

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Pronounced on: 15.05.2015

+ W.P.(C) 4218/2014

DEEPSHIKHA

..... Petitioner

Through: Mr. S.K. Rungta, Sr. Adv. with
Mr. Prashant Singh, Adv.

Versus

MEDICAL COUNCIL OF INDIA & ORS

..... Respondents

Through: Mr. T. Singhdev, Adv. for R-1.
Mr. B.S. Shukla, CGSC for R-2.
Mr. Atul Kumar, Adv. for R-3.
Mr. Vikram Jetly, Adv. for R-4.

+ W.P.(C) 4344/2014

RAVI CHAUBEY

..... Petitioner

Through: Mr. Bhupesh Narula Adv.

Versus

UNION OF INDIA & ORS

..... Respondents

Through: Mr. Sanjeev Narula, CGSC with
Mr. Sunil Dalal & Mr. Ajay
Sondhi, Adv. for R-1/UOI.
Mr. T. Singhdev, Adv. for R-2.
Mr. Atul Kumar, Adv. for R-3.

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

JUDGMENT

Ms.G.ROHINI, CHIEF JUSTICE

1. The Central Board of Secondary Education (CBSE) issued a notification proposing to conduct All India Pre-Medical/Pre-Dental Entrance Test (AIPMT-2014) for admission to MBBS and Dental courses

in the Government Medical Colleges for the Academic Session 2014-15.

2. The petitioners in both the writ petitions are persons suffering from locomotor disability. The petitioner in W.P.(C) No.4218/2014 is having disability in her left hand whereas the petitioner in W.P.(C) No.4344/2014 is a person with bilateral club hand and bilateral club feet.

3. Both the petitioners appeared for the AIPMT-2014 and secured Rank No.19 and Rank No.3 respectively in Physically Handicapped (PH) category. However, their candidature was not considered for admission into Medical course on the ground that the reservation of seats in medical colleges for Physically Handicapped candidates is restricted only for persons suffering from locomotor disabilities of lower limbs and the same is not available for the persons suffering from locomotor disability of upper limbs.

4. The Notification for AIPMT-2014 providing reservation of 3% seats on horizontal basis for physically handicapped persons of locomotor disabilities of lower limbs was admittedly issued in terms of the Regulations issued by the Medical Council of India called Regulations on Graduate Medical Education, 1997 as amended by Notification dated 25.03.2009.

5. Aggrieved by the action of the respondents in holding that the petitioners are ineligible for admission into Medical course against the 3% seats reserved under PH category, these two writ petitions are filed with a prayer to declare (i) the Notification dated 25.03.2009 issued by the Medical Council of India (MCI) to the extent of restricting the reservation only to the persons with locomotor disability of lower limbs; and (ii) Clause 10.1(d) of the Information Bulletin issued by the CBSE

for conducting AIPMT-2014 containing similar stipulation that the 3% reservation for PH candidates shall be reserved only for persons with locomotor disability of lower limbs are ultra vires the provisions of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 and unconstitutional and further to direct the respondents to consider the candidature of the petitioners for admission to MBBS course against the 3% seats reserved for persons with disabilities.

6. It is primarily contended in the writ petitions that the classification sought to be drawn between the persons with locomotor disability of the upper limbs and the persons with locomotor disability of the lower limbs is irrational both on facts and law apart from being contrary to the object of the “Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 (for short ‘Disabilities Act) since the said Act does not draw any differentiation between the disability of lower limbs and upper limbs. It is also contended that the impugned Regulations and the Notifications are illegal and unconstitutional being violative of Articles 14 and 19 of the Constitution of India.

7. Before proceeding further, it may be mentioned that in exercise of the powers conferred by Section 33 of the Indian Medical Council Act, 1956, the Medical Council of India made Regulations on Graduate Medical Education, 1997 (for short ‘Regulations’). The said Regulations initially did not provide for any reservation for the Physically Handicapped persons. However, in terms of the directions of the Supreme Court in *All Kerala Parents Association of Hearing Impaired & Anr. Vs. State of Kerala*, (Civil Appeal No.6120/2001) (2003) 2 WLN 692 , the MCI issued the Notification dated 25.03.2009 thereby

adding sub-Clause (3) to Clause 4 of Chapter II under the heading (Admission to the Medical Course - Eligibility Criteria) providing 3% reservation for admission into MBBS Course in terms of Section 39 of the Disabilities Act. Clause 4 of Chapter II of the Regulations on Graduate Medical Education, 1997 as it originally stood may be reproduced hereunder for ready reference:-

“CHAPTER II

ADMISSION, SELECTION, MIGRATION & TRAINING:-

4. Admission to the Medical Course – Eligibility Criteria : No Candidate shall be allowed to be admitted to the Medical Curriculum proper of first Bachelor of Medicine and Bachelor of Surgery (MBBS) Course until:

- (1) He/she shall complete the age of 17 years on or before 31st December of the year of admission to the MBBS Course.
- (2) He/she has passed qualifying examination as under:
 - (a) The higher secondary examination or the Indian School Certificate Examination which is equivalent to 10+2 Higher Secondary Examination after a period of 12 years study, the last two years of study comprising of Physics, Chemistry, Biology and Mathematics or any other elective subjects with English at a level not less than the core course for English as prescribed by the National Council for Educational Research and Training after the introduction of the 10+2+3 years educational structure as recommended by the National Committee on education.

Note: Where the course content is not as prescribed for 10+2 education structure of the National Committee, the candidates will have to undergo a period of one year pre-professional training before admission to the Medical colleges.

or

(b) The Intermediate examination in science of an Indian University/Board or other recognized examining body with Physics, Chemistry and Biology which shall include a practical test in these subjects and also English as a compulsory subject.

or

(c) The pre-professional/pre-medical examination with Physics, Chemistry and Biology, after passing either the higher secondary school examination, or the pre-university or an equivalent examination. The pre-professional/pre-medical examination shall include a practical test in Physics, Chemistry & Biology and also English as a compulsory subject.

or

(d) The first year of the three years degree course of a recognized university, with Physics, Chemistry and Biology including a practical test in these subjects provided the examination is a “University Examination” and candidate has passed 10+2 with English at a level not less than a core course.

or

(e) B.Sc examination of an Indian University, provided that he/she has passed the B.Sc examination with not less than two of the following subjects Physics, Chemistry, Biology (Botany, Zoology) and further that he/she has passed the earlier qualifying examination with the following subjects – Physics, Chemistry, Biology

and English.

or

(f) Any other examination which, in scope and standard is found to be equivalent to the intermediate science examination of an Indian University/Board, taking Physics, Chemistry and Biology including practical test in each of these subjects and English.

Note:

The pre-medical course may be conducted either at Medical College or a Science College.

Marks obtained in mathematics are not to be considered for admission to MBBS course.

After the 10+2 course is introduced, the integrated courses should be abolished.”

8. The impugned Notification dated 25.03.2009 inserting sub-Clause (3) to Clause 4 of the abovesaid Regulations reads as under:-

In Chapter II Clause 4 under the heading “Admission to the Medical Course – Eligibility Criteria” the following shall be added after sub-Clause 2(f) -

“(3) 3% seats of the annual sanctioned intake capacity shall be filled up by candidates with the **Locomotor disability of lower limbs** between 50% to 70%.

Provided that in case any seat in this 3% quota remains unfilled on account of unavailability of candidates with locomotory disability of lower limbs between 50% to 70% then any such unfilled seat in this 3% quota shall be filled up by persons with locomotory disability of lower limbs between 40% to 50% - before they are included in the

annual sanctioned seats for General Category candidates.”

(emphasis supplied)

9. In terms of Clause 4 (3) of Chapter II of the Regulations of Graduate Medical Education 1997, 3% reservation for physically handicapped candidates with locomotor disability of lower limbs has been provided for admission into Medical and Dental Courses from the Academic Year 2009-10 onwards. Accordingly, the Information Bulletin issued for AIPMT-2014 contained a specific provision, i.e. Clause 10.1(d) providing for reservation for physically handicapped candidates and the same reads as under:-

“10.1(d) - 3% seats are reserved on horizontal basis for **Physically Handicapped candidates (only for locomotory disabilities of lower limbs)** between 50% to 70%, provided that in case any seat in this 3% quota remains unfilled on account of unavailability of candidates with locomotory disability of lower limbs between 50% to 70% then any such unfilled seat in this 3% quota shall be filled up by persons with locomotory disability of lower limbs between 40% to 50% before they are included in the seats of respective category in 15% All India UG quota seat. Detailed information in this regard is available on the website of the Ministry of Health and Family Welfare www.mohfw.nic.in Candidates who considered themselves eligible for this category are advised to ensure their eligibility by getting themselves examined at any Government Medical College/District Hospital/Government Hospital. However, candidates may kindly note that in case of selection under PH category, they will be required to produce Disability Certificate from one of the disability assessment boards, constituted at the four metro cities, mentioned below, before their schedule date of counselling:

- i) Vardhman Mahavir Medical College and Safdarjung Hospital, Ansari Nagar, Ring Road, New Delhi – 110029

(Tel No.011-26190763 & 26163072).

- ii) All India Institute of Physically Medicine and Rehabilitation, Hazi Ali Park, K. Khadya Marg, Mahalaxmi, Mumbai-400034 (Tel No.022-23544341).
- iii) Institute of Post Graduate Medical Education & Research, 244, Acharya J.C. Bose Marg, Kolkata-20 (Tel No.033-22235181).
- iv) Madras Medical College, Park Town, Chennai-600003 (Tel No.044-25305301).”

(emphasis supplied)

10. The petitioner in W.P.(C) No.4218/2014 who has disability in her left hand appeared before the Disability Assessment Board at Vardhman Mahavir Medical College and Safderjung Hospital, New Delhi (for short ‘Safderjung Hospital’) as required in Clause 10.1(d) of the Information Bulletin and after examining her, the Disability Assessment Board issued the disability certificate dated 24.06.2014 stating that she is suffering from Post Infective Ankylosis Left Elbow and has permanent physical impairment of left upper limb and that she is not eligible for admission in medical/dental courses as per the MCI/DCI Guidelines. Aggrieved by the same, the petitioner filed W.P.(C) No.4218/2014 and by order dated 22.07.2014, this Court directed the Medical Board of the Safderjung Hospital to re-examine the petitioner and apprise this Court about the exact nature of the petitioner’s disability and opine as to whether petitioner is physically able to pursue the MBBS Course and thereafter to practise as a Doctor. For the said purpose, the petitioner was directed to appear before the Office of the Medical Superintendent, Safderjung Hospital on 25th July, 2014. In pursuance thereof, the Safderjung

Hospital reconstituted the Medical Board and the petitioner was re-examined by the Board on 28.07.2014. The certificate dated 28.07.2014 issued by the Medical Board reflected that the petitioner is suffering from Post Infective Ankylosis Left Elbow and her total permanent physical impairment of left upper limbs is 46%. So far as her physical ability to pursue MBBS Course and thereafter to practise as a Doctor is concerned, the Board after independent evaluation opined that she is fit to undergo MBBS Course and thereafter to practise as a Doctor. However, the Heads of the Departments of PMR and Orthopaedics were of the view that she is not fit as her left upper limb is involved. It was also mentioned in the certificate that due to involvement of her upper limb, she has difficulty in the functions of lifting overhead objects removing and placing at the same place, touching nose with end of extremity, combing and plaiting and buttoning.

11. So far as the petitioner in W.P.(C) No.4344/2014 is concerned, the Disability Assessment Board at Safderjung Hospital issued the certificate dated 04.07.2014 stating that he is suffering from “bilateral club hand and bilateral club feet” and has permanent physical impairment of both lower limb and upper limb and that he is not eligible for admission in Medical/Dental Courses as per the MCI/DCI Guidelines. On the basis of the same, he was declined admission into MBBS course and aggrieved by the same he filed W.P.(C) No.4344/2014. By order dated 21.07.2014, this Court while issuing a similar direction for re-examination of the petitioner by the Medical Board at Safderjung Hospital and to apprise this Court about the exact nature of the petitioner’s disability, ordered that in the meanwhile the petitioner’s provisional allotment letter dated

11.07.2014 should not be cancelled. In pursuance thereof, the petitioner was re-examined and the Medical Board issued the certificate dated 24.07.2014 opining that the petitioner is fit to undergo MBBS Course except Physiology subject.

12. On the basis of the said certificates dated 28.07.2014 and 24.07.2014 issued by the Medical Board of Safderjung Hospital with regard to the ability of the petitioners to pursue the MBBS Course and thereafter to practise as a Doctor, the petitioners pressed for an interim direction to permit them to appear in Counselling and to allow them to be admitted in MBBS course pending the writ petitions. The said applications for interim directions were dismissed by this Court by common order dated 06.08.2014 observing:-

“14. Under the circumstances, it appears to us that whether the impugned Regulations and the impugned AIPMT-2014 Notification is ultra vires is a larger issue which requires consideration in the main writ petition.

15. So far as the interim order is concerned, as noticed above, the petitioners are very well aware of the fact that under the impugned Regulations as well as the Notification for AIPMT-2014 the reservation for physically handicapped candidates is restricted only for locomotor disabilities of lower limbs. Though both the petitioners are persons with locomotor disabilities of upper limbs and thus, are not eligible for reservation as per the impugned Regulations, they have chosen to appear for the entrance test and the present writ petitions came to be filed after the commencement of the counselling for admission into the MBBS/BDS course. At any rate, as the petitioners and respondents are bound by the statutory Regulations as they stand as of today, there cannot be any direction to the respondents to act contrary to the same.

16. Therefore, we do not feel it appropriate to grant a direction as sought by the petitioners for provisional admission into the MBBS/BDS course by way of interim relief.”

13. The Medical Council of India (MCI) filed the counter affidavit stating that the Regulations framed by the MCI are statutory in character and are binding on all the concerned universities and colleges conducting medical courses. It is explained that so far as the requirement of reservation for persons with disabilities in medical admissions is concerned, a Sub Committee was constituted by the MCI in January, 2001 for framing guidelines and on the basis of the report of the said Sub Committee, the Executive Committee called for the comments of the associations of ENT Specialists, Ophthalmologists, Orthopaedic Surgeons and General Surgeons with regard to the report of the Sub Committee and after considering the comments, a meeting was convened with experts on 24.05.2001 where the details regarding reservations for persons with disabilities as per Section 39 of the Disabilities Act was considered and a resolution was passed on 05.07.2001 by the Executive Committee stating that the persons with locomotor disability of upper limbs should be considered ineligible for admission to the professional medical course and that the locomotor disability of lower limbs is permissible subject to the guidelines specified therein. Subsequently on 14.07.2003, the MCI has reiterated that it is only persons with locomotor disability of lower limbs between 50% to 70% who should be allowed the benefit of reservation under the Disability Act for admission in the medical courses. It was further decided that the last valid disability certificate of the

candidate from a Medical Board should not be more than three months' old from the date of submitting his or her application for seeking admission in the reserved category for disabled candidates. It is further explained that the persons with visual or hearing impairment, as per the stipulation by the MCI, are not entitled for admission in medical courses and therefore they are not eligible to claim reservation. It is also added that after the decision of this Court in ***Dr. Raman Khanna v. University of Delhi & Ors.*** **106 (2003) DLT 197** wherein the MCI was directed to have a fresh look on the subject, the issue was considered by the MCI in the meeting held on 20.10.2003 and the General Body of the Council came to the conclusion that with regard to admission in medical courses, the percentage of locomotor disability of lower limbs should be 50% to 70% so as to ensure that the benefit of reservation actually reaches the deserving candidates. The General Body of the MCI opined that feeling and sensation are important aspects of clinical diagnosis and treatment and therefore the persons with locomotor disability of upper limbs are not eligible. Again in the meeting held on 07.09.2006, the Executive Committee of the MCI decided that the description of disability between 50% to 70% should continue subject to modifications that in case sufficient number of candidates with locomotor disability of the lower limbs of 50% to 70% are not available, the unfilled seats should be filled up by the candidates having locomotor disability of lower limbs to the extent of 40% to 50% before they are converted into the open category seats.

14. In the counter affidavit filed on behalf of the Ministry of Health

and Family Welfare, Government of India, it is stated that 62 seats in MBBS course and 6 seats in BDS course were reserved for physically handicapped candidates for the Academic Year 2014. Out of the seats so reserved, no seat is earmarked for OBC PH to which the petitioner in W.P.(C) 4218/2014 belongs. It is also stated that the Director General of Health Services being the allotment authority is bound to follow the eligibility criteria fixed by the Medical Council of India and therefore the eligibility rules have been incorporated in Para 10.1(d) of the Information Bulletin for AIPMT-2014 in terms of the MCI Regulations as amended by the notification dated 25.03.2009.

15. Sh.S.K.Rungta, the learned Senior Counsel appearing for the petitioner in W.P.(C) No.4218/2014 contended that Section 39 of the Disabilities Act will have overriding effect over the Regulations made by MCI and, therefore, the respondents cannot draw any differentiation between the persons with the disability of lower limbs and the persons with the disability of upper limbs. It is further submitted that the issue as to whether there is any justification in restricting the reservation only to the persons with locomotor disability of lower limbs was already adjudicated by this Court in ***Dr. Raman Khanna's case*** (supra) and it was held that persons with disabilities in upper limbs cannot be disqualified for admission to medical courses. It is also contended that the impugned regulations of MCI are not only contrary to the decision of this Court in ***Dr. Raman Khanna*** (supra) but also unconstitutional being violative of Article 14 and Article 19 of the Constitution of India. The further contention is that the impugned notification is hit by unreasonable

classification between the persons with locomotor disabilities of upper limbs and the persons with locomotor disabilities of lower limbs and that the same is contrary to the very object of the Disabilities Act.

16. The learned Senior Counsel also places much reliance upon the certificates issued by the Medical Board constituted by the Safderjung Hospital in terms of the interim orders passed by this Court in support of his submission that the petitioners are physically able to pursue the MBBS Course and thereafter to practice as a Doctor. Pointing out that some of the persons with similar disability of upper limbs have already completed MBBS/BDS Courses, the learned Senior Counsel vehemently contended that the decision of the General Body of MCI to exclude the persons with locomotor disability of upper limbs for admission to medical courses is wholly misconceived.

17. In support of his submissions, the learned Senior Counsel appearing for the petitioners relied upon the judgment of the High Court of Gujarat in *Dr. Deval R. Mehta v. Union of India & Ors.*, AIR 2011 Gujarat 33. In the said case, the very same question as to whether the MCI has any authority to frame the regulations limiting the reservation only to persons having locomotor disability of lower limbs by the Notification dated 25.03.2009 fell for consideration. Answering the said question, the Division Bench of the High Court of Gujarat held that the notification dated 25.03.2009 amending the Post-Graduate Medical Education Regulations is contrary to and amounting to altering the definition of “person with disability” as defined in Section 2(t) of the Disabilities Act and thus it is ultra vires.

18. Shri Bhupesh Narula, the learned counsel appearing for the petitioner in W.P.(C) No.4424/2014 has reiterated the same submissions adopting the arguments advanced by Shri S.K. Rungta, the learned Senior Counsel.

19. We have also heard the learned counsel for the MCI as well as the learned counsel appearing for the Union of India.

20. For proper appreciation of the contentions advanced on behalf of the parties, it is necessary to refer to the relevant provisions of the Disabilities Act, 1995 which is enacted to give effect to the Proclamation on the Full Participation and Equality of the People with Disabilities in the Asian and Pacific Region.

21. The words “disability”, “locomotor disability” and “person with disability” are defined under Section 2(i), (o) and (t) respectively of the Disabilities Act, 1995 as under:-

“2(i) “disability” means-

- (i) blindness;
- (ii) low vision;
- (iii) leprosy-cured;
- (iv) hearing impairment;
- (v) locomotor disability;
- (vi) mental retardation;
- (vii) mental illness;”

“2(o) “locomotor disability” means disability of the bones, joints or muscles leading to substantial restriction of the movement of the limbs or any form of cerebral palsy;”

“2(t) “person with disability” means a person suffering from not less than forty per cent of any disability as certified

by a medical authority;”

22. Sections 32, 33 and 39 of the Disabilities Act are also relevant for the purpose of the present case and the same read as under:

“32. Identification of posts which can be reserved for persons with disabilities. - Appropriate Governments shall –

- a. identify posts, in the establishments, which can be reserved for the persons with disability;
- b. at periodical intervals not exceeding three years, review the list of posts identified and up-date the list taking into consideration the developments in technology.

33. Reservation of Posts - Every appropriate Government shall appoint in every establishment such percentage of vacancies not less than three per cent. for persons or class of persons with disability of which one per cent. each shall be reserved for persons suffering from-

- i. blindness or low vision;
 - ii. hearing impairment;
 - iii. locomotor disability or cerebral palsy,
- in the posts identified for each disability:

Provided that the appropriate Government may, having regard to the type of work carried on in any department or establishment, by notification subject to such conditions, if any, as may be specified in such notification, exempt any establishment from the provisions of this section.

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39. All educational institutions to reserve seats for

persons with disabilities - All Government educational institutions and other educational institutions receiving aid from the Government, shall reserve not less than three per cent seats for persons with disabilities.”

23. As noticed above, in exercise of the powers conferred by Section 33 of the Indian Medical Council Act, 1956, the Graduate Medical Education Regulations, 1997 were made by the MCI and the said Regulations were amended by notification dated 25.03.2009 with the object of implementing the reservation provided under Section 39 of the Disabilities Act in all the Government educational institutions and other educational institutions receiving aid from the Government. Admittedly, the Regulations made by MCI as amended by the Notification dated 25.03.2009 provide for reservation for PH candidates having locomotor disabilities of lower limbs only. In other words, the candidates having locomotor disabilities of upper limbs are excluded from claiming the benefit of 3% reservation provided under Clause 4(3) of the Regulations on Graduate Medical Education, 1997 for admission into MBBS/BDS courses.

24. According to Shri S.K. Rungta, the learned Senior Counsel appearing for the petitioners, such exclusion of the candidates having locomotor disability of upper limbs would amount to drawing a further classification among the persons with locomotor disability which is impermissible under law. Referring to the definition of “locomotor disability” under Section 2(o) of the Disabilities Act which does not differentiate the disability of lower limbs and disability of upper limbs, the learned Senior Counsel submits that sub-clause (3) of clause 4 of the

Regulations made by MCI is ultra vires the provisions of the Disabilities Act. It is also contended that the classification sought to be made among the persons with locomotor disability, which has no nexus to the object sought to be achieved by the Disabilities Act, is violative of Article 14 of the Constitution of India.

25. In the light of the facts and circumstances of the case, the question that requires consideration by us is whether clause 4(3) of the Regulations on Graduate Medical Education, 1997 restricting the 3% reservation for the persons with locomotor disability of lower limbs only is liable to be struck down on the ground that it is ultra vires the provisions of the Disabilities Act apart from being violative of Article 14 of the Constitution of India.

26. It is true that the High Court of Gujarat in ***Dr. Deval R. Mehta's Case (Supra)*** held by judgment dated 24.11.2010 that a similar Notification issued by the MCI amending the Post Graduate Medical Education Regulations is ultra vires the provisions of the Disabilities Act and contrary to the definition of 'person with disability' as defined in Section 2(t) of the Disabilities Act.

27. However, it is brought to our notice by the learned counsel for the respondents that the abovesaid judgment of the High Court of Gujarat was carried in appeal before the Supreme Court and by order dated 18.07.2011 the Supreme Court while granting leave stayed the judgment of the High Court of Gujarat dated 24.11.2010 making it clear that the said order will not disturb the directions of the High Court to permit the

petitioner therein to continue his studies. It is not disputed before us that the said appeal is still pending before the Supreme Court.

28. It may also be mentioned that in ***Dr. Deval R. Mehta's case*** (supra), the petitioner had muscular weakness of both the right upper limb and right lower limb resulting in decreased grip and wasting of muscles on the right side and he was declared as physically disabled having 50% permanent physical impairment. However, he had already completed the M.B.B.S. course having been admitted in the Physically Handicapped category and the dispute arose at the stage of his admission to Post-Graduate Medical Course. In those circumstances, the High Court of Gujarat held that Medical Council of India cannot exclude the persons with upper limb locomotor disability from admission in the PG course on the ground that such person cannot elicit sign during clinical examination.

29. As could be seen, ***Dr. Deval R. Mehta's case*** (supra) is distinguishable on facts since the petitioner therein had successfully completed the MBBS course. At any rate, the judgment of the High Court of Gujarat has been stayed by the Supreme Court and the question whether MCI is justified in excluding the persons with locomotor disability of upper limbs from 3% reservation provided for PH candidates is yet to be decided by the Supreme Court.

30. Coming to the decision of the High Court of Delhi in ***Dr. Raman Khanna*** (supra), upon which the learned senior counsel appearing for the petitioners heavily relied upon, it may be mentioned that there was no adjudication as such in the said decision that the persons with disabilities

in the upper limbs cannot be disqualified. As we could see, this court had merely directed the MCI and the Delhi University to re-consider the policy of disqualifying candidates with disability of the upper limbs for availing the benefits enshrined in the Disabilities Act.

31. It is relevant to note that even prior to the decision in ***Dr. Raman Khanna's case*** (supra), the issue whether the benefit of reservation can be extended to persons with locomotor disability of upper limbs was considered by the Executive Committee of the MCI on 05.07.2001 and it was opined as under:

“Among the locomotory disabled the upper limb should be functional & 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. The locomotory disabled involving the lower limb is permissible but it should be with the following guidelines:-

1. If it involves only one lower limb it should have a minimum of 40% and should not exceed 60%.
2. If it involves both the lower limbs the total disability should not exceed 60% with a minimum of 40%.”

32. In pursuance of the directions of this Court in ***Dr. Raman Khanna's case*** (supra), the issue was re-considered in detail in the General Body Meeting of the MCI dated 20.10.2003 and it was reiterated that reservation can be made available under the Disabilities Act only to

persons with locomotory disability of lower limbs.

33. It is no doubt true that the Disabilities Act is a welfare legislation and the definition of the word ‘disability’ under Section 2(i) specifically includes locomotor disability without drawing any distinction between the disability of lower limbs and disability of upper limbs. However, the MCI which is an expert body to prescribe the qualification and standards for medical education, after elaborate deliberations, thought it fit to exclude certain disabilities including locomotor disability of upper limbs from the purview of Section 39 of the Disabilities Act. The law is well settled that this Court cannot substitute its views over a decision taken by such expert body on application of mind to the controversy involved.

34. That apart, as held in *Union of India Vs Devendra Kumar Pant, (2009) 14 SCC 546*, the intention of the Disabilities Act is not to accept reduced standards of efficiency in performance of functions of a particular post merely because the employee suffers from a disability.

35. In the said case the Supreme Court was dealing with the scope and purport of Section 47(2) of the Disabilities Act which provides that no promotion shall be denied to a person merely on the ground of disability. While holding that Section 47(2) of the Disabilities Act bars disability per se being made a disqualification for promotion, it was further observed –

“30. To give an example, a person working as a Lower Division Clerk (LDC) suffering from the disability of low vision, cannot be denied promotion to the post of Upper Division Clerk (UDC) merely because

of his disability. This is because the efficiency with which he functioned as an LDC will be the same while functioning as a UDC also and the disability as such will not affect his functioning in a higher post. But the position is different if the disability would affect the discharge of functions or performance in a higher post or if the disability would pose a threat to the safety of the co-employees, members of the public or the employee himself, or to the assets and equipments of the employer. If promotion is denied on the ground that it will affect the safety, security and performance, then it is not denial of promotion *merely on the ground of his disability*, but is denial of promotion by reason of the disability plus something more, that is, adverse effect of the disability upon the employee's performance of the higher duties or functions attached to the promotional post.

31. It is significant that Section 47(2) does not provide that even if the disability comes in the way of performance of higher duties and functions associated with the promotional post, promotion shall not be denied. Section 47(2) bars promotion being denied to a person on the ground of disability, only if the disability does not affect his capacity to discharge the higher functions of a promotional post.

32. Where the employer stipulates minimum standards for promotion keeping in view the safety, security and efficiency, and if the employee is unable to meet the higher minimum standards on account of any disability or failure to possess the minimum standards, then Section 47(2) will not be attracted, nor can it be pressed into service for seeking promotion. In other words, where the disability is likely to affect the maintenance of safety and security norms, or efficiency, then the stipulation of standards for maintaining such safety, security and efficiency will not be considered as denying a person with disability, *merely on the ground of his disability.*”

36. Drawing the same analogy to the case on hand, we may observe that the decision of the Expert Committee of the MCI to exclude certain categories of disabilities while providing reservation in terms of Section 39 of the Disabilities Act for admission into the medical courses is apparently for the reason that the said disabilities affect the capacity to discharge the functions as a Medical Practitioner. The report of MCI dated 05.07.2001 reflects that the feeling and sensation are important factors for clinical diagnosis and treatment. It also shows that finer movements are desired for conduct of surgical procedure. Since the persons with locomotor disability of upper limbs may not be in a position to satisfy the said criteria, the MCI appears to have excluded the persons with locomotor disability of upper limbs for the purpose of reservation in terms of Section 39 of the Disabilities Act.

37. The functional capacity to discharge the functions of a given profession or post is undoubtedly a relevant factor to decide the reasonableness of the classification and therefore, we are unable to hold that the action of MCI in distinguishing the persons with locomotor disability of upper limbs from the persons with locomotor disability of lower limbs for the purpose of admission in MBBS Course is unreasonable.

38. In ***Transport and Dock Workers Union and Others Vs Mumbai Port Trust and Another***, (2011) 2 SCC 575, the Supreme Court held that Article 14 does not prohibit reasonable classification for the purpose of legislation or for the purpose of adoption of a policy of the legislature or the executive provided the policy takes care to reasonably classify

persons for achieving the purpose of the policy and it deals equally with all persons belonging to a well defined class. While referring to the two conditions that are required to be fulfilled to satisfy the test of permissible classification namely, (i) that the classification must be founded on an intelligible differentia which distinguishes persons or things that are grouped together from others left out of the group and, (ii) that the differentia must have a reasonable relation to the object sought to be achieved by the statute in question, it was further held in the said admission:-

“20. In our opinion Article 14 of the Constitution does not take away from the State or its instrumentality the power of classification, which to some degree is bound to produce some inequality, vide *State of Bombay v. F.N. Balsara* (AIR 1951 SC 318). However, in our opinion, mere inequality is not enough to violate Article 14. Differential treatment, per se, does not constitute violation of Article 14. It denies equal protection only when there is no reasonable basis for differentiation, vide *Ameerunnissa Begum v. Mahboob Begum* (AIR 1953 SC 91 - para 11), *Babulal Amthalal Mehta v. Collector of Customs* (AIR 1957 SC 877 - para 16), etc. If the law or the practice deals equally with members of a well-defined class, it is not obnoxious and it is not open to the charge of denial of equal protection on the ground that it has no application to other persons.”

39. In a recent decision in ***Dr. Subramanian Swamy Vs. Director, CBI (2014) 8 SCC 682***, the Supreme Court has reiterated as to what should be regarded as a ‘class’ for the purpose of legislation as under:-

“58. The Constitution permits the State to determine, by the process of classification, what should be regarded as

a class for purposes of legislation and in relation to law enacted on a particular subject. There is bound to be some degree of inequality when there is segregation of one class from the other. However, such segregation must be rational and not artificial or evasive. In other words, the classification must not only be based on some qualities or characteristics, which are to be found in all persons grouped together and not in others who are left out but those qualities or characteristics must have a reasonable relation to the object of the legislation. Differentia which is the basis of classification must be sound and must have reasonable relation to the object of the legislation. If the object itself is discriminatory, then explanation that classification is reasonable having rational relation to the object sought to be achieved is immaterial.

70. Undoubtedly, every differentiation is not a discrimination but at the same time, differentiation must be founded on pertinent and real differences as distinguished from irrelevant and artificial ones. A simple physical grouping which separates one category from the other without any rational basis is not a sound or intelligible differentia. The separation or segregation must have a systematic relation and rational basis and the object of such segregation must not be discriminatory. Every public servant against whom there is reasonable suspicion of commission of crime or there are allegations of an offence under the PC Act, 1988 has to be treated equally and similarly under the law. Any distinction made between them on the basis of their status or position in service for the purposes of inquiry/investigation is nothing but an artificial one and offends Article 14.”

40. Reiterating the principle that Article 14 is attracted only where equals are treated differently without any reasonable basis, it is further explained in *S. Seshachalam & Ors. Vs. Bar Council of Tamil Nadu*

(2014) SCC Online SC 1011:

“21. Article 14 forbids class-legislation but it does not forbid reasonable classification. The classification however must not be “arbitrary, artificial or evasive” but must be based on some real and substantial bearing, a just and reasonable relation to the object sought to be achieved by the legislation. Article 14 applies where equals are treated differently without any reasonable basis. But where equals and unequals are treated differently, Article 14 does not apply. Class legislation is that which makes an improper discrimination by conferring particular privileges upon a class of persons arbitrarily selected from a large number of persons all of whom stand in the same relation to the privilege granted and between those on whom the privilege is conferred whom and the persons not so favoured, no reasonable distinction or substantial difference can be found justifying the inclusion of one and the exclusion of the other from such privilege.”

41. In the light of the settled legal position noticed above, we do not find any substance in the contention that Clause 4(3) of the impugned Regulations as amended by Notification dated 25.03.2009 is hit by unreasonable classification between the persons with locomotor disabilities of upper limbs and persons with locomotor disabilities of lower limbs. The said classification according to us has a rational basis and a reasonable nexus with the object sought to be achieved. Hence the same cannot be held to be violative of the equality clause enshrined in Article 14 of the Constitution of India.

42. However, Shri S.K. Rungta, the learned senior counsel placing reliance upon the Notification dated 29.07.2013 issued by the Ministry of

Social Justice and Empowerment, Government of India in terms of the provisions of Section 32 of the Disabilities Act identifying the suitable posts for persons with disabilities in Group A, B, C and D, submitted that for the posts of Medical Officers in Group-A and for the posts of Physicians (Non-Surgical) in Group-B, the persons with disabilities with upper limbs are identified as suitable and therefore, the Notification dated 25.03.2009 issued by the MCI amending the Regulations thereby restricting the reservation for admission into MBBS Course only to persons with locomotor disability of lower limbs shall be deemed to have been superseded.

43. We are unable to agree with the contention that the impugned Regulations of MCI shall be deemed to have been superseded in view of the subsequent Notification dated 29.07.2013 issued under the Disabilities Act. It is no doubt true that the Disabilities Act is intended to give a helping hand to persons with disability so that they can lead a self reliant life with dignity and freedom. However, the impugned Regulations are also statutory Regulations and are made by MCI which is an expert body and competent authority under the Indian Medical Council Act, 1956 to prescribe the qualification and standards of medical education. Therefore, a harmonious approach has to be made while interpreting such enactments so as to make both the enactments workable.

44. In this context, we may refer to the decision of the High Court of Madras dated 12.04.2013 in *MCI v. P. Divya*, (2013) 6 MadLJ 225 in which a Division Bench of the High Court, while considering the validity of the very same amendment to the Regulations on Graduate Medical

Education, 1997 by notification dated 25.03.2009, held that there is no repugnancy between Section 39 of the Disabilities Act and the Graduate Medical Education Regulations, as amended by the notification dated 25.03.2009. It was further held that both the MCI Regulations and Section 39 of the Disabilities Act have to be read together to make them workable without any possible conflict. It appears that the said judgment of the High Court of Madras has attained finality.

45. The observations made by the High Court of Madras in *MCI v. P. Divya* (supra) may be usefully extracted hereunder:

“12. Admittedly in this case, the private Respondent does not question the power or authority of the Appellate to frame Regulations. The attack is on the restrictive implementation of Section 39 of the Act only. Therefore, applying the Rule of Harmonious and Purposive Construction, we have no difficulty in holding the impugned Regulation as valid in law. Admittedly, the Appellant has implemented Section 39 of the Act by reserving 3% of the seats to the disabled persons. We do not find any repugnancy between Section 39 of the Disabilities Act and the impugned Regulations. Taking into consideration of the Principles governing the Interpretation of Statute, we find that both of them have to be read together to make them workable without any possible conflict. While deciding the Constitutionality of a provision, this Court cannot test it on the factual premise of an individual case. In other words, a mere hardship of an individual cannot be the basis for testing the Constitutional validity of a provision. In this connection, it is useful to quote the following passage of the Honourable Apex Court in *Avishek Goenka (2) v. Union of India and another*, 2012 (4) CTC 272 (SC): (2012) 8 SCC 441:

‘The interpretation of law is not founded on a single circumstance, particularly, when such circumstance is so very individualistic. The Court is not expected to go into individual cases while dealing with interpretation of law. It is a settled canon of interpretative jurisprudence that hardship of few cannot be the basis for determining the validity of any statute. The law must be interpreted and applied on its plain language (Ref: Saurabh Chaudri v. Union of India, 2003 (4) CTC 477 (SC): AIR 2004 SC 361).’

13. When the experts are of the view that certain categories of the person 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.”

46. We respectfully agree with the view expressed by the High Court of Madras in *MCI v. P. Divya* (supra) and thus applying the harmonious and purposive construction we hold that Clause 4(3) of the impugned Regulations made under the MCI Act cannot be struck down merely on the ground that by subsequent notification issued under the Disabilities Act certain posts have been identified as suitable for Medical Graduates with locomotor disability of upper limbs.

47. May be that it is open to MCI to have a re-look at the issue in the light of the said Notification dated 29.07.2013 issued in terms of Section 32 of the Disabilities Act identifying the posts of Medical Officers and the posts of Physicians (Non-surgical) as suitable posts for persons with disabilities and to decide whether the 3% reservation provided to the

persons with locomotor disability of lower limbs for admission to the Medical course can be extended to the persons with locomotor disability of upper limbs also subject to limitations, if any, however no mandamus as such can be issued by this Court to allow admission to the petitioners since the same would amount to compelling the respondents to act contrary to the statutory regulations as they stand as of today.

48. For the aforesaid reasons, the relief as prayed for cannot be granted and accordingly, both the writ petitions are dismissed. There shall be no order as to costs.

CHIEF JUSTICE

RAJIV SAHAI ENDLAW, J

MAY 15, 2015

‘anb’/kks