

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.07.2018

CORAM:

THE HONOURABLE MR. JUSTICE S.VAIDYANATHAN

WRIT PETITION No.16591 of 2018
and
WMP Nos.19760 & 19761 of 2018

Sonal Shruthi

...Petitioner

Vs.

1. The Director of Medical Education,
Poonamallee High Road, Chennai.
 2. The Selection Committee,
rep. by its Secretary,
Poonamallee High Road, Chennai.
 3. The Ministry of Social Justice and Empowerment,
rep. by its Secretary, New Delhi.
 4. The Medical Council of India,
rep. by its Secretary,
New Delhi.
- Respondents

Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a writ of mandamus, directing the 2nd Respondent to allot 1 MBBS seat for the academic year (2018-2019) for the Petitioner, who is visually impaired by protecting her right under Right of Persons Disability Act, 2016.

For Petitioner

: Mr.A.Navaneetha Krishnan,
Senior Counsel
for Mr.R.Rajamohan

For Respondents 1 & 2:

Mr.C.Manishankar,
Additional Advocate General
assisted by Mr.K.Krishnamoorthy,
Addl. Government Pleader

For 4th Respondent :

Mr.V.P.Raman

O R D E R

Petitioner, who is visually impaired, has come up with this Writ Petition seeking a direction to the 2nd Respondent to allot one MBBS seat for her for the academic year (2018-2019) by protecting her rights under Right of Persons under Disability Act, 2016.

2. According to the Petitioner, she belongs to Vanniya Kula Kshatriya Community and comes under MBC Quota. As the Petitioner is a visually impaired candidate, she applied for M.B.B.S. Course before the 1st Respondent under the Physically Disabled Quota under Visual Impaired Category for the academic year 2018-19, and secured 116 marks in National Entrance cum Eligibility Test (NEET).

3. The grievance of the Petitioner is that her name is not found in the list of physically challenged persons eligible to participate in the counselling scheduled on 01.07.2018 under Special Category (Disabled Quota). She came to understand that only candidates who are having locomotive disability have been included in the list of disabilities.

4. It is further stated by the Petitioner that 5% of seats is reserved for candidates under 'Physically Handicapped Quota', which include Visual impairment. Out of 120 seats allotted for Disabled Quota, only less than 20 candidates have been allotted to join the course and that remaining seats meant for Disabled Quota will be reverted to Parent Quota. The contention of the Petitioner is that though she is visually impaired, she has successfully completed her 12th Standard and secured 116 marks in NEET. According to her, she is capable of doing M.B.B.S. Course and entitled to get a seat under the Right of Persons under Disabilities Act, 2016 (in short 'Disabilities Act')

5. Mr.A.Navaneetha Krishnan, learned Senior Counsel appearing for the Petitioner contended that non-inclusion of the Petitioner's name in the list uploaded by the 2nd Respondent is without any basis, illegal and unsustainable in law. According to him, any clause in the Prospectus for M.B.B.S./B.D.S. Course 2018-19, which runs counter to the Disabilities Act, 2016 needs to be ignored and the case of the Petitioner needs to be considered.

6. Though the Respondents have not filed counter, Mr.C.Manishankar, learned Additional Advocate General appearing for Respondents 1 and 2 submitted that the case of the Petitioner could only be considered under Clause 36(iii)(a) and

Clause 36(iii)(d) of the Prospectus. For better understanding, Clause 36(iii)(a) and Clause 36(iii)(d) of the Prospectus for MBBS/BDS Course 2018-19, are extracted hereunder:

36(iii)(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.

36(iii)(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.

7. Learned Additional Advocate General further submitted that though the Petitioner has produced her Disability Certificate, her visual acuity is 6/18 and the limitation of the field of vision subtends to an angle of 40 degree and that the said condition is not likely to improve. In this regard, he drew reference to a specific condition of the Prospectus pertaining to the Recommendation of Expert on Visual Impairment under the head 'Operational Recommendations', and submitted that the case of the Petitioner cannot be considered. The said clause reads as under:

"Visual Disability:

A person with visual disability of 40% or more (category III or greater) shall not be eligible to pursue Graduate Medical Education. Persons with visual disability of less than 40%, namely 10% (Category 0), 20% (Category I) and 30% (Category II) are eligible to pursue Graduate Medical Education, but do not qualify for reservation as the extent of visual impairment is less than the benchmark definition of Low Vision.

In the same vein, testing of Colour Vision Deficiency by Ishihara test be compulsorily incorporated in the format of General Physical Examination of the Student, so that all medical students with suspect colour vision should be aware of severity of their deficiency before entering the medical course, and the kind of problems it may pose in the career they have opted.

8. In reply, Mr.A.Navaneetha Krishnan, learned Senior Counsel appearing for the Petitioner submitted that the Petitioner is willing to produce necessary document to show that a Demand Draft for a sum of Rs.100/- as additional fee, has been enclosed by her along with the Application to consider her case under Disability Quota and that in the cover, in which the Application was sent by the Petitioner, it is clearly mentioned that the Petitioner comes under Orthopaedically Physically Disabled Category.

9. However, the said submission was refuted by the learned Additional Advocate General that no Demand Draft was enclosed with the Petitioner's Application. He contended that had the Petitioner enclosed a Demand Draft for a sum of Rs.100/- with the Application, such fact should have been stated in her pleadings.

10. Heard the learned counsel on either side and perused the material documents available on record.

11. Whether the Petitioner has enclosed a Demand Draft for a sum of Rs.100/- or not, is not the issue for consideration in the case on hand. The only point for consideration is whether the Petitioner, who is a visually impaired candidate, is eligible for an MBBS seat or not.

12. Before proceeding further, for better appreciation of the case, relevant provisions under the Rights of Persons with Disabilities Act, 2016 are extracted hereunder:

Visual Impairment:

(a) "blindness" means a condition where a person has any of the following conditions, after best correction -

- (i) total absence of sight; or
- (ii) visual acuity less than 3/60 or less than 10/200 (Snellen) in the better eye with best possible correction; or
- (iii) limitation of the field of vision subtending an angle of less

than 10 degree

(b) "low-vision" means a condition where a person has any of the following conditions, namely:-

(i) visual acuity not exceeding 6/18 or less than 20/60 upto 3/60 or upto 10/200 (Snellen) in the better eye with best possible corrections; or
34 The GAZETTE of INDIA EXTRAORDINARY [PART II-

(ii) limitation of the field of vision subtending an angle of less than 40 degree upto 10 degree."

13. Also, the Eligibility Criteria for the Visually Impaired furnished in Annexure - A of the Guidelines for Admission of Persons with Specified Disabilities framed by the Medical Council of India, is extracted hereunder:

Disability Type	Benchmark Disabilities	Dealing Expert	Specified Disability	Eligible for Medical Course, Not Eligible for PH Quota	Eligible for Medical Course, Eligible for PH Quota	Not Eligible for Medical Course
Physical Disability	B. Visual Impairment	Dr. Radhika Tandon	a. Blindness b. Low Vision	Less than 40% disability (i.e. Category '0 (10%) 'I (20%) 'II (30%)	-	Equal to more than 40% Disability Category III and above

14. In the present case on hand, de hors the fact whether the Demand Draft was enclosed or not, the case of the Petitioner has been considered under the Reserved Quota viz. MBC under Special Category for the Visually Impaired. In the Disability Certificate of the Petitioner, it is seen that the visual acuity in her Left Eye is 6/18. Even assuming that 6/18 visual acuity has to be taken into account as per the Disabilities Act, 2016, it cannot be read in isolation without reference to the

percentage of disability, i.e. 40% as mentioned in the Disability Certificate. As per the Guidelines framed by the Medical Council of India, a candidate whose percentage of disability is 40% or above is not eligible to pursue Medical Course. Furthermore, in the Disability Certificate, it is mentioned that the permanent disability of the Petitioner is not likely to improve.

15. It is very unfortunate that God is severe to the Petitioner herein, who is a bright student. However, vision is more important for a Doctor to examine the patient and that the eligibility criteria fixed by the Medical Council of India cannot be interfered with. As the Petitioner has not satisfied the Benchmark Disability specified in the Regulation read with Disabilities Act, 2016 and that her condition is not likely to improve, the Petitioner would not be entitled to any reservation. It is needless to mention that there cannot be any discrimination at all, as the Medical Council of India is empowered to fix the percentage of disability of a candidate to be looked into for the purpose of pursuing Medical Course.

16. After dictating the order, Mr.A.Navaneetha Krishnan, learned Senior Counsel appearing for the Petitioner represented that the Petitioner may be permitted to make a representation to the Secretary to Government, who shall direct the authorities concerned to verify from the records, as to whether the Demand Draft for Rs.100/- towards Additional Fee Special Category, has been enclosed or not. It is needless to mention that this Court does not prevent the Petitioner from doing so.

17. Before parting with, this Court observes that this is not the first case, where submissions are put forth without pleading the same in the Affidavit. Though learned Senior Counsel appearing for the Petitioner has earnestly submitted that the Petitioner has enclosed the said Demand Draft along with the Application, on a perusal of the File produced by the learned Additional Advocate General, it is seen that there is no mention about the enclosure of the said Demand Draft with the Application. Equally, it has to be noted that there is no need for the Respondents to remove any of the Enclosures, to deprive the candidate a seat.

18. Hence, in order to avoid such kind of allegations from candidates, who claim to have enclosed certain documents along with the Application, but, have not taken such a stand in their Affidavit, this Court suggests that the Respondent/Selection Committee, Directorate of Medical Education, Chennai, shall amend the Prospectus from the academic year 2019-2020 to the effect that all the Enclosures along with the Applications are uploaded by the candidates in the official website of the

Authority concerned, apart from sending the same by Post. The Authority concerned shall cross-check the uploaded documents with that of the documents sent through Post. If the enclosures uploaded in the web portal are not clear, the discretion in accepting the same vests with the Respondent; but the candidate cannot, as a matter of right, seek acceptance of his/her application.

19. Thus, in view of the guidelines laid down in the Prospectus, the case of the Petitioner, cannot, by any stretch of imagination said to be contrary to the Right of Persons with Disabilities Act, 2016. This Court further observes that payment of a sum of Rs.100/- by means of a Demand Draft by the Petitioner as additional fee to treat her under 'Disability Quota' is not going to improve her case, as the Petitioner, who is Visually Impaired, has not satisfied the conditions stipulated in the Prospectus and the Guidelines framed by the Medical Council of India and there is no fault on the part of the Respondents in rejecting the Petitioner's application.

The Writ Petition is dismissed with the above observation. No costs. Consequently, connected W.M.P.Nos.19760 and 19761 of 2018 are closed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

(aeb)
To:

1. The Director of Medical Education,
Poonamallee High Road, Chennai.
2. The Secretary,
Selection Committee,
Poonamallee High Road,
Chennai.

+1cc to Mr.V.P.Raman, Advocate Sr.44736
+1cc to Mr.R.Rajamohan, Advocate Sr.44486
+1cc to the Government Pleader Sr.44923

W.P.No.16591 of 2018

srg 16/07/2018