

CHAIRMAN, ODISHA JOINT ENTRANCE EXAMINATION

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v.

JASOBANTA NAYAK AND OTHERS

(Civil Appeal Nos. 288-289 of 2016)

JANUARY 18, 2016

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[DIPAK MISRA AND N.V. RAMANA, JJ.]

*Education/Educational institution – Admission to engineering course – State Joint Entrance Examination – Respondent no.1 placed at serial no. 16871 in the general category and at no. 80 under physically challenged category for admission – Challenge to, before the High Court – Pursuant to the direction by High Court, respondent no.1 filed physically handicapped certificate granted by District Hospital which stated that he was 40% visually disabled – High Court declared the disability of respondent no.1 at 40% and issued direction to consider his case in the category of physically handicapped persons – Interference with – Held: Percentage of disability was to be determined by the Medical Board, which was specifically mentioned in the prospectus – Medical Board was constituted as per the norms of prospectus and it clearly assessed the disability of vision of respondent no. 1 at 20% and issued the certificate – Certificate granted by the District Hospital was 40% and on basis thereof, the High Court declared the disability of respondent no.1 at 40% and to consider his case in the category of physically handicapped persons – Court cannot assess the percentage of disability – Thus, the High Court was not justified in interfering with the selection process in exercise of writ jurisdiction – Order passed by the High Court set aside.*

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CIVIL APPELLATE JURISDICTION : Civil Appeal No. 288-289 of 2016

From the Judgment and Order dated 17.10.2012 of the High Court of Orissa at Cuttack in W.P. (C) No. 14456/2012 with Misc. Case No. 12732 of 2012.

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Milind Kumar for appellant.

Nidhi for the Respondents.

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A The following order of the Court was delivered

**ORDER**

1. Leave granted.

B 2. The present appeals are directed by way of special leave petitions against the judgement and order dated 17<sup>th</sup> October, 2012, passed in W.P.(C) No.14456 of 2012, by the High Court of Orissa at Cuttack.

C 3. The respondent No.1 herein had appeared in the Odisha Joint Entrance Examination 2012 for admission into engineering course. He was assigned the rank at Sl. No.16871 in the general category and placed at No.80 under the physically challenged category for admission into the engineering course. As the respondent No.1 was physically handicapped, he had filed a certificate issued from the District Head Quarters Hospital, Balasore, Odisha, which had mentioned that he was visually disabled by 40%. Needless to say, visual 40% disability enables a candidate to be considered in the physically handicapped category.

D 4. It is submitted by Mr. Milind Kumar, learned counsel appearing for the appellant that the order passed by the High Court suffers from grave illegality inasmuch as it has observed that the respondent No.1 was directed to produce the physically handicapped certificate, though E the prospectus clearly prohibits for filing of such certificate. It is urged by him that the Board that was constituted as per the stipulations prescribed in the prospectus, had found that the respondent No.1 had 20% visual disability and not 40% and, in such a case, the High Court should not have placed reliance on the certificate issued by the District F Head Quarters Hospital, Balasore, by opining that there is no reason to disbelieve the same.

5. Ms. Nidhi, learned counsel appearing for the respondent No.1, has supported the order passed by the High Court.

G 6. To appreciate the controversy, we may with profit refer to Clause 2.1.4. of the prospectus, which reads as follows:

H “2.1.4. 3% of seats are reserved for Physically Challenged candidates for admission to B. Tech/B. Arch / MBA / MCA / PGDM / PGCM / PGDM (Exe) / B. Pharm courses. the candidates with 40% disabilities in consonance with section – 39 of the Persons with Disabilities (Equal opportunities, Protection

of Rights and Full participation) Act, 1995, are eligible to be considered under Physically Challenged Category for admission to B. Tech / B. Arch / MBA / PGDM / PGCM / PGDM (Exe) / B. Pharm courses. A

3% of total MBBS and BDS seats are reserved for persons with disabilities and they have to meet the medical standard of Locomotory disability of lower limbs between 50 to 70% (% of disability may vary subject to the decision of the Hon'ble Apex Court). B

The medical standard of PC category candidates will be decided by a medical board specifically constituted with Senior Professors of the premier medical college and hospital : SCB Medical College, Cuttack, and Chairman, OJE – 2012 or his representative under the Chairmanship of Principal, SCB Medical College or his nominee, that they are eligible to be categorized as Physically Challenged candidates and capable of undergoing each part of the requirements for B. Tech / B. Arch / MBBS / BDS / MBA / MCA / PGDM / PGCM (Exe) / B. Pharm. The decision of this Board will be final and binding. They SHOULD NOT therefore, submit along with the application form any medical certificate to the effect that they are physically challenged. C D

Further, for MBBS/BDS stream, the candidates claiming locomotory disability of lower limbs are only eligible for consideration. Visually handicapped and hearing disabled candidates are not eligible as stipulated by Medical Council of India.” E

[Emphasis supplied] F

7. On a perusal of the aforesaid clause, it is perceivable that the candidates should not submit along with application form, any medical certificate to the effect that they are physically challenged. The High Court, as we find from the order impugned, has stated, as a matter of fact, that the candidates were directed to produce the physically handicapped certificate. The said finding, being contrary to the postulates in the prospectus is absolutely unsupportable. G

8. It needs no special emphasis to state that the percentage of disability has to be determined by the Medical Board, which is specifically mentioned in the prospectus. The said Board consisting of Dean & H

- A Principal, S.C.B. Medical College, Cuttack, and two Assistant Professors, Department of Ophthalmology, S.C.B. Medical College, Cuttack, has assessed the disability of vision of the respondent No.1 on 16<sup>th</sup> June, 2012, at 20% and issued the certificate. Be it noted, the certificate granted by the District Head Quarters Hospital, Balasore, was 40%. A
- B Court cannot assess the percentage of disability. As per the prospectus, the Medical Board has to be constituted consisting of senior Professors of the S.C.B. Medical College, Cuttack and Chairman, OJEE – 2012 or his representative under the Chairmanship of Principal, S.C.B. Medical College or his nominee. The Medical Board has been constituted as per
- C the norms of prospectus and it has clearly recorded its opinion as regards the disability of vision of the respondent. In such a situation, we are constrained to hold that the High Court was not justified in interfering with the selection process in exercise of writ jurisdiction and declaring the disability of the respondent No.1 at 40% and to consider his case in the category of physically handicapped persons. The approach being erroneous, the order is wholly untenable.
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9. Resultantly, the appeals are allowed and the order passed by the High Court is set aside. There shall be no order as to costs.

Nidhi Jain

Appeals allowed.

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