

**IN THE HIGH COURT OF JUDICATURE AT PATNA**

**Civil Writ Jurisdiction Case No.14875 of 2023**

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Munmun Kumari D/o Rajnish Kumar Yadav Ward No. 03, Vill- Barsam, Post- Barsam, PS- Sour Bazar, Dist- Saharsa, Pin- 852221 Bihar.

... .. Petitioner.

Versus

1. The State of Bihar Through the Additional Chief Secretary, Education Department, Government of Bihar, New Secretariat, Patna.
2. The Bihar Combine Entrance Competitive Examination Board Through Secretary, Bihar Combine Entrance Competitive Examination Board, Patna.
3. National Medical Commission, Through Secretary, National Medical Commission, New Delhi
4. Union of India Through Secretary, Ministry of Education, New Delhi.

... .. Respondents.

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**Appearance :**

For the Petitioner/s	:	Mr. Shivesh Kumar Singh, Advocate
For the State	:	Mr. Madhaw Pd. Yadaw, G.P.-23
		Mr. Arvind Kumar, AC to G.P.-23
For the BCECE	:	Mr. Prasoon Sinha, Advocate
For the UOI	:	Mrs. Kanak Verma, C.G.C.
For the NMC	:	Mr. Kumar Priya Ranjan, Sr. S.C.
		Mr. Sandeep Kumar, Advocate
		Mr. Sudarshan Bharadwaj, Advocate

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**CORAM: HONOURABLE MR. JUSTICE ANJANI KUMAR SHARAN**

**CAV JUDGMENT**

**Date : 08-10-2024**

Heard learned counsel for the petitioner, learned counsel for the State, learned counsel for the Bihar Combine Entrance Competitive Examination Board, learned counsel for the Union of India and learned counsel for the National Medical



Commission.

2. By filing this petition under Article 226 of the Constitution of India, the petitioner seeks the following reliefs:

*i) Issuance of an order, direction or an appropriate declaration thereby declaring that since there was no condition in Notification dated 24.09.2023 that if the candidate will be allotted any seat in ongoing Stray Round Counselling by MCC for All India Quota, will not be eligible for seat in third round counselling in Bihar, hence issuance of notification dated 29.09.2023 by the Bihar Combined Entrance Competitive Examination Board debarring the candidates including the petitioner from consideration in 3 round counselling in Bihar, who were allotted seat in Stray Round of All India Quota, was arbitrary and in violation of their own notification dated 24.09.2023 and hence not sustainable in the eyes of law.*

*ii) Issuance of an order, direction or writ in the nature of certiorari thereby quashing the final notification dated 29.09.2023.*

*iii) Issuance of an order, direction or writ in the nature of Mandamus thereby commanding the respondents concerned to allot a seat to the petitioner for MBBS Course, as the candidates much lower in merit and rank have been allotted seat for MBBS Course.*

*iv) Issuance of a direction, order or an appropriate writ in the nature of mandamus thereby directing the respondents to keep reserve a seat for MBBS Course, during the pendency of the present writ petition.*



*v) Issuance of an order, direction thereby directing the respondent Authority not to take any further steps towards appointment of any selected candidates, during the pendency of the present writ petition.*

*vi) Any other relief(s) for which the petitioner may be found entitled to under the facts and circumstances of the case.*

3. The case of the petitioner lies in narrow compass is that the petitioner is an aspirant for admission in Under Graduate Medical Courses, for which the petitioner appeared in NEET Examination, 2023 and scored 605 marks and secured Rank 692 in State Backward Class Category and Rank 405 in Reserved Category Girls (RCG). She participated in Round 1, 2 and 3 of counselling for All Indian Quota as well as in Round 1 and 2 of counselling for State of Bihar Quota, but did not succeed to get any seat.

4. The further case of the petitioner is that after Round 1, 2 & 3 counselling for the All-India Quota, the Medical Counselling Committee issued a notification regarding Stray Vacancy Round Counselling for All India Quota. The petitioner, being eligible, applied for Stray Round Counselling for MBBS Course and alternatively, for BDS Course. Meanwhile, belatedly, the Bihar Combined Entrance Competitive Examination Board (BCECEB) issued a notice dated 24.09.2023 for the 3<sup>rd</sup> Round



of Online Counselling for UGMAC-2023. As per para nos. 3&4 of the notification dated 24.09.2023, the petitioner was fully eligible for the 3<sup>rd</sup> Round of Counselling in Bihar and hence, she applied for the same opting for an MBBS Course and alternatively BDS Course. On 27.09.2023, the MCC published the results of the Stray Round, wherein the petitioner was allotted seat in the BDS Course. Subsequently, on 29.09.2023, the BCECEB issued a notification declaring that candidates, who had been allotted any seat in the Stray Round of the All India Quota by MCC, would be debarred from obtaining a seat in the 3<sup>rd</sup> Round of Online Counselling for the Bihar Quota. As a result, despite having a higher ranking compared to the candidates allotted an MBBS seat in Bihar, the petitioner was not allotted a seat.

5. Learned counsel for the petitioner submitted that the petitioner's rank in the Reserved Category Girl (RCG) is 405, whereas the last selected candidate for the MBBS course in the RCG category had a rank of 445. This clearly shows that candidates with significantly lower ranks than the petitioner were granted admission to the MBBS course during the third round of counselling under the State Quota. It is argued by the learned counsel for the petitioner that the notification dated



24.09.2023 does not mention any terms and conditions that if a candidate is allotted a seat in the ongoing Stray Round for All India Quota, they would be debarred from obtaining a seat in the 3<sup>rd</sup> round of online counselling for the Bihar Quota.

6. Learned counsel for the petitioner further submitted that, on the one hand, the BCECE had delayed the counselling process for 3<sup>rd</sup> Round and, on the other hand, the BCECEB had issued the notification of third round of counselling on 24.08.2023 but belatedly published the results on 29.09.2022. Therefore, by taking advantage of its own delay, the BCECEB issued notification dated 29.09.2023 and thereby debarred the petitioner in 3<sup>rd</sup> Round Counselling without any authority merely on the ground that the petitioner was allotted seat for BDS Course in Stray Round in All India Quota.

7. Learned counsel further submitted that on bare perusal of the provisions relating to Stray Vacancy Round, as mentioned in the Information Bulletin and Counselling Scheme of UG NEET-2023 of MCC, it is evident that the said provision does not empower BCECE to debar any candidate from counselling on the ground that such candidate has been allotted seat in Stray round in All India Quota and the impugned notification dated 29.09.2023 is, prima facie, wrong, illegal and without any



authority. Petitioner had no alternative but to take admission in the BDS Course under the All India Quota on the last date of admission i.e. on 30.09.2023.

8. Precisely, the grouse of the petitioner, as has been highlighted in the petition and further canvassed by learned counsel for the petitioner is that the petitioner is entitled to restoration of her position before issuance of impugned Notification dated 29.09.2023 and entitled to get admission in MBBS Course in the present academic year i.e. 2024-25, in view of the law laid down by Hon'ble Supreme Court in the matter of ***S. Krishna Sradha Vs. State of Andhra Pradesh and Others(2020) 17 SCC 465.***

The relevant part whereof is quoted herein below:

*“However, the question is with respect to a student, a meritorious candidate for no fault of his/her has been denied admission illegally and who has pursued his/her legal rights expeditiously without delay is entitled to pay relief of admission more particularly in the courses like MBBS the relief of compensation as held by this Court in Asha? The aforesaid question is required to be considered only to the cases where (I) no fault is attributable to the candidate; (ii) the candidate has pursued her rights and legal remedies expeditiously and without delay; (iii) where there is fault on the part of the authorities and apparent breach of rules and regulations; and (iv) candidate is found to be more meritorious than the last candidate who has been given admission.”*



9. Mounting the claim, learned counsel for the petitioner lastly submitted that by applying the law laid down by the Hon'ble Supreme Court in the case of **S. Krishna Sradha (supra)**, the Gauhati High Court vide Judgment dated 07.03.2024 has granted similar relief to the petitioner therein by directing the respondents to give permission for admission in MBBS Course in next academic session and also compensated the petitioner. Accordingly, it is submitted that the petitioner is also entitled to get admission in MBBS Course in State Quota in present academic session i.e. 2024-25 and further she is also entitled to be adequately compensated for losing one academic year and for the expenses made by her in pursuing BDS Course and BCECE is also bound to pay the bond amount.

10. Refuting the aforesaid submissions made on behalf of the petitioner, Mr. Prasoon Sinha, learned counsel appearing for the respondent no.2, submitted that before publishing a notice for 3<sup>rd</sup> round online counseling for the State Quota by the BCECE Board, an Information Bulletin and Counselling Scheme was published. Chapter 12 of this bulletin, which deals with the registration and counselling process, provides detailed guidelines for the final Stray Round, which has been annexed as Annexure-R2/H to this application.



**11.** He further submitted that the candidates including the petitioner are deemed to have read, agreed and accepted the scheme of counseling and the terms and conditions of the counseling scheme for NEET-UG counseling and, thereafter, completed the online submission of application/registration form. It is further submitted that the option to exit was permissible only till Round-3 (AIQ counselling). The consequence of not joining the seat allotted to the candidate in Stray Vacancy Round against All India Quota, as provided by the MCC in the Information Bulletin and Counselling Scheme (Anneuxre-R2/G to the counter affidavit), would be that the candidate who did not join the allotted seat in the Stray round shall be debarred from NEET examination for one year. If the petitioner decided to exit and she did not join the seat allotted to her by the MCC in the Stray Round in defiance of the counselling scheme prepared and published by the MCC, she herself is responsible for consequence of debarment for one year from NEET Examination as well as for forfeiture of fees as provided by the MCC in the guidelines for the final Stray Round.

**12.** He further submitted that on 27.09.2023, the MCC released seat allotment result for the NEET(UG) stray vacancy round in





which seats were allotted to altogether 2140 candidates including the petitioner. The name of the petitioner stands at Serial No. 741 in the aforesaid list and she was allotted a seat for BDS Course in ESIC Dental Hospital.

**13.** He further submitted that out of the aforesaid 2140 candidates, who were allotted seat in Stray round vacancy for NEET (UG) against AIQ, 288 candidates including the petitioner, had submitted their application for 3<sup>rd</sup> Round Online Counselling before the BCECE Board for State Quota. Since the seats were allotted in the Stray Round for All India Quota by the MCC to the aforesaid 288 candidates, who were bound to join the seat allotted to them in the Stray round in accordance with Information Bulletin and Counselling Scheme. In that view of the matter, not only the petitioner but other 287 candidates, who had been allotted seats in Stray Vacancy Round for All India Rank, were debarred from participating in the Round-3 counselling conducted by the BCECE Board on the basis of the notification dated 29.09.2023 published by the BCECE for 3<sup>rd</sup> round online counselling. After removing those 288 candidates including the petitioner from the list for UGMAC-2023, Round-3 seat/college allotment, BCECE conducted 3<sup>rd</sup> round counselling and allotted the seats to the remaining candidates on



the basis of merit-cum-choice.

**14.** It is further submitted that on the same day, the BCECE also published a list vide advertisement no. BCECEB (UGMAC) – 2023/15 dated 29.09.2023 and in that list the petitioner is at serial no. 187 in the list of the aforesaid 288 candidates and if only Reserved Category Girl (RCG) candidates shall be considered in the aforesaid list, a total number of RCG candidates out of these 288 candidates are 54. The total vacant seats in RCG Category to be filled up was only 21 and out of these 54 RCG candidates, 29 RCG candidates have higher rank than that of the petitioner and, therefore, even if these 288 candidates were allowed to participate in the Round-3 counselling, the petitioner would not have been allotted a seat under RCG.

**15.** While making his argument, Mr. Prasoon Sinha has made serious objection regarding non-joinder of party. He submitted that the BCECE Board, which conducted Under Graduate Medical Admission Counselling (UGMAC)-2023 for MBBS/BDS/ B.V.Sc.& A.H. in Government Medical/ Dental/ Bihar Veterinary Colleges and Private Medical/Dental Colleges of Bihar for State Quota, has been impleaded as respondent no.2 by the petitioner in the writ application, but the Medical



Counselling Committee (MCC), which conducted counselling-2023 of the candidates for their admission in All India Quota/ Deemed University/Central Universities (MBBS/ BDS/ B.Sc. Nursing), has not been impleaded as a party respondent in the writ application. The MCC is a necessary party in this case, as without whom no order can be made effectively. In buttress of his submission, he placed reliance on the judgment of the Hon'ble Supreme Court in the case of *Udit Narayan Singh V/s. Board of Revenue* reported in *AIR 1963 SC 786* wherein the Hon'ble Court has examined the law on the subject as to who are necessary or proper parties. The principle has been laid down by the Hon'ble Apex Court in the aforesaid case, inter-alia, that a necessary party is one without whom no order can be made effectively; a proper party is one in whose absence an effective order can be passed, but whose presence is necessary for a complete and final decision on the question involved in the proceeding.

**16.** Learned counsel for the National Medical Commission has virtually supported the submissions of learned counsel for the respondent no.2 and submitted that the petitioner had already been allotted a seat at the "ESIC Dental Hospital" for the BDS Course during the Stray Round Online counselling of the All-



India Quota, organized by the MCC. Therefore, as per Chapter-12 of the Information Bulletin and Counselling Scheme published by the MCC, whether the petitioner joined the allotted seat in AIQ in BDS Course or not, she was debarred from participating in the third round of online counselling conducted by the BCECE Board.

17. In support of his submission, learned counsel for the National Medical Commission has relied on the judgment of the Hon'ble Apex Court in case of ***Dar-Us-Slam Educational Trust vs Medical Council of India*** passed in WP (C) No. 267/2017 vide order dated 09.05.2017, the relevant portion whereof is quoted hereunder:

*“After the second round of counselling for All India Quota seats, the students who take admission in All India Quota seats should not be allowed/permitted to vacate the seats. This would ensure that very few seats are reverted to the State Quota and also All India Quota seats are filled by students from all india merit list only. The students who take admission and secure admission in Deemed Universities pursuant to the second round of counselling conducted by the DGHS shall not be eligible to participate in any other counselling.”*

18. Learned counsel further submitted the Hon'ble Apex Court in case of ***Ashish Ranjan as reported in (2016) 11 SCC 225***



*(Relevant page no. 228-229, chart)* has held that no admission can be taken after the cut-off date, but in the year 2023, the date was extended till 15 November, 2023, hence no admission after 15 November, 2023 is permissible.

19. He further submitted that the claim of learned counsel for the petitioner that the petitioner's case is similar to *S. Krishna Sradha (supra)* is totally false as the petitioner fulfils only one criterion i.e., approached this Court on time, except the same, she does not fulfil other requirement/criteria, hence she is not entitled to any relief as granted to the petitioner therein.

20. The undisputed and unchallenged fact is that the petitioner scored 605 marks in NEET, 2023 and in Bihar her Rank was declared as 692 in Backward Class category and 405 Rank in Reserve Category Girls (RCG). After three rounds of counselling for All India Quota, MCC notified for stray round counselling for MBBS course and in alternative BDS course in All India Quota. The petitioner, being eligible, applied for this round under the All India Quota for an MBBS course and, alternately, for a BDS course. The petitioner bears Roll No.3905310331 for NEET (UG), 2023 and was allotted a seat in ESIC Dental Hospital for BDS course in AIQ Stray Round online counselling organized by the MCC. It is pertinent to



mention here that while the Stray round of the All India Quota was going on, the BCECB issued a notice dated 24.09.2023, for the 3<sup>rd</sup> Round of Online counselling for Undergraduate Medical Admission Counselling (UGMAC-2023). It is much more argued on behalf of the petitioner that the notification dated 24.09.2023 does not mention any terms and conditions stating that if a candidate is allotted a seat in the ongoing Stray Round for All India Quota, they would be debarred from obtaining a seat in the 3<sup>rd</sup> Round of online counselling for the Bihar Quota and this is the crux of the matter.

**21.** It is pertinent to mention here that for convenience of the students appearing in the counselling, 2023, the MCC has published an Information Bulletin & Counselling Scheme and the relevant portion thereof is being reproduced hereunder:

*“If a candidate is allotted a seat in the Stray Round, they must join the allotted seat/college. Failure to join the allotted seat will result in the candidate being debarred from the NEET examination for one year, along with the forfeiture of fees.”*

**22.** From perusal of the above, there is no scintilla of doubt that if the BCECE Board had allowed the petitioner to join the counselling for 3<sup>rd</sup> round against State quota, that would have frustrated the debarment of the petitioner from NEET



examination for one year for not joining the seat allotted to her in the Stray Round by the MCC as per the provisions contained in the aforesaid allotment scheme prepared and published by the MCC. Thus, it was mandatory for the petitioner to join the seat/college allotted by the MCC to the petitioner during the stray round in view of the fact that 288 candidates (including the petitioner) who had been allotted seats in stray vacancy round to All India quota (out of altogether 2140 candidates) were removed from the list of counselling for UGMAC-2023 for 3<sup>rd</sup> round by the BCECE Board.

**23.** Further, from perusal of Annexure-R2/J of the 2<sup>nd</sup> supplementary counter affidavit filed on behalf of the respondent no.2, it is manifest that all together 288 candidates, including the petitioner, had applied for 3<sup>rd</sup> round of counselling before the BCECE Board for State quota, and the aforesaid 288 candidates had already been allotted seats for the All India quota during stray round counselling conducted by the MCC. Therefore, Annexure-5 to the writ petition was issued by the BCECE Board debarring the aforesaid 288 candidates including the petitioner from 3 round of counselling for the state quota. Out of the aforesaid 288 candidates only the petitioner has questioned the validity of notification dated 29.09.2023 as



contained in Annexure-5 to the writ petition and has prayed to quash the said notification. In case, the aforesaid notification dated 29.09.2023, as contained in Annexure-5 to the writ petition, is quashed, then debarment of the remaining 287 candidates from participating in the 3 round of counselling and for the State quota, will automatically go and it will open a Pandora box; whereas the notification as contained in Annexure-5 to the writ petition dated 29.09.2023 was issued after publication of the list of the candidates who had already been allotted seats against all India quota during the stray round counselling, and all the candidates were bound to take admissions on the seats/colleges allotted to them and further they were not allowed to exit, hence they could not have participated in 3<sup>rd</sup> round of counselling conducted by the BCECE Board.

**24.** At this juncture, it would be useful to quote what has been held by the Hon'ble Supreme Court in the case of *Nihila P.P. v. Medical Counselling Committee (MCC)* reported in **2021 SCC OnLine SC 3283** and, in particular in para-2 thereof, which is reproduced herein below:

*“2. The proposed modified scheme of online 4 rounds of counselling will be in tune with the prevailing norms of counselling (including the fees and*





*security deposit) being forwarded for Central Institutes/Universities. The salient points of the scheme are as follows:*

*(a) There will be 04 rounds of online counselling i.e. AIQ Round 1, AIQ Round 2, AIQ MOP-Up round and AIQ Stray Vacancy Round.*

*(b) ....*

*(c) .....*

*(d) ...*

*(e) ....*

*(f) ....*

*(g) ....*

*(h) Candidates who have joined the allotted seat in Round 2 and further rounds of counselling will not be allowed to resign and will also be ineligible to take part in further rounds of any type of counselling.*

*(I) Candidates who have not joined the allotted seat in Round 2 will be eligible for further rounds of counselling subject to forfeiture of security deposit.....”*

**25.** From perusal of Annexure-R2/H to the counter affidavit filed on behalf of the respondent no. 02, it is evident that once a seat is allotted to any candidate, the option to exit and choice for not joining the allotted seat/ College is permissible only up to the stage of 3<sup>rd</sup> round of counselling, and that too, on the condition of forfeiture of fees and elimination from participating in any further rounds. Therefore, the petitioner had no choice to exit and as such she could not have opted to not join the



seat/college allotted to her during the stray round of counselling conducted by the MCC for the all India quota.

26. If the petitioner was permitted to participate in the counselling and was not debarred, in that eventuality also she was not eligible to take admission in MBBS course inasmuch as the seats (15) would have been allotted from those 28 female BC candidates whose marks were in between 634 and 607. As such cut off marks for female BC would be 620. In this case, the petitioner having 605 marks would not be allotted any seat of MBBS.

27. In course of argument, learned counsel for the petitioner has placed much reliance on the judgment in the case of ***S. Krishna Sradha (supra)*** wherein various criteria has been laid down such as the meritorious candidate/student who has been denied an admission in MBBS course illegally or irrationally by the authorities for no fault of his/her and who has approached the Court in time and there is fault on the part of the authorities and/or there is apparent breach of rules and regulations then the Court under the exceptional circumstances can interfere in the matter. In the present case, the petitioner was neither illegally/irrationally denied by the authorities nor there is apparent breach of rules and regulations or any fault on the part



of the authorities rather the petitioner only fulfills only one criteria i.e. she has approached this Court on time. Thus seen, there is no illegality or infirmity in the policy decision taken by the respondent-State, which is otherwise in the interest of each and every individual. In the case of **Tata Cellular v. Union of India** reported in **(1994) 6 SCC 651**, the Hon'ble Supreme Court has observed that in case a policy decision, if any, taken by the Government, court should not overstep its limit and tinker with the policy decision, unless same is absolutely capricious and violative of any constitutional statutory or other provisions of law. It is not in domain of this Court nor within the power of judicial review, to embark upon an enquiry to find out, whether a particular policy is better or a better policy could have been evolved.

**28.** No doubt, the writ court has adequate power of judicial review in respect of such decisions. However, once it is found that there is sufficient material for taking a particular policy decision, bringing it within the four corners of Article 14 of the Constitution, power of judicial review would not extend to determine the correctness of such a policy decision or to indulge into the exercise of finding out whether there could be more appropriate or better alternatives. Once we find that parameters



of Article of 14 are satisfied; there was due application of mind in arriving at the decision which is backed by cogent material; the decision is not arbitrary or irrational and; it is taken in public interest, the Court has to respect such a decision of the Executive as the policy making is the domain of the Executive. In the case at hand, there is nothing on record to suggest that the policy decision taken by respondents is arbitrary and based on irrational consideration, mala fide or against statutory provisions, the same calls for no interference by this court in exercise, of power of judicial review.

**29.** After giving my thoughtful consideration to the facts and circumstances of the case and to the submissions made by learned counsel for the parties and for the reasons stated in foregoing paragraphs, this writ application is dismissed.

**(Anjani Kumar Sharan, J)**

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AFR/NAFR	AFR
CAV DATE	27.09.2024
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