



Ashwini

REPORTABLE

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION (L) NO. 33102 OF 2022

ZILL SURESH JAIN,
Age 18 years, Occ Student,
D/O: Suresh Jain, 55/57/59, Coronation
Bldg, C Block, Room No. 5, 3rd Floor, CP
Tank Road, Near Kothari Hospital, Mumbai
400 004.

... PETITIONER**~ VERSUS ~**

THE STATE CET CELL,
AK Nayak Marg, Fort,
Mumbai 400 001.

- 2. NATIONAL TESTING AGENCY,**
C 20, 1A/8, Sec-62, IITK Outreach
Centre, Noida 201 309.
- 3. NATIONAL MEDICAL
COMMISSION,**
Pocket No. 14, Sector 8,
Dwarka Phase 1, New Delhi 77.
- 4. MAHARASHTRA UNIVERSITY OF
HEALTH SCIENCES,**
Mhasrul, Vani Dindori Road,
Nashik 422 004.
- 5. SIR JJ HOSPITAL,**

Through the Dean, JJ Marg, Nagpada,
Mumbai 400 008.

6. **MAHARASHTRA STATE
OCCUPATIONAL THERAPY AND
PHYSIOTHERAPY COUNCIL,**
Through its Registrar, having office at
DEMR, 4th floor, St. George's
Hospital Campus, Mumbai 400 001.

... **RESPONDENTS**

APPEARANCES

- FOR THE PETITIONER** **Ms Kanchan Pamnani.**
FOR RESPONDENT NO. 1 **Mr Sameer Khedekar.**
FOR RESPONDENT NO. 2 **Mr Rui Rodrigues, with Ashutosh
Mishra, i/b AA Ansari.**
FOR RESPONDENT NO. 3 **Mr Ganesh Gole, with Arif Ali.**
FOR RESPONDENT NO. 6 **Ms Priyanka Patil.**
FOR RESPONDENT- **Ms PH Kantharia, GP.**
STATE

**CORAM : G.S.Patel &
Neela Gokhale, JJ.**

DATED : 20th June 2023

ORAL JUDGMENT (Per GS Patel J):-

1. **Rule.** Rule made returnable forthwith and, by consent, the matter is taken up for final hearing.

2. The Petitioner has suffers from a low vision visual impairment disability to the extent of 40%. There is a disability certificate annexed at Exhibit “D” and another at Exhibit “E”. These are not in controversy.

3. The Petitioner completed her SSC in March 2020 and her HSC in March 2022. She desires to study and later practice physiotherapy. She says she is being denied these opportunities only on account of her vision impairment. The contesting Respondent insists that *no* amount of visual impairment is acceptable for being allowed to study or practice physiotherapy — the extent of impairment is immaterial.

4. The reliefs sought in the Petition at pages 16 and 17 are two. They read as follows:

“(a) Be pleased to hold and declare that the provisions of the Regulations on Graduate Medical Education (Amendment), 2019 issued by the Medical Council of India which is the predecessor-in-title of the Respondent No. 3, to the extent of the disability of the present petitioner for pursuing the courses is violative of article 14, 19 and 21, of Constitution of India 1950 as well as provisions of RPWD Act 2016 and further be pleased to strike down the same as stated in the present;

(b) As a consequence of prayer clause (a), be pleased to direct the respondent herein to consider the case of the present petitioner herein on the basis of the performance of the petitioner in NEET (UG) 2022 under such terms and conditions as this Honourable Court deem fit and proper.”

5. Regrettably, though this Petition was filed on 15th October 2022 much time has been lost in gathering material in affidavits, reports and so on. We will refer to some of this material presently.

6. The Petitioner underwent NEET counselling following the 2022 examination. She sought admission to the physiotherapy course. By an order of 20th October 2022, she was allowed to remain present before the Medical Board. On 21st October 2022, the Division Bench permitted the Petitioner to fill in the form for the physiotherapy course and participate in the admission process (subject to further orders in the Writ Petition and without being entitled to claim equities). On 9th November 2022, the Division Bench noted that the Petitioner had been given admission to the physiotherapy course in Nair Hospital. The Court said that until the next date, her admission was not to be cancelled. That order has continued. She is in her first year and is scheduled to appear for the first year examination shortly.

7. By an amendment made by the National Medical Commission, Respondent No. 3, those with a visual disability of 40% or more are set to be ineligible for such courses. We clarify that the entire enquiry has been in regard to Physiotherapy. The field is occupied by a legislation called the Maharashtra State Council for Occupational Therapy and Physiotherapy Act, 2022 (“**OTPT Act**”). The Maharashtra State Occupational Therapy and Physiotherapy Therapy Council (“**The Council**”) is Respondent No. 6, added by amendment. The petition itself accepts that it is the Council that decides the questions of eligibility of admission of the

Petitioner to the Physiotherapy course. Factually, following the All India Counselling, the Petitioner appeared before the competent authority and was told that since the Petitioner had a 40% disability, she was otherwise ineligible. The Petitioner submits that Physiotherapy is a paramedical course or an allied health science course or both. The challenge in the Petition from paragraph 14 onwards is to certain provisions of the Regulations on Graduate Medical Education (Amendments), 2019 issued by the then Medical Council of India, now the National Medical Commission. The grounds on which the petition is brought include that these Regulations are contrary to the relevant provisions of the Rights of Persons with Disability Act, 2016 (“**RPWD Act**”).

8. One of the grounds is the challenge to the assertion that the Petitioner must have a 40% disability, and, if not, is ineligible. This is, we find, a common misconception in regard to what are called ‘benchmark disabilities’ under the RPWD Act.

9. On 5th January 2023, we made this order:

1. The question raised in this Petition is about the suitability of a young person with a 40% vision impairment obtaining admission to a physiotherapy course. There is no dispute, as there cannot be, that this is a disability covered by the Rights of a Persons with Disabilities Act, 2016. There is also no controversy about the extent of the disability. The 6th Respondent, added by amendment, is the Maharashtra State Occupation Therapy and Physiotherapy Council. It functions under The Maharashtra State Council for Occupational Therapy and Physiotherapy Act, 2002.

2. This is indeed a distinct legislation. Paragraph 8 of the Affidavit filed by the 6th Respondent, affirmed on 5th December 2022, says that the Council is charged with the maintenance of standards of education of the Occupational Therapy and Physiotherapy, among other things. What the affidavit also says is that there are no specific guidelines regarding admission to disabled students to courses under covered by OTPT Act 2002. Given that the Act is of 2002 and we are in 2023, this is indeed a matter of regret. It is hardly an answer to a Petitioner with a disability to tell us that there are no guidelines. If there are not, there should be.

3. But the question of guidelines sidesteps the issue. We see nothing in this affidavit to indicate how vision impairment is incompatible with the study and practice of physiotherapy. If it is indeed incompatible, this needs to be shown and demonstrated. If the incompatibility comes after a certain extent of disability, then this must also be demonstrated, that is to say it must be shown that persons with a vision impairment above a certain threshold are not able to effectively work as physiotherapist as required by the OTPT Act. None of this is to be found on Affidavit.

4. Mr Kantharia points out that the 40% vision impairment is in fact a benchmark set under the current admissions brochure for the MBBS course. This is an interesting submission because if people with blindness of up to 40% are entitled to seek admission to MBBS courses, then it must surely be demonstrated unequivocally that the demands of physiotherapy training and practice are so exacting that this same metric cannot apply to physiotherapy courses, i.e., that there is a much higher threshold for physiotherapy than medicine. This cannot be a matter of speculation.

(*Emphasis added*)

10. Our order of 8th February 2023 says:

2. We noted on the last occasion the statement made by Ms Kantharia that a 40% vision impairment is the threshold for admission to the MBBS course. Perhaps the use of the word ‘benchmark’ in paragraph 4 of our order was somewhat confusing in view of the distinct manner in which it is used in Sections 33 and 34 among others of the Rights of Persons with Disabilities Act, 2016. **We do not believe that it can be suggested that a person must have *at least a 40% vision impairment, that is to say, an impairment above 40%* (and possibly extending to 100%), to gain admission against reservation to a MBBS course.** There are two distinct concepts here, of a ‘benchmark disability’ for availing of a reservation and what we will call a threshold disability which is in regard to eligibility. The two are different. *Prima facie* it is difficult to accept Mr Warunjikar’s submission that no threshold eligibility can be set, or, conversely, that unless a person has at least the benchmark disability, that person cannot gain admission against reservation. We understood Ms Kantharia to say that if a person has more than 40% vision impairment, that person is not *suited* for admission to the MBBS course and for the practice of medicine. A disability of more than 40% comes in the way of successfully studying or practicing medicine — that was her submission. She points out today that this has to be correct, because the consequence otherwise would be startling, namely, that even in neurosurgery or cardiovascular surgery for example, persons with a 100% vision impairment would be allowed admission and the right to practice. In fact, this is nobody’s case.

3. The distinction being drawn is this. A ‘benchmark’ disability is the prescribed degree of disability to avail of a reservation. Below that ‘benchmark’, the disability is not regarded as sufficiently acute to warrant a reservation for the disabled. But running in parallel, and with no reference to reservation, is the ‘threshold’ disability *disqualification*. A person with a disability more than the stated threshold should not, it is submitted, gain admission or be allowed to practice at all, because the severity or extent of the disability would impede or interfere with the proper practice of that discipline. The benchmark disability for reservation may be ‘flat’ and may apply across several disciplines, courses, employment avenues, etc. The ‘threshold’ disability, by its nature, is a constantly sliding scale, one that has to be set differently — and carefully — for different types of study and work. A simple illustration should suffice: Ms Kantharia’s postulate of a 40% threshold (or cut-off) disability for the study or practice of medicine *is not necessarily applicable or appropriate to the practice and study of law*. (Or chartered accountancy, for that matter, or several dozen other fields of study and endeavour.) A person with a 40% or higher disability may indeed be able to study and practice law. Ms Kantharia only maintains that it is the cut-off for MBBS study and the practice of medicine.

(Emphasis added)

11. Moreover, the Petitioner contends that even 100% blindness is not an impediment to the study and practice of Physiotherapy, broadly stated. There may be certain aspects of Physiotherapy that a completely blind physiotherapist may not be able to do, but this cannot be generalized and stated across the board. As regards the

OTPT Act, the submission is that there is a Council which is required to set standards. The submission by Ms Pamnani for the Petitioner is that the OTPT Council is required to set standards specifically for the fields with which it is concerned, namely, Occupational Therapy and Physiotherapy and the National Board's general standards cannot be blindly applied to Occupational Therapy and Physiotherapy. which are under a dedicated statute. There is a challenge under Articles 14, 19 and 21 and there are submissions that this action is not only manifestly arbitrary and ultra vires but also violates the provisions of the United Nations Conventions on Rights of Persons with Disability to which India is a signatory, and to a treaty on which India is a signatory. These fundamental precepts have found voice in the RPWD Act 2016, Ms Pamnani also points out that the Petitioner was allowed to appear for that examination though she had declared herself to have the disability and to be under the 'Persons with Disability' ("PWD") category. The move to declare her as ineligible comes only after.

12. Annexed to the Petition is a large body of material apart from the certificates. There is, for example at page 210, a reference to an order of this Court made on 2nd August 2010 in *Kritika Purohit & Anr v The State of Maharashtra & Anr.*¹ The Petitioner in that case was a visually impaired student. She too sought admission to a degree course in Physiotherapy. Reliance was placed on the RPWD Act as well. Paragraph 10 of that order at page 216 reads thus:

“10. Having seen the negative attitude of respondents who have not considered the matter in proper perspective and have not cared to consider the object underlying the

1 Writ Petition No. 979 of 2010.

provisions of Disabilities Act, 1995, we are of the view that it is desirable that the Chief Commissioner for Persons with Disabilities, Government of India should consider the entire matter in proper perspective and issue suitable instructions to the concerned authorities in the country, including the universities to which the colleges running degree, diploma, certificate courses in physiotherapy are affiliated, so that the students may not suffer difficulties in future in the matter of admission to such courses. The Chief Commissioner shall accordingly take a decision in the matter within two months from today, after giving an opportunity of hearing to all concerned.”

13. It is correct that this is not a judgment properly so called being an interim order. We do not refer to it as constituting a binding precedent, for it is not. But it is an order by a Bench of coordinate strength and it is not possible to simply brush aside observations of this kind even if made at an interim stage. The direction there was for a decision to be taken within two months, with an opportunity of hearing to all concerns. As it happens, in this case we are well past that stage. There are not only the Affidavits in Reply and Rejoinder but further reports which we have taken on record.

14. The first affidavit is by the National Medical Commission, from page 221 and dated 10th November 2022. The deponent is one Rajeev Verma, the then Under Secretary to the National Medical Commission. First there is a reference to the Graduate Medical Education Regulations, 1997 as amended on 4th February 2019 which are assailed in the Petition. This Court had by its order of 21st October 2022 permitted the Petitioner to fill in the form and to

participate in the admission process. Paragraph 6 and 7 at pages 223 and 224 are important. They read as follows :

“6. It is submitted that Physiotherapists are licensed by the Physiotherapy Council of the respective States. The field of physiology is governed by the concerned State Council and in the case of Maharashtra, it comes under the purview of the Maharashtra State Council For Occupational Therapy & Physiotherapy (OTPT Council) which was established by the State of Maharashtra for determination and co-ordination of standards of education of Occupational Therapy and Physiotherapy professions. The Maharashtra State Council for Occupational Therapy & Physiotherapy (OTPT Council) is a statutory body which also registers and maintain the details of the concerned Physiotherapists in the State of Maharashtra.

7. It is submitted that the courses and period of study or training along with the subjects of examination and standards of proficiency therein to be obtained for grant of recognized occupational therapists or physiotherapists qualification in the State of Maharashtra is governed by the OTPT Council as per Section 40(1)(g) of the Maharashtra State Council for Occupational Therapy & Physiotherapy Act 2002. Thus, the answering respondent deserves to be deleted from the array of the parties of the present case. It is prayed accordingly.”

15. Then the National Medical Commission says that the 97th Regulation was first amended on 4th February 2019. The original Appendix “H” was substituted by an Appendix “H1” on 13th May 2019. Admissions in MBBS course alone, including grant of reservations for PWD quota were to be determined by the latest amendment. The affidavit goes on to say that only persons with a

visual impairment of 40% disability or more, i.e. equal to or greater than 40% would be *ineligible* for admission to the MBBS course and that persons with visual impairment of less than 40% would be eligible for the MBBS course but not for reservation under a PWD quota. Paragraph 11 of the Commission's Affidavit says that persons with a visual impairment of more than 40% may be eligible for admission and also may get a reservation subject to the condition that the visual impairment is brought to a level less than the 40% benchmark.

16. This is precisely our view as reflected in our order of 8th February 2023, quoted earlier.

17. We are not concerned with the other assertions in this affidavit, many of which are in the nature of legal submissions, until paragraph 35. Paragraph 36 states that since the Petitioner was found to be suffering from low vision impairment of 40%, she was not considered eligible for admission in medical and dental colleges and to avail of the 5% PWD reservation. Paragraph 37 says that the National Medical Commission Act, 2019 and its Regulations of 1997 do not regulate admissions or curricula to the Bachelor of Physiotherapy course. Once again there is a repetition in paragraph 38 that it is the states through their respective Councils that control the practice of Physiotherapy.

18. We have noted this at some length because it clearly demonstrates that the battle lines drawn are between the Petitioner and the OTPT Council, not the National Medical Commission.

19. We come now to the first affidavit of the OTPT Council filed by one Digamber Bidve, Registrar of that Council. The Affidavit is of 19th January 2023 from page 309. We will summarize this in one sentence: according to Mr Bidve, no person with any vision impairment can practice Physiotherapy.

20. There is a second additional affidavit from page 309 of 19th January 2023. It reaffirms the earlier contention that vision impairment forbids the study and practice of physiotherapy.

21. That, the Affidavit says, is the view of the OTPT Council of Maharashtra. It does not matter whether the blindness or low vision is 5%, 10%, 25%, 40% or 100%. It just cannot be done. This Affidavit is based on a somewhat discursive opinion of one Dr Sudeep Kale, the President of the Council. That report is from pages 319 to 321. That three-page report of Dr Kale is best reproduced verbatim (as we have done in the earlier order of 8th February 2023). This is what it says.

“No.OT.PT. COUNCIL/PWD/59/2023 Date:-
19/01/2023

Physiotherapy is a branch of modern medical science which deals with the orthopaedic, neurological, cardiorespiratory, women's & community health, paediatrics, geriatrics, sports, traumatic, paralytic conditions and physically challenged population. Today Physiotherapists are providing their services to the Indian community through central, state government; public, corporate, private & charitable trust running hospitals & clinics.

As per world health organization, “Physiotherapists assess, plan and implement rehabilitative programs that improve or restore human motor functions, maximize movement ability, relieve pain syndromes, and treat or prevent physical challenges associated with injuries, diseases and other impairments. They apply a broad range of physical therapies and techniques such as movement, ultrasound, heating, laser and other techniques. They may develop and implement programmes for screening and prevention of common physical ailments and disorders”

As per Maharashtra State council for Occupational therapy & Physiotherapy “ Physiotherapy” means a branch of modern science which includes examination, assessment, interpretation, physical diagnosis, planning and execution of treatment and advice to any person for the purpose of preventing, correcting, alleviating and limiting dysfunction, acute and chronic bodily malfunction including life saving measures via chest physiotherapy in the intensive care units, curing physical disorders or disability, promoting physical fitness, facilitating healing and pain relief and treatment of physical and psychosomatic disorders through modulating physiological and physical response using physical agents, activities and devices including exercise, mobilization, manipulations, therapeutic ultrasound, electrical and thermal agents and electrotherapy for diagnosis, treatment and prevention.

Hence the role of the Physiotherapist in health care, in hospitals, ICU community and ground is extensive and needs good physical, hearing, visual acuity. Vision of the candidate is important factor in the success of physiotherapy assessment, treatment, and patients’ safety. The physiotherapists prescribe different exercises to the patient for the various conditions. The visual disability of 40% will create many issues in observation, treatment and which can in turn jeopardize the patient safety. Observation

of the patient's gait pattern, movement pattern from a distance will create issues to person with low vision. The exercise testing like 6-minute walk test which is an integral part of Physiotherapists assessment from 100 feet Or 30 meters. This will be not possible for a candidate with 6/60 score reported on eye test. Blood pressure, heart rate, sympathetic, parasympathetic responses alter during exercise hence identifying the issues at appropriate time is important. Patients may get out of the breath, can have chest pain or cardiovascular issues during exercise which is important to prevent serious complications. Person with 40% vision disability will not be competent to identify this during exercise testing or on the ground which will put patient or player at risk landing into compromises patient safety.

Second, such candidates will have difficulty in working in ICU. Physiotherapists plays a major role ICU specially for patients on mechanical ventilators. Medical fraternity have also appreciated it in Covid ICU. A visual disability of 40% will create many issues in ICU. The B.P., Pulse rate, ECG, Oxygen level, mean pressures, intracranial pressures changes drastically during physiotherapy interventions and needs continuous and careful assessment and monitoring of the Cardiac monitors, ventilator panel, Infusion pumps etc. Dynamic computer tests like ECG monitors where running ECG is reflected on screen at a set speed. Identifying the abnormality and acting in response to those changes will not be possible for person with low vision.

Physiotherapists are called in ICU to clear the lung fields & airways. Patients with artificial airways like endo tracheal tubes, tracheostomy tubes, naso pharyngeal airways etc. Physiotherapists have to perform physiotherapy interventions on patient's chest and do manual MBU bagging and suction in a very short span of time as the

patient has to be disconnected from the ventilator. As per routine guidelines the disconnection, performance of AMBU suction & reconnection has to be done in 12 to 15 seconds. This is not possible to do for a patient with low vision which will put patient at risk. Identifying signs of cardiovascular insufficiency in ICU, observations in relation to red flags in ICU or other patients in ICU, another area where low vision puts. Neurological patients have balance, coordination related issues which creates issues while giving gait training to patients. Also, precise measurement of blood pressure and other vitals will be difficult for candidates with low vision.

Electrotherapy treatments require good visibility and physiotherapist needs to check the skin changes, color changes, erythema development during and after physiotherapy intervention to prevent local burns to the patients. Vision loss, failure to identify minute skin changes will create problems to patients' safety from electrotherapy treatment. Visual fatigue commonly seen in candidates with low vision will interfere in minute observation skills of physiotherapist like flickering contraction of muscle or changing dynamics of any test or screen.

As per the report of Zill Jain, she has 40% of permanent vision disability which will be not fit to perform all the duties as a physiotherapists and she will not be able to cater all the physiotherapy services which will not make her a competent Physiotherapist who can serve patients in IPD, OPD, ICU, Community, Pediatric setups and field. Hence this council is of opinion that in the wider interest of the patient safety the candidate with low vision 40% disability is not competent to be admitted in degree course of Physiotherapy.”

22. The report does not in our view address the question at all. It tells us of the various activities, functions and duties of physiotherapists. Some of these are familiar to almost all of us. It points out that physiotherapists have roles to play in operating theatres, surgical units and ICUs. We know this as well. But the assumption is whether every physiotherapist is perennially in an ICU, or in an OT or in some other sensitive environment. For example, there is a statement that a visual disability of 40% will create many issues in the ICU. This lack of granularity and understanding of the petition is what weakens any heft this report might have had.

23. There is then a third affidavit of the Council of 28th February 2023. Now this annexes an opinion of the report of the administrator of the OTPT Council of Maharashtra, one Dr Sandeep Bhagwat. This was pursuant to our order of 8th February 2023. In paragraph 4, we noted even then that Dr Kale's report was in generalities. In paragraph 6, we sought further information and our order of 8th February 2023 in paragraphs 6 and 7 reads thus:

“We are also not questioning Dr Kale's report. But we do seek further information and answer to questions that arise from that report itself.

(a) First, while we accept that a 40% disability may be too high to allow the full practice of Physiotherapy, the report does not indicate the issues in regard to Occupational Therapy or OT. These are two different areas of practice. We seek the assistance of the Council or the Administrator or Dr Kale himself directly in regard to Occupational Therapy

- (b) Second, accepting for the present that 40% vision impairment is too high for the full practice of Physiotherapy, we would like to be informed whether with this level of vision impairment, some form of limited or restricted physiotherapy practice is possible? For instance, is it possible for a person with a 40% vision impairment to practice physiotherapy without being entitled to attend intensive care units, surgeries, etc.
- (c) If this is possible, then the next question necessarily will be how these conditions are to be applied, monitored and regulated and whether an undertaking from such a person is to be taken.
- (d) Next, we notice that the report addresses itself to a 40% vision impairment, the case of the Petitioner. This leaves unanswered the question of what is the level of vision impairment, if any, according to Dr Kale that is acceptable for the full-spectrum practice of physiotherapy. Obviously, this is not something that leans itself to guesswork or estimation, especially by a Court. It is a matter of science, professional training and expertise.
- (e) Finally, if it is at all possible, we would appreciate reference being made to authoritative technical literature and standards set elsewhere which may serve as a guide. To do complete justice between the parties we permit Dr Warunjikar to also file a further affidavit with this material so that we can consider it fully on the next occasion.

7. We must make it clear that the frame of the petition is such that it is now in the realm of public law. The points that Dr Warunjikar canvasses are not, and we think quite correctly, restricted to the present Petitioner alone. In fact, we see no manner in which we can restrict an order on this

Petition to the present Petitioner. To view it conversely, the Petition requires a judicial pronouncement as to a certain standard for eligibility to study and practice a particular type of health care. Then the question will be whether the Petitioner meets that standard or can be accommodated at some level on a scale of standards that are accepted. But this cannot be restricted to the facts of the case or to the Petitioner alone. It is for this reason that we require the additional information mentioned above.”

24. It is in this context that the third Affidavit came to be filed with the report of Dr Bhagwat purporting to address the questions that we had outlined. Our second question regarding the extent of blindness that could be permitted in the study and practice of Physiotherapy was answered by saying that *no* disability could reasonably be accommodated with restricted Physiotherapy practice, or by an intermediary providing cognitive support, or substitute for essential clinical skills or a supplementing of clinical and ethical judgment keeping patient safety as prime. Despite all this rather lugubrious phrasing, and to cut a very long story short, Dr Bhagwat was of the same opinion as Dr Kale that blindness to any extent could not be permitted in the study or practice of Physiotherapy. We find this more than somewhat remarkable. We required an answer to question (b).. As can be seen, our question was what extent of Physiotherapy was possible without the requirement of attending ICUs and surgeries etc. The Court’s questions squarely put remains unanswered. What Dr Bhagwat said was this:

“b: Second, accepting for the present that 40% vision impairment is too high for the full practice of

Physiotherapy, we would like to be informed whether with this level of vision impairment, some form of limited or restricted physiotherapy practice is possible? For instance, is it possible for a person with a 40% vision impairment to practice physiotherapy without being entitled to attend intensive care units, surgeries, etc.

Ans.:- No disability can be reasonably accommodated with restricted Physiotherapy practice or by an intermediary that provides cognitive support or substitutes for essential clinical skills, or supplements clinical and ethical judgment keeping Patient safety as prime.

Thus, restricted Physiotherapy practice cannot eliminate essential program elements or fundamentally alter the curriculum.

Keen observation at the bedside in ICUs, during movement over ground, on the field etc. and its interpretation forms an essential aspect of evaluation and management in Physiotherapeutic curriculum and practice and hence cannot be compromised, keeping patients' safety as prime essential.

Observation for Biomechanical analysis is an essential component of posture and movement. Observation of body parts with respect to each other and supporting surface as well as observation of movement patters during functional performance is essential for evaluation and ongoing feedback to the Physiotherapist for and during treatment procedures.

Because the management of movement disorders is a major component of physical therapy practice, the physiotherapist must have the ability, within reasonable limits, to assist a patient in moving (e.g., for a chair to and from a bed, for from a wheelchair to and form a bed). The physiotherapist must also have the ability to move him or herself and the patient in three-dimensional space in order to perform motor function tests and provide purposeful and

skilled interventions. Additionally, the physiotherapist must be able to ensure the physical safety of the patient at all times, including measures related to basic life sustaining knowledge and skills, such as Cardio Pulmonary Resuscitation and first aid.

In summary, the physiotherapist **must possess sufficient visual, auditory, and tactile sensation**, as well as motor, and cognitive skills to perceive the presence of abnormalities of all systems that may contribute to movement disorders and be able to complete physical therapy examinations, and evaluations, as well as provide purposeful and skilled interventions through the use of visual, auditory and tactile input.

Definition:

Physiotherapy is a branch of modern medical science which deals with the orthopaedic, neurological, cardiorespiratory, women's & community health, paediatrics, geriatrics, sports, traumatic, paralytic conditions and physically challenged population.

Today Physiotherapists are providing their services to the Indian community through central, state government; public, corporate, private & charitable trust running hospitals & clinics.

Hence it is expected that physiotherapists shall practice completely in various areas in health care and not just in Intensive Care Units & Surgical wards. The council gives registration to the qualified eligible physiotherapist to practice independently and completely. The license is to practice physiotherapy to serve the community. This council or any other health professional council in India has no provision to give registration & license for limited practice. This council issues certificate & license to competent physiotherapists holding recognised degree so as to serve public at large. Hence registration or license can't

be issued to incompetent or professional with limited competency morally and legally and physically.

Also, the vision is needed for providing Physiotherapy treatment / services in other than Intensive Care Units & surgery wards. Electrotherapy treatments require good visibility and physiotherapists needs to check the skin changes, color changes, erythema development during and after physiotherapy intervention to prevent local burns to the patients. Vision loss, failure to identify minute skin changes will create problems to patients' safety from electrotherapy treatment. Visual fatigue commonly seen candidates with low vision will interfere in minute observation skills of physiotherapists like flickering contraction of muscle or changing dynamics of any test or screen.

Also management of neurological patients who are paralyzed or babies with neurological defects like cerebral palsy will be also a great challenge, measurement of muscle strength, assessment of loss balance / coordination is done by observation. Geriatric elderly patients are at a risk of falls. Such things has to be identify by physiotherapist in Out Patient Department / In Patient Department settings. Vision is the most needed for this task.

Also, exercise is medicine of physiotherapist. Appropriate cardiorespiratory responses have to be identified by physiotherapist. Observation that patient is doing appropriate movements/ exercise and not doing rick movements is the key in success of Physiotherapy. In some case like spinal stenosis, prolapse discs the exact movement & exercise is required. Wrong exercise may aggravate the condition & complicate the case. Hence with 40% of vision issue the candidate will not be able to identity this and patient health may be compromised.”

25. Before we turn to the next affidavit in this matter, we are constrained to observe that almost everything that Dr Kale and Dr Bhagwat say about Physiotherapy, can equally strongly be said about the practice of law. Yet we have before us in this very matter testament to the contrary: because Ms Pamnani, who has a significant vision impairment, has practiced law successfully for many years. We are not unmindful that in Courts throughout the country, including the Supreme Court there are several students, practitioners, assistants, associates, juniors, and interns who are entirely visually impaired and yet fruitfully engaged in the pursuit of an occupation that above all depends on the printed word. It seems to us, therefore, utterly remarkable that the OTPT Council should venture so strong a medical opinion despite being given an opportunity by a constitutional Court to do what is evidently the right thing.

26. Based on the three affidavits of the OTPT Council, Ms Pamnani did the one thing for which she is well known. She filed a massive Rejoinder. It runs fully from page 401 to page 1085. There is yet more but we will come to some of that later. We do not think we are going to reproduce every single thing that has been put into the Rejoinder, but it has to be noted that this Rejoinder is admirable for its comprehensiveness and for hunting down every possible avenue of arguments and addressing it. Paragraph 3 has an interesting historical background about the evolution of Physiotherapy in the context of blindness. Paragraphs 3.1 to 3.6 read as follows:

“3. Background of the matter:

3.1 Initially Physiotherapy was taught to the Blind and Low Vision students as a Diploma or Certificate Course. In

India, institutes like the National Association for the Blind, Mumbai and Blind People's Association (BPA), Ahmedabad continue to run certificate and diploma programs in the field for many decades. The BPA 3-year diploma program for physiotherapy assistants has been recognized by Ahmedabad University has also been running at the College of Physiotherapy, School of Deaf-Mutes Society in Ahmedabad.

3.2 In these certificate and Diploma courses anatomy, psychology, physiology, electrotherapy, exercise therapy and communication skills in English was taught. They are trained on Short wave Diathermy, Ultrasound and Traction machines etc. These physiotherapists have been working for several years at physiotherapy facilities including clinics, hospital settings, home-based therapy and even at a Burns Centre.

3.3 These students could not do the Degree course because they were not permitted to study science in 11th-12th Standard. In 2008, on a representation by the Xavier's Resource Center for the Visually Challenged (XRCVC), St. Xavier's College Mumbai, the Maharashtra State Higher Secondary Board issued a circular allowing candidates with Blindness/Low Vision to study Science in the 12th Standard. I crave leave to refer to and rely upon this circular when produce.

3.4 Thereafter, Ms Kritika Purohit (totally Blind) decided to study Physiotherapy as a Degree course and had to come to this Hon'ble Court (Bom HC OOCJ Pet. No. 979 of 2010) for justice and the copies of the orders are marked as "**Exhibit A to A8**". She was obstructed at initial stage by the narrow-mindedness of some of the Authorities but some other Authorities like the Maharashtra University of Health Sciences (Respondent No. 4) understood the issue and created systems and enabling processes with the

assistance of the Xavier's Recourse Center for the Visually Challenged (XRCVC) for the study of physiotherapy. I crave leave to refer to and rely upon the circulars when produced.

3.5 Kritika successfully finished her studies at Seth G. S. Medical College/K.E.M. Hospital and is a practising physiotherapist now.

3.6 Following Ms Kritika Purohit's case—other students with vision impairment have pursued physiotherapy education:

Name	Visual Impairment	Educational Qualification
Ms Kritika Purohit	Total blindness	Bachelors in Physiotherapy (BTPH)
Ms Saiyed Sabika Husain Abbas Zaidi	Low Vision	Bachelors in Physiotherapy (BPTh)
Ms Gitanjali Jetheliya	Low Vision	Bachelors in Physiotherapy (BPTh)
Ms Anjali Jain	Low Vision	Bachelors in Physiotherapy (BPTh), Masters in Physiotherapy (MPTh) in Cardiovascular and Respiratory Physiotherapy

They have competed with their sighted counterparts through the relevant competitive exams and have undergone the same coursework as them at undergraduate and postgraduate levels and have been licensed by the same authorities to become successful practitioners of physiotherapy. “**Exhibit B1 to B3**” have the profiles of some of these successful physiotherapists and “**Exhibit C1 and C2**” have the testimonials of patients treated by them. I apologise that in the earlier affidavit filed by me dated 28th February 2023 the names of these persons were misspelt on account of an editing error in para 5. “**Exhibit D1 to D6**” also have the testimonials by reputed doctors from various hospitals and community work of Ms Anjali Jain.”

27. Notably the person last mentioned in the statement, Ms Anjali Jain, is the Petitioner's sister.

28. We cannot understand how these facts, known to all, are totally elided in the reports or opinions of both Dr Kale and Dr Bhagwat. We do not know what they propose in regard to Ms Anjali Jain's Bachelor's degree in Physiotherapy and her Masters in Physiotherapy and cardio vascular and respiratory Physiotherapy. Are they proposing to cancel her degree? We urge them not to venture down that path.

29. The Affidavit in Rejoinder also points to other factors also completely overlooked by the OTPT doctors. The MCGM issued advertisements for recruitment of persons with low vision *and* blindness. Physiotherapy is taught to the visually impaired. In the Rejoinder, every OTPT Affidavit has been dealt with systematically. The Court's queries are answered in considerable detail. There are individuals mentioned in paragraph 7.2 in response to the OTPT assertion that 'no disability can be reasonably accommodated'. Cases are pointed out with names of those who are even now practicing Occupational Therapy. There is the reference to the Petitioner's sister as well and other individuals are mentioned. There is a reference to the Xavier's Resource Centre for the visually challenged and the Indian Association for Visually Challenged Physiotherapists.² The OTPT Council seems unaware that there is an association of visually challenged physiotherapists, in itself an

2 <https://www.iavp.in/tag/blind-physio>.

almost complete answer to all OTPT affidavits. The website of that Association says:

IAVIP (Indian Association of visually impaired physiotherapists) is the only official body representing all the practicing Visually Impaired Physiotherapists in India. Established on the 1st of April 2007, IAVIP is registered with the Public Charity Commissioner and also under the Society Act.

30. What is the answer of these doctors and the OTPT Council to the existence of a registered association of *visually impaired physiotherapists*? None; they only say that the visually impaired cannot practice physiotherapy.

31. Other material is in the public domain. A 2012 report in the Deccan Herald says this:³

Niraj Arora understands pain better than anyone else. “Just a touch will do. We can locate the exact spot where pain lurks in a patient. This is our USP in comparison with others,” boasts the 32- year-old physiotherapist from Bhusawal (Maharashtra), insisting that his blindness does not come in the way of his work.

Arora is among the ten blind physiotherapists who were in the City on Wednesday to take a certification exam for Community Based Rehabilitation. **He is one of the about 300 full-time blind physiotherapists in the country, most of who hail from Maharashtra and Gujarat.** Though several hundred persons with blindness from across the country visit Bangalore with a hope of joining the IT and ITES sector, **those in the western region are finding**

3 <https://www.deccanherald.com/content/270289/blind-open-their-eyes-opportunities.html>

physiotherapy a viable alternative. Arora and fellow participant Girish Chandra Rikhadi, 32, have received training from the National Association for the Blind India (NAB-India) in Mumbai, which runs a Diploma in Physiotherapy course for the blind. The NAB centre in Mahalaxmi, Mumbai, has trained about 150 blind physiotherapists in the last decade. Besides NAB, Blind People's Association (BPA) in Ahmedabad runs a two-year course in physiotherapy. "It generates good income for us. Most of us have our own private clinics and receive nearly 10 to 15 clients a day," said Rikhadi, who has his clinic at Amarnath in Mumbai. "I lost my eyes in an accident and my parents came across the physiotherapy programme online. Today, I have a clinic at Bhusawal and opened another in Pune offering Ayurveda, Panchakarma, obesity and weight management, physiotherapy and spa. There are several sighted persons working under me," Arora proudly mentions. Widespread awareness about physiotherapy coupled with the increasing ailments due to accidents and lifestyle meant the therapists receive more patients in recent times. "We find a lot of patients at hospitals. We've to manage diagnosis, evaluation and then the treatment. Those happy with us come back for more sessions," said Bhagyashree Sunil Gandhi, 21, who began her practice just last year. The issue of blindness, though a surprise for their clients, does not necessarily affect their business. "Any reservations the patient may have vanish once we treat their pain effectively," said Jyoti Mahesh Shirisagi, who commutes between two hospitals in Mumbai to offer her services. Indian Association for the Visually Impaired Physiotherapists (IVIP), which is formed by blind physiotherapists across the country, has members in Maharashtra, Gujarat, Delhi and other and other places, but has just one in Bangalore. "It's a surprise

that this city doesn't have many physiotherapists," Rikhadi said, admitting that Bangalore is an ideal place for the blind to practice physiotherapy. Understandably, none of the institutions in the City seems to offer a full-time diploma course, though there have been attempts to train the blind in massaging. "Most organisations (here) look at IT and ITES as the best sectors for the blind and other persons with disability to work," said a trainer closely associated with the disability sector in the City.

"Only a few practice physiotherapy here, which is neglected largely due to lack of awareness. With lifestyle changes and stress people go through here, physiotherapy will be the most lucrative option for the blind," Rikhadi added.

(Emphasis added)

32. There is a formal survey of 27 physiotherapists all with various degree of vision impairment. Inputs from the survey are noted in this Rejoinder Affidavit.

33. Paragraph 7.2.10 speaks of therapy for neurological patients and says that the Petitioner's sister has competently practiced with neurological patients. She has a testimonial from a doctor at the Sir HN Reliance Foundation Hospital. The Petitioner's sister is certified to have worked in the cardio pulmonary/oncology rehabilitation unit, etc., with complex neurological cases.

34. This is the state of the record. But additional material was tendered across the bar. Ms Patil for the OTPT Council relied on a 15th June 2023 opinion of Dr Umanjali Damke, Principal and Professor of Physiotherapy at the Government Medical College,

Nagpur. We have seen this report. It seems to us yet another variation on what we will call the Kale-Bhagwat theme namely that it is not possible at all for a physiotherapist with visual impairment to correctly assess the requirements of a patient who needs physiotherapy.

35. Ms Pamnani has prepared a short response note. She correctly asks whether Dr Umanjali Damke was even shown the material that has been produced by the Petitioner including in this mammoth Rejoinder. She contests the assertions of Dr Damke that Physiotherapy practice by low vision persons began in World War II and points that it started much earlier and probably goes back to World War I. Post-war development and the mainstreaming of Physiotherapy for the blind and the low vision is not even covered in that report. Ms Pamnani is correct that Dr Damke's opinion is repetitive of views earlier expressed and particularly laying considerable emphasis on so-called 'ethical and legal' implications' — as if to suggest that with great blindness comes great irresponsibility. It is difficult to conceive of a more untenable position. For the answer suggests itself: there is no shortage of persons with near-perfect 20/20 vision who are quite thoroughly irresponsible. There is no connection, nexus or relationship between blindness of any degree and ethical, legal or moral irresponsibility. Indeed, there is no nexus between *any* disability and irresponsibility. We find it irresponsible, and quite thoroughly reprehensible, to even suggest that those with disabilities cannot meet standards of ethical and legal responsibility; or that their disability or impairment makes them incapable of meeting these requirements.

36. What is not stated in any of these three reports is whether these three persons have any personal or professional experience of adverse reports when working with physiotherapists who are blind or have no vision. The reason for this glaring omission is not far to seek. These three reports proceed on the footing that there is *not a single case* of low vision or a blind physiotherapist anywhere. That is precisely the problem. The three reports assume that the present case of the Petitioner is the first ever such case and that there are no low vision or blind physiotherapists anywhere. This is why Ms Pamnani is correct in asking whether Dr Damke has any direct knowledge or experience of blind and low vision individuals practicing Physiotherapy. We ask the same question of the other two doctors as well. There is simply no answer. Most particularly, there is no answer about the Petitioner's own elder sister. She, Dr Anjali Jain worked at the Sir HN Reliance Foundation Hospital and received a commendation, a factor that is entirely ignored throughout.

37. But if there is something that should end all of this, it is the reference in paragraph 9 of the Rejoinder Affidavit that the Directorate of Medical Education and Research (“DMER”), to which the Government Medical College is affiliated has issued an advertisement for various employment categories and, included among these, is one for a physiotherapist described as LV—Low Vision and for a physiotherapist who is blind. There are also other descriptors such as for ‘D’ for deaf and so on. We have to read this in the context of the assertion by the OTPT Council that no disability of any extent is ever consistent to any degree with the practice of Physiotherapy.

38. We note that in at least one affidavit, the OTPT Council has tried to debunk some of the names included in the Petitioner's Rejoinder but merely stating in an affidavit before the High Court that according to the Council such a person is unworthy or lacks all qualifications does not answer the query of the Court. It does not answer the question raised in the Petition, which asks why the study and practice of Physiotherapy should be completely and totally denied to all persons on the blindness spectrum.

39. This is important when we turn to the provisions of the Rights of Persons with Disabilities Act, 2016. It is this Act and some of its provisions that will tell us clearly that the affidavits and reports by the OTPT Council have completely failed the stated intent and purpose of the RPWD Act, 2016. As Ms Pamnani points out, in a society such as ours that is polarised at every level in every conceivable way, what is required is a progression towards greater inclusiveness, not endeavouring to discover newer and newer methods of exclusion. This is what the Supreme Court has been telling us in every single matter involving the disabled, the marginalized, the poor. And yet we have here a statutory council that believes it is perfectly all right to tell persons who are, for no fault of their own, disabled, (in this case suffering from a blindness or a vision impairment) that certain fields of human endeavour must be forever shut to them.

40. We are having none of it. To accept this position would be contrary to statute and a travesty of every concept of justice.

41. The statement of objects and reasons of the 2016 RPWD reads thus.

“Statement of Objects and Reasons.—The Persons with Disabilities (Equal Opportunities, Protection on the Full Participation), Act 1995 was enacted to give effect to the Proclamation on the Full Participation and Equality of the People with Disabilities in the Asian and Pacific Region. The Act defines Persons with Disabilities as those having not less than forty per cent. Disability and identified seven categories of disabilities, namely, blindness, low vision, hearing impairment, locomotor disability, mental retardation, mental illness and leprosy-cured.

2. Over a period of time, the conceptual understanding of the rights of persons with disabilities has become more clear and there has been world-wide change in approach to handle the issues concerning persons with Disabilities laying down the principles to be followed by the States Parties for empowerment of persons with disabilities. India signed the said Convention and subsequently ratified the same on the 1st day of October, 2007. The Convention came into effect on the 3rd day of May, 2008. Being a signatory to the Convention, India has an international obligation to comply with the provisions of the said Convention which required an entirely new legislation.

3. In 2010, an Expert Committee constituted under the Chairmanship of Dr Sudha Kaul, Vice-Chairman, Indian Institute of Cerebral Palsy, Kolkata submitted its report in 2011, suggesting a Draft Bill relating to the Rights of Persons with Disabilities. The draft Bill was extensively debated upon at various levels involving State Governments and Union territories and various stakeholders.

4. The salient features of the Rights of Persons with Disabilities Bill, 2014, *inter alia*, are:-

(i) Nineteen specified disabilities have been defined;

(ii) the persons with disabilities enjoy various rights such as right to equality, life with dignity, respect for his or her integrity, etc., equally with others;

(iii) duties and responsibilities of the appropriate Government have been enumerated;

(iv) all educational institutions funded by appropriate Government shall provide inclusive education to the children with disabilities;

(v) a National Fund is proposed to provide financial support to persons with disabilities;

(vi) stakeholders' participation in the policy making through Central and State Advisory Boards;

(vii) increase in reservation in posts from existing three per cent. to five per cent. in the vacancies for persons or class of persons with benchmark disabilities in every establishment and reservation of seats for students with benchmark disabilities in higher educational institutions;

(viii) setting up of National Commission and State Commission to act as Grievance Redressal Mechanism, monitor implementation of the proposed legislation replacing the Chief Commissioner and State Commissioners for persons with disabilities, respectively;

(ix) guidelines to be issued by the Central Government for issuance of certificates of specified disabilities;

(x) penalties for offences committed against persons with disabilities; and every district to try offences.

(xi) *Court of Session to be designated as Special Court by the State Government in every district to try offences.*

5. The Bill seeks to achieve the above objects.”

(Emphasis added)

42. We note the reference to the United Nations Convention. There is an emphasis on respect for the inherent dignity of an individual; autonomy; freedom to make one’s own choices; non-discrimination; full and effective participation and inclusion in society; respect for differences; the requirement for acceptance of persons with disability as part of human diversity and humanity; and, important for our purposes important, *equality of opportunity*. Nobody can explain how the approach of the OTPT Council subserves any of these statutory purposes and intents.

43. We are required now to look at some of the more unusual definitions in the 2016 Act. These are terms that are not often adverted to, but they assume importance because of the assertions made by the OTPT Council. Prominent amongst these is the definition in Section 2(c) of ‘barrier’. This means any factor including communicational, cultural, economic, environmental, attitudinal or structural *which hampers the full and effective participation of persons with disabilities in society*. Then Section 2(h) tells us what is meant by ‘discrimination’ in relation to disability:

“2(h) “*discrimination*” in relation to disability, means **any distinction, exclusion, restriction on the basis of disability which is the purpose or effect of impairing or nullifying the recognition, enjoyment or exercise on an equal basis with others of all human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field and includes all forms of**

discrimination and denial of reasonable accommodation.”

(Emphasis added)

44. Section 2(m) speaks of an inclusive education:

(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;**

(Emphasis added)

45. To understand the concept of 40%, etc., we look at the definitions under Sections 2(r) and 2(s).

(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 measurable terms, as certified by the certifying authority;**

(s) *“person with disability”* means a person with **long term physical, mental, intellectual or sensory impairment which, in interaction with barriers, hinders his full and effective participation in society equally with others;**

(Emphasis added)

46. Then there is a concept in this Act of what is called ‘reasonable accommodation’ and we find this in Section 2(y). It reads thus:

“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.**”

(Emphasis added)

47. Chapter II of the 2016 Act deals with Rights and Entitlements. Section 3 reads thus:

“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.”

(Emphasis added)

48. Chapter III deals with education. After all, that is our primary focus today. Section 16 tells us what the duties of the appropriate Government and education institutions are in regard to providing

inclusive education. Section 17 sets out specific measures to promote and facilitate inclusive education and these two sections read thus:

CHAPTER III

EDUCATION

16. Duty of educational institutions.—The appropriate Government and the local authorities shall endeavour that all educational institutions funded or recognised by them provide inclusive education to the children with disabilities and towards that end shall—

(i) admit them without discrimination and provide education and opportunities for sports and recreation activities equally with others;

(ii) make building, campus and various facilities accessible;

(iii) provide reasonable accommodation according to the individual's requirements;

(iv) provide necessary support individualised or otherwise in environments that maximise academic and social development consistent with the goal of full inclusion;

(v) ensure that the education to persons who are blind or deaf or both is imparted in the most appropriate languages and modes and means of communication;

(vi) detect specific learning disabilities in children at the earliest and take suitable pedagogical and other measures to overcome them;

(vii) monitor participation, progress in terms of attainment levels and completion of education in respect of every student with disability;

(viii) provide transportation facilities to the children with disabilities and also the attendant of the children with disabilities having high support needs.

17. Specific measures to promote and facilitate inclusive education.— The appropriate Government and the local authorities shall take the following measures for the purpose of section 16, namely:

(a) to conduct survey of school going children in every five years for identifying children with disabilities, ascertaining their special needs and the extent to which these are being met:

Provided that the first survey shall be conducted within a period of two years from the date of commencement of this Act;

(b) to establish adequate number of teacher training institutions;

(c) to train and employ teachers, including teachers with disability who are qualified in sign language and Braille and also teachers who are trained in teaching children with intellectual disability;

(d) to train professionals and staff to support inclusive education at all levels of school education;

(e) to establish adequate number of resource centres to support educational institutions at all levels of school education;

(f) to promote the use of appropriate augmentative and alternative modes including means and formats of communication, Braille and sign language to supplement the use of one's own speech to fulfil the daily communication needs of persons with speech, communication or language disabilities and enables them to participate and contribute to their community and society;

(g) to provide books, other learning materials and appropriate assistive devices to students with benchmark disabilities free of cost up to the age of eighteen years;

- (h) to provide scholarships in appropriate cases to students with benchmark disability;
- (i) to make suitable modifications in the curriculum and examination system to meet the needs of students with disabilities such as extra time for completion of examination paper, facility of scribe or amanuensis, exemption from second and third language courses;
- (j) to promote research to improve learning; and
- (k) any other measures, as may be required.”

(Emphasis added)

49. Even assuming that what the three doctors cited by the OTPT Council say is correct, the RPWD Act requires them to change that situation. To put it even more bluntly: they have no choice. They have to adapt their education curricula and policies to bring them in line with the RPWD Act 2016. the National Commission tells us that it is the OTPT Council that deals with Physiotherapy curriculum. Therefore, the primary responsibility is with the OTPT Council. Those adaptations must serve the purposes under Sections 16 and 17. The one answer that is unacceptable is “it cannot be done”. The Petitioner demonstrates that it can, and it is for the OTPT Council to find a way to make it happen.

50. Chapter IV is a very unusual set of statutory provisions. It deals with skill development and employment. It is unusual because apart from reservations it actually focuses on the building up and the acquisition of skill sets for the disabled. Section 19 speaks of vocational training and self-employment. Section 20 says there will be no discrimination against the disabled in employment. Section

21, set out below, provides what is entirely consistent with Part III of the Constitution, namely, an equal opportunity policy.

“21. Equal opportunity policy.—

(1) Every establishment shall notify equal opportunity policy detailing measures proposed to be taken by it in pursuance of the provisions of this Chapter in the manner as may be prescribed by the Central Government.

(2) Every establishment shall register a copy of the said policy with the Chief Commissioner or the State Commissioner, as the case may be.”

(Emphasis added)

51. The aspect of special provisions of persons with benchmark disabilities is to be found in Chapter VI. Particularly, Sections 33 and 34 are relevant. The OTPT Council’s stand cannot be accepted unless there is a notification within the meaning of the second proviso to Section 34(1) saying that it is not possible for any government establishment to provide reservations having regard to “the type of work”, viz., the practice of Physiotherapy. What Sections 33 and 34 require are therefore the identification of posts for reservations and, secondly, the preservation of a 4% aggregate reservation. This reservation includes those with blindness and low vision. It follows, therefore, that unless there is an exclusion of Physiotherapy within the meaning of the second proviso the reservation must apply there as well.

52. The benchmark disability will tell us when that reservation begins to operate. This is as it should be and we have briefly

discussed this above because a person with a 5% vision impairment may not be entitled to a reservation, but equally, that person with a 5% visual impairment cannot be deprived of an opportunity to study Physiotherapy. But this is precisely where the responses from the OTPT Council fail everybody. They fail the purpose of the Council. They fail the enquiry of the Court. They fail the purpose of the RPWD statute. These Affidavits and reports, plainly read, necessarily imply that a person with even a 0.01% visual disability cannot study or practice Physiotherapy. Interestingly, we are not told whether the deponents of these Affidavits or the persons who gave the reports have perfect vision or wear spectacles.

53. On balance, what does the material before us show? *First*, that there is *no* demonstrated, independently established consensus that the practice of Physiotherapy requires zero visual impairment. As against this, there is overwhelming material produced by the Petitioner (including Ms Pamnani's Rejoinder) that exactly the converse is true: Physiotherapy is shown as being studied and practiced successfully by those even with 100% blindness. We are not called upon to decide what aspect of Physiotherapy can be successfully or safely practiced by what person. That is obviously governed by standards that would be established or by institutes where these persons work. But this does not mean that the stand of the Council that no low vision candidate can ever be admitted to a Physiotherapy course can possibly be sustained.

54. *Second*, what is most notable about the OTPT Affidavits and the OTPT reports is not what they say but what they do not say.

There is a complete failure to assess the extent to which low vision impairment will not impede the study or practice of the Physiotherapy. That was our question. It was asked several months ago. Five months later, it remains without an answer. We are only told that no visual impairment can be permitted for the study and practice of Physiotherapy. We are not told what aspects of Physiotherapy can be safely studied or practiced by those with low vision.

55. We must, we believe, express our very great dismay and displeasure at this approach of a regulatory Council . The constitutional mandate is not to find further methods of exclusion. It is not to find new methods to benefit majorities. The protections of Part III are for minorities, those marginalized and those deprived. Our collective endeavour as a society and particularly that of the State Government has to be a constant effort to find ways to assist those most in need of assistance; and never to say that nothing can be done. As a society in a Constitutional framework, one that is a Republic and therefore governed by the Rule of Law, the measure of how civilized we are is not the benefits we confer on those who are already privileged, but how we care for those most in need of protection. It is to this standard that we expect councils like the State OTPT Councils to always address themselves. The answer that we have received in these Affidavits are not only unacceptable to any judicial, constitutional or moral conscience but are, quite frankly, a betrayal of a Constitutional mandate and of a statutory duty.

56. Consequently, the Petition succeeds. For the reasons that we have indicated Rule is made absolute in terms of prayer clause (b). The Petitioner has already been given protection by orders of this Court and admitted to the first year of the Physiotherapy course. We clarify that her admission and continued study is not to be interrupted nor to be cancelled only on the ground of a low vision impairment.

57. Rule is made absolute in these terms.

58. No costs.

(Neela Gokhale, J)

(G. S. Patel, J)