



2026:DHC:4414-DB



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**IN THE HIGH COURT OF DELHI AT NEW DELHI**  
**Judgment reserved on: 24.02.2026**  
**Judgment pronounced on: 18.05.2026**

+ LPA 438/2025 and CM APPLs. 41843-45/2025 and 61454/2025

**NATIONAL BOARD OF EXAMINATIONS**  
**IN MEDICAL SCIENCES**

.....Appellant

Through: Mr. Kirtiman Singh, Sr. Advocate with Mr. Waize Ali Noor, Mr. Mrinal Kumar Sharma, Mr. Shashi Suman, Mr. Varun Rajawat and Mr. Zillur Rahman, Advs.

versus

**DR. ADITI PANWAR AND OTHERS** .....Respondents

Through: Mr Amarjit Singh Bedi, Mr Varun Chandiok, Ms Riya Seth, Mr Armaan Sharma, Advocates for R1  
Mr. Mukul Singh CGSC and Mr. Aryan Dhaka, Advocates for UOI, Mr. T. Singhdev, Mr. Abhijit Chakravarty, Ms. Yamini Singh, Mr. Tanishq Srivastava, Mr. Vedant Sood, Mr. Bhanu Gulati and Ms. Ramanpreet Kaur, Advs.

**CORAM:**

**HON'BLE MR. JUSTICE C. HARI SHANKAR**

**HON'BLE MR. JUSTICE OM PRAKASH SHUKLA**

**JUDGMENT**

**18.05.2026**

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**OM PRAKASH SHUKLA, J.**

1. This Letters Patent Appeal assails the impugned judgment dated 16.06.2025 passed by learned Single Judge whereby W.P.(C) 7066/2025, instituted by Respondent No. 1 herein, was allowed with a



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direction to de-reserve an Other Backwards Classes<sup>1</sup> category seat to unreserved<sup>2</sup> category in the Respondent No. 3 Hospital.

2. Briefly put, the dispute revolves around the right of Respondent No. 1, a UR candidate, to seek de-reservation of a seat in Respondent No. 3 Hospital earmarked for OBC category, on the ground that the seat having remained vacant in academic year 2025 due to lack of eligible candidates, would otherwise lapse and ought to be converted to prevent wastage.

### **FACTUAL BACKGROUND**

3. Shorn off unnecessary details, Respondent No. 1 is a practicing Radiologist who appeared for the DNB PDCET 2025<sup>3</sup> conducted by the Appellant (National Board of Examinations). Admittedly, Respondent No. 1 belongs to the UR category. The Appellant is the authority that conducts the said examination.

4. Upon securing 142<sup>nd</sup> rank in Radio-Diagnosis in the UR category, Respondent No. 1 chose Respondent No. 3 Hospital as her first preference and Ivy Health and Life Science Punjab<sup>4</sup> as the second. As per the Indicative Seat Matrix issued by the Appellant, only one seat was available at Respondent No. 3 Hospital which was reserved for the OBC category. Admittedly, Respondent No. 1 was aware that the seat belonged to OBC category and claimed that since

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<sup>1</sup> "OBC" hereinafter

<sup>2</sup> "UR" hereinafter

<sup>3</sup> Diplomate of National Board Post Diploma Centralised Entrance Test

<sup>4</sup> "Ivy Health" hereinafter



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no OBC candidate had qualified as per the results of the First Round dated 17.05.2025, the seat in Respondent No. 3 Hospital ought to be de-reserved i.e., converted to UR category.

5. However, on the same day itself, i.e., 17.05.2025, Respondent No. 1 was allotted her second preference i.e., Ivy Health, which she rejected and sought a representation on 19.05.2025 seeking allotment of the vacant OBC seat in Respondent No. 3 Hospital. Due to lack of response, Respondent No.1 approached this Court by way of a writ petition seeking allotment of the vacant seat reserved for OBCs.

6. The Appellant's stance before the learned Single Judge was that it did not have the authority to convert the OBC seat to UR quota. However, Respondent No. 4 i.e., State of Haryana, maintained that the impugned seat was part of the All-India Quota and that accordingly, the Appellant was the competent authority to de-reserve the seat. Respondent No. 5, Union of India, *vide* letter dated 10.06.2025 also directed Respondent No. 1 to take a decision in light of the learned Single Judge's order dated 29.05.2025 and "defend the case on behalf of the Ministry".

7. The Appellant placed reliance on Clause 4.6 of the Handbook of Centralised Merit Based Counselling for Admission to Post Diploma DNB Courses (2025 Admission Session)<sup>5</sup> and minutes of their 15<sup>th</sup> Accreditation Committee Meeting dated 09.08.2024<sup>6</sup>. Clause 4.6 of this Handbook stipulated that the Appellant was not authorised

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<sup>5</sup> "Handbook" hereinafter

<sup>6</sup> "MoM" hereinafter



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to convert a vacant seat reserved under one category to another reserved category. Further, the MoM indicate that if PD DNB<sup>7</sup> seats are left vacant after all rounds of counselling, then they shall be added to the pool of NEET PG<sup>8</sup> seats for that academic year to avoid wastage of medical seats.

**8.** The learned Single Judge noted that the impugned seat fell under All-India Quota. It was opined that Clause 4.6 was not applicable since the dispute did not concern conversion of the seat from one reserved category to another reserved category but to the UR quota. It was further reasoned that the MoM did not apply since it pertained to seats that remained vacant post PD DNB counselling, which was still ongoing at that time.

**9.** In light of the above, the writ petition was allowed with the direction that the impugned OBC seat be converted to UR category and offered to *all* candidates, including Respondent No. 1, in the order of merit, who indicated preference for the said seat of Respondent No. 3 Hospital in either first or second round of counselling.

**10.** Aggrieved, the present intra-court appeal was preferred by the Appellant assailing the aforementioned direction of de-reservation of the impugned seat and conducting re-counselling for allotment of the said seat.

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<sup>7</sup> Post Diploma Diplome of National Board

<sup>8</sup> National Eligibility cum Entrance Test for Postgraduate



## **SUBMISSIONS**

**11.** Mr. Kirtiman Singh, learned Senior Counsel on behalf of the Appellant vehemently opposed the impugned judgment. It was submitted that Respondent No. 1 wrongfully applied for the OBC quota seat since she belonged to UR category and that since the prospectus did not have any provision for de-reservation, there existed no right to claim de-reservation or conversion, especially considering that Respondent No. 1 was already allotted a seat in Ivy Health. It was also submitted that the direction in the impugned judgment was inherently incorrect since it would entitle all candidates, UR or reserved to be eligible for an OBC quota seat.

**12.** It was argued that de-reservation was inconsistent with the MoM wherein it was decided that seats remaining vacant after all rounds of counselling, would be added to the NEET PG pool. Therefore, prematurely de-reserving before all rounds of counselling would reduce the NEET PG pool. It was clarified that since the seats were available all over the country, the OBC reservation would be as per the Central list and not the State list. It was further submitted that the Appellant does not change the nature of the seat, only sends it to the NEET PG pool, then the Union may treat them as per their prerogative.

**13.** Mr. Singh contended that the Appellant did not have the authority to de-reserve the impugned seat since it did not own or control any of the hospitals/medical colleges by placing reliance on Clause 4.6 of the Handbook. It was argued that the learned Single



Judge wrongly construed Clause 4.6 to apply only to cases which involve conversion from one reserved category to another reserved category and not to UR category. It was submitted that the State provides eligibility criteria for admission in medical colleges, including the seat matrix. Reliance was placed on *State of Rajasthan & Ors. v. Yogesh Kumar Saini & Ors.*<sup>9</sup>, *Neil Aurelio Nunes (OBC Reservation) & Ors. v. Union of India & Ors.*<sup>10</sup>, *D.N. Chanchala v. State of Mysore & Ors.*<sup>11</sup> and *Kumari Chitra Ghosh & Anr. v. Union of India & Anr.*<sup>12</sup>. Reliance was also placed on Clauses 3.27 and 3.28 of the Handbook to contend that Respondent No. 1 was not eligible to participate in the mop-up/final round of counselling since she was already allotted a seat in the first round.

**14.** The learned Senior Counsel submitted that the direction of the learned Single Judge regarding offering the impugned seat to all eligible candidates would open floodgates since some of the candidates have already joined their allotted seats and therefore vacating their seats at this belated stage would cause a cascading effect. It was submitted that practical issues would arise since the candidates who opted for the impugned seat would be under OBC quota and hence, instead of considering them, 141 UR candidates, higher in merit than Respondent No. 1, would be considered for the said seat. It was also argued that counselling process cannot be conducted endlessly, as also held in *Arvind Kumar Kankane v. State of U.P. & Ors.*<sup>13</sup>, *Dr. Astha Goel & Ors. v. Medical Counselling*

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<sup>9</sup> 2020 SCC OnLine Raj 1110: (2020) 3 RLW 1974

<sup>10</sup> (2022) 5 SCC 1

<sup>11</sup> 1971 (2) SCC 293

<sup>12</sup> (1969) 2 SCC 228

<sup>13</sup> (2001) 8 SCC 355



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*Committee & Ors.*<sup>14</sup>, *Neelu Arora (Ms) & Anr. v. UOI & Ors.*<sup>15</sup> and *Supreet Batra & Ors. v. UOI & Ors.*<sup>16</sup>.

**15.** The learned Senior Counsel brought the attention of this Court to order dated 28.07.2025, particularly paragraph no. 7 to highlight the issues in controversy and also submitted that Respondent No. 4 (Union) did not take a clear stance before the learned Single Judge as to the Appellant's authority to de-reserve the impugned seat.

**16.** *Per contra*, the learned Counsel for Respondent No. 1 submitted that the impugned judgment warranted no interference by this Court. It was highlighted that it is a settled principle that medical seats ought not to be carried forward and are alive for that particular academic session, as also recognised in Appellant's Handbook. Further, that since no OBC candidate had qualified in Radiology, as evident from the Revised Allotment lists released by the Appellant, it was submitted that the seat be converted to UR quota to avoid wastage. The learned Counsel emphasised that reserved seats for PD DNB in Radio-Diagnosis, both State and All-India quota, were going vacant for several years and hence, the seat ought to be de-reserved. Reliance was placed on the 'Note' of Union of India which stipulates that OBC seats remaining vacant shall be converted to UR. It was emphasised that the said Note was not disputed by the Appellants. It was also submitted that the Appellants, for their other examination, apply the policy of conversion even after two rounds of counselling and that institutions such as AIIMS, PGI etc. also provided for de-

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<sup>14</sup> (2022) 19 SCC 695

<sup>15</sup> (2003) 3 SCC 366

<sup>16</sup> (2003) 3 SCC 370



reservation of seats.

**17.** It was submitted that MoM had no bearing on the present controversy and the learned Counsel called for a harmonious reading of the MoM. The following contentions were advanced in that regard:

- (i) MoM was not part of initial prospectus and hence could not be relied upon now.
- (ii) The object of the MoM is that no medical seat should go unfilled. However, there is misconstruction by Appellant that “all rounds of counselling” does not mean three rounds but rather, reference is made in spirit that the seats must be offered to all candidates once. Thus, the last round of counselling would include conversion and even after that if there are no takers, the seat may be added to NEET PG pool.
- (iii) MoM do not proscribe conversion of seats to UR category. In fact, MoM pertains to *all* seats and not just reserved seats, which implies that if even after converting the seats, they aren't filled, they should be transferred to the NEET PG pool.
- (iv) Appellant's contention is flawed since if all vacant seats are to be transferred, this means that even reserved seats will be transferred to NEET PG UR quota.
- (v) PG DNB courses are for candidates with clinical experience seeking higher qualification and not fresh MBBS graduates, hence the conversion to NEET PG pool must be the last resort after considering *all* diploma-qualified candidates. To do otherwise would frustrate the object behind PDCET pathway.



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18. The learned Counsel placed reliance on *Era Lucknow Medical College & Hospital v. State of U.P.*<sup>17</sup>, *Archana Thakur v. State of Himachal Pradesh & Ors.*<sup>18</sup>, *Nihila P. P. v. Medical Counselling Committee (MCC) & Ors.*<sup>19</sup> and *State of U.P. & Anr. v. Bhavna Tiwari & Ors.*<sup>20</sup>

### ANALYSIS

19. I have heard both the parties and perused the material on record.

20. This Court, *vide* order dated 28.07.2025, stayed the operation of the order passed by the learned single judge and meanwhile directed impugned seat would not be transferred to the NEET PG pool.

21. It is a settled law that an LPA is an appeal in principle and that the scope of interference is strictly correctional in nature. An appellate court may only intervene if the impugned judgment suffers from a patent error.<sup>21</sup> Being aware of the scope of interference available, I shall deal with this matter, keeping in the mind the settled principles of interference in an LPA.

22. At the outset, it is important to note that Respondent No. 1 was a UR candidate and had opted for an OBC seat in Respondent No. 3

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<sup>17</sup> 2024 SCC OnLine SC 3888

<sup>18</sup> 2018:HHC:652-DB; CWP No. 1992 of 2017, order dated 12.01.2018

<sup>19</sup> 2021 SCC OnLine SC 3283

<sup>20</sup> 2025 SCC OnLine SC 1357

<sup>21</sup> *Baddula Lakshmaiah v. Sri Anjaneya Swami Temple*, (1996) 3 SCC 52; *Delhi Transport Corporation v. Shri Bahadur Singh*, 2026:DHC:1912-DB



Hospital. It was for this very reason that she was not allotted the said OBC seat in the Respondent No.3 Hospital (her first preference), as also admitted in her representation dated 19.05.2025.

**23.** I also note that she was allotted a UR seat in Ivy Health (her second preference) however, she declined the said allotment and instead submitted the aforesaid representation dated 19.05.2025 for de-reservation of the OBC seat at Respondent No. 3 Hospital, on the ground that Ivy Health is a private hospital and the vacant seat would otherwise lapse for want of qualified OBC candidates in the relevant academic year.

**24.** On the other hand, the Appellant contends that opting for a reserved seat by a UR candidate is *void ab initio*, and in any case, the said seat could not be allotted to Respondent No. 1 as per the Handbook as she had already rejected her allotment of seat in Ivy Health.

**25.** The issue is not whether Respondent No.1 validly applied and opted for the OBC seat, or whether such a seat could be offered to her as per the Handbook. Rather, the issue pertains to de-reservation of an OBC seat, which according to this Court, is a matter of wider import with far reaching ramifications.

**26.** Accordingly, the issues raised by the Appellant relating to the Respondent No.1, need not detain us further.

**27.** At this juncture, it would be in best interest that I enumerate the



issues which fall for our consideration in this appeal, as follows:

- (i) Whether the learned single was correct in de-reserving the impugned seat for the PD DNB courses, which was otherwise lying vacant due to non-availability of any eligible OBC category candidate, and offering the same to eligible unreserved candidates, if any?
- (ii) An ancillary question would arise as to the competent authority to give effect to such de-reservation, if required.

**28.** Needless to say, both these issues must be evaluated in accordance with the material placed on record concerning the process of admission for DNB PDCET 2025, the MoM of the Appellant and the applicable law.

**29.** There is no doubt that reservation is not against equality, reservation is indeed a tool for social justice. Article 15(5) of the Constitution of India enables the State to make special provisions for the advancement of socially and educationally backward classes for admission in educational institutions. Notably, there is no distinction carved out between Under Graduate and Post Graduate courses.

**30.** No doubt, sometimes constitutional courts have remarked that there cannot be reservation in super speciality courses. However, neither the Hon'ble Supreme Court nor this Court has held in any case that reservations in super speciality courses are impermissible altogether. Additionally, it is nobody's case before us that reservation



is not permissible altogether.

**31.** Thus, it was in this background that the sole seat of DNB PDCET (Radio-Diagnosis) in the Respondent No.3 Hospital was reserved for OBC category candidates.

**32.** Adverting to the issue of whether this seat could be de-reserved or not. I find that in this regard, Respondent No. 1 claims that the OBC seat ought to be de-reserved to prevent wastage since there were no eligible OBC candidates. It relies on a 'Note' purportedly issued by Respondent No. 4 (UOI), titled "*The mode of implementation of OBC and PH Reservation in 50% All India Quota PG Seats*". This note provides that, "*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, they can be treated as with UR as in the case of SC/ST.*"

**33.** However, a plain reading of this 'Note' reveals that it is not accompanied by any covering letter or signatory or attestation by the relevant authority. Further, upon a closer examination, this 'Note' states, "*This proposal will be tried this year during the PG counseling-2009. Problems and difficulties if any arises during implementation of this Scheme can be studied and evaluated over a period of 2-3 years so that improvements of the 'Scheme' can be made*". Arguendo, considering this 'Note' to be authoritative, it is only a proposal to be adopted for 2009 PG counselling and hence, not binding. Thus, the said "Note" does not come to the rescue of the Respondent No.1, however the ground of wastage of seats as argued



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by the learned Counsel for the Respondent No.1 still remains.

**34.** Moving forward, the Hon'ble Supreme Court, in catena of judgments including *Era Lucknow Medical College (supra)*, has held that non-filling of medical seats amounts to national wastage and has, from time-to-time, devised various mechanisms for filling these medical seats, including even extending the last date of admission, which is ordinarily considered to be sacrosanct.

**35.** This Court does not wish to burden this judgment with a discussion of these precedents. However, it remains evident that the Supreme Court has, on several occasions, intervened to minimise the wastage of medical seats in our country, keeping in view the abysmal doctor-population ratio.

**36.** Interestingly, the opposing parties before us premise their case on the proposition that medical seats need not go vacant, though they adopt different approaches to achieve this result. Respondent No. 1 contends that the seat ought to be de-reserved to prevent its lapse, and the Appellant contends its addition to the NEET PG pool.

**37.** Therefore, apparently there is no quarrel as far as the proposition of law is concerned relating to wastage of medical seats.

**38.** Thus, the issue which boils down to the eye of a needle is whether the OBC category seat should be de-reserved as proposed by Respondent No. 1, as it is lying vacant in view of non- availability of



any OBC category candidate or be converted for NEET-PG as contested by the Appellant.

39. At this juncture, it would be helpful, if I would refer to some of the authorities rendered by the apex court from time to time. The same would help in understanding whether de-reservation of any vacant seat is itself permissible in law or not.

40. The constitutional bench of the Supreme Court in *Ashoka Kumar Thakur v. Union of India*<sup>22</sup> opined that remaining vacant OBC seats be reverted to general category. It was held that after excluding creamy layer and applying reasonable OBC cut-off norms, if OBC seats still remain vacant, they may be filled by general category candidates. The relevant observation highlighting these findings are reproduced below:

**“Per Dr. Arijit Pasayat, J. (For himself and C.K. Thakker, J.)**

*“358. To sum up, the conclusions are as follows:*

*...(3) The Central Government shall examine as to the desirability of fixing cut-off marks in respect of the candidates belonging to the Other Backward Classes (OBCs). By way of illustration it can be indicated that five grace marks can be extended to such candidates below the minimum eligibility marks fixed for general categories of students. This would ensure that quality and merit would not suffer. If any seats remain vacant after adopting such norms they shall be filled up by candidates from general categories.”*

**Per Dalveer Bhandari, J.**

*“629 [Ed. : Para 629 corrected vide Official Corrigendum No. F.3/Ed.B.J./41/2008 dated 6-6-2008.]*

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<sup>22</sup> (2008) 6 SCC 1



*Finding 68% reservation in educational institutions excessive, Balaji [AIR 1963 SC 649 : 1963 Supp (1) SCR 439] , at SCR pp. 470-71 admonished States that reservation must be reasonable and balanced against other societal interests. States have*

*“to take reasonable and even generous steps to help the advancement of weaker elements; the extent of the problem must be weighted, the requirements of the community at large must be borne in mind and a formula must be evolved which would strike a reasonable balance between the several relevant considerations” (AIR p. 663, para 34).*

*To strike such a balance, Balaji [AIR 1963 SC 649 : 1963 Supp (1) SCR 439] slashed the impugned reservation from 68% to less than 50%. Balaji [AIR 1963 SC 649 : 1963 Supp (1) SCR 439] thus serves as an example in which this Court sought to ensure that reservation would remain reasonable. We heed this example. There should be no case in which the gap of cut-off marks between OBC and general category students is too large. To preclude such a situation, cut-off marks for OBCs should be set no lower than 10 marks below the general category. To this end, the Government shall set up a committee to look into the question of setting the OBC cut-off at not more than 10 marks below that of the general category. Under such a scheme, whenever the non-creamy layer OBCs fail to fill the 27% reservation, the remaining seats would revert to general category students.”*

*(emphasis supplied)*

**41.** It could be understood from the above reading that if eligible non-creamy layer OBC candidates are not available, the leftover reserved seats should not remain empty and they should be converted to unreserved category.

**42.** The issue of de-reservation of OBC category candidate and the decision in *Ashok thakur* (supra) was elucidated by supreme court in



***P.V. Indiresan(2) vs. Union of India and Ors.*** <sup>23</sup> The Supreme Court held that if OBC seats remain vacant after applying the applicable qualifying norms, such seats may be filled by candidates from the unreserved category. The relevant para capturing these finding is reproduced below:

*“54. We, therefore, dispose of this appeal, affirming the decision dated 7-9-20103 of the learned Single Judge of the High Court, subject to the clarifications/observations above, and subject to the following conditions:*

*(i) In regard to the admissions for 2011-2012, if any Central educational institution has already determined the "cut-off marks" for OBCs with reference to the marks secured by the last candidate in the general category, and has converted the unfilled OBC seats to general category seats and allotted the seats to general category candidates, such admissions shall not be disturbed. But where the process of conversion and allotment is not completed, the OBC seats shall be filled by OBC candidates.*

***(ii) If in any Central educational institution, the OBC reservation seats remain vacant, such institutions shall fill the said seats with OBC students. Only if OBC candidates possessing the minimum eligibility/ qualifying marks are not available in the OBC merit list, the OBC seats shall be converted into general category seats.***

*(iii) If the last date for admissions has expired, the last date for admissions shall be extended till 31-8-2011 as a special case, to enable admissions to the vacant OBC seats.”*

**43.** The proposition laid down in ***P.V. Indiresan(2)*** (supra) that a reserved seat should not remain vacant merely because it was originally earmarked for a reserved category, was also followed by the learned single judge of this court in ***Sanchi Dilavri vs. University Of Delhi and Anr***<sup>24</sup>. The learned single judge accepted the reasoning that after non-availability or exhaustion of all the eligible reserved

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<sup>23</sup> (2011) 8 SCC 441

<sup>24</sup> 2019 SCC OnLine Del 10879



category candidates, the seat can be considered for unreserved category so that it is not wasted. The relevant observations for the same are as follows:

*“39. The other argument advanced by Mr. Rupal that the petitioner cannot be admitted to the EWS category against a seat reserved for the EWS category would have had merit if the students in the EWS category were available for the admission. The EWS category seat is lying vacant.*

*40. It is only when Mr. Rupal was asked to inform the Court as to whether any seat was available in the morning session was this information supplied to the Court.*

*41. Insofar as the Division Bench judgement in Pankaj Kumar Tiwari case is concerned, the same has no bearing on the point in issue. The point in issue is: as to whether an EWS seat could be accorded to a General category candidate.*

*42. Pankaj Kumar Tiwari was a case wherein the petitioners alleged that there were irregularities in the admission process and therefore directions were sought for the constitution of an independent panel under the aegis of the Court for investigation of the irregularities and, furthermore, as a consequential relief, cancellation of admission of candidates who are found ineligible. No such issue arises in the instant case. Hence, the judgement is distinguishable.*

***43. Ordinarily the reserved seat should go to a candidate who falls in such a category. If, however, no candidate is available in the reserved category, the seat ought not to be wasted only because the person seeking admission belongs to the General category.***

***44. This following principle is articulated by the Supreme Court in the matter of P.V. Indiresan v. Union of India, (2011) 8 SCC 441:***

***“54. We, therefore, dispose of this appeal, affirming the decision dated 7-9-2010 [Apurva v. Union of India, WP (C) No. 4857 of 2010 order dated 7-9-2010 (Del)] of the learned Single Judge of the High Court, subject to the clarifications/observations above, and subject to the following conditions:***

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xxx

xxx



(ii) If in any Central educational institution, the OBC reservation seats remain vacant, such institutions shall fill the said seats with OBC students. Only if OBC candidates possessing the minimum eligibility/qualifying marks are not available in the OBC merit list, the OBC seats shall be converted into general category seats. ...”

**44.** In *Dr. Sandeep Dhama v. State & Anr.*,<sup>25</sup> the single bench of this court through Manmohan, J (as his lordship then was), approved the method where a reserved “roster seat” in PG medical counselling is vacated, the method was that it must first be offered to candidates of the same reserved category in order of merit till category are exhausted, and only thereafter can the seat be converted in terms of Government of India Rules or guidelines. The relevant observation of the same are as follows:

“5. I had requested Mr. Sanjay Jain, learned Additional Solicitor General to look into the matter. I am informed that Mr. Jain along with Mr. Jasmeet Singh, CGSC held meetings with the petitioner as well as Mr. Tanoobhav Singhdev, learned counsel for Medical Council of India and Mr. Vaibhav Kalra, learned counsel for respondent no. 2-University. Mr. Jain has submitted that the method of counselling adopted by the respondent no. 2 to add the surrendered seat in the general pool for the next round of counselling, upon the same being surrendered by a reserved category student, is clearly not the best method for counselling, since a seat which is once offered to a reserved category student as per the roster point and is subsequently surrendered, must be offered to the next same category student as per merit in the next round of counselling. If the same is accepted then the baton rests at the last person selected in the category, in question and if the same is not accepted the baton continues to be passed till the last eligible candidate of the same category accepts the offer. In the event the last such candidate also declines to accept the seat to surrendered, then it would revert to the General category from the roster point

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<sup>25</sup> 2015:DHC:3408



next to the first such reserved category candidate, who had refused to accept such surrendered seat in the second round.

6. The counsel appearing for the respondent no. 2-University had fairly stated that the University was open to revisit the method of counselling as adopted by them. 7. Pursuant to the order dated 23rd December, 2014 passed by this Court, respondent no. 2-University had filed an additional affidavit on 3rd February, 2015 placing on record copy of the minutes of the meeting dated 13th January, 2015 and revised procedure for counselling for Post Graduate Medical Course being conducted by the University 2015-16. The relevant paragraphs 3 and 4 of minutes of meeting are reproduced as under:-

“3. In case, no vacancy arises on account of withdrawal or otherwise as explained above, after the first counselling, the second counselling will be conducted only for the candidates who had registered but were absent or not opted/allotted any seat during the first counselling in the order of CET merit/rank and only the left over seats of first counselling will be offered to such candidates. The second counselling will start from the next roster point, at which first counselling was closed.

4. In case of vacancy arises on account of withdrawal or otherwise after the first counselling, the following procedure will be adopted.

“From the allotted seats, from whatever roster point, the vacancy has arisen, in any particular category, then the seat shall be offered to the same category eligible candidate merit rank-wise till all eligible candidates of that category are exhausted, after which the conversion of seat shall be done as per GOI rules.”

8. The said minutes of the meeting were forwarded to the Director General Health Services vide letter dated 22nd January, 2015 for their concurrence and/or suggestions. The Director General Health Services gave its concurrence vide letter dated 5th February, 2015 which was taken on record on 11th February, 2015.

9. Subsequently, vide order dated 11th February, 2015 the respondent no.2-University was directed to file a supplementary affidavit in order to place on record an illustration to explain the procedure for conducting second round of counselling and matter was adjourned to 20th February, 2015. In compliance thereof, the



respondent no.2-University placed on record the illustration vide supplementary affidavit dated 18th February, 2015.

10. However the Court was not satisfied with the contents of the supplementary affidavit dated 18th February, 2015, accordingly, the respondent no. 2-University was directed to file another appropriate affidavit in terms of order dated 20th February, 2015. In compliance of the said order, another supplementary affidavit was filed by the respondent no.2-University on 27th February, 2015 amending para 3. The amended para 3 is as under:-

“3. That if pursuant to the first round of counselling, any student who vacates the seat allotted, during the first round of counselling then the second round of counselling will start from the Roster Point at which the first withdrawal comes from. It is further submitted that while conducting the second round of counselling the category of the student vacating the seat shall be considered and all those students who belong to the said category shall be called first merit-wise and once the list of such category of students is exhausted, the seat shall be converted in terms of the Government of India Rules i.e. if a student who was allotted a seat at Roster Point 85 in the category of OBC, vacates the seat after the first round of counselling, the second round of counselling will start from roster point 85. It is further submitted that while filling up Roster Point 85, all students belonging to the OBC category who were allotted the seat at the various roster points after roster point 85 (for example at roster point 90, 95) during first round of counselling shall also be called and offered the said vacated seat in the second round of counselling. It is further clarified that before calling all the OBC candidates who were allotted seat during first round of counselling i.e.90 and 95, the vacated seat shall first be offered to OBC candidate who is higher in the OBC merit list than the one who was allotted the seat at Roster Point 85 as per their CET ranking but had not opted for any seat in the first round of counselling. In case he accepts the seat then the second round of counselling shall start from Roster point 121 when the first round of counselling ended at roster point 120, however if he does not accept the seat then the seat shall be offered to the OBC candidate who come after the Roster Point 85 i.e. Roster Point 90 of 95 till all the OBC students are called and offered the



seat. If none of the students belonging to OBC category accepts the said seat, the said seat shall thereafter be converted in terms of the Government of India guidelines. However, in case, any OBC candidate who was already allotted a seat in first round of counselling accepts the said seat, the second round of counselling shall continue from the next roster point i.e. Sl.No. 86 but in case the said vacated seat is accepted by an OBC candidate who was not allotted any seat in the first round of counselling then the second round of counselling shall continue from roster point 121.”

11. The counsel for Union of India sought time to look into the affidavit filed by the respondent No.2 University. Thereafter the respondent No.2 has filed/placed on record another affidavit dated 9th April, 2015 further amending the para 3 of the additional affidavit the relevant portion of the amended para 3 is as under:-

“3. That if pursuant to the first round of counselling, any student who vacates the seat allotted, during the first round of counselling then the second round of counselling will start from the Roster Point at which the first withdrawal comes from. It is further submitted that while conducting the second round of counselling the relevant category of the student vacating the seat shall be considered and all those students who belong to the same category shall be called after the vacated position on the basis of their placement in the merit list of the relevant category. Once the list of such category of students is exhausted, the seat shall be converted in terms of the Government of India Rules. For example, if a student who was allotted a seat at Roster Point 85 in the category of OBC, vacates the seat after the first round of counselling, the second round of counselling will start from roster point 85. It is further submitted that while filling up Roster Point 85, all students belonging to the OBC category who come after the student who was offered/allotted the seat at Roster Point 85, will be called merit wise irrespective of whether they were allotted or offered the seat during first round of counselling or not (for example at roster point 90, 95, 100, 119) during second round of counselling till all the OBC students are called and offered the seat. If none of the students belonging to OBC category accept the said



seat, the said seat shall thereafter be converted in terms of the Government of India guidelines.

In case, any OBC candidate who comes in the merit list after the student at Roster Point 85 who did not opt for the seat offered to him during the first round of counselling but is higher in the merit than the student who was allotted the seat on the next roster point during first round of counselling (i.e. 90, 95, 100....) then that student shall be offered the seat so vacated prior to the such student who was already allotted the seat on the next roster point in terms of merit. If such a student who was offered a seat but he did not opt for the seat accepts the vacated seat the second round of counselling shall proceed from roster point 121. However, if he does not accept the seat the procedure as mentioned below shall be adopted.

In case, any OBC candidate who has already been allotted a seat in first round of counselling accepts the said seat vacated by the OBC candidate for e.g. at roster point 90, the seat of the roster point 90 now vacated shall be offered to the next OBC candidate, i.e., 95. If 95th accepts the offered seat, then the seat of the 95th Roster point shall be offered to student at Roster Point 100. If 100th accepts the offered seat, then the seat of the 100th Roster Point shall be offered to the student at Roster Point 119. Since the student at Roster Point 119 is the last selected candidate in the first round of counselling in the said category the seat so surrendered by him shall be offered to the next OBC candidate as per merit. If the next student as per merit, accepts the seat then the second round of counselling will proceed from Roster Point 121 as the first round of counselling ended at Roster Point 120. **However, if he refuses to accept the seat, the said seat shall be offered to the next OBC in the merit list till such time the said seat is accepted by an OBC candidate. However, if no OBC candidate accepts the seat surrendered by 119, then it shall be converted in terms of Government of India Guidelines and shall be offered to a student of such converted category next on the merit list, irrespective of him being allotted a seat at a lower roster point wise in the first round of counselling.**



That if student at roster point 90 refuses/rejects the stream vacated at the roster point 85 then the same shall be offered to student at Roster Point 95 and so on (100, 119..... till the last OBC candidate merit wise) and in case any student accepts the vacated stream, the procedure as above shall continue. However, if the seat is accepted by a student who was not allotted any seat in the first round of counselling, the second round of counselling shall begin from roster point 121 as the first round of counselling ended at 120.”

**12. The said method of counselling as contained in the affidavit dated 9th April, 2015 filed by respondent no. 2-University, elucidated in paragraph 11 of this order is the most fair and transparent method of granting admissions to the various Post Graduate Medical courses of respondent no. 2 from academic year 2015-16”.**

**45.** Further, in *Archana Thakur (supra)*, a Division Bench of the Himachal Pradesh High Court directed de-reservation of remaining vacant medical seats. The relevant excerpt is thus:

*“6. The moot issue involved in this writ petition is as to whether in the admission process, which is initiated by respondent No. 2, in case sufficient number of candidates belonging to SC and ST categories are not available and the seats are lying vacant, whether these seats can be filled up from amongst the candidates of general category, who otherwise are eligible for admission, as per the merit secured by them in the entrance examination or the seats should be allowed to remain unfilled?”*

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*8. It is common knowledge that seats available in various academic courses in colleges and universities are far below the number of applicants. This obviously means that seats are at a premium and all efforts should be made to ensure that as far as possible, the seats are not wasted. It is relevant to refer to the judgment of Hon'ble Supreme Court in Charles K. Skaria and others Vs. Dr. C. Mathew and others, (1980) 2 Supreme Court Cases 752, in which Hon'ble Supreme Court has observed that welfare-oriented judicial process must be constructive in its objective, must be geared to order as its goal and must pave the way for resultant contentment.*



9. *It is not a disputed factual position that vacant seats belonging to reserve category even in courses like MBBS, are not allowed to remain unfilled. A seat which is reserved for Scheduled Caste category, is firstly offered to a candidate belonging to Scheduled Tribe category if it is not filled up by a Scheduled Caste candidate and if the seat even after being offered to Scheduled Tribe candidate remains unfilled, same is thereafter offered on merit to open category candidate. This factual position could not be disputed even by the State during the course of arguments.*

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13. *Accordingly, we dispose of this petition with the direction to respondents No. 1 and 2 that for academic Sessions necessary instructions be imparted to the effect that vacant reserved seats meant for SC and ST categories in educational institutes including Schools, Colleges and Universities, which remain unfilled after exhausting the list of available and eligible SC and ST candidates, should be thereafter offered and filled from amongst eligible candidates from open category on the basis of merit. We clarify that in case any cut off limit has been fixed, then only those candidates of open category should be admitted against the vacant seats, who have gained marks at par with the cut off limit.”*

*(emphasis supplied)*

46. It may be kept in mind that generally the apex court has proscribed de-reservation in direct recruitment, the same can be inferred from the judgment of Supreme court in ***Post-graduate Institute of Medical Education and Research v. K.L Narasimhan***<sup>26</sup>. However, in the present case, this court is concerned with the reversion of Unfilled reserve seats of OBC category in educational admissions, because of non-availability of any eligible OBC category candidates and not any sort of recruitment. Thus, in light of the ***Ashok Thakur*** (supra), ***P.V. Indiresan*** (2) (supra), ***Sanchi Dilavri*** (supra), ***Dr. Sandeep Dhama*** (supra) and ***Archana Thakur*** (supra), I do not find any specific bar or mandate which proscribes reversion of

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<sup>26</sup> (1997) 6 SCC 283



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unfilled OBC category seat to unreserved category, in times of non-availability of any OBC category candidate in medical admissions.

**47.** Thus, from the various authorities mentioned above, it is clear that the courts are not alien from converting the vacant reserved seats to unreserved category, where there is non-availability of eligible reserved candidates.

**48.** Although one can still argue that there is no statutory provision or executive mandate which requires the court to de-reserve or there is no binding law as such which would automatically require conversion of a reserved DNB PDCET seat into unreserved. However, in the facts and circumstances of this case, according to me, offering the seat to eligible unreserved category candidate after duly placing them upon the eligible OBC candidate would be the most fair and transparent option and would be in line with the various authorities mentioned above.

**49.** Clearly, the courts in our country have stressed from time to time that medical seats should not be wasted. There is no doubt that reservation as a constitutional right be given full opportunity but once there is no eligible candidate available, wasting the seat would not serve the purpose of reservation.

**50.** Leaving the seat vacant would not benefit reserved category, because no eligible candidate is available, neither it would benefit the public. Therefore, in these circumstances, once there is no eligible reserved candidate available, wastage of seat would lead to



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obstruction of public interest.

**51.** Medical seats especially in government universities are a scarce public resource in our country, as the alternative lies in private universities, which are exceptionally costly. In these circumstances, converting the seat, in absence of any explicit bar, is clearly beneficial.

**52.** Additionally, if the path of transferring the seat to NEET PG pool is followed, that would run contrary to the very basic reason as to why these seats were created in the first place i.e. To train these individuals, specifically those qualified in that particular field, for that specific training course.

**53.** Thus, the creation of any seat in the specialised or super specialised courses is to train eligible people for that very course, if the seat is transferred to some other pool or category that very purpose of existence of that seat gets defeated.

**54.** In the same breath, it would not in any way mean that the seats of reserved category people are taken away, as the seats are not being converted because of denial of reservation to the reserved category, the seat are being converted because no eligible reserved candidate was anyways available after proper efforts.

**55.** This explains the reason why the supreme court adopted a balance approach in *P.V. Indiresan (2)* (supra) and *Ashok thakur* (supra). The supreme court adopted an approach where there is to first



fill the vacant seat with the OBC category candidates only and only if OBC candidates possessing minimum eligibility are not available, the seats can be converted to unreserved category candidates, if any.

**56.** This approach makes sure that seats are not taken away from reserved category candidates and given to unreserved candidates. Additionally, it makes sure that the decrease of seat in totality, if any, happens due to non-availability of any eligible candidate and not because of denial of reservation to the Unreserved category.

**57.** Be that as it may, I also must say that, in any circumstance, the conversion should not be used as a tool to defeat reservation. The reservation in all forms must be respected and ensured, the conversion should only be done in exceptional circumstance, where there are no reserved category candidate available, and to prevent wastage.

**58.** Having said that, I shall now proceed to deal with submissions raised at the bar.

**59.** Much reliance has been placed by the Appellant on the MoM to buttress their argument that the said DNB PDCET (Radio-Diagnosis) seat has to be converted into a NEET-PG seat. We find it appropriate to reproduce the relevant excerpt of the MoM as follows:

*“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 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.”*

**60.** The abovementioned MoM clarifies the objective of the Appellant to prevent wastage of seats. It is made out that PD DNB counselling is to be concluded a month prior to that of NEET PG counselling so that vacant seats, if any, be added to the latter pool.

**61.** According to this Court, from a plain reading of the MoM itself, it is clear as day that the Post Diploma<sup>27</sup> seats can be converted only after all the rounds of counselling are over and that it should be

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<sup>27</sup> “PD” hereinafter



completed 45 days prior to the start of NEET-PG counselling, which clarifies that in all circumstances, the left-over PD seats are to be converted and should not remain vacant. Thus, I have no hesitation in holding that the impugned seat for the session 2025 could have been very much de-reserved to UR category, and accordingly offered to meritorious candidates and in case, there were still vacant seats due to any reasons, they could be converted into a NEET-PG seat as per the MoM. In the present case, at the time when the impugned judgment was rendered, counselling for PD DNB was ongoing, hence, there was no scope to fast-track the said seat, so as to countenance its conversion into a NEET PG Counselling seat.

**62.** The next ancillary question, which crops up is as to which authority was entrusted to de-reserve the said seat. In this regard, I deem it fit to reproduce Clause 4.6 of the Handbook as follows:

*“4.6. NBEMS does not own or control any of its accredited hospitals. NBEMS neither employs a candidate nor itself makes any payment /stipend to the candidate. Reservation status of DNB seats at a particular institution/medical college is provided by the State /Central/ UT Governments and /PSU/ Railway Board/ESIC etc. only based on the reservation roster maintained by them. NBEMS does not own, possess or fund any seat. Reserved seats will be allotted to the concerned category candidates only. Candidates of reserved category can opt for either reserved seats earmarked for them or unreserved seats in order of their merit. The conversion of any vacant seat from one reserved category to another reserved category does not falls within the purview of the NBEMS.”*

**63.** From a plain reading of the above Clause, it is made out that the Appellant does not own or control any seat in the accredited colleges. Further, it is also made out that what is proscribed is the conversion of



a vacant seat from one *reserved* category to another *reserved* category; it is silent on conversion to the UR category. No doubt, in view of the fact that the Appellant does not own, possess or fund any seats, it can be well argued that the Appellant has no authority to reserve or de-reserve. However, while I have held that there is no impediment for de-reservation of the seats from OBC to UR, this Court finds that the learned Single Judge's direction to de-reserve the OBC seat after taking into account the denial of Respondent No. 5 (State of Haryana) and the affirmative direction of Respondent No. 4 (UOI) to the Appellant is fallacious, inasmuch as it is made out from the seat distribution matrix prepared by Respondent No. 5 that Respondent No. 3 Hospital had only one seat which fell under OBC category, and that seat was part of the All-India Quota. It is also evident from the same that seats allotted to All-India Quota would be governed as per the Central Reservation Policy.

**64.** As far as the Central Reservation Policy is concerned, this Court finds the Central Educational Institutions (Reservation in Admission) Act, 2006, particularly Section 4 to be relevant for the adjudication of the present dispute. It is reproduced thus:

*“4. Act not to apply in certain cases. —The provisions of section 3 of this Act shall not apply to—*

\* \* \*

*(b) the institutions of excellence, research institutions, institutions of national and strategic importance specified in the Schedule to this Act:*



*Provided that the Central Government may, as and when considered necessary, by notification in the Official Gazette, amend the Schedule;*

*(c) a Minority Educational Institution as defined in this Act;*

*(d) a course or programme at high levels of specialisation, including at the post-doctoral level, within any branch of study or faculty, which the Central Government may, in consultation with the appropriate authority, specify.*"

*(emphasis supplied)*

**65.** The Act provides for reservation in admission for students belonging to the Scheduled Castes, the Scheduled Tribes and OBCs. Section 4(d) specifically entails that the said Act is not to apply in certain cases, including courses of high levels of specialization at the post-doctoral level within a given branch or faculty. This Court note that it is nobody's case that the seat of DNB PDCET (Radio-Diagnosis) course could not had been reserved in the first place, this Court finds the said provision beneficial in determining whether such seat can be de-reserved at all. However, it has been weighing in the mind of this Court that, although the objective of preventing wastage of seats, as proposed by the parties before this Court, is appealing in light of the judgments of the Supreme Court and most importantly, in public interest, at the same time, this Court is also required to be clear in its mind and conscience alike that no injustice is caused to any reserved category candidate.

**66.** Accordingly, in the present factual matrix, since this seat belonged to All-India Quota, the Central Government would be the competent authority to decide whether it should be de-reserved or not. Thus, it was incumbent on the Central Government to process and take steps for de-reservation of the said seat.



**67.** The reasoning of the learned Single Judge is also correct that Clause 4.6 of the Handbook was not applicable since it did not pertain to release of the OBC seat to UR quota and that the decision of the MoM to transfer vacant PD DNB seats to NEET PG did not apply since the counselling process was ongoing. The learned Single Judge also noted that the Appellant was itself unclear about the status of the impugned seat.

**68.** In light of the foregoing, this Court ought to balance competing interests. While it is in public interest to not let medical seats go vacant, Respondent No. 1 has failed to furnish the basis of her right to seek de-reservation. A remedy can only lie if there exists a right. However, this Court shall also be cognisant of principles of equity and fairness while examining the impugned judgment.

**69.** I agree with the view taken by the learned Single Judge that reliance of the Appellant on Clause 4.6 of the Handbook and MoM does not come to their rescue. The Handbook, including Clause 4.6, only prohibits conversion from one reserved category to another. Therefore, the Handbook is silent as to the Appellant's authority to de-reserve the OBC seat. Further, the spirit of the decision taken in the MoM was indisputably to prevent wastage of seats. Hence, a harmonious interpretation is to be adopted.

**70.** If the seats are to be transferred to the NEET PG pool before de-reservation, it would deprive PD DNB candidates of the



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opportunity to further partake in the admission process for their respective courses, despite having participated in the same counselling process and being otherwise eligible. This approach would also defeat the purpose of maintaining a distinct counselling mechanism for PD seats. It is therefore more equitable that such transfer occurs only after counselling rounds are exhausted in their entirety, and any unfilled reserved seats be first de-reserved and offered to all eligible PD candidates as per merit. This approach shall ensure that the PD seats are filled by the most relevant pool of candidates, i.e., PD candidates. Only if seats continue to remain vacant thereafter should they be added to the NEET PG pool, thereby preserving the larger public interest in preventing wastage of medical seats.

**71.** Further, before the learned Single Judge, *vide* letter dated 04.06.2025, the Additional Chief Secretary (Health) of Respondent No. 5 (State of Haryana) clarified that the impugned seat fell under All-India Quota. Respondent No. 4 (UOI) also requested the Appellant to take a decision pertaining to the impugned seat by letter dated 10.06.2025. The learned Single Judge proceeded on this aforesaid stance and directed the Appellant to de-reserve the OBC seat. However, the stance taken by UOI before this Court is that State of Haryana is the competent authority to decide the question of de-reservation since it decides the seat distribution matrix and forwards the same to the Appellant.

**72.** I do not wish to delve further into this dispute of the concerned competent authority, suffice to say that since the seat belonged to the All-India Quota, it was always for the Central Government to take a



call in the said issue and take appropriate steps urgently to ensure that purported super speciality medical seats do not become casualties in the fight between two government authorities.

**73.** Therefore, in light of the limited correctional jurisdiction of this Court, the direction of the learned Single Judge for de-reservation of the OBC seat to UR category and offer it to UR candidates per the merits appears to be a plausible view and warrants our interference only to the extent that it is not the Appellant but Respondent No. 4 (UOI) that the said direction must be issued to.

**74.** The learned Single Judge has not missed the wood for the tree in deciding the issue raised in the writ petition, having undertaken a detailed analysis of the facts and circumstances of the present case.

**75.** At the cost of repetition, to conclude the issue, it is the Central Government and not the Appellant who is the competent authority to take a call on the de-reservation of the PD DNB seat from OBC to UR, since the impugned seat belonged to the All-India Quota.

**76.** For all the aforesaid reasons, the Appeal is partly allowed in the aforesaid terms. Pending applications, if any, stand disposed of.

**77.** There shall be no order(s) as to cost.

**OM PRAKASH SHUKLA, J.**



**C. HARI SHANKAR, J.**

1. Having had the advantage of reading the draft opinion of my learned Brother Om Prakash Shukla, J., I regret my inability to agree with the view taken by him.

2. The principal ground on which I am unable to subscribe to his opinion is in his view that the Court is empowered to direct the Radio diagnosis seat in the Government Medical Hospital, Panchkula, to be dereserved and thrown open to unreserved general category candidates including the respondent. Though Shukla, J., has, like the learned Single Judge in the judgement under appeal, adopted this view in order to ensure that the seat should not go vacant, especially as it is for admission to a medical course, I am of the opinion that a Court cannot, in the light of the law laid down in that regard by the Supreme Court, dereserve a reserved category seat. The highest, the Court can recommend or suggest to the competent executive authority is to consider whether the seat can be dereserved. Directing dereservation would, in my view, transgress the legitimate boundaries of our jurisdiction.

3. Though the relevant facts stand admirably set out in the judgement of Shukla, J., a brief recapitulation would not be out of place.

4. The National Board for Examination in Medical Sciences<sup>28</sup>, the Appellant issued a Notification inviting applications for the DNB

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<sup>28</sup> "NBEMS" hereinafter



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PDCET<sup>29</sup> 2025 on 28 January 2025. The Respondent participated. She scored the 142<sup>nd</sup> rank of candidates who desired to pursue radiodiagnosis, in the Unreserved quota, to which she belongs.

5. As per the Indicative Seat Matrix released by the NBEMS on 7 May 2005, the only Radiodiagnosis seat in the Government Hospital, Panchkula<sup>30</sup>, to which the respondent aspires, was reserved for a candidate belonging to the Other Backward Classes<sup>31</sup>. Admittedly, therefore, the respondent is not eligible for the said seat. Despite this, in full awareness of the fact that the lone Radiodiagnosis seat in the GHP was reserved for an OBC candidate, the Respondent chose, as the hospital of her first choice prior to the first round of counselling, the GHP.

6. The learned Single Judge has, in the impugned judgement, observed that the Respondent did so as he was under the impression that, if the seat remained unfilled, it would be dereserved. No basis, for the entertainment of any such belief by the Respondent is, however, forthcoming.

7. Indeed, as was submitted by Mr. Kirtiman Singh, learned Senior Counsel appearing for the NBEMS, there may be any number of candidates who may have desired to be admitted to the Radiodiagnosis seat in the GHP, but did not opt for such admission as they were aware that the seat was reserved for an OBC candidate. Directing dereservation of the seat would, among other things, to my mind,

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<sup>29</sup> Diplomate of National Board Post Diploma Centralized Entrance Test

<sup>30</sup> "GHP" hereinafter

<sup>31</sup> "OBC" hereinafter



result in injustice to all such candidates.

**8.** Be that as it may, the revised allotment details released by the NBEMS for counselling to the DNB PD course, on 17 May 2025, revealed that the OBC Radiodiagnosis seat in the GHP was going vacant. The petitioner, being an Unreserved category candidate, was allotted a Radiodiagnosis seat in the Ivy Health and Life Sciences Hospital, Punjab, which she declined on 18 May 2025. On 19 May 2025, the Respondent wrote to the NBEMS, praying that she be allotted the vacant OBC category Radiodiagnosis seat in the GHP, in case no candidate superior to her in merit was found suitable for admission thereto. On her request not meeting with a favourable response, the respondent petitioned this Court, resulting in the impugned judgement dated 16 June 2025, rendered by the learned Single Judge.

**9.** Before the learned Single Judge, the Respondent placed reliance on a Note, purportedly issued by the Ministry of Health and Family Welfare<sup>32</sup>, which stated that if an OBC seat was not filled for want of a candidate, it could be treated as Unreserved. Notably, Shukla, J., in para 28 of his opinion, with which I am entirely in agreement, holds that the said Note cannot come to the rescue of the Respondent.

**10.** Shukla J also goes on to concur with the learned Single Judge in his view that the decision to convert the OBC category Radiodiagnosis seat in the GHP to a post-MBBS seat, to be filled in by candidates aspiring to the post-MBBS Radiodiagnosis course, would not stand in

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<sup>32</sup> "MOHFW" hereinafter



the way of directing dereservation of the seat at this stage, as the decision applied only at a post-counselling stage. Shukla, J., specifically observes that the seat could have been converted into a post-MBBS seat after the exercise of counselling for the DNB PD courses was over. Ergo, holds Shukla J, there was no embargo on directing dereservation of the seat at this stage, when the exercise of DNB PD counselling was still ongoing.

**11.** I have, with greatest respect, two reservations with this point of view. In the 1<sup>st</sup> place, which is my minor reservation, adopting such a course of action would result in denying the Radiodiagnosis seat to the post-MBBS candidates, in the event that it remains unfilled after DNB PD counselling, which cannot be done by the Court. Nor, to my mind, can the Court prevent implementation of the decision taken in the 15<sup>th</sup> Accreditation Committee Meeting of the NBEMS to transfer the seat to the post-MBBS pool, if it remained unfilled after completion of DNB PD counselling. Significantly, there is no specific challenge to the validity of the said decision, taken by the NBEMS in its 15<sup>th</sup> Accreditation Committee Meeting.

**12.** Further, if Court were to step in and direct dereservation of the seat which is reserved for an OBC candidate, it could result in complete disarray. There would never be any certainty regarding whether a concerned seat would be reserved or dereserved, and Court could, even in the absence of any provision permitting it, dereserve a reserved seat merely because no reserved category candidate is available to fill it. Candidates could, at their whim and fancy – as in the present case – apply for a reserved category seat with full



knowledge of the fact that they are not eligible therefor. Others, who may have been more circumspect and acted with greater propriety, may not have so applied.

**13.** The present case is a stellar example against the advisability of the Court stepping in and dereserving the vacancy which was otherwise reserved for an OBC category candidate. The respondent, despite being fully aware that she was not eligible for the post, went ahead and applied for it. There may have been countless others who may not, *rightfully*, have applied for the seat, so that the direction, of the learned Single Judge, to allot it to the most meritorious unreserved category candidate, really speaking, is no panacea. The view adopted by Shukla J, which endorses that which was adopted by the learned Single Judge, provides a premium to the respondent who applied for a seat for which she was not eligible, *knowing fully well that she was not*, and rejected the seat for which she was eligible and which was, in fact, allotted to her. As a Court exercising jurisdiction under Article 226, I am of the opinion that no such order can be passed.

**14.** More elemental, however, is my reservation to the course of action suggested by the learned Single Judge and approved by Shukla J in his opinion, on the ground that a Court cannot direct a reserved category seat to be dereserved, in the absence of any authority in that regard, whether statutory or by way of binding executive instructions. I do not find, either in the judgement of the learned Single Judge, or in the accompanying opinion of my learned Brother Shukla J, reference to any such statutory provision or executive instruction, which could empower the Court to direct dereservation of the reserved category



seat.

15. Reservation is a measure of social justice, which has withstood constitutional scrutiny by the Supreme Court. It owes its origin to Article 15 of the Constitution of India. Dereservation of a reserved category seat compromises this consideration. If there is any applicable statutory provision, or executive instruction, which envisages such dereservation, then, of course, a Court can mandate compliance therewith. In the absence of statutory provision or executive instruction, the law, as I see it, is settled on the point that a Court cannot extend the reach of its writ jurisdiction to direct dereservation of a reserved category seat.

16. One may, in this context, refer to the decisions in *S.S. Sharma v. Union of India*<sup>33</sup>, *State of Punjab v. G.S. Gill*<sup>34</sup> and *Post-Graduate Institute of Medical Education and Research v. K.L. Narasimhan*<sup>35</sup>. The following passage from *K.L. Narasimhan*, which considers the 3 earlier decisions in *S.S. Sharma* and *G.S. Gill*, speaks for itself:

“16. The question, therefore, is whether the Court can give direction to throw open the reserved vacancies to the general candidates by a writ of mandamus or direction, as the case may be. The contention of Shri P.P. Rao is that since the Institute had already apprised the Ministry of Health and Family Welfare of the need for dereservation of the posts relating to scientific research and no action has since been taken, the Court is empowered to issue directions. In support thereof he placed reliance on the judgment of this Court in *Comptroller and Auditor General of India v. K.S. Jagannathan*<sup>36</sup>. We find it difficult to give

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<sup>33</sup> (1981) 1 SCC 397

<sup>34</sup> (1997) 6 SCC 129

<sup>35</sup> (1997) 6 SCC 283

<sup>36</sup> (1986) 2 SCC 679



acceptance to the contention. The same question had arisen in *S.S. Sharma v. Union of India* wherein a Bench of three Judges of this Court had considered the question whether the Court could give direction to dereserve the post. This Court pointed out that so long as the recruitment by a limited departmental competitive examination for the Dalits and Tribes could be adopted and followed, i.e., one of the methods to make recruitment, a mandamus cannot be issued by the Court to direct the Government to dereserve the post. *CAG* is a reverse case. Therein, rule of reservation was applicable to all the Departments since the CAG had not applied the relaxed standard in conducting the examination and making recruitment on the basis thereof; the Division Bench of the High Court had directed to relax the standard and make recruitment of the Dalits and Tribes by promotion. This Court had upheld the judgment and held that when the authorities have a power coupled with discretion, they have also a duty to implement the policy of the Government. At p. 39, this Court had pointed out that in order to prevent injustice resulting in injustice to the parties concerned, the Court may itself pass an order or give directions which the Government or the competent authority should have passed or given had it properly and lawfully exercised its discretion. Far from helping the appellants, the ratio goes in favour of the reserved candidates. This question was considered in *G.S. Gill*. Therein, the High Court has given direction to dereserve the post and to throw open the same to the general candidates. While considering the ratio in *CAG* and other decisions, this Court had pointed out that the Court cannot give mandamus to disobey the Constitution and principle of reservation enshrined in Articles 15(4) and 16; nor is the Court competent to direct the authorities to disobey the constitutional mandate. It would, therefore, be manifestly illegal to seek a mandamus or direction; nor would the Court be justified to issue such mandamus or direction to the appropriate Government to dereserve the vacancy. It is common knowledge that selections are not objectively being made to select the candidates belonging to the Dalits and Tribes to fill up the vacancies reserved for them though qualified candidates are available to be promoted/appointed, with a view to see that reserved vacancies are not filled up and the same are passed off as eligible candidates being not available so as to ensure that carry-forward vacancies either exceed 50% of the accumulated total vacancies or that selection goes beyond three years so as to make the Government dereserve the vacancies. It would, therefore, be clear that the authorities should implement the executive/legislative/constitutional policy or principle in their true spirit, honestly and sincerely to effectuate the policy; no mandamus or direction should be issued to dereserve the carry-forward vacancies reserved for appointment of the Dalits and Tribes nor should direction be given to fill up the reserved posts with general



candidates. Thus, it is settled legal position that application of roster to single post cadre and appointment by promotion to carry-forward post is valid and constitutional. With a view to give adequate representation in public service to reserved category candidates, the opportunity given to them is not violative of Articles 14 and 16(1) of the Constitution; nor is it unconstitutional.”

(Emphasis supplied)

17. The Court cannot, in my view, don the mantle of the executive. The decision to dereserve reserved category seat is unquestionably within the exclusive domain of the executive. If there were any statutory provision or other instrument having binding force of law, mandating de-reservation, the Court can, unquestionably, bind the executive authorities to comply with the said mandate. Our attention has, however, not been invited to any such instrument having the force of law, which mandates de-reservation of the seat reserved for OBC candidates, in the event that it remained unfilled.

18. Though Shukla J has, in his judgement, sought to draw a distinction between dereservation of a reserved category seat in the case of medical admissions and in the case of recruitment to a service, the distinction, though facially apparent, does not, in my view, impact the question of whether a *Court can direct derereservation of a reserved category seat*, in the absence of any legally binding provision to that effect. That would amount to transgressing into the realm of the executive; a trespass which the Supreme Court has, times without number, criticized.

19. Besides, it is not as though, in the facts available in the present case, the seat would go abegging. The NBEMS had, in its 15<sup>th</sup> Act



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Radiation Committee Meeting, taken a decision that, if the seat remained unfilled after DNB PD counselling was over, it could be added to the pool of Postgraduate seats available for being filled in, on the basis of the NEET. The validity of this decision is not under challenge; neither has it been struck down either by the learned Single Judge or in the opinion of Shukla, J. By following the said policy, the OBC reserved category seat would continue to remain reserved for an OBC candidate, albeit a candidate aspiring to a postgraduate seat following the NEET. If we were to de-reserve this seat, it would result in taking away one seat which would otherwise be available to an OBC candidate. This is yet another reason why, to my mind, it would not be proper for this Court to direct that the reserved Radiodiagnosis seat in the GHP be de-reserved and thrown open to Unreserved category candidates.

**20.** For all these reasons, I regret my inability to agree with Shukla, J. in his decision to concur with the judgement of the learned Single Judge and direct de-reservation of the Radiodiagnosis seat in the GHP, which was reserved for an OBC category candidate.

**21.** To my mind, the Respondent would not be entitled to the said seat and, therefore, the writ petition would be liable to be dismissed and the appeal of the NBEMS, accordingly, allowed.

**C. HARI SHANKAR, J.**



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### **Point of difference**

As we have not been able to arrive at a consensus regarding the course of action to be followed in the present case, the following point of difference is referred to the Hon'ble Chief Justice, to be placed before the learned Third Judge or before a Full Bench, as the Hon'ble Chief Justice would deem appropriate:

“Whether the learned Single Judge was correct in his decision to direct de-reservation of the Radiodiagnosis seat in the Government Hospital Panchkula, which was reserved for an OBC category candidate, and to throw it open to Unreserved category candidates, in the facts of the present case, keeping in mind the legal position?”

**22.** The Registry is directed to place the papers of this case before Hon'ble the Chief Justice for appropriate orders.

**C. HARI SHANKAR, J.**

**OM PRAKASH SHUKLA, J.**

**MAY 18, 2026/pa/ss**