
(2005) 01 GAU CK 0021
In the Gauhati High Court
Case No : Writ Appeal No. 428 of 2004

Monoranjan Deka

APPELLANT

Vs

State of Assam and Others

RESPONDENT

Date of Decision : 19-01-2005

Acts Referred:

Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 — Section 2, 39

Citation : (2005) 2 GLR 317

Hon'ble Judges : D. Biswas, Acting C.J.; Amitava Roy, J

Bench : Division Bench

Advocate : D.C.K. Hazarika and S.B. Choudhury, for the Appellant; B.J. Talukdar, for the Respondent

Final Decision : Dismissed

Judgement

D. Biswas, Actg. C.J.

1. This appeal is directed against the Judgment and Order dated 2.9.2004 passed in W.P.(C) No. 5386 of 2004 by the learned Single Judge rejecting the prayer of the appellant-petitioner for a direction to the respondent authority to admit him to the First Year MBBS/BDS Courses in the Medical/Dental Colleges of the State for the Session Commencing 2004 against the seats reserved for physically handicapped candidates.

2. We have heard Mr. DC Kath Hazarika, learned counsel for the appellant and Mr. BJ Talukdar, learned Government Advocate, Assam.

3. The appellant appeared in the Entrance Examination to the above courses without indicating that his candidature for admission was for any of the seats reserved for different categories of candidates. After Entrance Examination, by the letter dated 18.6.2004, the appellant informed the Director of Medical Education, Assam that his candidature is to be treated as that of the physically handicapped candidate for the purpose of admission against 3% seats reserved

for this category. The appellant secured 119 marks in the Entrance Examination and consequent thereupon claimed that he be ranked at Serial No. 4 of the merit list prepared for physically handicapped candidates. It may be mentioned here that his name was not incorporated in the list meant for physically handicapped candidates. The appellant issued a pleader's notice dated 3.7.2004 insisting that he be called for counselling/interview. Accordingly, he was called for counselling and interview on 26.7.2004, but was considered ineligible for admission as a physically handicapped person since he is suffering from impaired vision which is a disqualification as per Medical Council of India guidelines/directives. According to him, he was arbitrarily denied admission. Praying for appropriate writ, he filed the writ petition which the learned Single Judge has dismissed.

4. Before the learned Single Judge, Mr. Hazarika, learned counsel for the appellant, argued that the petitioner suffers from the disability of low vision and this has been certified by the District Level Medical Board in accordance with the provisions of Section 2(i) and Section 2(u) of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995, for short referred to as the Act hereinafter. Placing reliance on Section 39 of the aforesaid Act, Mr. Hazarika tried to make out a case of discrimination and arbitrary refusal of admission by the respondent authorities.

5. Mr. BJ Talukdar, learned State counsel countered the aforesaid argument of Mr. Hazarika relying upon the guidelines/directives of the Medical Council of India. According to Mr. Talukdar, as per directives of the Medical Council of India, candidates who are visually handicapped are not eligible for admission to the medical courses as the disabilities may come in the way of performance of duties of a doctor.

6. Similar arguments have also been advanced before this Court at the time of admission hearing. Mr. Hazarika also relied upon a few decisions of the hon'ble Supreme Court as well as of this Court.

7. It is evident from the certificate issued by the District Level Medical Board that the appellant is a physically disabled person. The certificate annexed with the writ petition shows that he is visually impaired of the right eye. There is, therefore, no manner of doubt that the appellant is entitled to the privileges conferred by the aforesaid Act of 1995 being a physically handicapped person. Section 39 of the Act provides for reservation of seats not less than 3% for persons with disabilities in all Government Educational Institutions and other Educational Institutions receiving aid from the Government. There is also no dispute with regard to reservation of 3% of seats in the Medical Colleges in the State of Assam. In normal course, the appellant would have been eligible for admission being a physically handicapped person. His candidature has been rejected on the directives of the Council.

8. The question that requires answer by us is whether a candidate suffering from visual impairment is entitled to get admission in the colleges. Mr. Talukdar,

learned State Counsel argued that the admission to the Medical Colleges is governed by the regulations/directives/guidelines made by the Medical Council of India in accordance with the Medical Council Act, 1956. According to him, the guidelines of the Medical Council of India are binding in the matter of admission in medical colleges. Referring to the guidelines of the Medical Council annexed with the affidavit-in-opposition, Mr. Talukdar argued that admission of visually handicapped person having been prohibited by the Council, the appellant is not entitled to admission on preferential treatment as a physically handicapped person. It would appear from the guidelines that the MCI after a threadbare consideration of the provisions of the Act and the judgments delivered by different High Courts came to the conclusion that the persons with locomotory disability of lower limbs between 50% to 70% should be allowed the benefit of reservation under the Act of 1995 in the medicine courses, thereby eliminating the scope for admission of visually impaired persons.

The Medical Council of India is undoubtedly the apex body empowered to regulate admission, make schemes and prescribe guidelines for admission to medical colleges. The powers are to be exercised to ensure medical services of excellence to the people at large. Thus, the visually handicapped candidates have been considered ineligible for admission as the disability will stand on the way of their performance as a doctor. The Medical Council of India prescribes the above directives prohibiting admission of visually impaired persons with a view to ensure best available medical services to the sick and ailing persons. It is because of these guidelines, the Selection Board refused admission to the appellant. This Court cannot prescribe any criterion for admission of its own in departure from the guidelines/directives framed by the Medical Council of India in consultation with the experts. Interference with the decision of the Medical Council appears to be impermissible since no case is made out that the decision is made on irrelevant considerations.

9. Mr. Kath Hazarika, learned counsel for the appellant relied upon the decisions of the hon"ble Supreme Court in *Javed Abidi Vs. Union of India and Others*, and in *Death of 25 Chained Inmates in In Re: Death of 25 Chained Inmates in Asylum Fire in Tamil Nadu*, We have carefully considered the Judgments of the hon"ble Supreme Court. In the same vein we have also considered the decisions of this Court in *State of Assam and Ors. Appellants v. Shri Rajeev Dey and others, Respondents* (1995) 3 GLT 157 and in *Binita Senapati, Petitioner v. State of Assam and others, Respondents* (2001) 3 GLT 195. The decisions rendered therein do not suggest that a person with total impairment of one eye or suffering from visually impairment is eligible for admission against seats reserved for physically handicapped persons. We are unable to persuade ourselves that the appellant has been able to make out a case for a direction for his admission in the MBBS/BDS Courses for the session beginning 2004.

10. In the result, the appeal is dismissed.