



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 30.07.2019
CORAM:

THE HONOURABLE MR.JUSTICE R.SURESH KUMAR

W.P. (MD) No.15696 of 2019
and W.M.P. (MD) No.12495 of 2019

R.Sakeela

... Petitioner

Vs.

1.The Secretary to Government
Higher Education Department
Government of Tamil Nadu,
St. George Fort, Chennai.

2.The Secretary
Selection Committee,
Directorate of Medical Education,
No.162 Periyar EVR High Road,
Kilpauk, Chennai

3.The Director of Medical Education,
Kilpauk, Chennai.

... Respondents

PRAYER : Writ Petition is filed under Article 226 of the Constitution of India to issue a Writ of Mandamus to direct the respondents to admit the petitioner in MBBS course for the academic year 2019-2020 from the quota reserved for persons with disabilities relying upon the disability certificate dated 21.05.2019 issued to the petitioner by the Regional Medical Board, Tirunelveli Medical College Hospital, Tirunelveli by considering the petitioner's application No.505847.

For Petitioner
For Respondents

:Mr.S.R.Anbarasu
:Mr.K.Chellapandian
Additional Advocate General
assisted by Mr.V.Anand
Government Advocate

ORDER

The prayer in the Writ Petition is for a Writ of Mandamus to direct the respondents to admit the petitioner in MBBS course for the academic year 2019-2020 from the quota reserved for persons with disabilities, relying upon the disability certificate dated 21.05.2019 issued to the petitioner by the Regional Medical Board, Tirunelveli Medical College Hospital, Tirunelveli, by considering



the petitioner's application No.505847.

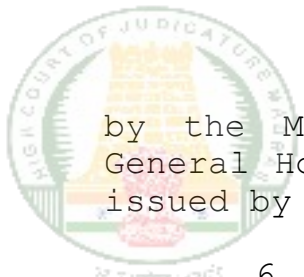
2.The short facts, which are required to be noticed for the disposal of the writ petition, are as follows:

That the petitioner is a minor, who, having completed the +2, applied for NEET examination for medical admission and after having got through the NEET examination, she applied to the respondents for getting admission in first year MBBS course for the year 2019-20 under 5% physically disabled persons quota. The application of the petitioner, having been considered by the respondents, they called the petitioner for counselling by counselling call letter under Orthopaedically physically disabled special category quota to attend counselling on 08.07.2019 at 9.00 a.m.

3. However, at the time of counselling, it seems that, after having perused the certificates produced by the petitioner, the respondents/selection authorities found that, the petitioner suffered with 85% locomotor disability, which is a Bench Mark disability and according to the prospectus issued by the respondents, since those who suffered with more than 80% disability would not be eligible to be admitted in MBBS course, therefore, on that ground the candidature of the petitioner had been rejected during the counselling. Challenging such rejection, this writ petition has been filed.

4. Heard the learned counsel for the petitioner, who would submit that, the petitioner suffered with locomotor disability and in this regard, the District Medical Board, after having examined the petitioner, has given a permanent disability certificate on 21.05.2019 with 70% locomotor disability and in this regard, the said certificate has been relied upon by the learned counsel. He would also submit that, despite the said certificate, having been issued by the District Medical Board, since the respondents, in the prospectus, insisted upon the petitioner and other similarly placed persons, who seek admission under physically disabled quota of 5%, the petitioner subjected herself for the medical examination before the Medical Board constituted in this regard at Rajiv Gandhi Government General Hospital, Chennai, (formerly, Madras Medical College) and accordingly the said Medical Board at Rajiv Gandhi General Hospital, Chennai, having examined the petitioner, had issued a disability certificate on 17.06.2019 stating that, the petitioner suffered with 85% locomotor disability.

5. In this context, it is the submission of the learned counsel for the petitioner that, once the District Medical Board, which is a body constituted, gives certificate for disabled persons for various purposes, after examining the petitioner just one month before, where they mentioned only 70% disability, the present disability certificate given for the purpose of medical admission



by the Medical Board constituted from Rajiv Gandhi Government General Hospital, Chennai cannot prevail over the said certificate issued by the District Medical Board.

6. In this context, the learned counsel for the petitioner relied upon a decision of this Court, by a learned Judge made in **W.P. (MD) Nos.9814 of 2012 and 9849 of 2012**, in the matter of **A.Ramachandran and K.Loga Rajeshwaran v. Government of Tamil Nadu represented by its Secretary, Higher Education Department and two others**. In the said judgment, the learned counsel for the petitioner has relied upon the following passages:

"14.On consideration, I find no force in the contention of the respondents. The certificate on which the reliance is placed by the petitioner is issued by the statutory Medical Board which shall prevail over any other certificate. Admittedly, a person suffering from 50% disability is eligible for consideration for admission of MBBS course.

15.The clause in prospectus stipulating that an Expert Committee constituted by Directorate of Medical Education is to decide the acceptance of the Certificate issued by the District Medical Board is as null and void being violation of the Central Act and therefore, not sustainable in law.

16.Consequently, the decision of the respondents in declaring the petitioner ineligible based on the recommendations of committee constituted by the second respondent cannot sustain, as the certificate issued by statutory Medical Board under the Act is only to be accepted in view of the settled law.

17.Likewise, for the reasons stated above the writ petition W.P.(MD) No.9849 of 2012 is also allowed as the only difference between W.P.(MD) No.9814 of 2012 and W.P.(MD) No.9849 of 2012 is that the District Medical Board declared the petitioner this case to be suffering from 65% disability in one of the lower limbs."

7. The learned counsel for the petitioner, by relying upon the said judgment, would submit that, since the certificate issued by the District Medical Board on 21.05.2019 would prevail upon any other certificate issued including the certificate dated 17.06.2019 issued by the Medical Board of Rajiv Gandhi Government General Hospital, the respondents should have relied upon only the certificate issued by the District Medical Board and not the certificate issued by the Medical Board of Rajiv Gandhi Government General Hospital, Chennai and based on which, they should not have rejected the candidature of the petitioner.



8. I have heard the learned Additional Advocate General for the respondents, who would make submissions that, in the prospectus issued by the respondents for admission of students in first year MBBS course, under clause (5), it has been made clear that, the candidates, who seek admission under 5% physically disabled persons quota, have to obtain a certificate from the Medical Board of Rajiv Gandhi Government General Hospital, three months prior to the making of the application and without such certificate, the applications of such candidates cannot be considered. The learned Additional Advocate General relied upon the following instructions given in the prospectus in this regard:

"5. Eligibility for Bench Mark Disabilities as per the Right of Persons with Disability Act, 2016

.....

(c) As per "ANNEXURE - A" published by the Medical Council of India in pursuance of the communication from Ministry of Health and Family Welfare as follows:

"Presence of significant Locomotor Disability with or without any other significant disability such as visual or hearing-speech or learning etc. which will make it very difficult for the candidate to pursue and complete the course satisfactorily and may significantly increase the risk to the candidate or the patient(s)-may be declared NOT ELIGIBLE for admission".

(d) The candidates are required to produce a certificate obtained from the Regional Medical Board constituted at Rajiv Gandhi Government General Hospital, Chennai 600 003 for the purpose of assessing the nature and the extent of disability. The certificate must have been obtained within three months prior to submitting the application for seeking admission under this category. If the certificate has been obtained earlier, then the application will be rejected. If the candidate fails to submit the Medical Certificate for person with disabilities then their application will be rejected under special category.

(e) The candidates seeking admission under the special category should produce a full size recent photograph (taken within three months) exhibiting the deformity at the time of counselling.

(f) Candidates who consider themselves eligible for Persons with Bench Mark Disabilities Category are advised to ensure their eligibility by getting themselves examined at the Disability Assessment Board constituted at Rajiv Gandhi Government General Hospital, Chennai, before their



scheduled date of counselling, failing which, the candidates will not be considered for allotment of seats under persons with Bench Mark Disabilities."

9. The learned Additional Advocate General would further submit that in view of the said instructions given in the prospectus, which is pursuant to the prescription made by the Medical Council of India, the petitioner, since has not fulfilled the eligibility criteria, ie., the disability between 40% and 80% and the disability of the petitioner, as has been found out and certified by the Medical Board of Rajiv Gandhi Government General Hospital is 85%, the petitioner is not eligible to get admission in the medical course itself. Therefore, the candidature of the petitioner has been rightly rejected by the selection authorities.

10. I have considered the said submissions made by the learned counsel for the petitioner as well as the learned Additional Advocate General for the respondents.

11. The controversy raised in this writ petition, though appears to be in narrow campus, two important issues, which arise for consideration before this Court in this matter, have to be dealt with.

12. The first issue is that, what is the eligibility criteria for getting admission in first year MBBS course or BDS course in Tamil Nadu as per the prospectus issued by the respondents under 5% quota for disabled persons. In this context, the learned Additional Advocate General has produced an amendment made by the Medical Council of India in the regulations for medical admission and the said amended regulations called Regulations of Graduate Medical Education (Amendment) 2019 and came into force from the date of publication in the official gazette.

13. The said amended notification has been gazetted on 4th February 2019, where the learned Additional Advocate General has relied upon **Appendix H**, which reads thus:

"Guidelines regarding admission of students with "Specified Disabilities" under the Rights of Persons with Disabilities Act, 2016 with respect to admission in MBBS

Note 1.The "Certificate of Disability" shall be issued in accordance with the Rights of Persons with Disabilities Rules, 2017 notified in the Gazette of India by the Ministry of Social Justice and Empowerment [Department of Empowerment of Persons with Disabilities (Divyangjan)] on 15th June 2017.

2.The extent of "Specified disability" in a person shall be assessed in accordance with the



"Guidelines for the purpose of assessing the extent of specified disability in a person included under the Rights of Persons with Disabilities Act, 2016 (49 of 2016)" notified in the Gazette of India by the Ministry of Social Justice and Empowerment [Department of Empowerment of Persons with Disabilities (Divyangjan) on 4th January 2018.

3.The minimum degree of disability should be 40% {Benchmark Disability} in order to be eligible for availing reservation for persons with specified disability.

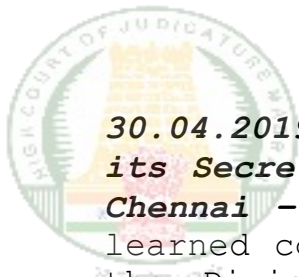
4.The term "Persons with Disabilities" (PwD) is to be used instead of the term "Physically Handicapped" (PH) .

Sl. No	Disability Type	Type of Disabilities	Specified Disability	Disability Range		
				Eligible for Medical Course, Not Eligible for PwD quota	Eligible for Medical Course, Eligible for PwD quota	Not Eligible for Medical Course
1	Physical disability	A.Locomotor Disability	a.Leprosy cured person	Less than 40% disability	40-80% disability	More than 80%

14. By relying upon the aforesaid table in clause IV of Appendix H, the learned Additional Advocate General submitted that, insofar as the locomotor disability is concerned, the person, who got such disability less than 40% would be eligible for admission in medical course, but not eligible for PwD quota. At the same time, those who suffered with 40 to 80% of the disability would be eligible for medical course as well as eligible for PwD quota. However, persons suffered with more than 80% of the disability not at all eligible for admission for medical course itself.

15. By relying upon this prescription made in the said amended regulations, the learned Additional Advocate General submitted that, the petitioner, since suffered with 85% disability, ie., more than 80%, which is the maximum allowable disability for making a candidate eligible to get admission in the medical course itself, much less under PwD quota, the petitioner is not at all eligible to be considered for admission in medical course either under PwD quota or under open quota.

16. In this context, it is to be noted that, the learned counsel for the petitioner has very much relied upon a Division Bench judgment of this Court made in **WA (MD) No.1481/2015 dated**



30.04.2019 in the matter of ***The State of Tamil Nadu represented by its Secretary to Government, Health and Family Welfare Department, Chennai - 9 v. J.Vibin.*** In the said division Bench judgment, the learned counsel for the petitioner has relied upon the decision of the Division Bench holding that, even though the said amended regulations had been brought into force from 04.02.2019, it is an arbitrary sudden and unreasoned amendment, which is violative of Articles 14 and 16 of the Constitution of India and also it goes against the doctrine of legitimate expectations. He relied upon the following paragraphs in the said Division Bench judgment:

"24. Therefore, the MCI regulations denying reasonable accommodation is discriminatory. The MCI guidelines did not foresee the emotional impact of studying medicine with disabilities. Candidates with learning disabilities or any other disability should not be barred from entering the field of medicine. The principles of the United Nations Convention on the Rights of Persons with Disabilities and PWED Act should be followed in their letter and spirit.

25. The arbitrary sudden and unreasoned amendment to the notification is violative of Articles 14 and 16 of the Constitution of India and also the doctrine of legitimate expectation. The subsequent amendment should not operate to the prejudice of the persons with disabilities, particularly, when the person had qualified and cleared the eligibility criteria."

17. I have gone through the said division bench judgment, where the case was of a visually impaired student, who aspired for medical admission and after getting certificate to that disability, when she applied for the medical admission, her candidature seems to have been rejected on the ground that, she suffered with visual impairment, which, according to the respondents therein, is against the prescribed permissible visual impairment under the amended regulation dated 04.02.2019. Though the writ Court allowed the writ petition, the official respondents therein preferred the said writ appeal before a Division Bench. While considering the said writ appeal, the Division Bench, after having considered the import of the amended regulations, as well as the provisions of the disabilities Act, has given the said finding stating that, since the regulations had come suddenly before which, pursuant to the order of the writ court, since the admission had already been made, the amended regulations shall not have a retrospective operation and if at all it should be put in operation, the same shall be prospectively. This has been clarified by the Division Bench at Paragraph No.28 of the said judgment, which reads thus:

"28. As hinted at the previous paragraphs, the MCI issued the notification on 04.02.2019 making



persons with visual impairment of low vision and blindness - equivalent to or more than 40% ineligible. It is clearly stated in clause 1(ii) of the notification itself that they shall come into force from the date of their publication in the Official Gazette. Hence, it goes without saying that the notification issued by the MCI would operate prospectively and it cannot be given effect to retrospectively, useful reference could be made to the judgment of the Hon'ble Apex Court in *MRF Ltd. v. CST*, (2006) 8 SCC 702, wherein, it has been held as follows:

27. The provisions of the Act or notification are always prospective in operation unless the express language renders it otherwise making it effective with retrospective effect. This Court in *S.L. Srinivasa Jute Twine Mills (P) Ltd. v. Union of India* [(2006) 2 SCC 740] has held that it is a settled principle of interpretation that:

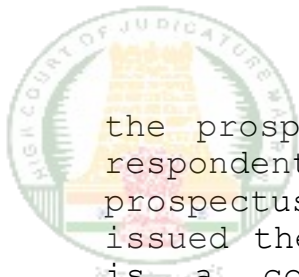
".... retrospective operation is not taken to be intended unless that intention is manifested by express words or necessary implication, there is a subordinate rule to the effect that a statute or a section in it is not to be construed so as to have larger retrospective operation than its language renders necessary."

From the above, it is clear that the notification issued by the MCI came into effect prospectively and as such, the right accrued on the first respondent/petitioner cannot be denied citing the said circular."

18. Therefore, the import of the said decision of the Division Bench referred to above and heavily relied upon by the petitioner side is that, certainly, the amendment made by the Medical Council of India, which was notified on 04.02.2019, would have an impact on the admission procedure, especially in the context of physically disabled persons. But the import of the such amendment/regulation shall have only prospective effect and not have retrospective application.

19. Only in that context, since the candidate in the said case, had already been given seat and got admission, the same was not disturbed, in view of the prospective application of the amendment.

20. However, in the case in hand, at the time of issuance of



the prospectus, it is a contract between the petitioner and the respondents, as the law has been settled in this regard that, the prospectus will have a binding effect of both the authorities, who issued the prospectus and the beneficiary in the prospectus and it is a contract between them, the notification ie., amended notification dated 04.02.2019 has already been gazetted and it has come into force from that date.

21. Therefore, at the time of issuance of the prospectus, the notification has been in force.

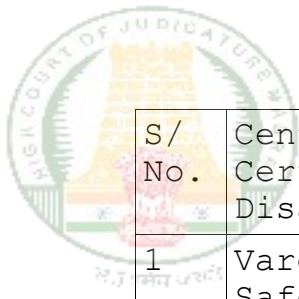
22. In the said notification, under Appendix H, it has been made clear that, the person with less than 40% locomotor disability, though eligible for getting admission in medical course, not at all eligible to get such admission under PwD quota. The person with 40 to 80% locomotor disability would be eligible for admission in MBBS course and also would be eligible to seek benefit under PwD quota. However, a person, who suffered with more than 80% disability of locomotor disability not at all eligible to get admission under medical course. Therefore, as per amended regulations, those who suffered with more than 80%, especially, locomotor disability would not at all eligible to get a seat for admission in MBBS/BDS course, not only under PwD quota, but even under open quota. This has been specifically mentioned under clause V of the prospectus, which has been relied upon by the learned Additional Advocate General and the same had been extracted hereinabove.

23. Therefore, there is no iota of doubt to hold that, the persons, who suffered with more than 80% disability are not at all eligible to seek admission for admission in MBBS course and such persons would be totally ineligible to seek admission.

24. Insofar as the second question as to whether the certificate issued by the Medical Board constituted in this regard at Rajiv Gandhi Government General Hospital, Chennai, who is the competent authority, would prevail upon the certificate already issued by the District Medical Board, on 21.05.2019 is concerned, the direct answer is available in the very said amended regulations itself, which has been pointed out by the learned Additional Advocate General for the respondents.

25. In Annexure II to the said amended medical regulations, the following has been prescribed:

- List of Centres who will issue Disability Certificates as per 21 Benchmark Disabilities given under RPWD Act - 2016.

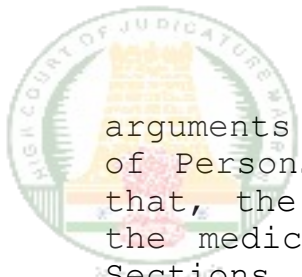


S/No.	Centres who will issue Disability Certificates as per 21 Benchmark Disabilities given under RPWD Act-2016	City/State
1	Vardhman Mahavir Medical College & Safdarjang Hospital	New Delhi
2	All India Institute of Physical Medicine and Rehabilitation (for Locomotor Disability only)	Mumbai
3	Institute of Post Graduate Medical Education & Research	Kolkata
4	Madras Medical College	Chennai
5	Grant Government Medical College, J.J.Hospital Compound	Mumbai, Maharashtra
6	Goa Medical College	Goa
7	Government Medical College, Thiruvananthapuram	Thiruvananthapuram, Kerala
8	SMS Medical College	Jaipur, Rajasthan
9	Govt. Medical College and Hospital, Sector 32	Chandigarh
10	Govt. Medical College, Agartala, State Disability Board	Agartala/Tripura

26. Insofar as the State of Tamil Nadu is concerned, the named medical College, from whom, such certificate for disability to be obtained is the Madras Medical College, Chennai, presently known as Rajiv Gandhi Government General Hospital, Chennai. This list of institutions have been specifically made in Annexure II of the list of centres to issue disability certificate as per 21 Bench Mark disability given in Right of Persons with Disabilities Act 2016.

27. In this context, it is further to be noted that, under Rule 17 of the Rights of Persons with Disabilities Rules 2017 (hereinafter referred to as 'the Rules'), a person, who wants to get a certificate of disability, can apply in Form IV for a certificate of disability and such application to be made to a Medical authority or any other notified competent authority. Once such application is made, such authority can issue such certificate under Rule 18 and once certificate is issued under Rule 18, which would be generally valid for all purposes, such as entitlement to apply for facilities, concessions and benefits admissible for persons with disability under Schemes of the Government and all non governmental organisations.

28. These provisions have also been heavily relied upon by the learned counsel for the petitioner to substantiate his



arguments that, once the Rules are framed under an Act ie., Right of Persons with Disabilities Act, 2017, which made it very clear that, the disability certificate can be applied and obtained from the medical authorities or a notified competent authority under Sections 17 and 18 of the Rules and once such certificate is issued, they will be valid generally for all purposes of Government schemes and concessions. The certificate issued by the District Medical Board can be considered only as a certificate under Rule 18 and such certificate shall be made useful or pressed into service under Rule 19 of the said Rules and therefore, whatever certificate issued by the Rajiv Gandhi Medical College Hospital cannot override the certificate issued by the District Medical Board under Section 18 of the Rules.

29. The said arguments may appear to be impressive, but cannot be accepted for the simple reason that, no doubt, generally under the Act and the Rules made thereunder, as referred to above, one can get a certificate for disability from the medical authority or other notified competent authority under Rule 18 and once such certificate is issued, generally, it will be valid for all purposes under Rule 19. Here, in the case in hand, for the purpose of getting admission in first year medical course, the medical certificate to be issued by a particular authority alone can be taken into account, in view of the statutory regulations made by the Medical Council of India, ie., the amended regulations dated 04.02.2019, under which, in Annexure II, specific institutions have been named, from whom only, such certificates have to be obtained.

30. In consonance with the said prescription, the respondents also in their prospectus at clause 5 made it very clear, especially, under clause 5D that, the candidates are required to produce the certificate obtained from the Regional Medical Board constituted at Rajiv Gandhi Government General Hospital, Chennai -600 003 for the purpose of assessing the nature and the extent of disability.

31. As has been already stated that, the prospectus between the parties will bind both of them and it will have a force of law to be enforced against both the parties, who signed in the contract, ie., the prospectus.

32. Moreover, the statutory backing of the amended regulations also has been dealt with by the Division Bench referred to above, where the Division Bench has accepted the applicability of the said amended regulations, but only exception taken by the Division Bench in the said judgment was the prospective nature of the application.

33. If the Dictum of the Division Bench judgment is taken into account, amended regulation has come into force on 04.02.2019

<https://hcservices.ecourts.gov.in/hcservices/>



prospectively with all statutory backing and under the said regulations under Annexure II, an institution has been specified, from whom only, such certificate has to be obtained and the petitioner also acted upon by approaching the said institution and submitted herself for medical examination and thereafter obtained the certificate and produced the same before the respondent selection authority. Therefore, the petitioner cannot now turn around and say that, such certificate issued by the Rajiv Gandhi Government General Hospital, Chennai cannot be taken into account and which shall be overridden by disability certificate issued by the District Medical Board.

34. Therefore, in view of the aforesaid facts and circumstances and the discussions made above, this Court is of the considered view that, the petitioner is not eligible to get admission in medical course in view of her 85% disability as quantified by the named medical authority under the regulation and therefore, the claim made by the petitioner to get medical admission for the year 2019-20 cannot be accepted and such claim in view of the above said facts and circumstances fail.

35. In that view of the matter, this Court has no hesitation to hold that, the writ petition deserves to be dismissed. Accordingly, the same is dismissed. No costs. Consequently connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar(CO)

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Sub Assistant Registrar(CS)

RR

To

- 1.The Secretary to Government
Higher Education Department
Government of Tamil Nadu,
St. George Fort,
Chennai.
- 2.The Secretary
Selection Committee,
Directorate of Medical Education,
No.162 Periyar EVR High Road,
Kilpauk, Chennai



3.The Director of Medical Education,
Kilpauk,
Chennai.

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+1CC TO MR.S.R.ANBARASU, Advocate Sr. No.78776

+1CC TO THE SPECIAL GOVERNMENT PLEADER SR.No.79188

W.P. (MD) No.15696 of 2019

30.07.2019

KM(CO)

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