

**IN THE HIGH COURT OF JUDICATURE AT PATNA**

**Letters Patent Appeal No.52 of 2024**

**In**

**Civil Writ Jurisdiction Case No.4669 of 2021**

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Kumar Utsav Son of Late Shambhu Prasad, Resident of Chhawani, Ward No. - 5, P.O. - Bettiah, P.S. - Mufassil, District - West Champaran, Bihar - 845438 at present resident of Village Laukhi, Police Station Laukhi, District-Madhubani PIN 847108.

... .. Appellant/s

Versus

1. The State of Bihar through the Principal Secretary, Health Department, Government of Bihar, Patna.
2. The Principal Secretary, Health Department, Government of Bihar, Patna.
3. Bihar Combined Entrance Competitive Examination Board through its Chairman, IAS Association Building, New Patna Airport, Patna - 14.
4. The Examination Controller Bihar Combined Entrance Competitive Examination Board, IAS Association Building, New Patna Airport, Patna - 14.
5. The Officer on Special Duty Bihar Combined Entrance Competitive Examination Board, IAS Association Building, New Patna Airport, Patna - 14.
6. The Office of the State Commissioner for Person with Disability Social Welfare Department, Bihar through its State Commissioner (Disability), Old Secretariat, Sichai Bhawan Parisar, Patna - 800015.
7. Nalanda Medical College and Hospital, Patna through its Principal NMCH, Patna.
8. The Principal Nalanda Medical College and Hospital, NMCH, Patna.
9. The Office of the Civil Surgeon-cum-Chief Medical Officer, Madhubani.

... .. Respondent/s

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**Appearance :**

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|------------------------|---|------------------------------------------------------------------|
| For the Appellant/s    | : | Mr. Purushottam Kumar Jha, Advocate<br>Mr.Kundan Kumar, Advocate |
| For the BCECE Board    | : | Mr.Prasoon Sinha, Sr. Advocate<br>Mr. Prabhat Kumar, Advocate    |
| For the Resp. Nos.7 &8 | : | Mr. Sanjay Kumar, Advocate<br>Mr. Rahul Nath, Advocate           |

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**CORAM: HONOURABLE THE ACTING CHIEF JUSTICE**

**and**

**HONOURABLE MR. JUSTICE PARTHA SARTHY**

**ORAL JUDGMENT**



(Per: HONOURABLE THE ACTING CHIEF JUSTICE)

**Date : 17-01-2025**

Heard Mr. Purushottam Kumar Jha, the learned Advocate for the appellant, Mr. Prasoon Sinha, the learned Senior Advocate for the Bihar Combined Entrance Competitive Examination Board and Mr. Sanjay Kumar, the learned Advocate for the Respondent Nos. 7 and 8/Nalanda Medical College and Hospital, Patna and its Principal.

2. The challenge in this appeal is to the order dated 19.05.2022 passed by a learned Single Judge of this Court in CWJC No. 4669 of 2021.

3. The appellant had obtained provisional admission under the disability quota in M.S. Course. Later, it was found out that his hearing impairment was less than 40 percent, disentitling him from availing the quota of disability.

4. The records reveal that on behalf of the appellant, three different certificates with different assessments of the doctors regarding his hearing impairment was furnished. Faced with this situation, the learned Single Judge of this Court directed for constitution of a Medical Board of the competent doctors of the field of the AIIMS, New Delhi, subject to



the payment of Rs. 50,000/- by the appellant for the reassessment of his disability.

5. The Medical Board, comprising five members, evaluated and examined the appellant on 05.10.2021 and submitted a report that based on the clinical examination and the investigations required, the Board was of the view that the appellant had better than 30-40 dB hearing threshold amounting to less than one percent disability.

6. Mr. Purushottam Jha has seriously contended that either the assessment is wrong or there has been a mistake in concluding that the impairment of the appellant is less than one percent. He has drawn the attention of this Court to the accepted parameter of adjudging the percentage of hearing loss and has pointed out that a person having a threshold of 26-40 dB would have less than 40 percent impairment.

7. From the reading of the extracted report of the Medical Board, referred to above, we do find that the concluding part of the report regarding the appellant having an impairment of less than one percent is erroneous. Nonetheless, after ignoring that concluding remark of the Board of the percentage of



hearing loss/disability of the appellant, we find that the investigations revealed that the appellant had better than 30-40 dB threshold. If we place it at 26-40dB, which is better than 30-40dB, even then the hearing impairment would be less than 40 percent, which would take out the appellant from the purview of quota of disabled person.

8. We do not wish to refer to the fact that earlier three reports furnished by the appellant did not find favour with the learned Single Judge.

9. Considering this aspect of the matter, we find it difficult to disagree with the opinion of the learned Single Judge that the appellant would not be entitled to the quota for hearing disability in seeking admission in the M.S. Course.

10. We, therefore, put our imprimatur on the opinion of the learned Single Judge that the appellant was wrongly admitted in the disabled category and that his admission was rightly cancelled and he ought not to be allowed to continue to pursue the studies on the basis of the admission based on disability certificate.

11. Mr. Jha then pointed out that the course still remains unfilled and there are no claimants to the



said course.

12. This would not provide any succour to the appellant, especially for the reason that if he was not entitled to such admission in a particular quota that the quota remains unfilled is no ground to have any other view of the matter.

13. Finding no merit in this appeal, we dismiss it.

14. Interlocutory application, if any, shall stand closed.

**(Ashutosh Kumar, ACJ)**

**( Partha Sarthy, J)**

sujit/krishna

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