

*** HON'BLE SRI JUSTICE V.RAMASUBRAMANIAN**

AND

HON'BLE SMT. JUSTICE T.RAJANI

+ Writ Petition No.24998 of 2017

% 30-04-2017

Shaik Shoyab Ali, S/o Shaik Rahamath Ali, aged
20 years, Occ: Student, r/o H.No.43/167-1-1,
Prakash Nagar, Kadapa town and District

... Petitioner

Vs.

\$ State of Andhra Pradesh, represented by its
Secretary, Department of Health, Medical and
Family Welfare, Amaravathi, Andhra Pradesh and
another

... Respondents

! Counsel for the Petitioner:

Mr. K. Venkatesh Gupta

Counsel for Respondents:

G.P. for Medical & Health

Mr. Taddi Nageswara Rao
Standing Counsel for University

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> Head Note:

? Cases referred:

HON'BLE SRI JUSTICE V. RAMASUBRAMANIAN

AND

HON'BLE MRS. JUSTICE T. RAJANI

Writ Petition No.24998 of 2017

ORDER: (V. Ramasubramanian, J)

The petitioner applied for admission to Undergraduate Medical Courses, under the quota reserved for Physically Handicapped persons. His disability was assessed at 62% by the Medical Board constituted by the Government in terms of G.O.Ms.No.31 dated 01-12-2009.

2. But the Medical Board constituted by the University rejected his claim, forcing him to come up with the above writ petition. On 01-08-2017 we passed the interim order to the following effect:

“Heard Mr. K. Venkatesh Gupta, learned counsel for the petitioner, and Mr. Taddi Nageswara Rao, learned standing counsel for Dr. N.T.R. University of Health Sciences, appearing for the 2nd respondent.

The petitioner applied for admission to undergraduate medical courses for the current academic year 2017-2018, under the quota reserved for persons with disabilities. He produced a certificate issued by the authority constituted under G.O.Ms.No.31, WD CW & DW Department, dated 01.12.2009, assessing the percentage of his disability at 62%.

But, at the time of certificate verification, the University referred the petitioner to a team of doctors, and he was declared ineligible, on the ground that he had “*spina bifida with para paresis – post op*”. Therefore, he has come up with the above writ petition, seeking appropriate reliefs.

On the first occasion when the writ petition came up for admission, we directed the learned standing counsel for the University to take notice and get instructions. Later, he produced a Government Order in G.O.Ms.No.125, Health, Medical and Family Welfare (C1) Department, dated 24.07.2017, which

empowered the University to constitute a Medical Board for examining persons with physical disabilities. It must be pointed out at this stage that this Government Order appears to be a sequel to an order passed by a Bench of this Court last year, holding that once a competent authority constituted under the Persons with Disabilities (Equal opportunities, Protection of Rights and Full Participation) Act, 1995, has issued a certificate of disability, the University cannot constitute a second Medical Board, unless the certificate was suspected to be fabricated or not genuine.

Though the Government appears to have got over the judgment of this Court, by issuing G.O.Ms.No.125, dated 24.07.2017, the facts of the present case reveal that even according to the Medical Board constituted by the University, the disability is more than 70%. In the first instance, the University took a stand that the disability is more than 70%. The eligibility for claiming the benefit of reservation is a disability ranging from 50% to 70%. A statement that the disability was more than 70%, is as vague as the vagueness could be. Therefore, we directed the standing counsel for the University to check-up.

Today, the standing counsel has produced a sheet of paper, where the Medical Board has indicated that the petitioner is suffering from paralysis of both lower limbs, which is assessed to be a disability of 80%.

But, the problem here is that one team of doctors constituted under the statutory prescriptions, assessed the disability of the petitioner to be 62%, in February, 2016. The Medical Board constituted by the University first recorded that the disability was more than 70%. They have now recorded that the disability is 80%.

In view of such a precarious stand taken by the University, we are of the considered view that the original disability certificate produced by the petitioner under G.O.Ms.No.31, dated 01.12.2009, cannot be rubbished so easily.

Hence, there will be an interim direction to consider the case of the petitioner under the quota for physically challenged, subject to further orders. The petitioner shall not claim any equity, in the event of our coming to a different conclusion, after final hearing of the writ petition.”

3. Thereafter, the University has come up with a counter affidavit. Based upon the contents of the counter affidavit, it is contended by Mr. Taddi Nageswara Rao, learned standing counsel for the University, that the Medical Board constituted by the University assessed the disability of the petitioner at 80%.

Paragraph 8 of the counter affidavit reads as follows:

“..... The Medical Board has given the remarks that “Spina bifida with para paresis – post op (Paralysis of both Lower Limbs)”. The Medical experts stated that Spina bifida is Spinal cord congenital abnormality which leads to weakness and paralysis of both Lower Limbs. Weakness of Lower Limb is more than 70% i.e.... 80%. It is further submitted that as per the Regulations of the Medical Council of India and the University, the Medical Board constituted by the University has to examine and assessed the disability suffered by the candidate who claims the quota under Physically Handicapped but not issued any certificate of disability with regard to his/her suffering disability. That is the reason, the Medical Board constituted by the University assessed the disability of the petitioner is more than 70% and the same is endorsed as remarks by the Medical Board on sheet of list of candidates eligible for admission under PHC quota in detail and the same is furnished to the University but not issued any certificate assessing the disability of the petitioner....”

4. On the basis of the findings of the Medical Board, it is contended by Mr. Taddi Nageswara Rao, learned standing counsel for the University that the disability suffered by the petitioner is of such a nature that he will not be able to undergo the medical courses.

5. But as we have pointed out in our interim order, there are two certificates today, one assessing the disability of the petitioner at 62% and the other assessing the disability at 80%. Two teams of doctors have assessed the disability at different percentages. It is

impossible for a Court to adjudicate, which one of these two certificates could be the most accurate.

6. The fact that the petitioner suffers from disability is not in dispute. The dispute is only with respect to the percentage. In any case, the assessment made by the Medical Board of the University at the time of verification, is on a rough estimate, since they had to examine lot of candidates on a single day. Therefore, we would choose to prefer the certificate produced by the petitioner and we see no reason to modify the interim order.

7. Therefore, the writ petition is disposed of directing the respondents to consider the case of the petitioner under the quota for physically handicapped persons, on the basis of the certificate already produced by him and allot him a seat, according to the order of merit.

As a sequel thereto, miscellaneous petitions, if any, pending shall stand closed.

V. RAMASUBRAMANIAN, J

T. RAJANI, J

Date: 30-08-2017

Note: Issue C.C. today.

B.O./Ksn