

GAHC010233122024



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : WP(C)/5698/2024

NADIYA TABASSUM
D/O- NOZMUL HOQUE,
VILLAGE- BORPUKHURI,
MOUZA- JUGIJAN, DIST- HOJAI, PIN-782435

VERSUS

THE STATE OF ASSAM AND 9 ORS
REP. BY THE COMMISSIONER AND SECRETARY TO THE GOVT. OF ASSAM,
DEPARTMENT OF HEALTH AND FAMILY WELFARE , DISPUR, GUWAHATI-
06

2:THE PRINCIPAL SECRETARY
TO THE GOVT. OF ASSAM
DEPARTMENT OF HEALTH AND FAMILY WELFARE
DISPUR
GUWAHATI-06

3:THE DIRECTOR GENERAL (ME)
GOVT. OF INDIA
DIRECTORATE GENERAL OF HEALTH SERVICES
NIRMAN BHAWAN
NEW DELHI-11

4:THE DIRECTOR OF MEDICAL EDUCATION
ASSAM
SIXMILE
KHANAPARA
GUWAHATI-22

5:THE PRINCIPAL CUM CHIEF SUPERINTENDENT
GUWAHATI MEDICAL COLLEGE AND HOSPITAL
BHANGAGARH
GUWAHATI- 781032

6:THE SELECTION COMMITTEERE. BY ITS CHAIRMAN
AT GAUHATI MEDICAL COLLEGE AND HOSPITAL
BHANGAGARH
GUWAHATI- 781032.

7:THE CHIEF COMMISSIONER
DEPARTMENT OF EMPOWERMENT OF PERSONS WITH DISABILITIES
MINISTRY OF SOCIAL JUSTICE AND EMPOWERMENT
GOVT. OF INDIA
SHASTRI BHAWAN
NEW DELHI
PIN-110003

8:DIRECTOR AND HOD
REGIONAL INSTITUTE OF OPHTHALMOLOGY

GUWAHATI MEDICAL COLLEGE AND HOSPITAL
BHANGAGARH
GUWAHATI- 781032

9:JOINT DIRECTOR OF HEALTH SERVICES
HOJAI
PIN-782435.
P.O AND P.S- HOJAI
ASSAM

10:MEMBERS
DISTRICT MEDICAL DISABILITY BOARD
HOJAI
PIN-782435
ASSAM

Advocate for the Petitioner : MR. M K DAS, C SAIKIA,S J DUTTA,MS. B CHETRY,MR. A DAS

Advocate for the Respondent : SC, HEALTH,

BEFORE
HONOURABLE MR. JUSTICE LANUSUNGKUM JAMIR

ORDER

Date : 05.11.2024

Heard Mr. M. K. Das, learned counsel for the petitioner. Also heard Mr. P. Gogoi, learned Standing counsel, Health Department, for the respondent Nos. 1,

2, 4, 5, 6, 8, 9 & 10 and Mr. K. Gogoi, learned CGC for the respondent No. 3 & 7.

2. The petitioner is holding a Disability Certificate, wherein, she is shown to be having 40% permanent disability in relation to her both eyes (low vision) issued by the Joint Director of Health Services, Hojai, Assam. The petitioner participated in the NEET-UG-2024 for admission in the MBBS Course in the various Government Medical and Dental Colleges of Assam. Thereafter, the Director of Medical Education, Assam issued an admission notice dated 29th of August, 2024 directing all the candidates who have been provisionally selected under the PWD Category to report with all their relevant certificates in original in the Office of the Principal cum Chief Superintendant, Gauhati Medical College & Hospital for verification of their disability status by the Medical Board on 2nd of September, 2024. Further, in the provisional selection list of the candidates (Round-1) for Assam State Quota whose names have appeared in Assam NEET UG-2024 merit list for admission into first year MBBS/BDS Course, Session 2024 in Government Medical and Dental Colleges of Assam, the name of the petitioner appeared at Sl. No.2915 and she was placed in Diphu Medical College, Diphu under the PWD category. Consequent to the Admission Notice dated 29.08.2024, the petitioner appeared before the Medical Board on 2nd of September, 2024.

3. The Director of Medical Education, Assam thereafter, issued Admission Notice on 6th of September, 2024, informing all concerned that the candidates in the Admission Notice are found eligible under the PWD (DIVYANG) category for admission into the MBBS/BDS Course in the Government Medical and Dental Colleges for the Session 2024. In the said list, the Roll Number of the petitioner

did not appear and accordingly, the petitioner filed the present writ petition praying for a direction to permit the petitioner to be admitted into the said Diphu Medical College, Diphu as per the provisional selection list of candidates issued by the Director of Medical Education on 29.08.2024.

4. This Court after considering the matter and with the consent of both the parties, passed an order on 28.10.2024 requesting the authorities in the All India Institute of Medical Sciences (AIIMS), Guwahati to examine the case of the petitioner to assess her disability in terms of the Disability Certificate issued to her by the competent authority. While passing the order, this Court had also directed that the Medical Board, constituted by the authorities of the All India Institute of Medical Sciences, Guwahati shall strictly proceed in terms of the Amendment Notification dated 13.05.2019 (Appendix H-1) and the Notification dated 12.03.2024. The petitioner was directed to appear before the Medical Board constituted by the authorities of AIIMS, Guwahati on 30.10.2024.

5. Accordingly, the Medical Superintendent, AIIMS Guwahati constituted a Medical Board Committee on 29.10.2024 with the approval of the competent authority. The petitioner appeared before the constituted Medical Board of the AIIMS, Guwahati and on examination, the committee gave its report that the petitioner is having 40% visual impairment, category III a (low vision).

6. The learned counsel for the petitioner however submits that when the Medical Board constituted by the authorities of the AIIMS examined the petitioner, they did not proceed in terms of the Appendix H-1 appended to the Amendment Notification dated 13th of May, 2019, inasmuch as the petitioner was not examined by using advance low vision aids such as telescope/magnifier etc.

7. A perusal of the comment sheet of the provisionally selected PWD candidates for admission into the MBBS/BDS Courses for the Session 2024 made by the constituted Medical Board of AIIMS, Guwahati also does not indicate whether the petitioner was examined by applying the advance low vision aids such as telescopes/magnifier as provided in Appendix H-1 of the Amendment Notification dated 13th of May, 2019.

8. Serial No.1 (B) with regard to visual impairment as provided in the Appendix H-1 of the Amendment Notification dated 13th of May, 2019 provides that the candidates would be eligible for medical courses but will not be eligible for PWD quota if the visual impairment is less than 40% disability. However, for those candidates having equal or more than 40% disability, they are not eligible for medical course. However, a condition is provided in Appendix H-1 with regard to persons with visual impairment/visual disability which states that person with visual impairment/ visual disability of more than 40% may be made eligible to pursue MBBS Course and may be given reservation, subject to the condition that the visual disability is brought to a level or less than the benchmark of 40% with advance low vision aids such as telescopes/magnifier etc.

9. Not being satisfied with the comments of the Medical Board, AIIMS Guwahati the learned counsel for the petitioner submitted that the Medical Board, AIIMS Guwahati did not apply the advanced low vision aids while assessing the disability of the petitioner in terms of Appendix H-1 of the Amendment Notification dated 13th of May, 2019.

10. Accordingly, this Court on 04.11.2024, directed the Director of Medical Education, Assam to facilitate the petitioner to appear before the Medical Board constituted by Principal cum Chief Superintendant, Gauhati Medical College &

Hospital by Officer Order dated 30.08.2024 and the petitioner was directed to appear before the said Medical Board on or before 5:00 PM on 04.11.2024.

11. In terms of the Order dated 04.11.2024, the petitioner appeared before the Medical Board constituted by the Principal cum Chief Superintendant, Gauhati Medical College & Hospital on 04.11.2024. However, as the findings of the said Medical Board continued to be the same i.e., 40% visual impairment, the petitioner has filed the present writ petition.

12. Mr. B. Gogoi, learned Standing counsel, Health Department has produced the report of the Medical Board which assessed the disability of the petitioner with regard to her visual impairment.

13. In the said report, it is indicated that without glass the vision of the petitioner with regard to her right eye is 6/36(P) and her left eye is 6/60(P). Further, with the application of glass, the vision of the petitioner with regard to her right eye is 6/24(P) and her left eye is 6/36. In the said report, it is stated that after glass correction, her visual impairment is 40%, and her Disability category is III (a) (Low Vision). The report further indicates that the percentage of Disability is given as per the Gazette of India Notification dated 12th March, 2024 & No. MCI-34(41)/2018-Med./170045 dated 04.02.2019.

14. Learned counsel for the petitioner submits that the 40% disability in the second Medical Report that was held on 04.11.2024 is the same with regard to the first report which was held on 02.09.2024 as well as that of the Medical Report of the AIIMS Guwahati, which is an independent body. Therefore, the visual impairment of the petitioner with the application of advanced low vision aids would surely come down below 40%, thereby making her eligible for getting a seat for the MBBS course.

15. This Court nor the Counsels for the respective parties are experts in this field. Therefore, Mr. B. Gogoi, learned Standing counsel, Health Department was requested to have the presence of the Dr. Bharati Deori Boruah, Professor of Ophthalmology, GMC&H-cum-Member Medical Board before this Court in order to clarify all the doubts that has arisen with regard to the visual impairment of the petitioner and the Court fixed for taking up the matter today at 2:00 PM.

16. Dr. Bharati Deori Boruah is present in Court as requested and she explained that the petitioner had a cataract operation in both her eyes and she also has implanted artificial lens in her eyes. Apart from that, she is using normal glasses and accordingly when the petitioner was assessed, they had assessed her without glass and after application of glass. In the view of the specialist, the 40% visual impairment of the petitioner cannot be brought down.

17. This Court has given an anxious consideration to the case in hand, particularly, when it is dealing with a disabled person having low vision and is vying for a seat in the MBBS course under the Assam State Quota. Considering the anxiety of the petitioner this Court had requested the authorities in the AIIMS Guwahati to constitute a Medical Board to examine the petitioner with regard to her low visual impairment. In the report of the Medical Board, AIIMS Guwahati her visual impairment is shown as 40%. However, as this Court found that the petitioner was not satisfied with the opinion of the independent body, i.e., Medical Board, AIIMS Guwahati, this Court had directed the Director of Medical Education, Assam on 04.11.2024 to facilitate the petitioner to appear before the Medical Board that was constituted on 2nd of September, 2024. In the second examination report the petitioner after correction is found to have distance vision of 6/24(P) with regard to her right eye and 6/36 with regard to her left eye and her visual impairment is shown as 40% with Disability category

– III (a) (Low Vision).

18. Under the circumstances, this Court is not in a position to go against the Report of the experts with regard to the visual impairment of the petitioner. Accordingly, this Court does not see any merit in the writ petition and is accordingly dismissed.

JUDGE

Comparing Assistant