

NAFR

HIGH COURT OF CHHATTISGARH BILASPUR**Writ Petition (C) No.2369 OF 2019**

Varsha Chandrakar D/o S.K. Chandrakar, aged about 19 years, R/o Sai Nagar, Uslapur, Bilaspur, District Bilaspur (C.G.).

---- Petitioner**Versus**

1. State of Chhattisgarh, through the Principal Secretary, Department of Health, Mahanadi Bhavan, Mantralaya, Atal Nagar, Naya Raipur, District Raipur (C.G.).
2. Director of Medical Education, Raipur, District Raipur (C.G.).
3. Dean, Chhattisgarh Institute of Medical Science (CIMS), Bilaspur, District Bilaspur (C.G.).
4. Medical Council of India through its Secretary, Pocket 14, Sector, Dwarika Phase-I, New Delhi, 110077.

---- Respondents

For Petitioner	: Shri B. N. Mishra and Shri T. K.Jha, Advocates
For Respondent/State	: Shri Gagan Tiwari, Deputy Govt. Advocate
For Respondent/MCI	: Smt. Anubhuti Marhas, Advocate on behalf of Shri R.S. Marhas, Advocate

Hon'ble Shri P. R. Ramachandra Menon, Chief Justice
Hon'ble Shri Parth Prateem Sahu, Judge

Order On Board**Per Parth Prateem Sahu, Judge****02/08/2019**

1. The Petitioner invoked extraordinary jurisdiction of this Court on the ground of denial of her candidature for admission in MBBS course at Chhattisgarh Institute of Medical Sciences (hereinafter referred to as 'CIMS'), Bilaspur.

2. Facts of the case in nutshell, are that, Petitioner appeared in the National Eligibility cum Entrance Test (UG)-2019 (hereinafter referred to as 'NEET') for admission in medical course conducted by the Central Board of Secondary Education in May-2019 as a candidate belonging to Other Backward Class category (hereinafter referred to as 'OBC') in class of 'Person with Disability'. She secured her place in the merit list within her category and class and as per score card uploaded by Ministry of Human Resources Development, she has been shown to be ranked as 236124 under OBC category and 1154 under Physically Handicapped (hereinafter referred to as 'PH') category.

3. On the basis of securing her position in the merit list, Respondent No.2 had issued provisional allotment letter in State quota showing her rank as 840 under CG-OBC category and she was allotted seat under category Unreserved-Physically Handicapped (hereinafter referred to as 'UR-PH'). She appeared at the venue mentioned in provisional allotment letter for her counselling and verification of documents on the scheduled date. After scrutinizing her testimonials and certificates, she was also asked to deposit requisite fee, which she deposited by way of Demand Draft of Rs.50,000/- by two drafts (10,000/- + 40,000/-) as per direction of authorities.

4. The Petitioner even after deposit requisite fee was not granted admission by Dean of CIMS, Bilaspur on the ground

that some clarification has been sought from office of Director Medical Education with regard to the gazette notification dated 04.02.2019 with reference to admission of disabled candidate in MBBS. When no communication was sent to the Petitioner, she made a representation to Dean, CIMS, Bilaspur on 08.07.2019 requesting him to decide the issue at the earliest. On the same date, Petitioner received a letter on the prescribed mobile number as Whatsapp message (social media message) vide Annexure P/7, wherein it has been mentioned that till 4.30 PM of 08.07.2019, no clarification/instruction has been received from the Directorate Medical Education, therefore, she had been declared ineligible for admission and prosecuting the course of MBBS (UG).

5. The Petitioner thereafter rushed to this Court and file a writ petition challenging the denial of her admission. This Court vide its order dated 12.07.2019 passed the following order:-

“Mr. T.K. Jha, Advocate for the petitioner.

Mr. Gagan Tiwari, Dy. Government Advocate for the State.

I.A. No.3/19, application for impleading Medical Council of India as party respondent being not opposed by learned counsel for the respondents is allowed. Let newly impleaded respondent be added in the array of respondents.

Petitioner is said to be aggrieved by Annexure P-7 whereby her candidature to get admission for MBBS Course pursuant to

coming out successful to the NEET Exam, 2019, is rejected.

Learned counsel representing petitioner points out that the reason shown in Annexure P-7 is quite a strange one i.e. for want of getting necessary instructions from the 2nd respondent who is the Director of Medical Education, Raipur with regard to clarification sought for in respect of the disability of the petitioner. It is stated that the extent of disability of the petitioner has been certified by the competent authority, by virtue of which, she is entitled to have admission for the course in question. The denial of admission is with reference to the Rules of the State (Annexure P-5) issued on 25.5.2018, which is not the rule as on date, by virtue of the comprehensive rules issued by the Central Government on the basis of stipulations made by the Medical Council of India, as notified in the Gazette of India dated 4.2.2019. As per the said Rules, the hurdles, if at all, which were in existence in the rules followed by the State, stand washed off and the petitioner has become a more deserving candidate, with reference to the nature and extent of her disability. It is also pointed out that the petitioner has already satisfied the fee, as payable in the first instance, by remitting a sum of Rs.50,000/- (Rupees Fifty Thousand) vide Annexure P-8.

Matter had come up for consideration on 11.7.2019 when it was adjourned for getting instructions.

Today, Shri Gagan Tiwari, learned counsel representing respondent/State submits, after getting instructions, that the new rules notified by the Central Government based on the instructions of the Medical Council of India on 4.2.2019 are applicable and that the respondent authorities are ready to consider the candidature of the petitioner in conformity with the said rules along with the rules of the State.

We also heard Shri Ranbir Singh Marhas, learned counsel representing the Medical Council of India in this regard.

In the above circumstances, we find it appropriate to grant an interim order directing the respondents to consider the candidature of the petitioner based on the Rules dated 4.2.2019 notified by the Central Government and such other rules, if any as applicable, by conducting a counseling and pursuing further steps, on a provisional basis. Outcome shall be let known to this Court after two weeks.”

6. In pursuant to order dated 12.07.2019 passed by this Court, Respondent No.2 came in action and instead of granting provisional admission has issued a letter dated 24.07.2019 addressing the Petitioner wherein Petitioner has been declared as ineligible to get admission in MBBS course.

7. Learned counsel appearing for the Petitioner submits that Petitioner submitted her application form in OBC category candidate under PH class. As per requirement of the Rules,

Petitioner appeared before the Chhattisgarh State Medical Board for issuance of certificate by recognized Board under the Rules of Chhattisgarh Chikitsa, Dant Chikitsa evam Bhautik Chikitsa (Physiotherapy) Snatak Pravesh Niyam, 2018 (hereinafter referred to as 'Rules of 2018'). The Chhattisgarh State Medical Board after examining the Petitioner, had issued the certificate (Annexure P/1) on 20.06.2019 mentioning therein that Board found the Petitioner suffering with "Transverse deficiencies Metacarpal complete (Disarticulation through carpal bones)". In the said certificate, it has been specifically mentioned that it has been issued only for NEET medical counselling. He further submits that after verification of documents and certificates, Petitioner was asked to deposit the fee, which she has deposited by way of demand draft Annexures P/4 and P/5. He further submits that Petitioner on the basis of her merit in her category, came in the merit list and she come within the range of 'disability' as provided under the gazette notification dated 04.02.2019 issued by the Government of India, wherein the candidate suffering disability within the benchmark of 40-80% has been held to be eligible for admission. The candidate under the class of PH whose disability is less than 40% and more than 80% has been shown to be ineligible to get the benefit of PH class. The notification also provides for the specified disabilities. Subsequently, another notification was issued on 13.05.2019 in super-session of the Medical Council amendment notification wherein the term

'PH' has been amended to be used as Persons with Disability, but the column of disabilities, its benchmark and type of disability insofar as it relates to case at hand i.e. Clause 1(A) remains as it is. He lastly submits that without applying the notification in the pragmatic manner, Respondent No.2 has declared the Petitioner to be ineligible, which is arbitrarily and contrary to the contents of Gazette notifications.

8. In support of his contentions, he relied upon the judgments passed by the Hon'ble Supreme Court in **Purswani Ashutosh (Minor) through Dr. Kamlesh Virumal Purswani v. Union of India & Others decided on 24.08.2018 in Writ Petition (C) No.669 of 2018** and **Muskan Abdul Rahim Shaikh (Minor) through Abdul Rahim Shaikh v. State of Gujarat & Others decided on 18.09.2018 in Special Leave to Appeal (C) No.24524 of 2018.**

9. Per contra, learned counsel appearing for Respondents No.1 to 3 submits that they have acted strictly in accordance with Gazette notification issued by the Medical Council of India dated 04.02.2019 wherein it has been provided that attention should be paid to loss of sensations in fingers and hand, amputation as well as involvement of eyes and corresponding recommendations be looked at and both hands intact with intact sensations, sufficient strength and range of motion are essential to be considered eligible for medical course. Therefore, considering the aforementioned notification, Petitioner has been

denied for admission and prosecution of her study in MBBS course due to disability in the hand of the Petitioner.

10. Learned counsel appearing for Respondent No.4 supports the action of Respondent No.2 in rejecting the candidature of Petitioner to get admission in MBBS course. She also referred same Gazette notification dated 04.02.2019 as also dated 13.05.2019 and raised same argument as advanced by learned counsel for Respondents No.1 to 3.

11. We have considered the submissions made by learned counsel appearing for the respective parties and also perused the records minutely.

12. Undisputedly, the Petitioner appeared in NEET examination and secured a place in the merit list of her category and class. She was issued a provisional admission letter for her admission at CIMS, Bilaspur wherein she appeared for counselling along with all her testimonials including Disability certificate issued by State Medical Board which were found to be correct and on the instruction of the counselling authority, she also deposited fee of Rs.50,000/- by way of Demand Draft. Perusal of Annexure P/1, which is a certificate issued by the Chhattisgarh Medical Board only mentions disability of "Transverse deficiencies Metacarpal complete (Disarticulation through carpal bones)" and her percentage of disability has been shown as 55%. No other deficiency or opinion has been mentioned in the said certificate but specifically mentioned that

it is issued for next Medical counselling. The benchmark for being eligible for admission in MBBS course is mentioned in Appendix “H-1” of the notification dated 13.05.2019.

13. The Rights of Persons with Disabilities Act, 2016 (hereinafter referred to as 'Act of 2016') was enacted to give effect of the proclamation on the full participation and equality of the people with disabilities in the Asian and Pacific region. The United Nation parted its convention, in which, India was also a signatory which came into effect on 03.05.2008 and being a signatory of the convention, there was an International obligation to comply with the provisions of said obligation.

14. Section 2(r) deals with 'Person with Benchmark Disability', the same is reproduced here-in-below :

“2. Definitions.-In this Act, unless the context otherwise requires.-

* * * *

(r) “person with benchmark disability” means a person with not less than forty per cent of a 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,”

15. Chapter III of Act of 2016 deals with 'Education' and Section 16 of the Act of 2016 deals with duty of educational institutions. Section 16(i) is relevant, which is reproduced here-

in-below :

“16. Duty of educational institutions.-The appropriate Government and the local authorities shall endeavour that all educational institutions funded or recognised by them provide inclusive education to the children with disabilities and towards that end shall-

(i) admit them without discrimination and provide education and opportunities for sports and recreation activities equally with others;”

16. A bare perusal of aforementioned provision, it is apparent that duty is also casted upon the Government and the local authorities to provide inclusive education without discrimination and provide education and other opportunities equally with others to Persons with Disability.

17. Under the specified disability as notified by Respondent No.4 as well as notification issued by Board of Governance in super-session of Medical Council of India dated 13.05.2019, under Clause 1(A)(f) the other disabilities has been brought into as Amputation and Poliomyelitis etc. The Respondents have not placed any certificate or document assigning reasons for her becoming ineligible in support of their arguments that under the notifications dated 04.02.2019 and 13.05.2019, the Petitioner is ineligible for admission.

18. The Hon'ble Supreme Court in **Muskan Abdul Rahim**

(supra) relied on **Purswani Ashutosh** (supra) and held the Petitioner therein entitled for admission as per the merit position of the Petitioner in her category and class. In that case, right hand of the Petitioner was amputated and she was declared 75% disabled.

19. The Hon'ble Supreme Court in case of **Purswani Ashutosh (Minor)** (supra) referred case of **Muskan Abdul Rahim Shaikh** (supra) and dealt with the issue of disability of low vision in detail. In the said case, though the subsequent report sought for by the State Government with respect to the extent of disability and whether it is within the benchmark of the Act of 2016. The Committee of 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 MCI requirements/guidelines. The Hon'ble Supreme Court considered that the said memo did not disclose the exact reasons for forming the opinion that the Petitioner was not fit for MBBS course and held that the Petitioner cannot be denied the admission to the MBBS course subject to his qualification as per his merit in the category of Persons with Disability. For holding the aforementioned dictum in favour of the Petitioner, the Hon'ble Supreme Court has said thus :

“.....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”

20. In the case at hand, both the hands of Petitioner are intact, but due to “Transverse deficiencies Metacarpal complete

(Disarticulation through carpal bones)” on one hand, she was certified by the Chhattisgarh Medical Board the petitioner is suffering with 55% disability. In the certificate (Annexure P/1), it has not been mentioned that she is ineligible to get admission in the medical course nor any other form of disability has been mentioned disentitling the Petitioner for admission.

21. The certificate (Annexure P/1) is issued by the Chhattisgarh State Medical Board mentioning the disability to the extent of 55% assigning the disability as “Transverse deficiencies Metacarpal complete (Disarticulation through carpal bones)”. In the said certificate (Annexure P/1), the Board has not opined with respect to her ineligibility for admission in MBBS course (UG) without there being any certification or opinion of any expert after examining the Petitioner holding her to be ineligible for admission in MBBS course, there was no occasion for Respondent No.2 to issue Annexure D/1 disentitling the Petitioner for admission in MBBS course, particularly, when the Petitioner's disability is within the benchmark of the disability as provided under column 1(A) of the notifications dated 04.02.2019 and 13.05.2019.

22. The letter Annexure D/1 issued by Respondent No.2 holding the Petitioner ineligible is without any basis. The action of Respondent No.2 in issuing Annexure D/1 is wholly arbitrary and is not sustainable in the eyes of law.

23. In view of aforementioned discussions, we hold that the

Petitioner cannot be denied admission to the MBBS course if she qualifies her merit in the category of OBC and PH class (now 'Persons with Disability'). The Petitioner as had been found to have secured her place in merit list of her category and class which is also evident from Annexure P/3, she shall be given admission in MBBS course in the current academic year.

24. The writ petition is allowed in the aforesaid terms.

Sd/-
(P. R. Ramachandra Menon)
Chief Justice

Sd/-
(Parth Prateem Sahu)
Judge