

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :: 19-08-2019

CORAM

THE HON'BLE DR.JUSTICE VINEET KOTHARI
AND
THE HON'BLE MR.JUSTICE C.V.KARTHIKEYAN

W.A.No.1943 of 2019

Dr.P.Muthu

... Appellant

-vs-

1. The Director,
National Institute of Epidemiology
(Indian Council of Medical Research),
Department of Health Research,
Ministry of Health & Family Welfare,
Government of India,
Ayyapakkam,
Chennai-600 077.

2. The Dean,
Sree Chitra Tirunal Institute
for Medical Sciences & Technology,
Department of Science & Technology,
Government of India,
Trivandrum-695 011.

.... Respondents

Appeal under Clause 15 of the Letters Patent against
the Order, dated 20.06.2019, passed in W.P.No.16918 of 2019 on
the file of this Court.

W.P.No.16918 of 2019:-

Writ of Mandamus to directing the respondents to provide
admission to the petitioner in the 1st respondent Institute for
the course of Master of Public Health Epidemiology and Health
System)- 2 year Programme for the Academic year 2019-2020.

For Appellant : Mr.R.Prabhakaran

For Respondent 1 : Mrs.N.Mala,
Special Govt.Pleader.

For Respondent 2 : Mr.G.Gubendhiran

JUDGMENT
(By Dr.Vineet Kothari,J.)

Dr.P.Muthu, M.B.B.S., D.I.H., Kanchipuram, had filed the Writ Petition No.16918 of 2019 in this Court on 10.06.2019, praying for a mandamus to direct the respondents viz., the Director, National Institute of Epidemiology (Indian Council of Medical Research), Chennai, and the Dean of Sree Chitra Tirunal Institute for Medical Sciences & Technology, to provide admission to him in the Course of Master of Public Health (Epidemiology and Health System), a two year programme, for the Academic Year 2019-2020.

2. The said Writ Petition came to be disposed of by a learned Single Judge with a direction to the respondents to decide the representations of the petitioner, dated 26.05.2019 and 30.05.2019.

3. Aggrieved by the said order, the petitioner came up in Intra Court Appeal before this Court.

4. Upon issuance of Notice, Second Respondent has filed a Counter Affidavit, dated 14th August,2019, in the present Writ Appeal.

5. Mrs.N.Mala, learned counsel for First Respondent, drawing the attention of this Court towards Para 11 of the said Counter Affidavit of Second Respondent, has submitted that the present Appellant Dr.P.Muthu and one other candidate, by name, Dr.Jadhav Pradipkumar Shamrao have applied for Admission to the said Course and as against the minimum qualifying marks of 50%, the present Appellant secured only 39% marks and other candidate- Dr.Jadhav Pradipkumar Shamrao- obtained only 34% marks and, therefore, in the Persons With Disabilities (PWD) Category, since no eligible candidate was available, the seat could not be allotted to anybody, including the present Appellant. The said Counter Affidavit also states in Para 11 that the Act viz., The Rights of Persons with Disabilities Act,2016, provides for 5% reservation for PWD Category and, in future, the Notification will specifically include the reservation provided to PH Category. But, the learned counsel submitted that since the present Appellant and the other candidate who applied for Admission in the said Category could not secure minimum qualifying marks of 50%, no seat could be allotted to either of them in the said Course.

6. Mr.R.Prabhakaran, learned counsel for the Appellant, however, vehemently submitted that the Benchmark of 50% marks would not be justified for the Physically Handicapped persons and it needs to be relaxed to accommodate and provide them Admission.

7. Having heard the learned counsel for the parties, we are afraid, this Court cannot legislate and bring down the Benchmark of 50% of minimum qualifying marks at the request of the learned counsel for the Appellant, as there is neither prayer in the Writ Petition for that purpose nor it seems possible for this Court to do so. Even if we are to entertain the oral prayer of the learned counsel for the Appellant, to provide for reservation in the seats in terms of the avowed object of the said 2016 Act enacted for Persons With Disabilities is one thing and to provide for the criteria of clearing with eligibility test is another thing.

8. Except the physical disabilities of the persons applying for such courses, they do not apparently suffer from any mental disability to claim any such relaxation. Therefore, as far as mental abilities or faculties are concerned, despite their physical disability, they cannot claim any such relaxation or lowering down of Benchmark from the facts stated in the Affidavit of Second Respondent in Para 11, noted above by us.

9. We cannot make any further interference in the matter so as to allow the Admission of the Appellant in the said Course, as he has not cleared the Benchmark of 50% marks in the Admission Test for the said Postgraduate Course.

10. Since we have already stated supra that it is a matter of Legislation and framing of Rules and Regulations, we grant liberty to the Appellant to make a suitable representation to the competent Body in this regard and if the said Competent Body, including the Medical Council of India or any other newly enacted Commission under the new enactment in this regard, considers it appropriate, it may make suitable Rules and Regulations for that purpose, which this Court certainly cannot do.

11. Therefore, we do not find any further reason to interfere with the order passed by the learned Single Judge or issue any further directions in the matter.

12. We, accordingly, dispose of this Writ Appeal. No costs. Consequently, the connected C.M.P.Nos.13171 and 13172 of 2019 are closed.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

dixit

To

1. The Director,
National Institute of Epidemiology
(Indian Council of Medical Research),
Department of Health Research,
Ministry of Health & Family Welfare,
Government of India,
Ayyapakkam,
Chennai-600 077.
2. The Dean,
Sree Chitra Tirunal Institute
for Medical Sciences & Technology,
Department of Science & Technology,
Government of India,
Trivandrum-695 011.

+1cc to Mr.R.Prabhakaran, Advocate, S.R.No.70719
+1cc to Mrs.N.Mala, Advocate, S.R.No.70593
+1cc to Mr.G.Gubendhiran, Advocate, S.R.No.70592

W.A.No.1943 OF 2019

RK(CO)
CS/06/09/2019