



2025:DHC:4986



\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% Judgment delivered on: 16.06.2025

+ **W.P.(C) 7066/2025 & CM APPL. 36689/2025**

DR ADITI PANWAR

.....Petitioner

versus

NATIONAL BOARD OF EXAMINATIONS IN MEDICAL  
SCIENCES AND ORS.

.....Respondents

**Advocates who appeared in this case**

For the Petitioner : Mr. Amarjit Singh Bedi, Mr. Varun  
Chandok and Ms. Riya Seth, Advocates.

For the Respondents : Mr. Siddharth Garg, Mr. Srijan Sinha, Mr.  
Himanshu Chaubey, Miss Lihzu Shiney  
Konyak and Mr. Srajan Yadav, Advocates  
for R-1/NBEMS.

Mr. T. Singhdev, Mr. Abhijit Chakraborty,  
Ms. Yamini Singh and Mr. Saurav Kumar,  
Advocates for R-2 (NMC)

Mr. Sumit Kumar Sharma, Advocate for R-3  
& R-5 (State of Haryana).

Mr. Mukul Singh, CGSC with Ms. Ira  
Singh, Advocate for R-4/UOI.

**CORAM:**

**HON'BLE MR. JUSTICE TEJAS KARIA**



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## JUDGMENT

### TEJAS KARIA, J

1. This Petition has been filed seeking direction to the Respondent Nos. 1 to 4 to allot the Petitioner the vacant seat of DNB PDCET [Radio-Diagnosis], a 2 year course at the Respondent No. 3 Hospital against the vacancy reserved for Other Backward Castes (“OBC”) quota.
2. The Petitioner is a qualified Radiologist practicing since last 18 years and has exceptional meritorious achievements. The Petitioner completed her MBBS from Sawai Mann Singh Government Medical College, Jaipur and completed her PG Diploma in Radiology (DMRD) from Indira Gandhi Government Medical College, Shimla, Himachal Pradesh. The Petitioner has also completed her 3 year Senior Residency in Radio-Diagnosis from Doctor Rajinder Prasad Government Medical College, Tanda, Himachal Pradesh.
3. The Respondent No.1 being the National Board of Examinations in Medical Sciences (“NBEMS”) issued Notification dated 28.01.2025 for conducting DNB PDCET 2025. The Petitioner on 25.03.2025 appeared for DNB PDCET 2025 and secured 142<sup>nd</sup> rank in Radio-Diagnosis in the Unreserved (“UR”) / General quota. The Respondent No.1 published Indicative Seat Matrix on 07.05.2025 for admission to DNB Post Diploma Courses for 2025 admission session with one seat of Radio-Diagnosis available at the Respondent No. 3 Hospital reserved for the OBC candidate.
4. The Petitioner filed online counselling form on 10.05.2025 indicating that the Respondent No. 3 Hospital being a Government hospital as her first



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preference and IVY Health and Life Science Punjab (“IVY”) as her second reference. The Petitioner was under impression that the OBC quota seat shall be released, if there is no taker and converted to UR quota for the Respondent No. 3 Hospital.

5. As per the revised allotment details of DNB (Post Diploma) Counselling 2025 Admission Session (First Round) dated 17.05.2025 published by the Respondent No. 1, there was no OBC candidate for the Respondent No. 3 Hospital. On 17.05.2025 itself, the counselling for DNB PDCET 2025 began and the Petitioner was allotted seat in IVY.

6. On 18.05.2025, the Petitioner on enquiry found that IVY is a completely private hospital and that the Petitioner, having pursued all her degrees from the Government Colleges, had a preference only for the Government College and, therefore, the Petitioner rejected the seat in IVY as the reserved seat in the Respondent No. 3 Hospital, which is a government hospital, was still vacant and unallotted. On 19.05.2025, the Petitioner made a representation to the Respondent No. 1 seeking allotment of the vacant UR seat at the Respondent No. 3 Hospital to the Petitioner provided someone above her rank in the merit list did not select the said seat.

7. As there was no response from the Respondent No. 1, and since the Petitioner had rejected the seat in IVY, the Petitioner filed the present Petition praying for a direction to the Respondent Nos. 1 and 4 to allot the Petitioner the vacant seat of Radio-Diagnosis at the Respondent No. 3 Hospital against the vacant seat reserved for OBC.



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8. This Court *vide* order dated 22.05.2025 issued Notice and granted time to the learned Counsel for the Respondent No. 1 to seek instructions while listing the matter on 23.05.2025.

9. On 23.05.2025, this Court recorded the submissions on behalf of the Respondent No. 1 that as per Clause 4.6 of the Handbook Centralized Merit Bases Counselling for Admission to Post Diploma DNB Courses (2025 Admission Session), the Respondent No. 1 does not own or control any of its accredited hospitals and the reservation roster is provided by the respective State / Central / Union Territory Governments and other PSUs maintained by them. It was further submitted that the reserved seat will be allotted to the concerned category candidates only and the conversion of any vacant seat from one reserved category to another reserved category does not fall under the purview of the Respondent No. 1. In view of the same, the State of Haryana was impleaded as the Respondent No. 5 and Notice was issued while re-notifying the matter on 28.05.2025 at the top of the Board.

10. On 28.05.2025, the matter was adjourned to 29.05.2025 and on 29.05.2025, the following order was passed by this Court:

*“1. The prayer in the present petition is for direction to the respondents to convert the vacant seat of DNB (Post Diploma) Course 2025 under the category of OBC which is stated to be available in the State of Haryana in respondent no.3 hospital.*

*2. Mr. Singh, the learned counsel appearing on behalf of the petitioner submits that the petitioner is a successful candidate in the unreserved category.*

*3. The contention of the petitioner is that all the successful candidates in the Speciality of Radio Diagnosis for which the petitioner has applied, are under unreserved category and there is no successful candidate under the OBC category.*



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4. He submits that since no candidate under the OBC category is available, therefore, the seat which is available at respondent no.3 i.e. General Hospital, Sector-6, Panchkula, Haryana will remain vacant and go waste in case the same is not converted into General category and allotted accordingly.

5. In support of his contention, Mr. Singh has relied upon the judgment dated 12.01.2024 passed by the High Court of Himachal Pradesh in CWP No. 1992/2017 titled as Archana Thakur vs. State of Himachal Pradesh and Ors.

6. He further invites attention of the Court to Section 7 of the Haryana Backward Classes (Reservation in Services and Admission in Educational Institutions) Act, 2016, which provides for conversion of seats reserved for backward classes for admission in educational institutions. The relevant provision reads thus:

“7. Where the seats reserved for Backward Classes for admission in educational institutions are not filled up in any academic year due to non-availability of candidates possessing the requisite qualifications, the same shall, after the display of the final list of such admissions for that year, be made available to candidates of general categories by the educational institution.”

7. Considering that the General Hospital (respondent no.3), where the seat is available, is a Government Hospital under the management and control of Government of Haryana, this Court on 23.05.2025 had impleaded the State of Haryana as respondent no. 5 and issued notice thereto.

8. Mr. Sumit Kumar Sharma, the learned counsel has entered appearance on behalf of the State of Haryana. He submits that he has instructions to state that the matter with regard to the conversion of OBC seat available at General Hospital, Sector-6, Panchkula will be considered by the competent authority and a decision on the same will be taken within a period of one week from today. The statement is taken on record and the respondent no.5 shall remain bound by the same.

9. It is further directed that the decision taken by the respondent no.5/State of Haryana shall be communicated to the respondent no.1/NBEMS forthwith whereafter the respondent no.1 shall proceed in accordance with law.



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10. A copy of the decision shall be communicated by the respondent no.5 to the petitioner as well.

11. Liberty is also granted to the petitioner to mention the matter before the vacation judge in case circumstances so warrant.

12. Re-notify on 16.07.2025.”

11. Pursuant to the liberty granted to the Petitioner to mention the matter before the Vacation Judge in case the circumstance so warrant *vide* order dated 29.05.2025, the Petitioner has preferred CM APPL 36689/2025, (“**Application**”), which was listed before the Vacation Bench on 11.06.2025.

12. The Petitioner has submitted that after passing of the order dated 29.05.2025, on 04.06.2025, Additional Chief Secretary (Health), Government of Haryana wrote a Letter to the Respondent No. 1 stating that the seat of Radio-Diagnosis Specialty at the Respondent No. 3 Hospital falls under Central Pool (All India Quota), which is in ambit of the Respondent No. 1. Hence, the power to decide on the reservation of this seat lies with the Respondent No. 1. Along with the Letter dated 04.06.2025, the Respondent No. 5 also attached Communication dated 21.05.2025 of DGHS, Haryana addressed to the Respondent No. 1 allocating seat matrix for Post Diploma DNB (All India Quota) for Admission Session 2025 and the distribution of seats for in-service Doctor’s quota that show that the seat for Radio-Diagnosis falls under the All India Quota.

13. The Petitioner has also relied upon a Note issued by the Respondent No. 4, Union of India which provides the mode of implementation of OBC and PH reservation in 50% All India Quota PG Seats annexed as Annexure



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A-3 to the Application. As per this Note, *“In the event of exhausting of OBC Seats under All India Quota no OBC candidates can claim OBC seats. The seat if not filled for want candidate, the can be treated as with UR as in the case of SC/ST.”*

14. The Petitioner has submitted that in view of the stand taken by the Respondent No. 5 and the documents supported shared with the Communication from the Respondent No. 5, the seat reserved for OBC quota at the Respondent No. 3 Hospital belongs to All India Quota and, thus, the Respondent No. 4 is the competent authority to de-reserve the seat from OBC category to UR category, if the same remained unfilled in terms of the Note published by the Respondent No. 4.

15. It was further submitted that if no OBC candidate has availed the seat reserved for OBC, the seat should be automatically shifted to UR category as it is a matter of policy, which has been upheld by the Supreme Court and various High Courts in a catena of judgments that a medical seat should not go vacant as each seat lying vacant in an academic year is a loss to the nation.

16. It was submitted on behalf of the Petitioner that this Petition was filed immediately after denial of the seat to the Petitioner in the first round of counselling and in absence of any OBC candidate appearing for DNB PDCET (Radio-Diagnosis), the Respondent No. 4 ought to have converted this seat to UR category in the second counselling itself.

17. The learned Counsel for the Respondent No. 4 has placed on record Letter dated 10.06.2025 addressed to Respondent No. 1 requesting to make



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necessary compliance with a direction of this Court passed *vide* order dated 25.05.2025. The learned Counsel for the Respondent No. 1 on instructions stated at the hearing on 11.06.2025 that the Respondent No. 1 had not received Letter dated 04.06.2025 from the Respondent No. 5 and the Letter dated 10.06.2025 sent by the Respondent No. 4 was received only in the evening of 10.06.2025. Accordingly, *vide* order dated 11.06.2025, learned Counsel for the Respondent No. 1 was granted time to seek instructions and the matter was listed on 13.06.2025 for further hearing before the Vacation Bench.

18. On 13.06.2025, learned Counsel for the Respondent No. 1 submitted that as per the minutes of 15<sup>th</sup> Accreditation Committee Meeting (12<sup>th</sup> Governing Body) dated 09.08.2024 (“**MoM**”), it has been observed by the Respondent No. 1 that the counselling for DNB PD seats is conducted by the Respondent No. 1 after Medical Counselling Committee (MCC) counselling and, accordingly, if DNB Post Diploma seats remain vacant, the same cannot be utilized in any way. The minutes of the meeting are further stated as under:

*“In view to prevent the wastage of seats, the following is proposed.*

*Post Diploma DNB seats counseling should be conducted prior to MCC counseling. Post Diploma DNB counseling should be completed at least 1 month prior to commencement of NEET PG counseling.*

*Post Diploma DNB seats remaining vacant should be converted into DNB seats for that particular admission session and submitted to MCC for inclusion in NEET PG counseling (after approval from the concerned hospitals).*

*Decisions:*

*The committee expressed that on one hand there is requirement to*



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*increase the seats, but hundred of seats are remaining vacant for Post Diploma DNB courses.*

*The members agreed that post diploma seats should not remain vacant. The following measures to be taken to prevent wastage of seats:*

*All the rounds of post diploma counseling should be completed atleast 45 days before the commencement of post MBBS counseling.*

*The post diploma seats remaining vacant after the counseling are to be converted to post MBBS seats for that particular session only.*

*Such post MBBS seats created as explained above should be taken up for post MBBS Counseling, with the consent from the concerned hospitals.*

*Challenges, if any, in Implementation of the above are to be brought to the notice of this committee.”*

19. In view of the above, it was submitted that DNB PD seats remaining vacant after the counselling to be converted to post MBBS seats for that particular session only and such post MBBS seats created shall be taken up for post MBBS counselling with the consent from the concerned hospitals.

20. Accordingly, it was submitted by the learned Counsel for the Respondent No. 1 that the prayers sought in the present Petition and the Application cannot be granted and be dismissed.

### **ANALYSIS:**

21. The Petitioner has given the first preference for the Respondent No. 3 Hospital in the first counselling despite being fully aware that the only seat, which was available, is reserved for OBC category. It is the submission of the Petitioner that as no OBC candidate has opted for DNB PD Course for 2025 Admission Session, the said seat should be converted from OBC quota to UR quota.



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22. When the Petition was argued before this Court on 23.05.2025 and 29.05.2025, the Respondent No. 1 had taken a stand that as per Clause 4.6 of the Handbook Centralized Merit Based Counselling for Admission to Post Diploma DNB Courses (2025 Admission Session), the Respondent No. 1 does not own or control the seat at the Respondent No. 3 Hospital and the conversion of any vacant seat from one reserved category to another reserved category did not fall within the purview of the Respondent No. 1.

23. Based on the above submission, the Respondent No. 5, State of Haryana was arrayed to the Petition. On 29.05.2025, the learned Counsel for the Respondent No. 5, on instructions, submitted that the matter regarding conversion of OBC seat available at the Respondent No. 3 Hospital and the decision of the same shall be taken within a period of one week from 29.05.2025. On the basis of the said statement, the petition was re-notified on 16.07.2025 and liberty was granted to the Petitioner to mention the matter before the Vacation Judge, in case the circumstance so warrant.

24. Subsequently, *vide* Letter dated 04.06.2025, the Respondent No. 5 in compliance of order dated 29.05.2025 passed by this Court, communicated its decision that the seat of Radio-Diagnosis at the Respondent No. 3 Hospital falls under Central Pool (All India Quota). Accordingly, the power to decide on reservation to this seat is with the Respondent No. 1. In view of the same, the Respondent No. 5 requested the Respondent No. 1 to take the decision as per Central Government Guidelines followed by the Respondent No. 1 for admission. The Respondent No. 4 has also *vide* letter dated 10.06.2025 requested the Respondent No. 1 to take the decision in compliance with order dated 29.05.2025 passed by this Court in this



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Petition.

25. However, the Respondent No. 1 has submitted that the Respondent No. 1 is not authorized to convert the OBC quota seat to UR category in view of Clause 4.6 of the Handbook Centralized Merit Based Counselling for Admission to Post Diploma DNB Courses (2025 Admission Session), and the decision of the Respondent No. 1 recorded in the MoM dated 09.08.2024 as reproduced above.

26. Clause 4.6 of the Handbook Centralized Merit Based Counselling for Admission to Post Diploma DNB Courses (2025 Admission Session) provides that conversion of any vacant seat from one reserved category to another reserved category is not under the purview of the Respondent No.1.

27. The MoM dated 09.08.2024 states that if the DNB PG seats remain vacant, then the same shall be converted into post MBBS seats for that particular admission session.

28. However, none of the above deals with the conversion of OBC seats into UR quota. The Note at Annexure A-3 to the Application deals with conversion of OBC seats under All India Quota to UR category, if the same are not filled for want of candidates.

29. When the Petition was filed, it was not clear that the OBC seat allocated to the Respondent No. 3 Hospital was part of All India Quota. In fact, the Respondent No. 1 was also not aware about the same as reflected in orders dated 23.05.2025 and 29.05.2025 passed in this Petition.

30. When the Respondent No. 5, State of Haryana confirmed that the



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OBC seat allocated to the Respondent No. 3 Hospital belongs to All India Quota *vide* Letter dated 04.06.2025 addressed to the Respondent No. 1, it was clarified that the Respondent No. 1 has the power to decide the conversion of this particular seat.

31. Accordingly, the Respondent No. 5 had categorically requested the Respondent No. 1 to take the decision in accordance with the Guidelines or Policy to be followed for admission.

32. Even the Respondent No. 4 has *vide* letter dated 10.06.2025 requested the Respondent No. 1 to take the decision in compliance with order dated 29.05.2025 passed by this Court.

33. In view of the same, it is clear that the OBC seat allocated to the Respondent No. 3 Hospital is not part of the State Government Reservation Roster as confirmed by the Respondent No. 5, State of Haryana *vide* letter dated 04.06.2025 and is part of All India Quota. Further, this is not a case of conversion from one reserved category to another reserved category. In fact, this is the case for releasing the seat from a reserved category and converting the same to UR category. Hence, Clause 4.6 of the Handbook Centralized Merit Based Counselling for Admission to Post Diploma DNB Courses (2025 Admission Session), will not be applicable in the facts of the present case. The decision taken at the 15<sup>th</sup> Accreditation Committee Meeting (12<sup>th</sup> Governing Body) dated 09.08.2024 will also not be applicable, as the same pertains to DNB PD seats remaining vacant post DNB PD counselling. However, the counselling for DNB PD for 2025 Admission Session is still ongoing as confirmed by the learned counsel for the Respondent No. 1.



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34. Accordingly, the OBC seats allocated to the Respondent No. 3 Hospital for DNB PD for 2025 Admission Session should be converted to UR category by the Respondent No. 1 and be offered to all candidates including the Petitioner in order of merit, who have given preference for this seat of the Respondent No. 3 Hospital in either first or second round of counselling for the 2025 Admission Session.

35. In view of the above, the present Petition and the Application are allowed. The Respondent No. 1 is directed to convert the OBC seat at the Respondent No. 3 Hospital for DNB PD for 2025 Admission Session to unreserved category and conduct the counselling for this seat only for all the candidates, who have given preference for this seat of the Respondent No. 3 Hospital and allocate the same as per the merit list. All the pending applications, if any, are disposed of.

36. The date already fixed i.e., 16.07.2025 stands cancelled.

**TEJAS KARIA, J**  
**(VACATION JUDGE)**

**JUNE 16, 2025**

*KG*