

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

WRIT PETITION NO.4541 OF 2023

Suruchika d/o Praful Kale,
Aged 20 years,
Occupation-Student,
R/o. Gandhi Ward, Palora
(Chauras), Bhandara,
Maharashtra.

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Petitioner

.. Versus ..

1. Union of India, Ministry of Social
Justice and Empowerment, through
Secretary of Department of
Empowerment of Persons with
Disabilities, 5th Floor, Antyodaya
Bhawan, CGO Complex, Lodhi Road,
New Delhi-110003.
2. Medical Counselling Committee,
Directorate General of Health
Services, Room No.348,
'A' Wing, Nirman Bhavan,
New Delhi-110011.
3. All India Institute of Medical
Science, Nagpur through its
Disability Assessment Board,
Sumthana MIHAN,
Nagpur-441108.
4. State of Maharashtra, through the
Commissioner of State Common
Entrance Test Cell, 8th Floor,
New Excelsior Building, A.K. Nayak Marg,
Fort, Mumbai.

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Respondents

Shri Sumeet P. Bodalkar, Advocate a/w Shri Parth Malviya, Advocate for the petitioner,

Shri N.S. Deshpande, Deputy Solicitor General of India for respondent nos.1 to 3,

Shri Nikhil Gaikwad, Advocate for respondent no.4.

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CORAM : A.S. CHANDURKAR AND MRS. VRUSHALI V. JOSHI, JJ.

DATED : 25.07.2023.

ORAL JUDGMENT (Per : A.S. Chandurkar, J.)

Rule. Rule made returnable forthwith. Heard the learned counsel for the parties.

2. The petitioner, who is having disability certificate dated 11.11.2022 certifying her permanent disability to 40% being a case of High Myopia with Myopic degeneration (BE) with keratoconus (BE), seeks declaration that she is entitled to participate in the counselling process for admission under the NEET-UG-MBBS-23 course. Since the petitioner has been issued a certificate of disability for NEET admission on 10.07.2023 indicating her disability to be 0% with remark that her bilateral keratoconus is likely to progress, the present writ petition has been filed. A challenge is raised to the said certificate dated 10.07.2023 in the light of Section 56 of the Rights of Persons with Disabilities Act, 2016 (hereinafter referred to as 'Act of 2016') read with Rule 18 of the Rights of Persons with Disabilities Rules, 2017 (hereinafter referred to as

‘Rules of 2017).

3. According to the petitioner, by virtue of certificate dated 11.11.2022, she is entitled to seek admission in the persons with disabilities under the PwD quota since her disability has been indicated to be 40%. Under the guidelines notified by the Government of India on 04.01.2018, while seeking admission at the respondent no.3-Institute, she was examined and disability certificate dated 10.07.2023 was assessed indicating her disability to 0%. It is submitted by the learned counsel for the petitioner that in view of provisions of Section 56 of the Act of 2016, the guidelines dated 04.01.2018 has been framed and by following the procedure prescribed by Section 58 of the Act of 2016, the petitioner was examined. It is her case that since the certificate dated 11.11.2022 is of the permanent nature, the petitioner is entitled to rely upon the same to seek such admission in PwD quota. Reliance is placed on the judgment of the Delhi High Court in the case of ***Anmol Kumar Mishra (Minor) .vs. Union of India and others, 2021 SCC OnLine Del 5148*** in that regard.

4. The learned Deputy Solicitor General of India appearing for the respondent nos.1 to 3 has relied upon affidavit-in-reply for opposing the writ petition. According to him, the petitioner underwent surgery in June-2023 and on being examined by the Medical Superintendent along with other experts, her disability has been indicated to 0%. This aspect has not been disclosed by the petitioner and hence it would not be

permissible for her to rely upon the earlier certificate dated 11.11.2022. Reference is also made to the Notification dated 04.01.2018 and especially Clause 19.2 thereon which indicates that in cases of keratoconus, patient can be issued a temporary certificate. Inviting our attention to the disclaimer clause along with certificate dated 10.07.2023, it was thus submitted that as the disability was indicated to be 0%, the petitioner was entitled to pursue her medical education but was not eligible for reservation.

5. The learned counsel appearing for the respondent no.4 pointed out that the admission process is undergoing and the stage of counselling is presently being undertaken. If the petitioner is admitted under the PwD quota and it is subsequently found that she is not entitled for such reservation, the same would result in depriving another deserving student of admission. According to him, certificate dated 10.07.2023 ought to be accepted.

6. After hearing the learned counsel for the parties and on perusing the documents on record, it can be seen that initial certificate issued to the petitioner on 11.11.2022 indicates her disability to be 40%. In June-2023, the petitioner underwent surgery as a result of which the category of better eye best corrected was noted to be 6/9. In view of Clause 19.3 of the said guidelines, her disability has been assessed to 0%. It is however necessary to note that as per the certificate dated 10.07.2023,

it has been stated that bilateral keratoconus is likely to progress. Along with said certificate, there is a disclaimer clause which reads as under :

“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.”

7. From the aforesaid, it can be seen that though her disability has been assessed to be 0%, it has been opined by the experts that bilateral keratoconus is likely to progress. The said certificate is provisional in nature and the candidate may be subjected to diagnostic test to specify the level of disability again at the allotted college in case of any ambiguity. Since the medical opinion of experts indicates that the condition of the petitioner with regards to bilateral keratoconus is likely to progress and it is also opined that the disability percentage of 0% could vary, we are inclined to permit the petitioner to participate in the counselling process in the light of the disclaimer clause in the certificate dated 10.07.2023. Since the aforesaid certificate has been issued by the Medical Superintendent of the respondent no.3-Institute along with other experts,

that certificate can be relied upon since the petitioner seeks admission at the respondent no.3-Institute.

8. Hence, for the aforesaid reasons, the petitioner is permitted to participate in the counselling process under the PwD quota with respondent no.4. Such participation would be subject to any diagnostic test that could be undertaken as indicated in the certificate dated 10.07.2023. In that contingency, the petitioner shall not claim any equity in case it is found that she is not entitled for the benefit of reservation under the PwD category.

9. Rule accordingly. No costs. Authenticated copy of this order be supplied to the learned counsel for the parties to act upon.

[MRS. VRUSHALI V. JOSHI, J.]

[A.S. CHANDURKAR, J.]

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