

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.07.2018

CORAM:

THE HONOURABLE MR. JUSTICE S.VAIDYANATHAN

WRIT PETITION No.17518 of 2018

J.S.Vignesh Balaji

...Petitioner

Vs.

1. The Selection Committee for MBBS/BDS,
Directorate of Medical Education,
Kilpauk, Chennai 600 010.
 2. The Director General of Health Services,
Government of India,
Nirman Bhavan,
New Delhi - 11.
 3. The Medical Council of India,
rep. by its Secretary,
Pocket-14, Sector 8,
Dwaraka Phase - 1,
New Delhi - 110 077.
- ... Respondents

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 MBBS/BDS Course for the academic year 2018-2019 under the Physically Handicapped Quota (PH).

For Petitioner : Mr.V.Vijaya Shankar

For 1st Respondent : Mrs.V.Annalakshmi,
Government Advocate

For 2nd Respondent : Mr.J.Madhana Gopal Rao

For 3rd 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 Respondents to consider and admit him to MBBS/BDS Course for the academic year 2018-2019 under the Physically Handicapped (PH) Quota.

2. According to the Petitioner, he obtained 1061 marks in the Higher Secondary Examination in March 2018. Later, he appeared in the National Eligibility and Entrance Test (NEET)

on 06.05.2018 and scored 117. It is his case that he can read and write, but his vision is blurred and that he has obtained necessary Certificate of Disability from the District Medical Officer, Salem on 29.05.2018 and also from the District Medical Board consisting of 3 members from the Government Mohan Kumaramangalam Medical College, Salem, on 06.06.2018.

3. The Petitioner applied for admission to MBBS/BDS Course for the academic year 2018-2019 enclosing two Certificates of Disability. However, it is his grievance that he had not been called for counselling on 01.07.2018. He came to learn that only about 20 out of 120 seats have been filled up under the Physically Handicapped Quota and hence, made a representation to the 1st Respondent on 05.07.2018, enclosing a copy of his Disability Certificate seeking to consider him in the next round of counselling under PH Quota. As there is no response to his representation, the Petitioner is before this Court by way of the present Writ Petition.

4. Learned counsel for the Petitioner has referred to the relevant provisions under the Rights of Persons with Disabilities Act, 2016, which 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."

5. Heard the learned counsel for the parties and perused the material documents available on record.

6. For better appreciation of the case, relevant provisions of the Prospectus pertaining to the Recommendation of Expert on Visual Impairment under the head 'Operational Recommendations', are extracted hereunder:

"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.

7. 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:

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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

8. In a similar circumstance, this Court by an order dated 09.07.2018 in W.P.No.16591 of 2018, has held as under:

"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."

9. In the case on hand, the Petitioner's visual impairment, as could be seen from the Disability Certificate, is 75% and as per the Prospectus pertaining to the Recommendation of Expert on Visual Impairment under the head 'Operational Recommendations', a person with visual disability of 40% or more (category III or greater) shall not be eligible to pursue Graduate Medical Education. Undoubtedly, the Petitioner is a bright student. He has scored 480 marks out of 500 in X Standard and 1061 marks out of 1200 in XII Standard.

10. It is paining to note that God is too severe to the candidates like that of the Petitioner, for the reason that inspite of being meritorious, the Petitioner is not eligible to pursue Medical education, as, he has not satisfied the conditions stipulated in the Prospectus and the Guidelines framed by the Medical Council of India. Hence, this Court is left with no other option, but to turn a blind eye to candidates like that of the Petitioner, in view of the Guidelines/Policy decisions of the Government, which cannot be said to be illegal.

The Writ Petition is dismissed with the above observation. No costs. Consequently, connected W.M.P.Nos.20790 and 20791 of 2018 are closed.

(aeb)

Sd/-

Assistant Registrar(CS-IX)

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Sub Assistant Registrar

To:

1. The Selection Committee for MBBS/BDS,
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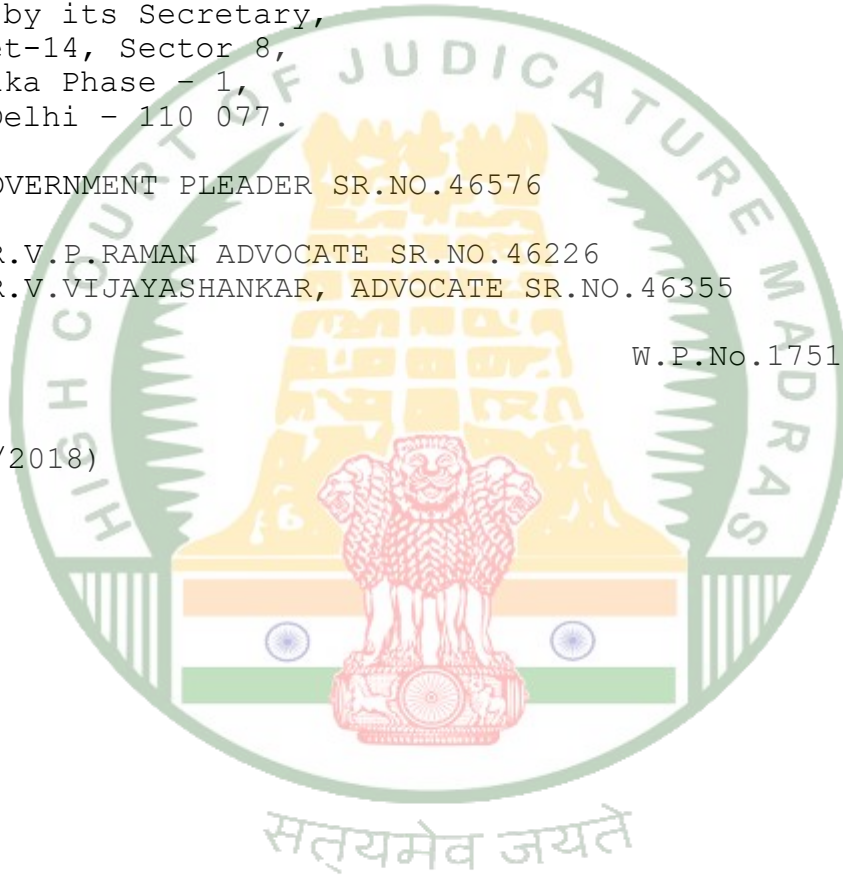
+1CC TO GOVERNMENT PLEADER SR.NO.46576

+1CC TO MR.V.P.RAMAN ADVOCATE SR.NO.46226

+1CC TO MR.V.VIJAYASHANKAR, ADVOCATE SR.NO.46355

W.P.No.17518 of 2018

RJ(CO)
ASK(31/07/2018)



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