

(2003) 10 OHC CK 0024
In the Orissa High Court
Case No : Writ Petition (C) No. 6806 of 2003

D.S. Rashmi Ranjan

APPELLANT

Vs

Chairman, Joint Entrance Examination, 2003 and Others

RESPONDENT

Date of Decision : 30-10-2003

Acts Referred:

Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 — Section 2

Citation : (2004) 97 CLT 264 : (2003) OLR 817 Supp

Hon'ble Judges : P.K. Mohanty, J; P.K. Misra, J

Bench : Division Bench

Advocate : R.K. Mohanty, D. Mohanty, P.K. Rath, S.N. Biswal, P.K. Satapathy, A.P. Bose, P.K. Samantaray and S. Dash, for the Appellant; R.K. Dash, for the Respondent

Final Decision : Dismissed

Judgement

P. K. Mohanty, J.—The petitioner calls in question the action of the opposite parties in not giving him admission to the M.B.B.S. course under the reserved category for physically handicapped.

2. The brief fact of the petitioner's case is that he has passed I.C.S.E., 1998 securing 72 per cent of marks and has passed Higher Secondary Examination in 2000 securing 53% of marks. He took the Joint Entrance Examination for admission to the medical courses for 2003. According to the petitioner, under Clause 2.1.3, of the admission brochure, 3% of the seats in each Government Engineering college in each discipline and one seat in each Government medical college of the State are reserved for physically handicapped candidates. Such physically handicapped candidates are to meet the prescribed medical standard laid down and are to satisfy a Board consisting of Doctors and the chairman, Joint Entrance Examination, 2003 or his representative that they are eligible to be categorized as physically handicapped candidates and capable of undergoing each part of the requirements for Engineering/Architecture/Medical studies. The

decision of the Board shall be final and therefore they were not required to submit along with, the application form any medical certificate to the effect that they are physically handicapped. The petitioner took 2001 entrance examination and ranked 11 (PH) and was called to the counselling. The petitioner appeared before the Board and was selected as the physically handicapped person. He deposited the required demand draft, but however, as there were only three seats for physically handicapped candidates and his position was 11 in the merit list, he could not get admission. Similarly, in 2002, the petitioner was in rank-8 and could not get admission. In the Joint Entrance Examination 2003, the petitioner's rank was 5 and 10 seats were available for physically handicapped candidates. He attended the Medical Board on 4.7.2003 and also attended the Counselling on 7.7.2003. But to his utter surprise, he came to learn that his name has not been shown in the final selection list of physically handicapped.

3. According to the petitioner, the counselling was to be held only after the Medical Board clears his case and since he was called to the counselling, he could not have been refused admission on the ground that he does not come within the category of physically handicapped, specially when in the two earlier opportunities he was adjudged as physically handicapped. The petitioner claims that since his defect is congenital and a responsible Government agency has granted a lawful certificate regarding his disability, copy of which is Annexure 4, there was no requirement again for the Medical Board to consider his disability and reject his candidature under the physically disability category.

4. Opp. party No. 1 has filed a counter affidavit denying the allegations and the claim made by the petitioner. It is their specific case that in terms of Clause 2.1.3, of the Information Brochure, a Medical Board consisting of four eminent doctors was constituted to examine the physically handicapped candidates including the petitioner. According to the report of the Board, the petitioner has 20% disability, which is below the required degree of disability of 40% in order to avail concession/ benefit to the considered for admission in the reserved category meant for physically handicapped persons. According to the opp. parties, the requirement of 40% disability for getting the benefit/concession has been decided by the Government of India, Ministry of Welfare basing on the report of the High Level Committee regarding "uniform definition of the physically handicapped published by the Government of India in para-1, Section 1, No. 4-2/83 HW III dated 6.8.1986. Each category of handicapped persons have been divided into four groups, like, mild, moderate, severe and profound/total. It is provided that minimum degree of disability is 40% in order to be eligible for any concession/benefit. The petitioner was at rank 5 in the merit list under the reserved category of physically handicapped, but since he did not fulfil the required degree of disability, his candidature was rejected during the counselling. According to these opposite parties in the Information Brochure under the heading "Important notes" note-19, it is provided that a candidate would not be considered for admission, if he/she failed to substantiate his claim with respect to reserved category, nativity, date of birth, qualification etc. The "

admissions are to be given to the candidates under the reserved category of physically handicapped but those who are found to be qualified by the Medical Board. The petitioner having been found to be disabled to the extent of 20%, which is below the prescribed requirement, could not be considered under reserved category. The petitioner has filed a rejoinder to which the Opp. party has filed a counter.

5. In view of the pleadings of the parties, the core question that needs consideration is, as to whether the petitioner is a physically handicapped candidate and comes within the reserved category of physically handicapped persons to be admitted to the M.B.B.S. Course under that category. The contention of the learned counsel for the petitioner is that he had obtained the Medical Certificate from the competent authority in support of his claim that he suffers from congenital deformity of left lower limb with 50% disability in the year 1998, copy of which is Annexure - 4 and as such, there was no further requirement nor the J.E.E. Authorities could insist for his examination by a Board to determine his physical disability. But according to the opposite parties, in terms of Clause 2.1.3 of the Admission Brochure itself, the physically handicapped persons have to meet the prescribed medical standard laid down in the medical requirements for admission and at the time of admission a candidate has to satisfy the Board consisting of four eminent doctors and Chairman, J.E.E. 2003 or his representative that they are eligible to be categorised as physically handicapped candidate and capable of undergoing each part of the requirements for Engineering/ Architecture/Medical studies and the decision of the Board is final. It is therefore, contended that the petitioner was not authorised to obtain a medical certificate from the doctors of his choice as in Annexure-4 and claim that he is a person under disability and entitled to the benefits of reservation. In the Information Brochure, J.E.E., 2003 for admission to 1st year Degree course in Engineering/ Technology/Architecture/Medicine/Dentistry/Pharmacy etc. under Clause 2.1 (A) reservation of seats under State categories in different colleges will be as per the direction of the policy planning body of J.E.E. Clause 2.1.3. of the Brochure, which is relevant for our purpose, reads thus :

"2.1.3. 3% seats in each Government Engineering college in each discipline, and one seat in each Government medical college of the State are reserved for physically handicapped candidates. They have to meet the prescribed medical standards laid down in the medical requirements for admission and at the time of admission satisfy a Board consisting of medical doctors and Chairman JEE-2003 or his representative that they are eligible to be categorized as physically handicapped candidates and capable of undergoing each part of the requirements for Engineering/Architecture/Medical studies. The decision of this Board will be final. They should NOT therefore, submit along with the application form any medical certificate to the effect that they are physically handicapped. Reservation in Pharmacy colleges is as per Govt. orders."

6. A reading of the aforesaid provisions leaves no manner of doubt that the

candidate in order to avail the reservation, have to meet the prescribed medical standards laid down in the medical requirements for admission and in addition, at the time of admission satisfy the Board consisting of medical doctors and Chairman, J.E.E, 2003 or his representative that they are eligible to be categorised as physically handicapped candidates and capable of undergoing each part of the requirements for medical standards in case of admission to medical course. It has also been prescribed that the decision of the Board will be final and therefore the candidates are not required to submit medical certificate to the effect that they are physically handicapped at the time of submitting application forms.

7. Section 2(i) of the Act "the persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 defines disability which includes under Clause (v), a locomotor disability to which category the petitioner claims to belong. Subsection (o) of Section 2 defines locomotor disability to mean disability of the bones, joints or muscles leading to substantial restriction of the movement of the limbs or any form of cerebral palsy. Persons under disability in terms of Sub-section (t) means, a person suffering from not less than 40% of any disability as certified by a medical authority. Section 39 of the Act requires all Government educational institutions and other educational institutions receiving aid from the Government, to reserve not less than 3% seats for persons with disability. Thus, a person with locomotor disability like the petitioner in order to come within the purview and ambit of the reservation contemplated under the Act, is required to have suffered minimum 40% of disability.

8. The information brochure itself made it clear that a candidate claiming benefits of reservation under physically handicapped category must meet the medical standard and at the time of admission has to satisfy the Board consisting of four medical doctors and Chairman, J.E.E. or his representative that they are eligible to be categorised as physically handicapped and so also capable of undergoing each part of the requirements of the course and the decision of the Board in this respect is final. Under Rule 4(2) of the Act" the person with disability (Equal Opportunities, Protection of Rights and Full Participation) Rules, 1996, the State Government is authorised to constitute a Medical Board consisting of at least three members out of which at least one shall be a specialist, in the particular field for assessing locomotor/visual including low vision/hearing and speech disability, mental retardation and leprosy cured, as the case may be.

9. In the case at hand, the petitioner claims "to be a physically handicapped person having suffered locomotor disability. The Board consisting of four doctors including the orthopaedic Specialist and the Chairman, J.E.E., on examination of the petitioner, found him to have 20% disability as against 40% required under the Act in order to be eligible for consideration under the reserve category.

10. In such view of the matter, we do not find any merit in the contention of the

petitioner that he has been illegally deprived of getting the benefit of reservation under the physically handicapped category for admission to the Medical Course to interfere in the findings recorded by the Expert Body and direct the Opp. party to treat him as a physically handicapped person.

The writ petition is thus dismissed being devoid of any merit, but however, there shall be no order as to costs.

CH. P. K. Misra, J.

11. I agree.