



सत्यमेव जयते

न्यायालय मुख्य आयुक्त निःशक्तजन
Court of Chief Commissioner for Persons with Disabilities
सामाजिक न्याय एवं अधिकारिता मंत्रालय
Ministry of Social Justice & Empowerment
निःशक्तता कार्य विभाग / Department of Disability Affairs

Case No.1/1032/13-14

Dated:-20.06.2014

In the matter of:

Dr. Guru Dayal Kumar Sinha,
President,
Tirhut Handicapped Welfare Association,
Vill. & Post – Sonbarsa – 843 330
District – Sitamarhi (Bihar)

..... Complainant

Versus

The Chairman,
Medical Council of India,
Pocket-14, Sector – 8,
Dwarka Phase-1,
New Delhi-110077.

..... Respondent

Date of hearing : 30.05.2014

1. Shri T. Singhdev, Advocate, Ms. Manpreet Kaur Bhasin, Advocate and Shri Shikhar Ranjan, Law Officer, on behalf of the Respondent.
2. None on behalf of the Complainant.

ORDER

The above named complainant Dr. Guru Dayal Kumar Sinha, Honorary President, Tirhut Handicapped Welfare Association, Sonbarsa (Bihar) filed a complaint dated 22.04.2013 under the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995, hereinafter referred to as the Act regarding violation of Section 33 of the said Act by the Medical Council of India in NEET-UG and NEET-PG Entrance Exams. Ministry of Social Justice & Empowerment, Department of Disability Affairs vide letter No.34-01/2013-DD.III dated 31.05.2013 had also forwarded a copy of the complaint to this Court for necessary action.

2. The complainant submitted that in the medical entrance test, namely, NEET-UG and NEET-PG the Medical Council of India (MCI) had provided reservation only to the candidates with moderate locomotor disability and had banned other categories without taking permission from Inter-Ministerial Committee set up by Ministry of Social Justice & Empowerment. The complainant further mentioned that by virtue of mandatory Section 33 and Section 3(2)(a)(b) of the Act, Ministry of Social Justice & Empowerment in exercise of the power conferred upon on, has notified vide order No.16-31/2000-NI.I. (PW D) dated 20.02.2001 that -

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- (i) No establishment can accord exemption to itself from Section 33 unless approved by the Inter-Ministerial Committee.
- (ii) Blanket exemption to an establishment is not favoured.

3. The complainant further submitted that said order has also been notified by the DoP&T vide O.M. No.36035/3/2004-Estt (Res.) dated 29.12.2005 in which it is ordered that grant of exemption from the provision of reservation for persons with disabilities shall be considered by Inter-Ministerial Committee set up by the Ministry of Social Justice & Empowerment. The complainant has also pointed out that Section 33 of the Indian Medical Council Act, 1956 applicable only to general case and not applicable to special case like reservation for persons with disabilities and the exemption. General Rule cannot override special mandatory rule enacted by the Parliament like the Persons with Disabilities Act, 1995.

4. The complainant also enclosed a photocopy of Notification No.MCI-34(41)/2008-Med./54469 dated 25.03.2009 issued by the Medical Council of India (MCI) and pointed out that MCI flouted Section 33 of the Indian Medical Council Act, 1956 by taking illegal permission of special case like disabled reservation and exemption under this section from Ministry of Health & Family Welfare and thus misused the power conferred upon it. MCI thus also violated the order of the appropriate Government i.e. Ministry of Social Justice & Empowerment. The complainant demanded that the persons with low vision & hearing impairment should be provided reservation. The same was as the persons with moderate category of locomotor disability.

5. Section 39 of the Persons with Disabilities Act provides as under:-

“All Government educational institutions and other educational institutions receiving aid from the Government, shall reserve not less than three per cent seats for persons with disabilities.”

6. The matter was taken up with the respondent vide this Court's letter dated 11.09.2013.

7. The respondent vide letter No. MCI-7(10)/2013-Legal/(8840)/40366 dated 26.10.2013 submitted that Hon'ble Supreme Court of India vide order dated 18.07.2011 passed in Civil Appeal No.5865 of 2011 has been pleased to stay the judgment of Hon'ble High Court of Gujarat in similar case titled as Deval R. Mehta vs. Union of India (Spl. Civil Appeal No.6412/2010). In another similar case of Medical Council of India Vs. D.S. Rashmi Ranjan (Civil Appeal Nos.8447-8448 of 2010), the Hon'ble Supreme Court vide judgment dated 24.08.2011 has held that admission to MBBS and Postgraduate Medical Courses in India qua the 3% seats reserved for persons with disabilities shall take place only in accordance with the MCI Regulations. In prima-facie view of Hon'ble Supreme Court, the MCI Regulations prescribing a limit of 40% to 70% disability for admission to medical courses is valid and reasonable and hence it has been allowed by the Hon'ble Supreme Court. As per MCI Regulation, candidates having more than 50% and less than 70% locomotor disability of lower limbs would be given preference in admission to Medical Courses. In case candidates having disability between 50% to 70% are not available, the unfilled seats would be filled up by candidates with 40% to 50% locomotor disability of lower limbs. MCI under the power conferred in Section 19A of Indian Medical Council Act, 1956 and with the prior approval of Government of India has already amended

vide notification No.MCI.31(1)/2010-Med./49068 dated 21.12.2010. However, the 3% reservation for candidates with locomotor disability of lower limbs has not been disturbed by the said amendment. Therefore, the persons with visual or hearing impairment or with a disability of lower limbs accompanying with a disability of upper limbs are not entitled for the benefit of admission in the medical courses under 3% reservation under the provisions of statutory regulation of the respondent. Moreover, the Hon'ble Supreme Court has held that NEET Regulation is ultra virus to the Constitution. However, the provision relating to 3% reservation for persons with disabilities was part of the unamended Regulation also. The respondent further submitted that no ground is made out by the complainant for relief sought in the complaint and is liable to be dismissed..

8. A copy of the reply dated 26.10.2013 furnished by Medical Council of India, New Delhi was forwarded to the complainant vide this Court's letter dated 07.11.2013 for his comments/rejoinder.

9. The complainant vide his rejoinder dated 07.11.2013 submitted that the contents of the reply of the respondent are false, irrelevant, inconsistent, malafide and fabrication of false order of Hon'ble Supreme Court in case of Rekha Tyagi (Case No.7892 of 2001) and in relation to persons with low vision/hearing impairment. As submitted by the respondent, it is related with the reservation of persons with locomotor disability of upper limbs and is not related with persons with low vision/hearing impairment reservation. The case is already pending before Hon'ble Supreme Court. No exemption has been granted to MCI by the Ministry of Social Justice & Empowerment. Hon'ble Supreme Court has never banned persons with low vision or hearing impairment. Persons with low vision are not totally blind but a moderate category. A person with low vision can work with the use of spectacles as equal to normal person. Likewise, person of hearing impairment is not totally deaf but a moderate category, his audibility is low but with assistive devices like hearing aid, he can work as a normal person. When moderate category of locomotor disability (40% to 70%) is given reservation why the persons with low vision and hearing impairment are banned by the respondent. This is violation of right to equality. The complainant vide letter dated 10.04.2014, inter-alia- informed that even Expert Committee of MCI banned persons with visual impairment and hearing impairment in Medical Entrance Test. MCI has never taken permission for exemption from Ministry of Social Justice & Empowerment. He requested that reservation be given to persons with low vision and hearing impairment and since admission is going to start in July, necessary order be passed.

10. Upon considering the reply dated 26.10.2013 of the respondent and the complainant's rejoinder/comments dated 07.11.2013 and 10.04.2014, a hearing was scheduled on 30.05.2014.

11. The complainant vide his letter dated 30.05.2014 submitted that due to serious sprain on his left disabled leg, he was not able to attend the hearing and has, therefore, sought exemption from appearance. The complainant has extensively referred to Section 33 of the Persons with Disabilities Act, 1995 which provides reservation of vacancies for persons with blindness or low vision, persons with hearing impairment and those of locomotor disability or cerebral palsy. However, the issue the complainant has agitated in the instant complaint relates to reservation of seats for persons with disabilities in various medical courses. While Section 33 provides for reservation for persons with disabilities of 3 sub categories, Section 39 does not envisage reservation for any particular category

of persons with disabilities. The persons with disabilities of all the sub categories covered under the Persons with Disabilities Act can avail the benefit of reservation in admission under Section 39 of the Act. The complainant has contended that Medical Council of India has no authority to exclude persons with low vision and those with hearing impairment from the benefit of reservation of seats in admissions to medical courses.

12. During the hearing on 30.05.2014, reiterating the written submissions, the Ld. Counsel for Medical Council of India submitted that issue whether persons with visual impairment and hearing impairment can be suitable for medical courses was deliberated by a Special Committee constituted for the purpose in January, 2001 and subsequently by the General Body in its meeting held on 20.10.2003 and concluded that the persons with visual impairment would not be in a position to pursue the medical course and to do the internship as correct vision is absolutely necessary for the study and for the practice of medicine. Similarly, hearing impairment would interfere with the training in medical education since the process of hearing of various signs auscultation is absolutely essential to pursue the medical training and to follow the medical practice. He further submitted that Hon'ble Supreme Court vide their judgment dated 24.08.2011 in Civil Appeal No.8847-8848/2010 – Medical Council of India Vs. D.S. Rashmi Ranjan & Ors. held, "that the reservation for physically handicapped would be regulated in the manner provided in the amended MCI Regulations and not in the manner directed by the High Court." The said Regulations are operative and are to be followed for regulating 3% reservation of seats in various medical courses. As already submitted in his written submissions, the Hon'ble Supreme Court upheld the Regulations by which admission in various medical courses with regard to persons with disabilities is regulated.

13. It is observed that Medical Council of India examined the question whether persons with blindness, low vision and hearing impairment could undertake the medical courses in 2001, 2003 and on 23.12.2006. Since a lot of research and technological development has taken place since then, it will be desirable to see whether persons with low vision, blindness or hearing impairment can undertake the medical courses with the help of latest aids and appliances available. Since Medical Council of India as the appropriate authority to deal with medical education, it may constitute a Committee to look into the matter and take a view and submit action taken report to this Court within three months from the date of receipt of this order. At this stage, this Court cannot direct MCI to reserve seats in medical courses for persons with low vision and hearing impairment.

Sd/-
(**P.K. Pincha**)
Chief Commissioner
for Persons with Disabilities