

WMP(MD) NO. 1897 of 2022

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 05-02-2025

CORAM

THE HONOURABLE MR JUSTICE V.LAKSHMINARAYANAN

WMP(MD) NO. 1897 of 2022

IN

WP(MD) NO. 2177 OF 2022

M.K.Nivetha

Petitioner(s)

Vs

1. Union of India, represented by
The Principal Secretary,
Ministry of Health and Family Welfare,
Union of India, A-Wing,
Nirman Bhawan, New Delhi - 110 011.

2. The Central Board of Secondary Education,
Represented By its Joint Secretary,
National Eligibility Certificate -cum -Entrance Test Unit,
Shiksha Kendra, 2, Community Centre,
Preet Vihar, New Delhi - 110 092.

3. National Testing Agency,
Represented by The Senior Director,
C-20, 1A/8, Sector 62,
IITK Outreach Centre,
Noida - 201 309.

4. National Medical Commission,
Represented by The Chairman,
National Medical Commission,
Pocket -14, Sector -8,
Dwarka Phase -1,
New Delhi - 110 077.



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5. State of Tamil Nadu, represented by,
The Principal Secretary,
Department of Health and Family Welfare,
State Secretariat, Fort St.George,
Chennai - 600 009.

6. The Secretary,
Selection Committee,
Directorate of Medical Education,
162, Periyar E.V.R. High Road,
Kilpauk, Chennai - 600 010.

7. Rajiv Gandhi Government General Hospital,
Represented by The Senior Civil Surgeon,
Regional Medical Board,
Rajiv Gandhi Government General Hospital,
Chennai - 600 003.

8. The Dean,
Madras Medical College and Rajiv Gandhi Government General Hospital,
EVR Salai,
Chennai - 600 003.

Respondent(s)

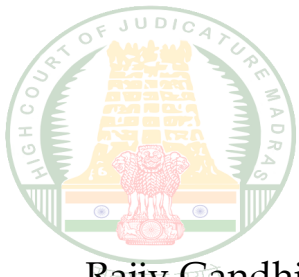
For Petitioner(s): Mr.R.Alagumani
For Respondent(s): Mr.P.Subbiah
Central Government Standing Counsel for R-1
Mr.P.Karthick, Standing Counsel for R-2 & R-3
M/s.Subha Ananth for R-4
M/s.M.Sneka, Standing Counsel
for Mr.S.Shaji Bino
Special Government Pleader for R-5 to R-8

ORDER

The petitioner has sought for a Writ of Certiorari to call for the records relating

to the impugned certificate issued by the 7th respondent/Regional Medical Board,

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Rajiv Gandhi Government General Hospital (hereinafter referred to as “RGGH”) and
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quash the same as illegal and incompetent and for a Mandamus to issue a fresh certificate of disability declaring the petitioner to be “eligible” to undertake the Tamil Nadu MBBS Counselling, on the basis of the marks that she had secured in the National Eligibility cum Entrance Test (NEET) under the category of persons with disability (PwD).

2. The petitioner is aged about 21 years. She is a person suffering from benchmark locomotor disability. She had obtained a certificate from the Government of Tamil Nadu as well as from the Union of India showing that she is suffering from 80% disability. She has a registered UDID card and a certificate of disability given by the Department of Social Justice and Empowerment of the Government of Tamil Nadu to substantiate this position.

3. After completing her education at Thoothukudi, she had appeared in the NEET examination in the year 2020. She taken taken additional coaching for taking up the examination in Tirunelveli. NEET results were declared and she was successful. As per the information bulletin issued by the sixth respondent, she would have to satisfy the criteria prescribed by the fourth respondent/National Medical Commission. The fourth respondent has issued the Regulations of Graduate Medical Admission, which also contemplates the criteria required to be satisfied for a person



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to be treated as PwD. It is not in dispute that persons suffering from 40% to 80%

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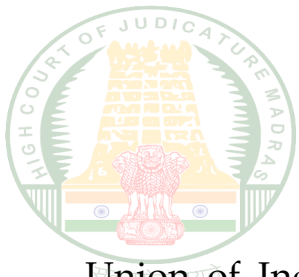
disability, are treated as candidates eligible for the reserved seat under PwD category.

4. The petitioner appeared before the Medical Board constituted by the seventh respondent on 18.11.2021. The Medical Board conducted the assessment and came up with a report that the petitioner suffers from 70% disability. However, it held that she is not eligible on account of the criteria fixed by the National Medical Commission in its notification MCI-18(1)/2018-Med/187262 dated 05.02.2019 and 13.05.2019. Aggrieved by the said report, the present Writ Petition has been filed.

5. When the matter came up for admission, this Court directed notice to the respondents. Primary actors in this Writ Petition are the petitioner, the National Medical Commission (NMC) and the Regional Medical Board RGGH.

6. I heard Mr.R.Alagumani, learned counsel for the writ petitioner, Ms.Subha Ananth, learned counsel for NMC and Ms.M.Sneka, learned Standing Counsel for the Regional Medical Board.

7. Mr.R.Alagumani relies upon the judgments of the Supreme Court in Omkar Ramchandra Gond Vs. Union of India and others, 2024 SCC OnLine SC 2860 and Om Rathod Vs. Director General of Health Services and others, 2024 SCC OnLine SC 3130 and argues that the petitioner has been illegally declared as ineligible. He also draws my attention to a judgment of the Kerala High Court in Aswathy.P Vs.



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Union of India, represented by its Secretary, Ministry of Evacuation and others,
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2021 SCC OnLine Ker 646, to urge that the assessment that was done by RGGH of the petitioner falls short of the requirements that have been declared by the Supreme Court and the Kerala High Court.

8. Per contra, Ms.Subha Ananth relies upon the judgment of the Supreme Court in Vidhi Himmat Katariya and others Vs. State of Gujarat and others, (2019) 10 SCC 20. She urges that this Court should not sit as a Court of appeal over the opinion of an expert body, which has found the petitioner to be ineligible on medical grounds.

9. Ms.M.Sneka points out that the RGGH implements two orders, at the time of examination of a Pwd candidate. The first one being the notification issued by the Ministry of Social Justice and Empowerment in S.O.(76E) dated 04.01.2018 and the second being the guidelines issued by the National Medical Commission in the year 2019. She states that unless and until a candidate satisfies both the requirements, the Regional Medical Board would not be in a position to certify a person to be eligible.

10. With respect to the submissions of Ms.Subha Ananth that this Court should not sit as an appellate authority over the opinion of the expert body, there cannot be a quarrel on this well settled proposition. However, the power of the Court to interfere is not totally excluded. In fact, in Omkar Ramchandra Gond Vs. Union of India, the Supreme Court has declared that pending creation of an appellate body, the decisions



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of the Disability Assessment Board will be amenable to challenge in a writ proceeding. It further directed that in matters, which are currently pending, the candidate should be referred to any premier medical institute having the facility for an independent opinion and relief could be granted to the candidate on the basis of the opinion of the said medical institution.

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11. I am alive to the fact that the judgment in Vidhi Himmat Katariya's case consists of three Honourable Judges in the Supreme Court and so does the Bench, which declared law in Omkar Ramchandra Gond. There is no conflict within the two judgments for me to choose between one or the other, following the law of precedents. In the first case, the Supreme Court directed that the Court must not take upon itself a role of assessing the disability. No one can take a different view. A Court is neither qualified nor competent to sit on appeal over the decision of a Medical Board. The way out has been pointed out in the judgment in Omkar Ramchandra Gond. It held that a Writ Court has the power to refer the case of the candidate to any other premier medical institute having the facility for assessment. If the report of the second Medical Board goes in favour of the PwD, then this Court can always take a call as to which report must be accepted. Therefore, being in a position to harmonize the two judgments, I would apply the recent view taken in Omkar Ramchandra Gond. Hence, I am inclined to direct the Director, JIPMER, a premier medical



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institution, to examine the writ petitioner in terms of the applicable guidelines issued by the Department of Social Justice and Empowerment as well as the Graduate Medical Admissions Regulations issued by the fourth respondent/National Medical Commission. The Director, JIPMER, at the time of constituting a Disability Assessment Board, shall include as a member of the Board, a Doctor or a health professional in the PwD category, as directed by the Director General of Health and Services on 24.03.2022.

12. The fear of Ms.M.Sneka that referring the candidate to JIPMER might be construed as a slur on the reputation of the RGGH, is misplaced. The candidate is being referred to JIPMER on account of the view that had been declared by the Supreme Court in Om Rathod's case. It is only to avoid any allegation of confirmation bias that will be raised by the writ petitioner at a later stage.

13. Registry is directed to mark a copy of this order to the Director, JIPMER, Puducherry. It is also open to the petitioner and the respective respondents to inform JIPMER about this order.

(a) The Director of JIPMER shall constitute a Medical Board and inform the petitioner to appear before it within a period of four (4) weeks from the date of receipt of a copy of this order.



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(b) The Disability Assessment Board so constituted shall submit its report to this Court within a period of four weeks thereafter.

(c) At the time of examination, the Assessment Board shall eschew from the benchmark model and shall positively record whether the disability of the writ petitioner will or will not come in the way of the candidate pursuing the medical course.

(d) In case the Disability Assessment Board comes to a conclusion that the candidate is not eligible, it shall specifically state the reasons as to why it is coming to the said conclusion.

(e) The petitioner can communicate the order to JIPMER using the good offices of the Deputy Solicitor General of India, Madurai Bench of Madras High Court.

sd/-
05/02/2025

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05/02/2025

Sub-Assistant Registrar
Madurai Bench of Madras High Court,
Madurai - 625 023.

Lm
To

1. The Principal Secretary,
Ministry of Health and Family Welfare,
Union of India,
A-Wing,
Nirman Bhawan,
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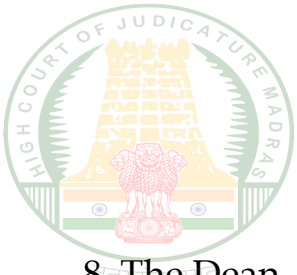
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Madras Medical College and Rajiv Gandhi Government General Hospital,
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Copy to:

The Director,
JIPMER,
Puducherry.

+1 CC to M/s.DR.R.ALAGUMANI, Advocate (SR-1405[I] dated 05/02/2025)

ORDER
IN
WMP(MD) No.1897 of 2022
IN
WP(MD) No.2177 of 2022
Date :05/02/2025

RS/IT/SAR-(05.02.2025) 10P 11C
Madurai Bench of Madras High Court is issuing
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