

**Omkar Vs. The Union Of India**

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**Court :** Supreme Court of India

**Decided On :** Oct-15-2024

**Judge :** Hon'Ble Mr. Justice B.R. Gavai Hon'Ble Mr. Justice K.V. Viswanathan

**Appeal No. :** C.A. No.-010611-010611 - 2024

**Appellant :** Omkar

**Respondent :** The Union Of India

**Advocate for Pet/Ap. :** PULKIT AGARWAL \_\_

**Judgement :**

2024 INSC775REPORTABLE IN THE SUPREME COURT OF INDIA CIVIL APPELLATE JURISDICTION CIVIL APPEAL No.10611 OF2024 Omkar Ramchandra Gond Appellant (s) Versus The Union of India & Ors. ...Respondent(s)

## **JUDGMENT**

**K.V. Viswanathan, J.**

1. Omkar Ramchandra Gond (the appellant) grew up in a middle-class family in the city of Latur in Maharashtra State. His father is a government servant. The appellant had a creditable academic performance in his tenth standard scoring 97.2%. He cleared his school final in the first division. The appellant aspired to be

a doctor. Nothing wrong with it, except that he had to surmount a few legal hurdles enroute. 1

2. Admittedly, the appellant has speech and language disability and is diagnosed with Hypernasality with Misarticulation IN K/C/O Repaired Bilateral CLEFT of palate. The appellant is certified to have 45% (in some reports, it was mentioned as 44%) permanent disability as per the Disability Certificate dated 18.05.2017.

3. The appellant applied for the National Eligibility Cum Entrance Test NEET (UG), 2024 for admission to MBBS Course from the category of Persons with Disability (for short PwD) and Other Backward Classes (OBC) on 18.02.2024.

4. The application form had a disclaimer clause which stated that the eligibility under the PwD Category was purely provisional and was to be governed as per the National Medical Commission (NMC) guidelines regarding admission of students with specified disabilities under the Rights of Persons with Disabilities Act, 2016 (for short RPwD Act). 2

5. The appellant appeared for the NEET (UG) held on 05.05.2024 and qualified the entrance examination. The Schedule for Centralized Admission Process (CAP) Round-I counseling for admission was notified on 20.08.2024. The appellant applied for the centralized admission process and claimed reservation under the OBC and the PwD category. In the provisional merit list published on 26.08.2024, the name of the appellant figured at 42091. Under the Information brochure, candidates with disability have to submit a disability certificate issued for the year 2024 and have to undergo medical examination at the Disability Assessment Board.

6. The appellant approached the Designated Disability Certification Centre at Sir JJ Group of Hospitals on 16.08.2024. The Certification Centre certified that the appellant has physical disability of speech and language of 44% (in some reports, it was mentioned as 45%) and recorded that based on quantification of disability, the 3 appellant was not eligible to pursue the medical course as per NMC norms. In view of that, the appellant was rendered ineligible person to obtain PwD reservation or to pursue medical course as per the NMC Gazette notification.

7. The Board of Governors of the Medical Council of India, the previous avatar of the NMC, had amended the Graduate Medical Education Regulations, 1997, vide notification dated 13.05.2019. The existing Appendix H was substituted with Appendix H-1 providing for guidelines regarding admission to students with specified disabilities under the RPwD Act with respect to admission in MBBS course. As per clause 1(D) thereof, persons who have equal to or more than 40% disability were not eligible for Medical Course. The relevant clause of the schedule is extracted hereinbelow:-

| Type of Disability          | Range                    | Disabilities Eligible for          |
|-----------------------------|--------------------------|------------------------------------|
| Speech Organic/neurological | Less than 40%            | Eligible for Medical Course        |
| Speech Organic/neurological | Equal to & more than 40% | Not Eligible for Medical Course    |
| Language causes disability  | Less than 40%            | Eligible for Medical PwD Quota     |
| Language causes disability  | Equal to & more than 40% | Not Eligible for Medical PwD Quota |

D. Persons with Speech Intelligibility Affected (SIA) shall be eligible to pursue MBBS Courses, provided Speech Intelligibility Affected (SIA) score shall not exceed 3 (three), which is 40% or below. Persons with Aphasia shall be eligible to pursue MBBS Courses, provided Aphasia Quotient (AQ) is 40% or below. Proceedings before the High Court:

8. Disappointed but by no means dispirited, the appellant moved the High Court of Judicature at Bombay in writ petition being W.P. Stamp No.24821 of 2024 contending that the Medical Council of India/NMC is not empowered to lay down eligibility criteria in such a manner as to altogether take away the benefits under the RPwD Act. Challenging the notification dated 13.05.2019 as well as the certificate issued by the Disability Certification Centre rendering him ineligible for pursuing the MBBS Course only on the ground of disability exceeding 40% without anything more, the appellant also sought interim relief permitting him to participate in the centralized admission process in admission to MBBS Course without considering the certificate issued by the Disability Certification Centre - Sir J.J.

Group of Hospitals, Mumbai pending final disposal of the writ petition.

9. The appellant contended that there is nothing which would show he is not competent to pursue the course. The appellant also alleged discrimination. By the order of 29.08.2024, the High Court simply stood over the matter to 19.09.2024 and did not pass any interim order.

10. Running against time as the last date for submitting the choice for admission was 29.08.2024 and since the results of the CAP Round-I were to be declared on 30.08.2024, the appellant with great alacrity moved this Court seeking urgent reliefs. 6 Interim order by this Court:

11. When the matter came up on 02.09.2024, this Court, after hearing the counsel for the NMC, passed an order directing that the seat which the appellant would have been entitled, if rendered eligible, be kept vacant. This Court also directed the Dean, Byramjee Jeejeebhoy Government Medical College and Sassoon General Hospital, Pune to constitute a Medical Board consisting of one or more specialists, having domain expertise pertaining to the appellants disability. The Medical Board was to specifically examine whether the speech and language disability of the appellant would come in his way of pursuing the MBBS Degree Course. This course of action was previously adopted in another case with similar facts in Writ Petition (C) No.793 of 2022 (Vibhushita Sharma vs. Union of India & Ors). 7 Opinion of the Medical Board:

12. Ultimately, since the B.J Government Medical College did not have the facility, the task was entrusted to Maulana Azad Medical College, Government of NCT of Delhi. The report has since been received and the Medical Board has opined that the Appellants speech and language disability would not come in the way of the appellant pursuing the MBBS Course, which is extracted hereinbelow:- As directed by the Honble Supreme Court of India, the medical examination of the petitioner, namely, Sh. Gond Omkar Ramchandra was conducted in the department of ENT(Room No.609) by the above mentioned members of the Medical Board. Findings of the examinations are attached (OPD-116574108). The Board is of the opinion that the Speech & Language disability of the Petitioner namely Sh. Gond Omkar Ramchandra would not come in the way of pursuing the MBBS Course. (Emphasis Supplied) 13. We have heard Mr. S. B. Talekar, learned counsel for the appellant and Mr. S.D. Sanjay, learned Additional Solicitor General for the Union of India and Mr. Gaurav Sharma, learned senior counsel for the NMC. 8

14. This Court made the following order on 18.09.2024:- 1. Leave granted.

2. For the reasons to be recorded separately, the appeal is allowed.

3. The appellant is directed to be admitted against the seat, which was directed to be kept vacant as per the orders passed by this Court. Question before the Court:

15. Merely because the disability is quantified at 44%/45%, should the appellant be disqualified to obtain admission under the PwD Category for the MBBS Course?. Analysis and Reasoning:

16. Article 41 in the Directive Principles of State Policy reads as under: 41. Right to work, to education and to public assistance in certain cases.- The State shall, within the limits of its economic capacity and development, make effective provision for securing the right to work, to education and to public assistance in cases of unemployment, old age, sickness and disablement, and in other cases of undeserved want. (Emphasis Supplied) 9 As is clear, it is the Constitutional goal of our nation that within the limits of its economic capacity and development, the State was to make effective provisions for securing the right to education including for the persons with disabilities.

17. The Rights of Persons with Disabilities Act, 2016 replaced the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation), Act 1995. The 2016 Act was a sequel to the United Nations Convention on the Rights of Persons with Disabilities. The Convention laid down principles to be followed by the States Parties for empowerment of persons with disabilities. The Convention laid down the following principles for empowerment of persons with disabilities, which the Act seeks to implement:- (i) respect for inherent dignity, individual autonomy including the freedom to make ones own choices, and independence of persons; (ii) Non-discrimination; (iii) full and effective participation and inclusion in society; 10 (iv) respect for difference and acceptance of persons with disabilities as part of human diversity and humanity; (v) equality of opportunity; (vi) accessibility; (vii) equality between men and women; (viii) respect for the evolving capacities of children with disabilities and respect for the right of children with disabilities to preserve their identities; (Emphasis supplied) 18. The RPwD Act has several salutary provisions. For the purpose of our case, special emphasis needs to be provided on Sections 2(m), 2(r), 2(y), 3, 15 and 32. They are extracted herein below. 2(m) inclusive education means a system of education wherein

students with and without disability learn together and the system of teaching and learning is suitably adapted to meet the learning needs of different types of students with disabilities; 2(r) "person with benchmark disability" means a person with not less than forty per cent of a specified disability where specified disability has not been defined in measurable terms and includes a person with disability where specified disability has been defined in 11 measurable terms, as certified by the certifying authority; 2(y) "reasonable accommodation" means 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; 3. Equality and non-discrimination.- (1) The appropriate Government shall ensure that the persons with disabilities enjoy the right to equality, life with dignity and respect for his or her integrity equally with others. (2) The appropriate Government shall take steps to utilise the capacity of persons with disabilities by providing appropriate environment. (3) No person with disability shall be discriminated on the ground of disability, unless it is shown that the impugned act or omission is a proportionate means of achieving a legitimate aim. (4) No person shall be deprived of his or her personal liberty only on the ground of disability. (5) The appropriate Government shall take necessary steps to ensure reasonable accommodation for persons with disabilities.

15. Designation of authorities to support.- (1) The appropriate Government shall designate one or more authorities to mobilise the community and create social awareness to support persons with disabilities in exercise of their legal capacity. (2) The authority designated under sub-section (1) shall take measures for setting up suitable support 12 arrangements to exercise legal capacity by persons with disabilities living in institutions and those with high support needs and any other measures as may be required.

32. Reservation in higher educational institutions.- (1) All Government institutions of higher education and other higher education institutions receiving aid from the Government shall reserve not less than five per cent seats for persons with benchmark disabilities. (2) The persons with benchmark disabilities shall be given an upper age relaxation of five years for admission in institutions of higher

education.

19. It is in pursuance of the 5% reservation provided for the persons with disabilities that the appellant applied for the MBBS course under the said category. He cleared the exam, however, was denied admission on the ground that his quantified disability was 44%/45%.

20. The Appendix H-I extracted above provides a peculiar scenario. While people with less than 40% disability are not eligible for PwD quota, though they can pursue the Medical Course, persons with equal to or more than 40% disability are not eligible for the medical course. Read literally, while persons with speech and language disability with less than 13 40% are not entitled to the reserved quota, if they have 40% or more disability they are rendered ineligible for the medical course. The column under the guidelines Eligible for Medical Course, Eligible for PwD quota is left blank reinforcing the absurd position that under this category no one is rendered eligible for the 5% reserved quota. Certainly that cannot be the legal position.

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. 14

22. In *State of Gujarat and Another vs. Ambica Mills Ltd., Ahmedabad and Another*, (1974) 4 SCC656 it was held that an over-inclusive classification includes not only those who are similarly situated with respect to the purpose but others who are not so situated as well. Among those with disability percentage of 40% or above in the category of speech and language disabilities, there will be individuals like the appellant to whom the disability may not come in the way of pursuing the particular educational course in question. Lumping together persons with benchmark disabilities who can pursue the educational course with those with the

same disabilities who, in the opinion of the Medical Board, cannot pursue the course would tantamount to over inclusion. This is precisely what Article 14 frowns upon.

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 15 prescribed limits, a person automatically becomes ineligible for the medical course.

24. Dealing with an absolute bar imposed on women in seeking criteria or command appointments, this Court, while finding that such prescription fell foul of Article 14 held that implicit in the guarantee of equality is the principle that where the action of the State does differentiate between two classes of person, it does not differentiate them in an unreasonable or irrational manner. This Court further held that the right to equality is a right to rationality and whether a particular candidate should or should not be granted, could be a matter for the competent authority to decide but a blanket non-consideration of women for criteria or command appointments absent an individuated justification was not sustainable in law (See *Secretary, Ministry of Defence v. Babita Puniya and Others*, (2020) 7 SCC469(para

85) 25. A Constitutional Court examining the plea of discrimination is mandated to consider whether real equality 16 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.

26. This Court in *Khandige Sham Bhat and Anr vs. Agricultural Income-tax Officer, Kasaragod, and Anr*, AIR 1963 SC591observed as under: 7. Though a law ex facie appears to treat all that fall within a class alike, if in effect it operates unevenly on persons or property similarly situated, it may be said that the law

offends the equality clause. It will then be the duty of the court to scrutinise the effect of the law carefully to ascertain its real impact on the persons or property similarly situated. Conversely, a law may treat persons who appear to be similarly situated differently; but on investigation they may be found not to be similarly situated. To state it differently, it is not the phraseology of a statute that governs the situation but the effect of the law that is decisive. If there is equality and uniformity within each group, the law will not be condemned as discriminative, though due to some fortuitous circumstance arising out of a peculiar situation some included in a class get an advantage over others, so long as they are not singled out for special treatment.

27. Similarly, in *Lieutenant Colonel Nitisha & Ors. vs. Union of India & Ors.*, (2021) 15 SCC125 this Court observed as under: 52. We must clarify here that the use of the term indirect discrimination is not to refer to discrimination which is remote, but is, instead, as real as any other form of discrimination. Indirect discrimination is caused by facially neutral criteria by not taking into consideration the underlying effects of a provision, practice or a criterion

28. In fact, the One Size Fits All theory in deciding eligibility of persons with disability to avail the benefit of reserved seats was questioned first in *Ravinder Kumar Dhariwal & Anr. vs. Union of India and Others*, (2023) 2 SCC209 wherein this Court had the following to say: - 77. Since disability is a social construct dependent on the interplay between mental impairment with barriers such as social, economic and historical among other factors, the one-size-fits-all approach can never be used to identify the disability of a person. Disability is not universal but is an individualistic conception based on the impairment that a person has along with the barriers that they face. Since the barriers that every person faces are personal to their surroundings - interpersonal and structural, general observations on how a person ought to have behaved cannot be made.

29. Close on the heels of *Ravinder Kumar Dhariwal* (supra) came an order of this Court in Writ Petition (C) No.856 of 2023 [*Bambhaniya Sagar Vasharambhai vs. Union of India & Ors.*]. In the said writ petition, by order dated 22.09.2023, in Para 13, this Court opined as under: 13. In the opinion of this Court in cases even of

specified disabilities, in all cases the standard of 40% may result in one size fit all norm which will exclude eligible candidates. The Union, therefore, shall consider the steps to mitigate such anomalies, because a lower extent of disabilities bar benefits and at the same time render them functional, whereas higher extent of disability would entitle benefits, but also result in denying them the benefit of reservation. The National Commission and the Central Government are directed to consider the problem and work out suitable solutions to enable effective participation.

30. Though ultimately Writ Petition (C) No.856 of 2023 was dismissed on 31.10.2023, the issue with regard to finding a suitable solution to facilitate the effective participation of persons with disabilities by the Central Government, as suggested in the order of 22.09.2023, was directed to be complied with.

31. It must be said to the credit of the Union of India that the directions of this Court in *Bambhaniya* (Supra) was carried forward and the Government of India through the Ministry of Social Justice and Empowerment issued a communication dated 25.01.2024 to the National Medical Commission.

32. The communication was placed on record by Mr. S.D. Sanjay, learned ASG. The Government of India mentioned in the communication that the National Medical Commission was obliged to take into account the developments in aids and assistive devices and also in other technologies which are capable of reducing the effects of disability and ensure that the statutory requirements of RPwD Act are followed in letter and spirit. It was further mentioned in the communication that, pursuant to deliberations, the National Medical Commission was required to take action of providing a drop- 20 down menu or a mandatory category in the electronic application form. That drop down menu or the mandatory category was to mention which categories and percentage of disability are suitable for pursuing the MBBS Course, and, if necessary, the disability categories in the form should also show symptoms which would normally be excluded by the medical board. It was also stated therein that a Meeting should be held with the National Testing Agency and proper classification of disabilities should be made in the application form so as to ensure that once the candidate was allowed to take the examination,

the candidate was not denied admission merely on the ground of disability. It was further mentioned that the regulations of NMC should immediately be reviewed.

33. Attention was also drawn of the National Medical Commission to the position obtaining in the Department of Personnel and Training (Do PT), wherein functional classification and physical requirements consistent with 21 requirements of the identified service/posts are being worked out for Civil Services. It was directed that on the lines of the exercise by Do PT, NMC should also work out functional classifications and physical requirements consistent with the requirements of medical profession and review its regulations accordingly. It was ordered that NMC should sensitize all the colleges with respect to reservation criteria for persons with benchmark disabilities as per the RPwD Act and also towards the requirements of such candidates once admitted. Suggestion was made for formation of Appellate Body against the decisions of the Medical Boards. (Emphasis supplied)

34. We commend the Union of India, for having issued the communication dated 25.01.2024 through the Ministry of Social Justice and Empowerment. We also deem it appropriate to extract the communication:-

Subject: Compliance of Hon'ble Supreme Court order dated 22.09.2023 in WP (C) 856 of 2023 in the matter of Bambhaniya Sagar Vashrambhai vs UOI and ors - reg 22

Sir, I am directed to refer to the captioned Court case and to your letter dated 13.10.2023 and to say that the Central Government has enacted the Rights of Persons with Disabilities Act, 2016 which came into effect on 19.04.2017. Section 32 of the said Act provides that (1) All Government institutions of higher education and other higher education institutions receiving aid from the Government shall reserve not less than five per cent seats for persons with benchmark disabilities (2) The persons with benchmark disabilities shall be given an upper age relaxation of five years for admission in institutions of higher education. Persons with Benchmark disability is defined under Section 2(r) as a person with not less than forty percent of a specified disability where specified disability has not been defined in measurable terms and includes a person with disability where specified disability has been defined in measurable terms, as certified by the certifying authority.

2. It is also stated that at least 5% reservation to persons with benchmark disabilities in higher education is a statutory provision and denial of this benefit to eligible candidates is violation of a statutory provision. It is also a point to be noted that extending this facility to persons with disabilities having less than 40% disability would not qualify as fulfilment of statutory obligations. The Government is also cognizant of the challenges that exist in balancing the statutory rights of persons with benchmark disabilities viz a viz strenuous requirement of the medical profession. NMC is therefore requested to take into account the developments in aids and assistive devices and also in other technologies which are capable of reducing the effects of disability and ensure that the statutory requirements of RPwD Act, 2016 are followed in letter and spirit. 23

3. Further, it may be recalled that, in pursuance to your letter dated 13.10.2023 vide which certain suggestions have been made to address the issues faced by PwDs, a meeting was held on 21.12.2023 under the Chairpersonship of Joint Secretary, Policy. Draft Minutes of the meeting were issued on 26.12.2023 upon which comments were received from NMC and DGHS. In pursuance of these comments, the matter was further considered in the Department and the following emerged: i. While filling up the NEET electronic form by PwDs, NMC there must be a drop down or a mandatory category to take which should mention which categories and a c t i o n percentage of disability are suitable for pursuing the MBBS course. If it is necessary, the disability categories may also show symptoms which would normally be excluded by the medical board. Such form should be accessible. NMC may also consider linking this form to DEPwD's UDID portal i.e. [www.swavlambancard.gov.in](http://www.swavlambancard.gov.in) ii. A meeting should be done with National Testing Agency and proper classification of disabilities should be made in application forms so as to ensure that once the candidate is allowed to take the examination, she/he will not be denied admission merely on the ground of disability. iii. The regulations issued by NMC regarding admission of students with specified disabilities must be immediately reviewed. In this context, reference may be taken from Do PT wherein functional classification and physical requirements (abilities/disabilities) consistent with requirements of the identified service/posts are being worked out for Civil Services. On the lines of this exercise by Do PT, NMC should also work out functional classifications and physical requirements

(abilities/disabilities) consistent with the requirements of medical profession and review its regulations accordingly. While carrying out this exercise, NMC should also take into account assessment guidelines dated 04.01.2018 and amendments made thereto. iv. The NMC should sensitize all the colleges with respect to reservation criteria for persons with benchmark disabilities (disability of 40% or more) as per the RPwD Act, 2016 and also towards the needs of such candidates once admitted. 24 v. The availability of medical boards in the country DGHS should be increased and there must be minimum 1 to take medical board in each State and UTs for proper a ction medical examination of the students who have passed the examination. Further, larger States/UTs should have sufficient number of such medical boards to streamline the process. vi. In case the PwD wants to challenge any decision of the medical board with regard to admission, an appellate body at the level of DGHS may be formed. vii. All India Institute of Medical Sciences at all places should be designated for issuing certificates of eligibility for attaining medical education. In view of the above, NMC and DGHS is requested to take appropriate action and a report may be sent to this Department.

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 2025-26.

36. In fact, a perusal of the amendment notification dated 13.05.2019 and the Guidelines at Appendix H-1 would indicate that with regard to some categories of Disabilities particularly, Locomotor Disability, including specified 25 disabilities like Leprosy cured person, Cerebral Palsy, Dwarfism, Muscular Dystrophy, Acid attack victims and other such as Amputation, Poliomyelitis etc. under the column Eligible for the Medical Course, Eligible for PwD Quota the following finds mention:- 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 posses sufficient motor ability as required to pursue and complete the course satisfactorily. (Emphasis supplied) 37. Similarly, for specific learning disabilities,

Perceptual disabilities, Dyslexia, Dyscalculia, Dyspraxia under the column Eligible for Medical Course, Eligible for PwD Quota, it is mentioned as follows Equal to or more than 40% disability and equal to or less than 80%. But selection will be based on the learning competency evaluated with the help of the remediation/assisted technology/aids/infrastructural changes by the Expert Panel.

26 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.

39. We have also examined the latest notified Guidelines for assessing the extent of Specified Disabilities dated 14.03.2024, which deals with the method for ascertaining the percentage of disabilities. In Clause 20.3.3, under the Computation of percentage Speech Disability, the following table is provided:-

27

20.3.3. Computation of percentage Speech Disability (a) Speech Intelligibility Test: The verbal output of person should be evaluated using Perceptual Speech Intelligibility Rating Scale [AYJNISHD (D), 2022]. (Appendix IV) and percentage of Speech Intelligibility Affected (SIA) to be measured based on score as the table given below:

| Point | Description of Speech Sample Percentage Scale of Disability                                                                          |
|-------|--------------------------------------------------------------------------------------------------------------------------------------|
| 1     | Normal 0-15                                                                                                                          |
| 2     | Can understand without difficulty, however, 16-30 feel speech is normal                                                              |
| 3     | Can understand with little effort occasionally 31-39 need to ask for repetition                                                      |
| 4     | Can understand with concentration and effort 40-55 especially by sympathetic listener, require a minimum of two or three repetition. |
| 5     | Can understand with difficulty and concentra- 56-75 tion by family but not others                                                    |
| 6     | Can understand with effort if content is known 76-89                                                                                 |
| 7     | Cannot understand at all even when content is 90-100 known (Emphasis supplied)                                                       |

To illustrate, it will be seen that a person with 40 to 55% speech disability is one who Can understand with concentration and effort especially by a sympathetic listener; require a minimum of 2 or 3 repetitions. In fact, for the entire range, this is the criterion.

40. It is in matters like this that the principles of reasonable accommodation should come into full play. Section 2(y) of 28 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 29 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 & Others*, (2021) 5 SCC370 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, the constitutionally 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 30 remember R.M. Lodha, J's (as he then

was) observation in *Sunanda Bhandare Foundation v. Union of India*, (2014) 14 SCC383 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 31 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.

43. It should be borne in mind that the RPwD Act which was enacted to give effect to the United Nations Convention on Rights of Persons with Disabilities - was with the objective of granting persons with disabilities full and effective participation and inclusion in society, grant them equal opportunity and to show respect for their inherent dignity, individual autonomy including the freedom to make their own choices. 32

44. This Court in *Jeeja Ghosh & Anr. v. Union of India & Ors.*, (2016) 7 SCC 761 observed as under : 40. In international human rights law, equality is founded upon two complementary principles: non-discrimination and reasonable differentiation. The principle of non-discrimination seeks to ensure that all persons can equally enjoy and exercise all their rights and freedoms. Discrimination occurs due to arbitrary denial of opportunities for equal participation. For example, when public facilities and services are set on standards out of the reach of persons with disabilities, it leads to exclusion and denial of rights. Equality not only implies preventing discrimination (example, the protection of individuals against unfavourable treatment by introducing anti- discrimination laws), but goes beyond in remedying discrimination against groups suffering systematic discrimination in society. In concrete terms, it means embracing the notion of positive rights, affirmative action and reasonable accommodation (Emphasis supplied) 45. In view of this mandate, while interpreting the RPwD Act and the agnate regulations, one must keep in mind the background and purpose for which the law was enacted. (See *U.P. Bhoodan Yagna Samiti, U.P. v. Braj Kishore and others*, (1988) 4 SCC 274. In the said judgment, quoting 33 from Lord Denning in *The Discipline of Law*, this Court held as under: 15. When we are dealing with the phrase landless persons these words are from English language and therefore I am reminded of what Lord Denning said about it. Lord Denning in *The Discipline of Law* at p. 12 observed as under: [ Quoting from his decision in *Seaford Court Estates Ltd. v. Asher*, (1949) 2 KB 481 Whenever a statute comes up for consideration it must be

remembered that it is not within human powers to foresee the manifold sets of facts which may arise, and, even if it were, it is not possible to provide for them in terms free from all ambiguity. The English language is not an instrument of mathematical precision. Our literature would be much the poorer if it were. This is where the draftsmen of Acts of Parliament have often been unfairly criticised. A Judge, believing himself to be fettered by the supposed rule that he must look to the language and nothing else, laments that the draftsmen have not provided for this, or that, or have been guilty of some or other ambiguity. It would certainly save the Judges trouble if Acts of Parliament were drafted with divine prescience and perfect clarity. In the absence of it, when a defect appears a Judge cannot simply fold his hands and blame the draftsman. He must set to work on the constructive task of finding the intention of Parliament ...

16. And it is clear that when one has to look to the intention of the legislature, one has to look to the circumstances under which the law was enacted. The preamble of the law, the mischief which was intended to be remedied by the enactment of the statute and in this context, Lord Denning, in the same book at p. 10, observed as under: At one time the Judges used to limit themselves to the bare reading of the statute itself - to go simply by the 34 words, giving them their grammatical meaning, and that was all. That view was prevalent in the 19th century and still has some supporters today. But it is wrong in principle. The meaning for which we should seek is the meaning of the statute as it appears to those who have to obey it - and to those who have to advise them what to do about it; in short, to lawyers like yourselves. Now the statute does not come to such folk as if they were eccentrics cut off from all that is happening around them. The statute comes to them as men of affairs - who have their own feeling for the meaning of the words and know the reason why the Act was passed - just as if it had been fully set out in a preamble. So it has been held very rightly that you can inquire into the mischief which gave rise to the statute - to see what was the evil which it was sought to remedy. It is now well settled that in order to interpret a law one must understand the background and the purpose for which the law was enacted (Emphasis supplied) 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 35 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.

47. The concept of inclusive education has been elucidated in *Avni Prakash v. National Testing Agency, (NTA) and others* (2023) 2 SCC286 This Court held as under. 40. Education plays a key role in social and economic inclusion and effective participation in society. Inclusive education is indispensable for ensuring universal and non-discriminatory access to education. The Convention on Rights of Persons with Disabilities recognises that inclusive education systems must be put in place for a meaningful realisation of the right to education for PwD. Thus, a right to education is essentially a right to inclusive education. In India, the RPwD Act, 2016 provides statutory backing to the principle of inclusive education. Section 2(m) defines inclusive education as: 2. (m) inclusive education means a system of education wherein students with and without disability learn together and the system of teaching and learning is suitably adapted to meet the learning needs of different types of students with disabilities;

48. While interpreting the Regulations and Guidelines, as provided in Appendix H-1 to the notification dated 13.05.2019, as they stood for the academic year 2024-25, we 36 are constrained, keeping in mind the salutary object of the RPwD Act and Article 41 of the Directive Principles of State Policy, to direct that mere existence of benchmark disability of 40% or above (or such other prescribed percentages depending on the disability) will not disqualify a candidate from being eligible for the course applied for. 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 Board concluding that candidate is not eligible for pursuing the course.

49. 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 37 salutary points mentioned in the said communication while forming their opinion.

50. 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.

51. Before we part, we will do well to recollect that acclaimed Bharatanatyam dancer Sudha Chandran, Arunima Sinha who conquered Mount Everest, prominent sports personality, H. Boniface Prabhu, entrepreneur Srikanth Bolla and Dr. Satendra Singh, the founder of Infinite Ability, are some of the shining daughters and sons from a long and illustrious list of individuals in India who scaled extraordinary heights braving all adversities.

52. The world would have been so much the poorer if Homer, Milton, Mozart, Beethoven, Byron and many more would not have been allowed to realize their full potential. Distinguished Indian Medical Practitioner Dr. Farokh Erach Udwadia in his classic work *The Forgotten Art of Healing and Others Essays* under the Chapter *Art and Medicine* rightly extolls their extraordinary talent, and of the many more similarly circumstanced. Conclusion and Directions:

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 40 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. (v) We have already, pursuant to our order dated 18.09.2024, in view of the favorable report dated 13.09.2024 of the Maulana Azad Medical College, granted admission to the appellant. We confirm the 41 admission and direct the concerned authorities to treat the admission as a valid admission in the eye of law.

54. The appeal is allowed and the impugned order dated 29.08.2024 is set aside. In view of our directions, Writ Petition (Stamp) No.24821 of 2024 pending in the High Court of judicature at Bombay will stand disposed of in terms of the holding in the present judgment. No order as to costs. ..J.

(B.R. Gavai) ..J.

(Aravind Kumar) ..J.

(K.V. Viswanathan) New Delhi; October 15, 2024. 42

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