

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION (ST) NO. 20773 OF 2019

Miss. Shaikh Durray Shaiwar Imtiyaz	}	Petitioner
versus		
The State of Maharashtra and Ors.	}	Respondents

Mr.Shrishail Sakhare for the petitioner.

Mr.P.P.Kakade-Government Pleader with Ms.A. A.
Purav - AGP for State.

Mr.S.S.Patwardhan for respondent no.2.

**CORAM :- S. C. DHARMADHIKARI &
SANDEEP K. SHINDE, JJ.**

DATED :- JULY 24, 2019

P.C. :-

1. The petitioner before us has prayed for a direction to the respondents to allow her to prosecute the studies as a disabled candidate. In other words, she is a person with physical disability. She wants a declaration that the selection list of respondent no.2 dated 6th July, 2019, to the extent it shows the petitioner to be medically unfit and not eligible as a person with disability in the persons with disabilities quota for admission to MBBS Degree course, be set aside.

2. The petitioner before us is indeed a person with disability. There is no dispute that she attempted to secure admission to the MBBS Degree course in a seat reserved for this quota. She has stated in the petition that the third respondent-Civil Surgeon, C.S.M.General Hospital, Solapur has issued a certificate certifying that she has 60% Locomotor disability. This certificate dates back to 15th February, 2002. She has again undergone, on 23rd June, 2017, medical test and the Civil Surgeon of C.S.M. General Hospital, Solapur has given physical disability certificate in Form-IV stating that she is suffering from physical impairment/disability to the extent of 61%. That certificate, according to the petitioner, shows that she is not unfit. It is in fact a certificate which can be safely relied upon, according to Mr.Sakhare, the learned advocate appearing for the petitioner. It is stated that the disability is to the extent of 61%, which is above the benchmark, but below the percentage beyond which the candidate is declared ineligible for admission to medical course. The argument is that the petitioner can walk, go up and down by the staircase. She can move both her hands. She can write without any assistance. She can see and hear clearly. It is stated that she has passed S.S.C. examination by securing 88.80% marks and H.S.C. examination by securing 66.77% marks. Both the examinations were given by her without any assistance or help. She could sit for long hours,

write the answers to the question papers and even in the National Eligibility-cum-Entrance Test (NEET) UG, 2019, she appeared and passed on 5th May, 2019 with very good percentage.

3. It is stated that the course that is scheduled for admission process for admissions to undergraduate course in Medicine for the Academic Year 2019-20 is from 10th May, 2019 to 30th September, 2019. The first round is complete. Though the petitioner was not selected in the first round, in the second round, she has been allotted a seat from All India Quota at Dr.Vaishampayam Memorial Medical College, Solapur.

4. Mr.Sakhare would, therefore, submit that we should direct the Commissioner to allot her seat and complete the admission process insofar as this candidate is concerned. The decision of the second respondent suffers from non-application of mind.

5. On a preliminary hearing of this petition in open court, we had directed that the petitioner be examined at Sir. J.J.Group of Hospitals and Grant Government Medical College, Mumbai, as per Annexure II, which is a list of centers qualified for issuing the disability certificate as per 21 benchmark disabilities given under the Right of Persons with Disabilities Act, 2016 and the Right of Persons with Disabilities Rules, 2017. Appendix 'H' are the

guidelines regarding admission of students with specified disabilities under the Right of Persons with Disabilities Act, 2016 with respect to admission in MBBS. The extent of specific disability for a person has to be assessed in accordance with these guidelines. That is an assessment for the purpose of determining whether the person can be held to be eligible for admission in medical courses. The minimum degree of disability should be 40% (benchmark disability). The disability with which we are concerned with, is physical disability. The type of that is Locomotor disability. We are, in this case, concerned with the disability range. The eligibility for medical courses, for person with disability quota, is less than 40%. Under this quota, a person is determined to be eligible with disability in the range of 40% and not eligible for medical course is a disability of more than 80%.

6. The petitioner seems to be aware of this for she has exhibited as Exhibit 'I', a copy of the amended notification of the Board of Governors in Supersession of Medical Council of India dated 4th February, 2019. These percentages are, therefore, determined by experts and they have been compiled in Rule 9.1.5.3 and Annexure 'D' of the Information Brochure of NEET UG 2019. It is, therefore, clear that the petitioner is aware that she will have to undergo medical examination by the Disability

Assessment Board. It is stated that the second respondent, vide Notice No. 5 dated 28th June, 2019, declared schedule of medical examination and as per that schedule, the petitioner must undergo medical examination by the Sir J.J.Group of Hospitals and Grant Government Medical College, Mumbai, i.e. the fourth respondent. Though the petitioner may rely upon the certificates issued by the Civil Surgeon, C.S.M. General Hospital, Solapur, a careful perusal of the same leaves us in no manner of doubt that the Civil Surgeon, in terms, says that there is a physical impairment and the affected part of the body is the upper limb and lower limb. This is a case of cerebral palsy with multiple adductor contractures of bilateral upper and lower limb. The condition is stated to be permanent, progressive and not likely to improve. Though the disability in percentage is stated to be 61%, the certificate does not, with certainty, say that this candidate can undergo the studies and rigorous as it is of the undergraduate course in medicine. The disability certificate, which is issued following this examination by the Civil Surgeon, C.S.M. General Hospital, Solapur, is heavily relied upon, but we cannot displace the Government of India Gazette, which contains the principal requirements, namely, the Regulations on Graduate Medical Education, 1997 amended up to 21st May, 2018 with Appendix 'H'.

7. Once the second respondent is guided by the report of the Sir J. J. Group of Hospitals and Grant Government Medical College, Mumbai, which is the centre notified for such examination, then, we cannot, in preference to this report, accept that of the Civil Surgeon of the C.S.M. General Hospital, Solapur.

8. Mr.Sakhare would like us to give an opportunity to the petitioner, but we do not think that merely because the experts differ that we should disregard the view of Sir.J.J. Group of Hospitals and Grant Government Medical College, Mumbai.

9. To be very fair, just and sympathetic to the petitioner, we placed this matter in Chambers and we directed the learned AGP to produce the record in relation to the petitioner, maintained by Sir. J.J.Group of Hospitals and Grant Government Medical College, Mumbai. We have before us not only the medical papers and records, but also the presence of doctors who examined the petitioner. The doctors explained to us as to how they have carried out the tests and complied with the settled norms. They have not deviated from them. They have stated that the disability extends the percentage and which has been set out in Annexure 'H'. That disability range is more than 80%.

10. Mr.Sakhare attempted to point out to us that there is one more centre which is notified for Mumbai and that is All India Institute of Physical Medicine and Rehabilitation and that is for Locomotor disability only. He says that the petitioner be allowed to undergo a test for determining the extent of disability at this institute.

11. Since the case of the petitioner entirely rests on the opinion and this institute has been included in Annexure II at page 41 of the paper book for Locomotor disability only, we request the Director of that institute to examine the petitioner on Monday 29th July, 2019. We further direct Sir.J.J.Group of Hospitals and Grant Government Medical College, Mumbai to forward the medical records and their confirmed opinion with the range of disability to this All India Institute of Physical Medicine and Rehabilitation.

12. However, we do not wish to interdict the process of admission. It is stated that the second round would be concluded by 25th July, 2019 at 5.00 p.m. In the circumstances, should the certificate of All India Institute of Physical Medicine and Rehabilitation be made available to the petitioner on 29th July, 2019, then, the petitioner can participate in the mop-up/ further round by bringing to the notice of the second respondent both the

reports. We are sure that the second respondent would consider the case of the petitioner sympathetically and grant her admission if she is otherwise eligible.

13. With the aforesaid directions, the writ petition is disposed of.

(SANDEEP K. SHINDE, J.) (S.C.DHARMADHIKARI, J.)