



न्यायालय मुख्य आयुक्त दिव्यांगजन

COURT OF CHIEF COMMISSIONER FOR PERSONS WITH DISABILITIES (DIVYANGJAN)

दिव्यांगजन सशक्तिकरण विभाग / Department of Empowerment of Persons with Disabilities (Divyangjan)

सामाजिक न्याय और अधिकारिता मंत्रालय / Ministry of Social Justice and Empowerment

भारत सरकार / Government of India

Case No. 13746/1041/2023/181612

Complainant:

Shri Zeeshan Ali

Address – OTA 29, Zonal Office Campus, ECR,

Hajipur, Vishali, Bihar-844101

Mobile No. 6203648935

Email- a.zeeshan0088@gmail.com

Respondent:

(1) General Manager (The Recruiter)

Central Recruitment & Promotion Department

State Bank of India, Corporate Centre, Atlanta Building,

3rd Floor, Nariman Point, Mumbai – 400021

Email – gm.crpdp@sbi.co.in crpd@sbi.co.in

Contact No. 022-22820547.....Respondent No 01

(2) The Chairman,

The Institute of Banking Personnel Selection,

IBPS House, 90 feet D P Road, Near Thakur Polytechnic,

Off. Western Express Highways,

P.B. No.- 8587, Kandivali, Mumbai-400101

Email – contact@ibps.in.....Respondent No 02

(3) ION Digital Zone IDZ 1

Patliputra UNO Digital Pvt Ltd

Gate No. 1 Road No. 2 Block 3 Patliputra Industrial Estate

Near P&M Mall Patna – 800013.....Respondent No 03

Affected Person: The complainant, a person with 90% Multiple Disabilities

1. Gist of Complaint:

1.1 Shri Zeeshan Ali, a person with 90% multiple disabilities filed a complaint dated 22.12.2022 regarding denial to accessible means to appear in the Online Pre-Exam of SBI PO 2022-23. Due to his specific eye disability caused by RD, he needs large magnified font text only on black back ground with requisite contrast to read text. As this can't be corrected with normal lens and he can't hear too, so he uses Senorita 5HD magnifier to read the text and do rough work as prescribed by ophthalmologist. While

he received an e-mail a day before the examination conveying the approval of the appropriate authority for use of the magnifier, he was humiliated and not allowed him to carry it to the hall. He informed the authorities from the SBI and the TCS that he has been allowed to carry it in all previous exams of SBI as well as TJPSC Civil Services and BPSC. The officials said that this is another exam and not by UPSC.

2. Submissions made by the Respondent:

2.1 Respondent No 01, General Manager (RP & PM), SBI filed their reply dated 14.03.2023 and inter-alia submitted that Shri Zeeshan Ali, Roll No – 4401002116 reported for the online examination on 17.12.2022 at iON Digital Zone iDZ1, Patliputra Centre, Patna, along with Senorita 5 HD Video Magnifier having recording features along with photo capturing facility. Since the said device was having recording and photo capturing features, the candidate was not allowed to use the same in the said examination on his own.

2.2 He also received an email 19.12.2022 from Institute of Banking Personnel Selection (IBPS) which was conducted the said examination, the extract of the said email is as under:

“As informed by TCS Team, the candidate reported for examination with scribe and device. When device was inspected it was noted that the device can capture photo. Hence after discussion, candidate was informed that he can give exam with scribe but not with device, for which the candidate denied.”

2.3 Respondent No 02, Deputy General Manager, IBPS filed their reply dated 28.02.2023 and inter-alia submitted that as per the relevant provisions (Clauses K & L) of the Advertisement dated 02.08.2022 for CRP PO/MT XII, any kind of electronic device and gadgets are not allowed inside the said examination venue in order to prevent Cheating/unfair means in the examination. Hence, IBPS conveyed its inability to allow the same in accordance vide its replied dated 14.10.2022. Therefore, IBPS in order to facilitate him in consideration of his disability, assured his that he well be proved zooming/magnified font option on the computer system on the day of said examination. He also submitted that such electronic devices have storage, which can be used for cheating/unfair means.

2.4 He further submitted that the complainant has stated that he has been allowed to use ‘magnifier’ in other exam of UPSC, BPSC, SSC and even exams like SBI. The respondent has no knowledge about correctness of his such statement regarding other exam of UPSC, BPSC, SSC, hence it is unable to offer any comments on the same.

3. Submissions made in Rejoinder:

3.1 The complainant filed his rejoinder dated 24.03.2023 and submitted that in all the earlier exams of SBI, he was allowed to carry the magnifier and even in the exam of IBPS CRP/Clerk XI it was allowed as invert colour/black background feature was not available on candidate console/screen, may be seen in enclosure complaint #CLK11E359710 at 3:40 pm dated 17.12.2022.

3.2 The table of previous exams in which it was allowed is as under:

Name of Exam	Phase	Exam Conducting Authority	Agency of Online Exam	Result	Remarks Magnifier Allowed/not allowed with scribe and compensatory time
SBI PO	Pre	IBPS	TCS iON	Qualified	Allowed on spot on prior request
	Main	do	do	Not Qualified	Allowed on spot with prior request after rigorous check and harassment and after lapse of an hour of exam
The NIACL AO Generalist	I	do	do	Qualified	Allowed on spot on prior request
	II	do	do	Display of text was in accessible format and magnifier was not allowed	Not all having prior request to all concerned, re-appealed to Grievance redressal cell online, not considered
IBPS CRP/Clerk – XI	Pre	do	do	Not Qualified	Allowed on spot prior request, though denied on IBPS grievance portal, and then informed the the invert colour/black background feature is not available on candidate console/screen
SBI PO 2021	Pre	do	do	Qualified	Allowed on spot on prior request

	Main	do	do	Not Qualified	Allowed on spot with prior request
IBPS CRP/PO/MT – XII	PT	do	do	Not appeared as my prayer to allow the magnifier not considered	My prayer to allow the magnifier not considered and prayed before the court for justice
SBI PO 2022	PT	do	do	Appeared at the center of exam, but magnifier was not allowed	Not allowed having the SBI acceded my need so prayed before the court

3.3 The table above clearly shows that he has been allowed on spot with magnifier in all earlier exams of SBI and also in IBPS CRP/Clerk-XI and which may also be verified by their CCTV recording as they record every incident and being preserved.

3.4 The IBPS, SBI and ICS on the basis of false statements in comments 5 (storage feature, photo capturing), 8 (recording and photo capturing), and finally, in a biased, one sided and false report in comment 9 (recording feature, camera working) has denied him to access and take part in the exam.

4. Hearing: The case was heard via Video Conferencing by Chief Commissioner for Persons with Disabilities on **Thursday, the 22.05.2023**. The following were present:

Complainant: Shri Zeeshan Ali and alongwith Adv. Rajan Mani
Respondent No 1: Shri S. Lama, G. M.
Respondent No 2: Shri Mohan Nair, DGM

5. Observations & Recommendations:

5.1 During online hearing, the Complainant explained the necessity of the screen magnifier device. This is small device which can be held in hand. When the user of this device puts it in front of the computer screen it magnifies the font of the text displayed on the computer screen so that the Person with Disabilities having Visual Impairment can read the text. This device also has an option to change the background color and text color which also assists the user in reading the text. Apart from magnifying the

screen display, this device also helps in magnifying the text written on paper.

5.2 Complainant also presented some pictures to prove that the device is absolutely indispensable for him because of the nature of his disabilities. Due to his Visual Impairment, he cannot watch the text which is displayed on the computer screen and due to his Hearing Impairment, he cannot use the facility of scribe since he cannot hear the voice of the scribe.

5.3 The main issue raised by the Respondent No. 2 is that the Complainant cannot be allowed to use the magnifying device because it has recording and photo capturing feature, which can be used for cheating and unfair advantage. The Complainant explained that this feature is essential and it is used not for obtaining unfair advantage and further demonstrated the practical use of this feature. The Complainant demonstrated that he uses this feature to capture the photo of the screen and bring it close to his eyes so that he can watch the captured photo from close.

5.4 To resolve the issue assistance of concept of 'Reasonable Accommodation' is indispensable. Concept of Reasonable Accommodation is defined in Section 2(y) of Rights of Persons with Disabilities Act, 2016, hereinafter referred as 'Act'. As per provision, it means necessary and appropriate modification and adjustments, to ensure to Persons with Disabilities the enjoyment or exercise of rights with others. Further, Section 20(2) of the Act makes it positive obligation of every government establishment to provide 'Reasonable Accommodation' and appropriate barrier free and conducive environment to divyang employee.

SECTION 2(y) - "reasonable accommodation" means 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.

5.5 This principle is incorporated in RPwD Act, 2016 for effective implementation of rights recognised or guaranteed by the Act. Concept of 'Reasonable Accommodation' is not new in Indian legal jurisprudence. Hon'ble Supreme Court in JEEJA GHOSH v. UNION OF INDIA; (2016) 7 SCC 761, noted that a key component of equality is the principle of reasonable differentiation and specific measures must be undertaken, recognizing the different needs of persons with disabilities, to pave the way for substantive equality. Principle of 'Reasonable Accommodation' acknowledges that in order to rectify the social problem of discrimination with divyans, affirmative conditions have to be created for facilitating the development of Divyangjans. This principle is not merely a formality, it is component of duty not to discriminate with Divyangjans hence the state is bound to provide these facilities to its Divyangjans. Hon'ble Supreme

Court explained this in VIKASH KUMAR v. UPSC; 2021 SCC OnLine SC 84.

“54. The principle of reasonable accommodation has found a more expansive manifestation in the RPwD Act 2016. Section 3 of the RPwD Act 2016 goes beyond a formal guarantee of non-discrimination by casting affirmative duties and obligations on government to protect the rights recognized in Section 3 by taking steps to utilize the capacity of persons with disabilities “by providing appropriate environment”. Among the obligations which are cast on the government is the duty to take necessary steps to ensure reasonable accommodation for persons with disabilities. The concept of reasonable accommodation in Section 2(y) incorporates making “necessary and appropriate modification and adjustments” so long as they do not impose a disproportionate or undue burden in a particular case to ensure to persons with disability the enjoyment or exercise of rights equally with others.” Equality, non-discrimination and dignity are the essence of the protective ambit of the RPwD Act 2016.”

5.6 Another provision which is indispensable to mention here is s.2(h) of the Act. The provision lays down the definition of ‘discrimination’ and is mentioned below –

(h) “discrimination” in relation to disability, means 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;

5.7 From perusal of the provisions mentioned above and particularly s. 2(h) of the Act, it is certain that the concept is not merely a privilege which can be granted or denied at the discretion of the appropriate government. It is the mandate of the appropriate government to provide reasonable accommodation and if denied, it amounts to discrimination.

5.8 Coming to the factual matrix of the Complaint, screen magnifier device, which is in center of the present Complaint is assistive device and falls under the umbrella of ‘Reasonable Accommodation’. The Respondent has to allow its use in order to accommodate the disability of the Complainant.

5.9 The only objection raised by the Respondent No. 2 in allowing the use of screen magnifier device, hereinafter referred as ‘device’, is that it has storage capacity and hence can be used for cheating. The Respondent tried to disprove this objection through the demonstration made during online hearing. This Court is not inclined to agree with the Respondent’s

objection. It is hard to configure as to how the device can be used for cheating if it has very limited capacity of storing things. As far as the submissions made by the Respondent, no evidence was produced to prove that the device can be used to establish communication with any third party so as to send and receive the information during examination from third party. Respondent's objection seems to be only apprehension bereft of any merit.

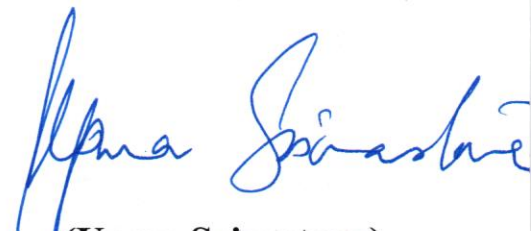
5.10 During online hearing, the learned advocate appearing on behalf of the Complainant also suggested that if the Respondent will provide their own magnifying device, it can also solve the problem.

5.11 On the basis of the legal provisions and submissions made by the parties, this Court recommends that in order to solve the issue and properly analyze and check the device and make reasoned decision on the issue of possibility of cheating, both the Respondents shall, within 30 days from the date of this Order, send their representatives to the Complainant's home in Bihar. The representatives shall particularly analyze the storage capacity issue. These representatives shall also demonstrate their own screen magnifier device to the Complainant and evaluate if it fulfils the requirements of the Complainant.

5.12 A copy of this Order shall also be marked to M/o Electronics & Information Technology (MeitY), which shall inform this Court within 30 days from the date of this Order, about technology or device which may already be existing or any other possible solution by use of which the disability of the Complainant can be accommodated.

5.13 Respondents are directed to submit the Compliance Report of this Order within 3 months from the date of this Order. In case the Respondents fail to submit the Compliance Report within 3 months from the date of the Order, it shall be presumed that the Respondents have not complied with the Order and the issue will be reported to the Parliament in accordance with Section 78 of Rights of Persons with Disabilities Act, 2016.

5.14 Accordingly, the case is disposed of.



(Upma Srivastava)
Chief Commissioner
for Persons with Disabilities

Dated: 03.07.2023