
(2019) 09 RAJ CK 0115
In the Rajasthan High Court
Case No : Civil Writ Petition No. 10340 Of 2019

Jagrati Kumari

APPELLANT

Vs

State Of Rajasthan And Ors

RESPONDENT

Date of Decision : 13-09-2019

Acts Referred:

Citation : (2019) 09 RAJ CK 0115

Hon'ble Judges : Sandeep Mehta, J

Bench : Single Bench

Advocate : J.P. Bhardwaj, Kailash Choudhary

Final Decision : Allowed

Judgement

1. By way of the present writ petition, the petitioner is seeking directions to the respondent to grant her admission in MBBS Course based on her merit in NEET Examination, 2019.
2. The petitioner, a physically challenged candidate, having disability in her upper limb to the extent of 50% has been denied admission in MBBS Course on the ground that as per conditions incorporated in Regulations on Graduate Medical Education, 1997 as amended vide Regulations on Graduate Medical Education (Amendment) Regulations, 2019, the petitioner is not entitled for admission to pursue MBBS Course.
3. On 20.7.19, a coordinate Bench of this court while issuing notices to the respondents, by way of an interim order directed the respondent to constitute a Medical Board with a view to ascertain petitioner's compatibility to pursue medical course as well as the profession. The report of the Medical Board was directed to be placed before the court on or before 29.7.19. Further, one seat of MBBS Course pursuant to NEET Examination, 2019 under the category of PwD was directed to be kept reserved.
4. Pursuant to the interim order passed by this court as aforesaid, the report of

the Medical Board constituted, was placed on record by the respondents alongwith an affidavit on 6.8.19.

5. A perusal of the report revealed that the same neither discloses the percentage of disability nor refers to any provisions or guidelines according to which the petitioner is not eligible for medical course and thus, a coordinate Bench while discarding the medical report dated 23.7.19 prepared by SMS Medical College, Jaipur, directed the respondent to furnish a fresh report in terms of order dated 20.7.19 while keeping in mind the provisions of Rights of Persons with Disabilities Act, 2016, the Rules and Guidelines framed thereunder.

6. The second Medical Board constituted by the State Government submitted a detailed report dated 27.8.19 wherein also the petitioner's ability and compatibility to pursue the course was not reported, however, the petitioner was held ineligible to pursue MBBS Course. The court observing that the Medical Board constituted by the State Government has resorted to the guidelines instead of reporting what was expected of them to do vide order dated 20.7.19 and 26.8.19, discarded the second report as well and referred the matter to the Director/Deputy Director, AIIMS, Jodhpur to constitute a Medical Board to report as to whether the petitioner with her disability is able to perform her duties as a medical student and in turn as professional doctor. The court directed that the Medical Board shall also report as to whether the petitioner is able to perform requisite functions including surgical functions, which a doctor in normal course of his duties is required to perform.

7. In compliance of the directions issued by a coordinate Bench as aforesaid, the Medical Board constituted by the Director, AIIMS, Jodhpur vide order dated 31.8.19 consisting of 9 doctors of various specialties has submitted their report. The opinion given by the Board reads as under:

"She has PPI (permanent physical impairment) with 59% disability in non-dominant Right Upper Limb

She is able to perform requisite functions required during pursuing and practicing as MBBS doctor. The committee is of the opinion that she is fit to pursue MBBS course.

She will need to be re assessed at a later date regarding her fitness to pursue post graduation for the particular specialty."

8. Learned counsel appearing for the petitioner submitted that in view of unequivocal opinion given by the Medical Board constituted by the Director, AIIMS, the petitioner deserves to be considered for admission to MBBS Course as per her merit in NEET Examination, 2019.

9. On the other hand, the counsel appearing for the respondents submitted that as per Regulations, 1997 as amended vide Amendment Regulation, 2019, a person within the disability range of 40-80% disability is eligible for admission against the PwD quota but the candidate's both the hands must be intact with

intact sensation and further, sufficient strength and range of motion are essential for consideration of eligibility of a candidate belonging to specially abled category for admission to medical course. It is submitted that since the petitioner was not fulfilling the requirement, she was not considered eligible for admission to MBBS course.

10. There is no reason to believe that while assessing the petitioner's physical ability to pursue the MBBS course as laid down under Regulations, the Medical Board constituted by the Director, AIIMS has not considered the relevant aspects noticed above. It is noticed that the Medical Board has opined that the petitioner has permanent physical impairment with 59% disability in non dominant upper limb and thus, the physical disability of the petitioner is within the range of disability as provided under the Amendment Regulations, 2019. That apart, after due consideration, the Medical Board has categorically opined that the petitioner is able to perform requisite functions required during pursuing and practicing as MBBS doctor and that she is fit to pursue MBBS course.

11. In view of the categorical opinion given by the Medical Board, there is no reason why the respondents ignoring the spirit behind the Act of 2016 and the rules made thereunder, should still contest that the petitioner is not eligible to be admitted to MBBS course.

12. In the considered opinion of this court, keeping in view, the categorical opinion expressed by the Medical Board constituted by the Director, AIIMS, Jodhpur, regarding the petitioner's fitness to pursue the admission course, the writ petition preferred deserves to be allowed.

13. In the result, the petition is allowed. The respondents are directed to consider the candidature of the petitioner for admission to MBBS course as per her merit in NEET Examination, 2019 against the one seat directed to be kept reserved by this court vide order dated 20.7.19. Needless to say that if the petitioner fulfills other eligibility conditions and is found entitled for admission to MBBS course as per her merit in NEET Examination, 2019, the admission shall not be denied to her. The entire exercise of consideration of the petitioner's candidature and grant of admission shall be completed by the respondents within a period of two weeks from the date of this order. No order as to costs.