

ITEM NO.13

COURT NO.8

SECTION X

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Writ Petition(Civil) No.856/2023

BAMBHANIYA SAGAR VASHARAMBHAI

Petitioner(s)

VERSUS

UNION OF INDIA & ORS.

Respondent(s)

(FOR ADMISSION and IA No.162048/2023-APPROPRIATE ORDERS/DIRECTIONS [LIST ON 22.09.2023 ON THE TOP OF THE BOARD])

WITH

W.P.(C) No. 788/2023 (X)

(IA No. 150071/2023 - APPROPRIATE ORDERS/DIRECTIONS)

W.P.(C) No. 782/2023 (X)

(FOR ADMISSION and IA No.148994/2023-APPROPRIATE ORDERS/DIRECTIONS)

SLP(C) No. 18017/2023 (IX)

(FOR ADMISSION and I.R. and IA No.163758/2023-EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT)

Date : 22-09-2023 These petitions were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

HON'BLE MR. JUSTICE ARAVIND KUMAR

For Petitioner(s)

Mr. Sandeep Sudhakar Deshmukh, AOR

Mr. Nishant Sharma, Adv.

Mr. Akshay Subhash Jagtap, Adv.

Mr. Tushar D.bhelkar, Adv.

Mr. Swapnil Walde, Adv.

Mr. Ajit Kumar Sinha, Sr. Adv.

Mr. Govind Jee, AOR

Mr. Omanakuttan K K, Adv.

Mr. Kartikeya Khanna, Adv.

Mr. Shivendu Prakash, Adv.

For Respondent(s)

Mr. Aaditya Aniruddha Pande, AOR

Mr. Siddharth Dharmadhikari, Adv.

Mr. Bharat Bagla, Adv.

Mr. Sourav Singh, Adv.

Mr. Aditya Krishna, Adv.

Ms. Aishwarya Bhati, A.S.G.
Mr. Gurmeet Singh Makker, AOR
Ms. Swarupama Chaturvedi, Adv.
Mr. Sanjay Kumar Tyagi, Adv.
Mr. Rajan Kumar Chourasia, Adv.
Mr. Sanjai Tyagi, Adv.

Mr. Gaurav Sharma, AOR
Mr. Dhawal Mohan, Adv.
Mr. Prateek Bhatia, Adv.
Mr. Paranjay Tripathi, Adv.

Mr. Sanjeev Kaushik, Adv.
Ms. Bhanu Mishra, Adv.
Ms. Ripul Swati Kumari, Adv.
Ms. Astha Sharma, AOR

Ms. Garima Prasad, Sr. A.A.G.
Mr. Vishnu Shankar Jain, AOR

Mr. Tushar Gupta, Adv.
Mr. Sudipto Sircar, Adv.

UPON hearing the counsel the Court made the following
O R D E R

W.P.(C) No. 788/2023 & W.P.(C) No. 782/2023:-

1. The Reports in respect of the petitioners, i.e., Rohit Kumar Singh (in Writ Petition (C) No.788/2023) and Sahil Arsh (Writ Petition (C) No.782/2023) issued by the Medical Board constituted by the All India Institute of Medical Sciences, New Delhi both dated 02-09-2023, have upheld their claim for treated as persons with disability. It was argued on behalf of the respondents that lack of clarity in regard to the certificate or evaluation of Sahil Arsh should be taken into account and further clarification may be sought. This Court is of the opinion that no such further clarification is necessary having regard to the range indicated by the Expert Board or Committee.

2. Having regard to these facts, both the petitioners' claim to be treated as persons with disabilities in Writ Petition (C) No.788/2023 (Rohit Kumar Singh vs. Union of India & Ors.) and Writ Petition(C) No.782/2023 (Sahil Arsh vs. Union of India & Ors.) are upheld. A direction is issued to the respondents to ensure that the counseling authorities are appropriately instructed to treat them as persons with disability and consider their applications for admission in accordance with other parameters, as persons with disability.

3. The Writ Petitions are allowed to the above extent in the above-terms.

Writ Petition(Civil) No.856/2023 & S.L.P.(Civil) No.18017/2023:-

1. This Court by order dated 25-08-2023 required the Director, All Indian Institute of Medical Sciences, New Delhi to constitute a Medial Board to evaluate the claim for treated as a person with disability under the Rights of Persons with Disabilities Act, 2016 made by the petitioners.

2. Two separate reports were issued on 02-09-2023.

3. The report in respect of the petitioner – Bambhaniya Sagar Vasharambhai (Writ Petition(Civil) No.856/2023) states as follows:-

"With reference to the aforementioned subject, the Medical Superintendent, AIIMS, New Delhi constituted a Medical Board consisting of the following members:-

- | | | |
|----------------------------------|---|-------------|
| 1. Dr. Sanjay Wadhwa Chairperson | - | Chairperson |
| Professor & Head, Deptt. of PMR | | |

2. *Dr. Manoj Phalak* - *Member*
Addl. Professor, Deptt. of Neurosurgery
3. *Dr. Sahil Batra* *Member*
Asstt. Professor, Deptt. of Orthopaedics
4. *Dr. Tony Joseph P.T.* *Member Secy.*
Department of Hospital Administration

The meeting of the Medical Board was held on 01.09.2023 (Friday) The meeting of the Medical Board was held on 01.09.2023 (Friday) at 2:30 P.M. in Seminar Room, M.S. Office Wing, Ground Floor, AIIMS, New Delhi. The petitioner Mr. Bambhaniya Sagar Vasharambhai is registered at PMR OPD with UHID No, 106977845. Clinical assessment was done by the Members, and X-ray imaging was advised and done at AIIMS for evaluation of spinal deformity. X-Ray report states Kyphotic deformity Cobb's angle is 50 degrees, anterior wedging of T9 to T12 vertebrae with incomplete fusion of D10, D11, D12 ring apophysis. The other available reports, earlier certificates and medical documents were also reviewed.

The petitioner, Mr. Bambhaniya Sagar Vasharambhai has significant weakness of right upper limb, decreased sensations in the right upper limb, with limited range of movements and poor hand grip. He also has Kyphoscoliosis of Dorsal spine, short and webbed neck, with left side rotation of cervical spine. A Certificate/report dated 27/7/2023 issued by the Medical Board, and another one dated 01/08/2023 issued by the Appeal Medical Board, Admission Committee for Professional Undergraduate & Postgraduate Medical Educational Courses, Government of Gujarat has also been perused wherein the extent of disability of the candidate is certified to be 80% (Eighty per cent).

In the final analysis, this Medical Board states

that Mr. Bambhaniya Sagar Yasharambhai belongs to the category of persons with Locomoter Disability and has Bench Mark disability (more than 40%) in relation to his right upper limb and spine. Taking into consideration the facts available at present, limitations in performance of various essential activities needs and demands imposed by the Undergraduate Medical Education programme MBBS, and looking at the NMC Guidelines related to NEET UG Admission of candidates with disabilities, this Medical Board is of the opinion that Mr. Bambhaniya Sagar Vasharambhai Is NOT ELIGIBLE to pursue MBBS course.

Sd/-	Sd/-	Sd/-
(Dr. Sanjay Wadhwa)	(Dr. Manoj Phalak)	(Dr. Sahil Batra)
Chairperson	Member	Member

Sd/-
(Dr. Tony Joseph P.T.)
Member Secy.

4. In Special Leave Petition (C) No.18017/2023 (Mr Gaurav S/o Gopichand), medical board in the first instance met on 02-09-2023 and recorded as follows:-

"Subject: Medical Board Committee constituted at AAIMS(CNC) for issuance of disability certificate of Mr. Gaurav Gopichand Ghaytidak Shakuntala in special leave petition (Civil) no.18017 – extension of final report submission thereof.

Following the directions of the Hon'ble Supreme Court dated 25.08.2023 vide SLP (C) No.018017/2023; Gaurav Vs G.O.I., the medical board meeting was held under Chairmanship of Dr. Achal Kumar Srivastav, Professor, Deptt. Of Neurology on 02.09.2023 at 10.00 AM in OPD, room no.14, Ground floor, CNC, AIIMS.

The following members of the the medical board were

present in the meeting:

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|---|--------------------|
| 1. <i>Dr Achal Kumar Srivastav</i>
<i>Professor, Deptt. Of Neurology</i> | <i>Chairperson</i> |
| 2. <i>Dr. Ashima Nehra</i>
<i>Addl. Professor, Deptt. of Clinical</i>
<i>Neuro-Psychology</i> | <i>Member</i> |
| 3. <i>Dr. Rajesh Kumar Singh</i>
<i>Associate Professor, Deptt.</i>
<i>oOf Neurology</i> | <i>Member</i> |
| 4. <i>Dr. Anu Gupta</i>
<i>Asst. Prof. Deptt. of Neurology</i> | <i>Member</i> |
| 5. <i>Dr. Animesh Das,</i>
<i>Asst. Prof., Deptt. of Neurology</i> | <i>Member</i> |
| 6. <i>Dr. Asem Rangita Chanu,</i>
<i>Assoc. Professor, Deptt. of PMR</i> | <i>Member</i> |
| 7. <i>Dr. M. Charan Raj</i>
<i>Asst. Prof. Hospital Administration</i> | <i>Member</i> |

The patient arrived before the Medical Board. The members of the medical board examined the patient. However, the Board is of an opinion that a detailed disability assessment of the petitioner had to be done. In this regard, it is requested to grant two weeks for the submission of the final report of the medical board with respect to the subject cited above."

5. It is thus evident that the board was of the "opinion that a detailed disability assessment" of the petitioner needed to be done.

6. On the basis of its detailed disability evaluation, the board by its report dated 09-09-2023 stated as follows:-

"Subject: Report of Medical Board Committee constituted at

AAIMS(CNC) for issuance of disability certificate of Mr. Gaurav Gopichand Ghaytidak in special leave petition (Civil) no.18017 -reg.

Following the directions of the Hon'ble Supreme Court dated 25.08.2023 vide SLP (C) No.018017/2023; Gaurav Vs G.O.I., the medical board meeting was held under Chairmanship of Dr. Achal Kumar Srivastav, Professor, Deptt. Of Neurology on 09.09.2023 at 11.00 AM in OPD, room no.14, Ground floor, CNC, AIIMS.

The following members of the the medical board were present in the meeting:

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| 1. Dr Achal Kumar Srivastav
Professor, Deptt. Of Neurology | Chairperson |
| 2. Dr. Ashima Nehra
Professor, Clinical Psychology,
(NS Centre), Neuro-Psychology | Member |
| 3. Dr. Rajesh Kumar Singh
Associate Professor, Deptt.
of Neurology | Member |
| 4. Dr. Anu Gupta
Asst. Prof. Deptt. of Neurology | Member |
| 5. Dr. Animesh Das,
Asst. Prof., Deptt. of Neurology | Member |
| 6. Dr. Asem Rangita Chanu,
Assoc. Professor, Deptt. of PMR | Member |
| 7. Dr. Prem Sagar,
Addl. Professor, Deptt. Of ENT | Member |
| 8. Dr. Sahil Aggarwal,
Asst. Professor, Deptt. Of Ophthalmology | Member |
| 9. Dr. M. Charan Raj
Asst. Prof. Hospital Administration | Member |

Mr. Gaurav Gopichand Ghaytidak was examined by the Medical Board on 02/09/2023 and 09/09/2023 at AIIMS, New Delhi and is of the opinion that he has a disability of 50% which is permanent and not likely to improve."

7. This Court is of the opinion that these reports only quantitatively assessed or evaluate the petitioners' extent of disability. In both the cases the detailed evaluation aside from the quantification of the disability is not reflected in the reports. In other words, the reports are bereft of any reasoning which impelled the experts to say that these candidates are not capable of pursuing medical courses or how the impairments they suffer from would impede or prevent them from effectively pursuing the courses which they wish to study in. Although the Court is conscious that some of the conditions such as deformity and webbed neck are not "usual" or "usually understood" disabilities, yet in the absence of any elaboration, or reasoning, one is left wondering why these candidates (who have been fairly capable of pursuing rigorous academic courses and even reaching a certain level of attainment) would be unable to do so in the opinion of such experts. The same logic applies in a case of Gaurav Gopichand, who claims to be suffering from cerebral palsy, a listed disability under the definition of the expression "person with disability"; under the Persons with Disabilities Act, 2016.

8. In these circumstances, the Director, AIIMS shall hereby ensure a further clarificatory note, based upon the evaluation

conducted by the concerned Expert Committee who had examined the said two petitioners i.e, Bambhaniya Sagar Vasharambhai and Gaurav S/o Gopichand, the evaluation and the elaborate reasoning as it were shall be furnished to this Court within a week.

9. The Expert shall also take into account the advance, including recent developments in medical and other sciences, while considering whether such candidates can pursue the medical courses. It is open to the Board to seek examination of the candidates afresh if necessary and also in its report clearly indicate the kind of aid or aids which may be useful to them, which may assist them in effectively participating in the concerned course.

10. In the meanwhile, the respondents are directed to ensure that the counselling in respect of two seats are specifically earmarked, and kept apart and not filled by any other candidates till next date of hearing. not filled from amongst the quota of persons with disabilities, till the next date of hearing. The States of Gujarat and Maharashtra are directed to ensure that order to earmark one seat each in the said States respectively, is complied with.

11. In the event of such selection, the concerned counseling body or Committee shall ensure that the allocation is done inter se having regard to the principles prescribed by law and as far as possible, conforming with merit.

12. Before parting, this Court would flag a concern, i.e., that under the Rights of Persons with Disabilities Act, 2016, by Section 2(r) defines "benchmark' disability as the extent of disability

"forty per cent of a specified disability where specified disability has not been defined in measurable terms". In the present two cases, both petitioners are suffering from disabilities at levels meeting the benchmark disability of 40% or above. In Gaurav's case, the disability is 50% and meets the criteria. Yet, his condition "cerebral palsy" has led this Board to reject his claim so also in the other case, where disability assessed is 80%. In these cases the rejection is based on either some unknown criteria, or entirely on the understanding that the extent of disability dis-entitles them to be treated as persons with disability.

13. In the opinion of this Court in cases even of specified disabilities, in all cases the standard of 40% may result in "one size fit all" norm which will exclude eligible candidates. The Union, therefore, shall consider the steps to mitigate such anomalies, because a lower extent of disabilities bar benefits and at the same time render them functional, whereas higher extent of disability would entitle benefits, but also result in denying them the benefit of reservation. The National Commission and the Central Government are directed to consider the problem and work out suitable solutions to enable effective participation.

14. List on 3-10-2023 on top of the Board.

(VISHAL ANAND)
ASTT. REGISTRAR-cum-PS

(BEENA JOLLY)
COURT MASTER (NSH)