

HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

Present:
THE HON'BLE JUSTICE JAY SENGUPTA

WPA 20814 of 2024

Mitadru Sau
Vs.
The State of West Bengal & Ors.

For the petitioner	:	Mr. Shamim Ahammed, Mr. Arka Maiti, Ms. Ambiya Khatun, Mr. Enamul Islam, Md. Nasirul Haque.
For the State	:	Mr. Syed Bhaktiyar Adil Rahman, Ms. Sinthia Bela.
For the respondent no.2	:	Mr. U. S. Menon, Mr. Abhirup Chakraborty.
For the National Medical Commission	:	Mr. Sunit Kr. Roy
For the WBMCC	:	Mr. S. Banerjee, Mr. A. K. Nag, Ms. Deboleena Ghosh.
Heard on	:	19.11.2024
Judgment on	:	19.11.2024

JAY SENGUPTA, J:

1. This is an application under Article 226 of the Constitution of India praying for a direction upon the respondent authorities to quash and set aside the disability certificate dated 13th August, 2024 issued by the Designated Disability NEET Screening Centre,

IPGME&R, Kolkata which assessed the petitioner's disability at 31% and to reconsider the petitioner's disability assessment in accordance with the previous certification issued by the NIMHANS and RG Kar Medical College and Hospital, which had assessed the petitioner's disability as 63% and 55%, respectively and thus, allow the petitioner to claim the benefits of reservation under the PwD category for NEET-UG, 2024.

2. Learned counsel appearing on behalf of the petitioner submits as follows. the petitioner participated in National Eligibility-cum-Entrance Test (UG), 2024. It pertains to the category of person with disability (PwD). He suffers from Hereditary Neuropathy with Liability to Pressure Palsy (HNLPP), which was diagnosed in 2015, resulting in locomotor disabilities such as foot drop and weakness in all four limbs. The petitioner has been declared ineligible for PWD category reservation by the Designated Disability NEET Screening Centre, IPGME&R, Kolkata despite previous certificates from reputed institutions confirming the petitioner's disability as greater than 40%. In fact, as per the Unique Disability ID issued to the petitioner after examination of disability in terms of the relevant law at the RG Kar Medical College and Hospital, Kolkata, the percentage of disability of the petitioner was found to be 55%. The said disability ID was valid from 29.12.2023 to 29.12.2023. The determination of Bench Mark Disabilities was guided by the provisions of The Rights of Persons with Disabilities Act, 2016. Sections 57 to 59 of the Act outlined the process of certifying disability. Whereas, according to the NEET Guidelines and Notification dated 13th May, 2019 which amended the regulations of Graduate Medical Education, 1997, the Disability Assessment Board's role is limited to determining functional disability and assessing whether a candidate can pursue a medical Course. It is not an Appellate authority over the statutory certifying bodies designated under Section 57 of the 2016 Act. For example, the Board may assess whether a person lacking two hands can pursue a course requiring basic surgical skills. The fact that the Disability Assessment Board is incompetent to determine benchmark disability is also bear from the parent Statute i.e., the Indian Medical Council Act, 1956. Section 33 of the Act

laid down powers to frame Regulations. There is no enabling provision authorising the Disability Assessment Board to determine benchmark disability. A harmonious reading of the provisions would imply that the Disability Assessment Board mentioned in Clause 6.7 of the NEET Guidelines can only verify the authenticity of the certificate issued by the certifying Authority and determine whether a person can pursue MBBS course with the said disability. Reliance is placed on a decision of Three Judges Bench of the Hon'ble Apex Court in ***Om Rathod Vs. Director General of Health Services & Ors.*** reported at 2024 SCC OnLine SC 3130.

3. Learned counsel appearing on behalf of the National Testing Agency denies the allegations made in the writ petition and submits as follows. While the authorities at NIMHANS and RG Kar Medical College and Hospital, Kolkata had earlier assessed the petitioner's disability at 55% and 35%, respectively, the Designated Disability NEET Screening Centre, IPGME&R, Kolkata assessed the petitioner's disability at 31%. The Information Bulletin of NEET (UG)-2024 laid down the detailed norms of the examination including the norms for counselling and reservation for the Medical Courses. Chapter 6.3 specified provisions relating to persons with disability. For extending the facilities of PwBD candidates, not only sub-clause c, but also sub-clauses b to g of Clause 6.7 of the Information Bulletin are to be relied upon. Appendix - VII specified the list of disability certifying centres who issued disability certificates as per the National Medical Commission norms. Therefore, whatever be the standard or procedure for issuing disability certifying under any other Act, for the purpose of getting admission to NEET (UG), the said guidelines would have to be followed. Therefore, the Disability Assessment Board was well within its power to re-assess the quantum of disability of a candidate. Reliance is placed on the decision of the Hon'ble Apex Court in the ***State of Tamil Nadu Vs. G. Hemlata & Anr.*** reported at (2020) 19 SCC 430.

4. Learned counsel appearing on behalf of the National Medical Commission opposes the prayer and relies on a decision of the Hon'ble Apex Court reported at (2024) SCC OnLine page 2860 (***Omkar Ramchandra Gond vs. Union of India***). He submits that in case there is any discrepancy and till an Appellate Authority is created as per the directions of the Hon'ble Supreme Court, it shall be open to a Court of Law to send the matter for further assessment.

5. Learned counsel appearing on behalf of the State supports the stand taken by the other respondent authorities and submits that as the petitioner was having 31% disability. Thus, he was not entitled to the quota in question.

6. I have heard the learned counsels for the parties and have perused the writ petition, the affidavits and the written notes of submissions.

7. In **Om Ratohd** (supra), a Three Judges' Bench of the Hon'ble Supreme Court laid down as follows.

"53. We have noted above that Disability Assessment Boards must comply with rule of law principles by injecting transparency, fairness and consistency in the approach. The Boards must further elaborate on the reasons for the outcome of their assessment, in particular when they opine that the candidate is ineligible. The Disability Assessment Boards must focus on the functional competence of persons with disabilities and not merely quantify the disability. The quantification of disability is a task in need of a purpose within the human rights based model of disability. The functional competency approach to assessment for a medical course is globally recognised. To enable members of the Assessment Boards in effectively applying the functional competency test, they must be adequately trained by professionals and persons with disabilities or persons who have worked on disability justice. These trainings must be with a view to enhance the understanding of the Board members in assessing persons with disabilities and must not pathologize or problematize them.

54. The disability of a person is quantified at the time of availing a Unique Disability ID Card. The quantification of disability is moot at the point of admission to educational courses since the eligibility for a person to benefit from reservation may be evaluated using the quantification in the UDID Card. If a person with disability wants to have themselves re-assessed so as to verify whether their disability falls within the prescribed parameters for reservation - they may choose to do so by updating their UDID Cards. The role of the Disability Assessment Boards must be tailored (with a functional competency approach) only for the course which the candidate seeks to pursue.”

8. Therefore, it is no more res integra that the quantification of disability is to be done at the time of availing a Unique Disability ID Card and as per the Rights of Persons with Disabilities Act, 2016. The role of the Disability Assessment Board, on the other hand, is limited to assessing the functional competency of a candidate for pursuing a medical course.

9. It has also been made clear by the Hon’ble Supreme Court that if a person with disability wanted to have himself re-assessed so as to verify whether the disability fell within the prescribed parameters for reservation, he might choose to do so by updating the UDID Card.

10. In view of the above, the respondent authorities shall act in terms of the above-referred directions passed by the Hon’ble Apex Court in **Om Rathod** (*supra*) and treat the certification of disability of the petitioner as per the UDID Card as the relevant document for providing the benefits of reservation under the PWD category for NEET (UG), 2024 and do the needful at the earliest.

11. However, the respondent authorities shall be at liberty to assess the functional competency of the candidate afresh by any medical institution of the

WBMCC's choice except for the IPGME&R who had earlier dealt with the issue. As the counselling is scheduled to take place on 25th of this month, the exercise of having re-assessment of functional disability, if required, shall be done within the 24th of this month.

12. With these observations and directions, the writ petition is disposed of.

13. As affidavits were not called for, the allegations contained in the writ petition are deemed not to have been admitted.

14. Parties shall act on a server copy of this order downloaded from the official website of this Court .

(Jay Sengupta, J)