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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ **WP(C) No.1158/2018 & CM No.4843/2018**

Reserved on: 9th February, 2018
Date of Decision: 16th February, 2018

MANIF ALAM ..... PETITIONER
Through: Mr.Rashid N.Azam with Mr.Manzar Anis, Advs.

versus

INDIAN INSTITUTE OF TECHNOLOGY, DELHI & ORS. ..... RESPONDENTS
Through: Mr.Arjun Mitra with Ms.Jaskaran Kaur, Advs. and Mr.Atul Vyas, Jt.Registrar for R-1.
Mr.Rajesh Gogna, CGSC for R-2 to 5.

CORAM:
HON'BLE MS. JUSTICE REKHA PALLI

REKHA PALLI, J

1. The Petitioner, a physically-disabled student enrolled in M.Sc. Mathematics in Respondent No. 1- Indian Institute of Technology, Delhi in academic year 2017-18, being aggrieved by order dated 09.01.2018 issued by Respondent No. 1-Institute whereby his name has been struck-off from the student rolls of Respondent No. 1-Institute immediately after

the end of first semester of academic session 2017-18, has approached this court vide the present Writ Petition under Article 226 of the constitution, seeking of order dated 09.01.2018 and a direction to the Respondent No.1 University to reinstate him as a regular student and allow him to continue his second semester in the said course.

2. The facts relevant for the adjudication of the present petition are that the Petitioner, who suffers from 50% locomotor disability, had secured admission in M.Sc. Mathematics in the Respondent-Institute under the reserved category of PWD (Persons with Disabilities) for the academic year 2017-18 through a common entrance test i.e. Joint Admission Test for M.Sc. Mathematics conducted by the Respondent-Institute. In the Joint Admission Test, the Petitioner secured 23.43 out of the allotted total of 100 marks clearing the minimum cut-off of 9.76 declared by the Respondent-Institute for the Differently Abled Category and also secured an All India Rank of 1647. Upon enrolment in M.Sc. Mathematics, the petitioner started attending the classes of the first semester from 24.07.2017 and appeared in the examinations of the first semester that were held from 18.11.2017 to 23.11.2017, the result whereof was declared on 09.01.2018 wherein not only was the Petitioner declared as 'failed' as he secured an SGPA of only 2.75 against the requirement of 4.00 SGPA but his name was also struck-off from the Institute Rolls with effect from the end of the 1st Semester of the

Academic year 2017-18 on account of his poor performance in the course. As per the result, the grades obtained by the petitioner are:-

Course No.	**Course Title**	**Credits**	**Grade**
1. MTL501	Algebra	4.0	F
2. MTL502	Liner Algebra	4.0	E
3. MTL503	Real Analysis	4.0	W
4. MTL504	Ordinary Differential Equation	4.0	C-
5. MTL505	Computer Programming	4.0	D

3. The Petitioner claims that while he had been permitted to re-appear in the paper of 'Linear Algebra' in which he had secured an 'E' Grade he was not permitted to re-appear in the paper of 'Algebra' as he had secured a 'F' grade in the subject. Vide the impugned order dated 09.01.2018, his name has been suddenly struck off from the rolls of the Institute without even giving him an opportunity to show cause as to why he had not able to secure the requisite minimum score of 4.00 SGPA. Immediately upon learning about the striking off his name, the petitioner submitted a representation dated 09.01.2018 to the Dean

(Academic) of the Respondent-Institute, requesting for restoration of his enrolment wherein he pointed out that while undergoing the course in the Institute, he had faced difficulty in following the lectures which were only in the English language. He stated that he had received most of his education in Hindi medium institutions and besides suffering from 50% locomotor disability, he also came from a very humble background having lost his father at a very young age. In his representation, the petitioner had further explained that despite the mandate of The Persons with Disabilities (Equal Opportunities, Protection of Rights & Full Participation) Act, 1995, the Respondent-Institute did not provide any facility like the Equal Opportunity Cell which would have allowed him to seek redressal for his issues or complaints. Having received no reply to his representation from the Respondent-Institute, the petitioner has preferred the present petition.

4. Arguing for the Petitioner, Mr. Rashid Azam, submits that the Respondents have struck off the name of the Petitioner from their rolls without giving him any opportunity to clear the backlog. He further submits that irrespective of the Rules contained in the brochure, the respondent no.1 ought to have kept in mind the provisions of The Rights of Persons with Disabilities Act, 2016 and that the rules made by the Respondent No. 1 are in any event delegated legislation therefore being subordinate to the statutes enacted by the Parliament. He also submits that once the petitioner was granted admission under the Reserved Category of PWD (Persons with Disabilities) by using a relaxed criteria,

it was incumbent for the respondent no.1/Institute to treat such `PWD' with compassion and grant him an opportunity to improve his performance.

5. Further, Learned counsel for the Petitioner submits that the failure on the part of Respondent No.1-institute to not setup any mechanism to facilitate the education of the 'Persons with Disability' has gravely prejudiced the Petitioner's education and performance in the institute. In support of his plea that there is an obligation on the institution to provide adequate facilities to physically disabled persons like the petitioner to cope with the high academic standards of the Institution by keeping in view the fact that they were able to join Institutes like the respondent only because of reservation, he relies on the observations of the Supreme Court in ***Avinash Singh Baghri & Ors. v. Registrar IIT Delhi & Anr.*** in WP(C) 535 of 2008. Learned counsel for the Petitioner further submits that though the petitioner had faced a similar issue of the lectures being conducted in English while studying in Delhi University, he had overcome the same with the help of the 'Equal Opportunity Cell' and had graduated in B.Sc. (Hons.) securing 63.96 % marks. He, thus, contends that it was the lack of facilities like the Equal Opportunity Cell, that led to the inadequate performance of the Petitioner, who otherwise has always been a very accomplished student in the past.

6. Learned counsel for the petitioner further submits that the Rights of Persons with Disabilities Act, 2016 contains provisions which make it

mandatory for any educational institution run under the aegis of the Government of India to have redressal mechanisms whereby the students who are differently abled are coached and guided so that they are able to compete in the mainstream since they cannot forever be at the mercy of reservation provisions.

7. The writ petition is vehemently opposed by Respondent No.1-Institute while the other respondents including the Chief Commissioner for persons with disabilities, Ministry of Human Resources and Development as also Ministry of Social Justice and Empowerment have supported the petition.

8. The primary argument raised by Mr.Arjun Mitra, the learned counsel for Respondent No.1 is that the Petitioner has been removed in accordance with the Rules of the institution as represented in the Courses of Study 2017-18 brochure. Mr.Mitra submits that the rules set out in the brochure are applied uniformly to students in both undergraduate and post-graduate courses and the Petitioner was well aware of the same having also signed an undertaking to this effect. He submits that if the prayer sought by the Petitioner is granted, it would be in contravention of these Rules, which have not been challenged by the petitioner. He draws my attention to Clause 5.2 read with the corresponding Table 10 of the Rules, according to which the minimum acceptable performance in the first semester in M.Sc. Mathematics, which would allow a student to continue in the Institute, is an SGPA of 4.0. He thus contends that once Rule 5.2 clearly provides that failure to

maintain the specified academic standing will result in termination of the registration and the student's name will be struck off the rolls, no fault could be found with the petitioner's termination as he had admittedly secured an SGPA of only 2.75. Mr.Mitra places reliance on decision of this Court in ***Pallavi Sharma vs. College of Vocational Studies,*** *221 (2015) DLT 738*, paragraph 14 of which lays down that the law is well settled that the procedure described in the Prospectus/Bulletin of Information issued by an Institution is binding and no mandamus can be issued directing the educational institutions to act contrary to their own procedure.

9. It is also submitted by Mr.Mitra that the Rules are made by experts in the field of education and it has been held in a catena of judgments that courts should not interfere in academic matters. The rules themselves are published after approval of the Senate of the Institute, in accordance with the Act and Statutes of the Institute. It is further submitted that there is sound rationale behind the provision for not allowing a re-major for a paper in which a student has secured an F grade and for terminating the registration if the SGPA is less than 4.0. This is for the reason that F grade typically represents an aggregate of less than 20% marks being obtained after six months of semester study and continuous evaluation, which would mean that the student has not done any meaningful work in that time. Moreover, he states there are a limited number of courses and credits that a student can opt for in any registered semester and a limited amount of time for doing the work. In

these circumstances it is virtually impossible for the petitioner to obtain a score of 5.0 or more, which would result in not being awarded a degree, should he/she be permitted to continue. It is therefore, submitted that there is no arbitrariness in the rules and considerable thought process has gone into the formulation of the same.

10. While refuting the claim of the petitioner that he was not given adequate opportunity to cope with the high academic standards in the Institute, the Learned Counsel for the Respondent No.1 submits that all support was given to the Petitioner by the Respondent No. 1-Institution. He states that since virtually all the students and faculty reside in the campus, it is very convenient for the students with disabilities to approach the faculty for help. He states that the Petitioner could have approached either the faculty, his senior colleagues, batch-mates, Course Co-ordinator or even the Counselling Unit to seek assistance and help in understanding his courses and, therefore, if the Petitioner did not avail any of these opportunities, he cannot now complain that he did not get any opportunity to improve his performance. Mr. Mitra further submits that the requirement of having an Equal Opportunity Cell is applicable only to Universities/Colleges under the purview of the University Grants Commission and the Respondent No. 1- institute, being an autonomous body created by an Act of The Parliament, is not governed by the mandates of the University Grants Commission.

11. On the other hand, Mr.Rajesh Gogna appearing for respondent nos. 2 to 5, while supporting the petitioner, submits that the respondent

no.1 Institute ought to have extended adequate facilities to the petitioner so as to ensure that despite his disability, he is able to compete with the general students. He submits that by terminating the petitioner on account of his poor academic performance in the very first semester, the respondent no.1 has virtually ignored the mandate of PWD Act.

12. I have considered the rival contentions raised by the parties. I find that though there is no doubt about the fact that the petitioner has not been able to secure the minimum SGPA prescribed in Rules set down in the brochure of Respondent no.1 but the issue raised in the present case is not merely as to whether the respondent no.1/institute was justified in expelling a student who was unable to meet the laid down academic criteria in the Rules. In my considered opinion, the core issue which needs to be considered is as to whether a student like the petitioner who is able to join a premier Institute like IIT Delhi only because of the 5% reservation provided for "Persons with Disability' can be expelled from the Institute after the very first semester on account of his inability to meet the criteria fixed for general students who had admittedly joined the Institute with much better academic backgrounds in terms of marks.

13. The answer to this question would not only depend on the necessity to meet academic standards prescribed by an Educational Institute but would also be closely linked to the reason for providing reservation in premier Educational Institutes of the country for Persons with Disability.

14. Before proceeding further, it would be appropriate to reproduce Section 16 of the Rights of Persons with Disabilities Act, 2016 which reads as under:-

> "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—
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> (i) admit them without discrimination and provide education and opportunities for sports and recreation activities equally with others;
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> (ii) make building, campus and various facilities accessible;
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> (iii) provide reasonable accommodation according to the individual's requirements;
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> (iv) provide necessary support individualised or otherwise in environments that maximise
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> academic and social development consistent with the goal of full inclusion;
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> (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;
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> (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."

It would also be appropriate to reproduce Section 72 of The Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 which reads as under:-

> "72. **Act to be in addition to and not in derogation of any other law**
> The provisions of this Act, or the rules made thereunder shall be in addition to, and not in derogation of any other law for the time being in force or any rules, order or any instructions issued thereunder, enacted or issued for the benefits of persons with disabilities.

15. The Rights of Persons with Disabilities Act 2016 clearly mandates in Section 16 sub-clause (iv) that it is the duty of all educational institutions to provide necessary support to maximise academic and social development consistent with the goal of full inclusion, and in sub-clause (vii) mandates monitoring participation, progress in terms of attainment levels and completion of education with respect of every student with disability; which can never be achieved if they are expelled without giving further an opportunity to attain the necessary levels. Respondent No.1 have clearly failed to comply with such requirements and if this is the state of affairs of the IITs in India then one can only imagine what goes on the

institutions which get lesser funds and guidance from the Union Government.

16. The aforersaid provisions of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 and the Rights of Persons with Disabilities Act, 2016 leave no doubt of any kind that the object sought to be achieved by these special enactments is to give persons suffering from disabilities an opportunity to join the mainstream and attain full participation in nation building. For this purpose, it is incumbent for the educational institutes to give them extra coaching and guidance if need be and provide them reservation at the time of admission in the Institutes. A mere reservation at the time of entry into the Institute, would become meaningless if the Institutes like IIT Delhi/Respondent No.1 don't do their bit and extend a helping hand to such students. I am unable to comprehend as to how a premier institute of the country can take the plea that since the mandate for providing an 'Equal Opportunity Cell' under the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 is applicable only to Institutes coming under the purview of UGC, Respondent No.1/Institute is under no obligation to provide special facilities to physically disabled students. In my considered opinion, an autonomous premier Institute like the respondent no.1 ought to have been more sensitive towards the needs of the persons with disabilities or

'differently abled persons' which is the more appropriate term to be used for such persons.

17. I also find merit in the submission of the learned counsel for the petitioner that despite the Supreme Court having emphasised that specialized Institutes like IITs should take care of the needs of students belonging to socially backward categories, the respondent no.1 has failed to take any steps to take care of the special needs of the physically challenged persons. I deem it appropriate to reproduce para 26 of the decision of Supreme Court in the case of ***Avinash Singh Baghri vs. Registrar, IIT, Delhi*** in ***W.P.(C) 535/2008***, wherein in the context of students belonging to SC/ST and OBC categories, it was held as under:-

> *"26. It is not in dispute that SC and ST are separate class by themselves and the creamy layer principle is not applicable to them. Article 46 of the Constitution of India enjoins upon the State to promote with special care the educational and economic interests of the weaker sections of the people and protect them from social injustice and all forms of exploitation. These socially and economically backward categories are to be taken care of at every stage even in the specialized institutions like IITs. They must take all endeavour by providing additional coaching and bring them up at par with general category students. All these principles have been reiterated by the Constitution Bench of this Court in Ashok Kumar Thakur vs. Union of India & Ors., (2008) 6 SCC 1."*

18. In my view the respondent Institute cannot, by placing reliance on its Rules, defeat the very purpose of the the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 and the Rights of Persons with Disabilities Act, 2016. I cannot lose sight of the fact that both these aforesaid Acts are special legislations dealing with persons with disability ensuring equal opportunities, protection of rights and full participation and therefore it is the duty of every Educational Institution to make an endeavour to ensure that the special objects of these Acts are achieved. Respondent No.1-Institute having admittedly failed to provide special facilities by way of extra coaching and guidance to the petitioner has failed in its duty and for this reason alone, the impugned order is liable to be set aside. The petitioner surely deserves a chance to improve his performance and make an attempt to clear his backlog for which purpose the respondent Institute ought to give him extra coaching and guidance.

19. However, there is yet another important issue raised by the learned counsel for the petitioner with which I must deal. Learned counsel for the petitioner contends that the action of the respondent Institute in expelling the petitioner without giving him any show cause notice is violative of principles of natural justice. He further contends that the automatic expulsion of a student from the Institute merely because he is unable to secure the required grade in the first semester, would in itself be arbitrary and most unfair. In my view, there is merit in the aforesaid submission of

the learned counsel for the petitioner. The automatic and compulsory expulsion of a student from the Institute, upon his failure to achieve the prescribed grade, without even giving him any opportunity to even give an explanation for his failure to meet the prescribed criteria would definitely be a violation of principles of natural justice. Even though full autonomy ought to be given to Educational institutes in respect of academic standards but this autonomy cannot be read to mean that the students, and that too those belonging to this disadvantaged group of physically challenged persons, should not even be given a chance to improve their performance.

20. For all the aforesaid reasons, impugned order dated 09.01.2018 is set aside. The respondent no.1 is directed to immediately re-admit the petitioner and also provide him extra coaching, if the need be.

21. The writ petition is, accordingly, allowed with no order as to costs. The pending application also disposed of.

(REKHA PALLI)
JUDGE

FEBRUARY 16, 2018/gm