



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.9959 OF 2024

Prathmesh s/o Dnyaneshwar Pawar

... PETITIONER

VERSUS

1. The Government of India,
through Director General of Health,
Medical Counselling Committee,
Nirman Bhawan, New Delhi.
2. The State of Maharashtra
through its Principal Secretary,
Medical Education & Drugs Deptt.,
Mantralaya, Mumbai-32.
3. Department of Empowerment of
Persons with Disabilities,
Ministry of Social Justice & Empowerment,
Government of India, New Delhi,
through its Secretary.
4. National Medical Commission
(Under Ministry of Health & Family Welfare),
New Delhi, Through its Secretary.
5. Medical Counselling Committee,
Ministry of Health and
Family Welfare, Govt. of India.
6. Grant Government Medical College,
Mumbai, through its Dean.
7. Certificate of Disability for NEET
Admissions Board (Centre),
Grant Govt. Medical College,
JJ Hospital Compound, Mumbai.
8. State Common Entrance Test Cell,
for conducting Admission Process
for Health Science Courses
for Academic year 2024-2025,
8th Floor, New Excelsior Bldg.
A.K.Nayak Road, Fort, Mumbai,
through its Commissioner &
Competent Authority.

... RESPONDENTS

...

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

Reserved On : 10.10.2024
Pronounced On : 11.10.2024

Heard. Rule. Rule is made returnable forthwith. Learned AGP and the learned advocates for the respective respondents waive service. At the joint request of the parties, the matter is heard finally at the stage of admission.

3. As per the regulations issued by the respondent No.4 National Medical Commission (N.M.C.) dated 13.05.2019, considering the benchmark disability of 40% under the provisions of the Rights of Persons with Disabilities Act, 2016 (the Disability Act), the petitioner appeared before the respondent No.7 which is a Disability Certification Centre for issuance of disability certificate as per the N.M.C. norms to PwD candidates. He was assessed with physical disability of 'Visual Impairment' with a specified disability of 'Low Vision' and by the

certificate dated 07.08.2024 he was declared to be not eligible to pursue medical course as per the N.M.C. norms. The petition was filed challenging such certification.

4. On 10.09.2024 we had passed following order :

“We have heard both the sides.

2. *The petitioner who is aspiring to get admission through NEET-UG-2024 is suffering with visual impairment specified to be low vision and assessed by respondent No.7 - Board constituted by the N.M.C. to be 40% and it has certified that he is not eligible to pursue medical course as per the N.M.C. norms prescribed in Appendix ‘H - 1’.*

3. *So far as Appendix ‘H - 1’ is concerned, it lays down the parameters depending upon the percentage of the disability holding the candidate eligible for undertaking medical course either with or without P.W.D. quota. To the extent of visual impairment the specified disability of low vision it mentions that the person having equal to or more than 40% disability would not be eligible for undergoing medical course. However, there is a stipulation which reads as under :*

“Persons with Visual impairment/visual disability of more than 40% may be made eligible to pursue MBBS Course and may be given reservation, subject to the condition that the visual disability is brought to a level of less than the benchmark of 40% with advanced low vision aids.”

4. *It is thus quite apparent that even if a person is having 40% or more visual disability, he would be eligible to undergo medical course provided the visual disability can be brought to the level of less than 40% with advance low vision aids. The certificate under challenge (**Exhibit-G**) issued by respondent No.7 - Board merely states that the petitioner is not eligible to pursue medical course as per these norms. However, whether even with advance low vision aids this percentage of 40% cannot be brought below has not been stated in express terms. It was imperative for the board to have simultaneously certified whether even with advance low vision aids the percentage could not be brought below 40%. In the absence of which, there is a confusion.*

5. *It is only to this extent, in our considered view, it would be appropriate that the petitioner is allowed to appear before respondent No.7 - Board so that the board can either by examining him again or even without undertaking any clinical examination,*

can certify in accordance with this rider as to whether this 40% of disability due to low vision can be brought below 40% which is the benchmark with the advanced low vision aids.

6. We, therefore, by way of interim order direct the petitioner to appear before respondent No.7 - Board by tomorrow and direct it to undertake his examination if felt necessary and to certify whether the percentage of disability can be brought below 40% with advanced low vision aids and to issue appropriate certificate to him within two days.

7. Learned advocate Mr. Bangar and learned AGP shall communicate this order immediately to respondent Nos.6 and 7 telephonically/by mail.

8. Stand over to 18.09.2024.”

5. Pursuant to such directions the petitioner again appeared before the respondent No.7 and was issued with a certificate of disability on 12.09.2024 (**Exhibit-I**) *inter alia* declaring that he was having no disability by expressly noting, “Specific Disability (BE) BCVA c contact lens $< \frac{6}{9}/\frac{6}{9}$ ”. It was opined that as per the M.C.I. guidelines the petitioner was not eligible for PwD quota but was eligible for medical/dental course.

6. The petitioner was granted leave to amend the petition and accordingly amendment was carried out.

7. Learned advocate Mr. Thombre for the petitioner would take us through the provisions of the Disability Act and particularly to the definition of ‘Person with benchmark disability’ as defined under Section 2(r), ‘Specified Disability’ defined under Section 2(zc) and Clause 1-B of the Schedule to the Disability Act. He would submit that there is no dispute about the petitioner having benchmark disability, having been assessed initially by the respondent No.7 – Board at 40%. He would

submit that since the first certificate issued by it, was not issued keeping in mind the specific guidelines as mentioned in (**Appendix 'H-1'**) of the N.M.C. Norms 2019, as was noted in the order dated 10.09.2024, the petitioner was again directed to appear before the respondent No.7 – Board and it was directed to undertake scrutiny in the light of the note with the asterisk (*) which we had reproduced in that order. He would, therefore, submit that even if with advanced low vision aids, the low vision was brought to 'Nil', that would not remove the petitioner's benchmark disability. He would strenuously submit that as per the guidelines a person with disability of low vision of 40% or more is not eligible to undertake medical/dental course. In view of the note, depending upon the consequence of use of advanced low vision aids, eligibility of a person to undertake to pursue MBBS course and even reservation has to be considered. The benchmark disability which could be remedied with the use of advanced low vision aids, would not affect the petitioner's handicap and he would be eligible and entitled to undertake medical course from PwD quota. He would refer to the decision of the Supreme Court in the matters of **Purswani Ashutosh Vs. Union of India (UOI) and Ors.; MANU/SC/0960/2018** and **Divya Sunil Parvatrao d/o Sunil Parvatrao Vs. The State of Karnataka and Anr.; WP No.2947/2022** (Karnataka High Court).

8. Per contra, learned advocate Mr. S.K. Kadam would submit that assessment of disability and eligibility of a candidate to pursue

medical/dental course through PwD quota is a matter exclusively within the domain of the respondent No.4 – N.M.C. He would submit that though the respondent No.7 – Board had not specified while issuing the first certificate, pursuant to the directions of this Court and in the light of the note below category ‘C’ type of disability in (**Appendix ‘H-1’**) the petitioner was again assessed by the respondent No.7–Board with the advance aid. It could notice that there was no disability, it having been brought down to 0% (zero percent). It has rightly certified according to those guidelines that he was eligible for medical course as the disability was brought down below 40% but since it resulted in complete correction of the vision, having no disability at all, he was rightly held to be not entitled to a PwD quota. He would advert our attention to (**Appendix ‘H-1’**) and would submit that since in the disability range column having less than 40% disability of low vision ‘specified disability’, the petitioner is eligible for medical course but not for a PwD quota.

9. The learned AGP and the learned advocate for the rest of the respondents would adopt the submission of Mr. Kadam.

10. There can be no dispute about primacy of the respondent No.4 – N.M.C. in laying down the Guidelines of 2019 which is an apex body supposed to regulate the Medical Education in the country, as laid down under Section 33 of the Indian Medical Council Act, 1956. Annexure ‘H-1’ to the extent of disability in question reads as under :

S. No.	Disability Type	Type of Disabilities	Specified Disability	Disability Range		
				Eligible for Medical Course, Not Eligible for PwD Quota	Eligible for Medical Course, Eligible for PwD Quota	Not Eligible for Medical Course
1.	Physical Disability	A. Locomotor Disability, including Specific Disabilities (a to f).	a. Leprosy cured person*	Less than 40% disability	40-80% disability Persons with more than 80% disability may also be allowed on case to case basis and their functional competency will be determined with the aid of assistive devices, if it is being used, to see if it is brought below 80% and whether they possess sufficient motor ability as required to pursue and complete the course satisfactorily.	More than 80%
			b. Cerebral Palsy**			
			c. Dwarfism			
			d. Muscular Dystrophy			
			e. Acid attack victims			
			f. Others*** such as Amputation, Poliomyelitis, etc.			
			* Attention should be paid to loss of sensations in fingers and hands, amputation, as well as involvement of eyes and corresponding recommendations be looked at. ** Attention should be paid to impairment of vision, hearing, cognitive function etc. and corresponding recommendations be looked at. *** Both hands intact, with intact sensations, sufficient strength and range of motion are essential to be considered eligible for medical course.			
		B. Visual Impairment (*)	a. Blindness	Less than 40% disability	-	Equal to or More than 40% Disability
			b. Low vision			
		C. Hearing Impairment@	a. Deaf	Less than 40% Disability	-	Equal to or more than 40% Disability
			b. Hard of hearing			
		(*) Persons with Visual impairment / visual disability of more than 40% may be made eligible to pursue MBBS Course and may be given reservation, subject to the condition that the visual disability is brought to a level of less than the benchmark of 40% with advanced low vision aids				

11. A bare reading of these guidelines would make it abundantly clear that as regards disability of 'Visual Impairment' or 'Hearing Impairment' a person suffering from equal or more than 40% disability is not eligible for medical course, whereas, a person with less than 40% disability would be eligible for medical course but not for PwD quota.

12. The petitioner when he was assessed for the first time by the respondent No.7 – Board was found to be having 40% disability. Following the guidelines, it was certified that since the disability was equal to 40%, he was not eligible for medical course.

13. Admittedly, the respondent No.7 – Board, as we have mentioned in the order dated 10.09.2024 (supra), had not expressed anything as to if this ‘Visual Disability’ could be brought to a level of less than the benchmark of 40% with advanced low vision aids. We had directed the petitioner to appear before it and directed it even to take into consideration this note (*) in the guidelines.

14. Pursuant to our directions, the respondent No.7 – Board thereafter issued the certificate expressly mentioning that with the use of advanced low vision aids i.e. lenses, the disability could be brought down to 0% (zero percent), certifying the petitioner to be eligible to medical course but not through PwD quota.

15. Bearing in mind the fact that there is no challenge to these guidelines, as is abundantly clear that a person with low vision having 40% benchmark disability or more would not be eligible for medical course and would be so eligible if it could be brought down to less than 40% with advanced low vision aids, however, he is eligible for medical course but not PwD quota. Therefore, the certificate issued by the respondent No.7 – Board cannot be said to be inconsistent with these guidelines.

16. In our considered view, there is not a room for confusion in this regard. A person having benchmark disability of low vision of 40% or more would not be eligible for medical course, but with advanced low vision aids if this disability could be brought down to less than 40%, he

would be eligible for medical course and obviously, will not be eligible for PwD quota since the benchmark disability for visual impairment is 40%, without which a person would not be eligible to the requisite quota under the Disability Act.

17. It is pertinent to note that the disability of the kind contained in category 'B' of 'Visual Impairment' seems to be typical. If he possesses a benchmark disability, he would not be eligible for medical course and conversely if it is brought down by advanced low vision aids, he will not reach the benchmark of disability and would be eligible for medical course but not through PwD quota.

18. With respect, while deciding the case of **Purswani Ashutosh** (supra), the guidelines framed by the predecessor of respondent No.4, Medical Council of India, under Section 33 of M.C.I. Act were still to get approval of the Union of India. In that case the certificate/memo did not disclose exact reason for forming the opinion that the petitioner was not fit for the MBBS course. The fact situation is quite distinguishable. Therefore, the petitioner is not entitled to derive any benefit from this decision of the Supreme Court.

19. As regards the decision of the Karnataka High Court in the matter of **Divya Sunil Parvatrao** (supra), we are in respectful disagreement. To repeat, as per the Guidelines 2019, if the benchmark disability could be brought down to less than 40% with advanced low vision aids, as indicated in the chart, the person would be eligible for

medical course but not for the PwD quota. No reasons have been assigned as to why particulars of the column of the disability range could be overlooked. Therefore, this petitioner cannot enure any benefit therefrom.

20. In the light of the above, the writ petition is allowed partly. It is declared that the petitioner is eligible for medical/dental course but not for PwD quota.

21. Rule is made absolute in the above terms.

[SHAILESH P. BRAHME]
JUDGE

[MANGESH S. PATIL]
JUDGE

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