

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

WRIT PETITION NO. 4248 OF 2019

Sakaray Vaishnavi	}	Petitioner
versus		
State of Maharashtra and Ors.	}	Respondents

Mr.Akshay R. Kapadia with Mr.Vishal Chowdhary for the petitioner.

Mr.P.P.Kakade-Government Pleader with Mr.A.A.Purav-AGP for respondent no.1 (State).

Mr.Yashodeep Deshmukh with Mr.Vinod Mahadik for respondent no.3.

Dr.Arunkumar S. Vyas-OSD-Director of Medical Education and Research present.

Dr.Buddheshwar N. Hiwale-OSD-Director of Medical Education and Research present.

**CORAM :- S. C. DHARMADHIKARI &
G. S. PATEL, JJ.**

DATED :- JUNE 25, 2019

P.C. :-

1. The petitioner claims that she has a hearing impairment. There is a policy in place to assist such persons and unfortunately for the petitioner, having cleared a national level test called NEET-2018 for admission into undergraduate course (professional course like MBBS), obtaining registration and securing admission, she was informed that the benchmark

disability as understood in the policy does not enable the respondents to continue her admission in the MBBS course in the third respondent college. She was, therefore, not allowed to pursue her studies.

2. She claims that she filed a writ petition erroneously in the High Court of Andhra Pradesh at Hyderabad. Having spent considerable time there, she realised that the cause of action has arisen within the territorial jurisdiction of the Bombay High Court. That is how the present petition. The prayer is to call for the records and particularly in relation to a letter dated 23rd June, 2018, to set it aside and then to direct the second respondent to continue the admission of the petitioner.

3. The learned counsel appearing for the petitioner may place reliance upon the judgment of the Hon'ble Supreme Court in the case of *Purswani Ashutosh vs. Union of India*¹ decided on 24th August, 2018. Reliance is placed on the penultimate para, by which, the Hon'ble Supreme Court found that the Medical Council of India having issued the Medical Education Regulations, they would require amendment so that the benchmark disabilities are appropriately and properly described. Now, these are not outlined in such a way that the petitioner can be accommodated.

¹ Writ Petition (Civil) 669 of 2018

4. In this matter, we were expecting simple assistance and from the advocates of the Government. They were to obtain instructions with regard to the policy of the State of Maharashtra and whether the Department of Public Health, through its Directorate can assist the petitioner. More so, when today the learned counsel appearing for the petitioner informs us that the petitioner is ready and willing to do everything for continuing her studies and fulfilling her dream of becoming a doctor. She is willing to undergo an expensive surgery so as to correct the hearing impairment and disability. If not anything, at least it will be brought to the level set as a benchmark. However, when the matter was not and could not be decided in the morning session, we kept it back only to enable the competent official from the second respondent-Directorate to appear.

5. Pursuant to our request, that officer/ official has attended the court. He has stated that in the specific disabilities (Appendix XIIIV to the Brochure known as IB-NEET (UG) 2018), the hearing impairment is understood as “deaf” and “hard of hearing”. The definitions together with specific details are set out. Our attention is invited to the type of disabilities and stated as physical disabilities. Insofar as hearing impairment is concerned, the benchmark disability says that it should be less than 40% to continue with admission. The petitioner does not fit in this

benchmark disability criteria. Unfortunately for her, when she was informed that she does not fit in and her admission was cancelled, the vacant seat has already been filled in by another candidate. Now, in the academic session in which the petitioner obtained admission, there is no vacant seat. Thus, in the academic 2019-20, there is no vacant seat. In a fresh round as well, the petitioner will have to satisfy the authorities with regard to the benchmark disability should the Medical Council of India not amend its regulations and bring them in tune with the ground realities, particularly the mandate of the law noticed by the Hon'ble Supreme Court. The Hon'ble Supreme Court noticed specific provisions of the Act, namely, Right of Persons with Disabilities Act, 2016. The Medical Council of India Regulations ought to be brought in tune with the same. So long as they are not so brought, we do not think that by issuing any directions either to the authorities or to the Medical Council of India, anything can be achieved. The petitioner cannot be directed to be admitted to a course in which she has lost the seat long time back. Even with the corrective surgeries undergone by her, ultimately she has to satisfy the authorities that she has the benchmark disability. The official present in the court says that even after such a surgery, it is entirely for the said authority to assess and determine the issue of the benchmark disability insofar as the petitioner is concerned.

6. Once we have such a situation before us, then, no useful purpose will be served by entertaining this petition. The certificate brought before us and stated to be issued by the Seth G.S. Medical College and KEM Hospital dated 30th June, 2018, which is taken on record and marked as “X”, could have been produced much earlier and particularly when the petitioner approached the High Court of Andhra Pradesh at Hyderabad for that is stated to have decided her petition on 4th September, 2018. This certificate also does not ensure that the corrective surgery will give immediate relief. There is a post-operative speech therapy and which will have to be undergone for three years. Thus, the impairment would not be entirely corrected until the whole procedure, including the surgery is undergone by the petitioner. At the instance of the petitioner, we are not considering a challenge to the policy and the benchmark disability. We keep that challenge open for a decision in an appropriate case.

7. With the aforesaid observations, the writ petition is dismissed.

(G.S.PATEL, J.)

(S.C.DHARMADHIKARI, J.)