

(2024) 07 MP CK 0036

In the Madhya Pradesh High Court

Case No : Writ Petition No.4700 of 2022

Sojal Agrawal

APPELLANT

Vs

The State of Madhya Pradesh & Ors.

RESPONDENT

Date of Decision : 29-07-2024

Acts Referred:

Constitution of India 1950 — Article 226

The Rights of Persons with Disabilities Act 2016 — Section 3, 32, 58, 200, 2(r), 2(s), 2(zc)

National Medical Commission Act, 2019 — Section 57, 60, 61

Indian Medical Council Act, 1956 — Section 33, 33(I)

Citation : (2024) 07 MP CK 0036

Hon'ble Judges : Anand Pathak, J Binod Kumar Dwivedi, J.

Bench : Division Bench

Advocate : Arvind Dudawat, Diwakar Vyas, Kshitiz Verma, Ankur Mody

Final Decision : Dismissed

Judgement

Anand Pathak, J Binod Kumar Dwivedi, J.

The present petition is preferred under Article 226 of the Constitution seeking following reliefs:-

- i) That, order impugned dated 19.02.2022 (Annexure P-1) may kindly be quashed;
- ii) That, the action of the respondents in not permitting the petitioner to attend the MBBS classes in respondent No.3 college may kindly be treated as illegal and respondent No.3 college may kindly be directed to permit the petitioner to attend the classes.
- iii) That, action of the respondents, in denying the admission to the petitioner despite being selected in NEET P.G., 2021 and despite being allotted respondent No.3 college in the counselling, may kindly be quashed.

2. Precisely stated facts of the case are that petitioner is a student and after

clearing his High School Examination, he participated in the National Eligibility Cum Entrance Test (NEET) Under Graduation Course (U.G.), 2021. Petitioner participated in the examination under the category "Person with Disability" (PwD). According to him, he has disability up to 65% in his left arm and disability certificate in that behalf is issued by the Government District Hospital, Morena (Annexure P-4).

3. Petitioner stood successful in the examination and secured 2391 rank. In the Madhya Pradesh State Combined NEET-UG Counselling 2021, petitioner was allotted Government Medical College, Datia (respondent No.3 herein) under "Unreserved Physically Handicapped" category (UR-PH-OP). According to the petitioner, he was eligible under the Mukhyamantri Medhavi Vidyarthi Yojna for waiver of college fee, thus, remaining fee was deposited by the petitioner. Before granting admission, medical checkup of petitioner was also done by the Medical Board, Datia. Therefore, according to the petitioner, it was the case where petitioner rightly got admission on merits being PwD. Later on, it appears from the proceedings that Dean of the Medical College found that since petitioner is handicapped by his one hand (left hand) therefore, he cannot become a doctor. Hence, the said authority passed an order dated 19.02.2022 (Annexure P-1) and cancelled the admission of petitioner relying upon the notification dated 04.02.2019 issued by Medical Council of India (MCI). Therefore, petitioner is before this Court.

4. Learned Senior counsel appearing for the petitioner vehemently submits that petitioner belongs to Economic Weaker Section and is suffering from Locomotor disability to the extent of 65% which has been duly certified by the competent Certifying Officer in terms of Section 58 of The Rights of Persons with Disabilities Act 2016 (hereinafter referred as "RPwD Act 2016") and since he was eligible for his admission in MBBS course, therefore, was rightly given admission under the reservation quota of Handicapped Category in terms of provision of Section 32 of RPwD Act 2016.

5. According to him, admission of petitioner in MBBS course was cancelled on reconsideration of Sub-Clause -F of Clause -1 of Appendix-H of Amendment Notification as published in Rajpatra of Bharat dated 04.02.2019 by MCI for amending the "Regulation on Graduate Medical Examination". MCI was constituted under the Indian Medical Council Act, 1956 (hereinafter referred as "Act 1956") and MCI was dissolved by the National Medical Commission Act, 2019 (hereinafter referred as "NMC Act") which came into force on 08.08.2019. In pursuance thereof, National Medical Commission was constituted.

6. On 15.06.2017, the Central Government in exercise of powers under Section 100 of RPwD Act 2016 framed Rights of Persons with Disabilities Rules, 2017 (hereinafter referred as "Rules 2017") which came into force on 15.06.2017. Similarly, National Medical Commission in exercise of powers conferred under Section 57 of NMC Act framed "Minimum Requirements for Annual M.B.B.S. Admission Regulation 2020" (hereinafter referred as "Regulation 2020") which

was published in Gazette Notification dated 28.10.2020. Therefore, after publication of this regulation, by virtue of Sections 60 and 61 of the NMC Act, any regulations and then amendments if any, made by MCI by a notification dated 4.02.2019 stood repealed.

7. Therefore, it is the submission of learned Sr. counsel that on the date when petitioner appeared in NEET Examination, 2021 i.e. 12.09.2021 as well as on 19.02.2022, when the impugned order was passed, amendment notification of MCI issued on 04.02.2019 was not in existence. Therefore, on the basis of said notification, impugned order could not have been passed. The MCI did not have any authority to make any amendment or modification in the Statutory Guidelines issued by the Competent Authority regarding evaluation of Specified Disabilities under RPwD Act 2016.

8. Learned Sr. counsel while going through the backdrop of passing of earlier Act in respect of person with disability which was promulgated in 1995 as "The Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 (hereinafter referred as Act 1995) and thereafter, RPwD Act 2016 was passed submits that by the effect of said provisions, no discrimination can be caused qua person with disability. He referred different provisions in this regard whereby Section 2(r) of RPwD Act defines 'Person with Benchmark Disabilities' and Section 2(s) of RPwD Act defines 'Person with Disability'. According to him, discrimination caused by the authority needs to be corrected.

9. It is further submitted that as per Section 56 of RPwD Act, powers have been conferred upon the Central Government for notifying the guidelines for the purpose of assessing the extent of specified disability in a person. Government of India in furtherance to discharge its aforesaid obligation, constituted an Expert-Committee to suggest guidelines for evaluation and procedure for certification of various Specified Disabilities and eight Sub-Committees constituted for different category found that the Ministry of Health and Family Welfare is the final authority to recommend guidelines on evaluation and procedure for certification of Specified Disability. Notification dated 04.08.2018 published as Gazette Notification includes "Locomotor Disability" at Serial No.1. According to him, it defines the Locomotor Disability as under:-

Locomotor disability:-

Which means a person's inability to execute distinctive activities associated with movement of self and object resulting from assertion of self and object resulting from assertion of musculoskeletal

Section-C: prescribes guideline for Evaluation of Permanent Physical Impairment in Person with Amputation (Amputees) according to it, percentage of permanent impairment in relation to upper limb Amputation in a case of Trans Radial (below elbow) upto lower 1/3rd of forearm is 65%.

10. Since, petitioner also suffers Locomotor Disability upto 65% of and proper disability certificate is filed as Annexure P-14 therefore, he should have been considered for continuation in MBBS course. Therefore, impugned order is contrary to legal provisions. He sought reinstatement of his position as MBBS student with a direction for continuance of his studies. He relied upon the judgments passed by Hon'ble Apex Court in the case of General Officer Commanding-in-Chief and anr. Vs. Dr. Subhash Chandra Yadav and Anr. 1988 (2) SCC 351, Supreme Court Employees Welfare Association Vs. Union of India and Anr. 1989 (4) SCC 187, Kunj Behari Lal Butail and Ors. Vs. State of H.P. and Ors. 2000 (3) SCC 40, Ajaya Kumar Das Vs. State of Orissa and Ors. 2011 (11) SCC 136, Vikash Kumar Vs. Union Public Service Commission and Ors. 2021 (5) SCC 370, and Avni Prakash Vs. National Testing Agency (NTA) and Ors. 2023 (2) SCC 286.

11. Per contra, Shri Mody, learned Additional Advocate General appearing on behalf of State opposed the prayer. According to him, Section 33 of Act 1956 prescribes power to make regulations. Therefore, erstwhile MCI, at the relevant point of time had the authority to make regulations in respect of plethora of fields as described in Section 33 of Act, 1956. Section 33(I) of the Act 1956 prescribed the authority to make regulations for the conduct of Professional Examinations, Qualifications of Examiners and the Conditions of Admission to such examinations. Taking power from that provision, MCI issued guidelines on 04.02.2019. When the Act of 1956 was repealed and substituted by new Act of NMC Act 2019 which came into being on 08.08.2019, Section 61 of NMC Act 2019 prescribed the saving of transitory provisions. MCI guideline is saved, therefore, it is not the case where MCI issued circular without any legal ground.

12. Learned AAG refers the contents of reply and circular dated 4.02.2019 in which Appendix-H prescribes guidelines regarding admission of students with "Specified Disabilities" under the RPwD Act, 2016 in MBBS course. In the said Appendix at Sr. No.4, a chart is prepared in which types of disabilities have been mentioned. For "Locomotor Disability", it has been clarified that "Both hands intact, with intact sensations, sufficient strength and range of motion are essential to be considered eligible for medical course". Since, petitioner has left hand amputated and his left hand is not intact and sensations are also not intact therefore, he does not have sufficient strength and range of motion to pursue medical course. Therefore, he was found to be in-eligible for MBBS Course.

13. So far as ground regarding Regulation of 2020 is concerned, that regulation is not in respect of conditions of admission or conduct of professional examinations but is in respect of laying down the minimum infrastructure requirement for accommodation in the college and its associated teaching hospitals, staff and equipment in the college department/hospitals. It is not relevant in the present case. Thus, prayed for dismissal of the petition.

14. Heard the counsel for parties at length and perused the documents appended thereto.

15. Admittedly, petitioner suffers from Locomotor disability to the extent of 65%. There is no conflict regarding source of power, validity of certificate by a certification agency and the rights given to the PwD candidates.

16. Petitioner suffers from specified disability as defined in Section 2 (zc) of RPwD Act 2016. Specified disability is defined in following manner:-

2. Definitions.—In this Act, unless the context otherwise requires,—

(zc) “specified disability” means the disabilities as specified in the Schedule;

The schedule prescribes dissects specified disability into Physical Disability, Intellectual Disability, Mental Behavior and Disability caused due to (A) Chronic Neurological Conditions (B) Blood Disorder.

17. Under Physical Disability, Locomotor disability is being defined as a person's inability to execute distinctive activities associated with movement of self and object resulting from affliction of musculoskeletal or nervous system or both. This definition is also notified under Locomotor disability in gazette notification dated 04.01.2018 as submitted by counsel for the petitioner. Therefore, petitioner's inability to execute distinctive activities, places him under physical disability (Specified Disability). Therefore, he cannot perform certain distinctive activities. Those distinctive activities include pursuing MBBS course where petitioner has to hold surgical and medical equipments in his hands and has to administer many medical procedures and involve in invasive procedures (like Injection, I.V. and other interventional procedures) which require both hands intact with intact sensations and sufficient strength and range of motion. If these essential parameters are not fulfilled then the notification dated 04.02.2019 issued by MCI bars the student to pursue medical course.

18. In other words, if a student who falls under the persons with specified disability category and is duly certified by the certification agency as referred above, then he cannot pursue medical course. It appears that, this was guided by the thought that if the person's hands are not intact then he may not perform distinctive activities and medical course requires such distinctive activities because lives of many patients lie at stake.

19. Earlier to give effect to the Proclamation on the Full Participation and Equality of the People with Disabilities in the Asian and Pacific Region, The Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 came into existence. However, it still lagged behind in taking PwDs in striving with normal human, therefore, to give effect to the 'United Nations' convention on the rights of persons with disabilities and for matter connected therewith on incidental thereto; new act, “The Rights of Persons with Disabilities Act 2016” came into being. It enlarged the scope for empowerment of persons with disabilities. Hon'ble Apex Court in the case of Ravinder Kumar Dhariwal and Anr. Vs. Union of India and Ors. 2023 (2) SCC 209 has elaborated the Origin, Source, Aims, Objects and other aspects of two Acts in detail.

20. Therefore, there is no iota of doubt that petitioner falls under the PwD category and was entitled for the benefits as elaborated in RPwD Act, 2016, as delineated by the Apex Court in the case of Ravindra Kumar Dhariwal (supra).

However, one exception has also been carved out in Section 3 of RPwD Act 2016 where Rights and Entitlements have been discussed in Chapter-2. Section -3 reads as under:-

Section -3. Equality and non-discrimination.—

(1) xxx

(2) xxx

(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;

21. Perusal of Sub-Section-3 indicates that if it is shown that the impugned act or omission is a Proportionate means of achieving a legitimate aim then a call can be taken by the authority for taking decision like the present one. In other words, a reasonable classification has to be there for such act whereby person like petitioner has been stopped to pursue medical course. Legitimate aim appears to be "Public Good or Public Interest at large" in the present case. MCI in its wisdom opined that since medical course is a specialized course where patients are to be treated by a person who otherwise having attributes to the extent where he can feel the sensation/pain of a patient and do the necessary surgical/interventional procedures with medical/surgical tools.

22. Some skills (or nature of work) demand particular type of attributes. A Fighter Pilot has to be Mentally, Physically and Cognitively capable of maneuvering the plane in a jiffy. Even a normal human can be ousted from the job, if he does not fulfill those tough requirements; same is the case with the doctors because human lives are at stake. Therefore, those distinctive activities which cannot be performed by a person may oust him from the zone of consideration and that does not constitute discrimination. Even in some jobs, Reasonable Accommodation theory may not be applicable for larger good. Therefore, petitioner is entitled to avail the benefits of PwD in accordance with law if profession/skill/work environment permits him to do particular job involving public lives or it does not fall under such category where exceptional or rare functions are to be performed. Petitioner and respondents nowhere pleaded or demonstrated that petitioner can be accommodated reasonably in some other branch of Medical Courses.

23. Once, MCI in exercise of powers under Section 33(I) of erstwhile Act 1956 issued certain guidelines in which persons with such attributes, cannot pursue medical course then it has to be seen in that perspective only. It does not fall under discrimination.

24. Another ground raised by the petitioner is the competence of MCI to issue such guidelines when subsequent guidelines of Regulation 2020 came into being. In this regard, Section 33(l) is to be seen first. Section 33 (l) reads as under:-

33. Power to make regulations.-

The Council may, with the previous sanction of the Central Government, make regulations generally to carry out the purposes of this Act, and, without prejudice to the generality of this power, such regulations may provide for:-

(a) xxx

(b) xxx

(c) xxx

(d) xxx

(e) xxx

(f) xxx

(g) xxx

(h) xxx

(I) xxx

(j) xxx

(k) xxx

(l) the conduct of professional examinations, qualifications of examiners and the conditions of admission to such examinations;

25. This act was repealed and new act namely National Medical Commission Act, 2019 came into being on 08.08.2019. It is to be remembered that regulation regarding conditions of admission was issued by MCI on 04.02.2019 prior to dissolution. Section 60 of NMC Act 2019 discusses Repeal and Savings. Section 60 of NMC Act 2019 reads as under:-

Section 60. Repeal and savings.-

(1) With effect from such date as the Central Government may appoint in this behalf, the Indian Medical Council Act, 1956 shall stand repealed and the Medical Council of India constituted under sub-section (1) of section 3 of the said Act shall stand dissolved.

(2) Notwithstanding the repeal of the Act referred to in sub-section (1), it shall not affect,

(a) the previous operation of the Act so repealed or anything duly done or suffered thereunder; or

(b) any right, privilege, obligation or liability acquired, accrued or incurred under the Act so repealed; or

(c) any penalty incurred in respect of any contravention under the Act so repealed; or

(d) any proceeding or remedy in respect of any such right, privilege, obligation, liability, penalty as aforesaid, and any such proceeding or remedy may be instituted, continued or enforced, and any such penalty may be imposed as if that Act had not been repealed.

(3) On the dissolution of the Medical Council of India, the person appointed as the Chairman of the Medical Council of India and every other person appointed as the Member and any officer and other employee of that Council and holding office as such immediately before such dissolution shall vacate their respective offices and such Chairman and other Members shall be entitled to claim compensation not exceeding three months' pay and allowances for the premature termination of term of their office or of any contract of service:

Provided that any officer or other employee who has been, immediately before the dissolution of the Medical Council of India appointed on deputation basis to the Medical Council of India, shall, on such dissolution, stand reverted to his parent cadre, Ministry or Department, as the case may be:

Provided further that any officer or other employee who has been, immediately before the dissolution of the Medical Council of India, employed on regular or contractual basis by the Medical Council of India, shall, on and from such dissolution, cease to be the officer or employee of the Medical Council of India and his employment in the Medical Council of India stand terminated with immediate effect:

Provided also that such officer or employee of the Medical Council of India shall be entitled to such compensation for the premature termination of his employment, which shall not be less than three months' pay and allowances, as may be prescribed.

(4) Notwithstanding the repeal of the aforesaid enactment, any order made, any licence to practice issued, any registration made, any permission to start new medical college or to start higher course of studies or for increase in the admission capacity granted, any recognition of medical qualifications granted, under the Indian Medical Council Act, 1956, which are in force as on the date of commencement of this Act, shall continue to be in force till the date of their expiry for all purposes, as if they had been issued or granted under the provisions of this Act or the rules or regulations made thereunder.

26. Transitory provisions have been saved in Section 61 of the Act NMC Act 2019 which reads as under:-

Section 61. Transitory provisions.-

(1) The Commission shall be the successor in interest to the Medical Council of India including its subsidiaries or owned trusts and all the assets and liabilities of the Medical Council of India shall be deemed to have been transferred to the Commission.

(2) Notwithstanding the repeal of the Indian Medical Council Act, 1956, the educational standards, requirements and other provisions of the Indian Medical Council Act, 1956 and the rules and regulations made thereunder shall continue to be in force and operate till new standards or requirements are specified under this Act or the rules and regulations made thereunder:

Provided that anything done or any action taken as regards the educational standards and requirements under the enactment under repeal and the rules and regulations made thereunder shall be deemed to have been done or taken under the corresponding provisions of this Act and shall continue in force accordingly unless and until superseded by anything done or by any action taken under this Act.

27. Perusal of Sections 60 and 61 of NMC Act 2019 reveals that the rules and regulations made under erstwhile IMC Act 1956 were saved and continued to be in force till new standards or requirements are made. Therefore, by the effect of Section 60 and 61 of NMC Act 2019, earlier regulation dated 04.02.2019 issued by MCI gets legitimacy and is applicable over the case of present petitioner. No new regulation was referred in their field.

28. So far as submissions regarding new regulation "Minimum Requirements for Annual MBBS Admission Regulation 2020" came into being is concerned, the same is not applicable in the case of petitioner because it moves in different realm of medical education and not in respect of conduct of professional examinations and conditions of admission to such examination. Claus-2(i) of Regulation, 2020 deals with applicability which is reiterated for ready reference.

Clause-2 (i) Applicability:-

These Regulations shall be applicable for Medical Colleges being established from the academic session 2021-22 onwards.

Similarly Clause -4 deals with objective which reiterated for ready reference:-

Clause-4 Objective:-

The objective of these regulations is to prescribe for a medical college and Medical Institution approved for admissions of MBBS students annually, the minimum requirements of accommodation in the college and its associated teaching hospitals, staff (teaching and technical) and equipment in the college departments and hospitals.

29. Perusal of Clause-2(i) and Clause-4 Regulation, 2020 indicate that applicability and objective of this regulation is to prescribe for a medical college and medical institution approved for admission of MBBS students annually, the

minimum requirements of accommodation in the college and its associated teaching hospitals, staff (teaching and technical) and equipment in the college departments and hospitals. It is not for the purpose for which notification dated 04.02.2019 was issued by the MCI. Both move in two different spheres. Therefore, till the new regulations if any are promulgated by NMC replacing the regulation dated 4.02.2019, these regulations by MCI would prevail and would be applicable as per Section 60 and 61 of the NMC Act, 2019. Therefore, arguments advanced by the petitioner does not have substance, thus, rejected.

30. The judgments as relied upon by the petitioner move in different factual realm. No doubt that no discrimination can be caused in consideration for employment and during employment to the person of PwD but when a regulation specifically prescribes certain standards and that standards are being taken care of in Section 3 of RPwD Act 2016 then larger public interest and the purpose (for such exceptional circumstances which carved out) are to be adhered to.

31. In the considered opinion of this Court, no illegality has been caused in passing the impugned order. Since, petitioner cleared NEET examination, therefore, must be an intelligent student. Many other sectors would be waiting for him. He would definitely make his mark there.

32. Cumulatively, petition stands dismissed.