IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 12.04.2013

Coram

The Honourable Mr.Justice M.JAICHANDREN
and
The Honourable Mr.Justice M.M.SUNDRESH

Writ Appeal Nos.2229 & 2449 of 2011

W.A.No.2229 of 2011

Medical Council of India,
represented by its Secretary,
Pocket-14, Sector-8, Dwarka Phase-I,
New Delhi-110 011. .. Appellant

-vs-

1.P.Divya,
represented by her mother P.Lakshmi,
Old No.151, New No.198,
Amani Ammal Thotam,
Royapuram, Chennai-13.

2.The Secretary to the Government,
Department of Health,
Fort St. George, Secretariat,

Chennai-600 009.

3.The Secretary,
Selection Committee,
Directorate of Medical Education,
Kilpauk, Chennai-600 010. .. Respondents

W.A.No.2449 of 2011

Dr.S.Kavitha,
D/o P.Shanmugam,
16/5, Adhiyaman Street,
Gandhi Road, Krishnagiri. .. Appellant

Vs.

1.The State of Tamil Nadu,
rep. by the Secretary to Government,
Health and Family Welfare Department,
Fort St. George, Chennai-600 009.

2.The Director of Medical Education,
No.162, Periyar E.V.R. High Road,
Kilpauk, Chennai-600 010.

3.The Secretary, Selection Committee,
Directorate of Medical Education,
No.162, Periyar E.V.R. High Road,
Kilpauk, Chennai-600 010.

4.The Secretary,
Medical Council of India,
Pocket-14, Sector-8,
Dwarka Phase-I,
New Delhi-110 077. .. Respondents

Writ Appeals filed under Clause 15 of the Letters Patent against the orders dated 29.09.2011 made in W.P.No.16144 of 2011 and dated 29.06.2011 in W.P.No.8778 of 2011 respectively.

For appellant in
W.A.No.2229/2011 &
4th respondent in
WA.No.2449/2011 : Mr.V.P.Raman

For Appellant in
WA.No.2449/2011 : Mr.A.R.Suresh

For 1st respondent
in WA.No.2229/2011 : Mr.R.Prabakaran

For respondents 2 & 3
in W.A.No.2229/2011 &
Respondents 1 to 3 in
WA.No.2449/2011 : Mr.S.Gunsekaran,

Government Advocate

COMMON JUDGMENT

M.M.SUNDRESH,J.

These writ Appeals have been filed against the orders dated 29.09.2011 and 29.06.2011 made in W.P.No.16144 of 2011 and W.P.No.8778 of 2011 respectively.

2. As the issues involved in both these appeals are interconnected and overlapping, they have been taken up together by way of a common judgment.

W.A.No.2229 of 2011

3. The Facts:

3.1. The first respondent being the writ petitioner, filed the writ petition in W.P.No.16144 of 2011, seeking the relief of writ of mandamus to direct the third respondent to allot one M.B.B.S., seat to the first respondent herein under the special category (Orthopaedically physically disabled).

3.2. Pending writ petition, the prayer was amended seeking to quash the Medical Council notification dated 25.03.2009, by which, the Graduate Medical Regulation was amended by providing reservation of

3% to the persons affected with locomotor disability of lower limbs between 50-70% and if no candidates available, then to 40%. Consequently, the prospectus of the respondents was also challenged. The learned single Judge, not only allowed the writ petition, but also issued certain directions against the appellant. Challenging the same, the present writ appeal has been preferred.

3.3. The first respondent applied to the third respondent for an admission to M.B.B.S., Course under special category (Orthopaedically Physically Disabled) for the year 2011-2012. She was indeed

called for the counselling by the third respondent on 30.06.2011. However, she was denied a seat under the special category on the ground that she did not suffer from locomotor disability of the lower limbs.

3.4. Pending writ petition, a direction was issued to the second respondent to refer the first respondent to the Regional Medical Board. The Report of the Regional Medical Board was issued on 19.07.2011, mentioning that there was no lower limb disability and hence, the first respondent was not eligible for the admission to M.B.B.S.,/B.D.S., course as per MCI/DCI guidelines under the special category.

3.5. The impugned regulation, which provides for reservation for physical disability of the lower limbs pertaining to locomotory is extracted here under.

"33. Reservation of Posts - Every appropriate Government shall appoint in every establishment such percentage of vacancies not less than three per cent, for persons or class of persons with disability of which one percent 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."

4. Salient provisions of the Persons with Disabilities (Equal opportunities, Protection of Rights and Full Participation) Act, 1995:

4.1. The relevant provisions dealing with the definition of disability, locomotory disability under the Disabilities Act as well as Section 39 of the Persons with Disabilities (Equal opportunities, Protection of Rights and Full Participation) Act, 1995 (hereinafter referred to as the "Disabilities Act"), which provides for reservation of 3% seats for the persons with disabilities, are extracted hereunder.

Section 2(i) - "disability" means (i)blindness; (ii)low vision; (iii) leprosy-cured; (iv) hearing impairment; (v) locomotor disability; (vi)mental retardation; and (vii) mental illness.

Section 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.

Section 39 All Government Educational Institutions and other Educational Institutions receiving aid from the Government shall reserve not less than 3% seats for persons with disabilities.

5.The salient provisions of the Indian Medical Council Act, 1956:

5.1. The Indian Medical Council Act, 1956, paved way for the establishment of Medical Council of India. Section 19-A of the Indian Medical Council Act, 1956, provides that the appellant may prescribe the minimum standards of medical education in the country. Section 33 of the Act is the source of power to the appellant to make regulations.

5.2. The appellant framed regulations "Graduate Medical Education, 1997", by exercising power under Section 33 of the Indian Medical Council Act, 1956. The regulations did not originally provide for the reservation to the persons with disability. The appellant referred the question of the requirement to provide reservation for persons with disability to its Executive Committee in January, 2001 and a Sub Committee was constituted for framing guidelines in relation to admission for persons with disability in medical courses. The report of the Sub Committee was submitted and was duly considered by the Executive Committee in April, 2001. The Executive Committee also invited comments from expert bodies, such as, the Association of ENT Specialists, Ophthalmologists, Orthopedic Surgeons and General Surgeons on the report of the Sub Committee and meeting was convened with the experts on 24.05.2001. Subsequently, on 05.01.2001, the appellant wrote to the Commissioner of Disabilities informing them that the appellant had decided that reservation to the extent of 3% in medical courses would be available for the persons with locomotor disability of the lower limbs suffering disability of 40-60%. In this letter, the appellant explained that the Sub Committee, after internal discussions and consulting experts, concluded that visually handicapped persons and those with hearing impairment are not in a position to pursue the medical course and do the internship as vision and hearing is absolutely necessary to elicit various signs required in the practice of medicine. Similarly, those with locomotor disability in their upper limbs will not be in a position to elicit signs required for medicine and the upper limbs had to be normal. Hence, it was decided that only those with locomotor disability of the lower limbs should be eligible for reservation.

5.3. Pursuant to this decision, the appellant sent a letter dated 14.07.2003 to the Ministry of Health and Family Welfare, Secretaries of the Health Departments in all the States, Deans of all Medical Colleges, Registrars of all Universities and the Director General of Medical Education in all the States. In this letter the appellant stated that reservation should be available for the persons with locomotor disability of the lower limbs between 50-70% instead of a minimum of 40% prescribed earlier as it was

felt that purpose of providing reservation to disabled candidates would be served better by giving benefit to 50-70%. Further, the appellant reiterated its earlier stand that the persons who are visually handicapped or hearing impaired should not be considered for admissions in MBBS courses.

5.4. By way of a notification dated 25.03.2009, the appellant amended the Graduate Medical Regulations providing that if the 3% reservation is not filled by candidates with locomotor disability of the lower limbs between 50-70%, then the unfilled seats shall be filled by the persons with locomotor disability of the lower limbs between 40-50%. This amendment was made in pursuant to a suggestion made by the Hon'ble Supreme Court in Civil Appeal Nos.8447-8448 of 2010 dated 24.08.2011 (MCI V. Rashmi Ranjan) and the amended regulation was also approved by the Hon'ble Supreme Court.

6. Finding of the learned Single Judge:

6.1. The learned single Judge, while allowing the writ petition, incidentally issued certain directions to the appellant and as the said order is under challenge, we deem it appropriate to mention the findings rendered and the reasons based upon which the decision was arrived at.

6.2. Even though the amendment was made on the suggestion made by the Honourable Apex Court, the validity of the said amendment was never an issue before it. Therefore, there is no bar for the Court to test its constitutionality. The appellant cannot refrain from including all the disabilities mentioned under Section 2(i) of the Disabilities Act. The disabilities mentioned under Section 2(i) of the Disabilities Act are only illustrations and not exhaustive. Under Section 2(i) of the Disabilities Act, all disabilities are to be included other than those which were specifically mentioned. Consequently, Section 39 of the Disabilities Act which provides for reservation to the Educational Institutions has to include all kinds of disabilities. The classification of two categories of locomotor disability of lower limbs between 50-70 and 40% and above is unconstitutional and repugnant to the Disabilities Act. The Medical Board's Report does not state that the first respondent is not suffering from locomotor disability. The spinal deformity, in which, the first respondent is suffering shall have to be treated as a locomotor disbaility coming under the purview of the 2(o) of the Disabilities Act. There cannot be any classification restricting a locomotor disability to the lower limb alone. The learned single Judge made reliance upon the following judgments for coming to the conclusion arrived at by him.

(i) ALL KERALA PARENTS ASSOCIATION V. STATE OF KERALA (2002) (3) KLT 423(SC)

(ii)P.RAJAPRABAHARAN V. THE SECRETARY TO GOVERNMENT, HIGHER EDUCATION DEPARTMENT, CHENNAI (2005) STPL (LE Civil) 14883 Madras

(iii)SMT.ANJU TALUKDAR AND ANOTHER V. STATE OF ASSAM AND OTHERS (2008) STPL (LE Civil) 20773 GAAUHATI

(iv)STATE OF TAMIL NADU AND ANOTHER V. P.KRISHNAMURTHY AND OTHERS (2006) 4 Supreme Court Cases 517

(v)DR.DEVAL R.MEHTA V. UNION OF INDIA AND OTHERS (AIR 2011 Gujarath 33)

(vi) A Division Bench of Orissa High Court in D.S.RASHMI RANJAN V. STATE OF ORISSA in W.P.(C) Nos.7877 and 7878 of 2004 and

(vii)A Division Bench of our Honourable High Court in G.MUTHU V. THE MANAGEMENT OF TAMIL NADU STATE TRANSPORT CORPORATION (MADURAI) LTD., (2007 (1) Law Weekly 146).

Accordingly, the learned single Judge has set aside the impugned notification and prospectus in so far as the grant of reservation to the disability pertaining to the lower limb for the category of locomotor disability alone. Consequently, a direction was issued to the appellant to include all the other categories of disabled persons as provided under the Disabilities Act. The respondents therein including the appellant were directed to provide a seat in the M.B.B.S., Course for the year 2010-2011 to the first respondent forthwith. Challenging the said order, the present writ appeal has been filed. However, it is seen that respondents 2 and 3 herein have complied with the order of the learned single Judge by providing a seat to the first respondent, who is said to be in III year M.B.B.S., course at present.

7. The submissions of the appellant:

7.1 The submissions of the appellant are focussed upon the legal issues decided by the learned single Judge. The learned counsel appearing for the appellant would submit that the appellant viz., Medical Council of India, is the competent authority to prescribe standards for Medical Education in India. The regulations have been framed by appropriate delegation made in favour of the appellant as per law. The classification between 50-70% of disability of the lower limb locomotor disability and thereafter, to 40-50% has been approved by the Honourable Apex Court. The further classification of restricting it to the lower limbs of locomotor disability has also been approved by the Honourable Division Bench of Orissa High Court. What has been fixed by the appellant is in consonance of the disabilities Act and what is relevant is to give 3% reservation. The said regulation has been incorporated after analysing adequate materials. The appellant has appointed an Executive Committee and a Special Committee and thereafter, made the impugned regulations by accepting the recommendations.

Therefore, it is based upon empirical data. Hence, the order of the learned single Judge is contrary to law.

7.2. The learned counsel also contended that even assuming that the Disabilities Act would apply to Section 2(i) of the said Act, it is exhaustive. The word used in the said section is "means" and not "include". While interpreting a word, sentence or provision of a statute, a simple and plain meaning will have to be given. The judgment rendered by this Honourable Court in G.MUTHU V. THE MANAGEMENT OF TAMIL NADU STATE TRANSPORT CORPORATION (MADURAI) LTD., (2007 (1) Law Weekly 146) is distinguishable on facts. This Honourable Court has dealt with Section 47 of the Disabilities Act, as it was concerned with a disability acquired during employment. Hence, it was held that the said section is a code by itself. Therefore, the said judgment would not be applied to the case on hand.

7.3. According to the learned counsel, Indian Medical Council Act is a Special Act. It has got overriding effect over the General Act, which is the Disabilities Act. He further submitted that the learned Single Judge has committed an error in holding that a spinal disability would become a locomotor disability. The said finding is contrary to the definition of Section 2(o) of the Disabilities Act. The learned Single Judge has erroneously disregarded the Medical Board Certification dated 15.07.2011. Finally, the learned counsel submitted that in any case, the directions issued by the learned Single Judge are totally unwarranted. The directions are beyond the scope of the writ petition. It is not the Public Interest Litigation to issue such direction. The directions issued are unworkable and they would lead to very dangerous consequences. It would lead to inclusion of the persons, who are ineligible for admission to MBBS course. Therefore, he submitted that the writ appeal will have to be allowed.

8. The submissions of the respondents:

The learned counsels appearing for the respondents would submit that a wider import will have to be given while dealing with a social welfare legislation. The definition of Section 2(i) is illustrative and not exhaustive. Therefore, all disabilities will have to be included in the regulation and in the absence of the same, it would be repugnant to the Disabilities Act. Like Section 47 of the Act, Section 39 of the Act is also a self contained code and has overriding effect. The appellant does not have the power to have further classification between disabilities ranging from 50-70% and 40-50%. Such a classification is impermissible in law. The medical text would show that spinal deformity is also a

form of locomotor disability. The appellant does not even have the power to classify a locomotor disability between lower limb and upper limb. The first respondent is not barred from competing the open competition. Therefore, she cannot be prevented from being considered under the Special Category. Accordingly he submitted that the writ appeal will have to be dismissed, particularly, when the order of the learned Single Judge having been given effect to and the first respondent is in the half way in her studies. A further submission has been made that there is no serious objection among respondents 2 and 3 for the continuation of the M.B.B.S. Course by the first respondent.

9. DISCUSSIONS ON FACTS:-

9.1. In order to appreciate the facts in the right perspective, it is imperative to extract the report given by the Medical Board, which governs the case on hand. The Medical Board consist of experts, in and by its report dated 19.07.2011, has opined as follows:

"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 degree 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."

9.2. The said report dated 19.07.2011 was reiterated by way of the remarks dated 25.07.2011. It is apposite to extract the said remarks here under.

"The order passed by the Hon'ble High Court dated 15.07.2011 in W.P.No.16144 of 2011 has been placed before the Medical Board. The Medical Board scrutinised the medical report given by Professor Dr.S.Subbiah, Ortho Surgeon and others dated 7.5.2011.

As per the certificate issued by Professor S.Subbiah, orthopaedic Surgeon to candidate Divya, the diagnosis stated that she is short statured and has xyphoscoliosis which denotes that the person is disabled (Spinal deformity).

The board constituted on 19.07.2011 with Dr.Rajendran and others also state that the petitioner has deformity of the spine (Lordo Scoliosis).

But as per the guidelines of the Hon'ble Supreme Court of India and the Medical Council of India only candidates with orthopaedic disabilities of the lower Limbs alone are eligible to be admitted in MBBS under the Special Category of Orthopedically physically disabled.

The petitioner is not eligible to be allotted a seat under the special category for orthopedically 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.

The present Medical Board find that the petitioner's disability has to be once again ascertained by the selection committee bearing in mind the certificate mentioned above and finally decided that the candidate P.Divya is not eligible for admission to MBBS/BDS course as per MCI/DCI guidelines."

9.3. The learned single Judge, in our considered view, has totally misunderstood and misinterpreted the opinion of the Medical Board. A locomotor disability has been clearly defined under the Act 1 of 1996. It deals with disability of bones, joins or muscles leading to substantial restriction of the movements of limbs or any form of cerebral palsi. We do not find the case of the first respondent to be fitted into any of the categories mentioned in the said definition clause. The report does not say that the first respondent was suffering from locomotor disability. When the first respondent does not suffer from locomotor disability, it is not open to her to question the clause which restricts the reservation to the lower limb of locomotor disability. Equally it is not open to her to question the classification of percentage of locomotor disabilities (i) between 50-70% and (ii) between 40-50%. That is the reason why it was remarked that the first respondent can compete in the open category. There is also no bar for her to compete in the open category. If she actually suffers from the locomotor upper limb disability thus she cannot perform the role of a medical student or a doctor as seen from the communication of the appellant based on expert's report. It is settled law that this Court cannot substitute its views over a decision taken by the experts on a proper analysis on materials available before them. Hence on facts, we are of the view that the first respondent does not have any locus to challenge the impugned regulation in so far as the classification and the restriction regarding lower limb of locomotor disability is concerned.

10. LEGAL ISSUES:

10.1 This takes us to the next issue which is legal in nature. In this connection, there are two legal issues that have arisen before this Court for consideration. The first issue is on the question of inclusion of any other physical disability not mentioned under Section 2(i) of the Act. In other words, in

the absence of any express inclusion, can that disability be included into Section 2(i). The second legal issue is as to whether the first respondent, as a matter of right, can seek such an inclusion and, in the absence of the same, whether the regulation would become unconstitutional. It also includes another ancillary issue as to whether the appellant has got the power to exclude any other disabilities as mentioned under the Act 1 of 1996 while implementing the Rule of Reservation.

RULE OF INTERPRETATION:

10.2. Section 2 of Act 1 of 1996 starts with the words "unless the context otherwise requires". The definition of Section 2(i) of the Act deals with seven categories. Now, we are concerned with the word "means" mentioned in Section 2(i), which has to be interpreted as to whether it is illustrative or exhaustive. Admittedly, Act 1 of 1996 is a Social welfare Legislation. It is meant for providing equality to the disabled persons. Therefore, while construing the provision of law, which is a piece of a welfare legislation, a technical, narrow, limited restrictive and pedantic interpretation has to be eschewed. The issue involved therein on the interpretation of Section 2(i) is no longer res integra. A Division Bench of this Court in G.MUTHU V. THE MANAGEMENT OF TAMIL NADU STATE TRANSPORT CORPORATION (MADURAI) LTD., (2007 (1) Law Weekly 146), while considering the scope and ambit of Section 2(i) as to whether it is illustrative or exhaustive, was pleased to held as follows:

"18. Therefore, we are unable to accept the arguments of the learned counsel appearing for the respondent and we are in full agreement with the submissions made by the learned counsel appearing for the appellant in this regard. As pointed out by the learned counsel appearing for the appellant, since the opening phrase of Section 2 reads "unless the context otherwise requires" purposive construction to definition clause has to be adopted. The court should not only look at the words but also look at the context, the collocation and the object of such words relating to such matter and interpret the meaning intended to convey by the use of words under such circumstances. Thus a rigorous, literal and pedantic interpretation need not be attributed to Section 2(i) of the Act. We are, therefore, of the opinion that the intention of the law makers is not to restrict only to those categories of persons mentioned in Section 2(i) of the Act alone to be entitled to the benefits under the Act. If justifiable and reasonable approach is to be made, then it has to be held that Section 2(i) of the Act is not exhaustive."

10.3. It is settled proposition of law that while construing a provision, the statute has to be read as a whole. When an interpretation makes the statute unworkable, defeating the very intention of the legislation, the same has to be avoided. A natural interpretation in conformity with the scheme of the

Act and the intentment of the legislation has to be adopted. In this connection, it is useful to refer to the classical paragraph of the Honourable Supreme Court in the words of Justice O.Chinnappa Reddy in RBI V. PEERLESS GENERAL GINANCE AND INVESTMENT COMPANY LIMITED (1987) 1 Supreme Court Cases 424, which reads thus.

33. Interpretation must depend on the text and the context. They are the bases of interpretation. One may well say if the text is the texture, context is what gives the colour. Neither can be ignored. Both are important. That interpretation is best which makes the textual interpretation match the contextual. A statute is best interpreted when we know why it was enacted. With this knowledge, the statute must be read, first as a whole and then section by section, clause by clause, phrase by phrase and word by word. If a statute is looked at, in the context of its enactment, with the glasses of the statute-maker, provided by such context, its scheme, the sections, clauses, phrases and words may take colour and appear different than when the statute is looked at without the glasses provided by the context. With these glasses we must look at the Act as a whole and discover what each section, each clause, each phrase and each word is meant and designed to say as to fit into the scheme of the entire Act. No part of a statute and no word of a statute can be construed in isolation. Statutes have to be construed so that every word has a place and everything is in its place. It is by looking at the definition as a whole in the setting of the entire Act and by reference to what preceded the enactment and the reasons for it that the Court construed the expression Prize Chit in Srinivasa and we find no reason to depart from the Court's construction. (emphasis supplied)

10.4. Similarly, the Honourable Apex Court in AFJAL IMAM V. STATE OF BIHAR AND OTHERS (2011) 5 Supreme Court Cases 729, after quoting the earlier pronouncement rendered by Justice O.Chinnappa Reddy was pleased to held as follows:

(b) In Union of India v. Filip Tiago De Gama of Vedem Vasco De Gama K. Jagannatha Shetty, J. observed as follows (in SCC para 16): (SCC p. 284)

16. The paramount object in statutory interpretation is to discover what the legislature intended. This intention is primarily to be ascertained from the text of enactment in question. That does not mean the text is to be construed merely as a piece of prose, without reference to its nature or purpose. A statute is neither a literary text nor a divine revelation. Words are certainly not crystals, transparent and unchanged as Mr Justice Holmes has wisely and properly warned. (Towne v. Eisner, US at p. 425) Learned Hand, J., was equally emphatic when he said: Statutes should be construed, not as theorems of Euclid, but with some imagination of the purposes which lie behind them. (Lenigh Valley Coal Co. v. Yensavage, FR at p. 553.)(emphasis supplied)

(c) In Anwar Hasan Khan v. Mohd. Shafi R.P. Sethi, J. quoted the above paragraph in Filip Tiago De Gama with approval prior whereto he observed as follows (in SCC para 8): (Anwar Hasan case, SCC pp. 543-44)

8. It is settled that for interpreting a particular provision of an Act, the import and effect of the meaning of the words and phrases used in the statute have to be gathered from the text, the nature of the subject-matter and the purpose and intention of the statute. It is a cardinal principle of construction of a statute that effort should be made in construing its provisions by avoiding a conflict and adopting a harmonious construction. The statute or rules made thereunder should be read as a whole and one provision should be construed with reference to the other provision to make the provision consistent with the object sought to be achieved. The well-known principle of harmonious construction is that effect should be given to all the provisions and a construction that reduces one of the provisions to a dead letteris not harmonious construction.(emphasis supplied)

52. This rule of harmonious construction has been adopted by this Court from time to time. In N.T. Veluswami Thevar v. G. Raja Nainar, a Bench of three Judges of this Court (consisting of T.L. Venkatarama Aiyar, P.B. Gajendragadkar and A.K. Sarkar, JJ.) was dealing with a matter concerning the election to the Legislative Assembly of the then State of Madras held in the year 1957. In that case arising under the Representation of the People Act, 1951, the Supreme Court held that if the Returning Officer had rejected a nomination paper of a candidate on one disqualification, it was open for the Election Tribunal to find the rejection proper on some other ground of disqualification which may not have been raised before the Returning Officer. It was pointed out that if this construction is not placed on Section 100(1)(c) of the Act, the result will be anomalous in that if the decision under Section 36(6) of the Returning Officer on the objection on which he rejected the nomination paper is held to be bad, the Tribunal will have no option but to set aside the election under Section 100(1)(c) even though the candidate was disqualified and his nomination paper was rightly rejected.

53. In holding so, Venkatarama Aiyar, J. observed as follows in AIR para 13: (N.T. Veluswami case, AIR pp. 427-28)

13. It is no doubt true that if on its true construction, a statute leads to anomalous results, the courts have no option but to give effect to it and leave it to the legislature to amend and alter the law. But when on a construction of a statute, two views are possible, one which results in an anomaly and the other, not, it is our duty to adopt the latter and not the former, seeking consolation in the thought that the law bristles with anomalies.

54. In S.V. Kandeakar v. V.M. Deshpande a Constitution Bench of this Court was concerned with the construction of Section 446(1) of the Companies Act, 1956 which provides that when a winding-up order has been made or the Official Liquidator has been appointed, no suit or legal proceedings shall be commenced or continued against the company except with the leave of the court, the Supreme Court held that assessment proceedings under the Income Tax Act do not fall within the section. This conclusion was reached on the ground that only such proceedings fall under Section 446(1) which could appropriately be dealt with by the winding-up court under Section 446(2). In AIR para 7 of the judgment for the Bench I.D. Dua,J. observed as follows:(SCC p. 449, para 17)

17. It would lead to anomalous consequences if the winding up court were to be held empowered to transfer the assessment proceedings to itself and assess the company to income tax.

11.DEFINITION OF 'MEANS".

Coming to the definition dealing with the word "means" it has been held in EXECUTIVE ENGINEER, SOUTHERN ELECTRICITY SUPPLY COMPANY OF ORISSA LIMITED (SOUTHCO) AND ANOTHER V. SRI SEETARAM RICE MILL (2012) 2 Supreme Court cases 108 in the following manner.

"56. As is obvious from the bare reading of the above provision, the provision used the expression untoward incident means and under clause (2) of that provision accidental falling of any passenger from a train carrying passengers is included. If it was to be understood as an absolute rule of law that the use of the term means unexceptionally would always require an exhaustive interpretation of what is stated in or can be construed to that provision, then a person who was climbing on the train which was carrying passengers and who meets with an accident, would not be covered. However, this Court in Prabhakaran case, while repelling this contention, held that by adopting a restrictive meaning to the expression accidental falling of any passenger from a train carrying passengersin Section 123(c) of the Railways Act, 1989, this Court would be depriving a large number of railway passengers from receiving compensation in railway accidents.

57. Treating the statute to be a beneficial piece of legislation, this Court applied purposive interpretation, while observing as under: (Prabhakaran case, SCC p. 533, para 11)

11. No doubt, it is possible that two interpretations can be given to the expression accidental falling of a passenger from a train carrying passengers, the first being that it only applies when a person has actually got inside the train and thereafter falls down from the train, while the second being that it includes a situation where a person is trying to board the train and falls down while trying to do so. Since the provision for compensation in the Railways Act is a beneficial piece of legislation, in our

opinion, it should receive a liberal and wider interpretation and not a narrow and technical one. Hence, in our opinion the latter of the abovementioned two interpretations i.e. the one which advances the object of the statute and serves its purpose should be preferred vide Kunal Singh v. Union of India16 (SCC para 9), B.D. Shetty v. Ceat Ltd. (SCC para 12) and Transport Corpn. of India v. ESI Corpn.

58. The above judgments clearly support the view that we have taken with reference to the facts and law of the present case. It cannot be stated as an absolute proposition of law that the expression means wherever occurring in a provision would inevitably render that provision exhaustive and limited. This rule of interpretation is not without exceptions as there could be statutory provisions whose interpretation demands somewhat liberal construction and requires inclusive construction. An approach or an interpretation which will destroy the very purpose and object of the enacted law has to be avoided. The other expressions used by the legislature in various sub-clauses of Explanation (b) of Section 126 of the 2003 Act are also indicative of its intent to make this provision wider and of greater application. Expressions like any artificial means, by a means not authorised by the licensee, etc. are terms which cannot be exhaustive even linguistically and are likely to take within their ambit what is not specifically stated. For example, any artificial means is a generic term and so the expression meanswould have to be construed generally."

Therefore considering the abovesaid pronouncement of law and taking note of the object and reasoning behind the enactment with the legislation being a Social Welfare Legislation, we hold that the definition of "means" as mentioned in Section 2(i) of the Act as illustrative.

12. LOCUS STANDI:

The next question for consideration is as to whether the first respondent has got any right to challenge the regulation or not. As narrated above, the impugned regulation has been introduced by the appellant with the sole object implementing Section 39 of the Act 1 of 1996. An Expert Committee was constituted and its recommendations were accepted. The committee has considered the disabilities mentioned under the Act 1 of 1996 and excluded some of them such as blindness, hearing impairment and mental retardation etc. Such an exclusion can be express or implied. For example, a mental retardation was not considered as it is not even necessary to do so since it is absolutely impossible to include it. We do not find any illegality in the said method adopted by the appellant. What is important is the implementation of the provisions of Act 1 of 1996. Such a provision will have to be a substantive one. In other words, taking note of the fact that the appellant is the competent authority to prescribe the qualification and standard being an expert body, it cannot be said that it is

bound to take all disqualifications even though persons having such disqualification cannot undergo the study in the field of medicine. While interpreting two enactments, a harmonious approach has to be made. Admittedly in this case, the private respondent does not question the power or authority of the appellant to frame regulations. The attack is on the restrictive implementation of Section 39 of the Act only. Therefore, applying the Rule of harmonious and purposive construction, we have no difficulty in holding the impugned regulation as valid in law. Admittedly, the appellant has implemented Section 39 of the Act by reserving 3% of the seats to the disabled persons. We do not find any repugnancy between Section 39 of the Disabilities Act and the impugned regulations. Taking into consideration of the principles governing the interpretation of statute, we find that both of them have to be read together to make them workable without any possible conflict. While deciding the constitutionality of a provision, this Court cannot test it on the factual premise of an individual case. In other words, a mere hardship of an individual cannot be the basis for testing the constitutional validity of a provision. In this connection, it is useful to quote the following passage of the Honourable Apex Court in AVISHEK GOENKA (2) V. UNION OF INDIA AND ANOTHER (2012) 8 Supreme Court Cases 441.

"The interpretation of law is not founded on a single circumstance, particularly, when such circumstance is so very individualistic. The Court is not expected to go into individual cases while dealing with interpretation of law. It is a settled canon of interpretative jurisprudence that hardship of few cannot be the basis for determining the validity of any statute. The law must be interpreted and applied on its plain language (Ref: Saurabh Chaudri V. Union of India)."

13. When the experts are of the view that certain categories of the persons cannot perform the role of a student or a Doctor, then it is well within the powers of the appellant to restrict them based upon the said opinion. While this Court has got every sympathy for disabled persons, the overwhelming public interest has to be seen, particularly, when such persons cannot perform the role assigned to them.

14. The records would show that the disability in spinal card was not taken into consideration by the appellant. However, the said fact cannot be a ground to challenge a provision of law. The private respondent, at best, can seek a direction to consider the disability faced by her to be included in the regulation for the purpose of reservation. There may also be numerous disabilities, which have not been considered by the appellant. However, the question as to whether the disabilities deserves to be

considered under the special category so as to enable the candidates suffering to get benefit under Act 1 of 1996 is an issue, which can be considered by the appellant alone.

15. CONCLUSION:

15.1. It is not as if the disability suffered by the private respondent was considered by the appellant and rejected on an extraneous consideration. On the contrary the said exercise is yet to be done. Further more, the appellant has considered the other disabilities expressly mentioned under the Act, but chose to implement Section 39 of the Act only to the lower limb of locomotor disability alone. The learned Single Judge, in our considered view, went beyond the scope of the writ petition and issued directions to include all disabilities for the purpose of giving benefit under Section 39 of the Act. Such a direction would lead to disastrous consequences, particularly, when a prayer in that regard has not been sought for in the writ petition. It is nobody's case that the disabilities which have been excluded would not stand in the way of the persons concerned from performing their duties as students of medicine and thereafter as Doctors. The appellant is the best person to decide the said issue. Therefore, we are also of the view that the directions given by the learned Single Judge to include all disabilities under the Act 1 of 1996 cannot be sustained.

15.2. Similarly, the findings of the learned single Judge regarding the classification made between locomotor disability, upper limb or lower limb and the percentage fixed for the lower limb also deserve to be set aside, as we find that such issues are not very much necessary for the purpose of deciding this appeal. This we hold so, because of our finding based on the Medical Board's Report that the private respondent does not suffer from any locomotor disability. Further more, we do not find any arbitrariness in the decision made by the appellant in this regard.

15.3. However, we have come to know that the private respondent is completing nearly two years of studies, therefore, by not allowing her to continue, nobody would be benefitted and the seat is also not going to be filled up. It is also not in public interest. Further, there was no bar for her to participate in the open competition. In other words, she can perform the role of a student of medicine without any difficulty. The other respondents have also not challenged the order of the learned single Judge. The order of the learned single Judge was also given effect to. Even the appellant does not have any serious objection for the continuance of the private respondent in the medical course in view of the

peculiar facts of the case. Hence, we are not inclined to interfere with the order of continuing the course in respect of the first respondent at this stage.

W.A.No.2449 of 2011

16. This writ appeal has been filed by the appellant against the dismissal of the writ petition in W.P.No.8778 of 2011 dated 29.06.2011 seeking to quash the prospectus issued by the third respondent restricting the special category to locomotor disabilities pertaining to lower limbs.

17. In this case also, the appellant was suffering from spinal disability. However, she was allowed to get a seat for under graduation in Medicine under "special category" and she also completed the course. When she applied for the P.G. Course, her case was rejected based upon the regulation 4(3) of the fourth respondent. Thereafter, she has come before this Court by filing the writ petition. The learned single Judge has dismissed the writ petition on the ground that the impugned clause in the prospectus is made in consonance with the regulation of the Medical Council of India. Challenging the same, the present writ appeal has been filed.

18. Submissions of the learned counsel for the appellant:

The learned counsel for the appellant would submit that the order passed in the connected writ petition by the learned Single Judge is also under challenge before us and the same would apply to the case of the appellant as well. She was, in fact, considered for the Diploma in Post Graduation course in the earlier occasion, but she did not opt for it as she aimed for the Post Graduate seat. The fact that the appellant is suffering from spinal disability is not in dispute. The learned counsel has also submitted that the regulation was not challenged in view of the fact that it was found to be unconstitutional by the learned Single Judge in the connected writ petition. In view of the fact that the right of education is the fundamental right, the challenge to the prospectus after participating in the selection process cannot prevent the appellant from seeking appropriate relief. Hence, the learned counsel submitted that the writ appeal will have to be allowed.

19. Submission of the learned counsel for the respondents:

The learned counsel appearing for the fourth respondent would reiterate the submissions made in W.A.No.2229 of 2011. A further submission has also been made that the appellant cannot seek to include herself as a matter of right and she has not challenged the impugned regulation. The prospectus

also cannot be challenged since after accepting the same, the appellant was called for and participated in the selection process. Therefore, the learned counsel appearing for the fourth respondent would submit that the writ appeal will have to be dismissed.

20. As rightly found by the learned Single Judge, the appellant has not challenged the notification issued by the fourth respondent-Medical Council of India. Merely because the appellant was allowed to get a seat under the special category, it will not create vested right to seek admission in the P.G. Course in the same category. It is settled law that Article 14 of the Constitution of India is positive in nature and an illegality committed will not enure to the benefit. The appellant was found by the Medical Board as not suffering from locomotor disability. The notification was issued by the other respondents in pursuant to the regulation of the Medical Council of India. In view of the discussions made in the connected writ appeal, which is related to this appeal also, and the relief sought for in this writ appeal has also become infructous as the academic year for which the appellant sought for admission is also over long time back, we do not find any reason to interfere with the order of the learned single judge.

21. In fine, the writ appeal in W.A.No.2229 of 2011 is allowed. No costs. However, we make it clear that the first respondent is entitled to continue her studies and complete the course. We also direct the appellant to consider any other disability not specifically mentioned in the Act 1 of 1996, if in its opinion, such disability is also required to be included for the purpose of reservation under special category. The said exercises will have to be done by the appellant before the academic year 2014-2015.

22. In the light of the discussions made above, W.A.No.2449 of 2011 is dismissed. No costs.