

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.09.2015

CORAM :

THE HONOURABLE MR.JUSTICE M.M.SUNDRESH

W.P.No.18345 of 2015

and

M.P.No.1 of 2015

S.Vishnu
rep.by its father and
natural guardian S.Subbaraj

... Petitioner

Vs.

1. The Secretary to Government,
Department of Health,
Fort St.George, Secretariat,
Chennai - 600 009,
2. The Secretary to Selection Committee,
Directorate of Medical Education,
Kilpauk, Chennai - 600 010,
3. Medical Council of India,
rep.by its Secretary,
Dwarker Phase-1-8,
New Delhi.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for the issuance of a Writ of Mandamus to direct the respondents to allotment seat to the petitioner in the M.B.B.S. Course having the petitioner's Random No.2147483647 who had attended the counseling on 19.6.2015 on the call of the 2nd respondent.

For Petitioner : Mr.S.Prabhakaran
for Mr.A.Kumanaraja

For Respondents : Mr.D.Krishnakumar, Spl.G.P for R.1
Mrs.P.Rajalakshmi, Govt.Advocate for R.2
Mr.V.P.Raman for R.3

ORDER

The petitioner applied for MBBS/BDS Course for the year 2015-16 under Orthopaedically Physically Disabled Quota. The petitioner's cut-off mark is 171.25. Of the entire seats available in MBBS Course, 3% have been earmarked for admission under the Orthopaedically disabled category.

2. It appears that totally 93 applications were received under the said category. Having found that only 83 candidates were eligible, call letters were sent to them for their appearance before the Special Medical Board. On examination, the said Medical Board declared the petitioner as not eligible as he is having Duchene Muscular Dystrophy with 60% disability. Challenging the same, the present writ petition has been filed.

3. Before proceeding further, let us have a look at the prospectus governing the issue. Clause 41 (iii) of the prospectus deals with the reservation for Orthopaedically Physically Disabled, the apposite portion of which reads as under:

"41. SPECIAL CATEGORIES:-

(i)

(ii)

(iii) Seats Reserved for Orthopaedically Physically Disabled:

(a) 3% of the total number of seats available in Government Medical/ Dental Institutions are reserved for the Orthopaedically Physically disabled candidates. In the first instance in the reservation of seats, candidates with disability of lower limbs between 50% to 70% shall be considered and in case candidates are not available in that category then candidates with disability of lower limbs between 40% to 50% may be considered. The other conditions for admission into MBBS/ BDS Course will be applicable as in the case of the general category.

(b) The candidates are required to produce a certificate from the District Medical Board of the area concerned constituted for the purpose of assessing the nature and the extent of disability only in the format prescribed in the Annexures - IV (a) & (b). Certificates in any other format will be summarily rejected.

(c) The Certificate must have been obtained within three months prior to submitting the application for seeking admission under this category. If the Certificate has been obtained

earlier, the application will be rejected.

(d) The Candidates seeking MBBS/BDS courses under this category will be required to undergo second medical examination by a Special Medical Board constituted by the Director of Medical Education to ascertain and confirm the nature and extent of Orthopedic Physical Disability at the time of counseling.

The candidate seeking admission under this category should produce a full size photograph exhibiting the deformity.

(e) Candidates with any other disability other than the locomotory disability of the lower limb will not be considered for admission into MBBSA/BDS Course under this Special Category. Such applications will be summarily rejected without any intimation to the candidate. Both Upper limbs, Vision, Hearing should be normal.''

4. The petitioner was issued with the Certificate by the District Medical Board as required by the prospectus. The report of the District Medical Board appears to be in favour of the petitioner. Thereafter, as per Clause 41(iii)(d), the petitioner was made to undergo medical test with the Special Medical Board. The Special Medical Board declared the petitioner as unfit since he was having progressive disorder in the upper limbs leading to weakness. He was also found suffering from Duchene Muscular Dystrophy with 60% disability. Thereafter, the petitioner moved the present writ petition before this Court.

5. This Court passed the following order on 26.6.2015:

''When the matter was listed on 25.6.2015, the learned Counsel appearing for the petitioner/candidate, submitted that the functional capacity of the upper limb of the petitioner is perfectly normal and therefore, he is entitled to be considered for the seats reserved for Orthopaedically Physically Disabled. Mr.R.Vijayakumar, learned Additional Government Pleader, accepted notice on behalf of the respondents 1 and 2, and Mr.V.P.Raman, learned Standing Counsel, accepted notice on behalf of the third respondent, and they sought time to get instructions.

2.Today, when the matter is taken up, the learned Additional Government Pleader, on instructions, would submit that since as per the entry found in

Column No.7 of the Medical Certificate for Orthopaedically Physically Disabled, given in Annexure IV (a), it has been stated that the petitioner is having 50% functional ability in his upper limb, his claim was not considered.

3. In response to the said submission, the learned Counsel appearing for the petitioner, has invited the attention of this Court to page No.19 of the typed-set of documents, and would submit that as per the said certificate, the petitioner/candidate does not have any upper limb disability and has only locomotory lower limb disability and in respect of the entry made in Column No.7, cent percent has been taken as a consideration for the functional ability of the entire body and therefore, it cannot be construed that the petitioner is having the disability on his upper limb also and prays for appropriate orders.

4. It is to be pointed out at this juncture, that in the prospectus itself, it has been indicated that the candidates seeking MBBS/BDS Course under this category, will be required to undergo second medical examination by a Special Medical Board constituted by Director of Medical Education to ascertain and confirm the nature and extent of Orthopedic Physical Disability at the time of counselling.

5. In the light of the above, there shall be an order of ad-interim direction directing the petitioner to appear before the second respondent on 1.7.2015, along with necessary documents and on such appearance, the second respondent is directed to refer him to the Special Medical Board constituted by the Director of Medical Education, as indicated in page No.15 of the Prospectus for Admission to MBBS/BDS Courses - 2015-2016 Session, forthwith and submit a report on or before 14.7.2015. It is also made clear that admission of students to MBBS/BDS Courses 2015-2016, under Orthopaedically Physically Disabled Category, is subject to the result of this writ petition.

5. List the matter on 14.7.2015, in the same position."

6. In pursuant to the said order, a different Medical Board re-examined the petitioner and it has reiterated the earlier view taken holding that the petitioner is not fit. These are the background facts.

7. Mr.Prabhakaran, learned counsel appearing for the petitioner submits that the District Medical Board has given a clean chit to the petitioner. The upper limbs of the petitioner are normal. A mere statement that there is weakness in the upper limbs cannot be a ground to deny the seat to the petitioner. The petitioner is 17 years old and therefore there is no possibility of the disease being spread. On merits, the petitioner is entitled to get a seat under the said quota. Therefore, the writ petition will have to be allowed.

8. Learned Special Government Pleader Mr.D.Krishnakumar submitted that the prospectus mainly followed the Medical Council of India guidelines. The petitioner, having accepted the prospectus, cannot go beyond the same. Two Medical teams have examined the petitioner. The disease of the petitioner is progressive and in view of the upper limbs being not functional and normal, he was rightly not considered. The question is not only the entitlement of the petitioner but his ability to undergo the course and perform the role of the Doctor. When experts have opined as above, the same is not required to be reviewed by this Court.

9. On the scope and applicability of the Medical Council of India regulations vis-a-vis the prospectus, the learned Special Government Pleader appearing for the respondents has made reliance upon the following judgments:

''(1) Medical Council of India Vs. P.Divya, ((2013 (3) CTC 791); and
(2) M.Rosy Vs. V.Dhanasekaran (W.P.Nos.18641 and 18642 of 2012, dated 1.8.2012)''.

10. After hearing the arguments at length on the last occasion, this Court directed the learned Special Government Pleader to ensure the presence of the team of doctors, who examined the petitioner. Accordingly, they are present before this Court today and they also explained the situation governing the case.

11. The Medical Council of India in the general body meeting held on 21/22nd June 2001 held as follows:

''Among the locomotory disabled the upper limb should be functional and normal as it is required to elicit sign during clinical examination and finer movements are desired for conduct of surgical procedure. Again the feeling and the sensation are important for clinical diagnosis and the treatment and locomotory disabled involving upper limb should be considered not eligible for admission to the professional medical course.''

12. The above said guidelines have been incorporated in clause 41 (iii) of the prospectus. It appears that as per the prospectus the petitioner was referred to the Special Medical Board constituted. Admittedly it was constituted with the experts in the field. They have opined in clear terms that the petitioner will not be in a position to undergo the course and perform the role of a Doctor. The second Medical Board was constituted with fresh team of specialists. They also reiterated the same.

13. Unfortunately, the disease, which the petitioner suffers, is said to be of progressive in nature. The team of doctors, who appeared before this Court submitted that the progression has begun in the upper limb. Thus, it has been stated that the upper limbs of the petitioner are not normal. A combined reading of the guidelines issued by the Medical Council of India with that of Clause 41(iii)(e) of the prospectus would make the position clear that the upper limbs of the candidate seeking admission should be normal. It has been further noted in specific terms that candidate with any other disability other than the locomotive disability of the lower limbs will not be considered.

14. The Doctors informed this Court that the upper limbs consists of arms and shoulders. The petitioner has obtained only minus 4 with respect to shoulder extension and similar is the position with with respect to elbow extension. They also stated that the weakness would increase gradually starting from the upper limbs. This is the unfortunate position.

15. The Division Bench of this Court in Medical Council of India Vs. P.Divya, ((2013 (3) CTC 791), in which I was a member, has reiterated the settled position of law in the following manner:

9.3. It is settled law that this Court cannot substitute its views over a decision taken by the experts on a proper analysis on materials available before them. Hence on facts, we are of the view that the first respondent does not have any locus to challenge the impugned regulation in so far as the classification and the restriction regarding lower limb of locomotor disability is concerned.

....

13. When the experts are of the view that certain categories of the persons cannot perform the role of a student or a Doctor, then it is well within the powers of the appellant to restrict them based upon the said opinion. While this Court has got every sympathy for disabled persons, the overwhelming public interest has to be seen, particularly, when

such persons cannot perform the role assigned to them.

....
15.1.It is nobody's case that the disabilities which have been excluded would not stand in the way of the persons concerned from performing their duties as students of medicine and thereafter as Doctors. The appellant is the best person to decide the said issue. Therefore, we are also of the view that the directions given by the learned Single Judge to include all disabilities under the Act 1 of 1996 cannot be sustained.''

In the light of the above judgment and the opinion of the team of doctors coupled with the facts discussed, this Court is unable to extend its helping hand to the petitioner.

16. Accordingly, the writ petition is dismissed. No costs. Consequently, the connected miscellaneous petition is also dismissed.

Sd/-
Assistant Registrar(CS III)

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To

Sub Assistant Registrar

1. The Secretary to Government,
Department of Health,
Fort St.George, Secretariat,
Chennai - 600 009
2. The Secretary to Selection Committee,
Directorate of Medical Education,
Kilpauk, Chennai - 600 010
3. The Secretary,
Medical Council of India,
Dwarker Phase-1-8,
New Delhi.

+lcc to Mr.S.Kumanaraja, Advocate, S.R.No.47099
+lcc to the Government Pleader, S.R.No.47667

W.P.No.18345 of 2015

GJ(CO)
CA(24/09/2015)