

ADSL 19.
October 13, 2020.
SG

MAT 1202 of 2019
with
CAN 1 of 2019
with
CAN 2 of 2020

Kaunain Nawaz Raza
vs
Union of India and others

Mr Biswaroop Bhattacharya
Mr Pratik Majumder
... for the appellant.

Mr Y.J. Dastoor
Mr Indrajit Dasgupta
... for UOI.

Mr Kishore Dutta
Mr Tapan Kumar Mukherjee
Mr Gourav Das
... for the State.

Mr Supratic Roy
Mr D.N. Maiti
... for WBUHS.

The appeal arises out of an order dated August 14, 2019 refusing to continue the interim order passed earlier in the writ petition, inter alia directing the respondents to keep one seat vacant for the appellant in the 2019-20 session in MBBS course.

The appellant, who suffers from hearing impairment, succeeded in the National Eligibility-Cum-Entrance (UG) Test-2019 under general category and sub category of Persons with Disabilities. The medical board constituted by the Institute of Post Graduate Medical

Education & Research examined the appellant and certified that the appellant was suffering 28.68% disability and was not eligible for admission in the medical course.

The Medical Council of India issued a fresh notification dated May 13, 2019 which provided that persons with hearing disability of more than 40% would be eligible to pursue MBBS course and may be entitled to reservation, subject to the condition that the hearing disability is brought to a limit of less than the benchmark of 40% with aid of assistive device. Additionally the individual should have a Speech Discrimination Score (SDS) of more than 60%.

The learned Single Judge, considering the fresh notification dated May 13, 2019, directed the appellant to approach the respondent no.3 and appear before the medical board on July 31, 2019 which was directed to examine the appellant and submit a report as per the notification dated May 13, 2019.

The appellant was examined by the medical board which issued a medical certificate dated August 5, 2019. The medical report runs thus:

“Find investigation & assessment showed the following result: % Disability (hearing impairment) 51% (without Aid) with SDS% = 30% (without Aid) 62.23% (with Aid) with SDS% = 30% (without Aid) Hence as per the Gazette of India dated the February 5, 2019 & the December 28,

2016 (RPWD act) the candidate is not eligible for admission in medical course as per the MCI/DCI guideline. We carefully examined the candidate & this is the only mode of investigations to get the actual report regarding disability assessment.”

By an order dated December 20, 2019, passed in this appeal, the respondent no.3 constituted a Board comprising of the Heads of the Department of ENT of the Calcutta Medical College & Hospital, Nil Ratan Sircar Medical College & Hospital and Institute of Post Graduate Medical Education and Research (IPGMER), which examined the appellant and filed a report in this appeal on March 5, 2020.

A co-ordinate bench, upon consideration of the report was of the view that such report was not prepared following the notification dated May 13, 2019. By an order dated March 5, 2020, passed in this appeal, a co-ordinate bench requested the three Specialists to give a report as to whether the hearing disability of the appellant could be brought to a limit of less than the benchmark of 40% with aid of assistive device.

Upon re-examination, the appellant was found eligible for admission in the MBBS course under PWD category as a person with hearing disability.

The State informed the Court earlier that pursuant to the initial interim order one seat has

been kept reserved for the appellant at College of Medicine and Sagore Dutta Hospital in the 2019-20 session in the reserved category.

Today upon instructions the State informs the Court that one unreserved seat is available at IPGMER Kolkata in the unreserved category in the 2019-20 session where the appellant can be accommodated subject to the condition that the appellant will pursue the MBBS course with the 2020-21 candidates but as a 2019-20 candidate. This would prevent the reduction of one seat in the 2020-21 session and would simultaneously grant relief to the appellant.

Advocate of the appellant, on instructions, agrees to such proposal. Principal of IPGMER Kolkata is directed to admit the appellant in the First year MBBS course in the 2020-21 session but as a 2019-20 candidate and allow him to pursue the course along with the 2020-21 candidates. The appellant would be allowed to take all examinations with the 2020-21 candidates throughout the course as a 2019-20 session candidate.

The appellant would be admitted at the time of counselling of the 2020-21 candidates after publication of the results of 2020 NEET.

The Medical Council of India is directed to regularize the admission of the appellant and register the appellant as a candidate for the 2019-20 session.

The Registrar of the West Bengal University of Health Sciences will take necessary action in terms of this order.

MAT 1202 of 2019 along with CAN 1 of 2020 and CAN 2 of 2020 are hereby disposed of with the above directions.

There will be no order as to costs.

Certified website copies of this order, if applied for, be urgently made available to the parties upon compliance with the requisite formalities.

(Sanjib Banerjee, J.)

(Arijit Banerjee, J.)