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***IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION***

***WRIT PETITION NO. 9676 OF 2021
with
INTERIM APPLICATION NO. 116 OF 2021***

Ms. Ayesha Iram Ibrahim Khan ... Petitioner

V/s.

Thane Municipal Corporation
Rajiv Gandhi Medical College and
Chhatrapati Shivaji Maharaj Hospital & Ors. ... Respondents

Ms. Amita Chaware for the Petitioner
Mr. Mandar Limaye for the Respondent No.1
Ms. P.J. Gavhane, AGP for the Respondent No.2
Mr. Sameer Khedekar for the Respondent No.6
Ms. Sarika Shetye i/b. S.B. Shetye for the Respondent No.7

Mr. Rui Rodrigues a/w. Ashutosh Misra for Respondent No.3 - UOI

***CORAM : SUNIL B. SHUKRE &
AMIT BORKAR, JJ.***

DATE : 16 FEBRUARY 2022

P.C. :-

Heard the learned Counsel for the Petitioner, the learned
Counsel for the Respondents and the learned AGP for the State.

2. It is the contention of the learned Counsel for the Petitioner that even though the Petitioner had submitted both the disability certificates one dated 04.04.2018 issued by the General Hospital, Khamgaon and the other dated 27.10.2020 issued by the Grant Government Medical College, Mumbai while seeking admission to M.B.B.S. Course, the Petitioner was admitted to Respondent No.1 – College for M.B.B.S. Course on seat reserved for the candidates with physical disability.

3. It is the contention of the Respondents that while submitting application form and staking her claim on a seat in M.B.B.S. Course which was reserved for candidates belonging to physically disabled category, the Petitioner had submitted a disability certificate dated 04.04.2018 issued by the General Hospital, Khamgaon which certifies that the Petitioner suffered disability of visual impairment to both eyes with 40%. We may note here that any candidate who suffers such physical disability of 40% or more, there is no dispute, is eligible for being admitted to M.B.B.S. Course on a seat reserved for physically disabled category. It is in this background that the Respondents submit, during the scrutiny it was noticed that there was another certificate of disability issued in favour of the Petitioner which certified her visual impairment as being only to the extent of 30%. Respondents further submit that they also found that Medical Board which issued the certificate

concluded that the Petitioner was not eligible for admission in medical/dental courses as per the MCI/BCI Guidelines. This certificate of disability, the learned Counsel for the Respondents further submit, was issued by the Medical Board constituted at Grant Government Medical College and Sir JJ Group of Hospital, Mumbai and it was issued on 27.10.2020. The Respondents further submit that disability certificate obtained subsequently by the Petitioner was suppressed by the Petitioner as it was not uploaded by her alongwith online application form submitted by her. The Respondents submit that the Petitioner has not approached this Court with clean hands and so, they urge that this Petition deserves to be dismissed summarily.

4. According to the learned Counsel for the Petitioner, there was no suppression of subsequent medical certificate by the Petitioner and that it was indeed uploaded by her alongwith the first disability certificate dated 04.04.2018. In support, the Respondent has placed reliance upon the fresh averments made in the rejoinder and the documents at pages 229 and 230. It is also submitted by the learned Counsel for the Petitioner that this is a case wherein there was no fault on the part of the Petitioner and if by some mistake committed by the Respondents, the Petitioner was given admission to M.B.B.S. Course conducted by the Respondent No.1 – College, the Petitioner must not be penalized. Reliance has been placed

upon the law laid down by the Apex Court in the case of *A. Sudha v/s. University of Mysore and Anr., Civil Appeal No. 2598 of 1987 decided on 06.10.1987 (1987 AIR (SC) 2305)*. According to the Respondents, the case of *A. Sudha* is of no assistance to the Petitioner as the facts of that case are quite different from the facts of the present case.

5. Upon careful consideration of the rival arguments, the documents placed on record, the pleadings made in the Petition, and the averments made in the rejoinder, we are of the view that there is no substance in the argument of the learned Counsel for the Petitioner and that there is merit in the submissions made across the bar on behalf of the Respondents.

6. About the suppression of the material document from the Respondents – Authorities by the Petitioner, we must say that the Petitioner is not innocent. The Petitioner has falsely stated before this Court through her rejoinder that the second disability certificate dated 27.10.2020 was indeed submitted by her at the time of filing of the online application form. Support to this conclusion can be found in the pleadings made by the Petitioner and the circumstances which appeared on record from the documents available on record, a detailed discussion of which is made in ensuing paragraphs.

7. Upon a close look at the pleadings, we find that there is no statement whatsoever made in the memo of Petition that the Petitioner had alongwith her online application form uploaded the second medical disability certificate dated 27.10.2020. The learned Counsel for the Petitioner concedes that there is no “specific pleading” made in this regard but on being asked of her to show some indirect pleading made by her, she could not do so and instead invited our attention to the averments made in the rejoinder. In the rejoinder the Petitioner has stated that she submitted disability certificate. In support of the certificate the Petitioner has filed two documents which are at pages 229 and 230. Item No.8 of the document of page 229 relates to the category in which the application is made and it reads “Person with Disability (PWD)” (Annexure-D). Against it, it is only stated that “Document Uploaded”. It is significant to note that plural of the word “Document” is not used and it has been mentioned only as “Document Uploaded”. Page 230 is the document which is in the nature of certificate given by the Vice Dean of Respondent No.1 – College. In this certificate, total number of the certificates submitted by the Petitioner has been given. It makes a mention of 11 number of certificates in total + undertaking as having been submitted by the Petitioner. This 11 number of certificates submitted by the Petitioner exactly corresponds with each of the certificates uploaded by the

Petitioner which is seen from the tick marks made against those certificates which were actually submitted. One of the tick marks is in respect of Serial No.20 which relates to two categories that is sports and physically handicapped, out of which, physically handicapped category has been selected by putting a tick mark against it. It also shows that for this category only one certificate has been submitted. So it is very clear that at the time of submission of the application form or at any point of time thereafter, the Petitioner did not submit two disability certificates and submitted only one disability certificate dated 04.04.2018 on which initially she has placed her reliance and about which the stand of the Respondents is that the Petitioner submitted only this certificate and not the other.

8. We also find that conduct of the Petitioner is not natural. Natural conduct of the Petitioner would have led her to incorporate an explanation in the memo of petition clarifying as to why she could not or did not upload the second disability certificate. But, no such explanation is given in the petition. Even in the rejoinder, no explanation has been given. On the contrary a submission has been made therein that both the disability certificates were submitted by the Petitioner and quiet incorrectly. This submission is not at all supported by the own document filed on the record by the Petitioner and the circumstances discussed earlier.

9. The conclusion which can be drawn from the discussion so made is inevitable. We find that the Petitioner did not submit the second medical certificate which categorically disqualified her to seek admission to M.B.B.S Course and yet the Petitioner, quiet boldly submitted her application form seeking admission to M.B.B.S. Course on a seat reserved for physically disabled persons and in her such endeavour the Petitioner simply uploaded the disability certificate dated 04.04.2018 and suppressed the disability certificate dated 27.10.2020. The Petitioner, therefore, is not innocent in this case, which fact distinguishes her case from the facts of *A. Sudha v/s. University of Mysore and Anr.* (supra). In this case the Supreme Court has noted that the Petitioner applied for admission to M.B.B.S. Course because she was informed by her Principal that she was eligible for admission in the 1st Year M.B.B.S. Course although the fact was that she was not eligible but then, on the backdrop of this fact, the Apex Court found that the Appellant therein was quite innocent and was quite justified in relying upon the information supplied to her by none else than the Principal of the Institute given in his letter about eligibility of the Petitioner for seeking admission in the 1st Year M.B.B.S. Course (see observations made in para 18). As stated by us already, the Petitioner herein made a deliberate attempt to mislead the Respondent – Authorities and was initially successful in her such attempt which saw the Petitioner secure admission to 1st Year M.B.B.S. Course. But, this admission of the

Petitioner was based upon suppression of a material fact and an effort of misleading the Authorities and therefore, the admission of the Petitioner to M.B.B.S. Course cannot be regularized. In fact, the Petitioner knows this, very well, but has chosen to take a chance before this Court. We must state it here that the second disability certificate dated 27.10.2020 is not disputed in any manner by the Petitioner. In such a case the Petitioner at the most could have questioned the legality and validity of second disability certificate dated 27.10.2020 but the Petitioner has never done so.

10. In view of the above, we find no merit in the Petition. The Petition stands dismissed. In ordinary course of circumstances, we would have certainly imposed cost on such a Petitioner but, considering the fact that the Petitioner is a student and is still going through her academic journey, we refrain from doing so. No costs.

11. Civil Application is disposed of accordingly.

AMIT BORKAR, J.

SUNIL B. SHUKRE, J.

JYOTI
PRAKASH
PAWAR

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by JYOTI
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