

THE HIGH COURT OF TRIPURA
AGARTALA

W.P. (C) 376 of 2015

Sri Anirban Nath Sharma
S/O Shri Pradip Nath Sarma,
Resident of Town Ganki, Khowai,
P.S. – Khowai, District – Khowai, Tripura.

..... *Petitioner*

- Vs. -

1. The State of Tripura
Represented by the Chief Secretary to the
Government of Tripura, Civil Secretariat,
New Secretariat Complex, Kunjaban, P.O.
Kunjaban, Agartala, District – West Tripura.
Pin – 799006.
2. The Secretary to the
Government of Tripura,
Health & Family Welfare Department,
Civil Secretariat, New Secretariat Complex,
Kunjaban, P.O. Kunjaban, Agartala,
District – West Tripura, Pin – 799006.
3. The Secretary to the
Government of Tripura,
Higher Education Department,
Civil Secretariat, New Secretariat Complex,
Kunjaban, P.O. Kunjaban, Agartala,
District – West Tripura, Pin – 799006.
4. The Director of Medical Education
Government of Tripura, Akhaura Road,
(Opposite to IGM Hospital) P.O. – Agartala,
District – West Tripura, Pin – 799001.

..... *Respondents*

BEFORE
HON'BLE THE CHIEF JUSTICE MR. DEEPAK GUPTA
HON'BLE MR. JUSTICE S.C. DAS

For the petitioner	: Mr. A.K. Bhowmik, Sr. Advocate. Mr. R. Datta, Advocate.
For the respondents	: Mr. T.D. Majumder, GA.

Date of hearing : 29.09.2015.
Delivery of Judgment : 30.09.2015.
& order
Whether fit for : No.
reporting

JUDGMENT & ORDER

(Deepak Gupta, CJ.)

The short question which arises for decision in this writ petition is whether the writ petitioner is eligible for being nominated to the MBBS course against the seats reserved for physically handicapped candidates.

2. The admitted facts are that the petitioner is physically handicapped. He appeared in the Joint Entrance Examination conducted by the Tripura Board of Joint Entrance Examination as a physically handicapped person. Thereafter, he was nominated for an MBBS seat against the physically handicapped candidates in the second round of counseling held on 31st July, 2015. A memorandum was issued on 1st August, 2015 nominating the petitioner for admission to the MBBS course against a seat reserved for the physically handicapped. However, this nomination was subject to fulfillment of admission criteria of the College. According to the petitioner, he prepared a draft for Rs.99,000/- for purpose of admission on 4th August, 2015 but when he went to get

admission he was told that there were some doubt with regard to his disability status.

3. On 7th August, 2015, the following Memo was issued to the petitioner:-

"MEMO

As per letter of Principal, AGMC, vide No.F.4(4-61)-AGMC/Academic/Admission/2014(Sub-I)/10,809 dt.-07-08-2015 dated, 7th August, 2015, the Director of Medical Education alongwith expert Orthopedics Surgeon, Dr. Tapan Kumar Das, Associate Professor, AGMC & GBP Hospital, Agartala have reviewed the disability status and the issued certificates by DDRC, West Tripura on 7th August, 2015 and the following suggestions are given to the candidate Sri Anirban Nath Sharma, S/o- Sri Pradip Nath Sarma of Khowai town Ganki, P.O-Ganki, P.O-Ganki, Khowai Tripura.

1. On examinations, it is found that Sri Anirban Nath Sharma is having Torticollis and Exaggerated Dorsal Kyphosis and X-Rays of both the conditions are essential. He has to attend Orthopedic OPD on 10-08-2015 as because 8th & 9th August are Govt. Holidays.

The final examination report will be submitted to the Review Board on same day."

4. Thereafter, on 11th September, 2015, another Memo was issued, which reads as follows:-

"MEMO

The Physically Challenged (PH) certificate as issued from the District Disability Medical Board, West Tripura vide No.DDRC/OH/6139/2015 dated 25-03-2015 under Registration No.627/2015 on Loco motor Disability (Temporary) in favour of Sri Anirban Nath Sharma has been examined by the Orthopedician of Agartala Government Medical College & GBP Hospital, Agartala but according to examination report, it is found that Sri Nath Sharma has not covered the Locomotor disability of lower limbs as per MCI guideline as stipulated vide Locomotors disability of lower limbs between 50% to 70% vide Amendment Notification No.MCI-

34(41)/2008-Med/54469 – In exercise of the powers conferred by section 33 of the Indian Medical Council Act, 1956 (102 of 1956), in terms of Clause 4(3) and also the opinion of the Orthopedician of Agartala Government Medical College, Agartala the disability of Sri Anirban Nath Sharma as described in the certificate is related to his spine(neck to low back).

In view of above, the provisional nomination for admission in MBBS course at Agartala Government Medical College as issued in favour of Sri. Anirban Nath Sharma by the undersigned vide this Directorate Memorandum No. F.11(1)-ET/DME/2015-16 dated 3rd August is hereby treated as cancelled.

This is issued with the approval of the Health & Family Welfare Department, Government of Tripura vide U.No.2365/Secy(H&FW)/15 dated 3rd September, 2015.”

5. By means of this Memo, it was found that the petitioner is not eligible to be considered for the reserved post under the physically handicapped category since his disability is not of the lower limbs as per the guidelines of the MCI. The petitioner has challenged this Memo dated 11th September, 2015 before this Court.

6. Mr. A.K. Bhowmik, learned senior counsel, appearing on behalf of the petitioner submits that the petitioner is not at fault. He had given his true certificates and was offered seat under the physically handicapped quota. It is submitted that the petitioner is disabled and his disability is also to be lower limbs. It is also contended that the petitioner once having been granted admission cannot be denied admission without giving him any hearing.

7. Notice of the petitioner was issued to the State on 23.09.2015. The State has filed reply and the stand of the State is that the petitioner is not eligible to be considered for the seat meant for the reserved category or physically handicapped since the petitioner does not fulfill the criteria laid down by the Medical Council of India. It is also submitted that the petitioner has not been granted admission and even the fees was not accepted. Lastly, it is submitted that the petitioner took a risk of applying him in physically handicapped category and once he is not found eligible he cannot get any relief.

8. The Medical Council of India vide Notification dated 25th March, 2009 has restricted the eligibility criteria for physically handicapped candidates for their admission to the MBBS course. The eligibility laid down by the MCI reads as follows:-

"3, 3% seats of the annual sanctioned intake capacity shall be filled up by candidates with locomotors disability of lower limbs between 50% to 70%,

Provided that in case any seat in this 3% quota remains unfilled on account of unavailability of candidates with locomotors disability of lower limbs between 50% to 70% then any such unfilled seat in this 3% quota shall be filled up by persons with locomotors disability of lower limbs between 40% to 50% - before they are included in the annual sanctioned seats for General Category candidates.

Provided further that this entire exercise shall be completed by each medical college / institution as per the statutory time schedule for admissions and in no case any admission will be made in the MBBS course after 30th of September."

9. The Apex Court as well as this Court has already held that the MCI has the final word in the matter. The MCI has clearly held that only those persons would be eligible for being considered for admission to the MBBS course, who have Locomotor disability of lower limbs between 50% to 70%. In case, the seats are vacant then those persons having Locomotor disability of lower limbs between 40% to 50% can also be considered. This criteria is also mentioned in the prospectus issued by the College.

10. Relevant portion of the disability certificate of the petitioner reads as follows:-

***"He is a case of Locomotor Disability (TEMPORARY)
His extent of permanent physical impairment/disability has been evaluated as per Govt. guidelines and is shown against the relevant disability in the below:***

<i>Disability</i>	<i>Affected Part of Body</i>	<i>Diagnosis</i>	<i>Disability (%)</i>
<i>Locomotor</i>	<i>Spine</i>	<i>TROTICOLOSIS WITH SCOLIOSIS.</i>	<i>50</i>

This certificate does not comply with the MCI guidelines. This certificate does not in any manner state that the disability is of the lower limbs.

11. We had called for the records of the Directorate of Medical Education. It was initially found that none of the candidates who appeared were eligible for being appointed under the physically handicapped quota. However, surprisingly, a decision was taken to offer one seat to the petitioner under the

physically handicapped category. This offer was provisional in nature and thereafter, the petitioner was asked to appear before the orthopedic surgeon, who opined that the disability of Anirban Nath Sharma as described in the certificate is related to his spine (neck to low back). Therefore, no disability of the lower limbs was found. The petitioner was therefore not eligible to be nominated to the MBBS course under the reserved category for physically handicapped candidates.

12. Dealing with the contention of Mr. A.K. Bhowmik, learned senior counsel that the petitioner is not at fault, all that we have to say is that even as laymen when we consider the disability certificate of the petitioner, it is clear that he was not eligible to be nominated under the physically handicapped quota since his certificate does not talk of disability to the extent of 50% to 70% of the lower limbs. Any person who applies against the physically handicapped category must know the extent of the disability and the petitioner has not given any certificate showing that he is disabled to the extent of 50% to 70% in respect of lower limbs.

13. Lastly, it was contended by Mr. Bhowmik, learned senior counsel that such an examination may be done at this stage. The last day for admission is 30th September, 2015. The application of the petitioner has to be considered as filed by him and in the disability certificate filed by him, there is no mention of

the disability of the lower limbs. As pointed out earlier at the time of scrutiny of relevant records, it was found that no one fulfills the criteria of physically handicapped category. However, somebody, for reason not known, took the decision to nominate the petitioner. That action was totally illegal and it has rightly been cancelled.

14. Coming to the issue of hearing, we are clearly of the view that vide Memo dated 1st August, 2015, the petitioner was only given provisional admission subject to fulfillment of admission criteria. Thereafter, on 7th August, 2015, he was specifically told to appear before the Orthopaedic Board. This is sufficient compliance with the Rules of natural justice.

15. In this view of the above discussion, we are of the considered view that there is no merit in the petition filed by the petitioner. The same is, accordingly, dismissed. No order as to costs.

JUDGE

CHIEF JUSTICE

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