



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 9165 OF 2023

Vaidehi D/o Santosh Borphale,
Age 18 years, Occ. Student,
R/o. Gangakhed, Tq. Gangakhed,
Dist. Parbhani.

... Petitioner

VERSUS

- 1) The Government of India
Through Director General of Health
Medical Counselling Committee,
Nirman Bhavan, New Delhi.
- 2) National Medical Commission
(Under Ministry of Health and Family
Welfare), New Delhi.
- 3) Department of Empowerment of Person
with Disabilities Ministry of Social
Justice and Employment Government of
India, New Delhi, Through its Secretary.
- 4) Grand Government Medical College
Mumbai, Through its Dean.
- 5) The State of Maharashtra,
Through Director Medical Education and
Research Mumbai.
- 6) The Commissioner State CET Cell,
Office at Mumbai.

... Respondents.

...

Advocate for the Petitioner : Mr. Santosh S. Dambe.
Advocate for Respondent Nos. 1 & 3 : Mr. R.R. Bangar.
Advocate for Respondent No. 2 : Mr. V. S. Kadam h/f Mr. S.K. Kadam
A.G.P. for Respondent No. 4 : Mr. S.R. Yadav
Advocate for Respondent No. 6 : Mr. P.V. Tapse-Patil

AND

WRIT PETITION NO. 8938 OF 2023

Dnyaneshwar s/o Vishnu Girgune,
Age 19 years, Occ. Education,
R/o. Deogaon Post Kadi Wadgaon,
Tq. Wadwani Dist. Beed.

... Petitioner

VERSUS

- 1) Union of India,
Represented by its Secretary,
Ministry of Health and Family Welfare
Room No. 348, A Wing, Nirman
Bhavan, Neww Delhi- 110011.
- 2) National Medical Commission,
Represented by its Chairman, Pocket
14, Sector 8, Dwarka Phase-1,
New Delhi- 110077.
- 3) Medical Counselling Committee,
Represented by the Directorate General
of Health Services, Government of India
Ministry of Health and Family Welfare
Room No. 4464, 'A' Wing, Nirman
Bhavan, New Delhi- 110011.
- 4) State of Maharashtra,
Represented by its Principal Secretary,
Higher Education Department,
411, Fourth Floor, Mantralaya Annex
Madam Cama Road, Nariman Point,
Mumbai- 400032.
- 5) Directorate of Medical Education and
Research Govt. Dental College and
Hospital Building, St. George's Hospital
Compound, Mumbai- 400 001.
- 6) The Designated Disability Board
Through : The Dean Government Medical
College and Sir J.J. Hospital, Nagpada
Mumbai Central, Off Jijabhoy Road,
Mumbai- 400008.
- 7) Union of India,
Represented by its Under Secretary
Department of Empowerment of Persons
with Disabilities Ministry of Social Justice
and Empowerment, Room No. 253-A Wing,
Shastri Bhawan, New Delhi- 110001.

- 8) The Chief Commissioner for Persons
With Disabilities, 5th Floor, NISD Building
Plot No. G-2, Sector-10, New Delhi 110075. ... Respondents

...

Advocate for the Petitioner : Mr. S.J. Salunke a/w Mr. S.M. Sangale
Advocate for Respondent Nos. 1, 3, 7 & 8 : Mr. R.R. Bangar Standing
Counsel

Advocate for Respondent No. 2 : Mr. V.S. Kadam h/f Mr. S.K. Kadam.
A.G.P. for Respondent Nos. 4 to 6 : Mr. S.R. Yadav-Lonikar

AND

WRIT PETITION NO. 9347 OF 2023

Momin Ifrah Fatema D/o Mukhtaruddin,
Age 19 years, Occ. Student,
R/o. C/o. Mukhtaruddin s/o Nasiruddin,
Opp. Madina Masjid, Moninpura,
Beed Dist. Beed.

... Petitioner

VERSUS

- 1) The Union of India,
Through Director of General of Health
Services, Nirmanbhavan, New Delhi.
- 2) Maharashtra State Council CET Cell,
Competent Authority & Commissioner,
State Common Entrance Test Cell,
Maharashtra State Mumbai.
- 3) National Medical Commission,
Through its Chairman, Pocket-14,
Sector 8, Dwarka Phase-1,
New Delhi- 110011. ... Respondents

...

Advocate for the Petitioner : Mr. S.S. Kazi h/f Mr. M. N. Shaikh.
Advocate for Respondent No. 1 : Mr. Bhushan Kulkarni, Standing Counsel
Advocate for Respondent No. 2 : Mr. P.V. Tapse
Advocate for Respondent No. 3 : Mr. V.S. Kadam h/f Mr. S.K. Kadam

CORAM : MANGESH S. PATIL &
SHAILESH P. BRAHME, JJ.
RESERVED ON : 08.09.2023
PRONOUNCED ON : 12.09.2023

JUDGMENT : (PER : MANGESH S. PATIL, J.)

Since all these petitions involve common questions albeit the petitioners are different but the respondents are common, we propose to decide these petitions together by this common order.

2. Rule. Rule is made returnable forthwith. Learned advocates and A.G.P. Mr. S.R. Yadav, R.R. Bangar, V.S. Kadam h/f Mr. S.K. Kadam, Bhushal Kulkarni, P.V. Tapse, waives service for the respective respondents. At the joint request of the parties, the matters are taken up for final disposal at admission stage.

3. The common thread running across all these petitions is to the eligibility of the petitioners for admission to Under Graduate Medical Course through National Eligibility Entrance Test (UG) 2023 (hereinafter 'NEET') under 'the person with disability' (PwD) category quota, in the light of the Graduate Medical Education regulations, 1997 notified on 04.02.2019 and modified on 13.05.2019 by the Medical Council of India (MCI) in exercise of the powers conferred by Section 33 of the Indian Medical Council Act, 1956 (IMC Act).

4. The petitioners' disability and eligibility has been considered by the disability boards notified therein. The disability boards have though noticed that the petitioners were suffering from disabilities have certified them to be not eligible to undertake medical education, classifying them to be possessing Specified Locomotor disability of type (f) 'others' such as amputation, poliomyelitis etc. which expects the disability board to consider if both hands are intact, with intact sensations, sufficient strength and range of motion, essential for undertaking medical course.

5. Petitioner-Vaidehi Santosh Borphale in Writ Petition No. 9165/2023 has the following disability :

Sr. No.	Disability Type	Type of Disability	Specified Disability	Disability %
1	Physical Disability	Locomotor Disability	Amputation	54

Conclusion : Based on quantification of Disability **The Candidate is not eligible to pursue medical course (as per NMC norms).**

Remark : No remarks.

The Disability Certificate Board certifies that the candidate is Not Eligible for admission in Medical/Dental courses and to avail 5% PwD reservation as per the NMC/MCI Gazette Notification.

If 'Not Eligible' the reason for the same is : No remarks.

6. Petitioner Dnyaneshwar Vishnu Girgune in Writ Petition No. 8938/2023 has the following disability :

Sr. No.	Disability Type	Type of Disability	Specified Disability	Disability %
1	Physical Disability	Locomotor Disability	others	50

Conclusion : Based on quantification of Disability **The Candidate is not eligible to pursue medical course (as per NMC norms).**

Remark : No remarks.

The Disability Certificate Board certifies that the candidate is Not Eligible for admission in Medical/Dental courses and to avail 5% PWD reservation as per the NMC/MCI Gazette Notification.

If 'Not Eligible' the reason for the same is : No remarks.

7. Petitioner Momin Ifrah Fatema Mukhtaruddin in Writ Petition No. 9347/2023 has the following Disability :

Sr. No.	Disability Type	Type of Disability	Specified Disability	Disability %
1	Physical Disability	Locomotor Disability	others	40

Conclusion : Based on quantification of Disability **The Candidate is not eligible to pursue medical course (as per NMC norms).**

Remark : Both hands intact with intact sensations with sufficient strength and range of motion are essential to be considered eligible for medical course.

The Disability Certificate Board certifies that the candidate is Not Eligible for admission in Medical/Dental courses and to avail 5% PwD reservation as per the NMC/MCI Gazettee Notification.

If 'Not Eligible' the reason for the same is : Both hands intact with intact sensations with sufficient strength and range of motion are essential to be considered eligible for medical course.

Hence these petitions.

8. The learned advocates for the petitioners would submit that so far as the powers of the MCI to promulgate regulations under the provisions of Section 33 of MCI Act are not being questioned. The petitioners are merely aggrieved by the fact that though a comprehensive report regarding the regulations to be framed for admission of persons with specified disabilities was submitted by an expert body after taking into consideration all the relevant aspects, the regulations issued by the MCI have overlooked the view expressed in the report particularly in respect of the ability of an individual with disability associated with upper limb. The regulations of 2019 are vague and do not take the views of the committee into consideration. The regulations give unbridled discretion to the Disability Boards irrespective of the percentage of disability assessed on the basis of

the accepted criteria.

9. The learned advocates for the petitioners particularly advert our attention to the aforementioned remarks given by the Disability Boards in the respective matter. The regulations do not distinguish between the power in the non-dominant upper limb and the dominant upper limb which is the factor considered in the report. The assessments made by the Disability Board do not precisely indicate the reasons why that particular petitioner is unable to undertake medical education, which is so vital.

10. They would submit that with whatever disability the petitioners have in the upper limbs they can easily perform all these chores and the petitioners could have easily been admitted to the medical course. They would submit that the medical education is not restricted to any particular branch of expertise. Some branches do not require involvement of or full use of the upper limbs like psychiatric etc. and may enable the individual to practice but that factor has not been taken care of by the regulations.

11. The learned advocates would submit that these regulations are violative of the fundamental rights of the petitioners to practice profession of their choice guaranteed under Article 19(1)(g). The restrictions imposed by the MCI are unreasonable. Hence they pray to declare the regulations issued by the MCI to be ultra virus and illegal and pray that the petitioners be directed to be reexamined and be permitted to undertake medical education by directing the respondents to admit them under PwD category.

12. The learned advocates for the respective respondents submit that there cannot be any question about the legislative power and competence of MCI which is a statutory body to have the regulations in place by virtue of Section 33 of the MCI Act. It is within its exclusive domain to prescribe the regulations *inter alia* for assessment and admission of a candidate under PwD category. They would submit that it being a body of experts in the field empowered to regulate, the regulations cannot be struck down being ultra

virus nor are they violative of any fundamental rights merely because they seek to *inter alia* regulate these admissions to the medical course.

13. The learned advocates would then submit that the disability boards have objectively considered the eligibility of the petitioners to undertake medical education strictly in accordance with the regulations. They being the experts in the field and have found the petitioners not eligible to undertake medical education, this Court in exercise of the powers under Article 226 of the Constitution of India cannot sit in appeal, assess the disability and eligibility of the petitioners to undertake medical education. A division bench of this Court in the matter of **Anita Prakash Shinde Vs. Union of India and Others in Writ Petition (St) No. 539/2021** by the order dated 08.09.2021 has considered all the similar arguments as have been made before this Court and dismissed the petition. The order was challenged before the Supreme Court in Special Leave to Appeal (C) No(s). 18382/2021 which has dismissed the appeal *in limine*

14. The learned advocates would also refer to the decision of the Supreme Court in the matter of **Vidhi Himmat Katariya and others Vs. State of Gujrat and others; (2019) 10 Supreme Court Cases 20**. They would submit that considering a similar challenge, it has been held that no such scrutiny of petitioners eligibility for undertaking medical course could be a subject matter of judicial review.

15. We have carefully considered the rival submissions and perused the papers.

16. As far as the powers and jurisdiction of MCI to lay down the regulations is concerned, there cannot be a debate that by virtue of Section 33 it has the powers to issue regulations for regulating medical admissions.

17. It does appear that before issuing the regulations a committee of experts was consulted. It had given a detailed report qua category of

disabilities depending upon locomotor and related disabilities, visual impairment, impairment of hearing and speech, intellectual disability and mental behaviour, chronic neurological conditions, chronic blood disorders and multiple disabilities. It also appears that this report in respect of locomotor and related disabilities with which the petitioners are suffering from had opined as under :

“Although % of disability as certified by a duly constituted Medical Board is a very important criteria, it is equally important to consider whether the candidate has sufficient ability to pursue and complete the various Sections of the Medical course satisfactorily and without any significant risk to the candidate or the patient(s). This ability may be assessed with the appropriate assistive device such as an artificial limb (prosthesis) already being used by the candidate.

Disability may be of a single category such as locomotor disability (including Leprosy cured persons, Cerebral Palsy, Dwarfism, Muscular Dystrophy, Acid Attack Victims) or multiple, as per the Schedule of Rpwd Act 2016.

Presence of significant Locomotor Disability with or without any other significant disability such as Visual or hearing speech of learning etc. which will make it very difficult for the candidate to pursue and complete the course satisfactorily and may significantly increase the risk to the candidate or the patient(s)-may be declared NOT ELIGIBLE for admission.

If single category disability, such as Locomotor Disability (including Cerebral Palsy, Leprosy Cured, Dwarfism, Acid Attack Victims, Muscular Dystrophy), candidates having extent of disability 40% to 80% only may be ELIGIBLE for consideration of admission.

Candidates having more than 80% disability may be declared NOT ELIGIBLE for admission to medical Courses.

Candidates having locomotor disability in relation to lower limb(s) may be considered ELIGIBLE.

Candidates having locomotor disability in relation to spine may be considered ELIGIBLE”.

To the extent of disability in the upper limbs it had also opined as follows :

“There will be NO BLANKET BAN on consideration of Candidates having locomotor disability in relation to upper limbs, but only those candidates having involvement of upper limbs in such a manner that :

- (i) The Non-Dominant upper limb is involved with mild weakness, shortening, deformity etc., but the hand is structurally intact, mobile (not stiff) and functional, sensations are preserved, condition is painless, and non-progressive in nature may be considered as ELIGIBLE.*
- (ii) the dominant upper limb is NOT INVOLVED and is structurally intact, mobile (not stiff) as well as normally functional may be considered as ELIGIBLE.*
- (iii) a candidate with loss of a digit or stiffness/deformity in non-dominant upper extremity but intact, mobile and functional thumb with preserved sensations may be considered as ELIGIBLE.*

Candidates with following locomotor disability are NOT ELIGIBLE for consideration for admission to Medical Courses when there is :

- (i) Involvement of whole body;*
- (ii) Involvement of three limbs in any combination (both lower limbs + one lower limb OR one lower limb + both upper limbs);*
- (iii) Involvement of both upper limbs;*
- (iv) Extent of locomotor disability more than 80%.*
- (v) Involvement of both lower limbs of such an extent that the candidate is unable to sit, stand, walk, and/or bend due to significant pain, stiffness, weakness, deformity etc.*
- (vi) Involvement of a single upper limb which is DOMINANT UPPER LIMB (which is right upper limb in a majority of persons) to an extent that the candidate has loss of thumb, cannot hold an object satisfactorily, has significant weakness/deformity/stiffness of joints, or the limb is lacking normal sensations.*
- (vii) Involvement of SPINE with weakness and/or deformity*

to such an extent that the candidate is unable to sit steadily for long duration, and/or has significant pain, and/or cardio-respiratory compromise etc.”

18. The basic thrust of the arguments of the learned advocates for the petitioners is on the above excerpts from the report with regard to the disability in the upper limb. Their submission is that the regulations do not address the aforementioned norms to the extent of ability of a dominant upper limb as compared to the disability in the non-dominant upper limb. The regulations should have addressed and taken into consideration these aspects which have been clearly overlooked for regulating the assessment by the disability board which merely takes into consideration a physical disability of locomotor disability category in respect of clause (f) under which merely expects both hands to be intact with intact sensation, sufficient strength and range of motion. No such distinction between a dominant upper limb and non dominant upper limb has been considered in spite of recommendations which gives the disability board some leeway in assessment of the eligibility of a candidate to undertake medical course.

19. However, this is a matter of undertaking judicial review of the regulations promulgated by the MCI under the statutory rule making powers. As laid down in the matter of **Vidhi Himmat Katariya (supra)** it is impermissible for this Court in exercise of powers under Article 226 to undertake a judicial review of the regulations. Merely because the report of the experts makes some distinction between the power in the upper limb and non dominant upper limb and even expects assessment of eligibility on that count, we cannot sit in appeal over the decision of the MCI to ignore it while issuing the regulations.

20. Pertinently, even in the matter of **Vidhi Himmat Katariya (supra)** the dominant hands of the petitioners therein were fully functional and the disability was only to be non dominant hand. Precisely, the description of the

disability in those matters can be found in paragraph No. 3.3 of that judgment which reads as under :

“3.3 It is further submitted by the learned counsel appearing on behalf of the petitioners that while applying the parameters mentioned in Appendix “H” with sub-clause (f) of Clause 4(1) of regulations (Both hands intact, with intact sensation, sufficient strength and range of motion are essential to be considered], the State Government did not consider the facts that, petitioner no.1 has good muscle power, does gripping and activities of daily living with modifications; petitioner no. 3’s right side dominant and his right hand is perfectly fine; the range of motion in left hand is not nil, rather restricted, does activities of daily living with little difficulty and the affected (left) hand has good muscle power as well; petitioner in Writ Petition (C) No. 900 of 2019 is right side dominant and his right hand is perfectly fine; affected body part is left hand only. Left hand has good pinch with modification and does daily activities with upper limb right side; petitioner in Writ Petition (C) No. 1026 of 2019 is left side dominant and his left hand is perfectly fine; affected body part is right hand only.”

After due scrutiny following observations have been made by the Supreme Court in paragraph No. 6.1:

“6.1 The respective petitioners are suffering from locomotor disability and they are seeking admission in the MBBS course under PwD category. As per Notification dated 4-2-2019 and Appendix “H” - Guidelines regarding admission of students with ‘Specified Disabilities’ under the 2016 Act with respect to admission in MBBS course, a candidate suffering from locomotor disability of less than 40% shall be eligible to pursue MBBS course but not eligible to be granted the benefit of reservation under PwD quota. It further provides that “both hands intact, with intact sensation, sufficient strength and range of motion” are essential to be considered eligible for medical course. As per the opinion of the Medical Board, Medical Appellate

Board and even the Medical Board of AIIMS, New Delhi, the respective petitioners are not eligible for admission in MBBS course under PwD quota as they do not fulfill the essential criteria to be fulfilled as per Appendix “H”. Therefore, as such, the respective petitioners are not fulfilling the essential eligibility criteria provided as per Appendix “H” and therefore they are not eligible for admission in the medical course under PwD quota”.

21. As far as the similar submissions as have been advanced before us, even the petitioners ability with fully functional upper limb were discarded by the Supreme Court in the following words :

“8. Now so far as the submission on behalf of the petitioners that while denying admission to the petitioners the State Government and/or authorities have not considered the relevant parameters and have not considered that the respective petitioners are able to perform well is concerned, it is required to be noted that in the present case all the expert bodies including the Medical Board, Medical Appellate Board and even the Medical Board of AIIMS, New Delhi consisting of the experts have opined against the petitioners and their cases are considered in light of the relevant essential eligibility criteria as mentioned in Appendix “H”- “both hands intact, with intact sensation, sufficient strength and range of motion.” Therefore, when the experts in the field have opined against the petitioners, the Court would not be justified in sitting over as an appellate authority against the opinion formed by the experts – in the present case, the Medical Board, Medical Appellate Board and the Medical Board of AIIMS, New Delhi, more particularly when there are no allegations of mala fides.”

22. In our considered view, all these observations squarely apply to the petitioners’ matters. In fact a coordinate division bench of this Court in the matter of **Anita Prakash Shinde (supra)** at the principal seat has considered all the aspects and a similar challenge and dismissed the petition and even the Supreme Court refused to admit the Special Leave to Appeal.

Consequently, even the challenge to the regulations on the ground of discrimination prohibited by Section 3 of the Rights of Persons with Disabilities Act, 2016 and Article 19(1)(g) of the Constitution of India, is therefore, not sustainable.

23. There is no merit in the petitions.

24. Still we feel it appropriate to record some observations in the larger interest in view of one peculiar aspect as far as the petitioner Momin Ifrah Fatema from Writ Petition No. 9347/2023. Her eligibility was considered by the Disability Board in the last year wherein she was found to be eligible to pursue medical education but was held to be not eligible to claim PwD reservation as per NMC norms, having merely 34% disability. Whereas, in the current year the same Disability Board has found her disability to be 40% but has also found that she is not eligible to pursue medical course. It is this peculiar aspect we intend to emphasize although we are inclined to dismiss the petitions.

25. Though we are not experts in the field and have limitations in objectively scrutinizing the opinion of the disability boards, the aforementioned aspect demonstrates a glaring shortcoming in the regulations framed by the MCI. Obviously the Disability Board in question comprises of three members and as can be noticed in respect of petitioner Momin Ifrah Fatema one of the three experts on both these occasions that is last year and the present year Dr. Amit Supe from the Department of Orthopedic Grand Government Medical College and Sir J.J. Group of Hospitals Mumbai is common. The other two experts are different.

26. Accepting that there could be some margin of difference in the assessment made by the successive disability boards, and even though we will not be able to objectively address their expert opinion, the very fact that there could be such difference of opinion wherein in the span of one year the same Disability Board has found the petitioner eligible but not in the

next year demonstrates that it is a serious matter which would require attention of the MCI, since eligibility of a candidate with physical disability to pursue medical education would be at stake. It could be by way of improving upon the existing regulations and providing several parameters for the disability boards to be followed which would rule out any such anomalous position. More the parameters lesser would be the possibility of such drastic deviation in the assessment albeit there would always remain some subjective element in the opinion of the experts constituting the disability boards.

27. It is in view of above peculiar state of affairs, even though we are not inclined to grant any relief to the petitioners we expect the MCI to ponder upon this glaring example and expect it to take appropriate remedial measures to obviate any such anomalous position.

28. The writ petitions are dismissed. Rule is discharged.

(SHAILESH P. BRAHME, J.)

(MANGESH S. PATIL, J.)

mkd/-