

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 6322 OF 2015

Prachi Gaikwad

.. Petitioner

VS

The State of Maharashtra & Ors.

.. Respondents

Ms. Pooja Thorat i/b Mr. M.V. Thorat for the petitioner.

Mr. Prashant Patil for Mr. G.K. Gole for the respondent – MCI.

Mr. V.B. Thadani, AGP for the respondent – State.

Dr. A.S. Vyas, Officer on Special Duty, DMER present in person.

**CORAM: MOHIT S. SHAH, C.J. &
A.K. MENON, J.**

DATE : 10 JULY 2015

P.C.:

In this petition under Article 226 of the Constitution, the petitioner, seeking admission to the First Year MBBS Course in the category of physically handicapped student, has challenged the assessment of the petitioner's disability at 5%.

2. Learned counsel for the petitioner places on record a Certificate dated 6 July 2015 issued by the Department of Orthopedics and Surgery, Lokmanya Tilak Municipal College and L.T.M.G. Hospital, Sion, Mumbai-400 022 certifying the petitioner's

permanent disability as 54%. The said certificate is marked as “A” for identification.

3. Pursuant to the directions dated 2 July 2015, the petitioner has been examined by the Special Medical Board.

4. Learned A.G.P. places on record a certificate dated 8 July 2008 indicating the permanent locomotor disability assessed as 47%. The said certificate is taken on record and marked “B” for identification.

5. The petitioner has been certified to be fit to pursue the Health Science Course and, therefore, the petitioner is treated as eligible for the MBBS Course.

6. In view of the above, the previous assessment assessing the petitioner's disability at 5% of the upper limb would not survive. But learned counsel for the petitioner further submits that 47% locomotor disability will be treated as falling in second category below the students with disability between 50% and 70% and this classification may come in her way when the petitioner will be prosecuting her post graduate study.

7. We make it clear that the petitioner's disability assessed at 47% on this occasion will not determine the percentage of the petitioner's disability at the time of admission to the post graduate

medical course. At that time the Special Medical Board shall again examine the petitioner's disability.

8. In view of the above directions, the learned counsel for the petitioner does not press the petition as the respondents have agreed to consider the petitioner to the First Year MBBS Course on the basis that the petitioner has 47% locomotor disability and the petitioner is eligible for admission to the First Year MBBS Course.

9. Subject to the direction in para 7 above, the petition is disposed of.

CHIEF JUSTICE

(A.K. MENON, J.)