



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 11807 OF 2024

1. **MR. SHAHID AKEEL SHAIKH,**
Age : 20 Years, Occu : Student,
R/at : B-122, DGP Nagar 1,
Nashik – Pune Road,
Nashik - 422006

...PETITIONER

~ versus ~

1. **UNION OF INDIA,**
Through its Ministry of Health
& Family Welfare,
Off : Room No.201-D,
Nirman Bhawan,
New Delhi - 110011
2. **NATIONAL TESTING AGENCY,**
Off : 1st Floor, NSIC-MDBP Building,
Okhla Industrial Estate,
New Delhi, Delhi - 110020
3. **GRANT GOVT. MEDICAL COLLEGE & SIR
J. J. GROUP OF HOSPITALS,**
J. J. Marg, Nagpada-Mumbai
Central, Off Jejeebhoy Road,
Mumbai – 400008.
4. **THE STATE OF MAHARASHTRA,**
Through its Principal Secretary,
Mantralaya Main Building, Madam
Cama Road, Mumbai – 400032.
5. **STATE COMMON ENTRANCE TEST CELL,
MAHARASHTRA,**
8th Floor, New Excelsior Building,

A. K. Nayak Marg, Fort,
Mumbai – 400 001.
E-mail id : Cetcell@mahacet.org

6. ALL INDIA INSTITUTE OF PHYSICAL
MEDICINE & REHABILITATION,
Haji Ali Dargah, Keshavrao Khadye
Marg, Haji Ali, Government Colony,
Mahalakshmi, Mumbai - 400034

...RESPONDENTS

APPEARANCES

FOR THE PETITIONER	Mr Pralhad Paranjape , <i>a/w Mr Priyansh Jain, Mr Yash Tembe, i/b. Mr Vivek Punjabi.</i>
FOR RESPONDENT NO.1- UOI	Mr Rui A. Rodrigues , <i>a/w Mr Vinit Jain.</i>
FOR RESPONDENT NO.2- NTA	Mr Rui A. Rodrigues , <i>a/w Mr Jainendra Sheth.</i>
FOR RESPONDENT NOS.3 AND 4-STATE	Ms M. P. THAKUR , AGP.
FOR RESPONDENT NO.5- CET	Mr Rui A. Rodrigues.

**CORAM : M. S. Sonak &
Kamal Khata, JJ.**

DATED : 20th September 2024

ORAL JUDGMENT (Per M S Sonak J):-

- 1.** Heard learned counsel for the parties.
- 2.** Rule. The rule is made returnable immediately at the request of and with the consent of learned counsel for the parties.

3. Even otherwise, by our orders dated 11 September 2024 and 19 September 2024, we had clarified that this matter would be disposed of finally at the admission stage, given the urgency involved.

4. The Petitioner, who suffers from a locomotor disability to the extent of 40%, seeks an appropriate writ from this Court to direct the Respondents to admit him to the MBBS course against the PwD-OBC (PH) quota.

5. After the institution of this Petition, the Petitioner, through legal aid, instituted Writ Petition (Civil) No.552 of 2024 before the Hon'ble Supreme Court seeking similar relief. By order dated 6 September 2024, the Hon'ble Supreme Court relegated the Petitioner to this Court.

6. The order dated 6 September 2024 reads as follows:-

“1. The Petitioner has already instituted a petition under Article 226 of the Constitution through legal aid counsel of the Bombay High Court Legal Services Committee. In that view of the matter, it would not be appropriate to entertain a petition under Article 32 of the Constitution, particularly since it deals with an individualized grievance pertaining to admission to the under-graduate medical course.

2. Since the petition is pending before the High Court, we permit the Advocate for the petitioner to move the Registrar (Judicial) of the High Court, who may seek administrative directions from the learned Chief Justice for listing it before an appropriate Bench so that it can be taken up at an early date.

3. The Petition is accordingly disposed of.

4. Pending applications, if any, stand disposed of.”

7. This Petition was assigned by the Hon'ble Chief Justice to this Bench on 10 September 2024. Accordingly, we posted it on 11 September 2024 at 10:30 a.m. after duly notifying the same on the cause list.

8. On 11 September 2024, we granted the Petitioner leave to implead the State of Maharashtra, State Common Entrance Test Cell and All India Institute of Physical Medicine and Rehabilitation ("AIIPMR") as Respondents and directed the Petitioner to take immediate steps to serve these newly impleaded Respondents.

9. On 11 September 2024, we also made an interim order directing AIIPMR, one of the authorised and prescribed institutions for verifying disability status, especially of candidates afflicted with locomotor disabilities, to examine the Petitioner and verify the Petitioner's disability status. The matter was posted on 19 September 2024, high on board, for final disposal.

10. The above interim relief was granted because the learned counsel for the Petitioner produced on record the 'Provisional Selection Letter (CAP 1)' issued by the State Common Entrance Test Cell, Maharashtra, printed on 1 September 2024 at 10:50 a.m. This Provisional Selection Letter states that the Petitioner was provisionally admitted to the MBBS course at Government Medical College, Kudal, Sindhudurg, against the PwD-OBC (PH) quota.

11. By notice dated 30 July 2024 (Exhibit 'F' on pages 21 to 23 of the paper book), all the children/widows of Armed Forces and Persons with Disabilities (CW & PwD) were advised to have ready their relevant documents to ensure their eligibility in the respective categories. The PwD candidates were directed to make appointments with any of the nearest/feasible centres out of the 16 notified centres listed in Annexure 1. For the Petitioner, who hails from Nashik, the two nearest/feasible disability certification centres were the AIIPMR, Mumbai, for locomotor disability only and Grant Government Medical College, J.J. Hospital Compound, for all disabilities as mentioned in disability certificate.

12. The Petitioner has pleaded that on 6 August 2024, the Petitioner personally visited the Grant Government Medical College, J.J. Hospital Compound, requesting that his disability position be certified. The Petitioner has also placed on record his handwritten letter seeking an appointment for disability verification. The Petitioner has pleaded that the Grant Government Medical College, J.J. Hospital Compound, acknowledged his application and informed the Petitioner orally to come for examination on 12 August 2024.

13. However, on 12 August 2024, the Head Clerk of the Grant Government Medical College, J.J. Hosp Compound, orally informed the Petitioner that he could not be examined because his online application form dated 21 February 2024 reflects that he does not belong to the category of Person with

Disability (PwD). This is because the Petitioner, in his online application form, against the column 'If you are a PwD Candidate', has selected the option 'No'.

14. The Petitioner has contended that his indication of 'No' was an inadvertent error, which he realised only on 12 August 2024. In the affidavit filed on behalf of the 2nd Respondent, there is a reference to two notices by which all the candidates were allowed to correct inadvertent errors in the online application form. However, the Petitioner's explanation that he was not even aware of the inadvertent error deserves to be accepted, mainly because there is no dispute about the Petitioner being a PwD, and the Petitioner had nothing to gain through the evident and inadvertent error. The petitioner hails from a rural background. He belongs to the OBC category. He is PwD. All these factors are relevant for accepting the petitioner's explanation.

15. The Petitioner has pleaded that he belongs to the Other Backward Class – Non-Creamy Layer category as per the Central List and the PwD category. Therefore, per the National Medical Commission ("NMC") Regulations, the Petitioner falls under the OBC-PwD category. The cut-off percentile for this category is the 40th percentile, and the cut-off scores are between 143 and 127. The Petitioner has admittedly secured a percentile score of 46.87 and a cut-off score 150. Thus, there is no dispute about the petitioner's eligibility.

16. After the Petitioner instituted this Petition on 19 August 2024, the Petitioner was permitted to attend the counselling round held by the State Common Entrance Test Cell, Maharashtra. This was not based on any Court order but by the authorities themselves. Since the Petitioner had documentation showing that he belonged to the OBC category and also the PwD category, the State Common Entrance Test Cell provisionally selected the Petitioner under the PwD-OBC (PH) category for admission to the MBBS faculty at the Government Medical College, Kudal, Sindhudurg.

17. The Provisional Selection Letter (CAP 1) issued by the State Common Entrance Test Cell, Maharashtra, to the Petitioner based on the counselling round held on 31 August 2024, reads as follows:-

 **State Common Entrance Test Cell,
Maharashtra**
8th Floor, New Excelsior Building, A. K. Nayak Marg, Fort, Mumbai- 400 001.
NEET (UG) - 2024
Provisional Selection Letter (CAP 1)

Printed On : Sep 1 2024 10:50AM

● **Candidate's Details**

Name : SHAIKH SHAHID AKEEL
Roll Number : 3113020576
State CET Form No : 245052037
All India Rank : 1231948
Date of Birth : 07/07/2004
Category : OBC PH

● **Current Selection**

Round No - Date	Institute Name	Faculty	Allotted Quota
CAP 1 - 31/08/2024	1154S : GOVERNMENT MEDICAL COLLEGE, KUDAL, SINDHUDURG	M.B.B.S.	PWD-OBC (PH)

1. Please read instructions carefully published in Notice before Physical Joining.
2. The candidates are advised to contact the allotted college authorities for details before proceeding for admission by physical joining process.
3. This selection is Provisional, to be confirmed subject to verification of original documents at the time of physical joining. Candidate should report to the respective allotted college along with all the original certificates and a set of photo copy with requisite fees.
4. Reserved candidate who have secured seat under reserved quota and whose allotted seat got cancelled during the document verification on reporting for admission will be considered for allotment of seat in the next round of seat allotment with changed category, subject to eligibility & availability of seat in respective category.
5. A desirous candidate may give his/her Status Retention Form in prescribed format available in information brochure within prescribed period to the allotted college to retain the admission. Candidate who submits Status Retention Form will get Retention Acknowledgement by the college. Candidate who does not fill status retention form is eligible for the subsequent rounds, as per the preference filled by the candidate.
6. After joining the allotted college, if candidate desires to resign the allotted seat then the candidate must fill the Cancellation Form in prescribed format available in information brochure and submit to college within prescribed period. Candidate who submits Cancellation Form will get Admission Cancellation Acknowledgement by the college.
7. The candidate is requested to ensure that he/she is issued a System Generated Receipt/Acknowledgement by the college where he/she is taking admission.
8. Candidate must preserve the physical acknowledgement of confirmation of admission / confirmation of retention / confirmation of resignation given by the admitting college authority whichever is applicable.
9. Eligibility to sub-sequent round(s) will be as per Information Brochure.
10. This is computer generated letter, no signature is required.

Note : This is based on the personal data viz. Category, Name, DOB etc. submitted by the candidate. State CET Cell is not responsible for the truth/factuality of the data. Neither State CET Cell is responsible for any inadvertent error that may have crept in the Provisional Selection Letter being published on the web.

18. Thus, it is apparent that despite the inadvertent error in filing the NEET online application, based on the documents produced by the Petitioner, the Petitioner was not only considered but provisionally selected for admission to the MBBS faculty at the Government Medical College, Kudal, Sindhudurg against the PwD-OBC (PH) quota. Therefore, all that remained to be done was to verify his disability status by the prescribed Disability Certification Board.

19. The Head Clerk of Grant Government Medical College, J.J. Hospital Compound, was not justified in informing the Petitioner that the institution would not even examine him. This action of the Head Clerk, or for that matter, the institution, was quite insensitive, mainly because the Petitioner was not even informed in writing that he would not be examined on account of inadvertent error in his online application form. Considering the provisions of the Rights of Persons with Disabilities Act, 2016 (“RPwD Act, 2016”), no Government hospital or, for that matter, the State agency should treat a PwD in this manner.

20. Perhaps out of desperation and based on legal advice from the Legal Aid counsel of the Bombay High Court Legal Services Committee, the Petitioner instituted Writ Petition (Civil) No.552 of 2024 before the Hon’ble Supreme Court, invoking Article 32 of the Constitution. However, after it was pointed out that the Petitioner had already instituted the present Petition, which was pending before this Court, the

Hon'ble Supreme Court, by order dated 6 September 2024, disposed of the Writ Petition under Article 32 of the Constitution with a request for listing before an appropriate Bench so that this Petition could be disposed of at an early date.

21. Based on our interim order on 11 September 2024, the AIIPMR examined the Petitioner. The Disability Certification Board certified that the Petitioner suffers from a 40% locomotor disability (Sensory motor demyelinating axonal poly neuropathy) and is, therefore, eligible for admission to Medical or dental courses as per the NMC norms/guidelines.

22. The disability assessment report prepared by the Disability Certification Board comprising the Consultant (Ortho) Dr Vivek Pusnake, Dr Mahesh Choudhary and Dr Sumedh More, submitted to this Court on 19 September 2024, reads as follows:-

“Disability assessment report of Mr. Shaikh Shahid Akeel as per Directives of Honorable Bumbay High Court dated 11 September 2024.

As per the directives from the Honorable High court, the candidate Mr. Shaikh Shahid Akeel attended for his disability assessment by the disability assessment board at AIIPMR, Mumbai on 12th September 2024 at 9.30 am.

The disability assessment board evaluated the candidate clinically. The candidate had weakness in his both upper limbs. Since he did not possess any previous medical records or investigation reports correlating his condition, and also because the previous disability certificate issued from Nashik, Maharashtra mentioned his disability as 40% due to post burn contracture with weakness in both upper limbs, in relation to

all four limbs, the disability board asked him to be present again with necessary investigations advised as early as possible.

The candidate followed up with the investigation reports on 17th September 2004.

The Disability Certification Board of the institute certifies that the candidate is Eligible in Medical/Dental courses (as per the NMC norms/guidelines) with disability percentage of 40% (forty percent) in relation to all four limbs with a diagnosis of sensorimotor demyelinating axonal poly neuropathy.

The disability certificate of Mr. Shaikh Shahid Akeel is attached herewith.

<i>sd/-</i>	<i>sd/-</i>	<i>sd/-</i>
<i>Sign & Name</i>	<i>Sign & Name</i>	<i>Sign & Name</i>
<i>Dr Mahesh Choudhary</i>	<i>Dr Sumedh Narayan More</i>	<i>Dr Vivek Pusnake</i>
<i>MBBS, MS (Ortho)</i>	<i>MBBS. D.Ortho DNB(PMR)</i>	<i>Consultant (Ortho)</i>
<i>Deputy Director (Rehab.)</i>	<i>Professor (PMR)</i>	
<i>Reg. No.2005031960</i>	<i>MMC Reg. No.2005/03/2108</i>	
<i>A.I.I.P.M.R.</i>	<i>AIIPMR, Haji Ali,</i>	
<i>Mumbai-34.</i>	<i>Mahalaxmi, Mumbai-34.</i>	

23. The certificate of disability for NEET admissions bearing No.2024/22 dated 17 September 2024 issued by the Disability Certification Board certifying that the Petitioner is eligible for admission in the Medical/Dental courses as per the NMC norms/guidelines was also produced before this Court on 19 September 2024.

24. Thus, there is no dispute that the Petitioner belongs to the OBC (Non Creamy Layer) category. There is also no dispute that the Petitioner belongs to the PwD category. Based on this undisputed position, the State Common Entrance Test Cell, Maharashtra, provisionally selected the Petitioner for admission to the faculty of MBBS at the Government Medical College, Kudal, Sindhudurg, against the PwD-OBC (PH)

quota. Now that the Petitioner's disability position has been verified and confirmed by the Disability Certification Board, which is the competent authority, it would be too harsh and inequitable to deny the Petitioner admission to the Government Medical College, Kudal at Sindhudurg based upon the inadvertent error in the online NEET application form.

25. In the present case, such error has not caused or does not have the potential of causing any prejudice to any candidate interested in obtaining admission to the PwD-OBC (PH) category, particularly under the State quota comprising about 85% of the seats. Learned counsel for the Petitioner, based on instructions from the Petitioner, has stated that the Petitioner will be satisfied if his provisional admission to the Government Medical College, Kudal, Sindhudurg, against the PwD-OBC (PH) quota is finalised. The argument based on the cascading effect will not really arise in the peculiar facts of the present case where the Petitioner, in the first round of counselling, has already been provisionally admitted to the MBBS course at the Government Medical College, Kudal, Sindhudurg, against the PwD-OBC (PH) quota.

26. On 19 September 2024, after hearing the learned counsel for the parties, we made the following order:-

“1. *Heard learned counsel for the parties.*

2. *The Registry is directed to accept a vakalatnama of Mr Vivek Punjabi on behalf of the Petitioner given the background of this case.*

3. By our order dated 11th September 2024, we had directed All India Institute of Physical Medicine and Rehabilitation (“AIIPMR”) to immediately examine the Petitioner and verify his disability status. We are happy to note that the doctors at AIIPMR, including, in particular, Dr Mahesh Choudhary, Dr Sumedh More and the Consultant (Ortho) Mr Vivek Pusnake have acted with utmost promptitude in examining the Petitioner and determining his disability status. Dr Choudhary is present in the Court and states that he has come with the necessary certification. He states that he is personally present in the Court, should this Court, require any clarification in the matter. All this promptitude and sensitivity is greatly appreciated.

4. The AIIPMR, upon examining the Petitioner has now certified that the Petitioner is indeed afflicted with locomotor disability. The specified disability is “Sensory motor demyelinating axonal poly neuropathy”. The extent of disability is 40%. Based upon all this, the Disability Certification Board has certified that the Petitioner is eligible for admission in Medical/Dental courses (as per the NMC norms/guidelines). A copy of this certification in the prescribed form dated 17th September 2024 is taken on record.

5. Mr Rodrigues, learned counsel for Respondent Nos.1 and 2 has tendered an affidavit on behalf of the 2nd Respondent. He has submitted that grant of any relief to the Petitioner particularly against the all India quota of 15% would have a cascading effect and the reasons why such reliefs should be declined have been set out in the affidavit-inreply of the 2nd Respondent.

6. Mr Paranjape, learned counsel for the Petitioner submits that the State Common Entrance Test Cell, Maharashtra has already selected the Petitioner provisionally for admission to the MBBS faculty at the Government Medical College, Kudal, Sindhudurg against the PWD-OBC (PH) quota. He submitted that this admission was not finalised by the State Common Entrance Test Cell only because the Petitioner could not immediately produce the certification from the Disability Certification Board. Mr Paranjape submitted that the Petitioner had in fact immediately approached the Grant Government Medical College and Sir J.J. Group of Hospital (Respondent No.3) which was one of the hospitals for verifying the disability status, but the hospital had declined to verify the Petitioner’s disability status on the alleged ground that the Petitioner had not opted for PWD category in the NEET

application form. Mr Paranjape submits that since now the AIIPMR which is also one of the designated hospitals for certifying the disability status has examined the Petitioner and concluded that he is eligible for admission to the Medical/Dental courses as per the NMC norms/guidelines, the Petitioner's provisional selection should be finalised in the counselling ground now scheduled on 25th September 2024.

7. Precisely to consider the adoption of the above course of action, we had granted the Petitioner leave to implead the State Common Entrance Test Cell and AIIPMR as Respondents to this Petition. The amendment has been duly carried out and, even the State Common Entrance Test Cell has been duly served in the matter. A covering letter dated 11th September 2024 along with endorsement from the State Common Entrance Test Cell is produced for our perusal.

8. Ms Thakur, learned AGP states that the State Common Entrance Test Cell has its own panel of advocates and therefore, she would not be able to appear on behalf of the State Common Entrance Test Cell. After notice, and considering the urgency of the matter, the State Common Entrance Test Cell should have appeared today. This is more so because this is a matter where the Hon'ble Supreme Court has relegated the Petitioner to this Court with a request for listing at an early date.

9. Ms Thakur, learned AGP and Mr Rodrigues, learned counsel for the 1st Respondent state that they would inform the State Common Entrance Test Cell about this order and the fact that this Petition is tomorrow posted for final disposal.

10. In any event, we grant the State Common Entrance Test Cell an additional opportunity, we post this matter on 20th September 2024 for directions/final disposal."

27. The matter was not disposed of on 19 September 2024 because there was no appearance on behalf of the State Common Entrance Test Cell, Maharashtra, despite service of notice upon them. An additional opportunity was therefore granted to the State Common Entrance Test Cell to appear in the matter.

28. Pursuant to the notices, the State Common Entrance Test Cell, Maharashtra has appeared in the matter by instructing Mr Rui Rodrigues.

29. Mr Rodrigues submitted that the Petitioner was provisionally admitted as is reflected in the Provisional Selection Letter referred to in paragraph 17, but, the Petitioner was unable to produce the PwD certificate and therefore, the College to which he was allotted was not bound to admit the Petitioner. He submitted that the Petitioner has now procured the PwD certificate on 17 September 2024, which is beyond the prescribed cut-off date and therefore, no case is made for grant of any relief to the Petitioner.

30. We have considered the submission made on behalf of the State Common Entrance Test Cell, Maharashtra through its learned counsel Mr Rodrigues. However, with respect, we are unable to accept this contention in the facts of the present case. As noticed earlier, the Petitioner did everything within his means to obtain the verification certificate. On 6 August 2024 he personally visited the Grant Medical College, J.J. Hospital Compound requesting for issue of necessary certificate. He was given an appointment on 12 August 2024. However, after he was turned down by the Head Clerk, he instituted this Petition and also rushed to the Hon'ble Supreme Court by instituting a Petition under Article 32 of the Constitution.

31. There was no justification for the Grant Government Medical College, J.J. Hospital Compound, not examining the Petitioner and issuing the necessary PwD certificate. The Grant Government Medical College, J.J. Hospital Compound, acted as if the provisions of RPwD Act, 2016 mean nothing. The aspects of ‘*inclusive education*’ and ‘*reasonable accommodation*’ were ignored by this institution. In such circumstances, the Petitioner, who is more in the nature of the victim, can hardly be made to suffer any further.

32. Based on the interim order made by this Court on 11 September 2024, the other prescribed institution AIIPMR, promptly examined the Petitioner and concluded that he suffers from a 40% locomotor disability and therefore, eligible for admission to Medical or dental courses as per the NMC norms/guidelines. The contention about rules in the information brochure being mandatory have to be construed reasonably. The possession of the prescribed qualification or disability status is undoubtedly a mandatory requirement. However, proof or rather the mode of production of proof is directory.

33. In *Charles K. Skaria and others vs. Dr. C. Mathew and ors.*¹ the Hon’ble Supreme Court speaking through V. R. Krishnaiyer, J. held that only the fact of attaining a particular qualification before the last date is essential. The proof of such attainment may follow later. The prescription in the

¹ (1980) 2 SCC 752

prospectus that the certificate of the diploma shall be attached to the application for admission is directory, not mandatory; a sure mode, not the sole means. If it is unshakably shown that the qualification has been acquired before the relevant date, then this factor cannot be invalidated merely because proof, though indubitable, was adduced a few days later but before the selection or in a manner not mentioned in the prospectus, but still above board. The delays in getting certified copies cannot result in defeating the Applicant if, otherwise than by a certified copy, he satisfies the committee about his diploma. The Court held that the method of convenience for proving possession of a qualification prescribed in the prospectus is merely directory.

34. In this case, it is not as if the Petitioner was indolent. The Petitioner did approach the Grant Government Medical College, J.J. Hospital Compound, as indicated above. Now that it is established that the Petitioner is indeed a PwD, there is no reason why his provisional admission ought not to be finalised. This is more so because Mr Paranjape, learned counsel for the Petitioner based on information obtained by the Petitioner from Government Medical College, Kudal at Sindhudurg stated that the seat provisionally allotted to the Petitioner is yet to be filled. Considering Notice No.11 dated 16 September 2024 produced before us by Mr Rodrigues, we are satisfied that this seat could not have been filled up before 26 September 2024, which is the date scheduled for CAP 2 round.

35. Since we propose to direct the State of Maharashtra and the State Common Entrance Test Cell, Maharashtra, to finally admit the Petitioner to the MBBS faculty at Government Medical College, Kudal, Sindhudurg, against the PwD-OBC (PH) quota, it is not necessary for us to deal in detail with Mr Rodrigues's arguments on behalf of the 2nd Respondent, the National Testing Agency (“NTA”). The arguments reflect the affidavit Binod Kumar Sahu, Director of NTA, filed.

36. The affidavit refers to some decisions of the Delhi and Madhya Pradesh High Courts regarding correcting errors in the NEET online application forms. These decisions referred to disruption in the admission process or operational issues based upon belated claims by candidates to correct the mistakes in their application forms.

37. As noted earlier, in the present case, there is no question of disruption of the admission process or operational issues, particularly regarding admission to the State quota of 85% seats. Even otherwise, several decisions of the Madras High Court and the Delhi High Court permit the correction of bona fide and unintentional errors in the NEET online application forms. In this regard, reference could be made to the following decisions:-

(a) *Vishnu Bargavi S. vs. The Director, NEET Exam*².

(b) *Union of India and Ors. vs. Pradeep Tomar*³.

² 2016 SCC OnLine Mad 28466

³ 2015 SCC OnLine Del 8699

(c) *Gavini Akhila (Minor) vs. Central Board of Secondary Education*⁴.

(d) *M. S. Aparna vs. Secretary to the Government of India and Another*⁵.

(e) *P. Swetha vs. Central Board of Secondary Education*⁶.

(f) *K. M. Subhiksha vs. The Director, National Eligibility cum Entrance Test Unit and ors.*⁷

(g) *Dr Lakshmi P. Gowda vs. Nation National Board of Examinations in Medical Sciences and anr.*⁸

(h) *Minor S. Kirthikaa vs. The Central Board of Secondary Education and ors.*⁹

(i) *B. Darshini vs. The Central Board of Secondary Education and ors.*¹⁰

(j) *Suvethan D vs. Union of India and ors.*¹¹

38. Apart from the above decisions, reference must be made to a recent decision of the Hon'ble Supreme Court in the case of *Vashist Narayan Kumar vs the State of Bihar and Others*¹² explaining the approach to be adopted in such matters.

39. This was a case where the Petitioner, an Applicant to the post of Police Constable, applied for selection under the

⁴ 2016 SCC OnLine Del 4065

⁵ 2019 SCC OnLine Mad 9159

⁶ 2017 SCC OnLine Mad 1400

⁷ 2017 SCC OnLine Mad 3704

⁸ Writ Petition No.12859 of 2023, Karnataka High Court

⁹ Writ Petition (MD) No.15960 of 2017, Madras High Court

¹⁰ Writ Petition No.20999 of 2017, Madras High Court

¹¹ Writ Petition No.24234 of 2023, Madras High Court

¹² 2024 SCC OnLine SC 2

reserved category. Although the Applicant, based on his marks and caste certificate, might have secured the employment, he was declared as failed only on the ground that in his application form uploaded online, his date of birth was shown as 8 December 1997, and in the school mark sheet his date of birth was reflected as 18 December 1997.

40. The Hon'ble Supreme Court has graphically explained how the Applicant, who lives in a remote village, visited a Cybercafe in a nearby town and filled out the online form with the assistance of the person running the Cybercafe. The Hon'ble Supreme Court explained how the discrepancy in the birth date was an inadvertent error by which the Applicant derived no advantage. Even if either of the dates were considered, the Applicant was eligible. The error had no bearing on the selection, and the Applicant himself, being oblivious of the error, produced the educational certificates which reflected his correct date of birth.

41. The Hon'ble Supreme Court held that it was not impressed with the argument of the State that the error was so grave as to constitute wrong or misleading information. The Court referred to its decision in *Divya vs Union of India*¹³ and the judgment in *Ajay Kumar Mishra vs Union of India*¹⁴ and held that the exception for trivial errors or omissions is because the law does not concern itself with trifles. This

¹³ (2023) 13 SCALE 730

¹⁴ 2016 SCC OnLine Del 6563

principle is recognised in the legal maxim – *De minimis non curat lex*.

42. The Hon'ble Supreme Court also noted that the Applicant had participated in the selection process and cleared all the stages successfully. The error in the application was trivial and did not play any part in the selection process. Therefore, the State was not justified in making a mountain out of this molehill. Perhaps the rarefied atmosphere of the cybercafe got the better of the Applicant. He omitted to notice the error and even failed to avail himself of the corrective mechanism offered. The Court held that in the instant case, it could not turn Nelson's eye to the ground realities that existed.

43. The Court also referred to its order in *Prince Jaibir Singh vs. Union of India & Ors.*¹⁵, in which it was observed that though technology is a great enabler, there is, at the same time, a digital divide. The Hon'ble Supreme Court held that if a trivial error appears to be a genuine and bona fide mistake, it would be unjust to penalise the Applicant for the same. Finally, the Hon'ble Supreme Court granted relief to the Applicant in a moulded form by observing that justice cannot be forsaken on the altar of technicalities.

44. Applying the above principles and observations to the undisputed facts of the present case, neither the NTA nor the State agencies may treat the petitioner harshly or unjustly.

¹⁵ C.A. No.6983 of 2021 decided on 22 November 2021

The error is bonafide and unintentional. The petitioner has neither secured any undue advantage nor misled any authorities. The explanation why the petitioner could not avail of the correction mechanism deserves to be accepted because it is similar to that which was accepted in the above case. The argument about any cascading effect does not hold good because the petitioner is already provisionally selected in the counselling rounds. The decisions relied upon by NTA are distinguishable, and in any event, there are other High Court decisions where bonafide and unintentional errors were permitted to be corrected.

45. In *Avni Prakash vs. National Testing Agency (NTA) and others*¹⁶, though, in a different factual context, the Hon'ble Supreme Court explained the concepts of '*inclusive education*' defined under the RPwD Act, 2016 and the concept of '*reasonable accommodation*' defined under Section 2(y) of the RPwD Act, 2016, when dealing with the rights of PwDs. This was, incidentally, in the context of the NEET examination.

46. The Hon'ble Supreme Court held that the NTA cannot be allowed to get away when confronted with the situation in hand whereby injustice has been caused to a student by standing behind the situation of a large competitive examination. The Court observed that '*individual injustices originating in a wrongful denial of rights and entitlements prescribed under the law cannot be sent into oblivion on the*

¹⁶ (2023) 2 SCC 286

grounds that these are a necessary consequence of a competitive examination’.

47. In *Jeeja Ghosh and another vs Union of India and others*¹⁷, the Hon’ble Supreme Court held that the rights that are guaranteed to differently-abled persons are founded on the sound principle of human dignity, which is the core value of human rights and is treated as a significant facet of right to life and liberty. Such a right, now treated as a human right of the persons who are disabled, has its roots in Article 21 of the Constitution. The Court held that the principle of non-discrimination against persons with disabilities or equality towards such persons implies not only preventing discrimination but goes beyond in remedying discrimination. In concrete terms, *it means embracing the notion of positive rights, affirmative action and reasonable accommodation.*

48. The Hon’ble Supreme Court held that the 1995 Act, when read along with the International Declaration and Charter, send an eloquent message that there is no question of sympathising with PwDs and extending them medical or other help. The subject of the rights of persons with disabilities should be approached from a human rights perspective, which recognises that persons with disabilities are entitled to enjoy the full range of internationally guaranteed rights and freedoms without discrimination on the grounds of disability. *This creates an obligation on the part of the State to take*

¹⁷ (2016) 7 SCC 761

positive measures to ensure that in reality persons with disabilities get enabled to exercise those rights. There should be an insistence on the full measure of general human rights guarantees in the case of persons with disabilities, as well as the development of specific instruments that refine and give detailed contextual content of those general guarantees. There should be full recognition of the fact that persons with disability are an integral part of the community, equal in dignity and entitled to enjoy the same human rights and freedoms as others.

49. For all the above reasons, we allow this Writ Petition and direct the concerned Respondents to confirm the provisional admission granted to the Petitioner at the counselling round held on 26 September 2024. In other words, the Petitioner must now be finally admitted to the MBBS faculty at the Government Medical College, Kudal, Sindhudurg against the PwD-OBC (PH) quota for which he was already provisionally selected by the State Common Entrance Test Cell, Maharashtra, pursuant to the counselling round held on 31 August 2024. Since, the College concerned is a Government Medical College and the State of Maharashtra is very much a party to this Petition, the College, must act based on an authenticated copy of this judgment and order.

50. If, for any reason, there is any genuine difficulty (at least we do not see any difficulty and none was pointed out)

to grant the Petitioner admission to the Government Medical College, Kudal, Sindhudurg, then the Petitioner must be permitted to participate in the next counselling round scheduled on 26 September 2024 and considered for admission to the MBBS course against the PwD-OBC (PH) quota.

51. The rule is made absolute in the above terms. There shall be no order for costs. All concerned must act on an authenticated copy of this judgment and order.

52. Before we part, we must record our appreciation for the promptitude and sensitivity displayed by the AIIPMR doctors, particularly the Consultant (Ortho) Dr Vivek Pusnake, Dr Mahesh Choudhary and Dr Sumedh More. They promptly examined the Petitioner and submitted a report confirming his disability status. Without their promptitude and sensitivity, there may have been further and avoidable hurdles to grant the Petitioner any immediate relief because there is no scope to delay the counselling rounds for admissions to the medical courses. This was in stark contrast with the treatment meted out to the helpless petitioner at the Grant Government Medical College, J.J. Hospital Compound, Mumbai.

(Kamal Khata, J)

(M. S. Sonak, J)