

(2010) 10 OHC CK 0038

In the Orissa High Court

Case No : Writ Petition (C) No. 9782 of 2008

Priya Ranjan Mohanty

APPELLANT

Vs

State of Orissa and Others

RESPONDENT

Date of Decision : 08-10-2010

Acts Referred:

Orissa Professional Educational Institutions (Regulation of Admission and Fixation of Fee) Act, 2007 — Section 4(6)
Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 — Section 2, 58
Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Rules, 1996 — Rule 3, 4

Citation : (2011) 1 OLR 860 Supp : (2011) 1 RCR(Rent) 896

Hon'ble Judges : M.M. Das, J

Bench : Single Bench

Final Decision : Allowed

Judgement

M.M. Das, J.—Deprivation of the Petitioner from being given admission to M.B.B.S. Course in the year 2008 is the cause of action for which the present writ petition has been filed.

2. The Petitioner is a physically handicapped candidate, who made application for appearing in the Joint Entrance Examination, 2008 and appeared in the said examination in the category of physically handicapped candidate. The Petitioner's rank in the said category was 61, but the Medical Board constituted by the Joint Entrance Examination Committee on examining him found that he does not suffer from locomotory disability up to the percentage required by the Joint Entrance Examination Committee, 2008. The Petitioner, however, produced a disability certificate, which was granted by the Medical Board, Cuttack district, disclosing that the percentage of disability was 50%. The question, which is raised in the present writ petition to be determined is, as to whether the Joint Entrance Examination Committee is bound to accept the percentage of disability as mentioned in the disability certificate granted by the Medical Board of Cuttack

district or can ignore the same and rely on the findings of the Medical Board constituted by the Joint Entrance Examination Committee.

3. The facts relevant to the issue are as follows:

The information brochure of Joint Entrance Examination, 2008 prescribed in Clause - 2.1.4 that 3% of the total M.B.B.S. seats of the three Government Medical Colleges of the State and B.D.A. stream in the S.C.B. Medical College, Cuttack are reserved for persons with disabilities and they have to meet the medical standard of locomotory disability of lower limbs between 50% to 70% (percentage of disability may vary subject to the decision of the Hon'ble apex Court). The medical standard of physically handicapped category candidates will be decided by a Medical Board specifically constituted with senior Professors of the Premier Medical College and Hospital; S.C.B. Medical College, Cuttack and Chairman, J.E.E., 2008 or his representative under the Chairmanship of Principal, S.C.B. Medical College, Cuttack.

4. It has been averred in the counter affidavit filed by the J.E.E. Committee, 2008 that the decision of the said Medical Board constituted by the J.E.E. shall be final and binding and the candidates should not submit along with the application forms any Medical Certificate to the effect that they are physically handicapped. u/s 4(6) of the Orissa Professional Educational Institutions (Regulation of Admission and Fixation of Fee) Act, 2007, the Policy Planning Body is to perform certain functions which are as follows:

4. (1) to (5) xx xx xx

(6) The Policy Planning Body shall perform the following functions, namely:

(a) regulate the admission;

(b) formulate policy guidelines for holding JEE;

(c) constitute one or more sub-committee for efficient discharge of its functions in the matter of examination and admission;

(d) formulate and recommend the reservation policy to Government for approval, which shall be with regard reservation of seats in favour of Scheduled Castes, Scheduled Tribes, SEBC, green card holders, Ex-servicemen, sports persons and physically handicapped persons:

(e) determine the eligibility criteria and qualifying examination required for admission; and

(f) perform such other functions as may be prescribed.

5. Though the Petitioner was placed at serial No. 61 in the rank list meant for physically handicapped candidates, but was found by the Medical Board constituted by the J.E.E. Committee that he is not suffering from locomotory disorder of 50% or more for which he was found ineligible to be given admission to the M.B.B.S. Course of that year. The disability certificate granted to the

Petitioner by the Medical Board of Cuttack district which has been annexed as Annexure-1 to the writ petition and stated to have been produced before the J.E.E. Committee, 2008 shows that the said district Medical Board certified that the Petitioner comes under the category of Orthopedic disability and the percentage of disability is 50%. The Policy Planning Body constituted under the Act is empowered to fix the modalities for holding a Joint Entrance Examination to give admission to the candidates to the M.B.B.S. Course and other technical courses as per the provisions of the Act as quoted above. No where in the said Act, it is provided that the Joint Entrance Committee holding the examination should constitute a Medical Board to examine the percentage of locomotory disability of any candidate, who has appeared under the reserved category of physically handicapped candidates. For the above purpose, the Parliament has legislated the Special Act, i.e., Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 (for short, "the Disabilities Act"). The body which is to give effect to the reservation policy for the physically handicapped, is legally authorized to insist for a disability certificate by the Medical Board constituted under the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Rules, 1996 (For short, "the Rules"). Rule 3 of the said Disabilities 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. Section 2(i) of the Disabilities Act defines "disability" to mean, (a) blindness, (b) low vision, (c) leprosy-cured, (d) hearing impairment, (e) locomotor disability, (f) mental retardation, and (g) mental illness.

6. Rule 4 of the Disabilities Rules reads as under:

4. Authority to give 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.

7. The Supreme Court in the case of Parul Jhunjhunwalla v. University of Delhi (Civil Writ No. 4345 of 2003 and C.M. No. 7440 of 2003) held that on a conjoint reading of Section 58 of the Disabilities Act and Rule 4 of the Disabilities Rules, it is 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 Government or State Government as the case may be. Any other interpretation would render Rule 4 totally otiose. Since the said Rule has not been challenged, it must be given effect to. In the facts of the said case, taking note of the contention made by the University, the Supreme Court held that even though there may be some substance in the stand of the Universities that it is quite possible that some Medical Board may be lenient in the manner and the

extent of their certification when compared with others, examining the status of the Members of the Board, who gave the certificate in the said case and finding that such Board includes not just a "Specialist" in locomotory disabilities, but the Professor of Orthopedics himself, came to the conclusion that the Delhi University does not have power to insist that persons, who have produced physically handicapped certificate from any of the nine Hospitals mentioned in the order dated 8.8.2002 should nevertheless appear before the Medical Board constituted by the University. In the instant case, a reference was made to the decision of a Division Bench of this Court in the case of D.S. Rashmi Ranjan Vs. Chairman, Joint Entrance Examination, 2003 and Others, by Mr. R.K. Dash, learned Counsel for the J.E.E. in support of his contention that this Court has held that there is no illegality with the J.E.E. Committee constituting a Medical Board to examine the percentage of the disabilities of the candidates under physically handicapped category.

8. A bare reading of the said decision goes to show that the aforesaid question was not directly involved in the said case. Further, as pointed by Mr. R.C. Mohanty from the counter affidavit filed by the Medical Council of India that the decision in the case of D.S. Rashmi Ranjan (supra) has been challenged by the Medical Council of India before the Hon"ble Supreme Court of India in SLP (C) No. 7952 - 53 of 2005 with regard to the fixation of percentage of disability to be considered for the physically handicapped candidates, as a reserved category. The Supreme Court by its order dated 8.8.2006 modified its stay order passed on 25.4.2005 staying operation of the order of this Court to the extent that the said order of stay does not prevent the admission of physically handicapped candidates having locomotory disability of lower limbs between 50-70%. The said SLP is still subjudice.

9. It would be pertinent to mention that in a connected writ petition, being W.P. (C) No. 10892 of 2009, the State was directed to file counter affidavit as to whether the District Medical Boards, who have granted disability certificates are constituted under the Disabilities Act. It has been stated in the counter affidavit filed therein by the State, that the District Boards have been constituted under the Disabilities Act. In view of such position and the ratio of the decision in the case of Parul Jhunhunwalla (supra), the contention raised by Mr. Patnaik, learned senior counsel appearing for the Petitioner that the J.E.E. 2008 should have accepted the certificate produced by the Petitioner granted by the Medical Board constituted under the Disabilities Act is bound to be accepted as it is also found that the Policy Planning Body had no authority to include a clause in the Information Brochure with regard to constitution of a separate Medical Board by the J.E.E. Committee, 2008.

10. On a direction issued by this Court, Mr. R.K. Dash, learned Counsel appearing for the Chairman, J.E.E. 2008 has produced a copy of the letter dated 18.9.2010 issued by the said Chairman instructing him that in the year 2008, who were placed below the Petitioner at serial Nos. 65 and 67 have been given admission

to M.B.B.S. Course. This Court, therefore, finds that as the J.E.E. Committee, 2008 could not have ignored the certificate granted by the Medical Board constituted under the Disabilities Act produced by the Petitioner which disclosed that he was orthopedically handicapped up to 50% and the Petitioner should have been given admission to M.B.B.S. Course in the said year. The above conclusion of this Court is based on the interpretation that the definition of disability as given in the Disabilities Act with regard to orthopedic disability includes only "locomotory disability".

Therefore, the certificate issued to the Petitioner can only mean locomotory disability.

11. It is well settled in law that due to pendency of a case, a Petitioner, who has been deprived from being admitted to a course on a particular year can be directed to be given admission in a subsequent year. As the last date for admission to M.B.B.S. Course has been fixed as 30th September of each year by the Government of India following the decision of the Constitution Bench judgment of the Supreme Court in the case of T.M.A. Pai Foundation and Others Vs. State of Karnataka and Others, and the final judgment could not be delivered on 28.9.2010, i.e., the date when the matter was finally heard, orders were passed on the same day directing the J.E.E. Committee to give admission to the Petitioner to the M.B.B.S. Course meant for physically handicapped candidates in the seat which was previously directed to be kept vacant by an interim order passed by this Court on 30.7.2010. In view of such order having been passed on 28.9.2010 keeping the last date of admission in view, no further directions are issued in this judgment.

12. The writ petition is accordingly allowed.