

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CIVIL APPELLATE JURISDICTION****WRIT PETITION NO.4503 OF 2022**

Mr. Malik Farhan Rafiullah .. Petitioner
v/s.
The State of Maharashtra Through its Dept.
of Medical Education And Drugs And Ors. .. Respondents

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Mr. Mateen Shah, for the Petitioner.

Mr. N.C. Walimbe, AGP, for State.

Ms. Bharti K. Gerella, for Respondent Nos. 2 and 4.

Mr. Om Suryawanshi, for Respondent Nos. 5 and 6.

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**CORAM: SUNIL B. SHUKRE &
G.A. SANAP, JJ.**

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Heard.

2. The contention is that the Petitioner has been erroneously found to be ineligible for seeking admission to BDS Course in the CAP Round-1 on the ground that the disability certificates submitted by the

Petitioner are not reliable, but the fact is that the designated centre, Ali Yavar Jung Hospital; has certified the hearing disability of the Petitioner as of permanent nature to the extent of 60% of the total body parts of the Petitioner.

3. Learned Counsel for the Petitioner prays for grant of interim relief in terms of prayer clause (c). The prayer, however, cannot be granted as there exists a doubt about the correctness of the disability certificates relied upon by the Petitioner and, in fact, there is a question about maintainability of this petition.

4. The disability certificate issued by Medical Authority Thane on 24 April 2019 shows that the Petitioner has 65% permanent hearing loss and his disability is to the extent of 65%. There is one more certificate of disability dated 24 April 2019 issued by one Dr. M. A. Azmi. This certificate of disability shows that the Petitioner's hearing loss is to the extent of 35%.

5. Thus, we find that the disability certificates relied upon by the Petitioner are incompatible with each other and, hence, none of them is reliable. At this stage, learned Counsel for the Petitioner submits that, in fact, the certificate dated 24 April 2019 issued by Dr. M. A. Azmi, showing hearing disability of the Petitioner to be of 35%, contains an inadvertent mistake in mentioning the percentage of the

disability granted to him and this certificate issued by Dr. M.A. Azmi is based upon the disability certificate bearing No. MH2130420000059270 and this can be verified from the certificate issued by Dr. M.A. Azmi, where Dr. M. A. Azmi has mentioned the same certificate number, which has been issued by Thane Medical Authority.

6. We have carefully considered the disability certificate dated 24 April 2019 issued by Thane Medical Authority and also the certificate of disability dated 24 April 2019 issued by Dr. M. A. Azmi. We have already stated about the variance between the two certificates, the former giving percentage of hearing disability as 65 and the latter giving percentage of disability as 35. The question is as to whether or not the latter certificate mentions the percentage of disability mistakenly. Answer would have to be found out by considering the surrounding circumstances.

7. Now, if we look into the memo of petition, we would find that the Petitioner has not made any averment regarding the mistake committed by Dr. M. A. Azmi in mentioning the percentage of hearing disability in the certificate issued by him. The Petitioner has not filed on record any affidavit of Dr. M. A. Azmi admitting the mistake committed by him. It is also not the case of the Petitioner that the certificate dated 24 April 2019 has been withdrawn by Dr. M. A. Azmi

and Dr. M. A. Azmi has, thereafter, issued a corrected disability certificate.

8. In these circumstances, we find that the contention that certificate of disability issued by Dr. M. A. Azmi contained an inadvertent mistake regarding percentage of disability suffered by the Petitioner is devoid of substance and, therefore, the explanation given in this regard by learned Counsel for the Petitioner is rejected.

9. Even if it is assumed for the sake of argument that the certificate of disability issued by Dr. M. A. Azmi contains some inadvertent mistake regarding percentage of disability, just for the sake of argument, the doubt about genuineness and correctness of the disability certificates obtained by the Petitioner still remains. There is one more certificate of disability dated 8 March 2022 issued by Ali Yavar Jung Hospital, Bandra (West), Mumbai. This certificate mentions about 60% of hearing disability suffered by the Petitioner. The Petitioner does not express any doubt about the percentage of hearing disability mentioned in this certificate, but, this percentage stands at variance with the percentage of disability mentioned in the disability certificate dated 24 April 2019, where percentage is stated to be 65.

10. From perusal of all the certificates submitted by the

Petitioner, the only conclusion that can be drawn is that there is a whole lot of doubt about percentage of the hearing disability suffered by the Petitioner and, in these circumstances, we do not think that the order, to which an exception has been taken in this petition, which order is of the date of 16 February 2022, can be said to be erroneous. Of course, this order dated 16 February 2022, declaring the Petitioner to be not eligible for seeking admission to BDS Course, has been passed much before the disability certificate was issued by Ali Yavar Jung Hospital. But, as stated earlier, even the disability certificates relied upon by the Petitioner do not unequivocally state about the percentage of hearing disability suffered by the Petitioner. That apart, the certificate of disability, which was required to be submitted by a student like the Petitioner, as per the Information Brochure, was only from a designated centre and the certificates of disability, which were submitted by the Petitioner at the time when he was found to be ineligible, were not issued admittedly by a designated authority. The designated authority for issuing a disability certificate was Ali Yavar Jung Hospital in case of Mumbai candidates and the disability certificate in the present case was obtained by the Petitioner from this designated centre on 8 March 2022, by which time, the cut-off date of Round-1 Admission Process had already been over. The Petitioner was required to submit disability certificate obtained from the said designated centre on or before the cut-off date of 8 February 2022, which he had not done in the present case.

11. Thus, we find that there is no merit in the petition. The petition stands summarily dismissed. No costs.

12. The Petitioner is, however, at liberty to make an application before suitable authority praying for release of relevant documents in his favour and refund of the fees, if any, as per Rules.

(G.A. SANAP, J.)

(SUNIL B. SHUKRE, J.)