

**2023 LiveLaw (SC) 841**

**IN THE SUPREME COURT OF INDIA**  
**S. RAVINDRA BHAT; J., ARAVIND KUMAR; J.**  
**Writ Petition (Civil) No. 856/2023; 22-09-2023**

**BAMBHANIYA SAGAR VASHARAMBHAJI versus UNION OF INDIA & ORS.**

**Rights of Persons with Disabilities Act, 2016 - MBBS Admission in PwD Quota - Disability Assessment Report - Persons with disabilities should not be excluded from MBBS courses merely on the basis of a quantitative assessment of their disabilities. The assessment of the disabilities must have a cogent reasoning as to how such candidates will be unable to pursue the medical courses. (Para 7)**

**Rights of Persons with Disabilities Act, 2016 - 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. (Para 13)**

*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.*

**ORDER**

**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.



*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:*

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

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

*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.