

NAFR

HIGH COURT OF CHHATTISGARH, BILASPURWPC No.22 of 2021

1. Chandani Patel D/o Rameshwar Prasad Patel Aged About 20 Years
R/o Village Kashidih, Post Office Latesara, Tehsil Dabhara,
District Janjgir- Champa, Chhattisgarh

---- Petitioner

Versus

1. State Of Chhattisgarh Through The Secretary, Department Of
Medical Education, Mantralaya Mahanadi Mantralaya, Naya
Raipur, Atal Nagar, Naya Raipur, District- Raipur, Chhattisgarh,
2. National Medical Commission Through its Secretary, Pocket-14,
Sector-8, Dwarika Phase-1, New Delhi-110077
3. Director, Directorate Of Medical Education Purana Nurses Hostel,
D.K.S. Bhawan Parisar, Raipur, District Raipur, Chhattisgarh
4. Chhattisgarh Institute Of Medical Science Through Its Dean,
Bilaspur, District Bilaspur, Chhattisgarh
5. State Medical Board Chhattisgarh Through Its Chairman,
Sanchalanalaya Chikitsa Shiksha Raipur, Purana Nurses Hostel,
D.K.S. Bhawan Parisar, Raipur, District Raipur Chhattisgarh
6. District Medical Board Janjgir, Through Its President, District
Hospital, Janjgir, District Janjgir- Champa, Chhattisgarh
7. Union Of India Through The Chief Medical And Health Officer,
National Health Mission, New Delhi, 110067

---- Respondents

For Petitioner	:- Mr. Rajeev Shrivastava, Advocate with Mr. Dhani Ram Patel, Advocate
For Respondent/State	:- Mr. Sudeep Agrawal, Dy. Adv. General
For Respondent No.2	:- Ms. Anubhuti Marhas, Advocate on behalf of Mr. R.S. Marhas, Advocate
For Respondent/UOI	:- Mr. Tushar Dhar Diwan, Advocate on behalf of Mr. Ramakant Mishra, Assistant Solicitor General.

Hon'ble Mr. Prashant Kumar Mishra, J.
Hon'ble Mrs. Rajani Dubey, J.

Order on Board
By
Prashant Kumar Mishra, J.

14-01-2021

1. Petitioner, a physically handicapped candidate, has preferred this writ petition under Article 226 of the Constitution of India seeking quashment of the physical disability certificate dated 29-12-2020 (Annexure – P/1) issued by the State Medical Board/respondent No.5 with further prayer of a direction to the said respondent to reconsider the physical disability of the petitioner in accordance with the provisions of the Rights of Persons with Disabilities Act, 2016 (henceforth 'the Act, 2016'). Petitioner also prays for quashment of the scrutiny receipt dated 29-12-2020 (Annexure – P/2), which has resulted in denial of admission in the first year MBBS course in any Medical College in the State of Chhattisgarh.
2. The facts of the case lie in a narrow compass. The petitioner participated in the NEET [National Eligibility-cum-Entrance Test] qualifying examination and obtained a score of 190 marks thus becoming eligible to take admission in the MBBS course. She appeared for counseling as a Physically Handicapped person on 17-12-2020, but the counseling was adjourned and the petitioner was directed to submit a medical certificate issued by the State Medical Board with the regard to her disability. Since the petitioner was not able to obtain required disability certificate within time as the last date of counseling was 23-12-2020 she preferred WPC No.3338 of 2020 in which an interim order was passed by this Court. Pursuant to the interim order passed by this Court, the petitioner appeared before the State Medical Board on 29-12-2020 and was issued a certificate (Annexure -P/1) finding that her physical disability is 20%.

3. Since admittedly for being eligible for admission in the physical handicapped category the candidate has to suffer minimum 40% disability the petitioner became disqualified and now the present petition has been filed for quashment of certificate (Annexure – P/1); for reconsideration of her physical disability; and for quashment of the scrutiny receipt.
4. Mr. Rajeev Shrivasta, learned counsel appearing with Mr. Dhani Ram Patel, learned counsel for the petitioner, would submit that as per the guidelines issued by the Ministry of Social Justice and Empowerment, Department of Empowerment of Persons with Disabilities (Divyangjan) on dated 4-1-2018 in exercise of powers conferred by Section 56 of the Act, 2016, the petitioner's disability should have been considered by the State Medical Board with reference to her mobility status. The petitioner can climb stairs with a railing and has difficulty with uneven surfaces; also has only minimal ability to run or jump; her percentage of impairment would be 40 to 50%, therefore, in terms of the chart provided under Section 'H' of the Government of India's (henceforth 'the GoI') notification the petitioner suffers from disability of 40% or more and would be entitled for admission in the MBBS course. According to the learned counsel, the State Medical Board has not given details of the parameters or the examination on the basis of which the disability has been assessed, therefore, the certificate is not in accordance with the guidelines issued by the GoI. If her disability is properly examined she would be entitled to get admission in the MBBS course. Learned counsel would also argue that the competent authority for issuance of disability certificate would be the Divisional Medical Board as provided under the provisions of the छत्तीसगढ़ आयुष स्नातक पाठ्यक्रम प्रवेश नियम, 2019 (henceforth 'the Rules, 2019'), however, in the case at hand, the State Medical Board has issued the certificate.

5. Shri Sudeep Agrawal, learned Dy. Adv. General appearing for the State, Ms. Anubhuti Marhas, Advocate appears on behalf of Mr. R.S. Marhas, Advocate for the respondent No.2; and Mr. Tushar Dhar Diwan, Advocate appearing on behalf of Mr. Ramakant Mishra, Assistant Solicitor General for the Union of India, *per contra*, would submit that reliance made by the petitioner on the Rules, 2019 is misplaced because the said Rules would apply for admission to Ayurved, Yoga, Naturopathy, Unani, Siddha and Homeopathy (AYUSH) Medical Colleges and not for MBBS for which separate set of Rules known as छत्तीसगढ़ चिकित्सा, दंत चिकित्सा एवं भौतिक चिकित्सा (फिजियोथेरेपी) स्नातक प्रवेश नियम, 2018 (henceforth 'the Rules 2018') would apply.
6. Learned State counsel would submit that under Rule 7 (xxi) of the Rules 2018 read with the proforma of the medical certificate (Annexure – IV to the Rules, 2018) the certificate is to be issued by the State Medical Board. In fact, the petitioner herself appeared before the State Medical Board and her disability has been duly and properly examined as reflected from the documents filed along with the return, therefore, the State Medical Board being an expert body the correctness of the said certificate is not open to judicial review. To buttress the aforesaid contention, learned counsel would place reliance upon the decision rendered by the Supreme Court in *Vidhi Himmat Katariya & Ors. v The State of Gujarat & Ors*¹.
7. Learned counsel for the respondents would also submit that one Aabhas Harwani, a candidate under the physically handicapped category, has scored more marks than the petitioner and his writ petition bearing WPC No.38 of 2021 has been allowed by a coordinate Division Bench of this Court, therefore, for this reason also the petitioner is not entitled to be admitted as there is one seat in the handicapped category.

¹ WPC No.885 of 2019 and other connected matters (decided on 4-10-2019)

8. Having seen the Rules, 2019 relied by the petitioner and the Rules, 2018 relied by the respondents we are satisfied that in the case at hand Rules, 2018 would apply. Under the said Rules the physical disability certificate is required to be issued by the State Medical Board. It is precisely for this reason the petitioner who was already having a certificate issued by the Divisional Medical Board preferred WPC No.3338 of 2020 and after recording petitioner's submission that she has applied for grant of disability certificate from the State Medical Board, an interim order was passed. Thus, the petitioner herself followed the rules, as it was necessary for her and accordingly she appeared before the State Medical Board.
9. Along with the return the State has filed document Annexure – R/4 which is assessment of petitioner's disability under different heads/parameters and thereafter the final conclusion recorded. The said assessment was done by the Assistant Professor (Orthopedics), Pt. JNM Medical College & Dr. B.R.A.M. Hospital, Raipur. The document clearly depicts that the petitioner was thoroughly examined on all parameters before issuance of certificate by the State Medical Board.
10. It is also to be noted that under the guidelines issued by the GoI, Locomotor Disability may be of different nature and the petitioner has been medically examined for evaluation of Permanent Physical Impairment (PPI) of Extremities (Upper and Lower Extremities) under Section 'A' within heading 'Locomotor Disability' whereas the chart relied by the petitioner's counsel is contained in Section 'H' paragraph 15 Cerebral Palsy affected Persons with disabilities.
11. It is not a case of the petitioner that she suffers from Cerebral Palsy and her Locomotor Disability originates from the said Cerebral Palsy. Her disability, therefore, would be covered within

the PPI of Extremities (Upper and Lower Extremities) and not under Cerebral Palsy.

12. In this view of the matter, we are not convinced with the submission raised by the petitioner's counsel that the certificate issued by the State Medical Board is contrary to the guidelines issued by the GoI.
13. Once the certificate issued by the State Medical Board is found to be within the parameters set forth by the GoI and has otherwise been issued after examination by the Medical experts, it would be outside the scope of judicial review as held by the Supreme Court in ***Vidhi Himmat Katariya and Others*** (supra). Para 8 of the said decision is quoted below for ready reference :

8. Now so far as the submission on behalf of the petitioners that while denying admission to the petitioners the State Government and/or authorities have not considered the relevant parameters and have not considered that the respective petitioners are able to perform well is concerned, it is required to be noted that in the present case all the expert bodies including the Medical Board, Medical Appellate Board and even the Medical Board of AIIMS, New Delhi consisting of the experts have opined against the petitioners and their cases are considered in light of the relevant essential eligibility criteria as mentioned in Appendix 'H' – 'Both hands intact, with intact sensation, sufficient strength and range of motion'. Therefore, when the experts in the field have opined against the petitioners, the Court would not be justified in sitting over as an appellate authority against the opinion formed by the experts – in the present case, the Medical Board, Medical Appellate Board and the Medical Board of AIIMS, New Delhi, more particularly when there are no allegations of mala fides.

14. We have not examined the petitioner's case by comparing it with the case of *Aabhas Harwani* (supra) for the reason that the said aspect was informed to this Court at the time of hearing and there is no pleading or document before us on that issue.
15. As an upshot, the writ petition, sans merit, is liable to be and is hereby dismissed, leaving the parties to bear their own cost(s).
16. Consequently, the interim order passed earlier stands vacated.

Sd/-

(Prashant Kumar Mishra)
Judge

Sd/-

(Rajani Dubey)
Judge

Gowri