



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 20.09.2018

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THE HONOURABLE MR.JUSTICE V.PARTHIBAN

W.P.(MD)No.19231 of 2018
and

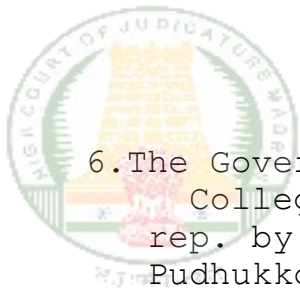
W.M.P(MD)No.17073 of 2018

J.Vibin (Minor)
rep. by his father / natural guardian
16b, Kuttralam Main road,
Bharathi Nagar,
Melagaram
Thenkasi,
Tirunelveli District.

... Petitioner

Vs.

- 1.The Central Board of Secondary Education,
rep. by it's Joint Secretary
National Eligibility Certificate cum Entrance Test Unit,
Shiksha Kendra, 2, Community Centre,
Preet Vihar,
New Delhi,
Delhi - 110 092.
- 2.The State of Tamil Nadu
rep. by it's Secretary to Government,
Health and Family Welfare Department,
Fort St. George,
Chennai - 600 009.
- 3.The Medical Council of India,
rep. by it's Secretary,
Dwaraka, New Delhi.
- 4.The Secretary
Selection Committee,
Directorate of Medical Education,
No.162, Periyar EVR High Road,
Kilpauk,
Chennai.
- 5.The Dean,
Madras Medical College,
<https://hcservices.ecourts.gov.in/hcservices/>
Central Station,
Chennai.



6.The Government Pudhukkottai Medical
College Hospital
rep. by it's Dean,
Pudhukkottai.

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...Respondents

Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Mandamus to direct the respondents to admit the petitioner's son in the 6th respondent college to pursue MBBS course in compliance with the provisional allotment order dated 12.07.2018 issued by the fourth respondent in terms of Section 32 of the Rights of Persons with Disabilities Act, 2016 (No.49 of 2016) within the period that may be stipulated by this Court.

For Petitioner : Mr.M.Ajmalkhan
Senior Counsel for
M/s Ajmal Associates

For Respondents : Mr.S.Angappan
Government Advocate

O R D E R

The petitioner's son is a physically challenged person having visual impairment. The Government of Tamil Nadu has issued a certificate to him to the effect that he is having visual impairment to the extent of 75%. The petitioner's son appeared for 10th Public Examination and secured 483 marks and 1016 marks in Higher Secondary Examination. He also participated in the NEET Examination in order to realize his dream of becoming a Doctor and secured 220 marks out of 720. Under the category of physically challenged person, the petitioner was ranked 285 as on all India basis.

2.The petitioner's son on securing high rank in the NEET examination participated in the online counseling and ultimately, he was selected and allotted the 6th respondent college, hospital in MBBS Course. The allotment order was generated online on 01.08.2018. On receipt of the allotment order, the petitioner and his son had visited the 6th respondent college and produced certificate issued by the Government of Tamil Nadu. At this juncture, the petitioner was informed that his son had obtained certificate from the authorized Disability Assessment Board and was directed to get such certificate from the Madras Medical College.

3.In pursuance of the above direction, the petitioner's son had gone to the Madras Medical College and on conducting medical examination on him, he was issued with a certificate to the effect that he is having the visual impairment of 90% instead of the original 75% degree of disability granted by the Government of Tamil Nadu.

<https://hcservices.ecourts.gov.in/hcservices/>

4.The certificate issued by the Madras Medical College



notifying that the petitioner's son was not eligible to medical course as per the Medical Council of India's guidelines, in view of the high degree of disability suffered by him.

5. According to the 6th respondent college, since the petitioner's son suffered more than 40% disability of visual impairment, he was not eligible to be admitted to the MBBS course. In the said circumstances, the petitioner is before this Court seeking appropriate direction.

6. Mr. M. Ajmalkhan, learned Senior Counsel appearing for the petitioner would at the outset submit that the denial of admission to the petitioner on the stated grounds, cannot be countenanced both in law and on facts for the reason that the same is contrary to the specific provision as contained in the Rights of Persons with Disabilities Act, 2016. According to the learned Senior Counsel, the person who suffer from benchmark disability is defined under Section 2(r) of the above Act, which reads as under:-

(r) "persons with benchmark disability" means a person with not less than forty per cent of 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;

7. As regards the visual impairment is concerned, the learned Senior Counsel would draw the attention of this Court the schedule appended to the Act under Clause z(c) of Section (2), which defines what visual impairment as per Clause B which reads as under:-

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

8. According to the learned Senior Counsel, the visual impairment includes total absence of sight and the benchmark disability means a person with not less than forty percent of the



specified disability. On the other hand, the 6th respondent college denied admission only on the ground which the petitioner learnt subsequently that the petitioner's son suffered more than 40% disability. Therefore, the rejection order is contrary to the statutory Rules and the Disabilities Act being an special enactment will prevail over all other enactments, more particularly, when the provisions of the same are benevolent in nature and the same have to be liberally construed by the authority concerned.

9. The learned Senior Counsel would also cite a recent unreported decision of the Hon'ble Supreme Court of India rendered in W.P(C)No.669 of 2018 dated 24.08.2018 [Purswani Ashutosh (minor) vs. Union of India]. In the said case, the Hon'ble Supreme Court of India dealt with the similar claim by visually impaired candidate and after adverting to various instructions and also to the reference to the provisions of the Disabilities Act, 2016, the Hon'ble Supreme Court of India directed admission to the said candidate in MBBS course, in case he was otherwise qualified as per his merit. The learned Senior Counsel would draw the attention of this Court the detailed reasoning of the Hon'ble Supreme Court as under:-

"The petitioner who suffers from a specified disability "low vision" appeared in the NEET (UG) Examination for the 2018-19 Session as a candidate of the physically handicapped category with Registration No. 41108572 and Roll No. 502902144, securing All India Rank 468982 - Category Rank 205186. He ranked 419 in the physically handicapped category.

Aggrieved by the refusal and/or failure of the concerned respondents to give the petitioner the benefit of reservation for the physically disabled, the petitioner approached this Court under Article 32 of the Constitution of India complaining of discrimination and arbitrariness.

By an order dated 15th June, 2018, the Vacation Bench of this Court directed that notice be issued to the respondents. In the meanwhile, the petitioner was directed to present himself before the Medical Board of B.J. Medical College, Ahmedabad for medical examination and appropriate medical certification with regard to his claim of sufferings from low vision.

Diverse orders were passed by this Court from time to time. By an order dated 12th July, 2018, this Court noted the submission of the MCI that an Expert Committee formed by MCI had opined that persons with visual impairment of 40 per cent or more could not be admitted to the undergraduate medical course, i.e. the MBBS course. The said request was pending consideration of the Central Government. This Court, however, found that there were inconsistencies in the report, and accordingly called for expert opinion from a team of Experts consisting inter alia of three senior members of the Ophthalmic Department on the following aspects:



"(i)The extent of the disability, with percentage if any. If yes, whether it is within the benchmark of the Disabilities Act.

(ii)Whether the petitioner with the kind of disability, if any he is suffering is fit to undertake the MBBS course." By Memo No. F.5-3/RPC/MB-502/2018 dated 16th July, 2018, the Committee answered the first question in the affirmative, in favour of the petitioner, but the second question in the negative and against the petitioner. The Committee of the Experts opined that the visual disability of the petitioner was within the benchmark of the Disabilities Act. The petitioner was, however, not suitably fit to undertake the MBBS course as per the MCI requirements/guidelines. The memo did not disclose the exact reasons for forming the opinion that the petitioner was not fit for the MBBS course.

Pursuant to the directions of this Court, the petitioner filed a counter affidavit objecting to the said report. As the recommendations of the Committee were awaiting consideration of the Central Government, this Court by an order dated 10th August, 2018 in effect gave liberty to the stakeholders for disabled categories, including the petitioner to submit a representation to the Central Government and directed the Central Government to take an expeditious decision so that the persons with disabilities did not suffer due to lapse of time.

The Medical Education Regulations framed under Section 33 of the Medical Council Act, 1956 have statutory force and are binding on the MCI. The Committee having opined that the petitioner suffers from a benchmark disability, its view with regard to the suitability of the petitioner for the MBBS course cannot override the Medical Education Regulations.

The 2016 Act, in particular Section 32 thereof, read with the Medical Education Regulations clearly provides for reservation of seats in the MBBS Course for persons like the petitioner with specified benchmark disability of low vision. Mr. Vikas Singh, learned senior Advocate appearing on behalf of the MCI, strenuously contended that Section 32 of the 2016 Act would not apply to admission to a medical college for the MBBS course. It is, however, not disputed that the Medical Education Regulations are valid, subsisting, in force and binding on the MCI. The validity of the said regulations has not been questioned. The contention of Mr. Singh that Section 32 is not attracted since it only provides for reservation to higher educational institutions and not to technical institutions imparting technical education, appears to be



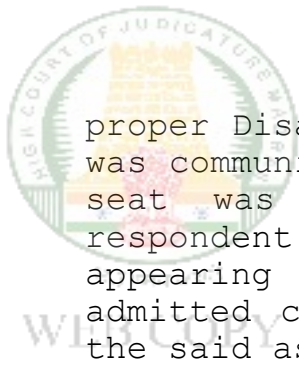
fallacious since higher educational institution is a generic term which would include institutions imparting all kinds of higher education, including technical education, whereas technical institution is a specific term for those institutions which only impart technical education. Be that as it may, 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 Persons 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.

The Writ Petition is disposed of accordingly."

10. The learned Senior Counsel would, therefore, submit that the claim of the petitioner herein is squarely covered within the scope of the order passed by the Hon'ble Supreme Court of India and therefore, the petitioner's son is entitled to be admitted in MBBS course. He would further emphasise the fact in regard to the case which was pending before the Hon'ble Supreme Court of India as stated supra, the said candidate had ranked 419 in physically handicapped category as against the ranking of 285 by the petitioner's son herein. In which even, the petitioner's son was entitled to be admitted in MBBS course in all fours.

11. In any event, the petitioner's son was indeed allotted to the 6th respondent college for pursuing MBBS course and eventually the allotment was not implemented in view of the petitioner's son being assessed 90% degree of disability (visual impairment). Such denial is contrary to the provisions of Disabilities Act and therefore, the petitioner is entitled to get the relief as sought for.

12. Per contra, on behalf of the 6th respondent, a counter affidavit has been filed, in which, it is stated that the petitioner's son was not found fit by the Disability Assessment Board, which is evidenced by the medical certificate issued by the Madras Medical College. Once the petitioner's son was declared unfit, the question of implementing the allotment order does not arise at all by the 6th respondent. It was further averred in the counter affidavit that since the petitioner's son did not submit



proper Disabilities Certificate within the time stipulated, the same was communicated to the Medical Council of India and thereafter, the seat was filled by the subsequent counseling by the fourth respondent herein. In any event, according to the learned counsel appearing for the sixth respondent, the petitioner cannot be admitted contrary to the Medical Council of India's guidelines on the said aspects.

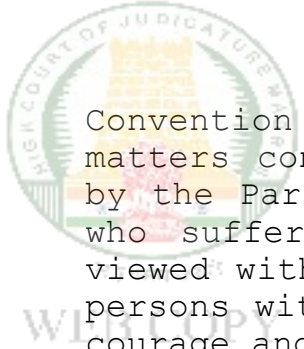
13. This Court has given its anxious consideration to the submissions made on behalf of the learned Senior Counsel appearing for the petitioner and the learned Government Advocate appearing for the respondents and perused the materials, pleadings placed on record.

14. As rightly contended by the learned Senior Counsel appearing for the petitioner, the denial of admission to the petitioner's son cannot be countenanced in law, as the same is contrary to the specific provision of the Disabilities Act, 2016. As per Section 2 (r) of the Act, it is very clear that the benchmark disability means any person suffering not less than 40% of the specified disability.

15. In the instant case, the petitioner suffered disability namely, visual impairment more than 40% and therefore, the disability is a specified one in terms of the provisions of the said Act. The petitioner's son is entitled to be considered in terms of the provisions of the said Act. The definition of visual impairment has also been defined in the schedule as extracted supra, which included total absence of sight. In such event, assuming that the petitioner suffered from 90% disability, the same cannot be held against him in the matter of grant of admission to the MBBS course. In matters like this, exemplary compassion has to be shown to the claimants in furtherance of laudable and noble objective the special enactment seeks to achieve.

16. As rightly contended by the learned Senior Counsel, the provision as contained in the Disabilities Act is benevolent in nature and therefore, the authority concerned ought to give positive thrust in implementing the objective of the enactment, but not to defeat the provisions of the Act with pedantic approach.

17. In the case on hand, it appears that with little application of mind the authority concerned mechanically rejected the candidature of the petitioner's son, notwithstanding the allotment originally made and prevented him from pursuing the course in the 6th respondent college. When the constitutional right to higher education is trifled with, there must be strong and compelling reason supported by valid legal principles. On the other hand, in the instant case, the 6th respondent college has refused to honour the allotment order issued to the petitioner's son blindly with wooden approach sans appreciation of the scheme of the Disabilities Act, 2016. The Rights to Persons with Disabilities Act, 2016 has been enacted in order to give effect to the United Nations



Convention on the Rights of Persons with the Disabilities and for matters connected therewith. Such enactment is brought into force by the Parliament in order to give Universal thrust to the persons who suffer from disability. The curse of disability has to be viewed with exemplary compassion and empathy, in order to make the persons with disability to pursue their career option with dignity, courage and conviction.

18. However, the 6th respondent unfortunately without appreciating the basic rights of the persons with disabilities, has chosen to blindly ignore the scheme of the Act and such attitude on the part of the respondents is a sad reflection of kafkaesque mind set, unmindful of the harm that may inflict on the person with disability, being denied of right to education. Compassion is the only universal language which blind can see, deaf can hear and dumb can speak. The State authorities are bound to provide thrust to the hallowed objectives of the Act and not to act contrary to the fundamental objectives of the Act. In matters like this, it is imperative on the part of the State authorities to act with good conscience and equity which qualities are in built in our constitutional scheme. Unfortunately, in the instant case, the 6th respondent has adopted stony attitude by sticking to certain guidelines which did not conform to the letter and spirit of the provisions of the Disabilities Act.

19. For the above said reasons, this Court is of the view that the writ petitioner has made out a clear case for grant of relief. Therefore, there shall be a direction to the fourth respondent to accept the Certificate issued by the Madras Medical College categorizing the petitioner's son as suffering from 90% degree disability (visual impairment) and implement the allotment already made in the 6th respondent college and event of the said seat being filled up in the 6th respondent college, may allot any other college within the State of Tamil Nadu. The fourth respondent shall pass appropriate order in this regard immediately on receipt of this order.

20. The Registry is directed to communicate the order to the fourth respondent immediately in order to enable the authority concerned to take immediate action to comply with the said direction of this Court.

21. With the above directions, this writ petition is allowed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(P&A)

/True Copy/



TO

1. The Joint Secretary,
Central Board of Secondary Education,
National Eligibility Certificate cum Entrance Test Unit,
Shiksha Kendra, 2, Community Centre,
Preet Vihar,
New Delhi,
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Central Station,
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6. The Dean
Government Pudhukkottai Medical
College Hospital
Pudhukkottai.

+1CC TO M/s.AJMAL ASSOCIATES IN S.R.No.86070.

W.P. (MD) No.19231 of 2018
and
W.M.P (MD) No.17073 of 2018
20.09.2018

SKN
DS/SV/SAR-2:25.09.2018: 9P/8C