

Court No. 22
19.12.2022
(Item No. 33)
(AB)

IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
Appellate Side

W.P.A. 23607 of 2022

Ms. Sucheta Adhikari
VS
Union of India & Ors.

Mr. Kalyan Sarkar
Mr. Falguni Bandyopadhyay
Ms. Riya Ballav
..... for the petitioner
Mr. Debapriya Samanta
.....For Union of India
Mr. Swapan Kumar Datta
Mr. Rajat Dutta
.... For the State
Mr. U. S. Menon
Mr. Abhirup Chakraborty
.... For respondent No. 3

Affidavit of service filed in Court today, is taken on record.

The petitioner's son, namely, **Sreejit Adhikari**, the minor son was an aspirant candidate for **National Eligibility cum Entrance Test (UG-2022)**. The minor son of the petitioner claims to be a disabled candidate with the requisite mark and percentage of disability and therefore he is eligible to avail of quota earmarked for **Persons with Disability (for short, PwD)**.

Mr. Kalyan Sarkar, learned advocate appearing for the petitioner drew attention of this Court to **Annexure P-1** to the writ petition which is a disability certificate obtained from the **Nadia District Hospital, Krishnagar, Nadia** which is also a State Hospital. He submitted that, from the said disability certificate it

appeared that, the aspirant candidate suffered at least **50% disability** which should have made him eligible. Subsequently for being eligible to participate in the **Medical Entrance Examination** the aspirant candidate had to under go a disability test from the designated hospital as mentioned in **page 19** to the writ petition and finally the aspirant candidate on October 7, 2022 obtained the said certificate of disability for **NEET** admission from **Institute of Post Graduate Medical Education & Research (IPGMER), Annexure P-5** to the writ petition which suggested that, the disability of the aspirant candidate was 28%. The petitioner submitted that, one Government hospital issued the certificate certifying the aspirant candidate with at least 50% disability i.e. the Nadia District Hospital, the other Government hospital namely, the IPGMER suggested the disability is 28%. This conflict of stand taken by the two medical institutes and/or medical experts of the said two institutions though both being under the umbrella of the same State is not maintainable and had infringed the valuable right of education of the petitioner as guaranteed under the Constitution.

Mr. Swapan Datta, learned Additional Government Pleader appearing for respondent Nos. 5 and 6 drew attention of this Court at **page 19** and **Annexure P-5** to the writ petition and submitted that, the certificate obtained by the aspirant **Annexure P-1**

to the writ petition was not from the designated medical institute wherefrom the petitioner should have obtained such certificate. Such designated medical institutes were identified by the respondent No. 3 in its notification dated September 30, 2022 at **page 18** to the writ petition. Mr. Datta, learned advocate submitted that, sine the designated medical institute suggested the disability was 28% not being up to the mark to be eligible to avail of PwD quota, the aspirant candidate cannot be considered for admission in the Under Graduate Medical Entrance Examination through the said PwD quota.

Mr. U. S. Menon, learned advocate appearing for respondent No. 3 also adopted the submission made by the learned Additional Government Pleader and submitted that this writ petition is totally devoid of any merit and should be dismissed.

In reply Mr. Kalyan Sarkar, learned advocate appearing for the petitioner submitted that, the certificate obtained from Nadia Hospital, **Annexure P-1** to the writ petition was dated November 10, 2021 whereas the notice for admission was issued mentioning the designated medical institute dated September 30, 2022, will operate on a retrospective basis.

After considering the rival contentions of the parties and upon perusal of the materials on record it appears that the moment the son of the petitioner i.e.

the aspirant candidate being applied for participating in the Under Graduate Medical Entrance Examination for the year 2022 from the date of making such application, the terms and conditions relating to the admission process for the Entrance Examination 2022 shall govern the petitioner. **Thus the said notice dated September 30, 2022 at page 18 to the writ petition which enumerated the designated medical institutes for obtaining certificate of disability would govern the petitioner and not any earlier certificate, namely, the disability certificate obtained by the aspirant candidate from the Nadia District Hospital which was not at all designated under the said notification dated September 30, 2022. Therefore, the certificate for disability Annexure P-5 to the writ petition would bind the petitioner and the examination authority.** Such certificate, **Annexure P-5** to the writ petition specifically stated that, the aspirant candidate was suffering from 28% disability which would not make the aspirant eligible to avail of PwD quota.

Therefore the physical disability of the aspirant candidate for the purpose of the NEET – 2022 should be considered in terms of the said certificate obtained by the petitioner from IPGMER dated October 7, 2022, **Annexure P-5** to the writ petition and not otherwise in any manner whatsoever.

Since affidavits are not called for, the allegations made in the writ petition are deemed not to have been admitted by the respondents.

In view of the above, this Court is of the considered opinion that, this writ petition being **WPA 23607 of 2022** is totally misconceived and devoid of any merit and accordingly stands dismissed.

There shall, however, be no order as to costs.

Urgent certified photo copy of this order, if applied for, be supplied to the parties expeditiously on compliance of usual legal formalities.

(Aniruddha Roy, J.)