

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 9556 OF 2016

Rutuja Dattatraya Raut .. Petitioner
V/s
State of Maharashtra & Ors. .. Respondents

Ms. P.V. Thorat with Mr. A.B. Seth for the petitioner.
Mr. Vishal Thadani, AGP for the respondent State.
Mr. Ganesh Gole for respondent no.3 MCI.

**CORAM: DR. MANJULA CHELLUR, CJ. &
M.S. SONAK, J.**

RESERVED ON : 14th September 2016

PRONOUNCED ON : 21st September 2016

P.C.:

The writ petitioner has approached this Court raising grievance that different authorities are assessing percentage of disability of lower limbs of the writ petitioner differently who has cerebral palsy. According to her, initially she approached the Civil Surgeon, District Hospital, Nashik, who certified that the petitioner is suffering from congenital disorder in her lower limbs on account of cerebral palsy and the disability is about 68% of the lower limbs. The Committee, which was constituted by Directorate of Medical Education & Research (DMER), certified that the disability suffered by the petitioner is to the extent of 76%. Since the Rules indicate 70% disability as the maximum percentage of disability to get the

benefit of reserved quota to seek admission to under-graduate medical course, aggrieved by different certificates issued by different authorities indicating different disability, the petitioner is before us seeking the following reliefs:

- “(a) Call for the relevant records and papers from the office of the Respondent authorities and after going into the legality of the same quash and set aside the sub-clause 2(f) under Clause 4 under Chapter II framed by the Medical Council of India and to the extent it makes a candidate eligible only upto 70% of disability.*
- (b) Read down the impugned sub-clause 2(f) under Clause 4 under Chapter II so as to mean that candidate having more than 70% disability to lower limbs are also eligible to pursue undergraduate and/or postgraduate course in clinical, non-clinical and some branches of medicine.*
- (c) Direct the Respondent – Directorate of Medical Education and Research and other authorities to make Petitioner as eligible candidate from physically handicapped category for admission to undergraduate course and publish the counseling list forthwith.*
- (d) Direct the Respondent – Directorate of Medical Education and Research and other authorities to consider the Petitioner as eligible candidate under physically*

handicapped category for admission to postgraduate course in the second round of admission.

- (e) Direct the Respondent No.5 to consider the disability of the Petitioner at 68% as declared by District Hospital, Nashik on 09.03.2016 for admission to MBBS course.*
- (f) Pending the hearing and final disposal of this Writ Petition, operation and/or execution and/or implementation of sub-clause 2(f) under Clause 4 under Chapter II framed by the Medical Council of India and to the extent it makes a candidate eligible only upto 70% of disability be stayed.*
- (g) Pending the hearing and final disposal of this Writ Petition, read down the impugned sub-clause 2(f) under Clause 4 under Chapter II so as to mean that candidate having more than 70% disability to lower limbs are also eligible to pursue undergraduate.*
- (h) Pending the hearing and final disposal of this Writ Petition, the Respondent – Directorate of Medical Education and Research and other authorities to make Petitioner as eligible candidate from physically handicapped category for admission to undergraduate course and publish the counseling list forthwith.*

- (i) *Pending the hearing and final disposal of this Writ Petition, the Respondent – Directorate of Medical Education and Research and other authorities be directed to consider the Petitioner as eligible candidate under physically handicapped category for admission to undergraduate course in the second round of admission.*
- (j) *Pending the hearing and final disposal of this Writ Petition, the Respondent – Medical Board B.J. Medical College, Pune be directed to consider the disability of the Petitioner at 68% as declared by District Hospital, Nashik on 09.03.2016 for admission to MBBS course.”*

2. When the petitioner approached this Court, this Bench directed on 12th August 2016 for re-examination of the writ petitioner by a Special Medical Board of Sir J.J. Hospital / Grant Govt. Medical College constituted by DMER and issue certificate on or before 18th August 2016 to consider the case of the writ petitioner. Subsequently, the Special Medical Board for physically handicapped (Grant Govt. Medical College & Sir J.J. Group of Hospitals, Mumbai) issued certificate dated 30th August 2016 certifying that the writ petitioner – Miss Rutuja Dattatray Raut, who is intending to pursue Health Sciences Undergraduate Course in the State of Maharashtra for the academic year 2016-17, was examined by them. It is further certified that she is an individual with 75% permanent locomotory disability of both lower limbs due to Cerebral Palsy with Diplegia.

According to the Special Medical Board, the percentage of permanent locomotory disability is more than 70%.

3. As a matter of fact, an expert in the field of Neuro Medicine, who was one of the members of Special Medical Board, as well as the expert in Physiotherapy were present before the Court. According to them, irrespective of assistance of prosthesis (stint), the disability of the writ petitioner would work out to more than 75%. According to the medical experts, since the disability is due to Cerebral Palsy with Diplegia, the clutches used by her will not be of any assistance as the disability is within the body and the clutches will not compensate or remove the deficit suffered by the writ petitioner.

4. Learned counsel for the petitioner relies upon the decision of a Division Bench of this Court dated 25th June 2013 in the case of *Dr. Nazreen Sartaj Ansari vs. Union of India & Ors. (Writ Petition (L) No. 1532 of 2013)* and so also the decision in the case of *Dr. Deval R. Mehta vs. Union of India & Ors., AIR 2011 Gujarat 33*. In the case of Dr. Nazreen Sartaj Ansari (supra) which came for consideration before the Division Bench of this Court, it was a case of physically handicapped candidate seeking admission to the Postgraduate Medical Course who challenged Regulation 9(1)(a) framed by Medical Council of India ("MCI" for short) which categorized the physically handicapped person as reserved candidate

and whose functional disability was assessed between 40% to 70% at the time of admission to Medical Course. Their Lordships having seen the petitioner's movements in the Court and having heard the counsel for the petitioner granted the following interim relief:

(i) Respondents shall consider the petitioner's case for admission to the Post Graduate Medical Course in MD (Medicine) or in a nonsurgical branch under the physically handicapped category by considering the petitioner to be eligible for such reservation and on the basis of the petitioner's performance in the NEETPG for the round of counseling conducted by the respondent Director General of Health Service of the Central Government and the respondent Director of Medical Education and Research of the State Government.

It is clarified that this order does not preclude the respondents authorities from considering the petitioner's case for admission to a surgical branch, in case the petitioner is found fit for prosecuting such course.

(ii) Since the petitioner is to be considered for admission to the Post-Graduate Medical seat reserved for physically handicapped candidate, for that purpose the petitioner is also allowed to fill in a fresh preference form on that basis.

(iii) The Medical Council of India is directed to consider, in light of the observations made in this order, framing/revising the guidelines for assessment of disabilities of candidates with physical disabilities for the purpose of assessing their functional ability/disability for prosecuting on under graduate Medical Course or Post-Graduate Medical Course, particularly the requirement of assessing the percentage of functional disability in relation to the whole body. This shall be done within three months from today.”

In the present situation, the writ petitioner is not a candidate with undergraduate degree in her hand and the issue is with regard to admission to the Post-Graduate Medical Course.

5. The case of *Dr. Nazreen* (supra) considered her candidature in a non-surgical branch under the physically handicapped category since it was possible. It is not so in the present case.

6. So far as the decision in the case of *Dr. Deval R. Mehta* (supra) is concerned, the candidate had suffered a head injury and was diagnosed as right sided hemiparesis at level C4-C5 of the vertebrae. This also was a case of admission to Post-Graduate Medical Course. Their Lordships opined that the petitioner being a medical practitioner having MBBS degree in his hand, who was

allowed to complete the MBBS course and having completed the course cannot be held to be ineligible for the purpose of admission to Post-Graduate Medical Course.

7. Learned counsel for the writ petitioner places reliance on the above two judgments to contend that the same should be applied to the writ petitioner. The Neuro Medical Science expert before us clearly indicated that in order to pursue MBBS Course, one has to attend not only the non-clinical classes but also clinical classes as well as laboratory including forensic laboratory to understand the dissection of human body etc. According to the expert, the very disability with which the writ petitioner is suffering from would come in the way of pursuing the medical course since the disability cannot be reduced with the aid of artificial limb or stint.

8. We do accept the contention of the petitioner's counsel that the MCI has not prescribed any basis/ criterion as to how the percentage of disability be assessed to certify whether the candidate would fall within the range of 40% to 70% in order to secure benefit of reservation quota meant for disabled persons.

9. Be that as it may, in order to extend benefit of reservation quota, the respondent authorities have constituted committees for different regions. In the present case, the Civil Surgeon, District Hospital, Nashik has certified the disability of the petitioner as 68%

while the committee constituted by DMER certifies it to the extent of 76%. According to the petitioner's counsel, since the disability of the petitioner fixed by different medical experts is between 68% to 76%, then why it should not be brought down to 70% so far as the writ petitioner is concerned. According to her, the very fact that different medical experts have prescribed different percentages of disability, it should go to the benefit of the writ petitioner rather to her disadvantage over and above the physical disability she is suffering from.

10. When the petitioner was not satisfied with the difference of opinions between two medical certificates, one from District Hospital, Nashik and another by the committee constituted by DMER, this Court by order dated 12th August 2016 directed re-examination of the writ petitioner by a Special Medical Board of Sir J.J. Hospital/ Grant Medical College. As stated above, the special committee has certified the disability of the writ petitioner at 75%. The petitioner is suffering from permanent locomotory disability of both lower limbs. At column No.7 of the certificate, so far as any other physical disability which incapacitate the candidate to pursue Health Science courses, the committee has certified that the candidate has fixed flexion deformities of both lower limbs. The reason is cerebral palsy with diplegia. The medical expert committee constituted in pursuance to the directions of this Court consists of Head of Physiotherapists, Department of Physiotherapy;

Professor and Head of Department of Medicine; Professor and Head of Department of Ophthalmology; Professor and Head of Department of Surgery; Professor and Head of Department of Neurology; Professor and Head of Department of Neurosurgery; and Professor and Head of Department of Orthopedics. It is not one expert who has certified the disability but the professors and heads of departments of different branches of medical sciences required for assessment of disability of the writ petitioner including departments of Ophthalmology and Physiotherapy have examined the petitioner before ascribing the percentage of her disability. Can this Court sit over the judgment of the Special Medical Board which consists of several specialists of different faculties of medicine. As a matter of fact, Professor and Head of Department of Neurology and the Head of Department of Physiotherapy were present to explain why any artificial limb or prosthesis or stint cannot assist the petitioner to reduce her physical disability. According to them, since the petitioner is suffering from fixed flexion deformities of both lower limbs, it cannot be reduced with the aid of prosthesis or stint. In other words, with or without the stint she is using, there is no reduction in the disability she is suffering from.

11. Since the writ petitioner has sought to quash and set aside sub-clause 2(f) of clause 4 of Chapter II of the Regulations framed by MCI wherein the maximum extent of disability making the candidate eligible to get the benefit of reservation quota is 70%, we

have to see the factual situation in the present case. In these sort of cases, the Court cannot fix what should be the ideal range of physical disability, whether minimum or maximum, in order to extend the benefit of the reserved quota. The MCI has come out with the range of 40% to 70% of disability to be considered for extending benefit of reserved quota meant for the candidates suffering from physical disability. Below 40% they cannot consider the candidate as physically handicapped person. Similarly, in case of disability above 70%, the candidate cannot be given the benefit of reserved quota since the percentage would come in the way of pursuing the course for which the candidate seeks admission. The wisdom behind making such criterion fixing the range of disability cannot be adjudged by this Court nor this Court can prescribe any other percentage as ideal percentage by sitting over the opinion of experts who must have put in lot of exercise and deliberations before arriving at the range of percentage of disability as 40% to 70%.

12. So far as writ petitioner is concerned, in order to avoid any mistake in the formation of opinion with regard to the percentage of disability, she was subjected to re-examination, to ascertain disability, at the instance of this Court which has been explained in the above paragraphs. The committee constituted by DMER has certified that the disability is 76% and the committee of Special Medical Board constituted in response to the directions of the Court has certified that the writ petitioner is suffering 75% of

physical disability. We do not find any convincing material to suspect the opinion/ certificate given by the Special Medical Board. We are not the experts in the field to assess percentage of physical disability of the writ petitioner. The writ petitioner neither can challenge sub-clause 2(f) nor can seek intervention of the Court to read down the impugned sub-clause 2(f) of clause 4 of Chapter II of the Regulations framed by MCI which is the highest statutory body to frame such regulations.

13. We are also of the opinion that we cannot question the wisdom of the policy makers who have prescribed the guidelines and the norms as stated above. We are aware of the instances where physical disability of the candidates was reduced in case where they could use artificial limbs to compensate the physical disability of the lower limbs like amputation or shortening of leg etc. So far as the petitioner is concerned, the experts are of the opinion that no external or artificial assistance by way of prosthesis or stint would reduce the percentage of disability of the petitioner. In these circumstances, though we are sympathetic towards the writ petitioner but we have to decline the reliefs sought by her.

14. Accordingly, writ petition is dismissed.

(M.S. SONAK, J.)

(CHIEF JUSTICE)