

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CWP-19236-2018 (O&M)

Date of decision: - 19.09.2018

Rohit Kumar

...Petitioner

Versus

**Government Medical College and Hospital, Sector 32, Chandigarh
and others**

...Respondents

**CORAM : HON'BLE MR. JUSTICE MAHESH GROVER
HON'BLE MR. JUSTICE MAHABIR SINGH SINDHU**

Present:- Mr. Vivek Singla, Advocate,
for the petitioner.

Mr. Suman Jain, Advocate
or the respondents.

MAHESH GROVER, J. (ORAL)

On the last date of hearing i.e. 06.09.2018, we had passed a detailed order, which for the purposes of making a composite reading, we proposed to extract here below: -

“The issue, raised in the present petition, is about the admission of the petitioner to MBBS Course under the Physically Challenged Quota. The Prospectus, issued by the respondents/College, envisages a quota with the stipulation that the Disability Certificate issued by the NEET (UG)- 2018 approved Centres will be accepted (as per Appendix D). The Central Board of Secondary Education, which conducts the NEET Examination in its Information Bulletin for the said exam, prescribed the eligibility and qualifications and for the purposes of present controversy, the relevant portion of its extracted hereinbelow:-

“(iv) *Differently abled candidates as per MCI guidelines are:*

Persons having Bench Mark disabilities and entitled for reservation under the Rights of Persons with Disability Act, 2016, 5% seats of the annual sanctioned intake capacity shall be filled up by candidates with Bench Marked Disabilities in accordance with the provisions of the Rights of Persons with Disabilities Act, 2016 based on the merit list of “National Eligibility Cum Entrance Test”. For this purpose, the specified disability contained in the schedule to the Rights of Persons with Disabilities Act, 2016 is available at Appendix-XIV. If the seats reserve for the persons with disabilities in a particular category remain unfilled on account of unavailability of candidates, the seats should be included in the Annual Sanctioned Seats for the respective category. Detailed information in this regard is available on the website of Medical Counselling Committee – www.mcc.nic.in and on website of the Ministry of Health and Family Welfare – www.mohfw.nic.in. Candidates who considered themselves eligible for this category are advised to ensure their eligibility by getting themselves examined at any Government Medical College/District Hospital/Government Hospital. However, candidates may kindly note that in case of selection under PH category, they will be required to produce Disability Certificate from one of the disability assessment boards, constituted at the four metro cities, mentioned below, before their scheduled date of counselling:

- *Vardhman Mahavir Medical College and Safdarjung Hospital, Ansari Nagar, Ring Road, New Delhi- 110029 (Tel No.011-26190763 & 26163072)*
- *All India Institute of Physical Medicine and Rehabilitation, Hazi Ali Park, K. Khadya Marg, Mahalaxmi, Mumbai 400034 (Tel No.022-23544341)* • *Institute of Post Graduate Medical Education & Research, 244, Acharya J.C. Bose Marg, Kolkata-20 (Tel No.033-22235181)*
- *Madras Medical College, Park Town, Chennai- 600003 (Tel No.044-25305301).*

(v) *Reservation will be made as per 2200 point reservation*

roster. The mode of implementation of reservation will be available on DGHS website- www.mohfw.nic.in.

The petitioner was issued a Certificate by the Vardhman Mahavir Medical College and Safdarjung Hospital, New Delhi, which is one of the prescribed Institutes, as per the above extracted information. The petitioner was held to be having a disability, described as more than 40% and his ailments were also mentioned therein as '*suffering from Gamma Sarcoglycanopathy*'. There was further stipulation that he is eligible for admission in the Medical/Dental Course as per the MCI/DCI Guidelines subject to his being otherwise medically fit. Evidently, the Certificate indicates two things, one is of a person being eligible to an admission for the Medical Course but subject to his medical fitness. The Prospectus, issued by the respondents, carries the following Clauses:-

- 1. The selected candidates will have to undergo medical examination by the constituted Medical Board on the same day or succeeding day of their admission to the course. Only those candidates who are found to be medically fit shall be granted admission.*
- 2. The candidates who do not appear before the Medical Board or are found medically unfit shall not be allowed to join the course.*

Purportedly, acting pursuant to the above, the petitioner was subjected to medical examination by a Board, constituted by the College Authorities, who went on to recording following:-

*“ The medical examination of Mr. Rohit Kumar S/o. B.N. Prasad aged 17 years old male vide OPD card No.180702631 and UHID No.2167 4924 4997 was carried out in the Department of General Medicine, GMCH-32, Chandigarh. Patient have been symptomatic for the last 08 years. The patient initially developed weakness of bilateral lower limb affecting musculature, which later progressed the upper limbs. The patient was worked up at Department of Paediatric Neurology, AIIMS, New Delhi. The muscle biopsy was done and the patient was diagnosed as **Gamma sarcoglycanopathy** at AIIMS vide Hosp. Reg. No.7414/10.*

On examination the patient has involvement of all four limbs and cannot stand, walk, bend and lift objects himself owing to muscle weakness. He cannot raise both arms against

gravity for sustained period.

The cardiac evaluation has been done at GMCH-32, Chandigarh and echocardiography is showing cardiac involvement in the form of left ventricular diastolic dysfunction.

The MRI of muscles has been done at GMCH-32 Chandigarh also shows extent of muscle involvement. (report attached).

Hence keeping above in view the clinical and supportive investigations, candidate Mr. Rohit is not fit as per NON ELIGIBILITY GUIDELINES of MCI (copy attached), on grounds of locomotor disability. ”

The provisional admission, granted to the petitioner, was cancelled on the basis of the above.

While challenging the action of the respondents, learned Counsel for the petitioner contends that once the MCI has laid the Guidelines and the petitioner has a Certificate from one of the suggested Institutes, there would be absolutely no reason to deny the admission.

Reliance has been placed on a decision of Hon'ble Delhi High Court in the case of '**Dr. Raman Khanna Versus University of Delhi and others**', 2004 (1) SLJ 208 and decision of Hon'ble Gauhati High Court in the case of '**Miss Rajashree Khound Versus The State of Assam and others**', 2012(6) SCT 779.

The Hon'ble Supreme Court, in a recent judgment, granted admission to a physically challenged candidate after noticing that the MCI Guidelines have yet to find approval and place in the Statute-Book after amendment.

We are confronted with the situation where the petitioner relies on a Certificate, issued by one of the Institutes recommended by the MCI, but discarded by the respondent-College in view of the report of the Medical Board, constituted in accordance with the provisions of the Prospectus.

There is no challenge to the Clause warranting so.

In putting to practice, the Regulations of the MCI even before they found acceptance in law has lent a certain fluidity to the situation, particularly, when it manifest in the Prospectus itself, however, the Certificate issued by the MCI Guidelines for whatsoever its worth does acknowledge two aspects of a candidate being eligible on account of his

physical disability and his ability to undertake the Course on the issue of Medical Fitness. Since the Certificate, issued by the Vardhman Mahavir Medical College and Safdarjung Hospital, New Delhi, does not address the issue of fitness, which is addressed by the Board, constituted by the College, we would deem it appropriate to refer the matter to the Post Graduate Institute of Medical Education and Research (PGIMER), Chandigarh and request the Board set up for determining the physical disabilities to examine the petitioner and record its opinion regarding the ailment of the petitioner, its extent and the ability of the petitioner to undertake the medical courses.

The petitioner shall appear before the Board, to be constituted by the PGIMER, Chandigarh, on 12.09.2018.

Adjourned to **19.09.2018** for further proceedings.”

Pursuant to above, we had requested the PGIMER, Chandigarh to constitute a Medical Board to examine the disability of the petitioner.

We have now received a report in the sealed cover (which is taken on record) and the findings are as below: -

“After thorough examination of the provided medical records and examination of Mr. Rohit Kumar, the Medical Board is of the opinion that:

As Mr. Rohit Kumar has normal mental faculties, normal cognition, normal vision and normal handwriting, his Understanding is Normal. He is fit to undertake the Medical courses.”

Evidently, the petitioner has been found to be possessed of normal faculties and he is capable of facing rigours of a medical course. Since we have satisfied ourselves by obtaining a report from the PGIMER, Chandigarh, which leans in favour of the petitioner, therefore, we are of the opinion that the stand of the respondents in declining

admission to the petitioner on the presumption of his inability to undertake a medical course is not correct. We while accepting the present writ petition with costs direct the respondents-College to grant admission to the petitioner forthwith in the current session.

Costs are assessed at ₹5,000/- and the same be paid to the petitioner within one month.

In view of above, the present petition stands allowed.

**(MAHESH GROVER)
JUDGE**

September 19, 2018
naresh.k

**(MAHABIR SINGH SINDHU)
JUDGE**

Whether reportable?	No
Whether reasoned/speaking?	Yes