

THE HON'BLE SRI JUSTICE V. RAMASUBRAMANIAN

AND

THE HON'BLE SMT JUSTICE ANIS

WRIT PETITION No. 23685 of 2016

-

ORDER: (*Per VRS,J*)

The petitioner, who gained admission to a four year under-graduate degree program in Engineering under the All India Quota after coming out successful in the Joint Entrance Examination

(Main) – 2016, and allocated to Indian Institute of Information Technology (IIIT), Dharwad, has come up with the present writ petition, challenging the cancellation of the seat allotted to him.

2. Heard Mr. Ch. Venkat Raman, learned counsel for the petitioner, and Mr. Aka Venkata Ramana, learned counsel for the respondents.

3. The petitioner was selected in JEE-2016 for admission to a four year under-graduate degree program in Electronics and Communication Engineering. His selection was under the category 'open (PWD)'. He claimed to be a person suffering from 40% disability in his vision. His claim was supported by a certificate issued by

the competent Medical Board, in terms of G.O.Ms.No.31, Women Development, Child Welfare & Disabled Welfare (DW) Department, dated 01.12.2009.

4. However, at the time of counseling, the Medical Board present at the counseling center, arrived at a conclusion that the percentage of disability of the petitioner was only 30% and not 40%. Based upon the said opinion of the Medical Board present at the counseling center, the respondents issued the impugned order, dated 13.07.2016, canceling the allotment of the seat. Hence, the petitioner is before us.

5. The procedure for the grant of certificates of physical disability, is governed entirely by the order in G.O.Ms.No.31, dated 01.12.2009. Under Paragraph-2.I of the said Government Order, low vision is included within the definition of the expression “disability”. The Government Order contemplates a detailed procedure under Paragraph-3 for the evaluation of the condition of a person claiming to be physically disabled. A detailed procedure for the issue of disability certificate, is also stipulated in the said G.O. There is also a provision for constitution of a State Appellate Medical Authority, for considering the grievances of persons about the

evaluation made on them by the original Board.

6. There is no denial of the fact that the petitioner produced before the respondents, a certificate of disability issued on 10.06.2011 by the competent Medical Board comprising of three professionally qualified doctors. This certificate was issued obviously in terms of G.O.Ms.No.31, dated 01.12.2009. As per this certificate, the percentage of disability of the petitioner was 40%. This certificate is not questioned by the respondents.

7. The procedure for the verification of certificates produced by physically disabled persons, at the time of allotment of seats, is stipulated in a set of guidelines issued by the Central Seat Allocation Board of the Ministry of Human Resources and Development. Paragraph-13.4 of these guidelines contains the rules for checking the certificates produced by persons with disability. The said paragraph reads as follows:

“13.4 – Rules for candidates of persons with disabilities category

- *Candidates applying under persons with disabilities (PwD) category should have minimum of 40% disability to be eligible for consideration under PwD subcategory.*
- *Persons with disabilities (PwD) category*

candidates must bring certificate issued by three member Medical Board constituted by State or Central Government under Person with Disability (PwD) Act (Annexure-VI).

- *The Medical Board at the Reporting Center or Participating Institute will assess the bona fide of the certificate. Medical Board at Reporting Center shall ensure that at least one of the three doctors who have signed the PwD certificate is a specialist in the particular field pertaining to the disability.*
- *In case there is serious doubt about percentage of disability/genuineness of the certificate and/or there is serious doubt regarding the candidate's ability to carry out all activities related to theory and practical work as applicable to B.E./B.Tech./B.Arch/B.Planning courses, the medical board may refer the case to issuing authorities.*

8. There is no dispute about the fact that the petitioner produced a certificate to the effect that he suffered from 40% disability. There is also no dispute about the fact that the certificate produced by the petitioner was issued by a three member Medical Board constituted by the State Government under the Act. There is also no dispute about the fact that one of those three members, who constituted the Medical Board that issued the disability certificate to the petitioner on 10.06.2011, was a specialist in the

particular field pertaining to disability.

9. Therefore, the respondents did not seek to cancel the admission of the petitioner, on any of the first three bullet points under Paragraph-13.4 of the guidelines issued by the Central Seat Allocation Board. Obviously, the respondents had taken recourse to the fourth bullet point under Paragraph-13.4.

10. But, a careful look at Paragraph-13.4 would show that wherever there is a doubt about the percentage of disability or genuineness of the certificate, the only course of action open to the Medical Board is to refer the case to the issuing authority. But, in this case, the Medical Board present at the counseling center, did not choose to refer the petitioner to the issuing authority. On the contrary, they independently assessed the disability of the petitioner to be 30%. It means that the Medical Board present at the counseling center exceeded their power. Therefore, the cancellation of allotment of the seat, on the basis of such an action not authorized by law, on the part of the Medical Board, deserves to be set aside.

11. Hence, the Writ Petition is allowed, the impugned order is set aside, and the respondents are directed to

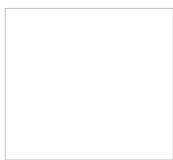
allow the petitioner to continue his course of study. Whenever any doubt about the genuineness of the disability certificate of the petitioner arises, it will be open to the respondents to follow due process of law.

Consequently, miscellaneous petitions if any pending in the writ petition shall stand dismissed. There shall be no order as to costs.

V. RAMASUBRAMANIAN, J

ANIS, J.

18th August, 2016
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