

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

31 WRIT PETITION NO. 9165 OF 2023

VAIDEHI D/O SANTOSH BORPHALE
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

...
Mr. S.S. Dambe, Advocate for petitioner
Mr. A.A. Jagatkar, A.G.P. for respondent – State
Mr. R.R. Bangar, Standing Counsel for respondents 1 and 3
Mr. S.K. Kadam, Advocate for respondent no. 2
Mr. P.V. Tapse Patil, Advocate for respondent no. 6
...

AND

154 WRIT PETITION NO. 8938 OF 2023

DNYANESHWAR VISHNU GIRGUNE
VERSUS
UNION OF INDIA REPRESENTED BY ITS SECRETARY AND OTHERS

...
Mr. S.J. Salunke and Mr. S.M. Sangle, Advocate for petitioner
Mrs. M.A. Deshpande, Addl.G.P. for respondent – State
Mr. R.R. Bangar, Standing Counsel for respondents 1, 3, 7 and 8
Mr. S.K. Kadam, Advocate for respondent no. 2
...

AND

34 WRIT PETITION NO. 9187 OF 2023

BHUSHAN GAUTAM HUSE
VERSUS
THE GOVERNMENT OF INDIA AND OTHERS

...
Mr. S.S. Thombre, Advocate for petitioner
Mrs. M.A. Deshpande, Addl.G.P. for respondent – State
Mr. R.R. Bangar, Standing Counsel for respondents 1 and 4
Mr. S.K. Kadam, Advocate for respondent no. 3
...

AND
WRIT PETITION NO. 9347 OF 2023

MOMIN IFRAH FATEMA MUKHTRARUDDIN
VERSUS
THE UNION OF INDIA THROUGH DIRECTOR AND ANOTHER

...
Mr. S.S. Kazi, Advocate h/f. Mr. M.N. Shaikh, Advocate for petitioner
Mr. P.S. Patil, Addl.G.P. for respondent – State
Mr. Bhushan B. Kulkarni, Standing Counsel for respondent no. 1
...

**CORAM : MANGESH S. PATIL &
SHAILESH P. BRAHME, JJ.**

DATE : 31 JULY 2023

ORDER (MANGESH S. PATIL, J.) :

We have heard the learned advocates for the petitioners in all the four writ petitions as also the learned advocate Mr. Bangar, who appears for the Union of India and Mr. Kadam who appears for respondent no. 2 - National Medical Commission.

2. The petitioners have appeared at National Eligibility cum Entrance Test (UG) - 2023 (NEET) and seeking to be considered from Persons with Disability (PwD) category quota.

3. By following the Medical Council of India (MCI) Graduate Medical Education Regulations, 1997 Appendix 'H' notified on 04-02-2019 and Appendix 'H-1' notified on 13-05-2019 prescribing for assessment of the percentage of disability and eligibility, they have been found to be not eligible for medical course for a similar reason,

namely, locomotor disability covered by the specified disability as described in clause (f), which requires both hands intact, with intact sensations, sufficient strength and range of motion to be essential for being eligible for medical course.

4. The learned advocates for the petitioners vehemently submit that in spite of specific recommendations of experts in the field, the regulations have not been modified appropriately ignoring the deficiencies only in the upper limb which is not dominant and the dominant upper limb being fully functional. In writ petition no. 9187 of 2023, the regulations have been put to challenge.

5. The learned advocates would advert our attention to the interim order passed in writ petition no. 10661 of 2022 in the matter of ***Ajinkya Ankush Budle Vs. The Government of India, through the Director General of Health and others*** dated 21-10-2022. It is being submitted that since the petitioner therein was directed to be considered for the admission from Persons with Disability category, a similar view should be taken even in the petitioners' matters.

6. The learned advocates for the petitioners would also submit that even the board which has found the petitioners not eligible, has not given concrete remarks for arriving at the conclusion. They have simply declared petitioners to be not eligible by referring to the physical disability of type 'A' i.e. locomotor disability and specified

disability described in clause (f). The learned advocates submit that the board could not have resorted to such vague orders which are *sans* detailed reasons for arriving at the conclusion. They would, therefore, request for interim relief so that the petitioners can go through the process of admission.

7. The learned advocate Mr. Kadam would vehemently submit that the petitions are not maintainable being *sans* merit. He would also refer to the decision of the Supreme Court in the matter of ***Vidhi Himmat Katariya and others Vs. State of Gujarat and others; (2019) 10 SCC 20*** which decision has been followed by a co-ordinate bench of this Court in the matter of ***Anita Prakash Shinde Vs. Union of India*** (writ petition (st.) no. 539 of 2021 decided on 08-02-2021) which was put to challenge before the Supreme Court in a Special Leave to Appeal (Civil) no. 18382 of 2021 but which was dismissed on 12-05-2023.

8. Mr. Kadam would submit that by virtue of section 33 of the Medical Council Act, the medical council can issue regulations subject to the previous approval of the Central government. Though the matter was referred to and some recommendations were received from the committee of the experts in its report submitted to the President of the Medical Council of India, those were merely recommendations. Subsequently, Medical Council of India considered those

recommendations and with the previous approval of the Central government has also modified the regulations on 13-05-2019 as per annexure 'H-1'. He would submit that it is a matter of policy decision to be taken by the MCI with the approval of the Central government. For the time being, the regulations need to be followed in letter and spirit.

9. Mr. Kadam would further submit that the interlocutory order granted by this Court in the matter of **Ajinkya Ankush Budle** (supra) was passed without extending any opportunity of being heard to the Standing Counsel of the Medical Council of India. He would further submit that the same bench had dismissed the petition in the matter of Vaibhavi Ambadas Karvar Vs. The Director of Medical Education and Research and others (writ petition no. 10675 of 2022 on 17-10-2022). He would submit that this Court would be guided by the decision of the Board taken in accordance with the regulations and when the experts have found the petitioners to be suffering from a disability of the kind which makes them not eligible to undergo medical education.

10. We have considered the rival submissions and perused the papers.

11. In our considered view, the observations of the Supreme Court in the matter of **Vidhi Himmat Katariya** (supra) limit the powers of this Court to undertake any scrutiny in the matters of this kind. The sympathies apart, even if the petitioners' dominant upper limb is fully

functional, we cannot undertake any scrutiny on our own to reach to a different conclusion than the one arrived at by the Board which has found the petitioners not eligible. 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 the other hand. The description of the disability can be found in paragraph no. 3.3 of the 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 scrutiny, following observations have been made by the Supreme Court in paragraph 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 fulfil 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."

12. The specific submission as far as capabilities of the petitioners with fully functional upper limb also did not weigh with the Supreme Court which has made the following observations in paragraph no. 8.

"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."

13. In view of such emphatic observations of the Supreme Court, we are not inclined to grant interim relief.

14. When we expressed our inclination not to grant any interim relief as was done in the matter of **Ajinkya Ankush Budle** (supra), the learned advocate Mr. S.S. Thombre and Mr. S.S. Kazi would

vehemently submit that if we are not inclined to grant any interim relief and are taking a view inconsistent or different than what was taken by the co-ordinate bench in the matter of **Ajinkya Ankush Budle** (supra), we should make a reference to the Larger Bench.

15. When we tried to impress upon the learned advocates that the order passed in the matter of **Ajinkya Ankush Budle** (supra) is merely an interlocutory order and there is no decision by the co-ordinate bench, Mr. Thombre and Mr. Kazi would persist by saying that there could be a reference to a Larger bench even in respect of interlocutory orders.

16. We are afraid, the submission demonstrates lack of understanding of the law. It is only if there is a decision by a bench which the latter bench does not intend to follow, that a reference can be made. The order passed in the matter of **Ajinkya Ankush Budle** (supra) is merely an order granting interim relief and is not a decision on any point of law or even on facts. There is no question of we embarking upon and taking any decision at this juncture since we are not taking up these matters today for final disposal but are passing this order merely because of the request of the petitioners for grant of interim relief similar to one granted in the matter of **Ajinkya Ankush Budle** (supra).

17. In that view of the matter, we refuse to grant any interim relief to the petitioners.

18. We direct the notices to be issued to the unserved respondents wherever those have not been issued, returnable on 28 August 2023.

[SHAILESH P. BRAHME]
JUDGE

[MANGESH S. PATIL]
JUDGE

arp/