

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 7915 OF 2020

Purushottam S/o Bhausahab Nawale ... Petitioner.

Versus

The Union of India
and others ... Respondents.

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Mr. S.D. Kotakar, Advocate for the Petitioner.
Mr. D.G. Nagode, Advocate for Respondent Nos. 1 and 2.
Mr. A.B. Chate, A.G.P. for Respondent No.3.
Mr. M.D. Narwadkar, Advocate for Respondent No.4.
Mr. S.K. Kadam, Advocate for Respondent No.5.

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**CORAM : S.V. GANGAPURWALA AND
SHRIKANT D. KULKARNI, JJ.**

DATE : 04th DECEMBER, 2020

PER COURT:-

1. The petitioner seeks admission to the MBBS course from persons with disability quota. The petitioner has cleared NEET examination. He was referred to the Medical Board. The Medical Board certified that the petitioner suffers from obsessive compulsive disorder in remission and his disability is less than 40%. It is further opined that the petitioner is not eligible for benefit of PWD quota, but

eligible for medical / dental course. The petitioner is also assailing the regulation viz. “Graduate Medical Education Regulations (Amendment) 2019”, more particularly column ‘C’ of Appendix H-1, which reads thus:

3	Mental behaviour		Mental illness	Absence or mild Disability less than 40% under IDEAS	Currently not recommended due to lack of objective method to establish presence and extent of mental illness. However, the benefit of reservation quota may be considered in future after developing better methods of disability assessment.	Equal to or more than 40% disability or if the person is unfit to perform his/her duties standards may be drafter for the definition of “fitness to practice medicine”, as are used by several institutions of countries other than India.
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2. We have heard the matter for interim relief as claimed by the petitioner.

3. Mr. Kotkar, the learned counsel for the petitioner submits that the petitioner possesses disability certificate issued by the Medical Authority, Ahmednagar certifying that the disability of the petitioner is 50% (mental illness). As the disability of the petitioner is 50%, the petitioner confirms to the definition of “benchmark disability” as provided under Section 2(r) of the Rights of Persons with Disabilities Act, 2016 (hereafter referred as to the “Act, 2016”). The learned Advocate further submits that the Medical Board issued a certificate assessing the mental disability of the petitioner as less than 40%. The learned Advocate for the petitioner submits if the petitioner satisfies the benchmark disability, then he is entitled for the benefit of PWD quota. The Rule that if the mental illness is more than 40%, then the person is unfit to perform his duties is against the provisions of Act, 2016. The learned Advocate submits that if there is a mild disability less than 40% (mental illness), then also the candidate is not permitted benefit of PWD quota. The person with mental illness is not given benefit of PWD quota. The learned counsel relies on the interim order passed by this Court at the Principal Seat in Writ Petition No.3851/2019 dated 03.04.2019. He submits that the Court has passed the interim order directing the person with permanent mental illness with disability of 30% to be admitted from the PWD quota. The

writ petition is still pending. The learned counsel also relies upon the judgment of the Calcutta High Court in case of **Anaya Maity Vs. The Union of India and others** dated 14.08.2019. The learned counsel submits that pursuant to the interim order passed by this Court, the petitioner had attended the counseling and he also allotted the college.

4. Mr. Kadam, the learned Advocate for the National Medical Commission submits that the Regulations are framed after considering the experts report. It has been opined that due to lack of objective methods to establish the person of mental illness, the PWD reservation of persons with disability less than 40% for mental illness is not provided and the person with disability of more than 40% mental illness are not eligible to be admitted in medical course. The experts / researchers have opined the same. The learned counsel relies upon the judgment of the Delhi High Court in case of **Deepshikha Vs. Medical Council of India and others** dated 15.05.2015, the judgment of the Bombay High Court in case of **Rutuja Dattatraya Raut Vs. State of Maharashtra and others** in Writ Petition No.9556/2016 dated 21.09.2016 and the judgment of Division Bench of Delhi High Court in case **Rakshit Yadav Vs. University College of Medical Sciences and others** dated 07.09.2019. He has also relies

upon the judgment of the Apex Court in case of **Vidhi Himmat Kataria and others Vs. The State of Gujrat** dated 04.10.2019.

5. For medical admission, the certificate given by the Medical Board as prescribed ought to be considered authentic. The Medical Board after examining the petitioner has opined that the petitioner suffers from mental illness with less than 40% disability. Section 2(r) of the Act, 2016 reads thus:

“2(r) “Person with benchmark disability” means a person with not less than forty per cent of a 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”

6. In view of aforesaid benchmark disability would be 40%. The petitioner has a disability less than 40%, as such, is considered fit for medical admission from general category and his not accorded the benefit of PWD quota. If the mental disability of the petitioner would have been more than 40%, then as per the Rules prevailing more particularly Appendix H-1 of Rules, 2019, the petitioner is not eligible for admission to the medical course.

7. At this stage, it would be inappropriate to sit in appeal over the decision of experts. The experts in the medical field have found inappropriate for persons with more than 40% mental disability to be eligible to perform the duties or the practice medicine and persons less than 40% disability i.e. below the benchmark disability are not entitled for PWD reservation.

8. In light of the above, it would not be appropriate to direct the respondents to admit the petitioner from PWD quota. Directions cannot be given to the respondents to admit the petitioner from PWD quota.

9. Authenticate copy be given.

(SHRIKANT D. KULKARNI)
JUDGE

(S.V. GANGAPURWALA)
JUDGE

S.P. Rane