

Digitally
signed by
TRUSHA
TUSHAR
MOHITE
Date:
2024.08.22
15:21:28
+0530

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.11478 OF 2024.

Swaroop Pramod Bochare

.. Petitioner

Versus

The Union of India
Thr. Director General and Ors.

.. Respondents

Ms.Hrushik Narvekar a/w Mr.Suyash Khose, Mr.Abhishek Nandimath, Mr.Siddharth Sutaria, Mr.Ashwin Hirulkar, Advocate for the Petitioner.

Mr.Ganesh K. Gole a/w Mr.Viraj Shelatkar, Advocate for the Respondent No.2 (NMC).

Mr.Rui Rodrigues a/w Mr.Ashutosh Mishra, Advocate for the Union of India / Respondent Nos.1 and 3.

Mr.A.I.Patel, Addl.G.P. with Ms.S.S.Bhende, A.G.P. for Respondent Nos.4 and 5.

**CORAM: B. P. COLABAWALLA &
FIRDOSH P. POONIWALLA, JJ.**

DATE: AUGUST 22, 2024

P. C.

1. The above Writ Petition is 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.

2. When the above matter had come up on 19th August 2024, it was pointed out to us by the learned counsel for Respondent No.2 (The National Medical Commission), that the 2019 Notifications have now been superseded by new Guidelines issued on 1st August 2023. In our order of 19th August 2024, we had in fact reproduced the relevant portion of the new Guidelines. Since this was the case, and the certificate issued by Respondent No.4 was based on the old Guidelines, we had directed Respondent No.5 to re-examine the Petitioner and issue the Certificate, either holding the Petitioner “Eligible” or “Not eligible” for admission to medical / dental courses in the All India Quota/State Quota. We had made it clear that while issuing such Certificate, Respondent No.5 shall take into consideration the 2023 Guidelines referred to by us and not the 2019 Notifications/Guidelines. We had requested Respondent No.5 to carry out this exercise by today and file the Certificate in this Court.

3. Today when the matter is called out, the report of Respondent No.5 dated 21st August 2024 is tendered to the Court. This Certificate once again holds the Petitioner “Not eligible” for applying for medical courses. On going through this report, we find that it leaves much to be desired. Firstly, though the 2023 Guidelines have stipulated that both hands have to be intact, with intact sensation, and sufficient strength and range of motion are

essential to be eligible for applying for medical courses/dental courses, movement of the upper limb with respect to all the joints (shoulder, elbow, forearm, wrist and all fingers) is also to be considered and full power intact in the dominant hand is necessary. This very important fact has been completely missed in the medical report submitted to this Court dated 21st August 2024. This is despite the fact that we had specifically directed Respondent No.5 to give the Certificate after taking into consideration the 2023 Guidelines. For the sake of convenience, the relevant portion of the said 2023 Guidelines are reproduced hereunder:-

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, including specified Disabilities (a to f)	a. Leprosy cured person* b. Cerebral Palsy** c. Dwarfism d. Muscular Dystrophy e. Acid attack victims f. Others*** such as Amputation, Poliomyelitis, etc.	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%

			* 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.
--	--	--	--

4. Considering the facts and circumstances narrated above, and we not being happy with the way Respondent No.5 has issued the Certificate dated 21st August 2024, we now direct another Institute, namely, the *All India Institute of Physical Medicine and Rehabilitation* (AIIPMR), Mumbai, to examine the Petitioner today at 4 PM and issue the necessary Certificate [with reasons], either holding the Petitioner “Eligible” or “Not eligible” for admission to Medical/Dental Courses in the All India Quota/State Quota. While issuing such Certificate, AIIPMR shall take into consideration the 2023 Guidelines reproduced above and not the 2019 Notification/Guidelines. We would request that this Report is filed in this Court by tomorrow.

5. The learned counsel appearing for Respondent No.1 as well as the learned A.G.P. appearing for the State, are both directed to immediately inform the AIIPMR of this Order.

6. As mentioned earlier, the Petitioner shall present himself before AIIPMR at 4.00 p.m. today so that the said Institute can examine the Petitioner regarding his disability and his eligibility to apply for medical / dental courses.

7. Stand over to 23rd August 2024 (First on Board).

8. 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.]