

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON: 04.11.2019

PRONOUNCED ON: 06.11.2019

CORAM::

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

WRIT PETITION NO.25784 OF 2019
& W.M.P.NO.25229 OF 2019

M.V.Manibharathi,
S/o.S.Murugan,
No.19, Tamizh Nagar - 4th Street,
Medical College Road,
Thanjavur - 613 004.

... Petitioner

/versus/

1. The State of Tamil Nadu,
Rep. by its Secretary to Government,
Health and Family Welfare Department,
Fort St.George,
Chennai - 600 009.
2. The Secretary,
Selection Committee,
Directorate of Medical Education,
No.162, Periyar E.V.R. High Road,
Kilpauk, Chennai - 600 010.
3. The Medical Council of India,
Rep. by its Secretary,
Dwaraka, New Delhi.
4. Regional Medical Board,
Rajiv Gandhi Government General Hospital,
Park Town, Chennai - 600 003.
5. Senior Director, NEET UG,
National Testing Agency,
Under Ministry of Human Resource Department,
C-20, 1A/8, Sector 62,
IITK Outreach Centre,
Noida - 201309.

.... Respondents

Prayer:

Writ Petition is filed under Article 226 of the Constitution of India, to issue Writ of Declaration, to declare the opinion given by the 4th respondent that the petitioner is not eligible for admission in Medical/Dental course as null and void in the light of the 3rd respondent notification No.MCI-34(41)/2018-Med./170045, dated 04.02.2019 and contrary to the Rights of Persons with Disabilities Act, 2016 and for a consequential direction directing the respondents 1 to 3, to admit the petitioner in MBBS course under OBC-PH category based on the marks secured by him in NEET - 2019 and to pass orders.

For Petitioner : Ms.L.Parvin Banu,

For R1 : Mr.V.Kathirvelu,
Special Government Pleader

For R2 : Mr.Abdul Saleem,
Standing Counsel

For R3 : Mr.V.P.Raman

For R5 : Mr.G.Nagarajan,
Standing Counsel

ORDER

Heard the Learned Counsel for the Petitioner and the Learned Counsel for the Respondents.

2. The petitioner herein is a person with Physical Disability. He has completed 12th standard in C.B.S.E syllabus and secured 397 marks out of 500. He appeared N.E.E.T examination conducted on 05.05.2019 and secured 230 marks out of 720. Being a person with Physical Disability (Locomotor Disability - Cerebral Palsy), he applied for admission into M.B.B.S course under OBC - PH category, in Medical College all over the State of Tamil Nadu. He was called for counselling on 08.07.2019. As per instruction of the Selection Committee, he appeared before the Disability Assessment Board constituted at Rajiv Gandhi Government General Hospital Chennai, and they assessed him as person suffering 50% disability and certified his not eligible for admission into Medical/Dental courses since he suffers from Cerebral Palsy (Spastic) all four limbs involvement. Since the Disability Assessment Board declared not

eligible, he was not allotted M.B.B.S seat though they were sufficient vacancies for Persons with Disability.

3. According to the Learned Counsel for the Petitioner, as per the prospectus, persons with 40% to 80% disability are eligible for admission into M.B.B.S/B.D.S course. The petitioner is a ghatam player and capable of writing examination on his own. The disability he suffers will no way impair his skill to become a Doctor. While the Medical Board at Thanjavur, examined him and certified that, he suffers only Physical impairment of right upper and lower limbs, the report of the 4th respondent stating that, the petitioner suffers permanent physical impairment on all four limbs, will be a bar for the petitioner to apply again for admission into M.B.B.S course, in view of 16.2 (d) of the prospectus to the candidate issued by the Selection Committee which read as:-

d. Candidates who have previously applied for the MBBS/BDS degree Courses under Persons with Benchmark Disabilities made ineligible by the Rajiv Gandhi Government General Hospital, Chennai are not eligible to apply under this category. Such application will be summarily rejected.

4. The Learned Counsel for the petitioner would submit that, the petitioner was subsequently examined by Medical College Board at Thanjavur and they have certified, he is eligible for admission in AYUSH course, as per CCIM/CCH guidelines. The certificate of the 4th respondent/Regional Medical Board, declaring the petitioner not eligible for admission into M.B.B.S/B.D.S courses, as per MCI/DCI Guidelines and clause 16.2 (d) of the Selection Committee, which debars a Person with Disability, found not eligible by the Board from applying for the subsequent years, has prejudice the petitioner. Hence, the petitioner seeks a direction to declare the Medical certificate given by the 4th respondent/Regional Medical Board, as null and void and contrary to the Rights of Persons With Disabilities Act, 2016.

5. The 2nd respondent has filed counter, wherein, the marks scored by the petitioner is admitted and the reason for holding the petitioner not eligible to get admitted into M.B.B.S course is also stated. According to the 2nd respondent, as per Clause 16(5)(d) of the prospectus, the eligibility for 5% reservation to Persons with Disabilities will be considered in accordance with Bench Mark Disabilities, as mentioned in the M.C.I Guidelines/Regulations.

6. The averments made in the affidavit and the counter affidavit reveals that the petitioner herein is a Person with Disability, suffering from Cerebral Palsy (Spastic) considered as locomotor disability.

7. The M.C.I Regulation prescribes that the candidate with following locomotor disability are NOT ELIGIBLE for consideration for admission into Medical course 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.,"

8. The petitioner was examined by the Regional Medical Board, Rajiv Gandhi Government General Hospital, Chennai,

constituted and authorized by the Selection Committee. They examined the petitioner and found all his four limbs are impaired and he is not eligible for admission into M.B.B.S course, as per the Medical Council of India Guidelines. The petitioner might have been found eligible for AYUSH course since the regulation prescribed for AYUSH course by CCIM/CCH is different from the regulation prescribed by MCI/DCI.

9. One cannot lose sight of the fact that, for M.B.B.S course, to learn surgery requires involvement of both upper limbs. That is the reason why, the M.C.I has considered that, if the disability is involvement of both the upper limbs, the candidate should be declared not eligible.

10. The 4th respondent/Regional Medical Board, has examined the petitioner and found that all the four limbs are involved and Certificate of Disability was issued on 17.06.2019. The petitioner herein produced another certificate dated 21.06.2019, which he claims to have been issued by the Regional Medical Board at Thanjavur Medical College & Hospital, wherein, the Disability is fixed 40% and involvement is only with right upper and lower limbs. The third Medical Certificate of Disability furnished by the petitioner dated 20.09.2019 issued by Regional Medical Board for AYUSH course, as per CCIM/CCH Guidelines.

11. In the said circumstances, when the prospectus specifically states that, a person will be eligible to get seat under 5% quota for disabled persons only if he fulfill the Bench Mark disabilities as mentioned in the M.C.I Guidelines/Regulations, the petitioner cannot have grievance on the report given by the duly constituted Regional Medical Board about his disability.

12. In the said circumstances, the only relief which this Court could grant to the petitioner is that, the Disability Certificate issued by the 4th respondent/Regional Medical Board, on 17.06.2019, shall not be a bar for the petitioner herein to compete for admission in the ensuing academic year provided he gets eligibility certificate from the competent Medical Board constituted for the said purpose, soon before he applies for M.B.B.S course for the academic year 2020-2021. The alleged prohibition in clause 16.2 (d) of the prospectus shall not apply to the petitioner herein in view of the peculiar facts and circumstances pointed out.

13. Accordingly, the Writ Petition is disposed of. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

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To,

1. The Secretary to Government,
The State of Tamil Nadu,
Health and Family Welfare Department,
Fort St.George, Chennai - 600 009.
2. The Secretary,
Selection Committee,
Directorate of Medical Education,
No.162, Periyar E.V.R. High Road,
Kilpauk, Chennai - 600 010.
3. The Secretary,
The Medical Council of India,
Dwaraka, New Delhi.
4. Regional Medical Board,
Rajiv Gandhi Government General Hospital,
Park Town, Chennai - 600 003.
5. Senior Director, NEET UG,
National Testing Agency,
Under Ministry of Human Resource Department,
C-20, 1A/8, Sector 62,
IITK Outreach Centre,
Noida - 201309.

+1cc to Mr.Abdul Saleem, Advocate, S.R.No.93145
+1cc to Mr.G.Nagarajan, Advocate, S.R.No.92305
+1cc to Ms.L.Parvin Banu, Advocate, S.R.No.92303

Writ Petition No.25784 of 2019

PM(CO)
CS/09/12/2019