

Umesh Kumar v. State of Haryana and another (D. V. Sehgal, J.)

dispute or not for the purposes of section 2(g) of the Act. Such a finding could only be arrived at by proper adjudication under Section 13-A of the Act by considering the rival claims of the parties after appraising the overwhelming documentary evidence on the record. This having not been done both the impugned orders Annexures P.1 and P.2 are set aside.

4. As the petitioner had approached this Court in 1979 and since then has been pursuing his cause with due diligence and the amendment to the Act has come during the pendency of these proceedings, the period of limitation prescribed in section 13-A of the Act for approaching the Court of Assistant Collector under that section deserves to be extended.

5. Accordingly, the petitioner, if so advised, may avail the remedy provided under Section 13-A of the Act for the proper adjudication by presenting a suit before the Assistant Collector 1st Grade concerned for adjudication within a period of three months from today. The Assistant Collector is directed to go into the dispute under section 13-A of the Act on merits, and decide the same on the basis of the material produced before him. With these directions the writ petition is allowed with no order as to costs.

S.C.K.

Before D. V. Sehgal, J.

UMESH KUMAR,—Petitioner.

versus

STATE OF HARYANA AND ANOTHER,—Respondents.

Civil Writ Petition No. 8864 of 1987

February 10, 1988.

*Constitution of India, 1950—Article 226—Admission to B.E. Course—Requirement of Medical Examination—Condition that candidate with power glasses above 2.5 power not eligible—Petitioner using glasses with more than 2.5 power found fit by the Board of Ophthalmologists—Chief Medical Officer held him unfit according to the condition laid down in Annexure VI of information bulletin—Principal cancelling his admission—Whether such a condition valid.*

*Held*, that we now live in a scientifically advanced age. Medical science has had phenomenal progress in the Course for the last one decade. If with medical aid and particularly by provision of glasses or contact lenses the vision can be corrected to the standard prescribed, there is no earthly reason why the candidate with the vision so corrected should be denied admission to the Engineering Course. Instances are not lacking where students who are totally blind are being admitted to different Courses, of course not to the Engineering Courses, but they are allowed admission to various Arts Faculties right upto the Doctorate so that they acquire necessary qualification to harness their inherent qualities for the progress and well being of the Society and at the same time to earn their livelihood. Since no reason has been assigned by respondent No. 2 why a candidate with power glasses above 2.5 power should be denied admission to the Engineering Course when such power glasses correct the defective vision upto the required standard, I have no hesitation to hold that the provision to this effect in the Brouchure which has been impugned herein is altogether arbitrary, unconstitutional and unsustainable. This part of the provision is, therefore, quashed. (Para 8).

*Petition under Articles 226/227 of the Constitution of India praying that records relating to the case be summoned and after a perusal thereof;*

- (i) a writ, order or direction in the nature of certiorari be issued quashing the impugned order Annexure P-3;
- (ii) a writ, order or direction in the nature of mandamus declaring the requirement, relating to power of glasses used by the candidates with defective vision, as illegal, arbitrary and unconstitutional and, pursuant to the issuance of the said writ, order or direction, a writ in the nature of mandamus be issued directing the respondent No. 2 to refrain from enforcing the said requirement against the petitioner;
- (iii) issue any other writ, order or direction as may be deemed fit and proper in the facts and circumstances of this case;
- (iv) award the costs of this petition to the petitioner.

*It is further prayed that pending disposal of the present writ petition, the operation of the impugned order Annexure P-3, whereby the admission of the petitioner has been cancelled, may kindly be stayed and the petitioner be allowed to continue his studies and join classes in the Bachelor of Engineering Course (Mechanical Branch).*

*Any other interim order, as may be deemed necessary and expedient, may also kindly be passed in the interest of justice.*

Gobind Goel, Advocate, for the Petitioner.

S. S. Ahlawat, Advocate, for the Respondents.

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JUDGMENT

*D. V. Sehgal, J. (oral)*

1. This judgment will dispose of Civil Writ Petitions Nos. 3864 and 7713 of 1987. The questions of law and fact involved in both the petitions are similar. Reference to the facts and documents shall, however, be made from Civil Writ Petition No. 8864 of 1987.

2. The petitioner got admission to the 1st Year of Bachelor of Engineering (Mechanical) Course in Chhotu Ram State College of Engineering, Murthal (Haryana). He was admitted to the Course on 30th October, 1987. A candidate seeking admission to the Course is required to get himself medically examined and is admitted to the Course in case he is found to be medically fit. The object of medical examination is spelt out in the Information Bulletin issued by respondent No. 2 as under :—

“As the Engineering profession demands a good physique and stamina, a candidate seeking admission must make certain that he/she does not suffer from any organic defect and that he/she is physically fit to bear the strain of the programme and later, of the professional life.”

3. Annexure VI to the said Information Bulletin lays down the following eye sight standard for medical fitness of a candidate:—

“3. Acuteness of visions will be ascertained by two tests (one for distance and the other for near visions). The tests for distance vision with or without glasses will be at 20 feet.

The test for near vision will be at any distance selected by the candidate.

The standard of vision shall not be less than:—

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	One eye	The other eye without or with glasses.
Distance vision.	6/6 or 6/9	6/12 or 6/9
Near vision.	0.6	0.8

Glasses allowed for hypermetropic astigmatism shall not exceed 2.5 D.”

Glasses allowed for myopia or myopia astigmatism shall not exceed 2.5 D."

4. The petitioner was referred for medical examination to the Chief Medical Officer, Sonapat, who in turn referred his case to the Rohtak Medical College and Hospital. A Board of Ophthalmologists consisting of two Associate Professors and one lecturer in Ophthalmology examined the petitioner and gave the following finding:—

"Vision without glasses :

R/E (right eye): 6/60.

L/E (left eye): 6/60.

Vision with glasses :

R/E : 6/6 (-4. OD. Sph.) J1.

L/E : 6/6 (-4.OD. Sph.) J1.

Colour vision : Normal.

Fundus : Simple Myopia.

In our opinion he is fit for admission to Bachelor of Engineering Course."

5. In spite of this finding of the Board of Ophthalmologists the Chief Medical Officer issued a certificate Annexure P/2 stating therein that on the basis of number of glasses in both eyes according to standard laid down in Annexure VI of the Information Bulletin, the petitioner is unfit. It was, however, made clear therein that he has no disease of mental or bodily infirmity unfitting him and or likely to unfit him in future for admission to Engineering College, Murthal active outdoor service. As a consequence of the certificate Annexure P/2 issued by the Chief Medical Officer the Director-Principal of the College respondent No. 2,—vide letter dated 17th November, 1987, Annexure P/3, cancelled the provisional admission of the petitioner to the Engineering Course observing that according to the prescribed standard of medical fitness, glasses are allowed for hypermetropic astigmatism upto 3.5D and for myopia or myopia astigmatism upto 2.5D and that the petitioner has not been able to come up to the requisite standard of eye sight.

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6. Through the present writ petition the petitioner has challenged the cancellation of his admission,—*vide* order, Annexure P/3 and has also brought into question the vires of the stipulation contained in Regulation 3 of Appendix VI of the Information Bulletin to the effect “Glasses allowed for myopia or myopia astigmatism shall not exceed 2.5D.” In the written statement filed on behalf of respondent No. 2, it has been maintained that the standard of eye sight and the power glasses mentioned in the aforesaid Regulation is a must as a student of the Engineering Courses has to handle different instruments and machinery and after qualifying the Degree Course he has to enter the profession of Engineering and standard eye sight for the purpose is very essential.

7. I have heard the learned counsel for the parties. In all most all the professional Colleges including Engineering Institutions for Degree Course the standard of vision prescribed is 6/9 both eyes or 6/6 in better eye in the case of defective vision corrected with glasses. The Indian Institute of Technology is one of the pioneer Institutions in the country. It has several Four years’ Degree Courses in different faculties of Engineering. The requirement of physical fitness as regards eye sight laid down by this Institute is the same as mentioned by me above. This is evidenced by the Information Brochure of the Indian Institute of Technology, Kharagpur, Bombay, Madras, Kanpur, Delhi and Institute of Technology BHU Varanasi issued on 4th February, 1987 which has been produced before me by the learned counsel for the petitioner. Similar standard of vision for admission to Four Years’ Degree Course in Engineering is laid down in the Admission Brochure of the Regional Engineering College, Kurukshetra for the year 1987-88 which *inter alia*, provides thus :—

“Vision : Normal.

In case of defective vision, it must be corrected to 6/9 in both eyes or 6/6 in better eye. Candidates taking admission in mining engineering must be free from colour blindness defective vision and should not use spectacles above power 3.”

Thus it is clear that in case of students of different faculties of Degree Courses in Engineering in case of defective vision it is provided that it can be corrected by use of power glasses to 6/9 in both eyes or 6/6 in better eye. The standard so fixed by the different Engineering Institutions has been specifically averred by the petitioner in para No. 7 of the writ petition. Corresponding para of the

written statement does not controvert this fact. In fact the relevant brochures of these Institutions have been perused by me today.

8. We now live in a scientifically advanced age. Medical science has had phenomenal progress in the Course for the last one decade. If with medical aid and particularly by provision of glasses or contact lenses the vision can be corrected to the standard prescribed, there is no earthly reason why the candidate with the vision so corrected should be denied admission to the Engineering Course. Instances are not lacking where students who are totally blind are being admitted to different Courses, of course not to the Engineering Courses, but they are allowed admission to various Arts Faculties right upto the Doctorate so that they acquire necessary qualification to harness their inherent qualities for the progress and well being of the Society and at the same time to earn their livelihood. Since no reason has been assigned by respondent No. 2 why a candidate with power glasses above 2.5 power should be denied admission to the Engineering Course when such power glasses correct the defective vision upto the required standard, I have no hesitation to hold that the provision to this effect in the Brochure which have been impugned herein is altogether arbitrary, unconstitutional and unsustainable. This part of the provision is, therefore, quashed.

9. Consequently, I allow both these writ petitions. I quash the order Annexure P/3 in Civil Writ Petition No. 8864 of 1987. I direct respondent No. 2 to allow both the petitioners to continue with their studies in the Engineering Course to which they were admitted by treating them medically fit.

The petitioners shall also get the costs of these writ petitions which are fixed at Rs. 500 in each writ petition.

P. C. G.

Before M. R. Agnihotri, J.  
HARBANS SINGH,—Petitioner  
*versus*

RAJINDER RAJAN AND ANOTHER,—Respondents.

Civil Revision No. 284 of 1988

February 23, 1988

*Civil Procedure Code (V of 1908)—O. 43, Rl. 1(r)—Application for grant of ad interim injunction—Ex parte order on said application—Appeal against such order—Maintainability of such appeal.*