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*** IN THE HIGH COURT OF DELHI AT NEW DELHI**

Reserved on: 30th October, 2019

Pronounced on 7th November, 2019

\+ WP (C) 8572/2019 and CM APPL. 35434/2019 (interim relief)

RAKSHIT YADAV ..... Petitioner

Through: Mr. A. Mariarputham, Sr.Advocate with Mr. Yusuf Khan, Mr. Amarjeet Singh Girsa, Mr. Anil Arora, Ms.Geetanjali and Mohd. Asif Ali, Advs.

Versus

UNIVERSITY COLLEGE OF MEDICAL SCIENCES AND ORS. ..... Respondents

Through: Mr. Mohinder J.S. Rupal and Mr. Kaushik Ghosh, Advs. for University of Delhi

Mr. Anil Dabas and Mr.Praveen Kumar, Advs. for respondent no. 3

Mr. T. Singhdev, Mr. Tarun Verma, Ms. Biaktnansangi Das, Ms. Puja Sarkar, Ms. Arunima, Mr. Abhijit and Ms. Sumangla, Advs. for respondent no. 4

Mr. Vibhor Garg and Mr. Sumit Mishra, Advs. for respondent no. 5

CORAM:
HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE C. HARI SHANKAR

% **JUDGMENT**

C. HARI SHANKAR, J.

1. The petitioner, who belongs to the Other Backward Classes (OBC), seeks admission in the MBBS course in University College of Medical Sciences (UCMS), under the Government of National Capital Territory of Delhi (GNCTD), in the "Persons with Disability (PWD)" quota.

Facts

2. In 2016, the petitioner passed his Class XII examination.

3. The petitioner is in possession of a "'Certificate for the person with Disabilities", dated 24th April, 2016, issued by the Medical Board, Janakpuri Super Speciality Hospital (Government Hospital under the Govt. of NCT of Delhi), which certifies that the petitioner is a case of "Encephalomyelities with Quadriparesis" and was physically disabled with 75% permanent disability. The certificate further states that the condition is non-progressive.

4. Admittedly, the type of disability, suffered by the petitioner, is a "locomotor disability" for the purposes of the Rights of Persons with Disabilities Act, 2016 (hereinafter referred to as "RPWD Act"), which governs and regulates the rights of persons with disability. Section 3

of the RPWD Act requires the appropriate Government to ensure that persons with disabilities enjoy the right to equality, life with dignity and respect for his or her integrity, equally with others.

Relevant provisions of the Rights of Persons with Disabilities Act, 2016

5. Sub-section 3 of Section 3 of the RPWD Act reads thus:

> "(3) No person with disability shall be discriminated on the ground of disability, unless it is shown that the impugned act or omission is a proportionate means of achieving a legitimate aim."

6. Chapter III of the RPWD Act deals with education, and Section 16 therein delineates the duties of educational institutions. Section 17 of the RPWD Act requires specific measures to be taken to provide and facilitate inclusive education at all levels of school education. Sections 16 and 17 of the RPWD Act may be reproduced thus:

> "**16. Duty of educational institutions. –**
>
> The appropriate Government and the local authorities shall endeavour that all educational institutions funded or recognised by them provide inclusive education to the children with disabilities and towards that end shall –
>
> (i) admit them without discrimination and provide education and opportunities for sports and recreation activities equally with others;
>
> (ii) make building, campus and various facilities accessible;
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> (iii) provide reasonable accommodation according to the individual's requirements;

(iv) provide necessary support individualised or otherwise in environments that maximise academic and social development consistent with the goal of full inclusion;

(v) ensure that the education to persons who are blind or deaf or both is imparted in the most appropriate languages and modes and means of communication;

(vi) detect specific learning disabilities in children at the earliest and take suitable pedagogical and other measures to overcome them;

(vii) monitor participation, progress in terms of attainment levels and completion of education in respect of every student with disability;

(viii) provide transportation facilities to the children with disabilities and also the attendant of the children with disabilities having high support needs.

17. Specific measures to promote and facilitate inclusive education. – The appropriate Government and the local authorities shall take the following measures for the purpose of section 16, namely: –

(a) to conduct survey of school going children in every five years for identifying children with disabilities, ascertaining their special needs and the extent to which these are being met: Provided that the first survey shall be conducted within a period of two years from the date of commencement of this Act;

(b) to establish adequate number of teacher training institutions;

(c) to train and employ teachers, including teachers with disability who are qualified in sign language and Braille and also teachers who are trained in teaching children with intellectual disability;

(d) to train professionals and staff to support inclusive education at all levels of school education;

(e) to establish adequate number of resource centres to support educational institutions at all levels of school education;

(f) to promote the use of appropriate augmentative and alternative modes including means and formats of communication, Braille and sign language to supplement the use of one's own speech to fulfill the daily communication needs of persons with speech, communication or language disabilities and enables them to participate and contribute to their community and society;

(g) to provide books, other learning materials and appropriate assistive devices to students with benchmark disabilities free of cost up to the age of eighteen years;

(h) to provide scholarships in appropriate cases to students with benchmark disability;

(i) to make suitable modifications in the curriculum and examination system to meet the needs of students with disabilities such as extra time for completion of examination paper, facility of scribe or amanuensis, exemption from second and third language courses;

(j) to promote research to improve learning; and

(k) any other measures, as may be required."

7. The expressions "person with benchmark disability" and "person with disability" are defined in Clauses (r) and (s) of Section 2 of the RPWD Act thus:

"(r) "person with benchmark disability" means a person with not less than forty per cent. of a specified disability where specified disability has not been defined in measurable

terms and includes a person with disability where specified disability has been defined in measurable terms, as certified by the certifying authority;

(s) "person with disability" means a person with long term physical, mental, intellectual or sensory impairment which, in interaction with barriers, hinders his full and effective participation in society equally with others;"

8. "Specified disability" is defined, in clause (zc) of Section 2 of the RPWD Act as meaning the disabilities as specified in the Schedule to the RPWD Act.

9. The Schedule to the RPWD Act enumerates the "specified disabilities", for the purposes of the said Act. Clause 1 in the Schedule deals with "Physical Disability". Sub-clause A thereof deals with "Locomotor Disability" and reads thus:

"A. Locomotor disability (a person's inability to execute distinctive activities associated with movement of self and objects resulting from affliction of musculoskeletal or nervous system or both), including –

(a) "leprosy cured person" means a person who has been cured of leprosy but is suffering from –

(i) loss of sensation in hands or feet as well as loss of sensation and paresis in the eye and eye-lid but with no manifest deformity;

(ii) manifest deformity and paresis but having sufficient mobility in their hands and feet to enable them to engage in normal economic activity;

(iii) extreme physical deformity as well as advanced age which prevents him/her from undertaking any gainful occupation, and the

expression "leprosy cured" shall construed accordingly;

(b) "cerebral palsy" means a Group of non-progressive neurological condition affecting body movements and muscle coordination, caused by damage to one or more specific areas of the brain, usually occurring before, during or shortly after birth;

(c) "dwarfism" means a medical or genetic condition resulting in an adult height of 4 feet 10 inches (147 centimeters) or less;

(d) "muscular dystrophy" means a group of hereditary genetic muscle disease that weakens the muscles that move the human body and persons with multiple dystrophy have incorrect and missing information in their genes, which prevents them from making the proteins they need for healthy muscles. It is characterised by progressive skeletal muscle weakness, defects in muscle proteins, and the death of muscle cells and tissue;

(e) "acid attack victims" means a person disfigured due to violent assaults by throwing of acid or similar corrosive substance."

10. Section 32 of the RPWD Act in Chapter VI thereof deals with the percentage of seats for persons with benchmark disabilities and Section 32 thereunder, reads thus:-

"**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."

11. The petitioner contends, in these circumstances, that at least 5% of the seats in institutions of higher education, which would include institutions conducting MBBS course, are required to be reserved for persons suffering from locomotor disability of not less than 40%.

The "Regulatory" Evolution

12. Medical education is governed by the provisions of the Indian Medical Council Act, 1956 (hereinafter referred to as "the IMC Act"). In exercise of powers conferred by Section 33 thereof, the Medical Council of India (MCI) framed the Regulations on Graduate Medical Education, 1997 (hereinafter referred to as "1997 Regulations"). These regulations have statutory force, as held by the Supreme Court in ***Purswani Ashutosh (Minor) Through Dr. Kamlesh Virumal Purswani v. U.O.I.***[1]**.**

13. In the 1997 Regulations, as originally notified, Regulation 4 in Chapter II contained only two sub-Regulations, i.e. sub-Regulations (1) and (2). Sub-regulation (3) was added by way of a Notification dated 25th March, 2009, and, as so added, read thus:

> "(3) 3% seats of the annual sanctioned intake capacity shall be filled up by candidates with locomotory disability of lower limbs between 50% to 70%. Provided that in case any seat in this 3% quota remains unfilled on account of unavailability of candidates with locomotory disability of lower limbs between 50% to 70% then any such unfilled seat in this 3% quota shall be filled up by persons with locomotory disability of lower limbs between 40% to 50% - before they are included in the

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annual sanctioned seats for General Category candidates. Provided further that this entire exercise shall be completed by each medical college / institution as per the statutory time schedule for admissions and in no case any admission will be made in the MBBS course after 30th of September."

14. The afore-extracted Regulation 4(3) of the 1997 Regulations was substituted, by the Graduate Medical Education (Amendment), 2017 (hereinafter referred to "the 2017 Amendment Regulations"), which was notified by the MCI *vide* Notification dated 22nd January, 2018. Regulation 6 of the 2017 Amendment Regulations substituted Clause 4(3) in Chapter II of the 1997 Regulations, to read thus: -

"(3) In respect of candidates with benchmark disabilities specified under the Rights of Persons with Disabilities Act, 2016, the minimum marks in qualifying examination in Physics, Chemistry and Biology (or Botany and Zoology)/Bio-technology taken together in qualifying examination shall be 45% instead of 50% for General Category candidates and 40% for SC/ST/OBC candidates.

5% seats of the annual sanctioned intake capacity shall be filled up by candidates with benchmark disabilities in accordance with the provisions of the Rights of Persons with Disabilities Act, 2016, based on the merit list of 'National Eligibility-Cum-Entrance Test'. *For this purpose the Specified Disability contained in the Schedule to the Rights of Persons with Disabilities Act, 2016 is annexed in Appendix 'G'*. If the seats reserved for the persons with disabilities in a particular category remain unfilled on account of unavailability of candidates, the seats should be included in the annual sanctioned seats for the respective category.

Provided further that this entire exercise shall be completed by each medical college/institution as per the statutory time schedule for admissions and in no case any admission will be made in the MBBS course after 31st of August."

(Emphasis supplied)

15. Regulation 4(3), as substituted with effect from 22nd January, 2018, therefore, entitled every person with benchmark disability as defined in Section 2(r) of the RPWD Act, to reservation of 5% of the seats in all higher education courses, which would include the MBBS course, subject to successfully clearing the Undergraduate National Eligibility-cum-Entrance Test, 2019 (UG-NEET, 2019).

16. *Vide* the Regulations on Graduate Medical Education (Amendment), 2019 (hereinafter referred to as "First Amendment Regulations of 2019"), notified on 4th February, 2019, the 1997 Regulations were further amended. Regulation 4(3) in 1997 Regulations (as earlier substituted *vide* the 2017 Amendment Regulations) was substituted, yet again, by the First Amendment Regulations of 2019. As so substituted, Clause 4(3) reads thus:-

> "To be eligible for admission to MBBS course, a candidate must have passed in the subjects of Physics, Chemistry, Biology (or Botany and Zoology)/Biotechnology and English individually and must have obtained a minimum of 50% marks taken together in Physics, Chemistry and Biology (or Botany and Zoology)/Biotechnology at the qualifying examination as mentioned in clause (2) of Regulation 4 and in addition must have come in the merit list of "National Eligibility-cum-Entrance Test" for admission to MBBS course. In respect of candidates belonging to Scheduled Castes, Scheduled Tribes or other Backward Classes the minimum marks obtained in Physics, Chemistry and Biology (or Botany and Zoology)/Bio-technology taken together in qualifying examination shall be 40% instead of 50%. In respect of candidates with specified disability under the Rights of Persons with Disabilities Act, 2016 the minimum marks in qualifying examination in Physics, Chemistry and Biology/Bio-technology taken together in qualifying examination shall be 45% instead of 50%.

> Provided that a candidate who has appeared in the qualifying examination the result of which has not been declared, he/she maybe provisionally permitted to take up the National Eligibility-cum-Entrance Test and in case of selection for admission to the MBBS course, he/she shall not be admitted to that course until he fulfils the eligibility criteria under Regulation 4.
>
> 5% of the annual sanctioned intake capacity in Government or Government aided higher educational institutions shall be filled up by candidates with benchmark disabilities in accordance with the provisions of the Rights of Persons with Disabilities Act, 2016, based on the merit list of 'National Eligibility-cum-Entrance Test'. For this purpose the "Specified Disability" contained in the Schedule to the Rights of Persons with Disabilities Act, 2016 is annexed in Appendix 'G' and the eligibility of candidates to pursue a course in medicine with specified disability shall be in accordance with Appendix 'H'. If the seats reserved for the persons with disabilities in a particular category remain unfilled on account of unavailability of candidates, the seats shall be included in the annual sanctioned seats for the respective Category."

17. It would be seen that, whereas Clause 4(3) in Chapter II of the 1997 Regulations, as substituted vide 2017 Amendment Regulations, referred only to Appendix G to the 1997 Regulations, the said sub-regulation 4(3), has further amended by the First Amendment Regulations of 2018, referred to Appendix G and Appendix H. Of this, Appendix G enumerated the categories "specified disabilities", whereas Appendix H dealt with eligibility of candidates to pursue a course in medicine with specified disability. The said Appendices contain the tabular statement, tabulating the specified percentage of disabilities, which would render a person with disability eligible or ineligible for being admitted under the PWD category. Serial No. 1 of the said table deals with physical disability, and category A therein

deals with locomotor disability. Inasmuch as the present writ petition is concerned only with a candidate suffering from locomotor disability, the tabular statement in Appendix H to the 1997 Regulations (as amended by the First Amendment Regulations of 2019), may be reproduced thus:

"**Sl. No.**	**Disability type**	**Type of Disabilities**	**Specified Disability**	**Disability Range**		
				Eligible for Medical Course, Not Eligible for PwD Quota	Eligible for Medical Course, Eligible for PwD Quota	Not Eligible for Medical Course
1.	Physical disability	A. Locomotor disability, including Specified Disabilities (a to f)	a. Leprosy cured person * b. Cerebral Palsy** c. Dwarfism d. Muscular Dystrophy e. Acid attack victims f. Others* * * such as Amputation, Poliomyelitis, etc.	Less than 40% disability	40-80% disability	More than 80 %
				* Attention should be paid to loss of sensations in fingers and hands, amputation, as well as involvement of eyes and corresponding recommendations be looked at. ** Attention should be paid to impairment of vision, hearing, cognitive function etc. and corresponding recommendations be looked at. *** Both hands intact, with intact sensations, sufficient strength and range of motion are essential to be considered eligible for medical course. "		

18. The above tabular statement indicates that, under Appendix H to the 1997 Regulations (as amended by the First Amendment Regulations of 2019), persons suffering from locomotor disability, of

less than 40%, were not eligible for admission against the PWD category, persons with disability between 40% and 80% were eligible for the benefit of PWD category and persons suffering from locomotor disability in excess of 80% were not eligible for admission in medicine course at all. In other words, benefit of admission, against PWD category, was available only for persons suffering from locomotor disability between 40% and 80%; whereas persons suffering locomotor disability in excess of 80% were completely ineligible for admission to the MBBS course.

19. The petitioner castigates the aforesaid amendment of the 1997 Regulations (as effected by the First Amendment Regulations of 2019) to be arbitrary and violative of the RPWD Act. The petitioner contends, in this regard, that the RPWD Act does not provide for sub-classification amongst persons suffering from benchmark disabilities and that, in view of Section 2(r) read with Section 32 of the RPWD Act, persons suffering from benchmark disabilities of more than 40% were, *ipso facto*, eligible for admission to institutions of higher education, which would include institutions awarding the MBBS qualification.

20. On 13th May, 2019, 1997 Regulations were amended yet again, by the Graduate Medical Education Regulations (Amendment), 2019 (hereinafter referred to as "Second Amendment Regulations of 2019"). This amendment replaced Appendix H, which had been introduced in the 1997 Regulations by the First Amendment Regulations of 2019, by Appendix H-1.

21. In the tabular statement in Appendix H-1 to the 1997 Regulations, the provision dealing with Locomotor disability, as so substituted, reads thus:

"**Sl. No.**	**Disability type**	**Type of Disabilities**	**Specified Disability**	**Disability Range**		
				Eligible for Medical Course, Not Eligible for PwD Quota	Eligible for Medical Course, Eligible for PwD Quota	Not Eligible for Medical Course
1.	Physical disability	A. Locomotor disability, including Specified Disabilities (a to f)	a. Leprosy cured person * b. Cerebral Palsy** c. Dwarfism d. Muscular Dystrophy e. Acid attack victims f. Others* * * such as Amputation, Poliomyelitis, etc.	Less than 40% disability	40-80% disability Persons with more than 80% disability may also be allowed on case to case basis *and their functional competency will be determined with the aid of assistive devices, if it is being used to see if it is brought below 80% and whether they possess sufficient motor ability as required to pursue and complete the course satisfactorily.*	More than 80 %
				* Attention should be paid to loss of sensations in fingers and hands,		

				amputation, as well as involvement of eyes and corresponding recommendations be looked at. ** Attention should be paid to impairment of vision, hearing, cognitive function etc. and corresponding recommendations be looked at. *** Both hands intact, with intact sensations, sufficient strength and range of motion are essential to be considered eligible for medical course. ”

(Emphasis supplied)

22. A comparison of Appendix-H (as introduced by the First Amendment Regulations, 2019), vis-à-vis Appendix H-1 (as introduced by the Second Amendment Regulations, 2019), to the 1997 Regulations, respectively, discloses that, in Appendix H-1, the assessment of whether the candidate suffered from disability in the range of 40% to 80%, so as to assess his eligibility for admission under the PWD quota, was required to be made by determining the functional competency of the candidate “with the aid of assistive devices, if it is being used”, to see whether, by using such assistive devices, the percentage of disability, from which the candidate suffered, could be brought below 80%.

Returning to the Facts

23. The National Testing Agency (NTA), being the authority which conducts the UG-NEET 2019, published the Information Bulletin for

the UG-NEET 2019 in October, 2018. Clause 5, in Chapter III of the said Information Bulletin dealt with "admission and reservation". Sub-clause (a) thereunder catered to reservation of seats in Government medical colleges under the 15% All India quota, pursuant to the UG-NEET 2019. To the extent it is relevant, Clause 5 reads as under:

> **"5. Admission and Reservation –**
>
> An All India Merit List of the qualified candidates shall be prepared on the basis of All India Rank in the Merit List of the NEET (UG) – 2019 and candidates shall be admitted to MBBS/BDS Courses from the said list only by following the already existing reservation policy. NTA will provide All India Rank. Admitting Authorities will invite applications for counselling and merit list shall be drawn based on All India Rank by the Admitting Authorities. Admission to MBBS/BDS Courses within the respective categories shall be based solely on All India Rank as per merit list of NEET (UG) – 2019.
>
> The admitting/counselling authorities will draw merit list of the candidates in the respective categories, declared by the candidates at the time of applying for admission/counselling.
>
> **(a) Reservation of seats in Government medical colleges under 15% All India Quota:**
>
> *****
>
> iv. **<u>Candidates under the PWD category as per MCI guidelines:</u>**
>
> 5% seats of the annual sanctioned intake shall be filled by candidates falling under Persons with Bench Mark disabilities as per MCI Guidelines/Regulations in accordance with the Rights of Persons with Disabilities Act, 2016. If the seats

for the persons with disabilities in a particular category remain unfilled on account of unavailability of candidates, the seats would be included in the Annual Sanctioned Seats for the respective category.

Candidates are required to consult the website of MCC (www.mcc.nic.in) and MOHFW (www.mohfw.nic.in) for the latest information in this regard.

Candidates who consider themselves eligible for this category are advised to ensure their eligibility by getting themselves examined at any Government Medical College/District Hospitals/ Government Hospital. However, candidates may kindly note that in case of selection under PWD category, they will be required to produce Disability Certificate from 1 of the Disability Assessment Reports, constituted at the following 4 metro cities, before their scheduled date of counselling:

(a) Vardhman Mahavir Medical College and Safdarjung Hospital, Ansari Nagar, Ring Road, New Delhi-110029 (Tel No. 011-EPABX: 26730000, 26165060, 26165032, 26168336, FAX: 011-26163072)

(b) All India Institute of Physical Medicine and Rehabilitation, Hazi Ali Park, K. Khadya Marg, Mahalaxmi, Mumbai-400034 (Tel No. 91-22-2354431, 91-22-2354432, 91-22-23515765, 91-22-23545358, Fax: 91-22-23532737)

(c) Institute of Post Graduate Medical Education and Research, 244, Acharya J.

C. Bose Marg, Kolkata-20 (Tel No. 033-22235181)

(d) Madras Medical College, Park Town, Chennai – 600003 (Tel. No. 044-25305301)"

(Emphasis supplied)

24. Mr. Singhdev, representing the MCI, contends – and we think he is right – that Clause 5(a)(iv) of the Information Bulletin governing the UG-NEET 2019 required *two Disability Certificates* to be obtained, by a candidate, before being allowed to join the MBBS course under the PWD category. *In the first instance*, all candidates, who considered themselves eligible for admission under the PWD category, were required to get themselves examined at any Government Medical College/District Hospital/Government Hospital. Thereafter, *in case of their selection under the PWD category*, such candidates were required to produce a disability certificate from a Disability Assessment Board constituted by one of the institutions enumerated in the said Clause. In Delhi, the clause identifies only one such institution, viz. the Vardhman Mahavir Medical College and Safdarjang Hospital (hereinafter referred as "VMMC Hospital")

25. On 12th November, 2018, the petitioner submitted his application, for being considered for admission to the MBBS Course, pursuant to the UG-NEET 2019, under the PWD (OBC) category

26. The petitioner was issued an admit card for appearance in the NEET-UG 2019 examination on 5th April, 2019, pursuant whereto the

petitioner participated in the said examination and successfully cleared the examination, as per the result, which was announced on 5th June, 2019. The petitioner was also permitted to participate in the second round of counselling, consequent to clearing the said examination and was allotted an MBBS seat in UCMS.

27. In view of the requirement, stipulated in the 1997 Regulations (as amended by 2017 Amendment Regulations) of obtaining of a disability certificate from the VMMC Hospital, in order to be permitted to join the MBBS course, the petitioner approached the said institution. The certificate of disability, dated 24th June, 2019, issued by the VMMC, however, certified that the petitioner was suffering from "Post Encepliolitis Sequalae with weakness of Left Upper Limb", *to the extent of 85%,* which was permanent and non-progressive in nature. Apparently because the extent of disability, suffered by the petitioner, was certified as more than 80%, the Certificate of Disability certified that the petitioner was not eligible for admission to medical/dental courses, as per the guidelines issued by the MCI. Consequent thereupon, the petitioner was denied admission to the MBBS course, on the ground that the extent of disability suffered by him was in excess of 80%.

28. It is in these circumstances that the petitioner has sought to invoke the extraordinary jurisdiction, vested in this Court by Article 226 of the Constitution of India, by means of the present writ petition.

29. During the course of these proceedings, our attention was drawn, by the parties, to the Second Amendment Regulations of 2019, whereunder the degree of disability of the candidate was required to be assessed with the aid of assistive devices, if they were being used, to examine whether, with the aid of such devices, the degree of disability suffered by the candidate could be brought within the outer 80% limit. In order to arrive at a quietus to the dispute, if possible, we had, with consent of parties, directed, *vide* our order dated 15th October, 2019, assessment of the extent of disability suffered by the petitioner by a Medical Board constituted by the All India Institute of Medical Science (AIIMS). Consequent thereto, the AIIMS has examined the petitioner on 18th October, 2019, and filed a certificate of disability, before this Court, certifying that the petitioner suffers from disability to the extent of 85%. As the said certificate seemed to indicate that the extent of the petitioner's disability had not been examined with the aid of assistive devices, we, *vide* our subsequent order dated 21st October, 2019, impleaded the AIIMS as an additional respondent. Consequent thereto, the AIIMS has filed an affidavit, stating that no assistive devices, whereby the degree of disability suffered by the petitioner could be mitigated, existed. Mr. A. Mariarputham, learned Senior Counsel, has contested this submission, and has placed, before us, literature which would seem to indicate that, in fact, assistive devices do exist, to cater to cases such as that of the petitioner.

30. We are, however, not experts in this field. The reliability and accuracy of the literature now cited by Mr. Mariarputham can hardly

be assessed by us, least of all under Article 226 of the Constitution of India. We do not know whether any such devices are readily available in India. Mr. A. Mariarputham has also, very fairly, stated that, in view of the affidavit filed by AIIMS, the court would have to proceed on the basis that no assistive devices existed to assess the extent of disability suffered by the petitioner, in accordance with Appendix H-1 to the 1997 Regulations, as introduced by the Second Amendment Regulations, 2019.

31. In these circumstances, as correctly submitted by Mr. A. Mariarputham, learned Senior counsel for the petitioner, the merits of the case of the petitioner would have to be independently examined, in the light of the law on the subject and rival submissions advanced by learned counsel.

Rival Submissions

32. We have heard, at length, Mr. A. Mariarputham, learned Senior Counsel appearing for the petitioner, as well as learned Counsel Mr.Mohinder J. S. Rupal for the University of Delhi, Mr. Anil Dabas for the Union of India, Mr. T. Singhdev for the MCI and Mr. Vibhor Garg for the AIIMS.

33. Arguing for the petitioner, Mr. Mariarputham advances the following contentions:

(i) Section 32 of the RPWD Act mandated that at least 5% of seats in every institution of higher education be reserved for persons suffering from "benchmark disabilities". The expression "person with benchmark disabilities" was defined in Section 2 (r) of the RPWD Act as meaning a person with not less than 40% of a specified disability. "Specified disability" was, in turn, defined in Section 2(zc) as meaning a disability specified in the Schedule to the RPWD Act. Locomotor disabilities were among the disabilities specified in the Schedule to the RPWD Act. A conjoint reading of Section 32, read with clauses (r) and (zc) of Section 2, read with the Schedule to the RPWD Act, made it clear that all government institutions of higher education, or higher education institutions receiving aid from the government, were necessarily required to reserve 5% of the seats for persons suffering from the disability enumerated in the Schedule to the RPWD Act,

(ii) While disability, to the extent of a minimum of 40%, was required for the sufferer thereof to qualify as a "persons with benchmark disability" as defined in Section 2 (r), no upper limit of disability finds any place in the RPWD Act. Nor was any such upper limit of disability to be found in Section 32 of the RPWD Act. As such, the stipulation, in the 1997 Regulations, as amended by the 2017 Amendment Regulations, that persons suffering from locomotor disability in excess of 80% were not eligible to be admitted against the PWD quota in higher education institutions, was contrary to the scheme of 1997

Regulations. It was not permissible, to include, in an Appendix to the 1997 Regulations, a stipulation which was not to be found either in the main body of 1997 Regulations, or in the RPWD Act. The respondents acted illegally, therefore, in disallowing the petitioner admission to the MBBS course to the UCMS, on the ground that he suffered from locomotor disability in excess of 80%.

(iii) On the date of submission of application by the petitioner, i.e. 12th November, 2018, the 1997 Regulations, as amended by the 2017 Amendment Regulations, were in existence, whereunder all disabled persons, with benchmark disability, were eligible for admission to the MBBS course, irrespective of the degree or percentage of disability. Specific attention was invited, in this context, to Appendix G to the 1997 Regulations, as introduced by the amendment, thereto, by the 2017 Amendment Regulations.

(iv) The 2017 Amendment Regulations were in force on the date of submission of application by the petitioner, and continued to be in force till the last date for submission of applications, which was 30th November, 2018. The case of the petitioner had, therefore, to be assessed on the basis of the 1997 Regulations as amended by the 2017 Amendment Regulations, and could not be affected either by the First Amendment Regulations of 2019, or by the Second Amendment Regulations of 2019.

(v) It was only on 4th February, 2019, that the MCI had, by Notification, amended the 1997 Regulations by the First Amendment Regulations of 2019, thereby arbitrarily classifying persons with disability into two categories, i.e. persons with disability of 40 to 80%, and persons with disability above 80%, and held that the latter category of candidates to be ineligible for admission. This classification was arbitrary and discriminatory, and violative of Article 14 of the Constitution of India. No object or purpose, sought to be achieved thereby, was discernible. This sub-classification also defeated the purpose of the RPWD Act.

(vi) Mr. Mariarputham also relied on Rule 20 of the Rights of Persons with Disabilities Rules, 2017 (hereinafter referred to as "the RPWD Rules"), which reads thus:

> "**20. Validity of certificate of disability issued under the repealed Act. –** The certificate of disability issued under the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 (1 of 1996) shall continue to be valid after commencement of the Act for the period specified therein."

We may enter a comment, here. There is no comma, anywhere in Rule 20 of the RPWD Rules, which makes it somewhat unclear as to whether the words "period specified therein" refers to the period specified in the RPWD Act, or the period specified in the Certificate of Disability issued under the PWD

Act. At the same time, Section 102 of the RPWD Act, which deals with "Repeal and savings", may be reproduced thus:

> "**102. Repeal and savings. –**
>
> (1) The Persons with Disabilities (Equal Opportunity Protection of Rights and Full Participation) Act, 1995 (1 of 1996) is hereby repealed.
>
> (2) Notwithstanding the repeal of the said Act, *anything done or any action taken under the said Act, shall be deemed to have been done or taken under the corresponding provisions of this Act*."
>
> (Emphasis supplied)

(vii) In connection with this submission, Mr. Mariarputham submitted that the Janakpuri Super Speciality Hospital, which had issued the Disability Certificate dated 24th April, 2016, was nominated as an authorised Hospital for issuance of certificate of disability, under the PWD Act, *vide* Notification dated 12th February, 2014, issued by the Department of Social Welfare, a copy of which has been placed on record. Mr. Singhdev, fairly, did not dispute the validity of the Disability Certificate dated 24th April, 2016, though he certainly disputes the entitlement, of the petitioner, to seek admission to the MBBS Course on the basis thereof.

34. The petitioner has placed reliance on the following authorities:

(i) ***Muskan Abdul Rahim Shaikh (Minor) v. State of Gujarat***[2],

[2] Order dt 18th September, 2018 in SLP (C) 24524/2018

(ii) ***Purswani Ashutosh (Minor) v. U.O.I.***[3],

(iii) ***Parmender Kumar v. State of Haryana***[4] and

(iv) ***Hemani Malhotra v. High Court of Delhi***[5]

35. Arguing *per contra*, Mr. Singhdev, learned counsel for the MCI, emphasises the fact that, as per the Information Bulletin issued by the NTA and governing admission to medical courses following the UG-NEET 2019, the candidate was required to obtain two Disability Certificates, of which the second Disability Certificate, which was required to be obtained in the eventuality of the candidate being selected to the MBBS Course, was required to be issued by the VMMC Hospital. The Disability Certificate of the VMMC Hospital having certified the petitioner was suffering from disability in excess of 80%, Mr. Singhdev submitted that it was not possible to allow the petitioner to join the MBBS course. Mr. Singhdev submits that the Regulations which would apply would be those which were in force on the date of admission of the student, and not on the date of submission of application. Mr. Singhdev places reliance on the judgment of the Supreme Court in ***Vidhi Himmat Katariya v. State of Gujarat***[6] and the judgment of the High Court of Rajasthan in ***Manohar Lal Swami v. State of Rajasthan***[7]. He finally submits that the AIIMS has been notified as one of the institutions, which are competent to issue Certificate of Disability under the RPWD Act, *vide* Circular, dated 2nd May, 2019, of the Health and Family Welfare

[3] 2018 SCC OnLine SC 1717
[4] (2012) 1 SCC 177
[5] (2008) 7 SCC 11
[6] 2019 SCC OnLine 1318
[7] MANU/RH/0866/2019

Department, GNCTD, which has been placed on record. Mr. Mariarputham does not, needless to say, dispute this position. Mr. Singhdev submits that, as the AIIMS, which is a competent authority in this regard, has certified the petitioner was suffering from disability in excess of 80%, he cannot be allowed to join the MBBS Course.

Analysis

36. The present case appears, to us, to be fully covered, on facts as well as in law, by the judgment of the Supreme Court in ***Vidhi Himmat Katariya***[6] and, in the light of the said judgment, we regret that we are of no position to grant any relief to the petitioner.

37. The position, in which the petitioner in ***Vidhi Himmat Katariya***[6] (who would be referred to, hereinafter, as "Vidhi"), and her co-petitioners before the Supreme Court, were placed, is, legally, identical to that in which the petitioner, in this writ petition, finds himself. For ease of reference, we would refer to the case of Vidhi, which is representative of the case of all the petitioners in ***Vidhi Himmat Katariya***[6].

38. Vidhi, too, applied for admission to the MBBS course for the 2019-2020 academic session. Admit Card was issued, to her, on 15th April, 2019. She appeared in the NEET, and was successful as per the result, declared on 5th June, 2019. In the meantime, the 1997 Regulations were amended by the First Amendment Regulations of 2019, which introduced Appendix H in the Regulations. The only

difference, between the case of Vidhi – and her co-petitioners – and the petitioner before us, is that, while the petitioner, before us, was found to be ineligible to aspire for admission to the MBBS course on the ground that the extent of disability suffered by him was more than 80%, the petitioners, in ***Vidhi Himmat Katariya***[6] were certified as ineligible on the ground that they did not fulfil the stipulation, which was introduced by the First Amendment Regulations of 2019, in the 1997 Regulations, of having "both hands intact, with intact sensation, sufficient strength and range of motion".

39. As in the present case, the petitioners, before the Supreme Court in ***Vidhi Himmat Katariya***[6], too, contested the applicability, to their candidature, of the First Amendment Regulations of 2019. On this aspect, the Supreme Court holds as under, in para 16 of the report:

> "*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 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 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 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 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 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 respective petitioners shall be governed by notification dated 04.02.2019.*"

(Italics and underscoring supplied)

40. In view of the emphasised portion of para 16 of the report in ***Vidhi Himmat Katariya***[6], as extracted hereinabove, the submission, of Mr. Mariarputham, that the changes introduced in the 1997 Regulations by the First Amendment Regulations of 2019, would not apply to the case of his client, has necessarily to be rejected.

41. It is also significant to note that, in the above extracted para 16 of its judgment in ***Vidhi Himmat Katariya***[6], the Supreme Court has also observed 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". The Supreme Court has, thereby, lent its imprimatur to the requirement, of the candidate obtaining a Second Disability Certificate, after being selected on the basis of the NEET and before being actually admitted to the MBBS course. In view thereof, we are unable to accede to the submission, of Mr. Mariarputham, that the requirement of obtaining a second disability certificate, figuring as it does only in the Information Bulletin issued by the NTA, would not apply, as no such requirement is to be found in the RPWD Act, or in the 1997 Regulations, even as amended, though the submission is, otherwise, undoubtedly attractive. Equally, and for the same reason, we cannot countenance the submission, of Mr. Mariarputham, that the NTA was incompetent to issue the Information Bulletin, or that the Information Bulletin was valid of all legal sanctity. We may observe, incidentally, that there is no prayer, in this writ petition, for striking down, or declaring as illegal, any provision in the Information Bulletin issued by the NTA.

42. In para 17 of its report in ***Vidhi Himmat Katariya***[6], the Supreme Court proceeds to hold that "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." We are of the opinion that these observations apply, with full force, to the facts of the present case. Though the petitioner does have, in her possession, a Disability Certificate, dated 24th April, 2016, issued by the Janakpuri Super Speciality Hospital, the certificate, dated 24th June, 2019, issued by the designated authority – i.e. the VMMC Hospital – after selection of the petitioner to the MBBS course consequent to his clearing the NEET, certifies the petitioner was suffering from disability in excess of 80% and, consequently, ineligible for admission to the MBBS course. Though, applying the law laid down in ***Vidhi Himmat Katariya***[6], the petitioner would be ineligible to seek admission to the MBBS course, in view of the certificate dated 24th June, 2019, issued by the VMMC Hospital, we, in order to be fair to the petitioner, and with consent of parties, directed the petitioner to be examined by the AIIMS, which is a competent authority, to issue Certificates of Disability under the RPWD Act, as per the Circular dated 2nd May, 2019 *supra*, issued by the Health and Family Welfare Department, GNCTD. The result is no better as the report dated 18th October, 2019 of the AIIMS also certifies the petitioner to be suffering from "Monoparesis of left upper limb" with "85% disability in relation to the left upper limb". The AIIMS has also come, on affidavit, to state that, in the condition in which the petitioner was placed, it is not possible to examine his case with the aid of assistive devices, and, in exercise of jurisdiction under Article 226 of the Constitution of India, we cannot discountenance this factual stand, as taken by the AIIMS. The

petitioner does not allege *mala fides* on the part of any of the authorities which have examined and tested him, to assess the degree of his disability.

43. In matters involving medical education, courts are required to exercise a considerably greater degree of circumspection. The element of public interest, which is pre-eminent in such cases, can never be ignored. While we do not intend, in any manner, to doubt the capability of the petitioner, and appreciate his achievements, despite his unfortunate physical limitations, the standards set by the Regulations framed by the MCI, are set by experts, keeping the best interests of the man who treats, as well as the man who is treated, in mind. We cannot profess to greater wisdom than the framers of the said Regulations. Howsoever laudable the achievements of the candidate may be, if she, or he, does not meet the requirements, stipulated in the Regulations framed by the MCI, for admission to the MBBS course, she, or he, has to face the situation which stoic resignation. We, who have, at all times, to confine our actions to the well-delineated peripheries of the law, are unable to provide succor in such a case.

44. As the case is fully covered by the judgment of the Supreme Court in ***Vidhi Himmat Katariya***[6], delivered by a Bench of 3 Hon'ble Judges of the Supreme Court just over two months ago, we do not deem it necessary to burden this judgment with reference to the other decisions, which were cited at the Bar.

45. Before parting, we may observe that the petitioner has prayed, in the writ petition, that the Disability Certificate, dated 24th June, 2019, issued by the VMMC Hospital, be quashed. Quite obviously, no court of law can quash a Disability Certificate issued by a competent medical authority. This prayer has, therefore, necessarily to be rejected. The writ petition further prays that a Medical Board be constituted to examine the disability of the petitioner. We have done so, and the Medical Board, which has been constituted by no less an authority than the AIIMS, has opined against the petitioner's entitlement to undertake the MBBS Course. Though the writ petition also prays for striking down of the First Amendment Regulations and the Second Amendment Regulations of 2019, on the ground that they sub-classify persons with disability into persons suffering from disability in excess of 80%, and persons suffering from disability below 80%, no serious submission, on that account, were canvassed. We, in any case, are not convinced that the First Amendment Regulations, or the Second Amendment Regulations, of 2019, are imperilled merely on this score. We may observe, in this context, that Section 3(3) of the RPWD Act ordains that "no person with disability shall be discriminated on the ground of disability, *unless it is shown that the impugned act or omission is a proportionate means of achieving a legitimate aim"*. We have no doubt about the legitimacy of the aim which is sought to be achieved by the MCI, in introducing the changes contained in Appendix H to the 1997 Regulations, *vide* the First Amendment Regulations of 2019, or the Second Amendment Regulations of 2019. Neither did Mr. Mariarputham seek to doubt the legitimacy of the said changes. Even on this score,

therefore, the challenge to the validity of the First Amendment Regulations, and the Second Amendment Regulations, would have to fail.

Conclusion

46. In view of the above discussion, we are unable to come to the aid of the petitioner.

47. The writ petition accordingly fails and is dismissed, with no orders as to costs.

C.HARI SHANKAR, J.

CHIEF JUSTICE

NOVEMBER 07, 2019
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