

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 6.9.2018

CORAM

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

W.A.No.1956 of 2018
and
C.M.P.No.15651 of 2018

J.S.Vignesh Balaji

..Appellant

Versus

1 The Selection Committee for
MBBS/BDS
Directorate of Medical Education
Kilpauk Chennai-10

2 The Director General
of Health Services
Government of India
Nirman Bhavan New Delhi-11

3 The Medical Council of India
Represented by its Secretary
Pocket 14 Sector 8
Dwaraka Phase 1
New Delhi-110077

...Respondents

Prayer: Writ Appeal filed under Clause 15 of the Letters Patent against the order dated 12.7.2018 passed in W.P.No.17518 of 2018 on the file of this court.

W.P.No.17518 of 2018

Writ Petition filed under Article 226 of the Constitution of India Praying for the issuance of a writ of Mandamus, directing the respondents to consider and admit the petitioner to the MBBS/BDS course for the academic year 2018-2019 under the Physically Handicapped Quota (PH)

For appellant : Mr.V.Vijay Shankar

For respondents : Mr.K.Karthikeyan
Government Advocate

JUDGMENT

(Judgment of the court was made by HULUVADI G.RAMESH, J.)

Heard the learned counsel appearing for the appellant and Mr.K.Karthikeyan, learned Government Advocate, who takes notice on behalf of the respondents.

2. It appears that on the ground of poor vision admission to MBBS course was denied to the appellant/writ petitioner and also when a challenge was made in the writ petition, the learned Single Judge has confirmed the stand of the Medical Council of India (MCI) by rejecting the claim of the appellant/writ petitioner.

3. However, now, the learned counsel for the appellant/writ petitioner brought to the notice of this court the order passed by the Honourable Supreme Court in a similar situation in Writ Petition (C) No.669 of 2018 dated 24.8.2018 in the case of PURSWANI ASHUTOSH (MINOR) THROUGH DR.KAMLESH VIRUMAL PURSWAMNI v. UNION OF INDIA AND OTHERS wherein the question as to whether a person with benchmark disability of low vision, within the meaning of Section 2(r) read with Clause 1B of the Schedule, of the Rights of Persons with Disabilities Act, 2016 can be denied the benefit of reservation for admission to the MBBS Medical Course was considered and it has been observed therein as under:-

"On 13th December, 2006, the United Nations General Assembly adopted the United Nations' Convention on the Rights of Persons with Disabilities, which inter alia lays down the following principles for empowerment of persons with disabilities:

(a) respect for inherent dignity, individual autonomy including the freedom to make one's own choices, and independence of persons;

(b) non-discrimination;

(c) full and effective participation and inclusion in society;

(d) respect for difference and acceptance of persons with disabilities as part of human diversity and humanity;

(e) equality of opportunity;

- (f) accessibility;
- (g) equality between men and women;
- (h) respect for the evolving capacities of children with disabilities and respect for the right of children with disabilities to preserve their identities.

India ratified the United Nations' Convention on the rights of Persons with Disabilities on 1st October, 2007. The 2016 Act has been enacted to give effect to the United Nations, Convention on the Rights of Persons with Disabilities and for matters connected therewith or incidental thereto. The right to Equality envisaged under Articles 14 and 15 of the Constitution of India contemplates equal rights in every respect including equal right to be considered for admission to educational institutions and related benefits.

Section 2(r) of the 2016 Act defines "person with benchmark disability" to mean "a person with not less than forty per cent of a specified disability where specified disability has not been defined in measurable terms and includes a person with disability where specified disability has been defined in measurable terms, as certified by the certifying authority."

4. In that judgment, it has been held that the Medical Education Regulations framed under section 33 of the Medical Council Act, 1956 have statutory force and are binding on the MCI. The Apex Court, having observed that the Expert from whom opinion was called for, had opined that the petitioner therein suffers from a benchmark disability, held that the view of the Committee with regard to suitability of the petitioner therein for the MBBS Course cannot override the Medical Education Regulations.

5. Further, the contention raised by the MCI effect that section 32 is not attracted since it only provides for reservation to higher educational institutions and not to technical institutions, imparting technical education was considered as a fallacious one by holding that higher educational institution is a generic term which would include institutions imparting all kinds of higher education, including technical education, whereas technical education is a specific term for those institutions which only impart technical education. Having observed so, the Apex Court has held thus:-

"Be that as it may, as mentioned hereinabove, it

is not necessary for this court to adjudicate the question of whether Section 32 of the 2016 Act is attracted or not, in view of the admission that the Medical Education Regulations which incorporate the provisions of the 2016 Act in relation to reservation to higher educational institutions, have statutory force and are binding on the MCI. The regulations have not yet been amended by the MCI in the light of the recommendations made by its Committee and the decision taken at the Secretariat level. No amendment in the 2016 Act or in the regulations framed by the MCI have been made so far.

For the reasons discussed above, this court holds that the petitioner cannot be denied admission to the MBBS course if he qualifies as per his merit in the category of Person with Disability. In the event, the petitioner is found to be entitled to admission, he shall be given admission in the current academic year 2018-19."

6. In the light of the above decision, the appellant/writ petitioner cannot be denied admission to the MBBS course. It is also brought to the notice of this court that admission process is still open till 30th September 2018. If that be so, it is for the authority to consider the appellant/writ petitioner for admission for the academic year 2018-19 itself, if the candidate is found eligible on merit in that category and if the seats are available. The order passed by the learned Single Judge is modified to the above extent. The writ appeal is disposed of accordingly. No costs. The connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

To:

- 1 The Selection Committee for
MBBS/BDS
Directorate of Medical Education
Kilpauk Chennai-10

WEB COPY

2 The Director General
of Health Services
Government of India
Nirman Bhavan New Delhi-11

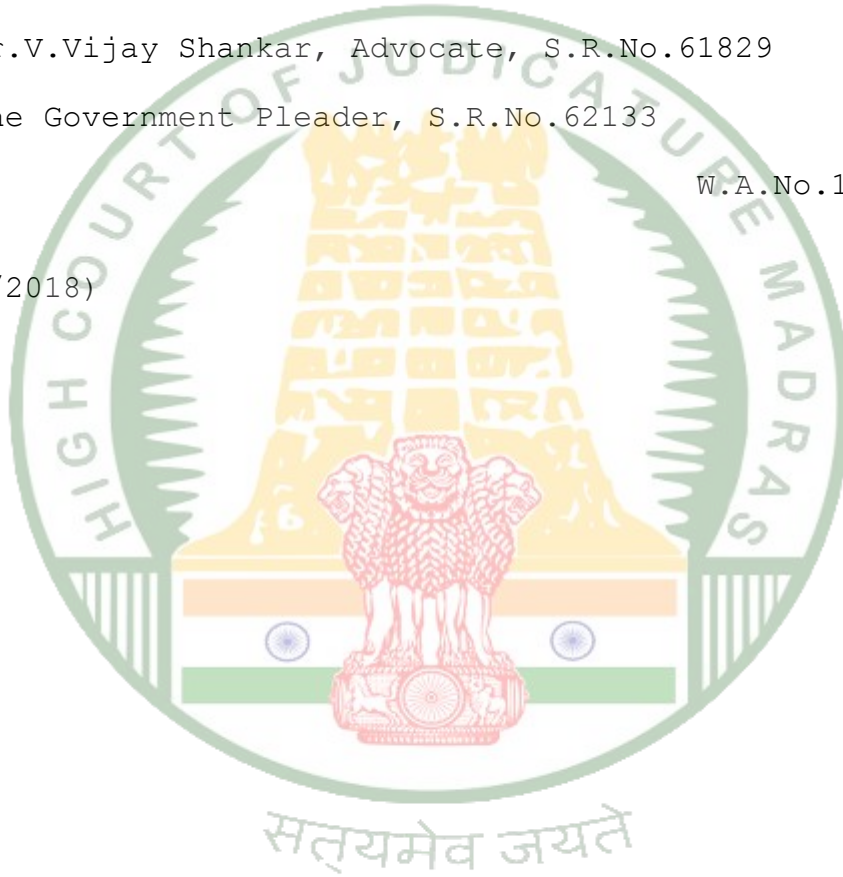
3 The Secretary,
The Medical Council of India
Pocket 14 Sector 8
Dwaraka Phase 1
New Delhi-110077

+1cc to Mr.V.Vijay Shankar, Advocate, S.R.No.61829

+1cc to the Government Pleader, S.R.No.62133

W.A.No.1956 of 2018

SS(CO)
GSP(10/09/2018)



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