

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of decision: 01st November, 2022

IN THE MATTER OF:

+ **LPA 587/2022 & CM APPL. 44889/2022**

MOHD DANISH KHAN

..... Appellant

Through: Mr. Vivek Kohli, Sr. Advocate
with Mr. Sajal Manchanda,
Mr. Juvas Rawal, Ms. Yeshi
Rinchhen, Ms. Deboleena,
Advocates

versus

UNION OF INDIA AND ORS

..... Respondents

Through: Mr. Gigi C. George, Mr. Dheeraj
Singh, Advocates for R-1 & R-2

Mr. T. Singhdev, Mr.
Ramanpreet Kaur, Mr. Abhijit
Chakravarty, Ms. Michelle B.
Das, Mr. Bhanu Gulati,
Advocates for R-3

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

JUDGMENT

SUBRAMONIUM PRASAD, J

1. Challenging the Order dated 26.09.2022 passed by the learned Single Judge in W.P.(C) 13423/2022, the Appellant has filed the instant LPA with the following prayers:-

" a. Quash/Set aside the Impugned Order dated 26.09.2022; and/or

b. Quash the Disability Certificates dated 01.09.2022 and 20.09.2022 issued by the Respondent No. 6; and/or

c. Pass an order for re-examination of the Appellant by a NEET designated disability certification Centre other than Respondent 6 for the purpose of issuance of a fresh disability certificate; and/or

d. Direct the Respondent 3 to Allow the Appellant to participate in the NEET PG Counselling for the year 2022; and/or

e. pass any other or further order as this Hon'ble court may deem fit and proper in the interest of justice."

2. The facts of the case reveal that the Appellant herein applied for NEET PG Examination-2022. The Medical Counselling Committee i.e. Respondent No.4 herein issued notice dated 08.08.2022, stipulating the conditions to avail the reservations which are meant for People with Disabilities (*hereinafter referred to as 'PwD'*) and the desired disability certificate.

3. As far as Prayers B, C & D are concerned, the learned Single Judge has noted that these issues are related to the inclusion of persons who are physically challenged and the High Level Committee has already taken notice of W.P.(C) 12653/2022, which is pending before this Court.

4. The learned Single Judge by the impugned order has left it open to Appellant herein to raise all the issues pertaining to Prayers B & C by way of a separate writ petition as a chosen advice. The arguments were heard only as far as Prayer A is concerned.

5. Respondent No.4 herein, Directorate General of Health Services, Medical Counselling Committee issued notice dated 08.08.2022 informing all the candidates of PG Counselling that in order to avail PwD reservation, the candidates should furnish disability certificate issued from one of the designated NEET Disability Certification Centre.

6. In accordance with the said notice, the Appellant herein appeared before Lady Hardinge Medical College & Associated Hospital, which is one of the designated NEET Disability Certification Centre. A Disability Certificate dated 01.09.2022 was issued to the Appellant. The relevant portion of the certificate reads as under:-

Certificate No : 2022-Sep/000249 Certificate Date : 01-Sep-2022

Name of the Designated Disability Certification Centre		Lady Hardinge Medical College & Associated Hospitals, New Delhi		
This to certify that Dr. / Mr. / Ms.		MOHD DANISH KHAN		
Age	27	Son/ Daughter of Mr.	AYYUB KHAN	
NEET Roll No.	2266033493	Rank No.	23204	

Has the following Disability

Sr No	Disability Type	Type of Disability	Specified Disability	Disability %
1	Physical Disability	Hearing Impairment	Deaf	61

Conclusion: Based on quantification of Disability The Disability of candidate is between 40- 80%. Hence, the candidate is eligible to pursue medical education and also eligible to claim PwD reservation.

The Disability Certification Board certifies that the candidate is Eligible for admission in Medical/ Dental courses and to avail 5% PwD reservation as per the NMC/ MCI Gazette Notification.

NOT ELIGIBLE

Functional competency with the aid of **Assistive devices** in case of **Locomotor* / Visual* / Hearing* Impairment**, if any.

UNAIDED HEARING DISABILITY =61% AIDED HEARING DISABILITY =20% AIDED SPEECH DISABILITY SCORE =53%

Sign & Name: Dr Sunil kumar
Director professor
ENT

Sign & Name: Dr A Chakravarti
Director professor
ENT

Sign & Name: Dr G B Singh
Director professor
ENT

Disclaimer: This Certificate is Provisional and will be verified by the allotted college authorities at the time of admission. The candidate will be subjected to diagnostic test to specify the level of disability again at the allotted college in case of any ambiguity. The certificate may be cross verified by the admitting college from the Disability Board from where the certificate has been issued. Hence, the Designated Disability Boards and the candidates are advised to preserve the records for any future reference. The Disability Certificate is valid for this academic session only.

7. A perusal of the said certificate shows that though in the conclusion it is stated that the candidate is eligible to pursue medical education and also eligible to claim PwD reservation. However, the later portion of the certificate

shows that he is not eligible because his functional competency with the aid of assistive devices does not fall in the permissible category.

8. The Appellant, therefore, filed W.P.(C) 13423/2022, and Prayer A was made to quash the said certificate dated 01.09.2022 issued by the Lady Hardinge Medical College & Associated Hospital. During the pendency of the writ petition, on 20.09.2022, a fresh Disability Certificate was issued by the Lady Hardinge Medical College & Associated Hospital, which reads as under:-

ANNEXURE A-4

Certificate No : 2022-Sep/000281 Certificate Date : 20-Sep-2022

Name of the Designated Disability Certification Centre		Lady Hardinge Medical College & Associated Hospitals, New Delhi		
This to certify that Dr. / Mr. / Ms.		MOHD DANISH KHAN		
Age	27	Son/ Daughter of Mr.	AYYUB KHAN	
NEET Roll No.	2266033493	Rank No.	23204	

Has the following Disability

Sr No	Disability Type	Type of Disability	Specified Disability	Disability %
1	Physical Disability	Hearing Impairment	Deaf	61

Conclusion: Based on quantification of Disability The Candidate is not eligible to pursue medical course (as per NMC norms).

The Disability Certification Board certifies that the candidate is Not Eligible for admission in Medical/ Dental courses and to avail 5% PwD reservation as per the NMC/ MCI Gazette Notification.

If 'Not Eligible' the reason for the same is: Unaided Hearing Disability=61%, Aided Hearing Disability=20%, Speech Discrimination Score with Assistive devices=53%, Therefore, Mohd. Danish Khan S/o Ayyub Khan is ineligible.

Functional competency with the aid of Assistive devices in case of Locomotor*/ Visual*/ Hearing* Impairment, if any. Aided Hearing Disability=20%, Speech Discrimination Score with Assistive devices =53%

Sign & Name: Dr Sunil kumar Director professor ENT	Sign & Name: Dr A chakravarti Director professor ENT	Sign & Name: Dr G B Singh Director professor ENT
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Disclaimer :This Certificate is Provisional and will be verified by the allotted college authorities at the time of admission. The candidate may be subjected to diagnostic test to specify the level of disability again at the allotted college in case of any ambiguity. The certificate may be cross verified by the admitting college from the Disability Board from where the certificate has been issued. Hence, the Designated Disability Boards and the candidates are advised to preserve the records for any future reference. The Disability Certificate is valid for this academic session only.

9. A perusal of the second certificate dated 20.09.2022 shows that the mistake in the certificate dated 01.09.2022 had been rectified and it has been conclusively held that the Appellant is not entitled for the PwD reservation.

The learned Single Judge has meticulously scanned the Disability Certificate dated 20.09.2022 which records that the Appellant is not eligible to pursue medical course as per the norms laid down by the NMC. The learned Single Judge noted that in the certificate dated 01.09.2022, there were inconsistencies as the later part of the certificate records the reason as to why the Appellant is not entitled to pursue medical education and has held that the anomaly has been rectified by subsequent certificate dated 20.09.2022.

10. The learned Single Judge noted that the inconsistencies in the original Disability Certificate dated 01.09.2022 primarily arose out of an error and if the court examines the certificate holistically, it is evident that the two competing recitals were clearly inconsistent and non-compatible. The later part of the certificate dated 01.09.2022 does not give the reasons as to why the Appellant is not entitled to the PwD reservation, and, therefore, the notings that the Appellant herein is eligible for PwD reservation is clearly inconsistent and incompatible. The Appellant had also procured a certificate from Ganga Ram Hospital stating that he is eligible for PwD reservation and his disability comes within the parameters of the as laid down by the NMC. The learned Single Judge, however, did not accept his certificate because the name of Ganga Ram Hospital does not find mention in the list of Institutions which according to Respondent No.6 are competent to issue a Disability Certificate. The learned Single Judge dismissed the said Writ Petition.

11. Heard learned Counsel for the parties and perused the material on record.

12. Mr. Vivek Kohli, learned Senior Counsel for the Appellant, contends that the learned Single Judge ought to have accepted the certificate given by Ganga Ram Hospital. He further states that the disability comes within the

four corners of the guidelines laid down by the NMC and the certificate dated 20.09.2022 is contrary to the guidelines prescribed by the Respondents.

13. In exercise of powers conferred under Section 33 of the Indian Medical Council Act, 1956, the Board of Governors issued a Gazette Notification dated 13.03.2019 bringing out Post Graduate Medical Education Regulations (Amendment), 2019. Appendix-III of the said notification of the deals with Schedule regarding disability, wherein hearing impairment has been defined as under:-

" C. Hearing impairment -

(a) "deaf" means persons having 70 DB hearing loss in speech frequencies in both ears;

(b) "hard of hearing" means person having 60 DB to 70 DB hearing loss in speech frequencies in both ears; "

14. Appendix-IV of the said notification brings out the guidelines regarding admission of students with specific disabilities under the Rights of Persons with Disabilities Act, 2016 for Post Graduate Courses in modern medicine. The relevant portion of the tabulated chart in sub-Clause 4 of Appendix-IV laying down the criteria for hearing disability reads as under:-

<i>C. Hearing impairment @</i>	<i>a. Deaf</i>	<i>Less than 40% Disability</i>	<i>-</i>	<i>Equal to or more than 40% Disability</i>
	<i>b. Hard of hearing</i>			
	xxx <i>@ Persons with hearing disability of more than 40% may be made eligible to pursue Postgraduate Medical Education and may be given reservation, subject to the condition that the hearing disability is brought to a level of less than the benchmark of 40% with the aid of assistive devices. In addition to this, the individual should have a speech discrimination score of more than 60%.</i>			

(emphasis supplied)

15. A perusal of the above shows that the person suffering from hearing impairment would be eligible to pursue medical education provided the hearing disability is less than 40 per cent. The parameters for eligibility of the candidate with hearing impairment is clarified in the Schedule wherein it is stated that if the hearing disability is brought to the level of less than the benchmark of 40 per cent with the aid of assistive devices, the candidate be considered eligible. In addition, it is also stated that the individual should have speech discrimination score of more than 60 per cent.

16. A perusal of the later portion of the Disability Certificate dated 01.09.2022 clearly points out that the Appellant is not eligible for PwD certificate because it does not come within the standards of sub-Clause 4 of Apendix-IV. A perusal of the sub-Clause 4 of Apendix-IV indicates that Persons with hearing disability of more than 40% may be made eligible to pursue Postgraduate Medical Education and may be given reservation, subject to the condition that the hearing disability is brought to a level of less than the benchmark of 40% with the aid of assistive devices and in addition to this, the individual should have a speech discrimination score of more than 60%. A perusal of the certificates dated 01.09.2022 and 22.09.2022 shows that the speech discrimination score of the Appellant with assistive devices is 53% which is less than the requisite 60%.

17. The Appellant, therefore, clearly does not come within the prescribed criteria and the Appellant is only trying to take advantage of the mistake that has crept into the Disability Certificate dated 01.09.2022.

18. Mr. Vivek Kohli, learned Senior Counsel, prayed that the Appellant may be tested once again. This Court is of the opinion that this prayer need not be entertained for the reason that the Appellant has already been tested by Lady Hardinge Medical College & Associated Hospital, which is a

government hospital and there is no reason as to why the government hospital would give a second certificate affirming that the Appellant is not eligible to pursue medical education and more so there is no reason for the Institute to take such stand. The certificate given of Ganga Ram Hospital has rightly been not taken into account by the learned Single Judge for the reason that the name of Ganga Ram Hospital is not in the list of Institutes which are competent to issue a Disability Certificate.

19. In view of the above, this Court does not find any reason to interfere with the finding of the learned Single Judge.

20. The appeal is dismissed, along with pending applications, if any.

SATISH CHANDRA SHARMA, CJ

SUBRAMONIUM PRASAD, J

NOVEMBER 01, 2022

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