

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.22707 of 2019

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Sanket Sourav, Son of Sri Surendra Prasad, Resident of Village- Bakhtar, Post Bambhai, Police Station Mehandiya, District- Arwal.

... .. Petitioner/s

Versus

1. The State of Bihar through Principal Secretary, Health Department, Bihar.
2. The Principal Secretary, Health Department, Bihar.
3. The State Commissioner, Disability, Patna, Bihar.
4. The Additional Commissioner, Disability, Patna, Bihar.
5. The Principal Jawaharlal Nehru Medical College, Bhagalpur.
6. Bihar Combined Entrance Competitive Examination Board through its Chairman, IAS Association Building, Near Patna Airport, Patna.
7. The Secretary Bihar Combined Entrance Competitive Examination Board, Patna.
8. The Examination Controller Bihar Combined Entrance Competitive Examination Board, Patna.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr.Sanjeev Kumar Singh, Adv.
For the Respondent/s : Mr.Pankaj Kumar (SC-12)

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CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

ORAL JUDGMENT

Date : 29-09-2020

Heard the learned counsel for the parties.

2. The petitioner had participated in the National Eligibility cum Entrance Test (UG) 2019 [NEET (UG) 2019] conducted by the National Testing Agency. His overall rank was 417099 whereas State rank 9245, EBC rank 1769 and Disability Quota(DQ) rank 54. A counselling was, thereafter, held for which the petitioner was registered. The petitioner is resident of Arwal district. He claimed his admission against the seats reserved for



differently abled candidates on the ground that he was suffering from 46% of disability (Orthopedics).

3. It appears from the pleadings on record that the Bihar Combined Entrance Competitive Examination Board, Patna (hereinafter referred to as “the BCECEB”), which conducts the counselling in the State of Bihar for admission to the course in question, in its meeting held on 11.08.2019, had decided that if on physical verification of candidates any visible difference was noticed in the percentage of disability claimed and the actual disability, recommendations shall be made for review to the State Commissioner (Disability) and the candidates would be admitted provisionally with a condition to produce review report and certificate in new performa within 15 days. The petitioner was allotted a medical college, namely, V.I.M.S., Pawapuri and was directed to appear for counselling on 16.08.2019. Upon examining his documents, his case was recommended for review to the State Commissioner (Disability), there being difference apparent in the disability claimed and the actual disability, though he was allowed admission provisionally in the college. His case was sent to Patna Medical College for review medical examination. A second round of counselling was held, in the meanwhile. In the second round of counselling, a revised allotment letter was issued and the petitioner



was allotted Jawaharlal Nehru Medical College, Bhagalpur on 25.08.2019. He was again allowed provisional admission and recommendation was made for review before the State Commissioner (Disability) on 16.09.2019, for the purpose of assessing his physical disability. The petitioner appeared before the medical board on 02.09.2019. The medical board constituted by the State Commissioner (Disability) has found the petitioner's disability (Locomotor) to be 20%.

4. This is to be noted that the petitioner had claimed the percentage of his disability on the ground of a certificate issued by the Civil Surgeon's office, Samastipur on 31.12.2018. Out of curiosity, the Court had wanted the petitioner to disclose the circumstance in which he had obtained certificate of his disability from the office of Civil Surgeon, Samastipur, when he is a resident of Arwal district. A supplementary affidavit has, thereafter, been filed wherein it has been stated that the petitioner's father was posted as Counsellor at Sadar Hospital, Samastipur in the year 2011-12. It has been averred that at the relevant point of time he was only 12 years of age when he had developed deformity in his right leg and initially steps were taken to get the deformity treated by Sadar Hospital, Samastipur. It is accordingly, his case that a disability certificate was issued on 02.04.2012 itself. It has further



been stated that, thereafter, the petitioner's father was transferred from one place to another and from 2016, he is posted in Arwal district. It is his further case that when the petitioner contacted the officials at Arwal and Aurangabad for issuance of fresh disability certificate, he had been advised to renew his earlier certificate dated 02.04.2012 from the place of its issuance or from the place where he had undergone treatment. According to his case, he was informed that once disability was issued from any particular district, no second disability certificate could be issued from a second place or from a different place as it could amount to issuance of multiple disability certificates in favour of one person. It is his case that accordingly the petitioner had presented himself before the office of Civil Surgeon, Samastipur for renewal/issuance of fresh disability certificate. A certificate was issued on 31.12.2018. Reference has been made to the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Rules, 1996 to submit that an application can be submitted to a medical authority where the applicant might have undergone treatment in connection with his disability.

5. Be that as it may, for the reasons stated in the supplementary affidavit, I do not intend to go into the



circumstance in which the petitioner obtained the disability certificate from the office of Civil Surgeon, Samastipur.

6. The certificate on which the petitioner has placed reliance is at Annexure-1, wherein his nature of disability has been described as deformity and weakness of right leg and the extent of deformity estimated in percentage has been shown as 46%. The review medical board has, on the other hand, found the extent of disability as under :-

“Examined the candidate Sanket Sourav UDMAC with ID 7190004031 and found that post traumatic soft tissue scarring of right anterior leg with mild wasting of right lets miscle without any involvement of adjacent joint. On this basis the disability percent (locomotor disability) of this candidate is 20% (Twenty per cent).”

7. It appears that the said medical board consisted of Dr. Ranjeet Kumar Jamaiyar, PMCH, Patna, Dr. Arun Kumar, Head of Department, PMR, PMCH, Dr. Arijit Kumar, Assistant Professor, Orthopaediatic, Dr. Rajaneesh Ranjan, Senior Resident (ENT), Dr. Shilpi Agrawal, Senior Resident(Eye). The report of the review board is dated 02.09.2019, which was forwarded to the Officer on Special Duty, BCECEB, Patna on 18.09.2019 by the Additional Commissioner (Disability), Bihar.



8. Since the extent of disability of the petitioner was found to be substantially less than the requisite disability percentage to claim reservation against the seats reserved for differently abled candidates, the BCECEB came out with an order dated 15.10.2019, which has been brought on record by way of Annexure-8 to the writ application, recording that the petitioner and other similarly situated candidates were found unfit to claim admission against the seats reserved for disabled candidates. The order specifically mentions that their admission to MBBS course was provisional and was subject to the report of the review medical board in this regard. Accordingly, by the said order, the BCECEB has cancelled the allotment of seat in favour of the petitioner in the college in question. The Principals of the medical colleges were asked to proceed accordingly. Consequently, the petitioner's admission to MBBS course stood cancelled with the issuance of an order dated 22.10.2019 (Annexure-9), by the Principal of the college. The orders dated 18.09.2019 and 22.10.2019 are under challenge in the present writ application.

9. Before I come to the submissions made on behalf of the petitioner, I must refer to Schedule-4 of the prospectus of Under Graduate Medical Counselling, 2019, which contains the guidelines for admission in degree courses in medical profession



against Disabled Quota(see page 26 of the writ application),

Clause-4 of which reads thus :-

“4. For availing the benefits of reservation in Disabled Quota, the locomotory disabled candidates with disabilities involving the lower limbs must fulfil the following criteria/ guidelines :-

(a) If the locomotory disability involves only one lower limb, it should not be less than 50% and should not exceed 70%.

(b) If the locomotory disability involves both the lower limbs, the total disability should not exceed 70% with a minimum of 50%.

(c) The disability certificate should be produced by a duly constituted and authorised medical board by the Government of Bihar.

(d) The candidate should have minimum eligibility criteria as per Medical Council of India guidelines and should be otherwise medically fit.”

10. As has been noticed above, the review medical board has found the extent of petitioner's disability to be 20% and, therefore, in terms of Clause-4 of the guidelines as noted above, he could not have availed the benefit of a reservation against Disabled Quota.

11. Assailing the impugned decision, learned counsel appearing on behalf of the petitioner has argued that it was Dr. Arun Kumar, who, at the time of counselling, had sent the



petitioner's case for review, doubting the correctness of his certificate and he himself became a member of review medical board among other doctors. According to the petitioner, the original disability certificate issued by the Civil Surgeon, Samastipur discloses the correct extent of percentage of disability and, therefore, decision of the review medical board to record percentage of disability to 20% is irrational, arbitrary and, therefore, requires interference by this Court. He has submitted that till date, fresh process of counselling has not begun nor any other candidate has been admitted against the seat which was allotted to the petitioner, to the petitioner's knowledge.

12. A counter affidavit has been filed on behalf of the BCECEB. The petitioner has filed a rejoinder to the said counter affidavit.

13. I have carefully perused the materials on record and have given my anxious consideration to submissions made on behalf of the parties. There are certain facts, which are not in dispute. For admission in MBBS and other courses in medical colleges of the State of Bihar on the basis of result of NEET (UG), 2009, a prospectus was issued and online applications were invited. The admissions were allowed provisionally subject to verification of documents of the respective candidates. It appears



that with the issuance of a notification on 04.02.2019, the guidelines for admission in medical courses for disabled quota were revised by the Medical Council of India, which was published in extraordinary official gazette of India on 05.02.2019. Under the revised guidelines, visual impairment, deaf impairment and other disability, in addition to Locomotor disability were included for the purpose of medical admission. Further, Disability Quota (DQ) candidates with 40% to 80% disability could avail the benefit of reservation in place of 50% to 70%. It is the specific case of BCECEB that in case the team constituted by the Department of Health, Government of Bihar for verification of the documents of candidates considered that disability certificate submitted by any candidate required review by a Medical Board, the candidate was to be granted admission provisionally on the basis of allotment of seats with clear stipulation that his case would be referred before the Commissioner (Disability) (Annexure-R-6/1).

14. Since the petitioner did not satisfy the eligibility requirement to claim admission against seats reserved for Disabled Quota candidates, he was declared unfit. Consequent upon the order of BCECEB dated 15.10.2019, as noted above, the Principal



of the college has cancelled the petitioner's provisional admission by order dated 22.10.2019 (Annexure-9).

15. Learned counsel for the petitioner has vehemently argued that presence of Dr. Arun Kumar in the review medical board, who was one of members of the Board which had recommended for review, vitiates the finding recorded by the review medical board, lowering down the percentage of petitioner's disability. He has submitted that if the petitioner is not allowed to pursue his course, it will cause immense loss to him.

16. I do not find much substance in submission made on behalf of the petitioner. No *malafide* has been alleged against any of the five members of the Medical Board including Dr. Arun Kumar, which had recommended for review of the petitioner's case. It is not the petitioner's case that one doctor had referred him to the State Commissioner (Disability) for review of his disability status. It has not been disputed that a Medical Board constituted by Health Department had examined the candidates and their respective disability certificates produced by them and when their percentage of disability mentioned in the certificates were found doubtful, the matters relating to their respective disability were referred by the medical board for review before the State Commissioner (Disability). The experts' committee, which found



the petitioner's disability to be 20%, was constituted by the State Commissioner (Disability).

17. I do not find any reason to interfere with the impugned decision which is based on a report of the experts relating to petitioner's percentage of disability. I must notice here that whereas the petitioner is relying on certificate issued by the office of Civil Surgeon cum Chief Medical Officer of a district, the Review Medical Board consisted of experts constituted by the State Commissioner (Disability). The petitioner knew that his admission was provisional subject to verification of his certificates including the certificate in support of his disability.

18. For the reasons aforementioned, I do not find any reason to interfere. This application has no merit and is accordingly dismissed.

19. There shall be no order as to costs.

(Chakradhari Sharan Singh, J)

Rajesh/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	15.10.2020
Transmission Date	NA

