

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P (C) No. 5973 of 2022

Yash Raj Dash

.....

Petitioner

Mr. S. Das, Adv.

Vs.

Chairman, OJEE 2021 and another

.....

Opposite parties

Mr. S. Palit, Adv.

CORAM:

DR. JUSTICE B.R. SARANGI

MISS JUSTICE SAVITRI RATHO

ORDER

14.03.2022

Order No.

03.

This matter is taken up through hybrid mode.

2. Heard Mr. S. Das, learned counsel for the petitioner and Mr. S. Palit, learned counsel for opposite party-OJEE.

3. The petitioner has filed this writ petition seeking to quash Annexure-16 dated 27.02.2022 issued by opposite party no.1, by which the petitioner has not been qualified in PC category from SCB Medical College, Cuttack and, thereby, his case has not been considered in the PC category by the Government of Orissa.

4. Mr. S. Das, learned counsel for the petitioner contended that the petitioner belonged to PC category and as per the certificate issued by the Medical Board, Keonjhar dated 16.07.2012 under Annexure-2, the petitioner suffers from bilateral flatfoot, right leg muscular dystrophy, ankle stiffness and is having disability of 55% of permanent locomotor impairment, which is not likely to improve and, as such, re-assessment is not recommended. Thereby, it is contended that the petitioner, having disability of 55% of permanent locomotor impairment, should have been selected for taking admission into the course. But the board denied the same vide Annexure-16, challenging which the petitioner has approached this Court by filing the present writ petition.

5. Mr. S. Palit, learned counsel for opposite party-OJEE,

referring to the counter affidavit, states that the petitioner is not entitled to the benefits, as claimed in the writ petition. Thereby, he seeks for dismissal of the writ petition.

6. Having heard learned counsel for the parties and after going through the records, this Court finds that the petitioner is a candidate to take admission into MBBS course for the academic year 2021-22 under PC category as per Annexure-2 series, by which the medical board of Keonjhar certified that the petitioner is having disability of 55% of permanent locomotor impairment, which is not likely to improve. The petitioner participated in the process of selection undertaken by the OJEE, but he was directed to go for second medical test, pursuant to which he appeared before the medical board, but result thereof has not been communicated to him. When the petitioner sought for information with regard to second round result of medical test, it was intimated vide Annexure-16 dated 27.02.2022 that his case has not been considered under PC category. Thereby, the petitioner has approached this Court by filing the present writ petition and by the time he has approached this Court, in the second round of counselling for admission to MBBS course, 2021-22, pursuant to notice dated 15.02.2022 wherein 26 seats are made available for UR-PC category, though the candidates having less impairment, namely, Shakshi Singh and Amrut Ashutosh, have been included for selection, the petitioner has been discriminated. Thereby, this Court called upon the counsel appearing for opposite parties to get instructions or file counter affidavit. In compliance of the same, the opposite parties have filed counter affidavit, of which paragraphs-10, 11 and 12 read as under:-

“10. That, with the regard to the third point i.e. violation of Article-14 it is submitted as follows;

In reply to the averment para.21 (a) of the petitioner, it is most humbly and respectfully submitted

herewith that, in 1st round of counseling, one candidate namely Sakshi Singh, whose name finds place at serial no.17 and 66 in the physical Challenge (PC) candidate list under the category of disability ENT and visual disability, as she has not qualified Medical Board. Hence, Sakshi Singh name was not recommended in the 1st provisional merit list under PC category. But she has been considered under PC category in the final merit list with condition as to get a clarification from the medical board.

11. That, it is most humbly and respectfully submitted herewith that keeping in view of the revised first round counseling round, notified by the Medical counseling Committee, DGHS, Government of India, on dated 28.01.2022, the O.P. No.1 as per the notification no OJEE/035, dated 29-1-2022 the prepared final; merit list, after receiving any grievance from the candidates.

12. That, during revision of the merit list, based on Sakshi Singh's complaint, the O-J.E.E Committee sought clarification from the Dean and Principal, S.C.B. Medical College and Hospital, Cuttack vide Letter No.- O.J.E.E/029, Dated 27.01.2022 regarding disability percentage calculation of the Complainant. The disability condition of Sakshi Singh was considered as per the Board of Governors Super- Session of Medical Council of India Amendment notification no. MCI-34(41)/2019-Med/112862, notified on dated: 13-05-2019 with regard to regulation to further amend the "Graduate medical Education regulation, 1997. Appendix-H-1 of the said gazette notification refers guidelines regarding admission of students with "specified disabilities" under the Rights of Persons with Disabilities Act, 2016 with respect to admission in MBBS Course. Under this guideline in the Row-5 of Sl. No- 4 combining formula has prescribed for recommendations regarding about multiple disabilities including deafness and blindness. Under this clause computing the disability of an arising when one more than one disabling Conditions is present in a given individual. In this guideline, it has stated this formula may be used in cases with multiple disabilities, and recommendations regarding admission and/or reservation made as per the specific present in a given individual. In the present case, as per the said formula applies, the multiple disabilities for Sakshi Singh is calculated as 44%."

7. In course of hearing, this Court made a query to Mr. S. Palit, learned counsel appearing for opposite party-OJEE as to

what is the percentage of disability of the petitioner after second round of test, pursuant thereto, he stated that the petitioner is suffering 25% disability, as is evident from Annexure-H/1 to the counter affidavit. But fact remains, if earlier medical board found that the petitioner is having 55% disability, how the second board found it to be 25% and, as such, the same has not been explained anywhere in the counter affidavit. Rather, from the pleadings made in paragraphs-10, 11 and 12 it is evident that the two candidates, whose names have been indicated in the writ petition, namely, Sakshi Singh and Amrut Ashutosh, had been subjected to second round test, pursuant to which their disability percentage was enhanced, as a consequence thereof, they have been given admission. If in case of those two candidates, the second medical board increased their disability percentage, than it was found in the certificate produced by them, then how the disability of 55%, as found by the 1st medical board in respect of the petitioner, could be reduced to 25% by the second medical board, which itself creates a doubt and, as such, this Court does not accept such type of report, as an error may be committed by the second medical board. Therefore, this Court is of the considered view that interest of justice would be best served, if a fresh medical Board constituted by the OJEE re-examined the case of the petitioner, so far as percentage of disability of the petitioner is concerned, so as to enable him to take admission into MBBS course for the academic session 2021-22, if he otherwise fulfills all other requirements. Needless to say, the petitioner shall appear before the OJEE on 16.03.2022, on which date the OJEE shall fix the date of examination of disability of the petitioner, so that the petitioner shall have opportunity to go for test by the medical Board constituted by OJEE. Further, till such examination is

conducted, one seat for the petitioner shall remain vacant. In the event the petitioner does not come out successful in the medical test, the said seat shall be allotted to other eligible candidate by the authority.

8. With the above observation and direction, the writ petition stands disposed of.

Issue urgent certified copy as per rules.

(DR. B.R. SARANGI)
JUDGE

Ashok/Sukanta

(SAVITRI RATHO)
JUDGE

