

(2018) 12 RAJ CK 0359
In the Rajasthan High Court
Case No : Civil Writ No. 15318 Of 2017

Geetika Tanwar

APPELLANT

Vs

State Of Rajasthan And Ors

RESPONDENT

Date of Decision : 19-12-2018

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2018) 12 RAJ CK 0359

Hon'ble Judges : Sangeet Lodha, J;Dinesh Mehta, J

Bench : Division Bench

Advocate : Rajat Arora, RS Saluja

Final Decision : Allowed

Judgement

The petitioner, belonging to SC category having varus deformity or deformity in upper limb appeared in the National Entrance Eligibility Test, 2017 (hereinafter referred as NEET), wherein 5% seats of each category were reserved for physically handicapped persons. According to the petitioner 55 seats were reserved for persons having disability in her category. The petitioner despite having scored highest marks in physically handicapped category, was not accorded admission, though her aggregate percentage of disability was 60%.

On enquiries, she found that the respondents had refused to admit her in the MBBS course on account of her disability in upper limb, for which the petitioner was constrained to invoke extra ordinary writ jurisdiction of this Court under Article 226 of the Constitution of India.

On 24.11.2017, while issuing notices this Court directed the respondents to subject the petitioner to medical examination by medical board to assess her disability and, thereafter, consider her candidature under the physically disabled category. The medical board so constituted by this Court on 4.12.2017, reported as under :

"Functional Evaluation:

Locomotion: She is able to walk independently. She can climb stairs and stand on one limb. She can squat but with some difficulty. Her left hand is severely malformed so she will have difficulty in work requiring both hands.

In view of MBBS Course:-

She should be able to learn and perform medical aspect of MBBS course in adapted and modified manner but she should have difficulty in learning and performing surgical aspects of MBBS course particularly procedures requiring both hands. Her permanent physical impairment is -60.18% (sixty point one eight percent)"

In view of the report so furnished by the medical board, this Court directed the Convenor NEET to consider the candidature of the petitioner for admission to MBBS Course under the physically disabled category.

It was the petitioner's predicament that despite the interim order granted in her favour, the petitioner could not be given admission in the course, as all the seats had been filled by that time and no vacant seat was available to accommodate the petitioner.

Mr. Rajat Arora, learned counsel for the petitioner submits that the petitioner was not at all at fault and her candidature had been wrongly rejected by the respondents. He submitted that the interim order passed by this Court be brought to its logical end and the respondents be directed to give admission to the petitioner, in the ensuing academic session, without requiring her to appear in the subsequent NEET Examination. In support of such request, he relied upon an order dated 9.10.2018 passed by Hon'ble the Supreme Court in Civil Appeal No.1075/2018 in somewhat similar circumstance.

Mr. Rajat Arora, learned counsel for the petitioner submits that in almost identical case, this Court had passed an interim order in the case of Raghav Agarwal (DBCWP NO.9483/2017) and under the interim orders of this Court, he was not only given admission, but has been allowed to complete the course by a separate order passed by this Court. Mr. Arora submitted that the petitioner's case is much better than the case of Raghav Agarwal as she has congenital deformation in upper limb only whereas said Raghav Agarwal was having deformation in both the hands and feet. Learned counsel for the petitioner further relied upon an order dated 9.10.2018 passed by Hon'ble the Supreme Court in Civil Appeal No.10353/2018 : Pramod Vs. Union of India; operative portion whereof is being reproduced hereunder:-

"In the aforesaid facts and circumstances of the case, though appellants were entitled for admission in the MBBS Course, but now as all the seats have been filled, the appellants have been illegally deprived of the admission. As such, we direct that the appellants be admitted in the next year, in MBBS course and in a government medical college as the seats of handicapped have been handed over to the general category, the seats of that category shall be reduced for the next

academic session 2019-2020.

Accordingly, the appeals are allowed. The impugned orders passed by the High Court is set aside. Apprehension is raised that the eligibility criteria may be changed. The apprehension is baseless as any change subsequently made is not going to affect the right of the appellants to obtain admission. The order is final, conclusive and binding."

Mr. Saluja, learned counsel for the respondent Medical Council of India, at the outset submitted that though MCI has adopted the provisions of Rights of Persons with Disability Act, 2016 and as there is no impediment in principle in giving the petitioner admission in MBBS Course, more particularly, in view of the order dated 9.10.2018 (supra), but no seats for the year 2017 are vacant so as to accommodate the petitioner and admission at such belated stage cannot be granted.

We have heard learned counsel for the parties and perused the material available on record.

Indisputably on 8.12.2017, after perusing the medical report submitted by the medical board, this Court had directed the respondents to consider petitioner's candidature for admission to MBBS Course. It is only a fortuitous circumstances that by the time this Court granted aforesaid interim relief to the petitioner, all the seats to the MBBS Course stood occupied.

In our considered opinion, the petitioner's candidature had wrongly been rejected. The provisions of the Rights of Persons with Disability Act, 2016 are mandatory, which the MCI itself has realized and has decided to adopt the same.

In view of the aforesaid and following the judgment and order dated 9.10.2018 passed by the Hon'ble Supreme Court (supra), we direct the respondents to provide the petitioner an admission to the MBBS Course in the next year, i.e., for the academic session 2019-20.

The writ petition is allowed, as indicated above.