



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 30.04.2019

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THE HONOURABLE Mrs. JUSTICE PUSHPA SATHYANARAYANA
AND
THE HONOURABLE Mrs. JUSTICE T. KRISHNAVALLI

W.A.(MD)No.1481 of 2018
against WP(MD).19231 of 2018

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,
162, Periyar E.V.R. High Road,
Kilpauk, Chennai-600 010.
 3. The Dean,
Madras Medical College,
Central Station,
Chennai.
 4. The Government Pudukottai
Medical College Hospital,
rep. by its Dean,
Pudukottai.
- .. Appellants/
Respondents 2, 4 to 6

Vs.

1. J.Vibin
rep. by his father/natural guardian
Mr.Jabakar, 16B, Kuttralam Main Road,
Bharathi Nagar, Melagaram,
Tenkasi, Tirunelveli District.
- .. Respondent 1/Petitioner
2. The Central Board of Secondary Education
rep. by its Joint Secretary,
National Eligibility Certificate-cum-
Entrance Test Unit,
Shiksha Kendra,
2, Community Centre, Preet Vihar,
New Delhi-110 092.
- ..Respondent 2/Respondent 1



Prayer : Writ Appeal filed under Clause 15 of the Letters Patent praying to set aside the judgment passed by this Court dated 20.09.2018 in W.P.(MD)No.19231 of 2018.

Prayer in WP(MD). 19231/ 2018 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a WRIT OF MANDAMUS direct the respondents to admit the petitioners son in the 6th respondent college to pursue MBBS course in compliance with the provisional allotment order dated 12.07.2018 issued by the 4th respondent in terms of Section 32 of the Rights of Persons with Disabilities Act, 2016 (No.49 of 2016)

For Appellants : Mr.K.Chellapandian,
Additional Advocate General
assisted by Mr.J.Padmavathi Devi,
Special Government Pleader

For Respondents : Mr.M.Ajmal Khan, Senior Counsel
for M/s.Ajmal Associates

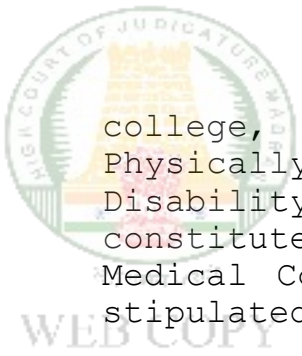
J U D G M E N T

"The only thing worse than being blind is having sight but no vision" - Helen Keller.

2. The present writ appeal is preferred against the order dated 20.9.2018 passed by the learned Single Judge in W.P.No.19231 of 2018.

3. The first respondent/petitioner sought for a direction to the appellants/respondents to admit the first respondent/petitioner in the sixth respondent college to pursue MBBS course in compliance with the provisional admission order dated 12.07.2018 issued by the second appellant/fourth respondent in terms of section 32 of the Rights of Persons with Disabilities Act, 2016 (in short, "the PWD Act").

4. The first respondent/petitioner, a minor student represented by his father, is physically challenged, having "benchmark disability" of visual impairment to an extent of 75% as per certificate issued to him by Government of Tamil Nadu. He has secured the requisite marks in the qualifying examinations and participated in NEET examination and ranked 285 on All India basis under the category of physically challenged persons. Subsequently, the first respondent/petitioner participated in the online counselling, got selected and allotted to the fourth appellant/sixth respondent college hospital in MBBS course as per the allotment order generated online on 01.08.2018. When the first respondent/petitioner went to the fourth appellant/sixth respondent



college, he was informed that since his selection is under Physically Handicapped (PH) category, he is required to produce Disability Certificate from one of the Disability Assessment Boards constituted at any one of the four metro cities, i.e., Madras Medical College, Park Town, Chennai (in short, "MMC") within the stipulated time i.e., before 08.08.2018.

5. Accordingly, the first respondent/Petitioner has appeared before the Special Medical Board approved by the Medical Council of India at the Institute of Ophthalmology and Government Ophthalmic Hospital, Egmore, Chennai, and it was certified that he is suffering from Visual Impairment and possess Congenital Anomaly-Both Eyes and the percentage of visual disability is 90 % and hence he is not eligible for admission in Medical/Dental Courses as per the Medical Council of India norms. In view of the high degree of disability suffered by him, it was notified that the first respondent/petitioner was not eligible to the said medical course. Accordingly, the first respondent/petitioner was denied the Medical seat in the fourth appellant/sixth respondent college, which was impugned in the writ petition.

6. After considering the materials placed before the writ Court, the learned Single Judge allowed the writ petition on 20.09.2018 holding that the PWD Act is benevolent in nature and therefore, the authorities concerned ought to have given positive thrust in implementing the objective of the enactment and also that the denial of admission to the first respondent/petitioner cannot be countenanced in law, as the same is contrary to the specific provisions of the PWD Act. Thus, the learned Single Judge directed the second appellant/ fourth respondent to accept the certificate issued by the MMC categorising the first respondent/petitioner as the person suffering from 90% disability and implement the allotment already made in the fourth appellant/sixth respondent college and in the event, the said seat is filled up, a direction was issued to allot a seat to the first respondent/petitioner in any other college in the State of Tamil Nadu. Challenging the order of the learned Single Judge, the appellants/respondents are before this court by way of this writ appeal.

7. The learned Additional Advocate General appearing on behalf of the appellants/respondents contended that the learned judge ought to have appreciated the fact that the first respondent/petitioner did not report back to the institute with the Disability Certificate within the time stipulated and hence, the said seat was treated as "not joined" and the same was surrendered to the state quota, which was also informed to Medical Council of India (in short, "MCI"), and duly filled up in the subsequent counselling.

8. The learned Additional Advocate General also contended that no admission is permissible beyond the last date of admission, i.e., 31.08.2018 and if there is any violation, as per the judgment



of the Hon'ble Apex Court, the student would be discharged from the course and action would be initiated against the concerned medical college.

9. The learned Senior Counsel appearing on behalf of the first respondent/petitioner contended that the PWD Act provides for special provisions for persons with benchmark disability. Section 32 (1) of the PWD Act states that all Government institutions of higher education and other higher education institutions receiving aid from the Government shall reserve not less than 5% seats for persons with benchmark disabilities. It was also argued that unless there is a strong and compelling reasons supported by strong legal principles to trifle with the constitutional right of higher education, the allotment originally made in favour of the first respondent/petitioner should not be interfered with. Thus, it is his submission that the direction issued by the learned single Judge to admit the student in any one of the medical colleges in the State is well within the legal right guaranteed to the first respondent/petitioner.

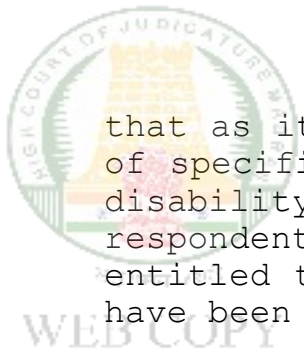
10. Admittedly, the first respondent qualified the NEET examination and allotted the seat in All India online counselling in the fourth appellant institution. When he was about to join the college, he was directed to produce the Disability Certificate from the Board constituted for the said purpose. Accordingly, he appeared before the Board, which issued him the certificate, wherein, his disability was measured at 90% and thus, he was disqualified from joining the medical course. At this juncture, it is relevant to note Section 2(r) of the PWD Act, which defines benchmark disability :

"(r) "person with benchmark disability" means a person with not less than forty percent of a specified disability where specified disability has not been defined in measurable terms and includes a person with disability where specified disability has been defined in measurable terms, as certified by the certifying authority;"

11. Before proceeding with the matter, it is relevant to note Section 32(1) of the PWD Act, which provides for reserving the seats for the persons with benchmark disabilities in higher education institutions and the said provision reads as follows :

(1) "All government institutions of higher education and other higher education institutions receiving aid from the Government shall reserve not less than five percent seats for persons with benchmark disabilities."

12. As stated above, though the first respondent/petitioner claims that he was issued a certificate by the Government of Tamil Nadu that he is having only 75% of visual impairment, the certificate issued by the Board measures his disability at 90%. Be



that as it may, he is suffering from not less than forty percent of specified disability, which means, he is a person with benchmark disability. According to the learned Senior Counsel for the first respondent, since he is suffering from benchmark disability, he is entitled to claim a seat out of five percent seats, which ought to have been reserved for persons with benchmark disabilities.

13. It is to be stated that Section 32 of the Medical Council of India Act, 1956 empowers the Central Government to make rules, while Section 33 of the said Act, provides power to the Council to make regulations, with the previous sanction of the Central Government. Accordingly, MCI issued notifications from time to time to regulate the medical education and such regulations have statutory force. One such notification provides for reservation of 5% seats of the annual sanctioned intake capacity to the candidates with benchmark disabilities, in terms of the PWD Act.

14. At this juncture, it is relevant to note that in **Purswani Ashutosh (Minor) through Dr. Kamlesh Virumal Purswani Vs Union of India** reported in **2018 SCC OnLine SC 1717**, a similar question as to whether a person with benchmark disability of low vision can be denied the benefit of reservation for admission to the MBBS Medical Course came up for consideration. The petitioner therein, who has low vision disability, questioned the order of denial of the benefit of reservation for the physically disabled. The MCI pleaded before the Hon'ble Apex Court that an Expert Committee formed by it opined that persons with visual impairment of 40% or more could not be admitted to the undergraduate medical courses. Rejecting the plea of the MCI, the Hon'ble Apex Court held as follows :

"23. The Medical Education Regulations framed under Section 33 of the Medical Council Act, 1956 have statutory force and are binding on the MCI. The Committee having opined that the petitioner suffers from a benchmark disability, its view with regard to the suitability of the petitioner for the MBBS course cannot override the Medical Education Regulations.

24. The 2016 Act, in particular Section 32 thereof, read with the Medical Education Regulations clearly provides for reservation of seats in the MBBS Course for persons like the petitioner with specified benchmark disability of low vision.

25. Mr. Vikas Singh, learned senior Advocate appearing on behalf of the MCI, strenuously contended that Section 32 of the 2016 Act would not apply to admission to a medical college for the MBBS course. It is, however, not disputed that the Medical Education Regulations are valid, subsisting, in force and binding on the MCI. The validity of the said regulations has not been questioned.

26. The contention of Mr. Singh that Section 32 is not attracted since it only provides for reservation to higher educational institutions and not to technical

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.	...			
		B. Visual Impairment	a. Blindness	Less than 40% disability (i.e. Category '0 (10%)', 'I (20%)' & 'II (30%')	-	Equal to or More than 40% Disability (i.e. Category III and above)
			b. Low vision			

17. A perusal of the above notification would go to show that (i) the student with less than 40% of disability is eligible for Medical Course but not eligible under Persons with Disability Quota; and (ii) when the disability level is Equal to or More than 40% Disability they are not eligible for Medical Course at all. Thus, by way of this amendment to the Medical Educational Rules dated 04.02.2019, the MCI gave statutory effect to the amendments suggested by the Expert Committee and now the persons with 40% or more visual impairment are not eligible for medical course.

18. Now the question that arise for consideration is whether the 2019 amendment to the Medical Education Regulations suggested by the Expert Committee is applicable to the case of the first respondent/petitioner ?

19. In the light of the right of PWD Act, 2016 and the United Nations Convention on the Rights of Persons with Disabilities, the recent guidelines of MCI are unfair, discriminatory and unlawful. The United Nations Convention on the Rights of Persons with Disabilities, 2007 was accepted and ratified by India, as per which, it was mandatory to harmonize all its existing legislations in line with its provisions. Accordingly, PWD Act was passed in 2016 and brought to force in 2017. The intention of the legislature was to move from a charity approach to a right-based approach and safeguard the human rights of the Persons with Disabilities. As per the Act, any person with benchmark disability, i.e., minimum of 40% of a specified disability, is entitled, as a matter of right, to avail the benefits under the PWD Act including 5% reservation in higher education.

<https://hcservices.hcsmadras.gov.in/hcsom>

20. The first respondent/petitioner, armed with the



legislation and amendments, appeared for NEET-UG to seek admission in Medical Education. Though he has qualified, as per the guidelines, despite having benchmark disability, the visual impairment was considered as an ineligibility for the disability quota in the Medical Course. The criteria for eligibility/ineligibility as per new MCI Guidelines for visual impairment is low vision and blindness - equal to or more than 40% disability. The first respondent/petitioner already made him eligible by competing with others and attended online counseling and secured a seat also. Therefore, rejecting him on the basis of percentage of disability is abhorrent to the principles enshrined in the Constitution of India and the provisions of the PWD Act.

21. The Preamble of the PWD Act does not permit any deviation from the Act. While framing the guidelines, Doctors with disabilities ought to have been considered. The competency of a Doctor with disability cannot be assumed, as unless it is experienced one may not understand the same. If a person with visual impairment is already a Doctor, it shall be possible for a blind person to be a Doctor. Dr.Y.G.Parameshvera of Karnataka was the first Indian Blind Doctor and practiced medicine and won several awards. It seems to be a difficult struggle for these blind men to achieve what they want. The first respondent/petitioner is not the first blind Doctor and he can learn from the experiences of others like him. Being blind need not destroy one's dreams.

22. In fact, even most of the hospitals in the country are not disabled-friendly. It is painful to note that no time allowance is given to Persons with Disabilities and they crack this tough competitive examination along with/on a par with others.

23. At this juncture, it is relevant to reproduce Section 21 and 10 of the Act as hereunder :

21. (1) Every establishment shall notify equal opportunity policy detailing measures proposed to be taken by it in pursuance of the provisions of this Chapter in the manner as may be prescribed by the Central Government.

(2) Every establishment shall register a copy of the said policy with the Chief Commissioner or the State Commissioner, as the case may be.

....

10. (1) The appropriate Government shall ensure that persons with disabilities have access to appropriate information regarding reproductive and family planning.

(2) No person with disability shall be subject to any medical procedure which leads to infertility without his or her free and informed consent."



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 PWD Act should be followed in their letter and spirit.

25. The arbitrary sudden and unreasoned amendment to the notification is violative if 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.

26. It is useful to refer here the judgment of the Hon'ble Apex Court in **Chanchal Goyal (Dr) v. State of Rajasthan, (2003) 3 SCC 485**, which dealt with the principle of "legitimate expectation" elaborately and held as follows :

"17. Before we do so, we shall refer to some of the important decisions of this Court to find out the extent to which the principle of substantive legitimate expectation is accepted in our country. In **Navjyoti Coop. Group Housing Society v. Union of India [(1992) 4 SCC 477]** the principle of procedural fairness was applied. In that case the seniority as per the existing list of cooperative housing societies for allotment of land was altered by subsequent decision. The previous policy was that the seniority amongst housing societies in regard to allotment of land was to be based on the date of registration of the society with the Registrar. But on 20-1-1990, the policy was changed by reckoning seniority as based upon the date of approval of the final list by the Registrar. This altered the existing seniority of the societies for allotment of land. This Court held that the societies were entitled to a "legitimate expectation" that the past consistent practice in the matter of allotment will be followed even if there was no right in private law for such allotment. The authority was not entitled to defeat the legitimate expectation of the societies as per the previous seniority list without some overriding reason of public policy as to justify change in the criterion. No such overriding public interest was shown. According to the principle of "legitimate expectation", if the authority proposed to defeat a person's legitimate expectation, it should afford him an opportunity to make a representation in the matter. Reference was made to *Halsbury's Laws of England* [p. 151, Vol. 1(1), 4th Edn., Reissue] and to *CCSU case* [1985 AC 374]. It was held that the doctrine imposed, in essence, a duty on public



authority to act fairly by taking into consideration all relevant factors, relating to such legitimate expectation. Within the contours of fair dealing, the reasonable opportunity to make representation against change of policy came in.

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19. This Court considered the question elaborately in ***Union of India v. Hindustan Development Corpn.*** [(1993) 3 SCC 499]. There tenders were called for supply of cast-steel bogies to the Railways. The three big manufacturers quoted less than the smaller manufacturers. The Railways then adopted a dual-pricing policy giving counter-offers at a lower rate to the bigger manufacturers who allegedly formed a cartel and a higher offer to others so as to enable a healthy competition. This was challenged by the three big manufacturers complaining that they were also entitled to a higher rate and a large number of bogies. This Court held that the change into a dual-pricing policy was not vitiated and was based on "rational and reasonable" grounds. In that context, reference was made to *Halsbury's Laws of England* [4th Edn., Vol. 1(I) p. 151], *Schmidt v. Secy. of State for Home Affairs* [(1969) 1 All ER 904] which required an opportunity to be given to an alien if the leave given to him to stay in UK was being revoked before expiry of the time and to *Attorney General of Hong Kong v. Ng Yuen Shiu* [(1983) 2 AC 629] which required the Government of Hong Kong to honour its undertaking to treat each deportation case on its merits, and *CCSU case* [1985 AC 374] which related to alteration of conditions relating to membership of trade unions and the need to consult the unions in case of change of policy as was the practice in the past, and to *Food Corpn. of India case* [(1993) 1 SCC 71] and *Navjyoti Coop. Group Housing Society case* [(1992) 4 SCC 477]. It was then observed that legitimate expectation was not the same thing as anticipation. It was also different from a mere wish to desire or hope; nor was it a claim or demand based on a right. A mere disappointment would not give rise to legal consequence. The position was indicated as follows:

"The legitimacy of an expectation can be inferred only if it is founded on the sanction of law or custom or an established procedure followed in regular and natural sequence. ... Such expectation should be justifiably legitimate and protectable."



for *Home Deptt.* [(1984) 3 All ER 801] and *Breen v. Amalgamated Engg. Union* [(1971) 1 All ER 1148] were considered. It was accepted that the principle of legitimate expectation gave the applicant sufficient locus standi to seek judicial review and that the doctrine was confined mostly to a right to fair hearing before a decision which resulted in negating a promise or withdrawing an undertaking, was taken. It did not involve any crystallized right. The protection of such legitimate expectation did not require the fulfilment of the expectation where an overriding public interest required otherwise. However, the burden lay on the decision-maker to show such an overriding public interest. A case of substantive legitimate expectation would arise when a body by representation or by past practice aroused expectation which it would be within its powers to fulfil. The court could interfere only if the decision taken by the authority was arbitrary, unreasonable or not taken in public interest. If it is established that a legitimate expectation has been improperly denied on the application of the above principles, the question of giving opportunity can arise if failure of justice is shown. The court must follow an objective method by which the decision-making authority is given the full range of choice which the legislature is presumed to have intended. If the decision is reached fairly and objectively, it cannot be interfered with on the ground of procedural fairness. An example was given that if a renewal was given to an existing licence-holder, a new applicant cannot claim an opportunity based on natural justice. On facts, it was held that legitimate expectation was denied on the basis of reasonable considerations."

27. In fact, in the case on hand, the first respondent/petitioner was given the benefit of joining the medical course in the ensuing academic year by the writ court and the same cannot be curtailed by any reason whatsoever, which is unsustainable in the eye of law and thrashing out his legitimate expectation.

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 Gazettee. 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.

29. At this juncture, it is relevant to note that the Apex Court in **Parmod vs Union of India & Others, 2018 SCC OnLine SC 1919** granted benefit of admission to a similarly placed medical aspirant and held as follows :

"3. It is not disputed that as per merit, the appellants were required to be given admission in the physically handicapped category. They were not given the admission in view of the recommendations given by the Medical Council of India (MCI). However, the regulations framed by the MCI adopts the provisions of the Rights of Persons with Disability Act, 2016 (RPWD).

4. As per the statutory provisions contained in the aforesaid Act which has been considered by this Court in **Purswani Ashutosh (Minor) through Dr. Kamlesh Virumal Purswani v. Union of India** in W.P (C) No. 669/2018 decided on 24.8.2018, it has been held that statutory provisions have to prevail over the recommendations made by the Committee as the recommendations made have not taken statutory shape so far.

5. In the aforesaid facts and circumstances of the case, though appellants were entitled for admission in the MBBS course, but now as all the seats have been filled, the appellants have been illegally deprived of the admission. As such, we direct that the appellants be admitted in the next year, in MBBS course and in a government medical college as the seats of handicapped have been handed over to the general category, the seats of that category shall be reduced for the next academic session 2019-2020.

6. Accordingly, the appeals are allowed. The impugned orders passed by the High Court is set aside. Apprehension is raised that the eligibility criteria may



be changed. The apprehension is baseless as any change subsequently made is not going to affect the right of the appellants to obtain admission. The order is final, conclusive and binding."

30. Similar is the view taken by a Division Bench of this Court in **J.S.Vignesh Balaji V. The Selection Committee for MBBS/BDS, Directorate of Medical Education, Kilpauk, Chennai-10 and Others, (W.A.No.1956 of 2018 decided on 06.09.2018).**

31. Both the aforesaid decisions were rendered relying upon the principle set forth in **Purswani Ashutosh (cited supra)**, extending the benefit to the similarly placed medical aspirants therein.

32. In view of the foregoing discussion, this Court is of the view that the order of the learned Single Judge need not be interfered with. Accordingly the Writ Appeal is dismissed confirming the order of the learned Single Judge dated 20.09.2018 with a further direction that the benefit of the relief given by the learned Single Judge to allot a seat to the petitioner shall be given effect to for the academic year 2019-2010. The second appellant is directed to pass appropriate orders in this regard immediately on receipt of a copy of this order. There shall be no order as to costs.

33. Before parting with this matter, this Court places on record its appreciation to the efforts put forth by the first respondent/ petitioner to become a medical practitioner. Indeed, his tireless efforts are laudable and surely deserves appreciation. This Court wishes the first respondent/petitioner to come up with flying colours in his endeavours.

Sd/-

Assistant Registrar (CS-I)

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Sub Assistant Registrar (CS)

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To

1. The Secretary,
Health and Family Welfare Department,
Government of Tamil Nadu,
Fort St. George,
Chennai-600 009.



2. The Secretary,
Selection Committee,
Directorate of Medical Education,
162, Periyar E.V.R. High Road,
Kilpauk, Chennai-600 010.

3. The Dean,
Madras Medical College,
Central Station, Chennai.

4. The Dean,
Government Pudukottai
Medical College Hospital,
Pudukottai.

+1CC TO MR.AJMAL ASSO., Advocate Sr. No. 64470

W.A. (MD) No. 1481 of 2018

30.04.2019

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