

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.08.2018

CORAM:

THE HONOURABLE MR. JUSTICE HULUVADI G.RAMESH
AND
THE HONOURABLE MR. JUSTICE K.KALYANASUNDARAM

W.A.No.1788 of 2018 and CMP.No.14502 of 2018

K.Nandhinee

... Appellant

Vs

1. The Government of Tamil Nadu
rep. by its Secretary,
Health and Family Welfare (ME) Department,
Fort St. George, Chennai-9.

2. The Director,
Directorate of Medical Education,
Kilpauk, Chennai-10.

3. The Secretary,
Selection Committee,
Directorate of Medical Education,
Kilpauk, Chennai-10.

.... Respondents

Prayer : Writ Appeal filed under Clause 15 of the Letter Patent
against the order dated 11.07.2016 made in W.P.No.21550 of 2016
by a learned Single Judge.

WP.NO.21550/2016:

Writ Petition praying to Writ of Mandamus to direct the
respondents to admit the petitioner in M.B.B.S Course for the
academic year 2016-2017 against the quota reserved for
physically handicapped person based on the disability
certificate issued to the petitioner by the District Medical
Board Villupuram on 26.05.2016

For Appellant :: Mr.R.Karunakaran
For Respondents :: Mr.P.S.Siva Shanmugasundaram
Spl.G.P. for R1
Mr.C.Munusamy, Spl.G.P. (Edn.) for R2

JUDGMENT

(Judgment of the Court was pronounced by HULUVADI G.RAMESH, J.)

The Writ Appeal is directed against the order dated 11.07.2016 made in W.P.No.21550 of 2016 by a learned Single Judge.

2. The Writ Petition has been filed seeking to issue a Writ of Mandamus directing the respondents to admit the petitioner in M.B.B.S Course for the academic year 2016-2017 against the quota reserved for physically handicapped person based on the disability certificate issued to the petitioner by the District Medical Board, Villupuram on 26.05.2016. The said Writ Petition was dismissed by the learned Single Judge by order dated 11.07.2016. Aggrieved over the same, the writ petitioner is before this Court with this Writ Appeal.

3. Heard the learned Counsel appearing for the appellant and the learned Special Government Pleader appearing for the respondents. We have also perused the materials available on record carefully including the order of the learned Single Judge.

4. At the outset, the facts that the writ petitioner/appellant belongs to Backward Class Community and she is handicapped due to Locomotory Disability of the lower limbs having permanent disability in the lower limb and she passed Higher Secondary Examination in March, 2016 by securing 1018 marks out of 1200 and applied for admission for M.B.B.S. Course based on the prospectus issued by the 3rd respondent for the year 2016-2017 are not in dispute. As per the prospectus issued by the 3rd respondent, it appears that 68 seats were earmarked for physically handicapped for M.B.B.S. Course and 3 seats for physically handicapped for BDS Course. It further appears that the appellant was issued with a Disability Certificate by the District Medical Board, Villupuram constituted under the provisions of Persons with Disabilities (Equal Opportunity for Protection of Rights of Full Participation) Act, 1995, assessing her medical disability at 70% (Orthopedically handicapped) whereas the Doctors in the Expert Committee constituted by the Directorate of Medical Examination, Kilpauk, Chennai, who were present in the Counselling on 20.6.2016 at 9.00 a.m. assessed her disability at 80% and declared that she is not eligible for M.B.B.S. Course, since her disability was more than the percentage of disability as prescribed in the prospectus for admission to M.B.B.S. Course. Therefore, the appellant has filed the Writ Petition before the learned Single Judge. The same has been dismissed by order dated 11.7.2016 by citing the Certificate of the Second Expert Committee dated 29.06.2016. The relevant portion in the order of the learned Single Judge is extracted here under:

''5.Though this Court sympathizes with the petitioner for the reason disability came into being in the form of an unfortunate accident, is not in a position to help the petitioner on account of the said certificate of the second Expert Committee dated 29.06.2016.

6.Therefore, the writ petition is dismissed and the petitioner, if so advised, she is at liberty to challenge the said certificate in the manner known to law, before the competent forum. The report of the second Expert Committee dated 29.06.2016, is taken on file and recorded. No costs. Consequently, connected miscellaneous petition is also closed.''

Against the said order, the present appeal has been preferred by the appellant/writ petitioner.

5. According to the learned Counsel for the appellant, when the appellant was issued with a Disability Certificate by the District Medical Board, Villupuram constituted under the provisions of Persons with Disabilities (Equal Opportunity for Protection of Rights of Full Participation) Act, 1995, assessing her medical disability at 70% (Orthopedically handicapped), without resorting to the same, the case of the appellant ought not to have been rejected by citing the Disability Certificate of the Expert Committee constituted by the Directorate of Medical Examination, Kilpauk, Chennai, since the medical authority as notified by the Government as per rules framed under the Act alone is competent to decide the disability and as such, the Disability Certificate issued by the District Medical Board, Villupuram cannot be questioned by the respondents through another Expert Committee as it would defeat the provisions of the Act.

6. However, objecting to the said contention, the learned Special Government Pleader appearing for the respondents submitted that in terms of clause 41(iii) (a) of the prospectus which reads as under:

“(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 Orthopedically 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;"

and as per the second opinion given by the Expert Committee constituted by the third respondent, the writ petitioner is having locomotory disability of 80% and hence, she cannot be considered for the said category.

7. The above facts reveal that the appellant/writ petitioner has secured eligible cut off mark to be selected for pursuing M.B.B.S. Course during 2016-2017 under the physically handicapped quota earmarked in the prospectus by the 3rd respondent and as per the Disability Certificate issued by the District Medical Board, Villupuram, her medical disability was assessed at 70% (Orthopedically handicapped). Therefore, it is clear that as stated in clause 41(iii) (a) of the prospectus that at the first instance in the reservation of seats, candidates with disability of lower limbs between 50% to 70% shall be considered, the appellant is entitled to get M.B.B.S. Seat. But, her case is rejected by assessing her disability as 80% by the Expert Committee constituted by the 3rd respondent. But, in our considered view, though the appellant has got 80% of disability on her lower limb, then also, she is eligible to get M.B.B.S. Seat for the reason that the Locomotory Disability of the lower limbs of the appellant will not affect her in anyway in pursuing her studies. That apart, clause 41(iii) (a) of the prospectus further proceeds that in case candidates are not available in that category, then, candidates with disability of lower limbs between 40% to 50% may be considered. When that be so, higher disability of lower limbs at 80% will not disentitle the appellant from pursuing her medical course. The appellant can very well attend the college and complete her medical course with some artificial aid. But, the same has not been taken into consideration during selection by the respondent authorities. Without appreciating the said proposition, the learned Single Judge has dismissed the writ petition.

8. At this stage, the learned Special Government Pleader appearing for the respondents submitted that those who have emerged successful in NEET Examination, they are only entitled to get seats in M.B.B.S. Course during 2018-2019 and the name of the appellant would be considered in the next academic year after emerging successful in NEET Examination.

9. But, we are of the view that originally, the appellant has applied for M.B.B.S. Course during 2016-2017 and got all eligibility and entitled to get admission. But, due to the improper consideration of her case by the respondents, already, she has lost two valuable years. That apart, during 2016-2017, passing in NEET exam for pursuing medical course was not

mandatory. If, now also, her case is rejected on that ground, it would be very difficult for her to undergo the NEET for no wrong committed by her.

10. In view of the foregoing reasons, the order of the learned Single Judge dated 11.7.2016 made in W.P.No.21550 of 2016 is hereby set aside and the respondents are directed to admit the appellant/writ petitioner in M.B.B.S. Course for the academic year 2018-2019 forthwith, without insisting her to undergo the NEET Examination, if the candidate is found otherwise eligible on merit for that academic year.

With the above observation and direction, the Writ Appeal is disposed of. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

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To

1. The Secretary,
Government of Tamil Nadu,
Health and Family Welfare (ME) Department,
Fort St. George, Chennai-9.
2. The Director,
Directorate of Medical Education,
Kilpauk, Chennai-10.
3. The Secretary,
Selection Committee,
Directorate of Medical Education,
Kilpauk, Chennai-10.

+1cc to Mr.R.Karunakaran, advocate sr.no.58730
+1cc to Government Pleader sr.no.59831

W.A.No.1788/2018

nr 26/10/2018