

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.07.2018

CORAM:

THE HON'BLE MR.JUSTICE S.VAIDYANATHAN

W.P.No.16477 of 2018
and
W.M.P.No.19692 of 2018

S.R.Harishankar, minor,
aged 17 years, Rep. by his father and
natural guardian S.Ragu .. Petitioner

Vs.

1. The Secretary, Selection Committee,
Directorate of Medical Examination,
Kilpauk, Chennai-600 010.
2. The Medical Council of India,
Rep. by its Secretary,
Dwarka Phase-I, New Delhi. . Respondents

Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Mandamus to direct the respondent herein to consider the candidature of the petitioner (S.R.Harishankar-Application No.128194) in the 2018-19 MBBS under Special Quota (Physically disabled persons) by calling him for the Counselling under the Physically disabled persons quota (meant for filling up 122 vacancies) as per the Prospectus for the year 2018-2019.

For Petitioner : Mr.R.Selvakumar

For Respondents : Mr.C.Manishankar,
Addl. Advocate General
assisted by Mrs.V.Annalakshmi,
Govt. Advocate for R-1
Mr.V.P.Raman for R-2

ORDER

The petitioner has come forward with the above Writ Petition praying for issuance of a Writ of Mandamus to direct the respondent herein to consider the candidature of the petitioner (S.R.Harishankar-Application No.128194) in the 2018-19 MBBS under Special Quota (Physically disabled persons) by calling him

for the Counselling under the Physically disabled persons quota (meant for filling up 122 vacancies) as per the Prospectus for the year 2018-2019.

2. The case of the petitioner is that the petitioner has not been considered under Special Quota (Physically Disabled Persons) and that there are 122 seats identified for Physically Disabled Persons, out of which, and 21 alone had been called for counselling. The petitioner has stated that he is a Physically Disabled Person with 50% disability and that he has produced the necessary documents for counselling. It is the grievance of the petitioner that though the Medical Board was constituted, the petitioner was not given a seat under the Special Quota and he was directed to undergo medical examination and the Medical Officers were present in the counselling session, and they did not consider the case of the petitioner and they have given a go-bye to the percentage (%) of disability given by the Medical Board.

3. The respondents have not filed counter affidavit and the learned Additional Advocate General, assisted by the learned Government Advocate appearing for the first respondent submitted that there is 5% of the seats meant for Orthopaedically and Physically Disabled Persons and that in terms of Clause 36 of the Prospectus relating to admissions to MBBS/BDS, as the petitioner did not fulfill the criteria laid down in Clause 36(iii)(a) and (d), the petitioner would not be entitled to any relief. In the above context, it is worthwhile to quote Clause 36 (iii)(a) and (d) of the Prospectus to MBBS Admissions 2018-2019, as follows:

"36. Special Categories:

(a)

(a)

... ..

.....

(iii) Seats Reserved for Orthopaedically and Physically Disabled:

(a) 5% of the total number of seats available in Government Medical/Dental Institutions are reserved for the Orthopaedically and 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

Degree Courses will be applicable as in the case of the General Category.

... ..
... ..

(d) The Candidates seeking MBBS/BDS Degree Courses under Orthopaedically and Physically Disabled category will be required to undergo second medical examination by a Special Medical Board constituted by the Director of Medical Education to ascertain and confirm the nature and extent of Orthopaedic Physical Disability at the time of counselling.

... .."

4. It is further stated by the learned Additional Advocate General that even though the petitioner has produced the Medical Certificate, the second medical examination conducted by the Special Medical Board found that the petitioner's disablement is 20% and they did not accept the Medical Certificate produced by the petitioner.

5. Heard both sides and perused the materials available on record.

6. It is not in dispute that the petitioner is a physically disabled person. The petitioner's case is that he has suffered 50% disability, as could be seen from the Disability Certificate issued on 20.10.2016 and also the Certificate of Locomotory Disability, dated 16.06.2018. The petitioner stated that he has given the Certificates as required in the format prescribed for counselling and that only 21 persons have been called for counselling and that all the 122 seats are kept vacant. Learned counsel for the petitioner contended that the petitioner was not at all called for counselling, which is not disputed by the first respondent, who stated that no intimation with regard to the counselling was given to the petitioner. However, on a representation made in the counselling centre by the petitioner, taking note of the fact that the petitioner is a physically disabled person, his request was considered by the first respondent and he was sent for medical examination and the Special Medical Board found that the petitioner has 20% disability. Since the extent of disability is less than 40%, the case of the petitioner has not been considered.

7. Moreover, this Court is not rendering any finding with regard to the above said two Certificates produced by the petitioner. As the specific provision is with regard to the second medical examination by Special Medical Board and that too when the second Medical Board has come to a conclusion that the

percentage of disability is only 20%, this Court cannot sit in appeal over the conclusion of the appellate Board (second Medical Board) and come to a different conclusion. Even though no communication with regard to the counselling was given to the petitioner, the petitioner has gone to the counselling centre and made a representation and considering his request, the second Medical Board was constituted, which assessed the percentage of disability at 20%.

8. For the foregoing reasonings, this Court is of the view that the petitioner is not entitled to the relief sought for by the petitioner. Hence, the Writ Petition is dismissed. No costs. Consequently, W.M.P. is closed.

Sd/-
Assistant Registrar (CS-V)

//True Copy//

Sub Assistant Registrar

cs

To

1. The Secretary, Selection Committee,
Directorate of Medical Examination,
Kilpauk, Chennai-600 010.
2. The Medical Council of India,
Rep. by its Secretary,
Dwarka Phase-I, New Delhi.

+ 1 cc to Mr.R. Selvakumar, Advocate Sr.44693
+ 1 cc to Mr. Government Pleader Sr.44907

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W.P.No.16477 of 2018

VGII (CO)
EU (23/07/2018)

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