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***IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ W.P.(C) 6970/2017

DEVRRAT PURANG

..... Petitioner

Through : Mr. Vishal Khattar with
Mr. Dhruv Gupta, Adv.

versus

UNION OF INDIA & ORS

..... Respondents

Through : Mr. Dev P. Bhardwaj, CGSC
for R-1 & 4.

Mr. Amit Bansal with Ms. Seema Dolo,
Adv. for R-2 CBSE.

Mr. T. Singhdev, Standing Counsel for
MCI.

Ms. Shruti Munjal, Adv. for Mr. Ankur
Chhibber , Standing Counsel for R-5 & 6.

CORAM:

HON'BLE THE ACTING CHIEF JUSTICE

HON'BLE MS. JUSTICE SANGITA DHINGRA SEHGAL

ORDER

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11.08.2017

CM No.28914/2017 (exemption)

Allowed, subject to all just exceptions.

CM stands disposed of.

W.P.(C) No.6970/2017

1. The petitioner before us is a disabled student with specific learning disability of dyslexia. By way of this writ petition, the petitioner has sought reservation in Government institutes of higher education for persons with such disabilities.

2. A challenge has been made to the Regulations on Graduate

W.P.(C) No.6970/2017

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Medical Education, 1997 contending that the same is *ultra vires* of the provisions of the Constitution of India.

3. Issue notice to show cause as to why rule *nisi* be not issued.
4. Mr. Dev P. Bhardwaj, CGSC accepts notice for the respondent Nos. 1 & 4 - UOI; Mr. Amit Bansal, Standing Counsel accepts notice for the respondent No.2-CBSE; Mr. T. Singhdev, Standing Counsel accepts notice for the respondent No.3-MCI and Mr. Ankur Chhibber, Addl. Standing Counsel for GNCTD accepts notice for the respondent Nos.5 & 6.
5. Counter affidavits be filed within two weeks from today. Rejoinders thereto, if any, be filed before the next date of hearing.

List on 18.09.2017.

CM No.28913/2017 (for stay)

1. Issue notice.
2. Mr. Dev P. Bhardwaj, CGSC accepts notice for the respondent Nos. 1 & 4 - UOI; Mr. Amit Bansal, Standing Counsel accepts notice for the respondent No.2-CBSE; Mr. T. Singhdev, Standing Counsel accepts notice for the respondent No.3-MCI and Mr. Ankur Chhibber, Addl. Standing Counsel for GNCTD accepts notice for the respondent Nos.5 & 6.
3. We permit the petitioner to appear before the respondents for the purpose of verification of the documents. It is made clear that admissions, if any, made to the persons belonging to 'Physically Handicapped' category shall be subject to the outcome of this writ petition.


Chief Justice
Supreme Court of India
New Delhi

4. It shall be the responsibility of the respondents to intimate all the candidates belonging to 'Physically Handicapped' category about this order.

A copy of this order be given *dasti* to the parties under the signatures of the Court Master.



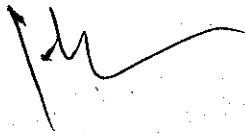
ACTING CHIEF JUSTICE



SANGITA DHINGRA SEHGAL, J

AUGUST 11, 2017

pmc



W.P.(C) No.6970/2017

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भारतीय आयुर्विज्ञान परिषद् MEDICAL COUNCIL OF INDIA

पॉकेट - 14, सेक्टर - 8, द्वारका, नई दिल्ली - 110 077
Pocket - 14, Sector - 8, Dwarka, New Delhi - 110 077



Platinum Jubilee
(1933 - 2008)

No. MCI-34(1)(Gen.)/2009-Med./2569

Dt.21.04.2009

To

1. Secretaries,
Health Departments
All State Governments.
2. Deans/Principals,
All Medical Colleges,
3. Registrars,
All Universities.
4. Director General of
Medical Education
All the State Governments.

Subject: Consideration of eligibility criteria – relaxation to be provided for physically handicapped persons having locomotory disability of lower limb.

Sir/Madam,

It is stated that the Council vide Circular dated 14th July, 2003 had issued detailed guidelines for filling up of reserve seats for persons having locomotive disabilities for admission in medical courses wherein it was reiterated that it is only with person of lower limbs between 50% to 70% should be allowed the benefit of reservation under the Disabilities Act for admission in all the medical courses.

The Central Govt. vide letter bearing No. F. No.U.12021/8.2002-MEC/ME III, dated 12.5.2004 sent to all States and Union Territories, bringing to their notice of the above-mentioned stipulations of considering candidates for the 3% quota having regard to disability of lower limbs between 50% to 70%. By the said letter, the Central Government, inter alia, had required various authorities to ensure that the admission of persons with locomotory disability of lower limbs would be as per MCI norms as had been provided for in the communication dated 14.7.2003 of the MCI.

On 24.08.2006 while hearing the submissions of the parties in SLP (C) Nos. 7952-53/2005 – MCI –Vs.- D.S. Rashmi Ranjan & Ors., the Hon'ble Supreme Court had observed that the Council should consider for providing a mechanism of filling-up of 3% seats in the medical courses for the persons with locomotory disability of lower limbs in a manner that - if in the event candidates with locomotory disability of lower limbs between 50-70% did not fill up all the 3% quota, the remaining seats within the 3% quota should be made available to the persons with locomotory disability of lower limbs between 40 to 50%. The relevant part of the order dated 24.8.2006 is reproduced hereunder:-



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“After some arguments, we have asked Mr. Maninder Singh, learned counsel for the Medical Council of India, as to why candidate suffering from locomotive disability of lower limb of less than fifty per cent but more than forty percent should not get permission in the medical courses in case sufficient number of candidates for three per cent quota seats with disability of seventy percent are not available. Mr. Maninder Singh prays for a short adjournment to take instructions.”

In pursuance of the Hon'ble Supreme Court order dated 24.8.2006, the Executive Committee of the Council at its meeting held on 7.9.2006 had decided as under:

“..... with reference to the provision of Section 2(t) of the Disabilities Act wherein it was laid down that the eligibility for persons with disabilities entitling them for consideration for benefits under the Act, should not be less than 40%, the prescription of the disability between 50% to 70% i.e. locomotory disability of lower limbs was neither arbitrary nor illegal. It was also observed that persons with really minor injury etc. were receiving the benefits of admissions in the medical courses in this 3% quota by being granted certificate of locomotory disability of lower limbs of more than 40% and therefore the General of the Council had brought this change by substituting the degree of locomotory disability of lower limbs as between 50% to 70%. It was also observed that modification had been made out entirely for the reasons that it is the most deserving candidates belonging to this category who should get benefit of reservation under the Act.

The Executive Committee of the Council deliberated and discussed upon the matter at length and taking cognizance of the material on record had decided as under:-

“The present prescription of disability between 50% to 70% i.e. locomotory disability of lower limbs for receiving the benefits of admission in the medical courses should continue subject to modifications that in the event when there are not sufficient number of candidates having locomotory disability of lower limbs of 50% to 70%, the unfilled seats should be filled up by the candidates having locomotory disability of lower limbs to the extent of 40% to 50% before they are converted into the open category seats.....”.

The matter alongwith the above recommendation of the Executive Committee was got approved by the General Body of the Council by circulation. This decision of the Council was communicated to the Central Government vide letter dated 18th January, 2007. Reminder was also sent by the MCI to the Govt. of India for grant of approval for issuance of notification u/s 33 of the Indian Medical Council Act, 1956.

It was further observed that in the meanwhile in the matter of Dr. Kumar Sourav Vs. Union of India & Ors. in W.P. (Civil) No. 184 of 2005, the Central Government vide its affidavit filed in



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July, 2008 had stated that the Government is of the view that a relaxation of marks to the extent of 5% for persons with disabilities falling in the unreserved category only would serve the avowed objective of the 1995 Act. The Medical Council of India had also considered this issue and the General Body of the Council in its meeting held on 13.11.08 had approved the decision of the Executive Committee of the Council dated 10.11.08 for providing the eligibility of 45% instead of 50% in the prescribed subjects in the 10+2 examination and 45% in the CET for consideration for admission in the MBBS course. The necessary recommendation to this effect was forwarded by the Council to the Govt. of India vide MCI letter dated 24.1.09. The approval of the Govt. of India was sought u/s 33 of the Indian Medical Council Act, 1956 for issuance of notification by the MCI in the official gazette.

The approval by the Govt. of India dated 24.3.09 was received by the MCI on 25.3.09 and whereafter immediate steps were taken by the MCI for issuance of the notification in the official gazette. The notification has been published in the official gazette dated 25.3.09. There are two notifications published in the official gazette both are dated 25.3.09. The 1st notification carries out the amendment in the relevant portions of clause-4 & 5 of the Graduate Medical Education Regulations, 1997.

The 2nd notification dated 25.3.09 carries out the amendment in clause-9 of the Postgraduate Medical Education Regulations, 2000. Copies of these notifications in the official gazette both dated 25.3.09 are enclosed for your information and compliance.

You are requested to kindly ensure the taking of necessary steps by all concerned for enforcement and implementation of these amended provisions for the benefit of persons with locomotory disability of lower limbs, as prescribed by the amended provisions, for filling-up of 3% quota for them, without any difficulty or hardship to the candidates belonging to this category.

Yours faithfully,

(A. K. Harit)
Deputy Secretary

Copy to: The Director-General of Health Services,
Govt. of India,
Ministry of Health & Family Welfare,
Nirman Bhawan,
New Delhi.