

pmw

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO.449 OF 2012**

Mr. Nachiket Jalindar Ramane	... Petitioner
Versus	
The State of Maharashtra and Ors.	... Respondents

Mr. Dipesh Siroya for the Petitioner.
Mr. Anurag Gokhale, AGP for the Respondent Nos.1 and 2.

**CORAM : A.S. OKA &
A.A. SAYED, JJ.**

DATE : 29th JULY, 2016

PC.

1 Called out for final hearing. Heard the learned counsel appearing for the Petitioner. Prayers (a) and (b) are the only substantive prayers in this Writ Petition which read thus :-

- (a) That this Hon'ble Court be pleased to issue a writ of mandamus or a writ in the nature of mandamus or any other appropriate writ, order or direction thereby directing Respondents to issue guidelines for candidates in respect of the fixing up the limit of disability of the upper limb as the same is been fixed for the Lower Limb which is 50% to 70% as per amended guidelines of 2009;
- (b) that this Hon'ble Court be pleased to issue a writ of mandamus or a writ in the nature of mandamus or any

other appropriate writ, order or direction thereby declaring that the limit of disability of lower limb as the same is been fixed for the Lower Limb which is 50% is void, illegal and bad in law and contrary to the provision the Persons with Disabilities (Equal Opportunities, Protection of Rights and full Participation) Act, 1995.”

2 On plain reading of the prayers, it is apparent that the Writ Petitioner is seeking a writ of mandamus against the Medical Council of India and other Authorities to take a policy decision in a particular manner.

3 Our attention has been invited to the judgment and order dated 15th May, 2015 of a Division Bench of the Delhi High Court in a Writ Petition (L.) No.4218 of 2014 (Deepshikha Vs. Medical Council of India & Ors.).

4 Paragraphs 46 to 48 of the said order reads thus :-

“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.”

5 Therefore, the Delhi High Court has already directed the Medical Council of India to have a re-look at the issue. We concur with the views expressed by the Division Bench of the Delhi High Court that a writ of mandamus cannot be issued. As necessary directions have been already issued by the Delhi High Court under the said judgment and order, we dispose of this Petition in terms of the said directions.

(A.A. SAYED, J)

(A.S. OKA, J)