



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

WRIT PETITION NO.5135 of 2023

Gruhit s/o Manoj Mehar,
Aged about 19 years, Occu. :Student,
R/o. Plot No.10, SV-38, Samratha
Shree Shakti Gruh Nirman,
Pipla Fata, Nagpur-440 034.

..... **PETITIONER**

...V E R S U S...

- 1] Union of India,
Ministry of Social Justice and Empowerment,
Through Secretary of Department of Empowerment of
Persons with Disabilities,
5th Floor, Anytodaya Bhawan,
CGO Complex, Lodhi Road,
New Delhi 110 003.
2. The Directorate of Medical Education and
Research, Govt. Dental College and
Hospital Building,
St.George's Hospital Compound,
Mumbai-400 001.
3. All India Institute of Medical Science,
Nagpur, through its Disability Assessment Board,
Sumthana, MIHAN, Nagpur-441108.
4. State of Maharashtra,
through the Commissioner of State Common Entrance
Test Cell, 8th Floor, New Excelsior Building,
A.K.Nayak Marg, Fort, Mumbai.
5. Indira Gandhi Government Medical College,
through its Dean,
Central Avenue Road, Nagpur.

..... **RESPONDENTS**

Shri A.M.Quazi, Advocate for petitioner.

Shri N.S.Deshpande, Deputy Solicitor General of India for respondent nos. 1
and 3.

Shri A.S.Fulzele, Additional Government Pleader for respondent no.2.

Shri N. A. Gaikwad, Advocate for respondent no.4.

CORAM : A.S.CHANDURKAR and MRS. VRUSHALI V. JOSHI, JJ.
DATED : 30th AUGUST, 2023.

ORAL JUDGMENT (PER A.S.CHANDURKAR, J.)

Rule. Rule made returnable forthwith and heard the learned counsel for the parties.

2. The petitioner suffers from hearing disability. The petitioner has been certified as a case of hearing impaired and has been issued disability certificate by the Medical Authority, Nagpur as suffering from 57% permanent disability in relation both his ears as per the certificate dated 30.06.2022 issued by the Medical Authority, Nagpur His right ear is found to be deformed and he is required to use hearing aid for his left ear as per the certificate of medical fitness dated 25.07.2023 issued by Borkar Multi-Speciality Hospital. Since the petitioner sought to prosecute his higher studies and participated in the National Eligibility cum Entrance Test (UG-2023) and secured All India Rank 678572, he sought to seek admission through the State Common Entrance Test Cell. He was examined by the Disability Board constituted by the All India Institute of Medical Sciences, Nagpur and his disability was certified at 34%. Since the petitioner has been found eligible to pursue medical education but he is not eligible to claim Persons with Disability (PwD) reservation, the petitioner has challenged assessment of his disability to the extent of 34% by the Disability Board on 18.07.2023. In the alternate, it is prayed that the petitioner may be permitted to submit himself to any other institution duly certified for assessing his disability.

3. Shri A.M.Quazi, learned counsel for the petitioner by referring to the Notification dated 04.01.2018 issued by the Ministry of Social Justice and Empowerment in the context of Chapter III A submitted that the Disability Board was not justified in conducting the ABR test as prescribed in Clause 20.2.1 since the Air Conduction Threshold (ACT) without indicating that the said test was non-reliable. Inviting attention to the medical reports placed on record by the Disability Board, it was submitted that insofar as the petitioner's right ear was concerned, the same evaluated at 85 dB. The left ear was stated to have moderately suffering mixed hearing loss and was assessed at 67 dB. On that basis percentage of disability was taken at 34%. Since the petitioner suffered from complete deformity of the right ear, there was no question of inserting any head phone in his right ear. Despite that the report of the Disability Board stated that head phones had been inserted in both the ears. Further, the BERA test though stated to be done under natural sleep, the same was done when the petitioner was awake. That report also stated that the head phones had been inserted in both the ears. Considering the petitioner's deformity, this was not possible. It is therefore submitted that the assessment of disability was incorrect and a certificate dated 18.07.2023 could not be relied upon for holding the petitioner not eligible for PwD reservation. It was thus submitted that if disability was correctly assessed, the same would be 57.1%. It was thus submitted that the petitioner be treated to be eligible for the benefit of PwD reservation.

4. Shri N.S.Deshpande, learned Deputy Solicitor General of India appearing for the respondent nos. 1 and 3 relied upon the affidavit filed by the

respondent no.3. It was submitted that in accordance with the Notification dated 04.01.2018 the Medical Board had examined the petitioner. Disability had been assessed in accordance therewith after conducting the tests prescribed by Clause 20.2.1. Since pure tone responses were inconsistent, the ABR test was conducted. There was no reason for the respondent no.3 to deny the petitioner the benefit of PwD reservation. It was thus submitted that there was no reason to interfere in writ jurisdiction.

5. We have heard the learned counsel for the parties and we have perused the documents on record. At the outset, we may state that the petitioner was present in Court during the course of hearing. It could be immediately gathered that due to deformity of his right ear use of hearing aid/head phone for the right ear did not appear to be possible. This has been stated in the certificate of medical fitness dated 25.07.2023. The medical papers produced by the respondent no.3 indicate that as per Clause 20.02.1 measurement of ACT was undertaken. By stating that pure tone responses were inconsistent, the ABR test was done. It is stated that head phones were inserted in both the ears which is also stated in the BERA report. By referring BERA report percentage of hearing disability has been determined to be 34%. The computation of percentage of hearing disability is prescribed by Clause 20.2.2. Insofar as right ear is concerned the hearing loss is assessed at 85 dB which indicates percentage of disability to be 82.75% In the left ear mixed hearing loss at 67 dB has been noticed which comes to 51.97%. As per formula indicated in Clause 20.2.3 the same would be: Percentage of Hearing Disability = (Better ear % of hearing disability X 5) + (Poorer ear % of hearing disability) divided by 6. This according to the petitioner would be $(51.97 \times 5) +$

(82.75) divided by 6, which would come to 57.1%. However after conducting the BERA test, the percentage of disability has been reduced to 34%.

6. We find that firstly, the BERA test was required to be undertaken only if the ACT was non-reliable. Except for stating that pure tone responses were inconsistent, the BERA test was done without indicating that the ACT was non-reliable. Clause 20.2.1(c) states that ACT could be difficult in children between 3 to 5 years and the ABR test could be advised. The same is not the case here. Secondly, with the deformity of the right ear, insertion of head phone in the said ear does not appear to be possible. The reports indicate that head phones were inserted in both the ears while assessing the disability. In these facts the interest of justice demands another assessment of the petitioner's disability since he seeks to avail benefit of PwD reservation. For these reasons, we are inclined to grant the alternate prayer made by the petitioner of directing him to submit himself to another Medical Board for assessing his disability afresh. This is for the reason that if the BERA report is excluded from consideration, the petitioner's disability would be assessed 57.1% and he would be entitled to seek benefit of PwD reservation. We therefore find that a case has been made out to re-assess the petitioner's disability at another Institute as prescribed by the respondent no.1.

7. Accordingly, it is directed that the petitioner shall be permitted to undertake fresh assessment of his disability at Grant Government Medical College, JJ Hospital Compound, Mumbai at his own costs. Based on such assessment, the petitioner's claim for the benefit of PwD reservation could be considered by the respondent nos. 4 and 5. Since the name of the petitioner with

Roll Number 3111140446 has been shown in the second list dated 29.08.2023 as prepared by the respondent no.4, it is directed that till the Disability Board undertakes assessment of the petitioner's disability the said seat allotted to the petitioner be retained for consideration based on the petitioner's assessment. The petitioner shall appear before the Disability Board on 01.09.2023. The Disability Board is requested to complete the assessment till 04.09.2023.

Rule is made absolute in aforesaid terms with no order as to costs.

Authenticated copy of this judgment be supplied to the learned counsel for the parties.

(MRS. VRUSHALI V. JOSHI, J.)

(A.S.CHANDURKAR, J.)

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