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W.P.(MD)No.15916 of 2019

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **19.07.2019**

CORAM

THE HON'BLE MR.JUSTICE R.SURESH KUMAR

W.P. (MD)No.15916 of 2019

and

W.M.P(MD).Nos.12640 and 12641 of 2019

P.Selvaraju

...Petitioner

-Vs-

- 1.The Union of India,
Rep., by its Secretary,
Ministry of Human Resources Development,
No.1, West Block,
Ramakrishnapuram,
New Delhi-110 006.
 - 2.The Union of India,
Rep., by its Secretary,
Ministry of Health and Family Welfare,
New Delhi-110 006.
 - 3.The Union of India,
Rep., by its Secretary,
Ministry of Social Justice and Empowerment,
Department of Empowerment of Persons with Disability,
Room No.22, 2nd Floor, C-Wing,
Shastri Bhavan, New Delhi-110 006.
 - 4.The Directorate of General Health Services,
Government of India,
Nirman Bhawan, Maulana Azad,
New Delhi-110 011.
 - 5.The State of Tamil Nadu,
Rep., by its Secretary,
Ministry of Health and Family Welfare,
Secretariat, Chennai.
 - 6.The Director,
The Directorate of Medical Education,
EVR Periyar Salai,
Kilpauk, Chennai-600 010.
- ...Respondents

Prayer: Writ Petition filed under Article 226 of Constitution of India, to issue a Writ of Certiorarified Mandamus, to call for the records relating to the impugned notification for selection list of person with disabilities for MBBS/BDS 2019/2020 Session issued by

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



the fifth respondent published in its official website dated 06.07.2019 and quash the same as illegal and consequently directing the respondents 4, 5 and 6 to take steps to include the name S.Sivadharshini in the list of selected candidates with disabilities to the course of MBBS 2019-2020 session.

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For Petitioner :Mr.R.Suresh Kumar

For Respondents :Mr.Rajasimman (For R1 to R4)

Central Government Standing Counsel

Mr.K.Chellapandian

Additional Advocate General (For R5 & R6)

assisted by Mr.M.Rajarajan

Government Advocate

ORDER

The prayer in this writ petition is for a Writ of Certiorarified Mandamus, to quash the impugned notification for selection list of person with disabilities for MBBS/BDS 2019/2020 Session issued by the fifth respondent published in its official website, dated 06.07.2019 and consequently, direct the respondents 4, 5 and 6 to take steps to include the name S.Sivadharshini in the list of selected candidates with disabilities to the course of MBBS 2019-2020 session.

2.Heard Mr.R.Suresh Kumar, learned counsel appearing for the petitioner, Mr.Rajasimman, learned Central Government Standing Counsel appearing for the respondents 1 to 4 and Mr.K.Chellapandian, learned Additional Advocate General appearing for the respondents 5 and 6.

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

(i)that the petitioner's daughter having completed +2 in March-2019 securing 404 marks out of 600, applied to the respondents for securing a seat in MBBS course under Physically Challenged Persons Quota, as the petitioner is suffered with 80% permanent disability. The petitioner also scored 122 marks in the NEET examination. However, while making the selection under Physically Disabled Persons quota, the Selection authorities had selected 53 candidates under various communal categories in Physically Disabled Candidates Quota. Out of 53, the name of the petitioner's daughter is not found.

(ii)On perusal, the petitioner came to know that, two candidates in the very same Backward Class Community, who got lesser mark i.e., 109 and 112 marks, have been included at Sl.No.24 at Sl.No.42 in the list of candidates published by the Selection authority for admission in MBBS course under Physically Challenged Persons Quota for the year 2019-2020, whereas the petitioner's



daughter, who obtained 122 marks, had been omitted to be selected and included in the list.

(iii) Therefore, challenging the non-selection or non-inclusion for admission in the MBBS course for the year 2019-2020 under Physical Challenged Persons Quota, the petitioner has come forward before this Court with the present writ petition.

4.I have heard Mr.R.Suresh Kumar, learned counsel appearing for the petitioner, who has reiterated the said stand and the case of the petitioner by stating that, though the petitioner's daughter has got higher marks, at-least two candidates, who belong to the same community with lesser marks, found place in the list submitted by the Selection Committee, but the name of the petitioner's daughter has been left, despite that the petitioner's daughter is physically challenged person with 80% permanent disability.

5.In this context, the learned counsel appearing for the petitioner relied upon the Permanent Disability Certificate issued by the State Government in the year 2006 as well as the Disability Certificate issued by the Department of Empowerment of Persons with Disabilities, Ministry of Social Justice and Empowerment, Government of India, where 80% disability has been specifically noted.

6.By relying upon these documents, the learned counsel for the petitioner would submit that, the non-selection of the petitioner's daughter for admission in MBBS course under the Physically Challenged Persons Quota is unlawful and unjustifiable. Therefore, interference of this Court is required. Hence, the learned counsel seeks indulgence of this Court for a direction to the respondents to select the petitioner's daughter for admission in MBBS course in the year 2019-2020.

7.I have heard Mr.K.Chellapandian, learned Additional Advocate General assisted by Mr.M.Rajarajan, learned Government Advocate, who would submit that, the Medical Council of India has issued instructions. Following the same only, brochures and instructions, have been issued by the State authorities for selection and admission for medical course.

8.In this context, the learned Additional Advocate General relied upon the following Clause in the Medical Council of India guidelines, which is otherwise called as comprehensive report regarding guidelines of admission of persons with specified disability.

9.The learned Additional Advocate General has relied upon the following Clause :-



"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 lower 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 limb 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."

10. Wherein, under Clause (vi), it has been specifically mentioned that, the disabled person suffered with dominant upper limb to an extent that the candidate has loss of thumb, cannot hold an object satisfactorily, would not be eligible to be considered for admission in the medical courses.

11. In this context, the learned Additional Advocate General also would submit that, pursuant to the said guidelines issued by the Medical Council of India, the following conditions have been imposed by the Selection Committee in the brochure issued in this regard for MBBS and BDS admission in their prospectus for the year 2019-2020, where the learned Additional Advocate General relied upon Clause 5, which reads thus:-

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

(a) 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 in accordance with the Rights of Persons with Disabilities Act, 2016. If the seats reserved for the persons with disabilities in a particular category remain unfilled on account of unavailability of candidates, then earmarked seats would be included in the general category.

(b) Candidates are required to visit the official websites www.tnhealth.org, www.tnmedicalselection.org for latest information in this regard.

(i) Candidates with disabilities of 40-80% shall be considered eligible to apply for MBBS/BDS

Degree Courses.

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



(ii) Candidates with less than 40% disabilities are NOT ELIGIBLE for reservation, provided that the candidates are eligible to apply for MBBS/BDS Degree Courses under general category.

(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."

12. Citing the said Clause in the prospectus, the learned Additional Advocate General submitted that, as per Clause 5(c), the presence of significant Locomotor Disability, based on which, if it would be very difficult for the candidate to pursue and complete the course satisfactorily, may be declared not eligible for admission. This Clause 5(c) in fact was inserted in the said prospectus strictly in accordance with the mandatory guidelines issued by the Medical Council of India, as referred to above. Apart from the aforesaid point, the learned Additional Advocate General would also point out that, under Clause 5(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 and such certificate of disability must have been obtained within three months prior to submitting the application for seeking admission under this category and if such certificate obtained from the Regional Medical Board is not submitted by the candidate, the application itself would be summarily rejected.

13. The learned Additional Advocate General, in this context further submits that, this prospectus was issued on 06.06.2019 and it was available in the website. Therefore, when the candidate wants to send application through online can also download these



prospectus and after having gone through the same, the application could have been filled up and sent it. The last date for submission of application was upto 20th June-2019, therefore, between 06.06.2019 and 20.06.2019, if at all, the petitioner's daughter did not get any certificate from the Regional Medical Board already, she could have obtained such certificate by making necessary application to the Regional Medical Board at Rajiv Gandhi Government General Hospital, Chennai-03. Since admittedly the said application has not been made by the petitioner's daughter and no such certificate was obtained and produced before the respondent/Selection authority, on that ground i.e., under Clause 5(d) of the prospectus also, the petitioner become ineligible to be considered for admission and accordingly, her candidature has been rejected and that is the reason why, though she obtained 122 marks in the NEET examination, her name was not included in the list of the candidates, which referred to above.

14.I have considered the said submissions made by the learned counsel for both sides.

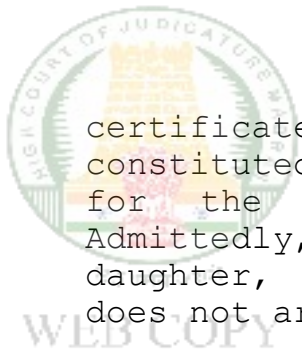
15.On perusal of the aforesaid documents very much relied upon by both sides, two grounds are emerged, under which, as to whether the application of the petitioner's daughter could have been rejected or accepted, can be decided.

16.Firstly, under Clause 5(c), which is in consonance with the Medical Council of India mandatory guidelines, the Locomotor disability must not be to the extent of making the candidate very difficult to pursue and complete the course satisfactorily and in such circumstance, the candidate can be declared as ineligible.

17.In this context, the learned Additional Advocate General has pointed out that, even in the certificate issued by the Department of Empowerment of Persons with Disabilities, Ministry of Social Justice and Empowerment, Government of India, dated 26.07.2006, it has been mentioned that, she has 80% permanent disability in relation to her as per guidelines (to be specified), wherein it is also specified that she is the case of Locomotor disability, the diagnosis in her case is OBSTETRIC PALSY (ERB'S PALSY) RIGHT UPPER LIMB.

18.In this context, Clause (vi) of the guidelines, as extracted above, issued by the Medical Council of India, has made it clear that, involvement of a single upper limb 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, or the limb is lacking normal sensation, it would be an ineligibility to be considered for admission in medical course. Exactly, this has been reiterated in Clause 5(c) of the prospectus issued by the respondent/Selection authority, as has been extracted above.

19.Apart from the said reason, it is an admitted fact on the part of the petitioner that, the petitioner's daughter did not get a



certificate for disability from the Regional Medical Board constituted at Rajiv Gandhi Government General Hospital, Chennai-3 for the purpose of assessing the nature of disabilities. Admittedly, since the same has not been obtained by the petitioner's daughter, the question of submitting the same to the respondents, does not arise.

20.The non-submission of such certificate obtained from the Regional Medical Board constituted at Rajiv Gandhi Government General Hospital, Chennai-3 is one of the condition under Clause 5 (d) of the prospectus to be satisfied or fulfilled and the same since has not been fulfilled, the application of the petitioner is liable to be rejected. Since two reasons in the context of Clause 5 (c) and 5(d) of the prospectus have not been fulfilled, based on which, according to the respondents, candidature of the petitioner's daughter has not been included in the list of the selected candidate under Disabilities quota.

21.Therefore, the petitioner's claim that, his daughter obtained higher mark than the two candidates in the same community category, who have been included in the list of the selected candidates, cannot be countenanced, as these two important requirements have not been fulfilled by the petitioner's daughter, the petitioner cannot claim that the rejection or non-inclusion of the petitioner's daughter in the list, is unlawful or unjustifiable. Therefore, on that ground, the impugned selection list of 53 candidates, cannot be successfully challenged by the petitioner. Finally, the petitioner would also not eligible to claim the consequential relief of Mandamus, directing the respondents to select his daughter under the said Physically Challenged Persons Quota for MBBS/BDS course for the year 2019-2020.

22.In view of the aforesaid facts and circumstance of the case and the discussion made above, this Court is of the considered view that, the petitioner's daughter is not eligible to be considered for admission in MBBS/BDS course for the year 2019-2020 under the Physically Challenged Persons Quota and therefore, the relief sought for herein by the petitioner cannot be granted.

23.In the result, the Writ Petition fails and the same is dismissed. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar (CS-III)

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Sub Assistant Registrar(CS)



- 1.The Secretary,
Ministry of Human Resources Development,
No.1, West Block,
Ramakrishnapuram,
New Delhi-110 006.
- 2.The Secretary,
Ministry of Health and Family Welfare,
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- 3.The Secretary,
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- 5.The Secretary,
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Secretariat, Chennai.
- 6.The Director,
The Directorate of Medical Education,
EVR Periyar Salai,
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+1cc to Mr.R.Suresh Kumar, Advocate Sr.No.76355
+1cc to Mr.A.P.Rajasimman Advocate Sr.No.77065
+1cc to Cpl GP SR.No.77045

Order made in

W.P. (MD)No.15916 of 2019
19.07.2019

VB (02.01.2020) 8P 10C