
(2017) 11 RAJ CK 0078
In the Rajasthan High Court
Case No : Civil Writ Petition No. 9483 Of 2017

Raghav Agrawal

APPELLANT

Vs

State Of Rajasthan And Ors

RESPONDENT

Date of Decision : 13-11-2017

Acts Referred:

Constitution Of India, 1950 — Article 14

Citation : (2017) 11 RAJ CK 0078

Hon'ble Judges : Govind Mathur, J; Vinit Kumar Mathur, J

Bench : Division Bench

Advocate : Rajat Arora, Archana Joshi, R.S. Saluja, Hemant Jain

Final Decision : Disposed Off

Judgement

Govind Mathur, J

By this petition for writ a challenge is given to Medical Council of India Regulations on Graduate Medical Education, 1997 to the extent those exclude the candidates having deformity in the upper limb to be considered for admission to the MBBS course against the vacancies reserved for the persons having disability.

The petitioner, a brilliant student, qualified National Eligibility-cum-Entrance Test 2017 for admission to MBBS/BDS Course. In the course aforesaid a reservation in a tune of 5% of total seats is prescribed for disabled candidates. Out of the total 1091 seats allocated to the different medical colleges in the year 2017, 21 seats in general category are required to be filled in from amongst the candidates having permanent disability. The petitioner, being suffered with congenital disability in both the hands and both the feet, claimed consideration against the vacancies reserved for the persons suffering from disabilities. His predicament is that in light of the restricting provision under the Regulations of 1997, his candidature cannot be considered against the vacancies reserved for the persons having disability. Aggrieved by the provision aforesaid, instant petition for writ is before us wherein an interim relief too is prayed.

This Court on 19.9.2017 directed the respondents to subject the petitioner to medical examination by a Medical Board to assess his disability and consequently consider him for admission into MBBS Course under the physically disabled category, based on the merit of the petitioner in NEET Examination, 2017, subject to the result of the writ petition. The petitioner was directed to submit himself before the Medical Board for examination to assess his percentage of disability by 5.10.2017.

In pursuance to the directions given, the petitioner was medically examined and as per the report thereof he might have difficulty in carrying out fine precision work although he is able to carry out gross functions with certain limits. His permanent physical impairment was calculated at 49.87%. On 26.10.2017, the Court requested the Medical Board to explain the impediment, if any, for the petitioner to undertake MBBS Course. The Board clarified the same as follows:-

"We hereby further clarify that Mr. Raghav has adopted well to his physical challenges. He is able to do functions in adopted and modified manner but on normal standardized assessment of opposition i.e., (Tip of thumb to other fingers), lateral pinch like key holding or needle holding and function which needs dexterity of individual finger tips, he is not able to perform as a normal person can do.

Due to syndactyly he will have difficulty in doing surgical intervention like tying, surgical knot, wearing of gloves, rectal examination, fine suturing, tissue holding, micro surgery etc. As MBBS is course of bachelor of Medicine and bachelor of surgery both.

In view of Medical Board he can learn and do medical aspect of MBBS Course like reading, writing, examination with stethoscope etc. But he may have difficulty in many modules of surgical aspects of MBBS Course."

Learned counsel appearing on behalf of the petitioner states that the assessment made by the Medical Board does not disclose that the petitioner is not physically fit to undergo the MBBS Course. According to him, there are several subjects where surgical precision is not required. It is asserted that in the subject of Radiology, Pharmacology and several others, such precision is not required. He has also pointed out the decisions taken by Medical Council of India in its meeting dated 31.10.2017 relating to expansion of the category of physically disabled persons for admission to MBBS. He has further pointed out the notification of the Government of India, Ministry of Social Justice and Empowerment, identifying different posts for which physically disabled persons even for the upper limb locomotive disability are entitled to be appointed. In the list aforesaid "Physician" too is identified as a post on which an upper limb physically disabled can be appointed. Heavy reliance is placed by learned counsel upon a Division Bench judgment of Gujarat High Court in Dr. Deval R. Mehta v. Union of India & Ors., reported in AIR 2011 Gujarat 33. In the case aforesaid Hon'ble the Gujarat High Court held that the regulation relating to restriction to

admission in MBBS Course for locomotor disability is in conflict with the Article 14 of the Constitution of India as well as the provisions of the enabling Act. Learned counsel has also relied upon a Division Bench judgment of this Court in D.B. Civil Special Appeal Writ No.463/2017, Dashrth Kumar Kuldeep v. Rajasthan University of Health Sciences, Jaipur & Anr., decided on 25.5.2017 declaring the petitioner therein eligible for the course in which he was admitted. The judgment aforesaid is based upon the law laid down by the Gujarat High Court in the case of Dr. Deval R. Mehta (supra).

Learned counsel appearing on behalf of the Medical Council of India states that the judgment given by Gujarat High Court is subject matter of an appeal pending before the Hon'ble Supreme Court since 2011 and a stay thereon is in operation. He, however, accepts that in several other similar matters different High Courts have granted interim relief for admission of students similar to the petitioner in medical courses. Suffice to mention that counsel appearing on behalf of the petitioner has relied upon certain orders passed by Bombay High Court in the case of similar nature including Writ Petition No.5900/2011, Shaikh Roshan Jahan Jawwad Ahmed v. State of Maharashtra & Ors.

Having considered the facts stated above, we also deem it appropriate to dispose of the application preferred by the petitioner to have interim relief with a direction to the respondents to consider petitioner's case for admission to first year MBBS Course in the category of physically handicapped candidates on the basis of merit list prepared in the said category. If he stands in merit, admission be granted to him on provisional basis to the first year MBBS Course in the category of physically disabled persons.

The stay application stands disposed of accordingly.