

(2019) 07 MAN CK 0005
In the Manipur High Court
Case No : Writ Appeal No. 29 Of 2019

State Of Manipur And Others	Vs	APPELLANT
Yaiphaba Laiphrakpam And Others		RESPONDENT

Date of Decision : 23-07-2019

Acts Referred:

Constitution Of India, 1950 — Article 246, 246(1), 246(3), 254, 254(1), 254(2)
Manipur BDS Entrance Examination (Selection Of Candidates For Nomination) Rules, 2004 — Rule 19, 19(iv)
Rights Of Persons With Disabilities Act, 2016 — Section 2(r), 2(zc), 32, 96
Tripura Land Revenue And Land Reforms Act, 1960 — Section 187

Citation : (2019) 07 MAN CK 0005

Hon'ble Judges : Ramalingam Sudhakar, CJ; Lanusungkum Jamir, J

Bench : Division Bench

Advocate : N.Kumarjit, P.Tamphamani, Th.Babita, B.R.Sharma

Final Decision : Dismissed

Judgement

R.S., CJ

1. Heard Mr. N.Kumarjit, learned Advocate General, Manipur for the State appellants assisted by Mr. P.Tamphamani, learned counsel and Mr.B.R.Sharma, learned counsel for the Medical Council of India and Ms. Babita Th., learned counsel for the respondent/writ petitioner.

FACTS

[2] Facts, which are relevant for disposal of the present appeal are as follows.

The respondent/writ petitioner filed a writ of Mandamus to direct the appellants to consider his case for admission to MBBS course session 2018-19, under the State quota in terms of the Regulations on Graduate Medical Education, 1997 as amended upto May, 2018 and also on the basis of the provisions of Rights of Persons with Disabilities Act, 2016(Act 49 of 2016). The prayer in the writ petition was subsequently amended by way of additional affidavit pursuant to the

order of the learned Single Judge dated 14.9.2018. The amendment sought for by the candidate/respondent was to direct that the admission should be given for the sessions 2019-20 by keeping one seat reserved in his favour because the timeline for entry to MBBS course had already expired on 31.8.2018. As against the order dated 14.9.2018, no appeal has been filed.

The respondent/ writ petitioner is admittedly a physically challenged person suffering from Locomotor disability. The certificate relied upon by the respondent/ writ petitioner is Annexure-A/2, page 74. He suffers from Hirayama's disease, a locomotor disability and in the certificate issued by the Jawaharlal Nehru Institute of Medical Sciences (JNIMS), Porompat dated 19.6.2018, his physical disability was assessed at 43%, right upper limb. This certificate is not in dispute. The respondent/writ petitioner applied for admission to the MBBS course through the National Eligibility-cum-Entrance Test (NEET) conducted by the Central Board of Secondary Education (CBSE). Information Bulletin, Annexure-A/6 is dated 06.5.2018 for the session 2018-19. In the entrance examination, the respondent/writ petitioner obtained 196 marks which is well above the cut-off marks specified for candidate applying under the Physically challenged persons quota. The respondent/petitioner was not called for counselling but on enquiry, he was informed and given Annexure-A/10 which read as follows:-

" ANNEXURE-A/10

GOVERNMENT OF INDIA

MEDICAL DIRECTORATE

NOTIFICATION

Imphal, the 12th June, 2018

No.104/1/2018-DHS: In pursuance of the Secretariat: Health Department Order No. 9/2/09-M(MBBS/BDS)Pt : dated 6th June, 2018, all the PH candidates of NEET-UG, 2018 who are qualified and eligible are hereby informed that the State Medical Board will be held on 18.06.2018 at 11 a.m./p.m. at Medical Directorate, Lamphel to determine the persons with loco motor disorder/disability of lower limb between 50% to 70% in connection with the reservation of 3% of the total seats for MBBS/BDS courses allocated for the year, 2018 to the State of Manipur.

Dr. K. Rajo Singh

Directorate of Health Services, Manipur

No. 104/1/2018-DHS: Imphal, the 12th June, 2018

Realising that the petitioner was denied counselling and a seat in the MBBS course in the State quota on untenable and unsustainable legal grounds, the writ petition has been filed. Reliefs No.(i) and (ii) along with the amended prayer filed by way of additional affidavit by the petitioner on 24th September, 2018 are as

follows:-

" i) Issue writ in the nature of Mandamus/Certiorari or any other appropriate writ of the like nature directing the respondents to consider the case of the petitioner for admission to MBBS Course in terms of the provisions of the Regulations on Graduate Medical Education, 1997 and the Rights of Persons with Disabilities Act, 2016 as amended from time to time against the 5% seat reserved for Physically Handicapped candidates out of the total seats for MBBS/BDS Course allocated for the year 2018 to the State of Manipur or against any stray seat left or remain unfilled in any MCI recognised college in India.

(ii) Issue writ directing the respondents specifically Respondents 1 and 2 to consider extension of time for admission for the petitioner as a special case."

AMENDED PRAYER

"to give admission in the year/session 2019-2020 by keeping one seat reserved in favour of the petitioner out of the 85% MBBS seats to be allocated for the State of Manipur for the session 2019-2020 by way of compensation or any other compensation which the Hon'ble Court deem fit and appropriate in accordance with law."

The counsel for the respondent/writ petitioner was at pains to point out that the writ petitioner's additional affidavit dated 24.9.2018 and his rejoinder affidavit in response to the reply affidavit filed by the State have not been annexed along with the appeal and sought leave of the Court to refer to the same. Learned Advocate General conceded that there was a lapse on their part in not filing all documents.

[3] Be that as it may, after hearing the learned Addl. Advocate General for the State and Mr.B.R.Sharma, learned counsel for the

Medical Council of India and accepting the writ petitioner's case, the learned Single Judge was pleased to allow the writ petition. Para No.10 of the judgment and order which is relevant is quoted hereunder:-

"[10] In view of the above and for the reasons stated hereinabove, the writ petition is allowed with the following directions:

(a) The State Government shall keep one MBBS seat, out of the total MBBS seats allocated for the academic session, 2019-20, unfilled;

(b) The State Government shall constitute a committee of medical experts within 15 days from the date of receipt of a copy of this judgment and order to examine the petitioner to find out as to whether the disability suffered by him is within the benchmark disability as defined in Section 2(r) and 2(zc) of the Act, 2016 and submit a report thereof to the State Government within 15 days thereafter;

(c) In the event of the petitioner's disability being found by the committee to be within the benchmark disability as defined in Section 2(r) and 2(zc) of the Act,

2016, the petitioner shall be admitted in MBBS course against the seat being kept unfilled as per direction (a) above;

(d) In the event of the petitioner's disability being found by the committee to be not within the benchmark disability as defined in Section 2(r) and 2(zc) of the Act, 2016, the said MBBS seat being kept unfilled, may be given to other candidates in accordance with law;

(e) Since the process of admission is to be completed within the time as prescribed and directed by the Hon'ble Supreme Court which is incorporated in the instructions of the MCI, the directions (a) to (c) above shall be strictly complied with by the State Government and the committee to be constituted by it."

[4] Challenging this order, the present appeal has been filed. The respondent/writ petitioner primarily relied upon the Medical Council of India Regulations on Graduate Medical Education, 1997 as amended and in particular, Regulations 4 and 5 read with the Rights of Persons with Disabilities Act, 2016 Special Enactment(Act 49 of 2016) for a mandamus which was accepted by the learned Single Judge.

[5] On the contrary, the State based on the reply affidavit and the documents annexed with the reply affidavit to the writ petition, relied upon the Manipur MBBS/BDS Entrance Examination (Selection of Candidates for Nomination) Rules, 2004 as amended in 2014. In that, Chapter-I deals with preliminary issues, Chapter-II deals with method of nomination, eligibility and disqualification. Chapter-III deals with Competitive Test Examination. In so far as the present case is concerned, the State appellants relies upon Chapter-II Rules 19 clause (iv) which read as follows:-

"19

(Rule 19 clause (iv) was inserted to the existing clauses 19(i), (ii), and (iii) vide Manipur Gazette No. 73, May 5, 2005 Order No. 9/2/2004-M(MBBS/BDS) (Pt) dated 04-05-2005. The above Rule 19 of the principal Rules were substituted wholly vide Manipur Gazette No. 73, May 19, 2007, Notification No.9/7/2003-M (MBBS/BDS) dated 18-05-2007).

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(iv)The Government shall reserve 3% of the total seats of MBBS/BDS allocated in a year to the State of Manipur for persons with locomotory disorder/ disability of lower limb between 50% to 70% or nomination against the seat as opted by the selected candidate who would be placed in the appropriate categories- General, Scheduled Castes, Scheduled Tribes and other backward classes [excluding the creamy layer of the Other Backward Classes as defined vide Government of Manipur, Department of personnel's letter No. 9/1/90(OBC0/DP dated

02-08-2004 read with GOI:DP & TRG's O.M. No. 36033/3/2004-Estt.(Res) dated 09-03-2004] by making adjustment within the quotas available for each category. (inserted vide Manipur Gazette No.31, May 5,2005 order No. 9/2/2004-M(MBBS/BDS)Pt. dated 4th May, 2005 and amended vide Manipur Gazette No. 73, May 19,2007 Notification No. 9/7/2003-M (MBBS/BDS): dated 18-05-2007)."

The State also relied upon 12.6.2018 notification, Annexure-A/10, which was already extracted above. The learned Single Judge after going into the scope of Act 49 of 2016 read with Medical Council of India Regulations, 1997 as amended upto May, 2018, was of the view that the disability suffered by the respondent/writ petitioner is a disability as defined under Section 2(r) read with 2(zc) of the Act 49 of 2016. The learned Single Judge also held that as per Medical Council of India Regulations which is in consonance with the Central Act 49 of 2016, the writ petitioner is entitled to be selected in the State quota of MBBS course subject to a condition of that a Committee of Medical experts should examine the petitioner once again as to whether the disability suffered by him is within the benchmark disability as defined in Section 2(r) and 2(zc) of the Act 49 of 2016.

It is not in dispute that these directions of the learned Single Judge was complied resulting in another Certificate being issued by the State Medical Board Doctors who assessed the writ petitioner on 27.4.2019 and issued the certificate dated 27.4.2019 whereby the petitioner's disability as per the earlier certificate has been reaffirmed as Hirayama disease, Locomotor disability at 44% in relation to right upper limb. It is therefore clear that the petitioner satisfies the provisions of the Sections 2(r) and 2(zc) and the Schedule to the Act 49 of 2016.

Contention of the State Appellant

[6] In this appeal, it is primarily pleaded on the basis of 28th April, 2004, Government of Manipur Rules for selection of candidates for MBBS/BDS course under disability quota, Clause 19 (iv) which has been already extracted above will be relevant and applicable and that the non-selection of the writ petitioner is correct if the above rule is taken and applied. According to the learned Advocate General appearing for the State, if the eligibility criteria as specified in Information Bulletin, NEET, Annexure-A/6, more particularly, Chapter 3 clause 4 (b) is read with Manipur Government 2004 Rules, the petitioner does not satisfy the eligibility criteria. The NEET Information Bulletin, Chapter 3 (4) at page 89 and 90 is as follows:-

"4. ADMISSION AND RESERVATION

An all India Merit List of the qualified candidates shall be prepared on the basis of the marks obtained in the NATIONAL ELIBIGILIY CUM ENTRANCE TEST (UG) and candidates shall be admitted to MBBS/BDS courses from the said list only by following the already existing reservation policy. CBSE will provide All India Rank. Admitting Authorities will invite applications for counseling and merit list shall be drawn based on All India Rank by the Admitting Authorities. Admission to MBBS/ BDS Courses within the respective categories shall be based solely on marks

obtained in the National Eligibility Cum Entrance Test. The admitting/ counseling authorities will draw merit list of the candidates in the respective categories declared by the candidates at the time of applying for admission/counseling.

(4) (a) RESERVATION OF SEATS IN GOVERNMENT MEDICAL COLLEGES UNDER 15% ALL INDIA QUOTA:

(i) 15% seats are reserved for SC candidates,

(ii) 7.5% seats are reserved for ST candidates,

(iii) 27% seats as per Central Act are reserved for non-creamy layer OBC candidates only in Central Educational Institutions. Reservation would be applicable to the castes mentioned in the Central list of OBC. Thus, the candidates falling in this list may mention OBC-NCL in the Category Column in application form. Candidates from creamy layer and those who do not come under Central List of OBC are advised to mention their category as Unreserved (UR).

(iv) Differently abled candidates as per MCI guidelines are:

Persons having Bench Mark disabilities and entitled for reservation under the Right of Persons with Disability Act, 2016, 5% seats of the annual sanctioned intake capacity shall be filled up by candidates with Bench Marked Disabilities in accordance with the provisions of the Right of Persons with Disabilities Act, 2016 based on the merit list of "National Eligibility Cum Entrance Test". For this purpose, the specified disability contained in the schedule to the Right of Persons with Disabilities Act, 2016 is available at Appendix-XIV. If the seats reserved for the persons with disabilities in a particular category remain unfilled on account of unavailability of candidates, the seats should be included in the Annual Sanctioned Seats for the respective category. Detailed information in the regard is available on the website of Medical Counseling Committee-www.mcc.nic.in and website of the Ministry of Health and Family Welfare-www.monfw.nic.in

Candidates who considered themselves eligible for this category are advised to ensure their eligibility by getting themselves examined at any Government Medical College/District Hospital/Government Hospital. However, candidates may kindly note that in case of selection under PH category, they will be required to produce Disability Certificate from one of the disability assessment boards, constituted at the four metro cities mentioned below, before their scheduled date of counseling:

... Vardhman Mahavir Medical College and Safdarjung Hospital, Ansari Nagar, Ring Road, New Delhi-110029 (Tel No.011- 26190763&26163072)

... All India Institute of Physical Medicine and Rehabilitation, Hazi Ali Park K. Khadya Marg, Mahalaxmi, Mumbai-400034 (Tel No.022- 23544341)

... Institute of Post Graduate Medical Education & Research 244, Acharya J.C Bose Marg, Kolkata-20 (Tel No. 033-22235181)

... Madras Medical College, Park Town, Chennai-60003 (Tel No.044- 25305301)

(v) Reservation will be made as per 2200 point reservation roster. The mode of implementation of reservation will be available on DGHS website- www.mohfw.nic.in.

4. (b) ADMISSION IN STATE MEDICAL COLLEGES/ UNIVERSITIES/ INSTITUTIONS/ PRIVATE MEDICAL COLLEGES FOR SEATS OTHER THAN 15% ALL INDIA QUOTA.

(i) Admission under State Quota Seats shall be subject to reservation policy and eligibility criteria prevailing in the State/Union Territory as notified by the respective State/Union Territory from time to time.

(ii) The reservation of the seats in medical colleges for respective categories shall be as per applicable laws prevailing in State/Union Territory concerned.

(iii) Admission to MBBS/BDS Courses in private Medical Colleges shall be subject to policies of the Government of India/State/Union Territory."

(Emphasis supplied)

[7] Learned Advocate General pleaded that the disability as defined in 2004 State Government Rules as amended, prescribes that a locomotory disorder/ disability should be a disability of lower limb between 50% to 70%. In this case, the petitioner does not qualify the State Governments eligibility criteria. Hence, the question of considering his claim does not arise. The disability as certified by the State Medical Board does not fall within the parameters of Rule 19(iv) of the Manipur BDS Entrance Examination (Selection of Candidates for Nomination) Rules, 2004 as amended by Rules, 2014. Consequently, the Selection Board was justified in not considering the writ petitioner's claim. Learned Advocate General further relies upon Medical Council of India Regulations amendment notification dated 22.01.2018. Chapter II Clause 4 (3) and more importantly Chapter II Clause 5 at page No.80 and 81 which read as follows:-

"6. In Chapter II under the heading " ADMISSION, SELECTION, MIGRATION & TRAINING" in the Clause 4(3), in ' Admission to Medical Courses - Eligibility Criteria' shall be substituted as under,

4(3) In respect of candidates with benchmark disabilities specified under the Rights of Persons with Disabilities Act, 2016, the minimum marks in qualifying examination in Physics, Chemistry and Biology (Botany and Zoology)/ Bio-Technology taken together in qualifying examination shall be 45% instead of 50% for General Category candidates and 40% for SC/ST/OBC candidates.

5% seats of the annual sanctioned intake capacity shall be filled up by candidates with benchmark disabilities in accordance with the provisions of the Rights of Persons with Disabilities Act, 2016, based on the merit list of National Eligibility-Cum-Entrance Test'. For this purpose the Specified Disability contained in the Schedule to the Rights of Persons with Disabilities Act, 2016 is annexed in Appendix 'G'. If the seats reserved for the persons with disabilities in a particular

category remain unfilled on account of unavailability of candidates, the seats should be included in the annual sanctioned seats for the respective Category.

Provided further that this entire exercise shall be completed by each medical college / institution as per the statutory time schedule for admission and in no case nay admission will be made in the MBBS course after 31st of August.

7. In Chapter-II Clause 5 under the hearing " Procedure for selection to MBBS course shall be as follows" shall be substituted as under:-

" Procedure for selection to MBBS course shall be as follows"-

1) There shall be a uniform entrance examination to all medical educational institutions at the under graduate level namely "

National eligibility-cum- entrance Test for admission to MBBS course in each academic year and shall be conducted under overall supervision of the Ministry of Health & Family Welfare, Government of India.

(emphasis supplied)

2) The "designated authority" to conduct the 'National Eligibility-Cum- Entrance Test' shall be the Central Board of Secondary Education or any other body/ organization so designated by the Ministry of Health & Family Welfare, Government of India, in consultation with the Medical Council of India.

3) The language and manner of conducting the ' National Eligibility-Cum- Entrance Test' shall be determined by the ' designated authority" in consultation with the Medical Council of India and the Ministry of health and Family Welfare, Government of India.

4) In order to be eligible for admission to MBBS Course for a academic year, it shall be necessary for a candidate to obtain minimum of marks at 50th percentile in' National Eligibility-Cum-Entrance Test to MBBS course' held for the said academic year. However, in respect of candidates belonging to Scheduled Castes, Scheduled Tribes, Other Backward Classes, the minimum marks shall be at 40th percentile. In respect of candidates with benchmark disabilities specified under the Right of Persons with Disabilities Act, 2016, in terms of Clause 4(3) above, the minimum marks shall be at 45th percentile for General Category candidates and 40th percentile for SC/ST/ OBC candidates. The percentile shall be determined on the basis of highest marks secured in the All-India common merit list for admission in 'National Eligibility-cum- Entrance Test for admission to MBBS course.

Provided when sufficient number of candidates in the respective categories fail to secure minimum marks as prescribed in National Eligibility-cum- Entrance Test held for any academic year for admission to MBBS Course, the Central Government in consultation with Medical Council of India may at its discretion lower the minimum marks required for admission to MBBS Course for candidates belonging to respective categories and marks so lowered by the Central

Government shall be applicable for the said academic year only.

5) The reservation of seats in Medical Colleges for respective categories shall be as per applicable laws prevailing in State/Union Territories. An All India merit list as well as State/Union Territory-wise merit list of the eligible candidates shall be prepared on the basis of marks obtained in "National Eligibility-cum-Entrance Test and candidates shall be admitted to MBBS course from the said lists only.

6) No candidate who has failed to obtain the minimum eligibility marks as prescribed in Sub-clause (4) above shall be admitted to MBBS course in the said academic year.

7) No authority/ institution shall admit any candidate to the MBBS course in contravention of the criteria / procedure as laid down by these Regulations and / or in violation of the judgments passed by the Hon'ble Supreme Court in respect of admissions. Any candidate admitted in contravention/ violation of aforesaid shall be discharged by the Council forthwith. The authority/ institution which grants admission to any student in contravention / violation of the Regulations and / or the judgment passed by the Hon'ble Supreme Court, shall also be liable to face such action as may be prescribed by the Council, including surrender of seats equivalent to the extent of such admission made from its sanctioned intake capacity for the succeeding academic year/years.

8) All admission to MBBS course with the respective categories shall be based solely on the marks obtained in the 'National Eligibility- cum- Entrance Test.'

(emphasis supplied)

[8] In terms of the amended Clause 5, the Reservation of Seats in Medical Colleges for respective categories shall be as per applicable laws prevailing in the States and the Union Territories. Since the Manipur State Government MBBS/BDS Entrance Examination Rules, 2004 as amended, provide for different eligibility criteria for persons with disability, more particularly, rule 19 (iv), non-consideration of the writ petitioner's claim in the counselling was correct and it is in order. He fairly conceded that as per Chapter-II clause 4(3) of the MCI Regulation 5% seat should be reserved for candidates with benchmark disability which the State Government has failed to amend and it is still 3%. The statement of the learned Advocate General is evident from Annexure-A/10 dated 12.6.2018 extracted in para No.2 of this order. He however pleads that in terms of para 19 (iv) of 2004 State Government Rules, the benchmark disability is different referring to Annexure-A/10 dated 12.6.2018 which is a reflection of Rule 19(iv) set out in para No.5 of this order. Since the seat is from state quota, the State Government Rules 2004 as amended has to apply. He therefore prayed for setting aside the Single Judge's order. No other plea was advanced.

Respondent/Writ petitioner

[9] Ms. Babita Th., learned counsel for the respondent/writ petitioner reiterated the plea made before the learned Single Judge and further pleaded that the

amended Medical Council of India Regulation Clause 4(3) and Clause (5) make it clear that the intake of the students as per the Rights of Persons with Disabilities Act, 2016, Act 49 of 2016, is 5% of the annual sanctioned intake capacity whereas the State Government Rules, 2004 as amended provide for only 3%. Further, the eligibility criteria for persons who are physically challenged should be in accordance with the Central Act 49 of 2016 and incorporated by the Medical Council of India in its regulations. The State Government cannot prescribe a different parameters other than what has been prescribed under the Central Act. To further the said plea, she relies upon a decision of Hon'ble Supreme Court reported in the case of UCO Bank and anr. Vs. Dipak Debbarma & ors. reported in (2017) 2 SCC 585.

Ms. Babita, learned counsel further distinguished the plea of the State that the addition of the word eligibility criteria in Clause 4(b) of the NEET Information Bulletin is not in accordance with Medical Council of India Regulation Chapter-II Clause 5 where it provides reservation of seats for respective categories as per the prevailing laws in States and Union territories and it does not speak about "eligibility criteria". If the NEET Information Bulletin includes certain words or conditions like "eligibility criteria" which is not found in Chapter II clause 5 of the Medical Council of India Regulations as amended, then the word or the term specified in the Medical Council of India Regulations alone should be made applicable. To substantiate her plea, she relied the decision of the Hon'ble Supreme Court in the case of Ashish Kumar vs. State of Uttar Pradesh & ors. reported in (2018) 3 SCC 55, the relevant para Nos.26 and 27 are quoted as under:-

"26. In the counter affidavit filed in this court by the state, 1991 rules have been accepted to be the relevant rules regulating the recruitment as has been noted in the Paragraph Xiii extracted above. The qualification prescribed in the Rules does not provide for L.T./B.T. B.Ed. as essential qualification. Thus non - possession of L.T./B.T. B.Ed. does not make him disqualified for the post as per Statutory Rules of 1991. Appellant is post- graduate in psychology and thus, also fulfill the qualification prescribed in the 1991 Rules.. The respondent in counter affidavit had themselves come with the case that the appointment has to be made in accordance with the statutory rules. When under the statutory rules, 1991, appellant fulfill the qualification; there is no occasion to deny appointment to him.

27. Any part of the advertisement which is contrary to the statutory rules has to give way to the statutory prescription. Thus, looking to the qualification prescribed in the statutory rules, appellant fulfills the qualification and after being selected for the post denying appointment to him is arbitrary and illegal. It is well settled that when there is variance in the advertisement and in the statutory rules, it is statutory rules which take precedence. In this context, reference is made in judgment of this Court in the case of Malik Mazhar Sultan & Anr. vs. U.P. Public Service Commission & Ors., 2006 (9) SCC 507. Paragraph 21 of the judgment lays down above proposition which is to the following effect:

"21. The present controversy has arisen as the advertisement issued by PSC stated that the candidates who were within the age on 01.07.2001 and 01.07.2002 shall be treated within age for the examination. Undoubtedly, the excluded candidates were of eligible age as per the advertisements but the recruitment to the service can only be made in accordance with the Rules and the error, if any, in the advertisement cannot override the Rules and create a right in favour of a candidate if otherwise not eligible according to the Rules. The relaxation of age can be granted only of permissible under the Rules and not on the basis of the advertisement. If the interpretation of the Rules by PSC when it issued the advertisement was erroneous, no right can accrue on basis thereof. Therefore, the answer to the question would turn upon the interpretation of the Rules."

She further pleaded that a reading of Section 2(r) read with 2(zc) of Act 49 of 2016 and Schedule to the Act 49 of 2016 makes it clear that the respondent/writ petitioner is eligible for consideration because the threshold to consider a claim of a person with benchmark disability would mean a person with not less than 40% disability and the disability as specified in the Schedule. Since as per the certificate produced by the respondent/writ petitioner and also based on the State Medical Board certificate issued consequent upon the impugned order of the learned Single Judge, the petitioner is suffering from 44% locomotor disability, he qualifies in terms of Sec. 2(r) and 2(zc) and the Schedule to the Act 49 of 2016. The writ petitioner will be entitled to be considered for selection under the disability quota in terms of Act 49 of 2016 and MCI Regulations.

Medical Council of India

[10] Shri B.R.Sharma, learned counsel appearing for the Medical Council of India primarily refers to Medical Council of India Regulations. He pleads that Chapter-II, Clause 4 (3) provides that 5% of seats of the annual sanctioned intake capacity should be filled up by candidates with benchmark disabilities in accordance with the provisions of Rights of Persons with Disabilities Act, 2016 based on the merit list of National Eligibility-cum-Entrance Test. It also provides that for the purpose of Specified Disability, the Schedule to the Rights of Persons with Disabilities Act, 2016 should be adopted. He pleaded that there is no scope for the State Government to take a different view from the Central Act. Besides, it is pleaded in common both by Mr.B.R.Sharma and Ms. Th.Babita Devi that Manipur State Government 2004 Rules as amended in 2014 would pale into insignificance in the light of the Central Act 49 of 2016 and more so, when the State Government accepts the Medical Council of India Regulations in pith and substances. It was therefore pleaded that the writ appeal should be dismissed.

Legal position

[11] The law that provides for the Rights of Persons with Disabilities Act, 2016 Act 49 of 2016 was given effect to based on the United Nations Convention which India is a signatory. The Statement of Objects and Reasons of the Act 49 of 2016

which came into force on 19.4.2017 reads as follows:-

"Statement of Objects and Reasons.- The persons with Disabilities (Equal Opportunities, protection of Rights and Full Participation) Act, 1995 was enacted to give effect to the Proclamation on the Full Participation and Equality of the People with Disabilities in the Asian and Pacific Region. The Act defines Persons with Disabilities as those having not less than forty per cent. disability and identified seven categories of disabilities, namely, blindness, low vision, hearing impairment, locomotor disability, mental retardation, mental illness and leprosy-cured.

2. Over a period of time, the conceptual understanding of the rights of persons with disabilities has become more clear and there has been world-wide change in approach to handle the issues concerning persons with disabilities. The United Nations adopted its Conventions on the Rights of the Persons with Disabilities laying down the principles to be followed by the States Parties for empowerment of persons with disabilities. India signed the said Convention and subsequently ratified the same on the 1st day of October, 2007. The Convention came into effect on the 3rd day of May, 2008. Being a signatory to the Convention, India has an international obligation to comply with the provisions of the said Convention which required an entirely new legislation.

3. In 2010, an Expert Committee constituted under the Chairmanship of Dr. Sudha Kaul, Vice-Chairperson, India Institute of Cerebral palsy, Kolkata submitted its report in 2011, suggesting a Draft Bill relating to the Rights of Persons with Disabilities. The draft Bill was extensively debated upon at various levels involving State Governments and Union Territories and various Stakeholders.

4. The salient features of the Rights of Persons with Disabilities Bill, 2014, inter alia, are:-

- (i) Nineteen specified disabilities have been defined;
- (ii) the persons with disabilities enjoy various rights such as right to equality, life with dignity, respect for his or her integrity, etc., equally with others;
- (iii) duties and responsibilities of the appropriate Government have been enumerated;
- (iv) all educational institutions funded by appropriate Government shall provide inclusive education to the children with disabilities;
- (v) A National Fund is proposed to provide financial support to persons with disabilities;
- (vi) Stakeholders' participation in the policy making through Central and State Advisory Boards;
- (vii) Increase in reservation in posts from existing three per cent. to five per

cent. in the vacancies for persons or class of persons with benchmark disabilities in every establishment and reservation of seats for students with benchmark disabilities in higher educational institutions;

(viii) Setting up of National Commission and State Commission to act as Grievance Redressal Mechanism, monitor, implementation of the proposed legislation replacing the Chief Commissioner and State Commissioners for persons with disabilities, respectively,

(ix) Guidelines to be issued by the Central Government for issuance of certificates of specified disabilities;

(x) Penalties for offences committed against persons with disabilities; and

(xi) Court of Sessions to be designated as Special Court by the State Government in every district to try offences.

5. The Bill seeks to achieve the above objects."

[12] (a) Section 2 (r) and 2(zc) of the Act 49 of 2016 are the core issues to be considered in the present appeal and it read as follows:-

"2. Definitions:

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(r) "person with benchmark disability" means a person with not less than forty per cent. of a specified disability where specified disability has not been defined in measurable terms and includes a person with disability where specified disability has been defined in measurable terms, as certified by the certifying authority;

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

THE SCHEDULE

[See clause (zc) of section 2]

SPECIFIED DISABILITY

1. Physical disability.-

A. Locomotor disability (a person's inability to execute distinctive activities associated with movement of self and objects resulting from affliction of musculoskeletal or nervous system or both), including-

(a) "leprosy cured person" means a person who has been cured of leprosy but is suffering from-

- (i) loss of sensation in hands or feet as well as loss of sensation and paresis in the eye and eye-lid but with no manifest deformity;
- (ii) manifest deformity and paresis but having sufficient mobility in their hands and feet to enable them to engage in normal economic activity;
- (iii) extreme physical deformity as well as advanced age which prevents him/her from undertaking any gainful occupation, and the expression "leprosy cured" shall construed accordingly;
- (b) "cerebral palsy" means a Group of non-progressive neurological condition affecting body movements and muscle coordination, caused by damage to one or more specific areas of the brain, usually occurring before, during or shortly after birth;
- (c) "dwarfism" means a medical or genetic condition resulting in an adult height of 4 feet 10 inches (147 centimeters) or less;
- (d) "muscular dystrophy" means a group of hereditary genetic muscle disease that weakens the muscles that move the human body and persons with multiple dystrophy have incorrect and missing information in their genes, which prevents them from making the proteins they need for healthy muscles. It is characterized by progressive skeletal muscle weakness, defects in muscle proteins, and the death of muscle cells and tissue;
- (e) "acid attack victims" means a person disfigured due to violent assaults by throwing of acid or similar corrosive substance."

(b) Section 32 of the Act 49 of 2016 provides for reservation in higher education and it reads as follows:-

"32. Reservation in higher education institutions.- (1) All Government institutions of higher education and other higher education institutions receiving aid from the Government shall reserve not less than five per cent. seats for persons with benchmark disabilities.

(2) The persons with benchmark disabilities shall be given an upper age relaxation of five years for admission in institutions of higher education."

(c) In Chapter XVII, Section 96 of the Act 49 of 2016 provides that the provisions of the Act shall be in addition to and not in derogation of the provisions of any other law for the time being in force.

[13] In the present case, it is pertinent to point out that the State Government, which is harping on the 2004 rules as amended, has not chosen to comply with the requirement of Section 32 and provide 5% seats for persons with benchmark disability vide Annexure-A/10 at para 2 of this order and Rule 19(iv) of the 2004 State Rules. The notification dated 12.6.2018 relied upon by the State Government consciously and erroneously provides for 3% reservation in defiance to the Central Act 49 of 2016. It shows the scant disregard that the State

Government and the Director of Health Services has to the provisions of the Central Act 49 of 2016.

In so far the present case is concerned, if the petitioner as per definition 2(r) and 2(zc) and the Schedule to the Act 49 of 2016 suffers from the benchmark disability as per Schedule then as per the provisions of the Act 49 of 2016 and MCI Regulations he is entitled to be considered for selection under the physically challenged quota. In the present case, respondent/writ petitioner qualifies on all aspects.

Application of the State Law

[14] The issue is whether the State/appellant can rely upon the 2004 Rules, as amended which was in vogue prior to coming into force Act 49 of 2016, to plead that the respondent/writ petitioner in this case is ineligible. Learned Single Judge was justified in rejecting the state's contention that the 2004 Rules has no application in the light of the Central Act 49 of 2016 because Medical Council of India Regulations, more particularly, Chapter II clause 4(3) as amended provides for 5% seats of annual sanctioned intake capacity for candidates with benchmark disability which is as per Section 32 of the Act 49 of 2016. This position is conceded by learned Advocate General stating that State Government has erred in not providing 5% seats to physically challenged category. If Central Act 49 of 2016 applies for 5% seat reservation it will apply in all respects including specified benchmark disability. The MCI Regulations also provides that candidates who suffer from the specified disability as per schedule to Act 49 of 2006, which has also been reproduced in the Appendix-G to the Medical Council of India Regulations are entitled to the benefit of the Act 49 of 2016. In the amendment to the MCI Regulation dated 22.01.2018, the Central Act 49 of 2016 has been fully made applicable.

The writ petitioner in the present case satisfies the eligibility criteria specified in Section 2(r) read with Section 2(zc) and the Schedule to the Central Act 49 of 2016. The State Medical Board has examined him and certified that he is suffering from Locomotor disability @ 44%. This is above the 40% benchmark specified in Section 2(r). The specified disability mentioned in 2(zc) and the schedule to Act 49 of 2016 is the same as per State Medical Board certificate. The State Government is bound by the Medical Council of India Regulations and the learned Advocate General does not dispute in this aspect. Therefore, there is no question of violating Chapter-II clause 4 (3) of MCI Regulations under any circumstances.

The apparent confusion that has arisen in the mind of the State is on account of misreading of Chapter-II clause (5) of the Medical Council of India Regulations notified by amendment notification dated 22.1.2018, which has been extracted above and the NEET Information Bulletin. MCI Regulations in Chapter II Clause (5) speaks about reservation of seats in medical colleges for the respective categories as per the laws prevailing in the State. It does not deal with rights of persons with disability specified under the Central Act 49 of 2016. The

reservation of seats in so far as persons with disability is concerned has been determined in Section 32 of Act 49 of 2016 at 5%. Hence, the reservation as contemplated in Chapter II clause 5 of MCI Regulations will be only in relation to other aspects of reservation of seats which the State Government is entitled to. The State is not entitled to encroach upon the rights of persons with disability as provided under the Central Act 49 of 2016.

Based on NEET Information Bulletin which has included the word eligibility criteria is stated as per State Government 2004 Rules as amended, in particular, Rule 19 (iv), the respondent/writ petitioner is not eligible. This is a fallacious contention. The State Government 2004 Rules will have no application in the light of Central Act 49 of 2016. The State Rules cannot amend the benchmark disability contrary to Sec. 2(r) and Sec. 2(zc) and the Schedule to Central Act 49 of 2016. On the contrary, it has to be in tune with the Central Act. The word eligibility criteria has been misconstrued by the State. It relates to law applicable to the State. In this case, State does not fall back on any legislation. It concedes that Central Act 49 of 2016 is applicable, the MCI Regulations is applicable. However the plea of State eligibility criteria is stated based on a misreading of MCI and the NEET Information Bulletin. The rights of persons with disability cannot be taken away or whittled down by an archaic rule of the year 2004 and in any event, it cannot override the Central Act 49 of 2016.

[15] In this regard, the decision of the Hon'ble Supreme Court in the case of UCO Bank and anr. Vs. Dipak Debbarma & ors. reported in (2017) 2 SCC 585 will be more apt. In this case, the Hon'ble Supreme Court was deciding a case arising out of a provision of Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 which was challenged as an infraction to Section 187 of the Tripura Land Revenue and Land Reforms Act, 1960. In para No.6, 7, 8, 9, 10 and 11, the Hon'ble Supreme Court held as follows:--

"6. Repugnancy or inconsistency between the provisions of Central and State enactments can occur in two situations. The first, in case of a Central and a State Act on any field of entry mentioned in List III of the Seventh Schedule (Concurrent List). To such a situation of repugnancy or inconsistency, the provisions of Article 254 of the Constitution would apply. If there is such an inconsistency, Article 254(1) makes it very clear that the central law will prevail subject, however, to the provisions of Article 254(2) and further subject to proviso to Article 254(2). The above position would be clear from the opinion rendered by a three Judges Bench of this Court in M/s Hoechst Pharmaceuticals Ltd. and Ors. vs. State of Bihar and Ors., (1983) 4 SCC 45.

7. Para 67 of the aforesaid opinion which may be usefully noticed is in the following terms:

"67. Article 254 of the Constitution makes provision first, as to what would happen in the case of conflict between a Central and State law with regard to the subjects enumerated in the Concurrent List, and secondly, for resolving such

conflict. Article 254(1) enunciates the normal rule that in the event of a conflict between a Union and a State law in the concurrent field, the former prevails over the latter. Clause (1) lays down that if a State law relating to a concurrent subject is 'repugnant' to a Union law relating to that subject, then, whether the Union law is prior or later in time, the Union law will prevail and the State law shall, to the extent of such repugnancy, be void. To the general rule laid down in clause (1), clause (2) engrafts an exception viz., that if the President assents to a State law which has been reserved for his consideration, it will prevail notwithstanding its repugnancy to an earlier law of the Union, both laws dealing with a concurrent subject. In such a case, the Central Act, will give way to the State Act only to the extent of inconsistency between the two, and no more. In short, the result of obtaining the assent of the President to a State Act which is inconsistent with a previous Union law relating to a concurrent subject would be that the State Act will prevail in that State and override the provisions of the Central Act in their applicability to that State only. The predominance of the State law may however be taken away if Parliament legislates under the proviso to clause (2). The proviso to Article 254(2) empowers the Union Parliament to repeal or amend a repugnant State law, either directly, or by itself enacting a law repugnant to the State law with respect to the 'same matter'. Even though the subsequent law made by Parliament does not expressly repeal a State law, even then, the State law will become void as soon as the subsequent law of Parliament creating repugnancy is made. A State law would be repugnant to the Union law when there is direct conflict between the two laws. Such repugnancy may also arise where both laws operate in the same field and the two cannot possibly stand together: See *Zaverbhai Amaldas v. State of Bombay*, (1955) 1 SCR 799; *M. Karunanidhi v. Union of India*, (1979) 3 SCR 254 and *T. Barai v. Henry Ah Hoe*, (1983) 1 SCC 177."

8. The above view has been reiterated in *State of W.B. vs. Kesoram Industries Ltd. and Ors*, (2004) 10 SCC 201. There are several other pronouncements of this Court on the aforesaid issue. The same, however, would not require any mention as any such reference would be only a multiplication of discussions on what appears to be a settled issue. In the present case, however, the question before this Court is not one of repugnancy between a Central and a State law relatable to an Entry in List III (Concurrent List). No further attention to the above aspect of the matter would, therefore, be required.

9. The second situation of repugnancy or inconsistency as in the present case is between to a subsequent Central law (Act of 2002) covered by Entry 45 of List I and an earlier State law (Tripura Act of 1960) relatable to Entries 18 and 45 of List II. How such a situation is to be resolved and answered and which legislation would have primacy is the moot question that arises for consideration in the present appeals.

10. Article 246 of the Constitution of India is in the following terms.

"246. Subject-matter of laws made by Parliament and by the Legislatures of

States:-

(1) Notwithstanding anything in clauses (2) and (3), Parliament has exclusive power to make laws with respect to any of the matters enumerated in List I in the Seventh Schedule (in this Constitution referred to as the 'Union List')

(2) Notwithstanding anything in clause (3), Parliament and, subject to clause (1), the Legislature of any State also, have power to make laws with respect to any of the matters enumerated in List III in the Seventh Schedule (in this Constitution referred to as the 'Concurrent List')

(3) Subject to clauses (1) and (2), the Legislature of any State has exclusive power to make laws for such State or any part thereof with respect to any of the matters enumerated in List II in the Seventh Schedule (in this Constitution referred to as the 'State List')

(4) Parliament has power to make laws with respect to any matter for any part of the territory of India not included (in a State) notwithstanding that such matter is a matter enumerated in the State List"

11. In interpreting Article 246 regard must be had to the constitutional scheme which visualises a federal structure giving full autonomy to the Union Parliament as well as to the State legislatures in their respective/demarcated fields of legislation. The problem may, however, become a little more complex than what may seemingly appear as the two legislations may very well be within the respective domains of the concerned legislatures and, yet, there may be intrusion into areas that fall beyond the assigned fields of legislation. In such a situation it will be plain duty of the Constitutional Court to see if the conflict can be resolved by acknowledging the mutual existence of the two legislations. If that is not possible, then by virtue of the provisions of Article 246(1), the Parliamentary legislation would prevail and the State legislation will have to give way notwithstanding the fact that the State legislation is within the demarcated field (List II). This is the principle of federal supremacy which Article 246 of the Constitution embodies. The said principle will, however, prevail provided the pre-condition exists, namely, the Parliamentary legislation is the dominant legislation and the State legislation, though within its own field, has the effect of encroaching on a vital sphere of the subject or entry to which the dominant legislation is referable. This is the principle that is discernible from the Constitution Bench judgment of this Court in *State of West Bengal and Ors. vs. Committee for Protection of Democratic Rights, West Bengal and Ors.*[3] Paragraphs 25, 26 and 27 which illuminates the issue may be conveniently extracted below.

"25. The non obstante clause in Article 246(1) contemplates the predominance or supremacy of the Union Legislature. This power is not encumbered by anything contained in clauses (2) and (3) for these clauses themselves are expressly limited and made subject to the non obstante clause in Article 246(1). The State Legislature has exclusive power to make laws for such State or any part thereof

with respect to any of the matters enumerated in List II in the Seventh Schedule and it also has the power to make laws with respect to any matters enumerated in List III (Concurrent List). The exclusive power of the State Legislature to legislate with respect to any of the matters enumerated in List II has to be exercised subject to clause (1) i.e. the exclusive power of Parliament to legislate with respect to matters enumerated in List I. As a consequence, if there is a conflict between an entry in List I and an entry in List II, which is not capable of reconciliation, the power of Parliament to legislate with respect to a matter enumerated in List II must supersede pro tanto the exercise of power of the State Legislature.

26. Both Parliament and the State Legislature have concurrent powers of legislation with respect to any of the matters enumerated in List III. The words "notwithstanding anything contained in clauses (2) and (3)" in Article 246(1) and the words "subject to clauses (1) and (2)" in Article 246(3) lay down the principle of federal supremacy viz. that in case of inevitable conflict between the Union and State powers, the Union power as enumerated in List I shall prevail over the State power as enumerated in Lists II and III and in case of an overlapping between Lists II and III, the latter shall prevail.

27. Though, undoubtedly, the Constitution exhibits supremacy of Parliament over the State Legislatures, yet the principle of federal supremacy laid down in Article 246 of the Constitution cannot be resorted to unless there is an irreconcilable direct conflict between the entries in the Union and the State Lists. Thus, there is no quarrel with the broad proposition that under the Constitution there is a clear demarcation of legislative powers between the Union and the States and they have to confine themselves within the field entrusted to them. It may also be borne in mind that the function of the lists is not to confer powers; they merely demarcate the legislative field."

[16] In the present case, there cannot be any dispute that the Rights of Persons with Disability Act, 2016, Act 49 of 2016 is a Central Act and it governs the field. The Rules 2004 framed by the State of Manipur, more particularly, Rule 2004 as amended should be in consonance with the Central Act 49 of 2016 and not in derogation of the same. In the light of the decision of the Hon'ble Supreme Court in UCO Bank case (supra), the State cannot take shelter under its 2004 State Rules as amended, to deny the respondent/writ petitioner his rightful claim.

The contention that the NEET Information Bulletin specifies eligibility criteria in clause (iv)(b) has been mis-read by the State Government because that eligibility criteria apparently relates to issues other than claims of persons falling under the Central Act 49 of 2016. In the State of Kerala and State of Tamil Nadu, the admission to Post Graduate and Medical courses provides that nativity to the State is one of the eligibility criteria. Similarly, in the State of Manipur also, nativity is one of the eligibility criteria. This eligibility criteria cannot be mis-read to deny the rights of persons who suffer from specified disability. It is a right guaranteed under the Central Act 49 of 2016. The State Government cannot

whittled down the Central Act 49 of 2016 on the basis of the 2004 Manipur Rules which is not in line with the Central Act 49 of 2016 both in terms of Section 32 and in terms of the definition in relation to person with benchmark disability. Hence, the state rule has no legal basis to deny the respondent/writ petitioner his lawful right under Act 49 of 2016.

[17] We hold that the reliance placed by the State Government on its 2004 rules has no legal basis. As a result, we hold that the order of the learned Single Judge as modified by the interim order pending the writ petition and the direction issued in para No.10 are in consonance with the direction of the Hon'ble Supreme Court in the case of Parmod vs. Union of India & ors. CA No.10353 of 2018 which has been reflected in para No.9 of the learned Single Judge order, which reads as follows:-

"[9] Having decided the issue involved herein in terms of the decision rendered by the Hon'ble Supreme Court as stated hereinabove, the next question is as to what relief be granted to the petitioner in the facts and circumstances of the case. It has been submitted by Ms. Th. Babita, the learned counsel appearing for the petitioner that since the petitioner was denied admission to MBBS/ BDS course for the session, 2018-19 for no fault of his, the State Government be directed to keep one seat reserved out of the total seats allocated for the session, 2019-20 to accommodate the petitioner. In order to support of her contention, she has relied upon the decision rendered on 09-10-2018 by the Hon'ble Supreme Court in [18] W.P. (C) No. 850 of 2018 Contd.../- Parmod & ors. Vs. Union of India, CA No. 10353 of 2018 wherein the appellants were illegally deprived admission in MBBS course, the Hon'ble Supreme Court directed that the appellants be admitted in the next year, in MBBS course by reducing the seats for the next academic session. The relevant portion of the decision is reproduced hereinbelow: "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." The facts of the said case are identical with that of the present case and in the present case also, the petitioner was denied admission in MBBS course illegally for the reason that the provisions of the Act, 2016 and the Regulations, 1997 have been completely violated by the State Government while conducting the process of selection/ nomination. Had the provisions of the Act, 2016 and the Regulations, 1997 been followed by the State Government, the case of the petitioner could have been [19] W.P. (C) No. 850 of 2018 Contd.../-considered

for admission to MBBS/ BDS courses for the session, 2018-19. The conduct of selection/ nomination of candidates for admission to MBBS/ BDS course by the State Government in terms of its old rules which are absolutely contrary to that of the Regulations, 1997, as amended, is highly unreasonable and unfair. It is the right time for the State Government to look into the matter and take corrective measures so as to obviate such problems in future."

[18] In the result, we are unable to find any merit in the present appeal and accordingly, the appeal stands dismissed.

[19] We record our appreciation for the good and able assistance rendered by Ms. Babita, the learned counsel for the respondent/writ petitioner, learned Advocate General and Mr.B.R.Sharma, learned counsel for the Medical Council of India.