

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

WRIT PETITION NO. 5321/2019.

Anwar Ahmed Ansar Ahmed

-VERSUS-

Union of India and others.

Office notes, Office Memoranda of
Coram, appearances, Court's orders
or directions and Registrar's orders.

Court's or Judge's Orders

Shri Mohd. Ateeque, Advocate for the Petitioner.
Shri U. Aurangabadkar, ASGI for Respondent Nos.1 to 3.
Ms. N.P. Mehta, A.G.P. for Respondent Nos. 4 and 6.
Shri N. Khubalkar, Advocate for Respondent No.5.

CORAM : R.K. DESHPANDE &
VINAY JOSHI, JJ.

DATE : AUGUST 05, 2019.

Heard.

2. The question raised in this petition is regarding eligibility of the petitioner for admission to Medical Courses in the quota of 'Persons with Disability' (PWD). The learned Counsel appearing for the petitioner has relied upon the definition of "Person with Benchmark Disability" contained in Section 2[r] of the Rights of Persons with Disabilities Act, 2016 which is reproduced below :

*"2(r) "person with benchmark disability" means a
person with not less than forty per cent. of a*

2

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;”

3. Our attention is invited to the Certificate of Disability and the range of disability of 40%. The conclusion drawn in the said certificate is that, the petitioner is not eligible for admission in Medical / Dental Courses as per MCI/DCI Guidelines subject to his being otherwise medically fit. The certificate further shows that the petitioner is eligible for PWD quota. The certificate has been issued in terms of gazette notification dated 05.02.2019, for admission to medical courses in All India Quota.

4. The petitioner has been shown as ineligible for admission in PWD quota and his name appears at Sr. No. 68 in the list. The verification of documents was done upto 06.07.2019. The amended notification dated 04.02.2019, issued by the Board of Governors in Supersession of Medical Council of India, contains the requirement of eligibility in the table contained in Appendix-'H'. The relevant portion of the same is reproduced below :

B. Visual impairment (*)	b. Blindness	Less than 50% disability [i.e. category “0 (10%) - I.	–	Equal to or more than 40% disability (i.e. category III and
	b. Low vision.			

3

		(20%) - & II (30%)		above)
C. Hearing impairment. @	a. Deaf b. Hard of hearing.	Less than 40% disability.	-	Equal to or more than 40% disability.
(*) Person with visual impairment/visual disability more than 40% may be made eligible to pursue Graduate Medical Education and may be given reservation, subject to the condition and the visual disability is brought to a level of less than the benchmark of 40% with advanced low vision aids such as telescope/magnifier etc. @ persons with hearing disability of more than 40% be made eligible to pursue Graduate Medical Education and may be given reservation subject to the condition that the hearing disability is brought to a level of less than the benchmark of 40% with the aid of assistive devices. In addition to this, the individual should have a speech discrimination score of more than 60%.				

5. The Contention is raised that the eligibility criteria prescribed of having equal to or more than 40% disability in case of low vision is contrary to the definition of “Persons with Benchmark Disability”, contained in Section 2[r] of the 2016 Act, and therefore, the said criteria need to be ignored and petitioner having filled in her candidature from PWD quota, as shown in certificate of disability by the Medical Board, the denial of admission in medical course, is, illegal.

6. The learned counsel for the respondents have invited our attention to a communication dated 29.07.2019, issued by the Grant Government Medical College and Sir J.J. Group of Hospitals,

4

Mumbai, where the petitioner was examined and certificate of disability was issued. Paragraph no.2 of the said communication being relevant is reproduced herein below :

“ The candidate Anwar Ahmed Ansar Ahmed is 40% visually impaired and his visual disability cannot be brought down to below the benchmark of 40 percent with the help of advanced low visual Aids and hence is a visual handicap and is not eligible for medical / dental courses according to Indian Gazette. The handwritten line in the certificate states that he is eligible for PWD quota is meant for other courses such as engineering, pharmacy etc.”

7. What we find is that the petitioner is held to be ineligible in terms of amended notification dated 04.02.2019, for admission to the medical courses, though he may have been covered by the definition of “Persons with Benchmark Disability”, contained in Section 2[r] of the 2016 Act. Merely because a person falls in the category of “Persons with Benchmark Disability”, would not make him eligible for admission to medical course, unless the eligibility criteria prescribed for it, is satisfied. If the provision of explanation below the eligibility criteria, reproduced above is read conjointly, the competent Authority has issued the certificate that the petitioner is not eligible for admission in medical course, after his medical examination. The petitioner may become eligible in

5

terms of the definition “Persons with Benchmark Disability” under Section 2[r] of the 2016 Act, for admission in any other Course, but, he is held ineligible for admission in medical course, which is clear from the certificate of disability produced. We therefore, do not find any error in the view taken by the respondents. Writ Petition is, accordingly dismissed. No costs.

JUDGE**JUDGE** ‘

Rgd.