

VIDHI HIMMAT KATARIYA AND OTHERS

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v.

THE STATE OF GUJARAT AND OTHERS

(Writ Petition (C) No. 885 of 2019)

OCTOBER 04, 2019

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[ARUN MISHRA, M. R. SHAH AND B. R. GAVAI, JJ.]

*Education/Educational Institutions:*

*Admission – Reservation under Persons with Disability (PwD) category – For MBBS course academic year 2019-20 – Petitioners-students denied admission as they were not fulfilling the requisite criteria as per appendix ‘H’ to Notification dated 4.2.2019 – Writ petition before Supreme Court seeking direction to treat them eligible for reservation under PwD category and grant admission in MBBS course – Pleaded that they were not governed by Notification dated 4.2.2019 as the process of selection had commenced prior to the date of Notification i.e. on 1.11.2018 – Held: The relevant date for considering the eligibility criteria would be the date on which admission is sought – The Notification was issued and published prior to date of admission – Therefore, the petitioners-students would be governed by the Notification – Moreover, when the experts in the field have opined against them, court sitting as an appellate authority against such opinion is not justified.*

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**Dismissing the writ petitions, the Court**

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**HELD :** The essential eligibility criteria as per Appendix ‘H’ is required to be considered at the time when the candidates were seeking admission in the medical course under PwD category. Even the candidates seeking admission in PwD quota are required to appear before the concerned Medical Board at the time of actually seeking admission and after NEET result is declared. Therefore, the relevant date for considering the essential eligibility criteria as per Appendix ‘H’ shall be the date on which the candidates – petitioners sought admission in the MBBS course under PwD quota. Much prior thereto, notification dated 4.2.2019 has been issued and published and therefore the

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- A respective petitioners shall be governed by notification dated 04.02.2019. All the expert bodies including the Medical Board, Medical Appellate Board and even the Medical Board of AIIMS, New Delhi consisting of the experts have opined against the petitioners and their cases are considered in light of the relevant essential eligibility criteria as mentioned in Appendix ‘H’ – ‘Both hands intact, with intact sensation, sufficient strength and range of motion’. Therefore, when the experts in the field have opined against the petitioners, the Court would not be justified in sitting over as an appellate authority against the opinion formed by the experts, more particularly when there are no allegations of *mala fides*. [Paras 7 and 8] [828-G-H; 829-A-D]

CIVIL ORIGINAL JURISDICTION : Writ Petition (Civil) No. 885 of 2018.

[Under Article 32 of the Constitution of India.]

- D With

W.P. (C) No. 900/2019 and 1026/2019.

Govind Jee, Krishna Kumar Singh and Syed Musaib, Advs. for the Petitioners.

- E A.K. Sinha, Sr. Adv., Prashant Singh, Vikas Bansal, Deepak Goel, R. R. Rajesh, Raj Bahadur Yadav, Gaurav Sharma, Dhawal Mohan, Prateek Bhatia, Prassanna Mohan, Aniruddha P. Mayee, A. Rajarajan and Sanjeev Kr. Choudhary, Advs. for the Respondents.

The Judgment of the Court was delivered by

- F **M. R. SHAH, J.**

- G 1. In all the writ petitions, the respective petitioners – students have prayed for an appropriate writ, order or direction directing the respondents – State Government to treat the petitioners eligible for reservation under Persons with Disability (PwD category) and grant them admission in MBBS Course for the academic year 2019-20. It is the case on behalf of the respective petitioners that all of them are eligible to pursue MBBS Course and they shall be granted admission under the PwD category as they are suffering from ‘locomotor disability’. All of them are seeking admission to MBBS Course in the reserved category under PwD quota.
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2. That Section 32 of the Right of Persons with Disabilities Act, 2016 (hereinafter referred to as the '2016 Act'), which came into force with effect from 19.04.2017 provides for reservation of not less than 5% in government educational institutions. Accordingly, the Medical Council of India notified the Regulations for providing 5% seats to candidates with benchmark disability in accordance with the provisions of the 2016 Act. It is the case on behalf of the petitioners that process of admission for MBBS Undergraduate course for the academic year 2019-2020 commenced in the last week of October, 2018 and the eligible candidates were to submit applications on-line between 01.11.2018 to 30.11.2018. That the admit cards were released on 15.04.2019 and the examination was held on 5.5.2019, followed by declaration of result on 5.6.2019. All the respective petitioners appeared in the NEET (UG) 2019 and were declared successful. However, it is required to be noted that in the meantime the Board of Governors in supersession of the Medical Council of India amended the Regulations of Graduate Medical Education, 1997, by notification dated 4.2.2019, whereby Appendix 'H' came to be added to the erstwhile Regulations, 2017 – providing for minimum degree of disability to be 40% (Benchmark Disability) in order to be eligible for availing reservation for persons with specified disability. Appendix 'H' further provided that in case of 'physical disability or locomotor disability', the applicant may be assessed for "Both hands intact, with intact sensation, sufficient strength and range of motion" as essential to be considered eligible for medical course". As observed hereinabove, thereafter the result of NEET (UG) 2019 came to be published in the month of June, 2019. As per the requirement, all the respective petitioners appeared before the Medical Board. However, all the respective petitioners were not fulfilling the requisite criteria as per Appendix 'H' to notification dated 04.02.2019 in the list published by the State Government on 29.06.2019. The petitioners were declared non-eligible for medical course. That thereafter the petitioners appeared before the Medical Appellate Board and the Medical Appellate Board also declared the petitioners not eligible for medical course. Hence, the respective petitioners have preferred the present petitions under Article 32 of the Constitution of India for the afore-stated reliefs.

3. Learned Advocate appearing on behalf of the respective petitioners have vehemently submitted that the case of the petitioners for admission in the MBBS Course under the reserved category of PwD

- A for the academic year 2019-20 shall not be governed by notification dated 04.02.2019, and that they shall be governed by the MCI Regulations, 2017. It is submitted that the relevant date to ascertain eligibility of the petitioners for medical course is to be determined on the date when the process of selection commenced, i.e., on 01.11.2018.
- B It is submitted that on the relevant date MCI Regulations, 2017, dated 22.01.2018, were applicable and therefore eligibility, as such, for medical course is to be determined in terms of the provisions of the said Regulations. It is submitted that Appendix ‘H’ to the notification amending the Regulations, 2017, which came into force with effect from 04.02.2019, therefore shall not be applicable.

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- 3.1 It is further submitted by the learned counsel appearing on behalf of the petitioners that rules of game cannot be changed midway, as per the settled proposition of law. In support of his above submission, learned counsel for the petitioners has heavily relied upon the recent decision of this Court dated 30.05.2019 in Writ Petition (Civil) No. 55 of 2019, titled Janhit Abhiyan v. Union of India. It is submitted that in the said decision, this Court has held that the EWS reservations could not be made applicable midway after the selection process for medical PG of 2019, which commenced in the month of November, 2018, whereas notification reserving EWS quota came in February/March, 2019.
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- 3.2 It is further submitted by the learned counsel appearing on behalf of the petitioners that even otherwise the petitioners are eligible under Regulations, 2019 also as they fulfil the required percentage disability between 40-80%. It is submitted that the minimum percentage disability to be eligible for availing reservation under PwD is 40%. It is submitted that “PwD not eligible for medical course” is stated as per the Regulations, 2019 to be beyond and in excess of 80%, which is not the case in hand. It is submitted that the relevant provisions of Regulations, 2019 – “Both hands intact, with intact sensation, sufficient strength and range of motion are essential to be considered” has been applied by the State Government to non-suit the petitioners for medical course in an arbitrary manner and without application of mind. It is submitted that while rejecting the petitioners to be not eligible for medical course, the State Government has not at all considered the fact that
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- H PwD is bound to have certain problems including the parameters

mentioned in Appendix 'H' [Both hands intact, with intact sensation, sufficient strength and range of motion are essential to be considered] with clause (f) of Clause 4(1) of the Regulations, 2019. A

3.3 It is further submitted by the learned counsel appearing on behalf of the petitioners that while applying the parameters mentioned in Appendix 'H' with clause (f) of Clause 4(1) of Regulations, 2019 [Both hands intact, with intact sensation, sufficient strength and range of motion are essential to be considered], the State Government did not consider the facts that, petitioner no.1 has good muscle power, does gripping and activities of daily living with modifications; petitioner no.3 is right side dominant and his right hand is perfectly fine; the range of motion in left hand is not nil, rather restricted, does activities of daily living with little difficulty and the affected (left) hand has good muscle power as well; petitioner in Writ Petition (C) No. 900 of 2019 is right side dominant and his right hand is perfectly fine; affected body part is left hand only. Left hand has good pinch with modification and does daily activities with upper limb right side; petitioner in Writ Petition (C) No. 1026 of 2019 is left side dominant and his left hand is perfectly fine; affected body part is right hand only. B C D

3.4 Making the above submissions, it is prayed to allow the present petitions and direct the respondents to consider the case of the petitioners for admission in MBBS Course in the PwD quota as per merit. E

4. The present petitions are vehemently opposed by Shri Aniruddha P. Mayee, learned Advocate appearing for the State of Gujarat. It is vehemently submitted by the learned counsel appearing on behalf of the State that the respective petitioners are not fulfilling the criteria as per notification dated 04.02.2019. It is submitted that the case of the respective petitioners was considered not only by the Medical Board but by the Medical Appellate Board also and experts have specifically opined that the respective petitioners are not eligible for admission in MBBS course under PwD quota. It is submitted that even subsequently also the petitioners were examined by the Medical Board of AIIMS, New Delhi and even the Medical Board of AIIMS has also opined against the petitioners and has opined that the respective petitioners are not eligible for admission in medical course under PwD quota. It is submitted that when the experts have opined that the F G H

A respective petitioners are not eligible for admission in medical course as they do not fulfil the requisite eligibility criteria as per Regulations, 2019, they are rightly denied admission in medical course under PwD quota.

5. The present petitions are also vehemently opposed by learned  
B counsel appearing on behalf of the Medical Council of India. A detailed reply affidavit has been filed on behalf of Board of Governors in supersession of the Medical Council of India. It is submitted that MCI while dealing with the issue of persons with disability had formed an independent Expert Committee comprising of eminent doctors in various  
C specialities. It is submitted that the amendments made in the Graduate Medical Regulations, 1997 vide MCI notification dated 04.02.2019 are in accordance with the report/recommendations furnished by an independent Expert Committee headed by the Director, AIIMS, New Delhi.

5.1 It is further submitted by the learned counsel appearing on  
D behalf of Board of Governors that a medical student pursuing MBBS course after becoming a doctor will be treating humans and it is very essential that a student is able to acquire the necessary skill and expertise during the MBBS course. It is submitted that Regulation 4(3) has been substituted in the Graduate Medical Education Regulations,  
E 1997 vide MCI notification dated 04.02.2019, whereby it is provided that 5% of the seats shall be reserved for “persons with benchmark disability” as specified under the 2016 Act. It is submitted that the substituted Regulation 4(3) further provides that the specified disability given in the Schedule to 2016 Act is adopted and incorporated in  
F Appendix ‘H’ to the Regulations. It is submitted that it further provides that the eligibility of the persons with specified disability to pursue course in medicine has to be dealt with in accordance with Appendix ‘H’ – Guidelines regarding admission of students with “Specified Disabilities” under the 2016 Act with respect to admission in MBBS course.

5.2 It is further submitted by the learned counsel appearing on  
G behalf of the Board of Governors that Appendix ‘H’ in the MCI notification dated 04.02.2019, inter alia, provides that the persons with locomotor disability of less than 40% are eligible to pursue MBBS course but are not eligible to be granted the benefit of reservation under PwD quota. It is submitted therefore that when the respective petitioners  
H do not fulfil the admission criteria as per Appendix ‘H’ to notification

dated 04.02.2019 and even all the expert bodies – Medical Board, Medical Appellate Board and even the Medical Board of AIIMS, New Delhi have opined that the respective petitioners are not eligible for admission in MBBS course, the respective petitioners are rightly denied admission in the MBBS course under PwD quota. A

5.3 Now so far as the submission on behalf of the petitioners that notification dated 04.02.2019 shall not be applicable and the erstwhile Regulations shall be applicable and the relevant date should be the date on which the process for admission has started, i.e., in the month of November, 2018, it is vehemently submitted that the relevant date for eligibility criteria would be the date on which the petitioners were to get admission. It is submitted therefore that the date on which the petitioners applied for admission in medical course under PwD quota and appeared before the Medical Board, that should be the relevant date and the notification came into force on 04.02.2019, the same shall be applicable. B C

5.4 Making the above submissions, it is prayed to dismiss the present writ petitions. D

6. We have heard the learned counsel for the respective parties at length.

6.1 The respective petitioners are suffering from locomotor disability and they are seeking admission in the MBBS course under PwD category. As per notification dated 04.02.2019 and Appendix ‘H’ – Guidelines regarding admission of students with ‘Specified Disabilities’ under the 2016 Act with respect to admission in MBBS course, a candidate suffering from locomotor disability of less than 40% shall be eligible to pursue MBBS course but not eligible to be granted the benefit of reservation under PwD quota. It further provides that ‘both hands intact, with intact sensation, sufficient strength and range of motion’ are essential to be considered eligible for medical course. As per the opinion of the Medical Board, Medical Appellate Board and even the Medical Board of AIIMS, New Delhi, the respective petitioners are not eligible for admission in MBBS course under PwD quota as they do not fulfil the essential criteria to be fulfilled as per Appendix ‘H’. Therefore, as such, the respective petitioners are not fulfilling the essential eligibility criteria provided as per Appendix ‘H’ and therefore they are not eligible for admission in the medical course under PwD quota. E F G H

- A 7. It is mainly contended on behalf of the petitioners and it is submitted by the learned counsel appearing on behalf of the petitioners that the NEET UG 2019 brochure was released on 01.11.2018 and the notification amending Regulations, 1997 whereby Appendix 'H' is added to the erstwhile Regulations, 2017 has been issued on 04.02.2019, the case of the petitioners are required to be considered as per the provisions prior to 04.02.2019 and more particularly prevailing as on 01.11.2018. The aforesaid has no substance. The relevant essential eligibility criteria is required to be considered when the petitioners were to get admission in the MBBS course under PwD quota. It is required to be noted and so stated in the reply affidavit filed on behalf of the
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- C MCI that the Expert Committee submitted the report – "Guidelines for admission of persons with Specified Disabilities", which was placed before the Executive Committee of the Council in its meeting held on 5.6.2018 wherein after due discussion and deliberations it was decided to approve the same. It was also decided that the said Expert
- D Committee Report should be communicated to the Ministry of Health & Family Welfare in view of the schedule for counselling for admission to MBBS course for the academic year 2018-19. However, for admission for the academic year 2018-19, it was at the stage of a draft notification and the Graduate Medical Education Regulations, 1997 were not amended in light of the recommendations of the Expert Committee constituted by the MCI which has issued the Disability Guidelines, this Court directed to give admission as per the unamended Graduate Medical Education Regulations, 1997. However subsequently and before the admission for the academic year 2019-20 are given, notification dated 04.02.2019 has been published and the Graduate
- E Medical Education Regulations, 1997 have been amended, as above. Therefore, in the facts and circumstances of the case, it cannot be said that 'Rules of the game are changed midway', as sought to be contended on behalf of the petitioners. As observed hereinabove, the essential eligibility criteria as per Appendix 'H' is required to be considered at the time when the candidates were seeking admission in
- F the medical course under PwD category. It is also required to be noted that even the candidates seeking admission in PwD quota are required to appear before the concerned Medical Board at the time of actually seeking admission and after NEET result is declared. Therefore, the relevant date for considering the essential eligibility criteria as per
- G Appendix 'H' shall be the date on which the candidates – petitioners
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sought admission in the MBBs course under PwD quota. Much prior thereto, notification dated 4.2.2019 has been issued and published and therefore the respective petitioners shall be governed by notification dated 04.02.2019. A

8. Now so far as the submission on behalf of the petitioners that while denying admission to the petitioners the State Government and/or authorities have not considered the relevant parameters and have not considered that the respective petitioners are able to perform well is concerned, it is required to be noted that in the present case all the expert bodies including the Medical Board, Medical Appellate Board and even the Medical Board of AIIMS, New Delhi consisting of the experts have opined against the petitioners and their cases are considered in light of the relevant essential eligibility criteria as mentioned in Appendix 'H' – 'Both hands intact, with intact sensation, sufficient strength and range of motion'. Therefore, when the experts in the field have opined against the petitioners, the Court would not be justified in sitting over as an appellate authority against the opinion formed by the experts – in the present case, the Medical Board, Medical Appellate Board and the Medical Board of AIIMS, New Delhi, more particularly when there are no allegations of mala fides. B C D

9. In view of the above and for the reasons stated above, the present petitioners are not entitled to the reliefs as prayed. Hence, all the writ petitions filed under Article 32 of the Constitution of India deserve to be dismissed and are accordingly dismissed. However, in the facts and circumstances of the case, there shall be no order as to costs. E