2025 INSC 256

REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 14333 OF 2024
(@ SPECIAL LEAVE PETITION (CIVIL) NO. 27632 OF 2024)

ANMOL APPELLANT(s)

VERSUS

UNION OF INDIA & ORS. RESPONDENT(s)

J U D G M E N T

K.V. Viswanathan, J.

1. The present appeal calls in question the correctness of the order dated 23.09.2024 passed by a Division Bench of the High Court of Punjab and Haryana at Chandigarh in CWP No. 24293 of 2024 (O&M). By a short order, the Division Bench rejected the claim of the appellant, a 'person with disabilities' and upheld the denial of his admission to the MBBS Course. This Court, by its order dated 12.12.2024, while granting leave, after considering the report of the Medical Board constituted by the All India Institute of Medical Sciences (AIIMS), including the separate opinion of Dr. Satendra

Singh, a member of the Board, and considering the legal position directed that the appellant should be admitted in the Government Medical College, Sirohi, Rajasthan against a seat reserved for Persons with Disabilities (PwD) (OBC). By the order of 12.12.2024, the Court had observed that reasons would be separately recorded. The reasons are being recorded by virtue of the present judgment.

Brief Facts:

2. The facts lie in a narrow compass. The appellant had a distinguished academic record in school and passed his 10th grade and 12th grade examination with flying colours. It is clear from the medical opinion of the AIIMS, including the opinion of Dr. Satendra Singh, that the appellant has Locomotor disability 50% with Club foot right lower limb with Phocomalia, Left middle ring finger through middle phalanx with right middle index finger through middle phalanx. Further, he has speech and language disability of 20%. The final disability computed was 58%.

3. The appellant aspired to be a medical professional. The appellant appeared for the NEET-UG 2024 Examination conducted by the

National Testing Agency on 05.05.2024. The results were declared and the appellant obtained rank 2462 in the Persons with Disability (PwD) category. The cut-off obtained by him was far above the cut-off for the OBC-PwD Category. The appellant approached the Government Medical College, Chandigarh (Respondent No. 6) - the designated Disability Certification Centre to get his disability assessed.

4. Without assigning any reason whatsoever and without examining the functional disability and merely being carried away by the quantified disability, the Disability Assessment Board, by its Certificate of 02.09.2024, rendered him ineligible to pursue medical course.

5. Aggrieved, the appellant filed Civil Writ Petition No. 24293 of 2024 before the High Court seeking issuance of a Writ of Certiorari to quash the disability certificate and sought a fresh assessment. By the impugned order, the Writ Petition has been dismissed on the ground that the Court cannot substitute the opinion of the experts in the field of disability.

6. When the matter came up before us on 25.11.2024, while issuing notice to the respondents, we passed the following order. The operative portion of which is as follows:

> "6. In the meantime, we direct Director, All India Institute of Medical Sciences (AIIMS), New Delhi to constitute a Committee to examine as to whether the disability suffered by the petitioner would come in the way of his pursuing medical studies. We request the Director, AIIMS, New Delhi to co-opt Professor Dr. Satendra Singh as a member of the Committee.
>
> 7. The petitioner is directed to remain personally present before the Director, AIIMS, New Delhi on 27.11.2024 at 10.00 A.M."

7. Thereafter, on 28.11.2024, the report as directed by us, has been furnished. The report is in two parts. Of the total six members, five of the members, except Dr. Satendra Singh, in their brief report observed as under:

> "This Medical Board after detailed clinical, radiological, speech and functional assessment of the candidate in the Skills Lab, SET Facility of AIIMS, and as per the NMC Guidelines for candidates with disability opines that the candidate has locomotor and speech related disabilities and belongs to the category of persons with multiple disability. The candidate could perform a few basic, essential and simple tasks tested slowly and with difficulty after having been explained and demonstrated these.

> The candidate has benchmark disability (Forty percent or more) as per the current Guidelines for this subject and notified by the Department of Empowerment of Persons with Disabilities in a Gazette of India in March 2024. His disability is permanent in nature, not likely to worsen or improve. **He is not suitable to pursue undergraduate medical education program (MBBS) which is a competency based program** of 5 and a half years, including one year of compulsory rotatory Internship. The current NMC Guidelines perhaps need revision, and with respect to the current Guidelines, **this Medical Board is not able to declare the candidate FIT to join MBBS course."**
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> (Emphasis supplied)

As noticed above, the five members observed that the current National Medical Commission (NMC) Guidelines needed revision and that with respect to the current Guidelines, they are not able to declare the appellant fit for pursuing MBBS Course.

8. Dr. Satendra Singh gave a separate detailed assessment which we have discussed in detail hereinbelow. The report of Dr. Satendra Singh concluded that the appellant can successfully navigate the MBBS Course with clinical accommodations and assistive technologies.

9. As mentioned earlier, based on an overall reading of the reports, particularly due to the clear opinion of Dr. Satendra Singh and taking

into account the point raised by five members of the Board about the need to revise the NMC Guidelines and considering the legal position this Court, by its order of 12.12.2024 found the appellant fit for pursuing the MBBS Course and directed his admission as stated above.

10. We have heard Mr. Atim Inam assisted by Mr. Rishit Vimadalal, Ms. Shrutika Pandey and Ms. Karuvaki Mohanty, learned counsels for the appellant and Mr. Vikramjit Banerjee, learned Additional Solicitor General, Mr. Gaurav Sharma, learned senior advocate and Ms. Pankhuri Shrivastava, learned advocate for the respondents. We have carefully considered their submissions and perused the record.

Guidelines under the Regulation

11. The Guidelines regarding admission of students with "Specified Disabilities" under the Rights of Persons with Disabilities Act, 2016 with respect to admission in MBBS Course which constitute Appendix H-1 to the Graduate Medical Education Regulations (Amendment), 2019, notified on 13.05.2019, in its relevant parts, read as under:

S. No.	Disability Type	Type of Disabilities	Specified Disability	Disability range		
				Eligible for Medical Course, not eligible for PwD Quota	Eligible for Medical Course, Eligible for PwD Quota	Not eligible for Medical Course
1.	Physical disability	A. Locomotor disability, including specified disabilities (a to f)	a. Leprosy cured person*	Less than 40% disability	40-80% disability Persons with more than 80% disability may also be allowed on case to case basis and their functional competency will be determined with the aid of assistive devices, if it is being used, to see if it is brought below 80% and whether they possess sufficient motor ability as required to pursue and complete the course	More than 80%
			b. Cerebral Palsy**			
			c. Dwarfism			
			d. Muscular Dystrophy			
			e. Acid attack victims			
			f. Others*** such as Amputation, Poliomyelitis, etc.			

					satisfactorily.	
			* Attention should be paid to loss of sensations in fingers and hands, amputation, as well as involvement of eyes and corresponding recommendations be looked at. ** Attention should be paid to impairment of vision, hearing, cognitive function etc. and corresponding recommendations be looked at. ***<u>**Both hands intact, with intact sensations, sufficient strength and range of motion are essential to be considered eligible for medical course.**</u>			

(Emphasis supplied)

12. These regulations have come up recently for interpretation and we have discussed the judgments hereinbelow. What is important to notice is that while the appellant's disability of 58% renders him eligible for Medical Course under the PwD quota, what renders him ineligible is the note against the triple asterix "*Both hands intact, with intact sensations, sufficient strength and range of motion are essential to be considered eligible for medical course*".

Analysis:

13. It is the mechanical and literal interpretation of the guidelines that has rendered the appellant ineligible both by the Disability Assessment Board at Chandigarh and by the five members of the All

India Institute of Medical Sciences. Here, we must add that even the five members felt that the current NMC Guidelines needed revision and that going by the current Guidelines, they are unable to declare the candidate fit.

14. There is a very good reason why the five members have lodged this caveat. The report is dated 28.11.2024. Two judgments of this Court delivered in the month of October, 2024 had clearly mandated the revision of the Guidelines. This was on the premise that the existing guidelines did not provide for the functional assessment.

15. In ***Omkar Ramchandra Gond v. Union of India & Ors., 2024 SCC OnLine SC 2860*** (delivered on 15.10.2024), a three-Judge Bench of this Court referred to Article 41 of the Directive Principles of State Policy which provided that the State was within the limits of its economic capacity and development to make effective provision for securing the right to work and education for the persons with disabilities. This Court noted that it was keeping this salutary principle in mind that originally the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act,

1995 was enacted and since that Act was not found to be comprehensive, it was replaced with the Rights of Persons with Disabilities Act, 2016 (hereinafter referred to as the 'RPwD Act'). This Court also dealt with the salutary provisions of the RPwD Act including the mandate for inclusive education and the express recognition of the concept of reasonable accommodation. This Court also discussed the United Nations Convention on the Rights of Persons with Disabilities which was the main reason for the enactment of the RPwD Act.

16. This Court, in ***Omkar Ramchandra Gond (supra),*** highlighted the principles enshrined in the Convention like respect for inherent dignity; individual autonomy including the freedom to make one's own choices; non-discrimination; full and effective participation and inclusion in society; respect for difference and acceptance of persons with disabilities as part of human diversity and humanity; equality of opportunity and accessibility. Thereafter, this Court in ***Omkar Ramchandra Gond (supra)*** invoking the doctrine of purposive interpretation held that merely based on the quantification of the disability, a candidate will not forfeit his right to stake a claim for

admission to the course of his or her choice. This was on the principle that no classification can be overbroad. Some of the relevant paragraphs on this aspect from ***Omkar Ramchandra Gond (supra)*** have been extracted hereinbelow:-

> **"21.** In any event, adopting a purposive interpretation of the RPwD Act and, more particularly, of the provisions extracted hereinabove, we are of the opinion that merely because of the quantification of the disability for speech and language at 40% or above, a candidate does not forfeit his right to stake a claim for admission to course of their choice. We say so for the reason that any such interpretation would render the clause in Appendix H-1 under the Graduate Medical Education Regulations of the Medical Council of India (precursor of the National Medical Commission) dated 13.05.2019, over broad for treating unequals equally.
>
> **23.** We are constrained to hold that the Appendix H-1 in the notification of 13.05.2019, issued by the Medical Council of India cannot be interpreted to mean that merely because on the quantification of the disability percentage exceeding the prescribed limits, a person automatically becomes ineligible for the medical course.
>
> **25.** A Constitutional Court examining the plea of discrimination is mandated to consider whether real equality exists. This Court is not to be carried away by a projection of facial equality. Viewed at first blush, the regulation providing that all persons with 40% or more disability are uniformly barred from pursuing the medical course in the category of speech and language disability, may appear non-discriminatory. But here too, appearances can be deceptive. The Court of law is obliged to probe as

> to whether beneath the veneer of equality there is any invidious breach of Article 14."
>
> (Emphasis supplied)

17. Most importantly, this Court commended the Union of India through the Ministry of Social Justice and Empowerment for having come out with a communication of 25.01.2024 pursuant to the directions of this Court in ***Bambhaniya Sagar Vasharambhai v. Union of India (Writ Petition (C) No. 856 of 2023)***. It should be noted that this communication of 25.01.2024 which mandated the review of regulations by the National Medical Commission (NMC) was issued after the extant regulations of 13.05.2019 had come into force. In fact, the communication issued by the Ministry of Social Justice and Empowerment dated 25.01.2024 drew the attention of the NMC to the position that obtained in the Department of Personnel and Training (DoPT) wherein functional classification and physical requirements consistent with requirements of the identified service/posts were being worked out for the Civil Services and the NMC was directed to work out functional classifications and physical requirements consistent with the requirements of medical profession and the NMC was directed to review its regulations.

18. In fact, in ***Omkar Ramchandra Gond (supra),*** after setting out the directives of the Union of India, it was held as under:-

> **"35.** We have no reason to doubt that the National Medical Commission will expeditiously comply with the requirements in the communication of the Ministry of Social Justice and Empowerment dated 25.01.2024. In any event, we direct that the needful be done by the National Medical Commission before the publication of the admission brochure for the academic year 2025-2026.
>
> **38.** We are hopeful that in the revised regulations and guidelines which the National Medical Commission will issue, an inclusive attitude will be taken towards persons with disabilities from all categories furthering the concept of reasonable accommodation recognized in the RPwD Act. The approach of the Government, instrumentalities of States, regulatory bodies and for that matter even private sector should be, as to how best can one accommodate and grant the opportunity to the candidates with disability. The approach should not be as to how best to disqualify the candidates and make it difficult for them to pursue and realize their educational goals."

19. Relying on the judgment in ***Vikash Kumar v. Union Public Service Commission & Ors., (2021) 5 SCC 370*** and expanding on the concept of reasonable accommodation elucidated therein, this Court in ***Omkar Ramchandra Gond (supra)*** held as under ***:***

> **"40.** …Section 2(y) of the RPwD Act, defines "reasonable accommodation" to mean necessary and appropriate

modification and adjustments, without imposing a disproportionate or undue burden in a particular case, to ensure to persons with disabilities the enjoyment or exercise of rights equally with others. The concept of reasonable accommodation would encompass within itself the deployment of a purposive and meaningful construction of the NMC Regulations of 13.05.2019 read with the Appendix H-1 guidelines in a manner as to further the objectives of the RPwD Act. The reasonable accommodation as defined in Section 2(y) of the RPwD Act should not be understood narrowly to mean only the provision of assisting devices and other tangible substances which will aid persons with disabilities. If the mandate of the law is to ensure a full and effective participation of persons with disabilities in the society and if the whole idea was to exclude conditions that prevent their full and effective participation as equal members of society, a broad interpretation of the concept of reasonable accommodation which will further the objective of the RPwD Act and Article 41 of the Directive Principles of State Policy is mandated.

41. This concept of reasonable accommodation has come in for judicial interpretation in ***Vikash Kumar* v. *UPSC*, (2021) 5 SCC 370** wherein this Court held that the principle of reasonable accommodation captures the positive obligation of the State and private parties to provide additional support to persons with disabilities to facilitate their full and effective participation in society. In Para 44, it was held as under.

> "44. The principle of reasonable accommodation captures the positive obligation of the State and private parties to provide additional support to persons with disabilities to facilitate their full and effective participation in society. The concept of reasonable accommodation is developed in section (H) below. For the present, suffice it to say that, for a person with disability, 14onstituteionally guaranteed fundamental rights to equality, the six freedoms and the

right to life under Article 21 will ring hollow if they are not given this additional support that helps make these rights real and meaningful for them. Reasonable accommodation is the instrumentality—are an obligation as a society—to enable the disabled to enjoy the constitutional guarantee of equality and non-discrimination. In this context, it would be apposite to remember R.M. Lodha, J's (as he then was) observation in ***Sunanda Bhandare Foundation* v. *Union of India*, (2014) 14 SCC 383**, where he stated : (SCC p. 387, para 9)

"9. … In the matters of providing relief to those who are differently abled, the approach and attitude of the executive must be liberal and relief oriented and not obstructive or lethargic."

42. Thereafter, in the said judgment, this Court held in para 62, 63 and 65 as under.

"62. The principle of reasonable accommodation acknowledges that if disability as a social construct has to be remedied, conditions have to be affirmatively created for facilitating the development of the disabled. Reasonable accommodation is founded in the norm of inclusion. Exclusion results in the negation of individual dignity and worth or they can choose the route of reasonable accommodation, where each individuals' dignity and worth is respected. Under this route, the "powerful and the majority adapt their own rules and practices, within the limits of reason and short of undue hardship, to permit realisation of these ends".

63. In the specific context of disability, the principle of reasonable accommodation postulates that the conditions which exclude the disabled from full and effective participation as equal members of society have to give way

to an accommodative society which accepts difference, respects their needs and facilitates the creation of an environment in which the societal barriers to disability are progressively answered. Accommodation implies a positive obligation to create conditions conducive to the growth and fulfilment of the disabled in every aspect of their existence — whether as students, members of the workplace, participants in governance or, on a personal plane, in realising the fulfilling privacies of family life. The accommodation which the law mandates is "reasonable" because it has to be tailored to the requirements of each condition of disability. The expectations which every disabled person has are unique to the nature of the disability and the character of the impediments which are encountered as its consequence.

65. Failure to meet the individual needs of every disabled person will breach the norm of reasonable accommodation. Flexibility in answering individual needs and requirements is essential to reasonable accommodation. The principle contains an aspiration to meet the needs of the class of persons facing a particular disability. Going beyond the needs of the class, the specific requirement of individuals who belong to the class must also be accommodated. The principle of reasonable accommodation must also account for the fact that disability based discrimination is intersectional in nature.

46. Disabilities Assessment Boards are not monotonous automations to just look at the quantified benchmark disability as set out in the certificate of disability and cast aside the candidate. Such an approach would be antithetical to Article 14 and Article 21 and all canons of justice, equity and good conscience. It will also defeat the salutary objectives of the RPwD Act. The Disabilities Assessment Boards are obliged to examine the further

> question as to whether the candidate in the opinion of the experts in the field is eligible to pursue the course or in other words, whether the disability will or will not come in the way of the candidate pursuing the course in question."

(Emphasis supplied)

20. As would be clear from the above, flexibility in answering individual needs and requirements is an essential component of reasonable accommodation. There cannot be a "one size fits all" approach. However, in the guidelines appendix H-1 to regulations of 13.05.2019 of "both hands intact, with intact sensations, sufficient strength and range of motion" are considered essential to be eligible for the medical course.

21. In our view, this prescription of "both hands intact…" is completely antithetical to Article 41 of the Constitution; the principles enshrined in the United Nations Convention on the Rights of Persons with Disabilities and the salutary provisions of the RPwD Act. It also indicates a classification which is overbroad and glorifies 'ableism'. It propagates that persons with typical abilities and with faculties similar to what the majority may have or somehow superior. This is precisely

what the Directive Principles of State Policy, the United Nations Convention and the RPwD Act abhor.

22. In ***Omkar Ramchandra Gond (supra),*** the following conclusion was recorded and directions given:

> "53. For the reasons set out hereinabove,
>
> (i) We hold that quantified disability per se will not dis-entitle a candidate with benchmark disability from being considered for admission to educational institutions. The candidate will be eligible, if the Disability Assessment Board opines that notwithstanding the quantified disability the candidate can pursue the course in question. The NMC regulations in the notification of 13.05.2019 read with the Appendix H-1 should, pending the re-formulation by NMC, be read in the light of the holdings in this judgment.
>
> (ii) The Disability Assessment Boards assessing the candidates should positively record whether the disability of the candidate will or will not come in the way of the candidate pursuing the course in question. The Disability Assessment Boards should state reasons in the event of the Disability Assessment Boards concluding that the candidate is not eligible for pursuing the course.
>
> (iii) The Disability Assessment Boards will, pending formulation of appropriate regulations by the NMC, pursuant to the communication of 25.01.2024 by the Ministry of Social Justice and Empowerment, keep in mind the salutary points mentioned in the said communication while forming their opinion.

> (iv) Pending creation of the appellate body, we further direct that such decisions of the Disability Assessment Boards which give a negative opinion for the candidate will be amenable to challenge in judicial review proceedings. The Court seized of the matter in the judicial review proceedings shall refer the case of the candidate to any premier medical institute having the facility, for an independent opinion and relief to the candidate will be granted or denied based on the opinion of the said medical institution to which the High Court had referred the matter."

23. The above discussion would clearly highlight why the five members of the board, in the present case, in their report incorporated the following disclaimer:-

> "the current NMC Guidelines perhaps need revision, and with respect to the current Guidelines, this Medical Board is not able to declare the candidate FIT to join the MBBS course."

24. Even otherwise, we find that the report of the five members has not set out any reasons and does not indicate as to how the functional assessment of the appellant was carried out. No doubt, it mentions that a functional assessment was carried out, but the five members are completely silent on how the appellant failed in the functional assessment test. Obviously, they felt shackled by the "both hands intact…" theory which we have discarded relying on the Union of

India's directive as approved in ***Omkar Ramchandra Gond (supra).*** Accepting the report of five members and denying the admission of the appellant would be upholding the theory of ableism which we are not prepared to do.

25. The "both hands intact…" prescription has no sanctity in law as it does not admit of a functional assessment of the individual candidate, a matter which is so fundamental in protecting the rights of persons with disabilities. In fact, it was the Union of India through the Ministry of Social Justice and Empowerment which took the lead in issuing the communication of 24.01.2024 pursuant to the directions of this Court in ***Bambhaniya Sagar Vasharambhai (supra)***.

26. Another important judgment which needs to be noticed at this stage is ***Om Rathod v. Director General of Health Services & Ors., 2024 SCC Online SC 3130*** (delivered on 25.10.2024) which reinforced the holding in ***Omkar Ramchandra Gond (supra). Om Rathod (supra),*** like the present case, was also a case where notwithstanding the reports of disability assessment board which denied relief to the appellant therein, the court called for an

assessment by Dr. Satendra Singh, the same expert, who was also co-opted in the present matter. Chief Justice Dr. D.Y. Chandrachud speaking for the Court in ***Om Rathod (supra)*** distinguished the earlier judgment of this Court in ***Vidhi Himmat Katariya v. Union of India (2019) 10 SCC 20*** by holding as follows:

> "38. At this point, it is imperative to deal with the holding of this Court in *Vidhi Himmat Katariya v. Union of India*. In that case, persons with disabilities who had appeared for the NEET UG Exam 2019 had moved this Court against their disqualification by the Medical Board. Appendix "H" had been issued midway through the process for admitting candidates from the NEET UG 2019. The primary contention of the petitioners was that since the new guidelines were issued in the middle of the admission process, they must not apply to the ongoing process. The petitioners prayed to be tested against the rules as they existed at the time of the application process for the examination, namely, the MCI guidelines of 2017. On this count, the Court ruled against the petitioners. The demurrer argument of the petitioners was that they have not been tested on relevant parameters. <u>This Court while rejecting the argument noted that the petitioners were disqualified for not meeting the eligibility criteria of having "both hands intact, with intact sensation, sufficient strength and range of motion."</u> Accordingly, the Court refused to sit in appeal over the expert body's opinion. The judgment of the Court in *Vidhi Himmat Katariya (supra)* was specific to the facts of that case and did not involve any question of interpretation or Constitutional analysis. The Court was not examining any criteria and did not scrutinise the guidelines to inspect their validity. The Court did not have the benefit of looking at the firm roots which

> reasonable accommodation has grown within the fold of the Constitution. Further, the judgments of this Court in *Vikash Kumar* (supra)*, Avni Prakash* (supra)*, Ravinder Dhariwal* (supra) and *Omkar Gond* (supra) were not available to the Court while dealing with the case of *Vidhi Himmat Katariya* (supra). Therefore, the opinion in *Vidhi Himmat Katariya* (supra) is inapplicable."
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> (Emphasis supplied)

27. Like in ***Om Rathod (supra),*** the report of Dr. Satendra Singh, who was also a member of the board appointed, pursuant to our direction, elaborately considers the functional assessment and gives detailed reasons to conclude as to how the appellant can successfully navigate the MBBS course with clinical accommodations and assistive technologies. The report also indicates as to how the choice should be left to the appellant after completing the MBBS Course to decide whether he wishes to specialize in a non-surgical or medical branch or continue as a general duty medical officer. The report rightly sets out as to how, at this stage, one should not assume incompetence without providing ample opportunities after ensuring clinical accommodations and assistive technologies. The report of Dr. Satendra Singh is similar to the report provided by the said Doctor in ***Om Rathod (supra).***

28. Before we discuss the report of Dr. Satendra Singh submitted in the present case in detail, we propose to summarize certain crucial holdings in ***Om Rathod (supra)*** which have direct bearing to the case at hand.

> **"a)** The use of the term 'brought below 80%,' as well intentioned as it may be, fails at this foundational premise. One cannot assume that all persons with more than 80% locomotor disability are incompetent to pursue medicine when their functional abilities have not been assessed. **The medical model of disability apparent in the phrase must give way to a social model of disability which takes into account the variety of experiences and outcomes which persons with disabilities have when they interact with different kinds of societies and accommodations.** (para 23)
>
> **b)**. In *Nipun Malhotra v. Sony Pictures*, this Court opined that words cultivate institutional discrimination and that the language of our discourse ought to be inclusive rather than alienating. When it comes to rights - language matters. Words may not always adequately reflect the intention of the drafter. Some words may be used unwittingly, without knowledge of their harmful consequences. Nevertheless, these words influence the thinking of others who hear them. Words are the tools one deploys to formulate thoughts. An expansive vocabulary allows people to think and articulate their thoughts better. When we use appropriate and sensitive language, we aspire for the quality of our thought to be broadened and evolve towards being emancipatory and inclusive. (para 24)
>
> **c) The requirement of assessing the functional competence of a medical aspirant with over eighty percent locomotor disability recognises that**

assessment must be done on a case to case basis. The method of assessment by designated Disability Assessment Boards must therefore reflect the approach and intent of the legal framework within which the Boards operate. An assessment for functional competency entails an analysis of the skill set which a person with disability must learn in order to compete and pursue the medical course. This is a marked difference from requiring a specific manner which a candidate must use to achieve the outcome. **For example, a functional competency model would require a candidate to effectively communicate with patients but would not require them to have speech *or intact hands*. By focusing on the end points, the approach avoids any ableism to seep into the assessment and avoids reifying that there is one and only one manner to achieve desired outcomes.** (para 26)

d) A failure to create a conducive environment is a failure to provide reasonable accommodation. Section 2(h) of the RPWD Act defines discrimination in the context of disability as "any distinction, exclusion, restriction on the basis of disability which has the purpose or effect of impairing or nullifying the recognition, enjoyment or exercise on an equal basis with others of all human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field and includes all forms of discrimination and denial of reasonable accommodation." The denial of reasonable accommodation is expressly recognised as discrimination under the RPWD Act. **For the proper realisation of reasonable accommodation, a person with disability must be identified using correct parameters and thereafter the accommodations necessary have to be determined on a case by case basis.** (para 27)

e) In *Omkar Gond (supra)* has applied a purposive interpretation to the guidelines (Appendix "H-1") in the context of a medical aspirant with dialectic incapacity. This Court held that the principle of reasonable accommodation in Section 2(y) of the RPWD Act read with Article 41 of the Constitution necessarily means that

(i) a person cannot be disqualified merely on the basis of a benchmark quantification. Such a criteria would be unconstitutional for being overbroad; (ii) the Disability Assessment Board must not act as monotonous automations looking at the quantified disability and disqualifying candidates. The Board must examine if the candidate can pursue the course with their disability; and (iii) in doing so, the Board is not merely obliged to provide assistive devices and other substances which will help the candidate. The true role of the Board is to assess the competence of a candidate. (para 28)

f) The principle of reasonable accommodation is not only statutorily prescribed but also rooted in the fundamental rights guaranteed to persons with disabilities under Part III of the Constitution. ***Reasonable accommodation is a fundamental right.*** It is a gateway right for persons with disabilities to enjoy all the other rights enshrined in the Constitution and the law. Without the gateway right of reasonable accommodation, a person with disability is forced to navigate in a world which excludes them by design. It strikes a fatal blow to their ability to make life choices and pursue opportunities. From mundane tasks of daily life to actions undertaken to realise personal and professional aspirations - all are throttled when reasonable accommodations are denied. **Reasonable accommodation is a facet of substantive equality and its failure constitutes discrimination.** (para 29)

g) Therefore, this Court has in the past opined on the pattern of conduct in medical boards and sought to align it with legal and Constitutional guarantees so as not to render the fundamental rights of persons before these boards nugatory. In *Bambhaniya Sagar Vashrambhai v. Union of India*, this Court has held that Disability Assessment Boards must not adopt the approach of a recluse by confining themselves to only quantifying the disability of a candidate. **In that case, the medical board had reported an unreasoned opinion that the candidate was ineligible to continue his MBBS course**

on account of being more than 80% disabled. Like in A (Mother of X) (supra), the Court in *Bambhaniya (supra)* also emphasised the need for elaborate reasons by the medical board while reporting their opinions. (para 34)

h) In *Purswani Ashutosh v. Union of India*, this Court was deciding if a medical aspirant who had appeared for the NEET UG Exam 2018 was eligible for the reservation earmarked for persons with disabilities. Despite having low vision impairment - the Medical Board had opined that the petitioner in that case was ineligible for reservation. **While rejecting the opinion of the committee, this Court held that a medical board cannot be allowed to override the statutory mandate of providing reservation to persons with disabilities. No committee has primacy over the law. We must emphasize that the opinions of medical boards and committees are not only required to adhere to legal standards but must also embody core principles of the rule of law within their processes. This Court, following a consistent line of precedent, has underscored the need for reasoned and transparent decisions by such boards, given the profound impact these opinions have on the life trajectory of individuals before them.** (para 35)

i) At its core, the rule of law demands predictable rules, equitable application, unbiased adjudication and fair, transparent treatment of individuals. In cases of assessment, this entails informing individuals about the procedures, standards, tools, and all pertinent aspects of the assessment in advance. Such transparency is essential to avoid any arbitrary uncertainty arising from obscure or inconsistent procedures. The procedures must be inherently fair and bear a rational and cogent nexus with the purpose which is sought to be achieved. A committee's role goes beyond mere quantification of disability; disability is a factual condition. **The key question for a Disability Assessment Board is whether an individual with a disability, aided by modern scientific tools and**

devices, can enter the MBBS program. Put differently, the board must assess whether it is infeasible for the candidate to pursue a medical career with their disability. (para 36)

j) Courts are not expert bodies in matters of medicine. The competent authority to adjudge the eligibility of a person to pursue a medical course is the Disability Assessment Board. **However, courts have the jurisdiction to ensure that the manner in which the Board proceeds and functions is in compliance with established principles of law. Ultimately, the Court will have to rely on the opinion of the Board to adjudicate the legal remedies of a person with disability. The interference of Courts is not to supplant its opinion for that of the experts but to ensure that a holistic evaluation of competence is conducted and that no person's career is set at naught with the stroke of a pen.** (para 39)

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

> **that - in line with contemporary scientific advancements, no devices or accommodations can enable the person with disability before them to compete at a level playing field. Courts must ensure that the sanctity of the principles in the RPWD Act and in the Constitution are not violated by the conduct or the outcome of the assessment.** (para 40)
>
> **l) The second respondent has submitted that in light of the judgment of this Court in *Omkar Gond (supra)*, it will be constituting a new committee of domain experts to comply with the directions in that judgment. We note the assurance of the second respondent and direct that this committee shall include persons with disability or one or more experts who are well conversant with disability rights. The committee shall recommend fresh guidelines to replace the existing guidelines. The above suggestions shall be duly considered by the government on its own merits. The recommendations so formulated shall comply with this judgment.** (para 58)
>
> **m)** The second respondent shall issue fresh guidelines for admitting persons with disabilities into medical courses. The committee formulating the guidelines must include experts with disability or persons who have worked on disability justice. The guidelines shall comply with the judgments of this Court and contemporary advancements in disability justice;" (para 60(a))
>
> (Emphasis supplied)

29. Having set out the legal position governing the situation, we have no hesitation in concluding that the report of the five members of the All India Institute of Medical Sciences cannot be the basis to deny the appellant's admission to the MBBS Course. *Firstly*, the

report does not satisfy the test laid down in ***Omkar Ramchandra Gond (supra)*** and ***Om Rathod (supra).*** The functional assessment as contemplated in the said two judgments is not borne out by the report of five members. *Secondly*, as mandated or required in both ***Omkar Ramchandra Gond (supra)*** and ***Om Rathod (supra),*** reasons have not been assigned by the five members of the Board for denying the appellant his right to pursue the MBBS Course. *Thirdly*, the need to assess beyond the quantified disability and the need to opine whether the individual with a disability aided by modern scientific tools and devices can enter the MBBS program has not been fulfilled by the five members of the Board. This is apart from the fact that the five members of the Board have recorded statements in the nature of disclaimers as set out hereinabove.

30. While we are conscious that courts are not expert bodies in the matters of medicine, as held in ***Om Rathod (supra)*** courts have the jurisdiction to ensure that the manner in which the Board proceeds and functions are in compliance with the established principles of law. We will only add that it is not just a question of jurisdiction of the court but a duty cast upon the Court; since it is the Courts which

enforce the fundamental rights.

31. For all these reasons, we reject the report of the five-member Board. Like in ***Om Rathod (supra)***, Dr. Satendra Singh, the Member of the Board has furnished a separate report, that fulfils the parameters laid down in ***Omkar Ramchandra Gond (supra)*** and ***Om Rathod (supra).***

32. Dr. Satendra Singh has, at the very outset, set out the parameters for his consideration as under:-

> "Considering quantification of disability was deemed redundant, the focus of the assessment was on functional competence along with potential reasonable accommodation, assistive technology and adaptive equipment to see whether petitioner ("Anmol") can fulfil the national Medical Commission ("NMC") norms of Competency based Medical Education ("CBME") and can pursue the MBBS degree course."

33. Dr. Satendra Singh has also set out detailed justification and summarized the two primary factors which resulted in his disagreement with the other members in the following terms:

> "(i) AIIMS has yet to revise its curriculum to align with the NMC-based CBME framework. Certain competencies deemed essential by AIIMS board are, in fact, not core competencies (AS 2.1, AS 2,2) in the NMC's revised curriculum issued on 12.09.2024 (Annexure A1)

> (ii) Another point raised pertains to the controversial issue of "both hands intact". Even in the first released 2018 report, it was stated that there need to be "periodic revaluation of this guideline" (Annexure A2, p.34). The same thing was highlighted by Delhi HC in *Neha Pudil v UOI 2022* where they directed NMC to reframe guidelines in line with the Rights of Persons with Disabilities Act (RPDA) 2016 and new technological advances by 18 Oct 2022."

34. We may only add that the need to revise the guidelines as emphasized by the NMC was directed in the 15.10.2024 judgment of ***Omkar Ramchandra Gond (supra)*** and reiterated in the 25.10.2024 judgment of ***Om Rathod (supra).*** Further in para 26 of ***Om Rathod (supra)*** extracted hereinabove the "both hands intact…" requirement has been expressly rejected. We have also held hereinabove that such an insistence in a statutory regulation is absolutely antithetical to the objectives of Article 41 and the principles set out in the United Nations Convention and the rights guaranteed under the RPwD Act.

35. A prescription such as "both hands intact…" reeks of ableism and has no place in a statutory regulation. In fact, it has the effect of denuding the rights guaranteed under the Constitution and the RPwD Act and makes a mockery of the principle of reasonable accommodation.

36. In our considered view, the correct approach is the one that Dr. Satendra Singh has adopted viz.- to not bar a candidate at the threshold but grant the candidate the choice after completing the MBBS Course, to decide whether he whishes to specialize in a non-surgical or medical branch or continue as a General Duty Medical Officer. As rightly set out by Dr. Satendra Singh, it will be unfair to presume incompetence at the threshold without first providing an opportunity to the candidate and ensuring the availability of accommodations and assistive products.

37. Dr. Satendra Singh also adopted an interactive process which he highlights in the report in the following terms:

> "Accommodation decisions are not made based on diagnosis, per se. I used an interactive process to review his functional limitation (restrictions that prevent him from fully performing an activity) and barriers which may be educational, physical or attitudinal in nature.
>
> - **Disability**: Benchmark Multiple Disability with two half grown fingers in both hands and toes (mobility-related physical disability, phocomelia) and speech impairment.
> - **Potential Functional Limitations**: Some areas involving full dexterity
> - **Potential Barriers to learning**: Few practical procedures which might require full dexterity
> - **What is being assessed**: Cognitive, psychomotor and affective skills in line with NMC's five roles of an Indian Medical

Graduate in CBME

- **Appropriate and reasonable accommodation**: Physical intermediary to assist in a few procedures as part of medical team and appropriate assistive technology in final year and internship."

38. Dealing with Functional Assessment, the appellant was put through certain procedures to test his dexterity and ability to perform psychomotor skills in simulated environment. The report concludes as follows:

> "The following procedure skills was tested to see his dexterity and ability to perform psychomotor skills in simulated environment: holding glass slides; wearing gloves; holding scissors; putting suture into needles; locking scissors, making sutures; making single incisions with blade; making curvilinear incisions; holding syringe, filling it, withdrawing water in syringe; cutting sutures; doing lifesaving cardiopulmonary resuscitation (CPR) – chest compressions and artificial respiration; urinary catheterization.
> The experience showed that despite loss of two fingers in either hands his thumb in both was intact showing grasp and ability to use his both hands (he is left-handed). With the advent of Competency Based Medical Education (CBME), it may also be noted that attainment of the highest level of competency needs to be obtained through steps spread over several subjects or phases and not necessarily in the subject or the phase in which the competency has been identified. (page 3969 of NMC CBME 2024 released on 12.09.2024)."
>
> (Emphasis supplied)

39. Based on these tests, certain clinical accommodations for each of the phases in the MBBS Course have been suggested which can

easily be adopted by the authorities. For example, for phase one MBBS Course, it is suggested that compensatory time in theory and practical examination and provision of facility of scribes have been suggested to improve efficiency. Similarly, for phase three, part-I, certain assistive technology measures have been suggested like speech to text technology, antivibration gloves and so on.

40. Thereafter, Dr. Satendra Singh posed to himself the following four questions:

> "a) Would the proposed accommodation result in a failure to meet the NMC CBME's inherent requirements?
>
> b) Would the accommodation legitimately jeopardize patient safety?
>
> c) Would the proposed accommodation result in the improper waiver of a core requirement of the CBME?
>
> d) Would the proposed accommodation pose an undue hardship on the medical college (budgets wise)?"

The answer to all these was in the negative, as has been duly recorded in the report.

41. The report has an interesting reference about how in an age when robotic surgeries are relied upon, the NMC norms still insist on

the "both hands intact with intact sensations" norm. Dr. Satendra Singh quotes the father of neurosurgery Harvey Cushing, who as early as in November 1911, emphasized that motor skills are often "the least part of the work".

42. The report addresses issues of patient's safety and concludes as under:

> **"In my opinion, Anmol can successfully navigate the MBBS course with clinical accommodations, and later internship with assistive technologies, and thereafter practice as a doctor. It is up to him, after completing MBBS, to decide whether he wishes to specialize in a non-surgical or medical branch or continue as a general duty medical officer. At this stage, we should not assume his incompetence without first providing him ample opportunities in a simulation lab and ensuring the availability of accommodations and assistive products."**
>
> (Emphasis supplied)

43. We find that the report of Dr. Satendra Singh satisfies the parameters of the law laid down by this Court in ***Omkar Ramchandra Gond (supra)*** and ***Om Rathod (supra).*** It makes a detailed individual analysis of the case and makes a functional assessment; it states elaborate reasons and it suggests measures for providing clinical accommodation and assistive technology. Above all, the conclusion

of Dr. Satendra Singh that incompetence to pursue the MBBS Course cannot be presumed at the threshold stage, on the facts of the present case, appeals to us for the reasons set out hereinabove.

44. For the aforesaid reasons, we accept the report of Dr. Satendra Singh and confirm the admission granted to the appellant by our order dated 12.12.2024 in the Government Medical College, Sirohi, Rajasthan.

45. Before we part, there is one important aspect which needs to be considered. In the judgment of 15.10.2024 in ***Omkar Ramchandra Gond (supra)*** a direction was given to the National Medical Commission to issue revised regulations and guidelines in supersession of the guidelines of 13.05.2019 with regard to admission of students with specified disabilities under the RPwD Act with respect to the MBBS Course. This Court had also directed the NMC to consider the communication of the Ministry of Social Justice and Empowerment dated 25.01.2024. Pursuant to the judgment in ***Omkar Ramchandra Gond (supra),*** the National Medical Commission assured this Court during the course of hearing in ***Om Rathod (supra)*** that it will constitute a new committee of domain experts to comply

with the judgment in ***Omkar Ramchandra Gond (supra).*** Noting the assurance of the NMC, this Court directed that the Committee to be so constituted will include persons with disability or one or more experts conversant with the disability rights. A further direction was given that fresh guidelines will be put in place applying the principles set out in the judgments.

46. We direct this matter to be posted on 03.03.2025 to consider whether the National Medical Commission has formulated the revised guidelines in accordance with the judgments of this Court, as directed in ***Omkar Ramchandra Gond (supra)*** and ***Om Rathod (supra)*** and further direct that the NMC shall file an affidavit explaining the current status before the said hearing date.

47. In view of what is held hereinabove, the appeal is allowed. The judgment and order dated 23.09.2024 passed by a Division Bench of the High Court of Punjab and Haryana at Chandigarh in CWP No. 24293 of 2024 (O&M) is set aside and the admission granted to the appellant by virtue of our order dated 12.12.2024 in the Govt. Medical College, Sirohi is confirmed. No order as to costs.

48. List the matter on 03.03.2025 for consideration of the affidavit of NMC.

.....J.
[**B.R. GAVAI**]

.....J.
[**K. V. VISWANATHAN**]

New Delhi;
21st February, 2025.