

BDP-SPS-

BHARAT
DASHARATH
PANDIT

Digitally signed by
BHARAT
DASHARATH
PANDIT
Date: 2022.12.22
16:53:43 +0530

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.14688 OF 2022**

ABC

..... Petitioner.

V/s

Union of India and Ors.

..... Respondents.

Mr. V.M. Thorat a/w Mr. M.V. Thorat a/w Mr. P.V. Thorat a/w Mr. Amar Bodke a/w Mr. Avinash Bailmare a/w Mr. Nikhil Adkine for the Petitioner.

Mr. R.V. Govilkar a/w Ms. Smita Thakur for Respondent No.1.

Mr. T.R. Yadav i/b Mr. A.K. Jalisatgi for Respondent No.4.

**CORAM: NITIN W. SAMBRE &
SHARMILA U. DESHMUKH, JJ.**

DATE: DECEMBER 06, 2022

P.C.:-

1] Petitioner, suffering from specific learning disability (Dysgraphia) is questioning decision of Respondent No.4 – Maharashtra Animal and Fishery Science University, whereby his claim for admission to Undergraduate Course of B.V.Sc. & A.H. came to be rejected. Respondent No. 4 – University on 25/11/2022 declared final list of non-eligible candidates for admission to aforesaid degree course in which with following remark, his candidature came to be

rejected.

“THE CERTIFICATE PRODUCED BY THE CANDIDATE IS NOT ISSUED BY THE MEDICAL BOARD OR CIVIL SURGEON AS PRESCRIBED BY THE VETERINARY COUNCIL OF INDIA REGULATION 2016 AND IN THE MAFSU PROSPECTUS 2022-23. THE VETERINARY COUNCIL OF INDIA REGULATION - 2016 NO. 10(C) & (F) AND CLAUSE 6.5 (C) & (F) OF MAFSU PROSPECTUS 2022-23, PROHIBITS THE ADMISSION IN B.VSC. & A.H. DEGREE TO THE PERSON WITH DISABILITY OF UPPER LIMB (विशिष्ट लेखन दोष) AND DISABILITY WHICH OTHERWISE WOULD INTERFERE IN THE PERFORMANCE OF DUTIES OF THE VETERINARIAN.”

Basic challenge in the Petition is to the aforesaid order, as the Petitioner claims that his candidature for aforesaid course be considered from the handicapped category.

2] Facts necessary for deciding the Petition are as under:-

3] Petitioner belongs to OBC category has secured 143 marks in NEET examination and in XII Standard his aggregate score is 60.67%. Petitioner scored 89.40% marks in X Standard. His score in Physics, Chemistry, Biology and English is 58.25% in XII Standard.

4] Petitioner at the age of 13 years vide Certificate dated 19th December 2017 issued by Centre for Learning Disability, Department of Psychiatry, Nair Hospital, Mumbai was certified to be suffering from specific learning disability i.e. Dysgraphia with Attention Deficit Hyperactivity Disorder which is claimed to be disorder and not a disease. Psychological assessment of the Petitioner which was carried out at the time of issuance of said Certificate speaks of having normal hearing and vision. Similarly, he has normal physical and neurological assessment. Petitioner has after his psychological assessment certified by Centre for Learning Disability managed under Department of Psychiatry consisting of Professor (Addl.) and two Associate Professors from Department of Psychiatry and a Professor from Department of Pediatrics formed an interpretation that Petitioner has a very superior intellectual functioning.

5] Accordingly, Petitioner is certified to be having 40% learning disability as reflected in the Unique Disability ID. A National Testing Agency has published Information Bulletin for conduct of Neet (UG) – 2022 Examination. In the said Information Bulletin, Chapter-6

provides for Counseling and Reserving for Admission to MBBS and BDS Course. In the said Bulletin, it has been expressly provided for reservation of 5% of the total seats for specially disabled persons. It further provides for a person with bench mark disabilities which means a person with not less than forty percent (40%) of a specified disability will be entitled for claiming admission to MBBS Course. The NEET brochure further provides that Grant Government Medical College, J.J. Hospital is recognized as Certification Centre which has an authority to issue Disability Certificate as per the National Medical Council Norms to Person with Disability candidates. Accordingly, Petitioner was issued Certificate of Disability for NEET admission by the Board of Doctors from J.J. Group of Hospital. Type of Disability certified by the said Medical Board was intellectual disability and percentage of disability is mentioned as 40%. The Board concluded that the candidate is eligible to pursue medical education and also eligible to claim reservation against the seat meant for people with disability as per the existing norms. Veterinary Council of India vide Notification dated 8/7/2016 has prescribed Minimum Standard of Veterinary Education by Regulation of 2016. Part-III of the said

Regulation provides for admission to the Bachelor of Veterinary Science and Animal Husbandry Degree Course. Clause (10) of Regulation 7 prescribes as under :-

“(10) A candidate shall not be allowed admission to Bachelor of Veterinary Science and Animal Husbandry degree course including those admitted under 15% reserved quota of Veterinary Council of India if he or she suffers the following disabilities, namely :-

- (a) disability of total body including disability of chest or spine more than 50%,
- (b) disability of lower limb of more than 50%,
- (c) disability of upper limb,
- (d) visually handicapped candidates and those with hearing disability,
- (e) candidates with progressive diseases like myopathies etc.
- (f) disabilities which otherwise would interfere in the performance of the duties of a veterinarian.”

As a sequel of above, Respondent No.4 – University on 10/10/2022 published a Prospectus for admission to aforesaid Course. In the said Prospectus expressly constitutional reservation is provided to the extent of 60.0% out of which 5% seats are to be filled in as per merit

and in accordance with Government Resolution dated 11/07/2019 from physically handicapped candidates. Clause 6.5 of the said Prospectus which is in tune with aforesaid Clause (10) of Sub-clause 7 of the said Regulation of 2016 reads thus:-

“6.5 Reservation for Physically Handicapped candidates (PH):

Physically Handicapped candidates shall not be admitted to B.V.Sc. & A.H. degree course, if he / she suffer disabilities in physical fitness as listed below -

- a) Disability of total body including disability of chest / spine more than 50%.
- b) Disability of lower limb of more than 50%.
- c) Disability of upper limb.
- d) Visually handicapped candidates and those with hearing disability.
- e) Candidates with progressive diseases like myopathies etc.
- f) Disabilities which otherwise would interfere in the performance of the duties of a Veterinarian.

The disability should be certified by Civil Surgeon / Medical Board and the candidate has to present him / herself before the Civil Surgeon / Medical Board. The last valid disability certificate of the candidate issued by Civil Surgeon / Medical Board should not be more than three months old from the date of submission of application form, failing which the claim of Physically Handicapped

candidature shall be rejected. The candidate should submit the Physically Handicapped Certificate as per proforma in **Annexure VI**. The type of disability and the percentage of disability should be readable / clearly legible to ascertain the eligibility for admission.”

In the aforesaid backdrop and having regard to the identical clause prescribed in Government Resolution dated 11/07/2019 of Respondent No.3 – State Government, the candidature of students who have cleared NEET Examination for admission to B.V.Sc. & A.H. Degree Course is required to be considered. Respondent No.4 – University for the above referred reason has held the Petitioner as not eligible for admission.

6] Mr. Thorat, learned Counsel for the Petitioner would urge that the Petitioner suffers from Dysgraphia which is a specific learning disability. Petitioner can write, however cannot maintain pace with that of regular students. According to him, Petitioner has superior intellectual functioning with high IQ level as could be inferred from the Certificate issued by Centre for Learning Disability. He would also invite attention of this Court to the percentage of disability suffered by the Petitioner. As such, he would urge that the only incapacity which

the Petitioner is suffering from is, he cannot write with the same speed with which other common students can. According to him, a candidate like the Petitioner with 40% disability is entitled for consideration for admission on merit against 5% seats reserved for such candidates for admission to the aforesaid course.

7] Drawing support from another Certificate issued by the Medical Board consisting of Experts, he would urge that Authority ought not to have substituted its opinion to Experts' opinion reflected in the Certificate dated 10/10/2022 which is issued in an appropriate format by the Board as required under the provisions of NEET Regulation. He would urge that said Medical Board has already certified that Petitioner can pursue medical education and can claim benefit of reservation against the seats reserved for people with disability category. In this backdrop, his contentions are, sub-clause (f) of Clause 6.5 of the Prospectus issued by Respondent No.4 – University cannot be read to mean that Petitioner is not able to perform the duties of Veterinarian. According to him, Board, as referred to under Clause 6.5, has already specified disability of the Petitioner and his entitlement to claim privileges for admission against the seats reserved

for physically disabled persons. In addition, he has invited my attention to Advertisement No.012 of 2022 issued by the Maharashtra Public Service Commission wherein State Government through Respondent No. 3 – Department has an intention to fill in the post of Live Stock Development Officer for which prescribed qualification is B.V.Sc. & A.H. Degree Course. According to him, three posts are reserved for persons with disability. Specific category and disability mentioned in the aforesaid Advertisement is, intellectual disability. As such, he would urge that the cause cited for making the Petitioner ineligible for admission is contrary to record and far away from the legal position. He would further urge that candidature of the Petitioner is already declared to be eligible on Online Counseling conducted by Veterinary Council of India for 15% Quota for the year 2022. According to him, Petitioner has already been allotted a seat against the reserved quota for people with disability by Central Council and as such Respondent – State Government cannot override very decision of the Veterinary Council of India.

8] Counsel for Respondents while opposing the prayer would urge that Certificate produced by the Petitioner is not in accordance with

the order or the format as is prescribed under the Prospectus even if same is issued by the Medical Board. It is further claimed that considering the nature of disability (mental disability) suffered by the Petitioner, same otherwise would interfere in the performance of duties of Veterinarian. He would urge that as the Petitioner is unable to write with speed and with correct spelling, Respondents have rightly declared him ineligible. Specific reliance is placed on the provisions of sub-clause (10) of Clause 7 of Veterinary Council of India – Minimum Standard of Veterinary Education, Regulation, 2016, Clause 6.5 of the Prospectus for aforesaid admission and Clause 8 of the Government Resolution dated 11/07/2019. Based on the above, it is claimed that Petition is liable to be dismissed.

9] We have appreciated the aforesaid submissions.

10] At the outset, Petition is liable to be allowed on alone and alone ground that Petitioner being already held to be eligible and allotted a seat by the Central Veterinary Council as against his Ranking 743714 from All India Quota. Petitioner is allotted Bombay Veterinary College, Parel, Mumbai for the aforesaid course against the seat

earmarked for OBC people with disability.

11] Once the Veterinary Council of India for very same admission based on its very same Regulation has held the Petitioner to be qualified to be selected and granted him admission, exact opposite stand taken by Respondent No. 4 – University that too based on hyper technical reason cannot be said to be sustainable, even if the Prospectus prescribed by Respondent No. 4 – University provides for production of Disability Certificate in an appropriate format i.e. Annexure IV from the Centres recognized under the above Bulletin for NEET (UG) – 2022. Same Centre has issued not only Intellectual Disability Certificate to the Petitioner but has also concluded that Petitioner based on quantification of disability is eligible to pursue medical education. Once the Experts Body which is already approved by Respondent Nos. 1 and 3 has held the Petitioner to be eligible, it cannot fall for consideration of Respondent No. 4 – University to sit in appeal over the decision of said Experts Body and make the Petitioner ineligible for grant of admission. Though in the prospectus of the Respondent-University or Bulletin prescribed by NEET Authorities, Rules provide for candidature of students from the disabled category

is liable to be rejected in the matter of admission against quota for disabled candidate, however such rejection can be for reasonable cause i.e. nature and degree of disability seriously impairing him in discharge of his duties like in the present case as that of Veterinarian. However, while analysing the candidature from handicapped category regard must had to the opinion of the Experts Body like in the present case Medical Board. Respondent-University but for the Rule of admission has not placed on record any material to override the opinion of Experts Body. In view of the aforesaid Certificate which is issued in appropriate format prescribed by National Testing Agency, certifying that Petitioner can pursue medical education, it cannot be said that disability of the Petitioner would interfere in the performance of duties as Veterinarian. Apart from above, Respondent No. 3 – State Government has already reserved three posts to be filled in for Live Stock Officer from intellectual disabled persons i.e. category of physically handicapped persons. As such, State Government has also recognized that person with intellectual disability can pursue the Course which Petitioner intends to.

12] It is worth to mention that Rights of Persons with Disabilities

Act, 2016 (hereinafter referred to for the sake of brevity as “the Act of 2016”) is proactive and welfare legislation. Such legislation is required to be given purposive interpretation so as to extend benefit to a person with disability, so that such person does not feel less privileged than the normal person. In such an eventuality, role of Respondents has to be more proactive with liberal and relief oriented approach and not obstructive or lethargic. Interpretation of clause so as to declare the Petitioner as ineligible by Respondent No. 4 – University is, by far stretching the said clause and reading the same out of context for which the same is incorporated.

13] If we appreciate nature of disability suffered by the Petitioner i.e. Dysgraphia, it is said to be a condition in which person cannot write well, as a result of irregularity of muscular action or tremor or motor neurosis. Such person has difficulty in writing due to existence of brain lesion which cannot be said to be severe in nature. Only impediment is, such person cannot maintain pace with common students. Such learning disorder can be managed by proper supportive or assistive resources without there being any change in educational contents and also by providing services to reduce the effect of such

disorder or disability. Institution in such an eventuality can provide specific intervention to reduce the severity of the student's disability.

14] Hence, Respondent-Institution is equally duty bound to assist and provide necessary support to the student like Petitioner under educational settings. In today's world of advance technology, there are various Apps, Keyboarding, Electronic Devices and Speech-to-text software which can be utilized by disabled persons like Petitioner so as to overcome the disability from which they are suffering.

15] The aforesaid disability is a specified disability listed in Entry 2(a) of the Schedule to the Rights of Persons with Disability Act 2016. Petitioner is already diagnosed with 40% of permanent disability which falls within the statutory definition 'person with benchmark disability' under section 2(r) of the Act of 2016. In this background, the claim put-forth by the Petitioner that he is entitled for admission by declaring him to be an eligible by quashing the order impugned is quite justified. Provisions of clause (m) of Section 2 of the Act of 2016 defines "inclusive education" which read thus :-

“(m) “inclusive education” means a system of education wherein students with and without disability learn together and the system of teaching and learning is suitably adapted to meet the learning needs of different types of students with disabilities;”

The said provision fell for consideration before the Apex Court in the matter of *Avni Prakash vs. National Testing Agency (NTA) and others* reported in **2021 SCC Online SC 1112**. The Apex Court in para 45, 46, 47 and 48 of the said judgment has observed thus :-

“45. Education plays a key role in social and economic inclusion and effective participation in society. Inclusive education is indispensable for ensuring universal and non-discriminatory access to education. The Convention on Rights of Persons with Disabilities recognises that inclusive education systems must be put in place for a meaningful realisation of the right to education for PwD. Thus, a right to education is essentially a right to inclusive education. In India, the RPwD Act 2016 provides statutory backing to the principle of inclusive education. Section 2(m) defines inclusive education as:

“(m) "inclusive education" means a system of education wherein students with and without disability learn together and the system of teaching and learning is suitably adapted to meet the learning needs of different types of students with disabilities;”

“46. The RPwD Act 2016 contains salutary provisions on the rights of PwD to inclusive education in Chapter

III. Section 17, which forms a part of Chapter III, entails specific measures to promote and facilitate inclusive education for students with disabilities. Among other inclusive measures in Section 17, is sub-section (i) which prescribes a duty to make suitable modifications in the curriculum and examination system to meet the needs of students with disabilities. This duty can be fulfilled by providing extra time for the completion of examination papers and/or the facility of a scribe. The provision of inclusive education is not limited to children with disabilities but extends to adults with disabilities. Section 18 provides that the government and local authorities are duty-bound to take measures to promote, protect and ensure participation of PwD in adult education and continuing education programmes on an equal footing with others. Chapter VI prescribes special provisions for persons with benchmark disabilities, including reservations in higher educational institutions of not less than 5 per cent seats under Section 32.”

“47. The provisions for reservation in Chapter VI specifically for PwBD are distinct from the provisions in Chapter III for PwD. PwD encompasses a wider group of which PwBD is a sub-set. This distinction extends to efforts under Section 17 to promote inclusive education.”

“48. Above all, the RPwD Act 2016 contains provisions mandating reasonable accommodation. The expression “reasonable accommodation” is defined in Section 2(y), which reads as under:

“2(y) “reasonable accommodation” means necessary and appropriate modification and

adjustments, without imposing a disproportionate or undue burden in a particular case, to ensure to persons with disabilities the enjoyment or exercise of rights equally with others;”

“49. The right to inclusive education is realised through the provision of reasonable accommodation. In *Vikash Kumar* (supra), this Court emphasised that reasonable accommodation is at the heart of the principle of equality and non-discrimination espoused under the RPwD Act 2016. The denial of reasonable accommodation to a PwD amounts to discrimination. It is the positive obligation of the State to create the necessary conditions to facilitate the equal participation of disabled persons in society. This Court observed thus:

“44. The principle of reasonable accommodation captures the positive obligation of the State and private parties to provide additional support to persons with disabilities to facilitate their full and effective participation in society. The concept of reasonable accommodation is developed in section (H) below. For the present, suffice it to say that, for a person with disability, the constitutionally guaranteed fundamental rights to equality, the six freedoms and the right to life under Article 21 will ring hollow if they are not given this additional support that helps make these rights real and meaningful for them. Reasonable accommodation is the instrumentality—are an obligation as a society—to enable the disabled to enjoy the constitutional guarantee of equality and

non-discrimination...”

16] In this backdrop, what can be noticed is, Central Council has already made the Petitioner eligible based on the very same Disability Certificate, whereas by giving discriminatory and unequal treatment, Respondent No.4 – University has held the Petitioner ineligible. Respondent No.4 has tried to rely on unexplained and vague Rule in the Prospectus by trying to read and give its meaning contrary to the ‘Act’.

17] In the aforesaid background, it has to be held that order declaring the Petitioner ineligible runs contrary to very provisions of the Act of 2016 and same is liable to be quashed and set aside. It is declared that Petitioner is eligible for admission to B.V.Sc. & A.H. Degree Course for Academic Year 2022-23 in accordance with the merit against the seats reserved for people with disability i.e. against 5% reserved seats available for people with disability.

18] Petition stands allowed in the aforesaid terms.

[SHARMILA U. DESHMUKH, J.]

[NITIN W. SAMBRE, J.]