

Om Rathod vs The Director General Of Health Services on 25 October, 2024

Author: Dhananjaya Y Chandrachud

Bench: Dhananjaya Y Chandrachud

2024 INSC 836

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

Civil Appeal No. 12110 of 2024
(Arising out of Special Leave Petition (C) 21942 of 2024)

Om Rathod

...Appellant

Versus

The Director General of Health Services & Ors.

...Respondent

Signature Not Verified

Digitally signed by
Chetan Kumar
Date: 2024.11.05
14:33:58 IST
Reason:

JUDGMENT

Dr Dhananjaya Y Chandrachud, CJI

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The Stage
We didn't go up to the stage
no one asked us, actually
only by pointing fingers
they showed us our place
and we sat there;
'great', they exclaimed.
And they went up on the stage
started narrating us our own sorrows
but, 'our sorrows remained ours
never became theirs...'

– Waharu Sona

A.	Background
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1. Legal principles and their application often stand at opposite banks of the river.

The distance between them is manifest before us. The appellant has undergone a crash course in navigating the Indian legal system - from statutory prescriptions, regulatory stipulations, High Court adjudication, regulatory and court ordered disability assessments to the race to justice before this Court. Four assessments later - the appellant's fate now hangs in the balance and this Court is asked to interfere to ensure that the balance does not tilt unfavourably and fall into disarray. Vital foundational questions have been thrown open for debate before this Court. What is expected of an Indian medical graduate? Can a person with disability aspire to meet these expectations? Or is their only option to resign their fate to a society that places a premium on disabled bodies - every step of the way? Academic and practical rigour of the medical profession notwithstanding, should the journey of an Indian to navigate their way into the

1 Poem translated from its original version in Marathi – written in the context of the t
being co-opted by persons who claim to speak on their behalf while simultaneously otheri

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medical profession be this arduous? Is our collective obsession with disability too strong to focus on a person's ability? Is our nation ready to benefit from the talent and experiences of persons with disabilities? Or should we continue to sacrifice them at the altar of technicalities?

2. We answer these questions by rooting them in the web of Constitutional law principles, statute, regulatory framework and guidelines which are germane for this case. The bone of contention before us turns on the manner in which the Disability Assessment Boards must function while certifying the eligibility of a

candidate for the MBBS course. The appellant has lower limb myopathy - a locomotor disability. The appellant has been an academic success. He secured an A1 grade in his matriculate (Class X) and intermediary (Class XII) examination held by the Central Board of Secondary Education. He aspires, now, to enter the medical profession. With this resolve, the appellant appeared for the NEET UG Examination 2024 on 5 May 2024 under the unreserved/EWS-PwD category and secured 601 marks (out of a total marks of 720). This placed the appellant at an all India PwD rank of 84 and a State PwD rank of 4. Despite having a Disability Certificate dated 24 January 2021 which was to be valid until 2025 – the appellant submitted himself to the mandatory assessment to get his eligibility certified by a designated medical board at AIIMS, Nagpur. Appendix "H-1" of the Guidelines regarding admission of students with 'Specified Disabilities' under the Rights of Persons with Disabilities Act, 2016 with respect to admission in MBBS Course prescribes that persons having over eighty percent disability may be admitted to a medical course on a case by case basis

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after assessing their functional competence to navigate academic and practical requirements.

3. The medical board at AIIMS, Nagpur comprised of an Associate Professor in Physical Medicine and Rehabilitation; an Assistant Professor of Orthopaedics; and a Professor who was the Chairman of the Disability Board at AIIMS, Nagpur. The Board, by a NEET Disability Certificate dated 13 August 2024, opined that the appellant is 88% disabled and is therefore ineligible to pursue an MBBS/Dental course.

B. Pillar to post: scaling the ramparts of courts and hospitals

4. Aggrieved by this, the appellant filed a writ petition under Article 226 of the Constitution before the Nagpur bench of the High Court of Judicature at Bombay, challenging the NEET Disability Certificate issued by AIIMS, Nagpur. The High Court by the impugned judgment dated 3 September 2024 dismissed the writ petition and held that the certification of the degree of disability was in accordance with prescribed procedures. The appellant challenged the impugned judgment by a petition for special leave before this Court under Article 136 of the Constitution.
5. On 3 October 2024, this Court directed the appellant to appear before a medical board at AIIMS, Delhi to reassess him keeping in mind the circular issued by the first respondent on 24 March 2022. The circular inter alia made mandatory directions to include a doctor or health professional with disability in every Disability Assessment Board. The appellant accordingly reported to AIIMS, Delhi at 11 AM on 5 October 2024. The five member board submitted its report

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dated 9 October 2024 inter alia finding that there were no changes in most disability components despite assistive devices. The report also stated that there are no clear guidelines available to assess the disability with assistive devices. The report states as follows:

“The candidate was re-assessed with the assistive device (single hand crutch & motorised scooty). There was minimal to no change in most of the components for disability evaluation as per the GOI gazette (March 2024) with these assistive devices. The possibility of wheelchair usage was also explored which might be required for better efficiency in ambulation component in near future. However, there are no clear

guidelines available to assess the disability with assistive devices as per the Govt. of India gazette guideline. Further it is to be noted that safety, efficiency and agility of movements are needed to independently use the devices and many times some manual support is also required which may not be available to the candidate at all times and may affect the safety of the candidate and the patients during the skills based training provided in the various setups in the labs and hospitals during the MBBS course training. The Board after careful evaluations of all possibilities concurs with the opinion of the previous medical board held at AIIMS Nagpur dated 13.08.2024 that the disability is above 80% even with consideration of assistive devices and also both upper limbs have significant involvement and hence the candidate is ineligible to pursue MBBS course."

6. The appellant in his affidavit countering the AIIMS, Delhi report has elucidated his experience. He submits that he was made to wait for long hours on each date when he was asked to appear. He was not given clear directions or information about the steps to follow in his assessment. The first stage of the examination was conducted by an able bodied doctor from the PMR department who was unduly focused on the medical condition of the appellant. He

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underwent a large number of tests including climbing stairs and power assessment. When the appellant informed the Board that he used (i) a wheelchair, (ii) crutches, and (iii) an electric scooter for mobility, he was asked why he did not bring his wheelchair. To this, the appellant stated that bringing a wheelchair was not logistically possible given that he had travelled from his place of residence at Washim in Maharashtra to Delhi by air, on short notice.

7. The Board did not ask him any questions which would allow the appellant to counter the basis for the Board's findings. He was only asked (i) if he would be

able to undertake his professional duties and (ii) if he could conduct his daily activities. He responded positively to both and stated that he had already completed his secondary education with the same disability and had managed to navigate adequately thus far. Eventually, the AIIMS, Delhi report dated 9 October 2024 fell into the error of being a mere benchmark evaluation report. The report adjudged the disability of the appellant to be 80% - down from 88% which was reported by AIIMS, Nagpur on 13 August 2024. While the AIIMS, Nagpur report did not evaluate the appellant with assistive devices to assess his functional ability, the AIIMS Delhi report did use these devices but ultimately opined that there were no government guidelines on the use of such devices.

8. By an order dated 18 October 2024, this Court noted the statement of AIIMS, Delhi on the lack of clear guidelines and observed that the AIIMS report failed to evaluate the (i) extent of functional disability of the appellant; and (ii) the extent to which the use of assistive devices would have the potential to bring the functional disability within the permissible limits in terms of the government notification.

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9. Relying on the judgment of this Court in *Omkar Ramchandra Gond v. Union of India*,² we requested Dr Satendra Singh of Infinity Ability to assist the Court on whether notwithstanding the quantified disability, the appellant can pursue the MBBS degree course. In arriving at his evaluation, Dr Satendra Singh was requested to examine the appellant and to have due regard to such assistive devices and their potential to assist the appellant to fulfil the requirements of the degree course in medicine.

10. The appellant made himself available at the University College of Medical Sciences and Guru Teg Bahadur Hospital, University of Delhi at 10 AM on 19

October 2024. He was made to undergo functional assessment and was asked to demonstrate his competence at the Medical Simulation Centre at the Physiology and Pathology central lab. Dr Satendra Singh gauged the accommodations necessary for the appellant by interacting with him to understand his limitations and barriers. Accordingly, the following premises were established in assessing the appellant:

“Disability: Limb Girdle Muscular Dystrophy (mobility-related physical disability)

Potential Functional limitations: Inability to stand for long hours; difficulty in standing suddenly from sitting position

Potential Barriers to learning: Lack of accessible spaces

What is being assessed: Cognitive, psychomotor and affective skills and ability to arrive at a diagnosis using patient history and examination in line with NMC's five roles of an Indian Medical Graduate in CBME

Appropriate and reasonable accommodation:

Given the tight space of clinical environments, smaller/compact scooters are a good choice which Om is already using. This will allow him to continue with the pace and demands of a busy ward/OPD/OT independently and is much superior than a manual

2 2024 SCC OnLine SC 2860.

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wheelchair which is often dependent on human assistance.”

11. Dr Satendra Singh submitted his report on 20 October 2024. This Court duly furnished the report to the second respondent, National Medical Council, on 21 October 2024 to enable them to formulate their response. The report by Dr Satendra Singh outlined the functional disability of the appellant to be an

inability to stand independently which may prove limiting in clinical rotations in surgical settings. The report suggested solutions to enable the appellant in such cases. The report further suggested clinical accommodations for the appellant to reduce the barriers he may encounter. The report determined the accommodations necessary for the appellant to be reasonable and in compliance with existing norms. The report formulated four questions and answered them as follows:

- "a) Would the proposed accommodation result in a failure to meet the NMC CBME's inherent requirements? Not in my opinion
- b) Would the accommodation legitimately jeopardize patient safety? Not in my opinion
- c) Would the proposed accommodation result in the improper waiver of a core requirement of the CBME? Not in my opinion
- d) Would the proposed accommodation pose an undue hardship on the medical college (budgets wise)? Not in my opinion"

12. In stark contrast to the approach of the two AIIMS reports, when Dr Satendra Singh assessed the appellant on the request of this Court, he carried out a functional assessment. The process to determine the clinical accommodation for the appellant involved having a frank conversation with him about the barriers he faces - physical, educational and attitudinal. The approach adopted was not whether the appellant would succeed in a medical college but was

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rather to ensure that the appellant has equal opportunity and can start at the same level playing field as his classmates. After determining the accommodations needed by the appellant through an interview process, some questions were posed to him. These questions were as follows:

- "i. How does muscular dystrophy impact you in daily

life?

ii. How have you mitigated this impact in an educational setting (Class X,XII)?

iii. What, if anything, exacerbates or worsens your disability?

iv. Do you anticipate needing to receive treatment such that you may need to "step out" of the curriculum at some point to attend to disability-related needs?

v. Have you ever seen a clinical setting, or do you anticipate additional barriers during the clinical portion of your MBBS? (prompted with example competencies)

vi. Have you reviewed the MBBS curriculum? If not, we can do this together to identify any potential barriers.

vii. Have you ever used assistive technology to mitigate the impact of your disability?

viii. Are you aware of adaptive equipment used to navigate the clinical environment.

ix. What are your biggest concerns about entering the MBBS program?

x. What is your understanding of reasonable accommodation which you repeatedly mentioned in your affidavit."

13. Based on the preliminary conversation, the report noted that the appellant is concerned about the differential treatment which was meted out to him by previous Disability Assessment Boards despite him having successfully navigated with the disability for his entire life. The appellant was surprised that he was being doubted and his accomplishments questioned without being afforded an opportunity with simulation labs and reasonable accommodations.

14. The appellant was then made to undergo a functional assessment which included being given various instruments which he would be required to use in his course and profession. The nature of the tasks given to the appellant shows

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that they were done in progression, with basic instruments being given first, followed by the use of assistive devices to examine his abilities and then being tested in other, more complex tasks. The report states as follows:

"1.4 Functional assessment: Om was first shown how to record blood pressure using a mercury sphygmomanometer, how to elicit reflexes, and how to use a tuning fork to check for deafness. He was then asked to demonstrate these skills, which he successfully did, showing his eagerness to learn after just one demonstration. Next, he was given a foldable crutch to test whether it could assist him in standing from a seated position, but I observed that he has developed his own coping mechanisms to navigate physical barriers. This is often an innovative strategy used by people with disabilities in environments that are not fully accessible.

He was then taken to the laboratory and asked to reach examination tables of three different heights. He was able to access two of them, demonstrating that an adjustable examination table would be a suitable clinical accommodation for him.

Afterward, he was taken to our Medical Simulation Centre, where he was shown how to perform Cardiopulmonary Resuscitation (CPR) in a simulated real-life scenario of a person lying on the floor after a heart attack. After the demonstration, Om sat down on the floor to perform CPR. Considering it was his first experience in such a lab (his previous two assessments did not involve simulation), and to make the situation less intimidating, he was first guided on a baby mannequin, which he successfully managed. He also succeeded in giving an intravenous and intramuscular deltoid injection, as well as inserting a cannula after a demonstration. Please find some pictures below.

For Om, who uses a mobility scooter, the functional limitation lies in his inability to stand independently. This may pose a challenge during clinical rotations in surgical settings, where he would need to be at standing height to observe procedures. Potential solutions could include using a standing or hydraulic wheelchair, providing remote visual access to the surgery via a monitor, or arranging for all parties to sit during minor surgeries. These accommodations can help mitigate barriers without imposing undue burden. The disability access appointee or Coordinator of the Enabling Unit or Equal Opportunity Cell (as mandated by the UGC) at Om's future medical college should interact with him to propose these accommodations on

an individual basis before the preclinical, paraclinical, and clinical rotations begin."

15. The report thereafter gave detailed (but not exhaustive) suggestions for clinical accommodations for the appellant during his course - for each of the years of his education and the mandatory internship. The report finally outlined the overall assessment of the appellant and declared him to be suitable, with appropriate clinical accommodations, to pursue MBBS. The section of the report on overall assessment reads as follows:

"4. Overall assessment

4.1 Throughout the assessment, Om's diagnosed muscular dystrophy has not interfered with his learning or self-care. He quickly adapted to new situations and found interesting and unique ways to complete tasks in unfamiliar settings. For example, while initially unfamiliar with the full extent of the physical skills required in the MBBS program during the simulation lab experience, Om expressed confidence that these barriers could be easily mitigated using his existing compensatory skills and creative approaches to procedures.

As an 18-year-old who flew on an airplane for the first time while traveling for reassessment in Delhi, Om showed remarkable zeal and passion for becoming a doctor and is suitable with appropriate clinical accommodations to pursue MBBS.

Om should be given opportunities to demonstrate how he can successfully navigate clinical environments. Students with disabilities should be "Welcomed and Valued," as demonstrated by the General Medical Council UK's guidelines on reasonable accommodation (GMC, UK). The NMC should consider implementing similar regulations to guide faculty and minimize attitudinal barriers rooted in the medical model of disability. In the post-RPDA (Rights of Persons with Disabilities Act) era, with the advent of technology, we must welcome and recognize the competence of students with disabilities.

4.2 Progressive Disability – Is It a Concern?

Such concerns fall into the realm of ableism. It is "a

system of assigning value to people's bodies and minds based on societally constructed ideas of normalcy, productivity, desirability, intelligence, excellence, and fitness. These constructed ideas are

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deeply rooted in eugenics, anti-Blackness, misogyny, colonialism, imperialism, and capitalism. This systemic oppression that leads to people and society determining people's value based on their culture, age, language, appearance, religion, birth or living place, "health/wellness", and/or their ability to satisfactorily re/produce, "excel" and "behave." You do not have to be disabled to experience ableism" (Lewis, 2022).

In Iyer Seetharaman Venugopalan vs. Union of India, the Bombay High Court initially denied an MD in Psychiatry to a blind doctor who had retinitis pigmentosa and progressively lost his vision. However, thanks to the intervention of the Supreme Court under Hon'ble CJI, he was allowed to pursue Psychiatry and is now in his final year, doing successfully. Similarly, Dr. Sharad Philip, who also experienced progressive vision loss, successfully completed his MD in Psychiatry from NIMHANS Bangalore and is now a faculty member at AIIMS Guwahati.

Om can similarly choose to either remain a general MBBS doctor or pursue a specialty that is less physically demanding. Only he is best placed to take this decision after completing MBBS. We should not restrict a bright student on the basis of assumptions and ableist beliefs."

16. Accordingly, the appellant was assessed to be eligible for pursuing the MBBS course with assistive devices. The second respondent has fairly accepted the eligibility of the appellant and has only joined issue with the fact that the assessment of candidate by a doctor must comply with the rules formulated under the statutory framework. These rules require the assessing doctor to be a domain expert in disabilities. In the present case this Court requested Dr Satendra Singh to assess the appellant which shall not be a precedent. To that extent the submission of the second respondent is accepted. We may note that

this Court was constrained to order a functional competency test due to the failure of the previous two Boards to apply the legally permissible standard. The appellant shall not be made to undergo any further assessments as part of his admission to the MBBS course. On 25 October 2024 this Court granted leave

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and directed that the appellant be permitted to participate in the ongoing counselling process arising out of NEET UG 2024.

17. Unfortunately, this run hardly obviates further labour. The appellant finds himself re-entering the NEET counselling process after a lapse of valuable time. He was allocated a seat at the Dr Shankarrao Chavan Government Medical College, Nanded in the first and second rounds of All India Level counselling. Now, stray vacancies for the category of persons with disabilities at the All India Level are available in only nine colleges, none of which are in the home State of the appellant – Maharashtra. The appellant submits that none of the nine colleges are compliant with accessibility norms and adequate support systems necessary for him to enjoy a level playing field. The appellant now prays that this Court create a seat for him at the college which he was allocated in the initial rounds of counselling or for that matter at any college in Maharashtra. The run of the appellant from Washim to Nagpur and Delhi accompanied by several assessments now stands the chance of being fruitless. The appellant prays that this Court exercises its power to do complete justice under Article 142 of the Constitution. Additionally, the appellant prays that this Court may issue directives on the manner in which the grievances of exclusion of disabled candidates is to be considered inter alia by courts.

C. The maze to inclusion: RPWD Act and guidelines

18. Section 32 3 of the Rights of Persons with Disabilities Act 2016 4 stipulates that all Government and Government aided institutions of higher learning shall reserve not less than five percent of seats for persons with benchmark disability. The enactment of the RPWD Act in 2016 marked a paradigm shift in disability law in India from charity based to a rights based approach. Accordingly, the erstwhile Medical Council of India 5 formulated guidelines on admission of persons with specific disability in MBBS courses. The Government of India approved the proposal of the committee on 28 January 2019 and issued a notification in the gazette on 5 February 2019.
19. The report stipulated the guidelines in Appendix “H” which laid down six categories of locomotor disabilities including muscular dystrophy. All persons with a locomotor disability above eighty percent were rendered ineligible for medical courses. Appendix “H” was substituted by Appendix “H-1” on 13 May 2019. The amendment allowed persons with more than eighty percent locomotor disabilities to pursue medical courses on a case to case basis. The new appendix states as follows:

“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

- 3 “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. (2) The persons with benchmark disabilities shall be given an upper age relaxation of five years for admission in institutions of higher education.”

4 "RPWD Act"

5 "MCI"

sufficient motor ability as required to pursue and complete the course satisfactorily."
(emphasis supplied)

20. The amended guidelines brought about a welcome change by eschewing from a purely benchmark model to a functional ability model. For candidates with more than eighty percent locomotor disability, the guidelines allow their functional competency to be determined using assistive devices to see if it can be brought below 80%. The second respondent has submitted that a new committee will be constituted to recommend new guidelines for admission of persons with disabilities into medical courses.
21. The report of the MCI (the erstwhile version of the second respondent) which was the basis of the existing guidelines evidently found itself working in the remnants of the pre-RPWD Act legal regime. Besides making archaic observations requiring persons with disabilities to 'introspect and assess themselves whether they are likely to meet MCI standards and outcomes' the guidelines also noted the definition of reasonable accommodation in Section 2(y) 6 of the RPWD Act. The reference was only to further state that the standard of competence cannot be lowered in the name of accommodation. The observations, made without specific context on the standard or the accommodation in question, states as follows:

"MCI is aware of this provision and respects it. However, MCI cannot agree to enforce reasonable accommodation that would alter or lower the standard of competence – which exists to protect patients – that is required. Such an accommodation, if granted would

be 'unreasonable', and not reasonable. Moreover, in some cases, even with reasonable accommodation, it

6 "(y) "reasonable accommodation" means necessary and appropriate modification and adjustment without imposing a disproportionate or undue burden in a particular case, to ensure to persons with disabilities the enjoyment or exercise of rights equally with others;"

may not be possible for every disabled medical student to successfully and safely undertake all stages of medical education and training "

22. From promoting self-rejection of disabled medical aspirants to assuming that their accommodations would lower the standard of competence and would regardless be fruitless – the guidelines have charted their way into disrepute. Vitally, the resistance to alter the standard in a framework that has historically effaced a marginalised group – namely disabled persons other than in the capacity of a patient – is antithetical to any rights based approach to disability law. Many other issues of critical importance arise from these guidelines which are not germane to evaluate the case before us but may be open for an appropriate proceeding. 7 The current guidelines allow persons with more than eight percent locomotor disability to be admitted to MBBS course on a case by case basis after a functional competency to see whether their disability can be 'brought below 80%.' Before proceeding to analyse this guideline, it is essential that we clarify the phrase 'brought below 80%'.
23. The intention of the guideline in using the term 'brought below 80%' is ostensibly to mean that the functional assessment shall evaluate if the person with disability can perform the tasks which they are expected to perform as a student and a practitioner. The assumption in using the phrase 'below 80%' defeats the purpose of the guideline which is to allow candidates into the MBBS course on a case by case basis. Bodies are not biological parts put together – each to

serve a pre-determined role. They are alive – with thoughts, feelings, dreams

7 See Singh S, Medical Council of India's new guidelines on admission of persons with sp disabilities: Unfair, discriminatory and unlawful. Indian J Med Ethics. 2019 Jan-Mar; 4(DOI: 10.20529/IJME.2018.064.

PART C

and aspirations. All bodies – abled and disabled – are guaranteed dignity under the Constitution. A person with disability has to navigate the rigours of a society which was modelled on the premise of their absence. The disability of a person is a reflection on the inaccessibility of the society and not a comment upon the individual. A person does not overcome disability but learns to navigate life with it. Disability is not a thing to be overcome or brought down, but an attribute to be acknowledged and accommodated. The use of the term 'brought below 80%,' as well intentioned as it may be, fails at this foundational premise. One cannot assume that all persons with more than 80% locomotor disability are incompetent to pursue medicine when their functional abilities have not been assessed. The medical model of disability apparent in the phrase must give way to a social model of disability which takes into account the variety of experiences and outcomes which persons with disabilities have when they interact with different kinds of societies and accommodations.

24. In Nipun Malhotra v. Sony Pictures,⁸ this Court opined that words cultivate institutional discrimination and that the language of our discourse ought to be inclusive rather than alienating. When it comes to rights – language matters. Words may not always adequately reflect the intention of the drafter. Some words may be used unwittingly, without knowledge of their harmful consequences. Nevertheless, these words influence the thinking of others who hear them. Words are the tools one deploys to formulate thoughts. An

expansive vocabulary allows people to think and articulate their thoughts better.

When we use appropriate and sensitive language, we aspire for the quality of

8 2024 INSC 465, para 74.

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our thought to be broadened and evolve towards being emancipatory and inclusive.

D. Principle of fair assessment of competence: r
accommodation and the functional competence model

25. The guidelines (Appendix “H-1”) stipulate that the functional competence of an aspirant with a locomotor disability above eighty percent may be assessed with the help of assistive devices. A purposive interpretation of this guideline requires us to interpret it in light of the legislative intent of the governing statute, namely the RPWD Act. The RPWD Act is a watershed legislation for disability rights in India. It honours India’s commitment at the international level under the Convention on Rights of Persons with Disability. The preamble to the RPWD Act states that:

“...AND WHEREAS the aforesaid Convention lays down the following principles for the empowerment of persons with disabilities,—
(a) respect for inherent dignity, individual autonomy including the freedom to make one’s own choices, and independence of persons;
(b) non-discrimination;
(c) full and effective participation and inclusion in society;
(d) respect for difference and acceptance of persons with disabilities as part of human diversity and humanity;

- (e) equality of opportunity;
- (f) accessibility;
- (g) equality between men and women;
- (h) respect for the evolving capacities of children with disabilities and respect for the right of children with disabilities to preserve their identities;..."

26. The Act harmonises the Constitutional promise of full citizenship with action - by creating a framework in which persons with disabilities may translate their rights into remedies. To establish a bed of rights, Section 2 of the Act defines and acknowledges barriers,⁹ discrimination, ¹⁰ inclusive education ¹¹ and reasonable accommodation. ¹² Section 3 of the Act affords the right to equality and non-discrimination for persons with disabilities. The requirement of assessing the functional competence of a medical aspirant with over eighty percent locomotor disability recognises that assessment must be done on a case to case basis. The method of assessment by designated Disability Assessment Boards must therefore reflect the approach and intent of the legal framework within which the Boards operate. An assessment for functional competency entails an analysis of the skill set which a person with disability must learn in order to compete and pursue the medical course. This is a marked difference from requiring a specific manner which a candidate must use to achieve the outcome. For example, a functional competency model would require a candidate to effectively communicate with patients but would not require them to have speech or intact hands. By focusing on the end points, the

9 "(c) "barrier" means any factor including communicational, cultural, economic, environmental, institutional, political, social, attitudinal or structural factors which hampers the full participation of persons with disabilities in society;"

- 10 "(h) "discrimination" in relation to disability, means any distinction, exclusion, re
- of disability which is the purpose or effect of impairing or nullifying the recognition, on an equal basis with others of all human rights and fundamental freedoms in the political, social, cultural, civil or any other field and includes all forms of discrimination and accommodation;"
- 11 "(m) "inclusive education" means a system of education wherein students with and with
- learn together and the system of teaching and learning is suitably adapted to meet the l of different types of students with disabilities;"
- 12 "(y) "reasonable accommodation" means necessary and appropriate modification and adju
- without imposing a disproportionate or undue burden in a particular case, to ensure to p disabilities the enjoyment or exercise of rights equally with others;"

PART D

- approach avoids any ableism to seep into the assessment and avoids reifying that there is one and only one manner to achieve desired outcomes.
27. A failure to create a conducive environment is a failure to provide reasonable accommodation. 13 Section 2(h) of the RPWD Act defines discrimination in the context of disability as "any distinction, exclusion, restriction on the basis of disability which has the purpose or effect of impairing or nullifying the recognition, enjoyment or exercise on an equal basis with others of all human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field and includes all forms of discrimination and denial of reasonable accommodation." The denial of reasonable accommodation is expressly recognised as discrimination under the RPWD Act. For the proper realisation of reasonable accommodation, a person with disability must be identified using correct parameters and thereafter the accommodations necessary have to be determined on a case by case basis.
28. Justice KV Viswanathan speaking for this Court in Omkar Gond (supra) has applied a purposive interpretation to the guidelines (Appendix "H-1") in the context of a medical aspirant with dialectic incapacity. This Court held that the principle of reasonable accommodation in Section 2(y) of the RPWD Act read

with Article 41 of the Constitution necessarily means that (i) a person cannot be disqualified merely on the basis of a benchmark quantification. Such a criteria would be unconstitutional for being overbroad; (ii) the Disability Assessment Board must not act as monotonous automations looking at the quantified disability and disqualifying candidates. The Board must examine if the

13 Ravinder Kumar Dhariwal v. Union of India, (2023) 2 SCC 209.

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candidate can pursue the course with their disability; and (iii) in doing so, the Board is not merely obliged to provide assistive devices and other substances which will help the candidate. The true role of the Board is to assess the competence of a candidate.

29. The principle of reasonable accommodation is not only statutorily prescribed but also rooted in the fundamental rights guaranteed to persons with disabilities under Part III of the Constitution. Reasonable accommodation is a fundamental right. It is a gateway right for persons with disabilities to enjoy all the other rights enshrined in the Constitution and the law. Without the gateway right of reasonable accommodation, a person with disability is forced to navigate in a world which excludes them by design. It strikes a fatal blow to their ability to make life choices and pursue opportunities. From mundane tasks of daily life to actions undertaken to realise personal and professional aspirations - all are throttled when reasonable accommodations are denied. Reasonable accommodation is a facet of substantive equality and its failure constitutes discrimination. In *Vikash Kumar v. UPSC*,¹⁴ this Court adjudicated on whether a person with a writer's cramp is entitled to a scribe for writing the examination.

Allowing the use of a scribe, this Court held that the benchmark standard can only be applied where expressly stipulated. Section 2(s) of the RPWD Act defines a person with disability as a person with long term physical, mental, intellectual or sensory impairment which, in interaction with barriers, hinders their full and effective participation in society equally with others. Therefore, a person - to be considered as a person with disability - does not have to qualify

14 (2021) 5 SCC 370.

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any benchmark. The principle that the rights and entitlements cannot be constricted by adopting a benchmark as a condition precedent was also upheld by this Court in Avni Prakash v. NTA. 15

30. Section 3 of the RPWD Act affords persons with disabilities a right to equality and non-discrimination. In Vikash Kumar (supra) this Court held that Section 3 casts an affirmative obligation on the Government and private entities to take steps to ensure reasonable accommodation and utilize the capacity of persons with disabilities by providing an appropriate environment. There is a positive obligation to realise the inclusive premise in the concept of reasonable accommodation. This includes the duty to create an environment conducive for the development of persons with disabilities. This Court has held that:

"... The accommodation which the law mandates is 'reasonable' because it has to be tailored to the requirements of each condition of disability. The expectations which every disabled person has are unique to the nature of the disability and the character of the impediments which are encountered as its consequence.

...

48. Failure to meet the individual needs of every disabled person will breach the norm of reasonable accommodation. Flexibility in answering individual needs and requirements is essential to reasonable accommodation. The principle of reasonable accommodation must also account for the fact that disability based discrimination is intersectional in nature. The intersectional features arise in particular contexts due to the presence of multiple disabilities and multiple consequences arising from disability. Disability therefore cannot be truly understood by regarding it as unidimensional."

(emphasis supplied) 15 (2023) 2 SCC 286.

PART D

31. In *Ravinder Kumar Dhariwal v. Union of India*, 16 while dealing with a case of a CRPF officer with a mental health condition, this Court had the opportunity to opine that disability is a social construct. Its manifestation is contingent on the manner in which it interacts with inter alia social, economic and historical factors. A one-size-fits-all approach cannot be adopted in assessing disability. Disability is not a universal but an individualistic conception based on the impairments that a person has along with the barriers they face. Since the barriers that every person faces are personal to their interpersonal and structural surroundings - a general observation of permissible behaviour cannot be made.

32. Central to the principles of reasonable accommodation and the individualized experience of disability is the right to access legal protections without undue mental hardship. If persons with disabilities must repeatedly turn to the courts to correct the missteps of authorities, then the rights recognized by this Court and the RPWD Act risk becoming hollow assurances. For every person who has the awareness or ability to move this Court there are numerous others who suffer in silence. In the present case, the appellant was subjected to protracted and mentally exhausting assessments that failed to apply the correct standards, leading to a declaration of ineligibility. His first journey by air was not for leisure or education but to undergo a medical assessment in Delhi by an order of this Court. In this process, valuable time was lost, and the appellant faced intrusive and irrelevant questioning. Persons with disabilities often confront systemic failures that engender a deep sense of disappointment - a disappointment that 16 (2023) 2 SCC 209.

PART D reflects the frequency and predictability with which the system fails them. Those with disabilities who aspire to succeed must not only plan meticulously but also brace themselves for the barriers they will inevitably face due to their disabilities.

33. For many persons with disabilities, the stress of medical visits - the frequent trips to hospitals, the constant readiness to attend appointments, the long waits, the uncertainty of a doctor's availability, and the anxiety over the results - forms part of their lived reality. At the very least, they deserve a process and an outcome that is fair and reasoned. The mental toll which processes before a medical board has on people is recognised by this Court. In *A (Mother of X) v. State of Maharashtra*, 17 this Court had the opportunity to opine on the shifting stances of medical boards which are often observed in cases relating to medical termination of pregnancy. This Court held that the lack of application of proper standards, simpliciter recantation of statutory provision and changes in

opinions cause undue mental trauma to the pregnant person. In the backdrop of the fear of prosecution which many registered medical practitioners (RMP) have, this Court emphasised on the role of medical experts to ensure that the fundamental rights of persons before them is not compromised. The Court held as follows:

"...The opinion of the RMP is decisive in matters of termination of pregnancy under the MTP Act. The purpose of the opinion of the RMP borrows from the legislative intent of the MTP Act which is to protect the health of a pregnant person and facilitate safe, hygienic, and legal abortion. The right to abortion is a concomitant right of dignity, autonomy and reproductive choice. This right is guaranteed under Article 21 of the Constitution. The decision to terminate pregnancy is deeply personal for any person. The choice exercised by a pregnant person is not merely 17 2024 INSC 371.

PART D about their reproductive freedom but also about their agency as recognised by this court in *X v. State* (NCT of Delhi). It is therefore imperative that the fundamental right of a pregnant person is not compromised for reasons other than to protect the physical and mental health of the pregnant person.

...

23. The opinion of the RMP or the medical board, as the case may be, is indispensable under the scheme of the MTP Act. This inadvertently gives the power to the RMP or the medical board to stand in the way of a pregnant person exercising their choice to terminate the pregnancy. When there is fear or apprehension in the mind of the RMP or the medical board it directly jeopardises the fundamental freedoms of pregnant persons guaranteed under the Constitution...."

(emphasis supplied)

34. Therefore, this Court has in the past opined on the pattern of conduct in medical boards and sought to align it with legal and Constitutional guarantees so as not to render the fundamental rights of persons before these boards nugatory. In *Bambhaniya Sagar Vashrambhai v. Union of India*, 18 this Court has held that Disability Assessment Boards must not adopt the approach of a recluse by confining themselves to only quantifying the disability of a candidate. In that case, the medical board had reported an unreasoned opinion that the candidate was ineligible to continue his MBBS course on account of being more than 80% disabled. Like in *A (Mother of X)* (supra), the Court in *Bambhaniya* (supra) also emphasised the need for elaborate reasons by the medical board while reporting their opinions.

35. In *Purswani Ashutosh v. Union of India*, 19 this Court was deciding if a medical aspirant who had appeared for the NEET UG Exam 2018 was eligible for the 18 WP (C) 856 of 2023.

19 (2019) 14 SCC 422.

PART D reservation earmarked for persons with disabilities. Despite having low vision impairment - the Medical Board had opined that the petitioner in that case was ineligible for reservation. While rejecting the opinion of the committee, this Court held that a medical board cannot be allowed to override the statutory mandate of providing reservation to persons with disabilities. No committee has primacy over the law. We must emphasize that the opinions of medical boards and committees are not only required to adhere to legal standards but must also embody core principles of the rule of law within their processes. This Court, following a consistent line of precedent, has underscored the need for reasoned and transparent decisions by such boards, given the profound impact these opinions have on the life trajectory of individuals before them.

36. At its core, the rule of law demands predictable rules, equitable application, unbiased adjudication and fair, transparent treatment of individuals. In cases of assessment, this entails informing individuals about the procedures, standards, tools, and all pertinent aspects of the assessment in advance. Such transparency is essential to avoid any arbitrary uncertainty arising from obscure or inconsistent procedures. The procedures must be inherently fair and bear a rational and cogent nexus with the purpose which is sought to be achieved. A committee's role goes beyond mere quantification of disability; disability is a factual condition. The key question for a Disability Assessment Board is whether an individual with a disability, aided by modern scientific tools and devices, can enter the MBBS program. Put differently, the board must assess whether it is infeasible for the candidate to pursue a medical career with their disability.

PART D

37. Appendix "H-1" stipulates that assessments, particularly for individuals with locomotor disabilities exceeding 80%, should focus on evaluating functional competence. This functional competency test serves two critical purposes. First, it emphasizes the abilities of the person with a disability, assessing their capability rather than their limitations. Second, it mandates an evaluation rooted in practical relevance, aligning the candidate's abilities with the functional requirements of the MBBS curriculum. Mere quantification of disability is insufficient and fails to address the necessary criteria, a position this Court has consistently upheld as unsatisfactory in such cases. 20

38. At this point, it is imperative to deal with the holding of this Court in *Vidhi Himmat Katariya v. Union of India*.²¹ In that case, persons with disabilities who had appeared for the NEET UG Exam 2019 had moved this Court against their disqualification by the Medical Board. Appendix "H" had been issued midway through the process for admitting candidates from the NEET UG 2019. The primary contention of the petitioners was that since the new guidelines were issued in the middle of the admission process, they must not apply to the ongoing process. The petitioners prayed to be tested against the rules as they existed at the time of the application process for the examination, namely, the MCI guidelines of 2017. On this count, the Court ruled against the petitioners. The demurrer argument of the petitioners was that they have not been tested on relevant parameters. This Court while rejecting the argument noted that the petitioners were disqualified for not meeting the eligibility criteria of having "both 20 *Omkar Gond v. Union of India*, (2024) SCC OnLine SC 2401; *Vikash Kumar v. UPSC*, (2021) 5 SCC 370; *Bambhaniya Sagar Vasharambhai v. Union of India*, WP (C) 856 of 2023. 21 (2019) 10 SCC 20.

PART D hands intact, with intact sensation, sufficient strength and range of motion." Accordingly, the Court refused to sit in appeal over the expert body's opinion. The judgment of the Court in Vidhi Himmat Katariya (supra) was specific to the facts of that case and did not involve any question of interpretation or Constitutional analysis. The Court was not examining any criteria and did not scrutinise the guidelines to inspect their validity. The Court did not have the benefit of looking at the firm roots which reasonable accommodation has grown within the fold of the Constitution. Further, the judgments of this Court in Vikash Kumar (supra), Avni Prakash (supra), Ravinder Dhariwal (supra) and Omkar Gond (supra) were not available to the Court while dealing with the case of Vidhi Himmat Katariya (supra). Therefore, the opinion in Vidhi Himmat Katariya (supra) is inapplicable.

39. Courts are not expert bodies in matters of medicine. The competent authority to adjudge the eligibility of a person to pursue a medical course is the Disability Assessment Board. However, courts have the jurisdiction to ensure that the manner in which the Board proceeds and functions is in compliance with established principles of law. Ultimately, the Court will have to rely on the opinion of the Board to adjudicate the legal remedies of a person with disability. The interference of Courts is not to supplant its opinion for that of the experts but to ensure that a holistic evaluation of competence is conducted and that no person's career is set at naught with the stroke of a pen.

40. The Courts cannot be stupefied into inaction by the lack of adequate framework or expertise when questions of fundamental rights emerge. No person forfeits their claim to education or other pursuits of life on account of their disability. The PART D flurry of cases concerning medical aspirants with disability which has come before this Court shows that the overarching issue is a sense of over medicalization of disabled bodies by the Assessment Boards. The approach often taken, due to inertia or unwittingly, is to assume that a person with disability may not be eligible for pursuing the course and then to put the candidates under tests to prove the assumption. The approach focuses more on the disability of a person than their ability. This turns the principle of reasonable accommodation on its head. The question instead that the Board ought to ask itself is this - what measures can be taken to ensure that the candidate with disability can start their MBBS course on an equal footing with their prospective classmates? The change in question brings a change in perspective. The only negative answer to the question would be that - in line with contemporary scientific advancements, no devices or accommodations can enable the person with disability before them to compete at a level playing field. Courts must ensure that the sanctity of the principles in the RPWD Act and in the Constitution are not violated by the conduct or the outcome of the assessment.

PART E E. Building bridges for the nation: principle to practice "But it taught me, at a very early age, that most things are possible when you assume problems can be solved." □Judith Heumann 22 (regarded as the mother of the disability rights movement)

41. We started by noting that the principle and application of law have stood at opposite banks of the river. The true mandate of the law is to be an agent of inclusion and an abettor and executor of justice. Law reflects the outlook of its wielder. A parochial legal system will create laws which result in maldistribution of life chances and opportunities. In India, we have adopted an emancipatory Constitution premised on the fundamental virtues of equal dignity and access. The wielder of the

law, therefore, is rooted in a progressive grundnorm which seeks to eschew from societal prejudices and biases.

42. The window to these progressive virtues is envisioned in the preamble to the Constitution. The preamble, along with justice, liberty and equality, seeks to secure to all citizens - "FRATERNITY assuring the dignity of the individual and the unity and integrity of the Nation." The fundamental postulate of dignity which inheres in all people is intrinsic to the idea of fraternity and national integration. Fraternity, far from being mere collegiality among citizens, imagines a holistic sharing of goals and aspirations. It recognizes that to progress together we must join forces in our mutual advancement and emancipation. The framing of 22 Judith Heumann & Kristen Joiner (2020). Being Heumann: An Unrepentant Memoir of a Disability Rights Activist. Beacon Press : Boston, Massachusetts. PART E the preambular virtue of fraternity identifies the dignity of all individuals as a pre- condition. Dignity of the individual is assured when they are given equal opportunity and the freedom to contribute to the society - shoulder to shoulder with fellow citizens.

43. No nation can truly progress until all her people realize a stake in their collective outcome. In one sense discrimination excludes the aggrieved from the collective imagination of the nation. In another sense the nation is deprived of the expertise and brilliance of those who are discriminated. We aspire to have institutions and systems which reflect the rich diversity of our country. The aspiration is one rooted in our commitment to the nation. Diverse institutions are vital to ensure the governance of a diverse nation. When persons with disabilities are discriminated against, it not only affects their individual aspirations and dignity - it strikes a blow to the entire nation and the collective goal of integration and fraternity.

44. Justice PB Sawant concurring with the decision of the nine-Judge bench of this Court in Indra Sawhney v. Union of India, 23 has opined that inequality ill- favours fraternity. Without equality of opportunity there can be no fraternity. Justice Sawant has articulated his holding as follows:

"411. The aim of any civilised society should be to secure dignity to every individual. There cannot be dignity without equality of status and opportunity. The absence of equal opportunities in any walk of social life is a denial of equal status and equal participation in the affairs of the society and, therefore, of its equal membership. The dignity of the individual is dented in direct proportion to his deprivation of the equal access to social means. The democratic foundations are missing when equal opportunity to grow, govern, and give one's best to the society is 23 1992 Supp (3) SCC 217.

PART E denied to a sizeable section of the society. The deprivation of the opportunities may be direct or indirect as when the wherewithals to avail of them are denied. Nevertheless, the consequences are as potent.

412. Inequality ill-favours fraternity, and unity remains a dream without fraternity. The goal enumerated in the Preamble of the Constitution, of fraternity assuring the dignity of the individual and the unity and integrity of the nation must, therefore,

remain unattainable so long as the equality of opportunity is not ensured to all.

413. Likewise, the social and political justice pledged by the Preamble of the Constitution to be secured to all citizens, will remain a myth unless first economic justice is guaranteed to all. The liberty of thought and expression also will remain on paper in the face of economic deprivations. A remunerative occupation is a means not only of economic upliftment but also of instilling in the individual self-assurance, self-esteem and self-worthiness. It also accords him a status and a dignity as an independent and useful member of the society. It enables him to participate in the affairs of the society without dependence on, or domination by, others, and on an equal plane depending upon the nature, security and remuneration of the occupation. Employment is an important and by far the dominant remunerative occupation, and when it is with the Government, semi-Government or Government-controlled organisation, it has an added edge. It is coupled with power and prestige of varying degrees and nature, depending upon the establishment and the post. The employment under the State, by itself, may, many times help achieve the triple goal of social, economic and political justice.

(emphasis supplied)

45. Dr Martin Luther King Jr has famously remarked that "injustice anywhere is a threat to justice everywhere." When we allow injustice to occur, we normalize the idea that fundamental rights and freedoms are violable. The inviolability of our collective commitment is weakened. Discrimination cracks open a wedge in the fabric of the society - it violates the Constitution and erodes the humanity of the person discriminated against. The discrimination can manifest directly or indirectly. Its manifestation eats into our commitment to each other and of the PART E State to the people. In *Prathvi Raj Chauhan v. Union of India*,²⁴ a three-Judge Bench of this Court while dealing with the validity of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act 1989 has opined that the Constitution is also a pact between the people of India. It is a promise of oneness and equality. The Court opined as follows:

"15. The Constitution of India is ... a pact between people, about the relationships that they guarantee to each other (apart from the guarantee of liberties vis-à-vis the State) in what was a society riven along caste and sectarian divisions. That is why the preambular assurance that the republic would be one which guarantees to its people liberties, dignity, equality of status and opportunity and fraternity.

16. It is this idea of India, — a promise of oneness of and for, all people, regardless of caste, gender, place of birth, religion and other divisions that Part III articulates in four salient provisions : Article 15, Article 17, Article 23 and Article 24. The idea of fraternity occupying as crucial a place in the scheme of our nation's consciousness and polity, is one of the lesser explored areas in the constitutional discourse of this Court. The fraternity assured by the Preamble is not merely a declaration of a ritual handshake or cordiality between communities that are diverse and have occupied

different spaces : it is far more. ..."

46. What the movement for disability justice shares with other social justice movements - such as the anti-caste movement, feminism and queer and trans justice - is that they call into question the fundamental arrangement of a society which has created prejudicial structures. Inaccessibility and non-inclusion are taken as suspect categories to question the prevalent social order. In doing so these movements invite us to contribute to the national goal of fraternity and integration. Far from being interruptive in the national journey - calls for equal access and equal justice postulate a disruption in the order of discrimination 24 (2020) 4 SCC 727.

PART E and prejudices so that we may carry on the journey of national progress. They do not only champion the group interest of a certain class of citizens but instead advocate for a larger vision of a justice oriented society. A society where discrimination and exclusion are addressed and eliminated will create a just and equitable system for all persons regardless of their identities. To be intersectional is to see the common goals across vectors of identities by eliminating systems of discrimination. It is a call to eschew from simplistic identity reductionism and to imagine meaningful remedies for marginalised groups and persons. It calls for a world with equity and justice where our uniqueness forms part of benign differences among people and lends vibrance to our diversity. The Constitution enables this project of fraternity by guaranteeing rights to life, dignity, freedom, equality and non-discrimination inter alia under Articles 21, 19, 14, and 15.

47. When reasonable accommodation is denied to a person with disability, it amounts to discrimination and violates the fundamental rights of the aggrieved person and the preambular virtue of fraternity along with justice, liberty and equality. Persons with disability are not objects of pity or charity but an integral part of our society and nation. The advancement of rights for persons with disabilities is a national project along with eradication of all forms of discrimination. A component of this project is the inclusion of persons with disabilities in all pursuits of life.

48. In *Vikash Kumar* (supra) this Court opined that the most significant loser of a rigid inaccessible system is the system itself. The Court resonated the idea of PART E a generation of persons with disabilities who take it as their birthright to access the full panoply of entitlements. This Court has held as follows:

"81. When competent persons with disabilities are unable to realise their full potential due to the barriers posed in their path, our society suffers, as much, if not more, as do the disabled people involved. In their blooming and blossoming, we all bloom and blossom. The most significant loser as a consequence of UPSC's rigid approach in this case (of refusing to provide scribes to those not having benchmark disabilities) is UPSC itself. For it is denying to the nation the opportunity to be served by highly competent people who claim nothing but access to equal opportunity and a barrier-free environment.

...

98. Cases such as the present offer us an opportunity to make a meaningful contribution in the project of creating the RPwD generation in India. A generation of disabled people in India which regards as its birthright access to the full panoply of constitutional entitlements, robust statutory rights geared to meet their unique needs and conducive societal conditions needed for them to flourish and to truly become co-equal participants in all facets of life."

49. When we create avenues for inclusion, we work towards improving systems and institutions. In the context of healthcare, the inclusion of persons with disabilities is a vital component of quality healthcare. The guidelines and recommendations which express concern about "lowering the standard of medical practice" on account of persons with disabilities miss the fact that these standards may not be adequate to begin with. The quality of a system is informed by its ability to empathise with and relate to the recipients. A system without adequate number of practitioners who have lived experiences will not be able to fully imagine the obstacles and grievances faced by a diverse population. Diversity of workforce is crucial for a diverse society, so that PART E everyone may have a stake in the system and the system can effectively discharge its duties toward everyone.

50. Section 25 of the RPWD Act outlines the positive obligation of Government and local authorities to provide healthcare to persons with disabilities. An affirmative obligation is placed to ensure that persons with disabilities receive a barrier free access to all public and private healthcare institutions. Removal of barriers can only be achieved if persons with disabilities feel comfortable while accessing healthcare. The barriers faced by a person may be physical, psychological and attitudinal. The inclusion of persons with disabilities within medical practice is vital to ensure that the approach of the medical community and of hospitals and other healthcare institutes is humane, sensitive and informed by lived experiences. It strengthens our fraternity. Therefore, the process through which medical aspirants with disability enter the profession 25 "25. Healthcare.—(1) The appropriate Government and the local authorities shall take necessary measures for the persons with disabilities to provide,—

(a) free healthcare in the vicinity specially in rural area subject to such family income as may be notified;

(b) barrier-free access in all parts of Government and private hospitals and other healthcare institutions and centres;

(c) priority in attendance and treatment.

(2) The appropriate Government and the local authorities shall take measures and make schemes or programmes to promote healthcare and prevent the occurrence of disabilities and for the said purpose shall—

(a) undertake or cause to be undertaken surveys, investigations and research concerning the cause of occurrence of disabilities;

- (b) promote various methods for preventing disabilities;
- (c) screen all the children at least once in a year for the purpose of identifying “at-risk” cases;
- (d) provide facilities for training to the staff at the primary health centres;
- (e) sponsor or cause to be sponsored awareness campaigns and disseminate or cause to be disseminated information for general hygiene, health and sanitation;
- (f) take measures for pre-natal, perinatal and post-natal care of mother and child;
- (g) educate the public through the pre-schools, schools, primary health centres, village level workers and anganwadi workers;
- (h) create awareness amongst the masses through television, radio and other mass media on the causes of disabilities and the preventive measures to be adopted;
- (i) healthcare during the time of natural disasters and other situations of risk;
- (j) essential medical facilities for life saving emergency treatment and procedures; and
- (k) sexual and reproductive healthcare especially for women with disability." PART E must be compatible with constitutional and statutory entitlements and guarantees.

51. The United Nations Committee on the Rights of Persons with Disabilities in its concluding observations on the initial report of India 26 has inter alia identified the medical model of disability as a prominent concern. It has stated as follows:

"(a) The prevalence of the medical model of disability in legislation, public policies and attitudes concerning persons with disabilities, particularly in the multiple assessments and certification of disability and the requirement for different assessments to access services in the community, and in the misunderstanding of disability, including leprosy, as solely a biological condition requiring prevention and rehabilitation;"

(emphasis supplied)

52. The committee has recommended that the concern be remedied with inter alia reforming guidelines assessing persons with disabilities by adopting a human rights model. The recommendation has also opined against the multiplicity of assessments which we have echoed above. The recommendation states as follows:

"(b) Reform the guidelines for assessing and certifying disability to bring them into line with the human rights model of disability, ensuring that organizations of persons

with disabilities are involved in the reform, that multiple assessments do not create an undue burden for applicants, and that policies and programmes shift from care, treatment and protection towards the removal of environmental and attitudinal barriers, which prevent equality and inclusion;"

(emphasis supplied) 26 UN. Committee on the Rights of Persons with Disabilities (22nd sess). CRPD/C/IND/CO/1. Concluding observations on the initial report of India : Committee on the Rights of Persons with Disabilities. Geneva : UN, 29 Oct. 2019.

PART E

53. We have noted above that Disability Assessment Boards must comply with rule of law principles by injecting transparency, fairness and consistency in their approach. The Boards must further elaborate on the reasons for the outcome of their assessment, in particular when they opine that the candidate is ineligible. The Disability Assessment Boards must focus on the functional competence of persons with disabilities and not merely quantify the disability. The quantification of disability is a task in need of a purpose within the human rights based model of disability. The functional competency approach to assessment for a medical course is globally recognised. To enable members of the Assessment Boards in effectively applying the functional competency test, they must be adequately trained by professionals and persons with disabilities or persons who have worked on disability justice. These trainings must be with a view to enhance the understanding of the Board members in assessing persons with disabilities and must not pathologize or problematize them.

54. The disability of a person is quantified at the time of availing a Unique Disability ID Card. 27 The quantification of disability is moot at the point of admission to educational courses since the eligibility for a person to benefit from reservation may be evaluated using the quantification in the UDID Card. If a person with disability wants to have themselves re-assessed so as to verify whether their disability falls within the prescribed parameters for reservation - they may choose to do so by updating their UDID Cards. The role of the Disability Assessment Boards must be tailored (with a functional competency approach) only for the course which the candidate seeks to pursue. 27 "UDID Card"

PART E

55. Further, the journey of a person with disability to apply for the NEET Examination and thereafter pursue medicine at the college must also comply with accessibility norms. The application portal for NEET Examination must outline the accessibility compliances of different colleges to enable prospective students with disabilities in making an informed decision. Once admitted, the Enabling Units established under the directions of the University Grants Commission must act as a point of contact for persons with disabilities to access clinical accommodations. Students must be informed about the Enabling Units and Equal Opportunity Cells through the information booklet circulated for new MBBS students, the college website and the Equal Opportunity Policy under Section 21 of RPWD Act. The second

respondent must make appropriate directions in this regard.

56. In the UK, the General Medical Council, which regulates medical education, has issued an advisory guidance titled Welcome and valued. The guidance outlines how institutions can comply with their duties to afford reasonable accommodation to disabled medical students. The guidance inter alia lists the steps for supporting medical students. After addressing student requirements and agreeing on a support action plan, the guidance outlines the following steps, which are indicative and may not be appropriate for all:

- a. Forming a support group or a lead to deal with support arrangements of incoming students with disabilities;
- b. Identifying key persons of contact with students with disabilities and for each of the services involved in exploring the support arrangements; PART E c. Informing students on how their information will be used in compliance with confidentiality. Colleges are further recommended to:
 - i. Keep a clear audit trail of decision making for supporting disabled learners as this is likely to help schools make sure they have taken appropriate steps to provide reasonable adjustments; ii. Keep a record of all conversations between the support group and student. Agree on the method of recording such conversations and allow the student to see a draft record of any discussions; iii. Create a separate file with different access arrangements for confidential information related to health outside of the general student record.
- d. The lead must thereafter organise a meeting between the student and the support group. The group may also arrange meetings to evaluate cases and discuss progress; and e. Lastly, a decision may be made on whether the student with disability can be provided adequate support to enable them in meeting the outcomes desirable in a medical graduate.

57. The provision of an audit trail to assess whether a given accommodation required by a student with disability places an undue burden on the institution is a vital safeguard for transparency and fairness. Dr Satendra Singh in his report dated 20 October 2024 has made suggestions to (i) rename the Disability Assessment Boards as Ability Assessment Boards to align them better with their intended purpose; (ii) include a doctor with disability or who is well conversant with disability rights in such Boards; (iii) use a human rights model PART F of disability for assessment; (iv) issue guidance on clinical accommodations; (v) train the Boards in carrying out the disability competency assessment; and (vi) use the Enabling Units to serve as a contact point for clinical accommodations.

As far as the inclusion of doctors with disabilities in the Disability Assessment Boards is concerned - the first respondent has issued a circular on 24 March 2022 mandating such inclusion. This direction shall be complied with by all Boards.

58. The second respondent has submitted that in light of the judgment of this Court in Omkar Gond (supra), it will be constituting a new committee of domain experts to comply with the directions in that judgment. We note the assurance of the second respondent and direct that this committee shall include persons with disability or one or more experts who are well conversant with disability rights. The committee shall recommend fresh guidelines to replace the existing guidelines. The above suggestions shall be duly considered by the government on its own merits. The recommendations so formulated shall comply with this judgment.

F. Conclusions

59. Our conclusions in light of this case are formulated in the following terms:

a. The impugned judgment of the Nagpur bench of the High Court of Judicature at Bombay is set aside and the report of the Disability Assessment Board of AIIMS, Nagpur dated 13 August 2024 is quashed for failing to apply the statutory and regulatory standards applicable to the assessment of a person with disability;

PART F b. A supernumerary seat shall be created at the AIIMS, Nagpur and the seat shall be allocated to the appellant, provided that he has not already secured a seat at a college of his choosing;

c. The college shall be given the report dated 20 October 2024 which makes suggestions as to the accommodations which may be extended to the appellant to successfully pursue the MBBS course;

d. The appellant shall be protected from victimisation;

e. The judgement shall apply in rem.

60. We further conclude as follows:

a. The second respondent shall issue fresh guidelines for admitting persons with disabilities into medical courses. The committee formulating the guidelines must include experts with disability or persons who have worked on disability justice. The guidelines shall comply with the judgments of this Court and contemporary advancements in disability justice;

b. The Disability Assessment Boards shall eschew from a benchmark model to test the functional competence of medical aspirants with disability. The second respondent shall issue appropriate guidelines in this regard;

a. The Disability Assessment Boards shall include a doctor or health professional with disability as per the directions of the first respondent dated 24 March 2022;

PART F b. The conduct of the Disability Assessment Boards shall be fair, transparent and in compliance with principles of the rule of law. Attention must be paid to ensure that candidates appearing before the Board do not feel uncomfortable on account of physical or attitudinal barriers;

c. Reasonable accommodation is a gateway right to avail all other fundamental, human and legal rights for persons with disabilities. Non-availability of reasonable accommodation amounts to discrimination and violates substantive equality of persons with disabilities;

d. The inclusion of persons with disability in the medical profession would enhance the quality of healthcare and meet the preambular virtue of fraternity and the guarantees in Articles 21, 19, 14 and 15 of the Constitution; e. Applicants to the NEET examination must be informed about the compliance of accessibility norms and provisions of reasonable accommodation available at colleges. The respondents shall issue appropriate directions to create a database with relevant information on accessibility and reasonable accommodation; and f. Enabling Units at medical colleges shall act as points of contact for persons with disability desirous of accessing clinical accommodations.

61. A copy of this Judgment will be transmitted to the Secretaries of all concerned Ministries of the Government of India.

PART F

62. The appeal is allowed in the above terms.

63. Pending applications, if any, shall stand disposed of.

.....CJI.

[Dr Dhananjaya Y Chandrachud]J. [J B Pardiwala]
.....J. [Manoj Misra] New Delhi;

October 25, 2024