

## **CDJ 2011 MHC 5275**

**Court :** High Court of Judicature at Madras

**Case No :** W.P.No.16144 of 2011 & M.P.No.1 of 2011

**Judges:** THE HONOURABLE MR. JUSTICE D. HARIPARANTHAMAN

**Parties :** P. Divya Versus The Secretary to Government Department of Health & Others

**Appearing Advocates :** For the Petitioner: R. Prabhakaran, Advocate. For the Respondents: R1 & R2 - P. Sanjay Gandhi, Additional Govt. Pleader, R3 - V.P. Raman, Advocate.

**Date of Judgment :** 29-09-2011

### **Head Note :-**

Constitution of India - Articles 226 & 253, Persons with Disabilities (Equal Opportunities) Protection of Rights and Full Participation Act 1995 - Sections 2, 2(o), (i), (t), 26 to 31, 39, 47, 47(1) & 72, Indian Medical Council Act 1956 - Section 33 - Writ Petition under Article 226 of Constitution of India - issuance of Writ of Certiorarified Mandamus – to quash Medical Council notification - permitting only orthopaedically physically disabled candidates of four limbs - as unconstitution - and to amend eligibility criteria for admission of Medical Course including the other Locomotor Disabilities as contemplated under Section 2(o) and 2(i) of the Persons with Disabilities (Equal Opportunities) Protection of Rights and Full Participation Act, 1995.

Court held – petitioner suffers locomotor disability as per Section 2(o) of Disabilities Act - even as per Medical Board Certificate - respondent excluded her from consideration for reservation - frustrates very purpose of Disabilities Act – impugned notification in violation of Section 39 read with Section 2(t) of Disabilities Act - quashed - respondent directed to include other categories of disabled persons also - more particularly, persons having disabilities above 40% as per Section 2(t) of Disabilities Act – writ petition allowed.

(Paras 1,2, 59,60,61)

### **Cases Referred:**

Civ. Appl. Nos. 8447 & 8448 of 2010 Medical Council of India V D.S.Rashmi Ranjan

G.Muthu V The Management of Tamil Nadu State Transport Corporation (Madurai) Ltd.  
[2007 (I) LW 146]

All Kerala Parents Association V State of Kerala [2002 (3) KLT 423 (SC)]

P.Rajaprabakaran V The Secretary to Government, Higher Education Department, Chennai  
& ors. [2005 STPL (LE-CIVIL) 14883 Mad]

Smt.Anju Talukdar & anr. V State of Assam & ors. [2008 STPI (LE-CIVIL) 20773 Gau]

State of Tamil Nadu & anr. V P.Krishnamurthy & ors. [2006 (4) SCC 517]

Medical Council of India V State of Karnataka [1998 (6) SCC 131]

Dr.Deval R.Mehta V Union of India & ors. [AIR 2011 Guj. 33]

Kunal Singh V Union of India [2003 (4) SCC 524]

AIR 1960 SC 971, 1997(2) SCC 53, 2002 (1) SCC 589, 1998 (8) SCC 1 & 1980 (1) SCC 321

Dr.Rakhi Mangal V State of M.P. & ors. [AIR 2009 Mad Prad 37]

Ashwini Kumar Ghosh V Arvinda Bose AIR 1952 SC 369

Union of India v Sanjay Kumar Jain (2004 (6) SCC 708 : (AIR 2004 SC 4139))

Dr.Revathi V The State of Tamil Nadu & ors. W.A.No.309 of 2011

Comparative Citations:

2011 (7) MLJ 1305, 2011 (6) CTC 526, 2011 WLR 974

**Judgment :-**

(Prayer: Petition filed under Article 226 of the Constitution of India praying for the issuance of Writ of Certiorarified Mandamus, to call for entire records, quash the Medical Council notification dated 25.03.2009 made in No.MCI-34(41)/2008-Med-54469 and the prescribed rule in prospectus for M.B.B.S / B.D.S, 2011-2012 permitting only the orthopaedically physically disabled candidates of four limbs which is mentioned in the Sl.No.42 in Cl.No.4 in page No.16 of the prospectus as unconstitutional and consequentially amend the eligibility criteria for the admission of Medical Course including the other Locomotor Disabilities as contemplated under Section 2(o) and 2(i) of the Persons with Disabilities (Equal Opportunities) Protection of Rights and Full Participation Act, 1995 and to direct the 2nd respondent to allot one M.B.B.S. Seat to the petitioner based on the marks obtained / rank list under the Special category (Orthopaedically Physically Disabled).

(Prayer amended as per order dated 10.08.2011 in M.P.No.2 / 2011 in W.P.No.16144 of 2011))

1. An interesting question arises for consideration is as to whether the Regulations framed

by the Medical Council of India, the third respondent herein, under Section 33 of the Indian Medical Council Act, 1956 (Shortly "the MCI Act") prescribing that the persons suffering locomotor disability in lower limbs with 40 - 70% alone are entitled to reservation for admission in M.B.B.S. Course, under 3% reservation provided under Section 39 of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 (Shortly "the Disabilities Act").

2. The petitioner passed +2 examinations during the academic year 2010-2011. She made an application to the second respondent for admission in M.B.B.S. Course. She is a physically challenged person. She applied under Special Category (Orthopaedically Physically Disabled). She was called for counselling on 30.06.2011. She did not get a seat under the Special Category (Orthopaedically Physically Disabled) on the ground that she does not suffer locomotor disability with lower limbs, according to the Selection Committee. The petitioner produced a disability certificate issued by the Regional Medical Board, Government General Hospital, Chennai. As per the disability certificate, she suffers locomotory lower limbs disability between 40-50%, while upper limbs are normal. The Medical Board opined that the petitioner fulfills the medical standards to undergo studies in Medical institutions. But the said medical certificate was not acceptable to the second respondent.

3. In these circumstances, the petitioner filed the present writ petition seeking to quash the notification dated 25.03.2009 issued by the third respondent as well as SI.No.42, Column No.4 of the prospectus issued by the first respondent, making only the Orthopaedically Physically Disabled candidates with lower limbs disability alone as eligible for admission to M.B.B.S. Course and also for a consequential direction to amend the eligibility criteria for admission to M.B.B.S. Course by including other locomotor disabilities as contemplated under Section 2(o) read with 2(i) of the Disabilities Act.

4. In the writ petition, this Court passed an order on 15.07.2011 directing the second respondent to ascertain the petitioner's disability taking into account the disability certificate produced by the petitioner referred to above. Subsequently, an interim order was passed in M.P.No.1 of 2011 in W.P.No.16144 of 2011 directing the second respondent to keep one M.B.B.S. Seat vacant.

5. Pursuant to the direction issued by this Court on 15.07.2011, the second respondent

referred the petitioner to another Regional Medical Board, Government General Hospital, Chennai. The said Medical Board gave a certificate dated 19.07.2011 stating that petitioner's upper and lower limbs are normal. The Medical Board opined that the petitioner is not eligible for admission to M.B.B.S. Course, as per the guidelines issued by the Medical Council of India.

6. The respondents 1 and 2 have filed a common counter affidavit and the third respondent has filed a counter affidavit refuting the allegations.

7. The respondents 1 and 2 have stated in their counter affidavit that based on the guidelines issued by the third respondent, the prospectus was issued providing reservation to Orthopaedically Physically Disabled candidates with disability of lower limbs between 50 - 70% and in case, candidates are not available in that category, then candidates with lower limbs of 40-50% may be considered. The crux of the counter affidavit is that they simply followed the decision of the third respondent.

8. The third respondent has filed a detailed counter affidavit stating that the Medical Council of India is a statutory authority created and constituted by the Central Government under the MCI Act and the third respondent has been vested with the responsibility of discharging the duties of maintenance of minimum standards of Medical Education throughout the country. The Regulations framed by the third respondent under Section 33 of the MCI Act to maintain the standards of medical education are statutory in character. It is stated that the Honourable Apex Court has held that the Regulations of the third respondent are statutory and those Regulations are mandatory and binding on all Universities and Colleges which conduct medical courses. In this regard, the third respondent has referred to some of the judgments of the Honourable Apex Court. It is further averred that a Resolution was passed by the Executive Committee on 05.07.2001 to provide 3% reservation for the disabled persons in the medical courses under Section 39 of the Disabilities Act. In the said Resolution, it was decided to exclude the visually handicapped persons and persons having hearing impairment, from the 3% reservation provided under Section 39 of the Disabilities Act, while providing the benefit of 3% reservation to persons with locomotor disability in lower limbs between 40-60%. Later, the same was modified and the eligibility condition was locomotor disability of lower limbs between 50-70%, by way of the Resolution dated 30.06.2003 of the Executive Committee and the same was communicated to the Government of India vide their letter dated 14.07.2003. The said decision of the Committee

was also approved by the General Body of the third respondent on 20.10.2003.

9. The third respondent has stated that a Division Bench of the Orissa High Court passed a judgment dated 02.02.2005 in W.P.Nos.7877 and 7878 of 2004 in D.S.Rashmi Ranjan's case holding that persons with 40% - 70% disabilities would be eligible for admission to Medical Courses, based on Section 2(t) of the Disabilities Act. Against the said judgment, the third respondent preferred SLP before the Honourable Apex Court. The Honourable Apex Court granted interim stay of the order of the Division Bench of the Orissa High Court. The Honourable Apex Court passed an interim order directing the third respondent as to why candidates suffering from locomotor disability of lower limbs between 40 - 50% should not get admission in Medical Courses, in case sufficient number of candidates for 3% reservation seat are not available.

10. In these circumstances, the matter was placed before the Executive Committee, by the third respondent, on 07.09.2006 and the criteria for admission to Medical courses was modified to the effect that in case, candidates with 50 - 70% locomotor disability in lower limbs are not available, the seats could be allotted to the candidates with 40 - 50% locomotor disability in lower limbs. The said decision was approved by the General Body of the third respondent by circulation. Thereafter, the Graduate Medical Education Regulations, 1997 was amended suitably, in terms of the decision taken in the General Body. It is further stated that the extent of judicial review under Article 226 of the Constitution of India examining the constitutional validity and vires of the Regulations is limited and can be tested on certain restricted grounds alone.

11. It is further stated that the Honourable Apex Court vide its order dated 24.08.2011 disposed the Civil Appeal Nos.8447 and 8448 of 2010 in Medical Council of India Vs. D.S.Rashmi Ranjan in view of the amendment made to the Graduate Medical Education Regulations, 1997 and notified in the Gazette dated 25.03.2009. It is further stated that the MCI Act is a Special Act, while the Disabilities Act is a General Act dealing with physically challenged persons in all spheres. It is stated that the persons having locomotor disability of lower limbs falling in the category of 40 - 70% alone would be entitled to admission in Medical courses and not others.

12. In view of the important issue that has arisen for consideration, this Court appointed Mr.V.Lakshminarayanan, learned counsel, as Amicus Curiae to assist this Court.

13. Heard the submissions made by all the parties.

14. The learned counsel for the petitioner submits that the second Medical Board gave a disability certificate dated 19.07.2011 stating that the petitioner suffers 46% disability. According to him, as per the said disability certificate, the petitioner suffers locomotor disability as contemplated under Section 2(o) of the Disabilities Act. Even if upper and lower limbs are normal, as stated in the certificate, still a person would suffer locomotor disability as contemplated under Section 2(o) of the Disabilities Act. According to him, "limbs" mentioned in Section 2(o) of the Disabilities Act could not be taken only as lower and upper limbs. The learned counsel has relied on the dictionary meaning of "limbs" in Geddes & Grosset, Compact Edition, Family Medical Companion in support of his submission.

15. It is submitted that since Section 39 of the Disabilities Act covers persons with locomotor disability, the impugned Regulation confining only to locomotor disability in lower limbs alone is illegal. That is, according to him, if the disability certificate dated 19.07.2011 of the second Medical Board is read to the effect that the petitioner suffers with locomotor disability above 40%, the petitioner is entitled to admission in M.B.B.S. Course under 3% reservation. It is also submitted that since Section 2(t) of the Disabilities Act defines a person above 40% disability as "person with disability", who is entitled to reservation under Section 39 of the Disabilities Act and classifying persons with disability in two categories in the impugned notification, one with 50-70% and the other 40-50%, is contrary to and in violation of the Disabilities Act.

16. The learned counsel has further argued that Section 39 of the Disabilities Act is wide enough in providing reservation to all persons with disabilities without restriction and since the petitioner is a person with disability as per Section 2(t) read with Section 39 of the Disabilities Act, the petitioner is entitled to 3% reservation.

17. The learned Amicus Curiae has taken me through the various provisions of the Disabilities Act and submits that the Scheme of Disabilities Act makes it clear that Section 39 of the Disabilities Act is a code by itself. According to him, Chapter-V read with Section 39 in Chapter-VI of the Disabilities Act should be interpreted liberally to give the benefit of 3% reservation to persons with 40% disabilities and above, without restricting to only one category namely, locomotor disability, that too confining to lower limbs disability. He further

submits that while the Disabilities Act restricts to three disabilities in the case of employment, the same provides reservation in the matter of education to all persons with all disabilities, without any restriction under Section 39 of the Disabilities Act and only restriction imposed in Section 2(t) of the Disabilities Act is that the disability should be 40% and above. He has further submitted that the Disabilities Act was made in pursuant to the proclamation made in the International Conference at Beijing in the year 1992 and the statement of objects and reasons and the long title of the Disabilities Act requires wider interpretation to Section 39 of the Disabilities Act.

18. The learned Amicus Curiae has relied on a Division Bench judgment of this Court in G.MUTHU VS. THE MANAGEMENT OF TAMIL NADU STATE TRANSPORT CORPORATION (MADURAI) LTD. [2007(1)LW146], wherein it is held that Section 47 of the Disabilities Act is a code by itself and disabilities acquired during service as per Section 47 of the Disabilities Act should be given a different meaning and Section 2(i) of the Disabilities Act could not whittle down the amplitude of Section 47 of the Disabilities Act. That is, Section 2(i) of the Disabilities Act that defines "disability" could not be read into Section 47 of the Disabilities Act to understand the word "a disability" used therein and Section 2(i) could be read into Section 47 of the Disabilities Act, then the list of disabilities mentioned in Section 2(i) of the Disabilities Act could be taken as illustration and not as exhaustive. It is further submitted that SLP preferred against the said judgment was dismissed by the Honourable Apex Court. He further submits that the same principle should be applied to Section 39 also.

18.1. The learned Amicus Curiae traced the history as to how the third respondent refused to provide 3% reservation under the Disabilities Act and thereafter, the same has been provided only to the persons with locomotor disability in lower limbs alone. According to the learned Amicus Curiae, the approach of the third respondent is totally erroneous, as it proceeds as if there are only 3 categories of disabilities. Because of this erroneous approach, the third respondent committed error. It is submitted that when the third respondent has contravened the Disabilities Act, the same could be interfered with.

18.2. The learned Amicus Curiae has relied on the following judgments in support of his submissions:

1) Division Bench judgment of the Gujarat High Court in Palak Kailashchandra Jain Minor

Vs. Union of India

2) Judgment of the Honourable Apex Court in All Kerala Parents Association Vs. State of Kerala [2002 (3) KLT 423 (SC)]

3) Division Bench judgment of this Court in P.Rajaprabakaran Vs. The Secretary to Government, Higher Education Department, Chennai and others [2005 STPL (LE-CIVIL) 14883 MAD]

4) Division Bench judgment of Gauhati High Court in Smt.Anju Talukdar and another Vs. State of Assam and others [2008 STPI (LE-CIVIL) 20773 GAU]

18.3. The learned Amicus Curiae further has also relied on a Division Bench judgment of the Rajasthan High Court in Parmesh Pachar Vs. Convener, Central decided on 10.04.2003 wherein, the High Court directed to give medical seat to students with colour blindness.

19. On the other hand, the learned Additional Government Pleader (Education) submits that the respondents 1 and 2 have followed the guidelines framed by the Medical Council of India, as the Medical Council of India is regulating the Medical Education in India.

20. The learned counsel for the third respondent submits that the third respondent has power to frame Regulations under Section 33 of the MCI Act and the Regulations framed by the third respondent, which is impugned in the present writ petition was upheld by a Division Bench of the Orissa High Court in D.S.Rashmi Ranjan's case in W.P.Nos.7877 and 7878 of 2004 dated 02.02.2005. The said Regulations have also received the implied assent of the Honourable Apex Court in Civil Appeal Nos.8447 and 8448 of 2010 dated 24.08.2011. It is further submitted that the writ petition has not met the requirements for challenging the statutory Regulations as laid down by the Honourable Apex Court in State of Tamil Nadu and Another Vs. P.Krishnamurthy and Others [2006 (4) SCC 517]. He further submits that the impugned Regulation is statutory in character and the same is mandatory and binding on all the Universities and Colleges, which conduct medical courses, as held by the Honourable Apex Court in Medical Council of India Vs. State of Karnataka [1998 (6) SCC 131].

20.1. According to the learned counsel for the third respondent, Section 2(i) of the

Disabilities Act is exhaustive and not illustrative in so far as Section 39 of the Disabilities Act is concerned, while it is illustrative in so far as Section 47 of the Disabilities Act is concerned, as per the decision of the Division Bench of this Court in G.Muthu's case (cited supra). The learned counsel further submits that the Medical Council of India, being an expert body, the decision of the expert body could not be interfered with. The learned counsel has relied on a First Bench judgment of this Court in Dr.Revathi Vs. The State of Tamil Nadu in W.A.No.309 of 2011 (decided on 27.04.2011) and submits that the Regulations is binding on the respondents 1 and 2 as well as the candidates, who applied for medical courses. He has sought for dismissal of the writ petition.

21. I have considered the submissions made by all the parties and perused the materials available on record.

22. The Disabilities Act was enacted by the Parliament, in view of its obligation under Article 253 of the Constitution of India, to give effect to the Proclamation made in the International Convention held at Beijing in the year 1992. In the said Convention, the Proclamation on Full Participation and Equality of People with Disabilities in the Asian and Pacific regions was adopted. India, being a signatory to the above said proclamation, Disabilities Act was enacted. The statement of objects and reasons states that the said Act provides for the following:

"(i) to spell out the responsibility of the State towards the prevention of disabilities, protection of rights, provision of medical care, education, training, employment and rehabilitation or persons with disabilities:

(ii) to create barrier free environment for persons with disabilities;

(iii) to remove any discrimination against persons, with disabilities in the sharing of development benefits, vis-a-vis non-disabled persons:

(ii) to counteract any situation of the abuse and the exploitation of persons with disabilities;

(iii) to lay down a strategy for comprehensive development of programmes and services and equalization of opportunities for persons with disabilities; and

(iv) to make special provision of the integration of persons with disabilities into the social mainstream"

23. The Scheme of the Disabilities Act places responsibility on both the State and Central Governments to carry out the objects of the same. Chapter - I deals with various definitions. Chapter-II is on the Central Coordination Committee. Section 8 in Chapter-II deals with the functions of the Central Coordination Committee. Likewise, Chapter-III deals with the State Coordination Committee. Chapter-IV is on prevention of an early detection of disabilities. Chapter-V is on Education. Chapter-V contains Sections 26 to 31. This Chapter places obligation on the appropriate Governments and the local authorities to provide free education and other welfare schemes to children with disabilities and students with disabilities. While Chapter-VI deals with employment, Section 39 is an exception to the said Chapter, that provides for reservation to persons with disabilities in educational institutions run by the Government and those receive aid from the Government. The words "children with disabilities" and "students with disabilities" are used in Chapter-V of the Disabilities Act as beneficiaries to various schemes including free education that are to be made by the Appropriate Governments and Local Authorities and "the children with disabilities" and "students with disabilities" should receive liberal interpretation so as to achieve the objectives of the Disabilities Act.

24. Section 39 of the Disabilities Act uses the word "persons with disabilities". According to the petitioner, Section 39 of the Disabilities Act is a code by itself and the same is extracted hereunder:

"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 seats for persons with disabilities."

Section 39 of the Disabilities Act uses the word "shall" which denotes that the reservation of 3% for persons with disabilities is a mandatory one.

25. However, the Disabilities Act has been observed more in breach. Though the Disabilities Act came into force on 07.02.1996, the third respondent took a decision in the year 1999 not to provide reservation for the disabled persons under the Disabilities Act. When the Gujarat Government wrote a letter dated 16.03.2000 to the third respondent for implementation of

the Disabilities Act, the third respondent sent a letter dated 30.05.2000 stating that no reservation for physically handicapped for admission to medical courses is permissible, under the Regulations framed by the third respondent Medical Council of India. The same was challenged by one Palak Kailashchandra Jain before the Gujarat High Court. The Gujarat High Court allowed the writ petition on 27.11.2000 and issued a direction to provide 3% reservation to persons with disabilities, in the medical courses, as per Section 39 of the Disabilities Act.

26. Similar argument made here was advanced by the third respondent and the same was rejected by the Gujarat High Court. The Medical Council of India contended that Entry 66 List 1 Seventh Schedule of the Constitution of India covers the Regulations of admission to medical courses and therefore, it would have supremacy over any other law. However, the said contention was rejected.

27. The Kerala High Court as well as the Delhi High Court held that Section 39 of the Disabilities Act occurs in Chapter-VI relating to employment and therefore, Section 39 relates only to post/employment and not to seat/admission in the educational institutions. The judgment of the Kerala High Court was reversed by the Honourable Apex Court in All Kerala Parents Association Vs. State of Kerala [2002 (3) KLT 423 (SC)] in C.A.No.6120 of 2001 decided on 11.09.2002. The Honourable Apex Court held that Section 39 deals with reservation of seats for persons with disabilities in Government educational institutions as well as the educational institutions receiving aid from the Government and necessary provisions there of must be complied with. The judgment of the Delhi High Court was also reversed following the judgment of the Honourable Apex Court in all Kerala Parents Association's case (cited supra).

28. The Chief Commissioner of Disabilities under the Disabilities Act also impressed upon the third respondent to provide reservation under Section 39 of the Disabilities Act. In these circumstances, a resolution was passed on 05.07.2001 by the third respondent providing reservation to locomotory disabled persons with disability in lower limbs between 40 - 60 %. In the said resolution, the visually handicapped persons and persons with hearing impairment are excluded from the benefit of reservation under Section 39 of the Disabilities Act. Furthermore, the third respondent has erroneously proceeded, as if the Disabilities Act categorizes the disabled persons into three categories. The relevant passage in the resolution is extracted hereunder:

"... The categories of people under disabilities as classified under the Act covers the following three categories:-

- 1) Visually Handicapped
- 2) Persons suffering from hearing defects
- 3) Physically handicapped with the locomotory disorders"

29. This erroneous approach of the third respondent continues even today. The Executive Committee of the third respondent on 30.06.2003 modified the aforesaid eligibility criteria from 40-60% to 50-70% in the case of locomotor disability at lower limbs. This erroneous approach made in 2001 was continued in 2003, since the Executive Committee proceeded as if the persons with disabilities were classified under three categories only. In this regard, the relevant passage in the deliberations of the Executive Committee meeting held on 30.06.2003 is extracted hereunder:

"Broadly the persons with disabilities were classified under the following three categories:

- i) Visually Handicapped
- ii) Persons suffering from hearing defects
- iii) Physically handicapped with the locomotory disorders"

As stated above, visually handicapped persons, persons suffering from hearing impairment and other disabled persons were excluded from benefit of reservation, in the decision taken by the third respondent on 30.06.2003.

30. The decision of the Executive Committee was approved by the General Body of the third respondent on 20.10.2003. The Regulations was made in terms of the decision of the General Body. The same was questioned before this Court. However, a learned single Judge of this Court upheld that the Medical Council of India could prescribe 50-70% disability in lower limbs, while Section 2(t) of the Act provides that a person suffering from

not less than 40% of the disability is covered under Section 39 of the Disabilities Act. However, the First Bench of this Court reversed the judgment of the learned single Judge and held that the Regulations of the third respondent is contrary to Section 2(t) of the Disabilities Act, in para 4 of the judgment in P.Rajaprabakaran Vs. The Secretary to Government, Higher Education Department, Chennai and others [2005 STPL (LE-CIVIL) 14883 MAD] which reads as follows:

"4. In view of the above, we are of the opinion that the petitioner is a person with disability as defined in Sec. 2(t) of the said Act and he is entitled to claim the benefits of Sec.39 of the said Act. Hence the relevant clause in the prospectus prescribing that candidates with 50% to 70% disability alone were entitled for consideration under seats reserved for physically disabled persons is, in our opinion, invalid."

31. The Regulations of the third respondent provides reservation for physically handicapped candidates only to persons with locomotor disability at lower limbs between 50-70%. This policy was questioned before the Gauhati High Court in Smt.Anju Talukdar and Another Vs. State of Assam and others [2008 STPL(LE-CIVIL)20773 GAU]. A Division Bench of the Gauhati High Court held that the visually handicapped and the hearing impairment persons are also entitled to reservation under Section 39 of the Disabilities Act. It is also held that prescription of 50-70% disability of lower limbs in the case of locomotor disability, as void. Paras 14 and 16 of the said judgments are extracted hereunder:

"14. Even today it is not very clear whether there is anything in law which excludes either a person with visual impairment or hearing impairment from seeking admission to a medical course in this country not against any reserved quota but purely on merit, that is, on the basis of marks secured by such a candidate in the qualifying examination. In the absence of such restriction (we presume so in view of the lack of assistance by the Medical Council of India to enlighten us in this regard) we have no opinion but to reach the conclusion that denying the benefit to the above mentioned two categories of persons with disabilities under the Act, 1995 is illegal.

16. Coming to the question of prescription of 50% to 70% disability which in turn is confined by the impugned advertisement to be disability of lower limbs is also plainly contrary to the language of the enactment and therefore void. Even the guidelines issued by the Medical Council of India on 14-7-2003 do not appear to have considered this question in the context

of paramedical courses. Looked at any angle, the impugned notification, insofar as it restricts the benefit under the Act, 1995, is wholly unsustainable. We, therefore, direct the respondents to consider the cases of the candidates falling under any one of the seven categories of disabilities recognized under the Act, 1995 for admission to the various courses covered under the impugned notification against the 3% of the total number of seats sought to be filled up. Goes without saying that the best amongst the candidates with disabilities falling under each one of the seven categories are entitled for admission."

32. The issue was also taken before the Orissa High Court by D.S.Rashmi Ranjan by filing W.P.(C) No.7877 of 2004 and by Mr.Mohammad Abdul Khaliq by filing W.P.(C) No.7878 of 2004. A Division Bench of the Orissa High Court quashed the 50% disability at lower limbs as minimum eligibility and a direction was issued to provide reservation to persons having 40-70% locomotor disability of lower limbs. In this regard, para 14 and the relevant passage in para 15 of the said judgment are extracted hereunder:

"14. In such view of the matter, since the State Government and the Chairman, JEE have fixed 50% minimum degree of disability as the eligibility criteria for consideration of a candidate under the physically handicapped category on the basis of the decision of the Medical Council of India, the same has also to be quashed and it is quashed accordingly.

15. In the result, we direct the opposite parties 1 and 2 to consider the cases of all such applicants, who have been certified by the Medical Board of having 40-70% locomotor disability of the lower limbs for admission to the M.B.B.S. Course, 2004 in accordance with their merit position in terms of clause 2.1.3 of the Admission Brochure, JEE, 2004....."

33. The third respondent questioned the aforesaid judgment of the Orissa High Court in D.S.Rashmi Ranjan's case (cited supra) before the Honourable Apex Court. Though initially interim stay was granted, later on, the interim stay was modified to the following effect:

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

34. Based on the interim order, the third respondent have amended the Graduate Medical Education Regulations 1997 and the same was notified in the Gazette on 25.03.2009, which is now put to challenge in this writ petition. The amended Graduate Medical Education Regulations 1997 reads as follows:

"3. 3% seats of the annual sanctioned intake capacity shall be filled up by candidates with locomotory 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 locomotory disability of lower limbs between 50% to 70% then any such unfilled seat in this 3% quota shall be filled up by persons with locomotory 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 30th of September."

Ultimately, it seems that that the Civil Appeal against the judgment of the Orissa High Court was disposed on 24.08.2011 recording the amendment made in the Regulations on Graduate Medical Education, 1977. The said judgment is not placed for perusal before this Court. According to the learned counsel for the third respondent, the Honourable Apex Court has impliedly approved the impugned Regulations of the Medical Council of India, which is impugned in this writ petition.

35. I am unable to agree with the submissions made by the learned counsel for the third respondent. The Orissa High Court set aside the prescription of 50 - 70% disability of lower limbs in the case of persons with locomotor disability and issued a direction to provide reservation to persons with 40 - 70% lower limbs disability in accordance with Section 2(t) read with Section 39 of the Disabilities Act. The same was challenged by the third respondent before the Honourable Apex Court. Initially, interim stay was granted and later, the Honourable Apex Court directed the third respondent as to why the third respondent should not provide reservation to persons with 40 - 50 % disability in lower limbs, as an interim measure. In these circumstances, an amendment is made providing that after

exhausting candidates with 50-70% locomotor disabilities in lower limbs, candidates with 40-50% disabilities could be provided medical seat. I am unable to understand as to how the third respondent could contend that the Honourable Apex Court has approved the amended Regulations, when the same was not put to challenge.

36. The learned counsel for the third respondent has relied on certain judgments and submits that the Regulations made by the third respondent are statutory in character and are binding on all the Universities and Colleges which imparts medical education. There is no quarrel to the said proposition. Thus, the judgments relied on by the learned counsel for the third respondent, on these propositions, are not dealt hereunder. Those judgments did not consider the fact of the Disabilities Act and they arose in different context.

37. However, as already stated above, the Honourable Apex Court has held in its judgment in All Kerala Parents Association's case (cited supra) that the third respondent should comply with Section 39 of the Disabilities Act and the third respondent is bound to comply with Section 39 of the Disabilities Act.

38. The submission made by the learned counsel for the third respondent that the writ petition, questioning the Regulations of the third respondent is not maintainable, has no substance, particularly when the Regulations are questioned on the ground that the same is in violation of the mandate of the provisions of the Disabilities Act.

39. In fact, the judgment of the Honourable Apex Court in STATE OF TAMIL NADU AND ANOTHER VS. P.KRISHNAMURTHY AND OTHERS [2006 (4) SCC 517] relied on by the learned counsel for the third respondent supports the case of the petitioner. In the said judgment, it has been held in para 15 that the Regulations could be questioned, if it is repugnant to the laws of the land. Here, Regulations is challenged on the ground that the same are contrary to the Disabilities Act.

40. It is now relevant to quote the Division Bench judgment of the Gujarat High Court in Dr.Deval R.Mehta Vs. Union of India and others [AIR 2011 GUJARAT 33]. Para 24 of the said judgment is extracted hereunder:

"24. The Disabilities Act was enacted pursuant to a meeting to launch the Asian and Pacific Decade of Disabled Persons 1993-2002 held at Beijing on 1st to 5th December 1992,

wherein they adopted a Proclamation on the Full Participation and Equality of People with Disabilities in the Asian and the Pacific Region. It came into effect from 01.01.1996. U/Sec.72 of Disabilities Act. It is made clear that the provisions of the said Act or the Rules made thereafter is in addition to, and notri derogation of any other law for the time being in force or any Rules or Order or any Instruction issued there under enacted or issued for the benefit of persons with disabilities. Such provisions have been made under the Central Act, viz. the Disabilities Act, defining the persons with disabilities means a person suffering not less than 40% of any disability as certified by any Medical Authority. Any decision or regulation framed by the MCI contrary to Sec.2(t) shall be ultravires the said provisions. It is true that the MCI has jurisdiction to frame regulations for admission in M.B.B.S. or postgraduate medical course, but no provision can be made against any Central of including Sec.2(t) of the Disabilities A of wherein "person with disability" has been defined. The Postgraduate Medical Education (Amendment) Regulation 2009, issued by Notification dated 25.03.2009 adding sub-clause (1)(a) and proviso to clause (2)(iv) to Sec.9 therein being contrary to and amounting to altering definition of "person with disability" as defined u/Sec.2(t) of the Disabilities Act, we hold the Postgraduate Medical Education (Amendment) Regulations, 2009 Part-I so far as it relates to addition of sub-clause (1)(a) and proviso to clause (2)(iv) to Sec.9 relating to locomotory disability as ultravires."

41. I have already held that the very approach of the third respondent is erroneous, as it proceeded that there are only three categories of disabilities and sought to exclude two of the disabilities, namely visual and hearing disabilities for the purpose of reservation under Section 39 of the Disabilities Act and has restricted to one section of persons with locomotor disability. In fact, a Division Bench of Gauhati High Court in Smt.Anju Talukdar's case (cited supra) in para 12 of its judgment, has taken note of the erroneous approach of the Medical Council of India and held as follows:

"12..... The Executive Committee proceeded on the basis that persons with disabilities are classified under only three categories, i.e., visually handicapped, hearing impairment and locomotor disorders. Unfortunately such a premises is wrong in the background of the provisions of the Act, 1995. Starting with such a wrong premise the Executive Committee in its meeting in April, 2001 came to the conclusion that persons with visually handicapped and hearing impairment should not be considered for admission in the "MBBS Course"....."

42. Hence, it requires that the third respondent should consider the entire matter in a proper

perspective, taking into account the Scheme of the Disabilities Act and more particularly, Section 39 read with Section 2(t) of the Disabilities Act.

43. Section 39 of the Disabilities Act provides that the Government shall reserve not less than 3% seats for persons with disabilities, in the case of educational institutions. While reservation is provided for persons with all disabilities, in the matter of employment in Section 33 of the Disabilities Act and the same is restricted only to three categories and it is not so in the case of reservation under Section 39 of the Disabilities Act providing reservation in the matter of education. Section 33 of the Disabilities Act is extracted hereunder:

"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."

44. The basis for providing reservation in the matter of employment is taken by the third respondent for providing reservation in education. It is needless to state that educational opportunities should be provided to persons with disabilities, so as to give effect to the purpose of the Disabilities Act. In the case of children with disabilities / students with disabilities / persons with disabilities, care should be taken by the Government to provide education at the maximum extent possible. That is, the purport of Chapter-V dealing with Sections 26 to 31 and Section 39 in Chapter-VI of the Disabilities Act, on education and those provisions should be given widest possible interpretation, without doing violence to

the provisions of the Act.

45. The key word in Section 39 of the Disabilities Act is "shall" and "persons with disabilities". Person with disability is defined under Section 2(t) of the Disabilities Act and the same is extracted hereunder:

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

46. It has to be decided whether Section 2(t) should be confined to the disabilities mentioned in Section 2(i) or Section 2(t) covers all disabilities is the issue that has to be decided in this case. Unless it is construed that the definition of disability made in Section 2(i) is not exhaustive and it is only illustrative, the purpose of the Disabilities Act could not be achieved. Section 2(i) defines disabilities as follows:

"2(i) "disability" means-

(i) blindness;

(ii) low vision;

(iii) leprosy - cured;

(iv) hearing impairment;

(v) locomotor disability

(vi) mental retardation;

(vii) mental illness;"

47. At this juncture, it is relevant to extract the following passage in para 9 of the judgment of the Honourable Apex Court in Kunal Singh Vs. Union of India [2003 (4) SCC 524]:

"9. It must be borne in mind that Section 2 of the Act has given distinct and different

definitions of 'disability' and 'person with disability'. It is well settled that in the same enactment if two distinct definitions are given defining a word/expression, they must be understood accordingly in terms of the definition. .... In construing a provision of a social beneficial enactment that too dealing with disabled persons intended to give them equal opportunities, protection of rights and full participation, the view that advances the object of the Act and serves its purpose must be preferred to the one which obstructs the object and paralyses the purpose of the Act. "

Following the aforesaid principle, Section 2(t) of the Disabilities Act has to be taken as illustrative and not exhaustive, for interpreting "any disability" in Section 2(t) of the Disabilities Act, so as to achieve the purpose of the Enactment.

48. In fact, "disability" in Section 47 that provides for non-discrimination in Government employment, came up for consideration by a Division Bench of this Court in G.Muthu's case (cited supra) and this Court held that disability in Section 47 is not confined to the disabilities mentioned in Section 2(i) of the Disabilities Act. It is held by the Division Bench of this Court that Section 2(i) of the Disabilities Act is only illustrative and not exhaustive for the purpose of interpretation of Section 47(1) of the Disabilities Act. It is further held that the purpose of Section 47 is to protect employment of a person, who acquires disability and not suitable to hold the post which he was holding before acquiring disability. Section 47(1) of the Disabilities Act is extracted hereunder:

"47. Non-discrimination in Government employment - (1) No establishment shall dispense with, or reduce in rank, an employee who acquires a disability during his service:

Provided that, if an employee, after acquiring disability is not suitable for the post he was holding, could be shifted to some other post with the same pay scale and service benefits.

Provided further that if it is not possible to adjust the employee against any post, he may be kept on a supernumerary post until a suitable post is available or he attains the age of superannuation, whichever is earlier."

49. The Division Bench of this Court in G.Muthu's case (cited supra) following the decisions of the Honourable Apex Court reported in AIR 1960 SC 971, 1997(2) SCC 53, 2002 (1) SCC 589, 1998 (8) SCC 1 and 1980 (1) SCC 321 held that Section 2(i) of the Disabilities Act is

not exhaustive. In those judgments, the Honourable Apex Court has held that while interpreting a statute, the purpose of enactment should be given utmost importance. Furthermore, it is also in consonance with Section 2 of the Disabilities Act as it begins with "unless the context otherwise requires". The relevant passage in para 15 and para 16 of the said judgment are extracted hereunder:

"15..... We are of the firm view that the opening set of expressions contained in the definition clause, namely Section 2, which denotes "unless the context otherwise requires" squarely gets attracted to Section 47 and therefore the definition of "disability" as defined under Section 2(i) cannot be blindly applied to the term "disability" which has been used in Section 47 of the Act. In other words, the term "disability" used in Section 47 can draw support not only in respect of the defined "disabilities" as contained in Section 2(i) of the Act but will also encompass such other "disabilities" which would disable a person from performing the work which he held immediately prior to acquisition of such "disability" and thereby entitle him to avail the benefits conferred under the said provision for having acquired such a "disability".

16. The decisions of the Hon'ble Supreme Court relied on by the learned counsel for the appellant reported in AIR 1960 SC 971, 1997(2) SCC 53, 2002 (1) SCC 589, 1998 (8) SCC 1 and 1980 (1) SCC 321, which have been set out in detail in the earlier paragraphs, fully support the above conclusion of ours."

50. On the same analogy, Section 39 of the Disabilities Act also should receive a similar interpretation to give effect to the provisions of the Disabilities Act. On the other hand, the impugned Regulations have frustrated the very object of the enactment. Reading Section 39 of the Disabilities Act in the light of the Proclamation made in the International Convention, the title of the statute and the long title of the Act as well as the objects and reasons, it has to be held that Section 39 read with Section 2(t) of the Disabilities Act provides reservation to all persons with all disabilities and Section 2(i) for the purpose of understanding Section 39 and Section 2(t) of the Disabilities Act should be taken as an illustrative list of disabilities.

51. A Division Bench of the Madhya Pradesh High Court in Dr.Rakhi Mangal Vs. State of M.P. And others [AIR 2009 MADHYA PRADESH 37] held that the rules providing for counselling in medical courses has compelled the physically handicapped persons to take the left over seats after all categories such as SC / ST / OBC / UR categories have taken

over the seats, is held to be illegal and frustrate Section 39 of the Disabilities Act. Paras 10, 11 and 12 of the said judgment are extracted hereunder:

"10. The second question which we have to decide in this case is whether the Rules, 2008 are ultra vires inasmuch as they do not earmark in the tables annexed to the Rules the seats in Post-Graduate Degree / Diploma Courses reserved physically handicapped persons. Section 39 of the Act of 1995 has to be read along with the short and long titles of the Act of 1995 for understanding the purpose of the reservation of 3% seats for persons disabilities in all Government educational institutions and other educational institutions receiving aid from the Government. As observed by S.R.Das, J, in Ashwini Kumar Ghosh V. Arvinda Bose, AIR 1952 SC 369.

"It is now settled law that the title of a statute is an important part of the Act and may be referred to for the purpose of ascertaining its general scope and of throwing light on its construction, although it cannot override the clear meaning of the enactment."

The short title of the Act of 1995 reads: "The Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995". The long title of the Act states that it is an Act to give effect to the proclamation on the full participation and equality of the people with disabilities in the Asian Pacific Region.

11. In Union of India v. Sanjay Kumar Jain (2004(6) SCC 708 : (AIR 2004 SC 4139) in para 8 at page 712 of the SCC, the proclamation on the Full Participation and Equality of the People with Disabilities in the Asian and Pacific Region adopted at Beijing in December, 1992 has been referred to and it is stated therein that to give full effect to the proclamation it was felt necessary to enact a legislation to provide for the following matters

(i) to spell out the responsibility of the State towards the prevention of disabilities, protection of rights, provision of medical care, education, training, employment and rehabilitation or persons with disabilities:

(v) to create barrier free environment for persons with disabilities;

(vi) to remove any discrimination against persons, with disabilities in the sharing of development benefits, vis-a-vis non-disabled persons:

(vii) to counteract any situation of the abuse and the exploitation of persons with disabilities;

(viii) to lay down a strategy for comprehensive development of programmes and services and equalization of opportunities for persons with disabilities; and

(ix) to make special provision of the integration of persons with disabilities into the social mainstream"

12. We may now examine the Rules, 2008 to find out whether the reservation of 3% of the seats provided therein in favour of physically handicapped persons achieves the purposes set out in the Short and Long Titles of the Act of 1995 and the proclamation adopted at Beijing in December 1992. Table No.5 states that 7 seats would be reserved for physically handicapped persons (non-service) and two seats would be reserved for physically handicapped persons (in-service) which total to 9 seats and this works out to 3% of the total of 308 seats. In the Tables 1,2,3 and 4 in which the seats in the Post-Graduate Degree / Diploma courses have been distributed amongst UR, SC, ST and OBC categories in the different Government educational institutions or educational institutions receiving aid from the Government at Bhopal, Gwalior, Indore, Jabalpur and Rewa, no specific seats have been earmarked for physically handicapped persons. The result is that physically handicapped persons who have been selected for admission and have got less marks than other candidates belonging to ST, SC, OBC and UR categories are compelled to accept seats either in the degree or in the diploma course which are not opted for by candidates belonging to SC, ST, OBC and UR categories other than the physically handicapped candidates by operation of Rule 1.20(9) and Rule 1.2 (11) of the Rules, 2008 which provides for sequence of counselling amongst in-service and non-service candidates respectively. Disabled persons or physically handicapped candidates thus will not get equal opportunity for studying PG Course, Diploma or Degree, or will not get employment in jobs which they can perform and will be denied the right to fully participate in the medical / health programmes of the country and as a result, they cannot get integrated into the social mainstream. In short, the entire purpose of reservation of 3% of seats in the Government Educational Institutions and Institutions receiving aid from the Government as provided in S.39 of the Act of 1995 will be frustrated."

52. Applying the same, I am of the view that the impugned notification restricting the

reservation only to the locomotor disability persons in lower limbs alone, is bad and illegal. The third respondent should have given the benefit of reservation to other disabled candidates, particularly if they are otherwise eligible, to pursue the medical education. Furthermore, the impugned notification is not legal as it classifies the locomotory disabled persons into two categories, one with 50-70% lower limbs disability and the other with 40-50% disability, while Section 2(t) of the Disabilities Act does not make such classification.

53. In the present case, the respondents admit that the petitioner is eligible to join the medical course in merit quota and not under disability quota, though the petitioner suffered 46% disability. Section 2(t) of the Disabilities Act is extracted above, which provides that a person suffering from not less than 40% of any disability, is a person with disability. Thus, the respondents, more particularly, the third respondent, should provide reservation to all persons, who suffered disabilities above 40% and come under Section 2(t) of the Disabilities Act, since I have held that Section 2(i) of the Disabilities Act is only illustrative and not exhaustive. Otherwise, the very purpose of the Disabilities Act would get frustrated. The present case is a classic case to demonstrate the same.

54. At this juncture, it is relevant to extract the following second disability certificate dated 19.07.2011 issued by the Medical Board, based on which admission to M.B.B.S. Course is denied to the petitioner.

"Sub: Constitution of Medical Board - Miss.P.Divya, Applicant for Admission to MBBS / BDS courses 2011- 2012 - regarding.

Ref: 1) No.526/SCS 1(2)/2011 dated 16.7.2011 of the Addl. Director of Medical Education, Chennai.

2) No.18866/SMB/11 dated 18.7.2011 Medical Superintendent, RGGH, Chennai.

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With reference to the above, Miss.P.Divya, 16 year Female was examined by Prof.C.Rajendran, Prof.R.H.Govardhan and Prof.R.M.Bhoopathy.

We after careful and detailed examination, have come to a conclusion that Miss.P.Divya has

been suffering from Congenital Lordoscoliosis of the Dorsolumbar spine with Pelvic Tilt and disproportionate shortening. Her Height is 139 cms. (54.7") which is more than 2SD of the Standing Height of the Indian Population for 16 year old female. Her deformity of spine is calculated by Cobb's Angle and it is 115 and her permanent physical impairment in relation to spine is 30%. She has Torso imbalance of 16% (4cms). Total permanent physical disability is 46%. Her upper limb and lower limbs are normal.

She is not eligible for the admission to MBBS/BDS course as per MCI/DCI guidelines."

It is stated that in the aforesaid certificate that the petitioner is not entitled for MBBS course, as per the guidelines of the Medical Council of India. But however, in the remarks portion, it is stated as follows:

"The petitioner is not eligible to be allotted a seat under the special category for orthopaedically physically disabled candidates as she does not have any lower limb disability. However, she will be eligible for MBBS under the general category as per her merit and communal reservation."

Thus, the Medical Board has found that the petitioner is not eligible as per the impugned notification, though she suffers 46% permanent physical disability. Such a conclusion was arrived at by the Medical Board based on the third respondent's guidelines (impugned Regulations) that have provided reservation only to persons with locomotor disability in the lower limbs. This is contrary to and violation of the Scheme of the Act and more particularly, Section 39 read with Section 2(t) of the Disabilities Act.

55. Furthermore, the disability certificate itself shows that the petitioner suffers "PELVIC TILT", Permanent Physical Impairment in relation to SPINE and also suffers TORSO IMBALANCE. The disability certificate does not say that the petitioner is not suffering from locomotor disability. The disability certificate states that the petitioner is not entitled to MBBS/BDS admission as per the MCI guidelines. A person with "PELVIC TILT", physical impairment in Spine and had Torso imbalance, is a person with restricted movement. Hence, there is disability in locomotion and therefore, the petitioner is covered under Section 2(o) of the Disabilities Act that defines locomotor disability. For better appreciation, Section 2(o) of the Disabilities Act is again reproduced hereunder:

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

56. "Restriction of movement of limbs" is used in Section 2(o) of the Disabilities Act and nowhere "limbs" is understood as lower and upper limbs alone. In the medical dictionary, limbs means (1) an appendage of a body (2) a branch of an internal organ. Therefore, if a person has restriction of the movement of appendage of a body or a branch of an internal organ, he is said to have locomotor disability.

57. Here, the petitioner suffers with "PELVIC TILT", Permanent physical impairment in relation to SPINE and TORSO IMBALANCE. In total, she suffers 46% permanent physical disability. Since the Medical Council of India guidelines states that only persons suffering locomotor lower limbs disability alone is entitled to reservation under Section 39 of the Disabilities Act, the petitioner is deprived of the benefit of reservation, though the petitioner suffers locomotor disability under Section 2(o) of the Disabilities Act.

58. Furthermore, in Hutchison's Clinical Methods - a Medical Book, deals with locomotor system in Chapter-XI. It is stated that the locomotor disability system includes the muscles, bones and joints. While dealing with the bones, it is stated as "The vertebral column and skull demand special attention". Thus, vertebral column namely Spine is relevant, while considering the locomotor disability. Person with disability in Spine, is a person with locomotor disability.

59. In my view, the petitioner suffers locomotor disability as per Section 2(o) of the Disabilities Act, even as per the Medical Board Certificate dated 19.07.2011. However, the lower limbs is normal as per the medial certificate and hence, the third respondent excluded her from consideration for reservation. Thus, the same frustrates the very purpose of the Disabilities Act.

60. The First Bench judgment of this Court in Dr.Revathi Vs. The State of Tamil Nadu and others in W.A.No.309 of 2011 (decided on 27.04.2011) is not applicable to the facts of this case. In that case, the Medical Board certified that the appellant therein suffered 75% disability while the regulations make the disability above 70% as ineligible. The appellant therein questioned the opinion of the Medical Board contending that she suffers disability less than 70% and the same was repelled by the Division Bench holding that this Court

could not interfere with the Medical Certificate issued by the Expert Body. In that case, the Regulations was not challenged. Hence, the said judgment is not applicable to this case.

61. Hence, the impugned notification and the prospectus in providing reservation only to lower limbs locomotor disabled persons and also classifying the lower limbs locomotor disabled persons into two categories, in violation of Section 39 read with Section 2(t) of the Disabilities Act, thereby frustrating the reservation provided under Section 39 of the Disabilities Act is quashed and the third respondent is directed to include the other categories of disabled persons also and more particularly, persons having disabilities above 40% as per Section 2(t) of the Disabilities Act. The respondents are directed to provide admission to M.B.B.S. Course for the year 2010-2011 to the petitioner forthwith.

62. The writ petition is disposed of with the above observations and directions. No costs. Consequently, connected miscellaneous petition is closed.