

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 8375 OF 2018

Samiksha D/o Shivaji Patil

...Petitioner

Versus

The State of Maharashtra and Ors.

...Respondents

Adv. S.T. Veer for the Petitioner.

Adv. M.D. Narwadkar for Respondent No. 2.

Adv. G.O. Wattamwar, AGP, for Respondent Nos. 1 and 3.

CORAM : PRASANNA B. VARALE &
S.M. GAVHANE, JJ.

DATE : AUGUST 09, 2018

ORDER:

1. Heard learned Counsel appearing for the respective parties.
2. It may not be out of place to state that this Court has passed a detailed order on 26th July, 2018 referring to the challenges raised in the petition, prayers sought for and submissions advanced by the learned Counsel appearing for the petitioner. As the learned Counsel appearing for the petitioner prayed for an interim order and submitted before this Court that the petitioner be granted an opportunity to compete with other students, so as to protect the academic interest of the petitioner

and in view of those submissions advanced by learned Counsel appearing for Petitioner an interim order was passed by this Court.

3. In paragraph 2 of the interim order dated 26th July, 2018, a reference was made to the prayer clause. It was also observed by this Court that we are unable to accept first limb of submission of learned Counsel for the petitioner and only to grant an opportunity to the petitioner to compete with other students an interim order was passed.

4. It was submitted before this Court that the petitioner is suffering physical disability and a certificate issued by medical board was placed on record, to that effect a reference was made to the submissions in paragraphs 3 and 4 in order dated 26th July, 2018. A reference was also made in paragraph 8 of order dated 26th July, 2018 to the relevant clauses of admission process and it was a common knowledge that a brochure was published by the Government of Maharashtra to regulate the admission under the title 'NEET UG-2018' and the issue of admission to the persons with disabilities quota and the relevant provisions i.e. Clause 9.1.5.3.

5. We have also assigned reasons for not accepting the first limb

of submission of learned Counsel appearing for the Petitioner and only to provide the opportunity to the petitioner and to seek a response from the respondent authority, an interim order was passed. It was also made clear in the interim order that the interim order passed by this Court was subject to final decision of the petition.

6. At the cost of repetition, we may refer to those relevant observation in order dated 26th July, 2018 and same reads as under:

2. *The petitioner is before this Court with prayer clause (B), which reads thus:*

“(B) To issue the writ of certiorari or any other appropriate writ or order in the like nature and the decision taken by the respondent no. 3 & 4 deciding the petitioner not eligible for admission to MBBS health science course from Persons with Disability (PWD) quota with them may kindly be quash and set aside and they may be directed to give the admission to the petitioner for MBBS health science course from said PWD quota with them as per the certificate dated 02.06.2018 given by sub district hospital Mukhed Dist. Nanded.”

8. *Learned Counsel appearing for the petitioner made two fold submissions that the authorities ought not to have insisted for subsequent verification of the petitioner to assess the disability contrary to the provisions of Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995. The second submission is, the brochure published by the Government of Maharashtra to regulate the admission under the title 'NEET UG-2018'. The information brochure is for Preference System for admission to Health Science Course in State Government/Corporation/Private & Minority Colleges. It was submitted that while regulation the admission process by Clause 9.1.5.3 the admissions to the persons with disabilities is regulated under the title "Person with Disability (PWD) Quota". Learned Counsel invited our attention to sub-clause of Clause 9.1.5.3, which reads thus:*

9.1.5.3 Person with Disability (PWD) Quota:

The candidate should have claimed the Person with Disability (PWD) quota reservation in the original online application form. For claiming of PWD quota Category, no document required at time of online registration. Request for PWD category claim after submission application form

will not be granted.

As per Medical Council of India, New Delhi amendment notification No: MCI-34(41)/2017-Med/169873 dated 22/01/2018, Five (5%) seats of annual sanctioned intake capacity shall be filled up by candidates with specified benchmark disabilities contained in the schedule to the Rights of Persons with Disabilities Act, 2016, as per Annexure – D.

The specified disability categories as mentioned in the rights of persons with Disability Act 2016 are as follows:

- 1. A-Physical disability*
- 2. B-Intellectual disability*
- 3. C-Mental behavior disability*
- 4. D-Disability caused due to chronic illness*
- 5. E-Multiple disabilities*

1. Candidate should mark as PWD on the online application form, failing which claim will not be granted. Candidate is required to submit the proof of his/her disability by way of a certificate issued by certificate issuing authority in the year 2018 at the time of documents verification process.

2. However, such a candidate will be required to undergo medical examination at any one of the under mentioned Disability Assessment Board, constituted at

i) All India Institute of Physical Medicine and Rehabilitation, Hazi Ali, Park K. Khadya Marge, Mahalakshmi, Mumbai

OR

ii) Vardhaman Mahavir Medical College & Safadarjang Hospital, Ansari Nagar, New Delhi

OR

iii) Institute of Post Graduate Medical & Research, 244, Acharya J.C. Bose Marge, Kolkata

OR

iv) Madras Medical College, Park Town, Chennai.

The Medical Board after ascertaining his/her disability must be satisfied that the candidate is physically fit to undergo the course despite his/her disability.

3. Candidate is required to submit the proof of his/her disability by way of a certificate (issued in year 2018) in prescribed proforma (Annexure “D”) from the authorities stated in 9.1.5.3 (2)

above at the time of verification of documents during Preference form filling process. These PWD quota will be distributed under 30% State quota. Any seat remaining vacant will be reverted back to State 30% Quota. For filling these seats, no fresh preference(s) will be called from the candidates. These seats will be added to the seat matrix of the 30% state quota and allotted as per preferences (choices) already exercised by the eligible candidate(s) during online preference filing system.

(Refer Annexure-D of NEET UG-2018 Information Brochure). The person with Disability candidate will have to submit Disability certificate issued by Competent Authority as mentioned above.

The candidate must satisfy other conditions of eligibility as prescribed in NEET UG 2018 brochure for selection to MBBS/BDS/BAMS etc. Courses as prescribed for respective course.”

10. *We are not inclined to consider the first limb of the submission for the simple reason that publication of the brochure was of 4th June, 2018. The admission process started sometime in the year 3rd week of July and*

more precisely on 28th July, 2018. The petitioner submitted her application by way of online process. Thus, if it would have been simple challenge to the Rules of brochure submitting that this Rule is in contrast to the Central Act without entering into admission process, a person being aggrieved by this Rule could have raised a challenge without waiting for taking claim in the admission process, but we find considerable merit in the second submission of the learned Counsel for the petitioner. The counsel was justified in submitting that exercise undertaken by the respondent – State authorities directing the petitioner to approach the Board, which is not referred to in the brochure and asking the petitioner to proceed with the certificate issued by such Board would be causing prejudice to the petitioner, it may result in affecting the academic career of the petitioner.

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11. By way of interim order, we direct the respondents – authorities not to keep the petitioner away from the admission process and the petitioner be permitted to participate in the admission process, needless to state that as per merit of the petitioner. We further make it clear that this interim order subject to final decision of the petition.

7. We may also refer to certain factual aspects and the relevant documents placed on record in respect of those factual aspects. The disability certificate issued to the petitioner is placed on record at Exh 'C'. The list published by the Government of Maharashtra under the caption 'State Common Entrance Test Cell' Provisional State Merit List of NEET dated 19.06.2018 is also placed on record. The name of the petitioner finds place at serial no. 5336 and in the NEET All India Ranking at serial no. 61924. By notice dated 20.06.2018, the candidates were called upon to attend the Physiology Department, Grant Medical College, J.J. Hospital, Byculla, Mumbai on the scheduled dates i.e. 21.06.2018, 22.06.2018, 23.06.2018, 24.06.2018 and 25.06.2018. The dates of All India ranking and the time is refereed in the notice which as follows:

Date	Neet All India Rank	Time	Venue
Thursday, 21/06/2018	1 to 200000	(at 11.00 am)	Physiology Department, Grant Medical College, J.J. Hospital, Byculla, Mumbai – 400 008
Friday, 22/06/2018	200001 to 300000	(at 11.00 am)	
Saturday, 23/06/2018	300001 to 400000	(at 11.00 am)	
Sunday, 24/06/2018	400001 to 500000	(at 11.00 am)	
Monday 25/06/2018	500001 to 757557	(at 11.00 am)	

8. The verification of documents of petitioner was undertaken and the receipt to that effect is placed on record at page 28 to the petition. Then, there was a revised provisional list published on 26.06.2018 and the petitioner was informed to appear before the special medical board and petitioner attended the board on 02.07.2018. The certificate issued by the special medical board is placed on record at page 31 to the petition. It would be necessary to refer physical disability as observed by the special board and the percentage of physical disability is referred to in the certificate and it refers percentage of 'Locomotor Disability' is 7 percentage. Now as per the relevant rules the petitioner was found not eligible for consideration of her claim from the quota of persons with disabilities. It was again made clear that though, petitioner would not be eligible to stake her claim as the candidate suffering disability from the quota of persons with disabilities but the petitioner is entitled to stake her claim from the general category candidates.

It may not be out of place to state here that those selected candidates from the quota of persons with disabilities have suffered 30 percent disability.

9. In response to notice, a detailed affidavit is filed on behalf of the Respondent Nos. 2 and 3 and it is submitted that the rules for admission and more particularly, the consideration of the candidates having physical disability are framed in consonance with the provisions of person with disability act.

Our attention was invited to Section 2(e) of the persons with disabilities Act which reads as follows:

2. Definitions.-.....

(e) “cerebral palsy” means a group of non-progressive conditions of a person characterised by abnormal motor control posture resulting from brain insult or injuries occurring in the pre-natal, peri-natal or infant period of development;

It was submitted that the petitioner is placing only reliance on the rules and more particularly, rules 3 and 6 but the provision i.e. Section 2 would come in play. It is also submitted that in view of an interim order passed by this Court the petitioner was permitted to participate in the admission process and merely because the petitioner placed reliance on the rules and/or in view of the interim order passed by this Court, the petitioner cannot claim right of admission giving a go by

to the factual aspect that the petitioner is suffering disability to the extent of 7% whereas, the other candidates who have suffered physical disabilities to the extent of 30% were finding place in the final list and the said list was prepared as per the rules framed for admission.

It was reiterated by the learned Counsel appearing for the Respondent nos. 2 and 3 that the initial list was published on 20.06.2018 and thereafter on screening the revised list was published on 26.06.2018. Thus, learned Counsel Mr Narwadkar appearing for Respondent Nos. 2 and 3 vehemently submitted that the Respondent authorities committed no error in not considering the claim of the petitioner from the quota of person with disabilities.

10. As stated above, the submissions advanced by the learned Counsel appearing for the petitioner were dealt with in detailed in interim order passed by this Court on dated 26.07.2018. The Respondent nos. 2 and 3 have submitted before this Court that the reasons assigned for not selecting the petitioner and necessary documents are also placed on record along with affidavit filed on behalf of Respondent nos.2 and 3 through one Shri. Dr. Sudhir Prabhakar Rao Chaudhari.

11. On going through the response i.e. affidavit in reply and documents annexed to it, we are unable to find any merit in the Petition.

12. On perusal of the documents placed on record reveals that Chairman, Medical Counseling Committee, Ministry of Health and Family Welfare, New Delhi issued communication dated June 07, 2018 to All Health Secretaries/Principal Secretaries (Health)/Director Medical Education of all States informing that the process of counseling is to be initiated shortly.

In response to this communication, it was informed to the Directorate of Medical Education and Research, Mumbai that a centre is identified for assessment of disability as per 21 Benchmark disabilities given under PWD Act of 2016 Regulation and reference is made to Grant Government Medical College, J.J. Hospital Compound, Byculla, Mumbai given. There is also a communication issued by the Directorate of Medical Education and Research, Mumbai to the Dean, Grant Government Medical College, Mumbai informing dates of examination of those candidates i.e. examination through medical board and those dates are 21.06.2018 and 25.06.2018. It is also requested to the Dean to appoint a coordinator for the necessary purposes. It is also informed in

the communication that as this medical examination is a part of admission process, no fees in the form of registration, clinic test, etc be claimed from those students.

13. The brochure issued by the Medical Council of India submitted to the President of Medical Council of India in regards to the admission of person with specified disability is placed on record along with affidavit in reply filed on behalf of Respondent nos. 2 and 3. It would be useful for our purposes to refer the recommendations in reference to the Locomotor disability and it reads thus:

Disability may be of a single category such as locomotor disability (including Leprosy cured person, Cerebral Palsy, Dwarfism, Muscular Dystrophy, Acid Attack Victims) or multiple, as per the Schedule of RpwDAct 2016.

Presence of significant Locomotor Disability with or without any other significant disability such as hearing-speed or learning etc. which will make it very difficult for the candidate to pursue and complete the course satisfactorily and may significantly increase the risk to the candidate or the patient(s) – may be declared NOT ELIGIBLE for admission.

If single category disability, such as Locomotor Disability (including Cerebral Palsy, Leprosy Cures, Dwarfism, Accid Attack Victims, Muscular Dystrophy), candidates having extent of disability 40% to 80% only may be ELIGIBLE for consideration of admission.

14. It will not be out of place to state that by notice dated 28.06.2018, the candidates were informed to appear before the Competent Authority for medical examination in respect of physical disability. Learned Counsel for the Respondent nos. 2 and 3 submitted that 20.06.2018 was the date for undergoing medical test before the Authorized Authority and it is an admitted fact that in spite of notice petitioner failed to approach the Authorized Authority and the petition itself is filed in this Court on 13.07.2018 and interim order of this Court was passed on 26.07.2018. Thus, the submission of learned Counsel appearing for Respondent nos. 2 and 3 is that the petitioner failed to approach the Authorized Authority and had challenged the process after the initiation of process.

For the ready reference we may also refer to the grounds of opposition raised by the respondents reflected in the affidavit in reply and the same reads thus:

2. At the outset say and submit that, the certificate of disability dated 02.06.2018 (Exhibit "C") produced by petitioner, which is issued by Sub District Hospital, Mukhed, Dist. Nanded cannot be considered in view of the specific clause i.e. 9.1.5.3 of information brochure published for the admission to the Health Science Courses 2018-19. The candidate is required to undergo medical examination in the centres prescribed and candidate is required to submit the proof of his/her disability by way of certificate (issued in the year 2018) in prescribed Performa (Annexure "D") from the authorities stated in 9.1.5.3 at the time of verification of document during preference form filling process. In present case the Special Medical Board issued the certificate of disability certifying the percentage of disability as 7% and therefore, petitioner held not eligible for admission in Medical/Dental Courses as per the M.C.I./D.C.I. guidelines from P.W.D. quota.

7. I say and submit that, the respondent no. 2 Commissioner and competent authority State CET Cell Maharashtra published the notice on its website on 20.06.2018 and informed the candidates that if the candidates have not received disability certificate from any of the four centers as stated in information brochure should appear at grant Government Medical College as

per schedule provided thereunder.

8. *I most respectfully submit that since the petitioner had failed to appear before the centre prescribed in the information brochure therefore, in order to facilitated the petitioner who has claimed specified reservation, was given an opportunity to appear before the Special Medical Board constituted for issuing the certificate of disability. The petitioner was accordingly issued certificate on 02.07.2018 and she was found to not eligible for reservation as Rights of persons with disabilities Act 2016 since her percentage of disability is 7%.*

9. *I most respectfully say and submit that as per MCI guidelines and PWD Act petitioner is not eligible for seat from PWD quota. However, petitioner is eligible as general candidate depending upon the marks and merit, as the disability is below 40%.*

15. Considering the facts of the matter, rules of admission and sequence of events, we are of the opinion that there is no merit in the petition and deserves to be dismissed. Accordingly, Petition is dismissed.

(S. M. GAVHANE, J.)

(PRASANNA B. VARALE, J.)