

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION****WRIT PETITION NO.13072 OF 2024**

Suyash Suryakant Patil }
 Age:18 yrs, Occ: Student }
 S/o Suryakant }
 R/o Shivaji Peth, A/P-Kameri }
 Taluka-Walwa, Kameri, }
 Dist. Sangli, Maharashtra-415403 }.. Petitioner

Versus

1. National Medical Commission }
 Through Its Secretary }
 Pocket-14, Sector-8, }
 Dwarka Phase-1, Delhi-77 }
2. JJ Group of Hospitals }
 JJ Marg, Nagpada, }
 Mumbai Central, Off Jejeebhoy Road, }
 Mumbai-400008. }
3. Medical Counselling Committee }
 Through Its Adg (Me) & Member Secretary }
 Directorate General of Health Services }
 Room No.355-A, Nirman Bhawan, }
 New Delhi-110011. }
4. Ministry of Health & Family Welfare }
 Through Its Secretary }
 Room No.156-A, }
 Nirman Bhawan, New Delhi-110011. }
5. Government Medical College, }
 Jalna Through its Dean }
 Opposite Sushila Devi Lawns }
 Ambad Mantha Road, Jalna }
 Maharashtra-431213 }
 Email:deangmcjalna@gmail.com }.. Respondents

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Mr. Rahul Bajaj (through VC) with Mr. Taha Bin Tasneem, Mr. Shantanu Derhgawan, Advocates for the petitioner.

Mr. Ganesh K. Gole with Mr. Kunjan Makwana, Advocates for the respondent no.1.

Mrs. Neha S. Bhide, Government Pleader with Mr. S. B. Kalel, Assistant Government Pleader for the respondent nos.2 and 5.

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**CORAM : A.S. CHANDURKAR &
M.M. SATHAYE, JJ**

DATE : 21st FEBRUARY 2025.

JUDGEMENT :(PER :A. S. CHANDURKAR, J)

1. Rule. Rule made returnable forthwith and heard learned counsel for the parties.

2. The petitioner who suffers from multiple disabilities to the extent of 58% and speech disability exceeding 40% as per Certificate of Disability dated 6th August 2024 has approached this Court seeking a declaration as regards his eligibility to pursue the MBBS course. The petitioner appeared in the National Eligibility cum Entrance Test, Under Graduate-NEET UG, 2024 that was held on 23rd June 2024. A candidate suffering from a speech and hearing disability exceeding 40% is not considered eligible to pursue the MBBS course as per the Gazette Notification dated 5th February 2019 published by the Medical Council of India as amended on 13th May 2019. The petitioner on 15th August 2024 made a representation to the first respondent- the National

Medical Commission (for short, 'NMC') stating therein that the benchmark disability of 40% and below for pursuing medicine was arbitrary and without any scientific basis. The petitioner made a request to re-consider his disqualification to enable him to pursue the MBBS course. In the absence of any response to the same, the petitioner has filed this writ petition.

3. On 18th September 2024, after hearing the learned counsel for the petitioner a direction was issued to the NMC as well as the fourth respondent- the Ministry of Health and Family Welfare through its Secretary to consider in the petitioner's representation dated 15th August 2024 and file an affidavit in that regard. On 9th October 2024, the petitioner was examined by a three Member Committee constituted at the Grant Medical College and Sir J. J. Group of Hospitals, Mumbai being an authorized center for evaluation and issuance of disability certificates. It was stated that the petitioner was examined on 5th August 2024 and as per the Notification dated 5th February 2019 as well as the NEET UG-2024 Information Bulletin dated 15th February 2019 as the speech and language disability of the petitioner was more than 40%, the Committee was of the opinion that the petitioner was not eligible to pursue the medical course.

On 17th October 2024, in the light of the judgment of the Supreme Court in *Omkar Ramchandra Gond Vs. the Union of India and others*, 2024 INSC 775, a direction was issued for examining the petitioner's functional ability by having the petitioner examined at the All India Institute of Medical Sciences, Nagpur. An interim direction was also issued by which the petitioner was permitted to be admitted at the first year MBBS course, 2024-25 in the PwD quota on a provisional basis. His admission was made dependent upon the determination of his functional ability as well as the outcome of the writ petition. The petitioner was accordingly examined at AIIMS, Nagpur by the NEET Disability Certification Medical Board (for short, 'the DCMB'). On 23rd October 2024, the DCMB issued a certificate opining that the petitioner was eligible to pursue medical education but was not eligible for PwD reservation.

4. On the strength of the interim order, the petitioner sought for being admitted at the fifth respondent-Government Medical College, Jalna on 30th October 2024. However, in view of the certificate dated 23/10/2024 issued by the DCMB, the petitioner was held not eligible for PwD reservation. As a result, his admission at the Government Medical College, Jalna came to be

cancelled. By amending the writ petition, the petitioner has sought restoration of his admission with a declaration that the petitioner was also eligible to claim PwD reservation. In the aforesaid backdrop, the learned counsel for the parties have been heard.

5. Mr. Rahul Bajaj, learned counsel appearing for the petitioner referred to the decisions of the Supreme Court in *Omkar Ramchandra Gond (supra)* and *Om Rathod Vs. The Director General of Health Services and others*, 2024 INSC 836 and submitted that notwithstanding the assessment of disability of the petitioner at 58% and speech disability exceeding 40%, the petitioner was referred initially to the Sir J.J. Group of Hospitals, Mumbai for being examined by a three Member Committee. The said Committee opined that the petitioner was not eligible to pursue the medical course. The petitioner had been thereafter referred to the NEET DCMB at AIIMS Nagpur for assessing his functional competency. The DCMB found the petitioner eligible to pursue medical education but it further observed that the petitioner was not eligible for PwD reservation on the basis of its quantification. According to the learned counsel, the DCMB was merely required to assess the petitioner's functional competency and not quantify his disability. After assessing the petitioner's hearing, speech and

language disability, it had opined that the petitioner was eligible to pursue the medical course. On that basis, the petitioner ought to be restored his admission at the Government Medical College, Jalna which was denied on 31st October 2024. For the purposes of quantification of the petitioner's disability, the certificate dated 6th August 2024 was sufficient. As regards the petitioner's functional competency, the certificate dated 23rd October 2024 issued by the DCMB ought to be taken into consideration. It was thus submitted that though the petitioner was found eligible to pursue the medical course by the DCMB, his admission had been wrongly cancelled. It was thus prayed that the petitioner's admission be restored at Government Medical College, Jalna and if it was found that there was no vacant seat now available, the relief be moulded to enable the petitioner to pursue the MBBS course.

6. Ms. Neha S. Bhide, learned Government Pleader appearing for the second respondent- Sir J. J. Group of Hospitals relied upon the affidavit in reply filed by the Professor and Head of the Department (ENT) dated 15th October 2024 and opposed the writ petition. It was submitted that initially the petitioner was issued a certificate of disability on 6th August 2024 which indicated multiple disability at 58% and speech disability exceeding 40%.

Further verification of the petitioner's functional ability was undertaken on 5th August 2024 and the Board constituted by the second respondent had opined that as the petitioner's speech and language disability was more than 40%, he was not eligible to pursue the medical course. In view of the interim order passed in the present proceedings, the DCMB again examined the petitioner on 23rd October 2024 and as per the opinion expressed by it, the petitioner was not eligible to seek PwD reservation, though he was eligible to pursue the medical course. Since this assessment was undertaken pursuant to the directions issued by the Court, the opinion as expressed was binding on all parties.

Reliance was also placed on the affidavit in reply filed on behalf of the Assistant Professor in Forensic Medicine, Government Medical College, Jalna dated 7th February 2025. It was submitted that when the petitioner had approached the said college on 30th October 2024 for seeking admission to the MBBS course, he did not possess the requisite disability certificate. Since the petitioner's functional ability was determined by the DCMB which stated that he was not entitled for PwD reservation, his admission came to be cancelled. This was done after giving due opportunity to the petitioner by granting him time to produce the relevant documents till 31st October 2024. Since it was opined that

the petitioner was not eligible for the benefit of PwD reservation, his admission was rightly cancelled.

7. Mr. Ganesh K. Gole, learned counsel appearing on behalf of the first respondent-NMC referred to various communications issued on behalf of the NMC in the light of the orders passed by Supreme Court in Writ Petition (C)No.856 of 2023 *Bambhaniya Sagar Vasharambhai Vs. Union of India and others* in the matter of providing suggestions to facilitate grant of benefit to candidates suffering from physical disability. He also invited attention to the guidelines regarding admissions of students with specified disabilities under the Rights of Persons with Disabilities Act, 2016. According to him, the disability board having certified the petitioner to be not eligible for PwD reservation, no relief in that regard could be granted to him.

8. We have heard the learned counsel for the parties at length and with their assistance we have also perused the documents on record. The petitioner has been issued a Certificate of Disability by the Sir J. J. Group of Hospitals which is the Designated Disability Certification Centre. As per this certificate dated 6th August 2024, the petitioner suffers from multiple disability to the extent of 58%

and speech disability exceeding 40%. Relying upon the decision of the Supreme Court in *Omkar Ramchandra Gond (supra)*, a direction was issued on 17th October 2024 by which the Disability Board was requested to examine the petitioner's functional ability and opine as to whether the petitioner would be in a position to pursue the medical course. In accordance therewith, the petitioner was examined by the NEET DCMB at AIIMS, Nagpur. It recorded a finding that after assessing the petitioner's functional ability, he was found eligible to pursue medical education. It however opined that the petitioner was not eligible for PwD reservation. Thus the only contentious issue that now remains to be adjudicated is the entitlement of the petitioner to admission at the MBBS course by seeking benefit of PwD reservation.

9. As per the Information Brochure governing admissions to NEET-UG 2024, a candidate having less than 40% hearing impairment or speech and language disability is eligible for being admitted to the medical course but is not eligible to seek benefit of PwD reservation. In case such disability is equal to or exceeds 40%, then such candidate is not eligible to pursue the medical course. The Supreme Court in *Omkar Ramchandra Gond (supra)* noticed this very provision. Therein the appellant was certified to

have 44%/45% permanent disability as per the certificate issued to him. As per Appendix H-1 of the Admission Brochure, a candidate with less than 40% disability was not eligible for PwD reservation though such candidate could pursue the medical course. A candidate with 40% disability or more was however not eligible to pursue the medical course. While considering the aforesaid, it was observed that merely because the quantification of disability of speech and language was 40% or above, a candidate would not forfeit his right to stake a claim for admission to the course of his choice. It was thus held that quantification of disability *per se* would not disentitle a candidate with benchmark disability from being considered for admission to an education institution. The candidate would be eligible if the DCMB opines that notwithstanding the quantified disability, the candidate can pursue the course in question. The DCMB that assesses the candidate should positively record whether the disability of the candidate would or would not come in the way of the candidate pursuing the course in question. The observations in paragraphs 20, 46 to 48 are relevant for the present purpose. The same are as under:-

20. The Appendix H-I extracted above provides a peculiar scenario. While people with less than 40% disability are

not eligible for PwD quota, though they can pursue the Medical Course, persons with equal to or more than 40% disability are not eligible for the medical course. Read literally, while persons with speech and language disability with less than 40% are not entitled to the reserved quota, if they have 40% or more disability they are rendered ineligible for the medical course. The column under the guidelines "Eligible for Medical Course, Eligible for PwD quota" is left blank reinforcing the absurd position that under this category no one is rendered eligible for the 5% reserved quota. Certainly that cannot be the legal position.

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.

47. The concept of "inclusive education" has been elucidated in Avni Prakash v. National Testing

Agency, (NTA) and others (2023) 2 SCC 286. This Court held as under.

"40. Education plays a key role in social and economic inclusion and effective participation in society. Inclusive education is indispensable for ensuring universal and non-discriminatory access to education. The Convention on Rights of Persons with Disabilities recognises that inclusive education systems must be put in place for a meaningful realisation of the right to education for PwD. Thus, a right to education is essentially a right to inclusive education. In India, the RPwD Act, 2016 provides statutory backing to the principle of inclusive education. Section 2(m) defines "inclusive education" as:

"2. (m) "inclusive education" means a system of education wherein students with and without disability learn together and the system of teaching and learning is suitably adapted to meet the learning needs of different types of students with disabilities;"

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 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.”

(emphasis supplied by us)

10. It is necessary to note that a candidate seeking benefit of PwD reservation is required to submit certificate of disability. As referred to above, such certificate dated 6th August 2024 was submitted by the petitioner. Since his disability was found to exceed the benchmark of 40%, he was held to be not eligible to pursue the medical course. It is for this reason that the petitioner approached the High Court by filing the present writ petition seeking a declaration that the NMC be directed to re-consider its policy of not permitting candidates who suffer from more than 40% disability from pursuing medical courses. In the light of the law laid down in *Omkar Ramchandra Gond (supra)*, the petitioner's functional competency was directed to be examined by the expert body, namely the NEET DCMB. It having opined that the

petitioner was eligible to pursue the medical education course, as a corollary, the petitioner is entitled to seek benefit of PwD reservation in the light of the disability certificate dated 6th August 2024.

11. It was urged on behalf of the respondents that as the NEET DCMB had opined that the quantification of petitioner's disability was below the benchmark of 40%, he was not eligible for PwD reservation. In this regard, it may be stated that the only direction issued to the said Board was to assess the petitioner's functional ability for pursuing the medical course and not to quantify his disability. The quantification of the petitioner's disability was already done on 6th August 2024. Accepting that quantification, a direction had been issued to the DCMB examine the petitioner's functional competency. No fault was found with the quantification of the petitioner's disability indicated in the certification dated 6th August 2024. At this stage, it would be necessary to refer to paragraphs 53 and 54 of the decision in *Om Rathod (supra)*, which read as under:

"55. We have noted above that Disability Assessment Boards must comply with rule of law principles by injecting transparency, fairness and consistency in their approach. The Boards must further elaborate on the reasons for the outcome of

their assessment, in particular when they opine that the candidate is ineligible. The Disability Assessment Boards must focus on the functional competence of persons with disabilities and not merely quantify the disability. The quantification of disability is a task in need of a purpose within the human rights based model of disability. The functional competency approach to assessment for a medical course is globally recognised. To enable members of the Assessment Boards in effectively applying the functional competency test, they must be adequately trained by professionals and persons with disabilities or persons who have worked on disability justice. These trainings must be with a view to enhance the understanding of the Board members in assessing persons with disabilities and must not pathologize or problematize them.

54. *The disability of a person is quantified at the time of availing a Unique Disability ID Card. The quantification of disability is moot at the point of admission to educational courses since the eligibility for a person to benefit from reservation may be evaluated using the quantification in the UDID Card. If a person with disability wants to have themselves re-assessed so as to verify whether their disability falls within the prescribed parameters for reservation - they may choose to do so by updating their UDID Cards. The role of the Disability Assessment Boards must be tailored (with a functional competency approach) only for the course which the candidate seeks to pursue.”*

(emphasis supplied by us)

Hence, it was not necessary for the DCMB to have again examined and quantified the disability of the petitioner. Once the

DCMB found the petitioner eligible to pursue the medical course notwithstanding his aforesaid disability as quantified, its assessment of his functional competency ought to govern the matter. In other words, on the basis of quantification of the petitioner's disability vide Certificate dated 6th August 2024 coupled with the assessment of the petitioner's functional competency to pursue the medical course as opined by the DCMB on 23rd October 2024, the petitioner would be entitled to pursue medical education by seeking benefit of PwD reservation.

Accepting the quantification of the petitioner's disability as undertaken by the DCMB on 23rd October 2024 would place the petitioner in a worse position than he was prior to approaching the Court. His disability was already quantified on 6th August 2024 by the Disability Board as per the Information Brochure. The matter was referred to the DCMB by the order dated 17th October 2024 only to assess the petitioner's functional competency. It is well settled that a person cannot be placed in a worse position by coming to Court as held in *Pradeep Kumar Vs. Union of India and others*, (2005) 12 SCC 219.

12. Though the petitioner was directed to be admitted at the first year MBBS course at the Government Medical College, Jalna

pursuant to the interim order 17th October 2024, for failure on his part to submit the requisite certificate indicating his physical disability so as to seek benefit of PwD reservation, his admission was cancelled on 31st October 2024. Since it is found that the petitioner is entitled to pursue the medical course with the aid of PwD reservation, the petitioner's admission is liable to be restored. It is informed that presently there is no vacant seat available in the PwD category at the Government Medical College, Jalna. However considering the facts aforestated, a case has been made out to grant restitutive relief as held in *Manoj Kumar Vs. Union of India* 2024 INSC 126 and restore the petitioner to the position in which he was prior to denying him admission. Following the principle of law laid down in *S. Krishna Sradha Vs. State of Andhra Pradesh and others* 2017 INSC 1301, a direction is issued to the Government Medical College, Jalna as well as the NMC to admit the petitioner at the first year MBBS course in the PwD category by creating a supernumerary seat.

13. Hence for aforesaid reasons, the following order is passed:-

- i) In the light of quantification of petitioner's multiple disability at 58% and speech disability exceeding 40% as per Certificate dated 6th August 2024

coupled with the disability assessment of the petitioner by the NEET Disability Certification Medical Board on 23rd October 2024 holding the petitioner eligible to pursue medical education, it is held that the petitioner is entitled to pursue medical education and also seek benefit of PwD reservation.

ii) The action on the part of Government Medical College, Jalna of cancelling the petitioner's admission to the first MBBS course, 2024 for failure to produce a requisite disability certificate is set aside. It is directed that the petitioner shall be restored his admission to the first MBBS course, 2024 in the PwD category. Same be done by creating a supernumerary post.

iii) The Dean, Government Medical College, Jalna shall take necessary steps so as to enable creation of this supernumerary seat with the approval of the National Medical Commission.

iv) Rule is made absolute in aforesaid terms with no order as to costs.

[M.M. SATHAYE, J.]

[A.S. CHANDURKAR, J.]