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IN THE HIGH COURT OF DELHI AT NEW DELHI

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W.P.(C) 9933/2020, CM Nos. 31622/2020, 13877/2021

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*Reserved on: 21st September, 2021.
Pronounced on: 28th September, 2021.*

ALOK RANJAN

..... Petitioner

Through: Mr. P.S. Sharma, Advocate.

Versus

NATIONAL MEDICAL COMMISSION & ORS..... Respondents

Through: Mr. T. Singhdev, Mr. Abhijit Chakravarty, Ms. Michelle B. Das, Ms. Sumangla Swami and Mr. Bhanu Gulati, Advocates for R-1. Ms. Monika Arora, Central Government Standing Counsel with Mr. Shriram Tiwary and Mr. Jitendra Kumar Tripathi (GP) for R-4/ UOI. Mr. Mohinder J.S. Rupal and Ms. Bhawani Vemban, Advocates for R-3 and 5.

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE AMIT BANSAL

JUDGMENT

: **Per D. N. PATEL, Chief Justice**

1. This petition has been preferred with the following prayers:-

“a. issue appropriate writ, order or direction in thenature of mandamus thereby quashing the MCI gazette notification no.mci-18(1)/2018-med. / 187262 dated 05.02.2019 / 14.5.2019 for admission to medical courses in all India quota, restriction beremoved for disabled person who has been stoppedfor getting admission in MBBS Course, not eligiblebecause of involvement of right upper limbs;

- b. issue of appropriate writ, order or direction in thenature of mandamus thereby directing therespondent no. 2 to 4 to get admitted the petitioner in MBBS course in respondent no.3 college under the quota of PWD (PH Quota) under the disability act, 2016 who has already admitted in MBBS course with the Respondent No.3 be continued.
- c. issue appropriate writ, order or direction in thenature of mandamus for issuance of fresh disability certificate with correction that the petitioner is eligible for admission in MBBS Course and remove "Not Eligible" because of involvement of right upper limbs be removed" which mentioned in the disability certificate of the petitioner unwantedly as thepetitioner is functioning well with right hand upper limbs and fulfill the condition of MCI sensation, strength and both the hands are intact.
- d. Pass any other or further order which this Hon'bleCourt deem fit and proper under the circumstancesof the case in favour of the petitioners and againstthe respondents."

FACTUAL MATRIX:

- 2. The present Petitioner had applied for admission **in MBBS Course for the Academic Year 2020-21.**
- 3. **National Eligibility cum Entrance Test (Under Graduate) -2020 [hereinafter referred to as 'NEET (UG) - 2020']** was conducted for entrance in MBBS Course on 13.09.2020. Petitioner had appeared in the said examination on 13.09.2020.
- 4. Under the NEET All India rank of the Petitioner was 4,47,653 and under the Category rank was 1,48,642. Petitioner is physically handicapped and in Physically Handicapped Category (hereinafter referred to as 'PH Category'), his rank was 884.
- 5. Provisional allotment Letter (**Annexure – C** to the memo of the writ

petition) was issued to the Petitioner by Respondent No.3 on 06.11.2020.

6. In view of the aforesaid provisional allotment letter, subject to furnishing disability certificate, provisional admission was granted to the Petitioner in PH Category.

7. On 11.11.2020, Petitioner supplied the disability certificate dated 30.12.2006. However, the certificate supplied was not a valid certificate as it was not obtained from designated institutes/hospitals as per Clause 5.2 of Information Bulletin of NEET(UG) – 2020. Since this was not permissible, the Petitioner gave an undertaking to Respondent No.3, to furnish fresh disability certificate from Safdarjung Hospital by 20.11.2020.

8. Thereafter, Petitioner approached Vardhman Mahavir Medical College and Safdarjung Hospital, New Delhi (hereinafter referred to as ‘Safdarjung Hospital’) which is an approved institution/hospital for NEET(UG) – 2020 as per Clause 5.2 of Information Bulletin of NEET (UG) – 2020. Safdarjung Hospital issued disability certificate dated 18.11.2020 (**Annexure -E** to the memo of this writ petition).

9. As per the aforesaid disability certificate, Petitioner was found not eligible to get admission in MBBS Course, as he was suffering from “Congenital Deformity of Hypoplasia of Right Upper Limb” with Shortening of Right Upper Arm & absence of the Right Upper Thumb and has Permanent Locomotor Disability of 44%.

10. Thereafter, petitioner again approached Respondent No.3-College on 21.11.2020 and sought further extension by a week for supplying disability certificate.

11. However, Petitioner could not supply disability certificate within a week from 21.11.2020. Hence, his admission was cancelled w.e.f.

22.12.2020.

12. Hence, Petitioner has preferred the present petition for the aforesaid prayers challenging the notification dated 14.05.2019 of Medical Council of India and the disability certificate given by Safdarjung Hospital.

ARGUMENTS CANVASSED ON BEHALF OF PETITIONER

13. It is submitted by learned counsel appearing on behalf of the Petitioner that the Petitioner is an aspiring student, and meritorious for seeking admission in MBBS Course. He is suffering from Congenital Deformity of Hypoplasia of Right Upper Limb with Shortening of Right Upper Arm & absence of the Right Upper Thumb and has Permanent Locomotor Disability of 44% and hence, he is entitled to admission in MBBS Course in quota reserved for Persons with Disability (hereinafter referred to as 'PwD').

14. It is further submitted that the Petitioner is able to write and appear in an examination despite having physical disability/locomotor disability.

15. It is further submitted by counsel for the Petitioner that certificate dated 18.11.2020 issued by Safdarjung Hospital wrongly mentions that Petitioner is "not eligible" for admission in medical courses. No reasons have been assigned in the said certificate. Nor any opportunity of being heard was given to the Petitioner.

16. It is further submitted that as per Gazette Notification dated 14.05.2019 issued by Board of Governors of Medical Council of India whereby the Graduate Medical Education Regulation, 1997 have been amended in 2019, especially, Appendix "H-1" thereof, makes the Petitioner entitled to get admission, as per this amendment, persons with more than

80% disability may also be allowed on case to case basis and their functional competency will be determined with the aid of assistive devices, if it is being used.

17. Learned counsel appearing for Petitioner has placed reliance upon the following judgments:-

- (a) ***Mushkan Abdul Rahim Shaikh(minor) vs. The State of Gujarat, SLP 24524/2018*** decided on 18.09.2018.
- (b) ***S. Amina vs. State of Kerala &Ors. W.P.(C) 28457/2020*** decided on 21.12.2020.
- (c) ***Anita Prakash Shinde vs. Union of India &Ors. 2021 SCC OnLine Bom 257.***
- (d) ***Aswathy P vs. Union of India 2021 SCC OnLine Ker 646.***
- (e) Judgment dated 02.09.2020 of the High Court of Bombay at Goa in ***W.P. No.989/2019*** titled as ***Akshada Bandekar vs. State.***
- (f) ***Vikash Kumar vs. Union Public Service Commission (2021) 5 SCC 370.***

18. In view of the aforesaid, it is pointed out that Respondents be directed to give admission to the Petitioner in MBBS Course in Respondent No.3 College.

ARGUMENTS ON BEHALF OF RESPONDENT NO.1, NATIONAL MEDICAL COMMISSION.

19. It is submitted by learned counsel for Respondent No.1 that Graduate Medical Education, 1997 have been amended by notification dated 13.05.2019 which was published in official Gazette on 14.05.2019.

20. It is further submitted by counsel for Respondent No.1 that as per amended Regulations, persons suffering from locomotor disability including various specified disability, between the range of 40% to 80% shall be

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eligible for admission in Medical courses under PwD Category, provided that both the hands must be intact, with intact sensations, sufficient strength and range of motion. This condition is essential to be considered eligible for admission in MBBS Course.

21. It is further submitted by learned counsel appearing on behalf of Respondent No.1 that as the petitioner is suffering from Congenital Deformity of Hypoplasia of Right Upper Limb with Shortening of Right Upper Arm & absence of the Right Upper Thumb and has Permanent Locomotor Disability of 44% as per disability certificate dated 18.11.2020 (**Annexure-E** to the memo of this writ petition) issued by Respondent No.2. The Petitioner's disability is permanent in nature and in view of the statutory regulations, Petitioner is ineligible as he does not fulfill the criteria of both hands being intact, with intact sensations, and having sufficient strength and range of motion, which are essential for admission to MBBS Course.

22. It is further submitted that the Medical Board has categorically found the Petitioner as not eligible for admission in medical course.

23. It is further submitted by Respondent No.1 that Petitioner is ineligible for seeking admission in MBBS Course on the basis of notification dated 13.05.2019 which was published in official Gazette on 14.05.2019 whereby the Graduate Medical Education Regulations, 1997 have been amended.

24. Learned Counsel for Respondent No.1 further submitted that Petitioner was never given admission in a medical college/Respondent No.3. In fact, he was just given a provisional allotment letter.

25. Learned counsel for Respondent further points out that as per the undertaking given by the Petitioner, the petitioner was to submit a fresh disability certificate. However, there is a breach of the undertaking given by

the Petitioner as the Petitioner could not provide a disability certificate which makes him entitled to get admission in a medical course. The Petitioner sought for extension on 21.11.2020 for a week. Even within this extended period of one week, Petitioner could not present the disability certificate and hence, admission of Petitioner was cancelled on 22.12.2020.

26. It is further submitted by counsel for Respondent No.1 that the prescribed cut off date for grant of admission in medical college is also over. The last date for grant of admission was 11.02.2021, in the facts of the present case, the admission has been closed by now. There is no vacancy in the medical college – Respondent No.3 and hence, no admission can be granted to the Petitioner in MBBS Course for the academic year 2020-21.

27. Counsel for Respondent No.1 has placed reliance upon the following decisions:-

- a) ***Rakshit Yadav vs. University College of Medical Sciences &Ors.*** **2019 SCC OnLine Del 10921**
- b) ***Anita Prakash Shinde vs.Union of India &Ors.*** **2021 SCC OnLine Bom 257**
- c) ***S. Amina vs. State of Kerala &Ors.*** **W.P.(C) 28457/2020** decided on 21.12.2020.
- d) ***Vidhi Himmat Kataria & Ors. vs. State of Gujarat &Ors.*** **(2019) 10 SCC 20.**

28. On the basis of the aforesaid decision, it is submitted by counsel for Respondent No.1 that no error has been committed by Respondents in cancelling the admission of the Petitioner vide communication dated 22.12.2020 and the notification issued by Respondents which is Annexure-F is just, proper, legal and valid because in MBBS Course both the hands of

the students must be intact, with intact sensation, and have sufficient strength and range of motion. Fingers must be functional and there must be sensation in fingers without which a doctor cannot work. Even a blood pressure cannot be measured without two working hands with the help of mercury instrument. Hence, this petition cannot be entertained by this Court.

29. Learned counsel appearing on behalf of Respondents No.2 to 4 have adopted arguments canvassed by counsel for Respondent No.1 and they have submitted that in view of the amended regulations, namely, Graduate Medical Education Regulations (Amendment), 2019 (**Annexure-F**) and looking to the disability certificate issued by Safdarjung Hospital, Petitioner is not eligible for getting admission in MBBS Course.

30. Moreover, they have further submitted that the medical admission process is already completed, there is no vacancy now with the Respondent No.3/Medical College and once the cut off date for admission is over, this petition cannot be entertained for granting admission at this stage to the Petitioner at Respondent No.3-College. There is no vacancy in PwD category or any other category for academic year 2020-21.

31. Learned Counsel for Respondents are also relying upon the decisions upon which counsel for Respondent No.1 has placed reliance. Additionally, they have also relied upon *Krishna Sradha vs. The State of Andhra Pradesh & Ors.* **(2019) SCC OnLine SC 1609.**

ANALYSIS AND REASONS:-

32. Having heard learned counsel for the parties and looking to the facts and circumstances of the case, we see no reason to entertain this writ petition mainly for the reason that the Petitioner is not entitled to get

admission in MBBS Course as per Graduate Medical Education Regulation (Amendment), 2019 whereby Regulations on Medical Graduate Education, 1997 has been amended.

33. Relevant portion of **Appendix – “H 1”** of Graduate Medical Education (Amendment), 2019 reads as under:-

“Guidelines regarding admission of students with “Specified Disabilities” under the Rights of Persons with Disabilities Act, 2016 with respect to admission in MBBS Course.

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).”**

S. No.	Disability Type	Type of Disabilities	Specified Disability	Disability Range		
				<u>Eligible for Medical Course, Not Eligible for PwD Quota</u>	<u>Eligible for Medical Course, Eligible for PwD Quota</u>	<u>Not Eligible for Medical Course</u>
1.	Physical Disability	A. Locomotor Disability, including	a. Leprosy cured person*	Less than 40% disability	40-80% disability Persons with more than	More than 80%

		Specified Disabilities (a to f).			<u>80% disability may also be allowed on case to case basis and their functional</u> competency will be determined with the aid of assistive devices, if it is being used, to see if it is brought below 80% and whether they possess sufficient motor ability as required to pursue and complete the course satisfactorily.	
			b. Cerebral Palsy**			
			c. Dwarfism			
			d. Muscular Dystrophy			
			e. Acid Attack victims			
			f. Others** * such as Amputation, Poliomye			

			litis etc.			
			<u>*Attention should be paid to loss of sensations in fingers and hands, amputation, as well as involvement of eyes and corresponding recommendations be looked at.</u> <u>** Attention should be paid to impairment of vision, hearing, cognitive function etc. and corresponding recommendations be looked at.</u> <u>*** Both hands intact, with intact sensations, sufficient strength and range of motion are essential to be considered eligible for medical course.</u>			

(emphasis supplied)

34. Petitioner was given provisional allotment letter dated 06.11.2020 (**Annexure-C**) by Respondent No.3. Looking to the provisional allotment letter dated 06.11.2020, the admission was made subject to Petitioner furnishing fresh disability certificate from designated institute/hospital as per Clause 5.2 of Information Bulletin of NEET(UG) – 2020. However, the Petitioner sought for extension on 21.11.2020 for a week. Even within this extended period of one week, Petitioner could not present the disability certificate and hence, admission of Petitioner was cancelled on 22.12.2020.

35. Petitioner provided disability certificate dated 30.12.2006 (**Annexure-D**) which was not accepted as such certificate should have been obtained from designated institutes/hospitals as per Clause 5.2 of Information Bulletin of NEET(UG) – 2020. Therefore, undertaking was given by the Petitioner on 11.11.2020 to the effect that Petitioner will submit fresh certificate of disability by 20.11.2020.

36. Thereafter, Petitioner had approached designated institutes/hospital, namely, Vardhman Mahavir Medical College and Safdarjung Hospital, New Delhi where disability certificate dated 18.11.2020 (**Annexure – E**) was issued to the Petitioner. In this certificate, nature of disability has been

mentioned and Petitioner is found **not eligible** for admission in MBBS Course.

37. As the aforesaid certificate was not in his favour, vide letter dated 21.11.2020, Petitioner wrote to Respondent No.3 College seeking extension of time for a week to submit the disability certificate. As Petitioner could not produce the disability certificate within the prescribed time, admission of the Petitioner was cancelled on 22.12.2020.

38. Looking to the medical certificate dated 18.11.2020 (**Annexure- E**), it appears that Petitioner is suffering from Congenital Deformity of Hypoplasia of Right Upper Limb with Shortening of Right Upper Arm & absence of the Right Upper Thumb and has Permanent Locomotor Disability of 44%.

39. As per Gazette notification dated 14.05.2019, Graduate Medical Education (Amendment) Regulations, 2019, a person with 40% - 80% disability can get admission provided both hands are intact with intact sensation, having sufficient strength and range of motion.

40. Thus, as per this amendment in the year 2019 in Graduate Medical Education Regulation, 1997, especially in **Appendix-“H-1”** thereof, there must be sensation in fingers or the fingers must be fully functional which is lacking in the case of the Petitioner as per the medical certificate dated 18.11.2020 issued by Safdarjung Hospital. Hence, no error has been committed by Respondents in cancelling the admission of Petitioner in MBBS Course vide communication dated 22.12.2020.

41. Looking to the Gazette Notification dated 14.05.2019 at **Annexure-F** to the memo of this petition whereby the Graduate Medical Education Regulation (Amendment), 2019 have been brought into force, it appears that

by no stretch of imagination, it can be said that the same is unreasonable or arbitrary nor the same is discriminatory in nature. For less than 40% disability, eligibility is attached with PwD quota provided both the hands of the candidate are intact with intact sensation and having sufficient strength and range of motion is also essential. Similarly, attention shall be paid to loss of sensation in fingers and hands amputation. If these factors are absent in locomotor disability including specified disability and having 40% - 80% disability, then only the candidate will be entitled to get admission in MBBS Course under PwD quota.

42. It ought to be kept in mind that doctors have to work with both hands. There must be sufficient strength in both hands and sensation must be intact. Nature of work to be performed by doctors requires sensation in both hands and both hands also must be intact with sufficient strength. Looking to the nature of work to be performed by them, this criteria has been amended as per Appendix –“H-1” as per Graduate Medical Education Regulation (Amendment), 2019.

43. A doctor cannot even measure blood pressure with the help of mercury instrument without both hands being intact. Even eyes, ears, nose and mouth cannot be examined without having torch in one hand and instrument in another hand by a doctor. All these aspects have been properly appreciated by the Board of Governors while bringing Graduate Medical Education Regulations (Amendment), 2019 in exercise of powers under Section 33 of the Indian Medical Council Act, 1956 and original Appendix -H of Regulations of Graduate Medical Education, 1997 has been substituted by Appendix-H-1 of Graduate Medical Education Regulations (Amendment), 2019. By no stretch of imagination, it can be said that

Appendix-H-1 of Graduate Medical Education Regulations (Amendment), 2019 is arbitrary, discriminatory or violative of the provisions of the Indian Medical Council Act, 1956.

44. In the case of *Vidhi Himmat Kataria & Ors. vs. State of Gujarat & Ors.* **(2019) 10 SCC 20**, Hon'ble Supreme Court in para-8 as under:-

“8. Now so far as the submission on behalf of the petitioners that while denying admission to the petitioners the State Government and/or authorities have not considered the relevant parameters and have not considered that the respective petitioners are able to perform well is concerned, it is required to be noted that in the present case all the expert bodies including the Medical Board, Medical Appellate Board and even the Medical Board of AIIMS, New Delhi consisting of the experts have opined against the petitioners and their cases are considered in light of the relevant essential eligibility criteria as mentioned in Appendix “H” — “Both hands intact, with intact sensation, sufficient strength and range of motion”. Therefore, when the experts in the field have opined against the petitioners, the Court would not be justified in sitting over as an appellate authority against the opinion formed by the experts — in the present case, the Medical Board, Medical Appellate Board and the Medical Board of AIIMS, New Delhi, more particularly when there are no allegations of mala fides.”

(emphasis supplied)

45. In the case of *Rakshit Yadav vs. University College of Medical Sciences & Ors.* **2019 SCC OnLine Del 10921**, a Division Bench of this Court in paragraphs- **41,42, and 44** held as under:-

“**41.** It is also significant to note that, in the above extracted para 16 of its judgment in *Vidhi Himmat Katariya*, the Supreme Court has also observed that

“even the candidates seeking admission in PWD quota are required to appear before the concerned Medical Board at the time of actually seeking admission and after NEET result is declared”. The Supreme Court has, thereby, lent its imprimatur to the requirement, of the candidate obtaining a Second Disability Certificate, after being selected on the basis of the NEET and before being actually admitted to the MBBS course. In view thereof, we are unable to accede to the submission, of Mr. Mariarputham, that the requirement of obtaining a second disability certificate, figuring as it does only in the Information Bulletin issued by the NTA, would not apply, as no such requirement is to be found in the RPWD Act, or in the 1997 Regulations, even as amended, though the submission is, otherwise, undoubtedly attractive. Equally, and for the same reason, we cannot countenance the submission, of Mr. Mariarputham, that the NTA was incompetent to issue the Information Bulletin, or that the Information Bulletin was valid of all legal sanctity. We may observe, incidentally, that there is no prayer, in this writ petition, for striking down, or declaring as illegal, any provision in the Information Bulletin issued by the NTA.

42. In para 17 of its report in *Vidhi Himmat Katariya*, the Supreme Court proceeds to hold that “when the experts in the field have opined against the petitioners, the Court would not be justified in sitting over as an appellate authority against the opinion formed by the experts – in the present case, the Medical Board, Medical Appellate Board and the Medical Board of AIIMS, New Delhi, more particularly when there are no allegations of mala fides.” We are of the opinion that these observations apply, with full force, to the facts of the present case. Though the petitioner does have, in her possession, a Disability Certificate, dated 24th April, 2016, issued by the Janakpuri Super Speciality Hospital, the certificate, dated 24th June, 2019, issued by the

designated authority – i.e. the VMMC Hospital – after selection of the petitioner to the MBBS course consequent to his clearing the NEET, certifies the petitioner was suffering from disability in excess of 80% and, consequently, ineligible for admission to the MBBS course. Though, applying the law laid down in ***Vidhi Himmat Katariya***, the petitioner would be ineligible to seek admission to the MBBS course, in view of the certificate dated 24th June, 2019, issued by the VMMC Hospital, we, in order to be fair to the petitioner, and with consent of parties, directed the petitioner to be examined by the AIIMS, which is a competent authority, to issue Certificates of Disability under the RPWD Act, as per the Circular dated 2nd May, 2019 supra, issued by the Health and Family Welfare Department, GNCTD. The result is no better as the report dated 18th October, 2019 of the AIIMS also certifies the petitioner to be suffering from “Monoparesis of left upper limb” with “85% disability in relation to the left upper limb”. The AIIMS has also come, on affidavit, to state that, in the condition in which the petitioner was placed, it is not possible to examine his case with the aid of assistive devices, and, in exercise of jurisdiction under Article 226 of the Constitution of India, we cannot discountenance this factual stand, as taken by the AIIMS. The petitioner does not allege mala fides on the part of any of the authorities which have examined and tested him, to assess the degree of his disability.

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44. As the case is fully covered by the judgment of the Supreme Court in ***Vidhi Himmat Katariya***, delivered by a Bench of 3 Hon^{ble} Judges of the Supreme Court just over two months ago, we do not deem it necessary to burden this judgment with reference to the other decisions, which were cited at the Bar.”

(emphasis supplied)

46. Bombay High Court in *Anita Prakash Shinde vs. Union of India & Ors.* 2021 SCC OnLine Bom 257 in paragraphs – **15, 16 and 17** held as under:-

“**15.** The case of Aswathy P., decided by Kerala High Court, was on an altogether different premise. There, the argument against the candidate applying for medical admission was that the candidate was suffering from a disability on account of causes mentioned in the residuary category ‘others’, particularly, cerebral palsy. The court held that so far as cerebral palsy was concerned, the requirement was only that the disability of the candidate should not be more than 80 per cent and the candidate should not be suffering from impairment of vision, hearing, cognitive function, etc. The candidate's impairment was not by reason of any locomotor disability, such amputation, poliomyelitis, etc; her impairment was on account of cerebral palsy, and she was within the acceptable range of disability without suffering from the stated impairments. Based on this assessment, the court directed the respondents to admit the petitioner to the MBBS course applied for by her. The facts of this case are altogether different. The Petitioner there was, far from challenging the regulation, imploring the authorities to act within the regulations; she was seeking admission on the basis of the regulation, and not by questioning its wisdom. As we have noticed above, the facts of our case are wholly distinguishable from the facts before the Kerala High Court in Aswathy P.'s case.”

16. Learned Counsel for the Petitioner submits that denial of admission to the Petitioner on account of her disability in the present case amounts to a discrimination prohibited both under Section 3 of the Rights of Persons with Disabilities Act, 2016 (“Disabilities Act”) and Article 19(1)(g) of the Constitution of India. There is no merit in this contention. Sub-Section (3) of Section 3 of the

Disabilities Act, which provides for the rule against discrimination, itself recognizes the permissibility of an act of discrimination which is a proportionate means of achieving a legitimate aim. It is a legitimate aim to achieve excellence in the study and practice of medicine, which involves basics of surgery, commensurate with the rights of disabled persons to study and practice medicine. For achieving this aim, laying down of categories of disability and providing for different ranges within which individuals with disabilities shall be allowed access to medical education can surely be described as proportionate means to achieve that aim. So far as the disability of amputation is concerned, the guidelines provide for three different ranges of disability, namely, (i) upto 40 per cent, (ii) 40 per cent and 80 per cent and (iii) above 80 per cent. Disability upto 40 per cent entitles the candidate to undertake the course, but not through PwD quota; Disability between 40 per cent and 80 per cent allows admission to the course and through PwD quota; on the other hand, disability of over 80 per cent has to be considered on a case by case basis for admission to medical course through PwD quota. For all three ranges, however, there is a uniform condition of both hands being intact, with intact sensation, sufficient strength and range of motion, for eligibility to undertake the course. This arrangement clearly amounts to a proportionate means of achieving the aforesaid legitimate aim.

17. Article 19(1)(g), which provides for the citizens' right to practice any profession, or to carry on any occupation, is also subject to reasonable restrictions generally imposed by the State by making a law, in the interests of the general public and particularly, by prescribing professional and technical qualifications necessary for practicing any profession or carrying on any occupation. Prescribing professional and technical qualification of a degree in medicine and eligibility criteria for enrolling

for a degree course do come within these permissible restrictions.”

(emphasis supplied)

47. Kerala High Court in *S. Amina vs. State of Kerala & Ors.* W.P.(C) 28457/2020 decided on 21.12.2020, held as under:-

“11. Regarding the contention as to the authority of the medical board to examine the suitability of the candidate with disability, it is necessary to have a look at Clause 5.3 of the prospectus which reads as follows:

“5.3 preservation for persons with disability (PD):
5% of the seats available to State for allotment from the State rank list is reserved for candidates with benchmark disabilities for all courses in government / aided colleges as stipulated in Section 32, chapter VI of the Persons with Disabilities Act 2016. As per clause 2 (r) chapter 1 of the Act, 'Persons with benchmark disability' means a person with not less than 40% of the 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.

Generally, candidates who have a minimum of 40% disability alone will be eligible to apply for this quota. Candidates seeking admission to medical courses (except BHMS course) will have to satisfy the eligibility criteria prescribed by the Central Council of Homoeopathy. (See Annexure XXIV).

For claiming reservation under PwD category, certificate of disability from the district medical board certifying the percentage of degree of disability has to be produced before the state medical board at the time of medical verification.

The certificate of disability from the district medical board must be produced at the time of medical verification. No document/certificate is to be uploaded to the online application.

The state medical board constituted by the government under the chairmanship of DME consisting of medical experts in General Medicine, ENT, Neurology, Orthopaedic Surgery, Ophthalmology, Psychiatry and Physical Medicine and Rehabilitation, will examine the degree of physical disability of the candidates who are provisionally included in this category. The State Medical Board will have powers to review a certificate issued by the District Medical Board.

A State-Level Committee constituted by the Government under the Chairmanship of the Commissioner for Entrance Examinations consisting of the members in the medical board constituted under the chairmanship of DME, special invitees representing Engineering/ Pharmacy /Medical/ Agriculture/ Veterinary/ Forestry / Fisheries specialists will take a final decision on the eligibility of a candidate for PWD quota as per the criteria fixed by various Central Councils and the suitability of the candidate to study a particular course applied by him / her. Necessary orders constituting the State-Level Committee and State Medical Board will be issued by Government in due course and the same will be notified.

Only those candidates who are having a minimum 40% of any disability and found to be physically suitable by them for the courses opted by the candidates will be chosen for a course as only the

physically fit can undergo the rigors of a professional course. The recommendations of the State-Level Committee will be binding on the candidates. The selection of candidates under this category will be based on merit in the entrance examination and physical suitability and not on the basis of the degree of disability. Commissioner for Entrance Examinations will prepare and publish the list of candidates eligible for PWD quota based on the recommendations of State-Level Committee.”

The assessment is made in accordance with the Graduate Medical Education Regulations, 1997 issued by the MCI. Regulation 4(3) as amended by Amendment regulations 2019 notified in gazette of India dated 05.02.2019 provide for reservation of 5% seats in Government and aided higher educational institutions for candidates with benchmark disabilities in accordance with the provisions of the Rights of Persons with Disabilities Act 2016, based on the merit list of NEET. For this purpose, specified disability contained in the schedule to the Right of Persons with Disabilities Act 2016 is annexed in Appendix G and the eligibility of candidates to pursue a course in Medicine with specified disability shall be in accordance with Appendix H. Appendix H was substituted by Appendix H1 as per amendment Regulation notified in the Gazette of India dated 14.05.2019, which provides for the guidelines regarding admission of students with disabilities under the Rights of Persons with Disabilities Act 2016 for admission to MBBS course. Note 1 to 3 in Appendix H1 read as follows:

“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 (the Divyangjan)] on 15 June 2017.

2. The extent of 'specified disability' in any person shall be assessed in accordance with the "Guidelines for the purpose of assessing the extent of 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 (the 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."

Under Appendix H1 of the Regulations (Ext.P9), a candidate with locomotor disability of 40% to 80% is 'eligible for medical course and eligible for reservation under PwD.' The specified disability of the petitioner would come under "f. others***" such as amputation, Poliomyelitis, etc". The 3 asterisks for the others is explained as "***Both hands intact, with intact sensations, sufficient strength and range of motion are essential to be considered eligible for medical course."

12. As per Section 32 of the Right of Persons with Disabilities Act 2016, 5% reservation is admissible for persons with 'benchmark disabilities' in institutions of Higher Education. 'Persons with benchmark disability' is defined under Section 2(r) of the Right of Persons with Disabilities Act, 2016 as a person with not less than forty per cent 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, ascertained by the certifying authority. 'Specified disability' is defined under Section 2(zc) of the 2016 Act as disabilities as specified in the Schedule.

13. In this context, it is relevant to note the judgment of the Apex Court in *Vidhi Himmat Katariya v. State of Gujarat*: (2019) 10 SCC 20, while it was considering the cases where persons with locomotor disability claimed admission in accordance with the regulations which were in force prior to 2019 amendment. It is relevant to note the contentions raised by MCI in that case relating to the incorporation of Appendix H in the regulations, as observed in para.5 of the judgment:

“5. xxxxx It is submitted that MCI while dealing with the issue of persons with disability had formed an independent Expert Committee comprising of eminent doctors in various specialties. It is submitted that the amendments made in the Graduate Medical Regulations, 1997 vide MCI Notification dated 4-2-2019 are in accordance with the report/recommendations furnished by an independent expert committee headed by the Director, AIIMS, New Delhi.

5.1. It is further submitted by the learned counsel appearing on behalf of Board of Governors that a medical student pursuing MBBS course after becoming a doctor will be treating humans and it is very essential that a student is able to acquire the necessary skill and expertise during the MBBS course. It is submitted that Regulation 4(3) has been substituted in the Graduate Medical Education Regulations, 1997 vide MCI Notification dated 4-2-2019, whereby it is provided that 5% of the seats shall be reserved for “persons with benchmark disability” as specified under the

2016 Act. It is submitted that the substituted Regulation 4(3) further provides that the specified disability given in the Schedule to 2016 Act is adopted and incorporated in Appendix “H” to the Regulations. It is submitted that it further provides that the eligibility of the persons with specified disability to pursue course in medicine has to be dealt with in accordance with Appendix “H” — Guidelines regarding admission of students with “specified disabilities” under the 2016 Act with respect to admission in MBBS course.”

The Apex Court did not grant any relief to the petitioners therein as it found that experts in the field had found them not eligible in accordance with the eligibility criteria contained in Appendix H. The dictum laid down therein squarely applies to the present case.

14. As contended by Sri. Manu, the learned Senior Government Pleader in the judgment in W.P.(C).No.16743/2019, this Court while considering a similar case where the assessment of suitability by the medical board was challenged, repelled their claim taking note of the introduction of Appendix H1 by way of amendment regulations of 2019, by which the authorities are enabled to assess the suitability of the candidates. The said judgment was upheld by a Division Bench of this Court in W.A.No.1694 of 2019.

15. Therefore, when the competent authority with expertise in the field has assessed the disability as well as the suitability of the petitioner in accordance with the provisions in the Regulations as well as the prospectus and the orders issued by the Government, this Court is not expected to sit in appeal over it.”

(emphasis supplied)

48. In view of the aforesaid decisions and looking to the disability

certificate dated 18.11.2020 issued by designated institute/hospital, that is, Safdarjung Hospital, Petitioner is not eligible for taking admission in MBBS Course as he is suffering from Congenital Deformity of Hypoplasia of Right Upper Limb with Shortening of Right Upper Arm & absence of the Right Upper Thumb and has Permanent Locomotor Disability of 44%.

49. Much has been argued out by counsel for the Petitioner that disability certificate issued by Safdarjung Hospital may be amended by this Court. It ought to be kept in mind that this Court is not sitting in appeal against the medical opinion given by the designated institute/hospital. Medical opinion has been given by Board of Doctors after examining the Petitioner and they are experts in the subject. Hence, we see no reason, not to accept the medical certificate issued by the designated hospital dated 18.11.2020 (Annexure – E to the memo of this petition).

50. It has been held by Hon'ble Supreme Court in the case of *Vidhi Himmat Kataria (Supra)*, in paragraph –8, as under:-

“8. Now so far as the submission on behalf of the petitioners that while denying admission to the petitioners the State Government and/or authorities have not considered the relevant parameters and have not considered that the respective petitioners are able to perform well is concerned, it is required to be noted that in the present case all the expert bodies including the Medical Board, Medical Appellate Board and even the Medical Board of AIIMS, New Delhi consisting of the experts have opined against the petitioners and their cases are considered in light of the relevant essential eligibility criteria as mentioned in Appendix “H” — “Both hands intact, with intact sensation, sufficient strength and range of motion”. Therefore, when the experts in the field have opined against the petitioners, the Court would not be justified in sitting over as an

appellate authority against the opinion formed by the experts — in the present case, the Medical Board, Medical Appellate Board and the Medical Board of AIIMS, New Delhi, more particularly when there are no allegations of mala fides.”

(emphasis supplied)

51. When doctors are examining the Petitioner and is observing in the certificate about the nature of disability and the percentage of disability, there is no need to further opportunity of being heard to be given to the Petitioner. We have no reason to disbelieve the opinion given by the Board of Doctors of the designated institute/hospital. There is no personal malice alleged against the doctors who have issued the certificate.

52. As has been submitted by the counsel for the Respondents including counsel for Respondent No.3 that now the admission process for academic year 2020-21 in MBBS Course is over. Once the medical admission process is over and the cut off date is also over, we see no reason to extend the cut off date and to allow the Petitioner to get admission in MBBS Course. In the facts of the present case, the cut off date for admission in MBBS Course for academic year 2020-21 was 11.02.2021.

53. The Supreme Court has time and again emphasised that the cut-off dates for admission in medical courses are mandatory and cannot be relaxed. Reference in this connection may be made to the judgments in *State of Bihar & Ors. vs. Dr. Sanjay Kumar Sinha & Ors.* (1990) 4 SCC 624 and *Priya Gupta vs. State of Chhattisgarh & Ors.* (2012) 7 SCC 433. The following observations in *Priya Gupta* are particularly instructive:

“38. From the above discussion and reference to various judgments of this Court, it is clear that adherence to the principle of merit, compliance with the prescribed

schedule, refraining from midstream admissions and adoption of an admission process that is transparent, non-exploitative and fair are mandatory requirements of the entire scheme.

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40. The schedules prescribed have the force of law, inasmuch as they form part of the judgments of this Court, which are the declared law of the land in terms of Article 141 of the Constitution of India and form part of the Regulations of the Medical Council of India, which also have the force of law and are binding on all concerned. It is difficult to comprehend that any authority can have the discretion to alter these schedules to suit a given situation, whether such authority is the Medical Council of India, the Government of India, State Government, university or the selection bodies constituted at the college level for allotment of seats by way of counselling.

We have no hesitation in clearly declaring that none of these authorities are vested with the power of relaxing, varying or disturbing the time schedule, or the procedures of admission, as provided in the judgments of this Court and the Medical Council of India Regulations.

41. Inter alia, the disadvantages are:

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(3) The delay in adherence to the schedule, delay in the commencement of courses, etc. encourage lowering of the standards of education in the medical/dental colleges by shortening the duration of the academic courses and promoting the chances of arbitrary and less meritorious admissions.

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46.6. All admissions through any of the stated selection processes have to be effected only after due publicity and in consonance with the directions issued by this Court. We vehemently deprecate the practice of giving admissions on 30th September of the academic year. In fact, that is the date by which, in exceptional circumstances, a candidate duly selected as per the prescribed selection process is to join the academic course of MBBS/BDS. Under the directions of this Court, second counselling should be the final counselling, as this Court has already held in *Neelu Arora v. Union of India* [(2003) 3 SCC 366] and third counselling is not contemplated or permitted under the entire process of selection/grant of admission to these professional courses.

46.7. If any seats remain vacant or are surrendered from all-India quota, they should positively be allotted and admission granted strictly as per the merit by 15th September of the relevant year and not by holding an extended counselling. The remaining time will be limited to the filling up of the vacant seats resulting from exceptional circumstances or surrender of seats. All candidates should join the academic courses by 30th September of the academic year.

46.8. No college may grant admissions without duly advertising the vacancies available and by publicising the same through the internet, newspaper, on the notice board of the respective feeder schools and colleges, etc. Every effort has to be made by all concerned to ensure that the admissions are given on merit and after due publicity and not in a manner which is ex facie arbitrary and casts the shadow of favouritism.

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(emphasis supplied)

“33. In light of the discussion/observations made hereinabove, a meritorious candidate/student who has been denied an admission in MBBS Course illegally or irrationally by the authorities for no fault of his/her and who has approached the Court in time and so as to see that such a meritorious candidate may not have to suffer for no fault of his/her, we answer the reference as under:

(ii) Under exceptional circumstances, if the court finds that there is no fault attributable to the candidate and the candidate has pursued his/her legal right expeditiously without any delay and there is fault only on the part of the authorities and/or there is apparent breach of rules and regulations as well as related principles in the process of grant of admission which would violate the right of equality and equal treatment to the competing candidates and if the time schedule prescribed - 30th September, is over, to do the complete justice, the Court

under exceptional circumstances and in rarest of rare cases direct the admission in the same year by directing to increase the seats, however, it should not be more than one or two seats and such admissions can be ordered within reasonable time, i.e., within one month from 30th September, i.e., cut off date and under no circumstances, the Court shall order any Admission in the same year beyond 30th October. However, it is observed that such relief can be granted only in exceptional circumstances and in the rarest of rare cases. In case of such an eventuality, the Court may also pass an order cancelling the admission given to a candidate who is at the bottom of the merit list of the category who, if the admission would have been given to a more meritorious candidate who has been denied admission illegally, would not have got the admission, if the Court deems it fit and proper, however, after giving an opportunity of hearing to a student whose admission is sought to be cancelled.”

(emphasis supplied)

55. In view of the aforesaid decision, once the admission process for the MBBS Course is over and the cut off date has also gone by now for the academic year 2020 – 21, we see no reason to extend the said cut off date as the same is not permissible in view of the aforesaid decision. Hence, also Petitioner is not entitled to get admission in MBBS Course.

56. Looking to the peculiar facts of the present case, namely,

- (a) Petitioner is seeking admission in PwD quota but as per the medical certificate issued by the designated institute, that is, Safdarjung Hospital dated 18.11.2020, he is not eligible for getting admission in MBBS Course;
- (b) We are not sitting in appeal against the opinion of medical board which has given their opinion dated 18.11.2020.

(c) Cut off date for getting admission in MBBS Course is over

Hence, the case of the Petitioner is different from the facts of the cases upon which reliance is placed by counsel for Petitioner and hence, those judgments are not helpful to the case of the Petitioner.

57. In view of the aforesaid facts, reasons and judicial pronouncements, no error has been committed by the Respondents in cancelling the admission of the Petitioner vide communication dated 22.12.2020 and we see no reason to quash the notification published in official Gazette on 14.05.2019 whereby the Graduate Medical Education Regulation (Amendment), 2019 has been brought into effect and Appendix – “H 1” has been substituted in Regulation of Graduate Medical Education, 1997.

58. Writ petition is, accordingly, dismissed along with the pending applications.

CHIEF JUSTICE

AMIT BANSAL, J

SEPTEMBER 28, 2021

‘anb’