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W.P.(MD)NO.9920 OF 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED: 26.04.2024

CORAM

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P.(MD)No.9920 of 2024

Ms.Monisha

... Petitioner

Vs.

1. The National Testing Agency,
First Floor, NSIC-MDBP Building,
Okhla Industrial Estate,
New Delhi – 110 020.

2. The Chairman,
National Medical Commission,
Satarkta Bhawan, G.P.O.Complex,
Block A, INA,
New Delhi – 110 023.

... Respondents

Prayer: Writ petition filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus, directing the first respondent to consider the representation dated 08.04.2024 (sent to the respondents on 10.04.2024) and thereby directing the first respondent to permit the petitioner into the examination hall by wearing diaper and also permit the petitioner to change the diaper once or twice (as required) in between the time of examination i.e., 2.00 pm to 5.20 pm on the date of examination i.e., on 05.05.2024.



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For Petitioner : Mr.J.Anandakumar,
for Mr.V.Purushothaman Reddy.

For R-2 : Mrs.Subharanjani Ananth

For R-1 : Mr.P.Karthick

* * *

ORDER

The Rights of Persons with Disabilities Act, 2016 (49 of 2016) was hailed by the Hon'ble Supreme Court as marking a paradigm shift. In ***Vikash Kumar v. UPSC (2021) 5 SCC 370***, it was held that though Part III of the Constitution of India does not explicitly include persons with disabilities within its protective fold, the golden triangle of Articles 14, 19 and 21 applies with full force and vigor to the disabled much like their abled-bodied counterparts.

2.Section 20(2) of the Act mandates that no government establishment shall discriminate against any person with disability in any matter relating to employment. Section 17 of the Act expects the appropriate government and the local authorities to take specific measures to promote and facilitate inclusive education. Section 2(y) of the Act defines "reasonable accommodation" as "*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." Section 2(h) of the Act defines "discrimination" in relation to disability as "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."

3.The question that I am called upon to answer is if the principle of reasonable accommodation should be restrictively applied and made available only to persons who fall within the scope of the Central Act 49 of 2016. This issue arises in the context of examinations held for students and job aspirants. I hold that any candidate not necessarily suffering from disability set out in the Schedule to RPwD Act, 2016 but otherwise having special requirements or needs by virtue of her/his biological condition is entitled to reasonable accommodation. Let me see how this principle can be applied to the facts of this case.



4.The petitioner is a young woman aged about 19 years. She

desires to appear in NEET (UG) - 2024. She has a special requirement.

Her medical history makes a sad reading. When she was around four years old, she met with a gruesome accident and suffered burn injuries on the face. She was scalded by hot oil. She is taking treatment for LETM/NMO/Spectrum Disorder/Neurogenic Bladder on OPD basis. Her doctor has certified that she has lack of urine control and that she needs to wear diaper continuously which also has to be frequently changed. The petitioner therefore called upon the respondents to permit her to sit in the examination hall wearing diaper and allow her to change once or twice depending on her condition. Since her representation dated 08.04.2024 did not elicit any response, the present writ petition came to be filed.

5.The petitioner's apprehension could not have been dismissed as misplaced or unfounded. NEET is held all over the country every year. We read that the mandatory frisking to which the candidates are subjected to is sometimes taken to absurd limits. In Kerala, once a girl was asked to remove her inner wear. Girls in particular face the brunt. The following two stories illustrate the point that the issue warrants response :



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“After three grueling years of law school, aspiring attorneys have one last hurdle to overcome in order to practice law: the bar exam. In normal times, the bar exam is daunting, as the multi-day test determines the professional fates of lawyers-to-be. This year, with the COVID-19 pandemic raging, the bar exam has gone from being unnecessarily burdensome to unnecessarily deadly.

Some states have granted bar admission to graduates of accredited law schools — a policy known as “diploma privilege.” But others are plowing ahead with exams — in-person or remote, on time or delayed. The policies and procedures for these exams are in constant flux. And the civil rights and civil liberties issues presented by this year’s bar exams are extensive.

This year, states are limiting law grads’ access to menstrual products and opportunities to pump breastmilk during the bar exam. This policing of when someone can change their tampon or if and when someone can pump raises serious sex discrimination concerns.

Take the West Virginia bar exam, for example. “Feminine hygiene products” are explicitly prohibited in the testing room. Instead, the West Virginia Board of Law Examiners (WVBLE) requires those who are menstruating go to proctors to retrieve tampons or pads during the all-day exam. In response to rightful confusion from West Virginia bar examinees, the WVBLE has since stated that “there is no prohibition on bringing menstrual products to the test,” but it remains unclear if test takers can have the products with them in the testing room or not.

Montana’s policy is even worse: Menstrual hygiene products are not included in the list of permitted items (although “medical items” are allowed), and the exam instructions do not otherwise indicate that these products will be provided to test-takers. And in Nebraska, one



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examinee was told that she needed permission in order to change her tampon more often than every two hours.

The notion that anyone can use a tampon to cheat would be laughable if it weren't being used to disadvantage menstruating test-takers. In any event, other states have allowed examinees to bring menstrual products into exam rooms for years without incident.

States are also putting up unnecessary roadblocks for test-takers who are lactating. For example, administrators in Oklahoma refused to extend the 15-minute break for one woman to pump, even though that isn't nearly enough time to prepare the equipment, pump, and clean and sanitize the equipment. Sadly, this problem isn't unique to the pandemic: exam administrators have long created roadblocks for menstruating and breastfeeding test takers. But this creates further barriers to new parents entering the legal profession who are already facing an unprecedented lack of childcare.

Blocking access to menstrual products and opportunities to pump breastmilk during the bar exam is also a gender equity issue. First, more often than not, menstrual products are placed in women's restrooms only. Failing to provide menstrual products in facilities that are accessible to everyone who needs them, including some transmen and non-binary people, leaves some test takers with no access to necessary products at all.

Also, what products will be provided? Menstruation is different for everybody, and those who menstruate know the products that work best for them. Not to mention the privacy concerns raised by needing to disclose personal medical information to proctors. Test takers who are breastfeeding are similarly negatively affected when exam administrators refuse to allow them to safely express breastmilk during



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the exam at an appropriate time and place, effectively preventing many new parents from sitting for the bar.

Bar examiners should be working to make the legal profession more accessible to those who already face barriers to success in the legal profession — including women, trans and non-binary people, and new parents — not less. Fortunately, some states have already reversed course in response to public outcry. But it shouldn't take going viral on Twitter for all students to be able to sit for the bar exam in safety and dignity.

- **Anna Jessurun**, Legal Intern ACLU Women's Rights Project"

“Exams ruined, period

published in DownToEarth on 10.09.2020 written by Twinkle

Back in 2013-14, I was headed to Sri Guru Tegh Bahadur Khalsa College in New Delhi for my second year semester examination. It was a typical hot and humid afternoon and I could feel the exam jitters taking hold of me outside the centre. We took seats inside the examination hall and then the bell rang. The invigilator started distributing the answer sheets and I had only finished filling in details like my name, roll number and college when I realised something was wrong.

I started to feel uncomfortable and then it hit me—I am having my periods. I was secretly hoping it was a false alarm but I had to be sure, after all I was wearing white. However, the clock was ticking and I had a paper to write as well. I started focusing on



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the questions instead but concentrating on the exam became difficult since I could not help thinking about the public embarrassment I will have to face in case my fears came true.

Everything I studied became a blur and I finally asked the invigilator to allow me to go to the bathroom. That is when I finally found out that I was having my periods, indeed. To make things worse, I was not carrying a sanitary pad and I blamed myself for not being prepared. I became nervous and was clueless as to how I should handle the situation.

I went back to the examination room, took my seat and pretended to read the question paper. I thought of seeking help from the invigilator but was irked by the public embarrassment this would cause. Why should something as personal and relating to my body be made public to strangers in the examination hall? In my head I kept imagining all the embarrassing situations like my white kurta turning red and the invigilator announcing in the hall that I needed a sanitary pad.

Struggling to find a way out, I could feel the cramps setting in. The pain was excruciating but I realised that I had to do something. For the second time, I excused myself out of the examination hall under the pretext of filling my water bottle. My secret plan was to begin a pad hunt in the building. I searched for napkins, even tissues, in the bathroom but alas, I found nothing. Next, I tried to locate the reception office but since I was not familiar with the building, I failed again. Instead, I was left exhausted and without a sanitary pad. I was in pain and could feel time slipping out of my hands.

I returned to the examination hall and realised I won't finish writing the exam on time. Finding myself helpless, I handed



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over the incomplete answer sheet to the invigilator saying I was not feeling well. I left the hall with watery eyes, an unspoiled white kurta and a spoiled exam."

I am still unsure if my decision to walk out of the examination hall without writing my paper was the right call. However, the realisation that a girl or woman should be forced to choose between writing an examination and leaving it simply because she got her periods and could not find any sanitary pads within the school/college premises. Had there been a provision for sanitary pads and medicine at the college, perhaps I would have written the exam. Essential items like sanitary pads should be provided in public spaces to cater the regular needs of women like me. That would have been the right choice.

6.Clause 10.2 of the Information Bulletin issued by the first respondent reads as follows :

"10.2 Dress Code

10.2.1 The candidates are instructed to follow the following dress code while appearing for NEET (UG) - 2023:

a. Light clothes with long sleeves are not permitted. However in case, candidates come in cultural/ customary dress at the Examination Centre, they should report at least an hour before the last reporting time i.e. 12.30 pm so that there is enough time for proper frisking without any inconvenience to the candidate while maintaining the sanctity of the



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examination.

b. Slippers, sandals with low heels are permitted. Shoes are not permitted.

c. In case of any deviation required due to unavoidable (medical, etc.) circumstances, specific approval of NTA must be taken before the Admit Cards are issued.
10.2.2 It is desired that the candidates follow instructions issued by the NTA strictly. This will help NTA in the fair conduct of the examination."

Since the aforesaid clause does not address the concerns expressed by the writ petitioner, the present writ petition came to be filed. On the other hand, in another notification issued by the National Testing Agency, it is mentioned that diabetic students will be allowed to carry eatables like sugar tablets/fruits (bananas/apples/oranges) and transparent water bottles to the examination halls/rooms. It was also laid down that candidates will be frisked and biometric attendance will be taken again on entry from bio break/toilet break. My attention could not be drawn to similar clauses in this notification pertaining to NEET.

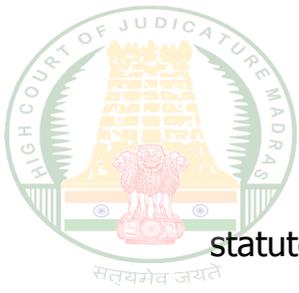
7.The materials on record clearly establish that the petitioner



is having special needs. She has to wear diaper always and not just

when in the examination hall. She has to frequently change the same.

That would necessarily entail visiting the rest room. In other words, she has to take bio-break while writing the examination. If the facilities required by the petitioner are denied, she will not be able to take the examination. That would lead to discrimination that is forbidden by Article 14 of the Constitution of India. Not for nothing the Hon'ble Supreme Court declared in **Vikash Kumar** that denial of reasonable accommodation would mean discrimination. Once it is recognised that an eligible candidate is entitled to write a given examination, she must be placed on the same footing as any normal candidate. That is why, a disabled candidate is statutorily permitted extra time to complete the examination. If the requisite facilities are not available and the special treatment is denied, the candidate has only one option : she cannot take the test. That would necessarily constitute a grave breach of the equality mandate set out in Article 14 of the Constitution of India. Article 15(3) of the Constitution enables the State to make special provision for women and children. There is no justification in restricting the principle of reasonable accommodation only to those suffering from disabilities recognised by RPwD Act, 2016. All persons having disability have special needs. That does not mean the disabled as defined in the



statute alone have special needs. Beneficial principles and doctrines

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8. Every examination centre must have suitable toilet facilities with water amenities. They must keep a minimum number of sanitary products near the toilets so that any girl who has come unprepared may use them. The girl candidates must be allowed the use of rest rooms when required. The rest rooms can be thoroughly inspected in advance and regularly so that there is virtually no need for frisking the candidates for the second time. This will save the candidates' precious examination time. It is the duty of the authorities to spread awareness so that the candidates are not put to any stress at all. In the dress code, it would have been appropriate if the clause specifically permitted wearing of sanitary pads by the girl children. The absence of such a clause and the failure to respond to the petitioner's representation led to the filing of this writ petition. The examination authorities are directed to bear the special needs of girl children in mind and provide for reasonable accommodation.

9. I place on record that considering the special facts and



circumstances peculiar to the writ petitioner, the first respondent had fairly agreed to the petitioner's request and have undertaken to issue suitable instruction to the city examiner.

10. Recording the stand of the first respondent, this writ petition stands allowed. No costs.

26.04.2024

NCC : Yes / No
Index : Yes / No
Internet : Yes/ No
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Note : Issue order copy on 30.04.2024.

To

1. The National Testing Agency,
First Floor, NSIC-MDBP Building,
Okhla Industrial Estate,
New Delhi – 110 020.
2. The Chairman,
National Medical Commission,
Satarkta Bhawan, G.P.O.Complex,
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G.R.SWAMINATHAN,J.



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