
(2019) 08 RAJ CK 0213
In the Rajasthan High Court
Case No : Civil Writ Petition No. 11277 Of 2019

Vikas

APPELLANT

Vs

State Of Rajasthan And Ors

RESPONDENT

Date of Decision : 26-08-2019

Acts Referred:

Constitution Of India, 1950 — Article 14, 19(1)(g), 21

Citation : (2019) 08 RAJ CK 0213

Hon'ble Judges : Dinesh Mehta, J

Bench : Single Bench

Advocate : Juhi Mathur, Kailash Choudhary, Manish Vyas

Final Decision : Allowed

Judgement

By way of the present writ petition, the petitioner has sought following reliefs :

"(i) The respondents may kindly be directed to keep one seat vacant in course of MBBS commencing from 2019-20 to protect the rights of the petitioner.

(ii) The respondents may be directed to subject the petitioner to medical examination by a medical board to assess his disability and consider his admission on basis of the report of the Medical Board.

(iii) The respondents may kindly be directed to grant admission to the petitioner in MBBS Course based on merit in NEET Examination, 2019.

(ii) Any other relief which this Hon'ble Court deems just and proper in favour of the petitioner, may kindly be granted and

(iii) the cost of the writ petition be allowed in favour of the petitioner."

The facts in nutshell are that the petitioner appeared in National Eligibility cum Entrance Text (UG), 2019 (hereinafter referred to as the 'NEET 2019') as a candidate under Persons with Disability (PwD) category.

The petitioner secured 30th position in his category (PwD category), however, he

was refused admission in MBBS Course, in wake of the observation made in the certificate of disability dated 29.07.2019, which contains the following stipulation :

"He is unfit due to impaired right hand function and involvement of all four limbs"

At the time of issuing notices, based upon petitioner's pleadings, this Court vide order dated 26.07.2019 directed the respondents to constitute a Medical Board, so as to ascertain petitioner's compatibility to pursue medical course as well as the profession. In furtherance of the order so issued by this Court, an additional affidavit has been filed by the respondents and the report of Medical Board dated 29.07.2019 has been submitted.

A perusal of the report/certificate of disability dated 29.07.2019 issued by the Medical Board clearly reveals that though the petitioner is having 68% disability, yet his hand functions are fairly normal with adaptation and he can walk independently. It will not be out of place to reproduce the relevant extract of the report submitted by Medical Board, constituted in pursuance of the order of this Court :

"Candidate is not eligible for MBBS Course as per guidelines. But in our opinion, his both upper limbs including Hand functions are fairly normal with adaptation. He can walk independently."

In view of the above referred clear and categorical finding, this Court is of the firm view that the petitioner despite having 68% disability squarely falls within the eligibility criteria, which provides that a person with locomotive disability with 40% to 80% is entitled to secure admission in MBBS Course.

Learned counsel for the petitioner submits that the petitioner was not at all at fault and his candidature had been wrongly rejected by the respondents. In support of her submissions, she relied upon the judgments of this Court in Ms. Geetika Tanwar Vs. State of Rajasthan & Ors. decided on 19.12.2018 in DB Civil Writ Petition No.15318/2017 and Raghav Agrawal Vs. State of Rajasthan & Ors. decided on 13.11.2017 in DB Civil Writ Petition No.9483/2017.

In view of the judgments aforesaid and in view of the facts, as noticed above, this Court holds that rejection of petitioner's candidature is not only illegal on the basis of facts available on record, but the same falls foul to the provisions contained in the Rights of Persons with Disabilities Act, 2016. Rejection of petitioner's candidature is also violative of fundamental rights guaranteed by Articles 14, 19(1)(g) and 21 of the Constitution of India.

The present writ petition is thus, allowed.

The respondents are directed to consider the petitioner fit for admission and allot appropriate college to him in MBBS Course, based upon his merit position in NEET Examination, 2019. Needful be done within a period of one week from today.