



IN THE HIGH COURT OF KARNATAKA AT BENGALURU
DATED THIS THE 7TH DAY OF AUGUST, 2023
PRESENT
THE HON'BLE MR JUSTICE G.NARENDAR
AND
THE HON'BLE MR JUSTICE VIJAYKUMAR A. PATIL
WRIT PETITION NO. 16631 OF 2023 (EDN-MED ADM)

BETWEEN:

DR. POOJA S N

Digitally signed
by YAMUNA K L
Location: High
Court of
Karnataka

...PETITIONER

(BY SRI. DIVYATEJ H.N, ADV. FOR
SRI. RAHAMATHULLA KOTHWAL., ADV.)

AND:

1. UNION OF INDIA
REPRESENTED BY ITS
SECRETARY,
MINISTRY OF HEALTH AND
FAMILY WELFARE, GOI,
VIGYAN BHAVAN,
NEW DELHI-110011.
2. THE NATIONAL MEDICAL COMMISSION,
REPRESENTED BY ITS SECRETARY,
POCKET-14, SECTOR-8,
DWARAKA PHASE-1
NEW DELHI-110077.



3. THE MEDICAL COUNCIL COMMITTEE,
REPRESENTED BY ITS SECRETARY,
NEET PG ADMISSION SECTION,
POCKET-14, SECTOR-8
DWARAKA PHASE-1, NEW DELHI-110077.

...RESPONDENTS

(BY SRI. SHIVAPRASAD SHANTANAGOUDAR, CGC
FOR R1 & R3; SRI. K.N.KETTY, ADV. FOR R2.)

THIS WP IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA PRAYING TO ISSUE WRIT IN THE NATURE OF CERTIORARI IN QUASHING THE IMPUGNED CERTIFICATE OF DISABILITY FOR NEET ADMISSIONS IN CERTIFICATE NO. 2023-JUL/000092 DATED 06/07/2023 ISSUED BY THE MEDICAL BOARD CONSTITUTED BY THE RESPONDENT NO.3 VIDE ANNEXURE-H ETC.

THIS PETITION, COMING ON FOR PRELIMINARY HEARING, THIS DAY, G.NARENDAR J., MADE THE FOLLOWING:

ORDER

Heard the learned counsel for the petitioner and the learned CGC.

2. Earlier we were faced with a case where a disability certificate had been issued without any justification or recording reasons for concluding the higher percentage of disability when the disability was a non progressive one. In the instant case it is one of sheer non-application of mind.

3. The petitioner was assessed with the disability of 45% and was admitted to a seat reserved against the quota



reserved for "Persons with Disability". Having completed her under-graduation in first class and aspiring for post graduation has made an application and has undergone the mandatory examination by the Board in the designated center at Madras Medical College, Chennai wherein after examination the Board has assessed her disability at 50%. But while recording its conclusion it has recorded that the candidate is not eligible to pursue medical course as per NMC norms.

4. The moot question is, whether the Board could have expressed such a conclusion ? The eligibility of a candidate is to be concluded by the respondents and it certainly is not within the domain of the Medical Board. Being an expert body it was merely required to assess and certify the extent of disability, in our opinion the conclusion drawn by the board is wholly unsustainable being illegal and as the board is not the selecting authority the eligibility of a candidate cannot be certified by the board. The board is only required to certify the extent of disability and the eligibility of a candidate is in the hands of the competent authority. In our opinion the board has traversed an area beyond its realms, which in our opinion is impermissible.



5. Be that as it may, even as per the regulations a person with a certain extent of disability is entitled for benefits of the quota under the Act, i.e., if such person/candidate suffers with a disability which is certified between 40% to 80%. The petitioner having been certified as suffering from 50% disability, is but naturally and legally entitled to be considered for selection. In that view of the matter, we have no hesitation to hold that portion of the certificate with the nomenclature "Conclusion" shall not be looked into and shall be struck off from consideration. What troubles us even more is, the attitude of the other official respondents who have merely toed the line of the medical board.

6. It is not in dispute that the competence to select the candidates is with the third respondent and if that be so, then the certificate ought to have been appreciated by the third respondent for the purposes of selection. The petitioner otherwise being eligible and also handicapped and the conclusion being the consequences of sheer non application of mind, we are of the considered opinion that the petitioner has made out a case for grant of relief. Accordingly, the writ petition is allowed. The respondents No.2 and 3 shall examine



and consider the case of the petitioner for admission for graduation under the "Persons with Disability" quota. While so considering the case of the petitioner that portion which reads as under:

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

Shall not be taken into consideration by the respondents and shall complete the candidature of the petitioner against the quota "persons with disability" if she is otherwise eligible. The writ petition is ordered accordingly.

7. The respondents shall not wait for the copy of this order. The operative portion be communicated to the respondents No.2 and 3.

There shall be no order as to costs.

**Sd/-
JUDGE**

**Sd/-
JUDGE**

ykl / List No.: 1 Sl No.: 9