

13 03.11.2022
Sc Ct. no.22

WPA 23259 OF 2022
with
I.A. No. CAN 1 OF 2022

Synthia Das

Vs.

Union of India & Ors.

Mr. Biswaroop Bhattacharya
Mr. Vivekananda Bose
Mr. Avik Ghatak
Mr. Soham De Dhara
Mr. Ratikanta Pal.

....For Petitioner

Mr. Asok Kumar Chakrabarty
Mr. Indrajeet Dasgupta.

....For Respondent
Nos. 1 to 5/UOI

Mr. Himadri Sikhar Chakraborty
Mr. Hara Krishna Halder.

....For Respondent
Nos. 7, 8 & 9/State

Mr. Indranil Roy
Mr. Sunit Kr. Roy.

....For Respondent
Nos. 10 & 11 /National
Medical Commission

Affidavit-of-service filed in Court today, is taken on record. Supplementary affidavit, affirmed on October 28, 2022 filed on behalf of the petitioner, is also taken on record.

Mr. Vivekananda Bose led by Mr. Biswaroop Bhattacharya, learned counsel appear on behalf of the petitioner.

Mr. Ashok Kumar Chakrabarty, learned senior counsel and learned Additional Solicitor General represents the respondent nos. 1 to 5.

Mr. Himadri Sikhar Chakraborty, learned counsel represents the respondent nos. 7, 8 and 9.

Mr. Indranil Roy, learned counsel appears on behalf of the respondent no.10 and 11.

The writ petitioner is an intending candidate to pursue her MBBS course. She appeared in the ***National Eligibility cum Entrance Test (NEET – UG), 2022 Examination*** (for short NEET).

The petitioner intends to avail of the specified ***Quota for the Persons with Disabilities***. The petitioner claims that congenitally she has been suffering disabilities which is within the permitted range as per the guidelines framed by the then ***Medical Council of India***, presently, the respondent no.10. The State policy framers, on the basis of a comprehensive report regarding the guidelines of admission of persons with specified disabilities in the medical courses, ***Annexure-P5*** to the writ petition, framed the relevant guidelines which were published in the ***Gazette of India*** on ***February 5, 2019, Annexure-P7*** to the writ petition. Subsequently the said guidelines were amended and published in the official gazette on ***May 14, 2019, Annexure-P8*** to the writ petition.

The parties appearing before this Court agreed and were *ad idem* that the said guidelines, ***Annexure-P8*** to the writ petition, is prevailing and governing the case of the petitioner.

The relevant provisions as provided under **Clause 4** of the said prevailing guidelines, are quoted below :

“4. The term ‘Persons with Disabilities’ (PwD) is to be used instead of the term ‘Physically Handicapped’ (PH)

Sl.	Disability Type	Type of Disabilities	Specified Disabilities	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. Locomotor Disability.	a. Leprosy cured person*	Less than 40% disability	40-80% disability	More than 80%	
		Including Specified Disabilities (a to f).	b. Cerebral Palsy**				
			c. Dwarfism				
			d. Muscular				
			e. Acid attack victims				
			f. Others*** such as Amputation, Poliomyelitis, etc.				
			* 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. ** Attention should be paid to impairment of vision, hearing, cognitive function etc. and corresponding recommendations be looked at. *** Both hands intact, with intact sensations, sufficient strength and range of motion are essential to be considered eligible for medical course				
		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				
		C. Hearing Impairment @	a. Deaf	Less than 40% Disability		Equal to or more than 40% Disability	
			b. Hard of hearing				
		(*) Persons with Visual impairment/visual disability of more than 40% may be made eligible to pursue Graduate Medical Education and may be given reservation, subject to the condition that the visual disability is brought to a level of less than the benchmark of 40% with advanced low vision aids such as telescopes/magnifier ets. @ Persons with hearing disability of more than 40% may be made eligible to pursue Graduate Medical Education and may be given reservation, subject to the condition that the hearing disability is brought to a level of less than the benchmark of 40% with the aid of assistive devices. In addition to this, the individual should have a speech discrimination score of more than 60%					
		D. Speech & language disability\$	Organic/neurological causes	Less than 40% Disability		Equal to or more than 40% Disability	
		\$ It is proposed that for admission to MBBS course the Speech Intelligibility Affected (SIA) score shall not exceed 3 (Which will correspond to less than 40%) to be eligible to pursue the MBBS course. The individuals beyond this score will not be eligible for admission to the MBBS course. Persons with an Aphasia Quotient (AQ) upto 40% may be eligible to pursue MBBS course but beyond that they will neither be eligible to pursue the MBBS course nor will they have any reservation.					
2.	Intellectual disability		a. Specific learning disabilities (Perceptual disabilities, Dyslexia, Dyscalculia, Dyspraxia & Developmental aphasia)#	# currently there is no Quantification scale available to assess the severity of SpLD, therefore the cut-off of 40% is arbitrary and more evidence is needed.			

				Less than 40% Disability	Equal to or more than 40% disability – But selection will be based on the learning competency evaluated with the help of the remediation/ assisted technology/a ids/infrastru ctural changes by the Expert Panel	More than 80% or severe nature or significant cognitive/int ellectual disability
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The aforesaid provision of the said guidelines made a candidate eligible with certain physical disabilities and limitations to pursue his/her admission in the medical course.

The relevant **Certificate of Disability** for NEET admission was issued in favour of the petitioner dated October 6, 2022, **Annexure-P3** to the writ petition. The relevant portion from the said **Certificate of Disability** is quoted below :

“Conclusion: Based on quantification of Disability **The Candidate is not eligible to pursue medical** course (as per NMC norms).

The Disability Certification Board certifies that the candidate is Not Eligible for admission in Medical/Dental courses and to avail 5% PwD reservation as per the NMC/MCI Gazette Notification.

If ‘Not Eligible’ the reason for the same is : Congenital Absence of fingers of right hand. Both hands not intact. Not eligible for Medical course as per NMC.”

The said certificate shows that the petitioner was with certain physical disability, the ‘**Type of Disability**’ was mentioned as “**Locomotor Disability**”. The

'Specified Disability' was mentioned as "Others" and the 'Disability %' was mentioned as "45".

Mr. Vivekananda Bose, learned counsel appearing for the writ petitioner submitted that from a reading of the said **Certificate of Disability** it would be clearly demonstrated that it was a result of a mechanical approach on the part of the experts of doctors who issued the said certificate by observing that "**Both hands not intact**". Placing reliance upon various clauses and provisions of the said comprehensive report regarding the guidelines for admission of persons with specified disabilities in the medical courses, **Annexure-P5** to the writ petition, he strenuously argued that the intention of the policy framers was to promote the physically disabled candidates for pursuing medical courses and as such upon careful consideration of every factor by the body of medical experts, the said comprehensive report was prepared mentioning the extent of disabilities with which a disabled candidate would be eligible to pursue his/her medical course. He submitted that on the basis of the said comprehensive report, the relevant guidelines were framed by the policy framers of the State, **Annexure-P8** to the writ petition.

He then submitted that to ascertain the case of the petitioner as to her eligibility as a disabled candidate to pursue the medical course, the relevant provisions laid down in the said guidelines should be meaningfully taken

into consideration and not in a mechanical manner. If a meaningful consideration is given, then the petitioner with **45%** disability and with the nature of disability on her upper limb ought to have been considered for admission under the ***physically disabled category*** in the medical course.

Mr. Bose, learned counsel then submitted that a meaningful reading of the provisions mentioned in the said guidelines would show that the relevant ***Certificate of Disability, Annexure-P3*** to the writ petition was prepared mechanically and without any application of mind.

The writ petitioner in the above facts and circumstances filed the instant writ petition with the following prayers:

“a. Leave be granted to the petitioners dispensing compliance with the formalities contemplated under Rule 26 of the Rule framed by this Hon’ble Court relating to applications under Article 226 of the constitution of India;

b. A writ of and/or in the nature of Mandamus do issue directing the respondent authorities, more specifically the respondents no.12 and 13 to cancel/rescind/withdraw/set aside the Certificate dated 6th October, 2022 (being AnnexureP/3 herein) insofar as it declares the petitioner as not eligible for admission in medical/dental course and to avail 5% PwD reservation as per the NMC/MCI Gazette Notification without any delay whatsoever’;

c. A writ of and/or in the nature of Mandamus do issue directing the respondents, more specifically the respondents no. 5, 9, 12 and 13 not to act in terms of and/or to take any step and/or further step on the basis of the Certificate dated 6th October, 2022 (being

Annexure P/3 herein) insofar as it declares the petitioner as not eligible for admission in medical/dental course and to avail 5% PwD reservation as per the NMC/MCI Gazette Notification;

d. A writ of or in the nature of Mandamus do issue directing the respondents, more specifically the respondent no.13 and/or any other such authority as this Hon'ble Court may deem fit and proper to appropriately examine the petitioner and issue appropriate certificate in terms of the Notification dated 13th May, 2019 (being Annexure P/8 herein) read with the report dated 5th June, 2018 (being Annexure P/5 herein) without any delay whatsoever;

e. A writ of or in the nature of Mandamus do issue directing the respondents, more specifically the respondent authorities to allow the petitioner to participate in the counselling for admission in medical/dental courses for the session 2022-2023 and further to admit the petitioner in such course in an institute of her choice;

f. A writ of or in the nature of Certiorari commanding the respondent authorities to transmit to this Hon'ble Court all documents/records/papers, pertaining to the instant case and forming the basis of the impugned certificate dated 6th October 2022 being Annexure P/3 herein in so far as the same declares the petitioner not eligible for admission in medical/dental course and to avail 5% PwD reservation as per the NMC/MCI Gazette Notification so that the same may be certified, and on being so certified, quash the same so that conscionable justice is rendered;

g. Rule NISI in terms of prayer (b) to (f) above;

h. An interim order do issue directing the respondents, more specifically the respondent no.5 and 9 to allow the petitioner to participate in the counselling for enrolment in medical/dental course for the session 2022-2023 during the pendency of the instant writ petition;

i. In the alternative, an interim order do issue directing the respondent nos. 5 and 9 to keep vacant one seat in the medical/dental

course pertaining to session 2022-2023 during the pendency of this writ petition;

j. Ad-interim orders in terms of prayers (h) and (I) above;

k. Such other and/or further order/orders and/or direction/directions as your Lordships may deem fit and proper.”

Upon the said writ petition being moved an interim order was passed by a coordinate Bench on October 14, 2022 directing as an interim measure that the respondent authorities, particularly the respondent nos. 5 and 9 shall keep **one seat** vacant in the medical course for the relevant session of 2022-23 during pendency of the writ petition. Subsequently, the writ petition was again moved before the Vacation Bench and an order was passed by a coordinate Bench on October 21, 2022 with a direction to allow the petitioner to participate in the procedure those were proposed to be held on October 28, 2022 pursuant to the tentative schedule for **NEET UG 2022** dated October 18, 2022 and the petitioner was allowed to submit her registration and online payment of fees for the same and it was specifically directed that such order would not create any right or equity in her favour.

Mr. Vivekananda Bose, learned counsel in support of his contention that the case of the petitioner may be sent for further verification by the Medical Board had relied upon a decision of the **Hon’ble High Court of Judicature at Bombay Bench at Aurangabad, In the**

matter of : Writ Petition No.10661 of 2022, Ajinkya Ankush Budle –vs.- The Government of India through Director General of Health and Others.

The decision relied upon on behalf of the petitioner in the matter of **Ajinkya Ankush Budle** (supra) was an interim order. There also a specific direction was made by the Court that no equity would be created in favour of the writ petitioner. Inasmuch as the writ petition there, was also fixed for final hearing and the fate is not known to this Court.

Since this writ petition is being taken up for final disposal by consent of the parties, the interim order passed in the matter of **Ajinkya Ankush Budle** (supra) would not have any binding effect before this Court.

The learned Additional Solicitor General appearing for the respondent nos. 1 to 5 submitted that an interlocutory application has been filed being **CAN 1 of 2022** which has also been taken up for hearing today seeking modification of the order dated October 21, 2022. The contention of the writ petitioner was in the said application that she was not allowed to participate in the admission process under the Persons with Disabilities Category but was asked to compete the admission process under the “General Category” despite she being a person with disabilities, as stated above. However, the writ petitioner in support of his contention relied upon a

letter dated October 26, 2022, **Annexure-P13** to the said interlocutory application.

The learned Additional Solicitor General submitted that it was a case made out from the Bar and no such communication has ever been disclosed before this Court neither any such communication was sought to be brought on record which was issued by the admission authority or the Medical Council in support of the contention of the writ petitioner.

The learned Additional Solicitor General further submitted that the writ petition is devoid of any merit and unnecessarily under the said interim orders one valuable seat is kept set apart. The writ petition may be dismissed at this stage. It was also submitted that the petitioner had also not registered herself with the **Central Medical Counselling Committee**.

Mr. Indranil Roy, learned counsel appearing for the respondent nos. 10 and 11 heavily relied upon the prevailing guidelines being **Anneure-P8** to the writ petition and drew attention of its various provisions before this Court. Relying upon such provisions he submitted that a candidate suffering from some physical disabilities like the petitioner can definitely pursue his/her medical course subject to he/she comes within the scope and ambit of such a candidate specified under the said guidelines. Relying on **Clause 4** and the schedule set out thereunder he submitted that a

candidate ***Both hands are intact, with intact sensations, sufficient strength and range of vision are essential to be considered eligible for medical course.***

Referring to the said ***Certificate of Disabilities, Annexure-P3*** to the writ petition he submitted that the petitioner's both hands are not intact as was observed and found by the appropriate medical experts who had physically verified the petitioner and then issued the said Certificate.

Relying upon the said document, ***Annexure-P3*** to the writ petition read with the prevailing guidelines as stated above, Mr. Roy submitted that when there is a specific report prepared by the relevant experts on the subject, the Court cannot re-assess the same. In support, he relied upon a judgment of the Hon'ble Supreme Court in the matter of ***Vidhi Himmat Katariya & Ors. -vs.- State of Gujarat and Ors., reported at (2019) 10 SCC 20.***

Mr. Roy concluded his submissions with a specific prayer for dismissal of this writ petition and submitted that the existence of the said interim order in such a writ petition which is otherwise wholly devoid of any merit creates prejudice to the genuine and eligible candidates who wish to pursue their medical course and are covered under the said prevailing guidelines with some physical disabilities.

After considering the rival contentions of the parties and on perusal of materials on record, this Court is of the firm opinion that the said guidelines, **Annexure-P8** to the writ petition will prevail on the issue. The said guidelines have not been challenged in any manner by the writ petitioner. The writ petitioner had challenged the said **Certificate of Disabilities, Annexure-P3** to the writ petition. On a perusal of the averments made in the writ petition and after hearing the parties at length without relying upon any further document beyond the record of this proceeding, it also appears to this Court that, the challenge thrown to the said **Certificate of Disabilities** is subjective in nature which was prepared by the concerned medical experts upon physical verification of the petitioner. On a conjoint reading of the said opinion of the experts appearing from the said **Certificate of Disability** and the provisions laid down in the prevailing guidelines for admission, it appears to this Court that there was no element of *malice* attached while issuing the said **Certificate of Disability** by the medical experts. It is also the settled provision of law that an opinion of an expert on the subject cannot be reassessed by a writ court unless *prima facie* and *ex facie* there is an element of *malice* attached with it. In the case in hand such is not the case of the writ petitioner. The writ court cannot sit on appeal for reassessment of an expert's opinion. Inasmuch as, the finding in the said **Certificate**

of Disability of the medical experts were in sync with the said prevailing guidelines as quoted above. Thus, this Court is of the firm opinion that, there is no scope for any interference by this Court with the finding of the medical experts appearing in the said **Certificate of Disability** of the petitioner.

In the matter of **Vidhi Himmat Katariya** (supra), the Hon'ble Supreme Court has observed 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 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.

9. In view of the above and for the reasons stated above, the present petitioners are not entitled to the reliefs as prayed. Hence, all the writ petitions filed under Article 32 of the Constitution of India deserve to be dismissed and are accordingly dismissed. However, in the facts and circumstances of the case, there shall be no order as to costs.”

The identical provision of the guidelines was under consideration before the Hon'ble Supreme Court in the matter of ***Vidhi Himmat Katariya*** (supra).

Considering the urgency involved in this writ petition as submitted by the parties, the writ petition along with its interlocutory application is taken up for final disposal today and is dealt with accordingly.

In view of the foregoing discussions and reasons this writ petition ***WPA 23259 of 2022*** with its connected application, ***I.A. No. CAN 1 of 2022*** both stand dismissed, without any order as to costs.

It is needless to mention that the interim orders passed in this writ petition consequently stand vacated.

Photostat certified copy of this order, if applied for, be furnished expeditiously.

(Aniruddha Roy, J.)