

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION (ST.) NO.539 OF 2021

Anita Prakash Shinde ... Petitioner
Versus
Union of India
And Others ... Respondents

....

Mr. Gaurav Bansal i/b Ms. Rekha Musale for the Petitioner.

Mr. Ashutosh R. Gole for Respondent No.1.

Mr. Ganesh Gole for Respondent No.2.

Mr. N.C. Walimbe, AGP for Respondent Nos.3 and 4.

Mr. Aadesh J. Sawant for Respondent No.5.

....

**CORAM : S.C. GUPTE AND
SURENDRA P. TAVADE, JJ.**

DATE : 8 FEBRUARY 2021

Oral Judgement : (Per S.C. Gupte, J)

. The petition, listed at Sr. No.52 (HoB), is called at 11.00 a.m.

2 Heard learned Counsel for the Petitioner, learned AGP for Respondent State and learned Counsel for Respondent No.2-National

Medical Commission (formerly known as 'Medical Council of India'). The subject matter of controversy in the present petition is denial of admission to undergraduate medical course to the Petitioner, who is a person with disability. The Petitioner challenges both the executive decision of the Respondents in denying her admission and also the law in this behalf, which is contained in regulations called Graduate Medical Education (Amendment) Regulations, 2019.

3 The Petitioner has her left hand amputated. The disability suffered by her is said to be 'left transcarpal amputation with disability of 60 per cent'. It has been so assessed by the Disability Assessment Board of All India Institute of Physical Medicine and Rehabilitation, Mumbai. At the Petitioner's instance, she was again assessed for her disability by Grant Medical College and Sir J.J. Group of Hospitals, Mumbai, certifying her disability type as physical disability being locomotor disability and the specified category of disability under the broad sub-head "others", such as "Amputation, poliomyelitis". Both certificates declare the Petitioner to be ineligible for medical/dental course.

4 In exercise of powers conferred by Section 33 of the Indian Medical Council Act, 1956, the Medical Council of India, with the previous sanction of the Central Government, has made regulations called as Graduate Medical Education Regulations (Amendment), 2019. These regulations amend the original regulations known as

“Regulations on Graduate Medical Education, 1997”, by substituting Appendix H-1 in place of Appendix H to the original regulations in connection with admission of students with specified disabilities under the Rights of Persons with Disabilities Act, 2016 to MBBS course. The regulations, in the first place, categorize various disabilities into broad heads, such as physical disability, intellectual disability and mental disability. They then describe the various types of disabilities within these three heads, first as broad categories and then specified disabilities within these broad categories and lay down the ranges of such specified disabilities for undertaking the medical course. We are here concerned with the broad sub-head of “locomotor disability”, which includes “specified disabilities” under clauses- a to f. Clause ‘f’ provides for a residual category, described it as ‘others...such as Amputation, Poliomyelitis etc.’. So far as this category is concerned, the regulations add a note to the following effect :

“Both hands intact, with intact sensations, sufficient strength and range of motion are essential to be considered eligible for medical course.”

5 So far as the ranges of disability are concerned, the regulations describe three ranges from the point of view of eligibility for undertaking a medical course and applying through PwD quota for admission. The first is less than 40 per cent disability, which makes the candidate eligible for medical course, but not eligible for PwD

Quota (person with disability quota). The next range is between 40 to 80 per cent. A candidate within this range is eligible for medical course as well as for applying through PwD quota. The third range is above 80 per cent Disability. This range of disability makes the candidate generally ineligible subject to one exception, such exception being in favour of a person, who, even with more than 80 per cent of disability, may be allowed on a case to case basis, his or her functional competency being determined with the aid of assistive devices so as to see that with such devices, the disability can be brought to the level of below 80 per cent. If it could so be brought to the level below 80 per cent, even such candidate can undertake the medical course through PwD quota. Save for this exception, the disability range of more than 80 per cent is described as not eligible for medical course.

6 As the two certificates issued in the case of the Petitioner indicate, the Petitioner is a person with locomotor disability coming within the broad head of physical disability, her specified disability being classified as 'F', that is to say, amputation, poliomyelitis, etc. The final opinion of both expert committees as per MCI guidelines is that the Petitioner is not eligible for medical/dental course based on her disability.

7 Learned Counsel for the Petitioner submits that the Respondents are wrongfully denying admission to medical course to the Petitioner,

whose physical disability is commensurate with her capacity to undertake the course. It is submitted that MCI itself has issued a competency based curriculum, which talks about five roles of 'Indian Medical Graduate'. They are said to be those of a (i) clinician, (ii) leader and member of the health care team, (iii) communicator, (iv) lifelong learner, and (v) professional. Learned Counsel submits that candidates with disability such as the Petitioner can fulfill all these five roles with reasonable accommodation. Learned Counsel relies on several extracts and opinions, both National and International, on this subject. Based on this material, it is submitted that the type and range of disability of the Petitioner admits of her capacity and ability to undergo and successfully complete the under-graduate medical course.

8 Alternatively, it is submitted that the regulations themselves are unconstitutional, being violative of the fundamental right of the Petitioner to practice profession of her choice. It is submitted that the restrictions introduced by the Respondent-National Medical Commission for taking admission to undergraduate medical course *inter alia* by requiring that both hands of the candidate ought to be intact, is an unreasonable restriction. It is submitted that the undergraduate medical course does not involve any surgery and hence, there is no rationale for denying admission to a person with disability such as the Petitioner.

9 Learned Counsel relies on Section 3 of Rights of Persons with Disabilities Act, 2016 (for short “Disabilities Act”) and cites judgements of the Supreme Court in cases of **Veer Pal Singh Vs. Ministry of Defence**¹ and **Ramesh Chandra Agrawal Vs. Regency Hospital Ltd**² and the judgment of Kerala High Court in the case of **Aswathy. P. Vs. Union of India**³. Relying on these judgments, it is submitted that expert opinion, which forms the basis of the particular regulation or guideline of the Medical Council, is open to review through an independent body of experts. Learned Counsel implores the court to appoint such independent expert body to assess the wisdom of the expert opinion, which purportedly forms the basis of the relevant guidelines issued by MCI.

10 In the first place, any executive, quasi judicial or legislative action, based on an expert opinion, can hardly be contested in a court of law on the basis of the wisdom of that opinion. It may, however, be permissible to question an executive action or a quasi-judicial order based on the expert opinion if the court is of the view that such opinion has not been duly obtained or its credibility is in doubt. As the Supreme Court has observed in **Ramesh Chandra Agrawal** (supra), it is not the province of the expert to act as a Judge or Jury; the real function of the expert is to put before the court all materials, together with reasons which induce him to come to the

1 (2013) 8 Supreme Court Cases 83

2 (2009) 9 Supreme Court Cases 709

3 WP(C) No.27225 of 2020, decided on 25 January 2021

particular conclusion, so that the court, although not an expert, may form its own judgment by its own observation of those materials. This would be typically so in the realm of a quasi-judicial decision, which was questioned in **Ramesh Chandra Agrawal**. It was a case of medical negligence. The appellant before the court, being impaired by the treatment given to him by the respondent hospital, had filed a complaint before the National Consumer Disputes Redressal Commission alleging medical negligence. The Commission, whilst holding that negligence was not proved, relied on an opinion of an expert. It is in the context of the Commission's decision on such expert opinion that the Supreme Court made its aforesaid observations.

11 The other judgment of the Supreme Court, in the case of **Veer Pal Singh** (supra), was a case of an executive decision taken by the State relying on a recommendation of an expert body. The appellant before the court was discharged from military service on account of his illness on a recommendation of the Invalidating Medical Board held at a Military Hospital. There, the Supreme Court observed that although courts are extremely loath to interfere with an opinion of experts, there was nothing like exclusion of judicial review of a decision taken on the basis of such opinion. The court observed that what needed to be emphasized was that the opinion of experts deserved respect and not worship, and the courts and other judicial/quasi-judicial forums entrusted with the task of deciding

disputes concerning such matter, could not in every case refuse to examine the record forming the basis for determination of the opinion, so as to assess whether or not the conclusion reached by the expert body was legally sustainable.

12 Though in administrative or quasi judicial matters, it may thus be open, from this limited standpoint, to go behind or question an expert opinion, when it comes to legislative exercise by the State, it would be practically impossible to question the wisdom of any legislation based on an expert opinion. It is not open in such a case to examine the materials before the experts and assessment of such materials made by experts to form their opinion, on the basis of which the particular law is framed.

13 With these observations, let us now turn our attention to the particular legislative enactment in the present case. It is contained in the guidelines to be found in Appendix 'H-1' of the regulations framed by MCI. The guidelines *inter alia* describe various physical disabilities, their sub-types and ranges of disabilities to be considered for each sub-type for eligibility to undertake medical course. One of the stipulations so far as locomotor physical disability is concerned is that in the case of a candidate with amputation, with a view to consider the particular range of disability for assessing eligibility to undertake medical course, both hands of the candidate must be intact. If the candidate is prevented from using either of his/her

hands, there is no question of assessing the disability range with a view to see if he/she is fit for undertaking medical course. Medical Council is a body of experts and there is no gainsaying that this particular stipulation is based on its expert opinion. It is not open, for the reasons stated above, for this court to question the legislative wisdom of the Council or to question the expert opinion, on which its legislation is based.

14 As we have noticed above, the case of **Veer Pal Singh** (supra) was an instance of executive decision, whereas the case of **Ramesh Chandra Agrawal** (supra) was a case of quasi judicial decision based on an expert opinion. As we have indicated above, within the limited range of scrutiny, these executive or quasi judicial decisions may be open to review, but not so for an enactment by a legislature or a sub-ordinate legislation by an authority.

15 The case of **Aswathy P.**, decided by Kerala High Court, was on an altogether different premise. There, the argument against the candidate applying for medical admission was that the candidate was suffering from a disability on account of causes mentioned in the residuary category 'others', particularly, cerebral palsy. The court held that so far as cerebral palsy was concerned, the requirement was only that the disability of the candidate should not be more than 80 per cent and the candidate should not be suffering from impairment of vision, hearing, cognitive function, etc. The candidate's

impairment was not by reason of any locomotor disability, such as amputation, poliomyelitis, etc; her impairment was on account of cerebral palsy, and she was within the acceptable range of disability without suffering from the stated impairments. Based on this assessment, the court directed the respondents to admit the petitioner to the MBBS course applied for by her. The facts of this case are altogether different. The Petitioner there was, far from challenging the regulation, imploring the authorities to act within the regulations; she was seeking admission on the basis of the regulation, and not by questioning its wisdom. As we have noticed above, the facts of our case are wholly distinguishable from the facts before the Kerala High Court in **Aswathy P.'s** case.

16 Learned Counsel for the Petitioner submits that denial of admission to the Petitioner on account of her disability in the present case amounts to a discrimination prohibited both under Section 3 of the Rights of Persons with Disabilities Act, 2016 (“Disabilities Act”) and Article 19(1)(g) of the Constitution of India. There is no merit in this contention. Sub-Section (3) of Section 3 of the Disabilities Act, which provides for the rule against discrimination, itself recognizes the permissibility of an act of discrimination which is a proportionate means of achieving a legitimate aim. It is a legitimate aim to achieve excellence in the study and practice of medicine, which involves basics of surgery, commensurate with the rights of disabled persons to study and practice medicine. For achieving this

aim, laying down of categories of disability and providing for different ranges within which individuals with disabilities shall be allowed access to medical education can surely be described as proportionate means to achieve that aim. So far as the disability of amputation is concerned, the guidelines provide for three different ranges of disability, namely, (i) upto 40 per cent, (ii) 40 per cent and 80 per cent and (iii) above 80 per cent. Disability upto 40 per cent entitles the candidate to undertake the course, but not through PwD quota; Disability between 40 per cent and 80 per cent allows admission to the course and through PwD quota; on the other hand, disability of over 80 per cent has to be considered on a case by case basis for admission to medical course through PwD quota. For all three ranges, however, there is a uniform condition of both hands being intact, with intact sensation, sufficient strength and range of motion, for eligibility to undertake the course. This arrangement clearly amounts to a proportionate means of achieving the aforesaid legitimate aim.

17 Article 19(1)(g), which provides for the citizens' right to practice any profession, or to carry on any occupation, is also subject to reasonable restrictions generally imposed by the State by making a law, in the interests of the general public and particularly, by prescribing professional and technical qualifications necessary for practicing any profession or carrying on any occupation. Prescribing professional and technical qualification of a degree in medicine and

eligibility criteria for enrolling for a degree course do come within these permissible restrictions.

18 There is, accordingly, no merit in the writ petition. The petition is dismissed.

(SURENDRA P. TAVADE, J)

(S.C. GUPTE, J.)