

**HIGH COURT OF TRIPURA
AGARTALA**

WP(C) 518 OF 2024

**Sri Thakur Chan Das, S/o Late Swapan Das,
Gokulnagar, P.S. Bishalgarh, Sepahijala.**

....Petitioner

Versus

**Tripura Tribal Areas Autonomous District Council,
Khumulwng, West Tripura.**

....Respondent

For the petitioner : Mr. Samarjit Bhattacharjee, *Amicus Curiae*.

For the respondent : Mr. Bhaskar Debbarma, Advocate.

Date of hearing : 08.10.2024

Date of delivery of
judgment & Order : **18.03.2025**

Whether fit for
reporting : **Yes**

HON'BLE MR.JUSTICE ARINDAM LODH

Judgment & Order

By means of filing the present writ petition, the petitioner has urged for issuing a writ of mandamus upon the respondent to provide him a Scribe in the competitive examination.

2. Briefly stated, the facts of the case are that he being a visually impaired with benchmark disability applied for the post of Sub-zonal Development Officer/Dy. Principal Officer in pursuant to the Advertisement No.03/2024, dated 03.02.2024, issued by the Tripura Tribal Areas Autonomous District Council (for short, 'TTAADC'), Khumlwng, West Tripura. He submitted the application on 16.02.2024 with a prayer for providing him a scribe from respondent-TTAADC itself since he is a visually

impaired candidate. The respondent issued admit card in favour of him to appear in the examination which was scheduled to be held on 09.06.2024, but, that was postponed due to leakage of answer paper of that examination. It is asserted that the petitioner had waited for three months to have the panel of scribe to be formed by the respondent, but he did not get any reply. He submitted another application to the respondent on 28.05.2024, but, no result has been yielded. Subsequently, the examination was rescheduled to be held on 21.07.2024 but since he was not provided with any Scribe, he was not able to appear in the examination. The petitioner approached this Court with an order of Ministry of Social Justice and Empowerment dated 01.01.2019 [*Annexure-J* to the writ petition] referring to an order of Hon'ble Delhi High Court passed in the case of *Shri Aditya Narayan Tiwari & Anr. Vs. Union of India & Ors.* showing that until and unless the scribe is provided to an aspirant having visually impaired, no department can conduct any examination, however, the Delhi High Court maintained the office memorandum issued on 26.02.2013 [*Annexure-H* to the writ petition] by the Ministry of Social Justice & Empowerment, Department of Disability Affairs wherein one of the specific terms and conditions was that a candidate who has 40% or more disability can opt for a scribe of his own and no educational qualification, age, marks scored for the scribe was fixed. But, the respondent denied to follow the memorandum dated 26.02.2013, in spite of that they followed the guidelines issued vide memorandum dated 29.08.2018 [*Annexure-I* to the writ petition] where the qualification of scribe has been prescribed one step below the qualification of the candidate taking examination. However, the petitioner submitted another application on 18.07.2024 for allowing him to appear in the examination as per office

memorandum dated 1st January, 2019 whereby the Delhi High Court maintained the guidelines dated 26.02.2013. But, the respondents did not give any response to the petitioner and hence, this writ petition.

3. Heard Mr. Samarjit Bhattacharjee, learned *amicus curiae* appearing for the petitioner. Also heard Mr. B. Debbarma, learned counsel appearing for the respondent-TTAADC.

4. Mr. Bhattacharjee, learned *amicus* appearing for the petitioner at the very outset has submitted that the petitioner is a candidate with 100 per cent visual disability. He falls under Category-2(r) of the Rights of Persons with Disability Act, 2016 [for short, Act of 2016] having benchmark disability of more than 40%. Mr. Bhattacharjee, learned *amicus* pointed out that as per *Clause (v) of the guidelines of Ministry of Social Justice and Empowerment, Govt. of India, dated 29.08.2018 the candidates should have the discretion of opting for his own scribe/reader/lab assistant or request the Examination Body for the same. The examining body may also identify the scribe/reader/lab assistant to make panels at the District/Division/State level as per the requirements of the examination. In such instances the candidates should be allowed to meet the scribe a day before the examination so that the candidates get a chance to check and verify whether the scribe is suitable or not.* Further, learned *amicus* has drawn the attention of this Court to the guidelines dated 1st January, 2019, issued by the Ministry of Social Justice and Empowerment, Govt. of India and candidly submitted that in this guideline, it has been stipulated that –“till the panel of scribes is formed, if any examination is conducted by any of the Department wherein the petitioners and similarly situated persons appear in the exam, the guidelines dated

29.09.2018 shall not be applicable, however, the candidate shall appear in terms of guidelines dated 26.02.2013....”. So, according to Mr. Bhattacharjee, learned *amicus*, in view of the guidelines dated 1st January, 2019, the respondent-TTAADC should have allowed the petitioner to sit in the examination with his own chosen scribe, without any prohibition of educational qualification of the scribe. Since the request of the petitioner to sit in the examination along with his chosen scribe was rejected by the respondent-TTAADC on 12.07.2024, according to Mr. Bhattacharjee, learned *amicus*, the petitioner was deprived from getting equal opportunity for employment, as he is protected under the Act of 2016 and Articles 14 & 16 of the Constitution of India. Thus, Mr. Bhattacharjee, learned *amicus* urged that this Court may consider and compensate the petitioner and impose huge cost upon the respondent for violation of the constitutional and statutory rights of the petitioner.

5. Further, Mr. Bhattacharjee, learned *amicus* pointed out that the scribe facility for the petitioner should be given from independent body or from the Court because the integrity of the scribe should not be in question due to adverse mindset of the respondent towards the petitioner. If the Court finds appropriate reason and suitable solution for conducting special examination for the petitioner, then the petitioner should be given at least 3 months preparation time for examination and the examination should be conducted in Agartala under video surveillance.

6. This Court vide order dated 24.09.2024 requested the learned counsel for the petitioner to give some suggestions for regulating the recruitment process in respect of differently abled persons in the light of the principles and objects of Act of 2016. Accordingly, Mr. Bhattacharjee, learned

amicus in terms of the order of this Court, on 08.10.2024 submitted following written suggestions, which reads thus:

“IN GENERAL FOR FUTURE RECRUITMENT EXAM, THE BELOW MENTIONED CRITERIA NEEDED TO BE FOLLOWED:-

1. As per Clause- 8 Sub Clause 3 of Person with Disability Rules 2017, a Liaison Officer should be appointed by every establishment who deals with the recruitment process to monitor the recruitment of Person with Disabilities to fulfil the objective in recruitment as per Rights of Person with Disability Act 2016.

In Tripura, the Respondent as well other establishments of State Government not yet notified about recruitment of any Liaison Officer.

2. As per Clause 11 Sub Clause-3 of Rights of Person with Disabilities Rules 2017, every establishment should publish the reservation quota for person with disabilities and in the recruitment notification/advertisements category wise reservation under RPWD Act 2016 to be followed/ mentioned in terms of Section 34 of the said Act. The State Authorities are not following the same.

3. Every recruitment body should follow mandatorily the guidelines of conducting written examination for person with disabilities dated 29th August 2018 of Ministry of Social Justice and Empowerment.

4. Every recruitment body should notify the panel of Scribe and in the advertisement, it is to be mentioned specifically, that, persons with disability category candidates can have the option to choose a scribe from the panel & sit in the exam with his chosen scribe from the said panel, notified by the competent authority.

5. Every recruitment body should simplify the process of taking the scribe facility according to the guidelines of conducting written examination for person with disabilities, dated 29th August 2018 and take all the records of requirements of PWD candidates like scribe, mode of examination, assistive devices etc at the time of filling of form.

6. When any PWD candidate request for scribe from the examiner, the examiner should make a panel of scribe as per the requirement of PWD candidate in accordance with guidelines of conducting written examination for person with disabilities dated 29th August 2018.

7. When the examiner body makes panel of scribe after receiving requirements from PWD candidates, the number of members should be 3 times the number of requirements. For example, if in any

exam total 5 candidates request for scribe from the examiner, the number of members in panel of scribe should be 15. The candidates should be called at least two days before the exam and choose a suitable scribe for him from the panel for exam and choose another one for reserve if 1st selected scribe could not be able to reach for any unavoidable circumstances then the 2nd scribe will be allowed to sit in the exam, for PWD candidate.

8. If any examiner fails or unable to make panel of scribe, the candidates should be informed at least 3 weeks before the exam and the **candidates should be given chance of taking scribe of his own choice of any qualification, in terms of Clause-v of the 2013 Guideline.** The candidates should inform the examiner 7 days prior to the exam with the details of his own scribe. If the candidate does not able to find his own scribe of any qualification, then also the candidates should inform the recruiting body at least 7 days before the exam. On that situation, the examination should be postponed till the date the examiner able to make panel of scribe.

9. When a candidate chooses to bring his own scribe, the examiner should take all the information about his own scribe at time of filing of form. The examining body may conduct an enquiry about scribes' information before the examination, to rule out any malpractices.

10. The examination of the candidates using scribe should be conducted within the video surveillance to reduce the cheating and malpractices.

The Respondent and any establishment of the State have yet not been formulated any guidelines to fulfil the objectives of Rights of Person with Disabilities Act 2016. The guidelines which are needed to be formulated by the Respondent are mentioned below,

1. Reservation guidelines should be formulated to provide reservation for PWD person (in each category under Act, 2016) in direct recruitment as well as in promotion in accordance with the RPWD Act 2016 and RPWD Rules 2017 to ensure equal opportunity for them.

2. In terms of Section-21 of the Act, 2016, every establishment shall notify equal opportunity policy detailing measures proposed to be taken by it in pursuance with Chapter 4 of the RPWD Act 2016.

3. Every establishment should make appropriate schemes and guidelines for inclusive growth of person with disabilities in the field of

education, health, skill development, sports, culture etc. in accordance with the RPWD Act 2016 and RPWD Rules 2017.

4. Every establishment should follow the rules and regulations of accessibility in public infrastructure in accordance with RPWD Act 2016.

5. A special officer should be appointed by the Competent Authority and the Respondent through State Commissioner only for persons with disabilities to resolve the complaints received from disabled person.”

7. At the time of argument, Mr. Bhattacharjee, learned *amicus* has relied upon two Judgments, wherein some broader criteria have been laid down by the Hon'ble Apex Court for Persons with Disabilities candidates. The reference of the said judgments is as follows:

- (i) **Arnab Roy Vs. Consortium of National Law Universities & Ors., 2023 Live Law(SC) 3439 &**
- (ii) **Vikash Kumar Vs. Union Public Service Commission & Ors., (2021) 5 SCC 370.**

8. On the other side, Mr. Debbarma, learned counsel appearing for the respondent-TTAADC, on a divergent view has simply contended that as per guidelines issued by the Ministry of Social Justice & Empowerment, Department of Empowerment of Persons with Disabilities (Divyangjan), dated 29.08.2018, the petitioner was informed vide communication dated 12.07.2024 that he was allowed to use his own scribe on condition that the qualification of his Scribe should be 1(one) step below his qualification. Except this submission, Mr. Debbarma, learned counsel for the respondent-TTAADC could not make any other convincing submissions before this Court.

9. Having heard the learned counsel appearing for the parties and on meticulous examination of the records, I find that the petitioner is a blind

handicapped with 100% disability as per the Disability Certificate [*Annexure-A* to the writ petition], issued by the District Disability Medical Board, West Tripura District. He was diagnosed '*Retinal Aplasia B/E*'.

10. Now, coming to the fact of the case, indubitably the petitioner has all the essential qualifications for the post of Sub-Zonal Development Officer/Deputy Principal Officer as advertised by the respondents-TTAADC and accordingly admit card was issued in favour of him to sit in the examination scheduled to be held on 09.06.2024 for the said Post by the respondent, but, due to leakage of answer sheet, the examination was postponed. Subsequently, when the examination was rescheduled on 21.07.2024, the petitioner submitted an application to the respondent to provide him a scribe since he is visually impaired. The respondent in reply on 12.07.2024 intimated the petitioner that he is allowed to use his own scribe on condition that the qualification of his scribe should be one step below his qualification. But, when he went to the examination centre with his scribe, the respondent had denied to allow him to appear in the examination since the scribe had one-step higher qualification than that of the petitioner. Having denied to sit in examination, the petitioner approached this Court for appropriate remedy.

11. On the background of the aforesaid facts, Mr. Bhattacharjee, learned *amicus* for the petitioner heavily stressed upon the Office Memorandum dated 1st January, 2019 issued by the Ministry of Social Justice & Empowerment, Department of Empowerment of Persons with Disabilities (Divyangjan).

At the outset, for the sake of convenience, the Office Memorandum dated 1st January, 2019 may be quoted as under:

“F.No.34-02/2015-DD-III(Pt)
Government of India
Ministry of Social Justice & Empowerment
Department of Empowerment of Persons with Disabilities (Divyangjan)

Pt. Antyodaya Bhawan, 5th Floor,
CGO Complex, Lodhi Road, New Delhi
Dated 1st January, 2019

OFFICE MEMORANDUM

Sub: Compliance of order of Hon'ble High Court of Delhi in the matter of Shri Aditya Narayan Tiwari & Anr. Vs Union of India & Anr reg.

In continuation of this Department's O.M. of even number dated 28/11/2018(copy enclosed), the undersigned is directed to say that Hon'ble High Court of Delhi has further clarified in the matter as under vide order dated 04/12/2018 (copy enclosed):

"Till the panel of scribes is formed, if any examination is conducted by any of the Department wherein the petitioners and similarly situated persons appear in the exam, the guidelines dated 29.8.2018 shall not be applicable, however, the candidate shall appear in terms of guidelines dated 26.02.2013..... "

2. All the Ministries/Departments are requested to issue appropriate advisory to all examining bodies under their administrative control to make a panel of scribe/reader/lab assistant at the District/Divisional/State Level in terms of clause V of the guidelines dated 29/08/2018. Till the panel of scribes is not formed, any of the Department who are conducting the exam, shall not conduct the exam in terms of guidelines dated 29/08/2018.

Sd/-
(D.K. Panda)
Under Secretary to the Govt. of India & CPIO
Tel. No. 24369059”

12. It is, therefore, crystal clear that in view of the judgment of Hon'ble Delhi High Court in **Aditya Narayan Tiwari** (supra), the memorandum dated 26.02.2013 is in existence. Further, from the judgment of **Vikash Kumar Vs. UPSC**, reported in (2021) 5 SCC 370, as referred to by learned counsel appearing for the petitioner, it appears that in view of the decision of the Apex Court in **Vikash Kumar** (supra), the Ministry of Social Justice and Empowerment, Govt. of India by an Office Memorandum dated 10th August, 2022, formulated certain guidelines.

13. Let me have a look upon the first and foremost concept of the case of *Vikash Kumar (supra)*. In the said case, the Hon'ble Supreme Court under the heading-***Benchmark disability not precondition to obtaining a scribe***, in paras 34, 35,36,37,38,39 & 40 of the judgment has observed thus:

“34. It is in this backdrop that the Court must resolve the issue, bearing as it does on the rights of similarly situated candidates. The 2016 RPwD Act embodies two distinct concepts when it speaks of; (i) “persons with benchmark disabilities”, and (ii) persons with disability. In defining a person with benchmark disability, Section 2(r) encompasses two categories; (i) a person with not less than 40 per cent of a specified disability, where the specified disability has not been defined in measurable terms, and (ii) a person with disability where the specified disability has been defined in measurable terms, as certified by the certifying authority. In other words, Section 2(r) encompasses both a situation where a specified disability has not been defined in measurable terms, in which event it means a person not less than 40 per cent of the specified disability but also where a specified disability has been defined in measurable terms. A certification by the certifying authority is contemplated in regard to whether the person concerned does in fact meet the specified norm as quantified.

35. The second concept which is embodied in Section 2(s) is that of a person with disability. Section 2(s) unlike Section 2(r) is not tagged either with the notion of a specified disability or a benchmark disability as defined in Section 2(r). Section 2(s) has been phrased by Parliament in broad terms so as to mean a person with a long term physical, mental, intellectual or sensory impairment which in interaction with various barriers hinders full and effective participation in society equally with others.

36. Section 2(s) is significant because it recognises firstly, the nature of the impairment, secondly, the interconnection of the impairment with various barriers and thirdly, the impact of the impairment in hindering full and effective participation on a footing of equality. On the first aspect, namely, the nature of the impairment, Section 2(s) requires that the impairment should be long term—physical, mental, intellectual or sensory. The statutory definition has evidently recognised that it is the nature of the impairment in its interaction with barriers that results in the full and effective participation of the person in society equally with others being hampered. Section 2(s) is, in other words, a far-reaching recognition by the legislature of disability as not only a function of a physical or mental impairment but of its interaction with barriers resulting in a social milieu which prevents the realisation of full, effective and equal participation in society.

37. Both as a matter of textual construction and bearing in mind the purpose and object underlying the term, it is necessary to emphasise that the definition in Section 2(s) cannot be constricted by the measurable quantifications tagged with the definition under Section 2(r).

38. The concept of a benchmark disability under Section 2(r) cannot be conflated with the notion of disability under Section 2(s). The

definition in Section 2(r) applies in the case of a specified disability. The expression “specified disability” is defined in Section 2(zc) to mean the disabilities as specified in the Schedule. The Schedule to the Act incorporates five specified disabilities:

1. Physical disabilities comprised of
 - (a) Locomotor disability including
 - (i) leprosy cured persons
 - (ii) cerebral palsy
 - (iii) dwarfism
 - (iv) muscular dystrophy
 - (v) acid attack victims;
 - (b) Visual impairment encompassing**
 - (i) blindness**
 - (ii) low vision**
 - (c) Hearing impairment
 - (d) Speech and language disability
2. Intellectual disability including
 - (a) specific learning disabilities
 - (b) autism spectrum disorder
3. Mental behaviour
4. Disability caused due to
 - (a) Chronic neurological conditions, such as
 - (i) multiple sclerosis
 - (ii) Parkinson's disease
 - (b) Blood disorder
5. Multiple disabilities (more than one of the above specified disabilities).

The Central Government has been empowered to notify any other category as a specified disability.

39. The concept of benchmark disabilities under the 2016 RPwD Act has specifically been adopted in relation with the provisions of Chapter VI and Chapter VII. Chapter VI contains special provisions for persons with benchmark disabilities. Among those provisions is Section 31 (free education for children with benchmark disability), Section 32 (reservation in higher educational institutions), Section 33 (identification of posts for reservation), Section 34 (reservation), Section 36 (Special Employment Exchange) and Section 37 (Special Schemes and Development Programmes). Chapter VII contains special provisions for persons with benchmark disabilities in need of high support. Thus, the concept of benchmark disabilities has been adopted by the legislation bearing in mind specific provisions which are contained in the law for persons meeting this description.

40. Conflating the rights and entitlements which inhere in persons with disabilities with the notion of benchmark disabilities does disservice to the salutary purpose underlying the enactment of the 2016 RPwD Act. Worse still, to deny the rights and entitlements recognised for persons with disabilities on the ground that they do not fulfil a benchmark disability would be plainly ultra vires the 2016 RPwD Act.”

14. Further, in the heading '*D.The legal framework*' of the judgment of *Vikash Kumar (supra)*, the Hon'ble Supreme Court in para 14 of the judgment observed thus:

"14. On 7-2-2018, a Notification was issued by the Ministry prescribing the Rules for the Conduct of the CSE to be held by UPSC in 2018. The notification covers diverse aspects governing the conduct of the examination. Among them is Section 1 of Appendix I which incorporates the "plan of examination" and Section 2 which provides for the "scheme, subjects for the preliminary and main examination". This is followed by "general instructions" for the conduct of the preliminary and main examination for the civil services. Insofar as is material, the general instructions contain the following stipulations:

"General Instructions (Preliminary as well as Main Examination):

(i) Candidates must write the papers in their own hand. In no circumstances will they be allowed the help of a scribe to write the answers for them. However, blind candidates and candidates with locomotor disability and cerebral palsy where dominant (writing) extremity is affected to the extent of slowing the performance of function (minimum of 40% impairment) will be allowed to write the examination with the help of a scribe in both the Civil Services (Preliminary) as well as in the Civil Services (Main) Examination.

(ii) Compensatory time of twenty minutes per hour shall be permitted for the blind candidates and the candidates with locomotor disability and cerebral palsy where dominant (writing) extremity is affected to the extent of slowing the performance of fl, motion (minimum of 40% impairment) in both the Civil Services (Preliminary) as well as in the Civil Services (Main) Examination."

These rules have since been amended in 2019."

15. In *Vikash Kumar (supra)*, Hon'ble Supreme Court issued a broader direction to the Union Government in the Ministry of Social Justice and Empowerment to ensure the framing of proper guidelines which would regulate and facilitate the grant of a facility of a scribe to persons with disability within the meaning of Section 2(s) where the nature of the disability operates to impose a barrier to the candidate writing an examination. These guidelines should also prescribe appropriate norms to ensure that condition of the candidate is duly certified by such competent medical authority as may be prescribed so as to ensure that only genuine candidates in need of the facility

are able to avail it. Consequently, the Government of India, Ministry of Social Justice and Empowerment (for short, 'MSJE'), Department of Empowerment of Persons with Disabilities (Divyangjan) issued an office memorandum dated, 10th August, 2022 in compliance with the direction issued in **Vikash Kumar** (*supra*). The operative portion of the said office memorandum reads thus:

“.....2. Keeping in view the above order of the Hon'ble Supreme Court, an Expert Committee was constituted to consider the issue and suggest guidelines accordingly. The Committee noted that there are various types of clinical problems that can affect the writing capacity. After careful consideration of the matter, the Committee recommended that sole criteria for grant of scribe and compensatory time should be based on assessment of the capability of a person to write.

3. The Committee accordingly recommended the following guidelines for conducting written examination for persons with specified disabilities covered under the definition of Section 2(s) of the RPwD Act, 2016 *but not covered under the definition of Section 2(r) of the said Act, i.e. persons having less than 40% disability and having difficulty in writing:* -

(a) These guidelines may be called as Guidelines for conducting written examination for persons with specified disabilities covered under the definition of Section 2(s) of the RPwD Act, 2016 **but not covered under the definition of Section 2(r) of the said Act,** i.e. persons having less than 40% disability and having difficulty in writing.

(b) The facility of scribe and/or compensatory time shall be granted solely to those having difficulty in writing subject to production of a certificate to the effect that person concerned has limitation to write and that scribe is essential to write examination on his/her behalf from the competent medical authority of a Government healthcare institution as per proforma at Appendix-I.

(c) The medical authority for the purpose of certification as mentioned in point (b) above should be a multi-member authority comprising the following:-

- i. Chief Medical officer/Civil Surgeon/Chief District Medical Officer.....Chairperson
- ii. Orthopaedic/PMR specialist
- iii. Neurologist, if available*

iv. *Clinical Psychologist/Rehabilitation Psychologist/ Psychiatrist/Special Educator*

v. *Occupational therapist, if available**

vi. *Any other expert based on the condition of the candidate as may be nominated by the Chairperson.*

(the Chief Medical Officer/Civil Surgeon/Chief District Medical Officer may make full efforts for inclusion of neurologists, occupational therapist from the nearest District or the Medical College/Institute, if the same is not available in the District)"*

(d) The candidate should have the discretion of opting for his own scribe or request the Examination Body for the same. The examination body may also identify the scribe to make panels at the District/Division/State level as per the requirements of the examination. In later instances the candidates should be allowed to meet the scribe two days before the examination so that the candidates get a chance to check and verify whether the scribe is suitable or not.

(e) In case the examination body provides the scribe, it shall be ensured that qualification of the scribe should not be more than the minimum qualification criteria of the examination. However, the qualification of the scribe should always be matriculate or above.

In case the candidate is allowed to bring his own scribe, the qualification of the scribe should be one step below the qualification of the candidate taking examination. The person opting for own scribe should submit details of the own scribe as per proforma at Appendix-II.

(f) There should also be flexibility in accommodating any change in scribe in case of emergency. The candidates should also be allowed to take different scribe for writing different papers especially for languages. However, there can be only one scribe per subject.

(g) The candidate should be allowed to use aids and assistive devices such as prosthetics & orthotics, hearing aid as mentioned in para 2 of the certificate issued by medical authority as per Appendix I.

(h) Compensatory time not less than 20 minutes per hour of the examination should be allowed for persons who are eligible for getting scribe. In case the duration of the 3 examination is less than an hour, then the duration of the compensatory time should be allowed on pro-rata basis. Compensatory time should not be less than 5 minutes and should be in the multiple of 5.

(i) The examination bodies shall modify their application forms to incorporate specific needs of this category of persons. In case, any

incident has been reported after filling up the form, the examination bodies shall inform the candidates to obtain medical certificate as per these guidelines for facilitating grant of scribe and/or compensatory time.

(j) As far as possible the examination for such persons may be held at ground floor. The examination centres should be accessible for persons with disabilities.

(k) These guidelines are applicable to written examinations conducted by central recruitment agencies as well as academic institutions. The States/UTs may adopt these guidelines or issue similar guidelines to maintain uniformity.

(l) These guidelines are independent of the Guidelines for conducting written examination for persons with benchmark disabilities issued by the Department of Empowerment of Persons with Disabilities on 29.08.2018.

(m) The examining bodies shall ensure strict vigilance to check misuse of facility of scribe.

4. All the recruitment agencies, Academics/Examination Bodies etc. under the administrative control of each Ministry/Department may be advised appropriately to ensure compliance of implementing these guidelines.

5. The above guidelines are issued with the approval of Hon'ble Minister (Social Justice & Empowerment)."

16. A person with benchmark disability is defined under Section 2(r) of the Act of 2016 which reads as under:

"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."

17. Keeping in view the above provision, it is crystal clear that the definition in Section 2(r) applies in the case of a specified disability. The expression "specified disability" is defined in Section 2(zc) to mean the disabilities as specified in the Schedule of the Act of 2016. For the sake of brevity, 'Schedule B' of the Specified Disability may be reproduced here-in-below:

“B. Visual impairment-

(a) “blindness” means a condition where a person has any of the following conditions, after best correction—

- (i) total absence of sight; or*
- (ii) visual acuity less than 3/60 or less than 10/200 (Snellen) in the better eye with best possible correction; or*
- (iii) limitation of the field of vision subtending an angle of less than 10 degree.*

(b) “low-vision” means a condition where a person has any of the following conditions, namely—

- (i) visual acuity not exceeding 6/18 or less than 20/60 upto 3/60 or upto 10/200 (Snellen) in the better eye with best possible corrections; or*
- (ii) limitation of the field of vision subtending an angle of less than 40 degree up to 10 degree.”*

18. It is apparent from the office memorandum dated 10th August, 2022, that the department of MSJE, Govt. of India issued the guidelines to protect the disabled person who is covered under Section 2(s) of the Act of 2016, but not covered who falls under the definition of Section 2(r) of the said Act.

Having gone through the above quoted observations of the Hon’ble Supreme Court and the guidelines dated 10th August, 2022, this Court may safely come to a conclusion that the extent of disability of the petitioner as it appears from the Disability Certificate, issued by the District Disability Medical Board is above benchmark. He was diagnosed ‘*Retinal Aplasia B/E*’ which means *a birth defect where an organ or tissue is wholly or largely absent*. Thus, he is suffering from total absence of his sight and has become 100 per cent visually impaired who comes under the purview of definition embodied in Section 2(r) of the Act of 2016 i.e. “*person with benchmark disability*”. Therefore, Section 2(r) of the Act of 2016 envisages the provision to arrange or offer a scribe to the petitioner to sit in the written examination in terms of the guidelines dated 26.02.2013, but, the respondent-TTAADC had

not allowed the petitioner to sit in the examination with the help of a scribe, which action of the respondent, in my considered opinion, is unwarranted. In my opinion, the respondent-TTAADC is liable to pay a sum of Rs. 25,000/- (Rupees twenty five thousand) only as compensation to the petitioner for harassment he suffered and a cost of Rs.10,000/-(Rupees ten thousand) due to their arbitrary conduct not to allow him to sit with his own scribe in the examination.

19. In the light of aforesaid enunciation of law and for the reasons recorded here-in-above, following directions are issued:

- I. The respondent-TTAADC shall make a panel of Scribe/Reader/Lab-Assistant, etc. and till the panel of Scribe is formed, if any examination is conducted by any of the department wherein the petitioner and similarly situated persons appear in the exam, the respondent-TTAADC shall permit the specially abled candidates in terms of the guidelines dated 26.02.2013.
- II. The respondent-TTAADC shall formulate necessary schemes/guidelines in line with the spirit and directions passed in the *Vikash Kumar* (supra) and to make a specially abled candidates to participate in any selection process to be undertaken by the respondent-TTAADC.
- III. The respondent-TTAADC shall pay a sum of Rs.25,000/- (Rupees twenty five thousand) only, as compensation and Rs.10,000/-(Rupees ten thousand) only as cost to the petitioner.

AND

IV. The entire process shall be completed within a period of 6(six) months from the date of receipt of a copy of this judgment and order.

20. Before I part, I would like to place on record my appreciation for valuable assistance provided by Shri Samarjit Bhattacharjee, learned *amicus*, who with consent of the petitioner and on my request has argued the case on his behalf. Learned *amicus* is entitled to Rs.10,000/- as his fees. However, Shri Bhattacharjee, learned *amicus* has fairly submitted that he has argued the case as *pro bono* keeping in mind the petitioner is specially abled.

21. The instant writ petition stands disposed in terms of above directions. Connected application, if any, shall also stand disposed.



JUDGE