

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE THE CHIEF JUSTICE MR.HRISHIKESH ROY

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THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

FRIDAY, THE 26TH DAY OF JULY 2019 / 4TH SRAVANA, 1941

W.A.No.1694 of 2019

AGAINST THE JUDGMENT IN WP(C) 16743/2019 of HIGH COURT OF DATED 18.7.2019

APPELLANT/PETITIONER:

ALBIN JOSEPH,

BY ADVS.
SRI.MATHEW A KUZHALANADAN
KUM.APARNA SATHIANATHAN
SRI.SUDEEP ARAVIND PANICKER

RESPONDENTS/RESPONDENTS:

- 1 COMMISSIONER FOR ENTRANCE EXAMINATIONS
HOUSING BOARD BUILDINGS, SANTHI NAGAR,
THIRUVANANTHAPURAM, KERALA 695 001.
- 2 NATIONAL TESTING AGENCY,
REPRESENTED BY THE CHAIRPERSON, C-20 IA/8 SECTOR 62,
IITK OUTREACH CENTRE, NOIDA 201 309.
- 3 STATE OF KERALA, REPRESENTED BY CHIEF SECRETARY,
THIRUVANANTHAPURAM , KERALA 695 001.
- 4 THE DIRECTOR OF MEDICAL EDUCATIONS,
MEDICAL COLLEGE, KUMARAPURAM ROAD, CHALAKKUZHI,
THIRUVANANTHAPURAM, KERALA 695 011.

(SR.GP) SRI. TEK CHAND.

THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON 26.07.2019, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

JUDGMENT

Hrishikesh Roy, C.J.

Heard Sri.Mathew A. Kuzhalanadan, the learned counsel appearing for the appellant/writ petitioner. Also heard Sri.Tek Chand, the learned Senior Government Pleader appearing for the State authorities.

2. The writ petitioner, of the differently abled category, claimed admission to the MBBS curriculum under the earmarked PWD quota. He is suffering from *MeningoMyelac (Post Surgical) with Paraplegia locomotive disability* of lower limbs, to the extent of 60%. The petitioner appeared in the National Eligibility cum Entrance Test (NEET) UG - 2019 for admission to MBBS and allied courses and had obtained 58.76 percentile. Then, he applied for allotment of seats before the Commissioner of Entrance Examination, Thiruvananthapuram, Kerala. According to him, as per *Regulation 4(3)* of the *Regulation on Graduate Medical Education* as amended, the aspirant satisfies the *benchmark* disability parameters.

3. The *Appendix H - 1* of the *guidelines* covers admission of students with "Specified Disabilities" under *the Rights of Persons with Disabilities Act, 2016* with respect to admission in MBBS Course. According to these guidelines, those with more than 80% disability, are *ineligible* for admission. Those within the disability range of 40 -80% can be considered but their functional competency would have to be determined. If assistive devices are used, the Medical Board would be required to assess whether the aspirant in the PWD quota possess sufficient motor ability as required, to pursue and complete the course satisfactorily.

4. The Report given on 29.5.2019 Ext.R1(d) by the Medical Board determined the percentage of disability of the student at 85% but it was also found that he was not *eligible* to pursue the MBBS curriculum. Then, another Medical Board was constituted to examine the applicant on his capability to undertake the MBBS course, on the order passed in the W.P.(C)No.16743 of 2019. This led to the 28.6.2019 report (Ext.R1(e)). The Board determined the percentage of disability at 80%. The *Physical Medicine and Rehabilitation* expert however opined that the student will not be able to give basic life saving procedure like *Cardio Pulmonary Resuscitation (CPR)* and other procedures mentioned in the MBBS curriculum. From the *neurological* side, the expert was of the opinion that it will be difficult for the student to pursue and complete the course satisfactorily. According to the *Orthopaedic* Professor in the Medical Board, the student will not be able to fulfill all requirements of the curriculum of the MBBS course.

5. During the hearing of the W.P.(C)No.16743 of 2019, the learned Judge referred to the above reports and considered the submission of the Government Pleader that for disability level of 80%, the authority will have the power to consider the capability or the *suitability* of the candidate, in accordance with the prospectus. Upon such assessment, it was found that the disability suffered by the petitioner would mean that he will not be able to complete the MBBS course satisfactorily.

6. Accepting the above projection and bearing in mind the *Clause 5.3* of the Prospectus for Kerala Engineering, Architect and Medical Courses (KEAM) - 2019, which would show that besides satisfying the benchmark eligibility criteria, an aspirant would also have to satisfy the test of being physically capable or *suitable*, to undertake the

MBBS course, the learned Judge observed in the impugned judgment (18.7.2019) that the authorities have taken into account all relevant aspects and have rightly reached the conclusion that the student is medically unfit, to pursue the MBBS studies. It would not be appropriate for the court to sit over the views of the experts to grant any relief in the Writ Petition. The court also recorded that there is no manifest error or injustice or malafides, in the decision taken by the authorities.

7. Assailing the dismissal judgment in the W.P.(C)No.16743 of 2019, the learned counsel Sri.Mathew A.Kuzhalanadan for the appellant would cite *Puruswani Ashutosh (Minor) v. Union of India and others* reported in *AIR 2018 SC 3999* to contend that the writ petitioner satisfied the benchmark eligibility criteria as per the *MCI Regulations* and therefore, he should not be deprived of the opportunity to pursue the Medical curriculum, on the ground of *unsuitability*.

8. The learned Single Judge had adverted to the above ratio while declining relief. Moreover, the said decision in *Puruswani Ashutosh (supra)* is distinguishable in as much as the determination of *suitability* in that case was by the *MCI*, which the court opined cannot go against their own Regulation regarding the *eligibility*. Whereas in the present case, the negative decision was by the State Government and was based on the specific provisions of the Prospectus which were never challenged by the aspirant, before appearing for the selection based on provisions in the Prospectus.

9. According to us, the precise reason for determining the *unsuitability* of the student to pursue the MBBS course is reflected by the Medical Board and this is consistent with the parameters indicated in the Prospectus. Moreover, the court should

not substitute its own views when the opinion of the Medical Board is available on the issue. The experts from different medical discipline examined the extent of disability and determined in the Ext.R1(e) report that the petitioner will not be able to provide basic life saving procedure and it will be difficult for the 80% disabled aspirant to pursue and complete the MBBS curriculum. If such be the categorical opinion of the Medical Board constituted on court's order and the Prospectus permits determination of suitability to satisfactorily pursue the course, the denial of admission to the PWD quota seat for the appellant, cannot in our assessment, be faulted.

10. Considered thus, infirmity or error is not found in the impugned judgment. The Writ Appeal is accordingly dismissed as one without merit.

sd/-
HRISHIKESH ROY
CHIEF JUSTICE

sd/-
A.K.JAYASANKARAN NAMBIAR
JUDGE

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