**The Deputy Secretary (Mart), Department of Health and Family Welfare vs. Miss Sanchita Biswas and Ors**

**Filed under**: Section 39 of the Persons with Disabilities Act, 1995 Articles 15(4), 226 and 256 of the Constitution of India
**Appellant**: The Deputy Secretary (Mart), Dept. of Health and Family Welfare
**Respondents**: Miss Sanchita Biswas and Ors.
**Citation**: AIR 2000 Cal 202
**Court**: In the High Court of Calcutta
**Judges**: Ruma Pal and S. N. Bhattacharjee

**Facts**

Miss Sanchita Biswas, a physically handicapped candidate appeared in the Joint Entrance Examination of 1997 for admission to Medical Colleges but was unsuccessful.

For admission into the medical colleges, some seats were reserved for nominees of the Government of India, the State Government, Donors, Schedule Caste and Schedule Tribes. After the examination was over the Government also reserved some seats for hill candidates. However, no seats were reserved for disabled candidates. Sanchita filed a Writ petition challenging the reservation of seats for the hill candidates, donor's nominees and also challenged the non-reservation of seats for the physically handicapped candidates despite statutory requirements as being violative of Articles 14, 15, 21 & 41 of the Constitution of India.

The Judge partly allowed the petition by setting aside the reservation for candidates residing in the hill region of the State of West Bengal. Further, the Government of West Bengal was directed to reserve 3% seats for physically handicapped candidates.

The Government of West Bengal filed the present Appeal challenging the judgment passed by the Single Judge.

**Arguments on behalf of the Department of Health and Family Welfare**

Arguments on behalf of the Department of Health and Family Welfare were made on the following grounds:

1. The provisions of the Constitution of India do not impose any obligation on the State to reserve seats for the physically handicapped persons.
2. The reservation of seats for hill candidates was taken by the Government taking into consideration the place of birth of people residing in hilly regions implementing the recommendations of the Minority Commission.
3. They further stated that Sanchita had participated in the JEE with full knowledge that there was no reservation for the physically handicapped candidates. Therefore, she could not be allowed to challenge the selection process after being unsuccessful.

Further, it was argued that the nature of the job to be performed by a medical practitioner does not warrant for such reservations, as handicapped candidates are medically unfit and the State government without the approval of the medical council cannot provide for such reservation of seats in medical colleges.

**Observations of the Court**

Taking into view the various provisions of the Constitution and the Persons with Disabilities Act, the Court concluded that the Constitution and the Act cast an obligation upon the state to provide for reservation of seats for handicapped candidates to the extent of 3% of the total seats in educational institutions like medical colleges.

With regard to the contention that the reservation for hill council has been made after taking into account various considerations, the Court observed that no official records were produced before the Court and no objectives were shown for making such a reservation. Further, after referring to some of the earlier cases, the Court opined that Sanchita's right bestowed to her under the Constitution was violated.

In response to the argument that reservation to the hill candidates was also provided on the ground that on securing medical degrees would cater to the needs of the hill people for medical treatment as per the recommendations of the Minority Commission, the Judge pointed out that no such report was placed before him and held the reservation policy for the hill candidates arbitrary.

Further, on the point that Sanchita could not be allowed to challenge the reservation policy after taking up the examination the Court observed that there was a space to indicate whether the candidate was physically handicapped or not with the hope that some protective leniency would be given to her.

However, the JEE failed to make any reservations for the physically handicapped. Therefore, she could not be debarred from challenging it. Due to these reasons all the arguments made on behalf of the Department of Heath were rejected by the Court and declined to interfere with the findings of the lower Court and dismissed the appeal.

**Held**: All contentions on the behalf of the Department of Health were rejected by the Court and the Appeal was dismissed.

**Sections referred:**

* Section [39](http://www.disabilityindia.co.in/Disability-Law-and-Access-to-Rights/section39.php) of the Persons with Disabilities Act, 1995
* Articles [15(4)](http://www.disabilityindia.co.in/Disability-Law-and-Access-to-Rights/article15.php), [226](http://www.disabilityindia.co.in/Disability-Law-and-Access-to-Rights/article226.php) and [256](http://www.disabilityindia.co.in/Disability-Law-and-Access-to-Rights/article256.php) of the Constitution of India

**Cases Referred:**

* Air India Statutory vs. United Labour Union, (1997) 9 SCC 377: AIR 1997 SC 645
* Dwarka vs. ITO, AIR 1966 SC 81
* Mafatlal Industries Ltd vs. Union of India, (1997) 5 SCC 536
* A Janardana vs. Union of India, (1983) 3 SCC 601: AIR 1983 SC 769