
(2012) 07 DEL CK 0347

In the Delhi High Court

Case No : Writ Petition (C) 3777 of 2012 and CM No. 7926 of 2012

Master Amit Kumar Through his Next Friend and Brother
Satish Kumar

APPELLANT

Vs

Indian Institute of Technology

RESPONDENT

Date of Decision : 26-07-2012

Acts Referred:

Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 — Section 2, 58, 73

Citation : (2012) 195 DLT 1

Hon'ble Judges : G.S. Sistani, J

Bench : Single Bench

Advocate : Anuj Aggarwal with Mr. Khagesh Jha, for the Appellant; Saurabh Mishra and Mr. T. Singhdev, for the Respondent

Final Decision : Dismissed

Judgement

G.S. Sistani, J.—Notice to show cause as to why petition be not admitted. Counsel for the respondent accepts notice. Rule. With the consent of counsel for the parties writ petition is set down for final hearing and disposal.

2. The petitioner is stated to be orthopedically handicapped since birth due to stiffness in his knee and hip. He is stated to be suffering from multiple exostosis (formation of a new bone on the surface of the bone). In support of his disability the petitioner relies on a certificate issued by the Darbhanga Medical College and Hospital, Laheriasarai dated 06.08.2005 certifying that the petitioner is 40% disabled. According to the learned counsel for the petitioner, the certificate has been issued by a competent authority as per the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 (hereinafter referred to in short as the "Act"). The petitioner also relies upon a letter dated 17.08.2005 wherein it has been certified that the certificate dated 06.08.2005 is a valid certificate. Petitioner completed his class XII examination and secured 74% marks in the Science stream. In November, 2011 the Indian Institute of

Technology (IIT) invited applications for the Joint Entrance Examination of IIT-JEE 2012. The petitioner applied under the physically handicapped quota for the examination conducted on 18.04.2012. The result of this examination was declared on 18.05.2012. The petitioner scored GEPD 113 rank in IIT-JEE 2012. Thereafter, the petitioner was informed to appear for a medical examination which was scheduled to be conducted on 05.06.2012. It is this procedure which is under challenge in the present proceedings as counsel for the petitioner submits that the procedure adopted by the IIT, Delhi is illegal, unjustified and unwarranted in view of the fact that the petitioner has a valid certificate certifying that the petitioner is suffering from 40% disability.

3. It is not in dispute that the petitioner underwent the medical examination as conducted at the instance of IIT on 05.06.2012. As per the medical examination, the board opined that petitioner was suffering from only 18% disability. Accordingly, the petitioner was disqualified for admission in the IIT.

4. The counsel for the petitioner submits that the IIT was bound to rely upon the disability certificate which was issued to him on 06.08.2005 as it was issued by a competent authority notified as a medical authority under the Act. It is also submitted by learned counsel for the petitioner that in the light of the aforesaid certificate, the IIT could not have put the petitioner to a fresh medical examination and even otherwise, the board which has conducted the medical examination is not a valid board under the Act. Learned counsel for the petitioner has relied upon a decision reported in Dr. Raman Khanna Vs. University of Delhi and Others, . Counsel has relied on Paras 13 and 14 of the judgment which are reproduced below:-

13. The third question pertains to whether the Delhi University or any other Institutions who is to give effect to the reservation for the physically handicapped, is legally authorized to insist that candidates should appear before a Medical Board constituted by them. This can be immediately resolved by adverting to the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Rules, 1996 (hereinafter referred to as "the Disability Rules"). Rule 3 of the Disability Rules in Chapter II empowers the Government of India, Ministry of Welfare to publish general guidelines for evaluation and assessment of various disabilities specified in Section 2 of the Disabilities Act. Rule 4 of the Disability Rules which is germ (sic) to the issue reads as under:

4. Authority to given Disability Certificate.-

(1) A Disability Certificate shall be issued by a Medical Board duly constituted by the Central and the State Government.

(2) The State Government may 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.

14. On a conjoint reading of Section 58 of the Disabilities Act and Rule 4 of the Disability Rules, it will be crystal clear that individual Universities, Institutions or Establishments have no alternative but to accept a certificate issued by the Medical Boards constituted by the Central or State Governments, as the case may be. Any other interpretation would render Rule 4 totally otiose. Since this Rule has not been challenged it must be given effect to...

5. The petitioner based on the disability certificate dated 06.08.2005 seeks admission.

6. Learned counsel for the respondent has opposed this petition on the ground that the disability certificate sought to be relied upon by the petitioner is firstly not a valid certificate. Reliance is placed on Rule 4 Sub-Rule 2 of Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Rules, 1996. Learned counsel relying on this Rule submits that the medical board should consist of at least three members out of which at least one member has to be a specialist in the particular field for assessment. Counsel further submits that even otherwise, the certificate sought to be relied upon by the petitioner has not been issued as per the rules. The certificate is only signed by one doctor and not as per the mandatory requirement. Further, the certificate fails to state as to whether the said disability is permanent or whether there are no chances of variation in the degree of disability. The certificate also does not state the period of validity in cases where there is any chance of variation in the degree of disability.

7. Reliance is also placed on Rule 3 which is reproduced below:-

The general guidance for evaluation and assessment of various disabilities issued by the Government of India in the Ministry of Welfare, vide No 4-2/83-HW III, dated the 6th August, 1986 and as may be amended from time to time, shall be followed for evaluation of various disabilities specified in section 2(b), (e), (I), (n), (o), (q), (r), (t) and (u) of the Act.

8. Learned counsel submits that based on Rule 3, a notification was issued by the Office of the Chief Commissioner for Persons with Disabilities issued by the Ministry of Social Justice and Empowerment. Relevant portion which is sought to be relied upon by the counsel for the respondent is reproduced below:-

The minimum degree of disability should be 40% in order to be eligible for any concessions/benefits. According to the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Rules, 1996 notified on 31.12.1996 by the Central Government in exercise of the powers conferred by sub-section (1) and (2) of section 73 of the persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 (1 to 1996), authorities to give disability Certificate will be a Medical Board duly constituted by the Central and State Government. The State Government may 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.

Specified test as indicated in Annexure should be conducted by the medical board and recorded before a certificate is given.

The certificate would be valid for a period of five years for those whose disability is temporary. For those who acquire permanent disability, the validity can be shown as "Permanent".

The State Government/UT Administrations may constitute the medical boards indicated in para 4 above immediately, if not done so far.

The Director General of Health Services Ministry of Health and Family Welfare will be the final authority, should there arise any controversy/doubt regarding the interpretation of the definitions/classifications/evaluations tests etc.

(emphasis added)

9. Reliance is also placed on Annexure B which is a standard format prescribed of the certificate which is also reproduced below:-

ANNEXURE-B

STANDARD FORMAT OF THE CERTIFICATE

Certificate No. _____

Date _____

CERTIFICATE FOR THE PERSONS WITH DISABILITIES

This is to certify that

Shri/Smt/Kum _____

Son/wife/daughter of Shri _____

Age _____ old male/female, Registration No. _____ is a case of _____. He/She is physically disabled/visual disabled/speech & hearing disabled and has _____ % (_____ per cent) permanent (physical impairment/visual impairment/speech & hearing impairment) in

relation to his/her _____

Note:-

1. This condition is progressive/non-progressive/likely to improve/not likely to improve.

2. Re-assessment is not recommended/is recommended after a period of _____ months/years. Strike out which is not applicable.

Sd/- Sd/- Sd/-

(DOCTOR) (DOCTOR) (DOCTOR)

Seal Seal Seal

Signature/Thumb impression of the patient.

Countersigned by the

Medical Superintendent/CMO/Head of

Hospital (with seal)

Recent attested photographs showing the disability affixed here.

10. Counsel contends that the certificate sought to be relied upon by the petitioner is not as per the format nor does it give the specific details. It does not specify as to whether the condition is progressive or non-progressive or whether it is likely to improve or not. The certificate also does not mention whether re-assessment is recommended or not and if recommended, after the number of months or years. Relying on this format, learned counsel submits that the format shows that it is to be signed by three doctors whereas the certificate which is relied upon by the petitioner is only signed by one doctor. Counsel further relies upon Clause 4.3 of the admission information brochure which reads as under:-

4.3 Persons with Physical Disability (PD) In each institute 3% of seats in every category are reserved for PD candidates. For any category of disability (viz., locomotor, visual, dyslexia, speech, and/or hearing) benefit would be given to those who have at least 40% physical impairment. Leprosy-cured candidates who are otherwise fit to pursue the course are also included in this category. Candidates belonging to this category are qualified on the basis of a relaxed criterion.

The percentage of disability of the candidates will be certified by a medical board constituted by IITs. The decision of the medical board would be final.

11. Mr.Mishra submits that Clause 4.3 of the admission information had made it clear that the percentage of disability of the candidates will be certified by a medical board constituted by IITs. The decision of the medical board would be final. It is further submitted that after agreeing to submit for medical examination the petitioner cannot challenge the procedure or the findings.

12. He submits that the board which was constituted comprises of 10 doctors from the All India Institute of Medical Sciences. He further submits that the examination conducted by them cannot be faulted and more so, petitioner had failed to allege any malafides on behalf of these doctors against the petitioner.

13. I have heard learned counsel for the parties and also perused the pleadings and the annexures filed thereto. The first question, which arises for consideration in the present case, is whether the disability certificate sought to be relied upon by the petitioner is a valid certificate issued by the medical board duly constituted under the Central or the State Government. The copy of the medical

certificate filed by the petitioner reads as under:-

Office of Medical Superintendent, Darbhanga Medical College & Hospital,
Laheriasarai

S.No. 27

Laheriasarai, Dated 06.08.2005

DISABILITY CERTIFICATE

Name: Amit Kumar

Age : 11 Years

Father's name : ShriLaxman Prasad

Village Riga Mil Bazaar

Post Office :Riga

Police Station : Riga

District: Sitamani

Percentage of Disability : 40% (Forty percent)

Reason of disability : Orthopedic handicap due to stiffness in knee and hip. He is suffering from multiple exostosis. The condition will improve after operation.

Sd/-

Medical Superintendent,
Darbhanga Medical College & Hospital,
Laheriasarai

Note : Prior to this certificate, I have not taken any disability certificate. In case the information is false, then I will be responsible for the same.

Sd/-

Signature or thumb impression
of the Handicap person.

14. A perusal of this certificate would show that the same is signed by the Medical Superintendent of the hospital and does not bear the signatures of three members as per the format prescribed under the Act. The certificate also fails to mention the validity of the certificate which is also a requirement as per the guidelines issued by the Ministry of Social Justice and Empowerment as per which the certificate is valid for a period of five years for those with temporary disability. The certificate is also ambiguous as to whether the condition of the patient is to be re-assessed and if yes, after a period of how many months or

years. The certificate also does not mention as to whether the condition is progressive or non-progressive, whether it is likely to improve or not. These questions are extremely relevant to the facts of the present case in view of the endorsement made in this certificate that the condition will improve after operation. Another factor which is to be taken into consideration while considering this disability certificate is that it was issued in the year 2005 when the petitioner was merely 11 years of age. Accordingly, I am of the view that the disability certificate sought to be relied upon by the petitioner does not meet the requirements of the Act. It may also be observed that the All India Institute of Medical Sciences is a recognized hospital and empowered to grant a disability certificate. In view thereof, it cannot be said that the certificate sought to be relied upon by the IIT is not as per the Act. The question as to whether the IIT can impose a condition in their admission brochure as per Clause 4.3 is kept open in view of the fact that this Court is of the considered view that reliance cannot be placed on the disability certificate provided by the petitioner as the same is not as per the requirements of the Act and the rules framed thereunder. Accordingly, the present petition cannot be entertained. The same is dismissed. The Court appreciates the assistance rendered by both the counsels in the matter.