

(2018) 08 SC CK 0109

Supreme Court Of India

Case No: Writ Petition (C) No(S). 669 Of 2018

Purswani Ashutosh (Minor)
Through Dr. Kamlesh Virumal
Purswani

APPELLANT

Vs

Union Of India & Ors

RESPONDENT

Date of Decision: Aug. 24, 2018

Acts Referred:

- Constitution of India, 1950 - Article 14, 15, 32
- Rights of Persons with Disabilities Act, 2016 - Section 2(r), 2(zc), 32
- Indian Medical Council Act, 1956 - Section 33

Citation: (2019) 14 SCC 422 : AIR 2018 SC 3999 : (2019) AllScR 31 : (2018) 3 ACJ649 : (2018) 10 Scale 228 : (2019) 5 SCJ 97 : (2018) 4 SCT 165

Hon'ble Judges: Arun Mishra, J; Indira Banerjee, J

Bench: Division Bench

Advocate: Prashant Bhushan, Govind Jee, Krishna Kumar Singh, Tara Chandra Sharma, Neelam Sharma, Pankhuri Shrivastava, Rupesh Kumar, Vikramjit Banerjee, D.N. Goburdhun, Nishish Sharma, Shubhendu Anand, Sarthak Raizada, Gurmeet Singh Makker, Raj Bahadur Yadav, Vikas Singh, Gaurav Sharma, Prateek Bhatia, Dhawal Mohan, Kapish Seth, Hemantika Wahi, Jesal Wahi, Vishakha, Mamta Singh

Final Decision: Disposed Off

Judgement

The question which arises in this writ petition under Article 32 of the Constitution of India is, whether a person with benchmark disability of low vision, within the meaning of Section 2(r), read with Clause 1B of the Schedule, of the Rights of Persons with Disabilities Act, 2016 (hereinafter referred to as the "2016 Act") can be denied the benefit of reservation for admission to the MBBS Medical Course.

On 13th December, 2006, the United Nations General Assembly adopted the United Nationsâ€™ Convention on the Rights of Persons with

Disabilities, which inter alia lays down the following principles for empowerment of persons with disabilities:

- (a) respect for inherent dignity, individual autonomy including the freedom to make oneâ€™s own choices, and independence of persons;
- (b) non-discrimination;
- (c) full and effective participation and inclusion in society;
- (d) respect for difference and acceptance of persons with disabilities as part of human diversity and humanity;
- (e) equality of opportunity;
- (f) accessibility;
- (g) equality between men and women;
- (h) respect for the evolving capacities of children with disabilities and respect for the right of children with disabilities to preserve their identities.

India ratified the United Nationsâ€™ Convention on the Rights of Persons with Disabilities on 1st October, 2007. The 2016 Act has been enacted to

give effect to the United Nationsâ€™ Convention on the Rights of Persons with Disabilities and for matters connected therewith or incidental thereto.

The Right to Equality envisaged under Articles 14 and 15 of the Constitution of India contemplates equal rights in every respect including equal right to

be considered for admission to educational institutions and related benefits.

Section 2(r) of the 2016 Act defines â€œperson with benchmark disabilityâ€ to mean â€œa 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 authorityâ€.

Specified disability has been defined in Section 2(zc) of the 2016 Act to mean the disabilities as specified in the schedule.

Visual impairment which includes low vision is a specified disability as set forth in Clause 1B of the Schedule to the 2016 Act, set out hereinunder:

â€œB. Visual Impairment-

(a) "blindness" means a condition where a person has any of the following conditions, after best correction-

(i) total absence of sight; or

(ii) visual acuity less than 3/60 or less than 10/200 (Snellen) in the better eye with best possible correction; or

(iii) limitation of the field of vision subtending an angle of less than 10 degree

(b) "low-vision" means a condition where a person has any of the following conditions, namely:-

(i) visual acuity not exceeding 6/18 or less than 20/60 upto 3/60 or upto 10/200 (Snellen) in the better eye with best possible corrections; or

(ii) limitation of the field of vision subtending an angle of less than 40 degree up to 10 degree."

Section 32 of the 2016 Act provides as follows:

"32. (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."

In Exercise of powers conferred by Section 33 of the Indian Medical Council Act, 1956, the Medical Council of India (hereinafter referred to as

"the MCI") has framed the "Regulations on Graduate Medical Education, 1997 (hereinafter referred to as the Medical Education Regulations.

By an amendment notification No. MCI 34(41)/2017-Med/169873 dated 22nd January, 2018, the MCI amended the Medical Education Regulations by the Regulations on Graduate Medical Education (Amendment), 2017.

Regulation 4(3) in Chapter II of the Medical Education Regulations under the heading "Admission, Selection, Migration and Training", as amended by the aforesaid amendment, Notification provides:

"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 (or 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 case any admission

will be after 31st of August.

Regulations 4 and 5 of the Medical Education Regulations incorporate the provisions of the 2016 Act with regard to special disability and, in particular,

Clause (zc) of Section 2 of the 2016 Act and the Schedule to the said 2016 Act.

Appendix "G" of the Medical Education Regulations enumerating specified disability includes:

B. Visual impairment-

xxx xxx xxx

xxx xxx XXX

(b) "low-vision" means a condition where a person has any of the following conditions, namely:-

(i) visual acuity not exceeding 6/18 or less than 20/60 upto 3/60 or upto 10/200 (Snellen) in the better eye with best possible corrections; or

(ii) limitation of the field of vision subtending an angle of less than 40 degree up to 10 degree.

Para 1B(b) of Appendix "G" of the Medical Education Regulation is a verbatim reproduction of paragraph 1B(b) of the Schedule to the 2016

Act.

As per the Medical Education Regulations, the Central Board of Secondary Education conducted the National Eligibility cum Entrance Test, 2018

(NEET-UG-2018) on 6th May, 2018 for admission to the Undergraduate Medical Course (MBBS/BDS) in Medical/Dental Colleges in India run with the approval of the MCI and the Dental Council of India for the academic year 2018-2019.

The Central Board of Secondary Education published an Information Bulletin for NEET(UG)2018 FOR THE Session 2018-2019, announcing inter alia eligibility and qualifications for the NEET (UG) 2018.

Paragraphs 4(a) and (b) of the Chapter titled Eligibility and Qualifications are extracted hereinbelow:

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 ELIGIBILITY 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 counselling 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/counselling authorities will draw merit list of the candidates in the respective categories declared

by the candidates at the time of applying for admission/counselling.

(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 Rights 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 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 available at Appendix-

XIV. If the seats reserve 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 this regard is available on the website of

Medical Counselling Committee " www.mcc.nic.in and on website of the Ministry of Health and Family Welfare " www.mohfw.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 counselling:

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-600003 (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.

(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.

The petitioner who suffers from a specified disability "low vision" appeared in the NEET (UG) Examination for the 2018-19 Session as a

candidate of the physically handicapped category with Registration No. 41108572 and Roll No. 502902144, securing All India Rank 468982 "Category Rank 205186. He ranked 419 in the physically handicapped category.

Aggrieved by the refusal and/or failure of the concerned respondents to give the petitioner the benefit of reservation for the physically disabled, the

petitioner approached this Court under Article 32 of the Constitution of India complaining of discrimination and arbitrariness.

By an order dated 15th June, 2018, the Vacation Bench of this Court directed that notice be issued to the respondents. In the meanwhile, the petitioner

was directed to present himself before the Medical Board of B.J. Medical College, Ahmedabad for medical examination and appropriate medical

certification with regard to his claim of sufferings from low vision.

Diverse orders were passed by this Court from time to time. By an order dated 12th July, 2018, this Court noted the submission of the MCI that an

Expert Committee formed by MCI had opined that persons with visual impairment of 40 per cent or more could not be admitted to the undergraduate

medical course, i.e. the MBBS course. The said request was pending consideration of the Central Government. This Court, however, found that there

were inconsistencies in the report, and accordingly called for expert opinion from a team of Experts consisting inter alia of three senior members of

the Ophthalmic Department on the following aspects:

"(i) The extent of the disability, with percentage if any. If yes, whether it is within the benchmark of the Disabilities Act.

(ii) Whether the petitioner with the kind of disability, if any he is suffering is fit to undertake the MBBS course.â€

By Memo No. F.5-3/RPC/MB-502/2018 dated 16th July, 2018, the Committee answered the first question in the affirmative, in favour of the

petitioner, but the second question in the negative and against the petitioner. The Committee of the Experts opined that the visual disability of the

petitioner was within the benchmark of the Disabilities Act. The petitioner was, however, not suitably fit to undertake the MBBS course as per the

MCI requirements/guidelines. The memo did not disclose the exact reasons for forming the opinion that the petitioner was not fit for the MBBS

course.

Pursuant to the directions of this Court, the petitioner filed a counter affidavit objecting to the said report. As the recommendations of the Committee

were awaiting consideration of the Central Government, this Court by an order dated 10th August, 2018 in effect gave liberty to the stakeholders for

disabled categories, including the petitioner to submit a representation to the Central Government and directed the Central Government to take an

expeditious decision so that the persons with disabilities did not suffer due to lapse of time.

The Medical Education Regulations framed under Section 33 of the Medical Council Act, 1956 have statutory force and are binding on the MCI. The

Committee having opined that the petitioner suffers from a benchmark disability, its view with regard to the suitability of the petitioner for the MBBS

course cannot override the Medical Education Regulations.

The 2016 Act, in particular Section 32 thereof, read with the Medical Education Regulations clearly provides for reservation of seats in the MBBS

Course for persons like the petitioner with specified benchmark disability of low vision.

Mr. Vikas Singh, learned senior Advocate appearing on behalf of the MCI, strenuously contended that Section 32 of the 2016 Act would not apply to

admission to a medical college for the MBBS course. It is, however, not disputed that the Medical Education Regulations are valid, subsisting, in force

and binding on the MCI. The validity of the said regulations has not been questioned.

The contention of Mr. Singh that Section 32 is not attracted since it only provides for reservation to higher educational institutions and not to technical institutions imparting technical education, appears to be fallacious since higher educational institution is a generic term which would include institutions imparting all kinds of higher education, including technical education, whereas technical institution is a specific term for those institutions which only impart technical education.

Be that as it may, as mentioned hereinabove, it is not necessary for this Court to adjudicate the question of whether Section 32 of the 2016 Act is attracted or not, in view of the admission that the Medical Education Regulations which incorporate the provisions of the 2016 Act in relation to reservation to higher educational institutions, have statutory force and are binding on the MCI. The regulations have not yet been amended by the MCI in the light of the recommendations made by its Committee and the decision taken at the Secretariat level. No amendment in the 2016 Act or in the regulations framed by the MCI have been made so far.

For the reasons discussed above, this Court holds that the petitioner cannot be denied admission to the MBBS course if he qualifies as per his merit in the category of Persons with Disability. In the event, the petitioner is found to be entitled to admission, he shall be given admission in the current academic year 2018-19.

The Writ Petition is disposed of accordingly.