

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO.9623 OF 2023

Gaurav s/o Gopichand Ghaytidak

... Petitioner

Versus

1. The Government of India,
through Director General of Health,
Medical Counseling Committee,
Nirman Bhawan, New Delhi
2. The State of Maharashtra
through its Director of Medical
Education and Research, Mumbai
3. National Medical Commission
(under Ministry of Health and Family
Welfare), New Delhi
4. Department of Empowerment of Persons
with Disabilities, Ministry of Social Justice
and Empowerment, Government of India,
New Delhi, through its Secretary
5. Grant Government Medical College,
Mumbai through its Dean

... Respondents

...

Advocate for Petitioner : Mr. Suryawanshi Prashant D.

AGP for Respondents: Mr. P.S. Patil

Advocate for respondent No.3 : Mr. S.K. Kadam

...

**CORAM : MANGESH S. PATIL &
SHAILESH P. BRAHME, JJ.**

DATE : 09.08.2023

PER COURT :

Heard the learned advocate for the petitioner, learned advocate

Mr. Kadam for respondent No.3 and learned AGP

2. The petitioner has appeared for National Eligibility Cum Entrance Test (UG) - 2023 and is seeking to be considered from the Persons with Disability (PwD) quota.

3. The learned advocate for the petitioner submits that pursuant to the Medical Council of India (MCI) Graduate Medical Education Regulation, 1997 published on 04.02.2019 and modified on 13.05.2019 by virtue of Appendix 'H-1', petitioner's disability has been assessed. He has been found to be suffering with locomotor disability specified as cerebral palsy of 60%. He would advert our attention to Appendix 'H-1', wherein, the disability range in respect of locomotor disability has been given in the chart. He would submit that only if the disability is less than 40% a person would be eligible for medical course but not for the PwD quota, in respect of the persons having such disability between 40% to 80% they are eligible for medical course and also for the PwD quota and only if the disability is found to be more than 80% that the incumbent would not be eligible for the medical course. He would submit that when the petitioner's disability has been classified as locomotor disability with cerebral palsy of a range between 40% and 80% he is entitled to and eligible for a medical course and also from the PwD quota. He would cite the orders of this Court, bench at Nagpur, in the matter of **Manthan Yudhishtir Sawai Vs. Disability Certification Board, Nagpur and Ors.**; WP No.7233/2022 date 04.07.2023.

3. Mr. Kadam would strongly oppose the petition. He would advert our attention to the order passed by this Court in a group of matters

Vaidehi d/o Santosh Borphale Vs. The State of Maharashtra and Ors.; WP No.9165/2023 decided on 31.07.2023. He would submit that appreciating and interpreting the Appendix ‘H-1’ and following the decision in the matter of **Vidhi Himmat Katariya and Ors. Vs. State of Gujarat and Ors.**; 2019 (10) **SCC 20** this Court has refrained itself from undertaking any scrutiny as to the ability of the petitioner therein to go for medical education. He would submit that a specified board has been constituted. One of such 16 boards has certified the petitioner to be not eligible to take admission to the medical course as certified in the certificate dated 15.07.2023 and that should be the end of the matter. He would also point out that even the petitioner has obtained the disability certificate from a board at the District Hospital, Beed, wherein, he has been found to have a physical impairment of all the four limbs and has been diagnosed as *CP with Quadriparesis*, 55% disability. He also points out that certificate also mentions that the condition is permanent, non-progressive but not likely to improve. He would submit that if such is the experts’ opinion this Court cannot undertake a reassessment and find petitioner’s eligibility.

4. The learned advocate for the petitioner would seek to distinguish the decision in the matter of **Vidhi Himmat Katariya** (supra) by saying that the issue involved therein was altogether different than the one that was before this Court in the matter of **Vaidehi Santosh Borphale** (supra).

5. We have carefully considered the rival submissions and perused

the papers. A similar claim of the petitioners in the matter of **Vaidehi Santosh Borphale** (supra) was scrutinized by us in the light of the observation made in the matter of **Vidhi Himmat Katariya** (supra). It was expressly observed that this Court is incapable of undertaking any scrutiny as to the physical fitness of an individual to undertake medical education. We had also made following observation which according to us are aptly applicable to the matter in hand

*“11. In our considered view, the observations of the Supreme Court in the matter of **Vidhi Himmat Katariya** (supra) limit the powers of this Court to undertake any scrutiny in the matters of this kind. The sympathies apart, even if the petitioners’ dominant upper limb is fully functional, we cannot undertake any scrutiny on our own to reach to a different conclusion than the one arrived at by the Board which has found the petitioners not eligible. Pertinently, even in the matter of **Vidhi Himmat Katariya** (supra), the dominant hands of the petitioners therein were fully functional and the disability was only to the other hand. The description of the disability can be found in paragraph no.3.3 of the judgment which reads as under.*

“3.3 It is further submitted by the learned counsel appearing on behalf of the petitioners that while applying the parameters mentioned in Appendix “H” with sub-clause (f) of Clause 4(1) of Regulations [Both hands intact, with intact sensation, sufficient strength and range of motion are essential to be considered], the State Government did not consider the facts that, petitioner no.1 has good muscle power, does gripping and activities of daily living with modifications; petitioner no.3’s right side dominant and his right hand is perfectly fine; the range of motion in left hand is not nil, rather restricted, does activities of daily living with little difficulty and the affected (left) hand has good muscle power as well; petitioner in Writ Petition (C) No. 900 of 2019 is right side dominant and his right hand is perfectly fine; affected body part is left hand only. Left hand has good pinch with modification and does daily activities with upper limb right side; petitioner in Writ Petition (C) No. 1026 of 2019 is left side dominant and his left hand is perfectly fine; affected body part is right hand only.”

After scrutiny, following observations have been made by the Supreme Court in paragraph 6.1 :

“6.1 The respective petitioners are suffering from locomotor disability and they are seeking admission in the MBBS course under PwD category. As per Notification dated 4-2-2019 and Appendix “H” – Guidelines regarding admission of students with ‘Specified Disabilities’ under the 2016 Act with respect to admission in MBBS course, a candidate suffering from locomotor disability of less than 40% shall be eligible to pursue MBBS course but not eligible to be granted the benefit of reservation under PwD quota. It further provides that “both hands intact, with intact sensation, sufficient strength and range of motion” are essential to be considered eligible for medical course. As per the opinion of the Medical Board, Medical Appellate Board and even the Medical Board of AIIMS, New Delhi, the respective petitioners are not eligible for admission in MBBS course under PwD quota as they do not fulfil the essential criteria to be fulfilled as per Appendix “H”. Therefore, as such, the respective petitioners are not fulfilling the essential eligibility criteria provided as per Appendix “H” and therefore they are not eligible for admission in the medical course under PwD quota.”

12. The specific submission as far as capabilities of the petitioners with fully functional upper limb also did not weigh with the Supreme Court which has made the following observations in paragraph no. 8.

“8. Now so far as the submission on behalf of the petitioners that while denying admission to the petitioners the State Government and/or authorities have not considered the relevant parameters and have not considered that the respective petitioners are able to perform well is concerned, it is required to be noted that in the present case all the expert bodies including the Medical Board, Medical Appellate Board and even the Medical Board of AIIMS, New Delhi consisting of the experts have opined against the petitioners and their cases are considered in light of the relevant essential eligibility criteria as mentioned in Appendix “H” – “Both hands intact, with intact sensation, sufficient strength and range of motion”. Therefore, when the experts in the field have opined against the petitioners, the Court would not be justified in sitting over as an appellate authority against the opinion formed by the experts – in the present case, the Medical Board, Medical Appellate Board and the Medical Board of AIIMS, New Delhi, more particularly when there are no allegations of mala fides.”

6. In the light of the above, when the constituted board has found the petitioner ineligible to undertake medical course, we cannot sit in appeal and undertake any scrutiny of the experts' view.

7. The writ petition is dismissed.

(SHAILESH P. BRAHME, J.)

(MANGESH S. PATIL, J.)