

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 11478 OF 2024

LAXMI
SUBHASH
SONTAKKE

Swaroop P. Bochare

.. Petitioner

Versus

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LAXMI SUBHASH
SONTAKKE
Date: 2024.08.19
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The Union of India & Ors.

.. Respondents

Adv. Hrushi Narvekar a/w Suyash Khose, Abhishek Nandimath, Siddharth Sutaria and Ashwin Hirulkar for the Petitioner.

Adv. Rui Rodrigues for the Respondent No.1.

Adv. Ganesh Gole a/w Viraj Shelatkar for Respondent No.2.

Mr. A. I. Patel Add. GP a/w Y. D. Patil, AGP for Respondent Nos. 4 and 5.

CORAM: B. P. COLABAWALLA &
FIRDOSH P. POONIWALLA, JJ.
DATE: AUGUST 19, 2024

P. C.

1. The above Writ Petition is filed seeking a direction to quash the Notifications dated 4th February, 2019 and 13th May, 2019 as ultra vires to and being contrary to the object and purpose of the Rights of Persons with Disabilities Act, 2016. These Notifications basically set out the Guidelines regarding admission of students which specify disabilities under the Rights of Persons with Disabilities Act, 2016 with respect to admission in MBBS. These

Guidelines can be found in Appendix-H of the Notification dated 4th February, 2019, and thereafter substituted by the Notification dated 13th May, 2019 as Appendix-H1. In both these Notifications, it is stated that for Locomotor Disability such as Amputation, Poliomyelitis etc., both hands have to be intact, with intact sensations, sufficient strength and range of motion, to be considered eligible for the medical courses. According to the Petitioner, it is this part of the Notification that is seriously challenged, because according to the Petitioner, if he wants to take up the field of medicine in Psychiatry or even as a General Practitioner, both hands being intact with intact sensation is wholly unnecessary. In other words, a student of medicine who may not require the full functioning of both his hands would be barred from taking up the practice of medicine.

2. Mr. Gole, the learned Counsel appearing for Respondent No.2 [The National Medical Commission], in fact pointed out that after the 2019 Notifications, there are new Guidelines that have been issued on 1st August, 2023. The relevant portion of these Guidelines is as under:

Sr 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,	a. Leprosy cured person*	Less than 40%	40-80% disability Persons with more than	More than 80%

		including specified Disabilities (a to f)	b. Cerebral Palsy** c. Dwarfism d. Muscular Dystrophy e. Acid attack victims f. Others*** such as Amputation, Poliomyelitis, etc.	disability	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.	
			* 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. *** (i) Both hands intact, with intact sensations, sufficient strength and range of motion are essential to be considered eligible for medical course. (ii) Movement of the upper limb with respect to all the joints (shoulder, elbow, forearm, wrist and all fingers) to be considered full power, intact, in the dominant upper limb is necessary. (iii) For non-dominant upper limb, power of 4/5 or above is recommended.			

Mr. Gole has fairly submitted that the Certificate issued by Respondent No.5 holding the Petitioner “Not Eligible” for admission in medical/dental courses, relies upon the old Guidelines/Notifications when in fact, the new Guidelines ought to have been applied.

3. Since this is the factual scenario before us, at this stage, we direct Respondent No.5 to re-examine the Petitioner and issue the necessary

Certificate, either holding the Petitioner “Eligible” or Not Eligible” for admission to medical/dental courses in the All India Quota. Whilst issuing such Certificate, Respondent No.5 shall take into consideration the 2023 Guidelines referred to by us above and not the 2019 Notifications/Guidelines. We request Respondent No.5 to carry out this exercise by 22nd August, 2024 and file the said Certificate in this Court by that date.

4. The Petitioner shall remain present before Respondent No.5 tomorrow so that he can be examined by Respondent No.5 before issuing the necessary Certificate.

5. We now place the above matter on 22nd August, 2024.

6. This order will be digitally signed by the Private Secretary/ Personal Assistant of this Court. All concerned will act on production by fax or email of a digitally signed copy of this order.

[FIRDOSH P. POONIWALLA, J.]

[B. P. COLABAWALLA, J.]