
(2019) 08 RAJ CK 0142
In the Rajasthan High Court
Case No : Civil Writ Petition No. 11241 Of 2019

Manohar Lal Swami

APPELLANT

Vs

State of Rajasthan And Ors

RESPONDENT

Date of Decision : 28-08-2019

Acts Referred:

Right of Persons with Disabilities Act, 2016 — Section 2(s), 2(r), 32, 33, 36
Constitution of India, 1950 — Article 14, 21

Citation : (2019) 08 RAJ CK 0142

Hon'ble Judges : Mohammad Rafiq, J; Narendra Singh Dhatta, J

Bench : Division Bench

Advocate : Sandeep Singh Shekhawat, Angad Mirdha, Rajendra Prasad, Karan Tibrewal

Final Decision : Dismissed

Judgement

Mohammad Rafiq, J

This writ petition has been filed by Manohar Lal Swami inter alia with the prayer that the petitioner be declared entitled to the benefit of reservation under the disability quota in terms of Section 32 of the Right of Persons with Disabilities Act, 2016 (for short 'the Act of 2016'). Further prayer has been made that the Regulation on Graduate Medical Education (Amendment), 2019 with Appendix "H" promulgated vide notification dated 04.02.2019 whereby benefits of locomotive disabilities has only been extended to lower limb, be declared ultra vires the Section 36 of the Act of 2016 as also Articles 14 and 21 of the Constitution of India and the respondents be directed to admit the petitioner in MBBS Course under the disability category from the date other candidates were so admitted.

The petitioner is a specially abled person having congenital left upper limb disability. The petitioner does not have the left thumb. Department of Medical and Health, Government of Rajasthan has issued a disability certificate (Form IV) to the petitioner certifying that the petitioner has permanent disability of 40%.

The petitioner participated in the NEET Examination in the category of OBC (NCL) with further sub category of PWD placed under physically handicapped-2 category. The petitioner was placed at rank 179 in physically handicapped category and his All India Rank was 155159. The petitioner participated in the counseling but his candidature was rejected on the ground that due to absence of left thumb, he is not eligible for admission to medical course. The respondents in taking that decision relied upon the notification dated 04.02.2019 and Appendix H supra, which provided that the physical disability of a candidate categorized as locomotive disability compulsorily requires, "Both hands intact, with intact sensations, sufficient strength and range of motion are essential to be considered eligible for medical course." The said notification was reiterated by Medical Council of India vide notification dated 13.05.2019 implying thereby that a candidate, with upper limb disability or upper limb deformity, is not eligible to pursue MBBS course. According to the respondents, it is essential that the candidate should have both hand intact with due sensation in both the hands.

Mr. Sandeep Singh Shekhawat, learned counsel for the petitioner argued that the aforesaid provision is contrary to the Act of 2016. Reference in particular has been made to definition "person with disability" under Section 2(s) of the Act of 2016. It is argued that the impugned provision is contrary to Sections 32 and 33 of the Act of 2016 as no such differentiation in the persons suffering from locomotive disability can be made. Learned counsel relied upon the judgment of Gujarat High Court in *Dr. Deval R. Mehta Vs. Union of India & Others*, AIR 2011 Guj 33 and argued that the Gujarat High Court by the aforesaid judgment declared the regulations ultra vires to the Constitution of India but the Supreme Court vide order dated 18.07.2011 stayed the operation of the judgment of the Gujarat High Court and directed that this will not disturb the direction of the High Court that the respondent-writ petitioner should be permitted to continue his studies. Subsequently, the Supreme Court vide order dated 23.04.2018 dismissed the SLP and the Civil Appeal as having become infructuous. Reference is also made to the order dated 19.12.2018 passed by the Division Bench of this Court at Principal Seat at Jodhpur in *Ms. Geetika Tanwar Vs. State of Rajasthan & Others* (D.B. Civil Writ Petition No. 15318/2017) in which case the petitioner having deformity in upper limb appeared in NEET 2017 wherein 5% seats were reserved for physically handicapped persons. The Division Bench of this Court while issuing notices of the writ petition directed the respondent-State to subject the petitioner therein to medical examination to assess her disability and thereafter consider her candidature under the physically handicapped category. The Medical Board assessed her permanent physical impairment at 60.18% but opined that that 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. The Convenor, NEET was directed to consider her candidature for admission to MBBS Course under the physically disabled category. Since no seat was available in the current academic session 2018- 19, the petitioner therein

was not accommodated. Reliance before the Court was placed on the interim order passed by this Court in *Raghav Agarwal Vs. The State of Rajasthan & Others*, (D.B. Civil Writ Petition No. 9483/2017) in which case the petitioner was not only given admission to MBBS course but was also allowed to complete the course by interim order though he was having deformity in both hands and the left feet. This Court held that the provisions of the Act of 2016 are mandatory. It is argued that in the case of *Ms. Geetika Tanwar (supra)*, reliance was placed on the order dated 09.10.2008 passed by the Supreme Court in *Pramod Vs. Union of India* (Civil Appeal No. 10353/2018) wherein the Supreme Court taking note of the fact that all the seats have been filled in that academic year directed the respondents therein to admit the petitioner in MBBS Course in next academic year. Division Bench of this Court in *Ms. Geetika Tanwar (supra)* directed admission of the petitioner in MBBS Course in the next year, i.e. academic year 2019-20.

Mr. Sandeep Singh Shekhawat, learned counsel relied upon the judgment in *Dashrath Kumar Kuldeep Vs. Rajasthan University of Health Science and Another*, D.B. Civil Special Appeal Writ No. 463/2017 in which case this Court relying on the judgment of the Gujarat High Court in *Dr. Deval R. Mehta (supra)* declared clause 9(2)(iv)(1)(a) of the Regulations relating to locomotive disability as ultra vires to Sections 32 and 33 of the Act of 2016, allowed the appeal and held the appellant therein entitled to complete Post Basic B.Sc. Nursing Course. Learned counsel further relied upon the order dated 21.10.2013 passed by Division Bench of this Court in *Madhusudan Sharma Vs. State of Rajasthan & Others*, D.B. Civil Writ Petition No. 13913/2012. This Court relying on the interim order dated 18.07.2011 passed by the Supreme Court in *Medical Council of India Vs. Deval R. Mehta & Others*, [Petition(s) for Special leave to Appeal (Civil)/2011 (CC 11401/2011)] directed the respondents to declare the result of the petitioner therein of MBBS Part-I Examination and permit him to continue his further studies. Learned counsel also relied upon the order dated 29.09.2016 passed by Division Bench of this Court in *Milan Pratap Singh Shekhawat Vs. The State of Rajasthan & Others*, D.B. Civil Writ Petition No. 13208/2016 wherein similar interim order was passed in favour of the petitioner, who had 50% to 70% locomotive disability of lower limb. It is argued that the Act of 2016 nowhere provides any differentiation between upper limb and lower limb disability. Action of the respondents in denying him admission merely on account of his not having left thumb is per se contrary to the very scheme of the Act of 2016 object of which is to give respect for inherent dignity, individual autonomy including the freedom to make one's own choices and independence of persons; to remove discrimination and ensure full and effective participation and inclusion in the society; respect for difference and acceptance of persons with disabilities as part of human diversity and humanity equality of opportunity and accessibility. Moreover, Section 2(s) of the Act of 2016 does not provide for any differentiation in the disability and the reservation provided under Section 32 and 33 of the said Act. It is argued that if the view taken by the respondents is upheld, the very

purpose of the Act of 2016 would be defeated.

Mr. Angad Mirdha, learned counsel appearing on behalf of the respondent No. 4- Medical Council of India opposed the writ petition and submitted that the petitioner has been diagnosed with congenital absence of left thumb of the left upper limb and his permanent physical impairment has been stated to be 40%. As per his own case, after he qualified NEET 2019 in the category of OBC with sub category of PH. Having obtained PH rank of 179, he was required to appear before a medical board to assess disability as well as extent thereof and there he was informed that he was ineligible to be considered for admission in MBBS course in the PH category. Upon receiving reference of the case of the petitioner, the respondent- Medical Council of India (for short 'the MCI') sought opinion in the case of the petitioner from Dr. Sanjay Wadhwa, Professor, Department of Physical Medicine and Rehabilitation, All India Institute of Medical Sciences, New Delhi. The opinion was specifically sought in respect of whether the petitioner was entitled for admission in MBBS Course. Dr. Sanjay Wadhwa, after considering the case of the petitioner as well as the disability certificate dated 07.03.2018 issued by the Department of Medical and Health, Government of Rajasthan, concluded that the case of the petitioner is not a case of multiple disabilities but of locomotor disability since there is no other type disability. He found that the extent of disability mentioned as 40% in the aforesaid certificate dated 07.03.2018 was incorrect in reference with the Guideline for Assessment of Disabilities notified by the Department of Empowerment of Persons with Disabilities (Divyangjan), Ministry of Social Justice and Empowerment, Government of India which had been notified in Gazette of India on 05.01.2018. According to the said notification, absence of left thumb would entail a permanent impairment of 30% in relation to left upper limb, which was clearly below the benchmark disability as defined under Section 2(r) of the Act of 2016 to be not less than 40%. Dr. Sanjay Wadhwa further observed that it is the duty of the Regulatory Body, i.e. MCI to ensure that aspiring students possess minimum functional abilities/competencies, which are required to complete the training programme of MBBS satisfactorily and that the patients are also safe under the care of such medical graduates. He therefore categorically opined that in view of the Graduate Medical Education Regulations, 1997 (for short 'the Regulations of 1997') as amended on 13.05.2019 and published in the Official Gazette on 14.05.2019 as well as the competency based MBBS curriculum as applicable from the academic year 2019-20, due to the absence of left thumb the petitioner possesses the disability which is less than the benchmark disability and is ineligible to pursue MBBS Course as he does not possess minimum functional abilities to perform skills required of a medical graduate such as basic life-saving resuscitation as well as operative interventions etc.

Mr. Angad Mirdha, learned counsel argued that as per the provisions of the Regulations of 1997, both hands have to be intact with all fingers, with intact sensation, sufficient strength and range of motion, which are crucial to be considered eligible for medical course. In terms of Guidelines for Assessment of

Disabilities notified by the Department of Empowerment of Persons with Disabilities (Divyangjan), Ministry of Social Justice and Empowerment, Government of India, which have been notified in the Gazette of India on 05.01.2018, each upper extremity comprises of arm component and hand component. The hand component includes the thumbs and four fingers. In view of the disability certificate dated 07.03.2018 issued by the Department of Medical and Health, Government of Rajasthan; Guidelines for Assessment of Disabilities notified by the Department of Empowerment of Persons with Disabilities (Divyangjan), Ministry of Social Justice and Empowerment, Government of India, which have been notified in the Gazette of India on 05.01.2018 as well as the Graduate Medical Education Regulations, 1997 as amended on 13.05.2019 and published in the Official Gazette on 14.05.2019, the petitioner has been conclusively found to be ineligible to pursue MBBS Course in any medical college of the country. Learned counsel argued that the respondent-MCI is a statutory body constituted under the provisions of the Indian Medical Council Act, 1956 (for short 'the MCI Act') and has been given the responsibility of discharging the duty of maintenance of the highest standards of medical education. Reliance has been placed on the judgment of the Supreme Court in *State of Kerala Vs. Kumari T. P. Roshana & Another*, (1979) 1 SCC 572 to bring home the point. Reliance is also placed on the judgment of the Supreme Court in *Medical Council of India Vs. State of Karnataka & Others*, (1998) 6 SCC 131 wherein it was held that, "The country does not want half-baked medical professionals coming out of medical colleges when they did not have full facilities of teaching and were not exposed to the patients and their ailments during the course of their study." Reliance is also placed on the Constitution Bench judgment of the Supreme Court in *Dr. Preeti Srivastava & Another Vs. State of M.P. & Others*, (1999) 7 SCC 120.

Learned counsel argued that in case of any conflict between the MCI Act/the Regulations and any State Rules/Regulations, the MCI Act/Regulations shall prevail. The Supreme Court has laid down that there cannot be any relaxation/dilution of standards in MBBS or PG courses and also reiterated the binding character of the regulations of the Council. Learned counsel in support of his arguments relied upon the judgments of the Supreme Court in *Dr. Narayan Sharma & Another Vs. Dr. Pankaj Lehar & Others*, (2000) 1 SCC 44; *State of Punjab Vs. Dayanand Medical College and Hospital & Others*, (2001) 8 SCC 664; *State of M. P. & Others Vs. Gopal D. Tirthani & Others* (2003) 7 SCC 83 and *Harish Verman & Others Vs. Ajay Srivastava & Another*, (2003) 8 SCC 69. Learned counsel for the respondent-MCI referred to the detailed affidavit filed on behalf of the MCI, especially that part which deals with the provisions of the Act of 2016 and the amendment dated 22.01.2018 made to the Regulations of 1997.

Mr. Rajendra Prasad, learned Senior Counsel appearing on behalf of the intervenor also opposed the writ petition.

We have given our anxious consideration to rival submissions and carefully perused the material on record.

The detailed counter affidavit filed on behalf of the MCI reveals that the Central Government vide letter dated 02.05.2018 requested the MCI to examine the matter pertaining to admissions of persons with disabilities to MBBS Course under the amended Regulations on Graduate Medical Education, 1997 since as per the provisions of the Act of 2016, only such persons with a minimum of 40% of a specified disability were eligible for any benefit and also that the upper limit of the percentage of specified disability for all 21 categories had not been decided. The MCI then constituted an Expert Committee to elaborate on the permissible range of the disabilities for the purposes of reservation contemplated under Section 32 of the Act of 2016. The Expert Committee examined all the specified disabilities as provided in the Schedule appended to the Act of 2016 and gave its recommendations after considering each of the specified disability in the context of the available scientific/medical resources/method and tools/techniques for measuring the extent/percentage of disability for the purpose of considering whether persons with such specified disabilities will be eligible for admission to MBBS course. The Expert Committee also provided its recommendations in respect of those disabilities and/or their extents/percentage, with which such persons will be unable to function as a doctor thereby putting risk to the patients, hence being ineligible for admission to MBBS course. The Expert Committee further recommended the disabilities along with their extent/percentage which will bring them within the range of obtaining the benefit of 5% reservation under the Act of 2016. Copy of the Guidelines for Admission of Persons with Specified Disabilities has been placed on record by the MCI. The report of the aforesaid Expert Committee was placed before the Executive Committee of the MCI, which in its meeting dated 05.06.2018 after due consideration decided to approve the same. It was also decided that the said report be communicated to the Ministry of Health and Family Welfare in view of the schedule for counseling for admission to MBBS Course for the academic year 2018-19.

The issue of implementation of the aforesaid Disability Guidelines during the academic year 2018-19 in respect of admission to MBBS course was considered by the Supreme Court in Purswani Ashutosh (Minor) through Dr. Kamlesh Virumal Purswani Vs. Union of India & Others, W.P.(C) No. 669/2018 wherein it was observed that the Regulations of 1997 had incorporated the provisions of the Act of 2016 and that the said Regulations had not yet been amended in the light of the recommendations of the Expert Committee constituted by the MCI, which had issued the Disability Guidelines. Thereafter, the MCI was dissolved and the Board of Governors in supersession of MCI was appointed by the Central Government vide Ordinances dated 26.09.2018, 12.01.2019, 21.02.2019 and 10.07.2019 to discharge the functions under the MCI Act. In the meanwhile, the MCI had forwarded the draft amendment to the Regulations of 1997 in respect of admission of persons with disabilities to MBBS course in respect of academic year 2019-20. The Central Government vide letter dated 14.11.2018 had requested the MCI to publish the draft amendment in public domain for 15 days inviting

comments/views from public. The MCI placed the said draft amendment in public domain on its website and invited comments/views upto 30.11.2018. Number of comments/suggestions/feedback were received which were sent by the MCI to an Expert Committee under the Chairmanship of the Director, All India Institute of Medical Sciences, New Delhi. The Expert Committee considered the draft amendment along with the aforesaid comments/suggestions and submitted its report i.e. Guidelines on Admission of Persons with Specified Disabilities in MBBS Course. The MCI vide its letter dated 17.01.2019 informed the Central Government that it had placed the draft amendment in the public domain for comments/feedback from the general public. The said comments/feedback from the general public were duly considered by the Expert Committee. The MCI by the aforesaid letter forwarded to the Central Government, report submitted by the Expert Committee along with revised draft amendment to the Regulations of 1997 seeking approval under Section 33 of the MCI Act. The Central Government vide letter dated 28.01.2019 informed the MCI that the proposal to amend the Regulations of 1997 in respect of the upper limit of disabilities for admission to MBBS course had been approved with following modifications:

".....

- i) The persons with hearing disability of more than 40% may be allowed to pursue medical education and given reservation provided that hearing disability is brought to less than 40% with the aid of assistive devices;
- ii) Similar benefit to pursue medical education and reservation may also be given to persons with low vision provided that hearing disability is brought to less than 40% with aid of assistive devices if possible."

The Central Government vide letter dated 01.02.2019 forwarded copy of the aforesaid amendment to the Regulations of 1997 to the MCI for publication in the Official Gazette, which the MCI sent to the Controller of Publication, Government of India Press for the publication with its letter dated 04.02.2019. The MCI vide letter dated 04.02.2019 had simultaneously forwarded the draft amendment to the Postgraduate Medical Education Regulations, 2000 in this regard. The amendment aforesaid was published in the Official Gazette on 05.02.2019. The Central Government vide letter dated 14.02.2019 requested the MCI to make certain changes in the draft amendment to the Postgraduate Medical Education Regulations, 2000 as also to furnish a draft notification for similar amendment to the Regulations on Graduate Medical Education, 1997. The Board of Governors in its meeting dated 25.02.2019 considered the aforesaid letter dated 14.02.2019 and apart from others, decided that persons with more than 80% disability may be considered subject to their functional competency determination with the aid of assistive devices. If disability is brought down to the level of 80% or less with assistive devices then such persons shall be allowed and eligible for seats reserved for persons with disability. The Board of Governors, while taking aforesaid decision, observed that it was the duty of a Statutory/Regulatory Body such as the MCI to ensure that students with disabilities are having minimum

functional abilities/competencies required to complete the medical training programme satisfactorily and that the patients are safe under their care/treatment. The said decision was communicated to the Central Government vide letter dated 07.03.2019. Central Government vide letter dated 08.03.2019 approved the proposed amendment to the Postgraduate Medical Education Regulations, 2000 subject to certain clarifications. Similar changes were introduced in the Regulations of 1997 in respect of admission in MBBS course with specified disabilities.

In view of above, the respondent-MCI has made its stand clear that it is after enormous exercise undertaken by it in exercise of powers conferred by Section 33 of the MCI Act with prior approval of the Central Government that Regulations of 1997 were amended initially vide notification dated 04.02.2019 and then vide notification dated 14.05.2019. The last amended Graduate Medical Education Regulations, 1997 substitutes the Appendix H with the new Appendix-H1 providing for the guidelines regarding admission of students with specified disabilities under the Act of 2016 in MBBS Course. Admission of the students with specified disabilities in MBBS course shall now be made as per notification dated 04.02.2019 published in the Official Gazette on 05.02.2019 and Notification dated 13.05.2019 published in the Official Gazette on 14.05.2019.

In view of the detailed clarification and justification given by the respondents, it would be evident that Appendix H had been substituted by new Appendix H1 providing for the guidelines regarding admission of students with specified disabilities under the Act of 2016 in MBBS Course. The respondent-MCI and the Central Government in taking that decision were advised and assisted by the experts in the field and the data received in the form of comments/suggestions/feedback when the draft amendment was put in public domain. The Expert Committee then finalized the draft amendment, which was approved by the Central Government. The petitioner on the basis of disability certificate dated 07.03.2018 issued by the Department of Medical and Health, Government of Rajasthan as also report of Medical Board constituted by Sawai Mansingh Hospital, Jaipur was declared ineligible for admission in MBBS Course. Opinion in the case of the petitioner was sought from Dr. Sanjay Wadhwa, Professor, Department of Physical Medicine and Rehabilitation, All India Institute of Medical Sciences, New Delhi who after carefully considering the case of the petitioner as well as disability certificate dated 07.03.2018 opined that case of the petitioner is not of multiple disabilities but of locomotor disability since there is no other type disability. He found that the extent of disability mentioned as 40% in the aforesaid certificate dated 07.03.2018 was incorrect in reference with the Guideline for Assessment of Disabilities notified by the Department of Empowerment of Persons with Disabilities (Divyangjan), Ministry of Social Justice and Empowerment, Government of India which had been notified in Gazette of India on 05.01.2018. Copy of the guidelines has been placed on record. According to the said guidelines, absence of left thumb would entail a permanent impairment of only 30% in relation to left upper limb, which was clearly below

the benchmark disability as defined under Section 2(r) of the Act of 2016 to be not less than 40%. Dr. Sanjay Wadhwa further observed that it is the duty of the Regulatory Body, i.e. MCI to ensure that aspiring students possess minimum functional abilities/competencies which are required to complete the training programme of MBBS satisfactorily and that the patients are also safe under the care of such medical graduates. He therefore categorically opined that in view of the Graduate Medical Education Regulations, 1997 as amended on 13.05.2019 and published in the Official Gazette on 14.05.2019 as well as the competency based MBBS curriculum as applicable from the academic year 2019-20, due to the absence of left thumb the petitioner possesses less than the benchmark disability and is ineligible to pursue MBBS Course as he does not possess minimum functional abilities to perform skills required of a medical graduate such as basic life-saving resuscitation as well as operative interventions etc.

In view of the categorical stand of the respondents, we do not find any case for interference. Most of the orders/judgments which learned counsel for the petitioner has relied are interim orders and the same cannot be relied as precedents. Even the judgment of the Gujarat High Court in Dr. Deval R. Mehta (supra) was rendered on its own facts and the Supreme Court while staying operation of the aforesaid judgment did not interfere with the admission granted to the appellant therein and upon completion of studies, civil appeal was dismissed by the Supreme Court as having rendered infructuous. Therefore, dismissal of civil appeal cannot be treated as a precedent or approval of the ratio of the judgment of the Gujarat High Court. It is trite that decision of expert bodies should not be interfered by the Courts. In our view, the MCI can distinguish between various persons with disabilities for the purpose of admission in MBBS course and such determination by the MCI shall not be in conflict with the provisions of the Act of 2016.

We, therefore, do not find any merit in this writ petition and the same is accordingly dismissed.

Stay Application No. 10507/2019 also stands dismissed.