GAHC010163932020

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

**Case No. : WP(C)/5047/2020**

MOKIB MD. MINHAZUL RAHMAN
S/O SAFIAR RAHMAN,
RESIDENT OF GAURIPUR, WARD NO. 4
DIST DHUBRI, ASSAM 783331

VERSUS

THE STATE OF ASSAM AND 3 ORS
REP. BY THE CHIEF SECY., GOVT. OF ASSAM, ASSAM SACHIBALAYA,
DISPUR, GHY-6

2:THE COMM. AND SECY. TO THE GOVT. OF ASSAM
HEALTH AND FAMILY PLANNING WELFARE
DEPTT.
DISPUR
GHY-6

3:THE DIRECTOR OF MEDICAL EDUCATION
ASSAM
OFFICE OF THE DIRECTOR OF MEDICAL EDUCATION
SIXMILE
KHANAPARA
GHY-22

4:THE CONTROLLER OF EXAMINATIONS
OFFICER OF THE DIRECTOR OF MEDICAL EDUCATION
SIXMILE
KHANAPARA
GHY-2

**Advocate for the Petitioner** : PETITIONER IN PERSON

**Advocate for the Respondent** : GA, ASSAM

**BEFORE**
**HONOURABLE MR. JUSTICE ACHINTYA MALLA BUJOR BARUA**

**O R D E R**

**09.12.2020**

Heard Mr. Mokib Md. Minhazul Rahman, the petitioner in person, Mr. D Saikia, learned senior counsel for the Medical Education Department of the Government of Assam and Mr. DK Baidya, learned counsel for the National Medical Commission.

2. The petitioner is an aspiring candidate of the MBBS Course 2020 in the State of Assam and he claims the benefit of reservation under the Rights of Persons with Disabilities Act, 2016. The petitioner relies upon a certificate issued by the Joint Director of Health Services, Dhubri, which is the statutory authority to issue a disability certificate under the Act of 2016 to certify as to what is the extent of a disability that a person may suffer from. The certificate relied upon by the petitioner shows that the petitioner is suffering from 45% disability of mental illness. The petitioner is aggrieved to the extent that he had secured 214 in the NEET examination, but persons who have secured lower marks than the petitioner in NEET examination had been shortlisted for admission for MBBS Course under the quota for persons with disability.

3. The Graduate Medical Education Regulation (Amendment) 2019 of the Medical Council of India had been formulated by the Board of Governors and notified as per the amendment notification dated 13.05.2019. The relevant portion of the regulation of 2019 as regards mental illness is extracted as below:-

| Sl No | Disability Type | Type of Disabilities | Special Disability | Disability Range | | |
|---|---|---|---|---|---|---|
| | | | | Eligible for Medical Course, Not Eligible for PwD Quota | Eligible for Medical Course, Eligible for PwD Quota | Not Eligible for Medical Course |
| 3 | Mental behaviour | | Mental illness | Absence or mild disability: less than 40% (under IDEAS) | Currently not recommended due to lack of objective method to establish presence and extent of mental illness. However, the benefit of reservation/quota may be considered in future after developing better methods of disability assessment | Equal to or more than 40& disability or if the person is unfit to perform his/her duties. Standards may be drafted for the definition of "fitness to practice medicine", as are used by several institutions of countries other than India. |

4. A reading of the said clause of the Regulation of 2019 goes to show that in case of mental illness, a person having absence or mild disability being less than 40% would be eligible for admission under the quota for persons with disability under the Act of 2016 in respect of admission to MBBS Courses. In other words, the Regulation clearly provides that any assessment of the mental illness over and above 40%, the person concerned would not be eligible for admission to the MBBS course under the quota for persons with disability. A further provision is discernible from the Regulation of 2019 that for determining the eligibility of a person suffering from mental illness in respect of the quota for persons with disability under the Act of 2016, presently 'an objective method to establish presence and extent of mental illness' is not in place and further the benefit of reservation/quota of persons with disability under the Act of 2016 may be considered in future after developing better method of disability assessment.

5. In the instant case as already noted, the petitioner has been certified to have a mental

disability of 45% which is more than the prescribed acceptable 40% disability. When the aforesaid provision of law was put across to the petitioner in person, Mr. Mokib Md. Minhazul Rahman made a statement that he is not further interested to pursue with this writ petition.

6. Accordingly, the writ petition stands closed. However, closure of the writ petition shall not preclude the petitioner to approach the Court again on any other issue apart from what had been referred above.

**JUDGE**

**Comparing Assistant**