

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

WRIT PETITION NO. 10514 OF 2023

Rohan Avinash Gade .. Petitioner

Versus

The State of Maharashtra and others .. Respondents

Shri S. K. Mathpati, Advocate for the Petitioner.

Shri A. S. Shinde, A.G.P. for the Respondent Nos. 1, 2, 5 and 7.

Shri R. R. Bangar, Standing Counsel for the Respondent Nos. 3 and 4.

Shri P. V. Tapse, Advocate for the Respondent No. 6.

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

DATE : 24 AUGUST 2023.

FINAL ORDER (*Per Shailesh P. Brahme, J.*) :-

. Heard both sides finally at the admission stage.

2. This writ petition is directed against inaction on the part of the respondent authorities to refer the petitioner for medical examination at Disability Screening Centre to facilitate his admission through Persons with Disability (P.W.D.) category.

3. The petitioner has approached this Court on following factual matrix.

(A) The petitioner is an eligible candidate for M.B.B.S. He appeared for NEET examination held on 07.05.2023 through

O.B.C. category only. On 13.06.2023 his result was declared. He secured 111 out of 720 marks.

(B) On 19.07.2023 he secured disability certificate being diagnosed as BE – High Myopia, which was 40% permanent disability. He submitted CET Cell application opting for P.W.D. category. In the CAP Round – I he was allotted the respondent No. 7/college by issuing provisional selection letter. It is stated therein that he is allotted quota through P.W.D-NTB (PH).

(C) As he was given provisional admission from P.W.D. category he was aspiring for medical examination from designated disability NEET Screening Centre. He requested the concerned authorities to refer him to the screening centre, but there was no response. It was orally intimated that he did not opt for P.W.D. category in his earlier online application and, therefore, he was not eligible for the same.

(D) On 07.08.2023 an application was submitted by the petitioner to refer him for the medical examination, which did not yield any result.

4. The learned counsel appearing for the respondents have opposed the contentions and relief claimed by the petitioner. According to them the petitioner should have opted for P.W.D. category when for the first time he submitted online application. After declaration of result, it is not permissible for him to opt P.W.D. category for the first time. The provisional selection

letter referring P.W.D. as a allotted quota does not confer upon him any right to claim any benefit of P.W.D. The Information Bulletin – National Eligibility cum Entrance Test – UG/2023 is placed on record.

5. The learned counsel for the petitioner has placed on record Information Brochure prepared by the Directorate of Medical Education and Research, Maharashtra State, Mumbai. He is relying on interim order **dated 04.08.2023 passed by this Court in Writ Petition No. 9053 of 2023 in the matter of Shantanu Prashant Bhale Vs. The Union of India and others** and the judgment of the Supreme Court in the matter of **Avani Prakash Vs. National Testing Agency (NTA) and others** reported in **(2023) 2 SCC 286**.

6. We have considered rival submissions of the parties and perused the Information Brochure and Information Bulletin. P.W.D. category falls in specified reservation. Clause 7.5 of the Information Brochure prescribes online document uploading process and the list of the documents for uploading. A candidate has to upload the documents either along with online application or later, but before document verification process. Clause 7.4.2 (xi) is as under :

**7.4 ONLINE DOCUMENT UPLOADING PROCESS &
THE LIST OF DOCUMENTS FOR UPLOADING :**

7.4.1

7.4.2 Candidate has to upload all the relevant documents

on this site, either along with online application or later but before document verification process.

LIST OF DOCUMENTS :

- i.
- ii.
- ix.

If applicable...

- x. **For Constitutional reservation claim. (Annexure-B)**
 - a) ...
 - d) ...
- xi. **For Specified Reservation Claim**
 - a) Defence Category Claim (Annexure-C)
 - b) Person with Disability (PWD) (Annexure-D)
 - e)

7. Clause 9.4. of the Information Brochure reads as follows :

9.4 DISTRIBUTION OF CONSTITUTIONAL AND SPECIFIED (PARALLEL) RESERVATION SEATS :

There will be constitutional and specified reservation as per annexure B, C, D, E, F and V.

The candidates desirous of claiming the constitutional and / or specified reservations must have claimed the same in the online application form of NEET UG 2023 for the State of Maharashtra, failing which the claim will not be entertained subsequently.

The distribution of seats at the disposal of

Competent Authority will be made by taking into consideration the constitutional reservations and the specified reservations.

8. It is relevant to mention the conditions stipulated in Clause No. 9.4.5 of the Information Brochure as follows.

9.4.5 Person with Disability (PWD) Quota: The candidate should have claimed the Person with Disability (PWD) quota reservation in the original Online application form. Request for PWD category claim after submission of application form will not be granted. The parallel constitutional reservation will be applied for PWD quota seats. The eligibility under PWD quota as prescribed by respective central Council from time to time will be applicable.

As per Medical Council of India, New Delhi amendment notification No: MCI- 34(41)/2018-Med/170045, dated 5th Feb 2019, CCIM Notification F.No 24-14/2018 (UG Regulation), dated 18/06/2019 and CCH Notification No.12-11/2010- CCH(Pt.II)(1), dated 02/08/2019, Five percent (5%) seats of annual sanctioned intake capacity shall be filled up by candidates with specified benchmark disabilities contained in the schedule to the Rights of Persons with Disabilities Act, 2016, as per Annexure – D. Constitutional reservation will be applied parallelly within PWD quota seats.

The specified disability categories as mentioned in the rights of persons with Disability Act 2016 are as follows.

1. Physical disability
 2. Intellectual disability
 3. Mental behavior disability
 4. Disability caused due to chronic illness
 5. Multiple disabilities
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1. Candidate should mark as PWD in the online application form, failing which claim will not be granted. Candidate is required to submit the proof of his/her disability by

way of a certificate issued by certificate issuing authority in the year 2023.

2. Such a candidate will be required to undergo medical examination at any one of the under mentioned Disability Assessment Board, constituted at:

9. There is no dispute that the petitioner did not claim P.W.D. category while submitting online application. For the first time after the results are declared on 13.06.2023, he applied for disability certificate and secured the same on 19.07.2023. Thereafter while filling up CET Cell Application, he opted for P.W.D. quota.

10. It reveals from the Information Brochure that a candidate has to fill in online application with necessary details including the reservation or specified reservation. The list of the documents provided by Clause 7.2.4 contemplates uploading of certificate for P.W.D. category. On the basis of the information supplied by the candidates there would be distribution of constitutional and specified reservation seats. The distribution of the seats of both the types of reservation cannot be done unless the categories are opted expressly by the student. Subsequent changes in the categories would certainly disturb allocation of the seats.

11. We have quoted the specific provisions from the brochure of Clause No. 9.4 and 9.4.5. We find that unequivocal provisions are made in the rules for a candidate aspiring a seat through P.W.D. category to claim the same at the beginning in the online

application. In that view of the matter, the submissions of the learned counsel for the petitioner that the candidate can go for PWD reservation subsequently also cannot be countenanced.

12. If the candidates are permitted to change category of specified reservation, then that will affect the matrix of the allocation and distribution of the seats. The information supplied by the candidates at the commencement of the process is used by the respondent authorities for working out State or All India quota and for following the policies of reservation. The entire process is very complex. From time to time instructions are issued through the information bulletin that a candidate will not be permitted to effect any change in the information and the candidates are cautioned to fill up the form with utmost care and precaution.

13. The learned counsel for the petitioner has relied upon our order dated 04 August 2023 passed in the matter of Shantanu Vs. Union of India. It is an interim order. It is subject to the adjudication of the right to change the category. The said order is of no help to the petitioner. He has also relied upon the judgment of the Supreme Court in the matter of **Avani Prakash Vs. National Testing Agency (NTA) and others** (supra). Considering the facts and situation of the case, the said judgment also may not enure to the benefit of the petitioner.

14. The learned counsel for the petitioner has also placed on record the order passed by the Division Bench of this Court at

Principal Seat at Bombay dated 21 July 2023 in the matter of Maitreyai Mahendra Garad Vs. The State of Maharashtra and others in Writ Petition No. 9069 of 2023. The petitioner in that case had also not opted for P.W.D. category while filling up form, but sought to change to P.W.D. category. She was permitted to change the category. It reveals that the provisions with which we have dealt with are not considered by the Division Bench of this Court at Principal Seat at Bombay. It does not lay down any ratio to be followed.

15. For the reasons stated above, we are of the considered view that no case is made out by the petitioner for our indulgence. The writ petition is dismissed. There shall be no order as to costs.

[SHAILESH P. BRAHME, J.]

[MANGESH S. PATIL, J.]

bsb/Aug. 23