



\$~

* **IN THE HIGH COURT OF DELHI AT NEW DELHI***Judgment reserved on:10.09.2025*

%

Judgment delivered on:16.09.2025+ **W.P.(C) 1975/2023 & CM APPL. 7546/2023****MS. JAHANVI NAGPAL**

.....Petitioner

Through: **Mr. Rahul Bajaj, Adv. with Ms.Sarah,
Adv.**

versus

UNION OF INDIA & ORS.

.....Respondents

Through: **Mr. Kavindra Kumar Gill, Senior
Panel Counsel for R-1/UOI.****Mr. T. Singhdev, Adv. with
Mr.Abhijit Chakravarty, Mr.Anum
Hussain, Mr.Bhanu Gulati,
Mr.Tanishq Srivastava, Ms.Yamini
Singh, Mr.Sourabh Kumar,
Mr.Vedant Sood and Mr.Ramanpreet
Kaur, Advs. for R-2/NMC.****CORAM:****HON'BLE THE CHIEF JUSTICE****HON'BLE MR. JUSTICE TUSHAR RAO GEDELA****J U D G M E N T****DEVENDRA KUMAR UPADHYAYA, CJ**

1. The proceedings of this petition have been instituted under Article 226 of the Constitution of India, initially praying for issuing a direction to the respondent no.1/Union of India and respondent no.2/National Medical



Commission to allocate a seat to the petitioner against one of the vacancies under Persons with Disabilities [*hereinafter referred as 'PwD'*] category in NEET-UG 2022 cycle as per the procedure and in terms of the provisions prescribed under Section 32 of the Rights of Persons with Disabilities Act, 2016 [*hereinafter referred as 'the RPwD Act'*];

An alternate prayer was also made to issue a direction for a fresh medical examination with the fresh medical board at All India Institute of Medical Sciences for assessment of the extent of disability of the petitioner;

The petitioner also prayed that Section 32(1) of the RPwD Act, read with Note 3 of the amendment dated 14.05.2019, be declared as unconstitutional and violative of Article 14 of the Constitution of India insofar as they restrict the benefit of reservation in government institutions of higher education and other higher education institutions receiving aid from government, for persons with benchmark disabilities alone;

The petitioner has further prayed for taking an expeditious decision on the representation dated 05.01.2023 preferred by him in a time-bound manner.

A prayer for payment of compensation to the petitioner has also been made.

2. Heard the learned counsel for the parties.

3. Sh. Rahul Bajaj, learned counsel for the petitioner, has stated that the petitioner does not press the prayer seeking a declaration of Section 32(1) of the RPwD Act as unconstitutional. He has stated that the other prayers



made in the writ petition have lost their efficacy, except for the issues raised by the petitioner in his representation dated 05.01.2023.

4. Our attention has also been drawn to an order passed by this Court in this case on 13.04.2023, wherein it has been observed by the Court that the petition involves an important aspect in respect of filling up of the seats under PwD category and in case candidates with prescribed benchmark disability are not available under PwD category, the seats are being diverted to the open category/respective categories. The order dated 13.04.2023 passed by the Court is extracted herein below:

“It has been brought to the notice of this Court by learned Counsel for Union of India that the representation of the Petitioner has been rejected.

The petition involves a very important aspect in respect of filling up of seats under the PwD category and, in case, candidates with prescribed benchmark are not available under the PwD category, the seats are being diverted to General Category/ respective category.

A detailed and exhaustive reply is also necessary by Union of India. Let the same be filed positively within 6 weeks.

Learned Counsel for the Petitioner has requested this Court that the documents which are filed be furnished to him in Word Format. The prayer made is a genuine prayer and the learned Counsel for the Respondents while filing the reply/ counter affidavit shall serve a copy to the learned Counsel for the Petitioner in Word Format.

The delay in filing the reply on behalf of National Medical Commission stands condoned. The reply is taken on record.

List on 17.07.2023.”



2025:DHC:8142-DB



5. It has been stated by learned counsel for the petitioner that the representation dated 05.01.2023 has been rejected, and therefore, the issue raised therein, which has been summarized in the order of the Court dated 13.04.2023, needs adjudication.

6. He has argued that Section 32(1) of the RPwD Act, mandates that all government institutions and other institutions of higher education receiving aid from the government shall reserve not less than 5% seats for persons with benchmark disabilities, however, the provision is silent about what course needs to be adopted in case number of eligible persons with benchmark disabilities qua the seats reserved for them are not available.

7. According to the learned counsel for the petitioner, in a situation where the number of persons with benchmark disabilities falls short of the number of seats reserved for them under Section 32(1) of the RPwD Act, such seats should be allocated to the category of persons with disability, and should not be diverted to the open category candidates or candidates belonging to the other categories.

8. It is his submission that unless and until seats reserved for persons with benchmark disabilities are allocated to persons with persons disabilities in case of shortfall of number of persons with benchmark disabilities, the very purpose of providing reservation in higher education institutions under the RPwD Act, gets defeated, and accordingly, a direction may be issued to the respondents to fill-in the seats reserved for persons with benchmark disabilities from the persons with disabilities in case of non-availability of adequate number of the persons with benchmark disabilities.



9. Sh. Bajaj, has referred to the definition clause of the RPwD Act, and has stated that “*Persons with Benchmark Disability*” and “*Persons with Disability*” are two different categories of persons as defined in Sections 2(r) and 2(s) of the RPwD Act. Sections 2(r) and 2(s) of the RPwD Act are quoted hereunder:

“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;

2(s) “person with disability” means 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;”

10. According to the learned counsel for the petitioner, in case seats reserved for persons with benchmark disability are not diverted to persons with disability in case of shortfall in the number of persons with benchmark disability qua the number of seats reserved for them and are diverted to other category of candidates, the benefit which is otherwise available under the RPwD Act, virtually slips away from the candidates eligible for being given the benefit of reservation under RPwD Act in the matter of their admission to higher educational institutions.

11. Certain suggestions have been advanced by Sh. Bajaj, learned counsel for the petitioner, for mitigating the situation arising out of the non-availability of adequate number of persons with benchmark disabilities. He has submitted that when seats reserved for persons with benchmark



disabilities remain unfilled, the Court may direct the respondents to make all possible endeavour to allocate such seats to candidates with less than benchmark disability as a form of reasonable accommodation and for the said purpose some baseline percentage cutoff, say of 5%, can be fixed. Sh. Bajaj has also stated that in the alternative a direction can be issued to carry forward such vacancies to the next academic year and/or the seats can be diverted to persons with disabilities and only if no such person with disability is available, the seat should be allocated to the open category candidates.

12. Sh. Bajaj, learned counsel for the petitioner, has drawn our attention to an order of a Coordinate Bench of this Court in the case of **Justice for All v Government of NCT of Delhi & Ors., 2023 SCC Online Delhi 4609**, and has submitted that in the said case this Court has emphasized that all possible endeavours shall be made for filling up the seats meant for persons with disabilities by providing reservation to all categories of persons with disabilities, and accordingly, in view of the said direction, the respondents are under obligation to fill-in the unfilled seats on account of non-availability of number of adequate persons with benchmark disabilities from amongst the persons with other categories of disabilities, that is to say, from amongst the persons who are suffering from disabilities in a measure which is less than the benchmark disability.

13. Referring to the judgment of Hon'ble Supreme Court in **Vikash Kumar v. UPSC, (2021) 5 SCC 370**, it has been argued on behalf of the petitioner that persons with disabilities who do not have a benchmark disability are also entitled to a grant of reasonable accommodation.



14. A recent judgment of a Division Bench of this Court in ***Ashwin Murali v Oil and Natural Gas Corporation Ltd. & Ors., (LPA 754/2023)***, decided on 01.09.2025, has also been referred by the learned counsel for the petitioner, wherein a question posed was that, *can it be said that mandate of the RPwD Act, will be served if the post meant for persons with benchmark disability, due to non-availability of such candidate, is de-reserved and surrendered to unreserved candidate, rather than being given to the persons with disabilities*. The Court answered the said question and observed that the answer has to be in negative otherwise such a course would certainly defeat the mandate and object of the RPwD Act. The Court has further held that to serve the mandate and object of the RPwD Act, such a post and in such a situation must be offered to a person with disability in preference to open category candidates.

15. Learned counsel for the respondents, on the other hand, have opposed the prayer being urged by learned counsel for the petitioner and have submitted that in absence of any such provision in Section 32 of the RPwD Act or elsewhere in the said Act, in a situation where adequate number of persons with benchmark disabilities are not available, a seat reserved under Section 32 of the RPwD, Act is impermissible to be diverted to the persons with disabilities.

16. We have given our anxious consideration to the competing arguments made by learned counsel for the parties and have also perused the records available before us on this writ petition.



17. The RPwD Act has been enacted by the Parliament with certain objects, especially to give effect to the United Nations Convention on Rights of Persons with Disabilities, which was adopted by the United Nations General Assembly, on 13.12.2006, and to which India is a signatory. The said Convention lays down certain principles for empowerment of persons with disabilities, which include non-discrimination, full and effective participation and inclusion in society, equality of opportunity, accessibility and other such principles.

18. In a legislation enacted by the respective legislatures, the policy decisions are reflected, and accordingly, such policy decisions are to be given effect to in accordance with the provisions contained in the enactment itself made by the legislatures. If we examine the scheme of the RPwD Act, what we find is that “*Persons with Disability*” and “*Persons with Benchmark Disability*” have been defined in Section 2(s) and 2(r) of the RPwD Act. “*Person with Disability*” has been defined to be a person with long-term physical, mental, intellectual and sensory impairment, which hinders their full and effective participation in society equally with others. Whereas, “*Person with Benchmark Disability*” has been defined to mean a person with not less than forty per cent of specified disability where specified disability has not been defined in measurable terms and also includes a person with disability where specified disability has been defined in measurable terms, as certified by the certifying authority. Thus, the Act itself draws a distinction between a “*Person with Benchmark Disability*” and “*Person with Disability*”.



19. Section 20 of the RPwD Act falls in Chapter IV of the said Act, which commences with the heading “*Skill Development and Employment*”. Section 20 of the RPwD Act is quoted hereunder:

“20. Non-discrimination in employment.—(1) No Government establishment shall discriminate against any person with disability in any matter relating to employment:

Provided that the appropriate Government may, having regard to the type of work carried on in any establishment, by notification and subject to such conditions, if any, exempt any establishment from the provisions of this section.

(2) Every Government establishment shall provide reasonable accommodation and appropriate barrier free and conducive environment to employees with disability.

(3) No promotion shall be denied to a person merely on the ground of disability.

(4) No Government establishment shall dispense with or reduce in rank, an employee who acquires a disability during his or her service:

Provided that, if an employee after acquiring disability is not suitable for the post he was holding, shall be shifted to some other post with the same pay scale and service benefits:

Provided further that if it is not possible to adjust the employee against any post, he may be kept on a supernumerary post until a suitable post is available or he attains the age of superannuation, whichever is earlier.

(5) The appropriate Government may frame policies for posting and transfer of employees with disabilities.”

20. The afore-quoted provision of Section 20 of the RPwD Act, prohibits discrimination against any person with disability in any manner relating to public employment.



21. We also notice that Sections 32 and 34 fall in Chapter VI of the RPwD Act, which starts with the heading “*Special Provisions for Persons with Benchmark Disabilities*”. Sections 32 and 34 of the RPwD Act are quoted hereunder:

“32. Reservation in higher educational institutions.—(1) *All Government institutions of higher education and other higher education institutions receiving aid from the Government shall reserve not less than five per cent seats for persons with benchmark disabilities.*

(2) *The persons with benchmark disabilities shall be given an upper age relaxation of five years for admission in institutions of higher education.”*

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.”

22. Section 32 of the Act provides for reserving not less than 5% seats for persons with benchmark disabilities in all government institutions of higher education and other higher education institutions receiving government aid. However, so far as reservation in higher education institutions are concerned, Section 32 of the RPwD Act does not contain any provision for providing reservation to persons with disabilities. Similarly, Section 34 of the Act mandates that the government shall appoint in every government establishment not less than 4% of the total number of vacancies



from amongst the persons with benchmark disabilities, of which 1% seats are to be reserved for persons with different categories of disabilities. Sub-section 2 of Section 34 of the RPwD Act provides that in case in any recruitment year a vacancy cannot be filled up on account of non-availability of a suitable person with benchmark disability or for any other sufficient reason, 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, such vacancy shall be first filled by inter change amongst the five categories, and only when there is no person with disability is 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.

23. Thus, there is a contrast between the scheme providing for reservation in public employment as contained in Section 34 of the Act, and the scheme of reservation in higher educational institutions as contained in Section 32 of the Act. In case of public employment, on account of non-availability of a suitable person with benchmark disability, the vacancy is to be carried forward in the succeeding year, whereas no such provision exists in Section 32 of the Act. Sub-section 2 of Section 34 of the Act further provides that in a situation where in the succeeding recruitment year also suitable person with benchmark disability is not available, the vacancy shall be first filled in by interchange amongst the five categories, and it is only when there is no person with disability is available for the vacancy in that year that such vacancy shall be filled in by appointing a person other than a person with disability.



24. The rule of carry forward is thus absent in Section 32 of the Act, whereas it is available in the matter of public employment as per Section 34 of the Act. In the absence of any provision in Section 32 of the RPwD Act, or anywhere else in the said Act, providing for carrying forward a vacancy which could not be filled in on account of non-availability of persons with benchmark disabilities for admission, to the next academic year, it is difficult for the Court to issue directions for such carrying forward. It is also to be noticed that Section 32 of the RPwD Act, also does not provide that in case of non-availability of persons with benchmark disabilities if a vacancy reserved under Section 32 of the Act remains unfilled the same shall be directed to the persons with disabilities, and accordingly, it is neither possible nor permissible for Court to issue such direction as has been urged by the learned counsel for the petitioner. It is trite law that provisions of a statute are to be read as it is without either any interpolation or intrapolation. If the prayer being urged by the learned counsel for the petitioner is to be acceded to by the Court, that would amount to reading something in Section 32 of the RPwD Act, which otherwise is absent.

25. However, having observed as above, we may also point out that since the prayer being urged by learned counsel for the petitioner lie in the realm of policy making, appropriate decision at the end of the Union of India may be required to be taken in this regard, for the purposes of achieving the object for which the RPwD Act, has been enacted by the Parliament, that is, for the purpose of achieving the object of meaningfully empowering the persons with disabilities. Reference in this regard may be had to the judgment of the Hon'ble Supreme Court in the case of **Vikash Kumar**



2025:DHC:8142-DB



(*supra*). In the said case, the appellant – Vikash Kumar, was denied access to a scribe for taking the Civil Services Examination conducted by the Union Public Service Commission (UPSC). The appellant had a disability, which is commonly known as “writer’s cramp”. He was a graduate with an MBBS degree from Jawaharlal Institute of Postgraduate Medical Education and Research. UPSC issued a notification for the Civil Services Examination – 2018, and the general instructions provided that all candidates must write their papers in their own handwriting. Exceptions were, however, carved out by providing scribes for blind candidates, candidates with locomotor disability and cerebral palsy where writing is affected to the extent of slowing the performance of function (minimum of 40% impairment). Thus as per the rules/instructions candidates within the exceptions were allowed to have excess of a scribe and an additional ‘compensatory time’ of 20 minutes per hour was also granted to such candidates.

26. The appellant – Vikash Kumar, however, was denied the help of a scribe on the ground that a scribe could be provided only to blind candidates and candidates with locomotor disability or cerebral palsy within an impairment of at least 40% and since the appellant did not meet this criteria he was not entitled the facility of a scribe. The issue was taken up before the Central Administrative Tribunal (CAT) and thereafter before this Court by the appellant, unsuccessfully. However, in the appeal Hon’ble Supreme Court, after discussing the purpose and entire scheme of the RPwD Act, held and declared that the appellant will be entitled to the facility of a scribe for



appearing in the Civil Services Examination and any other competitive examination conducted under the authority of the Government.

27. While discussing the issues relating to empowering the persons with disabilities, the Hon'ble Supreme Court observed that though Part-III of the Constitution of India, though, does not include persons with disabilities, however, the golden triangle of Articles 14, 19 and 21 applies with full force and vigour to the disabled persons. It further observed that the RPwD Act seeks to give complete shape to the promise of full and equal citizenship to the disabled.

28. Further discussing the provisions of the RPwD Act, the Hon'ble Supreme Court observed that the fundamental postulate of this Act is based on the principle of equality and non-discrimination and that there is a critical qualitative difference between barriers faced by persons with disabilities and other marginalized groups. The observations made in paragraphs 41 to 44, 50, 51, 54, 55 to 59 are relevant to be quoted here, which are as under:-

“G. The Rights of Persons with Disabilities Act, 2016 : A paradigm shift

G.1. A statutory manifestation of a constitutional commitment

41. Part III of our Constitution does not explicitly include persons with disabilities within its protective fold. However, much like their able-bodied counterparts, the golden triangle of Articles 14, 19 and 21 applies with full force and vigour to the disabled. The 2016 RPwD 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 ethos of inclusion and acceptance.



42. The fundamental postulate upon which the 2016 RPwD 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.

43. There is a critical qualitative difference between the barriers faced by persons with disabilities and other marginalised groups. In order to enable persons with disabilities to lead a life of equal dignity and worth, it is not enough to mandate that discrimination against them is impermissible. That is necessary, but not sufficient. We must equally ensure, as a society, that we provide them the additional support and facilities that are necessary for them to offset the impact of their disability. This Court in its judgment in Jeeja Ghosh v. Union of India [Jeeja Ghosh v. Union of India, (2016) 7 SCC 761 : (2016) 3 SCC (Civ) 551] , noted that a key component of equality is the principle of reasonable differentiation and specific measures must be undertaken, recognising the different needs of persons with disabilities, to pave the way for substantive equality. A.K. Sikri, J. stated in the above judgment : (SCC p. 793, para 40)

“40. In international human rights law, equality is founded upon two complementary principles : non-discrimination and reasonable differentiation. The principle of non-discrimination seeks to ensure that all persons can equally enjoy and exercise all their rights



and freedoms. Discrimination occurs due to arbitrary denial of opportunities for equal participation. For example, when public facilities and services are set on standards out of the reach of persons with disabilities, it leads to exclusion and denial of rights. Equality not only implies preventing discrimination (example, the protection of individuals against unfavourable treatment by introducing anti-discrimination laws), but goes beyond in remedying discrimination against groups suffering systematic discrimination in society. In concrete terms, it means embracing the notion of positive rights, affirmative action and reasonable accommodation.”

(emphasis supplied)

*44. 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. The concept of reasonable accommodation is developed in section (H) below. For the present, suffice it to say that, for a person with disability, the constitutionally guaranteed fundamental rights to equality, the six freedoms and the right to life under Article 21 will ring hollow if they are not given this additional support that helps make these rights real and meaningful for them. Reasonable accommodation is the instrumentality—are an obligation as a society—to enable the disabled to enjoy the constitutional guarantee of equality and non-discrimination. In this context, it would be apposite to remember R.M. Lodha, J's (as he then was) observation in *Sunanda Bhandare Foundation v. Union of India* [*Sunanda Bhandare Foundation v. Union of India*, (2014) 14 SCC 383 : (2015) 3 SCC (L&S) 470; *Disabled Rights Group v. Union of India*, (2018) 2 SCC 397 : (2018) 1 SCC (L&S) 391], where he stated : (SCC p. 387, para 9)*

“9. ... In the 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.”



xxx

xxx

xxx

50. It is clear from the scheme of the 2016 RPwD Act that “person with disability” and “person with benchmark disability” are treated as separate categories of individuals having different rights and protections. A third category of individuals “persons with disability having high support needs” has also been defined under the 2016 RPwD Act.

51. The general principle of reasonable accommodation did not find a place in the 1995 Act. The provision for taking aid of a scribe was limited to blind students or students with low vision in educational institutions. Section 31 of the 1995 Act provided:

“31. Educational institutions to provide amanuensis to students with visual handicap.—All educational institutions shall provide or cause to be provided amanuensis to blind students and students with or low vision.”

xxx

xxx

xxx

54. This Court in Union of India v. National Federation of the Blind [Union of India v. National Federation of the Blind, (2013) 10 SCC 772 : (2014) 2 SCC (L&S) 257] has recognised that employment opportunities play an instrumental role in empowering persons with disabilities. P. Sathasivam, J. (as he then was) observed : (SCC p. 799, para 50)

“50. Employment is a key factor in the empowerment and inclusion of people with disabilities. It is an alarming reality that the disabled people are out of job not because their disability comes in the way of their functioning rather it is social and practical barriers that prevent them from joining the workforce. As a result, many disabled people live in poverty and in deplorable conditions. They are denied the right to make a useful contribution to their own lives and to the lives of their families and community.”



It is imperative that not only the Government but also the private sector takes proactive steps for the implementation of the 2016 RPwD Act.

55. The 2016 RPwD Act is fundamentally premised on the recognition that there are many ways to be, none more “normal” or “better” than the other. It seeks to provide the disabled a sense of comfort and empowerment in their difference. 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 2016 RPwD Act aims to provide them an even platform to thrive, to flourish and offer their unique contribution to the world. It is based on the simple idea with profound implications that each of us has: “unique powers to share with the world and make it interesting and richer”. [Sonia Sotomayor, Just Ask! Be Different, Be Brave, Be You [2019, Penguin] letter to the reader.] By opening doors for them and attenuating the barriers thwarting the realisation of their full potential, it seeks to ensure that they are no longer treated as second class citizens.

56. It gives a powerful voice to the disabled people who, by dint of the way their impairment interacts with society, hitherto felt muted and silenced. The Act tells them that they belong, that they matter, that they are assets, not liabilities and that they make us stronger, not weaker. The other provisions of Chapter II follow upon the basic postulates embodied in Section 3 by applying them in specific contexts to ensure rights in various milieus such as community life, reproduction, access to justice and guardianship. Chapter III of the 2016 RPwD Act recognises specific duties on the part of educational institutions. Section 17 speaks of specific measures to promote and facilitate inclusive education. Among them, Clause (g) contemplates the provision of books, learning materials and assistive devices for students with benchmark disabilities free of cost up to the age of eighteen. Section 17(i) requires suitable modifications in the curriculum and examination system to meet the needs of students with disabilities such as : (i) extra time for



completion of examination (ii) the facility of scribe or amanuensis (iii) exemption from second and third language courses. The guarantee under Section 17(i) is not confined to persons with benchmark disabilities but extends to students with disabilities. It is thus evident that the legislature has made a clear distinction between disability and benchmark disability. Section 20 provides a mandate of non-discrimination in employment. Under Section 21, every establishment is under a mandate to notify equal opportunity policies setting out the measures which will be adopted in pursuance of the provisions of Chapter IV. Chapter V provides guarantees for social security, health, rehabilitation and recreation to persons with disabilities.

57. When the Government in recognition of its affirmative duties and obligations under the 2016 RPwD Act makes provisions for facilitating a scribe during the course of the Civil Services Examination, it cannot be construed to confer a largesse. Nor does it by allowing a scribe confer a privilege on a candidate. The provision for the facility of a scribe is in pursuance of the statutory mandate to ensure that persons with disabilities are able to live a life of equality and dignity based on respect in society for their bodily and mental integrity. There is a fundamental fallacy on the part of the UPSE/DoPT in proceeding on the basis that the facility of a scribe shall be made available only to persons with benchmark disabilities. This is occasioned by the failure of the MSJE to clarify their guidelines. The whole concept of a benchmark disability within the meaning of Section 2(r) is primarily in the context of special provisions including reservation that are embodied in Chapter VI of the 2016 RPwD Act. Conceivably, Parliament while mandating the reservation of posts in government establishments and of seats in institutions of higher learning was of the view that this entitlement should be recognised for persons with benchmark disabilities.

58. As a matter of legislative policy, these provisions in Chapter VI have been made applicable to those with benchmark disabilities where a higher threshold of disability is stipulated.



Except in the specific statutory context where the norm of benchmark disability has been applied, it would be plainly contrary to both the text and intent of the enactment to deny the rights and entitlements which are recognised as inhering in persons with disabilities on the ground that they do not meet the threshold for a benchmark disability. A statutory concept which has been applied by Parliament in specific situations cannot be extended to others where the broader expression, “persons with disability”, is used statutorily. The guidelines which have been framed on 29-8-2018 can by no means be regarded as being exhaustive of the situations in which a scribe can be availed of by persons other than those who suffer from benchmark disabilities. The MSJE does not in its counter-affidavit before this Court treat those guidelines as exhaustive of the circumstances in which a scribe can be provided for persons other than those having benchmark disabilities. This understanding of the MSJE is correct for the simple reason that the rights which emanate from provisions such as Section 3 extend to persons with disability as broadly defined by Section 2(s).

59. We are, therefore, of the view that DoPT and UPSC have fundamentally erred in the construction which has been placed on the provisions of the 2016 RPwD Act. To confine the facility of a scribe only to those who have benchmark disabilities would be to deprive a class of persons of their statutorily recognised entitlements. To do so would be contrary to the plain terms as well as the object of the statute.”

29. Emphasizing the necessity of not trivializing the needs of persons with disabilities, in para 76 of the decision in **Vikash Kumar (supra)** the Hon’ble Supreme Court further observed that the needs of those whose disability may not meet the threshold of 40% but are nonetheless disabled enough, has to be considered for the grant of reasonable accommodation of a scribe and extra time. Paragraph 76 of the judgment in **Vikash Kumar (supra)** is extracted herein below:-



“76. The ASG referred to the difficulty caused to her by dint of having carpal tunnel syndrome as an example of the dangerous consequences that would flow from opening the door too widely when it comes to granting scribes. In the hearing, examples were also cited of individuals having a small, everyday problem and expecting a scribe on that basis. While valid, such comparisons may end up creating a false equivalence between those with a legitimate disability-based reasonable accommodation need and others with everyday “life problems”. [IDAP Interview Series : Interview XV with Judge Ronald M. Gould, response to q. 13, available at <<https://www.idialaw.org/blog/idap-interview-series-interview-xv-with-judge-ronald-m-gould/>>.] Therefore, it has to be ensured that we do not make light of, or trivialise, the needs of those whose disability may not meet the quantitative threshold of 40% but are nonetheless disabling enough to merit the grant of the reasonable accommodation of a scribe and extra time. As the CRPD Committee notes, it is wrong to expect a person with disability to be “disabled enough” to claim the accommodations necessitated by their disability. [CRPD Committee, GC 6, para 73[b].] Such an approach would not be in consonance with the progressive outlook of the 2016 RPwD Act.”

30. Having discussed the aforesaid aspects and considered the object for which the RPwD Act has been enacted by the Parliament, we are of the opinion that it is the need of the hour for Union of India to address the issues raised by learned counsel for the petitioner so that the provisions of the RPwD Act can be applied with full force and vigour for empowering the persons with disabilities.

31. In our opinion, a provision providing for carrying forward the seats in higher educational institutions, which cannot be filled in on account of non-availability of persons with benchmark disabilities, to the next academic



year and/or a provision for diverting such seats to persons with disabilities will go a long way to fulfil the aims and objects of the RPwD Act.

32. We thus find it appropriate to refer this issue to the Law Commission of India for conducting a study and accordingly to make recommendations for appropriate amendment(s) in the RPwD Act.

33. Accordingly, we request the Law Commission of India to deliberate on the issues outlined in this judgment and make appropriate recommendations to the Union of India for incorporating the requisite amendment(s) in the RPwD Act.

34. The writ petition along with pending application(s), if any, shall stand disposed of in the aforesaid terms.

35. Let a certified copy of this judgment be furnished to the Law Commission of India by the Registry forthwith.

(DEVENDRA KUMAR UPADHYAYA)
CHIEF JUSTICE

(TUSHAR RAO GEDELA)
JUDGE

SEPTEMBER 16, 2025

“shailndra”