



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.01.2022

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P.No.922 of 2022

and

W.M.P.No.996 of 2022

S.L.Shainu Sangeeth

...Petitioner

Vs

1. The State of Tamil Nadu,
Rep. By its Principal Secretary to Government,
Health & Family Welfare Department,
Secretariat, Fort St. George, Chennai-600 009.
2. The Directorate of Medical Education,
162, EVR Periyar High Road,
Kilpauk, Chennai-600 010.
3. The Secretary,
Selection Committee,
Directorate of Medical Education,
162, Periyar EVR High Road,
Kilpauk, Chennai-600 010.
4. The National Medical Commission,
Rep. By its Secretary,
Pocket 14, Sector-8,
Dwaraka, New Delhi-110 077.

... Respondents

Petition filed under Article 226 of the Constitution of India to issue a Writ of Mandamus directing the respondents to consider the Application No.815443 submitted by the petitioner for admission to MBBS/BDS (Government quota) course for 2021-2022 session under Person with Disability(PWD) category, based on the marks secured by the petitioner in NEET-UG with assessment of proper percentage of visual impairment disability suffered by the petitioner, in consideration of the representation submitted by the petitioner dated 10.01.2022, within a time frame to be fixed by this Hon'ble Court.

For Petitioner

: Mr.G.Sankaran

For Respondents R1 to R3

: Mr.D.Ravichandran

Special Government Pleader
[High Education]



For Respondents R4

: Ms.Subha Sivaranjani

O R D E R

The petitioner has filed this writ petition seeking a direction to the respondents to consider her representation dated 10.01.2022 and Application for admission to MBBS/BDS (Government quota) course for 2021-2022 session under Persons with Disability (in short PWD) category with assessment of proper percentage of visual impairment disability suffered by her, as early as possible.

2.The case of the petitioner is that she suffered visual impairment at the age of six years and she was issued with Disability Certificate of Visual Impairment with 40% of permanent disability as certified by the District Medical Board. The petitioner has applied for NEET-UG examination for admission to MBBS/BDS course and secured 224 percentile marks and has been assigned with 1089 PWD Rank. While so, the 3rd respondent Selection Committee issued Notification for Prospectus for Admission to MBBS/BDS courses in 2021-2022 on 19.12.2021 and as per the prospectus, the eligibility for bench Mark Disabilities as per the Right of Persons with Disability Act, 2016 is as follows:

"Candidates with disabilities of 40-80% shall be considered Eligible to apply for MBBS/BDS Degree courses"

"Candidates with less than 40% disabilities are Not Eligible for reservation, provided that the candidates are eligible to apply for MBBS/BDS Degree courses under General Category"

3. Therefore, the petitioner went to Rajiv Gandhi Government General Hospital on 28.12.2021 and she underwent all the tests on 03.01.2022 and obtained a report on 05.01.2022 and submitted the same in Egmore Eye Hospital and she was issued with the Certificate of Disability by the Medical Board stating that she suffered 40% disability of visual impairment and she is not eligible for admission to Medical/Dental Courses. Thereafter, the petitioner submitted an application for admission to MBBS/BDS course and she sent a representation to the 3rd respondent to accept her application for admission to MBBS/BDS course under PWD category. However, till date no action has been taken on the same. Hence, this Writ petition.

4. The learned counsel for the petitioner submitted that the Authorities have issued Certificate of Disability declaring that, the petitioner is not eligible for MBBS Course without



taking into consideration the proviso of Appendix "H-I" of the Regulation as amended in 2019. According to the proviso, persons with 40% and more than 40% visual impairment disability are not eligible, however, they may be made eligible to pursue MBBS Course and may be given reservation, subject to the condition that the visual disability is brought to a level of less than the benchmark of 40% with advanced low vision aids. For better appreciation, the relevant portion of Appendix "H-I" is extracted below:

Appendix "H-I"

Type of Disabilities	Specified Disability	Eligible for Medical Course, Not Eligible for PwD Quota	Eligible for Medical Course, Eligible for PwD Quota	Not Eligible for Medical Course
.....				
B. Visual Impairment	a. Blindness	Less than 40% disability	-	Equal to or more than 40% disability
	b. Low vision			
C. Hearing Impairment	a. Deaf	Less than 40% disability	-	Equal to or more than 40% disability
	b. Hard of hearing			
	(*)Persons with Visual impairment/visual disability of more than 40% may be made eligible to pursue MBBD Course and may be given reservation, subject to the condition that the visual disability is brought to a level of less than the benchmark of 40% with advanced low vision aids.			

However, without considering the said proviso, the 3rd respondent has declared the petitioner as not eligible and the same is not sustainable. Hence, he prays that, this Court may remand the matter to the 3rd respondent and if the petitioner satisfies the benchmark of less than 40% with the help of advanced low vision aids, her Application for admission to MBBS/BDS course may be considered.

5. The learned counsel appearing for the 4th respondent fairly conceded that, if the petitioner is able to reduce the disability level less than the benchmark of 40% with the help of Advanced low vision aids before the Medical board, her application for admission to MBBS course may be considered and appropriate orders may be passed in the light of proviso to "Appendix H-I" within the time stipulated by this Court.

6. The learned counsel appearing for the respondents 1 to 3



reiterated the submissions made by the learned counsel appearing for the 4th respondent and he has no serious objection for the said order being passed.

7. Heard the arguments advanced by the learned counsel on either side and perused the material documents available on records.

8. Facts in the present case are not in dispute. A perusal of the above proviso makes it clear that, candidates with visual impairment equal to or more than 40% disability are eligible to pursue MBBS course subject to the condition that the visual disability is brought to a level of less than the benchmark of 40% with advanced low vision aids. However, without considering the said proviso, declaring the petitioner as a non-eligible candidate is not sustainable. Hence, this Court without any hesitation, sets aside the Disability Certificate dated 05.01.2022 issued to the petitioner and the matter is remanded to the 3rd respondent for fresh consideration of the petitioner's case by applying the above said proviso, thereby allowing the petitioner to use advanced low vision aids. Thereafter, if the petitioner is able to bring her disability less than the benchmark, she may be permitted to pursue the course applied by her. The said exercise shall be completed by the 3rd respondent within a period of one week from the date of receipt of a copy of this order. Till the said process is completed, the ***3th respondent** is directed to keep one seat vacant.

9. This Writ Petition is allowed with the aforesaid direction. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS IV)
28/01/2022

*** (Corrected as per order of this Court
dated 02/03/2022 made in WMP.No.4016/2022, WP 922/2022)**

Sd/-
Assistant Registrar(CS IV)
02/03/2022

//True Copy//

Sub Assistant Registrar

skt



To

1. The Principal Secretary to Government,
State of Tamil Nadu,
Health & Family Welfare Department,
Secretariat, Fort St. George,
Chennai-600 009.
2. The Directorate of Medical Education,
162, EVR Periyar High Road,

Kilpauk, Chennai-600 010.
3. The Secretary,
Selection Committee,
Directorate of Medical Education,
162, Periyar EVR High Road,
Kilpauk, Chennai-600 010.
4. The Secretary,
National Medical Commission,
Pocket 14, Sector-8,
Dwaraka, New Delhi-110 077.

+1cc to Mr.G.Sankaran, Advocate Sr.5012

***To be substituted
to the order
already despatched
on 31/01/2022**

W.P.No.922 of 2022
and
W.M.P.No.996 of 2022

nrjk[col]
srg 28/01/2022

CT 02/03/2022