy constitute a legal disability. A “*physical disability*” is a disability or incapacity caused by physical defect or infirmity, or bodily imperfection, or mental weakness or alienation; as distinguished from civil disability, which relates to the civil status or condition of the person, and is imposed by the law.

Despite the Constitutional guarantee by Article 14 of equality before law and equal protection of the laws, it is a harsh reality that substantive equality has not been ensured to such disabled persons.

28. So far as the bar at which the rights of a disabled person has to be placed, some guidance is provided by the observations made by the Supreme Court in *Indra Sawhney vs. Union of India, AIR 1993 SC 477* wherein the Court was actually concerned with the matter of reservation in educational institutions and employment for persons from the Scheduled Castes/Scheduled Tribes Category and the Other Backward Caste category. While considering the issue of reservation, in para 95 of the judgment (penned by *B.P. Jeevan Reddy, J.*), it has been held as follows:

*“95. 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, but 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 reservations cut across the vertical reservations – what is called interlocking reservations. **To be more precise, suppose 3% o 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 S.C. category he will be placed in that quota by making necessary adjustments; similarly, if he belongs to open competition (O.C.) 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.***

*(Emphasis by us)*

The Supreme Court has therefore, equated the discrimination faced by the disabled at the same high level as that of the Scheduled Castes and Scheduled Tribes as well as the persons from the Other Backward Categories.

### **Statutory recognition of the rights of the disabled**

29. Concerned with the difficulties and discrimination faced by people with disabilities, the Economic and Social Commission for

Asian and Pacific Region (ESCAP) convened a meeting at Beijing from 1<sup>st</sup> – 5<sup>th</sup> December, 1992 regarding rights of such persons. In this meeting the “*Proclamation on the Full Participation of the People with Disabilities in the Asia and Pacific Region*” was adopted.

India was a participant at this meeting and signatory to the proclamation.

30. As a result, to give effect to spirit, intent and purpose of the aforesaid proclamation, a path breaking legislation so far as right to persons with disability are concerned, “*The Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995*” was enacted by the Parliament which came into force with effect from 7<sup>th</sup> February, 1996.

31. Over a period of time, the conceptual understating of the rights of persons with disabilities has become more clear. There has also been change internationally in the approach to handling the issues concerning with persons with disabilities.

32. On the 13<sup>th</sup> of December 2006, the United Nations adopted the “*Convention on the Rights of Persons with Disabilities*” and its Optional Protocol to be followed by the States parties for empowerment of persons with disabilities. India has also signed the said Convention of the United Nations and subsequently ratified the same on 1<sup>st</sup> October, 2007. This Convention came into effect on 3<sup>rd</sup> May, 2008. India thereby acquired an international obligation to comply with the mandate of the said Convention, which in fact, required a drastic improvements over the legislation of 1995.

33. We may usefully extract hereunder the general principles recognized in Article 3 of the “*Convention on the Rights of Persons with Disabilities*” of the United Nations which read as follows:

*“(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;”*

*(Emphasis Supplied)*

34. To effectuate the principles laid down in the above Convention, the Rights of Persons with Disability Bill, 2014 was introduced in the Rajya Sabha to give effect to the abovesaid Convention of the United Nations. The Bill could be passed by both the Houses of the Parliament only in December, 2016. The President of India gave his assent to this Bill on the 27<sup>th</sup> of December 2016. Consequently, the Rights of Persons with Disabilities Act, 2016 (Act 49 of 2016) came into force with effect from 28<sup>th</sup> December, 2016.

35. It is noteworthy that the preamble to the *Rights of Persons with Disabilities Act, 2016* (“*Act of 2016*” hereafter) extracts the above principles laid down by the United Nations Convention; notes that India is a signatory to the Convention; that it has ratified the same on 1<sup>st</sup> October, 2007 and that the legislation was a step towards implementation of the United Nations Convention.

36. First and foremost, it is essential to extract the relevant provisions of the Act of 2016, which have bearing on the issues under consideration herein. The definitions of the expressions “*discrimination*”, “*high support*” and “*reasonable accommodation*” contained in the enactment in this important legislation deserve to be considered *in extenso* and read as follows :

***“2(h) “discrimination” in relation to disability, means any distinction, exclusion, restriction on the basis of disability which is the purpose or effect of impairing or nullifying the recognition, enjoyment or exercise on an equal basis with others of all human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field and includes all forms of discrimination and denial of reasonable accommodation;***

xxx xxx xxx

***(l) “high support” means an intensive support, physical, psychological and otherwise, which may be required by a person with benchmark disability for daily activities, to take independent and informed decision to access facilities and participating in all areas of life including education, employment, family and community life and treatment and therapy;***

xxx xxx xxx

***(y) “reasonable accommodation” means necessary and appropriate modification and adjustments, without imposing a disproportionate or undue burden in a particular case, to ensure to persons with disabilities the enjoyment or exercise of rights equally with others;”***

*(Emphasis supplied)*

37. We may usefully note the relevant provisions of the enactment, so far as duties of educational institutions are concerned:

***“16. Duty of educational institutions.***

*The appropriate Government and the local authorities shall endeavour that all educational institutions funded or recognised by them provide inclusive education to the children with disabilities and towards that end shall—*

***(i) admit them without discrimination and provide education and opportunities for sports and recreation activities equally with others;***

*(ii) make building, campus and various facilities accessible;*

*(iii) provide reasonable accommodation according to the individual's requirements;*

***(iv) provide necessary support individualised or otherwise in environments that maximise academic and social development consistent with the goal of full inclusion;***

*(v) ensure that the education to persons who are blind or deaf or both is imparted in the most appropriate languages and modes and means of communication;*

*vi) detect specific learning disabilities in children at the earliest and take suitable pedagogical and other measures to overcome them;*

*(vii) monitor participation, progress in terms of attainment levels and completion of education in respect of every student with disability;*

*(viii) provide transportation facilities to the children with disabilities and also the attendant of the children with disabilities having high support needs.*

*(Emphasis supplied)*

38. So far as mode of transport and access thereto of the disabled is concerned, this legislation recognizes the responsibility of the State to ensure the same in the following terms:

*“40. The Central Government shall, in consultation with the Chief Commissioner, formulate rules for persons with disabilities laying down the standards of accessibility for the physical environment, transportation, information and communications, including appropriate technologies and systems, and other facilities and services provided to the public in urban and rural areas.*

*41. (1) The appropriate Government shall take suitable measures to provide,—*

*(a) facilities for persons with disabilities at bus stops, railway stations and airports conforming to the accessibility standards relating to parking spaces, toilets, ticketing counters and ticketing machines;*

*(b) access to all modes of transport that conform the design standards, including retrofitting old modes of transport, wherever technically feasible and safe for persons with disabilities, economically viable and without entailing major structural changes in design;*

*(c) accessible roads to address mobility necessary for persons with disabilities.*

*(2) The appropriate Government shall develop schemes programmes to promote the personal mobility of persons with disabilities at affordable cost to provide for,—*

*(a) incentives and concessions;*

*(b) retrofitting of vehicles; and  
(c) personal mobility assistance.”*

*(Emphasis supplied)*

39. The statute therefore, specifically recognizes the entitlement of persons with disability to equal opportunity to personal mobility and casts an obligation upon the State to provide such facilities for persons with disabilities at railway stations to ensure such accessibility standards to all modes of transport as would provide a level playing field to the disabled so far as transport is concerned.

40. In this regard, we may note that Section 16 of the enactment appears in Chapter III entitled “**Education**”, whereas Section 41 of the enactment appears in Chapter VIII entitled “**Duties and Responsibilities of Appropriate Governments**”.

41. The law is crystallized and no longer *res integra* that all provisions of an enactment have to be read together to give effect to each of the provisions. It is a rule of construction that each provision has to be so read, that life can be infused in another provision of the same enactment and the other is not rendered otiose.

42. Useful reference in this regard may be made to **(1964) 3 SCR 297 State of AP v. Cheemalapati Ganeswara Rao** where *Mudholkar, J.* succinctly stated thus:

*“26...it is a rule of construction that all the provisions of a statute are to be read together and given effect to and that it is therefore, the duty of the Court to construe a statute harmoniously...”*

43. This was also held in *(2001) 8 SCC 540 Anwar Hasan Khan v. Mohd Shafi* in the following terms:

*“8. ... The statute or rules made thereunder should be read as a whole and one provision should be construed with to the other provision to make the provision consistent with the object sought to be achieved. The well-known principle of harmonious construction is that effect should be given to all the provisions and a construction that reduces one of the provisions to a “dead letter” is not harmonious construction.”*

44. What flows from the rules of construction and interpretation of statutes is not only that the provisions are to be read together when there is an inconsistency to give effect to both of those provisions, but also that when there are two separate provisions under the same act operating in different domains, both are to be read in tandem to give effect to each of them. These statutory provisions read together recognize the necessity of making accommodation for the disabled to access transport enabling their right to education which stands recognized constitutionally and enforced statutorily.

45. Therefore, we are of the view that the legal right of a disabled person under Section 16 as well as Section 41 of the act has to be read together to give effect to both of them and in essence to the objective of the Act and it is incumbent upon the State as well as the University of Delhi to ensure that such rights were not infringed.

46. The seriousness attached by the Legislature to the rights guaranteed to the disabled by the legislation is reinforced by the incorporation of Section 89 which appears in Chapter XVI of the *Rights of Persons with Disabilities Act, 2016* captioned as “Offences

*and Penalties*” which provides for punishment for contravention of the provisions of the Act or rules or regulations thereunder. Section 89 reads thus:

***“89. Punishment for contravention of provisions of Act or rules or regulations made thereunder.***

*Any person who contravenes any of the provisions of this Act, or of any rule made thereunder shall for first contravention be punishable with fine which may extend to ten thousand rupees and for any subsequent contravention with fine which shall not be less than fifty thousand rupees but which may extend to five lakh rupees.”*

**Rights violated**

47. In the present case, Vaibhav Shukla - respondent No.4, has been physically prevented from boarding the only means of transport available to him despite having been made efforts to reach the examination hall in time. Vaibhav Shukla, though holding a valid ticket and reservation, was physically prevented from getting into the compartment of the Gorakhdam Express which was reserved for the persons with disability. There has thus been a complete denial of the Constitutional right guaranteed to him under Article 14 of the Constitution as well as his statutory rights under the *Rights of Persons with Disabilities Act, 2016*. In fact, by failing to ensure that on 5<sup>th</sup> July, 2017, at the Unnao Railway Station, Vaibhav Shukla – respondent no.4 a disabled person could not actually access the carriage reserved for persons with disability, the respondents have failed in their statutory duties resulting in prevention of access to the only mode of transport available to the disabled person to reach the

examination center at the scheduled time. The present case has to be examined keeping this legal position in mind.

**Stand of the University of Delhi – reliance on Bulletin of Information**

48. The University of Delhi – respondent no.3 has staunchly opposed grant of any relief at all to Vaibhav Shukla. Appearing for this respondent, Mr. Sudhir Nandrajog, Id. Senior Counsel has urged that the schedule fixed in the Bulletin of Information for the admission to the courses in the Delhi University for the year 2017-2018 was sacrosanct.

49. The opposition to grant any relief to Mr. Vaibhav Shukla in the present matter on behalf of Delhi University is premised on the arguments of Mr. Sudhir Nandrajog, Id. Senior Counsel that it would prejudice the interest of the persons who had appeared in the entrance examination as per the schedule notified in the Bulletin of Information and may adversely affect their ranking due to the case of Vaibhav Shukla.

50. Id. Senior Counsel would contend that there may be hundreds of such other instances where similarly situated students could not appear due to unavoidable situations and they would require to be given a similar opportunity to ensure a level playing field.

51. It is further contended that to judge *inter se* merit, the candidates have to be assessed on the same entrance examination. Mr. Nandrajog would submit that the University cannot repeat the entrance

test for any candidate again because it is necessary to assess all the candidates on the same yard stick.

52. It is lastly urged that if a fresh entrance test is conducted, it will have a cascading effect upon other and future courses also and will affect the University system as it would create a precedent for the future so that any candidate who fails to meet the timeline for an examination for any reason, would have to be given a second opportunity, premised on the order to this effect in the present case.

**Reliance on the Bulletin of Information – Whether prescription therein treated as sacrosanct by the Delhi University?**

53. Let us examine the prescription made in this Bulletin of Information issue wise. It contains stipulation regarding mode and manner of selection, eligibility, schedules, etc.

54. Mr. Sudhir Nandrajog, Id. Senior Counsel for Delhi University has heavily relied on the declarations and information given in the Bulletin of Information. Amongst others, our attention is drawn to the following disclosure :

*“The admission of the candidates for M.Phil programme is governed by the Ordinance VI, VI-A, VI-A(I) and VI-A-(2) of the University of Delhi.”*

55. Id. Senior Counsel also relies on the following disclaimer notified in the said Bulletin of Information :

*“Disclaimer : This Bulletin of Information is a compendium of inputs collected and collated from various departments, faculties, institutions and related sources. Due care has been taken to reproduce the officially adopted*

*texts as well as verify the authenticity of the content of this Bulletin, to the extent possible.*

***It should, in no case, be construed as a warranty, express or implied, regarding completeness and accuracy of the information so provided, as a ready reference.***

*The University of Delhi disclaims any liability towards any individual for any loss or damage caused to him/her arising out of any action taken on the basis of this information, which may be due to inadvertent omissions, clerical errors or for any other reason whatsoever.*

***The University reserves the right to suitably modify, update or delete any part of the Bulletin without any prior notice.”***  
*(Emphasis by us)*

56. The manner of admission is prescribed in the Bulletin as follows :

**“1.2.1 ONLINE REGISTRATION**

xxx

xxx

xxx

***iv. Admission to M.Phil/Ph.D programme is through written examination, followed by an interview ...”***  
*(Emphasis by us)*

57. So far as admission to the M.Phil course is concerned, the Bulletin of Information provides the eligibility criteria in clauses 2. Relaxations/concessions are prescribed in Clause 2.3. However, reservations are prescribed in Clause 2.4 of the same. We extract the relevant portion of the Bulletin of Information which reads as follows:

**“2. Eligibility Criteria**

xxx

xxx

xxx

### 2.1. **Qualifying examinations**

xxx

xxx

xxx

### 2.2 **Equivalence criteria**

xxx

xxx

xxx

### **Relaxations/Concessions**

*The candidate belonging to the Scheduled Caste, Schedule Tribe and PwD shall be charged written examination fee at concessional rates.*

*The candidates belonging to the Scheduled Caste (SC), Scheduled Tribes (ST), Other Backward Classes (Non- Creamy layer as per Central list) and **Persons with Physical Disability (PwD)** shall have 5% relaxation in the minimum marks requirement in the eligibility criterion for admission to M.Phil/Ph.D Programmes”*

*(Emphasis supplied)*

58. From reading of the above Clause 2.3.2, it appears that a person with physical disability is entitled to 5% relaxation in the minimum marks requirement in the eligibility criterion for admission to the M.Phil/Ph.D Programme.

59. So far as the eligibility criteria for admission to M.Phil programme is concerned, the same is provided in Annexure VII to the Bulletin of Information and reads as follows :

**“Annexure-VII : Eligibility conditions for admission to M.Phil. Programme**

<b>FACULTY OF ARTS</b>		
<b>S.No</b>	<b>Department</b>	<b>Eligibility</b>
xxx	xxx	xxx
12.	Sanskrit	A candidate must have obtained a <b>Master's Degree (M.A in Sanskrit) of the University of Delhi or any other recognized University as approved by the University of Delhi. She/he must have obtained a minimum of 55% marks or equivalent grading in the Master's Degree.</b>

60. Mr. S.K. Rungta, Id. *amicus curiae* has drawn our attention to the prescription for M.Phil (Linguistics) in Annexure VII of the Bulletin of Information which reads as follows :

<b>"FACULTY OF ARTS</b>		
<b>S.No</b>	<b>Department</b>	<b>Eligibility</b>
xxx	xxx	xxx
6.	Linguistic	<b>Good academic record with a first or a high second class master's Degree in Linguistics of the University of Delhi or an examination recognized as equivalent. Other conditions as per Ordinance VI-B. Admission to M.Phil., would be on the basis of a merit comprising</b>

		<p><b><i>an Entrance Test, Interview and percentage in the last qualification examination considered for eligibility in the rationale of 30% weightage for the eligible qualification, 15% for interview and 55% for written test. Only those students who score 25 out of 55 marks or 45% marks in M.Phil., Entrance Examination will be called for interview.</i></b></p> <p><i>Note: High second class shall mean at least 55% marks in aggregate.”</i></p>
--	--	--

(Emphasis by us)

61. The prescription in Annexure VII read with clause 2.3.2 of Bulletin of Information would show that only 5% relaxation in the minimum marks requirement in the eligibility criterion i.e. the Masters examination for admission to the M.Phil course was permissible under the Bulletin of Information.

62. It is noteworthy that the Bulletin of Information did not prescribe any entrance examination for the admissions to the M.Phil (Sanskrit) course. The Bulletin of Information also does not stipulate any minimum marks or percentage in an entrance exam for admission to M.Phil (Sanskrit) course.

63. We also find that the prescription of passing marks for the entrance examination was actually made only by the decision dated 7<sup>th</sup>

July, 2017 by a Departmental Committee consisting of the Head of Department of Sanskrit in the Delhi University and its convener on the 7<sup>th</sup> July, 2017. This decision was taken after the examination had been conducted. The respondents have placed before us the letter dated 7<sup>th</sup> July, 2017 issued by the Sanskrit Department (after the conduct of entrance examination on the 5<sup>th</sup> of July 2017) which reads as follows :

***“Eligibility criteria for M.Phil. (Sanskrit) Admission for the Session 2017-18***

***Department of Sanskrit***

*University of Delhi  
Delhi-110007*

***Admission Information 2017-18***

*Applications are invited for admission in M.Phil (Sanskrit) for the academic session 2017-18, Total Seats – 25 (General Category – 13, SC – 04, ST – 02, OBC – 06).*

***Eligibility Criteria***

- 1. A candidate must have obtained a Master’s Degree (M.A. Sanskrit) of the University of Delhi or any other recognized University as approved by the University of Delhi. She/he must have obtained a minimum of 55% marks or equivalent grading in the Master’s Degree. Reservation as per the rules of the University of Delhi.*
- 2. M.Phil. admission will be done on the basis of an **Entrance Test (400 Marks)** and **Interview (20 Marks)**.*
- 3. Minimum pass marks in the Entrance Test will be 45% for the UR category, 40% for the OBC category and reservation as per the rules of the University of Delhi.*

4. *The candidates who have passed the Entrance Test will be eligible for appearing the interview.”*

64. As per para 1 of the letter dated 7<sup>th</sup> July, 2017, the Sanskrit Department has mandated that in order to be eligible, a candidate must have obtained a Master’s Degree (M.A. Sanskrit) of the University of Delhi and secured minimum of 55% marks or equivalent grading in the Master’s Degree.

65. Para 3 of the above decision would show that the respondents had prescribed minimum pass marks of 45% for the entrance test for the candidates of un-reserved category and 40% for the OBC category and as well as for the other reserved categories.

66. During the pendency of the present writ petition, the Department of Sanskrit of the University of Delhi issued yet another circular dated 12<sup>th</sup> July, 2017 which reads as follows :

***“Department of  
Sanskrit University of  
Delhi Delhi – 110007***

***Admission Information 2017-18***

***Revised Pass marks in M.Phil. (Sanskrit) Entrance Test  
(2017-18)***

1. *40% for UR category*
2. *36% for OBC Category*
3. *Reservation for SC/ST/PH as per University of the Delhi Rules.”*

67. Thus on 12<sup>th</sup> July, 2017 the respondents have brought down the pass percentage drastically from the declared standard to the following extent :

- “1. 40% for UR category
2. 36% for OBC category
3. 16.75% for disabled.”

Arguing before us, Mr. Rungta, *Id. amicus curiae* has strongly assailed the jurisdiction to lay down these conditions after the entrance exam was over. It is also urged that on the own showing of the University, the stipulation in the Bulletin of Information were not sacrosanct. It is further submitted that standards have been themselves lowered and conditions modified to meet situations. The submission is that this step must be undertaken to ensure justice to and the rights of the disabled in the present case.

### **Discussion**

68. In support of the submission that the Delhi University was authorized and empowered to reduce the eligibility marks so far as persons belonging to SC/ST category as well as the persons with disability were concerned, Mr. Sudhir Nandrajog, learned Senior Counsel has placed reliance on Ordinance II of the Delhi University Ordinance which casts an obligation on all colleges to fill up seats in the SC/ST category.

69. So far as persons with disability are concerned, reliance is placed on the provision of Section 39 of the Persons with Disability Act. Delhi University has placed before us a Circular dated 4<sup>th</sup>-6<sup>th</sup>

July, 2015 which prescribed the modality for implementation of reservation for persons with disability. The relevant extract whereof reads as follows :

*“In supersession of this office letter no. Aca.1/2012-13/354/PWD dated 30<sup>th</sup> April, 2012, the following modalities for implementation of **reservation for Persons with Disabilities (PWD)** for admission to various Under-graduate/Post-graduate Courses and **M.Phil. Programmes** in the University/Colleges, approved by the Competent Authorities, are hereby notified for necessary compliance by all concerned.*

*1. **Delhi University** and its constituent/affiliated colleges/institutions shall reserve not less than **three percent seats in admissions** for persons with disabilities (hereinafter called **PWD**) as defined in the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act 1995 (No.1 of 1996) (hereinafter called the **PWD Act**).*

*2. This reservation shall be applicable irrespective of the method and mode of admissions, such as: Direct Admission, through Entrance Test, Interview etc.*

xxx

xxx

xxx

*5. As per Section 39 of the PWD Act, it is a **statutory obligation on the part of the University** and its constituent/affiliated colleges/institutions to till all seats reserved for Persons With Disabilities.*

xxx

xxx

xxx

*7. **Relaxation to the extent of 5% in the minimum marks will be given to the candidates** belonging to persons with disabilities (PWD) category to determine their eligibility and merit for admission to the course concerned.*

*8. **In case, after giving 5% relaxation, the reserved seats still remain vacant, further relaxation would be given***

*to the extent required in order to fill up all the reserved seats.*

*9. It should be ensured that at least three percent persons with disabilities are admitted every year in every college/institution and in every department of the University if such PWD candidates are available as per norms prescribed above.”*

*(Emphasis by us)*

70. It has been submitted by Mr. Sudhir Nandrajog, Id. Senior Counsel for Delhi University that power to make admissions to the M.Phil programme is governed by the Ordinance VI of the University of Delhi to the Bulletin of Information. It is submitted that the M.Phil programmes conducted by the departments of the Delhi University are administered by the M.Phil committee prescribed under clause 3 of the Ordinance VI of the University, the relevant extract whereof reads as follows :

*“3. Subject to the over-all control of the Academic Council, the M.Phil. Programme in a Department will be administered by an M.Phil. Committee consisting of the Head of the Department, all Professors in the Department and such other teachers (including teachers from other Departments wherever necessary) recommended by the Dean of the Faculty, on the advice of the Head of the Department, and approved by the Vice-Chancellor. However, the total membership of the Committee shall not exceed 15...”*

*(Emphasis by us)*

71. Learned senior counsel has also argued that the circular dated 7<sup>th</sup> July, 2017 did not apply to reserved categories. If this submission was accepted, then, so far as admission to the M.Phil (Sanskrit) course

was concerned, there were no benchmarks for the reserved categories of SC/ST/Disabled persons at all.

72. The above narration does support the contention of Delhi University that in order to encourage and fill up the seats for reserved category of persons belonging to SC/ST category and persons with disability, the respondents do not follow the prescription of minimum pass marks in the entrance examination. However, a reading of the Bulletin of Information *vis-a-vis* circular dated 7<sup>th</sup> July, 2017 ; 15<sup>th</sup> June, 2017 and 12<sup>th</sup> July, 2017 would show that the respondents have not treated the prescriptions in the Bulletin of Information as sacrosanct and have effected modification.

73. Mr. S.K. Rungta has further pointed out that the Delhi University admittedly had not prescribed cut off for the candidates of SC/ST category or the persons with disability. But so far as the persons in the General and OBC Categories are concerned, the Delhi University had no power to relax the standards.

Yet it has done so.

74. It is argued by Mr. S.K. Rungta, *Id. amicus curiae* that Delhi University did not possess the power to relax the minimum qualifying marks to entitle a student who did not secure the prescribed minimum marks in the entrance examination to be called for the interview. In this regard *Id. Senior Counsel* has pointed out that prescription for the Department of Linguistics prescribes that securing a minimum of 45% marks in the M.Phil entrance examination was a *sine qua non* for being called for the interview.

75. So far as the entrance examination for admission to the M.Phil (Sanskrit) was concerned, if the benchmark for eligibility to be called for interview was mandated as 45% as notified even on 7<sup>th</sup> July, 2017, as per the result declared by the Delhi University it only had 13 successful candidates against the 13 available seats. In such eventuality, the interview would have been redundant. Mr. Rungta contends that it appears that purely to generate more choice, respondents have on 12<sup>th</sup> July, 2017 lowered the standards for general category students to 40%.

76. Id. Senior Counsel urges that on the same principle, against the reserved category seats for the disabled category, only two candidates took the entrance examination. Again only two reserved seats are available. On the same analogy as applied for lowering standards by the decision dated 17<sup>th</sup> July, 2017 for general category candidates merely to make a choice for selection available, the respondents must permit Mr. Vaibhav Shukla to participate in an entrance examination to make available such choice in the reserved category for the disabled.

77. Both sides have relied on the Bulletin of Information for admission to M.Phil/Ph.d (Programme) 2017-2018.

78. Mr. S.K. Rungta, Id. Senior Counsel as *amicus curiae* contended that respondents have not treated the stipulations contained in the said Bulletin of information as sacrosanct.

79. Mr. Rungta points out that on the 7<sup>th</sup> of July 2017, the date when this court took *suo motu* cognizance and issued notice, only the entrance examination had been conducted and the admission process

had not been finalized. A submission is made that even on the date when the hearing commenced, the result of the M.A. examinations of the candidates had not been declared by the Delhi University. This declaration was essential inasmuch as Bulletin of Information stipulated a minimum eligibility percentage in the qualifying examination, which so far as admission to the M.Phil (Programme) was concerned, was the M.A. course.

80. So we are called upon to also consider the submissions regarding practical difficulties in holding an examination for respondent no.4 or prejudice to any other disabled candidate who undertook the examination on the 5<sup>th</sup> of July 2017. Mr. S.K. Rungta, *ld. amicus curiae* informs us that, at any point of time, for all examinations conducted by it, the University of Delhi prepares two sets of questions of the same standard and both of the same difficulty quotient level. Either question paper can be used for the purposes of the conduct of a particular examination. This position is not disputed on behalf of the University of Delhi.

81. Mr. Rungta, has therefore, rightly pointed out that so far as entrance examination for the M.Phil (Sanskrit) course is concerned, the University – the respondent no.3 has available with it the alternative question paper which has not been utilized and which would have been maintained by it in sealed cover. This question paper is available with the University of Delhi for taking the test of Mr. Vaibhav Shukla.

This position has also not been disputed before us.

Therefore, no inconvenience results to the Delhi University having to prepare a fresh question paper results, if this court was to direct a fresh entrance examination.

82. We now examine the aspect of prejudice, if any, to the other two disabled candidates who took the entrance examination or to any other candidate who had applied in the reserved category for the disabled.

83. The two question papers for the entrance examination to the M.Phil (Sanskrit) course are admittedly of the same difficulty levels. The two disabled candidates who took the entrance exam have been tested on one of these two papers. The other paper on which the respondent no.4 would thus be tested is of the same standard of difficulty as these two candidates. Neither any advantage would result to Vaibhav Shukla, nor any disadvantage would result to the other two candidates.

84. So far as two other physically disabled candidates were concerned, the result shows that while Mr. Lakshman Tiwari secured 70 marks and was placed at rank 112, Mr. Bikash Mandal secured 67 marks out of 400 marks and was placed at rank 117.

85. Furthermore, as already noted that on the 7<sup>th</sup> of July 2017, on which date we had issued notice to show cause, was way before even the date on which the result of the entrance examination had been declared.

86. So far as impact of a direction to conduct an examination for respondent no.4 on any schedule is concerned, we have noted above that on the 7<sup>th</sup> of July 2017, when we had taken *suo motu cognizance*

and issued notice as well as thereafter when we commenced hearing on this issue, the result of the M.A. final exams had not been declared by even the Delhi University. Even on the 17<sup>th</sup> of August 2017, when we reserved orders, University of Delhi was not able to inform this court as to whether the only two disabled candidates who had taken the admission test, had even made the eligibility criteria. Therefore, other than a test having been held, the matter of admissions has not proceeded. The interviews are yet to be conducted and selection of general candidates is yet to be effected. The admission process is still inchoate. Certainly no prejudice results to the candidates who have taken the examination, so far as outcome of the examination is concerned.

87. With regard to the apprehension that the present case would be cited as a precedent in future, we had made it very clear that it was purely in the peculiar facts and circumstances of this case wherein the Constitutional and statutory rights of a disabled person have been infringed by physical obstruction to his accessing his reserved mode of transport and thereby prevented him from reaching the examination venue.

We make it specifically clear that so far as grant of any relief to the Vaibhav Shukla, respondent no.4 is concerned, the same shall not be cited as a precedent.

88. During the course of hearings, we had queried Mr. J.S. Rupal, Id. counsel for Delhi University as to the number of disabled candidates who had applied for taking M.Phil (Sanskrit) examination for the year 2017 – 2018 Session and those who were prevented from

taking their examination. Ld. counsel for the University of Delhi was unable to point out single instance

89. Also no representation has been received by the University of Delhi from any candidate, reserved or unreserved general category, seeking to participate in any entrance examination for this course.

90. By our order dated 10<sup>th</sup> August, 2017, we had directed that the respondents shall not finalize the admission to the course of M.Phil (Sanskrit) for Academic Sessions 2017 till further order of this court. Therefore, rights of no person have crystallized so far.

91. On behalf of respondent no.4 Vaibhav Shukla, Mr. S.K. Rungta, Ld. Senior Counsel has submitted that he does not wish to seek any relaxation and is willing to give undertaking to this court that if the respondent no.4 does not secure marks as many marks as those secured by the last candidate in the general category, he shall not seek admission to the M.Phil (Sanskrit) course. The respondent no.4 is thereby willing to forsake the right to be considered amongst the disabled candidates.

We are merely noting this submission on behalf of Vaibhav Shukla without accepting either the above statement or the offered undertaking for the reasons noted herein. A statutory responsibility was cast under Section 3(5) of the Act of 2016 on all authorities to ensure equality and non-discrimination and also to ensure reasonable accommodation to the disabled persons as the petitioner.

92. The statute recognizes the importance of ensuring non-discrimination and equality in making all facilities acceptable to the disabled in Section 40 as well as Section 41(1) of the said enactment.

Section 41(1) has used the expression “*shall*” and Section 41(1)(b) has used the expression “*access to all modes of transport*”. Consequently, the obstruction to respondent no.4 in accessing the reserved compartment of the train was in violation of his Constitutional right to equality and non-discrimination and breach of statutory duty of the respondent.

93. Given the fact that equality can be ensured to the petitioner without impacting the rights of any other person and without in any manner inconveniencing the University, we are of the view that the petitioner is entitled to be given a fair opportunity to undertake an entrance exam for the M.Phil (Sanskrit) course for the academic year 2017-18.

94. It is the judicial duty of this court to issue directions to ensure such rights inasmuch as the case manifests a systemic failure to comply with the mandate of the rights of persons with the Rights of Persons with Disabilities Act, 2016.

95. Mr. Sudhir Nandrajog, Id. Senior Counsel for Delhi University has placed reliance on the pronouncement of the Supreme Court reported at **2006 (12) SCALE 203, Minor Sunil Oraon Tr. Guardian & Ors. v. C.B.S.E. & Ors.** to contend that the direction, if any, made by the court could tantamount to disobedience of the statute to which the University of Delhi owes its existence and that such direction would be destructive of the rule of law.

96. There can be no dispute to the proposition that the University cannot be directed to disobey the statute to which it owes its existence or the regulations made by the University itself. However, as the

above discussion would show, the respondents have failed to point out the provision which they would violate, if a test was conducted for the respondent no.4.

97. So far as the pronouncement in *Minor Sunil Oraon Tr. Guardian* is concerned, it was related to the case of students of unauthorized schools being permitted to appear at the C.B.S.E. examination. The court was concerned with the issue of educational institutions admitting the students without the requisite recognition or affiliation. Despite undertakings to rectify the deficiencies, the schools in question non challantly continued with the violations. It was by an interim order by a Id. Single Judge of the High Court that the students of the Board classes X and XII were permitted to provisionally appear in the examinations subject to the decision in the case. It was in these facts that the court observed that declaration of the result would tantamount to violating the law. This decision has no bearing in the present case.

98. Again in the second pronouncement relied upon by Mr. Sudhir Nandrajog, Id. Senior Counsel for Delhi University, reported at (2008) (12) SCALE 356, *Mahatma Gandhi University & Anr. V. GIS Jose & Ors.*, the court was concerned with irregular admission of the respondent no.1 despite not securing the minimum cut-off marks in her qualifying examination. By the time this was pointed out, the student had participated in the first and second semester examination. It was held that the student did not have a basic qualification for admission to the course in accordance with the University regulations. It was also held that as her initial admission itself was in violation of

the admission rules of the University, the same had to be cancelled. Under orders of the court, she had been permitted to take the semester examinations. The college, where the student was admitted in breach of all possible rules, allowed her not only to complete the course but also to write the examination which was totally illegal. The matter was carried by the University in appeal to the Supreme Court. In para 9 of the pronouncement, the Supreme Court observed that misplaced sympathies should not have been shown total breach of the Rules.

This case does not deal with a fact situation as the present where Constitutional and statutory rights were being weighed against any rules.

99. In fact, even after the entrance examination of 5<sup>th</sup> of May 2017, the University of Delhi exercised discretion to lower standards for candidates of general category without any justification. It has taken a stand that under the applicable ordinances, no benchmarks are prescribed for candidates in the SC/ST and disabled categories.

100. As per the Bulletin of Information, so far as persons with disabilities and Foreign Nationals are concerned, “*supernumerary seats*” are required to be made available mandatorily as per the University Rules. We therefore, see no reason as to why judicial discretion ought not to be exercised in favour of the respondent no.4 in these circumstances.

101. In the present case, the results of the entrance exam show that performance of the general category candidates is abysmal. Yet every



*the purpose for which and the person or authority against whom it can be exercised. It can issue writs in the nature of prerogative writs as understood in England; but the scope of those writs also is widened by the use of the expression “nature”, for the said expression does not equate the writs that can be issued in India with those in England, but only draws an analogy from them. That apart, High Courts can also issue directions, orders or writs other than the prerogative writs. It enables the High Courts to mould the reliefs to meet the peculiar and complicated requirements of this country. ...”*

*(Emphasis by us)*

105. In this regard, in (1997) 9 SCC 377, *Air India Statutory Corporation & Ors. v. United Labour Union & Ors.*, it was noted that Article 226 of the Constitution of India casts no fetters on the High Court except self-imposed limitations. It was observed as follows :

*“59. The Founding Fathers placed no limitation or fetters on the power of the High Court under Article 226 of the Constitution except self-imposed limitations. The arm of the Court is long enough to reach injustice wherever it is found. The Court as sentinel on the qui vive is to mete out justice in given facts. ...”*

*(Emphasis by us)*

106. We may usefully also refer to the elucidation of the jurisdiction of the writ court in the Constitution bench pronouncement of the Supreme Court reported at *AIR 1962 SC 1044, Calcutta Gas Company (Proprietary) Ltd. v. State of W.B.* In this regard, the observations of the court are thus :

*“5. ... Article 226 confers a very wide power on the High Court to issue directions and writs of the nature mentioned therein for the enforcement of any of the rights conferred by*

*Part III or for any other purpose. It is, therefore, clear that persons other than those claiming fundamental rights can also approach the court seeking a relief thereunder. The article in terms does not describe the classes of persons entitled to apply thereunder; but it is implicit in the exercise of the extraordinary jurisdiction that the relief asked for must be one to enforce a legal right. In State of Orissa v. Madan Gopal Rungta [(1952) SCR 28] this Court has ruled that the existence of the right is the foundation of the exercise of jurisdiction of the court under Article 226 of the Constitution. ...”*

*(Emphasis by us)*

107. In the instant case, we have dwelt at length about the rights of the respondent no.4 which stand infringed.

108. The delineation of the principles in the pronouncement reported at *AIR 1980 SC 1037, Shiv Shankar Dal Mills v. State of Haryana* also empowers this court to mould relief in the facts and circumstances of the case in exercise of jurisdiction under Article 226 of the Constitution of India in the following terms :

*“6. Article 226 grants an extraordinary remedy which is essentially discretionary, although founded on legal injury. It is perfectly open for the court, exercising this flexible power, to pass such order as public interest dictates and equity projects:*

*“Courts of equity may, and frequently do, go much further both to give and withhold relief in furtherance of the public interest than they are accustomed to go where only private interests are involved. Accordingly, the granting or withholding of relief may properly be dependent upon considerations as of public interest...[27 Am Jur 2/d Equity, p. 626]”*

*(Emphasis by us)*

109. In a recent judgment rendered by the Supreme Court reported at **(2014) 1 SCC 188, Badshah v. Urmila Badshah Godse**, the court emphasized the duty of the court in being responsive to the social reality which is constantly changing. The observations of the court are thus :

***“16. ... Just as change in social reality is the law of life, responsiveness to change in social reality is the life of the law. It can be said that the history of law is the history of adapting the law to society's changing needs. In both constitutional and statutory interpretation, the court is supposed to exercise discretion in determining the proper relationship between the subjective and objective purposes of the law.”***

*(Emphasis by us)*

110. We may usefully advert to the Constitution Bench pronouncement reported at **(1964) 6 SCR 261, State of M.P. v. Bhailal Bhai** wherein it was held that it is insufficient to merely make a declaration that a right stood infringed and the courts must grant consequential relief. In this regard, we extract hereunder the observations of the court :

***“15. We see no reason to think that the High Courts have not got this power. If a right has been infringed — whether a fundamental right or a statutory right — and the aggrieved party comes to the court for enforcement of the right it will not be giving complete relief if the court merely declares the existence of such right or the fact that that existing right has been infringed. Where there has been only a threat to infringe the right, an order commanding the Government or other statutory authority not to take the action contemplated would be sufficient. It***

*has been held by this Court that where there has been a threat only and the right has not been actually infringed an application under Article 226 would lie and the courts would give necessary relief by making an order in the nature of injunction. It will hardly be reasonable to say that while the court will grant relief by such command in the nature of an order, of injunction where the invasion of a right has been merely threatened the court must still refuse, where the right has been actually invaded, to give the consequential relief and content itself with merely a declaration that the right exists and has been invaded or with merely quashing the illegal order made.*

*16. For the reasons given above, we are clearly of opinion that the High Courts have power for the purpose of enforcement of fundamental rights and statutory rights to give consequential relief by ordering repayment of money realised by the Government without the authority of law.*

*17. At the same time we cannot lose sight of the fact that the special remedy provided in Article 226 is not intended to supersede completely the modes of obtaining relief by an action in a Civil Court or to deny defences legitimately open in such actions. It has been made clear more than once that the power to give relief under Article 226 is a discretionary power. This is specially true in the case of power to issue writs in the nature of mandamus. Among the several matters which the High Courts rightly take into consideration in the exercise of that discretion is the delay made by the aggrieved party in seeking this special remedy and what excuse there is for it. Another is the nature of controversy of facts and law that may have to be decided as regards the availability of consequential relief. ...”*

*(Emphasis by us)*

111. In (2002) 2 SCC 475, *Food Corporation of India v. S.N. Nagarkar* it was held that “...It is well settled that in exercise of writ jurisdiction, the court may mould the relief having regard to the facts of the case and interest of justice.”

112. This principle was reiterated by the Supreme Court in para 16 of the pronouncement reported at (2013) 4 SCC 690, *Rajesh Kumar & Ors. v. State of Bihar & Ors.*, the Supreme Court held that “...The power of the court to mould the relief, according to the demands of the situation, was never the subject matter of dispute in those cases. That power is well recognized and is available to a writ court to do complete justice between the parties”.

### **Exercise of discretion under Article 226 of the Constitution of India**

113. Valuable rights of the respondent no.4 have been infringed resulting in this unfortunate situation. Let us test this situation with some other instances. Assume for a moment that a disabled person had to reach at that time for a cardiac or neuro-surgery and was similarly prevented from boarding the train. Can it be possibly contended that a court exercising extraordinary writ jurisdiction under Article 226 of the Constitution of India is incompetent to mould and grant appropriate relief in such an unfortunate and extraordinary situation? The answer clearly has to be in the negative.

### **Conclusion**

114. We certainly cannot stop at holding that the rights of the visually impaired persons have been impaired and that only the

railways has to effect redressal because it was responsible. It is the responsibility of every authority and person to facilitate the compliance with the Constitutional mandate ensuring social justice and equality to marginalized and that the spirit, intendment and purpose of the provisions of the Rights of Persons with Disabilities Act, 2016 are ensured. The University of Delhi cannot isolate itself from undertaking such enabling measures as would secure the rights of respondent no.4 in the present case which can only be by grant of an opportunity to participate in the entrance exam for the M.Phil (Sanskrit) course for the academic year 2017-18 just as all other candidates, including the other persons in the disabled category who were not obstructed, as the respondent no.4 and consideration for admission to the course as per merit. Therefore, in making such a direction, this court is only complying with the Constitutional mandate and ensuring equality and non-discrimination to a disabled person who is visually impaired and has been exposed to the most callous treatment because the respondents did not take effective steps as mandated under the Rights of Persons with Disabilities Act, 2016.

### **Result**

115. In view of the above discussion, it is directed that within 10 days from today, the University of Delhi (respondent no.3 herein) shall conduct an entrance examination for the respondent no.4 for admission to the M.Phil (Sanskrit) 2017-18 session forthwith and declare his result. In case, the respondent no.4 qualifies the said exam and is placed appropriately in the merit list, he shall be granted

admission to the said course. The respondent no.4 shall be given such assistance, as permissible under the applicable rules, for undertaking the examination.

116. We appreciate the valuable assistance rendered by Mr. S.K. Rungta, learned senior counsel and *amicus curiae* in this matter.

117. List for reporting compliance on 5<sup>th</sup> September, 2017.

*Dasti* under signatures of the Court Master.

**ACTING CHIEF JUSTICE**

**C.HARI SHANKAR, J**

**AUGUST 22, 2017**

mk/aj/pmc

भारतमेव जयते