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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of order: 22.11.2018

+ W.P.(C) 1415/2011

ANANDITEERTH P MUTALIK Petitioner

Through: Mr. G. Tushar Rao, Advocate.

versus

UOI AND ANR Respondents

Through: Mr. T. Singhdev, Ms. Amandeep Kaur, Ms. Puja Sarkar, Ms. Michelle B. Das, Mr. Tarun Verma & Mr. Abhijit Chakravarty, Advs. for R-2.

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

HON'BLE MR. JUSTICE PRATEEK JALAN

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S. RAVINDRA BHAT, J. (Oral)

1. The petitioner is physically disabled to the extent of 50% disability, and successfully completed the MBBS course inclusive of the 1-year internship at KIMS Hospital at Hubli, Karnataka. KIMS Hospital at Hubli issued a Certificate dated 04.03.2008 certifying that he suffered from 50% permanent physical disability which was non-progressive. For his admission into the Post Graduate course through All India Post Graduate Medical Entrance Examination (AIPGMEE) conducted by AIIMS, he appeared in the examination on 09.01.2011 and was ranked 14957 in the overall and at serial No. 21 overall in the “physically handicapped” category. He was to appear for

counselling on 26.02.2011. In terms of the guidelines in the Prospectus Form for the Physically Disabled Persons, the petitioner appeared before the Disability Assessment Board at Chennai being closest to his home town in Karnataka. The said Board issued a Certificate of Locomotor Disability stating therein that the petitioner was in fact suffering from disability to the extent of 50% and has permanent physical impairment to the above extent. However, at the same time the Board declared the petitioner ineligible for admission in the medical courses as per MCI guidelines. Also, the letter clearly stated that the petitioner was rejected due to the reason that there were no guidelines of the MCI regarding locomotor disability with respect to the upper limbs.

2. The present petition is filed with regard to the validity of the declaration of in-eligibility by the Disability Assessment Board, Chennai despite the Board's certification that the petitioner was suffering from 50% locomotor disability, as well as a direction that he be called for counselling in the physically handicapped category in the absence of any guidelines for the locomotor disability for the upper limbs. The petition also challenges the vires of sub-clause (1)(a) and proviso to clause (2)(iv) to Section 9 of the Post Graduate Medical Education (Amendment) Regulation 2009 dated 25.03.2009 of the MCI as ultra vires Section 32 and 39 of the Disabilities Act, 1995.

3. The petitioner contends that there is no guideline drafted by the respondent MCI with respect to persons who are disabled from the upper limbs, the petitioner cannot be arbitrarily and unjustly rejected

and disentitled from attending the counselling session. Also, the counsel for the parties brought to the attention of the court, the appeal against the decision of the Id. Division Bench of the High Court of Gujarat in Special Civil Application No. 6412 of 2010 in the case of Dr. Deval R. Mehta vs. UOI wherein it was categorically held that “.. *the Medical Council of India cannot exclude persons with upper limb locomotory disability from admission in the Post Graduate course on the ground that such person cannot elicit sign during clinical examination.*”

4. Subsequently, the Supreme Court in the case of Medical Council of India Vs. Deval R. Mehta and Ors (Civil Appeal No. 5865/2011), dismissed the civil appeal as having been infructuous. Furthermore, in Dr. Dnyaneshwar Dutta Dhepale Vs. State of Maharashtra & Ors (W.P. No. 775 of 2015) and connected matters, the main challenge to clause 9(1)(a) of the Post Graduate Medical Education Regulations, 2000 for admission to post-graduate courses, which prescribes that only candidates afflicted with disability ranging from 40% to 70% will be eligible to the benefit of reservation provided for persons with disabilities, was rejected. The Bombay High Court observed that most of the petitioners except perhaps one had already completed the post-graduation course, and therefore, the bench decided that the petitioners should not be divested of the benefit already obtained by them. Further, the Court also observed that:

“9. We however clarify that this order is made in the peculiar facts and circumstances of the present case, and

therefore, this order or the interim orders in these petitions may not be cited as a precedent in future. We are conscious that interim orders never constitute a precedent. However, we note that such interim orders are repeatedly cited at least the stage of plea for interim relief. Therefore, we deem it appropriate to clarify this position. All these petitions are disposed of in the aforesaid terms. There shall be no order as to costs.”

5. It is also a matter of record that MCI with the approval of the Central Government amended the Regulation 9 of the Postgraduate Medical Education Regulations, 2000, by Notification No. MCI/18(1)/2018-Med./100818 dated 05.04.2018:

“(5) 5% seats of annual sanctioned intake capacity shall be filled up by persons with benchmark 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 admission to Postgraduate Medical Courses.

In order to be eligible for admission to Postgraduate Course for an academic year, it shall be necessary for a candidate to obtain minimum of marks at 50th percentile in the ‘National Eligibility-Cum-Entrance Test for Postgraduate courses’ held for the said academic year. However, in respect of candidates belonging to Scheduled Castes, Scheduled Tribes, and Other Backward Classes, the minimum marks shall be at 40th percentile. In respect of candidates with benchmark disabilities specified under the Rights of Persons with Disabilities Act, 2016, the minimum marks shall be at 45th percentile for General Category and 40th percentile for SC/ST/OBC.”

6. Pursuant to an interim order made in the present case, at an early stage the petitioner has already completed his post-graduation.

Therefore, for the above reasons recorded, the challenge to the statute has been rendered academic; the writ petition is disposed of as infructuous.

S. RAVINDRA BHAT, J

PRATEEK JALAN, J

NOVEMBER 22, 2018
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