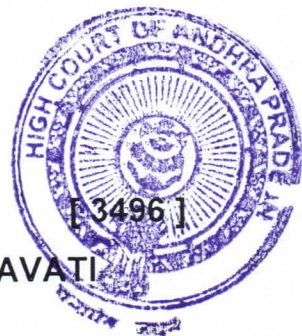




IN THE HIGH COURT OF ANDHRA PRADESH: AT AMARAVATI

(Special Original Jurisdiction)

TUESDAY, THE TWENTIETH DAY OF AUGUST

TWO THOUSAND AND TWENTY FOUR

:PRESENT:

HONOURABLE SRI DHIRAJ SINGH THAKUR, THE CHIEF JUSTICE

AND

THE HONOURABLE SMT JUSTICE VENKATA JYOTHIRMAI PRATAPA

WRIT PETITION NO: 18221 OF 2024

Between:

Thupakula Pradeep Kumar, S/o. Prasad, Aged about 19 years, Occ Student,
R/o. D.No. 6/65, Porumamilla, S.T. Colony, Rangasamudram, Kadapa,
Andhra Pradesh-516193

Petitioner

AND

1. The Union of India, rep by its Joint Secretary, Department of Higher Education, Ministry of Human Resource Development, Shastri Bhawan, New Delhi-110001.
2. The National Medical Commission, rep by its Chairperson, Pocket No 14, Sector No 8, Dwaraka, Phase -1, New Delhi-110077.
3. The Union of India, rep by its Secretary, Ministry of Social Justice and Empowerment (Department of Empowerment of Persons With Disabilities) Shastri Bhawan, New Delhi-110001.
4. The ADG (ME) Medical Counselling Committee, Director General of Health Services Ministry of Health and Family Welfare, Government of India, Nirman Bhavan, New Delhi-110108.
5. The Regional Medical Board, Rajiv Gandhi Government General Hospital, Chennai, Tamil Nadu-600003

Respondents

Petition under Article 226 of the Constitution of India is filed praying that in the circumstances stated in the affidavit filed therewith, the High Court may be pleased to issue a Writ Order or direction particularly, one in the nature of writ of Mandamus declaring the action of the respondents, in not providing reservation in PwD quota, despite allowing me to pursue the medical education as per the Appendix H - 1 of the Graduate Medical Education Regulations, (Amendment), 2019 issued by the respondent no.2 vide No.MCI-34(41)/2019-Med./112862 dated 13.05.2019 is as illegal, unjust, unfair, arbitrary and being in violation of the Fundamental Rights of the petitioner guaranteed under Articles 14, 19, and 21 of the Constitution of India and consequently direct the respondents to extend the benefit of PwD Reservation to the petitioner in accordance with the Graduate Medical Education Regulations, (Amendment), 2019 issued by the respondent no.2 vide No.MCI-34(41)/2019-Med./112862 dated 13.05.2019.

IA NO: 1 OF 2024

Petition under Section 151 CPC is filed praying that in the circumstances stated in the affidavit filed in support of the writ petition, the High Court may be pleased to direct the respondents to extend the benefit of PwD Reservation to me in accordance with Clause 3 of circular orders No.MCI-34(41)/2019-Med./112862 dated 13.05.2019 issued under the Graduate Medical Education Regulations, (Amendment), 2019 by the respondent no.2, pending disposal of WP 18221 of 2024, on the file of the High Court.

The petition coming on for hearing, upon perusing the Petition and the affidavit filed in support thereof and upon hearing the arguments of Ms. Kota Krishna Deepthi representing Mr. Jada Sravan Kumar, Advocate for Petitioner, Mr. Pasala Ponna Rao (Deputy Solicitor General), for the

Respondent Nos.1, 3 & 4 and Mr.Vivek Chandra Sekhar S, Advocate for Respondent No.2, the Court made the following.

ORDER:

The petitioner claims reservation under the Rights of Persons with Disabilities Act, 2016 in the category of visually impaired for which there is prescribed an overall reservation of 5%.

The petitioner was subjected to a medical examination by Regional Medical Board, Rajiv Gandhi Government General Hospital, Chennai, which has held the petitioner to be eligible to pursue the medical education but not eligible to claim PwD reservation as per the NMC norms.

Reference to the NMC norms notified by notification, dated 13.05.2019, would show that persons suffering from visual impairment with disability which is less than 40% are held entitled to undergo the MBBS course but not eligible for PwD quota. However, persons suffering from visual impairment/visual disability of more than 40% can also be made eligible to pursue the MBBS course and may also be given reservation subject to the condition that the visual disability is brought to a level of less than the benchmark of 40% with advanced low vision aids.

In the present case, the certificate issued by the Medical Board declares the petitioner's disability at 40% and also certifies that the candidate is eligible to pursue the medical education but not eligible to claim PwD reservation as per the NMC norms.

What is stated in the medical certificate issued by the Medical Board is as under:

“Remark: CANDIDATE HAS CONGENITAL NYSTAGMUS AND VISION NOT IMPROVING WITH GLASSES BEYOND 6 BY 24 – N12 BOTH EYES.

Functional competency with the aid of Assistive devices in case of Locomotor*/visual*/Hearing* Impairment, if any: FUNCTIONALLY COMPETENT.”

Learned counsel for the petitioner would submit that since the certificate states that the petitioner was “functionally competent” that would mean that the impairment of the vision could be brought down from the certified 40%, which is the benchmark disability, with the help of advanced low vision aids.

It is also stated that the conclusion drawn by the Medical Board that the candidate was eligible to pursue the medical education but not eligible to claim PwD reservation also was directly contradictory in terms inasmuch as if the norms of the NMC were to be applied on all fours to the case of the petitioner, then, with 40% visual disability, the NMC norms would not make eligible the petitioner to even otherwise undergo the MBBS course.

We, therefore, do find that the certificate issued by the Medical Board needs to be clarified further. However, considering the fact that the Medical Counselling Committee has already fixed a schedule for considering candidates under the said category, we feel it appropriate to direct the Medical Counselling Committee to consider the case of the petitioner under the category of PwD quota

prescribed as per Rules. However, in case the petitioner is found to make up the merit on such a consideration, the admission of the petitioner shall not be finalized till further orders.

List on 27.08.2024.

Sd/- S. SRINIVASA PRASAD
ASSISTANT REGISTRAR

//TRUE COPY//

For

SECTION OFFICER

To,

1. The Joint Secretary, Department of Higher Education, Ministry of Human Resource Development, Union of India, Shastri Bhawan, New Delhi-110001.
2. The Chairperson, National Medical Commission, Pocket No 14, Sector No 8, Dwaraka, Phase -1, New Delhi-110077.
3. The Secretary, Ministry of Social Justice and Empowerment (Department of Empowerment of Persons With Disabilities), Union of India, Shastri Bhawan, New Delhi-110001.
4. The ADG (ME) Medical Counselling Committee, Director General of Health Services Ministry of Health and Family Welfare, Government of India, Nirman Bhavan, New Delhi-110108.
5. The Regional Medical Board, Rajiv Gandhi Government General Hospital, Chennai, Tamil Nadu-600003 (1 to 5 by RPAD)
6. One CC to SRI.JADA SRAVAN KUMAR Advocate [OPUC]
7. One CC to SRI.PASALA PONNA RAO Advocate [OPUC]
8. One CC to Vivek Chandra Sekhar S, Advocate [OPUC]
9. Two spare copies

SRL

HIGH COURT

HC,J & VJP,J

DATED:20/08/2024

NOTE: LIST ON 27.08.2024

ORDER

WP.No.18221 of 2024

DIRECTION

