
(2019) 07 J&K CK 0039

In the Jammu And Kashmir High Court

Case No : Writ Petition (WP) No. 2573 Of 2019, CM No. 5179 Of 2019

Vasundhara Sharma

APPELLANT

Vs

State Of Jammu & Kashmir And & Ors

RESPONDENT

Date of Decision : 25-07-2019

Acts Referred:

Jammu And Kashmir Rights Of Persons With Disabilities Act, 2018 — Section 32, 34
Indian Medical Council Act, 1956 — Section 33
Jammu And Kashmir Reservation Rules, 2005 — Rule 13, 14

Citation : (2019) 07 J&K CK 0039

Hon'ble Judges : Tashi Rabstan, J

Bench : Single Bench

Advocate : P.N. Raina, Deeksha Handoo, F.A. Natnoo, Deepika Mahajan, H.A. Siddiqui

Final Decision : Disposed Off

Judgement

Tashi Rabstan, J

1. It is averred by the petitioner that while competing NEET-UG 2019 for admission in MBBS Course, she had applied as a candidates falling under the category of "persons with Benchmark Disability" as prescribed under the provisions of the Jammu & Kashmir Rights of Persons with Disabilities Act, 2018, read with Amendment Notification No.MCI-34(410/2018-MED./170045 dated 04.02.2019, as she has been suffering from Thalassaemia major (Benchmark Disability). However, on declaration of the result, she has not been included in the select list as she has not been considered under the said category, even though she has secured 415 points. Hence, the present writ petition.

2. Learned senior counsel appearing for petitioner argued that Benchmark disability is not a reservation under the J&K Reservation Act, rather

Benchmark disabilities have already been notified under the Jammu & Kashmir Rights of Persons with Disabilities Act, 2018 and under this Act the

petitioner is entitled to consideration of her selection and admission to MBBS Course.

3. Objections have been filed on behalf of respondent No.1 contending therein that as per MCI Guidelines, 5% seats of the annual sanctioned intake

shall be filled by candidates falling under Persons with Bench Mark Disabilities in accordance with the Rights of Persons with Disabilities Act, 2016.

However, as per Clause 5 (III) of MCI Regulations, 1997 as amended upto May, 2018, the reservation of seats in Medical Colleges for respective

categories shall be as per applicable laws prevailing in States/Union Territories. Thus, for conduct of counseling and allotment of seats, the Board

takes into consideration the Reservation Policy of the State Government and the Rules in vogue on the subject and that the State of J&K is not

contributing to the 15% All India Quota notified by the National Testing Agency in the NEET Information Bulletin for National Eligibility-cum-

Entrance Test (UG), 2019 providing information about eligibility and reservation in admissions. It is averred that the reservation rules have been

notified by the Government vide SRO 294 of 2005 dated 21.10.2005 framed under the J&K Reservation Act of 2004 and the same has been applied

by the answering respondent in letter and spirit while notifying the select list on 05.07.2019. It is contended that as per Rules 13 and 14 of the

Reservations Rules, there is no reservation for admission to professional institutions at WP(C) 2573/2019 under graduate level for Persons with

Disabilities. Further, it is contended that there is no provision in the J&K Rights of Persons with Disabilities Act, 2018 which provides reservation to

Persons with Disabilities for admission in professional institutions, rather there is only provision under Section 34 which provides for reservation in case

of persons with Benchmark disabilities in respect of recruitment in Government services for posts to be identified by the Government. The petitioner

has obtained 415 points in the NEET UG 2019 and since there is no reservation for Persons with Disabilities in the State of J&K, she has been treated

as Open Merit Candidate.

4. I have heard learned counsel appearing for the parties and perused the file.

5. Admittedly, the State of Jammu and Kashmir enacted the J&K Jammu and

Kashmir Rights of Persons with Disabilities Act, 2018 and the same came into force from the date of its publication in the Government Gazette, i.e., 04.12.2018. The Act addresses various matters related to Persons with Disabilities (PwDs) with enhanced effectiveness. It secures and protects the interests of PwDs in the matters relating to health, rehabilitation and education. The Act also provides reservation for admission of PwDs in educational institutions without discrimination. It would be relevant to reproduce Section 32 of the Jammu and Kashmir Rights of Persons with Disabilities Act, 2018:

32. Reservation in higher educational 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.

6. A plain reading of this section clearly reveals that all Government institutions of higher education and other higher education institutions receiving aid

from the Government are required to reserve not less than five per cent seats for persons with benchmark disabilities.

7. In the admissions of persons with Benchmark disabilities in MBBS Course or other higher courses in medical institutions, the Medical Council of

India under the powers conferred by Section 33 of the Indian Medical Council Act, 1956 has also made regulations, i.e., Regulations on Graduate

Medical Education (Amendment), 2019 vide amendment Notification dated 04.02.2019, which provides for 5% seats of annual sanctioned intake, to be

filled by persons with Benchmark disabilities, relevant extract whereof is reproduced hereunder:

5% of the annual sanctioned intake capacity in Government or Government aided higher educational institutions 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.

8. Thus, Medical Council of India has also made regulations reserving 5% of the annual sanctioned intake capacity in Government or Government

aided higher educational institutions for the persons with benchmark disabilities

in accordance with the provisions of the Rights of Persons with Disabilities Act, 2016.

9. Further, Clause 5(b)(ii) of the Information Bulletin for National Eligibility-cum-Entrance Test (UG), 2019 clearly provides that reservation of the

seats in medical colleges for respective categories shall be as per applicable laws prevailing in State/Union Territory concerned; meaning thereby the

J&K Board of Professional Entrance Examinations (BOPEE) has to strictly adhere Section 32 of the Jammu and Kashmir Rights of Persons with

Disabilities Act, 2018 providing reservation in higher educational institutions for persons with benchmark disabilities. Since the said Act came into

force with effect from 04.12.2018, i.e., well before the petitioner competed NEET-UG 2019 entrance test, as such respondent No.1 is required to

strictly adhere to Section 32 of the Act while providing reservation to persons with benchmark disabilities. Therefore, I do not find force in the

argument of learned counsel for respondent No.1 that J&K Rights of Persons with Disabilities Act does not apply to persons with benchmark

disabilities.

10. A Division Bench of this Court in a case, titled as, Dr. Arvind Kohli and another vs Dr. Sham Singh & others (LPA Nos.175/2010 and 181/2010),

reported as 2011 Legal Eagle 746, while relying on a decision of constitutional bench of the Apex Court in Harish Verma and others vs Ajay

Srivastava & another, has held that the statutory prescriptions contained in the Indian Medical Council Act, 1956 have to be mandatorily followed,

more so, when such requirements prescribed under the Medical Council of India Act have been made part of the requirement under the 1979

Recruitments Rules of the State of Jammu and Kashmir.

11. Further, while dealing with an identical matter on the subject, the Apex Court in case, titled as, Sruchi Rathore vs Union of India, has vide order

dated 18.08.2017 in WP(C) 620/2017 directed to admit the petitioner therein, who was also suffering from Thallasaemia major, in the MBBS Course

after due counseling.

12. Viewed thus, I deem it proper to dispose of the writ petition with a direction to J&K Board of Professional Entrance Examinations (BOPEE),

respondent No.1 herein, to strictly adhere Section 32 of the Jammu and Kashmir Rights of Persons with Disabilities Act, 2018 read with Amendment

Notification No.MCI-34(41)/2018-Med./170045 dated 04.02.2019 for admission of persons to the MBBS Course, who competed NEET-UG 2019

entrance test under the category of Persons with Benchmark Disabilities. Ordered accordingly. Connected CM, accordingly, stands disposed of.