



2024:DHC:8719-DB



* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
% Judgment reserved on: 15.10.2024
Judgment delivered on: 12.11.2024
+ LPA 967/2024, C.M. APPL. 56988-90/2024
KABIR PAHARIA ...Appellant
versus
NATIONAL MEDICAL COMMISSION & ORS ... Respondents

Advocates who appeared in this case:

For the Appellant : Mr. Gaurav Agarwal, Sr. Advocate with Mr. Rahul Bajaj, Mr. Taha Bin Tasneem, Mr. Manan Daga and Mr. Amar Jain, Advocates.

For the Respondent : Mr. T. Singhdev with Mr. Abhijit Chakravarty, Ms. Yamini Singh, Ms. Anum Hussain, Mr. Aabhaas Sukhramani, Mr. Bhanu Gulati, Mr. Sourabh Kumar, Mr. Tanishq Srivastava and Ms. Ramanpreet Kaur, Advocates for R-1/NMC.

CORAM:
HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE TUSHAR RAO GEDELA

J U D G M E N T
TUSHAR RAO GEDELA, J.

1. Present appeal has been preferred under Clause X of the Letters Patent Act, 1866 assailing the judgement dated 10th September, 2024 passed by the learned Single Judge whereby the underlying writ petition bearing W.P.(C) 12165/2024 filed by the appellant was dismissed. The appellant also seeks quashing of the NEET Disability Certificate issued by respondent no.2 as well as the Medical Report of the AIIMS, New Delhi dated 6th September,

Signature Not Verified

Digitally Signed
By: MADHU KARDANA
Signing Date: 12.11.2024
15:01:10

LPA 967/2024



2024:DHC:8719-DB



2024; and prays for declaring the appellant eligible to pursue medical courses and allowing him to take part in the ongoing counselling process. Alternatively, the appellant seeks re-evaluation and re-assessment of his suitability to pursue MBBS course notwithstanding the impugned Regulations. A challenge is also made to Footnote 3 to Appendix H-1 to the Competency Based Medical Education Curriculum (CBME) Regulations, 2023 being *ultra vires* Articles 14 and 19(1)(g) of the Constitution of India, 1950 and violative of the Rights of Persons with Disabilities Act, 2016, along with directions to the respondent no.1 to issue fresh Regulations/Guidelines in this respect.

2. The appellant had appeared for the National Eligibility-cum-Entrance Test (Undergraduate), 2024 Examination (for short 'NEET (UG) 2024') as an SC-PwD category candidate. His disability percentage was recorded at 42% as per his Disability Certificate dated 9th December, 2023, which is a benchmark disability as defined under Section 2(r) of the Rights of Persons with Disabilities Act, 2016 (for short 'RPwD Act').

3. The National Testing Agency had conducted the NEET (UG) 2024 on 5th May, 2024, for which the results were announced on 4th June, 2024, and a revised scorecard was issued on 26th July, 2024. The appellant secured 542 out of 720 marks, placing him at PwD Category Rank 176, well above the cut-off score for the SC/EWS-PwD category. He became eligible for the next stage in the admission process, which required issuance of a Certificate of Disability for NEET Admissions from a designated Disability Certification Centre. On 16th August, 2024, the appellant had approached

Signature Not Verified

Digitally Signed
By: MADHU KARDANA
Signing Date: 12.11.2024
15:01:10

EPA 967/2024



2024:DHC:8719-DB



Vardhman Mahavir Medical College - Safdarjung Hospital (for short 'VMMC-SJ Hospital'), a recognized Disability Certification Centre in New Delhi.

4. However, it is the case of the appellant that despite the VMMC-SJ Hospital quantifying the appellant's disability at 68% in its NEET Disability Certificate dated 19th August, 2024 i.e. within the permissible disability range of 40% to 80%, the said Hospital concluded that the appellant was not eligible to pursue medical courses.

5. Aggrieved by this, the appellant approached this Court by filing the underlying writ petition being W.P.(C) No.12165/2024. *Vide* order dated 3rd September, 2024, the learned Single Judge had directed formation of a Medical Board at All India Institute of Medical Sciences, New Delhi (for short 'AIIMS') to independently assess the nature and extent of appellant's functional disability, as well as to determine whether his condition meets the requirements necessary for being eligible to pursue MBBS course.

6. In compliance with the said order, the Medical Board, after conducting a thorough evaluation of the appellant's condition, submitted its Report dated 6th September, 2024 concluding that the appellant's disability makes him ineligible to pursue MBBS course. On this basis, learned Single Judge had dismissed the underlying writ petition filed by the appellant *vide* order dated 10th September, 2024. Aggrieved by such decision, the present appeal has been preferred.

CONTENTIONS OF THE APPELLANT:-

7. Mr. Gaurav Agarwal, learned senior counsel assisted by Mr. Rahul

Signature Not Verified

Digitally Signed
By: MADHU KARDANA
Signing Date: 12.11.2024
15:01:10

EPA 967/2024



2024:DHC:8719-DB



Bajaj, learned counsel for the appellant commenced his arguments by referring to the Disability Certificate dated 9th December, 2023 issued by the Department of Empowerment of Persons with Disabilities, Ministry of Social Justice and Empowerment, Government of India to submit that the appellant is an admitted case of Congenital amputation of Multiple fingers in both hands and second and third toe of the left foot. The appellant is assessed at 42% permanent disability. He submitted that the appellant belongs to SC category and has done exceptionally well by scoring 542 marks out of 700 marks. But for the rejection by the Medical Board, the appellant is otherwise fully qualified and entitled to be admitted to MBBS course. He submitted that the appellant is very keen and enthusiastic to become a medical doctor and dreams of serving humanity.

8. Learned senior counsel for the appellant drew attention to the Disability Certificate dated 19th August 2024 issued by the VMMC-SJ Hospital to submit that on the one hand, the Medical Board/institution, after medical examination, has assessed the appellant at 68% permanent disability, yet on the other, has rejected his candidature and found him ineligible on the ground of "*Bilateral upper limb involvement*". He submitted that this assessment is not valid. In support thereof, he invited attention to the Guidelines regarding admission of students with "Specified Disabilities" under the RPwD Act, 2016 with respect to admission in MBBS Course at Page nos. 182 and 183 of the paperbook, particularly to clause (f) under "Specified Disabilities" in the table at para 4, to contend that the Medical Board did not assess the competency of the appellant with the aid of

Signature Not Verified

Digitally Signed
By: MADHU KARDANA
Signing Date: 12.11.2024
15:01:10

EPA 967/2024



2024:DHC:8719-DB



assistive devices to ascertain whether affected part possesses sufficient motor ability as required to pursue and complete the course satisfactorily. Having not assessed the appellant on the prescribed parameters, learned senior counsel for the appellant forcefully contended that the said Disability Certificate be set aside and proper re-evaluation be conducted with assistive devices, regard being had to “reasonable accommodation” as per the provisions of the RPwD Act.

9. Alluding to ground ‘G’ of the appeal, he contended that “reasonable accommodation” envisaged assessment in a particular manner and with assistive devices which was grossly overlooked. It was contended that the provision of “reasonable accommodation” is not an empty formality and has to be enforced in order to further the object behind the social welfare legislation like the RPwD Act. He contended that none of the Medical Reports, including those generated in compliance with the orders passed by the learned Single Judge or this Court, have specified the reasons for concluding that the appellant would be “ineligible” to successfully complete the MBBS course.

10. Learned senior counsel for the appellant also attacked the impugned Disability Certificate dated 19th August, 2024 issued by VMMC-SJ Hospital and the Medical Report dated 6th September, 2024 issued by AIIMS, New Delhi prepared in compliance with the order dated 3rd September, 2024 of the learned Single Judge. According to him, these Medical Reports are vitiated for not following the mandate of directions in letter dated 24th March, 2024 issued by the Ministry of Health and Family Welfare,

Signature Not Verified

Digitally Signed
By: MADHU KARDANA
Signing Date: 12.11.2024
15:01:10

EPA 967/2024



2024:DHC:8719-DB



Government of India. It was contended that according to the said directions, the Disability Certification Centres should necessarily include a doctor or health professional with disability in line with the directive from Chief Commissioner of Persons with Disabilities, RPwD Act, 2016. He urged that the Medical Board, admittedly not having such a doctor or health professional as per the aforesaid directive, would be incompetent to assess the appellant and issue the said certificates.

11. Apart from the aforesaid arguments, it was seriously contended that neither the Medical Report dated 6th September, 2024 issued pursuant to the order dated 3rd September, 2024 of learned Single Judge nor the Medical Report dated 30th September, 2024 issued by AIIMS, New Delhi in compliance with the order dated 27th September, 2024 of this Court contained any reasons as to why the appellant was not eligible to undertake the MBBS Course. He painstakingly read through both the Medical Reports to vehemently argue that none of the reports clearly state as to what were the tests conducted; whether any assistive devices were provided and used by the appellant; whether the parameters of “reasonable accommodation” were made available to the appellant and; whether the appellant was found to not have the requisite strength in the affected limbs. It was forcefully exhorted that in the absence of reasons, the medical examination conducted and the Reports so generated and referred to above, are vitiated and are an empty formality. According to learned senior counsel, the object of RPwD Act is to further the cause of persons like the appellant and all out efforts must be endeavoured to alleviate their position. The beneficial aspect of the said Act

Signature Not Verified

Digitally Signed
By: MADHU KARDANA
Signing Date: 12.11.2024
15:01:10

EPA 967/2024



2024:DHC:8719-DB



must be scrupulously implemented and not wither away or wasted due to the apathy of medical institutions.

12. Referring to the Medical Report dated 30th September, 2024, it was submitted that it does not advert to the essential skills required for the completion of the medical course. In fact, according to him, the said Report does not even allude to the question posed by this Court in relation to whether the appellant could be eligible to pursue the medical course only for the purpose of taking up a teaching profession rather than practicing medicine. He seriously contended that as an alternate, the appellant is willing to restrict himself only to teaching, yet no opinion has been rendered on this. He stated that the medical opinion rendered is incomplete and a mere repetition of the earlier Medical Report. He relied upon the following judgements to substantiate his arguments:-

- (i) ***Harshil Maheshbhai Upadhyay vs. State of Gujarat***, dated 23rd July, 2019.
- (ii) ***Anjali Sonkar vs. State of Chattisgarh & Ors., 2022 SCC OnLine Chh 2696***
- (iii) ***Vikash Kumar vs. UPSC & Ors., (2021) 5 SCC 370***

13. Learned senior counsel for the appellant next referred to Annexure-17 to submit that the Journal Article published in the United States of America based on a survey conducted on 183 surgeons who had lost parts of their hands, provides an insight into how persons with disabilities almost identical to that of the appellant, have successfully completed the medical course and are stated to be successful in their careers as medical practitioners. He

Signature Not Verified

Digitally Signed
By: MADHU KARDANA
Signing Date: 12.11.2024
15:01:10

EPA 967/2024



2024:DHC:8719-DB



seemed to urge that the appellant being in a similar situation, ought not to be limited on account of impairment or permanent disability but afforded an opportunity to give wings to his dreams.

14. He thus prayed that the appeal be allowed and the respondent be directed to admit the appellant to the MBBS Course.

CONTENTIONS OF THE RESPONDENT:-

15. Mr. T. Singhdev, learned counsel for respondent no.1/National Medical Council (for short 'NMC') drew attention to sub-section (3) of Section 3 of the RPwD Act to submit that the Rules prescribed thereunder are in consonance with the said provision and the parameters set for evaluation of the persons with disability have been formulated keeping in view the aims and objects of the Act. He further elaborated by contending that sub-section (3) of Section 3 contains a rider that limits the scope of the first part of the said provision which prescribes that there shall be no discrimination on the ground of disability. He contended that the regulations which are prescribed are within the parameters restricted by the said rider.

16. He also drew attention to the prayer clause of the appellant in the underlying writ petition, particularly prayer 'C' to submit that the appellant had alternatively sought a direction to respondent no.2 to re-evaluate the appellant and assess his suitability to pursue MBBS Course. He contended that this prayer having been granted by the learned Single Judge and a Report having generated by the Medical Board freshly constituted in compliance with the order dated 3rd September, 2024, there cannot possibly be any grievance left for the appellant to have preferred the present appeal.

Signature Not Verified

Digitally Signed
By: MADHU KARDANA
Signing Date: 12.11.2024
15:01:10

EPA 967/2024



2024:DHC:8719-DB



17. Learned counsel for respondent no.1 drew the attention of this Court to the opinion of the Medical Board dated 6th September, 2024 rendered in pursuance to the order dated 3rd September, 2024 of the learned Single Judge, to submit that the said Report clearly gives a detailed opinion as to the parameters on which the appellant was examined and sound reasons for considering the appellant as ineligible to be admitted to the MBBS Course. He read through the entire Report/opinion of the Medical Board so constituted, to buttress the aforesaid argument. He submitted that the detailed opinion rendered belies the submissions of the appellant that the Medical Board had not conducted an examination in accordance with the directions issued by the learned Single Judge. That apart, he also referred to the second Report of the Medical Board reconstituted by the order dated 27th September, 2024 of this Court which included a Doctor/Health Professional who was a person with disability. Reading through the opinion rendered in the Medical Report dated 30th September, 2024, by such reconstituted Medical Board of AIIMS, New Delhi, learned counsel for respondent No.1 contended that in the said opinion too, the said Medical Board had examined the appellant on all stipulated parameters including assistive devices and “reasonable accommodation”. He further stated that all the directions of this Court, including that as to whether the appellant could pursue only educator/teaching post successful completion of the MBBS Course is concerned, were taken note of by the reconstituted Medical Board subsequent where to, the opinion dated 30th September, 2024 was rendered. On the above basis, learned counsel for respondent no.1 vehemently refuted

Signature Not Verified

Digitally Signed
By: MADHU KARDANA
Signing Date: 12.11.2024
15:01:10

EPA 967/2024



2024:DHC:8719-DB



and opposed the submissions of the appellant.

18. To the plea of the appellant that he be admitted to the MBBS Course on the assurance that he would only teach medical students and not indulge in medical practice is concerned, learned counsel for respondent no.1 forcefully contended that the same is untenable. In order to support the aforesaid contention, he placed on record the Gazette Notification dated 14th February, 2022 issued by respondent no.1 (Post Graduate Medical Education Board) prescribing “*Teachers Eligibility Qualifications in Medical Institutions Regulations, 2022*”. Referring to sub-regulation (3.1) of Regulation 3, he argued that even for the purposes of serving as an educator/teacher, an individual must possess the post graduate degree or equivalent qualification included in any one of the Schedules to the Indian Medical Council Act, 1956 and National Medical Commission Act, 2019. Dilating further, he also stressed that such individual is mandated to also be registered in a State Medical Register or the National Medical Register. If that were so, learned counsel for respondent No.1 strenuously argued that then, there would be no way the respondent no.1 could ascertain as to whether the appellant would be pursuing only a teaching profession and not practicing medicine. In that view of the anomalous situation, he contended that even that prayer cannot be granted.

19. That apart, on facts, learned counsel for respondent No.1 stressed that there were three clear and detailed medical opinions rendered by three independent Medical Boards giving the same opinion regarding the appellant’s ineligibility to complete the MBBS Course. He stated that the

Signature Not Verified

Digitally Signed
By: MADHU KARDANA
Signing Date: 12.11.2024
15:01:10

EPA 967/2024



2024:DHC:8719-DB



opinion rendered by the three Medical Boards would bind the respondent no.1 and it cannot take a view contrary to the said opinion. He assertively argued that even a Constitutional Court cannot substitute its own view in place of an expert body, particularly in cases of medical opinion rendered by highly professional and experienced doctors.

20. Learned counsel for respondent No.1 contended that the issue raised by the appellant in the present appeal is no more *res integra*. He relied upon the judgments in the cases of *Rakshit Yadav vs. University College of Medical Sciences & Ors., W.P.(C) 8572/2019* dated 7th November, 2019; *Alok Ranjan vs. National Medical Commission & Ors., 2021 SCC OnLine Del 4545*; *Neha Pudil vs. Union of India & Ors., W.P.(C) 2815/2022* dated 18th April, 2022; *Bambhaniya Sagar Vasharambhai vs. Union of India & Ors., W.P.(C) 856/2023* dated 31st October, 2023; *Ishaben Rameshbhai Patel vs. State of Gujarat, LPA No. 1209/2022* dated 20th September, 2022.

21. In that view of the matter, he prayed that the present appeal be dismissed.

ANALYSIS AND CONCLUSION:-

22. This Court has heard the arguments of Mr. Agarwal, learned senior counsel for the appellant and Mr. T. Singhdev, learned counsel for respondent no.1/NMC, meticulously perused the record and considered the judgments relied upon by the parties.

23. At the outset, this Court records with certain pain that the appellant who comes from a deprived strata of the society, yet brilliant to the core, is

Signature Not Verified

Digitally Signed
By: MADHU KARDANA
Signing Date: 12.11.2024
15:01:10

EPA 967/2024



2024:DHC:8719-DB



unable to give wings to his dreams. There are limitations which circumscribe the jurisdiction of Constitutional Courts lest the Court starts substituting its own opinion, contrary or otherwise, to the one rendered by a body constituting highly experienced professionals who are experts in their line.

24. That said, this Court would examine the contours of the present appeal, by first examining the opinion rendered by the Medical Board as copiously referred to by the learned counsel for the parties. It would be relevant to note that by the Disability Certificate dated 19th August, 2024, the VMCC-SJ Hospital ascertained appellant as a person suffering from locomotor disability to the extent of 68% with a remark “*bilateral upper limb involvement*”, opining that the appellant is not eligible to pursue medical course as per the NMC norms.

25. By the underlying writ petition, the appellant had challenged the Disability Certificate dated 19th August, 2024. *Vide* order dated 3rd September, 2024, learned Single Judge passed the following directions:-

“8. Having considered the submissions made by learned counsel appearing on behalf of the parties and in view of the similarity of the facts of the present case with the aforesaid orders passed by Coordinate Benches, this Court as an interim measures finds it appropriate to issue following directions:-

(i) The Director of All India Institute of Medical Science (AIIMS), New Delhi is directed to constitute a board of three experts in the relevant field to assess petitioner's disability and give an opinion on whether the petitioner could be able to pursue the said course and work as a doctor.

(ii) The report of the AIIMS be furnished to this court in a sealed cover by 06.09.2024.

(iii) The Board is at liberty to consider the applicable regulations.

(iv) The petitioner shall appear for medical examination before the Director of AIIMS, New Delhi at 2:30PM on 05.09.2024.”

Signature Not Verified

Digitally Signed
By: MADHU KARDANA
Signing Date: 12.11.2024 15:01:10
EPA 967/2024



2024:DHC:8719-DB



26. In compliance with the aforesaid directions, the Medical Board so constituted rendered its opinion on 6th September, 2024 which is extracted hereunder:

“The meeting of the Medical Board was held on 06.09.2024 (Friday) at 12:00 Noon in Consultation Room No.13, MS Office Wing, ground floor, AIIMS, New Delhi. The available reports, earlier disability certificates and medical documents were reviewed. The petitioner Sh. Kabir Paharia was present and was examined by the members of Medical Board.

It is pertinent to note that the MBBS training program is unique as it is training future medical doctors likely to be involved in saving lives. This course of very long duration (5 and a half years, including 1 year of Compulsory Rotating internship), with training in many subjects - preclinical, paraclinical and clinical (medical-surgical), and training in a variety of settings (OPD, Ward, Laboratories, Emergency, Operation Theatre, Community) as well as dealing with patients (children, men, women and in any age group). In pursuing MBBS course successfully, acquiring knowledge must be coupled with acquisition of appropriate skills including interventions including closure and suturing a wound, stopping bleeding, giving injections, bandaging, basic life support and resuscitation techniques, conducting a normal delivery, assisting in various procedures etc. as expected from an MBBS graduate. All the students have to learn various subjects and acquire the minimum prescribed skills. It should be noted that any limitation of the candidate shouldn't be to the detriment of patient safety or delivering the best patient care as expected.

Sh. Kabir Paharia has shared two Disability Certificates (one dated 09.12.2023 issued from Sanjay Gandhi Memorial Hospital, North West Delhi, Delhi and another dated 19.08.2024 issued from the Vardhman Mahavir Medical College & Safdarjung Hospital, New Delhi). There is a difference in the percentage of disability noted as certified.

This Medical Board after detailed assessment of the candidate states that the said candidate Sh Kabir Paharia belongs to the category of persons with benchmark disability (forty percent or more disability) due to congenital absence of multiple fingers in both hands as well as involvement of left foot (second and third toe). This disability is of the locomotor system and permanent in nature.

Signature Not Verified

Digitally Signed
By: MADHU KARDANA
Signing Date: 12.11.2024 15:01:10
EPA 967/2024



2024:DHC:8719-DB



The Medical Board is of the opinion that the petitioner Sh. Kabir Paharia is NOT ELIGIBLE to pursue the MBBS graduation course. This Medical Board is of the opinion that this candidate will face certain difficulties in the course of time pursuing MBBS, because of the significant involvement of both hands with missing multiple fingers leading to limitations in acquiring and executing certain essential skills.”

27. Predicated on the aforesaid opinion, learned Single Judge had dismissed the underlying writ petition *vide* order dated 10th September, 2024 which is impugned in the present appeal.

28. *Vide* order dated 27th September, 2024, this Court had, consequent to hearing the learned counsel for the parties, passed the following directions:

“Having considered the aforesaid submissions, this Court, as an interim measure, finds it appropriate to issue the following directions:-

- (i) *The Director, AIIMS, New Delhi is directed to constitute a Board of three Experts in the relevant field including a doctor with disability to assess the appellant’s disability and give an opinion as to whether the appellant is able to pursue the said course and work as a doctor with assistive devices that are available as well as after considering, any possibility of a reasonable accommodation.*
- (ii) *The report of the AIIMS be furnished to this Court in a sealed cover by 01st October, 2024.*
- (iii) *The appellant shall appear for medical examination before the Director, AIIMS, New Delhi on 30th September, 2024 at 2.30 P.M.”*

29. In compliance with the aforesaid directions, the freshly reconstituted Medical Board of AIIMS, New Delhi, which also included a doctor/Health Professional falling within the definition of a disabled person as enumerated in the RPwD Act, rendered its opinion on 30th September, 2024 which is extracted hereunder:

“ALL INDIA INSTITUTE OF MEDICAL SCIENCES

Signature Not Verified

Digitally Signed
By: MADHU KARDANA
Signing Date: 12.11.2024
15:01:10

EPA 967/2024



2024:DHC:8719-DB



Ansari Nagar, New Delhi-110029.

No.F.2-126/Medical Board/2024-Estt.(H)

Dated: 30.09.2024

Subject: Report of the medical board constituted at AIIMS for medical examination of petitioner Sh. Kabir Paharia in compliance of order dated 27.09.2024, Hon'ble High Court of New Delhi vide LPA – 967/2024 and C.M. Nos. 56988-56990/2024 titled Kabir Paharia Versus National Medical Commission &Ors.

With reference to the aforementioned subject, the Medical Superintendent, AIIMS, New Delhi constituted a Medical Board consisting of the following members-

1. Dr. Srikumar V. - Chairperson
Additional Professor, Department of Physical Medicine and Rehabilitation(PMR)
2. Dr. Asjad Mahmood - Member
Assistant Professor, Department of Orthopedics (JPNATC)
3. Dr. Junaid Alam - Member
Associate Professor, Department of Surgery (JPNATC)
4. Dr. Ranjith Raam Kumarr G. - Member Secy.
Department of Hospital Administration

The meeting of the Medical Board was held on 30.09.2024 (Monday) at 03:30 P.M. in PMR OPD, Department. of PMR, ground floor, AIIMS, New Delhi. The available reports, earlier disability certificates and medical documents were reviewed. The petitioner Sh. Kabir Paharia was present and was examined by the members of Medical Board.

The current Medical Board was constituted to include a doctor with disability. This Medical Board after detailed assessment of the candidate states that the said candidate Sh. Kabir Paharia belongs to the category of persons with benchmark disability (forty percent or more disability) due to congenital absence of multiple fingers in both hands as well as involvement of left foot (second and third toe). This disability is of the locomotor system and permanent in nature. This board also considered the possibility of reasonable accommodation with assistive devices or prostheses. It is observed that the main objective of undergraduate medical curriculum is to prepare a skilled and responsible physician to serve at the primary care level and this includes several medical and

Signature Not Verified

Digitally Signed
By: MADHU KARDANA
Signing Date: 12.11.2024
15:01:10

LPA 967/2024

Page 15 of 22



2024:DHC:8719-DB



surgical competencies including General Surgery and Allied disciplines like Orthopedics, Obstetrics and Gynecology etc (Guidelines for Competency Based Medical Education (CBME) Curriculum). Though the candidate may seek to pursue non-surgical branches at a later date, acquiring and demonstrating competencies in these surgical disciplines is a pre-requisite for completing the medical undergraduate program According to NMC norms (Guidelines regarding admission of students with "Specified Disabilities" under the Rights of Persons with Disabilities Act. 2016 with respect to admission in MBBS Course; "Graduate Medical Education Regulations (Amendment), 2019"), "Both hands intact, with intact sensations, sufficient strength and range of motion are essential to be considered for medical course".

*The Medical Board confirms with the finding of the previous Medical Board and is of the opinion that the petitioner Sh. Kabir Paharia is **NOT ELIGIBLE** to pursue the MBBS graduation course as per the current NMC norms.*

(sd/-)

(sd/-)

(sd/-)

(sd/-)

Chairperson Member Member Member Secy."

30. Learned senior counsel for the appellant had strenuously and forcefully argued that neither the first Medical Board constituted in compliance with learned Single Judge's order nor the second reconstituted Medical Board constituted in compliance with this Court's order examined the appellant on the parameters set by both the Courts. He had vociferously contended that none of the Reports clearly state as to what were the tests conducted; whether any assistive devices were provided and used by the appellant; whether the parameters of "reasonable accommodation" were made available to the appellant and; whether the appellant was found not to have the requisite strength in the affected limbs. It was forcefully exhorted that in the absence of reasons, the medical examination conducted and the

Signature Not Verified

Digitally Signed
By: MADHU KARDANA
Signing Date: 12.11.2024 15:01:10
EPA 967/2024



2024:DHC:8719-DB



Reports so generated and referred to above, are vitiated and are an empty formality. It was also contended that no ability test, by making available the assistive devices to the appellant, was conducted to ascertain his ability to clear the parameters.

31. This Court has carefully considered the arguments noted above of the appellant and in order to satisfy its conscience, minutely scrutinized the Medical Reports dated 6th September, 2024 and 30th September, 2024. This Court finds, as a matter of fact, that contrary to the submissions rendered on behalf of the appellant, the first Medical Report dated 6th September, 2024 itself examines all the relevant aspects and has rendered a holistic and complete medical opinion before concluding the ineligibility of the appellant. In fact, para 2 of the opinion rendered by the first Medical Board clearly delineates the skills that are required to be developed and mastered by a candidate seeking admission to MBBS Course, particularly a person with certain locomotor disabilities. This Court also finds that the said Medical Board has also considered and balanced the rights of the patients who may be treated. It cannot be gainsaid that the rights of a medical patient would also be a relevant factor and a primary consideration while issuing a Disability Certificate or rendering of an opinion by a Medical Board. It cannot be underscored that pursuing MBBS Course is primarily for the purposes of medical treatment of a patient.

32. So far as the Medical Report dated 30th September, 2024 rendered by the reconstituted Medical Board of AIIMS, New Delhi having a doctor/health professional who is a person with disabilities is concerned, this

Signature Not Verified

Digitally Signed
By: MADHU KARDANA
Signing Date: 12.11.2024
15:01:10

EPA 967/2024



2024:DHC:8719-DB



Court finds that the said Medical Board had revisited the examination of the appellant keeping in view the possibility of “reasonable accommodation” with assistive devices or prosthesis. This Court finds that the Medical Board had rendered a clear and cogent medical opinion concluding that the appellant is ineligible to pursue MBBS Course, having the said parameter as a primary aspect. Contrary to the submissions of the learned senior counsel for the appellant that the Medical Boards so constituted did not consider the alternate plea of the appellant pursuing MBBS Course only for the purposes of teaching, this Court finds that the second Medical Board had clearly taken the said aspect into consideration prior to ruling out the alternate plea. This is clear from the observation, in that, *“Though the candidate may seek to pursue non surgical branches at a later date, acquiring and demonstrating competencies in these surgical disciplines is a prerequisite for completing the Medical Under Graduate Programme”*. Thus, the argument on the aforesaid premise is untenable.

33. It is trite that Courts ordinarily do not interdict or substitute their own opinion over that of expert bodies. In the present case, highly qualified and experienced medical doctors were to render an opinion as to whether the appellant could or could not be eligible to complete the MBBS Course, even if the appellant were to only become a teacher. That opinion has been rendered in detail. Moreover, Courts are not experts in the field of medical science “to sit over decisions taken by the experts in the field and substitute it with its own wisdom”. (See *Vidhi Himmat Kataria vs. State of Gujarat, (2019) 10 SCC 20*).

Signature Not Verified

Digitally Signed
By: MADHU KARDANA
Signing Date: 12.11.2024 15:01:10
EPA 967/2024



2024:DHC:8719-DB



34. Besides, though it is unfortunate and seemingly sad, yet the overwhelming legal framework does not enure to the benefit of the appellant.

35. The ratio laid down in the judgments passed in *Anjali Sonkar (supra)*, *Harshil Maheshbhai Upadhyay (supra)*, *Vikash Kumar (supra)* are the opinions rendered in the absence of reasoned medical reports and are, therefore, not applicable to the facts of this case. A judgement cannot be used as Euclid's theorem to apply across Board in all cases concerning persons with disabilities under the RPwD Act.

36. It would however, be relevant to cite the latest judgment of the Supreme Court in regard to the opinion and the observations rendered above by this Court, in the case of *Omkar Ramchandra Gond Vs. Union of India & Ors.*, Civil Appeal No. 10611/2024 passed on 15th October, 2024. The relevant paragraphs of the same are extracted hereunder:

“46. Disabilities Assessment Boards are not monotonous automations to just look at the quantified benchmark disability as set out in the certificate of disability and cast aside the candidate. Such an approach would be antithetical to Article 14 and Article 21 and all canons of justice, equity and good conscience. It will also defeat the salutary objectives of the RPwD Act. The Disabilities Assessment Boards are obliged to examine the further question as to whether the candidate in the opinion of the experts in the field is eligible to pursue the course or in other words, whether the disability will or will not come in the way of the candidate pursuing the course in question.

xxx

xxx

xxx

48. While interpreting the Regulations and Guidelines, as provided in Appendix H-1 to the notification dated 13.05.2019, as they stood for the academic year 2024-25, we are constrained, keeping in mind the salutary object of the RPwD Act and Article 41 of the Directive Principles of State

Signature Not Verified

Digitally Signed
By: MADHU KARDANA
Signing Date: 12.11.2024 15:01:10
EPA 967/2024



2024:DHC:8719-DB



Policy, to direct that mere existence of benchmark disability of 40% or above (or such other prescribed percentages depending on the disability) will not disqualify a candidate from being eligible for the course applied for. The Disability Assessment Boards assessing the candidates should positively record whether the disability of the candidate will or will not come in the way of the candidate pursuing the course in question. The Disability Assessment Boards should state reasons in the event of the Disability Assessment Board concluding that candidate is not eligible for pursuing the course.

xxx

xxx

xxx

53. *For the reasons set out hereinabove,*

(i)...

(ii) The Disability Assessment Boards assessing the candidates should positively record whether the disability of the candidate will or will not come in the way of the candidate pursuing the course in question. The Disability Assessment Boards should state reasons in the event of the Disability Assessment Boards concluding that the candidate is not eligible for pursuing the course.

(iii)...

(iv) Pending creation of the appellate body, we further direct that such decisions of the Disability Assessment Boards which give a negative opinion for the candidate will be amenable to challenge in judicial review proceedings. The Court seized of the matter in the judicial review proceedings shall refer the case of the candidate to any premier medical institute having the facility, for an independent opinion and relief to the candidate will be granted or denied based on the opinion of the said medical institution to which the High Court had referred the matter..."

37. It is apparent that in case there are sufficient reasons contained in the medical opinion of the Medical Disability Board/Disability Assessment Board, the Courts may not interfere. Only when the said Medical Report lacks clarity in terms of detailed reasons, would the Court examine such Medical Reports. So far as the present appeal is concerned, this Court finds that the Medical opinion rendered by both the Court constituted Medical Boards of AIIMS, New Delhi have sufficiently explained the reasons for concluding that the appellant is ineligible to be admitted to the MBBS

Signature Not Verified

Digitally Signed
By: MADHU KARDANA
Signing Date: 12.11.2024 15:01:10
EPA 967/2024



2024:DHC:8719-DB



Course.

38. Keeping in view the aforesaid analysis of facts and findings, coupled with the authoritative pronouncement of the Supreme Court in ***Omkar Ramchandra Gond (supra)***, this Court is unable to agree with the contentions raised by the appellant.

39. However, this Court reiterates the directions passed by the Division Bench of this Court in the case of ***Neha Pudil vs. Union of India & Ors.*** W.P.(C) 2815/2022 dated 18th April, 2022 where, under similar circumstances, learned Coordinate Bench had directed as under:

“4. ...It is unfortunate that the petitioner, who appears to be otherwise meritorious, cannot pursue a MBBS Course on account of her physical handicap.

5. At the same time, we direct the respondent to explore the possibility of candidates, such as the petitioner, being able to pursue some of the disciplines, if not all, of medical education, considering the advancement of science and technology. Let this aspect be considered by the respondent no.5, in consultation with the Central Government, in the next six months.”

(Emphasis supplied)

40. In the aforesaid context, learned Single Judge too, in the impugned judgement had noted the submission of the learned counsel for the respondent in para 22 which is extracted hereunder:-

“22. This Court was informed by learned counsel for NMC that a fresh policy with regard to the aforesaid directions of the Division Bench has already been framed, however, the same would be applicable from the next academic year.”

41. In that view of the matter, it is directed that the aforesaid directions be complied with by the respondent strictly within six (6) months. Consequent thereto, the appellant would be at liberty to re-apply for the admission in

Signature Not Verified

Digitally Signed
By: MADHU KARDANA
Signing Date: 12.11.2024
15:01:10

EPA 967/2024



2024:DHC:8719-DB



NEET (UG) Programme and his condition would be re-assessed based upon the newly formulated guidelines of the respondent.

42. As a result thereof, the present appeal is disposed of, alongwith pending applications, if any.

TUSHAR RAO GEDELA, J

MANMOHAN, CJ

NOVEMBER 12, 2024/rl

Signature Not Verified

Digitally Signed
By: MADHU KARDANA
Signing Date: 12.11.2024
15:01:10

EPA 967/2024