



* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **W.P.(C) 9720/2023 and CM APPL. 37293/2023**

Date of Decision: 26.07.2023

IN THE MATTER OF:

SANYAM SETH (MINOR)

S/O MR. AMIT SETH

THROUGH HIS FATHER

AMIT SETH

R/O H.NO. 1537, HBC SECTOR-14, 131001,

SONIPAT, HARYANA

..... PETITIONER

Through: Ms. Abhilasha Yadav, Mr. Vishrut Relan

Mr. Urwashi Bhel, and Mr. Akshat Advocates

Versus

UNION OF INDIA

MINISTRY OF HEALTH & FAMILY WELFARE,

THROUGH ITS SECRETARY,

OFFICE AT NIRMAN BHAWAN,

NEW DELHI-110001

.....RESPONDENT NO.1

MEDICAL COUNSELLING COMMITTEE

NIRMAN BHAWAN, RAJPATH AREA,

CENTRAL SECRETARIAT,

NEW DELHI- 110001

.....RESPONDENT NO.2

DR. RAM MANOHAR LOHIA HOSPITAL

(FORMERLY WILLINGTON HOSPITAL) A CENTRAL

GOVERNMENT HOSPITAL

BABA KHARAK SINGH MARG;

NEAR GURUDWARA BANGLA SAHIB,

Signature Not Verified

Digitally Signed
By: PRATIMA
Signing Date: 02.08.2023
16:33:46

Signature Not Verified

Digitally Signed
By: PURUSHAINDRA
KUMAR KAURAV

CONNAUGHT PLACE, NEW DELHI, DELHI 110001
.....RESPONDENT NO.3

NATIONAL MEDICAL COMMISSION
SHRI PANKAJ AGRAWAL, DIRECTOR
NATIONAL MEDICAL COMMISSION,
POCKET- 14, SECTOR - 8, DWARKA PHASE -1
NEW DELHI - 110077RESPONDENT NO.4

**DIRECTOR DEPARTMENT OF EMPOWERMENT
OF PERSONS WITH DISABILITIES,
MINISTRY OF SOCIAL JUSTICE & EMPOWERMENT**
5th FLOOR, PANDIT DEENADAYAL
ANTYODAYA BHAWAN,
CGO COMPLEX, LODHI ROAD,
NEW DELHI-110003RESPONDENT NO.5

Through: Ms. Pratima N. Lakra, CGSC alongwith
Ms. Vanya Bajaj and Ms. Kashish G. Baweja,
Advocates for respondent nos.1 to 3 and 5
Mr. T. Singhdev, Ms. Anum Hussain, Mr. Abhijit
Chakravarty, Mr. Bhanu Gulati, Mr. Tanishq
Srivastava, Mr. Aabhaas Sukhramani and Ms.
Ramanpreet Kaur, Advocates for respondent no.4

HON'BLE MR. JUSTICE PURUSHAINDRA KUMAR KAURAV

J U D G M E N T

PURUSHAINDRA KUMAR KAURAV, J. (ORAL)

1. The petitioner in the instant writ petition prays for a direction to the respondent nos. 1 to 3 to allow the petitioner to participate in the counselling process of NEET-UG 2023 examination and grant admission in the MBBS course against the quota of person with disability. The petitioner also prays that the respondents be directed to issue a fresh disability certificate, with an

amendment that the petitioner is 50% disabled and is eligible for participating in counselling under the quota meant for disabled candidates.

2. Learned counsel appearing on behalf of the petitioner submits that pursuant to the information bulletin of the NEET-UG examination, the petitioner applied for his candidature for MBBS course in the year 2023. The petitioner after downloading the admit card, appeared in the examination and scored 234 marks out of 720 marks against unreserved Person with Disability (PWD) category. Learned counsel for the petitioner submits that on 06.07.2023, the notification was issued on the website enabling the candidates belonging to the PWD category to have their disability assessed at the designated centres. In terms of the said notification, the petitioner on 18.07.2023, approached the respondent no.3 which issued a disability certificate holding therein that the petitioner is ineligible under the category of PWD quota by assessing zero percent disability.

3. The grievance raised by the learned counsel for the petitioner is that the petitioner has been assessed under the wrong category i.e., Physical- Locomotor Disability, whereas, the case of the petitioner falls within the category of Chronic Neurological Disability. Learned counsel for the petitioner, therefore, submits that if the provisions of the Rights of Persons with Disabilities Act, 2016 (*hereinafter 'Act of 2016'*) are considered in the right perspective, it is evident that the entire purpose of the provisions of the Act of 2016 is to ensure adequate representation to the persons suffering with disability.

4. Learned counsel for the petitioner also states that in terms of communication dated 21.07.2023, a request was also made to the Chairman, National Medical Counselling, New Delhi that the authorities at Dr. RML

Hospital are awaiting for appropriate clarification from their higher authorities on the issue whether Chronic Neurological Disability (Epilepsy) can be considered as a Chronic Neurological condition for the purpose of PWD reservation as per MCI Gazette Notification No. MCI-18(1)/2018-Med./187262 dated 05.02.2019/14.05.2019 for admission to Medical Courses in All India Quota.

5. Learned counsel for the petitioner while taking this court through the guidelines known as the Guidelines for the purpose of assessing the extent of specified disability in a person included under the Rights of Persons with Disabilities Act, 2016 (*hereinafter 'Guidelines of 2018'*) states that Chapter VI, Clause No. 25.1 mentions that the Chronic Neurological condition can be of various nature including Multiple Sclerosis and Parkinson's disease. She tries to indicate that if the Chronic Neurological conditions and definitions laid down therein in Clause 25.1 of the Guidelines of 2018 are considered prudently, the fact that the definition only includes examples of two diseases relating to Chronic Neurological conditions would not mean that the disability being suffered by the petitioner i.e. Chronic Neurological condition (Epilepsy) is not included.

6. According to her, the definition is not exhaustive in nature and if the disability being suffered by the petitioner is of the nature of Chronic Neurological disabilities, the same must be included in the scope of the Act of 2016, so as to fulfill the basic object of the Act.

7. Learned counsel for the petitioner has also pointed out that Clause 25.4 of the Guidelines of 2018 states that the disability certificate shall mention the Chronic Neurological condition and the name of the disease which implies that there can be various other ailments/disability under the

broad categorization of chronic neurological condition. She, therefore, states that if the proper assessment of the disability of the petitioner is made, the petitioner would fall within the permissible criteria of disability as mandated under the relevant notification.

8. This court directed the respondents to take instructions and file the response.

9. Learned counsel appearing on behalf of the respondents oppose the submissions made by the learned counsel for the petitioner. They submit that there is no substance in the instant writ petition and the petition is liable to be dismissed being bereft of merits. According to them, the information bulletin published by the National Testing Agency for conducting National Eligibility Entrance Test (UG-2023) specifically states that the candidate with disability shall be considered for admission in medical courses against 5 per cent of the total seats in accordance with the criteria prescribed under the Regulations on Graduate Medical Education, 1997 (as amended upto 13.05.2019). While taking this court through Clause 6.7 of the said information bulletin, it is pointed out that Appendix VI of Clause 6.1.8 would clearly indicate that only two disabilities under Chronic Neurological condition lying between 40 to 80 per cent disability are considered eligible against the permissible quota for admission of disabled candidates.

10. It is submitted that inclusion of any other disability in Chronic Neurological condition apart from the two which are mentioned in the said notification would mean to include or introduce a new disability criterion under the statutory notification which is not permissible in exercise of power under Article 226 of the Constitution of India.

11. Learned counsel for the respondents, therefore, states that in any case,

the respondents are governed by the provisions of the Act of 2016 and the notification issued thereunder. They further submit that the mandate of Section 32 of the Act of 2016 providing reservation in higher education institution is for the persons with benchmark disability. They, therefore, emphasized that if the benchmark disability lies between 40 to 80 per cent and that too of specified category, the same cannot be interfered with.

12. They have also sought to impress upon the Schedule appended to Section 2(zc) which specifies the disability, to indicate that under the said schedule, the disability which has been caused due to Chronic Neurological conditions are limited to the Multiple Sclerosis and Parkinson's disease. It is, therefore, stated that when the statutory schedule does not prescribe any other disability and the disability to such extent and benchmark has already been clarified in the relevant notification i.e, Guidelines of 2018, no interference is called for.

13. I have heard learned counsel for the parties and perused the record.

14. For the sake of clarity, Section 32 of the Act of 2016 is reproduced as under:-

"32. Reservation in higher educational institutions. (1) All Government institutions of higher education and other higher education institutions receiving aid from the Government shall reserve not less than five per cent. seats for persons with benchmark disabilities."

15. It is thus seen that all Government as well as other higher educational institutions receiving aid from the Government shall reserve not less than 5 per cent seats for persons with benchmark disabilities. A bare perusal of the provisions under Section 32 of the Act of 2016 would clearly indicate that all disabled candidates are not entitled for the benefit under the said provisions. The disabled persons exclusively with benchmark disabilities are entitled for

consideration. Section 2(r) defines persons with benchmark disabilities as under:-

"(r) 'person with benchmark disability' means a person with not less than forty per cent. of a specified disability where specified disability has not been defined in measurable terms and includes a person with disability where specified disability has been defined in measurable terms, as certified by the certifying authority;"

16. Definition of specified disability is provided under Section 2(zc) of the Act of 2016. The same reads as under:-

"(zc) 'specified disability' means the disabilities as specified in the Schedule;"

17. If the Schedule appended to the Act of 2016 is taken into account, it specifies disabilities under clause 4 thereof and reads as under:-

"4. Disability caused due to-

(a) chronic neurological conditions, such as-

(i) 'multiple sclerosis' means an inflammatory, nervous system disease in which the myelin sheaths around the axons of nerve cells of the brain and spinal cord are damaged, leading to demyelination and affecting the ability of nerve cells in the brain and spinal cord to communicate with each other;

(ii) 'parkinson's disease' means a progressive disease of the nervous system marked by tremor, muscular rigidity, and slow, imprecise movement, chiefly affecting middle-aged and elderly people associated with degeneration of the basal ganglia of the brain and a deficiency of the neurotransmitter dopamine."

18. It is to be noted that the statutory schedule has prescribed only two diseases as a disability for the purpose of Chronic Neurological conditions. The Medical Council of India in exercise of the power conferred by Section 33 of the Indian Medical Council Act, 1956 and with the previous sanction of the Central Government, has also framed the regulations known as the Graduate Medical Education Regulations (Amendment), 2019 (*hereinafter*

as '*Regulations of 2019*'). Under the Regulations of 2019 as well, all persons suffering from Multiple Sclerosis and Parkinson's disease are not considered to be disabled. However, there is a limit prescribed therein which says that the candidate suffering with these two disabilities, lying between only 40 to 80 per cent disability, are entitled to be considered against the disabled category reservation.

19. In the instant case, the rejection of the disability by impugned certificate dated 18.07.2023 contains the reason that the petitioner is suffering with Locomotor Disability which is a physical disability. The same has also been assessed to be zero per cent and therefore, no certificate has been provided to the petitioner with respect to the disability suffered by the petitioner. The certificate would also indicate that based on the qualification of disability, the petitioner may be eligible to pursue medical education but cannot be considered eligible to claim PWD reservation as per National Medical Commission norms.

20. Learned counsel for the petitioner has sought to impress upon the fact that in the instant case, the express mention of two diseases pertaining to the Chronic Neurological condition should not exclude the petitioner's case of Chronic Neurological condition (Epilepsy) for availing the reservation in PWD category as the list of diseases mentioned in Clause 25.1 of the Guidelines of 2018 is not exhaustive and it must be seen in the larger context of the object sought to be achieved by the Act of 2016. It precipitates from the arguments advanced by the learned counsel that there exists a mischief of exclusion of the medical condition of the petitioner from the said clause which according to her, needs to be remedied by reading the provision in tandem with the scope and intention of the statute and guidelines therein. It

is, therefore, pertinent to discuss the relevant principles of statutory interpretation at this stage.

21. As per the settled position of law, the cardinal rule while interpreting the provisions of any statute would require this court to construe the said provisions literally and grammatically giving the words their ordinary and natural meaning. The mischief rule, as adopted in Indian context ever since the decision of the seven-Judge Bench of the Hon'ble Supreme Court in ***Bengal Immunity Co v. State of Bihar***¹, is employed only when the words in question are ambiguous and are reasonably capable of more than one meaning. A similar view has been observed by the Hon'ble Supreme Court in the case of ***Eera v. State (NCT of Delhi)***², the relevant paragraph thereof reads as under:-

37. In CIT v. Sodra Devi, the Court ruled that unless there is any such ambiguity it would not be open to the Court to depart from the normal rule of construction which is that the intention of the legislature should be primarily gathered from the words which are used. It is only when the words used are ambiguous that they would stand to be examined and construed in the light of surrounding circumstances and constitutional principle and practice. For the said purpose, the Court referred to the view of Lord Ashbourne in Nairn v. University of St. Andrews.

22. The primacy of literal construction over other rules of interpretation was also discussed in the decision of the Hon'ble Supreme Court in the case of ***Umed v. Raj Singh***³. The relevant paragraph no. 32 is reproduced herein as:

32. Now, there can be no doubt that Section 123 has been enacted with the object of ensuring purity of the election process. It is essential in a democratic form of Government that elections should be free and

¹ AIR 1955 SC 661

² (2017) 15 SCC 133

³ (1975) 1 SCC 76

fair and every vote cast in an election should be free and honest expression of the choice of the voter uninfluenced by any extraneous considerations. The political ideal of democracy is Government by the consent of the governed and government by consent postulates, amongst various other requirements, free elections where there is honest competition for votes. The election process must, therefore, remain pure and unsullied and it has been the endeavour of our law makers to secure this by making various provisions in the Representation of the People Act, 1951. Section 123, sub-section (1-A) is one such provision. It must, therefore doubtless be construed so as to suppress the mischief and advance the remedy. But that does not mean that a construction should be adopted which ignores the plain natural meaning of the words or disregards the context and the collocation in which they occur. It is a familiar rule of interpretation that the words used by the legislature must be construed according to their plain natural meaning. But it is equally well-settled — and authorities abound in support of it — that in order to ascertain the true intention of the legislature the court must not only look at the words used by the legislature, but also have regard to the context and the setting in which they occur. The context and the collocation of the words may induce the court to depart from their ordinary meaning, for these may show that the words were not intended to be used in the sense which they ordinarily bear. The exact colour and shape of the meaning of words in an enactment is not to be ascertained by reading them in isolation. They must be read structurally and in their context, for their signification may vary with their contextual setting. Of course, when we speak of the context, we mean it in a wide sense which requires that provisions which bear upon the same subject-matter must be read as a whole and in their entirety, each throwing light and illumining the meaning of the other. It is in the light of these principles of interpretation that we must proceed to examine the language of sub-section (1)(A) of Section 123 and construe the words “to withdraw or not to withdraw from being a candidate” occurring in clause (a) of that sub-section.

[Emphasis supplied]

23. The rule ‘*expressio unis est exclusion alterius*’, which implies that the express mention of one thing is the exclusion of other, assumes that it was the intention of the legislature to specify one set of criteria as opposed to the other. This rule is primarily based on the presumption that if anything is

expressly mentioned in a statute, a natural corollary would be that the things which are not specified in the statute are excluded. In order to apply this maxim for interpreting any statute, *firstly*, the list of words appearing in a statute must be specific in nature and *secondly*, the specific words should not be followed by general words.

24. A simple scrutiny of Clause 25.1 of the Guidelines of 2018 would indicate that the two diseases are mentioned in explicit terms and do not suffer from any ambiguity for the purpose of interpretation. Therefore, the said provision cannot be considered to be an empty vessel wherein any and all the content can be poured in, rather it contains an exhaustive list in clear terms to attract literal interpretation corresponding to its plain meaning.

25. In the case of ***Vidhi Himmat Katariya and Ors. v. State of Gujarat and Ors.***⁴, the Hon'ble Supreme Court while dismissing the petition for grant of admission to the petitioners suffering from 'locomotor disability' seeking to pursue MBBS course under PwD category, held as under:

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

⁴ (2019) 10 SCC 20

*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.***

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.**

[Emphasis supplied]

26. It is also to be noted that this court in the case of ***Buddhabhushan Anand Londhe Another v. Union of India & Ors.***⁵, while relying on a catena of judgments dealing with the interference of the court in the domain of Executive and Regulatory Authority, held as under:

*“27. It is to be noted that the eligibility conditions for appearing in JEE (Advanced) are decided by respondent no.2-JAB after due deliberation. The eligibility conditions such as the age requirement, permissible number of attempts, and are within the realm of the policy decision being taken by examining body and the same are uniformly applied to all candidates without exception. Any interference into the aforesaid aspects will have the effect of disturbing academic discipline. **The courts are not expected to have expertise to assess the pros and cons of various policy***

⁵ 2023/DHC/3121

decisions taken by experts. Unless the decision is de hors the fundamental rights or so arbitrary so as to shock the conscience of this court, the same normally does not require any interference.”

[Emphasis supplied]

27. In the instant case, the petitioner was duly assessed for their benchmark disability at the designated hospital for medical examination regarding the certificate of disability. The said assessment held the petitioner ineligible for the grant of reservation under the category of PWD quota with 0% disability. As per the settled position of law in the abovementioned cases, this court must be slow in interfering with such policy decisions taken by the concerned field experts under the writ jurisdiction.

28. A bare perusal of the provisions of the Act of 2016, applicable Regulations and the reasons assigned by the respondents for non-consideration of the petitioner in the disabled category under the Chronic Neurological condition, does not warrant any reasonable justification to interfere into the instant writ petition. The disability certificate will have to be issued in accordance with the permissible disability and any inclusion or exclusion therein would not be permissible under the writ jurisdiction. This court, therefore, is not inclined to interfere into the instant petition.

29. The petition is accordingly dismissed, alongwith pending application.

PURUSHAINDR KUMAR KAURAV, J

JULY 26, 2023

p'ma