

(2017) 13 Supreme Court Cases 351 : (2018) 1 Supreme Court Cases (L&S) 37 : 2017 SCC OnLine SC 272

In the Supreme Court of India

(BEFORE DIPAK MISRA AND A.M. KHANWILKAR, JJ.)

PRANAY KUMAR PODDER . . Appellant;

Versus

STATE OF TRIPURA AND OTHERS . . Respondents.

Civil Appeals No. 4393 of 2017[±] with No. 4394 of 2017[±], decided
on March 23, 2017

A. Education Law — Professional Colleges/Education — Medical and Dental Colleges — Admission — Admission Procedure — Eligibility/Qualifications for admission/entrance test — Candidates with colour vision deficiency (CVD) — Prosthetics aids to assist CVD medical practitioners and areas of practice which they could undertake without difficulty with these aids — MCI directed to constitute expert committee to explore the same keeping in view international practice and prevalent conditions and suggest changes within three months

— Held, total exclusion of CVD candidates for admission to medical courses without any stipulation in which areas they really can practise and render assistance would tantamount to regressive thinking — Court should have a broader outlook of international practice rather than being confined to resolution passed by general body of MCI — Therefore, MCI should take progressive measure so that individuals with CVD aspiring to become doctors are not frustrated and their right to equality is safeguarded — Further, India is a signatory to Convention on the Rights of Persons with Disabilities and Optional Protocol — There is no doubt that neither Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 nor Rights of Persons with Disabilities Act, 2016 treat CVD candidates as disabled persons — But present case is not a case about reservations in medical service

(Paras 10, 25 and 28 to 31 and 15 to 18)

Pranay Kumar Podder v. State of Tripura, SLP (C) No. 27388 of 2015, order dated 21-3-2017 (SC); *Union of India v. Devendra Kumar Pant*, (2009) 14 SCC 546 : (2010) 1 SCC (L&S) 374; *Union of India v. Sanjay Kumar Jain*, (2004) 6 SCC 708 : 2004 SCC (L&S) 869; *Kunal Singh v. Union of India*, (2003) 4 SCC 524 : 2003 SCC (L&S) 482; *Sunanda Bhandare Foundation v. Union of India*, (2014) 14 SCC 383 : (2015) 3 SCC (L&S) 470, referred to

Pranay Kumar Podder v. State of Tripura, 2015 SCC OnLine Tri 888 : AIR 2016 Trip

1, *impliedly disapproved*

The Truth About Color Vision in Healthcare — Dr Terrace L. Waggoner Sr., O.D, Terrace L. Waggoner Jr.; J. Anthony B. Spalding, Barry L. Cole, Fraz A. Mir : Advice for Medical Students and Practitioners with Colour Vision Deficiency : A Website Resource — Clin Exp Optom 2010; 93 : 1 : 39-41, *referred to*



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B. Education Law — Professional Colleges/Education — Medical and Dental Colleges — Admission — Admission procedure — Eligibility/Qualifications for admission/entrance test — Candidates with colour vision deficiency (CVD) — Delhi and Rajasthan High Court views' considered that : (a) CVD should not prevent petitioner from pursuing disciplines where colour blindness may not be a handicap, and (b) India recognises medical degrees from certain foreign Universities, where CVD is not a bar to medical admission — Options kept open, as Court directed constitution of expert committee for suggesting changes in this regard

(Paras 10 and 19 to 21)

Kunal Kumar v. Union of India, 2002 SCC OnLine Del 1297 : (2002) 101 DLT 471; *Parmesh Pachar v. Convener, Central Undergraduate Admission Board*, 2003 SCC OnLine Raj 349 : (2003) 4 RLW 2284, *considered*

C. Human and Civil Rights — Disabled and Differently-Abled Persons — Candidates with colour vision deficiency (CVD) — Ishihara test to ascertain CVD, discussed

(Paras 12 to 14)

Tests for Colour Vision Deficiency : Is it Time to Revise the Standards — Nidhi Pandey, A.K. Chandrakar, M.L. Garg : Pt. J.N.M. Medical College, Raipur.; Color Vision Tests — National Research Council (US) Committee on Vision — Procedures for Testing Color Vision; Report of Working Group 41. Washington (DC) : National Academies Press (US); 1981, *referred to*

D. Human and Civil Rights — Disabled and Differently-Abled Persons — Candidates with colour vision deficiency (CVD) — Meaning, causes and prevalence

(Paras 11 to 14)

Colour Vision Deficiency — Publication Review by Stanley J. Swierzewski, III, MD.; Color Vision Deficiency in the Medical Profession — J. Anthony B. Splading.; Facts about Color Blindness — National Eye Institute of the National Institutes of Health, USA.; Prevalence of Colour Vision Deficiency (CVD) in Medical Students in Kolkata, West Bengal, Dipa Saha 1, Kaushik Saha 2, Vol. 15, Issue 9 Ver. XII

(September 2016) pp. 01-03 <www.iosrjournals.org>., referred to

SS-D/58669/SL

Advocates who appeared in this case :

K.V. Viswanathan (Amicus Curiae) and Vikas Singh, Senior Advocates (Shoeb Alam, Mehul M. Gupta, Abhishek Kaushik, Dhananjay Bhaskar Ray, Ravi Raghunath, Siddhant Buxy, Mukunda Rao, K.V. Mohan, Chandra Prakash, Rituraj Biswas, Sujaya Bardhan, Gaurav Sharma, Ms Amandeep Kaur, Prateek Bhatia, Dhawal Mohan, Ms Vara Gaur, Ms Deepika Kalia, Shivam Singh and Gopal Singh, Advocates) for the appearing parties.

Chronological list of cases cited

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1. SLP (C) No. 27388 of 2015, order dated 21-3-2017 (SC), *Pranay Kumar Podder v. State of Tripura* 354e-f
2. 2015 SCC OnLine Tri 888 : AIR 2016 Trip 1, *Pranay Kumar Podder v. State of Tripura* 354d-e
3. (2014) 14 SCC 383 : (2015) 3 SCC (L&S) 470, *Sunanda Bhandare Foundation v. Union of India* 363a-b
4. (2009) 14 SCC 546 : (2010) 1 SCC (L&S) 374, *Union of India v. Devendra Kumar Pant* 363a
5. (2004) 6 SCC 708 : 2004 SCC (L&S) 869, *Union of India v. Sanjay Kumar Jain* 363a
6. (2003) 4 SCC 524 : 2003 SCC (L&S) 482, *Kunal Singh v. Union of India* 363a



7. 2003 SCC OnLine Raj 349 : (2003) 4 RLW 2284, *Parmesh Pachar v. Convener, Central Undergraduate Admission Board* 355c, 361a

8. 2002 SCC OnLine Del 1297 : (2002) 101 DLT 471,
Kunal Kumar v. Union of India

355b-c, 360d

The Judgment of the Court was delivered by

DIPAK MISRA, J.— Leave granted. The appellants, after crossing two scores and one, nurtured the ambition, which is quite a usual feature to human nature unless the innate nature is distracted by some kind of aberration, to prosecute medical education and for the said purpose they appeared in the examination and obtained the requisite marks to be selected. At that stage, the old saying “the proposals conceived in mind are not always concretised” or the beginning does not achieve the end or for many a reason, as it appears, took the principal seat and the two students were declared to be ineligible to take admission to MBBS course at the stage of counselling held on 23-6-2015 on the score that they suffered partial colour blindness. In such a situation, the appellants being determined and affirmatively obstinate not to abandon their pursuit, approached the High Court of Tripura at Agartala in WPs (C) Nos. 244 and 252 of 2015 seeking relief that the declaration of ineligibility by the Committee concerned was absolutely indefensible and legally impermissible. The submission of the appellants was built on the foundation that there were no regulations framed by the Medical Council of India under the Indian Medical Council Act, 1956, debarring the likes from admission, for in the absence of a regulation, neither any instruction nor resolution of the MCI could throttle the right to appear.

2. The stand and stance put forth by the appellants was resisted by the State placing reliance on the recommendations of the expert committee of the Medical Council of India. The said recommendations are as follows:

“The expert committee deliberated at length about the importance of normal colour vision to pursue various subjects in the curriculum of MBBS course. All the experts unanimously thought that the presence of normal colour vision was indispensable to acquire the desired competency of an MBBS doctor. The presence of good colour vision is also essential to pursue postgraduation in various disciplines of Medicine and Surgery. Moreover, as the normal colour vision is essential all the services mentioned under the category ‘Technical’ which included Indian Police Service, Indian Forest Service, Railway Engineering Service, Indian Railway Traffic Service, posts on Marine establishment, Telegraph Engineering Services, etc., it is imperative that the doctor who conducts the medical exam of these individuals should also have normal colour vision. The main recommendations of the committee were as follows:

The testing of colour vision must be conducted in respect of all

the students for admission to MBBS course. The colour defective students should not be allowed to pursue the MBBS course as a normal colour vision is absolutely necessary for such a study."



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3. Apart from that, reliance was also placed on the recommendations dated 12-10-2004 of the general body meeting. The said recommendations which are relevant are extracted hereunder:

"1. Admission of visually handicapped persons for MBBS:

It is mandatory that the students who are selected to join MBBS course should undergo an eye examination by a qualified ophthalmologist and must be certified to have best corrected visual activity of 6/9 in each eye. In case of one-eyed person, the best corrected visual activity should be 6/6. The candidate should be able to identify the three primary colours.

2. The time of onset blindness and continuation of their curriculum from thereon:

Retention of normal vision is an absolute need for undergoing the training in medical curriculum unlike in other streams of education like Arts and Science. Medicine is a course where perfect vision is the absolute need. The committee recommends that a candidate who becomes visually challenged after having been admitted to the course and completed to a reasonable extent his clinical training may still be considered fit for assessment and final examination. However, if the candidate develops visual challenge before acquiring reasonable amount of knowledge and skill in clinical and basic science he/she should be discharged from the course."

4. The Division Bench of the High Court expressed¹ the view that the guidelines issued by the Medical Council of India deserves to be given its due weightage by the Court and it should not interfere solely on the ground that the Regulations are silent with regard to the denial of admission to an individual suffering from colour blindness. Being of this view, it dismissed the writ petition.

5. When the matter was listed on the previous occasion, having regard to the nature of the issue that deserves to be delved into, we had appointed² Mr K.V. Viswanathan, learned Senior Counsel, as Amicus Curiae to assist the Court.

6. We have heard Mr K.V. Mohan, learned counsel for the appellants, Mr Vikas Singh, learned Senior Counsel along with Mr Gaurav Sharma,

learned counsel for the Medical Council of India and Mr Shivam Singh, learned counsel for the State of Tripura. Mr Viswanathan, the learned friend of the Court, has assisted the Court from many an angle.



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7. It is submitted by Mr Mohan, learned counsel appearing for the appellants that the High Court has fallen into error by coming to hold that in the absence of prohibition in the Regulations, the opinion of the committee would be binding. That apart, it is urged by him, final decision has not yet been taken with regard to the eligibility of candidates who suffer from colour vision deficiency (CVD) by the general body for the purpose of prosecuting medical courses. The learned counsel would submit that there is a distinction between visually handicapped person and a person suffering from colour blindness or CVD, but the Medical Council of India has treated both of them on a par, as a consequence of which the likes of the appellants have been compelled to face extreme discrimination. To bolster his submission, he has commended us to a decision of the Delhi High Court in *Kunal Kumar v. Union of India*³ and a judgment of the Rajasthan High Court in *Parmesh Pachar v. Convener, Central Undergraduate Admission Board*⁴.

8. Mr Vikas Singh, learned Senior Counsel appearing for the Medical Council of India, controverting the submissions of Mr Mohan, contended that the Regulations by the Medical Council of India may not be always specific and exhaustive and, therefore, in the absence of any specific regulation, it can issue instructions/guidelines or frame or indicate or provide guidance for the purpose of eligibility criteria as regards the candidates who can take admission in the medical courses, for a statutory Council, in all circumstances, may not be in a position to visualise all kinds of situations. It is his further submission that the general body has specified that the candidates should be able to identify three primary colours and the same would mean that a person who suffers from colour blindness is within the excluded category. That apart, submits Mr Singh, the judgments rendered by the Delhi High Court and the High Court of Rajasthan are prior to the date of resolution passed by the general body and, therefore, this Court should not lay much emphasis on the judgments of the said High Courts.

9. Mr Shivam Singh, learned counsel appearing for the State of Tripura, echoed the submissions of Mr Vikas Singh, learned Senior Counsel for the Medical Council of India.

10. Having noted the submissions of the learned counsel for the contesting parties, the controversy could have become simpler as the issue that emerges for consideration is whether the Medical Council of India can debar the candidates suffering from CVD to undertake medical courses on the basis of a decision taken by the general body, but Mr Viswanathan, learned Senior Counsel appearing as the friend of the Court, submits that this Court should travel beyond the narrow boundary of the binding effect of the decision or the resolution of the general body of the Medical Council of India and perceive the controversy regard being had to the international framework, research, practice and prevalence. We are disposed to think that the submission advanced by



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Mr Viswanathan in this regard is absolutely justified and, therefore, we are impelled to proceed to record the submissions advanced by him.

11. It is canvassed by Mr Viswanathan that colour blindness has to be understood as CVD and it happens when someone cannot distinguish between certain colours, usually between green and red and occasionally blue. Emphasising on the said aspect, he has borrowed certain literature and commented that the identification of a bush that has holly berries on it, the observation by a pilot of the patterns of coloured lights at an airport and learning about a person's health by their complexion are all tasks in which a person with CVD may fail. Be it noted, the said concept finds place in the article written by J. Anthony B. Spalding.

12. The learned Senior Counsel, referring to various study material available, has referred to Shinobu Ishihar, a Professor at Tokyo Imperial University who, in the year 1916, had developed a diagnostic method which is still the most common test for colour vision deficiency; and that test is called Ishihara test. We do not intend to elaborate on the methods of the said test.

13. Highlighting on the causes and prevalence, an article published under the heading "Colour Vision Deficiency" has been brought to our notice. We think it appropriate to reproduce the same:

"(a) Color deficiency is usually a hereditary condition linked to the 'X' chromosome.

(b) Color vision deficiency can also be acquired—not only as a result of diseases or conditions of the retina, optic nerve, or more posterior visual pathways in the brain—but also as a result of exposure to toxins and certain drugs. Macular degeneration, optic

neuritis, and strokes that affect certain areas of the occipital lobe, for example, can affect color perception. Head injuries, systemic diseases that damages nerves (e.g. multiple sclerosis), heavy metal poisoning, and certain medications (e.g. anti-malarials) also can affect color vision adversely.

(c) Unlike congenital color vision defects, acquired defects often affect visual acuity, are asymmetric from eye to eye, and may change as the disease changes.⁵

(d) Congenital CVD has a prevalence in the general population of 8% for men and 0.4% for women.⁶

(e) Men are much more likely to be color blind than women because the genes responsible for the most common, inherited color blindness are on the X chromosome. Inherited color blindness can be present at birth, begin in childhood, or not appear until the adult years.⁷

(f) CVD prevalence varies from country to country and even race to race. Vijayalakshmi et al, reported CVD in Hindu castes and religious groups of different parts of India. The prevalence reported was 2.1%



in 7542 males and 0.2% in 3519 females [9]. In Western Nepal, in a study on 964 school children (10-19 years age group), CVD was found in 18 boys with prevalence of 3.8%, but none of the girls was found affected [12]. In USA, prevalence of CVD in junior medical students was 12.8% [10]. A study among medical students of Medical Colleges, Kolkata, W.B. revealed prevalence of 4.8% in males. The prevalence of red-green colour anomaly among males was 27.3% and in females, 34.8%. There was significantly higher prevalence of red-green anomaly in females.⁸

14. The learned Senior Counsel has reproduced certain passages pertaining to diagnosis of colour blindness from the article "Colour Blindness Causes, Risk Factors & Symptoms". They read as under:

"3. Diagnosis of color blindness

(a) Inherited color vision deficiency is usually diagnosed in early childhood using simple screening tests. The Hardy-Rand-Rittler (H-R-R_ and Ishihara Color Plates are used to evaluate the type and degree of color deficiency. In these tests, the person is asked to identify the colored shapes or numbers that lie within a

jumble of dots and vary in color and intensity. The physician detects and categorizes the deficiency based on the person's responses.

(b) The D-15 and the Farnsworth-Munsell 100-hue disk-matching test evaluate the ability to identify gradations of color by placing discs in order.⁵

(c) In a September 2015 article in the Indian Journal of Ophthalmology,⁹ it is mentioned that though many methods for color vision testing are available, there is no consensus on the ideal method, with different countries using different tests. In India, the Ishihara charts are the most widely used, with additional use of Edridge-Green lantern in civil services and Martin lantern in armed forces. [1, 2] The Ishihara test is quick and easy and is an excellent screening tool to detect those with red-green CVD. However, it has a limited ability to classify CVD and determine its severity. Organizations that require the correct recognition of colored signals (principally transport groups such as the Civil Aviation Authority, Railways, Maritime, and Naval and Air Force) depend on a standard lantern test which imitates actual signal systems simulating the workplace. Lanterns do not specifically screen for color defects. It is surprising that even now, the general design of lanterns has not changed very much since their creation in 1891. With the exception of the Farnsworth lantern used in USA, there are scarce studies on the validation and reliability of lanterns. The panel tests, including the Farnsworth Panel D-15 and Farnsworth-Munsell 100-hue tests, are much more accurate in classifying



color deficiency. Farnsworth Panel D-15 test is considerably quicker and more convenient test for routine clinical use. Though not very sensitive, its speed and accuracy make it useful. The relative insensitivity can also be an asset in judging the practical significance of mild degrees of color deficiency. For example, individuals who fail the Ishihara plates but pass the D-15 panel will probably not have color discrimination problems under most circumstances and in most jobs.[3] Nagels anomaloscopes is considered the gold standard for color vision testing in clinical research, however, it is an expensive instrument requiring an experienced examiner's skills. Color vision is graded into higher and lower grade depending on the size of the aperture in the Edridge-Green lantern (1.3 mm v. 13 mm),[1] with the technical services category of

Indian civil services, which includes police services requiring higher grade of color vision. The United States police service no longer implements a color vision standard though monochromats are barred. [4] Those who fail initial color vision screening by pseudoisochromatic plates should be further evaluated by anomaloscope or D-15 test to include anomalous trichromats who are the most numerous among the CVD persons. In an ongoing study, 500 candidates who appeared in the divisional medical board were studied. Ishihara chart was used for initial screening of all candidates with further use of Edridge-Green lantern for candidates found to have CVD and selected for jobs requiring high grade of color vision. Sixty candidates (13%) were found to have CVD; 39 of those were selected for jobs requiring accurate color perception. None of the candidates found to have CVD on testing by Ishihara chart could pass the lantern test. Only 21 candidates found to have CVD were previously aware of their deficiency.

(d) The Edridge Green-Lantern Test, 1891 is claimed to simulate railway signals and is used in testing engine drivers in Great Britain. It was used by the US Navy for qualification of midshipmen and line officers prior to adoption of the Farnsworth Lantern Test in 1953¹⁰.

(e) The Farnsworth Lantern Test is the final qualifying test for the US Navy, the US Coast Guard Academy, and the US Merchant Marine Academy. It also may be used by the US Army for qualification of pilots and by the US FAA Aviation Medical Examiners. In addition, it is used by some US railroad systems and other organizations."¹⁰

15. It is worth noting that Mr J. Anthony B. Splading, in his article, has found that medical professionals and practitioners suffering from CVD have difficulty in detecting¹¹:

"Body color changes (pallor, cyanosis, jaundice)
Skin rashes and erythema —



Stage I pressure ulcers —
Blood or bile in urine, faeces, sputum, vomit —
Malaena — Mouth and throat conditions —
Test strips for blood and urine —
Color coded charts, slides, and prints —

Color coded medications —

Color sensitive monitors”

16. The learned Senior Counsel would submit that the Ophthalmologist Association of Australia has issued a publication in 2009¹² which covers the following aspects:

“(i) No medical course excludes students with abnormal colour vision, with the possible exception of a medical college in Taiwan that is known to have had a policy in 1995 of excluding students if they failed the D-15 test.

(ii) There have been colour vision requirements for medical courses in Japan but efforts to relax these began in the late 1980s and it seems they have been successful.

(iii) The prevalence of abnormal colour vision among medical practitioners is probably the same as it is in the general population. While medical practitioners with abnormal colour vision have reported that they sometimes made errors due to their colour vision deficiency, it is not known how often they occur and how serious they are.

(iv) The errors that do occur need to be viewed in the context of the fact that medical error is not uncommon and has a variety of causes. The right approach to error minimization is to recognise errors when they occur, identify their cause and find ways to avoid their recurrence. This approach should apply to errors that may arise because of abnormal colour vision.

(v) Medical practitioners with abnormal colour vision can minimise errors by their choice of specialty, by placing reliance on sources of information that do not depend on colour and making sure they have good observation conditions, especially good lighting.

(vi) It was suggested that all medical students who have abnormal colour vision should be aware of their deficiency before entering a medical course, that they should know its severity and have an appreciation of the kind of problems it may cause in their chosen career.”

17. Relying on the aforesaid literature, it is submitted by the learned Senior Counsel that considering that an MBBS student is also authorised to perform surgeries and the complete diagnosis and prognosis of a disease or disorder may sometimes depend upon colour detection, there is requirement for restriction in the field of practice of an individual with CVD in this country. He has

mentioned certain areas where difficulties may arise. The said areas, according to him, are:

"Pathology

Surgery and surgical branches (Ophthalmology, ENT, Gynae, Orthopaedics, etc.)

Skin

General medicine, etc."

18. According to the learned Senior Counsel, there are certain areas where an individual with CVD can effectively practice and they are:

"Psychiatry

Social and preventive medicine

Anatomy

Physiology

Pharmacology

Anaesthetics, etc."

19. At this juncture, we may refer to the decision of the Delhi High Court in *Kunal Kumar*³. The learned Single Judge of the High Court of Delhi made the following observations: (SCC OnLine Del para 12)

"12. At the outset, I may notice that there is no hindrance or restriction on the petitioner, who is a duly qualified and registered medical practitioner to carry out his practice as a general physician. He is authorised to prescribe drugs and treat patients, without acquiring any further postgraduate qualification. The petitioner has been found to be meritorious student. He is found to be eligible for a course in MD (Pathology), based on his ranking in the examination. Based on the report as received from LLRM College, regarding the colour blindness, he had been declined admission to MD (Pathology). There appears to be some justification for denying admission to the petitioner in Pathology. This is because in Pathology the pathologist concerned has to examine various colour slides under a microscope. The inability to distinguish colours could be a handicap in minute examination of various bacteria and examination of different slides. However, this should not prevent the petitioner from pursuing other courses or disciplines, where colour blindness may not be a handicap."

In the said case, the High Court issued a writ of mandamus to grant admission to the petitioner therein in the postgraduate course of Psychiatry.

20. The Division Bench of the High Court of Rajasthan, in *Parmesh Pachar*⁴, referred to certain literature in the field and, eventually, opined thus: (SCC OnLine Raj paras 8-10)

"8. Thus, it is clear that in British, American, Australian and Canadian medical schools, a student suffering from colour blindness is not barred from being admitted. In the opinion of Professor Roger Robinson, Retired Professor of Paediatrics at Guy's Hospital Medical School, London, as expressed in his letter dated 28-6-2002 (referred to above), denial of admission to a candidate by a medical school on the basis of red-green colour blindness is unacceptable and discriminatory.

9. It is interesting to note that the Medical Council of India has recognised medical degrees of various foreign universities even though they are admitting students with colour vision deficiency or colour blindness. The Second Schedule to the Indian Medical Council Act, 1956, reveals that Bachelor of Medicine and Bachelor of Surgery from University of Bristol, University of Leeds, University of Liverpool, University of London, University of Oxford, University of Sheffield, University of Wales, University of Edinburgh, University of Glasgow, University of Dundee, University of New South Wales, University of Melbourne, Dalhousie University, etc., are recognised.

10. It is queer logic that while a colour blind student can seek admission in the aforesaid foreign universities, he cannot seek admission in the home university. In case he qualifies in Bachelor of Medicine or Bachelor of Surgery in spite of his colour vision deficiency, his qualification will be recognised in India just because he has the stamp of a foreign university. The deficiency which is considered to be a handicap for the purposes of grant of admission in a home university, no longer remains a debarring factor. This hypocritical policy has no logic and relevancy."

21. As advised, at present, we do not intend to either lean in favour of the view of the Delhi High Court or generally accept the perception of the view of the High Court of Rajasthan.

22. In the course of deliberation, it is submitted by Mr Viswanathan that complete ban on the admission of individuals suffering from CVD to the MBBS course would violate conferment of equal opportunities and fair treatment. To buttress the said submission, he has drawn immense inspiration from certain articles from the Convention on the Rights of Persons with Disabilities and Optional Protocol to which India is a signatory. Article 1 of the said Convention deals with "purpose". It is as follows:

"1. Purpose.—The purpose of the present Convention is to promote, protect and ensure the full and equal enjoyment of all human rights and



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fundamental freedoms by all persons with disabilities, and to promote respect for their inherent dignity.

Persons with disabilities include those who have long-term physical, mental, intellectual or sensory impairments which in interaction with various barriers may hinder their full and effective participation in society on an equal basis with others."

23. Article 3 stipulates "general principles". We think it appropriate to extract the same:

"3. General principles.—The principles of the present Convention shall be:

- (a) Respect for inherent dignity, individual autonomy including the freedom to make one's own choices, and independence of persons;
- (b) Non-discrimination;
- (c) Full and effective participation and inclusion in society;
- (d) Respect for difference and acceptance of persons with disabilities as part of human diversity and humanity;
- (e) Equality of opportunity;
- (f) Accessibility;
- (g) Equality between men and women;
- (h) Respect for the evolving capacities of children with disabilities and respect for the right of children with disabilities to preserve their identities."

24. Article 4 provides for "general obligations" and Article 9 of the Convention lays the postulate of accessibility. The learned Senior Counsel would emphasise on the concept of accessibility, especially, clause (g) of Article 9. That apart, he has drawn our attention to Article 51(c) of the Constitution of India which is as follows:

"51. Promotion of international peace and security.—The State shall endeavour to—

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(c) foster respect for international law and treaty obligations in the dealings of organised peoples with one another;"

25. On the basis of the aforesaid, it is urged by the learned Senior Counsel that with the progress of science, expansion of many vistas of

knowledge, inclusive culture having regard to inclusive society and respect for differently-abled persons, it is obligatory on the part of the Medical Council of India to take a progressive measure so that an individual suffering from CVD may not feel like an alien to the concept of equality which is the fons juris of our Constitution.



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26. In *Union of India v. Devendra Kumar Pant*¹³, a two-Judge Bench has, after referring to two authorities in *Union of India v. Sanjay Kumar Jain*¹⁴ and *Kunal Singh v. Union of India*¹⁵, expressed doubt whether a person lacking colour perception can claim to be a person entitled to any benefit under the Act.

27. In this regard, a passage from *Sunanda Bhandare Foundation v. Union of India*¹⁶ is apt-quoting. It reads as under: (SCC p. 387, para 9)

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

28. We are absolutely conscious that the said authorities have been rendered in the context of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 (for short "the 1995 Act") and the said Act has been repealed in 2016 and a new Act i.e. the Rights of Persons with Disabilities Act, 2016 (49 of 2016) has come into force. The present case, needless to say, does not deal with any kind of reservation as laid down in the said Act. However, it is urged by Mr Viswanathan, learned Amicus Curiae, that once colour blindness is not considered as a disability under the 1995 Act and also not a disability under the 2016 Act, the nature and severity of colour

blindness and the disciplines they can practise has to be given a relook.

29. Though we are not deciding the controversy at present, for we are inclined to issue certain directions to have a complete picture and projection, yet we are disposed to observe that a human being is a magnificent creation of the Creator and that magnificence should be exposed in a humane, magnanimous and all-inclusive manner so that all tend to feel that they have their deserved space. Total exclusion for admission to medical courses without any stipulation in which areas they really can practise and render assistance would tantamount to regressive thinking. When we conceive of global phenomenon and universal brotherhood, efforts are to be made to be within the said parameters. The



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march of Science, apart from our constitutional warrant and values, commands inclusion and not exclusion. That is the way a believer in human rights should think.

30. In view of the aforesaid submissions, we direct as follows:

30.1. The Medical Council of India shall constitute a committee of experts that shall include the representatives of the Medical Council of India, experts from Genetics, Ophthalmology, Psychiatry and Medical Education, who shall be from outside the members of the Medical Council of India. At this juncture, we must appreciably state that Mr Vikas Singh, learned Senior Counsel, has submitted that the Court may say that the persons as experts who are to be taken from outside, shall be from the All-India Institute of Medical Sciences (AIIMS), and the Postgraduate Institute of Medical Education and Research, Chandigarh.

30.2. The Medical Council of India may also invite Mr K.V. Viswanathan along with Mr M. Shoeb Alam to assist them to take a view. Be it noted, Mr Vikas Singh has gladly accepted the suggestion.

30.3. The expert committee shall review the situation and take note of the prevalent conditions of the study and practice and suggest changes for adoption in the medical course keeping in view the international practices.

30.4. The expert committee shall also concentrate on diagnostic test for progress and review of the disorder and what are the available prosthetic aids to assist CVD medical practitioners and what areas of practice could they undertake without difficulty with these aids.

30.5. The committee shall meet within a period of three weeks and submit a report to this Court within three months hence.

31. Let the matter be listed for further hearing on 11-7-2017.

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[†] Arising out of SLP (C) No. 27388 of 2015. Arising from the Judgment and Order in *Pranay Kumar Podder v. State of Tripura*, 2015 SCC OnLine Tri 888 : AIR 2016 Trip 1 (Tripura High Court, Agartala Bench, WP (C) No. 244 of 2015, dt. 26-8-2015)

^{*} Arising out of SLP (C) No. 30772 of 2015

¹ *Pranay Kumar Podder v. State of Tripura*, 2015 SCC OnLine Tri 888 : AIR 2016 Trip 1

² *Pranay Kumar Podder v. State of Tripura*, SLP (C) No. 27388 of 2015, order dated 21-3-2017 (SC), wherein it was directed:

"Heard learned counsel for the parties. Let the matter be listed for further hearing on 23-3-2017. Mr K.V. Viswanathan, learned Senior Counsel is requested to assist the Court as Amicus Curiae. Registry is directed to hand over copies of the brief to Mr R.P. Gupta, learned counsel so that he can assist Mr K.V. Viswanathan."

³ *Kunal Kumar v. Union of India*, 2002 SCC OnLine Del 1297 : (2002) 101 DLT 471

⁴ *Parmesh Pachar v. Convener, Central Undergraduate Admission Board*, 2003 SCC OnLine Raj 349 : (2003) 4 RLW 2284

⁵ Colour Vision Deficiency — Publication Review by Stanley J. Swierzewski, III, MD.

⁶ Color Vision Deficiency in the Medical Profession — J. Anthony B. Splading.

⁷ Facts about Color Blindness — National Eye Institute of the National Institutes of Health, USA.

⁸ Prevalence of Colour Vision Deficiency (CVD) in Medical Students in Kolkata, West Bengal, Dipa Saha 1, Kaushik Saha 2, Vol. 15, Issue 9 Ver. XII (September 2016) pp. 01-03 <www.iosrjournals.org>.

⁹ Tests for Colour Vision Deficiency: Is it Time to Revise the Standards — Nidhi Pandey, A.K. Chandrakar, M.L. Garg: Pt. J.N.M. Medical College, Raipur.

¹⁰ Color Vision Tests — National Research Council (US) Committee on Vision — Procedures for Testing Color Vision; Report of Working Group 41. Washington (DC): National Academies Press (US); 1981.

¹¹ The Truth About Color Vision in Healthcare — Dr Terrace L. Waggoner Sr., O.D, Terrace L. Waggoner Jr.

¹² J. Anthony B. Spalding, Barry L. Cole, Fraz A. Mir: Advice for Medical Students and Practitioners with Colour Vision Deficiency: A Website Resource — Clin Exp Optom 2010; 93: 1: 39-41.

¹³ *Union of India v. Devendra Kumar Pant*, (2009) 14 SCC 546 : (2010) 1 SCC (L&S) 374

¹⁴ *Union of India v. Sanjay Kumar Jain*, (2004) 6 SCC 708 : 2004 SCC (L&S) 869

¹⁵ *Kunal Singh v. Union of India*, (2003) 4 SCC 524 : 2003 SCC (L&S) 482

¹⁶ *Sunanda Bhandare Foundation v. Union of India*, (2014) 14 SCC 383 : (2015) 3 SCC (L&S) 470

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