

Delhi High Court

Medical Council Of India vs Md. Shah Afzal & Anr on 6 July, 2010

Author: Badar Durrez Ahmed

THE HIGH COURT OF DELHI AT NEW DELHI

% Judgment delivered on: 06.07.2010

+ WP(C) 1352/2008 & WP(C) 8750/2009

MD. SHAH AFZAL ... Petitioner

- versus -

MEDICAL COUNCIL OF INDIA & ANR ... Respondent

Advocates who appeared in this case:

For the Petitioner : Mr Rajan Mani with Ms Ritu Kumar For the Respondent No.1 : Mr Maninder Singh, Sr Advocate with Mr T. Singhdev and Mr Abrar Abdullah For the Respondent No.2 : Mr Anurag Matur AND + WP(C) 6759/2008 MEDICAL COUNCIL OF INDIA ... Petitioner

- versus -

MD. SHAH AFZAL & ANR ... Respondent

Advocates who appeared in this case:

For the Petitioner : Mr Maninder Singh, Sr Advocate with Mr T. Singhdev and Mr Abrar Abdullah

For the Respondent No.1 : Mr Rajan Mani with Ms Ritu Kumar For the Respondent No.2 : Mr Sachin Datta CORAM:-

HON'BLE MR JUSTICE BADAR DURREZ AHMED HON'BLE MS JUSTICE VEENA BIRBAL

1. Whether Reporters of local papers may be allowed to see the judgment? YES

2. To be referred to the Reporter or not? YES

3. Whether the judgment should be reported in Digest? YES BADAR DURREZ AHMED, J

1. This judgment shall dispose of three writ petitions. Two of them have been filed by Mohd. Shah Afzal and one on behalf of MCI. We shall refer to Mohd. Shah Afzal as â the petitionerâ for the sake of convenience in all the three petitions and the Medical Council of India shall be referred to as â the MCIâ , the other parties being the University of Delhi, which shall be referred to as â the Delhi Universityâ , and the Union of India.

2. The petitioner is an orthopedically handicapped person and has a locomotor disability concerning his lower limbs to the extent of 64%. He has, on more than one occasion, applied for admission to

the MBBS course of the Delhi University against seats reserved for persons with disabilities and claims his right under Section 39 of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 (hereinafter referred to as "the said Act"). The petitioner took the Delhi University Medical Entrance Test in 2008 (DUMET-2008) and secured 41.5% marks in the qualifying papers. He again sat for DUMET-2009, but this time he obtained only 37% marks. The plea of the petitioner is that although there is 3% reservation of seats for physically disabled candidates, those seats go abegging because of the high threshold of minimum 50% marks, which has been applied to all candidates including physically disabled but excluding the candidates belonging to the scheduled castes and scheduled tribes categories (hereinafter referred to as "SC/ST"). In respect of the SC/ST candidates, the minimum qualifying marks have been relaxed to 40%. The main thrust of the arguments on behalf of the petitioner is that physically disabled candidates should be treated at par with the SC/ST candidates. In other words, all that the petitioner seeks is that the minimum qualifying marks for the entrance examination in respect of physically handicapped candidates should be reduced to 40% as against the stipulated 50% for general candidates.

3. The petitioner had also approached the Chief Commissioner for Disabilities under the said Act and the said Chief Commissioner, by an order dated 08.09.2007, directed the Delhi University and the MCI to extend the relaxation of marks insofar as the physically disabled candidates are concerned so as to bring it at par with the relaxation given to candidates belonging to SC/ST categories. The Chief Commissioner also directed the MCI to ensure that all government / government aided institutions running medical courses, should extend the relaxation in marks to the physically disabled candidates so as to bring it at par with the relaxation given to SC/ST candidates. It is as a consequence of this order passed by the Chief Commissioner and the fact that despite the said directions the petitioner was not being granted admission despite availability of seats, that the petitioner filed WP(C) 1352/2008 seeking a mandamus that the directions given by the Chief Commissioner in the order dated 18.09.2007 be implemented by the MCI by issuing amended regulations for admission and selection to medical courses in government and government aided institutions for the academic session 2008-2009 and beyond such that the minimum qualifying marks in the qualifying examination and medical entrance test for eligible physically disabled candidates is relaxed to 40% at par with the minimum qualifying marks for SC/ST candidates.

4. Thereafter, MCI filed WP(C) 6759 praying that the order dated 08.09.2007 passed by the Chief Commissioner for persons with disabilities in case No. 3944/2007 be set aside and quashed. The plea taken by the Medical Council of India was that minimum standards for medical education are to be prescribed by MCI under the Indian Medical Council Act, 1956 (hereinafter referred to as "the IMC Act"). According to MCI, it is the sole authority to prescribe the standards and that the standards so prescribed by virtue of the Regulations on Graduate Medical Education, 1997 are statutory in nature and cannot be overridden by the Chief Commissioner under the said Act inasmuch as the Chief Commissioner's powers and functions are of a recommendatory nature and, in any event, he cannot pass directions contrary to statutory provisions. The stand taken by MCI is that in view of the provisions of Section 39 of the said Act, 3% of the seats in medical colleges have been reserved for persons with locomotor disability of lower limbs. There is no reservation for

candidates with other kinds of disabilities inasmuch as that would interfere with the professional work as a doctor. In these writ petitions there is no controversy with regard to the other forms of disabilities and, therefore, we are only concerned with and are only considering the case from the standpoint of physically disabled persons with locomotor disabilities of the lower limbs. It was urged on behalf of MCI that apart from the 3% reservation, there is also a relaxation which has come in subsequently by a notification dated 25.03.2009 whereby the extent of eligible physical disability is not just limited to those candidates who have a locomotor disability of the lower limbs between 50-70% but also to those whose disability is between 40-50%. Apart from this, by virtue of the same notification dated 25.03.2009, MCI has also relaxed the eligibility criteria for admission in respect of persons with locomotor disability of lower limbs to a minimum of 45% marks as against the earlier threshold of 50% in the qualifying examination and entrance examination for admission to the MBBS course. It was contended on behalf of MCI that the council was alive to the situation and has, therefore, made it easier for eligible physically disabled persons to obtain admission in the MBBS course. At the same time, it was urged that parity with SC/ST candidates cannot be claimed as the category of physically disabled candidates cannot be compared with the category of SC/ST candidates and the two stand on entirely different footings. It was also urged on behalf of MCI that the petitioner having failed to obtain even 40% marks in DUMET-2009 would now have no case whatsoever.

5. The petitioner filed another writ petition being WP(C) 8750/2009 seeking the quashing of the provision in the said notification dated 25.03.2009 which provides for a limited relaxation in the minimum qualifying marks from 50% to 45% for the physically disabled candidates. The petitioner is aggrieved by the fact that although the relaxation of 5% has been given, the relaxation should have been of 10% so as to bring it at par with the minimum qualifying marks of 40% which is applicable in the case of SC/ ST candidates. A writ of mandamus has also been sought directing the MCI to issue amended regulations for admission and selection to the MBBS course so that minimum qualifying marks for the qualifying examination and medical entrance test for eligible physically disabled candidates is relaxed from 50% to 40% at par with the relaxation in the minimum qualifying marks provided for SC/ ST candidates and also directing that the said amended regulations should operate retrospectively with effect from the date of the order of the Chief Commissioner, that is, with effect from 08.09.2007. A mandamus has also been sought directing the Delhi University to admit the petitioner to the MBBS course for the academic year 2009-2010 against a seat from the 3% seats reserved for persons with disability on the basis of the 41.5% marks obtained by the petitioner in DUMET-2008.

6. The stand of the Delhi University is that it is bound by and follows the minimum standards prescribed by MCI. Since the minimum qualifying marks were 50% in 2008-2009 and the petitioner had obtained only 41.5% marks, he could not be considered for admission against the 3% seats reserved for physically disabled persons. It was further submitted that although in 2009 the minimum qualifying marks were relaxed to 45% for physically disabled persons, the petitioner could not be granted admission because in DUMET-2009 the petitioner had obtained only 37% marks. The submission on behalf of the Delhi University was that even if the marks obtained by the petitioner in DUMET-2008 were to be considered for admission to the academic year 2009-2010, the petitioner would not be eligible because his marks were less than 45% which was the minimum

marks prescribed for the academic year 2009-2010.

7. The learned counsel appearing on behalf of the petitioner submitted that by virtue of Section 39 of the said Act, 3% reservation of seats for disabled candidates in government and government aided educational institutions is to be provided for. He placed reliance on All Kerala parents Association v. State of Kerala: 2002 (7) SCALE 198 as also on the decision of the Supreme Court in the case of Deputy Secretary, Ministry of Health v. Sanchita Biswas: CA No. 4604/2000 decided on 18.09.2002 to contend that Section 39 of the said Act relates not just to employment but to reservation of seats for admission of students to government / government aided institutions. There is no controversy with regard to this aspect of the matter and the same has been laid to rest by the aforesaid decisions of the Supreme Court. We are proceeding on the basis that a 3% reservation for physically disabled persons is mandated under Section 39 of the said Act in respect of admission of students to government / government aided institutions which includes admission to MBBS courses offered by the Delhi University.

8. According to the petitioner, the action of the MCI in issuing the notification dated 25.03.2009 providing only 5% relaxation to the disabled candidates has the effect of defeating the provisions of Section 39 in respect of seats reserved for persons with disabilities in MBBS courses. It was contended that while reservation to the extent of 3% was granted in respect of admission to the MBBS courses, this has proved to be illusory inasmuch as the 3% seats reserved for persons with disabilities has remained largely unfilled. This position is factually correct. Thus, for considering the rival contentions of the parties, we are working on the factual basis that though there has been a 3% reservation for persons with disabilities, that has not actually worked out in reality in the sense that there have not been enough candidates who have crossed the threshold so as to be eligible for admission. The plea of the petitioner is that because of the fact that the 3% seats reserved for physically disabled persons have remained unfilled, there is a strong case for relaxing the threshold by lowering the minimum qualifying marks to 40% and bringing it at par with the minimum qualifying marks applicable for SC/ ST candidates.

9. Another plea taken by the petitioner was that once the Chief Commissioner, by his order dated 08.09.2007 had directed MCI to extend the relaxation which was given to SC/ ST candidates to persons with disabilities also, it was incumbent upon MCI to have implemented the said direction. It was also contended that the petitioner had obtained 41.5% marks in DUMET-2008 held in May, 2008 and at that point of time the Chief Commissioner's order dated 08.09.2007 had not been challenged by the MCI. Yet, the petitioner was not called for admission counseling held on 09.07.2008 by the Delhi University. It was also pointed out that 10 out of the 12 seats reserved for physically disabled persons in the MBBS course in Delhi University in 2008-2009 remained unfilled and were subsequently merged into the general category. The contention of the petitioner was that on the date on which the counseling was done on 09.07.2008, the Chief Commissioner had already directed that the minimum marks be relaxed to 40% in respect of the physically disabled candidates also. Yet, the petitioner had not been called for counseling. Consequently, it was submitted that the petitioner ought to have been granted admission and the fact that he was not granted admission on the basis of his having obtained 41.5% marks should not be held against him while considering his case for admission in 2009-2010. Consequently, on the strength of the Supreme Court decision in

the case of Dolly Chhanda v. Chairman, JEE: (2005) 9 SCC 779, it was urged that though the petitioner obtained only 37% marks in DUMET-2009, his 41.5% marks in DUMET-2008 should be considered for admission to the academic session of 2009-2010.

10. Another point taken by the petitioner was that the minimum qualifying marks for MBBS courses is the minimum standard of fitness of candidates which MCI is empowered to prescribe under Section 19-A of the IMC Act. Reliance was placed on the Supreme Court decision in Dr Preeti Srivastava & Anr. V. State of MP and Ors: (1999) 7 SCC 120. It was contended that if SC/ST candidates with 40% marks or more are deemed fit for filling of the seats reserved for SC/ ST categories, then, clearly, persons with disabilities with 40% or more marks must also be deemed fit for filling of the seats reserved for persons with disabilities. Consequently, it was submitted that the action of the MCI of providing relaxation only up to 45% was arbitrary, illegal, unsustainable in law and had the effect of defeating the intent and objective of Section 39 of the said Act. It was also submitted on behalf of the petitioner that it has been recognized that persons with disabilities are severely disadvantaged and have been suffering from historical discrimination and denial of opportunity and as such, positive measures need to be taken to integrate them into the social mainstream and that Section 39 of the said Act is one such measure. Several decisions and an article were relied upon by the learned counsel for the petitioner. They include:-

(i) Javed Abidi v. Union of India: (1999) 1 SCC 467;

(ii) Indra Sawhney v. Union of India: AIR 1993 SC 477;

(iii) Union of India v. Jagmohan Singh : WP(C) 11818 and 13627-28/2004 decided on 07.12.2007 by a Division Bench of this Court; and

(iv) All India Confederation of Blind v. Union of India: order passed by the Supreme Court in IA No. 4/1999 dated 19.03.2002.

(v) Disability Law vis-À-vis Human Rights: (2005) 3 SCC (Jour) 1;

11. It was also contended that reputed institutions such as the All India Institute of Medical Sciences and the Indian Institute of Technology were providing disabled candidates the same relaxation in the minimum qualifying marks for admission as provided to the SC/ ST candidates. Therefore, it was submitted that there is no reason as to why the MCI ought not to follow the same principle and give 10% relaxation in the minimum qualifying marks for admission in respect of the physically disabled persons also, as is the case with SC/ ST candidates.

12. The learned counsel for the petitioner further submitted that the Chief Commissioner under the said Act functions as a quasi-judicial authority and has ample powers to decide the issues entrusted to it. A reference was also made to Section 58 and 59 of the said Act as also to the decision of a learned Single Judge of this Court in the case of Dalip Kumar Chadha v. AIIMS: WP(C) 8926/2005 decided on 14.01.2008 to submit that wide powers had been given to the Chief Commissioner and that an order passed by him was binding on the authorities. It was also contended that the "court" of

the Chief Commissioner is a fully functioning "court" and a reference was made to various case reports of cases decided by the Chief Commissioner which had been obtained from the website of the Chief Commissioner. It was contended that the order of the Chief Commissioner dated 08.09.2007 was legal and binding on the authorities. There was no illegality or infirmity in the said order in terms of jurisdiction or procedure or in consideration of relevant factors and, therefore, this Court ought to direct the implementation of the said order dated 08.09.2007 and thereby grant physically disabled persons parity with SC/ ST candidates insofar as the minimum qualifying marks are concerned, for admission to the MBBS courses. Consequently, it was submitted that the petitioner be granted admission in the academic session 2009-2010.

13. On the other hand, Mr Maninder Singh, the learned senior advocate appearing on behalf of the MCI, submitted that the petitioner as also other physically disabled persons cannot claim parity with SC/ ST candidates. He referred to the Supreme Court decision in the case of Chattar Singh v. State of Rajasthan: (1996) 11 SCC 742 where persons belonging to Other Backward Castes claimed parity with SC/ ST candidates with regard to employment. The Supreme Court did not grant that parity and held that OBCs did not suffer from the same social handicap which the SC/ST candidates had been subjected to. Similarly, the learned counsel for the MCI submitted that the disabled persons cannot be equated with persons belonging to SC/ ST categories and that the decision in the case of Chattar Singh (supra) would squarely apply to the facts and circumstances of the present case. It was also contended on behalf of the MCI that Section 39 read with Section 33 of the said Act indicates that there should be 3% reservation for physically disabled persons with regard to admissions to educational institutions belonging to the government or aided by the government. It was contended that while reservation is provided for, there is no stipulation in the said Act with regard to relaxation of the minimum qualifying marks. The minimum standards are prescribed by the MCI and cannot be altered by the Chief Commissioner. As such, the order dated 08.09.2007 passed by the Chief Commissioner, whereby he directed the MCI to grant relaxation in the minimum standards to persons with disability to bring them at par with SC/ST candidates, was beyond the powers given to the Chief Commissioner under the said Act as also contrary to the provisions of the IMC Act. Referring to Sections 58 and 59 of the said Act, the learned counsel for the MCI submitted that the said Act does not empower the Chief Commissioner to create any new rights which are not spelt out in the said Act. Consequently, the Chief Commissioner, according to the learned counsel, could not have directed the MCI and the Delhi University to maintain parity with SC/ ST Candidates in the matter of admission to the MBBS courses.

14. In any event, it was submitted that the order dated 08.09.2007 passed by the Chief Commissioner was recommendatory and was not binding. It was also contended that a mandamus could not be issued directing the legislature or any subordinate thereof to legislate. Consequently, the petitioner was not entitled to the directions he was seeking and the order dated 08.09.2007 passed by the Chief Commissioner was liable to be set aside. A reference was also made to the decision in the case of Dr Raman Khanna v. University of Delhi: CW 2670/2003 decided on 11.08.2003 by a learned Single Judge of this Court with regard to the submission that preference ought to be given to persons with 50-70% disabilities over persons in the 40-50% category. It was submitted that it was in consequence of such a suggestion that the amendment of 25.03.2009 was brought about. A reference, by way of persuasive value, was also made to another decision of a

learned Single Judge of this Court in the case of Fahad Ansari v. AIIMS: 109 (2004) DLT 163 where it was noted that it was not permissible to transverse beyond the minimum qualification set down by MCI. A reference was made to the decision of the Supreme Court in the case of Indian Overseas Bank SC and ST Employee's Welfare Association & Ors v. UOI & Ors: (1996) 6 SCC 606 to submit that the powers of the Commissioner cannot be equated to the powers of a civil court. A further reference was made to the Supreme Court decision in Ajoy Kumar Banerjee v. Union of India: (1984) 3 SCC 127 to submit that every kind of differentiation does not necessarily imply that there is discrimination. Paragraph 50 of the said decision reads as under:-

"50. Differentiation is not always discriminatory. If there is a rational nexus on the basis of which differentiation has been made with the object sought to be achieved by particular provision, then such differentiation is not discriminatory and does not violate the principles of Article 14 of the Constitution. This principle is too well-settled now to be reiterated by reference to cases. There is intelligible basis for differentiation. Whether the same result or better result could have been achieved and better basis of differentiation evolved is within the domain of legislature and must be left to the wisdom of the legislature. Had it been held that the scheme of 1980 was within the authority given by the Act, we would have rejected the challenge to the Act and the scheme under Article 14 of the Constitution."

15. The decision of the Supreme Court in the case of Suresh Seth v. Commissioner: AIR 2006 SC 767 was referred to for the proposition that no mandamus can be issued directing a legislature to enact a particular law. Similarly, when an executive authority exercises a legislative power by way of subordinate legislation, pursuant to the delegated authority of a legislature, such executive authority cannot be asked to enact a particular law. Paragraph 5 of the said decision was referred to and the same reads as under:-

"5. Learned counsel for the appellant has also submitted that this Court should issue directions for an appropriate amendment in the M.P. Municipal Corporation Act, 1956 so that a person may be debarred from simultaneously holding two elected offices, namely that of a member of the Legislative Assembly and also of Mayor of a Municipal Corporation. In our opinion, this is a matter of policy for the elected representatives of people to decide and no direction in this regard can be issued by the court. That apart this Court cannot issue any direction to the Legislature to make any particular kind of enactment. Under our constitutional scheme Parliament and Legislative Assemblies exercise sovereign power to enact laws and no outside power or authority can issue a direction to enact a particular piece of legislation. In Supreme Court Employees Welfare Association v. Union of India (1989) 4 SCC 187 (para 51) it has been held that no court can direct a legislature to enact a particular law. Similarly, when an executive authority exercises a legislative power by way of a

subordinate legislation pursuant to the delegated authority of a legislature, such executive authority cannot be asked to enact a law which it has been empowered to do under the delegated legislative authority. This view has been reiterated in State of J & K v. A.R. Zakki 1992 Supp (1) SCC 548. In A.K. Roy v. Union of India (1982) 1 SCC 271, it was held that no mandamus can be issued to enforce an Act which has been passed by the legislature. Therefore, the submission made by the learned counsel for the appellant cannot be accepted."

16. A reference was also made to the Supreme Court decision in the case of State of Tamil Nadu v. P. Krishnamurthy & Ors: AIR 2006 SC 1622 to submit that there is a presumption in favour of constitutionality or validity of a subordinate legislation and the burden is upon him, who attacks and to show that it is invalid. It is also pointed out in the said decision that a subordinate legislation can be challenged under any of the following grounds:-

- a) Lack of legislative competence to make the sub-ordinate legislation.
- b) Violation of Fundamental Rights guaranteed under the Constitution of India.
- c) Violation of any provision of the Constitution of India.
- d) Failure to conform to the Statute under which it is made or exceeding the limits of authority conferred by the enabling Act.
- e) Repugnancy to the laws of the land, that is, any enactment.
- f) Manifest arbitrariness/unreasonableness (to an extent where court might well say that Legislature never intended to give authority to make such Rules).

It was further pointed out in the said decision that the court considering the validity of a subordinate legislation, will have to consider the nature, object and scheme of the enabling Act, and also the area over which power has been delegated under the Act and then decide whether the subordinate legislation conforms to the parent Statute.

17. The decision in Mridul Dhar v. Union of India: (2005) 2 SCC 65 was referred to by the learned counsel for the MCI for the proposition that carrying forward of any unfilled seats of one academic year to next academic year is not permissible. It was submitted that this decision of the Supreme Court was subsequent to the decision in

the case of Dolly Chhanda (supra) wherein under very special circumstances the Supreme Court permitted the grant of admission in the next academic year which ought to have been granted to the petitioner therein in the previous academic year as it had not been granted in the previous year because of no fault on her part. It was also submitted that other High Courts, such as the Punjab and Haryana High Court and the Kerala High Court have repelled the request for parity between the persons with disabilities and persons belonging to the SC/ST categories. It was contended that in 2008-2009 the petitioner had no subsisting right to get admission and that in 2009-2010, the petitioner did not even achieve 40% which, even according to the petitioner ought to have been the minimum requirement. It was also contended that since no carrying forward was permissible, in any event, the petitioner was not entitled to any admission.

18. The same view was adopted by the learned counsel for the Delhi University and it was submitted that the petitioner cannot be granted admission to the MBBS course for the academic year 2009-10.

19. The Preamble of the said Act indicates that it has been enacted to give effect to the Proclamation on the Full Participation and Equality of the People with Disabilities in the Asian and Pacific Region. The recitals indicate that the Meeting to Launch the Asian and Pacific Decade of Disabled Persons 1993-2002 convened by the Economic and Social Commission for Asia and Pacific held at Beijing on 1st to 5th December, 1992, adopted the Proclamation on the Full Participation and Equality of People with Disabilities in the Asian and Pacific Region. Since India was a signatory to the said Proclamation, it was considered necessary to implement the Proclamation. It is consequent to that, that the said Act was enacted by Parliament to provide for, inter alia, the responsibility of the State towards the prevention of disabilities, protection of rights, provision of medical care, education, training, employment and rehabilitation of persons with disabilities as also to create a barrier free environment for such persons. The proclamation also required that special provision should be made for the integration of persons with disability into the social mainstream.

20. As would appear from the Statement of Objects and Reasons behind the introduction of the Bill, which ultimately was enacted as the said Act, provision was made for education etc., for persons with disabilities. It was also noted in the said Statement of Objects and Reasons that for effective implementation of the provisions of the said Bill (the said Act), appointment of the Chief Commissioner for persons with disabilities at the Central level and Commissioners for persons with disabilities at the State level clothed with powers to monitor the funds disbursed by the Central and State Governments and also to take steps to safeguard the rights of the persons with disabilities was also envisaged.

21. The expressions "Chief Commissioner", "disability", "locomotor disability" and "persons with disability" are defined in Sections 2(f), (i), (o) and (t) of the said Act

and the same read as under:-

"(f) "Chief Commissioner" means the Chief Commissioner appointed under subsection (1) of section 57;"

"(i) "Disability" means-

- (i) Blindness;
- (ii) Low vision;
- (iii) Leprosy-cured;
- (iv) Hearing impairment;
- (v) Locomotor disability;
- (vi) Mental retardation;
- (vii) Mental illness;"

"(o) "Locomotor disability" means disability of the bones, joints muscles leading to substantial restriction of the movement of the limbs or any form of cerebral palsy;"

"(t) "Person with disability" means a person suffering from not less than forty per cent. of any disability as certified by a medical authority."

Chapters II and III of the said Act deal with the Central and State Coordination Committees respectively. Chapter IV of the said Act deals with the prevention and early detection of disabilities. Chapter V, which comprises of Section 26-31, specifically deals with education. Section 26, for example, requires the appropriate Governments and the local authorities to ensure that every child with a disability has access to free education in an appropriate environment till he attains the age of eighteen years. Furthermore, the appropriate Governments are required to endeavour to promote the integration of students with disabilities in normal schools. Similarly, there is a requirement for promotion of setting up of special schools in Government and private sectors for those in need of special education, in such a manner that children with disabilities living in any part of the country have access to such schools. There is also a requirement that an endeavour shall be made to equip the special schools for children with disabilities with vocational training facilities. Other similar provisions are made in Chapter V which all deal with education of children / persons with disability. The object being that a disabled person should not have to suffer the further handicap of being illiterate or uneducated.

22. Chapter VI deals with employment and comprises of Sections 32-41. Sections 33 and 39 are important for the present case and they read as under:-

"33. Reservation of posts. - Every appropriate Government shall appoint in every establishment such percentage of vacancies not less than three per cent. for persons or class of persons with disability of which one per cent. each shall be reserved for persons suffering from-

(i) blindness or low vision;

(ii) hearing impairment;

(iii) locomotor disability or cerebral palsy, in the posts identified for each disability:

Provided that the appropriate Government may, having regard to the type of work carried on in any department or establishment, by notification subject to such conditions, if any, as may be specified in such notification, exempt any establishment from the provisions of this section."

"39. All educational institutions to reserve seats for persons with disabilities.- All Government educational institutions and other educational institutions receiving aid from the Government, shall reserve not less than three per cent seat for persons with disabilities."

23. Chapter VII is entitled "affirmative action" and it comprises of Section 42 and 43. It provides for aids and appliances to persons with disabilities and schemes for preferential allotment of land for certain purposes. Chapter VIII deals with non-discrimination whereas Chapter IX is concerned with research and manpower and development. Chapter X makes provision for recognition of institutes for persons with disabilities and Chapter XI is concerned with the institutions for persons with severe disabilities.

24. Chapter XII, which makes provision with regard to the appointment of the Chief Commissioner for persons with disabilities and other related issues, is also important for the purposes of this case. This Chapter comprises of Sections 57 to 65. Section 57 provides for the appointment of the Chief Commissioner by the Central Government. Section 58 specifically provides for the functions of the Chief Commissioner. The said Section reads as under:-

"58. Functions of the Chief Commissioner.- The Chief commissioner shall -

(a) Coordinate the work of the Commissioners;

- (b) Monitor the utilization of funds disbursed by the Central Government;
- (c) Take steps to safeguard the rights and facilities made available to Persons with disabilities;
- (d) Submit reports to the Central Government on the implementation of the Act at such intervals as that Government may prescribe."

Section 59 is also important for our purposes and the same is as under:-

"59. Chief Commissioner to look into complaints with respect to deprivation of rights of persons with disabilities.

- Without prejudice to the provisions of section 58 the Chief Commissioner may of his own motion or on the application of any aggrieved person or otherwise look into complaints with respect to matters relating to -

(a) Deprivation of rights of persons with Disabilities.

(b) Non-implementation of laws, rules, byelaws, regulations, executive orders, guidelines or instructions made or issued by the appropriate Governments and the local authorities for the welfare and protection of rights or persons with disabilities, and take up the matter with the appropriate authorities."

Finally, Section 63 indicates that certain powers of the civil court are to be exercised by the Chief Commissioner for the purposes of discharging his functions under the said Act. Section 63 reads as under:-

"63. Authorities and officers to have certain powers of Civil Court.- (1) The Chief Commissioner and the Commissioners shall, for the purpose of discharging their functions under this Act, have the same powers as are vested in a court under the Code of Civil Procedure, 1908 while trying a suit, in respect of the following matters, namely:-

- (a) Summoning and enforcing the attendance of witnesses;
- (b) Requiring the discovery and production of any documents;

- (c) Requisitioning any public record or copy thereof from any court or office;
- (d) Receiving evidence on affidavits; and
- (e) Issuing commissions for the examination of witnesses or documents.

(2) Every proceeding before the Chief Commissioner and Commissioners shall be a judicial proceeding within the meaning directions 193 and 228 of the Indian Penal Code (45 of 1860) and the Chief Commissioner, the Commissioner, the competent authority, shall be deemed to be a civil court for the purposes of section 195 and Chapter XXVI of the Code of Criminal Procedure, 1973 (2 of 1974)."

25. From a survey of the above provisions of the said Act, it is apparent that the same were enacted to bring about an end to discrimination against physically disabled persons. Positive measures have been indicated in the said enactment so as to provide education to physically disabled children/ persons not only in normal schools but also in specialized institutions. There is also a requirement that physically disabled persons should be given special consideration in the matter of employment so that they are not left out of the social mainstream and are also made to contribute to the social and economic development of the nation. It is towards this end that Section 33 of the said Act provides for reservation of posts and sets the limit at a minimum of 3% for physically disabled persons and further requires a reservation of at least 1% in each of the three categories of disability, namely, (i) blindness; (ii) hearing; and (iii) locomotor. In the present case, of course, we are not concerned with the first two categories of disabilities inasmuch as it would not be appropriate to have professional doctors with that kind of disability as it would interfere with their functions as a doctor. Even the permissible locomotor disability, because of the nature of work that a medical doctor is required to do, is only in respect of the lower limbs and it is for this category alone that reservation has been provided for. There is no difficulty with this aspect of the matter as all parties are agreed that the reservation that has to be provided to persons with disabilities in the case of the MBBS course is limited to those persons who have locomotor disability of the lower limbs. In fact, the entire 3% reservation has been made in respect of this category of persons. Section 39 clearly stipulates that all government educational institutions and other educational institutions receiving aid from the government shall reserve not less than 3% seats for persons with disabilities. In the context of the present case, there is no dispute that the Delhi University has reserved 3% seats in respect of admission to the MBBS course for persons with locomotor disability of the lower limbs. Therefore, the provisions of Section 39 have been complied with. It is another matter that the 3% seats, which have been so reserved, are going largely unfilled because there are not enough candidates who cross the minimum threshold of 50%

marks (now 45%).

26. As regards the duties and functions of the Chief Commissioner, it is obvious upon a plain reading of Section 58 that the Chief Commissioner is required to coordinate the work of the Commissioners, monitor the utilization of funds disbursed by the Central Government and "take steps to safeguard the rights and facilities made available to persons with disabilities" as also to submit reports to the Central Government on the implementation of the said Act at such intervals as the government may prescribe. Out of the above functions, the one which requires the Chief Commissioner to take steps to safeguard the rights and facilities made available to the persons with disabilities is of prime importance for the purposes of this case. According to the petitioner, it is in exercise of this function of the Chief Commissioner that he has directed the MCI and the Delhi University to grant parity to persons with disabilities with the SC/ST candidates in order to safeguard the rights and facilities made available to the persons with disabilities under the said Act. At this juncture, it may be pointed out that the function of the Chief Commissioner is no doubt to safeguard the rights and facilities made available to the persons with disabilities, yet it has to be seen as to what are those rights and facilities. We have noticed the provisions of the said Act and found that there is no stipulation with regard to minimum standards or relaxation in the minimum standards in matters of admission to government educational institutions or other educational institutions receiving aid from the government. The only prescription is with regard to a minimum 3% reservation.

27. We also notice that Section 59 begins with the word "without prejudice to the provisions of Section 58" and empowers the Chief Commissioner to look into the complaints (either on his own motion or on an application by an aggrieved person or otherwise) with respect to matters relating to (a) deprivation of rights of persons with disabilities; (b) non- implementation of laws, rules, byelaws, regulations, executive orders, guidelines or instructions made or issued by the appropriate Governments and the local authorities for the welfare and protection of rights or persons with disabilities and to take up the matter with the appropriate authorities. We are mindful of the fact that we are dealing with a beneficial legislation and, therefore, the provisions should be interpreted and construed in a manner which advances the benefits given under the said legislation. Consequently, the powers and functions of the Commissioner would have to be given the widest amplitude possible within the four corners of the provisions of the said Act itself. We cannot, of course, while giving a liberal interpretation, travel beyond the provisions of the Act or some other statutory provisions which could never have been the intention of Parliament. Therefore, the expressions "look into complaints" and "to take up the matter with the appropriate authorities" cannot be elevated to the status of a case in court and an order or judgment passed by a court. The Chief Commissioner is certainly required to and is empowered to look into any transgression of the rights of persons with disabilities as also to examine the issue of non-implementation of laws etc. which are for the welfare and protection of rights of persons with disabilities, but, having considered the complaint, the Chief Commissioner is required to take up the matter with the appropriate authorities so as to prevent and or remove any deprivation of rights of persons with disabilities and also to ensure implementation of the laws for the welfare and protection of the rights of persons with disabilities. There is no doubt that, for certain purposes, the Chief Commissioner as also the Commissioners, by virtue of Section 63 of the said Act, have been given certain powers of a civil

court while trying a suit. However, such powers are exercisable by the Chief Commissioner for summoning and enforcing the attendance of witnesses, requiring the discovery and production of any documents, requisitioning any public record or copy thereof from any court or office, receiving evidence on affidavits and issuing commissions for the examination of witnesses or documents. The powers are limited to such matters only and do not entail that because such powers in certain matters have been given to the Chief Commissioner and the Commissioners, as the case may be, they are to be equated with civil courts. That is certainly not the intention of the legislature and that is not how we read it.

28. In this context, a reference may also be made to the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Rules, 1996 (hereinafter referred to as "the said Rules"). Chapter VI of the said Rules which comprises of Rules 42-45 relate to the Chief Commissioner for persons with disabilities. Rule 42 prescribes the procedure to be followed by the Chief Commissioner when a complaint is presented by a complainant. Sub-rule (1) specifies the particulars that should be set out in the complaint. Sub-rule (2) stipulates that the Chief Commissioner shall send a copy of the complaint to the opposite party / parties for their version. Sub-rule (3) provides that it shall be obligatory on the parties to appear before the Chief Commissioner on the date of hearing. Sub-rules (4) and (5) prescribe as to what the Chief Commissioner can do in case the complainant fails to appear or the opposite party fails to appear, as the case may be. Sub-rule (6) empowers the Chief Commissioner to dispose of the complaint *ex parte*, if necessary. Sub-rule (7) enables the Chief Commissioner to adjourn the hearing of the complaint on such terms as he may deem fit and at any stage of the proceedings. Sub-rule (8) requires that the complaint shall be "decided", as far as possible, within a period of three months from the date of the notice received by the opposite party. Although the learned counsel for the petitioner suggested that sub-rule (8) of Rule 42 is indicative of the fact that a complaint is "decided" by the Chief Commissioner and, therefore, it is in the form and shape of a quasi-judicial order which has a binding effect, we are not in agreement with the said submission. It is true that an order or direction given by the Chief Commissioner is not to be ignored and must be given serious and due consideration and weightage but, at the same time it is not to be regarded as an order of the court.

29. Going back to Section 59 of the said Act, we find that the Chief Commissioner has only been empowered to look into complaints and to take up the matter with the appropriate authorities. Once the Chief Commissioner has looked into the complaint and has come to a "decision" and thereupon the Chief Commissioner takes up the matter with the appropriate authorities, the said authorities cannot contend that the view of the Chief Commissioner can be totally ignored or side-stepped. We feel that once the Chief Commissioner takes a view on a particular complaint and then takes up the matter with an appropriate authority, if such view is permissible in law, then the appropriate authority would be obliged to redress and remove the grievance of the complainant. In case the concerned authority does not take any action whatsoever, it would then be open to the aggrieved person to approach the High Court under Article 226 for an appropriate writ, direction or order, if he makes out a case of deprivation of a right or non-implementation of laws, rules etc. providing for the welfare and protection of rights of persons with disabilities. But, this does not mean that the order or direction given by the Chief Commissioner, by itself, is elevated to the status

of an order passed by a court.

30. We now need to examine the provisions of the Indian Medical Council Act, 1956. There is no dispute that it is MCI which is empowered to prescribe the minimum standards of medical education in India. Section 19-A gives the Council such powers. Section 19-A reads as under:-

"19A. Minimum standards of medical education. - (1) The Council may prescribe the minimum standards of medical education required for granting recognized medical qualifications (other than post-graduate medical qualifications) by universities or medical institutions in India.

(2) Copies of the draft regulations and of all subsequent amendments thereof shall be furnished by the Council to all State Governments and the Council shall before submitting the regulations or any amendment thereof, as the case may be, to the Central Government for sanction, take into consideration the comments of any State Government received within three months from the furnishing of the copies as aforesaid.

(3) The Committee shall from time to time report to the Council on the efficacy of the regulations and may recommend to the Council such amendments thereof as it may think fit."

31. Section 33 of the IMC Act empowers the MCI, with the previous sanction of the Central Government, to make regulations generally to carry out the purposes of the IMC Act and to, without prejudice to the generality of this power, make, inter alia, such regulations as may provide for the conduct of professional examinations, qualifications of examiners and the conditions of admission to such examinations, the courses and period of study and practical training to be undertaken, the subject of examinations and the standards of proficiency therein to be obtained, in universities or medical institutions for grant of recognized medical qualifications. It is in exercise of these powers under Section 33 of the IMC Act that the Regulations on Graduate Medical Education 1997 were framed. Clause 4 of the said regulations deals with admission to the medical courses. Essentially, the requirement is that in the qualifying examination the candidate must have obtained 50% marks. By virtue of the notification dated 25.03.2009, the said regulations were amended and in clause 4, the following sub-clause (3) was added after sub-clause 2(f):-

"3. 3% seats of the annual sanctioned intake capacity shall be filled up by candidates with locomotors disability of lower limbs between 50% to 70%.

Provided that in case any seat in this 3% quota remains unfilled on account of unavailability of candidates with locomotors disability of lower limbs between 50% to 70% then any such unfilled seat in this 3% quota shall be filled up by persons with locomotors disability of lower limbs between 40% to 50% - before they are included in the annual sanctioned seats for General Category candidates.

Provided further that this entire exercise shall be completed by each medical college / institution as per the statutory time schedule for admissions and in no case any admission will be made in the MBBS course after 30 th of September."

Clause 5 of the said regulations made provision for the selection of students. It was stipulated that the selection of students to medical colleges shall be based solely on the merit of the candidates and for determination of the merit, a uniform criteria, to be followed throughout the country, was prescribed. Clause 5(5) of the said regulations initially read as under:

"(5). Procedure for selection to MBBS course shall be as follows:-

i. In case of admission on the basis of qualifying examination under clause (1) based on merit, candidate for admission to MBBS course must have passed in the subjects of Physics, Chemistry, Biology & English individually and must have obtained a minimum of 50% marks taken together in Physics, Chemistry and Biology at the qualifying examination as mentioned in the clause (2) of regulation 4. In respect of candidates belonging to Scheduled Castes, Scheduled Tribes or Other Backward classes. The marks obtained in Physics, Chemistry and Biology taken together in qualifying examination be 40% instead of 50% as above.

ii. In case of admission on the basis of Competitive entrance examination under clause (2) to (4) of this regulation, a candidate must have passed in the subjects of Physics, Chemistry, Biology and English individually and must have obtained a minimum of 50% of marks taken together in Physics Chemistry and Biology at the qualifying examination as mentioned in clause (2) of regulation 4 and in addition must have come in the merit list prepared as a result of such competitive entrance examination by securing not less than 50% marks in Physics, Chemistry and Biology competitive examination. In respect of candidates belonging to Schedule Caste, Schedule Tribes or other Backward Class the marks obtained in Physics, Chemistry, and Biology taken together in qualifying examination and competitive entrance examination be 40% instead of 50% as stated above.

Provided that a candidate who has appeared in the qualifying examination the result of which has not been declared, he may be provisionally permitted to take up the competitive entrance examination and in case of selection for admission to the MBBS course, he shall not be admitted to that course until he fulfills the eligibility criteria under regulation 4."

However, by the said notification dated 25.03.2009, the following proviso was added before the proviso to clause 5(5)(ii):-

"Provided that the eligibility criteria for admission to persons with locomotors disability of lower limbs in terms of Clause 4(3) above - will be a minimum of 45% marks instead of 50% taken together in qualifying examination and competitive

entrance examination for admission in MBBS course."

From the above regulations, as amended by the notification dated 25.03.2009, it is clear that in the case of admission on the basis of qualifying examination, persons belonging to the general category must have passed in the subjects of Physics, Chemistry, Biology and English individually and must have obtained a minimum of 50% of marks taken together in Physics Chemistry and Biology at the qualifying examination. In respect of candidates belonging to ST/ST/OBC, the marks obtained in Physics, Chemistry, and Biology taken together in the qualifying examination was relaxed to 40% instead of 50% for the general candidates. Similarly, in the case where admission was to be on the basis of a competitive entrance examination, the candidate was required to have passed in the subjects of Physics, Chemistry, Biology and English individually and was required to obtain a minimum of 50% of marks taken together in Physics Chemistry and Biology at the qualifying examination and in addition must have come in the merit list prepared as a result of such competitive entrance examination by securing not less than 50% marks in Physics, Chemistry and Biology. This requirement of 50% was relaxed to 40% in the case of SC/ST and OBC candidates.

32. It is clear that the relaxation in the minimum marks, which the petitioner is seeking, is under the said regulations which, in turn, have been framed under the IMC Act. It has nothing to do with any right arising out of or emanating from the said Act which deals with persons with disabilities.

33. Going back to the provisions of Sections 58 and 59 of the said Act, we find that the Chief Commissioner's powers and functions are in relation to the rights and facilities made available to the persons with disabilities. Obviously, those rights and facilities have reference to the provisions made in respect thereof in the said Act. We have already pointed out that nowhere in the said Act is it specified that persons with disabilities would be entitled to any relaxation insofar as the minimum qualifying marks are concerned while considering admission to educational institutions. Prescribing minimum standards for medical education is clearly within the domain of MCI and cannot be altered or interfered with by the Chief Commissioner under the said Act. We agree with the submission made by Mr Maninder Singh, the learned senior counsel appearing on behalf of MCI, that the Chief Commissioner can certainly ensure and take steps to safeguard the rights of persons with disabilities but he cannot, by himself, create a right which the said Act does not give to the persons with disabilities.

34. The argument on behalf of the petitioner could very well be that even if we ignore the powers and functions of the Chief Commissioner and forget about the order passed by him, this Court, can certainly issue directions to ensure that discrimination and arbitrariness is removed whenever there is any violation of Article 14 of the Constitution. In this backdrop, it could be argued that because the SC and ST candidates have been given a concession or relaxation of 10% in the minimum qualifying marks, the physically disabled candidates should also get the same relaxation. There are two answers to this. The first answer being that every differentiation does not necessarily entail discrimination. The fact that the physically disabled fall in a different class to the candidates belonging to the SC/ST category, in itself, implies that they could be treated differently just as candidates belonging to the general category are, indeed, treated differently from those belonging to the SC/ST category. The second answer is that what has been given to the SC/ST candidates is a

concession. The petitioner, belonging to a physically disabled category, cannot claim such a concession as a right. The right that the petitioner can claim or for that matter any person belonging to the physically disabled category can claim is of a minimum 3% reservation in the matter of admission to the MBBS course as that right is given under the said Act. That right has not been taken away inasmuch the Delhi University has reserved 3% seats for physically disabled candidates. Therefore, the mere fact that physically disabled candidates have not been given the same relaxation / concession as given to the SC/ST candidates does not entail that they have been deprived of their rights.

35. The minimum standards of medical education are to be stipulated by the MCI. They have done that and it is not for this Court to examine as to whether that is right or wrong because we do not have the expertise to do so. There has always been the argument and debate of maintenance of standards versus reservation. At one level, the argument is - why should there be any reservation at all because reservation has an opportunity cost itself in the sense that one seat reserved for somebody means that someone else, who is deserving, is deprived of that seat. However, because of our constitutional guarantees given to SC/ST candidates, reservation is part of the constitutional scheme and the logic behind it is that persons belonging to such categories have been subjected to hundreds of years of discrimination and they require definite positive action on the part of the State to enable them to participate in the mainstream of social and economic life. However, beyond reservation there is the further issue of relaxation of standards. There is an argument and a very compelling one, too, that while reservation of seats may be justified, lowering of standards by relaxing the minimum requirements is certainly not justifiable. In this context, it may be argued that once seats have been reserved, the lowering of standards along with it, would be violative of Article 14. There are also arguments on the other side that unless and until the reservation is coupled with a relaxation or a concession, reservation by itself would be meaningless inasmuch as the seats would go abegging. We are not entering into that controversy, though we feel that someday a fresh look would be required to be given to the concept of reservation coupled with relaxation of marks particularly in the field of professional education. For the present, it is sufficient for us to observe that insofar as physically disabled persons are concerned, they have a right to reservation but there is no right to relaxation or a concession in the minimum standards. And unless and until such a right is established, no mandamus or writ can be issued to any authority to give them the relaxation / concession that they seek. It is for this reason also that we feel that the Chief Commissioner travelled beyond his powers to direct that the relaxation in marks should be extended to the physically disabled candidates so as to bring them at par with the SC and ST candidates in respect of admission to the MBBS course in Delhi.

36. For all these reasons, although we feel that physically disabled persons should be extended all the rights, privileges and benefits under the said Act so as to ensure that they are not discriminated against and that they come within the social mainstream, we do not agree with the contentions made on behalf of the petitioner that the petitioner, as of right, can claim parity with SC/ST candidates insofar as the relaxation in the minimum marks required is concerned. Consequently, the writ petition Nos. 1352/2008 and 8750/2009 are dismissed. Insofar as WP(C) 6759/2008 is concerned, it is disposed of with the direction that the order passed by the Chief Commissioner on 08.09.2007 is recommendatory and is not binding on the respondents. However, the respondents

are required to give a serious view to the said recommendation so as to ensure that physically disabled persons are not deprived of their rights, privileges and facilities under the said Act.

The writ petitions stand disposed of.

BADAR DURREZ AHMED, J VEENA BIRBAL, J JULY 06, 2010 SR