



**HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR**

S.B. Civil Writ Petition No.1986/2021

Ankita Singodia S/o Shri K.K. Singodia, Aged About 23 Years,
Resident Of Ga-169, Bhawani Nagar, Murlipura, Sikar Road,
Jaipur (Raj.) 302039

-----Petitioner

Versus

1. Rajasthan University Of Health Sciences, Through Dy. Registrar, Sector-18, Kumbha Marg, Pratap Nagar, Jaipur (Raj.) 302033
2. National Medical Commission, Through Its Secretary, Dada Dev Mandir Road, Dwarka Phase-1, Pocket 14, Sector-8, Dwarka, New Delhi-110077
3. Medical Council Of India, Through Secretary, Dada Dev Mandir Road, Dwarka Phase-1, Pocket 14, Sector-8, Dwarka, New Delhi-110077
4. Principal And Controller Sms Medical College and Controller Associated Hospitals, Jaipur (Raj.)
5. State Of Rajasthan, Through Secretary, Department Of Medical Education Group-I, Government Of Rajasthan, Rajasthan Secretariat, Jaipur (Raj.)

-----Respondents

For Petitioner(s) : Mr. Shailesh Prakash Sharma with
Mr. Avi Sharma
For Respondent(s) : Mr. Angad Mirdha
Mr. S.K. Panwar
Mr. Gaurav Kumawat

JUSTICE ANOOP KUMAR DHAND
Order

Reserved on : 06/08/2025
Pronounced on : 12/08/2025
Reportable

INDEX

(1) Preface & Factual Matrix of the case.....	2
(2) Contentions of the Petitioner.....	3
(3) Contentions of the Respondents.....	5
(4) Analysis, Discussions & Findings.....	6
(5) Conclusion & Directions.....	27
(6) Parting Remarks.....	28



"The only thing worse than being blind is having sight but no vision."
-Helen Keller



More than sight, what truly empowers an individual to succeed in life is a vision or a dream and this vision is not limited alone to those with the sense of sight. With a determined vision, relentless hard work and the courage to take the plunge, individuals with visual impairment can conquer their challenges and thrive in their chosen fields.

Preface & Factual Matrix of the case:-

1. The petitioner, having qualified for the MBBS Course through NEET examination and successfully completed two years of medical studies, faced a life-altering accident that left her completely blind as she lost 100% vision. Despite this profound challenge, she remains determined to pursue her dream of becoming a Doctor. The precise issue to be decided by this Court in this writ petition is whether, under such circumstance, the petitioner can be permitted to complete the remaining portion of her MBBS studies or not.
2. The instant writ petition has been filed by the petitioner with the following prayer:-

"(I) by an appropriate writ, order or direction the respondents be directed to place the entire record pertaining to the petitioner before the Hon'ble Court and the Hon'ble Court after examining the same.

(II) by an appropriate writ, order or direction, the impugned decision dated 29.1.2021 not allowing the petitioner to pursue her studies in MBBS may kindly be quashed and set aside by the Hon'ble Court.



(III) by an appropriate writ, order or direction the respondents be directed to take effective steps for the petitioners and assist her as per the existing provisions of Disabilities Act in pursuing her studies of third year MBBS Course.

(IV) by an appropriate writ, order or direction the respondents be directed to allow the petitioner to appear with all other students in the Examination commencing/taken by the authorities and if such examinations are taken and petitioner is not able to appear, the Hon'ble Court may kindly direct the respondent authorities to conduct Special Examination.

(V) Any other order adversely affecting and prejudicial to the interest of the petitioner if passed during the pendency of the writ petition may kindly be taken on record and be quashed and set aside.

(VI) Any other order, which this Hon'ble Court deem just and proper may kindly be passed in favour of the petitioner."

3. By way of filing this writ petition, the petitioner seeks directions against the respondents to permit her to pursue her MBBS Course and to take appropriate and effective steps to assist her in accordance with the existing provisions of the Right of Persons with Disabilities Act, 2016.

Contentions of the Petitioner:-

4. Learned counsel for the petitioner submits that the petitioner was admitted in MBBS Course in August, 2014 and successfully completed her MBBS first year and second by the year 2017. Learned counsel submits that the petitioner on 07.04.2017, the petitioner met with a road accident wherein she sustained serious head injury, including temporal contusion and skull fracture, which ultimately led to 100% loss of vision. Learned counsel submits that a Medical Board was constituted and based on the petitioner's medical record, the Medical Board gave its opinion on 12.06.2020, and opined that the petitioner be allowed to pursue the MBBS





Course despite her visual impairment. However, learned counsel submitted that a subsequent Medical Board expressed a contrary view, opining that if the petitioner is permitted to complete the MBBS Course, she may not be able to effectively discharge the duties as a Doctor.

5. Learned counsel for the petitioner further submits that the petitioner has submitted an undertaking in the form of an affidavit before this Court that she will not practice as a Medical Practitioner, in the event, she is permitted to complete the MBBS Course and is awarded MBBS degree. Learned counsel submits that the petitioner is keenly committed and desirous to complete her MBBS Course. Learned counsel further submits that the petitioner undertakes to pursue and complete the remainder of her course with the assistance of a Scribe, which is permissible under the law. In the light of the above, it is prayed that appropriate directions be issued to the respondents not to deny the petitioner the opportunity to complete her remaining MBBS studies.

6. In support of his contentions, learned counsel for the petitioner has placed reliance upon the following judgments:-

(1) State of Tamil Nadu & Others Vs. J. Vibin & Another while deciding **W.A. (MD) No.1481/2018** on **30.04.2019** by the Madras High Court.

(2) Purswani Ashutosh (Minor) through Dr. Kamlesh Virumal Purswani Vs. Union of India & Ors. while deciding **Writ Petition (c) No.669/2018** on **24.08.2018** by the Hon'ble Apex Court.



(3) Om Rathod Vs. The Director General of Health Services & ors. while deciding **Civil Appeal No.12110/2024** on 25.10.2024 by the Hon'ble Apex Court.

(4) Aditya Sharma Versus The State of Rajasthan & Others while deciding **S.B. Civil Writ Petition No.9157/2017** on 15.10.2024 passed by this Court.

(5) Anmol Versus Union of India & Ors. while deciding **Civil Appeal No.14333/2024** on 21.02.2025 by the Hon'ble Apex Court.

(6) Suyash Suryakant Patil Versus National Medical Commission & Ors. while deciding **Writ Petition No.13072/2024** on 21.02.2025 by the Bombay High Court.

Contentions of the Respondents:-

7. *Per contra*, learned counsel for the respondents opposed the submissions made by learned counsel for the petitioner and submitted that under the provisions contained in the Regulations on Graduate Medical Examination, 1997 (for short "the Regulations of "1997") issued by Medical Council of India in exercise of powers conferred under Section 33 of the Indian Medical Council Act, 1956 (for short "the Act of 1956"), a detailed and complete mechanism has been prescribed for completing the MBBS Course, which necessarily includes performing surgeries and practical training and it would not be feasible for a person with 100% visual impairment, like petitioner, to perform and complete the practical studies of the MBBS curriculum. Learned counsel further submitted that under the Regulations on Graduate Medical



Education (Amendment), 2019, a candidate with less than 40% visual disability is not eligible for admission in MBBS Course. Therefore, when a candidate with less than 40% visual disability is considered ineligible for admission in MBBS Course, it is inconceivable how a candidate with 100% loss of vision can be permitted to pursue the MBBS Course. Learned counsel submits that the Hon'ble Apex Court, in catena of judgments, has consistently held that Courts should refrain from granting relaxations to candidates when such relief would run contrary to the opinion expressed by the experts in the field. Learned counsel submits that since one of the Medical Boards has opined that the petitioner would not be able to practice as a Doctor after completing the MBBS course, then under such circumstances, the relief sought for by the petitioner cannot be granted, and the writ petition is liable to be rejected.

Analysis, Discussions & Findings:-

8. Heard and considered the submissions made by the rival sides and perused the material available on the record.
9. Perusal of the record indicates that the petitioner, after qualifying the NEET exam, was admitted to the MBBS Course in the year 2014 and she successfully completed the first year and second year of the MBBS Course by the year 2017, having finished five semesters till 07.04.2017. While pursuing her third year of MBBS studies, the petitioner met with a road accident on 07.04.2017, sustaining serious head injuries, including temporal contusion and skull fracture. She was even remained admitted in the SMS Hospital at Jaipur but as a result of the said accident, she suffered 100% loss of vision.



10. After undergoing prolonged treatment for her injuries, the petitioner submitted an application to the Principal, SMS Medical College seeking permission to continue her studies for the remaining years of the MBBS Course.

11. The petitioner's application was forwarded to the Secretary, Medical Council of India (now known as "National Medical Commission") on 27.08.2019 seeking appropriate directions to allow her to continue her MBBS Course. Thereafter, the petitioner made several communications with the respondents in this regard and finally, a Medical Board was constituted, which submitted its report on 12.06.2020 and rendered the following opinion:-

"We the Members of Board examine the candidate and found the following. There is history of Head Trauma followed by loss of vision P&E candidate passed II MBBS Exam. before the trauma. On V.N.P.L.P.R. in accurate, pupils sluggish front temporal disk pallor. There is irreversible loss of vision, seeing the condition she may be allowed to pursue the course of MBBS through its completion. Further decision for post graduation or clinical practice is beyond the purview of the present Board."

12. It appears that a second Medical Board was constituted to provide its opinion regarding the modalities and methodology for teaching the visually challenged candidates and the newly constituted Medical Board gave the following opinion:-

"Department of Forensic Medicine & Toxicology,
SMS Medical College & Attached Hospital, Jaipur

No.FM/SMS/2020/611

Date 6/10/20

To,
The Principal & Controller
SMS Medical College and
attached Hospital, Jaipur.



Sub Regarding continuation of studies (Final MBBS Part-I) of Visually Challenged candidate Ankita Singodia.

Ref:- Your office letter
no.MC/Exam./Acad./2020/20012 dated 29-09- 2020



Respected Sir,

Our previous Board allowed the candidate to pursue the theory classes and course of MBBS using visual aids. However, regarding mode of practical teaching and patient examination presently there are no modalities for teaching a visually challenged candidate.

If MBBS course is completed, the board feels that the candidate shall be unable to conduct the duties as a doctor. This is for your kind information and necessary action."

13. Thereafter, the petitioner was informed by the Rajasthan University of Health and Sciences (for short "RUHS") vide letter dated 29.01.2021 that the RUHS in its 131st meeting held on 21.01.2021 has decided not to permit the petitioner to continue her study in MBBS studies on the ground that she has become completely blind.

14. Hence, under these circumstances, the petitioner approached this Court by way of filing the present writ petition and this Court, vide its interim order dated 17.03.2021, after considering the provisions of Ordinance 169M directed the respondents to allow the petitioner to appear in MBBS Part (I) Examination scheduled to commence from 23.03.2021 and further directed them to provide all necessary assistance, i.e., services of an amanuensis etc. in accordance with the Ordinance 169M of the University.

15. Pursuant to the interim order, the petitioner appeared in the theory papers of Third Professional MBBS Examination and secured 25 marks out of 40 in Ophthalmology, 19 out of 40 marks



in OTO-Rhino Laryngology and 64 marks out of 120 in Community Medicine. As she fell short by one mark in OTO-Rhino Laryngology, she was declared 'fail' in that subject. Furthermore, she failed to appear in the practical examinations, her practical examinations were not conducted and the University declared her as 'fail' in that as well.

16. The petitioner did not appear for the practical examination and was, therefore, shown as "absent" resulting in her being declared 'fail' due to lack of her assessment in the practical examination.

17. This writ petition has been contested by the National Medical Commission (NMC) as well as the RUHS on the ground that as per the notification dated 04.11.2019, i.e., Regulations on Graduate Medical Education 2019, a person with more than 40% blindness is not eligible for admission in the MBBS Course and under the Regulations on Graduate Medical Education (Amendment), 1997 from Semester 3rd to Semester 9th the MBBS students are required to undergo both theoretical as well as clinical subjects, which includes performing surgeries and practically examining the patients. It is submitted that the petitioner, being 100% blind, would be unable to pass the practical subjects of 3rd, 4th & 5th years of MBBS Course and the internship, even if she is allowed to continue her MBBS studies.

18. A person does not acquire a disability by choice. Disability or permanent disability may occur with anyone as a result of *Vis Major*, i.e., Act of God. The latin term "*Vis major*" means "Superior Force" or "The Act of God". It refers to an incident that may occur





due to natural forces without involvement of any human intervention.

19. Instant case is a peculiar example and illustration of the term *Vis Major*, i.e., Act of God, where the petitioner met with a road accident in the third year of her MBBS course and sustained severe injuries and consequently, lost 100% of her vision, rendering her completely blind after she had completed First year and Second year of her MBBS studies.

20. The petitioner has now become a specially-abled person, suffering from 100% visual disability as a result of the untoward and unfortunate road accident that occurred on 07.04.2017.

21. The Rights of Persons with Disabilities Act, 2016 (for short 'RPwD Act') replaced the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation), Act 1995. The RPwD Act was a sequel to the United Nations Convention on the Rights of Persons with Disabilities. The Convention laid down principles to be followed by the States-Parties for empowerment of persons with disabilities. The Convention laid down the following principles for employment of persons with disabilities, which the RpwD Act seeks to implement:-

- (i) respect for inherent dignity, individual autonomy including the freedom to make one's own choices, and independence of persons;
- (ii) Non-discrimination;
- (iii) full and effective participation and inclusion in society;



- (iv) respect for difference and acceptance of Persons with disabilities as part of human diversity and humanity;
- (v) equality of opportunity;
- (vi) accessibility;
- (vii) equality between men and women;
- (viii) respect for the evolving capacities of children with disabilities and respect for the right of children with disabilities to preserve their identities.

22. The RPwD Act is a watershed legislation for disability rights in India. It honours India's commitment at the international level under the Convention on Rights of Persons with Disability. The preamble to the RPwD Act states that:

"...AND WHEREAS the aforesaid Convention lays down the following principles for the empowerment of persons with disabilities, –

- (a) respect for inherent dignity, individual autonomy including the freedom to make one's own choices, and independence of persons;
- (b) non-discrimination;
- (c) full and effective participation and inclusion in society;
- (d) respect for difference and acceptance of persons with disabilities as part of human diversity and humanity;
- (e) equality of opportunity;
- (f) accessibility;
- (g) equality between men and women;



(h) respect for the evolving capacities of children with disabilities and respect for the right of children with disabilities to preserve their identities;...”

23. The Act harmonises the Constitutional promise of full citizenship with action - by creating a framework in which persons with disabilities may translate their rights into remedies. To establish a bed of rights, Section 2 of the Act defines and acknowledges barriers, discrimination, inclusive education and reasonable accommodation. Section 3 of the Act affords the right to equality and non-discrimination for persons with disabilities.

24. The Rpwd Act has several salutary provisions. For the purpose of disposal of the present case, special emphasis needs to be provided on Section(s) 2(r), 2(s), 2(y), 33 & 34. They are extracted herein below:-

2(r) “person with benchmark disability” means a person with not less than forty per cent. of a specified disability where specified disability has not been defined in measurable terms and includes a person with disability where specified disability has been defined in measurable terms, as certified by the certifying authority;

2(s) “person with disability” means a person with long term physical, mental, intellectual or sensory impairment which, in interaction with barriers, hinders his full and effective participation in society equally with others;

2(y) “reasonable accommodation” means necessary and appropriate modification and adjustments, without imposing a disproportionate or undue burden in a particular case, to ensure to persons with disabilities the enjoyment or exercise of rights equally with others;

33. Identification of posts for reservation.—The appropriate Government shall— (i) identify posts in the establishments which can be held by respective category of persons with benchmark disabilities in respect of the vacancies reserved in accordance with



the provisions of section 34; (ii) constitute an expert committee with representation of persons with benchmark disabilities for identification of such posts; and (iii) undertake periodic review of the identified posts at an interval not exceeding three years.

34. Reservation.—(1) Every appropriate Government shall appoint in every Government establishment, not less than four per cent. of the total number of vacancies in the cadre strength in each group of posts meant to be filled with persons with benchmark disabilities of which, one per cent. each shall be reserved for persons with benchmark disabilities under clauses (a), (b) and (c) and one per cent. for persons with benchmark disabilities under clauses (d) and (e), namely:—

- (a) blindness and low vision;
- (b) deaf and hard of hearing;
- (c) locomotor disability including cerebral palsy, leprosy cured, dwarfism, acid attack victims and muscular dystrophy;
- (d) autism, intellectual disability, specific learning disability and mental illness;
- (e) multiple disabilities from amongst persons under clauses (a) to (d) including deaf-blindness in the posts identified for each disabilities:

Provided that the reservation in promotion shall be in accordance with such instructions as are issued by the appropriate Government from time to time:

Provided further that the appropriate Government, in consultation with the Chief Commissioner or the State Commissioner, as the case may be, may, having regard to the type of work carried out in any Government establishment, by notification and subject to such conditions, if any, as may be specified in such notifications exempt any Government establishment from the provisions of this section.

(2) Where in any recruitment year any vacancy cannot be filled up due to non-availability of a suitable person with benchmark disability or for any other sufficient reasons, such vacancy shall be carried forward in the succeeding recruitment year and if in the succeeding recruitment year also suitable person with benchmark disability is not available, it may first be filled by interchange among the five categories and only when there is no person with disability available for the post in that year, the employer shall fill up the vacancy by appointment of a person, other than a person with disability:





Provided that if the nature of vacancies in an establishment is such that a given category of person cannot be employed, the vacancies may be interchanged among the five categories with the prior approval of the appropriate Government.

(3) The appropriate Government may, by notification, provide for such relaxation of upper age limit for employment of persons with benchmark disability, as it thinks fit.

25. Chapter III of this Act and Sections 16, 17 and 18 of the RPwD Act deal with the provision of duty of educational institution and facilities to be provided to such persons, who are undergoing the studies in their institution. Sections 16, 17 and 18 of the RPwD Act reads as under:-

"16. Duty of educational institutions.- The appropriate Government and the local authorities shall endeavour that all educational institutions funded or recognised by them provide inclusive education to the children with disabilities and towards that end shall—

(i) admit them without discrimination and provide education and opportunities for sports and recreation activities equally with others;

(ii) make building, campus and various facilities accessible; (iii) provide reasonable accommodation according to the individual's requirements;

(iv) provide necessary support individualised or otherwise in environments that maximise academic and social development consistent with the goal of full inclusion;

(v) ensure that the education to persons who are blind or deaf or both is imparted in the most appropriate languages and modes and means of communication;

(vi) detect specific learning disabilities in children at the earliest and take suitable pedagogical and other measures to overcome them;

(vii) monitor participation, progress in terms of attainment levels and completion of education in respect of every student with disability;



(viii) provide transportation facilities to the children with disabilities and also the attendant of the children with disabilities having high support needs.

17. Specific measures to promote and facilitate inclusive education.-The appropriate Government and the local authorities shall take the following measures for the purpose of section 16, namely:—

(a) to conduct survey of school going children in every five years for identifying children with disabilities, ascertaining their special needs and the extent to which these are being met: Provided that the first survey shall be conducted within a period of two years from the date of commencement of this Act; (b) to establish adequate number of teacher training institutions;

(c) to train and employ teachers, including teachers with disability who are qualified in sign language and Braille and also teachers who are trained in teaching children with intellectual disability;

(d) to train professionals and staff to support inclusive education at all levels of school education; Designation of authorities to support. Duty of educational institutions. Specific measures to promote and facilitate inclusive education.

(e) to establish adequate number of resource centres to support educational institutions at all levels of school education; (f) to promote the use of appropriate augmentative and alternative modes including means and formats of communication, Braille and sign language to supplement the use of one's own speech to fulfill the daily communication needs of persons with speech, communication or language disabilities and enables them to participate and contribute to their community and society;

(g) to provide books, other learning materials and appropriate assistive devices to students with benchmark disabilities free of cost up to the age of eighteen years;

(h) to provide scholarships in appropriate cases to students with benchmark disability;

(i) to make suitable modifications in the curriculum and examination system to meet the needs of students with disabilities such as extra time for completion of examination paper, facility of scribe or amanuensis, exemption from second and third language courses;





(j) to promote research to improve learning; and
(k) any other measures, as may be required.

18. Adult Education.-The appropriate Government and the local authorities shall take measures to promote, protect and ensure participation of persons with disabilities in adult education and continuing education programmes equally with others."



Bare perusal of the provisions contained under Sections 16, 17 & 18 of the RPwD Act indicates that certain modalities and methodology are required to be followed by Education Institution while teaching the persons suffering from disabilities.

26. It is relevant to note that Section 32(1) of the PWD Act, which provides for reserving the seats for the persons with benchmark disabilities in higher education institutions and the said provision reads as follows :

(1) "All government institutions of higher education and other higher education institutions receiving aid from the Government shall reserve not less than five percent seats for persons with benchmark disabilities."

27. It is to be stated that Section 32 of the Medical Council of India Act, 1956 empowers the Central Government to make rules, while Section 33 of the said Act, provides power to the Council to make regulations, with the previous sanction of the Central Government. Accordingly, MCI issued notifications from time to time to regulate the medical education and such regulations have statutory force. One such notification provides for reservation of 5% seats of the annual sanctioned intake capacity to the candidates with benchmark disabilities, in terms of the PWD Act.

28. At this juncture, it is relevant to note that in **Purswani Ashutosh (Minor) through Dr.Kamlesh Virumal Purswani** (supra), a similar question as to whether a person with benchmark disability of low vision can be denied the benefit of reservation for



admission to the MBBS Medical Course came up for consideration. The petitioner therein, who has low vision disability, questioned the order of denial of the benefit of reservation for the physically disabled. The MCI pleaded before the Hon'ble Apex Court that an Expert Committee formed by it opined that persons with visual impairment of 40% or more could not be admitted to the undergraduate medical courses. Rejecting the plea of the MCI, the Hon'ble Apex Court held as follows :



"23. The Medical Education Regulations framed under Section 33 of the Medical Council Act, 1956 have statutory force and are binding on the MCI. The Committee having opined that the petitioner suffers from a benchmark disability, its view with regard to the suitability of the petitioner for the MBBS course cannot override the Medical Education Regulations.

24. The 2016 Act, in particular Section 32 thereof, read with the Medical Education Regulations clearly provides for reservation of seats in the MBBS Course for persons like the petitioner with specified benchmark disability of low vision.

25. Mr.Vikas Singh, learned senior Advocate appearing on behalf of the MCI, strenuously contended that Section 32 of the 2016 Act would not apply to admission to a medical college for the MBBS course. It is, however, not disputed that the Medical Education Regulations are valid, subsisting, in force and binding on the MCI. The validity of the said regulations has not been questioned.

26. The contention of Mr.Singh that Section 32 is not attracted since it only provides for reservation to higher educational institutions and not to technical institutions imparting technical education, appears to be fallacious since higher educational institution is a generic term which would include institutions imparting all kinds of higher education, - including technical education, whereas technical institution is a specific term for those institutions which only impart technical education.

27. Be that as it may, as mentioned hereinabove, it is not necessary for this Court to adjudicate the question of whether Section 32 of the 2016 Act is attracted or not, in view of the admission that the Medical Education Regulations which incorporate the provisions of the 2016 Act in relation to reservation to higher educational institutions, have statutory force and are binding on the MCI. The regulations have not yet been amended by the MCI in the light of the recommendations made by its



Committee and the decision taken at the Secretariat level. No amendment in the 2016 Act or in the regulations framed by the MCI have been made so far.

28. For the reasons discussed above, this Court holds that the petitioner cannot be denied admission to the MBBS course if he qualifies as per his merit in the category of Persons with Disability. In the event, the petitioner is found to be entitled to admission, he shall be given admission in the current academic year 2018-19."



29. The Hon'ble Apex Court, thus, made it clear that the Medical Educational Regulations cannot be overridden with the suitability of the Medical Aspirant and also stressed the importance of the MCI giving statutory effect to the amendment proposed by its committee exercising its powers conferred under Section 33 of the Medical Council of India Act, 1956. As the recommendation of the Committee formed by the MCI was not given statutory effect and the amendment proposed was only at secretariat level, the Hon'ble Supreme Court held that the petitioner therein cannot be denied of medical admission.

30. In the light of the RPwD Act and the United Nations Convention on the Rights of Persons with Disabilities, the recent guidelines of MCI are unfair, discriminatory and unlawful. The United Nations Convention on the Rights of Persons with Disabilities, 2007 was accepted and ratified by India, as per which, it was mandatory to harmonize all its existing legislations in line with its provisions. Accordingly, PWD Act was passed in 2016 and brought to force in 2017. The intention of the legislature was to move from a charity approach to a right-based approach and safeguard the human rights of the Persons with Disabilities. As per the Act, any person with benchmark disability, i.e., minimum of 40% of a specified disability, is entitled, as a matter of right, to



avail the benefits under the PWD Act including 5% reservation in higher education.

31. The Preamble of the PWD Act does not permit any deviation from the Act. While framing the guidelines, Doctors with disabilities ought to have been considered. The competency of a Doctor with disability cannot be assumed, as unless it is experienced one may not understand the same. If a person with visual impairment is already a Doctor, it shall be possible for a blind person to be a Doctor. It seems to be a difficult struggle for these blind men to achieve what they want. Being blind need not destroy one's dreams.

32. In fact, even most of the hospitals in the country are not disabled-friendly. It is painful to note that no time allowance is given to Persons with Disabilities and they crack this tough competitive examination along with/on a par with others.

33. It is useful to refer here the judgment of the Hon'ble Apex Court in **Chanchal Goyal (Dr) v. State of Rajasthan** reported in **(2003) 3 SCC 485**, which dealt with the principle of "legitimate expectation" elaborately and held as follows :

"17. Before we do so, we shall refer to some of the important decisions of this Court to find out the extent to which the principle of substantive legitimate expectation is accepted in our country. In *Navjyoti Coop. Group Housing Society v. Union of India* [(1992) 4 SCC 477] the principle of procedural fairness was applied. In that case the seniority as per the existing list of cooperative housing societies for allotment of land was altered by subsequent decision. The previous policy was that the seniority amongst housing societies in regard to allotment of land was to be based on the date of registration of the society with the Registrar. But on 20-1-1990, the policy was changed by reckoning seniority as based upon the date of approval of the final list by the Registrar. This altered the existing seniority of the societies for allotment of land. This Court held that the



societies were entitled to a "legitimate expectation" that the past consistent practice in the matter of allotment will be followed even if there was no right in private law for such allotment. The authority was not entitled to defeat the legitimate expectation of the societies as per the previous seniority list without some overriding reason of public policy as to justify change in the criterion. No such overriding public interest was shown. According to the principle of "legitimate expectation", if the authority proposed to defeat a person's legitimate expectation, it should afford him an opportunity to make a representation in the matter. Reference was made to Halsbury's Laws of England [p. 151, Vol. 1(1), 4th Edn., Reissue] and to CCSU case [1985 AC 374]. It was held that the doctrine imposed, in essence, a duty on public authority to act fairly by taking into consideration all relevant factors, relating to such legitimate expectation. Within the contours of fair dealing, the reasonable opportunity to make representation against change of policy came in.

18.....

19. This Court considered the question elaborately in Union of India v. Hindustan Development Corpn. [(1993) 3 SCC 499]. There tenders were called for supply of cast-steel bogies to the Railways. The three big manufacturers quoted less than the smaller manufacturers. The Railways then adopted a dual-pricing policy giving counter-offers at a lower rate to the bigger manufacturers who allegedly formed a cartel and a higher offer to others so as to enable a healthy competition. This was challenged by the three big manufacturers complaining that they were also entitled to a higher rate and a large number of bogies. This Court held that the change into a dual-pricing policy was not vitiated and was based on "rational and reasonable" grounds. In that context, reference was made to Halsbury's Laws of England [4th Edn., Vol. 1(I) p. 151], Schmidt v. Secy. of State for Home Affairs [(1969) 1 All ER 904] which required an opportunity to be given to an alien if the leave given to him to stay in UK was being revoked before expiry of the time and to Attorney General of Hong Kong v. Ng Yuen Shiu [(1983) 2 AC 629] which required the Government of Hong Kong to honour its undertaking to treat each deportation case on its merits, and CCSU case [1985 AC 374] which related to alteration of conditions relating to membership of trade unions and the need to consult the unions in case of change of policy as was the practice in the past, and to Food Corpn. of India case [(1993) 1 SCC 71] and Navjyoti Coop. Group Housing Society case [(1992) 4 SCC 477]. It was then observed that legitimate expectation was not the same thing as anticipation. It was also different from a mere wish to desire or hope; nor was it a claim or demand based on a right. A mere disappointment would not give rise to legal consequence. The position was indicated as follows: "The legitimacy of an expectation can be inferred





only if it is founded on the sanction of law or custom or an established procedure followed in regular and natural sequence. .. Such expectation should be justifiably legitimate and protectable."

.....In Hindustan Development Corpn. Case [(1993) 3 SCC 499], R. v. Secy. of State for Home Deptt., ex p Ruddock [(1987) 2 All ER 518], Findlay v. Secy. of State for Home Deptt. [(1984) 3 All ER 801] and Breen v. Amalgamated Engg. Union [(1971) 1 All ER 1148] were considered. It was accepted that the principle of legitimate expectation gave the applicant sufficient locus standi to seek judicial review and that the doctrine was confined mostly to a right to fair hearing before a decision which resulted in negating a promise or withdrawing an undertaking, was taken. It did not involve any crystallized right. The protection of such legitimate expectation did not require the fulfilment of the expectation where an overriding public interest required otherwise. However, the burden lay on the decisionmaker to show such an overriding public interest. A case of substantive legitimate expectation would arise when a body by representation or by past practice aroused expectation which it would be within its powers to fulfil. The court could interfere only if the decision taken by the authority was arbitrary, unreasonable or not taken in public interest. If it is established that a legitimate expectation has been improperly denied on the application of the above principles, the question of giving opportunity can arise if failure of justice is shown. The court must follow an objective- method by which the decision-making authority is given the full range of choice which the legislature is presumed to have intended. If the decision is reached fairly and objectively, it cannot be interfered with on the ground of procedural fairness. An example was given that if a renewal was given to an existing licence-holder, a new applicant cannot claim an opportunity based on natural justice. On facts, it was held that legitimate expectation was denied on the basis of reasonable considerations."

34. At this juncture, it is relevant to note that the Hon'ble Apex Court in **Parmod Vs. Union of India & Others, 2018 SCC OnLine SC 1919** granted benefit of admission to a similarly placed medical aspirant and held as follows :

"3. It is not disputed that as per merit, the appellants were required to be given admission in the physically handicapped category. They were not given the admission in view of the recommendations given by the Medical Council of India (MCI). However, the regulations framed by the MCI adopts the provisions of the Rights of Persons with Disability Act, 2016 (RPWD).

4. As per the statutory provisions contained in the aforesaid Act which has been considered by this Court in





Purswani Ashutosh (Minor) through Dr. Kamlesh Virumal Purswani v. Union of India in W.P (C) No. 669/2018 decided on 24.8.2018, it has been held that statutory provisions have to prevail over the recommendations made by the Committee as the recommendations made have not taken statutory shape so far.

5. In the aforesaid facts and circumstances of the case, though appellants were entitled for admission in the MBBS course, but now as all the seats have been filled, the appellants have been illegally deprived of the admission. As such, we direct that the appellants be admitted in the next year, in MBBS course and in a government medical college as the seats of handicapped have been handed over to the general category, the seats of that category shall be reduced for the next academic session 2019-2020.

6. Accordingly, the appeals are allowed. The impugned orders passed by the High Court is set aside. Apprehension is raised that the eligibility criteria may be changed. The apprehension is baseless as any change subsequently made is not going to affect the right of the appellants to obtain admission. The order is final, conclusive and binding."

35. In the case of **Om Rathod** (supra), the Hon'ble Apex Court has held in Para Nos.40, 49, 50, 53 & 60 as follows:-

40. The Courts cannot be stupefied into inaction by the lack of adequate framework or expertise when questions of fundamental rights emerge. No person forfeits their claim to education or other pursuits of life on account of their disability. The flurry of cases concerning medical aspirants with disability which has come before this Court shows that the overarching issue is a sense of over medicalization of disabled bodies by the Assessment Boards. The approach often taken, due to inertia or unwittingly, is to assume that a person with disability may not be eligible for pursuing the course and then to put the candidates under tests to prove the assumption. The approach focuses more on the disability of a person than their ability. This turns the principle of reasonable accommodation on its head. The question instead that the Board ought to ask itself is this - what measures can be taken to ensure that the candidate with disability can start their MBBS course on an equal footing with their prospective classmates? The change in question brings a change in perspective. The only negative answer to the question would be that - in line with contemporary scientific advancements, no devices or accommodations can enable the person with disability



before them to compete at a level playing field. Courts must ensure that the sanctity of the principles in the RPWD Act and in the Constitution are not violated by the conduct or the outcome of the assessment.

49. When we create avenues for inclusion, we work towards improving systems and institutions. In the context of healthcare, the inclusion of persons with disabilities is a vital component of quality healthcare. The guidelines and recommendations which express concern about “lowering the standard of medical practice” on account of persons with disabilities miss the fact that these standards may not be adequate to begin with. The quality of a system is informed by its ability to empathise with and relate to the recipients. A system without adequate number of practitioners who have lived experiences will not be able to fully imagine the obstacles and grievances faced by a diverse population. Diversity of workforce is crucial for a diverse society, so that everyone may have a stake in the system and the system can effectively discharge its duties toward everyone.

50. Section 25 of the RPWD Act outlines the positive obligation of Government and local authorities to provide healthcare to persons with disabilities. An affirmative obligation is placed to ensure that persons with disabilities receive a barrier free access to all public and private healthcare institutions. Removal of barriers can only be achieved if persons with disabilities feel comfortable while accessing healthcare. The barriers faced by a person may be physical, psychological and attitudinal. The inclusion of persons with disabilities within medical practice is vital to ensure that the approach of the medical community and of hospitals and other healthcare institutes is humane, sensitive and informed by lived experiences. It strengthens our fraternity. Therefore, the process through which medical aspirants with disability enter the profession must be compatible with constitutional and statutory entitlements and guarantees.

53. 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.

60. We further conclude as follows:

a. The second respondent shall issue fresh guidelines for admitting persons with disabilities into medical courses. The committee formulating the guidelines must include experts with disability or persons who have worked on disability justice. The guidelines shall comply with the judgments of this Court and contemporary advancements in disability justice;

b. The Disability Assessment Boards shall eschew from a benchmark model to test the functional competence of medical aspirants with disability. The second respondent shall issue appropriate guidelines in this regard;

a. The Disability Assessment Boards shall include a doctor or health professional with disability as per the directions of the first respondent dated 24 March 2022;

b. The conduct of the Disability Assessment Boards shall be fair, transparent and in compliance with principles of the rule of law. Attention must be paid to ensure that candidates appearing before the Board do not feel uncomfortable on account of physical or attitudinal barriers;

c. Reasonable accommodation is a gateway right to avail all other fundamental, human and legal rights for persons with disabilities. Non-availability of reasonable accommodation amounts to discrimination and violates substantive equality of persons with disabilities;

d. The inclusion of persons with disability in the medical profession would enhance the quality of healthcare and meet the preambular virtue of fraternity and the guarantees in Articles 21, 19, 14 and 15 of the Constitution;

e. Applicants to the NEET examination must be informed about the compliance of accessibility norms and provisions of reasonable accommodation available at colleges. The respondents shall issue appropriate directions to create a database with relevant information on accessibility and reasonable accommodation; and





f. Enabling Units at medical colleges shall act as points of contact for persons with disability desirous of accessing clinical accommodations.



36. In the above noted case, the Hon'ble Apex Court granted admission in the MBBS Course to a candidate, suffering from 80% locomotive disability and issued several directions, including the direction to NMC to issue fresh guidelines for admitting a person suffering from more than 40% disability in MBBS Course.

37. In all the above judgments, the Hon'ble Supreme Court has laid down guiding principles extending the benefit of medical education in favour of the aspirants suffering with benchmark disabilities.

38. One Iyer Seetharaman Venugopalan was denied admission in MD Psychiatry, who was a blind doctor and he had retinitis pigmentosa and progressively lost his vision. The Bombay High Court initially denied him relief to get admission in M.D. But the Hon'ble Apex Court while passing an interim order on 18.02.2022 in Special Leave to Appeal (c) No.2661/2662/2022 held that allotment of a seat to him in MD Psychiatry Course at Topiwala National Medical College, Mumbai shall not be disturbed to his detriment and the petitioner would be permitted to participate in the ongoing process of counselling.

39. There are number of people, both overseas and in India, who have defied the norms and became successful doctors despite of visual impairment. Jacob Bolotin was the first totally blind physician to ever practice medicine in the USA. He graduated from the Chicago College of Medicine and Surgery in 1912. He set the foundation stone for other blind people to become doctor likewise



Dr. Tim Cordes was also a blind physician, he graduated in the US in 2005 and even in India Dr. Y.G. Parameshwara was the first blind doctor from Karnataka University. He lost his eye sight in the final year of college but that to his determination, he eventually graduated and practiced medicine till 1979 and later became a Professor.



40. The similar situation like the present one involved in this writ petition came up before the National Human Rights Commission (NHRC), India where one Mr. Anka Toppo was originally selected for an MBBS Course in All India Institute of Medical Sciences (AIIMS) in 1989 and he passed his first and second year examination and he was supposed to appear in final examination in December, 1993, but soon before two months of his final examination, he lost his sight and a series of operation had not been able to restore his vision.

41. It was brought into the notice of NHRC that one Dr. Y.G. Parameshwara of Karnataka was allowed to complete his MBBS Course under the similar circumstances in the year 1977 by Bangalore Medical College.

42. Considering all the above circumstances, the NHRC constituted a committee including Deputy Commissioner for Persons with Disability, Institute for the Physically Handicapped, Delhi to examine Mr. Toppo at AIIMS for perusing his MBBS Course inspite of his disability, by offering a modified modalities and methodology of examination. In the light of experience of that case, an exercise was undertaken in the Institute to work out a modalities and methodology, which could be adopted in all similar cases in future so that there can be a system in position which



could be put into practice each time such a situation arose. A Committee of experts was constituted for the aforesaid purpose and the entire exercise was done.

43. Taking note of the precedent set in the case of Mr. Anka Toppo, the situation arising in the instant case can be appropriately resolved by constituting a Committee of Experts of the field, with the assistance of the Commissioner/Deputy Commissioner, Persons with Disabilities, Institute for the Physically Handicapped, Delhi to find out a modified modalities and methodology for the petitioner's studies and examinations.

Conclusion & Directions:-

44. Having considered the entire facts and circumstances of the case and taking into account the precedent set in the cases of Dr. Y.G. Parameshwara of Karnataka in 1977 and Mr. Anka Toppo in 1993, this writ petition is disposed of with the following terms:-

(I) the respondents are directed to constitute a Commission/Committee of Experts at AIIMS, New Delhi with the assistance of Commissioner/Deputy Commissioner, Persons with Disabilities Institute for the Physically Handicapped, Delhi and Eyes Experts to examine the petitioner and recommend appropriate modalities and methodologies to enable her to pursue the remaining portion of her MBBS Course and to undertake all examinations including theory, clinical and practical papers.

(II) The Director, AIIMS, New Delhi and Commissioner, Persons with Disabilities Institute for the Physically Handicapped, Delhi are directed to carry out the necessary exercise in compliance with the order passed by this Court



within a period of three months from the date of receipt of a certified copy of this order and they shall suggest appropriate modalities and methodologies to enable the petitioner to pursue her MBBS studies and appear for her examinations.

(III) In case, the report of the Expert Committee at AIIMS, New Delhi comes in favour of the petitioner, the respondents are directed to permit the petitioner to pursue her MBBS studies and appear in all the practical, theory and clinical examinations, in accordance with the modalities and methodologies recommended by the Committee, The respondents shall also provide the petitioner all necessary assistance, including providing the services of a scribe, etc. as and when required, as per the Ordinance 169M of the University Ordinance.

Parting Remarks:-

45. Before parting with the order, this Court would like to place on record its appreciation for the commendable efforts put forth by the petitioner in her pursuit of becoming a Doctor by obtaining degree of MBBS. Indeed, her unwavering determination and tireless dedication are truly laudable and deserve appreciation and recognition. The petitioner's courage and resilience in overcoming the challenges serve as an inspiration. This Court believes that she will excel in her endeavours and emerge with flying colours. With the assistance, accommodation and support from the respondents, the petitioner will be able to overcome the challenges, achieve her dreams and make a meaningful contribution to the society.



46. Although the petitioner has submitted an undertaking, in the form of an affidavit and application, stating that she will not practice as a 'Medical Practitioner', in the event, the MBBS degree is awarded to her but this Court leaves it open to the concerned authorities to decide whether to issue or not to issue a certificate of practice to the petitioner, based on her overall performance and as per the applicable Rules and Regulations.

47. However, it is made clear that the above directions issued in this case are based on the peculiar and exceptional circumstances where the petitioner, at the time of admission to the MBBS Course, had no visual impairment and possessed normal vision, but subsequently lost her sight completely due to an unfortunate road accident in the mid of the third year of her MBBS Course. This order shall not be treated as a precedent for the candidates/students with more than 40% blindness, who seek to qualify the NEET examination for admission to the MBBS Course. Such cases shall continue to be governed strictly by the relevant Regulations on Graduate Medical Examination, 1997 and 1999 as amended from time to time.

48. Let a copy of this order be sent to the Director, AIIMS, New Delhi and Commissioner, Persons with Disabilities Institute for the Physically Handicapped, Delhi for necessary compliance.

49. All applications (pending, if any) also stand disposed of.

(ANOOP KUMAR DHAND),J

Karan/161