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W.P.No.26303 of 2025

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 03.11.2025
DELIVERED ON : 05.03.2026

CORAM :

THE HONOURABLE MR. MANINDRA MOHAN SHRIVASTAVA,
CHIEF JUSTICE

AND

THE HONOURABLE MR.JUSTICE G.ARUL MURUGAN

WP No.26303 of 2025
and WMP No.29608 of 2025

E.Hariharan

S/o.K.Elango,
No.2/19, Arasalakudi Bothanur Post,
Tharangambadi Taluk,
Mayiladuthurai.

.. Petitioner

Vs

1. Union of India

Rep. by Union Territory of Puducherry,
Through its Special Secretary (Revenue)
cum District Collector
Department of Revenue and
Disaster Management, I Floor,
New Revenue Complex Vazhudavoor Road,
Puducherry-605 009.

2.The Tahsildar cum Executive Magistrate

Thaluk Office, Muthialpet,
Puducherry-605 004.



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3.The Tahsildar/ Deputy Tahsildar

Thaluk Office, Muthiapet,
Puducherry-605 004.

4.The Superintending Engineer-cum-

Head of Department,
Electricity Department,
Government of Puducherry,
137, N.S.C. Bose Road,
Puducherry-605 001.

.. Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India seeking issuance of a writ of mandamus directing respondents 1 to 3 to issue Nativity and Community Certificates within two weeks to the petitioner based on the G.O.Ms.No.48 dated 12.12.2002 and, consequently, direct respondent No.4 to act on such certificates for the purpose of his appointment as Junior Engineer.

For Petitioner(s): Ms.R.Vaigai,
Senior Counsel
For M/s.S.Meenakshi

For Respondent(s): Mr.V.Vasanthakumar,
Additional Government Pleader
(Puducherry)

ORDER

THE CHIEF JUSTICE

The right to access to justice and right to equality and equal treatment claimed by a person with disability are ingrained in the basic human rights, in addition to it being recognized under the



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Constitution of India and given effect to by the law makers by enacting the Rights of Persons with Disabilities Act, 2016 [for brevity, "the Act"]. However, those principles enshrined in texts, at times, find difficult to be operated on ground realities majorly because of attitudinal behaviour and approach which lacks sensitivity, in utter disregard to right to equality.

2. The petitioner seeks issuance of a writ of mandamus to direct respondents 1 to 3 to issue Nativity and Community Certificates within two weeks to the petitioner based on the G.O.Ms.No.48 dated 12.12.2002 and, consequently, direct respondent No.4 to act on such certificates for the purpose of his appointment as Junior Engineer.

3.1. A recount of the facts, in a nutshell, runs thus: The petitioner is a physically challenged person and was selected for appointment as a Junior Engineer in the Electricity Department in Puducherry. Though the petitioner was born and bred in Puducherry, the nativity certificate has been denied to him for the sole reason that after his mother's death during Covid, as there was



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no one to help him in Puducherry, the petitioner went to stay with his sister and relatives in Arasalankudi Village, which is nearer to the border of Karaikal.

3.2. The asseverations are to the effect that the petitioner was born in Puducherry on 04.10.1992 and pursued his school education in Puducherry, followed by B.Tech in Electrical and Electronics Engineering from Pondicherry Engineering College, Puducherry. The Deputy Tahsildhar, Taluk Office Olugeret, Puducherry, had already issued a community certificate dated 28.08.2007 certifying that the petitioner belongs to Thuluva Vellela community and the Government of Puducherry, Department of Revenue and Disaster Management, Taluk Office, Oulgaret, had issued certificate dated 15.12.2007 certifying that the petitioner is an Indian national and resident of Union Territory of Puducherry.

3.3. According to the petitioner, he suffers from "*hereditary sensory motor neuropathy*" and the Department of Orthopaedics, Government General Hospital, Puducherry and District Centre for Disability, D.S.W., Puducherry, has issued medical certificate dated



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09.12.2009 certifying that the petitioner falls under the category of orthopaedically handicapped persons, fixing the extent of disability at 40%. The petitioner was issued unique disability identity card by the Government of India certifying locomotor disability at 40% and is, forsooth, receiving monthly financial assistance under the Social Welfare Department, Puducherry. Moreover, it is pleaded that all his government issued identity proofs, namely Aadhar Card, Ration Card, Pan card and Voter ID, would reflect that he is a native of Puducherry.

3.4. It is asserted that the petitioner applied to the post of Junior Engineer (Electrical) and participated in the competitive exam. He secured 65.50 marks and was provisionally selected for the said post under the OBC category, subject to verification of original certificates issued by the competent authorities. Subsequently, the fourth respondent herein called upon the petitioner to appear for certificate verification and required the petitioner to produce Nativity/Residence Certificate and Community Certificate issued within one year from the date of the results of selection.

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3.5. It is stated that the petitioner immediately applied to the third respondent for issuance of nativity certificate and community certificate. The third respondent issued "Previous Residence Report" dated 23.06.2025 stating that the petitioner earlier resided at No.255, M.G.Road, Muthialpet, Puducherry, from the year 2001 to 2004, and later shifted the residence to some other Revenue Village. Likewise, the second respondent issued "Previous Residence Report" dated 20.06.2025 stating that petitioner resided within the said revenue village from 2005 to 2021 and later shifted to some other place.

3.6. It is the case of the petitioner that he had secured 65.50 marks in the selection conducted by the fourth Respondent, but since respondents 1 to 3 have denied him the Nativity and Community certificates showing reason of his temporary stay out of Puducherry, the petitioner is unable receive his appointment order. Hence, this writ petition.

4.1. Ms.R.Vaigai, learned Senior Counsel appearing on behalf



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of the petitioner, submits that denying issuance of nativity and community certificate on the ground that petitioner is temporarily stationed outside Puducherry runs athwart G.O.Ms.No.48, dated 12.12.2002, in as much as the said government order clearly states that nativity certificate may be issued solely on the basis of proof of birth within the jurisdiction of Puducherry.

4.2. It is further submitted that a learned Single Judge of this Court in *M.Malarvizhy v. Union of India*¹ has held that nativity certificate and residence certificate are different and not interchangeable and a person who is born in Puducherry could claim Nativity Certificate, even if he is not residing in Puducherry continuously for a period of five years, provided it is established by the applicant that he has intention to return to Puducherry. She hastened to add that, in the instant case, all the government issued identity cards in favour of the petitioner demonstrate his native as Puducherry.

4.3. Referring to the United Nations Convention on the Rights

¹ Order dated 6.7.2022 in W.P.No.6488 of 2016



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of Persons with Disabilities, it is submitted that though the said convention insists to promote, protect and ensure the full and equal enjoyment of human rights and fundamental freedoms by all persons with disabilities and to promote respect for their inherent dignity, the authorities, on technical grounds, are rejecting the request of the petitioner.

4.4. It is further submitted that the object behind the Act was to, *inter alia*, ensure full participation and equality of the people with disabilities and to make sure that they enjoy various rights, such as right to equality, life with dignity and to enumerate the duties and responsibilities of the government. It is added that the purpose of the Act is to remove all barriers and discriminations that disempower the disabled persons to achieve equality. Accentuating the provision of the Act which mandates the Government to provide "reasonable accommodation" to the disabled persons in the matter of employment, education and other opportunities, it is submitted that the act of the Government, in the case on hand, runs afoul of the provisions of the Act.



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4.5. In support of the submissions, reliance has been placed by learned Senior Counsel on various decisions of the Supreme Court, this Court and the Rajasthan High Court, which shall be dealt with infra.

5.1. Confuting the aforesaid arguments, Mr.V.Vasanthakumar, learned Additional Government Pleader appearing on behalf of the respondents, submitted that, on field enquiry, it is was found that the petitioner is not living in Karaikal District of Puducherry, but in Arasalakudi, Mayiladuthurai District in Tamil Nadu, where his father owns lands and is involved in agricultural activities. Therefore, the submission of the petitioner that the shifting of abode is a stopgap arrangement is out of place.

5.2. It is submitted that, even as per the government order dated 12.12.2002, nativity by birth is applicable to individuals who were born in Puducherry and are residing there till date; and in case of nativity by continuous residence, the candidate should be an ordinary resident of Puducherry five years prior to the date of application, but the petitioner does not satisfy either condition.



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5.3. The next plank of the argument is that the petitioner applied for the post under the Special Category of Persons with Benchmark Disability and was provisionally selected along with three others, but the Medical Board, on examining the petitioner, vide letter dated 25.7.2025, opined that the petitioner is not eligible for the post of Engineer (Electrical) in the Electricity Department, Puducherry as per Orthopaedical/Neurologist's opinion. The case of the petitioner does not fall within the categories of disability stipulated in the recruitment notification and, therefore, the petitioner is not eligible for the post of Junior Engineer (Electrical).

6.1. Refuting the aforesaid submission made by learned counsel for the respondents, learned Senior Counsel for the petitioner submitted that, in fact, the petitioner and his father cast their vote in the Lok Sabha Election, 2024 in Puducherry and no further explanation is required to justify his intention to return to Puducherry.

6.2. It is further submitted that the petitioner already worked



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in a private company as Electrical Supervisor for over four years and the post of Junior Engineer, which is a managerial post, does not require manual work and, on the ground of his disability, the Medical Board ought not to have opined that the petitioner is medically unfit for the post. Moreover, the recruitment notification only excludes Visually Handicapped persons and, therefore, holding that the petitioner is ineligible for the said post is untenable and in violation of Section 33 of the Act.

6.3. Learned Senior Counsel entreated this court to consider a pivotal fact that the petitioner, while pursuing Engineering course, partook in all practicals as well and placed on record a fact that the fourth respondent issued certificate to the petitioner on his satisfactory performance during in-plant training in special maintenance and, in such circumstances, without holding any functional test, determining the petitioner to be ineligible is unsustainable.

7. The following seminal issues arise for consideration in this case:

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(i) *Whether respondents acted illegally and arbitrarily in denying issuance of nativity certificate to the petitioner? and*

(ii) *Whether rejection of petitioner's candidature for post of Junior Engineer (Electrical) on the ground of medical unfitness is perverse, illegal and arbitrary?*

DENIAL OF NATIVITY CERTIFICATE

8. According to the petitioner, he was born, bred and educated in the Union Territory of Puducherry. It is not disputed that the petitioner's mother died due to Covid and he was left only with his father, who was a farmer. The petitioner himself is a person with disability. He suffers from disability of the nature described as "Hereditary Sensory Motor Neuropathy". The certificate of disability issued by the competent authority has also been placed on record, which has not been disputed by the respondents.

9. In the writ petition, the petitioner clearly stated that he was born in Puducherry on 04.10.1992 and he belongs to Backward



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Community. The Puducherry Municipality issued a birth certificate signed by the Registrar, registering the petitioner's birth in St. Joseph Hospital, Puducherry. Apart from schooling, the petitioner completed his college education entirely in Puducherry. The details of the educational institutions where he completed school education as well as technical education are given in the writ petition and the same are not disputed by the respondents. The petitioner completed his Secondary School Education from Fathima School, Puducherry and Higher Secondary Education from N.N. Government Higher Secondary School, Puducherry. He completed his B.Tech in Electrical and Electronics Engineering from Pondicherry Engineering College, Puducherry in 2022-2023, followed by training in Puducherry itself.

10. The community certificate issued in favour of the petitioner on 28.08.2007 by the Deputy Tahsildar, Taluk Office, Oulgaret, Puducherry, certifies that the petitioner belongs to Thuluva Vellela community. It was followed by issuance of certificate dated 15.12.2007 by the Department of Revenue and Disaster Management, Taluk Office, Puducherry, certifying that the



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petitioner is a resident of Union Territory of Puducherry.

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11. The petitioner suffers from orthopaedic problems and the disability of the nature described herein above. The Department of Orthopaedics, Government General Hospital, Puducherry and District Centre for Disability, D.S.W., Puducherry, has issued medical certificate dated 09.12.2009 certifying that the petitioner falls under the category of orthopaedically handicapped person, fixing the extent of disability at 40%. The petitioner has also been issued unique disability identity card by the Government of India certifying locomotor disability at 40%. Not only this, the other admitted position is that the petitioner has been receiving monthly financial assistance from the Social Welfare Department, Puducherry.

12. The categoric and emphatic statement made in the petition along with supportive documentary evidence makes it an admitted position on record that the government has issued identity proofs, namely Aadhar Card, Ration Card, Pan Card and Voter ID, which reflect that the petitioner is a native of Puducherry.



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13. It is extremely relevant to mention, as an admitted factual position on record, that the petitioner as well as his father continued to be recorded as voters of the Union Territory of Puducherry and they have also cast their vote in the last Lok Sabha election from that constituency.

14. Another vital asseveration in the petition, which is not rebutted by the respondents, pertains to the compelling circumstances which necessitated the petitioner along with his father to reside in Arasalankudi Village, nearby his sister's house, though unwillingly and without any intention of giving up nativity of Puducherry. It is stated that the petitioner's mother died on 29.05.2021 due to acute respiratory distress caused by Covid Pneumonia in Puducherry and since his father, who is aged 76, also suffered from Covid and became debilitated, the petitioner, being a person with disability, was unable to continue habitation in Puducherry without much help. The petitioner and his father were struggling for their livelihood, as there was no one to care during and after the Covid period in Puducherry.



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15. It is stated that in these compelling circumstances and to cope with the difficult situation, as a temporary measure, in the year 2021, the petitioner and his father had to move to the house of his sister and then to Arasalankudi Village, which is near to the place where his sister and other relatives reside. This village is located in the border of Nandaluru, Karaikal, but the fact remains that the petitioner continued with his technical education in Puducherry, followed by training also in Puducherry, and all his certificates and other documents like Aadhar Card, Ration Card, Pan Card and Voter ID, continue to reflect that the petitioner is a native of Puducherry, which ostensibly depicts the intention of the petitioner that he being born, bred and educated in Puducherry, would always be looking to come back permanently and settle in Puducherry.

16. The shifting of residence to a place nearby his sister's residence was only intended to cope with the emergent situation arising out of the death of his mother during Covid, he being a person with disability and his father being an aged person requiring care and attention of some other family member.



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17. The petitioner and his father never applied for grant of permanent resident certificate in the State of Tamil Nadu to draw an inference that they intend to permanently settle in Tamil Nadu and they have left the Union Territory of Puducherry for all times to come, nor did they apply for change of address in the Aadhar Card, Ration Card, Pan Card and Voter ID for availing any facility and benefit from the State of Tamil Nadu.

18. The continued association, however, with the birth place was more than mere indication of the willingness and intention of the petitioner to permanently stay in Puducherry itself. That was the reason why the petitioner continued with his technical education in Puducherry, notwithstanding his temporary stay on the borders of the Union Territory of Puducherry and the State of Tamil Nadu.

19. Besides that, at the very first available opportunity, as and when an advertisement was issued inviting applications for direct recruitment to the post of Junior Engineer (Electrical), the petitioner immediately offered his candidature.



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20. On the basis of these overwhelming facts, circumstances and various certificates, the petitioner applied for issuance of Nativity Certificate.

21. At this stage, it is apposite to reproduce the government policy issued vide G.O.Ms.No.48, dated 12.12.2002, wherein the procedure for issuance of Nativity Certificate is detailed. It postulates the criteria for determining the nativity into two kinds, viz., nativity by birth and nativity by continuous residence. The relevant part of the said government order is reproduced herein below:

"(a) Nativity by birth: The applicant should have been born in the Union Territory of Pondicherry and should have been ordinarily residing within the Union Territory prior to the date of application. In order to satisfy the criterion of 'Ordinarily resident', the person should have been staying either by himself or with his family within the Union Territory of Pondicherry continuously with a clear intention of residing there permanently, but for temporary absence from such place of residence for reasons of



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job or education, etc. As long as the applicant is able to establish satisfactorily his intention to return to his place of residence on the conclusion of such temporary absence, he may be considered to be a person ordinarily residing in the Union Territory.

(b) Nativity by continuous residence: The applicant should have been residing continuously for five years in the Union Territory prior to the date of the application.”

22. It is more than clear from the aforesaid policy that the claim of the petitioner was for nativity by birth. The expression “*but for temporary absence from such place of residence for reasons of job or education, etc. As long as the applicant is able to establish satisfactorily his intention to return to his place of residence on the conclusion of such temporary absence*” clearly manifests that merely because a person is residing temporarily at another place, such person cannot be denied certificate of nativity by birth without due and proper consideration of the background compelling circumstances coupled with all other attending circumstances.



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23. However, if we may say so, the authority denied the Nativity Certificate in a most mechanical manner without taking into consideration all attending circumstances and without taking into account the spirit of the policy enunciated vide the Government Order dated 12.12.2002. The only reason, as could be seen from the previous residence certificate and reply, is that the petitioner for some time was residing near his sister's place along with his father and is, therefore, not entitled to issuance of nativity certificate. This finding of the respondents is not only perverse, mechanical and arbitrary, but lacks sensitivity while dealing with an application of a person suffering from disability.

24. All relevant circumstances and established facts narrated in detail herein above, which are admitted position on record, were conveniently ignored by the authorities resulting in petitioner being made a victim of arbitrary and mechanical exercise. The reply of the respondents and the submission that there was hardly any material to draw an inference that the petitioner had any intention to come back and stay permanently in Puducherry and that his stay



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with his sister was only temporary, perilously borders on perversity and has to be rejected.

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DENIAL OF APPOINTMENT ON THE GROUND
OF MEDICAL UNFITNESS

25. As we articulated in the introductory part of our order that the principles enshrined in the Constitution in the texts find difficult to be operated on the ground realities because of attitudinal behaviour and approach which lacks sensitivity, scrutinizing the material on record, the nature of duties and functions required to be performed by the Junior Engineer (Electrical), and the cursory manner in which the fitness of the petitioner has been judged by the Medical Board, we are constrained to observe and are at pains to say that the petitioner was not examined by the Medical Board in concordance with the spirit of the constitutional mandate and scheme of the Act and the entire process runs athwart the principle of "reasonable accommodation" evolved by the Apex Court in a series of judicial pronouncements.

26. A perusal of the recruitment notification clearly sets out

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that as many as three posts were reserved for persons with benchmark disability. The recruitment notification also specifies the categories of disability suitable for the post of Junior Engineer (Electrical) for the category of persons with benchmark disability as below:

- | <u>Sl.No.</u> | <u>Category of Disability</u> |
|---------------|--|
| a. | <i>Deaf, Hard of Hearing</i> |
| b. | <i>One Leg, Cerebral Palsy, Leprosy Cured, Dwarfism, Acid Attack Victims, Spinal Deformity without any Neurological/limb dysfunction (SD) and Spinal Injury without any neurological/limb dysfunction (SI)</i> |
| c. | <i>Autism Speotrum Disorder (M=Mild) Specific Learning Disability, Mental Illness</i> |
| d. | <i>Multiple Disabilities (a) to (c) above</i> |

Note: The post of Junior Engineer (Electrical) is not identified suitable for Visually Handicapped (VH) as per Department of Empowerment of Persons with Disabilities (Divyangjan) Notification dated 04/01/2021.

27. True it is that the petitioner could not claim benefit of reservation against three reserved vacancies, because he was not



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included in the categories of disability for which reservation was provided, but it is important to notice that persons suffering from Cerebral Palsy/ Autism Speotrum Disorder / Mental Illness and multiple disabilities of category (a) to (c) were entitled to reservation. The notification also states that the post of Junior Engineer (Electrical) is not identified suitable for visually handicapped. Therefore, those who are not visually handicapped and were not included in the categories specified in Clause (2) of Part II of the recruitment notification were entitled to be considered on the basis of their merit, provided they are otherwise found fit for performing the duties and functions.

It is to be noted that the petitioner suffers from "*hereditary sensory motor neuropathy*", which was not included in the note, reproduced supra, as a disability making the person unsuitable for appointment to the post of Junior Engineer (Electrical).

28. The Medical Board, which examined the medical fitness of the petitioner for the job, gave the following opinion:

"08/07/2025

- *Both upper/lower limb/Chronic Neurological*



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- *It has applied for Certificate from Neurology (Dr.Ravi)*
- *To include Neurologist in board*
- *Not eligible*

Both Upper and lower limbs and Chronic Neurological illness hence Not eligible 45%.

To get Neurologist Opinion

08/07/2025

U/B Neurologist

Patient is a known case of Hereditary Motor Sensory Neuropathy - under the category of chronic neurological condition. He has weakness of all four limbs. He has 45% disability. He has permanent disability."

29. It appears that the petitioner was considered to be a case of "hereditary sensory motor neuropathy". It was stated that as both upper and lower limbs suffer from chronic neurological illness, the petitioner is not eligible. Based on such opinion, a certificate was issued by the Medical Board stating that the petitioner is not eligible for the post of Engineer (Electrical) in the Electricity Department, Puducherry as per Orthopaedician/ Neurologist's



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opinion. The certificate reads as below:

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"CERTIFICATE

Certified that Thiru. E.Hariharan S/o Elango, No.9, 5th Street, Samipillai Thottam, Lawspet, Puducherry has appeared before the Medical Board on 10.07.2025 and we, the members of the Medical Board are of the opinion that he has Hereditary motor Sensory Neuropathy with weakness of all four limbs.

Medical Board Recommendation:

He is not eligible for the post of Engineer (Electrical) in the Electricity Department, Puducherry as per Orthopaedician / Neurologist's opinion."

29. Much deeper examination by the medical experts in the Neurological Department, in concert with the departmental authority, was required to be made to find out as to what percentage of disability suffered by a person, as in the present case, would render him medically unfit to perform the work of Junior Engineer (Electrical).

30. It is the clear assertion of the petitioner, which has not



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been disputed by the respondents, that the petitioner, while pursuing Engineering course, partook in all practicals as well. He has placed on record the fact that the fourth respondent issued certificate to the petitioner on his satisfactory performance during in-plant training in special maintenance. The petitioner successfully completed B.Tech (Electrical and Electronics Engineering). It is common knowledge that the engineering courses include practical examinations also. Therefore, the students studying B.Tech (Electrical and Electronics Engineering) are required to deal with various electrical equipment in their practical classes. Not only that, they have to appear and pass the practical examinations, apart from theory examinations. The fact that the petitioner successfully completed B.Tech (Electrical and Electronics Engineering) course clearly shows that even with the disability he is suffering, he was able to deal with electrical and electronic equipment. Had it not been so, the petitioner could not have cleared the practical examinations. All through the engineering course of more than four years, he had dealt with electrical and electronic equipment.



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31. The categoric assertion made by the petitioner, which also remained undisputed is that the petitioner worked as Electrical Supervisor for over four years in a private company. Certainly, if the petitioner was unable to discharge his duties as an Electrical Engineer, which involves dealing with electrical equipment, he would not have continued in a private job as Electrical Supervisor for nearly four years.

32. All these aspects were not taken into consideration by the authorities and the Medical Board acted in a most mechanical manner declaring the petitioner medically unfit for the job, ignoring that persons suffering with similar disabilities were declared suitable under the advertisement itself against three posts reserved for persons with benchmark disability.

33. It is apparent that the petitioner was declared medically unfit owing to the reason that the reservation is provided for certain specified category of persons with benchmark disability.



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WEB COPY 34. There may be a situation where a person may be suffering from a particular kind of disability which may not have been classified for the purpose of reservation, but that may not necessarily lead to a conclusion that a person suffering from disability of a different kind would not be suitable for the job. The person has to be medically examined independently. If he is found medically fit, yet not included in the specified category of disability for the purpose of reservation, he may still claim consideration of his candidature against general category posts.

35. In the present case, the recruitment notification indicated that visually handicapped persons are not suitable for employment on the post of Junior Engineer (Electrical), for obvious reasons. But, it did not include a person suffering from the nature of disability of the petitioner as altogether unsuitable for employment. It would depend on assessing the disability on a case to case basis, particularly taking into consideration the nature and extent of weakness of limbs due to "*hereditary sensory motor neuropathy*". It



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is not that in all cases of chronic neurological illness, a person may be unfit. In the instant case, the petitioner not only successfully completed B.Tech (Electrical and Electronics Engineering), which included practical examinations, but also worked for four years as Electrical Supervisor, which provided an additional input as functional test for medical fitness.

36. Though we are not experts in medical field, we have gone through the article regarding Distant Hereditary Motor Neuropathy (dHMN), Hereditary Motor/Sensory Neuropathy (HMSN) filed by the petitioner. Amongst other things, the say of the experts is that Hereditary Sensory Neuropathy and Hereditary Sensory and Autonomic Neuropathy can produce mild, moderate, or severe sensory loss without muscle weakness or atrophy. Therefore, a proper medical examination was necessary to form an opinion with reference to the nature of duties and functions required to be performed in the post of Junior Engineer (Electrical) and not an isolated examination limited to the nature of disability.



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37. India is party to international conventions. If we claim to be a progressive society in the 21st Century, the old-age practice of monotonous automation needs to be zealously eschewed and has to be substituted by a proactive and positive obligated attitude of all public functionaries and authorities in dealing with persons with disabilities, more particularly, while dealing with the cases of persons with disability, as to whether they are medically fit to undertake a job/employment. Their disability element is required to be judged with the assistive tools and devices, if any, available for such kind of disabilities.

38. As an illustration, a person with high disability, which otherwise would make him medically unfit, may lower down the degree of disability with the help of assistive device. This kind of affirmative action as part of positive obligation and proactive attitude that required sensitivity is what is least expected, and quite legitimately, by persons with disabilities in our society, who are none other than our own brothers and sisters. Indeed, their rights are our obligations.



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39. In the case of *Union of India and another v. National Federation of the Blind and others*², the Apex Court emphasised as to how employment is a key factor in the empowerment and inclusion of people with disabilities. The relevant observations in the said judgment are reproduced hereunder:

"50. Employment is a key factor in the empowerment and inclusion of people with disabilities. It is an alarming reality that the disabled people are out of job not because their disability comes in the way of their functioning rather it is social and practical barriers that prevent them from joining the workforce. As a result, many disabled people live in poverty and in deplorable conditions. They are denied the right to make a useful contribution to their own lives and to the lives of their families and community."

40. In *Justice Sunanda Bhandare Foundation v. Union of India and another*³, the Apex Court held thus:

"9. Be that as it may, the beneficial provisions of the 1995 Act cannot be allowed to remain only on paper

²(2013) 10 SCC 772

³(2014) 14 SCC 383



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for years and thereby defeating the very purpose of such law and legislative policy. The Union, States, Union Territories and all those upon whom obligation has been cast under the 1995 Act have to effectively implement it. As a matter of fact, the role of the governments in the matter such as this has to be proactive. 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. A little concern for this class who are differently abled can do wonders in their life and help them stand on their own and not remain on mercy of others. A welfare State, that India is, must accord its best and special attention to a section of our society which comprises of differently abled citizens. This is true equality and effective conferment of equal opportunity.”

41. India having ratified the United Nations Convention on the Rights of Persons with Disabilities (UNCRPD) in 2007, also enacted the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995, which conferred several rights and entitlements to the persons with disabilities. Over a period of time, the conceptual understanding of the rights of



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persons with disabilities has become more clear and there has been worldwide change in approach to handle the issues concerning the persons with disabilities. In order to cope with the changing situation, challenges and to make more effective the law, ensuring non-discriminatory treatment and access to equality of justice, based on recommendations of an Expert Committee, a more comprehensive legislation was enacted by the legislature, namely, the Rights of Persons with Disabilities Act, 2016. The Act seeks to confer the persons with disabilities various rights such as right to equality, life with dignity, respect for his or her integrity, etc. equally with others. Apart from other progressive provisions, the Act, inter alia, makes specific provisions with regard to duties and responsibilities of the appropriate Government.

42. Section 2(c) of the Act defines “*barrier*” as under:

“(c) “barrier” means any factor including communicational, cultural, economic, environmental, institutional, political, social, attitudinal or structural factors which hampers the full and effective participation of persons with disabilities in society”



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43. The word, “*discrimination*” has been given a very comprehensive and wide meaning under Section 2(h) of the Act as below:

“(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”

44. Section 2(l) of the Act defines “*high support*” as below:

“(l) “high support” means an intensive support, physical, psychological and otherwise, which may be required by a person with benchmark disability for daily activities, to take independent and informed decision to access facilities and participating in all areas of life including education, employment, family and community life and treatment and therapy”



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WEB COPY 45. The Act, a piece of progressive legislation, defines

"reasonable accommodation" as below:

"(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"

46. The aforesaid definitions have been incorporated under the Act, as those expressions find place in various provisions dealing with the rights and entitlements.

47. Section 3 of the Act guarantees equality and non-discrimination in the following terms:

"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.



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- (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."*

48. The other provisions contained in Chapter II of the Act which deal with the rights and entitlements of women and children with disabilities; community life; protection from cruelty and inhuman treatment; protection from abuse, violence and exploitation; protection and safety; home and family; reproductive rights; accessibility in voting; access to justice; legal capacity; provision for guardianship; and designation of authorities to support, if read together create a statutory framework of positive obligation on the State and its authorities while dealing with persons with disabilities and protects the persons with disabilities



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from harassment and discrimination. The provisions further obligate the State to create necessary eco-system removing all attitudinal barriers while dealing with persons with disabilities.

49. While Chapter IV of the Act deals with skill development and employment to be provided to persons with disabilities, there is a clear provision that no government establishment shall discriminate against any person with disability in any matter relating to employment and that every government establishment shall provide reasonable accommodation and appropriate barrier free and conducive environment to employees with disability.

Section 20 of the Act reads thus:

"20. Non-discrimination in employment.—

(1) No Government establishment shall discriminate against any person with disability in any matter relating to employment:

Provided that the appropriate Government may, having regard to the type of work carried on in any establishment, by notification and subject to such conditions, if any, exempt any establishment from the provisions of this section.



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(2) *Every Government establishment shall provide reasonable accommodation and appropriate barrier free and conducive environment to employees with disability.*

(3) *No promotion shall be denied to a person merely on the ground of disability.*

(4) *No Government establishment shall dispense with or reduce in rank, an employee who acquires a disability during his or her service:*

Provided that, if an employee after acquiring disability is not suitable for the post he was holding, shall be shifted to some other post with the same pay scale and service benefits: Provided further that if it is not possible to adjust the employee against any post, he may be kept on a supernumerary post until a suitable post is available or he attains the age of superannuation, whichever is earlier.

(5) *The appropriate Government may frame policies for posting and transfer of employees with disabilities."*

50. It may be noted that Section 20 of the Act which deals



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with non-discrimination in employment operates on a different field as compared to reservation provided under Sections 33 and 34 of Chapter VI of the Act laying down special provisions for persons with benchmark disabilities.

51. In the case of *Ravinder Kumar Dhariwal v. Union of India*⁴, the facets of non-discrimination that guide the Act were explained thus:

"40. The facets of non-discrimination that guide the PwD Act are threefold : (i) right to formal equality, where no person shall be discriminated based on her disability; (ii) affirmative action in pursuance of substantive equality under Section 33; and (iii) reasonable accommodation of persons with disabilities such as provided under Section 47. There may be no specific provision in the PwD Act—unlike the RPwD Act—which provides persons with disability the right of non-discrimination. However, since the principle of substantive equality (of providing equal outcomes through affirmative action and reasonable accommodation) is premised on the principle of non-discrimination, there is no reason to hold that the principle of non-discrimination, of treating every

⁴(2023) 2 SCC 209



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person equally irrespective of her disability does not guide the entire statute.”

52. In *Vikash Kumar v. UPSC*⁵, the Apex Court, referring to earlier decision in *Justice Sunanda Bhandare Foundation v. Union of India and another* (supra), expounded and explained the principle of “reasonable accommodation” embodied in the statutory scheme of the Act and held thus:

“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

⁵(2021) 5 SCC 370



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remember *R.M. Lodha, J's (as he then was) observation in Sunanda Bhandare Foundation v. Union of India, (2014) 14 SCC 383; Disabled Rights Group v. Union of India, (2018) 2 SCC 397, 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."

53. In the case of *Kabir Paharia v. National Medical Commission*⁶, their Lordships in the Supreme Court reminded all that the constitutional promise of equality is not merely formal, but substantive, while dealing with the persons with disabilities.

The relevant observations are reproduced infra:

"15. The constitutional promise of equality is not merely formal but substantive, requiring the State to take affirmative measures to ensure that PwD and PwBD can meaningfully participate in all spheres of life, including professional education. We emphasize that reasonable accommodation is not a matter of charity but a fundamental right flowing from Articles

⁶2025 SCC OnLine SC 1025



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14, 16, and 21 of our Constitution. When administrative authorities create arbitrary barriers that exclude qualified PwBD candidates, they not only violate statutory provisions but also perpetuate the historical injustice and stigmatisation. The fundamental rights and the dignity of PwD and PwBD candidates must be protected by ensuring that assessment of their capabilities is individualised, evidence-based, and free from stereotypical assumptions that have no scientific foundation.”

54. In yet another decision in the case of *Mission Accessibility v. Union of India and others*⁷, their Lordships in the Supreme Court explained the true measure of inclusivity in governance as below:

"13. Before parting, this Court deems it appropriate to observe that the true measure of inclusivity in governance lies not merely in the formulation of progressive policies but in their faithful and effective implementation. The rights guaranteed to persons with disabilities are not acts of benevolence, but expressions of the constitutional promise of equality, dignity, and non-discrimination enshrined in Articles

⁷2025 SCC OnLine SC 2635



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14, 19, and 21 of the Constitution of India. The Union Public Service Commission, being the premier constitutional body entrusted with upholding the values of merit and fairness in public recruitment, must ensure that its processes are accessible, transparent, and sensitive to the needs of every segment of society. It is therefore imperative that the directions issued herein are carried out with utmost earnestness, sensitivity, and expedition, so that the constitutional vision of equal opportunity and meaningful participation of persons with disabilities is not reduced to a distant aspiration, but is realised as a living, enforceable, and enduring reality in the conduct of all public examinations in the country.”

55. In the case of *Omkar Ramachandra Gond v. Union of India and others*⁸, keeping in view the scheme of the Act and need for assessment of disability with assistive devices, it was held as below:

“36. In fact, a perusal of the amendment Notification dated 13-5-2019 and the Guidelines at Appendix H-1 would indicate that with regard to some categories of

⁸2024 SCC OnLine SC 2860



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disabilities particularly, locomotor disability, including specified 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 possess sufficient motor ability as required to pursue and complete the course satisfactorily."

...

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



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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.

56. In another landmark judgment in the case of *Anmol v. Union of India and others*⁹, the wide meaning and import of the expression "reasonable accommodation" was explained again relying upon the earlier decisions in *Justice Sunanda Bhandare Foundation v. Union of India and another* (supra); *Vikash Kumar v. UPSC* (supra); *Omkar Ramachandra Gond* (supra). Their Lordships in the Supreme Court held thus:

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

After having minutely scrutinized the manner in which the

⁹2025 SCC OnLine SC 387



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medical tests were carried out, their Lordships concluded as

below:

"29. Having set out the legal position governing the situation, we have no hesitation in concluding that the report of the five members of the All India Institute of Medical Sciences cannot be the basis to deny the appellant's admission to the MBBS Course. Firstly, the report does not satisfy the test laid down in *Omkar Ramchandra Gond (supra)* and *Om Rathod (supra)*. The functional assessment as contemplated in the said two judgments is not borne out by the report of five members. Secondly, as mandated or required in both *Omkar Ramchandra Gond (supra)* and *Om Rathod (supra)*, reasons have not been assigned by the five members of the Board for denying the appellant his right to pursue the MBBS Course. Thirdly, the need to assess beyond the quantified disability and the need to opine whether the individual with a disability aided by modern scientific tools and devices can enter the MBBS program has not been fulfilled by the five members of the Board. This is apart from the fact that the five members of the Board have recorded statements in the nature of disclaimers as set out hereinabove.



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

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

The obligations cast on the authority while dealing with persons with disabilities were explained thus:

"45. Before we part, there is one important aspect which needs to be considered. In the judgment of 15.10.2024 in *Omkar Ramchandra Gond (supra)* a direction was given to the National Medical Commission to issue revised regulations and



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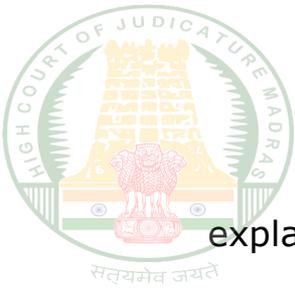


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guidelines in supersession of the guidelines of 13.05.2019 with regard to admission of students with specified disabilities under the RPwD Act with respect to the MBBS Course. This Court had also directed the NMC to consider the communication of the Ministry of Social Justice and Empowerment dated 25.01.2024. Pursuant to the judgment in Omkar Ramchandra Gond (supra), the National Medical Commission assured this Court during the course of hearing in Om Rathod (supra) that it will constitute a new committee of domain experts to comply with the judgment in Omkar Ramchandra Gond (supra). Noting the assurance of the NMC, this Court directed that the Committee to be so constituted will include persons with disability or one or more experts conversant with the disability rights. A further direction was given that fresh guidelines will be put in place applying the principles set out in the judgments.”

57. The principle of “reasonable accommodation” succinctly stated in various decisions as above were also noted in a recent judicial pronouncement in the case of *Sujata Bora v. Coal India Limited and others*¹⁰. Their Lordships in the Supreme Court

¹⁰2026 SCC OnLine SC 58



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explained how the directive principles and fundamental rights are

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two wheels of a chariot and provide constitutional mandate and

sanction in relation to persons with disability. It was held thus:

"18. Explaining how directive principles and fundamental rights are two wheels of a chariot, this Court in Minerva Mills Ltd. v. Union of India, (1980) 3 SCC 625, speaking through Chief Justice YV Chandrachud in a memorable passage held as follows—

"56. The significance of the perception that Parts III and IV together constitute the core of commitment to social revolution and they, together, are the conscience of the Constitution is to be traced to a deep understanding of the scheme of the Indian Constitution. Granville Austin's observation brings out the true position that Parts III and IV are like two wheels of a chariot, one no less important than the other. You snap one and the other will lose its efficacy. They are like a twin formula for achieving the social revolution, which is the ideal which the visionary founders of the Constitution set before themselves. In other words, the Indian Constitution is founded on the



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bedrock of the balance between Parts III and IV. To give absolute primacy to one over the other is to disturb the harmony of the Constitution. This harmony and balance between fundamental rights and directive principles is an essential feature of the basic structure of the Constitution.”

(emphasis supplied)

19. Justice Douglas of the U.S. Supreme Court in *Barsky v. Board of Regents*, 347 U.S. 442 (1954), said:

“The right to work I have assumed was the most precious liberty that man possesses. Man has indeed, as much right to work as he has to live, to be free and to own property. To work means to eat and it also means to live.”

20. *It is the most precious liberty because it sustains and enables a person to live and the right to life is a precious freedom. Life means something more than mere animal existence and the inhibition against the deprivation of life extends to all those limits and faculties by which life is enjoyed. Article 39(a) of the Constitution, which, is a directive Principle of State*



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Policy, provides that the State shall in particular, direct its policy towards securing that the citizens, men and women equally, have the right to an adequate means of livelihood.

21. Article 41 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."

22. Article 37 provides that the Directive Principles, though not enforceable by any court, are nevertheless fundamental in the governance of the country. The principles contained in Articles 39(a) and 41 must be regarded as equally fundamental in the understanding and interpretation of the meaning and content of fundamental rights."

58. In view of the above consideration, we have no hesitation



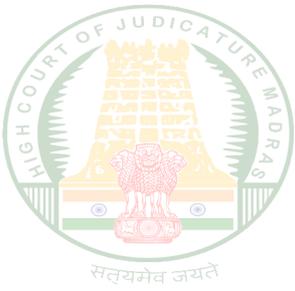
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to hold that there has been no proper medical examination of the petitioner with reference to the nature of duties and functions on the post of Junior Engineer (Electrical) vis-a-vis the competency assessed during the educational career and private employment on the post with similar work, and that too without involvement of departmental expert to correlate the nature and extent of disability with the requirement of job to ultimately conclude whether or not the petitioner is suitable for employment.

59. More than anything else, a person with disability is legitimate in his expectation that in all walks of life and interaction in the society, he would be treated equally; without discrimination and attitudinal barriers; and with sensitivity.

60. We are, therefore, inclined to issue direction to the Chief Secretary, Union Territory of Puducherry to prepare a Standard Operating Procedure (SOP) directing all the departments and the public officials dealing with persons with disabilities to hold sensitisation programmes periodically. This shall be done within a period of two months from today.

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In the result, the writ petition is allowed with the following directions:

(a) The decision of the respondents to deny Nativity Certificate to the petitioner is held illegal. The respondents are directed to forthwith issue Nativity Certificate to the petitioner.

(b) Apropos of medical fitness aspect, we direct the respondents to constitute a fresh Medical Board consisting of not only medical experts, including Neurologist, but also one departmental officer well-versed with the nature of duties and functions assigned to the post of Junior Engineer (Electrical). The fact that the petitioner successfully completed his B.Tech in Electrical and Electronics Engineering and has hands on experience in dealing with electrical and electronic equipment in his private employment for four years shall be given due credence and receive special additional



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consideration. This exercise shall be completed within a period of six weeks.

(c) The petitioner, having secured high marks, will be entitled to appointment against existing vacancy, once he is cleared by the Medical Board.

(d) The respondents shall pay costs quantified at Rs.50,000/- to the petitioner within a period of one month from today.

(e) The interim application stands closed.

(MANINDRA MOHAN SHRIVASTAVA, CJ) (G.ARUL MURUGAN,J)
05.03.2026

Index : Yes
Neutral Citation : Yes
sasi

Note to Registry:

Mark a copy this order to the Chief Secretary, Union Territory of Puduchery.



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To:

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1. The Special Secretary (Revenue)
cum District Collector, Union of India
Rep. by Union Territory of Puducherry,
Department of Revenue and
Disaster Management, I Floor,
New Revenue Complex Vazhudavoor Road,
Puducherry-605 009.
2. The Tahsildar cum Executive Magistrate
Thaluk Office, Muthialpet,
Puducherry-605 004.
3. The Tahsildar/ Deputy Tahsildar
Thaluk Office, Muthiapet,
Puducherry-605 004.
4. The Superintending Engineer-cum-
Head of Department,
Electricity Department,
Government of Puducherry,
137, N.S.C. Bose Road,
Puducherry-605 001.



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THE HON'BLE CHIEF JUSTICE
AND
G.ARUL MURUGAN,J.

WP No.26303 of 2025
and WMP No.29608 of 2025

05.03.2026

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