

**IN THE HIGH COURT AT CALCUTTA  
CONSTITUTIONAL WRIT JURISDICTION  
APPELLAE SIDE**

**Present:-**

**Hon'ble Mr. Justice Aniruddha Roy**

**W.P.A. 23056 of 2022**

**With**

**W.P.A. 23203 of 2022**

**With**

**W.P.A. 24186 of 2022**

**Ankur Manna**

**Vs.**

**The State of West Bengal & Ors.**

**For the petitioner:**

**Mr. Kallol Basu, Adv.,  
Mr. Suman Banerjee, Adv.,  
Mr. S. Sarkar, Adv.**

**For respondent nos. 1 to 3:**

**Mr. Swapan Kumar Datta, Adv.,  
Mr. Rajat Datta, Adv.**

**For respondent nos. 4 and 5:**

**Mr. Sirsanya Bandyopadhyay, Adv.,  
Mr. Arka Kumar Nag, Adv.**

**For National Medical Commission:**

**Mr. Indranil Roy, Adv.,  
Mr. Sunit Kumar Roy, Adv.**

**Reserved on:**

**22.11.2022**

**Judgment on:**

**28.11.2022**

**ANIRUDDHA ROY, J.:**

1. This cluster of writ petitions are interrelated. The issues involved in these writ petitions **pertain to reservation of seats for the persons with physical disabilities** in respect of the ***National Eligibility Cum Entrance Test- Post Graduation, 2022*** (for short, the said Entrance Test) being conducted on All

India Basis by the National Board of Examinations for Post Graduate Medical Courses.

**Facts:-**

2. 50% seats of all Post Graduate Medical Courses under the said Entrance Test are filled up by way of counseling conducted by Medical Council Committee on All India basis which are called the **All India Seats** and the rest are filled up by way of counseling conducted by the State Authorities which are called **State Quota Seats**. The result of the said entrance examination was declared. The petitioner secured the rank as **71356**. Since the petitioner did not serve in rural, remote and difficult areas, he was not eligible to the reservation provided for the **In-Service Doctors**. However, he was eligible to participate in the counseling in the open category.
3. The petitioner suffers from **Deltoid Paralysis** at his **left arm**. This is a left upper limb disability. This locomotor disability of the petitioner was assessed being **50%** by the appropriate authority, **Annexure P-2** to the writ petition. With the said disability the petitioner was eligible to avail of the reservation provided for the **persons with disabilities**. In the counseling process for admission for the Post Graduate Medical Courses for previous year the petitioner participated under the physically handicapped (PH) category.
4. On September 21, 2022 the respondent no.4 issued the notification for counseling, with the time schedule mentioned therein, **Annexure P-3** to the writ petition. On September 27, 2022 the respondent authority issued the **seat**

**matrix** for counseling process for the State Quota, **Annexure P-4** to the writ petition.

5. From the said seat matrix the petitioner came to learn that the reservation was provided in the same for the persons with disabilities in an arbitrary manner, without there being any consideration for the nature of the stream in the post graduate courses. No reservation was provided for the persons with disabilities in the stream **Dermatology**, whereas same provisions were made for General Surgery, Gynecology and Obstetrics and other streams. In all these streams the similarly placed persons suffering from the identical locomotor disabilities got the opportunity to avail of the reservation but the petitioner opted stream for **Dermatology** where such reservation was not provided for.
6. Feeling aggrieved the petitioner made representations dated September 28, 2022 before the respondent authorities, **Annexure P-5** to the writ petition. The petitioner contended that for not providing such reservation for the stream **Dermatology** was in violation of the provisions laid down under the **Rights of Persons with Disabilities Act, 2016** (for short, the said Act). The relevant respondent authorities replied to the said representation of the petitioner and contended that the necessary reservation was done and provided as per the roster prepared by the respondent authorities. On request of the petitioner the petitioner was provided with a copy of **West Bengal State Higher Education Institutions (Reservation in Admissions) Rules, 2013** (for short, the said 2013 Rules), **Annexure P-5** to the writ petition and informed the petitioner on the basis of the same the reservation was provided for.

7. No reservation was provided for the **Persons with Disabilities** for the stream **Dermatology** whereas the same reservation was made for other streams for the similarly placed candidates as that of the petitioner.
8. Challenging the said action of the respondents the petitioner filed **WPA No. 2305 of 2022** (for short, the first writ petition) with the following prayers:-

*“(a) Leave may be granted to move the instant application as ex-parte, dispensing with the requirements under Rule 26 of the Writ Rules;*

*(b) A Writ of and/or the nature of Mandamus commanding the respondent authorities concerned and/or their men, servants, agents and/or assigns to forthwith cancel and/or withdraw and/or set aside and/or rescind the seat matrix provided for the Post Graduate Degree seats;*

*(c) A Writ of and/or the nature of Mandamus directing the respondent authorities concerned and/or their men, servants, agents and/or assigns to forthwith conduct fresh counseling process by preparing fresh seat matrix by providing reservation of Persons with disability in the streams of Medicine such as **Dermatology**;*

*(d) A Writ in the nature of Certiorari calling upon the respondents and/or their men or agents to produce the records of the case before this Hon’ble Court so that conscionable justice may be done upon perusal of the same;*

*(e) Rule NISI in terms of prayers (a) to (d) above;*

*(f) Mandatory Injunction directing the respondent authorities concerned and/or their men, servants, agents and/or assigns to keep one seat of **Dermatology** in the NEET-PG Counseling for the year 2022 vacant till pendency of the writ petition;*

*(g) Injunction restraining the respondent authorities concerned and/or their men, servants, agents and/or assigns from giving any effect to the seat matrix of first round of counseling;*

*(h) Ad-interim order in terms of prayers (f) and (g) as above;*

*(i) Cost;*

*(j) And any other order or orders which Your Lordships may deem fit and proper”.*

## **Second Writ Petition WPA 23202 of 2022:-**

9. The petitioner duly participated in the All India first Round counseling and secured a seat on September 30, 2022. In terms of the allotment, the petitioner had taken admission on October 03, 2022 at **Calcutta National Medical College to pursue his MD in the stream General Medicine**. The petitioner also expressed his willingness to participate in the next round of counseling in order to upgrade his choice, **Annexure P-6** to the second writ petition.
10. The respondents then on October 09, 2022, **Annexure P-7** to the second writ petition, issued a circular whereunder the respondents withdrew the earlier seat matrix as well as the provisional result of **Round 1** counseling and provided a new time schedule for Round 1 counseling after causing a modification to the seat matrix and thereby converted the same **Management Quota Seats** of a private medical college to **State Quota**. The said modified seat matrix was published on September 10, 2022, the modification of the seat matrix is annexed as **Annexure P-8** to the second writ petition.
11. Being aggrieved thereby the petitioner filed the **second writ petition** with the following prayers:-

*“(a) Leave may be granted to move the instant application as ex-parte, dispensing with the requirements under Rule 26 of the Writ Rules:*

*(b) A Writ of and/or the nature of Mandamus commanding the respondent authorities concerned and/or their men, servants, agents and/or assigns to forthwith cancel and/or withdraw and/or set aside and/or rescind the seat matrix provided for the Post Graduate Degree seats;*

*(c) A Writ of and/or the nature of Mandamus directing the respondent authorities concerned and/or their men, servants, agents and/or assigns to forthwith conduct fresh counseling process by preparing fresh seat matrix by providing reservation of Persons with disability in the streams of Medicine such*

as **Dermatology** and by removing the reservation from the subjects like General Surgery, Orthopedic Surgery, Gynecology and Obstetrics;

(d) A writ in the nature of Certiorari calling upon the respondents and/or their men or agents to produce the records of the case before this Hon'ble Court so that conscionable justice may be done upon perusal of the same;

(e) Rule NISI in terms of prayers (a) to (d) above;

(f) Mandatory Injunction directing the respondent authorities concerned and/or their men, servants, agents and/or assigns to keep one seat of **Dermatology** in the NEET-PG Counseling for the year 2022 vacant till pendency of the writ petition;

(g) Injunction restraining the respondent authorities concerned and/or their men, servants, agents and/or assigns from giving any effect to the seat matrix of first round of counseling;

(h) Ad-interim order in terms of prayers (f) and (g) as above;

(i) Cost;

(j) And any other order or orders which Your Lordships may deem fit and proper”.

### **Third writ petition- WPA 24186 of 2022:-**

12. On October 03, 2022 the concerned All India Authorities issued a notice, **Annexure P-8** to the third writ petition, whereunder the mechanism for giving up and relinquishing the seat for admission in the post graduation courses was mentioned and the **last date was fixed as October 10, 2022**. As the result of the **Round 1** of State counseling was not declared then, the petitioner was not in a position to relinquish his seat, which he had secured in the central admission. On October 08, 2022, **Annexure P-9** to the writ petition, the respondent All India Authority issued a notice to the states so as to maintain the time schedule for the all India counseling and the State counseling.
13. On October 12, 2022 the State authorities published the result for the **Round 1**. The petitioner failed to secure a seat at its desired stream. On October 15,

2022 the petitioner participated in the **Round 2** for the All India counseling and exercised his option but there was no upgradation, **Annexure P-11** to the third writ petition. On October 17, 2022 the respondent State authorities provided for the provisions for the surrender of seats in the State Quota, **Annexure P-12** to the third writ petition. On and from October 19, 2022 the respondents State Authorities initiated the Round 2 State counseling with the schedule, **Annexure P-13** to the third writ petition.

14. On October 25, 2022 the respondent All India Authorities issued a notice, **Annexure P-14** to the third writ petition, providing the time schedule for counseling for the relevant year as approved by the Hon'ble Supreme Court. The all India Authorities also published notice indicating the list of admitted students in All India counseling who could not participate in the subsequent rounds of counseling, **Annexure P-15** to the third writ petition. On November 03, 2022 the State respondent authorities issued notice whereunder **candidates who received admission in the All India counseling were debarred from participating in the further round of State counseling**, **Annexure P-16** to the third writ petition.
15. Being aggrieved with the aforesaid action and decision of the State authorities, the petitioner filed the **third writ petition** with the following prayers:-

*“(a) Leave may be granted to move the instant application as ex-parte, dispensing with the requirements under Rule 26 of the Writ Rules;*

*(b) A Writ of and/or the nature of Mandamus commanding the respondent authorities concerned and/or their men, servants, agents and/or assigns to forthwith cancel and/or withdraw and/or set aside and/or rescind the Memo No. DME/Spl. Corresp/2022/280 dated 03.11.2022 issued by the respondent state authorities concerned and the notice dated 25.10.2022 issued by the All*

*India authorities concerned to the extent the same debars the petitioner from participating in the further rounds of counseling;*

*(c) A Writ of and/or the nature of Mandamus directing the respondent authorities concerned and/or their men, servants, agents and/or assigns to allow the petitioner to resign from his seat at Calcutta Medical College and participate in the counseling process for the seat of MD (**Dermatology**) which has been kept vacant as per the order dated 12.10.2022 of this Hon'ble Court;*

*(d) A Writ in the nature of Certiorari calling upon the respondents and/or their men or agents to produce the records of the case before the Hon'ble Court so that conscionable justice may be done upon perusal of the same;*

*(e) Rule NISI in terms of prayers (a) to (d) above;*

*(f) Injunction restraining the respondent authorities concerned and/or their men, servants, agents and/or assigns from giving any effect to the Memo No. DME/Spl.Corresp/2022/280 dated 03.11.2022 issued by the respondent State authorities concerned and the notice dated 25.10.2022 issued by the respondent All India authorities concerned to the extent the same debars the petitioner from participating in the further rounds of counseling;*

*(g) Ad-interim order in terms of prayers (f) as above;*

*(h) Cost;*

*(i) And any other order or orders which Your Lordships mau deem fit and proper”.*

16. On the said first two writ petitions, an interim order was passed by a coordinate bench on October 12, 2022 directing the State to keep one State Quota Seat reserved till the writ petition is decided finally. The said interim order is still in existence.
17. In the second writ petition, the petitioner filed a supplementary affidavit affirmed on November 03, 2022 disclosing the All India Seat Matrix for the first round of counseling, **Annexure P-10** thereto. The petitioner also disclosed the list of successful candidates, **Annexure P-13** thereto. The petitioner also disclosed notice dated November 02, 2022 for Mop-up round of counseling which would commence from November 04, 2022 and would come to an end on November 24, 2022, **Annexure P-14** thereto.

18. Pursuant to the direction made by this Court on November 11, 2022 the respondents filed their respective affidavits. The petitioner filed its reply thereto. The National Medical Commission filed its written note.

**Submissions:-**

19. Mr. Suman Banerjee learned advocate, lead by Mr. Kallol Basu learned counsel appearing for the writ petitioner placed reliance upon the various provisions from the said Act. Relying upon Sections 2(c), 2(h), 3 and 32 of the said Act, he submitted that, the legislature had promulgated the said Act which came into force in 2006 and conferred a specific right of reservations of seats for the candidates suffering from diverse disabilities at the entry level for the Post Graduation Courses. Mr. Suman Banerjee submitted that, all Government institutions of Higher Education and other Higher Education Institutions receiving aid from the Government **shall have to reserve 5% seats for the candidates with bench mark disabilities**. He submitted that, this provision was enacted by the legislature keeping in mind the constitutional rights guaranteed to a citizen of the country and to ensure such constitutional rights to be implemented, like various other statutes, the said Act was promulgated. Mr. Banerjee further submitted that, the provision for reservation as enumerated under Section 32 of the said Act is a clear mandate to the State. The State cannot and should not defy from such mandate and is bound by the same.
20. Referring to the ***Certificate of Disability for NEET Admissions*** dated August 23, 2022, **Annexure P-2** to the first writ petition, he submitted that, the

petitioner suffered physical disability. The type of disability was termed as locomotor disability under specified disability category **“Seats”**. The percentage of disability was found to be 51%. This certificate was prepared upon physical verification of the petitioner by the medical experts. This certificate according to the learned counsel for the petitioner, clearly showed that the petitioner being a physically disabled person with the bench mark disabilities was eligible for the reservation in terms of the provisions of the said Act and specifically under Section 32 of the Act when applied for the Entrance Examination for Post Graduation Medical Courses and opted for the stream **“Dermatology”** in the **State Quota**.

21. Mr. Suman Banerjee Learned Advocate for the petitioner then referred to the seat matrix which was prepared and published by the respondent authorities on September 27, 2022, **Annexure P-4** to the writ petition and placing reliance thereupon he submitted that, in diverse stream for the Post Graduation Medical Courses the necessary reservation was provided for in compliance of the said Act, whereas in several streams for the Post Graduation Medical Courses, he pointed out, no provision for reservation was made according to the said Act. He submitted that one such deviation would appear for the stream **Dermatology** which the petitioner opted for. On September 28, 2022 the petitioner made his due representation before the respondent authorities, **Annexure P-5** to the first writ petition. By a communication dated September 29, 2022, part of **Annexure P-5**, the respondent no.4 dealt with the said representation and informed the petitioner that no such reservation would be

provided for **Dermatology**. The respondent authorities relying upon the said 2013 Rules informed the petitioner that, the provisions for reservation in **Dermatology** would not be there. The petitioner was also provided with the necessary roster. Referring to such roster, it was submitted that, there was several streams where the said mandate for reservation in terms of the said Act were not followed.

22. Mr. Kallol Basu Learned Counsel for the writ petitioner submitted that, the statutory mandate under **Section 32 read with Sub-sections (c), (h), (o) to sub-section 2 and Section 3** of the said Act was engrafted in the statute to uphold a statutory manifestation of a constitutional commitment. Learned counsel submitted that, at the heart of this case lies the principle of **Reasonable Accommodation. Individual Dignity** under grids the said Act intrinsic to its realization is recognizing the worth of every person as an equal member of the society. Respect for the dignity of other and foster condition in which every individual can evolve according to their capacities are key elements of a legal order which protects, respects and facilitates individual anatomy. The law does this by imposing a positive obligation on the state to secure the realization of the rights. But does so by mandating that the state must create conditions in which the barriers posed by disability can be overcome. The creation of an appropriate environment in which the disabled can pursue the full right of entitlements which are encompassed within human liberty is enforceable at law. Learned counsel further submitted that, the principle of **Reasonable Accommodation** acknowledges that if disability is a social

contrast has to be remedied, conditions have to be affirmatively created for facilitating the development of the disabled. According to him, **Reasonable Accommodation** is founded in the norm of inclusion. Exclusion results in the negation of individual dignity and worth or they can choose the route of **Reasonable Accommodation**, where each individual's dignity and worth is respected. Mr. Basu submitted that, in the specific context of disability, the principle of **Reasonable Accommodation** postulates that the conditions which excludes the disabled from full and effective participation as equal members of society have to give way to a accommodative society which accepts difference, respects their needs and facilitates the creation of an environment in which the social barriers to disability which progressively answered. He then submitted that, accommodation implies a positive obligation to create conditions conducive to the growth and fulfillment of the disabled in every aspect of their existence, whether as students, members of the workplace, participants in governance or on a personal plane in realizing the fulfilling privacies of family life. He submitted that, the accommodation which the law mandates is **"Reasonable"** because it has to be tailored to the requirement of each condition of disability. The expectations which every disabled person as are unique to the nature of the disability and character of the impediments which are encounter as its consequence. Mr. Basu also submitted that, failure to meet the individual needs of every disabled person would breach the norm of **Reasonable Accommodation** flexibility in answering individual needs and requirements is essential **Reasonable Accommodation**. The number contains

an aspiration to meet the needs of the class of persons facing a particular disability. He further submitted that, **Reasonable Accommodation** requires the policy makers to comprehend disability in all its dimensions and to design measures which are proportionate to needs, inclusive in their reach and respecting of differences and aspirations. **Reasonable Accommodation** cannot be construed in a way that denies to each disabled person the customization he/she seeks. Even if a disabled person is in class of its own, its need must be made. In support, Mr. Basu relied upon a decision of the Hon'ble Supreme Court ***In the matter of: Vikash Kumar vs. Union Public Service Commission & Ors., reported at (2021) 5 Supreme Court Cases 370.***

23. Learned counsel for the writ petitioner further submitted that, in the event, the State policy framers act in such a way in framing their policy to make the rights of the disabled persons a real and meaningful for them the rights guaranteed under Article 21 of the Constitution of India along with the fundamental rights shall not be defeated. The **Reasonable Accommodation** is the instrumentality which is an obligation of the State policy framers to enable the disabled to enjoy the constitutional guarantee of equally and non discrimination. He submitted that, to create a **Reasonable Accommodation**, it is the obligation of the State policy framers to undertake the necessary consultation process depending upon the requirement of disabled individuals on case to case basis and then to take a decision to frame the necessary policy for the disabled. He submitted that, in the facts of this case the State had not undertaken such process of consultation to consider the disability of the

disabled individuals on case to case basis. In absence of such an exercise, he submitted that, no **Reasonable Accommodation** could be made for the disabled as in the instant case, the stream **Dermatology**, in the Post Graduation Medical Course Entrance had suffered and the petitioner is a victim and a discriminated disable person.

24. The learned counsel then submitted that, after second round of counseling for All India Quota Seats, the students who take admission in All India Quota seats should not be allowed/permitted to vacate seats, this would ensure that very few seats are reverted to the State Quota and also All India Quota Seats are filled by students from the All India Merit List only. The students who take admission and secure admission in deemed universities pursuant to the second round of counseling conducted by DGHS should not be eligible to participate in any other counseling. In support, he relied upon a decision of the Hon'ble Supreme Court ***In the matter of: Dar-us-Slam Educational Trust & Ors. vs. Medical Council of India and Ors., reported at 2017 SCC OnLine SC 219.***
25. The learned counsel for the petitioner drew attention of this Court on the scheme providing the prevailing norms of counseling mentioned in **an order dated December 16, 2021 passed by the Hon'ble Supreme Court in Special Leave to Appeal (C) No. 10487/2021; Nihila P.P. vs. The Medical Counseling Committee (MCC) & Ors. In the matter of: Nihila P.P. (supra)**, the Hon'ble Supreme Court had laid down the norms taking into account of the fact situation prevailing contemporaneously.

26. The learned counsel for the petitioner then submitted that, the petitioner having secured a seat in the Central Counseling for the stream **General Medicine** had already taken admission. There is no embargo upon the petitioner to join and pursue the said Post Graduation Course. However, he would opt for the stream **Dermatology** in the State Quota as a bench mark disabled candidate, to which he has a statutory right under the said Act and the State respondent authorities are mandated to provide the said seat to the petitioner under due reservation policy.
27. Since the seat matrix provided for the Post Graduation Degree seats do not provide for the reservation in terms of the statute in some of the streams, inter alia, **Dermatology**, the petitioner challenged the said seat matrix in the second writ petition and submitted that it was in gross violation of Article 14 and 21 of the Constitution of India, as for the similarly placed candidates reservation was made in other streams. The petitioner then filed the third writ petition challenging the decision of the respondent authorities dated November 03, 2022 and the notice dated October 25, 2022 issued by the All India Authorities concerned to the extent that the same debarred the petitioner from participating in the further round of counseling, since he had secured a seat in the Central Counseling and did not withdraw himself from the same within the time stipulated. This according to the petitioner is again violative to the constitutional mandate by not allowing the petitioner to pursue his education/higher education.

28. Learned counsel for the petitioner submitted that, the representation of the petitioner dated September 28, 2022 was dealt with by the respondent authorities on the purported contention that the necessary reservation was done and the roster was prepared on which the reservation was provided while conducting counseling in the West Bengal State Quota in 2022 in terms of the said 2013 Rules. Mr. Basu learned counsel submitted that, this contention of the State ex facie showed a clear non application of mind on its part by proceeding under the said 2013 Rules, when the said Act was already in vogue. The State, thus, adopted a wrong procedure while providing for reservation for the disabled candidates on the face of it and thereby acted wholly in an illegal and wrongful manner. Mr. Basu further submitted that, when an act of State is done wrongfully and willfully without reasonable or probable cause and not necessarily an act done from ill-feeling and spite, it is a deliberate act in disregard of rights of others. It is a malice on power, a legal malice or malice on law which can be attributed to the State and can never be a case of personal ill-will or spite on the part of the State. If at all it is malice in legal sense which could be described as an act, which is taken with an oblique or indirect object. He submitted that, in the instant case by not reserving the seat for the disabled in the stream **Dermatology**, the State had acted with a legal malice. He further submitted that, such a malice on the part of the State even if, not pleaded in the writ petition can be considered by the Court from the fact situation of the case. In support, learned counsel relied upon a judgment of the Hon'ble

Supreme Court ***In the matter of: G. Jayalal vs. Union of India & Ors., reported at (2013) 7 Supreme Court Cases 150.***

29. The petitioner submitted that, the State Authorities who were bound by the said statute to provide for the necessary reservation for the disable candidates, by not doing so acted grossly in an arbitrary, illegal and wrongful manner. He submitted that by making provisions for reservation for some streams and by not making the same reservation for the other streams, the State Authorities acted in discrimination of its discretion.
30. Mr. Sirsanya Bandyopadhyay, learned junior standing counsel for the State appearing for respondent nos. 4 and 5 submitted that, the reservation for **Persons with Disabilities** (for short, **PWD**) quota was **horizontal** which could be availed of by a candidate belonging to Unreserved, SC, ST, OBCA, OBCD, EWS (Economically Weaker Sections) etc. and this five percent reserved seats shall be secured for PWD Candidates. If this reservation is simplified, it should appear that for every 100 seats there shall be 5 seats reserved i.e. for about every 20<sup>th</sup> seat, position, of each cast/category, one seat is reserved for and/or allocated to PWD Candidates. He submitted that, the experts on the issue who were engaged by the State as policy framers in this regard had, thus, thought it fit upon analyzing all the relevant materials and the pros and cons of the situation, framed the necessary policies that the PWD placement could not be course wise but cast/category wise manner. The reason, inter alia, behind this was that in a particular college there may not be all courses or streams but allocation should be done in such a manner that the statutorily mandated

reservation is made in all possible reservations in an appropriate proportion. The State policy framers, thus, had undertaken pooled allocation for adopting fairness in the reservation policy.

31. Learned standing counsel for the State further submitted that, insofar as **Dermatology** was concerned there were only 15 nos. of seats available which were also divided into open and in service category. He submitted that, probability wise no PWD reserved seat was provided for in the said stream of **Dermatology** either in open or in service category. He further submitted that, likewise there are so many other streams namely **MPH Epidemiology-MD-Geriatrics, MD-Immuno Haematology and Blood Transfusion (IHBT), MD-Psycratic, MD-Physical Medicine and Rehabilitation and MD-Emergency Medicines .....etc.** He further submitted that, having handful few number of seats as stated above in the stream **Dermatology**, there was no reservation made for PWD. He further submitted that, necessary reservation was made as per the rules while maintaining the balance, equilibrium and continuity in reservation, which was again done by the concerned experts policy framers. On facts and figures the learned junior standing counsel submitted that, for the relevant year the total nos. of open category seats for which the petitioner intended to opt for was 533 out of which the reservation made for PWD was for 27 nos. of seats, which was equivalent to 5.06 percentage of the total seats even more than the lower limit of 5%, as mandated under Section 32 of the Act. He further submitted that total seats in **Dermatology** was 15 nos. of which 5%

comes equivalent of 0.75, not even an individual single candidate for the stream.

32. **Questioning the locus standi** of the petitioner to maintain this writ petition, Mr. Bandopadhyay submitted that since the petitioner had already taken admission in the first round of counseling in the stream of MD-General Medicine in the **Central Quota** and till the second round of counseling having been over already, the petitioner did not surrender the said seat in the stream of MD-General Medicine and as such pursuant to a **Medical Council of India Post Graduate Medical Education Regulations, 2000** (for short, the 2000 Rules) and specifically in terms of **Regulation 9A(4)** thereunder. He was barred and disqualified to seek any further participation in the **State Quota** counseling after the second round. Hence, the petitioner did not have locus to maintain this writ petition. The said **Regulation 9A(4)** having a statutory force, the petitioner was barred thereunder to claim the reservation for **PWD Quota** in the State counseling. On this ground alone, he submitted that, the writ petition should be dismissed.
33. Mr. Bandopadhyay further submitted that, in any event, the petitioner being disqualified to participate in the state level counseling, the interim order passed in the writ petition should be vacated otherwise the said one seat in the stream of **Dermatology** would be vacated immediately after the counseling would be over.
34. To distinguish the said judgment cited by Mr. Basu, ***In the matter of: Vikash Kumar (supra)***, Mr. Bandopadhyay referred to the various provisions laid

down under **Sub-sections (r), (s), (o), (y) and (t) to Section 2 and Sections 3, Section 12(3), 16, 32** of the said act and submitted that, two expressions namely person with **“Bench Mark Disasbility”** and **“Person With Disability”** were defined under Section 2(r) and 2(s) of the Act respectively, which were totally two independent classes. He submitted that, Section 32 provides for reservation for persons with **“Bench Mark Disabilities”** and not for **“Persons with disability”**. The petitioner in the instant case admittedly a person with **Bench Mark Disability**. Referring to paragraph 50 from **Vikash Kumar (supra)** Mr. Bandopadhyay submitted that, it is clear from the seeking of the said act that, **“Persons With Disability”** and persons with **“Bench Mark Disability”** were treated separate categories of individuals having different rights and protections.

35. Mr. Bandopadhyay further submitted that, the ratio decided ***In the matter of: Vikash Kumar (supra)*** by the Hon’ble Supreme Court in a fact situation which is different from the fact situation of the instant case and as such the same is not applicable in the facts of this case.
36. He further submitted that, the writ petitioner had not made out any case of malice of any nature attached with the decision making process on the part of the State executive while reserving the quota for PWD and, therefore, this Court should not take cognizance of the submission on behalf of the petitioner that malice was on attached the State action. He, therefore, submitted that, the ratio laid down by the Hon’ble Supreme Court ***In the matter of: G. Jayalal (supra)*** has no application in the facts of this case.

37. Mr. Indranil Roy the learned counsel appearing for the respondent no.6 submitted, at the threshold, placing reliance on the various provisions laid down under **Medical Council of India Post Graduate Medical Education Regulations, 2000** (amended upto May, 2018) (for short, the said 2000 Regulation) submitted that, this Regulation is a statutory Regulation with a binding force Regulation 9(4)A of the said 2000 Regulation provided that in order to prevent seat blocking in common counseling **for admission to Post Graduate Courses** and permissibility to exercise fresh choice during counseling, forfeiture of fee shall be in accordance with the matrix contained in **Appendix III**. He submitted that, the petitioner was eligible to take part upto the second round of counseling for both the Central and State Quota. Thereafter, since the petitioner had already taken and secured his admission in the stream MD General Medicine in the Central Quota, he was not eligible to appear in the Mop-up round at the State counseling in any manner. In the facts of this case the petitioner was not also eligible to leave his seat in the Central Quota which he had already secured. He, thus, submitted that, the petitioner **had no locus** to maintain this series of writ petitions. He submitted that, the said **Regulation 9A(4)** was considered by the Hon'ble Supreme Court and the Hon'ble Supreme Court had also laid down the law thereupon by which the petitioner was debarred from taking any part in the State counseling in the facts of this case. In support, he had relied upon two decisions of the Hon'ble Supreme Court, which are:

- (i) ***In the matter of: Dar-us-Slam Educational Trust and Others vs. Medical Council of India and Others, reported at 2017 SCC OnLine SC 2119.***
- (ii) ***In the matter of: Rachit Sinha and Others vs. Union of India and Others, reported at (2018) 16 Supreme Court Cases 655.***

38. Mr. Roy, learned counsel further submitted that, the challenge of the petitioner in the third writ petition in view of the law laid down ***In the matter of: Rachit Sinha (supra)*** liable to be dismissed.
39. Mr. Roy further referring to pages 265 and 264 from the supplementary affidavit affirmed by the petitioner on November 03, 2022 submitted that, the petitioner secured a **Rank 1728** whereas at least one candidate was there in the merit list who was similarly placed with the petitioner with the **Rank 1703** with a higher rank, for PWD Quota aspiring for **Dermatology** in the State Quota. Therefore, in any event, the petitioner could not and cannot succeed to his claim even if, for the argument sake, 1 seat is reserved out of 15 seats in **Dermatology**. Hence, all these writ petitions are misconceived and liable to be dismissed. He further submitted that, the interim order passed in the first writ petition should be vacated immediately otherwise the seat in **Dermatology** shall be wasted once the counseling process comes to an end. Drawing attention to **Annexure P-15** to the third writ petition Mr. Roy submitted that, this notification was in line with the law laid down by the Hon'ble Supreme Court on interpretation of the relevant, **Regulation 9(4) A** of the 2000 Regulation.

40. He submitted that the series of writ petitions should be dismissed.
41. Mr. Swapan Kumar data, Learned Senior State Counsel appearing for Respondent No. 1 to 3 had adopted the submissions made by Mr. Bandopadhyay.
42. In reply Mr. Kallol Basu, learned counsel for the writ petitioner submitted that, the law laid down in **Dar-hu-Salem (supra)** by the Hon'ble Supreme Court, has no application. The entire process of reservation for PWD quota adopted by the State was in clear violation of the **Principle of Reasonable Accommodation** as laid down in **Vikash Kumar (supra)**. He submitted that, the extent of consultation required for making such reservation on case to case basis on assessment of each individual case was not done by the State authority. Such inaction and/or arbitrary action on the part of the State authorities vitiated the decision making process of the State policy framers who had framed the policy for reservation for PWD Quota.
43. This Court has been informed that the mop-up counseling for the State Quota has commenced and the entire counseling process shall come to an end on December 02, 2022 as extended by the State.

**Decision:-**

44. For consideration of the issues involved in this cluster of writ petitions, at the outset the most relevant provision of the said Act is quoted below:-

***"32. Reservation in higher educational institutions.-(1) All Government institutions of higher education and other higher education institution receiving aid from the Government shall reserve not less than five per cent, seats for persons with benchmark disabilities.***

***(2) The persons with benchmark disabilities shall be given an upper age relaxation of five years for admission in institutions of higher education".***

45. The issue raised by the petitioner that while disposing of its representations dated September 28, 2022, the respondent authorities dealt with the same and rejected the claim of the petitioner solely relying upon the 2013 Rules and the relevant roster thereupon and failed to consider the claim of the petitioner in the light of the provisions laid down under the said Act, in view of this Court, the same shall not be required to be dealt with separately. The said issue is being dealt with in the light of the provisions laid down under the said Act in a comprehensive manner. More so in view of the paucity of time, that the selection process would come to an end on December 02, 2022, this writ petition needs to be finally decided before that.
46. After considering the submissions made on behalf of the parties and upon perusal of materials on record, it appears to this court that, the entire issue involved in these three writ petitions will have to be adjudged on the scope, effect, meaning and interpretation of the provisions laid down under the said Act. On a plain and literal reading of the said provisions laid down under Section 32 of the Act, it would appear that a statutory mandate was imposed upon all Government Institutions of Higher Education and other Higher Education Institutions receiving aid from the Government to reserve **not less than 5%** seats for persons with **Bench Mark Disabilities**. The later part of the Section, in view of this Court, is not material for the issues involved in the writ petitions. The language and expressions used in Section 32 leaves no room for any ambiguity. The provision is clearly in line and synk with the constitutional

mandate to ensure, to facilitate the development of the disabled with a **Reasonable Accommodation** being founded in the norm of inclusion.

47. The cardinal rule of construction of statutes is to read the statute literal by giving to the words used by the legislature their ordinary, natural and grammatical meaning. If, however, such a reading leads to absurdity and words are susceptible of another meaning, the Court may adopt the same. But if no such alternative construction is possible, the Court must adopt the ordinary rule of literally interpretation.
48. When upon a plain reading and literal interpretations of the words used in a statute the legislative intent could be gathered, it is not permissible at all to add words to the statute, equally, such an interpretation which would make some terms used in a statute otiose or meaningless has to be avoided.
49. To adjudge the issues involved in these writ petitions in the light of the provisions of the said Act, this Court is of the firm view that, from a plain and literal reading of Section 32 of the Act the Government Educational Institutions as mentioned thereunder are mandated **to reserve not less than 5% seats** for persons with **Bench Mark Disabilities**. There was no further provision made in Section 32 of the Act specifying the mode and manner in which such reservation should be made. In absence of directing the mode and manner for reservation, this Court is of the view that, sufficient discretion is left with such Government institutions to provide for the reservations in the manner and mode they would decide, but of course, in a just, fair, reasonable and rational

manner and not in an arbitrary or in colorful exercise of its discretion, subject to **not less than 5% seats for persons with Bench Mark Disabilities.**

50. From the materials disclosed on behalf of the respondent nos. 4 and 5 and the respondent no.6 in the first writ petition, it was clear that the experts were vested with the power and authority to administer the provisions laid down under the statute. They should be considered as the master of the rules and policies framed by them, unless such rules and policies are, ex facie, arbitrary, unfair, illegal, unreasonable, or attached with malice, such rules and policies are not open for interference in judicial review by Court in exercising its jurisdiction under Article 226 of the Constitution of India. For the relevant year the **total numbers of seats were 533** for the Post Graduation Medical Course at the **State Quota**, out of which **27 seats equivalent to 5.06%** were already provided for in strict compliance of the reservation mandate in terms of Section 32 of the Act. The State Government prepared its own roster, the allotment and reservation of seats in terms of Section 32 of the Act was duly made following such roster. The State Government being master of its roster unless, an ex facie, arbitrary and illegal exercise of discretion is found, such a roster cannot be interfered with. On a close scrutiny on the materials disclosed on behalf of the respondent no. 4 and 5, it appears to this Court that, following such roster the necessary reservation was made in terms of Section 32 of the Act in diverse streams in the Post Graduation Courses. Just because some of such Post Graduation Streams including the choice of the petitioner, namely, **Dermatology** was not provided with such reservation but as a whole the

provisions of the statute having found to be complied with, it cannot be said that the Government Higher Education Institutions as mentioned under Section 32 of the Act had acted in an arbitrary and illegal exercise of its discretion and in violation of the statute.

51. For the proper understanding of the perspective under which the ratio was laid down ***In the matter of: Vikash Kumar (supra)***, some portions from the said judgment relevant to adjudicate upon these writ petitions are reproduced below:-

#### **A. Factual background**

**1.** A citizen who suffers from a writer's cramp has travelled to this Court. The grievance is that he was denied a scribe in the civil services' examination ("CSE"). The case has run its course through the judicial system as an individual grievance. But its contours present portents of the aspirations of a whole class of persons whose daily engagement with physical disability defines their continuing quest for dignity. Through a maze of statutes, rules, and regulations, the case raises core issues about the actual realisation of equal opportunity and access to the disabled. It tests what the law professes with how its ideals are realised. The language of our discourse, as much as its outcome, should generate introspection over the path which our society has traversed and the road that lies ahead in realising the rights of the disabled. Voices such as those of the appellant are a constant reminder of the chasm between the law and reality. But they also provide a platform for change and evolution towards a better future.

**2.** Down to its bare bones, this appeal turns upon the interface of the Civil Services Examination Rules, 2018 ("the 2018 CSE Rules") dated 7-2-2018 with the Rights of Persons with Disabilities Act, 2016 ("the 2016 RPwD Act").

**3.** The appellant has a disability in the form of dysgraphia, commonly known as a writer's cramp. In August 2016, he graduated with an MBBS degree from Jawaharlal Nehru Institute of Post Graduate Medical Instruction and Research, popularly known by the acronym JIPMER. Intending to pursue a career in the civil services, he appeared in 2017 for the CSE. A scribe was provided to him by the Union Public Service Commission ("UPSC") to enable him to appear in the written test. In the online application form for CSE 2017, the appellant declared himself to be a person with locomotor disability to avail the services of a scribe. On 7-2-2018, UPSC issued a Notification for the CSE 2018 ("the 2018 CSE Notification"). The Department of Personnel and Training ("DoPT") issued the 2018 CSE Rules providing for the manner and conduct of the examination. The general instructions provided that all candidates must write their papers in their own hand and will not be allowed the help of a scribe. Exceptions to this rule were provided for blind candidates; candidates with locomotor disability and cerebral palsy where the "dominant (writing) is affected to the extent of

slowing the performance of function (minimum of 40% impairment)". Candidates within the exception were allowed the help of a scribe. An additional "compensatory time" of twenty minutes per hour was also to be granted to such candidates.

4. In his online application for the CSE 2018, the appellant declared himself to be a person with a benchmark disability of 40% or more. By his email dated 28-2-2018, the appellant requested UPSC to provide him with a scribe for the examination. UPSC, by its Letter dated 15-3-2018, rejected the request on the ground that a scribe could be provided only to blind candidates and candidates with locomotor disability or cerebral palsy with an impairment of at least 40% and the appellant did not meet this criterion.

5. The appellant also sought to appear for selection to the post of Medical Officer pursuant to the Combined Medical Services Examination, 2017 conducted under the auspices of UPSC. In order to obtain a disability certificate, he approached the Medical Board of Ram Manohar Lohia Hospital, Delhi. By a communication dated 12-2-2018, the disability certificate was denied to him. This led the appellant to preface a challenge before the Central Administrative Tribunal ("the Tribunal") where the case is still pending adjudication.

### **B. The course run : The Tribunal and the High Court of Delhi**

6. Aggrieved by the denial of the services of a scribe for the CSE 2018, the appellant moved the Tribunal. By an interim order dated 30-5-2018 [Vikash Kumar v. UPSC, 2018 SCC OnLine CAT 28615], the Tribunal directed UPSC to provide him a scribe to enable him to appear for the preliminary examination. The results were published on 14-7-2018, but the appellant's result was withheld. By a judgment dated 7-8-2018 [Vikash Kumar v. UPSC, 2018 SCC OnLine CAT 28614], the Tribunal dismissed the application filed by the appellant on the ground that, since Ram Manohar Lohia Hospital had refused to issue a disability certificate, the appellant could not claim access to a scribe as a disabled candidate. The Tribunal also noted that the appellant did not claim the facility of a scribe in the CSE 2017 or during his MBBS graduation examinations. The Tribunal held that though in Para 5 of the 2018 CSE Notification, UPSC recognised the right to a scribe, it has been limited to blind candidates and candidates having locomotor disability and cerebral palsy, where a minimum 40% impairment exists. The appellant was held not to fulfil the criteria. The Tribunal also rejected a certificate dated 22-3-2015 issued by the National Institute of Mental Health and Neuro Sciences, on the ground that it failed to mention the extent of the disability. Finally, the Tribunal questioned the maintainability of the prayer of the appellant for a direction to UPSC to amend the 2018 CSE Notification. Since the relief was in the realm of advising the executive on policy matters, the Tribunal refrained from interfering in the matter.

7. The appellant instituted a writ petition before the High Court of Delhi and challenged the legality of the 2018 CSE Rules. Meanwhile, he obtained a medical certificate dated 27-8-2018 from National Institute of Mental Health and Neuro Sciences (NIMHANS), Bangalore, declaring that he has a writer's cramp and would require a scribe during his examinations.

8. A Division Bench of the High Court of Delhi by an order dated 25-9-2018 [Vikash Kumar v. UPSC, 2018 SCC OnLine Del 13365] declined to interfere with the order of the Tribunal on the ground that the appellant had not qualified at the Preliminary Examination for CSE 2018 and thus, the relief seeking an amendment of the 2018 CSE Rules to provide scribes to candidates with specific disabilities was rendered otiose. The appellant was granted liberty to file another application before the Tribunal in the future. This order [Vikash

*Kumar v. UPSC*, 2018 SCC OnLine Del 13365] of the High Court of Delhi has been challenged in appeal.

### **C. These proceedings**

**9.** During the course of the proceedings, by an order dated 16-1-2020 [*Vikash Kumar v. UPSC*, 2020 SCC OnLine SC 1119], we directed All India Institute of Medical Sciences (“AIIMS”) to constitute a medical board to evaluate the condition of the appellant and render its opinion on (i) whether he suffers from a benchmark disability within the meaning of Section 2(r) and Section 2(zc) of the 2016 RPwD Act; and (ii) whether he is a “person with disability” under Section 2(s) of the 2016 RPwD Act and the extent of the disability. AIIMS, by its report dated 10-2-2020, opined that the appellant suffers from a “chronic neurological condition” termed as bilateral writer’s cramp. However, the report opines that while he does not suffer from a “benchmark disability”, the appellant is a “person with disability” under the 2016 RPwD Act. The extent of the disability is assessed at 6%.

**10.3.** The 2018 CSE Rules and the 2018 CSE Notification are in violation of Section 20 of the 2016 RPwD Act. Under Section 20, every government establishment is required to provide “reasonable accommodation” and a conducive environment to employees with disability. “Reasonable accommodation” as defined in Section 2(y) means necessary and appropriate modifications and adjustments to ensure that persons with disabilities enjoy their rights equally with others. The provision of scribes and compensatory time during the examination to candidates such as the appellant are reasonable accommodations necessary to be provided under the 2016 RPwD Act.

**10.4.** The 2018 CSE Rules and the 2018 CSE Notification violate Article 14 and Article 16(1) of the Constitution and the 2016 RPwD Act as they provide for scribes only for candidates who are blind, those suffering from locomotor disability or cerebral palsy. In the 2018 CSE Rules, applications are invited from all persons with disabilities and age relaxation is also provided to them, including for those suffering from learning disabilities. However, the provision of scribes is limited to a few candidates.

**10.5.** The 2018 CSE Rules fail to recognise that persons such as the appellant with a writer’s cramp have difficulty in writing in their own hand and thus, should be granted a similar facility of a scribe.

**11.1.** The issue relating to the entitlement of the appellant for the facility of a scribe for writing the CSE 2018 is governed by the rules framed by the DoPT. According to the 2018 CSE Rules, persons with benchmark disabilities are provided with the facility of a scribe, if desired. In case of persons with a benchmark disability, the facility of a scribe is provided on the production of a certificate issued by a Chief Medical Officer of a government healthcare institution to the effect that person concerned has a physical limitation to write and a scribe is essential to write the examination on the candidate’s behalf.

**11.3.** The appellant has failed to challenge the legality of the 2018 CSE Rules and has only made claims under Section 20 of the 2016 RPwD Act.

**12.2.** Writer’s cramp is not specifically included in the list of specified disabilities in the Schedule of the 2016 RPwD Act. Thus, the guidelines dated 29-8-2018 are not applicable to persons suffering from writer’s cramp. However, many such medical conditions which may hamper writing ability have not been identified as disabilities. In these instances, the examining body has to consider the cases of such candidates and whether facilities of scribes and compensatory time is to be granted.

**26.** The important point to note is that the guidelines of the MSJE dated 29-8-2018 recognise the entitlement to a scribe only for candidates with benchmark disabilities. Among them, candidates belonging to three categories—the blind

and those with locomotor disability or cerebral palsy—are to be given the facility if so desired. In the case of candidates with other benchmark disabilities, such a facility is to be extended upon a certificate which is issued in terms as noted above.

**F. Benchmark disability not a precondition to obtaining a scribe**

**34.** It is in this backdrop that the Court must resolve the issue, bearing as it does on the rights of similarly situated candidates. The 2016 RPwD Act embodies two distinct concepts when it speaks of : (i) “persons with benchmark disabilities”, and (ii) persons with disability. In defining a person with benchmark disability, Section 2(r) encompasses two categories : (i) a person with not less than 40 per cent of a specified disability, where the specified disability has not been defined in measurable terms, and (ii) a person with disability where the specified disability has been defined in measurable terms, as certified by the certifying authority. In other words, Section 2(r) encompasses both a situation where a specified disability has not been defined in measurable terms, in which event it means a person with not less than 40 per cent of the specified disability but also where a specified disability has been defined in measurable terms. A certification by the certifying authority is contemplated in regard to whether the person concerned does in fact meet the specified norm as quantified.

**35.** The second concept which is embodied in Section 2(s) is that of a person with disability. Section 2(s) unlike Section 2(r) is not tagged either with the notion of a specified disability or a benchmark disability as defined in Section 2(r). Section 2(s) has been phrased by Parliament in broad terms so as to mean a person with a long term physical, mental, intellectual or sensory impairment which in interaction with various barriers hinders full and effective participation in society equally with others.

**40.** Conflating the rights and entitlements which inhere in persons with disabilities with the notion of benchmark disabilities does disservice to the salutary purpose underlying the enactment of the 2016 RPwD Act. Worse still, to deny the rights and entitlements recognised for persons with disabilities on the ground that they do not fulfil a benchmark disability would be plainly ultra vires the 2016 RPwD Act.

**45.** The 2016 RPwD Act was a landmark legislation which repealed the 1995 Act and brought Indian legislation on disability in line with the United Nations Convention on the Rights of Persons with Disabilities (“UNCRPD”). Under the old regime, disability was simply characterised as a medical condition devoid of any understanding of how disability is produced by social structures that cater to able-bodied persons and hamper and deny equal participation of persons with disabilities in the society. Section 2(t) of the 1995 Act defined a “person with disability” in the following terms:

**“2. (t) “person with disability” means a person suffering from not less than forty per cent of any disability as certified by a medical authority;”**

**50.** It is clear from the scheme of the 2016 RPwD Act that “person with disability” and “person with benchmark disability” are treated as separate categories of individuals having different rights and protections. A third category of individuals “persons with disability having high support needs” has also been defined under the 2016 RPwD Act.

**62.** The principle of reasonable accommodation acknowledges that if disability as a social construct has to be remedied, conditions have to be affirmatively created for facilitating the development of the disabled. Reasonable accommodation is founded in the norm of inclusion. Exclusion results in the negation of individual dignity and worth or they can choose the

route of reasonable accommodation, where each individuals' dignity and worth is respected. Under this route, the "powerful and the majority adapt their own rules and practices, within the limits of reason and short of undue hardship, to permit realisation of these ends". [ Reasonable Accommodation in A Multicultural Society, Address to the Canadian Bar Association Continuing Legal Education Committee and the National Constitutional and Human Rights Law Section, 7-4-1995, Calgary, Alberta at 1.]

**65.** Failure to meet the individual needs of every disabled person will breach the norm of reasonable accommodation. Flexibility in answering individual needs and requirements is essential to reasonable accommodation. The principle contains an aspiration to meet the needs of the class of persons facing a particular disability. Going beyond the needs of the class, the specific requirement of individuals who belong to the class must also be accommodated. The principle of reasonable accommodation must also account for the fact that disability based discrimination is intersectional in nature. The intersectional features arise in particular contexts due to the presence of multiple disabilities and multiple consequences arising from disability. Disability therefore cannot be truly understood by regarding it as unidimensional. Reasonable accommodation requires the policy-makers to comprehend disability in all its dimensions and to design measures which are proportionate to needs, inclusive in their reach and respecting of differences and aspirations. Reasonable accommodation cannot be construed in a way that denies to each disabled person the customisation she seeks. Even if she is in a class of her own, her needs must be met. [ Amita Dhanda, Prof. of Law, NALSAR, "In a class of my own : Reasonable accommodation from a disability perspective" [ppt presentation].] While assessing the reasonableness of an accommodation, regard must also be had to the benefit that the accommodation can have, not just for the disabled person concerned, but also for other disabled people similarly placed in future.

**67.** The concept of reasonable accommodation as a component of the equality guarantee has been recognised in a consistent line of precedents of this Court. [Rajive Raturi v. Union of India, (2018) 2 SCC 413 : (2018) 1 SCC (L&S) 404; Jeeja Ghosh v. Union of India, (2016) 7 SCC 761 : (2016) 3 SCC (Civ) 551 and Disabled Rights Group v. Union of India, (2018) 2 SCC 397 : (2018) 1 SCC (L&S) 391] Illustratively, in Syed Bashir-ud-din Qadri v. Nazir Ahmed Shah [Syed Bashir-ud-din Qadri v. Nazir Ahmed Shah, (2010) 3 SCC 603 : (2010) 1 SCC (L&S) 874] , this Court, speaking through Altamas Kabir, J. held that a person having cerebral palsy should be given access to an external electronic aid as a reasonable accommodation to offset the impact of his inability to write on the blackboard. The Court held as follows : (SCC p. 614, para 52)

"52. ... while a person suffering from cerebral palsy may not be able to write on a blackboard, an electronic external aid could be provided which could eliminate the need for drawing a diagram and the same could be substituted by a picture on a screen, which could be projected with minimum effort."

**69.** A two-Judge Bench of this Court held that a judicial officer in a State has to possess reasonable limit of the faculties of hearing, sight and speech in order to hear cases and write judgments and, therefore, stipulating a limit of 50% disability in hearing impairment or visual impairment as a condition to be eligible for the post is a legitimate restriction. This Court affirmed the submission of the Madras High Court that seeking to address the socially constructed barriers faced by a visually or hearing impaired Judge, whose disability exceeds 50%, would create "avoidable complications". As a result, the

impugned ceiling was found to be valid. The relevant portion of the judgment is excerpted below : (V. Surendra Mohan case [V. Surendra Mohan v. State of T.N., (2019) 4 SCC 237 : (2019) 1 SCC (L&S) 594] , p. 257, para 45)

“45. ... The High Court in its additional statement has encapsulated the functions and duties of the Civil Judge in the following words:

‘7. ... Impaired vision can only make it extremely difficult, even impossible, to perform any of these functions at all. ... Therefore, creating any reservation in appointment for those with disabilities beyond the 50% level is far from advisable as it may create practical and seemingly other avoidable complications. Moreover, given the need to prepare judgments based on the case papers and other material records in a confidential manner, the assistance of a scribe or the like completely takes away the secrecy and discreteness that come with the demands of the post.’ ”

**75.** Second, and relatedly, this being so, it can be no answer to tell a disabled candidate whose disability genuinely necessitates access to a scribe that they are already being given all the above facilities. Providing those facilities does not absolve the State of the obligation to provide a disabled candidate access to a scribe, when this need is clearly established as being relatable to their disability.

**81.** When competent persons with disabilities are unable to realise their full potential due to the barriers posed in their path, our society suffers, as much, if not more, as do the disabled people involved. In their blooming and blossoming, we all bloom and blossom. The most significant loser as a consequence of UPSC's rigid approach in this case (of refusing to provide scribes to those not having benchmark disabilities) is UPSC itself. For it is denying to the nation the opportunity to be served by highly competent people who claim nothing but access to equal opportunity and a barrier-free environment.

#### **K. Realising the transformative potential of the Rights of Persons with Disabilities Act, 2016 : From principle to practice**

**87.** In the hearing, one of us presciently noted that the imposition of the criterion of a benchmark disability to access a scribe—an arena in which it has no relevance as per the statutory framework—betrays a profound lack of awareness on the part of the authorities about the 2016 RPwD Act. The OM of 29-8-2018, in its preambular portion recites as follows:

“The Act [Rights of Persons with Disabilities Act, 2016] provides for reservation in government jobs for persons with benchmark disabilities as defined under Section 2(r) of the said Act.”

#### **L. Case of the appellant**

**90.** Insofar as the case of the appellant is concerned, his condition has been repeatedly affirmed by several medical authorities including National Institute of Mental Health and Neuro Sciences (NIMHANS), Bangalore and AIIMS. The AIIMS report which was pursuant to the order [Vikash Kumar v. UPSC, 2020 SCC OnLine SC 1119] of this Court is clear in opining that the appellant has a specified disability inasmuch as he has a chronic neurological condition. This condition forms part of Entry IV of the Schedule to the 2016 RPwD Act. The writer's cramp has been found successively to be a condition which the appellant has, making it difficult for him to write a conventional examination. To deny the facility of a scribe in a situation such as the present would negate the valuable rights and entitlements which are recognized by the 2016 RPwD Act”.

52. The appellant ***In the matter of: Vikash Kumar (supra)*** had a disability commonly known as **Writer's Cramp**. In the relevant UPSC Examination he was not allowed to avail of the help of a **Scribe**. The appellant claimed that with the nature of disability he should have been allowed to take the help of scribe. In that backdrop and perspective the issue went before the Hon'ble Supreme Court. Writer's Cramp was not specifically included in the list of specified disabilities under the schedule of the said Act and the relevant guidelines of MSJE dated October 29, 2018 recognized the entitlement to a scribe for the candidates with Bench Mark Disabilities. The 2018 CSE Rules and the CSE Notification was violative to Article 14 and Article 16(1) of the Constitution and the said act as they provided for scribes only for candidates who were blind, those suffering from locomotor disability and cerebral palsy. In the 2018 CSE Rules applications were invited from all persons with disabilities and age relaxation was also provided to them including for those suffering from learning disabilities. **However, the provision of scribes was limited to a few candidates. The 2018 CSE Rules failed to recognize that person with writer's cramp having difficulty in writing in their own hand and, thus, the appellant claimed that such persons with writer's cramp with difficulty in writing in their own hand and, thus, should be granted a similar facility of a scribe. The reservation for the PWD Quota in terms of Section 32 of the Act was never the issue before the Hon'ble Supreme Court.**

53. Inasmuch as, from the facts and figures disclosed by the respondent no.4 and 5 and the respondent no. 6, it appears that if in all the Post Graduation Streams, the reservation following Section 32 of the Act is provided for, then such reservation would amount to a figure which would be far beyond and higher than the reasonable and rational assessment of the reading of the provisions under Section 32 of the Act. It is true that Section 32 of the Act did not specify any upper limit for the reservation in terms thereof but it is equally true that, the reservation in terms of the said provision should not reach such a State that it would amount to encroachment of seats which are ear marked either for the general category or reserved for other categories. In such a case it would amount to a clear violation of the constitutional mandate of equality and the doctrine of proportionality. In that case the interpretation of Section 32 of the Act would become an absurd proposition. While exercising the powers of judicial review, the limited areas in which the Court can enquire are as to whether in taking a decision, the authority has exceeded its power and committed any error of law. The Court can examine as to whether an authority has reached to a decision in a reasonable, just, lawful and in proper exercise of its discretion without abusing its power. It is not for the Court to determine whether a particular policy or a particular decision taken in the fulfillment of that policy is fair. The Court will examine as to whether the decision of an authority is vitiated by illegality, irrationality or procedural impropriety and arbitrariness. While examining the question of arbitrariness or irrationality, the Court will be guided by the principle as to whether the decision of the authority

is such, that no authority properly directing itself on the relevant law and acting reasonably would have reached it.

54. ***In the matter of: Vikash Kumar (supra)***, the Hon'ble Supreme Court had observed that the provisions laid down under the said Act were in sync with the provisions laid down under the Constitution with regard to the rights of the Physically disabled citizen to the extent discussed therein. On a reading of the ratio laid down in the said judgment, it was clear that the statutory mandate for reservation under the said Act was a mandatory requirement to be complied with and followed by all the Government Institutions of Higher Education, as the subject course, in the facts of this case. **The case of the writ petitioner was not that such mandate had not been followed. The writ petitioner following the reservation guidelines under Section 32 of the Act wanted that similar reservation has to be followed in each and every stream of the Post Graduate Medical Courses, like, Dermatology, into which the petitioner was interested to get an admission.** The contention of the writ petitioner, in the opinion of this Court, is totally misconceived.
55. For the reasons stated above, both the said first and second writ petitions are devoid of any merit and should be dismissed.
56. The various provisions laid down under ***Medical Council of India Post Graduate Medical Education Regulations, 2000 (amended up to May, 2018)*** (for short, the said 2000 Regulation) are statutory Regulation with a binding fore. **Regulation 9A(4)** of the said 2000 Regulation provided that in order to prevent seat blocking in common counseling **for admission to Post**

**Graduate Courses** and permissibility to exercise fresh choice during counseling, forfeiture of fee shall be in accordance with the matrix contained in Appendix III. The relevant extract from the said Regulation in this regard is quoted below:-

*“1. All India Quota Seats remaining vacant after last date for joining, i.e. 10<sup>th</sup> May will be deemed to be converted into State Quota.*

*2. Institute/College/Courses permitted after 28<sup>th</sup> February will not be considered for admission/allotment of seats for current academic year.*

*3. In any circumstances, last date for admission/joining will not be extended after 31<sup>st</sup> May.*

*4. For the purpose of ensuring faithful obedience to the above time-schedule, Saturday, Sunday or Holidays (except National Holiday) shall be treated as working day.*

*5. The following Matrix shall be applicable with regard to permissibility to students to exercise fresh choice during counseling:-*

| <i>Round</i>              | <i>Free Exit</i> | <i>Exit with forfeiture of fees</i> | <i>Ineligible for further counseling</i> | <i>Amount of registration fee</i>                                         |
|---------------------------|------------------|-------------------------------------|------------------------------------------|---------------------------------------------------------------------------|
| <i>AIQ I/Deemed</i>       | ✓                |                                     |                                          |                                                                           |
| <i>AIQ II/Deemed</i>      |                  | <i>If not joined</i>                | <i>If joined</i>                         | <i>Government-Rs.25,000 (half for SC/ST/OBC)<br/>Deemed-Rs.2,00,000</i>   |
| <i>State Quota I</i>      | ✓                |                                     |                                          |                                                                           |
| <i>State Quota II</i>     |                  | <i>If not joined</i>                | <i>If joined</i>                         | <i>Government-Rs.25,000 (half for SC/ST/OBC)<br/>Private-Rs. 2,00,000</i> |
| <i>State Quota Mop-Up</i> |                  |                                     | ✓                                        |                                                                           |
| <i>Deemed Mop-Up</i>      |                  |                                     | ✓                                        |                                                                           |

57. From a plain reading of the above provisions it is clear that if a candidate, as the petitioner herein has already joined in a course and occupied a seat under

the **All India Quota**, then in the **Mop up round** of **State Quota** Counseling such a candidate would be ineligible. In the facts in the instant case, the petitioner admittedly had joined and secured an admission in the All India Quota for the stream General Medicine and, therefore, by operation of the said Regulation the petitioner is now ineligible for the Mop up counseling in the **State Quota** any further. The ineligibility of the petitioner to participate for further counseling in the Mop up round of **State Quota** at present is **barred** by operation of statutory Regulation.

58. ***In the matter of: Rachit Sinha & Ors. (supra)***, the Hon'ble Supreme Court had observed as under:-

*“3. On 5-4-2018, a Notification was issued by the Medical Council of India by which Regulation 9-A(4) was added to the Postgraduate Medical Education Regulations, 2000 which is in the following terms:*

*“9-A. (4) In order to prevent seat blocking in common counselling for admission to postgraduate courses and permissibility to exercise fresh choice during Counselling, forfeiture of fee shall be in accordance with the matrix contained in Appendix III.”*

*9. It is clear from the record that the Medical Council of India decided to make certain changes to the method of admissions to the postgraduate courses to arrest the blocking of seats by certain candidates which was detrimental to the interest of meritorious candidates in the All-India quota. There is material on record to suggest that devious methods were adopted by certain candidates to block the seats in the All-India quota and resign thereafter from those seats later which resulted in reversion of the All-India quota seats to the State quota. The Medical Counselling Committee identified about thousand candidates who were indulging in such illegal practice and proposes to take action against them after a thorough inquiry.*

*10. There is no infringement of any legal right of the petitioners in the change of the method of counselling made by the notice dated 9-4-2018. Reduction of chances of admission does not entail in violation of any right. If the change in the method of counselling was due to the circumstances mentioned above, we see no reason to interfere. Further, the petitioners have participated in the second round of counselling for upgradation. We are informed that the second round of counselling for All-India quota is completed. No interference is warranted at this stage in respect of the All-India quota.*

*11. In view of the completion of the second round of counselling of the All-India quota, we see no reason to entertain the writ petitions. The order dated 20-4-*

2018 [*Rachit Sinha v. Union of India*, 2018 SCC OnLine SC 714, wherein it was directed: "Having heard the learned counsel appearing for the parties, we consider it appropriate to direct that until further orders, the petitioner students should be allowed to retain their seats allotted to them in the first round of counselling for admission to the post-graduate medical courses. We order accordingly. Also, there shall be stay of reversion of the seats by the Central Government to the State Government(s) until further orders. List these matters on 27-4-2018 for further hearing. In the meantime, the respondents may file their respective reply-affidavit, if any.], staying the reversion of seats from the All-India quota to the State quota is vacated. According to the schedule for online counselling, the second round of counselling of the State quota should be completed by 26-4-2018. The second round of State Counselling has to be conducted after taking into account the reverted seats on completion of the second round of the All-India quota. We are informed that some States and Deemed/Central institutions completed the second round of counselling without waiting for the reversion of the unfilled seats in the second round of counselling of the All-India quota. As this could not have been done, we direct that such States shall conduct the second round of counselling again after reversion of the unfilled seats in the second round of counselling of the All-India quota. As we have vacated the order dated 20-4-2018 [*Rachit Sinha v. Union of India*, 2018 SCC OnLine SC 714, wherein it was directed: "Having heard the learned counsel appearing for the parties, we consider it appropriate to direct that until further orders, the petitioner students should be allowed to retain their seats allotted to them in the first round of counselling for admission to the post-graduate medical courses. We order accordingly. Also, there shall be stay of reversion of the seats by the Central Government to the State Government(s) until further orders. List these matters on 27-4-2018 for further hearing. In the meantime, the respondents may file their respective reply-affidavit, if any.], the authority concerned will report the unfilled seats in the second round of the All-India Counselling to the respective States by 5-5-2018. The second round of counselling for the State quota shall be conducted and completed by 10-5-2018. The mop-up round for the State quota which is scheduled to be completed by 8-5-2018 is extended to 15-5-2018".

59. In the instant writ petition the writ petitioner challenged the decision of the State policy makers by not providing for reservation for PWD Quota in **Dermatology**. It was never the case of the petitioner that, overall, State had not reserved atleast 5% seats for person with Bench Mark Disabilities in the Post Graduation Medical Courses in terms of Section 32 of the Act. From the ratio laid down by the Hon'ble Supreme Court ***In the matter of: Vikash Kumar (supra)*** it would not appear that any mandate was laid down upon the educational institutions regarding the manner, mode and prescription as to how such reservation should be made. The petitioner has also not alleged

malice on power or malice on exercise of its discretion by the State authority in not providing for any reservation for any PWD Quota in the Stream

**Dermatology.**

60. In view of the above discussions and reasons, this Court is also of the considered view that this restrictions imposed by the Director General of Health Services Medical Counseling Committee, Government of India which is the subject matter of the said third writ petition were also not unreasonable or arbitrary restrictions. The said third writ petition is also devoid of any merit.
61. In view of the above, the first writ petition, **WPA No. 2305 of 2022** stands dismissed.
62. Consequently, the second writ petition **WPA No. 23202 of 2022** stands dismissed.
63. The third writ petition **WPA No. 24186 of 2022** also stands dismissed.
64. The **interim order** passed in the first two writ petitions namely **WPA No. 23056 of 2022 and WPA No. 23203 of 2022** dated **October 12, 2022** stands **vacated**.
65. In view of the above discussions, this Court thought it fit that, to decide the issues in these writ petitions the rest of the judgments relied upon on behalf of the petitioner were not required to be dealt with further.
66. There shall, however, be no order as to costs.
67. A copy of this judgment is directed to be kept in the file of each of the writ petitions.

**(Aniruddha Roy, J.)**