

02 **16.03**
2022

Ct. No. 04

Ab

MAT 364 of 2022
With
CAN 1 of 2022

Anamika Singh and another.
Vs.
Union of India and others.

Mr. R. Guha Thakurta,
Mr. S. Ghosh,
Ms. S. Sengupta,
Ms. R. Singh.

... for the appellants.

Mr. Indranil Roy,
Mr. Sunit Kumar Roy.

... for the MCI.

This appeal is against an order dated 8th March 2022 passed in WPA 4057 of 2022 wherein the Single Bench rejected the writ petition and permitting the petitioner to participate in the counseling as general candidate.

The appellant no. 1 applied her candidature having an intellectual disability. She was called for a counseling wherein she produced the physically handicapped certificate issued by the Medical Officer and Superintendent of Sub-divisional Hospital, Durgapur, Paschim Bardhaman, indicating the percentage of the disability i.e. moderate intellectual disability at 45 percent.

The Medical Counseling Committee refused to recognize the said certificate and invited the attention of the appellants that under the aforesaid category, the certificate issued in a particular manner can only be accepted, which constrained the writ petitioners/appellants to move a writ petition before this Court and the same was disposed of directing the Medical Assessment Board of Institute of Post Graduate Medical Education and Research (IPGMR), the respondent no. 9

herein, to issue an appropriate certificate in favour of the petitioner no. 1 in accordance with the Gazette Notification dated 13th May 2019 within a day from the date of the order.

It is not in dispute that such certificate of disability was issued in terms of the said Gazette Notification on 25th February 2022 opining that the petitioner/appellant no. 1 is not suffering from mental illness nor any symptom of disability in the mental behaviour can be noticed. The petitioner filed a writ petition seeking a Mandamus upon the said authority i.e. the respondent no. 9 to issue certificate in terms of the earlier order passed by this Court.

A supplementary affidavit was filed disclosing the certificate issued by the said authority explaining the reasons for non-disclosure thereof in the writ petition. The aforesaid fact led the Medical Council of India to take an exception by way of preliminary objection that the writ petition deserves to be dismissed having suppressed the material facts. The aforesaid preliminary objection appears to have been noticed by the Single Bench while dismissing the writ petition.

It is no doubt true that the writ petition is silent so far as issuance of the certificate of disability by the said authority on 25th February 2022 is concerned. The writ petition was drafted in a careless and casual manner but subsequently the gravity of non-disclosure was realized and the supplementary affidavit was taken out disclosing the true and correct facts.

Though the suppression of material facts were one of the factors for refusal to exercise the discretion under Article 226 of the Constitution of India, but equally the Court must see that the justice permeates in the society, which is the hallmark and paramount. Technicalities should not be projected affront for denying the right,

which has accrued into a person. When the technicalities are pitted against substantial justice, the Court must take recourse to later if such technicalities do not strike at the root of the jurisdiction or the competence of the Court to entertain.

We have noticed the certificate of disability issued by the competent authority in terms of the earlier order of this Court wherein the assessment was done in relation to mental behaviour and/or mental illness appearing in column 3 thereof. It was all along the stand of the appellant no. 1 that she is suffering from moderate intellectual disability, which is one of the factors entitling the person to claim benefits under the Disability Act. The same is apparent from the serial no. 2 of the said certificate, but there is no assessment by the said competent authority in this regard.

The appellant no. 1 never claimed to have disability in mental behaviour or mental illness, but always took a stand that she is suffering from intellectual disability.

In view of the above, we think that the Single Bench ought not to have taken the rigid stand on technicalities but should have ventured to decide the matter rendering substantial justice.

Accordingly, the order impugned is set aside.

As a consequence whereof the writ petition is disposed of directing the respondent no. 9 herein to reassess the appellant no. 1 pertaining to an intellectual disability as shown in serial no. 2 of the certificate of disability issued by them and such exercise shall be done within two days from the date of the communication of this order.

In the event, the appellant no. 1 satisfies the criterion and/or parameters pertaining to the intellectual disability indicated in the Graduate Medical Education Regulation (Amendment), 2019 dated 13th May, 2019, she

will be permitted to participate in the counseling in such special category.

In view of the above, the appeal is disposed of. As a consequence thereof the connected application is also disposed of.

There shall however be no order as to costs.

(Harish Tandon, J.)

(Rabindranath Samanta, J.)