

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 15.10.2019

PRONOUNCED ON : 18.10.2019

CORAM

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

Writ Petition No.23311 of 2019

Mohamed Kurchit Anwar
S/o Chinna Meeran
No.11/234, Mogappair East,
Chennai - 600 037.

.... Petitioner

Vs

1.The Secretary,
Medical Council of India,
MCI Building, Pocket 14,
Sector - 8, Dwaraka Phase,
New Delhi - 110 077.

2.The Selection Committee,
Directorate of Medical Education,
No.162, Periyar E.V.R Road,
Kilpauk, Chennai - 600 010.

.... Respondents

Prayer :- This Writ Petition is filed under Article 226 of the Constitution of India for a writ of Mandamus directing the second respondent to select the petitioner for M.B.B.S., course 2019, under the disability quota based on the Persons With Disability Act, 2016.

For Petitioner :Mr.M.Ravi

For 1st Respondent :Mr.V.P.Raman

For 2nd Respondent :Mr.Abdul Saleem, Standing Counsel

ORDER

The petitioner is a differently abled person. He is eligible for the quota reserved for Persons With Disability (PWD) as per the Right of Persons With Disabilities Act, 2016. He applied for M.B.B.S., seat for the academic year 2019-2020 along with disability certificate issued by the Government

Hospital Assistant Surgeon in the year 2013, certifying he suffers 70% disability. Having secured 125 out of 720 marks in NEET examination and secured more than 45% in the relevant subjects of the qualifying examination, the petitioner was called for counselling on 08/07/2019. The Medical Board of the Selection Committee, examined the petitioner and he was asked to wait for the entire day. Later, he was informed that he is not eligible. The petitioner gave representation to the selection committee and the District Collector for not selecting him for the MBBS course. On his representation, he was again called for medical examination on 22/07/2019 but denied seat. Hence, he has filed this petition seeking mandamus to issue direction to the respondents to select him for MBBS course, 2019.

2.The selection committee (second respondent) in the counter affidavit has stated that, the candidates are eligible under Physically disabled quota (PH) only if he/she fulfils the benchmark mentioned in the prospectus. The candidates should produce certificate obtained from the Regional Medical Board constituted at Rajiv Gandhi Government General Hospital, Chennai. The said certificate should have been obtained within 3 months prior to the submission of the application. The petitioner when he applied, he had enclosed the disability certificate given by the Assistant Surgeon of the District Head quarters hospital. When he appeared for counselling, he did not produce the disability certificate issued by the Regional Medical Board as required. So, on the day of counselling, the Selection committee itself to facilitate the candidates arranged for the medical examination by the Regional Board at the counselling venue. The Board, after examining the petitioner issued certificates stating the petitioner suffers "Multiple Exostosis with shortening upper limb" with 50% disability and he is not eligible for MBBS/BDS course.

3.On the representation of the petitioner, he was again called for medical examination by the Regional Board to re-examining the percentage of disability of the candidate. On re-examination, the Regional Board in consultation with the Doctors attached to the Government Institute of Rehabilitation Medicine assessed the disability of the petitioner and certified that he suffers 80% disability and as per the guidelines of the Medical Council of India, he is not eligible for MBBS course.

4.According to the learned Standing Counsel for the second respondent, the petitioner having locomotor disability involvement of his upper limb, he is found not eligible for M.B.B.S., admission. The counselling for MBBS course in the

State for the Academic year 2019-2020 started with the admissions for special categories. The unfilled seats were included to be filled by general category. The entire process of admission has completed by 31/08/2019, as per the Supreme Court guidelines. The petitioner who was found ineligible as per the medical report was not allotted seat. Hence, the writ petition deserves to be dismissed.

5.The right of reservation for differently abled persons emanates from the Right of Persons With Disability Act, 2016. Clause 16(5) of the Prospectus issued by the selection committee indicates that 5% of the total number of seats available in Government Medical/Dental Institutions will be filled by candidates falling under Persons With Bench Mark disabilities as per MCI Guidelines/Regulations. Persons with 40% to 80% disability are eligible to apply.

6.The MCI regulation prescribes that the candidates with following locomotor disability are NOT ELIGIBLE for consideration for admission to Medical Courses when there is :-

"i)Involvement of whole body;

ii.Involvement of three limbs in any combination (both lower limbs + one lower limb OR one lower limb + both upper limbs);

iii.Involvement of both upper limbs;

iv.Extent of locomotor disability more than 80%

v.Involvement of both limbs of such an extent that the candidate is unable to sit, stand, walk, and/or bend due to significant pain, stiffness, weakness, deformity etc.,

vi.Involvement of a single upper limbs which is the DOMINANT UPPER LIMB (which is right upper limb in a majority of persons) to an extent that the candidate has loss of thumb, cannot hold an object satisfactorily, has

significant weakness/deformity/stiffness of joints, or the limb is lacking normal sensations.

vii. Involvement of SPINE with weakness and/or deformity to such an extent that the candidate is unable to sit steadily for long duration, and/or has significant pain, and/or cardio-respiratory compromise etc.,"

7. The petitioner herein was subjected to medical examination by the Regional Board twice. First on 08/07/2019 on the day of counselling, wherein the petitioner's disability was assessed as 50%. The certificate of Disability states that he suffers from "Diaphyseal aklasis with deformity of left forearm". The second medical examination was done on 23/07/2019 on the representation given to the District Collector. In this second certificate, the Medical Board has assessed the disability of the petitioner as 80%. The certificate of disability states that, the petitioner suffers from "MULTIPLE EXOSTOSIS WITH SHORTENING UPPER LIMB".

8. The comparison of the two different disability certificates issued for the petitioner, by two different team of Doctors, this Court finds beside vast variation in the percentage of disability, it also does not clearly state the reason why the petitioner is not eligible for M.B.B.S., course. If they have found that the petitioner is not eligible for any one of the reason mentioned in clause (vi) of the Annexure - A of the prospectus, the certificate ought to have mentioned the said reason. In the absence of reason in the disability certificate issued, it is inevitable to order fresh medical test to the petitioner. Therefore, the second respondent shall convene the Regional Medical Board within 10 days from the date of receipt of copy of this order. The said Medical Board shall examine the petitioner and submit Disability Certificate containing necessary details about the deformity including the dominant upper limb of the petitioner. In case, the Medical Board finds that the petitioner satisfies the eligibility conditions prescribed as Bench Mark by MCI/Selection committee, then, the first respondent shall accommodate the petitioner in the unfilled seat, if any. The time limit prescribed by the Hon'ble Supreme Court for the last date for closing admission shall not apply to the petitioner, since, the delay in not considering his candidature is not due to his fault. If there is no vacancy, then, the disability certificate so issued shall be valid for the next academic year. The said direction is subject

to the outcome of the medical examination and on condition that the petitioner must be found eligible by the Medical Board and not otherwise.

9. With the above directions, the writ petition is disposed of. No order as to costs.

Sd/-

Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

To

1. The Secretary,
Medical Council of India,
MCI Building, Pocket 14,
Sector - 8, Dwaraka Phase,
New Delhi - 110 077.

2. The Selection Committee,
Directorate of Medical Education,
No.162, Periyar E.V.R Road,
Kilpauk, Chennai - 600 010.

+1cc to Mr.V.P.Raman, Advocate Sr.87981
+1cc to Mr.Abdul Saleem, Advocate Sr.87638
+1cc to Mr.Ravi, Advocate Sr.87226

W.P.No.23311 of 2019

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