

GAHC010241782024



AS:11747-DB

2024:GAU-

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

Case No. : WA/390/2024

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
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
ASSA

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

Advocate for the Respondent : SC, HEALTH, SC, SOCIAL JUSTICE AND EMPOWERMENT

**BEFORE
HONOURABLE THE CHIEF JUSTICE
HONOURABLE MR. JUSTICE N. UNNI KRISHNAN NAIR**

Date of Hearing : 20-11-2024

Date of Judgment: 20-11-2024

JUDGMENT & ORDER (Oral)

(N. Unni Krishnan Nair. J)

Heard Mr. A. C. Borbora, learned Senior Counsel assisted by Mr. B. Bora, learned counsel appearing for the appellant. Also heard Mr. B. Gogoi, learned Standing Counsel for the Health Department appearing for the respondent nos. 1, 2, 4, 5, 6, 8 & 9.

2. The present Intra Court Appeal has been instituted, assailing the Judgment & Order dated 05.11.2024, passed by the learned Single in WP(C)/5698/2024.

3. The appellant, herein, had appeared in the National Eligibility-cum-Entrance Test UG-2024 for admission into UG medical courses in Government medical institutions across the country. The said examination had taken place on 05.05.2024 and on 04.06.2024, the results thereof, came to be declared. In the initial results declared, the appellant had secured 638991 All India Ranking position and she was ranked at position 1350 amongst the PwD category candidates. However, the said results were further revised and the revised results were published on 26.07.2024, wherein, the All India Ranking of the appellant was 632152 and she was ranked at Serial No. 1330 amongst PwD category candidates.

4. On publication of the NEET-UG-2024 results, the Director of Medical Education, Assam, vide communication dated 07.08.2024 had published an educational notice and therein, circulated the Assam State Merit list for admission into 1st year MBBS/BDS courses in Government Medical and Dental Colleges of the State for the session-2024. The appellant was placed at serial No. 9699 in the said list as enclosed with the communication dated 07.08.2024.

5. The Director of Medical Education, Assam, thereafter, published a admission notification dated 29.08.2024, wherein it was intimated that the provisional select list of candidates after the first round of online counseling for admission into 1st year MBBS/BDS courses for the session-2024 in the Government Medical and Dental Colleges, Assam under Assam State Quota has been published and was available in the official website of the Directorate. It was further stipulated therein that the candidates provisionally selected under the PwD category are directed to report with all relevant certificates, in original, to the office of the Principal cum Chief Superintendent, Gauhati Medical College & Hospital for verification of their disability status by the constituted Medical Board on 28.09.2024. Accordingly, the appellant who was shortlisted for admission as a PwD category candidate after the 1st counseling, appeared before the constituted Medical Board and she was examined by the Board in relation to the disability suffered by her. Thereafter, vide admission notice dated 06.09.2024, the list of candidates found eligible under PwD (DIVYANG) for admission into MBBS/BDS in the Government Medical and Dental Colleges, Assam, for the session-2024 was published however, therein, the Roll. No. of the appellant did not find mention. The appellant not being selected for admission into the 1st year MBBS course, led to institution by her of writ petition being WP(C)/5077/2024 before this Court, praying for a direction for her admission into Diphu Medical College, Diphu as per the provisional select list of candidates issued by the Director of Medical Education on 29.08.2024.

6. The Writ Court, on considering the matter and with consent of all the parties to the proceeding, vide order dated 28.10.2024, requested the authorities of the All India Institute of Medical Sciences (AIIMS), Guwahati to examine the appellant and for assessment of her disability in terms of the Disability Certificate issued to her by the competent authority. Vide the said order; the Writ Court further directed that the Medical Board, constituted by the authorities of AIIMS shall examine the appellant, strictly, in terms of the amendment notification dated 13.05.2019, issued by the

Medical Council of India and the notification dated 12.03.2024, issued by the Government of India. Accordingly, the Medical Superintendent, AIIMS, Guwahati constituted a Medical Board Committee on 29.10.2024 with the approval of the competent authority. The appellant appeared before the constituted Medical Board of AIIMS, Guwahati and the Board, on examination of the disability suffered by the appellant, proceeded vide its report dated 30.10.2024, to assess the disability suffered by the appellant as follows:-

“BCVA Rt eye: 6/36, left eye: 6/24 (both eye pseudophakia). 40% (Forty percent) visual impairment, category III(a) (Low Vision)”.

7. It is to be noted that the appellant was assessed by the Medical Board constituted at AIIMS, Guwahati, to have suffered 40% (Forty percent) visual impairment and was placed in Category III(a) (Low Vision). However, the report of the Board as constituted by the AIIMS authority, on being placed before the Writ Court, the same was disputed by the appellant by contending that she was not examined by using advanced low vision aids such as Telescope/Magnifier.

8. The learned Single Judge, upon examination of the notifications holding the field with regard to the procedure to be followed for examination of persons with visual impairment for assessment of the extent of their disability, proceeded to dispose of the writ petition vide order dated 04.11.2024 by directing the Director of Medical Education, Assam to facilitate the petitioner to appear before a Medical Board, constituted by the Principal cum Chief Superintendent, Guwahati Medical College & Hospital vide an Office Order dated 30.08.2024, on 04.11.2024 itself.

9. The learned Single Judge vide the said order dated 04.11.2024, had further directed that the constituted Medical Board shall examine the applicant by applying advanced low vision aids such as Telescopes/Magnifier and thereafter, give a finding as to whether the disability suffered by the petitioner can be brought down below 40%. The Medical Board as constituted in the Guwahati Medical College & Hospital

examined the appellant on 04.11.2024 and therein, assessed the petitioner to be suffering from 40% visual impairment. Being aggrieved, the appellant has again instituted WP(C) No. 5698/2024 before this Court.

10. The Writ Court, upon considering the submissions advanced by the appellant, herein, in the proceeding of WP(C)/5698/2024 and also appreciating the fact that neither the Court nor the learned counsels appearing were experts in the matter, requested Dr. Bharati Deori Boruah, Professor of Ophthalmology, Guwahati Medical College & Hospital cum Member of the Medical Board to appear before the Court. Accordingly, Dr. Bharati Deori Boruah appeared before the Writ Court and explained that the appellant had cataract operation in both her eyes and she also had implanted artificial lens in her eyes. It was further stated that the appellant is using normal glasses and accordingly, when the appellant was examined, she was so assessed initially without glasses and thereafter, with application of glasses. The expert accordingly, opined that the assessment made in respect of the appellant to have been suffering 40% visual impairment cannot be further reduced. Upon considering the matter in the light of the reports of the committee, which had examined the appellant, herein, with regard to assessment of her visual impairment as well as the opinion rendered by said Dr. Bharati Deori Boruah, the learned Single Judge vide order dated 05.11.2024, proceeded to conclude as follows:-

“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 – IIIa (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”.

11. The present appeal has been instituted by the appellant being aggrieved by the said order dated 05.11.2024, passed by the learned Single Judge in WP(C)5698/2024.

12. Mr. Borbora, learned Senior Counsel by referring to the medical examination report of the appellant by AIIMS, as well as by the Medical Board constituted at the Guwahati Medical College & Hospital, has submitted that the examination of the appellant was not so carried out by the Boards in question by following the prescriptions made by the Medical Council of India vide notification dated 13.05.2019, wherein it was mandated that the persons with visual impairment/visual disability of more than 40% may be made eligible to pursue MBBS Course and be given reservation, subject to the condition that the visual impairment is brought to a level less than benchmark 40% with advanced low vision aids such as Telescope/Magnifier etc. Mr. Borbora, has further submitted that the appellant being admittedly, a person suffering from visual impairment and she being within the zone of consideration for admission into the 1st year MBBS or BBS Course as a PWD candidate, the Medical Board, ought to have while examining the appellant with a view to assess her visual impairment, done such examination, strictly, in accordance with the guidelines laid down by the Medical Council of India as well as the Government of India in the matter.

13. Mr. Borbora, learned Senior Counsel has submitted that in the event, the examination of the appellant was so carried out, strictly, in accordance with the

prescriptions made in this connection by the Medical Council of India as well as the Government of India, Ministry of Social Justice and Empowerment, the disability suffered by the appellant would have been so assessed below 40%, enabling her to be so admitted into the 1st year MBBS course in terms of her NEET-UG-2024 score as a PwD (DIVYANG) category candidate. Mr. Borbora, has submitted that the Medical Board having not applied advanced low vision aids such as Telescope/Magnifier etc., a proper and due assessment of the visual impairment suffered by the appellant had not occasioned. Accordingly, Mr. Borbora, submits that the Judgment and Order dated 05.11.2024, passed by the learned Single Judge would call for an interference along with further direction to the respondent authorities for carrying out a fresh examination in respect of the appellant, herein, strictly by applying advanced low vision aids such as Telescope/Magnifier and thereafter, to come to a conclusion as to whether the appellant's visual impairment can be assessed at a level lower than 40%.

14. Mr. Borbora, learned Senior Counsel, in support of his submission has relied upon a decision of the Hon'ble Supreme Court in the case of **Bambhaniya Sagar Vasharambhai Vs. Union of India & Ors.**, reported in **2023 Live Law (SC) 841** and the decision of the Hon'ble Supreme Court in the case of **Omkar Ramchandra Gond Vs. The Union of India & Ors.**, [Judgment dated 15.10.2024 in **Civil Appeal No. 10611/2024**].

15. Per contra, Mr. B. Gogoi, learned Standing Counsel appearing for the Medical Education Department, by referring to an affidavit filed by the Director of Medical Education, Assam, has submitted that the committees which had examined the appellant in terms of the directions passed in the matter, by the Writ Court, had assessed the appellant's visual impairment at 40%. Mr. Gogoi, has submitted that in terms of the guidelines laid down by the MCI, the visual impairment of the appellant being so assessed at 40%, she would not be entitled to be treated as a person with disability for the purpose of admission into medical courses.

16. Mr. Gogoi, learned Standing Counsel by referring to the opinion of Dr. Bharati Deori Baruah, which has been noticed by the learned Single Judge in the impugned Judgment and Order dated 05.11.2024, has contended that the said opinion would lay to rest any doubts that may exist in the matter and the appellant, on account of the cataract operation undergone by her and implanting of artificial lens in her eyes along with the fact that the petitioner was using normal glasses, the visual impairment suffered by the petitioner cannot be brought down to a level below 40%, so as to making her eligible for admission into medical courses in terms of Appendix H-1 to the notification dated 13.05.2019, issued by the Medical Council of India. Mr. Gogoi, learned Standing Counsel, in the above premises has submitted that the learned Single Judge had not committed any error in rejecting the case of the appellant and accordingly, the same would not call for any interference by this Court.

17. We have heard the learned counsels appearing for the parties and also perused the materials available on record.

18. It is to be noted that the appellant while appearing for the first counseling had relied upon a Disability Certificate, issued by the Joint Director of Health Services, Hojai, Assam and therein, she was assessed to be suffering from 40% permanent disability in relation to both her eyes (Low Vision). The appellant, initially, was considered by the Director of Medical Education, Assam for admission into 1st year MBBS course for the year 2024 as a (PwD) category candidate. However, the candidates claiming admission under the (PwD) category were required to undergo a verification of their disability by a Board constituted by the Principal cum Chief Superintendent, Guwahati Medical College. The appellant had accordingly, appeared before the said Board and the Board having found the appellant to be suffering only 40% permanent disability in relation to both her eyes, the name of the appellant was not shortlisted for admission into the 1st year MBBS course in various medical colleges of the State vide the Admission Notice dated 06.09.2024. Accordingly, the petitioner

had approached this Court by way of instituting WP(C)5077/2024, praying for a direction to the respondent authorities for admitting the appellant under PwD (DIVYANG) category into the 1st year MBBS course in Diphu Medical College, Diphu by reckoning the Disability Certificate issued to her by the Joint Director of Health Services, Hojai, Assam.

19. The learned Single Judge, on appreciating the contentions raised by the appellant, was pleased vide order dated 28.10.2024, to request the authorities of the All India Institute of Medical Sciences (AIIMS) for assessing her disability in terms of the Disability Certificate issued to her by the competent authority. This Court had further directed that such examination by the AIIMS authorities, shall be strictly done in terms of Appendix H-1 to the amendment notification dated 13.05.2019, issued by the Medical Council of India and the notification dated 12.03.2024, issued by the Ministry of Social Justice and Empowerment, Government of India. Accordingly, the AIIMS authorities constituted a Medical Board and examined the petitioner. On such examination, the Board, as constituted by the AIIMS authorities had assessed the appellant to be suffering from 40% visual impairment, category III (a) (Low Vision). The said assessment as made by the AIIMS authorities was disputed by the appellant, herein, before the learned Single Judge in the proceedings of WP(C)5077/2024. Accordingly, the learned Single Judge vide order dated 04.11.2024, was pleased to dispose of the said writ petition with a direction to the Director of Medical Education, Assam to facilitate the appellant to appear on 04.11.2024 before the Medical Board constituted by the Principal cum Chief Superintendent, Guwahati Medical College & Hospital, vide order dated 30.08.2024. The appellant was directed to appear before the said Board on, or before 5.00 PM of 04.11.2024.

20. The learned Single Judge had further vide the order dated 04.11.2024, directed the Medical Board to examine the appellant by applying advanced low vision aids such as Telescope/Magnifier etc., and thereafter, to give a finding as to whether the disability of the appellant can be brought down to 40%. The Medical Board as

constituted by the GMC & H authorities, on examination of the appellant, had assessed her visual impairment again at 40% and placed her in Category III (a) (Low Vision). Being aggrieved, the appellant had instituted WP(C)/5698/2024, inter alia, praying for re-evaluation of the medical verification process for selection of the appellant under PwD (DIVYANG) category for admission into 1st year MBBS course in Diphu Medical College by taking into consideration the Disability Certificate, issued to the appellant by the Joint Director, Health Services, Hojai, Assam.

21. The learned Single Judge, upon considering the reports submitted by the AIIMS authorities as well as the medical reports submitted by the committee as constituted in the Guwahati Medical College & Hospital, required the presence of Dr. Bharati Deori Baruah, Professor of Ophthalmology, Guwahati Medical College and Hospital and a member of the said Medical Board to appear before the Court. Dr. Bharati Deori Baruah, accordingly, appeared before the Court and explained as to why the visual impairment suffered by the appellant cannot be assessed below 40%. The learned Single Judge, in the order dated 05.11.2024 had recorded the opinion rendered by Dr. Bharati Deori Baruah in the matter and the same being relevant is extracted herein below:-

“16. Dr. Bharati Deori Baruah is present in Court as requested and she explained that the petitioner had a cataract operation in both her eyes and she had 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.”

22. The Appendix H-1 to the amendment notification dated 13.05.2019, issued by the Medical Council of India had prescribed that in respect of persons suffering from visual impairment, both blindness and poor vision, such person would be eligible for admission into medical course but, not eligible for PwD quota, if his/her disability is assessed less than 40% disability. The said notification further proceeds to provide

that if the disability is assessed as equal to, or more than 40%, such candidate would not be eligible for admission to any medical course. The said notification further mandates that persons 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 of less than the benchmark of 40% with advanced low vision aids such as Telescope/Magnifier.

23. As noticed herein above, the appellant was initially in the Disability Certificate, issued to her by the Joint Director of Health Services; Hojai, Assam assessed to have suffered 40% permanent disability in relation to both her eyes, the said assessment was maintained by the AIIMS authorities upon examining the appellant in terms of the directions passed by the learned Single Judge in the proceedings of WP(C)/5077/2024. The said assessment was further maintained by the Board constituted at the Guwahati Medical College & Hospital in terms of the directions passed by the learned Single Judge vide order dated 28.10.2024 in WP(C)/5077/2024. The medical opinion with regard to the disability suffered by the appellant is consistent.

24. The above being the position, the opinion as extracted herein above, rendered by Dr. Bharati Deori Baruah, before the learned Single Judge assumes significance. The said opinion reflects that the appellant had cataract operation in both her eyes and she also had implanted artificial lens in her eyes. It was also highlighted by the Specialist that the appellant was using normal glasses and that the appellant was assessed without glasses and also after application of glasses. Accordingly, the Specialist had asserted that the assessment of the visual impairment of the appellant at 40% cannot be further brought down. In view of the above position and also in view of the medical treatment received by the appellant on account of the cataract operation in both her eyes, the opinion of the Medical Boards which had examined the appellant at different points of time, in terms of the directions passed by the learned Single Judge, cannot be ignored.

25. Accordingly, this Court, proceeds to hold that the conclusions reached by the learned Single Judge to the effect that the Court is not in a position to go against the report of experts, with regard to the assessment of the extent of visual impairment of the appellant, cannot be said to be erroneous. The reports of the Medical Boards assessing the extent of the visual impairment suffered by the appellant and the consistent view emerging with regard to the visual impairment suffered by the appellant when considered with the opinion as rendered in the matter by Dr. Bharati Deori Baruah, we are of the considered view that the opinion rendered by the Medical Boards and the assessment of the appellant's visual impairment by them at 40%, would not mandate an interference by us and accordingly, the appellant is to be held to be not eligible for admission into the medical course as PWD (DIVYANG) candidate.

26. In view of the above conclusions reached by us, the decisions as relied upon by Mr. Borbora, learned Senior Counsel for the appellant, in our considered view, would not advance the case of the appellant herein.

27. Accordingly, the present writ appeal is held to be devoid of any merit and consequently, the same stands dismissed. However, there would no order as to costs.

JUDGE

CHIEF JUSTICE

Comparing Assistant